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Title: FEDERAL REGISTER.

Volume: 67 Issues: 236 - 243
PAGES: 72827-77644

Date: DECEMBER 9 - 18, 2002

UMI Number: 2575.00

Notes: REEL NO: 9 OF 11

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Federal Register

12–9–02 Monday
Vol. 67 No. 236 Dec. 9, 2002

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Federal Register

12–9–02 Monday
Vol. 67 No. 236 Dec. 9, 2002
Book 1 of 4 Books
Pages 72827–74048

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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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Rules and Regulations

Federal Register
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Monday, December 9, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 02–024–1]

Stall Reservations at Import Quarantine Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations regarding the importation of horses into the United States by requiring persons who cancel reservations for stall space at import quarantine facilities to notify us earlier and by increasing the fee for canceling reservations. Under the new fee structure, persons who cancel a reservation at least 30 business days prior to the reservation date will be charged 25 percent of the reservation fee; persons who cancel a reservation 15 to 29 business days prior to the reservation date will be charged 50 percent of the reservation fee; and persons who cancel a reservation less than 15 business days prior to the reservation date will forfeit 100 percent of the reservation fee. We are taking this action to discourage importers from reserving space that they may not use and canceling when it is too late for others to use the space. We believe this action will improve the occupancy rate of stall space, and, therefore, the efficiency of import quarantine facilities.

DATES: This interim rule is effective December 9, 2002. We will consider all comments that we receive on or before February 7, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–024–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–024–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–024–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Andrea Morgan, Staff Veterinarian, National Center for Import and Export, Technical Trade Services, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 restrict the importation of certain animals and animal products into the United States to prevent the introduction of communicable animal diseases. Subpart C—Horses (§§ 93.300 through 93.326, referred to below as the regulations), regulates the importation of horses into the United States. Section 93.304 of the regulations contains, among other things, specific provisions for reservation fees for space at quarantine facilities maintained by the Animal and Plant Health Inspection Service (APHIS).

Under the current regulations in § 93.304(a)(3), the importer or importer's agent must pay or ensure payment of a reservation fee for each lot of horses to be quarantined in a facility maintained by APHIS. The reservation fee is 100 percent of the cost of providing care, feed, and handling during quarantine, as estimated by the quarantine facility's veterinarian in charge. Any reservation fee will be forfeited if the importer or the importer's agent fails to present for entry, within 24 hours following the designated time of arrival, the horse or horses for which the reservation was made. However, a reservation fee will not be forfeited if written notice of cancellation from the importer or the importer's agent is received by the office of the veterinarian in charge of the quarantine facility during regular business hours (8:00 a.m. to 4:30 p.m. (local time) Monday through Friday, excluding holidays) no later than 5 business days prior to the beginning of the time of importation as specified in the import permit or as arranged with the veterinarian in charge of the quarantine facility if no import permit is required. When a reservation is canceled, a $40 cancellation fee is charged.

Recently, stall space for imported horses at the United States Department of Agriculture (USDA) quarantine facilities has been in high demand. Importers or their agents can sometimes expect to wait up to 2 to 4 months to obtain stall space. Some importers or their agents have been making speculative reservations far in advance of the projected date of arrival of the imported horses, and then canceling those reservations with 5 business days notice if they have no horses to import. While 5 business days' notice is what is required under the regulations to avoid forfeiture of the total reservation fee, this period does not allow sufficient time to offer the canceled space to other prospective importers. Five business days also does not allow sufficient time for another importer who might be able to make use of the available stall space to make the necessary arrangements for importing horses. We believe the current cancellation fee does not provide sufficient deterrent against speculative reservations and does not recover the fixed cost associated with operating quarantine facilities when stall space goes unused.

Therefore, we are amending the regulations to establish a graduated fee schedule for cancellations. Under this

schedule, the fee depends on when the reservations are canceled prior to the reservation date. Persons who cancel a reservation 30 business days or more prior to the reservation date will be charged 25 percent of the reservation fee. Persons who cancel a reservation 15 to 29 business days prior to the reservation will be charged 50 percent of the reservation fee. Persons who cancel a reservation less than 15 business days prior to the reservation date will forfeit 100 percent of the reservation fee.

We believe that a cancellation fee of 100 percent of the reservation fee is appropriate when a cancellation occurs less than 15 days prior to the expected date of arrival because it is rarely possible to find other horses to take the space in that short a time. It takes at least 15 days to prepare a horse for importation into the United States. Brokers are required to have certain diagnostic tests performed on their horses and these tests must be processed at National Veterinary Services Laboratories. The reduced cancellation fees for more notice reflects the increased likelihood of the space being filled.

We are taking this action to discourage importers from reserving space they may not use and cancelling when it is too late for others to use the space. We believe this action will improve the occupancy rate of stall space, and, therefore, the efficiency of the quarantine facilities. Furthermore, the increased cancellation fee will recover a larger portion of the fixed costs associated with operating quarantine facilities when stall space goes unused.

Alternatives Considered

We considered an alternative in which APHIS would refund brokers their cancellation fee if we were able to fill the stall space with other horses. We also considered charging a set cancellation fee greater than $40 per reservation regardless of when notice is provided. We are not adopting these alternatives for the following reasons:

As noted, it is generally not feasible to fill spaces canceled within 15 days. In cases where cancellation occurs 15 or more days in advance, we may be able to fill the space. However, a refund procedure would be very complex due to the nature of scheduling shipments and arranging stall space. There are times when an entire shipment of 20 horses may be canceled and we may be able to fill only 10 of those slots. There may also be times when the space that becomes available may be inappropriate for a new shipment due to size or location of the newly available stalls. In addition, we do not have the staffing or infrastructure to track and control refunds, especially refunds that must be prorated because there would not be an even exchange. We also were concerned that providing refunds would mean that the fees would no longer be a deterrent to canceling stall space for brokers who can arrange for another importer to fill their canceled space. Such arrangements also could limit which brokers might have an opportunity to use the stall space.

Regarding the other alternative, which would set a flat fee of above $40, we decided instead to establish a graduated fee schedule for cancellations. Under this schedule, the fee would depend on when the reservations were canceled prior to the reservation date, therefore, there would be a greater deterrent to cancelling reservations close to the reservation date, while the lower cancellation fees for more notice reflects the increased likelihood, but no certainty, of the space being filled.

Immediate Action

Immediate action is necessary to discourage importers from reserving space that they may not use and canceling when it is too late for others to use the space. APHIS put a freeze on taking reservations for stall space from importers until this issue is resolved. Because we wish to resume taking stall space reservations at these facilities by December 2002, it is important to make this action effective as quickly as possible. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the regulations regarding the importation of horses into the United States by requiring persons who cancel reservations for stall space at import quarantine facilities to notify us earlier and by increasing the fee for canceling reservations. Under the new fee structure, persons who cancel a reservation at least 30 business days prior to the reservation date will be charged 25 percent of the reservation fee; persons who cancel a reservation 15 to 29 business days prior to the reservation date will be charged 50 percent of the reservation fee; and persons who cancel a reservation less than 15 business days prior to the reservation date will forfeit 100 percent of the reservation fee. We are taking this action to discourage importers from reserving space that they may not use and canceling when it is too late for others to use the space. We believe this action will improve the occupancy rate of stall space, and therefore the efficiency of import quarantine facilities.

In 1999, the U.S. horse industry directly produced goods and services of $25.3 billion and had a total economic impact of $112.1 billion on the U.S. gross domestic product.[1] Racing, showing, and recreation each contributed more than 25 percent to the total value of goods and services produced by the industry. Activities related to the horse industry generated approximately $1.9 billion in tax revenues, most of which were generated in States where parimutuel betting was allowed.[2]

The horses quarantined at USDA's New York and Florida quarantine facilities include horses that are valued at up to $1 million. The average value of these horses in 2001 was $10,400 per horse. The number and total value of horses imported into the United States has been increasing over the last 8 years (table 1).

[1] American Horse Counci, 2000 House Industry Statistics.

[2] American Horse Council, the Economic Impact of the U.S. Horse Industry, Executive Summary, Washington, DC January 2000.

TABLE 1.—ALL HORSE IMPORT VALUES AND QUANTITIES
[Harmonized Schedule Code 0101]

	1993	1999	2001
Value	$61,000,000	$326,000,000	$319,000,000
Quantity	20,725	31,758	37,836

Source: World Trade Atlas, United States—General Imports—Customs Value.

Due to this increase in imported horses and the limited space available at USDA horse quarantine facilities, it is important that reservation space be fully utilized.

Horses are quarantined at a USDA facility for either 3 or 7 days before being cleared. European horses are quarantined for 3 days; South American and Caribbean horses are quarantined for 7 days. The user fee for a 3-day quarantine is $792 per horse. The user fee for a 7-day quarantine is $1,556 per horse (Table 2).

TABLE 2.—CURRENT STALL FEES FOR IMPORTED HORSES

	Equine stall daily user fee
1st through 3rd day (fee per day)	$264
4th through 7th day (fee per day)	191
8th and subsequent days (fee per day	162

Daily user fee Oct. 1, 2002–Sept 30, 2003 (9 CFR 130.7).

Eighty to ninety percent of the quarantine reservations cancelled 5 business days before a reservation are not refilled. The 5-day period does not allow sufficient time to find a replacement. The USDA quarantine facilities in Florida and New York each lose approximately $300,000–$470,000 each year in forgone user fees. In addition, the horse industry as a whole incurs additional costs through delays in being able to import horses. The result is fewer imports than would otherwise occur.

The current practice of charging $40 for a cancellation allows horse brokers to reserve stall space even before securing clients for the space. Brokers with significant capital resources may make several reservations and simply forfeit the $40 reservation fees if a client is not found to fill them. This practice of reserving stall space before securing a client has led to stall reservations being bartered on the open market even though the program receives Federal funding. Some brokers have complained that a $40 reservation fee is not an effective deterrent to prevent brokers from reserving stall space before a client is found.

The graduated fee schedule for canceled reservations will provide greater deterrence against late cancellations. Under a graduated fee schedule, brokers and horse owners will lose 25 percent of the reservation fee if they cancel at least 30 days prior to the reservation. Thirty days notice will provide opportunity for APHIS to refill the stall space. Brokers and horse owners who cancel 15–29 days prior to the reservation will lose 50 percent of the reservation fee. Brokers and horse owners who cancel less than 15 days prior to the reservation will be charged 100 percent of the reservation fee due to the insufficient time to refill the stall space (Table 3).[3]

TABLE 3.—GRADUATED RESERVATION FEES.

Cancellation time period prior to reservations	3-day quarantine cancellation fee	7-day quarantine cancellation fee
30 days or longer (25 percent)	$198	$389
15–29 days (50 percent)	396	778
Less than 15 days (100 percent)	792	1,556

Economic Efforts on Small Entities

Increasing the cancellation fee and the time-period required for cancellation has potential to affect both horse owners and brokers. Horse brokers who cancel space will incur additional cancellation fees. While the cost of cancellations will most likely be borne by the horse owners, the effects on those owners should be minimal compared to the high values of the horses being quarantined.[4]

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no

[3] While most equines undergo a 3 or 7 day quarantine, the new graduated fee schedule will apply to all quarantine periods for which user fees are charged under 9 CFR 130.2. Calculations of graduated fee schedule: (GF) = ((a*d)+(b*d)+(c*d)) * Z, where a = 1st through 3rd day (fee per day) $264, b = 4th through 7th day (fee per day) $191, c = 8th and subsequent days (fee per day) $162, d = number of days, and Z = percentage determined from the cancellation date prior to stall reservation 25%, 50%, and 100%.

[4] SBA lists horse owners as small if they have less than $750,000 per head in revenue (NAICS 112920). Census information is not available for individual horse owners' sales.

retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 is revised to read as follows:

Authority: 7 U.S.C. 1622, 8303, 8306–8308, 8310, 8313, and 8315; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. Section 93.304 is amended by revising paragraphs (a)(3)(iv) and (a)(3)(vi), and by adding a new paragraph (a)(3)(vii) to read as follows:

§ 93.304 Import permits for horses from regions affected with CEM and for horse specimens for diagnostic purposes; reservation fees for space at quarantine facilities maintained by APHIS.

(a) * * *

(3) * * *

(iv) Any reservation fee shall be forfeited if the importer or the importer's agent fails to present for entry, within 24 hours following the designated time of arrival, the horse for which the reservation was made: *Except* that a reservation fee shall not be forfeited if the Administrator determines that services, other than provided by carriers, necessary for the importation of the horses within the required period are unavailable because of unforeseen circumstances as determined by the Administrator (such as the closing of an airport due to inclement weather or the unavailability of the reserved space due to the extension of another quarantine).

* * * * *

(vi) If a reservation is canceled, the importer or the importer's agent will be charged a fee according to the following schedule:

Cancellation date	Fee
30 or more days before the scheduled reservation date	25 percent of the reservation fee.
15–29 days before the scheduled reservation date	50 percent of the reservation fee.
Less than 15 days before the scheduled reservation date	100 percent of the reservation fee.

(vii) If the reservation fee was ensured by a letter of credit, the Department will draw the amount of the cancellation fee against the letter of credit unless the cancellation fee is otherwise paid at least 3 days prior to the expiration date of the letter of credit.

* * * * *

Done in Washington, DC, this 4th day of December 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–31009 Filed 12–6–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 91, 121, 125, and 129

[Docket No. FAA–1999–6411; Amendment Nos. 21–82, 91–272, 121–285, 125–140, 129–35, Special Federal Aviation Regulation No. 88–1]

RIN 2120–AG62

Extension of Compliance Times for Fuel Tank System Safety Assessments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule extends the compliance deadline for supplemental type certificate holders to complete safety assessments of their fuel tank systems, and any system that may affect the fuel tank system, and to develop design changes and maintenance programs needed to correct unsafe conditions. It also extends the compliance time for the affected operators to incorporate instructions for maintenance and inspection of the fuel tank system into their maintenance or inspection programs. This action is needed to allow supplemental type certificate holders additional time to complete their compliance submittals using a newly identified method of completing their safety assessments and identifying corrective actions without acquiring information from the type certificate holders. Because the operators are dependent upon the supplemental certificate holders for showing compliance with the operating rules, this rule allows them the same time extension.

DATES: This final rule is effective December 9, 2002. Comments must be submitted on or before February 7, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–1999–6411 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mike Dostert, Transport Airplane Directorate, Propulsion/Mechanical Systems Branch, ANM–112, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2132.

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134, February 26, 1979), however, provide that, to the maximum extent possible,

operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from this amendment. The most helpful comments reference a specific portion of the amendment, explain the reason for any recommended changes, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section.

The FAA will consider all comments received on or before the closing date for comments. Late filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

If you want the FAA to acknowledge receipt of your comments on this amendment, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Final Rule

You can get an electronic copy of this final rule using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page, typing in the last four digits of the Docket number shown at the beginning of this final rule, and clicking on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, clicking on the final rule.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm*, or the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this final rule.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at, *http://www.faa.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail us at *9–AWA–SBREFA@faa.gov*.

Background

Amendment 25–102 and SFAR 88

Following the 1996 TWA 800 accident, which was caused by an explosion in the center wing fuel tank, the FAA issued regulations to establish several new transport airplane fuel tank safety requirements (66 FR 23086, May 7, 2001). The final rule, which was effective June 6, 2001, included:

1. Amendment 21–78 (SFAR 88) which requires type certificate (TC) and supplemental type certificate (STC) holders to:

- Conduct a revalidation of the fuel tank system designs on the existing fleet of transport category airplanes carrying 30 or more passengers or a payload of 7,500 lbs. or more;
- Develop all design changes required to demonstrate they meet the new ignition prevention requirements; and
- Develop fuel tank maintenance and inspection instructions,

2. Amendments 91–266, 121–282, 125–36, and 129–30, which require certain operators to incorporate FAA-approved fuel tank maintenance and inspection requirements into their maintenance or inspection programs, and

3. Amendment 25–102, which adopts new airworthiness standards for future designs to impose ignition prevention design and maintenance requirements (§ 25.981(a) & (b) and paragraph H25.4 of appendix H), and fuel tank flammability requirements (§ 25.981(c)).

Amendment to SFAR 88 To Allow Equivalent Safety Findings

On September 10, 2002, the FAA amended SFAR 88 by incorporating provisions into the rule that allow for findings of equivalent safety (Amendment 21–82, 67 FR 67490). This amendment added a paragraph that allows the FAA to approve a type certificate holder's required submission based on a finding that it provides an equivalent level of safety to full compliance with the SFAR. SFAR 88 is a part 21 rule which did not provide certificate holders the ability to make compliance findings based upon a finding of equivalent safety, as is available when making findings of compliance with part 25 for new or amended type certificates. Therefore, Amendment 21–82 provides a "level playing field" between pending applicants and current holders of TCs. It also allows applicants to propose other means to achieve the safety goals of the SFAR such as flammability reduction using polyurethane foam or nitrogen inerting.

Discussion of SFAR 88 and This Amendment

SFAR 88 requires that holders of type certificates and supplemental type certificates review the designs of fuel tank systems of large transport category airplanes, and develop design changes and maintenance and inspection programs based on the findings of those reviews. The reviews are conducted using the ignition prevention requirements that were adopted for new or amended type designs in § 25.981. Reports documenting compliance must be submitted to the FAA by December 6, 2002.

When the SFAR was written, the FAA believed that, to the extent that STC holders would be dependent upon the TC holders for the information needed to show compliance with the SFAR, this information would be available either from the original certification data or through business agreements with the TC holders. For a variety of reasons, this information has generally not been made available to the STC holders.

Since issuance of SFAR 88, we have gained experience and now recognize that STC holders can show compliance without access to data from the TC holders. On August 27, 2002, about 3 months prior to the compliance date for the SFAR, we conducted a seminar in Chicago with STC holders where methods for showing compliance without TC data were presented. (Presentations from this seminar can be accessed at the following Web site: *http://www.faa.gov/certification/aircraft/sfar88/index.htm).* These methods allow STC holders to conduct the safety assessment of their STC up to the interface with the TC holder's design, and to define service information (both maintenance instructions and design changes) needed to correct any deficiencies identified in

the assessment. For all safety issues associated with the interface between the STC and the TC holder's design, the STC holder can reference the design configuration control limitations defined by the TC holder, which will be sufficient to address these issues.

Until the August seminar, STC holders did not have access to this information regarding a means of compliance that is not dependent on access to TC holder data. Because of the widespread belief that access to these data was necessary, many STC holders had not made significant progress in assessing their designs. A six-month extension of the compliance time for STC holders will allow them to complete their compliance submittals using the method described above. This amendment therefore provides an extension of six months for STC holders to the compliance time of December 6, 2002, specified in SFAR 88.

It should be noted that the compliance deadline is not being extended for TC holders; and we expect them to comply by the original deadline. As noted previously, Amendment 21–82 allows TC holders to use factors providing an equivalent level of safety in complying with SFAR 88. Under this provision, some TC holders have expressed an intention to provide fuel tank inerting systems as an alternative to some design changes that would otherwise be necessary to eliminate ignition sources. Because these inerting systems involve new technology, the TC holders have indicated that they will not be able to complete the design changes by the deadline. Given the potential safety benefits of these systems, we have stated that a short delay in providing these design changes may be acceptable for a finding of equivalent safety, provided that the TC holders otherwise comply with SFAR 88's system safety assessment and maintenance program requirements by the December 6, 2002, deadline.

Operators are dependent upon STC holders for showing compliance with the operating rules (parts 91, 121, 125, and 129) that require development of an approved maintenance program by June 2004. Therefore this rulemaking would also provide a six-month extension of the compliance times for these rules. This extension will also enable operators to fully address any maintenance program changes associated with fuel tank inerting system changes that TC holders may develop, as discussed previously.

Since this rule simply extends the compliance time for STC holders and operators, it should not result in additional costs and therefore is not considered "significant" for purposes of Executive Order 12866, DOT Regulatory Policies and Procedures, or the Regulatory Flexibility Act, and it does not require preparation of a regulatory evaluation.

Paperwork Reduction Act

There are no new requirements for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Good Cause for Immediate Adoption

Sections 553(b)(3)(B) and 553(d)(3) of the Administrative Procedures Act (APA) (5 U.S.C. Sections 553(b)(3)(B) and 553(d)(3)) authorize agencies to dispense with certain notice procedures for rules when they find "good cause" to do so. Under section 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Section 553(d)(3) allows an agency, upon finding good cause, to make a rule effective immediately, thereby avoiding the 30-day delayed effective date requirement in section 553.

In the context of the APA, "impracticable" means that, if notice and comment procedures are followed, they would defeat the purpose of the rule. As explained previously, the purpose of this final rule is to prevent a large number of STC holders from being in noncompliance with SFAR 88 as of the December 6, 2002, deadline by extending this deadline by six months. There is no way we could issue a notice, receive comments, and issue a final rule before then. Therefore, it is "impracticable" to provide notice and opportunity to comment.

This final rule also provides a six-month extension of the compliance time for the operating rules, which originally had a deadline of June 2004 (18 months after the deadline for SFAR 88). The need to extend this deadline results directly from the extension for STC holders. We acknowledged in the original fuel tank safety final rule that the operators are heavily dependent on TC and STC holders' compliance, and we gave the operators 18 months after the SFAR 88 compliance deadline with the understanding that they would need that entire time to develop the maintenance program changes required by the operating rules. Nothing has occurred to make us reconsider that decision, so the extension of the STC holder deadline necessitates extending the operating rule deadline, as well.

Providing notice and opportunity to comment on this extension would create uncertainty for the operators and could be highly disruptive. Since it is important for operators to be able to plan their compliance activities, and notice and comment procedures would make this impossible, we also find that providing notice and opportunity to comment are impracticable for the operating rule extension.

For the same reasons, we find good cause to make this rule effective immediately upon publication.

Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

In conducting these analyses, the FAA has determined this rule (1) Is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866 and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) will have little effect on international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

For regulations with an expected minimal economic impact, the above-specified analyses are not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it is included in the proposed regulation. The FAA has determined that there are minimal costs associated with this final rule and the safety benefits contemplated by the SFAR will still be achieved. Since current circumstances preclude industry from meeting the original compliance time, a 6-month extension will impose de minimus economic impact.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. If, however, an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This action simply provides a six-month extension of the original compliance times. The FAA therefore expects this final rule to impose no cost on small entities. Consequently, the FAA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and has determined that it will not result in additional costs to supplemental type certificate holders or operators and will have a minimal effect on international trade

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. Such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate; therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. We therefore determined that this final rule does not have federalism implications.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the regulation clearly stated?
- Does the regulation contain technical language or jargon that interferes with their clarity?
- Would the regulation be easier to understand if it was divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the regulation?

Please send your comments to the address specified in the **ADDRESSES** section.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this final rule qualifies for a categorical exclusion.

Energy Impact

The energy impact of the final rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, as amended (42 U.S.C. 6362), and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Parts 21, 91, and 125

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 21, 91, 121, 125, and 129 of Title 14, Code of Federal Regulations, as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for part 21 continues to read:

Authority: 42 U.S.C. 7572; 40105, 40113, 44701–44702, 44707, 44709, 44711, 44713, 44715, and 45303.

2. SFAR No. 88–1 is amended by revising the introductory text of paragraph 2 and by adding a new paragraph 2(e) to read as follows:

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SFAR No. 88—Fuel Tank System Fault Tolerance Evaluation Requirements

* * * * *

2. *Compliance:* Each type certificate holder, and each supplemental type certificate holder of a modification affecting the airplane fuel tank system, must accomplish the following within the compliance times specified in paragraph (e) of this section:

* * * * *

(e) Each type certificate holder must comply no later than December 6, 2002, or within 18 months after the issuance of a type certificate for which application was filed before June 6, 2001, whichever is later; and each supplemental type certificate holder of a modification affecting the airplane fuel tank system must comply no later than June 6, 2003, or within 18 months after the issuance of a supplemental type certificate for which application was filed before June 6, 2001, whichever is later.

PART 91—GENERAL OPERATING AND FLIGHT RULES

3. The authority citation for part 91 continues to read:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352–1355, 1401, 1421–1431, 1471, 1472, 1502, 1510, 1522, and 2121–2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat 1180); 42 U.S.C. 4321 et. seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 21, 1983).

4. Amend § 91.410 by revising the first sentence of paragraph (b) to read as follows:

§ 91.410 Special maintenance program requirements.

* * * * *

(b) After December 6, 2004, no person may operate a turbine-powered transport category airplane with a type certificate issued after January 1, 1958, and either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more, unless instructions for maintenance and inspection of the fuel tank system are incorporated into its inspection program. * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

5. The authority citation for part 121 continues to read:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

6. Amend § 121.370 by revising the first sentence of paragraph (b) to read as follows:

§ 121.370 Special maintenance program requirements.

* * * * *

(b) After December 6, 2004, no certificate holder may operate a turbine-powered transport category airplane with a type certificate issued after January 1, 1958, and either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more, unless instructions for maintenance and inspection of the fuel tank system are incorporated in its maintenance program. * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

7. The authority citation for part 125 continues to read:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

8. Amend § 125.248 by revising the first sentence of paragraph (b) to read as follows:

§ 125.248 Special maintenance program requirements.

* * * * *

(b) After December 6, 2004, no certificate holder may operate a turbine-powered transport category airplane with a type certificate issued after January 1, 1958, and either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more unless instructions for maintenance and inspection of the fuel tank system are incorporated in its inspection program. * * *

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

9. The authority citation for part 129 continues to read:

Authority: 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906.

10. Amend § 129.32 by revising the first sentence of paragraph (b) to read as follows:

§ 129.32 Special maintenance program requirements.

* * * * *

(b) For turbine-powered transport category airplanes with a type certificate issued after January 1, 1958, and either a maximum type certificated passenger capacity of 30 or more, or a maximum type certificated payload capacity of 7,500 pounds or more, no later than December 6, 2004, the program required by paragraph (a) of this section must include instructions for maintenance and inspection of the fuel tank systems.

* * *

Issued in Washington, DC on December 3, 2002.

Marion C. Blakey,

Administrator.

[FR Doc. 02–30997 Filed 12–4–02; 3:40 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. No. ATF–485; Re: Notice No. 936]

RIN 1512–AC82

Yadkin Valley Viticultural Area (2001R–88P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision; final rule.

SUMMARY: This Treasury decision establishes the Yadkin Valley viticultural area in North Carolina. The viticultural area consists of approximately 1,416,600 acres encompassing all of Surry, Wilkes, and Yadkin counties and portions of Stokes, Forsyth, Davidson, and Davie counties.

EFFECTIVE DATE: Effective on February 7, 2003.

FOR FURTHER INFORMATION CONTACT: Tim DeVanney, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

What Is ATF's Authority To Establish a Viticultural Area?

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity while prohibiting the use of deceptive information on such labels. The FAA Act also authorizes the Bureau of Alcohol, Tobacco and Firearms (ATF)

to issue regulations to carry out the Act's provisions.

Regulations in 27 CFR Part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. A list of approved viticultural areas is contained in 27 CFR Part 9, American Viticultural Areas.

What Is the Definition of an American Viticultural Area?

Title 27 CFR 4.25a(e)(1) defines a viticultural area as a delimited grape-growing region distinguishable by geographical features. Viticultural features such as soil, climate, elevation, topography, etc., distinguish it from surrounding areas.

What Is Required To Establish a Viticultural Area?

Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition must include:

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition.
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition.
- Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) that distinguish the proposed area from surrounding areas.
- A description of the specific boundaries of the viticultural area, based on features that can be found on United States Geological Survey (USGS) maps of the largest applicable scale.
- A copy of the appropriate USGS map(s) with the boundaries prominently marked.

Rulemaking Proceeding

Yadkin Valley Petition

Ms. Patricia McRitchie petitioned ATF, on behalf of Shelton Vineyards, Inc., Dobson, North Carolina, to establish a viticultural area within the State of North Carolina, to be known as "Yadkin Valley." The petitioned viticultural area encompassed all of Surry, Wilkes, and Yadkin counties and portions of Stokes, Forsyth, and Davie counties. It was located entirely within the Yadkin River watershed.

The area, as originally proposed, covered approximately 1,924 square miles or 1,231,000 acres. Within these boundaries, there are over 30 growers who devote approximately 350 acres to the cultivation of wine grapes. Currently, there are three bonded wineries in the petitioned area, with at least two other wineries under construction.

Comments to Notice of Proposed Rulemaking

ATF published a Notice of Proposed Rulemaking, Notice No. 936, in the **Federal Register** on February 7, 2002 (67 FR 5756). The comment period for the proposed rule closed on April 8, 2002. During this 60-day time period, we requested comments concerning the proposed Yadkin Valley viticultural area from all interested persons. ATF received four written comments, all in favor of the Yadkin Valley viticultural area's establishment.

Alliston J. Stubbs, IV, Cedar Ridge Vineyards, Reeds, North Carolina, sought to expand the petitioned area's boundaries. ATF accepted Mr. Stubbs' expansion proposal based on the evidence he provided to support his proposed expansion.

Mr. David Bradley, president of the Greater Mount Airy Chamber of Commerce, submitted a comment fully supporting the establishment of the Yadkin Valley viticultural area, but he did not request that the area be expanded.

Ken Furr, Albemarle, North Carolina, supported a Yadkin Valley viticultural area with larger boundaries. Mr. Furr stated that, as petitioned, the area's boundaries were "much too exclusive." He argued that the entire Yadkin River basin should be included in one viticultural area. His primary concern was that the few existing vineyards and "the many that will be created over the next 20 years will be disenfranchised and deprived of a marketing mechanism that they deserve."

State Representative Pryor Gibson of the 33rd District also submitted comments in support of expanding the proposed Yadkin Valley area. Representative Gibson supported the inclusion of "the entirety of the Yadkin River Basin to include Stanly, Montgomery, and any other counties, which border these counties to the east and west which geographically and climatically would include areas conducive to the grape production."

ATF will consider an expansion of a viticultural area when the appropriate supporting evidence is furnished. Mr. Furr and Representative Gibson did not provide the detailed evidence required by the regulations to support an expansion of the boundaries proposed in Notice No. 936 and, therefore, ATF is unable to expand the Yadkin Valley viticultural area based on these two requests. The requirements for expanding an approved area are the same as those for establishing a new area. A petitioner must include evidence that the additional land is also known by the viticultural area's name, in this case Yadkin Valley, and has growing conditions similar to the ones in the approved area. Any interested person may petition ATF to expand the boundaries of an existing American viticultural area. See the section titled *What is Required to Establish a Viticultural Area?* listed earlier in this final rule.

Comments from Mr. Allston J. Stubbs, IV, submitted on behalf of Cedar Ridge Vineyards, Reeds, North Carolina, proposed an expansion of the proposed area's southern boundary. His proposed expansion added a portion of Davidson County and an additional area in Davie County. Mr. Stubbs provided data and analyses, including climate, geographical, and name evidence, supporting his proposal. ATF agrees that this proposed expansion's characteristics are consistent with the original petition's area and, therefore, meet the regulatory criteria for an American viticultural area. The revised size of the Yadkin Valley viticultural area is approximately 1,416,600 acres. The final rule has been modified accordingly.

Supporting Evidence Used in the NPRM

What Name Evidence Has Been Provided?

The viticultural area has been known as the Yadkin Valley since pre-colonial times. The first known written use of the name Yadkin (also spelled as Yattken or Yattkin) was in 1674 in the writing of an early trader, Abraham Wood, whose English scouts passed through the area in 1673. It was used in reference to the Native American tribe found living along the river known as the Yadkin. Subsequently, the name Yadkin was applied to many natural features and man-made structures in the area. In fact, the only references to Yadkin as a place name are to places located in North Carolina: the Yadkin Valley, the Yadkin River, Yadkin County, and the towns of Yadkin Falls, Yadkin College, and Yadkinville. It is also used to name businesses, schools, and organizations located in the State's northwestern piedmont region.

There is rich historical and anthropological evidence of settlement and cultivation in the Yadkin Valley. Native American settlements date back to approximately 500 B.C. The first non-Native settlers, the Moravians, arrived in the Yadkin Valley in the 1740s. They

originally scouted land in the Blue Ridge Mountains near Boone, but did not find a satisfactory site for settlement. The Moravians followed the Yadkin River east, finally reaching the three forks of Muddy Creek, a tributary of the Yadkin River. It was here that the Moravians made the first settlements in what are now Forsyth and Stokes counties. The settlements were Bethabara, established in 1753, and Bethania, established in 1759. These early settlers were meticulous recordkeepers and references to the Yadkin Valley can be found in their colonial writings as well as in later sources. References to the Yadkin Valley can also be found in histories of the region during the American Revolution and the Civil War periods.

An influx of settlers who farmed the Valley's rich soil characterized the period immediately after the Civil War. In the latter part of the 19th century, cotton and tobacco were the Valley's main crops. By the early 20th century, the change to tobacco as the Valley's main cash crop was complete, but by the century's close, however, the predominance of tobacco growing in the northwest piedmont of North Carolina had waned. In its place is an increased interest in grape growing, which is rooted in pre-colonial North Carolina's history.

An article titled "N.C. Winery History" (North Carolina Grape Council website, 2/24/01, *http://www.ncagr/com/markets/commodit/horticul/grape/winehist.htm),* states that the first cultivated wine grape in the United States was grown in North Carolina. The first known recorded account of the Scuppernong grape in North Carolina is found in the logbook of explorer Giovanni de Verranzano. He wrote in 1524, "Many vines growing naturally there [in North Carolina] that would no doubt yield excellent wines."

The wine industry in North Carolina thrived through the 19th and 20th centuries until prohibition. At that time, the industry, which was centered in the eastern part of the State, was based on muscadine wine.

One of the first modern major plantings of vinifera grapes in North Carolina occurred in 1972, when Jack Kroustalis established Westbend Vineyards, located in the Yadkin Valley. According to "Carolina Wine Country," "[t]he vines flourished in the rich soil of the Yadkin River Valley." In 1988, Kroustalis built the first bonded winery in the Yadkin Valley. Other growers in Yadkin Valley took note of Westbend Vineyard's success with vinifera grapes and followed suit. By the end of 2000, over 350 acres of grapes were planted in the Yadkin Valley. The North Carolina Department of Agriculture has recognized this area as a "unique and valuable winegrowing region."

In 1999, Shelton Vineyards began planting 200 acres of vinifera grapes on land considered perfectly suited to vinifera grape growing. The following year, Shelton opened a state-of-the-art 30,000 case winery. There are currently two additional wineries under construction in the viticultural area, and the Yadkin Valley Wine Grower's Cooperative was recently incorporated.

In 1999, Surry Community College began offering continuing education viticulture courses. Spurred on by the tremendous interest in grape growing, the College initiated a two-year viticulture program, which began in the fall of 2000. The program will educate future grape growers to take advantage of the favorable growing environment provided by the Yadkin Valley. In December of 2000, the Golden Leaf Foundation awarded the College over $130,000 to support the establishment of a demonstration vineyard and winery for use by students in the program.

The reference materials used to prepare this petition consistently included all of Wilkes, Surry, and Yadkin counties in the Yadkin Valley, as well as portions of Stokes and Forsyth counties. Davie and Iredell counties were also commonly included.

What Evidence Relating to Geographical Features Has Been Provided?

Soil

The Yadkin Valley viticultural area petition included a report by Roger J. Leab, a soil scientist with the Natural Resource Conservation Service, United States Department of Agriculture. Mr. Leab was the soil survey project leader for Surry and Stokes counties, and is currently the project leader for Alamance County. He compiled his report from the published soil surveys of Wilkes, Stokes, Yadkin, Davie, and Forsyth counties and the data collected for the soon-to-be-published soil survey of Surry County.

The soils of the Yadkin Valley viticultural area were formed mainly from residuum (saprolite) weathered from felsic metamorphic rocks (gneisses, schists, and phyllites) of the Blue Ridge Geologic Belt and the Smith River Allochothon and from metamorphosed granitic rocks of the inner Piedmont Belt. The extreme southeastern part of the area was formed from saprolite weathered from igneous intrusive rocks (granites, gabbros, and diorites) and some gneisses and schists, all of the Charlotte Belt.

Most of the viticultural area is in the mesic soil temperature regime, which, at a depth of 20 inches, has an average annual soil temperature of 47 to 59 degrees Fahrenheit. The extreme southeastern part of the area is in the thermic temperature regime, which is in the 59 to 72 degree Fahrenheit range.

The dominant soil series formed from residuum in the mesic area are Fairview, Clifford, Woolwine, Westfield, Rhodhiss, and Toast soils. The dominant soil series formed from residuum in the thermic area are Pacolet, Cecil, Madison, Appling, and Wedowee soils. There are also some large areas of soils, which formed in old fluvial sediments of high stream terraces. These are the Braddock series in the mesic area and the Masada, Hiwassee, and Wickham series in the thermic area. These soils all have clayey or fine-loamy subsoils with good internal structure and moderate permeability. They are mostly very deep and well drained. These soils are acidic and have low natural fertility, requiring a well-structured fertility plan.

The soil series that formed in residuum from the mafic intrusive rocks (gabbros and diorites), which occur scattered along the extreme southeastern part of the viticultural area, have slightly better natural fertility. However, they have subsoils with mixed mineralogy clays. The Gaston and Mecklenburg series have moderate or moderately slow permeability and are suitable to moderately suitable for viticulture. However, the Enon and Iredell series have high shrink-swell clayey subsoils, which perch water during wet periods and result in less than desirable internal drainage.

The less than desirable, high shrink-swell clayey soils are more abundant to the south and east of the viticultural area. The Blue Ridge Mountains are to the west and north of the area. The petitioner states that these limitations define the Yadkin Valley as a unique viticultural area.

Climate

The petition's data for precipitation, temperature and heat summation were provided by the State Climate Office of North Carolina.

Hardiness Zone. The Yadkin Valley viticultural area is in Zone 7a of the USDA Hardiness Zone Map. The surrounding regions are in Zones 6b and 7b. This zone is well suited for growing grapes while the adjacent zones are not as favorable for growing vinifera grapes. For example, the Columbia Valley viticultural area in Washington State is also located in Zone 7a.

The Yadkin Valley is located in the warm temperate latitude between 36°00′ and 36°30′ N. This latitude is well suited to growing vinifera grapes while latitudes below 35°00′ are not suited to vinifera grape growing, according to Gordon S. Howell and Timothy K. Mansfield's article, "Microclimate and the Grapevine: Site Selection for Vineyards (A Review)," in "Vinifera Wine Growers Journal," Fall 1977, page 373.

Precipitation. The Yadkin Valley receives an average rainfall of 46.42 inches. The regions to the west and northwest receive, on average, more than 68 inches of rain per year. The regions to the south and east receive, on average, 43.37 inches of rain per year. In general, the Yadkin Valley receives less precipitation than the land to the west and northwest and slightly more than the regions to the south and the east.

Temperature. The Yadkin Valley has an average maximum annual temperature of 69.85 degrees Fahrenheit and an average minimum annual temperature of 44.90 degrees Fahrenheit. The regions to the west and northwest have an average maximum temperature of 58.6 degrees Fahrenheit and an average minimum annual temperature of 40.00 degrees Fahrenheit. The region to the east has an average maximum annual temperature of 68.4 degrees Fahrenheit and an average minimum annual temperature of 46.0 degrees Fahrenheit. The region to the south has an average maximum annual temperature of 71.5 degrees Fahrenheit and an average minimum annual temperature of 48.1 degrees Fahrenheit.

In summary, the Yadkin Valley is much warmer than the regions to the west and northwest and has slightly higher maximum and minimum temperatures than the region to the east. The Yadkin Valley has lower maximum and minimum temperatures than the land to the south. Temperature differences become more pronounced the further south one travels. In addition, as one proceeds east past the Greensboro area, the temperatures, both maximum and minimum, become warmer than in the viticultural area.

Heat Summation. Using Amerine and Winkler heat summation definitions, the Yadkin Valley viticultural area is in climatic region IV, with 3743 degree-days. The land to the east is in region IV. The land to the west-northwest is in region I, while lands to the south are in region V (Greensboro is close to region V).

Frost-Free Season/Growing Season. The petition also offered data regarding the Yadkin Valley's growing season from the North Carolina State University horticulture information leaflet "Average Growing Season for Selected North Carolina Locations" (12/96, revised 12/98) by Katharine Perry. The viticultural area enjoys a frost-free season lasting from April 22 to October 15. This is a growing season of 176 days and is two to four weeks longer than the region to the west. The frost-free/growing season in the viticultural area is similar to the lands immediately to the south. In contrast, the regions to the east and southeast have a frost-free and growing season four to six weeks longer than the viticultural area.

Climate Summary. The Yadkin Valley viticultural area has more moderate temperatures and precipitation than the surrounding areas. The growing season and frost-dates fall within the optimum range for cultivation of premium vinifera grapes. These data support the proposition that the Yadkin Valley possesses climatic conditions distinguishing it from the surrounding areas.

Geology

The petition also included a report on the Yadkin Valley's geology prepared by Matthew Mayberry, president of the River Ridge Land Company, Inc. The highly complex rocks of the present day Blue Ridge and Piedmont provinces represent a core area that has been present and re-crystallized and re-metamorphosed through several mountain building cycles to produce the complex schists, gneisses and igneous rocks of today's Yadkin Valley. Relics of a couple of the hot spots that re-crystallized rock are the granites of Mount Airy and Stone Mountain, North Carolina. Mr. Mayberry's report noted that the weathering of these Piedmont rocks has produced soils with chemical and physical properties that are very amenable to the viticulture industry. The petition stated that the soils and climate of the Yadkin Valley viticultural area cover a spectrum equal to most vineyards of Europe and California.

After the Yadkin River's origin and descent from mountain springs in the Blowing Rock, North Carolina region, it encounters a major structural feature known as the Brevard Shear Zone (fault system), which also defines the Blue Ridge Escarpment in the area, paralleled by the river. At the base of the Blue Ridge Escarpment, the Yadkin River turns and flows northeastward under the structural control of this shear zone for a distance of approximately 50 miles before bending to the east between the northeast end of the Brushy Mountains and Pilot Mountain. At the Surry, Yadkin, and Forsyth County corner, the Yadkin turns southward and later becomes the Pee Dee River at High Rock Lake, about six miles northwest of Salisbury, North Carolina.

What Boundary Evidence Has Been Provided?

Mr. Mayberry also provided the petition's boundary description. The area of the Yadkin Valley viticultural area proposed in Notice No. 936 covers approximately 1,924 square miles or 1,231,000 acres in Wilkes, Surry, Yadkin and parts of Stokes, Forsyth, and Davie counties. The subject area is identified on two 1:250,000 scale USGS maps:

(1) Winston-Salem, N.C.; VA., Tenn. 1953 Limited Revision 1962; and

(2) Charlotte, North Carolina; South Carolina 1953 Revised 1974.

As noted above, ATF has expanded the Yadkin Valley viticultural area at the request of Mr. Allston J. Stubbs. The expansion adds an additional portion of the Yadkin River basin southeast of Winston-Salem in Davidson and Davie counties. As approved, the area covers about 1,416,600 acres. The finalized, expanded Yadkin Valley viticultural area boundary is determined on a 1:250,000 scale, based on the USGS maps. Primarily, county lines define the viticultural area's boundaries. In cases where directions change, where county lines or rivers are too irregular to measure, a "trend direction bearing" with straight-line miles is reported. The beginning point is defined as a point 3.6 miles west of the northeast corner of Surry County on the Surry County and North Carolina/Virginia state line at the crest of Slate Mountain.

The revised Yadkin Valley viticultural area boundaries are discussed in detail in § 9.174(c) of the final rule shown below in this Treasury Decision. In addition to the boundaries expanded by Mr. Stubbs proposal, ATF expanded a small portion of the northeastern boundary. This expansion was necessary to meet the requirements of 27 CFR 9.3(b)(4), *i.e.*, so that the boundaries were based on features that could be found on the associated USGS maps.

Supporting Evidence Provided for the Expansion of the Petitioned Area

As stated earlier in this Treasury Decision, a commenter, Mr. Allston J. Stubbs, IV, requested the expansion of the southeastern boundary of the proposed Yadkin Valley viticultural area. Mr. Stubbs provided evidence to ATF to amend the boundaries as they were originally proposed, in Notice of Proposed Rulemaking, Notice No. 936. "The addition" is used to refer to the

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area inside the expanded boundary and "the petitioned viticultural area" is used to refer to the area originally proposed in Notice No. 936. A summary of this evidence, and the associated references, is provided below.

Climate

The State Climate Office of North Carolina and the Southeast Regional Climate Center (See, respectively, *http://www.nc-climate.ncsu.edu* and *http://water.dnr.state.sc.us/climate/sercc/*) provided data for precipitation, temperature, and heat summation. The addition is defined by climate data from weather stations at its four geographic corners of Mocksville, Winston-Salem, Lexington/Lexington Agricultural Research Station, and the Rowan Agricultural Research Station.

Hardiness Zone. The petitioned Yadkin Valley viticultural area is in Zone 7a of the USDA Hardiness Zone Map. The addition is also in Zone 7a. Interstate 85 through Davidson County—the southern border of the addition—approximates the demarcation between Zone 7a and 7b.

Precipitation. The petitioned viticultural area has areas of average annual precipitation ranging from 44 inches per year in the east to 56 inches per year in the west and an average annual precipitation of 46.42 inches per year. The addition has an average annual precipitation of 45.05 inches per year. The amount of precipitation in the addition is similar to areas included in the petitioned viticultural area. The addition has more precipitation than areas to the southeast (outside the boundary) where the average annual precipitation ranges from 42 to 44 inches per year.

Temperature. The petitioned viticultural area has average maximum annual temperatures of 69.85 degrees Fahrenheit and average minimum annual temperatures of 44.90 degrees Fahrenheit. The addition has an average maximum annual temperature of 70.93 degrees Fahrenheit and an average minimum annual temperature of 46.80 degrees Fahrenheit. The temperatures of the addition are similar to those within the petitioned area and are cooler than areas outside of the petitioned area's southern and southeastern borders.

Heat Summation. The petitioned viticultural area is located in Amerine and Winkler Climatic Region IV, with 3743 degree-days. The addition is also located in Climatic Region IV, with 3904 degree-days.

Frost-Free Season/Growing Season. The petitioned viticultural area has a range of growing seasons: 176 days (April 22 to October 15) in Mt. Airy, N.C. (northern Surry County), 185 days (April 19 to October 21) in Yadkinville, N.C. (central Yadkin County), and 198 days (April 14 to October 24) in Mocksville, N.C. (central Davie County).

Using data from the North Carolina Climate Office (50 year average dates of last spring freeze and first fall freeze), the addition has an estimated growing season of 191 days (April 11 to October 20). This is similar to the growing seasons of the petitioned viticultural area.

All referenced growing seasons have a standard deviation of 11 to 13 days. This variability limits the distinctions among the growing seasons across the Yadkin Valley area. Hence, the addition has a similar growing season duration compared with the petitioned viticultural area. The growing season of the petitioned area and the addition is shorter than the areas along its southern and southeastern borders.

Climate Summary. The addition, like the petitioned viticultural area, has a climate defined by temperature and precipitation that is different from the surrounding areas. The growing season and frost-dates of the addition, like the originally petitioned region, fall within the optimum range for cultivation of premium vinifera grapes.

Geography

Location. The petitioned viticultural area lies between the north latitudes of 35 degrees 52 minutes and 36 degrees 35 minutes and between the east longitudes of 80 degrees 14 minutes and 81 degrees 32 minutes. The addition extends the southern boundary to a latitude of 35 degrees 41 minutes North. The southern boundary of the addition remains above the 35 degree parallel recommended for vinifera grape growing by Howell and Mansfield's article, "Microclimate and the Grapevine: Site Selection for Vineyards (A Review)," in the "Vinifera Wine Growers Journal," Fall 1977, 373.

Elevation. The elevation for the petitioned viticultural area ranges from 694 feet (NW Davie County) to 3800 feet (NW Wilkes County). The addition's elevation ranges from 696 feet (NW Davie County) to 921 feet (SW Forsyth County). The addition does not increase the range of elevation found in the petitioned viticultural area.

Soil

Mr. Stubbs provided soil information that was compiled from soil survey data of Wilkes, Surry, Stokes, Yadkin, Davie, Forsyth, and Davidson counties. A general distribution of soil types across the petitioned viticultural area, and the addition can be viewed on the General Soil Map of NC, Overlay #2, May 1978, Soil Conservation Service, USGS, 1:250,000. Additional information is from the respective county soil surveys and the Soil Survey Division, Natural Resources Conservation Service, United States Department of Agriculture, Official Soil Series Descriptions (*http://www.statlab.iastate.edu/soils/osd/*).

The soil types of the petitioned viticultural area comprise mesic and thermic residuum (saprolite). The mesic soils include the Fairview, Clifford, Woolwine, Westfield, Rhodhiss, and Toast series. The thermic soils include the Pacolet, Cecil, Madison, Appling, Louisburg, and Wedowee series.

The soil types of the addition (southwestern Forsyth, western Davidson, and eastern Davie counties) are thermic residuum, weathered primarily from felsic rock. Characteristic of the petitioned viticultural area, these thermic soils include the Pacolet, Cecil, Madison, Appling, Louisburg, and Wedowee series. These soils are distinguished by the properties of a low shrink-to-swell ratio, good drainage, and moderate permeability, which are good for grape growing.

The soil types of areas to the west, east, and south of the addition are composed of soil series weathered from mafic and felsic sources. These soils include Iredell, Mecklenburg, Enon, Wilkes, Sedgefield, Tatum, Goldston, and Badin series. As these soils are characterized by the properties of a low to high shrink-to-swell ratio, fair to good drainage, and slow to moderate permeability, they are less desirable for grape growing. These soils are neither characteristic of the petitioned area nor of the addition.

Geology

The geology of the petitioned viticultural area has been defined by multiple orogenies or mountain building cycles. The current geology reflects the convergence of several metamorphic and igneous formations including the Blue Ridge Belt, the Smith River Allochothon, the Sauratown Mountains Anticlinorium, the Milton Belt, the Charlotte Belt, and the Inner Piedmont Belt. The addition lies on the Charlotte Belt at the Churchland Pluton. The Churchland Pluton is composed primarily of Porphyritic granite with occasional Alluvium superstrata. The erosion of Porphyritic granite results in soils like Appling, Cecil, Pacolet, and Wedowee found throughout the Yadkin Valley region. These soil types have desirable characteristics for grape growing.

The area to the east of U.S. 52 and Interstate 85, along the eastern and southern borders of the addition, rests on the Carolina Slate Belt. The Carolina Slate Belt comprises dioritic rock types which when weathered result in soils like Enon, Iredell, Mecklenburg, Sedgefield, and Wilkes. These soil types have less desirable characteristics for grape growing and are generally outside the petitioned area and the requested addition.

Hydrography

The flow of the Yadkin River is measured at several points including Yadkin College, Davidson County (included in the addition). The Yadkin River proper ends at its crossing of Interstate 85, the southern border of the addition. South of Interstate 85 and outside of the addition, the river becomes a series of three lakes: High Rock, Badin, and Tillery. Beyond Lake Tillery, the river is referred to as the Pee Dee and continues from North Carolina into South Carolina and toward the Atlantic Ocean.

Regulatory Analyses and Notices

Is This a Significant Regulatory Action as Defined in Executive Order 12866?

This regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

How Does the Regulatory Flexibility Act Apply to This Final Rule?

This regulation will not have significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area. Rather, it is an identification of an area that is distinct from surrounding areas. We believe that the establishment of viticultural areas allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify various wines. Any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Does the Paperwork Reduction Act Apply to the Final Rule?

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)) and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Tim DeVanney, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Subpart C of part 9 is amended by adding § 9.174 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.174 Yadkin Valley.

(a) *Name.* The name of the viticultural area described in this section is "Yadkin Valley".

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the Yadkin Valley viticultural area are two United States Geological Survey (USGS) topographic maps, scale 1:250,000:

(1) Winston-Salem, N.C.; VA; Tenn. (1953, Limited Revision 1962), and,

(2) Charlotte, North Carolina; South Carolina. (1953, Revised 1974).

(c) *Boundaries.* The Yadkin Valley viticultural area is located in the State of North Carolina within Wilkes, Surry, Yadkin and portions of Stokes, Forsyth, Davidson, and Davie Counties. The boundaries are as follows:

(1) On the Winston-Salem, N.C.; VA; Tenn. map, the beginning point is 3.6 miles west of the northeast corner of Surry County on the Surry County and North Carolina/Virginia state line at the crest of Slate Mountain. From the beginning point, proceed southeast in a straight line approximately 6.5 miles to the intersection of the Surry/Stokes County line and State Route 89;

(2) Then bear southeast in a straight line for approximately 9 miles to the line's intersection with State Route 66 in the village of Gap (between Sauratown and Hanging Rock Mountains);

(3) Then bear south, following State Route 66 for approximately 9 miles to intersection of State Route 66 and U.S. Route 52;

(4) Then, for approximately 9.5 miles, follow U.S. Route 52 south through Rural Hall and Stanelyville, to the intersection of the Southern Railway track and U.S. Route 52;

(5) Then bear southerly for approximately 2 miles, following the Southern Railway track to where it intersects with U.S. Route 52 in Winston-Salem;

(6) Then follow U.S. Route 52 south for approximately 19.5 miles, crossing on to the Charlotte, North Carolina; South Carolina map, to its intersection with Interstate 85 at Lexington;

(7) Then, follow Interstate 85 southwest for approximately 11 miles to the Yadkin River and bear northwest approximately 4.5 miles along the Yadkin River to the mouth of the South Yadkin River;

(8) Follow the South Yadkin River upstream in a generally northwest direction approximately 3.5 miles to its intersection with U.S. Route 601;

(9) Then continue in a northerly direction, following U.S. Route 601 through the town of Mocksville, onto the Winston-Salem, N.C.; VA; Tenn. map approximately 20 miles to the Davie/Yadkin County line;

(10) Then, following a series of county lines, continue west along the Yadkin/Davie County line to the Yadkin/Davie/Iredell County line intersection, then follow the Yadkin/Iredell County line to the Yadkin/Iredell/Wilkes County line intersection, then follow the Iredell/Wilkes County line to the Iredell/Wilkes/Alexander County line intersection, then follow the Wilkes/Alexander County line to the Wilkes/Alexander/Caldwell County line intersection;

(11) Then bear northwesterly along the Wilkes/Caldwell County line, to the Wilkes/Caldwell/Watauga County intersection;

(12) Then bear northerly along the Wilkes/Watauga County line to the intersection of the Wilkes/Watauga/Ashe County lines;

(13) Then bear generally northeasterly along the Wilkes/Ashe County line, to the Wilkes/Ashe/Alleghany County line intersection;

(14) Then bear generally easterly along the Wilkes/Alleghany County line to the Wilkes/Alleghany/Surry County line intersection;

(15) Then bear northerly along Alleghany/Surry County line to the intersection of the Alleghany/Surry County line and the North Carolina/Virginia border;

(16) Then bear east along the North Carolina/Virginia State line approximately 22.5 miles, returning to

the point of beginning 3.6 miles west of the northeast corner of Surry County.

Dated: October 9, 2002.

Bradley A. Buckles,

Director.

Timothy E. Skud,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 02–31004 Filed 12–6–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–131]

RIN 2115–AA97

Safety and Security Zones; Drilling and Blasting Operations, Hubline Project, Captain of the Port Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing temporary safety and security zones around the vessels Drillboat No. 8 and Lablift IV to be in effect from November 18, 2002 to February 28, 2003. The safety and security zones will help protect the public from the hazards of marine blasting that will be conducted by these vessels in support of the Hubline Gas Pipeline Project, which entails placing a 30-inch, 800-PSI natural gas pipeline beneath the sea floor from Danvers, MA to Quincy, MA. These zones are in effect only while explosives are on board the vessels and closes all waters 600 yards around the Drillboat No. 8 and Lablift IV 1 hour prior to, during, and one hour after all blasting operations and 400 yards around the Drillboat No. 8 and Lablift IV while they are otherwise operating.

DATES: This rule is effective from 12 a.m. November 18, 2002 through 11:59 p.m. February 28, 2003. Comments must be received on or before January 8, 2003.

ADDRESSES: Comments may be mailed to the Marine Safety Office Boston, 455 Commercial Street, Boston, MA 02109. All comments and those documents indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA 02109, between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Daniel Dugery, Marine Safety Office Boston, Waterway Safety and Response Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–02–131) and the specific section of this document to which each comment applies, and give the reason for each comment.

Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Office at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after **Federal Register** publication because specific information regarding the drilling and blasting was not provided to the Coast Guard by the Hubline Project until November 6, 2002, making the proposed rule too vague to solicit comments, thus impossible to draft or publish a NPRM or a final rule 30 days in advance of its effective date. The rule is effective immediately as any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to protect the public from the hazards of marine blasting and to protect the vessels Drillboat No. 8 and Lablift IV, which will be carrying explosives used in this operation, from possible acts of terrorism or other sabotage.

The zones affect a small area of water only while the drill barges are conducting drilling and blasting operations and while the vessels are transiting with explosives (on-board) and when they are moored to Conley Marine terminal in order to load and discharge explosives.

Background and Purpose

As part of the Hubline Pipeline Project that will be placing a 30-inch, 800-PSI natural gas pipeline beneath the sea floor between Salem Sound and Quincy Bay, MA, several locations along this planned route have areas of bedrock that need to be removed to ensure the placement of the pipeline at a specific depth. Algonquin Pipeline and Great Lakes Dredge and Dock Company approached the Coast Guard to establish a safety and security zone around the Drillboat No. 8 and Lablift IV to protect the public and the drill vessels themselves. After meeting with all parties involved, the Captain of the Port is placing these safety and security zones around the above listed vessels to protect them from potential acts of terrorism and to protect the marine public from the hazards associated with marine blasting. This rule establishes safety and security zones on the waters surrounding the Drillboat No. 8 and Lablift IV. The zones extend 600 yards around the vessels one hour prior to and after blasting operations and 400 yards while the barge is otherwise operating. Blasting operations will take place at various locations and at various times along the track line of the project. A local notice to mariners and safety marine information broadcast will identify the time and location of the blasting and whether the zones are in effect. These zones are in effect only while there are explosives on board the vessels.

The safety and security zone around each vessel is in effect from November 18, 2002 through February 28, 2003. Marine traffic may safely transit outside of the safety and security zone in Broad Sound during the effective period and while the vessel in transiting to and from Conley Marine Terminal. The Captain of the Port will allow access as necessary through the zones where the zones impinge on navigation channels within other blasting areas. Public notifications will be made via safety marine information broadcasts, local notice to mariners, notification of local pilots, and notification of parties in the areas that the project will affect as operations proceed.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be minimal enough that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this rule prevents traffic from transiting into a portion of the above mentioned waters, the effect of this rule will be minimal for several reasons: Number of private vessels transiting the area is significantly less in the winter months, vessels will only be restricted from the safety and security zones during blasting operations or when the Drillboat No. 8 and Lablift IV are moored at Conley Marine Terminal, South Boston, MA. The majority of the track line for the project is in open waters with large areas for vessels to transit safely around the project. Advance notifications will be made to the local maritime community by safety marine information broadcasts, local notice to mariners, contact with local pilots, and contact with affected parties.

For areas of restricted waterways such as inshore areas in Quincy Bay, vessels may transit through the zones as necessary with Captain of the Port approval, and vessels may safely transit outside of the safety and security zones without restriction.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The Coast Guard and Hubline project contractors have been in contact with local maritime concerns and are coordinating activities with entities such as commuter boats and fishing associations to minimize any impact the project may have on them. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the above mentioned waters while the zones are in effect. For reasons enumerated under the Regulatory Evaluation section above this safety zone will not have significant economic impact on small entities.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule does not impose an unfunded mandate.

Taking of Private Property

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add temporary section 165.T01–131:

§ 165.T01–131 Safety and Security Zones; Drilling and Blasting Operations, Hubline Project, Captain of the Port Boston, Massachusetts.

(a) *Location.* The following areas are safety and security zones surrounding the Drillboat No. 8 and Lablift IV while operating in Danvers, MA, the Danvers River, Salem Sound, Broad Sound, Nantasket Roads, Quincy Bay and Weymouth Fore River to Quincy, MA, Boston Harbor, or any location the vessels may have to shelter in emergency situations.

(1) 600 yards around the vessels Drillboat No. 8 and Lablift IV one hour prior to, during, and one hour after all blasting operations;

(2) 400 yards around the Drillboat No. 8 and Lablift during operations other than blasting and while moored at Conley Marine Terminal, South Boston, MA for loading and unloading explosives.

(b) *Periods of enforcement.* The security and safety zones will be enforced only when explosives are on board the Drillboat No. 8 and Lablift IV or when loading and unloading operations are in progress.

(c) *Effective date.* This section is effective from 12 a.m. November 18, 2002 through 11:59 p.m. February 28, 2003.

(d) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 and 33 CFR 165.33 apply.

(2) All individuals and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel including commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: November 15, 2002.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–30928 Filed 12–6–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA144–0375a; FRL–7410–9]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution District, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) and the Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving local rules that address general requirements for continuous emissions monitoring systems and the use of credible evidence to demonstrate compliance with emission limits under the Act.

DATES: This rule is effective on February 7, 2003, without further notice, unless EPA receives adverse comments by January 8, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Monterey Bay Unified Air Pollution Control District, 24850 Silver Cloud Court, Monterey, CA 93940.

Ventura County Air Pollution Control District, 669 County Square Drive, 2nd floor, Ventura, CA 93003.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Andy Steckel, EPA Region IX, (415) 947.4115.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
MBUPACD	213	Continuous Emissions Monitoring	03/21/01	05/23/01
MBUAPCD	421	Violations and Determinations of Compliance	12/21/94	02/24/95
VCAPCD	103	Continuous Monitoring Systems	02/09/99	06/03/99

On the following dates EPA found these rule submittals met the completeness criteria in 40 CFR part 51 Appendix V: July 3, 2001 for MBUAPCD rule 213; March 10, 1995 for MBUAPCD rule 421; and June 24, 1999 for VCAPCD rule 103. The completeness criteria must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We approved a version of MBUAPCD rule 213 into the SIP on July 1, 1999.

We approved a version of MBUAPCD rule 421 into the SIP on July 13, 1987.

We approved a version of VCAPCD rule 103 into the SIP on December 14, 1994. At that time, the rule was titled "Stack Monitoring".

C. What Is the Purpose of the Submitted Rules?

MBUAPCD rule 213 includes the following significant changes from the current SIP:

- The rule is applicable to any source required to install CEMS pursuant to a District Authority to Construct or Permit to Operate.
- A reference is provided to the California Health and Safety Code (section 40702—Adoption of Rules and Regulations and section 42706—Report of Violation of Emission Standard).
- The definition of "Authority to Construct" is added.
- Sources with CEMS are required to develop and comply with a Quality Assurance/Preventative Maintenance Procedures Manual.

MBUAPCD rule 421 includes the following significant changes from the current SIP:

- Definitions are added for "Administrator" and "District".
- References are provided to pertinent sections of the CAA.
- Any credible evidence or federally-approved monitoring methods may be used to determine compliance.

VCAPCD rule 103 includes the following significant changes from the current SIP:

- The title was changed from "Stack Monitoring" to "Continuous Monitoring Systems".
- CEMS sources subject to federal CEMS requirements must install and operate equipment in accordance federal regulations.
- The requirement for opacity monitoring for gas fired boilers was removed.
- The time to report violations was increased from 48 to 96 hours.
- The length of time that records must be kept was increased from 4 years to 5 years.
- The requirement to maintain permanent records was changed from "net and gross" megawatt-hours to "net" megawatt-hours produced by a boiler/turbine generator system.
- Permanent records are required for a period of at least 5 years for emisions limits based on calculations.
- The requirement for quarterly reports is deleted. Sources must report excess emissions and inoperable CEMS upon written request from the District.
- CEMS data reduction requirements are added for (1) electric power generating units subject to a new source performance standards (NSPS), (2) large boilers, steam generator and process heaters, and (3) equipment with emissions of any single air pollutant greater than or equal to either 5 pounds per hour or 40 pounds per day when requested by the District to install a CEMS.
- Standards of performance are described standards for electric power generating units and units subject to NSPS.

The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

These rules describe administrative provisions and definitions that support emission controls found in other local agency requirements. In combination with the other requirements, these rules must be enforceable (*see* section 110(a) of the Act) and must not relax existing requirements (*see* sections 110(l) and 193). EPA policy that we used to help evaluate enforceability requirements consistently includes the Bluebook ("Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988) and the Little Bluebook ("Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001).

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

The TSDs describe additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the proposed rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by January 8, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on February 7, 2003. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

A. Why Were These Rules Submitted?

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of the local agency's program to control these pollutants. Table 2 lists some of the national milestones leading to the submittal of these rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). *See* section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

IV. Administrative Requirement

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 7, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 30, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(215)(i)(F),(c)(264)(i)(C)(*2*), and (c)(281)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(215) * * *

(i) * * *

(F) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 421 adopted on December 21, 1994.

* * * * *

(264) * * *

(i) * * *

(C) * * *

(*2*) Rule 103 adopted on February 9, 1999.

* * * * *

(281) * * *

(i) * * *

(B) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 213 adopted on March 21, 2001.

* * * * *

[FR Doc. 02–30939 Filed 12–6–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN146–1a; FRL–7411–7]

Approval and Promulgation of State Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving as a revision to the Indiana particulate matter (PM) State Implementation Plan (SIP) emission control regulations that pertain to Knauf Fiber Glass (Knauf) which is located in Shelbyville, Indiana, as requested by the State of Indiana on October 17, 2002. This submission makes changes to federally enforceable Indiana air pollution control rules. The rule revisions modify the PM emissions limits adopted by the State in the 1980s which are part of the current Indiana SIP. The revised rules delete references to equipment no longer in use by Knauf and update names of remaining equipment. Because the revised rules reduce both allowable emissions and the allowable emissions rate and reflect current operations atthe Knauf facility, EPA approval of these revisions should not result in an adverse impact on air quality.

DATES: This direct final rule is effective on February 7, 2003 without further notice unless EPA receives adverse written comments by January 8, 2003. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the SIP revision request is available for inspection at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Randolph Cano at (312) 886–6036 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Randolph Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), EPA, Region 5, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" is used we mean EPA.

Table of Contents

I. What Is the Background for This Action?
II. What Changes Are Being Made to the State Rule?
III. What Is EPA's Rulemaking Action?
IV. Administrative Requirements.

I. What Is the Background for This Action?

On October 17, 2002, Lori F. Kaplan, Commissioner of the Indiana Department of Environmental Management, submitted to EPA a requested amendment to the Indiana SIP. This amendment consisted of revisions to Title 326, Air Pollution of the Indiana Administrative Code (326 IAC). These changes to 326 IAC 11–4–5 were adopted final by the Indiana Air Pollution Control Board on May 1, 2002, filed with the Secretary of State on August 28, 2002 and became effective on September 27, 2002. They were published in the *Indiana Register* on October 1, 2002 (26 IR 10). The amendments update references to equipment to reflect current operations and delete references to equipment that no longer exists, along with their associated emissions limits, at the Knauf facility located in Shelbyville, Indiana.

II. What Changes Are Being Made to the State Rule?

The revised rule removes references to emission points which are no longer operational at Knauf and renames several other emission points. Specifically, Indiana deleted from the rule references to 203 oven, 304 oven, 1101 oven, 1102 oven, 1103 oven, 1104 oven, 1110 oven, 1111 oven 203 furnace, and 203 forming. Indiana renamed the 204 oven as the 605 oven, with no change in its maximum hourly PM emission rate of eight pounds per hour. Indiana renamed the 204 furnace as the 605 furnace, with no change in its maximum hourly PM emission rate of 10 pounds per hour. Indiana has renamed the 204 forming operation as 605 forming with no change in its maximum hourly PM emission rate of 15 pounds per hour.

Three emission points continue to be listed in the revised rule with the same emission limits they had in the previous rule: 601 forming plus oven, with a maximum hourly PM emission limit of 28.28 pounds per hour, 603 forming plus oven, with a maximum hourly PM emission limit of 16.49 pounds per hour, and 602 forming plus oven with a maximum hourly PM emission limit of 33.27 pounds per hour.

These revised rules reduce both allowable emissions and the allowable emissions rate. The revisions also reflect current operations at the Knauf facility. Consequently, EPA approval of these changes should not result in an adverse impact on air quality. In fact, EPA estimates a PM emission reduction of 155 tons per year.

III. What Is EPA's Rulemaking Action?

EPA is approving the incorporation of 326 IAC 11–4–5 Shelby County, as revised, into the Indiana SIP. The rule revisions modify the emissions limits adopted by the State in the 1980s which are part of the current Indiana SIP. The revised rules delete references to equipment no longer in use by Knauf and update names of equipment which remains in use. Because the revised rules reduce both allowable emissions and the allowable emissions rate and reflect current operations at the Knauf facility, EPA approval of these revisions should not result in an adverse impact on air quality.

EPA is publishing this action without prior proposal because we view this as a noncontroversial revision and we anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the State's SIP revision request should adverse written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by January 8, 2003. Should EPA receive such comments, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no comments are received, the public is advised that this action will be effective on February 7, 2003.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a

Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 7, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 7, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(155) to read as follows:

§ 52.770 Identification of plan.

(c) * * *

(155) On October 17, 2002, the State submitted revised particulate matter emission limits for the Knauf Fiber Glass in Shelby County for incorporation into the Indiana SIP.

(i) Incoropration by reference.

(A) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 11 Emission Limitations for Specific Types of Operations, Rule 4 Fiberglass Insulation Manufacturing, Paragraph 5 Shelby County (326 IAC 11–4–5). Adopted by the Indiana Air Pollution Control Board on May 1, 2002. Filed with the Secretary of State on August 28, 2002. Published in the *Indiana Register*, Volume 26, Number 1, October 1, 2002, effective September 27, 2002.

[FR Doc. 02–30937 Filed 12–6–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0326; FRL–7282–1]

Carboxin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of carboxin (5,6-dihydro-2-methyl-N-phenyl-1,4-oxathiin-3-carboxamide) and its metabolite 5,6-dihydro-3-carboxanilide-2-methyl-1,4-oxathiin-4-oxide (calculated as carboxin) (from treatment of seed prior to planting) in or on canola, seed. Gustafson LLC requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA) , as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective December 9, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0326, must be received on or before February 7, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: *waller.mary@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS Code 111)
- Animal production (NAICS Code 112)
- Food manufacturing (NAICS Code 311)
- Pesticide manufacturing (NAICS Code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0326. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of February 23, 2000 (65 FR 8970) (FRL–6390–1), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 9F6036) by Gustafson LLC, 1400 Preston Road, Suite 400, Plano, Texas 75093. That notice included a summary of the petition prepared by Gustafson, LLC, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.301 be amended by establishing a tolerance for combined residues of the fungicide carboxin, 5,6-dihydro-2-methyl-1,4-oxathiin-3-carboxanilide] and its sulfoxide metabolite 5,6-dihydro-3-carboxanilide-2-methyl-1,4-oxathiin-4-oxide], each expressed as the parent compound], in or on canola, seed at 0.03 parts per million (ppm).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances November 26, 1997 (62 FR 62961) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for combined residues of carboxin (5,6-dihydro-2-methyl-N-phenyl-1,4-oxathiin-3-carboxamide) and its metabolite 5,6-dihydro-3-carboxanilide-2-methyl-1,4-oxathiin-4-oxide (calculated as carboxin) (from treatment of seed prior to planting) on canola, seed at 0.03 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by carboxin are discussed in Table 1 of this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity in rats	NOAEL = Males: not identified; Females: 10 mg/kg/day LOAEL = Males: 10 mg/kg/day based on chronic nephritis, increased urea nitrogen, increased creatinine; Females: 40 mg/kg/day based on chronic nephritis
870.3200	21/28–Day dermal toxicity	Not available
870.3465	90–Day inhalation toxicity	Not available

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3700	Prenatal developmental in rats	Maternal NOAEL = 10 milligrams/kilogram/day (mg/kg/day) LOAEL = 90 mg/kg/day based on decreased body weights and body weight gain, decreased food consumption, and increased hair loss Developmental NOAEL = 175 mg/kg/day LOAEL = not identified
870.3700	Prenatal developmental in rabbits	Maternal NOAEL = 75 mg/kg/day LOAEL = 375 mg/kg/day based on increased abortions Developmental NOAEL = 75 mg/kg/day LOAEL = 375 mg/kg/day based on increased abortions
870.3800	Reproduction and fertility effects in rats	Parental NOAEL = Males and Females: 1 mg/kg/day LOAEL = Males: 10 mg/kg/day based on decreased body weight gains in F1 parents, gross and histopathological changes in kidneys; Females: 15 mg/kg/day based on equivocal histopathological changes in kidneys Reproductive NOAEL = Males: 10 mg/kg/day; Females: 15 mg/kg/day LOAEL = Males: 20 mg/kg/day; Females: 30 mg/kg/day based on decreased fertility indices for F1b parents due to decreased number of pregnancies for F2b generation Offspring NOAEL = Males: 10 mg/kg/day; Females: 15 mg/kg/day LOAEL = Males: 20 mg/kg/day; Females: 30 mg/kg/day based on decreased body weights for F2b male pups
870.4100	Chronic toxicity in dogs	NOAEL = Males: 16 mg/kg/day; Females: 1.3 mg/kg/day LOAEL = Males: 158 mg/kg/day based on decreased RBC, hematocrit and hemoglobin, increased MCH and MCV, increased alkaline phosphatase and cholesterol, increased liver weights; Females: 15 mg/kg/day based on decreased body weight gains
870.4300	Combined Chronic/Carcinogenicity in rats	NOAEL = Males: 0.8 mg/kg/day; Females: 1.0 mg/kg/day LOAEL = Males: 9 mg/kg/day based on decreased body weight and body weight gain, increased urea nitrogen and creatinine, increased water consumption and urine volume, decreased urine specific gravity, histopathological changes in kidneys; Females: 16 mg/kg/day based on histopathological changes in kidneys Negative for carcinogenicity
870.4200	Carcino-genicity in mice	NOAEL = Males: 752 mg/kg/day; Females: 9 mg/kg/day LOAEL = Males: not identified; Females: 451 mg/kg/day based on increased mortality Negative for carcinogenicity
870.5100	Bacterial reverse mutation assay (Ames test)	Negative with or without S-9 activation at 5.000 µg/plate and less
870.5375	*In vitro* mammalian chromosome aberration (CHO cells)	Negative without S-9 activation Positive with S-9 activation. Highly significant increases in chromosomal aberrations at several toxic dose levels ranging from 400 to 1,400 Fg/mL
870.5385	*In vivo* mammalian chromosome aberration (rat bone marrow)	Negative at all dose levels up to 48-hours post-dosing Study is unacceptable due to lack of clinical toxicity, lack of a multiple dosing schedule, and/or lack of evidence of transport to target tissue
870.5385	*In vivo* mammalian chromosome aberration (rat bone marrow)	Negative at all dose levels tested
870.5385	*In vivo* mammalian chromosome aberration (rat bone marrow)	Positive. Dose-related statistically significant increased percent of aberrant cells at 191 mg/kg/day
870.5450	Dominant lethal assay in rats	Not available

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.5550	UDS in primary rat hepatocytes	Positive. Dose-dependent positive responses were observed at treatment levels from 5.13 to 103 µg/mL in the absence of moderate to severe toxicity
870.7485	Metabolism and pharmaco kinetics in rats	Following oral treatment of rats with phenyl-UL-C^{14} carboxin, approximately 78.3–81.1% and 77.0–81.5% of the low and high doses, respectively, were recovered. Urine was the major route of excretion. The major urinary metabolites were 4-acetamidophenol and its glucuronide, acetanilide, and hydroxylated carboxin sulfoxide

B. Toxicological Endpoints

The dose at which NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factors (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for carboxin used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR CARBOXIN FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary all populations	Acute RfD = not required	No toxicological endpoint attributable to a single exposure was identified	None
Chronic dietary all populations	NOAEL = 0.8 mg/kg/day UF = 100 Chronic RfD = 0.008 mg/kg/day	FQPA SF = 3 cPAD = chr RfD FQPA SF = 0.00267 mg/kg/day	Combined chronic/carcinogenicity - rat LOAEL = Males: 9 mg/kg/day based on decreased body weight and body weight gain, increased urea nitrogen and creatinine, increased water consumption and urine volume, decreased urine specific gravity, histopathological changes in kidneys; Females: 16 mg/kg/day based on histopathological changes in kidneys
Cancer (oral, dermal, inhalation)	Not likely to be carcinogenic to humans	Negative for carcinogenicity in rats and mice	Combined chronic/carcinogenicity - rat and carcinogenicity - mouse

* The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.301) for the combined residues of carboxin and its sulfoxide metabolite, in or on a variety of raw agricultural commodities (RAC). Risk assessments were conducted by EPA to assess dietary exposures from

carboxin and its sulfoxide metabolite in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No toxicological endpoint attributable to a single exposure was identified in the available toxicology studies on carboxin. As a result, an acute endpoint was not identified and an acute dietary exposure assessment was not performed.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the Department of Agriculture (USDA) 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The chronic dietary exposure analysis was an unrefined assessment. Tolerance level residues and 100% crop treated assumptions were used.

iii. *Cancer.* Carboxin was classified as "not likely to be carcinogenic to humans." Therefore, a cancer dietary exposure assessment was not performed.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for carboxin and its sulfoxide metabolite] in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of carboxin and its sulfoxide metabolite.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop (PC) area factor as an adjustment to account for the maximum PC coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to carboxin and its sulfoxide metabolite they are further discussed in the aggregate risk sectionsin Unit E.

Based on the FIRST and SCI-GROW models the estimated environmental concentrations (EECs) of carboxin and its sulfoxide metabolite for acute exposures are estimated to be 29.6 parts per billion (ppb) for surface water and 0.09 ppb for ground water. The EECs for chronic exposures are estimated to be 0.63 ppb for surface water and 0.09 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Carboxin is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether carboxin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, carboxin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that carboxin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* The developmental toxicity and reproduction studies performed with carboxin did not indicate evidence for enhanced susceptibility to the fetuses/offspring of rats or rabbits. Neither quantitative nor qualitative increased susceptibility was observed in the developmental toxicity study in rats, the developmental toxicity study in rabbits, or the 2-generation reproduction toxicity study in rats. In none of the toxicity studies on carboxin was there any toxicologically significant evidence of treatment-related neurotoxicity. A developmental neurotoxicity study in rats is not required. There is, however, a concern for possible germinal cell toxicity.

In genotoxicity studies, carboxin demonstrated clear evidence of clastogenic potential. It was also noted that in the 2-generation reproduction study in rats, treatment-related decreased fertility indices for the F1b male and female parents (due to a decreased number of pregnancies for the F2b generation) were observed. Based on these considerations, the registrant will be required to submit a germinal cell assay, specifically a dominant lethal assay in rats, to the Agency in order to evaluate possible interaction between carboxin and germinal cell targets.

3. *Conclusion.* Based upon clear evidence of clastogenic activity and the requirement for a dominant lethal study, EPA concluded that a FQPA safety factor of 3X is appropriate for this risk assessment. The safety factor of 10X was reduced to 3X because: i. There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure; ii. A developmental neurotoxicity study is not required; iii. The dietary (food and drinking water) exposure assessments will not underestimate the potential for exposures to infants and children; and iv. There are no registered residential uses for carboxin.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model EECs of a pesticide. DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* No toxicological endpoint attributable to a single exposure was identified in the available toxicology studies on carboxin. As a result, carboxin is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to carboxin and its sulfoxide metabolite from food will utilize 41% of the cPAD for the U.S. population and 92% of the cPAD for children 1–6 years, the most highly exposed population. There are no residential uses for carboxin. In addition, there is potential for chronic dietary exposure to carboxin and its sulfoxide metabolite in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO CARBOXIN AND ITS SULFOXIDE METABOLITE

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.00267	41	0.63	0.09	56
Children 1–6 years	0.00267	92	0.63	0.09	2

3. *Short-term and Intermediate-term risk.* Both short-term aggregate exposure and intermediate-term aggregate exposure take into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Since carboxin is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern as described in Table 3.

4. *Aggregate cancer risk for U.S. population.* Carboxin was classified as "not likely to be carcinogenic to humans." Therefore, carboxin is not expected to pose a cancer risk.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to residues of carboxin and its sulfoxide metabolite.

IV. Other Considerations

A. Endocrine Disruptor Effects

FQPA requires EPA to develop a screening program to determine whether certain substances (including all pesticides and inerts or inactive ingredients) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect..." EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. In the available toxicity studies for carboxin, there is no evidence of endocrine disruptor effects. When appropriate screening and/or testing protocols being considered under the Agency's Endocrine Disruptor Screening Program have been developed, carboxin may be subjected to further screening and/or testing to better characterize effects related to endocrine disruption.

B. Analytical Enforcement Methodology

The current available enforcement methods for tolerances of the combined residues of carboxin and its carboxin sulfoxide metabolite are described in the Pesticide Analytical Manual (PAM)

Vol. II. Method I is a colorimetric method which is used for determination of residues in or on corn, peanuts, rice, rice straw, sorghum, soybeans, eggs, meat, and milk. Method II and its modification, Method A, are gas liquid chromatography (GLC) methods which are used for wheat, oats, barley, peanuts, peanut oil and meal, sorghum, cottonseed, and cottonseed oil and meal. Adequate recovery data were submitted to validate the methods used in the canola field trials. Residues in canola seeds were converted to aniline, which was derivatized with heptafluorobutyric anhydride prior to gas chromatography mass selective detector (GC/MSD) analysis. Recoveries were 100–103% for 0.025 ppm fortifications in canola seeds.

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Francis Griffith, Analytical Chemistry Branch, Environmental Science Center, U.S. Environmental Protection Agency, 701 Mapes Road, Fort George G. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: griffith.francis@epa.gov.

C. International Residue Limits

There are no CODEX, Canadian, or Mexican maximum residue levels (MRLs) for carboxin in/on onion seed. As a result, harmonization of tolerances is not an issue.

V. Conclusion

Therefore, the tolerance is established for combined residues of carboxin; (5,6 dihydro-2-methyl-N-phenyl-1,4-oxathiin-3-carboxamide) and its metabolite 5,6-dihydro-3-carboxanilide-2-methyl-1,4-oxathiin-4-oxide (calculated as carboxin) (from treatment of seed prior to planting) insert regulated chemical, in or on canola, seed at 0.03 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0326 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 7, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA;. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2002–0326, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 26, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.301 is amended by alphabetically adding the commodity "canola, seed" to the table in paragraph (a) to read as follows:

§ 180.301 Carboxin; tolerances for residues.

(a) * * *

Commodity	Parts per million
Canola, seed	0.03

* * * * *

[FR Doc. 02–31010 Filed 12–6–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPT–2002–0043; FRL–7279–1]

RIN 2070–AD43

Perfluoroalkyl Sulfonates; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 75 substances including perfluorooctanesulfonic acid (PFOSH) and certain of its salts (PFOSS), perfluorooctanesulfonyl fluoride (POSF), certain higher and lower homologues of PFOSH and POSF, and certain other chemical substances, including polymers, that are derived from PFOSH and its homologues. These chemicals are collectively referred to as perfluoroalkyl sulfonates, or PFAS. This rule requires manufacturers and importers to notify EPA at least 90 days before commencing the manufacture or import of these chemical substances for the significant new uses described in this document. EPA believes that this action is necessary because the PFOSH component of these chemical substances may be hazardous to human health and the environment. The required notice will provide EPA with the opportunity to evaluate an intended new use and associated activities and, if necessary, to prohibit or limit that activity before it occurs.

DATES: This final rule is effective on January 8, 2003.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Mary Dominiak, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8104; e-mail address: dominiak.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture (defined by statute to include import) any of the chemical substances that are listed in Table 1 of this unit. Persons who intend to import any chemical substance governed by a final SNUR are subject to TSCA section 13 (15 U.S.C. 2612) import certification requirements, and to the regulations codified at 19 CFR 12.118 through 12.127 and 12.728. Those persons must certify that they are in compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export any of the chemical substances listed in Table 1 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), and must comply with the export notification requirements in 40 CFR 721.20 and 40 CFR part 707, subpart D.Potentially affected entities may include, but are not limited to:

- Chemical manufacturers or importers (NAICS 325), e.g., persons who manufacture (defined by statute to include import) one or more of the subject chemical substances.
- Chemical exporters (NAICS 325), e.g., persons who export, or intend to export, one or more of the subject chemical substances.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 721.5 for SNUR-related obligations. Also, consult Unit II. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

TABLE 1.—CHEMICAL SUBSTANCES COVERED BY THIS RULE

CAS No./PMN	CAS Ninth Collective Index Name
307–35–7	1-Octanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
307–51–7	1-Decanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heneicosafluoro-
376–14–7	2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester
383–07–3	2-Propenoic acid, 2-[butyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester
423–50–7	1-Hexanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-
423–82–5	2-Propenoic acid, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester
754–91–6	1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
1652–63–7	1-Propanaminium, 3-[[(heptadecafluorooctyl)sulfonyl]amino]-N,N,N-trimethyl-, iodide
1691–99–2	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-
1763–23–1	1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
2795–39–3	1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, potassium salt

TABLE 1.—CHEMICAL SUBSTANCES COVERED BY THIS RULE—Continued

CAS No./PMN	CAS Ninth Collective Index Name
2991–51–7	Glycine, N-ethyl-N-[(heptadecafluorooctyl)sulfonyl]-, potassium salt
4151–50–2	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
14650–24–9	2-Propenoic acid, 2-methyl-, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester
17202–41–4	1-Nonanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,9-nonadecafluoro-, ammonium salt
24448–09–7	1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-N-methyl-
25268–77–3	2-Propenoic acid, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester
29081–56–9	1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, ammonium salt
29117–08–6	Poly(oxy-1,2-ethanediyl), .alpha.-[2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl]-.omega.-hydroxy-
29457–72–5	1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, lithium salt
31506–32–8	1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-methyl-
38006–74–5	1-Propanaminium, 3-[[(heptadecafluorooctyl)sulfonyl]amino]-N,N,N-trimethyl-, chloride
38850–58–7	1-Propanaminium, N-(2-hydroxyethyl)-N,N-dimethyl-3-[(3-sulfopropyl)[(tridecafluorohexyl)sulfonyl]amino]-, inner salt
55120–77–9	1-Hexanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-, lithium salt
67584–42–3	Cyclohexanesulfonic acid, decafluoro(pentafluoroethyl)-, potassium salt
67906–42–7	1-Decanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heneicosafluoro-, ammonium salt
68156–01–4	Cyclohexanesulfonic acid, nonafluorobis(trifluoromethyl)-, potassium salt
68298–62–4	2-Propenoic acid, 2-[butyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester, telomer with 2-[butyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, methyloxirane polymer with oxirane di-2-propenoate, methyloxirane polymer with oxirane mono-2-propenoate and 1-octanethiol
68329–56–6	2-Propenoic acid, eicosyl ester, polymer with 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, hexadecyl 2-propenoate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and octadecyl 2-propenoate
68541–80–0	2-Propenoic acid, polymer with 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and octadecyl 2-propenoate
68555–90–8	2-Propenoic acid, butyl ester, polymer with 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate and 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate
68555–91–9	2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester, polymer with 2-[ethyl[(nonafluorobutyl)sulfonyl]amino] ethyl 2-methyl-2-propenoate, 2-[ethyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and octadecyl 2-methyl-2-propenoate
68555–92–0	2-Propenoic acid, 2-methyl-, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, polymer with 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and octadecyl 2-methyl-2-propenoate
68586–14–1	2-Propenoic acid, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, telomer with 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, .alpha.-(2-methyl-1-oxo-2-propenyl)-.omega.-hydroxypoly(oxy-1,2-ethanediyl), .alpha.-(2-methyl-1-oxo-2-propenyl)-.omega.-[(2-methyl-1-oxo-2-propenyl)oxy]poly(oxy-1,2-ethanediyl), 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and 1-octanethiol

TABLE 1.—CHEMICAL SUBSTANCES COVERED BY THIS RULE—Continued

CAS No./PMN	CAS Ninth Collective Index Name
68649–26–3	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-, reaction products with N-ethyl-1,1,2,2,3,3,4,4,4-nonafluoro-N-(2-hydroxyethyl)-1-butanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-1-heptanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-N-(2-hydroxyethyl)-1-hexanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,5-undecafluoro-N-(2-hydroxyethyl)-1-pentanesulfonamide, polymethylenepolyphenylene isocyanate and stearyl alc.
68867–60–7	2-Propenoic acid, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, polymer with 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and .alpha.-(1-oxo-2-propenyl)-.omega.-methoxypoly(oxy-1,2-ethanediyl)
68867–62–9	2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester, telomer with 2-[ethyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 1-octanethiol and .alpha.-(1-oxo-2-propenyl)-.omega.-methoxypoly(oxy-1,2-ethanediyl)
68891–96–3	Chromium, diaquatetrachloro[.mu.-[N-ethyl-N-[(heptadecafluorooctyl)sulfonyl]glycinato-.kappa.O:.kappa.O']]-.mu.-hydroxybis(2-methylpropanol)di-
68909–15–9	2-Propenoic acid, eicosyl ester, polymers with branched octyl acrylate, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl acrylate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl acrylate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl acrylate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl acrylate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl acrylate, polyethylene glycol acrylate Me ether and stearyl acrylate
68958–61–2	Poly(oxy-1,2-ethanediyl), .alpha.-[2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl]-.omega.-methoxy-
70225–14–8	1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, compd. with 2,2'-iminobis[ethanol] (1:1)
71487–20–2	2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and 2-propenoic acid
73772–32–4	1-Propanesulfonic acid, 3-[[3-(dimethylamino)propyl][(tridecafluorohexyl)sulfonyl]amino]-2-hydroxy-, monosodium salt
81190–38–7	1-Propanaminium, N-(2-hydroxyethyl)-3-[(2-hydroxy-3-sulfopropyl)[(tridecafluorohexyl)sulfonyl]amino]-N,N-dimethyl-, hydroxide, monosodium salt
91081–99–1	Sulfonamides, C4-8-alkane, perfluoro, N-(hydroxyethyl)-N-methyl, reaction products with epichlorohydrin, adipates (esters)
94133–90–1	1-Propanesulfonic acid, 3-[[3-(dimethylamino)propyl][(heptadecafluorooctyl)sulfonyl]amino]-2-hydroxy-, monosodium salt
98999–57–6	Sulfonamides, C7-8-alkane, perfluoro, N-methyl-N-[2-[(1-oxo-2-propenyl)oxy]ethyl], polymers with 2-ethoxyethyl acrylate, glycidyl methacrylate and N,N,N-trimethyl-2-[(2-methyl-1-oxo-2-propenyl)oxy]ethanaminium chloride
117806–54–9	1-Heptanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-, lithium salt
129813–71–4	Sulfonamides, C4-8-alkane, perfluoro, N-methyl-N-(oxiranylmethyl)
148240–80–6	Fatty acids, C18-unsatd., trimers, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl esters
148240–82–8	Fatty acids, C18-unsatd., trimers, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl esters
182700–90–9	1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-methyl-, reaction products with benzene-chlorine-sulfur chloride (S2Cl2) reaction products chlorides

TABLE 1.—CHEMICAL SUBSTANCES COVERED BY THIS RULE—Continued

CAS No./PMN	CAS Ninth Collective Index Name
L–92–0151	2-Propenoic acid, 2-methyl-, butyl ester, polymer with 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and 2-propenoic acid
P–80–0183 192662–29–6	Sulfonamides, C4-8-alkane, perfluoro, N-[3-(dimethylamino)propyl], reaction products with acrylic acid
P–83–1102 306973–46–6	Fatty acids, linseed-oil, dimers, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl esters
P–84–1163 306975–56–4	Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and N,N',2-tris(6-isocyanatohexyl)imidodicarbonic diamide, reaction products with N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-1-octanesulfonamide and N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-1-heptanesulfonamide, compds. with triethylamine
P–84–1171 306975–57–5	Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 1,1'-methylenebis[4-isocyanatobenzene] and 1,2,3-propanetriol, reaction products with N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-1-octanesulfonamide and N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-1-heptanesulfonamide, compds. with morpholine
P–86–0301 306973–47–7	Sulfonamides, C4-8-alkane, perfluoro, N-(hydroxyethyl)-N-methyl, reaction products with 12-hydroxystearic acid and 2,4-TDI, ammonium salts
P–86–0958 306975–62–2	2-Propenoic acid, 2-methyl-, dodecyl ester, polymers with 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and vinylidene chloride
P–89–0799 160901–25–7	Sulfonamides, C4-8-alkane, perfluoro, N-ethyl-N-(hydroxyethyl), reaction products with 2-ethyl-1-hexanol and polymethylenepolyphenylene isocyanate
P–90–0111 306974–19–6	Sulfonamides, C4-8-alkane, perfluoro, N-methyl-N-[(3-octadecyl-2-oxo-5-oxazolidinyl)methyl]
P–91–1419 306975–84–8	Poly(oxy-1,2-ethanediyl), .alpha.-hydro-.omega.-hydroxy-, polymer with 1,6-diisocyanatohexane, N-(hydroxyethyl)-N-methyl perfluoro C4-8-alkane sulfonamides-blocked
P–93–1444 306975–85–9	2-Propenoic acid, 2-methyl-, dodecyl ester, polymers with N-(hydroxymethyl)-2-propenamide, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl methacrylate, stearyl methacrylate and vinylidene chloride
P–94–0545 306976–25–0	1-Hexadecanaminium, N,N-dimethyl-N-[2-[(2-methyl-1-oxo-2-propenyl)oxy]ethyl]-, bromide, polymers with Bu acrylate, Bu methacrylate and 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate
P–94–0927 306976–55–6	2-Propenoic acid, 2-methyl-, 2-methylpropyl ester, polymer with 2,4-diisocyanato-1-methylbenzene, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and 2-propenoic acid, N-ethyl-N-(hydroxyethyl)perfluoro-C4-8-alkanesulfonamides-blocked
P–94–2206 306974–28–7	Siloxanes and Silicones, di-Me, mono[3-[(2-methyl-1-oxo-2-propenyl)oxy]propylgroup]-terminated, polymers with 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and stearyl methacrylate
P–95–0120 306980–27–8	Sulfonamides, C4-8-alkane, perfluoro, N,N'-[1,6-hexanediylbis[(2-oxo-3,5-oxazolidinediyl)methylene]]bis[N-methyl-
P–96–1262 306974–45–8	Sulfonic acids, C6-8-alkane, perfluoro, compds. with polyethylene-polypropylene glycol bis(2-aminopropyl) ether
P–96–1424 306977–10–6	2-Propenoic acid, 2-methyl-, 2-(dimethylamino)ethyl ester, telomer with 2-[ethyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl methacrylate and 1-octanethiol, N-oxides
P–96–1433 * 178094–69–4	1-Octanesulfonamide, N-[3-(dimethyloxidoamino)propyl]-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-,potassium salt
P–97–0790 251099–16–8	1-Decanaminium, N-decyl-N,N-dimethyl-, salt with 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-1-octanesulfonic acid (1:1)
P–98–0251 306978–04–1	2-Propenoic acid, butyl ester, polymers with acrylamide, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and vinylidene chloride

TABLE 1.—CHEMICAL SUBSTANCES COVERED BY THIS RULE—Continued

CAS No./PMN	CAS Ninth Collective Index Name
P–98–1272 306977–58–2	2-Propenoic acid, 2-methyl-, 3-(trimethoxysilyl)propyl ester, polymers with acrylic acid, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and propylene glycol monoacrylate, hydrolyzed, compds. with 2,2'-(methylimino)bis[ethanol]
P–99–0188 306978–65–4	Hexane, 1,6-diisocyanato-, homopolymer, N-(hydroxyethyl)-N-methyl perfluoro-C4-8-alkane sulfonamides- and stearyl alc.-blocked
P–99–0319 306979–40–8	Poly(oxy-1,2-ethanediyl), .alpha.-[2-(methylamino)ethyl]-.omega.-[(1,1,3,3-tetramethylbutyl)phenoxy]-, N-[(perfluoro-C4-8-alkyl)sulfonyl] derivs.

* Manufacturer requested change in chemical identity based on interpretation of current data. Former CAS No. 179005–06–2 is being deleted from the inventory.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT-2002-0043. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.A frequently updated electronic version of 40 CFR part 721 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr721_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

A. What Action is the Agency Taking?

This action promulgates the supplemental proposed SNUR published in the **Federal Register** of March 11, 2002 (67 FR 11014) (FRL–6823–7), which modified the original proposed SNUR published in the **Federal Register** of October 18, 2000 (65 FR 62319) (FRL–6745–5).

This rule requires persons to notify EPA at least 90 days before commencing the manufacture or import of the chemical substances identified in Table 1, Unit I.A., for the significant new uses described in this document. The chemical substances identified in Table 1, Unit I.A., are 75 chemical substances, including PFOSH, PFOSS, POSF, certain higher and lower homologues of PFOSH and POSF, and certain other chemical substances, including polymers, that are derived from PFOSH and its homologues. These chemicals are collectively referred to throughout this rule as PFAS. In the original proposed SNUR, these chemicals were referred to collectively as perfluorooctyl sulfonates, or PFOS, but commenters noted that this generic usage of the term PFOS was inconsistent with the use by the manufacturer of PFOS; 3M, to refer only to chemicals with an eight-carbon, or C8, chain length. Many of the chemicals in this SNUR include a range of carbon chain lengths, although most include C8 within the range. Accordingly, EPA uses the generic term PFAS to refer to any carbon chain length, including mixed ranges and higher and lower homologues as well as C8, and the term PFOS to represent only those chemical substances which are predominantly C8.

The significant new uses described in this document are:

1. Any manufacture or import for any use of any chemical listed in Table 1, Unit I.A., on or after January 1, 2003, except as noted in Unit II.A.2.

2. Manufacture or import of any chemical listed in Table 1, Unit I.A., solely for one or more of the following specific uses shall not be considered as a significant new use subject to reporting under this section:

i. Use as an anti-erosion additive in fire-resistant phosphate ester aviation hydraulic fluids.

ii. Use as a component of a photoresist substance, including a photo acid generator or surfactant, or as a component of an anti-reflective coating, used in a photomicrolithography process to produce semiconductors or similar components of electronic or other miniaturized devices.

iii. Use in coatings for surface tension, static discharge, and adhesion control for analog and digital imaging films, papers, and printing plates, or as a surfactant in mixtures used to process imaging films.

iv. Use as an intermediate only to produce other chemical substances to be used solely for the uses listed in Unit II.A.2.i., ii., or iii.

The chemical substances subject to this SNUR are listed in Table 1, Unit I.A. Most of these PFAS chemical substances include the C8 chain length characteristic of PFOS and thus have the potential to degrade to PFOSH in the environment or to be converted to PFOSH via incomplete oxidation during the incineration of PFOS-containing materials. Once PFOSH has been released to the environment, it does not undergo further chemical (hydrolysis), microbial, or photolytic degradation. PFOS is highly persistent in the environment and has a strong tendency to bioaccumulate. Studies have found PFOS in very small quantities in the blood of the general human population as well as in wildlife, indicating that exposure to the chemicals is widespread, and recent tests have raised concerns about their potential developmental, reproductive, and systemic toxicity (Refs. 1, 2, and 3). These facts, taken together, raise concerns for long term potential adverse effects in people and wildlife over time if PFOS should continue to be produced, released, and built up in the environment.

3M, the principal manufacturer of PFAS worldwide, voluntarily committed to discontinue the production of the specific PFOS-based PFAS chemicals covered by this rule by December 31, 2002 (Ref. 4). Based on the information EPA possessed when the original proposed SNUR was published, EPA concluded that this action by 3M would reduce manufacture and importation of these chemicals to zero, with a corresponding reduction in the type, form, and duration of exposure to these chemicals. EPA therefore concluded that any subsequent new manufacture or importation of these chemicals would constitute a significant new use.

Commenters on the original SNUR proposal provided information confirming that, contrary to the information available to the EPA when the original proposed SNUR was published, 3M was not the sole manufacturer of certain of the chemical substances on Table 1, Unit I.A.These commenters were importing a few of these substances in small quantities below mandatory reporting thresholds for their specific uses from non-3M sources outside the United States prior to the publication of the proposed SNUR. The identities, amounts, and suppliers of those specific chemicals were claimed as CBI, and thus cannot be specifically identified in this rule. To the extent that specific PFAS chemical substances on the proposed SNUR lists were being obtained from sources other than 3M for specific uses prior to the publication of the proposed SNUR, and thus would not be affected by 3M's unilateral decision to discontinue production, the manufacture of those specific chemicals for particular uses is considered to be ongoing and would not be subject to a significant new use determination. These specific uses are as a component of a photoresist substance, including a photo acid generator or surfactant, or as a component of an anti-reflective coating, used in a photomicrolithography process to produce semiconductors or similar components of electronic or other miniaturized devices. Accordingly, this SNUR identifies the manufacture or importation of chemicals listed in Table 1, Unit I.A., for these specific uses as not being a significant new use.

Commenters on the original SNUR proposal who had obtained listed chemicals only from 3M sources prior to the publication of the proposed SNUR also identified non-3M sources for specific PFAS chemicals that were essential to their specific uses in the semiconductor, aviation hydraulics, and imaging industries. Based on the information presented by these commenters about the limited volume of their uses, the extent of controls on exposure and releases, and the absence of viable alternatives for these specific chemicals, some of which are claimed as CBI and thus cannot be specifically identified in this rule, this SNUR identifies the manufacture of chemicals in Table 1, Unit I.A., for these specific uses as not being significant new uses. Manufacture or importation of these chemicals for these uses is thus not subject to this SNUR. Because certain of the SNUR chemicals are intermediates required in the manufacture of the specific listed chemicals associated with these excluded uses, the use of PFAS chemicals listed in Table 1, Unit I.A., as intermediates solely to produce other chemicals for one or more of the specific excluded uses is also excluded from the definition of a significant new use.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." The Agency makes this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). These factors include the volume of a chemical substance's production or importation; the extent to which a use changes the type, form, magnitude, or duration of exposure to the substance; and the reasonably anticipated manner of producing or otherwise managing the substance. Once EPA makes this determination and promulgates a SNUR, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that significant new use (15 U.S.C. 2604 (a)(1)(B)).

As noted in the proposed SNUR, EPA believes that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the SNUR, rather than as of the effective date of the final rule. If uses begun after publication of the proposed SNUR were considered to be ongoing, rather than new, it would be difficult for EPA to establish SNUR notice requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the rule became final, and then argue that the use was ongoing.

Accordingly, persons who may have begun commercial manufacture or import of the PFAS chemicals listed in Table 1, Unit I.A., for the significant new uses listed in this final SNUR after the initial proposal was published on October 18, 2000, must stop that activity before the effective date of this final rule. Persons who cease those activities will have to meet all SNUR notice requirements and wait until the end of the notice review period, including all extensions, before engaging in any activities designated as significant new uses. If, however, persons who may have begun commercial manufacture or import of these chemical substances between the proposal and the effective date of the SNUR meet the conditions of advance compliance as codified at 40 CFR 721.45(h), those persons will be considered to have met the final SNUR requirements for those activities.

C. Summary of and Response to Comments

Eight parties submitted timely comments on the supplemental proposed SNUR. All of the comments generally supported the SNUR, although several of them requested clarification of specific points. Two parties submitted late comments addressing broader issues of EPA's SNUR authority.

Three of the comments, from Solutia, Inc., ExxonMobil Biomedical Sciences, Inc., and Boeing Company, supported the approach and language of the proposed SNUR with respect to the aviation hydraulics use.

The Semiconductor Industry Association and Semiconductor Equipment and Materials, Inc. (SIA/SEMI), submitted joint comments generally approving the proposed SNUR, but requested clarification on two issues, including the scope of the proposed exclusion of the semiconductor photomicrolithography use from the rule and the application of the section 12(b) export notification requirements of TSCA to the export of chemicals and products intended for the excluded use. SIA/SEMI noted that the photomicrolithography processes used in the semiconductor industry are used to produce not only semiconductors, but also electronic components of disk drives, electronics packaging, micromachines, and optoelectronic devices and circuits. SIA/SEMI indicated that they read the proposed exclusion to apply to such production activities, which were included in the industry mass balance materials they

supplied to the Agency, and asked EPA to confirm that understanding. EPA acknowledges that the language of the exclusion, which describes "... a photomicrolithography process to produce semiconductors or similar components of electronic or other miniaturized devices," is intended to apply to all of these activities for which the semiconductor industry, in its data submissions to the Agency, detailed the current need to use PFAS to achieve the technical requirement of fineness of lines requiring sharp definition in the submicron area. EPA agrees that the specific items listed by SIA/SEMI are "components of electronic or other miniaturized devices." Broader photolithography uses are not intended to be covered by this exclusion, and manufacture or importation of listed PFAS chemicals for such uses is considered to be a significant new use subject to this rule.

With respect to TSCA section 12(b), SIA/SEMI stated that it assumes that a person who exports one of the chemicals covered by the SNUR for a use that is excluded from the SNUR would not need to meet export notification requirements for such exports. EPA does not concur with this interpretation. Section 12(b)(2) of TSCA provides that, "If any person exports or intends to export to a foreign country a chemical substance or mixture for which ... a rule has been proposed or promulgated under section 5 ...., such person shall notify the Administrator of such exportation or intent to export and the Administrator shall furnish to the government of such country notice of such rule ..." Regulations implementing TSCA section 12(b) are at 40 CFR part 707, subpart D.

The TSCA section 12(b) export notification requirement for a chemical is not contingent on whether the intended use of the chemical has been regulated under the SNUR, and EPA does not interpret TSCA section 12(b) to include an exemption for uses that are not regulated. In promulgating the original TSCA section 12(b) regulations, EPA explained its position, "that the export notification requirement for a chemical is not contingent on whether the intended use of the chemical has been regulated . . . Notice must be given to EPA even though the chemical is being exported for a use, or in a manner, that is not regulated domestically under the relevant TSCA section 5, 6, or 7 action, rule or order." (45 FR 82844, 82846, December 16, 1980.) Under TSCA section 12(b), the Agency is responsible for informing the importing country about actions taken with respect to a chemical that is the subject of a proposed or final SNUR. This notice includes information about any exempt uses within the United States. It is up to the foreign government to determine what action, if any, should be taken with respect to the substance in that country. The Agency also notes that, in many cases, the exporter will not know the use of the substance or mixture being exported. Requiring the exporter to make a use determination would be unnecessarily burdensome, and could be impossible in some cases. Accordingly, EPA believes its current interpretation of TSCA section 12(b) best furthers the intent of the statute.

Air Products Electronic Chemicals (APEC) requested that the Agency clarify specifically whether the semiconductor photomicrolithography exclusion would apply to developer products with a PFAS component. This exclusion applies only to "components of photoresist substances" and "components of anti-reflective coatings." Developers are not components of either "photoresist substances" or "anti-reflective coatings," and thus are not included within the scope of the exclusion. The manufacture or importation of PFAS for use in developers and polyimides is considered a significant new use under this rule.

The Eastman Kodak Company filed comments and supporting materials on behalf of the International Imaging Industry Association (I3A), requesting minor changes to the language of the proposed exclusion for certain imaging uses and providing substantial information on the industry's reductions in PFAS use and on the details of PFAS use, exposures, and releases by the industry. I3A also met twice with the Agency to present information and answer questions, and materials and correspondence from those meetings were included in the rulemaking record. The language changes requested by I3A help to clarify the intended application of the exclusion, and have been incorporated into the regulatory text of the rule.

The specific imaging uses excluded from the significant new use definition are uses in coatings for surface tension, static discharge, and adhesion control for analog and digital imaging films, papers, and printing plates, or as a surfactant in mixtures used to process imaging films. Coatings for surface tension control allow the rapid spreading of multiple thin layers of light-sensitive materials at high speed to prevent drying of materials as they are laid down. This prevents irregularities in the coating which would make the films, papers, or printing plates unuseable. Coatings to control static discharge help to repel dirt, reduce friction, and thus prevent the discharge of static electricity otherwise built up during the transport of imaging materials through manufacturing and image processing equipment. This prevents light-sensitive imaging materials from being fogged and rendered useless by light from a static discharge. Because tape is the primary way in which imaging materials are attached to spools and to each other during processing, adhesion control coatings help to ensure that the bond between the tape and the coating will be strong enough to withstand transport during use and processing, but will separate before it would damage either the imaging material or the equipment.

The exclusion for use of PFAS as a surfactant in mixtures used to process imaging films involves incorporation of a PFAS material into a mixture that is used as a photoprocessing solution where its surfactant properties function to prevent discoloration of films while the films are being processed through the solution. This exclusion applies only to processing films. Use as a surfactant in mixtures to process papers and printing plates would be a significant new use under the rule.

The I3A comments and supporting documents characterized the specific uses, exposures, and releases of PFAS materials in the imaging industry in such a way as to greatly improve the Agency's understanding. The submission also reflected a significant reduction in the use of the chemicals subject to the SNUR. Comments on the original SNUR proposal indicated that the annual worldwide usage volume of these chemicals was approximately 36,000 kilograms (kg) (79,200 pounds), of which the U.S. consumption was approximately 18,000 kg/year (yr). The recent I3A comments reported that the United States demand for these chemicals is expected to be down to 3,000 kg/yr by the end of 2002. Of this amount, I3A estimates that less than 50 kg/yr are used for paper products and less than 300 kg/yr are used for printing plates, with the remainder being used for various film products in the United States. Of the remaining 2,650 kg/yr that are used for film, I3A estimates that 30 kg/yr are used as a surfactant in processing solutions and 2,620 kg/yr are used in film coatings. I3A reported that the industry has pursued alternative chemicals aggressively, indicating that the PFAS usage volumes are expected to continue to decline over time. EPA commends the members of I3A for the significant steps made in reducing the use of the PFAS chemicals listed in the

SNUR, and for the effort expended in supplying the Agency with a substantial base of information on which to make its decision.

3M requested clarification of the SNUR scope and nomenclature to emphasize that the hazard assessment supporting the proposed rule addressed only PFOS, the C8 chain length, not the entire range of PFAS chemicals covering all carbon chain lengths. 3M also stated that all of the chemicals voluntarily discontinued by 3M and subject to the SNUR would be properly characterized as being predominantly C8, or PFOS, and expressed concern that using the PFAS term in connection with the regulation of these specific chemicals could be confusing because many PFAS chemicals exist that are not subject to this rule. In this final rule, EPA has continued to use the PFAS name for the entire category, but has attempted to make clear that most of the chemicals subject to this rule do include the C8 chain length specifically of concern, although individual chemicals on the list include a range of higher and lower homologues in addition to C8. EPA acknowledges that the hazard assessment supporting the original proposed rule addressed only C8, or PFOS, chemicals, and not the full range of homologues.

3M requested that EPA clarify its future regulatory intentions with respect to these related chemicals. As indicated in the supplemental proposed SNUR, EPA is evaluating and assessing other PFAS and PFAS-related chemicals not listed in this rule. It is true that other PFAS chemicals, including lower homologues, have distinct hazard profiles and may not present the same concerns expressed by EPA with respect to PFOS. However, EPA is reviewing data on those other homologues, and, if warranted, will take action as appropriate on other PFAS chemicals. Because of the unique properties of perfluorinated compounds, EPA is currently assessing a variety of these compounds to determine their hazard profiles, including not only PFAS chemicals but also perfluorooctanoic acid (PFOA) and its salts, as well as fluorinated telomers. That these chemicals are currently under assessment does not necessarily indicate that regulation will follow; it indicates only that EPA is seeking answers to questions that have been raised about these chemicals and their behavior.

3M also requested that EPA acknowledge the substantial amount of data on PFOS submitted by 3M since the drafting of the original hazard assessment, and acknowledge the effort underway by the Organization for Economic Cooperation and Development (OECD) to prepare an international hazard assessment on PFOS. EPA has been an active contributor to the OECD assessment effort, and toward that end, has been reviewing all of the data submitted by 3M and others with respect to PFOS. EPA commends 3M for the extensive research it has conducted and continues to pursue to improve the understanding of these unique chemicals. When the OECD assessment document is released, it will be included in both the docket for this rule, and in Administrative Record (AR) file AR–226. AR–226 is the non-regulatory public access file for information on all the related fluorinated chemicals being assessed by the EPA, including PFOS, PFAS, PFOA and its salts, and fluorinated telomer chemicals. Copies of the index to and all documents contained within AR–226 can be obtained through the docket facility identified in Unit I.B.1.

Waste Not questioned whether PFAS chemicals previously on the list of pesticide inerts would continue to be listed, whether one named chemical on the inerts list was included in the SNUR, and whether its understanding of the status of sulfluramid products was correct. *Waste Not* also asked whether EPA would identify crops on which these products were used. EPA confirms that none of the PFAS chemicals on the inerts list identified by *Waste Not*, including the named chemical without a CAS number provided, are currently formulated into pesticide products, and they will all be removed from the EPA List 3 Inerts list the next time that list is updated. EPA notes that, although these PFAS chemicals will remain on the List 3 Inerts list until that list is updated, the manufacture or import of chemicals listed in this rule for use as inert ingredients in pesticide products would be a significant new use subject to this rule. Although TSCA does not regulate chemicals manufactured for use solely as pesticide active ingredients, chemical intermediates and pesticide inert ingredients are subject to regulation under TSCA.

With respect to *Waste Not*'s comment concerning the current status of registered insecticide products containing sulfluramid, EPA concurs with the list of active and cancelled products provided by *Waste Not*. There are currently 16 products listed as active and 3 products cancelled. Three of the four products listed as transferred, EPA Registration Nos. 11540–21, 1812–330, and 1812–329, are the same as the three products listed as cancelled. The fourth product listed as transferred, EPA Registration No. 11540–20, is the same as the active product under EPA Registration No. 499–45. All pesticide products containing sulfluramid are under a specific timeline to be phased out by 2016. The pesticide products that are registered are for use in a variety of enclosed termite, ant, and roach bait stations. These products are pre-filled and sold only in child-resistant packaging. Products containing sulfluramid have not been registered for food or crop uses.

The American Chemistry Council (ACC) filed late comments supporting the effort by EPA and industry to address concerns pertaining to PFAS compounds on a cooperative basis, but also expressed the opinion that an increase in manufacture or importation for an existing use should not be considered a "new use" within the meaning of TSCA section 5(a)(2). ATOFINA Chemicals, Inc. filed late comments supporting the comments of ACC. As no volume cap or trigger on manufacturing or importation for an existing use has been incorporated into this rule, EPA will not address this issue in the context of this rule. In addition, EPA believes ACC's and ATOFINA's comments present a broader legal issue regarding EPA's authority under TSCA section 5, rather than specific issues related to PFAS. EPA does not believe it is necessary or appropriate to engage in a broader legal discussion in the context of this specific SNUR.

III. References

These references have been placed in the official record that was established under docket ID number OPPT–2002–0043 for this rulemaking as indicated in Unit I.B.1. Reference documents identified with an AR number are cross-indexed to non-regulatory, publicly accessible information files maintained in the OPPT Docket. Other documents which the Agency considers relevant to this final rule have previously been identified in the **Federal Register** in the proposed and supplemental proposed SNURs discussed in Unit II.A. Copies of these documents can be obtained as described in Unit I.B.1.

1. (AR226–0620) Sulfonated Perfluorochemicals in the Environment: Sources, Dispersion, Fate, and Effects. 3M. St. Paul, MN. March 1, 2000.

2. (AR226–0547) The Science of Organic Fluorochemistry. 3M. St. Paul, MN. February 5, 1999.

3. (AR226–0548) Perfluorooctane Sulfonate: Current Summary of Human Sera, Health and Toxicology Data. 3M. St. Paul, MN. January 21, 1999.

4. (AR226–0550) Fluorochemical Use, Distribution, and Release Overview. 3M. St. Paul, MN. May 26, 1999.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that SNURs are not a "significant regulatory action" subject to review by OMB, because SNURs do not meet the criteria in section 3(f) of the Executive order.

According to the Paperwork Reduction Act (PRA), 44 USC 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the **Federal Register** and in addition to its display on any related collection instrument, are listed in 40 CFR part 9.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0038 (EPA ICR No. 1188.06). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 98.96 and 118.92 hours per response at an estimated reporting cost of between $5,957 and $7,192 per SNUN. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review and submit the required SNUN, and maintain the required records. This burden estimate does not include 1 hour of technical time at $64.30 per hour estimated to be required for customer notification of SNUR requirements, or the $2,500 user fee for submission of a SNUN ($100 for businesses with less than $40 million in annual sales).

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information, Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a "significant new use." By definition of the word "new," and based on all information currently available to EPA, it appears that no small or large entities currently engage in such activity. Since a SNUR requires merely that any person who intends to engage in such activity in the future must first notify EPA (by submitting a SNUN), no economic impact will even occur until someone decides to engage in those activities. As a voluntary action, it is reasonable to presume that this decision would be based on a determination by the person submitting the SNUN that the potential benefits would outweigh the costs. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. EPA's experience to date is that, in response to the promulgation of over 530 SNURs, the Agency has received fewer than 15 SNUNs. Of those SNUNs submitted, none appear to be from small entities. In fact, EPA expects to receive few, if any, SNUNs from either large or small entities in response to any SNUR. Therefore, EPA believes that the economic impact of complying with a SNUR is not expected to be significant or adversely impact a substantial number of small entities. This rationale has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

Based on EPA's experience with past SNURs, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

This rule does not have tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This does not significantly or uniquely affect the communities of Indian tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 276755, May 19, 1998), do not apply to this rule. Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), which took effect on January 6, 2001, revokes Executive Order 13084 as of that date. EPA developed this rulemaking, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084. For the same reasons stated for Executive Order 13084, the requirements of Executive Order 10175 do not apply to this rule either.

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

This action does not involve special considerations of environmental justice related issues as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive order.

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements.

Dated: November 27, 2002.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR chapter I is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to readas follows:

Authority: 15 U.S.C. 2604, 2607 and 2625(c).

2. By revising § 721.9582 to read as follows:

§ 721.9582 Certain perfluoroalkyl sulfonates.

(a) Chemical substances and significant new uses subject to reporting.

(1) The chemical substances listed in Table 1 and Table 2 of this section are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

TABLE 1.—PFAS CHEMICALS SUBJECT TO REPORTING ON OR AFTER JANUARY 1, 2001

CAS No./PMN	CAS Ninth Collective Index Name
2250–98–8	1-Octanesulfonamide, N,N',N''-[phosphinylidynetris(oxy-2,1-ethanediyl)]tris[N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
30381–98–7	1-Octanesulfonamide, N,N'-[phosphinicobis(oxy-2,1-ethanediyl)]bis[N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, ammonium salt
57589–85–2	Benzoic acid, 2,3,4,5-tetrachloro-6-[[[3-[[(heptadecafluorooctyl)sulfonyl]oxy]phenyl]amino]carbonyl]-, monopotassium salt
61660–12–6	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-[3-(trimethoxysilyl)propyl]-
67969–69–1	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-[2-(phosphonooxy)ethyl]-, diammonium salt
68608–14–0	Sulfonamides, C4-8-alkane, perfluoro, N-ethyl-N-(hydroxyethyl), reaction products with 1,1'-methylenebis[4-isocyanatobenzene]
70776–36–2	2-Propenoic acid, 2-methyl-, octadecyl ester, polymer with 1,1-dichloroethene, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, N-(hydroxymethyl)-2-propenamide, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate and 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate
127133–66–8	2-Propenoic acid, 2-methyl-, polymers with Bu methacrylate, lauryl methacrylate and 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl methacrylate
148240–78–2	Fatty acids, C18-unsatd., trimers, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl esters
148684–79–1	Sulfonamides, C4-8-alkane, perfluoro, N-(hydroxyethyl)-N-methyl, reaction products with 1,6-diisocyanatohexane homopolymer and ethylene glycol
178535–22–3	Sulfonamides, C4-8-alkane, perfluoro, N-ethyl-N-(hydroxyethyl), polymers with 1,1'-methylenebis[4-isocyanatobenzene] and polymethylenepolyphenylene isocyanate, 2-ethylhexyl esters, Me Et ketone oxime-blocked
P–94–2205	Polymethylenepolyphenylene isocyanate and bis(4-NCO-phenyl)methane reaction products with 2-ethyl-1-hexanol, 2-butanone, oxime, N-ethyl-N-(2- hydroxyethyl)-1-C4-C8 perfluoroalkanesulfonamide
P–96–1645 306974–63–0	Fatty acids, C18-unsatd., dimers, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl esters

TABLE 2.—PFAS CHEMICALS SUBJECT TO REPORTING ON OR AFTER JANUARY 1, 2003

CAS No./PMN	CAS Ninth Collective Index Name
307–35–7	1-Octanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
307–51–7	1-Decanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heneicosafluoro-
376–14–7	2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester
383–07–3	2-Propenoic acid, 2-[butyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester
423–50–7	1-Hexanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-
423–82–5	2-Propenoic acid, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester
754–91–6	1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
1652–63–7	1-Propanaminium, 3-[[(heptadecafluorooctyl)sulfonyl]amino]-N,N,N-trimethyl-, iodide
1691–99–2	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-
1763–23–1	1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
2795–39–3	1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, potassium salt
2991–51–7	Glycine, N-ethyl-N-[(heptadecafluorooctyl)sulfonyl]-, potassium salt
4151–50–2	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-
14650–24–9	2-Propenoic acid, 2-methyl-, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester
17202–41–4	1-Nonanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,9-nonadecafluoro-, ammonium salt
24448–09–7	1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-N-methyl-
25268–77–3	2-Propenoic acid, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester
29081–56–9	1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, ammonium salt
29117–08–6	Poly(oxy-1,2-ethanediyl), .alpha.-[2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl]-.omega.-hydroxy-
29457–72–5	1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, lithium salt
31506–32–8	1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-methyl-
38006–74–5	1-Propanaminium, 3-[[(heptadecafluorooctyl)sulfonyl]amino]-N,N,N-trimethyl-, chloride
38850–58–7	1-Propanaminium, N-(2-hydroxyethyl)-N,N-dimethyl-3-[(3-sulfopropyl)[(tridecafluorohexyl)sulfonyl]amino]-, inner salt
55120–77–9	1-Hexanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-, lithium salt
67584–42–3	Cyclohexanesulfonic acid, decafluoro(pentafluoroethyl)-, potassium salt
67906–42–7	1-Decanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heneicosafluoro-, ammonium salt
68156–01–4	Cyclohexanesulfonic acid, nonafluorobis(trifluoromethyl)-, potassium salt
68298–62–4	2-Propenoic acid, 2-[butyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester, telomer with 2-[butyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, methyloxirane polymer with oxirane di-2-propenoate, methyloxirane polymer with oxirane mono-2-propenoate and 1-octanethiol
68329–56–6	2-Propenoic acid, eicosyl ester, polymer with 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, hexadecyl 2-propenoate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and octadecyl 2-propenoate
68541–80–0	2-Propenoic acid, polymer with 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and octadecyl 2-propenoate
68555–90–8	2-Propenoic acid, butyl ester, polymer with 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate and 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate

TABLE 2.—PFAS CHEMICALS SUBJECT TO REPORTING ON OR AFTER JANUARY 1, 2003—Continued

CAS No./PMN	CAS Ninth Collective Index Name
68555–91–9	2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester, polymer with 2-[ethyl[(nonafluorobutyl)sulfonyl]amino] ethyl 2-methyl-2-propenoate, 2-[ethyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and octadecyl 2-methyl-2-propenoate
68555–92–0	2-Propenoic acid, 2-methyl-, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, polymer with 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and octadecyl 2-methyl-2-propenoate
68586–14–1	2-Propenoic acid, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, telomer with 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, .alpha.-(2-methyl-1-oxo-2-propenyl)-.omega.-hydroxypoly(oxy-1,2-ethanediyl), .alpha.-(2-methyl-1-oxo-2-propenyl)-.omega.-[(2-methyl-1-oxo-2-propenyl)oxy]poly(oxy-1,2-ethanediyl), 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and 1-octanethiol
68649–26–3	1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-, reaction products with N-ethyl-1,1,2,2,3,3,4,4,4-nonafluoro-N-(2-hydroxyethyl)-1-butanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-1-heptanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-N-(2-hydroxyethyl)-1-hexanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,5-undecafluoro-N-(2-hydroxyethyl)-1-pentanesulfonamide, polymethylenepolyphenylene isocyanate and stearyl alc.
68867–60–7	2-Propenoic acid, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, polymer with 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and .alpha.-(1-oxo-2-propenyl)-.omega.-methoxypoly(oxy-1,2-ethanediyl)
68867–62–9	2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester, telomer with 2-[ethyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 1-octanethiol and .alpha.-(1-oxo-2-propenyl)-.omega.-methoxypoly(oxy-1,2-ethanediyl)
68891–96–3	Chromium, diaquatetrachloro[.mu.-[N-ethyl-N-[(heptadecafluorooctyl)sulfonyl]glycinato-.kappa.O:.kappa.O']]-.mu.-hydroxybis(2-methylpropanol)di-
68909–15–9	2-Propenoic acid, eicosyl ester, polymers with branched octyl acrylate, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl acrylate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl acrylate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl acrylate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl acrylate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl acrylate, polyethylene glycol acrylate Me ether and stearyl acrylate
68958–61–2	Poly(oxy-1,2-ethanediyl), .alpha.-[2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl]-.omega.-methoxy-
70225–14–8	1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, compd. with 2,2'-iminobis[ethanol] (1:1)
71487–20–2	2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and 2-propenoic acid
73772–32–4	1-Propanesulfonic acid, 3-[[3-(dimethylamino)propyl][(tridecafluorohexyl)sulfonyl]amino]-2-hydroxy-, monosodium salt
81190–38–7	1-Propanaminium, N-(2-hydroxyethyl)-3-[(2-hydroxy-3-sulfopropyl)[(tridecafluorohexyl)sulfonyl]amino]-N,N-dimethyl-, hydroxide, monosodium salt

TABLE 2.—PFAS CHEMICALS SUBJECT TO REPORTING ON OR AFTER JANUARY 1, 2003—Continued

CAS No./PMN	CAS Ninth Collective Index Name
91081–99–1	Sulfonamides, C4-8-alkane, perfluoro, N-(hydroxyethyl)-N-methyl, reaction products with epichlorohydrin, adipates (esters)
94133–90–1	1-Propanesulfonic acid, 3-[[3-(dimethylamino)propyl][(heptadecafluorooctyl)sulfonyl]amino]-2-hydroxy-, monosodium salt
98999–57–6	Sulfonamides, C7-8-alkane, perfluoro, N-methyl-N-[2-[(1-oxo-2-propenyl)oxy]ethyl], polymers with 2-ethoxyethyl acrylate, glycidyl methacrylate and N,N,N-trimethyl-2-[(2-methyl-1-oxo-2-propenyl)oxy]ethanaminium chloride
117806–54–9	1-Heptanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-, lithium salt
129813–71–4	Sulfonamides, C4-8-alkane, perfluoro, N-methyl-N-(oxiranylmethyl)
148240–80–6	Fatty acids, C18-unsatd., trimers, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl esters
148240–82–8	Fatty acids, C18-unsatd., trimers, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl esters
182700–90–9	1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-methyl-, reaction products with benzene-chlorine-sulfur chloride (S2Cl2) reaction products chlorides
L–92–0151	2-Propenoic acid, 2-methyl-, butyl ester, polymer with 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and 2-propenoic acid
P–80–0183 192662–29–6	Sulfonamides, C4-8-alkane, perfluoro, N-[3-(dimethylamino)propyl], reaction products with acrylic acid
P–83–1102 306973–46–6	Fatty acids, linseed-oil, dimers, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl esters
P–84–1163 306975–56–4	Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and N,N',2-tris(6-isocyanatohexyl)imidodicarbonic diamide, reaction products with N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-1-octanesulfonamide and N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-1-heptanesulfonamide, compds. with triethylamine
P–84–1171 306975–57–5	Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 1,1'-methylenebis[4-isocyanatobenzene] and 1,2,3-propanetriol, reaction products with N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-1-octanesulfonamide and N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-1-heptanesulfonamide, compds. with morpholine
P–86–0301 306973–47–7	Sulfonamides, C4-8-alkane, perfluoro, N-(hydroxyethyl)-N-methyl, reaction products with 12-hydroxystearic acid and 2,4-TDI, ammonium salts
P–86–0958 306975–62–2	2-Propenoic acid, 2-methyl-, dodecyl ester, polymers with 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and vinylidene chloride
P–89–0799 160901–25–7	Sulfonamides, C4-8-alkane, perfluoro, N-ethyl-N-(hydroxyethyl), reaction products with 2-ethyl-1-hexanol and polymethylenepolyphenylene isocyanate
P–90–0111 306974–19–6	Sulfonamides, C4-8-alkane, perfluoro, N-methyl-N-[(3-octadecyl-2-oxo-5-oxazolidinyl)methyl]
P–91–1419 306975–84–8	Poly(oxy-1,2-ethanediyl), .alpha.-hydro-.omega.-hydroxy-, polymer with 1,6-diisocyanatohexane, N-(hydroxyethyl)-N-methyl perfluoro C4-8-alkane sulfonamides-blocked
P–93–1444 306975–85–9	2-Propenoic acid, 2-methyl-, dodecyl ester, polymers with N-(hydroxymethyl)-2-propenamide, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl methacrylate, stearyl methacrylate and vinylidene chloride
P–94–0545 306976–25–0	1-Hexadecanaminium, N,N-dimethyl-N-[2-[(2-methyl-1-oxo-2-propenyl)oxy]ethyl]-, bromide, polymers with Bu acrylate, Bu methacrylate and 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate
P–94–0927 306976–55–6	2-Propenoic acid, 2-methyl-, 2-methylpropyl ester, polymer with 2,4-diisocyanato-1-methylbenzene, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and 2-propenoic acid, N-ethyl-N-(hydroxyethyl)perfluoro-C4-8-alkanesulfonamides-blocked
P–94–2206 306974–28–7	Siloxanes and Silicones, di-Me, mono[3-[(2-methyl-1-oxo-2-propenyl)oxy]propylgroup]-terminated, polymers with 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and stearyl methacrylate

TABLE 2.—PFAS CHEMICALS SUBJECT TO REPORTING ON OR AFTER JANUARY 1, 2003—Continued

CAS No./PMN	CAS Ninth Collective Index Name
P–95–0120 306980–27–8	Sulfonamides, C4-8-alkane, perfluoro, N,N'-[1,6-hexanediylbis[(2-oxo-3,5-oxazolidinediyl)methylene]]bis[N-methyl-
P–96–1262 306974–45–8	Sulfonic acids, C6-8-alkane, perfluoro, compds. with polyethylene-polypropylene glycol bis(2-aminopropyl) ether
P–96–1424 306977–10–6	2-Propenoic acid, 2-methyl-, 2-(dimethylamino)ethyl ester, telomer with 2-[ethyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl methacrylate and 1-octanethiol, N-oxides
P–96–1433 178094–69–4	1-Octanesulfonamide, N-[3-(dimethyloxidoamino)propyl]-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-,potassium salt
P–97–0790 251099–16–8	1-Decanaminium, N-decyl-N,N-dimethyl-, salt with 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-1-octanesulfonic acid (1:1)
P–98–0251 306978–04–1	2-Propenoic acid, butyl ester, polymers with acrylamide, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and vinylidene chloride
P–98–1272 306977–58–2	2-Propenoic acid, 2-methyl-, 3-(trimethoxysilyl)propyl ester, polymers with acrylic acid, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and propylene glycol monoacrylate, hydrolyzed, compds. with 2,2'-(methylimino)bis[ethanol]
P–99–0188 306978–65–4	Hexane, 1,6-diisocyanato-, homopolymer, N-(hydroxyethyl)-N-methyl perfluoro-C4-8-alkane sulfonamides-and stearyl alc.-blocked
P–99–0319 306979–40–8	Poly(oxy-1,2-ethanediyl), .alpha.-[2-(methylamino)ethyl]-.omega.-[(1,1,3,3-tetramethylbutyl)phenoxy]-, N-[(perfluoro-C4-8-alkyl)sulfonyl] derivs.

(2) The significant new uses are:

(i) Any manufacture or import for any use of any chemical listed in Table 1 of paragraph (a)(1) of this section on or after January 1, 2001.

(ii) Any manufacture or import for any use of any chemical listed in Table 2 of paragraph (a)(1) of this section on or after January 1, 2003, except as noted in paragraph (a)(3) of this section.

(3) Manufacture or import of any chemical listed in Table 2 of paragraph (a)(1) of this section for the following specific uses shall not be considered as a significant new use subject to reporting under this section:

(i) Use as an anti-erosion additive in fire-resistant phosphate ester aviation hydraulic fluids.

(ii) Use as a component of a photoresist substance, including a photo acid generator or surfactant, or as a component of an anti-reflective coating, used in a photomicrolithography process to produce semiconductors or similar components of electronic or other miniaturized devices.

(iii) Use in coatings for surface tension, static discharge, and adhesion control for analog and digital imaging films, papers, and printing plates, or as a surfactant in mixtures used to process imaging films.

(iv) Use as an intermediate only to produce other chemical substances to be used solely for the uses listed in paragraph (a)(3)(i), (ii), or (iii) of this section.

(b) [Reserved]

[FR Doc. 02–31011 Filed 12–6–02; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 112602A]

Fisheries of the Northeastern United States; Atlantic Surf Clam and Ocean Quahog Fishery; Suspension of Minimum Surf Clam Size for 2003

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of suspension of surf clam minimum size limit.

SUMMARY: NMFS suspends the minimum size limit of 4.75 inches (12.07 cm) for Atlantic surf clams for the 2003 fishing year. This action is taken under the authority of the implementing regulations for this fishery, which allow for the annual suspension of the minimum size limit based upon set criteria. The intended effect is to relieve the industry from a regulatory burden that is not necessary, as the majority of surf clams harvested are larger than the minimum size limit.

DATES: Effective January 1, 2003, through December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Management Specialist, 978–281–9141.

SUPPLEMENTARY INFORMATION: Section 648.72(c) of the regulations implementing the Fishery Management Plan (FMP) for the Atlantic Surf Clam and Ocean Quahog Fisheries allows the Administrator, Northeast Region, NMFS (Regional Administrator) to suspend annually, by publication of a notification in the **Federal Register**, the minimum size limit for Atlantic surf clams. This action may be taken unless discard, catch, and survey data indicate that 30 percent of the Atlantic surf clam resource is smaller than 4.75 inches (12.07 cm) and the overall reduced size is not attributable to harvest from beds where growth of the individual clams has been reduced because of density-dependent factors.

At its June 2002, meeting, the Mid-Atlantic Fishery Management Council (Council) voted to recommend that the Regional Administrator suspend the minimum size limit. Commercial surf clam shell length data for 2002 were analyzed to determine the percentage of surfclams landed that were smaller than the minimum size requirement. The analysis indicated that 14 percent of the samples taken overall were composed of surf clams that were less than 4.75 inches (12.07 cm). Based on these data, the Regional Administrator adopts the

Council's recommendation and suspends the minimum size limit for Atlantic surf clams from January 1, 2003, through December 31, 2003.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 3, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–31028 Filed 12–6–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 236
Monday, December 9, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255 and Part 399

[Dockets Nos. OST–97–2881, OST–97–3014, OST–98–4775, and OST–99–5888]

RIN 2105–AC65

Computer Reservations System (CRS) Regulations; Statements of General Policy

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice extending comment period.

SUMMARY: The Department has issued a notice of proposed rulemaking that proposes to readopt and amend its existing rules governing airline computer reservations systems (CRSs) and to clarify the requirements of its Statements of General Policy on travel agency disclosure of any agency service fees.

DATES: The Department is now extending the due date for comments and reply comments on this notice of proposed rulemaking to March 16, 2003, and May 15, 2003, from the original dates of January 14 and February 13, 2003.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them (marked with docket numbers OST–97–2881, OST–97–3014, OST–98–4775 and OST–99–5888) by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*. Comments must be filed in Dockets OST–97–2881, OST–97–3014, and OST–98–4775 and OST–99–5888, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590. Late filed comments will be considered to the extent possible.

Due to security procedures in effect since October 2001 on mail deliveries, mail received through the Postal Service may be subject to delays. Commenters should consider using an express mail firm to ensure the timely filing of any comments not submitted electronically or by hand.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: The Department has begun a rulemaking to reexamine whether it should maintain its existing rules governing CRS operations. Our rules have a sunset date, currently March 31, 2003, to ensure that we would reexamine the need for the rules and their effectiveness. 67 FR 14846 (March 28, 2002). We issued a notice of proposed rulemaking that set forth our tentative conclusions on whether the rules should be readopted, whether we should extend the rules to cover the sale of airline tickets through the Internet, and whether we should clarify our full-fare advertising policy insofar as it concerns the disclosure of travel agency service fees. 67 FR 69366 (November 15, 2002). Comments and reply comments were due sixty days and ninety days, respectively, after the notice's publication.

Nineteen of the parties have filed a petition to extend these comment periods and to extend the rules' existing sunset date. These petitioners, Amadeus, Galileo, Sabre, Interactive Travel Services Association, American Society of Travel Agents, National Business Travel Association, National Consumers League, Navigant International, Rosenbluth International, Tzell Travel, Maritz TQ3, Colwick Travel, Protravel International, Austin Travel, Corporate Travel Planners, Altour International, World Travel BTI, Compass Travel, and Sea Gate Travel Group, ask that we provide an additional sixty days for comments and an additional thirty days for reply comments. They also ask that we extend the rules' sunset date to September 30, 2003. They request us to grant their petition by December 3 so that they may better plan the preparation of their comments.

In support of their request for more time, the petitioners note that our notice of proposed rulemaking is very long and requests the parties to address a large number of issues. They contend that the comment periods provided by the notice of proposed rulemaking will not enable them to prepare meaningful comments on the issues. They point out that the initial comment period includes the Thanksgiving, Christmas, and New Year's Day holidays. And they allege that our proposals, if adopted, would require the systems, airlines, and many travel agencies to make significant changes in their operations.

We have determined that it would be reasonable to give commenters more time for preparing their responses to the advance notice. The issues are complex, and our notice of proposed rulemaking is lengthy. As the petitioners point out, the comment period includes three major holidays. Extending the comment period should help us, by enabling the parties to prepare comments that thoroughly analyze the issues raised by our notice of proposed rulemaking. We will therefore give commenters an additional sixty days for the comments and thirty days for reply comments. These extensions should give them adequate time for preparing responses to our notice and the comments filed by other parties without unduly delaying the completion of this rulemaking. These comment periods will be comparable to those established by us in our last major reexamination of the rules. 56 FR 12586 (March 26, 1991). As a result, we are making the comments due on March 16 instead of January 14, 2003, and the reply comments due on May 15 instead of February 13.

We recognize that Continental, Orbitz, and Northwest have filed oppositions to the request for an extension that argue that we should not delay our decision on new rules, since the current rules allegedly restrict competition. We appreciate the need to proceed without undue delay, but we think the public interest will be best served by ensuring that the commenters have an opportunity to thoroughly address and analyze the issues.

We are not now prepared to propose another extension of the rules' sunset date. We will consider that issue early next year and see no reason to act on that matter at this time.

Issued in Washington, DC on December 2, 2002.

Kirk K. Van Tine,

General Counsel.

[FR Doc. 02–30951 Filed 12–3–02; 4:39 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–024]

Standards for Business Practices of Interstate Natural Gas Pipelines

November 29, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to amend its regulations governing standards for conducting business practices with interstate natural gas pipelines. The Commission is proposing to incorporate by reference the most recent version of the standards, Version 1.6, promulgated July 31, 2002, by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB) and the standards governing partial day recalls (recommendations R02002 and R02002–2), adopted October 31, 2002. These standards can be obtained from NAESB at 1100 Louisiana, Suite 3625, Houston, TX 77002, 713–356–0060, *http://www.naesb.org.*

DATES: Comments are due January 8, 2003.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–502–8685.

Marvin Rosenberg, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–502–8292.

Kay Morice, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–502–6507.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

1. The Federal Energy Regulatory Commission (Commission) proposes to amend § 284.12 of its open access regulations governing standards for conducting business practices and electronic communications with interstate natural gas pipelines. The Commission is proposing to adopt the most recent version, Version 1.6, of the consensus standards promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board (WGQ), and the WGQ standards governing partial day recalls. The proposed rule is intended to benefit the public by adopting the most recent and up-to-date standards governing electronic communication and by adopting standards that will facilitate partial day recalls.

Background

2. Since 1996, in the Order No. 587 series,[1] the Commission has adopted regulations to standardize the business practices and communication methodologies of interstate pipelines in order to create a more integrated and efficient pipeline grid. In this series of orders, the Commission incorporated by reference consensus standards developed by the WGQ (formerly the Gas Industry Standards Board or GISB), a private consensus standards developer composed of members from all segments of the natural gas industry. The WGQ is an accredited standards organization under the auspices of the American National Standards Institute (ANSI).

3. On October 7, 2002, the WGQ filed with the Commission a report informing the Commission that it had adopted a new version of its standards, Version 1.6. The WGQ reports that while Version 1.5 contained many of the standards designed to support Order No. 637,[2] Version 1.6 includes additional standards that support Order No. 637. It states: "development of standards to support FERC Order No. 637 was given the highest priority by all NAESB subcommittees and task forces." The WGQ further reports that the surety assessment performed by the Sandia National Laboratories on the GISB EDM (Electronic Delivery Mechanisms) standards was accepted by GISB and forwarded to the EDM Subcommittee for review and development of standards in October 2000. It states that some of the Sandia recommendations were implemented in Version 1.5, and the remainder were implemented in Version 1.6. Finally, the WGQ reports that work continues on requests for both new and revised business practices, information requirements, code value assignments, technical implementation and mapping or interpretations.

4. In Order No. 587–N,[3] the Commission adopted a regulation requiring that pipelines permit releasing shippers to recall released capacity and renominate that recalled capacity at any of the nomination opportunities provided by the pipelines. The Commission established a two-phased implementation for this regulation. In the first phase, the Commission established an interim schedule under which releasing shippers could recall capacity, as long as the recall did not involve a partial or flowing day recall (a recall of scheduled gas after the time at which it began to flow). Pipelines implemented the first phase as of July 1, 2002. In the second phase, the Commission provided the WGQ with six months to develop standards dealing with the operational details of permitting partial or flowing day recalls, in particular the method by which capacity would be allocated between releasing and replacement shippers. The Commission established October 1, 2002, as the date by which the WGQ and other industry members should submit a report and further provided for

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,038 (Jul. 17, 1996), Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,046 (Jan. 30, 1997), Order No. 587–C, 62 FR 10684 (Mar. 10, 1997), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,050 (Mar. 4, 1997), Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,062 (Apr. 16, 1998), Order No. 587–H, 63 FR 39509 (July 23, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,063 (July 15, 1998); Order No. 587–I, 63 FR 53565 (Oct. 6, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,067 (Sept. 29, 1998), Order No. 587–K, 64 FR 17276 (Apr. 9, 1999), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,072 (Apr. 2, 1999); Order No. 587–M, 65 FR 77285 (Dec. 11, 2000), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,114 (Dec. 11, 2000); Order No. 587–N, 67 FR 11906 (Mar. 18, 2002), III FERC Stats. & Regs. Regulations Preambles ¶ 31,125 (Mar. 11, 2002), Order No. 587–O, 67 FR 30788 (May 8, 2002), III FERC Stats. & Regs. Regulations Preambles ¶ 31,129 (May 1, 2002).

[2] Regulation of Short-Term Natural Gas Transportation Services, Order No. 637, 65 FR 10156 (Feb. 25, 2000), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,091 (Feb. 9, 2000).

[3] Order No. 587–N, 67 FR 11906 (Mar. 18, 2002), III FERC Stats. & Regs. Regulations Preambles ¶ 31,125 (Mar. 11, 2002).

reply comments to be filed by October 15, 2002.

5. On October 1, 2002, the WGQ filed a report stating that its Executive Committee had adopted standards governing partial or flowing day recalls in Recommendations R02002 and R02002–2. The WGQ membership ratified these standards on October 31, 2002.

6. Process Gas Consumers Group and Georgia Industrial Group (PGC) filed a comment on October 15, 2002. PGC supports the partial day recall standards as approved by the WGQ, but requests clarification as to whether the WGQ should be considering additional standards dealing with the allocation of penalties as a result of partial day recalls. PGC maintains that penalty issues are matters of Commission policy that should only be developed by the Commission.

Discussion

7. The Commission is proposing to adopt Version 1.6 of GISB's consensus standards and the standards adopted for partial day recalls.[4] Pipelines would be required to implement the standards three months after a final rule is issued.

8. Adoption of Version 1.6[5] of the WGQ standards will help continue the process of implementing Order No. 637 and will update and improve the current standards.[6] Adoption of the partial day recall standards[7] will provide shippers with enhanced flexibility to recall capacity, while ensuring that replacement shippers receive notice sufficient for them to reschedule their capacity. The partial day recall standards also address the method for determining how capacity will be allocated among releasing and replacement shippers when capacity is recalled during the gas day. Among the most notable of these standards are: A revision to the capacity release timeline to permit prearranged non-biddable releases on non-business days (Standard 5.3.2); a revision to the Commission's interim timeline for recall transactions to permit recalls at any of the four nomination opportunities, while still providing sufficient notice to replacement shippers to enable them to reschedule their capacity (Standard 5.3.z1); the adoption of procedures governing notice to replacement shippers (Standards 5.3.z2 through 5.3.z5); and the use of elapsed prorata capacity as the allocation method for flowing day recalls, unless a different method is necessary to reflect the nature of the pipeline's tariff, services, or operational characteristics (Standard 5.3.z13).[8]

9. The WGQ approved the standards under its consensus procedures.[9] As the Commission found in Order No. 587, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In § 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA), Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like the WGQ, as means to carry out policy objectives or activities.[10]

10. PGC seeks clarification as to the role of the WGQ with respect to the development of future standards (not included in this NOPR) dealing with the allocation of penalties between releasing and replacement shippers as a result of partial day recalls. PGC is particularly concerned about two proposed standards regarding the allocation of reservation charges and capacity release credit quantities and the determination of overrun charges.[11] PGC is concerned that such standards may undermine Commission policies regarding penalties adopted in Order No. 637, and it maintains that such issues should be deemed beyond the scope of the WGQ, and should be reserved for Commission determination.

11. PGC's comment raises two issues: The specific question of how reservation charges and credits and overrun penalties should be allocated when capacity is recalled during the gas day; and the generic question of what the WGQ's role should be in developing standards related to penalties.

12. As to the first issue, the Commission proposes that the determination of reservation charges and credits and potential liability for contract overruns should follow the allocation of capacity.[12] This seems the fairest method of allocating contractual responsibility, especially since the standards are designed to provide replacement shippers with sufficient notice to reschedule recalled capacity in order to come within contractual limits.[13] The Commission sees no reason in this instance for pipelines to propose individual allocation mechanisms.

13. As to the second issue, the Commission disagrees with PGC that the WGQ should refrain from examining methods of standardizing penalties. As the Commission found in Order No. 637, having penalty provisions that vary from pipeline to pipeline can create adverse effects by providing incentives for shippers to engage in penalty arbitrage and by creating additional administrative costs and uncertainty.[14]

[4] Pursuant to the regulations regarding incorporation by reference, copies of Version 1.6 and the partial day recall standards are available from NAESB. 5 U.S.C. 552(a)(1); 1 CFR part 51 (2001).

[5] In Version 1.6, the WGQ made the following changes to its standards. It revised Standards 1.3.63, 4.3.4, 4.3.6, 4.3.8, 4.3.10, 4.3.15, 4.3.21, 4.3.23, 4.3.61, 4.3.70 and 4.3.83, and Data Sets 1.4.6, 5.4.1 through 5.4.4, 5.4.7, 5.4.8, 5.4.9, 5.4.13, 5.4.14, 5.4.15, 5.4.18, and 5.4.19. It added Principle 4.1.39, Standard 4.3.88, and Data Sets 5.4.20, 5.4.21, and 5.4.22. It deleted Principles 4.1.1 and 4.1.11.

[6] The Commission is proposing to incorporate by reference Standards 2.3.29 and 2.3.30 (dealing with operational balancing agreements and imbalance netting and trading, respectively) which in previous versions, the Commission had not incorporated because the standards conflicted with the Commission's regulations in these areas. 18 CFR 284.12(b)(2)(i)&(ii). The WGQ has amended these standards so they no longer conflict with the Commission regulations.

[7] In the partial day recall standards, the WGQ made the following changes to its standards. It revised Standards 5.3.2, 5.3.7, 5.3.41, and 5.3.42, and Data Sets 1.4.4, 5.4.1, 5.4.3, 5.4.4, 5.4.7, and 5.4.9. It added Principles 5.1.z1, 5.1.z2, and 5.1.z3, Definition 5.2.z1, and Standards 5.3.z1 through 5.3.z15. It deleted Standard 5.3.6.

[8] Elapsed prorata capacity means the portion of the capacity that would have theoretically been available for use prior to the effective time of the intraday recall based on a cumulative uniform hourly use of the capacity. Definition 5.2.z1.

[9] This process first requires a super-majority vote of 17 out of 25 members of the WGQ's Executive Committee with support from at least two members from each of the five industry segments—interstate pipelines, local distribution companies, gas producers, end-users, and services (including marketers and computer service providers). For final approval, 67% of the WGQ's general membership must ratify the standards.

[10] Pub L. 104–113, § 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

[11] According to PGC's filing, the two standards are the following: 3.3.z1 Proposed Standard: For recalls at the intraday 1 and intraday 2 cycles, the reservation charge and capacity release credit quantities should be based upon the allocation of capacity between the Releasing and Replacement Shipper(s); and 3.3.z2 Proposed Standard: For recalls at the intraday 1 and intraday 2 cycles, overrun charges, if applicable, should be based upon the allocation of capacity between the Releasing and Replacement Shipper(s).

[12] For example, under a 2000 Dth/day release, with a recall amounting to 500 Dth/day, the replacement shipper would be responsible for paying reservation charges for 1500 Dth/day (to be credited to the releasing shipper) and would be potentially liable for contract overruns if it transported more than 1500 Dth over the day.

[13] It is also consistent with Standard 5.3.z14 which provides that the pipeline "should not be obligated to deliver in excess of the total daily contract quantity of the release."

[14] *See* Regulation of Short-Term Natural Gas Transportation Services, Order No. 637, 65 FR

Continued

development of standards that reduce such adverse effects could help reduce barriers to multi-pipeline shipments and improve the overall efficiency of the pipeline grid, thus redounding to the benefit of the entire industry. Thus, the Commission finds no reason to deem the standardization of penalties beyond the scope of the WGQ's standardization activities. The Commission is not asking the WGQ specifically to develop standards for penalties, but it encourages the WGQ to examine seriously any such proposals that hold out the prospect of improving the efficiency of the pipeline grid.

14. Should the WGQ adopt penalty standards, the Commission's role in reviewing such standards will not be eliminated, as PGC appears to fear. Just as in this rulemaking, the Commission would seek comment on, and review any proposed penalty standards developed by the WGQ before adopting such standards. PGC and other shippers, therefore, will have ample opportunity in those proceedings to raise any concerns about such standards with the Commission.

Notice of Use of Voluntary Consensus Standards

15. Office of Management and Budget Circular A–119 (§ 11) (February 10, 1998) provides that Federal Agencies should publish a request for comment in a NOPR when the agency is seeking to issue or revise a regulation proposing to adopt a voluntary consensus standard or a government-unique standard. In this NOPR, the Commission is proposing to incorporate by reference voluntary consensus standards developed by the WGQ.

Information Collection Statement

16. The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The following burden estimate includes the costs to implement the WGQ's Version 1.6 standards which incorporate the most recent and up-to-date standards governing electronic communication, including additional standards that support Order No. 637, that implement the surety assessment performed by the Sandia National Laboratories, and that implement the WGQ's standards governing partial day recalls. The burden estimate does not include the costs of modifying, preparing and submitting tariff changes to reflect compliance with these standards since costs for tariff filings for phase two implementation of partial day recalls were previously included in the burden estimate in Order No. 587–N. The burden estimate is primarily related to start-up to implement the latest version of the standards and will not result in on-going costs.

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total number of hours
FERC–549C	93	1	2,248	209,064

Total Annual Hours for Collection (Reporting and Recordkeeping, (if appropriate)) = 209,064.

17. Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be the following:

	FERC–549C
Annualized Capital/Startup Costs	$11,763,971
Annualized Costs (Operations & Maintenance)	0
Total Annualized Costs	11,763,971

18. OMB regulations [15] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

Title: FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines.

Action: Proposed collection.

OMB Control No.: 1902–0174.

Respondents: Business or other for profit, (Interstate natural gas pipelines (Not applicable to small business)).

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

Necessity of Information: This proposed rule, if implemented, would upgrade the Commission's current business practice and communication standards to the latest edition approved by the WGQ (Version 1.6) as well as the standards governing partial day recalls approved by the WGQ. These standards include additional standards that support Order No. 637 and standards implementing the surety assessment performed by the Sandia National Laboratories. The implementation of these standards is necessary to increase the efficiency of the pipeline grid and is consistent with the mandate that agencies provide for electronic disclosure of information.[16]

19. The information collection requirements of this proposed rule will be reported directly to the industry users. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act to monitor activities of the natural gas industry to ensure its competitiveness and to assure the improved efficiency of the industry's operations. The Commission's Office of Markets, Tariffs and Rates will use the data in rate proceedings to review rate and tariff changes by natural gas companies for the transportation of gas, for general industry oversight, and to supplement the documentation used during the Commission's audit process.

20. *Internal Review:* The Commission has reviewed the requirements pertaining to business practices and electronic communication with natural gas interstate pipelines and made a determination that the proposed revisions are necessary to establish a more efficient and integrated pipeline grid. Requiring such information

10156, at 10197–10198 (Feb. 25, 2000), FERC Stats. & Regs. Regulations Preambles (July 1996-December 2000) ¶31,091, at 31,307–310 (Feb. 9, 2000); Notice of Proposed Rulemaking, 63 FR 42982, 43005 (Aug. 11, 1998), FERC Statutes and Regulations, Proposed Regulations 1988–1998 ¶32,533, at 33,468 (Jul. 29, 1998) (recognizing a need for standardization of penalty provisions and requesting comment on whether GISB should develop such standards).

[15] 5 CFR 1320.11.

[16] 44 U.S.C. 3504 note, Pub. L. 105–277, 1701, 112 Stat. 2681–749 (1998).

ensures both a common means of communication and common business practices which provide participants engaged in transactions with interstate pipelines with timely information and uniform business procedures across multiple pipelines. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

21. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 502–8415, fax: (202) 208–2425, email: *michael.miller@ferc.gov*)

22. Comments concerning the collection of information(s) and the associated burden estimate(s), should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–7856, fax: (202) 395–7285).

Environmental Analysis

23. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[17] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[18] The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[19] Therefore, an environmental assessment is unnecessary and has not been prepared in this NOPR.

Regulatory Flexibility Act Certification

24. The Regulatory Flexibility Act of 1980 (RFA) [20] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations proposed here impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to benefit all customers, including small businesses. Accordingly, pursuant to § 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

Comment Procedures

25. The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due January 8, 2003. Comments must refer to Docket No. RM96–1–024, and may be filed either in electronic or paper format. Those filing electronically do not need to make a paper filing.

26. Documents filed electronically via the Internet can be prepared in a variety of formats, including WordPerfect, MS Word, Portable Document Format, Rich Text Format, or ASCII format, as listed on the Commission's Web site at *http://ferc.gov*, under the e-Filing link. The e-Filing link provides instructions for how to Login and complete an electronic filing. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt of comments. User assistance for electronic filing is available at 202–502–8258 or by E-Mail to *efiling@ferc.gov*. Comments should not be submitted to the E-Mail address.

27. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

28. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the FERRIS link.

Document Availability

29. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page *(http://www.ferc.gov)* and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

30. From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

31. User assistance is available for FERRIS and the FERC's website during normal business hours. Please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

List of Subjects in 18 CFR Part 284

32. Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Linwood A. Watson, Jr.,

Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend part 284, chapter I, title 18, *Code of Federal Regulations*, as follows:

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

2. Section 284.12 is amended by revising paragraphs (a)(1)(i), (ii), (iii), (iv) and (v), to read as follows:

§ 284.12 Standards for pipeline business operations and communications.

(a) * * *

(1) * * *

(i) Nominations Related Standards (Version 1.6, July 31, 2002) and the

[17] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[18] 18 CFR 380.4.

[19] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[20] 5 U.S.C. 601–612.

standards contained in Recommendation R02002 (October 31, 2002);

(ii) Flowing Gas Related Standards (Version 1.6, July 31, 2002);

(iii) Invoicing Related Standards (Version 1.6, July 31, 2002);

(iv) Electronic Delivery Mechanism Related Standards (Version 1.6, July 31, 2002) with the exception of Standard 4.3.4; and

(v) Capacity Release Related Standards (Version 1.6, July 31, 2002), with the exception of Standards 5.3.6 and 5.3.7, and the standards contained in Recommendations R02002 and R02002–2 (October 31, 2002).

* * * * *

[FR Doc. 02–30996 Filed 12–6–02; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA144–0375b; FRL–7411–1]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution District, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Monterey Bay Unified Air Pollution District (MBUAPCD) and the Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern general requirements for continuous emissions monitoring systems and the use of credible evidence to demonstrate compliance with emission limits. We are proposing to approve these local rules under the under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by January 8, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Monterey Bay Unified Air Pollution Control District, 24850 Silver Cloud Court, Monterey, CA 93940.

Ventura County Air Pollution Control District, 669 County Square Drive, 2nd floor, Ventura, CA 93003.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Andy Steckel, EPA Region IX, (415) 947.4115.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: MBUAPCD 213, MBUAPCD 421, and VCAPCD 103. In the rules and regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: October 30, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 02–30940 Filed 12–6–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN146–1b; FRL–7411–8]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve as a revision to the Indiana particulate matter (PM) State Implementation Plan (SIP) emission control regulations that pertain to Knauf Fiber Glass (Knauf) which is located in Shelbyville, Indiana, as requested by the State of Indiana on October 17, 2002. This SIP submission contains changes to federally enforceable Indiana air pollution control rules. The rule revisions modify the PM emissions limits adopted by the State in the 1980s which are part of the current Indiana SIP. The revised rules delete references to equipment no longer in use by Knauf and update names equipment which remains in use. Because the revised rules reduce both allowable emissions and the allowable emissions rate, and reflect current operations at the Knauf facility, EPA approval of these revisions should not result in an adverse impact on air quality.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The rationale for approval is set forth in the direct final rule. If EPA receives no written adverse comments, EPA will take no further action on this proposed rule. If EPA receives written adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect. In that event, EPA will address all relevant public comments in a subsequent final rule based on this proposed rule. In either event, EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments on this action must be received by January 8, 2003.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the State's request is available for inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Randolph Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" are used we mean the EPA.

I. What action is EPA taking today?

II. Where can I find more information about this proposal and corresponding direct final rule?

I. What Action Is EPA Taking Today?

The EPA is proposing to approve as a revision to the Indiana particulate matter SIP emission control regulations that pertain to Knauf Fiber Glass (Knauf) which is located in Shelbyville, Indiana, as requested by the State of Indiana on October 17, 2002. This SIP submission makes changes to federally enforceable Indiana air pollution control rules. Indiana made these changes at the request of Knauf, and they apply to the operation of the Knauf fiberglass plant in Shelbyville, Indiana. The rule revisions modify the PM emissions limits adopted by the State in the 1980s which EPA approved as part of the current Indiana SIP. The revised rules delete references to equipment no longer in use by Knauf and update names of equipment which remains in use. Because the revised rules reduce both allowable emissions and the allowable emissions rate and reflect current operations at the Knauf facility, EPA approval of these revisions should not result in an adverse impact on air quality.

II. Where Can I Find More Information About This Proposal and Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules and regulations section of this **Federal Register**.

Authority: 42 U.S.C. 4201 *et seq.*

Dated: November 7, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 02–30938 Filed 12–6–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7419–6]

RIN 2060—AK52

National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions; and Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: In this action, we are proposing specific amendments to the General Provisions for national emission standards for hazardous air pollutants (NESHAP), and to the rule establishing requirements for case-by-case determinations under Clean Air Act (CAA) section 112(j). We are proposing to establish a new timetable for the submission of section 112(j) Part 2 applications which is derived from our agreed timetable for promulgation of the remaining NESHAP. This new timetable for Part 2 applications is intended both to avoid the expenditure of unnecessary resources by affected sources and permitting authorities, and to create new incentives for prompt completion of the remaining standards. We are also proposing to make several changes in the section of the General Provisions rule that establishes general procedures for preparation, maintenance, and periodic revision of startup, shutdown, and malfunction (SSM) plans. These amendments are being proposed pursuant to a settlement agreement concerning a petition for judicial review of the prior amendments to these rules published on April 5, 2002. We are also proposing to revise a recordkeeping provision which we adopted in response to comments we received on the prior amendments because we have concluded that the recordkeeping provision should be more narrow in applicability.

DATES: *Comments.* Submit comments on or before January 20, 2003.

Public Hearing. If anyone contacts us requesting to speak at a public hearing by December 16, 2002, a public hearing will be held on December 19, 2002.

ADDRESSES: *Comments.* Written comments may be submitted to: Air and Radiation Docket and Information Center, Attention Docket Number OAR–2002–0038, Part 63 General Provisions (Subpart A) and Section 112(j) Regulations (Subpart B) Litigation Settlement Amendments II, Mailcode 6102T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

Public Hearing. If a public hearing is held, it will be held at 10 a.m. on December 19, 2002 in our EPA facility complex, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina, or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Colyer, Emission Standards Division (C504–05), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541–5262, e-mail *colyer.rick@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Categories and entities potentially regulated by this action include all section 112 source categories listed under section 112(c) of the CAA.

Industry Group: Source Category

Fuel Combustion:
- Coal- and Oil-fired Electric Utility Steam Generating Units
- Combustion Turbines
- Engine Test Facilities
- Industrial Boilers
- Institutional/Commercial Boilers
- Process Heaters
- Reciprocating Internal Combustion Engines
- Rocket Testing Facilities

Non-Ferrous Metals Processing:
- Primary Aluminum Production
- Primary Copper Smelting
- Primary Lead Smelting
- Primary Magnesium Refining
- Secondary Aluminum Production
- Secondary Lead Smelting

Ferrous Metals Processing:
- Coke Ovens: Charging, Top Side, and Door Leaks
- Coke Ovens: Pushing, Quenching, Battery Stacks
- Ferroalloys Production: Silicomanganese and Ferromanganese
- Integrated Iron and Steel Manufacturing
- Iron Foundries
- Steel Foundries
- Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration

Mineral Products Processing:
- Asphalt Processing
- Asphalt Roofing Manufacturing
- Asphalt/Coal Tar Application—Metal Pipes
- Brick and Clay Products Manufacturing
- Ceramics Manufacturing
- Lime Manufacturing
- Mineral Wool Production
- Portland Cement Manufacturing
- Refractories Manufacturing
- Taconite Iron Ore Processing
- Wool Fiberglass Manufacturing

Petroleum and Natural Gas Production and Refining:
- Oil and Natural Gas Production
- Natural Gas Transmission and Storage
- Petroleum Refineries—Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Plant Units
- Petroleum Refineries—Other Sources Not Distinctly Listed

Liquids Distribution:
- Gasoline Distribution (Stage 1)
- Marine Vessel Loading Operations
- Organic Liquids Distribution (Non-

Gasoline)
Surface Coating Processes:
Aerospace Industries
Auto and Light Duty Truck (Surface Coating)
Large Appliance (Surface Coating)
Magnetic Tapes (Surface Coating)
Manufacture of Paints, Coatings, and Adhesives
Metal Can (Surface Coating)
Metal Coil (Surface Coating)
Metal Furniture (Surface Coating)
Miscellaneous Metal Parts and Products (Surface Coating)
Paper and Other Webs (Surface Coating)
Plastic Parts and Products (Surface Coating)
Printing, Coating, and Dyeing of Fabrics
Printing/Publishing (Surface Coating)
Shipbuilding and Ship Repair (Surface Coating)
Wood Building Products (Surface Coating)
Wood Furniture (Surface Coating)
Waste Treatment and Disposal:
Hazardous Waste Incineration
Municipal Solid Waste Landfills
Off-Site Waste and Recovery Operations
Publicly Owned Treatment Works (POTW)
Site Remediation
Agricultural Chemicals Production:
Pesticide Active Ingredient Production
Fibers Production Processes:
Acrylic Fibers/Modacrylic Fibers Production
Spandex Production
Food and Agriculture Processes:
Manufacturing of Nutritional Yeast
Solvent Extraction for Vegetable Oil Production
Pharmaceutical Production Processes:
Pharmaceuticals Production
Polymers and Resins Production:
Acetal Resins Production
Acrylonitrile-Butadiene-Styrene Production
Alkyd Resins Production
Amino Resins Production
Boat Manufacturing
Butyl Rubber Production
Cellulose Ethers Production
Epichlorohydrin Elastomers Production
Epoxy Resins Production
Ethylene-Propylene Rubber Production
Flexible Polyurethane Foam Production
Hypalon (tm) Production
Maleic Anhydride Copolymers Production
Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production
Methyl Methacrylate-Butadiene-Styrene Terpolymers Production
Neoprene Production
Nitrile Butadiene Rubber Production
Nitrile Resins Production
Non-Nylon Polyamides Production
Phenolic Resins Production
Polybutadiene Rubber Production
Polycarbonates Production
Polyester Resins Production
Polyether Polyols Production
Polyethylene Terephthalate Production
Polymerized Vinylidene Chloride Production
Polymethyl Methacrylate Resins Production
Polystyrene Production
Polysulfide Rubber Production
Polyvinyl Acetate Emulsions Production
Polyvinyl Alcohol Production
Polyvinyl Butyral Production
Polyvinyl Chloride and Copolymers Production
Reinforced Plastic Composites Production
Styrene-Acrylonitrile Production
Styrene-Butadiene Rubber and Latex Production
Production of Inorganic Chemicals:
Ammonium Sulfate Production—Caprolactam By-Product Plants
Carbon Black Production
Chlorine Production
Cyanide Chemicals Manufacturing
Fumed Silica Production
Hydrochloric Acid Production
Hydrogen Fluoride Production
Phosphate Fertilizers Production
Phosphoric Acid Manufacturing
Production of Organic Chemicals:
Ethylene Processes
Quaternary Ammonium Compounds Production
Synthetic Organic Chemical Manufacturing
Miscellaneous Processes:
Benzyltrimethylammonium Chloride Production
Carbonyl Sulfide Production
Chelating Agents Production
Chlorinated Paraffins Production
Chromic Acid Anodizing
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines
Commercial Sterilization Facilities
Decorative Chromium Electroplating
Ethylidene Norbornene Production
Explosives Production
Flexible Polyurethane Foam Fabrication Operations
Friction Materials Manufacturing
Halogenated Solvent Cleaners
Hard Chromium Electroplating
Hydrazine Production
Industrial Dry Cleaning (Perchloroethylene)—Dry-to-dry Machines
Industrial Dry Cleaning (Perchloroethylene)—Transfer Machines
Industrial Process Cooling Towers
Leather Finishing Operations
Miscellaneous Vicose Processes
OBPA/1,3-Diisocyanate Production
Paint Stripping Operations
Photographic Chemicals Production
Phthalate Plasticizers Production
Plywood and Composite Wood Products
Pulp and Paper Production
Rubber Chemicals Manufacturing
Rubber Tire Manufacturing
Semiconductor Manufacturing
Symmetrical Tetrachloropyridine Production
Wet-formed Fiberglass Mat Production
Categories of Area Sources:
Chromic Acid Anodizing
Commercial Dry Cleaning (Perchloroethylene)—Dry-to-Dry Machines
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines
Commercial Sterilization Facilities
Decorative Chromium Electroplating
Halogenated Solvent Cleaners
Hard Chromium Electroplating
Hazardous Waste Incinerators
Portland Cement Production
Secondary Aluminum Production
Secondary Lead Smelting

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether you are regulated by this action, you should examine your source category specific section 112 regulation. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket

EPA has established an official public docket for this action under Docket ID No. OAR–2002–0038. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Part 63 General Provisions (Subpart A)

and Section 112(j) Regulations (Subpart B) Litigation Settlement Amendments II Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Part 63 General Provisions (Subpart A) and Section 112(j) Regulations (Subpart B) Litigation Settlement Amendments II Docket is (202) 566–1742). A reasonable fee may be charged for copying docket materials.

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility previously identified.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions below. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OAR–2002–0038. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *a-and-r-Docket@epa.gov*, Attention Docket ID No. OAR–2002–0038. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

Send your comments to: Part 63 General Provisions (Subpart A) and Section 112(j) Regulations (Subpart B) Litigation Settlement Amendments II, U.S. EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW, Washington, DC 20460, Attention Docket ID No. OAR–2002–0038.

Deliver your comments to: Public Reading Room, Room B102, EPA West, 1301 Constitution Avenue, NW, Washington, DC, Attention Docket ID No. OAR–2002–0038. Such deliveries are only accepted during the Docket's normal hours of operation.

Fax your comments to 202–566–1741, Attention Docket ID. No. OAR–2002–0038.

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Attention: Mr. Rick Colyer, c/o OAQPS Document Control Officer, Mailcode C404–02, U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. OAR–2002–

0038. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comments that includes any information claimed as CBI, a copy of the comments that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the FOR FURTHER INFORMATION CONTACT section.

Public Hearing

Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Janet Eck, U.S. EPA, Mailcode C539–03, Research Triangle Park, NC 27711, telephone (919) 541–7946, no later than December 17, 2002. Persons interested in attending the public hearing must also contact Ms. Eck to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed amendments.

Worldwide Web (WWW)

In addition to being available in the docket, an electronic copy of today's proposed rule amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Applicable Law

This rulemaking is being undertaken pursuant to the procedures established by CAA section 307(d). The special procedures for rulemakings governed by section 307(d) were utilized when EPA originally promulgated, and when EPA subsequently amended, each of the rules to which this proposal applies. The Administrator has specifically determined that it is appropriate to utilize the procedures in section 307(d) for this rulemaking.

Outline

The information presented in this preamble is organized as follows:

I. Background
A. General Provisions
B. CAA Section 112(j) Provisions
C. The Sierra Club Litigation
D. Review of Proposed Settlement Under CAA Section 113(g)
II. Proposed Amendments to the General Provisions
III. Proposed Amendments to the Section 112(j) Provisions
A. New Schedule for Part 2 Applications
B. Requests for Applicability Determination
C. Prior Section 112(g) Determinations
D. Content of Part 2 Applications
IV. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA) as Amended by Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act of 1995

I. Background

A. General Provisions

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of Hazardous Air Pollutants (HAP) and to establish NESHAP for the listed source categories and subcategories. Major sources of HAP are those that have the potential to emit equal to or greater than 10 tons/yr of any one HAP or 25 tons/yr of any combination of HAP. Area sources of HAP are those sources that do not have potential to emit equal to or greater than 10 tons/yr of any one HAP and 25 tons/yr of any combination of HAP.

The General Provisions in 40 CFR part 63 establish the framework for emission standards and other requirements developed pursuant to section 112 of the CAA. The General Provisions eliminate the repetition of general information and requirements in individual NESHAP by consolidating all generally applicable information in one location. They include sections on applicability, definitions, compliance dates and requirements, monitoring, recordkeeping and reporting, among others. In addition, they include administrative sections concerning actions that the EPA (or delegated authorities) must take, such as making determinations of applicability, reviewing applications for approval of new construction, responding to requests for extensions or waivers of applicable requirements, and generally enforcing national air toxics standards. The General Provisions become applicable to a CAA section 112(d) source category rule when the source category rule is promulgated and becomes effective.

The NESHAP General Provisions were first promulgated on March 16, 1994 (59 FR 12408). We subsequently proposed a variety of amendments to that initial rule, based in part on settlement negotiations with industrial trade organizations which had sought judicial review of the rule and in part on our practical experience in developing and implementing maximum achievable control technology (MACT) standards under the General Provisions (66 FR 16318, March 23, 2001). We then promulgated final amendments to the General Provisions pursuant to that proposal (67 FR 16582, April 5, 2002).

B. CAA Section 112(j) Provisions

The 1990 Amendments to section 112 of the CAA include a new section 112(j), which is entitled "Equivalent Emission Limitation by Permit." Section 112(j)(2) provides that the provisions of section 112(j) apply if the EPA misses a deadline for promulgation of a standard under section 112(d) established in the source category schedule for standards. After the effective date of a title V permit program in a State, section 112(j)(3) requires the owner or operator of a major source in a source category, for which the EPA failed to promulgate a section 112(d) standard, to submit a permit application 18 months after the missed promulgation deadline.

We first promulgated a rule to implement section 112(j) on May 20, 1994 (59 FR 26429). We subsequently proposed a variety of amendments to that initial rule, based in part on settlement negotiations with industrial trade organizations which had sought judicial review of the rule and in part on our own further evaluation of the existing procedures (66 FR 16318, March 23, 2001). We then promulgated final amendments to the section 112(j) rule, along with our final amendments to the General Provisions (67 FR 16582, April 5, 2002).

C. The Sierra Club Litigation

We promulgated the final rule amending the MACT General Provisions and the requirements for case-by-case determinations under Clean Air Act section 112(j) on April 5, 2002 (67 FR 16582). The Sierra Club filed a petition seeking judicial review of that final rule on April 25, 2002, *Sierra Club* v. *U.S. Environmental Protection Agency*, No. 02–1135 (D.C. Circuit). Sierra Club also filed a petition seeking administrative reconsideration of certain provisions in the final rule, pursuant to CAA section 307(d)(7)(B).

Shortly after the filing of the petition, EPA commenced discussions with Sierra Club concerning a settlement agreement. We reached initial agreement with Sierra Club on the terms of a settlement and lodged the tentative agreement with the court on August 15, 2002. Under the proposed settlement, we agreed to propose a rule to make specified amendments to the General Provisions and section 112(j) rules no later than 2 months after signature and to take final action on the proposed amendments within 7 months after signature.

D. Review of Proposed Settlement Under CAA Section 113(g)

As required by section 113(g) of the CAA, EPA published a notice in the **Federal Register** affording interested persons an opportunity to comment on the terms of the proposed settlement in *Sierra Club* v. *U.S. Environmental Protection Agency*, No. 02–1135 (D.C. Circuit) (67 FR 54804, August 26, 2002). In response to that notice, we received 110 timely comments, the vast majority of which opposed one or more provisions of the proposed settlement.

While we do not believe we are legally required to discuss or summarize our review of the comments on the proposed settlement we received as part of the process required by section 113(g), we think it is appropriate in this instance to describe our assessment of and response to certain of these comments.

Virtually all of the commenters expressed concern about the practical consequences of the proposal to reduce the time between the section 112(j) Part 1 and Part 2 applications from 24 months to 12 months. We agree with the commenters that this approach would have resulted in wasteful expenditures by the applicants and the permitting agencies to prepare and to process permit applications which in all likelihood would never have been acted upon. Given the strong opposition to this approach reflected in the comments both by industry sources and organizations and by State and local permitting authorities, we were pleased when Sierra Club agreed to discuss modifying the proposed settlement to establish an alternative timetable for submission of Part 2 section 112(j) applications.

Organizations representing the State and local permitting authorities played a very helpful role in the discussions concerning a revised settlement. These organizations noted that EPA had already reached an agreement with Sierra Club on a schedule for promulgation of all remaining MACT standards that were included on the original schedule established pursuant to CAA section 112(e)(1) and (3). We anticipate that this agreed upon schedule for promulgation of the remaining MACT standards will be incorporated in a forthcoming consent decree in *Sierra Club* v. *Whitman*, 01–1337 (D.D.C.). The State and local governmental organizations suggested that a timetable which would require submission of section 112(j) Part 2 applications only if the agreed upon schedule is not met would both eliminate the expenditure of significant resources on an ultimately futile process and create new incentives for EPA and the other stakeholders to cooperate in meeting the promulgation schedule.

After Sierra Club agreed to consider the alternative approach suggested by the State and local governmental organizations, EPA and Sierra Club then negotiated a revised settlement based on that approach. Under the timetable we are proposing pursuant to the revised settlement, section 112(j) Part 2 applications for affected sources in those categories for which MACT standards are scheduled to be promulgated while this rulemaking is pending will be due on May 15, 2003, and section 112(j) Part 2 applications for affected sources in categories for which the MACT standards are scheduled to be promulgated thereafter will be due 60 days after the corresponding scheduled promulgation dates.

In the revised settlement, we have also agreed to propose the same amendments to the General Provisions concerning startup, shutdown, and malfunction (SSM) plans which were set forth in the original settlement. Although we received numerous comments opposing these amendments as well, we believe that many of these comments materially misconstrued both the intent and the effect of these proposed amendments. In any case, we note that there will be a full opportunity for those who have concerns regarding either the need for or the effect of these amendments to comment during this rulemaking. We also believe these comments are likely to be more constructive and appropriately focused when the commenters have had an opportunity to review our explanation of the basis for these proposed amendments set forth below.

The EPA and Sierra Club executed a final settlement agreement in *Sierra Club* v. *U.S. Environmental Protection Agency*, No. 02–1135 (DC Circuit), and filed it with the Court on November 26, 2002. This rulemaking is being conducted in accordance with the provisions of that final agreement.

II. Proposed Amendments to the General Provisions

In today's action, we are proposing to make several changes in the section of the General Provisions rule that establishes general procedures for preparation, maintenance, and periodic revision of SSM plans. We consider these proposed revisions to be modest in character, and we believe they are generally consistent with the policies articulated in the preamble when we proposed the last set of amendments concerning SSM plans. We are also proposing to revise a new recordkeeping provision which we adopted in the prior rulemaking in response to a comment we received, because we have concluded that the new recordkeeping provision is too broad in its effect.

We are proposing some minor changes in the language in 40 CFR 63.6(e)(1)(i) to correct a potential problem in interpreting the relationship between the general duty to minimize emissions established by that section and a facility's compliance with its SSM plan. That section was modified in the last rulemaking because it appeared at that time to impose on a source a general duty to further reduce emissions, even when the source is already in full compliance with the applicable MACT standards. We deemed this result to be unreasonable and made corresponding changes in the language of the rule. We emphasize that nothing in today's proposal is intended to alter our determination that the general duty to minimize emissions is satisfied when emission levels required by the MACT standard have been achieved.

However, as part of these changes, we adopted some language which could be construed as contrary to the policies regarding the relationship between the general duty to minimize emissions and

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SSM plans which we stated in the preamble of the proposal of the original amendments. We note at the outset that SSM plans must be drafted in a manner which satisfies the general duty to minimize emissions (40 CFR 63.6(e)(3)(i)(A)). Thus, compliance with a properly drafted SSM plan during a period of startup, shutdown, or malfunction will necessarily also constitute compliance with the duty to minimize emissions, even though compliance with the MACT standards themselves during a period of startup, shutdown, or malfunction may not be practicable. However, in the proposal preamble to the original amendments, we stated explicitly that "compliance with an inadequate or improperly developed SSM plan is no defense for failing to minimize emissions" (66 FR 16327, March 23, 2001). We note that this understanding of the effect of the amendments was explicitly restated in comments by the organizations that represent the agencies that generally enforce these requirements, the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO). See Docket A–2001–02.

Sierra Club subsequently pointed out to us that the actual language of the section as promulgated could be construed to indicate that a facility that complies with its SSM plan—regardless of whether the plan is inadequate or improperly developed—thereby satisfies its general duty to minimize emissions. We did not intend this result. We believe such a construction could encourage potential abuse, particularly because SSM plans do not have to be reviewed or approved by the permitting authority before they take effect, and because such plans may also be revised by the facility without prior notice to the permitting authority. The revisions to 40 CFR 63.6(e)(1)(i) which we are proposing today are intended to assure that this section is not construed in this manner. Nothing in these revisions is intended either to change the general principle that compliance with a MACT standard is not mandatory during periods of startup, shutdown, or malfunction, or to require a source to further minimize emissions during periods of startup, shutdown, or malfunction once it has achieved levels which would constitute compliance with the MACT standard at other times.

We are also proposing some changes to 40 CFR 63.6(e)(3)(v), the section that governs submission of SSM plans to the EPA Administrator, and to the State or local permitting authorities which operate as the Administator's authorized representatives. The present rule provides that the current SSM plan must be made available upon request to the Administrator for "inspection and copying." The "Administrator" is defined to include a State which has received delegation and is therefore the Administrator's "authorized representative" (40 CFR 63.2).

We stated in the preamble of the proposal for the previous amendments that the permit writer or the Administrator may also require submission of the SSM plan (66 FR 16326, March 23, 2001). This is sensible because the SSM plan is an integral part of the permit file, regardless of whether the plan is physically available at the EPA Regional Office or the permitting authority that has received delegation or is maintained only at the affected source. However, we note that the present rule does not expressly require that SSM plans be submitted to the Administrator or to the permitting authority upon request. This potential omission was also noted in previous comments by STAPPA/ALAPCO. See Docket A–2001–02.

SSM plans are developed in connection with individual MACT standards promulgated under CAA section 112 and are therefore covered by CAA section 114(a). Under CAA section 114(c) and 40 CFR 70.4(b)(3)(viii), information in SSM plans must be made available to the public, unless the submitter makes a satisfactory showing that disclosure would divulge methods or processes that are entitled to protection under the Trade Secrets Act, 18 U.S.C. 1905. SSM plans are considered to be submitted to the Administrator under CAA Section 114 even if they are submitted to a State or local agency acting on the Administrator's behalf (40 CFR 2.301(b)(2)).

Sierra Club has expressed concern about the adequacy of the provisions in the present rule to assure the degree of public access to SSM plans required by law. In particular, Sierra Club is concerned that some permitting authorities might not construe the rule to require that an SSM plan be obtained from the affected source when it is requested by a member of the public, and that the rule does not expressly require submission of an SSM plan when the permitting authority or Administrator requests it. Although the rule clearly requires that such plans must be made available for inspection and copying by EPA or the permitting authority, Sierra Club believes that interested members of the public may encounter protracted delays in obtaining access to the non-confidential portions of an SSM plan.

We understand these concerns about the practicality of public access under the present system, and we have agreed to propose some revisions to the rule to facilitate better public access. The new language requires sources to submit a copy of the SSM plan to the permitting authority at the time it is first adopted and when it is subsequently revised. In most instances, revised versions of the SSM plan may be submitted with the semiannual report required by 40 CFR 63.10(d)(5). Under our proposal, the source may elect to submit the SSM plan in an electronic format. If the submitter claims that any portion of an SSM plan, or any revision of an SSM plan, is CBI entitled to protection under section 114(c) of the CAA or 40 CFR 2.301, the material which is claimed as confidential must be clearly designated in the submission.

While the applicable law generally requires that we provide public access to those portions of SSM plans which are not entitled to confidentiality under the Trade Secrets Act, we note that it is hypothetically possible that some information in a particular SSM plan would be deemed to be sensitive from a Homeland Security perspective. In most instances, we think that such sensitive information would also be entitled to confidential treatment under CAA section 114(c). However, we note that the entire Federal government is presently reviewing public access requirements to assure that they are compatible with Homeland Security, and it is possible that we may in the future propose other changes in public access to SSM plans as part of this important effort.

We note that many sources have already adopted SSM plans, and that the language we are proposing does not establish a specific transitional process for submission of those existing plans to permitting authorities. If we adopt the proposed changes, we want to minimize the burden and disruption associated with this transition, and we are requesting comment on how this may best be accomplished. One option would be to provide a specific time period within which the existing plans must be submitted. Another option would be to require that the plans be submitted as part of the next semiannual compliance report.

We are also proposing a change to 40 CFR 63.6(e)(3)(vii). The current rule provides that EPA or the permitting authority "may" require that an SSM plan be revised if certain specified deficiencies are found. However, we cannot envision any circumstance

where revision of an SSM plan should not be mandatory if it is specifically found to be deficient by EPA or the permitting authority according to one of the criteria set forth in this section. Therefore, we have agreed to propose to change the language to make such revisions mandatory rather than discretionary.

We are required to propose all of the foregoing amendments to the SSM plan provisions in the MACT General Provisions rule by the final settlement agreement that we executed with Sierra Club. We solicit comments on all these proposals.

In addition to the proposals required under our final settlement agreement with Sierra Club, we are also proposing to revise a provision concerning reporting of SSM events which we adopted in the previous rulemaking in response to comments we received. We have concluded that the new language we adopted was unnecessarily broad in its scope and we are proposing to substantially narrow its applicability.

During the previous rulemaking concerning revisions to the General Provisions and section 112(j) rules, we received comments from STAPPA/ALAPCO indicating that it would assist permitting agencies in performing their oversight function if facilities were required to include the number and a description of all malfunctions that occurred during the prior reporting period in the required semiannual report. See Docket A–2001–02. In response to that comment, we added a new reporting obligation to the language governing periodic SSM reporting in 40 CFR 63.10(d)(5)(i). However, the language we added was not limited to malfunctions and required that the facility report "the number, duration, and a brief description of each startup, shutdown, and malfunction." We have concluded that the inclusion of startups and shutdowns in this reporting requirement is unnecessary and burdensome.

With respect to malfunctions, the rule expressly requires that the SSM plan must be revised by the facility if there is an event meeting the characteristics of a malfunction which is not addressed by the plan (40 CFR 63.6(e)(3)(vii). Although the facility is required by 40 CFR 63.6(e)(3)(iv) to immediately report those instances where the actions it takes are not in conformity with the SSM plan and the standard is exceeded, this provision may not be sufficient to give the permitting authority all the information it needs to assure that SSM plans properly address all types of malfunctions. Thus, we think that the requirement that the owner or operator report the number, duration, and type of malfunctions which occurred during the prior reporting period may provide useful information to the permitting authority.

We recognize that some sources are concerned that the requirement to periodically report malfunctions may be interpreted to require reporting of minor problems that have no impact on emissions. However, we do not construe the provision in this manner. Under our regulations, "malfunction" is defined as "any sudden, *infrequent*, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner." See 40 CFR 63.2. Only those events that meet this definition would be subject to the reporting requirement. During an event that meets this definition, the facility is not required to comply with otherwise applicable emission limits, and the SSM plan must specify alternative procedures which satisfy the general duty to minimize emissions. Minor or routine events that have no appreciable impact on the ability of a source to meet the standard need not be classified by the source as a malfunction, addressed in the SSM plan, or included in periodic reports. Thus, if a source experiences a minor problem that does not affect its ability to meet the applicable emission standard, the problem need not be addressed by the SSM plan and would not be a reportable "malfunction" under our regulations.

Unlike malfunctions, we think that the extension of this requirement to startups and shutdowns was unwarranted. In some industries, startup and shutdown events are numerous and routine. So long as the provisions of the SSM plan are followed, there does not appear to be any real utility in requiring that each individual startup and shutdown be reported or described. In those instances where a startup and shutdown includes actions which do not conform to the SSM plan and the standard is exceeded, the facility is otherwise required to promptly report these deviations from the plan. We encourage all interested parties to comment both on our proposal to delete startups and shutdowns from this reporting provision, and on our rationale for the retention of the periodic reporting of malfunctions.

In addition to seeking comment on the revisions to the provisions governing SSM plans described above, we are also requesting comment concerning two other changes to the General Provisions which we made during the prior rulemaking in response to industry comments. During the prior rulemaking, the Colorado Association of Commerce and Industry suggested that we revise the definition of "monitoring" in 40 CFR 63.2 to include the phrase "or to verify a work practice standard." See Docket item No. IV–D–03. There are times when we must adopt a work practice standard under CAA section 112(h) rather than an emission standard under CAA section 112(d), and compliance with such a work practice standard is sometimes verified by activities which may not require "* * * collection and use of measurement data or other information to control the operation of a process or pollution control device * * *" Therefore, we thought that the suggested revision was a sensible one. However, because the additional language was not originally proposed by EPA, and it has been subsequently suggested that this revision might have unintended consequences, we have decided to take additional comment concerning the value of this language and the effects it might have when read in conjunction with other regulatory requirements, including other provisions of the General Provisions.

In the prior rulemaking, we also made a small change in the language of 40 CFR 63.9(h)(2)(ii) by adding the phrase "(or activities that have the same compliance date)" in response to a comment submitted by Dow Chemical Company. See Docket item No. IV–D–19. Although separate notices are appropriate for compliance obligations with different compliance dates (*e.g.*, equipment leaks versus process vents), Dow was concerned that separate compliance reports might be required for compliance obligations that have the same date and requested the option of filing a single compliance status report covering multiple compliance obligations. Because the new language in question was not originally proposed by EPA, and some have questioned whether it clearly achieves the intended purpose, we have decided to request additional comment concerning the need for this change and potential alternatives.

III. Proposed Amendments to the Section 112(j) Provisions

A. New Schedule for Part 2 Applications

The final settlement agreement which we have executed with Sierra Club requires us to propose to replace the existing schedule for submission of section 112(j) Part 2 applications, under which most Part 2 applications would have been due on May 15, 2004, with

a schedule which will establish a specific deadline for submission of Part 2 applications for all affected sources in a given category or subcategory. With respect to those listed categories or subcategories for which MACT standards are scheduled to be promulgated by November 30, 2002 or by February 28, 2003, we are proposing a Part 2 application deadline of May 15, 2003. Establishing an earlier deadline for these sources would not be practicable because we do not anticipate completing this rulemaking until April 2003. With respect to those categories or subcategories for which MACT standards are scheduled to be promulgated at a later time, we are proposing Part 2 application deadlines which are 60 days after each respective scheduled promulgation date. The deadlines for Part 2 applications which we are proposing for each category or subcategory are set forth below in Tables 1 and 2 of this preamble.

TABLE 1.—SECTION 112(j) PART 2 APPLICATION DUE DATES

Due date	MACT standard
5/15/03	Municipal Solid Waste Landfills
	Flexible Polyurethane Foam Fabrication Operations
	Coke Ovens: Pushing, Quenching, and Battery Stacks
	Reinforced Plastic Composites Production
	Semiconductor Manufacturing
	Refractories Manufacturing [1]
	Brick and Structural Clay Products
	Manufacturing, and Clay Ceramics Manufacturing [2]
	Asphalt Roofing Manufacturing and Asphalt Processing [3]
	Integrated Iron and Steel Manufacturing
	Hydrochloric Acid Production and Fumed Silica [4]
	Engine Test Facilities and Rocket Testing Facilities [3]
	Metal Furniture (Surface Coating)
	Printing, Coating, and Dyeing of Fabrics
	Wood Building Products (Surface Coating)
10/30/03	Combustion Turbines
	Lime Manufacturing
	Site Remediation
	Iron and Steel Foundries
	Taconite Iron Ore Processing
	Miscellaneous Organic Chemical Manufacturing (MON) [5]
	Organic Liquids Distribution
	Primary Magnesium Refining
	Metal Can (Surface Coating)
	Plastic Parts and Products (Surface Coating)
	Chlorine Production
	Miscellaneous Metal Parts and Products (Surface Coating) (and Asphalt/Coal Tar Application—Metal Pipes) [3]
4/28/04	Industrial Boilers, Institutional/Commercial
	Boilers and Process Heaters [6]
	Plywood and Composite Wood Products
	Reciprocating Internal Combustion Engines
	Auto and Light-Duty Truck (Surface Coating)
8/13/05	Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters [7]
	Hydrochloric Acid Production [8]

[1] Includes Chromium Refractories Production.
[2] Two subcategories of Clay Products Manufacturing.
[3] Two source categories.
[4] Includes all sources within the category Hydrochloric Acid Production that burn no hazardous waste, and all sources in the category Fumed Silica.
[5] Covers 23 source categories, see Table 2 of this preamble.
[6] Includes all sources in the three categories, Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters that burn no hazardous waste.
[7] Includes all sources in the three categories, Industrial Boilers, Institutional/Commercial Boilers, and Process Heaters that burn hazardous waste.
[8] Includes furnaces that produce acid from hazardous waste at sources in the category Hydrochloric Acid Production.

TABLE 2.—MON SOURCE CATEGORIES

Manufacture of Paints, Coatings, and Adhesives
Alkyd Resins Production
Maleic Anhydride Copolymers Production
Polyester Resins Production
Polymerized Vinylidene Chloride Production
Polymethyl Methacrylate Resins Production
Polyvinyl Acetate Emulsions Production
Polyvinly Alcohol Production
Polyvinyl Butyral Production
Ammonium Sulfate Production—Caprolactam By-Product Plants

TABLE 2.—MON SOURCE CATEGORIES—Continued

Quaternary Ammonium Compounds Production
Benzyltrimethylammonium Chloride Production
Carbonyl Sulfide Production
Chelating Agents Production
Chlorinated Paraffins Production
Ethylidene Norbornene Production
Explosives Production
Hydrazine Production
OBPA/1,3-Diisocyanate Production

TABLE 2.—MON SOURCE CATEGORIES—Continued

Photographic Chemicals Production
Phthalate Plasticizers Production
Rubber Chemicals Manufacturing
Symmetrical Tetrachloropyridine Production

We have always been reluctant to establish any timetable which would require submission of a large number of Part 2 applications which would in all likelihood never be acted upon by the permitting authorities. Submission of Part 2 applications would generally be a futile exercise in those instances where a final Federal MACT standard governing the facilities in question is scheduled for promulgation prior to the 18-month deadline for action on the applications by the respective permitting authorities. It has been our consistent view that requiring submission of such applications would represent an unwarranted expenditure of private and public resources. Thus, we are pleased that the proposed schedule under the final settlement will permit us to avoid such a wasteful exercise unless there are further delays in promulgation of the remaining MACT standards. We note also that the prompt and significant consequences if a promulgation deadline is missed will create new incentives for EPA and the other stakeholders to assure that the agreed upon promulgation deadlines are met.

We recognize that the proposed schedule for submission of section 112(j) Part 2 applications leaves relatively little time for sources to prepare and submit such applications if a particular promulgation deadline is missed. In recognition of the tight time frames, we will try to provide prompt advance notice to affected sources and to permitting authorities if we have reason to believe that we will not be able to meet an impending promulgation deadline for a particular MACT standard.

We note that the MACT standards for which we are proposing a Part 2 application deadline of May 15, 2003 are actually scheduled to be promulgated while this rulemaking is in progress. There will be no need to adopt a Part 2 application deadline for affected sources in any category for which a final MACT standard has been promulgated under CAA section 112(d) and/or (h) prior to the completion of this rulemaking. We are proposing to state explicitly in the amendments to the section 112(j) rule that no further process to develop a case-by-case MACT determination under section 112(j) is required for any source once a generally applicable Federal MACT standard governing that source has been promulgated.

The revised timetable for submission of Part 2 applications we are proposing requires significant changes in the structure of the existing section 112(j) rule. In contrast to the current general timetable for Part 2 applications, which applies to all of the remaining MACT standards which were included in the schedule adopted under CAA section 112(e)(1) and (3), we are proposing a phased timetable for Part 2 applications with different dates for sources in different categories based on the scheduled promulgation date. We are also proposing to make the new schedule as uniform as practicable for all affected sources in each category or subcategory, regardless of whether the source in question has previously requested an applicability determination under 40 CFR 63.52(e)(2)(i) or has previously obtained a case-by-case determination under CAA section 112(g).

These proposed changes will require that the existing section 112(j) rule be substantially rewritten. In order to allow the rulemaking process required by the final settlement agreement to proceed expeditiously and to encourage commenters to focus on the broad issues presented by the new approach, we are not proposing specific regulatory text. Rather, we are providing a detailed discussion in this preamble of the changes we are proposing to make. While we do not want to discourage those commenters who want to propose specific regulatory text for our consideration, we believe that comments will be most constructive if they focus on the larger question of how the existing rule should be restructured to achieve our proposed objectives.

When we first proposed the creation of a two-part process for section 112(j) applications, we specified a 6-month period between the submission of the general initial notification in the Part 1 application and the submission of more detailed supporting information in the Part 2 application. That initial proposal was based on the premise that every applicant would automatically be given the maximum extension of time to supplement an incomplete application that is authorized by CAA section 112(j)(4).

In the final rule, we observed that there is another provision in the statute which may be reasonably construed to provide authority for us to establish an incremental process for the submission of section 112(j) applications. The hammer provision in section 112(j)(2) itself establishes the requirement to submit permit applications "*beginning* 18 months after" the statutory date for promulgation of a standard. Reading this provision in context, we believe that the statute can be reasonably construed as authorizing us to provide a period of time after the hammer date in which the information necessary for a fully informative section 112(j) application can be compiled. We have not changed our view that this is a reasonable construction of the statutory provision in question, and we are reiterating this construction of the statute as part of our rationale for these proposed rule amendments.

B. Requests for Applicability Determination

As we explained above, we are proposing to establish a single uniform Part 2 application deadline for all sources in a given category or subcategory, which is based in turn on the agreed upon promulgation date for the MACT standard for that category or subcategory. However, to achieve this objective it will be necessary to establish new procedures for those affected sources which have previously submitted a request for applicability determination under 40 CFR 63.52(e)(2)(i).

That provision establishes a process by which major sources can request that the permitting authority determine whether or not specific sources at their facility belong in any category or subcategory requiring a case-by-case determination under section 112(j). All requests for applicability determinations were due at the same time as the section 112(j) Part 1 applications, on May 15, 2002. Under the procedures in the current rule, a negative determination by the permitting authority concerning such a request means that no further action is required, while a positive determination means that the applicant must then submit a Part 2 application within 24 months. In order to adopt the single uniform deadline for Part 2 applications for each affected source in a category or subcategory which we are required to propose by the final settlement, it is necessary to amend the provisions governing requests for applicability determinations.

We lack precise information concerning how many such requests for applicability determination were submitted to permitting authorities on or before May 15, 2002, but we believe that hundreds of such requests are pending. We know that some of these requests reflect genuine uncertainty concerning the scope of the activities or equipment governed by a particular category or subcategory. For some of these requests, the subsequent issuance of a proposed MACT standard or other subsequent events may have resolved such uncertainty. However, we also believe that many of these requests were filed merely because the filing of such a request operated to defer the deadline for submission of a Part 2 application. Under the proposal required by the final settlement, such an indefinite deferral of the Part 2 application deadline will no longer be allowed.

We do not seek to limit the right of those affected sources who may have genuine uncertainty regarding the scope of a particular category or subcategory to obtain a decision on applicability issues by the permitting authority, but we also do not want to burden the permitting authorities with a process that requires them to take final action on those pending requests which do not present genuine applicability issues. Accordingly, we are proposing to require that each affected source which still wishes to pursue a previously filed request for applicability determination under 40 CFR 63.52(e)(2)(i) which is still pending must resubmit and supplement that request within 60 days after EPA publishes final action in this rulemaking or within 60 days after EPA publishes a proposed MACT standard for the category or subcategory in question, whichever is later.

Our experience tells us that most uncertainties regarding applicability can be resolved by applying the specific applicability language in the proposed MACT standard. That is why we are proposing to delay any requirement to resubmit and supplement a request for applicability determination until after a proposed MACT standard is available. We are proposing to require that each resubmitted request for an applicability determination be supplemented to specifically discuss the relation between the source(s) in question and the applicability provision in the proposed MACT standard for the category or subcategory in question, and to explain why there may still be uncertainties that require a determination of applicability. We are also proposing to require that the permitting authority act upon each resubmitted and supplemented request for an applicability determination within an additional 60 days after the applicable deadline for the resubmitted request.

We believe this approach will preserve the rights of those affected sources which still have legitimate applicability concerns even after issuance of a proposed MACT standard. We also expect there will be a significant reduction in the number of pending requests, since the current procedural incentives for submission of such requests will have been eliminated. With respect to those requests that are resubmitted, the proposed mandatory supplementation should delineate the issues more clearly and improve the record for a decision concerning the request by the permitting authority.

While we anticipate that the issuance of a proposed MACT standard will generally operate to resolve existing applicability issues rather than raising new ones, it is hypothetically possible that a facility will have new questions based on the applicability provision in a proposed MACT standard. There is at present no formal process for addressing such issues, but we encourage all major sources that have questions concerning the applicability of a proposed MACT standard to their operations or equipment to seek guidance from responsible personnel at the permitting authority and the EPA Regional Office.

We note that there are special timing issues with respect to any requests for applicability determination which have been submitted concerning sources that may be in a category or subcategory for which the MACT standard in question is scheduled to be promulgated by November 30, 2002 or by February 28, 2003. There will be no need to address these concerns if the standards are promulgated on schedule. However, if any one of these standards is delayed, and if the delayed standard still has not been promulgated by the time we take final action concerning this proposal, special procedures will be required. Those facilities which have sources which may be in such a category or subcategory, and who previously submitted a request for applicability determination which is still pending, cannot be required to submit their Part 2 application on May 15, 2003. In such an instance, we propose that any Part 2 application will be required 120 days after EPA publishes final action in this rulemaking if the request for applicability determination is not resubmitted within 60 days after publication, or within 180 days after EPA publishes final action in this rulemaking if the request is resubmitted and a determination concerning the request by the permitting authority is required. We consider it improbable that we will need to adopt such procedures, but we are proposing them now in the unlikely event they are required.

We note also that those major sources which elect to resubmit requests for applicability determination with respect to sources that may be governed by one of the MACT standards which are scheduled to be promulgated by August 31, 2003, may not be entitled to receive a determination by the permitting authority on the resubmitted request until shortly after the scheduled promulgation date. If such a standard is delayed, and there is no negative determination by the permitting authority on the resubmitted request, the Part 2 application for sources within the category in question will be due on October 30, 2003. This tight time frame underscores the importance of careful coordination between such sources and the permitting authority if it appears that a MACT standard will be delayed. As discussed above, EPA will endeavor to provide timely information to affected sources and permitting authorities if it becomes apparent that the Agency will not meet the promulgation schedule for any of the remaining MACT standards.

C. Prior Section 112(g) Determinations

Our proposal to establish a single uniform Part 2 application deadline for all sources in a given category or subcategory also requires that we make some changes to the current procedures governing CAA section 112(j) applications for those sources which have previously received a case-by-case determination pursuant to CAA section 112(g). In evaluating this question, it is important to understand the substantive relationship between these separate statutory requirements.

In general, we anticipate that emission control requirements established as part of a previous case-by-case determination under section 112(g) will subsequently be adopted by the permitting authority to satisfy any applicable section 112(j) requirements as well. This is because the determination required for any sources subject to CAA section 112(g) is supposed to be based on new source MACT, and the subsequent application of section 112(j) requirements to those same sources will be based on existing source MACT. Moreover, to assure that inconsequential differences in emission control do not result in unduly burdensome sequential case-by-case determinations, the current section 112(j) rule requires the permitting authority to adopt any prior case-by-case determination under section 112(g) as its determination for the same sources under section 112(j) if it "determines that the emission limitations in the prior case-by-case determination are substantially as effective as the emission limitations which the permitting authority would otherwise adopt under section 112(j)." See 40 CFR 63.52(a)(3), (b)(2), and (e)(2)(ii).

Under the applicable provisions of the present rule, sources which have previously obtained a case-by-case determination under CAA section 112(g) are generally required to submit a request for an "equivalency determination" to decide if the applicable section 112(g) requirements are "substantially as effective" as the requirements which would otherwise apply under section 112(j). As explained above, we believe that this determination will generally be positive. However, 40 CFR 63.52(e)(2)(ii) provides that, if such a determination is negative, the source must then submit a Part 2 application within 24 months. As in the case of requests for applicability determination, changes to the existing rule will be required to place all sources in a given category or subcategory on the same schedule for submission of Part 2 applications. However, in this instance, we believe that the solution is considerably simpler.

We are proposing to adopt the proposed Part 2 application deadline for a given category or subcategory as the final deadline for submission of a request for an "equivalency determination" by any affected source that previously obtained a case-by-case determination under CAA section 112(g). Under this proposal, those sources which submitted such requests earlier under the provisions of the existing rule need not resubmit them. However, we are also proposing that all requests for an equivalency determination, regardless of when they were submitted, will be construed in the alternative as a section 112(j) Part 2 application as well.

The effect of this proposal will be to require that the permitting authority first make an equivalency determination. In the event of a negative determination, the permitting authority will then proceed to adopt a separate set of requirements pursuant to section 112(j). Under this proposal, this process will be completed in the same 18-month period that applies to the processing of all other Part 2 applications.

This proposal will assure that the deadline for submission of Part 2 applications will be the same for all affected sources within a category or subcategory, regardless of whether a source previously obtained a case-by-case determination under section 112(g). We do not think this proposal imposes any new burden on sources or permitting authorities, because the permitting authority should already have all of the information required for a Part 2 application in any instance where it is already administering section 112(g) requirements applicable to the same source.

D. Content of Part 2 Applications

We are hopeful that no source will be required to submit a section 112(j) Part 2 application under the schedule we are proposing in this rulemaking. We also note that the Part 2 application requirements in the current section 112(j) rule are significantly narrower than the application requirements in the original section 112(j) rule. However, in the event that some Part 2 applications must ultimately be submitted, we think it is appropriate to give some additional guidance concerning the information they must contain and to request comment on a few related issues.

We believe that an affected source submitting a Part 2 application may elect to rely directly on the content of the applicable proposed MACT standard in identifying affected emission points. We also think that applicants may reasonably limit the information they submit concerning HAP emissions to those specific HAP or groups of HAP which would be subject to actual control in the applicable proposed MACT standard. We encourage all section 112(j) Part 2 applicants to utilize the regulatory approach in the applicable proposed MACT standard as a practical template in compiling Part 2 applications. We also encourage applicants who have previously submitted to the permitting authority some of the information required in the Part 2 application to meet the requirements in question by cross-referencing such prior submissions.

Moreover, although the submission by an affected source of a proposed case-by-case MACT determination as part of its Part 2 application is entirely discretionary, we note that some industry representatives have stated that they would generally elect to include such information as a precautionary matter. While we do not seek to discourage this practice, we believe that the burden associated with inclusion of such information will not be significant in instances where a Federal MACT standard has already been proposed, the applicable proposed standard has already been evaluated by the facility, and the facility has already had an opportunity to comment on the applicable proposed standard.

We also want to do whatever we can to minimize any unnecessary burdens associated with submission of a Part 2 application. We do not want to require the submission of any information which is not truly necessary to prepare for potential issuance of case-by-case MACT determinations. To that end, we are requesting comment on the approach outlined above and whether there may be other ways to minimize any unnecessary burden. We also request comments on the following specific questions. Does the applicant need to provide "estimated total uncontrolled and controlled emission rates" to enable the permitting authority to prepare for a potential case-by-case determination? If the applicant does not have the information required to provide meaningful estimates of emission rates, should new emission testing be required? Is it appropriate to require individual applicants to submit "information relevant to establishing the MACT floor" in their Part 2 applications? Are there any Part 2 application requirements which can be met simply by referring to the applicable proposed MACT standard?

IV. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have determined that neither the proposed amendments to the General Provisions nor the proposed amendments to the section 112(j) rule are a "significant regulatory action" under the terms of Executive Order 12866, and this proposal was therefore not submitted to OMB for review.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled, "Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government."

These proposed amendments do not have Federalism implications under the terms of this Executive Order. We do not believe that the proposed changes in the General Provisions rule have any significant federalism implications. With respect to the alteration in the schedule for submission of section 112(j) Part 2 applications, we note that the CAA itself requires that State and local permitting authorities receive and process applications for case-by-case MACT determinations pursuant to section 112(j). This is one of the responsibilities that State and local permitting authorities have agreed to assume. We have tried to construe the statutory provisions in question in a manner that minimizes the burden on these agencies associated with this responsibility. We have determined that the proposed change in the schedule for submission of such applications does not itself have a substantial direct effect on the States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government.

Nevertheless, in the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA, State, and local governments, EPA specifically solicits comment on these proposed amendments from State and local officials.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

These proposed amendments to the General Provisions and the section 112(j) rule would not have tribal implications. They would not have substantial direct effects on tribal governments, or on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. There are currently no tribal governments that have approved title V permit programs to which sources would submit case-by-case permit applications under section 112(j). Accordingly, Executive Order 13175 would not apply to this action.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives that EPA considered.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These amendments are not subject to Executive Order 13045 because they are amending information collection requirements and do not affect health or safety risks. Furthermore, this rule has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

These proposed amendments are not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, in any 1 year. We do not expect annual expenditures by State, local and tribal governments in connection with implementation of these amendments to exceed $100 million. In any case, any obligation of State or local permitting authorities to take particular actions under these proposed amendments is not directly enforceable by a court of law, and any failure by a State or local permitting authority to meet such an obligation would at most result in a determination that the permitting authority is not adequately administering its permit program under CAA section 502(i). Thus, it can be argued that such obligations are not enforceable duties within the meaning of section 421(5)(A)(i) of UMRA, 2 U.S.C. 658(5)(A)(i). Moreover, even if such obligations were deemed to be enforceable duties, such duties might be viewed as falling within the exception for a condition of Federal assistance

under section 421(5)(A)(i)(I), 2 U.S.C. 658(5)(A)(i)(I).

We have also determined that the proposed amendments will not result in expenditures by the private sector of $100 million in any 1 year. We fully expect to promulgate the remaining MACT standards on or near schedule, eliminating the need for sources to prepare and submit section 112(j) Part 2 applications. We recognize that some sources may choose to begin preparing the Part 2 application, but cannot estimate the total expenditures this would entail, although we believe it to be only a small fraction of the $100 million criterion. We also expect relatively few resubmissions of applicability determination requests. In any case, all such resubmissions will be done at the source's discretion, and we expect the aggregate expenditure on them to be small.

Based on these determinations, today's proposed amendments are not subject to the requirements of sections 202, 203, and 205 of the UMRA.

G. Regulatory Flexibility Act (RFA) as Amended by Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any proposed rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's amendments on small entities, small entity is defined as: (1) A small business as defined in each applicable subpart, as defined by the Small Business Administration; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. We have determined that the proposed amendments to the General Provisions would not themselves cause any economic impacts on small entities. Rather, any economic impacts on small entities would be associated with the incorporation of specific elements of the General Provisions in the individual MACT standards which are promulgated for particular source categories.

We believe that adoption of the proposed amendments will not lead to a substantial impact on small entities through the incorporation of the General Provisions in individual MACT standards. For most MACT standards, we anticipate that any affected facilities will not be small entities. For those MACT standards where small entities would be affected, we believe any economic impact will be minimal since the only specific action which may be required is the submission to the permitting authority of an existing document which has already been prepared and is on file at the source.

We also have not prepared any regulatory flexibility analysis for the proposed amendments to the section 112(j) rule. At this time, we do not expect that any Part 2 applications will have to be submitted or case-by-case determinations will have to be made under section 112(j) and thus no small businesses would be affected by such determinations.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

H. Paperwork Reduction Act

As required by the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, the OMB must clear any reporting and recordkeeping requirements that qualify as an information collection request (ICR) under the PRA.

Approval of an ICR is not required in connection with the proposed amendments to the General Provisions rule. This is because the General Provisions do not themselves require any reporting and recordkeeping activities, and no ICR was submitted in connection with their original promulgation or their subsequent amendment. Any recordkeeping and reporting requirements are imposed only through the incorporation of specific elements of the General Provisions in the individual MACT standards which are promulgated for particular source categories. In any case, we believe that adoption of the proposed amendments will not materially alter the burden imposed on affected sources through the incorporation of the General Provisions in individual MACT standards. We anticipate that any incremental changes in the recordkeeping and reporting burden estimate for individual MACT standards will be addressed in the context of the periodic renewal process required by the PRA.

Approval is also not required for the proposed amendments to the section 112(j) rule. We expect to promulgate all remaining MACT standards before the Part 2 application due dates associated with those standards (see Table 1 of this preamble), which would eliminate the need for sources to submit the Part 2 application. Approval is also not necessary for resubmission of applicability determination requests. We expect there to be few resubmissions, and all of these will be entirely at the sources' discretion; the rule does not require submission or resubmission of such requests. Thus we do not project any recordkeeping or reporting burden to be incurred by sources as a result of these amendments.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

I. National Technology Transfer and Advancement Act of 1995

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113), all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with

explanations when an agency does not use available and applicable voluntary consensus standards.

These proposed amendments do not involve technical standards. Therefore, EPA is not considering the use of any VCS.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 3, 2002.

Christine Todd Whitman,

Administrator.

For the reasons cited in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart A—[Amended]

2. Section 63.6 is amended by:

a. Revising paragraph (e)(1)(i);

b. Adding 6 sentences to the beginning of paragraph (e)(3)(v); and

c. Revising the introductory text to paragraph (e)(3)(vii).

The revisions and additions read as follows:

§ 63.6 Compliance with standards and maintenance requirements.

* * * * *

(e) * * *

(1)(i) At all times, including periods of startup, shutdown, and malfunction, owners or operators must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions to the levels required by the relevant standards. Determination of whether acceptable operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and malfunction plan required in paragraph (e)(3) of this section), review of operation and maintenance records, and inspection of the source.

* * * * *

(3) * * *

(v) The owner or operator must submit to the Administrator a copy of the startup, shutdown, and malfunction plan at the time it is first adopted. The owner or operator must also submit to the Administrator a copy of any subsequent revisions of the startup, shutdown, and malfunction plan. Such revisions must be submitted at the time they are adopted if the revisions are required in order to adequately address an event involving a type of malfunction not included in the plan, or the revisions alter the scope of the activities at the source which are deemed to be a startup, shutdown, or malfunction, or otherwise modify the applicability of any emission limit, work practice requirement, or other requirement in a standard established under this part. All other revisions to the startup, shutdown, and malfunction plan may be submitted with the semiannual report required by § 63.10(d)(5). The owner or operator may elect to submit the required copy of the initial startup, shutdown, and malfunction plan, and of all subsequent revisions to the plan, in an electronic format. If the owner or operator claims that any portion of a startup, shutdown, and malfunction plan, or any revision of the plan, submitted to the Administrator is confidential business information entitled to protection under section 114(c) of the CAA or 40 CFR 2.301, the material which is claimed as confidential must be clearly designated in the submission. * * *

* * * * * *

(vii) Based on the results of a determination made under paragraph (e)(1)(i) of this section, the Administrator may require that an owner or operator of an affected source make changes to the startup, shutdown, and malfunction plan for that source. The Administrator must require appropriate revisions to a startup, shutdown, and malfunction plan, if the Administrator finds that the plan:

* * * * * *

3. Section 63.10 is amended by revising the second sentence of paragraph (d)(5)(i) to read as follows:

§ 63.10 Recordkeeping and reporting requirements.

* * * * * *

(d) * * *

(5)(i) * * * Reports shall only be required if a startup, shutdown, or malfunction occurred during the reporting period, and they must include the number, duration, and a brief description of each malfunction. * * *

* * * * * *

[FR Doc. 02–31012 Filed 12–6–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7393–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Industrial Latex Corp. Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region II Office announces its intent to delete the Industrial Latex Corp. Superfund Site from the National Priorities List (NPL) and requests public comment on this action. The Industrial Latex site is located in the Borough of Wallington, Bergen County, New Jersey. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of New Jersey, through the Department of Environmental Protection, have determined that all appropriate remedial actions have been completed at the Industrial Latex site and no further fund-financed remedial action is appropriate under CERCLA. In addition, EPA and the State of New Jersey have determined that the remedial actions taken at the Industrial Latex site protect public health and the environment without any further monitoring or restriction.

DATES: The EPA will accept comments concerning its intent to delete on or before January 8, 2003.

ADDRESSES: Comments should be mailed to: Stephanie Vaughn, Remedial Project Manager, New Jersey Remediation Branch, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor New York, New York 10007–1866.

Comprehensive information on the Industrial Latex site is contained in the Administrative Record and is available for viewing, by appointment only, at: U.S. EPA Records Center, 290 Broadway—18th Floor, New York, New York 10007–1866.

Hours: 9 a.m. to 5 p.m.—Monday through Friday. Contact the Records Center at (212) 637–4308.

Information on the Site is also available for viewing at the Information Repository located at: John F. Kennedy Memorial Library, 92 Hathaway Street, Wallington, New Jersey 07057, (973) 471–1692.

FOR FURTHER INFORMATION CONTACT: Stephanie Vaughn, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, New York 10007–1866, phone: (212) 637–3914; fax: (212) 637–4393; e-mail: *vaughn.stephanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The United States Environmental Protection Agency (EPA) Region II announces its intent to delete the Industrial Latex site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The NPL is a list maintained by EPA of sites that EPA has determined present a significant risk to public health or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund).

The Industrial Latex site (Site) is the property known as 350 Mount Pleasant Avenue in Wallington, Bergen County, New Jersey. The 9.67-acre site is located in a mixed residential/industrial area. An elementary school is located directly across the street. An outdoor recreation field forms the southern border of the site and an active railway forms the eastern border. Directly across the railroad tracks is the Borough of Wood-Ridge, New Jersey. The property is currently vacant.

At the Site, EPA conducted a Remedial Investigation and Feasibility Study (RI/FS), conducted a risk assessment, selected a remedy, and implemented the selected remedy in two phases.

EPA will accept comments concerning its intent to delete for thirty (30) days after publication of this document in the **Federal Register** and a newspaper of record.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State, will consider whether any of the following criteria has been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or to the environment and, therefore, taking of remedial measures is not appropriate.

EPA will not conduct any further activities at this Site because EPA believes that it is suitable for unlimited use and unrestricted exposure. If new information becomes available which indicates the need for further action, EPA may initiate such actions under § 300.425(e)(3) of the NCP. Pursuant to 40 CFR 300.425(e) of the NCP, any site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

III. Deletion Procedures

The following procedures were used for the intended deletion of the Industrial Latex Superfund Site.

1. EPA conducted an RI/FS to characterize and evaluate site contamination, conducted a risk assessment, and, in a Record of Decision (ROD) dated September 30, 1992, selected a remedy to address contaminated soil, vats, drums, and buildings at the Site. On April 10, 1996, EPA modified the remedy in an Explanation of Significant Differences.

2. Completion of the remedy was accomplished in two phases. The first phase, involving the demolition of the buildings and removal of the vats, started in July 1995 and was completed in November 1995. Field work for the second phase, addressing the soil and buried drums, began in December 1998 and was completed in August 2000.

3. EPA conducted a ground water investigation and issued a No Action ROD for ground water on September 27, 2001. Ground water represented the final operable unit at the site.

4. EPA has recommend the deletion of the Industrial Latex site and has prepared the relevant documents.

5. The State of New Jersey, through the New Jersey Department of Environmental Protection, has concurred with the deletion decision in a letter dated August 29, 2002.

6. Concurrent with this national Notice of Intent to Delete, a notice has been published in a local newspaper and appropriate notice has been distributed to federal, state and local officials, and other interested parties. This notice announces a thirty-day public comment period on the deletion, which starts on the date of publication of this notice in the **Federal Register** and a newspaper of record.

7. EPA has placed all relevant site documents in the site information repositories identified above.

8. Upon completion of the thirty (30) day public comment period, EPA will evaluate all comments received before issuing the final decision on the deletion. EPA will prepare a Responsiveness Summary, if appropriate, for comments received during the public comment period which will address the concerns raised. The Responsiveness Summary will be made available to the public at the information repositories. If, after review of all public comments, EPA determines that the deletion from the NPL is appropriate, EPA will publish a final notice of deletion in the **Federal Register**. Deletion of the Industrial Latex site does not actually occur until the final Notice of Deletion is published in the **Federal Register**.

Deletion of a site from the NPL does not itself create, alter, or revoke any person's rights or obligations. Deletion from the NPL does not alter EPA's right to take appropriate enforcement actions. The NPL is designed primarily for informational purposes and to assist Agency management.

IV. Basis for Intended Site Deletion

The following summary provides EPA's rationale for deletion of the Industrial Latex site from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied:

The Industrial Latex Corporation manufactured natural and synthetic rubber compounds, and chemical adhesives from 1951 to 1983. The company used solvents in the manufacturing process and polychlorinated biphenyls (PCBs) as a fire retardant. Poor operational procedures and on-site waste dumping resulted in widespread surface and subsurface soil contamination. When operations ceased in 1983, about 1,600

open or leaking drums remained on the property.

In 1986, EPA removed and disposed of open drums, liquids, and other immediate threats. The site was proposed for inclusion on the National Priorities List in May 1988 and finalized in March 1989. EPA then initiated an RI/FS to determine the nature and extent of contamination at the Industrial Latex site, and to develop and evaluate alternatives to address the contamination.

Based on the RI/FS and after receiving public input, EPA issued a ROD in September 1992, which outlined the cleanup plan for the site. The plan included: (1) Excavation of contaminated soil and on-site treatment by low temperature thermal desorption, followed by backfilling on the site; (2) excavation and off-site disposal of buried drums; (3) dismantling and off-site disposal of vats; and (4) demolition and off-site disposal of two buildings on the site.

On April 10, 1996, EPA issued an Explanation of Significant Differences changing or eliminating a number of remediation goals specified in the ROD. These changes were based on sampling conducted after the ROD was signed. The four remaining site-related contaminants of concern at the Industrial Latex site were PCBs, bis(2-ethylhexyl)phthalate, 3,3'-dichlorobenzidine, and arsenic.

Because the results of the ground water investigation were inconclusive, the 1992 ROD called for a subsequent investigation. This investigation was completed in August 2001 and a ROD was signed on September 27, 2001. The ROD selected a no action remedy for ground water at the site. No action was needed because the ground water at the site poses no unacceptable risk to human health or the environment.

The cleanup of the site was accomplished in two phases. The first phase, involving the demolition of the buildings and removal of the vats, started in July 1995 and was completed in November 1995. Field work for the second phase, addressing the soil and buried drums, began in December 1998 and was completed in August 2000.

During the soil remediation, approximately 53,600 cubic yards of material were excavated, treated on-site via low temperature thermal desorption, and then backfilled on the site.

The site has been cleaned up to an unrestricted, residential use standard. All activities at the Industrial Latex site are complete and the site poses no unacceptable risk to human health or the environment. Therefore, no operation and maintenance activities or institutional controls are required at the site. A five-year review of the remedy is also not required.

Public participation activities for the Industrial Latex site have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and section 117, 42 U.S.C. 9617. The RI/FS, the RODs and the ESD were subject to a public review process. All other documents and information which EPA relied on or considered in recommending that no further activities are necessary at the Industrial Latex site, and that the site can be deleted from the NPL, are available for the public to review at the information repositories.

One of the three criteria for site deletion specifies that EPA may delete a site from the NPL if "all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate." 40 CFR 300.425(e)(1)(ii). EPA, with the concurrence of the State of New Jersey, through the New Jersey Department of Environmental Protection, believes that this criterion for deletion has been met. Subsequently, EPA is proposing deletion of this site from the NPL.

In a letter dated August 29, 2002, the New Jersey Department of Environmental Protection concurred with EPA.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 17, 2002.

Jane M. Kenny,

Regional Administrator—Region II.

[FR Doc. 02–30838 Filed 12–6–02; 8:45 am]

BILLING CODE 6560–50–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

40 CFR Part 1610

Transcripts of Witness Testimony in Investigations

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Proposed rule.

SUMMARY: The Chemical Safety and Hazard Investigation Board ("CSB" or "Board") proposes a new rule concerning transcripts of the testimony of witnesses appearing at Board depositions. The proposed rule provides that witnesses have the right to petition to procure a copy of a transcript of their testimony, except that due to the nonpublic nature of Board depositions, witnesses (and their counsel) may for good cause be limited to inspection of the official transcript of their testimony.

DATES: Submit comments on or before January 8, 2003.

ADDRESSES: Address all comments concerning this proposed rule to Raymond C. Porfiri, Chemical Safety and Hazard Investigation Board, 2175 K Street, NW., Suite C–100, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Raymond C. Porfiri, 202–261–7600.

SUPPLEMENTARY INFORMATION: The Chemical Safety and Hazard Investigation Board is mandated by law to "investigate (or cause to be investigated), determine and report to the public in writing the facts, conditions, and circumstances and the cause or probable cause of any accidental release [within its jurisdiction] resulting in a fatality, serious injury or substantial property damages." 42 U.S.C. 7412(r)(6)(C)(i). The Board has developed practices and procedures for conducting investigations under this provision in 40 CFR 1610 and has spelled out the rights of witnesses to be represented in such proceedings (section 1610.1) and rules concerning attorney misconduct, (section 1610.2) and sequestration of witnesses and exclusion of counsel (section 1610.3). The Board has determined that it would be useful to add a provision concerning the taking, handling, and inspection of transcripts of Board depositions.

In proposing this regulation, the Board is following section 555(c) of the Administrative Procedure Act, which provides:

> A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

On its face, section 555(c) recognizes that it is sometimes necessary to balance a compelled witness' right to have access to his or her testimony, and an agency's need to limit the dissemination of sensitive matters revealed in such testimony.

Board depositions are nonpublic investigatory proceedings. Attendance at depositions is limited to the minimum number of necessary CSB staff, the witness, and one attorney representing the witness. Depositions are not open to multiple attorneys

representing the witness, non-attorney representative of the witness, or representatives of other parties (40 CFR part 1610). The Board's regulations on Freedom of Information Act requests (40 CFR part 1601) and on Production of Records in Legal Proceedings (40 CFR part 1612) further demonstrate that the Board recognizes that some of the information obtained in its investigation may not be appropriate for public dissemination.

Several considerations have led the Board to conclude that it is necessary to establish a mechanism to ensure appropriate control over the dissemination of deposition transcripts while also respecting witness' rights under the Administrative Procedure Act. Because of the nature of Board investigations, deposition testimony may contain sensitive information. For example, testimony may reveal trade secrets and confidential business information, which are protected by the Trade Secrets Act, 18 U.S.C. 1905.

Protection of the integrity of Board investigations also necessitates control over the dissemination of deposition transcripts. First-hand witness accounts are an invaluable source of information about the events leading to, and causes of, chemical incidents. Witnesses can be reluctant to cooperate, though, out of fear of whistleblower retaliation. The CSB would likely have greater difficulty obtaining vital testimony if witnesses believed that their testimony could easily become known to their employers and to other witnesses. Reasonable limits, such as proposed in this regulation, on the dissemination of transcripts also helps to prevent the coaching of future witnesses based on testimony already given. Such preparation is undesirable in health and safety investigations, where it is important to gather unvarnished facts and untainted recollections.

Ultimately, the Board's duty is to obtain the facts about chemical incidents and to report objectively based on those facts. The Administrative Procedure Act provision limiting the release of transcripts in non-public proceedings is intended to facilitate missions such as the Board's. It protects against harms that would be caused by premature circulation of such transcripts, while protecting the witness' rights by allowing him or her to inspect the official transcript. This approach, embodied in this proposed regulation, is also consistent with the principles of Attorney General Ashcroft's October 12, 2001, "Memorandum for Heads of All Federal Departments and Agencies," on the Freedom of Information Act, in which he said, "Any discretionary decision by your agency to disclose information protected under the FOIA should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information."

This proposal is modeled on the rules of the Securities and Exchange Commission (17 CFR 203.6) and those of other agencies which also follow the APA and permit the agency to limit witnesses to inspection of transcripts in non-public investigatory proceedings for good cause. The Board has followed the APA process by allowing witnesses, after their testimony, to ask the General Counsel for the opportunity to procure a copy of the transcript, provided, of course, that for good cause, the General Counsel may deny the petition and limit the witness (and his or her counsel) to an inspection of the witness' testimony. This proposed regulation also makes it clear that this right to inspect the transcript is a right guaranteed by the APA and that witnesses who seek copies of the transcript are informed by the General Counsel of their right to inspect it.

As the court stated in *SEC* v. *Sprecher*, 594 F.2d 317, 319 (2nd Cir 1979), "[I]t is obviously impractical for the Commission to determine prior to the testimony of a witness whether there will be 'good cause' to withhold a copy of the testimony from that witness, and we do not read the APA as requiring such an advance determination."

Moreover, the courts have made it clear that the APA "does not require [the agency] to spell out the 'good cause' which was the basis for the refusal to sell copies of the transcript." *Commercial Capital Corp.* v. *SEC*, 360 F. 2d 856, 858 (7th Cir. 1966).

In summary, this regulation largely tracks the language of the APA. The courts have recognized that such regulations are properly designed to "permit the [agency] to enjoy confidentiality, where it is necessary, in order effectively to complete its investigation." *Zients* v. *La Morte*, 319 F. Supp 956, 958 (S.D.N.Y 1970) (discussing purpose of the SEC regulation), accord *Lamorte* v. *Mansfield*, 438 F.2d 448 (2d Cir 1971), (Friendly, J.) ("to the extent that a privilege exists, it is the agency's not the witness'").

Regulatory Flexibility Act

The Board, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this proposed regulation and certifies that it will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48.

Federalism (E.O. 13132)

The CSB has determined this proposed regulation conforms to the federalism principals of Executive Order 13132. It also certifies that to the extent a regulatory preemption occurs, it is because the exercise of state and tribal authority conflicts with the exercise of federal authority under the U.S. Constitution's supremacy clause and federal statute.

Paperwork Reduction Act

This proposed regulation contains no reporting or recordkeeping requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3510 *et seq.*

List of Subjects in 40 CFR Part 1610

Administrative practice and procedure, Investigations.

For the reasons set forth in the preamble, the Chemical Safety and Hazard Investigation Board proposes to amend 40 CFR part 1610 as follows:

PART 1610—ADMINISTRATIVE INVESTIGATIONS

1. The authority citation for part 1610 is revised to read as follows:

Authority: 42 U.S.C. 7412(r)(6)(C)(i), 7412(r)(6)(L), 7412(r)(6)(N).

Section 1610.4 also issued under 5 U.S.C. 555.

2. Add § 1610.4 to read as follows:

§ 1610.4 Deposition Transcripts.

(a) Transcripts of depositions of witnesses compelled by subpoena to appear during a Board investigation, shall be recorded solely by an official reporter designated by the person conducting the deposition.

(b) Such a witness, after completing the compelled testimony, may file a petition with the Board's General Counsel to procure a copy of the official transcript of such testimony. The General Counsel shall rule on the petition, and may deny it for good cause. Whether or not such a petition is

filed, the witness (and his or her attorney), upon proper identification, shall have the right to inspect the official transcript of the witness' own testimony. If such a petition is denied by the General Counsel, he shall inform the petitioner of the right to inspect the transcript.

(c) Good cause for denying a witness' petition to procure a transcript of his or her testimony may include, but shall not be limited to, the protection of: trade secrets and confidential business information contained in the testimony, security-sensitive operational and vulnerability information, and the integrity of Board investigations.

Dated: December 2, 2002.

Christopher W. Warner,

General Counsel.

[FR Doc. 02–30981 Filed 12–6–02; 8:45 am]

BILLING CODE 6350–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Solicitation of Public Comments on Exceptions Under Section 1128A(a)(5) of the Social Security Act

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of intent to develop regulations.

SUMMARY: The OIG is soliciting public comments on the possible development of exceptions under section 1128A(a)(5) of the Social Security Act (the Act), the civil money penalty (CMP) prohibition on offering inducements to Medicare and Medicaid beneficiaries to influence their selection of a provider, practitioner, or supplier. In particular, the OIG is interested in comments on possible exceptions for complimentary local transportation, inducements related to clinical trials, and inducements of nominal value. The OIG welcomes suggestions for other exceptions under section 1128A(a)(5) of the Act, as well.

DATES: To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on February 7, 2003.

ADDRESSES: Please mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–72–N, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–72–N. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619–0089, OIG Regulations Officer

SUPPLEMENTARY INFORMATION:

I. Background

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, amended the Social Security Act (the Act) to prohibit providers from offering patients any inducement to order or receive Medicare or Medicaid reimbursable items or services from a particular provider, practitioner, or supplier. Specifically, section 231(h) of HIPAA established a new provision, section 1128A(a)(5) of the Act, to provide for the imposition of a CMP against any person who:

> Offers or transfers remuneration to any individual eligible for benefits under [Medicare or Medicaid] that such person knows or should know is likely to influence such individual to order or receive from a particular provider, practitioner, or supplier any item or service for which payment may be made, in whole or in part, under [Medicare or Medicaid].

Section 231(h) of HIPAA also created a new section 1128A(i)(6) of the Act to define "remuneration" for purposes of section 1128A(a)(5) of the Act. This section defines "remuneration," in relevant part, as "transfers of items or services for free or for other than fair market value." Remuneration does not include certain enumerated practices, including waivers of coinsurance and deductible amounts if the waiver is not advertised; not routinely offered; and made following an individualized good faith assessment of financial need or after the failure of reasonable collection efforts. Other statutory exceptions include properly disclosed copayment differentials in health plans; incentives to promote the delivery of preventive health care services; any practice permitted under a safe harbor to the federal anti-kickback statute at 42 CFR 1001.952; and waivers of hospital outpatient copayment amounts in excess of the minimum copayment amounts.

In 1998, Congress enacted section 6201 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, which authorized the Secretary to issue regulations establishing "safe harbor" exceptions under section 1128A(a)(5) of the Act for payment practices that would otherwise run afoul of the statute. In addition, the Secretary is vested with the authority to issue advisory opinions providing legal and regulatory guidance to providers under this section.

The OIG issued proposed regulations interpreting section 1128A(a)(5) of the Act on March 25, 1998 (63 FR 14393) and final regulations on April 26, 2000 (65 FR 24400). To alert the industry to the scope of acceptable practices, promote compliance, and level the competitive playing field, we have issued further guidance on the statute in a Special Advisory Bulletin on Offering Gifts and Other Inducements to Beneficiaries (67 FR 55855; August 30, 2002). In the Bulletin, we indicated our intent to solicit public comments on the possible regulatory exceptions to the statute.

II. Solicitation of Comments and Suggestions for Additional Exceptions

The OIG invites comments and suggestions for new regulatory exceptions to section 1128A(a)(5) of the Act. In particular, we are seeking comments and suggestions on possible exceptions for complimentary local transportation; remuneration to induce participation in clinical trials; and inducements of low value. We also welcome comments on other possible exceptions to section 1128A(a)(5). Comments that include detailed descriptions of relevant industry business practices, address the legal and policy concerns raised by the application of section 1128A(a)(5) to particular business practices, and offer specific suggestions for applicable criteria that might apply under a regulatory exception are particularly useful.

A. Criteria for Establishing Exceptions

In giving the OIG authority to create additional regulatory exceptions to—and issue advisory opinions on—section 1128A(a)(5) of the Act, Congress provided no guidance on the criteria to be applied. The absence of criteria is especially problematic because any exception to the prohibition creates the very harm prohibited (*i.e.*, the inducement of beneficiaries), resulting in an uneven competitive playing field. Moreover, any exception will result in a valuable benefit to Medicare and Medicaid beneficiaries. In the absence of statutory guidance, attempting to distinguish among types of benefits or categories of beneficiaries necessarily results in arbitrary standards. In these circumstances, the OIG has determined to exercise its regulatory authority cautiously by limiting exceptions to areas in which Congress has indicated a desire for flexibility in the provision remuneration to beneficiaries or where the provision of such remuneration serves a governmental interest.

B. Specific Areas of Interest

1. Complimentary Local Transportation

In enacting section 1128A(a)(5) of the Act, Congress intended that the statute not preclude the provision of complimentary local transportation of nominal value (H.R. Conf. Rep. No. 104–191 at 255 (1996)). We have interpreted nominal value to mean no more than $10 per item or service or $50 in the aggregate. (*See* 65 FR 24411; April 6, 2000.) We are concerned that this interpretation may be overly restrictive in the context of complimentary local transportation. Accordingly, we seek public input on the following issues as they relate to a possible exception for complimentary transportation:

- *Forms of transportation.* What forms of transportation should be considered in developing an exception and how should various forms of transportation be treated? We believe that luxury transportation (*e.g.*, limousines), as well as certain specialized transportation (*e.g.*, ambulances) should not be covered in an exception. Are there other forms of transportation that should be excluded (*e.g.*, handicapped-accessible vans, taxis, public transportation)?
- *Area in which transportation is offered.* Should the complimentary transportation service be limited to a provider's primary service area? If so, how should a service area be defined? Should there be a different rule for rural or underserved areas or patients? Should complimentary transportation be permitted to the nearest facility even if the patient resides outside the primary service area?
- *Eligibility for transportation.* Should providers be required to offer the transportation services to all patients? What other kinds of eligibility requirements might be permitted? Certain eligibility criteria, such as diagnosis or insurance coverage, would clearly raise significant issues. What about other eligibility criteria, such as a showing of transportation or financial need, chronic conditions, special services, or safety or treatment compliance?
- *Type of provider offering the transportation.* Should the rules be different depending on the type of provider or supplier offering the transportation services? Free transportation services offered by individuals or small groups of providers, including physicians, or by freestanding clinics have been subject to greater scrutiny. Historically, for example, unscrupulous providers and clinics have offered free transportation in conjunction with Medicare and Medicaid frauds.
- *Destination.* Should a provider be permitted to furnish transportation to other health care providers or only to its own premises for appointments for its own services? Some hospitals apparently provide free transportation to patients for private office visits with local physicians or other professionals; others limit transportation service to practitioners with hospital staff privileges. In addition, many hospitals and physician practices are co-located on a single campus. What safeguards might be included to protect against abuse if transportation is offered to the premises of other providers (*e.g.*, free transportation of patients as a financial benefit to other providers)? What about transportation among entities affiliated through health systems? What about transportation for reasons other than medical appointments?
- *Marketing and advertising.* What are the practical and policy considerations associated with allowing marketing or advertising of complimentary transportation services? What would constitute reasonable limits on promotional activities?
- *Other criteria.* Are there other safeguards, limitations, or conditions that should apply in any exception for complimentary transportation?

2. Clinical Trials

Historically, sponsors of clinical trials have offered various inducements to patients to enroll in their trials. Because Medicare did not cover medical services incident to most clinical trials, these inducements did not trigger scrutiny under the various federal program fraud and abuse sanctions. However, in 2000, the Centers for Medicare and Medicaid Services (CMS) issued a national coverage determination (NCD) providing for coverage for physician, hospital, and other services incidental to certain clinical trials ("Medicare Coverage Routine Costs of Beneficiaries in Clinical Trials"; September 19, 2000). Under the NCD, all other requirements of the Medicare program apply, including the various fraud and abuse authorities. In extending coverage to certain clinical trials, CMS intended to remove impediments to Medicare beneficiaries who want to enroll in trials, but not to grant favored status to clinical trials. This distinction is important, because many clinical trials involve unproven alternatives to existing effective treatments.

Because we are concerned that section 1128A(a)(5) not unduly impede valuable clinical trials, we are soliciting comments and suggestions on how to apply section 1128A(a)(5) to inducements to participate in bona fide clinical trials. Issues of particular interest to the OIG include:

- *Threshold level of Medicare reimbursement.* In many clinical trials, the volume and value of covered Medicare services provided to enrollees is likely to be significant, and trial sponsors may have a financial incentive to offer inducements to Medicare beneficiaries to enroll. For example, hospitalization triggers a substantial Medicare payment. However, it is possible that some clinical trials may involve only a small volume or value of Medicare covered services. Should a possible exception turn on the volume or value of Medicare services involved? If so, what would be the appropriate threshold level?
- *Sponsorship of studies.* One issue in crafting an exception for inducements associated with clinical trials would be defining the universe of trials that would be covered by the exception. We believe covered trials should have a clear potential public benefit. The scope of "deemed" trials under the NCD is overly broad for purposes of a possible exception to section 1128A(a)(5) of the Act. We are interested in comments regarding the scope of covered trials and the criteria that might apply to distinguish those with potential public benefit from those with solely or chiefly commercial value. We are also concerned that, as noted in several OIG studies, some trial sponsors provide investigators and other persons in positions to identify and influence potential enrollees with substantial monetary payments. (*See*, for example, the OIG report issued in June 2000, entitled "Recruiting Human Subjects: Pressures in Industry-Sponsored Clinical Research" (OEI–01–97–00195)).
- *Type or amount of inducements.* We are interested in information regarding the types of beneficiary inducements that might be offered in connection with clinical trials (*e.g.*, waivers of copayments, provision of otherwise uncovered services, drugs, or equipment). In the clinical trial context,

what are the practical and policy considerations associated with the various forms of inducements? Which kinds of inducements matter most to the efficient and successful completion of a clinical trial? What might be a reasonable cap on the value of inducements offered to particular patients?

• *Sources of benefits.* The OIG is aware that, in some cases, free items or services are offered to enrollees in a clinical trial by parties other than the trial sponsor. For example, a manufacturer might furnish patients with free or discounted products used in the course of the trial (but not the products that are the subject of the clinical trials). These kinds of arrangements raise concerns, as the benefits may induce enrollees to continue to use the manufacturer's products after completion of the trial.

3. Inducements of Low Value

As noted above, Congress indicated an intent to permit items and services of "nominal" value under section 1128A(a)(5) of the Act. Consistent with this intent, in the preamble to the final regulations governing section 1128A(a)(5), we indicated that items and services of nominal value are not prohibited by the statute and thus no exception would be necessary (65 FR 24410; April 6, 2000). We further interpreted "nominal" value to mean less the $10 per item and $50 in the aggregate on an annual basis (65 FR 24411; April 6, 2000).

We invite comments on whether, for the sake of clarity and bright-line guidance, we should codify an exception for inducements of low value, and, if so, what the value should be. Should the exception include a per item or service limitation on value or should it look solely to value on an annual (or other) aggregate basis?

4. Other Exceptions

The OIG welcomes suggestions for other possible exceptions to section 1128A(a)(5) of the Act. As noted above, comments are particularly useful if they address the legal and policy concerns raised by the application of section 1128A(a)(5) to particular business practices and offer specific suggestions for applicable criteria.

Dated: November 19, 2002.

Janet Rehnquist,

Inspector General.

[FR Doc. 02–31040 Filed 12–6–02; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Solicitation of New Safe Harbors and Special Fraud Alerts

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of intent to develop regulations.

SUMMARY: In accordance with section 205 of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, this annual notice solicits proposals and recommendations for developing new and modifying existing safe harbor provisions under the anti-kickback statute (section 1128B(b) of the Social Security Act), as well as developing new OIG Special Fraud Alerts. In addition, this notice solicits public comments regarding the development of possible guidance addressing certain credentialing practices.

DATES: To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on February 7, 2003.

ADDRESSES: Please mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–71–N, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–71–N. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619–0089, OIG Regulations Officer.

SUPPLEMENTARY INFORMATION:

I. Background

A. The OIG Safe Harbor Provisions

Section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a–7b(b)) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit, or receive remuneration in order to induce or reward business reimbursable under the Federal health care programs. The offense is classified as a felony and is punishable by fines of up to $25,000 and imprisonment for up to 5 years. The OIG may also propose the imposition of civil money penalties, in accordance with section 1128A(a)(7) of the Act (42 U.S.C. 1320a–7a), or exclusions from the Federal health care programs, in accordance with section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)).

Since the statute on its face is so broad, concern has been expressed for many years that some relatively innocuous commercial arrangements may be subject to criminal prosecution or administrative sanction. In response to the above concern, the Medicare and Medicaid Patient and Program Protection Act of 1987, section 14 of Public Law 100–93, specifically required the development and promulgation of regulations, the so-called "safe harbor" provisions, specifying various payment and business practices which, although potentially capable of inducing referrals of business reimbursable under the Federal health care programs, would not be treated as criminal offenses under the anti-kickback statute and would not serve as a basis for administrative sanctions. The OIG safe harbor provisions have been developed "to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial and innocuous arrangements" (56 FR 35952; July 29, 1991). Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices are not subject to any enforcement action under the anti-kickback statute or related administrative authorities. The safe harbor provisions are codified at 42 CFR 1001.952.

B. OIG Special Fraud Alerts and Special Advisory Bulletins

The OIG has also periodically issued Special Fraud Alerts and Special Advisory Bulletins to give continuing guidance to health care providers with respect to practices the OIG finds potentially fraudulent or abusive. The Special Fraud Alerts and Bulletins encourage industry compliance by giving providers guidance that can be applied to their own businesses. The OIG Special Fraud Alerts and Bulletins are intended for extensive distribution directly to the health care provider community, as well as those charged with administering the Federal health care programs. The OIG Special Fraud Alerts and Bulletins are available on the

OIG Web page at *http://oig.hhs.gov/fraud/fraudalerts.html.*

C. Section 205 of Public Law 104–191

Section 205 of Public Law 104–191 requires the Department to develop and publish an annual notice in the **Federal Register** formally soliciting proposals for modifying existing safe harbors to the anti-kickback statute and for developing new safe harbors and Special Fraud Alerts.

In developing safe harbors for a criminal statute, the OIG is required to engage in a thorough review of the range of factual circumstances that may fall within the proposed safe harbor subject area so as to uncover potential opportunities for fraud and abuse. Only then can the OIG determine, in consultation with the Department of Justice, whether it can effectively develop regulatory limitations and controls that will permit beneficial and innocuous arrangements within a subject area while, at the same time, protecting the Federal health care programs and their beneficiaries from abusive practices.

II. Solicitation of Additional New Recommendations and Proposals

In accordance with the requirements of section 205 of Public Law 104–191, the OIG last published a **Federal Register** solicitation notice for developing new safe harbors and Special Fraud Alerts on December 19, 2001 (66 FR 65460). As required under section 205, a status report of the public comments received in response to that notice is set forth in Appendix G to the OIG's Semiannual Report covering the period April 1, 2002 through September 30, 2002.[1] The OIG is not seeking additional public comment on the proposals listed in Appendix G at this time. Rather, this notice seeks additional recommendations regarding the development of proposed or modified safe harbor regulations and new Special Fraud Alerts beyond those summarized in Appendix G to the OIG Semiannual Report referenced above. A detailed explanation of justifications for a suggested safe harbor or Special Fraud Alert, as well as supporting empirical data if available, would be helpful and should, if possible, be included in any response to this solicitation.

A. Criteria for Modifying and Establishing Safe Harbor Provisions

In accordance with section 205 of HIPAA, we will consider a number of factors in reviewing proposals for new or modified safe harbor provisions, such as the extent to which the proposals would effect an increase or decrease in—

- Access to health care services;
- The quality of care services;
- Patient freedom of choice among health care providers;
- Competition among health care providers;
- The cost to Federal health care programs;
- The potential overutilization of the health care services; and
- The ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

In addition, we will take into consideration other factors, including, for example, the existence (or nonexistence) of any potential financial benefit to health care professionals or providers that may vary based on their decisions to (1) order a health care item or service or (2) arrange for a referral for health care items or services to a particular practitioner or provider.

B. Criteria for Developing Special Fraud Alerts and Advisory Bulletins

In determining whether to issue Special Fraud Alerts and Special Advisory Bulletins, we will consider, among other factors, whether, and to what extent, the identified conduct may result in any of the consequences set forth above, as well as the potential volume and frequency of the identified conduct.

III. Solicitation of Public Comments on Certain Credentialing Practices

We have been asked by the American Medical Association (AMA) to issue guidance regarding the legality under the federal anti-kickback statute of certain practices in connection with the granting of hospital staff privileges. According to the AMA and other sources, an increasing number of hospitals are refusing to grant staff privileges to physicians who (1) own or have other financial interests in, or leadership positions with, competing healthcare entities, (2) refer to competing health care entities, or (3) fail to admit some specified percentage of their patients to the hospital. There may be other examples of restrictive credentialing.

In evaluating the propriety of these credentialing practices, the OIG has identified the following issues about which it is soliciting public comment in order to develop a better understanding of these practices and their potential for abuse:

A. Are hospital staff privileges "remuneration"? Historically, so long as a physician had privileges at one hospital, the denial of privileges at another hospital was rarely actionable, since the physician could admit his or her patients to the hospital at which the physician had privileges. With the growth of managed care networks, especially in combination with the growth of health care systems that substantially control local markets, access to patients may depend on having privileges at the proper hospital. What effect, if any, do these developments have on the determination whether staff privileges are remuneration? Should the determination whether staff privileges have monetary value turn on the particular factual circumstances (e.g., in a given market, does access to privileges have a demonstrable monetary value)? Under what circumstances do staff privileges have monetary value?

B. What are the implications of a hospital's denial of privileges to a physician who competes with the hospital? Increasingly, physicians invest in and own entities, such as ambulatory surgical centers, cardiac catheterization labs, and specialty hospitals, that compete with hospital services. These physicians may be in a position to steer profitable business or patients to their own competing business through their control of referrals. A credentialing policy that *categorically* refuses privileges to physicians with significant conflicts of interest would not appear to implicate that anti-kickback statute in most situations. How should such physicians be defined: ownership? employee or contractor? staff leadership position?

C. Should the exercise of discretion by the privilege-granting hospital affect the analysis under the anti-kickback statute? Several credentialing practices have been brought to our attention that give the privilege-granting hospital discretion to evaluate the "financial conflict" created by a physician's outside business interests and permit the physician to retain privileges subject to periodic review. Such discretionary decision-making appears to raise substantial risks under the anti-kickback statute (i.e., privileges are conditioned on a sufficient flow of referred business). What factors other than the amount of business still being generated for the hospital might be used as the basis for the hospital exercising discretion in these kinds of arrangements? From a policy perspective, are there bases for the hospital's review or exercise of discretion that should not implicate the

[1] The OIG Semiannual Report can be accessed through the OIG Web site at *http://oig.hhs.gov/publications/semiannual.html.*

anti-kickback statute? Are there limits on discretion that might provide sufficient safeguards under the anti-kickback statute?

D. Can privileges ever be conditioned on referrals, other than minimums necessary for clinical proficiency? Some hospitals have apparently attempted to condition privileges on a physician's referral of a predetermined level of his or her hospital business to the hospital. Assuming the privileges have monetary value, such conditions would appear to be suspect under the anti-kickback statute. Are there conditions under which such conditions might be justified? Failing financial health? Guaranteeing a patient volume sufficient to support offering a critical service not otherwise available (e.g., a cardiac service in a rural area)? Does the level of required referrals or business matter (e.g., is there a difference between a requirement of 25 percent of referrals compared to 75 percent)?

E. What is the effect of credentialing restrictions that apply only to members of a group practice? What are the implications of a hospital restricting privileges for some, but not all, members of a group practice? What about restricting privileges of the entire group?

Finally, we are interested in comments on other aspects of restrictive credentialing practices that should inform our review of these practices and development of possible guidance under the anti-kickback statute.

Dated: November 19, 2002.

Janet Rehnquist,

Inspector General.

[FR Doc. 02–31039 Filed 12–6–02; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1003

RIN 0991–AB04

Medicare and State Health Care Programs: Fraud and Abuse; Civil Money Penalty Exception To Protect Payment of Medicare Supplemental Insurance and Medigap Premiums for ESRD Beneficiaries

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: On May 2, 2000, we published a notice of proposed rulemaking (65 FR 25460) soliciting public comments regarding a possible new exception under the OIG's civil money penalty provisions in 42 CFR part 1003 for independent dialysis facilities that pay, in whole or in part, premiums for Supplemental Medical Insurance (Medicare Part B) or Medicare Supplemental Health Insurance policies (Medigap) for financially needy Medicare beneficiaries with end-stage renal disease (ESRD). The exception would have established various standards and guidelines that, if met, would have resulted in the particular arrangement being protected from civil money sanctions under section 1128A(a)(5) of the Social Security Act (the Act). Having considered the public comments and for the reasons explained below, we are not promulgating an exception for these arrangements.

DATES: The NPRM published on May 2, 2000 at 65 FR 25460 is withdrawn as of December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619–0089, Office of Counsel to the Inspector General.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 1128A(a)(5) of the Act

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, amended the Act to prohibit any person from offering Medicare or Medicaid beneficiaries remuneration that might influence them to order or receive from a particular provider, practitioner, or supplier items or services payable by Medicare or Medicaid. Specifically, section 231(h) of HIPAA established a new provision—section 1128A(a)(5) of the Act—for the imposition of a civil money penalty (CMP) against any person who:

> Offers or transfers remuneration to any individual eligible for benefits under [Medicare or Medicaid] that such person knows or should know is likely to influence such individual to order or receive from a particular provider, practitioner, or supplier any item or service for which payment may be made, in whole or in part, under [Medicare or Medicaid].

Section 231(h) of HIPAA also created a new section 1128A(i)(6) of the Act to define the term "remuneration" for purposes of the new CMP. "Remuneration" is broadly defined to include any "waiver of coinsurance and deductible amounts (or any part thereof), and transfers of items or services for free or for other than fair market value." There are several narrow exceptions, including an exception for waivers of copayments based on financial need, if the waivers are neither routine, nor advertised. No exception applies to the payment by providers of Medicare Part B or Medigap insurance premiums on behalf of Medicare or Medicaid beneficiaries.

B. Effects of Section 1128A(a)(5)

Following enactment of HIPAA, representatives of a number of ESRD providers informed the OIG that many providers had been paying for Medicare Part B premiums and Medigap policies for financially needy patients who could not afford to purchase such insurance. The OIG concluded that such premium subsidies could be unlawful under the new law, and providers subsequently suspended their purchases of Medigap policies and payments of Medicare Part B premiums for their patients. Alternatively, some providers entered into funding arrangements with unrelated, nonprofit organizations that pay premiums on behalf of needy ESRD patients without regard to the identity of the patient's provider.

To date, the OIG has approved three premium funding arrangements through advisory opinions. (OIG Advisory Opinions Nos. 97–1, 97–2, and 98–17.[1]) OIG Advisory Opinion No. 97–1 is representative. In that instance, the American Kidney Fund (AKF)—a section 501(c)(3) charitable and educational organization—and a number of dialysis providers established an arrangement whereby the providers contribute funds to AKF, which, in turn, independently screens patients for financial need and pays Medicare Part B and Medigap premiums on behalf of qualifying patients. Under the arrangement, the providers do not make premium payments to, or on behalf of, particular patients; there is no "pass through" of payments from providers to specific patients; and payments do not tie patients in any way to particular providers. In short, the premium payments do not influence a patient's selection of any particular provider—the core prohibited conduct under section 1128A(a)(5). We understand that the AKF program now operates effectively and that contributions from ESRD providers have resulted in increasing numbers of needy patients receiving premium payment and other vital assistance. In the five years since AKF implemented its premium support program, we have received only a handful of letters from patients

[1] *http://oig.hhs.gov/fraud/docs/advisoryopinions/1997/kdp.pdf; http://oig.hhs.gov/fraud/docs/advisoryopinions/1997/972oo.pdf* and *http://oig.hhs.gov/fraud/docs/advisoryopinions/1998/oo98_17.htm* respectively.

concerned abut mistakes made in connection with their AKF funding.

C. The Proposed Exception

On October 21, 1998, Congress enacted the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 (OCESAA), Public Law 105–277. Section 5201 of OCESAA authorized, but did not require, the Secretary to issue regulations establishing exceptions under section 1128A(a)(5) of the Act for payment practices that would otherwise violate the statute. (Additionally, OCESSA vested the Secretary with authority to issue advisory opinions approving such arrangements on a case-by-case basis.) Congress provided no guidance as to acceptable bases for protecting or approving an otherwise unlawful arrangement. Under OCESAA, if a regulatory exception is promulgated for premium support payments by ESRD providers, (i) the exception must be limited to two years, and (ii) the Comptroller General of the United States must study any disproportionate impact on specific Medigap insurers due to adverse selection in enrolling Medicare ESRD beneficiaries and recommend whether to extend the exception past two years.

We construed OCESSA as evidencing Congress' intent that we consider, but not necessarily establish, an exception for premium payments made by ESRD providers. To that end, we issued an NPRM soliciting public comment regarding a proposed exception that would have applied to independent dialysis facilities (as defined in 42 CFR 413.174) that have no hospital, physician, or other provider or supplier ownership and that pay for Medicare Part B or Medigap premiums for financially needy ESRD patients when (i) the payment is not advertised, (ii) the dialysis facility does not routinely make payments for such premiums, and (iii) the dialysis facility makes a good faith determination that the individual is financially needy. The proposed exception would not have covered the payment of Medicare Part B or Medigap premiums on behalf of any other beneficiaries or by any other type of provider. We specifically solicited comments on the potential impact of adverse selection on the Medigap insurance market.

We received 72 timely comments to the proposed rule from a cross-section of interested parties. Many commenters considered the proposed rule too narrow and advocated a broader rule that would apply to dialysis providers owned or operated by hospitals, physicians, or other providers. Other commenters thought the rule was unnecessary. Commenters representing insurers opposed the rule.

Commenters favoring a broader rule believed that OCESSA demonstrated Congress' support for an ESRD premium payment exception. They pointed out that many ESRD facilities had paid premiums for financially needy patients prior to the enactment of HIPAA and that the Health Care Financing Administration (now the Centers for Medicare and Medicaid Services) had a separate line on the ESRD cost report for such payments. They also noted that dialysis patients traditionally have very high copayments and, thus, have a particular need for supplemental insurance. A substantial amount of care provided to these patients is covered under Medicare Part B and requires a 20% copayment. According to these commenters, premium payments do not influence a patient's choice of an ESRD facility, since the availability of premium support is not typically advertised and an ESRD patient typically picks a dialysis facility based on proximity to the patient's home or the recommendation of the patient's nephrologist. Commenters also asserted that there is little risk of overutilization because both ESRD facilities and nephrologists are paid by Medicare primarily on a composite rate basis that does not vary with the amount of services provided.

Commenters opposing the proposed rule emphasized the potential effects of adverse selection on the insurance market, noting that the claims costs of Medigap subscribers with ESRD are significantly higher than those of non-ESRD subscribers. Commenters also observed, among other things, that the proposed safe harbor would give ESRD facilities an incentive to pay Medicare Part B and Medigap premiums in order to maintain their revenue streams; would benefit nephrologists who may be influenced to steer patients to facilities providing premium support; and would influence beneficiaries to select particular facilities. In sum, commenters opposing the proposal believed it would have detrimental effects on insurers, the Medicare program, and beneficiaries.

D. Determination Not To Promulgate an Exception

We have reviewed the public comments and considered the issues raised by an exception to section 1128A(a)(5) for ESRD premium payments. For the following reasons, we decline to promulgate such an exception.

First, the direct payment of supplemental premiums by ESRD providers for financially needy patients carries the same potential for abuse as the provision of free or below market rate goods or services by any other health care provider. (*See OIG Special Advisory Bulletin on Offering Gifts and Other Inducements to Beneficiaries* (65 FR 55844; August 30, 2002). The statute targets corruption of the provider selection process. Since any exception would be permissive, any ESRD facility that did not pay premiums for financially needy patients would likely lose business. In short, the exception would promote the very conduct the statute prohibits: the offering of remuneration to influence the selection of a provider. Moreover, patients would not only be influenced to select ESRD facilities that buy them supplemental health insurance, but would be "locked in" to those facilities, since changing facilities would jeopardize their supplemental insurance for all services, including substantial non-ESRD services.

Second, creating an exception for direct premium payments by ESRD providers would create demands for additional exceptions for comparable payments by other health care providers and would potentially increase federal expenditures and Medigap premiums. We can discern no rational basis—and Congress has provided no guidance—for distinguishing between providers paying premiums for ESRD patients and providers paying premiums for other chronically ill, financially needy patients, such as patients with cancer, diabetes, or congestive heart disease. Nor can we discern any rational bases for distinguishing among types of benefits provided to Medicare and Medicaid beneficiaries or among categories of sick beneficiaries. Absent congressional guidance, attempting to draw such distinctions would necessarily result in arbitrary standards and would undermine the statute.

It is to a provider's financial advantage (i) to pay the Medigap premium whenever the premium is less than the expected copayments and (ii) to pay the Part B premium whenever the premium is less than the expected Part B payments. Thus, the insurer will always lose money on these policies, as the amount paid out to the provider will always exceed the premiums received. This phenomenon—adverse selection—will likely cause insurers to raise premiums for all other enrollees to cover the losses. For this reason, the health insurance industry objected to the proposed exception.

Finally, we are not persuaded that a special exception for ESRD premium payments is needed. Financially needy dialysis patients are already receiving, and will continue to receive, supplemental health insurance support through funding arrangements with AKF or comparable independent nonprofit organizations. These arrangements are lawful, are apparently efficient, and minimize the potential for abuse.

In sum, in the absence of specific guidance from Congress on the standards to apply, we are not promulgating an exception for ESRD premium payments under section 1128A(a)(5) of the Act. This approach reflects our determination—articulated in the OIG Special Advisory Bulletin on Offering Gifts and Other Inducements to Beneficiaries (67 FR 55855; August 30, 2002)—that any exceptions to section 1128A(a)(5) must be closely aligned with the existing language of the statute.

II. Withdrawal of Notice of Proposed Rulemaking

Accordingly, the notice of proposed rulemaking that was published in the **Federal Register** on May 2, 2000 (65 FR 25460) is withdrawn.

III. Regulatory Impact

Since the action only withdraws a notice of proposed rulemaking, it is neither a proposed or a final rule and, therefore, is not covered under Executive Order 12866 or the Regulatory Flexibility Act (5 U.S.C. 601–612).

List of Subjects in 42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties.

Dated: October 25, 2002.

Janet Rehnquist,

Inspector General.

Approved: December 2, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–31041 Filed 12–6–02; 8:45 am]

BILLING CODE 4152–01–P

Notices

Federal Register
Vol. 67, No. 236
Monday, December 9, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (portions of which will be open to the public) in Washington, DC at the Office of Director of Practice on January 9 and 10, 2003.

DATES: Thursday, January 9, 2003, from 9 a.m. to 5 p.m., and Friday, January 10, 2003, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in Suite 4200E, Conference Room, Fourth Floor, East Tower, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Director of Practice and Executive Director of the Joint Board for the Enrollment of Actuaries, 202–694–1805.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Suite 4200E, Conference Room, Fourth Floor, East Tower, Franklin Court Building, 1099 14th Street, NW., Washington, DC on Thursday, January 9, 2003, from 9 a.m. to 5 p.m., and Friday, January 10, 2003, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the November 2002 Pension (EA–2A) Joint Board Examination in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the May 2003 Basic (EA–1) Examination and the May 2003 Pension (EA–2B) Examination will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the November 2002 Joint Board examination fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1 p.m. on January 10 and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements should must notify the Executive Director in writing prior to the meeting in order to aid in scheduling the time available and must submit the written text, or at a minimum, an outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. All other persons planning to attend the public session must also notify the Executive Director in writing to obtain building entry. Notifications of intent to make an oral statement or to attend must be faxed, no later than December 31, 2002, to 202–694–1876, Attn: Executive Director. Any interested person also may file a written statement for consideration by the Joint Board and the Committee by sending it to the Executive Director: Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service, Attn: Executive Director N:C:SC:DOP, 1111 Constitution Avenue, NW., Washington, DC 20224.

Dated: December 3, 2002.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 02–31053 Filed 12–6–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Center for Nutrition Policy and Promotion; Agency Information Collection Activities; Proposed Collection; Comment Request—Generic Clearance for Nutrition Education Messages and Materials for the General Public

AGENCY: Center for Nutrition Policy and Promotion, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed information collection. This notice announces the Center for Nutrition Policy and Promotion's intention to request the Office of Management and Budget approval of the information collection instruments to be used during consumer research. The instruments are designed to identify consumers' understanding of potential nutrition education messages and their reaction to prototype sections of nutrition education materials, including Internet-based materials. The information collected will be used to refine messages and materials to improve usefulness and consumer understanding.

DATES: Written comments on this notice must be submitted on or before February 7, 2003.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Carole Davis, Nutrition Promotion Staff Director, Center for Nutrition Policy and Promotion, U.S. Department of

Agriculture, 3101 Park Center Drive, Room 1034, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Carole Davis, 703–305–7600.

SUPPLEMENTARY INFORMATION:

Title: Nutrition Education Messages and Materials for the General Public.

OMB Number: To be assigned.

Expiration Date: Not applicable.

Type of Request: New collection of information.

Abstract: The Dietary Guidelines for Americans, issued jointly by the U.S. Departments of Agriculture and Health and Human Services, are the cornerstone of Federal nutrition policy and form the basis for nutrition education efforts of these agencies. The U.S. Department of Agriculture develops and promotes nutrition education materials to help consumers understand and use the Dietary Guidelines. The Center for Nutrition Policy and Promotion is responsible for publication of the bulletin containing the text of the Dietary Guidelines; it also develops additional materials to help consumers understand and use the Guidelines. The increased prevalence of overweight and obesity in the United States has made it even more important to communicate clear and useful nutrition education information related to the Guidelines on food choices, weight, and physical activity. In addition, the Center for Nutrition Policy and Promotion provides food-based guidance for the general public through the Food Guide Pyramid. The Pyramid is an educational tool designed to help consumers implement the Guidelines and eat a nutritious diet. The Food Guide Pyramid is undergoing a broad-based reassessment, and development of updated materials is planned to help communicate Pyramid messages and recommendations.

Educational messages and materials in support of the Dietary Guidelines for Americans and Food Guide Pyramid, including those targeted to preventing obesity, will be developed by the Center for Nutrition Policy and Promotion. These will include:

1. The 2005 editions of the bulletin Nutrition and Your Health: Dietary Guidelines for Americans and the brochure Using the Dietary Guidelines for Americans;

2. An updated Food Guide Pyramid graphical representation, poster, and supportive educational materials;

3. Nutrition education and Internet-based materials to help combat overweight and obesity in America. The initial phase of this campaign will target women 20 to 40 years old, with a special emphasis on low-income women.

The materials for these initiatives will be tested using qualitative consumer research techniques, which may include focus groups, qualitative interviews, and Web-based surveys. Participants in the testing will provide information regarding the clarity, understandability, and acceptability of the messages and materials during the developmental process and during the final product development stage.

Affected Public: Adult Consumers.

Estimated Number of Respondents: 850.

Estimated Time Per Response: 2 hours for focus groups and qualitative interviews, .25 hours for Web-based surveys.

Total Estimated Annual Burden Hours: 1175 hours.

Project	Number of respondents	Estimated hours per respondent	Total estimated time burden
Dietary Guidelines materials	200	2	400 hrs.
Food Guide Pyramid materials	200	2	400 hrs.
Portion awareness messages	100	2	200 hrs.
Portion awareness materials	300	.25	75 hrs.
Portion awareness interactive	50	2	100 hrs.
Total	850		1175 hrs.

Dated: November 27, 2002.

Steven Christensen,

Acting Director, Center for Nutrition Policy and Promotion.

[FR Doc. 02–30963 Filed 12–6–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 02–045N]

Improving the Recall Process

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it will hold a one day technical conference on December 12, 2002, on Improving the Recall Process. There will be a series of discussions of issues related to this topic.

DATES: The public meeting is scheduled for Thursday, December 12, 2002. The meeting will be held from 8 a.m. to approximately 5 p.m.

ADDRESSES: The public meeting will be held at the Washington Plaza Hotel, #10 Thomas Circle, NW., Washington, DC 20005. The telephone number is 202–842–1300.

A tentative agenda is available in the FSIS Docket Room and on the FSIS Web site at *http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.fsis.usda.gov*. FSIS welcomes comments on the topics to be discussed at the public meeting. Please send an original and two copies of comments to the FSIS Docket Room, Docket 02–045N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments and the official transcript of the meeting, when they become available, will be kept in the FSIS Docket Room at the address provided above.

FOR FURTHER INFORMATION CONTACT: Moshe Dreyfuss at (202) 205–0260. Registration for the meeting will be on-site. No prior registration will be accepted. Persons requiring a sign Language interpreter or other special accommodations should notify Ms. Mary Harris as soon as possible at (202) 690–6498.

SUPPLEMENTARY INFORMATION:

Background

FSIS administers the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act. The Agency's activities are intended to prevent the distribution in domestic and foreign commerce, as human food, of unwholesome, adulterated, or misbranded meat, poultry, and egg products, including products that may transmit diseases or that may be otherwise injurious to health.

In January 2000, the Agency issued its latest revision of the recall procedures, FSIS Directive 8080.1, rev. 3. This revised directive was an improved recall procedure designed to inform meat and poultry producers of the need for swift action to prevent contaminated or adulterated meat or poultry from reaching the public. It includes methods for recovering those products and procedures for public notification.

While this process has functioned well, in recent months there have been questions raised on the efficiency and effectiveness of the recall process in light of several large recalls. Therefore, to address these concerns and to solicit possible means of improving the recall system, FSIS is holding this public meeting.

Public Meeting

At the meeting, the Agency will describe and invite discussion and comments on FSIS's recall authority, how FSIS approaches recalls, and how FSIS works with states on recalls. Also, presentations are expected to be made on approaches to recalls by industry and by other agencies.

The Agency will host three panel discussions to solicit ideas and proposals for making the recall process more effective. The discussions will cover the implications of mandatory recall authority, when public notification is needed, whether the Agency should approach establishment-initiated recalls differently from Agency-initiated recalls, and whether product should be withheld from commerce until sample results are received. The Agency intends to seek information from academia, industry sources, and consumers on ways to improve the recall process with a particular emphasis on improving public health and to provide a forum for discussion on how best to handle them. The Agency will open the discussion to include, and solicit comment from, the attendees.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail Subscription service. In addition, the update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the Internet at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done at Washington, DC, on: December 4, 2002.

Dr. Garry L. McKee,

Administrator.

[FR Doc. 02–31008 Filed 12–6–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Keystone-Quartz Ecosystem Management Project, Beaverhead-Deerlodge National Forests, Beaverhead County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare a supplement to the Environmental Impact Statement.

SUMMARY: The Forest Service will prepare a supplement to the final Environmental Impact Statement to document additional soils analysis and disclose the environmental impacts to the soils resource of the preferred alternative to manipulate forest and range vegetation on 684 acres. The Preferred Alternative 6 would thin and prescribe burn 540 acres of Douglas-fir forest to restore open Douglas-fir forest habitat, release 58 acres of aspen/shrub to restore aspen/shrub communities, thin 19 acres of dense lodgepole pine to improve overall forest health, and restore shrub/grass habitat by removal of small conifers and prescribed burning on 67 acres of shrub/grass habitat that has been lost to conifer succession. Forest product recovery would occur on 58 acres to remove the large conifers (aspen/shrub release only); on 260 acres to remove special forest products (small diameter trees), and on 19 acres to remove post and pole size lodgepole pine. Slashing would remove smaller conifers in most treatment areas as a pre-treatment prior to prescribed burning. Existing roads would be used and no new roads would be built. This area lies at the northern end of the Pioneer Mountains, three miles south of Wise River, Montana. The prior notice of intent for this proposed action appeared in the **Federal Register** on April 9, 1999, 64 FR 17310–11. The NOA for the DEIS appeared on April 6, 2001, 66 FR 18243. A Final Environmental Impact Statement and a Record of Decision were issued on December 3, 2001. The legal notice of the Record of Decision for the FEIS appeared on the Montana Standard on December 31, 2001. The decision was appealed, and later reversed on March 15, 2002.

DATES: Initial comments concerning the supplement to the EIS should be received in writing no later than 30 days after the publication of this NOI in the **Federal Register.**

ADDRESSES: The responsible official is the District Ranger, Beaverhead-Deerlodge National Forest, Dillon, Montana. Please send comments to Charlie Hester, District Ranger, Wise River Ranger District, P.O. Box 100, Wise River, MT 59762. Comments may be electronically submitted to *r1_b-d_comments@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jeff Trejo, project leader, P.O. Box 100, Wise River, MT or phone (406) 832–3178 or by e-mail to *jtrejo@fs.fed.us*. People may visit with Forest Service officials at any time during the analysis and prior to the decision.

The draft supplement to the EIS is anticipated to be available for review in January 2003. The final supplement to the EIS is planned for completion in April 2003.

The Environmental Protection Agency will publish the notice of availability of the draft supplement to the environmental impact statement in the **Federal Register**. The Forest will also publish a legal notice of its availability in the Montana Standard Newspaper, Butte, Montana. A 45-day comment period on the draft supplement to the Environmental Impact Statement will

begin the day following the publication of the legal notice.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft supplement to the Environmental Impact Statement must structure their participation in the environmental review of the preferred alternative so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft supplement to the environmental impact statement stage but that are not raised until after completion of the final supplement to the environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final supplement to the Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns, comments on the draft supplement to the Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages of the draft supplement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The responsible official will make the decision on this proposal after considering comments and responses, environmental consequences discussed in the final supplement to the EIS, the EIS, applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Dated: December 2, 2002.

Thomas K. Reilly,

Forest Supervisor.

[FR Doc. 02–30980 Filed 12–6–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Georgetown Vegetation Management, Philipsburg Ranger District, Beaverhead Deerlodge National Forest, Granite and Deer Lodge Counties, MT

AGENCY: Forest Service, USDA.

ACTION: Revised notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact settlement (EIS) to document the analysis and disclose the environmental impacts of proposed actions to manage forest and rangelands to reduce fuel levels, improve forest health, and improve vegetative structure in the Flint Creek, North Flint Creek, and upper Warm Springs drainages. The proposed project includes the Georgetown and Echo Lake recreation areas which are located approximately 10 miles south of Philipsburg, Montana. A portion of the project proposes to treat forested lands comprised of vegetation condition classes 2 and 3 within and adjacent to areas defined as wildland urban interface and intermix communities. Areas with these conditions have been identified as priorities for fuel treatment under the National Fire Plan and Cohesive Strategy because of the potential for severe and damaging wildfire.

The Forest Service proposes fuel reduction and forest health treatments by thinning and shelterwood harvest on 1,000 to 1,200 acres. As estimated 1.0 to 1.3 million board feet (2,000 to 2,600 hundred cubic feet, CCF) of sawtimber and approximately 1.0 to 1.5 million board feet equivalent (2,000 to 3,000 CCF) of posts and poles would be harvested. Also, 1,100 to 1,200 acres would be treated with prescribed fire and mechanical methods to control conifer encroachment and reduce grassland fuels.

This project originally appeared in the **Federal Register** on August 3, 1998, page 41223, as the Double Sec Timber Sale and Vegetative Management, Beaverhead-Deerlodge National Forest, Granite and Deer Lodge Counties, MT. A draft environmental impact statement was completed and a notice of availability was published in the **Federal Register** on October 8, 1999, page 54882, as EIS No. 990357, Draft EIS, AFS, MT, Double Sec Timber Sale and Vegetation Management Project.

DATES: Initial comments concerning the scope of the analysis should be received in writing no later than 30 days after the publication of this NOI in the **Federal Register**.

ADDRESSES: The responsible official is Forest Supervisor Thomas K. Reilly, Beaverhead-Deerlodge National Forest, Dillon, MT. Please send written comments to Bob Gilman, District Ranger, Philipsburg Ranger District, 88 10A Business Loop, Philipsburg, MT 59858. Comments may be electronically submitted to *rl_b-d_comments@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Mark Giacoletto, Fire Management Officer, Philipsburg Ranger District, 88 10A Business Loop, Philipsburg, MT, 59858, or phone: (406) 859–3211.

SUPPLEMENTARY INFORMATION: The project area is located in T4 &5N, R13 &14W. The scope of this proposal is to initiate vegetative practices throughout the Georgetown Lake area that would help maintain the recreational setting over time. Treatments would reduce stand densities and fuel levels, especially in areas near private property, developments, and homes.

The original environmental analysis for this area was initiated in the spring of 1997. The original proposed action would have harvested approximately 11.5 million board feet, from 1,250 acres, and constructed 4.5 miles of system roads and 4.5 miles of temporary roads. Alternatives to the proposed action reduced harvest levels, reduced or eliminated road construction, and changed travel management by closing up to 14.5 miles of roads and motorized trails.

The revised project would implement the goals and objectives outlined in the National Fire Plan, Cohesive Strategy and Goal 2 of the 10 Year Comprehensive Strategy.

Public participation will be re-initiated due to the substantial changes in project design. Part of the goal of public involvement is to identify issues to the revised project. During initial scoping, over 900 letters were sent to interested people, adjacent landowners, organizations, business, as well as Federal, State, County, and Tribal organizations. Thirty-two individual responses were received. A field trip was held during the summer of 1997; two people attended. A public meeting was held in Anaconda, MT on December 15, 1999. Articles describing the project were published in local newspapers.

The analysis will consider all reasonably foreseeable activities. The interdisciplinary team has not yet developed alternatives to the proposed action. Alternatives will be developed based on the key issues identified through scoping.

People may visit with Forest Service officials at any time during the analysis and prior to the decision. Two periods are specifically designated for comments on the analysis: (1) During the scoping process and (2) during the draft EIS comment period.

During the scoping process, the Forest Service is seeking additional information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. The United States Fish and Wildlife Service will be consulted concerning effects to threatened and endangered species. The agency invites written comments and suggestions on this action, particularly in terms of identification of issues and alternative development.

The draft EIS should be available for review in July 2003. The final EIS is scheduled for completion in August 2003.

The Environmental Protection Agency will publish the notice of availability of the Draft Environmental Impact Statement in the **Federal Register**. The Forest Service will also publish a legal notice of its availability in the Montana Standard Newspaper, Butte, Montana. A 45-day comment period on the draft environmental impact statement will begin the day following the legal notice.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritage, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important those interested in this proposed action participate by the close of the 45 day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The responsible official will make the decision on this proposal after considering comments and responses, environmental consequences discussed in the final EIS, applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Dated: December 2, 2002.

Thomas K. Reilly,

Forest Supervisor, Beaverhead-Deerlodge National Forest.

[FR Doc. 02–30979 Filed 12–6–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Stanislaus National Forest, CA; Larson Reforestation and Fuels Reduction Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement to restore, reforest, and reduce fuels within the 13,263 acre Larson project area that was burned in the Stanislaus Complex Fire of 1987. The Larson project area is located in Mariposa County, California, on Stanislaus National Forest, Groveland Ranger District. The project area is located three miles south of Highway 120, two miles north of the Merced River Canyon, and is bounded by Pilot Peak Lookout on the west and Yosemite National Park on the east. The legal description is: Township 2 South, Range 18 East, Sections 13, 24, 25, 36; Township 2 South, Range 19 East, Sections 15–18, 19–22, 26–30, 31–35; Township 3 South, Range 19 East, Sections 2–6, 9–10, MDM.

DATES: Comments concerning the scope of the analysis must be received by January 15, 2003. The draft environmental impact statement is expected September 2003 and the final environmental impact statement is expected April 2004.

ADDRESSES: Send written comments to John R. Swanson, District Ranger, Stanislaus National Forest, Groveland Ranger District, 24545 Highway 120, Groveland, CA 95321 or fax them to (209) 962–7412.

FOR FURTHER INFORMATION CONTACT: Dan Roskopf, Silviculture Forester, Stanislaus National Forest, Groveland Ranger District, 24545 Highway 120, Groveland, CA 95321, phone (209) 962–7825.

SUPPLEMENTARY INFORMATION: The proposed action is being undertaken to comply with the direction contained in the National Forest Management Act (1976) Sec. 4.(d)(1), stating that "it is the policy of Congress that all forested lands shall be maintained in appropriate forest cover with species of trees, degree of stocking, rate of growth, and conditions of stands designed to secure the maximum benefits of multiple use sustained yield management in accordance with the land management plans". In addition, this environmental impact statement (EIS) will tier to the Stanislaus National Forest Land and Resource Management Plan and EIS of 1991 as amended.

Purpose and Need for Action

The Larson Fire (part of the Stanislaus Complex Fire of 1987) burned over 15,000 acres of forest and non-forest lands within the Larson project area. The fire burned in a mosaic pattern of moderate and high intensities. Significant regeneration of conifer trees following a wildfire and the associated benefits of a forested ecosystem has not occurred. Relying on natural regeneration and succession to reforest an area would take many decades. By restoring and reforesting the area, the associated benefits of recreation, timber, soil quality, visual quality, water quality, and wildlife habitat would recover to pre-fire levels at an accelerated rate.

Proposed Action

The proposed action would consist of combinations of site preparation (4,300 acres), reforestation (4,500 acres), release (4,800 acres), precommercial thinning (750 acres), prescribed burning (4,800), and defensible fuel profile zone construction (150 acres) treatments. Site preparation treatments would include mechanical, manual, and chemical methods. Specific treatments would include shredding, tractor piling,

grapple piling, crushing, felling, hand herbicide applications (glyphosate or triclopyr), and aerial herbicide (glyphosate) applications. Reforestation treatment would include planting and re-planting if needed. Release treatments would include hand herbicide (glyphosate or triclopyr) application and a second hand herbicide (glyphosate or triclopyr) application if needed. Precommercial thinning treatments would include shredding, hand felling and piling, and hand felling with lopping and scattering of slash. Prescribed burning treatments would include broadcast, underburn, and pile burning. Defensible fuel profile zone construction would include tractor piling and shredding.

Possible Alternatives

A range of reasonable alternatives will be considered as long as they meet the purpose and need of the proposed action, meet the project objectives of the proposed action, and are consistent with the Forest and Resource Management Plan. A "no action" alternative will also be considered.

Responsible Official

The Responsible Official is Glenn Gottschall, Acting Forest Supervisor, Stanislaus National Forest, Supervisor's Office, 19777 Greenley Road, Sonora, CA 95370.

Nature of Decision To Be Made

The decision to be made is how to restore and reforest the land that was burned in the Stanislaus Complex Fire of 1987 to meet a variety of resource needs (i.e., recreation, timber, watershed, wildlife). The Forest Supervisor may select one of the proposed alternatives for reforesting the burn area, modify one of the proposed alternatives by adding additional management requirements or mitigation measures, or defer reforestation treatments of the burned area.

Scoping Process

The Larson Reforestation and Fuels Reduction Project encouraged public participation through notification in the Stanislaus National Forest Schedule of Proposed Actions (SOPA), a publication mailed to over 500 governmental agencies, organizations, groups, and interested individuals. In addition, the project is listed on the Stanislaus National Forest SOPA web site (*http://www.r5.fs.fed.us/stanislaus/planning/sopa/index.htm*). Furthermore, a preliminary scoping letter was mailed out to various individuals, organizations and government agencies in September of 1997 and August of 1998 requesting public comments. This project will also be listed in the **Federal Register**.

Preliminary Issues

Preliminary concerns include the effects of mechanical, chemical, and prescribed burning treatments on air quality, soil quality, water quality, and threatened and endangered species.

Permits or Licenses Required

A county burning permit will be required for prescribed burning operations. A California Pesticide Applicators License will be required for herbicide operations.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations that may be interested in, or affected by, the proposed action. Scoping comments will be used to refine the proposed action; develop management requirements, mitigation measures, or alternatives; and identify potential issues and environmental effects of the proposal and the alternatives. This input will be used in the preparation of the draft environmental impact statement (DEIS).

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45-days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: November 26, 2002.

Glenn J. Gottschall,

Acting Forest Supervisor, Stanislaus National Forest.

[FR Doc. 02–31025 Filed 12–6–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Assistance to High Energy Cost Rural Communities

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funding availability (NOFA).

SUMMARY: The Rural Utilities Service (RUS) of the United States Department of Agriculture (USDA) announces the availability of $14.9 million in a new program of competitive grants to assist communities with extremely high energy costs. This grant program is authorized under section 19 of the Rural Electrification Act of 1936 (7 U.S.C. 1918a). The grant funds may be used to acquire, construct, extend, upgrade, or otherwise improve energy generation, transmission, or distribution facilities serving communities in which the average residential expenditure for home energy exceeds 275 percent of the national average. Eligible applicants include persons, States, political subdivisions of States, and other entities organized under State law. Federally-recognized Indian tribes and tribal entities are eligible applicants. This notice describes the eligibility and application requirements, the criteria that will be used by RUS to award funding and information on how to obtain application materials.

DATES: All applications must be postmarked or delivered to RUS no later than February 7, 2003.

Applications will be accepted on publication of this notice.

ADDRESSES: Applications are to be submitted to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 1522, Room 4034 South Building, Washington, DC 20250–1522. Applications should be marked "Attention: High Energy Cost Community Grant Program."

FOR FURTHER INFORMATION CONTACT: Karen Larsen, Management Analyst, U.S. Department of Agriculture, Rural Utilities Service, Electric Program, 1400 Independence Avenue, SW, STOP 1560, Room 4037 South Building, Washington, DC 20250–1560. Telephone 202–720–9545, Fax 202–690–0717, email *HEnergy02@rus.usda.gov.*

SUPPLEMENTARY INFORMATION:

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance Programs (CFDA) as "Assistance to High Energy Cost Rural Communities." The CFDA number assigned to this program is 10.859.

Executive Order 12372

This program is not subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," as implemented under USDA's regulations at 7 CFR part 3015.

Information Collection and Recordkeeping Requirements

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (the "Act"), OMB must approve all "collections of information" by RUS. The Act defines "collection of information" as a requirement for "answer to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *." (44 U.S.C. 3502(3)(A).) RUS has determined that it is likely that fewer than ten applications will be received because of stringent eligibility requirements. Therefore, this NOFA does not involve the imposition of identical reporting and recordkeeping requirements on ten or more persons and does not require approval under the Act. If RUS receives ten or more applications in response to this NOFA, the Agency will submit a request for approval under the Paperwork Reduction Act.

Background

RUS is making available $14.9 million in competitive grants through a new financial assistance program under the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) (the "RE Act"). Under section 19 of the RE Act (7 U.S.C. 918a), RUS is authorized to make grants to "acquire, construct, extend, upgrade, and otherwise improve energy generation, transmission, or distribution facilities" serving communities in which the average residential expenditure for home energy is at least 275 percent of the national average residential expenditure for home energy."

The purpose of this new program is to provide financial assistance for a broad range of energy facilities, equipment and related activities to offset the impacts of extremely high residential energy costs on eligible communities. Grants funds may be used to "acquire, construct, extend, upgrade and otherwise improve energy generation, transmission, or distribution facilities', serving extremely high energy cost communities. Eligible facilities include on-grid and off-grid renewable energy systems and implementation of cost-effective demand side management and energy conservation programs that benefit eligible communities.

Eligible applicants include "persons, States, political subdivisions of States, and other entities organized under the laws of States." Under section 13 of the RE Act (7 U.S.C. 913) "the term person shall be deemed to mean any natural person, firm, corporation, or association." Indian tribes and tribal entities are eligible applicants and beneficiaries under this program.

No cost sharing or matching funds are required as a condition of eligibility under this grant program. However, RUS will consider other financial resources available to the grantee and any voluntary commitment of matching funds or other contributions in assessing the grantee's capacity to carry out the grant program successfully and will award additional evaluation points to proposals that include such contributions.

As a further condition of each grant, section 19(b)(2) of the RE Act requires that planning and administrative expenses may not exceed 4 percent of the grant funds.

This NOFA provides an overview of the grant program, eligibility and application requirements, and selection criteria. Applicants should consult the detailed grant Application Guide for additional information on application requirements and copies of all required forms and certifications. The Application Guide is available on the Internet from the RUS Web site at *<http://www.usda.gov/rus/electric/hecgp/index.htm>*. The application guide may also be requested from the Agency contact listed above.

Definitions

As used in this NOFA:

Administrator means the Administrator of the RUS.

Agency means the Rural Utilities Service.

Application Guide means the Application Guide prepared by RUS for the High Energy Cost Grant program containing detailed instructions for determining eligibility and preparing grant applications, and copies of required forms, questionnaires, and model certifications.

Census block means the smallest geographic entity for which the Census Bureau collects and tabulates decennial census information and which are defined by boundaries shown on census maps.

Census designated place (CDP) means a statistical entity recognized by the U.S. Census comprising a dense concentration of population that is not within an incorporated place but is locally identified by a name and with boundaries defined on census maps.

Extremely high energy costs means local community average residential energy costs that are at least 275 percent of one or more home energy cost benchmarks identified by RUS based on the national average residential energy expenditures as reported by the Energy Information Administration (EIA).

Home energy means any energy source or fuel used by a household including electricity, natural gas, fuel oil, kerosene, liquefied petroleum gas (propane), other petroleum products, wood and other biomass fuels, coal, wind, and solar energy. Fuels used for subsistence activities in remote rural areas are also included. Other transportation fuel uses are not included, however.

Home energy cost benchmarks means the criteria established by RUS for eligibility as an extremely high energy cost community. Home energy cost benchmarks are calculated for total annual household energy expenditures;

total annual expenditures for individual fuels; annual average per unit energy costs for primary home energy sources at 275 percent of EIA estimates of national average residential energy expenditure.

Indian Tribe means a Federally recognized tribe as defined under section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) to include "* * *any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

Person means any natural person, firm, corporation, or association and for purposes of this notice, includes Indian tribes and tribal entities.

Primary home energy source means the energy source that is used for space heating or cooling, water heating, cooking, and lighting. A household or community may have more than one primary home energy source.

State rural development initiative means a rural economic development program funded by or carried out in cooperation with a State agency.

Target area means the geographic area to be served by the grant.

Target community means the unit or units of local government in which the target area is located.

Tribal entity means a legal entity that is owned, controlled, sanctioned, or chartered by the recognized governing body of an Indian tribe as defined in this NOFA.

Award Information

The total amount of funds available for grants under this notice is $14.9 million. The number of grants awarded under this NOFA will depend on the number of applications submitted, the amount of grant funds requested, and the quality and competitiveness of applications submitted.

The funding instrument available under this NOFA will be a grant agreement. Grants awarded under this notice must comply with all applicable USDA and Federal regulations concerning financial assistance, with the terms of this notice, and with the requirements of section 19 of the RE Act. Grants made under this NOFA will be administered under and are subject to USDA financial assistance regulations at 7 CFR parts 3015, 3016, 3017, 3018, 3019, and 3052, as applicable. The maximum amount of grant assistance that will be considered for funding in a grant application under this notice is $5,000,000. The minimum amount of assistance for a grant application under this program is $75,000. The award period will generally be for 36 months, however, longer periods may be approved depending on the project involved.

All timely submitted and complete applications will be reviewed for eligibility and rated according to the criteria described in this NOFA. Applications will be ranked in order of their numerical scores on the rating criteria and forwarded to the RUS Administrator. The Administrator will review the rankings and the recommendations of the rating panels. The RUS Administrator will then fund grant applications in rank order.

RUS reserves the right not to award any or all the funds made available under this notice, if in the sole opinion of the Administrator, the grant proposals submitted are not deemed feasible. RUS also reserves the right to partially fund grants if grant applications exceed the available funds. RUS will advise applicants if it cannot fully fund a grant request.

Eligible Projects

Grantees must use grant funds to acquire, construct, extend, upgrade, or otherwise improve energy generation, transmission, or distribution facilities serving eligible communities. All energy generation, transmission, and distribution facilities, equipment, and associated services used to provide electricity, natural gas, home heating fuels, and other residential energy service are eligible. On-grid and off-grid renewable energy projects, and energy efficiency, and energy conservation projects that serve eligible communities are included.

Grants may cover up to the full costs of any eligible projects subject to the statutory condition that no more than 4 percent of grant funds may be used for the planning and administrative expenses of the grantee.

The project must serve communities that meet the extremely high energy cost eligibility requirements described in this NOFA. The grantee must demonstrate that the proposed project will benefit eligible communities. Additional information on eligible activities is contained in the Application Guide.

Ineligible Grant Purposes

Grant funds cannot be used for: preparation of the grant application, fuel purchases, routine maintenance or other operating costs, and purchase of equipment, structures, or real estate not directly associated with provision of residential energy services. In general, grant funds may not be used to support projects that primarily benefit areas outside of eligible target communities. However, grant funds may be used to finance an eligible target community's proportionate share of a larger energy project.

Consistent with USDA policy, grant funds awarded under this program generally cannot be used to replace other USDA assistance or to refinance or repay outstanding RUS loans. Grant funds may, however, be used in combination with other USDA assistance programs including RUS loans. Grants may be applied toward grantee contributions under other USDA programs depending on the terms of those programs. For example, an applicant may propose to use grant funds to offset the costs of electric system improvements in extremely high cost areas and as a cost contribution as part of the utility's expansion of its distribution system financed in whole or part by an RUS electric loan. An applicant may propose to finance a portion of an energy project for an extremely high energy cost community through this grant program and secure the remaining project costs through a loan or loan guarantee or grant from RUS or other sources.

Each grant applicant must demonstrate the economic and technical feasibility of its proposed project. Activities or equipment that would commonly be considered as research and development activities, or commercial demonstration projects for new energy technologies will not be considered as technologically feasible projects and would, thus, be ineligible grant purposes. However, grant funds may be used for projects that involve the innovative use or adaptation of energy-related technologies that have been commercially proven.

Eligible Applicants

Under Section 19 eligible applicants include "persons, States, political subdivisions of States, and other entities organized under the laws of States" (7 U.S.C. 918a). Under section 13 of the RE Act, the term "person" means "any natural person, firm, corporation, or association" (7 U.S.C. 913). Examples of eligible applicants include: for-profit and nonprofit organizations, including corporations, associations, partnerships (including limited liability partnerships), cooperatives, trusts, and sole proprietorships; State and local governments, counties, cities, towns, boroughs, or other agencies or units of State or local governments; Indian tribes, other tribal entities, Alaska Native Corporations; and individuals.

An individual is an eligible applicant under this program, however, the proposed grant project must provide community benefits and not be for the sole benefit of an individual applicant.

All applicants must demonstrate the legal capacity to enter into a binding grant agreement with the Federal Government at the time of the award and to carry out the proposed grant funded project according to its terms.

Eligible Communities

The grant project must benefit communities with extremely high energy costs. The RE Act defines an extremely high energy cost community as one in which "the average residential expenditure for home energy is at least 275 percent of the national average residential expenditure for home energy" as determined by the Energy Information Administration (EIA) using the most recent data available. 7 U.S.C. 918a.

The statutory requirement that community residential expenditures for home energy exceed 275 percent of national average establishes a very high threshold for eligibility under this program. RUS has calculated high energy cost benchmarks based on EIA national average home energy expenditure data. Communities must meet one or more high energy cost benchmarks to qualify as an eligible beneficiary of a grant under this program. Based on available published information on residential energy costs, RUS anticipates that only those communities with the highest energy costs across the country will qualify under this congressionally-mandated standard.

The EIA's Residential Energy Consumption and Expenditure Surveys (RECS) and reports provide the baseline national average household energy costs that were used by RUS for establishing extremely high energy cost community eligibility criteria for this grant program. The RECS data base and reports provide national and regional information on residential energy use, expenditures, and housing characteristics. The latest available RECS home energy expenditure estimates are based on 1997 survey data and are shown in Table 1.

TABLE 1.—EIA AVERAGE ANNUAL HOUSEHOLD ENERGY EXPENDITURES AND RUS EXTREMELY HIGH ENERGY COST ELIGIBILITY CRITERIA BENCHMARKS

Fuel	Average total consumption	National average	Extremely high energy cost benchmark
Average annual household expenditure:			
Electricity	10,219 kilowatt hours (kWh)	$871 per year	$2,341 per year
Natural Gas	83 thousand cubic feet	579 per year	1,547 per year
Fuel Oil	730 gallons	714 per year	1,870 per year
LPG/Propane	488 gallons	500 per year	1,266 per year
Total Household Energy Use	101 million Btus	1,338 per year	3,613 per year
Annual average per unit residential energy costs:			
Electricity		0.085 per kWh	0.229 per kWh
Natural Gas		6.96 per thousand cubic feet	18.78 per thousand cubic feet
Fuel Oil		0.96 per gallon	2.62 per gallon
LPG/Propane		1.03 per gallon	2.72 per gallon
Total Household Energy cost per Btus.		13.25 per million Btus	36.10 per million Btus

Sources: U.S. Department of Energy, Energy Information Administration, Residential Energy Consumption and Expenditure Surveys 1997. The RUS benchmarks calculations include adjustments to reflect the uncertainties inherent in EIA's statistical methodology for estimating home energy costs. The benchmarks are set based on the EIA's lower range estimates using the specified EIA methods.

Extremely high energy costs in rural and remote communities typically result from a combination of factors. The most prevalent include high energy consumption, high per unit energy costs in local markets, limited availability of energy sources, extreme climate conditions, and housing characteristics. The relative impacts of these conditions exhibit regional and seasonal diversity. Market factors have created an additional complication in recent years as the prices of the major commercial residential energy sources—electricity, fuel oil, natural gas, and LPG/propane—have fluctuated dramatically in some areas.

RUS has established community eligibility criteria based on EIA's estimates of national average residential energy expenditures. Table 1 shows the national averages and RUS benchmark criteria for extremely high energy costs. The applicant must demonstrate that each community in the grant's proposed target area exceeds one or more of these high energy cost benchmarks to be eligible for assistance under this program.

RUS High Energy Cost Benchmarks.

The benchmarks measure extremely high energy costs for residential consumers. These benchmarks were calculated using EIA's estimates of national average residential energy expenditures per household and by primary home energy source. The benchmarks recognize the diverse factors that contribute to extremely high home energy costs in rural communities. The benchmarks allow extremely high energy cost communities several alternatives for demonstrating eligibility. Communities may qualify based on: total annual household energy expenditures; total annual expenditures for commercially-supplied primary home energy sources, *i.e.*, electricity, natural gas, oil, or propane; or average annual per unit home energy costs. By providing alternative measures for demonstrating eligibility, the benchmarks reduce the burden on potential applicants created by the limited public availability of comprehensive data on local community energy consumption and expenditures.

RUS is adopting the following high energy cost benchmarks as eligibility criteria for competitive grant applications submitted in response to this NOFA. A target community or target area will qualify as an extremely high cost energy community if it meets

one or more of the energy cost benchmarks described below.

1. *Extremely High Average Annual Household Expenditure For Home Energy.* The target area or community exceeds one or more of the following:

- Average annual residential electricity expenditure of $2,341 per household;
- Average annual residential natural gas expenditure of $1,547 per household;
- Average annual residential expenditure on fuel oil of $1,870 per household;
- Average annual residential expenditure on propane or liquefied petroleum gas (LPG) as a primary home energy source of $1,266 per household; or
- Average annual residential energy expenditure (for all non-transportation uses) of $3,613 per household.

2. *Extremely High Average per unit energy costs.* The average residential per unit cost for major commercial energy sources in the target area or community exceeds one or more of the following:

- Annual average revenues per kilowatt hour for residential electricity customers of $0.229 per kilowatt hour (kWh);
- Annual average residential natural gas price of $18.78 per thousand cubic feet;
- Annual average residential fuel oil price of $2.62 per gallon;
- Annual average residential price of propane or LPG as a primary home energy source of $2.72 per gallon; or
- Total annual average residential energy cost on a Btu basis of $36.13 per million Btu.[1]

Supporting Energy Cost Data

The applicant must include information that demonstrates its eligibility under the RUS high energy cost benchmarks for the target communities and the target areas. The applicant must supply documentation or references for its sources for actual or estimated home energy expenditures or equivalent measures to support eligibility. Generally, the applicant will be expected to use historical residential energy cost or expenditure information for the local energy provider serving the target community or target area to determine eligibility. Other potential sources of home energy related information include Federal and State agencies, local community energy providers such as electric and natural gas utilities and fuel dealers, and commercial publications. The Application Guide includes a list of EIA resources on residential energy consumption and costs that may be of assistance.

The grant applicant must establish eligibility for each community in the project's target area. To determine eligibility, the applicant must identify each community included in whole or in part within the target areas and provide supporting actual or estimated energy expenditure data for each community. The smallest area that may be designated as a target area is a 2000 Census block. This minimum size is necessary to enable a determination of population size.

Potential applicants can compare the RUS benchmark criteria to available information about local energy use and costs to determine their eligibility. Applicants should demonstrate their eligibility using historical energy use and cost information. Where such information is unavailable or does not adequately reflect the actual costs of supporting average home energy use in a local community, RUS will consider estimated commercial energy costs. The Application Guide includes examples of circumstances where estimated energy costs are used.

EIA does not collect or maintain data on home energy expenditures in sufficient detail to identify specific rural localities as extremely high energy cost communities. Therefore, grant applicants will have to provide information on local community energy costs from other sources to support their applications.

In many instances, historical community energy cost information can be obtained from a variety of public sources or from local utilities and other energy providers. For example, EIA publishes monthly and annual reports of residential prices by State and by service area for electric utilities and larger natural gas distribution companies. Average residential fuel oil and propane prices are reported regionally and for major cities by government and private publications. Many State agencies also compile and publish information on residential energy costs to support State programs.

Use of Estimated Home Energy Costs

Where historical community energy cost data are incomplete or lacking or where community-wide data do not accurately reflect the costs of providing home energy services in the target area, the applicant may substitute estimates based on engineering standards. The estimates should use available community, local, or regional data on energy expenditures, consumption, housing characteristics and population. Estimates are also appropriate where the target area does not presently have centralized commercial energy services at a level that is comparable to other residential customers in the State or region. For example, local commercial energy cost information may not be available where the target area is without local electric service because of the high costs of connection. Engineering cost estimates reflecting the incremental costs of extending service could reasonably be used to establish eligibility for areas without grid-connected electric service. Estimates also may be appropriate where historical energy costs do not reflect the costs of providing a necessary upgrade or replacement of energy infrastructure to maintain or extend service that would raise costs above one or more of benchmarks.

Information to support high energy cost eligibility is subject to independent review by RUS. Applications that contain information that is not reasonably based on credible sources of information and sound estimates will be rejected. Where appropriate, RUS may consult standard sources to confirm the reasonableness of information and estimates provided by applicants in determining eligibility, technical feasibility, and adequacy of proposed budget estimates.

Coordination With State Rural Development Initiatives

USDA encourages the coordination of grant projects under this program with State rural development initiatives. There is no requirement that the grant proposal receive the concurrence or approval of State officials as a condition of eligibility under this program. RUS will, however, award additional priority points to proposals that are coordinated with and support rural development initiatives within a State. The Applicant should describe how the proposed project will support State rural development initiatives and provide documentation evidencing any concurrence or endorsement by State rural development officials.

If an Applicant is an entity directly involved in rural development efforts, such as a State, local, or tribal rural development agency or a participant in an existing USDA Rural Development program, the Applicant may qualify for additional points by describing how its proposed project supports its efforts.

[1] **Note:** Btu is the abbreviation for British Thermal Unit, a standard energy measure. A Btu is the quantity of heat needed to raise the temperature of one pound of water 1 degree Fahrenheit at or near 39.2 degrees Fahrenheit. In estimating average household per unit energy cost on a Btu basis, the costs of different home energy sources are converted to a standard Btu basis. The Application Guide contains additional information on calculating per unit costs on a Btu basis for major home energy sources.

How To Apply

All applications must be prepared and submitted in compliance with this NOFA and the Application Guide. The Application Guide contains additional information on the grant program and sources of information for use in preparing applications and copies of the required application forms. The Guide may be downloaded from RUS Web site <*http://www.usda.gov/rus/electric/hecgp/index.htm*> or requested from RUS.

How To Request An Application Package

Application packages, including required forms, may be requested from: Karen Larsen, Management Analyst, U.S. Department of Agriculture, Rural Utilities Service, Electric Program, 1400 Independence Avenue, SW, STOP 1560, Room 4037 South Building, Washington, DC 20250–1560. Telephone 202–720–9545, Fax 202–690–0717, email *HEnergy02@rus.usda.gov.*

What To Include In The Application

Applicants should follow the directions in this notice and the Application Guide in preparing their applications. The completed application should be assembled in the order specified with all pages numbered sequentially or by section. The applicant must submit the following information for the application to be complete and considered for funding:

Part A. A Completed SF 424, "Application for Federal Assistance." This form must be signed by a person authorized to submit the proposal on behalf of the applicant.

Part B. Grant Proposal. The grant proposal is a narrative description prepared by the applicant that establishes the applicant's eligibility, identifies the eligible extremely high energy cost communities to be served by the grant, and describes the proposed grant project, the potential benefits of the project, and a proposed budget. The grant proposal should contain the following sections in the order indicated.

1. Executive Summary. The Executive Summary is a one to two page narrative summary that: (a) Identifies the applicant, project title, and the key contact person with telephone and fax numbers, mailing address and email address; (b) specifies the amount of grant funds requested; (c) provides a brief description of the proposed program including the eligible rural communities and residents to be served, activities and facilities to be financed, and how the grant project will offset or reduce the target community's extremely high energy costs; and (d) identifies the associated rural development initiative that the project supports. The Executive Summary should also indicate whether the applicant is claiming additional points under any of the criteria designated as USDA priorities under this NOFA.

2. Table of Contents: The application package must include a table of contents immediately after the Executive Summary with page numbers for all required sections, forms, and appendices.

3. Applicant Eligibility: This section includes a narrative statement that identifies the applicant and supporting evidence establishing that the applicant has or will have the legal authority to enter into a financial assistance relationship with the Federal Government. Examples of supporting evidence of applicant's legal existence and eligibility include: a reference to or copy of the relevant statute, regulation, executive order, or legal opinion authorizing a State, local, or tribal government program, articles of incorporation or certificates of incorporation for corporate applicants, partnership or trust agreements, board resolutions. Applicants must also be free of any debarment or other restriction on their ability to contract with the Federal Government.

4. Community Eligibility: This section provides a narrative description of the community or communities to be served by the grant and supporting information to establish eligibility. The narrative must show that the proposed grant project's target area or areas are located in one or more communities where the average residential energy costs exceed one or more of the benchmark criteria for extremely high energy costs as described in this NOFA. The narrative should clearly identify the location and population of the areas to be aided by the grant project and their energy costs and the population of the local government division in which they are located. Local energy providers and sources of high energy cost data and estimates should be clearly identified. Neither the applicant nor the project must be physically located in the extremely high energy cost community, but the funded project must serve an eligible community.

The population estimates should be based on the results of the 2000 Census available from the U.S. Census Bureau. Additional information and exhibits supporting eligibility may include maps, summary tables, and references to statistical information from the U.S. Census, the Energy Information Administration, other Federal and State agencies, or private sources. The Application Guide includes additional information and sources that the applicant may find useful in establishing community eligibility.

5. Coordination With State Rural Development Initiatives: In this section the applicant must describe how the proposed grant will be coordinated with rural development efforts. The Applicant should provide supporting references or documentation.

6. Project Overview: This section includes the applicant's narrative overview of its proposed project. The narrative must address the following:

a. *Project Design:* This section must provide a narrative description of the project including a proposed scope of work identifying major tasks and proposed schedules for task completion, a detailed description of the equipment, facilities and associated activities to be financed with grant funds, the location of the eligible extremely high energy cost communities to be served, and an estimate of the overall duration of the project. The Project Design description should be sufficiently detailed to support a finding of technical feasibility. Proposed projects involving construction, repair, replacement, or improvement of electric generation, transmission, and distribution facilities must generally be consistent with the standards and requirements for projects financed with RUS loans and loan guarantees as set forth in RUS Electric Program Regulations and Bulletins and may reference these requirements.

b. *Project Management:* This section must provide a narrative describing the applicant's capabilities and project management plans. The description should address the applicant's organizational structure, method of funding, legal authority, key personnel, project management experience, staff resources, the goals and objectives of the program or business, and any related services provided to the project beneficiaries. A current financial statement and other supporting documentation may be referenced here and included under the Supplementary Material section. If the applicant proposes to use affiliated entities, contractors, or subcontractors to provide services funded under the grant, the applicant must describe the identities, relationship, qualifications, and experience of these affiliated entities. The experience and capabilities of these entities will be reviewed by the rating panel. If the applicant proposes to

secure equipment, design, construction, or other services from non-affiliated entities, the applicant must briefly describe how it plans to procure and/or contract for such equipment or services. The Applicant should provide information that will support a finding that the combination of management team's experience, resources and project structure will enable successful completion of the project.

c. *Regulatory and other approvals:* The applicant must identify any other regulatory or other approvals required by other Federal, State, local, or tribal agencies, or by private entities as a condition of financing that are necessary to carry out the proposed grant project and its estimated schedule for obtaining the necessary approvals.

d. *Benefits of the proposed project:* The applicant should describe how the proposed project would benefit the target area and eligible communities. The description must specifically address how the project will improve energy generation, transmission, or distribution facilities serving the target area. The applicant should clearly identify how the project addresses the energy needs of the community and include appropriate measures of project success such as, for example, expected reductions in household or community energy costs, avoided cost increases, enhanced reliability, or economic or social benefits from improvements in energy services available to the target community. The applicant should include quantitative estimates of cost or energy savings and other benefits. The applicant should provide documentation or references to support its statements about cost-effectiveness savings and improved services. The applicant should also describe how it plans to measure and monitor the effectiveness of the program in delivering its projected benefits.

7. Proposed Project Budget: The applicant must submit a proposed budget for the grant program on SF 424A, "Budget Information—Non-Construction Programs" or SF–424C, "Standard Form for Budget Information-Construction Programs," as applicable. The budget must document that planned administrative and other expenses of the project sponsor will not total more than 4 percent of grant funds. The applicant must also identify the source and amount of any other contributions of funds or services that will be used to support the proposed project. This program does not require supplemental or matching funds for eligibility, however RUS will award additional rating points for programs that include a match of other funds or like-kind contributions to support the project.

8. Supplementary Material: The applicant may append any additional information relevant to the proposal or which may qualify the application for extra points under the evaluation criteria described in this NOFA.

Part C. Additional Required Forms and Certifications: In order to establish compliance with other Federal requirements for financial assistance, the Applicant must execute and submit with the initial application the following forms and certifications:

- SF 424B, "Assurances—Non-Construction Programs" or SF 424D, "Assurances—Construction Programs" (as applicable).
- SF LLL, "Disclosure of Lobbying Activities."
- Drug-free Workplace Certification: Form AD–1049, "Certification Regarding Drug-free Workplace Requirements for Grantees other than Individuals;" Form AD–1050, "Certification Regarding Drug-free Workplace Requirements for Individuals;" or Form AD–1052, "Certification Regarding Drug-free Workplace Requirements, States and State Agencies." (State applicants that have already submitted this certification to USDA may reference their prior filing and need not submit a new certification.)
- "Certification Regarding Debarment, Suspension and Other Responsibility Matter—Primary Covered Transactions" as required under 7 CFR part 3017, Appendix A. Certifications for individuals, corporations, nonprofit entities, Indian tribes, partnerships.
- Environmental Profile. The environmental profile included in the Application Guide solicits information about project characteristics and site-specific conditions that may involve environmental, historic preservation, and other resources. The profile will be used by RUS to identify selected projects that may require additional environmental reviews, assessments, or environmental impact statements before a final grant award may be approved. A copy of the environmental profile and instructions for completion are included in the Application Guide.

Submitting the Application

Applicants must submit one original application that includes original signatures on all required forms and certifications and two copies. Applications should be submitted on 8½ by 11 inch white paper. Supplemental materials, such as maps, charts, plans, and photographs may exceed this size requirement.

A completed application must contain all required parts in the order indicated in the above section on "What to Include in the Application." The application package should be paginated either sequentially or by section.

The completed application package and two copies must be delivered to RUS headquarters in Washington, DC at the address listed at the beginning of this notice using United States Mail, overnight delivery service, or by hand. At this time, RUS is not able to accept applications online, by email or fax. Applicants should be advised that regular mail deliveries to Federal Agencies, especially of oversized packages and envelopes, continues to be delayed because of increased security screening requirements. Applicants may wish to consider using Express Mail or a commercial overnight delivery service instead of regular mail. Applicants wishing to hand deliver or use courier services for delivery should contact the Agency representative in advance to arrange for building access. RUS advises applicants that because of intensified security procedures at government facilities that any electronic media included in an application package may be damaged during security screening. If an applicant wishes to submit such materials, they should contact the agency representative for additional information.

Deadline for Submission and Late Applications

Applications must be postmarked or delivered to RUS by February 7, 2003. RUS will begin accepting applications on the date of publication of this NOFA. RUS will accept for review all applications postmarked or delivered to RUS by this deadline. Late applications will not be considered and will be returned to the Applicant.

Disclosure of Information

All material submitted by the applicant may be made available to the public in accordance with the Freedom of Information Act (5 U.S.C. 552) and USDA's implementing regulations at 7 CFR Part 1.

Review of Applications

All applications for grants must be delivered to RUS at the address listed above or postmarked no later than February 7, 2003 to be eligible for grant funding. After the deadline has passed, RUS will review each application to determine whether it is complete and meets all of the eligibility requirements described in this NOFA.

After the application closing date, RUS will not consider any unsolicited information from the applicant. RUS may contact the applicant for additional information or to clarify statements in the application required to establish applicant or community eligibility and completeness. Only applications that are complete and meet the eligibility criteria will be considered. RUS will not accept or solicit any additional information relating to the technical merits and/or economic feasibility of the grant proposal after the application closing date.

RUS may establish one or more rating panels to review and rate the grant applications. These panels may include persons not currently employed by USDA.

The panel will evaluate and rate all complete applications that meet the eligibility requirements using the selection criteria and weights described in this NOFA. As part of the proposal review and ranking process, panel members may make comments and recommendations for appropriate conditions on grant awards to promote successful performance of the grant or to assure compliance with other Federal requirements. The decision to include panel recommendations on grant conditions in any grant award will be at the sole discretion of the Administrator.

RUS will use the ratings and recommendations of the panel(s) to rank applicants against other applicants. The rankings and recommendations will then be forwarded to the Administrator for final review and selection.

Decisions on grant awards will be made by the RUS Administrator based on the application, and the rankings and recommendations of the rating panel. The Administrator will fund grant requests in rank order to the extent of available funds

Selection Criteria and Weights

RUS will use the selection criteria described in this NOFA to evaluate and rate applications and will award points up to the maximum number indicated under each criterion. Applicants should carefully read the information on the rating criteria in this NOFA and the Application Guide and address all criteria. The maximum number of points that can be awarded is 100 points. RUS will award up to 65 points for project design and technical merit criteria and up to 35 points based on priority criteria for project or community characteristics that support USDA Rural Development and RUS program priorities.

Project Design and Technical Merit Criteria

Reviewers will consider the soundness of applicant's approach, the technical feasibility of the project, the adequacy of financial and other resources, the competence and experience of the applicant and its team, the project goals and objectives, and community needs and benefits. A total of 65 points may be awarded under these criteria.

A. Comprehensiveness and feasibility of approach. (Up to 30 points) Raters will assess the technical and economic feasibility of the project and how well its goals and objectives address the challenges of the extremely high energy cost community. The panel will review the proposed design, construction, equipment, and materials for the community energy facilities in establishing technical feasibility. Reviewers may propose additional conditions on the grant award to assure that the project is technically sound. Reviewers will consider the adequacy of the applicant's budget and resources to carry out the project as proposed. Reviewers will also evaluate how the applicant proposes to manage available resources such as grant funds, income generated from the facilities, and any other financing sources to maintain and operate a financially viable project once the grant period has ended.

B. Demonstrated experience. (Up to 10 points) Reviewers will consider whether the applicant and its project team have demonstrated experience in successfully administering and carrying out projects that are comparable to that proposed in the grant application. RUS supports and encourages emerging organizations that desire to develop the internal capacity to improve energy services in rural communities. In evaluating the capabilities of entities without extensive experience in carrying out such projects, RUS will consider the experience of the project team and the effectiveness of the program design in compensating for lack of extensive experience.

C. Community Needs. (Up to 15 points) Reviewers will consider the applicant's identification and documentation of eligible communities, their populations, and the applicant's assessment of community energy needs to be addressed by the grant project. Information on the severity of physical and economic challenges affecting eligible communities will be considered. Reviewers will weigh: (1) The applicant's analysis of community energy challenges and (2) why the applicant's proposal presents a greater need for Federal assistance than other competing applications. In assessing the applicant's demonstration of community needs, the rating panel will consider information in the narrative proposal addressing:

(a) the burden placed on the community and individual households by extremely high energy costs as evidenced by such quantitative measures as, for example, total energy expenditures, per unit energy costs, energy cost intensity for occupied space, or energy costs as a share of average household income, and persistence of extremely high energy costs compared to national or statewide averages.

(b) the hardships created by limited access to reliable and affordable energy services; and

(c) the availability of other resources to support or supplement the proposed grant funding.

D. Project Evaluation Methods. (Up to 5 points) Reviewers will consider the applicant's plan to evaluate and report on the success and cost-effectiveness of financed activities and whether the results obtained will contribute to program improvements for the applicant or for other entities interested in similar programs.

E. Coordination with Rural Development Initiatives. (Up to 5 points) Raters will assess how effectively the proposed project is coordinated with State rural development initiatives and is consistent with and supports these efforts. RUS will consider the documentation for coordination efforts, community support, and State or local government recommendations. Applicants should identify the extent to which the project is dependent on or tied to other rural development initiatives, funding, and approvals.

Priority Criteria

In addition to the points awarded for project design and technical merit, all proposals will be reviewed and awarded additional points based on certain characteristics of the project or the target community. USDA Rural Development policies generally encourage agencies to give priority in their programs to rural areas of greatest need and to support other Federal policy initiatives. In furtherance of these policies, RUS will award additional points to smaller communities and areas experiencing economic hardship, persistent poverty, or where community energy services are inadequate or the facilities present an imminent hazard to public health or safety. Priority points will also be awarded for proposals that include cost sharing, or that serve a Federally designated Empowerment

Zone or Enterprise Community (EZ/EC) or a USDA Champion Community. A maximum of 35 total points may be awarded under priority criteria.

1. Economic Hardship. (Up to 10 points) The community experiences one or more economic hardship conditions that impair the ability of the community and/or its residents to provide basic energy services or to reduce or limit the costs of these services. Economic hardship will be assessed using either the objective measure of county median income under A below or subjectively under B based on the Applicant's description of the community's economic hardships and supporting materials. Applicants may elect either measure, but not both.

A. Economically Distressed Communities (up to 10 points). The target community is an economically distressed county where the median household income is significantly below the State average. Points will be awarded based on the county percentage of State median household income according to the following:

(1) Less than 70 percent of the State median household income—10 points;

(2) 70 to 80 percent of the State median household income—8 points; or

(3) 80 to 90 percent of the State median household income—5 points;

(4) 90 to 95 percent of the State median household income—2 points

(5) over 95 percent of the State median household income—0 points

Information on State and county median income is available online from the USDA Economic Research Service at *http://www.ers.usda.gov/data/unemployment/.*

B. Other Economic Hardship (up to 10 points) The community suffers from other conditions creating a severe economic hardship that is adequately described and documented by the Applicant. Examples include but are not limited to natural disasters, financially distressed local industry, loss of major local employer, outmigration, or other condition adversely affecting the local economy, or contributing to unserved or underserved energy infrastructure needs that affect the economic health of the community.

2. Persistent poverty community. (3 points) Persistent poverty counties are those where poverty continues to be a long-term problem. The Economic Research Service (ERS) of.USDA has defined a persistent poverty county as a nonmetropolitan county in which more than 20 percent of the population were below the poverty level in each of the last 4 census years. ERS has made a preliminary identification of over 300 nonmetropolitan counties in which more than 20 percent of the population was below the poverty level in 1970, 1980, 1990, and 2000. A list of the ERS persistent poverty counties can be found in the online Application Guide *http://www.usda.gov/rus/electric/hecgp/counties.htm* or requested from the agency contact. In support of USDA policy, raters will award 3 points to any proposal in which the target area or project is located in a persistent poverty county.

3. Rurality. (Up to 12 points) Consistent with the USDA Rural Development policy to target resources to rural communities with significant needs and recognizing that smaller communities are often comparatively disadvantaged in seeking assistance, RUS reviewers will award additional points based on the rurality (as measured by population) of the target communities to be served with grant funds. Applications will be scored based on the population of the largest incorporated cities, towns, or villages, or census designated places included within the grant's proposed target area.

If the largest target community within the proposed target area has a population of:

(A) 2,500 or less—12 points;

(B) Between 2,501 and 5,000, inclusive 10 points;

(C) Between 5,001 and 10,000, inclusive 8 points;

(D) Between 10,001 and 15,000, inclusive 5 points;

(E) Between 15, 001 and 20,000, inclusive 2 points;

(F) Above 20,000, 0 points.

Applicants must use the latest available population figures from Census 2000 available at *http://www.census.gov/main/www/cen2000.html* for every incorporated city, town, or village, or Census designated place included in the target area.

4. Unserved Energy Needs (2 points) Consistent with the purposes of the RE Act, projects that meet unserved or underserved energy needs will be eligible for 2 points. Examples of proposals that may qualify under this priority include projects that extend or improve electric or other energy services to communities and customers that do not have reliable centralized or commercial service or where many homes remain without such service because the costs are unaffordable.

5. Imminent hazard (2 points) If the grant proposal involves a project to correct a condition posing an imminent hazard to public safety, welfare, the environment, or to a critical community or residential energy facility, raters may award 2 points. Examples include community energy facilities in immediate danger of failure because of deteriorated condition, capacity limitations, damage from natural disasters or accidents, or other conditions where failure would create a substantial threat to public health or safety, or to the environment.

6. Cost Sharing (2 points) This grant program does not require any cost contribution. In addition to their assessment of the economic feasibility and sustainability of the project under the project evaluation factors above, raters may award 2 points for cost sharing. These points will be awarded when the proposal documents that supplemental contributions of funds, property, equipment, services, or other in kind contributions that support the project and demonstrate the applicant's and/or community's commitment to the project exceed 10 percent of project costs.

7. Empowerment Zone and Enterprise Community (EC/EZ) or Champion Community (up to 4 points) If the proposed project serves at least one community that is a Federally-identified Empowerment Zone and Enterprise Community (EC/EZ Community), 4 points will be awarded. The list of currently approved EC/EZ communities may be found at the EZ/EC Web site at: *http://www.ezec.gov* or may be requested from the agency contact.

If the proposed project serves at least one community that is a USDA identified "Champion Community," 2 points will be awarded. The list of currently approved USDA champion communities may be found at the EZ/EC Web site at: *http://www.ezec.gov* or may be requested from the agency contact.

Scoring and Ranking of Applications

Following the evaluation and rating of individual applications under the above criteria, the rating panels will rank the applications in order according to their total scores. The scored and ranked applications and the raters' comments will then be forwarded to the Administrator for review and selection of grant awards.

Selection of Grant Awards and Notification of Applicants

The RUS Administrator will review the rankings and recommendations of the applications provided by the rating panels for consistency with the requirements of this NOFA. The Administrator may return any application to the rating panel with written instruction for reconsideration if, in her sole discretion, she finds that the scoring of an application is inconsistent with this NOFA and the directions provided to the rating panel.

Following any adjustments to the project rankings as a result of reconsideration, the Administrator will select projects for funding in rank order. If funds remain after funding the highest ranking application, RUS may fund all or part of the next highest ranking application. RUS will advise an applicant if it cannot fully fund a grant request.

The Administrator may decide based on the recommendations of the rating panel or in her sole discretion that a grant award may be made fully or partially contingent upon the applicant satisfying certain conditions or providing additional information and analyses. For example, RUS may defer approving a final award to a selected project—such as projects requiring more extensive environmental review and mitigation, preparation of detailed site specific engineering studies and designs, or requiring local permitting, or availability of supplemental financing—until any additional conditions are satisfied. In the event that a selected applicant fails to comply with the additional conditions within the time set by RUS, the selection will be vacated and the next ranking project will be considered.

If a selected applicant turns down a grant award offer, or fails to conclude a grant agreement acceptable to RUS, or to provide required information requested by RUS within the time period established in the notification of selection for grant award, the RUS Administrator may select for funding the next highest ranking application submitted in response to this NOFA. If funds remain after all selections have been made, remaining funds will be carried over and made available in future awards under the High Energy Cost Grant Programs.

RUS will notify each Applicant in writing whether or not it has been selected for an award. RUS's written notice to a successful applicant of the amount of the grant award based on the approved application will constitute RUS's preliminary approval, subject to compliance with all post-selection requirements including but not limited to completion of any environmental reviews and negotiation and execution of a grant agreement satisfactory to RUS. Preliminary approval does not bind the Government to making a final grant award. Only a final grant award and agreement executed by the Administrator will constitute a binding obligation and commitment of Federal funds. Funds will not be awarded or disbursed until all requirements have been satisfied. RUS will advise selected applicants of additional requirements or conditions.

Adjustments to Funding

RUS reserves the right to fund less than the full amount requested in a grant application to ensure the fair distribution of the funds and to ensure that the purposes of a specific program are met. RUS will not fund any portion of a grant request that is not eligible for funding under Federal statutory or regulatory requirements; that does not meet the requirements of this NOFA, or that may duplicate other RUS funded activities, including electric loans. Only the eligible portions of a successful grant application will be funded.

Grant assistance cannot exceed the lower of:

(a) The qualifying percentage of eligible project costs requested by the Applicant; or

(b) The minimum amount sufficient to provide for the economic feasibility of the project as determined by RUS.

Other Grantee Requirements

RUS will notify successful grantees of their selection. Successful applicants will be required to execute a grant agreement acceptable to RUS and complete additional grant forms and certifications required by USDA. The grantee will provide periodic financial and performance reports as required by RUS and submit a final project performance report. Depending on the nature of the activities proposed by the application, the grantee may be asked to provide information and certifications necessary for compliance with RUS environmental policy regulations and procedures at 7 CFR part 1794.

RUS will require each successful applicant to agree to the specific terms of each grant agreement, a project budget, and other RUS requirements. In cases where RUS cannot successfully conclude negotiations with a selected applicant or a selected applicant fails to provide RUS with requested information within the time specified, an award will not be made to that applicant. The selection will be revoked and RUS may offer an award to the next highest ranking applicant, and proceed with negotiations with the next highest ranking applicant.

Environmental Review and Restriction on Certain Activities

Grant awards are required to comply with 7 CFR part 1794, which sets forth RUS regulations implementing the National Environmental Policy Act (NEPA). Grantees must also agree to comply with any other Federal or State environmental laws and regulations applicable to the grant project.

If the proposed grant project involves physical development activities or property acquisition, the Applicant is generally prohibited from acquiring, rehabilitating, converting, leasing, repairing or constructing property, or committing or expending RUS or non-RUS funds for proposed grant activities until RUS has completed any environmental review in accordance with 7 CFR part 1794 or determined that no environmental review is required. Successful applicants will be advised whether additional environmental review and requirements apply to their proposals.

Other Federal Requirements

Other Federal statutes and regulations apply to grant applications and to grant awards. These include, but are not limited to, requirements under 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

Certain OMB circulars also apply to USDA grant programs and must be followed by a grantee under this program. The policies, guidance, and requirements of the following may apply to the award, acceptance and use of assistance under this program and to the remedies for noncompliance, except when inconsistent with the provisions of the Agriculture, Rural Development and Related Agencies Appropriations Acts, other Federal statutes or the provisions of this NOFA:

OMB Circular No. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments);

- OMB Circular A–21 (Cost Principles for Education Institutions);
- OMB Circular No. A–122 (Cost Principles for Nonprofit Organizations);
- OMB Circular A–133 (Audits of States, Local Governments, and Non-Profit Organizations);
- 7 CFR part 3015 (Uniform Federal Assistance Regulations);
- 7 CFR part 3016 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally recognized Indian tribal governments);
- 7 CFR part 3017 (Governmentwide debarment and suspension (non-procurement) and governmentwide requirements for drug-free workplace (grants));
- 7 CFR part 3018 (New restrictions on Lobbying);
- 7 CFR part 3019 (Uniform administrative requirements for grants

and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations); and

• 7 CFR part 3052 (Audits of States, local governments, and non-profit organizations).

Compliance with additional OMB Circulars or government-wide regulations may be specified in the grant agreement.

Dated: December 4, 2002.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–31056 Filed 12–6–02; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: Commission on Civil Rights.

DATE AND TIME: Friday, December 13, 2002, 8:30 a.m.

PLACE: New York Marriott Brooklyn Hotel, 333 Adams Street, New York, NY 11201.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of November 15, 2002 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments for Indiana and Massachusetts
VI. Presentations from individuals and organizational representatives on Civil Rights Issues Facing Immigrants in New York City
VII. Presentations from New York State Advisory Committee Members
VIII. Future Agenda Items

FOR FURTHER INFORMATION CONTACT: Les Jin, Press and Communications (202) 376–7700.

Debra A. Carr,

Deputy General Counsel.

[FR Doc. 02–31146 Filed 12–5–02; 12:07 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 55–2002]

Foreign-Trade Zone 222—Montgomery, AL, Application for Subzone Status, Hyundai Motor Manufacturing Alabama, LLC, Plant (Motor Vehicles), Montgomery, AL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Montgomery Area Chamber of Commerce, grantee of FTZ 222, requesting special-purpose subzone status for the motor vehicle manufacturing plant of Hyundai Motor Manufacturing Alabama, LLC, (HMM)(a subsidiary of Hyundai Motor Co., of South Korea) located in Montgomery, Alabama. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 27, 2002.

The HMM plant (1,752 acres/2.1 million sq.ft.) is to be located at 1500 Montgomery County Road 42 (Teague Road), between Interstate 65 and the main line of the CSX Railroad, in Montgomery (Montgomery County), Alabama. The facility, currently under construction, will be used to produce light-duty passenger vehicles (sedans, sport utility vehicles, minivans) for export and the domestic market. At full capacity, the facility (about 2,000 employees) will manufacture up to approximately 250,000 vehicles annually. Components to be purchased from abroad (representing approximately 45% of vehicle material value) would include: diesel and gasoline engines and parts thereof, pumps, oils, compressors, air conditioner components, filters, paint, flexible tubes/hoses, self-adhesive plastic or polyurethane sheets/foil/film, labels, rubber belts, tires, seats, safety glass, engines and parts of engines, mirrors, flat-rolled steel (would be admitted under privileged foreign status (19 CFR 146.41)), stranded wire of steel and copper, body parts and trim, fasteners, cotter pins, catalytic converters, parts of steering systems, half shafts, transmissions and parts of transmissions, differentials, bearings and parts thereof, compasses, thermometers, motors, batteries, ignition parts, lighting equipment, horns, windshield wipers, audio components, antennas, wiring harnesses, handles/knobs, gaskets/seals, carpet sets, seat belts, airbag modules/inflators, brake components, wheels, shock absorbers, radiators, exhaust systems, hinges, pneumatic dampeners, speedometers, tachometers, flow meters, regulators/controllers, windshields and windows, springs, valves, resistors, relays, clocks, and switches (duty rate range: free—9.0%).

FTZ procedures would exempt HMM from Customs duty payments on the foreign components used in export production. On its domestic sales and exports to NAFTA countries, HMM would be able to choose the duty rate that applies to finished passenger vehicles (2.5%) for the foreign inputs noted above that have higher rates. Customs duties would be deferred and possibly reduced on foreign status production equipment. The application indicates that subzone status would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is February 7, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 24, 2003).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No.1 listed above and at the U.S. Department of Commerce Export Assistance Center, Suite 707, Medical Forum Building, 950 22nd Street North, Birmingham, AL 35203.

Dated: November 27, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–31036 Filed 12–6–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 57–2002]

Proposed Foreign-Trade Zone—Imperial County, California; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the County of Imperial, California, to establish a general-purpose foreign-trade zone at sites in Imperial County, within and adjacent to the Calexico Customs port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 3, 2002. The applicant is authorized to make the proposal under Section 6302 of the California Code.

The proposed zone would consist of sites covering 1,950 acres in Imperial County and within the City limits of Brawley, Calexico, Calipatria and El Centro: *Site 1* (755 acres, 3 parcels)—*Site 1a* (597 acres)—Gateway of the Americas, State Route 7 and State Highway 98, Imperial County; *Site 1b* (43 acres)—Imperial County Airport, State Highway 86 and Aten Road; *Site 1c* (115 acres)—Drewry Warehousing complex, 340 West Ralph Road, Imperial County; *Site 2* (77 acres, 2 parcels)—*Site 2a* (32 acres)—Airport Industrial Park, Jones Drive and Best Road with adjacent parcel on Duarte Street, Brawley; *Site 2b* (45 acres)—Luckey Ranch Industrial Park, Best Road and Shank Road, Brawley; *Site 3* (483 acres)—located at (a) Calexico International Airport (227 acres) and (b) adjacent industrial parks (256 acres) within the Calexico Community Redevelopment Agency project area; *Site 4* (104 acres)—Calipatria Airport Industrial Park and adjacent parcel, Main Street, International and Lyerly Roads, Calipatria; and, *Site 5* (531 acres)—within the El Centro Community Redevelopment Agency project area (Danenberg Road, Dogwood Road and I–8), El Centro. The sites are generally located within the County's Federal Empowerment Zone and Enterprise Community Initiative area.

The application indicates a need for foreign-trade zone services in the Imperial County area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as videos, construction/agricultural equipment and parts, electronics and furniture. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on January 15, 2003, at 2 p.m., at the City Hall Council Chambers, City of Calexico, 608 Heber Avenue, Calexico, California 92231.

Public comment on the application is invited from interested parties.

Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099—14th Street, NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB-Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is February 7, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 24, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the Office of the Economic Development Coordinator, Imperial County Community & Economic Development, 836 Main Street, El Centro, California 92243.

Dated: December 3, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–31038 Filed 12–6–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 56–2002]

Foreign-Trade Zone 33—Pittsburgh, Pennsylvania, Expansion of Manufacturing Authority—Subzone 33C, Sony Technology Center—Pittsburgh (Television Manufacturing Facility), Mount Pleasant, PA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Regional Industrial Development Corporation of Southwestern Pennsylvania, grantee of FTZ 33, requesting authority to expand the scope of manufacturing activity at Subzone 33C, the Sony Technology Center—Pittsburgh (Sony) television manufacturing facility, located in Mount Pleasant, Pennsylvania. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 2, 2002.

Subzone 33C was approved on September 27, 2001 (Board Order 1196, 66 FR 52741, 10–17–01). The subzone currently consists of three sites: Site 1 (633.64 acres)—located at 1001 Technology Drive, Mount Pleasant, Pennsylvania; Site 2 (9.8 acres, 192,500 square feet)—located at the South Greensburg Commons at Huff and Parr Streets, Greensburg, Pennsylvania; and Site 3 (31.2 acres, 273,600 square feet)—located at the former Montgomery Wards Distribution Center on Route 119 in New Stanton, Pennsylvania. Authority was originally granted for the manufacture of finished and unfinished televisions. The applicant is now seeking authority to manufacture a new line of 34-inch wide screen (16:9 ratio) direct view digital and analog televisions at the facility (HTS 8528.12.4800 and 8528.12.3290, duty rate 5%) using foreign sourced cathode ray tubes (HTS 8540.11.1080 and 8540.11.3000, duty rate 15%).

FTZ procedures would exempt Sony from Customs duty payments on the foreign components used in export production. On its domestic sales, Sony would be able to choose the duty rates during Customs entry procedures that apply to finished televisions (5%) for the imported cathode ray tubes. The request indicates that the 34-inch wide screen direct view cathode ray tubes are not produced in the U.S. and that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is February 7, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 24, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed

above, and at the U.S. Department of Commerce, Export Assistance Center, 2002 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

Dated: December 2, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–31037 Filed 12–6–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–808]

Certain Cut-to-Length Carbon Steel Plate From Ukraine; Preliminary Results of Administrative Review of the Suspension Agreement

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of the administrative review of the suspension agreement on certain cut-to-length carbon steel plate from Ukraine.

SUMMARY: In response to a request from the Ministry of Economy and for European Integration Issues of Ukraine (respondent) on behalf of the Government of Ukraine, the Department of Commerce (the Department) is conducting an administrative review of the suspension agreement on certain cut-to-length carbon steel plate from Ukraine (the Agreement) for the period November 1, 2000 through October 31, 2001, to review the current status of, and compliance with, the Agreement. For the reasons stated in this notice, the Department preliminarily determines the Government of Ukraine (GOU) is in compliance with the Agreement. The preliminary results are set forth in the section titled "Preliminary Results of Review," infra. Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with the argument: (1) A statement of the issues, and (2) a brief summary of the arguments.

EFFECTIVE DATE: December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Patricia Tran or Robert James, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–1121 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 1997, the Department signed an agreement with the Government of Ukraine which suspended the antidumping duty investigation on certain cut-to-length carbon steel plate (CTL plate) from Ukraine. *See Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 62 FR 61766 (November 19, 1997). In accordance with section 734(g) of the Tariff Act of 1930 (the Tariff Act), on November 19, 1997, the Department also published its final determination of sales at less than fair value in this case. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754 (November 19, 1997).

On October 30, 2001, the Government of Ukraine submitted a request for an administrative review pursuant to the notice of *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 66 FR 49923 (October 1, 2001). The Department initiated a review of the Agreement on December 13, 2001. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews (Initiation Notice)*, 66 FR 65470 (December 19, 2001).

On July 1, 2002, the Department extended the time limit for the preliminary results of review by 120 days. *See Notice of Extension of Time Limits for the Preliminary Results of Administrative Review of the Suspension Agreement on Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 67 FR 44174 (July 1, 2002).

Scope of Review

The products covered by this agreement include hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this Agreement are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling") for example, products which have been beveled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this Agreement is dispositive. Specifically excluded from subject merchandise within the scope of this Agreement is grade X–70 steel plate.

Period of Review

The period of review (POR) is November 1, 2000 through October 31, 2001.

Preliminary Results of Review

Section 751(a)(1)(C) of the Tariff Act specifies that the Department shall "review the current status of, and compliance with, any agreement by reason of which an investigation was suspended." In this case the Department and the GOU signed the Agreement suspending the antidumping duty investigation on CTL Plate from Ukraine on October 24, 1997. In order to effectively restrict the volume of exports of CTL Plate from Ukraine to the United States, Article VI of the Agreement provides for the implementation by the GOU of certain legal and administrative provisions. Moreover, Article VIII of the Agreement (Monitoring) requires the GOU to "provide to the Department such information as is necessary and appropriate to monitor the implementation of and compliance with the terms of [the] Agreement." The Department primarily relies upon three tools to administer the Agreement: (i) Export licenses issued by the GOU, and received by the Department from the U.S. Customs Service; (ii) reference prices, revised quarterly by the Department; and (iii) the annual export limits setting a quota on total imports of CTL plate from Ukraine. The GOU must restrict the volume of direct and indirect exports of CTL plate from Ukraine to the United States by means of export licenses. In addition, subject merchandise may not be sold below the quarterly reference prices issued by the Department.

On March 29, 2002, September 26, 2002, and October 29, 2002, the Department issued questionnaires to the GOU. The GOU submitted its responses to our March 29, 2002, September 26, 2002, and October 29, 2002 requests for information on May 13, 2002, October 14, 2002, and November 12, 2002, respectively. Our review of the information submitted by the GOU indicates that the GOU adhered to the major terms of the agreement. The GOU implemented the provisions of the Agreement through the passage of Presidential Decrees, Orders of the Ministry of Foreign Economic Relations and Trade of Ukraine, and Statute of the Cabinet of Ministers of Ukraine. *See* Exhibit 1 through 6 of May 13, 2002 response, and Exhibit I–3 of the October 14, 2002 and October 18, 2002 responses.

These legal enactments by the GOU established an export licensing program for all exports of CTL plate to the United States and mandated that merchandise would not be sold under the reference price. Pursuant to section VIII of the Agreement, the GOU conformed to the Agreement's monitoring requirement by timely filing semi-annual reports indicating the volume of sales of CTL plate in the home market and to third countries. It has also timely filed monthly reports on export licenses issued for sales of subject merchandise to the United States. The Agreement also stipulates the GOU must ensure compliance "by any official Ukrainian institution, chamber, or other entities authorized by the [GOU], all producers, exporters, brokers, and traders of CTL plate, and their affiliated parties, as well as independent trading companies/resellers utilized by the Ukrainian producer to make sales to the United States." The Ukrainian producers conformed to this requirement by inserting a clause in its contracts which prohibited the re-exportation of subject merchandise to the United States without the written permission of the producer and required their customers to include re-exportation cautions in contracts of further resells of the goods. *See* GOU's response on October 14, 2002 at 133.

Our review of the information submitted by the GOU indicates that each of the export licenses governed by the Agreement were at or above the quarterly FOB reference prices stipulated by the Agreement. Furthermore, data supplied by the GOU in its monthly reports, as well as our independent review of import data compiled by the U.S. Customs Service, indicates Ukraine did not exceed its annual export limits. Therefore, we preliminarily determine that the GOU has been in compliance with the Agreement. We note, however, that upon further review of the record and specifically the information provided by the GOU in its November 12, 2002 submission, Azovstal reported sales made during the POR to an affiliated trading company, instead of sales to the first unaffiliated customer. Appendix B12 of the Agreement requires Azovstal to report the name and address of the first unaffiliated customer. Consequently, certain information concerning the movement expenses incurred by this affiliated trading company on sales to the first unaffiliated customer in the United States and the nature of the affiliation between Azovstal and the trading company is not on the record of this segment of the proceeding. On November 25, 2002, we sent a supplemental questionnaire to the GOU requesting the GOU to provide sales to the first unaffiliated customer, the movement expenses incurred on all sales to these customers, and to describe the nature of the affiliation between the Ukrainian producer and its affiliated trading company. If appropriate, we will use the reported movement expenses to adjust the unaffiliated customer's reported CFR unit prices to the FOB prices specified in section IV E of the Agreement. We will inform the public of our decision in a Memorandum to the File. Additionally, prior to issuing the final results of this review, we will conduct a verification in Ukraine to verify the information submitted by the GOU in this proceeding.

Public Comment

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 CFR 351.310(c).

Case briefs from interested parties may be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing case briefs. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. Any hearing, if requested, will be held 37 days after the date of publication or the first business day thereafter. If this review proceeds normally, the Department will publish the final results of this administrative review, including its analysis of issues raised in the case and rebuttal briefs, not later than 120 days after the date of publication of this notice.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: December 2, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–31035 Filed 12–6–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–834]

Stainless Steel Sheet and Strip in Coils From The Republic of Korea: Extension of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of the review of stainless steel sheet and strip in coils from the Republic of Korea. This review covers the period July 1, 2000 through June 30, 2001.

EFFECTIVE DATE: December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, Enforcement Group III—Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4243.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as

amended ("the Act"), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (2001).

Background

On August 20, 2001, the Department published a notice of initiation of this antidumping duty administrative review for the period of July 1, 2000 through June 30, 2001 (66 FR 43570). We extended the preliminary results of review by 120 days on March 6, 2002. *See Stainless Steel Sheet and Strip in Coils from Korea: Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 10134 (March 6, 2002). We issued our preliminary results of review on August 7, 2002. *See Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part*, 67 FR 51216 (August 7, 2002). The final results of review are currently due on December 5, 2002.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 120-day period, following the date of publication of the preliminary results, to issue its final results by an additional 60 days. Completion of the final results within the 120-day period is not practicable for the following reasons:

- This review involves certain cross-cutting complex issues which were raised in the respondents' case briefs.
- The review involves a large number of transactions and complex adjustments.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review by 60 days until February 3, 2003.

Dated: December 2, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–31034 Filed 12–6–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–846, C–122–848]

Certain Durum Wheat and Hard Red Spring Wheat: Extension of Time Limit for Preliminary Determinations in Countervailing Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary determinations in countervailing duty investigations.

SUMMARY: The Department of Commerce is extending the time limit of the preliminary determinations in the countervailing duty ("CVD") investigations of certain durum wheat and hard red spring wheat from December 27, 2002 until no later than March 3, 2003. This extension is made pursuant to section 703(c)(1)(B) of the Tariff Act of 1930, as amended ("The Act").

EFFECTIVE DATE: December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Craig Matney, Stephen Cho, or Audrey Twyman, at (202) 482–1778, (202) 482–3798, (202) 482–3534, respectively, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Extension of Due Date for Preliminary Determinations

On October 23, 2002, the Department of Commerce ("the Department") initiated the CVD investigations of certain durum wheat and hard red spring wheat from Canada. *See Notice of Initiation of Countervailing Duty Investigations: Certain Durum Wheat and Hard Red Spring Wheat*, 67 FR 65951 (October 29, 2002). Currently, the preliminary determinations are due no later than December 27, 2002. However, pursuant to section 703(c)(1)(B) of the Act, we have determined that these investigations are "extraordinarily complicated" and are, therefore, extending the due date for the preliminary determinations by 65 days to no later than March 3, 2003.

Under section 703(c)(1)(B), the Department can extend the period for reaching a preliminary determination until not later than the 130th day after the date on which the administering authority initiates an investigation if:

(B) the administering authority concludes that the parties concerned are cooperating and determines that

(i) the case is extraordinarily complicated by reason of

(I) the number and complexity of the alleged countervailable subsidy practices;

(II) the novelty of the issues presented;

(III) the need to determine the extent to which particular countervailable subsidies are used by individual manufacturers, producers, and exporters; or

(IV) the number of firms whose activities must be investigated; and

(ii) additional time is necessary to make the preliminary determination.

Regarding the first requirement, we find that in both investigations all concerned parties are cooperating. Regarding the second requirement that the investigations be extraordinarily complicated, it is the Department's position that the appropriate criterion for analysis is not the number of programs in question, but rather, the specific transactions, applied under those programs, which are numerous and appropriately categorized as "practices." With respect to the issue of the complexity of the practice, these practices are complex in nature as reflected in the extensive analysis required to address these subsidies. Furthermore, the practices present novel issues. Finally, additional time is necessary to make the preliminary determinations.

For a number of the programs in both investigations, the Department will be required to examine complicated circumstances and documents from a number of private-sector and government parties to determine whether the Government of Canada ("GOC") or provincial governments entrusted or directed private parties to provide subsidies to the Canadian Wheat Board ("CWB"). For example, the Department must analyze complicated systems used to determine whether the revenue cap system imposed by the GOC on the railroads for transporting grain provides a benefit to the CWB. In addition, the Department will be required to examine in detail the financial records of the CWB and the GOC to determine whether or not the CWB received a countervailable subsidy by virtue of a GOC guarantee on its lending and borrowing. Lastly, the respondents have requested an extension of time to respond to the Department's questionnaire because the subsidies alleged "focus on extraordinarily complicated transportation systems. Information pertaining to these systems is held by many different private sector parties, governments, and government agencies, with no one entity possessing full knowledge of all aspects of the system." See November 22, 2002, submission from the GOC at page 2. The responses

to the questionnaire will require complicated analysis and will be necessary for the Department to make its preliminary determinations.

Accordingly, we conclude that the concerned parties are cooperating, we deem these investigations to be extraordinarily complicated, and we determine that additional time is necessary to make the preliminary determinations. Therefore, pursuant to section 703(c)(1)(B) of the Act, we are postponing the preliminary determinations in these investigations to March 3, 2003.

This notice is published pursuant to section 703(c)(2) of the Act.

Dated: December 3, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–31033 Filed 12–6–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112102A]

Marine Mammals: Draft Environmental Assessment of Issuing a Bowhead Whale Subsistence Quota to the Alaska Eskimo Whaling Commission for the Years 2003 through 2007

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a Draft Environmental Assessment(EA); request for written comments.

SUMMARY: NMFS announces the availability of a Draft EA, in accordance with the National Environmental Policy Act(NEPA), to assess the impacts of issuing a subsistence quota for bowhead whales to the Alaska Eskimo Whaling Commission (AEWC) for the years 2003 through 2007. The Draft EA considers four alternatives regarding the issuance of a quota to the AEWC, and NMFS has identified a preferred alternative. NMFS is soliciting comments and information to facilitate this analysis.

DATES: Comments and information must be postmarked by January 8, 2003.

ADDRESSES: Written comments should be sent to Chief, Marine Mammal Division (F/PR2), Office of Protected Resources, National Marine Fisheries Service, 13th Floor, 1315 East-West Hwy, Silver Spring, MD 20910. Please mark the outside of the envelope with "Comments on Bowhead Whale Analysis." Comments will not be accepted if submitted via e-mail or Internet. Copies of the EA may be obtained over the internet at the Office of Protected Resources Marine Mammal website under "Quick Information Links" at *http://www.nmfs.noaa.gov/prot_res/overview/mm.html*. The link is titled "Bowhead Whale Draft Environmental Assessment".

FOR FURTHER INFORMATION CONTACT: Chris Yates or Winnie Chan, NMFS Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION: At the 5th Special Meeting of the International Whaling Commission (IWC) held in October, 2002 the Commission approved a 5–year aboriginal subsistence quota for the take of Western arctic bowhead whales. The quota allows for a combined total of up to 280 whales to be landed in the years 2003 through 2007 by Alaskan Eskimos and Russian natives. For each of these years, the number of bowhead whales struck shall not exceed 67, except that any unused portion of a strike quota from any year shall be carried forward and added to the strike quota of any subsequent year, provided that no more than 15 strikes shall be added to the strike quota for any one year.

The basis for the quota was a joint request by the Russian Federation and the United States, showing that the needs of both countries' Native groups could be met with an annual average of 56 landed bowhead whales (or a total of 255 for the Alaska Eskimos and 25 for the Chukotka people over the 5–year period). The annual strike limits and quotas for whales are determined at the beginning of each year after consultation with the Russian government.

At the 54th annual meeting of the IWC, held in May, 2002 the Scientific Committee reiterated its previous advice for the Bering-Chukchi-Beaufort Seas stock of bowhead whales, i.e., that it is very likely that a catch limit of 102 whales or less would be consistent with the requirements of the Schedule.

The International Convention for the Regulation of Whaling, under which the IWC operates, is implemented domestically through the Whaling Convention Act (WCA). Under the WCA, NMFS proposes to issue a share of the IWC bowhead quota to the AEWC.

Alaska Eskimos have been taking bowhead whales for at least 2,000 years. Alaska Native subsistence hunters take less than one percent of the population of bowhead whales per year. Since 1977, the number of takes has ranged between 14 and 75 per year, depending in part on changes in management strategy and in part on higher estimates of bowhead whale abundance in recent years (NMFS Alaska Marine Mammal Stock Assessments, 2001).

The National Environmental Policy Act (NEPA) requires that Federal agencies conduct an environmental analysis of the effect of their proposed actions on the environment. While quotas under the WCA are issued on an annual basis, NMFS is evaluating the effects of issuing them over a 5–year period. Accordingly, NMFS prepared a draft EA that evaluated the following four alternatives:

Alternative 1 - Grant the AEWC a quota of 255 landed bowhead whales over 5 years (2003 through 2007), with an annual strike quota of 67 bowhead whales per year, where no unused strikes are added to the strike quota for any one year.

Alternative 2 - Grant the AEWC a quota of 255 landed bowhead whales over 5 years (2003 through 2007), with an annual strike quota of 67 bowhead whales per year, where no more than 15 unused strikes are added to the strike quota for any one year.

Alternative 3 - Grant the AEWC a quota of 255 landed bowhead whales over 5 years (2003 through 2007), with an annual strike quota of 67 bowhead whales per year, where, for unused strikes, up to 50 percent of the annual strike limit is added to the strike quota for any one year.

Alternative 4 (No Action) - Do not grant the AEWC a quota.

NMFS has selected Alternative 2 as the preferred alternative.

The Draft EA was prepared in accordance with NEPA and implementing regulations at 40 CFR parts 1500 through 1508 and NOAA guidelines concerning implementation of NEPA found in NOAA Administrative Order 216–6.

Information Solicited

To ensure that NMFS' review is comprehensive and based on the best available information, NMFS is soliciting information and comments from any interested party concerning issuing a bowhead whale quota to the AEWC of 255 landed whales over 5 years (2003 through 2007). NMFS is particularly interested in information on the affected environment or environmental consequences of issuing a quota. NMFS requests that data, information, and comments be accompanied by (1) supporting documentation, and (2) the name, address, and affiliation of person submitting data. Written comments should be sent to Chief of the Marine

Mammal Division within NMFS' Office of Protected Resources (see **ADDRESSES**).

Dated: December 3, 2002.

Laurie K. Allen,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–31027 Filed 12–6–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. 2003–C–006]

Request for Written Comments and Notice of Hearings on Technological Protection Systems for Digitized Copyrighted Works

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for written comments and notice of hearings.

SUMMARY: The United States Patent and Trademark Office (USPTO) requests written comments that will assist the agency in preparing a report to Congress required by the "Technology, Education and Copyright Harmonization Act of 2002." The report will provide information to Congress on technological protection systems for digitized copyrighted works and to prevent infringement. The USPTO also may conduct a hearing to obtain information for the report and requests a response from persons interested in providing testimony.

DATES: Written comments are due at the offices of the USPTO on January 14, 2003. A hearing is tentatively scheduled for the Washington, DC area, on February 4, 2003. Based on expressions of public interest, additional hearings may be scheduled. Requests to testify must be received by January 14, 2003.

ADDRESSES: Written comments and requests to testify should be addressed to the United States Patent and Trademark Office, Office of Legislative and International Affairs, Room 902, 2121 Crystal Drive, Arlington, VA 22202, or faxed to (703) 305–8885, marked to the attention of Velica Steadman. Written comments also may be sent via electronic mail to *teach.act@uspto.gov*. A specific time and location for the proposed hearing will be determined based on responses received from persons who express an interest in testifying and will be posted on the USPTO's Web site at *http://www.uspto.gov*.

FOR FURTHER INFORMATION CONTACT: Michael S. Shapiro by telephone at (703) 305–9300 or by electronic mail at *teach.act@uspto.gov*.

SUPPLEMENTARY INFORMATION:

1. Background

On November 2, 2002, the President signed into law the "Technology, Education and Copyright Harmonization Act of 2002" (the TEACH Act), Pub. L. 107–273, which updates certain provisions of the Copyright Act to facilitate the growth and development of distance education, while introducing new safeguards to limit the additional risks to copyright owners that are inherent in exploiting works in a digital format. As discussed more fully below, the TEACH Act requires the USPTO to submit a report to Congress on technological protection systems for digitized copyrighted works and to prevent infringement. The brief discussion of the TEACH Act that follows is intended only to provide some context for that report.

Over the last several years, the educational opportunities and risks associated with distance education have been the subject of extensive public debate and attention in the United States. In November 1998, the Conference on Fair Use (CONFU), convened by the Administration's Information Infrastructure Task Force, issued its final report, which included a proposal for educational fair use guidelines for distance learning.[1] In May 1999, the U.S. Copyright Office issued an extensive report on copyright and digital distance education.[2] The Senate Committee on the Judiciary and the House Judiciary Subcommittee on Courts, the Internet, and Intellectual Property held hearings on the TEACH Act.[3] For more detailed information on the background and legislative history of the TEACH Act, interested persons may wish to visit the USPTO Web site at *http://www.uspto.gov* and the U.S. Copyright Office Web site at *http://www.loc.gov*.

Subsection (b) of the TEACH Act amends section 110(2) of the Copyright Act to encompass performances and displays of copyrighted works in digital distance education under appropriate circumstances and subject to certain limitations. The Act expands the categories of works exempt from the performance right, from nondramatic literary works and musical works to "reasonable and limited portions" of any work and permits the display of any work in "an amount comparable to that typically displayed in the course of a live classroom setting." The Act removes the concept of the physical classroom, while maintaining the requirement of "mediated instructional activity," which generally requires the involvement of an instructor. The exemption is limited to mediated instructional activities that are conducted by governmental bodies and "accredited" non-profit educational institutions. Subsection (c) of the TEACH Act amends section 112 of the Copyright Act to permit transmitting organizations to store copyrighted material on their servers in order to allow the performances and displays of works authorized under amended section 110(2).

The TEACH Act contains a number of new safeguards to limit the additional risks to copyright owners that are inherent in using works in the digital format. Section 110(2)(C) limits the receipt of authorized transmissions, "to the extent technologically feasible," to students officially enrolled in the course or to Government employees as part of their official duties. Section 110(2)(D)(ii) requires transmitting institutions to apply technological measures that "reasonably prevent retention of the work in accessible form by recipients of the transmission * * * for longer than the class session" and the "unauthorized further dissemination" of the work. Section 110(2)(D)(ii) also prohibits transmitting institutions from engaging in "conduct that could reasonably be expected to interfere" with such technological measures.

2. Mandate for the Report

Subsection (d) of the TEACH Act requires the Under Secretary of Commerce for Intellectual Property, after consultation with the Register of Copyrights and after a period of public comment, to submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on technological protection systems for digitized copyrighted works. The report, which is intended solely to provide information to Congress, is due not later than 180 days after the date of enactment of the Act.

Congress specifically directed the USPTO to include information "on technological protection systems that have been implemented, are available for implementation, or are proposed to be developed to protect digitized copyrighted works and prevent infringement, including upgradeable and self-repairing systems, and systems that have been developed, are being developed, or are proposed to be developed in private voluntary industry-led entities through an open broad based consensus process." Congress also directed the USPTO to exclude "any recommendations, comparisons, or comparative assessments of any commercially available products that may be mentioned in the report."

Subsection (d) of the Act further states that the report "shall not be construed to affect in any way, either directly or by implication, any provision" of the Copyright Act in general or the TEACH Act in particular, including the requirements of section 110(2)(D)(ii) of the TEACH Act (discussed above), or "the interpretation or application of such provisions, including evaluation of the compliance with that clause by any governmental body or nonprofit educational institution."

Request for Written Comments

The USPTO requests that persons interested in submitting written comments organize their comments as follows:

(1) What technological protection systems have been implemented, are available for implementation, or are proposed to be developed to protect digitized copyrighted works and prevent infringement, including any upgradeable and self-repairing systems?

(2) What systems have been developed, are being developed, or are proposed to be developed in private voluntary industry-led entities through an open broad-based consensus process?

(3) Consistent with the types of information requested by Congress, please provide any additional comments on technological protection systems to protect digitized copyrighted works and prevent infringement.

Written comments must be received by January 14, 2003, and should be addressed to the United States Patent and Trademark Office, Office of Legislative and International Affairs, Room 902, 2121 Crystal Drive, Arlington, VA 22202, ATTN: Velica Steadman, Office of Legislative and International Affairs; faxed to Velica Steadman's attention at (703) 305–8885; or sent via electronic mail to *teach.act@uspto.gov*.

In addition, as noted above, the USPTO will schedule a hearing to obtain information for the report on the basis of expressions of public interest. The hearing is tentatively scheduled for the Washington, DC area on February 4, 2003. Based on expressions of public interest, additional hearings may be scheduled. Requests to testify must be received by January 14, 2003. A specific time and location for the proposed hearing will be determined based on responses received from persons who express an interest in testifying and will be posted on USPTO's Web site at http://www.uspto.gov.

Dated: December 3, 2002.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Potent and Trademark Office.

[FR Doc. 02–31017 Filed 12–6–02; 8:45 am]

BILLING CODE 3510–16–P

[1] *See* The Conference on Fair Use: Final Report to the Commissioner on the Conclusion of the Conference on Fair Use (U.S. Patent and Trademark Office, November 1998). The report is available on-line at *http://www.uspto.gov/web/offices/dcom/olia/confu/confurep.htm*

[2] *See* Report on Copyright and Digital Distance Education: A Report to the Register of Copyrights (U.S. Copyright Office, May 1999). The report is available at *http://www.copyright.gov/disted/*.

[3] *See* the Report of the Senate Committee on the Judiciary on the Technology, Education and Copyright Act of 2001, S.R. Rep. No. 107–31, 107th Congress, 1st Session and the Report of the House Committee on the Judiciary on the Technology, Education and Copyright Act of 2001, H.R. Rep. No. 107–687, 107th Congress, 2d Session.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Cambodia

December 4, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Memorandum of Understanding of December 29, 2001, between the Governments of the United States and Cambodia amends and extends the bilateral textile agreement of January 20, 1999 to cover the period January 1, 2003 through December 31, 2003.

The limits under this agreement may be revised if Cambodia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Cambodia.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limits, which include a twelve percent (12%) increase to all of Cambodia's quotas under the Labor Standards provision described in **Federal Register** notice 64 FR 60428, published on November 5, 1999.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the availability of the 2003 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 4, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Memorandum of Understanding, dated December 29, 2001, between the Governments of the United States and Cambodia, you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Cambodia and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
331/631	2,191,661 dozen pairs.
334/634	240,376 dozen.
335/635	91,908 dozen.
338/339	3,782,381 dozen.
340/640	1,060,481 dozen.
345	132,913 dozen.
347/348/647/648	4,241,923 dozen.
352/652	848,385 dozen.
435	21,832 dozen.
438	104,892 dozen.
445/446	128,202 dozen.
638/639	1,272,576 dozen.
645/646	353,493 dozen.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated January 3, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if Cambodia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Cambodia.

Moreover, these limits may be revised in light of the U.S. determination as to whether working conditions in the Cambodian textile and apparel sector substantially comply with Cambodian labor law and internationally recognized core labor standards (see **Federal Register** notice 64 FR 60428, published on November 5, 1999).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–31031 Filed 12–6–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Colombia

December 3, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Colombia and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limits.

These limits do not apply to goods entered under the Andean Trade Promotion and Drug Eradication Act (ATPDEA. Section 3103 of the Trade Act of 2002 amended the Andean Trade Preference Act (ATPA) to provide for duty and quota-free treatment for certain textile and apparel articles imported from designated Andean Trade Promotion and Drug Eradication Act (ATPDEA) beneficiary countries. See 67 FR 67283, published on November 5, 2002.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the 2003 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson.

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 3, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories, produced or manufactured in Colombia and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following restraint limits:

Category	Twelve-month restraint limit
315	39,120,817 square meters.
443	139,440 numbers.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 8, 2001 to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits do not apply to goods entered under the Andean Trade Promotion and Drug Eradication Act (ATPDEA. Section 3103 of the Trade Act of 2002 amended the Andean Trade Preference Act (ATPA) to provide for duty and quota-free treatment for certain textile and apparel articles imported from designated Andean Trade Promotion and Drug Eradication Act (ATPDEA) beneficiary countries. See directive dated October 31, 2002.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–30976 Filed 12–6–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Hong Kong

December 3, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 10, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for Categories 447/448 and 645/646 are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63219, published on December 5, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 3, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on December 10, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Sublevels in Group II	
447/448	70,515 dozen.
645/646	1,382,033 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–31029 Filed 12–6–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

December 4, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 10, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for the rescinding of special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63031, published on December 4, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 4, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on December 10, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
335	258,290 dozen.
635	473,183 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–31032 Filed 12–6–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

December 3, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://www.otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 351/651 is being increased for swing, reducing the limit for Category 237 to account for the swing being added to Categories 351/651.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 66 FR 65178, published on December 18, 2001). *Also see* 66 FR 63035, published on December 4, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 3, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on December 9, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
237	287,065 dozen.
351/651	628,179 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–30977 Filed 12–6–02; 8:45 a.m.]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

December 4, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 10, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward, swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 67232, published on December 28, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 4, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on December 10, 2002, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month limit [1]
Group I	
200–220, 224, 225/317/326, 226, 227, 300/301, 313–315, 360–363, 369–S [2], 369–O [3], 400–414, 469pt [4], 603, 604, 611, 613/614/615/617, 618, 619/620, 624, 625/626/627/628/629 and 666pt [5], as a group.	222,654,584 square meters equivalent.
Sublevels in Group I	
225/317/326	45,427,541 square meters.
619/620	16,816,084 square meters.
Sublevels in Group II	
338/339	1,062,354 dozen.
345	138,633 dozen.
347/348	1,535,616 dozen of which not more than 1,309,866 dozen shall be in Categories 347–W/348–W [6].
445/446	148,019 dozen.
638/639	6,607,313 dozen.
Within Group II Subgroup	
333/334/335	350,889 dozen of which not more than 190,066 dozen shall be in Category 335.
351	281,059 dozen.
447/448	23,018 dozen.
651	568,875 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[5] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

[6] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–31030 Filed 12–6–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 8, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 3, 2002.

John Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Annual Program Cost Report.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 82
Burden Hours: 385.
Abstract: Vocational Rehabilitation (VR) Services data submitted on the RSA–2 by State VR agencies for each fiscal year (FY) is used by the Rehabilitation Services Administration (RSA) to administer and manage the Title I Program; to analyze expenditures, evaluate program performance and identify problem areas.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–30974 Filed 12–6–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 8, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren.Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or

Recordkeeping burden. OMB invites public comment.

Dated: December 3, 2002.

John Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: William D. Ford Federal Direct Loan Program Statutory Forbearance Forms.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 4,092.

Burden Hours: 818.

Abstract: Borrowers who receive loans through the William D. Ford Federal Direct Loan Program will use this form to agree to statutory forbearances on their loans.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your reqest.

Comments regarding burden and/or the collection activity requirements should be directed to Lew Oleinick at his e-mail address *Lew.Oleinick@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–30975 Filed 12–6–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration, Office of Los Alamos Site Operations; Notice of Floodplain Involvement for the Proposed Installation of a Permeable Reactive Barrier Within Mortandad Canyon at Los Alamos National Laboratory, Los Alamos, NM

AGENCY: Department of Energy, National Nuclear Security Administration, Los Alamos Site Office.

ACTION: Notice of floodplain involvement.

SUMMARY: The Department of Energy (DOE), National Nuclear Security Administration (NNSA) Office of Los Alamos Site Operations plans to construct a multiple permeable reactive barrier within Mortandad Canyon at Los Alamos National Laboratory (LANL). The permeable reactive barrier (PRB) would be located within a floodplain area for the purpose of reducing the contaminant load within shallow groundwater. The PRB would be operated for about five years as a site-specific technology demonstration project. The site chosen for the PRB is in the central portion of LANL. In accordance with 10 CFR part 1022, DOE has prepared a floodplain/wetland assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain.

DATES: Comments are due to the address below no later than December 24, 2002.

ADDRESSES: Written comments should be addressed to: Elizabeth Withers, Department of Energy, National Nuclear Security Administration, Office of Los Alamos Site Operations, 528 35th Street, Los Alamos, NM 87544, or submit them to the Mail Room at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Written comments may also be sent electronically to: *ewithers@doeal.gov* or by facsimile to (505) 667–9998.

FOR FURTHER INFORMATION CONTACT: Everett Trollinger, Department of Energy, National Nuclear Security Administration, Office of Los Alamos Site Operations, 528 35th Street, Los Alamos, NM 87544. Telephone (505) 667–5280, facsimile (505) 667–9998.

For Further Information on General DOE Floodplain Environmental Review Requirements, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119. Telephone (202) 586–4600 or (800) 472–2756, facsimile (202) 586–7031.

SUPPLEMENTARY INFORMATION: In November 2002, NNSA considered a proposal for constructing a PRB system at a narrow constriction in Mortandad Canyon within LANL where contaminated groundwater is confined to a small cross-section of alluvial materials. The entire PRB structure would extend about 120 feet from side-wall to side-wall within the canyon bottom. The PRB would consist of a "funnel and gate" system to direct contaminated groundwater into a centrally-located gate area of reactive materials. The impermeable funnel would be constructed of sheet piling driven to a depth of approximately 27 feet on either side of the canyon. The permeable gate would contain multiple buried cells of selected media designed to react with and reduce the concentration of contaminants in groundwater passing through the gate. The PRB would be left in place for about five years and its function would be monitored through a system of shallow monitoring wells that would be installed at the same time the PRB was constructed. Construction of the PRB and associated monitoring wells will commence in 2003 and be completed in less than 6 months.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), NNSA has prepared a floodplain/wetland assessment for this action, which is available by contacting Elizabeth Withers at the previously identified addresses, phone and facsimile numbers. The floodplain/wetland assessment is available for review at the DOE Reading Room at the Los Alamos Outreach Center, 1619 Central Avenue, Los Alamos, NM 878544; and the DOE Reading Room at the Zimmerman Library, University of New Mexico, Albuquerque, NM 87131. The NNSA will publish a floodplain statement of findings for this project in the **Federal Register** no sooner than December 24, 2002.

Issued in Los Alamos on November 26, 2002.

Ralph E. Erickson,

Director, U.S. Department of Energy, National Nuclear Security Administration, Office of Los Alamos Site Operations.

[FR Doc. 02–31007 Filed 12–6–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–136–000]

Alliance Pipeline L.P.; Notice of Proposed Change in FERC Gas Tariff

December 3, 2002.

Take notice that on November 27, 2002, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 10; First Revised Sheet No. 257; and First Revised Sheet No. 258, proposed to become effective January 1, 2003.

Section 30.1 of the General Terms and Conditions (GTC) of Alliance's FERC Gas Tariff establishes an ACA charge applicable to Alliance's Rate Schedules FT–1 and IT–1. GTC Section 30.2 provides that such rate schedules shall include an ACA unit charge, which shall be the unit charge authorized by the Commission each year, and that Alliance shall file changes to the ACA unit charge annually to reflect the annual charge unit rate authorized by the Commission each year. Alliance states that it recently remitted payment for its initial Annual Charges Billing, covering fiscal year 2002.

Alliance states that all of its firm transportation capacity is subscribed on an long-term basis by its existing Rate Schedule FT–1 customers, all of whom have agreed to pay negotiated rates. The shippers' negotiated rate agreements provide that changes in Alliance's costs will be reflected in its negotiated rates from time to time. Contemporaneous with Alliance's filing in this docket, Alliance made a tariff change filing in Docket No. RP00–445–003 to adjust its negotiated rates to reflect changes in its costs.

Alliance states that its negotiated rate shippers have agreed that the amount of the Annual Charges Billing may be included as one of the cost changes reflected in Alliance's adjusted negotiated rates. Accordingly, Alliance states that the negotiated rates adjustment filing reflects the cost of the Annual Charges Billing. Because Alliance will recover its Annual Charges Billing in its negotiated rates, it is barred by Section 154.402 of the Commission's regulations from also recovering such costs through an ACA unit charge. Therefore, Alliance states that it is filing the revised tariff sheets listed above to delete the ACA charge authority from its FERC Gas Tariff.

Alliance further states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31107 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–119–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 2002.

Take notice that on November 27, 2002, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fifty-Fourth Revised Sheet No. 8; Fifty-Fourth Revised Sheet No. 9; Fifty-Third Revised Sheet No. 13; and Sixty-Fifth Revised Sheet No. 18, to become effective December 1, 2002.

ANR states that the above-referenced tariff sheets are being filed to implement recovery of approximately $2.3 million of above-market costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation surcharge applicable to its part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs, and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2, so as to recover the remaining ten percent (10%). ANR advises that the proposed changes would decrease current quarterly Above-Market Dakota Cost recoveries from $2,382,158 to $2,326,128.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31098 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–148–000]

CMS Trunkline Gas Company, LLC; Notice of Storage Credit Report

December 3, 2002.

Take notice that on November 27, 2002, CMS Trunkline Gas Company, LLC (Trunkline) tendered for filing its Annual Interruptible Storage Revenue Credit Surcharge Adjustment for the years 2000 and 2001 in accordance with Section 24 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Trunkline states that the purpose of this filing is to comply with section 24 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1 which requires that at least 30 days prior to the effective date of adjustment, Trunkline shall make a filing with the Commission to reflect the adjustment, if any, required to Trunkline's Base Transportation Rates to reflect the result of the Interruptible Storage Revenue Credit Surcharge Adjustment.

Trunkline further states that it failed to file its report under Section 24 for the

2000 and 2001 reporting periods. No Interruptible Storage Revenues for the periods covered by the missed filings in 2000 and 2001 were collected, and consequently no change in rates were required.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 10, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31112 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–149–000]

CMS Trunkline Gas Company, LLC; Notice of Tariff Filing

December 3, 2002.

Take notice that on November 27, 2002, CMS Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following *pro forma* sheet:

Pro Forma Sheet No. 223A

Trunkline states that this filing is being made to comply with the Commission's Order on Remand issued October 31, 2002 in Docket No. RM98–10–011. Trunkline is modifying Section 3.2(A) of the General Terms and Conditions of its FERC Gas Tariff to permit segmented transactions consisting of a forwardhaul and a backhaul to the same point. In such a segmented transaction, the revised tariff sheet makes clear that the shipper may nominate quantities of gas at a point of receipt or a point of delivery in excess of its maximum daily quantity at such point and the shipper may nominate quantities of gas in each segment up to its maximum daily quantity in the segment. Consistent with the Commission's policy and the Remand Order, the revised tariff sheet clarifies that a segment in which the flow is the opposite of the shipper's primary path will be considered to be outside the primary path for scheduling purposes.

Trunkline states that copies of this filing are being served on all jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31113 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–121–000]

Colorado Interstate Gas Company; Notice Fuel Reimbursement Percentage

December 3, 2002.

Take notice that on November 27, 2002, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twenty-Sixth Revised Sheet No. 11A, to become effective January 1, 2003.

CIG states the tariff sheet is being filed to revise the quarterly Fuel Reimbursement Percentage applicable to Lost, Unaccounted-For and Other Fuel Gas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 10, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31100 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–122–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 2002.

Take notice that on November 27, 2002, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on the Appendix to the filing, to become effective January 1, 2003.

CIG states that the tariff sheets propose to enhance service provided under CIG's Rate Schedule NNT–1 to enable shippers to divert gas quantities available at primary, no notice delivery points to designated secondary delivery points on short notice.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31101 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

***Consolidated Edison Company of New York, Inc.* v. *Public Service Electric and Gas Company*; Notice Partially Vacating Procedural Schedule and Authorizing Establishment of New Dates**

December 3, 2002.

On December 2, 2002, Consolidated Edison Company of New York (ConEd) filed a motion requesting the Commission to suspend the procedural schedule for the hearing in Phase II of this proceeding.

On December 3, 2002, Public Service Electric and Gas Company filed an answer opposing ConEd's request.

For good cause shown, Con Ed's motion will be granted in part. The procedural dates beginning with Filing of Staff's Testimony and ending with Reply Briefs Filed are hereby vacated, pending further action. The remaining dates, beginning with Initial Decision Issued and ending with Briefs Opposing Exceptions Filed, are unchanged.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31087 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–111–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 2002.

Take notice that on November 26, 2002, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets to become effective January 1, 2003:

Second Revised Volume No. 1–A
Twenty-Sixth Revised Sheet No. 20
Nineteenth Revised Sheet No. 22
Twenty-Fourth Revised Sheet No. 23
Thirty-First Revised Sheet No. 24
Twenty-Fifth Revised Sheet No. 26
Twenty-Fifth Revised Sheet No. 27
Eleventh Revised Sheet No. 37
Thirteenth Revised Sheet No. 38
Third Revised Volume No. 2
Fifty-Third Revised Sheet No. 1–D.2
Forty-Seventh Revised Sheet No. 1–D.3

El Paso states that the above tariff sheets are being filed to adjust its rates for inflation in accordance with its tariff and in accordance with the settlement of its last general rate case.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31092 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–120–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 2002.

Take notice that on November 27, 2002, El Paso Natural Gas Company (El Paso) tendered for filing as part of its

FERC Gas Tariff, Second Revised Volume No. 1–A, Ninth Revised Sheet No. 29, to become effective January 1, 2003.

El Paso states that the tendered tariff sheet revises the fuel charges applicable to transportation service on El Paso's system.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31099 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–163–000]

Energy Development Corporation v. *Columbia Gas Transmission Corporation, and Columbia Natural Resources, Inc.*; Notice of Complaint

December 3, 2002.

Take notice that on December 2, 2002, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, Energy Development Corporation (EDC) filed a Complaint Requesting Fast Track Processing and Request for Interim and Permanent Relief against Columbia Gas Transmission Corporation (Columbia), and Columbia Natural Resources (CNR). EDC alleges that Columbia, in concert with its affiliate CNR, is acting in an anti-competitive manner in connection with the transportation of gas in interstate commerce.

EDC has requested the Commission to: (1) Reassert jurisdiction over the V–33 system to protect shippers such as EDC from the anticompetitive behavior of Columbia and its affiliate CNR; (2) require Columbia to restore the exchange agreement with Cranberry/Cabot that existed prior to abandonment if, in fact, such agreement is not still in place; (3) protect EDC from the immediate danger of losing its essential service on the V–33 system by providing immediate interim relief requiring Columbia and its affiliate CNR to continue service without interruption until the final resolution of this Complaint; and (4) provide permanent relief to EDC and other shippers by restoring jurisdictional status to the V–33 system and requiring Columbia to accept delivery of maximum allowable volumes of gas from EDC into the V–33 system as an integral part of the Columbia system, thus allowing EDC free choice of a gas buyer.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before December 23, 2002. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31115 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–138–000]

Garden Banks Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

December 3, 2002.

Take notice that on November 27, 2002, Garden Banks Gas pipeline, LLC (GBGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 19, and First Revised Sheet No. 221, to be effective January 1, 2003.

GBGP states that the purpose of this filing is to remove a provision in Section 2 of its Rate Schedule FT–2 and the attendant form of service agreement that restricts an FT–2 shipper from reducing its cumulative MDQ over the term of the applicable transportation service agreement by more than twenty percent (20%) of the shipper's production forecast underlying its initial MDQ elections.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web siteunder the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31108 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–118–000]

High Island Offshore System, L.L.C; Notice of Tariff Filing

December 3, 2002.

Take notice that on November 27, 2002, High Island Offshore System, L.L.C. (HIOS) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 103.

HIOS states that the revised tariff sheet is being filed in order to comply with the Commission's October 31, 2002, Order in Docket No. RM98–10–011

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31097 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–22–001]

Michigan Gas Storage Company; Notice of Application

December 3, 2002.

On November 15, 2002, in Docket No. CP02–22–001, Michigan Gas Storage Company (MGSCo), 212 West Michigan Avenue, Jackson, Michigan 49201, filed Sixth Revised Sheet No.1 to terminate its entire FERC Gas Tariff, First Revised Volume No. 1, effective November 8, 2002. The Commission's February 28, 2002 order, in Docket No. CP02–22–000, conditionally authorized MGSCo to abandon its facilities by transfer to Consumers Energy Company (Consumers), its parent company, and to cancel its FERC Gas Tariff within 10 days of the abandonment. The February 28 Order also directed MGSCo to notify the Commission of the date of the abandonment within ten days after it occurred. MGSCo states that by this filing it providing notice to the Commission that the transfer of its facilities to Consumers occurred on November 8, 2002, as required by the February 28 order, and canceling its FERC Gas Tariff in its entirety.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 502–8659.

Any person desiring to intervene or to protest this filing should file on or before December 26, 2002, with the Federal Energy Regulatory Commission. 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31086 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–234–000]

New England Power Pool; Notice of Filing

December 3, 2002.

Take notice that on November 29, 2002, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include Great Bay Power Marketing, Inc. (GBPMI). The Participants Committee requests a December 1, 2002 effective date for commencement of participation in NEPOOL by GBPMI.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the

Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: December 13, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31088 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–150–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 2002.

Take notice that on November 27, 2002, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, 63 Revised Sheet No. 50; 64 Revised Sheet No. 51; 60 Revised Sheet No. 53; and 13 Revised Sheet No. 56, to be effective January 1, 2003.

Northern states that this filing establishes the System Balancing Agreement (SBA) cost recovery surcharge to be effective January 1, 2003 for the period January 1 through December 31, 2003.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31114 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–129–000]

Panhandle Eastern Pipe Line Company; Notice of Tariff Filing

December 3, 2002.

Take notice that on November 27, 2002, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following *pro forma* tariff sheets:

Pro Forma Sheet No. 249
Pro Forma Sheet No. 249A
Pro Forma Sheet No. 250
Pro Forma Sheet No. 250A
Pro Forma Sheet No. 254
Pro Forma Sheet No. 254A

Panhandle states that this filing is being made to comply with the Commission's Order on Remand issued October 31, 2002 in Docket No. RM98–10–011. Panhandle is modifying section 10.2(a) and (b) and section 11.5(a) and (b) of the General Terms and Conditions of its FERC Gas Tariff to permit segmented transactions consisting of a forwardhaul and a backhaul to the same point. In such a segmented transaction, the revised tariff sheets make clear that the shipper may exceed its maximum daily contract quantity at such point and the shipper may nominate quantities of gas in each segment up to its maximum daily contract quantity in the segment. Consistent with the Commission's policy and the Remand Order, the revised tariff sheets clarify that the portion of such a transaction in which the flow is the opposite of the shipper's primary path will be considered to be outside the primary path for scheduling purposes.

Panhandle states that copies of this filing are being served on all jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31104 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–141–000]

Petal Gas Storage, L.L.C.; Notice of Tariff Filing

December 3, 2002.

Take notice that on November 27, 2002, Petal Gas Storage, L.L.C. (Petal), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 137, to be effective December 27, 2002.

Petal states that the revised tariff sheet is being filed in order to comply with the Commission's October 31, 2002 Order on Remand.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31109 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–241–000 and RP00–241–006]

Public Utilities Commission of the State of California v. *El Paso Natural Gas Company, El Paso Merchant Energy Gas, L.P. and El Paso Merchant Energy Company;* Notice Releasing Protected Materials

December 3, 2002.

At the oral argument held on December 2, 2002, the Commission voted to make public the attached five pages that are a part of documents that were filed under protective seal in the above-docketed proceeding. The following pages were made public:

Exhibit PUC—36, pages 14 and 15
Exhibit PUC–37, page 13, one paragraph from that page
Exhibit PG&E–54, pages 47 and 48

Magalie R. Salas,

Secretary.

[FR Doc. 02–31091 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–134–000]

Sea Robin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 3, 2002.

Take notice that on November 27, 2002, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 30b, to be effective January 1, 2003.

Sea Robin states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to reflect a reduction in the standard fuel percentage in Section 5.1(b) of the General Terms and Conditions.

Sea Robin states that copies of this filing are being served on all jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31105 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–123–000]

Southern Natural Gas Company; Notice of Tariff Filing

December 3, 2002.

Take notice that on November 27, 2002, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, to become effective January 1, 2003.

Fifty-ninth Revised Sheet No. 14
Eightieth Revised Sheet No. 15
Fifty-ninth Revised Sheet No. 16
Eightieth Revised Sheet No. 17
Forty-third Revised Sheet No. 18

Section 14.2 of Southern's Tariff provides for an annual reconciliation of Southern's storage costs to reflect differences between the cost to Southern of its storage gas inventory and the amount Southern receives for such gas arising out of (i) the purchase and sale of such gas in order to resolve shipper imbalances; and (ii) the purchase and sale of gas as necessary to maintain an appropriate level of storage gas inventory for system management purposes. In the instant filing, Southern submits the rate surcharge to the transportation component of its rates under Rate Schedules FT, FT-NN, and IT resulting from the fixed and realized losses it has incurred from the purchase and sale of its storage gas inventory. Southern proposes to reduce its Storage Cost Reconciliation Mechanism Surcharge from $.012/Dth to $.003/Dth to be effective January 1, 2003. Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31102 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–125–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

December 3, 2002.

Take notice that on November 27, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff Fifth Revised Volume No. 1, Seventh Revised Sheet No. 324, with an effective date of January 1, 2003.

Tennessee states that the revised tariff sheet is being filed in accordance with the Commission's October 31, 2002, Order on Remand.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31103 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–143–000]

Tennessee Gas Pipeline Company; Notice of Take or Pay Report and Request for Waiver

December 3, 2002.

Take notice that on November 27, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing a current accounting of Tennessee's take-or-pay transition costs and a request for waiver of the requirement that Tennessee restate its take-or-pay transition surcharges.

Tennessee states that this filing of the current accounting is in compliance with Article XXV of the General Terms and Conditions of its FERC Gas Tariff, Fifth Revised Volume No. 1. Tennessee further states that the request for waiver is based on the fact that Tennessee has not incurred any significant recoverable take-or-pay costs since its last filing on May 31, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 10, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31110 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–144–000]

Tennessee Gas Pipeline Company; Notice of Cashout Report

December 3, 2002.

Take notice that on November 27, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Cashout Report for the September 2001 through August 2002 Period.

The Cashout Report is the fourth filed by Tennessee under the cashout reconciliation methodology established pursuant to the March 25, 1999 Stipulation and Agreement (Cashout Settlement) on the Tennessee system. Tennessee states that the Cashout Report reflects a cashout loss during the period of $1,414,168. Pursuant to the Cashout Settlement, this loss will carry forward into the next annual cashout period.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 10, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31111 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–115–000]

Texas Gas Transmission Corporation; Notice of Tariff Filing

December 3, 2002.

Take notice that on November 26, 2002, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing, with an effective date of January 1, 2003.

Texas Gas states that the revised tariff sheets are being filed pursuant to Section 22 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1, to reflect the 2003 General RD&D Funding Units authorized in the "Letter Order," issued by the Commission on September 19, 2002, in Docket No. RP02–534–000.

Texas Gas states that copies of this filing have been served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31094 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–112–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

December 3, 2002.

Take notice that on November 26, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revise tariff sheets and their proposed effective dates are detailed in Appendix A attached to the filing.

Transco states that the purpose of the instant filing is to update certain Delivery Point Entitlement (DPE) tariff sheets in accordance with the provisions of Section 19.1(f) of the General Terms and Conditions of Transco's Third Revised Volume No. 1 Tariff. Specifically, such tariff sheets have been revised to include changes associated with

(1) the November 1, 2002 in-service date of the completed Leidy East incremental capacity expansion and (2) miscellaneous adjustments as more fully explained in Appendix B of the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31093 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–116–000]

Williams Gas Pipelines Central, Inc.; Notice of Cash-Out Report

December 3, 2002.

Take notice that on November 26, 2002, Williams Gas Pipelines Central, Inc., (Central) tendered for filing its report of net revenue received from

cash-outs for the period of October 1, 2002 through September 30, 2002.

Central states that pursuant to the cash-out mechanism contained in Section 9.8(a)(iv) of Central's tariff, Shippers are given the option of resolving their imbalances by the end of the calendar month following the month in which the imbalance occurred by cashing out such imbalances at 100% of the spot market price applicable to Central as published in the first issue of Inside FERC's Gas Market Report for the month in which the imbalance occurred. Net monthly imbalances which are not resolved by the end of the second month following the month in which the imbalance occurred and which exceed the tolerance specified in section 9.8(c). Central states that it is filing its report of net cash out activity, which shows net cash out costs to the company of $79,401.63 for the twelve months ended September 30, 2002.

Central states that copies of its filing was served to all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 10, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31095 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–117–000]

Williams Gas Pipelines Central, Inc.; Notice of Cash Balancing Report

December 3, 2002.

Take notice that on November 26, 2002, Williams Gas Pipelines Central, Inc. (Central) filed its report of payments received from penalties assessed due to Periods of Daily Balancing and Operational Flow Orders.

Pursuant to Sections 9.6 and 10.3 of Central's FERC Gas Tariff, Original Volume No. 1, Central states that it is reporting that neither a Period of Daily Balancing nor an Operational Flow Order was issued during the 12-month period of October 1, 2001 through September 30, 2002 and no penalties were assessed or collected. Therefore, no refunds are due from Central for the 12-month period ending September 30, 2002 and a refund plan is unnecessary.

Central states that a copy of this filing has been served on all of Central's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 10, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31096 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–135–000]

Williams Gas Pipelines Central, Inc.; Notice of Tariff Filing

December 3, 2002.

Take notice that on November 27, 2002, Williams Gas Pipelines Central, Inc., (Central) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fifth Revised Sheet No. 6B, with an effective date of January 1, 2003.

Central states that this filing is being made pursuant to Article 13 of the General Terms and Conditions of its FERC Gas Tariff to reflect revised fuel and loss reimbursement percentages. The percentages are based on actual fuel and loss for the twelve months ended September 30, 2002.

Central states that copies of the filing have been served on all Central's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31106 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–22–000, et al.]

Camden Cogen, L.P., et al.; Electric Rate and Corporate Filings

November 27, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Camden Cogen, L.P., Cogen Technologies Camden GP Limited Partnership, Cogen Technologies NJ Venture, CPN Bayonne, L.L.C., East Coast Power Bayonne GP, L.L.C., East Coast Power Camden LP, L.C.C., East Coast Power, L.L.C., Mesquite Investors, L.L.C., TEVCO/Mission Bayonne Partnership

[Docket No. EC03–22–000]

Take notice that on November 25, 2002, Camden Cogen, L.P. (Camden Cogen), Cogen Technologies Camden GP Limited Partnership (Cogen Technologies Camden), Cogen Technologies NJ Venture (Bayonne), CPN Bayonne, L.L.C. (CPN Bayonne), East Coast Power Bayonne GP, L.L.C. (East Coast Bayonne), East Coast Power Camden LP, L.L.C. ("East Coast Camden"), East Coast Power, L.L.C. (East Coast Power), Mesquite Investors, L.L.C. (Mesquite), and TEVCO/Mission Bayonne Partnership (TEVCO) (jointly, Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to Section 203 of the Federal Power Act seeking authorization for: (I) Camden Cogen and Bayonne to convert their form of business organization to limited liability companies, and (ii) an internal corporate transfer of the member interests in the newly-converted limited liability companies, namely Camden Plant Holding, L.L.C. and Bayonne Plant Holding, L.L.C. respectively, directly to Mesquite.

Comment Date: December 16, 2002.

2. Power Resources, Ltd.

[Docket No. EG03–22–000]

Take notice that on November 22, 2002, Power Resources, Ltd. (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 and part 365 of the Commission's Regulations. Applicant, a Texas limited partnership with its principal place of business at 500 East Refinery Road, Big Spring, Texas 79720, is an indirect subsidiary of MidAmerican Energy Holdings Company.

Comment Date: December 18, 2002.

3. Ameren Energy Generating Company

[Docket No. EG03–23–000]

Take notice that on November 25, 2002, Ameren Energy Generating Company (AEG), One Ameren Plaza, 1901 Chouteau Plaza, P.O. Box 66149, St. Louis, Missouri, 63166–6149, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of continuing exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

AEG states that it has recently acquired the 468 MW Elgin Energy Center, which consists of four 117 MW natural gas-fired combustion turbines operating in simple cycle mode. AEG states that all of the electric energy from the affected units will be sold at wholesale.

Comment Date: December 18, 2002.

4. Southern Company Services, Inc.

[Docket No. ER03–211–000]

Take notice that on November 22, 2002, Southern Company Services, Inc. (SCS), on behalf of Georgia Power Company (Georgia Power) submitted for filing with the Federal Energy Regulatory Commission (Commission) the Interconnection Agreement by and between Georgia Power and Southern Power Company for McIntosh CC Unit 1 (Interconnection Agreement). SCS requests the Interconnection Agreement be accepted for filing effective October 25, 2002.

Comment Date: December 13, 2002.

5. Southern Company Services, Inc.

[Docket No. ER03–212–000]

Take notice that on November 22, 2002, Southern Company Services, Inc. (SCS), on behalf of Georgia Power Company (Georgia Power) submitted for filing with the Federal Energy Regulatory Commission (Commission) the Interconnection Agreement by and between Georgia Power and Southern Power Company for McIntosh CC Unit 2 (Interconnection Agreement). SCS requests Interconnection Agreement be accepted for filing effective October 25, 2002.

Comment Date: December 13, 2002.

6. Power Resource Group, Inc.

[Docket No. ER03–213–000]

Take notice that on November 22, 2002, Power Resource Group, Inc. filed a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 1, with a proposed effective date of November 25, 2002. Power Resource Group, Inc. is no longer engaged in the power marketing business, will not conduct power marketing activities in the future, and has no outstanding power sales contracts; accordingly, no purchasers will be affected by this Notice.

Comment Date: December 13, 2002.

7. New York Independent System Operator, Inc.

[Docket No. ER03–214–000]

Take notice that on November 22, 2002 Niagara Mohawk Power Corporation tendered for filing a service agreement, *i.e.* an Interconnection Agreement between Niagara Mohawk Power Corporation and Orion Power New York GPII, Inc. for an existing and operating 2.2 MW hydroelectric generating facility located in the Town of Clifton, St. Lawrence County, New York, dated as of October 18, 2002 (Agreement). The filing reflects the filing of the agreement as a service agreement filed by Niagara Mohawk under the NYISO Open Access Transmission Tariff. The filing has been designated by the New York Independent System Operator as Service Agreement No. 318.

An effective date of November 15, 2002 is requested and to the extent necessary, Niagara Mohawk requests waiver of any Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment Date: December 13, 2002.

8. Mirant Delta, LLC, Mirant Potrero, LLC

[Docket No. ER03–215–000]

Take notice that, on November 22, 2002, Mirant Delta, LLC (Mirant Delta) and Mirant Potrero, LLC (Mirant Potrero) tendered for filing certain revised tariff sheets to the Must-Run Service Agreements between Mirant Delta, Mirant Potrero, and the California Independent System Operator Corporation. The revisions include,

inter alia, changes to the: (I) Contract Service Limits, (ii) Hourly Availability Charges and Penalty Rates, (iii) Capital Item Charges and Penalty Rates; (iv) Prepaid Start-up Costs, and (v) projected outage information for the generating units owned by Mirant Delta and Mirant Potrero, for the year beginning January 1, 2003.

Comment Date: December 13, 2002.

9. Midwest Independent Transmission System Operator, Inc. and TRANSLink Development Company, LLC

[Docket No. ER03–216–000]

Take notice that on November 22, 2002, TRANSLink Development Company, LLC (TRANSLink Development) and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO or MISO) submitted to the Commission for its review and approval an Appendix I Independent Transmission Company Agreement (the Agreement) between the Midwest ISO and TRANSLink Development, executed on November 22, 2002.

The Appendix I Agreement submitted to the Commission identifies the terms under which TRANSLink Transmission Company LLC (TRANSLink) will join the Midwest ISO as an independent transmission company, thereby expanding the scope of the Midwest ISO regional transmission organization to include the transmission systems of the TRANSLink Participants, including both jurisdictional utilities and municipal and cooperative public power systems.

Comment Date: December 13, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30983 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–122–005, et al.]

PJM Interconnection, L.L.C., et al.; Electric Rate and Corporate Filings

November 29, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PJM Interconnection, L.L.C.

[Docket No. EL01–122–005]

Take notice that on November 21, 2002, in compliance with the Commission's order in PJM Interconnection, L.L.C., 101 FERC ¶ 61,135 (2002), PJM Interconnection, L.L.C. (PJM) submitted for filing amendments to the PJM Open Access Transmission Tariff to amend the PJM Market Monitoring Plan to comply with the Commission's earlier order issued in this proceeding on December 20, 2001 (PJM Interconnection, L.L.C., 97 FERC ¶ 61,319 (2002)), by adding a new section addressing investigations of undue preference.

As directed by the Commission, PJM requests an effective date of May 15, 2002 for the amendments.

Copies of this filing were served upon all parties designated on the official service list in Docket No. EL01–122, all PJM members and each state electric utility regulatory commissions in the PJM control area and PJM West region.

Comment Date: December 12, 2002.

2. TransCanada Energy Ltd.

[Docket No. ER97–1417–001]

Take notice that on November 21, 2002, TransCanada Energy Ltd. (TCE) filed a notification of a change in status to reflect certain departures from the facts the Commission relied upon in granting market-based rate authority.

Comment Date: December 12, 2002.

3. AES Placerita, Inc.

[Docket No. ER00–33–003]

Take notice that on November 22, 2002, pursuant to the Federal Energy Regulatory Commission's Order in this docket, AES Placerita, Inc. (Placerita) submitted its triennial market power update. In addition, pursuant to Section 205 of the Federal Power Act, Placerita submitted its second revision to FERC Electric Rate Schedule, Original Volume No. 1, and its first revision to its code of conduct reflecting new corporate affiliations.

Comment Date: December 13, 2002.

4. Adirondack Hydro Development Corporation, Adirondack Hydro Fourth Branch, LLC, Black Hills Colorado, LLC, Black Hills Power, Inc., Black Hills Generation, Inc., Black Hills Pepperell Power Associates, Inc., Fountain Valley Power, LLC, Harbor Cogeneration Company, NYSD LP, Sissonville LP, Warrensburg Hydro Power LP

[Docket Nos. ER00–3109–001, ER00–3774–001, ER00–1952–001, ER02–2287–001, ER01–1844–001, ER96–1635–008, ER01–1784–004, ER99–1248–003, and ER00–3109–001]

Take notice that on November 25, 2002, Black Hills Corporation, on behalf of itself and its public utility affiliates with authorization to sell electric capacity and energy at market-based rates, submitted a consolidated triennial market power update analysis demonstrating that each of the Black Hills entities satisfies the Federal Energy Regulatory Commission's applicable standards for assessing generation market power.

Comment Date: December 16, 2002.

5. Aquila, Inc.

[Docket No. ER03–188–001]

Take notice that on November 22, 2002, Aquila, Inc. filed a correction to its notice of termination of Transmission Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service between Aquila and El Paso Merchant Energy. Aquila requests that the termination be made effective on September 30, 2002.

Comment Date: December 13, 2002.

6. Aquila, Inc.

[Docket No. ER03–189–001]

Take notice that on November 22, 2002, Aquila, Inc. (Aquila) filed a supplement to its notice of termination of Transmission Service Agreements for Non-Firm and Short-Term Firm Point-to-Point Transmission Service between Aquila and El Paso Merchant Energy. Aquila requests that the termination be made effective on October 19, 2002.

Comment Date: December 13, 2002.

7. New York Independent System Operator, Inc.

[Docket No. ER03–200–001]

Take notice that on November 22, 2002, the New York Independent System Operator, Inc. (NYISO) filed with the Federal Energy Regulatory Commission (Commission) a corrected version of proposed Attachment V (ISO Working Capital Fund) to its Open Access Transmission Tariff. The corrected version conforms to the Commission's rules governing the pagination of tariff sheets. It is identical to the version originally filed on November 18, 2002 in all other respects.

The NYISO has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: December 13, 2002.

8. California Independent System Operator Corporation

[Docket No. ER03–219–000]

Take notice that on November 25, 2002, the California Independent System Operator Corporation (ISO) tendered for filing revisions to the Transmission Control Agreement (TCA) for acceptance by the Commission. The ISO states that the purpose of the amendment is (1) to clarify, amend, and supplement various provisions of the current TCA in response to issues raised by the Cities of Anaheim, Azusa, Banning, and Riverside, California (together Southern Cities), which have applied to become Participating Transmission Owners; (2) to identify the transmission interests that Southern Cities will be turning over to the ISO's Operational Control, and (3) to make certain other changes to the TCA proposed by the ISO and the current Participating Transmission Owners.

The ISO states that this filing has been served on the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, and all parties, including the signatories to the TCA, with effective Scheduling Coordinator Agreements under the ISO Tariff.

The ISO is requesting waiver of the 60-day notice requirement to allow the TCA to be made effective January 1, 2003.

Comment Date: December 16, 2002.

9. PJM Interconnection, L.L.C.

[Docket No. ER03–220–000]

Take notice that on November 25, 2002, PJM Interconnection, L.L.C. (PJM), submitted for filing with the Federal Energy Regulatory Commission (Commission) amendments to the PJM Open Access Transmission Tariff that more clearly conform the confidentiality provisions of the Market Monitoring Plan to the confidentiality provisions in the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C.

PJM requests waiver of the Commission's notice requirements to permit an effective date of November 26, 2002.

Copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM control area and PJM West region.

Comment Date: December 16, 2002.

10. El Paso Electric Company

[Docket No. ER03–221–000]

Take notice that on November 25, 2002, El Paso Electric Company tendered for filing with the Federal Energy Regulatory Commission (Commission) unexecuted Service Agreements with Arizona Public Service Company and Public Service Company of New Mexico.

Comment Date: December 16, 2002.

11. Las Vegas Cogeneration II, L.L.C.

[Docket No. ER03–222–000]

Take notice that on November 25, 2002, Las Vegas Cogeneration II, L.L.C., filed an initial rate schedule to sell power at market-based rates.

Comment Date: December 16, 2002.

12. Florida Power & Light Company

[Docket No. ER03–223–000]

Take notice that on November 26, 2002, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission an executed First Revised Construction and Connection Agreement between FPL and Oleander Power Project, L.P (Oleander). This First Revised Service Agreement No. 178 provides for additional mutually agreed to terms and conditions governing the interconnection between FPL and Oleander. A copy of this filing has been served on Oleander and the Florida Public Service Commission.

Comment Date: December 16, 2002.

13. American Electric Power Service Corporation

[Docket No. ER03–224–000]

Take notice that on November 26, 2001, American Electric Power Service Corporation (AEPSC) submitted for filing (1) the Service Agreement for ERCOT Regional Transmission Service between AEPSC and Medina Electric Cooperative Inc. (MEC), dated October 1, 2001, (2) a notice of cancellation of a service agreement for ERCOT regional transmission service between CPL and West Texas Utilities Company collectively, and MEC, dated January 1, 1997, (3) an amended interconnection agreement between Central Power and Light Company (CPL) and MEC, dated November 29, 1999, and (4) a notice of cancellation of an interchange agreement among CPL, MEC and South Texas Electric Cooperative, Inc., dated February 6, 1979.

AEPSC requests an effective date of October 1, 2001 for the Service Agreement for ERCOT Regional Transmission Service, cancellation of the earlier service agreement for ERCOT regional transmission service and addition of Facility Schedule Nos. 9 through 12 to the interconnection agreement. Such date coincides with the cancellation of CPL's agreement with MEC under which CPL supplied wholesale electric power service to MEC. AEPSC requests an effective date of August 30, 2000 for the amendment to Facility Schedule No. 7 of the interconnection agreement and it requests that the interchange agreement be canceled effective August 28, 2001.

AEPSC served copies of the filing on Medina Electric Cooperative, Inc. and the Public Utility Commission of Texas.

Comment Date: December 17, 2002.

14. Public Service Company of Oklahoma

[Docket No. ER03–225–000]

Take notice that on November 26, 2002, Public Service Company of Oklahoma (PSO) submitted for filing with the Federal Energy Regulatory Commission (Commission) a Restated and Amended Interconnection Agreement between PSO and the City of Coffeyville, Kansas (Coffeyville), dated September 12, 2002.

PSO requests an effective date of October 1, 2002. Because there are no rates or charges associated with this filing, PSO requests waiver of the Commission's notice requirements.

AEPSC served copies of the filing on Coffeyville and the Oklahoma Corporation Commission.

Comment Date: December 17, 2002.

15. Central Vermont Public Service Corporation

[Docket No. ER03–226–000]

Take notice that on November 26, 2002, Central Vermont Public Service Corporation (CVPS) tendered for filing the Forecast 2003 Cost Report required under Paragraph Q–2 on Original Sheet No. 19 of the Rate Schedule FERC No. 135 (RS–2 rate schedule) under which CVPS sells electric power to Connecticut Valley Electric Company Inc. (Customer). CVPS states that the Cost Report reflects changes to the RS–2 rate schedule which were approved by the Commission's June 6, 1989 order in Docket No. ER88–456–000. The Forecast 2003 Cost Report supports rates that represent a decrease of $1,266,280 for estimated non-energy costs in 2003.

Copies of the filing were served upon the Customer, the New Hampshire Public Utilities Commission, and the Vermont Public Service Board.

Comment Date: December 17, 2002.

16. Duke Energy Corporation

[Docket No. ER03–227–000]

Take notice that on November 25, 2002, Duke Energy Corporation, on behalf of Duke Power and Duke Electric Transmission, (collectively, Duke), tendered for filing an amended Network Integration Transmission Service Agreement (NITSA) between Duke and the City of Seneca, South Carolina. Duke seeks an effective date of November 1, 2002 for the amended NITSA.

Comment Date: December 16, 2002.

17. SP Newsprint Co.

[Docket No. QF03–34–000]

Take notice that on November 27, 2002, SP Newsprint Co., 1301 Wynooski Street, P. O. Box 70, Newberg, Oregon 97123, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Application for Commission Certification of Qualifying Status of a Cogeneration Facility pursuant to Section 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The new cogeneration facility will be located at the applicant's recycled content newsprint mill in Newberg, Oregon, and will consist of two natural gas-fired turbine generators combined with two heat recovery steam generators. The power output and steam recovered from the facility will be substantially used in the papermaking process. Surplus power and capacity not needed for the papermaking process may be sold to Pacific Northwest utilities or energy marketers. SP Newsprint currently purchases electric energy from PGE. PGE may provide the applicant with a variety of services including interconnection, wheeling, and ancillary services. In addition to PGE, it is anticipated that Bonneville Power Administration may provide wheeling and transmission services for the facility. The energy source for the facility will be natural gas. The maximum net electric power production capacity of the new cogeneration facility will be approximately 100 MW. The facility is expected to be in commercial operation by July 2003.

Comment Date: December 27, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30984 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests and Comments

December 3, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12248–000.

c. *Date filed:* June 18, 2002.

d. *Applicant:* Iron Bridge Hydro, LLC.

e. *Name and Location of Project:* The Iron Bridge Dam Hydroelectric Project would be located on the Sabine River in Van Zandt, Hunt, and Rains Counties, Texas. The project would utilize a dam owned by the Sabine River Authority of Texas. The project would not occupy Federal or Tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Brent Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

h. *FERC Contact:* Elizabeth Jones (202) 502–8246.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12248–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would operate in a run-of-river mode and would consist of: (1) An existing concrete dam 85-feet high, and 29,080-feet-crest-length, (2) an existing reservoir with a surface area of 36,015 acres, a storage capacity of 1,660,000 acre-feet, and a normal maximum water surface elevation of 438 feet, (3) a proposed 96-inch steel penstock approximately 200 feet long, (4) a proposed powerhouse containing one turbine with a total installed capacity of 2 MW, (5) a proposed switchyard, (6) approximately three miles of proposed 25kV transmission line, and (7) appurtenant facilities.

The project would have an estimated annual generation of 1.8 GWH.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at Iron Bridge Hydro, LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31089 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Recreation Plan Amendment and Soliciting Motions To Intervene, Protests, and Comments

December 3, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of Recreation Plan.

b. *Project No.:* P–2113–148.

c. *Date filed:* October 4, 2002.

d. *Applicant:* Wisconsin Valley Improvement Company.

e. *Name and Location of Project:* This amendment will affect project lands on the shores of the Rice development, located on the Tomahawk River in Lincoln and Oneida Counties, Wisconsin. The Rice reservoir is composed of three lakes: Nokomis Lake, Bridge Lake, and Deer Lake. The project utilizes U.S. Forest Service lands within the Nicolet and Ottawa National Forests and lands of the Lac Vieux Desert Bank of Lake Superior Chippewa Indians. This project does not include any hydroelectric generating facilities.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Robert Gall, President, Wisconsin Valley Improvement Company, 2301 North Third Street, Wausau, Wisconsin.

h. *FERC Contact:* Elizabeth Jones (202) 502–8246.

i. *Deadline for filing comments, protests, and motions to intervene:* January 3, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–2113–148) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Amendment:* The proposed amendment would (1) remove the requirement to development Site 2 in 2002 from the Recreation Plan, close vehicle access to Site 2 for erosion control and public safety reasons and retain it in the Recreation Plan for possible future development; (2) Reinstate Site 7 in the Recreation Plan for development in 2004; (3) Close Site 1 for public safety reasons when Site 7 opens.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov* . For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at Holbrook Hydro, LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

m. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

n. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31090 Filed 12–6–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7419–7]

Agency Information Collection Activities: Proposed Collection; Comment Request: NSPS for Coal Preparation Plants (40 CFR Part 60, Subpart Y); EPA ICR Number 1062.08; OMB Control Number 2060–0122; Expiration Date February 28, 2003

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): NSPS for Coal Preparation Plants (40 CFR part 60, subpart Y); EPA ICR Number 1062.08; OMB Control Number 2060–0122; expiration date February 28, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 7, 2003.

ADDRESSES: Compliance Assessment and Media Programs Division, Office of Compliance, Office of Enforcement and Compliance Assurance, Mail Code 2223A, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A hard copy of a specific ICR may be obtained without charge by calling or sending an E-mail to the contact person listed in this notice.

FOR FURTHER INFORMATION CONTACT: Dan L. Chadwick of the Office of Compliance at (202) 564–0754 or via E-mail at *Chadwick.Dan@epa.gov* and ask for EPA ICR Number 1062.08; OMB Control Number 2060–0122; expiration date February 28, 2003.

SUPPLEMENTARY INFORMATION:

Title: NSPS for Coal Preparation Plants (40 CFR Part 60, Subpart Y); EPA ICR Number 1062.08; OMB Control Number 2060–0122; expiration date February 28, 2003.

Affected Entities: Entities potentially affected by this action are owners or operators of coal preparation plants subject to the Clean Air Act New Source Performance Standards (NSPS) published 40 CFR part 60, subpart Y.

Abstract: The Agency has determined that the emissions from coal preparation plants cause, or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. As such, the Agency published a standard at 40 CFR part 60, subpart Y to control emissions from coal preparation plants.

Owners or operators of coal preparation plants must make certain one-time-only notifications including: notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate, notification of the initial performance test; including information necessary to determine the conditions of the performance test, and performance test measurements and results; notification of demonstration of the continuous monitoring system (CMS). Owners or operators are also required to maintain records of the occurrence and duration of any start-up, shutdown, or malfunction in the operation of an affected facility, or any period during which the CMS is inoperative. CMS requirements specific to coal preparation plants provide information on the operation of the emissions control device and compliance with the opacity standard. Periodic reports of excess emissions are also required. Any owner or operator subject to the rule shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records.

Burden Statement: The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

In the previously approved ICR, the estimated number of respondents for this information collection was 390 with 390 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 15,463 hours. On the average, each respondent reported once per year and approximately 40 hours were spent preparing each response. The total annual reporting and recordkeeping cost burden for this collection of information was $15,000. This included an annual cost of $1,000 associated with capital/startup costs and $14,000 associated with the annual operation and maintenance costs.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Dated: November 27, 2002.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 02–31016 Filed 12–6–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0312; FRL–7280–7]

Diazinon; End-Use Products Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's cancellation order for the product and use cancellations as requested by companies (hereafter collectively referred to as the "EUP Registrants") that hold the registrations of pesticide End-Use Products (EUPs) containing the active ingredient diazinon and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up an September 11, 2002, notice of receipt from the EUP Registrants, of requests for cancellations and or amendments of their diazinon product registrations to terminate all indoor uses, certain agricultural uses and certain outdoor non-agricultural uses. In the September 11, 2002 notice, EPA indicated that it would issue an order granting the voluntary product and use registration cancellations unless the Agency received any substantive comment within the comment period that would merit its further review of these requests. The Agency did not receive any comments specific to these cancellations. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: The cancellations are effective December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Laura Parsons, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, telephone number: (703) 305–5776; fax number: (703) 308–7042; e-mail address: *parsons.laura@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use diazinon products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0312. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may

be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Receipt of Requests to Cancel and Amend Registrations to Delete Uses.

A. Background

Certain registrants requested in letters dated December 2001, and January, February, March, April, May, June, and July 2002 that their diazinon registrations be amended to delete all indoor uses, certain agricultural uses, and any other uses that the registrants do not wish to maintain. The requests also included deletions of outdoor non-agricultural uses from the labeling of certain end-use products so that such products would be labeled for agricultural uses only. Similarly, other diazinon end-use registrants requested voluntary cancellation of their diazinon EUP registrations with indoor use and/or certain outdoor non-agricultural uses, and any other uses that the registrants do not wish to maintain. EPA announced its receipt of these above-mentioned cancellation requests in a **Federal Register** notice dated September 11, 2002 (67 FR 57589), (FRL–7197–8).

These requested cancellations and amendments are consistent with the requests in December 2000 by the manufacturers of diazinon technical products, and EPA's approval of such requests, to terminate all indoor uses and certain agricultural uses from their diazinon product registrations because of EPA's concern with the potential exposure risk, especially to children, associated with diazinon containing products. The indoor uses and agricultural uses subject to cancellation are identified in List 1 below:

List 1 — Uses Requested for Termination

1. *Indoor uses*: Pet collars, or inside any structure or vehicle, vessel, or aircraft or any enclosed area, and/or on any contents therein (except mushroom houses), including food/feed handling establishments, greenhouses, schools, residences, commercial buildings, museums, sports facilities, stores, warehouses and hospitals.

2. *Agricultural uses*: Alfalfa, bananas, Bermuda grass, dried beans, dried peas, celery, red chicory (radicchio), citrus, clover, coffee, cotton, cowpeas, cucumbers, dandelions, forestry (ground squirrel/rodent burrow dust stations for public health use), kiwi, lespedeza, parsley, parsnips, pastures, peppers, potatoes (Irish and sweet), sheep, sorghum, squash (winter and summer), rangeland, Swiss chard, tobacco, and turnips (roots and tops).

In today's Cancellation Order, EPA is approving the registrants' requested cancellations and amendments of the their diazinon end-use products registrations to terminate all uses identified in List 1.

B. Requests for Voluntary Cancellation of End-Use Products

The end-use product registrations for which cancellation was requested are identified in the following Table 1.

TABLE 1.— END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	EPA Registration #	Product
Farnam Companies, Inc.	270–282	Diazinon 2EC
Prentiss Inc.	655–457 655–462 655–519	Prentox Diazinon 4E Insecticide Prentox Diazinon 4S Insecticide Prentox Liquid Household Spray #1
Universal Cooperatives, Inc.	1386–573 1386–651	Diazinon Emulsifiable Lawn and Garden Insecticide Security Brand 2% Diazinon Granules Lawn Insect Control
Virbac AH, Inc.	2382–168 2382–171 2382–172	Diazinon-Pyriproxyfen Collar for Dogs and Puppies #1 Diazinon-Pyriproxyfen Collar for Dogs and Puppies #3 Diazinon-Pyriproxyfen Collar for Dogs and Puppies #2
ABC Compounding, Inc.	3862–71	Drop Dead Insect Spray
Cerexagri, Inc.	4581–335	Knox Out 2 FM
Amvac Chemical Corp.	5481–224 5481–241	Diazinon 4E Alco Housing Authority Roach Concentrate
US Marketing Distributors	6409–14	Professional Do it Yourself Exterminator's Kit Formula 400
Voluntary Purchasing Group, Inc.	7401–67	Ferti-Lome Rose Spray Containing Diazinon & Daconil.
Earth Care/Division of United Industries Corp.	8660–101 8660–115 8660–106	Vertagreen 5% Diazinon Insecticide Vertagreen Diazion Pre-Weed Vertagreen Diazinon Pre-Weed Plus
The Andersons Lawn Fertilizer Division	9198–189	Proturf Insecticide One
Waterbury Companies, Inc.	9444–89	CB Aqueous Residual Insecticide
Athea Laboratories, Inc.	10088–71	Roach and Ant Killer
Verpas Products, Inc.	13926–6	Diaciclon F-5
Wagnol Inc.	33912–1	Wagnol 40 Pest Control Spray Concentrate Contains Diazinon
T-Tex Corp.	39039–5	Dryzon WP Livestock Premise & Sheep Insecticide

TABLE 1.— END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

Company	EPA Registration #	Product
Chem-Tech Ltd.	47000–63	Pressurized Household Insect Spray Concentrate Contains Diazinon and DDVP
Marman USA , Inc.	48273–25	Marman Diazinon AG 60 EC
Control Solutions Inc	53883–58	Martin's Diazinon 4E Indoor- Outdoor Insecticide
Arkopharma, Inc.	69607–1	Double Duty Flea & Tick Collar For Dogs

EPA did not receive any substantive comments that would merit further review expressing a need of diazinon products for indoor use. Accordingly, the Agency is issuing an order in this notice canceling the registrations identified in Table 1, as requested by the EUP registrants.

C. Requests for Voluntary Amendments of End-Use Product Registrations to Terminate Certain Uses

Pursuant to section 6(f)(1)(A) of FIFRA, many EUP Registrants submitted requests to amend a number of their diazinon end-use product registrations to terminate the uses identified in List 1 of this notice or any other uses as specified for each product in the September 13, 2001, Diazinon 6(f) Notice and reiterated in Table 2 below. EPA did not receive any comments expressing a need for any of the canceled uses. The registrations for which amendments to terminate specific uses were requested are identified in the following Table 2:

TABLE 2.— END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS

Company	EPA Registration #	Product Name: Use Deletions
Dragon Chemical Corp.	16–119 16–157 16–166	Dragon 5% Diazinon Granules: Celery. Diazinon 25% Diazinon Spray: Almonds Dragon Diazinon Water-Based Concentrate: Almonds
Southern Agricultural Insecticides, Inc.	829–264	SA-50 Brand 5% Diazinon Granules: Celery

TABLE 2.— END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS—Continued

Company	EPA Registration #	Product Name: Use Deletions
Universal Cooperative, Inc.	1386–599 1386–648	Diazinon 4 EC (AG): Beans, Cucumbers, Parsley, Parsnips, Peas, Peppers, Potatoes (Irish), Squash (Summer and Winter), Sweet Potatoes, Swiss Chard, Turnips, Lawn Pest Control, Nuisance Pests in Outside Areas, Grassland Insects, and Indoor Ornamentals 5% Diazinon Insect Killer Granules: Celery
Knox Fertilizer Co. Inc.	8378–32	Shaw's 5% Diazinon Insect Granules: Celery

III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA hereby approves the requested cancellations of diazinon product and use registrations identified in Tables 1 and 2 of this notice. Accordingly, the Agency orders that the diazinon end-use product registrations identified in Table 1 are hereby canceled. The Agency also orders that all of the uses identified in List 1 and all other uses (including specific outdoor non-agricultural uses) identified for deletion in Table 2 are hereby canceled from the end-use product registrations identified in Table 2. Any distribution, sale, or use of existing stocks of the products identified in Tables 1 and 2 in a manner inconsistent with the terms of this order or the Existing Stock Provisions in Unit IV of this notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

IV. Existing Stocks Provisions

For purposes of this Order, the term "existing stocks" is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation. The existing stocks provisions of this Cancellation Order are as follows:

1. *Distribution or Sale of Products Bearing Instructions for Use on Agricultural Crops.* The distribution or sale of existing stocks by the registrant of any product listed in Table 1 or 2 that bears instructions for use on the agricultural crops identified in List 1 will not be lawful under FIFRA 1–year after the effective date of the cancellation order, except for the purposes of shipping such stocks for export consistent with section 17 of FIFRA or for proper disposal. Persons other than the registrant may continue to sell or distribute the existing stocks of any product listed in Table 2 that bears instructions for any of the agricultural uses identified in List 1 after the effective date of the cancellation order.

2. *Distribution or Sale of Products Bearing Instructions for Use on Outdoor Non-Agricultural Sites.* The distribution or sale of existing stocks by the registrant of any product listed in Table 1 or 2 that bears instructions for use on outdoor non-agricultural sites will not be lawful under FIFRA 1–year after the effective date of the cancellation order, except for the purposes of shipping such stocks for export consistent with section 17 of FIFRA or for proper disposal. Persons other than the registrant may continue to sell or distribute the existing stocks of any product listed in Table 1 or 2 that bears instructions for use on outdoor non-agricultural sites after the effective date of the cancellation order.

3. *Distribution or Sale of Products Bearing Instructions for Use on Indoor Sites.* The distribution or sale of existing stocks by the registrant of any product

listed in Table 1 or 2 that bears instructions for use at or on any indoor sites (except mushroom houses), shall not be lawful under FIFRA as of the effective date of the cancellation order, except for the purposes of shipping such stocks for export consistent with section 17 of FIFRA or for proper disposal.

4. *Retail and Other Distribution or Sale of Existing Stock of Products For Indoor Use.* The distribution or sale of existing stocks by any person other than the registrants of products listed in Table 1 or 2 bearing instructions for any indoor uses except mushroom houses will not be lawful under FIFRA after December 31, 2002, except for the purposes of shipping such stocks for export consistent with section 17 of FIFRA or for proper disposal.

5. *Use of existing stocks.* EPA intends to permit the use of existing stocks of products listed in Table 1 or 2 until such stocks are exhausted, provided such use is in accordance with the existing labeling of that product.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 22, 2002.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–31013 Filed 12–6–02; 8:45am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7413–3]

Napa State Hospital—Administrative Consent Agreement and Final Order; Notice of Proposed Administrative Consent Agreement and Final Order Pursuant to Section 311(b)(6) of the Clean Water Act

AGENCY: Environmental Protection Agency, Region IX.

ACTION: Notice, request for public comments.

SUMMARY: In accordance with section 311(b)(6)(C) of the Clean Water Act, ("CWA"), 33 U.S.C. 1321(b)(6)(C), notice is hereby given of a proposed Consent Agreement and Final Order ("CA/FO," Region 9 Docket No. OPA 9–2003–0001), which resolves penalties for alleged violations of sections 311(b)(3) and 311(j) of the CWA. The respondent to the CA/FO is the Napa State Hospital, an agency of the State of California. Through the proposed CA/FO, the Napa State Hospital will pay $40,000 to the Oil Spill Liability Trust Fund as a penalty for alleged violations involving the discharge of oil into waters of the United States, and the failure to prepare and maintain a spill prevention, control and countermeasure plan. The penalty included in this CA/FO was calculated in accordance with the Agency's guidance document, Civil Penalty Policy for section 311(b)(3) and section 311(j) of the Clean Water Act, dated August 1998. For 30 days following the date of publication of this notice, the Agency will receive written comments relating to the proposed CA/FO. Any person who comments on the proposed CA/FO shall be given notice of any hearing held and a reasonable opportunity to be heard and to present evidence. If no hearing is held regarding comments received, any person commenting on this proposed CA/FO may, within 30 days after the issuance of the final order, petition the Agency to set aside the CA/FO, as provided by section 311(b)(6)(C)(iii) of the CWA, 33 U.S.C. 1321(b)(6)(C)(iii).

DATES: Comments must be submitted on or before January 8, 2003.

ADDRESSES: The proposed CA/FO may be obtained from J. Andrew Helmlinger, telephone (415) 972–3904. Comments regarding the proposed CA/FO should be addressed to Danielle Carr (ORC–3) at 75 Hawthorne Street, San Francisco, California 94105, and should reference the Napa State Hospital and Region IX docket OPA 9–2003–0001.

FOR FURTHER INFORMATION CONTACT: J. Andrew Helmlinger, Office of Regional Counsel, (415) 972–3904, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Dated: November 14, 2002.

Debbie Jordan,

Acting Director, Superfund Division.

[FR Doc. 02–30121 Filed 12–6–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–02–49–A (Auction No. 49); DA 02–3287]

Auction No. 49 Auction of Lower 700 MHz Band Licenses Scheduled for April 16, 2003; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of 251 licenses in the Lower 700 MHz band C block (710–716/740–746 MHz) scheduled to commence on April 16, 2003. This document also seeks comment on reserve prices or minimum opening bids and other auction procedures.

DATES: Comments are due on or before December 16, 2002, and reply comments are due on or before December 23, 2002.

ADDRESSES: Comments and reply comments must be sent by electronic mail to the following address: *auction49@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: *Legal questions:* Howard Davenport (202) 418–0660; *General auction questions:* Lyle Ishida (202) 418–0660 or Linda Sanderson (717) 338–2888. *For service rule questions:* Amal Abdallah, Policy and Rules Branch, or Joanne Epps and Melvin Spann, Licensing and Technical Analysis Branch, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 49 Comment Public Notice* released December 2, 2002. The complete text of the *Auction No. 49 Comment Public Notice,* including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. *Auction No. 49 Comment Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

1. By the *Auction No. 49 Comment Public Notice,* the Wireless Telecommunications Bureau ("Bureau") announces the auction of 251 licenses in the Lower 700 MHz band C block (710–716/740–746 MHz) scheduled to commence on April 16, 2003 (Auction No. 49). This auction will include the C block licenses that remained unsold in Auction No. 44, which closed on September 18, 2002. A complete list of licenses available for Auction No. 49 is included as Attachment A of the *Auction No. 49 Comment Public Notice.* The C block is a 12-megahertz spectrum block, consisting of a pair of 6-megahertz segments, which is licensed over 734 Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs").

2. The following table contains the block/frequency cross-reference for the 710–716/740–746 MHz bands:

Block	Frequencies (MHz)	Bandwidth	Pairing	Geographic area type	No. of licenses
C	710–716, 740–746	12 MHz	2 x 6 MHz	MSA/RSA	251

(**Note:** *For Auction No. 49, licenses are not available in every market for the frequency block listed in the table. See Attachment A of the Auction No. 49 Comment Public Notice to determine which licenses will be offered.*)

3. The Balanced Budget Act of 1997 requires the Commission to "ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *." Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau therefore seeks comment on the following issues relating to Auction No. 49.

I. Auction Structure

A. Simultaneous Multiple Round (SMR) Auction Design

4. The Bureau proposes to award all licenses included in Auction No. 49 in a simultaneous multiple-round auction. As described further, this methodology offers every license for bid at the same time with successive bidding rounds in which bidders may place bids. The Bureau seeks comment on this proposal.

B. Upfront Payments and Initial Maximum Eligibility

5. The Bureau has been delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area, and the value of similar spectrum. As described further, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these guidelines in mind for Auction No. 49, the Bureau proposes to calculate upfront payments on a license-by-license basis using the following formula:

$0.005 * MHz * License Area Population with a minimum of $1,000 per license. Accordingly, the Bureau lists all licenses, including the related license area population and proposed upfront payment for each, in Attachment A of the *Auction No. 49 Comment Public Notice.* The Bureau seeks comment on this proposal.

6. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the number of bidding units on which a bidder may place bids. This limit is a bidder's "maximum initial eligibility." Each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 49 Comment Public Notice,* on a bidding unit per dollar basis. This number does not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses as long as the total number of bidding units associated with those licenses does not exceed its maximum initial eligibility. Eligibility cannot be increased during the auction. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. The Bureau seeks comment on this proposal.

C. Activity Rules

7. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their maximum bidding eligibility during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or must use an activity rule waiver (if any remain). The Bureau proposes to divide the auction into three stages, each characterized by an increased activity requirement. The auction will start in Stage One. The Bureau proposes that the auction generally will advance to the next stage (*i.e.,* from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, the Bureau further proposes that it retain the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau seeks comment on these proposals.

8. For Auction No. 49, the Bureau proposes the following activity requirements:

Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4).

Stage Two: In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths (10/9).

Stage Three: In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final

stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty/forty-ninths (50/49).

9. The Bureau seeks comment on these proposals. Commenters that believe these activity rules should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

D. Activity Rule Waivers and Reducing Eligibility

10. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

Note: Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.

11. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding period where a bidder's activity level is below the minimum required unless: (i) There are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

Note: If a bidder has no waivers remaining and does not satisfy the required activity level, its current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

12. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the "reduce eligibility" function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

13. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a bidding period in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

14. The Bureau proposes that each bidder in Auction No. 49 be provided with five activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth. The Bureau seeks comment on this proposal.

E. Information Relating to Auction Delay, Suspension, or Cancellation

15. For Auction No. 49, the Bureau proposes that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within its discretion, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

II. Bidding Procedures

A. Round Structure

16. The Commission will conduct Auction No. 49 over the Internet. Telephonic Bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. The telephone number through which the backup FCC Wide Area Network may be accessed will be announced in a later public notice. Full information regarding how to establish such a connection, and related charges, will be provided in the public notice announcing details of auction procedures.

17. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

18. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. The Bureau seeks comment on this proposal.

B. Reserve Price or Minimum Opening Bid

19. The Balanced Budget Act calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.

20. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

21. In light of the Balanced Budget Act's requirements, the Bureau proposes to establish minimum opening bids for Auction No. 49. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool.

22. Specifically, for Auction No. 49, the Commission proposes the following license-by-license formula for calculating minimum opening bids:

$0.01 * MHz * License Area Population with a minimum of $1,000 per license. The specific minimum opening bid for each license available in Auction No. 49 is set forth in Attachment A of the *Auction No. 49 Comment Public Notice*. Comment is sought on this proposal.

23. If commenters believe that these minimum opening bids will result in substantial numbers of unsold licenses, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the minimum opening bids, the Bureau particularly seeks comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the Lower 700 MHz band spectrum. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

C. Minimum Acceptable Bids and Bid Increments

24. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. The FCC Automated Auction System interface will list the nine acceptable bid amounts for each license. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. In the rounds after an acceptable bid is placed on a license, the minimum acceptable bid for that license will be equal to the standing high bid plus the defined increment.

25. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described. The difference between the minimum acceptable bid and the standing high bid for each license will define the *bid increment*. The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

26. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts for licenses that have not yet received a bid will be calculated differently, as explained.

27. For Auction No. 49, the Bureau proposes to calculate minimum acceptable bids by using a smoothing methodology, as it has done in several other auctions. The smoothing formula calculates minimum acceptable bids by first calculating a *percentage increment*, not to be confused with the *bid increment*. The percentage increment for each license is based on bidding activity on that license in all prior rounds; therefore, a license which has received many bids throughout the auction will have a higher percentage increment than a license which has received few bids.

28. The calculation of the percentage increment used to determine the minimum acceptable bids for each license for the next round is made at the end of each round. The computation is based on an activity index, which is a weighted average of the number of bids in that round and the activity index from the prior round. The current activity index is equal to a weighting factor times the number of new bids received on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%). Hence, at these initial settings, the percentage increment will fluctuate between 10% and 20% depending upon the number of bids for the license.

Equations

$A_i=(C*B_i)+((1-C)*A_{i-1})$

I_{i+1}=smaller of $((1+A_i)*N)$ and M

$X_{i+1}=I_{i+1}*Y_i$

Where,

A_i=Activity index for the current round (round i)

C=Activity weight factor

B_i=Number of bids in the current round (round i)

A_{i-1}=Activity index from previous round (round i − 1), A_0 is 0

I_{i+1}=Percentage increment for the next round (round i+1)

N=Minimum percentage increment or percentage increment floor

M=Maximum percentage increment or percentage increment ceiling

X_{i+1}=Dollar amount associated with the percentage increment

Y_i=High bid from the current round

29. Under the smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the high bid from the current round plus the dollar amount associated with the percentage increment, with the result rounded to the nearest thousand if it is over ten thousand or to the nearest hundred if it is under ten thousand.

Examples

License 1

C=0.5, N=0.1, M=0.2

Round 1 (2 new bids, high bid=$1,000,000)

i. Calculation of percentage increment for round 2 using the smoothing formula:

$A_1 = (0.5 * 2) + (0.5 * 0) = 1$

I_2 = The smaller of ((1 + 1) * 0.1) = 0.2 or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 2 (using I_2):

$X_2 = 0.2 * $1,000,000 = $200,000

iii. Minimum acceptable bid for round 2 = $1,200,000

Round 2 (3 new bids, high bid = $2,000,000)

i. Calculation of percentage increment for round 3 using the smoothing formula:

$A_2 = (0.5 * 3) + (0.5 * 1) = 2$

I_3 = The smaller of ((1 + 2) * 0.1) = 0.3 or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 3 (using I_3):

$X_3 = 0.2 * $2,000,000 = $400,000

iii. Minimum acceptable bid for round 3 = $2,400,000

Round 3 (1 new bid, high bid = $2,400,000)

i. Calculation of percentage increment for round 4 using the smoothing formula:

$A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$

I_4 = The smaller of ((1 + 1.5) * 0.1) = 0.25 or 0.2 (the maximum percentage increment)

ii. Calculation of dollar amount associated with the percentage increment for round 4 (using I_4):

$X_4 = 0.2 * $2,400,000 = $480,000

iii. Minimum acceptable bid for round 4 = $2,880,000

30. As stated, until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The

additional bid amounts are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded as described, and the minimum opening bid. That is, I = (minimum opening bid)(1 + N){rounded} − (minimum opening bid). Therefore, when N equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

31. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

32. The Bureau retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Automated Auction System. The Bureau seeks comment on these proposals.

D. High Bids

33. At the end of a bidding round, the high bids will be determined based on the highest gross bid amount received for each license. In the event of identical high bids on a license in a given round (*i.e.*, tied bids), the Bureau proposes to use a random number generator to select a high bid from among the tied bids. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the license. If any bids are received on the license in a subsequent round, the high bid again will be determined by the highest gross bid amount received for the license.

34. A high bid will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. A high bid from a previous round is sometimes referred to as a "standing high bid." Bidders are reminded that standing high bids confer activity credit.

E. Information Regarding Bid Withdrawal and Bid Removal

35. For Auction No. 49, the Bureau proposes the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By removing selected bids in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

36. A high bidder may withdraw its standing high bids from previous rounds using the withdraw function in the bidding system. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions of the Commission rules. The Bureau seeks comment on these bid removal and bid withdrawal procedures.

37. In the *Part 1 Third Report and Order*, 63 FR 770 (January 7, 1998), the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

38. Applying this reasoning, the Bureau proposes to limit each bidder in Auction No. 49 to withdrawing standing high bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. The Bureau seeks comment on this proposal.

A. Stopping Rule

39. The Bureau has discretion "to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time." For Auction No. 49, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain open until bidding closes simultaneously on all licenses.

40. Bidding will close simultaneously on all licenses after the first round in which no new acceptable bids, proactive waivers, or withdrawals are received. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

41. However, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 49:

i. Utilize a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be used at any time or only in stage three of the auction.

ii. Keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

iii. Declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) only for licenses on which the high bid increased in at least one of a specified preceding number of rounds.

42. The Bureau proposes to exercise these options only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. The Bureau seeks comment on these proposals.

III. Conclusion

43. Comments are due on or before December 16, 2002, and reply comments are due on or before December 23, 2002. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction49@fcc.gov*. The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 49 Comments. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW, Washington, DC 20554.

44. *In addition, the Bureau requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338–2850.*

45. This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions & Industry Analysis Division, WTB.

[FR Doc. 02–31075 Filed 12–6–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System (Board)

ACTION: Notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of proposed revisions to the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002). The Board is publishing the proposed revisions on behalf of the agencies. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC should modify the proposed revisions prior to giving its final approval. The Board will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before February 7, 2003.

ADDRESSES: Interested parties are invited to submit written comments to the agency listed below. All comments, which should refer to the OMB control number, will be shared among the agencies. Written comments, which should refer to the "Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, 7100–0032," should be addressed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Due to temporary disruptions in the Board's mail service, commenters are encouraged to submit comments by electronic mail to regs.comments@federalreserve.gov, or fax them to the Office of the Secretary at (202) 452–3819 or (202) 452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room outside those hours. Both the mailroom and the security control room are accessible from the Eccles building courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room M–P–500 between 9 a.m. and 5 p.m. on weekdays pursuant to sections 261.12 and 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: A draft copy of the proposed FFIEC 002 reporting form may be obtained at the FFIEC's web site (www.ffiec.gov). A copy of the proposed revisions to the collection of information may also be requested from Cindy Ayouch, Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

SUPPLEMENTARY INFORMATION: Proposal to Revise the Following Currently Approved Collection of Information:

Report Title: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

Form Number: FFIEC 002.

OMB Number: 7100–0032.

Frequency of Response: Quarterly.

Affected Public: U.S. branches and agencies of foreign banks.

Estimated Number of Respondents: 354.

Estimated Total Annual Responses: 1,416.

Estimated Time per Response: 22.50 burden hours.

Estimated Total Annual Burden: 31,860 burden hours.

General Description of Report: This information collection is mandatory: 12 U.S.C. 3105(b)(2), 1817(a)(1) and (3), and 3102(b). Except for select sensitive items, this information collection is not given confidential treatment (5 U.S.C. 552(b)(8)). Small businesses (that is, small U.S. branches and agencies of foreign banks) are affected.

Abstract: On a quarterly basis, all U.S. branches and agencies of foreign banks (U.S. branches) are required to file detailed schedules of assets and liabilities in the form of a condition report and a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The Federal Reserve System collects and processes this report on behalf of all three agencies.

Current Actions: The agencies propose to implement several revisions to the existing reporting requirements of the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002). The proposed revisions would improve the agencies' ability to analyze the risks and activities of branches and agencies and achieve consistency with the Reports of

Condition and Income (Call Report) (forms FFIEC 031 and 041) filed by insured commercial banks and FDIC–supervised savings banks, including certain proposed changes to the Call Report.

The proposed revisions to the FFIEC 002 that would take effect as of the March 31, 2003, reporting date include:

Schedule RAL–Assets and Liabilities

1. Splitting item 1.c(2), "Mortgage–backed securities," into separate items 1.c(2)a "Issued or guaranteed by U.S. Government agencies" and 1.(c).2b "Other." The proposed breakdown would provide information on the composition of mortgage–backed securities held by branches and agencies, which will enter into the derivation of weekly bank credit data used by the Board for monetary policy purposes.

2. Splitting item 1.d., "Federal funds sold and securities purchased under agreements to resell" into separate items 1.d.(1), "Federal funds sold," 1.d.(1)a, "With depository institutions in the U.S.," 1.d.(1)b, "With others," and 1.d.(2), "Securities purchased under agreements to resell," 1.d.(2)a, "With depository institutions in the U.S.," 1.d.(2)b, "With others." The proposed breakdown would provide greater insight into the liquidity of branches and agencies. These institutions actively participate and often hold large positions in the federal funds and repurchase agreement market. The separation would also achieve consistency with the existing Reports of Condition and Income (Call Report) because insured commercial banks and FDIC–supervised savings banks currently report federal funds sold separately from securities purchased under agreements to resell.

3. Splitting item 4.b., "Federal funds purchased and securities sold under agreements to repurchase" into separate items 4.b.(1), "Federal funds purchased," 4.b.(1)a, "With depository institutions in the U.S.," 4.b.(1)b, "With others" and 4.b.(2), "Securities sold under agreements to repurchase," 4.b.(2)a, "With depository institutions in the U.S.," 4.b.(2)b, "With others." The rationale for this proposed change, which deals with a funding source for branches and agencies, is essentially the same as the justification above for splitting "Federal funds sold and securities purchased under agreements to resell".

4. Splitting item 1.f, "Trading Assets," into separate items 1.f(1), "U.S. Treasury and Agency Securities" and 1.f(2), "Other trading assets." The proposed breakdown would provide information on the composition of the trading assets of branches and agencies, which will enter into the derivation of weekly bank credit data used by the Board for monetary policy purposes. On November 8, 2002, the agencies published a notice soliciting comments for 60 days on proposed revisions to the Reports of Condition and Income (Call Report) (67 FR 68234). The notice includes a proposed clarification to the "Trading Account" Glossary entry on when loans can be designated as trading assets. Accordingly, the agencies are proposing the same clarification for the FFIEC 002 "Trading Account" Glossary entry to achieve consistency with the proposed changes to the Call Report.

Schedule L–Derivatives and Off–Balance–Sheet Items

1. Adding Memoranda items 1.a., "Gross positive fair value," and 1.b., "Gross negative fair value" to Memoranda item 1., "Notional amount of all credit derivatives on which the reporting branch or agency is the guarantor." The new items would provide a better measure of credit and market risk, particularly for branches and agencies with large positions in credit derivatives. These new items will also achieve consistency with the existing Reports of Condition and Income (Call Report) filed by insured commercial banks and FDIC–supervised savings banks.

2. Adding Memoranda items 2.a., "Gross positive fair value," and 2.b., "Gross negative fair value" to Memoranda item 2., "Notional amount of all credit derivatives on which the reporting branch or agency is the beneficiary." The rationale for the proposed change is the same as the justification above for adding items to Memoranda item 1.

Schedule O –Other Data for Deposit Insurance Assessments

Modifying the captions for Memorandum items 1.a., "Deposit accounts of $100,000 or less," and 1.b., "Deposit accounts of more than $100,000," to reflect the deposit insurance limits in effect on the report date that are to be used as the basis for reporting the number and amount of deposit accounts in Memorandum item 1. Memorandum item 1, collects information on the number and amount of deposit accounts of (a) $100,000 or less and (b) more than $100,000. This information provides the basis for calculating "simple estimates" of the amount of insured and uninsured deposits. The captions for these memorandum items explicitly refer to $100,000, which is the current deposit insurance limit. Given the purpose of these memorandum items, the dollar amount cited in the caption would need to be changed if the deposit insurance limit were to change. The proposed revision would ensure that such a change occurs automatically as a function of the deposit insurance limit in effect on the report date.

Schedule S – Securitization and Asset Sale Activities

Splitting item 2.b., "Standby letters of credit, subordinated securities, and other enhancements," into two items, one for securitization credit enhancements that are on–balance sheet assets and another for other credit enhancements. This would be accomplished by adding a new item 2.c., "Standby letters of credit and other enhancements," where branches and agencies would disclose the unused portion of standby letters of credit and the maximum contractual amount of recourse or other credit exposure not in the form of an on–balance sheet asset that has been provided or retained in connection with the securitization structures reported in item 1 of Schedule S. This proposed revision will enable the agencies to better understand the types of credit support that branches and agencies are providing to their securitizations, including which types are typically used for different types of securitized loans. The revisions will also achieve consistency with the changes proposed to the Reports of Condition and Income (Call Report) filed by insured commercial banks and FDIC–supervised savings banks.

Request for Comment

Comments submitted in response to this Notice will be shared among the agencies and will be summarized or included in the Board's request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection requests. Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Board of Governors of the Federal Reserve System, December 3, 2002.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 02–30970 Filed 12–6–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Cindy Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer—Joseph Lackey—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Final Approval Under OMB Delegated Authority of the Extension For Three Years, With Revision, of the Following Reports:

1. Report title: Reports of Foreign Banking Organizations
Agency form numbers: FR Y–7, FR Y–7N, FR Y–7NS, and FR Y–7Q
OMB control number: 7100–0125
Frequency: Quarterly and annually
Reporters: Foreign banking organizations (FBO's)
Annual reporting hours: 5,330 hours
Estimated average hours per response:
FR Y-7: 3.25 hours,
FR Y-7N (quarterly): 6 hours,
FR Y-7N (annual): 6 hours,
FR Y-7NS: 1 hour,
FR Y-7Q (annual): 1 hour,
FR Y-7Q (quarterly): 1.25 hours
Number of respondents:
FR Y-7: 327,
FR Y-7N (quarterly): 129,
FR Y-7N (annual): 96,
FR Y-7NS: 164,
FR Y-7Q (annual): 301,
FR Y-7Q (quarterly): 26
Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. §§601–604a, 611–631, 1844(c), 3106, and 3108(a)). Confidential treatment is not routinely given to the data in these reports. However, the FR Y–7Q data will be held confidential until 120 days after the as-of date. Also, confidential treatment for information, in whole or in part, on any of the reporting forms can be requested in accordance with the instructions to the form, pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act [5 U.S.C. §§522(b)(4) and (b)(6)].

Abstract: The FR Y–7 is an annual report filed by all FBO's that engage in banking in the United States, either directly or indirectly, to update their financial and organizational information. The Federal Reserve uses information to assess an FBO's ability to be a continuing source of strength to its U.S. banking operations and to determine compliance with U.S. laws and regulations.

Current actions: On August 19, 2002, the Federal Reserve published a notice soliciting comments for 60 days on proposed revisions to the FR Y–7, Reports of Foreign Banking Organizations (67 FR 53797). The notice described the Federal Reserve proposal to (1) streamline the existing nonbank subsidiary reporting framework for all non-functionally regulated nonbank subsidiaries, (2) add a new report for collecting capital and asset information from FBO's (FR Y–7Q), and (3) revise the Annual Report of FBO's, FR Y–7, to update the reporting form for recent changes to Regulation K and delete items that were no longer needed. The Federal Reserve Board has approved the proposed changes, with the modifications discussed below, effective for the December 31, 2002, as–of date.

The Board received comment letters from three FBO's and three trade groups representing FBO's on this proposal. Most commenters supported the Board's efforts to streamline the reports and reduce reporting burden. Other substantive comments addressed the reporting dates and timing of submissions, the implementation date, and confidentiality for all the reports; consolidation and thresholds for the nonbank reports (FR Y–7N and 7NS); and top–tier reporting for capital and asset information and reporting of total assets (FR Y–7Q).

Reporting dates and timing of submissions

On the FR Y–7Q, FBO's that are financial holding companies (FHC's) must report capital and asset information quarterly and all other FBO's must report this information annually. Several commenters pointed out that some FHC FBO's do not provide quarterly capital and asset information even to their home country supervisors, and requested that capital information be collected on a basis consistent with home country reporting. Quarterly reporting will assist Federal Reserve supervisors in their evaluation of foreign bank FHC capital under the comparability requirements in the Gramm–Leach–Bliley Act. Also, quarterly reporting is appropriate for consistency with the reporting frequency for U.S. banking organizations. Therefore, the Federal Reserve maintains that quarterly reporting for FHC FBO's is appropriate. A commenter also suggested that FBO's be allowed to provide this information according to their fiscal year. As stated in the initial proposal, FBO's may report these data according to their fiscal year, but will provide these data on a calendar–year basis and note the as–of date on the form.

A commenter requested that more time be given for submitting the FR Y–7Q, regardless of frequency. Since many FBO's do not produce capital and asset information for their home country supervisors or the public as quickly as 60 days after the as–of date, the Federal Reserve will allow all FR Y–7Q reporters to submit their data up to 90 days after the as–of date. Some commenters also noted that the Federal Reserve proposed in 2000 to require risk–based capital data within 90 days, yet decided to keep the 120–day deadline. At that time, the Federal Reserve recognized that 120 days were sometimes needed to compile the different kinds of information required for the FR Y–7. Because such information is now being collected in separate forms, the timetables for filing have been tailored more appropriately to the types of information sought.

Some commenters expressed concern about the opportunity for extensions to file the FR Y–7Q. Cases in which home country practices do not allow for

reporting within 90 days might justify an extension, but only after consultation with Federal Reserve staff. Given the changes to submission dates suggested above, few extensions are expected to be granted after the initial implementation period.

The FR Y–7N collects data on FBO's nonbank subsidiaries not held through a U.S. holding company (formerly the NFIS report). A few commenters addressed the fact that some current NFIS reporters provide data on their U.S. nonbank subsidiaries according to the home country fiscal year, which is not on a calendar–year basis. Since these nonbank subsidiaries are separately capitalized entities operating within the United States, the Federal Reserve maintains that they should report on a calendar–year basis for consistency with other U.S. nonbank subsidiaries. Also, U.S. branches and agencies of FBO's (which are not separately capitalized entities) are currently required to report quarterly on a calendar–year basis.

Some commenters on the FR Y–7N requested that the quarterly filing requirement for "significant" nonbank subsidiaries (i.e., those with sizeable asset or off–balance–sheet positions) be eliminated because of burden arising from quarterly reconciliation with parent financial statements. However, the quarterly reporting requirement for significant nonbank subsidiaries was developed specifically to improve supervisory assessment of significant nonbank subsidiaries, because these significant nonbank subsidiaries have greater potential than other subsidiaries to pose risks to the FBO's other U.S. operations or the parent organization. As noted above, most FBO's already provide quarterly data on their branches and agencies, which requires reconciliation with financial statements of the parent organization. Therefore, quarterly data for significant nonbank subsidiaries will be collected. Finally, a commenter suggested that the threshold for quarterly reporting be determined annually, not quarterly. The Federal Reserve decided to maintain the quarterly threshold assessment since this is consistent with the assessment method for other quarterly regulatory reports.

Several commenters also requested that FR Y–7N filers be given more than 60 days after the as–of date to submit the report. The commenters also pointed out that the filing deadline for the FR Y–7, which contains consolidated financial statements remains at 120 days. The submission deadline for both annual and quarterly reporting on the FR Y–7N will be extended to 75 days for an implementation period to allow respondents time to alter their systems. However, by March 2004, the submission deadline will be scaled back to 60 days (consistent with FR Y–11 and FR 2314 reports). The Federal Reserve decided to retain the 120–day submission deadline for consolidated financial statements on the FR Y–7, since information on that report is required from the entire consolidated entity, which may have subsidiaries in various countries. The FR Y–7N collects data for individual U.S. subsidiaries, which should be available more quickly.

Implementation date

Several commenters stated that implementation of the new reporting framework for the FR Y–7Q and the FR Y–7N starting with year–end 2002 would be particularly difficult, especially given the submission deadlines in the original proposal. In order to facilitate the transition to the new reporting requirements for the FR Y–7Q and the FR Y–7N, respondents will be given 180 days to report year–end 2002 data.[1] In addition, the requirement for any quarterly reporting as of March 31, 2002, will be waived. This one–time delayed implementation should allow respondents time to adjust to the new framework. Quarterly reporting will commence June 30, 2003.

Confidentiality

Several commenters addressed the lack of automatic confidential treatment of capital and asset information on the FR Y–7Q. The FBO's were concerned about having capital and asset information available before their public financial statements were released. Therefore, all FR Y–7Q data will be held confidential for 120 days after the as–of date, since these data are usually provided to the public by FBO's before that time. The 120–day confidentiality period will not preclude applicants from requesting from the Board confidentiality beyond that period, in whole or in part, on a case–by–case basis, if justified by the respondent.

There were also requests that confidential status be applied to FR Y–7N reports. However, FR Y–7N respondents will not automatically be accorded confidential treatment. This is consistent with the current treatment of other domestic nonbank reports. The Board may grant confidentiality treatment for the reporting information on the FR Y–7N, in whole or in part, on a case–by–case basis, if justified by the respondent.

[1] Note that respondents who file for a fiscal year-end of October 31, 2002 under the current NFIS reporting requirements will only have to file once, i.e., as of December 31, 2002.

Consolidation (FR Y-7N and FR Y-7NS)

Several commenters strongly suggested that consolidated reporting of nonbank subsidiaries still be allowed for the FR Y–7N and FR Y–7NS. Legal entity data allows supervisors to identify issues more efficiently and effectively, and consolidated data is not as useful because filers consolidate reports inconsistently. Therefore, the Federal Reserve maintains that these respondents must file on a legal entity basis. As discussed in the following paragraph, however, the exemption of small or less significant respondents should offset burden since a large number of previously consolidated entities may meet the exemption criteria.

Threshold for nonbank reports (FR Y–7N and FR Y–7NS)

The commenters correctly pointed out that the reporting threshold for the abbreviated FR Y–7NS was actually lowered in the proposal, from the existing threshold of $150 million in total assets for NFIS reporters to $100 million in total assets for proposed FR Y–7NS reporters. All else equal, this would create unintended additional burden for proposed FR Y–7NS reporters. Therefore, the proposed threshold for abbreviated reporting will be raised from the amount initially proposed ($100 million) to $250 million. In addition, there was a request to raise the threshold for nonbank subsidiaries that are exempt from reporting altogether. This threshold will be raised from the proposed $20 million in total assets to $50 million.

Top–tier reporting for capital and asset information (FR Y–7Q)

Several commenters expressed concern that for capital and asset reporting on the FR Y–7Q, some top–tier FBO's might have to file data for U.S. regulatory reports when they do not submit capital and asset data to their home country supervisor. Reporting requirements for capital and asset information placed on top–tier entities will generally mirror those of the home country supervisors. For clarification, the instructions will include examples of cases in which top-tier filers would be exempt. In those limited instances where home country reporting would not be required, filers should consult with the appropriate Federal Reserve Bank regarding specific reporting requirements for the top–tier entity.

Total assets (FR Y–7Q)

A trade group representing foreign banks requested that the item for total assets be removed or separately linked to the frequency with which the reporting bank reports its total assets to its home country supervisor. The commenter stated that it would not be feasible for some banks to report this figure on a quarterly basis without significant changes to their internal financial reporting systems. Information on total assets is required as part of the FHC declaration and therefore ongoing periodic collection of this information is consistent with the regulatory framework. As noted above, requiring such information to be provided on a quarterly basis is consistent with the requirements imposed on U.S. banking organizations and helpful in monitoring comparability requirements. Therefore, this item will be collected.

2. Report title: Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies

Agency form number: FR Y–11 and FR Y–11S (formerly FR Y–11Q and FR Y–11I)
OMB control number: 7100-0244
Frequency: Quarterly and annually
Reporters: Bank holding companies (BHC's)
Annual reporting hours: 22,134 hours
Estimated average hours per response:
FR Y-11 (quarterly): 6 hours,
FR Y-11 (annual): 6 hours,
FR Y-11S (annual): 1 hour
Number of respondents:
FR Y-11 (quarterly): 843,
FR Y-11 (annual): 239,
FR Y-11S (annual): 468
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. §§1844(b) and (c) and 12 CFR 225.5(b)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act [5 U.S.C. §§522(b)(4) and (b)(6)].
Abstract: The FR Y–11 reports collect information that helps supervisory staff determine the condition of bank holding companies (BHC) that are engaged in nonbanking activities and helps monitor the volume, nature, and condition of their nonbanking subsidiaries. Financial information on nonbank subsidiaries is essential for monitoring their potential impact on the BHC's condition. The report collects information on assets, income, equity capital, and off–balance–sheet items.
Current actions: On August 19, 2002, the Federal Reserve published a notice soliciting comments for 60 days on proposed revisions to the Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies, FR Y–11 series (67 FR 53797). The notice described the Federal Reserve proposal to streamline the existing reporting framework for all non–functionally–regulated[2] nonbank subsidiaries. The revised framework would both provide essential information to supervise and regulate non–functionally–regulated subsidiaries and reduce the burden on the industry. The proposed revisions included:
1) Implementing a uniform and streamlined reporting form for all nonbank subsidiary filers;
2) Reducing the burden by increasing or establishing consistent filing thresholds for all nonbank subsidiary filers;
3) Establishing filing thresholds for reporters, consistent with risk–focused supervision, based on asset size and off–balance–sheet activity (absolute measures), plus operating revenues and equity capital (relative measures);
4) Not allowing consolidation among filers; and
5) Eliminating reporting for the smallest filers.

The Federal Reserve Board has approved the proposed changes, with the modifications discussed below, effective for the December 31, 2002, as–of date. The Federal Reserve received comment letters from two banking organizations. Both commenters supported the Board's effort to streamline the reporting requirements, create more consistency among all nonbank subsidiary filers, and reduce burden.

Both commenters suggested that the Board permit nonbank subsidiaries to file consolidated or combined reports for entities engaged in similar activities. Currently, the nonbank subsidiaries of U.S. BHC's (FR Y–11 respondents) are required to file on a legal entity basis. Legal entity data allows supervisors to identify issues more efficiently and effectively, and consolidated data is not as useful because filers consolidate reports inconsistently. Therefore, the Federal Reserve maintains that these respondents must file on a legal entity basis. However, the initially proposed thresholds will be raised to reduce burden. Specifically, the threshold for abbreviated reporting will be raised from $100 million in total assets to $250 million and the exemption level (i.e., below which no report is required) will be raised from $20 million to $50 million. This is consistent with the new FR Y–7NS thresholds discussed above.

One commenter suggested that the FR Y-11 include a separate line item for federal funds sold. The Federal Reserve does not plan to collect a separate item for federal funds because the amount being reported was not substantial enough to warrant a separate item.

[2] As distinguished from the term "functionally regulated" nonbank subsidiaries, which are entities in which the primary regulator is an organization other than the Federal Reserve, namely the Securities and Exchange Commission, Commodity Futures Trading Commission, state insurance commissioners, or state securities departments. Provisions of the Gramm–Leach–Bliley Act direct that the Federal Reserve must first rely on reports and information provided by the primary regulator for functionally regulated subsidiaries.

3. Report title: Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations

Agency form number: FR 2314 and FR 2314S (formerly FR 2314a, b, and c)
OMB control number: 7100-0073
Frequency: Quarterly and annually
Reporters: Foreign subsidiaries of U.S. state member banks, bank holding companies, and Edge or agreement corporations
Annual reporting hours: 4,006 hours
Estimated average hours per response:
FR Y-2314 (quarterly): 6 hours,
FR Y-2314 (annual): 6 hours,
FR Y-2314S (annual): 1 hour
Number of respondents:
FR Y-2314 (quarterly): 123,
FR Y-2314 (annual): 128,
FR Y-2314S (annual): 537
Small businesses are not affected.
General description of report: This information collection is mandatory (12 U.S.C. §§324, 602, 625, and 1844). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act [5 U.S.C. §§522(b)(4) and (b)(6)].
Abstract: The FR 2314 reports are collected from U.S. member banks, Edge and agreement corporations, and BHCs for their direct or indirect foreign subsidiaries. The FR 2314 reports collect information on assets, income, equity capital, and off–balance sheet items and the data are used to monitor the growth, profitability, and activities of these foreign companies.
Current actions: On August 19, 2002, the Federal Reserve published a notice soliciting comments for 60 days on proposed revisions to the Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations, FR 2314 reports (67 FR 53797). The notice described the Federal Reserve proposal to streamline the existing reporting framework for all non–functionally–regulated nonbank subsidiaries. The revised framework will both provide essential information to supervise and

regulate non–functionally–regulated subsidiaries and reduce the burden on the industry as discussed for the FR Y–11 reports above.

The Federal Reserve Board has approved the proposed changes, with the modifications discussed below, effective for the December 31, 2002, as–of date. The Federal Reserve received comment letters from two banking organizations. Both commenters supported the Board's effort to streamline the reporting requirements, create more consistency among all nonbank subsidiary filers, and reduce burden. They also provided other substantive comments that addressed consolidation and confidentiality, as discussed below.

Consolidation

Both commenters suggested that the Board permit nonbank subsidiaries to file consolidated or combined reports for entities engaged in similar activities and or located in the same country. In a change from current FR 2314 reporting requirements, the Federal Reserve proposed that foreign nonbank subsidiaries of U.S. banking organizations (FR 2314 respondents) no longer be permitted to file consolidated reports.

One commenter stated that precluding consolidation of FR 2314 respondents would increase burden. The same commenter indicated that a significant portion of the burden associated with filing legal entity based reports is due to the adjustments to switch financial statements from the accounting principles of their local country to U.S. generally accepted accounting principles (GAAP). The commenter indicted that, under the current consolidated reporting framework, reports based on local country accounting principles could be first consolidated and then converted to U.S. GAAP.

Legal entity data allows supervisors to identify issues more efficiently and effectively, and consolidated data is not as useful because filers consolidate reports inconsistently. Therefore, the Federal Reserve maintains that these respondents must file on a legal entity basis. To further reduce burden, FR 2314 respondents filing reports on a legal–entity basis will not be required to follow U.S. GAAP, as initially proposed. Respondents will be encouraged to follow U.S. GAAP but will continue to have the option to file reports based on local country accounting principles. Also, FR 2314 respondents that currently consolidate data will be permitted to report on a consolidated basis for December 2002 and March 2003 reporting periods to allow time to adjust their systems.

In addition, the initially proposed thresholds will be raised to reduce burden. Specifically, the threshold for abbreviated reporting will be raised from $100 million in total assets to $250 million and the exemption level (i.e., below which no report is required) will be raised from $20 million in total assets to $50 million. This is consistent with the new FR Y–11S and FR Y–7NS thresholds discussed above.

Confidentiality

One commenter suggested that the FR 2314 reports remain confidential, citing that disclosure of this information would likely be harmful to the competitive position of the reporting entities. As initially proposed, the FR 2314 respondents will no longer be accorded confidential treatment. Eliminating confidential treatment for the FR 2314 respondents is consistent with the goals of the Federal Reserve to increase public availability of regulatory reports, enhancing data transparency and market discipline. However, the Federal Reserve may grant confidential treatment, in whole or part, on a case–by case basis if requested and justified by the respondent.

Other Comments

One commenter suggested that the Federal Reserve allow electronic filing of the FR 2314. The Federal Reserve is investigating ways to allow the electronic submission of the FR 2314 at some point in the future and will notify respondents when this option becomes available.

Board of Governors of the Federal Reserve System, December 3, 2002.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 02–30971 Filed 12–6–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 23, 2002.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Betsy Z. Cohen; Edward E. Cohen; Daniel G. Cohen, all of Philadelphia, Pennsylvania, and Jonathan Z. Cohen, New York, New York; to retain voting shares of TheBancorp, Inc., Wilmington, Delaware, and thereby indirectly retain voting shares of TheBancorp Bank, Wilmington, Delaware.

Board of Governors of the Federal Reserve System, December 3, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–30972 Filed 12–6–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications

must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. First Commerce Bankshares, Inc., Douglasville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First Commerce Community Bank, Douglasville, Georgia (in organization).

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. FEB Bancshares, Inc., Neshkoro, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Golden Sands Bankshares, Inc., Neshkoro, Wisconsin, and thereby indirectly acquire voting shares of Farmers Exchange Bank of Neshkoro, Wisconsin.

2. F T Bancshares, Inc., Aurelia, Iowa; to become a bank holding company by acquiring 61.58 percent of the voting shares of Aurelia F T & S Bankshares, Inc. Aurelia, Iowa, and thereby indirectly acquire voting shares of The First Trust & Savings Bank, Marcus, Iowa.

C. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Heritage Bancshares, Inc., Topeka, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Heritage Bank, Topeka, Kansas (in organization).

Board of Governors of the Federal Reserve System, December 3, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–30973 Filed 12–6–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

[Docket No. R–1137]

Federal Reserve Board Sponsorship for Priority Telecommunication Services of Organizations That Are Important to National Security/ Emergency Preparedness

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board is updating its sponsorship policy and procedures for National Security/Emergency Preparedness telecommunication programs administered by the National Communications System. The Board has expanded its sponsorship criteria for the Telecommunications Service Priority (TSP) and has adopted sponsorship criteria for the Government Emergency Telecommunications Service and the Wireless Priority Service programs that are similar to its TSP sponsorship criteria. The Board believes that these programs will help facilitate the operation and liquidity of banks and the stability of financial markets, particularly during periods of substantial operational disruptions.

EFFECTIVE DATE: December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Ken Buckley, Assistant Director (202/452–3646), Karen Cunigan, Manager (202/452–2027), or Wayne Pacine, Senior IT Analyst (202/452–2210), Division of Reserve Bank Operations and Payment Systems; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The National Communications System (NCS) was established in 1963 to provide priority communications support to critical government functions during emergencies. In 1984, NCS NS/EP responsibilities expanded, and NCS became an interagency group of 22 federal departments and agencies, including the Federal Reserve Board. This interagency group coordinates and plans NS/EP telecommunications to respond to crises and disasters. The NCS has developed a number of priority telecommunications services that are also available to private-sector entities through sponsorship by an NCS member department or agency. The events of September 11, 2001, put a new focus on the importance of these programs to the nation and to the financial sector.

In November 1988, the FCC adopted rules establishing the Telecommunications Service Priority (TSP) program for expedited restoration of disrupted telecommunication services and expedited provision of new telecommunication services that support national security and emergency preparedness (NS/EP) functions (47 CFR part 64, Appendix A). Telecommunication services necessary for NS/EP are defined as: "those that are used to maintain a state of readiness or to respond to and manage any event or crisis (local, national, or international) which causes or could cause injury or harm to the population, damage to or loss of property, or degrades or threatens the NS/EP posture of the United States."

Two categories of telecommunication services fall within this definition: Emergency NS/EP and Essential NS/EP. Under the FCC rule, Emergency NS/EP telecommunication services are those new services that are "so critical as to be required to be provisioned at the earliest possible time without regard to the costs of obtaining them." An example of Emergency NS/EP service is federal government activity in response to a Presidential declared disaster or emergency.

Essential NS/EP telecommunication services must qualify under one of four subcategories: (A) National security leadership (the President of the United States); (B) national security posture and U.S. population attack warning; (C) public health, safety, and maintenance of law and order; and (D) public welfare and maintenance of national economic posture. Essential services are assigned a priority on a scale of 1 to 5 (with 1 as the highest priority) based on the appropriate subcategory. Services in subcategory A qualify for priority levels 1–5; those in subcategory B qualify for priority levels 2–5; those in subcategory C qualify for priority levels 3–5; and services in subcategory D qualify for priority levels 4–5.

The FCC delegated the administration of the NS/EP TSP program to the Executive Office of the President (EOP). The EOP's responsibilities under the NS/EP TSP program are administered by the NCS, established by Executive Orders 12472 and 13231.[1] In 2001 the NCS' mission was expanded to include protection of critical information assets as directed by the Office of Homeland Security. The NCS has enacted a range of priority telecommunications access programs to support its mission. In particular, NCS has established the Government Emergency Telecommunications Service (GETS) program, which provides emergency access and priority processing of local and long-distance calls over the terrestrial public switched network, and

[1] The administrative structure of the NCS consists of the executive agent, (the Secretary of Defense, as designated by the President), the Manager (designated by the executive agent) and the Committee for National Security and Emergency Preparedness (representatives from federal departments, agencies, and entities with significant national security or emergency preparedness telecommunications responsibilities). The Federal Reserve System was designated as a "participating independent entity" on the Committee for National Security and Emergency Preparedness. The EOP has assigned to the NCS Manager the administrative authority delegated to the EOP by the FCC, as well as the authority to administer the NS/EP programs after invocation of the President's war emergency powers. NCS policies and procedures for administering NS/EP telecommunication programs are available on NCS' Web site at *http://www.ncs.gov.*

the Wireless Priority Service (WPS) program, which provides priority routing of cellular calls during periods of severe network congestion. The Board's Division of Reserve Bank Operations and Payment Systems has responsibility for the Federal Reserve's NS/EP services and a division officer serves as a member of the Committee for National Security and Emergency Preparedness Communications.

Organizations other than federal government agencies must apply to participate in NCS NS/EP programs through a federal agency authorized to provide sponsorship. The Board and designated member agencies of the Financial and Banking Information Infrastructure Committee (FBIIC) of the President's Critical Infrastructure Protection Board may sponsor these organizations under the national economic posture category.[2] In its role as a sponsoring Federal organization, the Board supports the Treasury's specific NS/EP responsibilities as described in Executive Order 12656 on matters related to "operation and liquidity of banks" and "maintenance and restoration of stable and orderly markets."

II. Criteria for Sponsorship of Organizations for NS/EP Telecommunication Programs

Telecommunications services are designated as essential where a disruption of "a few minutes to one day" could seriously affect the continued operations that support an NS/EP function. In 1993, the Board established policies and procedures for its sponsorship of organizations for priority provision and restoration of telecommunications services under the TSP program (58 FR 38569, July 19, 1993).[3] Under these policies, the Board sponsors:

(1) Backbone circuits used in large-value interbank funds transfer, securities transfer, or payment-related services (such as Fedwire, CHIPS, and SWIFT) that require same-day recovery and are critical to the operation and liquidity of banks or to the stability of financial markets,

(2) Access circuits connecting participants or their third-party processors to a sponsored large-value network that transmit a daily average aggregate value of funds and/or securities transfers of at least $2 billion,[4]

(3) Eligible dedicated voice circuits from the Federal Reserve Bank of New York to primary dealers,

(4) The domestic components of circuits from the New York Reserve Bank to foreign exchange counterparties and foreign central banks,

(5) Circuits used to connect the large competitive bidders using the Treasury Automated Auction Processing System to the New York Reserve Bank, and

(6) Other circuits that meet an alternate criterion acceptable to the Board's director of the Division of Reserve Bank Operations and Payment Systems.

The Board has expanded its 1993 TSP sponsorship criteria to explicitly include the following:

(7) Access circuits that connect settlement agents that settle a daily average of at least $2 billion (net, one side) to the Federal Reserve's net settlement service,

(8) Backbone circuits used by the networks of ACH operators, as well as the access circuits connecting depository institutions and third-party processors that originate a daily average of at least $2 billion to their ACH operator,

(9) Access circuits connecting customers of Fedwire, CHIPS, or SWIFT participants that originate a daily average of at least $2 billion per day to their bank,

(10) Backbone circuits used for the CLS Bank network, access circuits connecting customers to the CLS Bank, and circuits connecting CLS Bank customers to Fedwire,

(11) Access circuits connecting settlement banks to the Depository Trust Company, the Government Securities Clearing Corporation, the National Securities Clearing Corporation, the Options Clearing Corporation, the Mortgage Backed Securities Clearing Corporation, the Chicago Mercantile Exchange, the Board of Trade Clearing Corporation, or the New York Mercantile Exchange, and

(12) Additional circuits used internally by a sponsored organization that are essential for the smooth operation of the function for which its other circuits are given TSP designation.

The Board sponsors circuits meeting these criteria for a TSP priority level 4.

Under criterion 6, the Board may sponsor circuits leased by an organization that may not meet any of the other sponsorship criteria, if a disruption of that circuit for a few minutes to one day could seriously affect operations that support the maintenance of the national economic posture. If a financial institution believes that one or more of its circuits meet this standard and wishes that those circuits be given TSP designation, its application for TSP status should include an explanation of how the circuit is critical to the maintenance of the national economic posture. The Board will consult with the organization's primary regulator in considering such applications for TSP sponsorship.

Since 1993, the NCS has established two other NS/EP telecommunications programs in which the Board participates. The Government Emergency Telecommunications Service (GETS) program provides emergency access and priority processing of local and long-distance calls over the terrestrial public switched network. GETS is intended to be used in emergency or crisis situations when heavy call volumes decrease the probability of completing a call. The Board has sponsored key Federal Reserve staff and staff from organizations that qualify under its TSP criteria for the GETS program.

The Wireless Priority Service (WPS) program provides priority routing of cellular calls to provide participants a higher likelihood of completing calls during periods of severe network congestion. Key Federal Reserve, CHIPS, and SWIFT staff currently participate in the pilot WPS program being conducted in the Washington, DC and New York City metropolitan areas. The program should move to full nationwide rollout by late 2003.

The Board has adopted criteria for GETS sponsorship that are analogous to its TSP sponsorship criteria. Unlike the TSP program, where the Board sponsors specific leased-line circuits, in the GETS program the Board sponsors individuals in eligible organizations who play critical roles in the operation of the

[2] FBIIC is a standing committee of the President's Critical Infrastructure Protection Board, and is charged with coordinating federal and state financial regulatory efforts to improve the reliability and security of the U.S. financial system. Treasury's Assistant Secretary for Financial Institutions chairs the committee. Members of the FBIIC include representatives of the Commodity Futures Trading Commission, the Conference of State Bank Supervisors, the Federal Deposit Insurance Corporation, the Federal Reserve Board, the National Association of Insurance Commissioners, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Federal Housing Enterprise Oversight, the Offices of Homeland and Cyberspace Security, the Office of Thrift Supervision, and the Securities and Exchange Commission.

[3] Clearing systems operated by SEC-registered clearing agencies, securities exchanges, and other securities industry participants registered with the SEC should request TSP sponsorship from the SEC. Contract markets or clearing organizations for contract markets registered under the Commodity Exchange Act and other futures and options market participants subject to the jurisdiction of the CFTC should request TSP sponsorship from the CFTC.

[4] The Board currently sponsors Fedwire access circuits for 300 institutions, CHIPS access circuits for 56 institutions, and SWIFT access circuits for 18 institutions.

organization's payment services, business continuity, or crisis management structure. Unless another federal agency has primary responsibility for sponsoring the organization, the Board will sponsor for the GETS program key individuals in organizations whose circuits are eligible for TSP sponsorship as described above.[5,6] Once it reaches full-production status, the Board plans to sponsor individuals in eligible organizations for the WPS program using the same criteria it uses for GETS sponsorship.

The TSP and GETS programs have proven to be very valuable, particularly in the days following the September 11 attacks. During this period, the Board used the TSP program to provision eighty-four circuits to support the continued transmission of critical payments-related data. Use of the GETS program increased the likelihood of completing calls over the public switched network when there was significant congestion of the telecommunications network.

III. Confidentiality of NS/EP Information

The Board believes that information provided to acquire NS/EP telecommunication service designations and information included in subsequent reports will be, in most cases, proprietary. Applicants for NS/EP services may be required to provide information about individuals critical to their business continuity and crisis management, including telephone numbers, e-mail addresses, and operations center addresses. In addition, applicants for TSP designation may be required to describe the topology of their payments network and disaster-recovery capabilities and may be required to identify telecommunication service providers and the unique circuit identifiers. Because of the sensitive nature of this information, the Board will generally consider information related to NS/EP services exempt from the Freedom of Information Act under exemption 4 to protect both the interests of commercial entities that submit proprietary information to the government and the interests of the government in receiving continued access to such data (5 U.S.C. 552(b)(4)).

IV. Revocation of NS/EP Eligibility

Organizations whose circuits or employees are sponsored for NS/EP status must abide by NCS regulations governing each particular service and must keep accurate records and monitor for fraud or abuse. The Board may periodically revalidate the eligibility of the circuits or employees to continue their participation in NCS programs. The Board reserves the right, after consultation with the primary regulatory agency (if applicable), to cancel its sponsorship of any circuit or employee if the organization is not fulfilling the necessary requirements. The Board may also cancel sponsorship if it changes its sponsorship policies and the circuit or employee is no longer qualified.

V. Telecommunications Service Priority

The Telecommunications Service Priority (TSP) program was developed to ensure priority treatment for the nation's most important telecommunication services, services supporting either national security or emergency preparedness (NS/EP) missions. Following disasters, telecommunications service vendors may become overwhelmed with requests for new services and requirements to restore existing services. The TSP program authorizes and requires service vendors to provision and restore TSP assigned services prior to non-TSP services and provides vendors with legal protection for giving preferential treatment to NS/EP users over non-NS/EP users.

The TSP program has two components: (1) Expedited restoration of disrupted telecommunication service and (2) expedited provision of new telecommunication services. A restoration priority is applied to new or existing telecommunication services to ensure their restoration before any non-TSP services. Priority restoration is necessary for a TSP service because interruptions may have a serious adverse effect on the supported NS/EP function. TSP restoration priorities must be requested and assigned before a service outage occurs. In the event of a telecommunication disruption, carriers are obligated to restore TSP-designated circuits according to their priority and preempt, if necessary, any other restoration agreement for non-TSP circuits. As a matter of general practice, telecommunication service vendors restore existing TSP services before provisioning new TSP services. A provisioning priority is obtained to facilitate priority installation of new telecommunication services. Provisioning on a priority basis becomes necessary when a service user has an urgent need for a new NS/EP service that must be installed immediately, such as relocating to or establishing new facilities. Telecommunication service providers assess recurring monthly charges on circuits assigned TSP and a surcharge for providing new service.

TSP status can only be assigned to leased point-to-point circuits, including circuits that are leased between specific endpoints (such as between locations within a sponsored network) and "last mile" access circuits between a telecommunications central office switch and a sponsored network or customer location (such as data switch or PBX trunk lines). TSP status cannot be applied to switched services, such as voice or frame relay. TSP status should be limited to the minimum number of telecommunication circuits necessary to support an NS/EP function. TSP is invoked only as a last resort; therefore, telecommunication services covered by TSP should already have a high level of disaster-recovery and contingency capability.

In addition to the eligibility criteria for NS/EP program sponsorship described in section II, the following additional conditions will be applied for TSP sponsorship: (1) The organization seeking TSP sponsorship must clearly delineate its network and the endpoints of each access circuit; (2) network backbone circuits and the access circuits must be subject to adequate contingency backup; and (3) the organization must provide the Board with the opportunity to verify continuing TSP eligibility for sponsored circuits.

The party that leases the circuit is responsible for completing the application for TSP sponsorship.[7] An organization requesting sponsorship for TSP restoration of existing circuits must complete form SF–315, "TSP Request for Service Users," for each circuit for which TSP status is sought. This form is described and included in the NCS Web site at *www.ncs.gov*. Applications for TSP sponsorship may be sent to the assistant director, Information Technology, Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System, Washington, DC 20551. Applications that warrant TSP status will be forwarded to the Office of the Manager NCS, which is responsible for

[5] An organization's eligibility for TSP status is based on criteria applied to determine a specific circuit's support of an NS/EP service, while eligibility for the GETS and WPS programs is based on criteria applied to the organization's overall NS/EP role.

[6] The Board's sponsorship criteria for the GETS program implements the policy recently adopted by FBIIC. Organizations should seek sponsorship from their primary regulatory agency. A copy of the FBIIC GETS policy and the application for organizations seeking Board sponsorship for GETS are included as an appendix to this notice.

[7] The Federal Reserve Banks are responsible for requesting sponsorship of eligible leased-line access circuits connecting institutions to Fedwire and other Federal Reserve services.

making TSP assignments. Any applicants determined to be ineligible would be informed of the decision.

The Board can invoke TSP to provision new telecommunication services on an as-needed basis as a result of emergencies or disasters warranting extraordinary action. The Board will consider requests from sponsored organizations to provision new service under TSP using the same sponsorship criteria adopted for the sponsorship of TSP restoration services. Board staff will submit form SF–315, "TSP Request for Service Users," to the NCS for each circuit eligible for provisioning under TSP. The Board does not consider the emergency provision of new services to be an appropriate substitute for adequate network contingency-planning measures.

A. Reconciliation of TSP Information

NCS requires that telecommunication service providers maintain an accurate inventory of circuits that are assigned TSP status and reconcile this inventory against NCS records annually. Reconciliation is necessary to ensure that the user, service provider, and NCS maintain accurate TSP information in the event that a disaster or emergency requires the restoration of NS/EP telecommunication services. As a sponsoring organization and program administrator on behalf of participating FBIIC members, the Board must maintain accurate records of the assignment and disposition of TSP codes provided to sponsored payments system participants. Organizations receiving TSP assignments from the Board will be required to (1) provide information to the assistant director, Information Technology, Division of Reserve Bank Operations and Payment Systems, pertaining to the telecommunication carrier with identification codes for each circuit receiving a TSP assignment, (2) notify the assistant director of any engineering changes affecting TSP assigned circuits, and (3) notify the assistant director of any TSP codes that should be revoked. The Board may periodically review records pertaining to TSP-sponsored circuits and work with the sponsored organization to resolve any discrepancies identified in TSP service information. Sponsored organizations are responsible for maintaining current TSP records.

B. Costs of TSP status

Telecommunication carrier tariffs for providing TSP are filed with the FCC and state regulatory agencies. The tariffs permit carriers to assess a one-time charge and a monthly charge for each circuit assigned a TSP restoration authorization code. In the event new service is provisioned under TSP, carriers can apply a surcharge to the normal installation charges for each telecommunication service ordered. Finally, telecommunication carriers can assess a penalty to TSP customers for reporting an erroneous outage on a TSP circuit that is traced to the customer's premise equipment.

The TSP tariffs are cost-based and are not uniform between states or carriers. Tariffs are charged for Local Access and Transport Area (LATA) and inter-exchange TSP services. A single carrier generally collects TSP charges for all portions of the end-to-end service. TSP restoration assignment involves a one-time "set-up" charge and an ongoing monthly charge. For example, the one-time charge for assigning TSP currently ranges from $15 to $360 and ongoing monthly charges range from $.90 to $7.50 by LATA. TSP restoration charges for an inter-exchange circuit include LATA charges for each end of the circuit and currently incur an additional one-time charge of $235 and a recurring monthly charge of $9.00 for the inter-exchange portion of the circuit.[8] Under the TSP tariff, surcharges for the emergency provision of new service currently range from $50 to $200 for endpoint access circuits, depending on the LATA, and $400 for the inter-exchange portion of a circuit. The cost for initiating a service call resulting from an erroneous report of an outage on a TSP circuit is based on time and material charges.

The costs associated with TSP status for leased Federal Reserve owned access circuits used for priced services will be recovered through the electronic access fees charged to depository institutions.[9] The costs associated with TSP assignments for backbone circuits used for eligible services are distributed to the services and activities that use these services, and in the case of priced services, are recovered through the fees assessed for that service. The incremental costs associated with TSP status have not significantly affected Federal Reserve fees.

Private-sector organizations that lease circuits that are granted TSP status must bear the cost of all tariffs for TSP. In addition, the Federal Reserve will not reimburse any costs incurred by the sponsored organization for improvements to network facilities necessary to comply with NCS standards.

VI. Government Emergency Telecommunications Service

Under the GETS program, selected critical employees of eligible organizations are assigned a card and corresponding PIN, which they can use to obtain priority access to the public switched network.[10] The Federal Reserve will consider requests for GETS sponsorship for critical employees of organizations for which the Federal Reserve is the primary supervisor. Federal Reserve supervised organizations should complete the Board's Request for GETS Sponsorship form, which is available on the Board's Web site at *http://www.federalreserve.gov/forms/getssponsorship.pdf.* Other financial organizations should complete the GETS sponsorship form that is available on the FBIIC Web site at *http://www.fbiic.gov* and submit the completed form to their primary regulator. A GETS point of contact (POC) must be established within the requesting organization to administer cards and coordinate billing. The POC will have the authority to administer the GETS program within its organization. Once approved, the organization's information will be forwarded to the NCS for further processing and the issuance of GETS cards. Organizations whose employees obtain GETS cards are responsible for complying with all NCS guidelines and restrictions, monitoring fraudulent use, and revoking GETS cards from individuals no longer performing qualified activities.

Sponsored organizations are responsible for all costs associated with GETS. While there is no subscription fee, GETS calls are currently billed at the rate of $0.15 per minute for calls within the United States, Mexico, and most of the Caribbean. International calls are billed at commercial rates. More information about the GETS program, including Frequently Asked Questions, is available on the NCS Web site (*http://www.ncs.gov*) under Programs.

[8] For example, the cost of TSP restoration priority on an intra-LATA Fedwire access circuit in Philadelphia would include a one-time charge of $47.72 and monthly charges of $1.34. TSP restoration priority on an inter-LATA circuit from a Philadelphia endpoint to a Los Angeles endpoint would include the costs referenced above as well as an additional one-time charge of $358.46 and monthly charges of $5.20 for the Los Angeles LATA access portion of the circuit as well as an additional $235 one-time charge and monthly charges of $9.00 for the inter-exchange portion of the circuit.

[9] Depository institutions that use their access circuits solely for non-priced services are not assessed electronic connection fees and are not charged for TSP.

[10] The NCS publication "GETS Planning Guide," which provides a detailed description of the GETS program and administrative procedures, is available on *www.ncs.gov.*

VII. Competitive Impact Analysis

The Board conducts a competitive impact analysis when considering an operational, legal, or other policy change, if that change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or constraints, or due to a dominant market position of the Federal Reserve deriving from such differences.[11] Under the Board's policies for sponsorship for NS/EP services, the Federal Reserve Banks are subject to the same eligibility criteria as private-sector service providers; therefore, the Board does not believe that its policy adversely affects the ability of other service providers to compete effectively with Federal Reserve Banks in providing similar services.

VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the notice under the authority delegated to the Board by the Office of Management and Budget (OMB).

This notice announces several collections of information for the TSP and GETS programs. An organization requesting Board sponsorship for TSP restoration of existing circuits must complete and submit application SF–315. An organization that received TSP assignments pursuant to Board sponsorship is subsequently required to notify Board staff of certain information affecting the TSP assignments. An organization requesting GETS sponsorship must complete and submit the GETS forms. To help ease the reporting burden, organizations can obtain copies of the TSP and GETS forms from the NCS and Board web sites.

The NCS is responsible for determining the paperwork burden associated with these collections of information. The NCS will submit all required information to OMB in compliance with the Paperwork Reduction Act.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding any aspect of these collections of information may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (NCS), Washington, DC 20503.

By order of the Board of Governors of the Federal Reserve System, December 3, 2002.

Jennifer J. Johnson,

Secretary of the Board.

Appendix

Financial and Banking Information Infrastructure Committee

Sponsorship of Priority Telecommunications Access for Private Sector Entities Through the National Communications System Government Emergency Telecommunications Service (GETS).

The National Communications System (NCS) was established in 1963 to provide priority communications support to critical government functions during emergencies. In 1984 the National Security and Emergency Preparedness (NS/EP) capabilities of NCS were broadened and an interagency group (currently 22 federal departments and agencies) was formed to help coordinate and plan NS/EP services. The NCS has developed a number of priority telecommunications services that are also available to private sector entities through sponsorship by an NCS member department or agency. The events of September 11, 2001, put a new focus on the importance of these programs to the nation and to the financial sector.

In order to provide guidance to financial organizations seeking sponsorship for NCS services, the Financial and Banking Information Infrastructure Committee (FBIIC)[12] is developing a series of policies on the sponsorship of priority telecommunications access for private sector entities through the NCS. The goal of the policies is twofold: first, to make financial organizations aware of NCS programs and, second, to provide a consistent set of guidance regarding qualification criteria and the appropriate process for organizations that want to gain access to the programs.

As a first step, the FBIIC has established this policy and process to sponsor qualifying financial sector institutions for Government Emergency Telecommunications Service (GETS).[13] GETS is designed to help assure communication between key public and private sector personnel during times of crisis.

GETS is a telecommunications voice service that supports Federal, State, and local government; industry; and non-profit organizations in performing their NS/EP missions by providing emergency access and priority processing for voice communications services in the local and long-distance segments of the Public Switched Network (PSN). GETS is intended to be used in an emergency or crisis situation when heavy usage of the PSN by organizations and the public decreases the probability of completing a call. Private sector organizations that need to participate in the GETS program must be sponsored by an NCS member. While there is no subscription fee, GETS calls are billed at the rate of $0.15 per minute for calls within the United States, Mexico, and most of the Caribbean. International calls are billed at commercial rates. More information about the GETS program, including Frequently Asked Questions, is available on the NCS Web site (*http://www.ncs.gov/*) under Programs.

There are five broad categories that serve as guidelines for determining who may qualify as a GETS user: (1) National Security Leadership, (2) National Security Posture and U.S. Population Attack Warning, (3) Public Health, Safety, and Maintenance of Law and Order, (4) Public Welfare and Maintenance of National Economic Posture and (5) Disaster Recovery. The FBIIC agencies have determined that to qualify for GETS sponsorship, organizations must support the performance of NS/EP functions necessary to maintain the national economic posture during any national or regional emergency. In particular, the FBIIC agencies view maintenance of the national economic posture as the minimization of systemic disruption to the financial system directly related to the operation of critical financial markets and related essential services and systems.

Essential services and systems are those that have no easily accessible substitute and that are necessary to support one of three critical NS/EP functions in key financial markets and payment mechanisms: Necessary crisis response and coordination activities; resumption and maintenance of economic activity; and the orderly completion of outstanding financial transactions and necessary offsetting transactions. For example, essential services and systems include: critical funds transfers systems (wholesale/large-value payment systems), securities and derivatives clearing and settlement systems, supporting communication systems and service providers, and key financial market trading systems and exchanges.

Private sector financial organizations and their service providers may qualify for GETS sponsorship if they play a significant role in one or more financial markets or essential

[11] These procedures are described in the Board's policy statement "The Federal Reserve in the Payments System," as revised in March 1990 (55 FR 11648, March 29, 1990).

[12] The Financial and Banking Information Infrastructure Committee (FBIIC) is a standing committee of the President's Critical Infrastructure Protection Board, and is charged with coordinating federal and state financial regulatory efforts to improve the reliability and security of the U.S. financial system. Treasury's Assistant Secretary for Financial Institutions chairs the committee. Members of the FBIIC include representatives of the Commodity Futures Trading Commission, the Conference of State Bank Supervisors, the Federal Deposit Insurance Corporation, the Federal Reserve Board, the National Association of Insurance Commissioners, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Federal Housing Enterprise Oversight, the Offices of Homeland and Cyberspace Security, the Office of Thrift Supervision, and the Securities and Exchange Commission.

[13] It is anticipated that subsequent policies will address other NCS programs, for example, Telecommunications Service Priority (TSP) and Wireless Priority Service (WPS).

services or systems. Factors which the appropriate FBIIC member agency will consider in determining whether individual organizations play a significant role in an essential market, service or system include consideration of whether the organization: (1) Is a registered securities or futures exchange, self-regulatory organization, registered securities clearing agency/depository and futures clearinghouse, and their critical service providers and utilities; (2) acts as market utility for effecting payments or clearance and settlement of transactions; (3) processes a large aggregate value of daily payments; (4) provides critical services or systems to financial institutions; (5) has a national or large regional presence in one or more product lines; or (6) demonstrates other facts or circumstances that suggest facilitating the organization's access to the GETS priority service in times of national emergency would serve to maintain the national economic posture.

Organizations seeking GETS sponsorship should complete the attached FBIIC Request for GETS Sponsorship and submit it to their primary financial regulator. Requesting organizations must support their request for sponsorship under the general NS/EP criteria stated above.

The FBIIC agencies may contact those organizations that clearly qualify under these criteria and inform them of the availability of GETS Sponsorship.[14]

Individuals being nominated for GETS usage should be limited to those individuals who play critical roles in the organization's business continuity or crisis response management structure.

NAME OF ORGANIZATION: _____

Name and Title of Individual	Critical Role	Citizenship
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

We acknowledge that our organization:

(1) May not reference the GETS card in our marketing activities or for other competitive advantage purposes.

(2) Must establish a GETS Point of Contact (POC) for administering GETS and to ensure accountability for each card issued to it.

(3) Will withdraw the GETS card from any individual that no longer fulfills the designated role or function that meets the criteria.

(4) Must establish a billing contact for payment of bills for GETS usage. We understand that upon approval of this request, we will be provided a letter notifying us of the sponsorship and requesting that we establish a Billing Account with a Program Designator Code (PDC) for billing and payment of our GETS calls.[15]

We further understand that cards issued under this sponsorship program may be cancelled at the discretion of the National Communications System or the Federal Reserve Board.

GETS Point of Contact

Name: _____
Title: _____
Mail Address: _____
Phone: _____
FAX: _____
E-Mail: _____

Please fax this request to *(202) 872–7574* to the attention of Edna Jacobs.

*Please note that other FBIIC agencies members have a sponsorship application for their institutions.

[FR Doc. 02–30969 Filed 12–6–02; 8:45 am]
BILLING CODE 6210–01–P

[14] In its role as a payments system operator, the Federal Reserve has traditionally sponsored significant participants in the payments system for NCS services. The Federal Reserve therefore intends to contact those organizations that clearly qualify under the criteria and ask them to provide the names of individuals who should receive GETS cards. The Federal Reserve will notify the other FBIIC agencies of institutions they have contacted.

[15] While there is no subscription fee, GETS calls are billed at the rate of $0.15 per minute for calls within the United States, Mexico, and most of the Caribbean. International calls are billed at commercial rates.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 2 p.m. (EST). December 16, 2002

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED: Parts Open to the Public

1. Discussion of the minutes of the November 18, 2002, Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director (including Legislation and New System Development).

3. Review of the Labor Department's Executive Summary of its FY 2002 audit program.

Board of Governors of the Federal Reserve System

Request for GETS Sponsorship

Upon reviewing the Government Emergency Telecommunications Service (GETS) information provided and based on our emergency telecommunications requirements, our organization requests Financial and Banking Information Infrastructure Committee sponsorship to the GETS program for the following individual(s):

Parts Closed to the Public

1. Discussion of litigation.
2. Discussion of personnel matters.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: December 4, 2002.

David L. Hutner,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 02–31117 Filed 12–4–02; 4:28 pm]
BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02P–0462]

Food Labeling: Nutrient Content Claims; Implied Nutrient Content Claim in the Brand Name CARBOLITE; Availability of Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for comment of a petition submitted by Carbolite Foods, Inc. (the petitioner), for the use of an implied nutrient content claim in their brand name CARBOLITE.

DATES: Submit written or electronic comments on the petition by January 8, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. The petition is available for review at the Dockets Management Branch or electronically on the agency's Web site at http://www.fda.gov/ohrms/dockets. You also may request a copy of the petition from the Dockets Management Branch.

FOR FURTHER INFORMATION CONTACT: Constance Henry, Office of Nutritional Products, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD, 20740–3835, 301–436–1450.

SUPPLEMENTARY INFORMATION:

I. Background

Section 403(r)(4)(A)(iii) of the Federal Food, Drug and Cosmetic Act (the act) (21 U.S.C. 343(r)(4)(A)(iii)), provides that any person may petition the Secretary of Health and Human Services (and by delegation FDA) for permission to use an implied claim characterizing the level of a nutrient (nutrient content claim) in a brand name. Under § 101.69(o)(3) (21 CFR 101.69(o)(3)), FDA will publish a notice of the petition in the **Federal Register** announcing its availability to the public and seeking comment on the petition. Within 100 days of the date of receipt of a petition accepted for review, FDA will notify the petitioner by letter of its decision to: (1) Grant the petitioner permission to use the proposed brand name, if such use is not misleading, specifying any conditions or limitations on such use, or (2) deny the petition, stating the reasons for the denial.

FDA must grant the petition if it finds that the petitioned claim is not misleading and is consistent with terms defined by regulation under section 403(r)(2)(A)(i) of the act. If FDA fails to notify the petitioner of its decision to grant or deny the petition within the 100-day period, the petition shall be considered to be granted. We have determined this 100-day deadline to be January 15, 2003.

II. Nutrient Content Claim in a Brand Name Petition

Carbolite Foods, Inc., submitted a petition to FDA on October 7, 2002, under section 403(r)(4)(A)(iii) of the act (§ 101.69(o)) seeking permission to use its brand name CARBOLITE as an implied nutrient content claim in a brand name.

In accordance with § 101.69(o), Carbolite's petition for a nutrient content claim in a brand name must identify the implied nutrient content claim for CARBOLITE, the nutrient the claim is intended to characterize (sugar), the corresponding term for characterizing the level of such nutrient as defined by a regulation under section 403(r)(2)(A)(i) of the act ("zero sugar" (also referred to as "sugar free" and defined in 21 CFR 101.60(c)(1)) and "reduced sugar" (defined in 21 CFR 101.60(c)(5))), and the brand name of which the implied claim is intended to be a part—CARBOLITE. The petition states that the petitioner seeks permission "to use the company brand name 'CARBOLITE' for its line of 'zero sugar' and 'reduced sugar' food products."

III. Comments

You may submit written or electronic comments to the Dockets Management Branch (see **ADDRESSES**). Groups or organizations must submit two copies of any mailed comments. Individuals may submit one copy of their comments. Submit only one copy of your comment if submitting an electronic comment. Identify your written or electronic comments with the docket number found in brackets in the heading of this document. The petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 3, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–31067 Filed 12–4–02; 3:17 pm]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, NRSA Individual Predoctoral Fellowship and Career Development Award Applications.

Date: December 3, 2002.

Time: 10:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: 1 Democracy Plaza, Democracy 1, 6701 Democracy, 710, Bethesda, MD 20892–4870, (Telephone Conference Call).

Contact Person: John E. Richters, PhD, Scientific Review Administrator, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Room 715, Bethesda, MD 20817, (301) 594–5971, *jrichters@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: November 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30955 Filed 12–6–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(b)(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Program Project.

Date: December 17, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Mark R. Green, Phd, Chief, CEASRB, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, Room 3158, MSC 9547, 6001 Executive Boulevard, Bethesda, MD 20892–9547, (301) 435–1431.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: November 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30957 Filed 12–6–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provision is set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Organ Transplantation in Animals and Man.

Date: December 18, 2002.

Time: 8 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 754, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799, *ls38z@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Islet Transplantation Tolerance.

Date: December 20, 2002.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 754, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799, *ls38z@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: November 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30958 Filed 12–6–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Parkinson's Disease and Stem Cells.

Date: December 4, 2002.

Time: 10:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Sherry L. Stuesse, PhD, Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892. 301–435–1785. *stuesses@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Basic and Clinical Studies of Anterior Eye Diseases.

Date: December 11, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892. (301) 435–1164. *custerm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Structure and Function of Developmental Regulators in the Nervous System.

Date: December 19, 2002.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Gillian Einstein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7850, Bethesda, MD 20817. (301) 435–4433. *einsteig@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 29, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–30956 Filed 12–6–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: "Coil for Transcranial Magnetic Stimulation"

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is a public notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the inventions embodied in:

Employee Invention Report E–223–00/0, "Coil for Magnetic Stimulation," PCT Application No. PCT/US01/50737 by Zangen *et al.*

to BrainGate, Inc., having a place of business at 25883 Goose Neck Rd, Royal Oak, MD 21662.

The United States of America is the assignee to the patent rights of these inventions.

The contemplated exclusive license may be restricted to the fields of Transcranial Magnetic Stimulation (TMS) therapies and apparatus.

DATES: Only written comments and/or applications for a license that are received by the NIH Office of Technology Transfer on or before February 7, 2003, will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Dale D. Berkley, Ph.D., J.D. Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5019; Facsimile: (301) 402–0220; E-mail: *berkleyd@od.nih.gov.* A signed confidential disclosure agreement will be required to receive copies of the patent application.

SUPPLEMENTARY INFORMATION: The invention is a magnetic stimulator that is placed in contact with the head of a subject to magnetically stimulate the brain. The device has applications in the treatment of cardiovascular or neurophysiological conditions, and may be of particular utility in the treatment of disorders associated with deep regions of the brain, such as drug addiction and depression. The unique coil shape of the stimulator is designed to target the nucleus accumbens, a region deep within the brain associated with the biological mechanism underlying drug abuse. Deep regions of the brain are also implicated in depressive disorders, and this coil is likely to offer an improvement in the transcranial magnetic stimulation therapy currently being tested for treatment of depression.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: November 29, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–30959 Filed 12–5–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

The National Toxicology Program (NTP) Center for the Evaluation of Risks to Human Reproduction (CERHR): Availability of Draft Expert Panel Reports on Ethylene Glycol and Propylene Glycol, Request for Public Comment, and Expert Panel Meeting Planned

Summary: The NTP CERHR announces:

1. The availability of the draft expert panel reports on ethylene glycol and propylene glycol and solicits written public comments on the reports January 23, 2003.

2. An expert panel meeting on February 11–13, 2003, at the Holiday Inn Old Town Select, Alexandria, Virginia and invites the public to present oral comments at this meeting.

Questions about the draft expert panel reports, submission of public comments, and the expert panel meeting should be directed to Dr. Michael Shelby, CERHR director (contact information below).

Draft Expert Panel Reports on Ethylene Glycol and Propylene Glycol Available

The CERHR announces the availability of draft expert panel reports on ethylene glycol (CASRN 107–21–1) and propylene glycol (CASRN 57–55–6). Most ethylene glycol is used as a chemical intermediate in the production of polyester compounds. There is widespread public exposure to ethylene glycol due to its use as automotive antifreeze and as a de-icer for aircraft. The toxicology database on ethylene glycol includes recent mechanistic data and occupational exposure information. Propylene glycol, similar in structure to ethylene glycol, is used as an antifreeze and de-icing solution and in various paints and coatings. Propylene glycol is approved for use in foods, drugs, and cosmetics.

Each draft expert panel report has the following sections:

1.0 Chemistry, Use, and Human Exposure
2.0 General Toxicological and Biological Effects
3.0 Developmental Toxicity Data
4.0 Reproductive Toxicity Data
5.0 Summary, Conclusions, and Critical Data Needs (to be written at expert panel meeting)

Sections 1–4 will be available to the public by December 4, 2003, and can be obtained electronically on the CERHR web site (*http://cerhr.niehs.nih.gov*) or in hard copy by contacting Dr. Michael Shelby, Director CERHR (NIEHS, 79

T.W. Alexander Drive, Building 4401, Room 103, P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709, telephone: (919) 541–3455; facsimile: (919) 316–4511; *shelby@niehs.nih.gov*).

Request for Written Comments on Draft Expert Panel Reports

The CERHR invites written public comments on sections 1–4 of the draft expert panel reports on ethylene glycol and propylene glycol. Comments can be submitted in hard copy or electronic format and must be received by the CERHR by January 23, 2003. These comments will be distributed to the expert panel and CERHR staff for consideration in revising the draft reports and in preparing for the expert panel meeting. They will be posted on the CERHR website prior to the expert panel meeting. These comments should be sent to Dr. Michael Shelby at the address provided above. Persons submitting written comments are asked to include their name and contact information (affiliation, mailing address, telephone and facsimile numbers, e-mail, and sponsoring organization, if any).

Expert Panel Meeting Planned

The CERHR will hold an expert panel meeting February 11–13, 2002, at the Holiday Inn Old Town Select, 480 King Street, Alexandria, VA 22314 (telephone: 703–549–6080, facsimile: 684–6508). The CERHR will ask the expert panel to review the scientific evidence regarding the potential reproductive and/or developmental toxicity associated with exposure to ethylene glycol and to propylene glycol. The expert panel will review and revise the draft expert panel reports and reach conclusions regarding whether exposure to ethylene glycol or propylene glycol is a hazard to human development or reproduction. The expert panel will also identify data gaps and research needs.

This meeting is open to the public and attendance is limited only by the available meeting room space. The meeting will begin at 8:30 a.m. each day. On February 11 and 12 it is anticipated that a lunch break will occur from noon–1 p.m. and that the meeting will adjourn 5–6 p.m. The meeting is expected to adjourn by noon on February 13; however, adjournment may occur earlier or later depending upon the time needed by the expert panel to complete its work. Anticipated agenda topics for each day are listed below. Following the expert panel meeting and completion of the expert panel reports, the CERHR will post the reports on its website and solicit public comment through a **Federal Register** notice.

Preliminary Meeting Agenda

February 11, 2003

Opening remarks (8:30 a.m.).

Oral public comments (7 min per speaker; one representative per group, *see* below).

Review of sections 1–4 of the draft expert panel reports on ethylene glycol and propylene glycol.

Discussion of section 5.0 summary, conclusions, and critical data needs.

February 12, 2002

Discussion of section 5.0 summary, conclusions, and critical data needs (8:30 a.m.).

Preparation of draft summaries and conclusion statements.

February 13, 2003

Presentation, discussion of, and agreement on summaries and conclusions (8:30 a.m.).

Closing comments.

Oral Public Comments Welcome at Expert Panel Meeting

Time is set-aside on February 11, 2003, for the presentation of oral public comments at the expert panel meeting. To facilitate planning, those persons wishing to make oral public comments are asked to contact Dr. Shelby by January 31, 2003 (contact information provided above). Seven minutes will be available for each speaker (one speaker per organization). When registering to comment orally, please provide your name, affiliation, mailing address, telephone and facsimile numbers, e-mail and sponsoring organization (if any). If possible, also send a copy of the statement or talking points to Dr. Shelby by February 3, 2003. This information will be provided to the expert panel to assist them in identifying issues for discussion and will be noted in the meeting record. Registration for presentation of oral comments will also be available at the meeting on February 11, 2003 (7:30–8:30 a.m.). Those persons registering at the meeting are asked to bring 20 copies of their statement or talking points.

In lieu of making an oral presentation at the meeting, the public is invited to submit a written statement to CERHR by February 3, 2003. This statement will be distributed to CERHR staff and the expert panel, noted in the meeting record, and posted on the CERHR website.

Ethylene Glycol and Propylene Expert Panel

The CERHR will convene an expert panel of independent scientists whose members were selected for their scientific expertise in reproductive and/or developmental toxicology and other areas of science relevant for this review.

Expert Panel Members and Affiliation

Elaine Faustman, PhD, DABT Chair)—University of Washington, Seattle, WA

Cynthia F. Bearer, MD, PhD—Rainbow Babies & Children's Hospital, Cleveland, OH

John M. DeSesso, PhD—Mitretek Systems, Falls Church, VA

Bruce A. Fowler, PhD— Agency for Toxic Substances Diseases Registry, Atlanta, GA

Gary L. Ginsberg, PhD—Connecticut Department of Public Health, Hartford, CT

Deborah K. Hansen, PhD—National Center for Toxicological Research, Jefferson, AR

Cynthia J. Hines, MS—National Institute for Occupational Safety and Health, Cincinnati, OH

Ronald N. Hines, PhD—Medical College of Wisconsin, Milwaukee, WI

Ken Portier, PhD—University of Florida, Gainesville, FL

Karl K. Rozman, PhD—University of Kansas Medical Center, Kansas City, KS

John A. Thomas, PhD—University of Texas, San Antonio, TX

Background Information About the CERHR

The NTP established the NTP CERHR in June 1998 (63 FR 68782, December 14, 1998). The CERHR is a publicly accessible resource for information about adverse reproductive and/or developmental health effects associated with exposure to environmental and/or occupational exposures. Expert panels conduct scientific evaluations of agents selected by the CERHR in public forums.

The CERHR invites the nomination of agents for review or scientists for its expert registry. Information about CERHR and the nomination process can be obtained from its homepage (*http://cerhr.niehs.nih.gov*) or by contacting Dr. Shelby (contact information provided above). The CERHR selects chemicals for evaluation based upon several factors including production volume, extent of human exposure, public concern, and published evidence of reproductive or developmental toxicity.

CERHR follows a formal, multi-step process for review and evaluation of selected chemicals. The formal evaluation process was published in the **Federal Register** notice July 16, 2001 (66 FR 37047–48) and is available on the CERHR website under "About CERHR" or in printed copy from the CERHR.

Dated: November 18, 2002.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 02–30960 Filed 12–6–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Recovery Plan for the Bruneau Hot Springsnail (*Pyrgulopsis bruneauensis*)

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife (Service) announces the availability of the final recovery plan for the Bruneau hot springsnail (*Pyrgulopsis bruneauensis*; springsnail). This endangered freshwater snail is a member of the family Hydrobiidae and occurs in a 5-mile reach of the Bruneau River and the lower one-third of Hot Creek in Owyhee County, Idaho.

ADDRESSES: Recovery plans that have been approved by the U.S. Fish and Wildlife Service are available on the World Wide Web at: *http://www.r1.fws.gov/ecoservices/endangered/recovery/default.htm*. In addition, recovery plans for the springsnail may also be obtained from: Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814, 301–429–6403 or 800–582–3421. The fee for the plan varies.

FOR FURTHER INFORMATION CONTACT: Steven Lysne or Jeri Wood, U.S. Fish and Wildlife Service, Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Boise, Idaho 83709 (telephone; 208–378–5243).

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of the Service's endangered species program. A species is considered recovered when the species' ecosystem is restored and/or threats to the species are removed so that self-sustaining and self-regulating populations of the species can be supported as persistent members of native biotic communities. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate the time and cost associated with implementing the measures needed for recovery.

The Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that during recovery plan development, the Service provide public notice and an opportunity for public review and comment. Information presented during the public comment period has been considered in the preparation of this final recovery plan, and is summarized in an appendix to the recovery plan. The Service will forward substantive comments regarding recovery plan implementation to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions.

The springsnail was listed as endangered on June 17, 1998 (FR 63 32981). This freshwater, aquatic snail exists only in an approximately 5-mile reach of the Bruneau River and its tributary, Hot Creek, in southwestern Idaho. The springsnail inhabits flowing geothermal springs and seeps with temperatures ranging from 15.7 to 36.9 degrees Celsius. The springsnail is found in these habitats on the exposed surfaces of various substrates including rocks, gravel, sand, mud, and algal films. The principal threat to the springsnail is the reduction and/or elimination of their geothermal spring habitat as a result of agricultural groundwater withdrawals.

The objective of this plan is to provide a framework for the recovery of the springsnail so that protection by the Act is no longer necessary. Recovery is contingent upon protecting and managing the remaining springsnail habitat to maintain and enhance viable populations of the springsnail.

The springsnail will be considered for reclassification when: (1) Water levels in the regional geothermal aquifer have increased and stabilized at 815 meters (2,674 feet) in elevation; (2) the total number of geothermal springs discharging within the recovery area is 200 or more and are distributed within the current range of the springsnail; (3) more than two-thirds of available geothermal springs within the recovery area are occupied by stable, medium to high density populations of reproducing hot springsnails; and (4) groundwater levels are permanently protected against further reductions through implementation of groundwater management activities.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: September 30, 2002.

Anne Badgley,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 02–30982 Filed 12–6–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of extension to approved Tribal-State Compact.

SUMMARY: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register,** notice of the approved Tribal-State compacts for the purpose of engaging in class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through this delegated authority, has approved the extension agreement to the class III gaming compact between the Assiniboine and Sioux Tribes of the Fort Peck Reservation and the State of Montana.

EFFECTIVE DATE: December 9, 2002.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: November 13, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–30966 Filed 12–6–02; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendment to Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register,** notice of approved

Tribal-State Compacts for the purpose of engaging in class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the second amendment to the Tribal-State Compact for class III gaming between the Quinault Indian Nation and the State of Washington.

EFFECTIVE DATES: December 9, 2002.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: November 22, 2002

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–30968 Filed 12–6–02; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Nation—State Gaming Compact taking effect.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, is publishing the notice that the Nation-State Compact for class III gaming between the Seneca Nation of Indians and the State of New York executed on August 18, 2002, is considered approved. By the terms of IGRA, this compact is considered approved, but only to the extent the compact is consistent with the provisions of IGRA.

EFFECTIVE DATE: December 9, 2002.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: November 18, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–30967 Filed 12–6–02; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ 020–03–1610–DO–089A]

Notice of Intent To Prepare a Resource Management Plan and Environmental Impact Statement for the Phoenix Field Office

AGENCY: Bureau of Land Management, Phoenix Field Office.

ACTION: Notice of intent to prepare a Resource Management Plan (RMP) and Environmental Impact Statement (EIS) for the Phoenix Field Office. These lands are located in Maricopa, Pinal, Pima, and Gila Counties, Arizona.

SUMMARY: This document provides notice that the Bureau of Land Management (BLM), Phoenix Field Office intends to prepare a RMP for the southern portion of the Phoenix Field Office (referred to as Phoenix South RMP) in association with the Sonoran Desert National Monument RMP (notice published in the **Federal Register** Vol. 67, No. 79, 20158; Wednesday April 24, 2002) with one associated EIS for the two planning efforts. This planning activity encompasses approximately 1 million acres of public land. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), other laws, regulations, and BLM management policies. The BLM will work closely with interested parties to identify the management decisions that are best suited to the needs of the public. This collaborative process will take into account local, regional, and national needs and concerns. The first phase of the planning process is scoping which includes the identification of issues that should be addressed in the planning process and development of planning criteria.

DATES: The scoping comment period commences with the publication of this notice and will continue for at least 60 days. Public meetings will be held in approximately late 2002–early 2003. Public notice will be provided specifying when the meetings will occur and will include notification of when the scoping period will close.

Public Participation: Public meetings will be held throughout the plan scoping and preparation period. In order to ensure local community participation and input, public meeting locations will be rotated among towns in the planning area. Towns in the planning area include the metro-Phoenix area, Tonopah, Buckeye, Gila Bend, Maricopa, Ajo, Sells, Casa Grande, and Miami-Globe. Early participation by all those interested is encouraged and will help determine the future management of the public lands. At least 15 days public notice will be given for activities where the public is invited to attend. Written comments will be accepted throughout the planning process. Meetings and comment deadlines will be announced through the local news media, newsletters, and the BLM Web site *(http://www.az.blm.gov)*. In addition to the ongoing public participation process, formal opportunities for public participation will be provided upon publication of the draft RMP/EIS.

ADDRESSES: Phoenix South—Sonoran Desert NM Planning, Bureau of Land Management, Phoenix Field Office, 21605 N. 7th Avenue, Phoenix, AZ 85027; Fax 623–580–5580. For further information and/or to have your name added to our mailing list, contact the Phoenix Field Office, Telephone 623–580–5500.

SUPPLEMENTARY INFORMATION: The planning area is generally bounded by: Interstate 10 and Highway 60 on the north, the Maricopa-Yuma County line on the west, the U.S.-Mexican border on the south, and the eastern Phoenix Field Office boundary on the east. The resulting Phoenix South RMP will replace the Lower Gila South RMP, and parts of the Lower Gila North MFP and the Phoenix RMP. Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. They represent the BLM's knowledge to date on the existing issues and concerns with current management. Additional issues and modifications to known issues will be identified during public scoping. The major issues that will be addressed in the plan effort include, but are not limited to, management of public land resources including natural resource management; cultural resource management and protection; recreation/visitor use and safety; access and transportation on the public lands; location and management of utility corridors; management of grazing, mining, mineral materials, and other uses; and integration of public land management, local community, tribal, and other agency needs and plans.

After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase. An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include rangeland, minerals and geology, outdoor recreation, archaeology, wildlife, wilderness, lands and realty, hydrology, soils, sociology, and economics. Where necessary, outside expertise may be used.

Mervin G. Boyd,

Acting Manager, Phoenix Field Office.

[FR Doc. 02–30992 Filed 12–6–02; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–1820–AE]

Notice of Public Meeting: Northeast California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northeast California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Thursday and Friday, Jan. 9 and 10, 2003, in the Conference Room of the Bureau of Land Management's Eagle Lake Field Office, 2950 Riverside Dr., Susanville, California. On Oct. 9, the meeting begins at 1 p.m. On Oct. 10, the council will convene at 8 a.m. Time for public comments has been set aside for 10 a.m.

FOR FURTHER INFORMATION CONTACT: Tim Burke, Field Manager, BLM Alturas Field Office, 708 West 12th St., Alturas, CA, (530) 233–4666; or BLM Public Affairs Officer Joseph J. Fontana, telephone (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northeast California and Northwest Nevada. At this meeting, agenda topics will include an update on wild horse and burro management, council involvement development of new BLM land use plans and an update on development of a juniper management strategy. The council will also hear status reports from the managers of the BLM's Alturas, Eagle Lake and Surprise field offices.

All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: December 2, 2002.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 02–30961 Filed 12–6–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–1430–01; AZA 12865/CAAZRI 06106]

Public Land Order No. 7547; Partial Revocation of Secretarial Order Dated October 16, 1931; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Secretarial Order dated October 16, 1931, insofar as it affects 31.25 acres of land withdrawn for the Bureau of Reclamation's Colorado River Storage and Survey Projects. This order makes the land available for conveyance under the Recreation and Public Purposes Act.

EFFECTIVE DATE: December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Kathy Gary, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825–1886, 916–978–4677.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation no longer needs the land and concurs with the partial revocation.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated October 16, 1931, which withdrew land for the Bureau of Reclamation's Colorado River Storage and Survey Projects, is hereby revoked insofar as it affects the following described land:

San Bernardino Meridian

T. 9 S., R. 21 E.,
sec. 15, S½SW¼SW¼NE¼SW¼, SE¼SE¼SE¼NW¼SW¼, E½E½NE¼SW¼ SW¼, N½SE¼SW¼, NW¼SW¼SE¼SW¼, N½NE¼SW¼SE¼SW¼, SW¼NE¼SW¼SE¼SW¼, and N½N½SE¼SE¼SW¼.

The area described contains 31.25 acres in Imperial County.

2. The land described in Paragraph 1 is hereby made available for conveyance under the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 (1994).

Dated: November 20, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–30989 Filed 12–6–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–ET; COC–28504]

Public Land Order No. 7548; Partial Revocation of Executive Order No. 5672; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes an Executive Order which withdrew lands in Colorado and Wyoming for Public Water Reserve No. 143. This order only affects lands in Colorado and opens 209.61 acres to the operation of the public land laws and to nonmetalliferous location and entry under the United States mining laws. The lands have been and will remain open to mineral leasing and to metalliferous mining.

EFFECTIVE DATE: January 8, 2003.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, 303–239–3706.

SUPPLEMENTARY INFORMATION: The lands do not contain a water source and one of the parcels has been identified for disposal.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Executive Order No. 5672, dated August 3, 1931, which withdrew lands for Public Water Reserve No. 143, is hereby revoked insofar as it affects the following described lands:

Sixth Principal Meridian

T. 8 N., R. 97 W., sec. 1, W½SW¼; sec. 2, N½SE¼; sec. 29, lots 17, 25, 26, 29, and 30 (previously lots 8 and 9).

The areas described aggregate 209.61 acres in Moffat County, Colorado.

2. At 9 a.m. on January 8, 2003, the lands described in paragraph 1 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on January 8, 2003, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on January 8, 2003, the lands described in paragraph 1 will be opened to nonmetalliferous location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order to nonmetalliferous mining under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: November 20, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–30987 Filed 12–6–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–ET; WYW 132601]

Public Land Order No. 7546; Withdrawal of Public Lands for Protection of Sweetwater River Recreational, Scenic, Riparian, Historic, and Wildlife Resources; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 4,943.13 acres of public lands from surface entry and mining for a period of 20 years to protect and preserve significant recreational, scenic, riparian, historic, and wildlife resources along segments of the Sweetwater River. The lands are not available for mineral leasing in accordance with the Bureau of Land Management Green River Resource Management Plan.

EFFECTIVE DATE: December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, 5353 N. Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), to protect and preserve significant recreational, scenic, riparian, historic, and wildlife resources:

Sixth Principal Meridian

T. 28 N., R. 102 W.,
Sec. 3, lots 2, 3, and 4, SW¼, W½SE¼, and SE¼SE¼;
Sec. 4, lots 1 to 4, inclusive, N½SW¼, E½SW¼SW¼, SE¼SW¼, and SE¼;
Sec. 5, lot 1 and NE¼SE¼;
Sec. 9, W½NE¼, SE¼NE¼, NE¼NW¼, NE¼SE¼NW¼, and N½NE¼SE¼;
Sec. 10, S½NE¼NE¼, W½NE¼, SE¼NE¼, NW¼, N½SW¼, N½SE¼SW¼, N½SE¼, E½SW¼SE¼, and SE¼SE¼;
Sec. 11, SW¼NW¼, NW¼SW¼, SW¼SE¼NW¼, and W½NE¼SW¼.
T. 29 N., R. 102 W.,
Sec. 5, lots 3 and 4, S½NW¼, N½SW¼, SE¼SW¼, W½SE¼, and SE¼SE¼;
Sec. 6, lot 1 and SE¼NE¼;
Sec. 8, NE¼, NE¼NW¼, E½SE¼NW¼, E½E½SW¼, and SE¼;
Sec. 9, W½W½NW¼, W½NW¼SW¼, and SW¼SW¼;
Sec. 17, N½NE¼, E½SW¼NE¼, SE¼NE¼, and NE¼SE¼;
Sec. 27, SW¼NE¼, E½SW¼, W½NE¼SE¼, and W½SE¼;
Sec. 34, NW¼NE¼, S½NE¼, NE¼NE¼NW¼, and N½SE¼;
Sec. 35, W½W½.
T. 30 N., R. 102 W.,
Sec. 19, lots 1 to 4, inclusive, SW¼NE¼, SE¼NW¼, E½SW¼, and W½SE¼;
Sec. 30, W½NE¼, W½SE¼NE¼, E½NW¼, E½SW¼, W½NE¼SE¼, W½SE¼, and SE¼SE¼;
Sec. 31, NE¼, E½NW¼, E½NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 32, SW¼.

The areas described aggregate 4,943.13 acres in Fremont County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of the mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: November 20, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–30986 Filed 12–6–02; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–02–1430–EU; CACA–42488]

Notice of Realty Action, Noncompetitive Sale of Public Lands in Trinity County, California

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Segregation and Sale of Public Land.

SUMMARY: The following public lands have been found suitable for direct sale under section 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the estimated fair market value of $5,000.00. The land will not be offered for sale until at least 60 days after the date of publication of the Notice of Realty Action.

Mount Diablo Meridian

T.33N., R.10W., Section 8, Lot 14.
Containing 1.39 Acres more of less.

DATES: Submit comments on or before January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Susie Rodriguez, Redding Field Office, 355 Hemsted Drive, Redding, CA. 96002; 530–224–2142.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first. This land is being offered by direct sale to the sole adjoining land owner, Charles Capelli, consistent with 43 CFR 2711.3–3(a)(5) and meets the criteria as described in 43 CFR 2710.0–6 (c)(3)(iii). It has been determined that the subject parcel contains no known mineral values; therefore, mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests not reserved to the United States. The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest. The patent, when issued, will contain certain reservations to the United States and will be subject to all existing rights. Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the Redding Field Office Bureau of Land Management, 355 Hemsted Dr. Redding, California 96002. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit written comments regarding the proposed sale to Charles M. Schultz, Field Office Manager, Redding Field Office, Bureau of Land Management, 355 Hemsted Dr., Redding, CA 96002. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: October 3, 2002.

Charles M. Schultz,

Field Office Manager.

[FR Doc. 02–30990 Filed 12–6–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–5440–G504; NMNM104115]

Realty Action; Conveyance of Public Land; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action; airport conveyance to the city of truth or consequences.

SUMMARY: The following public land in Sierra County, New Mexico has been found suitable for conveyance to the City of Truth or Consequences for airport purposes under the Act of May 24, 1928, as amended, and Section 516 of the Airport and Airway Improvement Act of September 3, 1982.

T. 12 S., R. 4 W., NMPM Section 33: W½ SE¼ NW¼ NW¼, N½ SW¼ NW¼, NE¼ SW¼ SW¼ NW¼, N½ SE¼ SW¼ NW¼, SW¼ SE¼ SW¼ NW¼, Containing approximately 35 acres.

DATES: Comments regarding the proposed conveyance must be submitted on or before January 23, 2003.

ADDRESSES: Comments should be sent to the BLM, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Gilda Fitzpatrick, Realty Specialist, at the address above or at (505) 524–4454.

SUPPLEMENTARY INFORMATION: Conveyance of the land is consistent with applicable Federal and county land use plans and will help meet the needs of Sierra County residents for air transportation.

The conveyance will contain reservations to the United States for ditches, canals and all minerals. Additionally the conveyance will be subject to rights of record including right-of-way NMNM44852, to Valor Telecommunications of New Mexico, LLC, for a telephone line.

Specific covenants required by the Federal Aviation Administration will also be included in the conveyance and are available by contacting the BLM Las Cruces Field Office.

The conveyance is consistent with the BLM White Sands Resource Area Management Plan. The land is not required for any other Federal purpose.

This notice segregates the above described public land from all forms of appropriation under the public land laws, including the general mining laws, except application for airport purposes and leasing under the mineral leasing laws.

On or before January 23, 2003, interested parties may submit comments to the BLM, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005. In the absence of any objections, the decision to approve this realty action will become the final determination of the Department of the Interior.

Dated: October 30, 2002.

Amy L. Lueders,

Field Manager, Las Cruces.

[FR Doc. 02–30988 Filed 12–6–02; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–010–1220–AD]

Recreation Management Restrictions, etc: Yellowstone County, MT; Firearms Target Shooting Emergency Closure

AGENCY: Bureau of Land Management, Billings Field Office, Montana State Office.

ACTION: Notice of emergency closure of firearms target shooting on certain public lands administered by the Bureau of Land Management in Yellowstone County, Montana.

SUMMARY: Notice is hereby given that certain areas are closed to firearms target shooting from October 1, 2002, to September 30, 2003, to protect public safety and natural resources. The closed areas are Shepherd Ah-Nei, 21-Mile, and Acton Ah-Nei areas and are legally described as:

That area of public lands commonly referred to the "Shepherd Area," or "Shepherd Ah Nei" located at:

T 4 N, R 27 E, Sec 24, NE¼, S½; Sec 25, all. Sec 36, all.
T 3 N, R 27 E, Sec 1, all.
T 4 N, R 28 E, Sec 19, all. Sec 20, W½. Sec 30, Lots 1, 2, N½NE¼. Sec 31, all
T 3 N, R 28 E, Sec 6, Lots 3, 4, 7, 8, 9, 10, 11, 12, E½, Principal Montana Meridian, and

That area of public lands commonly referred to the "21-Mile Area " located north of Billings and west of the Roundup Road, Highway 87 North and the 21 Mile Road at:

T 4 N, R 25 E, Sec 24, all. Principal Montana Meridian, and

That area of public lands commonly referred to as the "Acton Area" or "Acton Ah-Nei" located east of Broadview, Montana at:

T 4 N, R 25 E, Sec 31, E½.
T 3 N, R 25 E, Sec 5, all, Sec 6, Lots 1, 2, S½, NE¼; Sec 7, Lots 1, 2, E½ NW¼, E½ SW¼, E½; Sec 8, all. Sec 9, all. Sec 17, all.

Sec 20, N½ N½. Principal Montana Meridian, all in Yellowstone County, in the State of Montana.

Closure signs will be posted at the major entry points to this area. Maps of the closure and information may be obtained from the Billings Field Office.

DATES: This closure will be in effect from October 1, 2002, to September 30, 2003, unless superceded by permanent rulemaking action.

Discussion of the Emergency Closure: This emergency closure is necessary for the management of actions, activities, and public use on certain public lands which may have, or are having, adverse impacts on persons using public lands, on property, and on resources located on public lands until permanent management action can be taken. Increasing levels of public use are creating conflicts between different user groups. The subject lands are utilized for recreational hiking, horseback riding, mountain biking, off-highway vehicle use, wildlife observation, hunting, and target shooting.

While hikers, horseback riders, mountain bicyclists and other users can schedule their use around published hunting seasons for safety reasons, they are not able to avoid random target shooting. Local conditions including heavy timber and rough terrain reduce visibility and increase the hazard to other users from target shooters. Recent incidents involving random target shooting have resulted in endangerment and injury to other users. In addition, resource damage is occurring from the accumulation of debris from target materials. To reduce the incidence of future conflicts, three areas of public land known as the Acton Area, 21-Mile Area, and Shepherd Ah-Nei, located north of Billings, Montana are being closed to target shooting with firearms. These areas will remain open to hunting by licensed hunters during seasons administered by the Montana Department of Fish, Wildlife and Parks.

This emergency closure does not apply to other lands, specifically the "17-Mile" area located west of Highway 87, north of Billings, Montana, on the Crooked Creek Road.

SUPPLEMENTARY INFORMATION: Under the authority of 43 CFR 9268.3(d)(1)(i) and 43 CFR 8364.1(a) the Bureau of Land Management will enforce the following emergency closure on public lands within the closed area.

Emergency Closure

1.0 Emergency Closure of Certain Public Lands to Target Shooting.

The following is prohibited:

The discharge of firearms for the purpose of target shooting.

(2.0) Exceptions:

(a) This regulation does not apply to the hunting of lawful game by licensed hunters during seasons administered by the Montana Department of Fish, Wildlife and Parks.

(b) This regulation does not apply to archery marksmanship at fixed targets affixed to a backstop sufficient to stop and hold target or broad-head arrows or the use of compressed gas paintball projectors.

(c) This regulation does not apply to special target shooting events, which may be authorized by the authorized officer under special permit.

Penalties: The authority for this closure is found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C 1733 (a) and 43 CFR 9268.3(e)(2), 43 CFR 8360.0–7, and 43 CFR 8365.1–6. Violations of this regulation are punishable by a fine in accordance with the Sentencing Reform Act of 1984 (18 U.S.C. 3551 *et seq.*), and/or imprisonment not to exceed 12 months for each offense.

Dated: September 10, 2002.

Sandra S. Brooks,

Field Office Manager, Billings Field Office.

FOR FURTHER INFORMATION CONTACT: Sandra S. Brooks, Field Manager, BLM, Billings Field Office, P.O. Box 36800, 5001 Southgate Drive, Billings, MT 50107–6800 or call 406–896–5013.

[FR Doc. 02–30993 Filed 12–6–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0113).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled "30 CFR part 206, Subpart B, Indian Oil (Form MMS–4416, Indian Crude Oil Valuation Report)."

DATES: Submit written comments on or before February 7, 2003.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, PO Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3385 or e-mail *sharron.gebhardt@mms.gov*.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 206, Subpart B, Indian Oil (Form MMS–4416, Indian Crude Oil Valuation Report).

OMB Control Number: 1010–0113.

Bureau Form Number: Form MMS–4416.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

Section 101(a) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), as amended, requires the Secretary to "establish a comprehensive inspection, collection, and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and collect and account for such amounts in a timely manner." To accomplish these tasks more effectively, MMS published a proposed rule in the **Federal Register** on February 12, 1998 (63 FR 7089) and a supplementary proposed rule on January 5, 2000 (65 FR 403). The rules proposed add more certainty to valuation of oil produced from Indian lands and eliminate any direct reliance on posted prices by, among other provisions, requiring Indian lessees and purchasers to submit certain contract information to MMS.

MMS awaited the Solicitor General's approval of the appeal in the Federal Energy Regulatory Commission 636 case regarding duty to market before publishing a final rule. MMS intends to publish a final rule in Fiscal Year 2003. Because OMB approval of this information collection expires February 28, 2003, we are seeking OMB approval to renew these reporting requirements until a final rule is published.

Not collecting this information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments to the Indian lessor due to royalties not being collected on prices received under higher priced long-term sales contracts. Proprietary information submitted is protected, and there are no questions of a sensitive nature included in this information collection.

We have also changed the title of this ICR from "Indian Crude Oil Valuation Report (Form MMS–4416)" to "30 CFR part 206, Subpart B, Indian Oil (Form MMS–4416, Indian Crude Oil Valuation Report)" to clarify the regulatory language we are covering under 30 CFR part 206.

Frequency: Monthly.

Estimated Number and Description of Respondents: 225 payors-purchasers.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 2,362 hours.

The following chart shows the breakdown of the burden hours by CFR section and paragraph:

Proposed 30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
§ 206.61(d)(5)	You must submit information on Form MMS–4416 related to all of your crude oil production from Indian leases. You must initially submit Form MMS–4416 no later than [insert the date 2 months after the effective date of this rule] and then by October 31 [insert the year this regulation takes effect], and by October 31 of each succeeding year.	.1667	[1] 2,025	337.5
	In addition to the annual requirement to file this form, you must file a new form each time you execute a new exchange or sales contract involving the production of oil from an Indian lease. However, if the contract merely extends the time period a contract is in effect without changing any other terms of the contract, this requirement to file does not apply. All other purchasers of crude oil from designated areas likewise are subject to the requirements of this paragraph (d)(5).	.5	[2] 4,050	[2] 2,025
	Total		6,075	2,363

[1] 1,350 payor-purchaser agreements or contracts plus 675 non-payor-purchaser agreements or contracts.
[2] 225 payor-purchasers X 6 agreements or contracts per payor X ½ hour per submission X 2 submissions per year plus 675 agreements or contracts submitted by non-payor-purchasers X ½ hour per submission X 2 submissions per year.

Estimated Annual Reporting and Record keeping "Non-hour Cost" Burden: We have identified no "non-hour" cost burdens.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or record keepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request and the ICR will also be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request we withhold their home address from the public

record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: December 4, 2002.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 02–31042 Filed 12–6–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,699]

Liberty Sportswear, Inc., Jean Michael's Inc., Riverview, Willingboro, New Jersey; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 26, 2002, applicable to workers of Liberty Sportswear, Inc., a Division of Jean Michael's Inc. located in Willingboro, New Jersey. The notice was published in the **Federal Register** on September 10, 2002 (FR 67 57456).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of women's skirts. New information shows that workers of Riverview, under the same Liberty Sportswear umbrella were inadvertently excluded from the certification. Accordingly, the Department is amending the certification to include workers of Riverview.

The intent of the Department's certification is to include all workers of Liberty Sportswear, Inc., Willingboro, New Jersey, who were adversely affected by increased imports.

The amended notice applicable to TA–W–41,699 is hereby issued as follows:

"All workers of Liberty Sportswear, Inc., Jean Michael's Inc., and Riverview, Willingboro, New Jersey, who became totally or partially separated from employment on or after June 3, 2001, through August 26, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 26th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31062 Filed 12–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,728]

Mikan Group, Inc., Long Island City, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 23, 2002, applicable to workers of Milkan Group, New York, New York. The notice was published in the **Federal Register** on November 5, 2002 (67 FR 67420).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produced ladies' skirts and pants. The review shows that the notice incorrectly identified the company name and city. Consequently, the Department is amending the certification to reflect the correct spelling of the company name to read Mikan Group, Inc., and the city in New York where the plant was located to read Long Island City.

The amended notice applicable to TA–W–40,728 is hereby issued as follows:

"All workers at Mikan Group, Inc., Long Island City, New York, who became totally or partially separated from employment on or after December 5, 2000, through October 23, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC this 13th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31060 Filed 12–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,651]

Nortel Networks, Xros, Inc., Northern Telephone, Alteon Networks, Santa Clara, California; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 30, 2000, applicable to workers of Nortel Networks, Santa Clara, California. The notice was published in the **Federal Register** on June 29, 2000 (65 FR 40135).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of telecommunications equipment, primarily printed circuit assemblies and PBX telephone switches.

New information provided by the State shows that some workers separated from employment at the Santa Clara, California location of Nortel Networks had their wages reported under three separate unemployment insurance (UI) tax accounts for Xros, Inc. and Northern Telephone, Santa Clara, California and Alteon Networks, Santa Clara, California and San Jose, California.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Nortel Networks who were adversely affected by increased imports.

The amended notice applicable to TA–W–37,651 is hereby issued as follows:

"All workers of Nortel Networks, Santa Clara, California; and workers of Xros, Inc., Northern Telephone, and Alteon Networks, producing telecommunications equipment, primarily printed circuit assemblies and PBX telephone switches, at Nortel Networks, Santa Clara, California, who became totally or partially separated from employment on or after April 20, 1999, through May 30, 2002, are eligible to apply

for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 26th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31058 Filed 12–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,770]

RFS Ecusta, Pisgah Forest, North Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on November 4, 2002, applicable to workers of RFS Ecusta, Pisgah Forest, North Carolina. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produced tobacco, specialty, and printing paper. Information provided by the State shows that workers of RFS Ecusta were previously certified (TA–W–37,854) which expired July 24, 2002. To avoid an overlap in worker group coverage, the Department is amending the impact date for TA–W–41,770 from May 21, 2001, to July 25, 2002.

The amended notice applicable to TA–W–41,770 is hereby issued as follows:

"All workers of RFS Ecusta, Pisgah Forest, North Carolina, who became totally or partially separated from employment on or after July 25, 2002, through November 4, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC this 19th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31063 Filed 12–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,941 and TA–W–40,941A]

Wheland Automotive Industries, Warrenton, Georgia and Wheland Automotive Industries, Chattanooga, Tennessee; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on May 3, 2002, applicable to workers of Wheland Automotive Industries, located in Warrenton, Georgia. The notice was published in the **Federal Register** on May 17, 2002 (67 FR 35141).

At the request of the company official, the Department reviewed the certification for workers of the subject firm. The workers produced castings for brake drums and disc brake rotors. The company official reported that employment at the company's Chattanooga, Tennessee plant has declined. The sales of castings for brake drums and disc brake rotors at Chattanooga, Tennessee, have also declined. Layoffs of workers at the company's headquarters in Chattanooga, Tennessee, providing administrative support services to Whelan Automotive Industries has also occurred. The output of castings for brake drums and disc brake rotors at the Chattanooga plant were for the same customer base as the Warrenton, Georgia plant.

Based on the new information provided by the company, the Department is amending the certification to expand coverage to workers of Wheland Automotive Industries in Chattanooga, Tennessee, including the workers at headquarters, engaged in employment related to the production of castings for brake drums and disc brake rotors.

The amended notice applicable to TA–W–40,941 is hereby issued as follows:

"All workers of Wheland Automotive Industries, Warrenton, Georgia (TA–W–40,941), and workers of Wheland Automotive Industries, including headquarters staff, engaged in employment related to the production of castings for brake drums and disc brake rotors at Chattanooga, Tennessee (TA–W–40,941A), who became totally or partially separated from employment on or after January 14, 2001, through May 3, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC this 20th day of November, 2002.

Linda G. Poole

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31061 Filed 12–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 19, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 19, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 26th day of November, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 11/12/2002 and 11/15/2002]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
50,044	Wrought Washer Manufacturing Company (USWA).	Milwaukee, WI	11/12/2002	11/07/2002
50,045	Domestic Manufacturing Corporation (Comp)	Kinston, NC	11/12/2002	11/12/2002
50,046	Crown North America (Wkrs)	Wooster, OH	11/12/2002	11/07/2002
50,047	Andrew Corporation (Comp)	Denton, TX	11/12/2002	11/04/2002
50,048	Cooper Power Systems (WIA)	S. Milwaukee, WI	11/12/2002	11/12/2002
50,049	Cooper Power Systems (WIA)	Waukesha, WI	11/12/2002	11/12/2002
50,050	Advanced Energy (Wkrs)	Austin, TX	11/12/2002	11/08/2002
50,051	Blue Ridge Sportswear (Comp)	Palmerton, PA	11/12/2002	11/08/2002
50,052	MeadWestvaco (Wkrs)	Front Royal, VA	11/12/2002	11/05/2002
50,053	Advance Transformer Company (Comp)	Monroe, WI	11/12/2002	11/07/2002
50,054	Universal Automotive, Inc. (Comp)	Cuba, MO	11/12/2002	11/08/2002
50,055	Kraft Foods (Comp)	Chicago, IL	11/12/2002	11/08/2002
50,056	Ehlert Tool Co. (WIA)	New Berlin, WI	11/12/2002	11/08/2002
50,057	Evans Rule Company, Inc. (Comp)	Charleston, SC	11/12/2002	11/12/2002
50,058	Ely Shoshone Tribe (Wkrs)	Ely, NV	11/12/2002	11/04/2002
50,059	Flowserve (Wkrs)	Williamsport, PA	11/12/2002	11/12/2002
50,060	GKN Sinter Metals (Comp)	Gallipolis, OH	11/12/2002	11/13/2002
50,061	VF Jeanswear Limited Partnership (Comp)	Woodstock, VA	11/13/2002	11/06/2002
50,062	After Six, Inc. (Comp)	Athens, GA	11/13/2002	11/05/2002
50,063	Valeo Electrical Systems, Inc. (Wkrs)	Rochester, NY	11/13/2002	11/06/2002
50,064	Cerro Fabricated Products (UAW)	Bristol, CT	11/13/2002	11/12/2002
50,065	Rawlings Sporting Goods (UNITE)	Licking, MO	11/13/2002	11/11/2002
50,066	Square D (IBEW)	Lincoln, NE	11/13/2002	11/08/2002
50,067	Advanced Glassfiber Yarns (Comp)	Aiken, SC	11/13/2002	11/08/2002
50,068	Velvet Drive Transmissions (UAW)	New Bedford, MA	11/13/2002	11/07/2002
50,069	L.W. Packard and Company, Inc. (Wkrs)	Ashland, NH	11/13/2002	11/08/2002
50,070	Eaton Corporation (Comp)	Mooresville, NC	11/13/2002	11/07/2002
50,071	Graphic Metals, Inc. (UAW)	Bay City, MI	11/13/2002	11/11/2002
50,072	Federal Mogul Powertrain Systems (UAW)	Orangeburg, SC	11/13/2002	11/11/2002
50,073	Collins and Aikman (UAW)	Marshall, WI	11/13/2002	11/12/2002
50,074	Summit Manufacturing LLC (Wkrs)	West Hazleton, PA	11/14/2002	11/08/2002
50,075	Mayville Engineering Company (Wkrs)	Mayville, WI	11/14/2002	11/13/2002
50,076	Altadis USA Inc. (IBT)	McAdoo, PA	11/14/2002	11/04/2002
50,077	Northern Cambria Shirt Co. (UFCW)	Northern Cambria, PA	11/14/2002	11/06/2002
50,078	Auburn Hosiery Mills, Inc. (Comp)	Auburn, KY	11/14/2002	11/05/2002
50,079	ITT Industries, Automotive Div. (Comp)	Searcy, AR	11/14/2002	11/13/2002
50,080	VF Jeanswear Limited Partnership (Comp)	El Paso, TX	11/14/2002	11/06/2002
50,081A	Cutting Co., Inc. (The) (Comp)	Miami, FL	11/14/2002	11/13/2002
50,081	Drusco, Inc. (Comp)	Miami, FL	11/14/2002	11/13/2002
50,082	Playtex Apparel (Wkrs)	Dover, DE	11/14/2002	11/06/2002
50,083	Rayonier (Comp)	Lumber City, GA	11/14/2002	11/08/2002
50,084	Henry Pratt Company (IAM)	Dixon, IL	11/14/2002	11/07/2002
50,085	Pass and Seymour (Comp)	Concord, NC	11/14/2002	11/12/2002
50,086	J.C. Apparel, Inc. (Comp)	Sebastopol, MS	11/15/2002	11/14/2002
50,087	VF Jeanswear Limited Partnership (Comp)	Okemah, OK	11/15/2002	11/06/2002
50,088	Charles and Sons (NJ)	W. New York, NJ	11/15/2002	11/07/2002
50,089	E-Mu Systems (Comp)	Scotts Valley, CA	11/15/2002	11/05/2002
50,090	YKK USA, Inc. (Wkrs)	El Paso, TX	11/15/2002	11/08/2002
50,091	Cook Inlet Processing, Inc. (AK)	Kodiak, AK	11/15/2002	11/14/2002
50,092	Kus, Inc. (UAW)	Ft. Wayne, IN	11/15/2002	11/14/2002
50,093	Kane Magnetics International (Comp)	Kane, PA	11/15/2002	11/06/2002
50,094	Chiquola Industrial Products Group, LLC	Honea Path, SC	11/15/2002	11/05/2002
50,095	Johnson Controls, Inc. (Wkrs)	Kennesaw, GA	11/15/2002	11/03/2002
50,096	Burlington Industries (Wkrs)	Reidsville, NC	11/15/2002	11/08/2002
50,097	S. Goldberg (NJ)	Hackensack, NJ	11/15/2002	11/04/2002
50,098	Interstate Foam Processors, Inc. (NJ)	Passaic, NJ	11/15/2002	11/04/2002
50,099	Sweater Project (NJ)	North Bergen, NJ	11/15/2002	11/07/2002
50,100	Smith Systems (Comp)	Princeton, MN	11/15/2002	11/12/2002
50,101	Magna Power Tech (Wkrs)	Grand Rapids, MI	11/15/2002	11/14/2002
50,102	MMG North America (NJ)	Paterson, NJ	11/15/2002	11/07/2002
50,103	K and C Knitting, Inc. (NJ)	Passaic, NJ	11/15/2002	11/07/2002
50,104	Thermodisc, Inc. (Comp)	London, KY	11/15/2002	11/14/2002
50,105	Ericsson, Inc. (Comp)	Durham, NC	11/15/2002	11/15/2002
50,106	Profile Group LLC (Wkrs)	Coldwater, MI	11/15/2002	11/12/2002

[FR Doc. 02–31057 Filed 12–6–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6509]

Dana Corporation, Perfect Circle Division, Hastings, Nebraska; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on October 30, 2002, applicable to workers of Dana Corporation, Perfect Circle Division, located in Hastings, Nebraska. The notice was published in the **Federal Register** on November 22, 2002 (67 FR 76402).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The certification issued for the worker group at Dana Corporation, Perfect Circle Division, Hastings, Nebraska, was limited to workers engaged in the manufacture of piston rings. The company has reported that workers at the division are not separately identifiable by product.

The intent of the Department's certification is to include all workers of the firm adversely affected by the shift in production from Hastings, Nebraska to Mexico. Accordingly, the Department is amending the certification to expand worker group coverage to all workers of the Perfect Circle Division of Dana Corporation in Hastings, Nebraska.

The amended notice applicable to NAFTA–6509 is hereby issued as follows:

"All workers of Dana Corporation, Perfect Circle Division, Hastings, Nebraska, who became totally or partially separated from employment on or after August 23, 2001, through October 30, 2004, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974."

Signed in Washington, DC this 26th day of November 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31066 Filed 12–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6334]

Nortel Networks Corp., Manufacturing Operations, Billerica, Massachusetts; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on November 5, 2002, applicable to workers of Nortel Networks Corporation, Billerica, Massachusetts. The notice was published in the **Federal Register** on November 22, 2002 (67 FR 70462).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers produce computer network systems components. The certification was issued for all workers of Nortel Networks Corporation, Billerica, Massachusetts. New information provided by the company shows that the petition was filed on behalf of workers in the Manufacturing Operations group. Workers in this group are separately identifiable from other worker groups at the Billerica location of the firm.

It is the Department's intent to provide coverage to those workers adversely affected by the shift in production from the workers' firm to Canada. Accordingly, the certification is being amended to limit the certification to workers of Nortel Networks, Billerica, Massachusetts, Manufacturing Operations.

The amended notice applicable to NAFTA–6334 is hereby issued as follows:

Workers of Nortel Networks Corporation, Manufacturing Operations, Billerica, Massachusetts, who became totally or partially separated from employment on or after July 1, 2001, through November 5, 2004, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed in Washington, DC this 26th day of November 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31065 Filed 12–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03891]

Nortel Networks, Xors, Inc., Northern Telephone, Alteon Networks, Santa Clara, CA; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on May 30, 2000, applicable to workers of Nortel Networks, Santa Clara, California. The notice was published in the **Federal Register** on June 8, 2000 (65 FR 36470).

At the request of a State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of telecommunications equipment, primarily printed circuit assemblies and PBX telephone switches.

New information provided by the State shows that some workers separated from employment at the Santa Clara, California location of Nortel Networks had their wages reported under three separate unemployment insurance (UI) tax accounts for Xros, Inc. and Northern Telephone, Santa Clara, California and Alteon Networks, Santa Clara, California and San Jose, California.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Nortel Networks who were adversely affected by a shift of production of telecommunication equipment to Canada.

The amended notice applicable to NAFTA—03891 is hereby issued as follows:

All workers of Nortel Networks, Santa Clara, California; and workers of Xros, Inc., Northern Telephone, Alteon Networks, producing telecommunications equipment, primarily printed circuit assemblies and PBX telephone switches at Nortel Networks, Santa Clara, California, who became totally or partially separated from employment on or after April 27, 1999, through May 30, 2002, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974;

Signed at Washington, DC this 26th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31059 Filed 12–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of November, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,023; Saturn Electronics and Engineering, Inc., Auburn Hills, MI.
TA–W–41,611; Dean Specialty Foods Group, Atkins, AR.
TA–W–42,299; Alcoa Printing Plant, Gilbertsville, PA.
TA–W–42,050; CommScope, Inc. of North Carolina, Catawba Facility, Catawba, NC, A; Claremont Facility, Claremont, NC, B; Cable Technology Center, Newton, NC, C; Corporate Office, Hickory, NC, D; Denver Sales Office, Greenwood Village, CO.
TA–W–41,788; Johnson Controls, Automotive Systems Group-Interiors, Lapeer, MI.

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,007; Milwaukee Valve Company, Milwaukee, WI.
TA–W–42,326; Micro C Technologies, Inc., Grand Rapids, MI.
TA–W–42,262; Pollak, Actuator Products Div., Boston, MA.
TA–W–41,887; Storage Technology Corp., Printed Wire Assembly Workers, Louisville, CO.

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–42,215; Agilent Technologies, Colorado Springs, CO.
TA–W–50,058; Ely Shoshone Tribe, Small World Daycare, Ely, NE.
TA–W–42,327; Aspen International Cable Corp., Salem, OR.
TA–W–41,928; Veco Alaska, Inc., Anchorage, AK.
TA–W–42,307; Cadence Design Systems, Inc., Irvine Office, Irvine, CA.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–50,011; Cooper Power Systems, Cooper Industries, East Stroudsburg, PA: November 4, 2001.
TA–W–42,347; Shur-Line, a Div. of Newell Rubbermaid, Johnson City, TN: October 8, 2001.
TA–W–42,281; Dorel Juvenile Group, Cartersville, GA: October 9, 2001.
TA–W–42,228 & A; Pent Products, Inc., Ardmore, AL and Ashley, IN: September 23, 2001.
TA–W–42,220; Bo-Jan Garment, Inc., Schuylkill Haven, PA: September 19, 2001.
TA–W–42,198; Tritex Sportswear, Inc., Altoona, PA: September 9, 2001.
TA–W–42,184; Graphic Sportswear Unlimited, Austin, TN: September 10, 2001.
TA–W–42,122; Neshoba Lumber Company, Philadelphia, MS: August 28, 2001.
TA–W–42,037; Black Diamond Equipment, Ltd., Sew Plant, Salt Lake City, UT: August 15, 2001.
TA–W–41,964; Donaldson Co., Inc., Baldwin, WI: July 18, 2001.
TA–W–50,118; Volex, Inc., Power Cord Div., Clinton, AR: November 7, 2001.
TA–W–50,028; Tyco Electronics, Winston-Salem, NC: November 5, 2001.
TA–W–42,349; Maxoptix Corp., Peak Storage Solutions Div., Louisville, CO: October 23, 2001.
TA–W–42,348; Lexington Home Brands, Plant 11, Mocksville, NC: October 30, 2001.
TA–W–42,346; Haemer-Wright Tool and Die, Inc., Saegertown, PA: July 22, 2001.
TA–42,334; Pine State Knitwear Co., Inc., Mt. Airy, NC: October 21, 2001.
TA–W–42,275; The ESAB Group, Niagara Falls, NY: October 2, 2001.
TA–W–42,233; M.J. Soffe Company, Wallace, NC: September 25, 2001.
TA–W–42,171; Foothills Apparel, Inc., Albany, KY: September 10, 2001.
TA–W–41,558; BASF Corp., Nutritional Manufacturing Div., Wilmington, NC: May 2, 2001.
TA–W–41,503; Kimble Glass Co., Vineland, NJ: April 8, 2001.
TA–W–41,493; Sun-Chemical, Inc. (GPI), Linden, NJ: April 16, 2001.
TA–W–41,963; Peterson Spring Corp., Three Rivers, MI: "All workers engaged in employment related to the production of compression springs who became totally or partially separated on or after August 7, 2001. "All workers engaged in the production of coiled retaining rings are denied eligibility to apply for adjustment assistance under Section 223 of the trade Act of 1974."

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of November, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–07658; Atlas Copco Wagner, Inc., Portland, OR.
NAFTA–TAA–06222; Dean Specialty Foods Group, Atkins, AR.
NAFTA–TAA–06306; Signa Molds, Price Pfister, Black & Decker, Pacoima, CA.
NAFTA–TAA–06404; Clark Alabama, Inc., Pell City, AL.
NAFTA–TAA–06507; Autoline Industries, Inc., Argyle Industries, Inc. Div., Argyle, WI.
NAFTA–TAA–06527; Autoline Industries, Inc., Autoline East Div., MeElhatten, PA.
NAFTA–TAA–06330; Johnson Controls, Automotive Systems Group-Interiors, Lapeer, MI.
NAFTA–TAA–06395; Switching Systems International, Anaheim, CA.
NAFTA–TAA–07606; M.J. Soffe Company, Wallace, NC.
NAFTA–TAA–07625; Pollak, Actuator Products Div., Boston, MA.
NAFTA–TAA–07638; Haemer-Wright tool and Die, Inc., Saegertown, PA.
NAFTA–TAA–06484; CommScope, Inc., of North Carolina, Catawba. Facility, Catawba, NC, A; Claremont Facility, Claremont, NC, B; Cable Technology Center, Newton, NC, C; Corporate Office, Hickory, NC, D; Denver Sales Office, Greenwood Village, CO.
NAFTA–TAA–07649; Graphic Sportswear Unlimited, Inc., Austin, TX.

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

NAFTA–TAA–06495 & A; Hasler, Inc., Meter Repair Department (MRD), Shelton, CT and Canadian Support Services (CSS), Shelton, CT.

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) did not become totally or partially separated from employment as required for certification.

NAFTA–TAA–06750; State of Alaska Commercial Fisheries Entry Commission Permit #56712U, Egegik, AK.
NAFTA–TAA–06724; State of Alaska Commercial Fisheries Entry Commission Permit #55585P, Dillingham, AK.
NAFTA–TAA–06681; State of Alaska Commercial Fisheries Entry Commission Permit #SO3T62112B, Dillingham, AK.
NAFTA–TAA–06661; State of Alaska Commercial Fisheries Entry Commission Permit #61386Z, Dillingham, AK.
NAFTA–TAA–06626; State of Alaska Commercial Fisheries Entry Commission Permit #58548X, Dillingham, AK.
NAFTA–TAA–06540; State of Alaska Commercial Fisheries Entry Commission Permit #SO3T56859Q, Dillingham, AK.
NAFTA–TAA–06541; Permit #58590X, Aleknagik, AK.
NAFTA–TAA–06543; State of Alaska Commercial Fisheries Entry Commission Permit #65605V, Aleknagik, AK.
NAFTA–TAA–06546; State of Alaska Commercial Fisheries Entry Commission Permit #60381N, Aleknagik, AK.
NAFTA–TAA–06549; State of Alaska Commercial Fisheries Entry Commission Permit #55917A, Aleknagik, AK.
NAFTA–TAA–06550; Permit #68828I, Aleknagik, AK.
NAFTA–TAA–06552; Permit #57749J, Aleknagik, AK.
NAFTA–TAA–06555; State of Alaska Commercial Fisheries Entry Commission Permit #61932R, Aleknagik, AK.
NAFTA–TAA–06562; State of Alaska Commercial Fisheries Entry Commission Permit #57738S, Dillingham, AK.
NAFTA–TAA–06625; State of Alaska Commercial Fisheries Entry Commission Permit #57496U, Dillingham, AK.
NAFTA–TAA–06646; State of Alaska Commercial Fisheries Entry Commission Permit #64700S, Dillingham, AK.
NAFTA–TAA–06672; State of Alaska Commercial Fisheries Entry Commission Permit #61339M, Dillingham, AK.
NAFTA–TAA–06709; State of Alaska Commercial Fisheries Entry Commission Permit #61671P, Dillingham, AK.
NAFTA–TAA–06720; State of Alaska Commercial Fisheries Entry Commission Permit #57857G, Dillingham, AK.
NAFTA–TAA–06726; State of Alaska Commercial Fisheries Entry Commission Permit #59682R, Dillingham, AK.
NAFTA–TAA–06673; State of Alaska Commercial Fisheries Entry Commission Permit #55600F, Dillingham, AK.
NAFTA–TAA–06783; State of Alaska Commercial Fisheries Entry Commission Permit #58843M, King Salmon, AK.
NAFTA–TAA–06791; State of Alaska Commercial Fisheries Entry Commission Permit #58446F, King Salmon, AK.
NAFTA–TAA–06828; State of Alaska Commercial Fisheries Entry Commission Permit #59510O, Manokotak, AK.
NAFTA–TAA–06874; State of Alaska Commercial Fisheries Entry Commission, Permit #57536Q, Naknek, AK.
NAFTA–TAA–06880; State of Alaska Commercial Fisheries Entry Commission, Permit #59239P. Naknek, AK.
NAFTA–TAA–06883; State of Alaska Commercial Fisheries Entry Commission, Permit #58312I, Naknek, AK.
NAFTA–TAA–06914; State of Alaska Commercial Fisheries Entry Commission Permit #56941N, New Stuyahok, AK.
NAFTA–TAA–06941; State of Alaska Commercial Fisheries Entry Commission Permit #50106V, New Stuyahok, AK.
NAFTA–TAA–06946; State of Alaska Commercial Fisheries Entry Commission Permit #58952X, Newhalen, AK.

NAFTA–TAA–06984; State of Alaska Commercial Fisheries Entries Commission Permit #56961J, South Naknek, AK.
NAFTA–TAA–07016; State of Alaska Commercial Fisheries, Entry Commission Permit #57321O, Togiak, AK.
NAFTA–TAA–07021; State of Alaska Commercial Fisheries Entry Commission Permit #58106M, Togiak, AK.
NAFTA–TAA–07051; State of Alaska Commercial Fisheries Entry Commission Permit #57660O, Togiak, AK.
NAFTA–TAA–07051; State of Alaska Commercial Fisheries Entry Commission Permit #60568H, Togiak, AK.
NAFTA–TAA–07060; State of Alaska Commercial Fisheries Entry Commission Permit #58898N, Togiak, AK.
NAFTA–TAA–07068; State of Alaska Commercial Fisheries Entry Commission Permit #66920F, Togiak, AK.
NAFTA–TAA–07070; State of Alaska Commercial Fisheries Entry Commission, Permit #57329E, Togiak, AK.
NAFTA–TAA–07085; State of Alaska Commercial Fisheries Entry Commission Permit #64752U, Dillingham, AK.
NAFTA–TAA–07091; State of Alaska Commercial Fisheries Entry Commission Permit #59461O, Aleknagik, AK.
NAFTA–TAA–07135; State of Alaska Commercial Fisheries Entry Commission Permit #61851O, Dillingham, AK.
NAFTA–TAA–07153; State of Alaska Commercial Fisheries Entry Commission Permit #64872Z, Dillingham, AK.
NAFTA–TAA–07170; State of Alaska Commercial Fisheries Entry Commission Permit #59044L, Dillingham, AK.
NAFTA–TAA–07173; State of Alaska Commercial Fisheries Entry Commission Permit #64971P, Dillingham, AK.
NAFTA–TAA–07352; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T59919I, Naknek, AK.
NAFTA–TAA–07353; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T60518U, Naknek, AK.
NAFTA–TAA–07362; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T64955OD, Naknek, AK.
NAFTA–TAA–07365; State of Alaska Commercial Fisheries Entry Commission Permit #60094O, Naknek, AK.
NAFTA–TAA–07368; State of Alaska Commercial Fisheries Entry Commission Permit #59358F, Naknek, AK.
NAFTA–TAA–07379; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T59928N, Naknek, AK.
NAFTA–TAA–07400; State of Alaska Commercial Fisheries Entry Commission Permit #60851P, Naknek, AK.
NAFTA–TAA–07435; State of Alaska Commercial Fisheries Entry Commission Permit #59857G, South Naknek, AK.
NAFTA–TAA–07436; State of Alaska Commercial Fisheries Entry Commission Permit #59927V, South Naknek, AK.
NAFTA–TAA–07438; State of Alaska Commercial Fisheries Entry Commission Permit #60290M, South Naknek, AK.
NAFTA–TAA–07441; State of Alaska Commercial Fisheries Entry Commission Permit #57510S, Naknek, AK.
NAFTA–TAA–07457; State of Alaska Commercial Fisheries Entry Commission Permit #60431K, South Naknek, AK.
NAFTA–TAA–07459; State of Alaska Commercial Fisheries Entry Commission Permit #59938L, South Naknek, AK.
NAFTA–TAA–07460; State of Alaska Commercial Fisheries, Entry Commission Permit #65617G, South Naknek, AK.
NAFTA–TAA–07461; State of Alaska Commercial Fisheries Entry Commission Permit #65649J, South Naknek, AK.
NAFTA–TAA–07486; State of Alaska Commercial Fisheries Entry Commission Permit #65849B, Togiak, AK.
NAFTA–TAA–07493; State of Alaska Commercial Fisheries Entry Commission Permit #60432C, Togiak, AK.
NAFTA–TAA–07534; State of Alaska Commercial Fisheries Entry Commission Permit #55895Q, Togiak, AK.
NAFTA–TAA–07508; State of Alaska Commercial Fisheries Entry Commission Permit #60519M, Togiak, AK.
NAFTA–TAA–07522; State of Alaska Commercial Fisheries Entry Commission Permit #64744H, Togiak, AK.
NAFTA–TAA–07530; State of Alaska Commercial Fisheries Entry Commission Permit #59948J, Togiak, AK.
NAFTA–TAA–07532; State of Alaska Commercial Fisheries Entry Commission Permit #60958V, Togiak, AK.
NAFTA–TAA–07534; State of Alaska Commercial Fisheries Entry Commission Permit #55895Q, Togiak, AK.
NAFTA–TAA–07539; State of Alaska Commercial Fisheries Entry Commission Permit #64763K, Togiak, AK.
NAFTA–TAA–07540; State of Alaska Commercial Fisheries Entry Commission Permit #65091H, Togiak, AK.
NAFTA–TAA–07543; State of Alaska Commercial Fisheries Entry Commission Permit #66274F, Twin Hills, AK.
NAFTA–TAA–06869; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T61970Z, Naknek, AK.
NAFTA–TAA–06899; State of Alaska Commercial Fisheries Entry Commission Permit #63850R, Naknek, AK.
NAFTA–TAA–06903; State of Alaska Commercial Fisheries Entry Commission Permit #61951V, Naknek, AK.
NAFTA–TAA–06958; State of Alaska Commercial Fisheries Entry Commission Permit #56815GT, Dillingham, AK.
NAFTA–TAA–06969; State of Alaska Commercial Fisheries Entry Commission Permit #58130B, Port Heiden, AK.
NAFTA–TAA–06971; State of Alaska Commercial Fisheries Entry Commission Permit #58536P, Port Heiden, AK.
NAFTA–TAA–06975; State of Alaska Commercial Fisheries Entry Commission Permit #58130BT, Port Heiden, AK.
NAFTA–TAA–06976; State of Alaska Commercial Fisheries Entry Commission Permit #58396K, Port Heiden, AK.
NAFTA–TAA–07200; State of Alaska Commercial Fisheries Entry Commission Permit #64416W, Dillingham, AK.
NAFTA–TAA–07203; State of Alaska Commercial Fisheries Entry Commission Permit #59261W, Dillingham, AK.
NAFTA–TAA–07207; State of Alaska Commercial Fisheries Entry Commission Permit #60660E, Dillingham, AK.
NAFTA–TAA–07242; State of Alaska Commercial Fisheries Entry Commission Permit #57388A, King Salmon, AK.
NAFTA–TAA–07246; State of Alaska Commercial Fisheries Entry Commission Permit #65619P, King Salmon, AK.
NAFTA–TAA–07249; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T60024F, King Salmon, AK.
NAFTA–TAA–07250; State of Alaska Commercial Fisheries Entry Commission Permit #58844H, King Salmon, AK.
NAFTA–TAA–07274; State of Alaska Commercial Fisheries Entry Commission Permit #56856Q, Levelock, AK.
NAFTA–TAA–07279; State of Alaska Commercial Fisheries Entry Commission Permit #60517C, Manokotak, AK.
NAFTA–TAA–07321; State of Alaska Commercial Fisheries Entry Commission Permit #62119A, Manokotak, AK.
NAFTA–TAA–07327; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T59937S, Naknek, AK.
NAFTA–TAA–07339; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T65135, Naknek, AK.
NAFTA–TAA–07341; State of Alaska Commercial Fisheries Entry Commission Permit #60440P, Naknek, AK.
NAFTA–TAA–07598; General Mills, Bakeries and Food Service, Hillsdale, MI.

The investigation revealed that criteria (2) has not been met. Sales or production, or both, did not decline during the relevant period as required for certification.

NAFTA–TAA–07282; State of Alaska Commercial Fisheries Entry Commission Permit #65919Q, Manokotak, AK.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05527; Freudenburg-NOK, Bennsenville, IL: October 31, 2000.
NAFTA–TAA–06193; Kimble Glass Co., Vineland, NJ: May 9, 2001.
NAFTA–TAA–06581; State of Alaska Commercial Fisheries Entry Commission Permit #64799G, Dillingham, AK: September 5, 2001.
NAFTA–TAA–06634; Permit #59335F, Dillingham, AK: September 5, 2001.
NAFTA–TAA–06636; State of Alaska Commercial Fisheries Entry Permit #58354J, Dillingham, AK: September 5, 2001.
NAFTA–TAA–06653; State of Alaska Commercial Fisheries Entry Commission Permit #64659G, Dillingham, AK: September 5, 2001.

NAFTA–TAA–06679; Permit #613030, Dillingham, AK: September 5, 2001.
NAFTA–TAA–06686; Permit #57593B, Dillingham, AK: September 5, 2001.
NAFTA–TAA–06832; Permit #58553J, Manokotak, AK: September 5, 2001.
NAFTA–TAA–06838, Permit #58905O, Manokotak, AK: September 5, 2001.
NAFTA–TAA–06856; State of Alaska Commercial Fisheries Entry Commission Permit #63408I, Monokotak, AK: September 5, 2001.
NAFTA–TAA–06962; Permit #61905B, Port Alsworth, AK: September 5, 2001.
NAFTA–TAA–06978; State of Alaska Commercial Fisheries Entry Commission Permit #66896K, Portage Creek, AK: September 5, 2001.
NAFTA–TAA–06994; State of Alaska Commercial Fisheries Entry Commission Permit #55948L, South Naknek, AK: September 5, 2001.
NAFTA–TAA–07035; State of Alaska Commercial Fisheries Entry Commission Permit #57360N, Togiak, AK: September 5, 2001.
NAFTA–TAA–07082; State of Alaska Commercial Fisheries Entry Commission Permit #60547S, Ugashik, AK: September 5, 2001.
NAFTA–TAA–07147; Permit #59888Q, Dillingham, AK: September 5, 2001.
NAFTA–TAA–07171; Permit #66515L, Dillingham, AK: September 5, 2001.
NAFTA–TAA–07496; Permit #56260G, Naknek, AK: September 5, 2001.
NAFTA–TAA–07485; Permit #60019S, Togiak, AK: September 5, 2001.
NAFTA–TAA–07453; Permit #57389R, South Naknek, AK: September 5, 2001.
NAFTA–TAA–07553; Foothills Apparel, Inc., Albany, KY: September 10, 2001.
NAFTA–TAA–07648; Concise Fabricators, Inc., Tucson, AZ: October 29, 2001.
NAFTA–TAA–06464; Saturn Electronics and Engineering, Inc., Auburn Hills, MI: August 6, 2001.
NAFTA–TAA–07288; Permit #55655I, Manokotak, AK: September 5, 2001.
NAFTA–TAA–07343; Permit #59332F, Naknek, AK: September 5, 2001.
NAFTA–TAA–07306; Permit #58531G, Manokotak, AK: September 5, 2001.
NAFTA–TAA–07344; Permit #60565H, Naknek, AK: September 5, 2001.
NAFTA–TAA–07395; Permit #65134G, Naknek, AK: September 5, 2001.
NAFTA–TAA–07563; DJ Orthopedics, LLC, Vista, CA: September 16, 2001.
NAFTA–TAA–07569; Emerson Power Transmission, Rollway Bearing Corp., Liverpool, NY: September 4, 2001.
NAFTA–TAA–07591; Barth and Dreyfuss of California, Burbank, CA: June 27, 2001.
NAFTA–TAA–06454; Peterson Spring Corp., Three Rivers, MI: "All workers engaged in employment related to the production of compression spring who became totally or partially separated from employment on or after August 7, 2001 are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974." "All workers of Peterson Spring Corp. engaged in employment related to the production of rings are denied eligibility to apply for NAFTA–TAA under section 250 of the Trade Act of 1974."
NAFTA–TAA–07599; Waltec Forgings, Inc., Port Huron, MI: September 30, 2001.

I hereby certify that the aforementioned determinations were issued during the months of November, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 25, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–31064 Filed 12–6–02; 8:45 am]
BILLING CODE 4510–30–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request reinstatement and approval of this data collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this information collection.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or

other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by February 7, 2003, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov*.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send e-mail to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: 2003 and 2005 Survey of Scientific and Engineering Research Facilities.

Expiration Date of Approval: August 31, 2002.

Type of Request: Intent to seek approval to reinstate, with revisions, an information collection for three years.

Proposed Project: The National Science Foundation Survey of Scientific and Engineering Research Facilities is a Congressionally mandated (Pub. L. 99–159), biennial survey that has been conducted since 1986. The survey collects data on the amount, condition, and costs of the physical facilities used to conduct science and engineering research. It was expected by Congress that this survey would provide the data necessary to describe the status and needs of science and engineering research facilities and to formulate appropriate solutions to documented needs. During the 1999 and 2001 survey cycles, data were collected from a population of approximately 600 research-performing colleges and universities. This survey population was supplemented with approximately 250 nonprofit biomedical research institutions receiving research support from the National Institutes of Health. During the 2001 cycle, a very limited survey consisting of two questions was fielded in order to allow the National Science Foundation to focus on updating and redesigning the survey. Through this extensive redesign effort, a new section has been added to the survey requesting information on the computing and networking capacity at the surveyed institutions, an increasingly important part of the infrastructure for science and engineering research. Other important changes include the deletion of a question on the adequacy of research space, the deletion of the Large Facilities Follow-up Survey, the additional collection of data on individual construction projects and the addition of a more detailed question on how research space is divided among laboratories, laboratory support space, and office space.

Use of the Information: Analysis of the Facilities Survey data will provide updated information on the status of scientific and engineering research facilities. The information can be used by Federal policy makers, planners, and budget analysts in making policy decisions, as well as by academic officials, the scientific/engineering establishment, and state agencies that fund universities.

Burden on the Public: The Facilities Survey will be sent by mail to approximately 600 academic institutions and 250 nonprofit research organizations and hospitals. The completion time per academic institution is expected to average 30 hours and the completion time per research organization/hospitals is expected to average 5 hours. Assuming a 90% response rate, this would result in an estimated burden of 16,200 hours for academic institutions and 1,125 hours for nonprofit research organizations/hospitals.

Dated: December 4, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–31006 Filed 12–6–02; 8:45 am]

BILLING CODE 7555–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meeting

TIME AND DATE: 2 PM, Wednesday, December 11, 2002.

PLACE: Washington Hilton & Towers Hotel, 1919 Connecticut Avenue NW, Cabinet Room, Concourse Level, Washington, DC 20009.

STATUS: Open/Closed.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary, (202) 220–2372.

Agenda

I. Call to Order
II. Approval of Minutes: September 10, 2002 Regular Meeting
III. Audit Committee Meeting 11/18/02
IV. Treasurer's Report
V. Executive Directors Report
VI. Executive Session (CLOSED)
A. Personnel Committee Meeting 11/15/02
VII. Adjournment

Jeffrey T. Bryson,

General Counsel Secretary.

[FR Doc. 02–31142 Filed 12–5–02; 11:17 am]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Duke Energy Corporation (the licensee) to withdraw its December 6, 2002, application for proposed amendments to Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55 for the Oconee Nuclear Station, Units 1, 2, and 3 located in Seneca, South Carolina.

The proposed amendments would have revised Technical Specification (TS) 3.7.16, "Control Room Area Cooling System (CRACS)," that currently requires entry into TS 3.0.3 when two trains of CRACS are inoperable. The proposed amendments would have eliminated the required entry into TS 3.0.3 and would have allowed 6 hours to restore the operability of one train.

The Commission had previously issued a notice of consideration of issuance of amendment published in the **Federal Register** on February 5, 2002 (67 FR 5326). However, by letter dated November 26, 2002, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 6, 2002, and the licensee's letter dated November 26, 2002, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr@nrc.gov*.

Dated in Rockville, Maryland, this 2nd day of December 2002.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–31002 Filed 12–6–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–309–OM & 72–30–OM; ASLBP No. 03–806–01–OM]

Maine Yankee Atomic Power Company, Maine Yankee Atomic Power Station; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Maine Yankee Atomic Power Company, Maine Yankee Atomic Power Station.

This Board is being established pursuant to a November 15, 2002, petition to intervene and request for hearing submitted by the State of Maine. The petition was filed in response to an NRC staff "Order Modifying Licenses (Effective Immediately)" published in the **Federal Register** (67 FR 65150 (October 23, 2002)). The order requires licensees who currently store, or who have near-term plans to store, spent nuclear fuel in an independent spent fuel storage installation to maintain the security procedures specified in attachment 2 to the order.

The Board is comprised of the following administrative judges:

Ann M. Young, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Thomas D. Murphy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.701.

Issued in Rockville, Maryland, this 3rd day of December, 2002.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 02–31003 Filed 12–6–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power & Light Company; H. B. Robinson Steam Electric Plant, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) part 55, section 55.59(c) for Facility Operating License No. DPR–23, issued to Carolina Power & Light Company (the licensee), for operation of the H. B. Robinson Steam Electric Plant, Unit No. 2 (HBRSEP2), located in Darlington County, South Carolina. As required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee on a one-time basis from the schedular requirements of 10 CFR 55.59(c) for conducting the licensed operator requalification annual operating test and biennial comprehensive written examination at HBRSEP2.

The proposed action is in accordance with the licensee's application for exemption dated October 11, 2002.

The Need for the Proposed Action

The proposed action would extend the date for the licensee to complete the licensed operator requalification annual operating test and biennial comprehensive written examinations at HBRSEP2. The proposed action would extend the date for completing the examinations from December 31, 2002, to March 31, 2003, therefore extending the examination schedules by 3 months over the schedules required by 10 CFR 55.59(c). This proposed action is needed to allow HBRSEP2 to complete an unusually heavy workload associated with a plant refueling outage and a power uprate, including conducting associated additional training and modifying the plant-specific simulator, in a timely and safe fashion without undue hardship to plant personnel and licensed plant operators.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes, as set forth below, that there are no significant environmental impacts associated with the extension of the operator requalification examinations from December 31, 2002, to March 31, 2003.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for HBRSEP2.

Agencies and Persons Consulted

On November 26, 2002, the staff consulted with the South Carolina State official, regarding the environmental

impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of this environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 11, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 2nd day of December 2002.

For the Nuclear Regulatory Commission.

Allen G. Howe,

Chief, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–31000 Filed 12–6–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

TXU Generation Company, LP; Comanche Peak Steam Electric Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U. S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Facility Operating License Nos. NPF–87 and NPF–89, issued to TXU Generation Company, LP, for operation of Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, respectively. CPSES, Units 1 and 2, are located in Somerville and Hood Counties, Texas. Therefore, as required by Section 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would change the CPSES Facility Operating Licenses as follows: Section 2.C.(4)(b) would be changed to be consistent with the license conditions stated in the NRC Order and Safety Evaluation dated December 21, 2001, which approved the direct transfer of ownership interest and operating authority for CPSES to TXU Generation Company LP; Section 2.E which requires reporting any violations of the requirements contained in Section 2.C of the licenses would be deleted. Additionally, Technical Specification Table 5.5–2 "Steam Generator Tube Inspection," Table 5.5–3, "Steam Generator Repaired Tube Inspection for Unit 1 Only," and Section 5.6.10, "Steam Generator Tube Inspection Report," would be revised to delete the requirement to notify the NRC pursuant to 10 CFR 50.72(b)(2) if the steam generator tube inspection results are in a C–3 classification.

The proposed action is in accordance with the licensee's application dated July 25, 2002.

The Need for the Proposed Action

The proposed action is needed to make the facility operating licenses consistent with the license conditions stated in the NRC Order and Safety Evaluation dated December 21, 2001, and to delete unnecessary reporting requirements.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed amendments are administrative in nature.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement related to the operation of CPSES, Units 1 and 2, dated September 1981.

Agencies and Persons Consulted

On September 24, 2002, the staff consulted with the Texas State official, Mr. Arthur Tate of the Texas Department of Health, Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 25, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 19th day of November, 2002.

For the Nuclear Regulatory Commission.

Robert A. Gramm,

Chief, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–30999 Filed 12–6–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–1151]

Environmental Assessment and Final Finding of No Significant Impact of License Amendment for Westinghouse Electric Company LLC

AGENCY: Nuclear Regulatory Commission.

ACTION: Amendment of Westinghouse Electric Company LLC, Materials License SNM–1107 to exempt the licensee from the fissile material package standards for shipment of certain bulk materials (e.g. radwaste) containing low concentrations of uranium-235 contamination and to impose limits on these shipments.

The U.S. Nuclear Regulatory Commission is considering the amendment of Special Nuclear Material License SNM–1107 to exempt the licensee from the fissile material package standards for shipment of certain bulk materials (e.g. radwaste) containing low concentrations of uranium-235 contamination at the Westinghouse Electric Company LLC facility located in Columbia, SC, and to impose limits on these shipments, and has prepared an Environmental Assessment in support of this action.

Environmental Assessment

1.0 Introduction

1.1 Background

The Nuclear Regulatory Commission (NRC) staff has evaluated the environmental impacts of the exemption of Westinghouse Electric Company from the fissile material package standards for shipment of certain bulk materials (e.g. radwaste) containing low concentrations of uranium-235 contamination, with limits placed on the shipments to ensure adequate controls for nuclear criticality safety. This Environmental Assessment (EA) has been prepared pursuant to NRC regulations (10 CFR Part 51) which implement the requirements of the National Environmental Policy Act (NEPA) of 1969. The purpose of this document is to assess the environmental consequences of the proposed license amendment.

The Westinghouse facility in Columbia, SC, is authorized under NRC Materials License SNM–1107 to manufacture nuclear reactor fuel utilizing Special Nuclear Material (SNM), specifically low-enriched uranium, and to receive, possess, use, store and transfer source material. These activities generate low-level, radioactive waste. Examples of this waste include, but are not limited to, dry activated waste such as pipes, building debris, insulation, wire, concrete, plastic, ductwork, cabinets, furniture, and some flowable materials like dirt and blasting sand.

1.2 Review Scope

In accordance with 10 CFR Part 51, this EA serves to (1) present information and analysis for determining whether to issue a Finding of No Significant Impact (FONSI) or to prepare an Environmental Impact Statement (EIS); (2) fulfill the NRC's compliance with the National Environmental Policy Act (NEPA) when no EIS is necessary; and (3) facilitate preparation of an EIS if one is necessary. Should the NRC issue a FONSI, no EIS would be prepared.

1.3 Proposed Action

The proposed action is to amend NRC Materials License SNM–1107 to exempt the licensee from the fissile material package standards for shipment of certain bulk materials containing low concentrations of uranium-235 contamination and to impose limiting conditions to ensure adequate controls for nuclear criticality safety. These materials would be exempt from fissile material classification and the fissile material package standards of 10 CFR 71.55 and 71.59, but subject to other requirements of 10 CFR part 71 and the further limiting conditions. A Safety Evaluation Report (SER) has been prepared by the NRC staff and contains a discussion of the safety considerations for approval of the amendment. The SER will be included in the license amendment when it is issued.

1.4 Need for Proposed Action

Westinghouse is currently manufacturing nuclear reactor fuel at its Columbia, SC facility. It is requesting the exemption for transportation of low level radioactive waste (LLRW) generated during normal, routine operations. The reason for this request is to better utilize shipping containers and transportation.

On February 10, 1997, the NRC issued an emergency direct final rule (62 FR 5913) changing the fissile material exemption specifications of 10 CFR part 71. The revised rule limits the fissile-material mass in a consignment and restricts the presence of select moderators with very low neutron-absorption properties (i.e., special moderators). Under this rule, specifically 10 CFR 71.53(a), Westinghouse is limited to 400 grams of U–235 per consignment. The imposition of this 400-gram U–235 limit per consignment increases the number of shipments required to dispose of LLRW.

Westinghouse must make many small LLRW shipments to comply with the current SNM limits. With this amendment, Westinghouse will be able to utilize the entire volume of a strong-tight, twenty-foot sea/land van; thus, shipping, in one shipment, LLRW that currently takes ten shipments. Therefore, Westinghouse submitted this license amendment request for a specific exemption from the requirements of 10 CFR 71.55 and 71.59 for specified SNM shipments with greater than 400 grams U–235 per consignment.

On April 15, 2002, the Westinghouse facility in Hematite, MO (SNM–33), received a fissile material exemption for use in decommissioning the Hematite facility (NRC, 2002). This action requests the same exemption for the Columbia, SC facility (SNM–1107).

1.5 Alternatives to the Proposed Action

No Action (i.e., deny the request).

2.0 Affected Environment

The affected environment for the proposed action would be the immediate vicinity of the vehicle used to transport the material to a licensed disposal facility.

The affected environment for no action is the Westinghouse site. A full description of the site and its characteristics is given in the 1995 Environmental Assessment for the Renewal of the NRC license for Westinghouse (NRC, 1995). The Westinghouse facility is located on a site of about 1200 acres in Richland County, South Carolina, approximately 8 miles southeast of the city of Columbia.

3.0 Environmental Impacts of Proposed Action and Alternatives

3.1 Occupational and Public Health

Proposed Action

The risk to human health from the transportation of all radioactive material in the U.S. was evaluated in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977). The principal radiological

environmental impact during normal transportation is direct radiation exposure to nearby persons from radioactive material in the package. The average annual individual dose from all radioactive material transportation in the U.S. was calculated to be approximately 0.5 mrem, well below the 10 CFR Part 20 requirement of 100 mrem for a member of the public. The proposed action would result in fewer shipments. Fewer shipments would expose fewer members of the public to radiation, reduce nonradiological truck emissions, and reduce the risk of injuries from traffic accidents. However, the reductions would be so small that the differences would be negligible.

Occupational health was also considered in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977). The average annual occupational dose to the driver(s) is estimated to be 8.7 mSv (870 mrem), which is below the 10 CFR Part 20 requirement of 50 mSv (5000 mrem). The Department of Transportation (DOT) regulations in 49 CFR 177.842(g) require that the radiation dose rate may not exceed 0.02 mSv (2 mrem) per hour in any position normally occupied in a motor vehicle. The proposed action would not cause dose rates to the driver exceeding the DOT limit.

The NRC staff evaluated the possibility of a criticality accident due to transportation of this material. Based on the statements and representations in the application, the staff concluded that limiting the contents as described in the application will provide adequate assurance that an inadvertent criticality cannot occur if the materials are exempt from the fissile material classification and fissile material package standards of 10 CFR 71.55 and 71.59. A detailed discussion of this analysis can be found in the Safety Evaluation Report for this amendment.

Under the proposed action, the doses to the public and to the workers are not increased beyond those considered in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977). Therefore, shipment of these materials as proposed would be consistent with the assessment of environmental impacts and the conclusions in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977).

No Action

Denying this amendment request would not result in any significant difference in the risk to the public health from radiological materials. If this amendment request is denied, the licensee would be required to ship the contaminated waste more frequently in smaller containers. The larger number of shipments also is consistent with the assessment of environmental impacts and the conclusions in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977). As noted above, the level of nonradiological truck emissions and the risk of injuries from traffic accidents would be higher, but the differences would be negligible.

The occupational health impacts would not change significantly as a result of denial of this amendment request. Occupational doses at the facility may be slightly higher as a result of the larger number of packages that workers must prepare and handle; however, the facility will continue to implement NRC-approved, radiation safety procedures for handling radioactive materials. Thus, the dose to workers under the no action alternative will remain within acceptable regulatory limits.

3.2 Effluent Releases, Environmental Monitoring, Water Resources, Geology, Soils, Air Quality, Demography, Biota, Cultural and Historic Resources

Proposed Action

The NRC staff has determined that the approval of the proposed amendment will not impact effluent releases, environmental monitoring, water resources, geology, soils, air quality, demography, biota, or cultural or historic resources under normal transport conditions.

No Action

The NRC staff has determined that denial of the proposed amendment will not impact effluent releases, environmental monitoring, water resources, geology, soils, air quality, demography, biota, or cultural or historic resources at or near the Westinghouse site.

3.3 Conclusions

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action are not significant and, therefore, do not warrant denial of the license amendment request. The staff has determined that the proposed action, approval of the license amendment request as submitted, is the appropriate alternative for selection. Based on an evaluation of the environmental impacts of the amendment request, the NRC has determined that the proper action is to issue a FONSI in the **Federal Register**.

4.0 Agencies and Persons Contacted

The NRC provided the draft Environmental Assessment and FONSI to staff from the South Carolina Department of Health and Environmental Control (DHEC) on September 27, 2002. NRC staff provided the licensee's exemption request and NRC's Safety Evaluation Report supporting the exemption. During a conference call with DHEC staff on October 17, 2002, NRC staff confirmed that the proposed action would not affect the regulation in 10 CFR 70.42 requiring Westinghouse to verify that waste disposal facilities are authorized to receive their shipments. DHEC had no comments or concerns with the proposed action.

Because the proposed action is entirely within existing facilities and roadways, the NRC has concluded that there is no potential to affect endangered species or historic resources, and therefore consultation with the State Historic Preservation Society and the U.S. Fish and Wildlife Service was not necessary.

5.0 References

U.S. Nuclear Regulatory Commission (NRC), December 1977, "Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes."

U.S. Nuclear Regulatory Commission (NRC), July 1995, "Environmental Assessment for Renewal of Special Nuclear Material License SNM–1107."

U.S. Nuclear Regulatory Commission (NRC), April 2002, "Westinghouse Electric Company, LLC, Hematite Amendment 41 to Authorize Exemption to Fissile Material Classification and Package Standards in Transport," ADAMS no. ML021060797.

Final Finding of No Significant Impact

The Commission has prepared the above Environmental Assessment related to the amendment of Special Nuclear Material License SNM–1107. On the basis of the assessment, the Commission has concluded that environmental impacts associated with the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," the Environmental Assessment and the documents related to this proposed action will be available electronically for public inspection from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room).

The NRC contact for this licensing action is Kevin M. Ramsey, who may be contacted at (301) 415–7887 or by e-mail at kmr@nrc.gov for more information about the licensing action.

Dated at Rockville, Maryland, this 29th day of November 2002.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Acting Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–31001 Filed 12–6–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations; Notice; Correction

On November 12, 2002 (67 FR 68728), the **Federal Register** published the Biweekly Notice of Applications and Amendments to Operating Licenses. On page 68745, in the first column, the heading that reads "Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee" should read "Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee."

Dated at Rockville, Maryland, this 3rd day of December 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–30998 Filed 12–6–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Fiscal Year 2003 Tortiously Liable Third Party Medical and Dental Rates (Department of Defense)

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notification of Department of Defense's Fiscal Year 2003 tortiously liable third party medical and dental rates.

SUMMARY: The Fiscal Year 2003 Department of Defense reimbursement rates are provided in accordance with Title 10, United States Code, section 1095. The medical and dental service rates in this package and at the Unformed Business Office Web site *(http://www.tricare.osd.mil/ebc/rm_home/ubo_documents_rates_tables.cmf)* are effective October 1, 2002.

The Medical Care Expense Recovery Act (Pub. L. 87–693) allows the Federal government to recover reasonable charges from third parties for the provision of services necessitated by a tort liability. Executive Order No. 11060 directs that the Director of the Office of Management and Budget set rates for the recovery of cost of medical care from tortiously liable third parties. These rates are used to charge third parties for the health care provided through the Defense Health System.

Mitchell E. Daniels, Jr.,

Director.

[FR Doc. 02–31024 Filed 12–6–02; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF MANAGEMENT AND BUDGET

Public Availability of Year 2002 Agency Inventories Under the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270) ("FAIR Act")

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Public Availability of Agency Inventories of Activities That Are Not Inherently Governmental and of Activities That Are Inherently Governmental.

SUMMARY: Agency inventories of activities that are not inherently governmental are now available to the public from the agencies listed below, in accordance with the "Federal Activities Inventory Reform Act of 1998" (Public Law 105–270) ("FAIR Act"). Agency inventories of activities that are inherently governmental are also now available to the public from the agencies listed below. This is the second release of the 2002 FAIR Act inventories. The Office of Federal Procurement Policy has made available a summary FAIR Act User's Guide through its Internet site: *http://www.whitehouse.gov/OMB/procurement/index.html*. The User's Guide should help interested parties review 2002 FAIR Act inventories, and gain access to agency inventories through agency web-site addresses.

The FAIR Act requires OMB to publish an announcement of public availability of agency inventories of activities that are not inherently governmental upon completion of OMB's review and consultation process concerning the content of the agencies' inventory submissions. After review and consultation with OMB, the agency inventories are made available to the public. Interested parties who disagree with the agency's initial judgment can challenge the inclusion or the omission of an activity on the list and, if not satisfied with this review, may also demand a higher agency review/appeal.

Mitchell E. Daniels, Jr.,

Director.

SECOND FAIR ACT RELEASE 2002

Agency	Contact
Advisory Council on Historic Preservation	John Fowler, (202) 606–8503, www.achp.gov.
African Development Foundation	Tom Coogan, (202) 673–3946, www.adf.gov.
Appalachian Regional Commission	Guy Land, (202) 884–7674, www.arc.gov.
Broadcasting Board of Governors	Monica Smith, (202) 619–3988, www.bbg.gov.
Council on Environmental Quality	Dinah Bear, (202) 395–7421, www.whitehouse.gov/ceq.
Department of Education	Glenn Perry, (202) 708–8488, www.ed.gov/offices/OCFO.
Department of Housing and Urban Development (IG)	John Harr, (202) 708–0614, x8164, www.hud.gov/oig/oigindex.html.
Department of the Interior	Dorothy Sugiyama, (202) 208–3433, www.doi.gov.
Department of the Interior (IG)	Steve Suprun, (202) 208–6523, www.oig.doi.gov.
Environmental Protection Agency	Timothy McProuty, (202) 564–4996, www.epa.gov.

SECOND FAIR ACT RELEASE 2002—Continued

Agency	Contact
Environmental Protection Agency (IG)	Elissa Karpf, (202) 566–2604, www.epa.gov/oigearth.
Equal Employment Opportunity	James Israel, (202) 663–4250, www.eeoc.gov.
Federal Communications Commission	Michele Sutton, (202) 418–0100, www.fcc.gov.
Federal Communications Commission (IG)	Charles Willoughby, (202) 418–0472, www.fcc.gov/oig/oigreports.html.
Federal Emergency Management	Agency Margaret Chan, (202) 646–2931, www.fema.gov.
Federal Mediation and Conciliation Service	Karen Kline, (202) 606–5488, www.fmcs.gov.
Federal Mine Safety and Health Review Commission	Richard Baker, (202) 434–9900, www.fmshrc.gov.
Federal Trade Commission	Darleen Cossette, (202) 326–3255, www.ftc.gov.
Inter-American Foundation	Linda Borst-Kolko, (703) 306–4308, www.iaf.gov.
International Trade Commission	Judith Gwynn, (202) 205–2202, www.usitc.gov.
Japan-U.S. Friendship Commission	Eric Gangloff, (202) 418–9800, www.jusfc.gov/commissn/commissn.html.
Morris-Udall Foundation	Christopher Helms, (520) 670–5299, www.udall.gov.
National Archives and Records Administration	Lori Lisowski, (301) 837–1850, www.archives.gov.
National Archives and Records Administration (IG)	James Springs, (301) 837–3018, www.archives.gov/about_us/office_of_the_inspector_general/.
National Capital Planning Commission	Sandra Quick, (202) 482–7200, www.ncpc.gov.
National Gallery of Art	William Roache, (202) 842–6329, www.nga.gov.
National Endowment for the Arts	Larry Baden, (202) 682–5408, www.nea.gov.
National Labor Relations Board	Mike Erickson, (202) 273–0054, www.nlrb.gov.
National Labor Relations Board (IG)	Emil George, (202) 273–1960, www.nlrb.gov/ig/igindex.htm.
National Mediation Board	Grace Ann Leach, (202) 692–5010, www.nmb.gov.
National Science Foundation	Gary Scavongelli, (703) 292–8102, www.nsf.gov.
Occupational Safety and Health Review Commission	Ledia Bernal, (202) 606–5390, www.oshrc.gov.
Office of Management and Budget	Trish Haney, (202) 395–4754, www.whitehouse.gov/omb/.
Peace Corps	Christine Arnold, (202) 692–1100, www.peacecorps.gov.
Railroad Retirement Board	Steven Bartholow, (312) 751–4935, www.rrb.gov.
Railroad Retirement Board (IG)	William Tebbe, (312) 751–4350, www.rrb.gov/oig/Rrboig.html.
Small Business Administration	Robert Moffitt, (202) 205–6610, www.sba.gov.
U.S. Patent and Trademark Office	W. Dan Haigler, (703) 305–8161, www.uspto.gov.
U.S. Trade and Development Agency	Larry Bevan, (703) 875–4357, www.tda.gov.
U.S. Trade Representative	Susan Buck, (202) 395–9412, www.ustr.gov.

[FR Doc. 02–31023 Filed 12–6–02; 8:45 am]
BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46935; File No. SR–CBOE–2002–27]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Amendments No. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. Relating to Permanent Approval of the 100 Spoke RAES Wheel Pilot Program and Elimination of the "Vacation Penalty"

December 2, 2002.

I. Introduction

On May 24, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to amend its rules to eliminate the pilot program and make permanent the 100 Spoke RAES Wheel System. The CBOE further proposed to modify the calculation of the participation distribution for market makers participating on the 100 Spoke RAES Wheel by eliminating the "vacation penalty." On July 17, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On September 26, 2002, the Exchange filed Amendment No. 2 to the proposed rule change.[4] On October 17, 2002, the Commission published the proposed rule change and Amendments No. 1 and 2 in the **Federal Register**.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

On May 25, 2000, the Commission approved, on a pilot basis, the Exchange's proposal to amend Rule 6.8 to provide the appropriate Floor Procedure Committee ("FPC") with a third choice for apportioning RAES trades among participating market makers, the 100 Spoke RAES Wheel.[6] In those classes where the 100 Spoke RAES Wheel is employed, the allocation of RAES trades to participating market makers is commensurate with the distribution of in-person agency market-maker trades for non-RAES trades in that class. The pilot program has been extended five times, most recently until November 28, 2002.[7]

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] *See* Letter from Nancy L. Nielsen, Director of Arbitration and Assistant Secretary, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 16, 2002 ("Amendment No. 1").
[4] *See* Letter from Madge M. Hamilton, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 26, 2002 ("Amendment No. 2").
[5] See Securities Exchange Act Release No. 46683 (October 17, 2002), 67 FR 65384 (October 24, 2002).
[6] Securities Exchange Act Release No. 42824 (May 25, 2000), 65 FR 37442 (June 14, 2000). RAES is the Exchange's automatic execution system for public customer market or marketable limit orders of less than a certain size.
[7] Securities Exchange Act Release No. 46644 (October 10, 2002) (pilot program extended until November 28, 2002) (SR–CBOE–2002–60); Securities Exchange Act Release No. 46149 (June 28, 2002), 67 FR 45161 (July 8, 2002) (pilot program extended until September 28, 2002) (SR–CBOE–2002–34); Securities Exchange Act Release No. 45230 (January 3, 2002), 67 FR 1380 (January 10, 2002) (pilot program extended until June 28, 2002) (SR–CBOE–2001–68); Securities Exchange Act Release No. 44749 (August 28, 2001), 66 FR 46487 (September 5, 2001) (pilot program extended until December 28, 2001) (SR–CBOE–2001–47); Securities Exchange Act Release No. 44020 (February 28, 2001), 66 FR 13985 (March 8, 2001) (pilot program extended until August 28, 2001) (SR–CBOE–01–07).

Under the 100 Spoke RAES Wheel, RAES orders are assigned to market makers according to the percentage of their in-person agency contracts (excluding RAES contracts) traded in that class compared to the in-person agency contracts (excluding RAES contracts) of all of the market makers traded during the review period. Agency contracts are any contracts represented by an agent (booked orders and orders represented by brokers) and do not include contracts traded between market makers in person in the trading crowd. A particular market maker's entitlement will change based upon the percentage of agency contracts that market-maker traded in the review period. For example, if a particular market maker traded 10% of all the in-person agency contracts (excluding RAES contracts) of class ABC for a particular review period, then that market maker would be assigned 10% of the RAES contracts during the next trading period. The review period is determined by the appropriate FPC.

The RAES Wheel can be envisioned as having a number of spokes, each generally representing one percent of the total participation of all market makers in the class. Thus, a market maker generally will be assigned one spoke for each one percent of his or her market maker participation during the review period. If the spoke size is one and all market makers who traded in-person agency contracts in that option class during the review period are logged onto RAES, and no other market makers are logged on, the RAES Wheel would consist of 100 spokes, representing 100 percent of all market maker activity during the review period. The appropriate FPC may establish a larger spoke size. Setting the spoke size to five contracts, for example, would redefine the RAES Wheel for a particular option class as a Wheel of 500 contracts. A larger Wheel would mean the Wheel would not revolve as quickly through the logged on market makers, but a larger Wheel would not change the participation percentage of the individual market makers.

A wedge is the maximum number of spokes that may be consecutively assigned at any one time to a market maker during a rotation of the RAES Wheel. The purpose of the wedge is to break up the distribution of contracts into smaller groupings to reduce the exposure of any one market maker to market risk. If the size of the wedge is smaller than the number of spokes to which a particular market maker may be entitled based on his or her participation percentage, then that market maker would receive one or more additional assignments during one revolution of the RAES Wheel. For example, in the case where one spoke is equal to one contract and the market maker's participation percentage is 15 percent (15 percent of 100 spokes) and the wedge size is ten, that market maker first would be assigned ten contracts on the RAES Wheel and then five contracts at a different place on the RAES during the same revolution of the RAES Wheel. The wedge size is variable at the discretion of the appropriate FPC and may be established at different levels for different classes, or at the same level for all classes.

In its filing, the Exchange represented that the 100 Spoke RAES Wheel has worked as anticipated by providing an efficient and effective alternative allocation method for assigning RAES trades. The Exchange further represented that, in those classes where the 100 Spoke RAES Wheel is employed, the distribution of RAES trades is essentially identical to the distribution of in-person agency market maker trades on non-RAES trades in that class during the relevant review period.

The Exchange also clarified the calculation of the participation distribution for market makers participating on the 100 Spoke RAES Wheel.[8] Specifically, the applicable review period would be adjusted to account for vacations by market makers. CBOE indicated that without this revision, if a market maker takes even a single trading day off over the two-week review period, the market maker is allocated a number of spokes that is less than the market-maker's average daily percentage of the trading volume, resulting in a "vacation penalty." Thus, rather than a maximum review period of two weeks, as provided in the current rule, the review period will be a maximum of 10 trading days, *i.e.*, last ten days in which the market maker had trading activity, subject to the condition that the review period cannot extend back more than 30 calendar days (in order to assure that the review period is not based on stale activity). Under the proposed rule, the trading days within the review period may be non-consecutive trading days, and the percentage allocation will be calculated at the conclusion of each trading day and will be applied to the 100 Spoke RAES Wheel distribution on the following trading day.

Further, CBOE explained that, in calculating the review period, the 10 trading days used to compute one market maker's RAES participation distribution may be a different 10 trading days than another market maker signed onto RAES in the same trading crowd, and that the 10-day review periods of individual market makers may overlap.[9] In addition, CBOE clarified that the individual market makers have no discretion over which 10 trading days will be used in the calculation. The proposed rule change permits the appropriate FPC to set a review period not to exceed 10 trading days.[10] Once the appropriate FPC has set the number of days to be used in the calculation of the market maker's participation distribution, the Exchange looks back that number of trading days to calculate each market maker's participation right.

CBOE further noted that, under the proposed rule, the Exchange will conduct the calculation for the market maker participation distribution at the conclusion of each trading day and apply the market makers' RAES participation distribution to the following trading day. CBOE further explained that, since the calculation of the participation distribution is done at the end of each trading day, the 10 day review period for each market maker will be done on a rolling basis, *i.e.*, each time the calculation is conducted, the non-RAES agency trading volume for the current day, if any, is added to the 10 day review period, and the non-RAES agency trading volume for the oldest day used for the previous day's calculation is deleted. According to CBOE, this calculation encourages market makers to actively trade every day, since each day's trading activity will have an effect on the market maker's RAES participation distribution for the next trading day.[11] Finally,

[8] *See* Amendment No. 1, *supra* n. 3.
[9] *See* Amendment No. 2, *supra* n. 4. As noted above, the review period of a maximum of 10 trading days (*i.e.*, the last ten days in which the market maker had trading activity) cannot extend back more than 30 calendar days.
[10] The Exchange represents that under the proposed rule change, as amended, all market makers' review periods will be of equal size, regardless of whether the Exchange may look at different underlying time periods to ascertain the most recent days of trading activity for a specific market maker. Telephone conference among Madge Hamilton, Legal Division, CBOE, Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, and Geoffrey Pemble, Special Counsel, Division of Market Regulation, Commission (November 26, 2002).
[11] Any market maker that logs on the system during a particular review period will be guaranteed to receive an entitlement during that review period of no less than 1 percent of RAES contracts, or one "spoke." The minimum entitlement applies to any market maker in a particular option class who logs on RAES during a given review period. Thus, new market makers who have not yet had time to acquire market share on the trading floor will be allocated a single spoke if

Continued

CBOE noted the formula for determining market maker participation percentage on the 100 Spoke RAES Wheel. CBOE explained that in order to calculate a market maker's participation percentage, the "non-RAES agency trading volume" for a given market maker is divided by the "total volume," *i.e.*, the sum of the volume of the non-RAES agency trades for all traders in a particular options class (which is determined by adding together the trading volume for each market maker and DPM during his or her relevant review period).

III. Discussion

After careful review, the Commission finds that implementation of the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Act [12] and the rules and regulations thereunder applicable to a national securities exchange.[13] Specifically, the Commission believes that the proposal, as amended, is consistent with Sections 6(b)(5) and 6(b)(8) of the Act.[14] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.[15] Section 6(b)(5) also requires that those rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

As the Commission stated in its original approval order for the 100 Spoke RAES Wheel as a pilot program, the Commission believes that CBOE's implementation of the 100 Spoke RAES Wheel system as a pilot program was an important step forward, as it rewarded those market makers who consistently execute a greater portion of agency orders in the trading crowd, rather than randomly assigning contracts to all market makers logged on RAES. Although the 100 Spoke RAES Wheel does not reward a market maker for improving the Exchange's displayed quotation, it does reward the market maker for providing liquidity to orders in the trading crowd by linking the market maker's percentage of RAES contracts to the percentage of agency contracts it executed in the trading crowd.

Unlike the two means of allocation that were used exclusively prior to the 100 Spoke RAES Wheel pilot program, under which the size of the order assigned to a particular market maker is determined randomly,[16] the 100 Spoke RAES Wheel more closely allocates the percentage of contracts that a particular market maker can receive on a single revolution of the Wheel to the percentage of in-person agency contacts (excluding RAES contracts) traded on CBOE by that market maker. With the 100 Spoke RAES Wheel, market makers have a greater incentive to compete effectively for orders in the crowd, and this, in turn, should benefit investors and promote the public interest.

The Commission reiterates that implementation of the 100 Spoke RAES Wheel will have no effect on the prices offered to customers. Under CBOE Rule 6.8(d)(i), RAES automatically provides to each retail customer order its execution price, generally determined by the prevailing market quote at the time of the order's entry into the system. The 100 Spoke RAES Wheel merely provides for a different contract allocation system than currently exists for automatic execution of small retail orders.

The proposed rule change also will eliminate the "vacation penalty" that resulted under the original rule when a market maker was absent for one or more days. Under the proposed rule change, as amended, the review period will be the period not in excess of 10 trading days, *i.e.*, last ten days in which the market maker had trading activity, subject to the condition that the review period cannot extend back more than 30 calendar days (in order to assure that the review period is not based on stale activity). In addition, the Commission notes that under the proposal, all market maker's review periods will be of equal size, regardless of whether the Exchange may look at different underlying time periods to ascertain the most recent days of trading activity for a specific market maker. The Commission finds that these changes relating to the "vacation penalty" are consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change, as amended (SR–CBOE–2002–27) is approved on a permanent basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31018 Filed 12–6–02; 8:45 am]

BILLING CODE 8010–01–P

they log on RAES during the first review period they traded that class on the Exchange floor. Telephone conference among Madge Hamilton, Legal Division, CBOE, Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, and Geoffrey Pemble, Special Counsel, Division of Market Regulation, Commission (November 26, 2002).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(5) and (b)(8).

[15] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] Under Variable RAES, the market maker has some flexibility in limiting the extent of its exposure during each revolution of the Wheel.

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46932; File No. SR–CHX–2002–34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Trading of Nasdaq/NM Securities

November 29, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 25, 2002, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has requested a one-year extension of the pilot program relating to the trading of Nasdaq/NM securities on the Exchange. Specifically, the pilot program amended Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's rules. The current pilot expired on November 1, 2002. The Exchange proposes that the pilot remain in effect on a pilot basis through November 1, 2003. The text of the proposed rule change is available at the principal offices of the CHX and at the Commission. This proposed extension of the pilot does not alter the text of the pilot language, but simply extends the expiration date of the pilot through November 1, 2003.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has requested a one-year extension of the pilot program relating to the trading of Nasdaq/NM securities on the Exchange. Specifically, the pilot program amends Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's Rules. The pilot program currently is due to expire on November 1, 2002; the Exchange proposes that the pilot remain in effect through November 1, 2003.

On May 4, 1987, the Commission approved certain Exchange rules and procedures relating to the trading of Nasdaq/NM securities on the Exchange.[3] Among other things, these rules rendered the Exchange's BEST Rule guarantee (Article XX, Rule 37(a)) applicable to Nasdaq/NM securities and made Nasdaq/NM securities eligible for the automatic execution feature of the Exchange's Midwest Automated Execution System (the "MAX" system).[4]

On January 3, 1997, the Commission approved, on a one year pilot basis, a program that eliminated the requirement that CHX specialists automatically execute orders for Nasdaq/NM securities when the specialist is not quoting at the national best bid or best offer disseminated pursuant to SEC Rule 11Ac1–1 (the "NBBO").[5] When the Commission approved the program on a pilot basis, it requested that the Exchange submit a report to the Commission describing the Exchange's experience with the pilot program. The Commission stated that the report should include at least six months of trading data. Due to programming issues, the pilot program was not implemented until April 1997. Six months of trading data did not become available until November 1997. As a result, the Exchange requested an additional three-month extension to collect the data and prepare the report for the Commission.

On December 31, 1997, the Commission extended the pilot program for an additional three months, until March 31, 1998, to give the Exchange additional time to prepare and submit the report and to give the Commission adequate time to review the report prior to approving the pilot on a permanent basis.[6] The Exchange submitted the report to the Commission on January 30, 1998. Subsequently, the Exchange requested another three-month extension, in order to give the Commission adequate time to approve the pilot program on a permanent basis. On March 31, 1998, the Commission approved the pilot for an additional three-month period, until June 30, 1998.[7] On July 1, 1998, the Commission approved the pilot for an additional six-month period, until December 31, 1998.[8] On December 31, 1998, the Commission approved the pilot for an additional six-month period, until June 30, 1999.[9] On June 30, 1999, the Commission approved the pilot for an additional seven-month period, until January 31, 2000.[10] On January 31, 2000, the Commission approved the pilot for an additional three-month period, until May 1, 2000.[11] On May 1, 2000, the Commission approved the pilot for an additional six-month period, until November 1, 2000.[12] On November 15, 2000, the Commission approved the pilot for an additional one-year period, until November 1, 2001.[13] On November 1, 2001, the pilot was extended for an additional one-year period, until November 1, 2002.[14] In light of the evolving nature of the Nasdaq market and unlisted trading of Nasdaq/NM securities, the Exchange now requests another extension of the current pilot program, through November 1, 2003. The Exchange is not requesting approval of any changes to the pilot program in this submission.

Under the pilot program, specialists must continue to accept agency market orders [15] or marketable limit orders, but only for orders of 100 to 5099 shares in Nasdaq/NM securities. This threshold order acceptance requirement is referred to as the "auto acceptance threshold." Specialists, however, must accept all agency limit orders in Nasdaq/NM securities from 100 up to and including 10,000 shares for placement in the limit order book. Specialists are required to automatically execute Nasdaq/NM orders in accordance with certain amendments to the pilot program that were approved by the Commission.[16]

The pilot program requires the specialist to set the MAX auto-execution threshold at 100 shares or greater for Nasdaq/NM securities. When a CHX specialist is quoting at the NBBO, orders for a number of shares less than or equal to the size of the specialist's quote are

[3] *See* Securities Exchange Act Release No. 24424 (May 4, 1987), 52 FR 17868 (May 12, 1987) (order approving File No. SR–MSER–87–2); *see also,* Securities Exchange Act Release Nos. 8146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (order expending the number of eligible securities to 100); 36102 (August 14, 1995), 60 FR 43626 (August 14, 1995), 60 FR 43626 (August 22, 1995) (order expanding the number of eligible securities to 500); 64 FR 27839 (May 21, 1999) (order expanding the number of eligible securities to 1000).

[4] The MAX system may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule and certain other orders. *See* CHX Rules, Article XX, Rule 37(b). A MAX order that fits within the BEST parameters is executed pursuant to the BEST Rule via the MAX system. If an order is outside the BEST parameters, the BEST rule does not apply, but MAX system handling rules remain applicable.

[5] *See* Securities Exchange Act Release No. 38119 (January 3, 1997), 62 FR 1788 (January 13, 1997).

[6] *See* Securities Exchange Act Release No. 39512 (December 31, 1997), 62 FR 1517 (January 9, 1998).

[7] *See* Securities Exchange Act Release No. 39823 (March 31, 1998), 63 FR 17246 (April 8, 1998).

[8] *See* Securities Exchange Act Release No. 40150 (July 1, 1998), 63 FR 36983 (July 8, 1998).

[9] *See* Securities Exchange Act Release No. 40868 (December 31, 1998), 64 FR 1845 (January 12, 1999).

[10] *See* Securities Exchange Act Release No. 41586 (June 30, 1999), 64 FR 36938 (July 8, 1999) (the Commission notes that it requested additional data regarding the CHX's pilot in connection with this Release).

[11] *See* Securities Exchange Act Release No. 42372 (January 31, 2000), 65 FR 6425 (February 9, 2000) (the Commission notes that it requested additional data regarding the CHX's experience with the pilot in connection with this Release).

[12] *See* Securities Exchange Act Release No. 42740 (May 1, 2000) 65 FR 26649 (May 8, 2000) (the Commission notes that it requested additional data regarding the CHX's experience with the pilot in connection with this Release).

[13] *See* Securities Exchange Act Release No. 43565 (November 15, 2000), 65 FR 71166 (November 29, 2000) (the Commission notes that it requested additional data regarding the CHX's experience with the pilot in connection with this Release).

[14] *See* Securities Exchange Act Release No. 45010 (November 1, 2001), 66 FR 56585 (November 8, 2001).

[15] The term "agency order" means an order for the account of a customer, but does not include professional orders, as defined in CHX Rules, Article XXX, Rule 2, Interpretation and Policy .04. The rule defines a "professional order" as any order for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.

[16] *See* Securities Exchange Act Release No. 44778 (September 7, 2001), 66 FR 48075 (September 17, 2001) (SR–CHX–2001–11).

automatically executed through MAX

SR–CHX–2002–34 and should be

market data fees, the distribution of

executed automatically (in an amount up to the size of the specialist's quote). Orders of a size greater than the specialist's quote are automatically executed up to the size of the specialist's quote, with the balance of the order designated as an open order in the specialist's book, to be filled in accordance with the Exchange's rules for manual execution of orders for Nasdaq/NM securities. Such rules dictate that the specialist must either manually execute the order at the NBBO or a better price or act as agent for the order in seeking to obtain the best available price for the order on a marketplace other than the Exchange. If the specialist decides to act as agent for the order, the pilot program requires the specialist to use order-routing systems to obtain an execution where appropriate. Orders for securities quoted with a spread greater than the minimum variation are executed automatically after a fifteen second delay from the time the order is entered into MAX. The size of the specialist's bid or offer is then automatically decremented by the size of the execution. When the specialist's quote is exhausted, the system generates an autoquote at an increment away from the NBBO for 100 shares.

When the specialist is not quoting a Nasdaq/NM security at the NBBO, an order that is of a size less than or equal to the auto execution threshold designated by the specialist will execute automatically at the NBBO price up to the size of the auto execution threshold. Orders of a size greater than the auto execution threshold will be designated as open orders in the specialist's book and manually executed, unless the order-sending firm previously has advised the specialist that it elects partial automatic execution, in which event the order will be executed automatically up to the size of the auto execution threshold, with the balance of the order to be designated as an open order in the specialist's book.

Whether the specialist is quoting at the NBBO or not, "oversized" orders, *i.e.*, orders that are of a size greater than the auto acceptance threshold of 5099 shares (as designated by the specialist), are not subject to the foregoing requirements, and may be canceled within one minute of being entered into MAX or designated as an open order.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with Section 6(b) of the Act,[17] generally, and Section 6(b)(5) of the Act [18] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CHX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6)[20] thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The CHX has requested that the Commission waive the 5-day pre-filing notification requirement and the 30-day operative delay. The Commission believes waiving the 5-day pre-filing notification requirement and the 30-day operative delay is consistent with the protection of investors and the public interest.[21] The Commission notes that waiver of the 5-day pre-filing requirement and acceleration of the operative date will prevent the Exchange's pilot program relating to the trading of Nasdaq/NM securities from lapsing.

The Commission notes that in approving prior extensions of this pilot program, it has found that the Exchange's program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[22] Specifically, the Commission has found that the proposed rule change is consistent with Section 6(b)(5)[23] of the Act, which requires that an Exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission has also stated its belief that the proposal is consistent with Section 11A(a)(1)(C)[24] and 11A(a)(1)(D)[25] of the Act. The Commission has found that the proposal is consistent with Section 11A(a)(1)(C) in that it seeks to ensure economically efficient execution of securities transactions, and with Section 11A(a)(1)(D) in that it attempts to foster the linking of markets for qualified securities through communication and data processing facilities.

The Commission notes, however, that while the Exchange has been working toward establishing a linkage, specialists and OTC market makers do not yet have an effective method of routing orders to each other. The Commission expects the Exchange to continue to work towards establishing a linkage with the Nasdaq systems as requested in the January 1997 Order.[26] In connection with this effort, the Commission requests an update on the information provided in the December 21, 1999 report using the Exchange's surveillance system. The Commission requests that the Exchange supplement the available trading data so that it can consider issues concerning the pilot program, including the circumstances involving orders that are not automatically executed through MAX, whether orders are given the NBBO shown at the time the order is received or the NBBO posted at the time the order is executed, and what explanations are available for price disimprovement. The Commission is extending the pilot program for one year so that the Exchange may continue to compile this data for the Commission's review.

The Commission also requests that the Exchange continue its effort to rewrite Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's rules so these rules clearly explain the difference between how listed (or dually traded) securities and over-the-counter (or Nasdaq/NM) securities are routed and executed by the Exchange, and submit the new proposed language to the Commission for review and approval. Additionally, the Commission requests that the Exchange include in its rules an explanation of how the provisions of the Exchange's Best Rule interact with the Exchange's Rules governing automatic execution of orders.

The Commission does not want to interrupt the current operations of the Exchange while the above-described issues are being addressed. Therefore, the Commission finds that it is appropriate to accelerate the operative date of the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2002–34 and should be submitted by December 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30964 Filed 12–6–02; 8:45 am]

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[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6).

[21] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] *See* Securities Exchange Act Release Nos. 42372 (January 31, 2000), 65 FR 6425 (February 9, 2000)(SR–CHX–99–27) and 42740 (May 1, 2000) 65 FR 26649 (May 8, 2000)(SR–CHX–00–11).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78k–1(a)(1)(C).

[25] 15 U.S.C. 78k–1(a)(1)(D).

[26] *See* January 1997 Order, *supra* note 7.

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46938; File No. SR–NASD–2002–149]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Make Permanent Nasdaq's Transaction Credit Pilot Program for Exchange-Listed Securities, and To Increase the Percentage of Revenue Available for Distribution From 40% to 50%

December 3, 2002.

On October 18, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to codify on a permanent basis Nasdaq's InterMarket Transaction Credit Pilot Program ("Program"), and to raise the percentage of revenue available for distribution under the Program from 40% to 50%. The proposed rule change was published for notice and comment in the **Federal Register** on October 29, 2002.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

Nasdaq proposes to make the Program permanent, and to raise the percentage of revenue available for distribution under the Program from 40% to 50%. As set forth in its July 2, 2002 Order of Summary Abrogation ("Abrogation Order"),[4] the Commission will continue to examine the issues surrounding market data fees, the distribution of market data rebates, and the impact of market data revenue sharing programs on both the accuracy of market data and on the regulatory functions of self-regulatory organizations. In the interim, the Commission believes it is reasonable to allow Nasdaq to make its Program permanent, and increase the revenue available for distribution, because these changes to the Program leave Nasdaq on substantially similar footing as other self-regulatory organizations.[5]

Thus, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[6] and, in particular, the requirements of Section 15A of the Act[7] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 15A(b)(5) of the Act,[8] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The decision to allow Nasdaq to make permanent its Program, and to increase the percentage of revenue available for distribution, however, is narrowly drawn, and should not be construed as resolving the issues raised in the Abrogation Order, and does not suggest what, if any, future actions the Commission may take with regard to market data revenue sharing programs.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[9], that the proposed rule change (SR–NASD–2002–149) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30965 Filed 12–6–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46712 (October 23, 2002), 67 FR 66031.

[4] Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002)(File Nos. SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37)(Order of Summary Abrogation).

[5] *See e.g.*, Securities Exchange Act Release No. 41238 (March 31, 1999), 64 FR 17204 (April 8, 1999) (SR–CSE–99–03).

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78o–3.

[8] 15 U.S.C. 78o–3(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46939; File No. SR–NASD–2002–127]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Amend Rule 11890 Concerning Clearly Erroneous Transactions

December 3, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on September 24, 2002, the National Association of Securities Dealers, Inc., through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On November 1, 2002, Nasdaq filed Amendment No. 1 to its proposal with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 11890 (Clearly Erroneous Transactions) to implement a number of clarifications and modifications to the text of the existing rule. Nasdaq will make the proposed rule change effective immediately upon Commission approval.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

11890. Clearly Erroneous Transactions

(a) Authority to Review Transactions *Pursuant to Complaint of Market Participant*

(1) *Scope of Authority.* [For the purposes of this Rule, the terms of a transaction are clearly erroneous when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.]

[(2)] Officers of [The] Nasdaq [Stock Market, Inc. ("Nasdaq")] designated by [the] *its* President [of Nasdaq] shall, pursuant to the procedures set forth in paragraph [(b)] *(a)(2)* below, have the authority to review any transaction arising out of the use or operation of any [automated quotation,] execution[,] or communication system owned or operated by Nasdaq and approved by the Commission, *including transactions entered into by a member of a national securities exchange with unlisted trading privileges in Nasdaq-listed securities (a "UTP Exchange") through such a system; provided, however, that the parties to the transaction must be readily identifiable by Nasdaq through its systems* [excluding transactions arising from use of the Nasdaq Application of OptiMark]. A Nasdaq officer shall review transactions with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Based upon this review, the officer shall decline to act upon a disputed transaction if the officer believes that the transaction under dispute is not clearly erroneous[, or,]. [i]*I*f the officer determines the transaction in dispute is clearly erroneous, *however,* he or she shall declare that the transaction is null and void or modify one or more terms of the transaction. When adjusting the terms of a transaction, the Nasdaq officer shall seek to adjust the price and/or size of the transaction to achieve an equitable rectification of the error that would place the parties to a transaction in the same position, or as close as possible to the same position, *as* [that] they would have been in had the error not occurred. [Nasdaq shall promptly provide oral notification of a determination to the parties involved in a disputed transaction and thereafter issue a written confirmation of the determination.] *For the purposes of this Rule, the terms of a transaction are clearly erroneous when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.*

[(b) Procedures for Reviewing Transactions]

[(1)] *(2) Procedures for Reviewing Transactions*

(A) Any member, *member of a UTP Exchange,* or person associated with [a] *any such* member that seeks to have a transaction reviewed pursuant to paragraph (a)*(1)* hereof[,] shall submit a written complaint[, via facsimile or otherwise,] to Nasdaq Market Operations in accordance with the following time parameters:

[(A)] *(i)* for transactions occurring at or after 9:30 a.m., Eastern Time, but prior to 10 a.m., Eastern Time, complaints must be [submitted] *received by Nasdaq* by 10:30 a.m., Eastern Time; and

[(B)] *(ii)* for transactions occurring prior to 9:30 a.m., Eastern Time and at or after 10:00 a.m., Eastern Time, complaints must be [submitted] *received by Nasdaq* within thirty minutes.

[(2)] *(B)* Once a complaint has been received in accord with subparagraph [(b)(1)] *(a)(2)(A)* above:

[(A)] *(i)* the complainant shall have up to thirty (30) minutes, or such longer period as specified by Nasdaq staff, to submit any supporting written information concerning the complaint necessary for a determination under paragraph [(a)(2)] *(a)(1)[,* via facsimile or otherwise];

[(B)] *(ii)* the counterparty to the trade shall be [verbally] notified of the complaint *via telephone* by Nasdaq staff and shall have up to thirty (30) minutes, or such longer period as specified by Nasdaq staff, to submit any supporting written information concerning the complaint necessary for a determination under paragraph [(a)(2)] *(a)(1)[,* via facsimile or otherwise]; and

[(C)] *(iii)* either party to a disputed trade may request the written information provided by the other party pursuant to this subparagraph.

[(3)] *(C)* Notwithstanding *sub*paragraph [(b)(2)] *(a)(2)(B)* above, once a party to a disputed trade communicates that it does not intend to submit any further information concerning a complaint, the party may not thereafter provide additional information unless requested to do so by Nasdaq staff. If both parties to a disputed trade indicate that they have no further information to provide concerning the complaint before their respective thirty-minute information submission period has elapsed, then the matter may be immediately presented to a Nasdaq officer for a determination pursuant to paragraph [(a)(2)] *(a)(1)* above.

[(4)] *(D)* Each member, *member of a UTP Exchange, or person associated with any such member* [and/or person associated with a member] involved in the transaction shall provide Nasdaq with any information that it requests in order to resolve the matter on a timely basis notwithstanding the time parameters set forth in *sub*paragraph [(b)(2)] *(a)(2)(B)* above.

[(5)] *(E)* Once a party has applied to Nasdaq for review, the transaction shall be reviewed and a determination rendered, unless both parties to the transaction agree to withdraw the application for review prior to the time a decision is rendered pursuant to paragraph [(a)(2)] *(a)(1).*

[(c)] *(b)* Procedures for Reviewing Transactions [Executed During System Disruptions or Malfunctions] *on Nasdaq's Own Motion*

In the event of *(i)* a disruption or malfunction in the use or operation of any [automated] quotation, execution, [or] communication, *or trade reporting* system owned or operated by Nasdaq and approved by the Commission, *or (ii) extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, the President of Nasdaq or any Executive Vice President designated by the President[,* acting through an officer designated by the President of Nasdaq pursuant to paragraph (a)(2)], may, on [its] *his or her* own motion, *[*pursuant to the standards set forth in paragraph (a), declare] *review any* transaction[s] arising out of *or reported through* [the use or operation of such systems during the period of such disruption or malfunction] *any such quotation, execution, communication, or trade reporting system, including transactions entered into by a member of a UTP Exchange through the use or operation of such a system, but excluding transactions that are entered into through, or reported to, a UTP Exchange. A Nasdaq officer acting pursuant to this subsection may declare any such transaction* null and void or modify the terms of [these] *any such* transaction[s] *if the officer determines that (i) the transaction is clearly erroneous, or (ii) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest;* provided, *however,* that, in the absence of extraordinary circumstances, [a] *the* [Nasdaq] officer must take action pursuant to this [paragraph] *subsection* within thirty (30) minutes of detection of the [erroneous] transaction[(s)], but in no event later than [6]*3:00* p.m., Eastern Time, on the next trading day following the date of the trade at issue. [When Nasdaq takes action pursuant to this subparagraph, the member firms involved in the transaction shall be notified as soon as is practicable and shall have a right to appeal such action in accordance with paragraph (d)(1) below.]

[(d)] *(c)* Review by the Market Operations Review Committee ("MORC")

(1) A member, *member of a UTP Exchange,* or person associated with [a] *any such* member may appeal a determination made under [paragraphs] *subsection* (a)[(2) or (c)] to the MORC. *A member, member of a UTP Exchange, or person associated with any such member may appeal a determination made under subsection (b) to the MORC unless the officer making the determination also determines that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest.* [provided such] *An* appeal *must be* [is] made in writing[, via facsimile or otherwise], *and must be received by Nasdaq* within thirty (30) minutes after the [member or person associated with a member receives verbal] *person making the appeal is given* notification of [such] *the* determination *being appealed,* except that if Nasdaq notifies the parties of action taken pursuant to paragraph [(c)] *(b)* after 4:00 p.m., [either party has until] *the appeal must be received by Nasdaq by* 9:30 a.m. the next trading day [to appeal]. Once a written appeal has been received, the counterparty to the trade will be notified of the appeal and both parties shall be able to submit any additional supporting written information[, via facsimile or otherwise,] up until the time the appeal is considered by the Committee. Either party to a disputed trade may request the written information provided by the other party during the appeal process. An appeal to the Committee shall not operate as a stay of the determination [made pursuant to paragraph (a)(2) or (c) above] *being appealed.* Once a party has appealed a determination to the Committee, the determination shall be reviewed and a decision rendered, unless both parties to the transaction agree to withdraw the appeal prior to the time a decision is rendered by the Committee. Upon consideration of the record, and after such hearings as it may in its discretion order, the Committee, pursuant to the standards set forth in [paragraph (a)] *this section,* shall affirm, modify, reverse, or remand the determination [made under paragraph (a)(2) or (c) above].

(2) The decision of the Committee *pursuant to an appeal, or a determination by a Nasdaq officer that is not appealed,* shall be final and binding upon *all* [any member or person associated with a member] *parties* and shall constitute final Association action on the matter in issue. Any [adverse] determination by a Nasdaq officer pursuant to paragraph (a)[(2)] or [(c)] *(b)* or any [adverse] decision by the Committee pursuant to paragraph [(d)] *(c)*(1) shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

(d) Communications

(1) All materials submitted to Nasdaq or the MORC pursuant to this Rule shall be submitted via facsimile machine and within the time parameters specified herein; provided, however, that if requested, Nasdaq staff may authorize submission of material via electronic mail on a case-by-case basis. Materials shall be deemed received at the time indicated by the equipment (i.e., facsimile machine or computer) receiving the materials. Nasdaq, in its sole and absolute discretion, reserves the right to reject or accept any material that is not received within the time parameters specified herein.

(2) Nasdaq shall provide affected parties with prompt notice of determinations under this Rule via facsimile machine, electronic mail, or telephone (including voicemail); provided, however, that if an officer nullifies or modifies a large number of transactions pursuant to subsection (b), Nasdaq may instead provide notice to parties via the Nasdaq Workstation II Service, a press release, or any other method reasonably expected to provide rapid notice to many market participants.

IM–11890. Refusal to Abide by Rulings of a Nasdaq Officer or the MORC

It shall be considered conduct inconsistent with just and equitable principles of trade for any member to refuse to take any action that is necessary to effectuate a final decision of a Nasdaq officer or the MORC under Rule 11890.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated November 1, 2002 ("Amendment No. 1"), which replaced the original form 19b-4 in its entirety. In Amendment No. 1, Nasdaq, in part, reinstated the requirement that a Nasdaq officer must notify a market participant within 30 minutes of a disruption or malfunction in the Nasdaq market when Nasdaq acts on its own motion to modify or nullify a trade. Nasdaq also provided an example, in Amendment No. 1, of a situation where the number of transactions affected by a decision to break or modify trades on Nasdaq's own motion would be such that the decision would have to be accorded immediate finality in order to maintain a fair and orderly market, or to protect investors and the public interest. In addition, Amendment No. 1 clarified that market participants should submit materials to Nasdaq via facsimile for the purpose of seeking Nasdaq's review of a particular transaction, unless the market participant receives Nasdaq's permission to submit the materials via electronic mail.

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to amend NASD Rule 11890, which provides Nasdaq with authority to nullify or modify transactions. The proposed rule change is designed to achieve three primary goals: first, to clarify the conditions under which Nasdaq will consider petitions by market participants to review transactions; second, to clarify Nasdaq's authority to nullify or modify transactions on its own motion; and third, to clarify procedural aspects of the process of reviewing transactions. Unless otherwise noted below, the proposed rule change is not designed to modify the current scope of the rule, but is rather intended to rewrite the rule using more precise language that more clearly describes the current application of the rule.

a. Review of Transactions Pursuant to Complaint of Market Participant

Since 1990, Nasdaq has had the authority to receive petitions from market participants requesting that designated officers of Nasdaq review the terms of a transaction and nullify or modify it if the transaction is found to be clearly erroneous. Under subsections (a) and (b) of current NASD Rule 11890, a market participant may seek review by submitting a written complaint to Nasdaq Market Operations within specified time parameters—by 10:30 a.m. for transactions occurring within the first half hour of the regular trading day, and within thirty minutes of the time of the transaction for all other transactions. Following timely receipt of a complaint, the complainant and the counterparty to the disputed trade are given an opportunity to submit supporting information in writing and the matter is then adjudicated by a Nasdaq officer.

Currently, subsection (a) of NASD Rule 11890 states that it applies to "any transaction arising out of the use or operation of any automated quotation, execution, or communication system owned or operated by Nasdaq and approved by the Commission." Nasdaq believes that this language could be construed to cover not only transactions executed through Nasdaq systems, such as SuperMontage, SuperSOES, and SelectNet, but also transactions whose only nexus with Nasdaq systems is the posting of quotations on Nasdaq's quotation montage. For example, a transaction executed entirely through an electronic communications network (an "ECN") or an exchange trading Nasdaq securities pursuant to unlisted trading privileges (a "UTP exchange"), or a trade that is crossed internally by a market maker, may arise out of a quotation posted on the Nasdaq quotation montage.

Nasdaq, however, has not generally adjudicated trades unless they have actually been executed through a Nasdaq system. Nasdaq asserts several reasons for delineating the scope of its authority in this fashion. First, broker-dealers and exchanges through which trades are executed are likely to have their own procedures for reviewing and breaking trades. Second, because Nasdaq may not be able to identify the counterparty to a transaction executed through a non-Nasdaq system without obtaining this information from the entity through which the transaction was executed, it may not be possible to provide a prompt adjudication. As a result of these considerations, Nasdaq has received few "clearly erroneous" petitions concerning transactions that are not executed through Nasdaq systems and has generally declined to adjudicate the petitions that it has received, on the grounds that the transaction can more appropriately be reviewed by the market center through which it was executed. Accordingly, Nasdaq believes that NASD Rule 11890(a) should be amended to explicitly limit its purview to transactions arising out of the use or operation of Nasdaq execution or communication systems [4] and to explicitly require that the parties to a reviewable transaction be readily identifiable by Nasdaq through its systems.

Other proposed changes to NASD Rule 11890(a) governing review of complaints by market participants include the following:

- Consolidating subsections (a) and (b) of the rule into a new subsection (a).
- Clarifying that the rule covers transactions entered into by a member of a UTP exchange through a Nasdaq execution system. Thus, the rule would cover transactions executed between a Nasdaq member and a member of UTP exchange that had agreed to accept automatic executions through SuperSOES or SuperMontage, but would not cover transactions where the UTP exchange merely posted a quote and was accessible only via telephone.
- Clarifying that information submitted by parties to Nasdaq must be received by Nasdaq within the time frames specified by the rule.
- Eliminating redundant references to communications via facsimile and making other miscellaneous changes designed to improve the wording of the rule.

b. Review of Transactions on Nasdaq's Own Motion

Since 1998, Nasdaq has had the authority to nullify or modify transactions on its own motion. Nasdaq represents that it has used its authority in circumstances where Nasdaq believed that market integrity was threatened by aberrant market activity and a large number of trades had to be broken to protect investors. Nasdaq believes, however, that the language of NASD Rule 11890 should be amended to provide greater clarity as to its scope.

Specifically, Nasdaq proposes to amend subsection (b) of NASD Rule 11890 to state that Nasdaq's authority may be exercised in the event of extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. Because NASD Rule 11890 is designed to allow Nasdaq to respond to aberrational market conditions, Nasdaq believes that its scope must be broad and flexible in light of the difficulty of defining *ex ante* all situations in which application of the rule might be necessary. However, Nasdaq expects that the amended rule, like the current rule, would be used primarily in circumstances where the disruption or malfunction of a system resulted in the execution of trades with obvious errors, such as a price substantially unrelated to the inside market.[5]

[4] At present, the systems covered by the rule would be SuperSOES, SOES, SelectNet, SuperMontage, Primex, Liquidity Tracker, and CAES. The Over-the-Counter Bulletin Board would not be covered, because it is only a quotation system, but the proposed Bulletin Board Exchange ("BBX") would be covered, because it will allow executions. It should also be noted that Nasdaq is not proposing to delete the phrase "approved by the Commission" from Rule 11890, but that Nasdaq construes the rule language to include systems and aspects of systems that are exempted from formal approval under section 19(b)(2) of the Act by section 19(b)(3)(A) of the Act or SEC Rules 19b–4(f) or 19b–5.

[5] Nasdaq notes that, in the event of an emergency or extraordinary market conditions, Article VII, section 3 of the NASD By-Laws grants the NASD Board of Governors or persons designated by the NASD Board the authority to take any action regarding, among other things, trading in the over-the-counter securities market, the operation of Nasdaq systems and the trading of securities therein, and the operation of member firms' offices and systems. Thus, even in the absence of NASD Rule 11890, Nasdaq believes that there would be authority to break trades when the existence of extraordinary market conditions makes such actions necessary or appropriate for the protection of investors or the public interest or for the orderly operation of the marketplace. Nasdaq believes, however, that NASD Rule 11890's specific focus on the nullification or modification of trades, as well as the defined procedural mechanisms contained in the rule, provide a more tailored approach for addressing most situations in which aberrant transactions might occur.

Proposed subsection (b) of NASD Rule 11890 also clarifies that this portion of the rule may be applied to any transaction arising out of or reported through a Nasdaq quotation, execution, communication, or trade reporting system, including transactions entered into by a member of a UTP exchange through a Nasdaq execution system (but excluding transactions entered into through, or reported to, a UTP exchange). In contrast to proposed subsection (a) of the rule, which focuses on errors made by the parties to a specific trade, the focus of proposed subsection (b) is on errors that may affect numerous trades. Nasdaq believes that the scope of the rule must be broad to ensure that, to the greatest extent possible, similarly situated trades may be given similar treatment. Thus, in a situation where the malfunction of a Nasdaq system or a member's system results in numerous market participants entering into trades on the basis of erroneous price information, the proposed rule change would expressly authorize Nasdaq to break or modify not only trades executed through its systems, but also trades executed through the systems of members that are reported to Nasdaq. In recognition of the authority of other self-regulatory organizations, Nasdaq does not assert authority to break or modify trades entered into through, or reported to, a UTP exchange. As it does under the current rule, however, Nasdaq would endeavor to coordinate its actions with other market centers in an attempt to achieve consistent treatment of trades outside of Nasdaq's jurisdiction.

Other proposed changes to NASD Rule 11890(b) governing Nasdaq's authority to review transactions on its own motion include the following:

- Providing that the authority conferred by the rule may be exercised only by Nasdaq's President or an Executive Vice President designated by the President. Currently, Nasdaq's authority to review trades on its own motion may be exercised by any officer designated by Nasdaq's President. Because this authority may affect a broad range of market participants, Nasdaq believes that it should be exercised only by senior management.
- Providing that Nasdaq may act to nullify or modify a trade if it is clearly erroneous or if action is necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. This change will serve to clarify the scope of Nasdaq's authority in situations where quotations for a security have been affected by a system malfunction or erroneous market information. In such circumstances, the prices of trades might not be deemed "clearly erroneous" when measured against the national best bid and offer, but it might nevertheless be necessary, for the protection of investors, to nullify or modify transactions executed during the time frame when questionable quotations were posted.
- Amending the time frame for action under the current rule to require that the Nasdaq officer, on Nasdaq's own motion, act, except in extraordinary circumstances, no later than 3:00 p.m. on the next trading day.

Finally, Nasdaq is adding interpretative material after the rule to provide that it shall be considered conduct inconsistent with just and equitable principles of trade for a member to refuse to take action that is necessary to effectuate a final decision of a Nasdaq officer or the Market Operations Review Committee ("MORC"). When Nasdaq acts to nullify or modify a trade that has been executed through Nasdaq's systems, Nasdaq can effectuate the decision through those systems. However, in circumstances where Nasdaq takes action with respect to a trade executed through a non-Nasdaq system, the members that are parties to the transaction and/or that operate the execution system must effectuate Nasdaq's decision. Accordingly, Nasdaq believes that it is important that members be required to abide by decisions made under the rule.

c. Review by the Market Operations Review Committee

Current NASD Rule 11890(d) (which Nasdaq is redesignating as NASD Rule 11890(c)) governs review by the MORC, a standing committee composed of representatives of member firms as well as "non-industry" representatives. Persons seeking to appeal a determination by Nasdaq must submit their appeal within the time parameters specified by the rule. Both parties are then given the opportunity to submit supporting arguments in writing, and the matter is submitted to the MORC for a determination. Nasdaq believes that most of the changes to proposed subsection (c) are non-substantive clarifications of rule language. However, Nasdaq is also proposing that an officer empowered to review transactions on Nasdaq's own motion (*i.e.*, the President or an Executive Vice President) may determine that the number of transactions affected by a decision to break or modify trades on Nasdaq's own motion is such that the decision must be accorded immediate finality in order to maintain a fair and orderly market and to protect investors and the public interest. Although Nasdaq expects that it would use this authority only on rare occasions, Nasdaq believes that there will be circumstances in which review by the MORC of a large number of trades would be impractical and could expose market participants to unacceptable levels of risk.[6] In such cases, Nasdaq believes that the market will be best served by finality. Other changes to the provision include clarifying that determinations of Nasdaq officers that are not appealed are final and binding and constitute final action by the NASD on the matter.

d. Communications between Nasdaq and Market Participants

Nasdaq is proposing to add a new subsection (d) to NASD Rule 11890 to describe in greater detail the parameters for communications between Nasdaq and market participants. Specifically, proposed subsection (d) provides that:

- Materials submitted to Nasdaq or the MORC must be submitted via facsimile machine and must be received within the time parameters specified by the rule. However, if requested, Nasdaq staff may authorize submission of materials via electronic mail on a case-by-case basis.[7] Materials shall be deemed received at the time indicated by a facsimile machine or computer that receives the materials. Nasdaq reserves the right to reject or accept material that is not received within the time parameters specified by the rule.

Nasdaq will provide notice of determinations under the rule via facsimile machine, electronic mail, or

[6] For example, Nasdaq believes that if an erroneously priced order or quote causes a large number of transactions to occur at prices far in excess of a security's true value and if a decision is made to break all of the affected trades, some sellers may appeal the decision to break the trades. If a market participant is a party to trades on both sides of the market, and some remain broken while others are appealed and reinstated, it will suffer losses that arise solely from the inconsistent treatment of its trades.

[7] For example, if a party wishes to submit, pursuant to subparagraph (a)(2)(A) of the amended rule, a large document containing supporting information, it may be preferable to submit the document via electronic mail. Electronic mail may be used only when specifically authorized by Nasdaq staff, however, because it is impossible to control the delivery time of electronic mail.

telephone (including voicemail). However, in cases where an officer nullifies or modifies a large number of transactions pursuant to Nasdaq's authority to act on its own motion, individual notice may not be practicable. In that case, Nasdaq may provide notice to market participants via the Nasdaq Workstation II Service, a press release, or any other method reasonably expected to provide rapid notice to many market participants.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[8] in general and with section 15A(b)(6) of the Act,[9] in particular, in that it promotes just and equitable principles of trade and protects investors and the public interest. Nasdaq believes that the proposed rule change will promote the fair and efficient resolution of disputes involving clearly erroneous transactions and will clarify Nasdaq's authority to review transactions on its own motion. Accordingly, Nasdaq believes that the proposed rule change will lessen the impact of erroneous transactions on the public by allowing Nasdaq to correct erroneous transactions quickly and by defining more clearly the scope of Nasdaq's authority.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Nasdaq consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–127 and should be submitted by December 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31019 Filed 12–6–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46940; File No. SR–NASD–2002–89]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Nasdaq's Listing Standards Pertaining to American Depositary Receipts, Preferred and Secondary Classes of Stock, Bid Price Compliance and Monitoring Periods, Categories of Securities Eligible for Initial Inclusion on Nasdaq, and the Market Capitalization Compliance Period

December 3, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 7, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On November 1, 2002, NASD filed Amendment No. 1 to the proposed rule change.[3] On December 2, 2002, NASD filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from John Nachmann, Senior Attorney, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated November 1, 2002.

[4] See letter from John Nachmann, Senior Attorney, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated December 2, 2002.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to modify Nasdaq's listing standards pertaining to American Depositary Receipts, preferred and secondary classes of stock, bid price compliance and monitoring periods, categories of securities eligible for initial inclusion on Nasdaq, and the market capitalization compliance period. Below is the text of the proposed rule change. Proposed new language is in *italic;* proposed deletions are in [brackets].

* * * * * *

4310. Qualification Requirements for Domestic and Canadian Securities

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

(a)–(b) No change

(c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(3) No change.

(4) For initial inclusion, [common or preferred stock] *common stock, preferred stock and secondary classes of common stock* shall have a minimum bid price of $4 per share. For continued inclusion, the minimum bid price shall be $1 per share.

(5) No change

(6)*(A)* In the case of common stock, there shall be at least 300 round lot holders of the security. [An account of a member that is beneficially owned by a customer (as defined in Rule 0120) will be considered a holder of a security upon appropriate verification by a member.]

(B) In the case of preferred stock and secondary classes of common stock, there shall be at least 200,000 publicly held shares having a market value of at least $2 million for initial inclusion and 100,000 publicly held shares having a market value of $500,000 for continued inclusion. In addition, the issuer's common stock or common stock equivalent security must be traded on either Nasdaq or a national securities exchange. In the event the issuer's common stock or common stock equivalent security is not traded on either Nasdaq or a national securities exchange, the preferred stock and/or secondary class of common stock may be traded on Nasdaq so long as the security satisfies the listing criteria for common stock.

(C) An account of a member that is beneficially owned by a customer (as defined in Rule 0120) will be considered a holder of a security upon appropriate verification by a member.

(7)*(A)* In the case of common stock, there shall be at least 1,000,000 publicly held shares for initial inclusion and 500,000 publicly held shares for continued inclusion. For initial inclusion such shares shall have a market value of at least $5 million. For continued inclusion such shares shall have a market value of at least $1 million. [Shares held directly or indirectly by any officer or director of the issuer and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding are not considered to be publicly held.]

(B) In the case of preferred stock and secondary classes of common stock, there shall be at least 200,000 publicly held shares having a market value of at least $2 million for initial inclusion and 100,000 publicly held shares having a market value of $500,000 for continued inclusion. In addition, the issuer's common stock or common stock equivalent security must be traded on either Nasdaq or a national securities exchange. In the event the issuer's common stock or common stock equivalent security is not traded on either Nasdaq or a national securities exchange, the preferred stock and/or secondary class of common stock may be traded on Nasdaq so long as the security satisfies the listing criteria for common stock.

(C) Shares held directly or indirectly by any officer or director of the issuer and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding are not considered to be publicly held.

(8)(A)–(D) No change

(E) Nasdaq may, in its discretion, require an issuer to maintain a bid price of at least $1.00 per share for a period in excess of ten consecutive business days, but generally no more than 20 consecutive business days, before determining that the issuer has demonstrated an ability to maintain long-term compliance. In determining whether to monitor bid price beyond ten business days, Nasdaq will consider the following four factors: (i) margin of compliance (the amount by which the price is above the $1.00 minimum standard); (ii) trading volume (a lack of trading volume may indicate a lack of bona fide market interest in the security at the posted bid price); (iii) the market maker montage (the number of market makers quoting at or above $1.00 and the size of their quotes); and, (iv) the trend of the stock price (is it up or down).

(9)–(29) No change

(d) No change

4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

To qualify for inclusion in Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of (a), (b) or (c), and (d) and (e) of this Rule.

(a)–(d) No change.

(e) In addition to the requirements contained in paragraphs (a), (b) or (c), and (d), the security shall satisfy the [following] criteria *set out in this subsection* for inclusion in Nasdaq.[:] *In the case of ADRs, the underlying security will be considered when determining the ADR's qualification for initial or continued inclusion on Nasdaq.*

(1)–(2)(D) No change.

[(E) In the case of ADRs, the underlying security will be considered when determining the ADR's qualification for initial or continued inclusion on Nasdaq.]

(3) No change.

(4)*(A)* [In the case of foreign shares, t]There shall be at least 300 round lot holders of the security. [An account of a member that is beneficially owned by a customer (as defined in Rule 0120) will be considered a holder of a security upon appropriate verification by the member.]

(B) In the case of preferred stock and secondary classes of common stock, there shall be at least 100 round lot holders of the security, provided in each case that the issuer's common stock or common stock equivalent equity security is traded on either Nasdaq or a national securities exchange. In the event the issuer's common stock or common stock equivalent security is not traded on either Nasdaq or a national securities exchange, the preferred stock and/or secondary class of common stock may be traded on Nasdaq so long as the security satisfies the listing criteria for common stock.

(C) An account of a member that is beneficially owned by a customer (as defined in Rule 0120) will be considered a holder of a security upon appropriate verification by the member.

(5) [In the case of foreign shares, t]There shall be at least 1,000,000 publicly held shares for initial inclusion and 500,000 publicly held shares for continued inclusion. *In the case of preferred stock and secondary classes of common stock, there shall be at least 200,000 publicly held shares for initial inclusion and 100,000 publicly held shares for continued inclusion. In addition, the issuer's common stock or common stock equivalent security must be traded on either Nasdaq or a national securities exchange. In the event the issuer's common stock or common stock equivalent security is not traded on either Nasdaq or a national securities exchange, the preferred stock and/or secondary class of common stock may be included in Nasdaq so long as the security satisfies the listing criteria for common stock.* Shares held directly or indirectly by any officer or director of the issuer and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding are not considered publicly held.

(6) In the case of rights, warrants and ADR[']s for initial inclusion only, at least 100,000 shall be issued. *Issuers of ADRs must also meet the round lot holders and publicly held shares requirements set forth in subsections (4) and (5) above.*

(7)–(25) No change.

(f) No change

* * * * * *

4420. Quantitative Designation Criteria

In order to be designated for the Nasdaq National Market, an issuer shall be required to substantially meet the criteria set forth in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i)$_2$, [or] (j) *or (k)* below. Initial Public Offerings substantially meeting such criteria are eligible for immediate inclusion in the Nasdaq National Market upon prior application and with the written consent of the managing underwriter that immediate inclusion is desired. All other qualifying issues, excepting special situations, are included on the next inclusion date established by Nasdaq.

(a) Entry Standard 1—*First Class of Common Stock, Shares or Certificates of*

Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts

(1)–(7) No change

(b) Entry Standard 2—*First Class of Common Stock, Shares or Certificates of Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts*

(1)–(7) No change

(c) Entry Standard 3—*First Class of Common Stock, Shares or Certificates of Beneficial Interest of Trusts, Limited Partnership Interests in Foreign or Domestic Issues and American Depositary Receipts*

(1)–(6) No change

(d)–(j) No change

(k) Quantitative Designation Criteria—Preferred Stock and Secondary Classes of Common Stock

For initial inclusion, if the common stock or common stock equity equivalent security of the issuer is listed on Nasdaq or a national securities exchange, the issue shall have:

(1) At least 200,000 publicly held shares;

(2) A market value of publicly held shares of at least $4,000,000;

(3) A minimum bid price per share of $5;

(4) A minimum of 100 round lot shareholders;

(5) At least three registered and active market makers.

Alternatively, in the event the issuer's common stock or common stock equivalent security is not traded on either Nasdaq or a national securities exchange, the preferred stock and/or secondary class of common stock may be traded on Nasdaq so long as the security satisfies the listing criteria for common stock.

* * * * *

4450. Quantitative Maintenance Criteria

After designation as a Nasdaq National Market security, a security must substantially meet the criteria set forth in paragraphs (a) or (b), and (c), (d), (e), [and] (f), *(g) (h) or (i)* below to continue to be designated as a national market system security. A security maintaining its designation under paragraph (b) need not also be in compliance with the quantitative maintenance criteria in the Rule 4300 series.

(a) Maintenance Standard 1—*First Class of* Common Stock, [Preferred Stock,] Shares or Certificates of Beneficial Interest of Trusts, [and] Limited Partnership Interests in Foreign or Domestic Issues *and American Depositary Receipts*

(1)–(6) No change

(b) Maintenance Standard 2—*First Class of* Common Stock, [Preferred Stock,] Shares or Certificates of Beneficial Interest of Trusts, [and] Limited Partnership Interests in Foreign or Domestic Issues *and American Depositary Receipts*

(1)–(6) No change

(c)–(d) No change

(e) Compliance Periods

(1) No change

(2) *For issuers subject to the $1 bid price requirement under Maintenance Standard 1 or the $3 bid price requirement under Maintenance Standard 2, a* [A] failure to meet the continued inclusion requirement for minimum bid price shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 90 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 90 day compliance period. *Nasdaq may, in its discretion, require an issuer under Maintenance Standard 1 to maintain a bid price of at least $1.00 per share for a period in excess of ten consecutive business days, but generally no more than 20 consecutive business days, before determining that the issuer has demonstrated an ability to maintain long-term compliance. In determining whether to monitor bid price beyond ten business days, Nasdaq will consider the following four factors: (i) margin of compliance (the amount by which the price is above the $1.00 minimum standard); (ii) trading volume (a lack of trading volume may indicate a lack of bona fide market interest in the security at the posted bid price); (iii) the market maker montage (the number of market makers quoting at or above $1.00 and the size of their quotes); and, (iv) the trend of the stock price (is it up or down).* [If the issuer has not been deemed in compliance prior to the expiration of the 90 day compliance period, it may transfer to The Nasdaq SmallCap Market, provided that it meets all applicable requirements for continued inclusion on the SmallCap Market set forth in Rule 4310(c) (other than the minimum bid price requirement of Rule 4310(c)(4)) or Rule 4320(e), as applicable. A Nasdaq National Market issuer transferring to The Nasdaq SmallCap Market must pay the entry fee set forth in Rule 4520(a). Upon such transfer, a domestic or Canadian Nasdaq National Market issuer transferring to The Nasdaq SmallCap Market will be afforded the remainder of the initial 180 day compliance period set forth in Rule 4310(c)(8)(D) and may thereafter be eligible for the subsequent 180 day compliance period pursuant to that rule. The issuer may also request a hearing to remain on The Nasdaq National Market pursuant to the Rule 4800 Series. The 90-day grace period afforded by this rule and any time spent in the hearing process will be deducted from the applicable grace periods on The Nasdaq SmallCap Market. Non-Canadian foreign issuers that transfer to The Nasdaq SmallCap Market are not subject to the $1 minimum bid price requirement pursuant to Rule 4320. Any issuer (including a non-Canadian foreign issuer) that was formerly listed on The Nasdaq National Market, and which transferred to The Nasdaq SmallCap Market pursuant to this paragraph, may transfer back to The Nasdaq National Market without satisfying the initial inclusion criteria if it maintains compliance with the $1 bid price requirement for a minimum of 30 consecutive business days prior to the expiration of the compliance periods described in Rule 4310(c)(8)(D) and if it has continually maintained compliance with all other requirements for continued listing on The Nasdaq National Market since being transferred. Such an issuer is not required to pay the entry fee set forth in Rule 4510(a) upon transferring back to The Nasdaq National Market.]

(3) No change

(4) A failure to meet the continued inclusion requirements for market capitalization shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance with the applicable continued inclusion standard. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.

(f)–(g) No change

(h) Quantitative Maintenance Criteria—Preferred Stock and Secondary Classes of Common Stock

For continued inclusion, if the common stock or common stock equity equivalent security of the issuer is listed on Nasdaq or a national securities exchange, the issue shall have:

(1) At least 100,000 publicly held shares;

(2) A market value of publicly held shares of at least $1,000,000;

(3) A minimum bid price per share of $1;

(4) A minimum of 100 round lot shareholders;

(5) At least two registered and active market makers.

Alternatively, in the event the issuer's common stock or common stock equivalent security is not traded on either Nasdaq or a national securities exchange, the preferred stock and/or secondary class of common stock may be traded on Nasdaq so long as the security satisfies the listing criteria for common stock.

(i) Transfers between The Nasdaq National and SmallCap Markets For Bid Price Deficient Issuers

(1) If a National Market issuer has not been deemed in compliance prior to the expiration of the 90 day compliance period for bid price, it may transfer to The Nasdaq SmallCap Market, provided that it meets all applicable requirements for continued inclusion on the SmallCap Market set forth in Rule 4310(c) (other than the minimum bid price requirement of Rule 4310(c)(4)) or Rule 4320(e), as applicable. A Nasdaq National Market issuer transferring to The Nasdaq SmallCap Market must pay the entry fee set forth in Rule 4520(a). The issuer may also request a hearing to remain on The Nasdaq National Market pursuant to the Rule 4800 Series.

(2) Following a transfer to The Nasdaq SmallCap Market pursuant to paragraph (1), a domestic or Canadian Nasdaq National Market issuer under Maintenance Standard 1 will be afforded the remainder of the initial 180 day compliance period set forth in Rule 4310(c)(8)(D) and may thereafter be eligible for the subsequent 180 day compliance period pursuant to that rule. The 90 day grace period afforded by this rule and any time spent in the hearing process will be deducted from the applicable grace periods on The Nasdaq SmallCap Market. Any issuer that was formerly listed on The Nasdaq National Market, and which transferred to The Nasdaq SmallCap Market pursuant to this paragraph, may transfer back to The Nasdaq National Market without satisfying the initial inclusion criteria if it maintains compliance with the $1 bid price requirement for a minimum of 30 consecutive business days prior to the expiration of the compliance periods described in Rule 4310(c)(8)(D) and if it has continually maintained compliance with all other requirements for continued listing on The Nasdaq National Market since being transferred. An issuer qualifying for such a transfer pursuant to the maintenance requirements is not required to pay the entry fee set forth in Rule 4510(a) upon transferring back to The Nasdaq National Market.

(3) Following a transfer to The Nasdaq SmallCap Market pursuant to paragraph (1), an issuer formerly qualifying for listing on The Nasdaq National Market under Maintenance Standard 2 or a non-Canadian foreign issuer, which is not subject to the $1 bid price requirement, may transfer back to The Nasdaq National Market without satisfying the initial inclusion criteria if it maintains compliance with the applicable bid price requirement for continued listing on The Nasdaq National Market for a minimum of 30 consecutive business days within 360 days following the notification of the initial bid price deficiency, and if it has continually maintained compliance with all other requirements for continued listing on The Nasdaq National Market since being transferred. An issuer qualifying for such a transfer pursuant to the maintenance requirements is not required to pay the entry fee set forth in Rule 4510(a) upon transferring back to The Nasdaq National Market.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Nasdaq's listing standards pertaining to American Depositary Receipts, preferred and secondary classes of stock, bid price compliance and monitoring periods, types of securities eligible for initial inclusion on Nasdaq, and the market capitalization compliance period.

a. Standards for Preferred Stock and Secondary Classes of Common Stock

Nasdaq proposes to establish listing standards pertaining to round lot shareholders, publicly held shares and market value of publicly held shares for preferred stock and secondary classes of common stock. Currently, Nasdaq listing standards do not distinguish between common stock and preferred stock or secondary classes of common stock for purposes of these requirements. Nasdaq believes that it is appropriate to establish separate liquidity standards for preferred and secondary classes of common stock as these securities are generally not as widely held nor as liquid as primary classes of common stock.[5]

The new National Market listing standards would require 100 round lot shareholders; 200,000 publicly held shares; and $4,000,000 in market value of publicly held shares for initial inclusion, and 100 round lot shareholders; 100,000 publicly held shares; and $1,000,000 in market value of publicly held shares for continued inclusion. The round lot shareholders and publicly held shares listing requirements would be the same for the SmallCap Market; however, the market value of publicly held shares requirement would be $2,000,000 and $500,000 for initial and continued inclusion, respectively.

Preferred stock or secondary classes of common stock would be included under the proposed new standards only if the issuer's common stock or common stock equivalent is traded on either Nasdaq or a national securities exchange. In situations where an issuer's common stock or common stock equivalent is not traded on either Nasdaq or a national securities exchange, the preferred stock or secondary class of common stock would need to meet the initial inclusion listing standards pertaining to common stock.

b. Transfer of Maintenance Standard 2 Issuers to the National Market

Nasdaq Rule 4450(e)(2) currently allows a National Market issuer that has transferred to the SmallCap Market to transfer back to the National Market pursuant to the National Market maintenance criteria provided it meets certain conditions, including compliance with the $1.00 bid price requirement for a minimum of 30 consecutive business days prior to the expiration of the compliance periods set forth in Rule 4310(c)(8)(D). In effect, current Rule 4450(e)(2) only applies to National Market issuers that qualify for continued listing under Maintenance Standard 1. In contrast, National Market issuers that qualify for continued listing

[5] The New York Stock Exchange ("NYSE") and the American Stock Exchange ("AMEX") also have separate listing standards for preferred stock. *See* NYSE Listed Company Manual, Section 703.05; Amex Listing Standards, Policies and Requirements, Section 103.

under Maintenance Standard 2[6] must maintain a minimum bid price of at least $3.00. Thus, while a Maintenance Standard 2 issuer with a bid price between $1.00 and $2.99 would be eligible to transfer to the SmallCap Market, it would not be eligible for the compliance period set forth in Rule 4310(c)(8)(D), and, by implication, would not be eligible to transfer back to the National Market without satisfying the initial inclusion criteria.

In order to eliminate the disparate treatment between Maintenance Standard 1[7] and Maintenance Standard 2 issuers, Nasdaq proposes to provide Maintenance Standard 2 issuers the same compliance period and ability to transfer back to the National Market based on the Standard 2 maintenance criteria (including the $3 minimum bid price) as is currently provided for Maintenance Standard 1 issuers.

c. Clarification of the Bid Price Monitoring Period

The majority of companies listed on Nasdaq are required to maintain a $1.00 minimum bid price for continued inclusion although, as noted above, National Market companies listed under Maintenance Standard 2 are required to maintain a bid price of at least $3.00. In accordance with Rules 4310(c)(8)(D) and 4450(e)(2), once an issuer's bid price falls below the applicable standard for 30 consecutive business days, the issuer is automatically afforded a grace period in which to regain compliance. These rules further provide that compliance with the bid price requirement can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the compliance period. The rules currently do not differentiate between companies that must maintain a bid price of at least $1.00 and those that must maintain a $3.00 minimum bid price.

Nasdaq proposes to amend the bid price rule for Maintenance Standard 2 issuers to clearly indicate that the monitoring period will be limited to ten business days. This proposal is based upon Nasdaq's belief that trading in the securities of Maintenance Standard 2 companies is less subject to market manipulation than the trading in the securities of Maintenance Standard 1 issuers. Therefore, Nasdaq believes that a ten-day monitoring period for Maintenance Standard 2 issuers is sufficient to determine the compliance status of these issuers.

Nasdaq further proposes to amend its bid price rules to set forth the following factors that will be considered when determining whether to monitor the bid price beyond 10 business days for those issuers that must maintain a minimum $1.00 bid price: (i) The margin of compliance (the amount by which the price is above the $1.00 minimum standard); (ii) the trading volume (a lack of trading volume may indicate a lack of bona fide market interest in the security at the posted bid price); (iii) the market maker montage (the number of market makers quoting at or above $1.00 and the size of their quotes); and, (iv) the trend of the stock price (is it up or down). Generally, Nasdaq will not monitor an issuer's bid price for more than 20 consecutive business days.[8]

d. Clarification of the Securities that are Eligible for Initial Inclusion on the National Market

The requirements for continued listing on the National Market, as set forth in Rules 4450(a) and (b), list the specific types of securities that are eligible for continued inclusion, specifically, common stock, preferred stock, shares or certificates of beneficial interest of trusts and limited partnership interests in foreign or domestic issues. The requirements for initial inclusion on the National Market, as set forth in Marketplace Rules 4420(a), (b) and (c), however, do not cite the specific types of securities subject to the rule. Accordingly, Nasdaq proposes to amend Rules 4420(a), (b) and (c) in order to specify that these rules apply to the same securities as those cited in Rules 4450(a) and (b). To provide greater transparency, Nasdaq also proposes to amend the initial and continued inclusion requirements to indicate that American Depositary Receipts are also eligible for inclusion on the National Market.

e. Market Capitalization Compliance Standard for the National Market

To provide greater transparency, Nasdaq proposes to amend Rule 4450(e), which sets forth the compliance periods for National Market issuers, to include a compliance period for the market capitalization listing standard. The text of the proposed rule is identical to the standard currently set forth in Rule 4310(c)(8)(C).

f. American Depositary Receipts

Nasdaq proposes to clarify that ADRs must meet the publicly held shares and round lot holders requirements set forth in Rules 4320(e)(4) and (5). As currently drafted, the rules are unclear as to whether ADRs must only meet the distribution requirement set forth in Rule 4320(e)(6) or whether they must also meet the publicly held shares and round lot holders requirements in Rules 4320(e)(4) and (5). In order to avoid any potential confusion, Nasdaq proposes to clarify the requirements with respect to ADRs.

g. Implementation

Nasdaq recognizes the potential impact of the proposed listing standards relating to preferred stock and secondary classes of common stock. Therefore, Nasdaq proposes to provide those issuers that have preferred stock or secondary classes of common stock listed on Nasdaq at the time the rule filing is approved by the Commission eighteen months to come into compliance with these new listing standards. All other changes proposed in the rule filing would become effective at the time of Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[9] which require, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Specifically, the proposed rule changes are designed to provide greater transparency and consistency to Nasdaq's listing standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–89 and should be submitted by December 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31020 Filed 12–6–02; 8:45 am]

BILLING CODE 8010–01–P

[6] Rule 4450(b).

[7] Rule 4450(a).

[8] Nasdaq will monitor an issuer's bid price beyond 20 business days only in unusual circumstances. For example, Nasdaq may monitor an issuer's bid price beyond 20 days if the issuer maintains a minimum bid price of $1.00 for ten consecutive business days and then there is no trading in the issuer's securities for the following ten consecutive business days.

[9] 15 U.S.C. 78o–3(b)(6).

[10] 17 CFR 200.30–3(a)(12)

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before February 7, 2003.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to James O'Connor, Director, Office of Entrepreneurial Development, Small Business Administration, 409 3rd Street, SW., Suite 6200, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: James O'Connor, Director, (202) 205–6929 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: Entrepreneurial Development Management Information System (EDMIS).

Form Nos: 641, 641a.

Description of Respondents: SBA Resource Partners.

Annual Responses: 1,200,000.

Annual Burden: 60,000.

Title: Business Information Center Customer Satisfaction Survey.

Form No: 1916.

Description of Respondents: New established and prospective Small Business Owners Using the services and programs offered by the Business Information Center Program.

Annual Responses: 22,500.

Annual Burden: 1,867.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Cynthia Pitts, Program Analyst, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: Cynthia Pitts, Program Analyst, (202) 205–7570 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: Disaster Home Loan Application.

Form Nos: 5C, 739.

Description of Respondents: Applicant's Requesting SBA Disaster Home Loan.

Annual Responses: 53,975.

Annual Burden: 80,963.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Pam Swilling, Program Review Analyst, Office of Surety Guarantees, Small Business Administration, 409 3rd Street, SW., Suite 8600, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: Pam Swilling, Program Review Analyst, (202) 205–6546 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: Surety Bond Guarantee Assistance.

Form Nos: 990, 991, 994, 994B, 994C, 994F and 994H.

Description of Respondents: Small Business Contractors Applying for the Surety Bond Guarantee Program.

Annual Responses: 195.930.

Annual Burden: 53,375.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Linda Roberts, Director, Office of Security Operations, Small Business Administration, 409 3rd Street, SW., Suite 5600, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: Linda Roberts, Director, (202) 205–6223 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: Statement of Personal History.

Form No: 912.

Description of Respondents: Applicant's for Assistance or Temporary Employment in Disaster.

Annual Responses: 55,000.

Annual Burden: 13,750.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Joan Bready, Business Development Specialist, Office of Small Business Development Centers, Small Business Administration, 409 3rd Street, SW., Suite 4600, Washington DC 20416

FOR FURTHER INFORMATION CONTACT: Joan Bready, Business Development Specialist, (202) 205–7384 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: SBDC Program and Financial Reports.

Form Nos: SF–269, SF–270.

Description of Respondents: SBDC Directors.

Annual Responses: 114.

Annual Burden: 7,524.

Jacqueline White,
Chief, Administrative Information Branch.
[FR Doc. 02–31046 Filed 12–6–02; 8:45 am]
BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3452]

State of Louisiana; Amendment #4

In accordance with a notice received from the Federal Emergency Management Agency, dated November 29, 2002, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to December 14, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is July 3, 2003.

Dated: December 2, 2002.
(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)
Herbert L. Mitchell,
Associate Administrator for Disaster Assistance.
[FR Doc. 02–30985 Filed 12–6–02; 8:45 am]
BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4205]

Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to the Kurdistan Workers' Party (PKK)

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, and in consultation with the Secretary of the Treasury and the Attorney General, I hereby amend the November 2, 2001 designation of the Kurdistan Workers' Party (PKK and other aliases) to add the following names as aliases of the PKK:

Kurdistan Freedom and Democracy Congress

Freedom and Democracy Congress of Kurdistan

KADEK

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: December 3, 2002.
Colin L. Powell,
Secretary of State, Department of State.
[FR Doc. 02–31026 Filed 12–6–02; 8:45 am]
BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending November 29, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–13976.

Date Filed: November 29, 2002.

Parties: Members of the International Air Transport Association.

Subject: TC23/TC123 Africa-TC3, Africa-Japan/Korea and Africa-South East Asia, Mail Vote 249—Africa-Japan/Korea, Mail Vote 250—Africa-South East Asia, PTC23 AFR–TC3 0182 dated 21 October 2002, Africa-Japan/Korea Resolutions r1–r23, PTC23 AFR–TC3 0188 dated 15 November 2002 (Affirmative), PTC23 AFR–TC3 0183 dated 21 October 2002, Africa-South East Asia Resolutions r24–r37, PTC23 AFR–TC3 0190 dated 19 November 2002 (Affirmative), PTC23 AFR–TC3 0180 dated 18 October 2002, Africa-South Asian Subcontinent Resolutions r38–r50, PTC23 AFR–TC3 0181 dated 18 October 2002, Africa-South West Pacific r51–r64, PTC23 AFR–TC3 0189 dated 19 November 2002 Technical Correction, Minutes—PTC23 AFR–TC3 0186 dated 5 November 2002, Tables—PTC23 AFR–TC3 Fares 0081 dated 15 November 2002, PTC23 AFR–TC3 Fares 0082 dated 22 November 2002, PTC23 AFR–TC3 Fares 0078 dated 18 October 2002, PTC23 AFR–TC3 Fares 0079 dated 18 October 2002, *Intended effective date:* 1 April 2003.

Dorothy Y. Beard,
Federal Register Liaison.
[FR Doc. 02–31045 Filed 12–6–02; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending November 29, 2002

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2002–13937.
Date Filed: November 25, 2002.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 16, 2002.
Description: Application of Cool Tours, Inc. d/b/a San Juan Aviation, pursuant to 49 U.S.C. Section 41738 and Subpart B, requesting authority to conduct scheduled passenger operations as a commuter air carrier.

Dorothy Y. Beard,
Federal Register Liaison.
[FR Doc. 02–31044 Filed 12–6–02; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Sanders and Flathead Counties, MT

AGENCY: Federal Highway Administration (FHWA); Department of Transportation.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway improvement project on the Thompson River Road (Forest Highway 56), which is a county road near Thompson Falls, Montana.

FOR FURTHER INFORMATION CONTACT: Joel Petersen, Project Manager or Terri Thomas, Environmental Specialist, Federal Highway Administration, 610 Fifth Street, Vancouver, Washington 98661. Telephone: (360) 619–7700 E-mail: *Terri, Thomas@fhwa.dot.gov.*

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the U.S. Forest Service (FS) and the Montana Department of Transportation (MDT), will prepare an Environmental Impact Statement (EIS) on a proposal to improve the Thompson River Road on the Lolo National Forest from the junction with Montana State Road (SR) 200, four miles east of the town of Thompson Falls, to the junction with US Highway 2, approximately 40 miles west of Kalispell, MT. The project would provide safe, convenient, and efficient travel to and through national forest lands for current and future users. Besides improving access to national forest resources and recreational opportunities and to the Thompson River corridor within private timber lands, the improved road would correct current water quality problems caused by existing gravel roads. The project includes upgrading approximately 43 miles of road and eliminating many miles of nearby private and public gravel roads within the corridor.

Alternatives for improving travel on this road corridor are being developed. Besides the "no build" alternative, two or more build alternatives are being considered. These are more concepts than specifics, but they consist of:

1. Minor widening, straightening, and rehabilitation of the existing Thompson River Road to achieve a consistent, but minimal two-lane gravel road. Bridges would be widened or replaced to accommodate double lanes. Moderate sediment reduction to the nearby river would be achieved, but some maintenance and instability issues would remain.

2. The road would be widened, straightened, reconstructed and paved to meet national "collector" road standards. Major segments of the road would be realigned to follow the already improved private roads in the area. Miles of existing gravel road would be obliterated and substantial water quality improvements would be realized.

3. Other combinations of upgrading segments of the Thompson River Road and connecting them to improved portions of nearby private roads will be considered.

The Thompson River Road corridor passes through important forested areas that are habitat to various wildlife and fish species including Federally listed threatened and endangered species such as the gray wolf, grizzly bear, Canada lynx and Bull Trout. In addition, the area is of cultural importance for Native Americans. Special studies will be conducted to ensure any impacts to these resources are kept to a minimum.

Announcements describing the proposed action and soliciting comments will be sent to the appropriate Federal, state and local agencies. Announcements will also be sent to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public scoping meetings will be held in the spring of 2003 in the communities of Thompson Falls and Libby, Montana. Public notices will be issued to provide the times and places of these meetings.

It is important that the full range of issues related to this proposed action be addressed and that all significant issues be identified. Therefore, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address and phone number provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Dated: Issued on: November 4, 2002.
Ronald Carmichael,
Division Engineer, Western Federal Lands Highway Division, Vancouver, Washington.
[FR Doc. 02–30978 Filed 12–6–02; 8:45 am]
BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–3512]

Reports, Forms, and Recordkeeping Requirements

ACTION: Request for public comment on proposed collections of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under new procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes a collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before February 7, 2003.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to the Docket Section, Room PL401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided by referencing its OMB Clearance Number. It is requested, but not required, that 1 original plus 2 copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Glenn Karr, NHTSA, 400 Seventh Street, SW., Room 6124, Washington, DC 20590. Mr. Karr's telephone number is (202) 366–4800. Please identify the relevant collection of information by referring to its OMB Clearance Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comment on the following proposed collection of information:

National Driver Register Reporting and Inquiry Requirement for 23 CFR Part 1327

Type of Request—Extension of Clearance.

OMB Clearance Number—2127–0001.

Form Number—This collection of information uses no standard form.

Summary of the Collection of Information—Chapter 303 of Title 49, U.S.C. requires the Secretary of Transportation to establish and maintain a National Driver Register to assist chief driver licensing officials of participating states in exchanging information about the motor vehicle driving records of individuals. The chapter requires the chief driver licensing official of each participating state to submit a report to the Secretary of each individual who is denied a motor vehicle operator's license by that State for cause; whose motor vehicle operator's license is revoked, suspended, or cancelled by that State for cause; or who is convicted under the laws of that State of any of the following motor vehicle-related offenses or comparable offenses: (a) Operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; (b) a traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways; (c) failing to give aid or provide identification when involved in an accident resulting in death or personal injury; (d) perjury or knowingly making a false affidavit or statement to officials about activities governed by a law or regulation on the operation of a motor vehicle. It also requires the chief driver licensing official of each participating state to submit an inquiry to the NDR on all applicants for a motor vehicle operator's license, or for renewal of a license, before issuing a motor vehicle operator's license to the applicant. In addition, the Commercial Motor Vehicle Safety Act of 1986 requires the states to submit an inquiry to the NDR for each applicant for commercial driver's license. Respondents may submit the transactions interactively, which creates no burden for the respondent, or in batches which require some manual preparations.

Description of the need for the information and proposed use of the information—The purpose of the NDR, and thus this information collection activity, is to improve traffic safety by serving as a clearinghouse for State driver licensing officials to obtain driver record information about individuals applying for driver's licenses. It assists the driver licensing officials in making the decision about whether to license an individual to operate a motor vehicle. Through amendments to the NDR statute, the activity also serves to prevent the certification of airline pilots, merchant mariners, and locomotive operators, and individuals from being employed as motor vehicle operators and pilots, if they are problem drivers.

The information will be used by NHTSA in exercising its statutory authority to operate the NDR. Without this information, states could issue licenses to individuals who are suspended or revoked in other states.

Description of Likely Respondents (including estimated number and proposed frequency of response to the collection of information)—The respondents are the 51 State driver licensing agencies, including the District of Columbia. Typically, information systems personnel process the reports and inquiries that are submitted to the NDR. The frequency of response for reports varies from daily to monthly. The frequency of response for inquiries is daily.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—The agency estimates the annual reporting burden for this year will be 1979 hours at a cost of $29,225 for the 51 jurisdictions. The cost estimate is based on typical information systems employees' salaries and related expenses.

Authority: 49 U.S.C. 30304; delegation of authority at 49 CFR 1.50

Dated: November 19, 2002.

Raymond P. Owings,

Associate Administrator for Advanced Research and Analysis.

[FR Doc. 02–31043 Filed 12–6–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 197X)]

Union Pacific Railroad Company—Abandonment Exemption—in Santa Clara County, CA

On November 19, 2002, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a portion of the San Jose Industrial Lead from milepost 19.60 near Valbrick to milepost 22.45 near Cahill, a distance of 2.85 miles in Santa Clara County, CA. The line traverses U.S. Postal Service Zip Codes 95110, 95112, and 95125, and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 7, 2003.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than December 30, 2002. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 197X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Mack H. Shumate, Jr., 101 North Wacker Drive, Room 1920, Chicago, IL 60606. Replies to the petition are due on or before December 30, 2002.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*"

Decided: December 2, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–30906 Filed 12–6–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the Fund), a bureau of the Department of the Treasury, is soliciting comments concerning the New Markets Tax Credit (NMTC) Program—Allocation Application.

DATES: Written comments should be received on or before February 7, 2003 to be assured of consideration.

ADDRESSES: Direct all comments to Linda Davenport, Financial Equity Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, Facsimile Number (202) 622–8911.

FOR FURTHER INFORMATION CONTACT: The NMTC Allocation Application may be obtained from the Fund's Web site at *http://www.cdfifund.gov.* Requests for additional information should be directed to Linda Davenport, Financial Equity Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, or by phone to (202) 622–7373.

SUPPLEMENTARY INFORMATION:

Title: New Markets Tax Credit Program—Allocation Application.

OMB Number: 1559–0016.

Abstract: Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (the Act), as enacted by section 1(a)(7) of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554, December 21, 2000), amended the Internal Revenue Code (IRC) by adding IRC § 45D, New Markets Tax Credit. Pursuant to IRC § 45D, the Department of the Treasury, through the Fund, administers the NMTC Program, which will provide an incentive to investors in the form of tax credits over seven years, which is expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in low-income communities. In order to qualify for an allocation of tax credits under the NMTC Program, an entity must be certified as a qualified community development entity and submit an allocation application to the CDFI Fund. Upon receipt of such applications, the CDFI Fund will conduct a competitive review process to evaluate applications for the receipt of NMTC allocations.

Current Actions: Currently reviewing allocation applications.

Type of review: Extension.

Affected Public: Business or other for-profit institutions, not-for-profit institutions and State, local and Tribal entities.

Estimated Number of Respondents: 350.

Estimated Annual Time Per Respondent: 100 hours.

Estimated Total Annual Burden Hours: 35,000 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: Consolidated Appropriations Act of 2001, Pub. L. 106–554; 31 U.S.C. 321.

Dated: November 25, 2002.

Tony T. Brown,

Director, Community Development Financiol Institutions Fund.

[FR Doc. 02–30994 Filed 12–6–02; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the Fund), a bureau of the Department of the Treasury, is soliciting comments concerning the New Markets Tax Credit (NMTC) Program—Community Development Entity (CDE) Certification Application.

DATES: Written comments should be received on or before February 7, 2003 to be assured of consideration.

ADDRESSES: Direct all comments to Linda Davenport, Financial Equity Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, Facsimile Number (202) 622–8911.

FOR FURTHER INFORMATION CONTACT: The CDE Certification Application may be obtained from the Fund's Web site at *http://www.cdfifund.gov.* Requests for additional information should be directed to Linda Davenport, Financial Equity Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, or by phone to (202) 622–7373.

SUPPLEMENTARY INFORMATION:

Title: New Markets Tax Credit Program—Community Development Entity (CDE) Certification Application.

OMB Number: 1559–0014.

Abstract: Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (the Act), as enacted by section 1(a)(7) of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554, December 21, 2000), amended the

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Internal Revenue Code (IRC) by adding IRC § 45D, New Markets Tax Credit. Pursuant to IRC § 45D, the Department of the Treasury, through the Fund, administers the NMTC Program, which will provide an incentive to investors in the form of tax credits over seven years, which is expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in low-income communities.

In order to qualify for an allocation of tax credits under the NMTC Program, an entity must be certified as a qualified community development entity (CDE) and submit an allocation application to the CDFI Fund. Nonprofit entities and for-profit entities may be certified as CDEs by the Fund. Both for-profit and non-profit entities may apply to the Fund for an allocation of NMTCs, but only CDEs that are for-profit entities are eligible to issue qualified equity investments with respect to which investors will be entitled to claim NMTCs. In order to be certified as a CDE, an entity must be a domestic corporation or partnership, that: (1) Has a primary mission of serving or providing investment capital for low-income communities or low-income persons; and (2) maintains accountability to residents of low-income communities through their representation or any governing board of the entity or on any advisory board to the entity.

Current Actions: Currently receiving and processing CDE Certification Applications.

Type of review: Extension.

Affected Public: Business or other for-profit institutions, not-for-profit institutions and State, local and Tribal entities.

Estimated Number of Respondents: 500.

Estimated Annual Time Per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 2,500 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: Consolidated Appropriations Act of 2001, Pub. L. 106–554; 31 U.S.C. 321.

Dated: November 25, 2002.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 02–30995 Filed 12–6–02; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8023

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning form 8023, Elections Under Section 338 for Corporations Making Qualified Stock Purchases.

DATES: Written comments should be received on or before February 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the internet *(Allan.M.Hopkins@irs.gov)*, Internal Revenue Service, Room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Elections Under Section 338 for Corporations Making Qualified Stock Purchases.

OMB Number: 1545–1428.

Form Number: 8023.

Abstract: Form 8023 is used by a corporation that acquires the stock of another corporation to elect to treat the purchase of stock as a purchase of the other corporation's assets. This election allows the acquiring corporation to depreciate these assets and claim a deduction on its income tax return. IRS uses form 8023 to determine if the election is properly made and as a check against the acquiring corporation's deduction for depreciation. The form is also used to determine if the selling corporation reports the amount of sale in its income.

Current Actions: There are no changes being made to form 8023 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 201.

Estimated Time Per Respondent: 12 hr., 44 min.

Estimated Total Annual Burden Hours: 2,559.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 27, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–31054 Filed 12–6–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, January 28, 2003.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227, or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, January 28, 2003, from 1 p.m. e.s.t. to 3 p.m. e.s.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11021, or post comments to the website: www.improveirs.org. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 22, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 02–31052 Filed 12–6–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, January 7, 2003.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Tuesday, January 7, 2003, from 3 p.m. e.s.t. to 4 p.m. e.s.t. via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 4, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 02–31051 Filed 12–6–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, March 19, 2003.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227, or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, March 19, 2003, from 2 p.m. e.s.t. to 4 p.m. e.s.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11021, or post comments to the Web site: *http://www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 27, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 02–31047 Filed 12–6–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, February 19, 2003.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227, or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, February 19, 2003, from 2 p.m. e.s.t. to 4 p.m. e.s.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11021, or post comments to the Web site: *http://www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 27, 2002.

Maryclare Whitehead,

Executive Assistant to the Notionol Taxpayer Advocate.

[FR Doc. 02–31048 Filed 12–6–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, January 15, 2003.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227, or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, January 15, 2003, from 2 p.m. e.s.t. to 4 p.m. e.s.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11021, or post comments to the Web site: *http://www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 27, 2002.

Maryclare Whitehead,

Executive Assistant to the Notionol Taxpayer Advocate.

[FR Doc. 02–31049 Filed 12–6–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee Will Be Conducted (Via Teleconference)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee will be conducted (via teleconference).

DATES: The meeting will be held Friday, January 10, 2003.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Friday, January 10, 2003, from 1 p.m. e.s.t. to 2 p.m. e.s.t. via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 4, 2002.

Maryclare Whitehead,

Executive Assistant to the Notionol Taxpayer Advocate.

[FR Doc. 02–31050 Filed 12–6–02; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 67, No. 236

Monday, December 9, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–7413–9]

RIN 2040–AD06

National Primary Drinking Water Regulations: Minor Revisions to Public Notification Rule, Consumer Confidence Report Rule and Primacy Rule

Correction

In rule document 02–30117 beginning on page 70850 in the issue of Wednesday, November 27, 2002, make the following correction:

Appendix A to Subpart O of Part 141 [Corrected]

On page 70857, in the table, in the first column, in the second entry, in the second line, "andipate" should read, "adipate."

[FR Doc. C2–30117 Filed 12–6–02; 8:45 am]

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To amend the Consumer Product Safety Act to provide that low-speed electric bicycles are consumer products subject to such Act. (Dec. 4, 2002; 116 Stat. 2776)

H.R. 2595/P.L. 107–320
To direct the Secretary of the Army to convey a parcel of land to Chatham County, Georgia. (Dec. 4, 2002; 116 Stat. 2778)

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S. 1946/P.L. 107–325
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

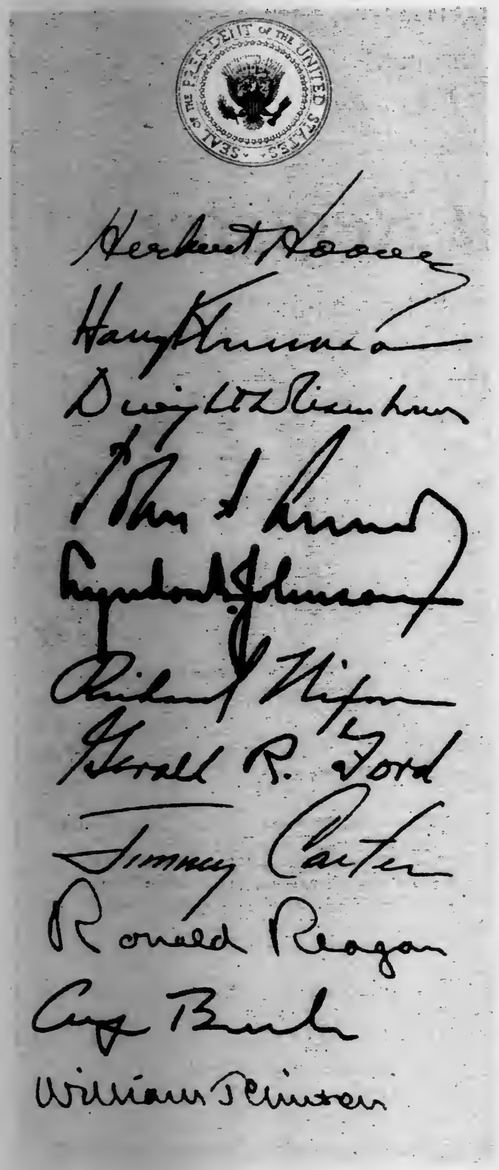
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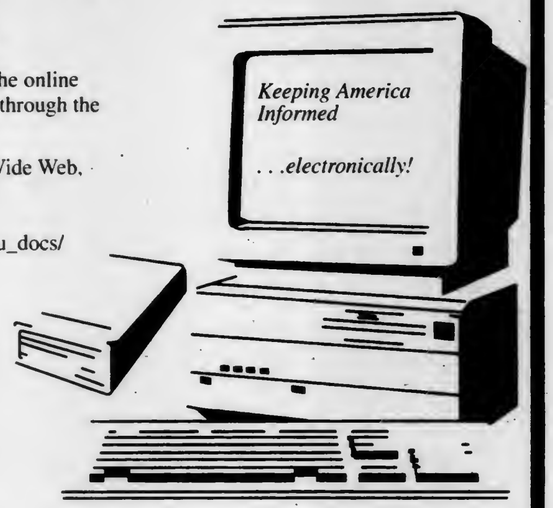
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The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions

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Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions

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REGULATORY INFORMATION SERVICE CENTER

Introduction to The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Regulatory Information Service Center.

ACTION: Introduction to The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions.

SUMMARY: The Regulatory Flexibility Act requires that agencies publish semiannual regulatory agendas describing regulatory actions they are developing (5 U.S.C. 602). Executive Order 12866 "Regulatory Planning and Review" (58 FR 51735; October 4, 1993) and Office of Management and Budget memoranda implementing section 4 of that order establish minimum standards for agencies' agendas, including specific types of information for each entry. Section 4 of Executive Order 12866 also directs that, as part of their submissions to the fall edition of the Unified Agenda, agencies prepare a regulatory plan of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form during the upcoming fiscal year.

The Regulatory Plan (Plan) and the **Unified Agenda of Federal Regulatory and Deregulatory Actions** (Unified Agenda) help agencies fulfill all of these requirements. This publication contains the plans of 27 Federal agencies and the unified agendas of these and 34 other Federal agencies.

ADDRESSES: Regulatory Information Service Center (MI), General Services Administration, 1800 F Street NW., Suite 3039, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: For further information about specific regulatory actions, please refer to the Agency Contact listed for each entry.

To provide comment on or to obtain further information about this publication, contact: Ronald C. Kelly, Executive Director, Regulatory Information Service Center (MI), General Services Administration, 1800 F Street NW., Suite 3039, Washington, DC 20405, (202) 482-7340. You may also send comments to us by e-mail at:

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INTRODUCTION TO THE REGULATORY PLAN AND THE UNIFIED AGENDA OF FEDERAL REGULATORY AND DEREGULATORY ACTIONS

I. What Are The Regulatory Plan and the Unified Agenda?

The Regulatory Plan serves as a defining statement of the Administration's regulatory and deregulatory policies and priorities. The Plan is part of the fall edition of the Unified Agenda. Each participating agency's regulatory plan contains: (1) A narrative statement of the agency's regulatory priorities and, for most agencies, (2) a description of the most important significant regulatory and deregulatory actions that the agency reasonably expects to issue in proposed or final form during the upcoming fiscal year. This edition includes the regulatory plans of 27 agencies.

The Unified Agenda provides information, in a uniform format, about regulations that the Government is considering or reviewing. The Unified Agenda has appeared in the **Federal Register** twice each year since 1983. This edition includes regulatory agendas from 61 Federal agencies. Agencies of the United States Congress are not included.

The Regulatory Information Service Center (the Center) compiles the Plan and the Unified Agenda for the Office of Information and Regulatory Affairs (OIRA), part of the Office of Management and Budget. OIRA is responsible for overseeing the Federal Government's regulatory, paperwork, and information resource management activities, including implementation of E.O. 12866. The Center also provides information about Federal regulatory activity to the President and his Executive Office, the Congress, agency managers, and the public.

The activities included in the Agenda are, in general, those that will have a regulatory action within the next 12 months. Agencies may include activities that will have a longer timeframe than 12 months. Agency agendas also show actions or reviews completed or withdrawn since the last Unified Agenda. The agendas do not contain regulations that were excluded under Executive Order 12866, such as those concerning military or foreign affairs functions or regulations related to agency organization, management, or personnel matters.

Agencies prepared entries for this publication to give the public notice of their plans to review, propose, and issue regulations. They have tried to predict their activities over the next 12 months as accurately as possible, but dates and schedules are subject to change. Agencies may withdraw some of the regulations now under development, and they may issue or propose other regulations not included in their agendas. Agency actions in the rulemaking process may occur before or after the dates they have listed. **The Regulatory Plan** and the Unified Agenda do not create a legal obligation on agencies to adhere to schedules within it or to confine their regulatory activities to those regulations that appear in this publication.

II. Why Are The Regulatory Plan and the Unified Agenda Published?

The Regulatory Plan and the Unified Agenda help agencies comply with their obligations under the Regulatory Flexibility Act and various Executive orders and other statutes.

Regulatory Flexibility Act

The *Regulatory Flexibility Act* requires agencies to identify those rules that may have a significant economic impact on a substantial number of small entities (5 U.S.C. 602). Agencies meet that requirement by including the information in their submissions for the Unified Agenda. Agencies may also indicate those regulations that they are reviewing as part of their periodic review of existing rules under the Regulatory Flexibility Act (5 U.S.C. 610).

Executive Order 12866

Executive Order 12866 entitled "Regulatory Planning and Review" (September 30, 1993; 58 FR 51735) requires covered agencies to prepare an agenda of all regulations under development or review. The order also requires that certain agencies prepare annually a regulatory plan of their "most important significant regulatory actions," which appears as part of the fall Unified Agenda.

Executive Order 13132

Executive Order 13132 entitled "Federalism" (August 4, 1999; 64 FR 43255) directs agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have "federalism implications" as defined in the Order. Under the Order, an agency that is proposing regulations with federalism implications, which either preempt State law or impose nonstatutory unfunded substantial direct compliance costs on State and local governments, must consult with State and local officials early in the process of developing the regulation. In addition, the agency must provide to the Director of the Office of Management and Budget a federalism summary impact statement for such regulations, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which those concerns have been met. As part of this effort, agencies include in their submissions for the Unified Agenda information on whether their regulatory actions may have an effect on the various levels of government and whether those actions have federalism implications.

Unfunded Mandates Reform Act of 1995

The *Unfunded Mandates Reform Act of 1995* (Pub. L. 104-4, title II) requires agencies to prepare written assessments of the costs and benefits of significant regulatory actions "that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more . . . in any 1 year . . . ." The requirement does not apply to independent regulatory agencies, nor does it apply to certain subject areas excluded by section 4 of the Act. Affected agencies identify in the Unified Agenda those regulatory actions they believe are subject to title II of the Act.

Executive Order 13211

Executive Order 13211 entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (May 22, 2001, 66 FR 28355) directs agencies to provide, to the extent possible, information regarding the adverse effects that agency actions may have on the supply, distribution, and use of energy. Under the order, the agency must prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for "those matters identified as significant energy actions." As part of this effort, agencies may optionally include in their submissions for the Unified Agenda information on whether they have prepared or plan to prepare a Statement of Energy Effects for their regulatory actions.

Small Business Regulatory Enforcement Fairness Act

The *Small Business Regulatory Enforcement Fairness Act* (Pub. L. 104-121, title II) established a procedure for congressional review of rules (5 U.S.C. 801 et seq.), which defers, unless exempted, the effective date of a "major" rule for at least 60 days from the publication of the final rule in the **Federal Register**. The Act specifies that a rule is "major" if it has resulted or is likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in that Act. If the issuing agency believes that a rule may be major, it indicates this under the "Priority" heading of the entry. The Act provides that the Administrator of OIRA will make the final determination as to whether a rule is major.

III. How Are The Regulatory Plan and the Unified Agenda Organized?

The Regulatory Plan appears in Part II of this edition of the **Federal Register**. The Plan is a single document beginning with an introduction, followed by a table of contents, followed by each agency's section of the Plan. Following the Plan, each agency's agenda appears as a separate part. The sections of the Plan and the parts of the Unified Agenda are organized alphabetically in four groups: Cabinet departments; other executive agencies; the Federal Acquisition Regulation, a joint authority (Agenda only); and independent regulatory agencies. Agencies may in turn be divided into subagencies.

Each agency's section of the Plan contains a narrative statement of regulatory priorities and, for most agencies, a description of the agency's most important significant regulatory and deregulatory actions. Each agency's part of the Agenda begins with a preamble providing information specific to that part. The Center provides a table of contents that appears in the Agenda after the agency preamble. For each agency that requests it, the table of contents includes a section listing entries that the agency is reporting as withdrawn, duplicate, merged, or transferred. Following the table of contents is a description of each of the agency's regulatory and deregulatory actions.

In the Agenda, each agency presents its entries under one of five headings according to the rulemaking stage of the entry. In the Plan, only the first three stages are applicable. The stages are:

1. *Prerule Stage* — actions agencies will undertake to determine whether or how to initiate rulemaking. Such actions occur prior to a Notice of Proposed Rulemaking (NPRM) and may include Advance Notices of Proposed Rulemaking (ANPRMs) and reviews of existing regulations.
2. *Proposed Rule Stage* — actions for which agencies plan to publish a Notice of Proposed Rulemaking as the next step in their rulemaking process or for which the closing date of the NPRM Comment Period is the next step in the rulemaking process.
3. *Final Rule Stage* — actions for which agencies plan to publish a final rule or an interim final rule or to take other final action as the next step in their rulemaking process.
4. *Long-Term Actions* — items under development but for which the agency does not expect to have a regulatory action within the 12 months after publication of this edition of the Unified Agenda. Some of the entries in this section may contain abbreviated information.
5. *Completed Actions* — actions or reviews the agency has completed or withdrawn since publishing its last agenda. This section also includes items the agency began and completed between issues of the Agenda.

In the Agenda, an agency may use subheadings to identify regulations that it has grouped according to particular topics. When these subheadings are used, they appear above the title of the first regulation in each group.

A bullet (•) preceding the title of an entry indicates that the entry appears in this publication as the start of a new rulemaking cycle.

All entries are numbered sequentially from the beginning to the end of the publication. The sequence number preceding the title of each entry identifies the location of the entry in this edition. This sequence number is used as the reference in the table of contents and in all indexes to enable readers to find entries. Entries in the Plan are also in the Unified Agenda with the same RIN but with different sequence numbers. For these entries, the Plan sequence number is used as the reference in all indexes.

This publication contains six indexes.

- Index A lists entries for which agencies have indicated that they are conducting a periodic review under section 610(c) of the Regulatory Flexibility Act.
- Index B lists the regulatory actions for which agencies believe that the Regulatory Flexibility Act may require a Regulatory Flexibility Analysis.
- Index C lists additional regulatory actions for which agencies have chosen to indicate that some impact on small entities is likely even though a Regulatory Flexibility Analysis may not be required.
- Index D lists entries that agencies believe may have effects on levels of government.

- Index E lists entries that agencies believe may have federalism implications as defined in Executive Order 13132. Index F is a subject index based on the **Federal Register Thesaurus of Indexing Terms**.

IV. What Information Appears for Each Entry?

All entries in the Unified Agenda contain uniform data elements including, at a minimum, the following information:

Title of the Regulation — a brief description of the subject of the regulation, possibly including section 610 review designation. The notation "Section 610 Review" following the title indicates that the agency has selected the rule for its periodic review of existing rules under the Regulatory Flexibility Act (5 U.S.C. 610(c)). Some agencies have indicated completions of section 610 reviews or rulemaking actions resulting from completed section 610 reviews

Priority — an indication of the significance of the regulation. Agencies assign each entry to one of the following five categories of significance.

(1) Economically Significant

As defined in Executive Order 12866, a rulemaking action that will have an annual effect on the economy of $100 million or more or will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The definition of an "economically significant" rule is similar but not identical to the definition of a "major" rule under 5 U.S.C. 801 (Pub. L. 104-121). (See below.)

(2) Other Significant

A rulemaking that is not economically significant but is considered significant by the agency. This category includes rules that the agency anticipates will be reviewed under E.O. 12866 or rules that are a priority of the agency head. These rules may or may not be included in the agency's regulatory plan.

(3) Substantive, Nonsignificant

A rulemaking that has substantive impacts but is neither Significant, nor Routine and Frequent, nor Informational/Administrative/Other.

(4) Routine and Frequent

A rulemaking that is a specific case of a multiple recurring application of a regulatory program in the Code of Federal Regulations and that does not alter the body of the regulation.

(5) Informational/Administrative/Other

A rulemaking that is primarily informational or pertains to agency matters not central to accomplishing the agency's regulatory mandate but that the agency places in the Unified Agenda to inform the public of the activity.

In addition, if an agency believes that a rule may be "major" under 5 U.S.C. 801 (Pub. L. 104-121) because it has resulted or is likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in that Act, the agency indicates this under the "Priority" heading. (The Act provides that the Administrator of the Office of Information and Regulatory Affairs will make the final determination as to whether a rule is major.)

Unfunded Mandates — whether the rule is covered by section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). The Act requires that, before issuing an NPRM likely to result in a mandate that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of more than $100 million in 1 year, agencies, other than independent regulatory agencies, shall prepare a written statement containing an assessment of the anticipated costs and benefits of the Federal mandate. If the agency believes the entry is not subject to the Act, this data element will not be printed.

Legal Authority — the section(s) of the United States Code (U.S.C.) or Public Law (Pub. L.) or the Executive order (E.O.) that authorize(s) the regulatory action. Agencies may provide popular name references to laws in addition to these citations.

CFR Citation — the section(s) of the Code of Federal Regulations that will be affected by the action.

Legal Deadline — whether the action is subject to a statutory or judicial deadline, the date of that deadline, and whether the deadline pertains to an NPRM, a Final Action, or some other action.

Abstract — a brief description of the problem the regulation will address; the need for a Federal solution; to the extent available, alternatives that the agency is considering to address the problem; and potential costs and benefits of the action.

Timetable — the dates and citations (if available) for all past steps and a projected date for at least the next step for the regulatory action. A date printed in the form 12/00/02 means the agency is predicting the month and year the action will take place but not the day it will occur. In some instances, agencies may indicate what the next action will be, but the date of that action is "To Be Determined." "Next Action Undetermined" indicates the agency does not know what action it will take next.

Regulatory Flexibility Analysis Required — whether an analysis is required by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because the rulemaking action is likely to have a significant economic impact on a substantial number of small entities as defined by the Act.

Small Entities Affected — the types of small entities (businesses, governmental jurisdictions, or organizations) on which the rulemaking action is likely to have an impact as defined by the Regulatory Flexibility Act. Some agencies have chosen to indicate likely effects on small entities even though they believe that a Regulatory Flexibility Analysis will not be required.

Government Levels Affected — whether the action is expected to affect levels of government and, if so, whether the governments are State, local, tribal, or Federal.

Federalism — whether the action has "federalism implications" as defined in Executive Order 13132. This term refers to actions "that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." If the action does not have federalism implications, this data element will not be printed. Independent regulatory agencies are not required to supply this information.

Agency Contact — the name and phone number of one or more persons in the agency who is knowledgeable about the rulemaking action. The agency may also provide the

title, address, fax number, e-mail address, and TDD for each agency contact.

Some agencies have provided the following optional information:

URL for More Info — one URL directing the reader to an Internet site that provides more information about the RIN entry.

URL for Public Comments — one URL directing the reader to an Internet site that accepts public comments on the RIN entry.

Additional Information — any information an agency wishes to include that does not have a specific data element.

Compliance Cost to the Public — the estimated gross compliance cost of the action.

Affected Sectors — the industrial sectors that the action may most affect, either directly or indirectly. Affected Sectors are identified by North American Industry Classification System (NAICS) codes.

Energy Effects — an indication of whether the agency has prepared or plans to prepare a Statement of Energy Effects for the action, as required by Executive Order 13211 "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" issued on May 18, 2001 (66 FR 28355; May 22, 2001).

Related RINs— one or more, past or current RIN(s) associated with activity related to this action; such as merged RINs, split RINs, new activity for previously completed RINs, or duplicate RINs.

Entries appearing in **The Regulatory Plan** may include one or more of the following additional data elements, but will, at a minimum, include information in Statement of Need:

Statement of Need — a description of the need for the regulatory action.

Summary of the Legal Basis — a description of the legal basis for the action, including whether any aspect of the action is required by statute or court order.

Alternatives — a description of the alternatives the agency has considered or will consider as required by section 4(c)(1)(B) of E.O. 12866.

Anticipated Costs and Benefits — a description of preliminary estimates of the anticipated costs and benefits of the action.

Risks — a description of the magnitude of the risk the action addresses, the amount by which the agency expects the action to reduce this risk, and the relation of the risk and this risk reduction effort to other risks and risk reduction efforts within the agency's jurisdiction.

V. Abbreviations

The following abbreviations appear throughout this publication:

ANPRM — An Advance Notice of Proposed Rulemaking is a preliminary notice, published in the **Federal Register**, announcing that an agency is considering a regulatory action. The agency issues an ANPRM before it develops a detailed proposed rule. The ANPRM describes the general area that may be subject to regulation and usually asks for public comment on the issues and options being discussed. An ANPRM is issued only when an agency believes it needs to gather more information before proceeding to a notice of proposed rulemaking.

CFR — The Code of Federal Regulations is an annual codification of the general and permanent regulations published in the **Federal Register** by the agencies of the Federal Government. The Code is divided into 50 titles, and each title covers a broad area subject to Federal regulation. The CFR is keyed to and kept up to date by the daily issues of the **Federal Register**.

EO — An Executive order is a directive from the President to executive agencies, issued under constitutional or statutory authority. Executive orders are published in the **Federal Register** and in title 3 of the Code of Federal Regulations.

FR — The **Federal Register** is a daily Federal Government publication that provides a uniform system for publishing Presidential documents, all proposed and final regulations, notices of meetings, and other official documents issued by Federal agencies.

FY — The Federal fiscal year runs from October 1 to September 30.

NPRM — A Notice of Proposed Rulemaking is the document an agency issues and publishes in the **Federal Register** that describes and solicits public comments on a proposed regulatory action. Under the Administrative Procedure Act (5 U.S.C. 553), an NPRM must include, at a minimum:

- a statement of the time, place, and nature of the public rulemaking proceeding;
- a reference to the legal authority under which the rule is proposed; and
- either the terms or substance of the proposed rule or a description of the subjects and issues involved.

PL — A Public Law is a law passed by Congress and signed by the President or enacted over his veto. It has general applicability, unlike a private law that applies only to those persons or entities specifically designated. Public laws are numbered in sequence throughout the 2-year life of each Congress; for example, PL 105-4 is the fourth public law of the 105th Congress.

RFA — A Regulatory Flexibility Analysis is a description and analysis of the impact of a rule on small entities, including small businesses, small governmental jurisdictions, and certain small not-for-profit organizations. The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires each agency to prepare an initial RFA for public comment when it is required to publish an NPRM and to make available a final RFA when the final rule is published, unless the agency head certifies that the rule would not have a significant economic impact on a substantial number of small entities.

RIN — The Regulation Identifier Number is assigned by the Regulatory Information Service Center to identify each rulemaking cycle listed in **The Regulatory Plan** and the Unified Agenda, as directed by E.O. 12866 (section 4(b)). Additionally, OMB has asked agencies to include RINs in the headings of their Rule and Proposed Rule documents when publishing them in the **Federal Register**, to make it easier for the public and agency officials to track the publication history of regulatory actions throughout their development.

Seq. No. — The Sequence Number identifies the location of an entry in this publication

USC — The United States Code is a consolidation and codification of all general and permanent laws of the United States. The USC is divided into 50 titles, and each title covers a broad area of Federal law.

VI. How Can Users Get Copies of the Plan and the Agenda?

Printed copies of this edition of the Federal Register are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9325, (202) 512-1800.

Copies of individual agency materials may be available directly from the agency. Please contact the particular agency for further information.

All editions of **The Regulatory Plan** and the **Unified Agenda of Federal Regulatory and Deregulatory Actions** since October 1995 are also available in electronic form. You can search the Agenda and the Plan on the World Wide Web at:

http://reginfo.gov

You may also search the Plan and the Agenda on the Government Printing Office's GPO Access, which is accessible through:

http://www.access.gpo.gov

Dated: October 30, 2002.
Ronald C. Kelly,
Executive Director.

Federal Register
Vol. 67, No. 236
Monday, December 9, 2002

The Regulatory Plan

THE INTRODUCTION TO THE FALL 2002 REGULATORY PLAN

Federal regulation is a fundamental instrument of national policy. It is one of the three major tools — in addition to spending and taxing — used to implement policy. It is used to advance numerous public objectives, including homeland security, environmental protection, food safety, transportation safety, quality health care, equal employment opportunity, energy security, educational quality, immigration control, and consumer protection. The Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) is responsible for overseeing and coordinating the Federal Government's regulatory policies.

Citizen-centered service is a vital element of the President's Management Agenda and The Regulatory Plan is a vital piece of this initiative. The Regulatory Plan is published as part of the fall edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions. The Regulatory Plan serves as a statement of the Administration's regulatory and deregulatory policies and priorities. The purpose of The Regulatory Plan is to make the regulatory process more accessible to the public and to ensure that the planning and coordination necessary for a well-functioning regulatory process occurs. The Plan identifies regulatory priorities and contains information about the most significant regulatory actions that agencies expect to take in the coming year.

Federal Regulatory Policy

The Bush Administration supports Federal regulations that are sensible and based on sound science, economics, and the law. Accordingly, the Administration is striving for a "smarter regulatory process" that adopts new rules when markets fail to serve the public interest, simplifies and modifies existing rules to make them more effective and/or less costly or less intrusive, and rescinds outmoded rules whose benefits do not justify their costs. In pursuing this agenda, OIRA has adopted an approach based on the principles of regulatory analysis and policy espoused in Executive Order 12866, signed by President Clinton in 1993.

Smart regulatory policy is not uniformly pro-regulation or anti-regulation. It starts, of course, with the authority granted under the law. Within the discretion available to the regulating agency by its statutory authority, agencies apply a number of principles articulated in Executive Order 12866 (as well as other orders, such as Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) in order to design regulations that achieve their ends in the most efficient and economical way — the smartest way. This means bringing to bear on the regulatory problem sound economic principles, the highest quality information, and the best possible science. This is not always an easy task — science and economics may point in very different directions for example — and does not mean the rote application of quantified data to reach policy decisions. In making regulatory decisions, we expect agencies to consider other attributes and factors that cannot be integrated readily in a benefit-cost framework, such as fairness and privacy, as well as benefit and cost items that can be quantified and expressed in monetary units. However, smart regulation is the result of the careful use of all available data and the application of broad principles established by the President.

In pursuing this goal of establishing a smarter regulatory system, the Bush Administration has increased the level of public involvement and trans-

parency in its review and clearance of new and existing regulations. First, OMB has solicited public suggestions for improving the quality of existing regulations. In OMB's draft 2002 Report to Congress on the Costs and Benefits of Regulation, OMB asked for public comment on a number of regulatory issues, including: (1) regulatory programs that need to be extended, modified or rescinded, (2) issues of regulatory analysis that need to be refined in OMB's formal guidance documents to agencies, and (3) ideas for new regulatory priorities that we can suggest to agencies in the form of prompt letters. This year, OMB has made every effort to publicize the public comment period, and at the President's request, OMB for the first time made available an electronic comment form. As a result, the public provided over 1700 comments, compared with 71 comments for last year's report. OMB is in the process of reviewing these comments and identifying candidates for reform. The results of this review will be published in our final report to Congress and shared with the agencies.

Second, OIRA has enhanced the transparency of OMB's regulatory review process to the public. By consulting the Web site, for example, the public can find information on rules that are formally under review at OMB, rules that have recently been cleared, and rules have been returned to agencies for reconsideration. OIRA has also increased the amount of information available on the OIRA Web site. In addition to information on meetings and correspondence, OIRA makes available communications from the OIRA Administrator to agencies, including "prompt letters," "return letters," and "post clearance letters," as well as the Administrator's memorandum to the Presidents Management Council (September 20, 2001) on Presidential review of agency rulemaking by OIRA.

Third, the Bush Administration has moved aggressively to establish basic quality performance goals for all information disseminated by Federal agencies, including information disseminated in support of proposed and final regulations. The Federal agencies have now issued guidelines in effect as of October 1, 2002, under the Information Quality Law to ensure the "quality, objectivity, utility, and integrity" of all Federal information. Under these guidelines, Federal agencies are taking appropriate steps to incorporate the information quality performance standards into agency information dissemination practices, and developing pre-dissemination review procedures to substantiate the quality of information before it is disseminated. OMB worked toward this October 1 deadline for over a year, developing its Government-wide guidelines for the agencies, providing interpretive memos, organizing working groups, and meeting with agencies to give views on what the agency-specific guidelines should say.

In addition, under the agency guidelines, "affected persons" can petition if they believe that scientific, technical, economic, statistical or other information does not meet these standards and if necessary appeal a denial of such a petition. While OMB agreed with agencies to meld the information complaint resolution process into their established notice-and-comment rulemaking procedures, OMB ensured that substantive standards of quality, the information quality standards provided in both the OMB and agency guidelines, would remain applicable to any information disseminated in support of a regulation. Through the combination of ongoing agency commitment, public interaction with the agencies, and OMB oversight, the underlying information and resulting analyses that agencies rely upon in developing regulations should become ever "smarter" and more reliable.

Fourth, early OMB involvement is under way to increase the impact of OMB's analytical perspective. The OIRA Administrator has devised the "prompt letter" to agencies as a new way to suggest promising regulatory priorities. The prompt letter highlights issues that may warrant the attention of regulators. These prompt letters are not meant to have legal authority but are designed to bring issues to the attention of agencies in a transparent manner that permits public scrutiny and debate. Prompt letters may highlight regulations that should be pursued, rescinded, revised, or further investigated.

For example, OIRA's first set of prompts has suggested lifesaving opportunities at FDA, NHTSA, OSHA and EPA. In a letter to FDA, OIRA suggested that priority should be given to completing a promising rulemaking started in the previous Administration, a consumer labeling rule that would require food companies to report the trans-fatty acid content of foods. Trans-fats are now recognized as a significant contributor to coronary heart disease. OSHA has responded to an OIRA prompt letter by notifying each employer in the country of the lifesaving effects and cost-effectiveness of automatic defibrillators, a lifesaving technology designed to save lives during sudden cardiac arrest.

In addition to increasing the level of public involvement and transparency in its review of regulations, the Bush Administration has aggressively sought coordination of Federal agencies to stimulate and foster the development of "smarter" regulations.

OIRA, for example, played a key role in implementing the Card Memorandum, a January 20, 2001, directive from the President's Chief of Staff, Andrew H. Card, Jr., to agency heads initiating the first regulatory action taken by the Bush Administration. As OMB discussed in its 2001 Report to Congress on the Costs and Benefits of Regulations, agencies conducted numerous reviews of new and pending regulations pursuant to the Card memo and a subsequent OMB memorandum to agencies. OIRA provided oversight of these agency actions. The 2002 Regulatory Plan continues OIRA's effort to ensure coordination across Federal agencies in pursuing regulatory policies.

Improvements Made to the 2002 Regulatory Plan

The Administration has modified the format and content of agencies' regulatory plans for the fall 2002 publication. Since The Regulatory Plan is integral in enhancing quality of Federal regulations, OMB instituted a number of changes to ensure that the public is provided with the information needed to understand and comment on the Federal regulatory agenda. Specifically, the 2002 Regulatory Plan has been modified to highlight several themes. These include:

1. Regulations that are related to the events of September 11, 2001.
2. Regulations that are of particular concern to small businesses.
3. Regulations that were among the 71 nominated by the public as reform candidates last year. (See OMB's 2001 Report to Congress on the Costs and Benefits of Regulations.)
4. Issues that have been the subject of an OIRA "prompt letter."

The regulatory improvements proposed in the 2002 Regulatory Plan may be incremental but promise to have a powerful positive long-run effect on the quality of Federal regulation. With regard to Federal regulation, the Bush Administration's objective is quality, not quantity. Those rules that are adopted promise to be more effective, less intrusive, and more cost-effective in achieving national objectives while demonstrating greater durability in the face of political and legal attack.

The Administration's 2002 Regulatory Priorities

The Administration's regulatory priorities can be grouped into five national policy objectives: (1) strengthening economic performance; (2) reducing barriers to the growth of small businesses, (3) improving public health and safety, (4) enhancing environmental protection, and (5) ensuring homeland security. The Administration is committed to pursuing regulatory actions that achieve each of these goals. Below are examples of regulatory priorities in the upcoming year that address each objective.

Strengthening Economic Performance

One of the Administration's primary goals is to strengthen the country's economic performance. Agencies across the Federal Government are actively pursuing this goal through regulatory changes. The Department of Housing

and Urban Development will undergo rulemakings on simplifying and improving the process of obtaining mortgages to reduce settlement costs to consumers. The rule simplifies the mortgage application process and allows a greater understanding of the upfront and long-term costs of a mortgage. The rule should strengthen market competition among mortgage providers and ultimately lower costs to consumers.

Similarly, the Department of Transportation will begin a review of its Computer Reservations System Regulations. The Department regulates computer reservations systems owned by airlines or airline affiliates that are used by travel agencies. The current rules are designed to prevent the systems from unreasonably prejudicing the competitive position of other airlines and to ensure that travel agencies can provide accurate and unbiased information to the public. The Department is reexamining its rules to see whether they should be readopted and, if so, whether they should be changed in response to greater use of the Internet in airline reservations and ticketing and changes in the industry

Reducing Barriers to the Growth of Small Business

This Administration has endeavored to encourage the growth of small businesses in our economy. As President George W. Bush has noted, "Wealth is created by Americans — by creativity and enterprise and risk-taking. But government can create an environment where businesses and entrepreneurs and families can dream and flourish." For example, the Small Business Administration will pursue rulemaking on the HUBZone Empowerment Contracting Program. This regulation will address eligibility requirements for small business concerns owned by Native American tribal governments and community development corporations and the addition of new HUBZone areas called redesignated areas.

Improving Public Health and Safety

The Federal Government's role in improving public health and safety is broad in scope. The Administration's 2002 regulatory priorities include a Department of Labor rulemaking on child labor, Regulations, Orders and Statements of Interpretation. This regulation will set forth the permissible industries and occupations in which 14- and 15-year-olds may be employed, and specify the number of hours in a day and in a week, and time periods within a day, that such minors may be employed.

The Department of Energy is addressing a different area of health and safety in its regulatory proposal to examine radiation protection of the public and the environment. This regulation will set forth basic requirements for ensuring radiation protection of the public and environment in connection with DOE nuclear activities. These requirements stem from the Department's ongoing effort to strengthen the protection of health, safety, and the environment from the nuclear and chemical hazards posed by these DOE activities. Major elements include a dose limitation system for the protection of the public and reporting and monitoring requirements.

The Department of Health and Human Services' Food and Drug Administration (FDA) will issue a rule on Food Labeling Requirements for Trans-Fatty Acids. This rule will specify how trans-fatty acids, which have been shown to have adverse health consequences, should be labeled on food products.

Enhancing Environmental Protection

Environmental protection is an integral consideration in U.S. policies concerning natural resources, human health, economic growth, energy, transportation, agriculture, industry, and international trade. These factors are similarly considered in establishing environmental policy. The Administration is dedicated to enhancing environmental protection through smart regulations, based on the best scientific data available.

The Environmental Protection Agency (EPA) is considering a new rulemaking to reduce the particulate matter and nitrogen oxide emissions from diesel-

powered non-road vehicles and equipment. Non-road engines emit significant amounts of fine particles and nitrogen oxide emissions; these pollutants are associated with a variety of adverse health effects, ranging from lost work days and greater numbers of hospital admissions to premature mortality. The proposal will evaluate not only new emission control devices that would be required for new engines, but also the reductions in sulfur levels that are likely to be needed to enable the control systems to operate effectively. This comprehensive systems approach is similar to that taken for the heavy-duty diesel highway rule for trucks and buses that takes effect in the 2006-2007 timeframe. EPA plans to publish a formal proposal for public comments early next year.

EPA will also propose two companion rules designed to protect drinking water against the risks of both microbial pathogens and the disinfectants that are used to control them. The rules will enhance existing monitoring and treatment requirements to ensure that risks from disinfection byproducts, which have been linked to various adverse health effects, are minimized, without compromising the important protection they provide against pathogens.

Ensuring Homeland Security

After the shocking terrorist attacks of September 11, 2001, the American public looked to the Federal Government to take action not only to prevent future security threats but also to provide relief for individuals affected by the tragedies. In response, the Federal Government revisited its current practices and procedures and sought solutions to address these concerns. Several agencies, including the Departments of Justice, Transportation, Labor, Health and Human Services, Commerce, the Office of Personnel Management, Small Business Administration, and the Office of Management and Budget, issued new regulations.

The Administration will continue to pursue regulatory actions necessary to ensure homeland security. The Department of Transportation proposes to examine limitations on the issuance of commercial drivers' licenses with a hazardous materials endorsement. This rule will implement section 1012 of the USA Patriot Act. It would prohibit States from issuing licenses to operate motor vehicles transporting hazardous materials unless DOT has determined that the operator does not pose a security risk.

The Department of Justice's Immigration and Naturalization Service (INS) will pursue rulemaking related to manifest requirements under section 231 of the Act. This rule will implement section 402 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107-173), which requires the submission of arrival and departure manifests electronically in advance of an aircraft or vessel's arrival in or departure from the United States. This rule also proposes to require manifest data on certain passengers and voyages previously exempt from this requirement. The information required in this rule will assist in the efficient inspection of passengers and crew members and is necessary for the effective enforcement of the immigration laws as part of the larger entry-exit system.

The Food and Drug Administration in the Department of Health and Human Services will issue four rules implementing the Bioterrorism Act of 2002. These rules include one that will authorize FDA to order the detention of food if there is credible evidence that it will create a threat of serious adverse health consequences to humans or animals. Another rule will require the maintenance of records to allow FDA to identify the previous source and subsequent recipient of food including its packaging. FDA will use this information to assess credible threats to human or animal health.

The Administration is committed to: (1) strengthening economic performance; (2) reducing barriers to the growth of small businesses; (3) improving public health and safety; (4) enhancing environmental protection; and (5) ensuring homeland security. Smarter regulatory policies, created through public participation, transparency, and cooperation across Federal agencies, seek to

accomplish these five national objectives. Each of the following department or agency's plans is a reflection of these objectives and provides information of regulatory priorities in the context of specific programs and initiatives.

[FR Doc. 02-28020
Filed 12-06-02; 8:45 am]
BILLING CODE 6820-27-S

Department of Agriculture

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
1	Livestock Mandatory Reporting Program--Lamb Amendment (LS-01-08)	0581-AB98	Proposed Rule
2	National Dairy Promotion and Research Program (DA-02-03)	0581-AC16	Proposed Rule
3	Chronic Wasting Disease in Elk and Deer; Interstate Movement Restrictions and Payment of Indemnity	0579-AB35	Proposed Rule
4	Foot-and-Mouth Disease; Payment of Indemnity	0579-AB34	Final Rule
5	Biological Agents and Toxins	0579-AB47	Final Rule
6	Multi-Family Housing (MFH)	0575-AC13	Proposed Rule
7	Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages	0584-AC90	Proposed Rule
8	Food Stamp Program: Simplification and State Flexibility	0584-AD22	Proposed Rule
9	FSP: High Performance Bonuses	0584-AD29	Proposed Rule
10	FSP: Eligibility and Certification Provisions of the Farm Security and Rural Investment Act of 2002	0584-AD30	Proposed Rule
11	FSP: Quality Control Provisions of the Farm Security and Rural Investment Act of 2002	0584-AD31	Proposed Rule
12	FSP: Employment and Training Program Provisions of the Farm Security and Rural Investment Act of 2002	0584-AD32	Proposed Rule
13	Child and Adult Care Food Program: Improving Management and Program Integrity	0584-AC24	Final Rule
14	Performance Standards for Bacon	0583-AC49	Proposed Rule
15	Egg and Egg Products Inspection Regulations	0583-AC58	Proposed Rule
16	Elimination of Chilling Time and Temperature Requirements for Ready-To-Cook Poultry **(Section 610 Review)**	0583-AC87	Proposed Rule
17	Emergency Regulations To Prevent Meat Food and Meat Products That May Contain the BSE Agent From Entering Commerce	0583-AC88	Proposed Rule
18	Performance Standards for Ready-To-Eat Meat and Poultry Products	0583-AC46	Final Rule
19	Meat Produced by Advanced Meat/Bone Separation Machinery and Recovery Systems	0583-AC51	Final Rule
20	Nutrition Labeling of Ground or Chopped Meat and Poultry Products and Single-Ingredient Products	0583-AC60	Final Rule

Department of Defense

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
21	Programmatic Regulations for the Comprehensive Everglades Restoration Plan	0710-AA49	Final Rule

Department of Education

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
22	Reauthorization of the Educational, Research, Development, Dissemination, and Improvement Act of 1994 **(Section 610 Review)**	1850-AA57	Proposed Rule
23	Reauthorization of Title I of the Elementary and Secondary Education Act of 1965 **(Section 610 Review)**	1810-AA91	Final Rule
24	Reauthorization of the Individuals With Disabilities Education Act **(Section 610 Review)**	1820-AB54	Proposed Rule

Department of Energy

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
25	Energy Efficiency Standards for Residential Furnaces, Boilers, and Mobile Home Furnaces	1904-AA78	Prerule
26	Energy Efficiency Standards for Electric Distribution Transformers	1904-AB08	Prerule
27	Energy Efficiency Standards for Commercial Central Air Conditioning Units and Heat Pumps Rated 65-240 kBtus/Hr	1904-AB09	Prerule
28	Radiation Protection of the Public and the Environment	1901-AA38	Final Rule

Department of Health and Human Services

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
29	Control of Communicable Diseases	0920-AA03	Proposed Rule
30	Possession, Use, and Transfer of Select Agents	0920-AA08	Final Rule
31	Safety Reporting Requirements for Human Drug and Biological Products	0910-AA97	Proposed Rule
32	Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Dietary Ingredients and Dietary Supplements	0910-AB88	Proposed Rule
33	Control of Salmonella Enteritidis in Shell Eggs During Production and Retail	0910-AC14	Proposed Rule
34	Exception From General Requirements for Informed Consent; Request for Comments and Information	0910-AC25	Proposed Rule
35	Bar Code Label Requirements for Human Drug Products	0910-AC26	Proposed Rule
36	Administrative Detention	0910-AC38	Proposed Rule
37	Establishment and Maintenance of Records to Identify Immediate Previous Source and Immediate Subsequent Recipient of Foods	0910-AC39	Proposed Rule
38	Registration of Food and Animal Feed Facilities	0910-AC40	Proposed Rule
39	Establishment of Prior Notification Requirement for All Imported Food Shipments	0910-AC41	Proposed Rule
40	Applications for FDA Approval to Market a New Drug: Patent Listing Requirements and Application of 30-Month Stays on Approval of Abbreviated New Drug Applications	0910-AC48	Proposed Rule
41	Labeling for Human Prescription Drugs; Revised Format	0910-AA94	Final Rule
42	Food Labeling: Trans Fatty Acids in Nutrition Labeling, Nutrient Content Claims, and Health Claims	0910-AB66	Final Rule
43	CGMPs for Blood and Blood Components: Notification of Consignees and Transfusion Recipients Receiving Blood and Blood Components at Increased Risk of Transmitting HCV (Lookback)	0910-AB76	Final Rule
44	Toll-Free Number for Reporting Adverse Events on Labeling for Human Drugs	0910-AC35	Final Rule
45	End Stage Renal Disease (ESRD) Conditions for Coverage (CMS-3818-P) **(Section 610 Review)**	0938-AG82	Proposed Rule
46	National Standard for Identifiers of Health Plans (CMS-6017-P)	0938-AH87	Proposed Rule
47	Health Insurance Reform: Claims Attachments Standards (CMS-0050-P)	0938-AK62	Proposed Rule
48	Organ Procurement Organization Conditions for Coverage (CMS-3064-P)	0938-AK81	Proposed Rule
49	Use of Restraint and Seclusion in Medicare and Medicaid Participating Facilities that Provide Inpatient or Residential Care (CMS-2130-P)	0938-AL26	Proposed Rule
50	Prospective Payment System for Psychiatric Hospitals (CMS-1213-P)	0938-AL50	Proposed Rule
51	Revisions to the Medicare Appeals Process (CMS-4004-P)	0938-AL67	Proposed Rule
52	Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities--Update for FY 2004 (CMS-1469-P)	0938-AL90	Proposed Rule
53	Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2004 Payment Rates (CMS-1471-P)	0938-AL91	Proposed Rule
54	Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2004 (CMS-1476-P)	0938-AL96	Proposed Rule
55	Revisions to Average Wholesale Price Methodology (CMS-1229-P)	0938-AM12	Proposed Rule
56	Electronic Medicare Claims Submission (CMS-0008-P)	0938-AM22	Proposed Rule
57	Revision of Medicare/Medicaid Hospital Conditions of Participation (CMS-3745-F)	0938-AG79	Final Rule
58	Health Insurance Reform: Standard Unique Health Care Provider Identifier (CMS-0045-F)	0938-AH99	Final Rule
59	Security Standards (CMS-0049-F)	0938-AI57	Final Rule
60	Hospital Conditions of Participation: Quality Assessment and Performance Improvements (QAPI) (CMS-3050-F)	0938-AK40	Final Rule
61	Review of National Coverage Determinations and Local Coverage Determinations (CMS-3063-F)	0938-AK60	Final Rule
62	Health Insurance Reform: Modifications to Standards for Electronic Transactions (CMS-0003-F)	0938-AK64	Final Rule
63	Changes to the Hospital Inpatient Prospective Payment System and FY 2004 Rates (CMS-1470-N)	0938-AL89	Final Rule
64	Application of Emergency Medical and Treatment Act (EMTALA) (CMS-1063-F)	0938-AM34	Final Rule

Department of Housing and Urban Development

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
65	Participation in HUD Programs by Faith-Based Organizations; Providing for Equal Treatment for All HUD Program Participants (FR-4782)	2501-AC89	Proposed Rule
66	The Secretary of HUD's Regulation of Fannie Mae and Freddie Mac (FR-4790)	2501-AC92	Proposed Rule

Department of Housing and Urban Development (Continued)

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
67	Disposition of HUD-Owned Single Family Assets in Asset Control Areas (FR-4471)	2502-AH40	Proposed Rule
68	FHA Appraiser Watch Initiative (FR-4744)	2502-AH81	Proposed Rule
69	Appraiser Qualifications for Placement on FHA Single Family Appraiser Roster (FR-4620)	2502-AH59	Final Rule
70	RESPA--Improving the Process for Obtaining Mortgages (FR-4727)	2502-AH85	Final Rule
71	Project-Based Voucher Program (FR-4636)	2577-AC25	Proposed Rule
72	Changes to the Public Housing Assessment System (PHAS)(FR-4707)	2577-AC32	Proposed Rule
73	Streamlining and Deregulation of Public Housing Agency Plans (FR-4788)	2577-AC40	Proposed Rule
74	Deregulation for Small Public Housing Agencies (FR-4753)	2577-AC34	Final Rule

Department of the Interior

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
75	Snowmobile Regulations; Yellowstone and Grand Teton National Parks and John D. Rockefeller Memorial Parkway	1024-AD09	Final Rule
76	Relief or Reduction in Royalty Rates -- Deep Gas Provisions	1010-AD01	Proposed Rule
77	Valuation of Oil from Indian Leases	1010-AD00	Final Rule

Department of Justice

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
78	Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities **(Section 610 Review)**	1190-AA44	Proposed Rule
79	Nondiscrimination on the Basis of Disability in State and Local Government Services **(Section 610 Review)**	1190-AA46	Proposed Rule
80	Carrier Arrival and Departure Electronic Manifest Requirements	1115-AG57	Proposed Rule
81	Revision of the Regulations Concerning F, J, and M Nonimmigrant Classifications	1115-AG55	Final Rule

Department of Labor

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
82	Defining and Delimiting the Term "Any Employee Employed in a Bona Fide Executive, Administrative, or Professional Capacity" (ESA/W-H)	1215-AA14	Proposed Rule
83	Family and Medical Leave Act of 1993	1215-AB35	Proposed Rule
84	Child Labor Regulations, Orders, and Statements of Interpretation (ESA/W-H)	1215-AA09	Final Rule
85	Senior Community Service Employment Program	1205-AB28	Proposed Rule
86	Trade Adjustment Assistance for Workers	1205-AB32	Proposed Rule
87	Labor Certification Process for the Permanent Employment of Aliens in the United States	1205-AA66	Final Rule
88	Rulemaking Relating to Notice Requirements for Continuation of Health Care Coverage	1210-AA60	Proposed Rule
89	Regulations Implementing the Health Care Access, Portability, and Renewability Provisions of the Health Insurance Portability and Accountability Act of 1996	1210-AA54	Final Rule
90	Prohibiting Discrimination Against Participants and Beneficiaries Based on Health Status	1210-AA77	Final Rule
91	Blackout Notice Regulation	1210-AA90	Final Rule
92	Blackout Notice Civil Penalty	1210-AA91	Final Rule
93	Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners	1219-AB29	Prerule
94	Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust	1219-AB14	Proposed Rule
95	Determination of Concentration of Respirable Coal Mine Dust	1219-AB18	Proposed Rule
96	Asbestos Exposure Limit	1219-AB24	Proposed Rule
97	Assigned Protection Factors: Amendments to the Final Rule on Respiratory Protection	1218-AA05	Proposed Rule
98	Fire Protection in Shipyard Employment (Part 1915, Subpart P) (Shipyards: Fire Safety)	1218-AB51	Proposed Rule
99	Occupational Exposure to Crystalline Silica	1218-AB70	Proposed Rule
100	Standards Improvement (Miscellaneous Changes) for General Industry, Marine Terminals, and Construction Standards (Phase II)	1218-AB81	Proposed Rule

Department of Labor (Continued)

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
101	Update and Revision of the Exit Routes Standard	1218-AB82	Final Rule

Department of Transportation

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
102	Computer Reservations System Regulations Comprehensive Review	2105-AC65	Proposed Rule
103	Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil (USCG-1998-3417)	2115-AF60	Final Rule
104	Flight Crewmember Duty Period Limitations, Flight Time Limitations, and Rest Requirements	2120-AF63	Proposed Rule
105	Improved Flammability Standards for Thermal/Acoustic Insulation Materials Used in Transport Category Airplanes	2120-AG91	Final Rule
106	Certification of Airports	2120-AG96	Final Rule
107	Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations **(Rulemaking Resulting From a Section 610 Review)**	2126-AA23	Final Rule
108	Limitations on Issuance of Commercial Driver's License With Hazardous Materials Endorsement	2126-AA70	Final Rule
109	Frontal Offset Protection	2127-AH73	Proposed Rule
110	Standards for Development and Use of Processor-Based Signal and Train Control Systems	2130-AA94	Final Rule
111	Pipeline Safety: Pipeline Integrity Management in High-Consequence Areas (Gas Transmission Pipeline Operators)	2137-AD54	Proposed Rule

Department of the Treasury

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
112	Revision of Brewery Regulations and Issuance of Regulations for Taverns on Brewery Premises (Brewpubs)	1512-AB37	Proposed Rule
113	Commerce in Explosives (Including Explosives in the Fireworks Industry) **(Rulemaking Resulting From a Section 610 Review)**	1512-AB48	Proposed Rule

Department of Veterans Affairs

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
114	Payment or Reimbursement for Emergency Treatment Furnished at Non-VA Facilities	2900-AK08	Final Rule

Environmental Protection Agency

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
115	Pesticides; Emergency Exemption Process Revisions	2070-AD36	Prerule
116	Endocrine Disruptor Screening Program; Priority Setting Criteria	2070-AD59	Prerule
117	Sustainable Futures; Voluntary Pilot Project Under the TSCA New Chemical Program	2070-AD60	Prerule
118	Clean Water Act Definition of Waters of the United States	2040-AB74	Prerule
119	NESHAP: Plywood and Composite Wood Products	2060-AG52	Proposed Rule
120	NESHAP: Reciprocating Internal Combustion Engine	2060-AG63	Proposed Rule
121	NESHAP: Industrial, Commercial, and Institutional Boilers and Process Heaters	2060-AG69	Proposed Rule
122	NESHAP: Surface Coating of Automobiles and Light-Duty Trucks	2060-AG99	Proposed Rule
123	Transportation Conformity Amendments: Response to March 2, 1999, Court Decision	2060-AI56	Proposed Rule
124	Control of Emissions from Spark Ignition Marine Vessels and Highway Motorcycles	2060-AJ90	Proposed Rule
125	Implementation Rule for 8-hour Ozone NAAQS	2060-AJ99	Proposed Rule

Environmental Protection Agency (Continued)

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
126	Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel	2060-AK27	Proposed Rule
127	Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Routine Maintenance, Repair, and Replacement	2060-AK28	Proposed Rule
128	Endocrine Disrupter Screening Program; Implementing the Screening and Testing Phase	2070-AD61	Proposed Rule
129	Modifications to RCRA Rules Associated With Solvent-Contaminated Shop Towels and Wipes	2050-AE51	Proposed Rule
130	Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures	2050-AE84	Proposed Rule
131	Increase Metals Reclamation from F006 Waste Streams	2050-AE97	Proposed Rule
132	Revisions to the Definition of Solid Waste	2050-AE98	Proposed Rule
133	NPDES Permit Requirements for Municipal Sanitary and Combined Sewer Collection Systems, Municipal Satellite Collection Systems, Sanitary Sewer Overflows, and Peak Excess Flow Treatment Facilities	2040-AD02	Proposed Rule
134	National Primary Drinking Water Regulations: Long Term 2 Enhanced Surface Water Treatment Rule	2040-AD37	Proposed Rule
135	National Primary Drinking Water Regulations: Stage 2 Disinfection Byproducts Rule	2040-AD38	Proposed Rule
136	Minimizing Adverse Environmental Impact from Cooling Water Intake Structures at Existing Facilities Under Section 316(b) of the Clean Water Act, Phase 3	2040-AD70	Proposed Rule
137	Watershed Rule: Total Maximum Daily Load (TMDL) Program Revisions	2040-AD82	Proposed Rule
138	Withdrawal of Total Maximum Daily Load (TMDL) Program Revisions	2040-AD84	Proposed Rule
139	Overview of Rulemakings for the Purpose of Reducing Interstate Ozone Transport	2060-AJ20	Final Rule
140	Control of Emissions of Air Pollution From New Marine Compression-Ignition Engines At or Above 30 Liters per Cylinder	2060-AJ98	Final Rule
141	Management of Cement Kiln Dust (CKD)	2050-AE34	Final Rule
142	Standardized Permit for RCRA Hazardous Waste Management Facilities	2050-AE44	Final Rule
143	Office of Solid Waste Burden Reduction Project	2050-AE50	Final Rule
144	National Primary Drinking Water Regulations: Groundwater Rule	2040-AA97	Final Rule
145	Effluent Guidelines and Standards for the Metal Products and Machinery Category, Phases 1 and 2	2040-AB79	Final Rule
146	National Pollutant Discharge Elimination System Permit Regulation and Effluent Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs)	2040-AD19	Final Rule
147	Minimizing Adverse Environmental Impact From Cooling Water Intake Structures at Existing Facilities Under Section 316(b) of the Clean Water Act, Phase 2	2040-AD62	Final Rule
148	Cross-Media Electronic Reporting (ER) and Recordkeeping Rule	2025-AA07	Final Rule

Equal Employment Opportunity Commission

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
149	Coordination of Retiree Health Benefits With Medicare and State Health Benefits	3046-AA72	Proposed Rule

National Archives and Records Administration

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
150	Federal Records Management	3095-AB16	Prerule

Pension Benefit Guaranty Corporation

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
151	Allocation of Assets in Single-Employer Plans; Valuation of Benefits and Assets	1212-AA55	Proposed Rule

Railroad Retirement Board

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
152	Application for Annuity or Lump Sum	3220-AB55	Proposed Rule
153	Account Benefits Ratio	3220-AB56	Proposed Rule
154	Requests for Reconsideration and Appeals Within the Board	3220-AB03	Final Rule

Small Business Administration

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
155	Small Business Lending Companies Regulations	3245-AE14	Proposed Rule
156	HUBZone Empowerment Contracting Program	3245-AE66	Final Rule

Social Security Administration

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
157	Federal Salary Offset (Withholding a Portion of a Federal Employee's Salary To Collect a Delinquent Debt Owed to the Social Security Administration) (721P)	0960-AE89	Proposed Rule
158	Administrative Wage Garnishment (To Repay a Debt Owed to the Social Security Administration) (724P)	0960-AE92	Proposed Rule
159	Evidence Requirement for Assignment of Social Security Administration Numbers (SSNs) and Assignment of SSNs for Nonwork Purposes (751P)	0960-AF05	Proposed Rule
160	Claimant Identification Pilot Projects (937P)	0960-AF79	Proposed Rule
161	Representative Payment Under Titles II, VIII, and XVI of the Social Security Act (949P)	0960-AF83	Proposed Rule
162	Removal of Clothing from the Definitions of Income and In-Kind Support and Maintenance, Exclusions of One Automobile and Household Goods and Personal Effects Under SSI from Resources (950P)	0960-AF84	Proposed Rule
163	OASDI and SSI; Administrative Review Process; Video Teleconferencing Appearances Before Administrative Law Judges of the Social Security Administration (737F)	0960-AE97	Final Rule
164	Revised Medical Criteria for Evaluating Impairments of the Digestive System (800F)	0960-AF28	Final Rule
165	Access to Information Held by Financial Institutions (815F)	0960-AF43	Final Rule
166	New Disability Claims Process--Roles of State Agency (816F)	0960-AF44	Final Rule

National Indian Gaming Commission

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
167	Freedom of Information Act Procedures (Amendments)	3141-AA21	Proposed Rule
168	Debt Collection	3141-AA25	Final Rule

DEPARTMENT OF AGRICULTURE (USDA)

Statement of Regulatory Priorities

The Department of Agriculture will implement the recently enacted Farm Security and Rural Investment Act of 2002 (Farm Bill) through the promulgation of regulations to ensure the viability of the Nation's domestic farm economy and promote and maintain the world's safest, most abundant, and most affordable food supply. USDA is also actively engaged in the Nation's homeland security and will promulgate regulations that protect the food supply from all sources of potential threats.

Farm Bill implementation will be a high priority in 2003 as new regulations are issued and farmers, ranchers, and other USDA customers participate in new and existing Federal farm programs over the next 6 years through direct payments, counter-cyclical payments, and marketing loans. While the Farm Bill and other future legislative initiatives are implemented, the Department is working to reduce the regulatory burden on program participants through focusing as much as possible on outcome-based regulation through implementing more efficient and simplified information collections and the continued migration to efficient electronic services and capabilities.

- USDA will develop new regulations and review existing ones that address the potential threats posed by domestic outbreaks of exotic animal diseases such as Foot-and-Mouth Disease (FMD) and Bovine Spongiform Encephalopathy (BSE).
- In the area of food safety, the Department will continue to refine existing regulations to assist industry in implementing a consistent, science-based process control system that yields the best outcomes. Further, USDA is developing new regulations that address emerging and exotic threats to the safety of the Nation's meat, poultry, and egg products supply.
- The Department is also improving regulations that serve rural communities. Regulations are being streamlined and simplified so that they will be more customer friendly, while providing for more efficient and effective program management.
- Nutrition programs are being improved to strengthen dietary quality for children and low-income participants, while also improving the efficiency and integrity of program operations.

Reducing Paperwork Burden on Farmers

The Department has made substantial progress in implementing the goal of the Paperwork Reduction Act of 1995 to reduce the burden of information collection on the public. The Government Paperwork Elimination Act (GPEA) is leading all agencies in the Department to evaluate how they conduct business and migrate toward electronically oriented methods. The Farm Service Agency, Natural Resources Conservation Service, Rural Development, and Risk Management Agency are also working to implement the Freedom to E-File Act. Freedom to E-File directs the agencies, to the maximum extent practicable, to modify forms into user-friendly formats with user instructions and permits those forms to be downloaded and submitted via facsimile, mail, or similar means. As a result, producers should have the capability to electronically file forms and all other documentation if they so desire. Underlying these efforts will be analyses to identify and eliminate redundant data collections and streamline collection instructions. The end result of implementing both of these pieces of legislation will be better service to our customers so that they can choose when and where to conduct business with USDA.

The Role of Regulations

The programs of the Department are diverse and far reaching, as are the regulations that attend their delivery. Regulations codify how the Department will conduct its business, including the specifics of access to, and eligibility for, USDA programs. Regulations also specify the responsibilities of State and local governments, private industry, businesses, and individuals that are necessary to comply with their provisions.

The diversity in purpose and outreach of our programs contributes significantly to the USDA being near the top of the list of departments that produce the largest number of regulations annually. These regulations range from nutrition standards for the school lunch program, to natural resource and environmental measures governing national forest usage and soil conservation, to regulations protecting American agribusiness (the largest dollar value contributor to exports) from the ravages of domestic or foreign plant or animal pestilence, and they extend from farm to supermarket to ensure the safety, quality, and availability of the Nation's food supply.

Many regulations function in a dynamic environment, which requires their periodic modification. The factors determining various entitlement, eligibility, and administrative criteria often change from year to year. Therefore, many significant regulations must be revised annually to reflect changes in economic and market benchmarks.

Almost all legislation that affects departmental programs has accompanying regulatory needs, often with a significant impact. The Farm Security and Rural Investment Act of 2002, Public Law 107-171, has had considerable regulatory consequences. This key legislation affects most agencies of USDA and resulted in the addition of new programs, the deletion of others, and modification to still others. In addition, the Agricultural Risk Protection Act of 2000, Public Law 106-224, provides further assurances that agricultural programs will continue to achieve long-term improvements, particularly in reforms to the crop insurance programs. This legislation also provides for improvements in market loss and conservation assistance, crop and livestock disease pest protection, marketing program enhancements, child nutrition program measures, pollution control, and research and development for biomass.

Major Regulatory Priorities

Seven agencies are represented in this regulatory plan as well as the Rural Development mission area. They include the Farm Service Agency, the Food and Nutrition Service, the Food Safety and Inspection Service, the Animal and Plant Health Inspection Service, the Agricultural Marketing Service, the Natural Resources Conservation Service, and the Rural Housing Service. This document represents summary information on prospective significant regulations as called for in Executive Order 12866. A brief comment on each of the seven agencies and Rural Development appears below, which summarizes the Agency mission and its key regulatory priorities. The Agency summaries are followed by the regulatory plan entries.

Farm Service Agency

Mission: The Farm Service Agency's (FSA) mission is to stabilize farm income; to assist owners and operators of farms and ranches to conserve and enhance soil, water, and related natural resources; to provide credit to new or

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existing farmers and ranchers who are temporarily unable to obtain credit from commercial sources; and to help farm operations recover from the effects of disaster, as prescribed by various statutes.

Priorities: FSA's priority for 2003 will be to fully implement the new Farm Bill, the Farm Security and Rural Investment Act of 2002. The 2002 Farm Bill, which was enacted on May 13, 2002, governs Federal farm programs for the next 6 years. Among its major provisions is to provide income support for wheat, feed grains, upland cotton, rice, and oilseeds through three programs: Direct payments, counter-cyclical payments, and marketing loans. Support for peanuts is changed from a price support program with marketing quotas to a program with marketing loans, counter-cyclical payments, direct payments, and a quota buyout. These are entirely new programs that require complete revision of the existing program regulations. FSA will develop and issue the regulations and make program funds available to eligible clientele in as timely a manner as possible. As these and future changes required by Administration initiatives and new legislation are made, the Agency's focus will be to implement the changes in such a way as to provide benefits while minimizing program complexity and regulatory burden for program participants. Opportunities will be taken to clarify, simplify, and reduce confusion whenever possible. However, the Agency's ability to promote new policy initiatives when implementing these regulations is limited, due to the need to adhere to legislative intent. Therefore, due to their economic magnitude, they are noted here to acknowledge their significance in the overall USDA regulatory plan but are not further listed in the body of the plan that appears below.

The 2002 Farm Bill exempts most of the new programs from the requirements of the Paperwork Reduction Act of 1995. However, FSA is still committed to the Act's goal of reducing the information collection burden on the public. New information collections are being designed to minimize our customers' time and cost to participate in the programs, while maintaining program integrity. In addition, FSA is streamlining its existing farm loan-making and servicing regulations and reducing the information collection burden associated with the programs. FSA plans to reduce the number of CFR parts containing its farm loan program regulations by approximately 70 percent. FSA also hopes to achieve a significant reduction in the total number of CFR pages by removing administrative provisions and internal policy and eliminating duplicative material. Furthermore, FSA intends to improve the clarity of the farm loan program regulations by following the guidelines established in the Plain Language in Government Writing Initiative.

As part of this project, all farm loan program regulations and internal Agency directives will be completely rewritten.

FSA has completed the streamlining of the Guaranteed Loan Program, the Indian Tribal Land Acquisition Loan Program, the Emergency Loan Program, and portions of the Direct Loan Program. The balance of the Direct Loan Program will be published in two separate rulemaking packages. Two proposed rules, one streamlining the loan-making process for farm ownership and operating loans and servicing of direct loans and another streamlining special loan programs, including boll weevil eradication, drainage and irrigation, and grazing association, will be published by the end of 2002.

Finally, FSA continues to be a full participant in the USDA Electronic Access Initiative and continues to work with other USDA county-based agencies to implement the Government Paperwork Elimination Act as we migrate to an environment where a greater proportion of information exchange and transaction processing occurs through off-site alternatives. Key components include: Providing farm program information, availability, and eligibility requirements electronically; providing on-line information collection and transaction processing capability; and developing information collection and management partnerships to integrate information collection and sharing mechanisms among service providers. In a continuing effort to accomplish these goals, all FSA information collections, forms, and procedures are reviewed for their applicability to electronic submission and collection. FSA has identified and made accessible on-line approximately 143 forms used by farm program and farm loan program customer groups. Approximately 90 of these forms are available for electronic submission. The agency intends to provide full electronic access and submission capabilities to the commodity operations customer group by October 2003.

Food and Nutrition Service

Mission: FNS increases food security and reduces hunger in partnership with cooperating organizations by providing children and low-income people access to food, a healthful diet, and nutrition education in a manner that supports American agriculture and inspires public confidence.

Priorities: In addition to responding to provisions of legislation authorizing and modifying Federal nutrition assistance programs, FNS' 2003 regulatory plan supports the broad goals and objectives in the Agency's strategic plan, which include:

- *Improved nutrition of children and low-income people.* This goal represents FNS' efforts to improve nutrition by providing access to program benefits (Food Stamps, WIC food vouchers, school lunch, and other child nutrition programs and commodities), including nutrition education, quality meals, and other benefits. It includes three major objectives: 1) Improve food security, which reflects nutrition assistance benefits issued to program eligibles; 2) improve the healthfulness of program participants' food choices, which represents efforts to improve nutrition knowledge and behavior through nutrition education and breastfeeding promotion; and 3) improve nutritional quality of meals, food packages, commodities, and other program benefits, which represents efforts to ensure that program benefits meet appropriate nutrition standards and help to effectively improve nutritional intakes for program participants.
- In support of this goal, FNS plans to propose rules implementing provisions of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171), as well as under other authorities, that will give States additional new flexibility by streamlining complex rules, simplifying program administration, supporting work, and improving access to benefits. This includes provisions to restore food stamp eligibility to certain legal immigrants who have lived in this country for at least 5 years, as well as immigrant children and disabled without a waiting period. Other changes will be implemented to reduce reporting burden on working families.
- The Agency also plans a proposed rule to amend regulations governing food packages provided in WIC to improve their variety and consistency with the *Dietary Guidelines for Americans* and to increase the nutritional adequacy of food packages for those with special medical needs.
- *Improved Stewardship of Federal Funds.* This goal represents FNS' ongoing commitment to maximize the accuracy of benefits issued, maximize the efficiency and effectiveness of program operations, and minimize participant and vendor fraud. It includes two major objectives: 1) Improved benefit accuracy and reduced fraud, which represents the Agency's effort to reduce participant and Agency errors and to control Food Stamp and WIC trafficking and participant, vendor, and administrative agency fraud and 2) improved efficiency of program administration, which represents the Agency's efforts to streamline program operations and improve program structures as necessary to maximize their effectiveness.

In support of this goal, FNS plans to propose rules implementing provisions of Public Law 107-171 that give States substantial new flexibility by streamlining some of the Food Stamp Program's complex rules, making it easier to administer, less error prone, and more accessible to those eligible for its benefits. Another proposed rule implementing this law will offer most States some relief from current sanction rules related to Food Stamp payment errors, allowing them to focus on program improvements, and will introduce new incentives to reward States for high performance on a variety of important program outcomes. FNS also plans to publish a final rule making changes in Child and Adult Care Food Program (CACFP) designed to improve management and financial integrity in this important program.

Food Safety and Inspection Service

Mission: The Food Safety and Inspection Service (FSIS) is responsible for ensuring that meat, poultry, and egg products in commerce are safe and not adulterated or misbranded.

Priorities: FSIS is reviewing its regulations to eliminate duplication of and inconsistency with its own and other agencies' regulations and to improve the consistency of the regulations with the Agency's pathogen reduction and hazard analysis and critical control point (PR/HACCP) regulations. HACCP is a science-based process control system for producing safe food products. FSIS-inspected meat and poultry establishments are required to develop and implement HACCP plans incorporating the controls the establishments have determined are necessary and appropriate to produce safe products. Under the HACCP regulations, the establishments are able to tailor their control systems to their particular needs and processes and to take advantage of the latest technological innovations.

FSIS is continuing to revise its numerous command-and-control regulations, which prescribe the exact means establishments must use to ensure the safety of their products. Some of these regulations specify precise time-and-temperature combinations for processing meat, poultry, or egg products. Others require the prior approval by FSIS of equipment and procedures, in effect assigning to the Agency the responsibility for determining the means used by establishments to comply with the regulations. As a general matter, such command-and-control regulations are incompatible with HAACP because they deprive plants of the flexibility to innovate and they undercut the clear delineation of responsibility for food safety.

In addition to undertaking regulatory amendments based on the results of its review activities, FSIS has been developing regulations for emergency use. Such regulations are an outcome of the Agency's proactive, risk-based policy toward emerging and exotic threats to the safety of the Nation's meat, poultry, and egg product supply.

Following are some of the Agency's recent and planned initiatives to convert command-and-control regulations to performance standards, to streamline and simplify the regulations, and to make the meat, poultry products, and egg products inspection regulations more consistent with the pathogen reduction and HACCP systems final rule:

FSIS has proposed a rule clarifying requirements for meat produced using advanced recovery systems by replacing the compliance program parameters in the current regulations with non-compliance program parameters in the current regulations with non-compliance criteria for bone solids, bone marrow, and neural tissue. Establishments would have to have process control procedures in place before labeling or using the product derived by use of such systems.

FSIS has proposed a rule to establish food safety performance standards for all processed ready-to-eat meat and poultry products and for partially heat-treated meat and poultry products that are not ready-to-eat.

FSIS will propose removing from the poultry products inspection regulations the requirement for ready-to-cook poultry products to be chilled to 40 degrees Fahrenheit or below within certain time periods according to the weight of the dressed carcasses.

In addition, FSIS will be proposing to require shell egg packers and federally inspected egg product plants to develop and implement HACCP systems and sanitation standard operating procedures. The Agency will be proposing pathogen reduction performance standards for pasteurized shell eggs and egg products. Further, the Agency will be proposing to remove requirements for approval by FSIS of egg-product plant drawings, specifications, and equipment prior to use, and to end the system for pre-marketing approval of labels for egg products.

Besides the foregoing initiatives, FSIS has proposed requirements for the nutrition labeling of ground or chopped meat and poultry products and single-ingredient products. This proposed rule would require nutrition labeling, on the label or at the point-of-purchase, for the major cuts of single ingredient, raw products and would require nutrition information on the label of ground or chopped products.

Finally, FSIS is planning to propose stand-by emergency procedures for dealing with any occurrences of bovine spongiform encephalopathy (BSE), known as mad-cow disease, to prevent any meat or meat products of animals affected by BSE from entering commerce. To date, no cases of BSE have been found in the United States herd. Any final rule that may be developed after the proposal would become effective when and if a native case of BSE is detected in the United States.

Post-September 11, 2001, initiatives: FSIS has not proposed new regulations in response to the September 11, 2001, events. The Agency has, however, issued non-regulatory security guidelines for food plants within the Agency's jurisdiction.

Small business concerns: Nearly all FSIS regulations affect small businesses in some way because the majority of FSIS-inspected establishments and other FSIS-regulated entities are small businesses. FSIS makes available to small and very small establishments technical materials and guidance on how to comply with FSIS regulations.

The Agency's post-September 11, 2001, security guidance materials were prepared with small food producing establishments in mind.

Animal and Plant Health Inspection Service

Mission: The major part of the mission of the Animal and Plant Health Inspection Service (APHIS) is to protect U.S. animal and plant resources from destructive pests and diseases. APHIS conducts programs to prevent the introduction of exotic pests and diseases into the United States and monitors and manages pests and diseases existing in this country. These activities enhance agricultural productivity and competitiveness and contribute to the national economy and the public health.

Priorities: APHIS is reviewing its existing regulations and developing new regulatory initiatives to ensure that a comprehensive framework is in place to address the threats posed by exotic and endemic animal diseases. Prompted in part by recent outbreaks of foot-and-mouth disease elsewhere in the world, APHIS plans to amend its regulations for the cooperative control and eradication of animal diseases to ensure their adequacy with regard to the valuation of animals and materials, as well as the payment of indemnity, should an outbreak of foot-and-mouth disease occur in the United States. APHIS has also published, or is developing, proposed and final rules pertaining to the group of neurological diseases known as transmissible spongiform encephalopathies, which includes scrapie (a disease of sheep and goats), bovine spongiform encephalopathy (BSE, which affects cattle), and chronic wasting disease (a disease of deer and elk). In addition, APHIS, in coordination with the Department's Food Safety Inspection Service, and with input from the public, is considering various options for addressing the disease risks that may be presented by nonambulatory animals and dead stock should BSE be introduced into the United States. APHIS is also working in conjunction with the Centers for Disease Control and Prevention to establish regulations for the possession, use, and transfer of biological agents and toxins that could pose a severe disease or pest risk to animals and plants or their products. In addition, APHIS plans to strengthen its regulations for the importation of plants and plant products, including unmanufactured wood, in response to new pest detections and the adoption, recently, of an international standard for treatment of solid wood packing material.

APHIS documents published in the **Federal Register** and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agricultural Marketing Service

Mission: The Agricultural Marketing Service (AMS) facilitates the marketing of agricultural products in domestic and international markets, while ensuring fair trading practices and promoting a competitive and efficient marketplace to the benefit of producers, traders, and consumers of U.S. food and fiber products.

Priorities: (A) The recently enacted Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) amended the Dairy Production and Stabilization Act of 1983 (the authorizing legislation for the National Dairy Promotion and Research Program (NDP&RP). The 2002 Farm Bill requires that the NDP&RP be amended to provide for: (1) Implementation of a mandatory 15-cent per hundred weight assessment on dairy products imported into the 48 contiguous States; (2) importer representation on the National Dairy Board; (3) importer voter eligibility during referenda; (4) the definition of imported dairy products to include casin; and (5) the order must be implemented in a manner consistent with the U.S. trade obligations. A proposed rule providing interested parties an opportunity to submit comments on the implementation of the mandatory assessment on imported dairy products will be published fall 2002.

(B) Livestock Mandatory Reporting-Lamb Amendments. These proposed amendments to the lamb reporting requirements are necessary to ensure that consistent, accurate, and easily understood information on the marketing of domestic and imported boxed lamb cuts is available to producers, packers, and other lamb market participants. AMS believes that the lamb industry would be better served by decreasing the lamb importer threshold to 2,500 metric tons of lamb meat products and redefining carlot of boxed lamb cuts to increase the ability to report import product and to reduce the volume of inappropriate or incompatible data submitted. AMS is presently working on burden-related issues placed on importers with the Office of Management and Budget. The Agency expects to have the proposed rule ready for departmental review by late fall.

(C) AMS Program Rulemaking Pages. Most of AMS' rules as published in the **Federal Register** are available on the Internet at: http://www.ams.usda.gov/rulemaking. This site also includes commenting instructions and addresses, links to news releases and background material, and comments received on various rules.

Natural Resources Conservation Service

Mission: The Natural Resources Conservation Service (NRCS) mission is to provide leadership in a partnership effort to help people conserve, maintain, and improve our natural resources and environment.

Priorities: NRCS's priority for 2003 will be to implement fully the conservation provisions of the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill), while continuing to meet the needs of landowners and land users who participate in non-Farm Bill programs. The 2002 Farm Bill was enacted on May 13, 2002, and governs Federal farm programs for the next 6 years. Title II of the 2002 Farm Bill reauthorized and made amendments to existing conservation programs, authorized new conservation programs, and expanded the overall funding for conservation.

The changes made by title II necessitate the revisions of existing regulations and the promulgation of proposed and final regulations to implement new programs. The 2002 Farm Bill exempts administration of title II from the requirements of the Paperwork Reduction Act of 1995. However, NRCS is still committed to the Act's goal of reducing the information collection burden on the public. New information collections are being designed to minimize program participants' time and cost to participate in the programs, while maintaining program integrity. NRCS is also committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which require Government agencies in general and NRCS in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. NRCS is designing its program forms to allow the public to conduct business with NRCS electronically.

The NRCS plans to publish the following proposed or final rules during FY 2003:

1. Conservation of Private Grazing Land (CPGL) Final Rule
2. Environmental Quality Incentives Program (EQIP) Proposed Rule and Final Rule
3. Technical Service Provider Assistance (TSPA) Interim Final Rule and Final Rule
4. Conservation Security Program (CSP) Proposed Rule and Final Rule
5. Farmland Protection Program (FPP) Proposed Rule and Final Rule
6. Emergency Watershed Protection (EWP) Program Proposed Rule and Final Rule
7. Highly Erodible Land and Wetland Conservation (HEL/WC) Final Rule
8. Categorical Minimal Effects (CME) Final Rule

The rulemaking for EQIP, EWP, and HEL/WC consist of changes being made to current regulations. The remainder of the rulemaking involves the creation of new regulatory provisions. NRCS will develop and issue the regulations and make program funds available to program participants in as timely a manner as possible. Opportunities will be taken to clarify, simplify, and reduce confusion whenever possible.

Rural Development

Mission: Enhance the ability of rural communities to develop, to grow, and to improve their quality of life by targeting financial and technical resources in areas of greatest need through activities of greatest potential.

Priorities: Rural Development priorities for 2003 will include timely implementation of the 2002 Farm Bill sections for which it is responsible. In addition to the regulations identified in the regulatory agenda, there are several sections of titles VI and IX of the Farm Bill for which work plans are being developed for future regulatory action.

Rural Housing Service

Mission: As part of USDA Rural Development, Rural Housing Service (RHS) works to improve the quality of life in rural areas. RHS helps rural communities and individuals by providing loans and grants for housing and community facilities. The Agency provides funding for single-family homes, apartments for low-income persons or the elderly, housing for farm laborers, childcare centers, fire and police stations, hospitals, libraries, nursing homes, and schools.

Priorities: A key priority for RHS is to identify ways to improve customer service, ensure borrower accountability and performance, and streamline the administration of its Multi-Family Housing (MFH) programs. These programs include the section 515 Rural Rental Housing (RRH) loan program, the section 514/516 Farm Labor Housing loan and grant programs, and the section 521 Rental Assistance (RA) program.

The new regulation substantially updates the current regulations and programs to current industry practices. Many of the current regulations had not been substantially updated for over 15 years. The new regulation consolidates the 13 current regulations that govern the programs. The new regulation and three handbooks substantially reduce the number of pages published in the Code of Federal Regulations.

Prior USDA Office of Inspector General (OIG) program audits identified weaknesses in the regulations that let some program participants commit program fraud, waste, and abuse. The new regulation was developed to correct such problems.

Significant automation initiatives have been implemented since the current regulations were written. The regulation addresses the permanent implementation of several pilot automation projects along with other innovative e-Government improvements.

The regulation focuses on the challenge of the Agency's aging portfolio. Areas such as conducting comprehensive needs analyses, reserve account administration, financial statement standards, and tenant quality of life issues are addressed.

As part of the regulatory process, RHS has solicited input from MFH program stakeholders, including borrowers (who are also owners of the projects), management agents, tenant representatives, State housing finance agencies, accounting firms, and the USDA, Office of Inspector General (OIG). The Agency has held several stakeholders meetings on issues that needed to be considered befo proposing to revise the regul tions. Stakeholders concurred with RHS that the MFH regulations were in need of a substantial revision, particularly with regard to asset management, housing preservation, and financial reporting.

USDA—Agricultural Marketing Service (AMS)

PROPOSED RULE STAGE

1. LIVESTOCK MANDATORY REPORTING PROGRAM—LAMB AMENDMENT (LS-01-08)

Priority:

Other Significant

Legal Authority:

7 USC 1621

CFR Citation:

7 CFR 59

Legal Deadline:

None

Abstract:

The Agricultural Marketing Service is amending the Livestock Reporting Act of 1999 regulations. The amendments would: (1) Amend regulations requiring lamb packers to report negotiated purchases of live lamb and sales of carcass lamb; (2) adjust requirements for reporting of imported and domestic boxed lamb sales; and (3) make adjustments to input data collection forms. The Act was implemented April 2, 2001, and requires packers to report purchase and sales transactions for cattle, swine, sheep, boxed beef, and lamb meat.

Statement of Need:

These proposed amendments and adjustments to the lamb reporting requirements of the Livestock Mandatory Reporting (LMR) regulations are necessary to ensure that consistent, accurate, and easily understood information on the marketing of domestic and imported boxed lamb cuts is available to producers, packers, and other lamb market participants. The amendment is intended to address problems that have occurred in the collection and publishing of lamb market information in the period since the implementation of the LMR on April 2, 2001.

Summary of Legal Basis:

The Livestock Mandatory Act of 1999 (Act) was enacted into law on October 22, 1999 (Pub. L. 106-78; 113 Stat. 1188; 7 U.S.C. 1635-1636(h)) as an amendment to the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 et seq.). The Act gives the Secretary of Agriculture (Secretary) the latitude to require mandatory reporting

of market information on lamb transactions.

Alternatives:

None.

Anticipated Cost and Benefits:

The Agricultural Marketing Service believes that the lamb industry would be better served by decreasing the lamb importer threshold to 2,500 metric tons of lamb meat products and redefining carlot of boxed lamb cuts to increase the ability to report import product and reduce the volume of inappropriate or incompatible data.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

State

Federalism:

This action may have federalism implications as defined in EO 13132.

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USDA—AMS

2. • NATIONAL DAIRY PROMOTION AND RESEARCH PROGRAM (DA-02-03)

Priority:

Other Significant

Legal Authority:

7 USC 450 et seq

CFR Citation:

7 CFR 1150

Legal Deadline:

NPRM, Statutory, November 2002, Proposed Rule necessary for industry input.

Final, Statutory, February 2003, Final Rule to be issued after 60-day comment period.

Abstract:

Recently enacted Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) amended the Dairy Production and Stabilization Act of 1983 (the authorizing legislation for the National Dairy Promotion and Research Program) concerning implementation of mandatory 15-cent per hundred weight assessment on dairy products imported into the 48 contiguous States and other related amendments.

Statement of Need:

The National Dairy Promotion and Research Program must be amended to conform with the recently enacted Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), which amended the Dairy Promotion and Research Programs. The amendments relate to implementation of a mandatory 15-cent per hundred weight assessment on dairy products imported into the 48 contiguous States and other related amendments.

Summary of Legal Basis:

The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) mandated changes to the National Dairy Promotion and Research Program.

Alternatives:

None.

Anticipated Cost and Benefits:

The incremental costs associated with the assessments collection on imported dairy products by U.S. Customs will be paid from the assessments collected. It is estimated that the fees will range between $30,000-$40,000 monthly after start-up. The annual assessment collected will be approximately $9 million.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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USDA—Animal and Plant Health Inspection Service (APHIS)

PROPOSED RULE STAGE

3. CHRONIC WASTING DISEASE IN ELK AND DEER; INTERSTATE MOVEMENT RESTRICTIONS AND PAYMENT OF INDEMNITY

Priority:

Other Significant

Legal Authority:

7 USC 8301 to 8316

CFR Citation:

9 CFR 55; 9 CFR 81

Legal Deadline:

None

Abstract:

APHIS is proposing to establish minimum requirements for the interstate movement of farmed elk and deer and to provide indemnity for the depopulation of farmed elk and deer that have been infected with, or exposed to, chronic wasting disease (CWD).

Statement of Need:

CWD has been confirmed in free-ranging deer and elk in a limited number of counties in northeastern Colorado and southeastern Wyoming and has also been diagnosed in farmed elk herds in South Dakota, Nebraska, Oklahoma, Montana, and Colorado. This project includes an interim rule to establish indemnity for voluntary depopulation of CWD-affected herds, followed by a proposed rule to establish a voluntary certification program and interstate movement restrictions on captive elk and deer. APHIS believes that establishing restrictions on the interstate movement of infected and exposed farmed elk and deer, coupled with the payment of some level of indemnity for infected and exposed animals, will encourage producers who are not yet engaging in surveillance activities to begin doing so. To date, the level of support from States and the farmed cervid industry for such a program has been high. Without a Federal program in place to depopulate infected and exposed animals, the movement of infected animals into new herds and States with no known infection will continue or may even accelerate. APHIS needs to take action to document the prevalence of the disease and to prevent its further spread.

Summary of Legal Basis:

The Secretary of Agriculture, either independently or in cooperation with other Federal agencies, States or political subdivisions of States, national governments of foreign countries, local governments of foreign countries, domestic or international organizations, domestic or international associations, Indian tribes, and other persons, may carry out operations and measures to detect, control, or eradicate any pest or disease of livestock of the United States, including the payment of claims arising out of the destruction of any animal, article, or means of conveyance, if necessary to prevent the dissemination of the pest or disease of livestock (7 U.S.C. 8305 to 8306, 8308, 8310, and 8315).

Alternatives:

APHIS has identified two additional alternatives to our selected action. The first—to maintain the status quo—was rejected because it would not address the animal disease risks associated with CWD. The second option would have been to provide financial and technical assistance to the cervid industry for continuation and expansion of a variety of herd management practices to reduce or eliminate CWD. Although this option may be less costly than the option chosen by APHIS, this option was not selected because it would not advance CWD eradication as quickly or effectively as the chosen option. However, APHIS will continue to work with industry to develop voluntary herd management practices to preserve and increase the reduction in CWD levels that the proposed program is expected to achieve.

Anticipated Cost and Benefits:

The presence of CWD in elk and deer causes significant economic and market losses to U.S. producers. Recently Canada has begun to require, as a condition for importing U.S. elk into Canada, that the animals be accompanied by a certificate stating that the herd of origin is not located in Colorado or Wyoming, and CWD has never been diagnosed in the herd of origin. The Republic of Korea recently suspended the importation of deer and elk and their products from the United States and Canada. Fear of CWD can severely affect the domestic prices for deer and elk, as it is more difficult for producers to sell cervid that are associated with any hint of exposure to the disease.

Risks:

Aggressive action in controlling this disease now will decrease the chance of having to deal with a much larger, widespread, and costly problem later, such as the situation with bovine spongiform encephalopathy ("mad cow disease") in Europe. Although there is currently no evidence that CWD is linked to disease in humans, or in domestic animals other than deer and elk, a theoretical risk of such a link exists.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/08/02	67 FR 5925
Interim Final Rule Comment Period End	04/09/02	
NPRM	02/00/03	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Undetermined

Additional Information:

APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

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RIN: 0579–AB35

USDA—APHIS

FINAL RULE STAGE

4. FOOT-AND-MOUTH DISEASE; PAYMENT OF INDEMNITY

Priority:

Other Significant

Legal Authority:

7 USC 8301 to 8317

CFR Citation:

9 CFR 53

Legal Deadline:

None

Abstract:

APHIS is proposing to amend its regulations for the cooperative control and eradication of foot-and-mouth disease (FMD) and other serious diseases, including both cooperative programs and extraordinary emergencies. The purpose of this rule is to remove possible sources of delay in eradicating foot-and-mouth disease, should an occurrence of that disease occur in this country, so that eligible claimants will be fully compensated while at the same time protecting the U.S. livestock population from the further spread of this highly contagious disease.

Statement of Need:

APHIS has recently reviewed these regulations to determine their sufficiency should an occurrence of foot-and-mouth disease occur in the United States. This review has been prompted, in part, by the series of outbreaks of foot-and-mouth disease that have taken place in the United Kingdom and elsewhere around the world. Based on this review, APHIS has determined that changes to the regulations are needed with regard to the valuation of animals and materials, as well as the payment of an indemnity to those persons who suffer loss of

property as a result of foot-and-mouth disease.

Summary of Legal Basis:

The Secretary of Agriculture, either independently or in cooperation with other Federal agencies, States or political subdivisions of States, national governments of foreign countries, local governments of foreign countries, domestic or international organizations, domestic or international associations, Indian tribes, and other persons, may carry out operations and measures to detect, control, or eradicate any pest or disease of livestock that threatens the livestock of the United States, including the payment of claims arising out of the destruction of any animal, article, or means of conveyance, if necessary to prevent the dissemination of the pest or disease of livestock (7 U.S.C. 8306, 8308, 8310, and 8315).

Alternatives:

The rule comprises several regulatory changes, each of which is intended to facilitate the control and eradication of foot-and-mouth disease, should an outbreak of this disease occur in the United States. Reasonable alternatives to the rule would be to not make any changes at all and rely on the current regulations as applied to cooperative programs and extraordinary emergencies.

Anticipated Cost and Benefits:

The rule is expected to affect livestock operations and Federal and State government agencies. The vast majority of livestock operations are small entities. The potential costs and benefits would depend upon the characteristics of the outbreak and mitigation strategy. The proposed changes would strengthen programs for the control and eradication of FMD by broadening USDA's options. The changes would also lessen the chances that FMD's eradication would be delayed.

Risks:

The changes contained in the rule would be particularly important in removing sources of delay in achieving FMD eradication, should an outbreak of foot-and-mouth disease occur in the United States. An effective response in the early stages of such an outbreak greatly reduces the risk of the disease's wider dissemination.

Timetable:

Action	Date	FR Cite
NPRM	05/01/02	67 FR 21934
NPRM Comment Period Extended	06/28/02	67 FR 43566
NPRM Comment Period End	07/01/02	
NPRM Comment Period End	07/31/02	
Final Rule	04/00/03	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Additional Information:

APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

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RIN: 0579–AB34

USDA—APHIS

5. • BIOLOGICAL AGENTS AND TOXINS

Priority:

Other Significant

Legal Authority:

7 USC 8401

CFR Citation:

7 CFR 331; 9 CFR 121

Legal Deadline:

None

Abstract:

In accordance with the Agricultural Bioterrorism Protection Act of 2002, APHIS has established, by regulation, an initial list of biological agents and toxins determined to have the potential to pose a severe threat to animal or plant health or to animal or plant products. The Act requires that all persons in possession of any listed biological agent or toxin must, within 60 days of the publication of the interim rule, notify the Secretary of such possession. The interim rule establishes APHIS' initial list of biological agents and toxins and provides guidance on the manner in which the required notice is to be provided. A second interim rule, also required by the Act, will follow this interim rule and will establish regulations regarding the possession, use, and transfer of listed biological agents and toxins.

Statement of Need:

The second interim rule referred to in the abstract is required under section 212 of the Public Health Security and Bioterrorism Response Act of 2002 (Pub. L. 107-188), which requires the Secretary of Agriculture to establish regulations by interim rule for the possession, use, and transfer of biological agents and toxins that she determines has the potential to pose a severe threat to animal or plant health or to animal or plant products. Among other things, the regulations must require registration with the Secretary and include appropriate safeguard and security measures, including data base checks by the Attorney General of individuals and facilities seeking to register with the Secretary. The Act imposes a deadline of December 9, 2002, for the promulgation of the regulations and requires an effective date of February 12, 2003.

Summary of Legal Basis:

The President signed into law the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 on June 12, 2002. Title II of Public Law 107-188 "Enhancing Controls on Dangerous Biological Agents and Toxins" (sections 201 through 231) provides for the regulation of certain biological agents and toxins by the Department of Health and Human Services (subtitle A, sections 201-204) and the Department of Agriculture (subtitle B, sections 211-213) and provides for interagency coordination between the two departments regarding overlap agents and toxins (subtitle C, section 221). Subtitle D (section 231) provides for criminal penalties regarding certain biological agents and toxins. For the Department of Health and Human Services, the Centers for Disease Control and Prevention has been designated as the agency with primary responsibility for implementing the provisions of the Act; the Animal and Plant Health Inspection Service (APHIS) is the agency fulfilling that role for the Department of Agriculture.

Alternatives:

APHIS' Veterinary Services and Plant Protection and Quarantine programs have had regulations in place for some years that require prior authorization from APHIS for the importation or interstate movement of certain animal disease agents and plant pests. Those regulations further require that appropriate safeguards be applied to the handling and containment of those animal disease agents and plant pests. While the biological agents and toxins that the Secretary has determined have the potential to pose a severe threat to animal or plant health or to animal or plant products have historically fallen within the scope of the existing regulations, those regulations do not contain the individual/facility registration requirements, physical security, and other considerations that the Public Health Security and Bioterrorism Response Act of 2002 requires the Agency to address in the second interim rule.

Anticipated Cost and Benefits:

APHIS is currently preparing a regulatory flexibility analysis and cost/benefit analysis to accompany the second interim rule. Among the costs we anticipate will be examined in those analyses are the costs associated with compliance with the administrative requirements of the rule (e.g., salary costs associated with the time needed to complete required forms), as well as costs that may be incurred in the course of making any necessary upgrades to the physical, computer, and biological security capabilities of facilities that possess, use, or transfer listed biological agents and toxins. The regulations are intended to increase the security over such agents and toxins and establish a comprehensive national data base of the location and characterization of those agents and toxins and the identities of those in possession of them. These enhanced security measures will prevent the use in domestic or international terrorism of those biological agents and toxins, thus protecting human, animal, and plant health and preventing the economic impacts that would be associated with the release of those agents and toxins.

Risks:

The regulations will include appropriate safeguard and security requirements for persons possessing, using, or transferring a listed agent or toxin commensurate with the risk such agent or toxin poses to public health and safety (including the risk of use in domestic or international terrorism).

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/12/02	67 FR 52383
Interim Final Rule Effective	08/12/02	
Interim Final Rule Comment Period End	10/11/02	
Second Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

State, Federal

Additional Information:

APHIS documents published in the Federal Register, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

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RIN: 0579–AB47

USDA—Rural Housing Service (RHS)

PROPOSED RULE STAGE

6. MULTI-FAMILY HOUSING (MFH)

Priority:

Other Significant

Legal Authority:

5 USC 301; 42 USC 1490a; 7 USC 1989; 42 USC 1475; 42 USC 1479; 42 USC 1480; 42 USC 1481; 42 USC 1484; 42 USC 1485; 42 USC 1486

CFR Citation:

7 CFR 1806 subpart A; 7 CFR 1955 subpart B; 7 CFR 1955 subpart C; 7 CFR 1956 subpart B; 7 CFR 1965 subpart B; 7 CFR 1965 subpart E; 7 CFR 1930 subpart C; 7 CFR 1944 subpart D; 7 CFR 1944 subpart E; 7 CFR 1951 subpart C; 7 CFR 1951 subpart D; 7 CFR 1951 subpart K; 7 CFR 1951 subpart N; 7 CFR 1955 subpart A

Legal Deadline:

None

Abstract:

The Rural Housing Service (RHS) proposes to consolidate regulations pertaining to section 515 Rural Rental Housing, section 514 Farm Labor Housing Loans, section 516 Farm Labor Housing Grants, and section 521 Rental Assistance Payments. Fourteen published regulations will be reduced to one regulation and handbooks for program administration. This will simplify loan origination and portfolio management for applicants, borrowers, and housing operators, as well as Rural Development field staff. This will also provide flexibility for program modifications to reflect current and foreseeable changes. It will also reduce regulations that address solely internal Agency program administration. Finally, the regulation will be more customer friendly and responsive to the needs of the public.

Statement of Need:

The new regulation for the program known as the Multi-Family Housing Loan and Grant Programs will be more user friendly for lenders, borrowers, and Agency staff. These changes are essential to allow for improved service to the public and for an expanded program with increased impact on rural housing opportunities without a corresponding expansion in Agency staff. The regulations will be shorter, better organized, and more simple and clear. Many documentation requirements will be eliminated or consolidated into more convenient formats.

Summary of Legal Basis:

The existing statutory authority for the MFH programs was established in title V of the Housing Act of 1949, which gave authority to the RHS (then the Farmers Home Administration) to make

housing loans to farmers. As a result of this Act, the Agency established single-family and multifamily housing programs. Over time, the sections of the Housing Act of 1949 addressing MFH have been amended a number of times. Amendments have involved issues such as the provision of interest credit, broadening definitions of eligible areas and populations to be served, participation of limited profit entities, the establishment of a rental assistance program, and the imposition of a number of restrictive use provisions and prepayment restrictions.

The MFH program, as it exists today, began in the 1960s. Its first loans were primarily for small rental projects. In the mid-sixties, the program expanded and changed from making small rural rental housing loans to individuals to making larger loans to organizations, such as limited partnerships. Regulations for the program have been amended several times over the years to reflect statutory changes and to revise the Agency's procedures for administering the program. The most recent significant regulatory revisions took place after the Appropriations Act of 1997 directed the Agency to implement six reforms to the MFH program. This was accomplished with the publication of a final rule for the reforms on December 23, 1997. Reforms addressed such items as equity skimming, review of other Government assistance, the maximum loan terms, and the use of a Notice of Funding Availability and competitive process to award funds for new projects.

Statistics show that the MFH program fills a significant need for rural Americans. Two primary types of households occupy RHS-financed, section 515 rental housing—elderly households who have decided that they prefer renting over continued ownership of their own dwellings and younger female and male headed households that do not have sufficient resources available to purchase their own home. Additionally, the sections 514/516 Farm Labor Housing loan and grant programs are the only Federal programs available for the provision of housing to farmworkers, one of the most chronically underhoused populations within America.

Alternatives:

The proposed rule is important to all program participants, beneficiaries, and agency staff. Any budgetary impacts of the regulation are minor and reflect good business practices rather than policy shifts. Funding for major program needs as rehabilitation, preservation, and future new construction may be addressed through the budget process rather than publication of the rule. To not publish the rule will substantially restrict RHS' ability to effectively administer the programs and cost the Agency significant credibility with the public and oversight organizations.

If the Agency were not to publish the proposed rule, the 25 percent reduction in Government burden not achieved would be significant. During the past 6 years, the number of staff-years assigned MFH functions has decreased approximately 25 percent. RHS' limited staff resources could be utilized more effectively on activities that would improve program performance by decreasing and simplifying the paperwork for the MFH program.

Current regulations include standards for physical condition, maintenance, and reserve levels to address the physical condition of the property. However, projects are experiencing physical maintenance problems due to their average age. One of the sources of this problem is that project reserves are inadequate to cover ongoing capital needs. Current regulations require that borrowers contribute initially 1 percent annually of total development costs toward a reserve for project improvements until a total of 10 percent is reached. While borrowers are permitted to request adjustments to their reserve contributions, there is no systematic provision for reevaluating reserves over the life of the project. A recent study found that while an average MFH project has accumulated $5,000 in reserves per unit at the end of 10 years and maintained at that level thereafter, the full cost of rehabilitation is likely to be close to $16,000 per unit. When rehabilitation is needed and the reserve is inadequate to meet the need, the project owner usually applies for a subsequent loan, which, if received, requires that rents be increased. In recent years, RHS has been experiencing a growing number of requests for subsequent loans and rent increases to cover costs of rehabilitation, while funding for such loans has been limited. For example, the President's budget for 2002 provides funding to rehabilitate 4,115 units, which is consistent with the funding received in recent years. However, at that rate, it will take more than 109 years to cycle once through the entire portfolio.

Consistently, RHS is taking several steps to link reserve levels more closely to projects' capital needs. The proposed rule allows a life cycle costs analysis to be used to establish the initial reserve amount needed to meet the capital needs for new projects. For existing projects, the proposed rule requires that any servicing action that involves additional agency funds must take into account physical needs of the project, based on a capital needs assessment. The proposed rule also allows borrowers with existing projects to include the cost of capital needs assessments in their budgets, which is expected to focus attention on the use of such assessments. Alternatively, by not publishing the proposed rule, properties financed under the programs may deteriorate.

Anticipated Cost and Benefits:

Based on analysis of the proposed rule, the following impacts may occur, some of which could be considered significant:

There would be cost savings due to reduced paperwork, estimated to be about $1.8 million annually for the public and about $10.1 million for the Government.

Rents for about half the 459,000 units in MFH projects would likely be increased by an average of about $15 per month. This estimate combines the impacts on rents of two different changes—an increase in reserve requirements for project improvements from $5,000 to $10,000 per unit and a change in RHS' policies relating to the investment of funds in reserves accounts. The latter change is expected to increase interest earnings on reserve accounts from 2 percent currently earned to 6 percent, with 25 percent of the earnings becoming eligible to be taken out of the accounts for owners to pay taxes and the rest remaining for improvements.

Government costs for rental assistance payments would increase by at least $23 million annually, and those for section 8 project-based assistance would increase by about $4 million annually.

Tenants of an estimated 79,500 units, about half the 159,000 units that do not receive rental assistance payments or similar assistance from HUD, would have to pay higher rents of about 5 percent. This amounts to an annual cost of about $14 million for these tenants. Most of these tenants are expected to remain in the projects because rents would remain competitive.

Increasing the reserve requirements would provide additional funds for improving projects. However, the full impact of this change is not expected to be reached until 10 years after it is implemented. Thus, projects that are in need of immediate rehabilitation will likely remain short of adequate funds for making needed improvements in the near term. Only a substantial increase in funding for rehabilitation loans would help resolve this problem.

Allowing project improvement needs to be considered in RHS' servicing actions could result in increased write-downs of the $12 billion MFH portfolio. This potential impact cannot be easily estimated.

Project owners who have or soon will meet the 20-year restriction on the use of their projects for low-income housing will have a clearer picture of RHS' policies in trying to maintain these projects in the program. In particular, establishment of a 15-month limit on waiting for incentives to be offered to them to stay in a program should help them make decisions on either staying in the program or prepaying their loans and possibly converting the projects to other uses.

Risks:

The risk associated with this regulatory initiative is that some program participants may be faced with increased replacement reserve requirements without sufficient cashflow in the property to make the deposits. The Agency believes that the need to adequately address project physical replacement needs offsets this risk. The Agency also believes that for the three-quarters of the properties that have deep tenant subsidies, this impact will be mitigated as rents can be increased in those situations without impacting the affordability of the units to eligible program beneficiaries.

The primary risk to the Agency is if the proposed rule is not implemented. Without the streamlining, program improvements and focus on current industry practices, including the increased use of third-party funds to rehabilitate program properties that are included in the regulation, the underlying assets for the loans and grants made under the programs will deteriorate as the properties age. This will cause a decrease in the ability of the Agency to provide safe, decent, and sanitary housing to program beneficiaries.

The loans made to recipients will become undersecured as the properties' values decrease. Lastly, there will be a greater propensity of borrowers to elect to either default on their loans or to pay off loans and remove their properties from the stock of affordable housing.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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USDA—Food and Nutrition Service (FNS)

PROPOSED RULE STAGE

7. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC): REVISIONS IN THE WIC FOOD PACKAGES

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 1786

CFR Citation:

7 CFR 246

Legal Deadline:

None

Abstract:

This proposed rule will amend regulations governing the WIC food packages to disallow low-iron WIC formulas in food packages for infants; revise the maximum monthly allowances and minimum requirements for certain WIC foods; revise the substitution rates for certain WIC foods and allow additional foods as alternatives; make technical adjustments in all of the food packages to accommodate newer packaging and physical forms of the WIC foods; add vegetables as a food category in Food Packages III-VII for women and children; require that State agencies make available the full maximum foods allowed in each package; revise the criteria for developing State agency proposals for alternative food packages to accommodate participant food preferences more effectively; revise the purpose, content, and requirements for Food Package III; and address general provisions that apply to all the food packages. These revisions will improve the likelihood that WIC recipients achieve the food servings recommendations of the Dietary Guidelines for Americans and nutritional recommendations, providing WIC participants with a wider variety of foods, accommodating newer packaging and physical forms of WIC foods, and providing WIC State agencies with greater flexibility in prescribing food packages, especially to accommodate participants with hardships or cultural/food preferences. (99-006)

Statement of Need:

While WIC has been successful in many areas, obesity and inappropriate dietary patterns have become equal, if not greater, problems for many in WIC's target population. WIC food packages and nutrition education are the chief means by which WIC affects the dietary quality and habits of participants. Results of a recent WIC study found that the supplemental food package is consistently ranked by pregnant and postpartum women as the leading positive attribute of the program. Therefore, revised food packages, which will foster greater consistency with the Dietary Guidelines for Americans, are an appropriate response to further increase the positive effects of the program among the WIC eligible population.

The overarching objective of this rule is to improve disease prevention and nutritional status by improving dietary quality and nutritional adequacy of the WIC food packages by:

1. Improving the manner in which the nutrients lacking in the target population's diet are provided by revising food packages to reflect more closely the Dietary Guidelines for Americans as represented by the diet recommendations of the Food Guide Pyramid; and

2. Increasing the nutritional adequacy of the WIC food packages for medically needy participants.

Summary of Legal Basis:

The WIC Program was established to provide nutritious supplemental foods, nutrition education, and referrals to related health and social services to low-income pregnant, breastfeeding, and non-breastfeeding postpartum women, infants, and children up to age 5. Section 17 of the Child Nutrition Act of 1966 (as amended, 42 U.S.C. 1786) clearly established the WIC Program as a supplemental nutrition program designed to provide nutrients determined by nutritional research to be lacking in the diets of the WIC target population. WIC law requires that, to the extent possible, the fat, sugar, and salt content of WIC foods be appropriate. The law gives substantial latitude to the Department in designing WIC food offerings but obligates the Department to prescribe foods that effectively and economically supply the target nutrients.

Alternatives:

None.

Anticipated Cost and Benefits:

None.

Risks:

This rule is intended to improve the nutritional status and dietary patterns of the WIC target population, as a response to the threat of increasing risk factors for nutrition-related diseases—obesity, diabetes, coronary heart disease, stroke, and cancer, to name a few—in the WIC eligible population.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	04/00/03	
Final Action	01/00/04	
Final Action Effective	03/00/04	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

State, Local, Tribal, Federal

Federalism:

This action may have federalism implications as defined in EO 13132.

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RIN: 0584–AC90

USDA—FNS

8. FOOD STAMP PROGRAM: SIMPLIFICATION AND STATE FLEXIBILITY

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

7 USC 2011 to 2036

CFR Citation:

7 CFR 272; 7 CFR 273

Legal Deadline:

None

Abstract:

This action will 1) propose to streamline the regulations by removing unnecessary or redundant provisions and reorganizing several sections; 2) propose to increase State flexibility by moving overly prescriptive regulations; 3) re-propose several provisions that were proposed in a previous rule, the Noncitizen Eligibility Certification Provisions (NECP) of Public Law 104-193, as amended by Public Laws 104-208, 105-33, and 105-185, published on February 29, 2000, but were not accepted in the final NECP rule published on November 21, 2001; 4) propose to remove or revise several provisions that were finalized in the NECP final rule; and 5) propose to incorporate current policy from the Food Stamp Program's Policy Interpretation Response System (PIRS). (01-018)

Statement of Need:

This rule is discretionary in nature. However, it simplifies the food stamp regulations and allows State flexibility in administering the program.

Summary of Legal Basis:

The legal basis for this rule is Public Law 104-193, as amended by Public Laws 104-208, 105-33, and 105-185.

Alternatives:

This rule is discretionary in nature; therefore it is not mandatory that we publish it.

Anticipated Cost and Benefits:

Undetermined

Risks:

The FSP provides nutrition assistance to millions of Americans nationwide—working families, eligible non-citizens, and elderly and disabled individuals. Many low-income families don't earn enough money and many elderly and disabled individuals don't receive enough in retirement or disability benefits to meet all of their expenses and purchase healthy and nutritious meals. The FSP serves a vital role in helping these families and individuals achieve and maintain self-sufficiency and purchase a nutritious diet. This rule is intended to simplify the regulations and allow State flexibility in administering the program, thus decreasing barriers to access benefits.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
NPRM Comment Period End	05/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State, Local, Tribal, Federal

Federalism:

Undetermined

URL For Public Comments:

http://www.fns.usda.gov/fsp/

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RIN: 0584–AD22

USDA—FNS

9. • FSP: HIGH PERFORMANCE BONUSES

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

PL 107-171

CFR Citation:

7 CFR 272; 7 CFR 275

Legal Deadline:

None

Abstract:

This action will propose implementation of the high performance bonuses as provided for in the Farm Security and Rural Investment Act of 2002 for States that demonstrate high or improved performance in administration of the Food Stamp Program. This action will propose the measurement criteria for fiscal year 2005 and beyond. (02-006)

Statement of Need:

This rule is mandated by Public Law 107-171 to codify the performance measures used to award high performance bonuses for fiscal years 2005 and beyond.

Summary of Legal Basis:

The legal basis for this rule is Public Law 107-171.

Alternatives:

This rule is mandated by law. Therefore, there are no alternatives.

Anticipated Cost and Benefits:

Undetermined

Risks:

The law mandates that we codify the performance measures for the high performance bonuses for FY 2005 and beyond. If we did not publish this proposed rule, we would be unable to publish a final rule, thus making us out of compliance with a legislative mandate.

Timetable:

Action	Date	FR Cite
NPRM	08/00/03	
NPRM Comment Period End	10/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State, Local, Tribal, Federal

Federalism:

Undetermined

URL For More Information:

http://www.fns.usda.gov/fsp

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USDA—FNS

10. • FSP: ELIGIBILITY AND CERTIFICATION PROVISIONS OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

PL 107-171, secs 4101 to 4109, 4114, 4115, and 4401

CFR Citation:

7 CFR 273

Legal Deadline:

None

Abstract:

This proposed rule will amend Food Stamp Program regulations to implement the food stamp eligibility and certification provisions of Public Law 107-171, the Farm Security and Rural Investment Act of 2002. The rule allows States, at their option, to treat legally obligated child support payments to a non-household member as an income exclusion rather than a deduction (as provided in current law); allows a State option to exclude certain types of income that are not counted under the State's Temporary Assistance for Needy Families (TANF) cash assistance or Medicaid programs; replaces the current, fixed standard deduction with a deduction that varies according to household size and is adjusted annually for cost-of-living increases; allows States to simplify the Standard Utility Allowance (SUA) if the States elect to use the SUA rather than actual utility costs for all households; allows States to use a standard deduction from income of $143 per month for homeless households with some shelter expenses; allows States to disregard reported changes in deductions during certification periods except for changes associated with a new residence or earned income until the next recertification; increases the resource limit for households with a disabled member from $2,000 to $3,000 consistent with the limit for households with an elderly member; allows States to exclude certain types of resources that the State does not count for TANF or Medicaid (section 1931); allows USDA to approve alternate methods for issuing food stamp benefits during disasters when reliance on electronic benefit transfer systems (EBT) is impracticable; allows States to extend semiannual reporting of changes to all households not exempt from periodic reporting; requires State agencies that have a website to post applications on these sites in the same languages that the State uses for its written applications; allows States to extend from the current 3 months up to 5 months the period of time households may receive transitional food stamp benefits when they lose TANF cash assistance; and restores food stamp eligibility to qualified aliens who are otherwise eligible AND who (1) are receiving disability benefits regardless of date of entry (current law requires them to have been in the country on 8/22/96)—effective FY 2003, (2) are under 18 regardless of date of entry (current law limits eligibility to children who were in the country on 8/22/96)—effective FY 2004 and beyond, or (3) have lived in the U.S. continuously for 5 years as a qualified alien beginning on date of entry—effective April 2003. (02-007)

Statement of Need:

The rule is needed to implement the food stamp certification and eligibility provisions of Public Law 107-171, the Farm Security and Rural Investment Act of 2002.

Summary of Legal Basis:

The legal basis for this rule is Public Law 107-171, the Farm Security and Rural Investment Act of 2002.

Alternatives:

This proposed rule deals with changes required by Public Law 107-171, the Farm Security and Rural Investment Act of 2002. The Department has limited discretion in implementing

provisions of that law. Most of the provisions in this rule are effective October 1, 2002, and must be implemented by State agencies prior to publication of this rule.

Anticipated Cost and Benefits:

The provisions of this rule will simplify State administration of the Food Stamp Program, increase eligibility for the program among certain groups, increase access to the program among low-income families and individuals, and increase benefit levels. The provisions of Public Law 107-171 implemented by this rule will have a 5-year cost of approximately $1.9 billion.

Risks:

The FSP provides nutrition assistance to millions of Americans nationwide—working families, eligible non-citizens, and elderly and disabled individuals. Many low-income families don't earn enough money and many elderly and disabled individuals don't receive enough in retirement or disability benefits to meet all of their expenses and purchase healthy and nutritious meals. The FSP serves a vital role in helping these families and individuals achieve and maintain self-sufficiency and purchase a nutritious diet. This rule is intended to implement the certification and eligibility provisions of Public Law 107-171, the Farm Security and Rural Investment Act of 2002. It will simplify State administration of the Food Stamp Program, increase eligibility for the program among certain groups, increase access to the program among low-income families and individuals, and increase benefit levels. The provisions of this rule will increase benefits by approximately $1.95 billion over 5 years. When fully effective in FY 2006, the provisions of this rule will add approximately 415,000 new participants.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	
NPRM Comment Period End	11/00/03	
Final Action	12/00/04	
Final Action Effective	02/00/05	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State, Local, Tribal, Federal

Federalism:

Undetermined

URL For Public Comments:

http://www.fns.usda.gov/fsp/

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RIN: 0584–AD30

USDA—FNS

11. • FSP: QUALITY CONTROL PROVISIONS OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002

Priority:

Other Significant

Legal Authority:

7 USC 2011 to 2032; PL 107-171

CFR Citation:

7 CFR 273; 7 CFR 275

Legal Deadline:

None

Abstract:

This proposed rule will implement quality control changes to the Food Stamp Act required by sections 4118 and 4119 of the Farm Security and Rural Investment Act of 2002 in the following areas: 1) Timeframes for completing quality control reviews; 2) timeframes for completing the arbitration process; 3) timeframes for determining final error rates; 4) the threshold for potential sanctions and time period for sanctions; 5) the calculation of State error rates; 6) the formula for determining States' liability amounts; 7) sanction notification and method of payment; and 8) corrective action plans. (02-008)

Statement of Need:

The rule is needed to implement the food stamp quality control provisions of Public Law 107-171, the Farm Security and Rural Investment Act of 2002.

Summary of Legal Basis:

The legal basis for this rule is Public Law 107-171, the Farm Security and Rural Investment Act of 2002.

Alternatives:

This proposed rule deals with changes required by Public Law 107-171, the Farm Security and Rural Investment Act of 2002. The Department has limited discretion in implementing provisions of that law. The provisions in this rule are effective for fiscal year 2002 quality control review period and must be implemented by FNS and State agencies during fiscal year 2002.

Anticipated Cost and Benefits:

The provisions of this rule will eliminate enhanced funding for low payment error rates and revise the quality control sanction and liability requirements. The provisions of Public Law 107-171 implemented by this rule will save $190 million over 5 years through elimination of the current enhanced funding system. This savings will be partially offset by costs of implementing a new performance system. The costs for the new performance system are estimated to be $144 million.

Risks:

The FSP provides nutrition assistance to millions of Americans nationwide. The quality control system measures the accuracy of States providing food stamp benefits to the program recipients. This rule is intended to implement the quality control provisions of Public Law 107-701, the Farm Security and Rural Investment Act of 2002. The provisions of this rule will eliminate enhanced funding for low payment error rates. It will significantly revise the system for determining State agency liabilities and sanctions for high payment error rates.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	04/00/03	
Final Action	01/00/04	
Final Action Effective	02/00/04	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

State, Local, Federal

Federalism:

Undetermined

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USDA—FNS

12. • FSP: EMPLOYMENT AND TRAINING PROGRAM PROVISIONS OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

PL 107-171

CFR Citation:

7 CFR 273.7

Legal Deadline:

None

Abstract:

This proposed rule will implement revisions to the Food Stamp Employment and Training (E&T) Program funding requirements. (02-009)

Statement of Need:

This rule is necessary to implement statutory revisions to E&T Program funding provisions.

Summary of Legal Basis:

All provisions of this proposed rule are mandated by Public Law 107-171.

Alternatives:

The alternative is not to revise current funding rules. This is not practical. The current rules have been superseded by changes brought about by Public Law 107-171. These changes were effective on May 13, 2002, the date of enactment of Public Law 107-171.

Anticipated Cost and Benefits:

None.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	
NPRM Comment Period End	11/00/03	
Final Action	12/00/04	
Final Action Effective	02/00/05	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State, Local, Federal

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USDA—FNS

FINAL RULE STAGE

13. CHILD AND ADULT CARE FOOD PROGRAM: IMPROVING MANAGEMENT AND PROGRAM INTEGRITY

Priority:

Other Significant

Legal Authority:

42 USC 1766; PL 103-448; PL 104-193; PL 105-336

CFR Citation:

7 CFR 226

Legal Deadline:

None

Abstract:

This rule amends the Child and Adult Care Food Program (CACFP) regulations. The changes in this rule result from the findings of State and Federal program reviews and from audits and investigations conducted by the Office of Inspector General. This rule will revise: State agency criteria for approving and renewing institution applications; program training and other operating requirements for child care institutions and facilities; and State- and institution-level monitoring requirements. This rule also includes changes that are required by the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103-448), the Personal Responsibility and Work Opportunities Reconciliation Act of 1996 (Pub. L. 104-193), and the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105-336).

The changes are designed to improve program operations and monitoring at the State and institution levels and, where possible, to streamline and simplify program requirements for State agencies and institutions. (95-024)

Statement of Need:

In recent years, State and Federal program reviews have found numerous cases of mismanagement, abuse, and in some instances, fraud by child care institutions and facilities in the CACFP. These reviews revealed weaknesses in management controls over program operations and examples of regulatory noncompliance by institutions, including failure to pay facilities or failure to pay them in a timely manner; improper use of program funds for non-program expenditures; and improper meal reimbursements due to incorrect meal counts or to mis-categorized or incomplete income eligibility statements. In addition, audits and investigations conducted by the Office of Inspector General (OIG) have raised serious concerns regarding the adequacy of financial and administrative controls in CACFP. Based on its findings, OIG recommended changes to CACFP review requirements and management controls.

Summary of Legal Basis:

Some of the changes proposed in the rule are discretionary changes being made in response to deficiencies found in program reviews and OIG audits. Other changes codify statutory changes made by the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103-448), the Personal Responsibility and Work Opportunities Reconciliation Act of 1996 (Pub. L. 104-193), and the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105-336).

Alternatives:

In developing the proposal, the Agency considered various alternatives to minimize burden on State agencies and institutions while ensuring effective program operation. Key areas in which alternatives were considered include State agency reviews of institutions and

sponsoring organization oversight of day care homes.

Anticipated Cost and Benefits:

This rule contains changes designed to improve management and financial integrity in the CACFP. When implemented, these changes would affect all entities in CACFP, from USDA to participating children and children's households. These changes will primarily affect the procedures used by State agencies in reviewing applications submitted by, and monitoring the performance of, institutions which are participating or wish to participate in the CACFP. Those changes which would affect institutions and facilities will not, in the aggregate, have a significant economic impact.

Data on CACFP integrity is limited, despite numerous OIG reports on individual institutions and facilities that have been deficient in CACFP management. While program reviews and OIG reports clearly illustrate that there are weaknesses in parts of the program regulations and that there have been weaknesses in oversight, neither program reviews, OIG reports, nor any other data sources illustrate the prevalence and magnitude of CACFP fraud and abuse. This lack of information precludes USDA from estimating the amount of money lost due to fraud and abuse or the reduction in fraud and abuse the changes in this rule will realize.

Risks:

Continuing to operate the CACFP under existing provisions of the regulations that do not sufficiently protect against fraud and abuse in CACFP puts the program at significant risk. This rule includes changes designed to strengthen current program regulations to reduce the risk associated with the program.

Timetable:

Action	Date	FR Cite
NPRM	09/12/00	65 FR 55103
NPRM Comment Period End	12/11/00	
Interim Final Rule	06/00/03	
Interim Final Rule Effective	07/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State, Local

Federalism:

This action may have federalism implications as defined in EO 13132.

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USDA—Food Safety and Inspection Service (FSIS)

PROPOSED RULE STAGE

14. PERFORMANCE STANDARDS FOR BACON

Priority:

Other Significant

Legal Authority:

21 USC 601 et seq; 21 USC 451 et seq

CFR Citation:

9 CFR 424.22(b)

Legal Deadline:

None

Abstract:

FSIS is proposing to revise the regulatory provisions concerning the production and testing of pumped bacon (9 CFR 424.22(b)). FSIS is proposing to remove provisions that prescribe the substances and amounts of such substances that must be used to produce pumped bacon. FSIS is proposing to replace these provisions with an upper limit for nitrite and a performance standard that establishments producing pumped bacon must meet. To meet the proposed performance standard, the process used would be required to limit the presence of nitrosamines when the product is cooked.

Statement of Need:

FSIS is proposing to replace restrictive provisions concerning the processing of pumped bacon with an upper limit for nitrite and a performance standard. The proposed performance standard concerns limiting the presence of volatile nitrosamines in pumped bacon. These proposed changes are necessary to make the regulations concerning pumped bacon consistent with those governing Hazard Analysis and Critical Control Point (HACCP) systems.

Summary of Legal Basis:

Under the Federal Meat Inspection Act (21 U.S.C. 601-695) a meat or meat food product is adulterated "if it bears or contains any poisonous or deleterious substance which may render it injurious to health, but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health" (21 U.S.C. 601(m)(1)). Volatile nitrosamines are deleterious because they are carcinogenic, and though not added directly to pumped bacon, they may be produced when the pumped bacon is fried. Processors can control the levels of nitrosamines that may be present when the product is fried by controlling the levels of ingoing nitrite and of ingoing curing accelerators that are used in the production of pumped bacon. In 1978, USDA stated that nitrosamines present at confirmable levels in pumped bacon after preparation for eating were deemed to adulterate the product. FSIS still maintains that pumped bacon with confirmable levels of nitrosamines after preparation for eating is adulterated. Under this proposed rule, processors meeting the performance standard would control the levels of nitrosamines in the finished product by complying with a performance standard.

Alternatives:

No action; performance standards for all types of bacon (not just pumped bacon, as proposed).

Anticipated Cost and Benefits:

Because FSIS is proposing to convert existing regulations to a performance standard and is not proposing any new requirements for establishments producing pumped bacon, FSIS does not anticipate that this proposed rule would result in any significant costs or benefits. Pumped bacon processing establishments whose HACCP plans do not address nitrosamines as hazards reasonably likely to occur may incur some costs. Also, establishments that choose to test their products for nitrosamines may incur some costs. Because this rule provides establishments the flexibility to develop new procedures for producing bacon, this rule may result in profits to

processors who develop cheaper means of producing product or who develop a product with wide consumer appeal.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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RIN: 0583–AC49

USDA—FSIS

15. EGG AND EGG PRODUCTS INSPECTION REGULATIONS

Priority:

Economically Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

21 USC 1031 to 1056

CFR Citation:

9 CFR 590.570; 9 CFR 590.575; 9 CFR 590.146; 9 CFR 590.10; 9 CFR 590.411; 9 CFR 590.502; 9 CFR 590.504; 9 CFR 590.580; 9 CFR 591; ...

Legal Deadline:

None

Abstract:

The Food Safety and Inspection Service (FSIS) is proposing to require shell egg packers and egg products plants to develop and implement Hazard Analysis and Critical Control Points (HACCP) systems and Sanitation Standard Operating Procedures (SOPs). FSIS also is proposing pathogen reduction performance standards that would be applicable to pasteurized shell eggs and egg products. Plants would be expected to develop HACCP systems that ensure products meet the pathogen reduction performance standards. Finally, FSIS is proposing to amend the Federal egg and egg products inspection regulations by removing current requirements for prior approval by FSIS of egg products plant drawings, specifications, and equipment prior to their use in official plants. The Agency also plans to eliminate the prior label approval system for egg products.

The actions being proposed are part of FSIS' regulatory reform effort to improve FSIS' egg and egg products food safety regulations, better define the roles of Government and the regulated industry, encourage innovations that will improve food safety, remove unnecessary regulatory burdens on inspected egg products plants, and make the egg and egg products regulations as consistent as possible with the Agency's meat and poultry products regulations. FSIS is also taking these actions in light of changing inspection priorities and recent findings of Salmonella in pasteurized egg products.

Statement of Need:

FSIS is proposing to require shell egg packers and egg products plants to develop and implement HACCP systems and sanitation SOPs. FSIS also is proposing pathogen reduction performance standards that would be applicable to pasteurized eggs and egg products. Plants would be expected to develop HACCP systems that ensure that these products meet the lethality required by the pathogen reduction performance standards. In addition, FSIS is proposing to amend the Federal shell egg and egg products inspection regulations by removing current requirements for approval by FSIS of egg product plant drawings, specifications, and equipment prior to their use in official plants. Finally, the Agency plans to eliminate the pre-marketing label approval system for egg products but to require safe-handling labels on all shell eggs.

The actions being proposed are part of FSIS' regulatory reform effort to improve FSIS' shell egg and egg products food safety regulations, better define the roles of Government and the regulated industry, encourage innovations that will improve food safety, remove unnecessary regulatory burdens on inspected egg products plants, and make the shell egg and egg products regulations as consistent as possible with the Agency's meat and poultry products regulations. FSIS also is taking these actions in light of changing inspection priorities and recent findings of Salmonella in pasteurized egg products.

This proposal is directly related to FSIS' PR/HACCP initiative.

Summary of Legal Basis:

This proposed rule is authorized under the Egg Products Inspection Act (21 U.S.C. 1031-1056). It is not the result of any specific mandate by the Congress or a Federal court.

Alternatives:

A team of FSIS economists and food technologists is conducting a cost-benefit analysis to evaluate the potential economic impacts of several alternatives on the public, the shell egg and egg products industry, and FSIS. These alternatives include: (1) Taking no regulatory action; (2) requiring all inspected egg products plants to develop, adopt, and implement written sanitation SOPs and HACCP plans; and (3) converting to a lethality-based pathogen reduction performance standard many of the current highly prescriptive egg products processing requirements. The team will consider the effects of a uniform, across-the-board standard for all egg products; a performance standard based on the relative risk of different classes of egg products; and a performance standard based on the relative risks to public health of different production processes.

Anticipated Cost and Benefits:

FSIS is analyzing the potential costs of this proposed rulemaking to industry, FSIS and other Federal agencies, State and local governments, small entities, and foreign countries. The expected costs to industry will depend on a number of factors. These costs include the required lethality, or level of pathogen reduction, and the cost of HACCP plan and sanitation SOP development, implementation, and associated employee training. The pathogen reduction costs will depend on the amount of reduction sought and in what classes of product, product formulations, or processes.

Relative enforcement costs to FSIS and Food and Drug Administration may change because the two agencies share responsibility for inspection and oversight of the egg industry and a common farm-to-table approach for shell egg and egg products food safety. Other Federal agencies and local

governments are not likely to be affected.

FSIS has cooperative agreements with six States and the Commonwealth of Puerto Rico under which they provide inspection services to egg processing plants under Federal jurisdiction. FSIS reimburses the States for staffing costs and expenses for full-time State inspectors. HACCP implementation may result in a reduction of staffing resource requirements in the States and a corresponding reduction of the Federal reimbursement. As a result, some States may decide to stop providing inspection services and convert to Federal inspection of egg products plants.

Egg and egg product inspection systems of foreign countries wishing to export eggs and egg products to the U.S. must be equivalent to the U.S. system. FSIS will consult with these countries, as needed, if and when this proposal becomes effective.

This proposal is not likely to have a significant impact on small entities. The entities that would be directly affected by this proposal would be the approximately 75 federally inspected egg products plants, most of which are small businesses, according to Small Business Administration criteria. If necessary, FSIS will develop compliance guides to assist these small firms in implementing the proposed requirements.

Potential benefits associated with this rulemaking include: Improvements in human health due to pathogen reduction; improved utilization of FSIS inspection program resources; and cost savings resulting from the flexibility of egg products plants in achieving a lethality-based pathogen reduction performance standard. Once specific alternatives are identified, economic analysis will identify the quantitative and qualitative benefits associated with each.

Human health benefits from this rulemaking are likely to be small because of the low level of (chiefly post-processing) contamination of pasteurized egg products. In light of recent scientific studies that raise questions about the efficacy of current regulations, however, it is likely that measurable reductions will be achieved in the risk of foodborne illness.

Risks:

FSIS believes that this regulatory action may result in a further reduction in the risks associated with egg products. The development of a lethality-based pathogen reduction performance standard for egg products, replacing command-and-control regulations, will remove unnecessary regulatory obstacles to, and provide incentives for, innovation to improve the safety of egg products.

To assess the potential risk-reduction impacts of this rulemaking on the public, an intra-Agency group of scientific and technical experts is conducting a risk management analysis. The group has been charged with identifying the lethality requirement sufficient to ensure the safety of egg products and the alternative methods for implementing the requirement. The egg products processing and distribution module of the Salmonella enteritidis Risk Assessment, made public June 12, 1998, will be appropriately modified to evaluate the risk associated with the regulatory alternatives.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Federal, State

Federalism:

Undetermined

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USDA—FSIS

16. ELIMINATION OF CHILLING TIME AND TEMPERATURE REQUIREMENTS FOR READY-TO-COOK POULTRY (SECTION 610 REVIEW)

Priority:

Other Significant

Legal Authority:

21 USC 451 to 470

CFR Citation:

9 CFR 381.66

Legal Deadline:

None

Abstract:

FSIS is proposing to eliminate the time and temperature requirements for chilling ready-to-cook poultry carcasses and giblets. The Agency is taking this action because the requirements are inconsistent with the Agency's Pathogen Reduction/Hazard Analysis and Critical Control Point (PR/HACCP) System regulations, with its final rule further restricting retained water in raw meat and poultry, and with the Agency's regulatory reform program. Moreover, because of these regulations, the meat and poultry industries receive disparate regulatory treatment: No regulations that apply to the chilling of poultry apply to the chilling of meat. This proposal responds to longstanding petitions by industry trade associations.

Statement of Need:

This proposed rule addresses Federal regulations that are inconsistent with the PR/HACCP regulations because they restrict the ability of poultry processors to choose appropriate and effective measures to eliminate, reduce, or control biological hazards identified in their hazard analyses. The regulations also complicate efforts by establishments to comply with the terms of the January 9, 2001, final rule further restricting the amount of water that may be retained in raw meat or poultry products after post-evisceration processing; some establishments may have to use chilling procedures that result in higher levels of retained water in carcasses than may be necessary to achieve the same food safety objective. For example, establishments that operate automated chillers may have to subject poultry carcasses to higher agitation rates or longer dwell times in the chillers. Also, as discussed above, the time/temperature chilling regulations for poultry are inconsistent with the PR/HACCP regulations, the retained water regulations, and the meat inspection regulations.

Summary of Legal Basis:

This regulatory action is authorized under the Poultry Products Inspection Act (21 U.S.C. 451-470).

Alternatives:

FSIS evaluated five regulatory alternatives: (1) Taking no regulatory action; (2) replacing the command-and-control requirements with a performance standard; (3) requiring meatpackers, as well as poultry processors, to comply with such a performance standard; (4) requiring all establishments that prepare raw meat or poultry products or handle, transport, or receive the products in transportation to comply with a performance standard; or (5) removing the command-and-control requirements from the poultry products inspection regulations. The Agency chose the fifth alternative.

Anticipated Cost and Benefits:

Poultry processors would gain the flexibility to choose the best processing techniques and procedures for achieving production efficiencies, meeting HACCP food safety objectives, and preventing economic adulteration of raw product with retained water in amounts greater than unavoidable for food-safety purposes. They would be able to operate with a wider range of chilling temperatures consistently with the requirements of the PR/HACCP regulations. The poultry products industry could achieve energy efficiencies resulting in annual savings of as much as $2.8 million. The industry could also reduce carcass "dwell times" in immersion chillers and thereby reduce the amount of water absorbed and retained by the carcasses. The reduction in dwell time might enable some establishments, particularly those currently operating at the throughput capacity of their chillers, to increase production by installing additional evisceration lines.

Poultry establishments would therefore be able to operate more efficiently to provide consumers with product that is not adulterated. FSIS also would gain some flexibility by being able to reallocate some inspection resources from measuring the temperature of chilled birds to such activities as HACCP system verification.

This proposed rule would directly impose no new costs on the regulated industry. It would relieve burdens arising from the disparate impacts of the current regulations on the meat and poultry industries.

Risks:

None

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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USDA—FSIS

17. EMERGENCY REGULATIONS TO PREVENT MEAT FOOD AND MEAT PRODUCTS THAT MAY CONTAIN THE BSE AGENT FROM ENTERING COMMERCE

Priority:

Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

21 USC 601 et seq

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

FSIS is proposing to amend the meat inspection regulations to add emergency regulations to prevent meat and meat food products that may contain the bovine spongiform encephalopathy (BSE) agent from entering commerce. The emergency regulations would become effective when, and if, BSE is diagnosed in native cattle in the United States. FSIS may also propose to issue certain regulations in the absence of BSE as preventive measures. The proposed regulations provide for periodic review by FSIS to determine their effectiveness and to evaluate the need to modify or remove some measures or impose additional measures.

Statement of Need:

FSIS is proposing to amend the meat inspection regulations to add provisions to prevent meat and meat products that may contain the BSE agent from entering commerce in the event that BSE is diagnosed in native cattle in the U.S. Any final rule that is developed as a result of this proposal will become effective if, and when, a native case of BSE is detected in the U.S.

BSE is a chronic, degenerative, neorological disorder of cattle. Worldwide, there have been more than 185,000 cases since the disease was first diagnosed in 1986 in Great Britain. There have been no cases of BSE detected in the United States despite 10 years of active surveillance for the disease. Recent laboratory and epidemiological research indicate that there is a causal association between BSE and variant Creutzfeldt-Jakob Disease (vCJD), a slow degenerative disease that affects the central nervous system of humans. Like BSE, vCJD has not been detected in the United States. Both BSE and vCJD are always fatal.

Although BSE has not been detected in the U.S., USDA policy in regard to BSE has been to be proactive and preventive. Therefore, FSIS is proposing these regulations so that the Agency will have an immediate regulatory response in the event that BSE is detected in the U.S. Once finalized, the proposed measures will be incorporated in the meat inspection regulations but would only become effective if, and when, BSE is detected in native cattle. The proposed regulations would: (1) Prohibit certain materials that have been shown to contain the BSE agent in BSE-infected cattle to be used for human food or in the production of human food; (2) prescribe handling, storage, and transportation requirements for such materials; (3) prohibit slaughter procedures that may cause potentially infective tissues to migrate to edible tissues; (4) impose restrictions on the use of the vertebral column as a source material in the production of meat produced using advanced meat recovery systems (AMRS) and in the production of "Mechanically Separated (Beef)" (MS(Beef)) meat food product; (5) prescribe requirements for the slaughtering and processing of cattle whose materials are most likely to contain the BSE agent if the animal is infected with BSE; and (6) prescribe requirements for the sanitation or disposal of plant equipment that may be contaminated with the BSE agent. The proposed regulations provide for periodic review by FSIS to determine their effectiveness and to evaluate the need to modify or remove some measures or impose additional measures.

Summary of Legal Basis:

Under the Federal Meat Inspection Act (21 U.S.C. 601-695), FSIS issues regulations governing the production of meat and meat food products. The regulations, along with FSIS inspection programs, are designed to ensure that meat food products are safe, not adulterated, and properly marked, labeled, and packaged.

Alternatives:

As an alternative to the proposed requirements, FSIS considered taking no action. FSIS rejected this option because, as previously mentioned, USDA policy in regard to BSE has been to be proactive and preventive. Publishing a proposed rule will inform the public of the type of regulatory response it can expect from FSIS when, and if, BSE is detected in native cattle.

In addition to the proposed requirements, FSIS is considering taking actions prior to the detection of BSE in the U.S. to minimize human exposure to materials from cattle that could potentially contain the BSE agent. The measures under consideration are targeted at the materials of cattle that are most likely to contain the BSE agent, if such animals have been infected with BSE, and those cattle that have consumed feed prohibited by Food and Drug Administration's (FDA) regulations (i.e., mammalian meat and bone meal in ruminant feed).

Anticipated Cost and Benefits:

If issued as a final rule, this proposal would result in costs to the regulated industry. FSIS expects to minimize the costs by targeting the regulations to apply to those cattle whose materials are most likely to contain the BSE agent if the animal is infected with BSE. Banning certain materials, such as brain and spinal cord, for use as human food may require additional staff and time to remove such materials. Materials prohibited for use as human food could not be sold domestically or exported. Companies may be required to find new ways to handle and dispose of these materials, which would impose additional costs. Prohibiting the use of bovine vertebral column as a source material in AMRS and systems used to produce MS (Beef) product could result in a decrease in product yield and may require companies that use these systems to produce boneless beef and beef products to find other uses for bovine vertebral column. Establishments whose equipment may have been contaminated with the BSE agent may have costs associated with sanitation or disposal of plant equipment.

FSIS may incur costs to increase inspection and compliance activities to ensure that the measures taken to prevent meat and meat food products that may contain the BSE agent from entering commerce are effective. Producers may receive lower prices from processors, and some of their stock may be condemned outright. The price consumers pay for meat may rise or fall depending on how the discovery of BSE in the U.S. would affect consumer demand for beef.

The main benefit of this proposed rule is the prevention of vCJD in the United States. There have been over 100 definite and probable cases of vCJD detected worldwide since the disease was first identified in 1986 in the United Kingdom. While vCJD is still considered a rare condition, the extent or occurrence of a vCJD epidemic in the United Kingdom cannot be determined because of the long incubation period (up to 25 years). Thus, if issued as a final rule, this proposal could have widespread public health benefits if it serves to prevent a vCJD epidemic from developing in the U.S. Even if vCJD remains a rare condition, this proposed rule will still have public health benefits because of the severity of the symptoms associated with vCJD and the fact that vCJD is always fatal.

This proposed rule may benefit the meat industry by helping to restore confidence in the domestic meat supply when, and if, a native case of BSE is detected in the U.S. This may limit losses to meat slaughter and processing operations in the long run.

Risks:

Although vCJD is a rare condition, the symptoms are severe, and it is always fatal. This proposed rule is intended to reduce the risk of humans developing vCJD in the U.S. in the event BSE is detected in native cattle. The measures proposed by FSIS are intended to minimize human exposure to materials from cattle that could potentially contain the BSE agent. In April 1998, USDA entered into a cooperative agreement with Harvard University's School of Public Health to conduct a risk analysis to assess the potential pathways for entry into U.S. cattle and the U.S. food supply, to evaluate existing regulations and policies, and to identify any additional measures that could be taken to protect human and animal health. FSIS will use the findings of the risk assessment to evaluate the level of risk reduction associated with the proposed measures.

Unlike bacterial and viral pathogens that may be found in or on meat food products, the BSE agent cannot be destroyed by conventional methods, such as cooking or irradiation. Also, although it is rare, vCJD, the human disease associated with exposure to the BSE agent, is generally more severe than the human illnesses associated with exposure to bacterial and viral pathogens. Thus, if BSE were detected in the U.S., additional measures to reduce the risk of human exposure to the BSE agent are necessary to protect public health.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 0583–AC88

USDA—FSIS

FINAL RULE STAGE

18. PERFORMANCE STANDARDS FOR READY-TO-EAT MEAT AND POULTRY PRODUCTS

Priority:

Economically Significant

Unfunded Mandates:

Undetermined

Legal Authority:

21 USC 451 et seq; 21 USC 601 et seq

CFR Citation:

9 CFR 317; 9 CFR 381; 9 CFR 430

Legal Deadline:

None

Abstract:

FSIS has proposed to establish pathogen reduction performance standards for all ready-to-eat and partially heat-treated meat and poultry products. The performance standards spell out the objective level of pathogen reduction that establishments must meet during their operations in order to produce safe products but allow the use of customized, plant-specific processing procedures other than those prescribed in the earlier regulations. Along with HACCP, food safety performance standards will give establishments the incentive and flexibility to adopt innovative, science-based food safety processing procedures and controls, while providing objective, measurable standards that can be verified by Agency inspectional oversight. This set of performance standards will include and be consistent with those already in place for certain ready-to-eat meat and poultry products. FSIS also proposed testing requirements intended to reduce the incidence of Listeria in ready-to-eat meat and poultry products.

Statement of Need:

The Food Safety and Inspection Service (FSIS) has proposed to amend the Federal meat and poultry inspection regulations by establishing food safety performance standards for all ready-to-eat and all partially heat-treated meat and poultry products. The proposed performance standards set forth both levels of pathogen reduction and limits on pathogen growth that official meat and poultry establishments must achieve during their operations in order to produce unadulterated products but allow the use of customized, plant-specific processing procedures. The proposed performance standards apply to ready-to-eat meat and poultry products, categorized as follows: Dried products (e.g., beef or poultry jerky); salt-cured products (e.g. country ham); fermented products (e.g., salami and Lebanon bologna); cooked and otherwise processed products (e.g., beef and chicken burritos, corned beef, pastrami, poultry rolls, and turkey franks); and thermally-processed, commercially sterile products (e.g., canned spaghetti with meat balls and canned corned beef hash).

Although FSIS routinely samples and tests some ready-to-eat products for the presence of pathogens prior to distribution, there are no specific regulatory pathogen reduction requirements for most of these products. The proposed performance standards will help ensure the safety of these products; give establishments the incentive and flexibility to adopt innovative, science-based food safety processing procedures and controls; and provide objective, measurable standards that can be verified by Agency oversight.

FSIS also proposed requirements intended to reduce the incidence of Listeria in ready-to-eat meat and poultry products. First, FSIS proposed to require establishments that produce ready-to-eat meat and poultry products to conduct environmental testing for Listeria to verify that they are controlling the presence of L. monocytogenes within their processing environments. Establishments that have developed and implemented HACCP controls for L. monocytogenes would be exempt from these testing requirements.

FSIS also has proposed to eliminate its regulations that require that both ready-to-eat and not-ready-to-eat pork and products containing pork be treated to destroy trichinae (Trichinella spiralis). These requirements are inconsistent with HACCP, and some will be unnecessary if FSIS makes final the proposed performance standards for ready-to-eat meat and poultry products.

Summary of Legal Basis:

Under the Federal Meat Inspection Act (21 U.S.C 601-695) and the Poultry Product Inspection Act (21 U.S.C 451-470) FSIS issues regulations governing the production of meat and poultry products prepared for distribution in commerce. The regulations, along with FSIS inspection programs, are designed to ensure that meat and poultry products are safe, not adulterated, and properly marked, labeled, and packaged.

Alternatives:

As an alternative to all of the proposed requirements, FSIS considered taking no action. As alternatives to the proposed requirements for Listeria testing, FSIS considered: End-product testing; mandatory post-lethality interventions for L. monocytogenes; mandatory food-contact surface testing for all establishments that produce read-to-eat products; redesignation of hotdogs and other ready-to-eat products as not-ready-to-eat; and requiring "use-by" date labeling on certain ready-to-eat products.

Anticipated Cost and Benefits:

If the proposed regulations could achieve a complete elimination of listeriosis that results from the consumption of contaminated RTE meat and poultry products, the expected annual reduction in listeriosis cases and deaths would range from 1,660 cases and 331 deaths (based on the draft FDA-FSIS risk assessment and on 100 percent program effectiveness) to 167 cases and 35 deaths (based on two independent CDC studies and on 100 percent program effectiveness). FSIS is uncertain about the effectiveness of its proposed testing requirements in reducing listeriosis and therefore unable to adequately quantify a range of benefits. FSIS intends to use comments and data received during the comment period and at the planned technical conference to refine the proposed regulations and to better estimate benefits. It is of course unlikely that the proposed regulations could achieve complete elimination of the listeriosis that results from contaminated meat and poultry, but FSIS believes that the benefits of the regulations would exceed the total costs of all of the proposed provisions.

The two main provisions of the proposed rule are: (1) Mandatory in-plant testing for Listeria and (2) Salmonella and E. coli performance standards firms must employ as measures of process control. Much of the costs of these actions are associated with first-year, one-time validation pertaining to the achievement of the performance standards and with the incorporation of new information into plants' HACCP plans. These initial costs are projected at over $6.5 million, while annual recurring costs are estimated at $6.2 million. Benefits are expected to result from less contaminated product entering commercial channels due to increased sanitation efforts and in-plant verification through testing.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	02/27/01	66 FR 12590
NPRM Comment Period End	05/29/01	
NPRM Comment Period Extended	07/03/01	66 FR 35112

Action	Date	FR Cite
NPRM Comment Period End	09/10/01	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

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USDA—FSIS

19. MEAT PRODUCED BY ADVANCED MEAT/BONE SEPARATION MACHINERY AND RECOVERY SYSTEMS

Priority:

Other Significant

Legal Authority:

21 USC 601 to 695

CFR Citation:

9 CFR 301.2; 9 CFR 318.24 (Revision); 9 CFR 320.1(b)(10)

Legal Deadline:

None

Abstract:

In 1994, the Food Safety and Inspection Service (FSIS) amended its regulations to recognize that products resulting from advanced meat/bone separation machinery comes within the definition of meat when recovery systems are operated to assure that the characteristics and composition of the resulting product are consistent with those of meat. Subsequent compliance problems and other concerns have made it apparent that the regulations are inadequate to prevent misbranding and economic adulteration. Therefore, FSIS is developing a rule to clarify the regulations and supplement the rules for assuring compliance.

Statement of Need:

In 1998, FSIS proposed to clarify the meat inspection regulations regarding mechanically separated meat contained in a final rule issued in December 1995. The rule would replace the present compliance program parameters with non-compliance criteria for bone and bone-related material. The rule would require, as a prerequisite to labeling or using product derived by mechanically separating skeletal muscle tissue from cattle and swine bones as meat, that establishments implement and document procedures for ensuring that their production process is in control. The proposed rule was published in 1998.

FSIS intends to implement more rigid measures for central nervous system tissue and prohibiting the use of vertebral columns in the AMR final product unless the establishment can demonstrate effective process control to ensure that no spinal cord and dorsal root ganglia will be present in the final AMR product. Current FSIS policy prohibits the presence of spinal cord in AMR products but not the presence of DRG or the use of vertebral columns. In January 2002, FSIS began the first of two surveys on AMR products derived from non-vertebral and vertebral beef and pork columns.

Summary of Legal Basis:

This action is authorized under the Federal Meat Inspection Act (21 U.S.C. 601-695).

Alternatives:

No action.

Anticipated Cost and Benefits:

Although the 1998 proposed rule was determined to be not economically significant, FSIS restudied the projected costs using data from various FSIS data bases and other sources to develop an improved estimate of the benefits and costs of implementing the final rule. To date, it appears that the final rule will not be economically significant, but data evaluation continues. The benefit of enforcing the misbranding provisions will ensure that the product does not contain materials not consistent with boneless, comminuted meat.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	04/13/98	63 FR 17959
NPRM Comment Period End	06/12/98	
Final Action	09/00/03	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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USDA—FSIS

20. NUTRITION LABELING OF GROUND OR CHOPPED MEAT AND POULTRY PRODUCTS AND SINGLE-INGREDIENT PRODUCTS

Priority:

Other Significant

Legal Authority:

21 USC 601 et seq; 21 USC 451 et seq

CFR Citation:

9 CFR 317; 9 CFR 381

Legal Deadline:

None

Abstract:

FSIS has proposed to amend the Federal meat and poultry products inspection regulations to require that nutrition information be provided for the major cuts of single-ingredient, raw meat and poultry products, either on their label or at their point-of-purchase. FSIS proposed to require nutrition labeling of the major cuts of single-ingredient, raw meat and poultry products because, during the most recent surveys of retailers, the Agency did not find significant participation in the voluntary nutrition labeling program for single-ingredient, raw meat and poultry products.

In this rule, FSIS also proposed to amend its regulations to extend mandatory labeling to single-ingredient ground or chopped products. Under this proposal, individual retail packages of ground or chopped meat and ground or chopped poultry products would bear nutrition labeling. The Agency has determined that ground or chopped products are different from other single-ingredient products in several important respects. Thus, FSIS proposed to make nutrition labeling requirements for ground or chopped products consistent with those for multi-ingredient products.

Finally, FSIS has proposed to amend the nutrition labeling regulations to provide that, when a ground or chopped product does not meet the criteria to be labeled "low fat," a lean percentage claim may be included on the product label or in labeling as long as a statement of the fat percentage also is displayed on the label or in labeling.

Statement of Need:

The Agency has proposed to require that nutrition information be provided for the major cuts of single-ingredient, raw meat and poultry products, either on their label or at their point-of-purchase, because during the most recent surveys of retailers, the Agency did not find significant participation in the voluntary nutrition labeling program for single-ingredient, raw meat and poultry products. Without the nutrition information for the major cuts of single-ingredient, raw meat and poultry products that would be provided if significant participation in the voluntary nutrition labeling program existed, FSIS believes that these products would be misbranded.

FSIS has also proposed to amend its regulations to require nutrition labels on the packages of all ground or chopped meat and poultry products. The Agency has determined that single-ingredient, ground or chopped products are different from other single-ingredient products in several important respects. Thus, FSIS has proposed to make nutrition labeling requirements for all ground or chopped products consistent with those for multi-ingredient products.

Finally, FSIS has proposed to amend the nutrition labeling regulations to provide that when a ground or chopped product does not meet the criteria to be labeled "low fat," a lean percentage claim may be included on the product as long as a statement of the fat percentage is also displayed on the label or in labeling. FSIS proposed this provision because many consumers have become accustomed to this labeling on ground beef products and because FSIS believed this labeling provides a quick, simple, accurate means of comparing all ground or chopped meat and poultry products.

Summary of Legal Basis:

This action is authorized under the Federal Meat Inspection Act (21 U.S.C. 601-695) and the Poultry Products Inspection Act (21 U.S.C. 451-470).

Alternatives:

No action; nutrition labels required on all single-ingredient, raw products (major cuts and non-major cuts) and all ground or chopped products; nutrition labels required on all major cuts of single-ingredient, raw products (but not non-major cuts) and all ground or chopped products; nutrition information at the point-of-purchase required for all single-ingredient, raw products (major and non-major cuts) and for all ground or chopped products.

Anticipated Cost and Benefits:

Costs would include the equipment for making labels, labor, and materials used for labels for ground or chopped products. FSIS believes that the cost of providing nutrition labeling for the major cuts of single-ingredient, raw meat and poultry products should be negligible. Retail establishments would have the option of providing nutrition information through point-of-purchase materials. These materials are available for a nominal fee through the Food Marketing Institute. Also, FSIS intends to make point-of-purchase materials available, free of charge, on the FSIS web site.

Benefits of the nutrition labeling rule would result from consumers modifying their diets in response to new nutrition information concerning ground or chopped products and the major cuts of single-ingredient, raw products. Reductions in consumption of fat and cholesterol are associated with reduced incidence of cancer and coronary heart disease.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	01/18/01	66 FR 4970
NPRM Comment Period End	04/18/01	
Extension of Comment Period	04/20/01	66 FR 20213
NPRM Comment Period End	07/17/01	
Final Action	07/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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BILLING CODE 3410-90-S

DEPARTMENT OF COMMERCE (DOC)

Statement of Regulatory and Deregulatory Priorities

The mission of the Department of Commerce (Commerce) is to promote job creation, economic growth, technological competitiveness and sustainable development, and improved living standards for all Americans by working in partnership with business, universities, communities, and workers to:

- Build for the future and promote U.S. competitiveness in the global marketplace by strengthening and safeguarding the nation's economic infrastructure;
- Keep America competitive with cutting-edge science and technology and an unrivaled information base; and
- Provide effective management and stewardship of our Nation's resources and assets to ensure sustainable economic opportunities.

The Commerce mission statement, containing our three strategic themes, provides the vehicle for understanding Commerce's aims, how they interlock, and how they are to be implemented through our programs. This statement was developed with the intent that it serve as both a statement of departmental philosophy and as the guiding force behind the Department's programs.

The importance that this mission statement and these strategic themes have for the Nation is amplified by the vision they pursue for America's communities, businesses, and families. Commerce is the smallest Cabinet agency, yet our presence is felt, and our contributions are found, in every State.

Commerce touches Americans, daily, in many ways. We make possible the weather reports that all of us hear every morning; we facilitate the technology that all of us use in the workplace and in the home each day; we support the development, gathering, and transmitting of information essential to competitive business; we make possible the diversity of companies and goods found in America's (and the world's) marketplace; and we support environmental and economic health for the communities in which Americans live.

Commerce has a clear and powerful vision for itself, for its role in the Federal Government, and for its roles supporting the American people, now and in the future. We confront the intersection of trade promotion, national security, civilian technology, economic development, sustainable development, and economic analysis, and we want to provide leadership in these areas for the Nation.

We work to provide programs and services that serve our country's businesses, communities, and families, as initiated and supported by the President and the Congress. We are dedicated to making these programs and services as effective as possible, while ensuring that they are being delivered in the most cost-effective ways. We seek to function in close concert with other agencies having complementary responsibilities so that our collective impact can be most powerful. We seek to meet the needs of our customers quickly and efficiently, with programs, information, and services they require and deserve.

As a permanent part of the Federal Government, but serving an Administration and Congress that can vary with election results, we seek to serve the needs of the Nation, according to the priorities of the President and the Congress. The President's priorities for Commerce range from issues concerning the economy, the environment, and national security. For example, the President directs Commerce to promote electronic commerce activities; encourage open and free trade; represent American business interests abroad; assist small businesses to expand and create jobs; and regulate the export of goods and technology that may compromise national security. We are able to address these priorities effectively by functioning in accordance with the legislation that undergirds our programs and by working closely with the President and the committees in Congress, which have programmatic and financial oversight for our programs.

Commerce promotes and expedites American exports, helps nurture business contacts abroad, protects U.S. firms from unfair foreign competition, and makes how-to-export information accessible to small and mid-sized companies throughout the Nation, thereby ensuring that U.S. market opportunities span the globe. Commerce completes these activities all the while preserving national security. For example, Commerce works to implement export controls on dual-use goods and technology to prevent the proliferation of weapons of mass destruction and to limit the U.S. transactions of terrorists and those who support them.

Commerce encourages development in every community, clearing the way for private-sector growth by building or rebuilding economically deprived and distressed communities. We promote minority entrepreneurship to establish businesses that frequently anchor neighborhoods and create new job opportunities. We work with the private sector to enhance competitive assets.

As the Nation looks to revitalize its industries and communities, Commerce works as a partner with private entities to build America with an eye on the future. Through technology, research and development, and innovation, we are making sure America continues to prosper in the short term, while also helping industries prepare for long-term success.

Commerce's considerable information capacities help businesses understand clearly where our national and world economies are going, and take advantage of that knowledge by planning the road ahead. Armed with this information, businesses can undertake the new ventures, investments, and expansions that make our economy grow.

Commerce has instituted programs and policies that lead to cutting-edge, competitive, and better paying jobs. We work every day to boost exports, to deregulate business, to help smaller manufacturers battle foreign competition, to advance the technologies critical to our future prosperity, to invest in our communities, and to fuse economic and environmental goals.

Commerce is American business' surest ally in job creation, serving as a vital resource base, a tireless advocate, and its Cabinet-level voice.

The Department's regulatory plan directly tracks these policy and program priorities, only a few of which involve regulation of the private sector by the Department.

Responding to the Administration's Regulatory Philosophy and Principles

The vast majority of Commerce's programs and activities do not involve regulation. Of Commerce's 12 primary operating units, only 2—the Bureau of Industry and Security (BIS) and the National Oceanic and Atmospheric Administration (NOAA)—plan significant preregulatory or regulatory actions for this Regulatory Plan year. However, none of these significant actions rise to the level of "most important" of Commerce's "significant regulatory actions" planned for the Regulatory Plan year.

Though not principally a regulatory agency, Commerce has long been a leader in advocating and using market-oriented regulatory approaches in lieu of traditional command-and-control regulations when such approaches offer a better alternative. All regulations are designed and implemented to maximize societal benefits while placing the smallest possible burden on those being regulated.

The Commerce Department is also refocusing on its regulatory mission by taking into account, among other things, the President's regulatory principles. To the extent permitted by law, all preregulatory and regulatory activities and decisions adhere to the Administration's statement of regulatory philosophy and principles, as set forth in section 1 of Executive Order 12866. Moreover, we have made bold and dramatic changes, never being satisfied with the status quo. We have emphasized, initiated, and expanded programs that work in partnership with the American people to secure the Nation's economic future. At the same time we have down-sized, cut regulations, closed offices, and eliminated programs and jobs that are not part of our core mission. The bottom line is that, after much thought and debate, we have made many hard choices needed to make this Department "state of the art."

The Secretary has prohibited the issuance of any regulation that discriminates on the basis of race, religion, gender, or any other suspect category and requires that all regulations be written so as to be understandable to those affected by them. The Secretary also requires that the Department afford the public the maximum possible opportunity to participate in departmental rulemakings, even where public participation is not required by law.

National Oceanic and Atmospheric Administration

The National Oceanic and Atmospheric Administration (NOAA) establishes and administers Federal policy for the conservation and management of the Nation's oceanic, coastal, and atmospheric resources. It provides a variety of essential environmental services vital to public safety and to the Nation's economy, such as weather forecasts and storm warnings. It is a source of objective information on the state of the environment. NOAA plays the lead role in achieving Commerce's goal of promoting stewardship by providing assessments of the global environment.

Recognizing that economic growth must go hand-in-hand with environmental stewardship, Commerce, through NOAA, conducts programs designed to provide a better understanding of the connections between environmental health, economics, and national security. Commerce's emphasis on "sustainable fisheries" is saving fisheries and confronting short-term economic dislocation, while boosting long-term economic growth. Commerce is where business and environmental interests intersect, and the classic debate on the use of natural resource resources is transformed into a "win-win" situation for the environment and the economy.

Three of NOAA's major components, the National Marine Fisheries Services (NMFS), the National Ocean Service (NOS), and the National Environmental Satellite, Data, and Information Service (NESDIS), exercise regulatory authority.

NMFS oversees the management and conservation of the Nation's marine fisheries, protects marine mammals, and promotes economic development of the U.S. fishing industry. NOS assists the coastal states in their management of land and ocean resources in their coastal zones, including estuarine research reserves; manages the Nation's national marine sanctuaries; monitors marine pollution; and directs the national program for deep-seabed minerals and ocean thermal energy. NESDIS administers the civilian weather satellite program and licenses private organizations to operate commercial land-remote sensing satellite systems.

The Administration is committed to an environmental strategy that promotes sustainable economic development and rejects the false choice between environmental goals and economic growth. The intent is to have the Government's economic decisions be guided by a comprehensive understanding of the environment. Commerce, through NOAA, has a unique role in promoting stewardship of the global environment through effective management of the Nation's marine and coastal resources and in monitoring and predicting changes in the Earth's environment, thus linking trade, development, and technology with environmental issues. NOAA has the primary Federal responsibility for providing sound scientific observations, assessments, and forecasts of environmental phenomena on which resource management and other societal decisions can be made.

In the environmental stewardship area, NOAA's goals include: rebuilding U.S. fisheries by refocusing policies and fishery management planning on increased scientific information; increasing the populations of depleted, threatened, or endangered species of marine mammals by implementing recovery plans that provide for their recovery while still allowing for economic and recreational opportunities; promoting healthy coastal ecosystems by ensuring that economic development is managed in ways that maintain biodiversity and long-term productivity for sustained use; and modernizing navigation and positioning services. In the environmental assessment and prediction area, goals include: modernizing the National Weather Service; implementing reliable seasonal and interannual climate forecasts to guide economic planning; providing science-based policy advice on options to deal with very long-term (decadal to centennial) changes in the environment; and advancing and improving short-term warning and forecast services for the entire environment.

Magnuson-Stevens Act Rulemakings

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) rulemaking concerns the conservation and management of fishery resources in the U.S. 3-to-200-mile Exclusive Economic Zone (EEZ). Among the several hundred rulemakings that NOAA plans to issue in the Regulatory Plan year, a number of the preregulatory and regulatory actions will be significant. The exact number of such rulemakings is unknown, since they are usually initiated by the actions of eight regional Fishery Management Council (FMCs) that are responsible for preparing fishery management plans (FMPs) and FMP amendments, and for drafting implementing regulations for each managed fishery. Once a rulemaking is triggered by an FMC, the Magnuson-Stevens Act places stringent deadlines upon NMFS by which it must exercise its rulemaking responsibilities. Most of these rulemakings will be minor, involving only the opening or closing of a fishery under an existing FMP. While no one Magnuson-Stevens Act rulemaking is among the Department's most important significant regulatory actions, and, therefore, none is specifically described below, the sum of these actions, and a few of the individual actions themselves, are highly significant.

The Magnuson-Stevens Act, which is the primary legal authority for Federal regulation to conserve and manage fishery resources, establishes eight regional FMCs, responsible for preparing FMPs and FMP amendments. NMFS issues regulations to implement FMPs and FMP amendments. FMPs address a variety of fishery matters, including depressed stocks, overfished stocks, gear conflicts, and foreign fishing. One of the problems that FMPs may address is preventing overcapitalization (preventing excess fishing capacity) of fisheries. This may be resolved by limiting access to those dependent on the fishery in the past and/or by allocating the resource through individual transferable quotas, which can be sold on the open market to other participants or those wishing access. Quotas set on sound scientific information, whether as a total fishing limit for a species in a fishery or as a share assigned to each vessel participant, enable stressed stocks to rebuild. Other measures include staggering fishing seasons or limiting gear types to avoid gear conflicts on the fishing grounds, and establishing seasonal and area closures to protect fishery stocks.

The FMCs provide a forum for public debate and, using the best scientific information available, make the judgments needed to determine optimum yield on a fishery-by-fishery basis. Optional management measures are examined and selected in accordance with the national standards set forth in the Magnuson-Stevens Act. This process, including the selection of the preferred management measures, constitutes the development, in simplified form, of an FMP. The FMP, together with draft implementing regulations and supporting documentation, is submitted to NMFS for review against the national standards set forth in the Magnuson-Stevens Act, in other provisions of the Act, and other applicable laws. The same process applies to amending an existing approved FMP.

The Magnuson-Stevens Act contains ten national standards against which fishery management measures are judged. NMFS has supplemented the standards with guidelines interpreting each standard, and has updated and added to those guidelines. One of the national standards requires that management measures, where practicable, minimize costs and avoid unnecessary duplication. Under the guidelines, NMFS will not approve management measures submitted by an FMC unless the fishery is in need of management. Together, the standards and the guidelines correspond to many of the Administration's principles of regulation as set forth in section 1(b) of Executive Order 12866. One of the national standards establishes a qualitative equivalent to the Executive Order's "net benefits" requirement—one of the focuses of the Administration's statement of regulatory philosophy as stated in section 1(a) of the Order.

Bureau of Industry and Security

The Bureau of Industry and Security (BIS) promotes U.S. national and economic security and foreign policy interests by managing and enforcing Commerce's security-related trade and competitiveness programs. BIS plays a key role in challenging issues involving national security and nonproliferation, export growth, and high technology, which has become especially important in light of the tragic events of September 11, 2001. The Bureau's continuing major challenge is combating the proliferation of weapons of mass destruction while furthering the growth of U.S. exports, which are critical to maintaining our leadership in an increasingly competitive global economy. BIS strives to be the leading innovator in transforming U.S. strategic trade policy and programs to adapt to the changing world.

Major Programs and Activities

The Export Administration Regulations (EAR) provide for export controls on dual-use goods and technology (primarily commercial goods that have potential military applications) not only to fight proliferation, but also to pursue other national security, short supply, and foreign policy goals (such as combating terrorism). Simplifying and updating these controls in light of the end of the Cold War has been a major accomplishment of BIS.

One of the most important updates to the EAR came as a result of the acts of terrorism committed on September 11, 2001. The President's Executive Order 13224, entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," directs agencies to, among other things, block property and interests in property of persons listed in the Annex of the Executive Order. This action was taken to ensure the continued preservation of national security, foreign policy, and the economy of the United States. To implement EO 13224, the EAR was updated to implement license requirements on all exports and reexports to persons designated in, or pursuant to, the Executive order.

BIS is also responsible for:

Enforcing the export control and antiboycott provisions of the Export Administration Act (EAA), as well as other statutes such as the Fastener Quality Act. The EAA is enforced through a variety of administrative, civil, and criminal sanctions.

Analyzing and protecting the defense industrial and technology base, pursuant to the Defense Production Act and other laws. As the Defense Department increases its reliance on dual-use high technology goods as part of its cost-cutting efforts, ensuring that we remain competitive in those sectors and subsectors is critical to our national security.

Helping Ukraine, Kazakstan, Belarus, Russia, and other newly emerging countries develop effective export control systems. The effectiveness of U.S. export controls can be severely undercut if "rogue states" or terrorists gain access to sensitive goods and technology from other supplier countries.

Working with former defense plants in the Newly Independent States to help make a successful transition to profitable and peaceful civilian endeavors. This involves helping remove unnecessary obstacles to trade and investment and identifying opportunities for joint ventures with U.S. companies.

Assisting U.S. defense enterprises to meet the challenge of the reduction in defense spending by converting to civilian production and by developing export markets. This work assists in maintaining our defense industrial base as well as preserving jobs for U.S. workers.

BILLING CODE 3510–BW–S

DEPARTMENT OF DEFENSE (DOD)

Statement of Regulatory Priorities

Background

The Department of Defense (DoD) is the largest Federal department consisting of 3 military departments (Army, Navy, and Air Force), 9 unified combatant commands, 16 Defense agencies, and 7 DoD field activities. It has over 1,400,000 military personnel and 670,000 civilians assigned as of May 31, 2002, and over 200 large and medium installations in the continental United States, U. S. territories, and foreign countries. The overall size, composition, and dispersion of the Department of Defense, coupled with an innovative regulatory program, presents a challenge to the management of the Defense regulatory efforts under Executive Order 12866 "Regulatory Planning and Review" of September 30, 1993.

Because of its diversified nature, DoD is impacted by the regulations issued by regulatory agencies such as the Departments of Energy, Health and Human Services, Housing and Urban Development, Labor, Transportation, and the Environmental Protection Agency. In order to develop the best possible regulations that embody the principles and objectives embedded in Executive Order 12866, there must be coordination of proposed regulations among the regulating agencies and the affected Defense components. Coordinating the proposed regulations in advance throughout an organization as large as DoD is straightforward, yet a formidable undertaking.

DoD is not a regulatory agency but occasionally issues regulations that have an impact on the public. These regulations, while small in number compared to the regulating agencies, can be significant as defined in Executive Order 12866. In addition, some of DoD's regulations may affect the regulatory agencies. DoD, as an integral part of its program, not only receives coordinating actions from the regulating agencies, but coordinates with the agencies that are impacted by its regulations as well.

The regulatory program within DoD fully incorporates the provisions of the President's priorities and objectives under Executive Order 12866. Promulgating and implementing the regulatory program throughout DoD presents a unique challenge to the management of our regulatory efforts.

Coordination

Interagency

DoD annually receives regulatory plans from those agencies that impact the operation of the Department through the issuance of regulations. A system for coordinating the review process is in place, regulations are reviewed, and comments are forwarded to the Office of Management and Budget. The system is working in the Department, and the feedback from the Defense components is most encouraging, since they are able to see and comment on regulations from the other agencies before they are required to comply with them. The coordination process in DoD continues to work as outlined in Executive Order 12866.

Internal

Through regulatory program points of contact in the Department, we have established a system that provides information from the Administrator of the Office of Information and Regulatory Affairs (OIRA) to the personnel responsible for the development and implementation of DoD regulations. Conversely, the system can provide feedback from DoD regulatory personnel to the Administrator, OIRA. DoD continues to refine its internal procedures, and this ongoing effort to improve coordination and communication practices is well received and supported within the Department.

Overall Priorities

The Department of Defense needs to function at a reasonable cost, while ensuring that it does not impose ineffective and unnecessarily burdensome regulations on the public. The rulemaking process should be responsive, efficient, cost-effective, and both fair and perceived as fair. This is being done in the Department while it must react to the contradictory pressures of providing more services with fewer resources. The Department of Defense, as a matter of overall priority for its regulatory program, adheres to the general principles set forth in Executive Order 12866 as amplified below.

Problem Identification

Congress typically passes legislation to authorize or require an agency to issue regulations and often is quite specific about the problem identified for correction. Therefore, DoD does not generally initiate regulations as a part of its mission.

Conflicting Regulations

Since DoD plans to issue just two significant regulations this year, the probability of developing conflicting regulations is low. Conversely, DoD is impacted to a great degree by the regulating agencies. From that perspective, DoD is in a position to advise the regulatory agencies of conflicts that appear to exist using the coordination processes that exist in the DoD and other Federal agency regulatory programs. It is a priority in the Department to communicate with other agencies and the affected public to identify and proactively pursue regulatory problems that occur as a result of conflicting regulations both within and outside the Department.

Alternatives

DoD will identify feasible alternatives that will obtain the desired regulatory objectives. Where possible, the Department encourages the use of incentives to include financial, quality of life, and others to achieve the desired regulatory results.

Risk Assessment

Assessing and managing risk is a high priority in the DoD regulatory program. The Department is committed to risk prioritization and an "anticipatory" approach to regulatory planning, which focuses attention on the identification of future risk. Predicting future regulatory risk is exceedingly difficult due to rapid introduction of new technologies, side effects of Government intervention, and changing societal concerns. These difficulties can be mitigated to a manageable degree through the incorporation of risk prioritization and anticipatory regulatory planning into DoD's decisionmaking process, which results in an improved regulatory process and increases the customer's understanding of risk.

Cost-Effectiveness

One of the highest priority objectives of DoD is to obtain the desired regulatory objective by the most cost-effective method available. This may or may not be through the regulatory process. When a regulation is required, DoD considers incentives for innovation to achieve desired results, consistency in the application of the regulation, predictability of the activity outcome (achieving the expected results), and the costs for regulation development, enforcement, and compliance. These will include costs to the public, Government, and regulated entities, using the best available data or parametric analysis methods, in the

cost-benefit analysis and the decisionmaking process.

Cost-Benefit

Conducting cost-benefit analyses on regulation alternatives is a priority in the Department of Defense so as to ensure that the potential benefits to society outweigh the costs. Evaluations of these alternatives are done quantitatively or qualitatively or both, depending on the nature of the problem being solved and the type of information and data available on the subject. DoD is committed to considering the most important alternative approaches to the problem being solved and providing the reasoning for selecting the proposed regulatory change over the other alternatives.

Information-Based Decisions

The Defense Department uses the latest technology to provide access to the most current technical, scientific, and demographic information in a timely manner through the world-wide communications capabilities that are available on the Internet. Realizing that increased public participation in the rulemaking process improves the quality and acceptability of regulations, DoD is committed to exploring the use of Information Technology (IT) in rule development and implementation. IT provides the public with easier and more meaningful access to the processing of regulations. Furthermore, the Department endeavors to increase the use of automation in the Notice and Comment rulemaking process in an effort to reduce time pressures and increase public access in the regulatory process. Notable progress has been made in the Defense acquisition regulations area toward achieving the Administration's E-government initiative of making it simpler for citizens to receive high-quality service from the Federal government, inform citizens, and allow access to the development of rules.

Performance-Based Regulations

Where appropriate, DoD is incorporating performance-based standards that allow the regulated parties to achieve the regulatory objective in the most cost-effective manner.

Outreach Initiatives

DoD endeavors to obtain the views of appropriate State, local, and tribal officials and the public in implementing measures to enhance public awareness and participation both in developing and implementing regulatory efforts. Historically, this has included such activities as receiving comments from the public, holding hearings, and conducting focus groups. This reaching out to organizations and individuals that are affected by or involved in a particular regulatory action remains a significant regulatory priority of the Department and, we feel, results in much better regulations.

The Department is actively engaged in addressing the requirements of the Government Paperwork Elimination Act (GPEA) in implementing electronic government and in achieving IT accessibility for individuals with disabilities. This is consistent with the Administration's strategy of advancing E-government as expressed in "The President's Management Agenda."

Coordination

DoD has enthusiastically embraced the coordination process between and among other Federal agencies in the development of new and revised regulations. Annually, DoD receives regulatory plans from key regulatory agencies and has established a systematic approach to providing the plans to the appropriate policy officials within the Department. Feedback from the DoD components indicates that this communication among the Federal agencies is a major step forward in improving regulations and the regulatory process, as well as in improving Government operations.

Minimize Burden

In the regulatory process, there are more complaints concerning burden than anything else. In DoD, much of the burden is in the acquisition area. Over the years, acquisition regulations have grown and become burdensome principally because of legislative action. But, in coordination with Congress, the Office of Federal Procurement Policy, and the public, DoD is initiating significant reforms in acquisition so as to effect major reductions in the regulatory burden on personnel in Government and the private sector. DoD has implemented a multi-year strategy for reducing the paperwork burden imposed on the public. This plan shows that DoD has met and will exceed the goals set forth in the Paperwork Reduction Act. It is the goal of the Department of Defense to impose upon the public the smallest burden viable, as infrequently as possible, and for no longer than absolutely necessary.

Plain Language

Ensuring that regulations are simple and easy to understand is a high regulatory priority in the Department of Defense. All too often, the regulations are complicated, difficult to understand, and subject to misinterpretation, all of which can result in the costly process of litigation. The objective in the development of regulations is to write them in clear, concise language that is simple and easy to understand.

DoD recognizes that it has a responsibility for drafting clearly written rules that are reader-oriented and easily understood. Rules will be written for the customer using natural expressions and simple words. Stilted jargon and complex construction will be avoided. Clearly written rules will tell our customers what to do and how to do it. DoD is committed to a more customer-oriented approach and uses plain language rules thereby improving compliance and reducing litigation.

In summary, the rulemaking process in DoD should produce a rule that: Addresses an identifiable problem, implements the law, incorporates the President's policies defined in Executive Order 12866, is in the public interest, is consistent with other rules and policies, is based on the best information available, is rationally justified, is cost-effective, can actually be implemented, is acceptable and enforceable, is easily understood, and stays in effect only as long as is necessary. Moreover, the proposed rule or the elimination of a rule should simply make sense.

Regulations Related to the Events of September 11, 2001

The Department of Defense promulgated two acquisition regulations relating to the events of September 11, 2001. Defense Federal Acquisition Regulation Supplement (DFARS) Case 2001-D018, Performance of Security Functions, implements section 1010 of the USA Patriot Act. An interim rule was published in the **Federal Register** on March 14, 2002. Section 1010 provides an exception to the prohibition on contracting for security functions at a military installation or facility. The exception applies during the period of time that the United States Armed Forces are engaged in Operation Enduring Freedom and the 180 days thereafter. The interim rule was finalized without change on August 30, 2002 (67 FR 55730).

Federal Acquisition Regulation (FAR) Case 2002-003, Temporary Emergency Procurement Authority, implements section 836 of the Fiscal Year (FY) 2002 National Defense Authorization Act. Section 836 increases the micropurchase threshold and the simplified acquisition threshold for purchases during FY 2002 and 2003 that facilitate the defense against terrorism or biological or chemical attack against the United States. The section also specifies that the procurement of biotechnology property or services to facilitate the defense against terrorism or biological or chemical attack shall be treated as procurement of commercial items. The interim rule was published in the **Federal Register** on August 30, 2002, as part of Federal Acquisition Circular (FAC) 2001-009 (67 FR 56120-56122).

Suggestions From the Public for Reform—Status of DoD Item

In the draft report on costs and benefits published May 2, 2001, the Office of Information and Regulatory Affairs asked the public to recommend specific proposals for regulatory reform. Of the 71 suggestions involving 17 agencies, one specifically addressed the Army Corps of Engineers' Regulatory Program. The nationwide permits were classified as priority 3 in appendix A of the report, "Making Sense of Regulation: 2001 Report to Congress on the Costs and Benefits of Regulations and Unfunded Mandates on State, Local, and Tribal Entities."

In the January 15, 2002, issue of the **Federal Register** (67 FR 2019-2095), the Army Corps of Engineers reissued 43 nationwide permits and 26 general conditions, with minor modifications. The Corps also issued one new nationwide permit general condition. The implementing regulations for the nationwide permit program are found at 33 CFR part 330. The most recent substantive modifications to 33 CFR part 330 were published in the **Federal Register** on November 22, 1991 (56 FR 59110). On February 14, 1997, the Corps removed appendix A (which contained the text of the nationwide permits) from the Code of Federal Regulations at 33 CFR part 330 (see 62 FR 6877). The nationwide permits are not classified as regulations. They are permits to authorize certain minor activities in waters of the United States that result in minimal adverse effects on the aquatic environment, individually and cumulatively. Nationwide permits cannot be issued for a period of more than 5 years and must be reviewed prior to reissuance to ensure compliance with section 404(e) of the Clean Water Act and other applicable laws. Although the permits and general conditions are not regulations, the Corps coordinated the reissue package with the Office of Management and Budget, who subsequently vetted the submission with other Federal agencies interested in the Army's Regulatory Program. The 43 nationwide permits and 27 general conditions that were published on January 15, 2002, reflect the result of this interagency coordination.

Specific Priorities

For this regulatory plan, there are three specific DoD priorities, all of which reflect the established regulatory principles. One of these, "U.S. Army Corps of Engineers, Directorate of Civil Works," will have one significant regulatory action as defined by E.O. 12866. In those areas where rulemaking or participation in the regulatory process is required, DoD has studied and developed policy and regulations that incorporate the provisions of the President's priorities and objectives under the Executive order.

DoD has focused its regulatory resources on the most serious environmental, health, and safety risks. Perhaps most significant is that each of the three priorities described below promulgates regulations to offset the resource impacts of Federal decisions on the public or to improve the quality of public life, such as those regulations concerning civil functions of the U.S. Army Corps of Engineers, acquisition, and installations and the environment.

U.S. Army Corps of Engineers, Directorate of Civil Works

Preserve the Quality of Water and the Quality and Quantity of Wetlands

During Fiscal Year (FY) 2003, the U.S. Army Corps of Engineers is proposing one significant regulation as defined by Executive Order 12866. Although not economically significant, the "Programmatic Regulations for the Comprehensive Everglades Restoration Plan" has been classified as significant ("other significant") because of the novel legal and policy issues that have arisen and will continue to arise over the 30-year implementation period. The Office of the Assistant Secretary of the Army (Civil Works) and the Corps have completed one regulation.

The U.S. Army Corps of Engineers was directed by Congress in section 601 of the Water Resources Development Act of 2000 (Public Law 106-541, 114 Stat. 2680) to develop a Comprehensive Everglades Restoration Plan (Plan) to restore and preserve south Florida's natural ecosystem, while enhancing water supplies and maintaining flood protection. To guide the development of the Plan, Congress also directed the Secretary of the Army, after notice and opportunity for public comment, to develop and implement Programmatic Regulations within 2 years (not later than December 11, 2002). The Programmatic Regulations will establish a process for developing project implementation reports, project cooperation agreements, and project operating manuals that will ensure the goals and the objectives of the Plan are achieved. The regulations also will establish procedures for developing and using any new information resulting from ecosystem changes or unforeseen circumstances in accordance with the principles of adaptive management contained in the Plan. Finally, the Programmatic Regulations will facilitate the re-establishment of and protection of the natural system consistent with the interim and final goals of the Plan while providing thorough evaluation points during the 30-year project implementation schedule. The Office of Management and Budget (OMB) is facilitating development of the rule. OMB vetted the draft with appropriate Federal agencies and held several interagency meetings before clearing the draft for publication in the **Federal Register** in August 2002. The final Programmatic Regulations require the concurrence of the Governor of Florida and the Secretary of the Interior, and the consultation with the Seminole Tribe of Indians of Florida, the Miccosukee Tribe of Indians of Florida, the Administrator of the Environmental Protection Agency, and the Secretary of Commerce. Additionally, other Federal, State, and local agencies will continue to assist in promulgating the Programmatic Regulations to ensure that the goals and purposes of the Plan are achieved.

The Office of the Assistant Secretary of the Army (Civil Works) and the U.S. Army Corps of Engineers completed one regulation in 2002. On April 20, 2001, the Corps proposed revisions to the Clean Water Act (Act) regulatory definitions of "Fill Material" and "Discharge of Fill Material" (65 FR 21292). On May 9, 2002, the Corps in conjunction with the U.S. Environmental Protection Agency (EPA), issued a final rule in the **Federal Register** (67 FR 31129) revising the Clean Water Act regulatory definitions of "fill material" and "discharge of fill material." Revising the rule was necessary in order to clarify those pollutants that are regulated by the Corps under section 404 of the Act.

Section 404 of the Clean Water Act requires a permit from the U.S. Army Corps of Engineers for discharges of dredged or fill material to waters of the

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United States. The Environment Protection Agency and the Corps' regulations implementing section 404 previously contained differing definitions of the term "fill material." In particular, the Corps regulations defined fill material as being used for the "primary purpose" of replacing an aquatic area with dry land or changing the bottom elevation of a waterbody. In contrast, EPA's definition of fill material looked to whether the effect is to replace waters of the U.S. with dry land or change the bottom elevation of waterbodies and did not contain a "primary purpose" test as found in the Corps regulations. In order to clarify what constitutes "fill material" for purposes of section 404 and provide improved regulatory certainty, the Corps and EPA have implemented the final rule under which both agencies have adopted identical, effect-based definitions of the terms "fill material" and "discharge of fill material."

National Historic Preservation Act—Army's Regulatory Program

More than 20 years ago, the Army Corps of Engineers published as appendix C of 33 CFR part 325, a rule that governs compliance with the National Historic Preservation Act for the Army's Regulatory Program. Over the years, there have been significant changes in policy, and the Act was amended in 1992, leading to the publication in December 2000 of new implementing regulations, at 36 CFR part 800, developed by the Advisory Council on Historic Preservation (ACHP). Thus, on March 8, 2002, the Corps published a notice in the **Federal Register** (67 FR 10822), requesting comments on the implementation of the Army's regulatory program in view of the new ACHP regulations at 36 CFR part 800. Thirty-nine comments were received in response to this notice. The Corps Regulatory Program currently uses 33 CFR part 325, appendix C, to comply with the National Historic Preservation Act and other laws that address historic properties. In Fiscal Year 2003, the Corps may propose changes to 33 CFR part 325, appendix C, to bring the regulation into conformance with the new Advisory Council on Historic Preservation's regulations at 36 CFR part 800.

Defense Procurement and Acquisition

The Department continues its efforts to reengineer its acquisition system to achieve its vision of an acquisition system that is recognized as being the smartest, most efficient, most responsive buyer of best value goods and services, which meet the warfighter's needs from a globally competitive base. To achieve this vision, the Department will focus its attention on implementing and institutionalizing initiatives that may include additional changes to existing and recently modified regulations to ensure that the Department is achieving the outcomes it desires (continuous process improvement).

The Department of Defense continuously reviews its supplement to the Federal Acquisition Regulation (FAR) and continues to lead Government efforts to simplify the following acquisition processes:

- Consider FAR and Defense Federal Acquisition Regulation Supplement (DFARS) changes to facilitate timely contract closeout.
- Consider policies and procedures to provide contractors an adequate share of savings from cost efficiencies and rationalization over a not-to-exceed 5-year period.
- Revise the FAR to provide for electronic listing of acquisition vehicles available for use by more than one agency.
- Rewrite DFARS part 225, Foreign Acquisition, to improve clarity and make procedures less complex, particularly for evaluation of foreign offers and customs duty. The rewrite also proposes to implement the determination of the Under Secretary of Defense (AT&L) that for procurements subject to the Trade Agreements Act, it would be inconsistent with the public interest to apply the Buy American Act to U.S.-made end products that are substantially transformed in the United States.
- Rewrite FAR part 27, Patents, Data and Copyrights, to clarify, streamline, and update guidance and clauses on patents, data, and copyrights.
- Review various FAR cost principles to determine whether certain FAR cost principles are still relevant in today's business environment, whether they place an unnecessary administrative burden on contractors and the Government, and whether they can be streamlined or simplified.
- Revise the FAR part 45, Government Property, to organize and streamline the property disposal procedures and to incorporate into the FAR the DoD deviations relating to Government property rental and special tooling.

Defense Installations and the Environment

The Department is committed to reducing the total ownership costs of the military infrastructure while providing the Nation with military installations that efficiently support the warfighter in: Achieving military dominance, ensuring superior living and working conditions, and enhancing the safety of the force and the quality of the environment. DoD has focused its regulatory priorities on explosives safety, human health, and the environment. These regulations provide means for the Department to provide information about restoration activities at Federal facilities and to take public advice on the restoration activities.

Restoration Advisory Boards

Section 324(a) of Public Law 104-106, which amended section 2705 of title 10, United States Code, requires the Secretary of Defense to "prescribe regulations regarding the establishment, characteristics, composition, and funding of restoration advisory boards." Section 324(a) also stated that DoD's issuance of regulations shall not be a precondition to the establishment of Restoration Advisory Boards (RABs) (amended section 2705(d)(2)(B)).

The Department of Defense recognizes the importance of public involvement at military installations and formerly used defense sites that require environmental restoration. RABs provide an expanded opportunity for stakeholder input into the environmental restoration process at operating and closing DoD installations. They also act as a forum for the discussion and exchange of restoration program information between agencies and the community, as well as providing an opportunity for RAB members to review progress and participate in a dialogue with the installation's decisionmakers.

In August 1996, the Department proposed and requested public comments on regulations regarding the characteristics, composition, funding, and establishment of Restoration Advisory Boards. The Boards were not subject to the Federal Advisory Committee Act (FACA), because DoD did not want to subject community members to the FACA requirements, such as financial disclosure. The General Services Administration did not agree that RABs are not subject to FACA. DoD continued its RABs but did not publish a final rule.

In the fall of 2001, the RAB regulations were raised in a case before the 9th Circuit. On the RAB rule issue,

the Judge indicated that he would dismiss without prejudice and give the Department of Defense 18 months to promulgate a rule. The Judge was not inclined to grant the plaintiff's request that he order DoD to promulgate the rule, stating that the plaintiff could bring the matter back to the Court if the Department of Defense had not completed the rulemaking in 18 months. Accordingly, DoD is preparing a new RAB rule to meet this requirement and plans on publishing the rule by the middle of 2003.

Munitions Response Site Prioritization Protocol

Section 2710(b)(1) of title 10, United States Code, directs the Secretary of Defense to develop, in consultation with representatives of the States and Indian tribes, a proposed protocol for assigning to each defense site a relative priority for munitions response activities. Section 2710 provides for public notice and comment on the proposed protocol and requires that the proposed protocol be available for public comment on or before November 30, 2002. DoD is directed to issue a final protocol to be applied to defense sites listed in the Department's munitions response site inventory.

The proposed rule will be called the "Munitions Response Site Prioritization Protocol" and will assign a relative response priority for all sites addressed under the Military Munitions Response Program (MMRP) category of the Defense Environmental Restoration Program (DERP). The protocol will be a qualitative methodology used to sequence environmental restoration activities. The tool will make use of limited data and reflect the overall conditions at the site. It will be used to assign a relative priority based on an evaluation of factors relating to safety and environmental hazard potential.

The proposed Munitions Site Prioritization Protocol Rule is being developed by a defense working group with input from other Federal agencies and State members of the Munitions Response Committee in consultation with tribal representatives. A notice was published in the **Federal Register** in March 2002 announcing DoD's intent to develop the protocol and requesting input from the public on the factors promulgated by Congress. Working documents are on the World Wide Web and the Department continues to meet with State and tribal representatives. DoD intends to prepare, in consultation with the States and Indian tribes, a proposed and final protocol according to the requirements. Currently a draft proposed protocol is being prepared. Meetings are scheduled to discuss it with the States and tribes prior to publication.

DOD

FINAL RULE STAGE

21. PROGRAMMATIC REGULATIONS FOR THE COMPREHENSIVE EVERGLADES RESTORATION PLAN

Priority:

Other Significant

Legal Authority:

PL 106-541

CFR Citation:

33 CFR 385

Legal Deadline:

Final, Statutory, December 11, 2002.

Abstract:

The U.S. Army Corps of Engineers was directed by Congress in section 601 of the Water Resources Development Act of 2000 (Public Law 106-541, 114 Stat. 2680) to develop a Comprehensive Everglades Restoration Plan (Plan) to restore and preserve south Florida's natural ecosystem, while enhancing water supplies and maintaining flood protection. To guide the development of the Plan, Congress also directed the Secretary of the Army, after notice and opportunity for public comment, to develop and implement Programmatic Regulations within 2 years (NLT December 11, 2002). The Programmatic Regulations will establish a process for developing project implementation reports, project cooperation agreements, and project operating manuals that will ensure the goals and the objectives of the Plan are achieved. The regulations also will establish procedures developing and using any new information resulting from ecosystem changes or unforeseen circumstances in accordance with the principles of adaptive management contained in the Plan. Finally, the Programmatic Regulations will facilitate the re-establishment and protection of the natural system consistent with the interim and final goals of the Plan while providing thorough evaluation points during the 30-year project implementation schedule.

Statement of Need:

The Programmatic Regulations will fulfill the intent of Congress to establish explicit guidance on how this project, and its constituent parts, will be developed and implemented, with full public and agency participation.

Summary of Legal Basis:

Specifically, the Programmatic Regulations will implement the following sections of the Water Resources Development Act of 2000:

Section 601(h)(3)(A), requires Programmatic Regulations to be completed not later than 2 years after enactment;

Section 601(h)(3)(B), the Secretary of the Interior and the Governor shall provide the Secretary of the Army with a written statement of concurrence or nonconcurrence not later than 180 days after the end of the comment period;

Section 601(h)(3)(C), the regulations shall establish a process for the development of project implementation reports, project cooperation agreements, and operating manuals; ensure that new information resulting from changed or unforeseen circumstances, new science or technical information developed through adaptive management are integrated into the implementation of the Plan; and ensure the protection of the natural system consistent with the goals and purposes of the Plan;

Section 601(h)(3)(D), all project implementation reports approved before the date of promulgation of the Programmatic Regulations shall be consistent with the Plan;

Section 601(h)(3)(E), at least every 5 years the Secretary of the Army shall review the Programmatic Regulations for consistency with Plan goals and purposes.

Alternatives:

None.

Anticipated Cost and Benefits:

There are no economic costs, per say, attributed to the promulgation of the Programmatic Regulations. The regulations will help ensure that the $8 billion estimated Federal investment will result in ecosystem restoration benefits identified as individual projects are developed and implemented over a 30-year construction period.

Risks:

There are no risks associated with the Programmatic Regulations. Promulgation of the regulations will help ensure that the Army Corps of Engineers follows agreed upon project development and implementation

procedures, designed to achieve the environmental restoration and protection benefits outlined in the Plan. Although no regulatory impacts with other Federal, Tribal, State, or local regulations have been identified to date, the Corps will take comments on impacts as part of the public and agency comment period, and address them in the final regulations. The draft Programmatic Regulations have been drafted so as not to conflict with existing laws and regulations. Any oversights will be corrected in the final version.

Timetable:

Action	Date	FR Cite
NPRM	08/02/02	67 FR 50540
NPRM Comment Period End	10/01/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State, Tribal, Local

Agency Contact:

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DEPARTMENT OF EDUCATION (ED)

Statement of Regulatory and Deregulatory Priorities

General

We support States, local communities, institutions of higher education, and others to improve education nationwide. Our roles include providing leadership and financial assistance for education to agencies, institutions, and individuals in situations in which there is a national interest; monitoring and enforcing Federal civil rights laws in programs and activities that receive Federal financial assistance; and supporting research, evaluation, and dissemination of findings to improve the quality of education.

To connect our customers to a "one-stop-shopping" center for information about our programs and initiatives, we instituted 1-800-USA-LEARN (1-800-872-5327). We also set up 1-800-4FED-AID (1-800-433-3243) for information on student aid, and we provide an on-line library of information on education legislation, research, statistics, and promising programs at the following Internet address:

http://www.ed.gov

More than 773,600 people take advantage of these resources every week. We have forged effective partnerships with customers and others to develop policies, regulations, guidance, technical assistance, and approaches to compliance. We have a record of successful communication and shared policy development with affected persons and groups, including parents, students, educators, representatives of State and local governments, neighborhood groups, schools, colleges, special education and rehabilitation service providers, professional associations, advocacy organizations, business, and labor.

In particular, we continue to seek greater and more useful customer participation in our rulemaking activities through the use of consensual rulemaking and new technology. If we determine that the development of regulations is absolutely necessary, we seek customer participation at all stages—in advance of formal rulemaking, during rulemaking, and after rulemaking is completed in anticipation of further improvements through statutory or regulatory changes. We have expanded our outreach efforts through the use of satellite broadcasts, electronic bulletin boards, and teleconferencing. For example, we generally invite comments on all proposed regulations through the Internet.

OMB's 2001 Report to Congress on the Costs and Benefits of Regulations identified as needing changes — (priority 1) — the Department's title IV regulations promulgated under the authority of the Higher Education Act. These regulations were recently negotiated with the financial aid; higher education, and other related community members through the negotiated rulemaking process and will reduce administrative burden for program participants, provide benefits to students and borrowers, and protect taxpayers' interests.

We are streamlining information collections, reducing burden on information providers involved in our programs, and making information maintained by us easily available to the public. We are looking into coordinating similar information collections across programs as one possible approach to reduce overlapping or inconsistent paperwork requirements. To the extent permitted by statute, we'll revise regulations to eliminate barriers that inhibit coordination across programs (such as by creating common definitions). This should help reduce the frequency of reports and eliminate unnecessary data requirements.

Recently, we have piloted two new Internet-based software applications, e-Application and e-Reports. These enable applicants, grantees, and grant teams to process applications and file performance reports online. We have received positive feedback from participants in the pilot programs. Our goal over time is to encourage applicants and grantees to make electronic commerce, or the process of conducting business over the Internet, their preferred method of doing business.

New Initiatives

The Secretary's initiatives include One-ED, a new way of doing business for the Department of Education. One-ED represents the culmination of a series of changes that will transform the Department into a flexible, high-performing, high-integrity workplace focused on program outcomes and management reform. One-ED provides an integrated, 5-year human capital, strategic sourcing and restructuring plan that builds on the President's Management Agenda and the Department's Strategic Plan, Culture of Accountability Report and Blueprint for Management Excellence, by providing employee learning and achievement opportunities.

Some One-ED changes involve employees learning new skills so that staff can help the Department's partners achieve key education outcomes. Creating One-ED also means making organization structure changes to coordinate policymaking and avoid duplication. One-ED clients and partners will find knowledgeable people arrayed in a structure that is easy to access and navigate.

Moving to One-ED also involves re-engineering work processes; i.e., changing how Department staff performs its work by reducing paperwork, introducing technology, and removing unnecessary steps. In some cases, through competitions and cost comparisons, the Department may find it less costly to provide high quality services by contracting with private sector organizations. In such cases, re-training and restructuring may become necessary.

Also, the Department of Education and the National Council of Negro Women (NCNW) have joined forces to ignite a movement in communities across the country to close the achievement gap between African American students and their peers. The Partnership for Academic Achievement will leverage the new provisions of the No Child Left Behind Act of 2001 in conjunction with the tremendous outreach network of NCNW to improve academic achievement dramatically, reducing the difference in the gap between white and African American National Assessment of Educational Progress performance at the proficient level.

Principles for Regulating

Our Principles for Regulating determine when and how we will regulate. Through aggressive application of the following principles, we have eliminated outdated or unnecessary regulations and identified situations in which major programs could be implemented without any regulations or with only limited regulations:

We will regulate only if regulating improves the quality and equality of services to our customers, learners of all ages. We will regulate only if absolutely necessary and then in the most flexible, most equitable, and least burdensome way possible.

Whether to Regulate:

- When essential to promote quality and equality of opportunity in education.

- When a demonstrated problem cannot be resolved without regulation.
- When necessary to provide legally binding interpretation to resolve ambiguity.
- Not if entities or situations to be regulated are so diverse that a uniform approach does more harm than good.

How to regulate:

- Regulate no more than necessary.
- Minimize burden and promote multiple approaches to meeting statutory requirements.
- Encourage federally funded activities to be integrated with State and local reform activities.
- Ensure that benefits justify costs of regulation.
- Establish performance objectives rather than specify compliance behavior.
- Encourage flexibility so institutional forces and incentives achieve desired results.

Regulatory and Deregulatory Priorities for the Next Year

Reauthorization of the Elementary and Secondary Education Act of 1965 reflected President Bush's No Child Left Behind plan for reforming our public schools. Our priorities include amending existing regulations in 34 CFR chapter II (Office of Elementary and Secondary Education) to make the No Child Left Behind plan a reality and to implement various changes in statutes as they are enacted.

Reauthorization of the Individuals with Disabilities Education Act (IDEA), parts C and D, will make changes needed to improve implementation of the early intervention program for infants and toddlers with disabilities under part C, and the effectiveness of the National Activities under part D. The Secretary solicited public comment on the reauthorization of IDEA using the underlying framework of the President's principles of education reform to ensure that no child is left behind.

Reauthorization of the Educational, Research, Development, Dissemination, and Improvement Act of 1994 will make changes needed to ensure that activities carried out by the Office of Educational Research and Improvement meet the highest standards of professional excellence.

ED—Office of Educational Research and Improvement (OERI)

PROPOSED RULE STAGE

22. • REAUTHORIZATION OF THE EDUCATIONAL, RESEARCH, DEVELOPMENT, DISSEMINATION, AND IMPROVEMENT ACT OF 1994 (SECTION 610 REVIEW)

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

20 USC 6001 et seq

CFR Citation:

34 CFR ch VII

Legal Deadline:

None

Abstract:

These regulations would implement changes made by the anticipated reauthorization of the Educational, Research, Development, Dissemination, and Improvement Act of 1994. This action is a notice that if regulations are necessary, ED would review the regulations in 34 CFR chapter VII under section 610 of the Regulatory Flexibility Act (5 U.S.C. 610). The purpose of this review would be to determine if these regulations should be continued without change, or should be amended or rescinded, to minimize any significant economic impact upon a substantial number of small entities. We would request comments on the continued need for the regulations; the complexity of the regulations; the extent to which they overlap, duplicate, or conflict with other Federal, State, or local government regulations; and the degree to which technology, economic conditions, or other relevant factors have changed since the regulations were promulgated.

Statement of Need:

Regulations may be necessary to implement new legislation. The Department would also complete its review of these regulations under 610(c) of the Regulatory Flexibility Act. In developing any regulations, the Department would seek to reduce regulatory burden and increase flexibility to the maximum extent possible.

Summary of Legal Basis:

New legislation.

Alternatives:

In addition to implementing the anticipated reauthorization of the Educational, Research, Development, Dissemination, and Improvement Act of 1994, the purpose of this review would be to determine whether there are appropriate alternatives.

Anticipated Cost and Benefits:

Existing regulatory provisions may be eliminated or improved as a result of this review.

Risks:

These regulations would not address a risk to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

No

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 1850–AA57

ED—Office of Elementary and Secondary Education (OESE)

FINAL RULE STAGE

23. REAUTHORIZATION OF TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965 (SECTION 610 REVIEW)

Priority:

Other Significant

Legal Authority:

PL 107-110

CFR Citation:

34 CFR 200

Legal Deadline:

Final, Statutory, July 8, 2002.

Abstract:

These regulations would implement changes made by the reauthorization of title I of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001. This action is a notice that ED is reviewing the regulations in 34 CFR part 200 under section 610 of the Regulatory Flexibility Act (5 U.S.C. 610). The purpose of this review is to determine if these regulations should be continued without change, or should be amended or rescinded, to minimize any significant economic impact upon a substantial number of small entities. We are requesting comment on the continued need for the regulations; the complexity of the regulations; the extent to which they overlap, duplicate, or conflict with other Federal, State, or local government regulations; and the degree to which technology, economic conditions, or other relevant factors have changed since the regulations were promulgated.

Statement of Need:

These regulations are necessary to implement new legislation. The Department is also completing its review of these regulations under section 610(c) of the Regulatory Flexibility Act. In developing any regulations, the Department will seek to reduce regulatory burden and increase flexibility to the maximum extent possible.

Summary of Legal Basis:

New legislation.

Alternatives:

In addition to implementing the reauthorization of title I of the Elementary and Secondary Education Act of 1965, the purpose of reviewing these regulations is to determine whether there are appropriate alternatives.

Anticipated Cost and Benefits:

Existing regulatory provisions may be eliminated or improved as a result of this review.

Risks:

These regulations would not address a risk to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	08/06/02	67 FR 50986
NPRM Comment Period End	09/05/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

Local, State

Agency Contact:

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RIN: 1810–AA91

ED—Office of Special Education and Rehabilitative Services (OSERS)

PROPOSED RULE STAGE

24. • REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (SECTION 610 REVIEW)

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

20 USC 1400 to 1487

CFR Citation:

34 CFR ch III

Legal Deadline:

None

Abstract:

These regulations would implement changes made by the anticipated reauthorization of the Individuals with Disabilities Education Act. This action is a notice that if regulations are necessary, ED would review the regulations in 34 CFR chapter III under section 610 of the Regulatory Flexibility Act (5 U.S.C. 610). The purpose of this review would be to determine if these regulations should be continued without change, or should be amended or rescinded, to minimize any significant economic impact upon a substantial number of small entities. We would request comments on the continued need for the regulations; the complexity of the regulations; the extent to which they overlap, duplicate, or conflict with other Federal, State, or local government regulations; and the degree to which technology, economic conditions, or other relevant factors have changed since the regulations were promulgated.

Statement of Need:

These regulations may be necessary to implement new legislation. The Department would also complete its review of these regulations under 610(c) of the Regulatory Flexibility Act. In developing any regulations, the Department would seek to reduce regulatory burden and increase flexibility to the maximum extent possible.

Summary of Legal Basis:

New legislation.

Alternatives:

In addition to implementing the anticipated reauthorization of the Individuals with Disabilities Education Act, the purpose of this review would be to determine whether there are appropriate alternatives.

Anticipated Cost and Benefits:

Existing regulatory provisions may be eliminated or improved as a result of this review.

Risks:

These regulations would not address a risk to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

No

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 1820–AB54

BILLING CODE 4000–01–S

DEPARTMENT OF ENERGY (DOE)

Statement of Regulatory and Deregulatory Priorities

The Department makes vital contributions to the Nation's welfare through its extraordinary scientific and technical capabilities in energy research, environmental remediation, and national security. The Department's mission is to:

- Foster a secure and reliable energy system that is environmentally and economically sustainable;
- Provide responsible stewardship of the Nation's nuclear weapons;
- Clean up the Department's facilities;
- Lead in the physical sciences and advance the biological, environmental and computational sciences; and,
- Provide premiere instruments of science for the Nation's research enterprise.

The Department of Energy's regulatory plan reflects the Department's continuing commitment to enhance safety, cut costs, reduce regulatory burden, and increase responsiveness to the public. While not primarily a major Federal regulatory agency, the Department's regulatory activities are essential to achieving its critical mission and to implementing major initiatives in the President's National Energy Plan.

Energy Efficiency Program for Consumer Products and Commercial Equipment

On May 23, 2002, the Department published a final rule that amended the existing energy conservation standards for central air conditioners and heat pumps by raising the minimum energy efficiency levels by 20 percent for most units. As part of this action, the Department withdrew a final rule, published on January 22, 2001, that would have established even higher standards. DOE determined the higher standards in the January 22 final rule, which was the only DOE regulation among the 23 identified as priority 1 reform candidates in OMB's 2001 Report to Congress on the Costs and Benefits of Regulations, were not economically justified under the Energy Policy and Conservation Act. DOE estimates that the revised standards will still save consumers $2 billion and reduce energy consumption by an amount equivalent to 516 million barrels of oil through the year 2030. By the year 2020, the new standards will eliminate the need for three 400 megawatt coal—fired powerplants and nineteen 400 megawatt gas-fired powerplants. In addition, the energy consumption thus avoided will reduce cumulative greenhouse gas emissions by 24 million metric tons of carbon, or an amount equal to that produced by approximately 2 million cars every year.

The Department's ongoing rulemaking activities related to energy efficiency standards and determinations have been categorized as high, medium, or low priority. On August 21, 2002, the Department released its most recent priority-setting report, "Appliance Standards Program — The FY 2003 Priority Setting Summary Report and Actions Proposed." These priorities, established with significant input from the public, are reflected in the rulemaking schedules set forth in The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions. The complete report can be viewed online at the following website: http://www.eren.doe.gov/buildings/codes_standards/reports/priority_setting/priority_setting.html

During the coming year, the Department expects to revise the energy efficiency standards for residential furnaces, boilers, and mobile home furnaces; electric distribution transformers; and commercial unitary air conditioners and heat pumps rated 65-240 kBtu's/hr. Additional information and timetables for these high priority actions can be found below. In addition, the Department will begin the preliminary analyses required to revise the standards for packaged terminal air conditioners and heat pumps, oil- and gas-fired commercial packaged boilers, and tankless gas-fired instantaneous water heaters.

The Department plans to publish final rules concerning test procedures for dishwashers, residential central air conditioners and heat pumps, electric distribution transformers, commercial warm air furnaces and air conditioning equipment, package boilers, and commercial water heaters. Information and timetables concerning these actions, medium and low priority standards rulemakings, and other test procedures can be found in the Department's regulatory agenda, which appears elsewhere in this issue of the **Federal Register**.

Nuclear Safety Regulations

The Department is committed to openness and public participation as it addresses one of its greatest challenges—managing the environment, health, and safety risks posed by its nuclear activities. A key element in the management of these risks is to establish the Department's expectations and requirements relative to nuclear safety and to hold its contractors accountable for safety performance. The 1988 Price-Anderson Amendments Act revisions to the Atomic Energy Act of 1954 (AEA) provide for the imposition of civil and criminal penalties for violations of DOE nuclear safety requirements. As a result, new nuclear safety requirements were initiated with the publication of four notices of proposed rulemaking for review and comment in 1991. The Department's nuclear safety procedural regulations (10 CFR part 820) were published as a final rule in 1993. The Department's substantive nuclear safety requirements (10 CFR parts 830 and 835) were finalized in 2001 and 1998, respectively. The remaining action, 10 CFR part 834, Radiation Protection and the Environment, is scheduled for publication by the end of fiscal year 2003.

DOE—Energy Efficiency and Renewable Energy (EE)

PRERULE STAGE

25. ENERGY EFFICIENCY STANDARDS FOR RESIDENTIAL FURNACES, BOILERS, AND MOBILE HOME FURNACES

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

42 USC 6295

CFR Citation:

10 CFR 430

Legal Deadline:

Final, Statutory, January 1, 1994.

Abstract:

The Energy Policy and Conservation Act, as amended, establishes initial energy efficiency standard levels for most types of major residential appliances and generally requires DOE to undergo two subsequent rulemakings, at specified times, to determine whether the extant standard for a covered product should be amended.

This is the initial review of the statutory standards for furnaces, boilers and mobile home furnaces.

Statement of Need:

This rulemaking is required by statute. Experience has shown that the choice of residential appliances and commercial equipment being purchased by both builders and building owners is generally based on the initial cost rather than on life-cycle costs. Thus, the law requires minimum energy efficiency standards for appliances to eliminate inefficient appliances and equipment from the market.

Summary of Legal Basis:

The Energy Policy and Conservation Act (EPCA), as amended, establishes initial energy efficiency standard levels for most types of major residential appliances and certain commercial equipment. The EPCA generally requires DOE to undergo rulemakings, at specified times, to determine whether the standard for a covered product should be made more stringent.

Alternatives:

The statute requires the Department to conduct rulemakings to review standards and to revise standards to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. In making this determination, the Department conducts a thorough analysis of the alternative standard levels, including the existing standard, based on criteria specified by statute. The process improvements that were announced (61 FR 36974, July 15, 1996) further enhance the analysis of alternatives in the appliance standards development process. For example, under this process, the Department will ask stakeholders and private sector technical experts to review its analyses of the likely impacts, costs and benefits of alternative standard levels. In addition, the Department will solicit and consider information on nonregulatory approaches for encouraging the purchase of energy efficient products.

Anticipated Cost and Benefits:

The specific costs and benefits for these rulemakings have not been established because the final standard levels have not been determined. Nevertheless, existing appliance standards are projected to save 23 quadrillion Btu's from 1993 to 2015, resulting in estimated consumer savings of $1.7 billion per year in 2000 and estimated annual emission reductions of 107 million tons of carbon dioxide and 280 thousand tons of nitrogen oxides in that year. Under the existing standards, the discounted energy savings for consumers are 2.5 times greater than the up-front price premium paid for the appliance.

Risks:

Without appliance standards, energy use will continue to increase with resulting damage to the environment caused by atmospheric emissions. Enhancing appliance energy efficiency reduces atmospheric emissions such as CO2 and NOx. Establishing standards that are too stringent could result in excessive increases in the cost of the product, possible reductions in product utility and may place an undue burden on manufacturers that could result in loss of jobs or other adverse economic impacts.

Timetable:

Action	Date	FR Cite
ANPRM	09/08/93	58 FR 47326
Framework Workshop	07/17/01	
Venting Workshop	05/08/02	
ANPRM	02/00/03	
NPRM	02/00/04	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

State, Local

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RIN: 1904–AA78

DOE—EE

26. ENERGY EFFICIENCY STANDARDS FOR ELECTRIC DISTRIBUTION TRANSFORMERS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 6317

CFR Citation:

10 CFR 430

Legal Deadline:

None

Abstract:

The Energy Policy and Conservation Act, as amended, (EPCA) establishes initial energy efficiency standard levels for most types of major residential appliances and certain types of commercial equipment. The EPCA generally requires DOE to undergo two subsequent rulemakings, at specified times, to determine whether the current standard for a covered product should be amended.

This is the initial review of the statutory standards for electric distribution transformers.

Statement of Need:

This rulemaking is required by statute. Experience has shown that the choice of residential appliances and commercial equipment being purchased by both builders and building owners is generally based on the initial cost rather than on life-cycle cost. Thus, the law requires minimum energy efficiency standards for appliances to eliminate inefficient appliances and equipment from the market.

Summary of Legal Basis:

EPCA establishes initial energy efficiency standard levels for most types of major residential appliances and certain types of commercial equipment and generally requires DOE to undergo rulemakings, at specified times, to determine whether the standard for a covered product should be made more stringent.

Alternatives:

The statute requires DOE to conduct rulemakings to review standards and to revise standards to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. In making this determination, the Department conducts a thorough analysis of alternative standard levels, including the existing standard, based on criteria specified by statute. The process improvements that were announced (61 FR 36974, July 15, 1996) further enhance the analysis of alternative standards. For example, DOE will ask stakeholders and private sector technical experts to review its analyses of the likely impacts, costs, and benefits of alternative standard levels. In addition, the Department will solicit and consider information on nonregulatory approaches for

encouraging the purchase of energy efficient products.

Anticipated Cost and Benefits:

The specific costs and benefits for these rulemakings have not been established because the final standard levels have not been determined. Nevertheless, existing appliance standards are projected to save 23 quadrillion Btu's of energy from 1993 to 2015, resulting in estimated consumer savings of $1.7 billion per year in the year 2000 and estimated annual emission reductions of 107 million tons of carbon dioxide and 280 thousand tons of nitrogen oxides in the year 2000. Under the existing standards, the discounted energy savings for consumers are 2.5 times greater than the up-front price premium paid for the appliance.

Risks:

Without appliance efficiency standards, energy use will continue to increase with resulting damage to the environment caused by atmospheric emissions. Enhancing appliance energy efficiency reduces atmospheric emissions of carbon dioxide and nitrogen oxides. Establishing standards that are too stringent could result in excessive increases in the cost of the product, possible reductions in product utility and may place an undue burden on manufacturers that could result in a loss of jobs or other adverse economic impacts.

Timetable:

Action	Date	FR Cite
Determination Notice	10/22/97	62 FR 54809
ANPRM	03/00/03	
NPRM	03/00/04	
Final Action	10/00/04	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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RIN: 1904–AB08

DOE—EE

27. ENERGY EFFICIENCY STANDARDS FOR COMMERCIAL CENTRAL AIR CONDITIONING UNITS AND HEAT PUMPS RATED 65-240 KBTUS/HR

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

42 USC 6293

CFR Citation:

10 CFR 431

Legal Deadline:

None

Abstract:

The Energy Policy and Conservation Act (EPCA), as amended, establishes initial energy efficiency standard levels for most types of major residential appliances and certain types of commercial equipment. The EPCA generally requires DOE to undergo two subsequent rulemakings, at specified times, to determine whether the current standard for a covered product should be amended.

This is the initial review of the statutory standards for these products.

Statement of Need:

These rulemakings are required by statute. Experience has shown that the choice of residential appliances and commercial equipment being purchased by both builders and building owners is generally based on the initial cost rather than on life-cycle cost. Thus, the law requires minimum energy efficiency standards for appliances to eliminate inefficient appliances and equipment from the market.

Summary of Legal Basis:

EPCA establishes initial energy efficiency standard levels for most types of major residential appliances and certain types of commercial equipment and generally requires DOE to undergo rulemakings, at specified times, to determine whether the standard for a covered product should be made more stringent.

Alternatives:

The statute requires DOE to conduct rulemakings to review standards and to revise standards to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. In making this determination, the Department conducts a thorough analysis of alternative standard levels, including the existing standard, based on criteria specified by statute. The process improvements that were announced (61 FR 36974, July 15, 1996) further enhance the analysis of alternative standards. For example, DOE will ask stakeholders and private sector technical experts to review its analyses of the likely impacts, costs, and benefits of alternative standard levels. In addition, the Department will solicit and consider information on nonregulatory approaches for encouraging the purchase of energy efficient products.

Anticipated Cost and Benefits:

The specific costs and benefits for this rulemaking has not been established because the final standard levels have not been determined.

Risks:

Without energy efficiency standards, energy use will continue to increase with resulting damage to the environment caused by atmospheric emissions. Enhancing energy efficiency reduces atmospheric emissions of carbon dioxide and nitrogen oxides. Establishing standards that are too stringent could result in excessive increases in the cost of the product, possible reductions in product utility and may place an undue burden on manufacturers that could result in a loss of jobs or other adverse economic impacts.

Timetable:

Action	Date	FR Cite
Screening Workshop	10/01/01	66 FR 43123
ANPRM	04/00/03	
NPRM	04/00/04	
Final Action	11/00/04	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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RIN: 1904–AB09

DOE—Departmental and Others (ENDEP)

FINAL RULE STAGE

28. RADIATION PROTECTION OF THE PUBLIC AND THE ENVIRONMENT

Priority:
Other Significant

Legal Authority:
42 USC 2201; 42 USC 7191

CFR Citation:
10 CFR 834

Legal Deadline:
None

Abstract:
This action would add a new 10 CFR 834 to DOE's regulations establishing a body of rules setting forth the basic requirements for ensuring radiation protection of the public and environment in connection with DOE nuclear activities. These requirements stem from the Department's ongoing effort to strengthen the protection of health, safety, and the environment from the nuclear and chemical hazards posed by these DOE activities. Major elements of the proposal included a dose limitation system for protection of the public; requirements for liquid discharges; reporting and monitoring requirements; and residual radioactive material requirements.

Statement of Need:
The purpose of this rule is to ensure that the Department's obligation to protect health and safety is fulfilled and to provide, if needed, a basis for the imposition of civil and criminal penalties consistent with the Price-Anderson Amendments Act of 1988. This action is consistent with the Department's commitment to the issuance of nuclear safety requirements using notice and comment rulemaking.

Summary of Legal Basis:
Under the Atomic Energy Act of 1954, as amended, the Department of Energy has the authority to regulate activities at facilities under its jurisdiction. The Department is committed to honoring its obligation to ensure the health and safety of the public and workers affected by its operations and the protection of the environs around its facilities.

Alternatives:
The Department could continue to impose nuclear safety requirements through directives made applicable to DOE contractors through the terms of their contracts.

Anticipated Cost and Benefits:
The incremental costs of the proposed rules should be minimal because contractors are currently bound by comparable contractual obligations. Full compliance by contractors with nuclear safety standards will result in substantial societal benefits.

Risks:
This rulemaking should reduce the risk of nuclear safety problems by clarifying safety requirements applicable to DOE contractors and improving compliance.

Timetable:

Action	Date	FR Cite
NPRM	03/25/93	58 FR 16268
Second NPRM	08/31/95	60 FR 45381
Final Action	09/00/03	

Regulatory Flexibility Analysis Required:
No

Government Levels Affected:
Federal

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RIN: 1901–AA38
BILLING CODE 6450–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Statement of Regulatory Priorities

The Department of Health and Human Services (HHS) is responsible for a vast array of programs designed to protect and promote the health and the social and economic well being of the American public. These programs affect some of the Nation's most vulnerable populations, including children, the elderly, and persons with disabilities. In one way or another, HHS programs and activities touch the lives of virtually every person in our country, citizens and non-citizens alike.

HHS' programs and activities include: Medicare, Medicaid, support for biomedical research, substance abuse and mental health treatment, assuring safe and effective drugs and other medical products, food safety, financial assistance to low income families, Head Start, services to older Americans, and direct health services delivery. These programs and services are essential to the well being of tens of millions of Americans across our country—people of every age, in every location and in every walk of life.

To improve the administration and conduct of these programs and activities, Secretary Thompson has made it clear that the Department must develop and issue regulations under a culture of responsiveness, where listening and responding to those we serve and those we regulate is our cornerstone. From health care to child welfare to food safety, the Secretary is committed to widening communication with consumers, beneficiaries, and all regulated entities. Furthermore, the Secretary wants to ensure that all HHS regulations are readily understandable, are clear and concise, and are grounded both in law and common sense.

Since September 11, 2001, the Department has placed a renewed emphasis on taking action to prepare and protect all Americans from acts of terrorism and other public health emergencies. The Department is also moving aggressively to issue regulations addressing health care, foods and drugs, and the Medicare and Medicaid programs. In addition, consistent with the Secretary's priorities, the Department has taken important actions to enhance coordination of regulations across all its components.

Given the size and scope of the Department's responsibilities, effective program regulations are critical. Yet too often, excessive regulation can be more of a hindrance than a help. Programs can become caught in a web of mandates, rules and paperwork, and those whom the programs were intended to serve fail to receive the help they need. Last year, Secretary Thompson established a Secretary's Advisory Committee on Regulatory Reform (Advisory Committee), to provide recommendations regarding potential regulatory changes. The Advisory Committee has held public hearings across the country, in an effort to identify unnecessarily burdensome rules. The Advisory Committee's specific recommendations will be issued later this year.

FY 2003 Regulatory Themes

The Secretary has adopted four overarching regulatory themes for FY 2003:

- Improving the Department's ability to respond to emergencies and disasters;
- Reducing medical errors and enhancing patient safety;
- Protecting America's consumers; and
- Reducing unnecessary and counter-productive regulations.

Most of the Department's regulatory priorities for this fiscal year will fall under these themes. It should be noted, however, that the Secretary's overall priorities go beyond these four regulatory categories and include, for example, increasing the percentage of the Nation's children and adults with access to regular health care; enhancing the capacity and productivity of the Nation's health science research enterprise; and supporting efforts to increase the independence of low-income families, the disabled, and older Americans.

Improving the Department's Ability to Respond to Emergencies and Diasters

HHS is responsible for directing and coordinating the medical and public health response to terrorism, natural disasters, major accidents, and other events that can result in mass casualties. Timely and well-focused responses to such events are key to limiting death and injury. The Department and its partners must be able to react quickly, and tailor responses to the specific emergency without being encumbered by unnecessary or counter-productive activities.

Regulations in the Plan designed to help ensure that HHS has appropriate authority and flexibility to address emergencies and disasters include:

- A final rule required under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) governing the possession, use and transfer of certain biological agents and toxins known as "select agents;"
- A proposed rule emanating from the Bioterrorism Act establishing registration requirements for all facilities engaged in manufacturing, processing, packing, or holding food for U.S. consumption;
- A proposed rule based on the Bioterrorism Act requiring the establishment and maintenance of certain records regarding food products; and
- A proposed rule under the Bioterrorism Act authorizing the FDA to detain the release or shipment of food if it is determined that such acts would present a serious health threat.

Reducing Medical Errors and Enhancing Patient Safety

Medical errors and other patient safety risks have been the subject of many recent studies and reports. The Secretary has directed that actions be taken to reduce these risks. Regulatory actions included in the Plan that are related to this category include:

- A proposed rule requiring human drug products to have a scanable bar code that will reduce medication errors;
- A proposed rule to enhance and make more timely the safety reporting on drugs and biologics;
- A final rule to strengthen requirements that hospitals maintain policies and procedures to assess and improve the quality of the medical care they provide;
- A final rule requiring that drug labels contain a toll-free number in order to report adverse events;
- A final rule requiring improvements in the format and content requirements of the "professional" labeling of drug products, enabling health care practitioners to prescribe drugs more safely.

Protecting America's Consumers

Consumer health and safety is a major concern for the public and the Secretary. Consumers are inundated each year with an availability of new ingestible products and ingredients. Providing consumers with information about these products is a matter of great interest to the Secretary. Every year, tens of thousands of Americans become sick and some die from food borne pathogens, and the size of vulnerable

populations (e.g., the elderly and those with compromised immune systems) is growing. The Secretary is especially interested in identifying opportunities that exist to make patient care and the food supply safer.

Regulations under this theme include:

- A proposed rule controlling the manufacturing and packaging of dietary supplements;
- A final rule to require that amounts of trans fatty acids be included in food labeling because such information has significant potential to reduce the risk of coronary heart disease;
- A proposed rule to strengthen safety requirements for the storage and distribution of eggs.

Reducing Unnecessary and Counterproductive Regulations

The Secretary's Advisory Committee on Regulatory Reform is addressing HHS' priority of reducing regulatory burden on consumers, beneficiaries, health care providers, and other stakeholders. In addition to conducting the series of public meetings mentioned above, the Advisory Committee has reviewed an array of Departmental regulations, with the goal of identifying reforms that would maintain or enhance program performance while reducing burdens and costs. Proposed ways to accomplish these objectives include: a) clarifying and simplifying regulations; b) eliminating unnecessary paperwork; c) improving the quality and timeliness of information for consumers, beneficiaries, and providers; d) increasing flexibility in Federal health programs; and e) promoting collaboration and coordination among and between HHS agencies and other public and private stakeholders.

Regulations under this theme include:

- A proposed rule under which current requirements for Medicare reimbursement for services to persons with End Stage Renal Disease would be completely overhauled and simplified;
- A final rule to clarify the responsibilities of Medicare hospitals that provide emergency room treatment;
- A final rule to reduce the cost of drugs by eliminating a current practice that allows manufacturers to repeatedly obtain 30-month stays in order to block the approval of generic versions of their drugs;
- A variety of other actions resulting from the recommendations of the Advisory Committee.

Public Comments and Reactions

The Secretary welcomes comments not only on specific regulations as they are published in the Federal Register, but also on the themes he has established for 2003, as well as the regulatory principles noted above. Such comments, as well as ideas and specific suggestions for regulatory improvements and initiatives, should be sent to Secretary Tommy G. Thompson, c/o Ann C. Agnew, Executive Secretary to the Department, Room 603, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

TITLES OF ALL PRIORITY REGULATIONS, BY THEME

Improving the Department's Ability to Respond to Emergencies and Disasters

- Possession, Use, and Transfer of Select Agents
- Registration Requirements for Food Facilities
- Establishment and Maintenance of Records Regarding Food Products
- Detainment of Food
- Control of Communicable Diseases through Quarantine
- Prior Notification Requirement for All Imported Food Shipments

1. Reducing Medical Errors and Enhancing Patient Safety

- Bar Code Label Requirements for Human Drug Products
- Safety Reporting on Drugs and Biologics
- Hospital Conditions of Participation
- Quality Assurance/Performance Improvement Program
- Toll-free Number for Reporting Adverse Drug Events
- Use of Restraint and Seclusion in Medicare and Medicaid Facilities
- Notification of Consignees and Transfusion Recipients Receiving Blood and Blood Components at Risk of Transmitting Hepatitis C Virus
- "Professional" Labeling for Prescription Drugs

Protecting America's Consumers

- Manufacturing and Packaging of Dietary Supplements
- Food Labeling: Trans Fatty Acids
- Medicare: Review of National Coverage Determinations
- Control of Salmonella Enteriditis in Shell Eggs
- Exception from General Requirements for Informed Consent

1. Reducing Unnecessary and Counterproductive Regulations

- Application of the Emergency Medical Treatment and Labor Act
- End Stage Renal Disease Conditions for Coverage
- 30-Month Stays on Approvals of New Drug Applications
- A variety of actions resulting from the recommendations of the Advisory Committee

Also included in the Plan, are other regulatory actions entitled as follows, which would update or otherwise improve the Medicare program.

- Hospital Conditions of Participation
- Security Standards for Electronic Health Information
- Organ Procurement Organizations' Conditions for Coverage
- Revisions to the Medicare Appeals Process
- Revisions to Average Wholesale Price Methodology
- Electronic Claims Submission
- National Standard for Identifiers of Health Plans
- National Standard for Identifiers for Health Care Providers
- Prospective Payment System for Psychiatric Hospitals
- FY 2004 Changes—Hospital Inpatient Prospective Payment System
- FY 2004 Changes—Hospital Outpatient Prospective Payment System
- 2004 Physician Fee Schedule Changes
- Establishment of a Prospective Payment System for Skilled Nursing Facilities

HHS—Centers for Disease Control and Prevention (CDC)

PROPOSED RULE STAGE

29. CONTROL OF COMMUNICABLE DISEASES

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

42 USC 216; 42 USC 243; 42 USC 264; 42 USC 271

CFR Citation:

42 CFR 70; 42 CFR 71

Legal Deadline:

None

Abstract:

This proposal updates existing regulations related to prevention of the introduction, transmission, or spread of communicable diseases from foreign countries to the U.S. and from State to State. The regulation addresses the process by which persons infected with, or who have been exposed to, modern communicable diseases should be quarantined, surveillance of quarantined persons, and requirements for carriers (e.g., airlines, etc.) to maintain passenger manifests for a determined period of time.

Statement of Need:

The quarantine of persons believed to be infected with communicable diseases is a long-term prevention measure that has been used effectively to contain the spread of disease. As diseases evolve due to natural occurrences or bioterrorist events, it is important to assure procedures reflect new threats and uniform ways to contain them.

The existing regulations are outdated and do not address some communicable diseases that currently pose a public health threat.

Summary of Legal Basis:

Section 264 of the U.S. Code, title 42 authorizes the Surgeon General, with the approval of the Secretary, to make and enforce regulations as are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States or its possessions, or from one State or possession into any other State or possession.

Alternatives:

In the absence of this regulation, uniform application of procedures for the quarantine of individuals exposed to or infected with a communicable disease would be unavailable.

Anticipated Cost and Benefits:

It is anticipated that there will be a cost to carriers to maintain passenger manifests for an extended period of time. However, these costs are undetermined.

Risks:

This rule would allow for improvements to existing quarantine procedures and clarify due process procedures.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

State

Federalism:

Undetermined

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RIN: 0920–AA03

HHS—CDC

FINAL RULE STAGE

30. • POSSESSION, USE, AND TRANSFER OF SELECT AGENTS

Priority:

Other Significant

Legal Authority:

PL 107-188

CFR Citation:

42 CFR 72; 42 CFR 72.6

Legal Deadline:

Final, Statutory, December 9, 2002.

Abstract:

On June 12, 2002, President George W. Bush signed Public Law 107-188, the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act). Title II, subtitle B of the Bioterrorism Act repeals, expands, and incorporates the Secretary's current authority to regulate the transfer of certain biological agents and toxins (select agents) as provided in section 511 of the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104-132) (42 U.S.C. 262 note) and that Act's implementing regulations (42 CFR 72.6). The Bioterrorism Act specifies that the Secretary develop and biennially review the list of select agents. Safety procedures must be established and enforced for the possession, use, and transfer of listed agents and toxins, and access to select agents is limited to those individuals and entities that pass background checks administered by the Attorney General. The Bioterrorism Act exempts certain information from disclosure under the Freedom of Information Act, including information that would identify the location of regulated entities or their security measures. Subtitle C of the Bioterrorism Act outlines the required interagency coordination between the Department of Health and Human Services and the Department of Agriculture regarding agents that are regulated by both departments (overlap agents).

CDC is currently in the rulemaking process that will culminate in the publication of an interim final rule on or before December 9, 2002. To date, CDC has published a notice of proposed data collection submitted for public comment and recommendations (Fed Reg. vol. 67, no. 127; Tuesday, July 2, 2002); a notice of OMB approval of data collection (Fed Reg, vol. 67, no 151; Tuesday, August 6, 2002); and a notice of preliminary guidance for notification of possession of select agents (Fed. Reg., vol. 67, no. 164; Friday, August 23, 2002).

Statement of Need:

Statutorily required by subtitles A and C of title II of the Bioterrorism Act, Public Law 107-188.

Summary of Legal Basis:

Subtitles A and C of title II of the Bioterrorism Act, Public Law 107-188.

Alternatives:

On June 12, 2002, the President signed the Bioterrorism Act into law. Section 202 (a) of the Bioterrorism Act requires that all persons possessing, using, or transferring agents or toxins deemed a threat to public health to notify the Secretary of the Department of Health and Human Services (HHS). Since this is a mandate from Congress, the only alternative for this regulation would be to have HHS go back to Congress to request reconsideration.

Anticipated Cost and Benefits:

Modest internal cost implications for HHS/CDC can be foreseen at this time, but the potential costs to entities and individuals required to register under provisions of this rulemaking are currently unknown. CDC has issued a task order for support for the agency's responsibilities for the rulemaking and

related requirements of the Bioterrorism Act. The contractor implementing this task order will conduct an analysis of all anticipated costs of the rulemaking. The economic impact information resulting from this analysis will be set out in the preamble of the interim final rule.

Risks:

By establishing and enforcing standards for the possession, use, and transfer of potentially lethal biological agents and toxins, the regulation will serve as a preventive mechanism against bioterrorism, which complements some of the Department's other bioterrorism related activities.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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HHS—Food and Drug Administration (FDA)

PROPOSED RULE STAGE

31. SAFETY REPORTING REQUIREMENTS FOR HUMAN DRUG AND BIOLOGICAL PRODUCTS

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 216; 42 USC 241; 42 USC 242a; 42 USC 262; 42 USC 263; 42 USC 263a-n; 42 USC 264; 42 USC 300aa; 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 360b-j; 21 USC 361a; 21 USC 371; 21 USC 374; 21 USC 375; 21 USC 379e; 21 USC 381

CFR Citation:

21 CFR 310; 21 CFR 312; 21 CFR 314; 21 CFR 320; 21 CFR 600; 21 CFR 601; 21 CFR 606

Legal Deadline:

None

Abstract:

This regulation is one component of the Secretary's initiative to reduce medical errors. The proposed rule would amend the expedited and periodic safety reporting regulations for human drugs and biological products to revise certain definitions and reporting formats as recommended by the International Conference on Harmonisation and to define new terms; to add to or revise current reporting requirements; to revise certain reporting time frames; and propose other revisions to these regulations to enhance the quality of safety reports received by FDA.

Statement of Need:

FDA currently has safety reporting requirements in section 21 CFR 312.32 for sponsors of investigational drugs for human use. FDA also has safety reporting requirements in sections 21 CFR 310.305, 314.80, 314.98 and 600.80 for applicants, manufacturers, packers, and distributors of approved human drug and biological products. FDA has undertaken a major effort to clarify and revise these regulations to improve the management of risks associated with the use of these products. For this purpose, the agency is proposing to implement certain definitions and reporting formats and standards recommended by the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) to provide more effective and efficient safety reporting to regulatory authorities worldwide. Currently, the United States, European Union, and Japan require submission of safety information for marketed drug and biological products using different reporting formats and different reporting intervals.

Summary of Legal Basis:

The agency has broad authority under sections 505 and 701 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 355 and 371) and section 351 of the Public Health Service Act (42 U.S.C. 262) to monitor the safety of drug and biological products for human use.

Alternatives:

The alternatives to the proposal include not amending our existing safety reporting requirements. This alternative would be inconsistent with FDA's efforts to harmonize its safety reporting requirements with international initiatives and with its mission to protect public health.

Anticipated Cost and Benefits:

Manufacturers of human drug and biological products currently have limited incentives to invest capital and resources in standardized global safety reporting systems because individual firms acting alone cannot attain the economic gains of harmonization. This proposed rule would harmonize FDA's safety reporting requirements with certain international initiatives, thereby providing the incentive for manufacturers to modify their safety reporting systems. Initial investments made by manufacturers to comply with the rule are likely to ultimately result in substantial savings to them over time.

The impact on industry includes costs associated with revised safety reporting and recordkeeping requirements. The benefits of the proposed rule are public health benefits and savings to the affected industries. The expected public health benefits would result from the improved timeliness and quality of the safety reports and analyses, making it possible for health care practitioners and consumers to expedite corrective actions and make more informed decisions about treatments. Savings to the affected industry would accrue from more efficient allocation of resources resulting from international harmonization of the safety reporting requirements.

Risks:

None

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

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HHS—FDA

32. CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKING, OR HOLDING DIETARY INGREDIENTS AND DIETARY SUPPLEMENTS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

21 USC 321; 21 USC 342; 21 USC 343; 21 USC 348; 21 USC 371; 21 USC 374; 21 USC 381; 21 USC 393; 42 USC 264

CFR Citation:

21 CFR 111

Legal Deadline:

None

Abstract:

The Food and Drug Administration (FDA) announced in an advance notice of proposed rulemaking (ANPRM) of February 6, 1997 (62 FR 5700), its plans to consider developing regulations establishing current good manufacturing practices (CGMP) for dietary supplements and dietary ingredients. The ANPRM was published in order for FDA to solicit comments on whether it should initiate action to establish CGMP regulations, and if so, what constitutes CGMP for these products. FDA announced that this effort was in response to the section of the Federal Food, Drug and Cosmetic Act (the Act) that provides authority to the Secretary of Health and Human Services to promulgate CGMP regulations and to a submission from the dietary supplement industry asking that FDA consider an industry-proposed CGMP framework as a basis for CGMP regulations. The ANPRM also responds to concerns that such regulations are necessary to ensure that consumers are provided with dietary supplement products which have not been adulterated as a result of manufacturing, packing, or holding; which have the identity and provide the quantity of dietary ingredients declared in labeling; and which meet the quality specifications that the supplements are represented to meet.

Statement of Need:

FDA intends to publish a proposed rule to establish CGMP for dietary supplements and dietary ingredients for several reasons. First, FDA is concerned that some firms may not be taking appropriate steps during the manufacture of dietary supplements and dietary ingredients to ensure that products are not adulterated as a result of manufacturing, packing, or holding. There have been cases of misidentified ingredients harming consumers using dietary supplements. FDA is also aware of products that contain potentially harmful contaminants because of apparently inadequate manufacturing controls and quality control procedures. The agency believes that a system of CGMP is the most effective and efficient way to ensure that these products will not be adulterated during manufacturing, packing, or holding.

Summary of Legal Basis:

If CGMP regulations were adopted by FDA, failure to manufacture, pack, or hold dietary supplements or dietary ingredients under CGMP regulations would render the dietary supplement or dietary ingredients adulterated under section 402(g) of the Act.

Alternatives:

The two principal alternatives to comprehensive CGMP are end-product testing and Hazard Analysis Critical Control Points (HACCP). In the ANPRM, FDA asked for public comment on approaches to ensure that dietary supplements and dietary ingredients are not adulterated during the manufacturing process. The agency asked whether HACCP may be a more effective approach than a comprehensive CGMP, and whether different approaches may be better able to address the needs of the broad spectrum of firms that conduct one or more distinct operations, such as the manufacture of finished products, or solely the distribution and sale of finished products at the wholesale or retail level. FDA has considered the information it received in response to the ANPRM and from other sources, such as public meetings and small business outreach meetings, in its consideration of whether CGMP or other approaches are most appropriate.

Anticipated Cost and Benefits:

The costs of the regulation will include the value of resources devoted to increased sanitation, process monitoring and controls, testing, and written records. The benefits of the proposed regulation are to improve both product safety and quality. We estimate that the proposed regulation will reduce the number of sporadic human illnesses and rare catastrophic illnesses from contaminated products. The current quality of these products is highly variable, and consumers lack information about the potential hazards and variable quality of these products. The product quality benefits occur because there will be fewer product recalls and more uniform products will reduce consumer search for preferred quality products. The proposed rule will have a significant impact on a substantial number of small businesses, so it will be significant under the Regulatory Flexibility Act. We anticipate that small businesses will bear a proportionately larger cost than large businesses.

Risks:

Any potential for consumers to be provided adulterated (e.g., contaminated with industrial chemicals, pesticides, microbial pathogens, or dangerous misidentified ingredients or toxic components of ingredients) products must be considered a very serious risk because of the possibility that such contamination could be widespread, affecting whole segments of the population, causing some severe long-term effects and even loss of life. Dietary supplements are used by a large segment of the American public. Moreover, they are often used by segments of the population that are particularly vulnerable to adulterated products, such as the elderly, young children, pregnant and nursing women, and persons who may have serious illnesses or are taking medications that may adversely interact with dietary supplements. FDA has adopted or proposed manufacturing controls for a number of foods and commodities that present potential health hazards to consumers if not processed properly, including seafood, juice products, and fruits and vegetables, and it is appropriate that FDA consider whether manufacturing controls are necessary to assure consumers that dietary

supplements are not adulterated during the manufacturing, packing, or holding process.

Timetable:

Action	Date	FR Cite
ANPRM	02/06/97	62 FR 5700
ANPRM Comment Period End	06/06/97	
NPRM	12/00/02	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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HHS—FDA

33. CONTROL OF SALMONELLA ENTERITIDIS IN SHELL EGGS DURING PRODUCTION AND RETAIL

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

21 USC 321; 21 USC 342; 21 USC 371; 21 USC 381; 21 USC 393; 42 USC 243; 42 USC 264; 42 USC 271; ...

CFR Citation:

21 CFR 16; 21 CFR 116; 21 CFR 118

Legal Deadline:

None

Abstract:

The President's Council on Food Safety was established in August 1998 to improve the safety of the food supply through science-based regulations and well-coordinated inspection, enforcement, research, and education programs. The Council has identified egg safety as one component of the public health issue of food safety that warrants immediate Federal, interagency action.

In July 1999, the Food and Drug Administration (FDA) and the Food Safety Inspection Service (FSIS) committed to developing an action plan to address the presence of salmonella enteritidis (SE) in shell eggs and egg products using a farm-to-table approach. FDA and FSIS held a public meeting on August 26, 1999, to obtain stakeholder input on the draft goals, as well as to further develop the objectives and action items for the action plan. The Egg Safety Action Plan was announced on December 11, 1999. The goal of the Action Plan is to reduce egg-related SE illnesses by 50 percent by 2005 and eliminate egg-related SE illnesses by 2010.

The Egg Safety Action Plan consists of eight objectives covering all stages of the farm-to-table continuum as well as support functions. On March 30, 2000 (Columbus, OH), April 6, 2000 (Sacramento, CA), and July 31, 2000 (Washington, DC), joint public meetings were held by FDA and FSIS to solicit and discuss information related to the implementation of the objectives in the Egg Safety Action Plan.

In accordance with discussions at the public meetings, FDA intends to publish a proposed rule to require that shell eggs be produced under an SE risk reduction plan that is designed to prevent transovarian SE from contaminating eggs at the farm during production.

Because egg safety is a farm-to-table effort, FDA intends to include in its proposal certain provisions of the 1999 Food Code that are relevant to how eggs are handled, prepared, and served at certain retail establishments. In addition, the agency plans to propose specific requirements for certain retail establishments that serve populations most at risk of egg-related illness (i.e., the elderly, children, and the immunocompromised).

Statement of Need:

FDA is proposing regulations as part of the farm-to-table safety system for eggs outlined by the President's Council on Food Safety in its Egg Safety Action Plan to require that shell egg producers implement SE risk reduction plans at the farm and that retail establishments institute certain egg relevant provisions of the 1999 Food Code. FDA intends to propose these regulations because of the continued reports of outbreaks of foodborne illness and death caused by SE that are associated with the consumption of shell eggs. The agency believes these regulations can have significant effect in reducing the risk of illness from SE-contaminated eggs and will contribute significantly to the interim public health goal of the Egg Safety Action Plan of a 50 percent reduction in egg-related SE illness by 2005.

Summary of Legal Basis:

FDA's legal basis for the proposed rule derives in part from sections 402(a)(4), and 701(a) of the Federal Food, Drug and Cosmetic Act (the Act) ((21 U.S.C. 342(a)(4) and 371(a)). Under section 402(a)(4) of the Act, a food is adulterated if it is prepared, packed, or held in insanitary conditions whereby it may have been contaminated with filth or may have been rendered injurious to health. Under section 701(a) of the Act, FDA is authorized to issue regulations for the efficient enforcement of the Act. FDA also intends to rely on section 361 of the Public Health Service Act (PHS Act) (42 U.S.C. 264), which gives FDA authority to promulgate regulations to control the spread of communicable disease.

Scientific reports in published literature and data gathered from existing voluntary egg quality assurance programs indicate that measures designed to prevent SE from entering a poultry house (e.g., rodent/pest control, use of chicks from SE-monitored breeders, and biosecurity programs) can be very effective in reducing SE-contamination of eggs and related foodborne illness.

Moreover, the use of shell eggs or egg products that have been treated to destroy SE or through cooking of untreated eggs in retail establishments will significantly contribute to the reduction of egg-related SE illnesses.

Alternatives:

There are several alternatives that the agency intends to consider in the proposed rule. The principal alternatives include: (1) no new regulatory action; (2) alternative testing requirements; (3) alternative on-farm mitigation measures; (4) alternative retail requirements; and (5) HACCP. FDA will consider the information that it receives in response to the public

meetings in its consideration of the various alternatives.

Anticipated Cost and Benefits:

The benefits from the proposed regulation to control Salmonella Enteritidis in shell eggs on the farm and at retail derive from better farming practices and safer handling and cooking of eggs at the retail level. Improved practices reduce contamination and generate benefits measured as the value of the human illnesses prevented. FDA has produced preliminary estimates of costs and benefits for a number of options. The mitigations that would produce the highest benefits include on-farm rodent control, changes in retail food preparation practices, and diversion of eggs from infected flocks to pasteurization. Other mitigations considered include record keeping, refrigeration, and feed testing. The actual costs and benefits of the proposed rule will depend upon the set of mitigations chosen and the set of entities covered by the proposed rule.

Risks:

Any potential for contamination of eggs with SE and its subsequent survival or growth must be considered a very serious risk because of the possibility that such contamination, survival, and growth could cause widespread foodborne illness, including some severe long-term effects and even loss of life. FDA made a decision to publish a proposed rule to require that shell egg producers have on-farm SE risk reduction plans and that retail establishments institute certain egg relevant provisions of the 1999 Food Code, based on a considerable body of evidence, literature, and expertise in this area. In addition, this decision was also based on the USDA risk assessment on SE in shell eggs and egg products and the identified public health benefits associated with controlling SE in eggs at the farm and retail levels.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 0910–AC14

HHS—FDA

34. EXCEPTION FROM GENERAL REQUIREMENTS FOR INFORMED CONSENT; REQUEST FOR COMMENTS AND INFORMATION

Priority:

Other Significant

Legal Authority:

21 USC 321; 21 USC 351; 21 USC 352; 21 USC 355; 21 USC 360; 21 USC 360bbb; 21 USC 360c; 21 USC 360d; 21 USC 360e; 21 USC 360f; 21 USC 360h; 21 USC 360i; 21 USC 360j; 21 USC 371; 21 USC 381

CFR Citation:

21 CFR 50.23

Legal Deadline:

None

Abstract:

FDA is proposing to clarify its regulations about the exception from the general requirement for informed consent in life-threatening situations necessitating the use of a test article. This proposal will explain how the informed consent provisions would apply during emergencies, including a response to chemical or biological terrorism, requiring the use of investigational in vitro diagnostic devices regulated by FDA.

Statement of Need:

The agency is proposing this action because of concern that confusion exists about how to apply the informed consent rules during a potential emergency, including a chemical or biological terrorism event. This confusion could delay the immediate use of investigational products thus threatening the rights, welfare, or lives of subjects.

Summary of Legal Basis:

FDA has already determined that the statutory authority provided in the Federal Food, Drug and Cosmetic Act (the Act) allows a limited exception to requiring informed consent in life-threatening situations such as those considered here. Section 505(i) of the Act requires informed consent except where it is not feasible or it is contrary to the best interests of the human beings involved. The Act also provides specifically for an exception from informed consent for investigational devices. Section 520(g)(3)(D) of the Act requires informed consent of the subject unless the clinical investigator determines in writing that: 1) there exists a life-threatening situation involving the human subject of such testing which necessitates the use of such device; 2) it is not feasible to obtain informed consent from the subject; and 3) there is not sufficient time to obtain such consent from his or her representative. Further, a licensed physician uninvolved in the testing must agree with this three-part determination before using the product, unless immediate use of the device is required to save the life of the human subject of such testing and there is not sufficient time to get such concurrence.

Alternatives:

The other option available to the agency is to work within the existing regulatory scheme. FDA believes that this option may result in improper or no diagnosis, and improper treatment or no treatment for persons with life-threatening illnesses because the health professionals may not use these investigational products.

Anticipated Cost and Benefits:

The minimal burdens imposed by this rule are offset by the fact that, in the absence of this rule, the sponsor may be required to obtain informed consent, which is just as burdensome, if not more so. The rule would permit use

of investigational products without which patients' lives might be threatened. Because of uncertainty about the nature or extent of any chemical or biological terrorism event, FDA cannot estimate the extent of the benefits of this rule.

Risks:

The primary risk addressed by this rule is the risk that patients may go untreated or may be improperly treated because health professionals may not use an investigational product in the absence of informed consent. FDA cannot determine the extent of this risk without knowing the nature or extent of any chemical or biological terrorism event.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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RIN: 0910–AC25

HHS—FDA

35. BAR CODE LABEL REQUIREMENTS FOR HUMAN DRUG PRODUCTS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 358; 21 USC 360; 21 USC 360b; 21 USC 360gg to 360ss; 21 USC 371; 21 USC 374; 21 USC 379e; 42 USC 216; 42 USC 241; 42 USC 262; 42 USC 264

CFR Citation:

21 CFR 201.25; 21 CFR 601.67

Legal Deadline:

None

Abstract:

This regulation is one component of the Secretary's initiative to reduce medical errors. The proposal would require human drug products and biological products and possibly other products to have a bar code. The bar code would contain certain information about the product, and when used in conjunction with bar code scanners and computer equipment, would help reduce the number of medication errors.

Statement of Need:

In 1999, the Institute of Medicine (IOM) report titled, "To Err Is Human: Building a Safer Health System," cited studies and articles estimating that between 44,000 and 98,000 Americans may die each year due to medical mistakes made by health care professionals, with most deaths attributable to medication errors. The report also indicated that, between 1983 and 1993, the medication error rate leading to a patient's death may have increased by over 2.5 times. While later medical articles have questioned the IOM's estimates, other studies have indicated that, regardless of the medication error rate, many medication errors are or were preventable.

Medication errors are a significant economic cost to the United States. An article published in 1995 estimated the direct cost of preventable drug-related mortality and morbidity to be $76.6 billion, with drug-related hospital admissions accounting for much of the cost. The authors suggested that indirect costs, such as those relating to lost productivity, might be two to three times greater than the direct costs, making the total cost of all preventable drug-related mortality and morbidity range from $138 to $182 billion. Another article, published in 2001, used updated cost estimates derived from current medical and pharmaceutical literature to revise the $76.6 billion estimate to exceed $177.4 billion; hospital admissions accounted for $121.5 billion in costs, and long-term care admissions accounted for another $32.8 billion.

Various organizations and health professional associations have advocated the use of bar codes as a method for reducing medication errors. For example, if a health professional could use a bar code scanner to compare the bar code on a human drug product to a specific patient's drug regimen, the health professional would be able to verify that the patient is receiving the right drug, at the right dose, at the right time. Most organizations and associations have recommended that the bar code contain, at a minimum, a unique numerical code identifying the manufacturer, product, and package size or type. In addition, some have advocated including the lot number and expiration date.

Thus, FDA is considering proposing to require certain medical products to be bar coded. The bar code would contain certain information about the product, such as its National Drug Code number. The agency is considering whether to require other information, such as the drug's expiration date and lot number, to make it easier to identify expired drugs and recalled drugs that may not be safe and effective for use. The bar code, when used in conjunction with bar code scanners and computer equipment, will enable health professionals to decrease the medication error rate.

Summary of Legal Basis:

Section 502 of the Federal Food, Drug, and Cosmetic Act (the Act) considers a drug to be misbranded unless it bears a label containing (in part) the name of the manufacturer and the drug's name (see sections 502(b) and 502(e)(1)(A) of the Act).

Section 501(a)(1) of the Act considers a drug to be adulterated if, among other things, the methods used in, or the facilities and controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that the drug meets the requirements of the Act as to safety and "has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess...."

Section 701(a) of the Act, in turn, authorizes FDA to issue regulations for the efficient enforcement of the Act.

A bar code requirement for human drug products and biological products would be consistent with, and aid in the efficient enforcement of, sections 501 and 502 of the Act. For example, if the bar code merely contained the drug's National Drug Code number, the bar code would identify the manufacturer and the drug, and this would be consistent with sections 502(b) and 502(e)(1)(A) of the Act. If the bar code contained other information, such as lot number and expiration date (pieces of information required under FDA's good manufacturing practice regulations (see 21 CFR 211.130 and 211.137), this would be consistent with section 501(a)(1) of the Act.

Therefore, using its general rulemaking authority at section 701(a) of the Act, the agency has sufficient authority to propose requiring human drug products to have a bar code.

Alternatives:

FDA considered a voluntary bar coding program, but this would be akin to a "no action" alternative as many products are not bar coded or not coded in a manner that would help health professionals. A voluntary bar coding system might also lead to the adoption of multiple incompatible bar coding formats on human drug products and biological products, thereby deterring hospitals and health care professionals from buying bar code scanners and computer equipment.

FDA also considered decreasing the amount of information it might require on the bar code. This would decrease bar coding costs to drug manufacturers and labelers, but also decrease the usefulness of the bar code and its ability to reduce medication errors.

Anticipated Cost and Benefits:

FDA is continuing to examine the potential costs and benefits associated with bar coding. The anticipated costs may vary greatly depending on the amount of information required in a bar code and the products to be bar coded. FDA's preliminary estimate is that the rule would cost between $500 million and $1.4 billion over a 10-year period; the wide range in the cost estimate reflects the agency's uncertainty as to the costs associated with various pieces of information that might go into a bar code, what products should be bar coded, and possible changes in labeling operations.

The rule's principal benefit would be a reduction in the number of medication errors, including reduced mortality and morbidity. As stated earlier, medication error costs have been estimated in the billions of dollars, and the agency is trying to determine the extent to which medication errors would be reduced.

Risks:

There is a possible risk that some manufacturers and repackagers, if required to bar code individual unit dose packages, would eliminate such types of packaging and only supply their products in bulk containers. Individual unit dose packages are convenient for hospitals, health professionals, and patients, but are more expensive to produce, and bar coding may increase production costs. Consequently, a manufacturer or repackager who wanted to reduce its expenses might decide to reduce the number of packages, particularly individual unit dose packages, that would be subject to a bar coding requirement.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 0910–AC26

HHS—FDA

36. • ADMINISTRATIVE DETENTION

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

PL 107-188, sec 303

CFR Citation:

21 CFR 1

Legal Deadline:

None

Abstract:

This rulemaking is one of a number of actions being taken to improve FDA's ability to respond to threats of bioterrorism. Section 303 of the Bioterrorism Act authorizes the Secretary, through FDA, to order the detention of food if an officer or qualified employee finds credible evidence or information indicating an article of food presents a threat of serious adverse health consequences or death to humans or animals. The Act requires the Secretary, through FDA, to issue final regulations to expedite court actions (i.e., seizures and injunctions) on perishable foods.

FDA intends to implement section 303 of the Act by proposing a regulation to provide for: 1) a detention procedure; 2) expedited procedures for enforcement actions with respect to perishable foods; and 3) an appeals procedure for detained goods.

Statement of Need:

The events of September 11, 2001 highlighted the need to enhance the security of the U.S. food supply. Congress responded by passing the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, which was signed into law on June 12, 2002. The proposed regulation would implement section 303 of the Bioterrorism Act.

Summary of Legal Basis:

The Bioterrorism Act, section 303, amended the Federal Food, Drug, and Cosmetic Act (FFDCA) by adding section 304(h), which authorizes the Secretary to order the detention of domestic and imported food and specifies an appeals process that includes an opportunity for an informal hearing. Section 303 of the Bioterrorism Act also amends section 301 of the FFDCA by making it a prohibited act to transfer an article of food in violation of a detention order or to remove or alter any required mark or label identifying the article as detained. Furthermore, section 303 of the Bioterrorism Act amends section 801 of the FFDCA to provide for temporary holds at ports of entry.

Alternatives:

FDA's decision to promulgate a regulation is based primarily on clear statutory directive to establish regulations, and also on need. The Bioterrorism Act, section 303, clearly states that the Secretary must provide by regulation for procedures for instituting enforcement actions with

respect to perishable foods on an expedited basis.

Section 303 of the Bioterrorism Act also specifies an appeals process that requires the Secretary, after providing for an informal hearing, to confirm or terminate a detention order within five days of an appeal. Section 201(x) of the FFDCA defines "informal hearing" and describes the requirements necessary for informal hearings. 21 CFR part 16 of FDA's regulations outlines FDA's informal hearing procedures in greater detail. Part 16 provides no requirements or limitations on the length of the informal hearing. FDA proposes to adopt part 16 with minor modifications (e.g., limiting length of hearing, delegating Secretary's duties as presiding officer to an FDA official in a regulation tailored to the administrative detention provisions in the Bioterrorism Act. If FDA were to include the minor modifications in a guidance document, FDA would not be able to enforce legally the new provisions because guidance documents are not binding (21 CFR 10.115(d)). If FDA chose simply to follow part 16, we would run the risk of not providing the presiding officer sufficient time to consider and weigh the evidence for the informal hearing within the statutory timeframes.

Anticipated Cost and Benefits:

Administrative detention actions on imports would generate two types of costs: 1) enforcement costs, including marking or labeling, transporting, and storing detained or held products in secure facilities, as necessary, and the cost of preparing and administering detention appeal hearings; and 2) the loss of product value during the detention period (in the case of products that we detain or hold but that turn out to be non-violative) and firms' costs for preparing for detention appeal hearings. In those cases in which we could have used other means to detain the relevant goods (i.e., collaboration with states or Customs, or our own existing authority to detain imports, shell eggs, and infant formula), only the net change in these costs would be relevant to this rule. We do not have sufficient information to estimate these costs at this time. However, annual costs would probably be fairly small because we would only use these procedures under rare, extraordinary circumstances. In addition to potentially reducing enforcement costs, product value loss, and firms' appeals hearing preparation costs relative to current methods of detention, this rule would generate benefits by improving our ability to detect accidental and deliberate contamination of food and to deter deliberate contamination.

Risks:

Regulations implementing legislation to protect the health of citizens against bioterrorism would advance the development, organization, and enhancement of public health prevention systems and tools. The magnitude of the risks addressed by such systems and tools is at least as great as the other risk reduction efforts within HHS' jurisdiction. These regulations will improve the ability to address credible threats of serious adverse health consequences or death to humans or animals.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 0910–AC38

HHS—FDA

37. • ESTABLISHMENT AND MAINTENANCE OF RECORDS TO IDENTIFY IMMEDIATE PREVIOUS SOURCE AND IMMEDIATE SUBSEQUENT RECIPIENT OF FOODS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

PL 107-188, sec 306

CFR Citation:

21 CFR 1

Legal Deadline:

Final, Statutory, December 12, 2003.

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, section 306, directs the Secretary, through FDA, to issue final regulations establishing recordkeeping requirements by December 12, 2003.

Abstract:

This rulemaking is one of a number of actions being taken to improve FDA's ability to respond to threats of bioterrorism. Section 414(b) of the Federal Food, Drug and Cosmetic Act (FFDCA), which was added by section 306 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, authorizes the Secretary, through FDA, to promulgate final regulations by December 12, 2003. The regulations will require the establishment and maintenance of records, for not longer than two years, that would allow the Secretary to identify the immediate previous sources and the immediate subsequent recipients of food, including its packaging. The required records would be those that are needed by FDA in order to address credible threats of serious adverse health consequences or death to humans or animals. This section does not extend to recipes for food, financial data, pricing data, personnel data, research data, and sales data (other than shipment data regarding sales). Specific covered entities are those that manufacture, process, pack, transport, distribute, receive, hold, or import food. Farms and restaurants are excluded. The Secretary is directed to take into account the size of a business in promulgating these regulations. In addition, the Secretary is directed to take appropriate measures to ensure that effective procedures are in place to prevent the unauthorized disclosure of any trade secret or confidential information that is obtained by FDA pursuant to these regulations.

Statement of Need:

The events of September 11, 2001, highlighted the need to enhance the security of the United States food supply. Congress responded by passing the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act), which was signed into law on June 12, 2002. The proposed regulations would implement section 306 of the Bioterrorism Act.

Summary of Legal Basis:

Section 306 of the Bioterrorism Act amended the Federal Food, Drug and Cosmetic Act by adding section 414(b), which authorizes the Secretary to establish by regulation requirements for the creation and maintenance of records. In addition, section 306 of the Bioterrorism Act also amends section 301 of the Federal Food, Drug and Cosmetic Act by making the failure to establish or maintain any record, as required by the new regulations, a prohibited act.

Alternatives:

None, based on clear statutory authority to establish regulations.

Anticipated Cost and Benefits:

The records provisions will impose a substantial cost on industry. Using the 1999 Country Business Patterns (CBP) database from the U.S. Census and recordkeeping cost estimates based on other FDA regulations (and assuming no small establishment exemptions), a rough first estimate is that the current provisions will affect approximately 500,000-600,000 establishments and will cost the food industry approximately $400 million in the first year and approximately $150 million every year thereafter.

The provisions will improve substantially FDA's ability to respond to outbreaks from deliberate and accidental contamination of food. FDA will use data collected by the Center for Disease Control (CDC) and FDA on past outbreaks to estimate the benefit of improved documentation in standard tracing investigations. Of the 1,344 food-borne illness outbreaks CDC identified in 1999, only 368 (27 percent) had a confirmed etiology. A host of factors contribute to the inability to identify the cause of an outbreak, but many investigations are hampered by the lack of adequate records identifying the production history of foods. Unfortunately, it is not possible to directly estimate the benefits of averting a terrorist attack, as we do not know what form an attack might take or the probability of an attack occurring. Instead, to get an idea of the cost of a food disaster, we will look at the costs of some severe food-borne illness outbreaks.

Risks:

Regulations implementing legislation to protect the health of citizens against bioterrorism would advance the development, organization, and enhancement of public health prevention systems and tools. The magnitude of the risks addressed by such systems and tools is at least as great as the other risk reduction efforts within HHS' jurisdiction. These regulations will improve the ability to address credible threats of serious adverse health consequences or death to humans or animals.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 0910–AC39

HHS—FDA

38. • REGISTRATION OF FOOD AND ANIMAL FEED FACILITIES

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

PL 107-188, sec 305

CFR Citation:

21 CFR 1

Legal Deadline:

Final, Statutory, December 12, 2003.

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, section 305, directs the Secretary, through FDA, to issue a final regulation establishing registration requirements by December 12, 2003. The statute is self-implementing on this date if FDA does not issue a final regulation by December 12, 2003.

Abstract:

This rulemaking is one of a number of actions being taken to improve FDA's ability to respond to threats of bioterrorism. Section 415 of the Federal Food, Drug, and Cosmetic Act (FFDCA), which was added by section 305 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act), directs the Secretary to require any facility engaged in manufacturing, processing, packing, or holding food for consumption by humans or animals in the United States to be registered with the Secretary through FDA. Section 415 directs the Secretary, through FDA, to promulgate final regulations implementing the requirements by December 12, 2003. The owner, operator, or agent in charge of the facility must submit the registration. Foreign facilities must include the name of the United States agent for the facility. The registration must include the name and address of each facility at which, and all trade names under which, the registrant conducts business. If FDA determines it is necessary through guidance, the registration must include the general food category (as identified under 21 CFR 170.3) of foods manufactured, processed, packed, or held at the facility. The registrant is required to notify the Secretary of changes to the registration in a timely manner. Upon receipt of the completed registration form, FDA is to notify the registrant of receipt of the registration and assign a unique registration number to the facility. The Secretary is also required to compile and maintain an up-to-date list of registered facilities. This list and any registration documents submitted to the Secretary are not subject to disclosure under the Freedom of Information Act. For purposes of section 415, "facility" includes any factory, warehouse, or establishment engaged in the manufacturing, processing, packing, or holding of food. Exempt from the registration requirement are farms, restaurants, retail food establishments,

nonprofit food establishments in which food is prepared for or served directly to the consumer, and fishing vessels (except those engaged in processing as defined in 21 CFR 123.3(k)). Foreign facilities required to register include only those from which food is exported to the United States without further processing or packaging outside the United States. The Bioterrorism Act provides that if a foreign facility attempts to import food into the United States without having registered, the food will be held at the port of entry until the foreign facility has registered.

Statement of Need:

The events of September 11, 2001, highlighted the need to enhance the security of the United States food supply. Congress responded by passing the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, which was signed into law on June 12, 2002. Regulations are needed to implement the new statutory provisions.

Summary of Legal Basis:

Section 305 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) amends the FFDCA by adding section 415, which directs the Secretary to establish by regulation requirements for the registration of food and animal feed facilities. Section 305 amends section 301 of the FFDCA by making the failure to register in accordance with section 415 a prohibited act. Section 305 also amends section 801 of the FFDCA by requiring food offered for import to be held at the port of entry until the foreign facility attempting to import the food has registered.

Alternatives:

None, based on clear statutory directive to establish regulations.

Anticipated Cost and Benefits:

Costs: Requiring registration for domestic and foreign facilities that manufacture, process, pack, or hold food will create costs for facilities to register and for FDA to set up and administer a database of firms. Industry costs are primarily a function of the number of firms affected and the amount of labor needed to register those firms. FDA estimates that 158,618 domestic establishments and 100,000 foreign establishments covered by the statute and proposed regulation will bear a cost of approximately $8.5 million in the first year. In subsequent years, new establishments will enter the industry. FDA estimates the number of new entrants each year will be equal to 10 percent of the current number of firms, for a recurring annual cost of $850,000. FDA's costs will include labor hours, hardware, software, and mailing costs for creating and administering a database. We estimate the costs to the agency for setting up the database and registering the first year registrants to be $17.4 million. This includes four FDA FTEs, contractor development of the database, hardware, software, industry outreach, and a firewall. We estimate costs for maintaining the database and adding new establishments to be $13.8 million in the second year. Total first year costs will be $25.9 million and second year costs will be $14.7 million. All of these cost estimates are preliminary and uncertain.

Benefits: These provisions will improve FDA's ability to respond to outbreaks from accidental and deliberate contamination from food and deter deliberate contamination. It is not possible to directly estimate the benefits of averting a terrorist attack, as we do not know what form an attack might take or the probability of an attack occurring. Instead, to get an idea of the cost of a food disaster, we will look at the costs of some severe, foodborne illness outbreaks.

Risks:

Regulations implementing legislation to protect the health of citizens against bioterrorism would advance the development, organization, and enhancement of public health prevention systems and tools. The magnitude of the risks addressed by such systems and tools is at least as great as the other risk reduction efforts within HHS' jurisdiction. These regulations will improve the ability to address credible threats of serious adverse health consequences or death to humans or animals.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 0910–AC40

HHS—FDA

39. • ESTABLISHMENT OF PRIOR NOTIFICATION REQUIREMENT FOR ALL IMPORTED FOOD SHIPMENTS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

PL 107-188, sec 307

CFR Citation:

Not Yet Determined

Legal Deadline:

Final, Statutory, December 12, 2003.

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, section 307, directs the Secretary, through FDA, to issue final regulations establishing prior notification requirements for all imported food shipment by December 12, 2003. If FDA fails to issue final regulations by this date, the statute is self-executing on this date, and requires FDA to receive prior notice of not less than 8 hours, nor more than 5 days until final regulations are issued.

Abstract:

This rulemaking is one of a number of actions being taken to improve FDA's ability to respond to threats of bioterrorism. Section 801(m) of the Federal Food, Drug and Cosmetic Act (FFDCA), which was added by section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, authorizes the Secretary, through FDA, to promulgate final regulations by December 12, 2003. Section 801(m) requires notification to FDA prior to the entry of imported food. The required prior notice would provide the identity of the article of food; the manufacturer; the shipper; the grower, if known at the time of notification; the originating country; the shipping country; and the anticipated port of entry. The regulation would identify the parties responsible for providing the notice and explain the information that the prior notice is required to contain, the method of submission of the notice, and the minimum and maximum period of advance notice required. Section 307 also states that if FDA does not receive prior notice or receives inadequate prior notice, the imported food shall be held at the port of entry until proper notice is provided.

Statement of Need:

The events of September 11, 2001, highlighted the need to enhance the security of the U.S. food supply. Congress responded by passing the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act), was signed into law on June 12, 2002. The proposed regulations would implement section 307 of the Bioterrorism Act.

Summary of Legal Basis:

Section 307 of the Bioterrorism Act amended the FFDCA by adding section 801(m), which authorizes the Secretary through FDA to establish by regulation requirements for the notification to FDA prior to the entry of imported food. In addition, section 307 of the Bioterrorism Act also amends section 301 of the FFDCA by making the offering of a food for import or the importing of a food without prior notification, as required by the new regulations, a prohibited act.

Alternatives:

None, based on clear statutory directive to establish regulations.

Anticipated Cost and Benefits:

The prior notification provision is an economically significant regulatory action, mainly because so many shipments are affected. For calendar year 2002, FDA estimates that about 4.7 million human and animal food and dietary supplements line items will be imported into U.S. commerce by airplane, train, vessel, and truck.

For those importers who currently do not notify FDA until their actual arrival (or later) at a point of entry, this proposed rule will create a burden as it would require a change in their current methods of operation. Prior notice requirements will also create some additional burdens if FDA requires more imported articles to be held for FDA inspection.

FDA costs will include the labor hours, hardware, and software costs for updating the present OASIS system. Technology costs will likely increase further if FDA has to create a stand alone system instead of working through U.S. Customs Service's ACE system to meet the statutory deadlines. FDA costs may also include hiring additional inspectors to certify the receipt of prior notice and clear the food to enter into U.S. commerce, and storing goods, if FDA has to take custody.

The provisions will improve substantially FDA's ability to examine imported food for deliberate and accidental contamination. The purpose of the prior notification of imported food shipments is to allow the FDA to determine whether there is any credible evidence or information indicating that an article of food presents a threat of serious adverse health consequences or death to humans or animals, and to receive and review the prior notification, and appropriately respond. It is not possible to directly estimate the benefits of averting a terrorist attack, as we do not know what form an attack might take or the probability of an attack occurring.

Risks:

Regulations implementing legislation to protect the health of citizens against bioterrorism would advance the development, organization and enhancement of public health prevention systems and tools. The magnitude of the risks addressed by such systems and tools is at least as great as the other risk reduction efforts within HHS' jurisdiction. These regulations will improve the ability to address credible threats of serious adverse health consequences or death to humans or animals.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

Federalism:

Undetermined

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RIN: 0910–AC41

HHS—FDA

40. • APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG: PATENT LISTING REQUIREMENTS AND APPLICATION OF 30-MONTH STAYS ON APPROVAL OF ABBREVIATED NEW DRUG APPLICATIONS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

21 USC 3321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 355a; 21 USC 356; 21 USC 356a; 21 USC 356b; 21 USC 356c; 21 USC 371; 21 USC 374; 21 USC 379e

CFR Citation:

21 CFR 314.52(a)(3); 21 CFR 314.53(b); 21 CFR 314.53(c)(1); 21 CFR 314.53(c)(2); 21 CFR 314.95(a)(3)

Legal Deadline:

None

Abstract:

The final rule would clarify the types of patents for which information must or must not be submitted to FDA. The final rule would also revise the patent declaration to make it more detailed. The rule would also revise the regulations regarding the approval date for certain abbreviated new drug applications or "505(b)(2) applications" by stating that there is only one opportunity for a 30-month stay in the approval date of an ANDA or 505(b)(2) application.

Statement of Need:

In recent years, FDA has seen new drug application (NDA) applicants submit

patent information to FDA shortly before other patents for the drug are to expire. Disputes have arisen whether the later-filed patents are appropriately submitted to FDA. The Federal Trade Commission (FTC) has also asked FDA to clarify whether NDA applicants can or should list various types of patents at FDA. The FTC has also issued a report questioning whether NDA applicants have used later-filed patents to seek unwarranted delays in the approval of generic drugs.

Summary of Legal Basis:

The principal legal authority for this rule is found at sections 505 and 701 of the Federal Food, Drug, and Cosmetic Act (the Act). Section 505(b) of the Act describes the contents of an NDA and 505(b)(2) application, including the patent listing and patent certification requirements. Section 505(j) of the Act describes the contents of an ANDA, including patent certification requirements. Both sections 505(b) and 505(j) of the Act also describe the 30-month stay of approval dates for ANDA's and 505(b)(2) applications if the ANDA or 505(b)(2) application applicant had certified that a patent was invalid or would not be infringed, and a timely suit for patent infringement ensued. Section 701(a) of the Act gives FDA the authority to issue regulations for the efficient enforcement of the Act.

Alternatives:

With respect to patent listing, one alternative would be to remain silent and defer to NDA applicants as to the appropriateness of any particular patent. This alternative, however, would not deter the submission of inappropriate patent information and could lead to unnecessary patent disputes between patent owners, NDA holders, and ANDA or 505(b)(2) application applicants.

As for the 30-month stay, there are alternative arguments to justify a single 30-month stay, but those alternative theories could also result in no notice to the patent owner or NDA holder and no opportunity for even a single 30-month stay. Such results would be contrary to the Act's desire to balance generic drug approvals against a need to preserve incentives for innovation. Another alternative would be to continue allowing multiple 30-month stays, but this would have the effect of delaying the introduction of generic drugs into the market.

Anticipated Cost and Benefits:

The one-year benefits of the regulation will include the increase in revenues to generic firms and the savings to consumers from the earlier availability of less expensive pharmaceuticals. The estimated total one-year benefit is approximately $3.2 billion. Adjusting this benefit to account for the expected increase in baseline pharmaceutical expenditures, the total benefit for the years 2002 through 2011 is expected to be approximately $53.9 billion.

Eliminating multiple 30-month stays per ANDA will prevent delays in generic drug competition. Generic drug companies gain through additional sales, and, to the extent that generic prices are lower than innovator prices, consumers benefit from the "price gap." While the quantified benefits do exceed the quantified costs, this rule has the additional important benefit of preserving the balance struck in the Hatch-Waxman amendments.

Risks:

The regulation would deter misuse of the patent listing and patent certification process to obtain unwarranted, multiple 30-month delays in the approval of an ANDA or 505(b)(2) application. Court decisions indicate that ANDA applicants and 505(b)(2) applicants have no private right of action to have inappropriate patents removed from FDA's lists, and the FTC report suggests that some patents submitted to FDA have been inappropriately listed.

Timetable:

Action	Date	FR Cite
NPRM	10/24/02	67 FR 65448
NPRM Comment Period End	12/23/02	
Final Rule	03/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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HHS—FDA

FINAL RULE STAGE

41. LABELING FOR HUMAN PRESCRIPTION DRUGS; REVISED FORMAT

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 358; 21 USC 360; 21 USC 360b; 21 USC 360gg to 360ss; 21 USC 371; 21 USC 374; 21 USC 379e; 42 USC 216; 42 USC 241; 42 USC 262; 42 USC 264

CFR Citation:

21 CFR 201

Legal Deadline:

None

Abstract:

This regulation is one component of the Secretary's initiative to reduce medical errors. The regulation would amend the regulations governing the format and content of professional labeling for human prescription drug and biologic products, 21 CFR 201.56 and 201.57. The regulation would require that professional labeling include a section containing highlights of prescribing information, and a section containing an index to prescribing information; reorder currently required information and make minor changes to its content, and establish minimum graphical requirements for professional labeling. The regulation would also eliminate certain unnecessary statements that are currently required to appear on prescription drug labels and move

certain information to professional labeling.

Statement of Need:

The current format and content requirements in sections 201.56 and 201.57 were established to help ensure that labeling includes adequate information to enable health care practitioners to prescribe drugs safely and effectively. However, various developments in recent years, such as technological advances in drug product development, have contributed to an increase in the amount, detail, and complexity of labeling information. This has made it harder for practitioners to find specific information and to discern the most critical information in product labeling.

FDA took numerous steps to evaluate the usefulness of prescription drug labeling for its principal audience and to determine whether, and how, its format and content can be improved. The agency conducted focus groups and a national survey of office-based physicians to ascertain how prescription drug labeling is used by health care practitioners, what labeling information is most important to practitioners, and how professional labeling should be revised to improve its usefulness to prescribing practitioners.

Based on the concerns cited by practitioners in the focus groups and physician survey, FDA developed and tested two prototypes of revised labeling formats designed to facilitate access to important labeling information. Based on this testing, FDA developed a third revised prototype that it made available to the public for comment. Ten written comments were received on the prototype. FDA also presented the revised prototype at an informal public meeting held on October 30, 1995. At the public meeting, the agency also presented the background research and provided a forum for oral feedback from invited panelists and members of the audience. The panelists generally supported the prototype.

The proposed rule described format and content requirements for prescription drug labeling that incorporate information and ideas gathered during this process. The agency has received several comments on the proposal and the comment period was extended until June 22, 2001.

Summary of Legal Basis:

The agency has broad authority under sections 201, 301, 501, 502, 503, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (the Act)(21 U.S.C. 321, 331, 351, 352, 353, 355 and 371) and section 351 of the Public Health Service Act (42 U.S.C. 262) to regulate the content and format of prescription drug labeling to help ensure that products are safe and effective for their intended uses. A major part of FDA's efforts regarding the safe and effective use of drug products involves FDA's review, approval, and monitoring of drug labeling. Under section 502(f)(1) of the Act, a drug is misbranded unless its labeling bears "adequate directions for use" or it is exempted from this requirement by regulation. Under section 201.100 (21 CFR 201.100), a prescription drug is exempted from the requirement in section 502(f)(1) only if, among other things, it contains the information required, in the format specified, by sections 201.56 and 201.57.

Under section 502(a) of the Act, a drug product is misbranded if its labeling is false or misleading in any particular. Under section 505(d) and 505(e) of the Act, FDA must refuse to approve an application and may withdraw the approval of an application if the labeling for the drug is false or misleading in any particular. Section 201(n) of the Act provides that in determining whether the labeling of a drug is misleading, there shall be taken into account not only representations or suggestions made in the labeling, but also the extent to which the labeling fails to reveal facts that are material in light of such representations or material with respect to the consequences which may result from use of the drug product under the conditions of use prescribed in the labeling or under customary usual conditions of use.

These statutory provisions, combined with section 701(a) of the Act and section 351 of the Public Health Service Act, clearly authorize FDA to promulgate a final regulation designed to help ensure that practitioners prescribing drugs (including biological products) will receive information essential to their safe and effective use in a format that makes the information easier to access, read, and use.

Alternatives:

The alternatives to the final rule, include not amending the content and format requirements in sections 201.56 and 201.57 at all, or amending them to a lesser extent. The agency has determined that although drug product labeling, as currently designed, is useful to physicians, many find it difficult to locate specific information in labeling, and some of the most frequently consulted and most important information is obscured by other information. In addition, the agency's research showed that physicians strongly support the concept of including a highlights section of the most important prescribing information, an index and numbering system that permits specific information to be easily located, and other requirements, such as the requirement for a minimum type size. Thus, the agency believes that the requirements in the final rule will greatly facilitate health care practitioners' access and use of prescription drug and biological labeling information.

Anticipated Cost and Benefits:

The expected benefits from the final rule include reduced time needed for health care professionals to read or review labeling for desired information, increased effectiveness of treatment, and a decrease in adverse events resulting from avoidable drug-related errors. For example, the proposed revised format is expected to significantly reduce the time spent on reading labeling by highlighting often used information at the beginning of labeling and facilitating access to detailed information.

The potential costs associated with the final rule include the cost of redesigning labeling for previously approved products to which the proposed rule would apply and submitting the new labeling to FDA for approval. In addition, one-time and ongoing incremental costs would be associated with printing the longer labeling that would result from additional required sections. These costs would be minimized by applying the amended requirements only to newer products and by staggering the implementation date for previously approved products.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	12/22/00	65 FR 81082
NPRM Comment Period End	03/22/01	
NPRM Comment Period Reopened	03/30/01	

Action	Date	FR Cite
NPRM Comment Period Reopening End	06/22/01	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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HHS—FDA

42. FOOD LABELING: TRANS FATTY ACIDS IN NUTRITION LABELING, NUTRIENT CONTENT CLAIMS, AND HEALTH CLAIMS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

21 USC 321; 21 USC 331; 21 USC 342; 21 USC 343; 21 USC 348; 21 USC 371; ...

CFR Citation:

21 CFR 101

Legal Deadline:

None

Abstract:

Section 403(q) of the Federal Food, Drug, and Cosmetic Act, which was added by the Nutrition Labeling and Education Act of 1990 (NLEA), requires that the label or labeling of food products bear nutrition information. Among other things, section 403(q) of the Act authorizes the Food and Drug Administration (FDA) to add or delete nutrients that are to be declared on the labels or labeling of food products by regulation if it finds such action necessary to assist consumers in maintaining healthy dietary practices. FDA issued final regulations implementing NLEA in 1993. FDA subsequently received a citizen petition requesting that FDA amend its regulations on food labeling to require that the amount of trans fatty acids be listed in the nutrition label and be limited wherever saturated fat limits are placed on nutrient content claims, health claims, or disqualifying levels and disclosure levels. In response to this petition and based on new evidence, FDA proposed the actions requested in the petition on November 17, 1999 (64 FR 62746). In addition, FDA proposed to define the claim "trans fat free."

Statement of Need:

FDA intends to publish a final rule amending its nutrition labeling regulations to incorporate requirements for trans fatty acids in labeling for several reasons. First, this final rule responds, in part, to a citizen petition on trans fatty acids in food labeling from the Center for Science in the Public Interest. Also, recent research shows that dietary trans fatty acids raise low density lipoprotein cholesterol (LDL-C), the major diet related risk factor for coronary heart disease (CHD). Finally, the information on trans fatty acids in nutrition labeling is needed to assist consumers in maintaining healthy dietary practices.

Summary of Legal Basis:

The NLEA (Pub. L. 101-535) amended the Federal Food, Drug, and Cosmetic Act (the Act) to provide, among other things, that certain nutrients and food components be included in nutrition labeling. Sections 403(q)(2)(A) and (q)(2)(B) of the Act provide the agency with authority to, by regulation, add or delete nutrients included in the food label or labeling if the agency finds that such action will assist consumers in maintaining healthy dietary practices.

Alternatives:

FDA proposed, in the November 1999 proposal, that when trans fatty acids are present in a food, the declaration of saturated fat must bear a symbol that refers to a footnote at the bottom of the nutrition label that states the number of grams of trans fatty acids present in a serving of the product, i.e., "Includes _____ g trans fat." In addition to the proposed option, the agency considered a variety of other options for the declaration of trans fatty acids in the Nutrition Facts panel. The other options were: (1) include trans fatty acids with saturated fat and call the total value "saturated fat;" (2) include trans fatty acids with saturated fat and call the total value "saturated fat," and add an asterisk after the term "saturated fat" when the food contains trans fatty acids that refers to a footnote stating "Contains _____ g trans fat;" (3) include trans fatty acids with saturated fat and call the total value "saturated + trans fat;" and (4) list trans fatty acids separately under saturated fat.

Anticipated Cost and Benefits:

FDA has estimated the benefits of the proposed rule in the range of $25 to $50 billion compared with costs in the range of $400 to $900 million (discounted at 7 percent for 20 years). The value of the benefits were estimated based on CHD morbidity and mortality prevented. The costs were estimated based on a formula that included costs for testing, decisionmaking, information panel reprinting, relabeling of the principal display panels, and product reformulation.

Risks:

The American Heart Association estimates that CHD causes 1.1 million heart attack cases annually, with 33 percent of them fatal. FDA used these estimates as the baseline to estimate the number of cases and fatalities prevented by this rule. The agency estimated the rule would annually prevent 6,300 to 17,100 cases of CHD and 2,100 to 5,600 deaths, using three different methods to estimate these benefits. Thus, the labeling changes resulting from this rule are expected to reduce the risk of CHD, preventing, at a minimum, 6,300 cases of CHD and 2,100 deaths annually.

Timetable:

Action	Date	FR Cite
NPRM	11/17/99	64 FR 62746
NPRM Comment Period Reopened	12/05/00	65 FR 75887
NPRM Comment Period End	01/19/01	
Final Rule	03/00/03	

Government Levels Affected:

None

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HHS—FDA

43. CGMPS FOR BLOOD AND BLOOD COMPONENTS: NOTIFICATION OF CONSIGNEES AND TRANSFUSION RECIPIENTS RECEIVING BLOOD AND BLOOD COMPONENTS AT INCREASED RISK OF TRANSMITTING HCV (LOOKBACK)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371; 21 USC 374; 42 USC 216; 42 USC 262; 42 USC 263; 42 USC 263a; 42 USC 264

CFR Citation:

21 CFR 606; 21 CFR 610

Legal Deadline:

None

Abstract:

This rulemaking is one of a number of actions being taken to amend the biologics regulations to remove, revise, or update the regulations applicable to blood, blood components, and blood derivatives. These actions are based on a comprehensive review of the regulations performed by FDA, and are also based on reports by the U.S. House of Representatives Committee on Government Reform and Oversight, Subcommittee on House Resources and Intergovernmental Relations, the General Accounting Office, and the Institute of Medicine, as well as public comments. In this rulemaking, FDA will amend the biologics regulations to require that blood establishments prepare and follow written procedures for appropriate action when it is determined that blood and blood components pose an increased risk for transmitting hepatitis C virus (HCV) infection because they have been collected from a donor who, at a later date, tested reactive for evidence of HCV. The HIV lookback regulations will be amended for consistency.

Statement of Need:

In the Federal Register of June 22, 1999 (64 FR 33309), FDA announced the availability of guidance, which updated previous guidance, providing recommendations for donor screening and further testing for antibodies to HCV, notification of consignees, transfusion recipient tracing and notification, and counseling by physicians regarding transfusion with blood components at increased risk for transmitting HCV (often called "lookback"). While available evidence indicates that blood establishments are following these recommendations, FDA believes that regulations should be codified, consistent with the previous recommendations, to assure there is clear enforcement authority in case deficiencies in an establishment's lookback program are found and to provide clear instructions for continuing lookback activities.

Summary of Legal Basis:

The Public Health Service Act (21 U.S.C. 201 et seq.) and the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.) authorize FDA to regulate biological products and to ensure that the products are safe, pure, potent, and effective. The Public Health Service Act also contains authority under which FDA can promulgate regulations to prevent the spread of communicable diseases. These regulations would assure that appropriate action is taken when blood has been collected which may potentially be capable of transmitting HCV; that persons who have been transfused with such blood components are notified so that they receive proper counseling and treatment; and that infected donors are notified. They will therefore help prevent the further transmission of HCV.

Alternatives:

FDA has considered permitting continued voluntary compliance with the recommendations that have already been issued. However, lookback will remain appropriate for the foreseeable future, and FDA believes that the procedures should be clearly established in the regulations.

Anticipated Cost and Benefits:

FDA is in the process of analyzing the costs related to the rulemaking. Monetary burdens will be associated with the tracing of previous donations of donors, quarantining in-date products, identifying the recipients of previous blood donations, and notifying these recipients, as appropriate. FDA believes these costs will be more balanced by the public health benefits, including benefits related to the notification of past transfusion recipients who may be unaware that they may be infected with HCV.

Risks:

FDA believes there are minimum risks posed by requiring that appropriate lookback procedures for HCV be prepared and followed.

Timetable:

Action	Date	FR Cite
NPRM	11/16/00	65 FR 69377
NPRM Comment Period End	02/14/01	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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Related RIN: Related To 0910-AB26

RIN: 0910–AB76

HHS—FDA

44. TOLL-FREE NUMBER FOR REPORTING ADVERSE EVENTS ON LABELING FOR HUMAN DRUGS

Priority:

Other Significant

Legal Authority:

21 USC 355a

CFR Citation:

21 CFR 201; 21 CFR 208; 21 CFR 209

Legal Deadline:

Final, Statutory, January 4, 2003.

Abstract:

To require the labeling of human drugs approved under section 505 of the Federal Food, Drug, and Cosmetic Act to include a toll-free number for reports of adverse events, and a statement that the number is to be used for reporting purposes only and not to receive medical advice.

Statement of Need:

Consumers may not be aware of FDA's adverse event reporting program under Medwatch. This requirement will promote FDA's mission to protect the public health by informing consumers of FDA's Medwatch system.

Summary of Legal Basis:

Section 17 of the Best Pharmaceuticals for Children Act (BPCA) requires this final rule to issue within one year of the date of its enactment on January 4, 2002.

Alternatives:

This final rule is required by section 17 of the BPCA. FDA has considered alternatives within the scope of the statutory requirements, in particular, ways to reach the broadest consumer audience and to minimize costs to the pharmacy profession.

Anticipated Cost and Benefits:

Anticipated costs are to drug manufacturers and authorized dispensers of drug products, including pharmacies. The BPCA contains a provision requiring the Secretary to seek to minimize the cost to the pharmacy profession. Anticipated benefits are to obtain information about adverse events from consumers, which may inform FDA of trends in reported adverse events and result in a review of the safety and/or effectiveness of particular drug products on the market.

Risks:

None.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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HHS—Centers for Medicare & Medicaid Services (CMS)

PROPOSED RULE STAGE

45. END STAGE RENAL DISEASE (ESRD) CONDITIONS FOR COVERAGE (CMS-3818-P) (SECTION 610 REVIEW)

Priority:

Other Significant

Legal Authority:

42 USC 1395rr

CFR Citation:

42 CFR 400; 42 CFR 405; 42 CFR 406; 42 CFR 409; 42 CFR 410; 42 CFR 412 to 414; 42 CFR 489; 42 CFR 494

Legal Deadline:

None

Abstract:

This proposed rule would revise the requirements that end stage renal disease (ESRD) facilities must meet to be certified under the Medicare program.

Statement of Need:

The proposed rule is a complete overhaul of the current ESRD conditions for coverage in order to reduce unnecessary process and procedural requirements and focus on the patient and the results of the care provided to the patient. The proposed conditions for ESRD facilities would include, among other things, new infection control guidelines; updated water quality standards; new fire safety standards; as well as patient assessment, care planning, quality improvement, and electronic data reporting provisions that reflect the current advances in dialysis technology and standard care practices. The ESRD conditions were last published in their entirety in 1976.

Summary of Legal Basis:

Section 1881 [42 U.S.C. 1395rr] of the Social Security Act (the Act) authorizes benefits for individuals who have been determined to have end stage renal disease as provided in section 226A. Section 1881(b) of the Act authorizes payments on behalf of such individuals to providers of services and renal dialysis facilities "which meet requirements as the Secretary shall by regulation prescribe." ESRD conditions for coverage may be revised as needed under the Secretary's rulemaking authority in section 1881.

Alternatives:

Retain the current conditions. CMS has undertaken various quality improvement initiatives, e.g., the Dialysis Facility Compare website and the CMS Clinical Performance Measures Project that have improved beneficiaries' quality of care. However, these initiatives lack the potential impact of an overall regulatory change.

Anticipated Cost and Benefits:

Undetermined.

Risks:

Failure to update would leave CMS with ESRD conditions for coverage that are over 26 years old and do not reflect current medical practices or scientific advances in the field.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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HHS—CMS

46. NATIONAL STANDARD FOR IDENTIFIERS OF HEALTH PLANS (CMS-6017-P)

Priority:

Other Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect State, local or tribal goverments.

Legal Authority:

42 USC 1320d to 1320d-8

CFR Citation:

45 CFR 160; 45 CFR 162

Legal Deadline:

Final, Statutory, February 21, 1998.

Abstract:

This proposed rule would implement a standard identifier to identify health plans that process and pay certain electronic health care transactions. It would implement one of the requirements for administrative simplification in section 262 of the Health Insurance Portability and Accountability Act of 1996.

Statement of Need:

This rule would implement the national health plan identifier, one of the requirements for administrative simplification in section 262 of the Health Insurance Portability and Accountability Act of 1996.

Summary of Legal Basis:

Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104-191, August 21, 1996, sec. 1173).

Alternatives:

Three alternatives were considered:

Option 1: Federal and State Medicaid Agencies Cost : $38.1M

Option 2: Private Organizations Cost : $38.1M

Option 3: Registry Cost : $34.9M

Duration: Every option is required to complete the enumeration process within two years of the promulgation and effective date of the final rule for all health plans, except that small health plans have three years to comply.

Option 1: Two or more coordinating entities will share responsibility for enumerating health plans. The entities would consist of Federal and State Medicaid programs.

Option 2: Same as option one, except that coordinating entities would consist of private organizations.

Option 3: CMS, acting through a contractor, would be the single entity enumerating all health plans and maintaining the registry.

Decision: The Secretary has selected option three, not only because its costs are lower, but also because it would result in less burden on organizations in coordinating enumeration, less confusion for health plans, better quality control of data control, and better management of the enumeration process.

Anticipated Cost and Benefits:

A benefit/cost analysis was conducted with three contribution rates of PlanID toward overall HIPPA cost savings. Given a 1 percent contribution rate, the PlanID project shows a net present value of over $12.8 million and a benefit/cost ratio of 1.45. For 5 and 15 percent rates, the net present values are $179.2 million and $595.3 million, respectively, and the benefit cost ratios are 7.23 and 21.69, respectively. These values indicate that the implementation of the PlanID project will result in a considerable positive return on investment.

Risks:

There are three categories of risk:

Technical and Operational—physical/logical system

Schedule—delays/slippage

Cost/Budget—cost overruns, funding shortfalls, unexpected funding needs

An assessment and mitigation of risks was conducted as part of the information technology documentation. The subsequent risk analysis determined the project to be a low risk endeavor.

Timetable:

Action	Date	FR Cite
Proposed Rule	02/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

State

Federalism:

This action may have federalism implications as defined in EO 13132.

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HHS—CMS

47. HEALTH INSURANCE REFORM: CLAIMS ATTACHMENTS STANDARDS (CMS-0050-P)

Priority:

Other Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect State, local or tribal goverments.

Legal Authority:

42 USC 1320d-2(a)(2)(B)

CFR Citation:

45 CFR 162

Legal Deadline:

Final, Statutory, August 21, 1998.

Abstract:

This rule proposes an electronic standard for claims attachments. The standard is required by the Health Insurance Portability and Accountability Act (HIPAA) of 1966. It

would be used to transmit clinical data, beyond those data contained in the claims standard, to help establish medical necessity for coverage.

Statement of Need:

The Administrative Simplification subtitle of HIPAA requires the Secretary of Health and Human Services to adopt standards for electronically requesting and supplying additional information to support submitted claims data. This rule stipulates the requirements necessary to comply with the law.

Summary of Legal Basis:

The Administrative Simplification provisions of HIPAA require the Secretary to establish standards that additionally support information attached to claims.

Alternatives:

In the absence of this regulation, claims attachments in electronic form would be left with the private industry to develop. This action may create an inconsistent standard use of electronic claims attachments within the health care industry.

Anticipated Cost and Benefits:

As the effect of any one of the HIPAA standards is affected by the implementation of other standards, it is misleading to discuss the impact of one standard by itself. Therefore, an Impact Analysis on the total effect of all standards was published in the proposed rule concerning the national provider identifier (HCFA-0045-P), which was published on May 7, 1998 (63 FR 25320).

Risks:

Failure to publish this rule would mean that no standard for electronic claims attachments would be established for use within the health care system. Lack of a standard for electronic claims attachments would decrease the amount of savings in health care costs.

Timetable:

Action	Date	FR Cite
Proposed Rule	03/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

State, Local, Federal, Tribal

Federalism:

This action may have federalism implications as defined in EO 13132.

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HHS—CMS

48. ORGAN PROCUREMENT ORGANIZATION CONDITIONS FOR COVERAGE (CMS-3064-P)

Priority:

Other Significant

Legal Authority:

42 USC 1320b-8(b)(1)(A)(i); 42 USC 273(b)(2)

CFR Citation:

42 CFR 486.301

Legal Deadline:

Final, Statutory, January 1, 2002, Requires promulgation of new conditions.

Abstract:

This proposed rule would establish conditions for coverage for organ procurement organizations (OPOs) to be certified by the Secretary to receive payment from Medicare and Medicaid for organ procurement costs, and to be designated by the Secretary for a specific geographic service area. The Organ Procurement Organization Certification Act of 2000 requires CMS to increase the certification cycle for OPOs from two years to four years and to promulgate new performance standards for OPOs.

Statement of Need:

This proposed rule contains new conditions for coverage for OPOs, including new performance standards. This proposed rule would also increase the rectification cycle for OPOs from two years to four years.

Summary of Legal Basis:

Section 1138(b) of the Social Security Act (the Act) provides the statutory qualifications and requirements that an OPO must meet in order to receive payment for organ procurement costs associated with procuring organs for hospitals under the Medicare and Medicaid programs. This section gives the Secretary broad authority to establish performance-related standards for OPOs. Under this authority, the Secretary established conditions for coverage for OPOs at 42 CFR 486.301, et seq. Section 1138(b) of the Act specifies that an OPO must be certified or rectified by the Secretary as meeting the standards to be a qualified OPO as described in section 371(b) of the Public Health Service (PHS) Act. The PHS Act requirements were established by the National Organ Transplant Act of 1984 and include provisions for OPO board membership, staffing, agreements with hospitals, and membership in the OPTN. The Organ Procurement Organization Certification Act of 2000 (section 701 of Pub. L. 106-505, 42 U.S.C. section 273(b)(1)(D)) amended section 371(b) of the PHS Act to require CMS to increase the certification cycle for OPOs from two years to four years and promulgate new performance standards for OPOs.

Alternatives:

CMS is considering various alternatives in the development of performance measures and additional conditions for coverage, and will solicit public comments in order to identify additional alternatives.

Anticipated Cost and Benefits:

While this rule is expected to improve OPO performance and organ donations, CMS is uncertain at this time about the rule's economic impact on OPOs.

Risks:

Failure to publish new outcome performance standards would violate section 701 of Public Law 106-505, which amended the Public Health Service Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/28/01	66 FR 67109
Proposed Rule	02/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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HHS—CMS

49. USE OF RESTRAINT AND SECLUSION IN MEDICARE AND MEDICAID PARTICIPATING FACILITIES THAT PROVIDE INPATIENT OR RESIDENTIAL CARE (CMS-2130-P)

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

Children's Health Act of 2000

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

This proposed rule would implement provisions of the Children's Health Act (CHA) related to the use of restraints or seclusion for individuals receiving services in health care facilities that receive Federal funding. The rule would establish common terminology and basic expectations for the use of restraints and seclusion for health care facilities that furnish inpatient or residential care and receive Medicare or Medicaid funding.

Statement of Need:

In recent years, media, government, and consumer reports of deaths and injuries occurring due to the use of restraint or seclusion have heightened concern about these mechanisms as interventions. However, concern about use is nothing new; the appropriate use of restraint and seclusion has been debated and regulated in various health care settings for many years. Researchers have examined the use of restraint and seclusion, related injuries and deaths, and potential alternatives to address safety and care concerns while posing less inherent risk to the individual. Patient advocates have lobbied for reduced and more highly regulated use. Health care facilities and professionals have examined mechanisms for reduction, and some have implemented training programs to promote safe application and use. However, reports of injuries and deaths have brought concerns about care and safety to the forefront. The issue has gained national attention, with a call for regulation across health care settings.

Several highly publicized newspaper articles and Federal reports are considered the impetus for this regulation. The CHA established a significant collaboration of several important children's health bills. CMS has responsibility for part H, which established certain requirements related to the rights of residents of certain facilities receiving Federal funds. The CHA establishes for certain facilities common definitions, staff training standards, reporting requirements, and strict enforcement criteria.

Summary of Legal Basis:

The Children's Health Act of 2000 (Pub. L. 106-310), section 3207, part H.

Alternatives:

No other regulatory alternatives were considered. However, in some form current regulations exist for hospitals and residential treatment facilities, while nursing homes and ICFs/MR utilize survey guidelines. The CHA's intent is to develop consistency in requirements across all Federally funded patient or residential care facilities. The statutory language required that regulations be promulgated within one year of its enactment. This NPRM, CMS-2130-P, is currently one year behind its mandated time of publication.

Anticipated Cost and Benefits:

The anticipated benefits include the increase in staff education and training that leads to alternative usage of restraint or seclusion as a means of intervention and less traumatic experiences for beneficiaries within the given facilities, more involvement with developing alternative treatment mechanisms for staff and clients, alike. The regulation creates a change in facility practices and policies on the use of restraint or seclusion as a treatment mechanism. The regulation will create standard criteria for all patients or residential care facilities that receive Federal funds, which will establish an industry wide effect on beneficiaries who are receiving services within these Federal facilities. The regulation creates consistent criteria for staff training, and defining and reporting on restraint or seclusion.

The anticipated cost is based on regulations that will affect more than 31,800 Medicare and Medicaid funded facilities. However, at this time, the extent of potential facilities affected is unattainable until comments are received from other HHS agencies. It is estimated that the cost will be roughly $500 million/yr for Federal Medicaid, and $2.5 - 3 billion for all payors. However, the NPRM will request comments on actual staff training and reporting costs, it is assumed this cost will decrease since the majority of facilities currently have training and reporting requirements.

Risks:

The risks in implementing this regulation are: 1) increase in cost for facilities in staff training (However, facilities that currently utilize restraint or seclusion as a form of intervention, have some general staff training requirements. The CHA will only expand the content of this training.); 2) increased possibility of facilities having their Federal funding status placed in jeopardy due to non-compliance with regulations (Industry may raise concern that the CHA's enforcement aspect is too harsh. For nursing homes, argument may occur that the CHA's enforcement goes against the intent of Congress and its OBRA '87 language to devise other alternative sanctions besides termination from the Medicare or Medicaid programs.); and 3) concern from facilities that currently do not have any regulations governing the use of restraints or seclusion (e.g., nursing homes, hospice inpatient facilities, and critical access hospitals. However, nursing homes have requirements in their survey guidance materials.)

And the risks in not implementing the regulation are: 1) increase in cost for facilities in staff training (However, facilities that currently utilize restraint or seclusion as a form of intervention, have some general staff training requirements. The CHA will only expand the content of this training.); 2) increased possibility of facilities having their Federal funding status placed in jeopardy due to non-compliance with regulations (Industry may raise concern that the CHA's enforcement aspect is too harsh. For nursing homes, argument may occur that the CHA's enforcement goes against the intent of Congress and its

OBRA '87 language to devise other alternative sanctions besides termination from the Medicare or Medicaid programs.); and 3) concern from facilities that currently do not have any regulations governing the use of restraints or seclusion (e.g., nursing homes, hospice inpatient facilities, and critical access hospitals. However, nursing homes have requirements in their survey guidance materials.)

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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HHS—CMS

50. PROSPECTIVE PAYMENT SYSTEM FOR PSYCHIATRIC HOSPITALS (CMS-1213-P)

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

PL 106-113, sec 124

CFR Citation:

Not Yet Determined

Legal Deadline:

NPRM, Statutory, October 1, 2002, per section 124 of Public Law 106-113.

Abstract:

This proposed rule would set forth a prospective payment system (PPS) for psychiatric hospitals.

Statement of Need:

This proposed rule will set forth a PPS for psychiatric hospitals and distinct part units. It would replace the current TEFRA payment mechanism that is outdated and problematic for psychiatric facilities.

Summary of Legal Basis:

Section 124 of BBRA mandated implementation of an inpatient psychiatric facility (IPF) PPS.

Alternatives:

An IPF PPS is required by statute.

Anticipated Cost and Benefits:

The statute requires us to implement this PPS in a budget neutral fashion, however there will be CMS administrative costs associated with its implementation.

Risks:

Redistributional effects inherent in a new payment system may adversely affects certain classes of facilities.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

State, Local, Federal

Federalism:

Undetermined

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HHS—CMS

51. REVISIONS TO THE MEDICARE APPEALS PROCESS (CMS-4004-P)

Priority:

Other Significant

Legal Authority:

Sec 521 of BIPA

CFR Citation:

42 CFR 426

Legal Deadline:

NPRM, Statutory, October 1, 2002, Statutory effective date 10/01/2002.

Abstract:

This proposed rule will also incorporate recommendations from an SSA/HHS workgroup to improve the Administrative Law Judge (ALJ) hearing process. ALJs within the SSA who conduct hearings for Medicare fee-for-service and managed care cases are currently governed by the SSA disability regulations. These regulations apply to disability cases and not to Medicare. In an effort to improve the integrity of the appeals process, CMS has recognized the need to develop regulations that are specific to the adjudication of Medicare cases.

Statement of Need:

Section 521 of the Benefits Improvement and Protection Act of 2000 (BIPA) requires the Secretary to promulgate regulations implementing new claims appeal procedures that are scheduled to take effect by October 1, 2002. Although we are unable to meet this deadline, we anticipate publishing a proposed rule in October, 2002. Subsequently, a final rule will be needed to implement the changes required by the statute.

Summary of Legal Basis:

Section 521 of BIPA amended section 1869 of the Social Security Act to require significant revisions to Medicare claims appeal procedures. Section 1869(a)(1) specifically directs the Secretary to promulgate regulations implementing the required changes.

Alternatives:

Promulgation of this regulation is required by statute, therefore there is no alternative.

Anticipated Cost and Benefits:

We anticipate that the new appeals process created by this regulation will decrease the number of appeals requested, reduce the length of time required to adjudicate an appeal, improve the integrity of the appeals process, and improve the accuracy and consistency of appeals decisions. These changes will benefit Medicare providers, suppliers, and beneficiaries. The new appeal procedures should not impose any additional costs on these groups but fully implementing the changes required by the statue is anticipated to generate administrative costs for HHS exceeding $100 million.

Risks:

Failure to implement this regulation by the statutory effective date will expose CMS to potential lawsuits.

Timetable:

Action	Date	FR Cite
Proposed Rule	11/00/02	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

No

Government Levels Affected:

Undetermined

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HHS—CMS

52. PROSPECTIVE PAYMENT SYSTEM AND CONSOLIDATED BILLING FOR SKILLED NURSING FACILITIES—UPDATE FOR FY 2004 (CMS-1469-P)

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

Sec 1888(e) of the Social Security Act

CFR Citation:

42 CFR 413.330 to 413.350

Legal Deadline:

NPRM, Statutory, April 1, 2003.

Final, Statutory, July 31, 2003, final rule to be published before August 1, 2003.

Abstract:

This annual proposed rule updates the payment rates used under the SNF PPS beginning October 1, 2003.

Statement of Need:

The Medicare SNF PPS was established by section 4432 of the Balanced Budget Act of 1997 (BBA). The PPS applies to all costs (routine, ancillary, and capital) of covered SNF services furnished to beneficiaries under part A of the Medicare program, effective for cost reporting periods beginning on or after July 1, 1998. Annual updates to the PPS rates are required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and SCHIP Balanced Budged Refinement Act of 1999 (BBRA), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), relating to Medicare payments and consolidated billing for SNFs.

Summary of Legal Basis:

Section 1888(e)(4)(H) requires that annual updates to the SNF PPS rates be published in the Federal Register before August 1 of each year, to be effective on the first day of the fiscal year.

Alternatives:

None.

Anticipated Cost and Benefits:

Section 1888(e) of the Act established the SNF PPS for the payment of Medicare SNF services for cost reporting periods beginning on or after July 1, 1998. This section also specifies that the base year cost date to be used in computing the Resource Utilization Group III (RUG-III) payment rates must be from FY 1995. The Act also requires that a number of elements be incorporated into the SNF PPS, such as case-mix classification methodology, the Minimum Data Set (MDS) assessment schedule, a market basket index, a wage index, and the urban and rural distinction used in the development or adjustment of the Federal rates. Payment for SNF care prospectively has a direct, positive impact on the Medicare program by controlling the increase in costs for services provided by SNFs. Operating under a PPS also has a beneficial impact on the efficient management and planning capability of individual SNFs.

Risks:

Failure to update the SNF PPS by October 1, 2002 would place us in violation of the Act. Moreover, failure to meet the publication deadline imposed by the Act would also constitute a violation.

Timetable:

Action	Date	FR Cite
Proposed Rule	04/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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HHS—CMS

53. CHANGES TO THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM AND CALENDAR YEAR 2004 PAYMENT RATES (CMS-1471-P)

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 1395L; BBA'97; BBRA'99; BIPA'00

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

This rule would revise the Medicare hospital outpatient department prospective payment system for the January 1, 2004 update.

Statement of Need:

Annual updates to the hospital outpatient prospective payment systems rates are required by section 1833 of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), relating to Medicare payments for hospital outpatient department patient prospective payment systems.

Summary of Legal Basis:

Section 1833(t) of the Act sets forth a system of payment for hospital outpatient department services furnished to Medicare beneficiaries based on prospectively set rates.

Alternatives:

None.

Anticipated Cost and Benefits:

Undetermined.

Risks:

Failure to update the hospital outpatient department prospective payment systems would place us in violation of the Act. Moreover, failure to meet the publication deadline imposed by the Act would also constitute a violation.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

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HHS—CMS

54. REVISIONS TO PAYMENT POLICIES UNDER THE PHYSICIAN FEE SCHEDULE FOR CALENDAR YEAR 2004 (CMS-1476-P)

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

42 USC 1395W-4

CFR Citation:

42 CFR 410; 42 CFR 414

Legal Deadline:

None

Abstract:

Revisions to payment policies under the physician fee schedule for calendar year 2004.

Statement of Need:

Since January 1, 1992, Medicare has paid for physicians' services under section 1848 of the Social Security Act (the Act), "Payment for Physicians' Services." This section provides for three major elements: 1) a fee schedule for the payment of physicians' services; 2) a sustainable growth rate for the rates of increase in Medicare expenditures for physicians' services; and 3) limits on the amounts that nonparticipating physicians can charge beneficiaries. The Act requires that payments under the fee schedule be based on national uniform relative value units (RVUs) based on the resources used in furnishing a service. Section 1848(c) of the Act requires that national RVUs be established for physician work, practice expense, and malpractice expense.

Summary of Legal Basis:

Section 6102 of the Omnibus Reconciliation Act of 1989 (Pub. L. 101-239) amended the Act by adding section 1848, "Payment for Physicians' Services," which requires Medicare to pay for physicians' services under a fee schedule. Section 4644 of the Balanced Budget Act of 1997 (Pub. L. 105-33) amended section 1848(b)(1) of the Act by requiring that we publish fee schedules that establish payment amount of all physicians' services before November 1 of the preceding year, each year.

Alternatives:

None.

Anticipated Cost and Benefits:

The statute requires that annual adjustments to physician fee schedule RVUs not cause annual payments to differ by more than $20 million from what they would have been had the adjustments not been made. If this threshold is exceeded, we would make adjustments to the conversion factor (the dollar amount that converts relative values into a payment amount for a physician's service) to preserve budget neutrality. Because changes to RVUs must be budget neutral, if we increase a service's RVUs, we must reduce the overall multiplier (or the actual RVUs) that converts the RVUs to a dollar amount.

Risks:

Failure to establish payment amounts for physicians' services would place us in violation of section 1848 of the Act.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal

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HHS—CMS

55. • REVISIONS TO AVERAGE WHOLESALE PRICE METHODOLOGY (CMS-1229-P)

Priority:

Economically Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

1842(o)

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

This rule would propose revisions to the source and methodology for determining the average wholesale price (AWP) of drugs covered by Medicare incident to a physician's service.

Statement of Need:

Studies by the Department of Justice, GAO, OIG, and others indicate that the current method of calculating AWP results in payments that are significantly higher than the providers' acquisition costs for Medicare-covered drugs. These revisions are intended to pay more appropriately for Medicare-covered drugs. A revision of AWP was included in the President's FY 2003 budget.

Summary of Legal Basis:

1842(o) requires that Medicare pay 95 percent of the average wholesale price for drugs not otherwise paid on a cost or prospective payment basis. The definition of AWP is left to the Secretary to interpret.

Alternatives:

None.

Anticipated Cost and Benefits:

We anticipate significant savings for the program and beneficiaries from using a revised definition of AWP.

Risks:

Without this regulation, Medicare will continue to make payments that are significantly higher than market prices and providers' acquisition costs for Medicare-covered drugs.

Timetable:

Action	Date	FR Cite
Proposed Rule	05/00/03	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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HHS—CMS

56. • ELECTRONIC MEDICARE CLAIMS SUBMISSION (CMS-0008-P)

Priority:

Other Significant

Legal Authority:

PL 107-105

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

This proposed rule implements the requirements for electronic submission of Medicare claims, submitted on or after October 16, 2003. In addition, this rule also implements the conditions upon which a waiver could be granted for these requirements.

Statement of Need:

Needed to state how we will implement the Administrative Simplification Compliance Act (ASCA), Public Law 107-105. It requires the electronic submission of Medicare claims, although the Secretary has the authority to grant waivers. This requirements applies to claims on or after October 16, 2003.

Summary of Legal Basis:

Public Law 107-105

Alternatives:

If we do nothing, it demonstrates the Department's lack of commitment to HIPAA and its enforcement.

Anticipated Cost and Benefits:

Will have an impact on the Medicare contractors budget but the magnitude is unknown at this time. A presumed benefit is that providers will choose to switch to electronic claims submissions.

Risks:

Providers may choose not to participate in Medicare.

Timetable:

Action	Date	FR Cite
Proposed Rule	03/00/03	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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HHS—CMS

FINAL RULE STAGE

57. REVISION OF MEDICARE/MEDICAID HOSPITAL CONDITIONS OF PARTICIPATION (CMS-3745-F)

Priority:

Other Significant

Legal Authority:

42 USC 1395x; 42 USC 1302; 42 USC 1395(cc); 42 USC 1395hh; 42 USC 13206-8

CFR Citation:

42 CFR 416; 42 CFR 482; 42 CFR 485; 42 CFR 489

Legal Deadline:

None

Abstract:

This final rule will revise the requirements that hospitals must meet to participate in the Medicare and Medicaid programs. The revised requirements focus on patient care, and how the outcomes of that care reflect a cross-functional view of how patients experience care and treatment in the hospital setting.

Statement of Need:

The purpose of the hospital conditions of participation is to protect patient health and safety and help assure that quality care is furnished to all hospital patients. Hospitals must meet the conditions of participation in order to participate in Medicare or Medicaid. Revised conditions are necessary to ensure that our regulations focus primarily on the actual quality of care furnished to patients, and the outcomes of that care, rather than on procedural compliance. These changes are intended to give hospitals the flexibility needed to achieve high-quality outcomes in the most cost-effective manner.

In addition, the regulations are intended to promote a cross-functional, interdisciplinary approach to hospital performance, instead of an approach geared towards evaluating each department of a hospital as a stand-alone entity. This approach is in line with current best practices in hospitals, in which patients routinely encounter many caregivers and services that often cut across department lines.

Summary of Legal Basis:

Section 1861(e) of the Social Security Act (the Act) provides that a hospital participating in the Medicare program must meet certain specified requirements. In addition, section 1861(e)(9) of the Act specifies that a hospital also must meet such requirements that the Secretary finds are necessary in the interest of the health and safety of the hospital's patients. Under this authority, the Secretary has established in regulations the requirements that a hospital must meet to participate in Medicare. These requirements are set forth in regulations at 42 CFR part 482, "Conditions of Participation for Hospitals." Section 1905(a) of the Act provides that Medicaid payments may be applied to hospital services. Under regulations at 42 CFR 440.10(a)(3)(iii), hospitals generally are required to meet the Medicare conditions of participation in order to participate in Medicaid.

Alternatives:

CMS considered the possibility of revising individual sections of the current hospital regulations. However, we determined that the best means of achieving the systematic changes needed in the regulations was to revise the hospital conditions in their entirety. The specific areas that are likely to form the core of the revised requirements include patient rights, patient assessment, patient care, quality assessment and improvement, and information management.

Anticipated Cost and Benefits:

There would not be significant costs associated with this final rule. The benefits that would be derived from the rule are discussed in the Statement of Need section, above.

Risks:

By revising these regulations to focus on the quality of the actual care given to an individual and the effectiveness of that care for the individual patient, we hope to reduce risks to beneficiaries' health and safety. Revised procedures can better focus on ensuring that the care being given to a patient is the care that is actually necessary and effective for that patient. No quantitative estimates of risk reductions are available yet.

Timetable:

Action	Date	FR Cite
NPRM	12/19/97	62 FR 66726
NPRM Comment Period End	03/20/98	
Final Action	09/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

Federalism:

Undetermined

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HHS—CMS

58. HEALTH INSURANCE REFORM: STANDARD UNIQUE HEALTH CARE PROVIDER IDENTIFIER (CMS-0045-F)

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

42 USC 1320D-2(b)(1)

CFR Citation:

42 CFR 160; 42 CFR 162

Legal Deadline:

Final, Statutory, February 21, 1998.

Abstract:

This final rule establishes a standard unique ID for all health care providers under the Health Insurance Protability and Accountability Act (HIPAA) of 1966 (Pub. L. 104-191). The rule implements administrative simplification initiatives that have a national scope beyond Medicare and Medicaid.

Statement of Need:

HIPAA creates a new part C, entitled "Administrative Simplification," to title XI of the Social Security Act. One of the standards for health identifiers that is mandated by part C is a standard unique health care provider identifier, to be used in the health care system. This regulation announces the adoption of the National Provider Identifier (NPI) as the standard unique health care provider identifier. It also provides information on how health care providers will be assigned NPIs and defines the requirements of health plans, health care providers, and health care clearinghouses with respect to obtaining and using this standard. Implementation of the NPI and the other Administrative Simplification standards will increase the efficiency of the processing of standard transactions within the health care system.

Summary of Legal Basis:

Currently, health plans assign identification numbers to their member health care providers. Different health plans assign different numbers to the same health care providers. The identifiers are frequently not standard within a health plan or across health plans. This results in health care providers having different identification numbers for different health programs, often having multiple billing numbers issued within a single health program. This complicates the health care providers' claims submissions and other transactions and increases the costs incurred by health care providers in conducting those transactions.

The Administrative Simplification provisions of HIPAA were designed to improve the efficiency and effectiveness of the health care system by encouraging the development of a health information system through the establishment of the standard unique health care provider identifier and other standards and requirements to facilitate the electronic transmission of certain health information.

Alternatives:

This regulation announces the NPI as the standard unique health care provider identifier. The NPI is a 10-position all numeric identifier, with a check-digit in the tenth position. There is no intelligence in the number. This design and our assignment strategy will allow more than 200 million NPIs to be issued. The NPI meets the principles established by the Department of Health and Human Services (HHS) for designation as a national standard. This final regulation defines "health care provider" in terms of the entities that will receive NPIs.

Health care providers will be enumerated by a federally directed registry (the enumeration contractor). The enumeration contractor will use the National Provider System (NPS) to uniquely identify a health care provider and issue it an NPI. The NPS will be developed by CMS. Health care providers must supply updates to their

NPS data to the enumeration contractor within 30 days of the effective dates of the changes.

The NPS will establish the National Provider File (NPF), which will contain information collected from health care providers in order to assign them NPIs. The NPS will assign a single, unique NPI to a health care provider. Upon the dissolution of an organization health care provider or the death of a individual health care provider, the NPS will deactivate the NPI that had been issued to that health care provider and will not assign a deactivated NPI to any other health care provider.

Anticipated Cost and Benefits:

Our analysis of the costs and savings of the HIPAA Administrative Simplification standards is an aggregate impact of all the standards. Assessing the impact of each standard independently would inflate the costs and would yield inaccurate results. While each individual standard is beneficial, the standards as a whole have a synergistic effect on savings. A difficulty in this analysis was the fact that we have no historical experience in assessing the costs and benefits of such a sweeping change. The costs of implementing the standards specified in HIPAA are primarily one-time or short-term costs related to conversion. These costs will be incurred during the first three years of implementation. Benefits will accrue almost immediately, but will not exceed costs for health care providers until after the third year of implementation. After the third year, the benefits will continue to accrue into the fourth year and beyond. The impact analysis for the costs and benefits associated with all the Administrative Simplification standards indicates that the combined net savings for health plans and health care providers would amount to $1.5 billion dollars after five years.

Risks:

This rule will formally establish the standard for the unique health care provider identifier and will communicate the requirements for health plans, health care providers, and health care clearinghouses in implementing this standard.

Failure to publish this rule would jeopardize the benefits of administrative simplification. Payers would continue to maintain their own system of enumerating providers, and providers would need to maintain systems to store the different identifiers. Additional costs would thus be incurred.

Timetable:

Action	Date	FR Cite
NPRM	05/07/98	63 FR 25320
NPRM Comment Period End	07/06/98	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, State, Local, Tribal

Federalism:

This action may have federalism implications as defined in EO 13132.

Additional Information:

None

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HHS—CMS

59. SECURITY STANDARDS (CMS-0049-F)

Priority:

Other Significant. Major under 5 USC 801.

Legal Authority:

PL 104-191; 42 USC 1320d-2(d)

CFR Citation:

45 CFR 162

Legal Deadline:

Final, Statutory, February 21, 1998.

Abstract:

This final rule is being jointly developed by CMS and the Department of Commerce. This final rule adopts standards for the security of certain electronic, individually identifiable health information of health plans, health care clearinghouses, and certain health care providers. It implements administrative simplification initiatives that have a national scope beyond the Medicare and Medicaid programs.

Statement of Need:

The Administrative Simplification provisions of the Health Insurance Portability and Accountability Act (HIPAA) of 1966 required the Department to adopt standards for security.

Currently, no standard measures exist in the health care industry that address all aspects of the security of electronic health information while it is being stored or transmitted between entities.

The use of the security standards will improve the Medicare and Medicaid programs, and other Federal health programs and private health programs, and the effectiveness and efficiency of the health care industry in general by establishing a level of protection for certain electronic health information.

Summary of Legal Basis:

This final rule implements some of the requirements of the Administrative Simplification subtitle of HIPAA.

Alternatives:

Existing security standards do not encompass all the requirements set forth in the law.

Anticipated Cost and Benefits:

Although we cannot determine the specific economic impact of the standards in this final rule (and individually each standard may not have a significant impact), we are unable to estimate the cost of implementing the security standards as implementation needs will vary dependent upon each entity's risk assessment and upon what is already in place. In addition, it is important to recognize that security is not a one-time project, but rather an on-going, dynamic process. However, the overall impact analysis makes clear that, collectively, all the HIPAA standards will have a significant impact of over $100 million on the economy. We believe that the overall Administrative Simplification costs will be offset by future savings.

Implementation of the security standards will provide confidentiality, integrity and availability protections to certain personaly identifiable health information. The synergistic effect of the employment of the security standards will also enhance all aspects of HIPAA's Administrative Simplification requirements.

Risks:

The security of electronic protected health information is, and has been for some time, a basic business

requirement that health care entities ignore at their peril. Instances of "hacking" and other security violations may be widely publicized, and can seriously damage an institution's community standing. Appropriate security protections are crucial for encouraging the growth and use of electronic data interchange.

Timetable:

Action	Date	FR Cite
NPRM	08/12/98	63 FR 43242
NPRM Comment Period End	10/13/98	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

State, Local, Tribal, Federal

Federalism:

Undetermined

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RIN: 0938–AI57

HHS—CMS

60. HOSPITAL CONDITIONS OF PARTICIPATION: QUALITY ASSESSMENT AND PERFORMANCE IMPROVEMENTS (QAPI) (CMS-3050-F)

Priority:

Other Significant

Legal Authority:

42 USC 1302; 42 USC 1395hh

CFR Citation:

42 CFR 482.21

Legal Deadline:

None

Abstract:

This final rule addresses provisions relating to the development and implementation of a QAPI program and its components. It imposes several requirements that are designed to increase patient safety and track the methodologies and/or programs or both used to increase patient safety.

Statement of Need:

In 1999, reports of deaths and serious injuries to patients associated with medical errors were published in a report issued by the Institute of Medicine (IOM) entitled, "To Err is Human: Building a Safer Health System." This report generated much media, public, Congressional, and Departmental concern for patient health and safety, estimating that up to 98,000 Americans die each year as a result of preventable medical errors.

The Quality Interagency Coordination Task Force (QuiC), evaluated the recommendations in the IOM report and to respond with a strategy to identify patient safety issues and stimulate the reduction of medical errors by 50 percent over the next 5 years, as recommended by the IOM. This regulation will serve to accomplish this goal.

Summary of Legal Basis:

Hospitals must meet certain conditions in order to participate in the Medicare program that are intended to protect patient health and safety and ensure that high-quality care is provided. Hospitals receiving payment under Medicaid must meet the CoPs in Medicare. 42 U.S.C. 1302 and 42 U.S.C. 1395hh authorizes promulgation of regulations in the interest of the health and safety of individuals who are furnished services in the institution.

Alternatives:

We considered adding requirements that were more prescriptive in nature. However, in response to public comments, and in recognition that this requirement will apply to hospitals of varying size, operating in wide ranges of localities, serving diverse populations, we opted not to utilize this approach. Development of more detailed strategies and policies to comply with the requirement will be left to the discretion of each hospital.

Anticipated Cost and Benefits:

Hospitals are currently required to have a quality assurance program and we believe that the costs associated with the QAPI program are similar to the costs associated with their existing quality assurance program. Therefore, we do not anticipate the implementation of the final rule to result in any significant increase in costs to hospitals or the Medicare and Medicaid programs. The information requirements contained within the regulations are comparable to those of JCAHO and are necessary safeguards against patient safety.

Given the variability of QAPI programs, it would be difficult to define the extent to which this would affect individual hospitals. CMS has allowed maximum flexibility in meeting these requirements, and Medicare hospitals have existing requirements for QA programs. We do, however, recognize that hospitals will have an increased minimal burden associated with the writing of internal policies and procedures that encompass all aspects of this requirement. Also, hospitals must continue to track incidents and analyze their causes, in addition to the new requirement of implementing preventive actions and mechanisms of learning. Accredited JCAHO hospitals should not experience increased burden associated with the requirement for performance projects; however, CMS' assessment of the rule's possible burden implications for these hospitals is currently under review. Also, the 1,485 non-accredited hospitals will now be required to perform improvement projects that measure, analyze, and track quality indicators or other aspects of performance. We have minimized the burden to these facilities by allowing projects to be representative of the hospitals complexity of services and resources.

Risks:

This final rule is intended to encourage the emphasis of patient safety in hospitals, and serves as the first step toward providing the framework for and bringing to the forefront of medical practice, increased patient safety and accountability. The knowledge gained from QAPI and patient safety programs will lead to better health care for Medicare's more than 39 million beneficiaries.

Given the substantial media, public, Congressional, and Departmental concern regarding patients' health and safety, we believe that this final rule should be published as soon as possible. The QAPI CoP provides the framework to implement the Administration's initiatives, thereby addressing preventable medical errors and patient safety in hospitals.

Timetable:

Action	Date	FR Cite
NPRM	12/19/97	62 FR 66725
NPRM Comment Period End	02/17/98	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

State

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RIN: 0938–AK40

HHS—CMS

61. REVIEW OF NATIONAL COVERAGE DETERMINATIONS AND LOCAL COVERAGE DETERMINATIONS (CMS-3063-F)

Priority:

Other Significant

Legal Authority:

Sec 522 of the BIPA 2000

CFR Citation:

42 CFR 405

Legal Deadline:

NPRM, Statutory, October 1, 2001. The effective date for regulation changes is 10/01/01.

Abstract:

This final rule would announce a new process for beneficiaries to appeal national and local coverage determinations (LCDs).

Statement of Need:

Implementation of an LCD and national coverage determination (NCD) appeals process is required by section 522 of the Benefits Improvement and Protections Act (BIPA). The effective date for this section was October 1, 2001, so expeditious implementation of the regulation is crucial.

Summary of Legal Basis:

An appeal process for LCDs and NCDs is mandated by section 522 of BIPA.

Alternatives:

Because of the complex nature of the proposed processes, the agency opted to implement through a Notice of Proposed Rulemaking (NPRM) in order to grant the public an opportunity to comment on these complex processes. Though other approaches would not have granted such an opportunity to comment, alternatives could have also included not writing a regulation, or implementing via another mechanism, such as a Federal Register Notice. The agency decided that the processes were too complex to implement via anything other than an NPRM.

Anticipated Cost and Benefits:

The Medicare program would incur certain administrative costs associated with coverage determination reviews, the cost of being a party to coverage determination reviews, and the cost of reevaluating policies. A potential benefit for beneficiaries includes providing another avenue for beneficiaries to challenge NCDs (this time to a third party), and a new mechanism to challenge LCDs, as mandated by section 522 of BIPA.

Risks:

Risks include receiving so many comments from the public, or comments that are sufficiently complex, that thorough review of the comments would further delay implementation of a final rule.

Timetable:

Action	Date	FR Cite
Proposed Rule	08/22/02	67 FR 54534
Comment Period End	10/21/02	
Final Action	07/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 0938–AK60

HHS—CMS

62. HEALTH INSURANCE REFORM: MODIFICATIONS TO STANDARDS FOR ELECTRONIC TRANSACTIONS (CMS-0003-F)

Priority:

Other Significant

Unfunded Mandates:

Undetermined

Legal Authority:

Social Security Act, sec 1871

CFR Citation:

45 CFR 162

Legal Deadline:

None

Abstract:

This rule finalizes provisions applicable to electronic data transaction standards, adopts implementation specifications for health care entities and others, and responds to public comments received on two related proposed rules published on May 31, 2002 in the Federal Register.

Statement of Need:

The Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 requires the Secretary of Health and Human Services to adopt standards for electronic transactions. This rule modifies previous adopted standards as a result of the Designated Standard Maintenance Organization (DSMO) process. The modifications in this rule are required by the health care industry for initial implementation of the HIPAA transactions standards.

Summary of Legal Basis:

The Administrative Simplification provisions of HIPAA require the Secretary to establish standards of electronic transactions for health plans, health care clearing houses, and certain health care providers.

Alternatives:

In the absence of this final rule, the health care industry would be unable to implement the adopted standard transactions.

Anticipated Cost and Benefits:

The estimated costs and benefits of this rule would not change the impact of the Standard for Electronic Transaction final rule published on August 17, 2000 (65 FR 50312). It would loosen the financial burden on the health care industry.

Risks:

Modifying standards established in the Standard for Electronic Transaction final rule (65 FR 50312), as a result of the DSMO process, will allow the health care industry to be in compliance with regulations under HIPAA. This rule would enable providers, health plans, and clearinghouses to utilize a consistent set of electronic standards that are in compliance throughout the entire health care community.

Timetable:

Action	Date	FR Cite
Proposed Rule	05/31/02	67 FR 38044
Final Action	12/00/02	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

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RIN: 0938–AK64

HHS—CMS

63. CHANGES TO THE HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEM AND FY 2004 RATES (CMS-1470-N)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

Sec 1886(d) of the Social Security Act

CFR Citation:

42 CFR 412 to 413; 42 CFR 485; 42 CFR 489

Legal Deadline:

NPRM, Statutory, April 1, 2003.

Final, Statutory, August 1, 2003.

Abstract:

This notice would revise the Medicare acute hospital inpatient prospective payment systems for operating and capital market costs to implement changes arising from our continuing experience with these systems. These changes apply to discharges occurring on or after October 1, 2003.

Statement of Need:

Annual updates to the hospital inpatient prospective payment system rates are required by section 1886 of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and SCHIP Balanced Budged Refinement Act of 1999 (BBRA), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), relating to Medicare payments for hospital inpatient prospective payment systems.

We are proposing to revise the Medicare hospital inpatient prospective payment systems for operating and capital costs to describe proposed changes to the amounts and factors used to determine the rates for Medicare hospital inpatient services. These changes would be applicable to discharges occurring on or after October 1, 2003. We also are setting forth proposed rate-of-increase limits as well as proposed policy changes for hospitals and hospital units excluded from the prospective payment systems.

Summary of Legal Basis:

Section 1886(d) of the Social Security. Act sets forth a system of payment for the operating costs of the acute care hospital inpatient system under Medicare part A based on prospectively set rates. Section 1866(g) of the Act requires the Secretary to pay for the capital-related costs of hospital inpatient stays under a prospective payment system.

Section 1886(e)(5)(B) requires that annual updates to the hospital inpatient prospective payment systems rates be published in the Federal Register before August 1 of each year, to be effective on the first day of the fiscal year (FY).

Alternatives:

None.

Anticipated Cost and Benefits:

The cost and benefits of this regulation will depend upon the market basket projection by the Office of the Actuary. Under current law, the update for FY 2003 will be market basket minus .55 percentage points. A one percent change in payments under the inpatient prospective payment system represents an approximately $760 million change.

Risks:

Inadequately paying for the services hospitals furnish to Medicare beneficiaries has the potential to affect a beneficiary's access to care and the quality of care furnished to a beneficiary. Therefore, we will carefully assess the impacts of all of the changes we implement through this regulation to mitigate these risks.

Failure to update the hospital inpatient prospective payment systems by October 1, 2003 would place us in violation of the Act. Moreover, failure to meet the publication deadline imposed by the Act would also constitute a violation.

Timetable:

Action	Date	FR Cite
Notice	05/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 0938–AL89

HHS—CMS

64. • APPLICATION OF EMERGENCY MEDICAL AND TREATMENT ACT (EMTALA) (CMS-1063-F)

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

Not Yet Determined

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

This final rule regulation would clarify special responsibilities of Medicare hospitals that offer services for treatment of emergency medical conditions, to promote consistent application of the Emergency Treatment and Labor Act to situations not discussed in current regulations.

Statement of Need:

Revised regulations are needed to clarify the responsibilities of Medicare participating hospitals with respect to individuals who come to the hospital emergency department and request examination or treatment of a medical condition. The regulations would announce the agency's final position on proposals published on May 9, 2002 (67 FR 31404).

Summary of Legal Basis:

The legal basis of this regulation are sections 1866(a)(1)(I) and 1867 of the Social Security Act (42 U.S.C. 1385cc and 42 U.S.C. 1395dd).

Alternatives:

None feasible. If the regulations are not published in final, uncertainty among physicians and hospitals about their responsibilities will continue and increase.

Anticipated Cost and Benefits:

We are unable to provide objective dollar estimates of the impact of the regulations. We expect that publication of the regulations will enable hospitals and physicians to act in more focused and efficient ways to meet their statutory responsibilities, thus increasing the quality and availability of emergency care.

Risks:

Some physicians and hospitals may continue to have some concerns about these requirements, even after the publication of clarifying regulations. However, if current regulations are not clarified, hospitals and physicians will have continued uncertainty as to their statutory responsibilities, and patients with emergency medical conditions may face greater difficulty in receiving needed care in a timely manner.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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Related RIN: Related To 0938-AL23

RIN: 0938–AM34

BILLING CODE 4150–24–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

Statement of Regulatory Priorities

The Regulatory Plan for the Department of Housing and Urban Development for fiscal year 2003 highlights the Department's most significant regulations and policy initiatives, as established by Secretary Martinez, for the upcoming fiscal year. As the Federal agency responsible for national policy and programs that address the housing needs of Americans, encourage community development, and enforce fair housing laws, HUD plays a significant role in communities throughout America. HUD touches the lives of individuals and families by helping to expand homeownership and affordable housing, and suitable living environments for all Americans. HUD's commitment to expand homeownership is achieved by underwriting homeownership for lower- and moderate-income families through its mortgage insurance programs, and by enforcing fair housing laws that operate to eliminate housing discrimination. HUD also provides housing and other essential support to a wide range of individuals and families with special needs, including homeless individuals, the elderly, persons with disabilities, and people living with HIV/AIDS.

From the beginning of his administration, Secretary Martinez has called on HUD to focus on activities that support the Department's core mission of providing affordable housing, expanding homeownership opportunities, and promoting economic growth in our Nation's communities. Consistent with that direction, HUD's regulatory plan for fiscal year 2003 builds upon the successes of the previous fiscal year through regulations that are designed to expand homeownership opportunities, that reform the home buying process by improving and simplifying the process of financing or refinancing homes, that strengthen HUD's oversight of Federal Housing Administration-approved mortgage lenders, and that combat predatory lending practices.

HUD is also committed to supporting its core community and economic development programs. Across America, faith-based and community-based organizations at the grassroots level share HUD's commitment and mission by providing critically important charitable services. In fiscal year 2003, HUD will comprehensively examine its programs to eliminate regulatory requirements that hinder these organizations from being able to fully participate in HUD programs and contribute to HUD's mission.

Consistent with the Secretary's direction, the regulations highlighted in this regulatory plan and in the semiannual agenda of regulations, published elsewhere in today's **Federal Register**, are directed to implementing policies, procedures and programs that support HUD's core mission.

Priority: Ensuring the Equal Participation of Faith-Based Organizations in HUD's Efforts To Enhance Communities

Faith-based and other community organizations are indispensable in meeting the needs of poor Americans and distressed neighborhoods. HUD believes, however, that faith-based organizations have not been effectively utilized in assisting the Federal Government to address those needs. Faith-based organizations have a strong history of providing vital community services, such as assisting the homeless and preventing homelessness, counseling individuals and families on fair housing rights, providing the elderly with housing opportunities, increasing homeownership and rental housing opportunities, developing first-time homeownership programs, developing affordable and accessible housing, creating economic development programs, and supporting the residents of public housing facilities.

HUD's goal is to remove any restrictions in regulations or the appearance of restrictions so that faith-based and non-faith-based organizations can participate equally in HUD's programs. This removal of restrictions will ultimately make HUD programs more effective, efficient and accessible by expanding opportunities for all organizations to participate in developing creative solutions for their own communities.

Regulatory Action: Faith-Based Organizations: Providing for Equal Treatment of All HUD Program Participants

HUD believes that there is no need to single out faith-based organizations for special instructions or conditions before allowing them to participate in HUD programs. This proposed rule would remove regulatory language that appears to impose, or in fact imposes, special conditions or requirements on faith-based organizations. HUD's objective is to ensure that its programs are neutral with regard to the religious character of a grant-recipient organization, thereby ensuring that faith-based organizations have equal opportunity to participate in HUD programs. Programs that will be affected by this proposed rule include Community Development Block Grants; HOPE for Homeownership of Single Family Homes; Housing Opportunities for Persons with AIDS; Emergency Shelter Grants; Shelter Plus Care; Supportive Housing; Youthbuild; and Community Development Block Grants for Indian Tribes and Alaska Native Villages.

Priority: Establishing Housing Goals for Fannie Mae and Freddie Mac

Under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, HUD is required to establish housing goals for Fannie Mae and Freddie Mac (collectively, the Government Sponsored Enterprises or GSEs). The current goals, promulgated by regulation in 2000, cover the calendar years 2001 through 2003. The Secretary is therefore establishing new goals for future years. The new goals may be higher than the current goals; in the past, each new set of goals has in fact been higher than its predecessor. The purpose of the housing goals is to ensure that the two GSEs more fully address the housing finance needs of low- and moderate-income families and residents of underserved areas, and thereby to more fully realize their public purposes.

Regulatory Action: The Secretary of HUD's Regulation of Fannie Mae and Freddie Mac (Government Sponsored Entities)

Through this rule, HUD will issue new housing goal levels for the purchase of mortgages by Fannie Mae and Freddie Mac for calendar years 2003 and beyond. The Department is required by statute to establish housing goals for the GSEs. The new goals to be established by this rule will have the benefit of increasing homeownership opportunities and affordable housing units for very low-, low- and moderate-income families, and will ensure that the GSEs carry out their statutory responsibilities.

Priority: Expanding Homeownership — Making the Home Purchase Process Less Complicated and Less Costly

Homeownership plays a vital role in creating strong communities, generating wealth for families, and providing financial security for millions of Americans. Homeownership also helps to strengthen families and to provide a positive, stable environment for children. In brief, homeownership has a positive and pronounced effect on the nation's economy. Yet every day Americans enter into mortgage loans, the largest investment most families will ever make, without the clear and useful information they receive with almost any other major purchase. Under the leadership of Secretary Martinez, HUD is determined to simplify the home buying process, and in doing so, expand homeownership to thousands of American first-time homebuyers. HUD is committed to streamlining the home mortgage finance process and making loan shopping and settlement simpler, so consumers have the information necessary to make informed decisions regarding mortgage costs.

Regulatory Action: RESPA: Simplifying and Improving the Process of Obtaining Mortgages To Reduce Settlement Costs to Consumers

The objective of this rule is to simplify and improve the process of obtaining home mortgages and reduce settlement costs for consumers by creating a more "transparent" settlement process to facilitate consumers' understanding of the true costs of a mortgage and the functions of an originator. Specifically, the proposed rule would: (1) address the issue of loan originator compensation, namely the problem of lender payments to mortgage brokers, by fundamentally changing the way in which these payments in brokered mortgage transactions are recorded and reported to consumers; (2) significantly improve HUD's Good Faith Estimate (GFE) settlement cost disclosure and HUD's related RESPA regulations to make the GFE firmer and more usable, to facilitate shopping for mortgages, to make mortgage transactions more transparent, and to prevent unexpected charges to consumers at settlement; and (3) remove regulatory barriers to allow guaranteed packages of settlement services and mortgages to be made available to consumers, and to permit consumers to shop for financing and further reduce settlement costs.

Priority: Expanding Homeownership — Through Revitalization of Communities

HUD is committed to expanding homeownership opportunities, particularly among racial and ethnic minorities and families with disabilities. Homeownership helps families establish strong roots, which in turn strengthens communities. One way in which HUD will expand homeownership opportunities for minorities is through implementation of section 204 of the National Housing Act, as recently amended. The stated purpose of this authority is to make HUD-held single family homes and formerly insured mortgages on single family properties, referred to as eligible assets, available for sale in a manner that promotes the revitalization of certain areas through expanded homeownership opportunities. Through this authority, HUD together with local government and nonprofit organizations can revitalize distressed areas and increase homeownership opportunities.

Regulatory Action: Disposition of HUD-Owned Single Family Assets in Asset Control Areas

This proposed rule would make available HUD-held single family homes and mortgage assets for sale to governmental and nonprofit organizations, among others, for use in homeownership programs to revitalize certain areas. By statute, governmental and nonprofit organizations are to be given preference. Under this program, revitalization areas would be identified by applying specified economic and housing criteria. Eligible purchasers would be able to establish an Asset Control Area within a revitalization area identified by the Secretary, and would commit by contract to purchase all HUD-owned single family homes or mortgages that become available in that area for a time frame specified by the contract. These purchasers would then make available the assets in accordance with a HUD-approved plan to encourage homeownership and revitalize the area.

Priority: Expanding Homeownership — Enhancing Accountability in the Home Purchase Process

HUD is committed to continuing its efforts to reduce predatory lending practices and enhance accountability in the home purchase process. Predatory lending, whether undertaken by creditors, brokers or home improvement contractors, involves engaging in deception or fraud, manipulating the borrower through aggressive sales tactics, or taking unfair advantage of a borrower's lack of understanding about loan terms. These practices are combined with loan terms that, alone or in combination, are abusive or make the borrower more vulnerable to abusive practices. While no one set of abusive lending practices or terms characterizes a predatory mortgage loan, a loan can be predatory when lenders or brokers undertake one or more of the following practices: charge borrowers excessive, often hidden fees; successively refinance loans at no benefit to the borrower; make loans without regard to a borrower's ability to repay; and engage in high-pressure sales tactics or outright fraud and deception. In addition, faulty appraisals, whether intentional or unintentional, are a significant part of this problem and contribute to the inability of homebuyers to make monthly mortgage payments and to the instability of neighborhoods. Vulnerable populations, including elderly and low-income individuals, and low-income or minority neighborhoods may be targeted by these unscrupulous lenders. As a result, predatory lending threatens homeownership by placing on borrowers loans that are so expensive or have such high rates that borrowers are unable to pay and risk default. This significantly undercuts HUD's efforts to revitalize communities and expand homeownership.

To date, HUD has issued several regulations directed to curbing predatory lending practices, such as the rule prohibiting property flipping, the rule establishing criteria for house inspectors to be placed on and removed from the FHA Inspector Roster, and the rule to clarify the responsibilities of lenders in the FHA appraisal process. Additional rules designed to enhance lender accountability and strengthen FHA's oversight of mortgage transactions are planned for fiscal year 2003, and include the following:

Regulatory Action: FHA Appraiser Watch Initiative

Through the Appraiser Watch Initiative, HUD plans to establish and monitor a performance standard that appraisers must meet to maintain their status on the FHA Appraiser Roster. This rule will cover approximately 25,000 individuals who conduct appraisals on FHA-insured single family homes. The Appraiser Watch Initiative is modeled on FHA's Credit Watch Termination Initiative and would provide for an electronic, fully computerized Appraiser Watch monitoring system. The rule would permit an appraiser to be removed from the FHA Appraiser Roster if the rate of defaults and claims on closed mortgages linked to the appraiser exceeds a rate established by HUD. Under the terms of this approach, FHA would notify appraisers before removing them from the FHA Appraiser Roster. Any appraiser who receives such notice would be permitted to meet with HUD officials and present evidence that factors beyond his or her control contributed to the excessive rates. The proposal would also make provisions for appraisers to be reinstated to the roster.

Regulatory Action: Appraiser Qualifications for Placement on Single Family Appraiser Roster

This rule is designed to strengthen the integrity of FHA appraisals by requiring that appraisers have, at a minimum, the professional credentials required by the Appraiser Qualifications Board of the Appraisal Foundation. This rule helps ensure that homebuyers seeking FHA-insured mortgages receive an accurate and complete appraisal of the homes they seek to purchase.

Priority: Improving the Quality of Public and Assisted Housing

A central HUD objective is to help low-income working families acquire skills that will move them toward self-sufficiency. Combined with this objective, it is HUD's goal to improve the quality of the housing opportunities provided to families in public and assisted housing. To do this, HUD will focus on improving the management accountability and physical conditions of public and assisted housing through the following regulations.

Regulatory Action: Deregulation of Small Public Housing Agencies (PHAs)

Although HUD has an obligation to monitor and regulate the use of Federal housing funds in order to ensure that taxpayer dollars are well spent, HUD is also mindful that compliance with its regulatory requirements may impose administrative burdens on PHAs and divert scarce resources. The cost of excessive regulation is especially problematic for small entities, in this case small PHAs, because they often possess the fewest staff and technical resources. In response to the limitations faced by many small PHAs, HUD is undertaking efforts to alleviate the regulatory and other administrative burdens Departmental requirements impose on small PHAs, while still requiring basic accountability. HUD believes that deregulating small PHAs will alleviate burden, and better enable them to focus on their core mission of providing safe, decent, and affordable housing to the neediest American families.

This final rule would simplify and streamline HUD's regulatory requirements for small PHAs that administer the public housing and voucher assistance programs under the United States Housing Act of 1937. Specifically, the final rule would further streamline the PHA Annual Plan requirements for certain small PHAs. The final rule will also deregulate the assessment and scoring of small PHAs under the Public Housing Assessment System (PHAS) and the Section 8 Management Assessment Program (SEMAP), consistent with its basic regulatory responsibilities. In addition to the changes that solely concern small PHAs, this final rule would also streamline HUD's review of the annual plans submitted by all PHAs (large and small). The final rule follows publication of an August 12, 2002, proposed rule, and takes into consideration the public comments received on the proposed rule.

Regulatory Action: Simplification of PHA Planning Requirements

This rule would streamline various aspects of the PHA Plan requirements to eliminate redundancies and unnecessary reporting requirements that do not relate to PHAs' strategic planning efforts, and are burdensome to PHAs and HUD. The rule would retain aspects of the current process that bolster resident participation and ensure the public's access to PHA records and documents.

PHA strategic planning involving residents and the community can be accomplished in a manner that is less dictated from Washington and involves fewer elements of bureaucratic compliance. The current PHA Plan statute requires eighteen specific Plan elements and a HUD approval process that in many respects does not affect the substance of the Plans. The proposal would deregulate various elements of the PHA Plan now requiring HUD approval, leaving these to local discretion. The rule would allow and encourage PHAs to focus on performance rather than form and process.

Regulatory Action: Improve the Public Housing Assessment System

This rule will propose changes to the Public Housing Assessment System (PHAS) and the regulations implementing that system. The PHAS, established in 1998, assesses the management performance of public housing agencies and resident management corporations in four critical areas of public housing operations: the physical condition of public housing; the financial condition; the management operations; and the satisfaction of the residents with the housing and services. The Department has met with public housing agencies, residents, representatives of these groups and other interested parties, to solicit input on how the PHAS can be improved. As a result of these meetings, the Department will publish a proposed rule for public comment incorporating some of the proposed changes from the stakeholders and seeking additional suggestions and proposals from the public. Improvements made to the PHAS will in turn promote maintaining affordable rental housing.

Regulatory Action: Project-Based Voucher Program

The Project-Based Voucher Program replaces the former and long-term Project-Based Certificate Program and provides PHAs with flexibility in administering the program that will assist PHAs in increasing housing opportunities. The Project-Based Program was authorized by law in 1998, as part of the statutory merger of the certificate and voucher tenant-based programs. In 2000, the Congress substantially revised the project-based voucher law. The statutory revisions of 2000 made a number of changes to the program including permitting a PHA to pay project-based assistance for a term of up to 10 years, permitting a PHA to provide project-based assistance for existing housing that does not need rehabilitation, as well as for newly constructed or rehabilitated housing, and allowing a family to move from a project-based voucher unit after one year and transfer to the PHA's tenant-based voucher program. Initial guidance on the new law was provided to PHAs and residents in January 2001. This rulemaking begins the process of providing the more permanent regulatory framework for this new program.

The Priority Regulations That Comprise HUD's FY 2003 Regulatory Plan

A more detailed description of the priority regulations that comprise HUD's FY 2003 regulatory plan follows.

HUD—Office of the Secretary (HUDSEC)

PROPOSED RULE STAGE

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65. • PARTICIPATION IN HUD PROGRAMS BY FAITH-BASED ORGANIZATIONS; PROVIDING FOR EQUAL TREATMENT FOR ALL HUD PROGRAM PARTICIPANTS (FR-4782)

Priority:

Other Significant

Legal Authority:

42 USC 3535(d), 42 USC 12701 to 12839;42 USC 5301 to 5320; 42 USC 12891, 42 USC 12901 to 12912; 42 USC 11376; 42 USC 11403 to 114706, 42 USC 11389; 42USC 8011

CFR Citation:

24 CFR 92; 24 CFR 570; 24 CFR 572; 24 CFR 574; 24 CFR 576; 24 CFR 582; 24 CFR 583; 24 CFR 585; 24 CFR 1003; ...

Legal Deadline:

None

Abstract:

This rule would revise those HUD regulations that appear to deter or preclude the participation of faith-based organizations in HUD programs. Faith-based organizations are welcome participants in HUD programs. They are eligible to participate in HUD programs and are subject to the same HUD and other Federal requirements to which all other program participants are subject. The rule therefore would clarify that the prohibitions against discriminating on the basis of religion and engaging in efforts to advance religion in the provision of HUD-funded activities are applicable to all HUD program participants and not just one category of participants. The rule would also clarify that faith-based organizations participating in HUD programs may consider religion as a factor in hiring, consistent with Title VII of the Civil Rights Act of 1964. The rule would amend the regulations for the following HUD programs: (1) HOME Investment Partnerships; (2) Community Development Block Grants (CDBG); (3) Hope for Homeownership of Single Family Homes (HOPE 3); (4) Housing Opportunities for Persons with AIDS(HOPWA); (5) Emergency Shelter Grants (ESG); (6) Shelter Plus Care; (7) Supportive Housing; (8) Youthbuild; and (9) Community Development Block Grants for Indian Tribes and Alaska Native Villages (ICDBG).

Statement of Need:

HUD regulations must treat all program participants fairly. The regulations should ensure that all grantees use HUD funds for the purposes specified in the regulations, and only those purposes, and under the conditions specified in the regulations. Consistent with recent judicial decision, this rule would ensure that HUD programs are neutral with regard to the religious character of participating organizations.

Summary of Legal Basis:

The statutes establishing the various programs amended by this proposed rule and HUD's general rulemaking authority under the Department of Housing and Urban Development Act authorize HUD to establish regulatory policies and procedures for the operation of these programs. This authority includes the establishment of eligibility requirements for organizations seeking to participate in HUD's programs, the conditions for receipt of funding, and the eligible uses of the HUD funds.

Alternatives:

The changes made by this rule would modify regulatory requirements and, therefore, must also be promulgated through regulation. Nonregulatory alternatives (such as promulgation through HUD notice or handbook) would not be binding upon HUD program participants.

Anticipated Cost and Benefits:

This rule would remove regulatory language that appears to present barriers to equal participation by faith-based organizations in HUD's programs. The anticipated benefit is that the rule would help to ensure equal opportunity for all organizations to participate as partners in HUD's programs.

Risks:

This rule poses no threat to public safety, health, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
NPRM Comment Period End	04/00/03	
Final Action	08/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Governmental Jurisdictions, Organizations

Government Levels Affected:

None

Agency Contact:

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Office of the Secretary
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RIN: 2501–AC89

HUD—HUDSEC

66. • THE SECRETARY OF HUD'S REGULATION OF FANNIE MAE AND FREDDIE MAC (FR-4790)

Priority:

Other Significant

Legal Authority:

12 USC 1451 et seq; 12 USC 1716 to 1723h; 12 USC 4501 to 4641; 28 USC 2641 note; 42 USC 3535(d); 42 USC 3601 to 3619

CFR Citation:

24 CFR 81

Legal Deadline:

None

Abstract:

Through this rule, the Department will propose housing goals for the purchase of mortgages by Fannie Mae and Freddie Mac (collectively, the Government Sponsored Enterprises, or GSEs) for calendar year 2004 forward and make any necessary revisions to HUD's GSE rules to ensure that the GSEs meet the laws' requirements and carry out their public missions. In accordance with the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA), this rule would establish new goals for the GSEs' purchase of mortgages financing low- and moderate-income housing, special affordable housing, and housing in central cities, rural areas, and other underserved areas. This rule would clarify, as necessary, HUD's guidelines for counting different types of mortgage purchases toward those goals. The current housing goals apply through 2003. The Secretary of HUD has general regulatory power over each GSE and is required to make such rules and regulations as shall be necessary to ensure that the purposes of FHEFSSA and the GSEs' charters are accomplished. HUD's current GSE regulations implement FHEFSSA's provisions and include fair housing, new program approval, reporting and access to information requirements. This rule will propose any necessary revisions to HUD's rules to implement FHEFSSA and carry out the Secretary's regulatory responsibilities.

Statement of Need:

In the absence of new goals, the goals already established for 2003 remain in place, but the Secretary intends to establish goals for 2004 and later years, with the objective of ensuring that the two enterprises fully address the housing finance needs of very low-,

low- and moderate-income families and residents of underserved areas, and thus realize more fully their public purposes. FHEFSSA sets forth the Secretary's responsibilities regarding the GSEs and the GSEs' charters specify their public missions. Under FHEFSSA, the Secretary must make necessary rules and regulations to ensure that the purposes of FHEFSSA and the GSEs' Charters are accomplished.

Summary of Legal Basis:

The Department is required to establish housing goals for the GSEs pursuant to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.). HUD also has general regulatory power over each GSE (12 U.S.C. 4541) and is required to make such rules and regulations as are necessary to ensure that the purposes of FHEFSSA and the GSEs' charters are accomplished. (See 12 USC 4501-4641.)

Alternatives:

The Department considered the alternative of leaving the housing goals unchanged. However, HUD takes very seriously its obligations under the law to establish the housing goals using the most current data and information.

The alternative of leaving other provisions of the GSE rules unchanged also has been considered but it is not evident that the existing rules will ensure that the purposes of the law are accomplished.

Anticipated Cost and Benefits:

This rule will have the benefit of increasing homeownership opportunities and affordable housing units for low- and moderate-income families and underserved communities from 2004 and beyond and it will ensure that the GSEs otherwise carry out their responsibilities under FHEFSSA. However, there is no indication that these objectives would be costly for the GSEs. HUD's analyses have consistently indicated that meeting housing goals will have little impact on the GSEs' financial returns or on the safety and soundness of GSE operations. Additionally, increased GSE activity in the affordable lending arena has not adversely affected traditional portfolio lenders.

Risks:

This rule poses no risk to public health, safety or the environment.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
NPRM Comment Period End	08/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Agency Contact:

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RIN: 2501–AC92

HUD—Office of Housing (OH)

PROPOSED RULE STAGE

67. DISPOSITION OF HUD-OWNED SINGLE FAMILY ASSETS IN ASSET CONTROL AREAS (FR-4471)

Priority:

Other Significant

Legal Authority:

12 USC 1710(h); 42 USC 3535(d)

CFR Citation:

24 CFR 291

Legal Deadline:

NPRM, Statutory, September 15, 2002.

Abstract:

This rule would implement a new program to make available HUD-held single family assets for sale to governmental organizations and nonprofits for use in homeownership programs to revitalize certain areas. Under the new program, HUD would identify revitalization areas by applying specified economic and housing criteria. Eligible purchasers, that is, units of general local government and nonprofit organizations, may establish an Asset Control Area within a revitalization area and commit by contract to purchase all HUD-owned single family homes or mortgages that become available in that area for a time frame specified by the contract. By statute, these purchasers are to be given preference. The entities would then make available the assets pursuant to a HUD-approved plan to encourage homeownership and revitalize the area.

Statement of Need:

The authorizing statute requires HUD to issue regulations for this program through rulemaking in accordance with the procedures established under section 553 of title 5, United States Code.

Summary of Legal Basis:

Section 602 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub.L. 105-276) added a new subsection (h) to section 204 of the National Housing Act to authorize this program.

Alternatives:

Administration of this program under a generally applicable rule will provide all interested parties with a level playing field and notice of what requirements must be followed in order to participate. This is more efficient than proceeding on a case-by-case basis.

Anticipated Cost and Benefits:

The costs of this rule will mainly be borne by the Department, since the discounts offered on eligible assets could represent a loss to the Mutual Mortgage Insurance Fund. The benefits are those related to the revitalization of, and increased homeownership within, the designated areas.

Risks:

This rule poses no risk to public health, safety or the environment.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Agency Contact:

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RIN: 2502–AH40

HUD—OH

68. FHA APPRAISER WATCH INITIATIVE (FR-4744)

Priority:

Other Significant

Legal Authority:

12 USC 1701 to 1715z-18; 42 USC 3535(d)

CFR Citation:

24 CFR 200

Legal Deadline:

None

Abstract:

This rule would establish HUD's regulations for the Federal Housing Administration (FHA) Appraiser Watch Initiative. Modeled on FHA's Credit Watch Termination Initiative, the proposed rule would provide for an electronic, fully computerized Appraiser Watch monitoring system. The Appraiser Watch Initiative establishes and monitors a performance standard that appraisers must meet to maintain their status on the Appraiser Roster. An appraiser may be removed from the Roster if the rate of defaults and claims on closed mortgages linked to the appraiser exceeds the rate established in this rule.

Statement of Need:

This rule is needed to increase appraiser accountability and address the role of faulty appraisals in the misuse of FHA insurance to underwrite bad loans that lead to defaults and foreclosed homes. Such defaulted properties contribute to neighborhood destabilization and decline. Faulty appraisals, whether intentional or not, are a significant part of this problem and contribute to the inability of homebuyers to make monthly mortgage payments and to the instability of neighborhoods.

Summary of Legal Basis:

The National Housing Act and HUD's authority under the Department of Housing and Urban Development Act authorize HUD to provide a home financing system through the insurance of mortgages that would maintain and expand homeownership opportunities, particularly for first-time homebuyers and low-income families.

Alternatives:

Individual fact-finding investigations and adjudications on a case-by-case basis as presently conducted, and which will continue on an ongoing basis, are lengthy and time-consuming proceedings. The Department is planning to adopt a streamlined approach to increase appraiser accountability modeled on its successful Credit Watch Initiative.

Anticipated Cost and Benefits:

Anticipated costs are mainly those of information collection and recordkeeping requirements related to establishing an electronic, fully computerized Appraiser Watch monitoring system. The anticipated benefit is an increase in sound appraisals and a corresponding decrease in defaults, foreclosures, and FHA losses.

Risks:

This rule poses no risk to public health, safety or the environment.

Timetable:

Action	Date	FR Cite
ANPRM	07/23/02	67 FR 48344
NPRM	12/00/02	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

Agency Contact:

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HUD—OH

FINAL RULE STAGE

69. APPRAISER QUALIFICATIONS FOR PLACEMENT ON FHA SINGLE FAMILY APPRAISER ROSTER (FR-4620)

Priority:

Other Significant

Legal Authority:

12 USC 1701 to 1715z-18; 42 USC 3535(d)

CFR Citation:

24 CFR 200

Legal Deadline:

None

Abstract:

This rule makes several regulatory changes designed to strengthen the licensing and certification requirements for placement on the Federal Housing Administration (FHA) Appraiser Roster. First, the rule requires that appraisers on the Appraiser Roster must have credentials that are based on the minimum licensing/certification standards issued by the Appraiser Qualifications Board of the Appraisal Foundation. The rule also clarifies that an appraiser may be removed from the Appraiser Roster if the appraiser loses his or her license or certification in any State due to disciplinary action, even if the appraiser continues to be licensed or certified in another State. Finally, the rule provides that an appraiser whose license or certification in any State has expired, or has been revoked, suspended or surrendered as a result of a State disciplinary action, will be automatically suspended from the Appraiser Roster until HUD receives evidence demonstrating renewal or that the State-imposed sanction has been lifted. The final rule follows publication of a November 30, 2001, proposed rule and takes into consideration the public comments received on the proposed rule.

Statement of Need:

HUD's Appraiser Roster lists those appraisers who are eligible to perform FHA single family appraisals. HUD maintains the Appraiser Roster to provide a means by which HUD can ensure the competency of appraisers performing FHA appraisals. The Appraiser Roster is an important part of the FHA Single Family Mortgage

Insurance program because accurate appraisals are vital to the success of the program and HUD's ability to protect the FHA insurance Fund. The changes made by this final rule are necessary to help ensure that homebuyers seeking FHA-insured mortgages receive accurate and complete appraisals of the homes they seek to purchase.

Summary of Legal Basis:

The National Housing Act and HUD's authority under the Department of Housing and Urban Development Act authorize HUD to provide a home financing system through the insurance of mortgages that would maintain and expand homeownership opportunities, particularly to first-time homebuyers and low-income families. This authority includes the regulation of appraisers participating in the FHA single family mortgage insurance programs.

Alternatives:

HUD has established codified placement and removal procedures for the FHA Appraiser Roster. The changes made by this final rule would modify these requirements and, therefore, must also be promulgated through regulation. Furthermore, nonregulatory alternatives (such as promulgation through mortgagee letter) would not be binding upon appraisers.

Anticipated Cost and Benefits:

This rulemaking will strengthen the FHA Appraiser Roster licensing and certification requirements. The anticipated benefit is that the rule will enhance the accuracy and integrity of FHA appraisals, thereby reducing opportunities for fraud and predatory lending abuses conducted with the collusion of unscrupulous appraisers, such as property flipping.

Risks:

This rule poses no risk to public health, safety or the environment.

Timetable:

Action	Date	FR Cite
NPRM	11/30/01	66 FR 60128
NPRM Comment Period End	01/29/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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HUD—OH

70. RESPA—IMPROVING THE PROCESS FOR OBTAINING MORTGAGES (FR-4727)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

12 USC 2601; 42 USC 3535(d)

CFR Citation:

24 CFR 3500 et seq

Legal Deadline:

None

Abstract:

This rule would establish a new framework for borrower disclosures under RESPA that would: (1) address the issue of mortgage broker compensation, specifically the problem of lender payments to mortgage brokers, by fundamentally changing the way in which such lender payments in brokered mortgage transactions are recorded and reported to borrowers; (2) significantly improve HUD's Good Faith Estimate (GFE) settlement cost disclosure, and amend HUD's related RESPA regulations, to make the GFE firmer and more usable, to facilitate shopping for mortgages, and to avoid unexpected charges to borrowers at settlement; and (3) remove regulatory barriers to allow guaranteed packages of settlement services and mortgages to be made available to borrowers, to make borrower shopping for mortgages easier and further reduce settlement costs.

Statement of Need:

The rule is needed to simplify and improve the process of obtaining a home mortgage to lower costs for consumers. The current disclosure requirements under RESPA have not been substantially revised in decades. Under current rules, there is confusion concerning the role of the mortgage broker and how the broker is compensated. Recent developments have only heightened the need for greater clarity. The GFE does not result in reliable estimates for consumers nor does it facilitate shopping to lower costs. Current rules present regulatory impediments to offering consumers simpler guaranteed packages of mortgages and settlement services to make shopping for a mortgage even easier and to lower settlement costs further. There have been continuing changes to the home mortgage process in the marketplace including new products and greater accessibility of mortgage information through the Internet. If properly addressed by Government, these and other factors can result in price reductions for consumers.

Summary of Legal Basis:

The Secretary is authorized to prescribe such rules and regulations as may be necessary to achieve the purpose of the Act under the Real Estate Settlement and Procedures Act of 1974 (12 USC 2617).

Alternatives:

As noted above, the Department has not updated the disclosure requirements in decades. The Department tried to bring some clarity to the process through two policy statements: a Statement of Policy on Lender Payments to Mortgage Brokers issued on March 1, 1999, and a Clarification of the 1999 Statement of Policy, issued on October 17, 2001. Nonregulatory alternatives were considered and acted upon, but it was determined that the changes in the marketplace and recent judicial decisions call for new regulations on the part of HUD.

Anticipated Cost and Benefits:

Because the Nation's home mortgage market is a billion-dollar industry, there are costs and benefits associated with this rule that were described in detail in the Initial Economic Analysis that accompanied the proposed rule. The Economic Analysis identifies a wide range of benefits, costs, efficiencies, transfers and market impacts. The effects on consumers from improved borrower shopping could be substantial as a result of this rulemaking. Similarly, increased competition associated with packaging could result in large reductions in settlement service costs and associated income transfers from service providers who are earning "economic rents" in today's system to borrowers, who would most likely be the ultimate

beneficiaries of more competition among settlement service providers. Entities that would suffer revenue losses under this rulemaking are usually those who now overcharge uninformed borrowers, or are high-cost producers, or are benefiting from the current system's restrictions on competition.

Risks:

This rule poses no risk to public health, safety or the environment.

Timetable:

Action	Date	FR Cite
NPRM	07/29/02	67 FR 49134
NPRM Comment Period End	10/28/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Agency Contact:

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RIN: 2502–AH85

HUD—Office of Public and Indian Housing (PIH)

PROPOSED RULE STAGE

71. PROJECT-BASED VOUCHER PROGRAM (FR-4636)

Priority:

Other Significant

Legal Authority:

42 USC 1437f(o); 42 USC 3535(d)

CFR Citation:

24 CFR 983

Legal Deadline:

None

Abstract:

The Project-Based Voucher Program replaces the Project-Based Certificate Program that was in existence for many years. Under the Project-Based Voucher Program, HUD pays rental assistance for eligible families to live in specific housing developments or units. A public housing agency (PHA) that administers a tenant-based housing choice voucher program may "project-base" up to 20 percent of voucher units funded by HUD. The Project-Based Program was authorized by law in 1998, as part of the statutory merger of the certificate and voucher tenant-based programs. In 2000, the Congress substantially revised the project-based voucher law. The law made a number of changes including permitting a PHA to pay project-based assistance for a term of up to 10 years, permitting a PHA to provide project-based assistance for existing housing that does not need rehabilitation, as well as for newly constructed or rehabilitated housing, and allowing a family to move from a project-based voucher unit after one year and transfer to the PHA's tenant-based voucher program.

Statement of Need:

This rule will implement the requirements for the new Section 8 Project-Based Voucher program. The regulations will provide the appropriate notice of the legal framework for the program, and clear and uniform guidance for program operation for PHAs and the residents that the PHAs serve.

Summary of Legal Basis:

The statute is not self-implementing. Regulations are needed to present the legal framework for the program. The Secretary is authorized under the U.S. Housing Act of 1937 and the Department of Housing and Urban Development Act to prescribe such rules and regulations as may be necessary to effectively administer Department programs.

Alternatives:

This is a new program that provides assistance for housing and replaces a previous HUD program. Effective and fair administration of the program necessitates a permanent legal framework rather than informal and sporadic HUD notices.

Anticipated Cost and Benefits:

The new law and the regulations to be implemented by HUD provide additional flexibility to PHAs to manage their project-based voucher programs, and also provide more housing choices to the individuals and families served by the PHA.

Risks:

The rule poses no threat to public safety, health or the environment.

Timetable:

Action	Date	FR Cite
Notice	01/16/01	66 FR 3605
NPRM	11/00/02	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State, Local

Agency Contact:

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RIN: 2577–AC25

HUD—PIH

72. CHANGES TO THE PUBLIC HOUSING ASSESSMENT SYSTEM (PHAS)(FR-4707)

Priority:

Other Significant

Legal Authority:

42 USC 1437d(j); 42 USC 3535(d)

CFR Citation:

24 CFR 902

Legal Deadline:

None

Abstract:

Through this rule, the Department will be revising the regulations that govern the Public Housing Assessment System (PHAS). This rule will incorporate the input of public housing stakeholder groups in the public housing assessment process, and solicit additional input from the public.

Statement of Need:

The Department has agreed to consider changes to the current PHAS regulations based on consultation with public housing stakeholders including industry representatives, resident groups and other interested Federal and congressionally chartered agencies.

Summary of Legal Basis:

The Secretary of HUD is directed under section 6(j) of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) to develop and publish in the Federal Register indicators to assess the management performance of public housing agencies and resident management corporations.

Alternatives:

The current interim scoring methodologies provide the Department with a fully implemented assessment system while the amended PHAS regulation is being developed. Other alternatives that have been considered, such as utilizing the Management Indicator (MASS) only, fail to meet the Department's strategic goal of ensuring that public housing agencies provide decent, safe and sanitary housing.

Anticipated Cost and Benefits:

This rule will have the benefit of promoting the success of PHAS by ensuring the buy-in of public housing stakeholder groups in the public housing assessment process. The new proposed rule is in the development phase; therefore, accurate cost estimates cannot be provided at this time.

Risks:

This rule poses no risk to public health, safety or the environment.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Agency Contact:

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RIN: 2577–AC32

HUD—PIH

73. • STREAMLINING AND DEREGULATION OF PUBLIC HOUSING AGENCY PLANS (FR-4788)

Priority:

Other Significant

Legal Authority:

42 USC 1437c-1; 42 USC 3535(d)

CFR Citation:

24 CFR 903

Legal Deadline:

None

Abstract:

This rule would simplify and streamline the regulations for the Public Housing Agency (PHA) Plans to eliminate redundancies and unnecessary reporting requirements that do not relate to the strategic planning efforts of PHAs. The rule would also deregulate certain components of the PHA Plans that currently require HUD approval, leaving these policies to the local discretion of individual PHAs. The rule would retain those PHA Plan requirements that bolster resident participation in the strategic planning of PHAs and that ensure the public's access to PHA records and documents. The regulatory changes will alleviate administrative burden on both PHAs and HUD. The changes will also further the goals of the PHA Plan process by enabling PHAs to focus their resources on strategic planning and performance, rather than on the forms and processes required under the current PHA Plan regulations.

Statement of Need:

The PHA Plans provide an easily identifiable source by which program participants and other members of the public may locate basic PHA policies and requirements concerning its operations, plans and services. The current PHA Plan regulations, however, impose several requirements on PHAs that are duplicative or administratively burdensome. For example, the regulations establish eighteen specific elements that must be addressed by PHAs and a HUD approval process that in many respects does not affect the substance of the Plans. Moreover, other statutory and HUD regulatory requirements facilitate and encourage successful PHA planning. For example, HUD has implemented management assessment systems for public housing and tenant-based assistance, and PHAs are statutorily required to include a resident on their governing boards. Accordingly, HUD has determined that PHA strategic planning involving residents and the community can be accomplished in a manner that is less dictated by the Federal Government and involves fewer elements of bureaucratic compliance.

Summary of Legal Basis:

Section 5A of the United States Housing Act of 1937 (42 U.S.C. 1437c-1), which establishes the PHA Plan process, and HUD's general rulemaking authority under the Department of Housing and Urban Development Act authorize HUD to establish regulatory policies and procedures governing the content, submission and approval of the PHA Plans.

Alternatives:

The changes contained in this rule would modify regulatory requirements and therefore, must also be promulgated through regulation. Nonregulatory alternatives (such as promulgation through HUD Notice) would not be binding upon PHAs.

Anticipated Cost and Benefits:

This rule simplifies and streamlines regulatory requirements for PHAs that are required to prepare and submit Annual and 5-Year PHA Plans. The anticipated benefit is that the rule will alleviate the administrative burden imposed on PHAs, thereby freeing limited resources that may be better used in strategic planning efforts and in the provision of housing assistance for poor families.

Risks:

This rule poses no threat to public safety, health, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

State, Local

Agency Contact:

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HUD—PIH

FINAL RULE STAGE

74. DEREGULATION FOR SMALL PUBLIC HOUSING AGENCIES (FR-4753)

Priority:

Other Significant

Legal Authority:

42 USC 1437a; 42 USC 1437c; 42 USC 1437d(j); 42 USC 1437f; 42 USC 3535(d)

CFR Citation:

24 CFR 902; 24 CFR 903; 24 CFR 985

Legal Deadline:

None

Abstract:

This rule simplifies and streamlines HUD's regulatory requirements for small public housing agencies (PHAs) that administer the public housing and voucher assistance programs under the United States Act of 1937 (1937 Act). Specifically, the rule will further streamline the PHA Annual Plan requirements for certain small PHAs. HUD also proposes to deregulate the assessment and scoring of small PHAs under the Public Housing Assessment System (PHAS) and the Section 8 Management Assessment Program (SEMAP), consistent with its basic regulatory responsibilities. In addition to the changes that solely concern small PHAs, this rule will also streamline HUD's review of the Annual Plans submitted by all PHAs (large and small). This final rule follows publication of an August 14, 2002, proposed rule and takes into consideration the public comments received on the proposed rule.

Statement of Need:

Although HUD has an obligation to monitor and regulate the use of Federal housing funds in order to ensure that taxpayer dollars are well spent, HUD is also mindful that compliance with its regulatory requirements may impose administrative burdens on PHAs and divert scarce resources. The cost of excessive regulation is especially problematic for small PHAs, because they often possess the fewest staff and technical resources. The changes made by this final rule will alleviate administrative burden, and better enable small PHAs to focus on their core mission of providing decent, safe, and affordable housing for the neediest American families.

Summary of Legal Basis:

The 1937 Act and HUD's authority under the Department of Housing and Urban Development Act authorize HUD to establish regulatory policies and procedures for the operation of the Federal public and assisted housing programs authorized by the 1937 Act.

Alternatives:

The changes made by this final rule would modify regulatory requirements and, therefore, must also be promulgated through regulation. Nonregulatory alternatives (such as promulgation through HUD Notice) would not be binding upon PHAs.

Anticipated Cost and Benefits:

This rule simplifies and streamlines regulatory requirements for small PHAs that administer HUD's public housing and voucher assistance programs. The anticipated benefit is that the rule will alleviate the administrative burden imposed on small PHAs, thereby freeing limited resources that may be better used for the provision of housing assistance for poor families.

Risks:

The rule poses no threat to public safety, health, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	08/14/02	67 FR 53276
NPRM Comment Period End	09/13/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

Local

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RIN: 2577–AC34

BILLING CODE 4210–01–S

DEPARTMENT OF THE INTERIOR (DOI)

Statement of Regulatory Priorities

The Department of the Interior (DOI) is the principal Federal steward of our Nation's public lands and resources, including many of our cultural treasures. We serve as trustee to Native Americans and Alaska natives and also are responsible for relations with the island territories under United States jurisdiction. We manage more than 450 million acres of Federal lands, including 385 park units, 538 wildlife refuges, 24,000 miles of trails, and approximately 1.7 billion acres submerged in offshore waters. The Department recovers endangered species, manages water projects, fights wildland fires, leases public lands for coal, oil and gas production to meet the Nation's energy needs, educates children in Indian schools and provides recreational opportunities for almost 300 million visitors annually in our national parks. To fulfill these responsibilities, the Department generates scientific information relating to land and resource management.

The Department is committed to achieving its stewardship objectives in partnership with States, communities, landowners, and others through consultation, cooperation, and communication.

We will review and update the Department's regulations and policies to ensure that they are effective, efficient, and promote accountability. Special emphasis will be given to regulations and policies that:

- Adopt performance-based approaches focusing on achieving results in the most cost-effective and timely manner;
- Incorporate the best available science, and utilize peer review where appropriate;
- Promote partnerships with States, other groups and individuals;
- Provide incentives for private landowners to achieve conservation goals; and
- Minimize regulatory and procedural burdens, promoting fairness, transparency, and accountability by agency regulators while maintaining performance goals.

Major Regulatory Areas

Among the Department's bureaus and offices, the Office of Surface Mining Reclamation and Enforcement (OSM) has a significant concentration of regulatory responsibilities. OSM, in partnership with the States and Indian tribes, sets and enforces environmental standards during coal mining and reclamation operations. Other DOI bureaus rely on regulations to implement legislatively mandated programs that focus on the management of natural resources and public or trust lands. Some of these regulatory activities include:

- Management of migratory birds and preservation of certain marine mammals and endangered species;
- Management of dedicated lands, such as national parks, wildlife refuges, and American Indian trust lands;
- Management of public lands open to multiple use;
- Leasing and oversight of development of Federal energy, minerals, and renewable resources;
- Management of revenues from American Indian and Federal minerals;
- Fulfillment of trust and other responsibilities pertaining to American Indian tribes;
- Natural resource damage assessments; and
- Management of financial and nonfinancial assistance programs.

Regulatory Policy

How DOI Regulatory Procedures Relate to the Administration's Regulatory Policies

Within the requirements and guidance in Executive Orders 12866, 12630, and 13132, DOI's regulatory programs seek to:

- Fulfill all legal requirements as specified by statutes or court orders;
- Perform essential functions that cannot be handled by non-Federal entities;
- Minimize regulatory costs to society while maximizing societal benefits; and
- Operate programs openly, efficiently, and in cooperation with Federal and non-Federal entities.

DOI bureaus have taken the initiative in working with other Federal agencies, non-Federal government agencies, and public entities to make our regulations easier to comply with and understand. Regulatory improvement is a continuing process that requires the participation of all affected parties. We strive to include all affected entities in the decisionmaking process and to issue rules efficiently. To better manage and review the regulatory process, we have revised our internal rulemaking and information quality guidance. Results have included:

- Increased bureau awareness of and responsiveness to the needs of small businesses and better compliance with the Small Business Regulatory Enforcement Fairness Act (SBREFA);
- A Departmentwide effort to evaluate the economic effects of planned rules and regulations;
- Issuance of new guidance in the Departmental Manual to ensure the use of plain language;
- Issuance of new guidance in the Departmental Manual to ensure that Departmental National Environmental Policy Act reforms are institutionalized; and
- In the Natural Resources Damage Assessment Program, deemphasizing actions stemming from litigation while increasing outreach to involved parties and stressing cooperation and restoration of affected sites.

We are committed to improving the regulatory process through the use of plain language. Simplifying regulations has resulted in a major rewrite of the regulations for onshore oil and gas leasing and operations in an easily understandable form that: (a) puts previously published rules into one location in a logical sequence; (b) eliminates duplication by consolidating existing regulations and onshore orders and national notices to lessees; (c) incorporates industry standards by reference; and (d) implements performance standards in some of the operating regulations. Our regulatory process ensures that bureaus share ideas on how to reduce regulatory burdens while meeting the requirements of the laws they enforce and improving their stewardship of the environment and resources under their purview.

Implementing the President's National Energy Policy

The President's National Energy Policy promotes "dependable, affordable, and environmentally sound production and distribution of energy for the future." The Department of the Interior plays a vital role in implementing the President's energy policy goals. The lands and facilities managed by the Department account for nearly 30 percent of all the energy produced in the United States, and undeveloped conventional and renewable energy resources on these lands suggest that this share will increase in the future.

The Department is taking over 100 actions to implement the President's energy policy, including several regulatory actions. The Bureau of Land Management recently completed a final rule that provides a comprehensive set of regulations for managing oil and gas leases in the National Petroleum Reserve — Alaska. The Minerals Management Service will soon propose a rule that would provide an incentive for development of deep gas resources offshore in order to encourage drilling of these high-risk wells and help tap into an important new source of natural gas supply. The Office of Surface Mining will propose regulations that will create a stable regulatory environment in order to encourage the development of better mining and reclamation practices that will reduce environmental damages associated with coal operations, while maintaining coal production. These and other regulatory actions within the Department are designed to streamline permitting processes and encourage environmentally sound energy production.

Encouraging Responsible Management of the Nation's Resources

The Department's mission includes protecting and providing access to our Nation's natural and cultural heritage and honoring our trust responsibilities to tribes. We are committed to this mission and to applying laws and regulations fairly and effectively. The Department's priorities include protecting public health and safety, restoring and maintaining public lands, ameliorating land and resource-management problems on public lands, and ensuring accountability and compliance with Federal laws and regulations.

The Department is continuing to work together with State and local governments, landowners, conservation groups, and the business community to conserve species and habitat. Building on successful approaches such as habitat conservation plans, safe harbor agreements, and candidate conservation agreements, the Department is reviewing its policies and regulations to identify opportunities to streamline the regulatory process where possible, consistent with protection of wildlife, and to enhance incentive-based programs to encourage landowners and others to implement voluntary conservation measures. For example, the Fish and Wildlife Service is developing guidance to promote the establishment of conservation banks as a tool to offset adverse impacts to species listed under the Endangered Species Act and restore habitat. The Service will be publishing a proposed rule to facilitate projects that improve habitat for listed species.

The Department is also developing a uniform code of scientific conduct and policy on research. The code describes ethical conduct for all Department employees who are engaged in conducting scientific activities on behalf of the Department. The primary reason for developing the code is to implement a new Federal policy on research misconduct as required by the Office of Science and Technology Policy. The new policy applies to all Federal agencies and federally funded research, whether conducted in-house or by partners at universities or in nongovernmental organizations. This new policy meets the expectations of the Secretary regarding the conduct of scientific activities with honesty, integrity, and accuracy; to make decisions based on the best science available; and is consistent with professional codes of conduct of other organizations.

Earlier this year, Secretaries Norton and Veneman signed an historic agreement with 17 western governors, county commissioners and other affected parties on a plan to make communities safer from wildfires through coordinating Federal, State and local action. Under the 10-year Comprehensive Strategy Implementation Plan, Federal wildfire agencies, affected States, counties, and local governments agreed to the same goals, implementation outcomes, performance measures and tasks that need to be accomplished by specific deadlines. The plan covers all phases of the fire program, including fire preparedness, suppression and prevention, hazardous fuels management, restoration of burned areas, community assistance and monitoring of progress.

The National Park Service is completing a Supplemental Environmental Impact Statement regarding snowmobile management in Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr. Memorial Parkway. Although a final decision is not expected until spring 2003, the NPS has made preliminary indications that snowmobile use will continue at some level in all three units. In order to continue this use, the NPS will likely require the use of new snowmobile engine technology in machines entering the parks. The new technology will likely improve air quality associated with the use of older machines and unlimited numbers of users. The subsequent changes to the existing rules will also likely reduce adverse economic impact projected to result from completely prohibiting the use of snowmobiles in all three parks.

The Bureau of Land Management is working on a grazing administration rule that would ensure grazing decision rules conform with the Administrative Procedure Act, are in compliance with recent court decisions regarding conservation use permits, require BLM to consider social and economic factors when considering changes to grazing use, and offer other improvements to grazing activities on public lands.

Minimizing Regulatory Burdens

We are using the regulatory process to ease the burdens on various entities throughout the country while improving results. For instance, the Endangered Species Act (ESA) allows for the delisting of threatened and endangered species if they no longer need the protection of the ESA. We have identified approximately 40 species for which delisting or downlisting (reclassification from endangered to threatened) may be appropriate.

We use performance standards in a variety of regulations to improve compliance and achievement of regulatory goals. These allow the affected entity to choose the most economical method to accomplish a goal provided it meets the requirements of the regulations. An example of this is Minerals Management Service's (MMS) training rule, which will allow companies with operations in the Outer Continental Shelf (OCS) to select their own training courses or programs for employees. The new rule will allow lessees and contractors to properly train the employees by any method they choose as long as the employees are competent. We anticipate that this will result in new and innovative training techniques and allow companies added flexibility in tailoring their training to employees' specific duties.

Over the last year, the Department's bureaus have worked extensively with the Federal Energy Regulatory Commission, along with the Departments of Commerce and Agriculture, to establish new licensing procedures that will reduce both the cost and time of obtaining a FERC hydropower license. In September 2002 the above agencies published a Federal Register notice inviting the public to comment on the new draft licensing procedures, and the agencies will be conducting public meetings around the

country throughout this fall. Over the course of the next year, the Department will be working closely with FERC and the other agencies in drafting new regulations that should embody many of the aspects of the agencies' draft new procedures.

Encouraging Public Participation and Involvement in the Regulatory Process

The Department is encouraging increased public participation in the regulatory process to improve results by ensuring that regulatory policies take into account the knowledge and ideas of our customers, regulated community, and other interested participants. The Department is reaching out to communities to seek public input on a variety of regulatory issues. For example, every year FWS establishes migratory bird hunting seasons in partnership with "flyway councils," which are made up of State fish and wildlife agencies. As the process evolves each year, FWS holds a series of public meetings to give other interested parties, including hunters and other groups, opportunities to participate in establishing the upcoming season's regulations.

Similarly, the Bureau of Land Management (BLM) uses Resource Advisory Councils (RACs) made up of affected parties to help prepare land management plans and regulations that it issues under the Rangeland Reform Act.

We encourage public consultation during the regulatory process. For example:

- OSM is continuing its outreach to interested groups to improve the substance and quality of rules and, to the greatest extent possible, achieve consensus on regulatory issues;
- The Bureau of Indian Affairs is developing its roads program rule using the negotiated rulemaking process. Because of the importance of the roads program to the individual tribes and because of the varying needs of the tribal governments, the negotiated rulemaking process will result in a rule that better serves the diverse needs of the Native American community;
- The National Park Service has granted cooperating agency status to three states and several local governments surrounding Yellowstone and Grand Teton National Parks to participate in the development of a sustainable winter use management plan that will include two phases of snowmobile regulations during 2002 and 2003.

Regulatory Actions Related to the Events of September 11, 2001

The Bureau of Reclamation is responsible for protecting 348 reservoirs and more than 500 Federal dams, 58 hydroelectric plants, and over 8 million acres of Federal property. Public Law 107-69 granted Reclamation law enforcement authority for its lands. Reclamation will finalize an interim rule published in April 2002 that implements this authority.

Rules of Particular Interest to Small Businesses

The National Park Service snowmobiling rule for Yellowstone and Grand Teton National Parks and the John D. Rockefeller Memorial Parkway is of great interest to small business in the area of the parks, in particular those who rent snowmobiles. If, as discussed above, snowmobile use does continue in all three units, those small businesses and others will benefit.

The Future of DOI

Interior has developed a draft Departmentwide strategic plan in response to congressional, OMB and other appraisals indicating that Interior's ten separate strategic planning documents are too long and lack the appropriate agency-level focus. Interior also intends to use the single Strategic Plan as the basis for preparing a single Departmentwide Annual Performance Plan beginning with the plan for FY 2004. The Interior bureaus will continue to prepare internal plans to support their budget initiatives and to meet management excellence and accountability needs. However, in the future we plan to submit only Departmentwide strategic and annual plans to the Congress. Finally, the process of developing the new strategic plan provides the Secretary with an opportunity to:

- Incorporate key Administration and Secretarial priorities into Interior's goals and performance measures;
- Consult with key interested constituents on the future direction of the Department; and
- Make Interior programs more "results-oriented" and accountable to citizens.

Bureaus and Offices Within DOI

The following brief descriptions summarize the regulatory functions of DOI's major regulatory bureaus and offices.

Office of the Secretary, Natural Resource Damage Assessment and Restoration Program

The regulatory functions of the Natural Resource Damage Assessment and Restoration Program (Restoration Program) stem from requirements under section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). Section 301(c) requires the development of natural resource damage assessment rules and the biennial review and revisions, as appropriate, of these rules. Rules have been promulgated for the optional use of natural resource trustees to assess compensation for damages to natural resources caused by hazardous substances. The Restoration Program is overseeing the study and possible promulgation of additional rules pursuant to section 301(c)(2) and the review and possible revision of the existing rule in compliance with section 301(c)(3).

In undertaking DOI's responsibilities under section 301(c), the Restoration Program is striving to meet three regulatory objectives: (a) make the regulation user-friendly through the use of plain language so that the assessment and restoration process can be followed by all interested parties; (b) move towards a restoration approach for determining compensation rather than monetizing economic damages, and (c) facilitating negotiated settlements rather than litigation over natural resource damages.

Bureau of Indian Affairs

The Bureau of Indian Affairs (BIA) is responsible for managing trust responsibilities to the Indian tribes and encouraging tribal governments to assume responsibility for BIA programs.

The Bureau's rulemaking and policy development processes are designed to foster public and tribal awareness of the standards and procedures that directly affect them. The processes also encourage the public and the tribes to participate in developing these standards and procedures. The goals of BIA regulatory policies are to: (a) ensure consistent policies within BIA that result in uniform interactions with the tribal governments, (b) facilitate tribal involvement in managing, planning, and evaluating BIA programs and services, and (c) ensure continued protection of tribal treaties and statutory rights.

Bureau of Land Management

The Bureau of Land Management manages about 262 million acres of land

surface and about 700 million acres of Federal mineral estate. These lands consist of extensive grasslands, forests, mountains, arctic tundra, and deserts. Resources on the lands include energy and minerals, timber, forage, wild horse and burro populations, habitat for fish and wildlife, wilderness areas, and archeological and cultural sites. BLM manages these lands and resources for multiple purposes and the sustained yield of renewable resources. Primary statutes under which the agency must operate include: the Federal Land Policy and Management Act of 1976; the General Mining Law of 1872; the Mineral Leasing Act of 1920, as amended; the Recreation and Public Purposes Act; the Taylor Grazing Act; and the Wild, Free-Roaming Horses and Burros Act.

The regulatory program mirrors statutory responsibilities and agency objectives. Agency objectives include:

- Providing for a wide variety of public uses while maintaining the long-term health and diversity of the land and preserving significant natural, cultural, and historical resources;
- Understanding the arid, semi-arid, arctic, and other ecosystems we manage and committing to using the best scientific and technical information to make resource management decisions;
- Understanding the needs of the public that use BLM-managed lands and providing them with quality service;
- Committing to recovering a fair return for using publicly owned resources and avoiding the creation of long-term liabilities for American taxpayers; and
- Resolving problems and implementing decisions in cooperation with other agencies, States, tribal governments, and the public.

The regulatory program contains its own objectives. These include preparing regulations that:

- Are the product of communication, coordination and consultation with all affected members of the public;
- Are understandable to the general public, especially those to whom they are directly applicable; and
- Are subject to periodic review to determine whether BLM still needs them, whether they need to be updated to reflect statutory and policy changes, and whether they are achieving desired results.

The regulatory priorities of BLM include:

- Completing the revision of oil and gas leasing and operations regulations in order to make the program more efficiently serve the regulated public;
- Completing the updating and consolidation of the regulations on locating, filing, and maintaining mining claims and mill and tunnel sites in order to remove unnecessary and outdated provisions, reorder the regulations more logically, and make them easier to read and follow;
- Completing the revision of the regulations on administration of rights-of-way on the public lands in order to increase cost recovery to levels that properly compensate BLM for our administrative and monitoring costs and to raise the cap on strict liability for right-of-way holders to a reasonable level in light of costs for environmental cleanup; and
- Completing the revision of the regulations on disclaimers of interest in public lands in order to remove claims on titles to lands in which the Federal Government no longer has an interest.

None of these specific priorities is based on recent legislation. They derive from programmatic needs and awareness of national budget constraints.

Minerals Management Service

The Minerals Management Service (MMS) has two major responsibilities. The first is timely and accurate collection, distribution, accounting for, and auditing of revenues owed by holders of Federal onshore, offshore, and tribal land mineral leases in a manner that meets or exceeds Federal financial integrity requirements and recipient expectations. The second is management of the resources of the Outer Continental Shelf in a manner that provides for safety, protection of the environment, and conservation of natural resources. These responsibilities are carried out under the provisions of the Federal Oil and Gas Royalty Management Act, the Minerals Leasing Act, the Outer Continental Shelf Lands Act, the Indian Mineral Leasing Act, and other related statutes.

Our regulatory philosophy is to develop clear, enforceable rules that support the missions of each program. For the Offshore Minerals Management program, as authorized by the Deep Water Royalty Relief Act (DWRRA) (Pub. L. 104-58), we plan to issue a final regulation to revise current regulations at 30 CFR part 203. The new rule would provide temporary incentives in the form of royalty suspension volumes for deep wells (at least 15,000 feet below sea level) in the Gulf of Mexico, that explore for or produce gas. We will also continue to review rules and issue amendments in response to new technology and new industry practices.

We also plan to continue our review of existing regulations and to issue rules to refine the Minerals Revenue Management (MRM) regulations in chapter II of 30 CFR. MRM is in the process of issuing regulations to: (1) revise its oil valuation regulations for Indian leases; (2) codify provisions in the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996; and (3) implement new financial and compliance procedures resulting from a major reengineering initiative.

Office of Surface Mining Reclamation and Enforcement

The Office of Surface Mining Reclamation and Enforcement (OSM) was created by the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to "strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy."

The principal regulatory provisions contained in title V of SMCRA set minimum requirements for obtaining a permit for surface coal mining operations, set standards for those operations, require land reclamation once mining ends, and require rules and enforcement procedures to ensure that the standards are met. Under SMCRA, OSM is the primary enforcer of SMCRA's provisions until the States achieve "primacy," that is, until they demonstrate that their regulatory programs meet all the specifications in SMCRA and have regulations consistent with those issued by OSM.

When a primacy State takes over the permitting, inspection, and enforcement activities of the Federal Government, OSM then changes its role from regulating mining activities directly to overseeing and evaluating State programs. Today, 24 of the 26 key coal-producing States have primacy. In return for assuming primacy, States are entitled to regulatory grants and to grants for reclaiming abandoned mine lands. In addition, under cooperative agreements, some primacy States have agreed to regulate mining on Federal lands within their borders. Thus, OSM regulates mining directly only in nonprimacy States, on Federal lands in States where no cooperative agreements are in effect, and on Indian lands.

SMCRA charges OSM with the responsibility of publishing rules as necessary to carry out the purposes of the Act. The fundamental mechanism for ensuring that the purposes of SMCRA are achieved is the basic policy and guidance established through OSM's permanent regulatory program and related rulemakings. This regulatory framework is developed, reviewed, and applied according to policy directives and legal requirements.

Litigation by the coal industry and environmental groups is responsible for some of the rules now being considered by OSM. Others are the result of efforts by OSM to address areas of concern that have arisen during the course of implementing OSM's regulatory program, and one is the result of legislation.

OSM has sought to develop an economical, safe, and environmentally sound program for the surface mining of coal by providing a stable, consistent regulatory, results-focused framework. At the same time, however, OSM has recognized the need: (a) to respond to local conditions; (b) to provide flexibility to react to technological change; (c) to be sensitive to geographic diversity; and (d) to eliminate burdensome recordkeeping and reporting requirements that over time have proved unnecessary to ensure an effective regulatory program.

Major regulatory objectives regarding the mining of surface coal include:

- Regulatory certainty so that coal companies know what is expected of them and citizens know what is intended and how they can participate; and
- Continuing consultation, cooperation, and communication with interest groups during the rulemaking process in order to increase the quality of the rulemaking, and, to the greatest extent possible, reflect consensus on regulatory issues.

U.S. Fish and Wildlife Service

The mission of the U.S. Fish and Wildlife Service is to work with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. Four principal mission goals include:

- *The sustainability of fish and wildlife populations.* FWS conserves, protects, restores, and enhances fish, wildlife, and plant populations entrusted to our care. FWS carries out this mission goal through migratory bird conservation at home and abroad; native fisheries restoration; recovery and protection of threatened and endangered species; prevention and control of invasive species; and work with international partners.
- *Habitat conservation—a network of lands and waters.* Cooperating with others, FWS strives to conserve an ecologically diverse network of lands and waters—of various ownerships—providing habitats for fish, wildlife, and plant resources. This mission goal emphasizes two kinds of strategic actions: (1) the development of formal agreements and plans with partners who provide habitat for multiple species; and (2) the actual conservation work necessary to protect, restore, and enhance those habitats vital to fish and wildlife populations. The FWS habitat conservation strategy uses an ecosystem approach to focus on the interaction and balance of people, lands and waters, and fish and wildlife.
- *Public use and enjoyment.* FWS provides opportunities to the public to enjoy, understand, and participate in the use and conservation of fish and wildlife resources. The Service directs activities on national wildlife refuges and national fish hatcheries that increase opportunities for public involvement with fish and wildlife resources. Such opportunities include hunting, fishing, wildlife observation and photography, and environmental education and interpretation, as well as affording the public hands-on experiences through volunteer conservation activities on Service lands.
- *Partnerships in natural resources.* FWS supports and strengthens partnerships with tribal, State, and local governments and others in their efforts to conserve and enjoy fish, wildlife, and plants and habitats. FWS administers Federal grants to States and territories for restoration of fish and wildlife resources and has a continuing commitment to work with tribal governments. FWS also promotes partnerships with other Federal agencies where common goals can be developed.

The Service carries out these mission goals through several types of regulations and programs. The Service works continually with foreign and State governments, affected industries and individuals, and other interested parties to minimize any burdens associated with Service-related activities. The Service attempts to ensure a balance between any possible public burdens and adequate protection for the natural resource.

The Service implements and enforces regulations that govern public access, use, and recreation on more than 500 national wildlife refuges and in national fish hatcheries. The Service authorizes those uses that are compatible with the purpose for which each area was established, are consistent with State and local laws where practical, and afford the public appropriate economic, recreational, and conservation opportunities.

The Service administers regulations to manage migratory bird resources. Annually, the Service issues a regulation on migratory bird hunting seasons and bag limits that is developed in partnership with the States, tribal governments, and the Canadian Wildlife Service. These regulations are necessary to permit migratory bird hunting that would otherwise be prohibited by various international treaties.

The Service enforces regulations to fulfill its statutory obligation to identify and conserve species faced with extinction. The Endangered Species Act (ESA) dictates that the basis for determining endangered species is limited to biological considerations. Regulations enhance the conservation of listed species and certain marine mammals. Regulations also help other Federal agencies comply with the ESA, which prohibits them from conducting activities that would jeopardize the existence of endangered species or adversely modify critical habitat of listed species. In designating critical habitat, the Service considers biological information and economic and other impacts of the designation. Areas may be excluded if the benefits of exclusion outweigh the benefits of inclusion, provided that such exclusion will not result in the extinction of the species.

Some Service regulations permit activities otherwise prohibited by law. These regulations allow possession, sale or trade, scientific research, and educational activities involving fish and wildlife and their parts or products. In general, these regulations supplement State regulations and cover activities that involve interstate or foreign commerce. In carrying out its assistance programs, the Service administers regulations to help interested parties obtain Federal assistance and also to help assistance recipients comply with applicable laws and Federal requirements.

National Park Service

The National Park Service is dedicated to conserving the natural and cultural resources and values of the National Park System for the enjoyment, education, and inspiration of this and future generations. The Service also manages a great variety of national and international programs designed to help extend the benefits of natural and cultural resource conservation and outdoor recreation throughout this country and the world.

There are 385 units in the National Park System, including national parks and monuments; scenic parkways, preserves, trails, riverways, seashores, lakeshores, and recreation areas; and historic sites associated with important movements, events, and personalities of the American past.

The National Park Service develops and implements park management plans and staffs the areas under its administration. It relates the natural values and historical significance of these areas to the public through talks, tours, films, exhibits, and other interpretive media. It operates campgrounds and other visitor facilities and provides, usually through concessions, lodging, food, and transportation services in many areas. The National Park Service also administers the following programs: the State portion of the Land and Water Conservation Fund, Nationwide Outdoor Recreation coordination and information and State comprehensive outdoor recreation planning, planning and technical assistance for the National Wild and Scenic Rivers System, and the National Trails System, natural area programs, the National Register of Historic Places, national historic landmarks, historic preservation, technical preservation services, Historic American Buildings survey, Historic American Engineering Record, and interagency archeological services.

The National Park Service maintains regulations that help manage public use, access, and recreation in units of the National Park System. The Service provides visitor and resource protection to ensure public safety and prevent degradation of resources. The regulatory program develops and reviews regulations, maintaining consistency with State and local laws, to allow these uses if they are compatible with the purpose for which each area was established.

Bureau of Reclamation

The Bureau of Reclamation's mission is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public. To accomplish this mission, Reclamation applies management, engineering, and scientific skills that result in effective and environmentally sensitive solutions.

Reclamation projects provide for some or all of the following concurrent purposes: irrigation water service, municipal and industrial water supply, hydroelectric power generation, water quality improvement, groundwater management, fish and wildlife enhancement, outdoor recreation, flood control, navigation, river regulation and control, system optimization, and related uses. Reclamation has increased security at its facilities and is implementing its law enforcement authorization received in November 2001.

Reclamation's regulatory program is designed to ensure that its mission is carried out expeditiously, efficiently, and with an emphasis on cooperative problem-solving.

DOI—National Park Service (NPS)

FINAL RULE STAGE

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75. • SNOWMOBILE REGULATIONS; YELLOWSTONE AND GRAND TETON NATIONAL PARKS AND JOHN D. ROCKEFELLER MEMORIAL PARKWAY

Priority:

Other Significant

Legal Authority:

16 USC 1; 16 USC 3; 16 USC 9a; 16 USC 460(q); 16 USC 462(k)

CFR Citation:

36 CFR 7.13; 36 CFR 7.21; 36 CFR 7.22

Legal Deadline:

Final, Judicial, November 15, 2002.

Abstract:

This is a multiphase rule with the next phase legally due to be published by November 15, 2002. This phase will delay, for one year, certain provisions of the existing snowmobile and snowcoach regulations at the parks. The next phase will implement any new provisions for snowmobile management that arise from the record of decision due to be issued in spring 2003. It is expected that those provisions will become effective before the winter use season of 2003-2004.

Statement of Need:

The rulemaking is necessary as a result of legal action taken by the International Snowmobile Manufacturers Association (ISMA) and others in June 2001. The NPS agreed to reevaluate the impacts of the existing regulations on local economies and to analyaze and incorporate provisions for new technology snowmobile engines into the existing Winter Use Management Plan.

Summary of Legal Basis:

The National Park Service entered into a settlement agreement with ISMA and others in June 2001. This agreement was a result of a lawsuit initiated by ISMA disputing provisions of the snowmobile regulations written at the end of the Clinton administration. The settlement agreement required publication of a final rule, if necessary, by November 15, 2002.

Alternatives:

The only alternative to these regulations would be to allow provisions of the existing regulations for the parks to go into effect for the winter use season 2002-2003. The result would be a 50 percent reduction in snowmobiles allowed into Yellowstone and Grand Teton National Parks with each entrance station being allotted a set number of users to enter per day.

Anticipated Cost and Benefits:

This rule would delay adverse economic impacts from the existing rule for one year. There may be economic benefits resulting from the proposed extension. In the draft supplemental environmental impact statement (DSEIS) the NPS estimated that in 2003-2004, the economic outputs and employment impacts of implementing actions under this rule are: in the five-county, greater Yellowstone area, an estimated loss of $15.9 to $21.1 million; in the three-State area surrounding the parks, a variance of a possible $18.4 million loss to a $7.0 million increase. Increased winter visitation from new visitors to the park under existing regulations could substantially offset estimated losses and employment reductions from current visitors.

Risks:

If the rulemaking were not to proceed, the gateway communities surrounding Yellowstone and Grand Teton National

Parks would experience a decrease in snowmobile use of 50 percent beginning this winter use season. Allowing the existing regulations to become effective would cause adverse economic impacts on the local communities and potentially to the surrounding three-State area.

Timetable:

Action	Date	FR Cite
NPRM	03/29/02	67 FR 15145
Final Action	11/00/02	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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RIN: 1024–AD09

DOI—Minerals Management Service (MMS)

PROPOSED RULE STAGE

76. • RELIEF OR REDUCTION IN ROYALTY RATES — DEEP GAS PROVISIONS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

43 USC 1331 et seq

CFR Citation:

30 CFR 203

Legal Deadline:

None

Abstract:

Declines in outer continental shelf production from existing fields need to be offset by new sources to keep up with growing demand. Very little of the deep gas potential in shallow water areas of the Gulf of Mexico has yet been explored. Extensive infrastructure already exists in shallow water, unlike in deep water, so new production could reach market quickly. Because the most prospective tracts in shallow water are already under lease, most of the deep gas potential in shallow water may already have been acquired. This rule proposes temporary incentives in the form of royalty suspension volumes for deep wells (at least 15,000 feet below significant energy action level) on existing leases that explore for or produce gas.

Statement of Need:

Very little of the deep gas potential in shallow water areas of the Gulf of Mexico has yet been explored. Extensive infrastructure already exists in shallow water, unlike in deep water, so new production could reach market quickly. Because the most productive

tracts in shallow water are already under lease, most of the deep gas potential in shallow water may already have been acquired. This rule would accelerate exploration and production of deep gas by providing temporary incentives in the form of royalty suspension volumes for deep wells on existing leases that explore for or produce gas.

Summary of Legal Basis:

The OCS Lands Act is the basis for our regulations on suspending or lowering royalties on "producing" OCS leases. The Deep Water Royalty Relief Act, which amended the OCS Lands Act, is the basis for regulations to reduce or eliminate royalty on "non-producing" leases in the Gulf of Mexico west of 87 degrees, 30 minutes West longitude. It gives the Secretary of the Interior this authority to (1) promote development or increased production on producing and non-producing leases, or (2) encourage production of marginal resources on producing and non-producing leases.

Alternatives:

There are two alternatives — providing incentives only through the lease sale process, or through an application process. Reserving the deep gas incentive only for new leases issued in future sales

will not encourage exploration and production of much of the deep gas potential that underlies existing leases. Many of the best blocks have not been through a sale in decades. Also, new leases would be less able to use the existing infrastructure than existing leases so additional gas production would be delayed. Granting royalty relief on a case-by-case basis to existing leases would better protect against unnecessary royalty relief but is unlikely to encourage much additional production. The unavoidable complexity and delays in a system like we use in the discretionary deep water royalty relief program would discourage many lessees and delay the desired activity by those that would apply.

Anticipated Cost and Benefits:

Costs of this program to the federal government are the foregone royalties associated with drilling and production of deep gas that would have occurred even if no royalty suspension incentives were offered. We estimate that recipients of deep gas royalty relief will earn an average of 350 Bcf of gas royalty relief each year from activity that would have taken place without the program.

This rule's royalty benefits derive from the extra gas production (i.e., gas produced in excess of the royalty suspension volumes) from discoveries induced by the program incentives and resulting drilling. We estimate this benefit to be, on average, 370 Bcf of gas each year, yielding a net annual royalty benefit of 20 Bcf.

The additional gas production resulting from this rule also offers an important timing benefit. We do not expect significant gas production from deep water for another 10-15 years. We estimate that this rule will result in twice as many deep wells drilled each year of the program producing 1 to 2 Tcf more gas production in shallow water. The additional gas volumes will help offset declines in other OCS gas production until deep water gas comes on stream, thereby moderating gas prices and reducing the need for gas imports and consumption of dirtier fuels.

Risks:

The risk of not offering royalty relief provided in this rulemaking

action is that some deep gas resources in shallow water will not be

developed, at least not during a period when growing demand and declines in traditional sources for natural gas will lead to volatile prices.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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RIN: 1010–AD01

DOI—MMS

FINAL RULE STAGE

77. • VALUATION OF OIL FROM INDIAN LEASES

Priority:

Other Significant

Legal Authority:

25 USC 2101 et seq; 25 USC 396 et seq; 25 USC 396a et seq; 30 USC 1001 et seq; 30 USC 1701 et seq; 30 USC 351 et seq; 30 USC 181 et seq

CFR Citation:

30 CFR 206

Legal Deadline:

None

Abstract:

This rule would modify the regulations that establish royalty value for oil produced from Indian leases and create a new form for collecting value and differential data. These changes would decrease reliance on oil posted prices and make Indian oil royalty valuation more consistent with the terms of Indian leases.

Statement of Need:

Current oil valuation regulations rely on posted prices and prices under arm=s-length sales to value oil that is not sold at arm=s-length. Over time, posted prices have become increasingly suspect as a fair measure of market value. This rulemaking would modify valuation regulations to place substantial reliance on the higher of crude oil spot prices, major portion prices, or gross proceeds, and eliminate any direct reliance on posted prices. This rulemaking would also add more certainty to valuation of oil produced from Indian leases.

Summary of Legal Basis:

The primary legal basis for this rulemaking is the Federal Oil and Gas Royalty Management Act of 1982, as amended, which defines the Secretary of the Interior=s (1) authority to implement and maintain a royalty management system for oil and gas leases on Indian lands, and (2) trust responsibility to administer Indian oil and gas resources.

Alternatives:

We considered a range of valuation alternatives such as making minor adjustments to the current gross proceeds valuation method, using futures prices, using index-based prices with fixed adjustments for production from specific geographic zones, relying on some type of field pricing other than posted prices, and taking oil in-kind. We chose the higher of the average of the high daily applicable spot prices for the month, major portion prices in the field or area, or gross proceeds received by the lessee or its affiliate. We chose spot prices as one of the three value measures because (1) they represent actual trading activity in the market,

(2) they mirror New York Mercantile Exchange futures prices, and (3) they permit use of an index price for the market center nearest the lease for oil most similar in quality to that of the lease production.

Anticipated Cost and Benefits:

We estimate compliance with this rulemaking would cost the oil industry approximately $5.4 million the first year and $4.9 million each year thereafter. These estimates include the up-front computer programming and other administrative costs associated with processing the new form. The monetary benefits of this rulemaking are an estimated $4.7 million increase in annual royalties collected on oil produced from Indian leases. Additional benefits include simplification and increased certainty of oil pricing, reduced audit efforts, and reduced valuation determinations and associated litigation.

Risks:

The risk of not modifying current oil valuation regulations is that Indian recipients may not receive royalties based on the highest price paid or offered for the major portion of oil produced—a common requirement in most Indian leases. These modifications ensure that the Department fulfills its trust responsibilities for administering Indian oil and gas leases under governing mineral leasing laws, treaties, and lease terms.

Timetable:

Action	Date	FR Cite
ANPRM	12/20/95	60 FR 65610
NPRM	02/12/98	63 FR 7089
NPRM Comment Period Extended	04/09/98	
NPRM Comment Period End	05/13/98	
Supplementary Proposed Rule	01/05/00	65 FR 10436
ANPRM Comment Period End	03/19/00	
NPRM Comment Period Extended	03/20/00	
Final Action	10/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Tribal

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Related RIN: Previously reported as 1010-AC24

RIN: 1010–AD00

BILLING CODE 4310–RK–S

DEPARTMENT OF JUSTICE (DOJ)

Statement of Regulatory Priorities

The first and overriding priority of the Department of Justice is to prevent, detect, disrupt, and dismantle terrorism while preserving constitutional liberties. To fulfill this mission, the Department is devoting all the resources necessary and utilizing all legal authorities to eliminate terrorist networks, to prevent terrorist attacks, and to bring to justice those who kill Americans in the name of murderous ideologies. It is engaged in an aggressive arrest and detention campaign of lawbreakers with a single objective: To get terrorists off the street before they can harm more Americans. In addition to using investigative, prosecutorial, and other law enforcement activities, the Department is also using the regulatory process to enhance its ability to prevent future terrorist acts and safeguard our borders while ensuring that America remains a place of welcome to foreigners who come here to visit, work, or live peacefully.

Accordingly, the Department has issued immigration regulations: (1) to register and more closely monitor certain nonimmigrants from designated countries; reinvent the processes for monitoring the admission and status of foreign students; (2) to provide for a uniform policy on the safeguarding of information relating to INS detainees; and (3) to establish greater control over the visitor visa process. In addition, the Department has also issued regulations to prevent dissemination by selected inmates of information that could endanger the national security and regulations authorizing immigration judges to issue protective orders and seal records relating to law enforcement or national security information. (These and other completed and ongoing antiterrorism regulatory actions are described in a separate section of this Statement below.)

Immigration

Although the Congress is currently considering legislation to restructure the immigration agencies, this Statement presents the Department's past and current efforts to improve the enforcement and administration of the immigration laws. The Department will continue to advance the President's antiterrorism objectives with regulatory initiatives that support law enforcement activities and increase border security along with its immigration mission responsibilities. The INS administers regulations governing the admission of legal immigrants and temporary visitors, apprehension and deportation of illegal aliens, alien employment authorization and verification, asylum, and naturalization.

The Department's top regulatory initiatives are described below, but many of the Agency's key initiatives occur either outside of the rulemaking process or supplement it. Although this regulatory agenda focuses on strengthening homeland security, the Department is pursuing an aggressive agenda, through both regulations and systems development, to enhance the delivery of immigration services.

Strengthening Immigration Enforcement

During the next 12 months, the Department will continue to implement rulemakings focused on supporting the President's homeland defense initiatives. In addition to regulations published as a result of the events of September 11, 2001, the Agency is pursuing rulemaking to implement three major components of the President's directive on Homeland Security: (1) control and tracking of foreign students and exchange visitors; (2) an improved entry-exit system that will track the arrivals and departures of foreign visitors who come to the United States. The Attorney General has also mandated that one aspect of this system will include additional registration requirements for certain nonimmigrants from countries of concern to the United States for national security reasons; and (3) a surrender requirement for aliens removed from the United States.

- Tracking Foreign Students and Exchange Visitors

In response to the first component of the President's directive, the Service is implementing section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Section 641 requires the Service to collect current information, on an ongoing basis, from schools and exchange programs relating to nonimmigrant foreign students and exchange visitors during the course of their stay in the United States. In addition, the USA PATRIOT Act, Public Law 107-56, amended section 641 to require full implementation and expansion of Student and Exchange Visitor Information System (SEVIS) prior to January 1, 2003. Furthermore, the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107-173) (Border Security Act) adds to and clarifies the collection of student and school information and specifically requires an educational institution to report any failure of an alien to enroll not later than 30 days after registration deadline. The Service is promulgating several regulations focused on addressing control issues for over 500,000 international students attending colleges and universities in the United States and a similar number of exchange visitors entering the United States through the Department of State's (DOS) "J" visa program.

The Service has embarked on a series of regulatory and nonregulatory initiatives to improve the tracking of foreign students. A key component of this initiative is the creation of SEVIS, an Internet-based system through which schools must submit current information on nonimmigrant students (F and M visa) and exchange visitors (J visa) and their dependents (F-2, M-2, and J-2). SEVIS enables schools and program sponsors to transmit electronic information and event notifications, via the Internet, to the Service and DOS throughout a student's or exchange visitor's stay in the United States. SEVIS will be informed of status events for international students and exchange visitors including, but not limited to, entry/exit data, changes of address, program extensions, employment notifications, and changes in program of study. SEVIS will also provide system alerts, event notifications, and reports to the end-user schools and programs, as well as for Service and DOS offices. SEVIS will be mandatory after January 30, 2003, for all institutions wishing to bring F/M/J aliens into the United States.

Also, on December 21, 1999, the Service published a proposed rule at 64 FR 71323 establishing a fee and a fee collection system allowing the Service to collect the fee authorized by section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). The interim final rule currently under expedited development differs from the earlier proposed rule in several ways. First, Public Law 106-396 amended section 641 of IIRIRA to provide that the Attorney General, rather than schools, is to collect the fee. Second, Congress appropriated startup funds for the program after the publication of the proposed rule. Accordingly, the forthcoming final rule will reflect a lower fee, based on a new fee study, which does not recapture those startup funds already appropriated. Finally, the Service will build into the final rule additional flexibility regarding the means and methods of payment. The interim final rule will make compliance easier than what was initially proposed.

In addition, INS published on August 27, 2002, at 67 FR 54941, an interim rule governing F and M nonimmigrants. This rule clarifies that nonimmigrant aliens who reside outside the U.S. and regularly commute across a land border to study may do so on a part-time basis within the F or M nonimmigrant category. These changes are being made to facilitate and legitimate part-time study along border communities while ensuring that all applicable requirements and safeguards are met. (INS No. 2220-02, RIN 1115-AG75)

- Entry-Exit System and Special Registration Requirements for Certain Nonimmigrants

Congress has mandated that, by 2005, the Department must complete deployment of an entry-exit system that integrates the available alien arrival and departure data that exists in the Department and DOS systems. This system also must include the arrival and departure data for any visitor who transits through the air and seaports and is admitted under the Visa Waiver Program. In addition, recent legislation requires that visas and other entry travel documents issued on or after October 26, 2004, be machine readable and contain biometrics and that INS deploy machines to read those documents at all ports-of-entry by that date. The entry-exit system must capture arrival and departure data from these biometric documents. The Administration is also planning to make the entry-exit system as comprehensive as possible to include arrival and departure information that is not currently recorded by existing systems.

As part of this initiative, the Service will promulgate regulations to implement the provisions of section 217(h) of the Immigration and Nationality Act (INA) concerning electronic passenger manifest requirements for carriers who transport Visa Waiver Program applicants, as well as the provisions of section 402 of the Border Security Act that requires submission of arrival and departure manifests electronically in advance of a commercial aircraft or vessel's arrival in or departure from the United States. The rule also proposes to require manifest data on certain passengers, crew, and voyages previously exempt from this requirement.

In addition, the Service and DOS plan to promulgate complementary regulations under section 212 of the INA that will remove the current visa and passport waivers for permanent residents of Canada and Bermuda who are citizens of approximately 55 other countries. Although these regulations are being promulgated for national security and related reasons, and not strictly for purposes of the entry-exit system, the system will be improved as a result of the arrival/departure data that will now be available on these previously document-exempt visitors to the U.S.

- Surrender Requirement for Aliens Ordered Removed from the U.S.

In an effort to streamline the removal process, the Service will promulgate a rule that requires aliens who become subject to a final order of removal to surrender themselves to the Service within 30 days thereafter. This rule provides that aliens who are given notice of the mandatory duty to surrender and later fail to comply with the surrender obligation will be denied all discretionary immigration benefits for the remainder of their presence in the U.S. and for 10 years after their departure. This action enhances the integrity of the removal process by shifting the burden upon termination of removal proceedings—eliminating the requirement that the Service seek out those subject of final removal orders—and instead requiring that such persons present themselves for removal. The surrender requirement will apply to aliens who receive notice of the obligation in the course of their immigration proceedings or concurrently with the final order of removal.

Concurrently, the Service has launched an initiative to address the fact that hundreds of thousands of aliens who already have final removal orders have not departed the United States. Such aliens, termed absconders, are the subject of the Service's sub-regulatory Absconder Apprehension Initiative (AAI), which is designed to enhance the ability of the Service's limited workforce to apprehend absconders. In the AAI, the Service has begun reviewing the files of absconders to enter appropriate records into the National Crime Information Center (NCIC) data base so that they may be apprehended when encountered by Federal, State, or local law enforcement officials. This effort supplements efforts being undertaken by the Service to use recent resource enhancements to apprehend those absconders whom the Service can locate.

Strengthening Immigration Services

In addition to the initiatives to strengthen homeland security as set forth above, the Service plans to re-engineer its regulations that govern nonimmigrant classes and admission requirements. These regulations are codified in 8 CFR 214 and have grown in size and complexity during the past 15 years as Congress has added at least 10 new nonimmigrant classes and expanded the requirements and restrictions on many of the existing classes. The regulatory outline for part 214 has become extremely complicated. This initiative provides for a comprehensive reorganization, streamlining, and rewriting of 8 CFR part 214. There are a number of other planned regulatory actions focused on improving benefit processing and adjudication services that are delineated in DOJ's unified agenda. For example, the following key regulatory initiatives are being pursued.

- Proposed Rule, INS No. 2134-01, RIN 1115-AG21, Removal and Adjustment Procedures for Victims of Trafficking and Certain Criminal Activities. This rule proposes that certain victims of severe forms of trafficking and victims of certain crimes who have been granted T or U nonimmigrant status may apply for adjustment to permanent resident status.
- Proposed Rule, INS No. 2170-01, RIN 1115-AG39, New Classification for Victims of Certain Criminal Activity; Eligibility for the U Nonimmigrant Status. This proposed action establishes the application requirements for a new nonimmigrant status "U." The U classification is for non-United States citizens/Lawful Permanent Residents who are victims of certain crimes and who cooperate with an investigation or prosecution of such crimes. There is a limit of 10,000 principals per year.
- Proposed Rule, INS No. 2228-02, RIN 1115-AG78, Petitions for Aliens to Perform Temporary Nonagricultural Services of Labor (H-2B). This action proposes to make significant changes to the regulations affecting H-2B nonimmigrant classification. The proposed changes are aimed to increase the usefulness of the H-2B nonimmigrant classification program for U.S. employers by eliminating certain regulatory barriers, by adding protections for foreign workers, and by increasing the Government efficiency and coordination.
- Proposed Rule, INS No. 2080-00, RIN 1115-AE73, Certificates for Certain Health Care Workers. This rule proposes to implement the foreign health care worker certification requirements by providing that all

immigrants and nonimmigrants, including nonimmigrants changing status, who are coming to the U.S. for the primary purpose of performing labor in a health care occupation, obtain health care worker certification and present this certificate to a consular officer and/or the INS.

Regulations Published or Being Developed Because of September 11, 2001

INS

- Final Rule, Registration and Monitoring of Certain Nonimmigrants (INS 2216-02, RIN 1115-AG70). This regulation broadened the special registration requirements for nonimmigrant aliens from certain designated countries, and other nonimmigrant aliens whose presence in the United States requires closer monitoring, to require that they provide specific information at regular intervals to ensure their compliance with the terms of their visas and admission and to ensure that they depart the United States at the end of their authorized stay. (67 FR 52584, 8-12-02)
- Interim Rule, Custody Procedures (INS 2171-01, RIN 1115-AG40). This rule changes the period of time after an alien's arrest within which the INS must make a determination whether the alien will be continued in custody or released on bond or recognizance and whether to issue a notice to appear and warrant of arrest. This rule provides that unless voluntary departure has been granted, the INS must make such determinations within 48 hours of arrest, except in the event of emergency or other extraordinary circumstance in which case the INS must make such determinations within an additional reasonable period of time. (66 FR 48334, 9-20-01)
- Interim Rule, Release of Information Regarding INS Detainees in Non-Federal Facilities (INS No. 2203-02, RIN 1115-AG67). This rule governs disclosure by any State or local government entity or by any privately operated facility of the name or other information relating to any immigration detainee being housed or otherwise maintained or provided service on behalf of the INS. This rule establishes a uniform policy on the public release of information on INS detainees. (67 FR 19508, 4-22-02)
- Proposed Rule, Limiting the Period of Admission for B Nonimmigrant Aliens (INS No. 2176-01, RIN 1115-AG43). This proposed action eliminates the minimum admission of B-2 visitors for pleasure, reducing the maximum admission period of B-1 and B-2 visitors from 1 year to 6 months. It will establish greater control over a B visitor's ability to extend status or to change status to that of nonimmigrant student. (67 FR 18605, 4-12-02)
- Interim Rule, Requiring Change of Status from B to F-1 or M-1 Nonimmigrant Prior to Pursuing a Course of Study (INS No. 2195-01, RIN 1115-AG60). This rule eliminates the current provisions allowing a B-1 or B-2 nonimmigrant visitor for business or pleasure to begin attending school without first obtaining approval of a change of nonimmigrant status request from the INS. This change ensures that no B nonimmigrant is allowed to enroll in school until the alien has applied for, and the INS has approved, a change of nonimmigrant status to that of F-1 or M-1 nonimmigrant student. (67 FR 18061, 4-12-02)
- Proposed Rule, Limiting the Number of Transit Without Visa (TWOV) Stops in the United States to One (INS No. 2194-02, RIN 1115-AG59). This proposed action limits the number of transit stops in the United States for those passengers participating in the TWOV program from two stops to one stopover. Current regulations allow an alien to be transported in transit through the United States to another foreign country without first obtaining a nonimmigrant visa from the DOS overseas, provided the carrier and the INS have entered into an immediate and continuous transit agreement pursuant to section 233(c) of the INA.
- Interim Rule, Additions to the List of Countries whose Citizens or Nationals are Ineligible for TWOV Privileges to the United States under the TWOV Program (INS No. 2199-02, RIN 1115-AG16). This rule will rescind standing waivers for certain countries because the Attorney General acting jointly with DOS has determined that it is in the best interests of the United States that nationals of these countries be required to obtain a visa before traveling to the United States.

Bureau of Prisons

- RIN 1120-AB08 "National Security; Prevention of Acts of Violence and Terrorism" (BOP 1116). This rule imposed special administrative measures with respect to specified inmates, where it has been determined to be necessary to prevent the dissemination either of classified information that could endanger the national security or of other information that could lead to acts of violence and terrorism.

Civil Division

- RIN 1105-AA79 "September 11th Victim Compensation Fund of 2001" (CIV 104). Shortly after the attacks the President signed the "September 11th Victim Compensation Fund of 2001" (the "Fund") into law. This Act authorized compensation to any individual (or the personal representative of a deceased individual) who was physically injured or killed as a result of the terrorist-related aircraft crashes on that day. The Department implemented this Act by an Interim rule (published on December 21, 2001, as required by statute), and then provided clarifications and other changes in a final rule (published on March 13, 2002.)

Executive Office for Immigration Review

- RIN 1115-AG41 "Review of Custody Determinations." This rule amended EOIR regulations to expand an existing regulatory provision for a temporary automatic stay of an immigration judge's decision to order an alien's release in any case in which a district director has ordered that the alien be held without bond or has set a bond of $10,000 or more. The detention of an alien during the pendency of proceedings ensures removal by preventing the alien from fleeing and protects the public from potential harm.
- RIN 1125-AA38 "Protective Orders in Immigration Administrative Proceedings" (EOIR 133). In this post-September 11, 2001, era, the highest priority of the Department is to prevent, detect, disrupt, and dismantle terrorism while preserving constitutional liberties. Disclosures of sensitive information could allow terrorists to discern patterns in an investigation, enabling them to evade detection in the future. Accordingly, the Department published the rule "Protective Orders in Immigration Administrative Proceedings" authorizing immigration judges to issue protective orders and seal records relating to law enforcement or national security information.

Foreign Terrorist Tracking Task Force

- RIN 1105-AA80 "Screening of Aliens and Other Designated Individuals Seeking Flight Training" (OAG 104). Also, after September 11th, Congress

enacted the "Aviation and Transportation Security Act" (Pub. L. 107-71) to enhance air safety by prohibiting certain flight schools from training aliens without the prior notification of the Attorney General. Relevant components of the Department (including FBI, INS, and the Foreign Terrorist Tracking Task Force) consulted with the FAA and representatives of the aviation industry to coordinate the Department's implementation of this notification program. Two temporary Federal Register Notices were published (on January 16, 2002, and on February 8, 2002) to provide relief for flight schools who were prohibited from furnishing recurrent training to aliens who were pilots in order to relieve the financial burden imposed by the Act imposed on the aviation industry. The Department published a proposed rule on June 14, 2002, to implement notification procedures for all prospective alien pilots.

The Department of Justice's regulatory priorities focus in particular on four regulatory initiatives in the areas of immigration and civil rights. However, in addition to these four specific initiatives, several other components of the Department carry out important responsibilities through the regulatory process. Although their regulatory efforts are not singled out for specific attention in this regulatory plan, those components carry out key roles in implementing the Department's antiterrorism and law enforcement priorities.

Drug Enforcement Administration

The Drug Enforcement Administration (DEA) is responsible for controlling abuse of narcotics and dangerous drugs, while ensuring adequate supplies for legitimate medical purposes, by regulating the aggregate supply of those drugs. However, now, the growing combination of drug trafficking and terrorism serves to call us even more urgently to action. Nearly one-third of the organizations on the State Department's list of Foreign Terrorist Organizations appear also on the Department's list of targeted United States drug suppliers. DEA accomplishes its objectives through coordination with State, local, and other Federal officials in drug enforcement activities, development and maintenance of drug intelligence systems, regulation of legitimate controlled substances, and enforcement coordination and intelligence-gathering activities with foreign government agencies. DEA continues to develop and enhance regulatory controls relating to the diversion control requirements and to the requirements of the Comprehensive Methamphetamine Control Act of 1996 (MCA) and the Methamphetamine Anti-Proliferation Act of 2000 (MAPA), which regulate certain drug products that are being diverted for the illicit production of methamphetamine. DEA has determined that proceeds from an illegal drug operation in the United States (that was diverting regulated drug products for the production of methamphetamine in violation of the diversion control requirements and the MCA and MAPA) have been funneled to Middle East terrorist groups like Hezbollah.

Civil Rights

The Department and its Civil Rights Division are deeply committed to the rigorous enforcement of this Nation's civil rights laws. In keeping with that commitment, although not a part of the regulatory process, since September 11, 2001, the Civil Rights Division has been and remains committed to the investigation and prosecution of incidents involving violence or threats of violence against people of Middle-Eastern origin, including Arab Americans, Muslim Americans, Sikh Americans, and South-Asian Americans. The Division is also actively involved in outreach efforts to individuals and organizations to provide information about Government services to vulnerable communities.

Additionally, the Division will review and update its regulations implementing the Americans with Disabilities Act of 1990 (ADA), as well as issue a rule pertaining to the Department's authority to review police departments for a pattern or practice of unlawful conduct under the Violent Crime Control and Law Enforcement Act of 1994.

The Department is planning to make revisions in its regulations implementing titles II and III of the ADA to amend the ADA Standards for Accessible Design (28 CFR part 36, appendix A) to be consistent with the revised ADA accessibility guidelines proposed by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) in November 1999 and in final draft form in April 2002. Title II of the ADA prohibits discrimination on the basis of disability by public entities, and title III prohibits such discrimination by places of public accommodation and requires accessible design and construction of places of public accommodation and commercial facilities. In implementing these provisions, the Department of Justice is required by statute to publish regulations that include design standards that are consistent with the guidelines developed by the Access Board.

The Access Board has been engaged in a multiyear effort to revise and amend its accessibility guidelines. The goals of this project have been: 1) to address issues such as unique State and local facilities (e.g., prisons, courthouses), recreation facilities, play areas, and building elements specifically designed for children's use that were not addressed in the initial guidelines; 2) to promote greater consistency between the Federal accessibility requirements and the model codes; and 3) to provide greater consistency between the ADA guidelines and the guidelines that implement the Architectural Barriers Act. The Access Board has proposed and/or adopted guidelines that address all of these issues. Therefore, to comply with the ADA requirement that the ADA standards remain consistent with the Access Board's guidelines, the Department will propose to adopt the changes previously proposed by the Access Board.

The Department also plans to review its regulations implementing title II and title III (28 CFR parts 35 and 36) to ensure that the requirements applicable to new construction and alterations under title II are consistent with those applicable under title III, to review and update the regulations to reflect the current state of law, and to ensure the Department's compliance with section 610 of the Small Business Regulatory Enforcement Fairness Act (SBREFA).

The Department is planning to adopt and interpret the Access Board's revised and amended guidelines in two parts. The first part will be a proposed rule adopting the Access Board's revised and amended guidelines as enforceable standards, which will, in addition to revising the current ADA Standards for Accessible Design, supplement the standards with specifications for prisons, jails, court houses, legislative facilities, building elements designed for use by children, play areas, and recreation facilities. The second part will be an advanced notice of proposed rulemaking seeking public comment on two discreet sets of issues: (i) the Department's interpretation of the new ADAAG and (ii) the section 610 review of the ADA regulations under SBREFA.

The Department's revised and supplemented regulations under the ADA will affect small businesses, small governmental jurisdictions, and other

small organizations (together, small entities). The Access Board has prepared regulatory assessments (including cost impact analyses) to accompany its new guidelines, which estimate the annual compliance costs that will be incurred by covered entities with regard to construction of new facilities. These assessments include the effect on small entities and will apply to new construction under the Department's revised and supplemented regulations. With respect to existing facilities, the Department will prepare an additional regulatory assessment of the estimated annual cost of compliance with regard to existing facilities. In this process, the Department will give careful consideration to the cost effects on small entities, including the solicitation of comments specifically designed to obtain compliance data relating to small entities.

Pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. section 14141 (section 14141), the Attorney General is authorized to file lawsuits seeking court orders to reform police departments engaging in a pattern or practice of conduct that deprives persons of rights, privileges, or immunities secured by the Constitution or laws of the United States. To date, the Department of Justice has conducted reviews of police departments pursuant to section 14141 using informal procedures. The Department plans to issue a rule to formalize the procedures by which the Department reviews police departments for a pattern or practice of unlawful conduct.

DOJ—Civil Rights Division (CRT)

PROPOSED RULE STAGE

78. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES (SECTION 610 REVIEW)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

5 USC 301; 28 USC 509; 28 USC 510; 42 USC 12186(b)

CFR Citation:

28 CFR 36

Legal Deadline:

None

Abstract:

In 1991, the Department of Justice published regulations to implement title III of the Americans with Disabilities Act of 1990 (ADA). Those regulations include the ADA Standards for Accessible Design, which establish requirements for the design and construction of accessible facilities that are consistent with the ADA Accessibility Guidelines (ADAAG) published by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board). In the time since the regulations became effective, the Department of Justice and the Access Board have each gathered a great deal of information regarding the implementation of the Standards. The Access Board is currently in the process of revising ADAAG, and it published a Notice of Proposed Rulemaking (NPRM) on November 16, 1999. In order to maintain consistency between ADAAG and the ADA Standards, the Department is reviewing its title III regulations and expects to propose, in one or more stages, to adopt the revisions proposed by the Access Board and to make related revisions to the Department's title III regulations. In addition to maintaining consistency between ADAAG and the Standards, the purpose of this review and these revisions will be to more closely coordinate with voluntary standards; to clarify areas which, through inquiries and comments to the Department's technical assistance phone lines, have been shown to cause confusion; to reflect evolving technologies in areas affected by the Standards; and to comply with section 610 of the Regulatory Flexibility Act, which requires agencies once every 10 years to review rules that have a significant economic impact upon a substantial number of small entities.

The adoption of revised ADAAG will also serve to address changes to the ADA Standards previously proposed in RIN 1190-AA26 and RIN 1190-AA38, which have been withdrawn. These changes will include technical specifications for facilities designed for use by children and accessibility standards for State and local government facilities that have previously been published by the Access Board.

The timetable set forth below refers to the notice of proposed rulemaking that the Department will issue as the first stage of the above-described title III rulemaking. This notice of proposed rulemaking will be issued under both title II and title III. For purposes of the title III regulation, this notice will propose to adopt revised ADAAG as the ADA Standards for Accessible Design and will initiate the review of the regulation in accordance with the requirements of section 610 of the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

Statement of Need:

Section 504 of the ADA requires the Access Board to issue supplemental minimum guidelines and requirements for accessible design of buildings and facilities subject to the ADA, including title III. Section 306(c) of the ADA requires the Attorney General to promulgate regulations implementing title III that are consistent with the Access Board's ADA guidelines. Because this rule will adopt standards that are consistent with the minimum guidelines issued by the Access Board, this rule is required by statute. Similarly, the Department's review of its title III regulation is being undertaken to comply with the requirements of the Regulatory Flexibility Act, as amended by SBREFA.

Summary of Legal Basis:

The summary of the legal basis of authority for this regulation is set forth above under Legal Authority and Statement of Need.

Alternatives:

The Department is required by the ADA to issue this regulation. Pursuant to SBREFA, the Department's title III regulation will consider whether alternatives to the currently published requirements are appropriate.

Anticipated Cost and Benefits:

The Access Board has analyzed the effect of applying its proposed amendments to ADAAG to entities covered by titles II and III of the ADA and has determined that they constitute a significant regulatory action for purposes of Executive Order 12866. The Access Board's determination will apply as well to the revised ADA standards published by the Department. The Department's proposed procedural amendments will not have a significant impact on small entities.

The Access Board has prepared a regulatory assessment, which includes a cost impact analysis for certain accessibility elements and a discussion of the regulatory alternatives considered. A summary of the Board's regulatory assessment is published at 64 FR 62282 (November 16, 1999). That assessment will also apply to the Department's proposed rule.

Risks:

Without the proposed changes to the Department's title III regulation, the ADA Standards will fail to be consistent with the ADAAG.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

Additional Information:

RIN 1190-AA44, which will effect changes to 28 CFR 36 (the Department's regulation implementing title III of the ADA), is related to another rulemaking of the Civil Rights Division, RIN 1190-AA46, which will effect changes to 28 CFR 35 (the Department's regulation implementing title II of the ADA).

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RIN: 1190–AA44

DOJ—CRT

79. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES (SECTION 610 REVIEW)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

5 USC 301; 28 USC 509 to 510; 42 USC 12134; PL 101-336

CFR Citation:

28 CFR 35

Legal Deadline:

None

Abstract:

On July 26, 1991, the Department published its final rule implementing title II of the Americans with Disabilities Act (ADA). On November 16, 1999, the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) issued its first comprehensive review of the ADA Accessibility Guidelines, which form the basis of the Department's ADA Standards for Accessible Design. The ADA (section 204(c)) requires the Department's standards to be consistent with the Access Board's guidelines. Therefore, the Department will publish a Notice of Proposed Rulemaking (NPRM) proposing to adopt the revisions proposed by the Access Board. The Department will also, in one or more stages, review its title II regulations for purposes of section 610 of the Regulatory Flexibility Act and make related changes to its title II regulations.

In addition to the statutory requirement for the rule, the social and economic realities faced by Americans with disabilities dictate the need for the rule. Individuals with disabilities cannot participate in the social and economic activities of the Nation without being able to access the programs and services of State and local governments. Further, amending the Department's ADA regulations will improve the format and usability of the ADA Standards for Accessible Design; harmonize the differences between the ADA Standards and national consensus standards and model codes; update the ADA Standards to reflect technological developments that meet the needs of persons with disabilities; and coordinate future ADA Standards revisions with national standards and model code organizations. As a result, the overarching goal of improving access for persons with disabilities so that they can benefit from the goods, services, and activities provided to the public by covered entities will be met.

The timetable set forth below refers to the notice of proposed rulemaking that the Department will issue as the first stage of the above-described title II rulemaking. This notice of proposed rulemaking will be issued under both title II and title III. For purposes of the title II regulation, this notice will propose to eliminate the Uniform Federal Accessibility Standards (UFAS) as an alternative to the ADA Standards for Accessible Design and to adopt revised ADAAG as the ADA Standards.

Statement of Need:

Section 504 of the ADA requires the Access Board to issue supplemental minimum guidelines and requirements for accessible design of buildings and facilities subject to the ADA, including title II. Section 204(c) of the ADA requires the Attorney General to promulgate regulations implementing title II that are consistent with the Access Board's ADA guidelines. Because this rule will adopt standards that are consistent with the minimum guidelines issued by the Access Board, this rule is required by statute. Similarly, the Department's review of its title II regulations is being undertaken to comply with the requirements of the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA).

Summary of Legal Basis:

The summary of the legal basis of authority for this regulation is set forth above under Legal Authority and Statement of Need.

Alternatives:

The Department is required by the ADA to issue this regulation as described in the Statement of Need above. Pursuant to SBREFA, the Department's title II regulation will consider whether alternatives to the currently published requirements are appropriate.

Anticipated Cost and Benefits:

The Administration is deeply committed to ensuring that the goals of the ADA are met. Promulgating this amendment to the Department's ADA regulations will ensure that entities subject to the ADA will have one comprehensive regulation to follow. Currently, entities subject to title II of the ADA (State and local governments) have a choice between following the Department's ADA Standards for title III, which were adopted for places of public accommodation and commercial facilities and which do not contain standards for common State and local government buildings (such as courthouses and prisons), or the Uniform Federal Accessibility Standards (UFAS). By developing one comprehensive standard, the Department will eliminate the confusion that arises when governments try to mesh two different standards. As a result, the overarching goal of improving access to persons with disabilities will be better served.

The Access Board has analyzed the effect of applying its proposed

amendments to ADAAG to entities covered by titles II and III of the ADA and has determined that they constitute a significant regulatory action for purposes of Executive Order 12866. The Access Board's determination will apply as well to the revised ADA Standards published by the Department. The Department's proposed procedural amendments will not have a significant impact on small entities.

The Access Board has prepared a regulatory assessment, which includes a cost impact analysis for certain accessibility elements and a discussion of the regulatory alternatives considered. A summary of the Board's regulatory assessment is published at 64 FR 62282 (November 16, 1999). That assessment will also apply to the Department's proposed rule.

The Access Board has made every effort to lessen the impact of its proposed guidelines on State and local governments but recognizes that the guidelines will have some federalism effects. These affects are discussed in the Access Board's regulatory assessment, which also applies to the Department's proposed rule.

Risks:

Without this amendment to the Department's ADA regulations, regulated entities will be subject to confusion and delay as they attempt to sort out the requirements of conflicting design standards. This amendment should eliminate the costs and risks associated with that process.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

State, Local

Federalism:

This action may have federalism implications as defined in EO 13132.

Additional Information:

RIN 1190-AA46, which will effect changes to 28 CFR 35 (the Department's regulation implementing title II of the ADA), is related to another rulemaking of the Civil Rights Division, RIN 1190-AA44, which will effect changes to 28 CFR 36 (the Department's regulation implementing title III of the ADA). By adopting revised ADAAG, this rulemaking will, among other things, address changes to the ADA Standards previously proposed in RINs 1190-AA26, 1190-AA36, and 1190-AA38, which have been withdrawn and merged into this rulemaking. These changes include accessibility standards for State and local government facilities that had been previously published by the Access Board (RIN 1190-AA26) and the timing for the compliance of State and local governments with the curb-cut requirements of the title II regulation (RIN 1190-AA36). In order to consolidate regulatory actions implementing title II of the ADA, on February 15, 2000, RINs 1190-AA26 and 1190-AA38 were merged into this rulemaking and on March 5, 2002, RIN 1190-AA36 was merged into this rulemaking.

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RIN: 1190–AA46

DOJ—Immigration and Naturalization Service (INS)

PROPOSED RULE STAGE

80. CARRIER ARRIVAL AND DEPARTURE ELECTRONIC MANIFEST REQUIREMENTS

Priority:

Other Significant

Legal Authority:

PL 107-173; PL 106-96; 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1221; 8 USC 1228; 8 USC 1229

CFR Citation:

8 CFR 231

Legal Deadline:

Final, Statutory, January 1, 2003.

Public Law 107-173, the Visa Waiver Permanent Program Act (VWPPA), sets a mandatory deadline of October 1, 2002.

Abstract:

There are four principal laws that require the Attorney General to develop an automated and integrated entry/exit data system for aliens:

1. The Immigration and Naturalization Service Data Management Improvement Act (DMIA), Public Law 106-21;

2. The Visa Waiver Permanent Program Act (VWPPA), Public Law 106-396;

3. The USA PATRIOT Act, Public Law 107-56; and

4. The Enhanced Border Security and Visa Entry Reform Act (Border Security Act), Public Law 107-173.

Implementation of the relevant provisions in these four laws together will result in the Entry/Exit System. One of the basic legislative mandates is that the system integrate the available alien arrival and departure data that exist in any Department of Justice (DOJ) or Department of State (DOS) data base or system. This necessarily must include the systems that incorporate carrier manifest data on passengers and crew members who are entering or leaving the U.S. via air or sea. Section 231 of the Immigration and Nationality Act (INA) and 8 CFR part 231 state the requirements for carrier manifests.

In section 402 of the Border Security Act, Congress amended the manifest requirements in INA, section 231. The Border Security Act requires the submission of arrival and departure manifests electronically in advance of a commercial aircraft or vessel's arrival in or departure from the United States not later than January 1, 2003. Promulgation of regulations to implement this law will provide the Service with advance notification of information necessary for the identification of passengers and crewmembers on commercial carriers. The contents of the electronic arrival and departure manifest include: (1) complete name; (2) date of birth; (3) citizenship; (4) sex; (5) passport number and country of issuance; (6) country of residence; (7) United States visa number, date, and place of issuance, where applicable; (8) alien registration; (9) United States address while in the United States; and (10) such other information the Attorney General, in consultation with the Secretary of State and the Secretary of Treasury determines as being necessary for the identification of the persons transported and for the enforcement of the immigration laws and to protect safety and national security.

In October 2000, Congress also amended section 217 of the INA to make the Visa Waiver Pilot a permanent program. The VWPPA also added a specific requirement for a "fully automated entry and exit control system" covering all aliens who enter the United States under the VWP at airports and seaports. The requirements for this system are both narrower and broader, in different respects, than the DMIA automated system requirements. The VWP entry/exit system will be incorporated into the broader Entry/Exit System mandated by DMIA. In addition, the VWPPA states that no alien arriving by air or sea may be granted a visa waiver under INA, section 217, on or after October 1, 2002, unless the carrier is submitting passenger information electronically to the VWP entry/exit system, as required by the Attorney General. The Service is separately promulgating regulations to amend 8 CFR part 217 to implement the electronic manifest requirements for VWP purposes.

Statement of Need:

The INS is pursuing rulemaking to aid in implementing a major component of the President's directive on Homeland Security: An improved entry/exit system that will track the arrival and departures of foreign visitors who come to the United States. The carrier electronic manifest regulations are necessary to implement the statutory requirements of the Border Security Act and VWPPA. In addition, collection of this electronic arrival/departure manifest information will be incorporated into the Entry/Exit system that is mandated in DMIA, the USA PATRIOT Act, and the Border Security Act. Failure to fully implement these regulations could result in adverse consequences to national security because INS would not have advance notification of the arrival and departure of foreign visitors and therefore would be unable to check their names against relevant law enforcement data bases. The historical record reveals that Congress has a strong interest in documenting the arrival and departure of aliens, and recent legislation demonstrates that relief from this requirement is unlikely. Therefore, the Immigration and Naturalization Service must immediately begin development of an entry/exit system, which includes the electronic manifest information and that meets the will of Congress.

Summary of Legal Basis:

See Statement of Need. These actions are required by the statute as explained in the Statement of Need.

Alternatives:

Public Law 107-173 statutorily amends section 231 of the Immigration and Nationality Act and requires that commercial carriers submit electronic arrival and departure manifests to the INS. The only means of implementing this change is through rulemaking.

Anticipated Cost and Benefits:

The enactment of section 402 of Public Law 107-173 reflects Congress' desire to ensure that commercial air and sea carriers submit to immigration officials passenger and crew information in such timeframes and in such a format so as to maximize the Government's efforts to (1) timely identify persons being transported to and from the United States, (2) enforce the immigration laws, and (3) protect public safety and national security. In addition to strengthening homeland security, the INS has focused on reengineering its regulations that govern nonimmigrant and admission requirements. The INS will continue to advance the President's objectives with regulatory initiatives that are focused on minimizing regulatory burdens on the public and increasing the efficiency of the Agency operations. The President's FY 2003 budget has allocated $362 million for the development of the entry/exit system. The INS is in the process of developing a project plan and estimated costs and benefits of different alternatives for utilizing this funding.

The INS is in the process of reengineering its inspections process with automated inspections systems for low-risk travelers. Commercial air carriers operating passenger flights have been required to electronically submit many of the data elements to the U. S. Customs Service in advance of arrival since December 21, 2001, and therefore, the INS plans to build upon these existing concepts to benefit the business community and the public.

Risks:

This regulatory action is critical for complete and clear implementation of the provisions of the recent legislation discussed above. The regulation will clarify the confusion that exists in the immigration and business community as to the scope and applicability of many of these provisions and will thus prevent the public from taking actions, which may unintentionally trigger adverse immigration consequences. Delay in this rulemaking or failure to promulgate will perpetuate confusion among the public and lead to members of the public unwittingly incurring adverse immigration consequences. Failure to implement these regulations in a timely manner may jeopardize national security and increase the costs to implement new alternative inspections methods. Finally, and not insignificantly, failure to publish the amended section 231 regulations will result in INS and DOJ not being in compliance with the laws as passed by Congress. As with any major program, implementation of the new electronic manifest requirements is not without some challenges.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

INS No. 2182-01

Sectors Affected:

481 Air Transportation

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Related RIN: Related To 1115-AG73, Related To 1115-AG68

RIN: 1115–AG57

DOJ—INS

FINAL RULE STAGE

81. REVISION OF THE REGULATIONS CONCERNING F, J, AND M NONIMMIGRANT CLASSIFICATIONS

Priority:

Other Significant

Legal Authority:

5 USC 552, 552(a); 8 USC 1101, 1103, 1201, 1252 note, 1252(b), 1304, 1356; 31 USC 9701; EO 12356; 8 USC part 2; ...

CFR Citation:

8 CFR 103; 8 CFR 214

Legal Deadline:

None

Abstract:

This rule lays the foundation for the implementation of the Student and Exchange Visitor Information System (SEVIS), an Internet-based system that provides tracking and monitoring functionality, with access to accurate and current information on nonimmigrant students and exchange visitors. There are three principal laws that require the Attorney General to develop an automated system to track foreign students and exchange visitors:

1. Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA);

2. Section 416 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT); and

3. Section 501 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Border Security Act).

IIRIRA requires the Service to collect current information, on an ongoing basis, from schools and exchange programs relating to nonimmigrant foreign students and exchange visitors during their course of stay in the United States. In addition, the USA PATRIOT Act amended section 641 of IIRIRA to require full implementation and expansion of SEVIS prior to January 1, 2003. Furthermore, the Border Security Act clarifies the collection of information required by SEVIS and adds the specific requirement that educational institutions report any failure of an alien to enroll not later than 30 days after the registration deadline of the institution. Finally, Presidential Directive No. 2 and the findings released by the Office of the Inspector General have also had a significant impact on the direction of the student program at the Service.

While this rule implements SEVIS and its requirements, SEVIS is only one component of the Service's Student and Exchange Visitor Program (SEVP). Further rulemakings are a necessary part of the overall reengineering process and success of SEVP, which encompasses the review and registration of all schools and exchange programs in SEVIS prior to January 30, 2003, subsequent recertifications every 2 years, and the student fee regulation mandated by Congress in IIRIRA to pay for the operation and maintenance of SEVIS.

As part of this ongoing program, the Service published an interim rule at 67 FR 44344 (July 1, 2002) allowing schools that met certain criteria to preliminarily enroll in SEVIS beginning on July 1, 2002. In early fall, the Service will publish another rule that will require all schools to apply for certification in SEVIS in order to be able to begin accepting or continue accepting foreign students after the SEVIS mandatory compliance date. Additionally, the Service will publish a rule describing the recertification, withdrawal, and denial process for SEVIS. Finally, the Service will reintroduce a rule for the collection of the fee for all F, J, and M nonimmigrants.

Statement of Need:

This regulation is necessary to implement the statutory requirements of IIRIRA, the USA PATRIOT ACT, and the Border Security Act. Failure to implement will result in adverse consequences to national security. The historical record reveals that Congress has a strong interest in monitoring foreign students and exchange visitors for the duration of their stay in the United States.

Additionally, the climate of the current administration as evidenced by Presidential Directive No. 2 and the findings of the Office of the Inspector General demonstrate that the student program is a high priority. Therefore, the Service must steadfastly continue to improve upon the SEVP program, implement the process to monitor foreign students and exchange visitors, as well as to complete the process by which all schools and programs use SEVIS prior to the acceptance of any foreign students or exchange visitors.

Summary of Legal Basis:

See Abstract and Statement of Need. These actions are required by statute as explained in the Abstract and the Statement of Need.

Alternatives:

None.

Anticipated Cost and Benefits:

This regulation implements the new processes and requirements for the electronic exchange and update of information. In 1994, the Service began conducting a comprehensive review and analysis of the foreign student program, both upon admission to the United States and on a continuing basis. Based on these findings, the Service established a plan to reengineer the business process.

Currently, updates to nonimmigrant student and exchange visitor information (e.g., change of address, extensions, curricular practical training) are submitted by the Service or the educational institution or exchange program to the Service via a paper copy. A significant amount of time lapses as the paperwork is routed and data entered by a contractor.

The utilization of SEVIS gives the schools and program sponsors the ability to make real-time updates without routing paperwork to a contractor. The SEVIS process reduces the risk of paperwork being lost or sent to an incorrect address and eliminates the risk of inaccurate information being entered by the data entry contractor. The elimination of the contractor will result in a monetary savings as the current data entry costs associated with the existing process average $800,000 per year. Finally, the information is stored electronically in SEVIS, thus reducing the need to store paper copies during and after routing and data entry, by both the Service and the educational institutions and sponsors.

Risks:

This regulatory action is critical for complete and clear implementation of the provisions of the legislation as well as the overall student program. The regulation will clarify for designated school officials and others in the education community the scope, applicability, and process for the exchange of student and school information and will prevent actions which may unintentionally trigger adverse immigration consequences.

Delay in this rulemaking or failure to promulgate will cause the Service to miss the dates mandated by Congress.

Timetable:

Action	Date	FR Cite
NPRM (INS 2185-02)	05/16/02	67 FR 34862
NPRM Comment Period End	06/16/02	
Interim Final Rule (INS 2211-02)	07/01/02	67 FR 44343
Interim Final Rule Comment Period End	07/31/02	
Final Action (INS 2185-02)	11/00/02	
Final Action (INS 2211-02)	12/00/02	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

INS No. 2185-02 (See also RIN 1115-AF56, INS No. 1991-99, which amends Service regulations to establish a fee for F, J, and M nonimmigrants. See also RIN 1115-AG71 "Requiring Certification of Service Approved Schools for Enrollment in SEVIS.)

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BILLING CODE 4410-BP-S

DEPARTMENT OF LABOR (DOL)

2002 Regulatory Plan

Executive Summary: Making Worker Protections Work

A new culture of responsibility is being built at the Department of Labor (DOL) whereby its employees will be responsible for helping the regulated community understand DOL's exhaustive list of rules and regulations. The Department understands that before any business or other regulated entity can comply with DOL's rules, they must be understandable and communicated clearly.

Since its creation in 1913, the Department of Labor has been guided by the idea that employers must be held responsible for the protection of their employees — protection of their wages, pensions, safety and health. In turn, the Department of Labor recognizes that it is responsible for helping employers and others understand and comply with their responsibilities under the Department's many laws and regulations.

The Department has always known that the vast majority of employers work hard to keep their employees and workplaces safe and secure and that employers who knowingly neglect or abuse their employees are a very small minority. DOL must provide this vast majority who want to comply with the knowledge and tools they need to carry out their legal responsibilities and obligations. To ensure DOL does this, the Secretary has made protecting workers through compliance assistance one of her top priorities. Her compliance assistance initiative is based on the proven success that comes when Government, employers, unions and employees work together to ensure that worker protections work.

As an essential part of this initiative, the Department of Labor is making the information it provides, including new or revised regulations, clearer, more helpful and more accessible. DOL has developed compliance materials in plain language, as well as online programs that answer questions and direct users to information that is easy to understand. DOL also is using its Web site, e-mail, toll-free numbers (e.g., the Call Center), and partnerships to convey this information when and where it is needed. And employers know that requesting compliance assistance materials through any of these means will not lead to referrals for investigation.

DOL's goal is to touch every workplace in a positive way, through sharing information and offering a helping hand. DOL will emphasize prevention, relying on the use of common-sense standards of safety and fairness to prevent workers from being harmed physically or economically. Education and encouragement of employers will help workers far more than enforcement alone, since no enforcement process can possibly identify every violation of the law, and fines and penalties can never fully redress losses of life, health, and economic well-being.

DOL has responsibilities beyond worker protection. It recognizes that the emerging 21st century economy presents challenges to workers at all skill levels and in all walks of life. Those who have been laid off from jobs because their companies could not adapt to technological changes or foreign competition, or those workers who are disabled, who did not get a full education, or who made a wrong turn at some point in their lives, cannot be left behind. Some of these workers, especially young workers, need training in basic skills and help in becoming acclimated to working life. Other workers need assistance in learning new skills or in obtaining advanced schooling.

At the same time, high-technology industries are creating job opportunities unheard of even a decade ago. DOL must help employers and workers bridge the gap between the requirements of those jobs and the skills of the workers who are needed to fill them. Workers who can keep their skills up to date throughout their careers have more productive and more rewarding economic futures.

The Secretary of Labor's Regulatory Plan for Accomplishing These Objectives

The balance between labor and management that underlies the country's labor laws is a crucial source of stability in our economy, and the need for labor and management to work together has become increasingly evident in recent years. For these reasons, any change in the regulations that implement the country's labor laws must be carefully considered, and the views of all affected parties must be taken into account.

In general, DOL will try to help employees and employers meet their needs in a cooperative fashion, with a minimum of rulemaking. However, to reflect changes in technology and business practices, to implement new laws and clarify existing rules in light of new laws and legal interpretations, and to rewrite rules in plain language, DOL needs to engage in rulemaking.

In doing so, DOL will craft proposals that are responsive to workers' needs yet understanding of employers' desire for the least burdensome regulatory alternative. These proposals will span an entire range of work environments, from traditional settings that have well-defined conditions and locations of work, to newly emerging settings that are more flexibly structured in terms of schedules and workplaces.

Similarly, the skills needed by today's workforce are more varied than at any time in our country's history, and they continue to change at a rapid rate. Changes in the financial marketplace, as well as in compensation and benefit arrangements, present both challenges and opportunities for today's workers.

The following proposals represent what DOL believes to be a balanced plan for protecting workers in their current jobs and preparing them for future employment while making it easier for the regulated community to play its part. DOL considers these proposals to be proactive, common-sense approaches to the issues most clearly needing regulatory attention.

The Department's Regulatory Priorities

DOL has identified 20 high-priority items for regulatory action. Nine of them address health and safety issues, which are central to DOL's mission and which represent a major focus of the Secretary. Two agencies, the Mine Safety and Health Administration (MSHA) and the Occupational Safety and Health Administration (OSHA), are responsible for these initiatives.

MSHA administers the Federal Mine Safety and Health Act of 1977 (Mine Act). The agency demonstrates its commitment to ensuring safer and healthier workplaces for the Nation's miners in a number of ways, but Government intervention alone cannot eliminate occupational deaths, injuries and illnesses in mining. The commitment of miners and mine operators is also needed. MSHA will continue to concentrate on improving existing health standards and addressing emerging health hazards in mining.

While levels of respirable coal dust have been significantly reduced over the years, some miners continue to develop coal workers' pneumoconiosis. MSHA intends to reopen the record for the

rulemaking on the Determination of Concentration of Respirable Coal Mine Dust (RIN 1219-AB18), and repropose Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust (RIN 1219-AB14). The former rule would permit MSHA to determine the level of mine dust on the basis of a single sample. The latter rule would help assure that operators' dust control plans are effective under typical mining conditions. These rules work in tandem to address miners' exposure to respirable coal dust.

MSHA is considering lowering the permissible exposure limit (PEL) for asbestos at metal and nonmetal and coal mines, addressing take-home contamination, and reevaluating the method used for sample analysis (RIN 1219-AB24). MSHA conducted a series of public meetings earlier this year to allow early participation in the rulemaking by interested parties. MSHA will be evaluating those comments as it prepares a notice of proposed rulemaking.

In response to litigation and a partial settlement agreement regarding its final rule on Diesel Particulate Matter, MSHA has initiated a rulemaking on Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners (RIN 1219-AB29). MSHA will address several provisions of the final standard, including changing the diesel particulate matter surrogate from total carbon to elemental carbon for the concentration limits, addressing the diesel particulate matter control plan, and revising requirements regarding the use of personal protective equipment and administrative controls to comply with the concentration limits.

The Occupational Safety and Health Administration administers a wide range of measures throughout the public and private sectors. OSHA is committed to establishing clear and sensible priorities, reducing occupational deaths, injuries, and illnesses; and simplifying its recordkeeping requirements.

Three of OSHA's high-priority initiatives address health standards. The first, Standards Improvement, will streamline a number of such health standards by removing language that is outdated, duplicative, unnecessary or inconsistent (RIN 1218-AB81). These changes will reduce the amount of time and effort needed to understand and comply with these standards.

The second, a revision to the Respiratory Protection Standard, will address Assigned Protection Factors for different types of respirators (RIN 1218-AA05). This action will improve respiratory protection for employees required to wear respirators, as well as making it easier for employers to choose the appropriate respirator for a given task.

OSHA's third initiative in the area of health standards addresses worker exposure to Crystalline Silica (RIN 1218-AB70). This substance is one of the most widely found in workplaces, and data have indicated that exposure to it may cause a debilitating respiratory disease called silicosis. Exposure also has been linked to cancer. OSHA is collecting information to determine what regulatory action might be appropriate to address these occupational health concerns.

OSHA has two initiatives in the area of safety standards. The first concerns Fires in Shipyards (RIN 1218-AB51). A negotiated rulemaking committee completed its work earlier this year, and recommended regulatory actions to address this issue. Fires in shipyards claim an average of one life a year, as well as causing 110 lost-workday "heat/burn" injuries, and more than three times that many total injuries. This rule will provide a comprehensive approach to dealing with fires in shipyard environments to help prevent these deaths and injuries.

OSHA's second safety initiative addresses requirements for Exit Routes, formerly known as Means of Egress (RIN 1218-AB82). OSHA has rewritten these important provisions in plain language to help ensure they are properly understood and implemented.

Protection of pension and health benefits continues to be a priority of the Secretary of Labor. As a member of the President's Task Force to strengthen retirement security, the Secretary played a major role in formulating legislative proposals to give workers better information about their pension rights, increased freedom to choose where to invest their retirement savings, and expanded access to investment advice. Two of these proposals were enacted as part of the Sarbanes-Oxley Act of 2002.

Consistent with the Secretary's priorities, the Pension and Welfare Benefits Administration (PWBA), which administers the Employee Retirement Income Security Act (ERISA), will focus on implementation of the recently enacted retirement security amendments to ERISA relating to the timely notification of participants and beneficiaries of periods during which they will be unable to direct investments in their 401(k) plan (RIN 1210-AA90) and civil penalties for failures to provide these notices (RIN 1210-AA91).

PWBA's regulatory program also will focus on compliance assistance to group health plans through issuance of guidance, as well as model forms and notices. Specific initiatives include guidance for group health plans on the application of the continuation of coverage notice provisions (RIN 1210-AA60); access, portability and renewability provisions (RIN 1210-AA54); and nondiscrimination provisions of ERISA (RIN 1210-AA77).

ERISA's requirements affect an estimated 730,000 private sector employee pension benefit plans (covering approximately 99 million participants); an estimated 2.5 million group health benefit plans (covering 131 million participants and dependents); and 3.4 million other welfare benefits plans (covering approximately 190 million participants).

The Secretary's emphasis on meeting the needs of the 21st century workforce is reflected in the first regulatory initiative developed by the Employment and Training Administration (ETA). ETA will issue regulations reflecting recent changes to the Trade Adjustment Assistance (TAA) program, as enacted in the Trade Act of 2002 (RIN 1205-AB32). The proposed rule would address the many new features of the TAA program: consolidation of the TAA and NAFTA-TAA programs; immediate services to workers to facilitate more rapid reemployment; expanded eligibility; increased benefits, including health care assistance; and an Alternative TAA Program for older workers. The new regulations will be in plain English, making them easier to read and use.

ETA's second regulatory initiative also focuses on meeting the needs of our workforce by improving the quality of employment services provided to low-income senior citizens under the Older Americans Act (RIN 1205-AB28). These individuals often need assistance in developing skills and obtaining work experience so that they can obtain unsubsidized work. This rule will also improve performance accountability and enhance the ability of the States to coordinate services.

In its third initiative, ETA proposes to reengineer the permanent labor certification process (RIN 1205-AA66). ETA's goals are to make fundamental changes that will streamline the process; save resources; improve the

effectiveness of the program; and better serve the Department of Labor's customers.

Finally, the Employment Standards Administration (ESA) has set forth three priority regulatory initiatives. Among the statutes enforced by the Wage and Hour Division is the Fair Labor Standards Act (FLSA), which sets requirements for payment of minimum wages and overtime pay to more than 100 million employees. It also defines conditions for the employment of minors.

The Wage and Hour Division's first initiative updates the child labor rules issued under the FLSA to address changes in the nature of the workplace and situations in which minors may operate certain kinds of machinery (RIN 1215-AA09). While young workers need employment experiences that will help them gain the skills needed to find and hold good jobs later in life, they also need to focus on obtaining high-quality educations, and ensuring that their work hours are reasonable will help them do so.

The Wage and Hour Division's second initiative revises and clarifies the criteria that define the minimum wage and overtime exemptions for "executive," "administrative," "professional," and "outside sales" employees under the FLSA (RIN 1215-AA14). These regulations were nominated for reform in a public comment on OMB's 2001 Report to Congress on the Costs and Benefits of Regulations. The issues of concern raised by various interested parties are being carefully examined in the development of proposed changes. Changes to these rules will help employers meet their obligations voluntarily and enhance workers' understanding of their rights and benefits.

The Wage and Hour Division's third initiative pertains to regulations issued under the Family and Medical Leave Act (FMLA) that were also nominated as a reform candidate in OMB's 2001 Report to Congress on Costs and Benefits of Regulations. Revisions will be proposed to the FMLA's implementing regulations to address issues raised by the decision of the U.S. Supreme Court in *Ragsdale v. Wolverine World Wide, Inc.*, 122 S. Ct. 1155 (2002), and the decisions of other courts.

DOL—Employment Standards Administration (ESA)

PROPOSED RULE STAGE

82. DEFINING AND DELIMITING THE TERM "ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY" (ESA/W-H)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

29 USC 213(a)(1)

CFR Citation:

29 CFR 541

Legal Deadline:

None

Abstract:

These regulations set forth the criteria for exemption from the Fair Labor Standards Act's minimum wage and overtime requirements for "executive," "administrative," "professional," and "outside sales employees." To be exempt, employees must meet certain tests relating to duties and responsibilities and be paid on a salary basis at specified levels. A final rule increasing the salary test levels was published on January 13, 1981 (46 FR 3010), to become effective on February 13, 1981, but was indefinitely stayed on February 12, 1981 (46 FR 11972). On March 27, 1981, a proposal to suspend the final rule indefinitely was published (46 FR 18998), with comments due by April 28, 1981. As a result of numerous comments and petitions from industry groups on the duties and responsibilities tests, and as a result of case law developments, the Department concluded that a more comprehensive review of these regulations was needed. An ANPRM reopening the comment period and broadening the scope of review to include all aspects of the regulations was published on November 19, 1985, with the comment period subsequently extended to March 22, 1986.

The Department has revised these regulations since the ANPRM to address specific issues. In 1991, as the result of an amendment to the Fair Labor Standards Act (FLSA), the regulations were revised to permit certain computer systems analysts, computer programmers, software engineers, and other similarly skilled professional employees to qualify for the exemption, including those paid on an hourly basis if their rates of pay exceed 6 1/2 times the applicable minimum wage. Also, in 1992 the Department issued a final rule which modified the exemption's requirement for payment on a "salary basis" for otherwise exempt public sector employees.

Statement of Need:

These regulations contain the criteria used to determine if an employee is exempt from the FLSA as an "executive," "administrative," "professional," or "outside sales" employee. The existing salary test levels used in determining which employees qualify as exempt were adopted in 1975 on an interim basis. These salary level tests are outdated and offer little practical guidance in applying the exemption. In addition, numerous comments and petitions have been received from industry groups regarding the duties and responsibilities tests in the regulations, requesting a review of these regulations.

These regulations have been revised to deal with specific issues. In 1991, as the result of an amendment to the FLSA, the regulations were revised to permit certain computer systems analysts, computer programmers, software engineers, and other similarly skilled professional employees to qualify for the exemption, including those paid on an hourly basis if their rates of pay exceed 6 1/2 times the applicable minimum wage. Also in 1991, the Department undertook separate rulemaking on another aspect of the regulations, the definition of "salary basis" for public-sector employees. Because of the limited nature of these revisions, the regulations are still in need of updating and clarification.

Summary of Legal Basis:

These regulations are issued under the statutory exemption from minimum wage and overtime pay provided by section 13(a)(1) of the Fair Labor Standards Act, 29 USC 213(a)(1), which requires the Secretary of Labor to issue regulations that define and delimit the terms "any employee employed in a bona fide, executive, administrative, or professional capacity... or in the capacity of outside salesman..." for purposes of applying the exemption to employees who meet the specified criteria.

Alternatives:

The Department will involve affected interest groups in developing regulatory alternatives. Following completion of these outreach and consultation activities, full regulatory alternatives will be developed.

Although legislative proposals have been introduced in Congress to address certain aspects of these regulations, the Department continues to believe revisions to the regulations are the appropriate response to the concerns raised. Alternatives likely to be considered range from particular changes to address "salary basis" and salary level issues to a comprehensive overhaul of the regulations that also addresses the duties and responsibilities tests.

Anticipated Cost and Benefits:

Some 19 to 26 million employees are estimated to be within the scope of these regulations. Legal developments in court cases are changing the guiding interpretations under this exemption and creating law without considering a comprehensive analytical approach to current compensation concepts and workplace practices. Clear, comprehensive, and up-to-date regulations would provide for central, uniform control over the application of these regulations and ameliorate many concerns. In the public sector, State and local government employers contend that the rules are based on production workplace environments from the 1940s and 1950s that do not readily adapt to contemporary government functions. The Federal Government also has concerns regarding the manner in which the courts and arbitration decisions are applying the exemption to the Federal workforce. Resolution of confusion over how the regulations are to be applied in the public sector will ensure that employees are protected, that employers are able to comply with their responsibilities under the law, and that the regulations are enforceable. Preliminary estimates of the specific costs and benefits of this regulatory action will be developed once the various regulatory alternatives are identified.

Risks:

This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
Indefinite Stay of Final Rule	02/12/81	46 FR 11972
Proposal To Suspend Rule	03/27/81	46 FR 18998
ANPRM	11/19/85	50 FR 47696
Extension of ANPRM Comment Period	01/17/86	51 FR 2525
ANPRM Comment Period End	03/22/86	
NPRM	01/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Federal

Federalism:

This action may have federalism implications as defined in EO 13132.

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RIN: 1215–AA14

DOL—ESA

83. • FAMILY AND MEDICAL LEAVE ACT OF 1993

Priority:

Other Significant

Unfunded Mandates:

Undetermined

Legal Authority:

29 USC 2654

CFR Citation:

29 CFR 825

Legal Deadline:

None

Abstract:

The U.S. Supreme Court, in Ragsdale v. Wolverine World Wide, Inc., 122 S. Ct. 1155 (2002), invalidated regulatory provisions issued under the Family and Medical Leave Act (FMLA) pertaining to the effects of an employer's failure to timely designate leave that is taken by an employee as being covered by the FMLA. The Department intends to propose revisions to the FMLA regulations to address issues raised by this and other judicial decisions.

Statement of Need:

The FMLA requires covered employers to grant eligible employees up to 12 workweeks of unpaid, job-protected leave a year for specified family and medical reasons, and to maintain group health benefits during the leave as if the employees continued to work instead of taking leave. When an eligible employee returns from FMLA leave, the employer must restore the employee to the same or an equivalent job with equivalent pay, benefits, and other conditions of employment. FMLA makes it unlawful for an employer to interfere with, restrain, or deny the exercise of any right provided by the FMLA.

The FMLA regulations require employers to designate if an employee's use of leave is counting against the employee's FMLA leave entitlement, and to notify the employee of that designation (29 CFR section 825.208). Section 825.700(a) of the regulations provides that if an employee takes paid or unpaid leave and the employer does not designate the leave as FMLA leave, the leave taken does not count against the employee's 12 weeks of FMLA leave entitlement.

On March 19, 2002, the U.S. Supreme Court issued its decision in Ragsdale v. Wolverine World Wide, Inc., 122 S. Ct. 1155 (2002). In that decision, the Court invalidated regulatory provisions pertaining to the effects of an employer's failure to timely designate leave that is taken by an employee as being covered by the FMLA. The Court ruled that 29 CFR section 825.700(a) was invalid absent evidence that the employer's failure to designate the leave as FMLA leave interfered with the employee's exercise of FMLA rights. This proposed rule is being prepared to address issues raised by this and other judicial decisions.

Summary of Legal Basis:

This rule is issued pursuant to section 404 of the Family and Medical Leave Act, 29 U.S.C. section 2654.

Alternatives:

After completing a review and analysis of the Supreme Court's decision in Ragsdale and other judicial decisions, regulatory alternatives will be developed for notice-and-comment rulemaking.

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Anticipated Cost and Benefits:

The costs and benefits of this rulemaking action are not expected to exceed $100 million per year or otherwise trigger economic significance under Executive Order 12866.

Risks:

This rulemaking action does not directly affect risks to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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DOL—ESA

FINAL RULE STAGE

84. CHILD LABOR REGULATIONS, ORDERS, AND STATEMENTS OF INTERPRETATION (ESA/W-H)

Priority:

Other Significant

Legal Authority:

29 USC 203(e)

CFR Citation:

29 CFR 570

Legal Deadline:

None

Abstract:

Section 3(l) of the Fair Labor Standards Act requires the Secretary of Labor to issue regulations with respect to minors between 14 and 16 years of age ensuring that the periods and conditions of their employment do not interfere with their schooling, health, or well-being. The Secretary is also directed to designate occupations that are particularly hazardous for minors 16 and 17 years of age. Child Labor Regulation No. 3 sets forth the permissible industries and occupations in which 14- and 15-year-olds may be employed, and specifies the number of hours in a day and in a week, and time periods within a day, that such minors may be employed. The Department has invited public comment in considering whether changes in technology in the workplace and job content over the years require new hazardous occupation orders, and whether changes are needed in some of the applicable hazardous occupation orders. Comment has also been solicited on whether revisions should be considered in the permissible hours and time-of-day standards for 14- and 15-year-olds. Comment has been sought on appropriate changes required to implement school-to-work transition programs. Additionally, Congress enacted Public Law 104-174 (August 6, 1996), which amended FLSA section 13(c) and requires changes in the regulations under Hazardous Occupation Order No. 12 regarding power-driven paper balers and compactors, to allow 16- and 17-year-olds to load, but not operate or unload, machines meeting applicable American National Standards Institute (ANSI) safety standards and certain other conditions. Congress also passed the Drive for Teen Employment Act, Public Law 105-334 (October 31, 1998), which prohibits minors under age 17 from driving automobiles and trucks on public roads on the job and sets criteria for 17-year-olds to drive such vehicles on public roads on the job.

Statement of Need:

Because of changes in the workplace and the introduction of new processes and technologies, the Department is undertaking a comprehensive review of the regulatory criteria applicable to child labor. Other factors necessitating a review of the child labor regulations are changes in places where young workers find employment opportunities, the existence of differing Federal and State standards, and the divergent views on how best to correlate school and work experiences. Under the Fair Labor Standards Act, the Secretary of Labor is directed to provide by regulation or by order for the employment of youth between 14 and 16 years of age under periods and conditions which will not interfere with their schooling, health and well-being. The Secretary is also directed to designate occupations that are particularly hazardous for youth between the ages of 16 and 18 years or detrimental to their health or well-being. The Secretary has done so by specifying, in regulations, the permissible industries and occupations in which 14- and 15-year-olds may be employed, and the number of hours per day and week and the time periods within a day in which they may be employed. In addition, these regulations designate the occupations declared particularly hazardous for minors between 16 and 18 years of age or detrimental to their health or well-being.

Public comment has been invited in considering whether changes in technology in the workplace and job content over the years require new hazardous occupation orders or necessitate revision to some of the existing hazardous orders. Comment has also been invited on whether revisions should be considered in the permissible hours and time-of-day standards for the employment of 14- and 15-year-olds, and whether revisions should be considered to facilitate school-to-work transition programs. When issuing the regulatory proposals (after review of public comments on the advance notice of proposed rulemaking), the Department's focus was on assuring healthy, safe and fair workplaces for young workers, and at the same time promoting job opportunities for young people and making regulatory standards less burdensome to the regulated community.

Summary of Legal Basis:

These regulations are issued under sections 3(l), 11, 12, and 13 of the Fair Labor Standards Act, 29 USC sections 203(l), 211, 212, and 213 which require the Secretary of Labor to issue regulations prescribing permissible time periods and conditions of employment for minors between 14 and 16 years old so as not to interfere with their schooling, health, or well-being, and to designate occupations that are particularly hazardous or detrimental to the health or well-being of minors under 18 years old.

Alternatives:

Regulatory alternatives developed based on recent legislation and the public comments responding to the advance notice of proposed rulemaking included specific proposed additions or modifications to the paper baler, teen driving, explosive materials, and roofing hazardous occupation orders, and proposed changes to the permissible cooking activities that 14- and 15-year-olds may perform in retail establishments.

Anticipated Cost and Benefits:

Preliminary estimates of the anticipated costs and benefits of this regulatory action indicated that the rule was not economically significant. Benefits will include safer working environments and the avoidance of injuries with respect to young workers.

Risks:

The child labor regulations, by ensuring that permissible job opportunities for working youth are safe and healthy and not detrimental to their education as required by the statute, produce positive benefits by reducing health and productivity costs employers may otherwise incur from higher accident and injury rates to young and inexperienced workers. Given the limited nature of the changes in the proposed rule, a detailed assessment of the magnitude of risk was not prepared.

Timetable:

Action	Date	FR Cite
Final Action	11/20/91	56 FR 58626
Final Action Effective	12/20/91	
ANPRM	05/13/94	59 FR 25167
ANPRM Comment Period End	08/11/94	59 FR 40318
NPRM	11/30/99	64 FR 67130
NPRM Comment Period End	01/31/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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DOL—Employment and Training Administration (ETA)

PROPOSED RULE STAGE

85. SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

42 USC 3056(b)(2)

CFR Citation:

20 CFR 641

Legal Deadline:

None

Abstract:

The Employment and Training Administration will implement new regulations to govern the Senior Community Service Employment Program (SCSEP) under title V of the Older Americans Act Amendments of 2000. SCSEP is the only federally sponsored job creation program targeted to low-income older Americans. The program subsidizes part-time community service jobs for low-income persons age 55 years and older who have poor employment prospects. Approximately 100,000 program enrollees annually work in a wide variety of community service jobs, including nurse's aides, teacher aides, librarians, clerical workers and day care assistants. The Department of Labor allocates funds to operate the program to State agencies on aging and to national organizations.

Proposed regulations will improve integration of SCSEP with the broader workforce investment system and introduce performance measures and sanctions.

Statement of Need:

As the baby boom generation ages, the demand for employment and training services and income support for low-income older persons will increase. Low-income seniors generally must continue working and many may not be able to find employment without work experience and additional training. The basic goals of the SCSEP are to provide community service employment for older workers with few skills and little work experience, and to move many of those seniors into unsubsidized employment. The Employment and Training Administration will issue regulations and other guidance, provide technical assistance, and establish performance standards that will drive State and national grantees' efforts towards the program's goals.

Summary of Legal Basis:

Promulgation of these regulations is authorized by section 502(b)(2) of Pub. L. 106-501 of the Older Americans Act Amendments of 2000.

Alternatives:

The public provided comments on changes to the statute due to the Older Americans Act Amendments of 2000 during Town Hall meetings held throughout the country in spring 2001. The public also will be afforded an opportunity to comment on the Department's plans for implementing the Amendments in a notice of proposed rulemaking that will be published in the Federal Register.

Anticipated Cost and Benefits:

Preliminary estimates of the anticipated costs of this regulatory action have not been determined at this time and will be determined at a later date.

Risks:

This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State, Local, Tribal, Federal

Federalism:

Undetermined

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DOL—ETA

86. • TRADE ADJUSTMENT ASSISTANCE FOR WORKERS

Priority:

Other Significant

Legal Authority:

19 USC 2320

CFR Citation:

20 CFR 617; 29 CFR 90

Legal Deadline:

None

Abstract:

The Trade Act of 2002, enacted on August 6, 2002, contains provisions amending title 2, chapter 2 of the Trade Act of 1974, entitled Adjustment Assistance for Workers. The amendments, effective 90 days from enactment (November 4, 2002), make additions to where and by whom a petition may be filed, expand eligibility to workers whose production has been shifted to certain foreign countries and to worker groups secondarily affected, and make substantive amendments regarding trade adjustment assistance (TAA) program benefits.

Additionally, a final rule implementing the 1988 Amendments to the TAA program was published in the Federal Register on January 6, 1994. Although published as a final rule, comments were requested on several material changes, which were not included in the proposed rule. Comments were received and will be considered and included in the final rule implementing the amendments under the Trade Act of 2002.

Furthermore, it is the agency's intention to rewrite both 20 CFR 20 part 617 and 29 FR 29 part 90 in plain English.

Statement of Need:

The Trade Act of 2002, enacted August 6, 2002, repeals the North American Free Trade Agreement-Transitional Adjustment Assistance provisions for workers affected by the NAFTA Implementation Act and adds significant amendments to worker benefits under Trade Adjustment Assistance for Workers, as provided for in the Trade Act of 1974.

The Department is mandated to implement the amendments in 90 days from enactment, November 4, 2002. The 2002 Trade Act amends where and by whom a petition may be filed. Program benefits for TAA eligible recipients are expanded to include for the first time a health care tax credit, and eligible recipients now include secondarily affected workers impacted by foreign trade. Income support is extended by 26 weeks and by up to one year under certain conditions. Waivers of training requirements in order to receive income support are explicitly defined. Job search and relocation benefit amounts are increased. Within one year of enactment, the amendments offer an Alternative TAA Program for Older Workers that targets older worker groups at firms who are certified as TAA eligible and provides the option of a wage supplement instead of training, job search, relocation and income support.

State agencies rely on the regulations to make determinations as to individual eligibility for TAA program benefits. TAA program regulations as written have been described as complicated to interpret. With the new TAA program benefit amendments contained in the Trade Act of 2002, it is imperative that the regulations be in an easy to read and understandable format.

Summary of Legal Basis:

These regulations are authorized by the Trade Act of 2002 amendments to the Trade Act of 1974.

Alternatives:

The public will be afforded an opportunity to provide comments on the TAA program changes when the Department publishes the interim final rule in the Federal Register.

Anticipated Cost and Benefits:

Preliminary estimates of the anticipated costs of this regulatory action have not been determined at this time and will be determined at a later date.

Risks:

This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State, Federal

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DOL—ETA

FINAL RULE STAGE

87. LABOR CERTIFICATION PROCESS FOR THE PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

Priority:

Other Significant

Legal Authority:

29 USC 49 et seq; 8 USC 1182(a)(5)(A), 1189(p)(1)

CFR Citation:

20 CFR 656

Legal Deadline:

None

Abstract:

The Employment and Training Administration (ETA) is in the process of reengineering the permanent labor certification process. ETA's goals are to make fundamental changes and refinements that will streamline the process, save resources, improve the effectiveness of the program and better serve the Department of Labor's (DOL) customer.

Statement of Need:

The labor certification process has been described as being complicated, costly and time consuming. Due to the increases in the volume of applications received and a lack of adequate resources, it can take up to 2 years or more to complete processing an application. The process also requires substantial State and Federal resources to administer and is reportedly costly and burdensome to employers as well. Cuts in Federal funding for both the permanent labor certification program and the U.S. Employment Service have made it difficult for State and Federal administrators to keep up with the process. ETA, therefore, is taking steps to improve effectiveness of the various regulatory requirements and the application processing procedures, with a view to achieving savings in resources both for the Government and employers, without diminishing protections now afforded U.S. workers by the current regulatory and administrative requirements.

Summary of Legal Basis:

Promulgation of these regulations is authorized by section 212(a)(5)(A) of the Immigration and Nationality Act.

Alternatives:

Regulatory alternatives are now being developed by the Department. The public will be afforded an opportunity to comment on the Department's plans for streamlining the permanent labor certification process in a notice of proposed rulemaking which will be published in the Federal Register.

Anticipated Cost and Benefits:

Preliminary estimates of the anticipated costs and benefits have not been determined at this time. Preliminary estimates will be developed after a decision is made as to what regulatory amendments are necessary and after the implementing forms and automated systems to support a streamlined permanent labor certification process have been developed.

Risks:

This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	05/06/02	67 FR 30465
NPRM Comment Period End	07/05/02	67 FR 30466
Final Rule	01/00/03	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

State, Federal

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DOL—Pension and Welfare Benefits Administration (PWBA)

PROPOSED RULE STAGE

88. RULEMAKING RELATING TO NOTICE REQUIREMENTS FOR CONTINUATION OF HEALTH CARE COVERAGE

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

29 USC 1135; 29 USC 1166

CFR Citation:

29 CFR 2590

Legal Deadline:

None

Abstract:

This rulemaking will provide guidance concerning the notification requirements pertaining to continuation coverage under the Employee Retirement Income Security Act of 1974 (ERISA). Section 606 of ERISA requires that group health plans provide employees notification of the continuation coverage provisions of the plan and imposes notification obligations upon plan administrators, employers, employees, and qualified beneficiaries relating to certain qualifying events.

Statement of Need:

Part 6 of title I of ERISA requires that group health plans provide employees with notice of the continuation of health care coverage provisions of the plan; it imposes notification requirements upon employers, employees, plan administrators, and qualified beneficiaries in connection with certain qualifying events. The public needs guidance from the Department with regard to how they can fulfill their respective obligations under these statutory provisions.

Summary of Legal Basis:

Section 606 of ERISA specifies the respective notification requirements for employers, employees, plan administrators, and qualified beneficiaries in connection with group health plan provisions relating to continuation of health care coverage. Section 606(a) of ERISA specifically refers to regulations to be issued by the Secretary of Labor clarifying these requirements. Section 505 of ERISA authorizes the Secretary to issue regulations clarifying the provisions of title I of ERISA.

Alternatives:

Regulatory alternatives will be developed once determinations have been made with regard to the scope and nature of the regulatory guidance which is needed by the public.

Anticipated Cost and Benefits:

Preliminary estimates of the anticipated costs and benefits will be developed once decisions are reached regarding the alternatives to be considered.

Risks:

Failure to provide guidance to the public concerning their notification obligations under section 606 of ERISA may complicate compliance by the public with the law and may reduce the availability of continued health care coverage in certain commonly encountered situations.

Timetable:

Action	Date	FR Cite
ANPRM	09/23/97	62 FR 49894
ANPRM Comment Period End	11/24/97	
NPRM	03/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

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DOL—PWBA

FINAL RULE STAGE

89. REGULATIONS IMPLEMENTING THE HEALTH CARE ACCESS, PORTABILITY, AND RENEWABILITY PROVISIONS OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

29 USC 1027; 29 USC 1059; 29 USC 1135; 29 USC 1171; 29 USC 1172; 29 USC 1191c

CFR Citation:

29 CFR 2590

Legal Deadline:

Other, Statutory, April 1, 1997, Interim Final Rule.

Abstract:

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) amended title I of ERISA by adding a new part 7, designed to improve health care access, portability and renewability. This rulemaking will provide regulatory guidance to implement these provisions.

Statement of Need:

In general, the health care portability provisions in part 7 of ERISA provide for increased portability and availability of group health coverage through limitations on the imposition of any preexisting condition exclusion and special enrollment rights in group health plans after loss of other health coverage or a life event. Plan sponsors, administrators and participants need guidance from the Department with regard to how they can fulfill their respective obligations under these statutory provisions.

Summary of Legal Basis:

Part 7 of ERISA specifies the portability and other requirements for group health plans and health insurance issuers. Section 734 of ERISA provides that the Secretary may promulgate such regulations as may be necessary or appropriate to carry out the provisions of part 7 of ERISA. In addition, section 505 of ERISA authorizes the Secretary to issue regulations clarifying the provisions of title I of ERISA.

Alternatives:

Regulatory alternatives will be considered after determining the scope and nature of additional regulatory guidance needed by the public.

Anticipated Cost and Benefits:

Determinations on the anticipated costs and benefits will be developed once determinations have been made with regard to the alternatives to be developed.

Risks:

Failure to provide guidance concerning Part 7 of ERISA may impede compliance with the law.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/08/97	62 FR 16894
Interim Final Rule Effective	06/07/97	
Interim Final Rule Comment Period End	07/07/97	
Request for Information	10/25/99	64 FR 57520
Comment Period End	01/25/00	
Final Rule	03/00/03	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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DOL—PWBA

90. PROHIBITING DISCRIMINATION AGAINST PARTICIPANTS AND BENEFICIARIES BASED ON HEALTH STATUS

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

29 USC 1027; 29 USC 1059; 29 USC 1135; 29 USC 1194; 29 USC 1182; 29 USC 1191c

CFR Citation:

29 CFR 2590.702

Legal Deadline:

None

Abstract:

Section 702 of the Employee Retirement Income Security Act of 1974, amended by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), establishes that a group health plan or a health insurance issuer may not establish rules for eligibility (including continued eligibility) of any individual to enroll under the terms of the plan based on any health status-related factor. These provisions are also contained in the Internal Revenue Code under the jurisdiction of the Department of the Treasury, and the Public Health Service Act under the jurisdiction of the Department of Health and Human Services.

On April 8, 1997, the Department, in conjunction with the Departments of the Treasury and Health and Human Services (collectively, the Departments) published interim final regulations implementing the nondiscrimination provisions of HIPAA. These regulations can be found at 26 CFR 54.9802-1 (Treasury), 29 CFR 2590.702 (Labor), and 45 CFR 146.121 (HHS). That notice of rulemaking also solicited comments on the nondiscrimination provisions and indicated that the Departments intend to issue further regulations on the nondiscrimination rules. This rulemaking contains additional regulatory interim guidance under HIPAA's nondiscrimination provisions. In addition, the rulemaking contains proposed guidance on bona fide wellness programs.

Statement of Need:

Part 7 of ERISA establishes that group health plans and health insurance issuers may not establish rules for eligibility (including continued eligibility) of any individual to enroll under the terms of the plan based on any health status-related factor. Plan sponsors, administrators and participants need additional guidance from the Department with regard to how they can fulfill their respective obligations under these statutory provisions.

Summary of Legal Basis:

Section 702 of ERISA specifies the respective nondiscrimination requirements for group health plans and health insurance issuers. Section 734 of ERISA provides that the Secretary may promulgate such regulations as may be necessary or appropriate to carry out the provisions of part 7 of ERISA. In addition, section 505 of ERISA authorizes the Secretary to issue regulations clarifying the provisions of title I of ERISA.

Alternatives:

Regulatory alternatives will be considered after determining the scope and nature of additional regulatory guidance needed by the public.

Anticipated Cost and Benefits:

Determinations on the anticipated costs and benefits will be developed once determinations have been made with regard to the alternatives to be developed.

Risks:

Failure to provide guidance concerning part 7 of ERISA may impede compliance with the law.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/08/97	62 FR 16894
Interim Final Rule Comment Period End	07/07/97	
NPRM	01/08/01	66 FR 1421
Second Interim Final Rule	01/08/01	66 FR 1378
NPRM Comment Period End	04/09/01	
Interim Final Rule Comment Period End	04/09/01	
Final Rule	04/00/03	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Undetermined

Additional Information:

This item has been split off from RIN 1210-AA54 in order to provide focused guidance on section 702 of ERISA, which prohibits discrimination against participants and beneficiaries by group health plans and health insurance issuers based on health status.

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DOL—PWBA

91. • BLACKOUT NOTICE REGULATION

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

PL 107-204; 29 USC 1135; 116 Stat 745 (29 USC 1132)

CFR Citation:

29 CFR 2520

Legal Deadline:

Other, Statutory, October 13, 2002, Interim Final Rule, PL 107-204.

Abstract:

This regulation will provide guidance with respect to the requirement that plan administrators furnish advance notice of blackout periods affecting individual account plans pursuant to section 101(i) of ERISA, as added by section 306 of the Sarbanes-Oxley Act of 2002.

Statement of Need:

The Sarbanes-Oxley Act of 2002 (the Act), amended ERISA by adding a new section 101(i), which requires plan administrators to notify individual account plan participants in advance of any period during which their ability to give investment directions will be suspended. The Act also added a new section 502(c)(7) to ERISA authorizing the Secretary of Labor to assess civil penalties against a plan administrator who fails or refuses to provide the required notice. The Act specifically requires the Secretary of Labor to provide regulatory guidance to the public with regard to new section 101(i) and establishes deadlines for the issuance of such guidance.

Summary of Legal Basis:

The Act requires the Secretary to issue regulatory guidance by October 13, 2002, and a model notice by January 1, 2003. Section 505 of ERISA authorizes the Secretary to issue regulations clarifying the provisions of title I of ERISA.

Alternatives:

The Department will develop regulatory alternatives after determining the scope and nature of the regulatory guidance needed by the public.

Anticipated Cost and Benefits:

Determinations on the anticipated costs and benefits will be developed once determinations have been made with regard to the alternatives to be developed.

Risks:

Failure to provide the regulatory guidance mandated by the Act would contravene the provisions of law. Moreover, failure to issue such guidance would increase the potential risks of loss to plan participants and beneficiaries, and deprive plan administrators of information they need to enable them to comply with the new notice requirements.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/21/02	67 FR 64765
Interim Final Rule Comment Period End	11/20/02	
Interim Final Rule Effective	01/26/03	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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DOL—PWBA

92. • BLACKOUT NOTICE CIVIL PENALTY

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

PL 107-204; 29 USC 1135; 29 USC 1021(b)(1)

CFR Citation:

29 CFR 2560

Legal Deadline:

Final, Statutory, October 13, 2002.

Abstract:

These regulations will provide guidance with respect to the requirement that plan administrators furnish advance notice of blackout periods affecting individual account plans pursuant to section 101(i) of ERISA, as added by section 306 of the Sarbanes-Oxley Act of 2002, as well as the related civil penalty provisions.

Statement of Need:

The Sarbanes-Oxley Act of 2002 (the Act), amended ERISA by adding a new section 101(i), which requires plan administrators to notify individual account plan participants in advance of any period during which their ability to give investment directions will be suspended. The Act also added a new section 502(c)(7) to ERISA authorizing the Secretary of Labor to assess civil penalties against a plan administrator who fails or refuses to provide the required notice. The Act specifically requires the Secretary of Labor to provide regulatory guidance to the public with regard to new section 101(i) and establishes deadlines for the issuance of such guidance.

Summary of Legal Basis:

The Act requires the Secretary to issue regulatory guidance by October 13, 2002, and a model notice by January 1, 2003. Section 505 of ERISA authorizes the Secretary to issue regulations clarifying the provisions of title I of ERISA.

Alternatives:

The Department will develop regulatory alternatives after determining the scope and nature of the regulatory guidance needed by the public.

Anticipated Cost and Benefits:

Determinations on the anticipated costs and benefits will be developed once determinations have been made with regard to the alternatives to be developed.

Risks:

Failure to provide the regulatory guidance mandated by the Act would contravene the provisions of law. Moreover, failure to issue such guidance would increase the potential risks of loss to plan participants and beneficiaries, and deprive plan administrators of information they need to enable them to comply with the new notice requirements.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/21/02	67 FR 64774
Interim Final Rule Comment Period End	11/20/02	
Interim Final Rule Effective	01/26/03	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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DOL—Mine Safety and Health Administration (MSHA)

PRERULE STAGE

93. • DIESEL PARTICULATE MATTER EXPOSURE OF UNDERGROUND METAL AND NONMETAL MINERS

Priority:

Other Significant

Legal Authority:

30 USC 811

CFR Citation:

30 CFR 57

Legal Deadline:

None

Abstract:

On January 19, 2001, MSHA published a final rule addressing diesel particulate matter (DPM) exposure of underground metal and nonmetal miners. The final rule established new health standards for underground metal and nonmetal mines that use equipment powered by diesel engines. The rule establishes an interim concentration limit of 400 micrograms of total carbon per cubic meter of air that became applicable July 20, 2002, and a final concentration limit of 160 micrograms to become applicable after January 19, 2006. This rule has been legally challenged and settlement negotiations with the litigants have resulted in further regulatory action on several requirements in the January 19, 2001 final rule. Several of the actions have been completed. This new rulemaking will address the remaining issues. MSHA issued an ANPRM to obtain additional information and to develop a proposed rule thereafter.

Statement of Need:

Several entities legally challenged the January 19, 2001 final rule. As a result of partial settlement with the litigants, MSHA published two documents in the Federal Register on July 5, 2001. One document delayed the effective date of 57.5066(b) regarding the evidence and the tagging provisions of the maintenance standards; clarified the effective dates of certain provisions of the final rule; and gave correction amendments.

The second document was a proposed rule to clarify 57.5066(b)(1) and (b)(2) of the maintenance standards and to add a new paragraph (b)(3) to 57.5067 regarding the transfer of existing diesel equipment from one underground mine to another underground mine. The final rule on these issues was published February 27, 2002, and became effective March 29, 2002.

Also as part of the settlement agreement, MSHA agreed to conduct joint sampling with industry and labor at 31 underground mines to determine existing concentration levels of DPM; assess the performance of the SKC sampler and the NIOSH Analytical Method 5040; assess the feasibility of achieving compliance with the standard's concentration limit at the 31 mines; and, to assess the impact of

interferences on the sample in the metal and nonmetal underground mining environment before the limits established in the final rule became effective. Sampling and date analyses are completed and the final report is being developed.

MSHA also agreed to reenter rulemaking on several other provisions. The following provisions will constitute the basis for this new rulemaking:

57.5060(a) and (b) - changing the diesel particulate matter surrogate from total carbon to elemental carbon for both the interim and final concentration limits;

57.5060(d) - permitting miners to work in areas where diesel particulate matter exceeds the applicable concentration limit;

57.5060(e) - prohibiting the use of personal protective equipment to comply with the concentration limits;

57.5060(f) - prohibiting the use of administrative controls to comply with the concentration limits;

57.5061(b) - changing reference of total carbon to elemental carbon;

57.5061(c) - deleting reference to "area" and "occupational" sampling for compliance;

57.5062 - addressing the diesel particulate matter control plan.

Summary of Legal Basis:

Promulgation of these regulations is authorized by section 101 of the Federal Mine Safety and Health Act of 1977.

Alternatives:

This rulemaking action is a result of the parties' settlement negotiations. This action will not decrease protection for miners.

Anticipated Cost and Benefits:

MSHA will develop a preliminary economic analysis to accompany the proposed rule.

Risks:

Several epidemiological studies have found that exposure to diesel exhaust presents potential health risk to workers. These potential adverse health effects range from headaches and nausea to respiratory disease and cancer. In the confined space of the underground mine environment, occupational exposure to diesel exhaust may present a greater hazard due to ventilation limitations and the presence of other airborne contaminants, such as toxic mine dusts or mine gases. We believe that the health evidence forms a reasonable basis for reducing miners' exposure to diesel particulate matter. Proceeding with rulemaking on the provisions discussed above, will reduce miners exposure to DPM.

Timetable:

Action	Date	FR Cite
ANPRM	09/25/02	67 FR 60199
ANPRM Comment Period End	11/25/02	
NPRM	02/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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DOL—MSHA

PROPOSED RULE STAGE

94. VERIFICATION OF UNDERGROUND COAL MINE OPERATORS' DUST CONTROL PLANS AND COMPLIANCE SAMPLING FOR RESPIRABLE DUST

Priority:

Other Significant

Legal Authority:

30 USC 811

CFR Citation:

30 CFR 70; 30 CFR 75; 30 CFR 90

Legal Deadline:

None

Abstract:

Our current regulations require that all underground coal mine operators develop and follow a mine ventilation plan for each mechanized mining unit that we approve. However, we do not have a requirement that provides for verification of each plan's effectiveness under typical mining conditions. Consequently, plans may be implemented by mine operators that could be inadequate to control respirable dust. The proposed rule provides for MSHA to verify the effectiveness of mine ventilation plans to control respirable dust under typical mining conditions. For longwall mine operators, we proposed to permit the limited use of either approved loose-fitting powered air purifying respirators (PAPRs) or verifiable administrative controls as a supplemental means of compliance if we have determined that further reduction in respirable dust levels cannot be achieved using all feasible engineering controls. Furthermore, MSHA proposed to assume responsibility for all compliance sampling for respirable dust in underground coal mines as required under 30 CFR parts 70 and 90. However, given significant public comments, MSHA will repropose this rule.

Statement of Need:

Respirable coal mine dust levels in this country are significantly lower than they were two decades ago. Despite this progress, there continues to be concern about the respirable coal mine dust sampling program and its effectiveness in maintaining exposure levels in mines at or below the applicable standard. Our regulations require that all underground coal mine operators develop and follow a mine ventilation plan approved by us. The dust control portion of the mine ventilation plan is the key element of an operator's strategy to control respirable dust in the work environment. Although such plans are required to be designed to control respirable dust, there is no current requirement that provides for verification of each proposed plan's effectiveness under typical mining conditions. Consequently, plans may be implemented that may be inadequate to control respirable dust. Therefore, we proposed to revoke existing operator respirable dust sampling and to implement new regulations that would require each underground coal mine operator to have a verified ventilation plan. MSHA would verify the effectiveness of the mine ventilation plan for each mechanized mining unit in controlling respirable dust under typical mining conditions.

Summary of Legal Basis:

Promulgation of these regulations is authorized by section 101 of the

Federal Mine Safety and Health Act of 1977.

Alternatives:

In developing the proposed rule, we considered alternatives related to typical production levels, the use of appropriate dust control strategies, use of supplemental controls for mining entities other than longwalls, and the level of protection of loose-fitting powered air purifying respirators (PAPRS) in underground coal mines.

Anticipated Cost and Benefits:

Benefits sought are reduced dust levels over a miner's working lifetime by the elimination of overexposures to respirable coal mine dust on each and every production shift. Additional benefits include reduced health care costs and disability and black lung benefit payments. There would be a cost savings for mine operators when MSHA completely takes over compliance and abatement sampling for respirable dust. We developed cost estimates and made them available for public review.

Risks:

Respirable coal mine dust is one of the most serious occupational hazards in the mining industry. Occupational exposure to excessive levels of respirable coal mine dust can cause black lung and silicosis, which are potentially disabling and can cause death. We are pursuing both regulatory and non-regulatory actions to eliminate these diseases through the control of coal mine respirable dust levels in mines and the reduction of miners' exposure.

Timetable:

Action	Date	FR Cite
NPRM	07/07/00	65 FR 42122
Notice of Hearings; Close of Record	07/07/00	65 FR 42186
Extension of Comment Period; Close	09/08/00	65 FR 49215
NPRM	02/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

This rulemaking is related to RIN 1219-AB18 (Determination of Concentration of Respirable Coal Mine Dust).

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RIN: 1219–AB14

DOL—MSHA

95. DETERMINATION OF CONCENTRATION OF RESPIRABLE COAL MINE DUST

Priority:

Other Significant

Legal Authority:

30 USC 811

CFR Citation:

30 CFR 72

Legal Deadline:

None

Abstract:

The National Institute for Occupational Safety and Health and the Mine Safety and Health Administration jointly proposed that a single, full-shift measurement (single sample) will accurately represent the atmospheric condition to which a miner is exposed. The proposed rule addresses the U.S. Court of Appeals' concerns raised in National Mining Association v. Secretary of Labor, 153 3d 1264 (11th Cir. 1998). MSHA is supllmenting the record with additional data and will reopen the record for comments.

Statement of Need:

Respirable coal mine dust levels in this country are significantly lower than they were over two decades ago. Despite this progress, there continues to be concern about our current sampling programs' ability to accurately measure and maintain respirable coal mine dust exposure at or below the applicable standard on each shift. For as long as miners have taken coal from the ground, many have suffered respiratory problems due to their occupational exposures to respirable coal mine dust. These respiratory problems affect the current workforce and range from mild impairment of respiratory function to more severe diseases, such as silicosis and pulmonary massive fibrosis. For some miners, the impairment of their respiratory systems is so severe, they die prematurely. Since there is a clear relationship between a miner's cumulative exposure to respirable coal mine dust and the severity of the resulting respiratory conditions, it is imperative that each miner's exposure not exceed the applicable standard on each and every shift.

Summary of Legal Basis:

Promulgation of this regulation is authorized by section 101 of the Federal Mine Safety and Health Act of 1977.

Alternatives:

The requirements of this rule (single sample) will work in tandem with those of the proposed rule (RIN 1219-AB14) in which MSHA proposed to verify the effectiveness of ventilation plans as well as conduct all compliance sampling in underground coal mines. However, given significant public comments, MSHA will repropose RIN 1219-AB14 - Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust.

Anticipated Cost and Benefits:

Benefits sought are reduced dust levels over a miner's working lifetime by the elimination of overexposures to respirable coal mine dust on each and every production shift. Additional benefits include reduced health care costs and disability and black lung benefit payments.

Risks:

Respirable coal mine dust is one of the most serious occupational hazards in the mining industry. Occupational exposure to excessive levels of respirable coal mine dust can cause workers' pneumoconiosis and silicosis, which are potentially disabling and can cause death. We are pursuing both regulatory and nonregulatory actions to eliminate these diseases through the control of coal mine respirable dust levels in mines and reduction of miners' exposure.

Timetable:

Action	Date	FR Cite
NPRM	07/07/00	65 FR 42068
Notice of Hearings; Close of Record	07/07/00	65 FR 42185
Extension of Comment Period; Close	09/08/00	65 FR 49215
Reopen Record for Comments	02/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

This rulemaking is related to RIN 1219-AB14 (Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust).

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RIN: 1219–AB18

DOL—MSHA

96. ASBESTOS EXPOSURE LIMIT

Priority:

Other Significant

Legal Authority:

30 USC 811; 30 USC 813

CFR Citation:

30 CFR 56; 30 CFR 57; 30 CFR 71

Legal Deadline:

None

Abstract:

MSHA's permissible exposure limit (PEL) for asbestos applies to surface (30 CFR part 56) and underground (30 CFR part 57) metal and nonmetal mines and to surface coal mines and surface areas of underground coal mines (30 CFR part 71) and is over 20 years old. Current scientific data indicate that this existing PEL is not adequate to protect miners' health. MSHA is considering rulemaking to lower the PEL in order to reduce the risk of miners developing asbestos-induced occupational disease. A recent report by the Office of the Inspector General (OIG) recommended that MSHA lower its existing permissible exposure limit for asbestos to a more protective level, and address take-home contamination from asbestos. It also recommended that MSHA use Transmission Electron Microscopy to analyze fiber samples that may contain asbestos.

Statement of Need:

Current scientific data indicate that the existing asbestos PEL is not protective of miners' health. MSHA's asbestos regulations date to 1967 and are based on the Bureau of Mines (MSHA's predecessor) standard of 5 mppcf (million particles per cubic foot of air). In 1969, the Bureau proposed a 2 mppcf and 12 fibers/ml standard. This standard was promulgated in 1969. In 1970, the Bureau proposed to lower the standard to 5 fibers/ml, which was promulgated in 1974. MSHA issued its current standard of 2 fibers/ml at the end of 1978 for metal and nonmetal mining (43 FR 54064). Since enactment of the Mine Act, MSHA has conducted regular inspections at both surface and underground operations at metal and nonmetal mines. During these inspections, MSHA routinely takes samples, which are analyzed for compliance with its standard.

Other Federal agencies have addressed this issue by lowering their PEL for asbestos. For example, the Occupational Safety and Health Administration, working in conjunction with the Environmental Protection Agency, enacted a revised asbestos standard in 1994 that lowered the permissible exposure limit and the excursion limit to an eight (8) hour time-weighted average limit of 0.1 fiber per cubic centimeter of air and to 1.0 fiber per cubic centimeter of air (1 f/cc) as averaged over a sampling period of thirty (30) minutes. These lowered limits reflected increased asbestos-related disease risk to asbestos-exposed workers.

Alternatives:

The Agency has increased sampling efforts in an attempt to determine current miners' exposure levels to asbestos, including taking samples at all existing vermiculite, taconite, talc, and other mines to determine whether asbestos is present and at what levels. Since the spring of 2000, MSHA has taken almost 900 samples at more than 40 operations employing more than 4,000 miners. During those sampling events, the MSHA staff also discussed with the miners and mine operators the potential hazards of asbestos and the types of preventive measures that could be implemented to reduce exposures. The course of action MSHA takes in addressing asbestos hazards to miners will, in part, be based on these sampling results.

Anticipated Cost and Benefits:

MSHA will develop a preliminary economic analysis to accompany any proposed rule that may be developed.

Risks:

There is concern that miners could be exposed to the hazards of asbestos during mine operations where the ore body contains asbestos. There is also potential for exposure at facilities in which installed asbestos-containing material is present. Overexposure to asbestos causes mesothelioma and other forms of cancers, such as cancers of the digestive system, as well as asbestosis.

Timetable:

Action	Date	FR Cite
ANPRM	03/29/02	67 FR 15134
Notice of Public Meetings	03/29/02	
Notice of Change to Public Meetings	04/18/02	67 FR 19140
ANPRM Comment Period End	06/27/02	
NPRM	09/00/03	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

The Office of the Inspector General's "Evaluation of MSHA's Handling of Inspections at the W.R. Grace & Company Mine in Libby, Montana," was issued in March 2001.

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RIN: 1219–AB24

DOL—Occupational Safety and Health Administration (OSHA)

PROPOSED RULE STAGE

97. ASSIGNED PROTECTION FACTORS: AMENDMENTS TO THE FINAL RULE ON RESPIRATORY PROTECTION

Priority:

Other Significant

Legal Authority:

29 USC 655(b); 29 USC 657

CFR Citation:

29 CFR 1910.134

Legal Deadline:

None

Abstract:

In January 1998, OSHA published the final Respiratory Protection standard (29 CFR 1910.134), except for reserved provisions on assigned protection factors (APFs) and maximum use concentrations (MUCs). APFs are numbers that describe the effectiveness of the various classes of respirators in reducing employee exposure to airborne contaminants (including particulates, gases, vapors, biological agents, etc.). Employers, employees, and safety and health professionals use APFs to determine the type of respirator to protect the health of employees in various hazardous environments. Maximum use concentrations establish the maximum airborne concentration of a contaminant in which a respirator with a given APF may be used.

Currently, OSHA relies on the APFs developed by NIOSH in the 1980s unless OSHA has assigned a different APF in a substance-specific health standard. However, many employers follow the more recent APFs published in the industry consensus standard, ANSI Z88.2-1992. For some classes of respirators, the NIOSH and ANSI APFs vary greatly.

When OSHA published the final Respiratory Protection standard in 1998, it reserved for later rulemaking those provisions of the standard dealing with APFs and MUCs. This rulemaking action will complete the 1998 standard, reduce compliance confusion among employers, and provide employees with consistent and appropriate respiratory protection.

Statement of Need:

About 5 million employees wear respirators as part of their regular job duties. Due to inconsistencies between the APFs found in the current industry consensus standard (ANSI Z88.2-1992) and in the NIOSH Respirator Decision Logic, employers, employees, and safety and health professionals are often uncertain about what respirator to select to provide protection against hazardous air contaminants. Several industry and professional groups have asked OSHA to proceed with this rulemaking to resolve these inconsistencies and provide reliable protection of employees' health in cases where respirators must be worn.

Summary of Legal Basis:

The legal basis for this proposed rule is the determination that assigned protection factors and maximum use concentrations are necessary to complete the final Respiratory Protection standard and provide the full protection of that standard.

Alternatives:

OSHA has considered allowing the current situation to continue, in which OSHA generally enforces NIOSH APFs but many employers follow the more recent consensus standard APFs. However, allowing the continuation of this situation results in inconsistent enforcement, lack of guidance for employers, and the potential for inadequate employee protection.

Anticipated Cost and Benefits:

The scope of the proposed APF table is still under development, and estimates of the costs and benefits have not yet been completed.

Risks:

The preamble to the final Respiratory Protection rule (63 FR 1270, Jan. 8, 1998) discusses the significance of the risks potentially associated with the use of respiratory protection. No independent finding of significant risk will be made for the APF rulemaking, since it only addresses a single provision of the larger rule.

Timetable:

Action	Date	FR Cite
ANPRM	05/14/82	47 FR 20803
ANPRM Comment Period End	09/13/82	
NPRM	11/15/94	59 FR 58884
Final Rule	01/08/98	63 FR 1152
Final Rule Effective	04/08/98	
NPRM	02/00/03	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

State, Local, Tribal, Federal

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RIN: 1218–AA05

DOL—OSHA

98. FIRE PROTECTION IN SHIPYARD EMPLOYMENT (PART 1915, SUBPART P) (SHIPYARDS: FIRE SAFETY)

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

29 USC 655

CFR Citation:

29 CFR 1915, subpart P

Legal Deadline:

None

Abstract:

The rule will update and revise an important but outdated part of OSHA's shipyard rules. The original rule was adopted by OSHA in 1971 and has remained unchanged since then. A negotiated rulemaking committee was convened on October 15, 1996. Members of the committee included: OSHA, State government, Federal agency, small and large shipyard employers, and maritime and firefighter union representatives. The committee completed work in February 2002, and recommended proposal requirements to OSHA. The Agency has developed an NPRM based on their recommendations.

Statement of Need:

Fires in the shipyard environment may cause death and serious injuries in this 100,000-employee workforce. Updating OSHA's outdated shipyard

requirements for fire extinguishers, sprinkler systems, detection systems, alarm systems, and fire brigades will facilitate compliance by employers and employees and reduce these fire-related injuries and fatalities.

Summary of Legal Basis:

The legal basis for this proposed rule is a preliminary determination that an unacceptable risk of fire-related injuries and fatalities exists in the shipyard industry.

Alternatives:

OSHA has considered but rejected the alternative of allowing the existing rule to remain in place, because the Agency believes that doing so would contribute to the unacceptable number of fire-related accidents occurring in shipyards every year.

Anticipated Cost and Benefits:

Detailed cost and benefits estimates are being prepared for the NPRM.

Risks:

A risk analysis is incldued in the NPRM.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

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RIN: 1218–AB51

DOL—OSHA

99. OCCUPATIONAL EXPOSURE TO CRYSTALLINE SILICA

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

29 USC 655(b); 29 USC 657

CFR Citation:

29 CFR 1910; 29 CFR 1915; 29 CFR 1917; 29 CFR 1918; 29 CFR 1926

Legal Deadline:

None

Abstract:

Crystalline silica is a significant component of the earth's crust, and many workers in a wide range of industries are exposed to it, usually in the form of respirable quartz or, less frequently, cristobalite. Chronic silicosis is a uniquely occupational disease resulting from exposure of employees over long periods of time (10 years or more). Exposure to high levels of respirable crystalline silica causes acute or accelerated forms of silicosis that are ultimately fatal. The current OSHA permissible exposure limit (PEL) for general industry is based on a formula recommended by the American Conference of Governmental Industrial Hygienists (ACGIH) in 1971 [PEL=10mg/cubic meter/(%silica + 2), as respirable dust]. The current PEL for construction and maritime (derived from ACGIH's 1962 Threshold Limit Value) is based on particle counting technology, which is considered obsolete. NIOSH and ACGIH recommend a 50ug/m3 exposure limit for respirable crystalline silica.

Both industry and worker groups have recognized that a comprehensive standard for crystalline silica is needed to provide for exposure monitoring, medical surveillance, and worker training. The American Society of Testing Materials (ASTM) recently published a final recommended standard to address the hazards of crystalline silica. The Building Construction Trades Department of the AFL-CIO has also developed a recommended comprehensive program standard. These standards include provisions for methods of compliance, exposure monitoring, training, and medical surveillance.

In developing a proposed standard, OSHA is currently considering several options ranging from proposing comprehensive standards simultaneously for general industry, construction, and maritime, to focusing the proposal on one or more specific issues, such as modernizing the construction and maritime PELs or standardizing sampling and employee exposures. OSHA is continuing to coordinate closely with the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH) in collecting and developing information for a proposed standard.

Statement of Need:

Over 2 million workers are exposed to crystalline silica dust in general industry, construction and maritime industries. Industries that could be particularly affected by a standard for crystalline silica include: foundries, industries that have abrasive blasting operation, paint manufacture, glass and concrete product manufacture, brick making, china and pottery manufacture, manufacture of plumbing fixtures, and many construction activities including highway repair, masonry, concrete work, rock drilling, and tuckpointing. The seriousness of the health hazards associated with silica exposure is demonstrated by the fatalities and disabling illnesses that continue to occur. Between 1990 and 1996, 200 to 300 deaths per year are known to have occurred where silicosis was identified on death certificates as an underlying or contributing cause. It is likely that many more cases have occurred where silicosis went undetected. In addition, the International Agency for Research on Cancer (IARC) has designated crystalline silica as a known human carcinogen. Exposure to crystalline silica has also been associated with an increased risk of developing tuberculosis and other nonmalignant respiratory diseases. Exposure studies and OSHA enforcement data indicate that some workers continue to be exposed to levels of crystalline silica far in excess of current exposure limits. Congress has recently included compensation of silicosis victims on Federal nuclear testing sites in the Energy Employees' Occupational Illness Compensation Program Act of 2000. There is a particular need for the Agency to modernize its exposure limits for construction and maritime, and to address some specific issues that will need to be resolved to propose a comprehensive standard.

Summary of Legal Basis:

The legal basis for the proposed rule is a preliminary determination that workers are exposed to a significant risk of silicosis and other serious disease and that rulemaking is needed to substantially reduce the risk. In addition, the proposed rulemaking will recognize that the PELs for construction

and maritime are outdated and need to be revised to reflect current sampling and analytical technologies.

Alternatives:

Over the past several years, the Agency has attempted to address this problem through a variety of nonregulatory approaches, including initiation of a Special Emphasis Program on silica in October 1997, sponsorship with NIOSH and MSHA of the National Conference to Eliminate Silicosis, and dissemination of guidance information on its Web site. OSHA has determined that rulemaking is a necessary step to ensure that workers are protected from the hazards of crystalline silica. The Agency is currently evaluating several options for the scope of the rulemaking.

Anticipated Cost and Benefits:

The scope of the proposed rulemaking is still under development, and estimates of the costs and benefits have not yet been developed.

Risks:

A detailed risk analysis has not yet been completed for this rule.

Timetable:

Action	Date	FR Cite
Initiate SBREFA Process or Initiate	06/00/03	
NPRM	11/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Agency Contact:

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RIN: 1218–AB70

DOL—OSHA

100. STANDARDS IMPROVEMENT (MISCELLANEOUS CHANGES) FOR GENERAL INDUSTRY, MARINE TERMINALS, AND CONSTRUCTION STANDARDS (PHASE II)

Priority:

Other Significant

Legal Authority:

29 USC 655(b)

CFR Citation:

29 CFR 1910, subpart Z; 29 CFR 1910.1001 to 1910.1052; 29 CFR 1910.142; 29 CFR 1910.178; 29 CFR 1910.219; 29 CFR 1910.261; 29 CFR 1910.265; 29 CFR 1910.410; 29 CFR 1917.92; 29 CFR 1926.1101; 29 CFR 1926.1127; 29 CFR 1926.1129; 29 CFR 1926.60; 29 CFR 1926.62

Legal Deadline:

None

Abstract:

The Occupational Safety and Health Administration (OSHA) is proposing to remove or revise provisions in its health standards that are out of date, duplicative, unnecessary, or inconsistent. The Agency is proposing these changes to reduce the burden imposed on the regulated community by these requirements. In this document, substantive changes are proposed for standards that will revise or eliminate duplicative, inconsistent, or unnecessary regulatory requirements without diminishing employee protections. Phase I of this Standards Improvement process was completed in June 1998 (63 FR 33450). OSHA plans to initiate Phase III of this project at a future date to address problems in various safety standards.

Statement of Need:

Some of OSHA's standards are out of date, duplicative, unnecessary, or inconsistent. The Agency needs to periodically review its standards and make needed corrections. This effort results in standards that are easier for employers and employees to follow and comply with, and thus enhances compliance and worker protection.

Summary of Legal Basis:

The legal basis for the proposed rule is a preliminary finding that the OSHA standards need to be updated to bring them up to date, reduce inconsistency, and remove unneeded provisions.

Alternatives:

OSHA has considered updating each standard as problems are discovered, but has determined that it is better to make such changes to groups of standards so it is easier for the public to comment on like standards. OSHA has also considered the inclusion of safety standards that need to be updated. However, the Agency has decided to pursue a separate rulemaking for safety issues because the standards to be updated are of interest to different stakeholders.

Anticipated Cost and Benefits:

This revision of OSHA's standards is a deregulatory action. It will reduce employers' compliance obligations.

Risks:

The project does not address specific risks, but is intended to improve OSHA's standards by bringing them up do date and deleting unneeded provisions. The anticipated changes will have no negative effects on worker safety and health.

Timetable:

Action	Date	FR Cite
NPRM	10/31/02	67 FR 66493
NPRM Comment Period End	12/20/02	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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RIN: 1218–AB81

DOL—OSHA

FINAL RULE STAGE

101. UPDATE AND REVISION OF THE EXIT ROUTES STANDARD

Priority:

Other Significant

Legal Authority:

29 USC 655(b); 5 USC 353

CFR Citation:

29 CFR 1910.35; 29 CFR 1910.36; 29 CFR 1910.37; 29 CFR 1910.38

Legal Deadline:

None

Abstract:

Many Occupational Safety and Health Administration (OSHA) standards were adopted under section 6(a) of the Occupational Safety and Health Act (OSH Act; 29 U.S.C. 655(a)). This section of the OSH Act authorized the Agency, in its first 2 years of existence, to adopt national consensus standards without prior notice and comment. The versions of the consensus standards OSHA adopted are now typically well over 30 years old and have been superseded by newer ones. In addition, many of these old standards were written in technical jargon and were hard for many employers and employees to understand.

To address these problems, OSHA is revising OSHA's exit routes (also known as means of egress) standard. The revisions rewrite the standard in simple, easy-to-understand language that will be easier for employers and employees to follow.

Statement of Need:

The standard being revised in this initiative is one of OSHA's oldest and most difficult to understand. The Agency has identified the exit routes standard as a standard in need of revision because it is out of date and unnecessarily complex, and stakeholders have recommended that the standard be updated quickly. OSHA also believes that revising the standard will lead to better voluntary compliance and fewer disputes about violations. With OSHA's limited resources, any effort that can substantially increase opportunities for compliance without sacrificing employee safety and health protection will have long-term benefits.

Summary of Legal Basis:

The legal basis for the final rule is that by making these OSHA standards easier to understand and comply with, the Agency will increase compliance and reduce work-related injuries and deaths.

Alternatives:

The alternative considered — leaving the outdated standard on the books — has been rejected because doing so would not encourage compliance or enhance safety.

Anticipated Cost and Benefits:

The final standard for exit routes will have no economic impacts because this revision will not increase employers' obligations or reduce employee protections.

Risks:

Employees can be injured or killed if they are not able to exit an area safely when a fire or other emergency occurs.

Timetable:

Action	Date	FR Cite
NPRM	09/10/96	61 FR 47712
Public Hearing	04/29/97	62 FR 9402
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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RIN: 1218–AB82

BILLING CODE 4510–23–S

DEPARTMENT OF TRANSPORTATION (DOT)

Statement of Regulatory Priorities

The Department of Transportation (DOT) consists of eleven operating administrations, the Bureau of Transportation Statistics and the Office of the Secretary, each of which has statutory responsibility for a wide range of regulations. For example, DOT regulates safety in the aviation, motor carrier, railroad, mass transit, motor vehicle, maritime, commercial space, and pipeline transportation areas. DOT regulates aviation consumer and economic issues and provides financial assistance and writes the necessary implementing rules for programs involving highways, airports, mass transit, the maritime industry, railroads, and motor vehicle safety. It writes regulations carrying out such disparate statutes as the Americans with Disabilities Act and the Uniform Time Act. It regulates the construction and operation of bridges over navigable waters, the prevention of oil pollution, and the security of commercial aviation and passenger vessels. Finally, DOT has responsibility for developing policies that implement a wide range of regulations that govern internal programs such as acquisition and grants, access for the disabled, environmental protection, energy conservation, information technology, occupational safety and health, property asset management, seismic safety, security, and the use of aircraft and vehicles.

The Department has adopted a regulatory philosophy that applies to all its rulemaking activities. This philosophy is articulated as follows: DOT regulations must be clear, simple, timely, fair, reasonable, and necessary. They will be issued only after an appropriate opportunity for public comment, which must provide an equal chance for all affected interests to participate, and after appropriate consultation with other governmental entities. The Department will fully consider the comments received. It will assess the risks addressed by the rules and their costs and benefits, including the cumulative effects. The Department will consider appropriate alternatives, including nonregulatory approaches. It will also make every effort to ensure that legislation does not impose unreasonable mandates.

The Department's regulatory policies and procedures provide a comprehensive internal management and review process for new and existing regulations and ensure that the Secretary and other appropriate appointed officials review and concur in all significant DOT rules. DOT continually seeks to improve its regulatory process. The Department's development of regulatory process and related training courses for its employees; creation of an electronic, Internet-accessible docket that can also be used to submit comments electronically; a "list serve" that allows the public to sign up for e-mail notification when the Department issues a rulemaking document; creation of an electronic rulemaking tracking system; the use of direct final rulemaking; and the use of regulatory negotiation are a few examples of this.

In addition, the Department continues to engage in a wide variety of activities to help cement the partnerships between its agencies and its customers that will produce good results for transportation programs and safety. The Department's agencies also have established a number of continuing partnership mechanisms in the form of rulemaking advisory committees.

Throughout the Department, we are also actively engaged in the review of existing rules to determine whether they need to be revised or revoked. These reviews are in accordance with section 610 of the Regulatory Flexibility Act, the Department's regulatory policies and procedures, and Executive Order 12866. This includes determining if the rules would be more understandable if they are written using a plain language approach. Appendix D to our Regulatory Agenda highlights our efforts in this area.

Office of the Secretary of Transportation (OST)

The Office of the Secretary (OST) oversees the regulatory process for the Department. OST implements the Department's regulatory policies and procedures and is responsible for ensuring the involvement of top management in regulatory decisionmaking. Through the General Counsel's office, OST is also responsible for ensuring that the Department complies with Executive Order 12866 and other legal and policy requirements affecting rulemaking, including new statutes and Executive orders. Although OST's principal role concerns the review of the Department's significant rulemakings, this office has the lead role in the substance of projects concerning aviation economic rules and those affecting the various elements of the Department.

OST provides guidance and training regarding compliance with regulatory requirements and process for use by personnel throughout the Department. OST also plays an instrumental part in the Department's efforts to improve our economic analyses, risk assessment, and regulatory flexibility analyses.

OST also leads and coordinates the Department's response to Administration and congressional proposals that concern the regulatory process. The General Counsel's Office works closely with representatives of other agencies, the Office of Management and Budget, the White House, and congressional staff to provide information on how various proposals would affect the ability of the Department to perform its safety, infrastructure, and other missions.

During fiscal year 2003, OST expects to substantially complete work on a CRS final rule. OST also expects to publish two NPRMs to implement provisions of the Aviation Investment and Reform Act for the 21st Century, signed into law in April 2000. One NPRM will seek to amend 14 CFR part 382, DOT's Air Carrier Access Act (ACAA) implementing rule, to cover foreign carriers operating to and from the United States or code sharing with the U.S. carriers. Another NPRM will propose to require air carriers to file with DOT detailed information on the disability-related complaints they receive to be used for enforcement, educational and other relevant purposes by DOT, disabled air travelers and Congress. OST also expects to substantially complete work on a final rule on the reporting requirements during FY 2003.

Transportation Security Administration (TSA)

The TSA was established on November 19, 2001, by the Aviation and Transportation Security Act (ATSA) (Pub. L. 107-71). Under ATSA, TSA is responsible for civil aviation security, as well as security in other modes of transportation regulated by the DOT. TSA's regulatory priorities for 2002-2003 are to continue to issue rulemakings necessary to meet the requirements of ATSA, including rules needed to address new security vulnerabilities that may arise. TSA also will undertake a review of its rules to eliminate duplicative and unnecessary requirements.

United States Coast Guard (USCG)

The United States Coast Guard's statutory responsibilities include

protecting the marine environment, enforcing U.S. laws and international treaties, performing search and rescue, and ensuring marine safety and security.

The majority of the regulatory actions issued by the Coast Guard are classified as routine and frequent because they apply to a specific location and most take effect for a limited time. These actions allow local Coast Guard units to respond quickly to ensure safety and security for our ports and waterways.

From its headquarters in Washington, DC, the Coast Guard issues approximately 20 regulations annually. These regulations set national standards or respond to specific statutory mandates. The Marine Safety Council, a board of senior Coast Guard Leaders, approves each of these rulemaking projects, monitors the Coast Guard's regulatory program, and advises the Commandant on regulatory matters. The following are significant aspects of the Coast Guard's regulatory program:

- The Coast Guard continues using a plain language format for its notices and regulations. Plain language updates will be an important part of the Coast Guard's review of all regulations under the Regulatory Flexibility Act. The Coast Guard recognizes that this format facilitates better understanding of regulations and promotes more public participation.
- Another way the Coast Guard encourages early public involvement in rulemaking is through public meetings and the ongoing work of 10 advisory committees. In addition, public comments are requested on existing rules identified for analysis each year and identified in Appendix D of the fall agenda. The Coast Guard is a staunch supporter of the Department of Transportation Docket Management System (DMS). DMS provides electronic docketing for all Coast Guard headquarters rulemaking projects. The public can view agency documents and public comments on each rulemaking project. DMS is located at http://dms.dot.gov/.
- As part of its response to the terrorist attacks of September 11, 2001, the Coast Guard conducted a public workshop on Maritime Security in January 2002. The public comments from this workshop have helped guide our work on security plans for ports, waterfront facilities (including passenger facilities), passenger vessels and high-consequences vessels, and identification credentials for persons on vessels and in waterfront facilities. Since September 11, 2001, the Coast Guard has created more than 100 security zones to protect vessels and waterfront facilities. We are also working to enhance our maritime domain awareness capabilities.
- Recognizing that it should issue only necessary regulations tailored to impose the least burden on society, the Coast Guard has developed a broad Prevention Through People Program, which develops and encourages a wide variety of voluntary actions by industry and individuals to improve marine safety. To support this effort, the Coast Guard has developed several Quality Partnerships.
- Finally, to ensure that all regulations are necessary, each agenda item specifies how it supports at least one of the five goals of the Coast Guard's Strategic Plan — maritime safety, protection of natural resources, maritime security, maritime mobility, and national defense. As indicated by the project in our regulatory plan, our post-September 11, 2001, emphasis on maritime security and national defense has not prevented us from addressing our other strategic goals. Our regulatory plan is structured to help us achieve the Commandant's new direction emphasizing readiness, people and stewardship.

Federal Aviation Administration (FAA)

The FAA issues regulations to provide a safe, secure, and efficient global aviation system for civil aircraft. In an effort to make sure their rules are concise and easy to understand, the FAA reexamined the use of plain language in its regulations. The result of this review was revisions to 14 CFR part 11, which delineates the process for rulemaking changes. This rulemaking effort is only the first of several planned revisions to the regulations. Other actions include:

- Supporting the FAA's Safety Agenda on Safer Skies. This agenda is based on a comprehensive review of the causes of aviation accidents and is designed to bring about a five-fold (80 percent) reduction in fatal accidents. The reformed rulemaking process supports this agenda by ensuring that appropriate resources are available to support those rulemaking projects identified as the agency's highest priority. Projects related to controlled flight into terrain, loss of control of an aircraft, uncontained engine failures, runway incursions, weather, pilot decisionmaking, and cabin safety are some of the focus areas identified that may result in rulemaking, advisory and guidance materials.
- Continuing to involve the aviation community early in the regulatory process. The Aviation Rulemaking Advisory Committee completed numerous reports and recommendations, leading to the publication of nine regulatory actions and issuance of several advisory circulars and other guidance materials. The FAA Aging Transport Nonstructural Systems Plan addresses concerns with potential safety issues associated with problems that may develop in transport category airplanes systems as a result of wear and degradation in service. One important component of the plan is use of the Aging Transport Nonstructural Systems Rulemaking Advisory Committee to provide a mechanism for public input to FAA activities. The FAA will receive recommendation from the Committee in the form of regulations, guidance materials and training requirements supporting enhanced airworthiness for airplane systems.
- Continuing to harmonize the U.S. aviation regulations with those of other countries. The harmonization of the U.S. regulations with the European Joint Aviation Regulations (JAR) is the FAA's most comprehensive long-term rulemaking effort. The differences worldwide in certification standards, practices and procedures, and operating rules must be identified and minimized to reduce the regulatory burden on the international aviation system. The differences between the FAA regulations and the requirements of other nations impose a heavy burden on U.S. aircraft manufacturers and operators. Harmonization and standardization should help the U.S. aerospace industry remain internationally competitive. While the overall effort to achieve this is global, it will be accomplished by many small, individual, nonsignificant rulemaking projects. The FAA has published 39 regulations based on recommendations of ARAC that will lead to harmonizing FAA regulations and Joint Aviation Requirements.
- Continuing to recognize the needs of small entities by complying with the Small Business Regulatory Enforcement Fairness Act and addressing small entity concerns whenever appropriate in rulemaking documents. In response to the Act, the FAA has established a Small Entity Contact, a Web site on FAA's home

page, a toll-free number, and an e-mail address for receipt of inquiries.

- Ensuring that the congressional mandates for rulemaking deadlines established by the FAA Reauthorization Act of 1996 are met. One mandate is the issuance of a final rule 16 months after the close of the comment period on the proposed rule.

Top regulatory priorities for 2002-2003 include a duty limitations and rest requirements proposal to ensure that pilots are sufficiently rested for duty, and final rules concerning certification of airports and thermal acoustic insulation flammability and fractional ownership.

Federal Highway Administration (FHWA)

The FHWA anticipates that its priority for fiscal year 2003 will be continuing implementation of the Transportation Equity Act for the 21st Century (TEA-21), which reauthorizes the surface transportation programs administered by the FHWA. The FHWA will continue to implement this legislation in the least burdensome and restrictive way possible consistent with the FHWA's mission. The FHWA will continue to pursue regulatory reform in areas where project development can be streamlined or accelerated, duplicative requirements can be consolidated, recordkeeping requirements can be reduced or simplified, and the decisionmaking authority of our State and local partners can be increased.

Federal Motor Carrier Safety Administration (FMCSA)

The FMCSA was established on January 1, 2000, by the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106-159). As required by MCSIA, FMCSA has developed a strong Safety Action Plan to guide it toward the goal of reducing the number of fatalities resulting from crashes involving large trucks. Setting new performance standards for vehicles, drivers, and motor carriers through regulation will raise the bar for safety in commercial operations. The FMCSA now is responsible for most of the functions of the former Office of Motor Carriers in the Federal Highway Administration. Several regulatory initiatives are required by MCSIA. Over the next year, FMCSA is committed to developing an effective and efficient regulatory program that meets the expectations of Congress, its stakeholders and partners, and the general public. FMCSA's regulatory program will assist the agency in meeting one of the stated goals of MCSIA to reduce the number and severity of large-truck involved crashes through expedited completion of rulemaking proceedings.

National Highway Traffic Safety Administration (NHTSA)

The statutory responsibilities of the National Highway Traffic Safety Administration (NHTSA) relating to motor vehicles include reducing the number of and mitigating the effects of motor vehicle crashes and related fatalities and injuries, providing motor vehicle information to consumers, and improving automotive fuel efficiency. NHTSA pursues policies that encourage the development of nonregulatory approaches when feasible in meeting its statutory mandates. It issues new standards and regulations or amendments to existing standards and regulations when appropriate. For example, during FY 2003, NHTSA's implementation of the TREAD Act will remain a high priority. It ensures that regulatory alternatives reflect a careful assessment of the problem and a comprehensive analysis of the benefits, costs, and other impacts associated with the proposed regulatory action. Finally, it considers alternatives consistent with the Administration's regulatory principles.

In addition to numerous programs that focus on the safety and performance of the motor vehicle, the Agency is engaged in a variety of programs to improve driver behavior. These programs emphasize the human aspects of motor vehicle safety and recognize the important role of the States in this common pursuit. This goal is accomplished through a number of means, including encouraging initiatives in such areas as safety belt use, child safety-seat use, activities aimed at combating impaired driving and aggressive driving, and consumer information activities.

NHTSA's regulatory program includes safety improvements that address significant numbers of fatalities and injuries and that are of the most concern to the public. Within this context, an important regulatory priority is offset frontal protection.

Federal Railroad Administration (FRA)

The Federal Railroad Administration (FRA) exercises regulatory authority over all areas of railroad safety.

Fashioning regulations that have favorable benefit-to-cost ratios and that, where feasible, incorporate flexible performance standards requires cooperative action by all affected parties. In order to foster an environment of collaborative rulemaking, FRA established the Railroad Safety Advisory Committee (RSAC). The purpose of RSAC is to develop consensus recommendations for regulatory action on issues referred to it by FRA. Where consensus is achieved, and FRA believes it serves the public interest, the resulting rule is very likely to be better understood, more widely accepted, more cost-beneficial, and more correctly applied. Where consensus cannot be achieved, however, FRA will fulfill its regulatory role without the benefit of RSAC's recommendations.

The RSAC has met on a quarterly basis so far and currently has working groups addressing the following tasks: (1) the development of regulations governing roadway maintenance equipment; (2) the review of FRA regulations for their applicability to historic railroads; (3) the development of safety standards for locomotive crashworthiness; (4) the development of safety standards for locomotive working conditions; (5) the development of locomotive event recorder accident survivability standards; (6) the development of regulations governing the use of processor-based signal and train control systems; (7) the revision of FRA's accident/incident reporting regulations to ensure conformity with OSHA's revised occupational injury and illness reporting regulations; and (8) the revision of FRA's blue signal protection requirements for workers performing certain duties on, under or between rolling equipment.

In addition to RSAC, FRA continues to use collaborative rulemaking to address passenger safety issues. FRA established a working group to address Passenger Equipment Safety Standards and published a final rule in the first phase of this rulemaking initiative in May 1999 based on its recommendations. FRA also employed a working group to develop Passenger Train Emergency Preparedness regulations. FRA continues to conduct research related to the second phase of the rule, and expects to convene a reconstituted working group on Passenger Safety Standards in late 2002. FRA also engaged in extensive public outreach to develop regulations regarding the use of train whistles and published an NPRM in January 2000.

Federal Transit Administration (FTA)

The Federal Transit Administration (FTA) provides financial assistance to

State and local governments for mass transportation purposes. The regulatory activity of FTA focuses on establishing the terms and conditions of Federal financial assistance available under the Federal transit laws.

FTA's policy regarding regulations is to:

- Implement statutory authorities in ways that provide the maximum net benefits to society;
- Keep paperwork requirements to a minimum;
- Allow for as much local flexibility and discretion as is possible within the law;
- Ensure the most productive use of limited Federal resources;
- Protect the Federal interest in local investments; and
- Incorporate good management principles into the grant management process.

As mass transportation needs have changed over the years, so have the requirements for Federal financial assistance under the Federal transit laws and related statutes. FTA's regulatory priorities for 2002-2003 are to continue to issue rulemakings required under the Transportation Equity Act for the 21st Century (TEA-21), to amend existing regulations as needed, and to update existing regulations for plain language.

Maritime Administration (MARAD)

MARAD administers Federal laws and programs designed to promote and maintain a U.S. merchant marine capable of meeting the Nation's shipping needs for both national security and domestic and foreign commerce.

MARAD's regulatory objectives and priorities reflect the Agency's responsibility of ensuring the availability of adequate and efficient water transportation services for American shippers and consumers. To advance these objectives, MARAD issues regulations, which are principally administrative and interpretive in nature, when appropriate, in order to provide a net benefit to the U.S. maritime industry.

MARAD's regulatory priorities are to update existing regulations and to reduce unnecessary burden on the public.

Research and Special Programs Administration (RSPA)

The Research and Special Programs Administration (RSPA) has responsibility for rulemaking under two programs. Through the Associate Administrator for Hazardous Materials Safety, RSPA administers regulatory programs under Federal hazardous materials transportation law and the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990. Through the Associate Administrator for Pipeline Safety, RSPA administers regulatory programs under the Federal pipeline safety laws and the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990.

In the area of hazardous materials transportation, the regulatory priority is to clarify through rulemaking the applicability of regulations to the loading, unloading, and storage of hazardous materials incidental to their movement in commerce. Clarifying the applicability of the regulations will facilitate compliance with them and also clarify when other requirements of Federal, State, local, and tribal governments apply.

Bureau of Transportation Statistics (BTS)

The Bureau of Transportation Statistics (BTS) is responsible for collecting, compiling, analyzing, and making accessible information on the Nation's transportation systems; identifying needs for new information and analysis and implementing programs to meet those needs; and enhancing the quality and effectiveness of the Department's statistical programs through research, the development of guidelines, coordination with related information-gathering activities conducted by other Federal agencies, and the promotion of improvements in data acquisition, archiving, dissemination, and use.

BTS's Office of Airline Information (OAI) collects airline financial and operating statistical data, covering both passenger and cargo traffic. This information gives the Government consistent and comprehensive economic and market data on individual airline operations and is used, for instance, in supporting policy initiatives, negotiating international bilateral aviation agreements, awarding international route authorities, and meeting international treaty obligations. The aviation, travel, and tourism communities value this information for a variety of purposes, such as conducting analyses of on-time performance, denied boardings, market trends, and economic analyses.

During FY 2003, BTS will continue its efforts to develop a reporting system that would allow relevant causal information to be disseminated to the traveling public. This reporting system would enable the Department to better identify the causes of delays and evaluate its efforts to mitigate such causes. BTS' goal is to publish a final rule concerning airline delays and cancellations during FY 2003.

BTS' long-range regulatory priority in the aviation area is to conduct a complete review and modernization of the Passenger Origin and Destination Survey. BTS can make significant improvements by providing data to meet the needs of DOT and other users in a way that takes advantage of the information revolution and matches the dramatically changing airline industry.

BTS, in conjunction with the Office of the Secretary, is in the process of performing a zero-base review of the financial and traffic data to determine what, if any, revisions can be made to the current data collections to ensure that these collections fully support the Department's mandated aviation responsibilities. Moreover, the review will seek to identify potential savings to the affected air carriers and the Government that can be accomplished through the application of advanced information technologies to the collection, processing, validation, and dissemination of aviation data. BTS's review and modernization of the Passenger Origin and Destination Survey will be incorporated as part of this zero-base review.

Saint Lawrence Seaway Development Corporation (SLSDC)

The Saint Lawrence Seaway Development Corporation (SLSDC) is a wholly owned Government corporation created by Congress in 1954. The primary operating service of the SLSDC is to ensure the safe transit of commercial and noncommercial vessels through the two U.S. locks and navigation channels of the Saint Lawrence Seaway System. The SLSDC works jointly with its Canadian counterpart to operate and maintain this deep draft waterway between the Great Lakes and the Atlantic Ocean. The SLSDC also works jointly with its Canadian counterpart on all matters related to rules and regulations, overall operations, vessel inspection, traffic control, navigation aids, safety, operating dates, and trade development programs.

The regulatory priority of the SLSDC is to provide its customers with the

safest, most reliable, and most efficient Seaway System possible.

DOT—Office of the Secretary (OST)

PROPOSED RULE STAGE

102. +COMPUTER RESERVATIONS SYSTEM REGULATIONS COMPREHENSIVE REVIEW

Priority:

Other Significant

Legal Authority:

49 USC 41712; 49 USC 40101(a); 49 USC 40113(a); 49 USC 40105

CFR Citation:

14 CFR 255; 14 CFR 399

Legal Deadline:

Final, Statutory, December 31, 1997.

Abstract:

The Department regulates computer reservations systems owned by airlines or airline affiliates that are used by travel agencies. The current rules are designed to prevent the systems from unreasonably prejudicing the competitive position of other airlines and to ensure that travel agencies can provide accurate and unbiased information to the public. The Department is reexamining its rules to see whether they should be readopted and, if so, whether they should be changed in response to greater use of the Internet in airline reservations and ticketing and changes in the industry. The Department is also reviewing its policies on the requirements for advertising fares by airline travel agencies that charge fees for brokering airline tickets. As part of this action, we will be looking at ways to lessen impacts on small entities.

Statement of Need:

The Department's existing rules require the Department to reexamine whether the rules are necessary and effective. In addition, two developments since the Department's last review of rules necessitate a reexamination. Those developments are the growing role of the Internet in airline distribution and the decline in airline control of the systems. A number of airlines obtain a large share of their bookings from their own Web sites, online travel agencies account for a significant share of all airline bookings, and the two largest systems operating in the United States are not owned by any airline.

Summary of Legal Basis:

The Department has the authority under 49 U.S.C. 41712 to prohibit unfair and deceptive practices and unfair methods of competition in the sale of air transportation by airlines and ticket agents. The Department accordingly may prohibit conduct by airlines and ticket agents that is likely to cause deception or violate the antitrust laws or antitrust principles. The original CRS rules were affirmed in United Air Lines v. CAB, 766 F.2d 1107 (7th Cir. 1985).

Alternatives:

The Department will consider alternatives ranging from allowing some or all of the rules to expire at their sunset date to readopting the rules with some additional provisions. The Department has issued two advance notices of proposed rulemaking asking for comment on whether the rules remain necessary in light of the developments in airline distribution and the systems' declining airline control and on whether rules are necessary for governing the sale of airline services through the Internet. The rules can be phased out or eliminated, along with comment on whether the rules should be strengthened in several respects raised by the comments on the advance notices of proposed rulemaking.

Anticipated Cost and Benefits:

The Department will include a preliminary regulatory evaluation in its notice of proposed rulemaking.

Risks:

The Department found in its last overall review of the rules that the systems had the ability and potential incentives to engage in conduct that could prejudice airline competition and cause consumers and their travel agents to receive misleading and inaccurate information on airline services. Systems could also engage in practices that would deny airlines and travel agencies a reasonable opportunity to use alternative electronic services that would provide information and booking capabilities. The rules may also impose costs on the systems and airlines. The Department will ask for comment on whether the risks still exist and, if so, whether the costs imposed by the rules outweigh the benefits provided by the rules.

Timetable:

Action	Date	FR Cite
ANPRM	09/10/97	62 FR 47606
Notice Extending Comment Period	10/30/97	62 FR 58700
Request for Comments	11/07/97	62 FR 60195
ANPRM Comment Period End	11/10/97	
Extended Comment Period End	12/09/97	
Notice Extending Reply Comment Period	01/23/98	63 FR 3491
Extended Comment Period End	02/03/98	
SANPRM	07/24/00	65 FR 45551
SANPRM Comment Period End	09/22/00	
SANPRM Reply Comment Period End	10/23/00	
NPRM	01/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

The extensions for the existing rule are under RINs 2105-AC75 and 2105-AD00 and AD09.

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RIN: 2105–AC65

DOT—U.S. Coast Guard (USCG)

FINAL RULE STAGE

103. +SALVAGE AND MARINE FIREFIGHTING REQUIREMENTS; VESSEL RESPONSE PLANS FOR OIL (USCG-1998-3417)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

33 USC 1321

CFR Citation:

33 CFR 155

Legal Deadline:

None

Abstract:

Current vessel response plan regulations require that the owners or operators of vessels carrying groups I through V petroleum oil as a primary cargo identify in their response plans a salvage company with expertise and equipment, and a company with firefighting capability that can be deployed to a port nearest to the vessel's operating area within 24 hours of notification (groups I-IV) or a discovery of a discharge (group V). Numerous requests for clarification revealed widespread misunderstanding and confusion regarding the regulatory language, which will make the implementation of this requirement difficult. Based on comments received after the Vessel Response Plan final rule publication (61 FR 1052; January 12, 1996) and during a Coast Guard hosted workshop, the Coast Guard intends to better define the terms "salvage expertise and equipment" and "vessel firefighting capability" requirements and will reconsider the 24-hour deployment requirement which was scheduled to go into effect on February 18, 1998. Therefore, the Coast Guard suspended the effective dates of the 24-hour deployment requirements as published in the final rule. The Coast Guard will continue with this project to better define the requirements. This rulemaking supports the Coast Guard's strategic goals of maritime safety and protection of the natural resources. This rulemaking is also significant because it concerns a matter of substantial public interest or controversy.

Statement of Need:

This rulemaking is intended to reduce the impact of oil spills from vessels.

Summary of Legal Basis:

The statutory authority for this rulemaking is 33 U.S.C. 1321.

Alternatives:

The Coast Guard hosted a workshop to solicit comments from the public on potential alternatives to the salvage and marine firefighting requirements contained in the vessel response plan rule.

Anticipated Cost and Benefits:

Undetermined

Risks:

Response plans are required by statute. A response plan will not prevent a discharge of oil, but it may help minimize the discharge and resulting damage to the environment. We estimate the provisions included in the salvage and firefighting requirements will prevent approximately 85,000 barrels of oil from entering the water during the next 25 years. As a point of reference, we further estimate the eleven major Oil Pollution Act of 1990 rulemakings will prevent approximately 1.2 million barrels of oil from entering the water over that same period. Consequently, the salvage and firefighting rulemaking represents a significant portion of the benefits to sociey of OPA 90.

Timetable:

Action	Date	FR Cite
Final Rule - Partial Suspension	02/12/98	63 FR 7069
Final Rule - Partial Suspension	01/17/01	66 FR 3876
NPRM	05/10/02	67 FR 31868
Public Meeting 7/9/02, 7/17/02, 7/25/02	06/12/02	67 FR 40254
Public Meeting 9/26/02	08/07/02	67 FR 51159
NPRM Comment Period Extended	08/07/02	
NPRM Comment Period End	10/18/02	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

Partial suspension of regulations created through the Vessel Response Plan final rule, docket no. 91-034, RIN 2115-AD81. The project was originally titled "Salvage and Firefighting Equipment; Vessel Response Plans." The change was made in order to distinguish this project from other similarly titled projects within the Coast Guard.

URL For More Information:

http://dms.dot.gov

URL For Public Comments:

http://dms.dot.gov

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Related RIN: Related To 2115-AD81

RIN: 2115–AF60

DOT—Federal Aviation Administration (FAA)

PROPOSED RULE STAGE

104. +FLIGHT CREWMEMBER DUTY PERIOD LIMITATIONS, FLIGHT TIME LIMITATIONS, AND REST REQUIREMENTS

Priority:

Other Significant

Legal Authority:

49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44701; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912

CFR Citation:

14 CFR 121; 14 CFR 135

Legal Deadline:

None

Abstract:

This rulemaking would amend the regulations on duty period limitations, flight time limitations, and rest requirements for flight crewmembers engaged in air transportation. The FAA proposes additional changes in response to comments received on the NPRM. The changes are necessary to ensure that the rules will continue to provide the minimum level of safety. This rulemaking responds to public and congressional interest in regulating flight crewmember rest requirements, NTSB Safety Recommendations, petitions for rulemaking, and scientific data. This action is considered significant because of substantial public interest.

Statement of Need:

The aviation community requires 24-hour activities to meet operational demands. Growth in long-haul,

regional, overnight cargo, and short-haul domestic operations is increasing. Therefore, shift work, night work, irregular work schedules, and time-zone changes will continue to be commonplace.

With this growth, the scientific knowledge about sleep, sleep disorders, circadian physiology, fatigue, and performance decrements has also grown. Some of the scientific knowledge has indicated that aviators experience performance-impairing fatigue from sleep loss resulting from current flight and duty practices.

In addition, industry and individuals have told the FAA that the current regulations are confusing and difficult to enforce. Therefore, a second purpose of the rulemaking is to establish consistent and clear duty-period limitations and rest requirements for all types of operations.

Summary of Legal Basis:

Section 44701, title 49 of the United States Code states that the Administrator shall promote safety of flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety.

Alternatives:

One obvious alternative would be to continue with the current rules; however, these regulations are rapidly becoming obsolete. As a second alternative, one commenter asked that the FAA develop a standard and then allow each carrier to design a rest/duty program that would meet that standard while accommodating differences in operations. While this works for certain rules, such as training regulations where the standard is training to proficiency, there is no way to apply this application to individual pilots on a daily basis.

Anticipated Cost and Benefits:

Undetermined.

Risks:

Although there has been only one identifiable accident due to pilot fatigue, fatigue is increasingly becoming the focus of possible causes following all accidents. Pilot reports of being fatigued to the point of incapacity are not uncommon, and intuitively, it is reasonable, given the sheer volume of air traffic, to expect fatigue to be a factor in future accidents if the regulations are not corrected.

Timetable:

Action	Date	FR Cite
NPRM	12/20/95	60 FR 65951
NPRM Comment Period End	03/19/96	
NPRM Comment Period Extended to 6/19/96	03/20/96	61 FR 11492
SNPRM	11/00/02	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

Project Number: AFS-94-443R

ANALYSIS: Regulatory Evaluation, 12/20/95, 60 FR 65951

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RIN: 2120–AF63

DOT—FAA

FINAL RULE STAGE

105. +IMPROVED FLAMMABILITY STANDARDS FOR THERMAL/ACOUSTIC INSULATION MATERIALS USED IN TRANSPORT CATEGORY AIRPLANES

Priority:

Other Significant

Legal Authority:

49 USC 106(g); 49 USC 44701; 49 USC 44702; 49 USC 44704

CFR Citation:

14 CFR 25

Legal Deadline:

None

Abstract:

This document proposes upgraded flammability standards that specifically address flame propagation and entry of an external fire into the airplane (burnthrough) under realistic fire scenarios. The proposed standards are intended to reduce the incidence and severity of cabin fires, particularly those ignited in inaccessible areas where thermal/acoustic insulation materials are typically installed. Also the proposed standards would provide an increased level of safety with respect to post-crash fires by delaying the entry of such a fire into the cabin, thereby providing additional time for evacuation and enhancing survivability. The new standards would apply to new type designs, and newly manufactured airplanes entering parts 91, 121, 125, and 135 service. This action is significant because of substantial public interest.

Statement of Need:

Service history and laboratory testing demonstrate that the current flammability requirements applicable to thermal/acoustic insulation materials may not be providing the intended protection against the spread of fires. Additionally, the FAA considers that increased protection against external fire penetrating the fuselage can be provided by proper selection of the same material. These new test methods would not only provide for increased in-flight fire safety, by reducing the flammability of thermal/acoustic insulation blankets, but would provide increased time for evacuation during externally fed, post-crash fires by increasing fuselage burnthrough resistance.

Summary of Legal Basis:

49 USC 4401 empowers the Administrator to prescribe regulations and minimum standards in the interest of safety for aircraft and equipment.

Alternatives:

The FAA considered several options to identify the least intrusive and most cost-effective alternative to increase the level of safety for insulation materials. The alternatives considered were as follows: (1) Utilize the industry test instead of the requirements proposed; this would not screen out certain types of materials shown to propagate a fire under more realistic conditions, but would screen out the worst performers. (2) Limit replacement of insulation materials to only certain parts of the airplane; it is not feasible to specify areas of the airplane that are more crucial than others. This would be an economic consideration that would not address safety issues. (3) Change the effectivity or compliance times to reduce the number of airplanes affected; the proposal will be designed to optimize costs versus benefits in this regard. Changes to either would be less than optimal. (4) Propose some combination of the above. Other combinations would either reduce the level of safety or be less cost effective.

Anticipated Cost and Benefits:

The total cost of this rule is $68.0 million, or $36.5 million discounted to present value if only blanket material changes are made to the aircraft. If manufacturers need to make configuration changes to the aircraft as well as material changes to their drawings, the FAA estimates that total costs would be $103.1 million or $68.2 million discounted to present value. The FAA is unable to quantify the benefits for this rule. However, preventing the loss of one airplane and its passengers over the 20-year period is not likely. Assuming such a loss would occur at the midpoint of the analysis, or in 2009, with 169 passengers, the nondiscounted loss would be $455.5 million, or $231.5 million discounted to present value (again, assuming society's willingness to pay $2.7 million to avoid a fatality). This loss does not include the value of the airplane. Even without loss of life, as several of the incidents show, a hull loss could exceed tens of millions of dollars. The FAA therefore has determined that this proposed rule would be cost beneficial.

Risks:

The FAA is aware of several events in which the flammability characteristics of thermal/acoustic insulation material may have been a contributing factor of airplane fires. The FAA initiated investigations and research to determine the appropriateness of applying existing Bunsen burner flammability criteria to thermal/acoustic insulation, as typically installed in concealed and inaccessible areas. This rule is necessary to decrease the risk of fires on airplanes and to improve airplane fire safety.

Timetable:

Action	Date	FR Cite
NPRM	09/20/00	65 FR 56992
NPRM Comment Period End	01/18/01	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

Project Number: ANM-99-086R.

Analysis: Regulatory Evaluation 12/00/2002.

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RIN: 2120–AG91

DOT—FAA

106. +CERTIFICATION OF AIRPORTS

Priority:

Other Significant

Legal Authority:

49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44706; 49 USC 44709 to 40711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44719; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 46105

CFR Citation:

14 CFR 121; 14 CFR 139

Legal Deadline:

None

Abstract:

This action proposes to revise the current airport certification regulation and to establish certification requirements for airports serving scheduled air carrier operations in aircraft with 10 to 30 seats. In addition, changes are proposed to address National Transportation Safety Board recommendations and petitions for exemptions and rulemaking. A section of an air carrier operation regulation also would be amended to conform with proposed changes to airport certification requirements. The FAA believes that these proposed revisions are necessary to ensure safety in air transportation and to provide a comparable level of safety at all certificated airports. This action is significant because of substantial public interest.

Statement of Need:

The last major revision to the airport certification regulation occurred in 1987, and since then, industry practices and technology have changed. To respond to such changes, the FAA is proposing to revise the regulation to clarify and update several requirements. Additionally, with the passage of the 1996 FAA Reauthorization Act, Congress provided the FAA the necessary authority to certificate airports serving scheduled air carrier operations with 10- to 30-seat aircraft, except in the State of Alaska (in addition to existing authority to regulate airports serving air carrier operations using aircraft with more than 30 seats). To achieve a comparable level of safety at all covered airports, FAA now proposes to exercise this authority and amend the regulation to incorporate airports serving smaller air carrier aircraft into the FAA's airport certification program. Also, the 2000 FAA Reauthorization Act (P.L. 106-181) mandates publication of the NPRM within 60 days of the Act's enactment; and publication of the final rule within one year of the close of comment period for airports serving smaller air carrier aircraft.

Summary of Legal Basis:

FAA has general and specific authority to regulate airports as set out in 49 USC 106(g) and 44701.

Alternatives:

The FAA has considered several alternative approaches to this proposed rulemaking and has attempted to minimize the potential economic impact of the proposal, especially the impact on small entities. In addition, this action fulfills the FAA's responsibility to meet deadlines established by Congress to certificate airports serving scheduled air carrier operations with 10- to 30-seat aircraft, except for the State of Alaska. The FAA considered alternatives based on two issues. Issue 1 was the revision of 14 CFR 139, and Issue 2 was the certification of airports serving scheduled operations of small air carrier aircraft with 10 to 30 passenger seats. The FAA determined that it was necessary to revise 14 CFR 139 and that the revised part 139 should include the certification of airports serving scheduled air carrier operations with 10- to 30-passenger seat aircraft.

Anticipated Cost and Benefits:

Most of the costs of this proposed rule are associated with the proposed improvements to safety and operational

requirements. Most of these costs result from the expansion of ARFF services. The present value of the total cost of the rule over a 10-year period is approximately $46 million, which includes training, additional emergency response protection, wildlife management, and an updated airport certification manual that better reflects current best practices. With the tremendous cost of aviation accidents, the proposed rule provides the potential for enhanced safety for a reasonable cost. The expected benefit of this proposed rule is an enhanced level of safety resulting in reduced fatalities, injuries, and property damage at airports with scheduled air carrier operations, particularly operations in aircraft configured with 10 to 30 passenger seats. The cost of a single accident of a 30-seat scheduled passenger aircraft is greater than the total cost of the proposal. Other benefits of this proposal include provisions for snow and ice control, wildlife management, and training.

Risks:

The purpose of this rulemaking is to expand and enhance the safety benefits of the current regulation by providing, to the extent possible, a comparable level of safety at all airports used by air carriers.

Timetable:

Action	Date	FR Cite
NPRM	06/21/00	65 FR 38636
Correction	08/21/00	65 FR 50669
NPRM Comment Period Extended	08/22/00	65 FR 50945
NPRM Comment Period End	09/19/00	
NPRM Comment Period End	11/03/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

Project Number: AAS-97-072R.

ANALYSIS: Regulatory Evaluation, 06/21/00

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RIN: 2120–AG96

DOT—Federal Motor Carrier Safety Administration (FMCSA)

FINAL RULE STAGE

107. +HOURS OF SERVICE OF DRIVERS; DRIVER REST AND SLEEP FOR SAFE OPERATIONS (RULEMAKING RESULTING FROM A SECTION 610 REVIEW)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

49 USC 31136; 49 USC 31502; PL 74-255; PL 84-939; PL 98-554; PL 103-311; PL 104-59; PL 104-88; PL 106-159

CFR Citation:

49 CFR 1.73; 49 CFR 395

Legal Deadline:

Final, Statutory, November 5, 1999, PL 104-88, sec 408(b).

Abstract:

This action would revise the regulations for commercial motor vehicle driver rest requirements and duty-period limitations for safe highway transportation. A broad rulemaking was required by the ICC Termination Act of 1995 (ICCTA), Pub. L. 104-88. There is substantial public and congressional interest in the regulation of medium- and heavy-duty truck and bus drivers' sleep, off-duty, and working periods of time. This action is one of the 23 "high priority" rule reform nominations in the 2001 cost benefit report.

Statement of Need:

Growth in long-haul, regional, overnight, local, for-hire and private carriage operations has kept pace with the growth of the U.S. economy. The scientific knowledge about sleep, sleep disorders, circadian physiology, fatigue, and performance decrements has also grown. The agency intends to incorporate as much of the scientific knowledge as possible into the regulations.

Summary of Legal Basis:

Section 408 of the ICC Termination Act of 1995 (Pub. L. 104-88, December 29, 1995) requires the Federal Highway Administration (functions transferred to the Federal Motor Carrier Safety Administration under Pub. L. 106-159) to issue a final rule dealing with a variety of fatigue-related issues pertaining to commercial motor vehicle safety (including 8 hours of continuous sleep after 10 hours of driving, loading and unloading operations, automated and tamper-proof recording devices, rest and recovery cycles, fatigue and stress in longer combination vehicles, fitness for duty, and other appropriate regulatory and enforcement countermeasures for reducing fatigue-related incidents and increasing driver alertness).

The FY 2001 Department of Transportation Appropriations Act, Pub. L. 106-346, included language prohibiting the Department from adopting a final rule before October 1, 2001.

Alternatives:

FMCSA received more than 53,000 comments on the NPRM. The agency is committed to fully exploring all issues and concerns of stakeholders; eight public hearings were held in May, June and July 2000; and three additional roundtables were held in September and October 2000. The roundtables drew broad public participation and elicited in-depth discussion and exchange of supporting data on critical issues, including issues surrounding the economic analyses and assumptions used by the agency. This will help FMCSA identify any necessary changes to the proposal that would address stakeholders' divergent concerns and support the development of a successful rule.

Anticipated Cost and Benefits:

FMCSA has placed a Preliminary Regulatory Evaluation of the NPRM in the docket.

Risks:

Driver reports of being fatigued to the point of incapacity are not uncommon, and it is reasonable to expect fatigue to be a factor in future crashes if the regulations are not corrected. FMCSA has established a goal to reduce by 50 percent over ten years the number of fatalities from crashes involving any commercial motor vehicle.

Timetable:

Action	Date	FR Cite
ANPRM	11/05/96	61 FR 57251
Notice of Meeting	02/11/97	62 FR 6161
ANPRM Comment Period End	03/31/97	
NPRM	05/02/00	65 FR 25540
Notice of Hearing	05/05/00	65 FR 26166
Notice of Hearing	05/22/00	65 FR 32070
Notice of Change in Hearing Structure	05/26/00	65 FR 34132
NPRM; Correction	05/31/00	65 FR 34904
Notice of Hearing	06/12/00	65 FR 36809
Comment Period Extended	06/19/00	65 FR 37956
Comment Period Extended; Roundtable Meetings	08/15/00	65 FR 49780
NPRM Comment Period End	12/15/00	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local, Federal

Federalism:

This action may have federalism implications as defined in EO 13132.

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RIN: 2126–AA23

DOT—FMCSA

108. +LIMITATIONS ON ISSUANCE OF COMMERCIAL DRIVER'S LICENSE WITH HAZARDOUS MATERIALS ENDORSEMENT

Priority:

Other Significant

Legal Authority:

49 USC 5103a; PL 107-56, sec 1012

CFR Citation:

49 CFR 383

Legal Deadline:

None

Abstract:

This rule would amend the Federal Motor Carrier Safety Regulations to prohibit States from issuing, renewing, transferring, or upgrading a commercial driver's license to transport hazardous materials unless and until the U.S. Department of Justice first conducts a background records check of the applicant and the U.S. Department of Transportation determines that the applicant does not pose a security risk which would warrant denial of the hazardous materials endorsement. This interim final action is required by section 1012 of the USA PATRIOT Act of 2001. This action is considered significant because of significant public interest in security issues since the events that occurred on September 11, 2001.

Statement of Need:

National security and intelligence officials continue to warn that future terrorist attacks against civilian targets are possible. One potential method could include obtaining hazardous materials for malicious purposes. This action responds to the requirement of section 1012 of the USA PATRIOT Act which is intended to make obtaining a hazardous materials endorsement difficult for those intending to do harm to the United States.

Summary of Legal Basis:

In response to the events of September 11, 2001, Congress passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Pub. L. 107-56, October 26, 2001, 115 Stat. 272). Section 1012 of the USA PATRIOT Act (115 Stat. 396) amended the Hazardous Materials Transportation Act (49 U.S.C. chapter 51) by adding new section 5103a(a)(1), Limitation on issuance of hazmat licenses. Further, section 1012(b) of the USA PATRIOT Act amended the fitness and testing standards of the Commercial Motor Vehicle Safety Act of 1986, which created the Commercial Driver's License (CDL) Program (49 U.S.C. 31305(a)(5)(C)).

Alternatives:

The purpose of section 1012 of the USA PATRIOT Act is to obstruct potential terrorists from gaining access to hazardous materials. If other, less costly methods were available to attain the same end, they would be employed. However, FMCSA does not believe any such alternatives exist.

Anticipated Cost and Benefits:

This rule will not have a significant impact on a substantial number of small entities because the impact of the rule will be gradual. Nonetheless, a regulatory analysis was prepared and placed in the docket.

Risks:

A failure to require background records checks of hazardous materials drivers could pose a national security risk.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

State

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RIN: 2126–AA70

DOT—National Highway Traffic Safety Administration (NHTSA)

PROPOSED RULE STAGE

109. +FRONTAL OFFSET PROTECTION

Priority:

Other Significant

Legal Authority:

49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation:

49 CFR 571.208

Legal Deadline:

None

Abstract:

The agency is considering establishing a Federal motor vehicle safety standard for high-speed frontal offset crash testing. The frontal offset test is a crash test for automobiles and light trucks in which the subject vehicles are run into a deformable honeycomb barrier. The barrier contacts only 40 percent of the front of the vehicle, simulating an off-center frontal collision. The agency is considering adding the offset test to the frontal occupant protection standard to measure vehicle structural integrity and reduce the number and severity of lower-body injuries.

Statement of Need:

While the Federal motor vehicle safety standards already contain a frontal crash test, injuries and fatalities still occur in various types of frontal crashes. The European Union determined that the best test for frontal occupant protection would be an offset test with belted test dummies. As part of the House of Representatives Conference Report 104-785, to accompany H.R. 3675, the National Highway Traffic Safety Administration was directed on September 16, 1996, to conduct research "...toward establishing a Federal motor vehicle safety standard for frontal offset crash testing." Such a standard would be largely harmonized with the European Union frontal crash standard. Subsequent research results with the 50th percentile male and the 5th percentile female Hybrid III dummies suggest that additional safety benefits would be provided under the offset test conditions.

Summary of Legal Basis:

Section 30111, title 49 of the United States Code, states the Secretary shall prescribe motor vehicle safety standards. As part of the House of Representatives Conference Report 104-785, to accompany H.R. 3675, the National Highway Traffic Safety Administration was directed on September 16, 1996, to conduct research "...toward establishing a Federal motor vehicle safety standard for frontal offset crash testing."

Alternatives:

The agency will focus on existing test procedures. However, the agency is working through the national and international biomechanical engineering community to develop better test devices such as improved dummy legs. Comments will be sought on the best dummy designs in the agency's proposal.

Anticipated Cost and Benefits:

The agency is evaluating the benefits and costs associated with requiring an offset frontal crash test procedure in FMVSS No. 208. Additional vehicle crash tests with advanced lower-leg instrumentation and new injury criteria are being conducted to develop comprehensive benefits estimates. The agency is also studying the societal costs associated with long-term lower-leg impairment.

Risks:

Current motor vehicles provide numerous occupant protection systems, such as safety belts and strategically placed energy absorption materials such as foam padding. However, an estimated 3,300 people per year are killed and 400,000 people per year are injured in frontal offset crashes. While lower-extremity injuries are rarely fatal, they do account for substantial societal costs associated with long-term impairment.

NHTSA is also examining whether implementing a new offset test might create disbenefits in other crash modes such as side impacts.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

In December 2001, the Office of Management and Budget (OMB) sent a prompt letter to NHTSA suggesting that it give higher priority to this rulemaking. NHTSA advised OMB that it is making offset frontal crash protection one of its highest safety rulemaking priorities.

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Related RIN: Related To 2127-AI39

RIN: 2127–AH73

DOT—Federal Railroad Administration (FRA)

FINAL RULE STAGE

110. +STANDARDS FOR DEVELOPMENT AND USE OF PROCESSOR-BASED SIGNAL AND TRAIN CONTROL SYSTEMS

Priority:

Other Significant

Legal Authority:

49 USC 20103

CFR Citation:

49 CFR 234; 49 CFR 236; 49 CFR 209

Legal Deadline:

None

Abstract:

Consistent with congressional mandate, FRA has continued its commitment to supporting Positive Train Control (PTC) technology development, testing and compatibility; and promoting deployment of PTC technology in the near future. In September 1997, FRA initiated joint fact-finding efforts through the Railroad Safety Advisory Committee (RSAC) Working Group on PTC. The advice and recommendations of RSAC formed the basis of an NPRM that would facilitate introduction of advanced technology, including systems that support PTC functions. The NPRM addresses technical standards for all processor-based signal and train control products, amending 49 CFR part 236. The comment period ended 11/08/01, and FRA is now preparing a final rule.

Statement of Need:

Current FRA regulations do not adequately address the use of signal and train control technology that is

processor-based. In fact, application of current regulations to processor-based systems can create unnecessarily burdensome requirements. Recently, use of this technology has begun to increase on the general system of North American railroads, placing new demands on agency resources to ensure the safety objectives contemplated by the current regulations are achieved. The existence of Federal regulations addressing this subject matter would further encourage safe use of the technology, which would reduce the risk of train-to-train collisions, better enforce speed restrictions, and increase the level of protection to roadway workers and their equipment. These improvements will likely result in fewer fatalities, injuries, and economic damage associated with such risks. Given the potential for substantial safety benefits that this program represents, this initiative is extremely important to the agency.

Summary of Legal Basis:

FRA is issuing this rule pursuant to its general rulemaking authority (49 U.S.C. 20103(a)). Currently, railroads may discontinue or materially alter a signal system initially required by the Secretary of Transportation only with approval from the Secretary (49 U.S.C. 20502). Exercise of both of these powers has been delegated to the FRA Administrator (49 C.F.R. 1.49).

Alternatives:

Currently, FRA accepts waiver applications from railroads that seek relief from FRA safety regulations in order to test new signal and train control equipment. Since FRA must consider the safety ramifications of each application on a case-by-case basis, this procedure can take years.

Prior to this action, FRA considered: (1) leaving the existing regulatory requirement as is, and (2) adopting a single standard for the design of processor-based signal and train control systems. However, agency inaction would hinder introduction of new, safer technology into railroad signal and train control; elimination of all railroad signal and train control system regulation would be a total abdication of the agency's statutory duties; and a single design standard would inhibit innovative signal and train control system designs.

Anticipated Cost and Benefits:

The proposed rule would provide flexible performance standards for the design of processor-based signal and train control systems, but would not mandate their usage. FRA believes that a railroad would adopt such a system under one or more of the following conditions: (1) the new system is safer; (2) the new system is less expensive; and (3) continued maintenance of the existing system is no longer feasible. The rule would ensure that any replacement system is at least as safe as the current system. Concerning existing processor-based systems, the rule would require railroads to adopt a software management plan, which will ensure proper software configuration, resulting in decreased risk of train accidents due to signal malfunction. FRA has not quantified these benefits because of the difficulties in estimating how many systems are likely to be affected by this rule, what the incremental cost would be, and when the benefits would accrue.

Most of the costs of this proceeding are associated with safety documentation required to demonstrate compliance with the performance standard. As with many performance standards, this rule would require substantial safety documentation from the railroad to demonstrate compliance, both up front and during the life cycle of the system. It appears that the primary cost involved in this rule would be the product risk assessment, a one-time expense presently incurred by product suppliers. For current processor-based systems, railroads face the cost of implementing a software management control plan, which is less expensive than attempting to satisfy current requirements, which did not contemplate the use of processor-based technology.

Overall, it appears that the benefits of the rule would outweigh the costs.

Risks:

The risk category addressed by the proposed rule is that of accidents that occur due to improper train operations and certain types of vandalism. Types of accidents that may be prevented include train-to-train collisions, derailments due to excessive train speed, and trains penetrating the work limits of roadway workers.

Timetable:

Action	Date	FR Cite
NPRM	08/10/01	66 FR 42351
NPRM Comment Period End	11/08/01	
Final Rule	06/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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DOT—Research and Special Programs Administration (RSPA)

PROPOSED RULE STAGE

111. +PIPELINE SAFETY: PIPELINE INTEGRITY MANAGEMENT IN HIGH-CONSEQUENCE AREAS (GAS TRANSMISSION PIPELINE OPERATORS)

Priority:

Other Significant

Legal Authority:

49 USC 5121; 49 USC 60102 to 60104; 49 USC 60108, 60117, 60118, 60124; 49 CFR 1.53

CFR Citation:

49 CFR 192

Legal Deadline:

None

Abstract:

An October 21, 1999, notice announced a public meeting to consider the need for additional safety and environmental regulations for gas transmission lines, hazardous liquid pipelines, and distribution pipelines in high-density population areas, commercially navigable waterways, and areas unusually sensitive to environmental damage. The public meeting was held on November 18-19, 1999 in Herndon, Virginia. The meeting was to determine the extent to which operators now have integrity management programs, to explore effective ways to promote their development and implementation by all operators, and to discuss mechanisms to confirm the adequacy of such operator-developed programs. Participants in the meeting discussed

a practical definition of high-consequence areas, as well as the need, if any, for increased inspection, enhanced damage prevention, improved emergency response, and other measures to prevent and mitigate pipeline leaks and ruptures in these areas. Comments from the public were due by January 17, 2000.

A final rule was published to require validation/testing of the integrity of certain hazardous liquid pipelines in high-consequence areas (RIN 2137-AD45).

Consideration of a similar gas rule is underway. A public meeting was held on February 12-14, 2001 to present information on integrity requirements for gas transmission pipelines. Additional information was requested June 27, 2001 (66 FR 34318). Rulemakings addressing gas transmission line high-consequence areas, direct assessment, and overall integrity management program will be published in 2002.

Statement of Need:

This action would address risks that have evolved as a growing economy brought people closer and closer to pipelines that are constructed in once rural areas. This action would provide added protection to areas where a gas release could do the greatest harm to people, and increase the public's assurance about the safety of pipelines.

In addition, this action would address four recommendations from the National Transportation Safety Board (NTSB): (1) require periodic testing and inspection to identify corrosion and other time-dependent damage; (2) establish criteria to determine appropriate intervals for inspections and tests, including safe service intervals between pressure testing; (3) determine hazards to public safety from electric resistance welded (ERW) pipe and take appropriate regulatory action; and (4) expedite requirements for installing automatic or remote-operated mainline valves on high-pressure lines to provide for rapid shutdown or failed pipeline segments.

Summary of Legal Basis:

Section 60102 of title 49, United States Code, provides broad authority to address pipeline operations and maintenance. In addition, paragraph (f) of that section requires that the Department prescribe, if necessary, additional standards requiring the periodic inspection of pipelines in high-density population areas, to include any circumstances when an instrumented internal inspection device, or similarly effective inspection method, should be used to inspect the pipeline (49 U.S.C. 60102(f)(2)). Paragraph (j) of that section requires that the Department prescribe standards on the circumstances where an operator of a gas transmission pipeline facility must use remote control valves to shut off the flow of natural gas in the event of a rupture of an interstate natural gas pipeline facility. (49 U.S.C. 60102(j)).

Alternatives:

The Office of Pipeline Safety considered several alternatives to provide the necessary increased level of protection to high consequence areas. These alternatives were: (1) no action; (2) prescriptive requirements for inspection and repair of pipelines in high consequence areas; (3) requiring pipeline operators to develop integrity management programs providing for inspection and testing based on risk factors and integration of information related to pipeline risk; and (4) requiring pipeline operators to develop integrity management programs providing for expedited inspection and testing.

Anticipated Cost and Benefits:

RSPA has estimated the following costs and benefits from the gas integrity management rulemaking and they have been subjected to peer review by the technical advisory committee charged by statute with reviewing the costs and benefits of proposed regulation.

For option 3, costs for the first year are estimated at $250M; for years 2-10 at $90M/year; and years 11-20 at $65M. In addition to a large amount of qualitative benefits, quantified benefits are estimated to be on order of $40 million annually.

Risks:

In conjunction with the existing pipeline safety requirements, this action creates a protective superstructure through more comprehensive assessment, repair, preventive, and mitigative actions in those areas (high consequence areas) where a failure would do the greatest damage. This assessment process will produce better information about problems that may have been missed and creates checks and balances to assure that the best use is made of available information to correct the problems.

Timetable:

Action	Date	FR Cite
NPRM - Integrity Management Program	11/00/02	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

Docket No. RSPA-00-7666.

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RIN: 2137–AD54

BILLING CODE 4910–62–S

DEPARTMENT OF THE TREASURY (TREAS)

Statement of Regulatory Priorities

The primary missions of the Department of the Treasury are:

- To promote prosperous and stable American and world economics, including promoting domestic economic growth and maintaining our Nation's leadership in global economic issues, supervising national banks and thrift institutions, and helping to bring residents of distressed communities into the economic mainstream;
- To manage the Government's finances by protecting and collecting the correct amount of revenue under the Internal Revenue Code and customs laws, financing the Federal Government and managing its fiscal operations, and producing our Nation's coins and currency; and
- To safeguard our financial systems, protect our Nation's leaders, and secure a safe and drug-free America by enforcing laws relating to counterfeiting, Federal Government securities, firearms and explosives, money laundering, border security, foreign commerce in goods and financial instruments, and smuggling and trafficking in contraband; protecting the President, Vice President, certain foreign diplomatic personnel, and others; and training Federal, State, and local law enforcement officers.

Consistent with these missions, most regulations of the Department and its constituent bureaus are promulgated to interpret and implement the laws as enacted by the Congress and signed by the President. Unless circumstances require otherwise, it is the policy of the Department to issue a notice of proposed rulemaking and carefully consider public comments before adopting a final rule. Also, in particular cases, the Department invites interested parties to submit views on rulemaking projects while a proposed rule is being developed, and holds public hearings to discuss proposed rules.

In response to the events of September 11, 2002, the President signed the USA PATRIOT Act of 2001 into law on October 26, 2001. Over the past year, the Department of the Treasury has accorded the highest priority to developing and issuing regulations to implement the provisions in this historic legislation that target money laundering and terrorist financing. These efforts, which will continue during the coming year, are reflected in the regulatory priorities of the Financial Crimes Enforcement Network (FinCEN). Also over the past year, the U.S. Customs Service has undertaken important regulatory initiatives to enhance our Nation's border security. These efforts will also continue during the coming year and are reflected in the regulatory priorities of the U.S. Customs Service.

To the extent permitted by law, it is the policy of the Department to adhere to the regulatory philosophy and principles set forth in Executive Order 12866 and to develop regulations that maximize aggregate net benefits to society, while minimizing the economic and paperwork burdens imposed on persons and businesses subject to those regulations.

Financial Crimes Enforcement Network

The regulations of the Financial Crimes Enforcement Network (FinCEN) constitute the core of Treasury's anti-money laundering initiatives and are an essential component of Treasury's anti-narcotics effort. FinCEN's regulations implement the Bank Secrecy Act (BSA), as amended in October 2001 by the USA PATRIOT Act. The BSA authorizes the Secretary of the Treasury to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, or regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures. FinCEN is working closely with the Treasury Offices of the General Counsel, Enforcement, and Financial Institutions to develop regulations to implement the amendments to the BSA made by the USA PATRIOT Act that target money laundering and terrorist financing.

FinCEN's regulatory priorities for fiscal year 2003 include the following projects, all of which are related to the events of September 11, 2001:

- *Due Diligence for Correspondent Accounts and Private Banking Accounts.* This final rule would implement section 312 of the USA PATRIOT Act, which requires certain financial institutions to establish due diligence policies, procedures, and controls reasonably designed to detect and report money laundering through correspondent accounts and private banking accounts established or maintained for non-U.S. persons.
- *Foreign Shell Banks and Recordkeeping for Foreign Banks with U.S. Correspondent Accounts.* This final rule would implement section 313 of the USA PATRIOT Act, which prohibits certain financial institutions from providing correspondent accounts in the United States to foreign shell banks (banks without a physical presence in any country) and requires certain financial institutions to take reasonable steps to ensure that correspondent accounts are not being used indirectly by foreign shell banks. The final rule would also implement section 319(b) of the USA PATRIOT Act, which requires certain financial institutions that provide correspondent accounts to a foreign bank to maintain records of the foreign bank's owners and agent in the United States designated to accept service of legal process regarding the correspondent account.
- *Anti-Money Laundering Programs.* These final and proposed rules would implement section 352 of the USA PATRIOT Act, under which financial institutions must adopt anti-money laundering programs. FinCEN expects to finalize rules proposed in April 2002 for banks and other depository institutions, casinos, securities broker-dealers, futures commission merchants, mutual funds, operators of credit card systems, and money services businesses. FinCEN also expects to issue a series of proposed rules for other financial institutions.
- *Customer Identification and Verification Procedures.* These final and proposed rules would implement section 326 of the USA PATRIOT Act, which mandates regulations requiring financial institutions to implement reasonable procedures for verifying the identity of customers opening an account, maintaining records of the information used to verify customer identity, and consulting lists of known or suspected terrorists or terrorist organizations. These procedures are required to be part of a financial institution's anti-money laundering program. FinCEN expects to finalize rules proposed in July 2002 for banks and other depository institutions, securities broker-dealers, futures commission merchants, and mutual funds and to publish proposed rules for other financial institutions.
- *Suspicious Activity Reporting.* FinCEN expects to issue a proposed rule to implement section 356(b) of the USA PATRIOT Act, which requires futures commission

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merchants to report suspicious transactions.

United States Customs Service

The United States Customs Service (Customs) is responsible for, among other things, administering laws concerning the importation of goods into the United States. This includes inspecting imports, collecting applicable duties, overseeing the activities of persons and businesses engaged in importing, and enforcing the laws concerning smuggling and trafficking in contraband. During the past fiscal year, due to the events of September 11, 2001, Customs also stressed its role in border security and in defending our nation's homeland. The regulatory priorities of Customs for fiscal year 2003 are: to continue to facilitate procedures for legitimate commercial transactions; to provide further obstacles to the flow of narcotics and other contraband into the United States; and to help secure the nation's borders from the introduction into this country of terrorists and weapons of terrorism. Customs also expects a regulatory priority to be amending its regulations to reflect its anticipated transition from the Department of the Treasury to the Department of Homeland Security.

During fiscal year 2002, Customs issued the following rules relating to border security:

- *Passenger and Crew Manifests Required for Passenger Flights in Foreign Air Transportation to the United States.* This interim rule requires that each air carrier, foreign and domestic, operating a passenger flight in foreign air transportation to the United States electronically transmit to Customs in advance of arrival a passenger and crew manifest that contains certain specified information.
- *Passenger Name Record Information Required for Passengers on Flights in Foreign Air Transportation To or From the United States.* This interim rule requires that each air carrier must provide Customs with electronic access to Passenger Name Record information contained in the carrier's automated reservation system and/or departure control system that sets forth the identity and travel plans of any passengers on flights in foreign air transportation either to or from the United States.
- *Access to Customs Security Areas at Airports.* This interim rule enhances the security environment at airports in Customs security areas at airports that accommodate international air commerce.
- *Presentation of Vessel Cargo Declaration to Customs Before Cargo Is Laden Aboard Vessel at Foreign Port for Transport to the United States.* This notice of proposed rulemaking would require that vessel carriers destined for the United States provide advance and accurate presentation of manifest information to Customs prior to cargo being loaded on the vessels at foreign ports and encourages electronic presentation of the advance information.

During fiscal year 2003, Customs plans to continue issuing regulations to enhance border security. In addition to finalizing the proposed rule and interim rules described above, Customs plans to issue rules that require advance manifesting for other modes of transportation pursuant to the Trade Act of 2002.

During fiscal year 2002, Customs developed and issued several rules to implement various provisions of the Tariff and Suspension Act of 2000 concerning the importation of goods into the United States. Customs published proposed rules on the following subjects:

- *Single Entry for Split Shipments.* This proposed rule would establish procedures to allow a single entry for a split shipment.
- *Single Entry for Unassembled or Disassembled Entities Imported on Multiple Conveyances.* This proposed rule would allow for a single entry to cover multiple portions of a single entity which, due to its size or nature, arrives in the United States on separate conveyances.
- *Prototypes Used Solely for Product Development, Testing, Evaluation, or Quality Control Purposes.* This proposed rule would establish procedures for allowing the duty-free entry of prototypes that are to be used exclusively in product development, testing, evaluation, or quality control.

Customs plans to finalize these proposals during fiscal year 2003.

Customs also plans to continue moving forward with amendments to improve its regulatory procedures that began under the authority granted by the Customs Modernization provisions of the North American Free Trade Implementation Act (Customs Mod Act). These efforts, in accordance with the principles of Executive Order 12866, have involved and will continue to involve significant input from the importing public. Customs will also continue to test new programs to see if they work before proceeding with proposed rulemaking to permanently establish the programs.

Consistent with the Customs Mod Act, Customs will accord priority to several projects to foster the development of a more automated environment to expedite the entry and release of imported merchandise, and the processing of merchandise for export. These regulations will benefit the importing and exporting public by streamlining the work of Customs officers and the trade community through improved efficiency and reduced paperwork and administrative costs. Among these projects are:

- *Liquidations.* Customs intends to propose regulations allowing paperless procedures for extension and suspension of liquidation notices, improving and clarifying the administrative process, and simplifying the regulations pertaining to liquidations and extensions and suspensions of liquidations.
- *Entry Reconciliation.* Customs will continue to develop through testing a "reconciliation" process that will allow the delayed submission to Customs of information that is undetermined at the time an entry summary or an import summary statement is required to be submitted. After Customs is satisfied with the testing, regulations will be proposed to allow reconciliation on a permanent basis.
- *Remote Location Filing.* Customs will continue to develop through testing the procedures that will allow electronic filing of entries with Customs from locations in the United States other than the port of arrival of the merchandise or the place at which the merchandise is examined. Remote location filing will provide entry filers (such as brokers and couriers) with greater flexibility and will allow Customs to make more efficient use of its resources. After Customs is satisfied with the testing, regulations will be proposed to allow remote location filing on a permanent basis.

In addition, Customs also plans to undertake several other regulatory actions that will affect the traveling and importing public, customs brokers, carriers, and commercial importers.

Internal Revenue Service

The Internal Revenue Service (IRS), working with the Office of the Assistant Secretary (Tax Policy), promulgates regulations that interpret and implement the Internal Revenue Code and related tax statutes. The purpose of these regulations is to carry out the tax policy determined by Congress in a fair, impartial, and reasonable manner, taking into account the intent of Congress, the realities of relevant transactions, the need for the Government to administer the rules and monitor compliance, and the overall integrity of the Federal tax system. The goal is to make the regulations practical and as clear and simple as possible.

Most IRS regulations interpret tax statutes to resolve ambiguities or fill gaps in the tax statutes. This includes interpreting particular words, applying rules to broad classes of circumstances, and resolving apparent and potential conflicts between various statutory provisions.

During fiscal year 2003, the IRS will accord priority to the following regulatory projects:

- *Deduction and Capitalization of Costs To Create Intangible Assets.* Section 162 of the Internal Revenue Code allows a current deduction for ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Under section263(a) of the Internal Revenue Code, however, no immediate deduction is allowed for expenditures to acquire or create property with a useful life that extends substantially beyond the taxable year. Such expenditures are capital expenditures that generally may be deducted only in future taxable years as the property is used in the taxpayer's trade or business. In recent years, there has been much uncertainty and controversy regarding whether expenditures that produce or enhance intangible assets or benefits are currently deductible under section 162, or are capital expenditures under section 263(a). The IRS and Treasury intend to publish proposed regulations that clarify the circumstances in which taxpayers must capitalize expenditures to produce or enhance intangible assets or benefits. As a first step in this process, the IRS and Treasury issued an advance notice of proposed rulemaking on January 24, 2002, describing and explaining rules that they expect to propose in the regulations and requesting public comment on these rules.
- *R&E Credit.* Section 41 of the Internal Revenue Code provides a credit for increasing research expenditures. The R&E Credit has been the subject of significant controversy between the Internal Revenue Service and taxpayers. In December 2001, the IRS and Treasury issued proposed regulations that clarify the types of research expenditures eligible for the credit. After a full review of the comments received from taxpayers, the IRS and Treasury expect to issue further guidance in FY 2003.
- *Abusive Tax Avoidance Transactions.* In February 2000, the IRS and Treasury issued temporary regulations requiring taxpayers to disclose potentially questionable transactions on their returns and requiring promoters to register, and maintain lists of investors for, similar types of transactions. The Treasury issued its Enforcement Proposals for Abusive Tax Avoidance Transactions on March 20, 2002, and, among other things, indicated that these rules would be revised based on the disclosures that had been made under the existing temporary regulations. New regulatory guidance will be issued revising the definition the types of transactions covered by these rules. In addition, in January 2001, the IRS and Treasury issued proposed Circular 230 regulations governing practice before the IRS. In July 2002, a number of these proposed changes were finalized. Additional guidance covering opinion standards for certain types of transactions will be issued in FY 2003.
- *Qualified Tuition Programs.* Section 529 of the Internal Revenue Code provides tax-deferred growth on college savings that are contributed to a section 529 program. Congress made significant amendments to section 529 in the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). Earnings on college savings in a section 529 program are excluded from the gross income of a student if used to pay qualified higher education expenses. The IRS and Treasury expect to issue regulations that will clarify various rules and definitions. Regulations are necessary because many taxpayers use a Qualified Tuition Program to save for college.
- *Losses on Consolidated Group Member Stock.* In response to Rite Aid v. United States, 255 F.3d 1357 (Fed. Cir. 2001), the IRS and Treasury will propose regulations to implement Notice 2002-11, 2002-7 I.R.B. 526, and Notice 2002-18, 2002-12 I.R.B. 644, which address the repeal of the General Utilities doctrine and duplication of losses if the stock of a member of a consolidated group is sold.
- *Cash Balance Pension Plans.* The IRS and Treasury will issue proposed regulations concerning approaches for cash balance plans to use to comply with the prohibition on discrimination on the account of age that is contained in the Internal Revenue Code, ERISA, and the Age Discrimination in Employment Act. A cash balance plan is a type of defined benefit plan under which benefits are calculated using a hypothetical account balance to which annual pay credits and interest credits are made. This proposed regulation will also address the circumstances in which a conversion from a traditional defined benefit pension plan to a cash balance plan is discriminatory on the account of age.
- *Split-Dollar Life Insurance Arrangements.* A split-dollar life insurance contract is an arrangement used to share or "split" the costs and benefits of a whole life insurance policy between two parties. Split-dollar insurance contracts usually arise in compensation-related and corporation-shareholder contexts, but have also been used in gift contexts. In a typical split-dollar insurance contract, an employer (the policy sponsor) agrees to contribute all or a significant portion of the premiums on a policy insuring the life of a key executive. Proposed regulations issued in July 2002 provide two mutually exclusive regimes to tax split-dollar life insurance arrangements for Federal income, employment, and gift tax purposes. Under the economic benefit regime, the owner of the life insurance contract is treated as providing current life insurance protection and other taxable economic benefits to the nonowner of the contract. Under the loan regime, the nonowner of the life insurance contract is treated as lending premium payments to the owner of the contract. If the loan from the non-owner does not provide for sufficient interest, the loan is a below-market loan, and is subject to imputations under section 7872 of the Internal Revenue Code as implemented by the proposed regulations. The IRS and Treasury

intend to issue additional guidance regarding the taxation of split-dollar life insurance arrangements in FY 2003.

- *Cost Sharing Arrangements.* Under existing regulations, affiliates within a multinational group may enter into so-called cost sharing arrangements and share the costs of developing intangibles in exchange for rights to exploit the resulting intangibles. Group affiliates that contribute pre-existing intangibles to the R&D effort must receive arm's length compensation (known as the buy-in) from the other affiliates participating in the arrangement. A number of technical issues have arisen that raise serious concerns that the cost sharing regulations are not operating in practice as intended. Treasury and the IRS anticipate issuing proposed amendments to the cost sharing regulations addressing these issues during FY 2003. In addition, Treasury and IRS anticipate following up the July 2002 issuance of proposed regulations addressing the treatment of stock option compensation under cost sharing arrangements with the issuance in FY 2003 of final regulations reflecting any revisions that may be appropriate in light of comments to be received on those proposed regulations.
- *Cross-Border Services.* Under existing regulations, if an affiliate within a multinational group provides services for other group affiliates' benefit, it must receive arm's length compensation (in certain cases cost reimbursement) from such other affiliates. A number of technical issues have arisen that raise serious concerns that the services regulations are not operating in practice as intended. Treasury and the IRS anticipate issuing proposed amendments to the services regulations addressing these issues during FY 2003.
- *Notices to Plan Participants.* Both the Internal Revenue Code and the Employee Retirement Income Security Act (ERISA) impose certain requirements on retirement plan administrators to provide notices to plan participants and beneficiaries about the plan benefits for which they are eligible. The IRS and Treasury will finalize guidance under section 204(h) of ERISA and section 4980F of the Internal Revenue Code on the requirements of the administrator of certain qualified retirement plans to provide notices to plan participants and others of certain reductions in the rate of future benefit accruals under the plan and the elimination or reduction of early retirement benefits or retirement-type subsidies. This guidance is needed in order to assist plan administrators in complying with their obligations and to ensure that participants receive the timely, understandable, and accurate notices required by the statute. In addition, the IRS and Treasury will revise existing regulations dealing with disclosure requirements to participants when a defined benefit pension plan offers participants a choice between a subsidized early retirement pension and a lump sum payment that does not include the subsidy. The new rules respond to complaints that employers are failing to warn participants that the lump sum distribution from the retirement plan that a participant may choose to receive is worth considerably less than the subsidized retirement annuity that is available to the participant.
- *Excess Parachute Payments.* Section 280G of the Internal Revenue Code imposes an excise tax on payments made to employees on account of a change in control of a corporation and denies the corporation the tax deduction for such payments. The IRS and Treasury will finalize proposed regulations that detail the way in which these rules work.
- *Nonwritten Consents To Disclose Return Information.* Prior to 1996, a taxpayer's request or consent to disclose his or her return information was required to be in written form. In 1996, section 1207 of the Taxpayer Bill of Rights II amended section 6103(c) of the Internal Revenue Code by removing the requirement that a request or consent authorizing the Service to disclose tax information to a third party designated by the taxpayer be in writing. Section 6103(c) provides that the Secretary may disclose returns or return information to a taxpayer's designee, subject to such requirements and procedures as the Secretary may prescribe by regulation. Temporary regulations were published in January 2001 authorizing the IRS to accept nonwritten requests or consents for disclosure in certain circumstances, providing parameters for developing consents applicable to the electronic filing program, easing the burden on taxpayers in combined Federal-State return filing programs, and clarifying the requirements for written consents. In FY 2003, the IRS and Treasury intend to issue final regulations regarding these important procedures.
- *New Markets Tax Credit.* Section 45D of the Internal Revenue Code, enacted as part of the Community Renewal Tax Relief Act of 2000, provides a credit for qualified equity investments in qualified community development entities that have received a new markets tax credit allocation. Temporary and proposed regulations were issued in December 2001, which provide guidance for taxpayers claiming the new markets tax credit under section 45D. The IRS and Treasury intend to issue additional guidance during FY 2003 in response to public comments that have been received.

Office of the Comptroller of the Currency

The Office of the Comptroller of the Currency (OCC) charters, regulates, and supervises national banks to ensure a safe, sound, and competitive national banking system that supports the citizens, communities, and economy of the United States. The substantive content of the OCC's regulations reflects four organizing principles that support this mission:

- The OCC's regulations help ensure safety and soundness by establishing standards that set the limits of acceptable conduct for national banks.
- The OCC's regulations promote competitiveness by facilitating a national bank's ability to develop new lines of business, subject to any safeguards that are necessary to ensure that the bank has the expertise to manage risk effectively and adapt its business practices to deal responsibly with its customers.
- Regulations can also affect national banks' ability to compete by contributing significantly to their costs. The OCC's goal is to improve efficiency and reduce burden by updating and streamlining its regulations and eliminating those that no longer contribute significantly to the fulfillment of its mission.
- The OCC's regulations help assure fair access to financial services for all Americans by removing unnecessary impediments to the flow of credit to consumers and small businesses, by encouraging national banks' involvement in community development activities, and by implementing Federal laws designed to protect consumers of financial services.

The OCC's regulatory workload and plans are affected directly by new statutes. Possible statutory changes are not addressed in this regulatory plan, but may affect some of the planned rules directly, and likely would affect how the OCC prioritizes its regulatory workload.

Important final rules issued during fiscal year 2002 include:

- *Capital; Treatment of Recourse, Direct Credit Substitutes and Residual Interests in Asset Securitizations (12 CFR Part 3).* This rulemaking, issued jointly with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, amended the agencies' regulatory capital standards to change the treatment of certain recourse obligations, direct credit substitutes, residual interests, and other positions in securitized transactions that expose banking organizations to credit risk. This final rule amended the agencies' regulatory capital standards to align more closely the risk-based capital treatment of recourse obligations and direct credit substitutes, to vary the capital requirements for positions in securitized transactions (and certain other credit exposures) according to their relative risk, and required capital commensurate with the risks associated with residual interests.
- *Capital; Nonfinancial Equity Investments (Merchant Banking) (12 CFR Part 3).* This rulemaking, issued jointly with the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation, amended the agencies' capital guidelines to establish special minimum capital requirements for equity investments in nonfinancial companies. The new capital requirements, which apply symmetrically to equity investments of banks and bank holding companies, impose a series of marginal capital charges on covered equity investments that increase with the level of a banking organization's overall exposure to equity investments relative to the organization's Tier 1 capital.
- *Capital; Claims on Securities Firms (12 CFR Part 3).* This rulemaking, issued jointly with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, amended the agencies' risk-based capital standards with regard to the risk weighting of claims on, and claims guaranteed by, qualifying securities firms. This rule reduced the risk weight applied to certain claims on, and claims guaranteed by, qualifying securities firms in countries that are members of the Organization for Economic Cooperation and Development from 100 percent to 20 percent under the agencies' risk-based capital rules. This rule implemented a change made to the Basel Accord.
- *Operating Subsidiaries of Federal Branches and Agencies (12 CFR Parts 5 and 28).* This rulemaking provided that a Federal branch or agency may establish, acquire, or maintain an operating subsidiary in generally the same manner that a national bank may acquire or establish an operating subsidiary.
- *International Banking Activities: Capital Equivalency Deposits (12 CFR Part 28).* This rulemaking revised certain requirements regarding capital equivalency deposit arrangements to increase flexibility for and reduce burden on certain Federal branches and agencies, based on a supervisory assessment of the risks presented by the particular institution.
- *Electronic Activities (formerly Electronic Banking) (12 CFR Part 7).* This rulemaking facilitated national banks' ability to conduct business using electronic technologies, consistent with safety and soundness. The rule groups together new and revised regulations addressing: national banks' exercise of their Federally authorized powers through electronic means; the location, for purposes of the Federal banking laws, of a national bank that engages in activities through electronic means; and the disclosures required when a national bank provides its customers with access to other service providers through hyperlinks in the bank's Web site or other shared electronic "space."
- *Prohibition Against Use of Interstate Branches Primarily for Deposit Production (12 CFR Part 25).* This rulemaking, issued jointly with the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation, amended the regulatory prohibition against branches being used as deposit production offices to include any bank or branch of a bank controlled by an out-of-State bank holding company, including a bank consisting only of a main office. The rulemaking implemented section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 to effectuate the amendment contained in section 106 of the Gramm-Leach-Bliley Act of 1999.
- *Debt Cancellation Contracts and Debt Suspension Agreements (12 CFR Part 37).* The OCC published a final rule that addresses debt cancellation contracts and debt suspension agreements. The purposes of the customer protections are to facilitate customers' informed choice about whether to purchase debt cancellation contracts and debt suspension agreements, based on an understanding of the costs, benefits, and limitations of the products and to discourage inappropriate or abusive sales practices. The final rule also promotes safety and soundness by requiring national banks that provide these products to maintain adequate loss reserves.

The OCC's regulatory priorities for fiscal year 2003 include projects in the following areas:

- *Implementation of a Revised Basel Capital Accord (formerly Domestic Capital Framework) (12 CFR Part 3).* The OCC plans to initiate one or more rulemakings to revise its regulatory capital requirements to take account of expected revisions to the 1988 Basel Accord. These rulemakings, which will be undertaken jointly with the other Federal banking agencies, will address the implementation of provisions of the revised Accord such as the internal ratings-based approach, as well as other revisions to the U.S. domestic capital framework that are appropriate in light of the revised Accord.
- *Capital; Securities Borrowing Transactions (12 CFR Part 3).* This final rule generally would lower the capital requirements for certain qualifying securities borrowing transactions by permitting the collateralized portion of the securities borrowing transactions to be subject to the market risk capital requirements at 12 CFR part 3, appendix B, as opposed to the risk-based capital requirements at 12 CFR part 3, appendix A. Among other things, in order to qualify for the lower market risk capital requirement under this joint interim rule, a bank must be subject to the market risk capital requirements, and the securities borrowing transaction must result in a receivable that arises from the posting of the cash collateral. Only the portion of the receivable

collateralized by the market value of the securities borrowed qualifies for the lower market risk capital requirement; noncollateralized portions must continue to be risk weighted under the risk-based capital guidelines.

- *Community Reinvestment Act Regulations (12 CFR Part 25).* The OCC, along with the other Federal banking agencies, published an advance notice of proposed rulemaking soliciting comments on ways to improve the CRA regulation. Based on the comments received, the OCC and other agencies will consider the need for changes to the CRA rules and will propose such changes as are deemed appropriate.
- *Implementation of Sections 1204-1206 of the Financial Regulatory Relief and Economic Efficiency Act of 2000 (the Act) (12 CFR Parts 5 and 7).* The OCC intends to initiate a rulemaking to implement the authority vested in national banks by the Act to reorganize into a holding company through a share exchange and to merge with a subsidiary or affiliate. The rulemaking may make other changes as well.
- *Fair Credit Reporting Act (12 CFR Part 41).* The OCC, along with the other Federal banking agencies, intends to publish a revised notice of proposed rulemaking to implement the affiliate-sharing provisions of the Fair Credit Reporting Act. This rulemaking would clarify the notice and opt-out obligations arising from the sharing of consumer information with affiliates.
- *Change in Business Plans (12 CFR Part 5).* The OCC intends to seek comment on a proposed rule that would require national banks to notify the OCC of material changes in business plans.
- *Suspension and Debarment of Accounts (12 CFR Part 19).* The OCC, along with the other Federal banking agencies, intends to issue proposed rules implementing the agencies' authority to suspend or debar accountants and accounting firms from performing the annual independent audits that are required by section 36 of the Federal Deposit Insurance Act (12 U.S.C. 1831m).

Office of Thrift Supervision

As the primary Federal regulator of the thrift industry, the Office of Thrift Supervision (OTS) has established regulatory objectives and priorities to supervise thrift institutions effectively and efficiently. These objectives include maintaining and enhancing the safety and soundness of the thrift industry; a flexible, responsive regulatory structure that enables savings associations to provide credit and other financial services to their communities, particularly housing mortgage credit; and a risk-focused, proactive approach to supervision.

OTS continues to work with the other Federal banking agencies on regulations where the agencies share the responsibility to implement statutory requirements. The agencies are working to update capital standards to maintain, and, where necessary, improve consistency in the agencies' rules. Regulatory projects in this area include the following:

- *Implementation of a Revised Basel Capital Accord.* The OTS plans to initiate one or more rulemakings to revise its regulatory capital requirements to take account of expected revisions to the 1988 Basel Accord. These rulemakings, which will be undertaken jointly with the other Federal banking agencies, will address the implementation of provisions of the revised Accord such as the internal ratings-based approach, as well as other revisions to the U.S. domestic capital framework that are appropriate in light of the revised Accord.

OTS and the other Federal banking agencies anticipate reproposing a rule implementing provisions of the Fair Credit Reporting Act (FCRA) concerning information sharing with affiliates. The agencies informed those institutions potentially affected by the rulemaking that any final rule would not apply to privacy notices sent before the effective date of the final FCRA rule.

The banking agencies are considering changes to the Community Reinvestment Act (CRA) rules, based upon the comments received on the joint advance notice of proposed rulemaking seeking comments on how to improve the CRA regulations, and will propose such changes as are deemed appropriate.

The banking agencies are considering rules on the corporate governance of depository institutions and on the ability of accountants and other professionals to provide audit services and practice before the agencies.

OTS has proposed regulations codifying certain interpretations affecting the fiduciary activities of savings associations and providing recordkeeping requirements for securities transactions. OTS is also considering possible amendments to its regulations governing directors and officers of savings associations.

Bureau of Alcohol, Tobacco and Firearms

The Bureau of Alcohol, Tobacco and Firearms (ATF) issues regulations to enforce the Federal laws relating to the manufacture and commerce of alcohol products, tobacco products, firearms and explosives. ATF's missions and regulations are designed to:

- Curb illegal traffic in, and criminal use of, firearms, and to assist State, local, and other Federal law enforcement agencies in reducing crime and violence;
- Facilitate investigations of violations of Federal explosives laws and arson-for-profit schemes;
- Regulate the alcohol, tobacco, firearms, and explosives industries, including systems for licenses and permits;
- Assure the collection of all alcohol, tobacco, firearms, and ammunition taxes, and obtain a high level of voluntary compliance with all laws governing those industries;
- Suppress commercial bribery, consumer deception, and other prohibited practices in the alcoholic beverage industry; and
- Assist the States in their efforts to eliminate interstate trafficking in, and the sale and distribution of, cigarettes in avoidance of State taxes.

In 2003, ATF is initiating a multiyear plan to revise its regulations in plain language. As resources permit, the ATF will update and revise regulations to be more clear and concise, using the principles of plain language. ATF began the groundwork for this priority in 2002 by starting recodifications in Title 27. These changes reorganize ATF regulations into a more logical sequence. The plain language revisions will make ATF rules more accessible to small businesses and to the public.

ATF will continue, as a priority during fiscal year 2003, modifications to its regulations governing commerce in explosives. ATF continues analysis of its regulations governing storage requirements for explosives, including fireworks explosive materials. ATF plans to issue regulations in response to closing loopholes in purchasing explosives materials, as directed by legislation now pending or contemplated.

Bureau of the Public Debt

The Bureau of the Public Debt (BPD) administers regulations:

- Governing transactions in government securities by Government securities brokers and dealers under the Government Securities Act of 1986 (GSA).
- Implementing Treasury's borrowing authority, including rules governing the sale and issue of savings bonds, marketable Treasury securities, and State and local government securities.
- Setting out the terms and conditions by which Treasury may redeem (buy back) outstanding, unmatured marketable Treasury securities through debt buyback operations.
- Governing the acceptability and valuation of all collateral pledged to secure deposits of public monies and other financial interests of the Federal Government.

Treasury's GSA rules govern financial responsibility, the protection of customer funds and securities, recordkeeping, reporting, audit, and large position reporting for all Government securities brokers and dealers, including financial institutions. During fiscal year 2003, BPD will give priority to the issue of final amendments to Treasury's Large Position Rules that pertain to very large positions in certain Treasury securities. The modifications will improve the information available to Treasury concerning the causes of market shortages. A proposed rule was published for comment on this matter in July 2002.

The rules setting out the terms and conditions for the sale and issue of marketable book-entry Treasury bills, notes, and bonds are known as the Uniform Offering Circular. During fiscal year 2003, BPD will accord priority to rewriting the Uniform Offering Circular in plain language. This will communicate the auction rules in a more direct and effective manner. BPD will also give priority to any further regulatory action the Department deems appropriate regarding the net long position reporting. An advance notice of proposed rulemaking was published in April 2002 soliciting comments on the timing and reporting of the net long position in Treasury auctions.

Financial Management Service

The Financial Management Service (FMS) issues regulations to improve the quality of Government financial management and to administer its payments, collections, debt collection, and Governmentwide accounting programs.

During fiscal year 2003, FMS' regulatory priorities will include several ongoing initiatives in the following areas:

- *Payment of Federal Taxes and the Treasury Tax and Loan Program (TT&L) (31 CFR Part 203).* FMS expects to revise this rule to support operational changes to the system used for the collection of corporate withholding taxes. FMS will streamline this rule and write it in plain language.
- *Automated Clearing House (ACH) (31 CFR Part 210).* FMS will continue to update this rule, which establishes standards for Federal Government payments and collections via the ACH system. FMS will revise this rule in order to stay current with private industry rules and to facilitate the continued expansion of electronic commerce.
- *Checks Drawn On the United States Treasury (31 CFR Part 240).* FMS intends to propose revisions to its rule governing the indorsement and payment of checks drawn on the United States Treasury. The proposed revisions will relate to, among other things, finality of payment, liability for checks bearing material defects or alterations, and the use of powers of attorney.
- *Debt Collection Improvement Act of 1996 (DCIA) (31 CFR Part 285).* FMS plans to issue general rules governing the offset of Federal Government payments to collect delinquent non-tax debt owed to Federal agencies. These rules will clarify the policies and procedures applicable to the collection of debt through the Treasury Offset Program and will facilitate full implementation of the program.

Community Development Financial Institutions Fund

The Community Development Financial Institutions Fund (Fund) was established by the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*). The primary purpose of the Fund is to promote economic revitalization and community development through investments in, and assistance to, community development financial institutions (CDFIs), principally through the CDFI Program. In FY 2003, the CDFI Program will comprise three components: the Core/Intermediary Component, the Small Capitalization Component, and the Technical Assistance Component. In addition, the Fund administers the Native American CDFI Technical Assistance Program, which provides capacity building grants to promote the development of CDFIs that serve Native American, Alaska Native and Native Hawaiian communities, and the Bank Enterprise Award (BEA) Program, which encourages insured depository institutions to engage in eligible development activities and to make equity investments in CDFIs.

In addition, the Fund administers the New Markets Tax Credit (NMTC) Program, in coordination with Treasury's Office of Tax Policy and the Internal Revenue Service. The NMTC Program is intended to spur investments in businesses located in low-income communities. Under the NMTC Program, taxpayers are provided a credit against Federal income taxes for qualified investments made to acquire stock or other equity interests in designated Community Development Entities (CDEs). Substantially all of the proceeds of qualified investments must in turn be used by the CDE to make qualified investments in low-income communities.

The Fund's fiscal year 2003 regulatory priority will focus on the NMTC Program, by developing guidance and/or regulations regarding aspects of the administration and operation of the program. In the last quarter of FY 2002, the Fund is developing revisions to the regulations that govern the CDFI Program and the BEA Program.

TREAS

PROPOSED RULE STAGE

112. REVISION OF BREWERY REGULATIONS AND ISSUANCE OF REGULATIONS FOR TAVERNS ON BREWERY PREMISES (BREWPUBS)

Priority:

Other Significant

Legal Authority:

26 USC 5051 to 5057; 26 USC 5401 to 5418; 27 USC 205

CFR Citation:

27 CFR 7; 27 CFR 25

Legal Deadline:

None

Abstract:

ATF intends to streamline regulations applying to breweries. ATF will eliminate obsolete regulatory provisions. A formula system for manufactured beer products will replace statements of process attached to the brewers notice. The annual notice for small brewers to pay the reduced rate of tax will be eliminated. Separate regulations for brewpubs will be added to part 25. A section will be added to part 25 to authorize and regulate the alternating use of brewery premises by different brewers. Regulations authorizing the operation of brew-on-premises facilities will be added to part 25.

Statement of Need:

ATF intends to streamline its regulations applying to the brewing industry. These changes will simplify brewery reports and operations and eliminate obsolete regulatory provisions. Specific changes would include the implementation of a formula system for the breweries to replace the statement of process; the establishment of a separate subpart containing simplified regulations for brewpubs; authorizing alternating brewery premises among different proprietors; eliminating the annual notice to pay the reduced rate of tax for most breweries; authorizing brewers to file the Brewer's Report of Operations on a quarterly basis; and authorizing many brewers to take inventories quarterly rather than monthly. The rule will also propose minimum production standards for beer thereby reducing formula filings and a revised statement of net contents requirement for certain container sizes.

Summary of Legal Basis:

ATF has undertaken this review of brewery regulations as part of the President's Regulatory Initiative. These regulations are issued under the general authority of the Secretary of the Treasury to promulgate regulations to implement the Internal Revenue Code and the Federal Alcohol Administration Act.

Alternatives:

Not applicable. ATF believes that industry will support these regulatory changes because they will streamline regulatory requirements applying to the brewing industry.

Anticipated Cost and Benefits:

The proposed regulations will benefit the brewing industry by reducing required inventories, notices, and other submissions to ATF.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	03/00/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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TREAS

113. COMMERCE IN EXPLOSIVES (INCLUDING EXPLOSIVES IN THE FIREWORKS INDUSTRY) (RULEMAKING RESULTING FROM A SECTION 610 REVIEW)

Priority:

Other Significant

Legal Authority:

5 USC 552(a); 31 USC 9303; 31 USC 9304; 40 USC 304(k); 18 USC 847; 18 USC 921 to 930; 18 USC 1261; 19 USC 1612; 19 USC 1613; 19 USC 1618; 26 USC 7101; 26 USC 7322 to 7326; 31 USC 9301

CFR Citation:

27 CFR 55

Legal Deadline:

None

Abstract:

Pursuant to section 610 of the Regulatory Flexibility Act, ATF published a notice on January 10, 1997, seeking public comments on whether it should revise its regulations, codified at 27 CFR part 55, governing Commerce in Explosives (Including Explosives in the Fireworks Industry). Based on comments received, ATF plans to initiate a rulemaking to revise these regulations in 2002.

Statement of Need:

This notice of proposed rulemaking will address many of the issues in part 55, Commerce in Explosives, especially the issues in requirements for explosives, including fireworks explosive materials. Pursuant to the periodic review requirements of the Regulatory Flexibility Act (5 U.S.C. 610), ATF published on January 10, 1997 a general notice initiating the review of a final rule published in 1990 concerning the storage of fireworks explosives materials. The 1990 rule, which was issued as a result of the number and severity of explosions occurring on the premises of special fireworks plants, amended certain regulations codified at 27 CFR part 55, generally concerning the recordkeeping and storage of fireworks explosive materials. The regulations also codified two fireworks-related rulings issued in 1979 and 1985, and the provisions of Public Law 99-308 relating to black powder. As a result of the public comments received in response to the General Notice and further study of this issue, ATF will issue a notice of proposed rulemaking covering this and related commerce and storage of explosives issues.

Summary of Legal Basis:

18 U.S.C. 847 grants the Secretary of the Treasury broad discretion to promulgate regulations necessary for the importation, manufacture, distribution, and safe storage of explosives materials. 18 U.S.C. 846 authorizes the Secretary to prescribe precautionary measures to prevent the recurrence of accidental explosions in which explosive materials were involved. The General Notice and upcoming notice of proposed rulemaking are also being issued pursuant to section 610 of the Regulatory Flexibility Act (5 U.S.C. 610), which requires an agency to review within 10 years of publication rules for which an agency prepared a final regulatory flexibility analysis addressing the impact of the rule on small businesses or other small entities.

Alternatives:

Alternatives will be examined in the context of public comments to the notice of proposed rulemaking.

Anticipated Cost and Benefits:

Unknown at this time.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
General Notice of Regulatory Review	01/10/97	62 FR 1386
NPRM	12/00/02	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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BILLING CODE 4810–25–S

DEPARTMENT OF VETERANS AFFAIRS (VA)

Statement of Regulatory Priorities

The Department of Veterans Affairs (VA) administers benefit programs that recognize the important public obligations to those who served this Nation. VA's regulatory responsibility is almost solely confined to carrying out mandates of the laws enacted by Congress relating to programs for veterans and their beneficiaries. VA's major regulatory objective is to implement these laws with fairness, justice, and efficiency.

Most of the regulations issued by VA involve at least one of three VA components: The Veterans Benefits Administration, the Veterans Health Administration, and the National Cemetery Administration. The primary mission of the Veterans Benefits Administration is to provide high-quality and timely nonmedical benefits to eligible veterans and their beneficiaries. The primary mission of the Veterans Health Administration is to provide high-quality health care on a timely basis to eligible veterans through its system of medical centers, nursing homes, domiciliaries, and outpatient medical and dental facilities. The primary mission of the National Cemetery Administration is to bury eligible veterans, members of the Reserve components, and their dependents in VA National Cemeteries and to maintain those cemeteries as national shrines in perpetuity as a final tribute of a grateful Nation to honor the memory and service of those who served in the Armed Forces.

A new priority undertaken at VA includes a comprehensive effort to review, reorganize, and rewrite the existing VA regulations contained in part 3 of 38 CFR. The goal of the Regulation Rewrite Project is to improve the clarity and logical consistency of these regulations in order to better inform veterans and their family members of their entitlements.

The Department of Veterans Affairs' 2002 regulatory plan contains one rulemaking action from the Veterans Health Administration. The Veterans Health Administration rulemaking is RIN 2900-AK08 "Payment or Reimbursement for Emergency Treatment Furnished at Non-VA Facilities," which amends the Department's medical regulations by establishing a mechanism for payment or reimbursement for certain non-VA emergency services furnished to veterans for nonservice-connected conditions.

VA

FINAL RULE STAGE

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114. PAYMENT OR REIMBURSEMENT FOR EMERGENCY TREATMENT FURNISHED AT NON-VA FACILITIES

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

38 USC 501; 38 USC 1725; PL 106-117

CFR Citation:

38 CFR 17

Legal Deadline:

NPRM, Statutory, May 22, 2000, 180 days after effective date of PL 106-117.

Abstract:

This document amends the Department of Veterans Affairs medical regulations by establishing a mechanism for payment or reimbursement for certain non-VA emergency services furnished to veterans for nonservice-connected conditions. This amendment is necessary to implement provisions of "The Veterans Millennium Health Care and Benefits Act."

Statement of Need:

Public Law No. 106-117 "The Veterans Millennium Health Care and Benefits Act" requires this amendment to implement its provisions.

Summary of Legal Basis:

38 U.S.C. 1725 authorizes VA to establish provisions for payment or reimbursement for certain non-VA emergency services furnished to Veterans for nonservice-connected conditions.

Alternatives:

The alternatives that the Department had to consider are the amount of reimbursement and the location where claimants can file a claim.

Anticipated Cost and Benefits:

Cost projection for FY 2001 is $66 to $75 million. The FY 2003 budget, in accordance with section 1725 of title 38, will provide an updated estimate of the full year impact of this legislation expected to be incurred in FY 2003.

Risks:

None.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	05/29/00	66 FR 36467
Interim Final Rule	07/19/01	66 FR 36467
Interim Final Rule Comment Period End (Information Collection)	07/19/01	
Interim Final Rule Effective (38 CFR 17.004)	07/19/01	
Interim Final Rule Comment Period End	09/10/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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RIN: 2900–AK08

BILLING CODE 8320–01–S

ENVIRONMENTAL PROTECTION AGENCY (EPA)

Statement of Priorities

OVERVIEW

Since 1970 the U.S. Environmental Protection Agency (EPA) has had the major Federal responsibility for protecting the quality of the American environment and controlling the effects of pollution on public health. EPA fulfills these responsibilities using a combination of tools, and over the past three decades EPA's actions have led to measurable improvements in air and water quality, significant reductions in solid and hazardous wastes, and limitations on the use of harmful pesticides.

In the year ahead EPA will continue its regulatory and nonregulatory activities in order to further protect the Nation's air, water, and land from the harmful effects of pollution. In particular, the Agency will focus its attention on the President's Clear Skies Initiative, the protection of specific watersheds and the strengthening of urban economies through the enhanced cleanup of brownfields.

But in one particular area EPA's responsibilities have changed substantially over the past year, and they will continue to change in the year ahead. After the terrorist attacks of September 11, 2001, EPA — like the rest of the nation — reordered its priorities so that it could sharply increase the services it provides in terms of both preventing future terrorist attacks and cleaning up the effects of such attacks, should any occur in the future. The response to future terrorism and its potential effects on human health and environmental quality is now one of EPA's top priorities. This new priority is affecting the structure of EPA's programs, the Agency's budget, and its regulatory agenda.

EPA also has made assistance to small businesses a top priority both in terms of the direct services it provides to those businesses and the consideration it gives them when developing regulations. The Agency is committed to fulfilling the President's pledge that "...we're going to do everything we can to clean up the regulatory burden on small businesses."

EPA continues to give a high priority to fresh thinking and innovation in its efforts to protect human health and the environment. Innovative methods of achieving environmental goals are being incorporated into EPA's regulations, and they are an important part of the Agency's regulatory agenda in each of its program offices.

Moreover, EPA's innovations extend beyond regulations and into a range of voluntary partnerships with industry, State governments, and local communities, partnerships that are leading to measurable environmental improvements. Although those partnerships often support activities that generate environmental benefits beyond those required by environmental regulations, many of them also result in more effective and less burdensome regulations. Like EPA's emphasis on innovation, partnerships involving individual facilities and whole industries cut across all of EPA's program offices.

Water Infrastructure Security

EPA's response to the terrorist attacks of September 11, 2001, and its subsequent homeland security efforts have not involved the need to promulgate new regulations.

The responsibility and authority provided to the Agency with respect to certain public drinking water systems under the Public Health Security and Bioterrorism Response Act, signed into law on June 12, 2002, may require the promulgation of a codification rule or other regulation.

Assistance to Small Businesses

Because of the crucial role played by small businesses in sustaining the health of the national economy, EPA has undertaken several activities that make it easier for those businesses to understand and fulfill their environmental responsibilities. Those activities constitute a strategically important priority in EPA's regulatory agenda, and in many cases they provide assistance that goes beyond EPA's formal regulatory responsibilities, while encouraging small businesses to improve their environmental performance beyond what is required by regulation.

In particular, the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the Regulatory Flexibility Act (RFA) give small businesses the opportunity to participate early in the development of certain regulations so that their special needs are given full consideration. For rules that may have a significant effect on small businesses, EPA solicits input from those businesses and considers alternatives that minimize adverse impacts. All of EPA's activities under SBREFA and RFA have a high priority on the Agency's regulatory agenda.

EPA also will encourage wider use of self-certification for small businesses, a system that is starting to become a reality in several states. Under this sector-based program, industrywide environmental performance standards are established with annual certifications of compliance. This system eases the regulatory burden on small businesses while improving and rewarding compliance with regulation. EPA's emphasis on small-business assistance extends to all of its program offices.

Regulatory Innovation

Innovation has been an important priority at EPA for the past several years, and it will be a priority into the future, because it has demonstrated its potential for improving environmental quality beyond what is possible with traditional regulations. As EPA develops its regulations, the Agency will continue to include economic incentives, compliance assistance, and other types of mechanisms that have proven capable of motivating better environmental performance by individuals, communities, businesses, and industry sectors. EPA also will support environmental technology innovation by ensuring that environmental regulations encourage and provide the flexibility for use of innovative technologies. Regulatory flexibility, cost reduction, information transfer, and technology development are all key parts of EPA's emphasis on regulatory innovation, and they will be evident in EPA's efforts to develop a number of regulations, including those related to Clear Skies.

Voluntary Partnerships

For the past several years EPA has placed a high priority on working as partners with both individual facilities and whole industries to help them improve their environmental performance. In many cases, these partnerships — such as Energy Star and WasteWise — support industry efforts to reduce pollution in ways that are not required by Federal regulation. But voluntary partnerships between EPA and regulated businesses also are directly affecting the quality of the Agency's regulations. For example, by working closely with trade associations, the Agency has been able to develop regulations that meet environmental goals while still being responsive to the special needs or circumstances of particular industries. Because EPA/private sector partnerships hold so much potential for improving regulations, they will continue to be a

priority for the Agency's regulatory agenda.

HIGHLIGHTS OF EPA'S REGULATORY PLAN

Office of Air and Radiation

EPA's Office of Air and Radiation (OAR) remains committed to taking advantage of the flexibility granted by the Clean Air Act that enables companies, States, and communities to meet clean air goals with cost-effective approaches. Consequently, this flexibility is a major priority in OAR's regulatory agenda for the coming year.

In 1997 the Agency established new, more stringent national ambient air quality standards for ozone and particulate matter (PM) based on new scientific information indicating that new standards were needed to protect public health with an adequate margin for safety. In 1999 a panel of the D.C. Circuit Court, in a 2 to 1 decision, held that the statutory provision authorizing issuance of such standards constituted an impermissible delegation of authority, as interpreted by EPA, and therefore was unconstitutional. On appeal to the United States Supreme Court, this decision was reversed in a unanimous vote. On remand, the same panel of the D.C. Circuit upheld all of the challenged standards for PM and ozone. The Agency now is working on an implementation program for ozone to respond to different aspects of the court decisions. The Agency also is proceeding with the next legislatively mandated review of the standards. In addition, in response to a recommendation from the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA), OAR is collaborating with OIRA to identify specific types of health research that would be useful in enhancing OAR's ability to quantify the health benefits from future reductions in human exposure to particulate matter.

To date, EPA's air toxics program has focused primarily on reducing emissions from large industrial sources through technology-based standards. Since 1990, the Agency has issued standards affecting 77 different industries, such as petroleum refineries and chemical manufacturing plants. When fully implemented, these standards will reduce more than one million tons of toxic air emissions per year. Through other efforts such as phasing lead out of gasoline, EPA also has significantly reduced air toxics from cars and trucks.

OAR will continue to set technology-based standards for large industries. The rules listed in this year's regulatory plan — covering industrial boilers, institutional/commercial boilers, wood manufacturing, reciprocating engines, combustion turbines, and automobile painting operations — are among the most significant remaining categories to be regulated under this program. While working on these standards, OAR is beginning to evaluate those sources with standards already in place to determine if the remaining risk from those sources warrants additional regulation.

OAR also is implementing an Urban Air Toxics Strategy, which focuses on 33 air toxics that pose the greatest risk to the largest number of urban areas. This strategy presents OAR's plan, both nationally and locally, to reduce these toxic emissions. Finally, to better understand and measure risks from air toxics, OAR is conducting important health research while improving emissions inventories, modeling capability, and monitoring networks.

To assist States in meeting clean air goals, OAR is proceeding with Federal programs aimed at achieving large, cost-effective reductions in particulate matter (PM) and ozone-forming nitrogen oxide (NOX) emissions. OAR also is working to develop a rule to control emissions from off-road vehicles such as construction equipment. In addition, OAR is in the final stages of completing a rulemaking to help States reduce airborne ozone concentrations resulting from the windblown transfer of NOX emissions from the Midwest to the East Coast.

Of these actions, one supports nominations of reform candidates in public comments responding to OMB's 2001 Report to the Congress on the costs and Benefits of Regulations. This action is the rulemaking entitled Review of the National Ambient Air Quality Standards for Particulate Matter, which supports the nomination to revise this standard.

Office of Water

EPA's Office of Water (OW) has established six regulatory priorities for the coming year. They include rules affecting cooling-water intakes, industrial and municipal wastewater pollution, concentrated animal feeding operations (CAFOs), the Total Maximum Daily Load (TMDL) program, Clean Water Act (CWA) jurisdiction, and drinking water.

EPA intends to issue two rules to minimize the adverse environmental impacts associated with cooling-water intakes. As the name implies, certain industrial operations require large volumes of water to be drawn in from a surface water body in order to regulate the operating temperature of equipment. Given the makeup of the regulated community, entities that own or operate steam electric power plants would bear most of the costs of these rules. The expected benefits would be significant reductions in aquatic organisms killed or injured by impingement (being pinned against screens or other parts of a cooling-water intake structure) or entrainment (being drawn into cooling water systems and subjected to thermal, physical, or chemical stresses).

EPA also will issue two regulations to help control industrial and municipal wastewater pollution. First, for the metal products and machinery industry, EPA expects to issue effluent limitations to reduce the discharge of millions of pounds of conventional and toxic pollutants. These reductions would achieve significant improvements in water quality. Second, EPA expects to propose a rule to better control sanitary sewer overflows (SSOs). EPA estimates that about 60,000 SSOs discharge untreated sewage to the environment yearly, exposing the public to health risks (primarily from pathogens in untreated sewage). The proposed rule would clarify the existing prohibition of these overflows, improve public notification and reporting, and provide guidelines for planning and managing sewer systems. It also would ensure that several thousand "satellite" sewer collection systems are covered by permit requirements.

CAFOs present significant risks to water quality through runoff from animal feeding facilities and farmland where manure has been spread. EPA will revise existing regulations to better control these risks. The revisions will control the discharge and runoff of excess nutrients and other pollutants and, in turn, improve surface water quality.

EPA plans to propose to withdraw the July 2000 TMDL program revisions and, at the same time, to propose a rule establishing a new framework for accomplishing the water quality planning and management provisions of the Total Maximum Daily Load (TMDL) program. EPA believes this framework, based on the watershed approach, will allow more jurisdictions — i.e., States, territories, and tribes — to use the program to contribute more effectively to improving the Nation's water quality. The proposal recognizes that the major responsibility for water quality management resides with these jurisdictions. The goal of the proposal is to provide jurisdictions with a tailored

yet flexible approach to water quality management that meets the unique needs and situation of each jurisdiction and of local communities, while ensuring that progress is made towards restoring the Nation's waters so they attain and maintain water quality standards. EPA's proposal revitalizes and strengthens the Continuing Planning Process (CPP) as a focus for a variety of jurisdictions' water quality planning and implementation activities. The proposed new framework seeks to increase TMDL program flexibility and enhance stakeholder participation, promote opportunities for trading, and increase efficiencies in establishing, approving, and implementing TMDLs.

EPA intends to undertake joint proposed rulemaking with the Department of the Army to amend the regulatory definition of waters subject to the CWA. The existing regulations contain language asserting jurisdiction over isolated intrastate waters, but a January 9, 2001, U.S. Supreme Court opinion limits use of that regulatory provision. The revisions of the regulations will address the Court's decision, improve regulatory clarity, and provide more specificity regarding the scope of CWA jurisdiction.

Finally, EPA is developing three rules to protect the safety of drinking water. First, EPA is developing a proposed Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) to reduce risks from microbial pathogens, especially *Cryptosporidium*, in public water systems that use surface water sources. LT2ESWTR provisions would target systems where current standards do not provide sufficient protection, including both filtered systems with elevated source water pathogen levels and also unfiltered systems. Second, EPA plans to finalize the Ground Water Rule, a rule that addresses fecal contamination in public water systems served by ground water sources. Finally, EPA is developing a proposed Stage 2 Disinfectants and Disinfection Byproducts Rule to control exposure to disinfection byproducts beyond the requirements of the Stage 1 Disinfectants and Disinfection Byproducts Rule. This rule will respond to new data the Agency has received on disinfection byproduct occurrence and possible reproductive and developmental health effects.

Office of Prevention, Pesticides, and Toxic Substances

The Food Quality Protection Act (FQPA) overhauled U.S. pesticides laws, enhancing protections related to pesticide residues in food by requiring aggregate and cumulative risk assessments, with a special emphasis on children and infants. EPA is currently working on the Pesticide Tolerance Reassessment Program, a ten-year program to reevaluate the safety of all pesticide residues in food. Under this program, EPA has completed reassessment of two-thirds of the tolerances for pesticide residues in foods. Implementation of FQPA has required an increase of the activities of the Scientific Advisory Panel (SAP) established under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Significant risk-assessment methodology issues continue to be addressed by the SAP, including drinking water assessment methodologies, approaches for conducting cumulative and aggregate risk assessments, use of 10x safety factors, and guidelines for assessing protein plant pesticides. The SAP also jointly sponsored with the EPA Science Advisory Board several meetings on ethical considerations related to the testing of human subjects, and the Agency has asked the National Academy of Science to evaluate the ethics of testing human subjects.

The Agency will be announcing revisions to its pesticide emergency exemption program, under which States and other Federal agencies may obtain permission to temporarily use a pesticide not in accordance with registration requirements under emergency conditions. In response to State concerns, EPA already has reduced the review time for emergency exemptions significantly. Other changes that EPA is considering have the potential for further streamlining the exemption program and allowing more flexibility.

Evidence suggests that environmental exposure to manmade chemicals that mimic hormones (endocrine disruptors) may cause adverse health effects in human and wildlife populations. FQPA directed EPA to develop a chemical screening program, using appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have hormonal effects in humans. In October 1996, EPA chartered a scientific advisory committee to advise it on establishing a program to carry out the legislated directive. The advisory committee recognized that there currently were no validated test systems for determining whether a chemical may have an effect in humans that is similar to an effect produced by naturally occurring hormones.

EPA is in the process of developing and validating the screens and tests that the advisory committee recommended, and designing a framework for regulatory information. As part of this process, EPA is developing priority-setting criteria to be used by the Agency to identify the initial list of chemicals for which testing will be required. The proposed criteria will be published in the Federal Register in December 2002 for public comment. The final criteria will be published in the Federal Register approximately six months later.

Bioengineering is on the cutting edge of an emerging technology with new and different products rapidly being developed and introduced into commerce. A Plant-Incorporated Protectant (PIP) is a bioengineered pesticidal substance produced and used by the living plant to protect itself from pests, typically insects, viruses, and fungi. EPA regulates the domestic manufacture, sale, and use of pesticides, including PIPs, under FIFRA and FFDCA to assure that any pesticide residue in/on a food product is safe. The Agency sets appropriate residue limits and assures that there is no adverse affect to the environment from the PIP.

Through the voluntary High Production Volume (HPV) Challenge Program, certain international efforts, and rulemaking under the Toxic Substances Control Act (TSCA), basic data related to the environmental fate and potential hazards associated with HPR chemicals, i.e., organic chemicals manufactured (including imported) at or above 1 million pounds per year, based on information submitted under the 1990 Inventory Update Rule (TSCA) will be collected or, where necessary, developed. When combined with information about exposure and uses, this data will allow the Agency and others to evaluate and prioritize potential health and environmental effects and take appropriate action.

EPA received commitments from 357 companies, individually or through 106 consortia, and the International Council of Chemical Associations (ICCA) to sponsor 2,214 of the estimated 2,800 HPV chemicals included in the voluntary HPV Challenge Program.

As an integrated approach for addressing the widespread problems associated with toxic pollutants that persist and bioaccumulate in the environment, EPA launched the Persistent, Bioaccumulative, and Toxic (PBT) pollutants program in November 1998. The goal of the program is to further reduce risks to human health and the environment from existing and

future exposure to PBT pollutants such as mercury, PCBs, and dioxin through the use of chemical- specific action plans. Through this program, the Agency is committed to create an enduring cross-office system that will address the cross-media issues associated with priority PBT pollutants.

To encourage the application of pollution prevention principles during the development of new chemicals submitted as premanufacture notices (PMNs) under TSCA section 5, EPA has initiated a new and innovative voluntary pilot project entitled Sustainable Futures. The goal of this pilot project is to encourage pollution prevention and the development of inherently low-hazard chemicals. Also, the Agency seeks to gain additional data and experience regarding the pollution prevention, risk reduction, and source reduction benefits of use of hazard, exposure, and risk screening methodologies such as EPA's Pollution Prevention Framework in new product development efforts.

Office of Solid Waste and Emergency Response

The Office of Solid Waste and Emergency Response (OSWER) is planning regulatory actions to reduce risks to human health and the environment, reduce burden on the regulated community, encourage recycling and reuse, and standardize certain aspects of recordkeeping programs. All these actions will be taken under the Resource Conservation and Recovery Act (RCRA), the Federal law governing waste management.

During the 1990s EPA determined that additional control is needed for cement kiln dust, a high-volume material byproduct of the cement manufacturing process that potentially contains hazardous constituents such as lead, cadmium and chromium. EPA is assessing regulatory approaches for waste management of cement kiln dust.

EPA also is taking steps to encourage recycling and reuse. EPA is considering modifying RCRA rules that impact the management of solvent-contaminated shop towels and wipes. This effort would encourage pollution prevention and recycling of hazardous solvents, make management standards more consistent with the risks these materials pose, and clarify existing Federal policies regarding these materials.

Under RCRA, wastewater treatment sludge from electroplating operations is listed as hazardous waste (waste code F006). F006 represents one of the largest hazardous waste streams amenable to recycling. EPA is considering changes to the existing RCRA regulations to encourage safe recycling and management practices of wastewater treatment sludge from electroplating operations, and to reduce regulations applicable to electroplating sludge that is sufficiently high in metals and sufficiently low in other toxic constituents.

Under RCRA, a hazardous waste is defined as a solid waste. EPA's framework for determining whether a material is a solid waste is based on what the material is and how it is managed. EPA is planning to revise the definition of solid waste, removing the necessity of RCRA control where it is unnecessary and thereby increasing reuse and recycling of hazardous waste, improving resource conservation, and improving materials management.

To reduce regulatory burdens, EPA is considering adding four solvents to the hazardous-waste exemptions for mixtures of spent solvents (used solvents that are not fit for further use without being processed) in wastewater treatment plants; revising provisions, such as de minimis quantities and the definition of point of application of exemption; and clarifying the applicability of exemptions to incinerator scrubber water. This effort, if finalized, would allow more facilities to be eligible for regulatory exemptions and more wastes to be exempted from hazardous-waste regulation.

To further reduce administrative burdens, efforts are underway to eliminate duplicative and nonessential paperwork imposed by RCRA reporting and recordkeeping requirements. This rule would have minimal impact on the protectiveness of RCRA regulations. It would eliminate or streamline paperwork requirements that are unnecessary because they add little to the protectiveness of RCRA regulations.

EPA also plans to streamline the permit process by creating a standardized permit for facilities that generate waste and routinely manage the waste on-site in tanks, containers, and containment buildings. This standardized permit process would allow facilities to obtain and modify permits more easily, while maintaining the protectiveness currently existing in the individual RCRA permit process.

Of these actions, two support nominations of reform candidates in public comments responding to OMB's 2001 Report to Congress on the Costs and Benefits of Regulations. The Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures proposed rule supports the nomination to revise the Mixture and Derived-From final rule to exempt waste streams resulting from the treatment of hazardous wastes from RCRA subtitle C, unless those waste streams themselves exhibit a characteristic of hazardous wastes. This nomination received an OMB priority level of 1 (high priority). This proposal is expected to be published in January 2003.

Likewise, the Revisions to the Definition of Solid Waste proposed rule supports the nomination to revise the definition of solid waste to grant an exemption from RCRA for materials destined for recycling or reuse. This nomination received an OMB priority level of 2 (medium priority). This proposal is expected to be published in April 2003.

Furthermore, one of OSWER's proposed actions, Modifications to RCRA Rules Associated with Solvent-Contaminated Shop Towels and Wipes proposed rule, may have small-business impacts. Initial analysis of options has found that some approaches may impose some costs on small business. The economic impacts are expected to be minor, since the estimated incremental costs are small relative to sales.

Office of Environmental Information

The top regulatory priority of EPA's Office of Environmental Information (OEI) will be the finalization of the Cross-Media Electronic Reporting and Record-Keeping Rule (CROMERRR). This rule will address electronic reporting by companies regulated under all of EPA's programs — air, water, pesticides, toxic substances, wastes, and emergency response. CROMERRR would remove existing regulatory obstacles to electronic reporting, and it would set requirements for companies choosing to report electronically. In addition, this rule would set the conditions for allowing electronic reporting under State, tribal, or local environmental programs that operate under EPA authorization.

CROMERRR is intended to make electronic reporting as simple, efficient, and cost effective as possible for regulated companies, while ensuring that a transition from paper to electronic reporting does not compromise EPA's compliance and enforcement programs. Consequently, the Agency's strategy is to impose as few specific requirements as possible, and to keep those requirements neutral with respect to technology, so the rule will pose no obstacles to adopting new technologies as they emerge.

To ensure that authorized programs at the State, tribal, and local levels meet CROMERRR's goals, the rule would specify a set of criteria that these programs must satisfy as they initiate electronic reporting or recordkeeping. The final rule would specify a process for certifying that these programs meet the criteria. EPA is on schedule to finalize CROMERRR by the third quarter of FY 2003. In response to public comment, a decision was made to focus the final rule on electronic reporting only, and to defer coverage of electronic recordkeeping until a later time. Also in response to comments, EPA currently is exploring a streamlined process to review State programs for electronic reporting.

Finally, in response to OMB's prompt letter pertaining to EPA's progress in implementing an integrated system of reporting, EPA has made further progress in implementing the Central Data Exchange (CDX). CDX is on track to provide electronic reporting services for all significant environmental data collections. All but one of the major environmental data exchanges with states will be operational through CDX by the end of 2004. Also, for the first time next year, Toxics Release Inventory (TRI) reporters will be able to send and view paperless reports using a form of electronic authentication that will substitute for a paper signature.

EPA ACTIONS OF SPECIAL INTEREST TO SMALL BUSINESSES

Many EPA regulations, and several actions included in this Regulatory Plan, are of substantial interest to small businesses. Because small businesses face special challenges in their efforts to understand and comply with environmental regulations, EPA is taking a number of actions across the Agency to help small businesses fulfill their environmental responsibilities. The Agency's Small Business Ombudsman provides one-stop assistance to small businesses looking for answers to environmental questions. The Agency is involving small businesses earlier in the regulatory development process, and developing alternative approaches — like self-certification — that work better for small businesses. EPA is providing a number of services, like compliance assistance centers, disclosure incentives, and a National Compliance Assistance Clearinghouse, that help small businesses better manage their compliance efforts. Small businesses are being rewarded for voluntary innovative efforts and environmental leadership, and EPA is investing in new technologies and management tools that small businesses can use in the future.

Because EPA's regulations affect many small businesses in many different ways, the Agency is committed to integrating and simplifying its activities in ways that help small businesses comply. In particular, EPA is preparing a revised small business strategy entitled Integrating EPA's Small Business Activities: A Strategy to Meet the Needs of Small Businesses. The revised strategy reflects input received over the past two years from a series of interviews within EPA and with focus groups, States, industry representatives, and other interested stakeholders to better understand the environmental regulatory issues and obstacles facing small businesses. In FY 2003, EPA will implement the strategy's recommendations to better integrate its activities that support small businesses, including how the Agency provides technical assistance and outreach, develops regulations that minimize burden, and simplifies participation in EPA's voluntary programs.

EPA

PRERULE STAGE

115. PESTICIDES; EMERGENCY EXEMPTION PROCESS REVISIONS

Priority:

Other Significant

Legal Authority:

7 USC 136(p)

CFR Citation:

40 CFR 166

Legal Deadline:

None

Abstract:

EPA will publish a Federal Register notice to revise the pesticide emergency exemption process under section 18 of the Federal Insecticide, Fungicide and Rodenticide Act, based on recent recommendations from the States. Rulemaking will not be undertaken at this time because the revisions are to operational practices used to implement the program and are consistent with current regulations. Emergency exemptions allow temporary use of a pesticide not in accordance with registration requirements when emergency conditions exist. EPA identified a number of issues, which have been refined through informal discussions with States, user groups, and other stakeholders.

Statement of Need:

In 1996, stakeholders, including States and Federal agencies, identified a number of issues related to improving the emergency exemption process. States and Federal agencies are the only applicants for emergency exemptions. Representatives of States have recommended modifications to the current process for application, review and approval of emergency exemptions. If adopted, the changes would reduce unnecessary burden to both applicants and EPA, expedite decisions on applications (which is critical in emergency situations) and potentially reduce risk to human health and the environment.

Summary of Legal Basis:

FIFRA section 18 authorizes EPA to temporarily exempt States from the requirements of registration to alleviate an emergency condition.

Alternatives:

Several measures for streamlining or improving the emergency exemption process are being considered by the Agency. EPA has analyzed these measures and has received considerable comment, both formally and informally, from stakeholders, including specific recommendations from a group representing States' interests. Since the modifications would generally constitute regulatory relief, and are not expected to cause any economic impact, options with varying cost do not apply.

Anticipated Cost and Benefits:

Because this action would provide regulatory relief, no costs are anticipated. Potential benefits include the reduced burden and cost to States and Federal agencies that apply for emergency exemptions, reduced burden to EPA, and, some cases, reduced risk to human health and the environment. Indirect benefits may accrue to users of pesticides under emergency exemptions if changes result in faster review and approval, or greater availability of pesticides. No economic assessment of costs and benefits has yet been conducted.

Risks:

In general, the measures being considered are primarily intended to

reduce burdens for States and EPA and achieve efficiencies in the program. There is potential risk reduction in reduced use of pesticides.

Timetable:

Action	Date	FR Cite
Notice	11/00/02	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State

Additional Information:

SAN No. 4216

Sectors Affected:

9241 Administration of Environmental Quality Programs

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RIN: 2070–AD36

EPA

116. • ENDOCRINE DISRUPTOR SCREENING PROGRAM; PRIORITY SETTING CRITERIA

Priority:

Other Significant

Legal Authority:

15 USC 2603 TSCA; 21 USC 346(a) FFDCA; 42 USC 300(a)(17) SDWA; 7 USC 136 FIFRA

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

EPA published a proposed policy statement in the Federal Register setting forth the Endocrine Disruptor Screening Program on December 28, 1998. In that FR Notice, the Agency described the major elements that the Program had developed to comply with the requirements of FFDCA section 408(p) as amended by FQPA. One of those elements is Priority Setting which was defined as the collection, evaluation, and analysis of relevant information to determine the general order in which chemical substances and mixtures will be subjected to screening and testing. Under this current action, EPA is developing priority setting criteria to be used by the Agency to identify the initial list of chemicals for which Tier 1 testing will be required.

Statement of Need:

The Endocrine Disruptor Screening Program fulfills the statutory direction and authority to screen pesticide chemicals and drinking water contaminants for their potential to disrupt the endocrine system and adversely affect human health.

Summary of Legal Basis:

The mandate to screen pesticide chemicals for estrogenic effects that may affect human health is the Federal Food, Drug and Cosmetic Act (FFDCA) as amended in the Food Quality Protection Act (21 U.S.C. 346a(p)). FFDCA also provides EPA authority to require testing of substances that may have an effect that is cumulative to that of a pesticide chemical. Discretionary authority to test contaminants in sources of drinking water is in the Safe Drinking Water Act as amended in 1996 (42 U.S.C. 300j-17). General authority to test chemicals and pesticides is in TSCA (15 U.S.C. 2603) and FIFRA (7 U.S.C. 136), respectively.

Alternatives:

A Federal role is mandated under cited authority. There is no alternative to role of the Federal Government on this issue to ensure that pesticides, commercial chemicals and contaminants are screened and tested for endocrine disruption potential. A limited amount of testing may be conducted voluntarily but this will fall far short of the systematic screening which is necessary to protect public health and the environment and ensure the public that all important substances have been adequately evaluated.

Anticipated Cost and Benefits:

None.

Risks:

Evidence is continuing to mount that wildlife and humans may be at risk from exposure to chemicals operating through an endocrine mediated pathway. Preliminary studies show possible adverse effects on humans. Wildlife effects have been more thoroughly documented. Abnormalities in birds, marine mammals, fish and shellfish have been documented in the U.S., Europe, Japan, Canada, and Australia which have been linked to specific chemical exposures. Evidence is sufficient for the U.S. to proceed on a two track strategy: research on the basic science regarding endocrine disruption and screening to identify which chemicals are capable of interacting with the endocrine system. The combination of research and test data developed by this program will enable EPA to take action to reduce chemical risks.

Timetable:

Action	Date	FR Cite
Notice Proposed Priority Setting Criteria & Request for Comment	12/00/02	
Notice Final Priority Setting Criteria	06/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

SAN No. 4727

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RIN: 2070–AD59

EPA

117. • SUSTAINABLE FUTURES; VOLUNTARY PILOT PROJECT UNDER THE TSCA NEW CHEMICAL PROGRAM

Priority:

Other Significant

Legal Authority:

Not Yet Determined

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

Sustainable Futures is a voluntary pilot project initiated by EPA to encourage the application of pollution prevention principles during the development of new chemicals submitted as premanufacture notices (PMNs) under section 5 of the Toxic Substances Control Act (TSCA). The goal of this pilot project is to encourage pollution prevention and the development of inherently low-hazard chemicals. Also, the Agency seeks to gain additional data and experience regarding the pollution prevention, risk reduction, and source reduction benefits of use of hazard, exposure, and risk-screening methodologies such as EPA's Pollution Prevention Framework in new product development efforts.

Statement of Need:

Chemical manufacturers need quick, inexpensive, reliable methods for screening chemicals for risk early-on in the chemical development process. Manufacturers of new chemical substances often have product or process alternatives available and/or under consideration at R&D. Unfortunately, little or no data are available about the potential hazards or risks of alternatives under consideration. As a result, stakeholders often make commercialization decisions without an understanding of the risk trade-offs of product or process alternatives under consideration. Commercialization decisions are often made "blind" to risk considerations. Sustainable Futures is a technology-transfer approach to risk reduction and pollution prevention. Under Sustainable Futures, the Agency will give sophisticated computerized risk-screening methodologies, called the P2 Framework, to chemical companies, together with training and detailed technical assistance. The P2 Framework allows companies to evaluate chemical alternatives based on a computerized analysis of chemical structure. The P2 Framework can be used early-on in R&D, even before a chemical is synthesized, to render screening-level assessments of chemicals under study and alternatives available. R&D is the optimal point to initiative risk screening because alternatives are more plentiful at R&D and the cost of change is lowest. Risk screening at R&R is the purest form of pollution prevention.

Summary of Legal Basis:

Section 5 of TSCA gives EPA authority to review and, where necessary, control unreasonable risks associated with new chemicals. An important approach to risk control is to give chemical manufacturers sophisticated, cost-effective screening methodologies that allow stakeholders to self-identify problematic chemicals, resulting in submission of inherently low-risk new chemicals. The Pollution Prevention Act encourages approaches that prevent the introduction of hazardous materials. The P2 Framework is one approach toward this objective.

Alternatives:

One alternative would be to ask the industry to test new chemical substances to determine the level of risk, if any. Such an approach would increase costs and delay introduction of materials into the market place. There is no statutory authority to require testing prior to submission of a premanufacture notice. A second alternative is the status quo, where chemical commercialization decisions are made without an understanding of risk trade-offs of product and process alternatives.

Anticipated Cost and Benefits:

Cost to participating stakeholders will be low. Almost all stakeholders currently have computer equipment sufficiently powerful to run assessment methodologies offered through Sustainable Futures. Training, offered by EPA at no cost, will be needed, however. Eastman Kodak conducted an independent study of the benefits of conducting risk screening at R&D using the P2 Framework - the central concept of the Sustainable Futures Initiative. Kodak found they saved between 13.5 percent and 100 percent of product development costs for each chemical evaluated at R&D. Other benefits seen in the Kodak case study include reduction in generation of chemical wastes, reduced time to market, reduced regulatory liability and better utilization of health, safety and environmental staff.

Risks:

The methodologies included in the P2 Framework, i.e., the foundation of the Sustainable Futures Initiative, are screening-level methodologies with an inherent degree of uncertainty. As a result, it is possible that a low risk chemical might be mistakenly identified as posing human or environment concerns. The opposite is also possible, i.e., a hazardous chemical might be mistakenly viewed as posing low hazard as a result of application of the P2 Framework methodologies.

Timetable:

Action	Date	FR Cite
Notice Announcing Voluntary Pilot Project	11/00/02	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

Additional Information:

SAN No. 4734

Sectors Affected:

325 Chemical Manufacturing; 32411 Petroleum Refineries

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RIN: 2070–AD60

EPA

118. CLEAN WATER ACT DEFINITION OF WATERS OF THE UNITED STATES

Priority:

Other Significant

Legal Authority:

33 USC 1361 CWA sec 501; 33 USC 1362 CWA sec 502

CFR Citation:

33 CFR 328.3(a); 40 CFR 110.1; 40 CFR 112.2; 40 CFR 116.3; 40 CFR 117.1; 40 CFR 122.2; 40 CFR 230.3(s); 40 CFR 232.2; 40 CFR 257.3-1(d); 40 CFR Part 300, Appendix E; 40 CFR 401.11(l)

Legal Deadline:

None

Abstract:

This action involves joint rulemaking by EPA and the Department of the Army to amend the regulatory definition of waters of the United States. The action would clarify the jurisdictional status under the Clean Water Act (CWA) of "isolated intrastate non-navigable waters and wetlands." The existing regulations contain language asserting jurisdiction over isolated intrastate waters, but that regulatory provision has been the subject of a January 9, 2001, U.S. Supreme Court opinion, Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC). In SWANCC, the Court held that the scope of "waters of the United States" protected under the Clean Water Act did not extend to isolated intrastate non-navigable waters based solely on presence of migratory birds. While SWANCC did not actually invalidate regulations under the CWA, the decision does establish limitations on their use. Revision of the regulatory language is necessary to address the Court's decision, improve regulatory clarity, and provide more specificity regarding CWA jurisdiction. Among others things, the rulemaking would clarify CWA jurisdiction for entities (e.g., industrial, commercial, governmental) that discharge pollutants, including dredged or fill material, to isolated intrastate surface waters or wetlands. Small entities or State/local/tribal governments might be affected by a change in regulatory definition of "waters of the United States" if they either are regulated under or help administer CWA programs affecting such waters, e.g. sections 402, 404, 311.

Significant impacts on such entities or governments are not anticipated, as the proposed regulatory revisions would be consistent with the Supreme Court ruling.

Statement of Need:

The need for this rule stems from the Supreme Court's 2001 decision in Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC), which has raised substantive questions regarding the extent to which isolated intrastate non-navigable waters are included within the geographic scope of jurisdiction under the Clean Water Act. Rulemaking will help clarify issues to ensure that Clean Water Act protections are in place for the appropriate set of wetlands and other waters of the United States.

Summary of Legal Basis:

Although the Supreme Court's decision in SWANCC did not invalidate regulations under the CWA, it raised questions that can be most effectively answered via rulemaking on the various regulations concerning CWA jurisdiction.

Alternatives:

The Agency will seek public input on alternatives via an advance notice of proposed rulemaking prior to proposing a rulemaking.

Anticipated Cost and Benefits:

Cost/benefit information will be developed/solicited as part of the ANPRM and proposal process. However, significant changes in the magnitude or distribution of costs and benefits are not anticipated, as the rule is primarily focused on how Clean Water Act jurisdiction for relevant programs is interpreted in light of the SWANCC Supreme Court decision.

Risks:

Risk information will be solicited as part of the ANPRM and proposal process. However, significant changes in the magnitude or distribution of risk are not anticipated as the rule is primarily focused on how Clean Water Act jurisdiction for relevant programs is interpreted in light of the SWANCC Supreme Court decision.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/02	
NPRM	06/00/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Federal, State, Local, Tribal

Additional Information:

SAN No. 2804

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RIN: 2040–AB74

EPA

PROPOSED RULE STAGE

119. NESHAP: PLYWOOD AND COMPOSITE WOOD PRODUCTS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

42 USC 7412(d)

CFR Citation:

40 CFR 63

Legal Deadline:

Final, Statutory, November 15, 2000.

Abstract:

This project is to develop national emission standards for hazardous air pollutants (NESHAP) by establishing maximum achievable control technology (MACT) for facilities manufacturing wood panels and engineered wood products. MACT standards are under development to reduce the release of hazardous air pollutants (HAP) from all industries to protect the public health and environment. Emissions of HAP from this industry have been associated with, but are not limited to, the drying of wood and binders. This rule is anticipated to apply to the manufacture of products involving wood and some kind of binder or bonding agent. This project may include, but is not limited to, facilities that manufacture waferboard, hardboard fiber board (MDF), oriented strandboard (OSB), medium density fiberboard, particleboard, strawboard, hardwood and softwood plywood, glue-laminated lumber, laminated veneer lumber, and engineered wood products. The source category may also include lumber drying kilns at sawmills which are located on the same site as a facility that manufactures any of the wood products mentioned above. The project may also include some coatings operations. The name of the source category was formerly Plywood and Particleboard MACT.

Statement of Need:

Plywood and Composite Wood Products is a source category listed to be regulated under section 112 of the Clean Air Act.

Summary of Legal Basis:

Clean Air Act Section 112

Alternatives:

The principal alternatives are to set standards at or beyond the "floor" level of stringency. The "floor is the minimum stringency implied by the congressionally given formula in section 112 of the Clean Air Act.

Anticipated Cost and Benefits:

In Section 112 of the Clean Air Act, Congress found that there is sufficient evidence of risk to warrant a broad, technology-based MACT program to reduce toxic emissions nationwide. In addition, an Economic Impact Analysis and Regulatory Impact Analysis have been prepared.

Risks:

In Section 112 of the Clean Air Act, Congress found that there is sufficient evidence of risk to warrant a broad, technology-based MACT program to reduce toxic emissions nationwide.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

SAN No. 3820

Sectors Affected:

32121 Veneer, Plywood, and Engineered Wood Product Manufacturing

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RIN: 2060–AG52

EPA

120. NESHAP: RECIPROCATING INTERNAL COMBUSTION ENGINE

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

42 USC 7412 CAA sec 112; PL 101-549

CFR Citation:

40 CFR 63

Legal Deadline:

Final, Statutory, November 15, 2000.

Abstract:

The stationary reciprocating internal combustion engine source category is listed as a major source of hazardous air pollutants (HAPs) under section 112 of the Clean Air Act (CAA). A major source is one which emits more than 10 tons/yr of one HAP or more than 25 tons/yr of a combination of 189 HAPs. The EPA will gather information on HAP emissions from internal combustion engines and determine the appropriate maximum achievable control technology (MACT) to reduce HAP emissions. The EPA will use information that has already been developed, if possible, by gathering information by working with State/local agencies, vendors, manufacturers of internal combustion engines, owners and operators of internal combustion engines, and environmentalists.

Statement of Need:

Reciprocating Internal Combustion Engines is a source category listed to be regulated under Section 112 of the Clean Air Act.

Summary of Legal Basis:

Section 112 of the Clean Air Act.

Alternatives:

The principal alternatives are to set standards at or beyond the "floor" level of stringency. The "floor is the minimum stringency implied by the Congressionally-given formula in Section 112 of the Clean Air Act.

Anticipated Cost and Benefits:

In Section 112 of the Clean Air Act, Congress found that there is sufficient evidence of risk to warrant a broad, technology-based MACT program to reduce toxic emissions nationwide. Therefore, separate cost/benefit analyses are not conducted for individual rulemakings within the MACT program. Total annualized cost for rule is $248 million, average cost/facility $62,000 for 4600 existing sources and 20,000 new sources.

Risks:

In Section 112 of the Clean Air Act, Congress found that there is sufficient evidence of risk to warrant a broad, technology-based MACT program to reduce toxic emissions nationwide.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

State, Local

Additional Information:

SAN No. 3656

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RIN: 2060–AG63

EPA

121. NESHAP: INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL BOILERS AND PROCESS HEATERS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

42 USC 7412

CFR Citation:

40 CFR 63

Legal Deadline:

Final, Statutory, November 15, 2000.

Abstract:

The Clean Air Act, as amended in 1990, requires EPA to develop emission standards for sources of hazardous air pollutants (HAPs). Industrial boilers, institutional/commercial boilers and process heaters are among the potential source categories to be regulated under section 112 of the CAA. Emissions of HAPs will be addressed by this rulemaking for both new and existing sources. EPA promulgated an NSPS for these source categories in 1987 and 1990. The standards for the NESHAP are to be technology-based and are to require the maximum achievable control technology (MACT) as described in section 112 of the CAA.

Statement of Need:

Industrial boilers, institutional/commercial boilers, and process heaters are source categories listed to be regulated under Section 112 of the Clean Air Act.

Summary of Legal Basis:

Section 112 of the Clean Air Act.

Alternatives:

Alternatives will be presented as part of the proposed rule.

Anticipated Cost and Benefits:

Implementation of the rulemaking would reduce nationwide emissions of air toxics by 58,000 tons per year in the 5th year. Mercury emissions would be reduced by almost 2 tons per year. Those reductions would lower ambient air concentrations and levels of exposure. In addition to HAP emissions reductions, reductions in criteria pollutant emissions (i.e., particulate matter, sulfur dioxide) would also be realized. The total nationwide capital costs for the rulemaking as proposed is about $1.7 billion, with an annualized cost of $840 million.

Risks:

In Section 112 of the Clean Air Act, Congress found that there is sufficient evidence of risk to warrant a broad, technology-based MACT program to reduce toxic emissions nationwide. The risks from this industry are those normally associated with combustion, such as exposure to particulate matter and sulfur oxides.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

SAN No. 3837

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RIN: 2060–AG69

EPA

122. NESHAP: SURFACE COATING OF AUTOMOBILES AND LIGHT-DUTY TRUCKS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 7401 et seq

CFR Citation:

40 CFR 63

Legal Deadline:

None

Abstract:

The Clean Air Act, as amended in 1990, requires EPA to develop emission standards for sources of hazardous air pollutants (HAPs). The surface coating of new automobiles and light-duty trucks is among the source categories to be regulated under section 112 of the CAA. Emissions of HAPs will be addressed by this rulemaking for both new and existing sources. EPA promulgated an NSPS for this source category in 1980. The standards for the NESHAP are to be technology-based and are to require the maximum achievable control technology as described in section 112 of the CAA.

Statement of Need:

Surface coating of automobiles and light-duty trucks is a source category listed to be regulated under section 112 of the CAA.

Summary of Legal Basis:

Section 112 of the Clean Air Act.

Alternatives:

Alternatives have been explored as the proposal has been developed. The alternatives include the minimum required "floor" level of control and other more stringent options.

Anticipated Cost and Benefits:

The estimated total annual costs, including costs for recordkeeping and reporting, to the affected industry of the rule is $150 million. The rule is projected to reduce emissions of hazardous air pollutants by 6,000 tons per year. A regulatory impact analysis will accompany the proposed rule.

Risks:

In Section 112 of the Clean Air Act, Congress found that there is sufficient evidence of risk to warrant a broad, technology-based MACT program to reduce toxic emissions nationwide. The risks from this industry are those normally associated with surface coating operations, such as exposure to coating solvents which are hazardous air pollutants.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State, Local

Additional Information:

SAN No. 3907

Sectors Affected:

33611 Automobile and Light Duty Motor Vehicle Manufacturing; 336112 Light Truck and Utility Vehicle Manufacturing; 336211 Motor Vehicle Body Manufacturing

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RIN: 2060–AG99

EPA

123. TRANSPORTATION CONFORMITY AMENDMENTS: RESPONSE TO MARCH 2, 1999, COURT DECISION

Priority:

Other Significant

Legal Authority:

42 USC 7401 to 7671q

CFR Citation:

40 CFR 93

Legal Deadline:

None

Abstract:

The Clean Air Act requires EPA to promulgate rules that establish the criteria and procedures for determining whether highway and transit plans, programs, and projects conform to state air-quality plans. Conformity means that the transportation actions will not cause or worsen violations of air quality standards or delay timely attainment of the standards. The original conformity rule was finalized on November 24, 1993, and most recently amended on August 15, 1997. On March 2, 1999, the U.S. Court of Appeals overturned certain provisions of the 1997 conformity amendments. This rulemaking will amend the conformity rule in compliance with the court decision. The rulemaking will formalize the May 14, 1999, EPA guidance and the June 18, 1999, DOT guidance that was issued to guide action on this issue until a rulemaking could be issued. Specifically, the rulemaking will clarify the types of projects that can be implemented in the absence of a conforming transportation plan. It will also explain EPA's process for reviewing newly submitted air quality plans and when those submissions can be used for conformity purposes.

Statement of Need:

The U.S. Court of Appeals remanded some provisions of EPA's conformity rule. The conformity rule must be amended in compliance with the court decision.

Summary of Legal Basis:

The Clean Air Act requires transportation plans, programs, and projects to conform to State air-quality plans. The Clean Air Act also requires EPA to establish rules for how to determine the conformity of transportation actions.

Alternatives:

EPA's alternatives are constrained by the court decision.

Anticipated Cost and Benefits:

This amendment will not change the results of the economic analysis performed for the original transportation conformity rule, which was summarized in the preamble to that rule on 11/24/93 at 58 FR 62214.

Risks:

Transportation conformity is a process designed to help achieve attainment with the National Ambient Air Quality Standards. The risks addressed by the rule are therefore those risks associated with non-achievment of such standards.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State, Local, Tribal

Additional Information:

SAN No. 4340

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RIN: 2060–AI56

EPA

124. CONTROL OF EMISSIONS FROM SPARK IGNITION MARINE VESSELS AND HIGHWAY MOTORCYCLES

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 7401 to 7671(q)

CFR Citation:

40 CFR 94

Legal Deadline:

None

Abstract:

EPA is proposing to take actions to reduce emissions from two categories of engines. The first category, highway motorcycles, have existing emission standards that were put in place over twenty years ago. Emissions control technologies have advanced significantly since that time, and EPA believes it is appropriate to put in place more stringent standards for HC and NOx that reflect this progress. The proposed standards are consistent with standards California has recently promulgated, thereby creating the opportunity to industry to produce and market products nationwide. The second categoy of emissions sources addressed in this proposal is gasoline-powered marine vessels. Specifically, EPA is proposing to control evaporative emissions from these sources through the application of fuel tank and hose controls that can significantly reduce HC emissions from these sources. This proposal is the first set of emissions standards for this category.

Statement of Need:

Ozone pollution poses a serious threat to the health and well-being of millions of Americans. This rulemaking addresses control measures to reduce emissions from highway motorcycles and gasoline fuel systems for marine vessels.

Summary of Legal Basis:

42 USC 7521 and 7547.

Alternatives:

The proposal describes alternatives that could be adopted as part of the final rule. Small business compliance flexibilities are included for both categories of standards. For the motorcycle portion of the proposal, alternative emission standards are less attractive given the benefits associated with harmonizing the Federal program with existing California requirements.

Anticipated Cost and Benefits:

Costs and benefits will be analyzed as part of the final rule review process. The standards included in the proposal are cost-effective, with significant reductions estimated for HC and NOx emissions from motorcycles and HC for the evaporative emissions controls. In addition, the evaporative emissions controls are expected to lead to significant fuel savings for the owners and operators of these sources.

Risks:

The risks addressed by this program are primarily those associated with nonattainment of the National Ambient Air Quality Standards for ozone. There are also serious public health and welfare benefits from controlling emissions from these sources, such as reductions in regional haze and acid deposition.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	08/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

SAN No. 4626

Sectors Affected:

333924 Industrial Truck, Tractor, Trailer and Stacker Machinery Manufacturing; 335312 Motor and Generator Manufacturing; 42183 Industrial Machinery and Equipment Wholesalers

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RIN: 2060–AJ90

EPA

125. IMPLEMENTATION RULE FOR 8-HOUR OZONE NAAQS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect State, local or tribal goverments and the private sector.

Legal Authority:

42 USC 7408; 42 USC 7410; 42 USC 7501-7511f; 42 USC 7601(a)(1)

CFR Citation:

40 CFR 51 (revision)

Legal Deadline:

None

Abstract:

This rule would provide specific requirements for State and local air pollution control agencies to prepare State implementation plans (SIPs) under the 8-hour national ambient air quality standard (NAAQS) for ozone, published by EPA on July 18, 1997. The Clean Air Act requires EPA to set ambient air quality standards and requires States to submit SIPs to implement those standards. The 1997 standards were challenged in court, but in February 2001, the Supreme Court determined that EPA has authority to implement a revised ozone standard, but ruled that EPA must reconsider its implementation plan for moving from the 1-hour standard to the revised standard. The Supreme Court identified conflicts between different parts of the Clean Air Act related to implementation of a revised NAAQS, provided some direction to EPA for resolving the conflicts, and left it to EPA to develop a reasonable approach for implementation. Thus, this rulemaking must address the requirements of the Clean Air Act and the Supreme Court's ruling. This rule would provide detailed provisions to address the Clean Air Act's requirements for State Implementation Plans (SIPs) and would thus affect State and local air agencies. States with areas that are not attaining the 8-hour ozone NAAQS will have to develop — as part of their SIPs — emission limits and other requirements to attain the NAAQS within the timeframes set forth in the Clean Air Act. Tribal lands that are not attaining the 8-hour ozone standard may be affected and could voluntarily submit a Tribal Implementation Plan (TIP), but would not be required to submit a TIP. In cases where a TIP is not submitted, EPA would have the responsibility for planning in those areas.

Statement of Need:

This action is needed in response to the U.S. Supreme Court's ruling in February 2001 (Whitman v. American Trucking Assoc.,, 121 S.Ct.903) that stated that EPA has the authority to implement a revised ozone NAAQS but that EPA could not ignore the provisions of subpart 2 when implementing the 8-hour NAAQS. The Supreme Court identified several portions of subpart 2 that are ill-fitted to the revised NAAQS but left it to EPA to develop a reasonable implementation approach. Consequently, EPA is developing a rule to implement the 8-hour ozone NAAQS under the provisions of subpart 2 of the CAA.

Summary of Legal Basis:

Title I of the Clean Air Act.

Alternatives:

This entry comprises the action the Agency plans to take to implement the 8-hour ozone NAAQS. The major alternative facing the Agency was whether to implement the standard strictly on a State-by-State basis, as has been the norm in the past, or to take Federal action to address the fact that emissions from one State affect the ability of other States to achieve the ozone NAAQS. The other major set of alternatives involved various possible strategies for infrastructure design, such as the designations of nonattainment areas and the requirements that apply to them.

Anticipated Cost and Benefits:

EPA prepared a regulatory impact analysis for the final ozone NAAQS, and is preparing a cost analysis for this implementation rule. The benefits of the rule are those associated with attainment of the ozone NAAQS including significant improvements in premature mortality, chronic asthma, chronic and acute bronchitis, upper and lower respiratory symptoms, work days lost, decreased worker productivity, visibility in urban and suburban areas, and increases in yields of commercial forests currently exposed to elevated ozone levels.

Risks:

The risks addressed by this action are the likelihood of experiencing increased health and environmental effects associated with nonattainment of the National Ambient Air Quality Standard for ozone. These effects are briefly described above in the "costs and benefits" section, and they were outlined in detail in the Regulatory Impact Analysis for the ozone NAAQS rulemaking. The results are summarized in the Federal Register notice for that rulemaking (62 FR 38856, July 18, 1997).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State, Local, Tribal

Additional Information:

SAN No. 4625

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RIN: 2060–AJ99

EPA

126. CONTROL OF EMISSIONS OF AIR POLLUTION FROM NONROAD DIESEL ENGINES AND FUEL

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

15 USC 2002

CFR Citation:

40 CFR 89

Legal Deadline:

None

Abstract:

On October 23, 1998, EPA finalized emission standards for nonroad compression ignition (i.e., diesel) engines for engines over 37 kW(50hp). The regulation reduced the NOx + HC emissions standard by 30 percent to 37 percent (based on the power class) from the previous 6.9 g/hp-hr NOx and 1.0 g/hp-hr HC standard beginning in 1999. As a follow-up to that 1998 rulemaking, the Agency is now undertaking a technology review, pursuant to the Clean Air Act, to assess whether more stringent standards are now feasible, and to promulgate such standards if the findings are positive. The technology review will reassess the NOx + HC standards and will set the next phase of particulate matter standards for over 37 kW and up to 560 kW. The emission limits will also be reexamined for the under 37 kW scheduled for implementation in 2004. The issue of the sulfur content of nonroad diesel

fuel will be raised and consideration given to lowering the fuel sulfur level with an ultimate 15 ppm cap. The certification duty cycle for this class of engines will also be revisited to implement a transient duty cycle that gives some assurance of better in-use control of particulate matter.

Statement of Need:

Ozone and particulate pollution pose a serious threat to the health and well-being of millions of Americans and a large burden to the U.S. economy. This rulemaking will address additional national control measures to reduce emissions, including emissions of nitrogen oxides, hydrocarbons and particulate matter, from nonroad heavy-duty diesel engines, and will also require reduced sulfur levels in nonroad diesel fuel, in order to protect the public health and welfare.

Summary of Legal Basis:

CAA title II part A section 213, 217.

Alternatives:

Alternatives will be considered as the rulemaking proposal is developed.

Anticipated Cost and Benefits:

Costs and benefits will be assessed as the rulemaking proposal is developed.

Risks:

The risks addressed by this program are primarily those associated with nonattainment of the National Ambient Air Quality Standards for ozone and particulate matter. There are also serious public health and environmental problems associated with toxic air pollution, acid rain, reduced visibility and nitrogen loading of estuaries.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, State, Local

Additional Information:

SAN No. 4675

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RIN: 2060–AK27

EPA

127. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) AND NONATTAINMENT NEW SOURCE REVIEW (NSR): ROUTINE MAINTENANCE, REPAIR, AND REPLACEMENT

Priority:

Economically Significant

Legal Authority:

42 USC 7401 et seq

CFR Citation:

40 CFR 51.165; 40 CFR 51.166; 40 CFR 52.21; 40 CFR 52.24

Legal Deadline:

None

Abstract:

The EPA is proposing revisions to the regulations governing the NSR programs mandated by parts C and D of title I of the Clean Air Act (Act). These proposed changes reflect the EPA's consideration of the discussions and recommendations of the President's National Energy Policy Report and from various stakeholders including representatives from industry, State and local governments, and environmental groups. The proposed changes provide a future category of activities that would be considered to be routine maintenance, repair, and replacement (RMR&R) under the NSR program. The changes are intended to provide greater regulatory certainty without sacrificing the current level of environmental protection and benefit derived from the program. We believe that these changes will facilitate the safe, efficient, and reliable operation of affected facilities.

Statement of Need:

The current New Source Review regulations provide for an exclusion from the definition of major modifications for "routine maintenance, repair, and replacement" activities; however, they do not provide a definition of this term. Specific questions regarding the application of this term have been addressed on a case-by-case basis. By providing a future category of activities that would be considered to be routine maintenance, repair, and replacement (RMR&R) under the NSR program, these changes will provide greater regulatory certainty without sacrificing the current level of environmental protection and benefit derived from the program.

Summary of Legal Basis:

42 USC 7411(a)(4)

Alternatives:

Alternative considerations that will affect what activities would be considered to be RMR&R will be included in the proposal.

Anticipated Cost and Benefits:

The Agency will conduct analyses to the extent appropriate to inform decisions on the rule. Such analyses will be introduced as part of the proposed rule and developed further for the final rule.

Risks:

Risk information will be developed as appropriate as the rulemaking proceeds.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Rule	10/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State, Local, Tribal

Additional Information:

SAN No. 4676

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RIN: 2060–AK28

EPA

128. • ENDOCRINE DISRUPTER SCREENING PROGRAM; IMPLEMENTING THE SCREENING AND TESTING PHASE

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

15 USC 2603 TSCA; 21 USC 346(a) FFDCA; 42 USC 300(a)(17) SDWA; 7 USC 136 FIFRA

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

The screening and testing phase of the Endocrine Disruptor Screening Program (EDSP) potentially will encompass a broad range of types of chemicals, including pesticide chemicals, TSCA chemicals, chemicals that may be found in sources of drinking water, chemicals that may have an effect that is cumulative to the effect of a pesticide chemical, chemicals that are both pesticide chemicals and TSCA chemicals, and other chemicals that are combinations of these types of chemicals. This proposed rule will describe EPA's proposed procedures and processes that EPA will use when implementing the screening and testing phase of the EDSP. Specifically, depending on decisions that the Agency makes regarding implementation of the testing phase of the EDSP, the proposed rule will describe the authorities that it may invoke to require testing and, if necessary, establish the process that the Agency will use to require the testing.

Statement of Need:

The Endocrine Disruptor Screening Program Implementation of the Screening and Testing Phase fulfills the statutory direction and authority to screen pesticide chemicals and drinking water contaminants for their potential to disrupt the endocrine system and adversely affect human health.

Summary of Legal Basis:

The screening and testing phase of the Endocrine Disruptor Screening Program (EDSP) potentially will encompass a broad range of types of chemicals, including pesticide chemicals, TSCA chemicals, chemicals that may be found in sources of drinking water, chemicals that may have an effect that is cumulative to the effect of a pesticide chemical, chemicals that are both pesticide chemicals and TSCA chemicals, and other chemicals that are combinations of these types of chemicals. As discussed in the Proposed Statement of Policy, EPA has a number of authorities at its disposal to require testing of these types of chemicals. The Federal Food, Drug, and Cosmetics Act (FFDCA) section 408(p) provides EPA authority to require testing of all pesticide chemicals and any other substance that may have an effect that is cumulative to an effect of a pesticide chemical if EPA determines that a substantial population may be exposed to the substance (21 U.S.C. 346a)(p)). Likewise, the Safe Drinking Water Act (SDWA) provides EPA with authority to require testing of any substance that may be found in sources of drinking water if EPA determines that a substantial population may be exposed to the substance (42 U.S.C. section 300j-17). The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) provides EPA with authority to require testing of pesticides if EPA determines that additional data are required to maintain in effect an existing registration (7 U.S.C. section 136a(c)(2)(B)). The Toxic Substances Control Act (TSCA) provides authority for EPA to require testing of TSCA chemicals, provided that it makes certain hazard and/or exposure findings (15 U.S.C. section 2603). In addition, EPA has authority to issue consent orders to require testing when interested parties agree on an acceptable testing program (51 FR 23706 (June 30, 1986)).

Alternatives:

A Federal role is mandated under cited authority. There is no alternative to role of the Federal Government on this issue to ensure that pesticides, commercial chemicals and contaminants are screened and tested for endocrine disruption potential. A limited amount of testing may be conducted voluntarily but this will fall far short of the systematic screening which is necessary to protect public health and the environment and ensure the public that all important substances have been adequately evaluated.

Anticipated Cost and Benefits:

It is too early to project the costs and benefits of this program accurately. However, the Agency recognizes that the rule could potentially have significant cost implications, depending on the screening criteria and testing requirements. For example, as a rough estimate, the screening battery currently under consideration is estimated to cost $200,000 per chemical. It is also too early to quantify the benefits of this program mathematically. The goal of the program is to reduce the risks identified below.

Risks:

Evidence is continuing to mount that wildlife and humans may be at risk from exposure to chemicals operating through an endocrine mediated pathway. Preliminary studies show possible adverse effects on humans. Wildlife effects have been more thoroughly documented. Abnormalities in birds, marine mammals, fish and shellfish have been documented in the U.S., Europe, Japan, Canada, and Australia which have been linked to specific chemical exposures. Evidence is sufficient for the U.S. to proceed on a two track strategy: research on the basic science regarding endocrine disruption and screening to identify which chemicals are capable of interacting with the endocrine system. The combination of research and test data developed by this program will enable EPA to take action to reduce chemical risks.

Timetable:

Action	Date	FR Cite
NPRM Proposed Procedural Rule	12/00/02	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

SAN No. 4728

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RIN: 2070–AD61

EPA

129. MODIFICATIONS TO RCRA RULES ASSOCIATED WITH SOLVENT-CONTAMINATED SHOP TOWELS AND WIPES

Priority:

Other Significant

Legal Authority:

42 USC 6921

CFR Citation:

40 CFR 261

Legal Deadline:

None

Abstract:

This action would modify RCRA rules that impact the management of solvent-contaminated shop towels and wipes. Solvent-contaminated shop towels and wipes are used throughout industry for equipment cleaning and other related facility operations. The spent shop towels and wipes can be hazardous wastes when the solvent used is either a characteristic or listed solvent. An examination of industry use and management practices reveals that many facilities may use only small amounts of solvent on their disposable wipes, and use small numbers of wipes daily, suggesting that these materials may sometimes pose little or no risk to human health and the environment if disposed in municipal landfills. Similarly, situations exist where both disposable wipes and reusable shop towels are not being managed according to prescribed Federal and States' rules and policies. Problems with this issue have persisted since the late 1980s.

Statement of Need:

After being asked by multiple stakeholders to examine this waste stream, EPA is considering changing the requirements for management of both reusable and disposable solvent-contaminated industrial wipes. This will encourage pollution prevention and recycling of hazardous solvents, make the management standards more consistent with the risks these materials pose, and clarify existing Federal policies regarding these materials.

Summary of Legal Basis:

No aspect of this action is required by statute or court order.

Alternatives:

EPA is considering options that would either exempt solvent-contaminated industrial wipes from the definition of hazardous waste or exclude them from the definition of solid waste when certain conditions are met. These conditions would address the amount of solvent present in the wipes during transportation, as well as container requirements for accumulation and transportation.

Anticipated Cost and Benefits:

The anticipated benefits of this rule include annual cost savings for generators of disposable and reusable industrial wipes. Other benefits include the potential for pollution prevention and for increased recycling of hazardous solvents used in conjunction with industrial wipes.

Risks:

The analyses associated with this action find that the options being considered would not cause risks from disposal or re-use of solvent-contaminated wipes to increase from current regulations.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, State

Additional Information:

SAN No. 4091

Sectors Affected:

323 Printing and Related Support Activities; 325 Chemical Manufacturing; 332 Fabricated Metal Product Manufacturing; 333 Machinery Manufacturing; 334 Computer and Electronic Product Manufacturing; 336 Transportation Equipment Manufacturing; 337 Furniture and Related Product Manufacturing; 441 Motor Vehicle and Parts Dealers; 811 Repair and Maintenance; 812 Personal and Laundry Services

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RIN: 2050–AE51

EPA

130. REVISION OF WASTEWATER TREATMENT EXEMPTIONS FOR HAZARDOUS WASTE MIXTURES

Priority:

Other Significant

Legal Authority:

42 USC 6912(a); 42 USC 6921; 42 USC 6922; 42 USC 6924; 42 USC 6926

CFR Citation:

40 CFR 261.3(a)(2)(iv)(A)-(E)(Revision)

Legal Deadline:

None

Abstract:

EPA is looking into proposing to add up to four solvents (benzene, 2-ethoxyethanol, 1,1,2-trichloroethane, and 2-nitropropane) to the hazardous waste exemptions for mixtures of spent solvents in wastewater treatment plants (headworks rule) at 40 CFR 261.3(a)(2)(iv)(A)-(B). Spent solvents are solvents that have been used and are no longer fit for use without being regenerated, reclaimed, or otherwise processed. In addition, EPA is considering proposing: (1) changes to implementation of rule from using mass balance only, to choice of using direct monitoring; (2) adding certain leachates to allowed categories of wastestreams; (3) revising other provisions of rule, such as de minimis quantities and the definition of point of application of exemption; and (4) clarifying applicability of exemption to incinerator scrubber waters.

Statement of Need:

This action is deregulatory. Federal action in this case will give States more flexibility in implementing the regulations. In addition, the Agency has been asked to look into this issue in Congressional Committee Appropriations Report Language.

Summary of Legal Basis:

This action is not required by statutory or court order.

Alternatives:

The Agency is considering this rule without any alternatives. Some aspects of the proposal provide alternatives for the regulated community in complying with the regulations (e.g., direct monitoring of solvents vs. mass balance). Future rulemaking may expand on some of the regulatory options contained in the proposal.

Anticipated Cost and Benefits:

This proposal, if finalized, is expected to provide cost savings to the regulatory community because more facilities will be eligible for regulatory exemptions and more wastes may be exempt from hazardous waste regulation.

Risks:

Since this is deregulatory, there is no risk reduction. However, the Agency performed a conservative risk analysis and found that risk is not increased above any level of concern by this action.

Timetable:

Action	Date	FR Cite
NPRM Revisions for wastewater treatment exemptions	01/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State

Additional Information:

SAN No. 4501

Sectors Affected:

31-33 Manufacturing; 562 Waste Management and Remediation Services

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RIN: 2050–AE84

EPA

131. INCREASE METALS RECLAMATION FROM F006 WASTE STREAMS

Priority:

Other Significant

Unfunded Mandates:

Undetermined

Legal Authority:

Not Yet Determined

CFR Citation:

40 CFR 261

Legal Deadline:

None

Abstract:

Currently wastewater treatment (WWT) sludges from electroplating operations (waste code F006) are identified as listed hazardous wastes. EPA is considering proposing changes to existing regulations intended to encourage safe recycling and management practices of this waste stream. We are considering reducing regulations for electroplating sludges that are sufficiently high in metal(s) and sufficiently low in other toxic constituents to be recovered.

Statement of Need:

F006 represents one of the largest hazardous waste streams amenable to recycling. Eliminating impediments to the safe recycling of F006 through regulatory changes would potentially facilitate this outcome - thereby decreasing the amount of hazardous waste disposed.

Summary of Legal Basis:

No aspect of this action is required by statutory or court order.

Alternatives:

EPA is evaluating alternatives that would either exempt from the definition of hazardous waste or exclude from the definition of solid waste F006 destined for recycling provided specified conditions were met. Specific conditions would address proper handling, possibly notification, certification, etc.

Anticipated Cost and Benefits:

Costs to generating facilities would be reduced relative to current compliance costs. Benefits include the potential for increased recycling of F006, thereby reducing the amount of virgin materials that must be extracted from the land. Safe handling of this material also would be maintained.

Risks:

Any options evaluated and proposed would ensure that the risks from recycling F006 would not increase over current regulations. In particular, the risks from managing the material on the land would be addressed.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Federalism:

Undetermined

Additional Information:

SAN No. 4651

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RIN: 2050–AE97

EPA

132. REVISIONS TO THE DEFINITION OF SOLID WASTE

Priority:

Other Significant

Legal Authority:

RCRA Section 1004(27); 42 USC 6903(27)

CFR Citation:

40 CFR 261.2

Legal Deadline:

None

Abstract:

Under RCRA, to be a hazardous waste, a material must also be a solid waste. EPA's framework for determining whether a material is a solid waste is based on what the material is and how it is managed (e.g., how it is used, reused, etc.). For materials being recycled, RCRA jurisdiction is complex and the history of legal decisions related to the definition of solid waste is extensive (AMC I, API I, AMC II, ABR, API II, etc.). In response to American Mining Congress v. EPA, 824 F. 2d 1177(D.C. Cir. 1987) (AMC I) and one of the most recent decisions, the Association of Battery Recyclers, v. EPA 208 F.3d 1047 (2000) (ABR), EPA has decided to initiate development of a proposed rule to revise the definition of solid waste. We expect that the proposed rule will be broad in scope and will specifically address materials undergoing reclamation. In the context of reclamation, we plan to discuss options for how to distinguish materials that are discarded from materials that remain in use in a continuous industrial process and we anticipate proposing a definition of "continuous industrial process." Generally, we believe that removing the specter of RCRA control where it is not necessary can spur increased reuse and recycling of hazardous waste, and will lead to better resource conservation and improved materials management overall.

Statement of Need:

This proposal responds to court decisions about EPA's definition of solid waste under RCRA. See Association of Battery Recyclers v. EPA, 208 F.3d 1047 (2000).

Summary of Legal Basis:

See above.

Alternatives:

No alternatives are being considered.

Anticipated Cost and Benefits:

EPA currently anticipates that this rule, when finalized, will result in a net savings to the part of the regulated community affected by the rule (those facilities involved in recycling that is part of a continuous process within the generating industry). These facilities will no longer have to comply with the RCRA hazardous waste management requirements.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

Additional Information:

SAN No. 4670

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RIN: 2050–AE98

EPA

133. NPDES PERMIT REQUIREMENTS FOR MUNICIPAL SANITARY AND COMBINED SEWER COLLECTION SYSTEMS, MUNICIPAL SATELLITE COLLECTION SYSTEMS, SANITARY SEWER OVERFLOWS, AND PEAK EXCESS FLOW TREATMENT FACILITIES

Priority:

Other Significant

Legal Authority:

33 USC 1311 CWA sec 301; 33 USC 1314 CWA sec 304; 33 USC 1318 CWA sec 308; 33 USC 1342 CWA sec 402; 33 USC 1361 CWA sec 501(a)

CFR Citation:

40 CFR 122.38; 40 CFR 122.41; 40 CFR 122.42

Legal Deadline:

None

Abstract:

EPA is developing a notice of proposed rulemaking that would propose a broad-based regulatory framework for sanitary sewer collection systems under the NPDES program. The Agency is proposing standard permit conditions for inclusion in permits for publicly owned treatment works (POTWs) and municipal sanitary sewer collection systems. The standard requirements address reporting, public notification, and recordkeeping requirements for sanitary sewer overflows (SSOs), capacity assurance, management, operation and maintenance requirements for municipal sanitary sewer collection systems; and a prohibition on SSOs. The Agency is also proposing a regulatory framework for applying NPDES permit conditions, including applicable standard permit conditions, to municipal satellite collection systems. Municipal satellite collection systems are sanitary sewers owned or operated by a municipality that conveys wastewater to a POTW operated by a different municipality. EPA is also proposing to clarify NPDES requirements, including secondary treatment requirements, for discharges from peak excess flow treatment facilities.

Statement of Need:

The proposed regulation is intended to address three interrelated issues: (1) the risks to health and the environment caused by SSOs; (2) the need to protect and enhance local, State and Federal investments in sewer system infrastructure; and (3) the need to provide a clear and consistent regulatory program for collection systems. Risks to health/environment: EPA estimates that about 55,000 SSO events occur each year, and perhaps ten times this many instances occur where sewage backs up into basements. These events lead to a variety of damages, including exposure of people to health risks; lowered water quality; and property damage and clean-up costs. Protection of Investments in Sewer System Infrastructure: Sanitary sewer collection systems represent a major national investment in community infrastructure. EPA estimates that these systems have a replacement value of $1 to $2 trillion. Another source estimates that wastewater collection and

treatment systems represent about 10 to 15 percent of the value of all publicly owned infrastructure in the United States. The substantial frequency of SSOs and other collection system failures indicates that operation, maintenance, repair and rehabilitation of sewer systems needs to improve.

Providing Clear and Consistent Regulatory Program for Collection Systems — States are implementing the existing NPDES regulations relevant to sanitary sewer collection systems in widely differing ways.

Summary of Legal Basis:

EPA is considering whether to publish a proposed rule that would require NPDES permits for municipal sanitary sewer collection systems to contain a standard provision for better operation and management of systems to avoid SSOs, increased attention to system planning, and better notification to the public in the event of an overflow. These proposed standard permit conditions would derive from Clean Water Act (CWA) sections 304(i), 308, and 402(a). Section 402(a) of the CWA authorizes EPA to prescribe permit conditions as necessary to carry out the provisions of the CWA, including permit conditions on data and information collection and reporting. Section 308 of the CWA authorizes EPA to require NPDES permittees to establish, maintain, and report records for determining whether there has been a violation of the CWA. The prohibition of SSO discharges is a technology-based limitation that is based, in part, on CWA section 301(a) which prohibits a discharge to waters of the United States except in compliance with an NPDES permit. The prohibition is also based on EPA's interpretation of the Act that discharges from a separate sanitary sewer system need to meet effluent limitations based on secondary treatment as defined by EPA and any more stringent limitation necessary to meet water quality standards.

Legal authority for the requirements for municipal satellite collection systems derives from the definition of "publicly owned treatment works." CWA section 212(2)(A) defines "treatment works" to include "any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature . . . including . . . intercepting sewers, outfall sewers, sewage collection systems . . . ." EPA regulations define the term "publicly owned treatment works similarly at 40 CFR 122.2 and 403.1.

Alternatives:

NPDES requirements for municipal sanitary sewer collection systems currently under consideration include the five major alternatives discussed below. The first alternative would require NPDES permits for municipal sanitary sewer collection systems to contain a standard provision for better operation and management of systems to avoid SSOs, increased attention to system planning, and better notification to the public in the event of an overflow. The second alternative would involve extending the requirements of the proposed rule to privately owned satellite collection systems. The third alternative would be to change the technology-based standard for discharges from sanitary sewers from secondary treatment to best available technology economically achievable (BAT)/ best practicable control technology currently available (BCT). The fourth alternative would be a no-action alternative. The fifth alternative would be a prescriptive capacity, management, operation, and maintenance provision. In addition to these alternatives, a number of municipalities have suggested additional alternatives which are being considered.

Anticipated Cost and Benefits:

EPA is considering a proposed rule that would require NPDES permits for municipal sanitary sewer collection systems contain standard provisions for better operation and management of systems, increase attention to system planning, and better public notification in the event of an overflow. EPA is in the process of estimating the annual costs and benefits associated with this proposal.

Risks:

EPA estimates that there are at least 55,000 SSO events per year and an additional 400,000 occurrences of sewage backing up into basements. The health and environmental risks attributed to SSOs vary depending on a number of factors including location and season (potential for public exposure), frequency, volume, the amount and type of pollutants present in the discharge, and the uses, conditions, and characteristics of the receiving waters. SSOs can release raw sewage to areas where they present high risks of human exposure, such as streets, private property, basements, and receiving waters used for drinking water, fishing and shellfishing, or contact recreation. The most immediate health risks associated with SSOs are potential exposure to bacteria, viruses, and other pathogens. Major groups of disease-causing organisms or agents associated with untreated SSOs include: bacteria, viruses, protozoa, and helminths (intestinal worms). These pathogens can cause diseases range in severity from mild gastroenteritis (causing stomach cramps and diarrhea) to diseases that can be life-threatening, such as cholera, infectious hepatitis, dysentery, and severe gastroenteritis. Adverse health consequences can be more severe for children, the elderly, and those with weakened immune systems. In addition to pathogens, raw sewage may contain metals, synthetic chemicals (including endocrine system disruptors), nutrients, pesticides, and oils, which also can be detrimental to the health of humans and wildlife. SSOs may affect the quality and uses of waters of the United States. Adverse water quality impacts from SSOs may include changes to the physical characteristics and viability of aquatic habitats, causing fish kills. In 2001, sewer line blockages and breaks were cited in 4 percent and SSOs were cited in 2 percent of beach closures and swimming advisories in the United States.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

Federal, State, Local, Tribal

Federalism:

This action may have federalism implications as defined in EO 13132.

Additional Information:

SAN No. 3999

Sectors Affected:

22132 Sewage Treatment Facilities

VOL 67 ISS 236 DEC 9 2002 UMI

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RIN: 2040–AD02

EPA

134. NATIONAL PRIMARY DRINKING WATER REGULATIONS: LONG TERM 2 ENHANCED SURFACE WATER TREATMENT RULE

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect State, local or tribal goverments and the private sector.

Legal Authority:

40 USC 300g-1(b); SDWA 1412(b); 42 USC 300f; 42 USC 300g-1; 42 USC 300g-2; 42 USC 300g-3; 42 USC 300g-4; 42 USC 300g-5; 42 USC 300g-6; 42 USC 300j-4; 42 USC 300j-9; 42 USC 300j-11

CFR Citation:

40 CFR 141 to 142; 40 CFR 9

Legal Deadline:

None

Abstract:

The Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) will control risk from microbial pathogens in drinking water. It is being developed simultaneously with the Stage 2 Disinfectants and Disinfection Byproducts Rule (DBPR) which will address risk caused by the use of disinfectants in drinking water. This rule could affect all public water systems that use surface water as a source. Promulgating the LT2ESWTR and the Stage 2 DBPR as a paired rulemaking is necessary to ensure that adequate protection from microbial risk is maintained while EPA manages risk from disinfection byproducts. In developing the LT2ESWTR, EPA will analyze a significant body of new survey data on microbial pathogens in source and finished waters, as well as data on parameters which could serve as indicators of microbial risk. This survey data, which was collected under the Information Collection Rule (ICR), Supplemental Surveys to the ICR, and additional research projects, will provide a substantially more comprehensive and complete picture of the occurrence of waterborne pathogens than was available previously. EPA will also use significant new data on the efficiency of treatment processes for the removal and inactivation of microorganisms, as well as new information on the pathogenicity of certain pathogens, to determine effective regulatory requirements for controlling microbial risk. On March 30, 1999, EPA established a committee of stakeholders under the Federal Advisory Committee Act (FACA) to assist in the development of these rules and an agreement in principle was signed in September 2000 outlining the proposed rule options.

Statement of Need:

The purpose of the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) is to reduce health risks posed by Cryptosporidium and other microbial pathogens in drinking water. Cryptosporidium is a protozoa which causes cryptosporidiosis, a severe gastrointestinal disease. While cryptosporidiosis is generally self-limiting in healthly individuals, it can be fatal for people with compromised immune systems. Cryptosporidium is removed to a degree by filtration but is highly resistant to conventional drinking water disinfectants, including chlorine and chloramines. EPA has recently collected a significant amount of data on occurrence of Cryptosporidium in drinking water sources through the Information Collection Rule (ICR) and ICR Supplemental Surveys. These data indicate that a subset of drinking water systems have an unacceptably high risk for Cryptosporidium in their treated water. The LT2ESWTR is intended to identify systems at high risk for Cryptosporidium through monitoring and prescribe an appropriate level of additional treatment. In addition, the LT2ESWTR will be promulgated simultaneously with the Stage 2 Disinfectants and Disinfection Byproducts Rule (DBPR). This will help to ensure that drinking water utilities do not compromise adequate microbial protection while they take steps to control DBPs.

Summary of Legal Basis:

Section 1412(b)(7)(A) of SDWA allows the Administrator to promulgate a national primary drinking water regulation that requires the use of a treatment technique in establishing a maximum contaminant level if the Administrator makes a finding that it is not feasible to ascertain the level of the contaminant. The MCLG for Cryptosporidium is zero and it is not feasible for public water systems to measure Cryptosporidium concentrations in treated water. Consequently, under section 1412(b)(1)(A), the Administrator may establish a treatment technique for Cryptosporidium if this presents a meaningful opportunity for health risk reduction. Although the 1996 Amendments do not require EPA to finalize a Long Term 2 Enhanced Surface Water Treatment Rule along with the Stage 2 Disinfectants and Disinfection Byproducts Rule, Congress did emphasize the importance of ensuring proper balance between microbial and DBP risks and, therefore, EPA believes it is important to finalize these rules together.

Alternatives:

EPA is considering various rule scenarios to reduce risk from Cryptosporidium. These scenarios include treatment requirements that would apply to all systems, such as requiring all conventional plants to achieve 2-log inactivation of Cryptosporidium. Alternative scenarios have involved assigning systems to bins based on mean Crypto source water concentrations. Additional treatment requirements would then depend on the bin to which a system was assigned. Issues associated with the binning approach include: amount of monitoring necessary to assign systems to bins, appropriate Crypto concentrations to demarcate bin boundaries, and appropriate level of additional treatment for a given bin. EPA is exploring analyses that evaluate the impact of these issues on costs and benefits. EPA has also considered options to reduce the impact on small systems.

Anticipated Cost and Benefits:

EPA estimates that the LT2ESWTR will have an annual economic impact of $100 million or more. The majority of people (approximately 67 percent) are served by public water systems that use a surface water or ground water under the direct influence of surface water. Thus, a large number of people will benefit from the LT2ESWTR. In addition, EPA has recently identified UV light as a technology that can achieve high levels of Cryptosporidium inactivation at relatively low cost.

Risks:

Approximately 67 percent of consumers are served by drinking water systems that use surface water sources or ground water under the direct influence of surface water. Survey data indicate that Cryptosporidium is prevalent in drinking water sources and current levels of treatment may not be adequate to control highly resistant pathogens like Cryptosporidium.
Cryptosporidiosis is a potentially fatal disease in people with weak immune systems, such as infants, the elderly, people with AIDS, and people taking immune suppressing drugs like cancer and transplant patients. By requiring additional treatment for those systems with the highest concentrations of Cryptosporidium in their source waters, EPA expects to significantly reduce current risk.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Federal, State, Local, Tribal

Federalism:

This action may have federalism implications as defined in EO 13132.

Additional Information:

SAN No. 4341

Sectors Affected:

22131 Water Supply and Irrigation Systems

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RIN: 2040–AD37

EPA

135. NATIONAL PRIMARY DRINKING WATER REGULATIONS: STAGE 2 DISINFECTION BYPRODUCTS RULE

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect State, local or tribal goverments and the private sector.

Legal Authority:

40 USC 300g-1(b); SDWA 1412(b); 42 USC 300f; 42 USC 300g-2; 42 USC 300g-3; 42 USC 300g-4; 42 USC 300g-5; 42 USC 300g-6; 42 USC 300j-4; 42 USC 300j-9; 42 USC 300j-11

CFR Citation:

40 CFR 141 to 142; 40 CFR 9

Legal Deadline:

Final, Statutory, July 14, 2003.

Abstract:

This Regulation, along with a Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) that will be promulgated simultaneously, is intended to expand existing public health protections and address concerns about risk trade-offs between pathogens and disinfection byproducts. This rule could affect all public water systems that add a disinfectant to the drinking water during any part of the treatment process although the impacts may be limited to community water systems (CWSs) and nontransient noncommunity water systems (NTNCWSs). Promulgating the LT2ESWTR and the Stage 2 DBPR as a paired rulemaking is necessary to ensure that adequate protection from microbial risk is maintained while EPA manages risk from disinfection byproducts. In developing the Stage 2 DBPR, EPA will analyze a significant body of new survey data on source water quality parameters, treatment data and disinfection byproduct occurrence. This survey data, which was collected under the Information Collection Rule (ICR), Supplemental Surveys to the ICR, and additional research projects, will provide a substantially more comprehensive and complete picture of the occurrence of DBPs and microbiological pathogens than was available previously. EPA will also use new information on the health effects of exposure to DBPs to determine effective regulatory requirements for controlling risk. On March 30, 1999, EPA reconvened a committee of stakeholders under the Federal Advisory Committee Act (FACA) to assist in the development of these rules and an Agreement in Principle was signed in September 2000 outlining the proposed rule options.

Statement of Need:

The purpose of the Stage 2 Disinfectants/Disinfection Byproducts Rule (DBPR) is to reduce potential health risks posed by disinfection byproducts (DBPs). Certain DBPs have been shown in laboratory tests to be carcinogens or to cause adverse reproductive and developmental health effects. In addition, epidemiology studies have indicated that exposure to chlorinated water may increase the risk of bladder cancer, miscarriage, and certain developmental defects. The Stage 2 DBPR is designed to reduce peak events in DBP exposure in order to mitigate these potential health risks.

Summary of Legal Basis:

Section 1412(b)(2)(C) of SDWA, as amended in 1996, requires EPA to promulgate a Stage 2 Disinfectants/Disinfection Byproducts Rule no later than July 14, 2003. Although the 1996 Amendments do not require EPA to finalize a Long Term 2 Enhanced Surface Water Treatment Rule along with the Stage 2 Disinfectants and Disinfection Byproducts Rule, Congress did emphasize the importance of ensuring proper balance between microbial and DBP risks and, therefore, EPA believes it is important to finalize these rules together.

Alternatives:

EPA is considering various rule scenarios to achieve reductions in disinfection byproduct exposure. These alternatives include: decreasing the standard set in the Stage 1 DBPR (0.080 mg/L total trihalomethanes (TTHM) and 0.060 mg/L the sum of 5 haloacetic acids (HAA5)) by half and maintaining a running annual average compliance calculation; maintaining 80/60 TTHM/HAA5 standards but revising the compliance calculation to a stricter locational running annual average; setting the 80/60 TTHM/HAA5 standard as a never-to-be exceeded maximum; and revising the standard for bromate which is currently 0.010 mg/L. EPA has also considered options to reduce the impact on small systems.

Anticipated Cost and Benefits:

EPA estimates that the Stage 2 DBPR will have an annual economic impact of $100 million or more. Over 200 million people are served by public water systems that apply a disinfectant (e.g., chlorine) to water in order to provide protection against microbial contaminants and potentially exposed to DBPs. Thus, a large number of people will benefit from the Stage 2 DBPR.

Risks:

Over 200 million people are served by public water systems that apply a disinfectant (e.g., chlorine) to water in order to provide protection against microbial contaminants. Due to the large number of people exposed to DBPs, there is a substantial concern for any risks associated with DBPs that may impact public health. EPA estimates that the Stage 2 DBPR will decrease exposure to DBPs on average but more importantly, the rule will significantly reduce exposure to peak occurrences of DBPs.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Federal, State, Local, Tribal

Federalism:

This action may have federalism implications as defined in EO 13132.

Additional Information:

SAN No. 4342

Sectors Affected:

22131 Water Supply and Irrigation Systems

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RIN: 2040–AD38

EPA

136. MINIMIZING ADVERSE ENVIRONMENTAL IMPACT FROM COOLING WATER INTAKE STRUCTURES AT EXISTING FACILITIES UNDER SECTION 316(B) OF THE CLEAN WATER ACT, PHASE 3

Priority:

Economically Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

33 USC 1311 CWA sec 301; 33 USC 1316 CWA sec 306; 33 USC 1326 CWA sec 316; 33 USC 1361 CWA sec 501

CFR Citation:

40 CFR 9; 40 CFR 122; 40 CFR 123; 40 CFR 124; 40 CFR 125

Legal Deadline:

NPRM, Judicial, June 15, 2003.

Final, Judicial, December 15, 2004.

Abstract:

This rulemaking affects, at a minimum, existing facilities that use cooling water intake structures, and whose intake flow levels exceed a minimum threshold EPA will determine during this rulemaking. The affected facilities include: (1) electricity generating facilities not covered by Phase 2 regulations; (2) pulp and paper manufacturing facilities; (3) chemicals and allied products manufacturing facilities; (4) petroleum and coal products manufacturing facilities; and (5) primary metals manufacturing facilities. Section 316(b) of the Clean Water Act provides that any standard established pursuant to sections 301 or 306 of the Clean Water Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact. A primary purpose of this action is to minimize the impingement and entrainment of fish and other aquatic organisms by cooling water intake structures. Impingement refers to trapping fish and other aquatic life against cooling water intake structures. Entrainment occurs when aquatic organisms, eggs and larvae are drawn into the cooling system, through the heat exchanger, and then pumped back out with significant injury or mortality to the entrained organisms.

Statement of Need:

In the absence of national regulations, Permit Directors have regulated cooling water intake structures incompletely and inconsistently, especially with respect to the manufacturing sector. In some instances, permit issuance or reissuance has been significantly delayed or permit decisions from 20 years ago have not been reevaluated. Tons of fish and other aquatic organisms may be cropped annually as a result of cooling water intake structures at a single large intake or cumulative impact at multiple small intakes on the same waterbody. By court order, EPA must propose and take final action on this regulation. This regulation may have substantial ecological benefits.

Summary of Legal Basis:

This action is required under an Amended Consent Decree in Riverkeeper Inc. et al. v. Whitman, 93 Civ. 0314 (AGS)(U.S. District Court, Southern District of New York, November 21, 2000).

Alternatives:

This analysis will cover various sizes and types of potentially regulated facilities. EPA is considering whether to regulate on a site-specific, waterbody category, or national basis. EPA is also considering several flow thresholds, below which the regulation would not apply.

Anticipated Cost and Benefits:

Costs are not yet determined, but are expected to exceed $100 million. A qualitative assessment of benefits at several large and small facilities indicates the potential for significant benefits when intakes are controlled. Costs and benefits are generally expected to be smaller at facilities that use smaller amounts of cooling water.

Risks:

Cooling water intake structures may pose significant risks for aquatic ecosystems.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Federal, State, Local, Tribal

Additional Information:

SAN No. 4543

Sectors Affected:

21 Mining; 211111 Crude Petroleum and Natural Gas Extraction; 211112 Natural Gas Liquid Extraction; 22111 Electric Power Generation; 22133 Steam and Air-Conditioning Supply; 311 Food Manufacturing; 3122 Tobacco Manufacturing; 313 Textile Mills; 321 Wood Product Manufacturing; 322 Paper Manufacturing; 324 Petroleum and Coal Products Manufacturing; 325 Chemical Manufacturing; 326 Plastics and Rubber Products Manufacturing; 327 Nonmetallic Mineral Product Manufacturing; 331 Primary Metal Manufacturing; 332 Fabricated Metal Product Manufacturing; 333 Machinery Manufacturing; 334 Computer and Electronic Product Manufacturing; 335 Electrical Equipment, Appliance and Component Manufacturing; 336 Transportation Equipment Manufacturing; 61131 Colleges, Universities and Professional Schools

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RIN: 2040–AD70

EPA

137. WATERSHED RULE: TOTAL MAXIMUM DAILY LOAD (TMDL) PROGRAM REVISIONS

Priority:

Other Significant

Legal Authority:

33 USC 1313; 33 USC 1329; 33 USC 1342

CFR Citation:

40 CFR 9; 40 CFR 122; 40 CFR 123; 40 CFR 124; 40 CFR 130; 40 CFR 131

Legal Deadline:

None

Abstract:

Amend regulations governing the TMDL program to ensure that it is effective and allows for active participation by all stakeholders including local governments and communities. The amendments will address: the scope and content of the list of impaired waters required by section 303(d) of the Clean Water Act, the scope and content of TMDLs, EPA's role in helping States establish 303(d) lists and TMDLs so that impaired waters are restored, and the framework for implementing TMDLs provided by State CPPs and watershed plans. EPA is also proposing revision to the NPDES permitting regulations.

Statement of Need:

This action will propose a new framework for accomplishing the water quality planning and management provisions of the Clean Water Act (CWA). EPA believes that this framework based on the watershed approach will allow jurisdictions (i.e., State, territories and authorized tribes) to use the Total Maximum Daily Load (TMDL) program to more effectively contribute to improving the Nation's water quality. The proposal recognizes that the major responsibility for water quality management resides with these jurisdictions. The goal of the proposal is to provide jurisdictions with a tailored yet flexible approach to water quality management that meets the unique needs and situation of each jurisdiction and of local communities while at the same time ensuring that progress is made towards restoring the Nation's waters so that they attain and maintain water quality standards. The proposal revitalizes and strengthens the Continuing Planning Process (CPP) as a focus for a variety of jurisdictions' water quality planning and implementation activities. The proposal seeks to increase TMDL program flexibility and enhance stakeholder participation, promote opportunities for trading, and increase efficiencies in establishing, approving and implementing TMDLs. EPA is also proposing revisions to the NPDES permit regulations.

Summary of Legal Basis:

These revisions to EPA's TMDL rules are authorized by, among others, sections 303(d) and (e) of the CWA that: (1) require States to identify impaired waters within their boundaries and establish TMDLs for those waters at levels necessary to implement water quality standards, and (2) require States to have a continuing planning process resulting in a plan for all navigable waters that EPA reviews from time to time.

Anticipated Cost and Benefits:

Estimates under development.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State, Tribal

Additional Information:

SAN No. 4623

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RIN: 2040–AD82

EPA

138. • WITHDRAWAL OF TOTAL MAXIMUM DAILY LOAD (TMDL) PROGRAM REVISIONS

Priority:
Other Significant

Legal Authority:
33 USC 1313

CFR Citation:
40 CFR 9; 40 CFR 122; 40 CFR 123; 40 CFR 124; 40 CFR 130

Legal Deadline:
None

Abstract:
EPA is proposing to withdraw the July 2000 rule, rather than allow it to go into effect. EPA believes that significant changes would need to be made to the July 2000 rule before it could serve as the blueprint for an efficient and effective TMDL program. Furthermore, EPA needs additional time beyond April 2003 to promulgate new revisions to the TMDL program that will enable EPA and jurisdictions to best achieve the goals of the Clean Water Act. Regulations that EPA promulgated in 1985 and amended in 1992 would remain the regulations in effect for implementing the TMDL Program until EPA finalizes any future TMDL rules.

Statement of Need:
Due to the significant controversy, pending litigation and lack of stakeholder consensus on key aspects of the July 2000 rule, it has become apparent to EPA that, as promulgated, the July 2000 rule cannot function as the blueprint for an efficient and effective TMDL program without significant revisions. Moreover, the existence of the approaching April 30, 2003, effective date for the July 2000 rule - a mere eight months away - is beginning to act as an unnecessary and artificial distraction from an orderly completion of the Agency's efforts now underway to chart the future direction and scope of the TMDL program. Consequently, EPA is proposing to withdraw the July 2000 TMDL rule so that the Agency can proceed in an orderly process to revise the TMDL rules without concern that those efforts will be adversely affected by the July 2000 rule's effective date.

Summary of Legal Basis:
These revisions to EPA's TMDL rules are authorized by, among others, sections 303(d) and (e) of the CWA that: (1) require States to identify impaired waters within their boundaries and establish TMDLs for those waters at levels necessary to implement water quality standards, and (2) require States to have a continuing planning process resulting in a plan for all navigable waters that EPA reviews from time to time. If the July 2000 TMDL regulations are not withdrawn, they will become effective on April 30, 2003.

Alternatives:
Whether the July 2000 rule should be withdrawn or not.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required:
No

Small Entities Affected:
No

Government Levels Affected:
Federal, State, Tribal

Additional Information:
SAN No. 4729

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RIN: 2040–AD84

EPA

FINAL RULE STAGE

139. OVERVIEW OF RULEMAKINGS FOR THE PURPOSE OF REDUCING INTERSTATE OZONE TRANSPORT

Priority:
Economically Significant. Major under 5 USC 801.

Legal Authority:
42 USC 7410

CFR Citation:
40 CFR 51

Legal Deadline:
None

Abstract:
The Clean Air Act (CAA) requires that a State implementation plan (SIP) contain provisions to prevent a State's facilities or sources from contributing significantly to air pollution that is transported downwind to other States, exacerbating their inability to meet the national ambient air quality standards for ozone. Through a two-year effort known as the Ozone Transport Assessment Group (OTAG) , EPA worked in partnership with the 37 easternmost States and the District of Columbia, industry representatives, and environmental groups to address ozone precursor and ozone transport. This multiyear collaboration resulted in the most comprehensive analysis of ozone transport ever conducted. The OTAG States voted in favor of a range of strategies to reduce nitrogen oxide emissions from utilities and other major sources. Building on the recommendations of OTAG, EPA issued a rule known as the NOx SIP Call (10/27/98, 63 FR 57355) requiring 22 States and the District of Columbia to submit revisions to their SIPs to address the regional transport of nitrogen oxides (a precursor to ozone formation known as NOx). By reducing emissions of NOx, the actions directed by these plans will decrease the formation and transport of ozone across State boundaries in the eastern half of the United States. This rule was challenged in court, and on March 3, 2000, the U.S. Court of Appeals for the District of Columbia issued a decision largely upholding the NOx SIP Call, but remanded four narrow issues to EPA for further rulemaking action. In an August 30, 2000, Court Order, emission reduction measures are required to be in place by May 31, 2004. On June 8, 2001, the Court made a related decision concerning the NOx SIP Call Technical Amendment rulemakings which largely upheld Phase I of the NOx SIP Call, but remanded one issue to EPA. EPA is now addressing the remanded issues in separate rulemakings (see SAN 4433 and SAN 4679 in today's Regulatory Agenda). A notice of data availability was published on 8/3/01 which made new data publicly available for notice-and-comment. A second notice of data availability was published in on March 11, 2002, listing additional items which were made publicly available. Final action was published on 5/1/02 (67 FR 21868). In addition to the SIP Call provisions, Federal Implementation Plans (FIPs) may also be needed to reduce regional transport if any affected State fails to adequately revise its SIP to comply with the NOx SIP call (see SAN 4096 in today's Regulatory Agenda). In addition to the SIP Call remedy, the Clean Air Act also gave States the right to petition EPA to take other Federal action to prevent ozone transport that affects downwind States. Accordingly, under section 126 of the CAA, eight Northeastern States filed petitions requesting EPA to make findings and require decreases in NOx emissions from

Statement of Need:
It has long been recognized that ozone transport is a major factor in the difficulty many States are having in attaining the clean-air standards for ozone. This was made more clear by the OTAG analysis outlined above.

Summary of Legal Basis:
Clean Air Act Section 110 provides the legal basis for addressing transport of air pollution.

Alternatives:
The Clean Air Act specifies the SIP Call process, the FIP process, and the Section 126 petition process as alternate approaches to remedying the problem of ozone transport. EPA intends to use these alternatives as appropriate in an integrated program.

Anticipated Cost and Benefits:
As outlined in the Regulatory Impact Analysis for the NOx SIP Call, the rule will result in significant improvements in premature mortality, chronic asthma, chronic and acute bronchitis, upper and lower respiratory symptoms, work days lost, decreased worker productivity, visibility in urban and suburban areas, increases in yields of commercial forests currently exposed to elevated ozone levels, and reductions in loadings of nitrogen to sensitivity estuaries, helping State and local government reach target reduction goals for estuaries such as Chesapeake Bay, Albermarle-Pamlico Sound and Long Island Sound. Due to practical analytical limitations, we cannot quantify and/or monetize all potential benefits of this action. Within these limitations, the quantified and monetized benefits were estimated in the Regulatory Impact Analysis to range from $1.1 billion to $4.2 billion annually. Annual costs were estimated at $1.7 billion. All figures are in 1990 dollars.

Risks:
The risks addressed by this action are the likelihood of experiencing increased health and environmental effects associated with nonattainment of the National Ambient Air Quality Standard for ozone. These effects are briefly described above in the "costs and benefits" section, and they are outlined in detail in the Regulatory Impact Analysis for the NOx SIP Call.

Timetable:

Action	Date	FR Cite
NPRM NOx FIPs (SAN 4096)	10/21/98	63 FR 56393
Final Action NOx SIP Call	10/27/98	63 FR 57355
Final Action Section 126 Findings	05/25/99	64 FR 28250
Final Action Section 126 Approvals and Remedy	01/18/00	65 FR 2674
NODA Notice of Data Availability for NOx SIP Call/Section 126 rule	08/03/01	66 FR 40609
NPRM Phase II NOx SIP Call Proposal (SAN 4433)	02/22/02	67 FR 8395
NODA Notice of Data Availability for NOx SIP Call/Section126 Rule	03/11/02	67 FR 10844
Final Action Data Harmonization (Section 126/NOx SIP Call)	04/30/02	67 FR 21522
Final Action Response to Remands Concerning Growth Factors	05/01/02	67 FR 21868
Final Action Final Phase II NOx SIP Call (SAN 4433)	12/00/02	

Regulatory Flexibility Analysis Required:
No

Small Entities Affected:
No

Government Levels Affected:
State

Additional Information:
SAN No. 4466

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RIN: 2060–AJ20

EPA

140. CONTROL OF EMISSIONS OF AIR POLLUTION FROM NEW MARINE COMPRESSION-IGNITION ENGINES AT OR ABOVE 30 LITERS PER CYLINDER

Priority:
Other Significant

Legal Authority:
42 USC 7621 et seq; 42 USC 7542 et seq

CFR Citation:
40 CFR 94

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Legal Deadline:

Final, Judicial, January 31, 2003. Finalize emission standards for new compression-ignition marine engines at or above 30 liters per cylinder.

Abstract:

This rule will set exhaust emission standards for new marine compression-ignition engines at or above 30 liters per cylinder installed on vessels flagged by the United States and will determine whether it is appropriate to apply these standards to foreign flag vessels that use U.S. ports. The proposed rule set out a primary control option of aligning emission standards with standards included in a pending international agreement beginning in 2004. The status of the international agreement is an issue to consider as we determine appropriate final standards. We also asked for comment on a second tier of more stringent NOx standards starting in 2007 as well as potential controls on sulfur levels in diesel fuel used in these vessels. Emissions control from marine vessels is important to various port cities as the contribution from marine vessels to their emissions inventories is projected to grow as steps are taken to reduce Nox and PM emissions from other sources.

Statement of Need:

Ozone and particulate pollution pose a serious threat to the health and well-being of millions of Americans. This rulemaking addresses control measures to reduce emissions from large diesel-powered marine engines, with a focus on engine controls that can reduce NOx emissions. The proposal also asked for comments on controlling sulfur levels in diesel fuel used in such vessels, which can lead to particulate matter reductions.

Summary of Legal Basis:

42 USC 7522-7525, 7541-7545, 7547, 7549, 7550, and 7601(a)

Alternatives:

The proposed rule included extensive cost and emissions reductions estimates for one primary option and two different control scenarios for NOx emissions - 30 percent, 50 percent, and 80 percent reductions from the assumed baseline levels associated with compliance with international standards. This rule also includes information regarding costs and benefits associated with fuel control options.

Anticipated Cost and Benefits:

There are negligible costs and marginal unanticipated benefits associated with compliance with the baseline control scenario included in the proposal as engine manufacturers are already meeting the specified emission levels through application of a pending international agreement. The costs and benefits of the primary option for a second tier of standards are estimated to be less than $200/ton for NOx control. Cost and benefit information is also provided for the alternative options as well.

Risks:

The risks addressed by this program are primarliy those associated with nonattainment of the National Ambient Air Quality Standards for ozone and particulate matter. There are also serious public health and welfare benefits from controlling emissions from these sources, such as reductions in regional haze and acid deposition.

Timetable:

Action	Date	FR Cite
NPRM	05/29/02	67 FR 37548
Final Action	01/00/03	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal

Additional Information:

SAN No. 4622

Sectors Affected:

333618 Other Engine Equipment Manufacturing; 3366 Ship and Boat Building

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RIN: 2060–AJ98

EPA

141. MANAGEMENT OF CEMENT KILN DUST (CKD)

Priority:

Other Significant

Legal Authority:

42 USC 6912(a) RCRA sec 2002(a); 42 USC 6921(a) RCRA sec 3001(a)

CFR Citation:

40 CFR 256; 40 CFR 259; 40 CFR 261; 40 CFR 264

Legal Deadline:

None

Abstract:

In December 1993, EPA submitted a Report to Congress with its findings on the nature and management practices associated with cement kiln dust (CKD). In 1995, EPA determined that some additional control of CKD was needed and published a regulatory determination (60 FR 7366, 2/7/95). On August 20, 1999, EPA issued a proposed rule (64 FR 45632) outlining the Agency's preferred regulatory approach (i.e., an exemption from hazardous waste listing for properly managed CKD) and several optional approaches including requirements solely under RCRA Subtitle D. On July 25, 2002, the Agency published a Notice of Data Availability to announce the availability for public inspection and comment of recently acquired data on CKD. The Agency is considering an approach whereby it would finalize protective CKD management standards.

Statement of Need:

EPA issued a regulatory determination finding that additional control of CKD was warranted. The Agency stated that its concerns about the potential harm to human health and the environment posed by some CKD suggest the need for some level of regulation under RCRA Subtitle C authority. The Agency is now considering an approach whereby it would finalize protective CKD management standards. Active consideration of the proposed mismanagement-based listing would be temporarily suspended for a period of three to five years. During this time EPA would collect data to evaluate the effectiveness of CKD management practices and States' regulatory programs. If after its evaluation the Agency deems CKD management practices and States' regulatory programs to be effective in protecting human health and the environment, the Agency would formally withdraw the Subtitle C portion of the 1999 proposal and would revisit the 1995 CKD regulatory determination. Otherwise, if the Agency deems CKD management practices and State regulatory programs to be ineffective after this period, the Agency would pursue regulation of mismanaged CKD under RCRA Subtitle C.

Summary of Legal Basis:

There are no applicable statutory or judicial deadlines for the CKD rulemaking effort. However, section 3001(b)(3)(C) of RCRA contemplates a rule in light of the Administrator's 1995 determination that further regulation of CKD was warranted.

Alternatives:

In the 1995 Regulatory Determination, the Agency stated its concerns about the potential harm to human health and the environment posed by some CKD suggest the need for some level of regulation under RCRA subtitle authority. Although the Agency is considering issuing the protective CKD management standards as a RCRA subtitle D rule, if after a three- to five-year evaluation period the Agency deems CKD management practices and State regulatory programs to be ineffective, the Agency would pursue regulation of mismanagement CKD under RCRA subtitle C.

Anticipated Cost and Benefits:

The Agency estimated the proposed rule would affect the economy by less than $100 million per year. EPA also estimated that the proposed rule may result in a reduced risk of 0.0004 to 0.003 cancer cases per year (best estimate - 0.0006) and 29 to 315 fewer persons (best estimate - 43) exposed to potential noncancer health effects due to food chain exposures (i.e., vegetables, beef, and/or milk) to "backyard" gardeners and subsistence farmers. In addition, the population analysis indicated that between 669 and 5,895 recreational fishers (best estimate - 999) would avoid exposure to contaminant levels that may result in noncancer health effects. The population analysis indicated that 18 to 4,118 individuals (best estimate - 2,378) would avoid exposure to particulate matter in excess of the National Ambient Air Quality Standards (NAAQS). The rule should also help prevent contaminated CKD leachate from impacting groundwater resources.

Risks:

For the 1993 Report to Congress and 1995 Regulatory Determination, the Agency modeled individual risks from direct and indirect pathways for 83 plants. The Agency concluded that the risks from direct pathways (i.e., drinking water ingestion, incidental ingestion, and chemical inhalation) were low or negligible. The Agency caveated these conclusions by noting that (1) about half of the plants are underlain by limestone formations in areas of karst landscape and may be susceptible to fissures and hydraulic characteristics that allow leachate to directly enter groundwater without dilution or attenuation and cannot be modeled with current techniques; (2) empirical evidence indicated groundwater contamination in areas of both karst and non-karst terrain; and (3) modeling results for fine particulate emissions for 28 cement plants out of 52 modeled may have exceedances of NAAQS at plant boundaries and may result in risks from fine particulate inhalation at nearby residences.

For the indirect pathways, the Agency concluded that releases from about 12 percent of the 83 plants studied may result in cancer risks greater than 1x10-5 for highly exposed individuals (i.e., subsistence fishers and subsistence farmers). Similarly, the Agency concluded that releases from about 12 percent of the 83 plants may result in noncancer hazard ratios greater than 1.0 for highly exposed individuals.

Timetable:

Action	Date	FR Cite
Notice Regulatory Determination	02/07/95	60 FR 7366
NPRM	08/20/99	64 FR 45632
Notice of Data Availability	07/25/02	67 FR 48648
Final Action	06/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, State

Additional Information:

SAN No. 3856

Sectors Affected:

32731 Cement Manufacturing

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RIN: 2050–AE34

EPA

142. STANDARDIZED PERMIT FOR RCRA HAZARDOUS WASTE MANAGEMENT FACILITIES

Priority:

Other Significant

Legal Authority:

42 USC 6905; 42 USC 6912; 42 USC 6924; 42 USC 6925; 42 USC 6927; 42 USC 6974

CFR Citation:

40 CFR 124; 40 CFR 267; 40 CFR 270

Legal Deadline:

None

Abstract:

EPA has proposed creating a new type of general permit, called a standardized permit, for facilities that generate waste and routinely manage the waste on-site in tanks, containers, and containment buildings. Under the standardized permit, facility owners and operators would certify compliance with generic design and operating conditions set on a national basis. The permitting agency would review the certifications submitted by the facility owners and operators. The permitting agency would also be able to impose additional site-specific terms and conditions for corrective action or other purposes, as called for by RCRA. Ensuring compliance with the standardized permit's terms and conditions would occur during inspection of the facility after the permit has been issued. The standardized permit should streamline the permit process by allowing facilities to obtain and modify permits more easily while maintaining the protectiveness currently existing in the

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individual RCRA permit process. The proposal raised issues for public comment on how all facilities receiving RCRA permits can satisfy RCRA corrective action requirements under appropriate alternative state cleanup programs and on financial assurance issues. The Agency is developing a final rule addressing this topic.

Statement of Need:

The Agency convened a special task force in 1994 to look at permitting activities throughout its different programs and to make specific recommendations to improve these permitting programs. This task force, known as the Permits Improvement Team (PIT), spent two years working with stakeholders from the Agency, State permitting agencies, industry, and the environmental community. The PIT stakeholders mentioned, among other things, that permitting activities should be commensurate with the complexity of the activity. The stakeholders felt that current Agency permitting programs were not flexible enough to allow streamlined procedures for routine permitting activities. Currently, facilities that store, treat, or dispose of hazardous waste must obtain site-specific "individual" permits prescribing conditions for each "unit" (e.g., tank, container area, etc.) in which hazardous waste is managed. Experience gained by the Agency and States over the past 165 years has shown that not all the waste management activities are at the same level of complexity. Some activities, such as thermal treatment or land disposal of hazardous wastes, are more complex than storage of hazardous waste. The Agency believes that thermal treatment and land disposal activities continue to warrant "individual" permits, prescribing unit-specific conditions. However, the Agency believes that some accommodation can be made for hazardous waste management practices in standardized units such as tanks, container storage areas, and containment buildings. In April 1996, the PIT tentatively recommended, among other things, that regulations be developed to allow "standardized permits" for on-site storage and nonthermal treatment of hazardous waste in tanks, containers, and containment buildings. On October 12, 2001, the Agency proposed revising the RCRA regulations to allow for this type of permit, and is preparing to finalize the rule.

Summary of Legal Basis:

Facilities that manage hazardous waste are required under RCRA to obtain a permit and carry out corrective action as necessary (see: RCRA Section 3004, 3005, 3008, and 3010). EPA has discretion under these statutory provisions to apply different permitting procedures to different types of facilities. No aspect of this streamlining action is required by court order.

Alternatives:

EPA considered several options regarding RCRA permits and corrective action alternatives. The Agency proposed to limit the scope of the rule to facilities that generate waste and manage it on-site, but asked for comment on whether to expand that scope to facilities that manage wastes generated off-site. The Agency also asked for comment on the option of allowing a facility's RCRA corrective action activities to be postponed if corrective action is being carried out under an approved state remedial program.

Anticipated Cost and Benefits:

The RCRA standardized permit is an optional rule designed to streamline the regulatory burden to EPA/States, as well as to private sector facilities covered by the rule, by reducing the amount of information collected, submitted, and reviewed for RCRA hazardous waste permit actions (i.e., new permit applications, permit modifications, and permit renewals). Because the rule proposed to streamline existing RCRA regulation, rather than add new RCRA regulation, implementation of the rule by the EPA and by States with EPA-authorized permitting programs is expected to result in economic benefits in the form of national cost savings from reducing both government and private sector resources required for the RCRA permit process. The national workload level of RCRA permit actions involving on-site hazardous waste storage and nonthermal treatment units has averaged 92 permit determinations per year over the 10-year period 1990-1999. Relative to this average annual workload, EPA estimates that the potential average annual cost savings to eligible facilities from implementation of this rule will range from approximately $100 to $5,800 (i.e., 2 to 140 burden hours) per permit action, depending on such things as the type of permit and the type of storage equipment. On a national basis, the rule is expected to generate a minimum of $0.36 to $0.53 million in average annual paperwork cost savings, based on the scope of the proposed rule, which was limited to on-site waste management facilities. However, the final rule may expand the initial scope of eligible facilities, which could easily double or triple the national cost savings benefits (i.e., $1.1 to $1.6 million per year in cost savings).

Risks:

The purpose of this rule is to streamline existing RCRA permit application and issuance procedures to achieve national paperwork burden reduction. Because of the facts that facilities covered by this rule: (a) are currently already required to obtain RCRA permits, and (b) are relatively simple to design, install/construct, operate, and clean-close, this rule is expected to have minimal incremental effects on existing levels of human health and environmental risk for these types of hazardous waste management facilities.

Timetable:

Action	Date	FR Cite
NPRM	10/12/01	66 FR 52191
Final Action	05/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State

Additional Information:

SAN No. 4028

Sectors Affected:

32411 Petroleum Refineries; 3251 Basic Chemical Manufacturing; 3252 Resin, Synthetic Rubber, and Artificial and Synthetic Fibers and Filaments Manufacturing; 325211 Plastics Material and Resin Manufacturing; 32532 Pesticide and Other Agricultural Chemical Manufacturing; 32551 Paint and Coating Manufacturing; 332813 Electroplating, Plating, Polishing, Anodizing and Coloring

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RIN: 2050–AE44

EPA

143. OFFICE OF SOLID WASTE BURDEN REDUCTION PROJECT

Priority:

Other Significant

Legal Authority:

42 USC 6907; 42 USC 6912(a); 42 USC 6921; 42 USC 6922; 42 USC 6923; 42 USC 6924; 42 USC 6925; 42 USC 6926; 42 USC 6927; 42 USC 6930; 42 USC 6934; 42 USC 6935; 42 USC 6937; 42 USC 6938; 42 USC 6939; ...

CFR Citation:

40 CFR 260; 40 CFR 261; 40 CFR 264; 40 CFR 265; 40 CFR 266; 40 CFR 268; 40 CFR 270

Legal Deadline:

None

Abstract:

EPA plans to reduce the burden imposed by the RCRA reporting and recordkeeping requirements to help meet the Federal government-wide goal established by the Paperwork Reduction Act (PRA).

In June 1999, EPA published a Notice of Data Availability (NODA) in the Federal Register (64 FR 32859) to seek comment on a number of burden reduction ideas. After reviewing the comments received on the NODA, EPA proposed (67 FR 2518, 1/17/02) to implement many of these ideas. The proposal was designed to eliminate duplicative and nonessential paperwork.

The main ideas for the final rulemaking are: (1) eliminating or modifying one-third of the 334 RCRA-required notices and reports that are sent by the regulated community to states and EPA; (2) eliminating the RCRA emergency response training requirements that overlap with the Occupational Safety and Health Administration requirements; (3) eliminating the need for facilities to record personnel descriptions; (4) decreasing the owner/operator self-inspection frequency of hazardous waste tanks to weekly; (5) providing states and EPA with the opportunity to lengthen owner/operator self-inspection frequencies on a case-by-case basis for containers, containment buildings, and tanks; (6) eliminating the Land Disposal Restrictions generator waste determinations, recycler notifications and certifications, hazardous debris notifications and characteristic waste determinations, and streamlining the characteristic waste notification procedures; and (7) modifying the groundwater monitoring requirements for hazardous waste facilities.

Statement of Need:

The Paperwork Reduction Act of 1995 establishes a federal government-wide goal to reduce the paperwork and reporting burden it imposes. The RCRA Burden Reduction Initiative Proposed Rulemaking makes the regulatory changes necessary to meet this goal.

Summary of Legal Basis:

This action is not required by statute or court order.

Alternatives:

Reducing recordkeeping and reporting will require changes in our regulations. There was no alternative to doing a rulemaking. The Agency sought opinions from the regulated community on various burden reduction possibilities.

Anticipated Cost and Benefits:

Our cost-benefit analysis showed a savings of $120 million and 929,000 hours. The rule will have minimal impact on the protectiveness of the RCRA regulations. It will eliminate or streamline paperwork requirements that are unnecessary because they add little to the protectiveness of the RCRA regulations.

Risks:

The rule will have no risk impacts.

Timetable:

Action	Date	FR Cite
Notice of Data Availability	06/18/99	64 FR 32859
NPRM	01/17/02	67 FR 2518
Final Action	05/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State, Local, Tribal

Additional Information:

SAN No. 4084

Sectors Affected:

323 Printing and Related Support Activities; 324 Petroleum and Coal Products Manufacturing; 325 Chemical Manufacturing; 326 Plastics and Rubber Products Manufacturing; 331 Primary Metal Manufacturing; 332 Fabricated Metal Product Manufacturing; 334 Computer and Electronic Product Manufacturing; 562 Waste Management and Remediation Services

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RIN: 2050–AE50

EPA

144. NATIONAL PRIMARY DRINKING WATER REGULATIONS: GROUNDWATER RULE

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

42 USC 300f; SDWA 1412

CFR Citation:

40 CFR 141 400 to 406; 40 CFR 142 14 to 16 (revision)

Legal Deadline:

Final, Statutory, October 30, 2004, Before Stage 2 Disinfection Byproducts Rule.

Abstract:

EPA has proposed a targeted risk-based regulatory strategy for all public water systems served by ground water. The proposed requirements provide a meaningful opportunity to reduce public health risk associated with the consumption of waterborne pathogens from fecal contamination for a substantial number of people served by ground water sources. The proposed strategy addresses risks through a multiple-barrier approach that relies on five major components: periodic sanitary surveys of ground water systems requiring the evaluation of eight elements and the identification of significant deficiencies; hydrogeologic assessments to identify wells sensitive to fecal contamination; source water monitoring for systems drawing from sensitive wells without treatment or with other indications of risk; a requirement for correction of significant deficiencies and fecal contamination through the following actions: eliminate the source of contamination, correct the

significant deficiency, provide an alternative source water, or provide a treatment which achieves at least 99.99 percent (4-log) inactivation or removal of viruses, and compliance monitoring to insure disinfection treatment is reliably operated where it is used.

Statement of Need:

Public water systems (PWSs) that use ground water as their sole source of water, as opposed to surface water PWSs, are not federally regulated as to treatment for microorganisms. There is data that indicates that a number of ground water PWSs are contaminated with microorganisms of fecal origin that can and have caused illness.

Summary of Legal Basis:

Section 1412(b)(8) of the Safe Drinking Water Act requires that EPA develop regulations specifying the use of disinfectants for ground water systems as necessary and "...(as part of the regulations) promulgate criteria...to determine whether disinfection shall be required as a treatment technique for any public water system served by ground water.

Alternatives:

EPA considered four regulatory alternatives in the development of the GWR proposal; the proposed regulatory alternative (multi-barrier option), the sanitary survey option, the sanitary survey and triggered monitoring option, and the across-the-board disinfection option. All options include the sanitary survey provision. The sanitary survey option would require the primacy agency to perform surveys every three to five years, depending on the type of system. If any significant deficiency is identified, a system is required to correct it. The sanitary survey and triggered monitoring option adds a source water fecal indicator monitoring requirement triggered by a total coliform positive sample in the distribution system. The multi-barrier option, which was proposed by EPA, adds a hydrogeologic sensitivity assessment to these elements which, if a system is found to be sensitive, results in a routine source water fecal indicator monitoring requirement. The multi-barrier option and the sanitary survey and triggered monitoring options are targeted regulatory approaches designed to identify wells that are fecally contaminated or are at a high risk for contamination. These across-the-board disinfection option would require all systems to install treatment instead of trying to identify only the high risk systems; therefore, it has no requirement for sensitivity assessment or microbial monitoring.

Anticipated Cost and Benefits:

EPA estimates the cost of the proposed GWR will be $183 million dollars per year (using a 3 percent discount rate). More than half of the estimated costs are for corrective actions which systems will be required to take to fix or prevent fecal contamination. The remainder of the costs are due to increased scope and frequency of sanitary surveys, hydrogeologic sensitivity assessments and source water monitoring. System costs are expected to be $162 million per year for implementation of the GWR. States are expected to incur costs of $21 million per year. Cost estimates do not include land acquisition, public notification or the potential cost of illness due to exposure to disinfection byproducts. The total estimated value of these benefits is $205 million per year, $139 million from avoided illness and $66 million from avoided deaths. These benefits are monetized based on a cost of illness and a value of statistical life. These estimates do not include pain and suffering associated with viral and bacterial illness avoided outbreak response costs (such as the costs of providing public health warnings and boiling drinking water), and possibly the avoided costs of averting behavior and reduced uncertainty about drinking water quality.

Risks:

EPA estimates that currently over 200,000 illnesses and 18 deaths occur each year due to viral and bacterial contamination of public ground water systems. Children, the elderly and the immunocompromised are particularly sensitive to the waterborne pathogens and account for between 20 and 30 percent of the illnesses and deaths. As proposed, the GWR is expected to reduce the total number of illness by 115,000 and the total number of deaths by 11 each year. The GWR in conjunction with the Surface Water Treatment Rule (SWTR), Total Coliform Rule (TCR) the Interim Enhanced Surface Water Treatment Rule (IESWTR), the Filter Backwash Rule (FBR) and the Long Term Enhanced Surface Water Treatment Rules (LT1ESWTR & LT2ESWTR) will provide protections to the consumers of public water supply systems from waterborne pathogens.

Timetable:

Action	Date	FR Cite
NPRM	05/10/00	65 FR 30194
Final Action	08/00/03	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Federal, State, Local, Tribal

Federalism:

This action may have federalism implications as defined in EO 13132.

Additional Information:

SAN No. 2340

Statutory deadline for final rule: After August 6, 1999, but before the Administrator promulgates a Stage II rulemaking for disinfection byproducts (currently scheduled for October 2004).

Sectors Affected:

22131 Water Supply and Irrigation Systems

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RIN: 2040–AA97

EPA

145. EFFLUENT GUIDELINES AND STANDARDS FOR THE METAL PRODUCTS AND MACHINERY CATEGORY, PHASES 1 AND 2

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

33 USC 1311CWA sec 301; 33 USC 1314 CWA sec 304; 33 USC 1316 CWA sec 306; 33 USC 1317 CWA sec 307; 33 USC 1318 CWA sec 308; 33 USC 1342 CWA sec 402; 33 USC 1361 CWA sec 501

CFR Citation:

40 CFR 413; 40 CFR 433; 40 CFR 438; 40 CFR 463; 40 CFR 464; 40 CFR 467; 40 CFR 471

Legal Deadline:

NPRM, Judicial, October 31, 2000.

Final, Judicial, December 31, 2002.

Abstract:

EPA is developing effluent limitations guidelines for facilities that generate wastewater while processing metal parts; metal products; and machinery, including manufacture, assembly, rebuilding, repair, and maintenance. In 1995 EPA proposed regulations for seven industrial groups: aircraft, aerospace, hardware, ordnance, stationary industrial equipment, mobile industrial equipment, and electronic equipment. EPA has consolidated this rulemaking with a second phase, whose scope would include additional industrial groups such as: bus and truck, household equipment, instruments, motor vehicles, office machines, precious metals and jewelry, railroads, job shops, printed circuit boards, and ships and boats. The rule will cover sites not currently covered by previous metals effluent limitations guidelines and will update 20 year old regulations to reflect changes in process control and pollution prevention practices. The deadlines and timetable apply to the consolidated Phase 1 and 2 rulemaking.

Statement of Need:

Roughly a quarter of the facilities in this industry are currently regulated by national effluent limitations guidelines. Many facilities have inadequate wastewater treatment, in terms of best available technology. Current effluent limitations guidelines for parts of this industry were developed 20 years ago and do not always reflect current practices of pollution prevention and wastewater treatment. The MP&M rule enhances protection of public health and the environment by reducing the discharge of toxic metals and organics into the environment.

Summary of Legal Basis:

The Clean Water Act requires EPA to establish effluent limitations guidelines and pretreatment standards to limit the pollutants discharged from point sources. In addition, EPA is bound by a provision in a Consent Decree entered in settlement of Natural Resources Defense Council et al. v. Whitman (D.D.C. No. 89-2980) to propose regulations for this industry by October 2000.

Alternatives:

The Agency is deliberating on final regulatory options. Estimates of costs and benefits are not available at the time EPA prepared this entry for the Regulatory Plan.

Anticipated Cost and Benefits:

The Agency is deliberating on final regulatory options. Estimates of risk and risk reduction are not available at the time EPA prepared this entry for the Regulatory Plan.

Risks:

EPA estimates that compliance with this regulation will reduce the annual discharge of conventional pollutants by at least 115 million pounds, priority pollutants by 12 million pounds, and non-conventional metal and organic pollutants by 43 million pounds. These reductions represent significant improvements in water quality. The amounts are substantial in terms of point source controls.

Timetable:

Action	Date	FR Cite
NPRM (Phase 1)	05/30/95	60 FR 28210
NPRM (Consolidated Phase 1 and 2)	01/03/01	66 FR 424
NODA	06/05/02	67 FR 38752
Final Action	12/00/02	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, State, Local

Additional Information:

SAN No. 2806

Sectors Affected:

332 Fabricated Metal Product Manufacturing; 333 Machinery Manufacturing; 334 Computer and Electronic Product Manufacturing; 335 Electrical Equipment, Appliance and Component Manufacturing; 336 Transportation Equipment Manufacturing; 337 Furniture and Related Product Manufacturing; 339 Miscellaneous Manufacturing

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RIN: 2040–AB79

EPA

146. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT REGULATION AND EFFLUENT GUIDELINES AND STANDARDS FOR CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOS)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

33 USC 1311 CWA sec 301; 33 USC 1314 CWA sec 304; 33 USC 1316 CWA sec 306; 33 USC 1317 CWA sec 307; 33 USC 1318 CWA sec 308; 33 USC 1342 CWA sec 402; 33 USC 1361 CWA sec 501

CFR Citation:

40 CFR 122.23; 40 CFR 412

Legal Deadline:

NPRM, Judicial, December 15, 2000, Effluent guidelines and standards only.

Final, Judicial, December 15, 2002, Effluent guidelines and standards only.

Abstract:

Concentrated animal feeding operations (CAFOs) are covered by existing effluent guidelines at 40 CFR 412 and by permitting regulations at 40 CFR 122.23. This action will revise the existing effluent guidelines primarily to address swine, poultry, beef, and dairy cattle operations and will revise the NPDES regulation for CAFOs. Feedlot operations are substantial contributors of nutrients in surface waters that have

severe anoxia (low levels of dissolved oxygen) and problem algae blooms.

Statement of Need:

The existing CAFO regulations were promulgated in the 1970's. Since that time, the animal production industry has changed significantly, and revisions to those regulations are appropriate. Contamination of surface water results from breaches of lagoons, runoff from feedlots, direct contact of animals with surface water, and manure applied to land in excess of crop nutrient needs. Nutrients, most notably nitrogen and phosphorus, are essential for profitable crop and animal agriculture. However, nitrogen and phosphorus export in watershed runoff can accelerate the eutrophication of surface waters. Rapid growth and intensification of animal production in many areas has created regional imbalances in nutrient inputs and nutrient output. In many of these areas nutrients produced in animal manure exceed crop needs and pose risks to the environment.

Summary of Legal Basis:

The Clean Water Act (CWA) authorizes EPA to establish and to revise if appropriate effluent limitations guidelines and standards to regulate the quality of point source discharges. The Act also authorizes EPA to promulgate implementating regulations for NPDES permitting program.EPA is also required to revisit these effluent guidelines to satisfy a provision in a Consent Decree entered in settlement of Natural Resources Defense Council et al v. Whitman, (D.D.C No. 89-2980).

Alternatives:

The CWA requires effluent guidelines to be established on a technology basis. EPA generally bases limitations on the performance of specific technology levels, such as the best available technology economically achievable. For animal feeding operations, EPA is considering a range of regulatory alternatives that includes management practices, traditional pollution control technologies, and alternative technologies/practices that recover the energy value or alter the handling /marketability characteristics of animal wastes. EPA is also considering whether alternative pollution control requirements should be established for smaller animal feeding operations. The NPDES regulation for CAFOs defines which facilities are covered by the permit regulation, and will specify the permit requirements necessary to protect water quality. EPA is considering adding additional animal types to its definition, and is considering amending the size facility or conditions that define which facilities are CAFOs subject to permitting. Requirements that specifically address land application of manure are also being considered.

Anticipated Cost and Benefits:

The Agency is deliberating on final regulatory options. Estimates of costs and benefits are not available at the time this Regulatory Plan was prepared.

Risks:

The regulatory changes under consideration will reduce adverse water quality impacts caused by runoff from animal feeding operations, thereby reducing risks to aquatic habitat and public health.

Timetable:

Action	Date	FR Cite
NPRM	01/12/01	66 FR 2959
NODA	11/21/01	66 FR 58556
NODA	07/23/02	67 FR 48107
Final Action	12/00/02	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, State, Local, Tribal

Additional Information:

SAN No. 4153

Sectors Affected:

11221 Hog and Pig Farming; 11232 Broilers and Other Meat Type Chicken Production; 11231 Chicken Egg Production; 112112 Cattle Feedlots; 11212 Dairy Cattle and Milk Production; 11241 Sheep Farming; 11233 Turkey Production; 11292 Horse and Other Equine Production; 11239 Other Poultry Production

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RIN: 2040–AD19

EPA

147. MINIMIZING ADVERSE ENVIRONMENTAL IMPACT FROM COOLING WATER INTAKE STRUCTURES AT EXISTING FACILITIES UNDER SECTION 316(B) OF THE CLEAN WATER ACT, PHASE 2

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

33 USC 1311 CWA sec 301; 33 USC 1316 CWA sec 306; 33 USC 1326 CWA sec 316; 33 USC 1361 CWA sec 501

CFR Citation:

40 CFR 9; 40 CFR 122; 40 CFR 123; 40 CFR 124; 40 CFR 125

Legal Deadline:

NPRM, Judicial, February 28, 2002.

Final, Judicial, August 28, 2003.

Abstract:

This rulemaking affects, at a minimum, existing electricity generating facilities that employ cooling water intake structures and whose intake flow levels exceed a minimum threshold to be determined by EPA during the rulemaking. Section 316(b) of the Clean Water Act provides that any standard established pursuant to sections 301 or 306 of the Clean Water Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact. A primary purpose of the rulemaking is to minimize any adverse environmental impact that may be associated with the impingement and entrainment of fish and other aquatic organisms by cooling water intake structures. Impingement refers to trapping fish and other aquatic life on intake screens or similar devices where they may be injured or killed. Entrainment occurs when smaller aquatic organisms, eggs, and larvae are drawn into a cooling system, and then pumped back out, often with significant injury or mortality due to heat, physical stress or exposure to chemicals.

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Federal, State, Local, Tribal

Additional Information:

SAN No. 4474

Sectors Affected:

22111 Electric Power Generation

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RIN: 2040–AD62

EPA

148. CROSS-MEDIA ELECTRONIC REPORTING (ER) AND RECORDKEEPING RULE

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

PL 104-13; PL 105-277

CFR Citation:

40 CFR 3 (New); 40 CFR 9 (Revision)

Legal Deadline:

None

Abstract:

As proposed, the Cross-Media Electronic Reporting (ER) and Recordkeeping Rule (CROMERRR) was intended to provide a uniform legal framework for paperless electronic reporting and recordkeeping, including electronic signature/certification, across EPA's environmental compliance programs. Based on public comment, however, EPA now plans to focus on finalizing the electronic reporting components of proposed CROMERRR, and to defer further action on the electronic recordkeeping components until a later time. Under current plans, the final electronic reporting (ER) rule will address electronic reporting by companies regulated under all of EPA's programs: air, water, pesticides, toxic substances, wastes, and emergency response. The final rule would remove existing regulatory obstacles to electronic reporting, and it would set requirements for companies choosing to report electronically. In addition, the rule would set the conditions for allowing electronic reporting under State, tribal or local environmental programs that operate under EPA authorization.

The final ER rule is intended to make electronic reporting as simple, efficient, and cost-effective as possible for regulated companies, while ensuring that a transition from paper to electronic reporting does not compromise EPA's compliance and enforcement programs. Consequently, the Agency's strategy is to impose as few specific requirements as possible, and to keep those requirements neutral with respect to technology, so the rule will pose no obstacles to adopting new technologies as they emerge.

To ensure that authorized programs at the State, tribal, and local levels meet EPA's electronic reporting goals, the final ER rule would specify a set of criteria that these program s must satisfy as they initiate electronic reporting. In response to public comments, EPA is also planning to include provisions for a streamlined process for EPA to review and approve authorized program revisions or modifications to allow electronic reporting.

Statement of Need:

EPA is required by the Government Paperwork Elimination Act (GPEA) of 1998 to make the option of electronic reporting and recordkeeping available, where practicable, to its regulated community by 2003. To meet this deadline and comply with GPEA, EPA believes that it needs to put a new legal framework in place by that time at least for electronic reporting. A final ER rule would provide for this legal framework by: (1) removing legal obstacles to electronic reporting posed by explicit references to paper and paper-based processes in EPA regulations; and (2) assuring that electronically submitted documents will have the same legal and evidentiary force as their paper counterparts, whether the submission is

Alternatives:

The analysis will cover various sizes, types of potentially regulated facilities, and control technologies. EPA is considering whether to regulate site-by-site, nationally, or on the basis of broad categories of water body types.

Anticipated Cost and Benefits:

Costs are estimated in the proposal to be $182 million annually (capital and compliance). The benefits of the proposed rule are approximately $700 million. Costs and benefits are generally, as expected, smaller at facilities that use smaller amounts of cooling water.

Risks:

Cooling water intake structures may pose significant risks for aquatic ecosystems.

Timetable:

Action	Date	FR Cite
NPRM	04/09/02	67 FR 17122
Final Action	08/00/03	

directly to EPA or under an EPA-authorized program.

Summary of Legal Basis:

Government Paperwork Elimination Act (GPEA) of 1998. GPEA requires Federal agencies to provide, where practicable, the option of electronic reporting and recordkeeping to their regulated communities by 2003.

Alternatives:

One alternative to an EPA cross-media ER rule that applies to most compliance reports under 40 CFR would be individual rulemakings by each of the program offices. EPA's past experience with program-by-program ER rulemakings has demonstrated that such an approach would not bring EPA into compliance with GPEA by the 2003 deadline. EPA also considered the use of guidance instead of rulemaking, but rejected this alternative based principally on a concern that program enforceability depends greatly on the ability to mandate a certain level of functionality for systems that will be used to receive electronic reports and other electronic documents.

Anticipated Cost and Benefits:

EPA received a number of comments on the assumptions used to generate the cost and benefit estimates for the electronic reporting components of proposed CROMERRR; based on this feedback, EPA decided to develop a new analysis of the costs and benefits for the final ER rule. As a part of this effort, EPA has conducted extensive follow-up interviews with commenters, reevaluated existing sources of information, and conducted new market research on ER technologies. The results have led to revisions in certain of the assumptions associated with the CROMERRR proposal that bear on the ER rule=s costs and benefits to State and local governments, to regulated entities, and to the federal government. For example, with respect to State and local governments, proposed CROMERRR had assumed that the costs and benefits of electronic reporting under authorized programs could be attributed entirely to the rule. EPA has since learned that a significant number of electronic reporting systems already operate under such programs; correspondingly, the ER rule cannot take credit for the costs and benefits of electronic reporting in such cases, but only for the costs or benefits that result from changes that occur as a result of the rule. With respect to regulated entities, EPA had had to adjust a number of assumptions associated with electronic signature requirements, including those related to the number of registered signature-holders at each facility, and the availability of acceptable alternatives to Public Key Infrastructure- based electronic signature approaches in many instances. EPA is also refining its estimate of the number of potentially affected regulated entities. With respect to the federal government, EPA has reconsidered the general costs and benefits of electronic reporting based on experience operating EPA's Central Data Exchange and other EPA systems, and based also on an in-depth analyses of business processes and associated costs for several major EPA programs implementing electronic reporting.

Based on these and other revisions to our assumptions, EPA has developed preliminary new cost/benefit results. They indicate that regulated entities will accrue modest net benefits from the ER rule; state and local government agencies will break even or experience modest benefits; and EPA will experience modest benefits. Concerning regulated entities in particular, the costs of the ER rule for those that use web forms would be negligible, insofar as EPA intends to provide the web forms and signature capabilities needed. For entities that use some form of file exchange B in XML, flat file, or other format B EPA anticipates that entities would incur additional up-front costs, but the savings would be larger over time, given the greater opportunities to fully automate the reporting functions. Qualitative benefits of electronic reporting were also identified, including: enhanced data quality, faster public access to submitted data, better tracking of compliance submissions, and opportunities for reengineering current paper processes.

Finally, comments on the CROMERRR also indicated the need for substantial reworking of the cost and benefit analyses with respect to the electronic record-keeping components of the proposal. Given EPA's current focus on electronic reporting, EPA will defer additional economic analysis in this area until we resume work on electronic recordkeeping.

Risks:

The risks are undetermined.

Timetable:

Action	Date	FR Cite
NPRM Resubmittal	08/31/01	66 FR 46161
Final Action	05/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Governmental Jurisdictions

Government Levels Affected:

Federal, State, Local, Tribal

Federalism:

Undetermined

Additional Information:

SAN No. 4270

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RIN: 2025–AA07

BILLING CODE 6560–50–S

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

Statement of Regulatory and Deregulatory Priorities

The mission of the Equal Employment Opportunity Commission (EEOC, Commission, or Agency) is to ensure equality of opportunity in employment by vigorously enforcing six Federal statutes. These statutes are: Title VII of the Civil Rights Act of 1964, as amended (prohibits employment discrimination on the basis of race, color, sex, religion, or national origin); the Equal Pay Act of 1963, as amended; the Age Discrimination in Employment Act of 1967 (ADEA), as amended; title I of the Americans with Disabilities Act of 1990 (ADA), as amended, and sections 501 and 505 of the Rehabilitation Act of 1973, as amended (disability); and the Government Employee Rights Act of 1991, which extends protections against employment discrimination to certain employees who were not previously covered.

Under the Chair's Five-Point Plan, the EEOC is focusing on emerging workplace trends and using proactive prevention, proficient resolution, strategic enforcement, alternative dispute resolution, and our own model workplace to enhance enforcement efforts. The significant regulatory action now under consideration by the EEOC resolves an important and timely question under the ADEA and serves the goals of proactive prevention and proficient resolution.

The significant action of a regulatory nature now under consideration is amending regulations governing age discrimination in employment to exempt from the prohibitions of the ADEA the practice of altering, reducing, or eliminating employer-sponsored retiree health benefits when retirees become eligible for Medicare or comparable State retiree health benefits. This rule will ensure that the application of the ADEA does not discourage employers from providing health benefits to their retirees.

(Consistent with section 4(c) of Executive Order 12866, this statement was reviewed and approved by the Chair of the Agency. The statement has not been reviewed or approved by the other members of the Commission).

EEOC

PROPOSED RULE STAGE

149. COORDINATION OF RETIREE HEALTH BENEFITS WITH MEDICARE AND STATE HEALTH BENEFITS

Priority:

Other Significant

Legal Authority:

29 USC 628

CFR Citation:

29 CFR 1625

Legal Deadline:

None

Abstract:

The Commission proposes to exempt from the prohibitions of the Age Discrimination in Employment Act of 1967, 29 USC 621 et seq. (ADEA or Act), the practice of altering, reducing, or eliminating employer-sponsored retiree health benefits when retirees become eligible for Medicare or comparable State retiree health benefits.

Statement of Need:

In August 2001, the Commission announced that it would consider the relationship between the ADEA and employer-sponsored retiree health benefit plans that alter, reduce, or eliminate benefits upon eligibility for Medicare or a comparable State-sponsored retiree health benefits program. There has been a decline in the number of employers providing retiree health benefits over the last 10 years. Various factors have contributed to this erosion, including the increased cost of health care coverage, an increased demand for such coverage as large numbers of workers near retirement age, and changes in the way accounting rules treat the long-term costs of providing retiree health benefits. Another factor has been employer concern about the potential application of the ADEA to employer-sponsored retiree health benefits. The Commission is proposing a narrowly drawn ADEA exemption that permits the practice of coordinating employer-provided retiree health coverage with eligibility for Medicare or a State-sponsored retiree health benefits program, so that the ADEA does not discourage employers from providing, or continuing to provide, health benefits to their retirees.

Summary of Legal Basis:

Pursuant to section 9 of the ADEA, the Commission is authorized to establish reasonable exemptions to and from any or all provisions of the Act as it may find necessary and proper in the public interest.

Alternatives:

The Commission considered various alternatives in developing this proposal. The Commission will consider all alternatives offered by the public commenters.

Anticipated Cost and Benefits:

The Commission recognizes that while employers are under no legal obligation to offer retiree health benefits, some employers choose to do so in order to maintain a competitive advantage in the marketplace, using these and other benefits to attract and retain the best talent available to work for their organizations. The proposed rule will ensure that the application of the ADEA does not discourage employers from providing, or continuing to provide, health benefits to their retirees who otherwise would have to obtain such coverage in the private individual marketplace at significant personal expense. The Commission believes that it is in the best interest of both employers and employees for the Commission to pursue a policy that permits employers to offer these benefits to the greatest extent possible. It is not anticipated that the proposal will result in increased costs.

Risks:

The proposed regulatory action will reduce the risks of liability for noncompliance with the statute by exempting certain employer practices from regulation. This proposal does not address risks to public safety or the environment.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State, Local

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BILLING CODE 6570–01–S

GENERAL SERVICES ADMINISTRATION (GSA)

Statement of Regulatory and Deregulatory Priorities

The General Services Administration (GSA) establishes Governmentwide policy for construction and operation of buildings, procurement and distribution of supplies, travel and transportation, acquisition, electronic commerce, management of advisory committees, and utilization and disposal of real and personal property.

GSA's fiscal year 2003 regulatory priorities are to complete conversion of the Federal Property Management Regulations to the Federal Management Regulation (FMR) and to complete the rewrite of the Federal Travel Regulation (FTR).

GSA is writing the FMR and FTR so that its regulations are consistent and sensible, and limit the regulatory burden placed on Government officials and the public. GSA has adopted a question and answer format to make them easier to read and understand, and non-regulatory guidance is being moved into other, less formal publications such as customer service guides.

As necessary, GSA will prepare its regulations so that they address national health and security concerns, particularly those created as a result of the events of September 11, 2001.

BILLING CODE 6840–34–S

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)

Statement of Regulatory Priorities

The National Aeronautics and Space Administration (NASA) was established by the National Aeronautics and Space Act of 1958 (the Act), 42 United States Code (U.S.C.) 2451 *et seq.*, which laid the foundation for NASA's mission. The Act authorizes NASA, among other things, to conduct space activities devoted to peaceful purposes for the benefit of humankind; to preserve the leadership of the United States in aeronautics and space science and technology; and to expand knowledge of the Earth and space. To carry out this mission, NASA is authorized to conduct research for the solution of problems of flight within and outside the Earth's atmosphere; to develop, construct, test, and operate aeronautical and space vehicles for research purposes; to operate space transportation systems, including the Space Shuttle and the International Space Station; and to perform such other activities as may be required for the exploration of space. NASA conducts activities required for the exploration of space with human-tended, robotic, and expendable vehicles and arranges for the most effective utilization of the scientific and engineering resources of the United States with other nations engaged in aeronautical and space activities for peaceful purposes.

NASA's mission, as documented in its 2000 Strategic Plan, is to advance and communicate scientific knowledge and understanding of the Earth, the solar system, and the universe; to advance human exploration, use, and development of space; and to research, develop, verify, and transfer advanced aeronautics and space technologies.

The following are narrative descriptions of the most important regulations being planned for publication in the **Federal Register** during fiscal year (FY) 2003.

The Federal Acquisition Regulation (FAR), 48 CFR chapter 1, contains procurement regulations that apply to NASA and other Federal agencies. NASA implements and supplements FAR requirements through the NASA FAR Supplement (NFS), 48 CFR chapter 18. Major revisions are not expected in FY 2003, except to conform to FAR changes that are currently being promulgated in part 27, Patents, Data, and Copyrights, and part 47, Transportation.

In a continuing effort to keep the NFS current with NASA initiatives and Federal procurement policy, minor revisions to the NFS will be published. For instance, NFS regulations addressing Acquisition of Investigations, part 1872, will be amended to incorporate NASA's risk-centered approach to acquisition including safety and security, and to update guidance. Current policy and procedures for NASA's midrange acquisitions, part 1871, are being reviewed for incorporation into NFS part 1815. Changes to internal administrative procedures, such as internal notification of awards, are being considered in response to the Freedom to Manage initiative, as well as use of electronic reporting mechanisms.

Additionally, changes to policy and guidance in the NFS and Grant and Cooperative Agreement Handbook (14 CFR 1260 and 14 CFR 1274) are being considered with the aim of introducing further competition in support of competitive sourcing activities at NASA.

To reduce the time and cost spent by the Agency and our industry partners in the procurement of basic and applied research under cooperative agreements, NASA is focusing on streamlining our processes. To go forward in this effort, policy and guidance associated with the generation and review of Cooperative Agreements Notices (CAN) is being considered. Additionally, changes necessary for implementing a common format for grant announcements and addressing other internal management practices will be made.

NASA is continuing consideration of revisions to the cross-waiver of liability regulation at 14 CFR part 1266. Specifically, NASA is considering implementation of the cross-waiver of liability provision of the intergovernmental agreement of the International Space Station and refinement and clarification of contractual cross-waivers in NASA agreements involving launch services.

BILLING CODE 7510–01–S

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

Statement of Regulatory Priorities

The National Archives and Records Administration (NARA) issues regulations directed to other Federal agencies and to the public. Records management regulations directed to Federal agencies concern proper management and disposition of Federal records. Through the Information Security Oversight Office (ISOO), NARA also issues Governmentwide regulations concerning information security classification and declassification programs. NARA regulations directed to the public address access to and use of our historically valuable holdings, including archives, donated historical materials, Nixon Presidential materials, and Presidential records. NARA also issues regulations relating to the National Historical Publications and Records Commission (NHPRC) grant programs.

NARA has three regulatory priorities for fiscal year 2003. The first, included in the regulatory plan, is to review and revise, where necessary, our records management regulations in 36 CFR ch. XII, subchapter B. This regulatory activity is part of a major NARA initiative to review and redesign our records management program that started in 2000.

The second, completing rulemaking actions relating to electronic records management and transfer of electronic records to NARA, is part of our Electronic Records Management (ERM) Initiative, one of the Administration's 24 E-Government Initiatives. This initiative will provide guidance on electronic records management applicable Governmentwide and will enable agencies to transfer electronic records to NARA in a variety of data types and formats so that they may be preserved for future use by the Government and citizens.

Our third priority regulatory action is updating and rewriting in plain language our research room regulations and restrictions on access regulations in 36 CFR parts 1254 and 1256. NARA's mission is to ensure ready access to the essential evidence that documents the rights of American citizens, the actions of Federal officials, and the national experience. NARA research rooms receive more than 270,000 research visits per year from individuals using our archival holdings. We also respond to nearly 477,000 inquiries about our archival holdings annually. The regulations in 36 parts 1254 and 1256 address how we serve these researchers.

NARA does not have any planned regulatory actions that relate to the events of September 11, 2001 or that are of particular concern to small businesses.

NARA

PRERULE STAGE

150. • FEDERAL RECORDS MANAGEMENT

Priority:

Other Significant

Legal Authority:

44 USC 2104(a); 44 USC ch 21; 44 USC ch 29; 44 USC ch 33

CFR Citation:

36 CFR 1201

Legal Deadline:

None

Abstract:

As part of its initiative to redesign Federal records management, NARA is reviewing its records management regulations in 36 CFR ch. XII, subchapter B to ensure that the regulations are appropriate, effective, and clear. Where needed, we intend to develop updated regulations.

Statement of Need:

NARA's records management program was developed in the 20th century in a paper environment. This program has not kept up with a Federal Government that creates and uses most of its records electronically. Today's Federal records environment requires different management strategies and techniques.

The revision of NARA's records disposition policies, processes, and tools is identified in our Strategic Plan as a key Strategy to meet the primary goal that "essential evidence will be created, identified, appropriately scheduled, and managed for as long as needed." Without effective records management, records needed to document citizens rights, actions for which Federal officials are responsible, and the historical experience of our Nation will be at risk of loss, deterioration, or destruction.

Summary of Legal Basis:

Under the Federal Records Act, the Archivist of the United States is responsible for: 1)providing guidance and assistance to Federal agencies to ensure adequate and proper documentation of the policies and transactions of the Federal Government and ensuring proper records disposition (44 U.S.C. 2904); 2) approving the disposition of Federal records (44 U.S.C. ch. 33); and 3) preserving and making available the Federal records of continuing value that have been transferred to the National Archives of the United States (44 U.S.C. ch. 21).

The Federal Records Act also makes the heads of Federal agencies responsible for making and preserving records containing adequate and proper documentation of the organization, functions, policies, decisions procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities (44 U.S.C. 3101). Agency heads must also have an active, continuing records management program (44 U.S.C. 3102).

Alternatives:

None.

Anticipated Cost and Benefits:

The revision of NARA's records disposition policies and processes, of which this regulation review is a part, is intended to reduce the burden on agencies and NARA in the area of records disposition activities.

Risks:

None.

Timetable:

Action	Date	FR Cite
Begin Review	11/00/02	
End Review	12/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

URL For More Information:

http://www.archives.gov/records_management/initiatives/rm_redesign_project.html

URL For Public Comments:

http://www.archives.gov/about_us/opportunities_for_comment/opportunities_for_comment.html

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RIN: 3095–AB16
BILLING CODE 7515–01–S

OFFICE OF PERSONNEL MANAGEMENT (OPM)

Statement of Regulatory Priorities

The Office of Personnel Management (OPM) is the Federal Government's human resources and personnel manager. In the coming year, the priority for OPM's regulatory efforts will continue to be the modernization and improvement of human resources management to support the Administration's initiatives. In particular, it has been and continues to be OPM's primary regulatory objective to institute human resources management reforms and flexibilities that will enable the Federal Government to recruit, manage, and retain the high-quality, diverse workforce that departments and agencies require to carry out their respective missions for the American people.

OPM's focus on reforming human resources management also supports the Administration's objectives and priorities expressed in the *President's Management Agenda*, which recognizes the critical role that human resources management must play in reforming Government by identifying the Strategic Management of Human Capital as the first of its five core Governmentwide initiatives. On February 28, 2002, the Director of OPM, Kay Coles James, appointed Marta Brito Perez as the agency's Project Director for Human Capital Performance to implement this critical element of the *President's Management Agenda*. This project will advance the agenda by way of regulation as necessary and appropriate during the coming year.

Other than any regulations that may be required to implement legislation creating the Department of Homeland Security, none of the regulations are related to the events of September 11, 2001. Similarly, none of the regulations addressed in OPM's regulatory plan are of particular concern to small businesses, were among the 71 regulations nominated as reform candidates in public comments responding to OMB's 2001 Report to Congress on the Costs and Benefits of Regulations, or have been the subject of an OIRA "prompt letter."

Department of Homeland Security

On June 6, 2002, President Bush proposed the creation of a new Department of Homeland Security. As proposed, this new Department would be formed by consolidating approximately 170,000 Federal employees, who are currently employed in numerous agencies and under a multitude of employment and pay titles and systems, into one organization. In addition, the President's proposal specifically requested flexibility in the management of any of the Department's human resources that may be directly engaged in critical security functions. Once the President's proposed legislation is passed, it is anticipated that the massive reorganization will require regulatory action by OPM to implement the specific legislation and develop a human resources management system. Given the urgent mission of the Department of Homeland Security, it is certain that this regulatory activity will be a priority for OPM in the coming year. However, until the actual legislation creating the Department is passed and signed, no specific necessary regulatory action can be identified.

Compensation Reform

On May 1, 2002, OPM Director, Kay Coles James, initiated a discussion of Federal compensation reform by releasing an agency White Paper: *A Fresh Start for Federal Pay: The Case for Modernization*. The purpose of the paper was to stimulate debate toward developing concrete proposals for improving the current Federal pay system. Proposals discussed may require statutory and regulatory action to implement. All stakeholders will be consulted before any modifications to the system are initiated. Compensation reform is a central element to a modern Federal workforce and is necessary for improving the management of human capital, a central element of the *President's Management Agenda*.

Managerial Flexibilities Act

The President's Managerial Flexibilities Act of 2001 is still pending in Congress. When it is passed, OPM will promulgate new, or modify existing regulations to implement employment restructuring assistance, voluntary early retirement, recruitment and retention incentives, results-oriented performance evaluation and compensation for senior executives, human resources management innovations, and hiring flexibilities.

Outsourcing

OPM continues to examine new ways to allow the private sector to contribute to mission delivery. OPM continues to work on converting positions in the Employment Service Technology Support Center to the private sector over a five-year period. OPM is also examining all Federal Retirement Program functions that are comparable to functions performed by commercial entities. The most sweeping long-term change under study is a comprehensive review of OPM's reimbursable services to determine if a different structure, based on increased reliance on private sector providers, would be more cost efficient.

Delayering and Restructuring

OPM is finalizing a sweeping restructuring plan that will dramatically redesign the agency to improve OPM's organization to better deliver services to the Federal workforce, our agency customers, and the American people. The new structure will result in a significantly flatter, more streamlined agency that is much better positioned to focus on customer service, and strategically aligned to help the President carry out his agenda. Supervisory ratios will be increased and employees redeployed to service delivery by centralizing internal functions and terminating programs when their missions have been completed. Most of this can be done administratively, without the need for further regulatory action. However, to the extent program functions are defined by regulation, they will have to be promulgated, modified, or eliminated.

e-Government

A second initiative in the *President's Management Agenda* is Expanded Electronic Government. The Office of Management and Budget has broken this item down into 24 e-Government initiatives and OPM has been designated as the managing partner on 5 of these initiatives: e-Recruitment (Recruitment One Stop), e-Clearance, e-Training, e-Payroll, and e-Enterprise HR Integration (e-EHRI). OPM currently is examining the necessary regulatory efforts needed to implement these programs.

The Office of Personnel Management will continue to accept the challenge of improving our human resources management systems in order to attract and keep the best possible talent, to promote fairness and diversity, to preserve the merit-based civil service system that serves as the cornerstone of our Democracy, to effectively protect the homeland, and to create a Government that truly serves and produces results for our citizens.

BILLING CODE 6325–44–S

VOL 67 ISS 236 DEC 9 2002 UMI

PENSION BENEFIT GUARANTY CORPORATION (PBGC)

Statement of Regulatory and Deregulatory Priorities

PBGC Insurance Programs

The Pension Benefit Guaranty Corporation (PBGC) administers two insurance programs for private defined benefit plans under title IV of the Employee Retirement Income Security Act of 1974 (ERISA): A single-employer plan termination insurance program and a multiemployer plan insolvency insurance program. The PBGC protects the pensions of nearly 44 million working men and women in about 35,000 private defined benefit plans, including about 1,700 multiemployer plans.

Under the single-employer program, the PBGC pays guaranteed and certain other pension benefits to participants and beneficiaries if their plan terminates with insufficient assets (distress and involuntary terminations). At the end of fiscal year 2001, the PBGC was trustee of almost 3,000 plans and paid $1,044 million in benefits to about 269,000 people during 2001. Another 355,000 people will receive benefits when they retire in the future.

Most terminating single-employer plans terminate with sufficient assets to pay all benefits. The PBGC has administrative responsibility for these terminations (standard terminations), but its role is limited to seeing that proper procedures are followed and participants and beneficiaries receive their plan benefits.

The multiemployer program (which covers about 9.4 million workers and retirees in about 1,700 insured plans) is funded and administered separately from the single-employer program and differs in several significant ways. The multiemployer program covers only collectively bargained plans involving more than one unrelated employer. The PBGC provides financial assistance (in the form of a repayable loan) to the plan if the plan is unable to pay benefits at the guaranteed level. Guaranteed benefits are generally less than a participant's full benefit under the plan (and less than the single-employer guaranteed benefit). PBGC financial assistance occurs infrequently.

The PBGC receives no funds from general tax revenues. Operations are financed by insurance premiums, investment income, assets from pension plans trusteed by the PBGC, and recoveries from the companies formerly responsible for the trusteed plans.

To carry out these functions, the PBGC must issue regulations interpreting such matters as the termination process, establishment of procedures for the payment of premiums, and assessment and collection of employer liability.

Objectives and Priorities

PBGC regulatory objectives and priorities are developed in the context of the statutory purposes of title IV: (1) to encourage voluntary private pension plans, (2) to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries, and (3) to maintain the premiums that support the insurance programs at the lowest possible levels consistent with carrying out the PBGC's statutory obligations (ERISA section 4002(a)).

The PBGC implements its statutory purposes by developing regulations designed: (1) to assure the security of the pension benefits of workers, retirees, and beneficiaries; (2) to improve services to participants; (3) to ensure that the statutory provisions designed to minimize losses for participants and PBGC in the event of plan termination are effectively implemented; (4) to encourage the establishment and maintenance of voluntary private pension plans; (5) to facilitate the collection of monies owed to plans and to the PBGC, while keeping the related costs and burdens as low as possible; and (6) to simplify the termination process.

Regulatory Priorities

The PBGC has focused on changes that would simplify the rules and reduce regulatory burden.

Relief for Plans and Sponsors Affected by the September 11, 2001, Terrorist Attacks

In response to the needs of covered plans and sponsors affected by the September 11, 2001, terrorist attacks, PBGC provided the following relief for plans in designated federal disaster areas and others affected by the disaster:

- Waived penalties for late payment of PBGC premiums.
- Extended the deadlines for fully funded terminating plans to give notices to participants and the PBGC and to transfer to the PBGC payments for missing participants.
- Extended the deadline for issuing the notice to participants that certain underfunded plans are required to provide to inform participants of plan funding levels and limitations on PBGC guarantees.
- Extended the deadlines for reporting certain Reportable Events.
- Extended the deadline for requesting reconsideration or appealing PBGC determinations under the PBGC's administrative review regulation.
- Provided case-by-case relief in other cases.

Relief for Small Businesses

A large percentage of the plans insured by the PBGC are small or maintained by small employers. The PBGC takes the special needs and concerns of small entities into account in developing its regulatory policies. For example, in recent years, the PBGC made the following changes, which are very helpful to small plans and their sponsors:

- Extended the time limits for various actions required to terminate a fully funded single-employer plan in a standard termination.
- Simplified its premium forms by introducing a new "Form 1-EZ" for use by single-employer plans that are exempt from the PBGC's variable-rate premium.
- Extended the filing date for PBGC premiums to match the latest Form 5500 filing date.
- Reduced penalties for late premiums that are paid before the PBGC notifies the plan of the delinquency.

Other Regulatory Simplifications and Relief

PBGC has provided additional regulatory simplifications and relief. Specifically, the PBGC:

- Stopped the reduction of monthly benefits under its actuarial recoupment method once the nominal amount of the benefit overpayment is repaid.
- Provided participants with benefits valued up to $5,000 in PBGC-trusteed plans with the choice of receiving their benefit in the form of an annuity or a lump sum.
- Encouraged self-correction of premium underpayments by making it easier to qualify for safe-harbor penalty relief.
- Published a proposed penalty policy to provide guidance on assessment and review of penalties and on what constitutes "reasonable cause" for a penalty waiver.
- Simplified its valuation assumptions by adopting a single set of assumptions for allocation purposes.
- Decided to continue to calculate and publish its lump sum interest rates indefinitely and amended its regulations to make it easier for practitioners to refer to those rates.
- Solicited public comment on benefit valuation and payment issues relating to terminated cash balance plans that use variable indices to determine future retirement benefits.
- Amended its premium regulation to allow plan administrators to pay a prorated premium for a short plan year rather than paying a full year's premium and requesting a refund.
- Amended its premium regulation to simplify and narrow the definition of "participant" for PBGC premium purposes.

In FY 2002, the PBGC:

- Amended its benefit payments regulations to give participants more choices of annuity benefit forms, to clarify what it means to be able to "retire" under plan provisions for certain purposes under title IV of ERISA, and to add rules on who will get certain payments the PBGC owes to a participant at the time of death.
- Amended its administrative review regulation to expedite the appeals process by authorizing a single member of the PBGC's Appeals Board to decide routine appeals.

The PBGC is continuing to review its regulations to look for further simplification opportunities. The PBGC's regulatory plan for October 1, 2002, to September 30, 2003, consists of one significant regulatory action.

PBGC

PROPOSED RULE STAGE

151. ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS; VALUATION OF BENEFITS AND ASSETS

Priority:

Other Significant

Legal Authority:

29 USC 1302(b)(3); 29 USC 1341; 29 USC 1301(a); 29 USC 1344; 29 USC 1362

CFR Citation:

29 CFR 4044, subpart B

Legal Deadline:

None

Abstract:

The Pension Benefit Guaranty Corporation is considering amending its benefit valuation and asset allocation regulations by adopting more current mortality tables and otherwise simplifying and improving its valuation assumptions and methods.

Statement of Need:

The PBGC's regulations prescribe rules for valuing a terminating plan's benefits for several purposes, including (1) determining employer liability and (2) allocating assets to determine benefit entitlements. The PBGC's interest assumption for valuing benefits, when combined with the PBGC's mortality assumption, is intended to reflect the market price of single-premium, nonparticipating group annuity contracts for terminating plans. In developing its interest assumptions, the PBGC uses data from surveys conducted by the American Council of Life Insurers. The PBGC currently uses a mortality assumption based on the 1983 Group Annuity Mortality Table in its benefit valuation and asset allocation regulations (29 CFR parts 4044 and 4281).

In May 1995, the Society of Actuaries Group Annuity Valuation Table Task Force issued a report that recommends new mortality tables for a new Group Annuity Reserve Valuation Standard and a new Group Annuity Mortality Valuation Standard. In December 1996, the National Association of Insurance Commissioners adopted the new tables as models for determining reserve liabilities for group annuities. The PBGC is considering incorporating these tables into its regulations and making other modifications.

Summary of Legal Basis:

The PBGC has the authority to issue rules and regulations necessary to carry out the purposes of title IV of ERISA.

Alternatives:

Not yet determined.

Anticipated Cost and Benefits:

Cost estimates are not yet available. However, the PBGC expects that this regulation will not have a material effect on costs.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
ANPRM	03/19/97	62 FR 12982
ANPRM Comment Period End	05/19/97	
NPRM	03/00/03	
NPRM Comment Period End	05/00/03	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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RIN: 1212–AA55

BILLING CODE 7708–01–S

RAILROAD RETIREMENT BOARD (RRB)

Statement of Regulatory and Deregulatory Priorities

The Railroad Retirement Board (Board) administers a retirement program for railroad workers and their families under the Railroad Retirement Act of 1974, and an unemployment insurance and sickness benefit program for railroad workers under the Railroad Unemployment Insurance Act. Regulations by the Board under these two statutes and certain Governmentwide statutes are contained in chapter II of title 20 of the Code of Federal Regulations.

The Board has been involved in a multiyear project to review, revise, and update its regulations. During this project the Board has published final rules amending all of its regulations. In addition, there are several regulations actively under consideration by the Board at this time. The Board's short-term plan is to publish final regulations to complete the total review and revision project undertaken previously. The agency has also initiated a review of its regulations to assess the need for changes that may be required by the Railroad Retirement and Survivors Improvement Act of 2001.

The regulations issued by the Board are designated to be informative and to assist the agency's constituents in the railroad industry with an understanding of the benefit systems administered by the Board. In promulgating regulations, the agency is mindful of the burdens that may be imposed on the public and crafts its regulations in such a way as to impose the least possible burden on the public. In addition, through regulation, the Board makes every effort to simplify and streamline administration of the programs it administers. We believe the Board's regulatory review program is consistent with the priorities of the Administration.

The Board has not implemented regulations related to the events of September 11, 2001, and is unlikely to do so. The agency does, however, follow the guidelines and regulations instituted by other Government agencies that have Homeland Security authority for establishing such regulations. Examples of those areas would be: Federal agency facility management and security and computer security awareness.

It is highly unlikely that any regulations in the regulatory plan of this agency would be of particular concern to small business.

RRB

PROPOSED RULE STAGE

152. • APPLICATION FOR ANNUITY OR LUMP SUM

Priority:
Other Significant

Legal Authority:
45 USC 231d; 45 USC 231f

CFR Citation:
20 CFR 217.5; 20 CFR 217.6; 20 CFR 217.15 to 217.18

Legal Deadline:
None

Abstract:
The Railroad Retirement Board amends its regulations to permit the filing of applications for annuity or lump sum electronically via the Internet in accordance with the provisions of the Government Paperwork Elimination Act.

Statement of Need:
Sections 1701-1710 of the Government Paperwork Elimination Act, Public Law 205-277 (codified as 44 U.S.C. sec. 3504n), require Federal agencies to provide for the option of electronic maintenance, submission, or disclosure of information, when practicable, as a substitute for paper. The proposed changes to part 217 of the Board's regulations will permit the filing of applications under the Railroad Retirement Act electronically via the Internet.

Summary of Legal Basis:
The general authority for the issuance of regulations under the Railroad Retirement Act (RRA) is provided for in section 7(b)(5) of the RRA (45 U.S.C. 231f(b)(5)).

Alternatives:
None.

Anticipated Cost and Benefits:
While this amendment should result in modest savings in administrative costs due to the streamlining of procedures, the benefits are those extended to the agency's constituents who may file applications for benefits electronically via the Internet.

Risks:
None anticipated.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required:
No

Government Levels Affected:
Federal

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RIN: 3220–AB55

RRB

153. • ACCOUNT BENEFITS RATIO

Priority:
Other Significant

Legal Authority:
45 USC 231f(b)(5); 45 USC 231u(a)

CFR Citation:
20 CFR 206

Legal Deadline:
None

Abstract:
The Railroad Retirement Board adds a new part 206 to its regulations as information, and to advise that the Board will annually compute the account benefits ratio for the railroad retirement system, and will make a projection of the account benefits ratio and the average account benefits ratio for future years.

Statement of Need:
Sections 108 and 204 of the Railroad Retirement and Survivors' Improvement Act of 2001 (Pub.L. 107-90) amended the Railroad Retirement Act to require the Board to annually compute the account benefits ratios for the railroad retirement system and make a projection of the account benefits ratio and the average account benefits ratio for future years. Effective for calendar years after 2003, the tier II tax rate will be determined in accord with a formula that relies on the average account benefits ratio. See section 3241 of the Internal Revenue Code as amended by section 204 of Public Law 107-90. The Railroad Retirement Board has decided

to set forth in a new part 206 of the Board's regulations (20 CFR 206) how it will compute the "account benefits ratio" in accordance with sections 108 and 204 of the Railroad Retirement and Survivors' Improvement Act of 2001 so that all parties, rail labor, rail management, and the public, will be aware of how the Board intends to compute the account benefits ratio.

Summary of Legal Basis:
The general authority for the issuance of regulations under the Railroad Retirement Act (RRA) is provided for in section 7(b)(5) of the RRA (45 U.S.C. 231f(b)(5)); see also 45 U.S.C. 231u(a)(l).

Alternatives:
None.

Anticipated Cost and Benefits:
The costs associated with the addition of a new part to the Board's regulations are administrative in nature, and include the costs associated with drafting and publishing the regulation as a proposed and then a final rule. The benefits are those extended to the agency's constituents who will be aware of how the account benefits ratio is computed.

Risks:
None.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required:
No

Government Levels Affected:
Federal

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RIN: 3220–AB56

RRB

FINAL RULE STAGE

154. REQUESTS FOR RECONSIDERATION AND APPEALS WITHIN THE BOARD

Priority:
Other Significant

Legal Authority:
45 USC 231f(b)(5); 45 USC 231g; 45 USC 355

CFR Citation:
20 CFR 260; 20 CFR 320

Legal Deadline:
None

Abstract:
The Railroad Retirement Board is amending 20 CFR sections 260 and 320 to provide for its field offices to make timeliness determinations on requests for reconsideration of decisions of the RRB's various adjudicating units.

Statement of Need:
The amendments to parts 260 and 320 deal with administrative reviews of denials of claims for benefits or requests for waiver of recovery of overpayments under the Railroad Retirement and Railroad Unemployment Insurance Acts. The amendments streamline the adminstrative review process, and generally provide certain protections for a claimant that have not previously been available, without diminishing his or her rights in other areas.

Summary of Legal Basis:
The general authority for the issuance of regulations under the Railroad Retirement Act (RRA) is provided for in section 7(b)(5) of the RRA (45 U.S.C. 231f(b)(5)); under the Railroad Unemployment Insurance Act (RUIA), the general authority for the issuance of regulations is found in section 5(a) (45 U.S.C. 355(a)) of the RUIA.

Alternatives:
None.

Anticipated Cost and Benefits:
While this regulation should result in modest savings in administrative costs due to the streamlining of procedures, the benefits are those extended to the agency's constituents as a result of the overall additional protections provided.

Risks:
None.

Timetable:

Action	Date	FR Cite
NPRM	03/29/02	67 FR 15127
NPRM Comment Period End	05/28/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required:
No

Small Entities Affected:
No

Government Levels Affected:
Federal

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SMALL BUSINESS ADMINISTRATION (SBA)

Statement of Regulatory Priorities

Overview

The Small Business Administration (SBA) is America's small business resource. SBA's mission is to promote and deliver financial and business development programs to America's entrepreneurs in the most efficient and effective manner possible.

With a portfolio of guaranteed business and disaster loans, SBA is the Nation's largest single financial backer of small businesses. Through our financial assistance programs, each year, SBA seeks to serve small companies by facilitating access to capital and credit. The SBA also helps entrepreneurs to start and grow their businesses through its resource-partner programs.

SBA is committed to:

- Listening to small businesses to make sure SBA is meeting the needs of the small business community;
- Working with its financial partners to improve small business access to capital through SBA's loan and venture capital programs;
- Providing technical assistance and guidance through its entrepreneurial development partners 24 hours a day;
- Establishing new and strengthening existing public and private partnerships to encourage greater contracting and business opportunities for small businesses.
- Measuring outcomes, such as revenue growth, job creation, and business longevity, to ensure SBA operates its programs in an efficient and effective manner.

SBA's regulatory priorities for the coming year will focus on strengthening SBA's management of programs, streamlining its HUBZone Program, and increasing opportunities for women-owned businesses.

SBA's Regulatory Plan

Small Business Lending Company Regulations

SBA is currently drafting proposed regulations that will strengthen the Agency's management and oversight of the Small Business Lending Company (SBLC) Program. SBA guarantees loans through approximately 7,000 lenders, of which 14 are SBLCs that are not otherwise regulated by Federal or State authorities. Further, consistent with congressional and Administration policy, certain SBA lenders are delegated authority to make credit decisions on loans guaranteed by SBA. At the present time, all of the SBLCs are preferred lenders with authority to make such credit decisions. The SBLCs hold approximately 20 percent of the outstanding loans guaranteed by SBA and are subject to safety and soundness examinations by SBA on a 12- to 24-month cycle. This rulemaking will clarify and strengthen the existing rules governing SBLCs in the areas of monitoring, oversight and enforcement, safe and sound operations, and compliance with SBA regulations.

HUBZone Empowerment Contracting Program

SBA is proposing regulations that will incorporate changes enacted by Public Law 106-554. The amended regulations will address eligibility requirements for small business concerns owned by Native American Tribal Governments and Community Development Corporations and the addition of new HUBZone areas called redesignated areas. The proposed amendments will streamline the program to make it more efficient.

Regulation as a Result of September 11, 2001, Events

Small Business Size Standards; Travel Agencies Affected by September 11, 2001

The events of September 11, 2001, directly impacted travel agencies. The traveling public cancelled and rescheduled existing travel arrangements and many postponed further travel. Many small travel agencies saw their business decline by 20 to 50 percent. To address this situation, after consultation with the industry and other interested parties, SBA issued an interim final rule on March 15, 2002, that increased the size standard for travel agencies, North American Industry Classification System (NAICS) code 561510, from $1 million to $3 million for economic injury disaster loan (EIDL) assistance. SBA believes that this action better defines the size of businesses in this industry that should be eligible for EIDL loans as a result of the September 11, 2001, terrorist attacks and for EIDL assistance to businesses in the declared disaster areas. On May 31, 2002, SBA issued a final rule, after taking into consideration comments received on the interim final rule.

SBA

PROPOSED RULE STAGE

155. SMALL BUSINESS LENDING COMPANIES REGULATIONS

Priority:

Other Significant

Legal Authority:

15 USC 634(b)(6); 15 USC 636(a); 15 USC 636(b)

CFR Citation:

13 CFR 120.470

Legal Deadline:

None

Abstract:

This rulemaking would amend 13 CFR 120.470 to clarify and strengthen the rules regarding Small Business Lending Companies (SBLCs) monitoring and oversight for safety and soundness, compliance, and related areas.

Statement of Need:

Section 7(a) of the Small Business Act states that the Small Business Administration (SBA) may provide financing to small businesses "directly or in cooperation with banks or other financial institutions." Presently, SBA guarantees loans through approximately 7,000 lenders. Of these lenders, about 14 are Small Business Lending Companies (SBLCs) that are not otherwise regulated by Federal or State chartering, licensing, or similar regulatory control. SBA examines or audits these SBLCs periodically. Congressional and Administration policy to privatize SBA lending and levels in loan volume require that SBA increase its SBLC oversight. To that end, SBA will draft regulations that strengthen the Agency's management of the SBLC Program.

Summary of Legal Basis:

Not required by statute or court order.

Alternatives:

This rulemaking amends and expands SBA's existing regulations on the SBLC Program.

Anticipated Cost and Benefits:

This rulemaking is designed to strengthen SBA's regulations regarding the SBLC Program. Some additional costs associated with additional reporting by the SBLCs to the SBA is anticipated.

Risks:

This regulation poses no risks to the public health and safety or to the environment.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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SBA

FINAL RULE STAGE

156. HUBZONE EMPOWERMENT CONTRACTING PROGRAM

Priority:

Other Significant

Legal Authority:

15 USC 632(a); 15 USC 634(b)(6); 15 USC 637(a); 15 USC 644(c); 15 USC 662(5); PL 105-135, sec 601 et seq, 111 Stat 2592; sec 304, PL 103-403, 108 Stat 4175, 4188

CFR Citation:

13 CFR 121; 13 CFR 125; 13 CFR 126

Legal Deadline:

None

Abstract:

SBA proposes to amend its regulations for the HUBZone Empowerment Contracting Program to incorporate changes enacted by Public Law 106-554. The amended regulation addresses eligibility requirements for small business concerns owned by Native American Tribal Governments and Community Development Corporations and the addition of new HUBZone areas called redesignated areas. This rule proposes: (1) consolidating all subcontracting requirements into one regulation, (2) language on how to petition for changes in subcontracting requirements, (3) to apply nonmanufacturer rules consistently for all programs, (4) how small nonmanufacturers should submit products of any manufacturer for contracts below the simplified acquisition threshold, (5) addressing statutory amendments, and (6) making technical changes.

Statement of Need:

SBA must amend its HUBZone regulations in order to implement changes in the Small Business Act mandated by Public Law 106-554, to correct typographical errors, and to streamline the program.

Summary of Legal Basis:

According to 15 U.S.C. section 657a, SBA's Administrator is charged with carrying out the HUBZone Program. On December 21, 2000, the President signed into law Public Law 106-554, which amends the HUBZone Program. To carry out the program, SBA must implement these statutory changes by amending its regulations.

Alternatives:

The Agency considered issuing policy notices explaining the changes to the statute. However, this is not sufficient because the current regulations do not address the statutory changes to the program and therefore, if the regulations are not amended, the public would be confused.

Anticipated Cost and Benefits:

The proposed amendments to the HUBZone regulation would simplify the program to make it more efficient. Therefore, the benefits would be quicker processing time of HUBZone applications.

Risks:

There is no risk to the Agency.

Timetable:

Action	Date	FR Cite
NPRM	01/28/02	67 FR 3826
NPRM Comment Period Extended	02/26/02	67 FR 8739
NPRM Comment Period End	02/27/02	
NPRM Comment Period End	03/29/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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BILLING CODE 8025–01–S

SOCIAL SECURITY ADMINISTRATION (SSA)

Statement of Regulatory Priorities

The Social Security Administration (SSA) administers the retirement, survivors', and disability insurance programs under title II of the Social Security Act (the Act) and the Supplemental Security Income (SSI) program under title XVI of the Act. Our regulations codify the requirements for eligibility and entitlement to benefits under the programs that we administer. Generally, SSA's regulations do not impose burdens on the private sector or on State or local governments.

Our ten entries for the Regulatory Plan represent areas of major importance to the administration of the retirement, survivors', disability, and SSI benefit programs. Each individual initiative is described more fully after this Statement of Regulatory Priorities.

Serve the Public

Providing the best service possible to the public remains a principal objective of SSA. To that end, we have included in the Plan a final rule on Expansion of the Use of Video Teleconference Technology in Hearings Before Administrative Law Judges of the Social Security Administration. We expect that expanding the availability of this technology will improve service by providing faster access to a hearing.

Improve the Disability Process

As the continued improvement of the disability program is an area of vital interest to SSA, we have included on the Plan two final rules that address disability. One final rule will update the medical listings used to evaluate digestive impairments. The revisions will ensure that the listings reflect advances in medical knowledge, treatment, and methods of evaluating these impairments. The other final rule implements elements of the redesigned disability claims process that have been tested and found to use our resources more effectively to award benefits at the earliest point possible.

Reduce Fraud

SSA bears a responsibility to ensure we are effective stewards of the public trust placed in us. We are including in the Plan several regulatory initiatives designed to strengthen our stewardship and program integrity activities.

To further enhance the integrity of SSA's enumeration process for assigning Social Security Numbers (SSNs), we plan to publish a proposed rule that would change evidence requirements for assigning SSNs. This proposed rule would clarify what "valid nonwork reasons" are in order to reduce the opportunity for fraud through misusing and/or improperly attaining SSNs.

For beneficiaries who are not able to manage their own benefits due to legal incompetence or medical infirmity, we must assure that benefits paid to representatives on their behalf are used properly. We are proposing rules that reflect provisions of various laws intended to strengthen our oversight of the representative payee program.

We have also included final rules that provide us with additional tools to strengthen the integrity of the Social Security and SSI programs. One final rule implements a provision of the Foster Care Independence Act of 1999, authorizing SSA to obtain information from financial institutions in order to determine initial or continuing eligibility for SSI benefits.

The Debt Collection Improvement Act of 1996, as amended by the Foster Care Independence Act of 1999, provided SSA with new tools for our efforts in collecting debts, including the use of administrative wage garnishment. We are developing a final rule that will enable us to collect qualifying, delinquent title II and XVI debts owed by former beneficiaries who are currently employed in other-than-Federal employment. We are also developing a proposed rule on Federal salary offset to provide the same authority for similar debts owed by former beneficiaries who are currently employed by the Federal government.

Another proposal would enable us to conduct six-month pilot projects in order to test and gather information on the use of photographic identification to address the issue of impersonation in the disability claims process.

Simplify the SSI Program

SSA is proposing a rule that would simplify our SSI regulations. This proposed change would modify three rules concerning what we consider as income or resources available to an applicant or recipient. We propose to no longer consider gifts of clothing as income when we decide whether a person can receive SSI benefits or when we compute the amount of benefits. We also propose to exclude, from our determination of resources, one automobile if it is used for transportation, without consideration of its value. Finally, we propose to no longer count household goods and personal effects as resources when we decide whether a person can receive SSI benefits.

SSA

PROPOSED RULE STAGE

157. FEDERAL SALARY OFFSET (WITHHOLDING A PORTION OF A FEDERAL EMPLOYEE'S SALARY TO COLLECT A DELINQUENT DEBT OWED TO THE SOCIAL SECURITY ADMINISTRATION) (721P)

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 404; 42 USC 405; 42 USC 902; 42 USC 1383; 5 USC 5514

CFR Citation:

20 CFR 422

Legal Deadline:

None

Abstract:

This initiative would enable the Social Security Administration (SSA) to collect from Federal salaries qualifying, delinquent title II and title XVI overpayment debts and administrative debts owed by individuals who are currently Federal employees. The debt collection would be accomplished by the partial reduction of the employee's disposable salary.

Statement of Need:

This regulation is required by 5 U.S.C. 5514(b) and by regulations of the Department of the Treasury (Treasury) in order for SSA to participate in the Federal Salary Offset program. Treasury's regulation 31 CFR section 3714 (administrative offset) and 5 U.S.C. 5514 (salary offset).

Summary of Legal Basis:

SSA's use of the Federal Salary Offset program is authorized by 42 U.S.C. 404(f), as amended by section 31001(z)(2) of Public Law 104-134, the Debt Collection Improvement Act of 1996, 42 U.S.C. 1383(b), as amended by section 203 of Public Law 106-169, the Foster Care Independence Act of 1999 and 5 U.S.C. 5514.

Alternatives:

None. SSA must have regulations, approved by the Office of Personnel Management, in order to use Federal salary offset to collect debts owed by Federal employees. See 5 U.S.C. 5514(b) and 5 CFR 550.1104.

Anticipated Cost and Benefits:

Undetermined at this time.

Risks:

At this time we have not identified any risks associated with the proposal.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal

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SSA

158. ADMINISTRATIVE WAGE GARNISHMENT (TO REPAY A DEBT OWED TO THE SOCIAL SECURITY ADMINISTRATION) (724P)

Priority:

Other Significant

Unfunded Mandates:

Undetermined

Legal Authority:

31 USC 3720D; 42 USC 405; 42 USC 902; 42 USC 1383

CFR Citation:

20 CFR 404.527; 20 CFR 404.903; 20 CFR 4416.590; 20 CFR 416.1403; 20 CFR 422.401 to 422.403; 20 CFR 422.405; 20 CFR 422.410; 20 CFR 422.415; 20 CFR 422.420; 20 CFR 422.425; 20 CFR 422.430; 20 CFR 422.435; 20 CFR 422.440; 20 CFR 422.445

Legal Deadline:

None

Abstract:

This initiative will enable the Social Security Administration (SSA) to use administrative wage garnishment to collect administrative debts and to collect qualifying, delinquent titles II and XVI overpayment debts owed by individuals who are now employed in other than Federal employment. Administrative wage garnishment allows SSA to order an employer to deduct a percentage of the disposable pay earned by the worker/debtor and to send that amount to SSA as payment toward satisfying the delinquent debt. Administrative wage garnishment does not require a court judgment to impose the withholding order.

Statement of Need:

This regulation is necessary in order for SSA to use administrative wage garnishment as a tool in its debt collection process.

Summary of Legal Basis:

SSA is authorized to use administrative wage garnishment by 31 U.S.C. 3720D, added by section 31001(o) of Public Law 104-134, the Debt Collection Improvement Act of 1996.

Alternatives:

None—without regulatory authority SSA would be unable to proceed with administrative wage garnishment in a manner that addresses SSA's particular needs and processes. SSA must either adopt by reference the Treasury Department's regulations on wage garnishment hearings or prescribe SSA regulations regarding such hearings consistent with those Treasury Department regulations. See 31 CFR 285.11(f)(1).

Anticipated Cost and Benefits:

The administrative costs for the first year of implementation, including systems start-up costs, will be about 25 work years (WY) and $2 million in fiscal year (FY) 2003. Ongoing costs, once the regulation is fully implemented, are estimated to be about 65 WYs and $5 million per year, with higher costs of 80 WYs and $6 million for FY 2005 as older cases are cleared.

The estimated overpayment collections that we could receive for the title II program will be nothing in FY 2003, $25 million in FYs 2004 and 2005, and $15 million in FYs 2006 and 2007. The estimated collections for the title XVI program will be less than $2.5 million in FYs 2003 and 2004, and $10 million in FYs 2005, 2006, and 2007.

Risks:

At this time we have not identified any risks associated with the proposal.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	09/00/03	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

State, Local, Tribal, Federal

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SSA

159. EVIDENCE REQUIREMENT FOR ASSIGNMENT OF SOCIAL SECURITY ADMINISTRATION NUMBERS (SSNS) AND ASSIGNMENT OF SSNS FOR NONWORK PURPOSES (751P)

Priority:

Other Significant

Legal Authority:

42 USC 405; 42 USC 432; 42 USC 902(a)(5); 42 USC 1320b-1; 42 USC 1320b-13

CFR Citation:

20 CFR 422.104; 20 CFR 422.107

Legal Deadline:

None

Abstract:

We propose to change our rules regarding the age at which a mandatory

in-person interview is required for original applications for an SSN. In addition, we propose eliminating the waiver of evidence of identity for children under age 7 who are applying for an original SSN card. Under these proposals, SSA will require an in-person interview with all individuals age 12 or older who are applying for an original SSN, and SSA will no longer waive the requirement to provide evidence of identity in original applications for a child under age 7. SSA will clarify that evidence of identity must contain sufficient biographical information to identify the individual. Additionally, we propose to eliminate reference to a pilot no longer under consideration by SSA pertaining to the processing of replacement SSN cards for United States (U.S.) citizens.

We also propose to clarify our rules regarding when we will assign an SSN to an alien who is legally in the U.S. but not under authority of law permitting him or her to work in the U.S. We are proposing to define a "valid nonwork purpose" as those instances when a Federal statute or regulation requires an alien to have an SSN in order to receive a federally-funded benefit to which the alien has established entitlement, or when a State or local law requires an alien to have an SSN in order to receive general public assistance benefits (i.e., a public benefit that is means-tested) to which the alien has established entitlement.

Statement of Need:

These revised regulations are necessary to further enhance the integrity of SSA's enumeration processes for assigning Social Security Numbers (SSNs). By changing evidence requirements for assignment of SSNs and by defining "valid nonwork reasons," we intend to reduce the opportunity for fraud through misuse and/or improper attainment of SSNs.

Summary of Legal Basis:

None.

Alternatives:

In developing the policies for the age at which a mandatory in-person interview is required and the reasons for which a nonwork SSN is assigned, we considered but rejected the following options.

Age for Mandatory In-Person Interview -

When considering the age at which to set the in-person interview, we felt that it was rare for individuals to obtain an SSN for the first time as late as 12 years of age. However, we rejected a younger age because we felt that such interviews with younger children would be overly burdensome on the child and unproductive for SSA, even with the parent in attendance. We believe that the proposed age 12 threshold for in-person interviews provides the best balance between allowing us to screen effectively for a prior SSN without being overly burdensome on the child.

Reasons for Nonwork SSN -

We considered limiting the assignment of nonwork SSNs to where there is a Federal statute or regulation that requires the alien to furnish an SSN to receive a federally-funded benefit or service and the alien is legally in the U.S. but not under authority of law permitting him or her to work in the U.S. However, we have not observed significant fraud in the area of nonwork SSNs assigned for general public assistance benefits and we do not want to unnecessarily impact access to general public assistance programs.

Anticipated Cost and Benefits:

This regulation may result in a negligible increase in administrative costs. Enhancing the integrity of SSA's enumeration processes should result in fewer opportunities for SSN fraud, including the fraud associated with identity theft.

Risks:

None.

Timetable:

Action	Date	FR Cite
ANPRM	10/12/99	64 FR 55217
ANPRM Comment Period End	12/13/99	
NPRM	12/00/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State

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SSA

160. • CLAIMANT IDENTIFICATION PILOT PROJECTS (937P)

Priority:

Other Significant

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 405

CFR Citation:

20 CFR 404.617 (New); 20 CFR 416.217 (New)

Legal Deadline:

None

Abstract:

This initiative will enable the Social Security Administration (SSA) to conduct six-month pilot projects in order to test and gather information on the use of photographic identification to address the issue of complicit impersonation in the disability claims process. All field offices in South Carolina and Kansas, nine field offices in New York City, and the Augusta, Georgia field office will require that applicants filing for title II and title XVI disability benefits allow SSA to take their photographs and make them part of the SSA disability claims file. Failure to cooperate will result in denial of benefits. We will permit an exception to the photograph requirement when an individual has a valid religious objection.

Statement of Need:

The rule would provide regulatory authority to conduct the pilot projects.

Summary of Legal Basis:

Section 205(a) of the Social Security Act, as amended (42 U.S.C. 405) provides SSA with broad authority to set reasonable rules to ensure the integrity of Social Security programs. The proposed Claimant ID regulation is not specifically required by any statute or court order.

Alternatives:

None.

Anticipated Cost and Benefits:

Costs are undetermined at this time. Benefits would include the collection of data that will be used to analyze the feasibility and effectiveness of rolling out such a regulation on a national basis. This process will strengthen the integrity of the disability claims process by helping to ensure that the individual filing the application is the same individual examined by the consultative examination physician. These procedures would help to identify and/or deter individuals who are attempting to defraud the disability programs.

Risks:

At this time we have not identified any risks associated with the proposal.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Finial Action	02/00/03	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

No

Government Levels Affected:

Federal

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SSA

161. • REPRESENTATIVE PAYMENT UNDER TITLES II, VIII, AND XVI OF THE SOCIAL SECURITY ACT (949P)

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 401(j); 42 USC 902(a)(5); 42 USC 405 note; 42 USC 421 note; 42 USC 1383(a)(2); 42 USC 1383(d)(1); 42 USC 404(f); 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 405(h); 42 USC 405(j); 42 USC 405(k); 42 USC 421; 42 USC 425; 42 USC 1007

CFR Citation:

20 CFR 404.902; 20 CFR 404.2011; 20 CFR 404.2021; 20 CFR 404.2022; 20 CFR 404.2024; 20 CFR 404.2025; 20 CFR 404.2030; 20 CFR 404.2035; 20 CFR 404.2040(a); 20 CFR 404.2041; 20 CFR 404.2045; 20 CFR 404.2050; 20 CFR 404.2065; 20 CFR 416.611; 20 CFR 416.621; 20 CFR 416.622; 20 CFR 416.624; 20 CFR 416.625; 20 CFR 416.630; 20 CFR 416.635; 20 CFR 416.640(a); 20 CFR 416.641; 20 CFR 416.645; 20 CFR 416.650; 20 CFR 416.665; 20 CFR 416.1402

Legal Deadline:

None

Abstract:

Effective stewardship of SSA programs requires mechanisms to assure that benefits are used to meet the needs of beneficiaries determined incapable of managing or directing someone else to manage their benefits. Congress determined that improvements to the representative payment procedures were needed to assure program integrity. These regulations are required to reflect these legislative improvements and to further our program integrity efforts.

Statement of Need:

These regulations, which reflect certain provisions of Public Law 101-508, 103-296, 104-121, 105-33, 106-169 and 106-170, modify existing representative payee procedures by: (1) requiring the Social Security Administration to do a more extensive investigation of representative payee applicants, generally limiting to one month the deferral or suspension of direct payment of benefits pending selection of a payee; (2) providing stricter standards in determining the fitness of representative payee applicants to manage benefit payments on behalf of beneficiaries; (3) requiring SSA to repay the beneficiary or an alternate payee, an amount equal to any misused funds resulting from SSA's negligent failure to investigate or monitor a representative payee; (4) granting certain payees the authority to collect a fee from beneficiaries and defining the amount of bonding necessary to provide adequate protection for our beneficiaries and the nature of licenses that are pertinent for a fee for service organization; (5) changing how SSA treats persons whose drug addition or an alcohol condition is material to his/her disability; and (6) requiring SSA to compile and maintain a centralized file of certain beneficiary and payee information.

Summary of Legal Basis:

These regulations implement section 5105 of Public Law 101-508, section 210 of Public Law 103-296, section 105 of Public Law 104-121, section 5525 of Public Law 105-33, section 251 and 1136 of Public Law 106-169 and section 401 of Public Law 106-70.

Alternatives:

None.

Anticipated Cost and Benefits:

Any costs associated with these regulations are reflected in the President's budget as part of legislative implementation. They are required to further our program integrity efforts.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Governmental Jurisdictions, Organizations

Government Levels Affected:

State, Local

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SSA

162. • REMOVAL OF CLOTHING FROM THE DEFINITIONS OF INCOME AND IN-KIND SUPPORT AND MAINTENANCE, EXCLUSIONS OF ONE AUTOMOBILE AND HOUSEHOLD GOODS AND PERSONAL EFFECTS UNDER SSI FROM RESOURCES (950P)

Priority:

Other Significant

Legal Authority:

Sec 1612 of the Social Security Act; Sec 1613(a)(2)(A) of the Social Security Act

CFR Citation:

20 CFR 416.1102 to 416.1104; 20 CFR 416.1121; 20 CFR 416.1124; 20 CFR 416.1130; 20 CFR 416.1133; 20 CFR 416.1140; 20 CFR 416.1142; 20 CFR 416.1144 to 416.1145; 20 CFR 416.1147 to 416.1149; 20 CFR 416.1157; 20 CFR 416.1210; 20 CFR 416.1216; 20 CFR 416.1218

Legal Deadline:

None

Abstract:

We propose to make the following changes to our rules on determining income and resources under the Supplemental Security Income (SSI) program.

1. We propose to remove clothing from the definition of income and from the definition of in-kind support and maintenance. As a result, we generally will not count gifts of clothing as income when we decide whether a person can receive SSI benefits or when we compute the amount of benefits.

2. We propose to simplify our rules on how we exclude an automobile in determining the resources of a SSI applicant or recipient. Specifically, we propose to exclude one automobile from resources if it is used for transportation, without consideration of its value.

3. We propose to change our resources counting rules in the SSI program by eliminating the dollar value limit for the exclusion of household goods and personal effects. As a result, we would not count household goods and personal effects as resources when we decide whether a person can receive SSI benefits.

Statement of Need:

These changes will simplify our rules, making them less cumbersome to administer and easier for the public to understand and follow, and thereby reducing the potential for payment errors. These changes also will make SSI financial eligibility rules more consistent with those of other means-tested Federal programs. The changes also will eliminate the need to ask claimants, beneficiaries, and other members of their household certain questions that have been viewed as intrusive. By no longer counting gifts of clothing as income, we will remove a disincentive for family members to help needy relatives.

Summary of Legal Basis:

None.

Alternatives:

Clothing

None.

Automobile -

We considered revising the regulations to provide that SSA will assume that the recipient's automobile meets the use requirements for total exclusion of one automobile, absent evidence to the contrary. We did not select this option because it would not change the rule but only how we apply it. It does not go far enough in simplifying the SSI program. By revising the use requirements to exclude a car if it is used for transportation, thus replacing the four present specific transportation exclusion criteria, we will simplify the process.

We considered excluding the value of one automobile, regardless of use. We did not select this option because it would allow for the routine exclusion of an automobile even if it were not used for transportation. Such an approach would exclude an inoperable vehicle, a vehicle not being used at all, or a vehicle only used for recreation (such as a dune buggy). We maintain that it is unreasonable to exclude from resources the value of a vehicle that is not used for transportation.

We also considered increasing the excludable value of an automobile not meeting the use test to $11,000. We did not select this option because it would not simplify the SSI program.

Household Goods and Personal Effects -

Instead of excluding the entire value of household goods and personal effects, we considered raising the excludable limit to $10,000 from the current level of $2,000. We decided not to pursue this option because it would not provide any policy simplification. It would increase the amount excluded but it would not eliminate the need for the current time-consuming and complex procedures for determining the market value of an individual's household goods and personal effects.

Anticipated Cost and Benefits:

We estimate that the program costs and administrative costs for these regulatory changes would be negligible.

The proposed rules will simplify the administrative process of valuing noncash items. The change to the household goods and personal effects exclusion would simplify our rules and improve work efficiency by eliminating the need to inventory an individual's household goods and personal effects and determine their current market value. The proposed changes would also serve to make our rules less intrusive and more protective of the dignity of individuals seeking SSI benefits.

Risks:

These proposed changes would simplify complex SSI rules without disadvantaging SSI applicants or recipients or significantly increasing program or administrative costs.

Clothing -

There are no significant concerns.

Automobile -

Our experience shows that most SSI beneficiaries do not own expensive cars. Still, it is possible that a beneficiary may, under our proposal, own an automobile that is used for transportation (and therefore excluded) and that is worth a considerable amount of money.

Household Goods and Personal Effects -

Under the proposed change to the household goods and personal effects exclusion, we would continue to recognize that individuals applying for SSI may own items that have investment value and which may be quite valuable. Such items as gems, jewelry, and collectibles would still be considered countable resources and subject to the SSI resource limit. Thus, the proposed exclusion for household goods and personal effects would not create an unintended exclusion for items that have investment value.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
Final Action	09/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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RIN: 0960–AF84

SSA

FINAL RULE STAGE

163. OASDI AND SSI; ADMINISTRATIVE REVIEW PROCESS; VIDEO TELECONFERENCING APPEARANCES BEFORE ADMINISTRATIVE LAW JUDGES OF THE SOCIAL SECURITY ADMINISTRATION (737F)

Priority:

Other Significant

Legal Authority:

42 USC 205(a); 42 USC 205(b); 42 USC 902(a)(5); 42 USC 1383

CFR Citation:

20 CFR 404.929; 20 CFR 404.936; 20 CFR 404.938; 20 CFR 404.950; 20 CFR 416.1429; 20 CFR 416.1436; 20 CFR 416.1438; 20 CFR 416.1450

Legal Deadline:

None

Abstract:

This final rule revises our rules to permit us to conduct hearings before an administrative law judge (ALJ) at which a party or parties to the hearing and/or witness or witnesses may appear before the ALJ by video teleconference (VTC). The revised rules provide that if we schedule a hearing as one at which a party would appear by VTC, rather than in person, and the party objects to use of that procedure, we will reschedule the hearing as one at which the party may appear in person. We will be requesting public comments on this final rule.

Statement of Need:

Our regulations provide for a hearing in person before an ALJ. Traditionally, this has meant that the individual requesting a hearing makes his or her appearance in the same room as the ALJ. These changes will allow us to schedule a party to appear by VTC without requiring prior written consent, and set out the right of the party to decline such an appearance. We believe that conducting hearings by VTC will improve our efficiency and allow us to improve the service we can provide to individuals requesting a hearing.

The VTC provision will aid in reducing the average processing time for hearings by eliminating much of the time some ALJ's must spend to travel to remote sites to conduct hearings face-to-face.

Summary of Legal Basis:

None.

Alternatives:

Require participation in a scheduled VTC appearance with no right to decline a VTC appearance.

Anticipated Cost and Benefits:

Improved public service by providing faster access to a hearing.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	01/05/01	66 FR 1059
NPRM Comment Period End	03/06/01	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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Related RIN: Previously reported as 0960-AA05

RIN: 0960–AE97

SSA

164. REVISED MEDICAL CRITERIA FOR EVALUATING IMPAIRMENTS OF THE DIGESTIVE SYSTEM (800F)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 405; 42 USC 1302; 42 USC 1383

CFR Citation:

20 CFR 404, subpart P, app 1

Legal Deadline:

None

Abstract:

Listings 5.00 and 105.00 of appendix 1 to the disability regulation at 20 CFR part 404, subpart P describe those digestive impairments that are considered severe enough to prevent a person from doing any gainful activity or, for a child claiming SSI payments under title XVI, that are considered severe enough to result in marked and severe functional limitations. Comprehensive revisions to these listings are being made to ensure that the medical evaluation criteria are up to date and consistent with the latest advances in medicine. The SSI program incorporates by reference and uses the same medical criteria as the old-age, survivors, and disability insurance program.

Statement of Need:

These regulations are necessary to update the digestive listings to reflect advances in medical knowledge, treatment, and methods of evaluating digestive impairments. They ensure that determinations of disability have a sound medical basis, that claimants receive equal treatment through the use

of specific criteria, and that people who are disabled can be readily identified and awarded benefits if all other factors of entitlement or eligibility are met.

Summary of Legal Basis:

Administrative—not required by statute or court order.

Alternatives:

We considered not revising the listings, or making only minor technical changes, and thus continuing to use our current criteria. However, we believe that proposing these revisions is preferable because of the medical advances that have been made in treating and evaluating these types of impairments. The current listings are now over 15 years old. Medical advances in disability evaluation and treatment and our program experience make clear that the current listings do not reflect state-of-the-art medical knowledge and technology.

Since there would be no changes or only minor technical changes in using this alternative, the program and administrative costs would be the same as under the current rules. However, the program savings associated with the proposed rules would not be achieved.

Anticipated Cost and Benefits:

We are projecting savings in program expenditures as a result of these actions, described in more detail below.

Program Savings -

1. Title II

We estimate that, if finalized, these proposed rules would result in reduced program outlays resulting in the following savings (in millions of dollars) to the title II program ($295 million total in a 5-year period beginning in FY 2003).

2. Title XVI

We estimate that, if finalized, these proposed rules will result in reduced program outlays resulting in the following savings (in millions of dollars) to the SSI program ($85 million in a 5-year period beginning in FY 2003).

(Note: Federal SSI payments due on October 1st in fiscal years 2006 and 2007 are included with payments for the prior fiscal year.)

Program Costs -

We do not expect any program costs to result from these proposed regulations.

Administrative Savings -

We do not expect any administrative savings to result from these proposed regulations.

Administrative Costs -

We expect that, if finalized, there will be some administrative costs associated with these proposed rules. If finalized, the proposed rules are expected to result in administrative costs less than 25 work years and less than $2 million per year.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	11/14/01	66 FR 57009
NPRM Comment Period End	01/14/02	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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RIN: 0960–AF28

SSA

165. ACCESS TO INFORMATION HELD BY FINANCIAL INSTITUTIONS (815F)

Priority:

Other Significant

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 1383(e); PL 106-169, sec 213

CFR Citation:

20 CFR 416.200; 20 CFR 416.207; 20 CFR 416.421; 20 CFR 416.640; 20 CFR 416.1231; 20 CFR 416.1242; 20 CFR 416.1245; 20 CFR 416.1247; 20 CFR 416.1320; 20 CFR 416.1321; 20 CFR 416.1335; 20 CFR 416.1337; 20 CFR 416.1618

Legal Deadline:

None

Abstract:

These final rules implement law that will enhance our access to bank account information of Supplemental Security Income (SSI) applicants and recipients and other individuals whose income and resources we consider as being available to the applicant or recipient.

Statement of Need:

This final rule is required to implement section 213 of Public Law 106-169, the Foster Care Independence Act of 1999.

Summary of Legal Basis:

Required by section 213 of Public Law 106-169.

Alternatives:

None.

Anticipated Cost and Benefits:

First year administrative costs are projected not to exceed $1.5 million. Subsequent year costs are projected not to exceed $6 million annually. It is estimated that this project will produce first-year program savings of $22 million. When fully implemented, it is estimated that program savings will be $85 million annually.

Risks:

Undetermined at this time.

Timetable:

Action	Date	FR Cite
NPRM	05/02/02	67 FR 22021
NPRM Comment Period End	07/01/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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RIN: 0960–AF43

SSA

166. NEW DISABILITY CLAIMS PROCESS—ROLES OF STATE AGENCY (816F)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 405(a); 42 USC 902(a)(5)

CFR Citation:

20 CFR 404.1512; 20 CFR 404.1513; 20 CFR 404.1526; 20 CFR 404.1527; 20 CFR 404.1529; 20 CFR 404.1546; 20 CFR 404.1615; 20 CFR 404.1616; 20 CFR 416.912; 20 CFR 416.913; 20 CFR 416.926; 20 CFR 416.927; 20 CFR 416.929; 20 CFR 416.946; 20 CFR 416.1015; 20 CFR 416.1016

Legal Deadline:

None

Abstract:

We plan to revise our regulations that pertain to the processing of initial claims for disability benefits under title II and title XVI of the Social Security Act at the initial and reconsideration steps of the administrative review process. Under these final rules, certain State agency disability examiners, familiarly called "single decisionmakers," will be responsible for the disability determinations in many initial claims for disability benefits. However, they will be able to ask for advice from State agency medical or psychological consultants when they decide they need it. We also plan to review other rules to reflect these changes, including our rules about how we decide whether a person's impairment(s) medically equals a listing.

Statement of Need:

This regulation will permit us to use resources more effectively to ensure that disabled claimants are awarded benefits at the earliest point in the claims process.

Summary of Legal Basis:

None.

Alternatives:

The agency continues to consider various options for further redesign of the disability claims process.

Anticipated Cost and Benefits:

The 5-year estimates for implementation indicates an incremental benefit cost of $2.4 billion for OASDI and SSI combined, and $1.3 billion for Medicare and Medicaid combined.

Risks:

Not yet established.

Timetable:

Action	Date	FR Cite
NPRM	01/19/01	66 FR 5494
NPRM Comment Period End	03/20/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State, Federal

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Related RIN: Merged With 0960-AE73

RIN: 0960–AF44

BILLING CODE 4191–02–S

FEDERAL HOUSING FINANCE BOARD (FHFB)

Statement of Regulatory and Deregulatory Priorities

The Federal Housing Finance Board (Finance Board) is an independent agency that is charged under the Federal Home Loan Bank Act (Bank Act) with supervising and regulating the Nation's Federal Home Loan Bank (Bank) System. The Bank System comprises 12 regional cooperative Banks that are owned by their respective member financial institutions. The Banks provide wholesale credit to members and certain nonmembers to be used for mortgage lending and related community lending activities. The Bank System also includes the Office of Finance, which issues Bank System consolidated obligations. The Finance Board is required to prepare a regulatory plan pursuant to section 4 of Executive Order 12866. At this time, the Finance Board does not anticipate taking any significant regulatory or deregulatory actions during 2003 that would be required to be included in a regulatory plan.

The Finance Board's highest regulatory priorities during 2003 continue to be to ensure the safety and soundness of the Bank System and to ensure that the Banks fulfill their housing finance and community investment mission. In furtherance of these statutory mandates, the Finance Board expects to develop, based on its analysis of recently-solicited comments, an appropriate regulatory response to requests that a single financial institution be permitted to become a member of more than one Bank.

The Finance Board also intends to consider regulations that will:

- Review the structure of authorized acquired member asset products to determine if Banks have sufficient flexibility in creating new products that will be responsive to member needs;
- More clearly delineate the responsibilities and the accountability of the board of directors for governance of a Bank, thereby strengthening the role of the boards in the Banks' operations;
- Streamline the Finance Board's review of new business activities proposed by a Bank to more clearly focus the regulatory review process on ensuring that a new product, service, or activity will not endanger the continued safe and sound operation of the Bank;
- Streamline the community support requirements to eliminate unnecessary regulatory burden, while preserving the statutory intent of ensuring that members' access to long-term advances reflects such factors as their record of performance under the Community Reinvestment Act and their record of lending to first-time homebuyers; and
- Improve public disclosure by the Banks including addressing the requirements of the Securities Act of 1933 and Securities Exchange Act of 1934, as these Acts are interpreted and applied by the SEC.

BILLING CODE 6725–01–S

FEDERAL MARITIME COMMISSION (FMC)

Statement of Regulatory and Deregulatory Priorities

The Federal Maritime Commission's (Commission) regulatory objectives are guided by the Agency's basic mission. The Commission's mission is to administer the shipping statutes as effectively as possible to provide an efficient, competitive, market-driven, and nondiscriminatory ocean transportation system in an environment free of unfair foreign maritime trade practices. The Commission's regulations are designed to implement each of the statutes the Agency administers in a manner consistent with this mission and in a way that minimizes regulatory costs, fosters economic efficiencies, relies on the marketplace to determine industry growth, and promotes international harmony.

Recent legislation continues to impact the Federal regulatory scheme regarding international ocean shipping. The legislation required new regulations, as well as the revision of many of the Commission's substantive regulations. One of the principal changes was the elimination of the requirement that carriers file tariffs with the Commission listing their rates and charges. Carriers are now required to publish their rates in private automated systems. The Commission continues to assess its regulations implementing this requirement, as well as other requirements of the new legislation.

Common carriers remain concerned as to the content requirements of agreements filed with the Commission. Carriers have expressed a desire for better delineation as to what matters do or do not have to be filed and have suggested that the Commission's rules should provide protections for confidential business information, provide maximum flexibility for carriers to modify cooperative arrangements, and include guidance tailored for different types of agreements. The Commission previously initiated an inquiry to solicit comments from the ocean transportation industry and the general public to assist the Commission in formulating new rules governing content requirements. This matter continues to be assessed and will be considered during calendar year 2002. The Commission also oversees the financial responsibility of passenger vessel operators to indemnify passengers and other persons in cases of death or injury, and to indemnify passengers for nonperformance of voyages. The Commission has been updating its nonperformance coverage requirements to correspond more closely with current industry conditions and contemplates proposing additional changes in calendar year 2002.

The principal objective or priority of the Agency's current regulatory plan will be to continue to assess major existing regulations for continuing need, effectiveness, burden on the regulated industry, fairness, and clarity. The Commission issued its 2-year study of the Ocean Shipping Reform Act of 1998 in September 2001. Findings and conclusions from that report could result in consideration of specific issues for rulemaking proposals.

The Commission continues to have under review, *inter alia*, regulations regarding certain requirements applicable to vessel-operating common carrier agreements and co-loading arrangements between non-vessel-operating common carriers. The Commission's review of existing regulations exemplifies its objective to regulate fairly and effectively while imposing a minimum burden on the regulated entities, following the principles stated by the President in Executive Order 12866.

Description of the Most Significant Regulatory Actions

The Commission currently has no actions under consideration that constitute "significant regulatory actions" under the definition in Executive Order 12866.

BILLING CODE 6730–01–S

FEDERAL TRADE COMMISSION (FTC)

I. REGULATORY PRIORITIES

Background

The Federal Trade Commission (FTC or Commission) is an independent agency charged with protecting American consumers from "unfair methods of competition" and "unfair or deceptive acts or practices" in the marketplace. The Commission strives to ensure that consumers benefit from a vigorously competitive marketplace. The Commission's work is rooted in a belief that free markets work — that competition among producers and information in the hands of consumers bring the best products at the lowest prices for consumers, spur efficiency and innovation, and strengthen the economy.

The Commission pursues its goal of promoting competition in the marketplace through two different, but complementary, approaches. First, for competition to thrive, curbing deception and fraud is critical. Through its consumer protection activities, the Commission seeks to ensure that consumers receive accurate, not false or misleading, information in the marketplace. At the same time, for consumers to have a choice of products and services at competitive prices and quality, the marketplace must be free from anticompetitive business practices. Thus, the second part of the Commission's basic mission — antitrust enforcement — is to prohibit anticompetitive mergers or other anticompetitive business practices without unduly interfering with the legitimate activities of businesses. These two complementary missions make the Commission unique insofar as it is the Nation's only Federal agency to be given this combination of statutory authority to protect consumers.

The Commission is, first and foremost, a law enforcement agency. It pursues its mandate primarily through case-by-case enforcement of the Federal Trade Commission Act and other statutes. The Commission, however, is also charged with the responsibility of issuing and enforcing regulations under a number of statutes. Pursuant to the FTC Act, for example, the Commission currently has in place thirteen trade regulation rules. The Commission also has adopted a number of voluntary industry guides. Most of the regulations and guides pertain to consumer protection matters, and are generally intended to ensure that consumers receive the information necessary to evaluate competing products and make informed purchasing decisions.

Regulatory Actions Related to Events of September 11, 2001

On October 25, 2001, President Bush signed the USA PATRIOT Act of 2001, Pub. L. 107-56, 115 Stat. 272, which contains provisions that have a significant impact on the Telemarketing Sales Rule (TSR). The TSR, 16 CFR part 310, which was adopted pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 (Telemarketing Act), 15 USC 6101-6108, requires telemarketers to disclose certain material information; prohibits misrepresentations; limits the times of day telemarketers may call consumers; prohibits calls to a consumer who has asked not to be called again; and sets payment restrictions for the sale of certain goods and services. Sec. 1011 of the USA PATRIOT Act, also referred to as the Crimes Against Charitable Americans Act of 2001, 15 U.S.C. 6101 note, amends the Telemarketing Act to extend the coverage of the TSR to charitable fund raising conducted by for-profit telemarketers for, or on behalf of, charitable organizations.

On January 30, 2002, the Commission announced its proposal to amend the TSR and published a Notice of Proposed Rulemaking (NPRM). Among other things, the proposed Rule would establish a centralized national "do not call" registry, would prohibit telemarketers from receiving or sharing a consumer's billing information with anyone else, and would prohibit telemarketers from blocking "Caller ID" information. In addition, as mandated by the USA PATRIOT Act, the Commission's proposal adds certain disclosures and other requirements applicable to for-profit telemarketers who solicit charitable donations. Staff held a three-day public workshop from June 5-7, 2002, to discuss these and other proposed changes to the Rule. On May 24, 2002, the Commission also issued a related NPRM proposing that user fees be imposed on telemarketers and their seller or telemarketer clients for access to the national "do not call" registry in order to establish and maintain the registry. *See* 67 FR 37362 (May 29, 2002). Staff plans to forward its recommendations to the Commission by fall 2002.

Ten-Year Review Program

In 1992, the Commission implemented a program to review its rules and guides regularly. The Commission's review program is patterned after provisions in the Regulatory Flexibility Act, 5 USC 601 *et seq.* Under the Commission's program, however, rules have been reviewed on a ten-year schedule as resources permit, not just once as usually required by section 610 of the Regulatory Flexibility Act. This program is also broader than the review contemplated under the Regulatory Flexibility Act, in that it provides the Commission with an ongoing systematic approach for seeking information about the costs and benefits of its rules and guides and whether there are changes that could minimize any adverse economic effects, not just a "significant economic impact upon a substantial number of small entities." The program's goal is to ensure that all of the Commission's rules and guides remain beneficial and in the public interest.

As part of its continuing ten-year plan, the Commission examines the effect of rules and guides on small businesses and on the marketplace in general. These reviews often lead to the revision or rescission of rules and guides to ensure that the Commission's consumer protection and competition goals are achieved efficiently and at the least cost to business. In a number of instances, the Commission has determined that existing rules and guides were no longer necessary or in the public interest. As a result of the review program, the Commission has repealed 48 percent of its trade regulation rules and 55 percent of its guides since 1992.

Calendar Year 2002 Reviews and Reviews in Process

As part of the Commission's ten-year review program, in 2002 the Commission continued reviews of seven rules. The Commission also commenced the review of one rule regarding Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles, 16 CFR part 309 and one industry guide regarding Guides Concerning Use of Endorsements and Testimonials in Advertising, 16 CFR part 255.[1]

All of the matters currently under review pertain to consumer protection and are intended to ensure that consumers receive the information necessary to evaluate competing products and make informed purchasing decisions. For example, as discussed in greater detail in the September 11, 2001

[1] In publishing the regulatory review schedule each year, the Commission indicates that the tentative timetable may be modified in the future to incorporate new legislative rules, or to respond to external factors (such as changes in the law) or other considerations *See, e.g.*, 67 FR 9630 (Mar. 4, 2002).

section above, the Commission announced on January 22, 2002, its proposal to amend the Telemarketing Sales Rule (TSR), 16 CFR part 310, and published a notice of proposed rulemaking (NPRM). Among other things, the proposed Rule would establish a centralized national "do not call" registry, would prohibit telemarketers from receiving or sharing a consumer's billing information with anyone else, and would prohibit telemarketers from blocking "Caller ID" information. In addition, as mandated by Sec. 1011 of the USA PATRIOT Act, also referred to as the Crimes Against Charitable Americans Act of 2001, 15 U.S.C. 6101 note, the Commission's proposal adds certain disclosures and other requirements applicable to for-profit telemarketers who solicit charitable donations. Staff held a three-day public workshop from June 5-7, 2002, to discuss these and other proposed changes to the Rule. On May 24, 2002, the Commission also issued a related NPRM proposing that user fees be imposed on telemarketers and their seller or telemarketer clients for access to the national "do not call" registry in order to establish and maintain the registry. *See* 67 Fed. Reg. 37362 (May 29, 2002). Staff plans to forward its recommendations to the Commission by fall 2002.

In addition, the Commission's review of the Pay-Per-Call Rule, 16 CFR part 308, is proceeding. The Commission has held workshops to discuss proposed amendments to its Pay-Per-Call Rule including provisions to combat telephone bill "cramming" — inserting unauthorized charges on consumers' phone bills — and other abuses in the sale of products and services that are billed to the telephone including voicemail, 900-number services, and other telephone base information and entertainment services. The most recent workshop, held May 20 and 21, 1999, focused on discussions of the use of 800 and other toll-free numbers to offer pay-per-call services, the scope of the Rule, the dispute resolution process, the requirements for a presubscription agreement, and the need for obtaining express authorization from consumers before placing charges on their telephone bills. Staff anticipates forwarding its recommendation to the Commission by early 2003.

The Commission's review of the Franchise Rule, 16 CFR part 436, is also continuing. The Commission accepted comments on an NPRM with the text of a revised rule until December 21, 1999, and rebuttal comments until January 31, 2000. The proposal addresses issues including: (1) changing the timing for making disclosures; (2) clarifying the application of the Rule to international franchise sales; (3) expanding the Rule to require additional disclosures, including pending franchiser-initiated lawsuits involving the franchise relationship, franchiser use of gag clauses and, in some instances, trademark specific franchisee associations; (4) permitting disclosures through electronic media, including the Internet; and (5) expanding the Rule's exemptions to address sophisticated investors. In June 2001, Bureau of Consumer Protection Staff issued *Franchise and Business Opportunity Program Review 1993-2000: A Review of the Complaint Data, Law Enforcement and Consumer Education*. Staff expects to forward its report on the rulemaking to the Commission by the end of 2002.

In addition, the Commission's review of the Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986 (Smokeless Regulations), 16 CFR part 307, is proceeding. Issued to implement the requirements of the Comprehensive Smokeless Tobacco Health Education Act of 1986, the Smokeless Regulations govern the format and display of statutorily mandated health warnings on all packages and advertisements for smokeless tobacco. In fiscal year 2000, the Commission undertook its periodic review of the Smokeless Regulations to determine whether the Regulations continue to effectively meet the goals of the Act and to seek information concerning the Regulations' economic impact in order to decide whether they should be amended. Staff is currently assessing the public comments and anticipates forwarding its recommendations to the Commission early next year.

The review of the R-Value Rule, 16 CFR part 460, is also proceeding. As part of the Commission's regulatory review program, the Commission published an advance notice of proposed rulemaking (ANPRM) on the R-Value Rule for home insulation. *See* 64 FR 48023 (Sept. 1, 1999). Staff is currently reviewing the comments and expects to forward its recommendation to the Commission regarding proposed substantive amendments to the Rule, and anticipates publication of the NPRM late this fall.

In 1999, the Commission began its regulatory review of certain aspects of the Funeral Industry Practices Rule (Funeral Rule or Rule), 16 CFR part 453. The Funeral Rule, which became effective in 1984, and was amended in 1994, requires providers of funeral goods and services to give consumers itemized lists of funeral goods and services that not only state prices and descriptions, but also contain specific disclosures. The Rule enables consumers to select and purchase only the goods and services they want, except for those which may be required by law and a basic services fee. Also, funeral providers must seek authorization before performing some services, such as embalming. In addition to an assessment of the Rule's overall costs and benefits and continuing need for the Rule, the Commission's review will examine whether changes in the funeral industry warrant broadening the scope of the Rule to include non-traditional providers of funeral goods or services and revising or clarifying certain prohibitions in the Rule. *See* 64 FR 24249 (May 5, 1999). In response to requests of industry members, the Commission determined to extend the comment period. A public workshop conference was held on November 18, 1999, to explore issues raised in the comments submitted. Staff expects to forward its recommendation to the Commission by early 2003.

Final Actions

Since publication of the 2001 Regulatory Plan, the Commission has taken final actions on three rulemakings. First, on May 17, 2002, the Commission issued a final Financial Information Safeguards Rule, 16 CFR, part 314, governing the safeguarding of customer records and information for the financial institutions that are subject to its jurisdiction. Section 501(b) of the Gramm-Leach-Bliley Act, Pub. L. No. 106-102,[2] required the Federal Trade Commission to implement and enforce appropriate standards for financial institutions subject to the agency's jurisdiction to safeguard customers' records and information (safeguards standards) by rule. After publishing both a request for comments and a notice of proposed rulemaking. *See* 66 FR 41162 (Aug. 7, 2001), the Commission considered about forty-five public comments before issuing the final Financial Information Safeguards Rule, 16 CFR part 314, on May 17, 2002. *See* 67 FR 36483 (May 23, 2002). As required by section 501(b) of Gramm-Leach-Bliley, the standards are intended to ensure the security and

[2] The Commission previously published its final rule implementing other Gramm-Leach-Bliley requirements in its Rule on Privacy of Consumer Financial Information, 16 CFR part 313. *See* 65 FR 33646 (May 24, 2000).

confidentiality of customer records and information; protect against any anticipated threats or hazards to the security or integrity of such records; and protect against unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to any customer.

Second, on April 17, 2002, the Commission amended the Children's Online Privacy Protection (COPPA) Rule, 16 CFR part 312, extending by three years (until April 21, 2005) the sliding scale mechanism of verifying parental consent by Web sites or online services. *See* 67 FR 18818 (Apr. 17, 2002). During October 2001, the Commission had proposed a two-year extension of the sliding scale mechanism from April 21, 2002, until April 21, 2004 because the anticipated progress in available technology of verifying such consent had not occurred since the initial COPPA Rule became effective April 21, 2000. 66 FR 54963 (Oct. 31, 2001). The public comments received in response to the Commission's October 2001 NPRM indicated that secure electronic technology and infomediary services are not yet widely available at a reasonable cost and that the sliding scale mechanism to date has been an effective method for obtaining parental consent.

Third, the Commission has also withdrawn its review of a portion of the Amplifier Rule, 16 CFR part 432, from the Unified Agenda because the Commission does not anticipate any further action in this supplemental rulemaking proceeding in the near future. On December 22, 2000, the Commission issued a final rule clarifying the testing procedure for self-powered speakers, and eliminating or modifying certain testing and disclosure requirements that had outlived their usefulness to consumers. *See* 65 FR 81232 (Dec. 22, 2000). At the same time, the Commission also issued a supplemental notice of proposed rulemaking (SNPRM) to seek comment on proposed testing procedures for "home theater" receivers with five or more channels. *See* 65 FR 80798 (Dec. 22, 2000). The comment period for the SNPRM ended on March 30, 2001. On January 15, 2002, the Commission announced that it would keep the rulemaking record open but defer action on the proposed supplemental rule to allow an industry working group time to establish a voluntary consensus standard of measuring the power output of multichannel receivers and amplifiers. *See* 67 FR 1915 (Jan. 15, 2002).

With respect to Industry Guides, the Commission finished its review and rescinded the Guides for the Household Furniture Industry (Furniture Guides), 16 CFR part 250. On April 11, 2000, the Commission had initiated its regulatory review of the Furniture Guides, which were issued on December 21, 1973, and had requested comments about the overall costs and benefits and the continuing need for them. *See* 65 FR 18933 (Apr. 11, 2000). The Commission received one comment from the American Furniture Manufacturers Association (AFMA), which expressed concern that the Furniture Guides have little practical use to members of the furniture industry due to significant changes in technology and terminology since they were first promulgated. In the almost thirty years since the Furniture Guides were issued, the Commission has not received any complaints relating to practices covered by the Guides. Further, within the last ten years, the Commission has not had to initiate any enforcement action relating to these Guides. For these reasons, the Commission has determined that the Guides are no longer necessary. If deceptive practices prove to be a problem in this industry in the future, the Commission can deter manufacturers and sellers from misleading consumers in the labeling, advertising or sale of household furniture products by pursuing enforcement actions under the FTC Act on a case-by-case basis.

The Commission completed its review and retained Guides for the Rebuilt, Reconditioned, and Other Used Automobile Parts Industry (Used Auto Parts Guides or Guides), 16 CFR part 20, with updated language and minor revisions. *See* 67 FR 9919 (Mar. 5, 2002). The Used Auto Parts Guides, effective since 1962, advise industry members not to misrepresent the age of the product, the condition of the product, the extent of the rebuilding of the product, or that the rebuilder was the original manufacturer. Industry members must also conspicuously disclose in advertising and packaging that the products include used parts, if that is the case. During April 1998, the Commission published a Federal Register notice seeking comment on the overall costs and benefits of the Used Auto Parts Guides and whether there was a continuing need for them. *See* 63 FR 17132 (Apr. 8, 1998). Seven of the eight written comments received favored keeping these Guides. In retaining the Used Auto Parts Guides, the Commission also updated the list of commonly rebuilt used automobile parts contained in section 20.0 of these Guides and clarified that these Guides apply to advertising in electronic format, such as on the Internet. Finally, the Commission updated and streamlined certain language in the Used Auto Parts Guides to conform to current FTC practice.

The Commission has also completed its review and retained the Guide Concerning Fuel Advertising for New Automobiles (Fuel Economy Guide or Guide), concluding that consumers will continue to benefit from accurate information in the advertising of fuel economy figures for new vehicles. *See* 67 FR 9924 (March 4, 2002). Adopted in 1975 and subsequently revised twice, the Fuel Economy Guide is designed to prevent deceptive fuel economy advertising and to facilitate the use of fuel economy claims in advertising. Since its issuance, this Guide has advised marketers to disclose the established fuel economy of the vehicle as determined by the Environmental Protection Agency (EPA) under the Automobile Information Disclosure Act, 15 USC 2206, in advertisements that make representations regarding the fuel economy of a new vehicle. These EPA fuel economy numbers also appear on window labels attached to new automobiles. After considering a variety of factors during its review, including eight public comments, the Commission has concluded that the Fuel Economy Guide's benefits to consumers far outweigh the minimal cost to vehicle manufacturers of complying with its provisions.

Calendar Year 2003 Reviews

On March 4, 2002, the Commission issued a Federal Register notice announcing that the agency will commence the review of one rule and two guides during calendar year 2003. *See* 67 FR 9630 (Mar. 4, 2002). The review will include the Rules and Regulations Under the Hobby Protection Act, 16 CFR part 304; Tire Advertising and Labeling Guides, 16 CFR part 228; and Statements of General Policy or Interpretations Under the Fair Credit Reporting Act, 16 CFR part 600.

Summary

With regard to both content and process, the FTC's ongoing and proposed regulatory actions are compatible with the President's priorities. The actions under consideration inform and protect consumers and reduce the regulatory burdens on businesses. The Commission will continue working toward these goals. The Commission's ten-year review program is patterned after provisions in the Regulatory Flexibility Act and complies with the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission's ten-year program also is consistent with section 5(a) of Executive Order 12866, 58 FR 51735 (Sept. 30, 1993), which directs executive branch agencies to develop a plan to reevaluate periodically all of their significant existing regulations. In addition, the Financial Information Safeguards Rule, 16 CFR, part 314 (2002) is consistent with the President's Statement of Regulatory Philosophy and Principles, Executive Order. 12866 section 1(a), which directs agencies to promulgate only such regulations as are, *inter alia*, required by law or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public.

As set forth in Executive Order 12866, the Commission continues to identify and weigh the costs and benefits of proposed actions and possible alternative actions, and to receive the broadest practicable array of comment from affected consumers, businesses, and the public at large. As stated above, since 1992 the Commission has repealed 48 percent of its trade regulation rules and 55 percent of its industry guides that existed in 1992 because they had ceased to serve a useful purpose. In sum, the Commission's regulatory actions are aimed at efficiently and fairly promoting the ability of "private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people." Executive Order 12866, sec. 1.

II. REGULATORY ACTIONS

The Commission has no rules that constitute "significant regulatory actions" under the definition in Executive Order 12866.

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NATIONAL INDIAN GAMING COMMISSION (NIGC)

Statement of Regulatory Priorities

The Indian Gaming Regulatory Act (IGRA or the Act), 25 U.S.C. 2701 et seq., was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (NIGC or the Commission). The stated purpose of the Commission is to regulate the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments. It is the Commission's intention to provide regulation of Indian gaming to adequately shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players.

The NIGC's regulatory priorities for the next fiscal year are to:

1. Amend regulations implementing the Freedom of Information Act (FOIA); and
2. Finalize rules that set forth procedures for collecting debts owed to the agency.

NIGC

PROPOSED RULE STAGE

167. FREEDOM OF INFORMATION ACT PROCEDURES (AMENDMENTS)

Priority:

Other Significant

Legal Authority:

5 USC 552

CFR Citation:

25 CFR 517.3; 25 CFR 517.6; 25 CFR 517.8

Legal Deadline:

None

Abstract:

These rules will revise the current regulations to make them consistent with the amended Freedom of Information Act (FOIA). The rules will also update information such as addresses and copying fees.

Statement of Need:

Amendments to the Freedom of Information Act (FOIA) Procedures are necessary to better implement the amended Act.

Summary of Legal Basis:

The Freedom of Information Act (FOIA) requires that each Federal agency shall publish procedures by which the public may obtain information. (5 U.S.C. 552(a)(1)). The Commission relies on this section of FOIA to authorize promulgation of this regulation.

Alternatives:

At this time, the only alternative is to continue using the current FOIA Procedures.

Anticipated Cost and Benefits:

The potential benefit of this regulatory action is improved compliance with FOIA. The anticipated costs of the regulation are unknown at this time.

Risks:

There are no known risks to this regulatory action.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

Agency Contact:

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RIN: 3141–AA21

NIGC

FINAL RULE STAGE

168. DEBT COLLECTION

Priority:

Other Significant

Legal Authority:

31 USC 3716; 25 USC 2713(a)(1)

CFR Citation:

25 CFR 580

Legal Deadline:

None

Abstract:

This regulation will establish a process for the assessment, notification, and collection of debts owed the National Indian Gaming Commission.

Statement of Need:

The Commission has determined that regulations are necessary for the assessment, notification, and collection of debts owed the NIGC.

Summary of Legal Basis:

IGRA expressly authorizes the Commission to "promulgate such regulations and guidelines as it deems appropriate to implement the provisions of the [Act]." (25 U.S.C. 2706(b)(10)). The Commission relies on this section of the statute to authorize the promulgation of standards for collecting debts owed the Commission.

Alternatives:

The Commission has no alternative but to promulgate this debt collection procedure for gaming facilities operated on Indian lands.

Anticipated Cost and Benefits:

The potential benefits to this regulatory action are to establish and define for the regulated community the procedure by which the Commission will enforce the collection debts owed the Commission. This regulatory action will provide the Commission with a process for the efficient and effective collection of debts.

Risks:

There are no known risks to this regulatory action.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/20/01	66 FR 58056
Interim Final Rule Comment Period End	01/04/02	
Interim Final Rule Comment Period Reopened	01/09/02	67 FR 1273
Interim Final Rule Comment Period End	01/14/02	
Final Rule	01/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Tribal

Agency Contact:

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RIN: 3141–AA25

BILLING CODE 7565–01–S

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VOL
67

ISS
236

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2002

UMI



Federal Register

Monday,
December 9, 2002

Part III

Department of Agriculture

Semiannual Regulatory Agenda

DEPARTMENT OF AGRICULTURE (USDA)

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Subtitle A, Chs. I-VII, IX-XII, XIV-XVIII, XXI, XXIV-XXIX

9 CFR Chs. I-IV

36 CFR Ch. II

41 CFR Ch. 4

Semiannual Regulatory Agenda, Fall 2002

AGENCY: Office of the Secretary, USDA.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda provides summary descriptions of significant and not significant regulations being developed in agencies of the U.S. Department of Agriculture (USDA) in conformance with Executive Order 12866 "Regulatory Planning and Review." The agenda also describes regulations affecting small entities as required by section 602 of the Regulatory Flexibility Act, Public Law 96-354. This agenda also identifies regulatory actions that are being reviewed in compliance with section 610(c) of the Regulatory Flexibility Act. We invite public comment on those actions.

USDA has attempted to list all regulations and regulatory reviews pending at the time of publication except for minor and routine or repetitive actions, but some may have been inadvertently missed. There is no legal significance to the omission of an item from this listing. Also, the dates shown for the steps of each action are estimated and are not commitments to act on or by the date shown.

For this edition of the USDA regulatory agenda, the most important significant regulatory actions are included in part II of this issue of the **Federal Register.** The Regulatory Plan entries are listed in the table of contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

FOR FURTHER INFORMATION CONTACT: For further information on any specific entry shown in this agenda, please contact the person listed for that action. Requests for copies of the agenda should include a self-addressed, stamped envelope and be directed to: Regulatory Agenda, OBPA, Office of the Secretary, Room 118-E, Jamie Whitten Building, U.S. Department of Agriculture, Washington, DC 20250, (202) 720-1272.

Dated: October 11, 2002.

Jacquelyn Y. Chandler,

Chief, Legislative and Regulatory and Automated Systems Staff.

Agricultural Marketing Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
169	National Laboratory Accreditation Program	0581-AB42
170	Changes in Fees for Federal Grading and Certification of Livestock for Chicago Mercantile Exchange Futures Deliveries	0581-AB66
171	Discontinue the Official Grading of Imported Beef, Lamb, Veal, and Calf Carcasses Under the Authority of the Agricultural Marketing Act of 1946	0581-AB90
172	Revision of Regulations Governing the Inspection and Grading Service of Manufactured or Processed Dairy Products (DA-00-08)	0581-AB93
173	National Organic Program: Add Standards for Mushroom, Apiculture, Greenhouse, and Hydroponic Production Systems and the Handling of Honey (TM-01-09)	0581-AB96
174	National Organic Program: Add Standards for the Organic Certification of Wild Captured Aquatic Animals (TM-01-08)	0581-AB97
175	Livestock Mandatory Reporting Program—Lamb Amendment (LS-01-08) **(Reg Plan Seq No. 1)**	0581-AB98
176	Establishing Fees for Voluntary Quality Systems Certification Services (LS-00-13)	0581-AC08
177	Voluntary Federal Meat Grading and Certification Services (LS-02-06)	0581-AC13
178	Exemption of Organic Producers From Research and Promotion/Marketing Order Assessment (PY-02-002)	0581-AC15
179	National Dairy Promotion and Research Program (DA-02-03) **(Reg Plan Seq No. 2)**	0581-AC16
180	User fees for 2003 Crop Cotton Classification Services (CN-02-006)	0581-AC17
181	PACA: Coating or Battering Fruits and Vegetables Does Not Alter Their Character (FV-02-369)	0581-AC21
182	Plant Variety Protection Services (ST-02-02)	0581-AC22
183	USDA "Produced From" Grademark for Shell Eggs (PY-02-007)	0581-AC24
184	Administrative Requirements for Voluntary Shell Egg, Poultry, and Rabbit Grading (PY-02-003)	0581-AC25

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Agricultural Marketing Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
185	Hass Avocado Promotion, Research, and Information Order (FV-01-705)	0581-AB92
186	Mango Promotion, Research, and Information Order (FV-01-707)	0581-AC05
187	Flue-Cured Tobacco Advisory Committee: Amendment to Regulations (TB-02-14)	0581-AC11
188	Quality Systems Verification Program (LS-02-10)	0581-AC12

USDA

Agricultural Marketing Service—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
189	National Organic Program, Amendment to the National List of Allowed and Prohibited Substances	0581-AC19
190	Tobacco Inspection: Mandatory Grading (TB-02-11)	0581-AC20
191	Establishment of Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the U.S. and Termination of the Peanut Marketing Agreement and Associated Rules and Regulations	0581-AC23

Agricultural Marketing Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
192	Cotton Futures Act: Changing the Destination of Spot Markets (CN-01-004)	0581-AC00
193	Voluntary Egg, Poultry, and Rabbit Grading, Increase in Fees and Charges (PY-02-002)	0581-AC10
194	Removal of Cottonseed Chemist Licensing Program and Fees (ST-02-03)	0581-AC18

Agricultural Marketing Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
195	General Specifications for Dairy Plants Approved for USDA Inspection and Grading	0581-AB59
196	Revision of User Fees for 2002 Crop Cotton Classification Services	0581-AC04
197	Establishing a Lamb Promotion, Research, and Information Order (LS-01-12)	0581-AC06
198	Fluid Milk Promotion Program (DA-02-02)	0581-AC14

Agricultural Marketing Service—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
0581-AC09	California Prune/Plum (Tree Removal) Program, Extension of Program	08/08/2002	Withdrawn

Farm Service Agency—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
199	Regulatory Streamlining of the Farm Service Agency's Direct Farm Loan Programs	0560-AF60
200	Producer Disqualification for Crop Insurance Fraud	0560-AG70
201	2002 Farm Bill Regulations—Loan Eligibility With Prior Debt Forgiveness	0560-AG81

Farm Service Agency—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
202	2002 Farm Bill Regulations—Conservation Reserve Program	0560-AG74
203	2002 Farm Bill Regulations—General Credit Provisions	0560-AG78

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Farm Service Agency—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
204	Amendments to the Standards for Approval of Warehouse for Commodity Credit Corporation Storage Contracts	0560-AE50
205	Deletion of FSA Regulations Regarding Colorado River Basin Salinity Control Program	0560-AE54
206	Amendments to the Debt Settlement Policies and Procedures To Conform to the Debt Collection Improvement Act of 1996	0560-AF22
207	Amendments to the Conservation Reserve Program Regulations Regarding Land Eligibility	0560-AF77
208	Emergency Conservation Program	0560-AG26
209	Interest Assistance Program	0560-AG46
210	Ocean Freight Claims Administrative Appeal Process	0560-AG49
211	Elimination of 30-Day Past-Due Period for Farm Loan Program Borrowers	0560-AG50
212	Tobacco Marketing Quotas, Cards, Penalty Provisions, Recordkeeping and Reporting	0560-AG52
213	Rescheduling Guaranteed Loans With Balloon Payments, Clarification of Annual Analysis Requirements for Guaranteed Lenders, and Subordination Requirements	0560-AG53
214	Amendment to the Regulations for Determining Acreage for Skip-Row Cotton	0560-AG55
215	Prompt Disaster Set-Aside Consideration and Primary Loan Servicing	0560-AG56
216	2002-Crop Marketing Quotas and Price Support Levels for Five Kinds of Tobacco	0560-AG58
217	2002-Crop Marketing Quota and Price Support Level for Burley Tobacco	0560-AG59
218	2002-Crop Marketing Quota and Price Support Level for Flue-Cured Tobacco	0560-AG60
219	Servicing Minor Farm Loan Program Loans	0560-AG67
220	2002 Farm Bill Regulations—Direct and Counter-Cyclical Payments	0560-AG71
221	2002 Farm Bill Regulations—Assistance for Livestock Producers	0560-AG76
222	2002 Farm Bill Regulations—Acreage Reporting and Common Provisions	0560-AG79
223	2002 Farm Bill Regulations—Equitable Relief	0560-AG80
224	2002 Farm Bill Regulations—Tree Assistance Program	0560-AG83
225	2002 Farm Bill Regulations—Bioenergy Program	0560-AG84
226	2002 Farm Bill Regulations—Income Limits	0560-AG86

Farm Service Agency—Completed Actions

Sequence Number	Title	Regulation Identification Number
227	Mediation; Agricultural Loan Mediation Program	0560-AE26
228	Noninsured Crop Disaster Assistance Program Regulations for the 2001 and Succeeding Crop Years	0560-AG20
229	Conservation of Farmable Wetlands	0560-AG38
230	Tobacco Loss Assistance Program and Amendments to the Tobacco Marketing Quota Regulations	0560-AG40
231	Collecting Guaranteed Loss Payments From FSA Farm Loan Program Borrowers	0560-AG44
232	Implementation of the U.S. Warehouse Act of 2000	0560-AG45
233	Horse Breeder Loans	0560-AG62
234	Apple Market Loss Payment Program II	0560-AG63
235	Limitations on Amount of Guaranteed Farm Ownership and Operating Loans	0560-AG64
236	Sale and Purchase of Flue-Cured Tobacco Across County Lines (Florida and Georgia)	0560-AG68
237	Boll Weevil Eradication Loan Program	0560-AG69
238	2002 Farm Bill Regulations—Marketing Assistance Loans and Loan Deficiency Payments; Milk Price Support and Dairy Market Loss; Apple Market Loss	0560-AG72
239	2002 Farm Bill Regulations—Sugar Program	0560-AG73
240	2002 Farm Bill Regulations—Termination of Peanut Market Quota Program and Revised Flue-Cured Tobacco Reserve Stock Level	0560-AG75
241	2002 Farm Bill Regulations—Payment Limits	0560-AG77
242	2002 Farm Bill Regulations—Sea Grass and Sea Oats Eligibility for the Non-Insured Disaster Assistance Program	0560-AG82
243	2002 Farm Bill Regulations—Apple Market Loss Assistance Payment Program III	0560-AG85

Farm Service Agency—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
0560-AF36	Amendment to the Farm Reconstitution Regulations	05/20/2002	Withdrawn

USDA

Farm Service Agency—Discontinued Entries (Continued)

Regulation Identification Number	Title	Date	Comments
0560-AF71	Low Documentation Loan	04/01/2002	Merged With 0560-AG60
0560-AG07	Designation of Non-Auction Tobacco	06/05/2002	Withdrawn
0560-AG14	Agricultural Disaster and Market Assistance	05/20/2002	Merged With 0560-AG72
0560-AG42	Collection of Appraisal Fees for Farm Loan Programs, Insured Loans	06/03/2002	Withdrawn
0560-AG47	Non-Recourse Cotton Loan and Loan Deficiency Payment Programs; Upland Cotton First Handler Marketing Certificate Program; and Seed Cotton Recourse Loan Program	08/19/2002	Withdrawn
0560-AG54	General Regulations Governing Commodity Loans for 1998 and Subsequent Crops	09/01/2002	Withdrawn
0560-AG57	2002-Crop Peanuts National Poundage Quota for Quota Peanuts	05/20/2002	Withdrawn
0560-AG65	Clarification of Guaranteed Farm Ownership and Operating Loan Requirements	06/03/2002	Merged With 0560-AG53

Animal and Plant Health Inspection Service—Prerule Stage

Sequence Number	Title	Regulation Identification Number
244	Potential Pathways for the Spread of Bovine Spongiform Encephalopathy in U.S. Livestock	0579-AB43

Animal and Plant Health Inspection Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
245	Importation of Fuji Variety Apples From the Republic of Korea	0579-AA93
246	Blood and Tissue Collection at Livestock Slaughtering Establishments	0579-AB13
247	Plum Pox Compensation	0579-AB19
248	Bees, Beekeeping Byproducts, and Beekeeping Equipment **(Section 610 Review)**	0579-AB20
249	Veterinary Diagnostic User Fees—5-Year Plan for Fees **(Section 610 Review)**	0579-AB22
250	Salmonella Enteritidis Phage-Type 4; Remove Import Restrictions	0579-AB31
251	Chronic Wasting Disease in Elk and Deer; Interstate Movement Restrictions and Payment of Indemnity **(Reg Plan Seq No. 3)**	0579-AB35
252	Importation of Milk and Milk Products From FMD Countries	0579-AB38
253	Importation of Solid Wood Packing Material; Adoption of International Standards	0579-AB48

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Animal and Plant Health Inspection Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
254	Animal Welfare; Inspection, Licensing, and Procurement of Animals **(Section 610 Review)**	0579-AA94
255	Phytosanitary Treatment by Irradiation of Imported Fresh Fruits and Vegetables	0579-AA97
256	Importation of Unmanufactured Wood Articles From Mexico	0579-AB02
257	Establishment of Regions in the European Union for Classical Swine Fever, Foot-and-Mouth Disease, and Swine Vesicular Disease	0579-AB03
258	Nursery Stock Regulations **(Section 610 Review)**	0579-AB23
259	Foot-and-Mouth Disease; Payment of Indemnity **(Reg Plan Seq No. 4)**	0579-AB34
260	Infectious Salmon Anemia; Payment of Indemnity	0579-AB37
261	Animal Welfare; Policy on Training and Handling of Potentially Dangerous Animals	0579-AB39
262	Additional Restrictions on the Importation of Certain Ruminant Meat, Meat Products, and Edible Products Other Than Meat From BSE Regions	0579-AB41
263	Brucellosis in Sheep, Goats, and Horses; Payment of Indemnity **(Section 610 Review)**	0579-AB42
264	Low Pathogenic Avian Influenza; Payment of Indemnity	0579-AB46

USDA

Animal and Plant Health Inspection Service—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
265	Biological Agents and Toxins **(Reg Plan Seq No. 5)**	0579-AB47

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Animal and Plant Health Inspection Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
266	Importation of Certain Embryos and Animal Semen **(Section 610 Review)**	0579-AA63
267	Plant Pest Regulations; Update of Current Provisions **(Section 610 Review)**	0579-AA80
268	Importation of Solid Wood Packing Material	0579-AA99
269	Horse Protection; Horse Industry Organizations	0579-AB04
270	Pseudorabies in Swine; Payment of Indemnity	0579-AB10
271	Phytosanitary Certificates for Imported Fruits and Vegetables	0579-AB18
272	Animal Welfare: Marine Mammals; Nonconsensus Language and Interactive Programs	0579-AB24
273	Importation Prohibitions Because of Bovine Spongiform Encephalopathy	0579-AB26
274	Animals Destroyed Because of Tuberculosis; Payment of Indemnity	0579-AB29
275	Draft Action Plan for the Noxious Weeds Program	0579-AB30
276	Tuberculosis; Indemnity for Dairy Cattle	0579-AB36
277	Amend Regulations To Harmonize Our Import Requirements With Proposed National Tuberculosis Eradication Program	0579-AB44
278	Karnal Bunt Compensation	0579-AB45

Animal and Plant Health Inspection Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
279	Importation of Clementines From Spain	0579-AB40

Animal and Plant Health Inspection Service—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
0579-AB21	Exportation of Livestock	08/20/2002	Withdrawn
0579-AB25	Animal Welfare; Policy on Environment Enhancement for Nonhuman Primates	04/29/2002	Withdrawn

Cooperative State Research, Education, and Extension Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
280	Matching Requirements for Formula Funds for Agricultural Research and Extension Activities at the 1890 Land-Grant Institutions and at the 1862 Land-Grant Institutions in Insular Areas	0524-AA25
281	CSREES Agricultural Extension Formula Programs—Administrative Provisions	0524-AA26
282	CSREES Agricultural Research Formula Programs—Administrative Provisions	0524-AA27
283	CSREES Non-Formula Grant Programs—Administrative Provisions	0524-AA28

USDA

Rural Housing Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
284	Civil Rights Compliance Requirements—1901-E to 1940-D	0575-AA83
285	National Flood Insurance Regulations	0575-AC07
286	Servicing Community Programs Loans and Grants	0575-AC12
287	Multi-Family Housing (MFH) **(Reg Plan Seq No. 6)**	0575-AC13
288	Self-Help Technical Assistance Grants	0575-AC20
289	Community Facilities Direct Loan Program—Consolidate, Simplify, and Update Regulations	0575-AC27
290	Guaranteed Rural Rental Housing Program—Secondary Mortgage Market Participation	0575-AC28

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Rural Housing Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
291	Environmental Program	0575-AB98
292	Direct Section 502 and 504 Single-Family Housing Program	0575-AB99
293	Guaranteed Single-Family Housing	0575-AC18
294	Operating Assistance for Migrant Farmworker Projects	0575-AC24
295	Technical Assistance To Encourage the Development of Domestic and Migrant Farm Labor Housing	0575-AC25

Federal Crop Insurance Corporation—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
296	General Administrative Regulations; Subpart D; Application for Crop Insurance	0563-AB00
297	General Administrative Regulations; Movement of Business Among Insurance Providers	0563-AB71
298	General Administrative Regulations; Sanctions	0563-AB73
299	Common Crop Insurance Regulations; Blueberry Crop Insurance Provisions	0563-AB76
300	Common Crop Insurance Regulations; Nursery Crop Insurance Provisions	0563-AB80
301	General Administrative Regulations; Actual Production History	0563-AB83
302	Common Crop Insurance Regulations; Basic Provisions and General Administrative Regulations, Subpart T, Regulations for Implementation	0563-AB85
303	General Administrative Regulations; Subpart L—Reinsurance Agreement—Standards for Approval; Regulations for the 1997 and Subsequent Reinsurance Years	0563-AB86
304	General Administrative Regulations; Quality Assurance and Performance Measurement System for the Federal Crop Insurance Program	0563-AB88

Federal Crop Insurance Corporation—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
305	Common Crop Insurance Regulations; Small Grains Crop Insurance Provisions and Wheat Winter Coverage Endorsement	0563-AB63
306	General Administrative Regulations; Nonstandard Underwriting Classification System	0563-AB66
307	General Administrative Regulations; Premium Reductions; Payments of Rebates, Dividends, and Patronage Refunds; and Payments to Insured-Owned and Record-Controlling Entities	0563-AB70
308	Catastrophic Risk Protection Endorsement; Group Risk Plan of Insurance Regulations; Basic Provisions	0563-AB81
309	General Administrative Regulations; Submission of Policies and Provisions of Policies and Rates of Premiums	0563-AB84
310	Common Crop Insurance Regulations	0563-AB87
311	Common Crop Insurance Regulations; Sunflower, Coarse Grains, Safflower, Dry Pea, Rice, and Dry Bean Crop Insurance Provisions	0563-AB89

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Grain Inspection, Packers and Stockyards Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
312	Livestock Purchase or Sale: Prohibit Non-Reporting of Price	0580-AA65
313	Prohibition on Disguising Grain Quality	0580-AA77
314	Fees for Official Inspection and Official Weighing Services	0580-AA80

Grain Inspection, Packers and Stockyards Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
315	Tolerances for Dividers	0580-AA57
316	Review Inspection Requirements	0580-AA58
317	Swine Packer Marketing Contracts	0580-AA71
318	Exceptions to Geographic Areas for Official Agencies Under the USGSA	0580-AA76

Grain Inspection, Packers and Stockyards Administration—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
0580-AA78	Laboratory Proficiency Program	07/01/2002	Withdrawn

Food and Nutrition Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
319	Special Supplemental Food Program for Women, Infants, and Children (WIC): Miscellaneous Provisions	0584-AB10
320	Intentional Program Violation Reporting and Computer Matching Requirements That Affect the Food Stamp Program	0584-AB51
321	FSP: Civil Rights Data Collections	0584-AC75
322	Commodity Supplemental Food Program: Plain Language, Program Accountability, and Program Flexibility	0584-AC84
323	Food Stamp Program: Administrative Cost Reimbursement	0584-AC86
324	Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages **(Reg Plan Seq No. 7)**	0584-AC90
325	Improving Access to the Food Stamp Program for Persons With Limited English Proficiency	0584-AD06
326	Food Distribution Program on Indian Reservations: Resource Limits and Exclusions, Extended Certification Periods, and Transitional Benefits	0584-AD12
327	Child and Adult Care Food Program (CACFP): At-Risk Afterschool Suppers	0584-AD15
328	Food Stamp Program: Administrative Sanctions Imposed Against Violating Electronic Benefits Transfer (EBT) Stores	0584-AD18
329	Food Stamp Program: Simplification and State Flexibility **(Reg Plan Seq No. 8)**	0584-AD22
330	Food Stamp Program: Administrative Review Requirements—Food Retailers/Wholesalers	0584-AD23
331	Food Stamp Program: Clarifications and Corrections to Recipient Claim Establishment and Collection Standards	0584-AD25
332	FSP: EBT and Retail Food Stores Provisions of the Farm Security and Rural Investment Act of 2002	0584-AD28
333	FSP: High Performance Bonuses **(Reg Plan Seq No. 9)**	0584-AD29
334	FSP: Eligibility and Certification Provisions of the Farm Security and Rural Investment Act of 2002 **(Reg Plan Seq No. 10)**	0584-AD30
335	FSP: Quality Control Provisions of the Farm Security and Rural Investment Act of 2002 **(Reg Plan Seq No. 11)**	0584-AD31
336	FSP: Employment and Training Program Provisions of the Farm Security and Rural Investment Act of 2002 **(Reg Plan Seq No. 12)**	0584-AD32
337	Commodity Supplemental Food Program (CSFP)—Allocation of Administrative Funds	0584-AD33
338	Senior Farmers' Market Nutrition Program (SFMNP)	0584-AD35

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

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Food and Nutrition Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
339	WIC: Requirements for and Evaluation of WIC Program Requests for Bids for Infant Formula Rebate Contracts	0584-AB52
340	Food Stamp Program: Anticipating Income and Reporting Changes	0584-AB57
341	Child and Adult Care Food Program: Improving Management and Program Integrity **(Reg Plan Seq No. 13)**	0584-AC24
342	Food Stamp Program Regulatory Review: FSP Standards for Approval and Operation of Food Stamp Electronic Benefit Transfer Systems	0584-AC37
343	National School Lunch Program: Reimbursement for Snacks in Afterschool Care Programs	0584-AC72
344	FSP: Electronic Benefit Transfer (EBT) Systems Interoperability and Portability	0584-AC91
345	Special Nutrition Programs: Disclosure of Children's Eligibility Information Under the Child Nutrition Programs	0584-AC95
346	Implementation of Poultry Substitution Pilot as Permanent and Modification of Commodity Recordkeeping Requirements	0584-AD08
347	Special Nutrition Programs: Uniform Federal Assistance Regulations; Nondiscretionary Technical Amendments	0584-AD16
348	Expanded Verification of Eligibility Summary Requirements	0584-AD20
349	Privacy Act: Revision of an Existing System of Records	0584-AD24
350	Afterschool Snacks Under the Child and Adult Care Food Program	0584-AD27
351	Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Exclusion of Military Housing Payments	0584-AD34

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Food and Nutrition Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
352	Child and Adult Care Food Program: Implementing Legislative Reforms To Strengthen Program Integrity	0584-AC94
353	State Administrative Expense Funds: Plain Language Rewrite	0584-AC96
354	Special Milk Program for Children: Plain Language Revision and Reorganization	0584-AC97
355	Food Distribution Programs: Plain Language Rewrite of 7 CFR Part 250, Donation of Foods for Use in the United States, Its Territories and Possessions, and Areas Under Its Jurisdiction	0584-AC98
356	Food Distribution Programs: Plain Language Rewrite of 7 CFR Part 251, The Emergency Food Assistance Program (TEFAP)	0584-AC99
357	Food Distribution Programs: Plain Language Rewrite of 7 CFR Part 252, The National Commodity Processing Program (NCP)	0584-AD00
358	Food Distribution Programs: Plain Language Rewrite of 7 CFR Part 253, the Food Distribution Program on Indian Reservations (FDPIR)	0584-AD01
359	Food Distribution Programs: Plain Language Rewrite of 7 CFR Part 254, the Food Distribution Program on Indian Reservations (FDPIR) in Oklahoma	0584-AD02
360	Nutrition Education and Training Program: Plain Language Rewrite of 7 CFR Part 227	0584-AD03
361	State Agency Liabilities and Federal Sanctions	0584-AD04
362	Payments of Certain Administrative Costs of State Agencies	0584-AD05
363	School Breakfast Program: Plain Language Revision and Reorganization	0584-AD10
364	WIC: Plain Language Rewrite of 7 CFR Part 248, Farmers' Market Nutrition Program	0584-AD11
365	Food Stamp Program: Vehicle and Maximum Excess Shelter Expense Deduction Provisions of Public Law 106-387	0584-AD13
366	CNP: Plain Language Rewrite of 7 CFR Part 225, Summer Food Service Program	0584-AD17

Food and Nutrition Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
367	Food Stamp Program: Work Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Food Stamp Provisions of the Balanced Budget Act of 1997	0584-AC45
368	National School Lunch Program, School Breakfast Program, and Child and Adult Care Food Program—Amendments to the Infant Meal Pattern	0584-AD26

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Food Safety and Inspection Service—Prerule Stage

Sequence Number	Title	Regulation Identification Number
369	Poultry Inspection: Revision of Finished Product Standards With Respect to Ingesta	0583-AC77

Food Safety and Inspection Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
370	Transportation, Storage, and Other Handling of Potentially Hazardous Foods	0583-AC05
371	Grant and Inauguration of Inspection	0583-AC07
372	Performance Standards for Bacon **(Reg Plan Seq No. 14)**	0583-AC49
373	Reform of Regulations on Imported Meat and Poultry Products	0583-AC56
374	Egg and Egg Products Inspection Regulations **(Reg Plan Seq No. 15)**	0583-AC58
375	Labeling—Generic Approval and Regulation Consolidation	0583-AC59
376	Pathogen Reduction; Hazard Analysis and Critical Control Points (HACCP) Systems; Additions to Generic E. Coli Criteria	0583-AC63
377	Food Standards; Guiding Principles and Food Standards Modernization	0583-AC72
378	Petitions for Rulemaking	0583-AC81
379	Classes of Poultry Updating Poultry Class Standards	0583-AC83
380	Elimination of Chilling Time and Temperature Requirements for Ready-To-Cook Poultry **(Section 610 Review)** **(Reg Plan Seq No. 16)**	0583-AC87
381	Emergency Regulations To Prevent Meat Food and Meat Products That May Contain the BSE Agent From Entering Commerce **(Reg Plan Seq No. 17)**	0583-AC88
382	Addition of San Marino to the List of Countries Eligible To Export Meat and Meat Products to the United States	0583-AC91

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Food Safety and Inspection Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
383	Beef or Pork With Barbecue Sauce; Revision of Standards	0583-AC09
384	Performance Standards for Ready-To-Eat Meat and Poultry Products **(Reg Plan Seq No. 18)**	0583-AC46
385	Meat Produced by Advanced Meat/Bone Separation Machinery and Recovery Systems **(Reg Plan Seq No. 19)**	0583-AC51
386	Nutrition Labeling of Ground or Chopped Meat and Poultry Products and Single-Ingredient Products **(Reg Plan Seq No. 20)**	0583-AC60
387	Food Labeling; Nutrient Content Claims, Definition of the Term Healthy	0583-AC65
388	Incorporation of Food and Color Additives Into 21 CFR	0583-AC69
389	Performance Standards for On-Line Antimicrobial Reprocessing of Pre-Chill Poultry Carcasses	0583-AC73
390	Agency Organization	0583-AC78
391	Food Standards: Requirements for Substantive Standardized Meat and Poultry Products Named by Use of an Expressed Nutrient Content Claim and a Standardized Term	0583-AC82

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Food Safety and Inspection Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
392	Ante-Mortem and Post-Mortem Inspection of Livestock and Poultry	0583-AC43
393	Requirements for Disposition and Disposal of Inspected Raw Meat and Poultry Products	0583-AC44
394	Reworking of Meat and Poultry Carcasses Accidentally Contaminated During Evisceration	0583-AC53
395	Elimination of Requirements for Total Quality Control Systems	0583-AC68

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Food Safety and Inspection Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
396	Sharing Recall Distribution Lists With State and Other Federal Government Agencies	0583-AC75

Food Safety and Inspection Service—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
0583-AC90	Standards and Labeling Requirements for Mechanically Separated (Species) and Products in Which It Is Used **(Completion of a Section 610 Review)**	08/08/2002	Withdrawn

Foreign Agricultural Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
397	Program To Provide Technical Assistance To Promote U.S. Agricultural Exports to Emerging Markets (Emerging Markets Program)	0551-AA62

Foreign Agricultural Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
398	Program To Assist U.S. Producers in Developing Domestic Markets for Value-Added Wheat Gluten and Wheat Starch Products	0551-AA60
399	Technical Assistance for Specialty Crops	0551-AA63

Foreign Agricultural Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
400	CCC Supplier Credit Guarantee Program	0551-AA30
401	Facility Guarantee Program	0551-AA35

Foreign Agricultural Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
402	Freedom of Information Act (FOIA) Regulations for the Foreign Agricultural Service	0551-AA61

Forest Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
403	Hydropower Applications	0596-AA47
404	Indian Allotments on National Forest System Lands	0596-AA52
405	Small Tracts Act Regulations	0596-AA79
406	Species Surplus to Domestic Manufacturing Needs	0596-AB27
407	Appeal of Decisions Relating to Occupancy and Use of National Forest System Lands	0596-AB45
408	Law Enforcement Support Activities	0596-AB61

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Forest Service—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
409	Noncompetitive Sale of Timber	0596-AB70
410	Land Uses; Special Uses Requiring Authorizations	0596-AB74
411	Sale and Disposal of National Forest System Timber; Timber Export and Substitution Restrictions	0596-AB75
412	Special Forest Products and Forest Botanical Products	0596-AB81
413	Determining Fair Market Value for Recreation Residence Use Authorizations	0596-AB83
414	National Forest System Land and Resource Management Planning	0596-AB86
415	National Environmental Policy Act Documentation Needed for Certain Small Administrative Timber Sales on National Forest System Lands and Research Projects (Forest Service Handbook 1909.15, Chapter 30)	0596-AB88
416	Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities	0596-AB89
417	Land Uses; Prohibitions: Paleontological Resources	0596-AB91
418	Forest Service Trails Accessibility Guidelines	0596-AB92
419	Forest Service Outdoor Recreation Accessibility Guidelines	0596-AB93
420	Interim Directive to Forest Service Manual Chapter 1920, Land and Resource Management Planning, FSM 1923, Objection Process	0596-AB97
421	Locatable Minerals	0596-AB98
422	National Environmental Policy Act Documentation Needed for Fire Management Activities (Proposed Interim Directive to Forest Service Handbook 1909.15, Chapter 30)	0596-AB99

Forest Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
423	Disposal of National Forest Timber; Cancellation of Timber Sale Contracts	0596-AB21
424	Collection of Reimbursable Costs for Processing Special-Use Applications and Administration of Special-Use Authorizations	0596-AB36
425	Sale and Disposal of National Forest System Timber; Extension of Timber Sale Contracts To Permit Urgent Removal of Timber From Other Lands	0596-AB48
426	Preference for Visitor Service; Alaska National Forest Conservation System Units	0596-AB57
427	National Environmental Policy Act Documentation Needed for Certain Special Uses Permit Actions (Final Interim Directive to FSH 1909.15, Chapter 30)	0596-AB73
428	Revisions to Road Management Policy (Forest Service Manual Chapter 7710)	0596-AB90
429	Forest Land Enhancement Program	0596-AB95
430	Community and Private Land Forest Fire Assistance Program	0596-AB96

Forest Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
431	National Forest System Land and Resource Management Planning; Extension of Compliance Deadline	0596-AB87
432	Clarification of Extraordinary Circumstances for Categorical Exclusions	0596-AB94

Forest Service—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
0596-AB80	Use of Fixed Anchors in Wilderness	10/03/2002	Withdrawn

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Office of Chief Financial Officer—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
433	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	0505-AA11

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
434	General Nonprocurement Regulations	0503-AA21

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
435	Outreach and Assistance for Disadvantaged Farmers and Ranchers	0503-AA22

Rural Business-Cooperative Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
436	Business and Industrial Guaranteed Loan Program—Miscellaneous Changes	0570-AA23
437	Affirmative Fair Housing Marketing Plan	0570-AA24
438	Business and Industry Guaranteed Loan Program—Financing Cooperative Stock	0570-AA26
439	Rural Business Enterprise Grant Program	0570-AA28
440	Annual Renewal Fee	0570-AA34
441	Rural Business Investment Program	0570-AA35

Rural Business-Cooperative Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
442	Rural Economic Development Loan and Grant Program	0570-AA19
443	Allocation Formulas	0570-AA30
444	Business and Industry Guaranteed Loan Program—Domestic Lamb Industry Adjustment Assistance Program Set-Aside	0570-AA31
445	Rural Business Enterprise Grant Program—Farm Bill Changes	0570-AA36
446	B&I Guaranteed Loan Program Farm Bill Changes—Definition of Rural and Rural Area	0570-AA38
447	B&I Guaranteed Loan Program Farm Bill Changes—Expand Eligibility Criteria	0570-AA39

Rural Business-Cooperative Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
448	The Rural Business Enterprise Grants and Television Demonstration Grants—Small/Emerging Private Business Enterprise	0570-AA32
449	Rural Business Opportunity Grants—Definition of Rural and Rural Areas—Farm Bill Changes	0570-AA37

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Rural Utilities Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
450	Telecommunications Standards and Specifications for Materials, Equipment, and Construction	0572-AB40
451	Servicing of Water Programs Loans and Grants	0572-AB59
452	Environmental Policies and Procedures	0572-AB73
453	Technical Assistance Grants	0572-AB75
454	Special Equipment Contract (Not Including Installation), RUS Form 398	0572-AB76
455	Accounting Requirements for RUS Telecommunications Borrowers	0572-AB77
456	Extensions of Payments of Principal and Interest	0572-AB79
457	Launching Our Communities Access to Local Television Act of 2000	0572-AB82

Rural Utilities Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
458	Settlement of Debt	0572-AB61
459	Demand Side Management and Renewable Energy Systems	0572-AB65
460	Electric Program Standard Contract Forms	0572-AB67
461	Exemptions of RUS Operational Controls Under Section 306E of the RE Act	0572-AB68
462	Telecommunications Program Specification	0572-AB69
463	General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Loans	0572-AB72
464	Seismic Safety	0572-AB74
465	Record Retention Requirements for RUS Electric and Telecommunications Borrowers	0572-AB78
466	Useful Life of Facility Determination	0572-AB80
467	Rural Broadband Access Loans and Loan Guarantees	0572-AB81
468	Guarantees for Bonds and Notes Issued for Electrification Purposes	0572-AB83

Rural Utilities Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
469	Mergers and Consolidations of Electric Borrowers	0572-AB63

Natural Resources Conservation Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
470	Wetland Categorical Minimal Effects Exemptions	0578-AA27
471	Emergency Watershed Protection Program	0578-AA30
472	Environmental Quality Incentives Program	0578-AA31
473	Agricultural Management Assistance Program	0578-AA32
474	Conservation Security Program	0578-AA36
475	Farm and Ranch Lands Protection Program	0578-AA37

Natural Resources Conservation Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
476	Conservation of Private Grazing Land	0578-AA29
477	Third-Party Vendor	0578-AA35

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Natural Resources Conservation Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
478	Highly Erodible Land and Wetland Conservation	0578-AA17
479	Forestry Incentives Program	0578-AA26

Natural Resources Conservation Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
480	Wetlands Reserve Program	0578-AA33
481	Wildlife Habitat Incentives Program	0578-AA34

Office of Procurement and Property Management—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
482	Office of Procurement and Property Management (OPPM); Uniform Procedures for the Acquisition and Transfer of Excess Federal Property	0599-AA10

Department of Agriculture (USDA)
Agricultural Marketing Service (AMS)

Proposed Rule Stage

169. NATIONAL LABORATORY ACCREDITATION PROGRAM

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 7 USC 138 to 138i

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Food, Agriculture, Conservation, and Trade Act of 1990 (the FACT Act) authorized the establishment of the National Laboratory Accreditation Program (NLAP). The NLAP is a voluntary, fee-for-service program for accrediting laboratories that analyze for the presence of pesticide residues in agricultural products. The regulations will ensure that laboratories which request accreditation and conduct residue testing of fresh fruits and vegetables for at least one of four classes of pesticides, or make claims to the public or buyers concerning the residue levels, meet certain standards.

Timetable:

Action	Date	FR Cite
ANPRM	11/20/92	57 FR 54727
ANPRM Comment Period End	01/19/93	
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: James V. Falk, Scientist, Department of Agriculture, Agricultural Marketing Service, Room 3521-South, Technical Services Branch, P.O. Box 96456, Room 3523-south, Washington, DC 20090-6456
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Email: james.falk@usda.gov

RIN: 0581–AB42

170. CHANGES IN FEES FOR FEDERAL GRADING AND CERTIFICATION OF LIVESTOCK FOR CHICAGO MERCANTILE EXCHANGE FUTURES DELIVERIES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1621 to 1627

CFR Citation: 7 CFR 53

Legal Deadline: None

Abstract: The purpose of this action is to amend the rate and procedures used to charge applicants for Federal grading and certification of livestock inspected for deliveries on commodity futures contracts.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: John E. VanDyke, Branch Chief, Department of Agriculture, Agricultural Marketing Service, Room 2619-South, L&S, 14th & Independence Avenue SW, Washington, DC 20250
Phone: 202 720-6231
Fax: 202 690-3732
Email: john.vandyke@usda.gov

RIN: 0581–AB66

171. DISCONTINUE THE OFFICIAL GRADING OF IMPORTED BEEF, LAMB, VEAL, AND CALF CARCASSES UNDER THE AUTHORITY OF THE AGRICULTURAL MARKETING ACT OF 1946

Priority: Other Significant

Legal Authority: 7 USC 1621 through 1627

CFR Citation: 7 CFR 54

Legal Deadline: None

Abstract: The Agricultural Marketing Service (AMS) proposes to discontinue the official grading of imported beef, lamb, veal, and calf carcasses. Current regulations, promulgated under the Agricultural Marketing Act of 1946, permit the official grading of imported beef, lamb, veal, and calf carcasses provided the carcasses are in compliance with all requirements of the standards and regulations.

Timetable:

Action	Date	FR Cite
ANPRM	02/01/00	65 FR 4780
ANPRM Comment Period End	04/03/00	
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Martin E. O'Connor, Assistant Chief, Department of Agriculture, Agricultural Marketing Service, P.O. Box 96456, Washington, DC 20250-6456
Phone: 202 720-7046
Fax: 202 690-4119

RIN: 0581–AB90

172. REVISION OF REGULATIONS GOVERNING THE INSPECTION AND GRADING SERVICE OF MANUFACTURED OR PROCESSED DAIRY PRODUCTS (DA-00-08)

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1621 to 1627

CFR Citation: 7 CFR 58

Legal Deadline: None

Abstract: These regulations have not been updated since December 1, 1976. The proposal will establish a revision of the existing regulations to strengthen program integrity, to update the regulations to accurately reflect inspection and grading services available, and to clarify the meaning of the regulation provisions. The proposed changes are not expected to have any major impact on program participants as most participants are operating in a manner that is consistent with the proposed changes.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Duane R. Spomer, Associate Deputy Administrator for Standards and Grading, Department of Agriculture, Agricultural Marketing Service, Rm. 2746-South, Dairy Programs, P.O. Box 96456, Washington, DC 20090-6456
Phone: 202 720-7473
Fax: 202 720-2643
Email: duane.spomer@usda.gov

RIN: 0581–AB93

173. NATIONAL ORGANIC PROGRAM: ADD STANDARDS FOR MUSHROOM, APICULTURE, GREENHOUSE, AND HYDROPONIC PRODUCTION SYSTEMS AND THE HANDLING OF HONEY (TM-01-09)

Priority: Other Significant

Legal Authority: 7 USC 6501 through 6522

CFR Citation: 7 CFR 205

Legal Deadline: None

Abstract: AMS is revising the regulatory provisions for labeling agricultural products as organically produced and handled (7 CFR part 205). This rule will establish production standards for mushroom, apiculture, and greenhouse production systems and handling standards for apiculture products. Also, this action will incorporate the recommendations of the National Organic Standards Board (NOSB) finalized at its October 2001 meeting. In June 2001, the NOSB released and accepted public comment on a draft version of mushroom and greenhouse standards. Concurrently, the NOSB implemented a task force to develop production and handling standards for apiculture.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Federal, Tribal, State, Local

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Richard H. Mathews, Program Manager, Department of Agriculture, Agricultural Marketing Service, Rm. 2510-South, 14th & Independence Avenue SW, Washington, DC 20250
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Email: richard.mathews@usda.gov

RIN: 0581–AB96

174. NATIONAL ORGANIC PROGRAM: ADD STANDARDS FOR THE ORGANIC CERTIFICATION OF WILD CAPTURED AQUATIC ANIMALS (TM-01-08)

Priority: Other Significant

Legal Authority: 7 USC 6501 through 6522

CFR Citation: 7 CFR 205

Legal Deadline: None

Abstract: AMS is revising the regulatory provisions for labeling of agricultural products as organically produced and handled (7 CFR part 205). The term "aquatic animal" will be incorporated in the definition of livestock and to establish production and handling standards for operations that capture aquatic animals from the wild. AMS has defined "aquatic animal" as any finfish or shellfish used for human consumption, whether taken from regulated but free roaming marine and fresh water populations (wild captured) or propagated and raised in a controlled or selected environment (aquaculture). Production standards for operations producing aquatic animals will incorporate requirements for livestock origin, feed ration, health care, living conditions, and recordkeeping. Handling standards for such operations will address prevention of commingling of organically produced commodities and prevention of contact between organically produced and prohibited substances.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Richard H. Mathews, Program Manager, Department of Agriculture, Agricultural Marketing Service, Rm. 2510-South, 14th & Independence Avenue SW, Washington, DC 20250
Phone: 202 720-3252
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Email: richard.mathews@usda.gov

RIN: 0581–AB97

175. LIVESTOCK MANDATORY REPORTING PROGRAM—LAMB AMENDMENT (LS-01-08)

Regulatory Plan: This entry is Seq. No. 1 in part II of this issue of the Federal Register.

RIN: 0581–AB98

176. ESTABLISHING FEES FOR VOLUNTARY QUALITY SYSTEMS CERTIFICATION SERVICES (LS-00-13)

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This action is necessary to ensure that voluntary Quality Systems Certification Program (QSCP) services provided by the Agricultural Marketing Service's Meat Grading and Certification Branch remain financially self-sufficient and viable. The QSCP is a voluntary, audit-based program developed at the request of the industry and others to provide a means of verifying value-adding processes in the production and processing of agricultural products.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Larry R. Meadows, Chief, Meat Grading and Certification Branch, Department of Agriculture, Agricultural Marketing Service, Room 2628-South, Mail Stop 0248, L&S, Meat Grading Branch, 14th and Independence Avenue SW, Washington, DC 20250
Phone: 202-720-0343
Fax: 202 690-4119
Email: larry.meadows@usda.gov

RIN: 0581–AC08

177. • VOLUNTARY FEDERAL MEAT GRADING AND CERTIFICATION SERVICES (LS-02-06)

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1622 through 1624

CFR Citation: 7 CFR 54

Legal Deadline: None

Abstract: The Agricultural Marketing Service is amending the fees for Voluntary Meat Grading and Certification services provided by the Meat Grading and Certification Branch. This rule would amend section 54.27 Charges for Service by replacing the published rates with the following rates accordingly. Commitment Basis $55/hour, Noncommitment Basis $64/hour, Premium Basis $72/hour, and Holiday Basis $110/hour. This amendment would allow the Branch to offset increased operating expenses and decreased revenue hours, and allow the Branch to maintain a 4-month operating reserve required by the Agency.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Larry R. Meadows, Chief, Meat Grading and Certification Branch, Department of Agriculture, Agricultural Marketing Service, Room 2628-South, Mail Stop 0248, L&S, Meat Grading Branch, 14th and Independence Avenue SW, Washington, DC 20250
Phone: 202 720-0343
Fax: 202 690-4119
Email: larry.meadows@usda.gov

RIN: 0581–AC13

178. • EXEMPTION OF ORGANIC PRODUCERS FROM RESEARCH AND PROMOTION/MARKETING ORDER ASSESSMENT (PY-02-002)

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-171, sec 10607

CFR Citation: 7 CFR 906; 7 CFR 916; 7 CFR 917; 7 CFR 927; 7 CFR 928; 7 CFR 929; 7 CFR 932; 7CFR 955; 7 CFR 956; 7 CFR 958; 7 CFR 966; 7 CFR 981; 7 CFR 982; 7 CFR 984; 7 CFR 989; 7 CFR 1150; 7 CFR 1160; 7 CFR 1205; 7 CFR 1207; 7 CFR 1209; 7 CFR 1210; 7 CFR 1215; 7 CFR 1216; 7 CFR 1218; 7 CFR 1219; 7 CFR 1220; 7 CFR 1230; 7 CFR 1240; 7 CFR 1250; 7 CFR 1260; 7 CFR 1280; ...

Legal Deadline: Final, Statutory, May 13, 2003.

Abstract: Section 501 of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act) was amended on May 13, 2002. The amendment exempts any person that produces and markets solely 100 percent organic products from paying assessments under a commodity promotion law. The amendment further provides that the Secretary amend any research and promotion regulations to reflect this exemption within 1 year. Therefore, the Department of Agriculture is proposing amendments to the research and promotion regulations and applicable marketing order programs for which it has oversight The FAIR Act governs all research and promotion and 15 marketing order programs. Currently, there are 15 established research and promotion programs, with the additional program for Hass avocados in the final stages of rulemaking. The Hass avocado program should be fully implemented before this action is published.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Angela C. Snyder, Agricultural Marketing Specialist, Department of Agriculture, Agricultural Marketing Service, STOP 0256, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720-4476

USDA—AMS — **Proposed Rule Stage**

Fax: 202 720-5631
RIN: 0581–AC15

179. • NATIONAL DAIRY PROMOTION AND RESEARCH PROGRAM (DA-02-03)

Regulatory Plan: This entry is Seq. No. 2 in part II of this issue of the Federal Register.

RIN: 0581–AC16

180. • USER FEES FOR 2003 CROP COTTON CLASSIFICATION SERVICES (CN-02-006)

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 473a

CFR Citation: 7 CFR 28

Legal Deadline: Final, Statutory, June 1, 2003.

Abstract: This action would increase the user fees for cotton producers for the 2003 crop cotton classification services under the Cotton Statistics and Estimates Act.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Norma Randall McDill, Deputy Administrator, Department of Agriculture, Agricultural Marketing Service, 14th & Independence Avenue SW, Room 2641-South, Washington, DC 20250
Phone: 202 720-3193
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Email: norma.mcdill@usda.gov

RIN: 0581–AC17

181. • PACA: COATING OR BATTERING FRUITS AND VEGETABLES DOES NOT ALTER THEIR CHARACTER (FV-02-369)

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 499o

CFR Citation: 7 CFR 46

Legal Deadline: None

Abstract: On June 21, 2002, the Frozen Potato Products Institute petitioned the Agricultural Marketing Service to amend the definition of "fresh fruits and fresh vegetables" under the Perishable Agricultural Commodities Act. We have been asked to clarify our policy that coating, battering, or otherwise treating fruits and vegetables to maintain taste, color, and/or texture prior to or after cooking does not alter their character.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: James R. Frazier, Chief, PACA Branch, Department of Agriculture, Agricultural Marketing Service, F&V, P.O. Box 96456, Washington, DC 20099-6546
Phone: 202 720-4180
Email: james__r__frazier@usda.gov

RIN: 0581–AC21

182. • PLANT VARIETY PROTECTION SERVICES (ST-02-02)

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 2321; 7 USC 2401

CFR Citation: 7 CFR 97

Legal Deadline: None

Abstract: The action would establish a new fee schedule covering various administrative services that stakeholders are not currently charged for by the Plant Variety Protection (PVP) Office. PVP, as provided by the Agricultural Marketing Service is a voluntary, user-fee service, conducted under the authority of the Plant Variety Protection Act of 1970. The Act requires that reasonable fees be collected from applicants for plant variety protection in order to cover program expenses. Program obligations and administrative costs have increased and user-fees have been falling short of projections. Based on the current level of activity, new service fees will generate approximately $169,000 of new revenue in fiscal year 2003.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Paul Zankowski, Dr., Commissioner, Plant Variety Protection Office, Department of Agriculture, Agricultural Marketing Service, 10301 Baltimore Blvd., Room 401, National Agricultural Library, Beltsville, MD 20705
Phone: 301 504-5518

RIN: 0581–AC22

183. • USDA "PRODUCED FROM" GRADEMARK FOR SHELL EGGS (PY-02-007)

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1627

CFR Citation: 7 CFR 56

Legal Deadline: None

Abstract: The Agricultural Marketing Service is clarifying requirements for using the USDA "Produced From" grademark for shell eggs. These requirements, in effect since 1998, are causing confusion and need to be clarified to ensure uniform understanding and implementation of the requirements.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rex A. Barnes, Chief, Grading Branch, Department of Agriculture, Agricultural Marketing Service, Stop 0258, Poultry Programs, 14th & Independence Avenue SW, Washington, DC 20090-6456
Phone: 202 720-3271
Fax: 202 690-3165
Email: rex.barnes@usda.gov

RIN: 0581–AC24

184. • ADMINISTRATIVE REQUIREMENTS FOR VOLUNTARY SHELL EGG, POULTRY, AND RABBIT GRADING (PY-02-003)

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1621 through 1627

CFR Citation: 7 CFR 56; 7 CFR 70

Legal Deadline: None

Abstract: The Agricultural Marketing Service is updating the administrative requirements for Federal voluntary egg, poultry, and rabbit grading. The regulations, in effect since the 1950s, contain some outdated terms, references, and phrases that need updating to make them current and clear.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rex A. Barnes, Chief, Grading Branch, Department of Agriculture, Agricultural Marketing Service, Stop 0258, Poultry Programs, 14th & Independence Avenue SW, Washington, DC 20090-6456
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RIN: 0581–AC25

Department of Agriculture (USDA)
Agricultural Marketing Service (AMS) — **Final Rule Stage**

185. HASS AVOCADO PROMOTION, RESEARCH, AND INFORMATION ORDER (FV-01-705)

Priority: Routine and Frequent

Legal Authority: 7 USC 7801 to 7813

CFR Citation: 7 CFR 1219

Legal Deadline: None

Abstract: Under the Hass Avocado Promotion, Research, and Information Order, an industry board appointed by the Secretary of Agriculture will conduct a program of promotion, research, and information in order to increase consumption of fresh Hass avocados in the United States. Domestic producers and importers will pay an assessment of 2.5 cents per pound on the fresh Hass avocados they produce and import, respectively, to fund the program. The board will be supervised by USDA and pay a user fee to USDA to cover the cost of USDA oversight.

Timetable:

Action	Date	FR Cite
NPRM	07/13/01	66 FR 36869
NPRM Comment Period End	08/27/01	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Margaret B. Irby, Assistant Branch Chief, Department of Agriculture, Agricultural Marketing Service, Stop 0244, Fruit & Vegetable Programs, 14th & Independence Avenue SW, Washington, DC 20250-0244
Phone: 202 720-9915
Fax: 202 205-2800
Email: margaret.irby@usda.gov

RIN: 0581–AB92

186. MANGO PROMOTION, RESEARCH, AND INFORMATION ORDER (FV-01-707)

Priority: Routine and Frequent

Legal Authority: 7 USC 7411 through 7425

CFR Citation: 7 CFR 1206

Legal Deadline: None

Abstract: Under the Mango Promotion, Research, and Information Order (Order), an industry board appointed by the Secretary of Agriculture will conduct a program of promotion, research, and information in order to increase consumption of mangos in the United States. Domestic handlers and importers will pay an assessment of one half cent per pound on the mangos they handle and import, respectively, to fund the program. The board will be supervised by USDA and pay a user fee to USDA to cover the cost of USDA oversight.

Timetable:

Action	Date	FR Cite
NPRM	08/26/02	67 FR 54920
NPRM Comment Period End	10/25/02	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Margaret B. Irby, Assistant Branch Chief, Department of Agriculture, Agricultural Marketing Service, Stop 0244, Fruit & Vegetable Programs, 14th & Independence Avenue SW, Washington, DC 20250-0244
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Email: margaret.irby@usda.gov

RIN: 0581–AC05

187. • FLUE-CURED TOBACCO ADVISORY COMMITTEE: AMENDMENT TO REGULATIONS (TB-02-14)

Priority: Info./Admin./Other

Legal Authority: 5 USC (App.) Departmental Regulation 1042-52

CFR Citation: 7 CFR 29

Legal Deadline: None

Abstract: This action amends the Flue-cured Tobacco Advisory Committee regulations by removing the sections that reference composition and representation on the Committee. Removal of these regulations will eliminate lengthy rulemaking procedures and will allow the Committee to react more quickly to new marketing changes or shifts in the industry to maintain an orderly marketing system.

Timetable:

Action	Date	FR Cite
Final Action (Direct Final)	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John P. Duncan III, Deputy Administrator, Department of Agriculture, Agricultural Marketing Service, Ag Code 0280, Tobacco Programs, Room 502 Annex Bldg., P.O. Box 96456, Washington, DC 20090-6456
Phone: 202 205-0567
Fax: 202 205-0235
Email: john.duncan3@usda.gov

RIN: 0581–AC11

USDA—AMS — **Final Rule Stage**

188. • QUALITY SYSTEMS VERIFICATION PROGRAM (LS-02-10)

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1621

CFR Citation: 7 CFR 62

Legal Deadline: None

Abstract: The Agricultural Marketing Service is moving the responsibility for the administration of the Quality Systems Certification program from the Livestock and Seed Program's Meat Grading and Certification Branch, to the Audit, Review, and Compliance Branch; establishing a new user-fee schedule for the program; expanding the scope of the program to include all agricultural commodities; and changing the name of the program to the Quality Systems Verification Program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: James L. Riva, Chief, Audit, Review, and Compliance Branch, Department of Agriculture, Agricultural Marketing Service, STOP 0252, Room 2627-South, USDA, AMS, LS, ARC Branch, 1400 Independence Avenue SW, Washington, DC 20250-2052
Phone: 202 720-1124
Fax: 202 690-3428
Email: james.riva@usda.gov

RIN: 0581–AC12

189. • NATIONAL ORGANIC PROGRAM, AMENDMENT TO THE NATIONAL LIST OF ALLOWED AND PROHIBITED SUBSTANCES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 6501 through 6522

CFR Citation: 7 CFR 205

Legal Deadline: None

Abstract: This action would add substances to the National List of Allowed and Prohibited Substances recommended by the National Organic Standards Board.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Richard H. Mathews, Program Manager, Department of Agriculture, Agricultural Marketing Service, Rm. 2510-South, 14th & Independence Avenue SW, Washington, DC 20250
Phone: 202 720-3252
Fax: 202 205-7808
Email: richard.mathews@usda.gov

RIN: 0581–AC19

190. • TOBACCO INSPECTION: MANDATORY GRADING (TB-02-11)

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: Section 759 of the Agriculture, Rural Development, Food and Drug Administration; and Related Agencies Appropriations Act for 2002 (Pub. L. 107-76)

CFR Citation: 7 CFR 29

Legal Deadline: None

Abstract: This rule will administer mandatory grading for kinds of tobacco approved by a majority of producers voting in referenda required under section 759 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for 2002 (Pub. L. 107-76) (Appropriations Act). The amended regulation will provide mandatory grading for these types of tobacco as places other than designated tobacco auction markets. The amended regulations will include non-auction tobacco sold at locations (receiving stations) where tobacco is offered for marketing or shipment into commerce. The fees for providing this service would be established in the same manner as user fees for grading of tobacco sold at auction authorized under the Tobacco Inspection Act. The amended regulations must be made effective by June 1, 2002, at the beginning of the tobacco marketing season to fulfill the requirements of the statute to implement mandatory grading.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/23/02	67 FR 36079
Interim Final Rule Effective	05/24/02	
Interim Final Rule Comment Period End	07/22/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John P. Duncan III, Deputy Administrator, Department of Agriculture, Agricultural Marketing Service, Ag Code 0280, Tobacco Programs, Room 502 Annex Bldg., P.O. Box 96456, Washington, DC 20090-6456
Phone: 202 205-0567
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Email: john.duncan3@usda.gov

RIN: 0581–AC20

191. • ESTABLISHMENT OF MINIMUM QUALITY AND HANDLING STANDARDS FOR DOMESTIC AND IMPORTED PEANUTS MARKETED IN THE U.S. AND TERMINATION OF THE PEANUT MARKETING AGREEMENT AND ASSOCIATED RULES AND REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-171

CFR Citation: 7 CFR 996; 7 CFR 997; 7 CFR 998; 7 CFR 999

Legal Deadline: None

Abstract: Under this rule, mandated by the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171), a new part 996 is established which requires that all domestic and imported peanuts marketed in the U.S. be officially inspected. This rule also establishes handling standards that handlers and importers must follow and edible standards that all such peanuts intended for edible use must meet prior to entering human consumption channels. Safeguards to protect against peanut quality concerns are also specified. This rule also terminates Peanut Marketing Agreement No. 146 and its implementing rules and regulations and the companion regulations that apply to imported peanuts and peanuts handled by persons not subject to the Agreement.

USDA—AMS — **Final Rule Stage**

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

Federalism: Undetermined

Agency Contact: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Department of Agriculture, Agricultural Marketing Service, 14th & Independence Avenue SW, Washington, DC 20250
Phone: 202 720-2491
Email: ronald.cioffi@usda.gov

RIN: 0581–AC23

Department of Agriculture (USDA) / Agricultural Marketing Service (AMS) — Long-Term Actions

192. COTTON FUTURES ACT: CHANGING THE DESTINATION OF SPOT MARKETS (CN-01-004)

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 27

Timetable:

Action	Date	FR Cite
NPRM	07/23/02	67 FR 48050
NPRM Comment Period End	09/23/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Norma Randall McDill
Phone: 202 720-3193
Fax: 202 690-1718
Email: norma.mcdill@usda.gov

RIN: 0581–AC00

193. • VOLUNTARY EGG, POULTRY, AND RABBIT GRADING, INCREASE IN FEES AND CHARGES (PY-02-002)

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1621 through 1627

CFR Citation: 7 CFR 56; 7 CFR 70

Legal Deadline: None

Abstract: The Agricultural Marketing Service is increasing the fees and charges for Federal voluntary egg, poultry, and rabbit grading to cover increase in salaries of Federal employees, salary increases of State employees cooperatively utilized in administering the program, and other increased Agency costs.

Timetable:

Action	Date	FR Cite
NPRM	07/26/02	67 FR 48816
NPRM Comment Period End	08/26/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rex A. Barnes, Chief, Grading Branch, Department of Agriculture, Agricultural Marketing Service, Stop 0258, Poultry Programs, 14th & Independence Avenue SW, Washington, DC 20090-6456
Phone: 202 720-3271
Fax: 202 690-3165
Email: rex.barnes@usda.gov

RIN: 0581–AC10

194. • REMOVAL OF COTTONSEED CHEMIST LICENSING PROGRAM AND FEES (ST-02-03)

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1622 through 1624

CFR Citation: 7 CFR 96

Legal Deadline: None

Abstract: The Agricultural Marketing Service (AMS) is removing the Cottonseed Chemist Licensing Program. The AMS budget office performed a budget analysis that indicated that even by economizing at every opportunity, the program will fail to maintain sufficient revenue.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James V. Falk, Scientist, Department of Agriculture, Agricultural Marketing Service, Room 3521-South, Technical Services Branch, P.O. Box 96456, Room 3523-south, Washington, DC 20090-6456
Phone: 202 690-4089
Fax: 202 720-6496
Email: james.falk@usda.gov

RIN: 0581–AC18

Department of Agriculture (USDA) / Agricultural Marketing Service (AMS) — Completed Actions

195. GENERAL SPECIFICATIONS FOR DAIRY PLANTS APPROVED FOR USDA INSPECTION AND GRADING

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 58

Completed:

Reason	Date	FR Cite
Final Action	07/29/02	67 FR 48971
Final Action Effective	08/28/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Duane R. Spomer
Phone: 202 720-7473
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RIN: 0581–AB59

USDA—AMS — **Completed Actions**

196. REVISION OF USER FEES FOR 2002 CROP COTTON CLASSIFICATION SERVICES

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 28

Completed:

Reason	Date	FR Cite
NPRM	04/19/02	67 FR 19357
Final Action	05/24/02	67 FR 36501
Final Action Effective	07/01/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Norma Randall McDill
Phone: 202 720-3193
Fax: 202 690-1718
Email: norma.mcdill@usda.gov

RIN: 0581–AC04

197. ESTABLISHING A LAMB PROMOTION, RESEARCH, AND INFORMATION ORDER (LS-01-12)

Priority: Routine and Frequent

CFR Citation: 7 CFR 1280

Completed:

Reason	Date	FR Cite
Final Action	04/11/02	67 FR 17847

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: Marlene M. Betts
Phone: 202 720-1111

RIN: 0581–AC06

198. • FLUID MILK PROMOTION PROGRAM (DA-02-02)

Priority: Routine and Frequent

Legal Authority: 7 USC 6401 et seq

CFR Citation: 7 CFR 1160

Legal Deadline: Final, Statutory, August 11, 2002, Final Rule to be implemented at beginning of the month.

Abstract: Recently enacted Farm Security and Rural Investment of 2002 (2002 Farm Bill) mandated that the Secretary of Agriculture implement certain amendments—within 90-days after passage of the Act (by 8/11/02)—to amend the Fluid Milk Promotion Act of 1990.

Timetable:

Action	Date	FR Cite
Final Action	08/01/02	67 FR 49857

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Jamison, Chief, Promotion and Research Branch, Department of Agriculture, Agricultural Marketing Service, Stop 0233, Dairy Progams, 1400 Independence Avenue SW, Washington, DC 20250-0233
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RIN: 0581–AC14

BILLING CODE 3410–02–S

Department of Agriculture (USDA)
Farm Service Agency (FSA) — **Proposed Rule Stage**

199. REGULATORY STREAMLINING OF THE FARM SERVICE AGENCY'S DIRECT FARM LOAN PROGRAMS

Priority: Other Significant

Legal Authority: 5 USC 301; 7 USC 1989; 42 USC 1480

CFR Citation: 7 CFR 7; 7 CFR 18

Legal Deadline: None

Abstract: The Farm Service Agency's (FSA's) direct farm loan programs are still using the regulations and handbooks from the former Farmers Home Administration, and still share many of its regulations, forms, and handbooks with the Rural Housing Service, Rural Utilities Service, and the Rural Business-Cooperative Service. This is very cumbersome and confusing to both Agency employees and the general public. This action will move all the direct farm loan program regulations from 7 CFR chapter 18 to 7 CFR chapter 7 and will allow FSA the opportunity to rewrite and re-engineer its direct farm loan program regulations. This action also consolidates a number of actions that were previously included in the regulatory agenda under separate RINs: 0560-AE04, 0560-AE07, 0560-AE09, 0560-AE11, 0560-AE13, 0560-AE14, 0560-AE15, 0560-AE37, 0560-AE87, 0560-AE88, 0560-AE90, 0560-AE98, and 0560-AE99.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mr. Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, Room 0339 South Building, MS 0572, 1400 Independence Avenue SW, Washington, DC 20250-0572
Phone: 202 205-5851
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Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AF60

200. • PRODUCER DISQUALIFICATION FOR CROP INSURANCE FRAUD

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-224

CFR Citation: 7 CFR 1405

Legal Deadline: None

Abstract: This rule implements the provisions of the Agricultural Risk Protection Act of 2000 (ARPA) that provide for producer disqualification for crop insurance fraud. In case of a violation committed by a producer, the producer may be disqualified for a period of up to 5 years from receiving any monetary or non-monetary benefits under ARPA, the Agricultural Market Transition Act, the Agricultural Act of 1949, the Commodity Credit Corporation Charter Act, the Agricultural Adjustment Act of 1938, title XII of the Food Security Act of 1985, the Consolidated Farm and Rural Development Act of 1938, or any law that provides assistance affected by a crop loss or falling prices. The Secretary has discretion to consider the severity of a violation in determining whether to impose a sanction and the amount of the sanction.

Timetable:

Action	Date	FR Cite
NPRM	09/12/02	67 FR 57759
NPRM Comment Period End	11/12/02	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Sectors Affected: 111 Crop Production

Agency Contact: Phillip Elder, Agricultural Economist, Department of Agriculture, Farm Service Agency, MS 0572, 1400 Indepenedence Avenue SW, Washington, DC 20250
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RIN: 0560–AG70

USDA—FSA — **Proposed Rule Stage**

201. • 2002 FARM BILL REGULATIONS—LOAN ELIGIBILITY WITH PRIOR DEBT FORGIVENESS

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-171

CFR Citation: 7 CFR 1941

Legal Deadline: None

Abstract: This action will seek to clarify language needed to implement the 2002 Farm Bill provisions relating to borrowers who received debt forgiveness and a change in the eligibility requirements for direct farm ownership loans: (1) The legislation provides that borrowers who received debt forgiveness may also be eligible for new direct or guaranteed operating loans if forgiveness resulted from a declared major emergency or natural disaster. However, besides areas designated as natural disasters, low-interest emergency loans are also available in areas under plant or animal quarantines. This rule will obtain public comments on the types of emergencies or natural disasters to be considered eligible. (2) The legislation changes an eligibility requirement for direct farm ownership loans from persons who "operated" a farm to persons who "participated in the operation of" a farm. This rule will obtain public comments on the meaning of the new term. The expected cost is minimal.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mr. Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, Room 0339 South Building, MS 0572, 1400 Independence Avenue SW, Washington, DC 20250-0572
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RIN: 0560–AG81

Department of Agriculture (USDA)
Farm Service Agency (FSA) — **Final Rule Stage**

202. • 2002 FARM BILL REGULATIONS—CONSERVATION RESERVE PROGRAM

Priority: Economically Significant

Legal Authority: PL 107-171

CFR Citation: 7 CFR 701; 7 CFR 1410

Legal Deadline: Final, Statutory, August 10, 2002.

Abstract: This action will implement the 2002 Farm Bill provisions relating to the Conservation Reserve Program (CRP). The legislation re-authorized the CRP through 2007. Major changes include increasing the acreage cap to 39.2 million acres, allowing for managed haying and grazing, expanding the Farmable Wetlands Pilot Program to all States, and redefining eligible land to include a fixed cropping history requirement four out of the prior 6 years. Increased spending of $1.5 billion over 10 years is expected.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mr. Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, Room 0339 South Building, MS 0572, 1400 Independence Avenue SW, Washington, DC 20250-0572
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RIN: 0560–AG74

203. • 2002 FARM BILL REGULATIONS—GENERAL CREDIT PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-171

CFR Citation: 7 CFR 762; 7 CFR 764; 7 CFR 774; 7 CFR 1924; 7 CFR 1943; 7 CFR 1951; 7 CFR 1955; 7 CFR 1956; 7 CFR 1962; 7 CFR 1065

Legal Deadline: None

Abstract: This action will implement the 2002 Farm Bill provisions relating to farm credit as follows: Eligibility time limits on Farm Service Agency (FSA) direct and guaranteed farm operating loans can be waived for a period of time and more farmers can qualify for FSA emergency loan financing; interest-rate assistance on guaranteed operating loans is made permanent; and annual authorized loan amounts increase. Beginning farmer and rancher programs are enhanced. Lending procedures are streamlined, including raising the threshold for which lenders can submit reduced documentation on loan guarantee applications. No significant changes in expenditures are expected.

USDA—FSA — **Final Rule Stage**

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0560–AG78

Department of Agriculture (USDA)
Farm Service Agency (FSA) — **Long-Term Actions**

204. AMENDMENTS TO THE STANDARDS FOR APPROVAL OF WAREHOUSE FOR COMMODITY CREDIT CORPORATION STORAGE CONTRACTS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1421; 7 CFR 1423; 7 CFR 1427

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0560–AE50

205. DELETION OF FSA REGULATIONS REGARDING COLORADO RIVER BASIN SALINITY CONTROL PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 702; 7 CFR 703; 7 CFR 752

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AE54

206. AMENDMENTS TO THE DEBT SETTLEMENT POLICIES AND PROCEDURES TO CONFORM TO THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

Priority: Other Significant

CFR Citation: 7 CFR 792; 7 CFR 1403; 7 CFR 1404

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0560–AF22

207. AMENDMENTS TO THE CONSERVATION RESERVE PROGRAM REGULATIONS REGARDING LAND ELIGIBILITY

Priority: Other Significant

CFR Citation: 7 CFR 1410

Timetable:

Action	Date	FR Cite
NPRM	12/06/01	66 FR 63339
NPRM Comment Period End	02/04/02	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0560–AF77

208. EMERGENCY CONSERVATION PROGRAM

Priority: Other Significant

CFR Citation: 7 CFR 701

Timetable:

Action	Date	FR Cite
NPRM	08/01/02	67 FR 49879
NPRM Comment Period End	09/30/02	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG26

209. INTEREST ASSISTANCE PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 762

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0560–AG46

210. OCEAN FREIGHT CLAIMS ADMINISTRATIVE APPEAL PROCESS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1405; 7 CFR 1499; 22 CFR 211

USDA—FSA — **Long-Term Actions**

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG49

211. ELIMINATION OF 30-DAY PAST-DUE PERIOD FOR FARM LOAN PROGRAM BORROWERS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1951

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG50

212. TOBACCO MARKETING QUOTAS, CARDS, PENALTY PROVISIONS, RECORDKEEPING AND REPORTING

Priority: Other Significant

CFR Citation: 7 CFR 723

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG52

213. RESCHEDULING GUARANTEED LOANS WITH BALLOON PAYMENTS, CLARIFICATION OF ANNUAL ANALYSIS REQUIREMENTS FOR GUARANTEED LENDERS, AND SUBORDINATION REQUIREMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 762

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG53

214. AMENDMENT TO THE REGULATIONS FOR DETERMINING ACREAGE FOR SKIP-ROW COTTON

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 718.107

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG55

215. PROMPT DISASTER SET-ASIDE CONSIDERATION AND PRIMARY LOAN SERVICING

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1951

Timetable:

Action	Date	FR Cite
NPRM	06/20/02	67 FR 41869
NPRM Comment Period End	08/19/02	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG56

216. 2002-CROP MARKETING QUOTAS AND PRICE SUPPORT LEVELS FOR FIVE KINDS OF TOBACCO

Priority: Other Significant

CFR Citation: 7 CFR 723; 7 CFR 1464

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG58

217. 2002-CROP MARKETING QUOTA AND PRICE SUPPORT LEVEL FOR BURLEY TOBACCO

Priority: Other Significant

CFR Citation: 7 CFR 723; 7 CFR 1464

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG59

218. 2002-CROP MARKETING QUOTA AND PRICE SUPPORT LEVEL FOR FLUE-CURED TOBACCO

Priority: Other Significant

CFR Citation: 7 CFR 723; 7 CFR 1464

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG60

219. SERVICING MINOR FARM LOAN PROGRAM LOANS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 772; 7 CFR 1901-E; 7 CFR 1942-A; 7 CFR 1951-E and F; 7 CFR 1956-C

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG67

220. • 2002 FARM BILL REGULATIONS—DIRECT AND COUNTER-CYCLICAL PAYMENTS

Priority: Economically Significant

Legal Authority: PL 107-171

CFR Citation: 7 CFR 1412

Legal Deadline: Final, Statutory, August 10, 2002.

Abstract: This action will implement the 2002 Farm Bill provisions relating to direct and counter-cyclical payments for commodities, including peanuts, and for white winter wheat incentive payments. Specific provisions are as follows: Establishment of base acres and payment acres for a farm; Establishment of payment yield; Availability of direct payments; Availability of counter-cyclical payments; Relation to remaining payment authority under production flexibility contracts; Establishment of payment yield and base acres for peanuts for a farm; Availability of direct payments for peanuts; Availability of counter-cyclical payments for peanuts; Producer agreement required as condition on provision of direct payments and counter-cyclical payments; Planting flexibility; Administration generally; Availability of incentive payments for certain producers. (See the attached sheets for detailed information.)

Expected Cost: Total outlays, exclusive of the peanut quota buyout are expected to be about $10.9billion per year. The peanut quota buyout is expected to cost about $1.3 billion total for the years 2003 - 2006.

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mr. Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, Room 0339 South Building, MS 0572, 1400 Independence Avenue SW, Washington, DC 20250-0572
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RIN: 0560–AG71

221. • 2002 FARM BILL REGULATIONS—ASSISTANCE FOR LIVESTOCK PRODUCERS

Priority: Other Significant

Legal Authority: PL 107-171

CFR Citation: 7 CFR 1439

Legal Deadline: None

Abstract: The Secretary may provide assistance to dairy and other livestock producers to cover economic losses incurred by such producers in connection with the production of livestock. The assistance may be: (1) Indemnity payments to livestock producers who incur livestock mortality losses; (2) Livestock feed assistance to livestock producers affected by shortages of feed; (3) Compensation for sudden increases in production costs; and (4) Such other assistance, and for such other economic losses, as the Secretary considers appropriate. The legislation provides that funding will be appropriated "as may be necessary to carry out" the program. For comparison, outlays in FY 2001 for the Livestock Assistance, Pasture Recovery, American Indian Livestock Feed and Livestock Indemnity Programs totaled $480 million.

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0560–AG76

222. • 2002 FARM BILL REGULATIONS—ACREAGE REPORTING AND COMMON PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-171

CFR Citation: 7 CFR 718

Legal Deadline: Final, Statutory, August 10, 2002.

Abstract: This action will implement the 2002 Farm Bill provisions relating to 1) acreage reports, which the Secretary shall require producers on a farm to submit as a condition on the receipt of direct or counter-cyclical payments or marketing assistance loans or loan deficiency payments, to the Secretary annual acreage reports; 2) producer agreements to be in compliance with conservation and other requirements in order to be eligible for direct and counter-cyclical payments; 3) transfers or changes of interest in a farm; 4) sharing of payments; and 5) for the 2002 crop only, special farm reconstitutions, in lieu of lease and transfer of allotments and quotas for flue-cured tobacco. Costs will be minimal.

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0560–AG79

223. • 2002 FARM BILL REGULATIONS—EQUITABLE RELIEF

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-171

CFR Citation: 7 CFR 718

Legal Deadline: Final, Statutory, August 10, 2002.

Abstract: This action will implement the 2002 Farm Bill provisions relating to equitable relief, by which the Secretary may provide relief to any participant that is determined not to be in compliance with the requirements of a covered program, and therefore ineligible for a loan, payment, or other benefit under the covered program, if the participant (1) acting in good faith, relied on the action or advice of the Secretary (including any authorized representative of the Secretary) to the detriment of the participant; or (2) failed to comply fully with the requirements of the covered program, but made a good faith effort to comply with the requirements. The Secretary may authorize a participant in a covered program to (1) retain loans, payments, or other benefits received under the covered program; (2) continue to receive loans, payments, and other benefits under the covered program; (3) continue to participate, in whole or in part, under any contract executed under the covered program; (4) in the case of a conservation program, re-enroll all or part of the land covered by the program; and (5) receive such other equitable relief as the Secretary determines to be appropriate. Cost is expected to be minimal due to low incidence of cases and low dollar amounts of relief.

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mr. Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, Room 0339 South Building, MS 0572, 1400 Independence Avenue SW, Washington, DC 20250-0572
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RIN: 0560–AG80

224. • 2002 FARM BILL REGULATIONS—TREE ASSISTANCE PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-171

CFR Citation: 7 CFR 783

Legal Deadline: None

Abstract: This action will implement the 2002 Farm Bill provisions relating to assistance to orchardists who lost trees as a result of a natural disaster. "Natural disaster" means plant disease, insect infestation, drought, fire, freeze, flood, earthquake, lightning, and other occurrence, as determined by the Secretary. Eligible "trees" include trees, bushes, and vines. Eligible losses will be those losses in excess of 15 percent mortality. Reimbursement will be 75 percent of the cost of re-planting the eligible loss, or at the Secretary's option, sufficient seedlings to replant the stand. Total assistance is limited to $75,000 per person or equivalent value in seedlings, and the total acreage a person can receive payments on is 5,000 acres. There are authorized to be appropriated such sums as are necessary to carry out the program. In the last TAP program (1998), net outlays were 20.7 million dollars, and were before there were payment limitations.

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mr. Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, Room 0339 South Building, MS 0572, 1400 Independence Avenue SW, Washington, DC 20250-0572
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RIN: 0560–AG83

225. • 2002 FARM BILL REGULATIONS—BIOENERGY PROGRAM

Priority: Other Significant

Legal Authority: PL 107-171

CFR Citation: 7 CFR 1424

Legal Deadline: None

Abstract: This action will implement the 2002 Farm Bill provisions for the Bioenergy Program. The legislation required the continuation of the program and made several changes: 1) Modification of the biodiesel definition, 2) expansion of the list of eligible commodities, including some grasses, fats, oils and greases and animal by-products, and 3) allowing producers to enter into multi-year contracts for program payments. The legislation authorizes up to $150 million per fiscal year through FY 2006. $0 is specifically provided for 2007.

Timetable:

Action	Date	FR Cite
NPRM	10/01/02	67 FR 61565
NPRM Comment Period End	10/31/02	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mr. Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, Room 0339 South Building, MS 0572, 1400 Independence Avenue SW, Washington, DC 20250-0572
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RIN: 0560–AG84

226. • 2002 FARM BILL REGULATIONS—INCOME LIMITS

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-171

CFR Citation: 7 CFR 1400

Legal Deadline: Final, Statutory, August 10, 2002.

Abstract: This action will implement the 2002 Farm Bill provisions relating to gross income limitations for direct and counter-cyclical payments and marketing loan and loan deficiency payments. The new provisions are effective for 2003 and subsequent crop years. A $2.5 million limitation will be applied to individuals and entities who derive less than 75 percent of their average adjusted income from farming, ranching, or forestry operations, as determined by the Secretary. These individuals or entities will be ineligible to receive direct and counter-cyclical payments, marketing loan gains and loan deficiency payments and certain conservation payments. The 2002 Act does not define "individual," but does define an "entity." Under the statute an "entity" is a corporation, joint stock company, association, limited partnership, charitable organization, or other similar entity (as determined by the Secretary), including any such entity or organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar entity (as determined by the Secretary). The gross income limit will result in savings about $23 million for 2002 to 2006.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mr. Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, Room 0339 South Building, MS 0572, 1400 Independence Avenue SW, Washington, DC 20250-0572
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RIN: 0560–AG86

Department of Agriculture (USDA)
Farm Service Agency (FSA)

Completed Actions

227. MEDIATION; AGRICULTURAL LOAN MEDIATION PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1946 subpart A

Completed:

Reason	Date	FR Cite
Final Action	09/10/02	67 FR 57309

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State

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RIN: 0560–AE26

228. NONINSURED CROP DISASTER ASSISTANCE PROGRAM REGULATIONS FOR THE 2001 AND SUCCEEDING CROP YEARS

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 7 CFR 1437

Completed:

Reason	Date	FR Cite
Final Action	03/19/02	67 FR 12446
Interim Final Rule Comment Period End	04/19/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0560–AG20

229. CONSERVATION OF FARMABLE WETLANDS

Priority: Other Significant

CFR Citation: 7 CFR 1410

Completed:

Reason	Date	FR Cite
Final Action	05/02/01	66 FR 22098

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0560–AG38

230. TOBACCO LOSS ASSISTANCE PROGRAM AND AMENDMENTS TO THE TOBACCO MARKETING QUOTA REGULATIONS

Priority: Other Significant

CFR Citation: 7 CFR 1464

Completed:

Reason	Date	FR Cite
Final Action	10/23/01	66 FR 53507

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0560–AG40

231. COLLECTING GUARANTEED LOSS PAYMENTS FROM FSA FARM LOAN PROGRAM BORROWERS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 762

Completed:

Reason	Date	FR Cite
Final Action	07/01/02	67 FR 44015

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0560–AG44

232. IMPLEMENTATION OF THE U.S. WAREHOUSE ACT OF 2000

Priority: Other Significant

CFR Citation: 7 CFR 735 to 742

Completed:

Reason	Date	FR Cite
Final Action	08/05/02	67 FR 50778

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0560–AG45

233. HORSE BREEDER LOANS

Priority: Other Significant

CFR Citation: 7 CFR 764 and 775

Completed:

Reason	Date	FR Cite
Notice	07/05/02	67 FR 44799

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0560–AG62

234. APPLE MARKET LOSS PAYMENT PROGRAM II

Priority: Other Significant

CFR Citation: 7 CFR 1470

Completed:

Reason	Date	FR Cite
NPRM	07/19/02	67 FR 47477
Final Action	09/12/02	67 FR 57719

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0560–AG63

235. LIMITATIONS ON AMOUNT OF GUARANTEED FARM OWNERSHIP AND OPERATING LOANS

Priority: Other Significant

CFR Citation: 7 CFR 762; 7 CFR 761

Completed:

Reason	Date	FR Cite
Final Action	06/18/02	67 FR 41311

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0560–AG64

236. SALE AND PURCHASE OF FLUE-CURED TOBACCO ACROSS COUNTY LINES (FLORIDA AND GEORGIA)

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 723

Completed:

Reason	Date	FR Cite
Final Action	06/18/02	67 FR 41310

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0560–AG68

237. • BOLL WEEVIL ERADICATION LOAN PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1989

CFR Citation: 7 CFR 770; 7 CFR 1941

Legal Deadline: None

Abstract: The purpose of the Boll Weevil Eradication Loan Program is to assist producers, through non-profit and state governmental agencies, in the eradication of the boll weevil from cotton producing states. The current regulations allow only private non-profit organizations to be eligible for a loan from FSA. State-run organizations, with the same organizational and operating staff, boards, goals. and purpose, are currently not authorized to take part in program benefits. Also, eligible applicants must currently document that they are unable to get a loan elsewhere.

This action will make three changes to the regulations. First, State Agencies dedicated to the elimination of the boll weevil and recognized by APHIS will be eligible to secure loan funds through FSA's Boll Weevil Eradication Loan Program. Secondly, eligible applicants will not need to document that they are unable to get a loan elsewhere. And finally, the rule will be moved from 7 CFR 1941, subpart C, to 7 CFR 770.

Timetable:

Action	Date	FR Cite
Final Action	06/24/02	67 FR 59770

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Sectors Affected: 11192 Cotton Farming

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RIN: 0560–AG69

238. • 2002 FARM BILL REGULATIONS—MARKETING ASSISTANCE LOANS AND LOAN DEFICIENCY PAYMENTS; MILK PRICE SUPPORT AND DAIRY MARKET LOSS; APPLE MARKET LOSS

Priority: Economically Significant

Legal Authority: PL 107-171

CFR Citation: 7 CFR 1421; 7 CFR 1425; 7 CFR 1427; 7 CFR 1430; 7 CFR 1434

Legal Deadline: Final, Statutory, August 10, 2002.

Abstract: This action will implement the 2002 Farm Bill provisions relating to commodity loans and loan deficiency payments, including peanuts, and the Milk Price Support Program. Specific provisions are as follows: Loan rates for nonrecourse marketing assistance loans; Term of loans; Repayment of loans; Loan deficiency payments; Payments in lieu of loan deficiency payments for grazed acreage; Special marketing loan provisions for upland cotton; Special competitive provisions for extra long staple cotton; Availability of recourse loans for high moisture feed grains and seed cotton; Marketing assistance loans and loan deficiency payments for peanuts; Milk Price Support Program; National dairy market loss payments;

Dairy export incentive and dairy indemnity programs; Adjustments of loans; Personal liability of producers for deficiencies; Extension of existing administrative authority regarding loans; Market loss assistance for apple producers. Total outlays are expected to be about $6.2 billion per year.

Timetable:

Action	Date	FR Cite
Final Action--7 CFR 1421	10/11/02	67 FR 63506
Final Action Effective--7 CFR 1421	10/08/02	
Final Action--7 CFR 1425, 1427, 1430, and 1434	10/18/02	67 FR 64454
Final Action Effective--7 CFR 1425, 1427, 1430, and 1434	10/15/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mr. Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, Room 0339 South Building, MS 0572, 1400 Independence Avenue SW, Washington, DC 20250-0572
Phone: 202 205-5851
Fax: 202 720-5233
Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG72

239. • 2002 FARM BILL REGULATIONS—SUGAR PROGRAM

Priority: Economically Significant

Legal Authority: PL 107-171

CFR Citation: 7 CFR 1435; 7 CFR 1436

Legal Deadline: Final, Statutory, August 10, 2002.

Abstract: This action will implement the 2002 Farm Bill provisions relating to the Sugar Program, which is re-authorized through FY 2007. The legislation terminates marketing assessments; makes in-process sugars eligible for loans; reinstitutes the "no-cost" provision; grants CCC authority to establish a payment-in-kind program; caps the minimum payment requirement for sugar beet growers; eliminates the forfeiture penalty; provides for storage facility loans; and establishes flexible marketing allotments. A cost savings of $245 million is expected for 2002, and average outlays of $78 million for 2003 to 2006.

Timetable:

Action	Date	FR Cite
Final Action	08/26/02	67 FR 54926

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mr. Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, Room 0339 South Building, MS 0572, 1400 Independence Avenue SW, Washington, DC 20250-0572
Phone: 202 205-5851
Fax: 202 720-5233
Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG73

240. • 2002 FARM BILL REGULATIONS—TERMINATION OF PEANUT MARKET QUOTA PROGRAM AND REVISED FLUE-CURED TOBACCO RESERVE STOCK LEVEL

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-171

CFR Citation: 7 CFR 723; 7 CFR 727

Legal Deadline: Final, Statutory, August 10, 2002.

Abstract: This action will implement the 2002 Farm Bill provisions relating to the termination of the peanut market quota program and the change in the flue-cured tobacco reserve stock level. It will also repeal superseded price support authority. No cost is expected.

Timetable:

Action	Date	FR Cite
Final Action	10/09/02	67 FR 62871

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mr. Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, Room 0339 South Building, MS 0572, 1400 Independence Avenue SW, Washington, DC 20250-0572
Phone: 202 205-5851
Fax: 202 720-5233
Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG75

241. • 2002 FARM BILL REGULATIONS—PAYMENT LIMITS

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-171

CFR Citation: 7 CFR 1400

Legal Deadline: Final, Statutory, August 10, 2002.

Abstract: This action will implement the 2002 Farm Bill provisions relating to payment limitations for direct and counter-cyclical payments and marketing loan and loan deficiency payments. The payment limitations per "person" are as follows: $40,000 for direct payments, $65,000 for counter-cyclical payments and $75,000 for loan deficiency payments and marketing loan gains, for a total amount of $180,000. In addition, the three-entity rule allows receipt of direct and indirect payments through no more than three entities. If an individual receives $180,000 as an individual and also holds 50 percent in two corporations not combined as one "person," the total amount received directly and indirectly would be $360,000. The payment limitation will result in savings of $97 million for 2002 to 2006.

Timetable:

Action	Date	FR Cite
Final Action	10/01/02	67 FR 61468

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mr. Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, Room 0339 South Building, MS 0572, 1400 Independence Avenue SW, Washington, DC 20250-0572
Phone: 202 205-5851
Fax: 202 720-5233
Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG77

242. • 2002 FARM BILL REGULATIONS—SEA GRASS AND SEA OATS ELIGIBILITY FOR THE NON-INSURED DISASTER ASSISTANCE PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-171

CFR Citation: 7 CFR 1437

Legal Deadline: None

Abstract: This action will implement the 2002 Farm Bill provision making oats and sea grass eligible for the Non-Insured Disaster Assistance Program (NAP). Previously, NAP assistance was only available for crops grown for agricultural production or ornamental uses. It was not available for crops grown for conservation purposes. Sea oats, although used for conservation purposes, also had been used for ornamental purposes and was determined to be eligible by CCC. Sea grass was only used for conservation purposes and was not eligible. Expected cost is minimal, due to few participants.

Timetable:

Action	Date	FR Cite
Final Action	10/07/02	67 FR 62323

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mr. Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, Room 0339 South Building, MS 0572, 1400 Independence Avenue SW, Washington, DC 20250-0572
Phone: 202 205-5851
Fax: 202 720-5233
Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG82

243. • 2002 FARM BILL REGULATIONS—APPLE MARKET LOSS ASSISTANCE PAYMENT PROGRAM III

Priority: Other Significant

Legal Authority: PL 107-171

CFR Citation: 7 CFR 1470

Legal Deadline: Final, Statutory, August 10, 2002.

Abstract: This final rule implements the Apple Market Loss Assistance Payment Program III. The program will provide direct payments to apple producers to provide relief due to the low prices received for their 2000 crop.

Timetable:

Action	Date	FR Cite
Final Action	10/11/02	67 FR 63242

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mr. Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, Room 0339 South Building, MS 0572, 1400 Independence Avenue SW, Washington, DC 20250-0572
Phone: 202 205-5851
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Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG85

BILLING CODE 3410-05-S

Department of Agriculture (USDA)
Animal and Plant Health Inspection Service (APHIS)

Prerule Stage

244. POTENTIAL PATHWAYS FOR THE SPREAD OF BOVINE SPONGIFORM ENCEPHALOPATHY IN U.S. LIVESTOCK

Priority: Other Significant

Legal Authority: 7 USC 8301 to 8316

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: We are soliciting public comment to help us develop approaches to control risks that dead stock and nonambulatory animals could serve as potential pathways for the spread of bovine spongiform encephalopathy, if that disease should ever be introduced into the United States. We are also seeking comments on the role of rendering in dead stock disposal. We are publishing this notice to collect information that could help us address animal disease risks associated with nonambulatory animals and dead stock.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/02	
ANPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. Lisa Ferguson, Senior Staff Veterinarian, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 41, Emergency Programs, VS, 4700 River Road, Riverdale, MD 20737-1237
Phone: 301 734-8073

RIN: 0579–AB43

Department of Agriculture (USDA)
Animal and Plant Health Inspection Service (APHIS)

Proposed Rule Stage

245. IMPORTATION OF FUJI VARIETY APPLES FROM THE REPUBLIC OF KOREA

Priority: Other Significant

Legal Authority: 7 USC 166; 7 USC 450; 7 USC 7711 to 7714; 7 USC 7718; 7 USC 7731 to 7732; 7 USC 7751 to 7754; 21 USC 136 to 136a

CFR Citation: 7 CFR 319.56-2cc

Legal Deadline: None

Abstract: This action would amend the regulations that allow Fuji variety apples to be imported into the United States. It would allow Fuji variety apples to be imported from the Republic of Korea under a systems approach, including strict cultural control conditions, from certified orchards. This action is in response to a request from the Republic of Korea.

Timetable:

Action	Date	FR Cite
NPRM	04/26/00	65 FR 24423
NPRM Comment Period End	06/26/00	
NPRM Comment Period Extended	08/22/00	65 FR 50937

Action	Date	FR Cite
NPRM Comment Period End	10/23/00	
Notice of Availability and Request for Comments; Pest Risk Assessment	11/00/02	
Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Wayne D. Burnett, Senior Import Specialist, PIM, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 140, 4700 River Road, Riverdale, MD 20737-1236
Phone: 301 734-6799

RIN: 0579–AA93

246. BLOOD AND TISSUE COLLECTION AT LIVESTOCK SLAUGHTERING ESTABLISHMENTS

Priority: Other Significant

Legal Authority: 7 USC 8301 to 8316

CFR Citation: 9 CFR 71

Legal Deadline: None

Abstract: We are considering establishing requirements for the collection of blood and tissue samples from livestock (horses, cattle, bison, sheep, and swine) and poultry at slaughter establishments when it is necessary for disease surveillance. Under this proposal, any person who moves an animal interstate for slaughter could only move the animal to a slaughter establishment that has been approved by the Administrator. The Administrator would approve a slaughter establishment after determining that it is not necessary to conduct testing at the establishment or determining that it is necessary to conduct testing at the establishment and the establishment provides space and facilities to collect blood and tissue samples for disease testing. This collection of blood and tissue samples would enable us to identify animals at slaughter that are affected by various communicable diseases. This change would affect persons moving animals interstate for slaughter, slaughter plants that receive animals in interstate commerce, and in cases where an animal that tests positive can be successfully traced back to its herd or flock of origin, the owners of such herds or flocks. The long-term effects of this change would be to improve surveillance programs for animal diseases and to contribute to the eventual control or eradication of such diseases.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Dr. Diane Sutton, Senior Staff Veterinarian, VS, National Animal Health Programs, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 43, 4700 River Road, Riverdale, MD 20737-1231
Phone: 301 734-4363

RIN: 0579–AB13

247. PLUM POX COMPENSATION

Priority: Other Significant

Legal Authority: 7 USC 166; 7 USC 7711 to 7712; 7 USC 7714; 7 USC 7731; 7 USC 7735; 7 USC 7751 to 7754; sec 301.75-15 also issued under sec 204, title II, PL 106-113; 113 Stat 1501A-293; sec 301.75-15 and 301.75.16 also issued under sec 203; title II, PL 106-224, 114 Stat 400 (7 USC 1421 note)

CFR Citation: 7 CFR 301.74-5

Legal Deadline: None

Abstract: This rule provides for the payment of compensation to the owners of commercial stone fruit orchards and fruit tree nurseries who had stone fruit trees or nursery stock destroyed in order to control plum pox. The payment of these funds is necessary in order to reduce the economic impact of the plum pox quarantine on affected commercial stone fruit growers and fruit tree nursery owners. APHIS anticipates publishing a proposed rule to address plum pox compensation issues that have arisen since the close of the interim rule's comment period.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/14/00	65 FR 55431
Interim Final Rule Comment Period End	11/13/00	
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Stephen R. Poe, Operations Officer, Program Support Staff, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 134, 4700 River Road, Riverdale, MD 20737-1236
Phone: 301 734-8247

RIN: 0579–AB19

248. BEES, BEEKEEPING BYPRODUCTS, AND BEEKEEPING EQUIPMENT (SECTION 610 REVIEW)

Priority: Other Significant

Legal Authority: 7 USC 166; 7 USC 281; 7 USC 450; 7 USC 7701 to 7772; 21 USC 136 to 136a

CFR Citation: 7 CFR 319; 7 CFR 322

Legal Deadline: None

Abstract: This rule would revise the regulations for the importation of honeybees and honeybee semen. Among other things, it would allow, under certain conditions, the importation into the United States of honeybees from Australia and honeybees and honeybee germ plasm from New Zealand. It also would make these regulations more consistent with standards established by the Office International des Epizooties, update them to reflect current research and terminology, and simplify them and make them more useful.

In addition, the rule would combine the regulations for the importation of honeybees and honeybee semen with the regulations established to prevent the introduction of exotic bee diseases and parasites through the importation of bees other than honeybees, certain beekeeping byproducts, and used beekeeping equipment. This change would make the regulations more useful by consolidating all of the requirements related to the importation of bees, beekeeping byproducts, and used beekeeping equipment into one part.

Timetable:

Action	Date	FR Cite
NPRM	08/19/02	67 FR 53844
NPRM Comment Period End	11/18/02	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Dr. Wayne Wehling, Permits and Risk Assessment, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 141, 4700 River Road, Riverdale, MD 20737-1228
Phone: 301 734-8757

RIN: 0579–AB20

249. VETERINARY DIAGNOSTIC USER FEES—5-YEAR PLAN FOR FEES (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5542; 7 USC 1622; 7 USC 8301 to 8316; 21 USC 136 to 136a; 31 USC 3716 to 3717; 31 USC 3719; 31 USC 3720A; 31 USC 9701

CFR Citation: 9 CFR 130

Legal Deadline: None

Abstract: We are proposing user fees for multiple fiscal years for APHIS' Veterinary Services' veterinary diagnostic user fee goods and services. We are proposing this action in order to ensure that we recover the full costs of providing these goods and services.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Donna Ford, User Fee Section Head, FSSB, BASE, MRPBS, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 140, 4700 River Road, Riverdale, MD 20737-1236
Phone: 301 734-8351

RIN: 0579–AB22

250. SALMONELLA ENTERITIDIS PHAGE-TYPE 4; REMOVE IMPORT RESTRICTIONS

Priority: Other Significant

Legal Authority: 7 USC 450; 7 USC 7711 to 7714; 7 USC 7751; 7 USC 7754; 7 USC 8301 to 8316; 21 USC 136 to 136a; 31 USC 9701; 42 USC 4331 to 4332

CFR Citation: 9 CFR 71; 9 CFR 82; 9 CFR 94

Legal Deadline: None

Abstract: This rule would amend the regulations to remove import restrictions on eggs (other than hatching eggs) of poultry, game birds, and other birds from regions where Salmonella enteritidis phage-type 4 exists. Previously, Salmonella enteritidis phage-type 4 had not been isolated in the United States; therefore, those import restrictions were necessary to help prevent Salmonella enteritidis phage type-4 from being introduced into this country. However, Salmonella enteritidis phage-type 4 is now known to be present in the United States. This action would eliminate restrictions on the importation of eggs from regions where Salmonella enteritidis phage-type 4 exists. This rule would also remove our domestic regulations regarding poultry disease caused by Salmonella enteritidis serotype enteritidis. These regulations are no longer enforced.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dr. Michael David, Asst. Director, Sanitary International Standards Team, NCIE, VS, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 33, 4700 River Road, Riverdale, MD 20737
Phone: 301 734-8093

RIN: 0579–AB31

251. CHRONIC WASTING DISEASE IN ELK AND DEER; INTERSTATE MOVEMENT RESTRICTIONS AND PAYMENT OF INDEMNITY

Regulatory Plan: This entry is Seq. No. 3 in part II of this issue of the **Federal Register**.

RIN: 0579–AB35

252. IMPORTATION OF MILK AND MILK PRODUCTS FROM FMD COUNTRIES

Priority: Other Significant

Legal Authority: 7 USC 450; 7 USC 7711 to 7714; 7 USC 7751; 7 USC 7754; 7 USC 8303; 7 USC 8306; 7 USC 8308; 7 USC 8310 to 8311; 7 USC 8315; 21 USC 136 to 136a; 31 USC 9701; 42 USC 4331 to 4332

CFR Citation: 9 CFR 94

Legal Deadline: None

Abstract: This rule would amend the regulations regarding the importation of animal products to establish additional processing and handling requirements for milk and milk products imported from regions in which foot-and-mouth disease exists. Additionally, it would require that those materials, when imported from regions in which foot-and-mouth disease exists, be accompanied by government certification regarding the production, processing, and handling of the materials. We believe these actions are necessary to ensure that materials containing the foot-and-mouth disease virus are not imported into the United States.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dr. Karen A. James-Preston, Assistant Director, Technical Trade Services Team, NCIE, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Riverdale, MD 20737-1231
Phone: 301 734-8364

RIN: 0579–AB38

253. • IMPORTATION OF SOLID WOOD PACKING MATERIAL; ADOPTION OF INTERNATIONAL STANDARDS

Priority: Other Significant

Legal Authority: 7 USC 166; 7 USC 450; 7 USC 7711 to 7714; 7 USC 7718; 7 USC 7731 to 7732; 7 USC 7751 to 7754; 21 USC 136 to 136a

CFR Citation: 7 CFR 319

Legal Deadline: None

Abstract: This proposed rule would amend the regulations for the importation of unmanufactured wood articles to adopt an international standard entitled "Guidelines for Regulating Wood Packaging Material in International Trade" that was approved by the Interim Commission on Phytosanitary Measures of the International Plant Protection Convention on March 15, 2002. The standard calls for wood packaging

USDA—APHIS — **Proposed Rule Stage**

material to be either heat treated or fumigated with methyl bromide, in accordance with the Guidelines, and marked with an approved international mark certifying treatment. We propose to adopt the IPPC Guidelines because recent analyses of pest interceptions at ports show an increase in pests associated with certain wood packaging material. This increase in pests was found in wood packaging material that does not meet the IPPC Guidelines' (e.g., wood packaging material from everywhere except China, which must already be treated due to past pest interceptions). There has been a decrease in pests associated with wood packaging material from China, however, since we began requiring that material be treated prior to importation. This change would affect all persons using wood packaging material in connection with importing goods into the United States.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Raymond Nosbaum, Senior Regulatory Coordinator, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 131, 4700 River Road, Riverdale, MD 20737-1231
Phone: 301 734-6280

RIN: 0579–AB48

Department of Agriculture (USDA)
Animal and Plant Health Inspection Service (APHIS) — **Final Rule Stage**

254. ANIMAL WELFARE; INSPECTION, LICENSING, AND PROCUREMENT OF ANIMALS (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 2131 to 2159

CFR Citation: 9 CFR 1 to 2

Legal Deadline: None

Abstract: This action would make several amendments to the Animal Welfare Act regulations to clarify them and improve their enforceability. In addition, it would amend a number of administrative procedures to make them more efficient. We believe these actions are necessary to help ensure compliance with the regulations and the Animal Welfare Act.

Timetable:

Action	Date	FR Cite
NPRM	08/04/00	65 FR 47908
NPRM Comment Period End	10/03/00	
NPRM Comment Period Reopened and Extended	10/19/00	65 FR 62650
NPRM Comment Period End	11/20/00	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 84, 4700 River Road, Riverdale, MD 20737-1234
Phone: 301 734-7833

RIN: 0579–AA94

255. PHYTOSANITARY TREATMENT BY IRRADIATION OF IMPORTED FRESH FRUITS AND VEGETABLES

Priority: Other Significant

Legal Authority: 7 USC 166; 7 USC 450; 7 USC 7701 to 7772; 21 USC 136 to 136a

CFR Citation: 7 CFR 305; 7 CFR 319

Legal Deadline: None

Abstract: This rulemaking would establish irradiation as a new treatment alternative for the importation of certain fresh fruits and vegetables. Irradiation would be allowed as an alternative to mitigation measures that are required to control certain species of fruit flies in a variety of imported fruits and vegetables. If this proposal is adopted, importers of certain fruits and vegetables will have an additional alternative to the currently approved treatments, such as fumigation and cold treatment, for treating their articles. No net societal gains and losses other than small price-related changes are expected from this rulemaking.

Timetable:

Action	Date	FR Cite
Policy Statement for Irradiation Treatment of Fresh Fruits and Vegetables	05/15/98	63 FR 24433
NPRM	05/26/00	65 FR 34113
NPRM Comment Period End	07/25/00	
Supplemental NPRM	03/15/02	67 FR 11610
Supplemental NPRM Comment Period End	04/15/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. Inder Paul Gadh, Import Specialist, Phytosanitary Issues Management Team, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 140, 4700 River Road, Riverdale, MD 20737-1236
Phone: 301 734-5210

RIN: 0579–AA97

256. IMPORTATION OF UNMANUFACTURED WOOD ARTICLES FROM MEXICO

Priority: Other Significant

Legal Authority: 7 USC 166; 7 USC 450; 7 USC 7711 to 7714; 7 USC 7718; 7 USC 7731 to 7732; 7 USC 7751 to 7754; 21 USC 136 to 136a

CFR Citation: 7 CFR 319

Legal Deadline: None

Abstract: This action would add restrictions on the importation of pine and fir logs and lumber, as well as other unmanufactured wood articles, from Mexico. These wood articles from Mexico would have to meet certain treatment and handling requirements to be eligible for importation into the United States. We believe this action is necessary to prevent the introduction into the United States of dangerous plant pests, including forest pests, with unmanufactured wood articles from Mexico.

Timetable:

Action	Date	FR Cite
NPRM	06/11/99	64 FR 31512

USDA—APHIS — **Final Rule Stage**

Action	Date	FR Cite
NPRM Comment Period End	08/10/99	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Wayne D. Burnett, Senior Import Specialist, PIM, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 140, 4700 River Road, Riverdale, MD 20737-1236
Phone: 301 734-6799

RIN: 0579–AB02

257. ESTABLISHMENT OF REGIONS IN THE EUROPEAN UNION FOR CLASSICAL SWINE FEVER, FOOT-AND-MOUTH DISEASE, AND SWINE VESICULAR DISEASE

Priority: Other Significant

Legal Authority: 7 USC 450; 7 USC 7711 to 7714; 7 USC 7751; 7 USC 7754; 7 USC 8301 to 8316; 21 USC 136 to 136a; 31 USC 9701; 42 USC 4331 to 4332

CFR Citation: 9 CFR 92; 9 CFR 94; 9 CFR 98

Legal Deadline: None

Abstract: This action would recognize certain regions in the European Union as regions where classical swine fever is not known to exist and from which live swine, swine semen, and pork and pork products may be imported into the United States under certain conditions. Additionally, it would recognize Greece as free of swine vesicular disease and recognize eight regions in Italy as free of swine vesicular disease.

Timetable:

Action	Date	FR Cite
NPRM	06/25/99	64 FR 34155
NPRM Comment Period End	08/24/99	
Notice of Availability of a Risk Assessment	05/03/02	67 FR 22388
Comment Period End	07/17/02	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. S. Anne Goodman, Supervisory Staff Officer, Regionalization Evaluation Services, NCIE, VS, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 38, 4700 River Road, Riverdale, MD 20737-1231
Phone: 301 734-4929

RIN: 0579–AB03

258. NURSERY STOCK REGULATIONS (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 166; 7 USC 450; 7 USC 7711 to 7714; 7 USC 7718; 7 USC 7731 to 7732; 7 USC 7751 to 7754; 21 USC 136 to 136a

CFR Citation: 7 CFR 300; 7 CFR 319

Legal Deadline: None

Abstract: We are proposing to amend the regulations for importing nursery stock to provide additional treatment certifications for the importation of niger seed and lilac, to reflect recent changes in plant taxonomy and pest distributions, and to make various changes to the requirements for postentry quarantine of imported plants. We are also proposing several other amendments to update and clarify the regulations and improve their effectiveness.

Timetable:

Action	Date	FR Cite
NPRM	12/28/01	66 FR 67123
NPRM Comment Period End	02/26/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: William Thomas, Import Specialist, PIM, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 140, 4700 River Road, Riverdale, MD 20737-1236
Phone: 301 734-6799

RIN: 0579–AB23

259. FOOT-AND-MOUTH DISEASE; PAYMENT OF INDEMNITY

Regulatory Plan: This entry is Seq. No. 4 in part II of this issue of the **Federal Register**.

RIN: 0579–AB34

260. INFECTIOUS SALMON ANEMIA; PAYMENT OF INDEMNITY

Priority: Other Significant

Legal Authority: 7 USC 8301 to 8316

CFR Citation: 9 CFR 53

Legal Deadline: None

Abstract: This rule amended the regulations regarding the control and eradication of certain communicable diseases of livestock or poultry to provide for the payment of indemnity to producers in the State of Maine for fish destroyed due to infectious salmon anemia. Because depopulation is necessary to control infectious salmon anemia, a successful control program will provide for indemnification of depopulated fish to gain producer support. This action will, therefore, increase the effectiveness of our efforts to control infectious salmon anemia in Maine and prevent further outbreaks of the disease.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/11/02	67 FR 17605
Interim Final Rule Comment Period End	06/10/02	
Affirmation of Interim Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State

Agency Contact: Dr. Otis Miller Jr., National Aquaculture Coordinator, NAHP, Veterinary Services, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 36, 4700 River Road, Riverdale, MD 20737-1231
Phone: 301 734-8715

RIN: 0579–AB37

261. ANIMAL WELFARE; POLICY ON TRAINING AND HANDLING OF POTENTIALLY DANGEROUS ANIMALS

Priority: Other Significant

Legal Authority: 7 USC 2131 to 2159

CFR Citation: 9 CFR 3

Legal Deadline: None

Abstract: APHIS's Animal Welfare Act regulations require exhibitors and other regulated entities that handle potentially dangerous animals to provide a sufficient number of adequately trained personnel to handle and care for the animals and to provide adequate protection from risk for the general public when animals are exhibited.

APHIS is preparing a final policy statement to provide guidance to

exhibitors and other regulated entities for the training and handling of potentially dangerous animals, adequate experience and training of trainers, handlers, and attendants, and points to consider when developing emergency contingency plans. The final policy statement addresses the comments received in response to our draft policy statement.

Timetable:

Action	Date	FR Cite
Draft Policy Statement	02/18/00	65 FR 8318
Comment Period End	04/18/00	
Final Policy Statement	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 84, 4700 River Road, Riverdale, MD 20737-1234
Phone: 301 734-7833

Related RIN: Previously reported as 0579-AB12

RIN: 0579–AB39

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262. ADDITIONAL RESTRICTIONS ON THE IMPORTATION OF CERTAIN RUMINANT MEAT, MEAT PRODUCTS, AND EDIBLE PRODUCTS OTHER THAN MEAT FROM BSE REGIONS

Priority: Other Significant

Legal Authority: 7 USC 8301 to 8316

CFR Citation: 9 CFR 94; 9 CFR 96

Legal Deadline: None

Abstract: We are amending the regulations governing the importation into the United States of meat and meat products from ruminants and other ruminant products to restrict the importation of meat and meat products from ruminants and certain other ruminant products that were processed or stored in regions where bovine spongiform encephalopathy exists or regions considered to present an undue risk of introducing bovine spongiform encephalopathy into the United States. This action is necessary to ensure that materials containing the bovine spongiform encephalopathy agent are not imported into the United States.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/00/03	
Interim Final Rule Comment Period End	04/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Dr. Donna L. Malloy, Senior Staff Veterinarian, Technical Trade Services, NCIE, VS, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 38, 4700 River Road, Riverdale, MD 20737-1231
Phone: 301 734-3277

RIN: 0579–AB41

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263. BRUCELLOSIS IN SHEEP, GOATS, AND HORSES; PAYMENT OF INDEMNITY (SECTION 610 REVIEW)

Priority: Other Significant

Legal Authority: 7 USC 8301 to 8316

CFR Citation: 9 CFR 51

Legal Deadline: None

Abstract: We are proposing to amend the brucellosis indemnity regulations to allow us to pay indemnity for sheep, goats, and horses destroyed because of brucellosis. This action would make it easier to eliminate affected herds/flocks and infected animals as sources of infection by encouraging herd and flock owners to cooperate with our brucellosis eradication program. This action is intended to help reduce the incidence of brucellosis and the likelihood of it spreading within the United States.

Timetable:

Action	Date	FR Cite
NPRM	09/13/01	66 FR 47593
NPRM Comment Period End	11/13/01	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. Valerie Ragan, Senior Staff Veterinarian, National Animal Health Programs, VS, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 43, 4700 River Road, Riverdale, MD 20737-1231
Phone: 301 734-7708

RIN: 0579–AB42

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264. • LOW PATHOGENIC AVIAN INFLUENZA; PAYMENT OF INDEMNITY

Priority: Other Significant

Legal Authority: 7 USC 8301 to 8316

CFR Citation: 9 CFR 53

Legal Deadline: None

Abstract: We are amending our general indemnity regulations to allow the Department to pay indemnity to contract growers and owners for poultry destroyed because of low pathogenic avian influenza associated with a disease situation in Virginia. The Department will pay all eligible losses of contract growers and up to 50 percent of eligible losses of owners, minus any amount paid to the contract grower of a flock.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Dr. Cheryl Hall, Staff Veterinarian, Planning, Certification, and Monitoring Staff, VS, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 46, 4700 River Road, Riverdale, MD 20737-1231
Phone: 301 734-4924

RIN: 0579–AB46

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265. • BIOLOGICAL AGENTS AND TOXINS

Regulatory Plan: This entry is Seq. No. 5 in part II of this issue of the **Federal Register**.

RIN: 0579–AB47

266. IMPORTATION OF CERTAIN EMBRYOS AND ANIMAL SEMEN (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

CFR Citation: 9 CFR 98

Timetable:

Action	Date	FR Cite
ANPRM	07/08/93	58 FR 36625
ANPRM Comment Period End	09/07/93	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Roger Perkins
Phone: 301 734-8364

RIN: 0579–AA63

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267. PLANT PEST REGULATIONS; UPDATE OF CURRENT PROVISIONS (SECTION 610 REVIEW)

Priority: Other Significant

CFR Citation: 7 CFR 330

Timetable:

Action	Date	FR Cite
ANPRM	09/27/96	61 FR 50767
ANPRM Comment Period End	12/26/96	
NPRM	10/09/01	66 FR 51340
NPRM Comment Period End	02/06/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Flanders
Phone: 301 734-5930

RIN: 0579–AA80

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268. IMPORTATION OF SOLID WOOD PACKING MATERIAL

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 7 CFR 319

Timetable:

Action	Date	FR Cite
ANPRM	01/20/99	64 FR 3049
ANPRM Comment Period End	03/22/99	
Notice	07/07/99	64 FR 36608
Comment Period End	09/07/99	
Notice	10/17/00	65 FR 61301
NPRM	01/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Raymond Nosbaum
Phone: 301 734-6280

RIN: 0579–AA99

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269. HORSE PROTECTION; HORSE INDUSTRY ORGANIZATIONS

Priority: Other Significant

CFR Citation: 9 CFR 11

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jodie Kulpa
Phone: 301 734-7833

RIN: 0579–AB04

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270. PSEUDORABIES IN SWINE; PAYMENT OF INDEMNITY

Priority: Other Significant

CFR Citation: 9 CFR 52

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/12/99	64 FR 2545
Interim Final Rule Comment Period End	04/16/99	
Interim Final Rule	04/18/00	65 FR 20706
Interim Final Rule Comment Period End	06/19/00	
Affirmation of Interim Rules	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Arnold C. Taft
Phone: 301 734-4916

RIN: 0579–AB10

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271. PHYTOSANITARY CERTIFICATES FOR IMPORTED FRUITS AND VEGETABLES

Priority: Other Significant

CFR Citation: 7 CFR 319.56 to 319.56-8

Timetable:

Action	Date	FR Cite
NPRM	08/29/01	66 FR 45637
NPRM Comment Period End	10/29/01	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Wayne D. Burnett
Phone: 301 734-6799

RIN: 0579–AB18

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272. ANIMAL WELFARE: MARINE MAMMALS; NONCONSENSUS LANGUAGE AND INTERACTIVE PROGRAMS

Priority: Other Significant

CFR Citation: 9 CFR 3

Timetable:

Action	Date	FR Cite
ANPRM	05/30/02	67 FR 37731
ANPRM Comment Period End	07/29/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Barbara Kohn
Phone: 301 734-7833

RIN: 0579–AB24

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273. IMPORTATION PROHIBITIONS BECAUSE OF BOVINE SPONGIFORM ENCEPHALOPATHY

Priority: Other Significant

CFR Citation: 9 CFR 94.18; 9 CFR 95.1; 9 CFR 95.4; 9 CFR 95.29 (New)

Timetable:

Action	Date	FR Cite
IRM Retroactively Effective	12/07/00	
Interim Final Rule	08/14/01	66 FR 42595
Sec 95.29 Effective	08/14/01	
Comment Period End	10/15/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Donna L. Malloy
Phone: 301 734-3277

RIN: 0579–AB26

USDA—APHIS

Long-Term Actions

274. ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS; PAYMENT OF INDEMNITY

Priority: Other Significant

CFR Citation: 9 CFR 50

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/20/02	67 FR 7583
Interim Final Rule Comment Period End	04/22/02	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joseph Van Tiem
Phone: 301 734-7716

RIN: 0579–AB29

275. DRAFT ACTION PLAN FOR THE NOXIOUS WEEDS PROGRAM

Priority: Other Significant

CFR Citation: 7 CFR 360

Timetable:

Action	Date	FR Cite
Notice	01/28/02	67 FR 3874
Comment Period End	03/29/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Alan V. Tasker
Phone: 301 734-5225

RIN: 0579–AB30

276. TUBERCULOSIS; INDEMNITY FOR DAIRY CATTLE

Priority: Other Significant

CFR Citation: 9 CFR 50

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/26/02	67 FR 48745
Interim Final Rule Comment Period End	09/24/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joseph Van Tiem
Phone: 301 734-7716

RIN: 0579–AB36

277. AMEND REGULATIONS TO HARMONIZE OUR IMPORT REQUIREMENTS WITH PROPOSED NATIONAL TUBERCULOSIS ERADICATION PROGRAM

Priority: Other Significant

CFR Citation: 9 CFR 93

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: S. Anne Goodman
Phone: 301 734-4929

RIN: 0579–AB44

278. KARNAL BUNT COMPENSATION

Priority: Other Significant

CFR Citation: 7 CFR 301

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/01/02	67 FR 21561
Interim Final Rule Comment Period End	07/01/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert G. Spaide
Phone: 301 734-7819

Related RIN: Related To 0579-AA83

RIN: 0579–AB45

Department of Agriculture (USDA)

Animal and Plant Health Inspection Service (APHIS)

Completed Actions

279. IMPORTATION OF CLEMENTINES FROM SPAIN

Priority: Other Significant

CFR Citation: 7 CFR 300; 7 CFR 319

Completed:

Reason	Date	FR Cite
NPRM	07/11/02	67 FR 45922
Final Action Effective	10/15/02	
Final Action	10/21/02	67 FR 64702

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Inder Paul Gadh
Phone: 301 734-5210

RIN: 0579–AB40

BILLING CODE 3410–34–S

Department of Agriculture (USDA)

Cooperative State Research, Education, and Extension Service (CSREES)

Proposed Rule Stage

280. • MATCHING REQUIREMENTS FOR FORMULA FUNDS FOR AGRICULTURAL RESEARCH AND EXTENSION ACTIVITIES AT THE 1890 LAND-GRANT INSTITUTIONS AND AT THE 1862 LAND-GRANT INSTITUTIONS IN INSULAR AREAS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 361a et seq; 7 USC 341 et seq; 7 USC 1449

CFR Citation: 7 CFR 3419

Legal Deadline: None

Abstract: Passage of the Farm Security and Rural Investment Act of 2002, Sections 7212 and 7213, has changed the matching requirements for the 1890 Land-Grant Institutions and the 1862 Land-Grant Institutions in insular areas. Issues regarding the use of matching funds, sources of matching funds, and matching waivers for the Insular 1862 Land-Grant Institutions need to be clarified.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ellen Danus, Policy Specialist, Department of Agriculture, Cooperative State Research, Education, and Extension Service, STOP 2299, 1400 Independence Avenue SW, Washington, DC 20250-2299
Phone: 202 401-4325
Fax: 202 401-7752
Email: edanus@reeusda.gov

RIN: 0524–AA25

281. • CSREES AGRICULTURAL EXTENSION FORMULA PROGRAMS—ADMINISTRATIVE PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 341 et seq; 7 USC 1444

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Passage of the Farm Security and Rural Investment Act of 2002, sections 7212 and 7213, has resulted in the need for CSREES to clarify its distribution of funding, matching requirements, carryover provisions, and reporting requirements for Extension programs at 1862 Land-Grant Institutions and 1890 Land-Grant Institutions.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ellen Danus, Policy Specialist, Department of Agriculture, Cooperative State Research, Education, and Extension Service, STOP 2299, 1400 Independence Avenue SW, Washington, DC 20250-2299
Phone: 202 401-4325
Fax: 202 401-7752
Email: edanus@reeusda.gov

RIN: 0524–AA26

282. • CSREES AGRICULTURAL RESEARCH FORMULA PROGRAMS—ADMINISTRATIVE PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 361a et seq; 7 USC 1445; 7 USC 1622; 16 USC 582a et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Passage of the Farm Security and Rural Investment Act of 2002, sections 7202, 7204, 7212, and 7213, has resulted in the need for CSREES to clarify its distribution of funding, matching requirements, carryover provisions, and reporting requirements for the Hatch Act funds, Hatch Multi-State Research funds, Evans-Allen Program funds, McIntire-Stennis Cooperative Forestry Act funds, and Animal Health and Disease Research funds.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ellen Danus, Policy Specialist, Department of Agriculture, Cooperative State Research, Education, and Extension Service, STOP 2299, 1400 Independence Avenue SW, Washington, DC 20250-2299
Phone: 202 401-4325
Fax: 202 401-7752
Email: edanus@reeusda.gov

RIN: 0524–AA27

283. • CSREES NON-FORMULA GRANT PROGRAMS—ADMINISTRATIVE PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 450i; PL 101-624; PL 105-185; PL 104-127; ...

CFR Citation: 7 CFR 3427; 7 CFR 3400; 7 CFR 3402; 7 CFR 3405; 7 CFR 3406; ...

Legal Deadline: None

Abstract: CSREES plans to propose one administrative provision that contains the elements common to all of the competitive and noncompetitive grant programs it administers. In a relatively short period of time, this will allow the Agency to apply basic rules to grant programs that are currently operating without them, including new non-formula grant programs created by the passage of the Farm Security and Rural Investment Act of 2002.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Erin Daly, Policy Specialist, Department of Agriculture, Cooperative State Research, Education, and Extension Service, STOP 2299, 1400 Independence Avenue SW, Washington, DC 20250-2299
Phone: 202 401-3319
Fax: 202 401-7752
Email: edaly@reeusda.gov

RIN: 0524–AA28

BILLING CODE 3410–09–S

Department of Agriculture (USDA)
Rural Housing Service (RHS)

Proposed Rule Stage

284. CIVIL RIGHTS COMPLIANCE REQUIREMENTS—1901-E TO 1940-D

Priority: Other Significant

Legal Authority: PL 100-259; 29 USC 794; PL 94-135; 42 USC 6101 et seq; PL 94-239; 15 USC 1601 et seq; EO 11246; PL 88-352; 42 USC 2000d et seq; PL 90-284; 42 USC 3601 to 3619; PL 100-430; PL 92-318; 20 USC 1681 et seq; PL 93-112; EO 12898

CFR Citation: 7 CFR 15; 12 CFR 202; 28 CFR 42; 45 CFR 90; 41 CFR 60 to 64; 24 CFR 14; 7 CFR 1940 subpart D; 7 CFR 1901 subpart E

Legal Deadline: None

Abstract: This ruling will effectuate a comprehensive civil rights regulation implementing the following laws: The Equal Credit Opportunity Act (ECOA); title VI of the Civil Rights Act of 1964; title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (The Fair Housing Act); section 504 Federally Conducted and Federally Assisted Programs; title IX of the Education Amendments of 1972; Age Discrimination Act of 1975; and Executive Orders 11246 and 12898 (Environmental Justice). The revised regulations will provide detailed guidelines for field offices for improved enforcement and compliance with these laws, which heavily impact the Agency's programs. Mechanisms for monitoring compliance by field offices and recipients of Federal financial assistance at all levels will decrease the Agency's vulnerability that exist due to noncompliance with recently enacted Civil Rights legislation.

Timetable:

Action	Date	FR Cite
NPRM	08/00/03	
NPRM Comment Period End	10/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Carlton L. Lewis, Chief, Program Compliance Branch, Department of Agriculture, Rural Housing Service, STOP 0703, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 692-0097
TDD Phone: 202 692-0107
Fax: 202 692-0305
Email: cllewis@rdmail.rural.usda.gov

RIN: 0575–AA83

285. NATIONAL FLOOD INSURANCE REGULATIONS

Priority: Other Significant

Legal Authority: 7 USC 1989; 42 USC 1480; 42 USC 4012a; 42 USC 4104b; 42 USC 4106; 42 USC 4128; PL 91-152; PL 93-234; PL 103-325; ...

CFR Citation: 7 CFR 1926, subpart B; 7 CFR 1806, subpart B

Legal Deadline: None

Abstract: The Agency is rewriting its regulations to conform to the requirements of the National Flood Insurance Reform Act of 1994 (NFIRA).

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	
NPRM Comment Period End	05/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Baxter Hill, Technical Support Branch Chief, Department of Agriculture, Rural Housing Service, Room 6900/Stop 0761, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720-1499

RIN: 0575–AC07

286. SERVICING COMMUNITY PROGRAMS LOANS AND GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 7 USC 1989; 31 USC 3711; 42 USC 1480

CFR Citation: 7 CFR 3570 subpart E; 7 CFR 1951 subpart E; 7 CFR 1951 subpart O; 7 CFR 1955 subpart A; 7 CFR 1955 subpart B; 7 CFR 1955 subpart C; 7 CFR 1956 subpart C; 7 CFR 1951 subpart F

Legal Deadline: None

Abstract: The Agency is combining seven regulations affecting the servicing of Community Programs loans and grants into one regulation. There are no policy or procedural changes. The published regulation will be simplified by removing the administrative portion and will only contain the information affecting the public.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Beth Jones, Loan Specialist, Community Programs Division, Department of Agriculture, Rural Housing Service, Room 0183/Stop 0787, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720-1498
Email: epjones@rdmail.rural.usda.gov

RIN: 0575–AC12

287. MULTI-FAMILY HOUSING (MFH)

Regulatory Plan: This entry is Seq. No. 6 in part II of this issue of the Federal Register.

RIN: 0575–AC13

288. SELF-HELP TECHNICAL ASSISTANCE GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 42 USC 1480

CFR Citation: 7 CFR 1944; 7 CFR 3551

Legal Deadline: None

Abstract: The regulations for 7 CFR 1944-I "Self-Help Technical Assistance Grants" is being rewritten and renumbered to 7 CFR 3551. Changes are proposed for clarification of policy and procedures relative to the: 1) Application procedure, which is changing to an annual competitive grant process; 2) labor contribution of participating families; 3) monitoring of grantee progress through Self-Help Automated Reporting and Evaluation System (SHARES); and 4) define the roles of Technical and Management Assistance Contractors.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
NPRM Comment Period End	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

USDA—RHS

Proposed Rule Stage

Government Levels Affected: None

Agency Contact: William M. Toney, Director, Single Family Housing Direct Loan Division, Department of Agriculture, Rural Housing Service, Stop 0783, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720-1474

RIN: 0575–AC20

289. COMMUNITY FACILITIES DIRECT LOAN PROGRAM—CONSOLIDATE, SIMPLIFY, AND UPDATE REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1926

CFR Citation: 7 CFR 1942, subpart A; 7 CFR 1942, subpart C

Legal Deadline: None

Abstract: Community Programs, a division of the Rural Housing Service, is seeking to consolidate, simplify, and update the Agency's regulations used to administer the Community Facilities Direct Loan Program. This effort will produce a user-friendly tool to help constituents and rural communities seeking to develop their essential community facilities for public use. The proposed action will have no financial impact on the public or agency.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	
NPRM Comment Period End	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joseph Ben-Israel, Senior Loan Specialist, Department of Agriculture, Rural Housing Service, Room 0183/STOP 0787, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720-1490
Email: jbenisra@rdmail.rural.usda.gov

RIN: 0575–AC27

290. GUARANTEED RURAL RENTAL HOUSING PROGRAM—SECONDARY MORTGAGE MARKET PARTICIPATION

Priority: Other Significant

Legal Authority: 5 USC 301; 7 USC 1989; 42 USC 1480

CFR Citation: 7 CFR 3565

Legal Deadline: None

Abstract: Section 538 of title V of the Housing Act of 1949 authorizes USDA to make commitments to guarantee loans for the development of housing and related facilities. By this authority, the Rural Housing Service (RHS) administers the Guaranteed Rural Rental Housing Program. The RHS, through consultation with industry and government experts in the loan guarantee field, has identified barriers to the success of the program. In the case of default, regulations will be revised to allow for a timely payment to the investor. In addition, lenders will be allowed to submit a claim for "estimated" losses. The RHS also intends to lower the annual guarantee fee from 50 to 25 basis points.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Douglas MacDowell, Senior Loan Specialist, Department of Agriculture, Rural Housing Service, Stop 0781, 1400 Independence Avenue SW, Washington, DC 20250-0781
Phone: 202 720-1627
Fax: 202 690-3444
Email: dmacdowe@rurdev.usda.gov

RIN: 0575–AC28

Department of Agriculture (USDA)
Rural Housing Service (RHS)

Final Rule Stage

291. ENVIRONMENTAL PROGRAM

Priority: Other Significant

Legal Authority: PL 96-510; PL 94-580; PL 94-469; PL 92-500; PL 91-190

CFR Citation: 40 CFR 300; 40 CFR 260; 40 CFR 700; 40 CFR 400; 7 CFR 1940

Legal Deadline: None

Abstract: The objective of this action is to replace the existing environmental regulation and to implement changes to streamline the environmental process for the Rural Housing Service (RHS) and the Rural Business-Cooperative Service (RBS); to include changes necessitated by amendments to various environmental laws, Executive orders, and regulations applicable to the two agencies; to clarify wording; correct inconsistencies; and where applicable, to delete obsolete material and update references in other program regulations. This revision represents an important contribution to the Department's efforts to streamline its operations and realize more efficient use of staff time. There are a number of Federal environmental statutes which govern the management of hazardous substances, materials, and wastes. At the present time, RHS and RBS do not have implementing regulations for these Federal statutes. The development of implementation procedures for managing hazardous substances is necessary to insure consistency in compliance with Federal, as well as State, environmental statutes; to develop appropriate "due diligence" policies to ensure that the market value of real estate being considered as security for financial assistance adequately reflects potential contamination from hazardous waste; and to minimize the Agencies' liability with regard to environmental cleanups of hazardous waste in loan processing/servicing and property management activities.

Timetable:

Action	Date	FR Cite
NPRM	09/14/00	65 FR 55784
NPRM Comment Period End	11/13/00	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Susan Wieferich, Senior Environmental Protection Specialist, Program Support Staff, Department of Agriculture, Rural Housing Service, Room 6900/Stop 0761, 1400 Independence Avenue SW, Washington, DC 20250

USDA—RHS — **Final Rule Stage**

Phone: 202 720-9647

RIN: 0575–AB98

292. DIRECT SECTION 502 AND 504 SINGLE-FAMILY HOUSING PROGRAM

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 5 USC 301; 7 USC 1989; 42 USC 1480; 31 USC 3700

CFR Citation: 7 CFR 1806; 7 CFR 1900; 7 CFR 1944; 7 CFR 1951; 7 CFR 1955; 7 CFR 1956; 7 CFR 1965; 7 CFR 3550

Legal Deadline: None

Abstract: The Rural Housing Service reopened the comment period on four sections of this regulation seeking potential changes to the definition of modest housing and calculation of payment subsidies. The Agency has reviewed the comments and will be publishing minor corrections and clarifications in the existing regulation. In addition, the Agency will provide an updated definition of modest housing moving away from reliance on the section 203(b) mortgage limits set by the Department of Housing and Urban Development. The Agency will use more localized data and provide clearer guidance to ensure compliance with our mission to finance housing that is decent, safe, sanitary, and modest. No changes in the payment subsidy are anticipated.

Timetable:

Action	Date	FR Cite
NPRM	04/08/96	61 FR 15395
NPRM Comment Period End	06/07/96	
Interim Final Rule	11/22/96	61 FR 59762
Interim Final Rule Comment Period End	12/26/96	
Interim Final Rule Effective	12/26/96	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William M. Toney, Director, Single Family Housing Direct Loan Division, Department of Agriculture, Rural Housing Service, Stop 0783, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720-1474

RIN: 0575–AB99

293. GUARANTEED SINGLE-FAMILY HOUSING

Priority: Other Significant

Legal Authority: 5 USC 301; 7 USC 1989; 42 USC 1480

CFR Citation: 7 CFR 3555; 7 CFR 1980, subpart D

Legal Deadline: None

Abstract: The Rural Housing Service is rewriting the regulations governing the Guaranteed Single-Family Housing program to provide better clarity and consistency within the program. The action is taken to update the regulations to current mortgage industry standards and provide more guidance on program oversight and monitoring.

Timetable:

Action	Date	FR Cite
NPRM	12/15/99	64 FR 70124
NPRM Comment Period End	02/14/00	
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local

Agency Contact: Roger Glendenning, Deputy Director, Guaranteed Loan Division, Department of Agriculture, Rural Housing Service, Room 2248/Stop 0784, 1400 Independence Avenue SW, Washington, DC 20250-0780
Phone: 202 720-1480
Fax: 202 205-2476
Email: rglendenning@rdmail.rural.usda.gov

RIN: 0575–AC18

294. OPERATING ASSISTANCE FOR MIGRANT FARMWORKER PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1989; 42 USC 1484; 42 USC 1486; 42 USC 1490a; PL 105-276, sec 599c

CFR Citation: 7 CFR 1944, subpart D; 7 CFR 1930, subpart C

Legal Deadline: None

Abstract: Regulation implements the provisions of Public Law 105-276, enacted October 21, 1998, which amended section 521 of the Housing Act of 1949. This amendment provides that, for migrant farmworker housing projects financed under section 514 or 516 of the Housing Act, the Secretary may, at the request of the owner, permit amounts provided for rental assistance under section 521 to be used to provide assistance for the costs of operating the project.

Timetable:

Action	Date	FR Cite
NPRM	11/02/00	65 FR 65790
NPRM Comment Period End	01/02/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Layfield, Senior Loan Specialist, Department of Agriculture, Rural Housing Service, Room 1239/STOP 0781, 1400 Independence Avenue SW, Washington, DC 20250-0781
Phone: 202 690-0759
Fax: 202 690-3444
Email: dlayfiel@rdmail.rural.usda.gov

RIN: 0575–AC24

295. TECHNICAL ASSISTANCE TO ENCOURAGE THE DEVELOPMENT OF DOMESTIC AND MIGRANT FARM LABOR HOUSING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1484; 42 USC 1486

CFR Citation: 7 CFR 1944, subpart D

Legal Deadline: None

Abstract: Section 514 of title V of the Housing Act of 1949 authorizes USDA to make loans for farm labor housing. Section 516 of the Act authorizes USDA to make grants for the same purpose. These authorities are implemented through 7 CFR part 1944, subpart D. Section 516 also authorizes USDA to provide financial assistance to private and public nonprofit agencies to encourage the development of farm labor housing. Recipients of this financial assistance, in turn, assist other organizations obtain loans and grants for the construction of farm labor housing. This regulation change will incorporate the "technical assistance" provision of the statute into 7 CFR 1944. The amount of assistance is limited by statute to 10 percent of the total section 516 allocation.

USDA—RHS — **Final Rule Stage**

Timetable:

Action	Date	FR Cite
NPRM	06/01/01	66 FR 29739
NPRM Comment Period End	07/31/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David Layfield, Senior Loan Specialist, Department of Agriculture, Rural Housing Service, Room 1239/STOP 0781, 1400 Independence Avenue SW, Washington, DC 20250-0781
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RIN: 0575–AC25

BILLING CODE 3410–XV–S

Department of Agriculture (USDA)
Federal Crop Insurance Corporation (FCIC)

Proposed Rule Stage

296. GENERAL ADMINISTRATIVE REGULATIONS; SUBPART D; APPLICATION FOR CROP INSURANCE

Priority: Other Significant

Legal Authority: 7 USC 1506(l)

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation amends the General Administrative Regulations by revising the "Collection of Information and Data (Privacy Act)" statement found on the general crop insurance application. The proposed amendments to the statement include defining "substantial beneficial interest" as those persons whose interest in the policyholder is in excess of 10 percent. Other minor changes have been made to more fully comply with provisions of the Privacy Act.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133
Phone: 816 926-7743

RIN: 0563–AB00

297. GENERAL ADMINISTRATIVE REGULATIONS; MOVEMENT OF BUSINESS AMONG INSURANCE PROVIDERS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1506(l); 7 USC 1506(p)

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: To ensure that the interests of policyholders are protected and that the policies and policyholder data are transferred in an orderly manner, the Risk Management Agency is providing comprehensive regulations that will apply to agents, managing general agents, policy-issuing companies, and reinsured companies. The objective of this regulation is to prescribe uniform administrative requirements for the movement or assumption of crop insurance policies.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Heyward Baker, Director, Reinsurance Services Division, Department of Agriculture, Federal Crop Insurance Corporation, 1400 Independence Avenue SW, Room 6727 South, Washington, DC 20250
Phone: 202 720-4232

RIN: 0563–AB71

298. GENERAL ADMINISTRATIVE REGULATIONS; SANCTIONS

Priority: Other Significant

Legal Authority: 7 USC 1506(l); PL 106-224

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: RMA plans to supplement the existing sanction authority found at 7 CFR 400.451 in order to include the revised sanctions available for offenses which occur after June 20, 2001, the date of passage of the Agricultural Risk Protection Act of 2000. This action will supplement the existing regulations which remain effective for all offenses occurring before June 20, 2000. This rule will contain guidelines for the level of sanctions that may be imposed, waiver authority on the part of the Administrator or designee, examples of sanctionable offenses, and the evidentiary standards to be followed.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert J. Crockett, Sanction Officer, Department of Agriculture, Federal Crop Insurance Corporation, 430 G. Street, Suite 4167, Davis, CA 95616-4167
Phone: 530 792-5864

RIN: 0563–AB73

299. COMMON CROP INSURANCE REGULATIONS; BLUEBERRY CROP INSURANCE PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1506(l); 7 USC 1506(p)

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: The purpose of this rule is to solicit public comments on FCIC's proposed action to convert the blueberry pilot insurance program to a permanent insurance program. The pilot was initiated for the 1995 crop year for selected counties in Michigan, Mississippi, New Jersey, and North Carolina and covered highbush and rabbiteye blueberry varieties.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133 Phone: 816 926-7743

RIN: 0563–AB76

300. COMMON CROP INSURANCE REGULATIONS; NURSERY CROP INSURANCE PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1506(l); 7 USC 1506(p)

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: The purpose of this proposed rule is to solicit public comments on FCIC's proposed action to revise the Nursery Crop Provisions (99-073) for the 2002 crop year to: Specify that container grown and field grown plants are separate crops, provide optional units by location for field grown nursery plant, incorporate the "lower of" rule into section 6 of the provisions, permit insureds to purchase insurance coverage on a year-round basis, incorporate provisions to provide a rehabilitation payment for plants damaged by an insured cause of loss.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133 Phone: 816 926-7743

RIN: 0563–AB80

301. GENERAL ADMINISTRATIVE REGULATIONS; ACTUAL PRODUCTION HISTORY

Priority: Other Significant

Legal Authority: 7 USC 1506 (l); 7 USC 1506 (p)

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: To revise actual production history regulations to reflect changes in calculation of approved APH yields as mandated by the Agricultural Risk Protection Act of 2000. Revisions will include: Assigned yields for crops produced on land not farmed before (added land), rotations to crops not previously produced (new crops), and for prevented planting acreage if planted to a substitute crop; adjustments for successful pest control efforts and for organic crops destroyed to maintain organic certification; and substitution of 60 percent of the transitional yield for low actual yields if producers elect that option.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133 Phone: 816 926-7743

RIN: 0563–AB83

302. COMMON CROP INSURANCE REGULATIONS; BASIC PROVISIONS AND GENERAL ADMINISTRATIVE REGULATIONS, SUBPART T, REGULATIONS FOR IMPLEMENTATION

Priority: Other Significant

Legal Authority: 7 USC 1506(l); 7 USC 1506(p)

CFR Citation: 7 CFR 400; 7 CFR 457

Legal Deadline: Final, Statutory, October 18, 2000.

Abstract: The purpose of these rules is to propose changes to the Common Crop Insurance Regulations, Basic Provisions and the General Administrative Regulations, Subpart T—Insurance Implementation, mandated by the Agricultural Risk Protection Act of 2000. The changes will be proposed to be effective beginning with the 2002 crop year for all crops with a contract change date on or after June 30, 2001. The major changes to the Common Crop Insurance Regulations, Basic Provisions are: 1) Limit indemnities and premiums when more than one crop is planted on acreage within the same crop year; 2) if an initial crop is prevented from being planted and a substitute crop is planted on the acreage within the same crop year, allow reduced prevented planting coverage for the initial crop, and the initial crop's Actual Production History (APH) will be reduced to 60 percent of the producer's APH; and 3) add scientifically sound sustainable and organic farming practices as good farming practices.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133 Phone: 816 926-7743

RIN: 0563–AB85

303. GENERAL ADMINISTRATIVE REGULATIONS; SUBPART L—REINSURANCE AGREEMENT—STANDARDS FOR APPROVAL; REGULATIONS FOR THE 1997 AND SUBSEQUENT REINSURANCE YEARS

Priority: Other Significant

Legal Authority: 7 USC 1508

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation (FCIC) proposes to amend its General Administrative Regulations to publish the terms of the Standard Reinsurance Agreement (SRA) in the Federal Register. This will improve the integrity of the public/private partnership by avoiding ad hoc changes to important definitions and terms during negotiations involving compensation paid to each insurance provider. The current SRA has not been published in the Federal Register; therefore, the intent of this proposal is to codify the definitions and terms.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Heyward Baker, Director, Reinsurance Services Division, Department of Agriculture, Federal Crop Insurance Corporation, 1400 Independence Avenue SW, Room 6727 South, Washington, DC 20250 Phone: 202 720-4232

RIN: 0563–AB86

304. • GENERAL ADMINISTRATIVE REGULATIONS; QUALITY ASSURANCE AND PERFORMANCE MEASUREMENT SYSTEM FOR THE FEDERAL CROP INSURANCE PROGRAM

Priority: Other Significant

Legal Authority: 7 USC 1506(l), 7 USC 1506(p)

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation (FCIC) proposes a regulation to amend its General Administrative Regulations that includes an additional Subpart which contains the Quality Assurance and Performance Measurement System for private sector delivery of the Federal Crop Insurance program.

This regulation will establish a standard of measure for determining acceptable and unacceptable levels of performance by private insurance providers. It will define how monetary errors will be identified, classified, and reported. It will also establish a system of incentives and sanctions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Heyward Baker, Director, Reinsurance Services Division, Department of Agriculture, Federal Crop Insurance Corporation, 1400 Independence Avenue SW, Room 6727 South, Washington, DC 20250 Phone: 202 720-4232

RIN: 0563–AB88

Department of Agriculture (USDA)
Federal Crop Insurance Corporation (FCIC)

Final Rule Stage

305. COMMON CROP INSURANCE REGULATIONS; SMALL GRAINS CROP INSURANCE PROVISIONS AND WHEAT WINTER COVERAGE ENDORSEMENT

Priority: Other Significant

Legal Authority: 7 USC 1506(l); 7 USC 1506(p)

CFR Citation: 7 CFR 457.101; 7 CFR 457.102

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation proposes to revise and clarify existing policy provisions, establish winter wheat coverage in certain South Dakota and Wisconsin counties, reduce coverage under Option B of the Wheat Winter Coverage Endorsement, and to require insurance on spring wheat planted to replace damaged winter wheat covered under the Wheat Winter Coverage Endorsement.

Timetable:

Action	Date	FR Cite
NPRM	04/20/00	65 FR 21144
NPRM Comment Period End	06/19/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133 Phone: 816 926-7743

RIN: 0563–AB63

306. GENERAL ADMINISTRATIVE REGULATIONS; NONSTANDARD UNDERWRITING CLASSIFICATION SYSTEM

Priority: Other Significant

Legal Authority: 7 USC 1506(l); 7 USC 1506(p)

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: Nonstandard Underwriting Classification System (NCS): NCS was criticized by producers and their representatives for several years and became a major issue with the repetitive floods in the upper Midwest and multi-year droughts in the Southwest. Complaints included claims that the NCS procedures: 1) Did not adequately exclude widespread causes of loss (disaster adjustment); 2) failed to recognize diverse conditions within a county; 3) unfairly hit new or struggling producers caught by repetitive disasters; and 4) set too high a premium for those producers listed. Additionally, administration of the NCS process was complicated, sometimes subjective, and labor intensive.

The Advanced Notice of Proposed Rulemaking that was published in the Federal Register in September 1997 sought comments from the public on options to improve NCS. Twenty-two comments were received in response to the advanced notice. RMA decided to replace NCS with a process that charged appropriate rates for those producers with adverse loss experience and less than average production histories.

RMA examined increasing premium rates based on producers' lower APH yields and using a surcharge based on use of the yield floor (or some other identifiable indicator of adverse experience) to determine if these measures would adequately address the need to increase premiums for those producers with the most adverse loss histories based on the frequency and severity of losses. After reviewing past NCS experience on the existing book of business, it was determined that appropriate rate increases for those producers whose APH yields were less than average would compensate entirely for the elimination of NCS.

RMA implemented the following actions to accomplish the goal of replacing NCS beginning with the 1999 crop year:

— Removed and reserved the current NCS regulation (7 CFR part 400, subpart O) by publishing a proposed rule in the Federal Register. The final

USDA—FCIC — **Final Rule Stage**

rule is pending clearance; however, the Agency proceeded with the process and has waived NCS since 1999.

— Developed and implemented appropriate rate adjustments to offset the removal of NCS.

Timetable:

Action	Date	FR Cite
ANPRM	09/17/97	62 FR 48798
ANPRM Comment Period End	10/17/97	
NPRM	09/02/98	63 FR 46703
NPRM Comment Period End	10/19/98	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133 Phone: 816 926-7743

RIN: 0563–AB66

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307. GENERAL ADMINISTRATIVE REGULATIONS; PREMIUM REDUCTIONS; PAYMENTS OF REBATES, DIVIDENDS, AND PATRONAGE REFUNDS; AND PAYMENTS TO INSURED-OWNED AND RECORD-CONTROLLING ENTITIES

Priority: Other Significant

Legal Authority: 7 USC 1506(l); 7 USC 1506(p); 7 USC 1508(e)(3)

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: To allow approved insurance providers to apply to the Federal Crop Insurance Corporation for authority to reduce the premium charged producers in accordance with section 508(e)(3) of the Federal Crop Insurance Act, as amended, and to provide the limitations and requirements applicable to the payment of rebates, dividends, and patronage refunds to insureds and payments to insured-owned and record-controlling entities.

Timetable:

Action	Date	FR Cite
NPRM	05/12/99	64 FR 25464
NPRM Comment Period End	07/12/99	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Heyward Baker, Director, Reinsurance Services Division, Department of Agriculture, Federal Crop Insurance Corporation, 1400 Independence Avenue SW, Room 6727 South, Washington, DC 20250 Phone: 202 720-4232

RIN: 0563–AB70

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308. CATASTROPHIC RISK PROTECTION ENDORSEMENT; GROUP RISK PLAN OF INSURANCE REGULATIONS; BASIC PROVISIONS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 7 USC 1506(l), 1506(p)

CFR Citation: 7 CFR 402; 7 CFR 407; 7 CFR 457

Legal Deadline: Final, Statutory, June 30, 2000.

Abstract: The Federal Crop Insurance Corporation (FCIC) amends the Catastrophic Risk Protection Endorsement (7 CFR part 402), the Group Risk Plan of Insurance Regulations (7 CFR part 407), and the Common Crop Insurance Regulations, Basic Provisions (7 CFR part 457) to revise those provisions affected by the changes in the administrative fees and subsidies and the substitution of yields in the producer's actual production history mandated by the Agricultural Risk Protection Act of 2000.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	06/28/00	65 FR 40483
Interim Final Rule	06/30/00	65 FR 40483
Interim Final Rule Comment Period End	08/29/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133 Phone: 816 926-7743

RIN: 0563–AB81

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309. GENERAL ADMINISTRATIVE REGULATIONS; SUBMISSION OF POLICIES AND PROVISIONS OF POLICIES AND RATES OF PREMIUMS

Priority: Other Significant

Legal Authority: 7 USC 1506(l); 7 USC 1506(p)

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: Minor revisions will be made to the regulation for clarification and other revisions will be made as specified: Remove the need to publish policies from 508(h) submissions as a Notice of Availability in the Federal Register; information will be made available electronically to producers and approved insurance providers; confidential information may be withheld from the public under the standard for privileged or confidential information pertaining to trade secrets and commercial or financial information even after approval by the Board; there will be an expert review of submissions; the applicant will be notified in writing at least 30 days prior to the Board disapproving a submission, if the Board intends to disapprove the submission; a submission will be deemed approved by the Board if the Board fails to make a determination within a prescribed time period; applicants will be reimbursed for research and developmental costs and maintenance costs; and companies selling the product will pay fees to the developer of the product after the fourth year of the applicant being paid maintenance costs unless maintenance for the product is transferred to FCIC.

Timetable:

Action	Date	FR Cite
NPRM	07/16/01	66 FR 36951
NPRM Comment Period End	08/15/01	
Interim Final Rule	09/17/01	66 FR 47949
Interim Final Rule Comment Period End	11/16/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal

USDA—FCIC — **Final Rule Stage**

Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133 Phone: 816 926-7743

RIN: 0563–AB84

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310. • COMMON CROP INSURANCE REGULATIONS

Priority: Routine and Frequent

Legal Authority: 7 USC 1506(l), 7 USC 1506(p)

CFR Citation: 7 CFR 457.101; 7 CFR 457.161

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Regulations, Small Grains Crop Provisions (7 CFR section 457.101) and Canola and Rapeseed Crop Insurance Provisions (7 CFR section 457.161) to implement the quality loss adjustment procedures contained in section 10003 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171).

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	06/26/02	
Interim Final Rule	06/28/02	67 FR 43525
Interim Final Rule Comment Period End	08/27/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133 Phone: 816 926-7743

RIN: 0563–AB87

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311. • COMMON CROP INSURANCE REGULATIONS; SUNFLOWER, COARSE GRAINS, SAFFLOWER, DRY PEA, RICE, AND DRY BEAN CROP INSURANCE PROVISIONS

Priority: Routine and Frequent

Legal Authority: 7 USC 1506(l), 7 USC 1506(p)

CFR Citation: 7 CFR 457.108; 7 CFR 457.113; 7 CFR 457.125; 7 CFR 457.140; 7 CFR 457.141; 7 CFR 457.150; ...

Legal Deadline: None

Abstract: The purpose of this rule is to amend policies for the crops listed above, to implement the quality loss adjustment procedures contained in section 10003 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) that allow quality determinations to be made by warehouse operators that are licensed under State law or are not licensed under State law but are in compliance with State law regarding warehouses, provided they have entered into a storage agreement with the Commodity Credit Corporation. The sunflower and coarse grain crop provisions currently provide for the samples to be analyzed by a grader licensed to grade the crop under the authority of the United States Grain Standards Act or the United States Warehouse Act and the safflower, dry pea, rice, and dry bean crop provisions currently provide for the samples to be analyzed by a grader licensed to grade the crop under the authority of the Agricultural Marketing Act or the United States Warehouse Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133 Phone: 816 926-7743

RIN: 0563–AB89

BILLING CODE 3410–08–S

Department of Agriculture (USDA)
Grain Inspection, Packers and Stockyards Administration (GIPSA)

Proposed Rule Stage

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312. LIVESTOCK PURCHASE OR SALE: PROHIBIT NON-REPORTING OF PRICE

Priority: Other Significant

Legal Authority: 7 USC 204; 7 USC 228

CFR Citation: 9 CFR 201.54

Legal Deadline: None

Abstract: Following a review of comments received in response to the ANPRM, the Agency is proposing a regulation that would make purchasing or selling livestock with the condition that the price not be reported a violation of the Packers and Stockyards Act.

Timetable:

Action	Date	FR Cite
ANPRM	09/10/98	63 FR 48450
ANPRM Comment Period End	12/09/98	
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: H. Tess Butler, Regulatory Liaison, Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, 1400 Independence Avenue SW, Room 1647 South Building, Washington, DC 20250 Phone: 202 720-7486 Fax: 202 720-4628 Email: h.tess.butler@usda.gov

RIN: 0580–AA65

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313. PROHIBITION ON DISGUISING GRAIN QUALITY

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 71

CFR Citation: 7 CFR 800.61

Legal Deadline: None

Abstract: The Agency proposes to revise regulations under the U.S. Grain Standards Act to prohibit the disguising of grain quality by adding various substances during post-harvest marketing.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

USDA—GIPSA — **Proposed Rule Stage**

Government Levels Affected: None

Agency Contact: H. Tess Butler, Regulatory Liaison, Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, 1400 Independence Avenue SW, Room 1647 South Building, Washington, DC 20250
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RIN: 0580–AA77

314. FEES FOR OFFICIAL INSPECTION AND OFFICIAL WEIGHING SERVICES

Priority: Other Significant

Legal Authority: 7 USC 71

CFR Citation: 7 CFR 800.71

Legal Deadline: None

Abstract: GIPSA is proposing several changes in the way the Agency charges fees for official inspection and weighing services performed in the United States, under the United States Grain Standards Act. Currently, GIPSA assesses fees by using hourly and unit rates and by assessing an administrative tonnage fee. The proposed action will increase the hourly and unit rates. GIPSA is also proposing to increase the administrative tonnage fee and adopt a new, regional fee structure.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: H. Tess Butler, Regulatory Liaison, Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, 1400 Independence Avenue SW, Room 1647 South Building, Washington, DC 20250
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RIN: 0580–AA80

Department of Agriculture (USDA)
Grain Inspection, Packers and Stockyards Administration (GIPSA) — **Final Rule Stage**

315. TOLERANCES FOR DIVIDERS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 71 et seq

CFR Citation: 7 CFR 801.10

Legal Deadline: None

Abstract: GIPSA proposes to remove section 801.10, Tolerance for Dividers, from the CFR. Since GIPSA no longer tests dividers, the rule is no longer needed. By using the direct final rule process, GIPSA will give the public general notice of its intent to remove the rule and provide interested persons an opportunity to participate in the rulemaking through submission of comments.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Tess Butler, Regulatory Liaison, Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, 1400 Independence Avenue SW, Room 1647 South Building, Washington, DC 20250
Phone: 202 720-7486
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RIN: 0580–AA57

316. REVIEW INSPECTION REQUIREMENTS

Priority: Other Significant

Legal Authority: 7 USC 71 et seq

CFR Citation: 7 CFR 800.125; 7 CFR 800.135; 7 CFR 800.87

Legal Deadline: None

Abstract: The Agency is proposing to revise regulations under the U.S. Grain Standards Act to allow interested persons to stipulate the quality factors that would be redetermined during a reinspection or appeal inspection for grade. Currently reinspections and appeal inspections for grade must include a review for all factors that (1) may determine the grade; (2) are reported on the original certificate; or (3) are required to be shown. The Agency has determined that mandating all quality factors be reexamined during a review inspection is inefficient, time consuming, and costly. Further, such a complete review of the preceding inspection service is usually not needed to confirm the true quality of the grain. This proposed action will allow interested parties to specify which official factors should be redetermined during the reinspection or appeal inspection service. However, to safeguard against inadvertent misgrading, official personnel may determine other factors, when deemed necessary.

Timetable:

Action	Date	FR Cite
NPRM	08/21/02	67 FR 54136
NPRM Comment Period End	10/21/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: H. Tess Butler, Regulatory Liaison, Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, 1400 Independence Avenue SW, Room 1647 South Building, Washington, DC 20250
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RIN: 0580–AA58

317. SWINE PACKER MARKETING CONTRACTS

Priority: Other Significant

Legal Authority: 7 USC 181; PL 106-78

CFR Citation: 9 CFR 206

Legal Deadline: None

Abstract: The Agency is issuing rules under the Packers and Stockyards Act to implement the Swine Packer Marketing Contracts subtitle of the Livestock Mandatory Reporting Act of 1999. The Agency will establish a swine contract library and publish contract provisions on its web site.

USDA—GIPSA — **Final Rule Stage**

Timetable:

Action	Date	FR Cite
NPRM	09/05/00	65 FR 53653
NPRM Comment Period End	10/05/00	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 0580–AA71

318. EXCEPTIONS TO GEOGRAPHIC AREAS FOR OFFICIAL AGENCIES UNDER THE USGSA

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 71

CFR Citation: 7 CFR 800.81; 7 CFR 800.99; 7 CFR 800.116-.118; 7 CFR 800.185; 7 CFR 800.196

Legal Deadline: None

Abstract: The Agency is proposing to revise regulations under the U.S. Grain Standards Act to reflect the amendment made by the Grain Standards and Warehouse Improvements Act of 2000 that provides an exception under which the Secretary may determine that more than one official agency can provide inspection services in a specified geographic area.

Timetable:

Action	Date	FR Cite
NPRM	07/03/02	67 FR 44571
NPRM Comment Period End	09/03/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 0580–AA76

BILLING CODE 3410–EN–S

Department of Agriculture (USDA)
Food and Nutrition Service (FNS) — **Proposed Rule Stage**

319. SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC): MISCELLANEOUS PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1786

CFR Citation: 7 CFR 246

Legal Deadline: None

Abstract: This proposed rule responds to a variety of program concerns, most of which have been expressed by WIC State agencies. The proposal increases State agency flexibility regarding the sharing of participant information with other programs and streamlines Federal requirements for financial and participation reporting by State agencies. Several minor clarifications and technical corrections are also made. (89-515)

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	03/00/03	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

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RIN: 0584–AB10

320. INTENTIONAL PROGRAM VIOLATION REPORTING AND COMPUTER MATCHING REQUIREMENTS THAT AFFECT THE FOOD STAMP PROGRAM

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 552(a) Computer Matching and Privacy Protection Act; 7 USC 2015(b) Food Stamp Act

CFR Citation: 7 CFR 272; 7 CFR 273

Legal Deadline: None

Abstract: This proposed rule describes requirements for State agencies to report information on individuals disqualified from the program for intentional program violations to FNS and codifies prisoner verification and death master file matching mandated by legislation and previously implemented through agency directive. (89-010)

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	
NPRM Comment Period End	05/00/03	
Final Action	09/00/03	
Final Action Effective	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

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RIN: 0584–AB51

321. FSP: CIVIL RIGHTS DATA COLLECTIONS

Priority: Substantive, Nonsignificant

Legal Authority: PL 88-352, sec 601

CFR Citation: 7 CFR 272

Legal Deadline: None

Abstract: Title VI of the Civil Rights Act of 1964 requires the collection of racial/ethnic data for all programs utilizing Federal funds. State agencies are required to collect the data by racial/ethnic categories set by the Federal Government. In 1997, those categories changed. This proposed rule would change the racial categories for State Food Stamp Program reporting to comply with the new Federal racial categories. (98-010)

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	
Final Action	10/00/03	
Final Action Effective	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

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RIN: 0584–AC75

322. COMMODITY SUPPLEMENTAL FOOD PROGRAM: PLAIN LANGUAGE, PROGRAM ACCOUNTABILITY, AND PROGRAM FLEXIBILITY

Priority: Other Significant

Legal Authority: PL 101-624; PL 104-127

CFR Citation: 7 CFR 247

Legal Deadline: None

Abstract: This rule will rewrite regulations pertaining to the Commodity Supplemental Food Program (7 CFR part 247) in "plain language." It will also amend regulatory provisions in this part to increase program accountability and flexibility for program operators. The rule will affect program accountability by: (1) Requiring State agencies to initiate a claim against participants for repayment of the value of program benefits obtained as a result of intentional misrepresentation; (2) extending the period that State agencies may disqualify participants for program violations to up to 1 year; (3) requiring State agencies to disqualify participants for engaging in dual participation or for other selected program violations; (4) including under program violations the physical abuse, or the threat of physical abuse, of program staff.

Amendments to increase program flexibility include: (1) Allowing the State to extend the certification of elderly persons on a fixed income for an indefinite period without a formal review of eligibility; (2) increasing the period of time the State agency has to review a local agency's application for participation; (3) allowing State agencies to request to retain more than the maximum amount of administrative funds allocated whether or not they perform warehouse services; (4) reducing the frequency of State management evaluations of local agencies; and (5) making State plans and Federal-State agreements permanent, with amendments submitted as needed.

Other miscellaneous proposed changes include: (1) Requiring local agencies to notify applicants of a decision on their application within 10 days of the date of application; (2) including the specific factors that FNS uses to determine the amount of caseload that States will receive in addition to base caseload; (3) making the caseload cycle the period from January 1 to December 31; and (4) including a pregnant woman's embryo or fetus in utero as a household member in determining the family's income eligibility.

The rule will also incorporate legislative provisions that have been implemented through program policy, including: (1) Increasing the percentage of the program appropriation, and of funds carried over from the previous year, to be allotted for administrative support of State and local agencies from 15 to 20 percent; and (2) requiring that State and local agencies provide information on certain other public assistance programs to participants. (99-005)

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal

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RIN: 0584–AC84

323. FOOD STAMP PROGRAM: ADMINISTRATIVE COST REIMBURSEMENT

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: Undetermined

Legal Authority: PL 105-185, sec 502

CFR Citation: 7 CFR 277

Legal Deadline: Final, Statutory, October 1, 1998, Payment reduction required by law.

Abstract: This rule will allow State agencies to charge the FSP for its share of common costs for determining eligibility of Temporary Assistance for Needy Families (TANF) households for FSP in accordance with new HHS policy and approved cost allocation plans. (99-007)

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	
NPRM Comment Period End	05/00/03	
Final Action	11/00/03	
Final Action Effective	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Federalism: Undetermined

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RIN: 0584–AC86

324. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC): REVISIONS IN THE WIC FOOD PACKAGES

Regulatory Plan: This entry is Seq. No. 7 in part II of this issue of the Federal Register.

RIN: 0584–AC90

325. IMPROVING ACCESS TO THE FOOD STAMP PROGRAM FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

Priority: Other Significant

Legal Authority: 42 USC 2000d

CFR Citation: 7 CFR 272.4(b)

Legal Deadline: None

Abstract: On August 11, 2000, the President signed an Executive order requiring Federal agencies to examine the services they provide and to develop and implement a system that ensures persons with limited English proficiency (LEP) have meaningful access to Federal health and human services programs and activities. The Executive order clarifies long-standing title VI principles that prohibit discrimination based on national origin. (00-016)

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
NPRM Comment Period End	08/00/03	
Final Action	06/00/04	
Final Action Effective	09/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: State, Local

Federalism: Undetermined

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RIN: 0584–AD06

326. FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS: RESOURCE LIMITS AND EXCLUSIONS, EXTENDED CERTIFICATION PERIODS, AND TRANSITIONAL BENEFITS

Priority: Other Significant

Legal Authority: 7 USC 2011 to 2032

CFR Citation: 7 CFR 253; 7 CFR 254

Legal Deadline: None

Abstract: This proposed rule would amend FDPIR regulations to: 1) Increase the standard FDPIR resource limit from $1750 to $2000 per household (households that include a member or members age 60 or over shall continue to have a resource limit of $3000); 2) allow a resource exclusion for the first $1500 of the value of one pre-paid funeral arrangement per household member (in instances where the total value of the agreement is not already excluded because it is funded under a life insurance policy or an inaccessible trust fund); 3) allow households in which all members are elderly or disabled to be certified for up to 24 months, provided that the State agency contacts the household at least once every 12 months; and 4) allow States the option to provide transitional FDPIR benefits (for 3 months), at a minimum, to households with earnings that leave the Temporary Assistance Program for Needy Families (TANF). All of the above provisions conform to Food Stamp Program policy and will ensure consistent treatment between the two programs. (01-005)

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Tribal

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RIN: 0584–AD12

327. CHILD AND ADULT CARE FOOD PROGRAM (CACFP): AT-RISK AFTERSCHOOL SUPPERS

Priority: Other Significant

Legal Authority: PL 106-224, sec 243(i)

CFR Citation: 7 CFR 226

Legal Deadline: None

Abstract: This proposed rule would revise the Child and Adult Care Food Program (CACFP) regulations to allow reimbursement of suppers provided by at-risk afterschool care programs in seven States. Six States were initially authorized by the Agricultural Risk Protection Act (Pub. L. 106-224); the seventh State was authorized by fiscal year 2002 appropriation legislation. At-risk suppers in these States (Delaware, Illinois, Pennsylvania, Michigan, Missouri, New York, and Oregon) are reimbursed under the same conditions set forth in the National School Lunch Act (NSLA) for at-risk snacks in the CACFP. Children who are 18 or younger and enrolled in qualifying afterschool programs located in the seven States may receive free suppers. To qualify, afterschool care programs must be located in low-income areas, provide care to children, and have an educational or enrichment purpose. (01-007)

Timetable:

Action	Date	FR Cite
NPRM	07/00/03	
NPRM Comment Period End	09/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

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RIN: 0584–AD15

328. FOOD STAMP PROGRAM: ADMINISTRATIVE SANCTIONS IMPOSED AGAINST VIOLATING ELECTRONIC BENEFITS TRANSFER (EBT) STORES

Priority: Other Significant

Legal Authority: 12 USC 2021; 13 USC 2022

CFR Citation: 7 CFR 278.6

Legal Deadline: None

Abstract: The United States Department of Agriculture, Food and Nutrition Service (FNS), is proposing to revise section 278.6 of the Food Stamp Program Regulations entitled "Disqualification of Retail Food Stores and Wholesale Food Concerns and Imposition of Civil Money Penalties In Lieu of Disqualifications." This section of the regulation is being revised as a result of the implementation of the Electronic Benefits Transfer (EBT) system. This section of the regulations addresses the administrative sanctions (i.e., imposing a period of disqualification or assessing a monetary penalty) that may be imposed by FNS against retail food stores and wholesale food concerns that are found violating the Food Stamp Program. (01-012)

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
NPRM Comment Period End	08/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 0584–AD18

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329. FOOD STAMP PROGRAM: SIMPLIFICATION AND STATE FLEXIBILITY

Regulatory Plan: This entry is Seq. No. 8 in part II of this issue of the **Federal Register**.

RIN: 0584–AD22

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330. FOOD STAMP PROGRAM: ADMINISTRATIVE REVIEW REQUIREMENTS—FOOD RETAILERS/WHOLESALERS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 2011 to 2036

CFR Citation: 7 CFR 278; 7 CFR 279

Legal Deadline: None

Abstract: The rule proposes to streamline and make technical corrections to the administrative review process by amending portions of current regulations provided in parts 278 and 279. It would eliminate repetitious, outdated and unnecessary provisions without taking away a business's right to an administrative review or a judicial review. It would also eliminate formal procedures for face-to-face meetings with review officers. There are very few requests for such reviews, and because administrative review decisions are based on documented facts and not on face-to-face meetings, these meetings are unnecessary and ineffective. (02-001)

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0584–AD23

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331. • FOOD STAMP PROGRAM: CLARIFICATIONS AND CORRECTIONS TO RECIPIENT CLAIM ESTABLISHMENT AND COLLECTION STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 2011 to 2036

CFR Citation: 7 CFR 272; 7 CFR 273

Legal Deadline: None

Abstract: Section 13 of the Food Stamp Act of 1977, as amended, requires State agencies to pursue collection of recipient overissuances in the Food Stamp Program. On July 6, 2000, FNS published a major rule that revised many of the processes and procedures in this area. This proposed rule provides clarifications and corrections to the July 6, 2000, rulemaking. (02-003)

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	
NPRM Comment Period End	05/00/03	
Final Action	03/00/04	
Final Action Effective	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

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RIN: 0584–AD25

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332. • FSP: EBT AND RETAIL FOOD STORES PROVISIONS OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-171, secs 4108, 4110, 4113, and 4117

CFR Citation: 7 CFR 274.12; 7 CFR 278; 7 CFR 279

Legal Deadline: Other, Statutory, May 13, 2002, PL 107-171, sec 4108, 4113, and 4117.
Other, Statutory, October 1, 2002, PL 107-171, sec 4110.

Abstract: Section 4108—This rule proposes to allow alternate methods for issuing food stamp benefits during disasters when reliance on electronic benefit transfer systems (EBT) is impracticable.

Section 4110—This rule proposes to eliminate the requirement that Federal costs for electronic benefit transfer systems cannot exceed the costs of the paper systems they replace.

Section 4113—This rule proposes to allow group homes and institutions to redeem EBT benefits directly through banks in areas where EBT has been implemented rather than going through authorized wholesalers or other retailers.

Section 4117—This rule proposes to allow the Secretary of Agriculture to use mailing methods other than certified mail when notifying retailers of the above mentioned adverse actions so long as the method provides evidence of delivery. (02-005)

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0584–AD28

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333. • FSP: HIGH PERFORMANCE BONUSES

Regulatory Plan: This entry is Seq. No. 9 in part II of this issue of the **Federal Register**.

RIN: 0584–AD29

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334. • FSP: ELIGIBILITY AND CERTIFICATION PROVISIONS OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002

Regulatory Plan: This entry is Seq. No. 10 in part II of this issue of the **Federal Register**.

RIN: 0584–AD30

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335. • FSP: QUALITY CONTROL PROVISIONS OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002

Regulatory Plan: This entry is Seq. No. 11 in part II of this issue of the **Federal Register**.

RIN: 0584–AD31

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336. • FSP: EMPLOYMENT AND TRAINING PROGRAM PROVISIONS OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002

Regulatory Plan: This entry is Seq. No. 12 in part II of this issue of the **Federal Register**.

RIN: 0584–AD32

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337. • COMMODITY SUPPLEMENTAL FOOD PROGRAM (CSFP)—ALLOCATION OF ADMINISTRATIVE FUNDS

Priority: Other Significant

Legal Authority: PL 107-171

CFR Citation: 7 CFR 247.10

Legal Deadline: None

Abstract: This rule will amend CSFP regulations to implement nondiscretionary provisions of Public Law 107-171 affecting the allocation of administrative funds to State agencies. The law allocates to State agencies an administrative grant per assigned caseload slot, adjusted each year for inflation, to pay program administrative costs. It also deletes the current limitation of the total administrative allocation to 20 percent of total program funding. The method of allocation used previously did not guarantee States a specific amount for each caseload slot assigned. The changes provide more stable funding support for State and local agencies. (02-010)

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal

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RIN: 0584–AD33

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338. • SENIOR FARMERS' MARKET NUTRITION PROGRAM (SFMNP)

Priority: Other Significant

Legal Authority: PL 107-171, sec 4306

CFR Citation: 7 CFR 249

Legal Deadline: None

Abstract: This proposed rule will implement the provision of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) that gives the Department the authority to promulgate regulations for the operation and administration of the SFMNP. The purposes of the SFMNP are to provide fresh, nutritious, unprepared locally grown fruits, vegetables, and herbs from farmers' markets, roadside stands, and community supported agriculture programs to low-income seniors, and to increase the consumption of agricultural commodities by expanding, developing, and/or aiding in the development of domestic farmers' markets, roadside stands, and community supported agriculture programs. (02-012)

Timetable:

Action	Date	FR Cite
NPRM	08/00/03	
NPRM Comment Period End	11/00/03	
Final Action	06/00/04	
Final Action Effective	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal, Federal

Federalism: Undetermined

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RIN: 0584–AD35

Department of Agriculture (USDA)
Food and Nutrition Service (FNS)

Final Rule Stage

339. WIC: REQUIREMENTS FOR AND EVALUATION OF WIC PROGRAM REQUESTS FOR BIDS FOR INFANT FORMULA REBATE CONTRACTS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 42 USC 1786

CFR Citation: 7 CFR 246

Legal Deadline: None

Abstract: At the time the current cost containment regulations were published in 1989, there were only minor differences in infant formula wholesale prices and few differences in types of infant formulas offered by manufacturers; i.e., milk- and soy-based infant formula. However, current wholesale prices vary considerably among manufacturers for similar formulas and several new infant formulas have emerged on the market over the last decade. Therefore, to reflect market changes in the infant formula industry and to optimize competition in the WIC Program's infant formula rebate contracts, this interim rule would require WIC State agencies to award infant formula rebate contracts based on the lowest net price, allowing highest gross rebate as a basis of award only when retail prices of the different brands of infant formula vary, on average, by 5 percent or less. Additionally, this rule would define the types and forms of infant formula that must be included in cost containment systems. It would also expand on conditions that must be met for the issuance of infant formulas not covered by rebate contracts. (92-013)

Timetable:

Action	Date	FR Cite
NPRM	07/16/98	63 FR 38343
NPRM Comment Period End	09/14/98	
Interim Final Rule	08/23/00	65 FR 51213
Interim Final Rule Effective	10/23/00	
Interim Final Rule Implementation Date	11/21/00	
Interim Final Rule Comment Period End	08/23/01	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local, Tribal, Federal

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RIN: 0584–AB52

340. FOOD STAMP PROGRAM: ANTICIPATING INCOME AND REPORTING CHANGES

Priority: Other Significant

Legal Authority: 7 USC 2011 to 2032

CFR Citation: 7 CFR 272; 7 CFR 273

Legal Deadline: None

Abstract: This rule revises Food Stamp Program procedures for reporting and acting on changes in earned income. The changes are designed to increase State agency flexibility and improve procedures for determining the eligibility and benefits of households whose income fluctuates unpredictably. Under this rule, State agencies would choose from four different reporting requirements for households with earned income. The reporting requirement a State agency selects would replace the current requirement that households report a change of more than $25 in earned income. In addition to reporting a change in source of income, households would be required to report one of the following: A change in wage rate or salary and a change in part-time or full-time status, provided the household is certified for no more than 3 months; a change in wage rate or salary and a change of more than 5 hours a week that is expected to continue for more than a month; or a change in the amount earned of more than $100 a month. The reporting requirement for changes in unearned income would be increased to changes of more than $50 a month from the current threshold of changes of more than $25 a month. In addition to the above reporting options, State agencies would also be able to select the option of requiring households to report changes through a quarterly reporting system rather than at the time the changes become known to the household. (93-005)

Timetable:

Action	Date	FR Cite
NPRM	12/17/96	61 FR 66233
NPRM Comment Period End	02/18/97	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

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RIN: 0584–AB57

341. CHILD AND ADULT CARE FOOD PROGRAM: IMPROVING MANAGEMENT AND PROGRAM INTEGRITY

Regulatory Plan: This entry is Seq. No. 13 in part II of this issue of the **Federal Register**.

RIN: 0584–AC24

342. FOOD STAMP PROGRAM REGULATORY REVIEW: FSP STANDARDS FOR APPROVAL AND OPERATION OF FOOD STAMP ELECTRONIC BENEFIT TRANSFER SYSTEMS

Priority: Other Significant

Legal Authority: 7 USC 2011 to 2034

CFR Citation: 7 CFR 274.12

Legal Deadline: None

Abstract: This rule proposes revisions to food stamp regulations affecting the standards and administration of EBT systems for food stamp issuance. Current regulations at 7 CFR 274.12 delineate the standards that EBT systems must meet in order to be approved for operation. This rule will revise those regulations to provide the State agency more flexibility in implementing and operating those systems. Clarifications and FNS settlement improvements will also be incorporated into the rule. (96-016)

Timetable:

Action	Date	FR Cite
NPRM	07/12/01	66 FR 36495
NPRM Comment Period End	09/10/01	
Final Action	11/00/02	

USDA—FNS

Final Rule Stage

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0584–AC37

343. NATIONAL SCHOOL LUNCH PROGRAM: REIMBURSEMENT FOR SNACKS IN AFTERSCHOOL CARE PROGRAMS

Priority: Other Significant

Legal Authority: PL 105-336

CFR Citation: 7 CFR 210; 7 CFR 235; 7 CFR 245

Legal Deadline: None

Abstract: The William F. Goodling Child Nutrition Reauthorization Act of 1998 amended the Richard B. Russell National School Lunch Act to authorize reimbursement for snacks served under the NSLP in afterschool care programs operated by schools. The afterschool program must be organized primarily to provide care for children and have an educational or enrichment purpose. Additionally, the statute mandates free snacks for all children enrolled in afterschool care programs operated by schools in areas served by a school in which at least 50 percent of the enrolled children are certified for free or reduced price meals. (98-007)

Timetable:

Action	Date	FR Cite
NPRM	10/11/00	65 FR 60502
NPRM Comment Period End	01/09/01	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Sharon Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302
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RIN: 0584–AC72

344. FSP: ELECTRONIC BENEFIT TRANSFER (EBT) SYSTEMS INTEROPERABILITY AND PORTABILITY

Priority: Other Significant

Legal Authority: PL 106-171

CFR Citation: 7 CFR 272.1; 7 CFR 274.12

Legal Deadline: Other, Statutory, September 7, 2000, PL 106-171, sec 3. Other, Statutory, February 11, 2001, PL 106-171, sec 4. Other, Statutory, October 1, 2002, PL 106-171, sec 3.

Abstract: This rule revises Food Stamp regulations to ensure that recipients can use their electronic food stamp benefits across State borders by requiring interoperable State electronic issuance systems. The regulations establish uniform national standards to achieve this requirement. Also, 100 percent funding is available under the regulation to pay for the operational cost of this functionality up to a national limit of $500,000. Costs beyond this level will be covered at the standard 50 percent program reimbursement rate for State administrative costs. (00-001)

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/15/00	65 FR 49719
Interim Final Rule Effective	09/19/00	
Interim Final Rule Comment Period End	11/13/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sharon Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302
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RIN: 0584–AC91

345. SPECIAL NUTRITION PROGRAMS: DISCLOSURE OF CHILDREN'S ELIGIBILITY INFORMATION UNDER THE CHILD NUTRITION PROGRAMS

Priority: Other Significant

Legal Authority: PL 106-224, sec 242; PL 103-448, sec 108

CFR Citation: 7 CFR 215; 7 CFR 225; 7 CFR 226; 7 CFR 245

Legal Deadline: Final, Statutory, October 20, 2000.

Abstract: This rule establishes requirements for the disclosure of children's free and reduced price meal and free milk eligibility information by agencies that make the free and reduced price meal or free milk determination under the National School Lunch Program, the School Breakfast Program, the Special Milk Program, the Child and Adult Care Food Program, and the Summer Food Service Program. The rule responds to amendments to the Richard B. Russell National School Lunch Act, which allow limited disclosure of children's free and reduced price meal or free milk eligibility information, Public Law 103-448, the Healthy Meals for Healthy Americans Act of 1994; and Public Law 106-224, the Agricultural Risk Protection Act of 2000; comments received on the July 25, 2000, proposed rule on "Disclosure of Children's Eligibility Information" (65 FR 45725 issued under RIN 0584-AC21) and comments received on the January 11, 2001, interim rule on "Disclosure of Children's Eligibility Information to State Medicaid and the State Children's Health Insurance Program" (66 FR 2195 issued under RIN 0584-AC95). This rule incorporates the proposed rule and interim rule into one final rule. Therefore, RIN 0584-AC21 is withdrawn, and the final provisions will be issued under RIN 0584-AC95. The final rule will adopt or modify as necessary many of the provisions mandated by the statute and required by the interim rule. Many of these same provisions were presented as recommendations in the proposed rule. The objective is to provide consistency in procedures when determining agencies opt to disclose children's eligibility information and to provide some protection against unauthorized disclosures and misuse of personal information, regardless of whether the disclosure is to Medicaid or SCHIP or

to an education or other program. (00-004)

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	10/01/00	
Interim Final Rule	01/11/01	66 FR 2195
Interim Final Rule Comment Period End	04/11/01	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

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RIN: 0584–AC95

346. IMPLEMENTATION OF POULTRY SUBSTITUTION PILOT AS PERMANENT AND MODIFICATION OF COMMODITY RECORDKEEPING REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 7 USC 612c; 7 USC 612c note; 7 USC 1431; 7 USC 1431b; 7 USC 1431e; 7 USC 1431 note; 7 USC 1446a-1; 7 USC 1859; 7 USC 2014; 7 USC 2025; 15 USC 713c; 22 USC 1922; 42 USC 1751; 42 USC 1755; 42 USC 1758; 42 USC 1760 to 1761; 42 USC 1762a; 42 USC 1766; 42 USC 3030a; 42 USC 5179 to 5180

CFR Citation: 7 CFR 250.14; 7 CFR 250.16; 7 CFR 250.30

Legal Deadline: None

Abstract: 1) Poultry and fruit and vegetables may currently be substituted for commodities under pilots and waivers. Due to the success of these programs, the regulations will be changed to allow such commercial substitution on a permanent basis. 2) Due to changes in the commercial market and the food donation program, the Department will allow vendors to use their own labels in place of USDA donated labels for school programs. This will complicate school's recordkeeping and inventory procedures. The regulations will be modified to accommodate the change in labels. (01-001)

Timetable:

Action	Date	FR Cite
NPRM	02/21/02	67 FR 7977
NPRM Comment Period End	04/22/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Sharon Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302
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RIN: 0584–AD08

347. SPECIAL NUTRITION PROGRAMS: UNIFORM FEDERAL ASSISTANCE REGULATIONS; NONDISCRETIONARY TECHNICAL AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 503, 111, and 7501; PL 98-502; PL 104-156

CFR Citation: 7 CFR 210, 215, 220, 225, and 235

Legal Deadline: None

Abstract: This final rule makes a number of technical changes to the regulations governing the National School Lunch Program, the Special Milk Program for Children, the School Breakfast Program, the Child and Adult Care Food Program, the Summer Food Service Program, and State Administrative Expense Funds. The United States Department of Agriculture (USDA) is revising its grants management regulations in order to bring the entitlement programs it administers under the same regulations that already apply to nonentitlement programs and to identify exceptions to these general rules that apply only to entitlement programs. (01-008)

Timetable:

Action	Date	FR Cite
Direct Final Rule	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Sharon Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302
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RIN: 0584–AD16

348. EXPANDED VERIFICATION OF ELIGIBILITY SUMMARY REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1758, sec 9(d)(2)

CFR Citation: 7 CFR 245

Legal Deadline: None

Abstract: Recent comparisons of National data indicate that there are more students certified for free and reduced price meals than there are students eligible for such meal benefits. As a result, the Food and Nutrition Service (FNS) plans to propose regulations to address this discrepancy. FNS plans to publish proposed regulations to require local school food authorities to report verification activity and results to their respective State agency to support State agency oversight activities and to allow States to report the school level data to USDA. Results will provide USDA with information that will assist in improving the certification of eligibility for free and reduced price meal benefits. (01-015)

Timetable:

Action	Date	FR Cite
NPRM	08/09/02	67 FR 51779
NPRM Comment Period End	10/08/02	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

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RIN: 0584–AD20

349. • PRIVACY ACT: REVISION OF AN EXISTING SYSTEM OF RECORDS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 2011 to 2036; PL 100-103

CFR Citation: 7 CFR 273

Legal Deadline: None

Abstract: This is a revision to the existing system of records entitled "Claims Against Food Stamp Recipients-USDA/FNS-3." The revision is being made to comply with the requirements of Treasury Offset Program. This notice announces that FNS will now share data with private sources for the purpose of obtaining addresses to locate individuals who may owe delinquent food stamp recipient claims and employment information for administrative wage garnishment. (02-002)

Timetable:

Action	Date	FR Cite
Final Action	01/00/03	
Final Action Effective	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

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RIN: 0584–AD24

350. • AFTERSCHOOL SNACKS UNDER THE CHILD AND ADULT CARE FOOD PROGRAM

Priority: Other Significant

Legal Authority: PL 105-336

CFR Citation: 7 CFR 226

Legal Deadline: None

Abstract: The William F. Goodling Child Nutrition Reauthorization Act of 1998 amended the Richard B. Russell National School Lunch Act to authorize reimbursement for snacks served under CACFP in afterschool care programs operated by at-risk centers. The afterschool program must be organized primarily to provide care for children and have an educational or enrichment purpose. All snacks are served free to participants because at-risk centers are located in eligible areas (that is, areas served by a school in which at least 50 percent of the enrolled children are certified for free or reduced price meals). (02-004)

Timetable:

Action	Date	FR Cite
NPRM	10/11/00	65 FR 60502
NPRM Comment Period End	01/09/01	
Final Action	06/00/03	
Final Action Effective	07/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

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RIN: 0584–AD27

351. • SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC): EXCLUSION OF MILITARY HOUSING PAYMENTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-171, sec 4402

CFR Citation: 7 CFR 246

Legal Deadline: None

Abstract: This final rule implements a non-discretionary legislative provision of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) by providing WIC State agencies the option to exclude payments to military personnel for privatized housing, whether on- or off-base, when determining income eligibility for the WIC program. (02-011)

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Sharon Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302
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RIN: 0584–AD34

Department of Agriculture (USDA)
Food and Nutrition Service (FNS)

Long-Term Actions

352. CHILD AND ADULT CARE FOOD PROGRAM: IMPLEMENTING LEGISLATIVE REFORMS TO STRENGTHEN PROGRAM INTEGRITY

Priority: Other Significant

CFR Citation: 7 CFR 226

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/27/02	67 FR 43448
Interim Final Rule Effective	07/29/02	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Federalism: This action may have federalism implications as defined in EO 13132.

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RIN: 0584–AC94

353. STATE ADMINISTRATIVE EXPENSE FUNDS: PLAIN LANGUAGE REWRITE

Priority: Info./Admin./Other

CFR Citation: 7 CFR 235

Timetable:

Action	Date	FR Cite
Direct Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sharon Ackerman
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RIN: 0584–AC96

354. SPECIAL MILK PROGRAM FOR CHILDREN: PLAIN LANGUAGE REVISION AND REORGANIZATION

Priority: Info./Admin./Other

CFR Citation: 7 CFR 215

Timetable:

Action	Date	FR Cite
Direct Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

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RIN: 0584–AC97

355. FOOD DISTRIBUTION PROGRAMS: PLAIN LANGUAGE REWRITE OF 7 CFR PART 250, DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS, AND AREAS UNDER ITS JURISDICTION

Priority: Info./Admin./Other

CFR Citation: 7 CFR 250

Timetable:

Action	Date	FR Cite
Direct Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal, Federal

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RIN: 0584–AC98

356. FOOD DISTRIBUTION PROGRAMS: PLAIN LANGUAGE REWRITE OF 7 CFR PART 251, THE EMERGENCY FOOD ASSISTANCE PROGRAM (TEFAP)

Priority: Info./Admin./Other

CFR Citation: 7 CFR 251

Timetable:

Action	Date	FR Cite
Direct Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

Agency Contact: Sharon Ackerman
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RIN: 0584–AC99

357. FOOD DISTRIBUTION PROGRAMS: PLAIN LANGUAGE REWRITE OF 7 CFR PART 252, THE NATIONAL COMMODITY PROCESSING PROGRAM (NCP)

Priority: Info./Admin./Other

CFR Citation: 7 CFR 252

Timetable:

Action	Date	FR Cite
Direct Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

Agency Contact: Sharon Ackerman
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RIN: 0584–AD00

358. FOOD DISTRIBUTION PROGRAMS: PLAIN LANGUAGE REWRITE OF 7 CFR PART 253, THE FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS (FDPIR)

Priority: Info./Admin./Other

CFR Citation: 7 CFR 253

Timetable:

Action	Date	FR Cite
Direct Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Sharon Ackerman
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RIN: 0584–AD01

359. FOOD DISTRIBUTION PROGRAMS: PLAIN LANGUAGE REWRITE OF 7 CFR PART 254, THE FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS (FDPIR) IN OKLAHOMA

Priority: Info./Admin./Other

CFR Citation: 7 CFR 254

Timetable:

Action	Date	FR Cite
Direct Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal, Federal

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RIN: 0584–AD02

360. NUTRITION EDUCATION AND TRAINING PROGRAM: PLAIN LANGUAGE REWRITE OF 7 CFR PART 227

Priority: Info./Admin./Other

CFR Citation: 7 CFR 227

Timetable:

Action	Date	FR Cite
Direct Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sharon Ackerman
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RIN: 0584–AD03

361. STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

Priority: Info./Admin./Other

CFR Citation: 7 CFR 276

Timetable:

Action	Date	FR Cite
Direct Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

Agency Contact: Sharon Ackerman
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RIN: 0584–AD04

362. PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

Priority: Info./Admin./Other

CFR Citation: 7 CFR 277

Timetable:

Action	Date	FR Cite
Direct Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

Agency Contact: Sharon Ackerman
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RIN: 0584–AD05

363. SCHOOL BREAKFAST PROGRAM: PLAIN LANGUAGE REVISION AND REORGANIZATION

Priority: Info./Admin./Other

CFR Citation: 7 CFR 220

Timetable:

Action	Date	FR Cite
Direct Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

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RIN: 0584–AD10

364. WIC: PLAIN LANGUAGE REWRITE OF 7 CFR PART 248, FARMERS' MARKET NUTRITION PROGRAM

Priority: Info./Admin./Other

CFR Citation: 7 CFR 248

Timetable:

Action	Date	FR Cite
Direct Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Sharon Ackerman
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RIN: 0584–AD11

365. FOOD STAMP PROGRAM: VEHICLE AND MAXIMUM EXCESS SHELTER EXPENSE DEDUCTION PROVISIONS OF PUBLIC LAW 106-387

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 7 CFR 273.8; 7 CFR 273.9

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: Sharon Ackerman
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RIN: 0584–AD13

366. CNP: PLAIN LANGUAGE REWRITE OF 7 CFR PART 225, SUMMER FOOD SERVICE PROGRAM

Priority: Info./Admin./Other

CFR Citation: 7 CFR 225

Timetable:

Action	Date	FR Cite
Direct Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

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RIN: 0584–AD17

Department of Agriculture (USDA)
Food and Nutrition Service (FNS)

Completed Actions

367. FOOD STAMP PROGRAM: WORK PROVISIONS OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 AND THE FOOD STAMP PROVISIONS OF THE BALANCED BUDGET ACT OF 1997

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 7 CFR 273.7; 7 CFR 273.22; 7 CFR 273.24

Completed:

Reason	Date	FR Cite
Final Action	06/19/02	67 FR 41589
Final Action Effective	08/19/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Sharon Ackerman
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RIN: 0584–AC45

368. NATIONAL SCHOOL LUNCH PROGRAM, SCHOOL BREAKFAST PROGRAM, AND CHILD AND ADULT CARE FOOD PROGRAM—AMENDMENTS TO THE INFANT MEAL PATTERN

Priority: Other Significant

CFR Citation: 7 CFR 210; 7 CFR 220; 7 CFR 226

Completed:

Reason	Date	FR Cite
Final Action	05/28/02	67 FR 36779
Final Action Effective	06/27/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Sharon Ackerman
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RIN: 0584–AD26

BILLING CODE 3410–30–S

Department of Agriculture (USDA)
Food Safety and Inspection Service (FSIS)

Prerule Stage

369. POULTRY INSPECTION: REVISION OF FINISHED PRODUCT STANDARDS WITH RESPECT TO INGESTA

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 21 USC 451 to 470 et seq

CFR Citation: 9 CFR 381

Legal Deadline: None

Abstract: FSIS is seeking to clarify its Poultry Inspection regulations regarding visible ingesta on poultry carcasses and parts. This action was precipitated by a civil suit filed against USDA.

Timetable:

Action	Date	FR Cite
ANPRM	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. Daniel L. Engeljohn, Director, Regulations and Directives Development Staff, Department of Agriculture, Food Safety and Inspection Service, Room 112 Cotton Annex Building, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0583–AC77

Department of Agriculture (USDA)
Food Safety and Inspection Service (FSIS)

Proposed Rule Stage

370. TRANSPORTATION, STORAGE, AND OTHER HANDLING OF POTENTIALLY HAZARDOUS FOODS

Priority: Other Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 21 USC 601 to 695; 21 USC 451 to 470

CFR Citation: 9 CFR 308; 9 CFR 317; 9 CFR 325; 9 CFR 381

Legal Deadline: None

Abstract: The Food Safety and Inspection Service (FSIS), in conjunction with the Food and Drug Administration (FDA), published an advance notice of proposed rulemaking (ANPRM) that addressed possible regulatory approaches to the transportation and storage of potentially hazardous foods (including meat and poultry products) and solicited comments and information from the public. FSIS and FDA have been considering various efforts to ensure that potentially hazardous foods outside of food processing establishments will be handled in a way that will minimize the growth of pathogenic organisms or other hazards. FSIS now anticipates rulemaking under the Federal Meat Inspection Act and the Poultry Products Inspection Act on proposed handling standards and information to assure that the public is informed of the manner of handling required to maintain these products under sanitary conditions.

Timetable:

Action	Date	FR Cite
ANPRM	11/22/96	61 FR 59372
ANPRM Comment Period End	02/20/97	
NPRM	09/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Dr. Daniel L. Engeljohn, Director, Regulations and Directives Development Staff, Department of Agriculture, Food Safety and Inspection Service, Room 112 Cotton Annex Building, 1400 Independence Avenue SW, Washington, DC 20250

USDA—FSIS

Proposed Rule Stage

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RIN: 0583–AC05

371. GRANT AND INAUGURATION OF INSPECTION

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 304; 9 CFR 305

Legal Deadline: None

Abstract: FSIS is proposing to clarify the regulations in 9 CFR parts 304 and 305, which provide for grant and inauguration of inspection in meat and poultry establishments to address issues raised by the Office of Inspector General and others.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 0583–AC07

372. PERFORMANCE STANDARDS FOR BACON

Regulatory Plan: This entry is Seq. No. 14 in part II of this issue of the **Federal Register**.

RIN: 0583–AC49

373. REFORM OF REGULATIONS ON IMPORTED MEAT AND POULTRY PRODUCTS

Priority: Other Significant

Legal Authority: 21 USC 451 et seq; 21 USC 601 et seq

CFR Citation: 9 CFR 327; 9 CFR 381

Legal Deadline: None

Abstract: As part of its continuing regulatory reform effort, FSIS is proposing to consolidate and streamline the regulations governing the importation of livestock and poultry products to make them consistent with the regulatory approach the Agency has taken in its Pathogen Reduction/Hazard Analysis and Critical Control Points (PR/HACCP) regulations and related rulemakings. FSIS is proposing to eliminate obsolete provisions and, where appropriate, to replace command-and-control provisions with performance standards. The Agency is proposing to require establishments where import inspection is conducted to have documented process controls that parallel in some respects the HACCP and other documented systems that establishments where inspection of domestic products is conducted must have.

Timetable:

Action	Date	FR Cite
NPRM	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 0583–AC56

374. EGG AND EGG PRODUCTS INSPECTION REGULATIONS

Regulatory Plan: This entry is Seq. No. 15 in part II of this issue of the **Federal Register**.

RIN: 0583–AC58

375. LABELING—GENERIC APPROVAL AND REGULATION CONSOLIDATION

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 451 to 470; 21 USC 601 to 695

CFR Citation: 9 CFR 317; 9 CFR 327; 9 CFR 381; 9 CFR 412

Legal Deadline: None

Abstract: This rulemaking will continue an effort initiated several years ago by amending FSIS's regulations to expand the types of labeling that are generically approved. FSIS plans to propose that the submission of labeling for approval prior to use be limited to certain types of labeling, as specified in the regulations. In addition, FSIS plans to reorganize and amend the regulations by consolidating the nutrition labeling rules that currently are stated separately for livestock products and poultry products (in part 317, subpart B, and part 381, subpart Y, respectively) and by amending their provisions to set out clearly various circumstances under which these products are misbranded.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Robert Post, Director, Labeling and Consumer Protection Staff, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250
Phone: 202 205-0279

RIN: 0583–AC59

376. PATHOGEN REDUCTION; HAZARD ANALYSIS AND CRITICAL CONTROL POINTS (HACCP) SYSTEMS; ADDITIONS TO GENERIC E. COLI CRITERIA

Priority: Other Significant

Legal Authority: 21 USC 601 to 695; 21 USC 451 to 470

CFR Citation: 9 CFR 310; 9 CFR 381

Legal Deadline: None

Abstract: FSIS is proposing to add generic E. coli criteria to the regulations. In addition, FSIS is proposing to revise the terms used to identify and define certain classes of product listed in the Salmonella tables.

FSIS is proposing to delay making the proposed criteria and standards applicable for 1 year for small establishments and for 2 years for very small establishments.

USDA—FSIS — **Proposed Rule Stage**

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0583–AC63

377. FOOD STANDARDS; GUIDING PRINCIPLES AND FOOD STANDARDS MODERNIZATION

Priority: Other Significant

Legal Authority: 21 USC 601 et seq; 21 USC 451 et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Food Safety and Inspection Service (FSIS) and the Food and Drug Administration (FDA) are proposing to modernize their food standards. The agencies are proposing a set of guiding principles that define how modern food standards should be structured to protect the interest of consumers, provide for technological advances in food production, be consistent with international food standards, and be clear, simple, and easy to use for both manufacturers and the agencies that enforce compliance with the standards. The proposed guiding principles will establish the criteria that the Agencies will use in considering whether a petition to establish, revise, or eliminate a food standard will be the basis for a proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Robert Post, Director, Labeling and Consumer Protection Staff, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250 Phone: 202 205-0279

RIN: 0583–AC72

378. PETITIONS FOR RULEMAKING

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 553

CFR Citation: 9 CFR 392

Legal Deadline: None

Abstract: FSIS is proposing to amend its regulations to add a new part that prescribes procedures for the submission, consideration, and disposition of petitions for rulemaking. The proposal also describes the Agency's expectations for the type of documentation that should be submitted in support of a petition and that will facilitate regulatory development. FSIS is proposing this action to provide clear guidance to those who would like to participate in the rulemaking process by petitioning FSIS to issue, amend, or repeal a rule administered by the Agency.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Dr. Daniel L. Engeljohn, Director, Regulations and Directives Development Staff, Department of Agriculture, Food Safety and Inspection Service, Room 112 Cotton Annex Building, 1400 Independence Avenue SW, Washington, DC 20250 Phone: 202 720-5627 Fax: 202 690-0486 Email: daniel.engeljohn@usda.gov

RIN: 0583–AC81

379. CLASSES OF POULTRY UPDATING POULTRY CLASS STANDARDS

Priority: Other Significant

Legal Authority: 21 USC 451

CFR Citation: 9 CFR 381.170(a)

Legal Deadline: None

Abstract: FSIS is proposing to amend the official U.S. classes of poultry so that they more accurately and clearly describe the characteristics of poultry in the market today. Poultry classes are defined primarily in terms of age and sex of the bird. Genetic improvements and new poultry management techniques have reduced the grow-out period for some poultry classes while extensive cross breeding has produced poultry with higher meat yields but blurred breed distinctions. This action is being taken to ensure that poultry products are labeled in a truthful and non-misleading manner.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Post, Director, Labeling and Consumer Protection Staff, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250 Phone: 202 205-0279

RIN: 0583–AC83

380. ELIMINATION OF CHILLING TIME AND TEMPERATURE REQUIREMENTS FOR READY-TO-COOK POULTRY (SECTION 610 REVIEW)

Regulatory Plan: This entry is Seq. No. 16 in part II of this issue of the **Federal Register**.

RIN: 0583–AC87

381. EMERGENCY REGULATIONS TO PREVENT MEAT FOOD AND MEAT PRODUCTS THAT MAY CONTAIN THE BSE AGENT FROM ENTERING COMMERCE

Regulatory Plan: This entry is Seq. No. 17 in part II of this issue of the **Federal Register**.

RIN: 0583–AC88

382. • ADDITION OF SAN MARINO TO THE LIST OF COUNTRIES ELIGIBLE TO EXPORT MEAT AND MEAT PRODUCTS TO THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 601 to 695

CFR Citation: 9 CFR 327

Legal Deadline: None

Abstract: FSIS is proposing to add San Marino to the list of countries from which meat or meat food products may be imported into the United States.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Dr. Daniel L. Engeljohn, Director, Regulations and Directives Development Staff, Department of Agriculture, Food Safety and Inspection Service, Room 112 Cotton Annex Building, 1400 Independence Avenue SW, Washington, DC 20250 Phone: 202 720-5627 Fax: 202 690-0486 Email: daniel.engeljohn@usda.gov

RIN: 0583–AC91

USDA—FSIS — **Proposed Rule Stage**

Department of Agriculture (USDA)
Food Safety and Inspection Service (FSIS) — **Final Rule Stage**

383. BEEF OR PORK WITH BARBECUE SAUCE; REVISION OF STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 319

Legal Deadline: None

Abstract: The Food Safety and Inspection Service (FSIS) has been petitioned to amend the Federal meat inspection regulations by removing a meat yield requirement for the standardized products "Beef With Barbecue Sauce" and "Pork With Barbecue Sauce." Current regulations for these products require that the product contain not less than 50 percent of the species identified on the label and that the weight of the cooked pork or beef not exceed 70 percent of the uncooked weight of the meat. The first requirement is consistent with other meat and sauce requirements, but the second requirement is not. The petitioner asserts that the product standard (promulgated in 1952) does not reflect current production practices or the commercial marketability of beef or pork with barbecue sauce. The petitioner further states that producers of these products are at a competitive disadvantage with other meat and sauce producers, because other meat and sauce producers do not have a 70 percent yield requirement. For example, producers of the standardized products "Beef with Gravy," "Meat Pies," and "Spaghetti with Meat and Sauce" and similar standardized products do not have any meat yield requirements.

FSIS has determined that the petitioner's request should be granted. This action would permit fair competition between meat and barbecue sauce producers, and poultry and sauce producers, and would provide consistent requirements in both the meat and poultry inspection regulations.

Timetable:

Action	Date	FR Cite
NPRM	09/03/97	62 FR 46450
NPRM Comment Period End	11/03/97	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. Daniel L. Engeljohn, Director, Regulations and Directives Development Staff, Department of Agriculture, Food Safety and Inspection Service, Room 112 Cotton Annex Building, 1400 Independence Avenue SW, Washington, DC 20250 Phone: 202 720-5627 Fax: 202 690-0486 Email: daniel.engeljohn@usda.gov

RIN: 0583–AC09

384. PERFORMANCE STANDARDS FOR READY-TO-EAT MEAT AND POULTRY PRODUCTS

Regulatory Plan: This entry is Seq. No. 18 in part II of this issue of the **Federal Register**.

RIN: 0583–AC46

385. MEAT PRODUCED BY ADVANCED MEAT/BONE SEPARATION MACHINERY AND RECOVERY SYSTEMS

Regulatory Plan: This entry is Seq. No. 19 in part II of this issue of the **Federal Register**.

RIN: 0583–AC51

386. NUTRITION LABELING OF GROUND OR CHOPPED MEAT AND POULTRY PRODUCTS AND SINGLE-INGREDIENT PRODUCTS

Regulatory Plan: This entry is Seq. No. 20 in part II of this issue of the **Federal Register**.

RIN: 0583–AC60

387. FOOD LABELING; NUTRIENT CONTENT CLAIMS, DEFINITION OF THE TERM HEALTHY

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 601 et seq; 21 USC 451 et seq

CFR Citation: 9 CFR 317; 9 CFR 381

Legal Deadline: None

Abstract: This interim final rule extended until January 1, 2003, the effective date of the requirements that, to bear the claim "healthy" or any other derivative of the term "health," individual meat and poultry products can contain no more than 360 milligrams (mg) sodium and that meal-type products can contain no more than 480 mg sodium.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/28/99	64 FR 72490
Interim Final Rule Comment Period End	01/27/00	
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Post, Director, Labeling and Consumer Protection Staff, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250 Phone: 202 205-0279

RIN: 0583–AC65

USDA—FSIS — **Final Rule Stage**

388. INCORPORATION OF FOOD AND COLOR ADDITIVES INTO 21 CFR

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 602 et seq; 21 USC 451 et seq; 21 USC 321 et seq

CFR Citation: 9 CFR 318.7; 9 CFR 381.147

Legal Deadline: None

Abstract: This final rule will amend the meat and poultry inspection regulations by completing earlier efforts to incorporate current listings in 9 CFR into 21 CFR.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Post, Director, Labeling and Consumer Protection Staff, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250
Phone: 202 205-0279

RIN: 0583–AC69

389. PERFORMANCE STANDARDS FOR ON-LINE ANTIMICROBIAL REPROCESSING OF PRE-CHILL POULTRY CARCASSES

Priority: Other Significant

Legal Authority: 21 USC 451 to 470

CFR Citation: 9 CFR 381; 9 CFR 424

Legal Deadline: None

Abstract: This rule is proposing to allow, on a voluntary basis, the on-line reprocessing of pre-chill poultry carcasses that are accidentally contaminated with digestive tract contents during slaughter. The treated carcasses must meet a standard at pre-chill, in addition to pre-chill standards for generic E. coli and Salmonella already prescribed.

Timetable:

Action	Date	FR Cite
NPRM	12/01/00	65 FR 75187
NPRM Comment Period End	01/30/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0583–AC73

390. AGENCY ORGANIZATION

Priority: Info./Admin./Other

Legal Authority: 21 USC 451 to 470; 21 USC 601 to 695; 21 USC 1031 to 1056

CFR Citation: 9 CFR 300; 9 CFR 301; 9 CFR 306; 9 CFR 320; 9 CFR 381; 9 CFR 590

Legal Deadline: None

Abstract: This rulemaking will amend FSIS's regulations adopted under the FMIA, PPIA, and EPIA by updating and consolidating organizational provisions.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dr. Daniel L. Engeljohn, Director, Regulations and Directives Development Staff, Department of Agriculture, Food Safety and Inspection Service, Room 112 Cotton Annex Building, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0583–AC78

391. FOOD STANDARDS: REQUIREMENTS FOR SUBSTANTIVE STANDARDIZED MEAT AND POULTRY PRODUCTS NAMED BY USE OF AN EXPRESSED NUTRIENT CONTENT CLAIM AND A STANDARDIZED TERM

Priority: Other Significant

Legal Authority: 21 USC 601; 21 USC 451

CFR Citation: 9 CFR 381.172; 9 CFR 319.10

Legal Deadline: None

Abstract: FSIS is amending the Federal meat and poultry inspection regulations to establish a general definition and standard of identity for standardized meat and poultry products that have been modified to qualify for use of an expressed nutrient content claim in their product names. These products will be identified by an expressed nutrient content claim, such as "fat free," "low fat," and "light," in conjunction with an appropriate standardized term. FSIS is taking this action to 1) assist consumers to maintain healthy dietary practices by providing for modified versions of standardized meat and poultry products that have reductions of certain constituents that are of health concern to some people, 2) increase regulatory flexibility and support product innovation and, 3) provide consumers with an informative nutrition labeling system.

Timetable:

Action	Date	FR Cite
NPRM	12/29/95	60 FR 67474
NPRM Comment Period End	02/27/96	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Post, Director, Labeling and Consumer Protection Staff, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250
Phone: 202 205-0279

RIN: 0583–AC82

Department of Agriculture (USDA)
Food Safety and Inspection Service (FSIS) — **Long-Term Actions**

392. ANTE-MORTEM AND POST-MORTEM INSPECTION OF LIVESTOCK AND POULTRY

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

CFR Citation: 9 CFR 309; 9 CFR 310; 9 CFR 381

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State

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RIN: 0583–AC43

393. REQUIREMENTS FOR DISPOSITION AND DISPOSAL OF INSPECTED RAW MEAT AND POULTRY PRODUCTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

CFR Citation: 9 CFR 311; 9 CFR 314; 9 CFR 320; 9 CFR 325; 9 CFR 381; 9 CFR 428; 9 CFR 455

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State

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RIN: 0583–AC44

394. REWORKING OF MEAT AND POULTRY CARCASSES ACCIDENTALLY CONTAMINATED DURING EVISCERATION

Priority: Other Significant

CFR Citation: 9 CFR 310; 9 CFR 381; 9 CFR 433

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 0583–AC68

395. ELIMINATION OF REQUIREMENTS FOR TOTAL QUALITY CONTROL SYSTEMS

Priority: Other Significant

CFR Citation: 9 CFR 317; 9 CFR 318; 9 CFR 381

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

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RIN: 0583–AC53

Department of Agriculture (USDA)
Food Safety and Inspection Service (FSIS) — **Completed Actions**

396. SHARING RECALL DISTRIBUTION LISTS WITH STATE AND OTHER FEDERAL GOVERNMENT AGENCIES

Priority: Substantive, Nonsignificant

CFR Citation: 9 CFR 390

Completed:

Reason	Date	FR Cite
Final Action	04/24/02	67 FR 20009

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

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RIN: 0583–AC75

BILLING CODE 3410–DM–S

Department of Agriculture (USDA)
Foreign Agricultural Service (FAS) — **Proposed Rule Stage**

397. PROGRAM TO PROVIDE TECHNICAL ASSISTANCE TO PROMOTE U.S. AGRICULTURAL EXPORTS TO EMERGING MARKETS (EMERGING MARKETS PROGRAM)

Priority: Other Significant

Legal Authority: Not Yet Determined

CFR Citation: None

Legal Deadline: None

Abstract: This rule proposes to establish regulations applicable to the Emerging Markets Program, currently authorized by the Food, Agriculture, Conservation, and Trade Act of 1990 and amended by the Federal Agriculture Improvement and Reform Act of 1996. The Emerging Markets Program currently operates under agency guidelines. The proposed rule would amend and codify the existing guidelines. Codification of the guidelines should not change program administration noticeably. Because the program is already in operation under agency guidelines, this proposal would have no significant impact on the U.S. economy.

The proposed rule will provide specific regulations concerning program administration. Significant provisions include definition of emerging market and country eligibility, program objectives and priorities, eligible

USDA—FAS — **Proposed Rule Stage**

organizations, qualification requirements, application and review processes, decisions and appeals, reimbursement rules and procedures, reporting requirements, evaluations, and program controls.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Kimberly Chisley, Regulatory Coordinator, Department of Agriculture, Foreign Agricultural Service, Room 6087, South Building, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0551–AA62

Department of Agriculture (USDA)
Foreign Agricultural Service (FAS) — **Final Rule Stage**

398. PROGRAM TO ASSIST U.S. PRODUCERS IN DEVELOPING DOMESTIC MARKETS FOR VALUE-ADDED WHEAT GLUTEN AND WHEAT STARCH PRODUCTS

Priority: Other Significant

Legal Authority: 15 USC 714c

CFR Citation: 7 CFR 1482

Legal Deadline: None

Abstract: The rule provides for a 2-year program to assist U.S. wheat gluten producers in fully adjusting to import competition by transitioning the industry from production of basic bulk commodities to production of value-added commodities where the market potential is more viable. U.S. producers of wheat gluten, who meet the eligibility requirements of the rule and submit the required market development plans, will receive an annual lump sum payment by CCC to conduct specific program activities aimed at facilitating the transition to value-added wheat gluten products for sale in the domestic market.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/08/01	66 FR 30801
Interim Final Rule Comment Period End	07/09/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 0551–AA60

399. • TECHNICAL ASSISTANCE FOR SPECIALTY CROPS

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-171, sec 3205

CFR Citation: 7 CFR 1487

Legal Deadline: None

Abstract: The Farm Security and Rural Investment Act of 2002 mandates that the Secretary make available annually $2 million of Commodity Credit Corporation funds to establish and carry out an export assistance program to address sanitary, phytosanitary, and technical barriers that prohibit or threaten the export of U.S. specialty crops. This interim rule would establish the Technical Assistance for Specialty Crops program, providing a new tool to enable USDA to make available much needed resources to the specialty crop industry to remove, resolve or mitigate these barriers to increased exports.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/10/02	67 FR 39254
Interim Final Rule Comment Period End	11/12/02	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kimberly Chisley, Regulatory Coordinator, Department of Agriculture, Foreign Agricultural Service, Room 6087, South Building, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0551–AA63

Department of Agriculture (USDA)
Foreign Agricultural Service (FAS) — **Long-Term Actions**

400. CCC SUPPLIER CREDIT GUARANTEE PROGRAM

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

CFR Citation: 7 CFR 1493

Timetable:

Action	Date	FR Cite
NPRM	07/19/95	60 FR 37025
NPRM Comment Period End	09/18/95	
Interim Final Rule	07/01/96	61 FR 33825
Interim Final Rule Effective	08/30/96	
Interim Final Rule Comment Period End	12/30/96	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0551–AA30

401. FACILITY GUARANTEE PROGRAM

Priority: Other Significant

CFR Citation: 7 CFR 17; 7 CFR 1493

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/01/93	58 FR 11786
Interim Final Rule Comment Period End	06/01/93	
Interim Final Rule	08/08/97	62 FR 42651
Interim Final Rule Comment Period End	10/07/97	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0551–AA35

Department of Agriculture (USDA)
Foreign Agricultural Service (FAS) — **Completed Actions**

402. FREEDOM OF INFORMATION ACT (FOIA) REGULATIONS FOR THE FOREIGN AGRICULTURAL SERVICE

Priority: Info./Admin./Other

CFR Citation: 7 CFR 1

Completed:

Reason	Date	FR Cite
Final Action	07/11/02	67 FR 45895

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0551–AA61

BILLING CODE 3410–10–S

Department of Agriculture (USDA)
Forest Service (FS) — **Proposed Rule Stage**

403. HYDROPOWER APPLICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 551; 43 USC 1761

CFR Citation: 36 CFR 251

Legal Deadline: None

Abstract: The Forest Service is revising its current policy and procedures, implemented in February 1987, concerning administration of hydropower authorizations and the processing of proposals for hydropower projects affecting National Forest System lands. These revisions are necessary to make Agency policy and procedures consistent with regulatory changes by the Federal Energy Regulatory Commission (FERC). The proposed policy was published in the Federal Register on May 22, 1995 (60 FR 27153), for a 60-day public comment period, which was extended for another 45 days (60 FR 36401). As a result of the comments received, substantial changes were made to the proposed policy (60 FR 36401). Therefore, the Forest Service is publishing a revised proposed policy for public comment.

Timetable:

Action	Date	FR Cite
NPRM	05/22/95	60 FR 27153
NPRM Comment Period Extended	07/17/95	60 FR 36401
NPRM Comment Period End	09/05/95	
Second NPRM	11/00/02	
Second NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0596–AA47

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USDA—FS

Proposed Rule Stage

404. INDIAN ALLOTMENTS ON NATIONAL FOREST SYSTEM LANDS

Priority: Other Significant

Legal Authority: 16 USC 472; 16 USC 551; 16 USC 1603; 43 USC 1740; 25 USC 337

CFR Citation: 36 CFR 254

Legal Deadline: None

Abstract: This proposed rule sets forth the Forest Service role and procedures in the conveyance of Indian allotments on National Forest System (NFS) lands. The Indian Allotment Act of 1910, as amended, authorizes the Secretary of the Interior to make allotments of NFS lands to American Indians for homesteading and agricultural and grazing purposes, but only after a determination by the Secretary of Agriculture that the lands are more valuable for agriculture or grazing than for timber. The Forest Service has relied upon U.S. Department of the Interior rules and procedures at 43 CFR 2533 to govern its involvement in Indian allotment cases. Litigation and a decision by the Interior Board of Land Appeals require the Forest Service to set forth its own regulations. This proposed rule clarifies the role of the Forest Service in the allotment process. It preserves the rights of affected individual American Indians who wish to apply for allotments on NFS lands. An earlier version of this proposed rule was published in the Federal Register on June 22, 1987 (52 FR 23473). Very few comments were received on the 1987 proposed rule, and this revision of the proposed rule makes only limited changes needed to update the rule due to the passage of 15 years since publication of the first version of the proposed rule. Because of the amount of time that has elapsed since the earlier version of the proposed rule was published, the agency believes that it is in the public interest to publish a revised proposed rule and request comment prior to adopting a final rule.

Timetable:

Action	Date	FR Cite
NPRM	06/22/87	52 FR 23473
NPRM Comment Period End	07/22/87	
Second NPRM	11/00/02	
Second NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0596–AA52

405. SMALL TRACTS ACT REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 521(c) to 521(i)

CFR Citation: 36 CFR 254

Legal Deadline: None

Abstract: Implementation of the Agency's Small Tracts regulations (adopted in 1984) has revealed an inadvertent inconsistency between the regulations at 36 CFR 254.35(f) and 254.41(a) and the legislative history of the Small Tracts Act of January 12, 1983. The regulations imply that the disposal of mineral fractions by sale can only be made in response to an application from an abutting landowner, thus discouraging the conveyance by sale to the public. The Act clearly authorizes sale of mineral fractions to the public through public sale, as well as individual applications, provided that certain conditions are met. The revisions will clarify the application of the Act to ensure that both individual applications and public sale are permissible means of disposing of qualifying tracts.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0596–AA79

406. SPECIES SURPLUS TO DOMESTIC MANUFACTURING NEEDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 620 et seq

CFR Citation: 36 CFR 223.200

Legal Deadline: None

Abstract: This proposed rule would amend 36 CFR 223.200 to list species proposed to be surplus to domestic manufacturing needs. This proposed rule would implement a portion of section 620a(b) of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 et seq.). Section 620a(a) of the Act provides that no person who acquires unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States may export such timber from the United States, or sell, trade, exchange, or otherwise convey such timber from the United States, unless such timber has been determined under subsection (b) to be surplus to the needs of timber manufacturing facilities in the United States. Section 620a(b) of the Act provides that the prohibition contained in section (a) shall not apply to specific quantities of grades and species of unprocessed timber originating in Federal lands which the Secretary determines, through rulemaking, to be surplus to domestic manufacturing needs.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	
NPRM Comment Period End	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 0596–AB27

USDA—FS

Proposed Rule Stage

407. APPEAL OF DECISIONS RELATING TO OCCUPANCY AND USE OF NATIONAL FOREST SYSTEM LANDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 472; 16 USC 551

CFR Citation: 36 CFR 251; 36 CFR 214

Legal Deadline: None

Abstract: These proposed regulations would redesignate these appeals rules as a new part 214, thus placing all appeals and notice and comment rules in close proximity. Additionally, this proposed rule would revise a number of existing provisions. For example, changes to part 251 would clarify the application of this rule to the issuance of permits for occupancy and use of National Forest System lands. When 36 CFR part 251, subpart C, regulations were promulgated in 1989, NEPA analysis and documentation was not consistently applied to the authorization of special uses. Now the authorization and the issuance of permits and other authorization requires application of the NEPA process prior to issuance. In addition, since these regulations were implemented, Congress has passed the Appeal Reform Act. The proposed changes to the permit-related appeal rules are needed to make this regulation consistent with regulations at 36 CFR part 215. Among specific proposed changes being considered are removing the second level of appeal opportunity, removing the discretionary review option, shortening timeframes for scheduling oral presentations, and making changes to conform terminology and definitions with 36 CFR part 215.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	
NPRM Comment Period End	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Andria D Weeks, Regulatory Analyst, Department of Agriculture, Forest Service, MS 1134, ATTN: IRM, D&R, 1400 Independence Avenue SW, Washington, DC 20250-1134
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RIN: 0596–AB45

408. LAW ENFORCEMENT SUPPORT ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1011(f); 16 USC 472; 16 USC 551; 16 USC 559(a) to 559(g); 40 USC 484(m)

CFR Citation: 36 CFR 262

Legal Deadline: None

Abstract: In February 1994, the Forest Service published proposed rule changes for parts 261 and 262 of title 36 of the Code of Federal Regulations. Due to the high level of interest in and comment on part 261, the decision was made to publish a second proposed rule. The majority of the public comment on part 262 referred to the definition section, which has been revised to respond to those comments. The Forest Service has decided to issue a second proposed rule for comment only on part 262, Law Enforcement Support Activities. Proposed revisions to part 261 will proceed separately.

In addition, the proposed amendment to 36 CFR part 262, Law Enforcement Support Activities, would amend the rules that govern monetary rewards and payments for information leading to the arrest and conviction of people who harm natural resources or threaten employees. The proposed rule would remove established rewards for damaging or stealing yew trees, the natural source of taxol, as taxol is now produced synthetically. The change also would clarify the procedures in subpart B for administrative impoundments and removals of livestock, dogs, and personal property.

Timetable:

Action	Date	FR Cite
NPRM	02/16/94	59 FR 7880
NPRM Comment Period End	05/18/94	
Second NPRM	02/00/03	
Second NPRM Comment Period End	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0596–AB61

409. NONCOMPETITIVE SALE OF TIMBER

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 472(a)

CFR Citation: 36 CFR 223.85

Legal Deadline: None

Abstract: This proposed rule would revise 36 CFR 223.85 by removing references to section 2001(k) of Public Law 104-19 (109 Stat. 246) and defining "extraordinary conditions" to allow forest officers, without advertisement, to make modifications to timber and forest product sales, which result in the substitution of timber or forest products from outside the sale area specified in the contract. Under the proposed rule, substitute timber or forest products would have to come from the same administrative national forest and meet Agency requirements for compliance with the National Environmental Policy Act and other environmental laws. Forest Service officials would be authorized to propose timber sale modifications and to enter into discussions with purchasers on such modifications. However, timber purchasers would not be compelled to accept any modifications offered under this rule.

To the extent that timber sale cancellations and partial cancellations are avoided, future damage claims on timber sales would be reduced.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
NPRM Comment Period End	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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USDA—FS

Proposed Rule Stage

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RIN: 0596–AB70

410. LAND USES; SPECIAL USES REQUIRING AUTHORIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 477 to 482; 16 USC 551; 43 USC 1761 to 1771

CFR Citation: 36 CFR 251.50

Legal Deadline: None

Abstract: In April 1997, the Forest Service completed a reengineering study of its special uses program on how to manage the program in a more businesslike, customer-service-oriented way. The Agency is proposing revisions to 36 CFR 251.50 that would implement recommendations from this study. The study determined that many units are issuing special use authorizations unnecessarily, thereby increasing workloads. The study concluded that the Agency should clarify the special uses rules at section 251.50(a) to make explicitly clear that special use authorizations should not be issued for activities that are addressed by other Forest Service regulations; for example, those governing the disposal of timber (part 223); minerals (part 228); and the grazing of livestock (part 222). The study also concluded that section 251.50(e) should be added to direct that special use authorizations should not be issued where such authorization would serve no land or resource management objective and would have nominal effects on National Forest System lands; for example, where activities are adequately regulated by other governmental entities or where an authorized officer determines that normal operation and maintenance by the holder is within the scope of a right-of-way, easement, or other valid existing real property interest. Further, the rule at section 251.50(d) would clarify requirements regarding authorizations for special uses involving National Forest System roads and trails. The current regulation requires the issuance of closure orders for regulation of special uses on NFS roads and trails. The revised regulation will eliminate the necessity of individual closure orders for common public service permit programs.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AB74

411. SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER; TIMBER EXPORT AND SUBSTITUTION RESTRICTIONS

Priority: Other Significant

Legal Authority: 16 USC 620

CFR Citation: 36 CFR 223; 36 CFR 261

Legal Deadline: None

Abstract: The proposed rule for timber export and substitution restrictions would implement the Forest Resources Conservation and Shortage Relief Act of 1990, as amended. The proposed rule defines the certain terms necessary to facilitate uniform compliance; prohibits transfer of unprocessed private timber for export by a person who possesses or acquires unprocessed Federal timber; prohibits export of such unprocessed private timber by a third or successive party; prescribes procedures for reporting the acquisition and disposition of NFS and private timber requiring domestic processing, including transfers; prescribes procedures for identifying unprocessed National Forest Service and private timber requiring domestic processing; and establishes procedures for assessing civil and criminal penalties and applying administrative remedies for violations of the Act, its implementing regulations, and contracts subject to the Act.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	
NPRM Comment Period End	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 0596–AB75

412. SPECIAL FOREST PRODUCTS AND FOREST BOTANICAL PRODUCTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-113

CFR Citation: 36 CFR 223

Legal Deadline: None

Abstract: The Forest Service proposes to promulgate regulations for managing special forest products and forest botanical products. The regulations will guide the Forest Service in the administration of the broader category of special forest products. The proposed rule also implements Public Law 106-113, which authorizes a pilot program of charges and fees for harvest of forest botanical products (Appropriations Act H.R. 3423, section 339, Forest Botanical Products). Forest botanical products include products, such as herbs, berries, seeds, and wildflowers that are not wood products. The intended effect of this rule is to give guidance and consistency for the sustainability and sale of special forest products including forest botanical products.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 0596–AB81

USDA—FS

Proposed Rule Stage

413. DETERMINING FAIR MARKET VALUE FOR RECREATION RESIDENCE USE AUTHORIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 497; PL 106-291, title VI

CFR Citation: None

Legal Deadline: None

Abstract: The appropriations act for the Department of the Interior and related agencies for fiscal year 2001 (Pub. L. 106-291) contains provisions in title VI "Cabin User Fee Fairness Act of 2000" to ensure consistent and fair processes for appraising the fee simple value of recreation residence lots on National Forest System (NFS) lands. This act (1) establishes in law that the base annual fee for recreation residences is 5 percent of the market value of the lot; (2) changes the appraisal cycle period from 20 years to 10 years; and (3) requires the Secretary of Agriculture to (a) complete an inventory of utilities, access, and facilities serving each recreation residence tract or lot and document who paid for the installation of those improvements; (b) develop a new set of guidelines for conducting appraisals for recreation residences on NFS lands; (c) use a different annual indexing indicator; and (d) issue new Agency direction to implement the provisions of the Act within 2 years of its passage (10/11/2000). The Forest Service proposes to publish notice in the Federal Register of policy changes to the Forest Service Manual (FSM 2723) and Handbooks (FSH 2709.11, sec. 33; and FSH 5409.12, ch. 6) that would make Agency direction consistent with the requirements in the Act for the base annual fee and appraisal cycle (described in the preceding items (1) and (2)) and to request public comment on those policy changes related to the inventory, guidelines for appraisals, and indexing indicator (described in the preceding items (3)(a) to (3)(d)). Comments will be considered in development of the final policy.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 0596–AB83

414. NATIONAL FOREST SYSTEM LAND AND RESOURCE MANAGEMENT PLANNING

Priority: Other Significant

Legal Authority: 16 USC et seq; 5 USC 301

CFR Citation: 36 CFR 219, subpart A

Legal Deadline: None

Abstract: The Forest Service is proposing to revise the November 9, 2000, land and resource management planning rule. This action responds to serious concerns raised by employees and others about the agency's ability to implement some provisions of the November 2000 rule. The Forest Service also plans to address issues or deficiencies that have evolved from over 2 decades of forest planning. The goal is to develop a new rule that improves the planning process, decisionmaking, and legal defensibility of land and resource management plans.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	
Final Action	08/00/03	
Final Action Effective	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information: http://www.fs.fed.us/emc/nfma

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RIN: 0596–AB86

415. NATIONAL ENVIRONMENTAL POLICY ACT DOCUMENTATION NEEDED FOR CERTAIN SMALL ADMINISTRATIVE TIMBER SALES ON NATIONAL FOREST SYSTEM LANDS AND RESEARCH PROJECTS (FOREST SERVICE HANDBOOK 1909.15, CHAPTER 30)

Priority: Other Significant

Legal Authority: 42 USC 1421 to 4337

CFR Citation: None

Legal Deadline: None

Abstract: In 1999, as a result of a court action, the Forest Service lost the ability to use a categorical exclusion from National Environmental Policy Act (NEPA) documentation for small timber sales. This category was used extensively for small timber sales to remove hazardous trees, treat insect and disease outbreaks, and provide related timber products for local communities. As a consequence, the responsible official must now prepare an environmental assessment (EA) on these small volume timber sales (under 250,000 board feet of green timber or 1 million board feet of salvage timber). This has resulted in a Service-wide increase in environmental analysis costs and delays in beginning and completing these small timber sale projects on the National Forests and Research Experimental Forests. This proposal would categorically exclude from documentation in an EA or environmental impact statement (EIS) certain types of small timber sales in the National Forests and Research Experimental Forests and would enable the Agency to accomplish in a more timely and efficient manner the treatment of small fire hazard areas, insect and disease outbreaks, and hazardous tree removal. This new categorical exclusion would be added to the existing categories for categorical exclusions in chapter 30 of Forest

Service Handbook (FSH) 1909.15, and by Council on Environmental Quality (CEQ) regulation, this proposal requires public notice and opportunity to comment. For convenience and cost savings, the final directive may be issued temporarily as an interim directive to chapter 30 of FSH 1909.15 but would be incorporated as an amendment as soon as there are sufficient other changes to the chapter to warrant revision of the entire chapter. Decisions using this new category may be subject to a 30-day public comment period and administrative appeal under 36 CFR part 215.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AB88

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416. NOTICE, COMMENT, AND APPEAL PROCEDURES FOR NATIONAL FOREST SYSTEM PROJECTS AND ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 472; 16 USC 551; PL 102-381, sec 322 (Appeal Reform Act); 106 Stat 1419 (16 USC 1612 note)

CFR Citation: 36 CFR 215 (Revision)

Legal Deadline: None

Abstract: In 1992, the Appeal Reform Act mandated the Forest Service to develop appeal regulations for site-specific projects on National Forest System lands. The regulations were promulgated in 1994. Experience has shown there are certain provisions in the regulations that consistently give rise to questions by employees and the public and reduce efficient processing of administrative appeals. This proposed rule would revise the appeal regulations to bring better focus to public participation and to improve consistency in the application of this regulation, both of which would result in improved efficiency of the appeals process for the public and the Government.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AB89

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417. LAND USES; PROHIBITIONS: PALEONTOLOGICAL RESOURCES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 551; 18 USC 641

CFR Citation: 36 CFR 251.50; 36 CFR 251.51; 36 CFR 261.2; 36 CFR 261.9(i)

Legal Deadline: None

Abstract: This proposed rule consists of several technical changes to the agency's special uses and prohibited acts regulations regarding fossil collecting. First, the proposed rule would revise 36 CFR 251.50 to make clear that noncommercial recreational collecting of nonvertebrate fossils is an activity that does not require a special use authorization. Noncommercial vertebrate fossil collecting by academic and other similar institutions would be added as an activity that requires a special use authorization. The commercial collection of paleontological resources would not be authorized on National Forest System Lands. Second, this proposed rule would revise the definition for "paleontological resource" at 36 CFR 261.2 to make it scientifically correct. The revised definition for "paleontological resource" and a definition for "nonvertebrate fossil collecting" would be added to 36 CFR 251.51. Third, the prohibitions related to paleontology at 36 CFR 261.9 would be revised to reflect the changes at 36 CFR part 251. Other conforming amendments to 36 CFR parts 251 and 261 will be made to accommodate the changes identified in this abstract. This proposed rule is consistent with the Forest Service's stated commitment to develop a unified policy for management of fossil resources on Federal and Indian lands in accordance with the seven principles established in the May 2000 Secretary of the Interior's Report to the Senate.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	
Final Action	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AB91

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418. FOREST SERVICE TRAILS ACCESSIBILITY GUIDELINES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 4151; 29 USC 794; 7 CFR 15e

CFR Citation: None

Legal Deadline: None

Abstract: The Architectural Barriers Act of 1968, section 504 of the Rehabilitation Act of 1973, and 7 CFR 15e require that new or reconstructed facilities be accessible. The Forest Service Trails Accessibility Guidelines in this proposed policy amending Forest Service Manual (FSM) 2350, Trail, River, and Similar Recreation Opportunities, would establish clear agency guidelines to provide the highest level of accessibility to pedestrian/hiker trails for the greatest number of people, including persons with disabilities, while not fundamentally altering the environment and recreational setting. The proposed policy also would incorporate the definition of a wheelchair and clarify direction that a mobility device that meets that definition of a wheelchair may be used anywhere foot travel is permitted. Comments will be considered in development of the final guidelines.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AB92

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419. FOREST SERVICE OUTDOOR RECREATION ACCESSIBILITY GUIDELINES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4151; 29 USC 794; 7 CFR 15e

CFR Citation: None

Legal Deadline: None

Abstract: The Architectural Barriers Act of 1968, section 504 of the Rehabilitation Act of 1973, and 7 CFR 15e require that new or reconstructed facilities be accessible. The Forest Service Outdoor Recreation Accessibility Guidelines in this proposed policy amending Forest Service Manual (FSM) chapter 2330, Publicly Managed Recreation Opportunities, would establish clear agency guidelines to provide the highest level of accessibility for the greatest number of people, including persons with disabilities, while not fundamentally altering the environment and recreational setting. Outdoor recreation facilities include campgrounds, picnic areas, beach access and other access routes, and so on. The proposed policy also would clarify direction regarding existing requirements for the Golden Access Passport eligibility and documentation utilized by all Federal agencies under the 1980 amendment to the Land and Water Conservation Fund Act. Comments will be considered in development of the final guidelines.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AB93

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420. • INTERIM DIRECTIVE TO FOREST SERVICE MANUAL CHAPTER 1920, LAND AND RESOURCE MANAGEMENT PLANNING, FSM 1923, OBJECTION PROCESS

Priority: Substantive, Nonsignificant

Legal Authority: 36 CFR 219

CFR Citation: None

Legal Deadline: None

Abstract: The Agency is proposing to issue an interim directive (ID) to Forest Service Manual chapter 1920, Land and Resource Management Planning to provide Agency-wide guidance on objections filed against land and resource management plan decisions. The objection process is authorized in the National Forest System Land and Resource Management Planning rule at 36 CFR 219.32 (65 FR 65714, November 9, 2000). The 2000 Planning Rule is currently being revised to address concerns raised regarding the Agency's ability to implement some portions of the rule's provisions. Nevertheless, this pre-decisional objection process is a viable tool for field units to use to attempt to resolve issue(s) prior to making a final Agency decision on land and resource management plans. Therefore, it is prudent to provide interim direction on the objection process in order to ensure Agency-wide consistency in its implementation. Upon issuance of this ID, notice will be given in the Federal Register with a request for public comment. Comments will be reviewed and considered in developing the final policy on the objection process.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AB97

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421. • LOCATABLE MINERALS

Priority: Other Significant

Legal Authority: 30 USC 21 to 54; 30 USC 612

CFR Citation: 36 CFR 228, subpart A

Legal Deadline: None

Abstract: This revision follows recommended changes developed by GAO and OIG audits and recommendations in the National Research Council's 1999 report titled "Hardrock Mining on Federal Lands." The proposed rule would improve the administration of the locatable minerals program. The proposed rule's objectives are to improve the process for modifying, suspending, and terminating plans of operation; improve the process of reviewing and adjusting reclamation bonds to cover the full cost of reclamation; improve the process of managing temporary closures; define proper occupancy and use; and improve noncompliance and enforcement actions. This proposed rule revision will increase the efficiency of locatable minerals administration and protect the public from funding mine reclamation.

USDA—FS — **Proposed Rule Stage**

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

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RIN: 0596–AB98

422. • NATIONAL ENVIRONMENTAL POLICY ACT DOCUMENTATION NEEDED FOR FIRE MANAGEMENT ACTIVITIES (PROPOSED INTERIM DIRECTIVE TO FOREST SERVICE HANDBOOK 1909.15, CHAPTER 30)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1421 to 4337

CFR Citation: None

Legal Deadline: None

Abstract: The Forest Service proposes to issue an interim directive to Forest Service Handbook (FSH) 1909.15, Environmental Policy and Procedures Handbook, chapter 30, which addresses categories of actions that normally do not require either an environmental impact statement or an environmental assessment. The interim directive would add two categories of actions applicable to certain fire management activities, including prevention, mitigation, and emergency stabilization and rehabilitation (or restoration) measures. Such management activities would be designed to keep fire on the ground so that suppression efforts can be more effective. The objective of these activities for fuels management in areas of wildland-urban interface would be to reduce potential wildland fire intensity to a level where fire suppression forces can safely remain on site during a wildland fire. Hazard reduction treatments would be accomplished using both prescribed fire and mechanical methods (thinning, logging, creating fuelbreaks, and so on). Comments received on the proposed interim directive will be used in development of final direction.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 0596–AB99

Department of Agriculture (USDA)
Forest Service (FS) — **Final Rule Stage**

423. DISPOSAL OF NATIONAL FOREST TIMBER; CANCELLATION OF TIMBER SALE CONTRACTS

Priority: Other Significant

Legal Authority: 16 USC 472a; 16 USC 551; 16 USC 618

CFR Citation: 36 CFR 223.30; 36 CFR 223.40; 36 CFR 223.116

Legal Deadline: None

Abstract: The Forest Service is issuing a final rule to revise current Agency regulations regarding cancellation of timber sale contracts, permits, and other such instruments authorizing the sale or harvest of timber or other forest products. This rule is needed to clarify when, why, and by whom contracts may be canceled to remove redundant provisions and to provide a new formula for compensation when the Government must cancel timber sale contracts. The Forest Service takes every precaution before authorizing a particular activity on National Forest System lands to ensure that its authorization conforms with existing laws and with existing conditions on the ground at the time of the authorization. The current regulations place an inappropriate amount of financial liability on the Forest Service when the agency must, for reasons of public policy, judicial decision, or statutory direction, cancel a timber sale contract or permit. The regulatory changes are necessary because the Forest Service is unable to continue bearing the majority of the financial risk and burden of contract cancellations. This rule would more reasonably allocate the risk between the Government and private parties. Establishing these reasonable limits to the Government's exposure to financial liability and burden of risk in the event of contractual changes or contract cancellations is critical to protecting the public's financial interests.

Timetable:

Action	Date	FR Cite
NPRM	12/30/96	61 FR 68690
NPRM Comment Period End	02/13/97	
Final Action	01/00/03	
Final Action Effective	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0596–AB21

USDA—FS — **Final Rule Stage**

424. COLLECTION OF REIMBURSABLE COSTS FOR PROCESSING SPECIAL-USE APPLICATIONS AND ADMINISTRATION OF SPECIAL-USE AUTHORIZATIONS

Priority: Other Significant

Legal Authority: 43 USC 1764; 30 USC 181

CFR Citation: 36 CFR 251

Legal Deadline: None

Abstract: The objective of this proposal is to incorporate into regulation the authority contained in the Mineral Leasing Act and the Federal Land Policy and Management Act to reimburse the United States for reasonable administrative costs associated with the issuance and administration of special-use authorizations on National Forest System lands. It responds to a recommendation contained in GAO Audit Report RCED-97-16 (12/96).

Timetable:

Action	Date	FR Cite
NPRM	11/24/99	64 FR 66341
NPRM Comment Period Extended	12/29/99	64 FR 72971
NPRM Comment Period End	02/04/00	
Comment Period Extended	02/25/00	65 FR 10042
Comment Period End	03/09/00	
Final Action	12/00/02	
Final Action Effective	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Cost reimbursement for processing special-use applications and administration of special-use authorizations was originally included under RIN 0596-AA36. All provisions pertaining to the special-use application and administration process were merged into the Final Rule published November 30, 1998 (63 FR 65950, RIN 0596-AB35). Thus, this rulemaking addresses only the post-reimbursement provisions.

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RIN: 0596–AB36

425. SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER; EXTENSION OF TIMBER SALE CONTRACTS TO PERMIT URGENT REMOVAL OF TIMBER FROM OTHER LANDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 472a; 16 USC 618; 16 USC 620

CFR Citation: 36 CFR 223.50; 36 CFR 223.53

Legal Deadline: None

Abstract: This interim rule and policy change will provide for extension of National Forest System (NFS) timber sale contracts when such an extension will permit the prompt removal and utilization of non-NFS timber damaged by catastrophic events. This change will define the responsibilities of the parties for requesting and approving such extensions and specify when such extensions should be approved. This change will also allow for the use of scarce timber resources and the recovery of economic benefits from timber that might otherwise be lost because of contractual obligations to harvest undamaged timber. The interim rule will provide the regulatory foundation for extending existing contracts.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	
Interim Final Rule Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 0596–AB48

426. PREFERENCE FOR VISITOR SERVICE; ALASKA NATIONAL FOREST CONSERVATION SYSTEM UNITS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 3197

CFR Citation: 36 CFR 251

Legal Deadline: None

Abstract: The Forest Service is issuing a final rule to establish procedures by which eligible persons may receive preferences authorized by statute in the issuance of special use permits to conduct revenue-producing visitor services within Conservation System Units on the National Forests in Alaska. This regulation is necessary to implement section 1307 of the Alaska National Interest Lands Conservation Act (ANILCA; 16 U.S.C. 3101 et seq.). Lands administered by the Forest Service comprise approximately 5% of the Federal lands affected by this statute; therefore, in preparing this rule, the Forest Service has coordinated with two agencies of the Department of the Interior in order to provide consistency in the implementation of ANILCA. The final rule for the National Park Service was published on October 18, 1996 (61 FR 54334, revising 36 CFR part 13) and the final rule for the U.S. Fish and Wildlife Service was published on January 14, 1997 (62 FR 1838, revising 50 CFR part 36). While the USDI received many comments on its proposed rules, the Forest Service received only four comments on its proposed rule, which was published on April 25, 1997 (62 FR 20140). After considering all public comments, the Forest Service has revised the rule to clarify that statutory rights granted by ANILCA take precedence over the Forest Service outfitter and guide policy regarding reissuance of permits to priority use holders without competition; other changes made in this final rule are primarily minor and non-substantive.

Timetable:

Action	Date	FR Cite
NPRM	04/25/97	62 FR 20140
NPRM Comment Period End	06/24/97	
Final Action	11/00/02	
Final Action Effective	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

USDA—FS

Final Rule Stage

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RIN: 0596–AB57

427. NATIONAL ENVIRONMENTAL POLICY ACT DOCUMENTATION NEEDED FOR CERTAIN SPECIAL USES PERMIT ACTIONS (FINAL INTERIM DIRECTIVE TO FSH 1909.15, CHAPTER 30)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321 to 4346

CFR Citation: None

Legal Deadline: None

Abstract: In April 1997, the Forest Service completed a reengineering study of its special uses program. One finding in that study was that the Forest Service is conducting extensive National Environmental Policy Act (NEPA) analysis and documentation for the renewal or transfer of ownership of special use authorizations having no significant effect on the human environment, either individually or cumulatively. This level of NEPA compliance is costly, time consuming, and not commensurate with the risk attributed to the activity. Therefore, the Forest Service proposes to add a new category of categorical exclusions from NEPA documentation at sections 31.1b and 31.2 of FSH 1909.15, Environmental Policy and Procedures Handbook. This action would give clearer direction regarding the NEPA obligation, when issuance of a special use authorization is a purely ministerial action and no changes are proposed in permitted activities or facilities.

The proposed policy published September 20, 2001 (66 FR 48412) also contained a proposed revision to section 30.3 to clarify the NEPA documentation that is needed for processing applications and authorizations under a categorical exclusion when extraordinary circumstances exist. This revision to section 30.3 regarding extraordinary circumstances was incorporated as a separate action in RIN 0596-AB94 and final policy was published August 23, 2002 (67 FR 54622).

Timetable:

Action	Date	FR Cite
NPRM	09/20/01	66 FR 48412
NPRM Comment Period End	11/19/01	
Final Action	01/00/03	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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Related RIN: Related To 0596-AB94

RIN: 0596–AB73

428. REVISIONS TO ROAD MANAGEMENT POLICY (FOREST SERVICE MANUAL CHAPTER 7710)

Priority: Other Significant

Legal Authority: 16 USC 551; 23 USC 205

CFR Citation: 36 CFR 212

Legal Deadline: None

Abstract: On January 12, 2001 (66 FR 3205), the Forest Service adopted a new road management policy to improve the analysis and decisionmaking of the National Forest System road system. As part of a Governmentwide review of recently adopted rules and policies announced January 20, 2001, the Chief conducted an internal review of the new road management policy. As a consequence, the Agency identified several changes to be made to Forest Service Manual (FSM) chapter 7710. The first of these was to issue an interim directive (ID No. 7710-2001-1) to redelegate the authority for extending deadlines for completion of forest-scale analysis from the Chief to the Regional Foresters. Additionally, the ID granted all units an additional year to complete road inventories and analysis. This ID was effective May 31, 2001. Upon issuance, the Agency gave notice in the Federal Register with a request for comment. The Agency later determined that the interim requirements of the road management policy limiting road construction in inventoried roadless and contiguous unroaded areas were not relevant to the road management policy; rather, these requirements should be dealt with in the context of overall management planning of roadless areas. Moreover, field units were generally finding it difficult to determine how to define and map contiguous unroaded areas consistently. In some recent cases, the interim requirements were resulting in EIS's for minimal road construction or reconstruction along the edge of inventoried roadless areas and contiguous unroaded areas, with resultant delays in project decisions: Therefore, the Agency issued a second ID effective December 14, 2001 (ID No. 7710-2001-3), to rescind these interim requirements from FSM chapter 7710 and simultaneously issued a third ID (ID No. 1920-2001-1) to relocate these roadless requirements to FSM chapter 1920, Land and Resource Management Planning. Although the second ID was immediately effective, a notice with a request for comment was published in the Federal Register on December 20, 2001 (66 FR 65796). Comments on ID No. 7710-2001-1 and ID No. 7710-2001-3 have been considered in developing the next appropriate steps concerning the road management policy. The Agency has decided to move ahead with adoption of the changes to FSM chapter 7710. The issues regarding interim protection of roadless areas will be handled as changes to chapter 1920.

Timetable:

Action	Date	FR Cite
NPRM	12/20/01	66 FR 65796
NPRM Comment Period End	02/19/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AB90

USDA—FS

Final Rule Stage

429. • FOREST LAND ENHANCEMENT PROGRAM

Priority: Other Significant

Legal Authority: PL 107-171

CFR Citation: 36 CFR 230, subpart C

Legal Deadline: None

Abstract: This interim rule is needed to implement the Forest Land Enhancement Program (FLEP) authorized in the 2002 Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) through an amendment to the Cooperative Forestry Assistance Act (16 U.S.C. 2103). The FLEP program replaces two previous conservation incentives programs (the Stewardship Incentive Program (SIP) and the Forestry Incentives Program (FIP)). It is very similar to other cooperative grant and agreement programs that the Forest Service has managed over the past 50 years.

The goals of FLEP are to: (1) Enhance the productivity of timber, fish and wildlife habitat, soil and water quality, wetland, recreational resources, and aesthetic values of private non-industrial private forestland; and (2) establish, manage, maintain, enhance, and restore such forests. The act requires establishing a coordinated and cooperative Federal, State, and local grants program directed to achieve sustainable forestry; assisting owners of non-industrial private forestlands to more actively manage these lands and related resources; and encouraging such owners to use State, Federal, and private sector resource management expertise, financial assistance, and educational programs.

The interim rule is being drafted in consultation with other State and Federal Government partners. The FLEP steering committee includes representatives from State forestry agencies, the Cooperative State Research, Education and Extension Service, and the Office of General Council. The Technical Committee that is drafting the interim rule is comprised of national and regional Forest Service representatives, as well as State forestry staff from across the country. Every State forester will have an opportunity to review and provide input to the interim rule before it is finalized and submitted for clearance. Other government and non-government partners will also have this opportunity.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	
Interim Final Rule Comment Period End	02/00/03	
Interim Final Rule Effective	03/00/03	
Final Action	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Federalism: This action may have federalism implications as defined in EO 13132.

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RIN: 0596–AB95

430. • COMMUNITY AND PRIVATE LAND FOREST FIRE ASSISTANCE PROGRAM

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: PL 107-171

CFR Citation: 36 CFR 230, subpart D (new)

Legal Deadline: None

Abstract: The Farm Security and Rural Investment Act of 2002 directs the Secretary of Agriculture to establish a Community and Private Land Fire Assistance Program, to be administered by the Forest Service and implemented through the State Foresters. The Forest Service is issuing an interim rule to provide for the implementation and administration of the program, which would allow the following activities on both Federal and non-Federal lands: Fuel hazard mitigation and prevention, invasive species management, multi-resource wildfire planning, community protection planning, community and landowner education, market development and expansion, improved wood utilization, and special restoration projects.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 0596–AB96

Department of Agriculture (USDA)
Forest Service (FS)

Completed Actions

431. NATIONAL FOREST SYSTEM LAND AND RESOURCE MANAGEMENT PLANNING; EXTENSION OF COMPLIANCE DEADLINE

Priority: Substantive, Nonsignificant

CFR Citation: 36 CFR 219, subpart A

Completed:

Reason	Date	FR Cite
Interim Final Rule	05/20/02	67 FR 35431
Interim Final Rule Effective	05/20/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0596–AB87

USDA—FS — **Completed Actions**

432. • CLARIFICATION OF EXTRAORDINARY CIRCUMSTANCES FOR CATEGORICAL EXCLUSIONS

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 4321 to 4346

CFR Citation: None

Legal Deadline: None

Abstract: The Forest Service adopted an Interim Directive (No. 1909.15-2002-2) to guide employees in complying with the National Environmental Policy Act and the Council on Environmental Quality (CEQ) regulations for certain actions which can be categorically excluded from documentation in an environmental assessment or an environmental impact statement. This policy was split from RIN 0596-AB73 and published as a separate action. The Interim Directive clarifies the consideration of extraordinary circumstances as they apply to categorical exclusions. The intent of this Interim Directive is to facilitate employees' consistent interpretation and application of CEQ regulations and related agency policy. Notice of adoption of this Interim Directive was published and became effective on August 23, 2002 (67 FR 54622).

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/23/02	67 FR 54622
Interim Final Rule Effective	08/23/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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Related RIN: Split From 0596-AB73

RIN: 0596–AB94

BILLING CODE 3410–11–S

Department of Agriculture (USDA)
Office of Chief Financial Officer (OCFO) — **Long-Term Actions**

433. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 3017 and 3021

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

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RIN: 0505–AA11

BILLING CODE 3410–90–S

Department of Agriculture (USDA)
Office of the Secretary (AgSEC) — **Proposed Rule Stage**

434. GENERAL NONPROCUREMENT REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 5 USC 901 et seq

CFR Citation: 7 CFR 3020

Legal Deadline: None

Abstract: USDA published 7 CFR part 3015, Uniform Federal Assistance Regulations, in 1981 to establish and codify departmentwide policies and standards for administering grants and cooperative agreements to governmental and nongovernmental entities. Since that time, the Office of Management and Budget has led efforts to establish Governmentwide common rules for governmental and nongovernmental recipients of grants and cooperative agreements. Consequently, over the years, USDA has codified its Governmentwide common rules in other parts of title 7 of the CFR. This has resulted in corresponding amendments to part 3015 to revise its scope accordingly. We are proposing to remove part 3015 and to add part 3020 to parts of title 7. We are proposing to include other administrative requirements that were never codified. The alternative would be to continue to work with the disjointed, outdated part 3015. Expected results are that the new part 3020 will be more clear and concise and will only contain those cross-cutting requirements not included in other USDA departmentwide administrative regulations.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Federalism: Undetermined

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RIN: 0503–AA21

Department of Agriculture (USDA)
Office of the Secretary (AgSEC) — **Final Rule Stage**

435. OUTREACH AND ASSISTANCE FOR DISADVANTAGED FARMERS AND RANCHERS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 2279(a)

CFR Citation: 7 CFR 26

Legal Deadline: None

Abstract: This rulemaking will remove CFR part 1943, subpart C, "Small Farmer Outreach Training and Technical Assistance Program," under the Farm Service Agency and add new CFR part 26, "Outreach and Assistance to Socially Disadvantaged Farmers and Ranchers Program," under the Office of the Secretary. The Food, Agriculture, Conservation and Trade Act of 1990, title XXV, section 2501 and the Department of Agriculture Appropriation Acts provides funding for the "Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program." These acts provide the Office of Outreach with the authority to make grants and enter into contracts, cooperative agreements, and other agreements with entities to provide outreach, training, and technical assistance; to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches; and increase their participation and accessibility to agricultural programs.

Timetable:

Action	Date	FR Cite
NPRM	04/30/01	66 FR 21608
NPRM Comment Period End	05/30/01	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Geraldine Herring, Special Outreach Program Coordinator, Department of Agriculture, Office of the Secretary, 1400 Independence Avenue SW, Washington, DC 29259
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RIN: 0503–AA22

BILLING CODE 3410–90–S

Department of Agriculture (USDA)
Rural Business-Cooperative Service (RBS) — **Proposed Rule Stage**

436. BUSINESS AND INDUSTRIAL GUARANTEED LOAN PROGRAM—MISCELLANEOUS CHANGES

Priority: Other Significant

Legal Authority: 7 USC 1989; 42 USC 1480; 5 USC 301

CFR Citation: 7 CFR 4287, subpart B; 7 CFR 4279, subpart A; 7 CFR 4279, subpart B

Legal Deadline: None

Abstract: Revisions are proposed in the following areas: Exclusion of financing agriculture production, limiting debt refinancing, criteria for reducing percent of guarantee, revising loan priority criteria, eligibility issues when an applicant is delinquent on Federal debt, title IX provisions, additional administrative guidance, tightening eligibility criteria for non-bank lenders, removing the need for a Regional Attorney review for transfers and assumptions of existing loans, limiting debt refinancing, limiting packaging fees, adjusting loan priorities, additional application requirements for certain applicants, and various other minor editorial changes.

Timetable:

Action	Date	FR Cite
NPRM	08/00/03	
NPRM Comment Period End	10/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: John R. Dunn, Director, Cooperative Resources Management Division, Department of Agriculture, Rural Business-Cooperative Service, Room 4206/Stop 3253, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0570–AA23

437. AFFIRMATIVE FAIR HOUSING MARKETING PLAN

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 5 USC 301; 7 USC 1989; 42 USC 1480

CFR Citation: 7 CFR 1703 subpart B; 7 CFR 1942 subpart G; 7 CFR 4284 subpart D; 7 CFR 4287, subpart B; 7 CFR 4279, subpart B; 7 CFR 4274, subpart D; 7 CFR 4280, subpart A; 7 CFR 4287, subpart H

Legal Deadline: None

Abstract: This action will incorporate the requirement for housing-related projects (such as apartment buildings, nursing homes, group homes, and assisted living type facilities) to develop an Affirmative Fair Housing Marketing Plan (plan) when receiving funding from the Intermediary Relending Program, Rural Business Enterprise Grant Program, Rural Business Opportunity Grant Program, Rural Economic Development Loan and Grant Programs, and the Business and Industry Direct and Guaranteed Loan Programs. The plan will describe strategies to attract applications from all groups in a housing market area and efforts to reach those persons in the market area who traditionally would not be expected to apply for housing. The Rural Housing Service Multifamily Housing Program regulations currently include this borrower requirement.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Nichell Daniels, Loan Specialist, B&I Servicing Branch, Department of Agriculture, Rural Business-Cooperative Service, Room 6858/Stop 3224, 1400 Independence Avenue SW, Washington, DC 20250-3224
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RIN: 0570–AA24

USDA—RBS — **Proposed Rule Stage**

438. BUSINESS AND INDUSTRY GUARANTEED LOAN PROGRAM—FINANCING COOPERATIVE STOCK

Priority: Other Significant

Legal Authority: 7 USC 1989; 42 USC 1480; 5 USC 301

CFR Citation: 7 CFR 4279, subpart B; 7 CFR 4279, subpart A

Legal Deadline: None

Abstract: The Agency proposes to revise the Business and Industry Program regulations to incorporate additional guidance and eliminate or reduce certain requirements when financing cooperative stock. It also proposes to develop a streamlined application form when financing working capital, which includes cooperative stock.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	
NPRM Comment Period End	07/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

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RIN: 0570–AA26

439. RURAL BUSINESS ENTERPRISE GRANT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 7 USC 1932; 7 USC 1989; 16 USC 1005

CFR Citation: 7 CFR 1942; 7 CFR 4284

Legal Deadline: None

Abstract: The Rural Business-Cooperative Service proposes to completely rewrite and renumber 7 CFR 1942, subpart G, to 7 CFR part 4284, subpart B. This rewrite will incorporate public law changes and clarify administrative regulatory procedures and guidelines in order to improve program administration.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	
NPRM Comment Period End	06/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Amy Cavanaugh, Loan Specialist, Department of Agriculture, Rural Business-Cooperative Service, Stop 3225, 1400 Independence Avenue SW, Washington, DC 20250-3225
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RIN: 0570–AA28

440. ANNUAL RENEWAL FEE

Priority: Other Significant

Legal Authority: 7 USC 1932

CFR Citation: 7 CFR 4279, subpart B

Legal Deadline: None

Abstract: The Rural Business-Cooperative Service is amending its regulation for Business and Industry Guaranteed Loans to provide for an annual renewal fee. The intended effect of this rule is to reduce the subsidy rate and its associated budget authority dollar level, which will result in a greater level of assistance to the public (i.e., higher supportable loan level).

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Dwight Carmon, Director, Special Project Program Oversight Division, Department of Agriculture, Rural Business-Cooperative Service, STOP 3221, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0570–AA34

441. • RURAL BUSINESS INVESTMENT PROGRAM

Priority: Other Significant

Legal Authority: PL 107-171, sec 6029

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This action will implement the provisions of section 6029 of the Farm Security and Rural Investment Act (the 2002 Farm Bill, copy of relevant provisions attached), which amended the Consolidated Farm and Rural Development Act by adding "Subtitle H — Rural Business Investment Program." Section 6029 provides that the Secretary "shall" establish the program and provides mandatory no-year funding out of the Commodity Credit Corporation at a level sufficient to guarantee $280 million of debentures and $44 million in grants. The purpose of the program is the establishment of equity capital investment in Rural Business Investment Companies and other entities through a combination of grants and guarantees of debentures with the objective of fostering economic development in rural areas. The program is expected to be administered by the Small Business Administration (SBA), using primarily SBA regulations. These may be supplemented with Rural Development instructions established by the Rural Business-Cooperative Service (RBS). An interagency agreement under section 1535 of title 31, United States Code, will be executed by both agencies to provide the mechanism by which SBA will deliver the program and by which RBS will provide reimbursement for SBA's services.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	
NPRM Comment Period End	11/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steve Levy, Spacial Initiatives Assistant, Department of Agriculture, Rural Business-Cooperative Service, Room 6901-S/STOP 3220, Washington, DC 20250
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RIN: 0570–AA35

Department of Agriculture (USDA)
Rural Business-Cooperative Service (RBS) — **Final Rule Stage**

442. RURAL ECONOMIC DEVELOPMENT LOAN AND GRANT PROGRAM

Priority: Other Significant

Legal Authority: 7 USC 940c

CFR Citation: 7 CFR 1703, subpart B; 7 CFR 4280, subpart A

Legal Deadline: None

Abstract: This action is part of a reinvention laboratory initiative of the Department of Agriculture and Rural Business-Cooperative Service. The regulations will be written in a "plain language" style. The regulation will be simpler and improve the ease of use by the public and program beneficiaries. The regulation will be written in a question and answer format from the perspective of questions from the applicant under this program. The regulations will simplify the application format, review and selection process, and recipient's recordkeeping requirements. It will also add a section on the appeal of adverse decisions. The comment period on the proposed rule ended February 14, 2000. The Agency received 28 written comments. The Agency conducted a meeting, which was open to the public on August 2, 2000, to allow the Agency to listen to oral presentations from the general public on the proposed rule. The Agency will respond to the comments made at the meeting in the preamble to the final rule as part of the rulemaking processing under the Administrative Procedures Act.

Timetable:

Action	Date	FR Cite
NPRM	12/15/99	64 FR 69937
NPRM Comment Period End	02/14/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Wing, Loan Specialist, Department of Agriculture, Rural Business-Cooperative Service, Room 6867, South Building, STOP 3225, Washington, DC 20250
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RIN: 0570–AA19

443. ALLOCATION FORMULAS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 7 USC 1989; 42 USC 1480

CFR Citation: 7 CFR 1940, subpart L

Legal Deadline: None

Abstract: This action will amend existing regulations for allocating program funds among Agency State offices. It will add the Rural Business Opportunity Grant Program and update the formulas used for Rural Business Enterprise Grant and Business and Industry Programs.

Timetable:

Action	Date	FR Cite
NPRM	08/03/00	65 FR 47695
NPRM Comment Period End	10/02/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Diane Berger, Loan Specialist, Department of Agriculture, Rural Business-Cooperative Service, STOP 3225, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720-2383
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RIN: 0570–AA30

444. BUSINESS AND INDUSTRY GUARANTEED LOAN PROGRAM—DOMESTIC LAMB INDUSTRY ADJUSTMENT ASSISTANCE PROGRAM SET-ASIDE

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1989; 42 USC 1480; 5 USC 301

CFR Citation: 7 CFR 4279, subpart B

Legal Deadline: None

Abstract: This action provides for a set-aside of $15 million in Business and Industry Guaranteed Loans in fiscal year (FY) 2001, $15 million in FY 2002, and $5 million in FY 2003 to help fund the Domestic Lamb Industry Adjustment Assistance Program. The effective date for the set-aside was September 30, 2000.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/30/00	65 FR 64596
Interim Final Rule Effective	10/30/00	
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John R. Dunn, Director, Cooperative Resources Management Division, Department of Agriculture, Rural Business-Cooperative Service, Room 4206/Stop 3253, 1400 Independence Avenue SW, Washington, DC 20250
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Email: john.dunn@usda.gov

RIN: 0570–AA31

445. • RURAL BUSINESS ENTERPRISE GRANT PROGRAM—FARM BILL CHANGES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1932

CFR Citation: 7 CFR 1942

Legal Deadline: None

Abstract: President Bush signed the Farm Bill May 13, 2002, changing the definition of rural and rural area in the Consolidated Farm and Rural Development Act for certain programs including the Rural Business Enterprise Grant (RBEG) program. The definition now reads "any area other than a city or town that has a population of greater than 50,000 inhabitants and the urbanized area contiguous and adjacent to such as a city or town." The previous definition of rural and rural area was "any area that is not within the outer boundary of any city having a population of 50,000 or more and its immediately adjacent urbanized and urbanizing areas with a population density of more than 100 persons per square mile." Therefore, the RBEG program, which is authorized under the Consolidated Farm and Rural Development Act, must be changed to reflect the current definition.

The Consolidated Farm and Rural Development Act also amended the definition of small and emerging private business enterprise to include nonprofit entities and other tax exempt organizations who have a principal office located on land of an existing or former Native American reservation in a city, town, or unincorporated area that has a population of not more than 5,000 inhabitants as an eligible small

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and emerging business regardless of the number of employees or operating capital of the enterprise.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Amy Cavanaugh, Loan Specialist, Department of Agriculture, Rural Business-Cooperative Service, Stop 3225, 1400 Independence Avenue SW, Washington, DC 20250-3225
Phone: 202 720-1400

RIN: 0570–AA36

446. • B&I GUARANTEED LOAN PROGRAM FARM BILL CHANGES—DEFINITION OF RURAL AND RURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 7 USC 1989; 42 USC 1480

CFR Citation: 7 CFR 1980, subpart E; 7 CFR 4279, subpart B

Legal Deadline: None

Abstract: Section 6020 of the Act amends section 343(a) of the Consolidated Farm and Rural Development Act by changing the definition of "rural" and "rural area" for the purposes of the B&I program to read: "Any area other than a city or town that has a population of greater than 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town." 7 CFR part 4279, subpart B, and 7 CFR part 1980, subpart E, must be changed to incorporate the new definition.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Brenda Griffin, Loan Specialist, Processing Division, Department of Agriculture, Rural Business-Cooperative Service, Room 6847/Stop 3224, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0570–AA38

447. • B&I GUARANTEED LOAN PROGRAM FARM BILL CHANGES—EXPAND ELIGIBILITY CRITERIA

Priority: Other Significant

Legal Authority: 5 USC 301; 7 USC 1989; 42 USC 1480

CFR Citation: 7 CFR 4279, subpart B

Legal Deadline: None

Abstract: Section 6013 of the Act adds other renewable energy systems as an eligible loan purpose. Section 6017 expands eligibility criteria for loans to cooperatives and loan guarantees in non-rural areas under certain conditions and expands eligibility and relaxes financial reporting requirements for the B&I Cooperative Stock Purchase Program. It also allows the Agency to require specialized appraisals for the B&I program. Section 6019 requires the Agency to provide a short, simplified application form for guarantees of $400,000 or less initially. 7 CFR part 4279, subpart B, must be changed to incorporate these provisions of the statute.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/00/03	
Interim Final Rule Comment Period End	09/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Brenda Griffin, Loan Specialist, Processing Division, Department of Agriculture, Rural Business-Cooperative Service, Room 6847/Stop 3224, 1400 Independence Avenue SW, Washington, DC 20250
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Email: brenda.griffin2@usda.gov

RIN: 0570–AA39

Department of Agriculture (USDA)
Rural Business-Cooperative Service (RBS) — **Completed Actions**

448. THE RURAL BUSINESS ENTERPRISE GRANTS AND TELEVISION DEMONSTRATION GRANTS—SMALL/EMERGING PRIVATE BUSINESS ENTERPRISE

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1942, subpart G

Completed:

Reason	Date	FR Cite
Final Action	10/15/02	67 FR 63536

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Amy Cavanaugh
Phone: 202 720-1400

RIN: 0570–AA32

449. • RURAL BUSINESS OPPORTUNITY GRANTS—DEFINITION OF RURAL AND RURAL AREAS—FARM BILL CHANGES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1926

CFR Citation: 7 CFR 4284

Legal Deadline: None

Abstract: President Bush signed the Farm Bill May 13, 2002, changing the definition of rural and rural area in the Consolidated Farm and Rural Development Act for certain programs including the Rural Business Opportunity Grant (RBOG) program. The definition now reads "any area other than a city or town that has a population of greater than 50,000 inhabitants and the urbanized area contiguous and adjacent to such as a city or town." The prior definition of rural area for this program includes "any area that is not within the boundaries of a city with a population in excess of 10,000 inhabitants." Therefore, the RBOG Program, which is authorized under the Consolidated Farm and Rural Development Act, must be changed to reflect the current definition.

The objective of the Agency is to publish a final rule Federal Register document to promulgate the changes in the Consolidated Farm and Rural Development Act into 7 CFR part 4284, subpart G. We recommend a not significant designation of significance

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from the Office of Management and Budget on the final rule. The RBOG Program has only received an appropriation from Congress for the past two fiscal years. The year-end obligations total for fiscal years 2000-2001 was $12,849,188. The new Farm Bill increases the maximum amount of appropriations authorization from $7.5 million to $15 million for the RBOG Program.

Timetable:

Action	Date	FR Cite
Final Action	10/15/02	67 FR 63537

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Amy Cavanaugh, Loan Specialist, Department of Agriculture, Rural Business-Cooperative Service, Stop 3225, 1400 Independence Avenue SW, Washington, DC 20250-3225
Phone: 202 720-1400

RIN: 0570–AA37

BILLING CODE 3410–XY–S

Department of Agriculture (USDA)
Rural Utilities Service (RUS) — **Proposed Rule Stage**

450. TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT, AND CONSTRUCTION

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq

CFR Citation: 7 CFR 1755

Legal Deadline: None

Abstract: The Rural Utilities Service (RUS) proposes to amend 7 CFR 1755 to include requirements presently contained in RUS Bulletin 345-3. This rule would establish and codify provisions for the inclusion and removal for products from I.P. 344-2. This rule also proposes to integrate the existing section on field trials in the procedures for product acceptance and inclusion in this codification, as well as clarifying and reorganizing the field trials section.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
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Fax: 202 720-4120

RIN: 0572–AB40

451. SERVICING OF WATER PROGRAMS LOANS AND GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 7 CFR 1782; 7 CFR 1951; 7 CFR 1955; 7 CFR 1956

Legal Deadline: None

Abstract: This proposed action combines nine existing loan-servicing regulations of Water Programs into one. The new regulations will codify and clarify Water Programs policy relating to loan-servicing by incorporating simplified language without significantly changing any of the Agency's servicing policies or procedures.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
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Fax: 202 720-4120

RIN: 0572–AB59

452. ENVIRONMENTAL POLICIES AND PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 to 950b; PL 103-354; 7 USC 6941 et seq

CFR Citation: 7 CFR 1794

Legal Deadline: None

Abstract: Based on a greater use of small-scale and distribution generation, RUS' experience and review of its existing procedures, RUS has determined that several changes are necessary for its environmental process to operate in a more effective and efficient manner.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
Phone: 202 720-9550
Fax: 202 720-4120

RIN: 0572–AB73

453. TECHNICAL ASSISTANCE GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 7 USC 1989; 16 USC 1005

CFR Citation: 7 CFR 1775

Legal Deadline: None

Abstract: RUS proposes to amend the regulation to separate the technical assistance and training grant and solid waste management grant programs for clarification purposes and to bring the regulation in line with revisions to OMB circulars. Additionally, it eliminates the requirement that applicants submit a pre-application

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when applying for grant funds and transfers grant processing and servicing from the National Office to Rural Development State Offices.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
Phone: 202 720-9550
Fax: 202 720-4120

RIN: 0572–AB75

454. SPECIAL EQUIPMENT CONTRACT (NOT INCLUDING INSTALLATION), RUS FORM 398

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 CFR 6941 et seq

CFR Citation: 7 CFR 1755

Legal Deadline: None

Abstract: RUS is amending its regulations on Telecommunications Standards and Specifications for Materials, Equipment, and Construction to revise RUS Form 398, Special Equipment Contract (Not Including Installation).

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
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Fax: 202 720-4120

RIN: 0572–AB76

455. ACCOUNTING REQUIREMENTS FOR RUS TELECOMMUNICATIONS BORROWERS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 USC 6941 et seq

CFR Citation: 7 CFR 1770

Legal Deadline: None

Abstract: RUS proposes to revise subpart B, Uniform System of Accounts, to reflect changes to 47 CFR part 32, Uniform System of Accounts, by the Federal Communications Commission.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
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Fax: 202 720-4120

RIN: 0572–AB77

456. EXTENSIONS OF PAYMENTS OF PRINCIPAL AND INTEREST

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 USC 6941 et seq

CFR Citation: 7 CFR 1721

Legal Deadline: None

Abstract: RUS proposes to amend the regulation to include distributed generation projects. Also, the agency proposes to impose a maximum interest rate not to exceed more than 3 percent in excess of the RUS borrower's average interest on the notes being deferred. This 3 percent limit would be used to offset all or part of the administrative costs.

Timetable:

Action	Date	FR Cite
NPRM	10/08/02	67 FR 62652
NPRM Comment Period End	12/09/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
Phone: 202 720-9550
Fax: 202 720-4120

RIN: 0572–AB79

457. • LAUNCHING OUR COMMUNITIES ACCESS TO LOCAL TELEVISION ACT OF 2000

Priority: Other Significant

Legal Authority: 47 USC 1101 et seq; PL 106-553; PL 107-171

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Rural Utilities Service (RUS) is proposing to draft regulations to implement title X, Local TV Act, of H.R. 5548. The purposed of this Act is to facilitate access, on a technology neutral basis, to signals of local television stations for households located in non-served and under-served areas.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
Phone: 202 720-9550
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RIN: 0572–AB82

Department of Agriculture (USDA)
Rural Utilities Service (RUS) — **Final Rule Stage**

458. SETTLEMENT OF DEBT

Priority: Other Significant

Legal Authority: 7 USC 901 to 950b; 7 USC 1981; PL 99-591; PL 103-354

CFR Citation: 7 CFR 1717

Legal Deadline: None

Abstract: The Rural Utilities Service (RUS) proposes to amend its debt settlement procedures to allow its Administrator to modify the requirements borrowers must meet to receive debt settlements. Currently, all borrowers must meet the same requirements regardless of the amount of debt or other circumstances. The intent of the proposed change is to facilitate debt settlements where the RUS Administrator determines that the Government's interest in the debt can still be protected without having the borrower meet each of the current requirements. Such determinations would be made on a case-by-case basis. While the change is expected to improve the efficiency of debt settlements, it is not intended to alter the basic outcome of such settlements.

Timetable:

Action	Date	FR Cite
NPRM Comment Period End	05/25/01	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
Phone: 202 720-9550
Fax: 202 720-4120

RIN: 0572–AB65

460. ELECTRIC PROGRAM STANDARD CONTRACT FORMS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 USC 6941 et seq

CFR Citation: 7 CFR 1724; 7 CFR 1726; 7 CFR 1755

Legal Deadline: None

Abstract: RUS proposes to amend its regulations to revise its standard forms of contracts that borrowers are required to use when contracting for construction and procurement financed through loans made or guaranteed by RUS, in accordance with applicable RUS regulations.

Timetable:

Action	Date	FR Cite
ANPRM	09/16/98	63 FR 49503
ANPRM Comment Period End	11/16/98	
NPRM	07/02/02	67 FR 44396
NPRM Comment Period End	10/30/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
Phone: 202 720-9550
Fax: 202 720-4120

RIN: 0572–AB67

459. DEMAND SIDE MANAGEMENT AND RENEWABLE ENERGY SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 USC 6941 et seq

CFR Citation: 7 CFR 1710

Legal Deadline: None

Abstract: The Agency is removing subpart H in its entirety.

Timetable:

Action	Date	FR Cite
NPRM	04/25/01	66 FR 20759
Direct Final Rule	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
Phone: 202 720-9550
Fax: 202 720-4120

RIN: 0572–AB61

461. EXEMPTIONS OF RUS OPERATIONAL CONTROLS UNDER SECTION 306E OF THE RE ACT

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 USC 6941 et seq

CFR Citation: 7 CFR 1710

Legal Deadline: None

Abstract: RUS proposes to eliminate duplicative lists of requirements and to eliminate RUS notification to each borrower informing them of their exemption from operational controls status under the 110 percent rule.

Timetable:

Action	Date	FR Cite
NPRM	05/24/02	67 FR 36542
NPRM Comment Period End	06/24/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
Phone: 202 720-9550
Fax: 202 720-4120

RIN: 0572–AB68

462. TELECOMMUNICATIONS PROGRAM SPECIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 USC 6941 et seq

CFR Citation: 7 CFR 1755

Legal Deadline: None

Abstract: The Rural Utilities Service (RUS) is proposing to amend its regulations to change the manner in which it publishes the specifications that products need to meet for their use in telecommunications systems of RUS borrowers. The specifications are currently published in the text of the CFR. This proposed rule would eliminate this unnecessary and burdensome publication in the CFR.

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Timetable:

Action	Date	FR Cite
Direct Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
Phone: 202 720-9550
Fax: 202 720-4120

RIN: 0572–AB69

463. GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED LOANS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 USC 6941 et seq

CFR Citation: 7 CFR 1710

Legal Deadline: None

Abstract: RUS is amending its regulations to clarify that the purchase or acquisition of existing electric facilities and implementation of demand side management and energy conservation programs, and on-grid and off-grid renewable energy systems are eligible loan purposes under the Rural Electrification Act, as amended. The rule also makes several technical corrections to conform the language of the regulations to existing law and to correct a typographical error.

Timetable:

Action	Date	FR Cite
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
Phone: 202 720-9550
Fax: 202 720-4120

RIN: 0572–AB72

464. SEISMIC SAFETY

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 42 USC 7701 et seq

CFR Citation: 7 CFR 1792-C

Legal Deadline: None

Abstract: The revision to the existing CFR is made to update the requirements of the agency. The direct final rule provides RUS borrowers, grant recipients, Rural Telephone Bank (RTB) borrowers and the public with updated rules for compliance with seismic safety requirements for new building construction using RUS or RTB loan, grant or guaranteed funds or funds provided through lien accommodations or subordinations approved by RUS or RTB.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
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Fax: 202 720-4120

RIN: 0572–AB74

465. RECORD RETENTION REQUIREMENTS FOR RUS ELECTRIC AND TELECOMMUNICATIONS BORROWERS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 USC 6941 et seq

CFR Citation: 7 CFR 1767; 7 CFR 1770

Legal Deadline: None

Abstract: RUS plans to issue record retention requirements for its Electric and Telecommunications borrowers.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
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RIN: 0572–AB78

466. USEFUL LIFE OF FACILITY DETERMINATION

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 USC 6941 et seq

CFR Citation: 7 CFR 1710

Legal Deadline: None

Abstract: The Rural Utilities Service proposes to eliminate the requirement to use depreciation rates as found in RUS Bulletin 183-1 for determining the useful life of a facility.

Timetable:

Action	Date	FR Cite
NPRM	04/09/02	67 FR 17018
NPRM Comment Period End	05/09/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
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RIN: 0572–AB80

467. • RURAL BROADBAND ACCESS LOANS AND LOAN GUARANTEES

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: PL 107-171, 7 USC 901 et seq

CFR Citation: 7 CFR 1738

Legal Deadline: Final, Statutory, November 13, 2002.

Abstract: RUS is amending its regulations in order to establish the Rural Broadband Access Loan and Loan Guarantees Program as authorized by the Farm Security and Rural Investment Act of 2002 (Pub. L. 101-171). Section 6103 of the Farm Security and Rural Investment Act of 2002, amended the Rural Electrification Act of 1936 (RE Act), as amended, to add title VI, Rural Broadband Access, to provide loans and loan guarantees to provide funds for the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities. This rule prescribes the types of loans available, facilities financed, and eligible applicants, as well as a minimum credit support requirement to be considered for a loan. In addition, the rule prescribes the process though which RUS will consider applicants under the priority consideration and the state allocations required in title VI.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
Phone: 202 720-9550
Fax: 202 720-4120

RIN: 0572–AB81

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468. • GUARANTEES FOR BONDS AND NOTES ISSUED FOR ELECTRIFICATION PURPOSES

Priority: Other Significant

Legal Authority: PL 107-171

CFR Citation: 7 CFR 1720

Legal Deadline: None

Abstract: The Farm Security and Rural Investment Act of 2002 (Farm Bill) amends the Rural Electrification Act of 1936 to include section 313A: Guarantees For Bonds And Notes Issued For Electrification Or Telephone Purposes. The Farm Bill became law on May 13, 2002, and requires the Secretary of Agriculture to promulgate regulations that carry out the amendments within 180 days. Furthermore, the implementation of the amendments shall take effect no later than 240 days.

The new section 313A: Guarantees for Bonds And Notes Issued For Electrification Or Telephone Purposes, states that the Secretary shall guarantee payments on bonds or notes issued by cooperative or other lenders organized on a not-for-profit basis. Section 313A provides limits to the amount of guarantees, the purpose for the guarantee and qualifications of eligible lenders seeking a guarantee of a bond or note. The section also provides for a fee to be charged to lenders that receive a guarantee under section 313A, which will be deposited in the Rural Economic Development Subaccount.

The Rural Utilities Service (RUS) is proposing the development of rules that carry out the amendments made by section 313A. The rules will establish regulations that allow the Secretary to comply with the requirements outlined and set the limitations provided for in the Farm Bill.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
Phone: 202 720-9550
Fax: 202 720-4120

RIN: 0572–AB83

Department of Agriculture (USDA)
Rural Utilities Service (RUS) — **Completed Actions**

469. MERGERS AND CONSOLIDATIONS OF ELECTRIC BORROWERS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1717

Completed:

Reason	Date	FR Cite
Final Action	09/16/02	67 FR 58323

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe
Phone: 202 720-9550
Fax: 202 720-4120

RIN: 0572–AB63

BILLING CODE 3410–15–S

Department of Agriculture (USDA)
Natural Resources Conservation Service (NRCS) — **Proposed Rule Stage**

470. WETLAND CATEGORICAL MINIMAL EFFECTS EXEMPTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 3821 et seq

CFR Citation: 7 CFR 12

Legal Deadline: None

Abstract: The 1985 Farm Bill, as amended, gives producers a major incentive to conserve wetlands by tying eligibility for most USDA program benefits to conservation of wetlands. However, producers can convert wetlands based on available exemptions, including a minimal effect exemption. A minimal effect applies if the action, individually and cumulatively, will have minimal effect on the functional hydrological and biological value of the wetlands in the area. A categorical minimal effect is

USDA—NRCS — **Proposed Rule Stage**

one that, when carried out, will always have a minimal effect on the hydrologic and biological functions of wetlands in the area. These activities will be identified on a regional basis.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Floyd Wood, Department of Agriculture, Natural Resources Conservation Service, Watersheds and Wetlands Division, PO Box 2890, Washington, DC 20013-2890
Phone: 202 690-1588
Fax: 202 720-2143
Email: floyd.wood@usda.gov

RIN: 0578–AA27

471. EMERGENCY WATERSHED PROTECTION PROGRAM

Priority: Other Significant

Legal Authority: PL 81-516; 33 USC 701; PL 95-334; 16 USC 2203

CFR Citation: 7 CFR 624

Legal Deadline: None

Abstract: A revision is necessary to incorporate changes in the program, which have resulted from the passage of the 1996 Farm Bill; to fulfill a desire to make the program more responsive and efficient; and to respond to concerns of the public and the Agency. The rule is being reorganized and several items added.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Victor Cole, National EWP Leader, Department of Agriculture, Natural Resources Conservation Service, Room 6019-S, PO Box 2890, Washington, DC 20013
Phone: 202 690-4575
Fax: 202 720-2143
Email: vcole@usda.gov

RIN: 0578–AA30

472. • ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 16 USC 3839aa

CFR Citation: 7 CFR 1466

Legal Deadline: None

Abstract: Environmental Quality Incentive Program (EQIP) assistance promotes agricultural production and environmental quality as compatible goals, and strives to optimize environmental benefits. Through EQIP, CCC provides flexible technical, financial, and educational assistance to producers to install and maintain conservation systems that enhance soil, water, air quality, related natural resources, and wildlife while sustaining production of food and fiber. The statutory purposes of EQIP are to promote agricultural production and environmental quality as compatible goals and to optimize environmental benefits.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mark W. Berkland, Director, Conservation Operations Division, Department of Agriculture, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013
Phone: 202 720-1845
Fax: 202 720-4265
Email: mark.berkland@usda.gov

RIN: 0578–AA31

473. • AGRICULTURAL MANAGEMENT ASSISTANCE PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1524b

CFR Citation: 7 CFR 1465

Legal Deadline: None

Abstract: Through the Agricultural Management Assistance (AMA) program, the Commodity Credit Corporation (CCC) provides financial assistance funds annually to producers in 15 statutorily designated States to construct or improve water management structures or irrigation structures, to plant trees to form windbreaks or to improve water quality; and to mitigate risk through production diversification or resource conservation practices, including soil erosion control, integrated pest management, or transition to organic farming. The AMA Program is applicable in Connecticut, Delaware, Maryland, Massachusetts, Maine, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mark W. Berkland, Director, Conservation Operations Division, Department of Agriculture, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013
Phone: 202 720-1845
Fax: 202 720-4265
Email: mark.berkland@usda.gov

RIN: 0578–AA32

474. • CONSERVATION SECURITY PROGRAM

Priority: Economically Significant

Legal Authority: 16 USC 3838

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This program will provide assistance and cost share incentives to producers who implement or maintain conservation practices on their property.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Martha Joseph, Resource Conservationist, Department of Agriculture, Natural Resources Conservation Service, Room 6027-S, P.O. Box 2890, Washington, DC 20013

USDA—NRCS — **Proposed Rule Stage**

Phone: 202 720-7157
Fax: 202 720-2143
Email: martha.joseph@usda.gov

RIN: 0578–AA36

475. • FARM AND RANCH LANDS PROTECTION PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 3838i

CFR Citation: 7 CFR 1491

Legal Deadline: None

Abstract: This program will seek to protect and help farmers and ranchers keep their land in agriculture. The program provides matching funds to State, tribal, local governments, and non-governmental organizations with existing farmland protection programs to purchase conservation easements.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Douglas J. Lawrence, Department of Agriculture, Natural Resources Conservation Service
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RIN: 0578–AA37

Department of Agriculture (USDA)
Natural Resources Conservation Service (NRCS) — **Final Rule Stage**

476. CONSERVATION OF PRIVATE GRAZING LAND

Priority: Other Significant

Legal Authority: 16 USC 2005b

CFR Citation: 7 CFR 610

Legal Deadline: None

Abstract: Private grazing land constitutes nearly one-half of the non-Federal land of the United States and is basic to environmental, social, and economic stability of rural areas. In fact, grazing land constitutes the single largest watershed cover type in the United States and contributes significantly to the quality and quantity of water for all of the many uses in the watershed. Congress recognized the importance of grazing lands in subtitle H, section 386, of the Federal Agriculture Improvement and Reform Act of 1996 by authorizing the Secretary to provide a coordinated technical, educational, and related assistance program to conserve and enhance private grazing lands.

Timetable:

Action	Date	FR Cite
NPRM	06/29/01	66 FR 34584
NPRM Comment Period End	08/28/01	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mitch Flanagan, Resource Conservationist, Department of Agriculture, Natural Resources Conservation Service, Washington, DC 20013
Phone: 202 690-5988
Fax: 202 720-4265
Email: mitch.flanagan@usda.gov

RIN: 0578–AA29

477. • THIRD-PARTY VENDOR

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 7 CFR 652

Legal Deadline: None

Abstract: Third-party vendor assistance will allow producers to obtain technical services from the department or entities by a certification process.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Martha Joseph, Resource Conservationist, Department of Agriculture, Natural Resources Conservation Service, Room 6027-S, P.O. Box 2890, Washington, DC 20013
Phone: 202 720-7157
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RIN: 0578–AA35

Department of Agriculture (USDA)
Natural Resources Conservation Service (NRCS) — **Long-Term Actions**

478. HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION

Priority: Other Significant

CFR Citation: 7 CFR 12

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/06/96	61 FR 47019
Interim Final Rule Comment Period End	11/05/96	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Martha Joseph
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RIN: 0578–AA17

479. FORESTRY INCENTIVES PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 635; 7 CFR 701

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

USDA—NRCS — **Long-Term Actions**

Government Levels Affected: None
Agency Contact: Robert Molleur
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Email: robert.molleur@usda.gov
RIN: 0578–AA26

Department of Agriculture (USDA)
Natural Resources Conservation Service (NRCS) — **Completed Actions**

480. • WETLANDS RESERVE PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 3837, et seq

CFR Citation: 7 CFR 1467

Legal Deadline: None

Abstract: The Wetlands Reserve Program provides wetland conservation assistance through long-term easements and restoration agreements. This rule would enable the Secretary to grant a waiver if the "ownership change occurs due to foreclosure on the land and the owner of the land immediately before the foreclosure exercises a right of redemption from the mortgage holder in accordance with State law.

Timetable:

Action	Date	FR Cite
Final Action	06/07/02	67 FR 39254

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Roger L. Bensey, Director, Department of Agriculture, Natural Resources Conservation Service, Watersheds & Wetlands Division, P.O. Box 2890, Washington, DC 20013
Phone: 202 720-3534

RIN: 0578–AA33

481. • WILDLIFE HABITAT INCENTIVES PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 3839bb-1

CFR Citation: 7 CFR 636

Legal Deadline: None

Abstract: The Farm Security and Rural Investment Act of 2002 amended the authority of the Secretary of Agriculture for the Wildlife Habitat Incentives Program (WHIP) to provide additional cost-share assistance to landowners who enter into an agreement to protect and restore plant and animal habitat for a term of 15 years. The current regulations for WHIP require cost-share agreements to be for a term of 5 to 10 years. This change will amend the program regulation to conform to the statutory language.

Timetable:

Action	Date	FR Cite
Final Action	07/24/02	67 FR 48353

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Roger L. Bensey, Director, Department of Agriculture, Natural Resources Conservation Service, Watersheds & Wetlands Division, P.O. Box 2890, Washington, DC 20013
Phone: 202 720-3534

RIN: 0578–AA34

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Department of Agriculture (USDA)
Office of Procurement and Property Management (OPPM) — **Final Rule Stage**

482. OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT (OPPM); UNIFORM PROCEDURES FOR THE ACQUISITION AND TRANSFER OF EXCESS FEDERAL PROPERTY

Priority: Info./Admin./Other

Legal Authority: 7 USC 2206a; 7 USC 301 note; 7 USC 321 et seq; 20 USC 1059c(b)

CFR Citation: 7 CFR 3200

Legal Deadline: None

Abstract: The Office of Procurement and Property Management (OPPM) is amending its procedures for the acquisition and transfer of excess personal property to 1994 Institutions (as defined in section 532 of the Equity in Education Land Grant Status Act of 1994); Hispanic-Serving Institutions (as defined in section 316(b) of the Higher Education Act of 1965); and any college or university eligible to receive funds under the Act of August 30, 1890. This amendment clarifies administrative rules regarding equipment transfer and reduces the administrative burden placed on recipient institutions.

Timetable:

Action	Date	FR Cite
Direct Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kathleen N. Fay, Property Utilization Specialist, Department of Agriculture, Office of Procurement and Property Management, Mail Stop 9304, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720-9779
Email: kathy.fay@usda.gov

RIN: 0599–AA10

[FR Doc. 02–26642 Filed 12–06–02; 8:45 am]

BILLING CODE 3410–98–S

Federal Register

Monday,
December 9, 2002

Part IV

Department of Commerce

Semiannual Regulatory Agenda

DEPARTMENT OF COMMERCE (DOC)

DEPARTMENT OF COMMERCE

Office of the Secretary

13 CFR Ch. III

15 CFR Subtitle A; Subtitle B, Chs. I, II, III, VII, VIII, IX, and XI

19 CFR Ch. III

37 CFR Chs. I, IV, and V

48 CFR Ch. 13

50 CFR Chs. II, III, IV, and VI

Fall 2002 Semiannual Agenda of Regulations

AGENCY: Office of the Secretary, Commerce.

ACTION: Semiannual regulatory agenda.

SUMMARY: In compliance with Executive Order 12866 entitled "Regulatory Planning and Review" and the Regulatory Flexibility Act, as amended, the Department of Commerce, in the spring and fall of each year, publishes in the **Federal Register** an agenda of regulations under development or review over the next 12 months. Rulemaking actions are grouped according to prerulemaking, proposed rules, final rules, long-term actions, and rulemaking actions completed since the spring 2002 agenda. The purpose of the agenda is to provide information to the public on regulations currently under review, being proposed, or issued by the Department. The agenda is intended to facilitate comments and views by interested members of the public.

The Department's fall 2002 regulatory agenda includes regulatory activities that are expected to be conducted during the period October 1, 2002, through September 30, 2003.

FOR FURTHER INFORMATION CONTACT:

Specific: For additional information about specific regulatory actions listed in the agenda, contact the individual identified as the contact person.

General: Comments or inquiries of a general nature about the agenda should be directed to Daniel Cohen, Chief Counsel for Regulation, Office of the Assistant General Counsel for Legislation and Regulation, U.S. Department of Commerce, Washington, DC 20230; telephone: 202-482-3151.

SUPPLEMENTARY INFORMATION: Executive Order 12866 requires agencies to publish an agenda of those regulations that are under consideration pursuant to this Order. By memorandum of August 9, 2002, the Office of Management and Budget issued guidelines and procedures for the preparation and publication of the Fall 2002 Unified Agenda of Federal Regulatory and Deregulatory Actions. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies to publish, in April and October of each year, a regulatory flexibility agenda which contains a brief description of the subject area of any rule which is likely to have a significant economic impact on a substantial number of small entities. The agenda also identifies those entries that have been selected for periodic review under section 610 of the Regulatory Flexibility Act.

This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions includes The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Department of Commerce's Statement of Regulatory Priorities is included in part II.

Explanation of Information Contained in the Agenda

Within the Department, the Office of the Secretary and various operating units may issue regulations. Operating units, such as the National Oceanic and Atmospheric Administration (NOAA), the Bureau of Industry and Security, and the Patent and Trademark Office issue the greatest share of the Department's regulations.

A large number of regulatory actions reported in the agenda deal with fishery management programs of NOAA's National Marine Fisheries Service (NMFS). To avoid repetition of programs and definitions, as well as to provide some understanding of the technical and institutional elements of the NMFS programs, a section on "Explanation of Information Contained in NMFS Regulatory Entries" is provided below.

Explanation of Information Contained in NMFS Regulatory Entries

The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Act) governs the management of fisheries within the Exclusive Economic Zone (EEZ). The EEZ refers to those waters from the outer edge of the State boundaries, generally 3 nautical miles, to a distance of 200 nautical miles. Fishery Management Plans (FMPs) are to be prepared for fisheries, which require conservation and management measures. Regulations implementing these FMPs regulate domestic fishing and foreign fishing where permitted. Foreign fishing can be conducted in a fishery in which there is no FMP only if a preliminary fishery management plan has been issued to govern that foreign fishing. Under the Act, eight Regional Fishery Management Councils (Councils) prepare FMPs or amendments to FMPs for fisheries within their respective areas. In the development of such plans or amendments and their implementing regulations, the Councils are required by law to conduct public hearings on the draft plans and to consider the use of alternative means of regulating.

The Council process for developing FMPs and amendments makes it difficult for NMFS to determine the significance and timing of some regulatory actions under consideration by the Councils at the time the semiannual regulatory agenda is published.

The DOC fall 2002 regulatory agenda follows.

Theodore W. Kassinger,
General Counsel.

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
483	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	0690-AA30

Office of the Secretary—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
484	Employee Responsibilities and Conduct; Removal of Obsolete Regulations	0690-AA32

Bureau of Economic Analysis—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
485	Annual Survey of Selected Services Transactions With Unaffiliated Foreign Persons	0691-AA43
486	Benchmark Survey of Foreign Direct Investment in the United States—2002	0691-AA44
487	Transactions of U.S. Affiliate, Except U.S. Banking Affiliate, With Foreign Parent (BE-605) and Transactions of U.S. Banking Affiliate With Foreign Parent (BE-605)	0691-AA45
488	Annual Survey of Foreign Direct Investment in the United States	0691-AA48

Bureau of Economic Analysis—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
489	Economic Development Administration Regulations	0691-AA47

Bureau of Economic Analysis—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
0691-AA46	Initial Report on Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of Operating Assets, or U.S. Business Enterprise, Including Real Estate	09/06/2002	Withdrawn

Bureau of the Census—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
490	Mandatory Automated Export System (AES) Filing for All Items on the Commerce Control List (CCL) and the United States Munitions List (USML)	0607-AA34
491	Bureau of the Census Geographically Updated Population Certification Program	0607-AA37

Bureau of the Census—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
492	Special Services and Studies by the Bureau of the Census; Amendments to Age Search Procedures	0607-AA24
493	Reporting Value on Shipper's Export Declaration for Inland Freight and Insurance Charges	0607-AA29
494	Reporting the Value of Repairs and Replacement Parts on the Shipper's Export Declaration	0607-AA30
495	Notation of the Shipper's Export Declaration Filing Exemption Statement on Manifest Documents	0607-AA31
496	Cutoff Dates for Recognition of Boundary Changes for Census 2000 and for the Intercensal Period	0607-AA35
497	Bureau of the Census Certification Process	0607-AA36

DOC

General Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
498	Governmentwide Debarment and Suspension (Nonprocurement)	0605-AA16

General Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
499	Public Information, Freedom of Information and Privacy	0605-AA14

General Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
500	Uniform Administrative Requirement for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofits and Commercial Organizations	0605-AA09

International Trade Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
501	Proposed Changes in the Insular Possessions Watch, Watch Movement and Jewelry Program	0625-AA57
502	Short Supply of Fabric and Yarn	0625-AA59

International Trade Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
503	Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders	0625-AA51
504	Import of Certain Worsted Wool Fabric: Implementation of Tariff Rate Quote Established Under Title V of the Trade and Development Act of 2000	0625-AA58

International Trade Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
505	Export Trade Certificates of Review (15 CFR 325)	0625-AA52
506	Establishment of Steel Import Licensing and Surge-Monitoring Program	0625-AA60

Bureau of Industry and Security—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
507	Mandatory Electronic Filing of License Applications, Classification Requests, and License Exceptions Notifications via BIS's Simplified Network Application Process (SNAP)	0694-AC20
508	Protective Equipment Export License Jurisdiction	0694-AC64

DOC

Bureau of Industry and Security—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
509	Chemical Weapons Convention Regulations	0694-AB06
510	Revisions to the Export Administration Regulations; Additions to the Entity List	0694-AB60
511	Exports and Reexports of Explosive Detection Systems; Expansion of Foreign Policy Controls	0694-AB87
512	Exports and Reexports to Sudan	0694-AC05
513	Revisions to the Export Administration Regulations Related to the Missile Technology Control Regime (MTCR)	0694-AC22
514	Revisions and Clarifications to the Export Administration Regulations (EAR)	0694-AC24
515	License Exception AVS: Cuba, Libya, Serbia	0694-AC33
516	Chemical Weapons Convention: Revisions to the Export Administration Regulations	0694-AC35
517	Exports to Afghanistan (the Taliban) and Liberia: Imposition of Foreign Policy Controls	0694-AC45
518	Elimination of "National Security" as a Reason for Control for Certain Items on the Commerce Control List	0694-AC54
519	Imposition and Expansion of Controls on Designated Persons	0694-AC60
520	Implementation of the 2002 Wassenaar Arrangement List of Dual-Use Items: Revisions to Categories 2, 3, 4, 5, 6, 7 and 9 of the Commerce Control List; General Software Note, and Reporting Requirements	0694-AC65
521	Revision of Export Controls for General Purpose Microprocessors	0694-AC66
522	License Application Denial Policy, "Red Flag" Indicators of Possible Inappropriate End-Use, End-User or Destination	0694-AC68

Bureau of Industry and Security—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
523	Transfer of Dual-Use Items From U.S. Munitions List to the Commerce Control List	0694-AA52
524	Administration of State Log Exports Ban	0694-AB25
525	Change the Commerce Control List To Revise Controls on Communication Intercepting Devices (Export Commerce Control Number ECCN 5A980)	0694-AB41
526	Clarification of License Exception GFT (Humanitarian Donations)	0694-AB49
527	Exports of Technology and Software; Release of Technology or Source Code to Foreign Nationals in the United States	0694-AB59
528	India and Pakistan Sanctions	0694-AB73
529	Expansion of License Exception CIV Eligibility for "Microprocessors" Controlled by ECCN 3A001	0694-AB90
530	Export of Technology and Software Through Electronic Transmissions, Downloads, and Programming Onto Hardware	0694-AB97
531	Export Administration Regulations: Support Documentation	0694-AC04
532	Antiterrorism Controls on Iraq	0694-AC06
533	Expansion of License Exception GOV; Exports and Reexports to International Organizations	0694-AC15
534	De Minimis Expansion of Eligibility: U.S. Origin Software Incorporated Into Foreign-Made Retail Commodities	0694-AC17
535	Revision to the Export Administration Regulations: Replacement Licenses	0694-AC23
536	Short Supply Controls: Crude Oil Exports	0694-AC25
537	Offsets in Military Exports	0694-AC27
538	Entity List: Additions and Revisions	0694-AC28
539	Crime Control Items: Revisions to the Commerce Control List	0694-AC31
540	Revisions to Encryption Items	0694-AC32
541	Clarifications to Part 753: Special Comprehensive License Requirements	0694-AC34
542	Addition and Revision of Missile Projects in the Export Administration Regulations	0694-AC46
543	Revision, Suspension, or Prohibition of Use of "No License Required" Provisions	0694-AC47
544	Removal of Licensing Exemption for Exports and Reexports of Missile Technology-Controlled Items Destined to Canada	0694-AC48
545	Exports to the Federal Republic of Yugoslavia: Lifting of Sanctions	0694-AC57
546	Computer Technology and Software Eligible for Export or Reexport Under License Exception TSR	0694-AC63

Bureau of Industry and Security—Completed Actions

Sequence Number	Title	Regulation Identification Number
547	Revisions to the Export Administration Regulations; Country Group E:1; License Exception TMP	0694-AB76

DOC

Bureau of Industry and Security—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
548	Revisions to the North Korean Embargo Policy	0694-AC10
549	Exports of Agricultural Commodities, Medicines and Medical Devices	0694-AC37
550	Implementation of the Wassenaar Arrangement List of Dual-Use Items Revisions: Computers; and Revisions to License Exception CTP	0694-AC42
551	Licensing Jurisdiction for "Space Qualified" Items	0694-AC49
552	Missile Technology Production Equipment and Facilities	0694-AC51
553	Revisions and Clarifications to the Export Administration Regulations—Nuclear Nonproliferation Controls: Nuclear Suppliers Group	0694-AC52
554	Corrections and Clarifications to the Export Administration Regulations: Czech Republic, Hungary, and Poland	0694-AC53
555	Revisions to the Export Administration Regulations as a Result of the September 2001 Missile Technology Control Regime (MTCR) Plenary Meeting	0694-AC55
556	Revisions to License Exception CTP: Implementation of Presidential Announcement of January 2, 2002	0694-AC56
557	Revision to Export Administration Regulations: Denied Persons List	0694-AC58
558	License Exception CIV Eligibility for Certain "Microprocessors" Controlled by ECCN 3A001	0694-AC59
559	Implementation of the Wassenaar Arrangement List of Dual-Use Items and Other Revisions to Encryption Items	0694-AC61
560	Revisions and Clarifications to the Export Administration Regulations—Chemical and Biological Weapons Controls: Australia Group; Chemical Weapons Convention	0694-AC62

Bureau of Industry and Security—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
0694-AC67	Clarification of Applicability of Entity List Restrictions to Certain Russian Entities	09/22/2002	Withdrawn

National Institute of Standards & Technology—Completed Actions

Sequence Number	Title	Regulation Identification Number
561	Establishment of Information Technology Security Validation Programs Fees	0693-AB51

National Oceanic and Atmospheric Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
562	Fleet Capacity Control for U.S. Tuna Purse Seine Fisheries in the Eastern Pacific Ocean	0648-AQ21
563	Fleet Capacity Control for U.S. Troll Albacore Tuna Fishing in Canadian Waters	0648-AQ22

National Oceanic and Atmospheric Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
564	Amendment 4 to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands	0648-AG87
565	Establish Central Registry for Limited Access System Permits	0648-AJ77
566	Regulatory Amendment To Require Mandatory Observer Coverage in the At-Sea Processing Sector of the Whiting Fishery	0648-AK26
567	Adjustment of Management Program: Bottomfish Fisheries in the Hawaiian Islands	0648-AK82
568	Revise Exempted Fishing Regulations To Specify Compensatory Fishing Under Exempted Fishing	0648-AK84
569	Amendment 11 to the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region	0648-AL67
570	Regulatory Amendment to Reinstate 6000 Pound Trip Limit of Halibut in Area Northeast of the Bering Sea	0648-AL97

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National Oceanic and Atmospheric Administration—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
571	Enhanced Measures To Mitigate Seabird Bycatch in the Alaska Longline Fisheries	0648-AM30
572	Amendment 7 to the Fishery Management Plan for the Bottomfish Fisheries of the Western Pacific Region	0648-AM98
573	Amendment 18 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico	0648-AN09
574	Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan	0648-AN12
575	Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan	0648-AN16
576	Amendment 13 to the Northeast Multispecies Fishery Management Plan	0648-AN17
577	Amendment 9 to the Fishery Management Plan Amendment for the Pelagic Fisheries of the Western Pacific Region	0648-AN76
578	Resubmission of Sustainable Fisheries Act Amendment Crustaceans, Bottomfish, and Pelagics Regarding Overfishing Definitions	0648-AN79
579	Regulatory Amendment Modifying the Gulf of Mexico BRD Protocol Under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP)	0648-AN84
580	Fishery Management Plan (FMP) for Sargassum Habitat of the South Atlantic	0648-AN87
581	Fishery Management Plan for Northeast Skate	0648-AO10
582	Amendment 5 to the Fishery Management Plan for Precious Coral Fisheries in the Western Pacific Region	0648-AO47
583	Fishery Management Plan for the Dolphin and Wahoo Fishery of the Atlantic, Caribbean, and Gulf of Mexico (FMP)	0648-AO63
584	Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna Incidental Catch	0648-AO75
585	Atlantic Highly Migratory Species; Exempted Fishing Permits Procedures	0648-AO79
586	Regulatory Amendment Under the Fishery Management Plan for Gulf of Mexico Reef Fish (FMP) To Establish a Red Snapper Stock Rebuilding Plan and To Set Red Snapper Overfishing Targets and Thresholds	0648-AP02
587	Amendment 13 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region	0648-AP03
588	Revision of American Lobster Regulations for the EEZ	0648-AP18
589	Fishing Capacity Reduction Program for the Crab Species Covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs	0648-AP25
590	Regulatory Amendment to Implement Permit Stacking in the Limited-Entry Fixed-Gear Sablefish Fishery in 2002 and Beyond	0648-AP38
591	Implementation of Fishery Management Plan for Highly Migratory Species Fisheries Off the West Coast	0648-AP42
592	Regulatory Amendment Under the Coastal Migratory Pelagics Fishery Management Plan	0648-AP50
593	Amendment 2 to the Fishery Management Plan for the Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands	0648-AP51
594	Adjustment of Management Program: Bottomfish Fisheries in the Western Pacific	0648-AP53
595	Resubmission of Sustainable Fisheries Act Amendment Bottomfish, Crustacean, and Pelagics Regarding Bycatch Provisions	0648-AP54
596	Resubmission of Sustainable Fisheries Act Amendment Bottomfish, Crustaceans, and Pelagics, and Precious Corals Regarding Fishing Communities	0648-AP55
597	Atlantic Surf Clam and Ocean Quahog Fisheries; Amendment 13	0648-AP57
598	Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 9	0648-AP60
599	Implement a Vessel Monitoring System Under the South Pacific Tuna Act	0648-AP61
600	Revise Community Development Quota Program Administration and Allocation Regulations	0648-AP67
601	Full Retention of Demersal Shelf Rockfish in Gulf of Alaska Area 650	0648-AP73
602	Antarctic Marine Living Resources Vessel Monitoring System and Catch Documentation Scheme	0648-AP74
603	Amendment 10 to the Coastal Pelagic Species Fishery Management Plan	0648-AP87
604	IFQ Recordkeeping and Reporting Requirements for Catcher Vessels	0648-AP92
605	Amendment to Fishery Management Plan for Reef Fish Resources of Gulf of Mexico To Set 10-Year Rebuilding Plan for Red Grouper	0648-AP95
606	2003 Observer Program Requirements	0648-AQ05
607	Regulatory Amendment to Section 679 Permits or Permit-Related Issues	0648-AQ07
608	2003 Initial Specifications for Atlantic Mackerel, Squid, and Butterfish	0648-AQ15
609	Pacific Coast Groundfish Fishery; Announcement of the 2003 Groundfish Fishery Specifications and Management Measures	0648-AQ18
610	Regulatory Amendment To Adjust Permit Renewal Requirements and Transferability Restrictions in NWHIs Hoomalu Zone and Mau Limited Access Programs	0648-AQ20
611	Secretarial Amendment 2 to Reef Fish Fishery Management Plan To Set Greater Amberjack Sustainable Fisheries Act Targets and Thresholds and To Set Rebuilding Plan	0648-AQ24
612	Amendment 2 to Monkfish Fishery Management Plan	0648-AQ25
613	Annual Specifications for the Atlantic Bluefish Fishery for Fishing Year 2003	0648-AQ26
614	Amendment 1 to the Atlantic Herring Fishery Management Plan (FMP) and Amendment 2 to the Atlantic Salmon FMP	0648-AQ27

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National Oceanic and Atmospheric Administration—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
615	Framework 15 to the Atlantic Sea Scallop Fishery Management Plan	0648-AQ28
616	Framework 2 to the Monkfish Fishery Management Plan	0648-AQ29
617	Annual Specifications for Fishing Year 2003 for the Summer Flounder, Scup, and Black Sea Bass Fishery	0648-AQ30
618	Annual Specifications for the Surf Clam and Ocean Quahog Fisheries for Fishing Year 2003	0648-AQ31
619	Recreational Measures for the Summer Flounder, Scup, and Black Sea Bass Fishery for Fishing Year 2003	0648-AQ32
620	Specifications for the Atlantic Herring Fishery for Fishery Year 2003	0648-AQ33
621	Specifications for the 2003-2004 Fishing Year for the Spiny Dogfish Fishery	0648-AQ34
622	Framework 37 to the Northeast Multispecies Fishery Management Plan	0648-AQ35
623	Atlantic Highly Migratory Species (HMS); Bigeye Tuna and Swordfish Trade Statistical Document Programs	0648-AQ37
624	Atlantic Highly Migratory Species (HMS); 2003 Bluefin Tuna Quota Specifications and Effort Controls	0648-AQ38
625	Atlantic Highly Migratory Species (HMS); Small Coastal Shark Commercial and Recreational Management Measures	0648-AQ39
626	Atlantic Highly Migratory Species (HMS); Large Coastal Shark Commercial and Recreational Management Measures	0648-AQ40
627	Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations	0648-AQ42
628	EFH Amendments to the Bottomfish, Crustaceans, and Precious Corals FMPs	0648-AQ43
629	Increase in Allowable Percentage of Pollock Roe	0648-AQ44
630	Opening Waters to Pacific Cod Pot Fishing Off Cape Barnabas and Caton Island in the Gulf of Alaska	0648-AQ45
631	Seasonal Adjustment of Closure Areas to Pollock and Pacific Cod Trawl Fishing in Waters Off Cape Sarichef in the Bering Sea Subarea	0648-AQ46
632	Amend Regulations Governing the Taking and Importing of Marine Mammals	0648-AH83
633	Preventing Harassment From Human Activities Directed at Marine Mammals in the Wild	0648-AN43
634	Endangered and Threatened Species: Permit Exemptions	0648-AO37
635	Captive Steller Sea Lions	0648-AO61
636	Taking Marine Mammals Incidental to Rocket Launches From the Kodiak Launch Complex, Kodiak Island, Alaska	0648-AP62
637	Designating the Eastern North Pacific Southern Resident Stock of Killer Whales as Depleted	0648-AQ00
638	Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations	0648-AQ04
639	Revision of Overflight Regulations	0648-AI91
640	Gray's Reef National Marine Sanctuary	0648-AQ41

National Oceanic and Atmospheric Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
641	Regulatory Amendment To Allocate Pacific Halibut to the Charter Boat Fleet	0648-AK17
642	Proposed Highly Migratory Species Process	0648-AK40
643	Comprehensive Amendment Addressing Sustainable Fisheries Act Requirements Regarding Overfishing, Bycatch, Fishing Communities and Provisions for Fishery Management Plans for the Caribbean	0648-AL86
644	Regulatory Amendment To Change the Regulations Implementing the North Pacific Observer Program	0648-AM44
645	Framework Regulatory Amendment for the Atlantic Highly Migratory Species (HMS); Fishing Vessel Permits; Charter Boat Operations	0648-AM91
646	Implementation of Western Pacific Coral Reef Ecosystem Fishery Management Plan (FMP)	0648-AM97
647	Atlantic Highly Migratory Species Fisheries; Monitoring of the Atlantic Billfish and Swordfish Recreational Fisheries	0648-AN06
648	Amendment 7 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico	0648-AN10
649	Amendments 61/61 for BSAI and GOA Groundfish; Amendment 13 for Commercial King and Tanner Crab; and Amendment 8 for Alaska Scallop Fishery	0648-AN55
650	Deep-Sea Red Crab Fishery Management Plan	0648-AN68
651	Atlantic Highly Migratory Species; Swordfish Quotas and Fishing Areas	0648-AO93
652	American Lobster Fishery; Revisions to Lobster Trap Limits, Conservation Equivalency in New Hampshire Waters, and Clarification of Lobster Management Boundaries per Addendum 1	0648-AP15
653	Regulatory Amendment To Allow Experimental Setnet Sablefish Landings To Qualify Limited-Entry Sablefish Endorsement Holders for Tier Assignment in the West Coast Primary Sablefish Fishery	0648-AP39
654	Amendment 5 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region	0648-AP41
655	Announcement of the Optimum Yield and Harvest Limit for Pacific Mackerel	0648-AP43

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National Oceanic and Atmospheric Administration—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
656	Amendment to Regulations for Observer At-Sea Electronic Communication Equipment Requirements for Vessels and Shoreside Processors in the North Pacific Groundfish Fisheries	0648-AP66
657	Amendment 69 to the BSAI FMP — AFA Coop Leasing	0648-AP71
658	Protect Northeast Multispecies Groundfish Stocks	0648-AP78
659	Amendment 60 to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska	0648-AP79
660	Pacific Tuna Fisheries	0648-AP86
661	Announcement of the Optimum Yield and Harvest Limit for Pacific Sardine	0648-AP88
662	Atlantic Highly Migratory Species (HMS); Regulatory Adjustments; NOAA Information Collection Requirements	0648-AP89
663	Atlantic Highly Migratory Species (HMS); 2002 Bluefin Tuna Quota Specifications and Effort Controls	0648-AP90
664	Extension of an Emergency Interim Rule To Implement 2002 Steller Sea Lion Protection Measures and Harvest Specifications for the Bering Sea/Aleutian Islands Area and the Gulf of Alaska	0648-AQ02
665	Fisheries of the Exclusive Economic Zone Off Alaska — Regulatory Amendment To Implement Steller Sea Lion Protect Measures	0648-AQ08
666	Subsistence Fishery for Pacific Halibut in Waters Off Alaska	0648-AQ09
667	Implementation of New Depth-Based Management Measures in the Pacific Coast Groundfish Fishery	0648-AQ14
668	Capital Construction Fund Procedures	0648-AQ16
669	2003-2004 Management Measures for Commercial, Recreational, and Treaty Indian Salmon Fisheries Off the Coasts of Washington, Oregon, and California	0648-AQ17
670	Emergency Rule — Groundfish Fishery Management Measures for January Through February 2003	0648-AQ19
671	Emergency Action to Expedite Reallocation of Sardine in the West Coast Coastal Pelagic Species Fishery	0648-AQ47
672	Interagency Policy on the Prescription of Fishways Under Section 18 of the Federal Power Act	0648-AO70
673	Policy for Review of Mandatory Conditions Developed by the Departments of the Interior and Commerce in the Context of Hydropower Licensing	0648-AO84
674	Atlantic Large Whale 2002 Seasonal Area Management (SAM) Program	0648-AP68
675	Provide Regulations for Permits for Capture, Transport, Import and Export of Protected Species for Public Display, and for Maintaining a Captive Marine Mammal Inventory	0648-AH26
676	Pacific Offshore Cetacean Take Reduction Plan	0648-AL70
677	Draft Policy for Evaluation of Conservation Efforts in Making Listing Decisions	0648-AL91
678	Sea Turtle Conservation Regulations; Shrimp Fishery	0648-AN62
679	Designated Critical Habitat: Proposed Critical Habitat for Northern California Steelhead	0648-AO04
680	Taking of the Cook Inlet, Alaska, Stock of Beluga Whales by Alaska Natives	0648-AO16
681	Restrictions on Pound Net Leaders To Enhance Turtle Protection in Virginia; Threatened and Endangered Sea Turtle Conservation	0648-AP81
682	Sea Turtle Conservation Regulations; Fishery Activities	0648-AP91
683	Listing Endangered and Threatened Wildlife and Designating Critical Habitat; 90-Day Finding	0648-AP94
684	Designation of Critical Habitat for Gulf Sturgeon	0648-AQ03
685	Taking of Threatened or Endangered Species Incidental to Commercial Fishing Operations	0648-AQ13
686	Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations	0648-AQ23
687	Natural Resource Damage Assessments Under the Oil Pollution Act of 1990	0648-AM80

National Oceanic and Atmospheric Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
688	Fishery Management Plan for Calico Scallop Fishery in the South Atlantic Region (FMP)	0648-AL78
689	Amendment 10 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP)	0648-AM23
690	Amendment 7 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic FMP	0648-AN08
691	Sea Turtle Conservation Regulations; Fishery Activities (TEDs)	0648-AP16
692	Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Control Date for Atlantic Mackerel	0648-AQ11
693	Endangered and Threatened Species: Take of Threatened Southern Oregon/Northern California Coast Evolutionarily Significant Unit (ESU) Coho Salmon	0648-AJ91
694	North Atlantic Whale Protection	0648-AM85
695	Interagency Consultation for the National Marine Sanctuary Program	0648-AL06
696	Installing and Maintaining Commercial Submarine Cables in National Marine Sanctuaries	0648-AO36

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National Oceanic and Atmospheric Administration—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
697	Procedural Changes to the Federal Consistency Process	0648-AP98
698	Regional Marine Research Program	0648-AF20

National Oceanic and Atmospheric Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
699	Regulatory Amendment To Establish Permit and Reporting Requirements for Pelagic Troll and Handline Vessels Fishing Off Pacific Remote Islands of the United States	0648-AJ08
700	Adjustment of the Management Program for Precious Corals Fisheries in the Western Pacific	0648-AK23
701	Amendment 54 to FMP for Groundfish Fishery of Bering Sea and Aleutian Islands Area and Amendment 54 to FMP for Groundfish of Gulf of Alaska	0648-AK70
702	Fishing Capacity Reduction Program	0648-AK76
703	Crab Community Development Quota Reserves	0648-AL92
704	Amendment 67 to the FMP for the Groundfish Fishery of the Bering Sea and the Aleutian Islands Area	0648-AM40
705	Regulatory Amendment To Prevent or Mitigate the Take of Sea Turtles in the Western Pacific Pelagic Fisheries	0648-AN75
706	Generic Amendment Addressing the Establishment of the Tortugas Marine Reserves Under the Fishery Management Plans of the Gulf of Mexico	0648-AN83
707	Amendment 3 to the Fishery Management Plan for the Golden Crab Fishery Off the Southern Atlantic States (FMP)	0648-AO23
708	Regulatory Amendment to Modify the Management Program for the Western Pacific Pelagic Fisheries to Mitigate the Take of Seabirds	0648-AO35
709	Amendment 11 to Fishery Management Plan for Shrimp Fishery of Gulf of Mexico (FMP)	0648-AO51
710	Amendments to FMPs for Gulf of Mexico Reef Fish and Gulf of Mexico and South Atlantic Coastal Migratory Pelagic Resources To Limit Entry Into Gulf of Mexico Recreational-For-Hire Fisheries	0648-AO62
711	Recreational Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries for Fishing Year 2002	0648-AO91
712	Specifications for the Spiny Dogfish Fishery for Fishing Year 2002	0648-AP07
713	Framework 1 to the Monkfish Fishery Management Plan for Fishing Year 2002; Disapproval of Framework	0648-AP11
714	Framework Adjustment 2 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries	0648-AP12
715	Atlantic Highly Migratory Species; Pelagic Longline Fishery; Sea Turtle Protection Measures	0648-AP49
716	2002-2003 Management Measures for Commercial, Recreational, and Treaty Indian Salmon Fisheries Off the Coasts of Washington, Oregon, and California	0648-AP52
717	Atlantic Bluefish Fishery; Specifications for Fishing Year 2002	0648-AP59
718	Pacific Halibut Fisheries Catch Sharing Plan	0648-AP80
719	Imposing Additional Restrictions in the Hawaii-Based Longline Fishery	0648-AP84
720	Implement 2002 Pacific Whiting Specifications	0648-AP85
721	Control Date for Longline Vessels Fishing for Pelagic Species in the EEZ Around American Samoa	0648-AQ01
722	Change of Title for the Salmon FMP	0648-AQ10
723	Notice of Control Date for Hagfish Fishery	0648-AQ12
724	Regulatory Amendment To Correct the Definition of "Eligible Applicant" for a Crab Species License	0648-AQ36
725	Sea Turtle Conservation Regulations; Fishery Activities	0648-AP63
726	Endangered Species; Transferring Permits	0648-AP64
727	Rulemaking for the Incidental Taking of Marine Mammals During Worldwide Deployment of the U.S. Navy's Low Frequency Active Sonar	0648-AM62
728	Sea Turtle Conservation Regulations; Summer Flounder Fishery	0648-AM89
729	Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Oil and Gas Structure Removal Activities in the Gulf of Mexico	0648-AP83
730	Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations	0648-AP93
731	Sea Turtle Conservation Regulations; Restrictions Applicable to Shrimp Trawl Activities; Leatherback Conservation Zone	0648-AP96
732	Atlantic Large Whale Take Reduction; Temporary Area and Gear Restrictions	0648-AP97
733	Sea Turtle Conservation Regulations; Restrictions Applicable to Shrimp Trawl Activities; Leatherback Conservation Zone	0648-AP99

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National Oceanic and Atmospheric Administration—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
734	Sea Turtle Conservation Regulations; Restrictions Applicable to Shrimp Trawl Activities; Leatherback Conservation Zone	0648-AQ06

National Oceanic and Atmospheric Administration—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
0648-AM07	Fishery Management Plan Amendment To Revise Community Development Quota Regulations	07/25/2002	Withdrawn
0648-AM94	Amendment 62 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area and Amendment 62 to the FMP for the Groundfish of the Gulf of Alaska	08/28/2002	Withdrawn
0648-AN03	Prohibit Use of Set Net Gear To Harvest Groundfish in Certain Portions of the Exclusive Economic Zone Waters Seaward of California	06/25/2002	Withdrawn
0648-AN19	Amendment 1 to the Atlantic Herring Fishery Management Plan	08/12/2002	Withdrawn
0648-AN20	Amendment 14 to the Northeast Multispecies Fishery Management Plan	08/12/2002	Withdrawn
0648-AO55	Amendment 14 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan	08/12/2002	Withdrawn
0648-AP45	Secretarial Amendment to Implement Annual Adjustment Measures for the Northeast Multispecies Fishery for Fishing Year 2002	08/14/2002	Withdrawn
0648-AP56	Summer Flounder, Scup, and Black Sea Bass Fisheries; Framework 3	08/12/2002	Withdrawn
0648-AP58	Spiny Dogfish Fishery; Amendment 1	08/12/2002	Withdrawn
0648-AP82	Suspension of the Texas Closure in Accordance With the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP)	05/09/2002	Withdrawn

National Telecommunications and Information Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
735	Mandatory Reimbursement Rules for Relocation of Federal Spectrum	0660-AA14

Patent and Trademark Office—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
736	Rules of Practice Before the Board of Patent Appeals and Interferences in Appeals Under 35 U.S.C. 134	0651-AB27
737	Changes in Rules of Practice for Patent Interferences and Related Proceedings	0651-AB32
738	Changes To Improve the Patent and Application Process	0651-AB50
739	Revision of the Fees for Request for Continued Examination and the URAA Transitional Examination Practices	0651-AB53
740	Changes in Trademark Rules of Practice in Inter Partes Proceedings Before the Trademark Trial and Appeal Board	0651-AB56

Patent and Trademark Office—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
741	Complaints Regarding Invention Promoters	0651-AB12
742	Elimination of Continued Prosecution Application Practice as to Utility and Plant	0651-AB37
743	Revision of Patent and Trademark Fees for Fiscal Year 2003	0651-AB51

DOC

Patent and Trademark Office—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
744	Changes To Implement Patent-Related Provisions of United States Patent and Trademark Reauthorization Act, Fiscal Year 2003	0651-AB54

Patent and Trademark Office—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
745	Correspondence Filed in the Patent and Trademark Office	0651-AB17
746	Madrid Protocol Implementation Act Rules Change	0651-AB45
747	Processing Fee for Use of Paper Forms for Submission of Applications for Registration and Other Documents	0651-AB52
748	Changes to Representation of Others Before the United States Patent and Trademark Office	0651-AB55

Patent and Trademark Office—Completed Actions

Sequence Number	Title	Regulation Identification Number
749	Rulemaking Related to Electronic Filing of Trademark Documents	0651-AB31

Patent and Trademark Office—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
0651-AB34	Development of Plan To Remove Patent and Trademark Classified Paper Files From Public Search Facilities	04/09/2002	Withdrawn
0651-AB38	Changes to Representation of Others Before the U.S. Patent and Trademark Office	08/30/2002	Merged With RIN 0651-AB55
0651-AB46	Patent and Trademark Office Acquisition Regulation	08/30/2002	Withdrawn
0651-AB47	Surcharge for the Use of Non-Electric, Paper Forms for Submission of Applications for Registration and Other Documents	05/17/2002	Withdrawn
0651-AB48	Amendment of Rule Regarding Filing of Trademark Correspondence via Express Mail	08/30/2002	Withdrawn
0651-AB49	Revision of Patent and Trademark Fees for Fiscal Year 2003	06/28/2002	Withdrawn

Technology Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
750	Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements	0692-AA14
751	Acquisition and Protection of Foreign Rights in Inventions	0692-AA15
752	Amendment to Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements	0692-AA18

Department of Commerce (DOC)
Office of the Secretary (OS)

Final Rule Stage

483. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 15 CFR 8; 15 CFR 8b; 15 CFR 8c; 15 CFR 20

Legal Deadline: None

Abstract: The Department of Commerce proposes to make amendments to its regulations implementing Title VI of the Civil Rights Act of 1964 (Title VI), section 504 of The Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to Title VI and added a definition of "program or activity" to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRRA's definition of "program or activity" and "program" into the Department's Title VI, section 504, and Age Discrimination Act regulations. The Department's proposed regulation will be published as part of a joint notice of proposed rulemaking involving up to 24 Federal agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Lawrence N. Self, Acting Director, Office of Civil Rights, Department of Commerce, Office of the Secretary, HCHB Room 6010, 14th and Pennsylvania Avenue NW., Washington, DC 20230
Phone: 202 482-0625
Fax: 202 482-5375

RIN: 0690–AA30

484. EMPLOYEE RESPONSIBILITIES AND CONDUCT; REMOVAL OF OBSOLETE REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 5 USC 7301; 5 USC 7353; 26 USC 7214(b); EO 12731; ...

CFR Citation: 15 CFR

Legal Deadline: None

Abstract: The Department of Commerce issues this final rule to remove obsolete sectors of the Commerce and Foreign Trade Regulation concerning the policies and procedures relating to employee responsibilities and conduct.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Douglas Ligor, Attorney Advisor, Department of Commerce, Office of the Secretary, HCHB Room 5898C, 14th & Constitution Avenue NW., Washington, DC 20230
Phone: 202 482-0127
Fax: 202 482-2998

RIN: 0690–AA32

Department of Commerce (DOC)
Bureau of Economic Analysis (BEA)

Proposed Rule Stage

485. ANNUAL SURVEY OF SELECTED SERVICES TRANSACTIONS WITH UNAFFILIATED FOREIGN PERSONS

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 3101 to 3108

CFR Citation: 15 CFR 801

Legal Deadline: None

Abstract: This action will amend existing rule 15 CFR 801 to raise the threshold for reporting on the BE-22, Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons, and to bring the survey into conformity with the BE-20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: R. David Belli, Chief, International Investment Division, Department of Commerce, Bureau of Economic Analysis, BE-50, 14th & Pennsylvania Avenue NW., Washington, DC 20230
Phone: 202 606-9807
Fax: 202 606-5318
Email: david.belli@bea.doc.gov

RIN: 0691–AA43

486. BENCHMARK SURVEY OF FOREIGN DIRECT INVESTMENT IN THE UNITED STATES—2002

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 3101 to 3108

CFR Citation: 15 CFR 806

Legal Deadline: None

Abstract: This action will amend existing rule 15 CFR 806.17 to provide for the conduct of the BE-12, Benchmark Survey of Foreign Direct Investment in the United States—2002, as required in the International Investment and Trade in Services Survey Act, 22 USC 3101 to 3108 (see especially section 4(b) of the Act). The existing rule covers a similar survey for 1997 which has been completed and which the new survey will update.

DOC—BEA — **Proposed Rule Stage**

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: R. David Belli, Chief, International Investment Division, Department of Commerce, Bureau of Economic Analysis, BE-50, 14th & Pennsylvania Avenue NW., Washington, DC 20230
Phone: 202 606-9807
Fax: 202 606-5318
Email: david.belli@bea.doc.gov

RIN: 0691–AA44

487. TRANSACTIONS OF U.S. AFFILIATE, EXCEPT U.S. BANKING AFFILIATE, WITH FOREIGN PARENT (BE-605) AND TRANSACTIONS OF U.S. BANKING AFFILIATE WITH FOREIGN PARENT (BE-605)

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 3101 to 3108

CFR Citation: 15 CFR 806

Legal Deadline: None

Abstract: This action will amend existing rule 15 CFR 806.15 on the BE-605, Transactions of U.S. Affiliated, Except a U.S. Banking Affiliate, with Foreign Parent and BE-605 Bank, Transactions of U.S. Banking Affiliate with Foreign Parent, to bring the survey into conformity with the BE-12, Benchmark Survey of Foreign Direct Investment in the United States—2002.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: R. David Belli, Chief, International Investment Division, Department of Commerce, Bureau of Economic Analysis, BE-50, 14th & Pennsylvania Avenue NW., Washington, DC 20230
Phone: 202 606-9807
Fax: 202 606-5318
Email: david.belli@bea.doc.gov

RIN: 0691–AA45

488. • ANNUAL SURVEY OF FOREIGN DIRECT INVESTMENT IN THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 3101 to 3108

CFR Citation: 15 CFR 806

Legal Deadline: None

Abstract: This action will amend existing rule CFR 806.15 to raise the threshold for reporting on the BE-15, Annual Survey of Foreign Direct Investment in the United States, and to bring the survey into conformity with the BE-12, Benchmark Survey of Foreign Direct Investment in the United States—2002.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
NPRM Comment Period End	08/00/03	
Final Action	09/00/03	
Final Action Effective	10/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: R. David Belli, Chief, International Investment Division, Department of Commerce, Bureau of Economic Analysis, BE-50, 14th & Pennsylvania Avenue NW., Washington, DC 20230
Phone: 202 606-9807
Fax: 202 606-5318
Email: david.belli@bea.doc.gov

RIN: 0691–AA48

Department of Commerce (DOC)
Bureau of Economic Analysis (BEA) — **Long-Term Actions**

489. • ECONOMIC DEVELOPMENT ADMINISTRATION REGULATIONS

Priority: Other Significant

Legal Authority: 42 USC 3121 et seq; 19 USC 3

CFR Citation: 13 CFR ch III

Legal Deadline: None

Abstract: The Economic Development Administration (EDA) will review the existing regulations implementing the requirements of the Economic Development Administration Reform Act of 1998 and part 3 of the Trade Act of 1974 as amended to determine the appropriateness and effectiveness of those regulations and whether they conflict with any recent case law. EDA is also subject to reauthorization and will review its regulations to identify any changes necessary to comply with the reauthorizing legislation.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Claudia Nadig, Chief Counsel, Department of Commerce, Bureau of Economic Analysis, HCHB 7005, 1401 Constitution Avenue, NW., Washington, DC 20230
Phone: 202 482-4687
Fax: 202 482-5671
Email: cnadig@eda.gov

RIN: 0691–AA47

Department of Commerce (DOC)
Bureau of the Census (CENSUS) — **Proposed Rule Stage**

490. MANDATORY AUTOMATED EXPORT SYSTEM (AES) FILING FOR ALL ITEMS ON THE COMMERCE CONTROL LIST (CCL) AND THE UNITED STATES MUNITIONS LIST (USML)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-113, title XII

CFR Citation: 15 CFR 30

Legal Deadline: None

Abstract: The Bureau of the Census is amending the Foreign Trade Statistics Regulations to specify the Requirement for the Mandatory Automated Export System (AES) filing for all items on the Department of Commerce's Commerce Control List (CCL) and the United States Munitions List (USML) of the Department of State. The AES is an electronic method by which export information can be transmitted. This amendment will specify the provisions and the responsibilities of parties exporting commodities identified on the CCL and USML via AES.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Ruth Mangaroo, Regulations, Outreach, & Education Branch, Foreign Trade Division, Department of Commerce, Bureau of the Census, Room 3125, FB-3, Washington, DC 20233
Phone: 301 457-2238
Fax: 301 457-3765

RIN: 0607–AA34

491. • BUREAU OF THE CENSUS GEOGRAPHICALLY UPDATED POPULATION CERTIFICATION PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 15 CFR 50

Legal Deadline: None

Abstract: The Bureau of the Census will reinstate the process for requesting certification of population and housing counts for governmental units that change boundaries or that newly incorporate or organize. To create a consistent process to meet the anticipated demand for certifying these counts, the Bureau of the Census proposes amending title 15 CFR part 50, by adding a new section that provides the procedures for this certification process.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Rodger V. Johnson, Department of Commerce, Bureau of the Census, Population Division Room 2324 FB-3, Population Distribution Branch, Washington, DC 20233
Phone: 301 763-2419
Fax: 301 457-2481

RIN: 0607–AA37

Department of Commerce (DOC)
Bureau of the Census (CENSUS) — **Final Rule Stage**

492. SPECIAL SERVICES AND STUDIES BY THE BUREAU OF THE CENSUS; AMENDMENTS TO AGE SEARCH PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1256; 13 USC 8

CFR Citation: 15 CFR 50.1(d); 15 CFR 80.1(c); 15 CFR 80.1(g); 15 CFR 50.5

Legal Deadline: None

Abstract: Chapter 1, part 50.1(d) should be amended to read as follows: If a search is unsuccessful and additional information for a further search is requested by the Bureau, such information must be received within 90 days of the request or the case will be considered closed. Additional information received after 90 days must be accompanied by a new fee and will be considered a new request. Chapter 1, part 80.1(c): Change the address from Pittsburg, Kansas 66762 to Jeffersonville, Indiana 47131. Chapter 1, part 80.1(g): The language may be clarified by changing it to read: Census information will not be furnished to another person unless the person to whom the information relates authorizes such release in the space provided on the Form BC-600. Chapter 1, part 50.5: The note following the chart of the fee structure can be eliminated since we have not had a fee increase since February 1993.

Timetable:

Action	Date	FR Cite
NPRM	09/17/01	66 FR 48013
NPRM Comment Period End	10/17/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stanley M. Domzalski, Assistant Chief (Services), National Processing Center, Department of Commerce, Bureau of the Census, 1201 East 10th Street, Jeffersonville, IN 47132
Phone: 812 218-3579
Fax: 812 218-3293

RIN: 0607–AA24

493. REPORTING VALUE ON SHIPPER'S EXPORT DECLARATION FOR INLAND FREIGHT AND INSURANCE CHARGES

Priority: Substantive, Nonsignificant

Legal Authority: 13 USC 301; 13 USC 302

CFR Citation: 15 CFR 30.7(q)

Legal Deadline: None

Abstract: The Bureau of the Census is amending the Foreign Trade Statistics Regulations to clarify the provisions for reporting the value of merchandise on the Shipper's Export Declaration (SED) when the inland freight and insurance charges are not known. Current provisions define the value to be reported on the SED as the value at the U.S. port of export including inland freight and insurance charges. In situations where inland freight and insurance charges are not known the

DOC—CENSUS — **Final Rule Stage**

Census Bureau will require that the exporter add 3 percent of the value of the commodity to the value to determine the total value to be reported on the SED.

Timetable:

Action	Date	FR Cite
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Ruth Mangaroo, Regulations, Outreach, & Education Branch, Foreign Trade Division, Department of Commerce, Bureau of the Census, Room 3125, FB-3, Washington, DC 20233
Phone: 301 457-2238
Fax: 301 457-3765

RIN: 0607–AA29

494. REPORTING THE VALUE OF REPAIRS AND REPLACEMENT PARTS ON THE SHIPPER'S EXPORT DECLARATION

Priority: Substantive, Nonsignificant

Legal Authority: 13 USC 301; 13 USC 302

CFR Citation: 15 CFR 30.30(c)

Legal Deadline: None

Abstract: The Bureau of the Census is amending the Foreign Trade Statistics Regulations to clarify provisions for reporting the value of exports that were previously imported for repairs or alterations, and the value of replacement parts. This amendment will clarify provisions for reporting the cost of repairs and/or alterations and reporting the value of replacement parts on the Shipper's Export Declaration.

Timetable:

Action	Date	FR Cite
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Ruth Mangaroo, Regulations, Outreach, & Education Branch, Foreign Trade Division, Department of Commerce, Bureau of the Census, Room 3125, FB-3, Washington, DC 20233
Phone: 301 457-2238
Fax: 301 457-3765

RIN: 0607–AA30

495. NOTATION OF THE SHIPPER'S EXPORT DECLARATION FILING EXEMPTION STATEMENT ON MANIFEST DOCUMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 13 USC 301; 13 USC 302

CFR Citation: 15 CFR 30.50

Legal Deadline: None

Abstract: The Bureau of the Census is amending the Foreign Trade Statistics Regulations (FTSR) to clarify provisions for making notations on the Shipper's Export Declaration (SED) filing exemption statement on the bill of lading, air waybill, or other loading document for carrier use, in all cases when an SED is not required to be filed. This amendment will require the exporter to refer to the specific FTSR section, explaining the exemption criteria, whenever an SED is not required to be filed with the statement "No SED Required, FTSR 30.XX" on the manifest document.

Timetable:

Action	Date	FR Cite
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Ruth Mangaroo, Regulations, Outreach, & Education Branch, Foreign Trade Division, Department of Commerce, Bureau of the Census, Room 3125, FB-3, Washington, DC 20233
Phone: 301 457-2238
Fax: 301 457-3765

RIN: 0607–AA31

496. CUTOFF DATES FOR RECOGNITION OF BOUNDARY CHANGES FOR CENSUS 2000 AND FOR THE INTERCENSAL PERIOD

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 553(b)(3)(A); 5 USC 604(a); 44 USC 35

CFR Citation: 15 CFR 70

Legal Deadline: None

Abstract: The Bureau of the Census (Census Bureau) is establishing cutoff dates for recognition of boundary changes to geographic entities for which the Census Bureau reports data in various surveys, estimates, censuses, programs, compilations, and publications throughout the period between decennial censuses (years 2001 through 2009).

Timetable:

Action	Date	FR Cite
NPRM	01/25/02	67 FR 3631
NPRM Comment Period End	02/25/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: Robert W. Marx, Chief, Geography Division, Department of Commerce, Bureau of the Census, Stop 7400, 4700 Silver Hill Road, Washington, DC 20233-7400
Phone: 301 457-2131
Email: rmarx@geo.census.gov

RIN: 0607–AA35

497. • BUREAU OF THE CENSUS CERTIFICATION PROCESS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 192; 15 USC 189a; 13 USC 8

CFR Citation: 15 CFR 50.50(a); 15 CFR 50.50(b); 15 CFR 50.50(c)

Legal Deadline: None

Abstract: Part 50.50(a): Upon request, the Census Bureau certifies certain statistical materials (such as the population and housing unit counts of government entities, published tabulations, maps, and other documents). The Census Bureau charges customers a preset fee for this service according to the kind of certification requested (either an impressed document or an attestation) and the level of difficulty involved in compiling it (easy, moderate, or difficult, determined according to the resources expended) as well as the set cost of the data product to be certified. Certification prices range from $70 to $240.

Part 50.50(b): There are two forms of certification available: Impressed Documents and Attestations. (1) Impressed Documents. An impressed document is one that is certified by

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impressing the Census Bureau seal on the document itself. (2) Attestations. Attestation is a more formal process of certification. It consists of a signed statement by a Census Bureau official that the document is authentic and produced or published by the agency, followed by a signed statement of another Census Bureau official witnessing the authority of the first.

Part 50.50(c): Requests for certification should be submitted on Form BC-1868(EF), Request for Official Certification, to the Census Bureau by fax, (301) 457-4714 or by e-mail, webmaster@census.gov. No certification request will be processed without payment of the required fee.

Timetable:

Action	Date	FR Cite
NPRM	06/04/02	67 FR 38445
NPRM Comment Period	07/05/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Les Solomon, Chief, Customer Services Center, Department of Commerce, Bureau of the Census, FB-3, Room 1579, Washington, DC 20233
Phone: 301 763-5377
Fax: 301 457-4714

RIN: 0607–AA36

Department of Commerce (DOC)
General Administration (ADMIN) — **Final Rule Stage**

498. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; PL 103-355, sec 2455; 31 USC 6101; EO 12549; EO 12689

CFR Citation: 15 CFR 26

Legal Deadline: None

Abstract: Periodically, OMB amends the Governmentwide common rule for suspension and debarment of contractors and assistance participants who threaten the integrity of Federal programs because of criminal misconduct or poor performance. Agencies must issue changes to their individual codified versions to conform to the common rule. Recently, the Interagency Suspension and Debarment Coordinating Committee prepared recommendations for comprehensive changes to the common rule to conform to changes made in the Federal Acquisition Regulation (FAR) as a result of the Federal Acquisition Streamlining Act. In addition, several other proposals to improve or change the rule are included.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/23/02	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Robert Kugelman, Director, Office of Executive Budgeting and Assistance Management, Department of Commerce, HCHB Room 6022, 14th & Constitution Avenue, NW., Washington, DC 20230
Phone: 202 482-4115
Fax: 202 482-3270

RIN: 0605–AA16

Department of Commerce (DOC)
General Administration (ADMIN) — **Long-Term Actions**

499. PUBLIC INFORMATION, FREEDOM OF INFORMATION AND PRIVACY

Priority: Other Significant

CFR Citation: 15 CFR 4; 15 CFR 4a; 15 CFR 4b

Timetable:

Action	Date	FR Cite
NPRM	05/31/00	65 FR 34606
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Andy McCready
Phone: 202 482-8044

RIN: 0605–AA14

Department of Commerce (DOC)
General Administration (ADMIN)

Completed Actions

500. UNIFORM ADMINISTRATIVE REQUIREMENT FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NONPROFITS AND COMMERCIAL ORGANIZATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 14

Completed:

Reason	Date	FR Cite
Final Rule	10/01/01	66 FR 49827

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth L. Dorfman
Phone: 202 482-4115

RIN: 0605–AA09

Department of Commerce (DOC)
International Trade Administration (ITA)

Proposed Rule Stage

501. PROPOSED CHANGES IN THE INSULAR POSSESSIONS WATCH, WATCH MOVEMENT AND JEWELRY PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: PL 97-446, sec 110; PL 103-465, sec 602; PL 94-241, sec 601; PL 106-36, sec 2401

CFR Citation: 15 CFR 303

Legal Deadline: None

Abstract: The proposed rule would amend ITA regulations by defining the term "permanent resident" in order to clarify which wages qualify as creditable and which do not for purposes of calculating the duty-refund for watches and jewelry.

Timetable:

Action	Date	FR Cite
NPRM	05/23/01	66 FR 28404
Final Rule	07/02/01	66 FR 34810
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Faye Robinson, Acting Director, Department of Commerce, International Trade Administration, FCB Suite 4100W, Statutory Import Staff Programs, Washington, DC 20230
Phone: 202 482-3526

RIN: 0625–AA57

502. • SHORT SUPPLY OF FABRIC AND YARN

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-200, sec 112(b)(5)(B); PL 106-200, sec 211; EO 13191

CFR Citation: 15 CFR 345

Legal Deadline: None

Abstract: The proposed rule implements certain provisions of the Trade and Development Act of 2000 (the Act). Title I of the Act (the African Growth and Opportunity Act or AGOA) and Title II of the Act (the United States—Caribbean Basin Trade Partnership Act or CBTPA) provide for quota and duty-free treatment for qualifying apparel products from designated beneficiary countries. AGOA and CBTPA authorize quota and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more designated beneficiary countries from yarn or fabric that is not formed in the United States or a beneficiary country, provided it has been determined that such yarn or fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner. The President has delegated to the Committee for the Implementation of Textile Agreements (the Committee), which is chaired by Commerce, the authority to determine whether yarn or fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA and the CBTPA, and has authorized the Committee to extend quota and duty-free treatment to apparel of such yarn or fabric. The proposed rule provides the procedure for interested parties to submit a request alleging that a yarn or fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner, the procedure for public comments, and relevant factors that will be considered in the Committee's determination. The proposed rule also outlines the factors to be considered by the Committee in extending quota- and duty-free treatment.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Janet Heinzen, International Trade Specialist, Department of Commerce, International Trade Administration, 3106, Office of Textiles and Apparel, Washington, DC 20230
Phone: 202 482-4006

RIN: 0625–AA59

Department of Commerce (DOC)
International Trade Administration (ITA)

Final Rule Stage

503. PROCEDURES FOR CONDUCTING FIVE-YEAR (SUNSET) REVIEWS OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 1671 et seq; 19 USC 1673 et seq; 19 USC 1303

CFR Citation: 19 CFR 351

Legal Deadline: None

Abstract: On May 19, 1997 (62 FR 27296), the Department of Commerce (the Department) published final rules on, inter alia, procedures for conducting antidumping and countervailing duty proceedings to conform the Department's existing regulations to the Uruguay Round Agreements Act (URAA). Although these regulations contain provisions on the conduct of sunset reviews, the Department is planning to amend the regulations to provide more guidance on the procedures for conducting sunset reviews. Specifically, the Department proposes to amend the procedural regulations for participation in, and conduct of, sunset reviews to add two definitions to provide shorthand expressions for 120-day and 240-day sunset reviews; provide deadlines for certain submissions; clarify the information to be provided by parties participating in a sunset review; clarify when the Department will conduct a 120-day or a 240-day sunset review; and provide time limits for actions to be taken by the Department.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/20/98	63 FR 13516
Interim Final Rule Effective	03/20/98	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Stacy Ettinger, Attorney, Department of Commerce, International Trade Administration, Room 3828, 14th & Pennsylvania Ave., N.W., Washington, DC 20230
Phone: 202 482-4618

RIN: 0625–AA51

504. IMPORT OF CERTAIN WORSTED WOOL FABRIC: IMPLEMENTATION OF TARIFF RATE QUOTE ESTABLISHED UNDER TITLE V OF THE TRADE AND DEVELOPMENT ACT OF 2000

Priority: Other Significant

Legal Authority: PL 106-200, sec 501-504; Title V of the Trade and Development Act of 2000; Presidential Proclamation No. 7383 (December 1, 2000)

CFR Citation: 15 CFR 335; 15 CFR 340

Legal Deadline: None

Abstract: On January 22, 2001, the Department of Commerce issued interim regulations implementing section 501(e) and section 504(b) of the Trade and Development Act of 2000 (the Act). Section 501(e) requires the President to fairly allocate tariff rate quotas on the import of certain worsted wool fabrics, tariff rate quotas which were established by sections 501(a) and 501(b) of the Act. Section 504(b) authorizes the President to modify the limitations on worsted wool fabric imports under the tariff rate quotas. The President has delegated to the Secretary of Commerce the authority to allocate the quantity of imports under the tariff rate quotas and to determine whether the limitations on the quantity of imports under the tariff rate quotas should be modified. Final regulations will be issued after the period for notice and comment has expired.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/22/01	66 FR 6459
Interim Final Rule Comment Period End	03/23/01	
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Sergio Botero, Industry Economist, Department of Commerce, International Trade Administration, HCHB Room 3119, Office of Textiles and Apparel, 14th and Constitution Avenue NW., Washington, DC 20230
Phone: 202 482-4058
Fax: 202 482-0667

RIN: 0625–AA58

Department of Commerce (DOC)
International Trade Administration (ITA)

Long-Term Actions

505. EXPORT TRADE CERTIFICATES OF REVIEW (15 CFR 325)

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 325

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Jeffery Anspacher
Phone: 202 482-5131
Fax: 202 482-1790

RIN: 0625–AA52

506. • ESTABLISHMENT OF STEEL IMPORT LICENSING AND SURGE-MONITORING PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 2251 et seq

CFR Citation: 19 CFR ch III

Legal Deadline: None

Abstract: On March 5, 2002, the President issued Proclamation 7529 - To Facilitate Positive Adjustment to Competition of Certain Steel Products. In this Proclamation, the President ordered restrictions and increased tariffs on imports of certain steel products. Also on March 5, 2002, the President issued a memorandum instructing the Secretary of Commerce, together with the Secretary of the Treasury, to implement a licensing program to give effect to the positive adjustments contained in Proclamation 7529. Pursuant to these instructions, these procedures have been proposed.

Timetable:

Action	Date	FR Cite
NPRM	07/18/02	67 FR 47338
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Roland MacDonald, Department of Commerce, International

DOC—ITA **Long-Term Actions**

Trade Administration, Room 3713, 14th and Pennsysvania Avenue, NW., Washington, DC 20230

Phone: 202 482-1275
RIN: 0625–AA60

Department of Commerce (DOC)
Bureau of Industry and Security (BIS) **Proposed Rule Stage**

507. MANDATORY ELECTRONIC FILING OF LICENSE APPLICATIONS, CLASSIFICATION REQUESTS, AND LICENSE EXCEPTIONS NOTIFICATIONS VIA BIS'S SIMPLIFIED NETWORK APPLICATION PROCESS (SNAP)

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401; 50 USC 1701; 18 USC 2510; 22 USC 3201; EO 12058; EO 12851; EO 12938; EO 13026; EO 13222; 66 FR 56965; 67 FR 53721; EO 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; EO 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; ...

CFR Citation: 15 CFR 740; 15 CFR 742; 15 CFR 743; 15 CFR 748; 15 CFR 754; 15 CFR 772

Legal Deadline: None

Abstract: This rule would change the Export Administration Regulations as needed to implement a revised version of the Bureau of Industry and Security's Simplified Network Application Processing (SNAP) system. This rule also would make use of that system mandatory for all filings of Export License applications (except Special Comprehensive Licenses and deemed export licenses), Reexport Authorization requests, Classification requests, Encryption Review requests, and License Exception AGR notifications unless the Bureau of Industry and Security authorizes paper filing for a particular user or transaction. This rule also would authorize SNAP filing for special reports of certain items controlled under the Wassenaar Arrangement. This rule also would eliminate all provisions of the regulations associated with earlier versions of SNAP and other electronic filing systems that the Bureau of Industry and Security has used in the past, as use of those systems would be terminated upon introduction of the new version of SNAP (SNAP 2002). Those eliminated provisions include the requirements regarding personal identification numbers (PINs) and the requirement for users to keep logs of items filed electronically. This rule also would require that requests for advisory opinions include the Export Control Classification Number of the item(s) at issue, revise emergency license application procedures, set the value of all aircraft licensed for temporary sojourn abroad to zero and correct some omissions, misstatements and typographical errors.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William Arvin, Department of Commerce, Bureau of Industry and Security
Phone: 202 482-2440
Fax: 202 482-3355
Email: warvin@bis.doc.gov

RIN: 0694–AC20

508. • PROTECTIVE EQUIPMENT EXPORT LICENSE JURISDICTION

Priority: Routine and Frequent

Legal Authority: Not Yet Determined

CFR Citation: 15 CFR 774

Legal Deadline: None

Abstract: Export Control Classification Number (ECCN) 1A004 in the Commerce Control List (CCL) provides that protection and detection equipment and components not specially designed for military use are subject to the licensing authority of the Department of State, Office of Defense Trade Controls (DTC). The Bureau of Industry and Security (BIS) has received information suggesting that the existing rule commits to DTC authority a number of items that have primarily civil end uses. This proposed rule draws a distinction between items subject to DTC control and items subject to the Export Administration Regulations (EAR) by modifying ECCN 1A004 and creating a new ECCN 1A995.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William Arvin, Department of Commerce, Bureau of Industry and Security
Phone: 202 482-2440
Fax: 202 482-3355
Email: warvin@bis.doc.gov

RIN: 0694–AC64

Department of Commerce (DOC)
Bureau of Industry and Security (BIS) **Final Rule Stage**

509. CHEMICAL WEAPONS CONVENTION REGULATIONS

Priority: Other Significant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222

CFR Citation: 15 CFR 710 et seq

Legal Deadline: None

Abstract: The final rule will make effective the proposed rule published July 21, 1999. The purpose of the regulation is to implement the provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention) and the Chemical Weapons Convention Implementation Act of 1998, requiring private facilities to submit information on certain activities involving toxic chemicals, and to make certain private facilities subject to periodic inspection by the Organization for the Prohibition of Chemical Weapons (OPCW), the international organization created to administer the Convention and to monitor compliance by States Parties.

DOC—BIS **Final Rule Stage**

Timetable:

Action	Date	FR Cite
NPRM	07/21/99	64 FR 39193
Interim Final Rule	12/30/99	64 FR 73744
Correction	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal

Agency Contact: Willard Fisher, Export Administration Specialist, Department of Commerce, Bureau of Industry and Security, 14th & Pennsylvania Avenue NW., Washington, DC 20230
Phone: 202 482-2440

RIN: 0694–AB06

510. REVISIONS TO THE EXPORT ADMINISTRATION REGULATIONS; ADDITIONS TO THE ENTITY LIST

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 744

Legal Deadline: None

Abstract: The Export Administration Regulations (EAR) provide that the Bureau of Export Administration may inform exporters, individually or through amendment to the EAR, that a license is required for exports or reexports to certain entities. The EAR contains a list of such entities. This rule adds entities to the Entity List, and requires a license for all exports and reexports of all items subject to the EAR.

Timetable:

Action	Date	FR Cite
Addition to Entity List	05/16/97	62 FR 26922
Addition to Entity List	06/30/97	62 FR 35334
Addition to Entity List	06/30/97	62 FR 35335
Revision to Entity List	10/01/97	62 FR 51369
Addition to Entity List - Russian Entities	07/29/98	63 FR 40363
Revisions and Additions to Entity List	05/14/01	66 FR 24264
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AB60

511. EXPORTS AND REEXPORTS OF EXPLOSIVE DETECTION SYSTEMS; EXPANSION OF FOREIGN POLICY CONTROLS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 730 to 774

Legal Deadline: None

Abstract: The Bureau of Export Administration is amending the Export Administration Regulations by expanding the current scope of control of explosive detection systems controlled by Export Control Classification Number (ECCN) 2A993 to include all types of systems that detect the presence of explosives or explosive residue. This rule also expands the control of these explosive detection systems to Iraq. In addition, this rule establishes a new licensing requirement on the export and reexport of software designed or modified for the development, production, or use of explosive detection systems to Iran, Iraq, Sudan, and Syria for antiterrorism reasons.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sheila Quarterman, Export Policy Analyst, Department of Commerce, Bureau of Industry and Security
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RIN: 0694–AB87

512. EXPORTS AND REEXPORTS TO SUDAN

Priority: Other Significant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 700 to 799

Legal Deadline: None

Abstract: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to reflect the imposition of economic sanctions on Sudan, as a result of the issuance of Executive Order 13067 on November 3, 1997. The Executive Order delegates implementation responsibility to the Department of the Treasury's Office of Foreign Assets Control, including authority for exports and certain reexports. In addition, this rule makes editorial revisions to the EAR relating to embargoes and antiterrorism controls.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AC05

DOC—BIS

Final Rule Stage

513. REVISIONS TO THE EXPORT ADMINISTRATION REGULATIONS RELATED TO THE MISSILE TECHNOLOGY CONTROL REGIME (MTCR)

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 740; 15 CFR 774; 15 CFR 742

Legal Deadline: None

Abstract: Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to amend the Commerce Control List to reflect the reformatted Missile Technology Control Regime (MTCR) Annex of October 14, 1999 (Noordwijk/TEM). This final rule also amends Country Group A:2, MTCR, to add the Czech Republic, Korea (Republic of), Poland, Turkey, and Ukraine.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC22

514. REVISIONS AND CLARIFICATIONS TO THE EXPORT ADMINISTRATION REGULATIONS (EAR)

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 730; 15 CFR 732; 15 CFR 734; 15 CFR 736; 15 CFR 740; 15 CFR 746; 15 CFR 748; 15 CFR 752; 15 CFR 758; 15 CFR 772; 15 CFR 774

Legal Deadline: None

Abstract: This rule amends the Export Administration Regulations by making certain revisions and clarifications and, in some cases, inserts material inadvertently omitted from previous rules.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sharron Cook, Policy Analyst, Department of Commerce, Bureau of Industry and Security, 2096/MS 2705, 14th & Pennsylvania Avenue NW., Washington, DC 20230
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RIN: 0694–AC24

515. LICENSE EXCEPTION AVS: CUBA, LIBYA, SERBIA

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 740

Legal Deadline: None

Abstract: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) by allowing equipment, spares, and plane stores under the provisions of License Exception AVS on foreign registered aircraft subject to the EAR that are temporarily reexported to Libya and Serbia, and on U.S.- or foreign-registered aircraft subject to the EAR that are temporarily exported or reexported to Cuba.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Willard Fisher, Export Administration Specialist, Department of Commerce, Bureau of Industry and Security, 14th & Pennsylvania Avenue NW., Washington, DC 20230
Phone: 202 482-2440

RIN: 0694–AC33

516. CHEMICAL WEAPONS CONVENTION: REVISIONS TO THE EXPORT ADMINISTRATION REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 700 to 799

Legal Deadline: None

Abstract: The Bureau of Industry and Security (BIS) administers export controls on certain toxic chemicals and precursors that are listed in the "Schedules of Chemicals" contained within the "Annex on Chemicals" to the "Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction," also known as the Chemical Weapons Convention (CWC). This rule amends the CWC provisions in the Export Administration Regulations (EAR) to clarify BXA licensing requirements and policies for chemicals and precursors controlled for chemical weapons reasons.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Willard Fisher, Export Administration Specialist, Department of Commerce, Bureau of Industry and Security, 14th & Pennsylvania Avenue NW., Washington, DC 20230
Phone: 202 482-2440

RIN: 0694–AC35

517. EXPORTS TO AFGHANISTAN (THE TALIBAN) AND LIBERIA: IMPOSITION OF FOREIGN POLICY CONTROLS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 730 to 774

Legal Deadline: None

Abstract: This rule amends the Export Administration Regulations (EAR) to implement United Nations Security Council (UNSC) Resolutions 1333 of December 19, 2000, and 1343 of March 7, 2001, which mandated embargoes on the sale or supply of arms-related items, including technical assistance and training, to the Taliban and to Liberia, respectively. These steps taken by the Bureau of Industry and Security (BIS) supplement controls implemented by the Department of State on exports of defense articles and services to the Taliban and to Liberia under the International Traffic in Arms Regulations. BIS already requires a license for the export and reexport to Afghanistan and Liberia of most of the items subject to the EAR that fall within the scope of the UNSC-mandated ban on arms-related items (e.g., items controlled for regional stability and crime control reasons).

Timetable:

Action	Date	FR Cite
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC45

518. ELIMINATION OF "NATIONAL SECURITY" AS A REASON FOR CONTROL FOR CERTAIN ITEMS ON THE COMMERCE CONTROL LIST

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC 2401; 50 USC 1701; 18 USC 2510; EO 13222; EO 12058; ...

CFR Citation: 15 CFR 742; 15 CFR 774

Legal Deadline: None

Abstract: This rule amends the Commerce Control List (CCL) to eliminate "National Security" as a reason for control with respect to certain items. This rule is needed to make the CCL conform to Section 5(c)(6)(A) of the Export Administration Act (the Act), which provides that unilateral national security controls expire six months after enactment of the Act or of the control (whichever is later) unless a determination has been made under section 5 of the Act that there is no foreign availability of the items or unless the President is pursuing negotiations to end such availability. All but four of the items affected by this rule are moved to other Export Control Classification Numbers (ECCNs) on the CCL. Two of the items that are removed from the CCL (bayonets and technology for the design, production or use of bayonets) are transferred to the United States Munitions List. The other two items (muzzle-loading firearms and technology for the design, production or use of muzzle-loading firearms) are now EAR99.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC54

519. IMPOSITION AND EXPANSION OF CONTROLS ON DESIGNATED PERSONS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC 1701; 50 USC 2401; 22 USC 3201; EO 13099; EO 13222; ...

CFR Citation: 15 CFR 744; 15 CFR 772

Legal Deadline: None

Abstract: This final rule amends the Export Administration Regulations (EAR) by imposing a license requirement on the export and reexport of any item subject to the EAR by a U.S. person or non-U.S. person to persons blocked and designated pursuant to Executive Order 13224 of September 23, 2001. In response to grave acts of terrorism and threats of terrorism, Executive Order 13224 blocks the property and interests in property of persons who commit, threaten to commit or support terrorism, and prohibits U.S. persons or applicable non-U.S. persons from engaging in any transactions with such blocked persons. The Department of the Treasury's Office of Foreign Assets Control (OFAC) maintains the list of blocked persons newly designated Specially Designated Global Terrorists (SDGTs) in Appendix A to 31 C.F.R. chapter V pursuant to Executive Order 13224 and identified by the bracketed initials [SDGT]. This rule also amends the EAR by expanding reexport controls on Specially Designated Terrorists (SDTs) and foreign controls on Specially Designated Terrorists (SDTs) and Foreign Terrorist Organizations (FTOs). OFAC also maintains the lists of SDTs and FTOs found in appendix A to 31 C.F.R. chapter V and identified by the bracketed initials [SDT] and [FTO], respectively.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sheila Quarterman, Export Policy Analyst, Department of Commerce, Bureau of Industry and Security
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RIN: 0694–AC60

520. • IMPLEMENTATION OF THE 2002 WASSENAAR ARRANGEMENT LIST OF DUAL-USE ITEMS: REVISIONS TO CATEGORIES 2, 3, 4, 5, 6, 7 AND 9 OF THE COMMERCE CONTROL LIST, GENERAL SOFTWARE NOTE, AND REPORTING REQUIREMENTS

Priority: Routine and Frequent

Legal Authority: 50 USC 2401; EO 13222; EO 13020; 50 USC 1701; 10 USC 7420; ...

CFR Citation: 15 CFR 743; 15 CFR 772; 15 CFR 774

Legal Deadline: None

Abstract: The Bureau of Industry and Security (BIS) maintains the Commerce Control List (CCL), which identifies

items subject to Department of Commerce export controls. This final rule revises certain entries controlled for national security reasons in categories 2, 3, 4, 5 part I (telecommunications), 5 part II (information security), 6, 7, and 9 to conform with changes in the List of Dual-Use Goods and Technologies maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement controls strategic items with the objective of improving regional and international security and stability.

The purpose of this final rule is to make the necessary changes to the Commerce Control List to implement revisions to the Wassenaar List that were agreed upon in the February 2002 meeting (and finalized in June 2002) and to make necessary revisions to reporting requirements, definitions, and the General Software Note.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC65

521. • REVISION OF EXPORT CONTROLS FOR GENERAL PURPOSE MICROPROCESSORS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC 2401; 50 USC 1701; 22 USC 3201; 42 USC 2139(a); EO 13224; ...

CFR Citation: 15 CFR 744; 15 CFR 772; 15 CFR 774

Legal Deadline: None

Abstract: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to remove license requirements for exports and reexports of general purpose microprocessors to most destinations. There will be no change to existing license requirements for the export or reexport of general purpose microprocessors to terrorist-supporting and embargoed countries, and no change to license requirements for exports or reexports of microprocessors specifically designed for military uses. In addition, this rule will establish a new license requirement for the export or reexport of general purpose microprocessors if at the time of the export or reexport you know, have reason to know, or are informed that the item will be used in a military weapon system or used by a military end-user in Country Group D:1.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sharron Cook, Policy Analyst, Department of Commerce, Bureau of Industry and Security, 2096/MS 2705, 14th & Pennsylvania Avenue NW., Washington, DC 20230
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RIN: 0694–AC66

522. • LICENSE APPLICATION DENIAL POLICY, "RED FLAG" INDICATORS OF POSSIBLE INAPPROPRIATE END-USE, END-USER OR DESTINATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 50 USC app 2401; 50 USC 1701; EO 13026; EO 13222; 22 USC 3201; 42 USC 2139a; EO 12058; EO 12851; EO 12938; EO 12947; EO 13026; EO 13099; EO 13222; EO 13224

CFR Citation: 15 CFR 732; 15 CFR 744.11

Legal Deadline: None

Abstract: This rule makes explicit BIS's policy of denying export license applications when a sanction imposed on a party pursuant to a statute requires such denial. Such sanctions are imposed for activities contrary to United States foreign policy interests or that contribute to the proliferation of weapons of mass destruction. This rule also makes the imposition of such sanctions or publication of a party's name on the BIS "Unverified List" a "red flag" triggering a need for heightened scrutiny when dealing with such parties in transactions that are subject to the Export Administration Regulations.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Agency Contact: William Arvin, Department of Commerce, Bureau of Industry and Security
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RIN: 0694–AC68

523. TRANSFER OF DUAL-USE ITEMS FROM U.S. MUNITIONS LIST TO THE COMMERCE CONTROL LIST

Priority: Other Significant

CFR Citation: 15 CFR 774 Supplement No. 1

Timetable:

Action	Date	FR Cite
Transfer of Communications Satellites	10/23/92	57 FR 48312
Navigation and Avionics	06/23/93	58 FR 34211
Final Rule - Transfer of Commercial Communication Satellites	09/08/93	58 FR 47322
Transfer of Items From the USMI to the CCL; Imposition of Certain Foreign Policy Controls	10/26/93	58 FR 57549
Satellite Fuel	09/29/97	62 FR 50865
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Brian Nilsson
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RIN: 0694–AA52

524. ADMINISTRATION OF STATE LOG EXPORTS BAN

Priority: Other Significant

CFR Citation: 15 CFR 754

Timetable:

Action	Date	FR Cite
ANPRM	06/07/95	60 FR 30030
ANPRM Comment Period End	07/07/95	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local

Agency Contact: Willard Fisher
Phone: 202 482-2440

RIN: 0694–AB25

525. CHANGE THE COMMERCE CONTROL LIST TO REVISE CONTROLS ON COMMUNICATION INTERCEPTING DEVICES (EXPORT COMMERCE CONTROL NUMBER ECCN 5A980)

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 730 to 799

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Brian Nilsson
Phone: 202 482-4196

RIN: 0694–AB41

526. CLARIFICATION OF LICENSE EXCEPTION GFT (HUMANITARIAN DONATIONS)

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 740

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AB49

527. EXPORTS OF TECHNOLOGY AND SOFTWARE; RELEASE OF TECHNOLOGY OR SOURCE CODE TO FOREIGN NATIONALS IN THE UNITED STATES

Priority: Other Significant

CFR Citation: 15 CFR 730 to 799

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AB59

528. INDIA AND PAKISTAN SANCTIONS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 730 to 774

Timetable:

Action	Date	FR Cite
Interim Final Rule - India and Pakistan Sanctions and Other Measures	11/19/98	63 FR 64322
Interim Final Rule - Correction to India and Pakistan Sanctions and Other Measures	11/27/98	63 FR 65352
Final Rule	03/17/00	65 FR 14444
Final Rule	07/26/00	65 FR 45842
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AB73

529. EXPANSION OF LICENSE EXCEPTION CIV ELIGIBILITY FOR "MICROPROCESSORS" CONTROLLED BY ECCN 3A001

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 730 to 774

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/08/99	64 FR 36779
Interim Final Rule	11/26/99	64 FR 66372
Interim Final Rule	06/13/00	65 FR 37039
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AB90

530. EXPORT OF TECHNOLOGY AND SOFTWARE THROUGH ELECTRONIC TRANSMISSIONS, DOWNLOADS, AND PROGRAMMING ONTO HARDWARE

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 700 to 799

Timetable:

Action	Date	FR Cite
ANPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AB97

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531. EXPORT ADMINISTRATION REGULATIONS: SUPPORT DOCUMENTATION

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 748

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 0694–AC04

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532. ANTITERRORISM CONTROLS ON IRAQ

Priority: Other Significant

CFR Citation: 15 CFR 700 to 799

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sheila Quarterman
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RIN: 0694–AC06

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533. EXPANSION OF LICENSE EXCEPTION GOV; EXPORTS AND REEXPORTS TO INTERNATIONAL ORGANIZATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 730 to 774

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sheila Quarterman
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RIN: 0694–AC15

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534. DE MINIMIS EXPANSION OF ELIGIBILITY: U.S. ORIGIN SOFTWARE INCORPORATED INTO FOREIGN-MADE RETAIL COMMODITIES

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 730 to 774

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC17

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535. REVISION TO THE EXPORT ADMINISTRATION REGULATIONS: REPLACEMENT LICENSES

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 748 to 750

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC23

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536. SHORT SUPPLY CONTROLS: CRUDE OIL EXPORTS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 750; 15 CFR 754

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Willard Fisher
Phone: 202 482-2440

RIN: 0694–AC25

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537. OFFSETS IN MILITARY EXPORTS

Priority: Other Significant

CFR Citation: 15 CFR 701

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Brad Botwin
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RIN: 0694–AC27

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538. ENTITY LIST: ADDITIONS AND REVISIONS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 730 to 799

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sharron Cook
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RIN: 0694–AC28

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539. CRIME CONTROL ITEMS: REVISIONS TO THE COMMERCE CONTROL LIST

Priority: Other Significant

CFR Citation: 15 CFR 730 to 799

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/13/00	65 FR 55177
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sharron Cook
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RIN: 0694–AC46

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540. REVISIONS TO ENCRYPTION ITEMS

Priority: Other Significant

CFR Citation: 15 CFR 730 to 799

Timetable:

Action	Date	FR Cite
Final Rule	10/19/00	65 FR 62600
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Brian Nilsson
Phone: 202 482-4196

RIN: 0694–AC32

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541. CLARIFICATIONS TO PART 753: SPECIAL COMPREHENSIVE LICENSE REQUIREMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 700 to 799

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Willard Fisher
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RIN: 0694–AC34

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542. ADDITION AND REVISION OF MISSILE PROJECTS IN THE EXPORT ADMINISTRATION REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 740

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sharron Cook
Phone: 202 482-2440
Fax: 202 482-3355
Email: scook@bis.doc.gov

RIN: 0694–AC47

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543. REVISION, SUSPENSION, OR PROHIBITION OF USE OF "NO LICENSE REQUIRED" PROVISIONS

Priority: Routine and Frequent

CFR Citation: 15 CFR 732; 15 CFR 738; 15 CFR 758

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharron Cook
Phone: 202 482-2440
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Email: scook@bis.doc.gov

RIN: 0694–AC57

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544. REMOVAL OF LICENSING EXEMPTION FOR EXPORTS AND REEXPORTS OF MISSILE TECHNOLOGY-CONTROLLED ITEMS DESTINED TO CANADA

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 738; 15 CFR 742

Timetable:

Action	Date	FR Cite
ANPRM	12/20/01	66 FR 65666
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sharron Cook
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Email: scook@bis.doc.gov

RIN: 0694–AC48

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545. EXPORTS TO THE FEDERAL REPUBLIC OF YUGOSLAVIA: LIFTING OF SANCTIONS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 732; 15 CFR 738; 15 CFR 746; 15 CFR 758

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sheila Quarterman
Phone: 202 482-2440
Email: squarter@bis.doc.gov

RIN: 0694–AC57

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546. • COMPUTER TECHNOLOGY AND SOFTWARE ELIGIBLE FOR EXPORT OR REEXPORT UNDER LICENSE EXCEPTION TSR

Priority: Routine and Frequent

Legal Authority: Not Yet Determined

CFR Citation: 15 CFR 774

Legal Deadline: None

Abstract: The Bureau of Industry and Security (BIS) is reviewing the current limit for use of License Exception TSR for exports and reexports of technology and software on the Commerce Control List (CCL) of the Export Administration Regulations (EAR) under Export Classification Control Numbers (ECCNs) 4D001 and 4E001. These ECCNs control technology and software that can be used for the development, production, or use of computers. The goal of this notice is to collect information from industry that will assist BIS in evaluating whether the current TSR eligibility level of 33,000 Millions of Theoretical Operations per Second (MTOPS) for exports and reexports to most countries should be adjusted, taking into consideration the control level for the export of computer equipment and the control policies of other member countries of the Wassenaar Arrangement.

Timetable:

Action	Date	FR Cite
ANPRM	06/10/02	67 FR 39675
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sharron Cook, Policy Analyst, Department of Commerce, Bureau of Industry and Security, 2096/MS 2705, 14th & Pennsylvania Avenue NW., Washington, DC 20230

DOC—BIS

Long-Term Actions

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Email: scook@bis.doc.gov
RIN: 0694–AC63

Department of Commerce (DOC)
Bureau of Industry and Security (BIS)

Completed Actions

547. REVISIONS TO THE EXPORT ADMINISTRATION REGULATIONS; COUNTRY GROUP E:1; LICENSE EXCEPTION TMP

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 730 to 774

Completed:

Reason	Date	FR Cite
Interim Final Rule	08/10/01	66 FR 42108

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharron Cook
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Email: scook@bis.doc.gov

RIN: 0694–AB76

548. REVISIONS TO THE NORTH KOREAN EMBARGO POLICY

Priority: Other Significant

CFR Citation: 15 CFR 730 to 774

Completed:

Reason	Date	FR Cite
Interim Final Rule	06/19/00	65 FR 38148

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sheila Quarterman
Phone: 202 482-2440
Email: squarter@bis.doc.gov

RIN: 0694–AC10

549. EXPORTS OF AGRICULTURAL COMMODITIES, MEDICINES AND MEDICAL DEVICES

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 700 to 799

Completed:

Reason	Date	FR Cite
Interim Final Rule	07/12/01	66 FR 36676

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sheila Quarterman
Phone: 202 482-2440
Email: squarter@bis.doc.gov

RIN: 0694–AC37

550. IMPLEMENTATION OF THE WASSENAAR ARRANGEMENT LIST OF DUAL-USE ITEMS REVISIONS: COMPUTERS; AND REVISIONS TO LICENSE EXCEPTION CTP

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 740; 15 CFR 742; 15 CFR 743; 15 CFR 774; 15 CFR 748

Completed:

Reason	Date	FR Cite
Final Action	03/08/02	67 FR 10611

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharron Cook
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Email: scook@bis.doc.gov

RIN: 0694–AC42

551. LICENSING JURISDICTION FOR "SPACE QUALIFIED" ITEMS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 740; 15 CFR 774

Completed:

Reason	Date	FR Cite
Interim Final Rule	09/23/02	67 FR 59721

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharron Cook
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RIN: 0694–AC49

552. MISSILE TECHNOLOGY PRODUCTION EQUIPMENT AND FACILITIES

Priority: Routine and Frequent

CFR Citation: 15 CFR 774

Completed:

Reason	Date	FR Cite
Final Action	09/18/02	67 FR 58691
Final Action Effective	09/18/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Matthew Blaskovich
Phone: 202 482-2440
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Email: mblaskov@bis.doc.gov

RIN: 0694–AC51

553. REVISIONS AND CLARIFICATIONS TO THE EXPORT ADMINISTRATION REGULATIONS—NUCLEAR NONPROLIFERATION CONTROLS: NUCLEAR SUPPLIERS GROUP

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 738; 15 CFR 740; 15 CFR 742; 15 CFR 744; 15 CFR 772; 15 CFR 774

Completed:

Reason	Date	FR Cite
Final Rule	08/29/02	67 FR 55593

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Willard Fisher
Phone: 202 482-2440

RIN: 0694–AC52

554. CORRECTIONS AND CLARIFICATIONS TO THE EXPORT ADMINISTRATION REGULATIONS: CZECH REPUBLIC, HUNGARY, AND POLAND

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 738; 15 CFR 742

Completed:

Reason	Date	FR Cite
Final Action	03/18/02	67 FR 11896

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sheila Quarterman

DOC—BIS

Completed Actions

Phone: 202 482-2440
Email: squarter@bis.doc.gov
RIN: 0694–AC53

555. REVISIONS TO THE EXPORT ADMINISTRATION REGULATIONS AS A RESULT OF THE SEPTEMBER 2001 MISSILE TECHNOLOGY CONTROL REGIME (MTCR) PLENARY MEETING

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 774

Completed:

Reason	Date	FR Cite
Final Action	05/20/02	67 FR 35428

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharron Cook
Phone: 202 482-2440
Fax: 202 482-3355
Email: scook@bis.doc.gov

RIN: 0694–AC55

556. REVISIONS TO LICENSE EXCEPTION CTP: IMPLEMENTATION OF PRESIDENTIAL ANNOUNCEMENT OF JANUARY 2, 2002

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 734; 15 CFR 740; 15 CFR 742

Completed:

Reason	Date	FR Cite
Final Action	03/08/02	67 FR 10608

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharron Cook
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Email: scook@bis.doc.gov

RIN: 0694–AC56

557. REVISION TO EXPORT ADMINISTRATION REGULATIONS: DENIED PERSONS LIST

Priority: Info./Admin./Other

CFR Citation: 15 CFR 732; 15 CFR 736; 15 CFR 752; 15 CFR 758; 15 CFR 764; ...

Completed:

Reason	Date	FR Cite
Final Action	08/27/02	67 FR 54592
Final Action Effective	08/27/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William Arvin
Phone: 202 482-2440
Fax: 202 482-3355
Email: warvin@bis.doc.gov

RIN: 0694–AC58

558. LICENSE EXCEPTION CIV ELIGIBILITY FOR CERTAIN "MICROPROCESSORS" CONTROLLED BY ECCN 3A001

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 774

Completed:

Reason	Date	FR Cite
Final Rule	03/21/02	67 FR 13091

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharron Cook
Phone: 202 482-2440
Fax: 202 482-3355
Email: scook@bis.doc.gov

RIN: 0694–AC59

559. IMPLEMENTATION OF THE WASSENAAR ARRANGEMENT LIST OF DUAL-USE ITEMS AND OTHER REVISIONS TO ENCRYPTION ITEMS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 732; 15 CFR 740; 15 CFR 742; 15 CFR 748; 15 CFR 770; ...

Completed:

Reason	Date	FR Cite
Interim Final Rule	06/06/02	67 FR 38855

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Willard Fisher
Phone: 202 482-2440

RIN: 0694–AC61

560. REVISIONS AND CLARIFICATIONS TO THE EXPORT ADMINISTRATION REGULATIONS—CHEMICAL AND BIOLOGICAL WEAPONS CONTROLS: AUSTRALIA GROUP; CHEMICAL WEAPONS CONVENTION

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 736; 15 CFR 738; 15 CFR 740; 15 CFR-742; 15 CFR 745; ...

Completed:

Reason	Date	FR Cite
Final Action	05/31/02	67 FR 37977

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Willard Fisher
Phone: 202 482-2440

RIN: 0694–AC62

Department of Commerce (DOC)
National Institute of Standards & Technology (NIST)

Completed Actions

561. • ESTABLISHMENT OF INFORMATION TECHNOLOGY SECURITY VALIDATION PROGRAMS FEES

Priority: Substantive, Nonsignificant

Legal Authority: PL 104-106 section 5131; PL 100-235; 15 USC 273; 15 USC 275a; ...

CFR Citation: None

Legal Deadline: None

Abstract: NIST issued a final rule to adopt a fee schedule for some of its Information Technology Security Validation Programs. Prior to the notice, NIST did not charge fees for these programs, but demand for the services increased 1800 percent since 1996 in some cases, which resulted in significantly increased expense to NIST for each program. The fees will allow NIST to continue and expand the Information Technology Security Validation Programs.

Timetable:

Action	Date	FR Cite
Final Action	06/18/02	67 FR 41399

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

DOC—NIST — **Completed Actions**

Agency Contact: Ray Snouffer, Department of Commerce, National Institute of Standards & Technology, Stop 8930, Computer Security Division, 100 Bureau Drive, Gaithersburg, MD 20899-8930
Phone: 301 975-4436
Email: ray.snouffer@nist.gov

RIN: 0693–AB51

Department of Commerce (DOC)
National Oceanic and Atmospheric Administration (NOAA) — **Prerule Stage**

NATIONAL MARINE FISHERIES SERVICE

562. • FLEET CAPACITY CONTROL FOR U.S. TUNA PURSE SEINE FISHERIES IN THE EASTERN PACIFIC OCEAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 951 to 961; 16 USC 971 et seq

CFR Citation: 50 CFR 300

Legal Deadline: None

Abstract: This rule will implement a tuna fishery management recommendation of the Inter-American Tropical Tuna Commission (IATTC), of which the United States is a party. The rule will establish procedures by which the United States will limit tuna purse seine fleet capacity consistent with the limits in the IATTC recommendation, which has been approved by the Department of State pursuant to the Tuna Conventions Act. Fleet capacity is necessary to prevent overcapitalization and achieve sustainable tuna fisheries in the eastern Pacific Ocean. Excessive fleet capacity threatens the ability of the IATTC and its member states to take effective action to control overall fishing mortality and maintain healthy stocks that will support economically viable fisheries, including U.S. tuna fisheries in the region.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/02	
ANPRM Comment Period End	12/00/02	
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Svein Fougner, Assistant Regional Administrator for Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Southwest Region, 501 W. Ocean Boulevard, Long Beach, CA 90802
Phone: 562 980-4040

RIN: 0648–AQ21

563. • FLEET CAPACITY CONTROL FOR U.S. TROLL ALBACORE TUNA FISHING IN CANADIAN WATERS

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 50 CFR 300

Legal Deadline: None

Abstract: This rule will implement limits on albacore tuna fishing by vessels of the United States in Canadian waters pursuant to the U.S.-Canada Albacore Fishing Treaty. In accordance with recent amendments to that Treaty, the United States is obliged to ensure that U.S. vessels do not fish for more than a set number of days each year 2003-2005. This will require methods to monitor fishing effort and notify U.S. vessel owners/operators of the date on which further U.S. fishing must cease. In turn, U.S. vessel operators/owners will be required to furnish reports of entry to and exit from Canadian waters and to provide points of contact for notices of closures. In addition, the Treaty requires that the United States exchange fishery data each year. The rule will require maintenance and submission of logbooks of fish catch and fishing effort in Canadian and U.S. waters each year.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/02	
ANPRM Comment Period End	12/00/02	
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Svein Fougner, Assistant Regional Administrator for Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Southwest Region, 501 W. Ocean Boulevard, Long Beach, CA 90802
Phone: 562 980-4040

RIN: 0648–AQ22

Department of Commerce (DOC)
National Oceanic and Atmospheric Administration (NOAA) — **Proposed Rule Stage**

NATIONAL MARINE FISHERIES SERVICE

564. AMENDMENT 4 TO THE FISHERY MANAGEMENT PLAN FOR THE REEF FISH FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 4 would restrict the use of gillnets, fish traps, and other gear in the reef fish fishery in the Caribbean exclusive economic zone. Amendment 4 would address the possible need for permitting in the fish trap fishery.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AG87

565. ESTABLISH CENTRAL REGISTRY FOR LIMITED ACCESS SYSTEM PERMITS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 600

Legal Deadline: None

Abstract: This action will establish a central registry for limited access system permits as required by the Magnuson-Stevens Fishery Conservation and Management Act section 305(h).

Timetable:

Action	Date	FR Cite
ANPRM	05/07/97	62 FR 24897
ANPRM Comment Period End	08/05/97	
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Charles L. Cooper, Program Leader, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2396
Email: charles.cooper@noaa.gov

RIN: 0648–AJ77

566. REGULATORY AMENDMENT TO REQUIRE MANDATORY OBSERVER COVERAGE IN THE AT-SEA PROCESSING SECTOR OF THE WHITING FISHERY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Regulations would require observer coverage on vessels in the at-sea processing sector of the whiting fishery.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Donna Darm, Acting Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, BIN C15700, 7600 Sand Point Way NE, Building 1, Seattle, WA 48115-0070
Phone: 206 526-6150

RIN: 0648–AK26

567. ADJUSTMENT OF MANAGEMENT PROGRAM: BOTTOMFISH FISHERIES IN THE HAWAIIAN ISLANDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of NPRM comment period.

Abstract: This regulatory action would establish eligibility criteria for new entry into the NWHIs Mau Zone limited access system

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AK82

568. REVISE EXEMPTED FISHING REGULATIONS TO SPECIFY COMPENSATORY FISHING UNDER EXEMPTED FISHING

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 600

Legal Deadline: None

Abstract: This action would revise current exempted fishing regulations to specifically authorize the use of an exempted fishing permit as the method of allowing the compensation of private vessels for their conduct of resource assessment. Specific methodology for vessel compensation would be developed on a fishery-by-fishery basis. The rule would also make other minor changes in the regulations.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: John Dunnigan, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2334
Email: john.dunnigan@noaa.gov

RIN: 0648–AK84

569. AMENDMENT 11 TO THE FISHERY MANAGEMENT PLAN FOR THE CRUSTACEAN FISHERIES OF THE WESTERN PACIFIC REGION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 11 to the Western Pacific Remote Crustaceans Fishery Management Plan would add the exclusive economic zone waters off the U.S. Pacific Island Areas and the Commonwealth of the Northern Mariana Islands as crustaceans management areas.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AL67

570. REGULATORY AMENDMENT TO REINSTATE 6000 POUND TRIP LIMIT OF HALIBUT IN AREA NORTHEAST OF THE BERING SEA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This regulatory amendment would reinstate a 6000 pound halibut trip limit in the halibut management area northeast of the Bering Sea.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AL97

571. ENHANCED MEASURES TO MITIGATE SEABIRD BYCATCH IN THE ALASKA LONGLINE FISHERIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: Final, Statutory, One year from approval of overfishing definitions. Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This regulatory amendment would enhance measures designed to mitigate seabird bycatch in the longline fisheries off Alaska.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AM30

572. AMENDMENT 7 TO THE FISHERY MANAGEMENT PLAN FOR THE BOTTOMFISH FISHERIES OF THE WESTERN PACIFIC REGION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 7 would facilitate and enable adjustments to management measures for the bottomfish fisheries in Guam and American Samoa. Possible regulatory changes include closed areas, gear restrictions, seasons, permit and notification/reporting requirements, etc.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: None

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AM98

573. AMENDMENT 18 TO THE FISHERY MANAGEMENT PLAN FOR THE REEF FISH RESOURCES OF THE GULF OF MEXICO

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 18 would address the need for improved conservation of grouper stocks in the Gulf of Mexico by establishing additional closed seasons and areas.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AN09

574. AMENDMENT 13 TO THE SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 13 is being developed to bring the disapproved Essential Fish Habitat portions of Amendment 12 into compliance with the Sustainable Fisheries Act and revise management of black sea bass.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: State, Federal

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AN12

575. AMENDMENT 10 TO THE ATLANTIC SEA SCALLOP FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 10 would implement a management strategy that would incorporate rotational closed areas for rebuilding the sea scallop resource and address essential fish habitat issues. This action may replace or modify the current DAS reduction schedule.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	
NPRM Comment Period End	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AN16

576. AMENDMENT 13 TO THE NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This action would amend the FMP to address the Magnuson-Stevens Act requirement to implement a stock rebuilding program for all of the regulated multispecies. Management measures may include a days-at-sea reduction, gear reductions and area management.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	
NPRM Comment Period End	06/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AN17

577. AMENDMENT 9 TO THE FISHERY MANAGEMENT PLAN AMENDMENT FOR THE PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This amendment would prevent or mitigate and conserve, manage, and allow full utilization of sharks.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	
Final Action	02/00/03	
Final Action Effective	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AN76

578. RESUBMISSION OF SUSTAINABLE FISHERIES ACT AMENDMENT CRUSTACEANS, BOTTOMFISH, AND PELAGICS REGARDING OVERFISHING DEFINITIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: This action would bring these FMPs into compliance with the Sustainable Fisheries Act regarding previously disapproved overfishing definitions and bycatch provisions and fishing community definitions (0648-AP54, 0648-AP55).

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

Related RIN: Related To 0648-AP54, Related To 0648-AP55

RIN: 0648–AN79

579. REGULATORY AMENDMENT MODIFYING THE GULF OF MEXICO BRD PROTOCOL UNDER THE FISHERY MANAGEMENT PLAN FOR THE SHRIMP FISHERY OF THE GULF OF MEXICO (FMP)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: In accordance with the FMP's framework procedure for regulatory adjustments, the Gulf Council requested that NMFS develop alternative data collection procedures and statistical tests to certify bycatch reduction devices (BRDs) for use in the shrimp fishery of the Gulf of Mexico. The regulation would provide additional flexibility in sampling procedures to facilitate BRDs meeting the testing/certifying protocol's requirements while maintaining the scientific and statistical credibility in achieving the FMP's established bycatch reduction criterion for certified BRDs.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AN84

580. FISHERY MANAGEMENT PLAN (FMP) FOR SARGASSUM HABITAT OF THE SOUTH ATLANTIC

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Sargassum habitat is defined as essential fish habitat for several managed fish stocks in the South Atlantic region under the provisions of the South Atlantic Fishery Management Council's fishery management plans. To further conserve and manage Sargassum habitat, the Council's proposed new FMP would restrict the commercial harvest of Sargassum to avoid further expansion of the current limited fishery and to reduce the potential for habitat loss.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AN87

581. FISHERY MANAGEMENT PLAN FOR NORTHEAST SKATE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of the end of the NPRM comment period.

Abstract: This action would establish a fishery management plan for the seven species of skates found in the Northeast. Management measures would be established to end overfishing on two of the seven species of skate and to provide basic protection for the remaining five species.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	
NPRM Comment Period End	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AO10

582. AMENDMENT 5 TO THE FISHERY MANAGEMENT PLAN FOR PRECIOUS CORAL FISHERIES IN THE WESTERN PACIFIC REGION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 5 would facilitate and enable adjustments to management measures for the precious coral fisheries in the Commonwealth of the Northern Mariana Islands (CNMI). Possible regulatory changes could include inclusion of the EEZ around CNMI, within the management area of the FMP, as well as permit and reporting requirements for harvesters in this area.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AO47

583. FISHERY MANAGEMENT PLAN FOR THE DOLPHIN AND WAHOO FISHERY OF THE ATLANTIC, CARIBBEAN, AND GULF OF MEXICO (FMP)

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of the end of NPRM comment period.

Abstract: This new FMP, as prepared jointly by the South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils, is to provide a comprehensive management program for dolphin and wahoo in the Atlantic Ocean, Gulf of Mexico, and Caribbean exclusive economic zone.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AO63

584. ATLANTIC HIGHLY MIGRATORY SPECIES FISHERIES; ATLANTIC BLUEFIN TUNA INCIDENTAL CATCH

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: NMFS is considering rulemaking on modifications to the target catch requirements for the incidental longline fishery for Atlantic bluefin tuna (BFT). NMFS requests comments on possible changes to Atlantic tuna regulations prior to drafting proposed changes to those regulations.

Timetable:

Action	Date	FR Cite
ANPRM	11/17/00	65 FR 69492
ANPRM Comment Period End	12/14/00	
Comment Period Extended	01/16/01	
NPRM	05/00/03	
NPRM Comment Period End	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Chris Rogers, Chief for Highly Migratory Species, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13563, Bldg. SSMC3, Stop F/SF1, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2347
Fax: 301 713-1917

RIN: 0648–AO75

585. ATLANTIC HIGHLY MIGRATORY SPECIES; EXEMPTED FISHING PERMITS PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: NMFS amends procedures for issuing exempted fishing permits for fishing activities that are otherwise prohibited, and for scientific research permits.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Dunnigan, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2334
Email: john.dunnigan@noaa.gov

RIN: 0648–AO79

586. REGULATORY AMENDMENT UNDER THE FISHERY MANAGEMENT PLAN FOR GULF OF MEXICO REEF FISH (FMP) TO ESTABLISH A RED SNAPPER STOCK REBUILDING PLAN AND TO SET RED SNAPPER OVERFISHING TARGETS AND THRESHOLDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This regulatory amendment under the FMP's framework procedure would establish a revised red snapper stock rebuilding plan and red snapper overfishing targets and thresholds, all intended to meet requirements of the Magnuson-Stevens Fishery Conservation and Management Act as amended by the Sustainable Fisheries Act of 1996.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
NPRM Comment Period End	05/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

DOC—NOAA

Proposed Rule Stage

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AP02

587. AMENDMENT 13 TO THE FISHERY MANAGEMENT PLAN FOR THE SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC REGION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: NPRM, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 13 will revise permit transfers, revise maximum sustainable yield (MSY) and overfishing definitions, revise snowy grouper and golden tilefish management measures, and include a formal section 7 analysis on the interaction of gear (with an emphasis on black sea bass traps) with endangered and threatened species.

Timetable:

Action	Date	FR Cite
NPRM	08/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AP03

588. REVISION OF AMERICAN LOBSTER REGULATIONS FOR THE EEZ

Priority: Other Significant

Legal Authority: 16 USC 5101 et seq

CFR Citation: 50 CFR 697

Legal Deadline: None

Abstract: In accordance with the Atlantic Coastal Fisheries Cooperative Management Act (Act), 16 U.S.C. et seq., NMFS announces that it is considering, and seeking public comment on, revisions to Federal American lobster regulations for the Exclusive Economic Zone in response to recommendations from the Atlantic States Marine Fisheries Commission to NMFS in Addenda II and III to Amendment 3 to the Interstate Fishery Management Plan for American Lobster (ISFMP). This ANPR/NOI proposes to develop regulations relative to Addendum III to the ISFMP, and combine those with Addendum II (ANPR and NOI published May and September of 2001, respectively) into a single environmental impact statement. Addendum II management measures would include minimum gauge size increases in five of the seven Lobster Conservation Management Areas (LCMA), lobster trap gear modifications, a 4-year lobster trap reduction schedule for LCMA 3, and a logbook requirement for LCMA 3 lobster vessels. Addendum III would further modify Addendum II's gauge increase schedule and include new management measures for the majority of the LCMAs.

Timetable:

Action	Date	FR Cite
ANPRM	05/24/01	66 FR 28726
ANPRM Comment Period End	06/25/01	
ANPRM	09/05/02	67 FR 56800
ANPRM Comment Period End	10/07/02	
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local

Agency Contact: Thomas Meyer, Fisheries Biologist, Office of Intergovernmental/Recreational Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Suite 425, 8484 Georgia Avenue, Silver Spring, MD 20910
Phone: 301 427-2014

RIN: 0648–AP18

589. FISHING CAPACITY REDUCTION PROGRAM FOR THE CRAB SPECIES COVERED BY THE FISHERY MANAGEMENT PLAN FOR THE BERING SEA/ALEUTIAN ISLANDS KING AND TANNER CRABS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 16 USC 1861a; 46 USC 1279f; PL 106-554

CFR Citation: 50 CFR 600

Legal Deadline: Final, Statutory, May 1, 2001, Publish Final Regulations. Other, Statutory, December 31, 2001, Complete Fishing Capacity Reduction Program.

Abstract: This action establishes a fishing capacity reduction program in the fishery for the crab species covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs. The crab reduction program makes payments for revoking crab licenses in, and withdrawing fishing vessels from, the crab fishery. Reducing the number of crab licenses and vessels in the crab fishery increases post-reduction harvesting productivity, helps conserve and manage the crab resources, and fosters the potential for rationalizing crab fishery harvesting effort. The regulations add a new section 600.1018 to the fishing capacity reduction framework regulations contained in subpart L to 50 CFR part 600.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Michael L. Grable, Chief, Financial Services Division, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2390
Email: michael.grable@noaa.gov

RIN: 0648–AP25

DOC—NOAA

Proposed Rule Stage

590. REGULATORY AMENDMENT TO IMPLEMENT PERMIT STACKING IN THE LIMITED-ENTRY FIXED-GEAR SABLEFISH FISHERY IN 2002 AND BEYOND

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: NPRM, Statutory, Final rule must be published 30 days after end of comment period on the proposed rule.

Abstract: This regulatory amendment would implement the following Amendment 14 provisions: permit owners will be required to provide detailed ownership information to ensure that no person has ownership interest in or holds more than 3 permits; current permit owners who were not permit owners before November 1, 2000, will be required to be on board the vessel fishing against the sablefish cumulative limits associated with that vessel's permit(s); vessels landing sablefish against their primary season limits will be required to contact enforcement officials before making sablefish landings; vessel owners wishing to freeze sablefish at sea will be required to provide proof of a history of freezing sablefish at sea in the years 1998, 1999, or 2000.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE, Building 1, Seattle, WA 48115-0070
Phone: 206 526-6150
Fax: 206 526-6426

RIN: 0648–AP38

591. IMPLEMENTATION OF FISHERY MANAGEMENT PLAN FOR HIGHLY MIGRATORY SPECIES FISHERIES OFF THE WEST COAST

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: This action would implement the Fishery Management Plan (FMP) for Highly Migratory Species Fisheries off the West Coast. The FMP is currently under development by the Pacific Fishery Management Council (Council) under the terms of the Magnuson-Stevens Act and other applicable law. The FMP will both establish a process for implementing regulations as deemed necessary in the future and provide a basis for initial regulation of selected fishery sectors (e.g., drift gillnet and longline) to ensure conservation of the fish stocks involved and protection of species of special concern such as sea turtles and seabirds. The FMP will include substantial environmental and economic analyses consistent with the requirements of the National Environmental Policy Act, the Regulatory Flexibility Act, and Executive Order 12296 and other laws and orders. Steps for reviewing and implementing approved elements of the FMP are set forth in the Magnuson-Stevens Act and include provisions for publication of proposed and final rules within certain time periods.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	
Final Action	04/00/03	
Final Action Effective	05/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Svein Fougner, Assistant Regional Administrator for Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Southwest Region, 501 W. Ocean Boulevard, Long Beach, CA 90802
Phone: 562 980-4040

RIN: 0648–AP42

592. REGULATORY AMENDMENT UNDER THE COASTAL MIGRATORY PELAGICS FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 622

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: In accordance with the FMP's framework procedure for regulatory adjustments, this action would establish biomass-based stock status criteria such as maximum-sustainable yield (MSY), optimum yield (OY), and definitions of overfishing and overfished using default control rules as required by the Magnuson-Stevens Fishery Conservation and Management Act.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AP50

593. AMENDMENT 2 TO THE FISHERY MANAGEMENT PLAN FOR THE QUEEN CONCH RESOURCES OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 2 would prohibit possession and harvest of queen conch in the exclusive economic zone (EEZ) of the U.S. Caribbean. The queen conch resource is overfished and needs to be rebuilt to a healthy level consistent with requirements of the Magnuson-Stevens Fishery Conservation and Management Act.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Action	Date	FR Cite
NPRM Comment Period End	07/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AP51

594. ADJUSTMENT OF MANAGEMENT PROGRAM: BOTTOMFISH FISHERIES IN THE WESTERN PACIFIC

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, January 2003.

Abstract: This regulatory action would facilitate and enable adjustments to management measures for the bottomfish fisheries in the Commonwealth of the Northern Mariana Islands.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AP53

595. RESUBMISSION OF SUSTAINABLE FISHERIES ACT AMENDMENT BOTTOMFISH, CRUSTACEAN, AND PELAGICS REGARDING BYCATCH PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: This action would bring these FMPs into compliance with the Sustainable Fisheries Act regarding previously disapproved bycatch provisions.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AP54

596. RESUBMISSION OF SUSTAINABLE FISHERIES ACT AMENDMENT BOTTOMFISH, CRUSTACEANS, AND PELAGICS, AND PRECIOUS CORALS REGARDING FISHING COMMUNITIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: This action would bring these FMPs into compliance with the Sustainable Fisheries Act regarding previously disapproved categorization of the State of Hawaii as a fishing community.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AP55

597. ATLANTIC SURF CLAM AND OCEAN QUAHOG FISHERIES; AMENDMENT 13

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 40 CFR 648

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of the end of the NPRM comment period.

Abstract: Amendment 13 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries would describe gear impacts on essential fish habitat, revise the surf clam overfishing definition, establish multi-year quotas, and add/revise other measures.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AP57

598. ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERIES; AMENDMENT 9

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of the end of the NPRM comment period.

Abstract: Amendment 9 to the Fishery Management Plan for the Atlantic Mackerel, Squid and Butterfish Fisheries would establish a controlled access program for mackerel, address essential fish habitat, and revise the Illex quota procedures.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
NPRM Comment Period End	07/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AP60

599. IMPLEMENT A VESSEL MONITORING SYSTEM UNDER THE SOUTH PACIFIC TUNA ACT

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 50 CFR 300

Legal Deadline: None

Abstract: This rulemaking will implement an electronic vessel monitoring system under the South Pacific Tuna Act. The system is satellite-based with individual U.S. purse seine vessels providing automatic location information to the Forum Fisheries Agency located in Honiara, Solomon Islands. This rule will require that all U.S. purse seine vessels operating within the South Pacific Tuna Treaty Area shall participate and shall install and operate a transponder of the type and in such a manner as agreed upon by the parties to the "Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America" (implemented as the South Pacific Tuna Act).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AP61

600. REVISE COMMUNITY DEVELOPMENT QUOTA PROGRAM ADMINISTRATION AND ALLOCATION REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This action will revise regulations governing the process under which a portion of the Bering Sea and Aleutian Islands quotas for groundfish, prohibited species, crab, and halibut are allocated to groups representing Western Alaska communities eligible for the Community Development Quota (CDQ) Program. The action also will revise administrative regulations for the economic development aspects of the CDQ Program.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Federal

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AP67

601. FULL RETENTION OF DEMERSAL SHELF ROCKFISH IN GULF OF ALASKA AREA 650

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This action would require full retention of demersal shelf rockfish (DSR) in the hook-and-line fisheries in the GOA, Regulatory Area 650. If approved, this rule would eliminate the maximum retainable bycatch limit for DSR and require that all DSR caught by federally permitted vessels using fixed gear in the SEO be retained, landed, weighed and reported. The amount of DSR that could be sold would be limited to an amount no more than 10 percent of other retained catch. With respect to DSR in excess of that 10 percent limit, fishermen would be allowed to voluntarily surrender the fish to the State of Alaska, retain it for personal use, donate it to a State-recognized charity, use it for bait, or any combination of the above.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AP73

602. ANTARCTIC MARINE LIVING RESOURCES VESSEL MONITORING SYSTEM AND CATCH DOCUMENTATION SCHEME

Priority: Other Significant

Legal Authority: 16 USC 2341 et seq

CFR Citation: 50 CFR 300

Legal Deadline: None

Abstract: This rule would lengthen the duration of the permit required to enter a Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) Ecosystem Monitoring Program (CEMP) site from one year to five years. The rule would define the CCAMLR fishing season and require the use of an automated satellite-linked

vessel monitoring system (VMS) for U.S. vessels harvesting Antarctic marine living resources (AMLR) in the area of the Convention on the Conservation of Antarctic Marine Living Resources (Convention). The rule would also require a non-resident consignee to designate a resident agent; prohibit the importation of Dissostichus species declared as harvested in certain high seas areas outside the Convention area; prohibit the import of Dissostichus species issued a Specially Validated Dissostichus Catch Document (SVDCD); provide guidance on the disposition of AMLR seized by law enforcement personnel; and propose regulations to modify requirements for U.S. receivers and importers of Dissostichus species harvested in all waters, including those under the jurisdiction of CCAMLR. This rule is intended to implement U.S. obligations as a member of CCAMLR and to conserve Antarctic and Patagonian toothfish by preventing and discouraging unlawful harvest and trade in these species.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal

Agency Contact: Dean Swanson, Chief, International Fisheries Division, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2276
Email: dean.swanson@noaa.gov

RIN: 0648–AP74

603. AMENDMENT 10 TO THE COASTAL PELAGIC SPECIES FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: Amendment 10 to the Coastal Pelagic Species Fishery Management Plan, would (1) establish a capacity goal for the limited entry fishery (LE), provide for LE permit transferability to achieve and maintain the capacity, and establish a process for considering new LE permits; and (2) establish a maximum sustainable yield (or proxy) for market squid that will address the Magnuson-Stevens Fishery Management Act requirement that "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery in the United States fishing industry."

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Svein Fougner, Assistant Regional Administrator for Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Southwest Region, 501 W. Ocean Boulevard, Long Beach, CA 90802
Phone: 562 980-4040

RIN: 0648–AP87

604. • IFQ RECORDKEEPING AND REPORTING REQUIREMENTS FOR CATCHER VESSELS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This rulemaking will revise the submittal time limit for the individual fishing quotas (IFQ) prior notice of landing; will combine the IFQ shipment report into the groundfish product transfer report; will remove the vessel clearance requirement; will remove authorized IFQ ports of landing from Table 14; and will revise the IFQ departure report.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AP92

605. • AMENDMENT TO FISHERY MANAGEMENT PLAN FOR REEF FISH RESOURCES OF GULF OF MEXICO TO SET 10-YEAR REBUILDING PLAN FOR RED GROUPER

Priority: Other Significant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: None

Abstract: In October 2000, the National Marine Fisheries Service (NMFS) issued a determination that the Gulf of Mexico red grouper stock is overfished and undergoing overfishing. This determination was based on the results of a 1999 red grouper stock assessment. Once a stock is determined to be overfished the Magnuson-Stevens Act requires the Gulf of Mexico Fishery Management Council within one year to submit a plan to NMFS to end overfishing and rebuild the stock to a level capable of sustaining maximum sustainable yield on a continuing basis. The proposed rebuilding plan contains alternatives that would implement a 10-year rebuilding plan for red grouper including a recreational and commercial shallow-water grouper closed season, recreational bag limits, movement of the commercial longline gear boundary, and a reduction of the shallow-water grouper quota by an amount consistent with a 45 percent reduction in commercial red grouper harvest. The rebuilding plan also contains alternatives for establishing red grouper sustainable fishing parameters (e.g., maximum sustainable yield, optimum yield, maximum fishing mortality rate, minimum stock size threshold).

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AP95

606. • 2003 OBSERVER PROGRAM REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This regulatory rulemaking would extend through 2007, the existing regulations for the Interim North Pacific Groundfish Observer Program (Observer Program) (50 CFR 679.50), which otherwise expire December 31, 2002. Further, this proposed action would improve regulations governing the relationship between NMFS and the observer providers and observers through modifications to existing observer and observer provider responsibilities, including several new regulations. It would also ensure that the administrative procedures NMFS uses in dealing with observer providers and observers are compliant with the Administrative Procedures Act. This action also would increase the ability of NMFS to interact effectively with observers, fishermen, and processing plant employees by granting to NMFS the authority to place NMFS staff and authorized agents aboard groundfish vessels and at shoreside and stationary floating processors that require observer coverage.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AQ05

607. • REGULATORY AMENDMENT TO SECTION 679 PERMITS OR PERMIT-RELATED ISSUES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This rulemaking would revise several sections of regulations that pertain to permits or permit-related issues by technical edits and clarifications to existing requirements, removal of obsolete text, and clarification and simplification of text. In addition, this rulemaking would combine the registered buyer permit with the Federal processor permit when a shoreside processor does both IFQ and groundfish. This would be accomplished by adding an endorsement to the Federal processor permit.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AQ07

608. • 2003 INITIAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: The action proposes initial specifications for the 2003 fishing year for Atlantic mackerel, squid, and butterfish.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AQ15

609. • PACIFIC COAST GROUNDFISH FISHERY; ANNOUNCEMENT OF THE 2003 GROUNDFISH FISHERY SPECIFICATIONS AND MANAGEMENT MEASURES

Priority: Economically Significant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: This rulemaking will implement the 2003 annual specifications and management measures for the Pacific Coast groundfish fishery.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	01/00/03	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE, Building 1, Seattle, WA 48115-0070
Phone: 206 526-6150
Fax: 206 526-6426

RIN: 0648–AQ18

610. • REGULATORY AMENDMENT TO ADJUST PERMIT RENEWAL REQUIREMENTS AND TRANSFERABILITY RESTRICTIONS IN NWHIS HOOMALU ZONE AND MAU LIMITED ACCESS PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, February 2003, Final Rule - adjust permit renewal requirements/transferability restrictions in NWHI Hoomalu Zone and Mau Limited Access Programs.

Abstract: This measure would remove the annual landings requirement for permit renewal retroactive to December 4, 2000, which is the date the Northwestern Hawaiian Islands Reserve (NWHI) was established and when restrictions on fishing in the NWHI became uncertain.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AQ20

611. • SECRETARIAL AMENDMENT 2 TO REEF FISH FISHERY MANAGEMENT PLAN TO SET GREATER AMBERJACK SUSTAINABLE FISHERIES ACT TARGETS AND THRESHOLDS AND TO SET REBUILDING PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: NPRM, Statutory, December 2002.
Final, Statutory, January 2003.

Abstract: The greater amberjack resource in the Gulf of Mexico was declared overfished by the National Marine Fisheries Service (NMFS) on February 9, 2001. This determination was based on the 2000 greater amberjack stock assessment conducted by the NMFS Southeast Fisheries Science Center (SEFSC) (Turner et al. 2000) and the December 2000 Report of the Reef Fish Stock Assessment Panel (RFSAP) (GMFMC 2000). The results of several analyses indicated that the stock biomass was below the level needed to sustain harvest at maximum sustainable yield (MSY), with the best estimate indicating that the stock biomass was at less than half the biomass needed to sustain MSY, below the minimum level allowed under the 1998 NMFS National Standard Guidelines.
Currently, the Reef Fish Fishery Management Plan (FMP) requires that overfished stocks be restored to a level of 20 percent transitional spawning potential ratio (SPR) within one and a half generation times. A generation time is the average time it would take a year class in an unfished population to replace itself. However, in order to comply with the requirements of the NMFS National Standard Guidelines (NSG), new biomass based targets and recovery time frame parameters need to be implemented. The greater amberjack resource is not considered by NMFS to be undergoing overfishing at this time due to Council actions taken in 1997 and 1998 as cited in section 3.0 (1998 is the final year of data in the stock assessment). Consequently, actions to further reduce fishing mortality are not needed at this time.
This secretarial amendment proposes no changes to the current fishing regulations for greater amberjack, but does propose to establish new biomass based targets and thresholds as well as the establishment of a ten-year rebuilding plan. These measures would be in compliance with the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, Sustainable Fisheries Act (SFA), NMFS NSGs, and NMFS technical guidance on implementing National Standard 1 (Restrepo et al. 1998).

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AQ24

612. • AMENDMENT 2 TO MONKFISH FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: Amendment 2 to the Monkfish Fishery Management Plan would address essential fish habitat and bycatch issues and revise the management program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AQ25

613. • ANNUAL SPECIFICATIONS FOR THE ATLANTIC BLUEFISH FISHERY FOR FISHING YEAR 2003

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would implement the annual specifications for the Atlantic Bluefish Fishery for fishing year 2003.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AQ26

614. • AMENDMENT 1 TO THE ATLANTIC HERRING FISHERY MANAGEMENT PLAN (FMP) AND AMENDMENT 2 TO THE ATLANTIC SALMON FMP

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: These amendments would address essential fish habitat conservation measures.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	
NPRM Comment Period End	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AQ27

615. • FRAMEWORK 15 TO THE ATLANTIC SEA SCALLOP FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This framework action would implement management measures for fishing year 2003-2004 in the Atlantic sea scallop fishery.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AQ28

616. • FRAMEWORK 2 TO THE MONKFISH FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This framework would amend the overfishing criteria in the Monkfish Fishery Management Plan and establish measures for fishing year 2003-2004.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	
NPRM Comment Period End	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AQ29

617. • ANNUAL SPECIFICATIONS FOR FISHING YEAR 2003 FOR THE SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS FISHERY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would establish annual specifications for the summer flounder, scup and black sea bass fishery for fishing year 2003.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AQ30

618. • ANNUAL SPECIFICATIONS FOR THE SURF CLAM AND OCEAN QUAHOG FISHERIES FOR FISHING YEAR 2003

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would implement the annual specifications for the surf clam and ocean quahog fisheries for fishing year 2003.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AQ31

619. • RECREATIONAL MEASURES FOR THE SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS FISHERY FOR FISHING YEAR 2003

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would implement recreational measures for the 2003

fishing year for the summer flounder, scup, and black sea bass fishery.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930 Phone: 978 281-9200

RIN: 0648–AQ32

620. • SPECIFICATIONS FOR THE ATLANTIC HERRING FISHERY FOR FISHERY YEAR 2003

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would implement specifications for the 2003 fishing year for the Atlantic herring fishery.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930 Phone: 978 281-9200

RIN: 0648–AQ33

621. • SPECIFICATIONS FOR THE 2003-2004 FISHING YEAR FOR THE SPINY DOGFISH FISHERY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would implement specifications for the 2003-2004 fishing year for the spiny dogfish fishery.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930 Phone: 978 281-9200

RIN: 0648–AQ34

622. • FRAMEWORK 37 TO THE NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This framework action would establish year-4 measures for the whiting fishery.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930 Phone: 978 281-9200

RIN: 0648–AQ35

623. • ATLANTIC HIGHLY MIGRATORY SPECIES (HMS); BIGEYE TUNA AND SWORDFISH TRADE STATISTICAL DOCUMENT PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: This proposed rule is to comply with the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) to establish statistical document programs for trade of swordfish and bigeye tuna. This regulation will require all dealers, who export or import swordfish or bigeye tuna, complete a statistical document and ensure the document accompanies the shipment. The purpose of the ICCAT recommendation and this regulation, is to assist in the conservation of swordfish and bigeye tuna, improve the reliability of statistical information of catches and to assist ICCAT with the elimination of illegal, unreported and unregulated fishing operations.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Chris Rogers, Chief for Highly Migratory Species, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13563, Bldg. SSMC3, Stop F/SF1, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910 Phone: 301 713-2347 Fax: 301 713-1917

RIN: 0648–AQ37

624. • ATLANTIC HIGHLY MIGRATORY SPECIES (HMS); 2003 BLUEFIN TUNA QUOTA SPECIFICATIONS AND EFFORT CONTROLS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: NMFS proposes specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quotas and General category effort controls for the 2003 fishing year. This action will implement the U.S. annual BFT quota as recommended by the International Commission on Conservation of Atlantic Tunas and allocate that quota among the domestic fishing categories. Effort controls for the General category will allocate monthly quotas and set certain restricted fishing days.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Chris Rogers, Chief for Highly Migratory Species, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13563, Bldg. SSMC3, Stop F/SF1, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910 Phone: 301 713-2347 Fax: 301 713-1917

RIN: 0648–AQ38

625. • ATLANTIC HIGHLY MIGRATORY SPECIES (HMS); SMALL COASTAL SHARK COMMERCIAL AND RECREATIONAL MANAGEMENT MEASURES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: The rule would address small coastal shark commercial and recreational management measures based on a new stock assessment.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Chris Rogers, Chief for Highly Migratory Species, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13563, Bldg. SSMC3, Stop F/SF1, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910 Phone: 301 713-2347 Fax: 301 713-1917

RIN: 0648–AQ39

626. • ATLANTIC HIGHLY MIGRATORY SPECIES (HMS); LARGE COASTAL SHARK COMMERCIAL AND RECREATIONAL MANAGEMENT MEASURES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: The rule would address large coastal shark commercial and recreational management measures based on a new stock assessment.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Chris Rogers, Chief for Highly Migratory Species, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13563, Bldg. SSMC3, Stop F/SF1, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910 Phone: 301 713-2347 Fax: 301 713-1917

RIN: 0648–AQ40

627. • TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS; ATLANTIC LARGE WHALE TAKE REDUCTION PLAN REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 216

Legal Deadline: None

Abstract: NMFS is amending the regulations that implement the Atlantic Large Whale Take Reduction Plan, specifically with regard to the straight set of gillnets in the southeast U.S. Restricted Area in waters off the coasts of Georgia and Florida. The intent of this proposed rule is to prohibit straight sets of gillnets at night from November 15 through March 31, annually to reduce the risk of entanglement of large whales, including the western North Atlantic right whale.
This rule was published on March 27, 2002, in the Federal Register under RIN 0648-AN88.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Lawson, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910 Phone: 301 713-2322 Email: patricia.lawson@noaa.gov

Related RIN: Related To 0648-AN88

RIN: 0648–AQ42

628. • EFH AMENDMENTS TO THE BOTTOMFISH, CRUSTACEANS, AND PRECIOUS CORALS FMPS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: NPRM, Statutory, February 2003, Proposed rule to implement FMP amendments. Final, Statutory, May 2003, Final rule to implement FMP amendments.

Abstract: Amendment 8, to the Bottomfish FMP, Amendment 12 to the Crustaceans FMP, and Amendment 6 to the Precious Corals FMP would revise the EFH portions of the subject FMPs and include the Commonwealth of the Northern Mariana Islands and the Pacific Remote Island Areas exclusive economic zones under Western Pacific Fishery Management Council developed management plans.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
NPRM Comment Period End	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AQ43

629. • INCREASE IN ALLOWABLE PERCENTAGE OF POLLOCK ROE

Priority: Routine and Frequent

Legal Authority: 16 USC 773 et seq; 16 USC 1801 et seq; 16 USC 3631 et seq; PL 106-31; PL 105-277

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This regulatory amendment would increase from 7 to 9 percent the percentage of pollock roe that may be retained by operators of catcher/processors and motherships processing pollock harvested in the BSAI. This action is necessary because catcher/processors and motherships have been able to increase their pollock roe recovery rate since the passage of the American Fisheries Act through cooperative fishing practices and more precise timing of fishing activity.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
NPRM Comment Period End	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AQ44

630. • OPENING WATERS TO PACIFIC COD POT FISHING OFF CAPE BARNABAS AND CATON ISLAND IN THE GULF OF ALASKA

Priority: Info./Admin./Other

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This action would remove restriction on directed fishing for Pacific cod by federally permitted vessels using pot gear in waters within 3 nm of Cape Barnabas and Caton Island Steller sea lion haulouts in the Gulf of Alaska. This action is necessary to provide consistency between State of Alaska and Federal fishing regulations.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AQ45

631. • SEASONAL ADJUSTMENT OF CLOSURE AREAS TO POLLOCK AND PACIFIC COD TRAWL FISHING IN WATERS OFF CAPE SARICHEF IN THE BERING SEA SUBAREA

Priority: Info./Admin./Other

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This action will seasonally close a portion of waters located near Cape Sarichef in the Bering Sea subarea to vessels using trawl gear for directed fishing for pollock and Pacific cod. This action is necessary to support NMFS-sponsored research on the effect of fishing on localized abundance of Pacific cod and support a comprehensive program of Steller sea lion protection measures research.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AQ46

632. AMEND REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1371(a)(6)

CFR Citation: 50 CFR 216

Legal Deadline: None

Abstract: This action implements certain changes in the prohibitions on importing or exporting marine mammals or marine mammal parts and products that occurred with the enactment of the Marine Mammal Protection Act Amendments of 1994 (Pub. L. 104-238). This action prohibits the export of marine mammals or marine mammal products for purposes other than public display, scientific research, or enhancing the survival of a species or stock and establishes three new categories of exceptions to the prohibition on importing marine mammal parts and products. This is a noncontroversial action that is not significant as it will have only minor effects on a small number of people, most of whom will benefit by the new exceptions.

Timetable:

Action	Date	FR Cite
NPRM	07/00/03	
NPRM Comment Period End	09/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gene Nitta, Marine Resource Manager, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2289

RIN: 0648–AH83

633. PREVENTING HARASSMENT FROM HUMAN ACTIVITIES DIRECTED AT MARINE MAMMALS IN THE WILD

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 216

Legal Deadline: None

Abstract: This rule would prohibit the public from swimming with or otherwise interacting with dolphins and other marine mammals in the wild.

Timetable:

Action	Date	FR Cite
ANPRM	01/30/02	67 FR 4379
ANPRM Comment Period End	04/01/02	
NPRM	06/00/03	
NPRM Comment Period End	08/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Trevor Spradlin, Marine Mammal Biologist, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2289
Email: trevor.spradlin@noaa.gov

RIN: 0648–AN43

634. ENDANGERED AND THREATENED SPECIES: PERMIT EXEMPTIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 et seq; 16 USC 742a et seq; 31 USC 9701

CFR Citation: 50 CFR 222

Legal Deadline: None

Abstract: NMFS is providing exceptions to prohibitions to allow Federal and State employees to perform conservation activities.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: LaMont Jackson, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-1401
Fax: 301 713-0376
Email: terri.jordan@noaa.gov

RIN: 0648–AO37

635. CAPTIVE STELLER SEA LIONS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531-1543; 16 USC 1361 et seq

CFR Citation: 50 CFR 223

Legal Deadline: None

Abstract: This rule is to provide exception to captive Steller sea lions (those captured before listing) to assist the public display community in commerce involving these animals.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
NPRM Comment Period End	07/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jennifer Lyn Skidmore, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13710, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2289
Fax: 301 713-0376
Email: jennifer.skidmore@noaa.gov

RIN: 0648–AO61

636. TAKING MARINE MAMMALS INCIDENTAL TO ROCKET LAUNCHES FROM THE KODIAK LAUNCH COMPLEX, KODIAK ISLAND, ALASKA

Priority: Other Significant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 216

Legal Deadline: None

Abstract: NMFS has received a request from the Alaska Aerospace Development Corporation (AADC) for a Letter of Authorization (LOA) to take small numbers of marine mammals incidental to rocket launches from the Kodiak Launch Complex (KLC), Kodiak Island, Alaska. As a result of that request, NMFS is proposing regulations that would authorize the incidental taking of a small number of marine mammals. In order to issue such regulations, NMFS must determine that these takings will have a negligible impact on the affected species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of marine mammal species or stocks for subsistence uses.

Timetable:

Action	Date	FR Cite
ANPRM	11/05/01	66 FR 55909
ANPRM Comment Period End	12/05/01	
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State

Agency Contact: Kenneth Hollingshead, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Room 13600, Silver Spring, MD 20910
Phone: 301 713-2322
Fax: 301 713-0376
Email: ken.hollingshead@noaa.gov

RIN: 0648–AP62

637. • DESIGNATING THE EASTERN NORTH PACIFIC SOUTHERN RESIDENT STOCK OF KILLER WHALES AS DEPLETED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1383b

CFR Citation: 50 CFR 216

Legal Deadline: None

Abstract: NMFS anticipates promulgating regulations to designate the Eastern North Pacific, Southern Resident stock of killer whales as depleted under the Marine Mammal Protection Act.

Timetable:

Action	Date	FR Cite
ANPRM	06/28/02	67 FR 43586
ANPRM Comment Period End	08/30/02	
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Thomas C. Eagle, Fishery Biologist, Department of

DOC—NOAA — **Proposed Rule Stage**

Commerce, National Oceanic and Atmospheric Administration, Room 13725, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2055
Fax: 301 713-4060
Email: tom.eagle@noaa.gov

RIN: 0648–AQ00

638. • TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS; ATLANTIC LARGE WHALE TAKE REDUCTION PLAN REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 229

Legal Deadline: None

Abstract: This proposed regulatory action is related to RIN 0648-AN88, a final rule which amended the regulations that implement the Atlantic Large Whale Take Reduction Plan and established a Dynamic Area Management (DAM) program. This proposed regulatory action involves the identification of acceptable fishing practices and gear which could be used under the DAM program.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mary A. Colligan, Assistant Regional Admisistrator, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS/Protected Resources, Protected Resources Division, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9116
Fax: 978 281-9394

Related RIN: Related To 0648-AN88

RIN: 0648–AQ04

NATIONAL OCEAN SERVICE/OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

639. REVISION OF OVERFLIGHT REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1431 et seq

CFR Citation: 15 CFR 922

Legal Deadline: None

Abstract: These regulations are being revised to clarify that they are for resource protection purposes.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Debra Malek, National Marine Sanctuary Program, Department of Commerce, National Oceanic and Atmospheric Administration, N ORM 6, 1305 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-3125

RIN: 0648–AI91

640. • GRAY'S REEF NATIONAL MARINE SANCTUARY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1434; 16 USC 1439

CFR Citation: 15 CFR 922.90 to 922.92

Legal Deadline: None

Abstract: This action will amend regulations and designation document for the Gray's Reef National Marine Sanctuary to clarify that the sanctuary boundary includes submerged lands; revise regulations on placing structures on the seabed, fishing, anchoring, discharges, and cultural resources; and revise procedure for issuing sanctuary permits.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Reed Bohne, Manager, Gray's Reef National Marine Sanctuary, Department of Commerce, National Oceanic and Atmospheric Administration, 10 Ocean Science Circle, Savannah, GA 31411
Phone: 912 598-2345
Fax: 912 598-2367
Email: reed.bohne@noaa.gov

RIN: 0648–AQ41

Department of Commerce (DOC) — **Final Rule Stage**

National Oceanic and Atmospheric Administration (NOAA)

NATIONAL MARINE FISHERIES SERVICE

641. REGULATORY AMENDMENT TO ALLOCATE PACIFIC HALIBUT TO THE CHARTER BOAT FLEET

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 773c

CFR Citation: 50 CFR 300

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This action establishes measures to manage the halibut charter boat industry off Alaska.

Timetable:

Action	Date	FR Cite
NPRM	01/28/02	67 FR 3867
NPRM Comment Period End	02/27/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AK17

DOC—NOAA — **Final Rule Stage**

642. PROPOSED HIGHLY MIGRATORY SPECIES PROCESS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq; 16 USC 971 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: NMFS proposes to revise the administrative procedures it follows to prepare and issue highly migratory species (HMS) fishery management plans (FMPs), FMP amendments and implementing regulations for the Atlantic Ocean, Gulf of Mexico and Caribbean Sea in response to recent amendments to the Magnuson-Stevens Fishery Management Act.

Timetable:

Action	Date	FR Cite
NPRM	09/18/97	62 FR 48990
NPRM Comment Period End	10/15/97	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Dunnigan, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2334
Email: john.dunnigan@noaa.gov

RIN: 0648–AK40

643. COMPREHENSIVE AMENDMENT ADDRESSING SUSTAINABLE FISHERIES ACT REQUIREMENTS REGARDING OVERFISHING, BYCATCH, FISHING COMMUNITIES AND PROVISIONS FOR FISHERY MANAGEMENT PLANS FOR THE CARIBBEAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: NMFS proposes regulations to implement those provisions of the Comprehensive Amendment Addressing Sustainable Fishery Act (SFA) Definitions and other Required Provision of the Magnuson-Stevens Act in the FMP of the U.S. Caribbean (Comprehensive SFA Amendment) that would modify and/or add framework procedures to the FMPs for reef fish, corals and reef associated plants and invertebrates, queen conch, and spiny lobster. These FMP framework modifications/additions would allow timely modification/addition of required stock parameters and management measures related to preventing overfishing and rebuilding overfished stocks. The intended effect is to provide a more efficient mechanism for implementation of improved estimates of stock parameters and necessary management measures as better information becomes available.

Timetable:

Action	Date	FR Cite
Final Rule	05/01/02	67 FR 21598
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Under 16 USC 1853 note, each Regional Fishery Management Council must submit to NMFS amendments to its fishery management plans and any associated proposed regulations bringing them into compliance with the Sustainable Fisheries Act (P.L. 104-297). Final regulations to be published within 30 days of NPRM comment period.

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AL86

644. REGULATORY AMENDMENT TO CHANGE THE REGULATIONS IMPLEMENTING THE NORTH PACIFIC OBSERVER PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This would change the regulations implementing the North Pacific Observer program, including authority to place NMFS personnel onboard fish or processing vessels, revised requirements for shoreside accommodations for observers, and revisions to observer coverage levels.

Timetable:

Action	Date	FR Cite
NPRM	04/02/02	67 FR 15517
NPRM Comment Period End	05/01/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AM44

645. FRAMEWORK REGULATORY AMENDMENT FOR THE ATLANTIC HIGHLY MIGRATORY SPECIES (HMS); FISHING VESSEL PERMITS; CHARTER BOAT OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: This framework regulatory amendment to the HMS FMP will adjust gear/permitting/reporting requirements.

Timetable:

Action	Date	FR Cite
NPRM	04/26/02	67 FR 20716
NPRM Comment Period End	05/23/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Correction to comment period end date, changing from 05/28/02 to 05/23/02, was published in the Federal Register 05/02/02, 67 FR 22165.

Agency Contact: Chris Rogers, Chief for Highly Migratory Species,

Department of Commerce, National Oceanic and Atmospheric Administration, Room 13563, Bldg. SSMC3, Stop F/SF1, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2347
Fax: 301 713-1917

RIN: 0648–AM91

646. IMPLEMENTATION OF WESTERN PACIFIC CORAL REEF ECOSYSTEM FISHERY MANAGEMENT PLAN (FMP)

Priority: Other Significant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This action would implement the Western Pacific Coral Reef Ecosystem FMP. Possible initial management measures include permit and reporting requirements, framework procedures, gear restrictions, harvest limits/restrictions, marine protected areas, no anchoring zones, etc.

Timetable:

Action	Date	FR Cite
NPRM	09/24/02	67 FR 59824
NPRM Comment Period End	10/24/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Undetermined

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AM97

647. ATLANTIC HIGHLY MIGRATORY SPECIES FISHERIES; MONITORING OF THE ATLANTIC BILLFISH AND SWORDFISH RECREATIONAL FISHERIES

Priority: Other Significant

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: The International Commission for the Conservation of Atlantic Tuna recommended that the United States limit annual recreational landings of Atlantic blue marlin and white marlin to 250 marlin, combined, for 2001 and 2002. NMFS may consider an adjustment of the minimum size, as well as management measure to enhance reporting of non-tournament landings to comply with the ICCAT framework provisions of Amendment 1 to the Atlantic Billfish Fishery Management Plan.

Timetable:

Action	Date	FR Cite
ANPRM	08/09/00	65 FR 48671
ANPRM Comment Period End	09/25/00	
NPRM	12/26/01	66 FR 66386
NPRM Comment Period End	02/25/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Chris Rogers, Chief for Highly Migratory Species, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13563, Bldg. SSMC3, Stop F/SF1, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2347
Fax: 301 713-1917

RIN: 0648–AN06

648. AMENDMENT 7 TO THE FISHERY MANAGEMENT PLAN FOR THE STONE CRAB FISHERY OF THE GULF OF MEXICO

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 654

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 7 would adopt the relevant provisions of Florida's approved limited entry trap reduction program for the stone crab fishery and apply them to vessels fishing in the exclusive economic zone off Florida's west coast.

Timetable:

Action	Date	FR Cite
Notice	04/18/02	67 FR 19155
NPRM	06/25/02	67 FR 42744
NPRM Comment Period End	08/09/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AN10

649. AMENDMENTS 61/61 FOR BSAI AND GOA GROUNDFISH; AMENDMENT 13 FOR COMMERCIAL KING AND TANNER CRAB; AND AMENDMENT 8 FOR ALASKA SCALLOP FISHERY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: Other, Statutory, American Fisheries Act requires regulatory implementation prior to January 2000.

Abstract: This rule would implement: (1) permitting requirements for AFA pollock catcher vessels, catcher vessel cooperatives, c/p motherships, and shoreside processors; (2) new pollock allocation regime for allocations to catcher vessel cooperatives; (3) new recordkeeping and reporting requirements for vessels and processors; (4) new restrictions on participation of AFA pollock vessels in non-pollock fisheries; and (5) restrictions on ability of AFA pollock processors to process non-pollock groundfish and crab species from the Bering Sea and Gulf of Alaska.

Timetable:

Action	Date	FR Cite
Notice	11/17/01	66 FR 59225
NPRM	12/17/01	66 FR 65028
Comment Period End	01/28/02	
NPRM Comment Period End	01/31/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AN55

650. DEEP-SEA RED CRAB FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This action would establish a fishery management plan for the red crab fishery to protect the stock.

Timetable:

Action	Date	FR Cite
NPRM	06/20/02	67 FR 41936
NPRM Comment Period End	07/23/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AN68

651. ATLANTIC HIGHLY MIGRATORY SPECIES; SWORDFISH QUOTAS AND FISHING AREAS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: This rulemaking would implement several recommendations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT) in November 2000. These recommendations include a ban on the importation of bigeye tuna from non-members Belize, Honduras, Cambodia, and St. Vincent and the Grenadines, and ICCAT member Equatorial Guinea, the development of statistical document programs for swordfish and bigeye tuna to monitor harvests and assist in the collection of trade data, the establishment of a 400 metric ton conservation reserve for North Atlantic swordfish and the establishment of a 2001 catch limit for South Atlantic swordfish, consistent with catch limits in recent years. This rule would also clarify authorized fishing areas for highly migratory species in the Atlantic Ocean.

Timetable:

Action	Date	FR Cite
NPRM	11/15/01	66 FR 57409
NPRM Comment Period End	12/31/01	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Dunnigan, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2334
Email: john.dunnigan@noaa.gov

RIN: 0648–AO93

652. AMERICAN LOBSTER FISHERY; REVISIONS TO LOBSTER TRAP LIMITS, CONSERVATION EQUIVALENCY IN NEW HAMPSHIRE WATERS, AND CLARIFICATION OF LOBSTER MANAGEMENT BOUNDARIES PER ADDENDUM 1

Priority: Other Significant

Legal Authority: 16 USC 5101 et seq

CFR Citation: 50 CFR 697

Legal Deadline: None

Abstract: NMFS announces that it is considering, and seeking public comment on, revisions to Federal American lobster regulations for Federal permit holders associated with Amendment 3 of the Interstate Fishery Management Plan for American Lobster (ISFMP). Addendum I to Amendment 3 of the ISFMP, approved by the Atlantic States Marine Fisheries Commission (ASMFC) on August 3, 1999, provides for the control of fishing effort as determined by historical participation in the American lobster trap fisheries in offshore waters of the Exclusive Economic Zone (EEZ) and areas of the EEZ closer to shore between New York and North Carolina. The addendum also clarifies lobster management area boundaries in Massachusetts waters. In addition, the ISFMP calls for the implementation of conservation equivalent trap limits in New Hampshire waters.

Timetable:

Action	Date	FR Cite
NPRM	01/03/02	67 FR 282
NPRM Comment Period End	02/19/02	
Comment Period Extended	02/19/02	67 FR 4697
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Federal

Agency Contact: Thomas Meyer, Fisheries Biologist, Office of Intergovernmental/Recreational Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Suite 425, 8484 Georgia Avenue, Silver Spring, MD 20910
Phone: 301 427-2014

RIN: 0648–AP15

653. REGULATORY AMENDMENT TO ALLOW EXPERIMENTAL SETNET SABLEFISH LANDINGS TO QUALIFY LIMITED-ENTRY SABLEFISH ENDORSEMENT HOLDERS FOR TIER ASSIGNMENT IN THE WEST COAST PRIMARY SABLEFISH FISHERY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: NPRM, Statutory, Final Rule must be published 30 days after end of comment period on proposed rule.

Abstract: This regulation would alter sablefish tier qualification requirements at 50 CFR 660 to include sablefish landings made in the 1984-1986 setnet sablefish fishery. This is a minor

regulation intended to allow sablefish endorsement holders to qualify for sablefish tier assignment based on both fixed-gear sablefish landings and on experimental setnet sablefish landings, and will not change the effect of the fishery on the sablefish resource nor change the overall sablefish harvest level.

Timetable:

Action	Date	FR Cite
NPRM	06/24/02	67 FR 42525
NPRM Comment Period End	07/24/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE, Building 1, Seattle, WA 48115-0070
Phone: 206 526-6150
Fax: 206 526-6426

RIN: 0648–AP39

654. AMENDMENT 5 TO THE FISHERY MANAGEMENT PLAN FOR THE SHRIMP FISHERY OF THE SOUTH ATLANTIC REGION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This rule would implement Amendment 5 to the Fishery Management Plan (FMP) for the Shrimp Fishery of the South Atlantic Region. This rule would: (1) establish a license limitation program for the rock shrimp fishery prosecuted south of the South Carolina-Georgia border in the South Atlantic Region that (a) have held a valid rock shrimp permit prior to December 31, 2000 and (b) can demonstrate landings of at least 15,000 pounds in any one year from 1996 to 2000; (2) require captains operating permitted vessels fishing for rock shrimp in the South Atlantic EEZ to have a vessel operator's permit issued by the National Marine Fisheries Service to participate in the fishery; (3) require the minimum allowable mesh size for a trawl used to fish in the South Atlantic EEZ for rock shrimp be 1 and 7/8 inch stretched mesh; and (4) require any vessel fishing for rock shrimp in the South Atlantic Council's EEZ to use an approved vessel monitoring system that would not exceed $1,200 in cost for equipment and installation. Annual communication costs would not exceed $800.

Timetable:

Action	Date	FR Cite
Notice	07/25/02	67 FR 48603
NPRM	09/04/02	67 FR 56516
NPRM Comment Period End	10/21/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Peter J. Eldridge, Fishery Management Specialist, Department of Commerce, National Oceanic and Atmospheric Administration
Phone: 727 570-5305
Fax: 727 570-3583
Email: peter.eldridge@noaa.gov

RIN: 0648–AP41

655. ANNOUNCEMENT OF THE OPTIMUM YIELD AND HARVEST LIMIT FOR PACIFIC MACKEREL

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: NPRM, Statutory, July 2002.

The Coastal Pelagics Fisheries regulations require that the annual specifications for Pacific mackerel be published in the Federal Register before July 1, the start of the season.

Abstract: NMFS announces the annual harvest guideline for Pacific mackerel in the exclusive economic zone off the Pacific coast. The Coastal Pelagic Species Fishery Management Plan (FMP) and its implementing regulations require NMFS to set an annual harvest guideline for Pacific mackerel based on a formula in the FMP. The intended effect of this action is to establish allowable harvest levels for Pacific mackerel off the Pacific coast and to minimize the impact on other coastal pelagic fisheries.

Timetable:

Action	Date	FR Cite
NPRM	07/11/02	67 FR 45952
NPRM Comment Period End	07/26/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Svein Fougner, Assistant Regional Administrator for Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Southwest Region, 501 W. Ocean Boulevard, Long Beach, CA 90802
Phone: 562 980-4040

RIN: 0648–AP43

656. AMENDMENT TO REGULATIONS FOR OBSERVER AT-SEA ELECTRONIC COMMUNICATION EQUIPMENT REQUIREMENTS FOR VESSELS AND SHORESIDE PROCESSORS IN THE NORTH PACIFIC GROUNDFISH FISHERIES

Priority: Other Significant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: NPRM, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This rulemaking would refine requirements for the facilitation of observer data transmission and improve support for observers. The rulemaking is intended to assure continued collection of high-quality observer data to support the management objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska.

Timetable:

Action	Date	FR Cite
NPRM	07/25/02	67 FR 48604
NPRM Comment Period End	08/26/02	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AP66

657. AMENDMENT 69 TO THE BSAI FMP — AFA COOP LEASING

Priority: Routine and Frequent

Legal Authority: 16 USC 1801 et seq; 16 USC 773 et seq

CFR Citation: 50 CFR 679

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This rulemaking would amend the Fishery Management Plan for the Groundfish Fishery of the Bering Sea Aleutian Islands Area (BSAI) (Amendment 69) to allow American Fisheries Act (AFA) inshore pollock cooperatives to contract with inshore catcher vessel members of other cooperatives for the purpose of harvesting the cooperative's BSAI pollock allocation.
This rulemaking would alter the AFA inshore cooperative structure. The change would allow one inshore cooperative to contract with members of another inshore cooperative to harvest a portion of the first cooperative's BSAI pollock allocation. This is currently not allowed, since only members of a given cooperative are allowed to harvest any portion of that cooperative's allocation. Cooperatives are concerned that they might not be able to achieve a full harvest of their pollock allocation under some conditions in any given year. This amendment would result in a structure that would better ensure that cooperatives are able to harvest all of their allocation.

Timetable:

Action	Date	FR Cite
Notice	07/05/02	67 FR 47794
NRPM	08/23/02	67 FR 54610
Notice Comment Period End	09/03/02	
NPRM Comment Period End	10/07/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AP71

658. PROTECT NORTHEAST MULTISPECIES GROUNDFISH STOCKS

Priority: Other Significant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: The National Marine Fisheries Service implemented interim measures intended to reduce overfishing on species managed under the Northeast Multispecies Fishery Management Plan. The interim rules implemented restrictions specified in the Settlement Agreement Among Certain Parties which was ordered to be implemented by the U.S. District Court for the District of Columbia.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/29/02	67 FR 21140
Interim Final Rule Effective	05/01/02	
Interim Final Rule	05/06/02	67 FR 30331
Interim Final Rule	06/05/02	67 FR 38608
NPRM	07/01/02	67 FR 44139
Interim Final Rule Comment Period End	07/05/02	
NPRM Comment Period End	07/16/02	
Interim Final Rule	08/01/02	67 FR 50292
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AP78

659. AMENDMENT 60 TO THE FISHERY MANAGEMENT PLAN FOR THE GROUNDFISH FISHERY OF THE GULF OF ALASKA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This Amendment is intended to protect the depressed king and Tanner crab stocks in Cook Inlet by minimizing bycatch and the mortality of such bycatch. Prohibiting non-pelagic trawl operations will protect this habitat and promote the rebuilding of the crab resources in the Cook Inlet portion of the GOA.

Timetable:

Action	Date	FR Cite
Notice	05/14/02	67 FR 34424
NPRM	06/13/02	67 FR 40680
NPRM Comment Period End	07/29/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AP79

660. PACIFIC TUNA FISHERIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 955

CFR Citation: 50 CFR 300

Legal Deadline: None

Abstract: This action would announce harvest limits and associated fishery management measures to carry out recommendations of the IATTC that have been approved by the U.S. Department of State. The United States is a member of the IATTC, and NMFS (on behalf of the Secretary of Commerce) implements management recommendations pursuant to the Tuna Conventions Act of 1950. Procedures for announcing harvest quotas and associated management measures are

set forth at 50 CFR part 300 subpart C.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Svein Fougner, Assistant Regional Administrator for Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Southwest Region, 501 W. Ocean Boulevard, Long Beach, CA 90802 Phone: 562 980-4040

RIN: 0648–AP86

661. ANNOUNCEMENT OF THE OPTIMUM YIELD AND HARVEST LIMIT FOR PACIFIC SARDINE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, January 1, 2003, The CPS fisheries regulations require that the annual specs for Pacific sardine be published in the Federal Register before January 1, the start of the fishing year.

Abstract: This rule will announce the annual harvest guidelines for Pacific sardine in the exclusive economic zone off the Pacific coast. The catch sharing plan (CSP) FMP and its implementing regulations require NMFS to establish an annual harvest guideline for Pacific sardine based on a formula in the Fishery Management Plan (FMP). This harvest guideline has been calculated according to the regulations implementing the Coastal Pelagic Species FMP and establishes allowable harvest levels for Pacific sardine off the Pacific coast.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Svein Fougner, Assistant Regional Administrator for Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Southwest Region, 501 W. Ocean Boulevard, Long Beach, CA 90802 Phone: 562 980-4040

RIN: 0648–AP88

662. ATLANTIC HIGHLY MIGRATORY SPECIES (HMS); REGULATORY ADJUSTMENTS; NOAA INFORMATION COLLECTION REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq; 16 USC 971 et seq

CFR Citation: 50 CFR 622

Legal Deadline: None

Abstract: This rule corrects the cross-references in several parts to regulations that have since been removed, and it updates the table in 15 CFR 902.1(b) to add new OMB approvals and to correct control number references to the appropriate CFR part or section.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John H. Dunnigan, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, 1315 East-West Highway 13350, Silver Spring, MD Phone: 301 713-2334

RIN: 0648–AP89

663. ATLANTIC HIGHLY MIGRATORY SPECIES (HMS); 2002 BLUEFIN TUNA QUOTA SPECIFICATIONS AND EFFORT CONTROLS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: NMFS proposes specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quotas and general category effort controls for the 2002 fishing year. This action will implement the U.S. annual BFT quota as recommended by the International Commission on Conservation of Atlantic Tunas and allocate that quota among the domestic fishing categories. Effort controls for the general category will allocate monthly quotas and set certain restricted fishing days.

Timetable:

Action	Date	FR Cite
NPRM	06/27/02	67 FR 43266
NPRM Comment Period End	07/24/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John H. Dunnigan, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, 1315 East-West Highway 13350, Silver Spring, MD Phone: 301 713-2334

RIN: 0648–AP90

664. • EXTENSION OF AN EMERGENCY INTERIM RULE TO IMPLEMENT 2002 STELLER SEA LION PROTECTION MEASURES AND HARVEST SPECIFICATIONS FOR THE BERING SEA/ALEUTIAN ISLANDS AREA AND THE GULF OF ALASKA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 773 et seq; 16 USC 1801 et seq; 16 USC 3631 et seq

CFR Citation: 50 CFR 679

Legal Deadline: Other, Statutory, July 8, 2002, Extension of emergency interim rule.

Abstract: The extension of an emergency interim rule continues to implement Steller sea lion protection measures to avoid the likelihood that the groundfish fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify their critical habitat. This action also extends final 2002 harvest specifications and associated management measures for the groundfish fisheries of the Bering Sea and Aleutian Islands management area and the Gulf of Alaska through December 31, 2002.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/16/02	67 FR 34860
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802 Phone: 907 586-7221 Fax: 907 586-7249

Related RIN: Related To 0648-AP69

RIN: 0648–AQ02

665. • FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA — REGULATORY AMENDMENT TO IMPLEMENT STELLER SEA LION PROTECT MEASURES

Priority: Economically Significant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This regulatory amendment would implement Steller sea lion protection measures to avoid the likelihood that the groundfish fisheries off Alaska will jeopardize the continued existence of the western distinct population segment of Steller sea lions or adversely modify its critical habitat.

Timetable:

Action	Date	FR Cite
NPRM	09/04/02	67 FR 56692
NPRM Comment Period End	10/04/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802 Phone: 907 586-7221 Fax: 907 586-7249

RIN: 0648–AQ08

666. • SUBSISTENCE FISHERY FOR PACIFIC HALIBUT IN WATERS OFF ALASKA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 773-773k

CFR Citation: 50 CFR 300; 50 CFR 679

Legal Deadline: None

Abstract: NMFS proposes regulations to authorize a subsistence fishery for Pacific halibut in waters off Alaska. These regulations are necessary to allow qualified persons to practice the long-term customary and traditional harvest of Pacific halibut for food in a noncommercial manner. This action is intended to meet the conservation and management requirements of the Northern Pacific Halibut Act of 1982 (Halibut Act) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Timetable:

Action	Date	FR Cite
NPRM	08/26/02	67 FR 54767
NPRM Comment Period End	09/25/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802 Phone: 907 586-7221 Fax: 907 586-7249

RIN: 0648–AQ09

667. • IMPLEMENTATION OF NEW DEPTH-BASED MANAGEMENT MEASURES IN THE PACIFIC COAST GROUNDFISH FISHERY

Priority: Economically Significant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: This emergency rulemaking would allow additional depth-based management measures to be incorporated into the suite of routine management measures that can be used by the Pacific Fishery Management Council and NMFS in the Pacific Coast Groundfish fishery. The emergency rule published on 9/13/02 published under RIN 0648-AP85.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	09/10/02	
Interim Final Rule	09/13/02	67 FR 57973
Interim Final Rule Comment Period End	10/15/02	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: The Emergency Rule published on 9/13/02 was published with an incorrect RIN: 0648-AP85.

Agency Contact: D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE, Building 1, Seattle, WA 48115-0070 Phone: 206 526-6150 Fax: 206 526-6426

RIN: 0648–AQ14

668. • CAPITAL CONSTRUCTION FUND PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 1177

CFR Citation: 50 CFR 259

Legal Deadline: None

Abstract: Simplifies and clarifies program regulations and eases restrictions on reconstructions to promote fleet safety, reliability, and efficiency.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Charles L. Cooper, Program Leader, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910 Phone: 301 713-2396 Email: charles.cooper@noaa.gov

RIN: 0648–AQ16

669. • 2003-2004 MANAGEMENT MEASURES FOR COMMERCIAL, RECREATIONAL, AND TREATY INDIAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, May 2003.

Abstract: The annual management measures for the 2003-2004 fishing year specify allowable ocean harvest levels (including quotas), allocations, management boundaries and zones, minimum size limits, gear definitions, seasons, selective fisheries, and in-season notice procedures.

Timetable:

Action	Date	FR Cite
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE, Building 1, Seattle, WA 48115-0070
Phone: 206 526-6150
Fax: 206 526-6426

RIN: 0648–AQ17

670. • EMERGENCY RULE — GROUNDFISH FISHERY MANAGEMENT MEASURES FOR JANUARY THROUGH FEBRUARY 2003

Priority: Economically Significant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, January 1, 2003, Emergency Rule January-February management measures.

Abstract: This emergency rulemaking would implement the January through February 2003 management measures for groundfish taken in the U.S. exclusive economic zone and State waters off the coasts of Washington, Oregon, and California. These management measures are intended to allow achievement of harvest guidelines and limited entry and open access allocations to the extent practicable.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE, Building 1, Seattle, WA 48115-0070
Phone: 206 526-6150
Fax: 206 526-6426

RIN: 0648–AQ19

671. • EMERGENCY ACTION TO EXPEDITE REALLOCATION OF SARDINE IN THE WEST COAST COASTAL PELAGIC SPECIES FISHERY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: This emergency rule would expedite the reallocation of Pacific sardine along the West Coast to minimize economic harm to fishermen and processors in communities of Washington, Oregon and northern California. The Coastal Pelagic Species Fishery Management Plan provides that an annual harvest guideline for Pacific sardine be announced in January each year, with an initial allocation of one-third of the harvest guideline to the northern area and two-thirds of the allocation to the southern area. After nine months, the Southwest Regional Administrator, NMFS, determines the catches to date and, if the harvest guideline has not been reached, allocates the remaining portion of the harvest guideline equally between the northern and southern areas.
The sardine industry in the northern area has grown rapidly the past two years. This year the northern allocation was taken before the end of the 9-month period; therefore, the northern fishery was closed effective September 13, 2002. There is substantial unharvested sardine left in the total harvest guideline. Consequently, the Pacific Fishery Management Council requested that NMFS take emergency action to minimize the effects of this closure. The closure of the northern fishery is viewed as resulting in an unnecessary loss of revenue and jobs. Sardine would normally become available again to the northern fishery with the reallocation on October 1, 2002. The reallocation is expected to result in increased catches, landed value, fishing and processing income, and associated community activity. It is further noted that this is not likely to adversely affect southern fishermen and processors because they would continue to have fish available for the rest of the year. NMFS does not expect this emergency rule to cause any biological problems because the harvest guideline would still control total catch.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Svein Fougner, Assistant Regional Administrator for Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Southwest Region, 501 W. Ocean Boulevard, Long Beach, CA 90802
Phone: 562 980-4040

RIN: 0648–AQ47

672. INTERAGENCY POLICY ON THE PRESCRIPTION OF FISHWAYS UNDER SECTION 18 OF THE FEDERAL POWER ACT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 742; 16 USC 661 et seq; 16 USC 791a et seq; 16 USC et 1531 et seq; 16 USC 811 et seq; ...

CFR Citation: 18 CFR 385.713

Legal Deadline: None

Abstract: This rulemaking invites public comment on proposed internal policy for the U.S. Fish and Wildlife Service and National Marine Fisheries Service (the Services) regarding the prescription of fishways pursuant to section 18 of the Federal Power Act for non-Federal hydropower projects licensed by the Federal Energy Regulatory Commission (FERC). The proposed policy is intended to set forth the definition of fishways in accordance with the 1992 National Energy Policy Act and the procedures for the prescription of fishways. The policy does not introduce new procedures but standardizes current practices and existing procedures for providing fishway prescriptions.

Timetable:

Action	Date	FR Cite
Notice	12/22/00	65 FR 80898
Notice Comment Period End	02/20/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Kathryn Conant, Habitat Specialist, NMFS, Office of Habitat Conservation, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2325
Fax: 301 713-1043
Email: kathryn.conant@noaa.gov

RIN: 0648–AO70

673. POLICY FOR REVIEW OF MANDATORY CONDITIONS DEVELOPED BY THE DEPARTMENTS OF THE INTERIOR AND COMMERCE IN THE CONTEXT OF HYDROPOWER LICENSING

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 791a et seq; 16 USC 811; 16 USC 797(e); 16 USC 8251(b)

CFR Citation: 18 CFR 385.713

Legal Deadline: None

Abstract: The Department of the Interior and the Department of Commerce (Departments) have formalized a process for public review of and comment on mandatory conditions and prescriptions the Departments develop for inclusion in hydropower licenses issued by the Federal Energy Regulatory Commission pursuant to part I of the Federal Power Act. This policy provides an opportunity for public comment on the Departments' mandatory conditions and prescriptions for both the traditional licensing process and the alternative licensing process.

Timetable:

Action	Date	FR Cite
Notice	12/13/00	65 FR 77889
Notice Comment Period End	01/03/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Energy Effects: Statement of Energy Effects planned as required by Executive Order 13211.

Agency Contact: Kathryn Conant, Habitat Specialist, NMFS, Office of Habitat Conservation, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2325
Fax: 301 713-1043
Email: kathryn.conant@noaa.gov

RIN: 0648–AO84

674. ATLANTIC LARGE WHALE 2002 SEASONAL AREA MANAGEMENT (SAM) PROGRAM

Priority: Other Significant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 229

Legal Deadline: NPRM, Judicial, November 23, 2001, The Federal District Court for the District of Massachusetts order.
Final, Judicial, December 31, 2001, The Federal District Court for the District of Massachusetts order.

Abstract: NMFS is preparing regulations to implement a SAM program for the 2002 fishing year, which was identified as a measure under the RPA that resulted from the biological opinions prepared for the Northeast multispecies, monkfish, spiny dogfish, and American lobster fisheries. The 2002 SAM program is intended as an incremental step to provide endangered western North Atlantic right whales protection from entanglement with fishing gear used in those fisheries. NMFS is preparing an EIS for more comprehensive SAM regulations for 2003 and beyond, in accordance with the National Environmental Policy Act (NEPA), to analyze the impacts on the human environment of the management alternatives under consideration. The measures that have been identified for the 2002 SAM proposed rulemaking requires reduction, elimination, and/or modification of certain types of fixed gear (i.e., gillnets and lobster traps) in specific areas off the Atlantic coast of the United States during times of the year when right whales are known to be present in significant concentrations.

Timetable:

Action	Date	FR Cite
ANPRM	10/03/01	66 FR 50390
ANPRM Comment Period End	11/02/01	
NPRM	11/28/01	66 FR 59394
NPRM Comment Period End	12/13/01	
Interim Final Rule	01/09/02	67 FR 1142
Interim Final Rule Comment Period End	02/08/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Patricia Lawson, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2322
Email: patricia.lawson@noaa.gov

RIN: 0648–AP68

675. PROVIDE REGULATIONS FOR PERMITS FOR CAPTURE, TRANSPORT, IMPORT AND EXPORT OF PROTECTED SPECIES FOR PUBLIC DISPLAY, AND FOR MAINTAINING A CAPTIVE MARINE MAMMAL INVENTORY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1372 (c)

CFR Citation: 50 CFR 216

Legal Deadline: None

Abstract: This rule will revise and simplify criteria and procedures specific to permits for taking, transporting, importing, and exporting protected species for public display and provide convenient formats for reporting marine mammal captive holdings and transports as required by amendments made in 1994 to the Marine Mammal Protection Act.

Timetable:

Action	Date	FR Cite
NPRM	07/03/01	66 FR 35209
NPRM Comment Period Extended	08/22/01	66 FR 44109
NPRM Comment Period End	09/04/01	
Comment Period Extended	11/02/01	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gene Nitta, Marine Resource Manager, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2289

RIN: 0648–AH26

676. PACIFIC OFFSHORE CETACEAN TAKE REDUCTION PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 229

Legal Deadline: None

Abstract: This interim final rule allows vessel operators participating in the California/Oregon drift gillnet fishery for thresher shark and swordfish to use longer lines to attach pingers to the nets.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/24/01	66 FR 44549
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Patricia Lawson, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2322
Email: patricia.lawson@noaa.gov

RIN: 0648–AL70

677. DRAFT POLICY FOR EVALUATION OF CONSERVATION EFFORTS IN MAKING LISTING DECISIONS

Priority: Info./Admin./Other

Legal Authority: 16 USC 1531

CFR Citation: 50 CFR 424

Legal Deadline: None

Abstract: This draft policy evaluates conservation efforts in making listing decisions under the Endangered Species Act (ESA). The policy identifies considerations to be used in determining whether conservation plans and agreements, management plans or other efforts provide sufficient protections to preclude or remove the need to list a species under the ESA.

Timetable:

Action	Date	FR Cite
NPRM	06/13/00	65 FR 37102
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Margaret C. Lorenz, ESA Policy Coordinator, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-1401
Email: margaret.lorenz@noaa.gov

RIN: 0648–AL91

678. SEA TURTLE CONSERVATION REGULATIONS; SHRIMP FISHERY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 223

Legal Deadline: None

Abstract: NMFS issues this rule to make technical changes to the requirements for turtle excluder devices (TEDs) to increase their effectiveness. In particular, NMFS is considering increasing the size of TED escape openings to allow larger turtles to escape. The options NMFS is currently considering are: Requiring the leatherback opening with a minimum 32-inch grid in all areas (71-inch opening), or requiring a 35-inch by 16-inch opening with a minimum 30-inch grid in all areas. In addition, NMFS is considering other modifications to the TED regulations, including modifying or decertifying hooped hard TEDs and weedless TEDs, changing the requirements for the types of flotation devices allowed, and extending the requirement to have a short flap and grid angle of no greater than 45 degrees on bottom opening TEDs (other than TEDs equipped with the leatherback opening) to all areas in the U.S. Gulf of Mexico and the Southeast U.S. Atlantic. NMFS is also considering modifications to the leatherback contingency plan (50 CFR 223.206(d)(2)(iv)) to provide better protection to leatherback turtles.

Timetable:

Action	Date	FR Cite
ANPRM	04/05/00	65 FR 17852
ANPRM Comment Period End	05/05/00	
NPRM	10/02/01	66 FR 50148
NPRM Comment Period End	11/16/01	
Comment Period Extended	02/15/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Therese Conant, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, Silver Spring, MD 20910
Phone: 301 713-1431
Fax: 301 713-0376

RIN: 0648–AN62

679. DESIGNATED CRITICAL HABITAT: PROPOSED CRITICAL HABITAT FOR NORTHERN CALIFORNIA STEELHEAD

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1533

CFR Citation: 50 CFR 226

Legal Deadline: Final, Statutory, June 7, 2001.

Abstract: On June 7, 2000, NMFS listed the Northern California steelhead evolutionarily significant unit of steelhead as threatened under the Endangered Species Act. NMFS will now designate critical habitat for these steelhead.

Timetable:

Action	Date	FR Cite
NPRM	12/19/00	65 FR 79328
NPRM Comment Period End	02/20/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Barry Thom, Fishery Biologist, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-1401
Email: barry.thom@noaa.gov

RIN: 0648–AO04

680. TAKING OF THE COOK INLET, ALASKA, STOCK OF BELUGA WHALES BY ALASKA NATIVES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1371

CFR Citation: 50 CFR 216

Legal Deadline: None

Abstract: NMFS is regulating subsistence harvest of Cook Inlet Beluga to ensure that the harvest is sustainable and does not substantially delay the recovery of this marine mammal stock. Specific harvest levels and distribution of the harvest will be based upon cooperative agreements with Alaska native organizations.

Timetable:

Action	Date	FR Cite
NPRM	10/04/00	65 FR 59164
NPRM Comment Period End	11/27/00	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations, Governmental Jurisdictions

Government Levels Affected: Tribal, Federal

Agency Contact: Thomas C. Eagle, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13725, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2055
Fax: 301 713-4060
Email: tom.eagle@noaa.gov

RIN: 0648–AO16

681. RESTRICTIONS ON POUND NET LEADERS TO ENHANCE TURTLE PROTECTION IN VIRGINIA; THREATENED AND ENDANGERED SEA TURTLE CONSERVATION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 222; 50 CFR 223; 50 CFR 224

Legal Deadline: None

Abstract: This action involves prohibiting the use of all pound net leaders measuring 12 inches or greater stretched mesh and all pound nets with stringer leaders in the Virginia waters of the mainstem Chesapeake Bay and the waters of the James River, York River, and Rappahannock River downstream of the first bridge in each tributary from May 8 to June 30. This action also includes a provision to extend the regulation if NMFS believes that sea turtles may still be vulnerable to entanglement in pound net leaders after June 30. Should an extension of the prohibition of pound net leaders measuring 12 inches or greater stretched mesh and leaders with stringers be necessary, NMFS will file a notification with the Office of the Federal Register explicitly stating the duration of the extension. Additionally, this proposed rule incorporates a measure that if high strandings start to occur and/or monitoring of pound net leaders reveals new information about sea turtle interactions with pound net leaders less than 12 inches stretched mesh, NMFS may determine that additional restrictions are necessary. Should this occur, NMFS will immediately file a final rule with the Office of the Federal Register which explicitly states the mandatory gear modification as well as the affected area and the time period. Such additional restrictions may include prohibiting the use of all pound net leaders measuring 8 inches or greater stretched mesh or prohibiting the use of all pound net leaders regardless of mesh size in the Virginia waters of the mainstem Chesapeake Bay and portions of the Virginia tributaries from the date of publication to June 30.

Timetable:

Action	Date	FR Cite
NPRM	03/29/02	67 FR 15160
NPRM Comment Period End	04/15/02	
Interim Final Rule	06/17/02	67 FR 41196
Interim Final Rule Comment Period End	07/17/02	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mary A. Colligan, Assistant Regional Admisistrator, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS/Protected Resources, Protected Resources Division, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9116
Fax: 978 281-9394

RIN: 0648–AP81

682. SEA TURTLE CONSERVATION REGULATIONS; FISHERY ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 223

Legal Deadline: None

Abstract: NMFS is enacting a seasonally adjusted closure of the Mid-Atlantic Exclusive Economic Zone (EEZ) waters to fishing with gillnets with a mesh size larger than 8 inch (20.3 cm) stretched mesh. The purpose of this action is to reduce the impact of the large-mesh gillnet fisheries on endangered and threatened species of sea turtles primarily from the monkfish fishery which has previously demonstrated a high sea turtle bycatch and mortality rate. The closure areas and times are as follows: waters north of 33 degrees 51.0 minutes N (North Carolina/South Carolina border at the coast) and south of 35 degrees 46.0 minutes N (Oregon Inlet) are closed at all times; waters north of 35 degrees 46.0 minutes N (Oregon Inlet) and south of 36 degrees 22.5 minutes N (Currituck Beach Light, NC) are closed from March 16 through January 14; waters north of 36 degrees 22.5 minutes N (Currituck Beach Light, NC) and south of 37 degrees 34.6 minutes N (Wachapreague Inlet, VA) are closed from April 1 through January 14; waters north of 37 degrees 34.6 minutes N (Wachapreague Inlet, VA) and south of 37 degrees 56.0 minutes N

(Chincoteague, VA) are closed from April 16 through January 14; waters north of 37 degrees 56.0 minutes N (Chincoteague, VA) will not be affected by this rule. NMFS also intends to publish a permanent rule establishing seasonal closures and is seeking comments on this proposal. In addition, NMFS is requesting comments on the need to consider restrictions on smaller gillnet mesh sizes in the permanent rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/21/02	67 FR 13098
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Opay, Sea Turtle Ecologist, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Hwy., Silver Spring, MD 20910
Phone: 301 713-1401

RIN: 0648–AP91

683. • LISTING ENDANGERED AND THREATENED WILDLIFE AND DESIGNATING CRITICAL HABITAT; 90-DAY FINDING

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 223

Legal Deadline: None

Abstract: The National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, announces the 90-day finding for a petition to reclassify the Northern and Florida Panhandle nesting subpopulations of the loggerhead (Caretta caretta) sea turtle from threatened to endangered and designate critical habitat under the Endangered Species Act (ESA). The Services find that the petition to reclassify presents substantial scientific information indicating that the petitioned action may be warranted. The Services find that the petition to designate critical habitat did not provide substantial scientific information to warrant further review. The Services will conduct a status review of the loggerhead turtle to determine whether the petitioned action is warranted. To ensure a comprehensive review, the Services are soliciting information and comments pertaining to this species from any interested party.

Timetable:

Action	Date	FR Cite
NPRM	06/04/02	67 FR 38459
NPRM Comment Period End	08/05/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Therese Conant, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, Silver Spring, MD 20910
Phone: 301 713-1431
Fax: 301 713-0376

RIN: 0648–AP94

684. • DESIGNATION OF CRITICAL HABITAT FOR GULF STURGEON

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 226

Legal Deadline: NPRM, Judicial, May 23, 2002.
Final, Judicial, February 28, 2003.

Abstract: The National Marine Fisheries Service and U.S. Fish and Wildlife Service (collectively, the Services) jointly listed the Gulf sturgeon as "threatened" under the Endangered Species Act (ESA) in 1991. The ESA requires that critical habitat be designated for any listed species. On June 6, 2002, the Services proposed designating critical habitat for the Gulf sturgeon. The proposed designation includes seven freshwater and seven estuarine/marine units in the Gulf of Mexico as critical habitat. All of the units proposed as critical habitat are areas presently occupied by Gulf sturgeon during part of its life cycle. On August 8, 2002, the Services announced the availability of a draft economic analysis of the proposed designation, and extended the public comment period for the proposal to October 7, 2002. A final designation must be filed by February 28, 2003, per a court settlement agreement.

Timetable:

Action	Date	FR Cite
NPRM	06/06/02	67 FR 39106
Comment Period Extended	08/08/02	67 FR 51530
NPRM Comment Period End	10/07/02	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Stephania Bolden, Fisheries Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, F/SER3, 9721 Executive Center Drive North, St. Peterburg, FL 33702
Phone: 727 570-5312

RIN: 0648–AQ03

685. • TAKING OF THREATENED OR ENDANGERED SPECIES INCIDENTAL TO COMMERCIAL FISHING OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 222; 50 CFR 223

Legal Deadline: None

Abstract: The National Marine Fisheries Service (NMFS) proposes to prohibit drift gillnet fishing in U.S. ocean waters off of southern California south of Point Conception (34 degrees 27 minutes N) and west to 120 degrees W longitude from August 15 to August 31, and from January 1 to January 31, during El Nino events.

Timetable:

Action	Date	FR Cite
NPRM	09/20/02	67 FR 59243
NPRM Comment Period End	10/21/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Therese Conant, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, Silver Spring, MD 20910
Phone: 301 713-1431
Fax: 301 713-0376

RIN: 0648–AQ13

686. • TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS; ATLANTIC LARGE WHALE TAKE REDUCTION PLAN REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1387

CFR Citation: 50 CFR 229

Legal Deadline: None

Abstract: NMFS is proposing to amend the regulations that implement the Atlantic Large Whale Take Reduction Plan. The purpose of this rule is to correct unintended errors in the Seasonal Area Management interim final rule and the Dynamic Area Management final rule's preambles. Some aspects of each program were inadvertently omitted from the associated regulatory text and this technical amendment makes the regulatory text reflect information provided in the rules' preambles.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Lawson, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2322
Email: patricia.lawson@noaa.gov

RIN: 0648–AQ23

NATIONAL OCEAN SERVICE/OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

687. NATURAL RESOURCE DAMAGE ASSESSMENTS UNDER THE OIL POLLUTION ACT OF 1990

Priority: Other Significant

Legal Authority: 33 USC 2706(e)

CFR Citation: 15 CFR 990

Legal Deadline: None

Abstract: This action amends the natural resource damage assessment rule under the Oil Pollution Act of 1990, codified at 15 CFR 990, due to court remand (General Electric vs. Commerce, 128 F. 3d 767. DC Cir. 1997).

Timetable:

Action	Date	FR Cite
NPRM	07/31/01	66 FR 39464
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Eli Reinharz, Ecologist, Department of Commerce, National Oceanic and Atmospheric Administration, NOAA/DAC, Room 10218, 1305 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-3038
Fax: 301 713-4387

RIN: 0648–AM80

Department of Commerce (DOC)
National Oceanic and Atmospheric Administration (NOAA)

Long-Term Actions

NATIONAL MARINE FISHERIES SERVICE

688. FISHERY MANAGEMENT PLAN FOR CALICO SCALLOP FISHERY IN THE SOUTH ATLANTIC REGION (FMP)

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 622

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Powers
Phone: 727 570-5301

RIN: 0648–AL78

689. AMENDMENT 10 TO THE FISHERY MANAGEMENT PLAN FOR THE SHRIMP FISHERY OF THE GULF OF MEXICO (FMP)

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 622

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Powers
Phone: 727 570-5301

RIN: 0648–AM23

690. AMENDMENT 7 TO THE FISHERY MANAGEMENT PLAN FOR THE SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC FMP

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 640

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joseph Powers
Phone: 727 570-5301

RIN: 0648–AN08

691. SEA TURTLE CONSERVATION REGULATIONS; FISHERY ACTIVITIES (TEDS)

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 223

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/14/01	66 FR 24287
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Therese Conant
Phone: 301 713-1431
Fax: 301 713-0376

RIN: 0648–AP16

692. • FISHERIES OF THE NORTHEASTERN UNITED STATES; ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERIES; CONTROL DATE FOR ATLANTIC MACKEREL

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: NMFS announces that it is considering, and is seeking public comment on, proposed rulemaking to control future access to the Atlantic mackerel resource if a management regime is developed and implemented under the Magnuson-Stevens Fishery conservation and Management Act that limits the number of participants in the fishery. This announcement is intended, in part, to promote awareness of potential eligibility criteria for future access so as to discourage speculative entry into the fishery while the Mid-Atlantic Fishery Management Council and NMFS consider whether and how access to the Atlantic mackerel fishery should be controlled.

Timetable:

Action	Date	FR Cite
Final Action	07/05/02	67 FR 44792
Comment Period End	08/05/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AQ11

693. ENDANGERED AND THREATENED SPECIES: TAKE OF THREATENED SOUTHERN OREGON/NORTHERN CALIFORNIA COAST EVOLUTIONARILY SIGNIFICANT UNIT (ESU) COHO SALMON

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 223

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/18/97	62 FR 38479
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Barry Thom
Phone: 301 713-1401
Email: barry.thom@noaa.gov

RIN: 0648–AJ91

694. NORTH ATLANTIC WHALE PROTECTION

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 216; 50 CFR 222

Timetable:

Action	Date	FR Cite
ANPRM	01/04/00	65 FR 270
ANPRM Comment Period End	03/06/00	
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Trevor Spradlin
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RIN: 0648–AM85

NATIONAL OCEAN SERVICE/OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

695. INTERAGENCY CONSULTATION FOR THE NATIONAL MARINE SANCTUARY PROGRAM

Priority: Other Significant

CFR Citation: 15 CFR 922

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Helen Golde
Phone: 301 713-3145

RIN: 0648–AL06

696. INSTALLING AND MAINTAINING COMMERCIAL SUBMARINE CABLES IN NATIONAL MARINE SANCTUARIES

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 922

Timetable:

Action	Date	FR Cite
ANPRM	08/23/00	65 FR 51264
ANPRM Comment Period End	10/23/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Helen Golde
Phone: 301 713-3145

RIN: 0648–AO36

697. • PROCEDURAL CHANGES TO THE FEDERAL CONSISTENCY PROCESS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1463; 16 USC 1451 et seq

CFR Citation: 15 CFR 930

Legal Deadline: None

Abstract: NOAA is evaluating whether procedural changes or additional guidance to the existing Federal consistency regulations is necessary to improve efficiencies in the Federal consistency procedures and Secretarial appeals process, particularly as related to energy development on the Outer Continental Shelf (OCS).

Timetable:

Action	Date	FR Cite
ANPRM	07/02/02	67 FR 44407
ANPRM Comment Period End	09/03/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: David W. Kaiser, Federal Consistency Coordinator, Department of Commerce, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910
Phone: 301 713-3155
Fax: 301 713-4367
Email: david.kaiser@noaa.gov

RIN: 0648–AP98

OFFICE OF THE ADMINISTRATOR

698. REGIONAL MARINE RESEARCH PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Don Scavia
Phone: 301 713-3060

RIN: 0648–AF20

Department of Commerce (DOC)
National Oceanic and Atmospheric Administration (NOAA)

Completed Actions

699. REGULATORY AMENDMENT TO ESTABLISH PERMIT AND REPORTING REQUIREMENTS FOR PELAGIC TROLL AND HANDLINE VESSELS FISHING OFF PACIFIC REMOTE ISLANDS OF THE UNITED STATES

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 660

Completed:

Reason	Date	FR Cite
NPRM	05/06/02	67 FR 30346
Final Action	09/04/02	67 FR 56500

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Charles Karnella
Phone: 808 973-2937

RIN: 0648–AJ08

700. ADJUSTMENT OF THE MANAGEMENT PROGRAM FOR PRECIOUS CORALS FISHERIES IN THE WESTERN PACIFIC

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 660

Completed:

Reason	Date	FR Cite
Final Action	03/18/02	67 FR 11941
Final Action Effective	04/17/02	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Charles Karnella
Phone: 808 973-2937

RIN: 0648–AK23

701. AMENDMENT 54 TO FMP FOR GROUNDFISH FISHERY OF BERING SEA AND ALEUTIAN ISLANDS AREA AND AMENDMENT 54 TO FMP FOR GROUNDFISH OF GULF OF ALASKA

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 679

Completed:

Reason	Date	FR Cite
Final Action	04/29/02	67 FR 20915
Final Action Effective	05/29/02	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: James W. Balsiger
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AK70

702. FISHING CAPACITY REDUCTION PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 600

Completed:

Reason	Date	FR Cite
Interim Final Rule	05/18/00	65 FR 31430

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael L. Grable
Phone: 301 713-2390
Email: michael.grable@noaa.gov

RIN: 0648–AK76

703. CRAB COMMUNITY DEVELOPMENT QUOTA RESERVES

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 679

Completed:

Reason	Date	FR Cite
Final Action	03/22/02	67 FR 13291

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: James W. Balsiger
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AL92

704. AMENDMENT 67 TO THE FMP FOR THE GROUNDFISH FISHERY OF THE BERING SEA AND THE ALEUTIAN ISLANDS AREA

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 679

Completed:

Reason	Date	FR Cite
Final Action	04/15/02	67 FR 18129
Correction	08/15/02	67 FR 53321

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: James W. Balsiger
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Fax: 907 586-7249

RIN: 0648–AM40

705. REGULATORY AMENDMENT TO PREVENT OR MITIGATE THE TAKE OF SEA TURTLES IN THE WESTERN PACIFIC PELAGIC FISHERIES

Priority: Other Significant

CFR Citation: 50 CFR 660

Completed:

Reason	Date	FR Cite
NPRM	04/29/02	67 FR 20945
Final Action	06/12/02	67 FR 40232
Correction	07/25/02	67 FR 48604

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Charles Karnella
Phone: 808 973-2937

RIN: 0648–AN75

706. GENERIC AMENDMENT ADDRESSING THE ESTABLISHMENT OF THE TORTUGAS MARINE RESERVES UNDER THE FISHERY MANAGEMENT PLANS OF THE GULF OF MEXICO

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 622

Completed:

Reason	Date	FR Cite
Final Action	07/19/02	67 FR 47467

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joseph Powers
Phone: 727 570-5301

RIN: 0648–AN83

707. AMENDMENT 3 TO THE FISHERY MANAGEMENT PLAN FOR THE GOLDEN CRAB FISHERY OFF THE SOUTHERN ATLANTIC STATES (FMP)

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 622

Completed:

Reason	Date	FR Cite
Final Action	05/03/02	67 FR 22359

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joseph Powers
Phone: 727 570-5301

RIN: 0648–AO23

708. REGULATORY AMENDMENT TO MODIFY THE MANAGEMENT PROGRAM FOR THE WESTERN PACIFIC PELAGIC FISHERIES TO MITIGATE THE TAKE OF SEABIRDS

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 660

Completed:

Reason	Date	FR Cite
Final Rule	05/14/02	67 FR 34408
Final Rule Effective	06/13/02	
Final Action	09/10/02	67 FR 57346

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Local

Agency Contact: Charles Karnella
Phone: 808 973-2937

RIN: 0648–AO35

709. AMENDMENT 11 TO FISHERY MANAGEMENT PLAN FOR SHRIMP FISHERY OF GULF OF MEXICO (FMP)

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 622

Completed:

Reason	Date	FR Cite
Final Action	08/07/02	67 FR 51074
Final Action Effective	09/06/02	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Joseph Powers
Phone: 727 570-5301

RIN: 0648–AO51

710. AMENDMENTS TO FMPS FOR GULF OF MEXICO REEF FISH AND GULF OF MEXICO AND SOUTH ATLANTIC COASTAL MIGRATORY PELAGIC RESOURCES TO LIMIT ENTRY INTO GULF OF MEXICO RECREATIONAL-FOR-HIRE FISHERIES

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 622

Completed:

Reason	Date	FR Cite
Final Action	06/28/02	67 FR 43558

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Joseph Powers
Phone: 727 570-5301

RIN: 0648–AO62

711. RECREATIONAL MEASURES FOR THE SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS FISHERIES FOR FISHING YEAR 2002

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 648

Completed:

Reason	Date	FR Cite
NPRM	05/23/02	67 FR 36139
Final Action	08/02/02	67 FR 50368

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul
Phone: 978 281-9200

RIN: 0648–AO91

712. SPECIFICATIONS FOR THE SPINY DOGFISH FISHERY FOR FISHING YEAR 2002

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 648

Completed:

Reason	Date	FR Cite
Final Action	05/07/02	67 FR 30614

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul
Phone: 978 281-9200

RIN: 0648–AP07

713. FRAMEWORK 1 TO THE MONKFISH FISHERY MANAGEMENT PLAN FOR FISHING YEAR 2002; DISAPPROVAL OF FRAMEWORK

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 648

Completed:

Reason	Date	FR Cite
NPRM	04/04/02	67 FR 16079
Emergency Interim Rule	05/22/02	67 FR 35928
Emergency Interim Rule Ends	11/18/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul
Phone: 978 281-9200

RIN: 0648–AP11

714. FRAMEWORK ADJUSTMENT 2 TO THE FISHERY MANAGEMENT PLAN FOR THE ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERIES

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 648

Completed:

Reason	Date	FR Cite
NPRM	05/28/02	67 FR 36556
Final Action	07/02/02	67 FR 44392

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Patricia Kurkul
Phone: 978 281-9200

RIN: 0648–AP12

715. ATLANTIC HIGHLY MIGRATORY SPECIES; PELAGIC LONGLINE FISHERY; SEA TURTLE PROTECTION MEASURES

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 635

Completed:

Reason	Date	FR Cite
NPRM	04/10/02	67 FR 17349
Final Action	07/09/02	67 FR 45393

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Dunnigan
Phone: 301 713-2334
Email: john.dunnigan@noaa.gov

RIN: 0648–AP49

716. 2002-2003 MANAGEMENT MEASURES FOR COMMERCIAL, RECREATIONAL, AND TREATY INDIAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 660

Completed:

Reason	Date	FR Cite
Final Action	05/07/02	67 FR 30616

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: D. Robert Lohn
Phone: 206 526-6150
Fax: 206 526-6426

RIN: 0648–AP52

717. ATLANTIC BLUEFISH FISHERY; SPECIFICATIONS FOR FISHING YEAR 2002

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 648

Completed:

Reason	Date	FR Cite
Final Action	06/06/02	67 FR 38909

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Patricia Kurkul
Phone: 978 281-9200

RIN: 0648–AP59

718. PACIFIC HALIBUT FISHERIES CATCH SHARING PLAN

Priority: Substantive, Nonsignificant

CFR Citation: None

Completed:

Reason	Date	FR Cite
Final Action	03/20/02	67 FR 12885

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: D. Robert Lohn
Phone: 206 526-6150
Fax: 206 526-6426

RIN: 0648–AP80

719. IMPOSING ADDITIONAL RESTRICTIONS IN THE HAWAII-BASED LONGLINE FISHERY

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 660

Completed:

Reason	Date	FR Cite
Interim Final Rule	04/05/02	67 FR 16323

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Karnella
Phone: 808 973-2937

RIN: 0648–AP84

720. IMPLEMENT 2002 PACIFIC WHITING SPECIFICATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 660

Completed:

Reason	Date	FR Cite
Interim Final Rule	04/15/02	67 FR 18117
Interim Final Rule Comment Period End	05/15/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: D. Robert Lohn
Phone: 206 526-6150
Fax: 206 526-6426

RIN: 0648–AP85

721. • CONTROL DATE FOR LONGLINE VESSELS FISHING FOR PELAGIC SPECIES IN THE EEZ AROUND AMERICAN SAMOA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final rule must be published 30 days after the comment period ends on the proposed rule.

Abstract: On March 21, 2002, the Western Pacific Fishery Management Council (Council) adopted a "control date" of March 21, 2002, for the longline fishery for pelagic species around American Samoa (the "fishery") that entrance to this fishery might be limited. The purpose of the "control date" is to notify persons interested in joining this fishery after March 21, that they might be excluded from the fishery if the Council and/or NMFS decide to limit entry to the fishery. The Council is currently developing an amendment to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region to limit new entry to this fishery. The specific eligibility requirements that would be used in this limited entry program are still being formulated and analyzed. The Council may choose not to control entry or access to the fishery, in which case the control date may be rescinded.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/03/02	67 FR 38245
Interim Final Rule Comment Period End	07/03/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AQ01

722. • CHANGE OF TITLE FOR THE SALMON FMP

Priority: Info./Admin./Other

Legal Authority: 16 USC 773 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: NMFS is correcting the title of the Fishery Management Plan for the Salmon Fisheries in the Exclusive Economic Zone (EEZ) off Alaska (FMP). This action is necessary to make the name of the FMP in Federal regulations consistent with the actual name of the FMP as approved by the Secretary of Commerce (Secretary). The intended effect of this action is regulatory consistency, and it will have no effect on any person fishing in the EEZ for any species.

Timetable:

Action	Date	FR Cite
Final Action	07/01/02	67 FR 44093

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AQ10

723. • NOTICE OF CONTROL DATE FOR HAGFISH FISHERY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: At present, the hagfish fishery is not regulated under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The control date admonishes the industry that future action to control the number of participants in the hagfish fishery is being considered. It announces that anyone entering the hagfish fishery after the control date will not be assured of future access, should a management regime that limits the number of participants in the fishery be prepared and implemented. Limited entry into the fishery may be based on levels of participation or other criteria such as domestic harvest capacity. The control date is intended to discourage speculative entry into the hagfish fishery if controlled access schemes are developed by the Council. This notice would establish the date of its publication in the Federal Register as the control date. The publication of a control date would not commit the Council to developing any particular management regime or to using any specific criteria for determining entry into the fishery. Any action by the Council will be taken pursuant to the requirements for FMP development established under the Magnuson-Stevens Act.

Timetable:

Action	Date	FR Cite
Final Action	08/28/02	67 FR 55191

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AQ12

724. • REGULATORY AMENDMENT TO CORRECT THE DEFINITION OF "ELIGIBLE APPLICANT" FOR A CRAB SPECIES LICENSE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This action corrects paragraph (3) of the definition of "eligible applicant" for a crab species license. This paragraph is designed to implement part of the License Limitation Program (LLP) for the crab fisheries in the Bering Sea and Aleutian Islands. A final rule to implement the initial crab LLP was published on October 1, 1998 (63 FR 52642). As published in this rule, paragraph (3) incorrectly included the word "and" between "1993" and "1994" in the "eligible applicant" definition. This error incorrectly made the conditions for a certain crab species license more restrictive than intended by the North Pacific Fisheries Management Council and NMFS and inconsistent with crab species license criteria specified at section 679.4(k)(5)(ii)(G). NMFS corrected this error on September 12, 2000 (65 FR 54971).

Subsequently, NMFS issued a final rule on December 14, 2000 (65 FR 78110) to implement Amendment 4 to the Fishery Management Plan for the scallop fishery off Alaska, which created an LLP for the scallop fishery. The scallop final rule added clarifying subheadings to the numbered paragraphs within the definition of "eligible applicant" and in the process, repeated the regulatory text of each paragraph. The regulatory text repeated for paragraph (3), however, was the original incorrect text published on October 1, 1998, for the crab LLP. This mistake likely occurred because, with respect to paragraph (3), the scallop final rule relied on the text of the proposed rule for the scallop LLP which was published on April 21, 2000 (65 FR 21385), before the text was corrected nearly five months later on September 12, 2000. Therefore, this action recorrects paragraph (3) to read as originally intended and corrected to read on September 12, 2000.

Timetable:

Action	Date	FR Cite
Final Action	08/28/02	67 FR 55170

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

Related RIN: Related To 0648-AM42

RIN: 0648–AQ36

725. SEA TURTLE CONSERVATION REGULATIONS; FISHERY ACTIVITIES

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 223

Completed:

Reason	Date	FR Cite
Final Action Effective	09/03/02	
Final Action	09/06/02	67 FR 56931

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Therese Conant
Phone: 301 713-1431
Fax: 301 713-0376

RIN: 0648–AP63

726. ENDANGERED SPECIES; TRANSFERRING PERMITS

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 224; 50 CFR 223; 50 CFR 222

Completed:

Reason	Date	FR Cite
Final Action	09/13/02	67 FR 57970
Final Action Effective	10/15/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lamont Jackson
Phone: 301 713-1401

RIN: 0648–AP64

727. RULEMAKING FOR THE INCIDENTAL TAKING OF MARINE MAMMALS DURING WORLDWIDE DEPLOYMENT OF THE U.S. NAVY'S LOW FREQUENCY ACTIVE SONAR

Priority: Other Significant

CFR Citation: 50 CFR 216.101

Completed:

Reason	Date	FR Cite
Final Action	07/16/02	67 FR 46712

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Kenneth R. Hollingshead
Phone: 301 713-2055
Email: ken.hollingshead@noaa.gov

RIN: 0648–AM62

728. SEA TURTLE CONSERVATION REGULATIONS; SUMMER FLOUNDER FISHERY

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 223; 50 CFR 222

Completed:

Reason	Date	FR Cite
Final Action	04/17/02	67 FR 18833

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

Agency Contact: Therese Conant
Phone: 301 713-1431
Fax: 301 713-0376

RIN: 0648–AM89

729. TAKING AND IMPORTING MARINE MAMMALS; TAKING MARINE MAMMALS INCIDENTAL TO OIL AND GAS STRUCTURE REMOVAL ACTIVITIES IN THE GULF OF MEXICO

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 216

Completed:

Reason	Date	FR Cite
NPRM	04/19/02	67 FR 19370
Final Action	08/01/02	67 FR 49869

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kenneth Hollingshead
Phone: 301 713-2322
Fax: 301 713-0376
Email: ken.hollingshead@noaa.gov

RIN: 0648–AP83

730. • TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS; ATLANTIC LARGE WHALE TAKE REDUCTION PLAN REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 229

Legal Deadline: None

Abstract: This action will amend the regulations that implement the Atlantic Large Whale Take Reduction Plan, specifically with regard to the straight set of gillnets in the southeast U.S. restricted area in waters off the coasts of Georgia and Florida. The intent of this rulemaking is to prohibit straight sets of gillnets at night from November 15 through March 31, annually to reduce the risk of entanglement of large whales, including the western North Atlantic right whale.

This rule was published on March 27, 2002, in the Federal Register under RIN 0648-AN88.

Timetable:

Action	Date	FR Cite
NPRM	03/27/02	67 FR 14690
NPRM Comment Period End	05/28/02	
Final Action	09/23/02	67 FR 59471

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patricia Lawson, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2322
Email: patricia.lawson@noaa.gov

Related RIN: Related To 0648-AN88

RIN: 0648–AP93

731. • SEA TURTLE CONSERVATION REGULATIONS; RESTRICTIONS APPLICABLE TO SHRIMP TRAWL ACTIVITIES; LEATHERBACK CONSERVATION ZONE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 222; 50 CFR 223

Legal Deadline: None

Abstract: NMFS is closing, for a two-week period, all inshore waters and offshore waters out to 10 nautical miles (nm) (18.5 km) seaward of the COLREGS demarcation line, bounded by 31 degrees N. lat. (approximately St. Andrews Sound, Georgia) and 32 degrees N. lat. (approximately Tybee Island, Georgia) within the Leatherback Conservation Zone, to fishing by shrimp trawlers required to have a turtle excluder device (TED) installed in each net that is rigged for fishing, unless the TED has an escape opening large enough to exclude leatherback turtles, as specified in the regulations.

Timetable:

Action	Date	FR Cite
Final Action	04/24/02	67 FR 20054

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Opay, Sea Turtle Ecologist, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Hwy., Silver Spring, MD 20910

DOC—NOAA — **Completed Actions**

Phone: 301 713-1401

RIN: 0648–AP96

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732. • ATLANTIC LARGE WHALE TAKE REDUCTION; TEMPORARY AREA AND GEAR RESTRICTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 229

Legal Deadline: None

Abstract: NMFS is implementing temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These restrictions apply to lobster trap and anchored gillnet fishing gear in an area totaling approximately 1,100 square nautical miles (nm2) (2,038.5 km2) in April and 1,700 nm2 (3,150 km2) in May off Cape Ann, MA, for 15 days. The purpose of this action is to provide immediate protection to an aggregation of North Atlantic right whales (right whales).

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/26/02	67 FR 20699

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Lawson, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2322
Email: patricia.lawson@noaa.gov

RIN: 0648–AP97

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733. • SEA TURTLE CONSERVATION REGULATIONS; RESTRICTIONS APPLICABLE TO SHRIMP TRAWL ACTIVITIES; LEATHERBACK CONSERVATION ZONE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 222; 50 CFR 223

Legal Deadline: None

Abstract: NMFS is closing, for a short 2-week period, all inshore waters and offshore waters 10 nautical miles (nm) (18.5 km) seaward of the COLREGS demarcation line, bounded by 32 degrees N. lat. (approximately Tybee Island, Georgia) and 34 degrees N. lat. (approximately Wilmington Beach, North Carolina) within the Leatherback Conservation Zone, to fishing by shrimp trawlers required to have a turtle excluder device (TED) installed in each net that is rigged for fishing, unless the TED has an escape opening large enough to exclude leatherback turtles, as specified in the regulations.

Timetable:

Action	Date	FR Cite
Final Action	05/01/02	67 FR 21585

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Opay, Sea Turtle Ecologist, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Hwy., Silver Spring, MD 20910
Phone: 301 713-1401

RIN: 0648–AP99

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734. • SEA TURTLE CONSERVATION REGULATIONS; RESTRICTIONS APPLICABLE TO SHRIMP TRAWL ACTIVITIES; LEATHERBACK CONSERVATION ZONE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 222; 50 CFR 223

Legal Deadline: None

Abstract: NMFS is requiring shrimp trawlers fishing in offshore Atlantic waters west of 77 degrees 57.5 minutes W. longitude (approximately Cape Fear, N.C.) and north of 30 degrees N. latitude (just north of St. Augustine, Fla.) to use tirtle excluder devices (TEDs) with escape openings modified to exclude leatherback turtles and to restrict shrimp trawling to the hours between one hour before sunrise to one hour after sunset.

Timetable:

Action	Date	FR Cite
Final Action	05/30/02	67 FR 37723

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Opay, Sea Turtle Ecologist, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Hwy., Silver Spring, MD 20910
Phone: 301 713-1401

RIN: 0648–AQ06

Department of Commerce (DOC)
National Telecommunications and Information Administration (NTIA) — **Completed Actions**

735. MANDATORY REIMBURSEMENT RULES FOR RELOCATION OF FEDERAL SPECTRUM

Priority: Other Significant

CFR Citation: 47 CFR 301

Completed:

Reason	Date	FR Cite
Final Rule	06/17/02	67 FR 41182

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: Milton Brown
Phone: 202 482-1816
Fax: 202 501-8013
Email: mbrown@ntia.doc.gov

RIN: 0660–AA14

Department of Commerce (DOC)
Patent and Trademark Office (PTO) — **Proposed Rule Stage**

736. RULES OF PRACTICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES IN APPEALS UNDER 35 U.S.C. 134

Priority: Substantive, Nonsignificant

Legal Authority: 35 USC 2(B)(2); 35 USC 6; 35 USC 134

CFR Citation: 37 CFR 1.191 to 1.198; 37 CFR 1.959 to 1.981

Legal Deadline: None

Abstract: The United States Patent and Trademark Office proposes to amend its rules of patent appellate practice to simplify proceedings and to reflect changes in recent legislation.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeffrey V. Nase, Administrative Patent Judge, Department of Commerce, Patent and Trademark Office, Commissioner of Patents and Trademarks, Washington, DC 20231
Phone: 703 305-9797
Fax: 703 308-7953
Email: jeffrey.nase@uspto.gov

RIN: 0651–AB27

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737. CHANGES IN RULES OF PRACTICE FOR PATENT INTERFERENCES AND RELATED PROCEEDINGS

Priority: Substantive, Nonsignificant

Legal Authority: 35 USC 2; 35 USC 3; 35 USC 6; 35 USC 10; 35 USC 22; 35 USC 23; 35 USC 25; 35 USC 32; 35 USC 41; 35 USC 135; ...

CFR Citation: 37 CFR 1; 37 CFR 41; ...

Legal Deadline: None

Abstract: The United States Patent and Trademark Office will revise its rules of practice in patent interferences to simplify the process and to increase its flexibility and efficiency.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard Torczon, Administrative Patent Judge, Department of Commerce, Patent and Trademark Office, Box Interference, Washington, DC 20231
Phone: 703 308-9797
Fax: 703 305-0942
Email: interference.rules@uspto.gov

RIN: 0651–AB32

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738. CHANGES TO IMPROVE THE PATENT AND APPLICATION PROCESS

Priority: Substantive, Nonsignificant

Legal Authority: 35 USC 2(b)(2)

CFR Citation: 37 CFR 1

Legal Deadline: None

Abstract: The United States Patent and Trademark Office (Office) is revising the rules of practice to improve the patent application and examination process. For example, the Office is proposing: (1) changes to facilitate the filing of applications and subsequent papers by facsimile or electronic mail message over Internet; (2) changes to the manner in which applicants bring pertinent information to the Office's attention and how the Office uses that information; (3) limitation on the number of claims that must be given a separate examination by the Office; (4) changes to allow the Office to terminate proceedings or application if the applicant refuses to prosecute the application with reasonable diligence; and (5) changes that facilitate obtaining information from the applicant to aid in the examination process, such as what information is well known in the art, where support for a claim is found in the written description, what priority application provides support for each claim. These changes to the patent application and examination process are necessary for the Office to be able to process an ever-increasing number of applications within a reasonable time frame.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert W. Bahr, Senior Patent Attorney, Department of Commerce, Patent and Trademark Office, Box DAC, Assistant Commissioner for Patents, Washington, DC 20231
Phone: 703 305-8850
Fax: 703 305-6916
Email: robert.bahr@uspto.gov

RIN: 0651–AB50

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739. • REVISION OF THE FEES FOR REQUEST FOR CONTINUED EXAMINATION AND THE URAA TRANSITIONAL EXAMINATION PRACTICES

Priority: Substantive, Nonsignificant

Legal Authority: 35 USC 41, 2(b)(2)

CFR Citation: 37 CFR 1

Legal Deadline: None

Abstract: The United States Patent and Trademark Office (Office) is proposing to adjust the fee for filing a request for continued examination in a patent application, and the fees for a submission after final or for the examination of each additional invention under the Uruguay Round Agreements Act (URAA) transitional examination practices in a patent application. The Office is proposing to adjust these fees to be closer to the actual cost of providing the additional examination given to an application when an applicant files a request for continued examination, or a submission after final or a request for the examination of each additional invention under the URAA transitional examination practices.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert W. Bahr, Senior Patent Attorney, Department of Commerce, Patent and Trademark Office, Box DAC, Assistant Commissioner for Patents, Washington, DC 20231
Phone: 703 305-8850
Fax: 703 305-6916
Email: robert.bahr@uspto.gov

RIN: 0651–AB53

DOC—PTO

Proposed Rule Stage

740. • CHANGES IN TRADEMARK RULES OF PRACTICE IN INTER PARTES PROCEEDINGS BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1067; 35 USC 2(8)(2)(A)

CFR Citation: 37 CFR 2.120(a); 37 CFR 2.120(d) to (g); 37 CFR 2.120 (i) to (j); 37 CFR 2.121 (a) to (b); 37 CFR 2/127 (e)

Legal Deadline: None

Abstract: The United States Patent and Trademark Office proposes to amend its rules of practice in connection with inter partes proceedings before the Trademark Trial and Appeal Board to require initial disclosure of certain information.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James David Sams, Chief Administrative Trademark Judge, Department of Commerce, Patent and Trademark Office, ST-9A03, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, VA 22202
Phone: 703 308-9300
Fax: 703 308-9092
Email: david.sams@uspto.gov

RIN: 0651–AB56

Department of Commerce (DOC)
Patent and Trademark Office (PTO)

Final Rule Stage

741. COMPLAINTS REGARDING INVENTION PROMOTERS

Priority: Substantive, Nonsignificant

Legal Authority: 35 USC 2(b)(2); 35 USC 297; PL 106-113, sec 4001

CFR Citation: 37 CFR 4

Legal Deadline: None

Abstract: The Patent and Trademark Office (Office) has added rules of practice to implement the Office's procedures for accepting complaints under the Inventor's Rights Act of 1999. The Act requires the Office to provide a forum for publishing complaints concerning invention promoters.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/20/00	65 FR 3127
Interim Final Rule Effective	01/28/00	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William R. Covey, Associate Counsel for General Law, Department of Commerce, Patent and Trademark Office, Washington, DC 20231
Phone: 703 308-2000
Fax: 703 305-5907
Email: william.covey@uspto.gov

RIN: 0651–AB12

742. ELIMINATION OF CONTINUED PROSECUTION APPLICATION PRACTICE AS TO UTILITY AND PLANT

Priority: Substantive, Nonsignificant

Legal Authority: 35 USC 2(b)(2)

CFR Citation: 37 CFR 1

Legal Deadline: None

Abstract: The American Inventors Protection Act of 1999 (AIPA) enacted provisions for the continued examination of a utility or plant application at the request of the applicant (request for continued examination or RCE practice). Therefore, there no longer appears to be a need for continued prosecution application (CPA) practice as to utility and plant applications. Thus, the Office is eliminating CPA practice as to utility and plant applications. An applicant for a utility or plant patent may also continue to effectively obtain further examination of the application by filing a continuing application under section 1.53(b). Since RCE practice does not apply to design applications, CPA practice will remain in place for design applications.

Timetable:

Action	Date	FR Cite
NPRM	07/09/01	66 FR 35763
NPRM Comment Period End	09/07/01	
Final Action	11/00/02	
Final Action Effective	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert W. Bahr, Senior Patent Attorney, Department of Commerce, Patent and Trademark Office, Box DAC, Assistant Commissioner for Patents, Washington, DC 20231
Phone: 703 305-8850
Fax: 703 305-6916
Email: robert.bahr@uspto.gov

RIN: 0651–AB37

743. • REVISION OF PATENT AND TRADEMARK FEES FOR FISCAL YEAR 2003

Priority: Routine and Frequent

Legal Authority: 35 USC 41; 15 USC 1115; 35 USC 1051; 15 USC 1113; 15 USC 1123; 35 USC 2(b)(2); 35 USC 376; PL 105-358; PL 106-113

CFR Citation: 37 CFR 1.16 TO 1.21; 37 CFR 1.26; 37 CFR 1.445; 37 CFR 1.482; 37 CFR 1.492; 37 CFR 2.6

Legal Deadline: Final, Statutory, October 1, 2002, Final Action Effective Date.

Abstract: This rulemaking revises certain patent and trademark fees to reflect fluctuations in the Consumer Price Index (CPI) consistent with PL 105-358, as amended by PL 106-113.

Timetable:

Action	Date	FR Cite
NRPM	05/17/02	67 FR 30634
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Matthew Lee, Financial Systems Analyst, Department of Commerce, Patent and Trademark Office, PK1-802, Washington, DC 20231
Phone: 703 305-8051
Email: matthew.lee@uspto.gov

RIN: 0651–AB51

DOC—PTO

Final Rule Stage

744. • CHANGES TO IMPLEMENT PATENT-RELATED PROVISIONS OF UNITED STATES PATENT AND TRADEMARK REAUTHORIZATION ACT, FISCAL YEAR 2003

Priority: Substantive, Nonsignificant

Legal Authority: 35 USC 41, 2(b)(2)

CFR Citation: 37 CFR 1

Legal Deadline: None

Abstract: The United States Patent and Trademark Office Reauthorization Act, fiscal year 2003, includes changes to the patent fee structure as well as the patent application examination process. Under the revised patent fee structure and patent application examination process, the United States Patent and Trademark Office (Office) will not examine an application for patent unless the applicant files a request for examination and pays the examination fee in a timely manner. This interim final rule implements these changes in the patent fee structure and patent application examination process.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert W. Bahr, Senior Patent Attorney, Department of Commerce, Patent and Trademark Office, Box DAC, Assistant Commissioner for Patents, Washington, DC 20231
Phone: 703 305-8850
Fax: 703 305-6916
Email: robert.bahr@uspto.gov

RIN: 0651–AB54

Department of Commerce (DOC)
Patent and Trademark Office (PTO)

Long-Term Actions

745. CORRESPONDENCE FILED IN THE PATENT AND TRADEMARK OFFICE

Priority: Info./Admin./Other

CFR Citation: 37 CFR 1.1

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Briskin
Phone: 703 308-2000
Fax: 703 305-5907
Email: michael.briskin@uspto.gov

RIN: 0651–AB17

746. MADRID PROTOCOL IMPLEMENTATION ACT RULES CHANGE

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary E. Hannon
Phone: 703 308-8900
Fax: 703 872-9280
Email: mary.hannon@uspto.gov

RIN: 0651–AB45

747. • PROCESSING FEE FOR USE OF PAPER FORMS FOR SUBMISSION OF APPLICATIONS FOR REGISTRATION AND OTHER DOCUMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1113; 37 USC 9701

CFR Citation: 37 CFR 2.6(a)

Legal Deadline: None

Abstract: The United States Patent and Trademark Office seeks to amend its rules to require a $50.00 paper processing fee when a party submits a paper instead of an electronically transmittable form available through the Trademark Electronic Application System (TEAS).

Timetable:

Action	Date	FR Cite
NPRM	05/12/02	67 FR 35081
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Craig Morris, Department of Commerce, Patent and Trademark Office, Office of the Commissioner of Trademarks, Washington, DC 20231
Phone: 703 308-3910

Related RIN: Related To 0651-AB47

RIN: 0651–AB52

748. • CHANGES TO REPRESENTATION OF OTHERS BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 500(a)

CFR Citation: 37 CFR 1; 37 CFR 2; 37 CFR 10; 37 CFR 11

Legal Deadline: None

Abstract: The United States Patent and Trademark Office (USPTO) proposes to update the procedures regarding enrollment and discipline. The office also proposes to replace the current USPTO Code of Professional Responsibility, which is based on the Model Code of Professional Responsibility of the American Bar Association, with USPTO Rules of Professional Conduct, which are based largely on the Model Rules of Professional Conduct of the American Bar Association.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Harry I. Moatz, Director of Enrollment and Discipline, Department of Commerce, Patent and Trademark Office, Commissioner of Patents and Trademarks, Washington, DC 20231

DOC—PTO — **Long-Term Actions**

Phone: 703 306-4097
Related RIN: Related To 0651-AB38
RIN: 0651–AB55

Department of Commerce (DOC)
Patent and Trademark Office (PTO) — **Completed Actions**

749. RULEMAKING RELATED TO ELECTRONIC FILING OF TRADEMARK DOCUMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 37 CFR 1.4; 37 CFR 2.21; 37 CFR 2.56; 37 CFR 2.76; 37 CFR 2.88 to 2.89; 37 CFR 2.161; 37 CFR 2.166 to 2.168; ...

Completed:

Reason	Date	FR Cite
Final Action	07/23/02	67 FR 36099
Final Action Effective	07/23/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mary E. Hannon
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Fax: 703 872-9280
Email: mary.hannon@uspto.gov

Related RIN: Merged With 0651-AB48

RIN: 0651–AB31

Department of Commerce (DOC)
Technology Administration (TA) — **Final Rule Stage**

750. RIGHTS TO INVENTIONS MADE BY NONPROFIT ORGANIZATIONS AND SMALL BUSINESS FIRMS UNDER GOVERNMENT GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS

Priority: Other Significant

Legal Authority: 35 USC 206

CFR Citation: 37 CFR 401

Legal Deadline: None

Abstract: This rule is issued to authorize the electronic reporting of inventions and the filing of provisional patent applications.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/14/95	60 FR 41811
Interim Final Rule Comment Period End	09/13/95	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Karen Laney-Cummings, Acting Director, Technology Competitiveness, Department of Commerce, Technology Administration, 14th & Pennsylvania Ave. NW., Washington, DC 20230
Phone: 202 482-2100
Fax: 202 219-8667

RIN: 0692–AA14

751. ACQUISITION AND PROTECTION OF FOREIGN RIGHTS IN INVENTIONS

Priority: Substantive, Nonsignificant

Legal Authority: EO 10096; 15 USC 3710d

CFR Citation: 37 CFR 101; 37 CFR 501

Legal Deadline: None

Abstract: On August 7, 1996, 37 CFR part 101 was abolished and 37 CFR part 501 expanded to cover foreign rights of inventions made by Federal employees.

We are evaluating the comments received on the interim final rule and will be making minor changes to the regulation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/07/96	61 FR 40997
Interim Final Rule Effective	08/07/96	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: John H. Raubitschek, Patent Counsel, Department of Commerce, Technology Administration, HCHB Room 4613, 14th & Pennsylvania Avenue, NW., Washington, DC 20230
Phone: 202 482-8010
Fax: 202 273-0607
Email: jraubits@doc.gov

RIN: 0692–AA15

752. AMENDMENT TO RIGHTS TO INVENTIONS MADE BY NONPROFIT ORGANIZATIONS AND SMALL BUSINESS FIRMS UNDER GOVERNMENT GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 35 USC 206

CFR Citation: 37 CFR 401

Legal Deadline: NPRM, Statutory, June 30, 2000, To provide for an exception for support contractors.

Abstract: This would require certain contractors to assign their rights if they make an invention under a Cooperative Research and Development Agreement.

Timetable:

Action	Date	FR Cite
NPRM	09/11/00	65 FR 54826
Final Rule	10/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: John H. Raubitschek, Patent Counsel, Department of Commerce, Technology Administration, HCHB Room 4613, 14th & Pennsylvania Avenue, NW., Washington, DC 20230
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RIN: 0692–AA18

[FR Doc. 02–23903 Filed 12–06–02; 8:45 am]
BILLING CODE 3510–BW–S

Federal Register

Monday,
December 9, 2002

Part V

Department of Defense

Semiannual Regulatory Agenda

DEPARTMENT OF DEFENSE (DOD)

DEPARTMENT OF DEFENSE

32 CFR Chs. I, V, VI, and VII

33 CFR Ch. II

36 CFR Ch. III

48 CFR Ch. II

Improving Government Regulations; Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Department of Defense (DoD).

ACTION: Semiannual regulatory agenda.

SUMMARY: The Department of Defense (DoD) is publishing this semiannual agenda of regulatory documents, including those that are procurement-related, for public information and comments under Executive Order 12866 "Regulatory Planning and Review." This agenda incorporates the objective and criteria, when applicable, of the regulatory reform program under the Executive order and other regulatory guidance. It contains DoD issuances initiated by DoD components that may have economic and environmental impact on State, local, or tribal interests under the criteria of Executive Order 12866. Although most DoD issuances listed in the agenda are of negligible public impact, their nature may be of public interest and, therefore, are published to provide notice of rulemaking and an opportunity for public participation in the internal DoD rulemaking process.

For this edition of the Department of Defense's regulatory agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Regulatory Plan entries are listed in the table of contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

The agenda portion of this document updates the report published on May 13, 2002, and includes regulations expected to be issued and under review over the next 12 months. The next agenda is scheduled to be published in the spring of 2003, with the next regulatory plan scheduled to be published in the fall of 2003. In addition to this agenda, DoD components also publish rulemaking notices pertaining to their specific statutory administration requirements as required.

FOR FURTHER INFORMATION CONTACT: For information concerning the overall DoD regulatory improvement program and for general semiannual agenda information, contact Mr. Robert Cushing, telephone 703-604-6269, or write to Directorate for Information Operations and Reports, Washington Headquarters Services, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, or e-mail: cushingr@dior.whs.mil.

For questions of a legal nature concerning the agenda and its statutory requirements or obligations, write to Office of the General Counsel, 1600 Defense Pentagon, Washington, DC 20301-1600, or call 703-697-2714.

For general information on Office of the Secretary regulations, other than those which are procurement-related, contact Mr. Dan Cragg, telephone 703-601-4722, or write to Directives and Records Division, Directorate for Correspondence and Directives, Washington Headquarters Services, Suite 501, 1111 Jefferson Davis Highway, Arlington, Virginia 22202, or e-mail: dcragg@cd.whs.mil.

For general information on Office of the Secretary agenda items which are procurement-related, contact Ms. Michele Peterson, telephone 703-602-0311, or write to Defense Acquisition Regulations Directorate, 3062 Defense Pentagon, Washington, DC 20301-3062, or e-mail: michele.peterson@osd.mil.

For general information on Department of the Army regulations, contact Ms. Luz D. Ortiz, telephone 703-806-3708, or write to the U.S. Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, 6000 6th Street, Stop 5603, Fort Belvoir, Virginia 22060-5603, or e-mail: luz.ortiz@rmda.belvoir.army.mil.

For general information on the U.S. Army Corps of Engineers regulations, contact Mr. Chip Smith, telephone 703-693-3644, or write to Office of the Deputy Assistant Secretary of the Army (Policy and Legislation), 108 Army Pentagon, Room 2E569, Washington, DC 20310-0108, or e-mail: chip.smith@hqda.army.mil.

For general information on Department of the Navy regulations, contact Lieutenant Commander Robert Vincent, telephone 703-604-8208, or write to Department of the Navy, Office of the Judge Advocate General, Administrative Law Division (Code 13), Washington Navy Yard, 1322 Patterson Avenue SE., Suite 3000, Washington, DC 20374-5066, or e-mail: welsh.thomas@hq.navy.mil.

For general information on Department of the Air Force regulations, contact Mrs. Pamela D. Fitzgerald, telephone 703-601-4042, or write to Department of the Air Force, AF-CIO/P, 1155 Air Force Pentagon, Washington, DC 20330-1155, or e-mail: pamela.fitzgerald@pentagon.af.mil.

For specific agenda items, contact the appropriate individual indicated in each DoD component report.

SUPPLEMENTARY INFORMATION: This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions is composed of the regulatory status reports, including procurement-related regulatory status reports, from the Office of the Secretary of Defense (OSD) and the Departments of the Army, Navy, and Air Force. Included also is the regulatory status report from the U.S. Army Corps of Engineers, whose civil works functions fall under the reporting requirements of Executive Order 12866 and involve water resource projects and regulation of activities in waters of the United States.

DoD issuances range from DoD directives (reflecting departmental policy) to implementing instructions and regulations (largely internal and used to implement directives). The OSD agenda section contains the primary directives under which DoD components promulgate their implementing regulations.

To ease identification and to differentiate among the variety of issuances reported, they are identified by their DoD internal numbering system, which denotes component level of authority and type of issuance, in addition to the required CFR number.

In addition, this agenda, although published under the reporting requirements of Executive Order 12866, continues to be the DoD single-source reporting vehicle, which identifies issuances that are currently applicable under the various regulatory reform programs in progress. Therefore, DoD components will identify those rules which come under the criteria of the:

a. Regulatory Flexibility Act;

b. Paperwork Reduction Act of 1995;

DOD

c. Unfunded Mandates Reform Act of 1995.

Those DoD issuances, which are directly applicable under these statutes, will be identified in the agenda and their action status indicated. Generally, the regulatory status reports in this agenda will contain five sections: (1) Prerule stage; (2) proposed rule stage; (3) final rule stage; (4) completed actions; and (5) long-term actions. Where certain regulatory actions indicate that small entities are affected, the effect on these entities may not necessarily have significant economic impact on a substantial number of these entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601(6)).

Although not a regulatory agency, DoD will continue to participate in regulatory initiatives designed to reduce economic costs and unnecessary environmental burdens upon the public. Comments and recommendations are invited on the rules reported and should be addressed to the DoD component representatives identified in the regulatory status reports. Although sensitive to the needs of the public, as well as regulatory reform, DoD reserves the right to exercise the exemptions and flexibility permitted in its rulemaking process in order to proceed with its overall defense-oriented mission. The publishing of this agenda does not waive the applicability of the military affairs exemption in section 553 of title 5 U.S.C. and section 3 of Executive Order 12866.

Dated: September 13, 2002.

Howard G. Becker

Acting Director, Administration and Management.

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
753	Settling Personnel and General Claims and Processing Advance Decision Requests	0790-AG47
754	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	0790-AG83
755	Stars and Stripes (S&S) Newspaper	0790-AG84
756	Department of Defense Newspapers, Magazines, and Civilian Enterprise Publications	0790-AG85
757	Procedures for Settling Personnel and General Claims and Processing Advance Decision Requests	0790-AG89
758	Waiver of Debts Resulting From Erroneous Payments of Pay and Allowances (DoD Directive 1340.21)	0790-AG90
759	Waiver Procedures for Debts Resulting From Erroneous Payments of Pay and Allowances (DoD Instruction 1340.23)	0790-AG91
760	Development of a Munitions Response Site Prioritization Protocol	0790-AG94

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
761	National Security Education Program (NSEP) Grants to Institutions of Higher Education (DoD Instruction 1025.5)	0790-AF59
762	Restoration Advisory Boards (RABs)	0790-AG31
763	Personnel Security Policies for Granting Access to Classified Information	0790-AG54
764	National Policy on Reciprocity of Facilities and Guidelines for Implementation of Reciprocity	0790-AG55
765	National Policy on Technical Surveillance Countermeasures	0790-AG56
766	Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations	0790-AG76
767	Governmentwide Debarment and Suspension (Non-Procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	0790-AG86
768	DoD Grant and Agreement Regulations	0790-AG87
769	Voluntary State Tax Withholding From Retired Pay	0790-AG93
770	Implementation of Wildfire Suppression Aircraft Transfer Act of 1996	0790-AG95
771	National Security Agency/Central Security Service (NSA/CSS) Freedom of Information Act Program	0790-AG96

Office of the Secretary—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
772	Teacher and Teacher's Aide Placement Assistance Program (Troops to Teachers) (DoD Instruction 1404.13)	0790-AF71
773	Former Spouse Payments From Retired Pay; Amendment (DoD Directive 1340.16 and DoD 7000.14-R, Vol 7, Part B)	0790-AG22
774	Closed, Transferred, and Transferring Ranges Containing Military Munitions	0790-AG46

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Office of the Secretary—Completed Actions

Sequence Number	Title	Regulation Identification Number
775	Implementation of the Wildfire Suppression Aircraft Transfer Act of 1996	0790-AG60
776	Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects	0790-AG92

Defense Acquisition Regulations Council—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
777	Patent Rights—Ownership by the Contractor (Large Business) (DFARS Case 2001-D015)	0750-AD72
778	Rewrite of DFARS Part 225 and Associated Text and Clauses (DFARS Case 2002-D009)	0750-AD73

Defense Acquisition Regulations Council—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
779	Incremental Funding, Fixed-Price Contracts (DFARS Case 90-037)	0750-AA07
780	Performance-Based Service Contracts Using Part 12 Procedures (DFARS Case 2000-D306)	0750-AD35
781	Enterprise Software Agreements (DFARS Case 2000-D023)	0750-AD37
782	Restriction on Contingent Fees for Foreign Military Sales—Commercial Items (DFARS Case 2000-D029)	0750-AD47
783	Applicability of Competition Requirements to Purchases From a Required Source (DFARS Case 2002-D003)	0750-AD57
784	Performance of Security Functions (DFARS Case 2001-D018)	0750-AD58
785	Electronic Submission and Processing of Payment Requests (DFARS Case 2002-D001)	0750-AD70
786	Competition Requirements for Purchase of Services Under Multiple Award Contracts (DFARS Case 2001-D017)	0750-AD71
787	Exception for Acquisition of U.S.-Made End Products in Acquisitions Subject to the Trade Agreements Act (DFARS Case 2002-D008)	0750-AD74
788	Foreign Military Sales Customer Involvement (DFARS Case 2002-D005)	0750-AD75
789	Codification and Modification of Provision of Law Known as the "Berry Amendment" (DFARS Case 2002-D002)	0750-AD76
790	Acquisition Workforce Qualifications (DFARS Case 2002-D021)	0750-AD77

Defense Acquisition Regulations Council—Completed Actions

Sequence Number	Title	Regulation Identification Number
791	Institutions of Higher Education (DFARS Case 1999-D303)	0750-AD05
792	Ocean Transportation by United States-Flag Vessels—Simplified Acquisition Threshold (DFARS Case 2000-D014)	0750-AD19
793	Changes to Profit Policy (DFARS Case 2000-D018)	0750-AD21
794	Balance of Payments Program (DFARS Case 2000-D020)	0750-AD22
795	Subcontract Commerciality Determinations (DFARS Case 2000-D028)	0750-AD36
796	Utilization of Indian Organizations and Indian-Owned Economic Enterprises (DFARS Case 2000-D024)	0750-AD42
797	Research and Development Streamlined Contracting Procedures (DFARS Case 2001-D002)	0750-AD43
798	DoD Pilot Mentor-Protege Program (DFARS Case 2001-D006)	0750-AD52
799	Preference for Local 8(a) Contractors—Base Closure or Realignment (DFARS Case 2001-D007)	0750-AD53
800	Partnership Agreement Between SBA and DoD (DFARS Case 2001-D016)	0750-AD59
801	Restriction on Acquisition of Vessel Propellers (DFARS Case 2002-D006)	0750-AD61
802	Weighted Guidelines Form (DFARS Case 2002-D012)	0750-AD63
803	Reporting Requirements Update (DFARS Case 2002-D010)	0750-AD65
804	NAFTA Procurement Threshold (DFARS Case 2002-D007)	0750-AD67
805	Trade Agreements Thresholds—Construction (DFARS Case 2002-D011)	0750-AD69

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Defense Acquisition Regulations Council—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
0750-AA09	Demilitarization (DFARS Case 92-D024)	04/26/2002	Withdrawn
0750-AC98	Anticompetitive Teaming (DFARS Case 1999-D028)	04/15/2002	Withdrawn

Department of the Army—Completed Actions

Sequence Number	Title	Regulation Identification Number
806	Environmental Analysis of Army Actions	0702-AA34

U.S. Army Corps of Engineers—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
807	Environmental Quality; Procedures for Implementing the National Environmental Policy Act (NEPA)	0710-AA42

U.S. Army Corps of Engineers—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
808	Natural Disaster Procedures: Preparedness, Response, and Recovery Activities of the Corps of Engineers	0710-AA47
809	Programmatic Regulations for the Comprehensive Everglades Restoration Plan (**Reg Plan Seq No. 21**)	0710-AA49

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

U.S. Army Corps of Engineers—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
810	Regulatory Programs of the Corps of Engineers	0710-AA30
811	Regulatory Programs of the Corps of Engineers—Wetland Delineator Certification Program	0710-AA38
812	Regulatory Programs of the Corps of Engineers, Endangered Species Act; Scope of Analysis	0710-AA43
813	Flood Control Cost-Sharing Requirements Under the Ability To Pay Provisions	0710-AA44

U.S. Army Corps of Engineers—Completed Actions

Sequence Number	Title	Regulation Identification Number
814	Proposed Revision to the Clean Water Act Regulatory Definitions of "Fill Material" and the "Discharge of Fill Material"	0710-AA48

Department of the Navy—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
815	Use of Department of the Navy Aviation Facilities by Other Than United States Department of Defense Aircraft	0703-AA48
816	Policies and Responsibilities for Implementation of the National Environmental Policy Act Within the Department of the Navy	0703-AA51

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Department of the Navy—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
817	Shipbuilding Capability Preservation Agreements	0703-AA50

Department of the Air Force—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
818	Department of Defense Commercial Air Transportation Quality and Safety Review Program	0701-AA67

Department of the Air Force—Completed Actions

Sequence Number	Title	Regulation Identification Number
819	Installation Entry Policy, Civil Disturbance Intervention and Disaster Assistance	0701-AA64
820	Wake Island Code	0701-AA65

Office of Assistant Secretary for Health Affairs—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
821	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Hospital Payment for Ambulatory Care (DoD 6010.8-R)	0720-AA20
822	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Exception to the CHAMPUS Dual Compensation/Conflict of Interest Provisions	0720-AA41
823	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Prosthetic Devices	0720-AA49
824	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Double Coverage	0720-AA50
825	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Program; Double Coverage; Third-Party Recoveries	0720-AA52
826	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Establishment of an Appeals Process for TRICARE Claimcheck Denials	0720-AA56
827	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Methodology for Coverage of NIH-Sponsored Clinical Trials	0720-AA57
828	CHAMPUS/TRICARE; Implementation of the Pharmacy Benefits Program	0720-AA63
829	Civilian Health and Medical Program of the Uniformed Services; Individual Case Management Program for Persons With Extraordinary Conditions (ICMP-PEC)	0720-AA65
830	TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Eligibility and Payment Procedures for CHAMPUS Beneficiaries Age 65 and Over	0720-AA66
831	TRICARE Prime Remote for Active Duty Family Members	0720-AA68
832	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Voluntary Disenrollment From the TRICARE Retiree Dental Program (TRDP)	0720-AA69
833	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS): Enuretic Devices, Breast Reconstructive Surgery, PFPWD Valid Authorization Period, Early Intervention Services	0720-AA70
834	TRICARE; Waiver of Certain TRICARE Deductibles; Clarification of the TRICARE Prime Enrollment Period	0720-AA72
835	TRICARE; Sub-Acute Care Program; Uniform Skilled Nursing Facility Benefit; Home Health Care Benefit; Adopting Medicare Payment Methods for Skilled Nursing Facilities and Home Health Care Providers	0720-AA73

Office of Assistant Secretary for Health Affairs—Completed Actions

Sequence Number	Title	Regulation Identification Number
836	TRICARE; Revisions to Coverage Criteria for Transplants, Cardiac and Pulmonary Rehabilitation, and Ambulance Services	0720-AA28

DOD

Office of Assistant Secretary for Health Affairs—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
837	TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Bonus Payments in Medically Underserved Areas	0720-AA60
838	CHAMPUS/TRICARE; Partial Implementation of Pharmacy Benefits Program; Implementation of National Defense Authorization Act Medical Benefits for Fiscal Year 2001	0720-AA62
839	Collection From Third-Party Payers of Reasonable Charges of Healthcare Services	0720-AA67

Department of Defense (DOD)
Office of the Secretary (OS)

Proposed Rule Stage

753. SETTLING PERSONNEL AND GENERAL CLAIMS AND PROCESSING ADVANCE DECISION REQUESTS

Priority: Other Significant

Legal Authority: 31 USC 3702

CFR Citation: 32 CFR 281

Legal Deadline: None

Abstract: The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense (DoD). Later, the General Accounting Office Act of 1996 codified many of these delegations and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding $1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members to DoD and the authority to waive employee debts to the employee's agency (non-DoD agencies may request an advisory opinion from DoD). The Secretary of Defense further delegated his claims settlement authority to the Defense Office of Hearings and Appeals (DOHA). This proposed rule seeks public comments on the procedures that DOHA proposes to use to implement these authorities.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Pending analysis of public comments and issuance of final regulations, DOHA intends to use the procedures and practices applicable to claims and waiver applications before the effective dates of the transfers of authority, June 30, 1996, and December 18, 1996, respectively, which are published in title 4, Code of Federal Regulations, chapter 1, subchapters C and G. See also 61 FR 50285, September 25, 1996; and 62 FR 5387, February 5, 1997.

Agency Contact: Michael Hipple, Department of Defense, Office of the Secretary
Phone: 703 696-8524

Related RIN: Related To 0790-AG89, Related To 0790-AG90, Related To 0790-AG91

RIN: 0790–AG47

754. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Department of Defense proposes to make amendments to its regulations implementing title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRRA's definition of "program or activity" and "program" into the Department of Defense's title VI, section 504, and Age Discrimination Act regulations. The Department of Defense's proposed regulation will be published as part of a joint notice of proposed rulemaking involving up to 24 Federal agencies.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Jerry Anderson, Department of Defense, Office of the Secretary
Phone: 703 695-0105

RIN: 0790–AG83

DOD—OS

Proposed Rule Stage

755. STARS AND STRIPES (S&S) NEWSPAPER

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 113

CFR Citation: 32 CFR 246

Legal Deadline: None

Abstract: This rule establishes policies and assigns responsibilities for the Stars and Stripes (S&S) newspaper operations. It designates the Secretary of the Army as the DoD Executive Agent for nonappropriated fund support to S&S and designates the successor-in-interest to S&S.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: R. Oleszewski, Department of Defense, Office of the Secretary
Phone: 703 428-0629

RIN: 0790–AG84

756. DEPARTMENT OF DEFENSE NEWSPAPERS, MAGAZINES, AND CIVILIAN ENTERPRISE PUBLICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 113

CFR Citation: 32 CFR 247

Legal Deadline: None

Abstract: This rule establishes policy, assigns responsibilities, and prescribes procedures concerning authorized DoD Appropriated Funded (APF) newspapers and magazines, and Civilian Enterprise (CE) newspapers, magazines, guides, and installation maps (hereafter referred to as DoD publications) in support of the DoD Internal Information Program.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: R. Oleszewski, Department of Defense, Office of the Secretary
Phone: 703 428-0629

RIN: 0790–AG85

757. PROCEDURES FOR SETTLING PERSONNEL AND GENERAL CLAIMS AND PROCESSING ADVANCE DECISION REQUESTS

Priority: Other Significant

Legal Authority: 31 USC 3702

CFR Citation: 32 CFR 282

Legal Deadline: None

Abstract: The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense (DoD). Later, the General Accounting Office Act of 1996 codified many of these delegations and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding $1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members to DoD and the authority to waive employee debts to the employee's agency (non-DoD agencies may request an advisory opinion from DoD). The Secretary of Defense further delegated his claims settlement authority to the Defense Office of Hearings and Appeals (DOHA). This proposed rule seeks public comments on the procedures that DOHA proposes to use to implement these authorities.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Hipple, Department of Defense, Office of the Secretary
Phone: 703 696-8524

Related RIN: Related To 0790-AG47, Related To 0790-AG90, Related To 0790-AG91

RIN: 0790–AG89

758. WAIVER OF DEBTS RESULTING FROM ERRONEOUS PAYMENTS OF PAY AND ALLOWANCES (DOD DIRECTIVE 1340.21)

Priority: Other Significant

Legal Authority: 31 USC 3702

CFR Citation: 32 CFR 283

Legal Deadline: None

Abstract: The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense (DoD). Later, the General Accounting Office Act of 1996 codified many of these delegations and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding $1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members to DoD and the authority to waive employee debts to the employee's agency (non-DoD agencies may request an advisory opinion from DoD). The Secretary of Defense further delegated his claims settlement authority to the Defense Office of Hearings and Appeals (DOHA). This proposed rule seeks public comments on the procedures that DOHA proposes to use to implement these authorities.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Hipple, Department of Defense, Office of the Secretary
Phone: 703 696-8524

Related RIN: Related To 0790-AG47, Related To 0790-AG89, Related To 0790-AG91

RIN: 0790–AG90

DOD—OS

Proposed Rule Stage

759. WAIVER PROCEDURES FOR DEBTS RESULTING FROM ERRONEOUS PAYMENTS OF PAY AND ALLOWANCES (DOD INSTRUCTION 1340.23)

Priority: Other Significant

Legal Authority: 31 USC 3702

CFR Citation: 32 CFR 284

Legal Deadline: None

Abstract: The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense (DoD). Later, the General Accounting Office Act of 1996 codified many of these delegations and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding $1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members to DoD and the authority to waive employee debts to the employee's agency (non-DoD agencies may request an advisory opinion from DoD). The Secretary of Defense further delegated his claims settlement authority to the Defense Office of Hearings and Appeals (DOHA). This proposed rule seeks public comments on the procedures that DOHA proposes to use to implement these authorities.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Hipple, Department of Defense, Office of the Secretary
Phone: 703 696-8524

Related RIN: Related To 0790-AG47, Related To 0790-AG89, Related To 0790-AG90

RIN: 0790–AG91

760. • DEVELOPMENT OF A MUNITIONS RESPONSE SITE PRIORITIZATION PROTOCOL

Priority: Other Significant

Legal Authority: 10 USC 2710

CFR Citation: 32 CFR 179

Legal Deadline: None

Abstract: In response to section 311 of the Fiscal Year 2002 National Defense Authorization Act, the Office of the Deputy Under Secretary of Defense (Installations & Environment), U.S. Department of Defense (DoD), proposes to develop a site prioritization protocol for assigning to each defense site (hereinafter, munitions response site) a relative priority for response activities related to unexploded ordnance, discarded military munitions, and munitions constituents. Section 311 lists specific factors to be included in the protocol. DoD is requesting input from interested parties on: (a) these factors; (b) any additional factors to consider in developing a site prioritization protocol; (c) how the proposed protocol should incorporate such factors as they relate to safety and environmental hazards; and (d) recommendations on any existing prioritization methods, models, or tools that should be evaluated.

Timetable:

Action	Date	FR Cite
ANPRM	03/20/02	67 FR 12937
ANPRM Comment Period End	05/20/02	
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Patricia Ferrebee, Department of Defense, Office of the Secretary
Phone: 703 695-6107

RIN: 0790–AG94

Department of Defense (DOD)
Office of the Secretary (OS)

Final Rule Stage

761. NATIONAL SECURITY EDUCATION PROGRAM (NSEP) GRANTS TO INSTITUTIONS OF HIGHER EDUCATION (DOD INSTRUCTION 1025.5)

Priority: Substantive, Nonsignificant

Legal Authority: 20 USC 1141(a)

CFR Citation: 32 CFR 206

Legal Deadline: Final, Statutory, April 5, 1994.

Abstract: The National Security Education Act provided for the National Security Education Program, the National Security Education Board, and a trust fund in the U.S. Treasury to provide all resources for the program. Under the Act, the Secretary is directed to carry out a program to award undergraduate scholarships, graduate fellowships, and grants to institutions of higher education. This rule is to inform those concerned with institutional grants to be offered under the 1994-1995 pilot grants program of the preliminary guidelines.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/19/94	59 FR 26116
Interim Final Rule Comment Period End	07/18/94	
Final Action	11/00/02	
Final Action Effective	01/00/03	
Interim Final Rule Effective	05/05/94	59 FR 26116

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Organizations

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Steve Door, Department of Defense, Office of the Secretary
Phone: 703 696-1991
Email: nsep@nsep.policy.osd.mil

RIN: 0790–AF59

762. RESTORATION ADVISORY BOARDS (RABS)

Priority: Other Significant

Legal Authority: 5 USC 551 et seq; 10 USC 2705

CFR Citation: 32 CFR 202

Legal Deadline: NPRM, Statutory, September 15, 1996.

Abstract: In accordance with the National Defense Authorization Acts for 1995 and 1996, the Department has prepared this rule for Restoration Advisory Boards (RABs). DoD has established RABs at over 200 installations and formerly used Defense sites which have environmental restoration programs for cleanup of contaminated sites. The purpose of the RAB is to facilitate public participation in restoration activities at operating and closing installations. The proposed rule is based on DoD's current policies for RABs, as well as DoD's experience in establishing and operating RABs over the past 2 years.

Timetable:

Action	Date	FR Cite
NPRM	08/06/96	61 FR 40764
NPRM Comment Period End	11/04/96	61 FR 40765
NPRM Extension of Comment Period	11/19/96	61 FR 58803
NPRM Comment Period End	01/20/97	
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Federalism: Undetermined

Agency Contact: Marcia Read, Department of Defense, Office of the Secretary
Phone: 703 697-9793
Email: readmw@acq.osd.mil

RIN: 0790–AG31

763. PERSONNEL SECURITY POLICIES FOR GRANTING ACCESS TO CLASSIFIED INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: EO 12968

CFR Citation: 32 CFR 147

Legal Deadline: None

Abstract: This rule is published to streamline security practices throughout the Government. Uniform adjudicative guidelines, investigative standards, and guidelines for temporary access are being established. This initiative will simplify security processing and allow the deserving public to obtain a security clearance in a faster, more efficient manner.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/30/98	63 FR 4572
Interim Final Rule Effective	03/24/98	
Interim Final Rule Comment Period End	03/31/98	
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Terence Thompson, Department of Defense, Office of the Secretary
Phone: 703 602-9969

RIN: 0790–AG54

764. NATIONAL POLICY ON RECIPROCITY OF FACILITIES AND GUIDELINES FOR IMPLEMENTATION OF RECIPROCITY

Priority: Substantive, Nonsignificant

Legal Authority: EO 12968

CFR Citation: 32 CFR 148

Legal Deadline: None

Abstract: This rule is published to make physical facilities available for reciprocal use in the storage of classified information. Once a facility has been certified as suitable for classified use by one organization, it may also be used by another for like purposes.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	09/16/97	63 FR 4580
Interim Final Rule	01/30/98	63 FR 4580
Interim Final Rule Comment Period End	03/31/98	
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Terence Thompson, Department of Defense, Office of the Secretary
Phone: 703 602-9969

RIN: 0790–AG55

765. NATIONAL POLICY ON TECHNICAL SURVEILLANCE COUNTERMEASURES

Priority: Substantive, Nonsignificant

Legal Authority: EO 12968

CFR Citation: 32 CFR 149

Legal Deadline: None

Abstract: This rule is published to limit the use of technical surveillance countermeasures within the boundaries of the U.S. to cases where there is a reasonable showing of threat.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	09/16/97	63 FR 4582
Interim Final Rule	01/30/98	63 FR 4582
Interim Final Rule Comment Period End	03/31/98	
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Terence Thompson, Department of Defense, Office of the Secretary
Phone: 703 602-9969

RIN: 0790–AG56

766. UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NONPROFIT ORGANIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 10 USC 113

CFR Citation: 32 CFR 22; 32 CFR 32

Legal Deadline: None

Abstract: This rulemaking is the Department of Defense portion of a multiple-agency action. The agencies are amending their rules implementing Office of Management and Budget (OMB) Circular A-110 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations." The amendments to the rules incorporate updated language in Circular A-110 requiring Federal awarding agencies to ensure that all data produced under awards subject to the Circular are made available to the public through the procedures established under the Freedom of Information Act (FOIA). OMB updated the Circular language in this way in October 1999, in response to a provision in Public Law 105-277. With this rule amendment to 32 CFR parts 22 and 32, the Department of Defense therefore will maintain policies on access to data produced under awards subject to Circular A-110 that are consistent with the policies of other executive departments and agencies.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/16/00	65 FR 14405
Interim Final Rule Effective	04/17/00	
Interim Final Rule Comment Period End	05/15/00	
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mark Herbst, Department of Defense, Office of the Secretary
Phone: 703 696-0372
Email: herbstm@acq.osd.mil

RIN: 0790–AG76

767. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

Legal Authority: EO 12549; EO 12689; PL 103-355

CFR Citation: 32 CFR 25; 32 CFR 26

Legal Deadline: None

Abstract: The Department of Defense (DoD) proposes to adopt two updated common rules, on nonprocurement debarment and suspension and on drug-free workplace requirements for grants and agreements. In adopting these rules, the Office of the Secretary of Defense, Military Departments, Defense Agencies, and DoD Field Activities will maintain uniform policies and procedures that are consistent with those of other executive departments and agencies. At the time the final rule is adopted, the Department of Defense will make conforming amendments to other parts of the DoD Grant and Agreement Regulations (32 CFR parts 21, 22, 32, and 34) to update references to the debarment and suspension and the drug-free workplace requirements that currently are 32 CFR part 25.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3265
NPRM Comment Period End	03/25/02	67 FR 3267
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mark Herbst, Department of Defense, Office of the Secretary
Phone: 703 696-0372
Email: herbstm@acq.osd.mil

RIN: 0790–AG86

768. DOD GRANT AND AGREEMENT REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 10 USC 113

CFR Citation: 32 CFR 21; 32 CFR 22; 32 CFR 32; 32 CFR 34; 32 CFR 37

Legal Deadline: None

Abstract: The Department of Defense (DoD) proposes to add a new part 37 to the DoD Grant and Agreement Regulations (DoDGARs) to incorporate policies and procedures for the award and administration of Technology Investment Agreements (TIAs). TIAs are a relatively new class of assistance instruments. DoD Components use TIAs to support or stimulate defense research projects involving for-profit firms, especially commercial firms that do business primarily in the commercial marketplace. The new part 37 therefore gives DoD agreements officers greater flexibility to negotiate award provisions in areas that can present barriers to those commercial firms (e.g., intellectual property, audits, and cost principles). This rule also proposes revisions to parts 21, 22, 32, and 34 of the DoDGARs to conform the rest of the DoDGARs with the proposed part 37.

Timetable:

Action	Date	FR Cite
NPRM	04/30/02	67 FR 21486
NPRM Comment Period End	07/01/02	
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mark Herbst, Department of Defense, Office of the Secretary
Phone: 703 696-0372
Email: herbstm@acq.osd.mil

RIN: 0790–AG87

769. • VOLUNTARY STATE TAX WITHHOLDING FROM RETIRED PAY

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 1045

CFR Citation: 32 CFR 78

Legal Deadline: None

Abstract: This rule amends 32 CFR part 78, Voluntary State Tax Withholding From Retired Pay, to comply with the Treasury Financial Manual, Volume 1, section 5060f.

Timetable:

Action	Date	FR Cite
Final Rule	11/00/02	

DOD—OS

Final Rule Stage

Action	Date	FR Cite
Final Rule; Comment Period End	01/00/03	
Final Rule Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Peter Dragon, Department of Defense, Office of the Secretary
Phone: 703 604-6350

RIN: 0790–AG93

770. • IMPLEMENTATION OF WILDFIRE SUPPRESSION AIRCRAFT TRANSFER ACT OF 1996

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 2576 note

CFR Citation: 32 CFR 171

Legal Deadline: None

Abstract: This rule adds regulations on the Implementation of Wildfire Suppression Aircraft Transfer Act of 1996 back into the Code of Federal Regulations. This rule was published as an Interim Final Rule on June 1, 1999 (64 FR 29227) and was inadvertently removed on October 25, 2001 (66 FR 53957). The Wildfire Suppression Aircraft Transfer Act of 1996 authorized the Department of Defense (DoD), during the period October 1, 1996, through September 30, 2000, to sell aircraft and aircraft parts to entities that contract with the Federal Government for the delivery of fire retardant by air in order to suppress wildfire. Public Law 106-398 (114 Stat. 1654A-89) extended the expiration date from September 30, 2000, to September 30, 2005.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/01/99	64 FR 29227
Interim Final Rule Comment Period End	06/01/99	
Interim Final Rule Effective	08/02/99	
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Debra Bennett, Department of Defense, Office of the Secretary
Phone: 703 604-0098

Related RIN: Related To 0790-AG60

RIN: 0790–AG95

771. • NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICE (NSA/CSS) FREEDOM OF INFORMATION ACT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552

CFR Citation: 32 CFR 299

Legal Deadline: None

Abstract: This rule implements the Freedom of Information Act, as amended. It assigns responsibility for responding to written requests made pursuant to the Act and provides for the review required to determining the appropriateness of classification.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	08/05/02	
Interim Final Rule	11/00/02	
Interim Final Rule Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Pamela Phillips, Department of Defense, Office of the Secretary
Phone: 301 688-6527

RIN: 0790–AG96

Department of Defense (DOD)
Office of the Secretary (OS)

Long-Term Actions

772. TEACHER AND TEACHER'S AIDE PLACEMENT ASSISTANCE PROGRAM (TROOPS TO TEACHERS) (DOD INSTRUCTION 1404.13)

Priority: Substantive, Nonsignificant

CFR Citation: 32 CFR 254

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/15/94	59 FR 7213
Interim Final Rule Effective	02/22/94	
Interim Final Rule Comment Period End	04/18/94	
Interim Final Rule Amendment Effective	11/25/94	60 FR 30188
Interim Final Rule Amendment	06/08/95	60 FR 30188
Action	Date	FR Cite
Interim Final Rule Amendment Comment Period End	08/07/95	60 FR 30188
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Otto Thomas
Phone: 703 614-4074
Email: thomaso@pr.osd.mil

RIN: 0790–AF71

773. FORMER SPOUSE PAYMENTS FROM RETIRED PAY; AMENDMENT (DOD DIRECTIVE 1340.16 AND DOD 7000.14-R, VOL 7, PART B)

Priority: Substantive, Nonsignificant

CFR Citation: 32 CFR 63

Timetable:

Action	Date	FR Cite
NPRM	04/06/95	60 FR 17507
NPRM Comment Period End	06/06/95	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Fiti Malufau
Phone: 703 607-5061

DOD—OS

Long-Term Actions

Email: malufauf@cleveland.dfas.mil

RIN: 0790–AG22

774. CLOSED, TRANSFERRED, AND TRANSFERRING RANGES CONTAINING MILITARY MUNITIONS

Priority: Other Significant

CFR Citation: 32 CFR 178

Timetable:

Action	Date	FR Cite
NPRM	09/26/97	62 FR 50796
Public Meetings Begin	10/22/97	
Public Meetings End	12/10/97	
NPRM Comment Period End	12/26/97	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: John Selstrom
Phone: 703 697-5372

RIN: 0790–AG46

Department of Defense (DOD)
Office of the Secretary (OS)

Completed Actions

775. IMPLEMENTATION OF THE WILDFIRE SUPPRESSION AIRCRAFT TRANSFER ACT OF 1996

Priority: Substantive, Nonsignificant

Legal Authority: PL 104-307

CFR Citation: 32 CFR 171

Legal Deadline: Final, Statutory, September 30, 1998.

Abstract: The Wildfire Suppression Aircraft Transfer Act of 1996 states that, notwithstanding section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483) and subject to subsections (b) and (c), the Secretary of Defense may, during the period beginning October 1, 1996, and ending on September 30, 2000, sell certain aircraft and aircraft parts to persons or entities that contract with the Federal Government for the delivery of fire retardant by air to suppress wildfire. The Act states that, as soon as practicable after the date of the enactment of the Act, the Secretary of Defense shall, in consultation with the Secretary of Agriculture and the Administrator of General Services, prescribe regulations relating to the sale of aircraft and aircraft parts under this section. This interim final rule prescribes regulations to implement the Wildlife Suppression Aircraft Transfer Act of 1996.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/01/99	64 FR 29227
Interim Final Rule Effective	06/01/99	
Interim Final Rule Comment Period End	08/02/99	
Final Action	10/25/01	66 FR 53957
Final Action Effective	10/25/01	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal

Additional Information: The final rule published in the Federal Register on October 25, 2001 (66 FR 53957), removed 32 CFR part 171 from the Code of Federal Regulations.

Agency Contact: Michael Stubblebine, Department of Defense, Office of the Secretary
Phone: 703 767-1537

Related RIN: Related To 0790-AG95

RIN: 0790–AG60

776. TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 103-160

CFR Citation: 32 CFR 3

Legal Deadline: None

Abstract: This rule codifies the conditions for appropriate use and defines a nontraditional Defense contractor consistent with section 803 of the Floyd D. Spence National Defense Authorization Act for Fiscal year 2001. Representatives of the military departments, Defense agencies, and other DoD activities, have agreed on this final rule that amends the interim rule as a result of comments received. Audit policy is still being discussed and will be addressed by a separate rule.

Timetable:

Action	Date	FR Cite
NPRM	11/21/01	66 FR 58422
NPRM Comment Period End	01/22/02	
Public Meeting	03/27/02	67 FR 9632
Final Action	08/27/02	67 FR 54955
Final Action Effective	08/27/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0790–AG92

Department of Defense (DOD)
Defense Acquisition Regulations Council (DARC)

Proposed Rule Stage

777. • PATENT RIGHTS—OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS) (DFARS CASE 2001-D015)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 227.3; 48 CFR 252.227

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to incorporate prescriptive text and a clause equivalent to FAR clause 52.227-12, which will then be removed from the FAR.

Timetable:

Action	Date	FR Cite
Case Opened	10/09/01	
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD72

778. • REWRITE OF DFARS PART 225 AND ASSOCIATED TEXT AND CLAUSES (DFARS CASE 2002-D009)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 206.303; 48 CFR 208.7203; 48 CFR 209.1; 48 CFR 209.4; 48 CFR 225; 48 CFR 242.302; 48 CFR 252.209; 48 CFR 252.212; 48 CFR 252.225

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to rewrite part 225 to improve clarity and make procedures less complex, particularly for evaluation of foreign offers and customs duty.

Timetable:

Action	Date	FR Cite
Case Opened	03/22/02	
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD73

Department of Defense (DOD)
Defense Acquisition Regulations Council (DARC)

Final Rule Stage

779. INCREMENTAL FUNDING, FIXED-PRICE CONTRACTS (DFARS CASE 90-037)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 232.7; 48 CFR 252.232

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to permit the use of incremental funding of fixed-price contracts under certain situations.

Timetable:

Action	Date	FR Cite
Case Opened	09/26/90	
Interim Final Rule	09/01/93	58 FR 46091
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: This rulemaking was previously reported as RIN 0790-AE42.

RFA: Y

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AA07

780. PERFORMANCE-BASED SERVICE CONTRACTS USING PART 12 PROCEDURES (DFARS CASE 2000-D306)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-398, sec 821(b)

CFR Citation: 48 CFR 212.102; 48 CFR 237.601

Legal Deadline: Other, Statutory, April 27, 2001, Implementation can be either an Interim Final Rule or a Final Rule.

Abstract: Modifies the Defense FAR Supplement to implement section 821(b) of the FY 2001 National Defense Authorization Act, which authorizes the Department of Defense to treat performance-based service contracts/task orders valued at $5 million or less as contracts for commercial items if certain conditions are met.

Timetable:

Action	Date	FR Cite
Case Opened	11/08/00	
Interim Final Rule	12/06/01	66 FR 63335
Interim Final Rule Comment Period End	02/04/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD35

781. ENTERPRISE SOFTWARE AGREEMENTS (DFARS CASE 2000-D023)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

DOD—DARC

Final Rule Stage

CFR Citation: 48 CFR 208.001; 48 CFR 208.74; 48 CFR 239.101; 48 CFR 251.102; 48 CFR 252.251

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to add guidance on acquiring commercially available software. These revisions implement the Department of Defense Chief Information Officer Guidance and Policy Memorandum Number 12-8430, dated July 26, 2000, entitled "Acquiring Commercially Available Software."

Timetable:

Action	Date	FR Cite
Case Opened	10/03/00	
NPRM	01/29/02	67 FR 4231
NPRM Comment Period End	04/01/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD37

782. RESTRICTION ON CONTINGENT FEES FOR FOREIGN MILITARY SALES—COMMERCIAL ITEMS (DFARS CASE 2000-D029)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 252.212

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to remove the clause at 252.225-7027, Restriction on Contingent Fees for Foreign Military Sales, from the list of clauses at DFARS 252.212-7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

Timetable:

Action	Date	FR Cite
Case Opened	12/05/00	
NPRM	03/14/02	67 FR 11455
NPRM Comment Period End	05/13/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD47

783. APPLICABILITY OF COMPETITION REQUIREMENTS TO PURCHASES FROM A REQUIRED SOURCE (DFARS CASE 2002-D003)

Priority: Other Significant

Legal Authority: PL 107-107, sec 811

CFR Citation: 48 CFR 208.6; 48 CFR 210.0

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to require market research before purchasing any product from Federal Prison Industries (FPI) to determine whether the FPI product is comparable in price, quality, and time of delivery to products available from the private sector.

Timetable:

Action	Date	FR Cite
Case Opened	01/08/02	
Interim Final Rule	04/26/02	67 FR 20687
Interim Final Rule Comment Period End	06/25/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD57

784. PERFORMANCE OF SECURITY FUNCTIONS (DFARS CASE 2001-D018)

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-56, sec 1010

CFR Citation: 48 CFR 237.1

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to implement section 1010 of the USA Patriot Act. Section 1010 permits DoD to contract for security functions at military installations.

Timetable:

Action	Date	FR Cite
Case Opened	12/04/01	
Interim Final Rule	03/14/02	67 FR 11438
Interim Final Rule Comment Period End	05/13/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD58

785. • ELECTRONIC SUBMISSION AND PROCESSING OF PAYMENT REQUESTS (DFARS CASE 2002-D001)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-398, sec 1008

CFR Citation: 48 CFR 232.70; 48 CFR 252.212-7001; 48 CFR 252.232

Legal Deadline: Other, Statutory, October 1, 2002, Implementation can be either an Interim Final Rule or a Final Rule.

Abstract: Modifies the Defense FAR Supplement to implement section 1008 of the FY 2001 National Defense Authorization Act, which requires that any claim for payment be submitted and processed electronically.

Timetable:

Action	Date	FR Cite
Case Opened	01/09/02	
NPRM	05/31/02	67 FR 38057
NPRM Comment Period End	07/30/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD70

786. • COMPETITION REQUIREMENTS FOR PURCHASE OF SERVICES UNDER MULTIPLE AWARD CONTRACTS (DFARS CASE 2001-D017)

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-107, sec 803

CFR Citation: 48 CFR 208.4; 48 CFR 216.5

Legal Deadline: Other, Statutory, June 26, 2002, Implementation can be either an Interim Final Rule or a Final Rule.

Abstract: Modifies the Defense FAR Supplement to implement section 803 of the FY 2002 National Defense Authorization Act, which requires competition in the purchase of services under multiple award contracts.

Timetable:

Action	Date	FR Cite
Case Opened	11/16/01	
NPRM	04/01/02	67 FR 15351
NPRM Comment Period End	05/06/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD71

787. • EXCEPTION FOR ACQUISITION OF U.S.-MADE END PRODUCTS IN ACQUISITIONS SUBJECT TO THE TRADE AGREEMENTS ACT (DFARS CASE 2002-D008)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 225.001; 48 CFR 225.003; 48 CFR 225.103; 48 CFR 225.402; 48 CFR 225.502; 48 CFR 225.504; 48 CFR 225.1101; 48 CFR 225.7501; 48 CFR 252.225

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to implement the determination of USD (AT&L) that, for procurements subject to the Trade Agreements Act, it would be inconsistent with the public interest to apply the Buy American Act to U.S.-made end products that are substantially transformed in the United States.

Timetable:

Action	Date	FR Cite
Case Opened	03/22/02	
NPRM	07/30/02	67 FR 49278
NPRM Comment Period End	09/30/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD74

788. • FOREIGN MILITARY SALES CUSTOMER INVOLVEMENT (DFARS CASE 2002-D005)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 225.7304

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to add policy regarding the participation of foreign military sales customers in the development of contracts that DoD awards on their behalf.

Timetable:

Action	Date	FR Cite
Case Opened	01/18/02	
NPRM	04/26/02	67 FR 20713
NPRM Comment Period End	06/25/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD75

789. • CODIFICATION AND MODIFICATION OF PROVISION OF LAW KNOWN AS THE "BERRY AMENDMENT" (DFARS CASE 2002-D002)

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-107, sec 832

CFR Citation: 48 CFR 225.7002; 48 CFR 252.212-7001; 48 CFR 252.225-7012

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to implement section 832 of the FY 2002 National Defense Authorization Act, which codifies and makes minor modifications to the Berry Amendment.

Timetable:

Action	Date	FR Cite
Case Opened	01/08/02	
Interim Final Rule	04/26/02	67 FR 20697
Interim Final Rule Comment Period End	06/25/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD76

790. • ACQUISITION WORKFORCE QUALIFICATIONS (DFARS CASE 2002-D021)

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-107, sec 824

CFR Citation: 48 CFR 201.603-2

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to implement section 824 of the FY 2002 National Defense Authorization Act, which contains qualification requirements for contracting professionals.

Timetable:

Action	Date	FR Cite
Case Opened	06/26/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD77

Department of Defense (DOD)
Defense Acquisition Regulations Council (DARC)

Completed Actions

791. INSTITUTIONS OF HIGHER EDUCATION (DFARS CASE 1999-D303)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-65, sec 549; PL 106-79, sec 8120

CFR Citation: 48 CFR 209.470; 48 CFR 243; 48 CFR 252.209

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to implement section 549 of the FY 2000 National Defense Authorization Act. Section 549 amends statutory provisions pertaining to the denial of Federal contracts and grants to institutions of higher education that prohibit Senior Reserve Officer Training Corps units or military recruiting on campus.

Timetable:

Action	Date	FR Cite
Case Opened	10/06/99	
Interim Final Rule	01/13/00	65 FR 2056
Interim Final Rule Comment Period End	03/13/00	
Final Rule	07/30/02	67 FR 49253

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD05

792. OCEAN TRANSPORTATION BY UNITED STATES-FLAG VESSELS—SIMPLIFIED ACQUISITION THRESHOLD (DFARS CASE 2000-D014)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 247.573; 48 CFR 252.247

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to apply cargo preference provision and clause in solicitations and resultant contracts with an anticipated value at or below the simplified acquisition threshold.

Timetable:

Action	Date	FR Cite
Case Opened	05/12/00	
NPRM	09/11/01	66 FR 47153
NPRM Comment Period End	11/13/01	
Final Rule	05/31/02	67 FR 38020

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD19

793. CHANGES TO PROFIT POLICY (DFARS CASE 2000-D018)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 215.404

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to make changes to Department of Defense profit policy that would reduce and eventually eliminate emphasis on facilities investment, increase emphasis on performance risk, and encourage contractor cost efficiency.

Timetable:

Action	Date	FR Cite
Case Opened	06/05/00	
NPRM	07/24/00	65 FR 45574
NPRM Comment Period End	09/22/00	
NPRM	09/21/01	66 FR 48649
NPRM Comment Period End	11/20/01	
Final Rule	04/26/02	67 FR 20688

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD21

794. BALANCE OF PAYMENTS PROGRAM (DFARS CASE 2000-D020)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 225; 48 CFR 252.225

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to add language on the Balance of Payments Program and streamline procedures.

Timetable:

Action	Date	FR Cite
Case Opened	08/01/00	
NPRM	09/11/01	66 FR 47155
NPRM Comment Period End	11/13/01	
Final Rule	04/26/02	67 FR 20693

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD22

795. SUBCONTRACT COMMERCIALITY DETERMINATIONS (DFARS CASE 2000-D028)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 244.303; 48 CFR 244.402

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to clarify that contractors must determine whether a particular subcontract item meets the definition of a commercial item. Also clarifies that administrative contracting officers must review the adequacy of the contractor's rationale documenting commercial item determinations during Contractor Purchasing System Reviews.

Timetable:

Action	Date	FR Cite
Case Opened	11/29/00	
NPRM	09/11/01	66 FR 47159
NPRM Comment Period End	11/13/01	
Final Rule	05/31/02	67 FR 38023

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD36

796. UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (DFARS CASE 2000-D024)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-259, sec 8022

CFR Citation: 48 CFR 226.104; 48 CFR 252.226

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to implement section 8022 of the FY 2001 Defense Appropriations Act, which specifies that a subcontractor at any tier shall be considered a contractor for the purposes of being allowed additional compensation under section 504 of the Indian Financing Act of 1974.

Timetable:

Action	Date	FR Cite
Case Opened	10/17/00	
Interim Final Rule	09/11/01	66 FR 47110
Interim Final Rule Comment Period End	11/13/01	
Final Rule	05/31/02	67 FR 38022

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD42

797. RESEARCH AND DEVELOPMENT STREAMLINED CONTRACTING PROCEDURES (DFARS CASE 2001-D002)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 235.7003

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to delete the requirement that research and development streamlined solicitations must be posted on the research and development streamlined solicitation/contract website.

Timetable:

Action	Date	FR Cite
Case Opened	01/17/01	
NPRM	12/06/01	66 FR 63348
NPRM Comment Period End	02/04/02	
Final Rule	04/26/02	67 FR 20699

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD43

798. DOD PILOT MENTOR-PROTEGE PROGRAM (DFARS CASE 2001-D006)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-398, sec 807

CFR Citation: 48 CFR 219.71; 48 CFR 252.232; 48 CFR app I

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to add women-owned small businesses to the types of concerns that may participate as protege firms in the DoD Pilot Mentor-Protege Program.

Timetable:

Action	Date	FR Cite
Case Opened	04/06/01	
Interim Final Rule	09/11/01	66 FR 47108
Interim Final Rule Comment Period End	11/13/01	
Final Rule	03/14/02	67 FR 11435

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD52

799. PREFERENCE FOR LOCAL 8(A) CONTRACTORS—BASE CLOSURE OR REALIGNMENT (DFARS CASE 2001-D007)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 226.71

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to clarify policy pertaining to preferences for local businesses in acquisitions that support a base closure or realignment.

Timetable:

Action	Date	FR Cite
Case Opened	05/02/01	
NPRM	09/11/01	66 FR 47158
NPRM Comment Period End	11/13/01	
Final Rule	03/14/02	67 FR 11438

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD53

800. PARTNERSHIP AGREEMENT BETWEEN SBA AND DOD (DFARS CASE 2001-D016)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 219.800

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to implement a Partnership Agreement between DoD and the Small Business Administration (SBA). The agreement permits DoD to award contracts directly to 8(a) program participants instead of awarding the contracts through the SBA.

Timetable:

Action	Date	FR Cite
Case Opened	11/07/01	
Interim Final Rule	03/14/02	67 FR 11435
Interim Final Rule Comment Period End	05/13/02	
Final Rule	07/30/02	67 FR 49255

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD59

801. RESTRICTION ON ACQUISITION OF VESSEL PROPELLERS (DFARS CASE 2002-D006)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 225.7020-4

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to clarify that the statutory restriction on acquisition of vessel propellers from foreign sources applies only to DoD contracts that use fiscal year 2000 or 2001 funds.

Timetable:

Action	Date	FR Cite
Case Opened	01/28/02	
Final Rule	03/14/02	67 FR 11437

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
Phone: 703 602-0131
Fax: 703 602-0350
Email: gail.cruz@osd.mil

RIN: 0750–AD61

802. • WEIGHTED GUIDELINES FORM (DFARS CASE 2002-D012)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 215.404-71; 48 CFR 253.215-70

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to revise DD Form 1547, Record of Weighted Guidelines Application, and related DFARS cites, to conform to changes made to profit policy at 67 FR 20688 on April 26, 2002.

Timetable:

Action	Date	FR Cite
Case Opened	05/09/02	
Final Rule	07/30/02	67 FR 49254

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
Phone: 703 602-0131
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RIN: 0750–AD63

803. • REPORTING REQUIREMENTS UPDATE (DFARS CASE 2002-D010)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 204.670; 48 CFR 253.204

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to update DD Form 350 contract reporting requirements to meet FY 2003 statutory and regulatory requirements.

Timetable:

Action	Date	FR Cite
Case Opened	04/11/02	
Final Rule	07/12/02	67 FR 46112
Final Action Effective	10/01/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD65

DOD—DARC

Completed Actions

804. • NAFTA PROCUREMENT THRESHOLD (DFARS CASE 2002-D007)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 225.1101

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to implement revised NAFTA threshold for procurement of goods and services, as published by USTR at 67 FR 8057 on February 21, 2002.

Timetable:

Action	Date	FR Cite
Case Opened	03/05/02	
Final Rule	04/26/02	67 FR 20692

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD67

805. • TRADE AGREEMENTS THRESHOLDS—CONSTRUCTION (DFARS CASE 2002-D011)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 225.7503

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to implement revised trade agreements thresholds for acquisition of construction, as published by USTR at 67 FR 14763 on March 27, 2002.

Timetable:

Action	Date	FR Cite
Case Opened	04/19/02	
Final Rule	07/30/02	67 FR 49256

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
Phone: 703 602-0131
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Email: gail.cruz@osd.mil

RIN: 0750–AD69

Department of Defense (DOD)
Department of the Army (DOA)

Completed Actions

806. ENVIRONMENTAL ANALYSIS OF ARMY ACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321

CFR Citation: 32 CFR 651

Legal Deadline: None

Abstract: This rule revises policies and procedures for assessing the effect of Army actions (32 CFR 651). The revision is intended to streamline portions of the Army environmental actions process and strives to meet the spirit of the National Performance Review (NPR) and Executive Order 12861 "Elimination of One-Half of Executive Branch Internal Regulations."

Timetable:

Action	Date	FR Cite
NPRM	09/07/00	65 FR 54348
NPRM Comment Period End	11/06/00	
Final Rule	03/29/02	67 FR 15290
Final Rule Effective	03/29/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Luz D. Ortiz, Army Federal Register Liaison Officer, Department of Defense, Department of the Army, U.S. Army Records Management and Declassification Agency, Stop 5603, ATTN: TAPC-PDD-RP, 6000 6th Street, Fort Belvoir, VA 22060-5603
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Email: luz.ortiz@rmda.belvoir.army.mil

RIN: 0702–AA34

Department of Defense (DOD)
U.S. Army Corps of Engineers (COE)

Proposed Rule Stage

807. ENVIRONMENTAL QUALITY; PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321 et seq; 40 CFR 1500.6

CFR Citation: 33 CFR 230

Legal Deadline: None

Abstract: The purpose of this regulatory revision is to clarify and provide additional guidance for Corps NEPA requirements for activities at Federal water resource development projects and lands.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
NPRM Comment Period End	07/00/03	
Final Action	10/00/03	
Final Action Effective	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Forrester Einarsen, Biologist, Department of Defense, U.S. Army Corps of Engineers, Office of Environmental Policy (CECW-PC), 441 G Street NW, Washington, DC 20314-1000
Phone: 202 761-4589

RIN: 0710–AA42

Department of Defense (DOD)
U.S. Army Corps of Engineers (COE)

Final Rule Stage

808. NATURAL DISASTER PROCEDURES: PREPAREDNESS, RESPONSE, AND RECOVERY ACTIVITIES OF THE CORPS OF ENGINEERS

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 701

CFR Citation: 33 CFR 203

Legal Deadline: None

Abstract: This revision of 33 CFR 203 is necessary to reflect current policy, add features required by the Water Resources Development Act of 1996 (Pub. L. 104-303), and streamline certain procedures concerning Corps authority for disaster preparedness, response, and recovery activities. Public Law 104-303 additions are the option of a nonstructural alternative to structural levee repairs for damage caused by flood events and the provision of a levee owners' manual. Other changes include a change in the cost share provision for rehabilitation of Federal and non-Federal flood control works, expansion of investigation ability for potential Advance Measures work, and a streamlined approach for requests for assistance from Native American tribes and Alaska Native Corporations.

Timetable:

Action	Date	FR Cite
NPRM	02/26/02	67 FR 8748
NPRM Comment Period End	04/29/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: George Gilmore, Program Manager, Public Law 84-99, Department of Defense, U.S. Army Corps of Engineers, CECW-OE (3F68), 441 G Street NW, Washington, DC 20314-1000
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RIN: 0710–AA47

809. PROGRAMMATIC REGULATIONS FOR THE COMPREHENSIVE EVERGLADES RESTORATION PLAN

Regulatory Plan: This entry is Seq. No. 21 in part II of this issue of the Federal Register.

RIN: 0710–AA49

Department of Defense (DOD)
U.S. Army Corps of Engineers (COE)

Long-Term Actions

810. REGULATORY PROGRAMS OF THE CORPS OF ENGINEERS

Priority: Substantive, Nonsignificant

CFR Citation: 33 CFR 320 to 330

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Thaddeus J. Rugiel
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Fax: 202 761-4150
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RIN: 0710–AA30

811. REGULATORY PROGRAMS OF THE CORPS OF ENGINEERS—WETLAND DELINEATOR CERTIFICATION PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 33 CFR 320; 33 CFR 323; 33 CFR 325; 33 CFR 328; 33 CFR 333

Timetable:

Action	Date	FR Cite
NPRM	03/14/95	60 FR 13654
NPRM Comment Period End	04/13/95	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Thaddeus J. Rugiel
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RIN: 0710–AA38

812. REGULATORY PROGRAMS OF THE CORPS OF ENGINEERS, ENDANGERED SPECIES ACT; SCOPE OF ANALYSIS

Priority: Substantive, Nonsignificant

CFR Citation: 33 CFR 325

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Thaddeus J. Rugiel
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Fax: 202 761-4150
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RIN: 0710–AA43

813. FLOOD CONTROL COST-SHARING REQUIREMENTS UNDER THE ABILITY TO PAY PROVISIONS

Priority: Substantive, Nonsignificant

CFR Citation: 33 CFR 241

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Harry M. Shoudy
Phone: 202 761-1977

RIN: 0710–AA44

Department of Defense (DOD)
U.S. Army Corps of Engineers (COE)

Completed Actions

814. PROPOSED REVISION TO THE CLEAN WATER ACT REGULATORY DEFINITIONS OF "FILL MATERIAL" AND THE "DISCHARGE OF FILL MATERIAL"

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1344

CFR Citation: 33 CFR 323

Legal Deadline: None

Abstract: Section 404 of the Clean Water Act requires a permit from the U.S. Army Corps of Engineers for discharges of dredged or filled material to waters of the United States. The Environmental Protection Agency (EPA) and Corps' regulations implementing section 404 previously contained differing definitions of the term "fill material." In particular, the Corps regulations defined fill material as being used for the primary purpose of replacing an aquatic area with dry land or changing the bottom elevation of a waterbody. In contrast, EPA's definition of fill material looked to whether the effect is to replace waters of the United States with dry land or change the bottom elevation of waterbodies and did not contain a "primary purpose" test as found in the Corps regulations. In order to clarify what constitutes "fill material" for purposes of section 404 and provide improved regulatory certainty, the Corps and EPA have implemented this final rule under which both agencies have adopted identical, effect-based definitions of the terms "fill material" and "discharge of fill material."

Timetable:

Action	Date	FR Cite
NPRM	04/20/00	65 FR 21292
NPRM Comment Period End	06/19/00	
Final Action	05/09/02	67 FR 31129
Final Action Effective	06/10/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State, Tribal, Federal

Agency Contact: Thaddeus J. Rugiel, Department of Defense, U.S. Army Corps of Engineers, CECW-OR (3F75), 441 G Street NW, Washington, DC 20314-1000
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RIN: 0710–AA48

Department of Defense (DOD)
Department of the Navy (NAVY)

Final Rule Stage

815. USE OF DEPARTMENT OF THE NAVY AVIATION FACILITIES BY OTHER THAN UNITED STATES DEPARTMENT OF DEFENSE AIRCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 1507

CFR Citation: 32 CFR 766

Legal Deadline: None

Abstract: This part establishes the policy and procedures for the use of Navy and Marine Corps aviation facilities by aircraft other than United States Department of Defense aircraft.

Timetable:

Action	Date	FR Cite
NPRM	12/01/94	59 FR 61561
NPRM Comment Period End	01/03/95	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dan Bartlett, Department of Defense, Department of the Navy, N885F, Office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350-2000
Phone: 703 604-7707
Fax: 703 604-6969

RIN: 0703–AA48

816. POLICIES AND RESPONSIBILITIES FOR IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT WITHIN THE DEPARTMENT OF THE NAVY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 44502

CFR Citation: 32 CFR 775 (Revision)

Legal Deadline: None

Abstract: The Department of the Navy is revising its regulations, which establish the responsibilities and procedures for complying with the National Environmental Policy Act (NEPA). This revision clarifies when certain Department of the Navy actions must be studied to determine their effect on the human environment and what types of activities are excluded from the NEPA documentation requirements.

Timetable:

Action	Date	FR Cite
NPRM	07/09/99	64 FR 37069
NPRM Comment Period End	09/07/99	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Egeland, Department of Defense, Department of the Navy, Office of the Assistant Secretary of the Navy (Installations and Environment), 2000 Navy Pentagon, Washington, DC 20350-2000
Phone: 703 588-6671

RIN: 0703–AA51

Department of Defense (DOD)
Department of the Navy (NAVY)

Long-Term Actions

817. SHIPBUILDING CAPABILITY PRESERVATION AGREEMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 5231 (New)

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/22/97	62 FR 66826
Interim Final Rule Effective	12/22/97	
Interim Final Rule Comment Period End	02/20/98	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Clarence Belton
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RIN: 0703–AA50

Department of Defense (DOD)
Department of the Air Force (AF)

Final Rule Stage

818. • DEPARTMENT OF DEFENSE COMMERCIAL AIR TRANSPORTATION QUALITY AND SAFETY REVIEW PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 8013; 10 USC 2640

CFR Citation: 32 CFR 861

Legal Deadline: None

Abstract: The Department of Air Force proposes to revise the Department of Defense (DoD) Commercial Transportation Quality and Safety Review Program. The current version of the program is being updated to reflect current and anticipated policies. Department of Defense Directive 4500.53, DoD Commercial Air Transportation Quality and Safety Review Program, charges the Commander-in-Chief (CINC), United States Transportation Command (USTRANSCOM), with ensuring the establishment of safety requirements and criteria for evaluating civil air carriers and operators providing air transportation and operational support services to DoD. It also charges the CINC with ensuring the establishment of a Commercial Airlift Review Board (CARB) and providing policy guidance and direction for its operation. Part 861 establishes DoD quality and safety criteria for air carriers providing or seeking to provide air transportation and, at the discretion of the CARB or higher authority, operational support services to DoD.

Timetable:

Action	Date	FR Cite
NPRM	09/05/02	67 FR 56777
NPRM Comment Period End	09/20/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Merlin Lyman, Department of Defense, Department of the Air Force, HQ, AMC/DOB, Air Mobility Command, 402 Scott Drive, Scott AFB, IL 62225-5302
Phone: 618 229-4801

RIN: 0701–AA67

Department of Defense (DOD)
Department of the Air Force (AF)

Completed Actions

819. INSTALLATION ENTRY POLICY, CIVIL DISTURBANCE INTERVENTION AND DISASTER ASSISTANCE

Priority: Info./Admin./Other

Legal Authority: 10 USC 332-333, 50 USC 797

CFR Citation: 32 CFR 808 (previously 32 CFR 809a)

Legal Deadline: None

Abstract: This rule prescribes the installation commander's authority for enforcing orders within or near Air Force installations and controlling entry. It also provides for guidance for use of military personnel in controlling civil disturbances and in supporting disaster relief operations.

Timetable:

Action	Date	FR Cite
NPRM	07/12/01	66 FR 36523
NPRM Comment Period End	09/10/01	
Final Action	03/26/02	67 FR 13718

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Walter Filipak, SMSgt, Department of Defense, Department of the Air Force, HQ AFSFC/SFO, 1720 Patrick Street, Lackland AFB, TX 78236-5226
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RIN: 0701–AA64

820. WAKE ISLAND CODE

Priority: Info./Admin./Other

Legal Authority: 74 Stat 424, PL 86-6244, EO 11048

CFR Citation: 32 CFR 935 (Revised)

Legal Deadline: None

Abstract: Revises and updates the Code to reflect current and anticipated use of Wake Island. Provides regulations for conduct not otherwise provided by law and provides a judicial system to enforce those requirements. Delegates authority to the Commander of Pacific Air Forces to perform most of the functions of civil administration.

Timetable:

Action	Date	FR Cite
NPRM	10/25/00	65 FR 63826
NPRM Comment Period End	12/26/00	
Final Action	04/09/02	67 FR 16997

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: This is the information for legal authority as it is generally listed. There is some duplication of information.

Sec. 48, Act of 12 July 1960; 74 Stat. 424, Pub. L. 86-624, E.O. 11048, Sept. 1, 1962, 27 FR 8851; agreement between Department of Interior and Department of the Air Force, dated June 19, 1972, 37 FR 12255, and Secretary of the Air Force, Order 111.1, dated April 26, 1999.

Agency Contact: Philip Sheuerman, Associate General Counsel, Department of Defense, Department of the Air Force, Room 4C921, SAF/GCN, 1740 Air Force Pentagon, Washington, DC 20330-1740
Phone: 703 695-4691
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RIN: 0701–AA65

Department of Defense (DOD)

Office of Assistant Secretary for Health Affairs (DODOASHA)

Final Rule Stage

821. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); HOSPITAL PAYMENT FOR AMBULATORY CARE (DOD 6010.8-R)

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule establishes a new payment method for ambulatory care (other than ambulatory surgery) provided by hospitals to CHAMPUS beneficiaries, under which payment amounts would be based on the cost of the service rather than on the billed charge, as at present.

Timetable:

Action	Date	FR Cite
NPRM	01/20/94	59 FR 3046
NPRM Comment Period End	03/21/94	
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Steve Lillie, Department of Defense, Office of Assistant Secretary for Health Affairs
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RIN: 0720–AA20

822. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); EXCEPTION TO THE CHAMPUS DUAL COMPENSATION/CONFLICT OF INTEREST PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: Currently, any individual who is a civilian employee of the United States Government cannot be authorized by CHAMPUS as a provider of medical services. We propose to provide an exception to this prohibition to permit these individuals to be authorized CHAMPUS providers if they meet three conditions. First, they must be employed by the Government agency on a part-time basis, that is, less than twenty (20) hours per week. Second, the agency must certify that unique or special circumstances detrimental to the delivery of quality health care exist that can be overcome only by employing part-time, non-Government physicians. Third, the agency and the physician must certify that they understand and have taken appropriate measures to avoid violation of Standards of Conduct, dual compensation, and conflict of interest requirements including protection against referral of patients to the employee's private practice.

Timetable:

Action	Date	FR Cite
NPRM	08/26/97	62 FR 45196
NPRM Comment Period End	10/27/97	
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Stephen Isaacson, Department of Defense, Office of Assistant Secretary for Health Affairs
Phone: 303 676-3572
Email: stephen.isaacson@tma.osd.mil

RIN: 0720–AA41

823. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); PROSTHETIC DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule implements section 702 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85), which authorizes purchase of prosthetic devices, as determined by the Secretary of Defense, to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease. The Act changes the existing limited provisions for prosthetic devices, expands coverage to include cost sharing of other prostheses; e.g., noses, ears, and fingers.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	05/20/99	64 FR 45453
Interim Final Rule	08/20/99	64 FR 45453
Interim Final Rule Comment Period End	10/19/99	
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Margaret Brown, Department of Defense, Office of Assistant Secretary for Health Affairs
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RIN: 0720–AA49

824. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); DOUBLE COVERAGE

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule clarifies our double coverage policy for non-institutional claims for beneficiaries with primary health insurance. TRICARE network, non-network but participating, and non-participating providers are all reimbursed differently under current procedures. This has had the unintended effect of discouraging TRICARE network participation since non-network but participating providers receive the most favorable treatment with respect to double coverage calculations. The Department proposes to revise double coverage reimbursement calculations by reimbursing all providers up to 100 percent of the CHAMPUS Maximum Allowable Charge after the primary health insurance has paid, or 115 percent for nonparticipating providers.

Timetable:

Action	Date	FR Cite
NPRM	06/17/99	64 FR 32451
NPRM Comment Period End	08/16/99	
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: LTC Kathleen Larkin, Department of Defense, Office of Assistant Secretary for Health Affairs
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RIN: 0720–AA50

825. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); TRICARE PROGRAM; DOUBLE COVERAGE; THIRD-PARTY RECOVERIES

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule implements section 711 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, which allows the Secretary of Defense to authorize certain CHAMPUS/TRICARE claims to be paid, even though other health insurance may be the primary payer, with authority to collect from the other health insurance (third-party payer) the CHAMPUS/TRICARE costs incurred on behalf of the beneficiary.

Timetable:

Action	Date	FR Cite
NPRM	10/19/99	64 FR 56283
NPRM Comment Period End	12/20/99	
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Robert Shepherd, Department of Defense, Office of Assistant Secretary for Health Affairs
Phone: 303 676-3705

RIN: 0720–AA52

826. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); ESTABLISHMENT OF AN APPEALS PROCESS FOR TRICARE CLAIMCHECK DENIALS

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule implements section 714 of the National Defense Authorization Act for FY 1999, which requires the establishment of an appeals process for denials by TRICARE Claimcheck (TCC) or any similar software system. This rule enhances the current appeals process by adding an additional level of appeal conducted at the TRICARE Management Activity (TMA) and by codifying the entire process in this part.

Timetable:

Action	Date	FR Cite
NPRM	01/13/00	65 FR 2085
NPRM Comment Period End	03/13/00	
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Donald Wagner, Department of Defense, Office of Assistant Secretary for Health Affairs
Phone: 303 676-3411

RIN: 0720–AA56

827. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); METHODOLOGY FOR COVERAGE OF NIH-SPONSORED CLINICAL TRIALS

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule modifies the general prohibition against CHAMPUS cost-sharing of unproven drugs, devices, and medical treatments or procedures by adding a provision allowing a waiver of the prohibition in connection with clinical trials sponsored by the National Institutes of Health, if it is determined that such a waiver will promote access by covered beneficiaries to promising new treatments and contribute to the development of such treatments.

Timetable:

Action	Date	FR Cite
NPRM	05/31/00	65 FR 34627
NPRM Comment Period End	07/31/00	
Final Rule	01/31/01	66 FR 8365
Final Rule Withdrawn	02/07/01	66 FR 9199
Final Rule Effective	03/02/01	66 FR 8365
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Steve Lillie, Department of Defense, Office of Assistant Secretary for Health Affairs
Phone: 703 681-3628
Email: steve.lillie@tma.osd.mil

RIN: 0720–AA57

828. CHAMPUS/TRICARE; IMPLEMENTATION OF THE PHARMACY BENEFITS PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule is designed to implement section 701 of the National Defense Authorization Act for Fiscal Year 2000. This rule establishes procedures for the inclusion of pharmaceutical agents on a Uniform Formulary based upon relative clinical effectiveness and cost effectiveness; establishes cost-sharing requirements, including a tiered co-payment structure, for generic, formulary and non-formulary pharmaceutical agents; establishes procedures to assure the availability of pharmaceutical agents not included on the Uniform Formulary to eligible beneficiaries at the non-formulary cost-share tier; establishes procedures to receive pharmaceutical agents not included on the Uniform Formulary, but considered clinically necessary, under the same terms and conditions as an agent on the Uniform Formulary; establishes procedures to assure the availability of clinically appropriate non-formulary pharmaceutical agents to members of the Uniformed Services; establishes procedures for prior authorization when required; and establishes a Department of Defense Pharmacy and Therapeutics Committee (DoD P&T Committee) and a Uniform Formulary Beneficiary Advisory Panel. Other administrative amendments are also made to clarify specific policies that relate to the program.

Timetable:

Action	Date	FR Cite
NPRM	04/12/02	67 FR 17948
NPRM Comment Period End	06/11/02	
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary Stockdale, Department of Defense, Office of Assistant Secretary for Health Affairs
Phone: 703 681-0039

RIN: 0720–AA65

829. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES; INDIVIDUAL CASE MANAGEMENT PROGRAM FOR PERSONS WITH EXTRAORDINARY CONDITIONS (ICMP-PEC)

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: The Department of Defense proposes to amend its regulations of the Individual Case Management Program (ICMP) to implement requirements stipulated by section 703 of the Fiscal Year 2000 National Defense Authorization Act, section 8118 of the Fiscal Year 2000 Defense Appropriations Act, section 701 of the Fiscal Year 2001 National Defense Authorization Act, and section 8100 of the Fiscal Year 2001 Defense Appropriations Act. Other administrative amendments are also proposed to clarify specific policies that relate to the program.

Timetable:

Action	Date	FR Cite
NPRM	08/01/01	66 FR 39699
NPRM Comment Period End	10/01/01	
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary Stockdale, Department of Defense, Office of Assistant Secretary for Health Affairs
Phone: 703 681-0039

RIN: 0720–AA63

830. TRICARE; CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); ELIGIBILITY AND PAYMENT PROCEDURES FOR CHAMPUS BENEFICIARIES AGE 65 AND OVER

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: Final, Statutory, October 1, 2001, Implements section 712 of FY 2001 NDAA.

Abstract: This rule implements section 712 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. Section 712 extends TRICARE eligibility to persons age 65 and over who would otherwise have lost their TRICARE eligibility due to attainment of entitlement to hospital insurance benefits under Part A of Medicare. In order for these individuals to retain their TRICARE eligibility, they must be enrolled in the supplementary medical insurance program under Part B of Medicare. In general, in the case of medical or dental care provided to these individuals for which payment may be made under both Medicare and TRICARE, Medicare is the primary payer and TRICARE will normally pay the actual out-of-pocket costs incurred by the person. This rule prescribes TRICARE payment procedures and makes revisions to TRICARE rules to accommodate Medicare-eligible CHAMPUS beneficiaries. The Department is publishing this rule as an interim final rule in order to meet the statutorily required effective date.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/03/01	66 FR 40601
Interim Final Rule Effective	10/01/01	
Interim Final Rule Comment Period End	10/02/01	
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Stephen Isaacson, Department of Defense, Office of Assistant Secretary for Health Affairs
Phone: 303 676-3572
Email: stephen.isaacson@tma.osd.mil

RIN: 0720–AA66

831. TRICARE PRIME REMOTE FOR ACTIVE DUTY FAMILY MEMBERS

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule implements 10 U.S.C. 1079(p), as added by section 722(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. This rule provides coverage for medical care for active-duty family members who reside with an active-duty member of the Uniformed Services assigned to remote areas and eligible for the program known as TRICARE Prime Remote. Active-duty family members who enroll in TRICARE Prime Remote for Active-Duty Family Members (TPRADFM) will enjoy benefits generally comparable to TRICARE Prime enrollees including access standards, benefit coverage, and cost-shares.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/06/02	67 FR 5477
Interim Final Rule Comment Period End	04/08/02	
Interim Final Rule Effective	04/08/02	
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: LCDR Robert Styron, Department of Defense, Office of Assistant Secretary for Health Affairs
Phone: 703 681-0064

RIN: 0720–AA68

832. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); VOLUNTARY DISENROLLMENT FROM THE TRICARE RETIREE DENTAL PROGRAM (TRDP)

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule implements section 726 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, which amended 10 U.S.C. 1076c to allow for voluntary disenrollment from the TRICARE Retiree Dental Program in certain circumstances.

Timetable:

Action	Date	FR Cite
NPRM	01/30/02	67 FR 4375
NPRM Comment Period End	04/01/02	
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Linda Winter, Department of Defense, Office of Assistant Secretary for Health Affairs
Phone: 303 676-3682

RIN: 0720–AA69

833. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS): ENURETIC DEVICES, BREAST RECONSTRUCTIVE SURGERY, PFPWD VALID AUTHORIZATION PERIOD, EARLY INTERVENTION SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule removes the exclusion of enuresis alarms, corrects contradictory language as it relates to breast reconstructive surgery, changes the valid period of an authorization for services and items under the Program for Persons with Disabilities, implements section 640 of Public Law 105-17, which establishes the CHAMPUS payment relationship for IDEA part C and items, and revises a statement to the paragraph at 32 CFR 199.4(g)(15)(i)(D).

Timetable:

Action	Date	FR Cite
NPRM	11/15/00	65 FR 68957
NPRM Comment Period End	01/16/01	
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Second Agency Contact: Mike Kottyan, 303 676-3520

Agency Contact: Margaret Brown, Department of Defense, Office of Assistant Secretary for Health Affairs
Phone: 303 676-3581
Fax: 303 676-3579
Email: margaret.brown@tma.osd.mil

RIN: 0720–AA70

834. TRICARE; WAIVER OF CERTAIN TRICARE DEDUCTIBLES; CLARIFICATION OF THE TRICARE PRIME ENROLLMENT PERIOD

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule implements section 714 of the National Defense Authorization Act for Fiscal Year 2000, which authorizes the Secretary of Defense to waive the TRICARE deductible in certain cases for care provided to a dependent of a member of a Reserve Component or the National Guard who is called to active duty for more than 30 days but less than one year. In implementing this rule, we are limiting this to Reserve Component and National Guard members called to active duty in support of contingency operations. The term "contingency operations" is defined at 10 U.S.C. 101(a)(13). This rule also establishes circumstances under which eligible beneficiaries may enroll in TRICARE Prime for a period of less than 1 year.

Timetable:

Action	Date	FR Cite
NPRM	04/18/02	67 FR 19141
NPRM Comment Period End	06/17/02	
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen Isaacson, Department of Defense, Office of Assistant Secretary for Health Affairs
Phone: 303 676-3572

DOD—DODOASHA — **Final Rule Stage**

Email: stephen.isaacson@tma.osd.mil
RIN: 0720–AA72

835. TRICARE; SUB-ACUTE CARE PROGRAM; UNIFORM SKILLED NURSING FACILITY BENEFIT; HOME HEALTH CARE BENEFIT; ADOPTING MEDICARE PAYMENT METHODS FOR SKILLED NURSING FACILITIES AND HOME HEALTH CARE PROVIDERS

Priority: Other Significant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule partially implements the TRICARE "sub-acute and long-term care program reform" enacted by Congress in the National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107, specifically: (1) Establishment of "an effective, efficient, and integrated sub-acute care benefits program," with skilled nursing facility and home health care benefits modeled after those of the Medicare Program; (2) adoption of Medicare payment methods for skilled nursing facility, home health care, and certain other institutional health care providers; (3) adoption of Medicare rules on balance billing of beneficiaries, prohibiting it by institutional providers and limiting it by non-institutional providers; (4) change in the statutory exclusion of coverage for custodial and domiciliary care.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/13/02	67 FR 40597
Interim Final Rule Comment Period End	08/12/02	
Interim Final Rule Effective	08/12/02	
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: Additional Agency Contacts: David Bennett, 303 676-3494, and Stan Regensberg, 303 676-3742

Agency Contact: Tariq Shahid, Department of Defense, Office of Assistant Secretary for Health Affairs
Phone: 303 676-3801

RIN: 0720–AA73

Department of Defense (DOD) — **Completed Actions**

Office of Assistant Secretary for Health Affairs (DODOASHA)

836. TRICARE; REVISIONS TO COVERAGE CRITERIA FOR TRANSPLANTS, CARDIAC AND PULMONARY REHABILITATION, AND AMBULANCE SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule implements a number of regulatory revisions relating to TRICARE coverage for transplants and related services, cardiac and pulmonary rehabilitation, and ambulance services. They are (1) clarification of TRICARE coverage and time limitations on preauthorizations for solid organ and stem cell transplantation for beneficiaries whose conditions are considered appropriate for transplantation according to guidelines adopted by the Executive Director, TRICARE Management Activity (TMA), or a designee; (2) clarification of TRICARE coverage for ambulance service for organ and stem cell transplant candidates; (3) recognition of certain transplant centers as authorized TRICARE institutional providers according to provisions adopted by the Executive Director, TMA, or a designee; (4) clarification of pediatric consortium programs for organ transplantation according to provisions adopted by the Executive Director, TMA, or a designee; (5) extension of coverage for cardiac rehabilitation for those patients who have had heart valve surgery, heart or heart-lung transplantation; (6) establishment of coverage for pulmonary rehabilitation for beneficiaries whose conditions are considered appropriate for pulmonary rehabilitation according to guidelines adopted by the Executive Director, TMA, or a designee; and (7) elimination of payment restrictions for Military Treatment Facility (MTF) ordered ambulance transfers.

Timetable:

Action	Date	FR Cite
NPRM	03/17/95	60 FR 14403
NPRM Comment Period End	05/16/95	
Final Action	06/25/02	67 FR 42717
Correction	07/09/02	67 FR 45311
Final Action Effective	07/25/02	67 FR 42717

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Paragraphs 199.4(e)(18)(i)(F) and (G) are effective 12/01/1991. Paragraph 199.4(e)(21) is effective 08/12/2002.

Agency Contact: Marty Maxey, Department of Defense, Office of Assistant Secretary for Health Affairs
Phone: 303 676-3627

RIN: 0720–AA28

837. TRICARE; CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); BONUS PAYMENTS IN MEDICALLY UNDERSERVED AREAS

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule implements a bonus payment, in addition to the amount normally paid under the allowable charge methodology, to physicians in medically underserved areas. For purposes of this rule, medically underserved areas are the same as those determined by the Secretary of Health and Human Services for the Medicare program. Such bonus payments shall be equal to the bonus payments authorized by Medicare, except as necessary to recognize any unique or distinct characteristics or requirements of the TRICARE program and as described in instructions issued by the Executive Director, TRICARE Management Activity. This rule promotes a reimbursement enhancement to a limited number of physicians designed to increase TRICARE beneficiary access to care.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/03/00	65 FR 41002
Interim Final Rule Effective	08/02/00	
Final Action Effective	08/02/00	67 FR 18114
Interim Final Rule Comment Period End	09/01/00	65 FR 41002
Final Action	04/15/02	67 FR 18114

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stan Regensberg, Department of Defense, Office of Assistant Secretary for Health Affairs, Washington, DC
Phone: 303 676-3742

RIN: 0720–AA60

DOD—DODOASHA — **Completed Actions**

838. CHAMPUS/TRICARE; PARTIAL IMPLEMENTATION OF PHARMACY BENEFITS PROGRAM; IMPLEMENTATION OF NATIONAL DEFENSE AUTHORIZATION ACT MEDICAL BENEFITS FOR FISCAL YEAR 2001

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: Final, Statutory, April 1, 2001, Implements Public Law 106-398.
Provisions of act effective October 30, 2000, or 180 days thereafter.

Abstract: This rule implements several sections of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. The rule allows coverage of physical examinations for beneficiaries ages 5 through 11 that are required in connection with school enrollment; provides an additional 2-year period for survivors of deceased active-duty members to remain eligible for TRICARE medical and dental benefits at active-duty dependent rates; extends eligibility for medical and dental benefits to Medal of Honor recipients and their immediate dependents in the same manner as if the recipient were entitled to retired pay; partially implements the Pharmacy Benefits Program establishing revised copays and cost-shares for the prescription drug benefit; implements the TRICARE Senior Pharmacy Program by establishing a new eligibility for prescription drug benefits for Medicare-eligible retirees; allows a waiver of copayments, cost-shares, and deductibles for all Uniformed Services TRICARE-eligible active-duty family members residing with their TRICARE Prime Remote-eligible Active-Duty Service Member Sponsor within a TRICARE Prime Remote designated area until implementation of the TRICARE Prime Remote for Family Member Program or October 30, 2001, whichever is later; provides for the elimination of TRICARE Prime copayments for active-duty family members enrolled in TRICARE Prime; provides for the reimbursement of reasonable travel expenses for TRICARE Prime beneficiaries referred by a primary care provider to a specialty care provider who provides services over 100 miles away; and reduces the maximum amount which retirees, their family members, and survivors would be liable from $7,500 to $3,000.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/09/01	66 FR 9651
Interim Final Rule; Correction	03/26/01	66 FR 16400
Interim Final Rule; Change in Effective Date	04/01/01	66 FR 10367
Final Action Effective	04/01/01	67 FR 15721
Interim Final Rule Comment Period End	04/10/01	66 FR 9651
Interim Final Rule Effective	04/10/01	
Interim Final Rule; Correction	03/19/02	67 FR 12472
Final Action	04/03/02	67 FR 15721

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Tariq Shahid, Department of Defense, Office of Assistant Secretary for Health Affairs
Phone: 303 676-3801

RIN: 0720–AA62

839. COLLECTION FROM THIRD-PARTY PAYERS OF REASONABLE CHARGES OF HEALTHCARE SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 1095; 5 USC 301

CFR Citation: 32 CFR 220

Legal Deadline: None

Abstract: This rule implements provisions of the National Defense Authorization Act for Fiscal Year 2000, which amended 10 U.S.C. 1095 to replace the "reasonable cost" basis of the Third-Party Collection Program with a "reasonable charge" basis and which added 10 U.S.C. 1097b(b) to authorize methods to be used for the computation of reasonable charges. We propose to adopt the "reasonable charge" basis and generally to use CHAMPUS payment rates as the reasonable charges under the Program. This rule also implements 10 U.S.C. 1079b, as added by section 732 of the National Defense Authorization Act for Fiscal Year 2002. This section specifically addresses the charging of fees for care to civilians who are not covered beneficiaries.

Timetable:

Action	Date	FR Cite
NPRM	03/29/02	67 FR 15140
NPRM Comment Period End	05/28/02	
Final Action	09/12/02	67 FR 57739
Final Action Effective	10/01/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: LtCol Rose Layman, Department of Defense, Office of Assistant Secretary for Health Affairs
Phone: 703 681-8910

LtCol Linnes Chester, Department of Defense, Office of Assistant Secretary for Health Affairs
Phone: 703 681-8910

RIN: 0720–AA67

[FR Doc. 02–24261 Filed 12–06–02; 8:45 am]
BILLING CODE 5001–08–S

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Federal Register

Monday,
December 9, 2002

Part VI

Department of Education

Semiannual Regulatory Agenda

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DEPARTMENT OF EDUCATION (ED)

DEPARTMENT OF EDUCATION

Office of the Secretary

34 CFR Subtitles A and B

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Office of the Secretary, Education.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Secretary of Education publishes a semiannual agenda of Federal regulations. The agenda is issued under the authority of section 4(b) of Executive Order 12866 "Regulatory Planning and Review." The purpose of the agenda is to encourage more effective public participation in the regulatory process by providing the public with early information about pending regulatory activities.

FOR FURTHER INFORMATION CONTACT: Questions or comments related to specific regulations listed in this agenda should be directed to the agency contact listed for the regulations. Questions or comments related to preparation of this agenda should be directed to Sandy Jablonski, Division of Regulatory Services, Office of the General Counsel, Department of Education, Room 6E107, FB-6, 400 Maryland Avenue SW., Washington, DC 20202-2241; telephone: (202) 401-8300. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: Section 4(b) of Executive Order 12866, dated September 30, 1993, requires the Department of Education (ED) to publish, at a time and in a manner specified by the Administrator of the Office of Information and Regulatory Affairs, OMB, an agenda of all regulations under development or review. The Regulatory Flexibility Act, 5 U.S.C. 602(a), requires ED to publish, in October and April of each year, a regulatory flexibility agenda.

The regulatory flexibility agenda may be combined with any other agenda that satisfies the statutory requirements (5 U.S.C. 605(a)). In compliance with the Executive order and the Regulatory Flexibility Act, the Secretary publishes this agenda.

For each set of regulations listed, the agenda provides the title of the document, the type of document, a citation to any rulemaking or other action taken since publication of the most recent agenda, and planned dates of future rulemaking. In addition, the agenda provides the following information:

- An abstract, which includes a description of the problem to be addressed, any principal alternatives being considered, and potential costs and benefits of the action.
- An indication of whether the planned action is likely to have significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601(b)).
- A reference to where a reader can find the current regulations in the Code of Federal Regulations.
- A citation of legal authority.
- The name, address, and telephone number of the contact person at the Department from whom a reader can obtain additional information regarding the planned action.

In accordance with the Department's Principles for Regulating listed in its regulatory plan, ED is committed to regulation that improves the quality and equality of services to its customers, learners of all ages. ED will regulate only when absolutely necessary and then in the most flexible, most equitable, least burdensome way possible.

Interested members of the public are invited to comment on any of the items listed in this agenda that they believe are not consistent with the Principles for Regulating. Members of the public are also invited to comment on regulations listed in this agenda that are designated for periodic review under the Regulatory Flexibility Act (5 U.S.C. 610).

This publication in the **Federal Register** does not impose any binding obligation on the Department with regard to any specific item in the agenda. The Department may elect not to pursue any of the regulatory actions listed here, and regulatory action in addition to the items listed is not precluded. Dates of future regulatory actions are subject to revision in subsequent agendas.

For this edition of ED's regulatory agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Regulatory Plan entries are listed in the table of contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

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To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free, at 1-888-293-6498, or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

Dated: September 13, 2002.

Brian W. Jones,

General Counsel

Office of Management—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
840	Student Rights in Research, Experimental Programs, and Testing	1880-AA66

ED

Office of the Chief Financial Officer—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
841	Governmentwide Requirement for Drug-Free Workplace (Financial Assistance) and Governmentwide Debarment and Suspension (Nonprocurement)	1890-AA07
842	Protection of Human Subjects (Classified Research)	1890-AA08

Office for Civil Rights—Prerule Stage

Sequence Number	Title	Regulation Identification Number
843	Boy Scouts of America Equal Access Act	1870-AA12

Office for Civil Rights—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
844	Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance	1870-AA11

Office of Educational Research and Improvement—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
845	Reauthorization of the Educational, Research, Development, Dissemination, and Improvement Act of 1994 **(Section 610 Review) (Reg Plan Seq No. 22)**	1850-AA57

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Office of Elementary and Secondary Education—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
846	Reauthorization of Title I of the Elementary and Secondary Education Act of 1965 **(Section 610 Review) (Reg Plan Seq No. 23)**	1810-AA91

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Office of Elementary and Secondary Education—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
847	Indian Education Discretionary Grant Program	1810-AA93

Office of Elementary and Secondary Education—Completed Actions

Sequence Number	Title	Regulation Identification Number
848	Improving the Academic Achievement of the Disadvantaged	1810-AA92
849	Impact Aid Programs	1810-AA94

ED

Federal Student Aid—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
850	Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions; General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program	1845-AA24
851	Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program	1845-AA23

Federal Student Aid—Completed Actions

Sequence Number	Title	Regulation Identification Number
852	Federal Perkins Loan Program	1845-AA22

Office of Special Education and Rehabilitative Services—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
853	Reauthorization of the Individuals With Disabilities Education Act **(Section 610 Review) (Reg Plan Seq No. 24)** ...	1820-AB54

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Department of Education (ED)
Office of Management (OM)

Proposed Rule Stage

840. STUDENT RIGHTS IN RESEARCH, EXPERIMENTAL PROGRAMS, AND TESTING

Priority: Other Significant

Legal Authority: 20 USC 1232h

CFR Citation: 34 CFR 98

Legal Deadline: None

Abstract: These regulations are needed to implement section 1017 of the Goals 2000: Educate America Act (Pub. L. 103-227, 20 U.S.C. 1232h). That provision amends the Protection of Pupil Rights Amendment (PPRA) to require schools, in certain instances, to make specific educational materials available to parents for inspection. The provision also amends the PPRA to prohibit schools from requiring a student to submit to certain surveys, analyses, or evaluations without prior parental consent. The regulations are being developed in accordance with the Department's Principles for Regulating. New legislation amending the PPRA passed as part of the No Child Left Behind Act of 2001. As our next action we will issue a new NPRM based on this legislation.

Timetable:

Action	Date	FR Cite
NPRM	08/28/95	60 FR 44696
NPRM Comment Period End	10/27/95	
Second NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ellen Campbell, Family Policy Compliance Office, Department of Education, Office of Management, Room 2W101, 400 Maryland Avenue SW, FB-6, Washington, DC 20202-4605
Phone: 202 260-3887

RIN: 1880–AA66

Department of Education (ED)
Office of the Chief Financial Officer (OCFO)

Long-Term Actions

841. GOVERNMENTWIDE REQUIREMENT FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE) AND GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Priority: Other Significant

Legal Authority: EO 12549; EO 12689; 20 USC 1082; 20 USC 1094; 20 USC 1221e-3; 20 USC 3474; sec 2455, PL 103-355, 108 Stat 3243 at 3327

CFR Citation: 34 CFR 84; 34 CFR 85; 34 CFR 668; 34 CFR 682

Legal Deadline: None

Abstract: These regulations are part of a common rule amending the Governmentwide nonprocurement common rule for debarment and suspension and the Governmentwide rule implementing the Drug-Free Workplace Act of 1988. These regulations clarify the relationship between debarment and suspension actions and limitation, suspension, and termination actions under title IV of the HEA. Additionally, these regulations set the dollar threshold on prohibited lower-tier procurement transactions with excluded persons at $25,000. These regulations also relocate the Drug-Free Workplace Act regulations in a separate part from the debarment and suspension regulations.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3326
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Peter Wathen-Dunn, General Attorney, Department of Education, Office of the Chief Financial Officer, Room 6E211, 400 Maryland Avenue SW, FB-6, Washington, DC 20202-2243
Phone: 202 401-6700

RIN: 1890–AA07

842. PROTECTION OF HUMAN SUBJECTS (CLASSIFIED RESEARCH)

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 42 USC 300v-1(b)

CFR Citation: 34 CFR 97

Legal Deadline: None

Abstract: These amendments would revise existing regulations to eliminate certain waiver and expedited review provisions by adopting additional protection pertaining to human subjects in classified research.

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1880-AA79

Agency Contact: Helene Deramond, Department of Education, Office of the Chief Financial Officer, Room 3652, ROB-3, 400 Maryland Avenue SW, Washington, DC 20202
Phone: 202 260-5353

RIN: 1890–AA08

Department of Education (ED)
Office for Civil Rights (OCR)

Prerule Stage

843. • BOY SCOUTS OF AMERICA EQUAL ACCESS ACT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 20 USC 7905

CFR Citation: 34 CFR ch I

Legal Deadline: None

Abstract: These regulations would implement a new law, the Boy Scouts of America Equal Access Act (Boy Scouts Act), which is part of the No Child Left Behind Act of 2001. Under the Boy Scouts Act, no public elementary school, public secondary school, or State or local educational agency that provides an opportunity for one or more outside youth or community groups to meet on school premises or in school facilities before or after school hours shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America or other specified patriotic youth groups.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Jeanette J. Lim, Director, Program Legal Group, Department of Education, Office for Civil Rights, Room 5036, Switzer Building, 400 Maryland Avenue SW, Washington, DC 20202-1100
Phone: 202 205-8635

RIN: 1870–AA12

Department of Education (ED)
Office for Civil Rights (OCR)
Proposed Rule Stage

844. • NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Other Significant

Legal Authority: 20 USC 1681; 20 USC 1682

CFR Citation: 34 CFR 106

Legal Deadline: None

Abstract: In the event changes are made, such changes would amend existing regulations implementing title IX of the Education Amendments of 1972 to provide more flexibility for educators to establish single-sex classes and schools at the elementary and secondary levels. The purpose of the amendments would be to support efforts of school districts to improve educational outcomes for children and to provide public school parents with a diverse array of educational options that respond to the educational needs of their children, while at the same time ensuring appropriate safeguards against discrimination. We want to permit appropriate latitude for innovative efforts to help children learn and to expand the choices parents have for their children's education consistent with the purposes of the title IX statute and the Constitution.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jeanette J. Lim, Director, Program Legal Group, Department of Education, Office for Civil Rights, Room 5036, Switzer Building, 400 Maryland Avenue SW, Washington, DC 20202-1100
Phone: 202 205-8635

RIN: 1870–AA11

Department of Education (ED)
Office of Educational Research and Improvement (OERI)
Proposed Rule Stage

845. • REAUTHORIZATION OF THE EDUCATIONAL, RESEARCH, DEVELOPMENT, DISSEMINATION, AND IMPROVEMENT ACT OF 1994 (SECTION 610 REVIEW)

Regulatory Plan: This entry is Seq. No. 22 in part II of this issue of the Federal Register.

RIN: 1850–AA57

Department of Education (ED)
Office of Elementary and Secondary Education (OESE)
Final Rule Stage

846. REAUTHORIZATION OF TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965 (SECTION 610 REVIEW)

Regulatory Plan: This entry is Seq. No. 23 in part II of this issue of the Federal Register.

RIN: 1810–AA91

Department of Education (ED)
Office of Elementary and Secondary Education (OESE)
Long-Term Actions

847. • INDIAN EDUCATION DISCRETIONARY GRANT PROGRAM

Priority: Other Significant

Legal Authority: 20 USC 7441; 20 USC 7442

CFR Citation: 34 CFR 263

Legal Deadline: None

Abstract: The regulations that govern the competition of new Indian Education discretionary grant programs for fiscal year (FY) 2002 are revised. The programs governed by this part include grants for the Professional Development Program and the Demonstration Grants for Indian Children Program. These programs are authorized under title VII of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001. These regulations identify eligible applicants for the program and the specific application and program requirements that must be met in order for applications to be considered for funding. These regulations also provide the requirements for the payback provisions that apply to the Professional Development Program. These regulations govern the grant application process for new FY 2002 awards under both programs, including the payback provisions for the Professional Development Program.

ED—OESE
Long-Term Actions

Timetable:

Action	Date	FR Cite
Final Rule With Request for Comments	07/22/02	67 FR 47695
Comment Period End	08/21/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cathie Martin, Department of Education, Office of Elementary and Secondary Education, Room 3W111 FB-6, 400 Maryland Avenue SW, Washington, DC 20202-6335
Phone: 202 260-1683

RIN: 1810–AA93

Department of Education (ED)
Office of Elementary and Secondary Education (OESE)
Completed Actions

848. IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

Priority: Other Significant

CFR Citation: 34 CFR 200

Completed:

Reason	Date	FR Cite
NPRM	05/06/02	67 FR 30452
Final Action	07/05/02	67 FR 45038

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jacquelyn Jackson
Phone: 202 260-0826

RIN: 1810–AA92

849. • IMPACT AID PROGRAMS

Priority: Other Significant

Legal Authority: 20 USC 7701 to 7714

CFR Citation: 34 CFR 222

Legal Deadline: None

Abstract: These regulations implement a new discretionary Impact Aid construction grant program, which is authorized under section 8007(b) of the Elementary and Secondary Education Act (the Act), as amended by the No Child Left Behind Act of 2001. The program provides competitive grants for emergency repairs and modernization of school facilities to certain eligible school districts that receive Impact Aid funds. These final regulations incorporate statutory requirements and provide rules for applying and qualifying for, as well as spending, the Federal funds provided under this program. These final regulations apply only to the fiscal year (FY) 2002 grant competition.

Timetable:

Action	Date	FR Cite
Final Action	08/16/02	67 FR 53680

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Catherine Schagh, Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue SW, Washington, DC 20202-6244
Phone: 202 260-3858

RIN: 1810–AA94

Department of Education (ED)
Federal Student Aid (FSA)
Final Rule Stage

850. INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED; STUDENT ASSISTANCE GENERAL PROVISIONS; GENERAL PROVISIONS FOR THE FEDERAL PERKINS LOAN PROGRAM, FEDERAL WORK-STUDY PROGRAM

Priority: Other Significant

Legal Authority: 20 USC 1001 et seq

CFR Citation: 34 CFR 600; 34 CFR 668; 34 CFR 673; 34 CFR 675; 34 CFR 682; 34 CFR 685; 34 CFR 690; 34 CFR 694; ...

Legal Deadline: None

Abstract: These regulations will implement various changes to the Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions; General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program; Federal Work-Study Programs; Federal Family Education Loan Program; William D. Ford Federal Direct Loan Program; Federal Pell Grant Program; and Gaining Early Awareness and Readiness for Undergraduate Programs regulations. These regulations were negotiated with the financial aid, higher education, and other related community members through the negotiated rulemaking process under section 492 of the Higher Education Act of 1965, as amended, and they will reduce administrative burden for program participants, provide benefits to students and borrowers, and protect taxpayers' interest.

Timetable:

Action	Date	FR Cite
NPRM	08/08/02	67 FR 51718
NPRM Comment Period End	10/07/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Wendy Macias, Department of Education, Office of Postsecondary Education, Room 8056,

ED—FSA — **Final Rule Stage**

1990 K Street NW, Washington, DC 20006
Phone: 202 502-7526

RIN: 1845–AA24

851. STUDENT ASSISTANCE GENERAL PROVISIONS, FEDERAL PERKINS LOAN PROGRAM, FEDERAL FAMILY EDUCATION LOAN PROGRAM, AND WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

Priority: Other Significant

Legal Authority: 20 USC 1001 et seq

CFR Citation: 34 CFR 682; 34 CFR 685; 34 CFR 668; 34 CFR 674

Legal Deadline: None

Abstract: These regulations will implement various changes to the Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program and were negotiated with the financial aid, higher education, and other related community members through the negotiated rulemaking process under section 492 of the Higher Education Act of 1965, as amended. These regulations will reduce administrative burden for program participants, provide benefits to students and borrowers, and protect taxpayers' interest.

Timetable:

Action	Date	FR Cite
NPRM	08/06/02	67 FR 51036
NPRM Comment Period End	10/07/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gail McLarnon, Department of Education, Office of Postsecondary Education, Room 8062, 1990 K Street NW, Washington, DC 20006
Phone: 202 219-7048

RIN: 1845–AA23

Department of Education (ED)
Federal Student Aid (FSA) — **Completed Actions**

852. FEDERAL PERKINS LOAN PROGRAM

Priority: Other Significant

CFR Citation: 34 CFR 674

Completed:

Reason	Date	FR Cite
Withdrawn	07/26/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gail McLarnon
Phone: 202 219-7048

RIN: 1845–AA22

Department of Education (ED)
Office of Special Education and Rehabilitative Services (OSERS) — **Proposed Rule Stage**

853. • REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (SECTION 610 REVIEW)

Regulatory Plan: This entry is Seq. No. 24 in part II of this issue of the **Federal Register**.

RIN: 1820–AB54

[FR Doc. 02–24265 Filed 12–06–02; 8:45 am]
BILLING CODE 4000–01–S

Federal Register

Monday,
December 9, 2002

Part VII

Department of Energy

Semiannual Regulatory Agenda

DEPARTMENT OF ENERGY (DOE)

DEPARTMENT OF ENERGY

10 CFR Chs. II, III, and X

48 CFR Ch. 9

Regulatory Agenda

AGENCY: Department of Energy.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Department of Energy has prepared and today is publishing its semiannual regulatory agenda pursuant to Executive Order 12866 "Regulatory Planning and Review," 58 FR 51735, and the Regulatory Flexibility Act, 5 U.S.C. sections 601-612 (1988).

FOR FURTHER INFORMATION CONTACT: For further information about any particular item on the regulatory agenda, please contact the individual listed under that item. For further information on the regulatory agenda in general, please contact: Richard L. Farman, Room 6E-078, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8145.

SUPPLEMENTARY INFORMATION: Entries appended to this notice reflect the status of activities as of approximately September 10, 2002. They are divided into categories first by subagencies and then according to their stage of rulemaking action: prerule, proposed rulemaking, final rulemaking, long-term action, or completed action.

For this edition of the Department of Energy's regulatory agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Regulatory Plan entries are listed in the table of contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

A draft of this regulatory agenda has been transmitted to the Chief Counsel for Advocacy of the U.S. Small Business Administration for comment, if any, pursuant to 5 U.S.C. 602(b).

Issued in Washington, DC, on October 22, 2002.

Lee Liberman Otis,
General Counsel.

Energy Efficiency and Renewable Energy—Prerule Stage

Sequence Number	Title	Regulation Identification Number
854	Energy Efficiency Standards for Residential Furnaces, Boilers, and Mobile Home Furnaces **(Reg Plan Seq No. 25)**	1904-AA78
855	Determination for Small Electric Motors	1904-AA87
856	Energy Efficiency Standards for Electric Distribution Transformers **(Reg Plan Seq No. 26)**	1904-AB08
857	Energy Efficiency Standards for Commercial Central Air Conditioning Units and Heat Pumps Rated 65-240 kBtus/Hr **(Reg Plan Seq No. 27)**	1904-AB09

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Energy Efficiency and Renewable Energy—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
858	State and Local Incentives Program: Alternative Fuels	1904-AA66
859	Test Procedures for Electric Distribution Transformers	1904-AA85
860	Alternative Fueled Vehicle Acquisition Requirements for Private and Local Government Fleets	1904-AA98

Energy Efficiency and Renewable Energy—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
861	Test Procedures for Central Air Conditioners and Heat Pumps—Amendments	1904-AA46
862	National Voluntary Residential Energy Efficiency Rating Guidelines	1904-AA74
863	Test Procedures for Commercial Water Heaters	1904-AA95
864	Test Procedures for Commercial Warm Air Furnaces	1904-AA96
865	Test Procedures for Commercial Air Conditioning Equipment	1904-AA97
866	Test Procedures for Commercial Package Boilers	1904-AB02
867	Test Procedures for Dishwashers—Amendment	1904-AB10
868	Test Procedures for Residential Refrigerators and Refrigerator-Freezers	1904-AB12

DOE

Energy Efficiency and Renewable Energy—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
869	Energy Efficiency Code for New Federal Residential Low-Rise Buildings	1904-AA53
870	Determination for High-Intensity Discharge Lamps	1904-AA86
871	Energy Efficiency Standards for Clothes Dryers and Dishwashers	1904-AA89
872	Energy Efficiency Standards for Pool Heaters and Direct Heating Equipment	1904-AA90
873	Energy Efficiency Standards for 1-200 HP Electric Motors	1904-AA91
874	Energy Efficiency Standards for Fluorescent and Incandescent Lamps	1904-AA92

Energy Efficiency and Renewable Energy—Completed Actions

Sequence Number	Title	Regulation Identification Number
875	Energy Efficiency Standards for Central Air Conditioners and Heat Pumps	1904-AA77

Defense and Security Affairs—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
876	Physical Protection of Security Interests	1992-AA23
877	Computer Security; Access to Information on National Nuclear Security Administration Computer Systems	1992-AA27

Defense and Security Affairs—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
878	Procedural Rules for DOE Nuclear Security Activities	1992-AA28
879	Human Reliability Program	1992-AA29
880	Criteria and Procedure for Establishment of the Personnel Security Assurance Program and Determinations of an Individual's Eligibility for Access to a Personnel Security Assurance Program Position	1992-AA30
881	Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material, Subpart A	1992-AA31

Departmental and Others—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
882	Freedom of Information Act	1901-AA32
883	Payments for Special Burdens and In Lieu of Taxes	1901-AA58
884	Research Misconduct	1901-AA89
885	Administrative Procedures and Sanctions; Electric Power System Permits and Reports; Short-Term Imports and Exports of Natural Gas	1901-AA93
886	Occupational Radiation Protection	1901-AA95
887	Cost Recovery Adjustment Rate Proceeding	1901-AA96
888	Transmission Rate Proceeding	1901-AA97

Departmental and Others—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
889	Radiation Protection of the Public and the Environment **(Reg Plan Seq No. 28)**	1901-AA38

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Departmental and Others—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
890	Economic Development Transfers of Real Property	1901-AA82
891	Nondiscrimination in Federally Assisted Programs or Activities	1901-AA86
892	Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites: Technical Amendments	1901-AA88

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Departmental and Others—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
893	Annotation of Land Records for Remediated Properties in the Uranium Mill Tailings Remedial Action Project (UMTRA)	1901-AA57
894	Compliance With Floodplain and Wetland Environmental Review Requirements	1901-AA94

Departmental and Others—Completed Actions

Sequence Number	Title	Regulation Identification Number
895	Guidelines for Physician Panel Determinations on Worker Requests for Assistance in Filing for State Workers' Compensation Benefits	1901-AA90
896	Revision of ACS-02 Control Area Service Rate: Generation Imbalance Service Rate	1901-AA92

Office of Procurement and Assistance Management—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
897	Financial Assistance Regulation: Administrative Requirements Related to For-Profit Organizations	1991-AB57
898	Energy Department Motor Vehicle Fleet Fuel Efficiency	1991-AB59
899	DEAR: Part 970 Rewrite Continuation	1991-AB60

Office of Procurement and Assistance Management—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
900	DEAR: Recycling	1991-AB47
901	Organizational Conflict of Interest Disclosure	1991-AB52
902	Acquisition Regulation: Payment of Fee Relating to Security Issues/Conditional Payment of Fee	1991-AB54

Office of Procurement and Assistance Management—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
903	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	1991-AB56

DOE

Office of Procurement and Assistance Management—Completed Actions

Sequence Number	Title	Regulation Identification Number
904	DEAR: Patent Rights	1991-AB55

Office of General Counsel—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
905	Conduct of Employees	1990-AA19
906	Claims for Damages Against Department of Energy Employees	1990-AA26

Department of Energy (DOE) — **Prerule Stage**

Energy Efficiency and Renewable Energy (EE)

854. ENERGY EFFICIENCY STANDARDS FOR RESIDENTIAL FURNACES, BOILERS, AND MOBILE HOME FURNACES

Regulatory Plan: This entry is Seq. No. 25 in part II of this issue of the **Federal Register**.

RIN: 1904–AA78

855. DETERMINATION FOR SMALL ELECTRIC MOTORS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6317

CFR Citation: 10 CFR 431

Legal Deadline: Other, Statutory, April 24, 1995, Determination Notice.

Abstract: The Energy Policy Act of 1992 requires the Department to prescribe test procedures for small electric motors for which the Secretary makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings.

Timetable:

Action	Date	FR Cite
Determination Notice	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: The Department's regulatory actions related to energy efficiency standards have been categorized as high, medium, and low priority based on significant input from the public. This action is a high priority and the Department is gathering information and conducting analyses in preparation for a determination under 42 U.S.C. 6317(b).

Agency Contact: James Raba, EE-2J, Energy Technology Program Specialist, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585

Phone: 202 586-8654
Email: jim.raba@ee.doe.gov

RIN: 1904–AA87

856. ENERGY EFFICIENCY STANDARDS FOR ELECTRIC DISTRIBUTION TRANSFORMERS

Regulatory Plan: This entry is Seq. No. 26 in part II of this issue of the **Federal Register**.

RIN: 1904–AB08

857. ENERGY EFFICIENCY STANDARDS FOR COMMERCIAL CENTRAL AIR CONDITIONING UNITS AND HEAT PUMPS RATED 65-240 KBTUS/HR

Regulatory Plan: This entry is Seq. No. 27 in part II of this issue of the **Federal Register**.

RIN: 1904–AB09

Department of Energy (DOE) — **Proposed Rule Stage**

Energy Efficiency and Renewable Energy (EE)

858. STATE AND LOCAL INCENTIVES PROGRAM: ALTERNATIVE FUELS

Priority: Other Significant

Legal Authority: 42 USC 13235

CFR Citation: 10 CFR 409

Legal Deadline: Final, Statutory, April 24, 1993.

Abstract: The Energy Policy Act of 1992 requires DOE to issue regulations establishing the State and Local Incentives Program. Under this program DOE may grant financial assistance to States for projects in DOE-approved State plans to promote use of alternative fuels and alternative-fueled vehicles. With the publication of an integrated State Energy Program (61 FR 35890), the alternative fuel grant programs may be a part of the State grant special projects, depending on funding availability. The next action will be a cancellation notice of any separate State grant program.

Timetable:

Action	Date	FR Cite
NPRM	03/21/95	60 FR 15020
NPRM Comment Period End	05/22/95	

DOE—EE

Proposed Rule Stage

Action	Date	FR Cite
Notice Withdrawing Proposed Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Dorothy Wormley, Program Manager, EE-2K, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-7028

RIN: 1904–AA66

859. TEST PROCEDURES FOR ELECTRIC DISTRIBUTION TRANSFORMERS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6317

CFR Citation: 10 CFR 430

Legal Deadline: Other, Statutory, April 24, 1995, Determination Notice.

Abstract: The Energy Policy Act of 1992 requires the Department to prescribe testing requirements for electric distribution transformers for which the Secretary makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings.

Timetable:

Action	Date	FR Cite
Determination Notice	10/22/97	62 FR 54809
NPRM	11/12/98	63 FR 63359
Supplemental NPRM	04/00/03	
Final Action	10/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Due to the Department's limited staff and financial resources, regulatory actions related to energy efficiency standards have been categorized as high, medium, and low priority based on significant input from the public. This action is a high priority, and the Department is working actively on this action.

Agency Contact: Antonio Bouza, EE-2J, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20676
Phone: 202 586-4563
Email: antonio.bouza@ee.doe.gov

RIN: 1904–AA85

860. ALTERNATIVE FUELED VEHICLE ACQUISITION REQUIREMENTS FOR PRIVATE AND LOCAL GOVERNMENT FLEETS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 42 USC 13257

CFR Citation: 10 CFR 490

Legal Deadline: NPRM, Statutory, May 1, 1999.
Final, Statutory, April 1, 2000.

Abstract: The Energy Policy Act of 1992 (the Act) requires DOE to initiate a rulemaking to determine whether a private and local fleet program is deemed necessary to meet the fuel displacement goals of the Act. The criteria for making this determination is mandated by the Act. DOE conducted a series of informal workshops, including two for State and local government officials, to discuss regulatory options and other issues related to the alternative fueled vehicle requirements under the Act. The analysis required to make the determination is more extensive than originally estimated.

Recently the U.S. District Court for the Northern District of California entered an order requiring DOE to complete a proposed rulemaking and to take final action within specified timeframes. DOE is actively engaged in the analysis and drafting required to comply with the court's mandated schedule.

Timetable:

Action	Date	FR Cite
ANPRM	04/17/98	63 FR 19372
Notice of Public Workshops	07/20/00	65 FR 44987
NPRM	01/00/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Local

Agency Contact: Dana O'Hara, EE-2G, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-8063
Email: dana.o'hara@ee.doe.gov

RIN: 1904–AA98

Department of Energy (DOE)
Energy Efficiency and Renewable Energy (EE)

Final Rule Stage

861. TEST PROCEDURES FOR CENTRAL AIR CONDITIONERS AND HEAT PUMPS—AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 430

Legal Deadline: None

Abstract: These revisions to the test procedures for central air conditioners and heat pumps in accordance with the Energy Policy and Conservation Act will reorganize the document in a logical order and update the references. The revisions include an updated nomenclature compatible with the eventual test procedure for combined (domestic hot water and central air conditioners or heat pumps) appliances, additional tables listing test tolerances, a clearer specification for the demand defrost credit, and test methods for ECM (electronically commutated motor) blowers and history-dependent defrosts.

Timetable:

Action	Date	FR Cite
NPRM	01/22/01	66 FR 6768
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Michael Raymond, EE-2J, Program Manager, Office of Building Research and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-9611
Email: michael.raymond@ee.doe.gov

RIN: 1904–AA46

DOE—EE

Final Rule Stage

862. NATIONAL VOLUNTARY RESIDENTIAL ENERGY EFFICIENCY RATING GUIDELINES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 8236

CFR Citation: 10 CFR 437

Legal Deadline: Final, Statutory, April 24, 1994.

Abstract: DOE is required to establish by rule national voluntary guidelines for home energy rating systems. The guidelines are designed to encourage uniformity with regard to systems for rating the annual energy efficiency of residential buildings. The guidelines may be used to enable and encourage the assignment of energy efficiency ratings to residential buildings and the development of criteria for attractive financial instruments for energy efficient homes.

In response to the directives of the Energy Policy Act of 1992, DOE collaborated with hundreds of stakeholders and organizations, including the Home Energy Rating System (HERS) Council, the National Association of State Energy Officials, and HERS providers, many of whom had been meeting regarding HERS since about 1987. Based on input from all the stakeholders, DOE issued for public comment a Notice of Proposed Rulemaking on voluntary guidelines.

Most of the comments that DOE received on the proposed rule were readily resolved. But the issue of "fuel neutrality" was not easily incorporated into the rule. "Fuel neutrality" involved an interpretation of the requirement that the rule not "discriminate among fuel types" for which the EPACT legislation provided no clarification. Yet, in spite of an intensive effort by DOE to work with both the electric and gas industries, a definition regarding fuel neutrality was not resolved and remains hotly disputed.

In the fall of 2003, DOE plans to issue a Report to Congress on the HERS and Energy Efficient Mortgages, as required by Congress. This report will note that despite the fact that DOE has not issued a final rule, home energy raters are now available in 47 States, and the guidelines used by these raters are generally consistent in content to DOE's notice of proposed rulemaking on voluntary HERS guidelines.

Timetable:

Action	Date	FR Cite
NPRM	07/25/95	60 FR 37949
NPRM Comment Period End	05/09/96	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: David Boomsma, EE-3B, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-7086
Fax: 202 586-1233
Email: david.boomsma@ee.doe.gov

RIN: 1904–AA74

863. TEST PROCEDURES FOR COMMERCIAL WATER HEATERS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 431

Legal Deadline: None

Abstract: The Energy Policy and Conservation Act (EPCA), as amended, establishes energy conservation standards for commercial water heaters, prescribes test procedures, and requires labeling for such equipment. This action would codify the energy conservation standards and test procedures established in the EPCA for commercial water heaters. This action will incorporate by reference energy conservation standards and test procedures, revised by the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE).

Timetable:

Action	Date	FR Cite
NPRM	08/09/00	65 FR 48852
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cyrus Nasseri, EE-2J, Program Manager, Office of Building Research and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-9138
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RIN: 1904–AA95

864. TEST PROCEDURES FOR COMMERCIAL WARM AIR FURNACES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 431

Legal Deadline: None

Abstract: The Energy Policy and Conservation Act (EPCA), as amended, establishes energy conservation standards for commercial heating equipment, prescribes test procedures, and requires labeling for such equipment. This action would codify the energy conservation standards and test procedures established in the EPCA for commercial heating equipment. This action will also incorporate by reference energy conservation standards and test procedures, revised by the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE), and will establish certification and compliance requirements for commercial heating equipment.

Timetable:

Action	Date	FR Cite
NPRM	12/13/99	64 FR 69597
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1904–AA96

865. TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONING EQUIPMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 431

Legal Deadline: None

Abstract: The Energy Policy and Conservation Act (EPCA), as amended, establishes energy conservation standards for commercial air conditioning equipment, prescribes test procedures, and requires labeling for such equipment. This action would codify the energy conservation standards and test procedures established in the EPCA for commercial air conditioning equipment. This action will also incorporate by reference energy conservation standards and test procedures, revised by the Air Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigeration and Air Conditioning Engineers (ARI/ASHRAE).

Timetable:

Action	Date	FR Cite
NPRM	08/09/00	65 FR 48828
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cyrus Nasseri, EE-2J, Program Manager, Office of Building Research and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585
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RIN: 1904–AA97

866. TEST PROCEDURES FOR COMMERCIAL PACKAGE BOILERS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 431

Legal Deadline: None

Abstract: The Energy Policy and Conservation Act (EPCA), as amended, establishes energy conservation standards for commercial heating equipment, prescribes test procedures, and requires labeling for such equipment. This action would codify these provisions. It would also incorporate by reference energy conservation standards and test procedures revised by the American Society of Heating, Refrigerating, and Air Conditioning Engineers.

Timetable:

Action	Date	FR Cite
NPRM	08/09/00	65 FR 48838
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cyrus Nasseri, EE-2J, Program Manager, Office of Building Research and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585
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RIN: 1904–AB02

867. TEST PROCEDURES FOR DISHWASHERS—AMENDMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 430

Legal Deadline: None

Abstract: This action would add a new test procedure for soil-sensing dishwashers, using soiled dishes. It would also incorporate standby power consumption, where applicable.

Timetable:

Action	Date	FR Cite
NPRM	09/03/02	67 FR 56232
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1904–AB10

868. TEST PROCEDURES FOR RESIDENTIAL REFRIGERATORS AND REFRIGERATOR-FREEZERS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6293(b)

CFR Citation: 10 CFR 430 subpart B, app A1

Legal Deadline: None

Abstract: This action would amend the calculation of the test time period for long-time automatic defrost.

Timetable:

Action	Date	FR Cite
Direct Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1904–AB12

Department of Energy (DOE)
Energy Efficiency and Renewable Energy (EE)

Long-Term Actions

869. ENERGY EFFICIENCY CODE FOR NEW FEDERAL RESIDENTIAL LOW-RISE BUILDINGS

Priority: Other Significant

Legal Authority: 42 USC 6834

CFR Citation: 10 CFR 435

Legal Deadline: Final, Statutory, October 24, 1994.

Abstract: Title III of the Energy Conservation and Production Act as amended by the Energy Policy Act of 1992 (PL 102-486, October 24, 1992) provides that DOE establish Federal building energy standards that require in new Federal buildings those energy efficiency measures that are technologically feasible and economically justified. The standards for Federal buildings are intended to parallel closely the voluntary building energy codes of the Energy Policy Act for private sector construction. Interim energy performance standards which DOE had issued before enactment of the Energy Policy Act are to remain in effect for the Federal sector until the new Federal building energy standards become effective.

Timetable:

Action	Date	FR Cite
NPRM	05/02/97	62 FR 24164
NPRM Comment Period End	07/14/97	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Stephen P. Walder, EE-2J, Program Manager, Office of Building Research and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-9209

RIN: 1904–AA53

870. DETERMINATION FOR HIGH-INTENSITY DISCHARGE LAMPS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6317

CFR Citation: 10 CFR 430

Legal Deadline: Other, Statutory, April 24, 1995, Determination Notice.

Abstract: The Energy Policy Act of 1992 requires the Department to prescribe test procedures and efficiency standards for high-intensity discharge lamps for which the Secretary makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings.

Timetable:

Action	Date	FR Cite
Determination Notice	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: The Department plans to move HID lamps from low to high priority for standards determination and to begin the preliminary analyses.

Agency Contact: Ronald Lewis, EE-2J, Department of Energy, Energy Efficiency and Renewable Energy, Office of Building Research and Standards, 1000 Independence Avenue SW., Washington, DC 20585
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Email: ronald.lewis@ee.doe.gov

RIN: 1904–AA86

871. ENERGY EFFICIENCY STANDARDS FOR CLOTHES DRYERS AND DISHWASHERS

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 42 USC 6295

CFR Citation: 10 CFR 430.32

Legal Deadline: Final, Statutory, May 14, 1996, Determination Notice.

Abstract: The statute requires the Department to revise the standards to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Additional Information: Due to the Department's limited staff and financial resources, regulatory actions related to energy efficiency standards have been categorized as high, medium, and low priority based on significant input from the public. This action is a low priority, and the Department does not plan to begin substantive work on this action for the next two fiscal years.

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RIN: 1904–AA89

872. ENERGY EFFICIENCY STANDARDS FOR POOL HEATERS AND DIRECT HEATING EQUIPMENT

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 42 USC 6295

CFR Citation: 10 CFR 430

Legal Deadline: Final, Statutory, January 1, 1992, Determination Notice.

Abstract: The statute requires the Department to revise the standards to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Additional Information: Due to the Department's limited staff and financial resources, regulatory actions related to energy efficiency standards have been categorized as high, medium, and low priority based on significant input from the public. This action is a low priority, and the Department does not plan to begin substantive work on this action for the next two fiscal years.

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RIN: 1904–AA90

873. ENERGY EFFICIENCY STANDARDS FOR 1-200 HP ELECTRIC MOTORS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 42 USC 6313

CFR Citation: 10 CFR 431

Legal Deadline: Final, Statutory, October 24, 1999, Determination Notice.

Abstract: The Energy Policy and Conservation Act (EPCA), as amended, establishes initial energy efficiency standards and test procedures for commercial and industrial electric motors. EPCA requires the Department to revise the standards periodically to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Due to the Department's limited staff and financial resources, regulatory actions related to energy efficiency standards have been

DOE—EE — Long-Term Actions

categorized as high, medium, and low priority based on significant input from the public. This action is a low priority, and the Department does not plan to begin substantive work on this action for the next two fiscal years.

Agency Contact: James Raba, EE-2J, Energy Technology Program Specialist, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585
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RIN: 1904–AA91

874. ENERGY EFFICIENCY STANDARDS FOR FLUORESCENT AND INCANDESCENT LAMPS

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 42 USC 6295

CFR Citation: 10 CFR 430.32

Legal Deadline: Final, Statutory, November 15, 1998, Determination Notice.

Abstract: The statute requires the Department to revise the standards to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Additional Information: Due to the Department's limited staff and financial resources, regulatory actions related to energy efficiency standards have been categorized as high, medium, and low priority based on significant input from the public. While this action is presently a low priority, it may be raised to a higher priority in the near future. However, the Department does not anticipate that any formal procedures will be initiated within the next six months.

Agency Contact: Ronald Lewis, EE-2J, Department of Energy, Energy Efficiency and Renewable Energy, Office of Building Research and Standards, 1000 Independence Avenue SW., Washington, DC 20585
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RIN: 1904–AA92

Department of Energy (DOE)
Energy Efficiency and Renewable Energy (EE)
Completed Actions

875. ENERGY EFFICIENCY STANDARDS FOR CENTRAL AIR CONDITIONERS AND HEAT PUMPS

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 42 USC 6295

CFR Citation: 10 CFR 430.32

Legal Deadline: Final, Statutory, January 1, 1994.

Abstract: The Energy Policy and Conservation Act, as amended, establishes initial energy-efficiency standard levels for most types of major residential appliances and generally requires DOE to undergo two subsequent rulemakings, at specified times, to determine whether the extant standard for a covered product should be amended.

This is the initial review of the statutory standards for central air conditioners and heat pumps.

Timetable:

Action	Date	FR Cite
ANPRM	09/08/93	58 FR 47326
Screening Workshop	06/30/98	
Supplemental ANPRM	11/24/99	64 FR 66305
NPRM	10/05/00	65 FR 59589
Final Rule	01/22/01	66 FR 7170
Supplemental NPRM and Proposal to Withdraw Final Rule	07/25/01	66 FR 38821
Final Action	05/23/02	67 FR 36368

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Michael Raymond, EE-2J, Program Manager, Office of Building Research and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585
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RIN: 1904–AA77

Department of Energy (DOE)
Defense and Security Affairs (DSA)
Proposed Rule Stage

876. PHYSICAL PROTECTION OF SECURITY INTERESTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2011; 42 USC 7101

CFR Citation: 10 CFR 1046 subpart A; 10 CFR 1046 subpart B

Legal Deadline: None

Abstract: 10 CFR part 1046, subparts A and B, establishes DOE contractor requirements in the areas of protective force medical, physical fitness, and firearms qualifications and training. The proposed revisions are to ensure protective force personnel receive quality medical services that are consistent with the Americans with Disabilities Act of 1990. They also will enhance communications between

DOE—DSA — Proposed Rule Stage

Designated Physicians and personnel responsible for supervising physical fitness training and certification to assure better understanding of the risk of injury to Security Police Officers and Security Officers participating in physical fitness activities. Additionally, Security Police Officer I and Security Police Officer II positions were better defined to eliminate confusing physical fitness requirements. Finally, the current physical fitness qualification requirements are being revised.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ronnie M. Edge, Department of Energy, Office of Security, Germantown, MD 20874
Phone: 301 903-4247

RIN: 1992–AA23

877. COMPUTER SECURITY; ACCESS TO INFORMATION ON NATIONAL NUCLEAR SECURITY ADMINISTRATION COMPUTER SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7101 et seq; 42 USC 2011 et seq; 50 USC 2425; 50 USC 2483(c)

CFR Citation: Not Yet Determined

Legal Deadline: NPRM, Statutory, January 3, 2000.

Abstract: This action would codify rules governing access by any individual to information on National Nuclear Security Administration computer systems.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Philip Sibert, Office of Defense Nuclear Security (NA-3), Department of Energy, National Nuclear Security Administration, 1000 Independence Avenue SW, Washington, DC 20585
Phone: 202 586-2541

RIN: 1992–AA27

Department of Energy (DOE)
Defense and Security Affairs (DSA)
Final Rule Stage

878. PROCEDURAL RULES FOR DOE NUCLEAR SECURITY ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2011 et seq; 42 USC 7101 et seq; 42 USC 2282(b)

CFR Citation: 10 CFR 824

Legal Deadline: None

Abstract: This action would define the process for the imposition of civil penalties on contractors for violations relating to the safeguarding or security of classified or sensitive data.

Timetable:

Action	Date	FR Cite
NPRM	04/01/02	67 FR 15339
NPRM Comment Period End	07/01/02	
Final Rule	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Geralyn C. Praskievicz, Department of Energy, Office of Security, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-4451

RIN: 1992–AA28

879. HUMAN RELIABILITY PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7254

CFR Citation: 10 CFR 710; 10 CFR 711; 10 CFR 712

Legal Deadline: None

Abstract: This action would establish a Human Reliability Program that would consolidate the Department's Personnel Security Assurance Program (PSAP) and its Personnel Assurance Program (PAP). PSAP is an access authorization program for individuals who apply for or occupy certain positions that are critical to the national security. The PSAP requires an initial and annual supervisory review, medical assessment, management evaluation, and a DOE personnel security review of all applicants or incumbents. The PAP is a nuclear explosives safety program using many of the evaluations of the PSAP to ensure that employees assigned to nuclear explosive duties do not have emotional, mental, or physical conditions that could result in an accidental or unauthorized detonation of nuclear explosives.

Timetable:

Action	Date	FR Cite
NPRM	07/12/02	67 FR 46912
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Linda Repass, Department of Energy, Office of Security, 19902 Germantown Road, Germantown, MD 20874
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RIN: 1992–AA29

880. CRITERIA AND PROCEDURE FOR ESTABLISHMENT OF THE PERSONNEL SECURITY ASSURANCE PROGRAM AND DETERMINATIONS OF AN INDIVIDUAL'S ELIGIBILITY FOR ACCESS TO A PERSONNEL SECURITY ASSURANCE PROGRAM POSITION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2165; 42 USC 2201; EO 10450; 42 USC 7251, 7254, and 7256

CFR Citation: 10 CFR 710, subpart B

Legal Deadline: None

Abstract: This action would amend the Department's regulations to allow newly hired individuals in security police officer positions who have received an interim Q access authorization through DOE's Accelerated Access Authorization

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Program to be eligible to hold a Personnel Security Assurance Program (PSAP) position. Currently, DOE's regulations require a Q access authorization based on a full background investigation for all PSAP positions.

Timetable:

Action	Date	FR Cite
NPRM	04/04/02	67 FR 16061
NPRM Comment Period End	05/06/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1992–AA30

881. • CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SPECIAL NUCLEAR MATERIAL, SUBPART A

Priority: Info./Admin./Other

Legal Authority: EO 12968; 42 USC 2201

CFR Citation: 10 CFR 710, subpart A

Legal Deadline: None

Abstract: This action would update the responsibilities and authorities to reflect to reflect organizational changes.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	
Interim Final Rule Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: A. Barry Dalinsky, Personnel Security Specialist, Department of Energy, Office of Security, Germantown, MD 20874-1290
Phone: 301 903-5010

RIN: 1992–AA31

Department of Energy (DOE)
Departmental and Others (ENDEP)

Proposed Rule Stage

882. FREEDOM OF INFORMATION ACT

Priority: Other Significant

Legal Authority: 5 USC 552

CFR Citation: 10 CFR 1004

Legal Deadline: None

Abstract: On October 23, 1991, DOE proposed to amend the procedures and principles to be applied in responding to requests for records under the Freedom of Information Act (FOIA) 5 USC 552. The proposal updated names and addresses of organizational entities, and updated guidelines for the schedule of fees associated with processing requests. A proposed section on policies clarified DOE's operation of a first-in, first-out policy in responding to FOIA requests, and the role of the Office of Hearings and Appeals was clarified. The proposal also included a statement of DOE policy on contractor records.

On December 12, 1994, DOE adopted the contractor records policy, with certain modifications. DOE expects to take final action on the remainder of the proposal in the near future.

The new regulations will clarify the FOIA process by clearly defining the roles of the FOIA Officer and the Denying Official and comply with the new requirements of the Electronic Freedom of Information Act Amendment of 1996. The new regulations will be written in a more customer-friendly manner in plain English.

Timetable:

Action	Date	FR Cite
Final Rule (Contractor Records)	12/12/94	59 FR 63882
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Abel Lopez, Director, FOIA and Privacy Act Division, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585
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RIN: 1901–AA32

883. PAYMENTS FOR SPECIAL BURDENS AND IN LIEU OF TAXES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2208 Atomic Energy Act of 1954, sec 168

CFR Citation: 10 CFR 610

Legal Deadline: None

Abstract: This action will revise the Department of Energy's policy on making payments for special burdens and in lieu of taxes to State and local taxing jurisdictions pursuant to the Atomic Energy Act of 1954. Prior to the 1987 issuance of DOE Order 2100.12, the Department and its predecessor agencies approved such payment requests on an ad hoc basis. To ensure all eligible taxing jurisdictions are provided appropriate opportunity to comment, the revised policy is being established through the rulemaking process. The Department anticipates no added costs by issuing the revised policy as a regulation rather than as an internal directive revision.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State, Local

Federalism: Undetermined

Agency Contact: Helen O. Sherman, Director, Office of Financial Policy, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-4860

RIN: 1901–AA58

DOE—ENDEP — **Proposed Rule Stage**

884. RESEARCH MISCONDUCT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 7101 et seq; 50 USC 2401 et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This action would establish policies and procedures for handling research misconduct allegations.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: William J. Valdez, Director, Office of Planning and Analysis, Department of Energy, Office of Science, 1000 Independence Avenue SW., Washington, DC 20585
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RIN: 1901–AA89

885. ADMINISTRATIVE PROCEDURES AND SANCTIONS; ELECTRIC POWER SYSTEM PERMITS AND REPORTS; SHORT-TERM IMPORTS AND EXPORTS OF NATURAL GAS

Priority: Substantive, Nonsignificant

Legal Authority: PL 95-91; PL 10485 as amended by EO 12038; 15 USC 717 b; 42 USC 7101 et seq; EO 12009

CFR Citation: 10 CFR 205.300; 10 CFR 590

Legal Deadline: None

Abstract: This action would streamline the existing procedures for applying to the DOE for Presidential permits and electricity export authorizations by eliminating the use of FERC procedures and establishing a less adversarial process of decisionmaking. It would also establish that the DOE's decisional criterion is only electric power system reliability and impacts to the environment and not the economic or commercial viability of projects. These actions are in response to the restructuring of the electric power industry.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ellen Russell, Department of Energy, FE-27, 1000 Independence Avenue SW., Washington, DC 20585
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RIN: 1901–AA93

886. • OCCUPATIONAL RADIATION PROTECTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 7191

CFR Citation: 10 CFR 835

Legal Deadline: None

Abstract: This action would amend the Department of Energy's occupational radiation protection regulations to provide additional flexibility in meeting requirements, to update the dosimetric models and dose terms, to establish certain concentration values and limits, and to clarify requirements for radioactive material transportation not subject to DOT regulations.

Timetable:

Action	Date	FR Cite
NPRM	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Peter O'Connell, Department of Energy, Office of Worker Protection Policy and Programs, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 303 903-5641

RIN: 1901–AA95

887. • COST RECOVERY ADJUSTMENT RATE PROCEEDING

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 832e; 16 USC 825s; 16 USC 838; 16 USC 839e(a)(1)

CFR Citation: None

Legal Deadline: None

Abstract: BPA's Power Business Line has electric rates in effect through September 30, 2006. During the rate period, BPA periodically examines forecast and actual loads, market prices, and expenses. Under the General Rate Schedule Provisions there is a risk mitigation tool embedded within the rates called a Cost Recovery Adjustment Clause (CRAC). There are three levels of the CRAC under which a rate may incrementally increase. The first is the Load-Based CRAC (LB CRAC), which triggers if BPA's augmentation cost exceeds the amount forecast. The second is the Financial-Based CRAC (FB CRAC), which triggers based on the generation function's forecasted level of accumulated net revenues. The third is the Safety-Net CRAC (SN CRAC), which would be an upward adjustment to posted power rates subject to the FB CRAC by modifying the FB CRAC parameters.

Prior to each six month period of the 2002-2006 rate period (beginning October 2001), BPA establishes the LB CRAC for that six-month period. The LB CRAC is calculated based on the current forecast of forward market prices for each year, shaped, and the amount by which contracted loads exceed BPA's resources. About 90 days after the end of each six-month period, BPA trues up the LB CRAC based on actual augmentation purchases during the period, and a debit or credit will be made to the customer's bill. BPA establishes the LB CRAC percentage about 90 days prior to the beginning of the next six-month period. Then, about 90 days after the end of the most recent six-month period, BPA calculates the over- or under-collection of actual LB CRAC revenues for the previous six-month period. Any over- or under-collection is treated separately from any charges for augmentation costs for the upcoming six-month period.

The FB CRAC allows a temporary, one-year adjustment to the base rates in addition to the Load Based CRAC for non-Slice customers, if the Power Business Line's accumulated net revenues fall below a preset threshold. It can trigger in all 5 years of the rate period. It is designed to generate additional cash in a given fiscal year. The thresholds for triggering the FB CRAC vary depending on the particular year of the rate period. The rate adjustment is based on the prior August's third-quarter-review forecast of year-end accumulated net revenues. If the forecast accumulated net revenues are below the threshold, the administrator will propose an FB CRAC

DOE—ENDEP — **Proposed Rule Stage**

adjustment by the end of August that will apply to rates beginning in October. BPA will notify customers in September of the percentage increase. It is trued-up for actual accumulated net revenues in the second half of the year. The SN CRAC would trigger if it appeared the FB CRAC parameters need modification based upon market and other risk factors as discussed above. Changes to the terms and conditions of the FB CRAC would be conducted through a rate proceeding.

Timetable:

Action	Date	FR Cite
Proposed Record of Decision	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Byron G. Keep, Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208
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RIN: 1901–AA96

888. • TRANSMISSION RATE PROCEEDING

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 839e

CFR Citation: None

Legal Deadline: Final, Statutory, October 1, 2003.

Abstract: Pursuant to section 7 of the Northwest Power Act, 16 USC 839e, the Bonneville Power Administration is required to periodically set and revise its rates. Transmission rates were last set for a two-year period in 2001, and expire September 30, 2002. BPA is required to set rates to recover its costs, including the amortization of the Federal investment in the Federal Columbia River Power System over a reasonable period of years. Therefore, the Transmission Business Line will set its rates in this rate case in order to recover its costs. Issues of cost allocation among customer classes may also be addressed.

Timetable:

Action	Date	FR Cite
Proposed Record of Decision	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Barry Bennett, Department of Energy, Bonneville Power Administration, 905 N.E. 11th Street, Portland, OR 97208
Phone: 503 230-4053

RIN: 1901–AA97

Department of Energy (DOE)
Departmental and Others (ENDEP) — **Final Rule Stage**

889. RADIATION PROTECTION OF THE PUBLIC AND THE ENVIRONMENT

Regulatory Plan: This entry is Seq. No. 28 in part II of this issue of the Federal Register.

RIN: 1901–AA38

890. ECONOMIC DEVELOPMENT TRANSFERS OF REAL PROPERTY

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-85, sec 3158

CFR Citation: 10 CFR 770

Legal Deadline: None

Abstract: This action would establish procedures for indemnifying and disposing of real property by sale or lease at the Department's defense nuclear facilities for the purpose of permitting economic development. It would also establish procedures for reporting actions to Congress, informing those acquiring the property of the availability of indemnification for injury to people or property from releases or threatened releases of hazardous materials, requesting indemnification, and making claims for indemnification.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/29/00	65 FR 10685
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Andrew Duran, Realty Officer, ME-90, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-4548
Email: andrew.duran@hq.doe.gov

RIN: 1901–AA82

891. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7254

CFR Citation: 10 CFR 1040

Legal Deadline: None

Abstract: This action would amend the definition of "program."

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76459
NPRM Comment Period End	01/05/01	
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharon Wyatt, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-2256
Fax: 202 586-0888
Email: sharon.wyatt@hq.doe.gov

RIN: 1901–AA86

892. REIMBURSEMENT FOR COSTS OF REMEDIAL ACTION AT ACTIVE URANIUM AND THORIUM PROCESSING SITES: TECHNICAL AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2296a et seq

CFR Citation: 10 CFR 765

Legal Deadline: None

Abstract: This action would adopt several technical and administrative amendments to the procedural regulations governing the reimbursement of remedial action costs at active uranium and thorium processing sites. The original legislation authorizing the program has been amended three times to increase the amounts authorized for reimbursement, extend certain program dates, and make other technical corrections. The amendments to 10 CFR part 765 will reflect the legislative amendments and make other technical corrections that have been identified since the original rule was issued.

Timetable:

Action	Date	FR Cite
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David E. Mathes, Leader, Albuquerque/Nevada Team, Department of Energy, Small Sites Closure Office (EM-34), Cloverleaf Building, 19901 Germantown Road, Germantown, MD 20874-1290
Phone: 301 903-7222

RIN: 1901–AA88

DOE—ENDEP — **Final Rule Stage**

Department of Energy (DOE)
Departmental and Others (ENDEP) — **Long-Term Actions**

893. ANNOTATION OF LAND RECORDS FOR REMEDIATED PROPERTIES IN THE URANIUM MILL TAILINGS REMEDIAL ACTION PROJECT (UMTRA)

Priority: Substantive, Nonsignificant

Legal Authority: PL 95-604, sec 104(d); PL 104-259, sec 4(a)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Under section 104(d) of the Uranium Mill Tailings Radiation Control Act of 1978, the Department of Energy (DOE) is required to issue appropriate rules and regulations concerning the annotation of land records of designated inactive uranium mill sites and vicinity properties included for remedial action under the Act. The annotation is intended to ensure that future purchasers of remediated inactive uranium mill sites and vicinity properties will be notified, prior to such purchase, of the condition of the land.

Timetable:

Action	Date	FR Cite
NPRM	04/14/89	54 FR 29732
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

Additional Information: Public Law 104-259, signed into law on October 9, 1996, amended the annotation requirement to provide for States to receive certification from the Secretary for "a program which would achieve the purposes" of the annotation under section 104(d) of the UMTRCA in regards to vicinity properties. Letters have been sent to the affected States regarding the amendment language.

Agency Contact: David E. Mathes, Leader, Albuquerque/Nevada Team, Department of Energy, Small Sites Closure Office (EM-34), Cloverleaf Building, 19901 Germantown Road, Germantown, MD 20874-1290
Phone: 301 903-7222

RIN: 1901–AA57

894. • COMPLIANCE WITH FLOODPLAIN AND WETLAND ENVIRONMENTAL REVIEW REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: EO 11988; EO 11990

CFR Citation: 10 CFR 1022

Legal Deadline: None

Abstract: This action would revise the Department of Energy's floodplain and wetland environmental review requirements to add flexibility and remove unnecessary procedural burdens.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Katherine Nakata, Department of Energy, Office of NEPA Policy and Compliance, EH-42, 1000 Independence Avenue, SW., Washington, DC 20585
Phone: 202 586-0801

RIN: 1901–AA94

Department of Energy (DOE)
Departmental and Others (ENDEP) — **Completed Actions**

895. GUIDELINES FOR PHYSICIAN PANEL DETERMINATIONS ON WORKER REQUESTS FOR ASSISTANCE IN FILING FOR STATE WORKERS' COMPENSATION BENEFITS

Priority: Other Significant

Legal Authority: 42 USC 7384 et seq; 42 USC 2201 and 7101 et seq; 50 USC 2401 et seq

CFR Citation: 10 CFR 852

Legal Deadline: None

Abstract: This action would establish procedures to implement subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000 under which a DOE contractor employee or the employee's estate can seek assistance from DOE in filing a claim with the appropriate State workers' compensation system based on an illness or death caused by exposure to a toxic substance during the course of employment at a DOE facility.

Timetable:

Action	Date	FR Cite
NPRM	09/07/01	66 FR 46742
Final Action	08/14/02	67 FR 52841

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

DOE—ENDEP — **Completed Actions**

Agency Contact: Kate Kimpan, Office of Worker Advocacy, EH-8, Department of Energy, 100 Independence Avenue, SW., Washington, DC 20585
Phone: 202 586-3997

RIN: 1901–AA90

896. REVISION OF ACS-02 CONTROL AREA SERVICE RATE: GENERATION IMBALANCE SERVICE RATE

Priority: Substantive, Nonsignificant

Legal Authority: PL 96-501, sec 7; PL 102-486, sec 824k(i)(2)

CFR Citation: None

Legal Deadline: None

Abstract: BPA's Transmission Business Line (TBL) announces its proposal to revise the Generation Imbalance Service rate (rate) found in its 2002 Transmission and Ancillary Service Rate Schedules, Schedule ACS-02. Generation Imbalance Service is taken when there is a difference between scheduled and actual energy delivered from a generation resource in the BPA Control Area during a schedule hour. The existing Generation Imbalance Service rate was established in BPA's TR-02 2002 Transmission Rate Proceeding and subsequently was approved by the Federal Energy Regulatory Commission (FERC) for use during the October 1, 2001 to September 30, 2003 rate period. The current rate charges the higher of BPA's incremental cost for energy plus 10 percent or 100 mills/kWh for imbalances outside the Deviation Band when the actual energy delivered from a resource in a schedule hour is less than the energy scheduled for that hour.

The TBL believes that wind generation resources are not able to accurately predict generation and respond to dispatch instructions during the delivery hour, and that charging the 100 mill floor rate may have deleterious effects on the development of wind generation resources in the BPA Control Area. Therefore, TBL proposes to eliminate the 100 mill/kWh floor rate when applying the rate to wind generation resources. This will result in the Generation Imbalance Service rate for wind generation resources being BPA's incremental cost for energy plus 10 percent. All other aspects of the existing Generation Imbalance Service rate are unchanged.

Timetable:

Action	Date	FR Cite
Proposed Record of Decision	04/17/02	67 FR 18871
Final Record of Decision	07/15/02	67 FR 18871

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, Tribal, Federal

Agency Contact: Mary A. Dalton, Transmission Rates Manager, Department of Energy, Bonneville Power Administration, P.O. Box 491, 5411 NE Highway 99, Vancouver, WA 98663
Phone: 360 418-8270
Email: madalton@bpa.gov

RIN: 1901–AA92

Department of Energy (DOE)
Office of Procurement and Assistance Management (PR) — **Proposed Rule Stage**

897. FINANCIAL ASSISTANCE REGULATION: ADMINISTRATIVE REQUIREMENTS RELATED TO FOR-PROFIT ORGANIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7173

CFR Citation: 10 CFR 600

Legal Deadline: None

Abstract: This action seeks comments on whether to issue a rule that prescribes administrative requirements for financial assistance awards tailored specifically to for-profit organizations.

Timetable:

Action	Date	FR Cite
ANPRM	05/08/01	66 FR 23197
NPRM	03/00/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Trudy Wood, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-5625
Email: trudy.wood@pr.doe.gov

RIN: 1991–AB57

898. ENERGY DEPARTMENT MOTOR VEHICLE FLEET FUEL EFFICIENCY

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201

CFR Citation: 48 CFR 947; 48 CFR 970.52

Legal Deadline: None

Abstract: This action would implement sections 403 and 505 of Executive Order 13101, Greening the Government through Federal Fleet and Transportation Efficiency.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard B. Langston, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-8247
Email: richard.langston@pr.doe.gov

RIN: 1991–AB59

899. DEAR: PART 970 REWRITE CONTINUATION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 7254

CFR Citation: 48 CFR 970; 48 CFR 901 to 952

Legal Deadline: None

Abstract: This action would revise part 970 and related parts of DEAR to eliminate provisions that are unnecessary, obsolete, or duplicated elsewhere in title 48.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

DOE—PR — **Proposed Rule Stage**

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael Fishetti, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue, SW., Washington, DC 20585
Phone: 202 586-8192

RIN: 1991–AB60

Department of Energy (DOE)
Office of Procurement and Assistance Management (PR) — **Final Rule Stage**

900. DEAR: RECYCLING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7254; 42 USC 486(c)

CFR Citation: 48 CFR 923; 48 CFR 970.52; 48 CFR 970.23

Legal Deadline: None

Abstract: This action would implement E.O. 13101, Greening the Government Through Recycling, Waste Prevention, and Federal Acquisition. It would increase the procurement of products containing recycled materials and reduce waste generation at DOE facilities.

Timetable:

Action	Date	FR Cite
NPRM	11/30/00	65 FR 71292
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard B. Langston, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-8247
Email: richard.langston@pr.doe.gov

RIN: 1991–AB47

901. ORGANIZATIONAL CONFLICT OF INTEREST DISCLOSURE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7254

CFR Citation: 48 CFR 909; 48 CFR 970

Legal Deadline: None

Abstract: This action would amend provisions that cover organizational conflicts of interest and purchases from affiliated sources to protect the Department in transactions involving a DOE M&O contractor and its affiliates.

Timetable:

Action	Date	FR Cite
NPRM	10/13/99	64 FR 55453
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert M. Webb, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-8264

RIN: 1991–AB52

902. ACQUISITION REGULATION: PAYMENT OF FEE RELATING TO SECURITY ISSUES/CONDITIONAL PAYMENT OF FEE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7254; 40 USC 486(c)

CFR Citation: 48 CFR 970

Legal Deadline: None

Abstract: This action would make the payment of fees to the Department's major operating contractors conditional on meeting safeguard and security requirements.

Timetable:

Action	Date	FR Cite
NPRM	02/01/01	66 FR 8560
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael L. Righi, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-8175

RIN: 1991–AB54

Department of Energy (DOE)
Office of Procurement and Assistance Management (PR) — **Long-Term Actions**

903. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

Legal Authority: EO 12549; EO 12689; PL 103-355, sec 2455

CFR Citation: 10 CFR 1036

Legal Deadline: None

Abstract: This Governmentwide rulemaking proposes changes to clarify and simplify the debarment and suspension process and drug-free workplace requirements.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3265
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cynthia Yee, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-1140

RIN: 1991–AB56

Department of Energy (DOE)
Office of Procurement and Assistance Management (PR)

Completed Actions

904. DEAR: PATENT RIGHTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7254; 40 USC 486(c)

CFR Citation: 48 CFR 927; 48 CFR 970

Legal Deadline: None

Abstract: This action would update the Department's regulations on patent rights to reflect the current practices employed in its major facility contracts.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/15/00	65 FR 68932
Final Action	07/25/02	67 FR 48568

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert M. Webb, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-8264

RIN: 1991–AB55

Department of Energy (DOE)
Office of General Counsel (OGC)

Final Rule Stage

905. CONDUCT OF EMPLOYEES

Priority: Info./Admin./Other

Legal Authority: 42 USC 7211 et seq; PL 103-160, sec 3161; EO 12674

CFR Citation: 10 CFR 1010; 5 CFR 2635

Legal Deadline: None

Abstract: The DOE regulation on conduct of employees needs to be revised to reflect the issuance of the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR 2635) and the repeal of conflict-of-interest provisions formerly applicable to DOE employees.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/05/96	61 FR 35085
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Susan Beard, Acting Assistant General Counsel for General Law, Department of Energy, Office of General Counsel, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-1522

RIN: 1990–AA19

906. CLAIMS FOR DAMAGES AGAINST DEPARTMENT OF ENERGY EMPLOYEES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 28 USC 2672; 42 USC 7101 et seq

CFR Citation: 10 CFR 1014

Legal Deadline: None

Abstract: This action would provide for the indemnification of employees or former employees of the Department of Energy who are personally liable to pay damages for their official acts or omissions as a result of an adverse judgment or settlement.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Susan Beard, Acting Assistant General Counsel for General Law, Department of Energy, Office of General Counsel, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-1522

RIN: 1990–AA26

[FR Doc. 02–27760 Filed 12–06–02; 8:45 am]
BILLING CODE 6450–01–S

Federal Register

Monday,
December 9, 2002

Part VIII

Department of Health and Human Services

Semiannual Regulatory Agenda

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

21 CFR Ch. I

42 CFR Chs. I-V

45 CFR Subtitle A; Subtitle B, Chs. II, III, and XIII

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Office of the Secretary, HHS.

ACTION: Semiannual agenda.

SUMMARY: The Regulatory Flexibility Act of 1980 and Executive Order 12866 require the semiannual publication of an inventory of all rulemakings that will be under development or review. The purpose of this effort is to encourage public participation in the regulatory process by providing, at an early stage, summarized information about regulatory actions that the Department is working on. All persons interested in communicating to the Department their views on the rulemakings prospectively outlined below are invited to do so.

FOR FURTHER INFORMATION CONTACT: Ann C. Agnew, Executive Secretary, Department of Health and Human Services, Washington, DC 20201.

SUPPLEMENTARY INFORMATION: The capsulized information provided below reflects an effort to present for public scrutiny a forecast of the rulemaking activities that the Department expects to undertake over the foreseeable future. We focus primarily on those areas of work expected to result in publication of an advance notice of proposed rulemaking, a notice of proposed rulemaking, or a final rule within the next 12 months. (Also included in several "long-term actions" sections are summaries of actions that we will probably not take any earlier than 12 months after publication of the agenda.) We welcome hearing the views of all concerned with regard to all of these planned rulemakings. Comments may be directed to the agency officials cited in each of the summaries, or, if early attention at the Secretary's level is believed to be warranted, comments should be directed to: Ann C. Agnew, Executive Secretary to the Department, Room 603H, 200 Independence Avenue SW., Washington, DC 20201.

The Office of Management and Budget requires that fall editions of the agenda be augmented by a regulatory plan, highlighting the most important regulatory actions under development by the Department. Our Plan appears in part II of this issue of the **Federal Register**, along with those of other Departments and agencies. Our Plan entries are listed in the table of contents below, and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

Dated: September 27, 2002.

Ann C. Agnew,

Executive Secretary to the Department.

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
907	Safe Harbor for Arrangements Involving Federally Qualified Health Centers	0991-AB06
908	Tax Refund Offset	0991-AB17
909	Claims Collection	0991-AB18
910	Salary Offset	0991-AB19

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
911	Shared Risk Exception to the Safe Harbor Provisions	0991-AA91
912	Safe Harbor for Waiver of Beneficiary Coinsurance and Deductible Amounts for a Medicare SELECT Policy	0991-AB16
913	Administrative Wage Garnishment	0991-AB20
914	U.S. Exchange Visitor Programs; Request for Waiver of the Two-Year Foreign Residence Requirement	0991-AB21
915	Implementation of the Equal Access to Justice Act in Agency Proceedings	0991-AB22

Office of the Secretary—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
916	Revisions to 42 CFR Part 1003	0991-AB03
917	Civil Money Penalty Safe Harbor To Protect Payment of Medicare and Medigap Premiums for ESRD Beneficiaries	0991-AB04
918	Amending the Regulations Governing Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, Sex, and Age To Conform to the Civil Rights Restoration Act of 1987	0991-AB10
919	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	0991-AB12

HHS

Office of the Secretary—Completed Actions

Sequence Number	Title	Regulation Identification Number
920	Modifications to Standards for Privacy of Individually Identifiable Health Information	0991-AB14
921	Implementing the Bioterrorism Prevention and Response Act of 2001	0991-AB15

Substance Abuse and Mental Health Services Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
922	Seclusion and Restraint for Non-Medical Residential Facilities	0930-AA10

Centers for Disease Control and Prevention—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
923	Control of Communicable Diseases **(Reg Plan Seq No. 29)**	0920-AA03
924	Amendments to Quality Assurance and Administrative Provision for Approval of Respiratory Protective Devices	0920-AA04

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Centers for Disease Control and Prevention—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
925	Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under the Energy Employee Occupational Illness Compensation Act of 2000	0920-AA07
926	Possession, Use, and Transfer of Select Agents **(Reg Plan Seq No. 30)**	0920-AA08

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Centers for Disease Control and Prevention—Completed Actions

Sequence Number	Title	Regulation Identification Number
927	Methods for Estimating Radiation Dose and Guidelines for Assessing Probability of Cancer for Energy Employees Occupational Illness Compensation Program	0920-AA05

Departmental Management—Completed Actions

Sequence Number	Title	Regulation Identification Number
928	Implementation of the Equal Access to Justice Act in Agency Proceedings	0990-AA02
929	Administrative Wage Garnishment	0990-AA05

Food and Drug Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
930	Requirements for Submission of In Vivo Bioequivalence Data	0910-AC23

HHS

Food and Drug Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
931	Establishment Registration and Listing for Drugs and Biologics	0910-AA49
932	Safety Reporting Requirements for Human Drug and Biological Products **(Reg Plan Seq No. 31)**	0910-AA97
933	Blood Initiative	0910-AB26
934	Applications for FDA Approval to Market a New Drug; Complete Response Letter; Amendments to Unapproved Applications	0910-AB34
935	Current Good Manufacturing Practice for Medicated Feeds	0910-AB70
936	Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Dietary Ingredients and Dietary Supplements **(Reg Plan Seq No. 32)**	0910-AB88
937	Requirements Pertaining to Sampling Services and Private Laboratories Used in Connection With Imported Food	0910-AB96
938	Control of Salmonella Enteritidis in Shell Eggs During Production and Retail **(Reg Plan Seq No. 33)**	0910-AC14
939	Institutional Review Boards: Registration Requirements	0910-AC17
940	Chronic Wasting Disease: Control of Food Products and Cosmetics Derived From Exposed Animal Populations	0910-AC21
941	Exception From General Requirements for Informed Consent; Request for Comments and Information **(Reg Plan Seq No. 34)**	0910-AC25
942	Bar Code Label Requirements for Human Drug Products **(Reg Plan Seq No. 35)**	0910-AC26
943	Medical Devices; Patient Examination and Surgeons' Gloves; Adulteration	0910-AC32
944	Amendments to the Performance Standard for Diagnostic X-Ray Systems and Their Major Components	0910-AC34
945	Administrative Detention **(Reg Plan Seq No. 36)**	0910-AC38
946	Establishment and Maintenance of Records to Identify Immediate Previous Source and Immediate Subsequent Recipient of Foods **(Reg Plan Seq No. 37)**	0910-AC39
947	Registration of Food and Animal Feed Facilities **(Reg Plan Seq No. 38)**	0910-AC40
948	Establishment of Prior Notification Requirement for All Imported Food Shipments **(Reg Plan Seq No. 39)**	0910-AC41
949	Requirements for Liquid Medicated Feed and Free-Choice Medicated Feed	0910-AC43
950	Applications for FDA Approval to Market a New Drug: Patent Listing Requirements and Application of 30-Month Stays on Approval of Abbreviated New Drug Applications **(Reg Plan Seq No. 40)**	0910-AC48

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Food and Drug Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
951	Over-the-Counter (OTC) Drug Review	0910-AA01
952	Investigational New Drugs: Export Requirements for Unapproved New Drug Products	0910-AA61
953	Determination That Informed Consent Is Infeasible or Is Contrary to the Best Interest of Recipients	0910-AA89
954	Labeling for Human Prescription Drugs; Revised Format **(Reg Plan Seq No. 41)**	0910-AA94
955	Revisions to the General Safety Requirements for Biological Products; Final Rule	0910-AB51
956	Supplements and Other Changes to an Approved Application	0910-AB61
957	Food Labeling: Trans Fatty Acids in Nutrition Labeling, Nutrient Content Claims, and Health Claims **(Reg Plan Seq No. 42)**	0910-AB66
958	CGMPs for Blood and Blood Components: Notification of Consignees and Transfusion Recipients Receiving Blood and Blood Components at Increased Risk of Transmitting HCV (Lookback) **(Reg Plan Seq No. 43)**	0910-AB76
959	Antibiotic Resistance Labeling	0910-AB78
960	Requirements for Submission of Labeling for Human Prescription Drugs and Biologics in Electronic Format	0910-AB91
961	Additional Safeguards for Children in Clinical Investigations of FDA Regulated Products	0910-AC07
962	Aluminum in Large- and Small-Volume Parenterals Used in Total Parenteral Nutrition	0910-AC18
963	Toll-Free Number for Reporting Adverse Events on Labeling for Human Drugs **(Reg Plan Seq No. 44)**	0910-AC35
964	Records and Reports Concerning Experience With Approved New Animal Drugs	0910-AC42
965	Presubmission Conferences	0910-AC44
966	Regulation of Carcinogenic Compounds Used in Food-Producing Animals; Definition of "No Residue"	0910-AC45
967	Bioavailability and Bioequivalence Requirements	0910-AC47

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

HHS

Food and Drug Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
968	Infant Formula: Requirements Pertaining to Good Manufacturing Practice, Quality Control Procedures, Quality Factors, Notification Requirements, and Records and Reports	0910-AA04
969	Investigational Use New Animal Drug Regulations **(Section 610 Review)**	0910-AB02
970	Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)	0910-AB27
971	Current Good Tissue Practice for Manufacturers of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps); Inspection and Enforcement	0910-AB28
972	Premarket Notice Concerning Bioengineered Foods	0910-AC15
973	Use of Materials Derived From Bovine and Ovine Animals in FDA-Regulated Products	0910-AC19
974	Medical Devices; Anesthesiology Devices; Proposed Reclassification of Pressure Regulators for Use With Medical Oxygen	0910-AC30

Food and Drug Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
975	Use of Ozone-Depleting Substances	0910-AA99
976	Food Additives: Food Contact Substances Notification System	0910-AB94
977	Efficacy Evidence Needed for Products To Be Used Against Toxic Substances When Human Studies Are Unethical	0910-AC05
978	Revocation of Conditions for Marketing Digoxin Products for Oral Use	0910-AC12
979	Postmarket Surveillance	0910-AC31

Food and Drug Administration—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
0910-AB24	FDA Export Reform and Enhancement Act of 1996; Reporting and Recordkeeping Requirements for Unapproved or Violative Products Imported for Further Processing or Incorporation and Later Export	08/02/2002	Withdrawn
0910-AB95	Marking Requirements for and Prohibitions on the Reimportation of Imported Food Products That Have Been Refused Admission Into the United States	08/02/2002	Withdrawn
0910-AC04	Status Reports of Distribution and Use Information for Antimicrobial Animal Drug Products Used in Food-Producing Animals	07/31/2002	Withdrawn
0910-AC20	Postmarketing Reports of Substandard or Ineffective Bulk Ingredients and Bulk Ingredients From Unapproved Sources	08/02/2002	Withdrawn
0910-AC33	Redacting 510(k) Submissions	09/18/2002	Withdrawn

Health Resources and Services Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
980	National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Medical Malpractice Payments Reporting Requirements	0906-AA41
981	Designation of Medically Underserved Populations and Health Professional Shortage Areas	0906-AA44
982	National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Reporting Adverse and Negative Actions	0906-AA57

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Health Resources and Services Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
983	National Vaccine Injury Compensation Program: Revisions and Additions to the Vaccine Injury Table	0906-AA55

Indian Health Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
984	Indian Child Protection and Family Violence Prevention Act Minimum Standards of Character	0917-AA02

Indian Health Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
985	Tribal Self-Governance Amendments	0917-AA05

National Institutes of Health—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
986	Undergraduate Scholarship Program Regarding Professions Needed by the National Institutes of Health (NIH)	0925-AA10
987	National Institutes of Health (NIH) Center Grants	0925-AA24
988	National Institutes of Health (NIH) Training Grants	0925-AA28
989	National Institutes of Health (NIH) Aids Research Loan Repayment Program	0925-AA32

National Institutes of Health—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
990	National Institutes of Health Loan Repayment Program for Research Generally	0925-AA18
991	Scientific Peer Review of Research Grant Applications and Research and Development Contract Projects	0925-AA20

National Institutes of Health—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
992	Standards for a National Chimpanzee Sanctuary System	0925-AA31

Office of Public Health and Science—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
993	Public Health Services Policies on Research Misconduct	0940-AA04
994	Human Subjects Protection Regulations: Institutional Review Boards Registration Requirements	0940-AA06

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Office of Public Health and Science—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
995	Public Health Service Standards for the Protection of Research Misconduct Whistleblowers	0940-AA01

Centers for Medicare & Medicaid Services—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
996	End Stage Renal Disease (ESRD) Conditions for Coverage (CMS-3818-P) **(Section 610 Review) (Reg Plan Seq No. 45)**	0938-AG82
997	Criteria for Approval of Facilities to Perform Covered Heart, Liver, Lung, Pancreas, and Intestinal Transplants (CMS-3835-P)	0938-AH17
998	Hospice Care—Conditions of Participation (CMS-3844-P)	0938-AH27
999	Requirements for Establishing and Maintaining Medicare Billing Privileges (CMS-6002-P)	0938-AH73
1000	National Standard for Identifiers of Health Plans (CMS-6017-P) **(Reg Plan Seq No. 46)**	0938-AH87
1001	Medical Child Support and Health Insurance Coverage of Dependent Children (CMS-2081-P)	0938-AI21
1002	Medicare Hospice Care Amendments (CMS-1022-P)	0938-AJ36
1003	Supplier Standards for Home Oxygen, Therapeutic Shoes, Home Nutrition Therapy (CMS-6010-P)	0938-AJ98
1004	All Provider Bad Debt Payment (CMS-1126-P)	0938-AK02
1005	Conditions of Participation of Intermediate Care Facilities for Persons With Mental Retardation (CMS-3046-P)	0938-AK23
1006	Health Insurance Reform: Claims Attachments Standards (CMS-0050-P) **(Reg Plan Seq No. 47)**	0938-AK62
1007	Rate of Reimbursement of Photocopy Expenses for Prospective Payment System Providers (CMS-3055-P)	0938-AK68
1008	Modifications to Medicare Managed Care Rules (CMS-4041-P)	0938-AK71
1009	Medicare Inpatient Disproportionate Share Hospital (DSH) Adjustment Formula (CMS-1171-P)	0938-AK77
1010	Elimination of Statement of Intent Procedures for Filing Medicare Claims (CMS-1185-P)	0938-AK79
1011	Organ Procurement Organization Conditions for Coverage (CMS-3064-P) **(Reg Plan Seq No. 48)**	0938-AK81
1012	Extending Medicare Entitlement When Disability Benefit Entitlement Ends Because of Substantial Gainful Activity (CMS-4018-P)	0938-AK94
1013	Update Interest Assessment on Medicare Overpayment and Underpayment (CMS-6014-P)	0938-AL14
1014	Use of Restraint and Seclusion in Medicare and Medicaid Participating Facilities that Provide Inpatient or Residential Care (CMS-2130-P) **(Reg Plan Seq No. 49)**	0938-AL26
1015	Payment for Respiratory Assist Devices with Bi-Level Capability and a Back-Up Rate (CMS-1167-P)	0938-AL27
1016	Self-Declaration of Citizenship (CMS-2085-P)	0938-AL33
1017	Permitting Premium Reductions as Additional Benefits Under Medicare+Choice Plans (CMS-6016-P)	0938-AL49
1018	Prospective Payment System for Psychiatric Hospitals (CMS-1213-P) **(Reg Plan Seq No. 50)**	0938-AL50
1019	Provider Reimbursement Determinations and Appeals (CMS-1727-P)	0938-AL54
1020	SCHIP; Purchase of Family Coverage—Benefit Flexibility in Parent Coverage (CMS-2148-P)	0938-AL62
1021	Request for Information on Benefit-Specific Waiting Periods (CMS-2150-N)	0938-AL64
1022	Revisions to the Medicare Appeals Process (CMS-4004-P) **(Reg Plan Seq No. 51)**	0938-AL67
1023	DMERC Service Areas and Related Matters (CMS-1219-P)	0938-AL76
1024	Revisions to Conditions for Coverage for Ambulatory Surgical Centers (CMS-3887-P)	0938-AL80
1025	Medicaid Coverage Rules for Inmates of Public Institutions (CMS-2077-P)	0938-AL85
1026	Targeted Case Management (CMS-2061-P)	0938-AL87
1027	Health Coverage Portability: Tolling Certain Time Periods and Interactions With Family and Medical Leave Act (CMS-2158-P)	0938-AL88
1028	Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update for FY 2004 (CMS-1469-P) **(Reg Plan Seq No. 52)**	0938-AL90
1029	Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2004 Payment Rates (CMS-1471-P) **(Reg Plan Seq No. 53)**	0938-AL91
1030	Prospective Payment System for Long-Term Care Hospitals: FY 2004 (CMS-1472-P)	0938-AL92
1031	Home Health Prospective Payment System Rate Update for FY 2004 (CMS-1473-NC)	0938-AL94
1032	Prospective Payment System for Inpatient Rehabilitation Hospitals (CMS-1474-P)	0938-AL95
1033	Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2004 (CMS-1476-P) **(Reg Plan Seq No. 54)**	0938-AL96
1034	Nondiscrimination In Post-Hospital Referral to Home Health Agencies and Other Entities (CMS-1224-P)	0938-AM01
1035	Medicaid Home and Community-Based Services Waivers (CMS-2162-P)	0938-AM05
1036	Ticket to Work Medicaid Infrastructure Grant (CMS-2165-N)	0938-AM11
1037	Revisions to Average Wholesale Price Methodology (CMS-1229-P) **(Reg Plan Seq No. 55)**	0938-AM12
1038	Criteria for Determining Whether a Drug is Considered Usually Self-Administered (CMS-1228-P)	0938-AM13

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Centers for Medicare & Medicaid Services—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1039	Electronic Medicare Claims Submission (CMS-0008-P) **(Reg Plan Seq No. 56)**	0938-AM22
1040	Liability of Third Parties to Pay for Care and Services (CMS-2080-P)	0938-AM24
1041	Medicaid Definition of Qualified Speech Pathologists and Audiologists (CMS-2132-P)	0938-AM26
1042	Medicaid Estate Recoveries (CMS-2083-P)	0938-AM30

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Centers for Medicare & Medicaid Services—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1043	Revision of Medicare/Medicaid Hospital Conditions of Participation (CMS-3745-F) **(Reg Plan Seq No. 57)**	0938-AG79
1044	Home Health Agency (HHA) Conditions of Participation (CoPs) (CMS-3819-FC)	0938-AG81
1045	Medicare and Medicaid Programs; Terms, Definitions, and Addresses: Technical Amendments (CMS-9877-F)	0938-AH53
1046	Health Insurance Reform: Standard Unique Health Care Provider Identifier (CMS-0045-F) **(Reg Plan Seq No. 58)**	0938-AH99
1047	Appeals of Carrier Determination That a Supplier Fails To Meet the Requirements for Medicare Billing Privileges (CMS-6003-F)	0938-AI49
1048	Security Standards (CMS-0049-F) **(Reg Plan Seq No. 59)**	0938-AI57
1049	Coverage of Religious Non-Medical Health Care Institutions (CMS-1909-F)	0938-AI93
1050	External Quality Review of Medicaid Managed Care Organizations (CMS-2015-F)	0938-AJ06
1051	Reporting Outcome and Assessment Information Set (OASIS) Data as Part of the Conditions of Participation for Home Health Agencies (CMS-3006-IFC)	0938-AJ10
1052	Rural Health Clinics: Amendments to Participation Requirements and Payment Provisions, and Establishment of a Quality Assessment and Improvement Program (CMS-1910-F)	0938-AJ17
1053	Hospital Conditions of Participation: Laboratory Services (CMS-3014-F)	0938-AJ29
1054	Use of Restraint and Seclusion in Residential Treatment Facilities Providing Inpatient Psychiatric Services to Individuals Under Age 21 (CMS-2065-F)	0938-AJ96
1055	Application of Inherent Reasonableness to All Medicare Part B Services (Other than Physician Services) (CMS-1908-F)	0938-AJ97
1056	Clinical Lab Requirements—Revisions to Regulations Implementing CLIA (CMS-2226-F)	0938-AK24
1057	Fire Safety Requirements for RNHCI, ASC, Hospices, PACE, Hospitals, and Long-Term Care Facilities and ICFs for the Mentally Retarded (CMS-3047-F)	0938-AK35
1058	Hospital Conditions of Participation: Quality Assessment and Performance Improvements (QAPI) (CMS-3050-F) **(Reg Plan Seq No. 60)**	0938-AK40
1059	Improvements to the Medicare+Choice Appeals and Grievance Procedures (CMS-4024-F)	0938-AK48
1060	Review of National Coverage Determinations and Local Coverage Determinations (CMS-3063-F) **(Reg Plan Seq No. 61)**	0938-AK60
1061	Revised Process for Making Medicare Coverage Determinations (NCDs) (CMS-3062-N)	0938-AK61
1062	Health Insurance Reform: Modifications to Standards for Electronic Transactions (CMS-0003-F) **(Reg Plan Seq No. 62)**	0938-AK64
1063	Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships—Phase II (CMS-1810-FC)	0938-AK67
1064	Medicaid Managed Care; New Provisions (CMS-2104-F2)	0938-AK96
1065	Modifications to the State Children's Health Insurance Program (CMS-2006-F)	0938-AL00
1066	Medicare Limits on the Valuation of a Depreciable Asset Recognized as an Allowance for Depreciation and Interest on Capital Indebtedness After a Change of Ownership (CMS-1004-F)	0938-AL12
1067	Requirements for Paid Feeding Assistants in Long-Term Care Facilities (CMS-2131-F)	0938-AL18
1068	Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2003 Payment Rates (CMS-1206-F)	0938-AL19
1069	Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2003 (CMS-1204-FC)	0938-AL21
1070	Health Coverage Portability for Group Health Plans and Group Health Insurance Issuers (CMS-2151-F)	0938-AL43
1071	Interim Final Amendment for Mental Health Parity (CMS-2152-IFC)	0938-AL44
1072	Electronic Submission of Cost Reports (CMS-1199-F)	0938-AL51
1073	Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for Calendar Year 2003 (CMS-8013-N)	0938-AL56
1074	Program for All-Inclusive Care for the Elderly (PACE): Program Revisions (CMS-1201-F)	0938-AL59
1075	Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rate Beginning January 1, 2003 (CMS-8014-N)	0938-AL63

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Centers for Medicare & Medicaid Services—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1076	Part A Premiums for 2003 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement (CMS-8015-N)	0938-AL69
1077	State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals; Federal Fiscal Year 2002 (CMS-2136-FN)	0938-AL79
1078	Changes to the Hospital Inpatient Prospective Payment System and FY 2004 Rates (CMS-1470-N) **(Reg Plan Seq No. 63)**	0938-AL89
1079	Fee Schedule for Payment of Ambulance Services—Update for CY 2003 (CMS-1220-N)	0938-AL97
1080	Update of the List of Covered Procedures for Ambulatory Surgical Centers Effective January 1, 2003 (CMS-1885-FC)	0938-AM02
1081	Comprehensive Employment Demonstration (CMS-2163-N)	0938-AM10
1082	Nondiscrimination in Health Coverage in the Group Market (CMS-2022-F)	0938-AM14
1083	Bona Fide Wellness Programs (CMS-2078-F)	0938-AM15
1084	Time Limitation on Recalculations and Disputes Under the Drug Rebate Program (CMS-2175-IFC)	0938-AM20
1085	Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships; Extension of Partial Delay of Effective Date of the "Set in Advance" Provision (CMS-1809-IFC2)	0938-AM21
1086	Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 2004 (CMS-8016-N)	0938-AM31
1087	Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rate Beginning January 1, 2004 (CMS-8017-N)	0938-AM32
1088	Part A Premiums for 2004 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement (CMS-8018-N)	0938-AM33
1089	Application of Emergency Medical and Treatment Act (EMTALA) (CMS-1063-F) **(Reg Plan Seq No. 64)**	0938-AM34

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Centers for Medicare & Medicaid Services—Completed Actions

Sequence Number	Title	Regulation Identification Number
1090	National Standard Employer Identifier (CMS-0047-F)	0938-AI59
1091	Non-Federal Governmental Plans Exempt From Health Insurance Portability Requirements (CMS-2033-F)	0938-AK00
1092	Supplementary Medical Insurance Premium Surcharge Agreements (CMS-1221-F)	0938-AK42
1093	Payment for Upgraded Durable Medical Equipment; Withdrawal of Proposed Rule (CMS-1084-WN)	0938-AK50
1094	Prospective Payment System for Long-Term Care Hospitals for FY 2003 (CMS-1177-F)	0938-AK69
1095	Revisions to Transaction and Code Set Standards for Electronic Transactions (CMS-0005-P)	0938-AK76
1096	Modifications to Managed Care Rules Based on Payment Provisions in BIPA and Technical Corrections (CMS-4040-F)	0938-AK90
1097	Home Health Prospective Payment System Rate Update for FY 2003 (CMS-1198-NC)	0938-AL16
1098	Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update for FY 2003 (CMS-1202-N)	0938-AL20
1099	Inpatient Rehabilitation Facility Prospective Payment System for FY 2003 (CMS-1205-N)	0938-AL22
1100	Hospital Inpatient Prospective Payment System for FY 2003 (CMS-1203-F)	0938-AL23
1101	Medicare Program; Medicare-Endorsed Prescription Drug Discount Card Assistance Initiative (CMS-4027-F)	0938-AL28
1102	Medicare-Endorsed Prescription Drug Discount Card Assistance Initiative for State Sponsors (CMS-4032-P)	0938-AL30
1103	Peer Review Organizations: Name and Other Changes—Technical Amendments (CMS-3088-FC)	0938-AL38
1104	End-Stage Renal Disease—Rescission of Waiver of Conditions for Coverage Under a State of Emergency in Houston, Texas Area (CMS-3074-F2)	0938-AL39
1105	Prospective Payment System for Inpatient Rehabilitation Hospital; Correcting Amendment (CMS-1069-F2)	0938-AL40
1106	Hospice Wage Index for FY 2003 (CMS-1211-N)	0938-AL41
1107	Physician Fee Schedule for CY 2002: Correction Notice (CMS-1169-CN)	0938-AL48
1108	Notice of Modification of Beneficiary Assessment Requirements for Skilled Nursing Facilities (CMS-1209-N)	0938-AL55
1109	Revision of the Procedures for Requesting Exceptions to Cost Limits for Skilled Nursing Facilities and Elimination of Reclassifications; Correction (CMS-1883-F3)	0938-AL61
1110	Notice of Intent to Conduct Negotiated Rulemaking for Special Payment Provisions and Standards for Suppliers of Custom-Fabricated Orthotics and Prosthetics (CMS-6012-N)	0938-AL68
1111	Medicaid Managed Care: Withdrawal (CMS-2001-F4)	0938-AL83
1112	FY 1999 SCHIP Reallocation Notice (CMS-2137-N)	0938-AL86

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Centers for Medicare & Medicaid Services—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
1113	Criteria for Acceptance of Supplemental Practice Expense Survey Data (CMS-1223-IFC)	0938-AL99

Centers for Medicare & Medicaid Services—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
0938-AD95	"Without Fault" and Beneficiary Waiver of Recovery As It Applies to Medicare Overpayment Liability (CMS-6007-F)	09/12/2002	Withdrawn
0938-AK91	State Allotments for Payment of Medicare Part B Premiums for Qualified Individuals; Federal Fiscal Year 2001 (CMS-2087-FN)	09/12/2002	Withdrawn
0938-AL37	State Children's Health Insurance Program; Eligibility for Unborn Children (CMS-2127-F)	09/12/2002	Withdrawn
0938-AL52	Health Insurance Reform: National Standard for Identifiers of Health Plans (CMS-6017-P)	08/22/2002	Withdrawn
0938-AL53	Revised Civil Money Penalties, Assessments, Exclusions, and Related Appeals Procedures (CMS-6146-P)	09/12/2002	Withdrawn
0938-AL57	Definition of Severe Medically Determinable Impairment (CMS-2143-P)	09/12/2002	Withdrawn
0938-AL66	Revisions to Medicaid Cost-Sharing Regulations (CMS-2144-P)	09/12/2002	Withdrawn
0938-AL72	Effect of Change of Ownership on Provider and Supplier Penalties (CMS-2215-P)	10/10/2002	Withdrawn
0938-AL81	Flexibility in Payment Methods for Services of Hospitals, Nursing Facilities, and Intermediate Care Facilities for the Mentally Retarded (CMS-2004-F)	09/12/2002	Withdrawn
0938-AL84	Continue To Allow States an Option Under the Medicaid Spousal Impoverishment Provisions To Increase the Community Spouse's Income When Adjusting the Protected Resource Allowance (CMS-2128-F)	09/12/2002	Withdrawn
0938-AL93	Prospective Payment System for Psychiatric Hospitals (CMS-1477-P)	08/08/2002	Withdrawn

Administration for Children and Families—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1114	Safeguarding Child Support and Expanded FPLS Information	0970-AC01
1115	Developmental Disabilities and Bill of Rights Act	0970-AC07
1116	Child Support Enforcement Program; Customer Service Annual State Self-Assessment	0970-AC10
1117	Child Support Enforcement Program; Expenditures for Caseworker Costs	0970-AC11

Administration for Children and Families—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1118	Construction and Major Renovation of Head Start and Early Head Start Facilities	0970-AB54
1119	Child Support Enforcement for Indian Tribes	0970-AB73
1120	Child Support Enforcement Program Omnibus Conforming Regulation	0970-AB81
1121	Family Child Care Program Option for Head Start Programs	0970-AB90
1122	Technical Revision of Head Start Regulations To Make Them Conform to Recent Statutory Revisions	0970-AC00
1123	Child Support Enforcement Program; Federal Tax Refund Offset	0970-AC09

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Administration for Children and Families—Completed Actions

Sequence Number	Title	Regulation Identification Number
1124	Program Performance Standards for the Operation of Head Start Programs	0970-AB99

Administration on Aging—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1125	Grants for State and Community Programs on Aging, Training, Research, and Discretionary Programs; Vulnerable Elder Rights; and Grants to Indians and Native Hawaiians	0985-AA00

Department of Health and Human Services (HHS)
Office of the Secretary (OS)

Proposed Rule Stage

907. SAFE HARBOR FOR ARRANGEMENTS INVOLVING FEDERALLY QUALIFIED HEALTH CENTERS

Priority: Substantive, Nonsignificant

Legal Authority: PL 100-93, sec 14(a)

CFR Citation: 42 CFR 1001

Legal Deadline: None

Abstract: This rule would set forth a new anti-kickback safe harbor addressing remuneration between federally qualified health centers and certain service providers where a significant community benefit exists.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joel Jay Schaer, Regulations Officer, Department of Health and Human Services, Office of the Secretary, Office of Inspector General (OCIG), 330 Independence Avenue SW., Washington, DC 20201
Phone: 202 619-0089

Related RIN: Related To 0991-AA91

RIN: 0991–AB06

908. • TAX REFUND OFFSET

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 3720A; 31 CFR 285.2

CFR Citation: 45 CFR 31

Legal Deadline: None

Abstract: The Department will amend part 31 to title 45 of the Code of Federal Regulations (CFR) to reflect amendments to 31 U.S.C. 3720A made by the tax refund offset provisions of the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, 110 Stat. 1321-358, as implemented by the Department of Treasury at 31 CFR 285.2. The proposed rule revises the process by which the Department collects its debts. The proposed rule is required in order to bring the Department's tax refund offset provisions in compliance with Department of Treasury regulations.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Katherine M. Drews, Associate General Counsel, Department of Health and Human Services, Office of the Secretary, Office of the General Counsel, Room 5362, HHS Cohen Building, 330 Independence Avenue SW., Washington, DC 20201
Phone: 202 619-0150

RIN: 0991–AB17

909. • CLAIMS COLLECTION

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 3711; 31 CFR 900 to 904

CFR Citation: 45 CFR 30

Legal Deadline: None

Abstract: The Department will amend part 30 of title 45 of the Code of Federal Regulations (CFR) to reflect the amendments to the Federal Claims Collection Act made by the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, 110 Stat. 1321 to 1358, as implemented by the Department of Treasury at 31 CFR 900-904. The proposed rule will prescribe the standards and procedures for the Department's use in the administrative collection, offset, compromise and suspension or termination of debts owed to the Department. The proposed rule is required in order to bring the Department's claims collection provisions in compliance with Department of Treasury regulations.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	
Final Rule	06/00/03	

Regulatory Flexibility Analysis Required: No

HHS—OS — **Proposed Rule Stage**

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Katherine M. Drews, Associate General Counsel, Department of Health and Human Services, Office of the Secretary, Office of the General Counsel, Room 5362, HHS Cohen Building, 330 Independence Avenue SW., Washington, DC 20201
Phone: 202 619-0150

RIN: 0991–AB18

910. • SALARY OFFSET

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Department will add a new part 33 to title 45 of the Code of Federal Regulations (CFR) to implement the salary offset provisions of the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, 110 Stat. 1321 to 1358, codified at 5 USC 5514, as implemented by the Office of Personnel Management at 5 CFR part 550, subpart K. The proposed rule is required in order to bring the Department's salary offset provisions in compliance with Governmentwide regulations published by the Office of Personnel Management.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	
Final Rule	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Katherine M. Drews, Associate General Counsel, Department of Health and Human Services, Office of the Secretary, Office of the General Counsel, Room 5362, HHS Cohen Building, 330 Independence Avenue SW., Washington, DC 20201
Phone: 202 619-0150

RIN: 0991–AB19

Department of Health and Human Services (HHS)
Office of the Secretary (OS)

Final Rule Stage

911. SHARED RISK EXCEPTION TO THE SAFE HARBOR PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1302; 42 USC 1320a-7b; 42 USC 1395hh; PL 104-191, sec 216(b)

CFR Citation: 42 CFR 1001

Legal Deadline: Final, Statutory, January 1, 1997.

Abstract: This final rule establishes a new statutory exception for risk-sharing arrangements under the Federal health care programs' anti-kickback provisions. The rule sets forth an exception from liability for remuneration between an eligible organization and an individual or entity providing items or services in accordance with a written agreement between these parties. The rule allows remuneration between an organization and an individual or entity if a written agreement places the individual or entity at "substantial financial risk" for the cost or utilization of the items or services that the individual or entity is obligated to provide.

Timetable:

Action	Date	FR Cite
ANPRM	05/23/97	62 FR 28410
ANPRM Comment Period End	06/09/97	
Interim Final Rule	11/19/99	64 FR 63504
Final Rule	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Interim final regulations were published on November 19, 1999 (64 FR 63504) and are currently in effect. See 42 CFR 1001.952(t) and (u).

Agency Contact: Joel Jay Schaer, Regulations Officer, Department of Health and Human Services, Office of the Secretary, Office of Inspector General (OCIG), 330 Independence Avenue SW., Washington, DC 20201
Phone: 202 619-0089

Related RIN: Related To 0991-AB06

RIN: 0991–AA91

912. • SAFE HARBOR FOR WAIVER OF BENEFICIARY COINSURANCE AND DEDUCTIBLE AMOUNTS FOR A MEDICARE SELECT POLICY

Priority: Substantive, Nonsignificant

Legal Authority: PL 100-93, sec 14(a)

CFR Citation: 42 CFR 1001

Legal Deadline: None

Abstract: This final rule will expand the existing safe harbor for certain waivers of beneficiary coinsurance and deductible amounts to benefit the policyholders of Medicare SELECT supplemental insurance. Specifically, the amended safe harbor will protect waivers of coinsurance and deductible amounts under part A or part B of the Medicare program owed by beneficiaries covered by a Medicare SELECT policy issued in accordance with section 1882(t)(1) of the Social Security Act, if the waiver is in accordance with a price reduction agreement covering such policyholders between the Medicare SELECT issuer and the provider or supplier offering the waiver.

Timetable:

Action	Date	FR Cite
NPRM	09/25/02	67 FR 60202
NPRM Comment Period End	10/25/02	
Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joel Jay Schaer, Regulations Officer, Department of Health and Human Services, Office of the Secretary, Office of Inspector General (OCIG), 330 Independence Avenue SW., Washington, DC 20201
Phone: 202 619-0089

RIN: 0991–AB16

HHS—OS — **Final Rule Stage**

913. ADMINISTRATIVE WAGE GARNISHMENT

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 3720D; 31 CFR 285.11

CFR Citation: 42 CFR 32

Legal Deadline: None

Abstract: The Department will add a new part 32 to title 42 of the Code of Federal Regulations (CFR) to implement the Administrative Wage Garnishment provisions of the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, 110 Stat. 1321 to 1358, codified at 31 U.S.C. 3720D, and implemented by the Department of Treasury at 31 C.F.R. 285.11. The proposed rule will be another tool for the Department to collect its debts by allowing the Department to garnish the wages of non-Federal employees administratively (i.e., without the need for a court order). The wage withholding order will be required to withold amounts from an employee's wages and pay those amounts to the Department in satisfaction of the indebtedness.

Timetable:

Action	Date	FR Cite
NPRM	03/13/02	67 FR 11264
NPRM Comment Period End	05/13/02	
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 0990-AA05

Agency Contact: Timothy M. White, Associate General Counsel, Business and Administrative Law Division, Department of Health and Human Services, Room 5362, HHS Cohen Building, 330 Independence Avenue SW., Washington, DC 20201
Phone: 202 619-0150

Katherine M. Drews, Associate General Counsel, Department of Health and Human Services, Office of the Secretary, Office of the General Counsel, Room 5362, HHS Cohen Building, 330 Independence Avenue SW., Washington, DC 20201
Phone: 202 619-0150

Related RIN: Previously reported as 0990-AA05

RIN: 0991–AB20

914. • U.S. EXCHANGE VISITOR PROGRAMS; REQUEST FOR WAIVER OF THE TWO-YEAR FOREIGN RESIDENCE REQUIREMENT

Priority: Other Significant

Legal Authority: 22 USC 2451 et seq; 8 USC 1182(e)

CFR Citation: 45 CFR 50

Legal Deadline: None

Abstract: This regulation will expand the Department's role in requesting waivers of the two year foreign residence requirement. HHS previously only requested waivers for J-1 visa holders for research. This will permit the review of applications based on 40 hours per week primary care in an HHS-designated health manpower shortage area or a medically underserved area.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Joyce Edith Jones, International Affairs Specialist, Department of Health and Human Services, Office of the Secretary, Room 639H, 200 Independence Avenue SW., Washington, DC 20201
Phone: 202 690-6174
Fax: 202 690-7127

RIN: 0991–AB21

915. IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 504(c)(1)

CFR Citation: 45 CFR 13

Legal Deadline: None

Abstract: The Equal Access to Justice Act requires agencies to pay fees to parties prevailing against the Government in certain administrative proceedings. The Act has been amended several times since its 1980 enactment, most recently by the Contract with America Advancement Act of 1996, which increased the amount of the hourly fees payable. The proposed rule revises 45 CFR part 13 (HHS's regulation implementing the Equal Access to Justice Act) to conform with statutory changes.

Timetable:

Action	Date	FR Cite
NPRM	06/19/87	52 FR 23311
NPRM Comment Period End	08/18/87	
Second NPRM	08/13/02	67 FR 52696
Second NPRM Comment Period End	10/12/02	
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 0990-AA02

Agency Contact: Katherine M. Drews, Associate General Counsel, Department of Health and Human Services, Office of the Secretary, Office of the General Counsel, Room 5362, HHS Cohen Building, 330 Independence Avenue SW., Washington, DC 20201
Phone: 202 619-0150

Related RIN: Previously reported as 0990-AA02

RIN: 0991–AB22

Department of Health and Human Services (HHS)
Office of the Secretary (OS)

Long-Term Actions

916. REVISIONS TO 42 CFR PART 1003

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1320a-7a; 42 USC 1395mm; 42 USC 1395w-27; 42 USC 1396b; 42 USC 1396u-2

CFR Citation: 42 CFR 1003

Legal Deadline: None

Abstract: This proposed rule would revise part 1003, addressing the Office of Inspector General's authority to propose the imposition of civil money penalties and assessments, by reorganizing and simplifying existing regulatory text and eliminating obsolete references contained in the current regulations. Among the proposed revisions, this rule would establish separate subparts within part 1003 for various categories of violations; modify the current definition for the term "claim;" update various references to managed care organization authorities; and clarify the application of section 1140 of the Social Security Act with respect to the misuse of certain Departmental symbols, emblems or names through Internet and e-mail communications.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joel Jay Schaer, Regulations Officer, Department of Health and Human Services, Office of the Secretary, Office of Inspector General (OCIG), 330 Independence Avenue SW., Washington, DC 20201
Phone: 202 619-0089

RIN: 0991–AB03

917. CIVIL MONEY PENALTY SAFE HARBOR TO PROTECT PAYMENT OF MEDICARE AND MEDIGAP PREMIUMS FOR ESRD BENEFICIARIES

Priority: Substantive, Nonsignificant

Legal Authority: Social Security Act, sec 1128A(a)(5)

CFR Citation: 42 CFR 1003

Legal Deadline: None

Abstract: The proposed final rule would set forth in the OIG's civil money penalty provisions in 42 CFR part 1003 a new safe harbor for unlawful inducements to beneficiaries to provide protection for independent dialysis facilities that pay, in whole or in part, premiums for Supplementary Medical Insurance (Medicare part B) or Medicare Supplemental Health Insurance policies (Medigap) for financially needy Medicare beneficiaries with end-stage renal disease (ESRD). The safe harbor would specifically establish various standards that, if met, would result in the particular arrangement being protected from civil penalties under section 1128A(a)(5) of the Social Security Act.

Timetable:

Action	Date	FR Cite
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joel Jay Schaer, Regulations Officer, Department of Health and Human Services, Office of the Secretary, Office of Inspector General (OCIG), 330 Independence Avenue SW., Washington, DC 20201
Phone: 202 619-0089

RIN: 0991–AB04

918. AMENDING THE REGULATIONS GOVERNING NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, SEX, AND AGE TO CONFORM TO THE CIVIL RIGHTS RESTORATION ACT OF 1987

Priority: Other Significant

Legal Authority: PL 100-259, Civil Rights Restoration Act of 1987

CFR Citation: 45 CFR 80; 45 CFR 84; 45 CFR 86; 45 CFR 90; 45 CFR 91

Legal Deadline: None

Abstract: The Secretary proposes to amend the Department's regulations implementing title VI of the Civil Rights Act of 1964, as amended, section 504 of the Rehabilitation Act of 1973, as amended, title IX of the Education Amendments of 1972, and the Age Discrimination Act of 1975, as amended. The principal proposed conforming change is to amend the regulations to add the definitions of "program or activity" or "program" that correspond to the statutory definitions enacted under the Civil Rights Restoration Act of 1987.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Federal, Tribal

Agency Contact: Robinsue Frohboese, Principal Deputy Director, Office for Civil Rights, Department of Health and Human Services, Office of the Secretary
Phone: 202 619-0403

RIN: 0991–AB10

919. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 41 USC 701 et seq, sec 2455; PL 103-355; 31 USC 6101 note; EO 12689; EO 12549

CFR Citation: 45 CFR 76; 45 CFR 82

Legal Deadline: None

Abstract: This proposed common rule is revised to simplify and streamline nonprocurement debarment and suspension requirements, as well as correspond to procurement regulations where possible. The revision will separate the debarment and suspension and Drug-Free Workplace regulations, and will be written in the plain language format.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3315
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Diane Osterhus, Federal Assistance Policy Specialist, Department of Health and Human Services, Office of the Secretary, Room 517D, Office of Grants and Acquisition
Management, 200 Independence Avenue SW., Washington, DC 20201
Phone: 202 690-5729
Fax: 202 690-6901
Email: diane.osterhus@hhs.gov

RIN: 0991–AB12

HHS—OS

Long-Term Actions

Department of Health and Human Services (HHS)
Office of the Secretary (OS)

Completed Actions

920. MODIFICATIONS TO STANDARDS FOR PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION

Priority: Other Significant. Major under 5 USC 801.

CFR Citation: 45 CFR 160; 45 CFR 164

Completed:

Reason	Date	FR Cite
Final Rule	08/14/02	67 FR 53182

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, State, Local, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Susan McAndrew
Phone: 202 205-8725

RIN: 0991–AB14

921. IMPLEMENTING THE BIOTERRORISM PREVENTION AND RESPONSE ACT OF 2001

Priority: Other Significant

CFR Citation: None

Completed:

Reason	Date	FR Cite
Withdrawn	09/06/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Tribal, Federal

Agency Contact: Alex Azar
Phone: 202 690-7741

RIN: 0991–AB15

Department of Health and Human Services (HHS)
Substance Abuse and Mental Health Services Administration (SAMHSA)

Long-Term Actions

922. SECLUSION AND RESTRAINT FOR NON-MEDICAL RESIDENTIAL FACILITIES

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-310

CFR Citation: Not Yet Determined

Legal Deadline: NPRM, Statutory, April 2001.

Abstract: The Secretary is required by statute to publish regulations governing States that license non-medical, community-based residential facilities for children and youth. The regulation requires States to develop licensing rules and monitoring requirements concerning behavior management practice that will ensure compliance; requires States to develop and implement such licensing rules and implementation requirements within one year; and ensures that States require such facilities to have adequate staff and that the States provide training for professional staff.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Joseph Denis Faha, Director, DLEA, SAMHSA, Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Room 12C-15, 5600 Fishers Lane, Rockville, MD 20857
Phone: 301 443-7017
Fax: 301 443-1450
Email: jfaha@samhsa.gov

RIN: 0930–AA10

Department of Health and Human Services (HHS)
Centers for Disease Control and Prevention (CDC)

Proposed Rule Stage

923. CONTROL OF COMMUNICABLE DISEASES

Regulatory Plan: This entry is Seq. No. 29 in part II of this issue of the **Federal Register**.

RIN: 0920–AA03

924. AMENDMENTS TO QUALITY ASSURANCE AND ADMINISTRATIVE PROVISION FOR APPROVAL OF RESPIRATORY PROTECTIVE DEVICES

Priority: Other Significant

Legal Authority: 29 USC 651 et seq; 30 USC 3; 30 USC 5; 30 USC 7; 30 USC 811; 30 USC 842(h); 30 USC 844

CFR Citation: 42 CFR 84

Legal Deadline: None

Abstract: NIOSH plans to modify the Administrative/Quality Assurance sections of 42 CFR part 84, Approval of Respiratory Protective Devices. Areas for potential modification in this module are: 1) upgrade of Quality Assurance requirements; 2) ability to use private sector quality auditors and private sector testing laboratories in the approval program; 3) revised approval label requirements; 4) updated and

HHS—CDC — **Proposed Rule Stage**

restructured fee schedule; and 5) fee retention in the respirator program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Roland Berry Ann, Acting Chief, Respirator Branch, National Personal Protection Technology Laboratory, Department of Health and Human Services, Centers for Disease Control and Prevention, NIOSH, P.O. Box 18070, 626 Cochrans Mill Road, Pittsburgh, PA 15236
Phone: 412 386-4000

RIN: 0920–AA04

Department of Health and Human Services (HHS)
Centers for Disease Control and Prevention (CDC)

Final Rule Stage

925. PROCEDURES FOR DESIGNATING CLASSES OF EMPLOYEES AS MEMBERS OF THE SPECIAL EXPOSURE COHORT UNDER THE ENERGY EMPLOYEE OCCUPATIONAL ILLNESS COMPENSATION ACT OF 2000

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7384g; EO 13179

CFR Citation: 42 CFR Par 83

Legal Deadline: None

Abstract: Pursuant to the Energy Employees Occupational Illness Compensation Program Act, HHS plans to finalize procedures to petition the Secretary to be added to the Special Exposure Cohort.

Timetable:

Action	Date	FR Cite
NPRM	06/25/02	67 FR 42962
Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Larry Elliott, Director, Office of Compensation Analysis and Support, Department of Health and Human Services, Centers for Disease Control and Prevention, NIOSH, R44, 5555 Ridge Avenue, Cincinnati, OH 45213
Phone: 513 841-4498

RIN: 0920–AA07

926. • POSSESSION, USE, AND TRANSFER OF SELECT AGENTS

Regulatory Plan: This entry is Seq. No. 30 in part II of this issue of the **Federal Register**.

RIN: 0920–AA08

Department of Health and Human Services (HHS)
Centers for Disease Control and Prevention (CDC)

Completed Actions

927. METHODS FOR ESTIMATING RADIATION DOSE AND GUIDELINES FOR ASSESSING PROBABILITY OF CANCER FOR ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM

Priority: Other Significant

CFR Citation: 42 CFR 81; 42 CFR 82

Completed:

Reason	Date	FR Cite
Final Rule	05/02/02	67 FR 22296

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Larry Elliott
Phone: 513 841-4498

RIN: 0920–AA05

Department of Health and Human Services (HHS)
Departmental Management (HHSDM)

Completed Actions

928. IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

Timetable:

Action	Date	FR Cite
Transferred to RIN 0991-AB22	10/01/02	

RIN: 0990–AA02

929. ADMINISTRATIVE WAGE GARNISHMENT

Timetable:

Action	Date	FR Cite
Transferred to RIN 0991-AB20	08/23/02	

RIN: 0990–AA05

Department of Health and Human Services (HHS)
Food and Drug Administration (FDA)

Prerule Stage

930. REQUIREMENTS FOR SUBMISSION OF IN VIVO BIOEQUIVALENCE DATA

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 355a; 21 USC 356; 21 USC 356a; 21 USC 356b; 21 USC 356c; 21 USC 371; 21 USC 374; 21 USC 379

CFR Citation: 21 CFR 314.96(a)(1); 21 CFR 314.94(a)(7); 21 CFR 320.21(b)(1)

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) is proposing to amend its regulations on submission of bioequivalence (BE) data to require an abbreviated new drug application (ANDA) applicant to submit data from all BE studies the applicant conducts on a drug product formulation submitted for approval. In the past, ANDA applicants have submitted BE studies demonstrating that a generic product meets BE criteria for FDA to approve the ANDA but have not typically submitted additional BE studies conducted on the same drug product formulation. FDA is proposing to require ANDA applicants to submit information, in either a complete or summary report, from all additional passing and nonpassing BE studies conducted on the same drug product formulation submitted for approval.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Aida L. Sanchez, Special Assistant to the Director, Department of Health and Human Services, Food and Drug Administration, HFD-650, Center for Drug Evaluation and Research, 5600 Fishers Lane, Rockville, MD 20857
Phone: 301 827-5847

RIN: 0910–AC23

Department of Health and Human Services (HHS)
Food and Drug Administration (FDA)

Proposed Rule Stage

931. ESTABLISHMENT REGISTRATION AND LISTING FOR DRUGS AND BIOLOGICS

Priority: Other Significant

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351; 21 USC 352; 21 USC 355; 21 USC 360; 21 USC 360b; 21 USC 371; 21 USC 374; 42 USC 262

CFR Citation: 21 CFR 20; 21 CFR 201; 21 CFR 207; 21 CFR 314; 21 CFR 514; 21 CFR 601; 21 CFR 607; 21 CFR 1271

Legal Deadline: None

Abstract: The proposed rule would amend FDA regulations on the registration of producers of drugs and the listing of drugs in commercial distribution. The proposed revisions would reorganize, consolidate, clarify, and modify current regulations concerning who must register establishments and list drug or biological products. The proposal describes when, how, and where to register and list, and what information must be submitted for registration and listing. The proposed regulations would also require the electronic submission of most registration and listing information.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Howard P. Muller, Office of Regulatory Policy, Department of Health and Human Services, Food and Drug Administration, Suite 3037 (HFD-7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
Phone: 301 594-2041
Fax: 301 827-5562

RIN: 0910–AA49

932. SAFETY REPORTING REQUIREMENTS FOR HUMAN DRUG AND BIOLOGICAL PRODUCTS

Regulatory Plan: This entry is Seq. No. 31 in part II of this issue of the **Federal Register**.

RIN: 0910–AA97

933. BLOOD INITIATIVE

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371; 21 USC 374; 42 USC 216; 42 USC 262; 42 USC 263; 42 USC 263a; 42 USC 264

CFR Citation: 21 CFR 600; 21 CFR 601; 21 CFR 606; 21 CFR 607; 21 CFR 610; 21 CFR 630; 21 CFR 640; 21 CFR 660; 21 CFR 680

Legal Deadline: None

Abstract: In multiple rulemakings, the Food and Drug Administration is amending the biologics regulations by removing, revising, or updating specific regulations applicable to blood, blood components, Source Plasma, and blood-derivative products to be more consistent with current practices and to remove unnecessary or outdated requirements. This action is based on a comprehensive review of the regulations that has been performed by FDA. It is also based on reports by the U.S. House of Representatives Committee on Government Reform and Oversight, Subcommittee on House Resources and Intergovernmental Relations; the General Accounting Office; the Institute of Medicine, as well as public comments. Some of the subjects intended to be addressed in the rulemakings include: 1) labeling; 2) notification of end users of plasma-derivative products of product safety information; and 3) requirements for donor suitability and testing. These actions are intended to help ensure the continued safety of the Nation's blood supply.

Timetable:

Action	Date	FR Cite
Albumin (Human), Plasma Protein Fraction (Human) and Immune Globulin (Human); Revision of Requirements		
Direct Final Rule	05/14/99	(64 FR 26282)
NPRM	05/14/99	(64 FR 26344)
Direct Final Rule - Confirmation in Part and Technical Amendment	03/14/00	(65 FR 13678)
Final Action	08/28/00	(65 FR 52016)
General Requirements for Blood, Blood Components, and Plasma Derivatives; Notification of Deferred Donors		
NPRM	08/19/99	(64 FR 45355)
Final Action	06/11/01	(66 FR 31165)

Regulations for Human Blood and Blood Components Intended for Transfusion or For Further Manufacturing Use
NPRM 09/00/03
Regulations for Testing Human Blood Donors for Evidence of Infection Due to Communicable Disease Agents
NPRM 08/19/99 (64 FR 45340)
Final Action 06/11/01 (66 FR 31146)
Revisions to Labeling and Storage Requirements for Blood and Blood Components, Including Source Plasma
NPRM 05/00/03
Revisions to the Requirements Applicable to Blood, Blood Components, and Source Plasma
Direct Final Rule 08/19/99 (64 FR 45366)
NPRM 08/19/99 (64 FR 45375)
Direct Final Rule - Confirmation in Part and Technical Amendment 01/10/01 (66 FR 1834)
Final Action 08/06/01 (66 FR 40886)

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Paula S. McKeever, Regulatory Policy Analyst, Department of Health and Human Services, Food and Drug Administration, Suite 200N (HFM-17), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852-1448
Phone: 301 827-6210
Fax: 301 594-1944

Related RIN: Related To 0910-AB76

RIN: 0910–AB26

934. APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG; COMPLETE RESPONSE LETTER; AMENDMENTS TO UNAPPROVED APPLICATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 371; 21 USC 374; 21 USC 379e

CFR Citation: 21 CFR 312; 21 CFR 314

Legal Deadline: None

Abstract: The proposed rule would amend the regulations on marketing approval of new drugs to discontinue the use of approvable and not approvable letters when taking action on a marketing application and instead use complete response letters. The proposed rule would also amend the regulations on extension of the review clock because of amendments to applications.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Brian L. Pendleton, Regulatory Counsel, Office of Regulatory Policy, Department of Health and Human Services, Food and Drug Administration, Suite 3037 (HFD-7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
Phone: 301 594-2041
Fax: 301 827-5562
Email: pendletonb@cder.fda.gov

RIN: 0910–AB34

935. CURRENT GOOD MANUFACTURING PRACTICE FOR MEDICATED FEEDS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 351; 21 USC 352; 21 USC 360b; 21 USC 371; 21 USC 374

CFR Citation: 21 CFR 225

Legal Deadline: None

Abstract: This proposal is in response to a citizen petition request to merge the separate requirements of the current good manufacturing practice (CGMP) regulations, 21 CFR part 225 applicable to licensed and unlicensed feed manufacturing facilities, respectively. The merger would produce a single set of updated, streamlined CGMPs that apply to all medicated feed manufacturers. This consolidation of existing CGMPs would preserve and strengthen food safety, be more appropriate given the changing structure of the medicated feed industry, and enhance uniformity and enforcement.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: George Graber, Director, Division of Animal Feeds, Department of Health and Human Services, Food and Drug Administration, HFV-220, Center for Veterinary Medicine, 7500 Standish Place, Rockville, MD 20855
Phone: 301 827-6651
Email: ggraber@cvm.fda.gov

RIN: 0910–AB70

936. CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKING, OR HOLDING DIETARY INGREDIENTS AND DIETARY SUPPLEMENTS

Regulatory Plan: This entry is Seq. No. 32 in part II of this issue of the **Federal Register**.

RIN: 0910–AB88

937. REQUIREMENTS PERTAINING TO SAMPLING SERVICES AND PRIVATE LABORATORIES USED IN CONNECTION WITH IMPORTED FOOD

Priority: Routine and Frequent

Legal Authority: 21 USC 331 to 334; 21 USC 335b; 21 USC 335c; 21 USC 341 to 344; 21 USC 348; 21 USC 351; 21 USC 352; 21 USC 355; 21 USC 360; 21 USC 360c-360f; 21 USC 361; 21 USC 362; 21 USC 371; 21 USC 372; 21 USC 374; 21 USC 376; 21 USC 381; 21 USC 393; 42 USC 262; 42 USC 264

CFR Citation: 21 CFR 59

Legal Deadline: None

Abstract: The proposed rule would establish requirements for importers and other persons who use sampling services and private laboratories in connection with imported food. For example, the proposal would pertain to persons who use sample collection services and private laboratories and would describe some responsibilities for such persons, sample collection services, and private laboratories. These responsibilities would include recordkeeping requirements to ensure that the correct sample is collected and analyzed, and a notification requirement if a person intends to use a private laboratory in connection with imported food. The proposed rule is intended to help insure the integrity and scientific validity of data and results submitted to FDA.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Philip L. Chao, Senior Policy Analyst, Department of Health and Human Services, Food and Drug Administration, Room 15-61 (HF-23), Office of Policy, Planning and Legislation, 5600 Fishers Lane, Rockville, MD 20857
Phone: 301 827-0587
Fax: 301 827-4774
Email: pchao@oc.fda.gov

RIN: 0910–AB96

938. CONTROL OF SALMONELLA ENTERITIDIS IN SHELL EGGS DURING PRODUCTION AND RETAIL

Regulatory Plan: This entry is Seq. No. 33 in part II of this issue of the **Federal Register**.

RIN: 0910–AC14

939. INSTITUTIONAL REVIEW BOARDS: REGISTRATION REQUIREMENTS

Priority: Info./Admin./Other

Legal Authority: 21 USC 321; 21 USC 346; 21 USC 346a; 21 USC 348; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 360c to 360f; 21 USC 360h to 360j; 21 USC 371; 21 USC 379e; 21 USC 381; 42 USC 216; 42 USC 241; 42 USC 262; 42 USC 263b to 263n

CFR Citation: 21 CFR 56.106

Legal Deadline: None

Abstract: The proposed rule would require institutional review boards (IRB) to register with FDA. The registration information would include the name of the IRB, the name of the institution operating the IRB, and names, addresses, phone numbers, facsimile (fax) numbers, and electronic mail (e-mail) addresses of the senior officer of the institution and IRB chair or contact, the range of active protocols (small, medium, or large) involving FDA-regulated products reviewed in the previous calendar year, and a description of the types of FDA-regulated products reviewed. The proposed rule would make it easier for FDA to inspect IRBs and to convey information to IRBs.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Philip L. Chao, Senior Policy Analyst, Department of Health and Human Services, Food and Drug Administration, Room 15-61 (HF-23), Office of Policy, Planning and Legislation, 5600 Fishers Lane, Rockville, MD 20857
Phone: 301 827-0587
Fax: 301 827-4774
Email: pchao@oc.fda.gov

RIN: 0910–AC17

940. CHRONIC WASTING DISEASE: CONTROL OF FOOD PRODUCTS AND COSMETICS DERIVED FROM EXPOSED ANIMAL POPULATIONS

Priority: Other Significant

Legal Authority: 42 USC 264; 21 USC 301 et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) is proposing to prohibit the use of cervids (deer, elk) for food, including dietary supplements, and cosmetics if the cervids have been exposed to chronic wasting disease (CWD). FDA is proposing this regulation because of potential risks to health.

CWD is a type of transmissible spongiform encephalopathy (TSE), a group of fatal, neurodegenerative diseases that include bovine spongiform encephalopathy (BSE) in cattle, scrapie in sheep, and Creutzfeldt-Jakob disease (CJD) in humans The disease has been identified in wild and farmed elk and wild deer populations.

CWD is endemic in cervid populations in certain areas of Wisconsin, Colorado, Nebraska, Wyoming, Kansas, Montana, Oklahoma, South Dakota, New Mexico, Minnesota, and Canada. The disease has been identified in wild and farmed elk and wild deer populations. In 1999, the World Health Organization (WHO) said there is no evidence that CWD transmits to humans. However, it also suggested any part of a deer or elk believed to be diseased should not be eaten. Scientific studies in the literature suggest that transmission to humans could possibly occur. However, if it does occur, it is likely to be through a very inefficient process.

Currently, there are no validated analytical tests to identify animals in the pre-clinical phase of CWD, or any other TSE. In addition, no test exists to ensure food safety. CWD typically exhibits a long incubation period, during which time animals appear normal but are likely to be infectious. Therefore, FDA is proposing to require that food or cosmetic products derived from animals exposed to CWD not enter into commerce.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Rebecca Buckner, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, HFS-306, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Parkway, College Park, MD 20740
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RIN: 0910–AC21

941. EXCEPTION FROM GENERAL REQUIREMENTS FOR INFORMED CONSENT; REQUEST FOR COMMENTS AND INFORMATION

Regulatory Plan: This entry is Seq. No. 34 in part II of this issue of the **Federal Register**.

RIN: 0910–AC25

942. BAR CODE LABEL REQUIREMENTS FOR HUMAN DRUG PRODUCTS

Regulatory Plan: This entry is Seq. No. 35 in part II of this issue of the **Federal Register**.

RIN: 0910–AC26

943. MEDICAL DEVICES; PATIENT EXAMINATION AND SURGEONS' GLOVES; ADULTERATION

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351; 21 USC 352; 21 USC 371; 21 USC 374

CFR Citation: 21 CFR 800.20

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) is proposing to amend the sampling plans, test method, and acceptable quality levels in 21 CFR 800.20. As prescribed by this regulation, FDA samples patient examination and surgeons' gloves and examines them for visual defects and water leaks. Glove lots are considered adulterated if they do not meet specified quality levels. This proposal would clarify sampling plans and the scoring of defects, lower acceptance rates for leaking gloves, raise rejection rates for leaking gloves, and add tightened inspection schemes for reexamined glove lots. The rule is intended to facilitate industry compliance and enhance the safety and effectiveness of gloves.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Joseph M. Sheehan, Chief, Regulations Staff, Department of Health and Human Services, Food and Drug Administration, HFZ-215, Center for Devices and Radiological Health, 1350 Piccard Drive, Rockville, MD 20850
Phone: 301 827-2974
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Email: jms@cdrh.fda.gov

RIN: 0910–AC32

944. AMENDMENTS TO THE PERFORMANCE STANDARD FOR DIAGNOSTIC X-RAY SYSTEMS AND THEIR MAJOR COMPONENTS

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 301 et seq; 21 USC 360kk et seq

CFR Citation: 21 CFR 1020.30; 21 CFR 1020.31; 21 CFR 1020.32

Legal Deadline: None

Abstract: This rule amends the performance standard for diagnostic x-ray systems and their components in 21 CFR 1020.30, 1020.31, and 1020.32 to address the changes in technology and practice and to fully utilize the currently accepted metric system.

Timetable:

Action	Date	FR Cite
NPRM	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joseph M. Sheehan, Chief, Regulations Staff, Department of Health and Human Services, Food and Drug Administration, HFZ-215, Center for Devices and Radiological Health, 1350 Piccard Drive, Rockville, MD 20850
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RIN: 0910–AC34

945. • ADMINISTRATIVE DETENTION

Regulatory Plan: This entry is Seq. No. 36 in part II of this issue of the **Federal Register**.

RIN: 0910–AC38

946. • ESTABLISHMENT AND MAINTENANCE OF RECORDS TO IDENTIFY IMMEDIATE PREVIOUS SOURCE AND IMMEDIATE SUBSEQUENT RECIPIENT OF FOODS

Regulatory Plan: This entry is Seq. No. 37 in part II of this issue of the **Federal Register**.

RIN: 0910–AC39

947. • REGISTRATION OF FOOD AND ANIMAL FEED FACILITIES

Regulatory Plan: This entry is Seq. No. 38 in part II of this issue of the **Federal Register**.

RIN: 0910–AC40

948. • ESTABLISHMENT OF PRIOR NOTIFICATION REQUIREMENT FOR ALL IMPORTED FOOD SHIPMENTS

Regulatory Plan: This entry is Seq. No. 39 in part II of this issue of the **Federal Register**.

RIN: 0910–AC41

949. REQUIREMENTS FOR LIQUID MEDICATED FEED AND FREE-CHOICE MEDICATED FEED

Priority: Substantive, Nonsignificant

Legal Authority: PL 104-250; 21 USC 360b

CFR Citation: 21 CFR 558.5; 21 CFR 510.455

Legal Deadline: None

Abstract: In response to a citizen petition filed by the American Feed Industry Association, the Food and Drug Administration (FDA) is proposing to amend the requirements for liquid medicated animal feed to clarify what information and data are required to demonstrate chemical and positional stability. The amended regulations would also clarify the provisions for the submission of such data through a master file and the reference to master files by subsequent applicants. Additionally, FDA is proposing to amend the regulations for free-choice medicated feed to ensure consistency with the requirements for liquid medicated feed. Finally, FDA is proposing to amend the regulations for free-choice medicated feed and liquid medicated feed so that these provisions comply with the terms of the Animal Drug Availability Act of 1996.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: William D. Price, Special Assistant, Department of Health and Human Services, Food and Drug Administration, HFV-200, Center for Veterinary Medicine, 7500 Standish Place, Rockville, MD 20855
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Related RIN: Previously reported as 0910-AB50

RIN: 0910–AC43

950. • APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG: PATENT LISTING REQUIREMENTS AND APPLICATION OF 30-MONTH STAYS ON APPROVAL OF ABBREVIATED NEW DRUG APPLICATIONS

Regulatory Plan: This entry is Seq. No. 40 in part II of this issue of the **Federal Register**.

RIN: 0910–AC48

Department of Health and Human Services (HHS)
Food and Drug Administration (FDA)

Final Rule Stage

951. OVER-THE-COUNTER (OTC) DRUG REVIEW

Priority: Routine and Frequent

Legal Authority: 21 USC 321p; 21 USC 351 to 353; 21 USC 355; 21 USC 360a; 21 USC 371a; 21 USC 331; 21 USC 360; 21 USC 360b; 21 USC 361; 21 USC 371

CFR Citation: 21 CFR 310; 21 CFR 340 to 345; 21 CFR 330; 21 CFR 333 to 339

Legal Deadline: None

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed.

SMALL ENTITIES AFFECTED: The effects, if any, vary depending on the individual rulemaking. However, the Agency anticipates that the rules would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act.

Timetable:

Antidiarrheal Products
NPRM (Amendment)(Trav. Diar.) 04/00/03
Final Action 04/00/03
Antiemetic Products
Final Action (Amendment) (Warning) 12/00/02
Antiperspirant Products
Final Action 04/00/03
Cough/Cold (Antihistamine) Products
Final Action (Amendment)(Warning) 12/00/02
Cough/Cold (Antitussive) Products
Final Action (Amendment)(Warning) 12/00/02
Cough/Cold (Combination) Products
Final Action 04/00/03
Cough/Cold (Nasal Decongestant) Products
NPRM (Phenylpropanolamine) 04/00/03
External Analgesic Products
Final Action (Amendment)(Warning) 12/00/02
Ingrown Toenail Relief Products
NPRM 10/04/02 (67 FR 62218)
Internal Analgesic Products
NPRM (Amendment)(Ibuprofen) 08/12/02 (67 FR 54139)
NPRM (Amendment) (Pediatric) 04/00/03
Labeling of Drug Products for OTC Human Use
NPRM (Convenience Sizes) 03/00/03
Final Action (Ca/Mg/K/Na) 06/00/03
Final Action (Sodium Labeling) 06/00/03
NPRM (Sodium Labeling) 06/00/03
Laxative Drug Products
NPRM (Amendment) (Psyllium Granular Dosage Form) 10/00/03
Nighttime Sleep Aid Products
Final Action (Amendment)(Warning) 12/00/02
Ophthalmic Products
NPRM (Emergency First Aid Eyewashes) 01/00/03
Final Action (Technical Amendment) 01/00/03
Oral Health Care Products
ANPRM (Plaque/Gingivitis) 04/00/03
Pediculicide Products
NPRM (Labeling Amendment) 05/10/02 (67 FR 31739)
Salicylate (Reye Syndrome)
Final Action (Warning) 04/00/03
Skin Protectant Products
Final Action 04/00/03
Final Action (Astringent) 06/00/03
NPRM (Astringent) 06/00/03
Status of Certain Category II and III Ingredients
Final Action 05/09/02 (67 FR 31123)
Final Action 05/09/02 (67 FR 31125)
Sunscreen Products
Final Action (Names) 06/20/02 (67 FR 41821)
ANPRM (and Insect Repellent) 02/00/03
NPRM (UVA/UVB) 08/00/03
Vaginal Contraceptive Products
NPRM (Amendment) 03/00/03
Weight Control Products
NPRM (Phenylpropanolamine) 04/00/03

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gerald M. Rachanow, Regulatory Counsel, Division of Over-the-Counter Drug Products, Department of Health and Human Services, Food and Drug Administration, HFD-560, Center for Drug Evaluation and Research, 5600 Fishers Lane, Rockville, MD 20857
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RIN: 0910–AA01

952. INVESTIGATIONAL NEW DRUGS: EXPORT REQUIREMENTS FOR UNAPPROVED NEW DRUG PRODUCTS

Priority: Routine and Frequent

Legal Authority: 21 USC 321; 21 USC 381; 21 USC 382; 21 USC 393; 42 USC 241; 42 USC 243; 42 USC 262; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 371

CFR Citation: 21 CFR 312.110

Legal Deadline: None

Abstract: The proposed rule would amend the regulations on the exportation of unapproved new drug products, including biological products, for investigational use. In general, the proposed rule would provide four different routes for exporting an unapproved new drug product for investigational use. One route would permit exportation, if the drug is the subject of an investigational new drug application (IND) and is being exported for use in the investigation. A second route would permit exportation,

without prior Food and Drug Administration (FDA) approval and without an IND, if the product is to be exported for use in a clinical investigation and has received marketing authorization in certain developed countries. The third route would permit exportation, without prior FDA approval and without an IND, if the product is to be exported for use in a clinical investigation in certain specified developed countries. The fourth route would permit exportation without an IND, to any country provided that the exporter sends a written certification to FDA at the time the drug is first exported. Drugs exported under any of the first three routes would, however, be subject to certain statutory requirements, such as not conflicting with the foreign country's laws and not being sold or offered for sale in the United States. Drugs exported under either the second or third routes would be subject to additional statutory requirements, such as being in substantial conformity with the current good manufacturing practices and certain labeling requirements. These provisions would implement changes in FDA's export authority resulting from the FDA Export Reform and Enhancement Act of 1996.

Timetable:

Action	Date	FR Cite
NPRM	06/19/02	67 FR 41642
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Philip L. Chao, Senior Policy Analyst, Department of Health and Human Services, Food and Drug Administration, Room 15-61 (HF-23), Office of Policy, Planning and Legislation, 5600 Fishers Lane, Rockville, MD 20857
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RIN: 0910–AA61

953. DETERMINATION THAT INFORMED CONSENT IS INFEASIBLE OR IS CONTRARY TO THE BEST INTEREST OF RECIPIENTS

Priority: Other Significant

Legal Authority: 21 USC 321; 21 USC 346; 21 USC 346a; 21 USC 348; 21 USC 352; 21 USC 353; 21 USC 355; 21 USC 360; 21 USC 360c to 360f; 21 USC 360h to 360j; 21 USC 371; 21 USC 379e; 21 USC 381; 42 USC 216; 42 USC 241; 42 USC 262; 42 USC 263b to 263n

CFR Citation: 21 CFR 50; 21 CFR 312

Legal Deadline: None

Abstract: The final rule would establish criteria and standards for the President to apply in making a determination that informed consent is not feasible or is contrary to the best interest of military personnel engaged in specific military operations. Under Federal law, the President is authorized to waive the Federal Food, Drug, and Cosmetic Act's informed consent requirements in military operations, if the President finds that obtaining consent is infeasible, contrary to the best interests of recipients, or contrary to national security interests.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/05/99	64 FR 54180
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Philip L. Chao, Senior Policy Analyst, Department of Health and Human Services, Food and Drug Administration, Room 15-61 (HF-23), Office of Policy, Planning and Legislation, 5600 Fishers Lane, Rockville, MD 20857
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RIN: 0910–AA89

954. LABELING FOR HUMAN PRESCRIPTION DRUGS; REVISED FORMAT

Regulatory Plan: This entry is Seq. No. 41 in part II of this issue of the **Federal Register**.

RIN: 0910–AA94

955. REVISIONS TO THE GENERAL SAFETY REQUIREMENTS FOR BIOLOGICAL PRODUCTS; FINAL RULE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 351

CFR Citation: 21 CFR 610.11(g)

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) issued a direct final rule and companion proposed rule to amend the biologics regulations by adding "cellular therapy products" to the list of products excepted from the general safety test (GST) and by adding an administrative procedure for obtaining an exemption from the GST requirements for other biological products. Because the agency received significant adverse comment on the administrative procedure portion of the direct final rule, FDA withdrew that portion of the rule and confirmed the remaining portion. FDA intends to finalize the companion proposed rule to respond to the significant adverse comment on the administrative procedure portion of the rule. FDA is taking this action because the GST may not be relevant or necessary for all biological products, including cellular therapy products, currently in various stages of development. This action is part of FDA's continuing effort to achieve the objectives of the "Reinventing Government" initiative, and is intended to reduce the burden of unnecessary regulations on biological products without diminishing the protection of the public health.

Timetable:

Action	Date	FR Cite
Direct Final Rule	04/20/98	63 FR 19399
Proposed Rule - Companion Document to Direct Final Rule	04/20/98	63 FR 19431
Direct Final Rule Confirmation in Part	08/05/98	63 FR 41718
Direct Final Rule Withdrawn in Part	08/05/98	63 FR 41718
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Stephen M. Ripley, Team Leader, Department of Health and Human Services, Food and Drug Administration, Suite 200N (HFM-17), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852-1448
Phone: 301 827-6210

RIN: 0910–AB51

956. SUPPLEMENTS AND OTHER CHANGES TO AN APPROVED APPLICATION

Priority: Other Significant

Legal Authority: 21 USC 356a

CFR Citation: 21 CFR 314

Legal Deadline: None

Abstract: Section 116 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105-115) added section 506A to the Food, Drug, and Cosmetic Act (21 U.S.C. 356a). Pursuant to section 116, the rulemaking will revise current procedures for approving manufacturing changes and generally classify such changes into four categories. Major manufacturing changes, which are of a type determined by the Secretary to have a substantial potential to adversely affect the identity, strength, quality, purity, and potency of the drug as they may relate to the safety and effectiveness of a drug, require prior approval of a supplemental application. A second category of changes may be made if FDA has not notified the company within 30 days after the submission of a supplement that prior approval is required. A third category of changes may be made upon submission of a supplement to the agency. The rule will also identify another category of changes that may be made without the submission of a supplement but which must be reported in an annual report.

Timetable:

Action	Date	FR Cite
NPRM	06/28/99	64 FR 34608
Final Action	09/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Howard P. Muller, Office of Regulatory Policy, Department of Health and Human Services, Food and Drug Administration, Suite 3037 (HFD-7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
Phone: 301 594-2041
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RIN: 0910–AB61

957. FOOD LABELING: TRANS FATTY ACIDS IN NUTRITION LABELING, NUTRIENT CONTENT CLAIMS, AND HEALTH CLAIMS

Regulatory Plan: This entry is Seq. No. 42 in part II of this issue of the **Federal Register**.

RIN: 0910–AB66

958. CGMPS FOR BLOOD AND BLOOD COMPONENTS: NOTIFICATION OF CONSIGNEES AND TRANSFUSION RECIPIENTS RECEIVING BLOOD AND BLOOD COMPONENTS AT INCREASED RISK OF TRANSMITTING HCV (LOOKBACK)

Regulatory Plan: This entry is Seq. No. 43 in part II of this issue of the **Federal Register**.

RIN: 0910–AB76

959. ANTIBIOTIC RESISTANCE LABELING

Priority: Other Significant

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 358; 21 USC 360; 21 USC 360b; 21 USC 371; 21 USC 374; 21 USC 379e; 42 USC 216; 42 USC 241; 42 USC 262; ...

CFR Citation: 21 CFR 201.24

Legal Deadline: None

Abstract: The final rule would require the inclusion of certain statements about the use of antibiotics in the prescription drug labeling of these products. These statements will emphasize the proper use of these products in an effort to reduce the development of drug-resistant bacterial strains.

Timetable:

Action	Date	FR Cite
NPRM	09/19/00	65 FR 56511
Final Rule	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Christine F. Rogers, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Suite 3059 (HFD-7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
Phone: 301 594-2041
Fax: 301 827-5562

RIN: 0910–AB78

960. REQUIREMENTS FOR SUBMISSION OF LABELING FOR HUMAN PRESCRIPTION DRUGS AND BIOLOGICS IN ELECTRONIC FORMAT

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351; 21 USC 353; 21 USC 355; 21 USC 360; 21 USC 371; 21 USC 374; 21 USC 379e; ...

CFR Citation: 21 CFR 314; 21 CFR 601

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) is proposing to amend its regulations governing the format in which certain labeling in new drug applications, abbreviated new drug applications, certain biological license applications, supplements, and annual reports is required to be submitted. The rule would require that certain labeing content described under section 201.160(d)(3) be submitted to FDA in electronic format.

Timetable:

Action	Date	FR Cite
NPRM	05/03/02	67 FR 22367
Final Action	09/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Virginia G. Beakes, Regulatory Counsel, Office of Regulatory Policy, Department of Health and Human Services, Food and Drug Administration, Suite 3037 (HFD-7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
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RIN: 0910–AB91

961. ADDITIONAL SAFEGUARDS FOR CHILDREN IN CLINICAL INVESTIGATIONS OF FDA REGULATED PRODUCTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 321; 21 USC 343; 21 USC 346; 21 USC 346a; 21 USC 348; 21 USC 350a; 21 USC 350b; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 360c to 360f; 21 USC 360h to 360j; 21 USC 371; 21 USC 379e; 21 USC 381; 41 USC 216; 41 USC 241; 41 USC 262; 41 USC 263b to 263n

CFR Citation: 21 CFR 50; 21 CFR 56

Legal Deadline: Other, Statutory, April 17, 2001, The Children's Health Act of 2000 requires that, within six months of the date of its enactment on 10/17/2000, FDA adopt existing HHS regulations providing additional protections for children involved as subjects in research. FDA published an interim rule in April 2001.

Abstract: The final rule will finalize the interim rule that published in April 2001 and provide additional protections for children involved as subjects in clinical investigations of FDA-regulated products, as required by the Children's Health Act of 2000.

Timetable:

Action	Date	FR Cite
Interim Rule	04/24/01	66 FR 20589
Final Rule	06/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Carol Drew, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Suite 3037 (HFD-7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
Phone: 301 594-2041
Fax: 301 827-5562

RIN: 0910–AC07

962. ALUMINUM IN LARGE- AND SMALL-VOLUME PARENTERALS USED IN TOTAL PARENTERAL NUTRITION

Priority: Other Significant

Legal Authority: 21 USC 321(n); 21 USC 352; 21 USC 355; 21 USC 371(a); 21 CFR 201.51; 21 CFR 201.100; 21 CFR 314.125

CFR Citation: 21 CFR 201.323(c)

Legal Deadline: None

Abstract: The final rule will revise 21 CFR 323(c) to permit small-volume parenterals and pharmacy bulk packages that contain no more than 25 ug/L of aluminum to state "contains no more than 25ug/L" rather than the exact amount of aluminum.

Timetable:

Action	Date	FR Cite
NPRM	08/12/02	67 FR 52429
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Christine F. Rogers, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Suite 3059 (HFD-7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
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RIN: 0910–AC18

963. TOLL-FREE NUMBER FOR REPORTING ADVERSE EVENTS ON LABELING FOR HUMAN DRUGS

Regulatory Plan: This entry is Seq. No. 44 in part II of this issue of the **Federal Register**.

RIN: 0910–AC35

964. • RECORDS AND REPORTS CONCERNING EXPERIENCE WITH APPROVED NEW ANIMAL DRUGS

Priority: Other Significant

Legal Authority: 21 USC 360b(l)

CFR Citation: 21 CFR 514.80

Legal Deadline: None

Abstract: In the Federal Register of December 17, 1991 (56 FR 65581), FDA published a proposed rule to revise Section 510.300 (21 CFR 510.300) and to redesignate it a Section 514.80 (21 CFR 514.80). This regulation implements section 512(l) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(l)), which provides that, following approval of a new animal drug application or an abbreviated new animal drug application, applicants must establish and maintain records and make reports to the agency as prescribed by regulation or order. FDA proposed the revision to define more clearly the kinds of information to be maintained and submitted by the applicant and to revise the timing and content of certain reports to enhance the usefulness of the information.

After considering comments submitted in response to the proposed rule for records and reports, FDA adopted the rule in modified form. Therefore, FDA issued an interim final rule on February 4, 2002 (67 FR 5046), which differed in some respects from the proposed rule. For instance, the interim final rule did not address medicated feed applications because they were eliminated by the Animal Drug Availability Act of 1996. Also, while the proposed rule for records and reports proposed to remove 21 CFR 510.310, which addressed records and reports for new animal drugs approved before June 20, 1963, FDA issued a final rule that revoked this provision in response to the Administration's "Reinventing Government Initiative" (61 FR 37680, July 19, 1996). The proposed rule for records and reports followed a style and format similar to the human drug records and reports regulations in part 314 (21 CFR part 314). The interim final rule maintained a similar style and format, but removed many of the proposed records and reports requirements that are not necessary to monitor animal drugs.

FDA received 33 comments to the interim final rule. In response to those comments, the agency further streamlined and clarified the regulation. FDA is affirming the interim final rule on its requirements for records and reports concerning experiences with approved new animal drugs (67 FR 5046) with modifications. The modifications include: revising the definitions of "applicant" and "serious adverse drug experience;" modifying the reporting requirement for summary reports of increased frequency of adverse drug experiences; clarifying what safety and efficacy records a nonapplicant versus an applicant must maintain; changing one word in the title of the section of the regulation pertaining to nonclinical laboratory studies and clinical data; eliminating the requirement of submission of prepublication manuscripts relating to completed clinical trials; changing

distributor's labeling so that the qualifying phrase that must precede the name and address of the distributor is as permitted by 21 CFR 201.1; and revising the section of the rule pertaining to distributor's signed statements to state that the distributor will promote the product only for use under the conditions stated in the approved labeling.

Timetable:

Action	Date	FR Cite
NPRM	12/17/91	56 FR 65581
NPRM Comment Period End	02/18/92	
Interim Final Rule	02/04/02	67 FR 5046
Interim Final Rule Comment Period End	04/05/02	
Interim Final Rule Effective Date Delayed	07/31/02	67 FR 49568
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Glenn Peterson, Mathematician/Statistician (Biomedical), Department of Health and Human Services, Food and Drug Administration, HFV-212, Center for Veterinary Medicine, 7500 Standish Place, Rockville, MD 20855
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Email: gpeterso@cvm.fda.gov

Related RIN: Previously reported as 0910-AA02

RIN: 0910–AC42

965. PRESUBMISSION CONFERENCES

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 360b

CFR Citation: 21 CFR 514

Legal Deadline: None

Abstract: This rule will implement section 512(b)(3) of the Federal Food, Drug, and Cosmetic Act (the Act). This section of the Act states that any person intending to file a new animal drug application or supplemental new animal drug application, or to investigate a new animal drug is entitled to one or more conferences with the agency prior to submission to reach an agreement establishing a submission or investigational requirement. This rule would describe how to request a presubmission conference and describe the procedures for the conduct of presubmission conferences.

Timetable:

Action	Date	FR Cite
NPRM	08/25/00	65 FR 51782
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Gail Schmerfeld, Special Assistant, Department of Health and Human Services, Food and Drug Administration, HFV-100, Center for Veterinary Medicine, 7500 Standish Place, Rockville, MD 20855
Phone: 301 827-0205

Related RIN: Previously reported as 0910-AB68

RIN: 0910–AC44

966. REGULATION OF CARCINOGENIC COMPOUNDS USED IN FOOD-PRODUCING ANIMALS; DEFINITION OF "NO RESIDUE"

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 342; 21 USC 343; 21 USC 348; 21 USC 351 to 353; 21 USC 360b; 21 USC 371

CFR Citation: 21 CFR 500.82; 21 CFR 500.84; 21 CFR 500.88

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) is amending its regulations relating to the operational definition of the term "no residue." The definition is used in determining whether any residue of carcinogenic compounds used in food-producing animals would "be found in the food produced from those animals under conditions of use reasonably certain to be followed in practice" (21 CFR 500.80(a)). Under the current operational definition of no residue, it is possible for a residue detected by a method approved by FDA to be considered "no residue." FDA is revising its regulations to make them consistent with a 1995 Department of Justice opinion regarding this definition. The changes revise the definition of "no residue" to mean that no residue is detected with an approved regulatory method. The rule has several conditions that sponsors of carcinogenic compounds must satisfy with respect to the sponsors' proposed regulatory methods.

Timetable:

Action	Date	FR Cite
NPRM	01/17/02	67 FR 2384
NPRM Comment Period Ends	04/17/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven Brynes, Regulatory Scientist, Department of Health and Human Services, Food and Drug Administration, HFV-151, Center for Veterinary Medicine, 7500 Standish Place, Rockville, MD 20855
Phone: 301 827-6975
Email: sbrynes@cvm.fda.gov

Related RIN: Previously reported as 0910-AC13

RIN: 0910–AC45

967. BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 321; 21 USC 351; 21 USC 352; 21 USC 355; 21 USC 371

CFR Citation: 21 CFR 320

Legal Deadline: None

Abstract: The final rule revises and clarifies certain sections of parts 314 and 320 and eliminates duplication and inconsistencies.

Timetable:

Action	Date	FR Cite
NPRM	11/19/98	63 FR 64222
NPRM Comment Period End	02/02/99	
Final Rule	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Christine F. Rogers, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Suite 3059 (HFD-7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
Phone: 301 594-2041
Fax: 301 827-5562

Related RIN: Previously reported as 0910-AA51

RIN: 0910–AC47

Department of Health and Human Services (HHS)
Food and Drug Administration (FDA)

Long-Term Actions

968. INFANT FORMULA: REQUIREMENTS PERTAINING TO GOOD MANUFACTURING PRACTICE, QUALITY CONTROL PROCEDURES, QUALITY FACTORS, NOTIFICATION REQUIREMENTS, AND RECORDS AND REPORTS

Priority: Other Significant

Legal Authority: 21 USC 321; 21 USC 350a; 21 USC 371; ...

CFR Citation: 21 CFR 106; 21 CFR 107

Legal Deadline: None

Abstract: The agency published a proposed rule on July 9, 1996 that would establish current good manufacturing practice regulations, quality control procedures, quality factors, notification requirements, and records and reports for the production of infant formula. This proposal was issued in response to the 1986 Amendments to the Infant Formula Act of 1980.

Timetable:

Current Good Mfg. Practices; Qual. Control Proc.		
NPRM	07/09/96	61 FR 36154
NPRM Comment Period End	12/06/96	
Final Action	12/00/03	
Infant Form Cons Comp, Micro Test & Recd Retention Req		
NPRM	01/26/89	54 FR 3783
NPRM Comment Period End	03/27/89	
Final Rule	12/24/91	56 FR 66566
Infant Formula Quality Factors		
NPRM	07/09/96	61 FR 36154
NPRM Comment Period End	12/06/96	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Shellee Anderson, Food Technologist, Department of Health and Human Services, Food and Drug Administration, HFS-800, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Parkway, College Park, MD 20740
Phone: 301 436-1693
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RIN: 0910–AA04

969. INVESTIGATIONAL USE NEW ANIMAL DRUG REGULATIONS (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 5 USC 610; 21 USC 351; 21 USC 353; 21 USC 360b; 21 USC 371; 21 USC 321; 21 USC 352

CFR Citation: 21 CFR 511; 21 CFR 512

Legal Deadline: None

Abstract: FDA is proposing to revise its regulations governing investigational use of new animal drugs by proposing to delete 21 CFR 511 and establish in 21 CFR part 512 revised investigational use of new animal drug regulations. The investigational use new animal drug regulations are expected to include regulations to implement provisions of the Animal Drug Availability Act of 1996, specifically presubmission conferences, and implement parts of the President's National Performance Report, "Reinventing the Regulation of Animal Drugs," May 1996. In the reinventing regulations report, FDA proposed to revise its regulations to reflect numerous new process changes and programs that will enable a more streamlined animal drug application review and approval process, and that would result in less regulatory burden upon industry and FDA while maintaining the safety and effectiveness of new animal drugs. In addition, FDA is initiating a review of this rule under section 610 of the Regulatory Flexibility Act. The purpose of the section 610 review is to determine if the rule should be amended to minimize adverse economic impacts on small entities. FDA will solicit and consider comments on the following: 1) the continued need for the rule; 2) the nature of complaints or comments received concerning the rule; 3) the complexity of the rule; 4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and 5) the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

Timetable:

Action	Date	FR Cite
ANPRM	11/21/96	61 FR 59209
ANPRM Comment Period End	01/21/97	
Begin Review	04/03/00	
End Review	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Marty Schoenemann, Department of Health and Human Services, Food and Drug Administration, HFV-126, Center for Veterinary Medicine, 7500 Standish Place, Rockville, MD 20855
Phone: 301 827-0220

RIN: 0910–AB02

970. ELIGIBILITY DETERMINATION FOR DONORS OF HUMAN CELLS, TISSUES, AND CELLULAR AND TISSUE-BASED PRODUCTS (HCT/PS)

Priority: Other Significant

Legal Authority: 42 USC 216; 42 USC 243; 42 USC 263a; 42 USC 264; 42 USC 271

CFR Citation: 21 CFR 210.1(c); 21 CFR 210.2(a); 21 CFR 210.2(b); 21 CFR 211.1(b); 21 CFR 820.1(a)(1); 21 CFR 820.1(c); 21 CFR 1271

Legal Deadline: None

Abstract: The Food and Drug Administration is requiring certain manufacturers of human cells, tissues, and cellular and tissue-based products to take actions to screen the donors of cells and tissues used in those products for evidence of, or risk factors for, relevant communicable disease. As part of this action, the agency is amending the current good manufacturing practice regulations that apply to human cells, tissues, and cellular and tissue-based products regulated as drugs, medical devices, and/or biological products to incorporate the new donor suitability requirements into existing good manufacturing practice regulations for those products.

Timetable:

Action	Date	FR Cite
NPRM	09/30/99	64 FR 52696
NPRM Comment Period End	12/29/99	
NPRM Comment Period Reopened	04/18/00	65 FR 20774
NPRM Comment Period Reopened End	07/17/00	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State

HHS—FDA

Long-Term Actions

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Paula S. McKeever, Regulatory Policy Analyst, Department of Health and Human Services, Food and Drug Administration, Suite 200N (HFM-17), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852-1448
Phone: 301 827-6210
Fax: 301 594-1944

RIN: 0910–AB27

971. CURRENT GOOD TISSUE PRACTICE FOR MANUFACTURERS OF HUMAN CELLS, TISSUES, AND CELLULAR AND TISSUE-BASED PRODUCTS (HCT/PS); INSPECTION AND ENFORCEMENT

Priority: Other Significant

Legal Authority: 42 USC 216; 42 USC 243; 42 USC 263a; 42 USC 264; 42 USC 271

CFR Citation: 21 CFR 1271

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) is proposing to require certain manufacturers of human cells and tissue to follow current good tissue practice (GTP), which includes proper handling, processing, and storage of human cells and tissue, recordkeeping, the maintenance of a quality program labeling and reporting. FDA is also proposing inspection and enforcement provisions.

Timetable:

Action	Date	FR Cite
NPRM	01/08/01	66 FR 1508
NPRM Comment Period End	05/08/01	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Paula S. McKeever, Regulatory Policy Analyst, Department of Health and Human Services, Food and Drug Administration, Suite 200N (HFM-17), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852-1448
Phone: 301 827-6210
Fax: 301 594-1944

RIN: 0910–AB28

972. PREMARKET NOTICE CONCERNING BIOENGINEERED FOODS

Priority: Other Significant

Legal Authority: 21 USC 342; 21 USC 343; 21 USC 348; 21 USC 321; 21 USC 371

CFR Citation: 21 CFR 192; 21 CFR 592

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) is requiring the submission to the agency of data and information regarding plant-derived bioengineered foods that would be consumed by humans or animals. FDA is requiring that this submission be made at least 120 days prior to the commercial distribution of such foods. FDA took this action to ensure that it has the appropriate amount of information about bioengineered foods to help to ensure that all market entry decisions by the industry are made consistently and in full compliance with the law. The action will permit the agency to assess on an ongoing basis whether plant-derived bioengineered foods comply with the standards of the Federal Food, Drug, and Cosmetic Act.

Timetable:

Action	Date	FR Cite
NPRM	01/18/01	66 FR 4706
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Linda Kahl, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, HFS-206, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Parkway, College Park, MD 20740
Phone: 202 418-3101
Fax: 202 418-3131
Email: lkahl@cfsan.fda.gov

RIN: 0910–AC15

973. USE OF MATERIALS DERIVED FROM BOVINE AND OVINE ANIMALS IN FDA-REGULATED PRODUCTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The U.S. Department of Agriculture's Animal and Plant Health Inspection Service maintains, by regulation in 9 CFR 94.18(a), a list of countries: 1) where bovine spongiform encephalopathy (BSE) exists; and 2) that present an undue risk of introducing BSE into the United States. This proposed rule would restrict, in FDA-regulated products, the use of most materials derived from bovine and ovine animals born, raised, or slaughtered in a country listed in 9 CFR 94.18(a). In addition, there would be a waiver provision that could be used under appropriate criteria.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Rebecca Buckner, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, HFS-306, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Parkway, College Park, MD 20740
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RIN: 0910–AC19

974. MEDICAL DEVICES; ANESTHESIOLOGY DEVICES; PROPOSED RECLASSIFICATION OF PRESSURE REGULATORS FOR USE WITH MEDICAL OXYGEN

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 351; 21 USC 360c(e)(1); 21 USC 371

CFR Citation: 21 CFR 868.2700; 21 CFR 868.5905

Legal Deadline: None

Abstract: The Food and Drug Administration is proposing to

reclassify pressure regulators for use with medical oxygen from class I to class II and to establish a special control for oxygen pressure regulators to address problems of fire and explosion associated with use of these devices. The special control will be a guidance document that includes standardized testing, performance, and labeling guidance for industry. Devices that meet the special control will be exempt from the premarket notification requirements of the act. The agency believes it is taking a least burdensome approach for industry. This rule will enable all manufacturers to most easily comply by implementing a phase-in compliance approach that will minimize the cost. FDA seeks to reclassify these devices under section 513(e)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(e)(1)).

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Joseph M. Sheehan, Chief, Regulations Staff, Department of Health and Human Services, Food and Drug Administration, HFZ-215, Center for Devices and Radiological Health, 1350 Piccard Drive, Rockville, MD 20850
Phone: 301 827-2974
Fax: 301 594-4795
Email: jms@cdrh.fda.gov

RIN: 0910–AC30

Department of Health and Human Services (HHS)
Food and Drug Administration (FDA)

Completed Actions

975. USE OF OZONE-DEPLETING SUBSTANCES

Priority: Other Significant

CFR Citation: 21 CFR 2

Completed:

Reason	Date	FR Cite
Final Action	07/24/02	67 FR 48370

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Wayne H. Mitchell
Phone: 301 594-2041
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Email: mitchellw@cder.fda.gov

RIN: 0910–AA99

976. FOOD ADDITIVES: FOOD CONTACT SUBSTANCES NOTIFICATION SYSTEM

Priority: Substantive, Nonsignificant

CFR Citation: 21 CFR 20.100; 21 CFR 58.3; 21 CFR 170.3; 21 CFR 170.100 to 170.105; 21 CFR 171.1; 21 CFR 171.4; 21 CFR 174.5; 21 CFR 179.25; 21 CFR 170.106; ...

Completed:

Reason	Date	FR Cite
Final Rule	05/21/02	67 FR 35724

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mitchell Alan Cheeseman
Phone: 301 436-1589
Email: mcheesem@cfsan.fda.gov

RIN: 0910–AB94

977. EFFICACY EVIDENCE NEEDED FOR PRODUCTS TO BE USED AGAINST TOXIC SUBSTANCES WHEN HUMAN STUDIES ARE UNETHICAL

Priority: Other Significant

CFR Citation: 21 CFR 314; 21 CFR 601

Completed:

Reason	Date	FR Cite
Final Action	05/31/02	67 FR 37988

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Wayne H. Mitchell
Phone: 301 594-2041
Fax: 301 827-5562
Email: mitchellw@cder.fda.gov

RIN: 0910–AC05

978. REVOCATION OF CONDITIONS FOR MARKETING DIGOXIN PRODUCTS FOR ORAL USE

Priority: Substantive, Nonsignificant

CFR Citation: 21 CFR 310.500

Completed:

Reason	Date	FR Cite
Final Rule	06/26/02	67 FR 42992

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mary E. Catchings
Phone: 301 594-2041
Fax: 301 827-0951

RIN: 0910–AC12

979. POSTMARKET SURVEILLANCE

Priority: Substantive, Nonsignificant

CFR Citation: 21 CFR 822

Completed:

Reason	Date	FR Cite
Final Action	06/06/02	67 FR 38878

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Joseph M. Sheehan
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Email: jms@cdrh.fda.gov

RIN: 0910–AC31

Department of Health and Human Services (HHS)
Health Resources and Services Administration (HRSA)

Proposed Rule Stage

980. NATIONAL PRACTITIONER DATA BANK FOR ADVERSE INFORMATION ON PHYSICIANS AND OTHER HEALTH CARE PRACTITIONERS: MEDICAL MALPRACTICE PAYMENTS REPORTING REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 11131

CFR Citation: 45 CFR 60.7

Legal Deadline: None

Abstract: This NPRM proposes to require that, in addition to reporting to the National Practitioner Data Bank medical malpractice payments made where physicians or other health care practitioners are named in medical malpractice actions or claims, judgments or settlements, payments be reported where they are made for the benefit of physicians or other health care practitioners not named in the judgments or settlements but who furnished or failed to furnish the health care services upon which the actions or claims were based. The purpose of this NPRM is to prevent the evasion of the medical malpractice payment reporting requirement of the Data Bank through the agreement of the parties to a lawsuit to use the corporate health care entity to "shield" practitioners. It would also require malpractice payers, in very limited circumstances, when it is impossible to identify the practitioner who furnished or failed to furnish the health care services upon which the actions or claims were based, to report why the practitioner could not be identified and to provide the name of the corporate health care entity.

Timetable:

Action	Date	FR Cite
NPRM	12/24/98	63 FR 71255
NPRM Comment Period End	02/22/99	
Second NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John M. Heyob, Director, Division of Practitioner Data Banks, Department of Health and Human Services, Public Health Service, Suite 300, 7519 Standish Place, Rockville, MD 20957
Phone: 301 443-2300
Fax: 301 443-6725

RIN: 0906–AA41

981. DESIGNATION OF MEDICALLY UNDERSERVED POPULATIONS AND HEALTH PROFESSIONAL SHORTAGE AREAS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 254b; 42 USC 254e

CFR Citation: 42 CFR 5; 42 CFR 51c

Legal Deadline: None

Abstract: This rule would consolidate the process for designating areas of health professional shortage and medical underservice that apply in several department programs, and would improve the criteria for designating medically underserved populations (MUPs) and Primary Care Health Professional Shortage Areas (HPSAs). This NPRM will address issues raised by comments received in a previous NPRM, dated September 1, 1998.

Timetable:

Action	Date	FR Cite
NPRM	09/01/98	63 FR 46538
NPRM Comment Period End	01/04/99	
Second NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Andy Jordan, Acting Chief, Shortage Designation Branch, Department of Health and Human Services, Health Resources and Services Administration, National Center for Health Workforce Analysis, Bureau of Health Professions, 4350 East-West Highway, Bethesda, MD 20814
Phone: 301 594-0816
Email: dsd@hrsa.gov

RIN: 0906–AA44

982. NATIONAL PRACTITIONER DATA BANK FOR ADVERSE INFORMATION ON PHYSICIANS AND OTHER HEALTH CARE PRACTITIONERS: REPORTING ADVERSE AND NEGATIVE ACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1396r-2

CFR Citation: 45 CFR 60

Legal Deadline: None

Abstract: Public Law 100-93 amended section 1921 of the Social Security Act to require that each State have in effect a system of reporting disciplinary licensure actions taken against all licensed health care practitioners and entities. It also requires States to report any negative action or finding which a peer review organization, private accreditation entity or a State has concluded against a health care practitioner or entity. Section 1921 directs the Secretary to provide for maximum appropriate coordination in the implementation of these reporting requirements with those of the Health Care Quality Improvement Act of 1986 (title IV of Pub. L. 99-660). Section 1921 requirements will be incorporated into the National Practitioner Data Bank (NPDB).

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: John M. Heyob, Director, Division of Practitioner Data Banks, Department of Health and Human Services, Public Health Service, Suite 300, 7519 Standish Place, Rockville, MD 20957
Phone: 301 443-2300
Fax: 301 443-6725

RIN: 0906–AA57

Department of Health and Human Services (HHS)
Health Resources and Services Administration (HRSA)
Completed Actions

983. NATIONAL VACCINE INJURY COMPENSATION PROGRAM: REVISIONS AND ADDITIONS TO THE VACCINE INJURY TABLE

Priority: Substantive, Nonsignificant

CFR Citation: 42 CFR 100

Completed:

Reason	Date	FR Cite
Final Rule	07/25/02	67 FR 48558

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Marian Jordan
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Email: gevans@hrsa.gov

Related RIN: Duplicate of 0906-AA58

RIN: 0906–AA55

Department of Health and Human Services (HHS)
Indian Health Service (IHS)
Final Rule Stage

984. INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION ACT MINIMUM STANDARDS OF CHARACTER

Priority: Info./Admin./Other

Legal Authority: 25 USC 3201 et seq

CFR Citation: 42 CFR 36

Legal Deadline: None

Abstract: The Indian Health Service (IHS) is proposing to establish regulations as mandated by the Indian Child Protection and Family Violence Protection Act, Public Law 101-630, 25 U.S.C. 3201 to 3211, that prescribe minimum standards of character for individuals whose duties and responsibilities involve regular contact with, or control over, Indian children.

Timetable:

Action	Date	FR Cite
NPRM	03/25/99	64 FR 14559
NPRM Comment Period End	07/26/99	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Ramona D. Williams, Child Protection Coordinator, Department of Health and Human Services, Indian Health Service, Suite 605, 12300 Twinbrook Parkway, Rockville, MD 20852
Phone: 301 443-1589

RIN: 0917–AA02

Department of Health and Human Services (HHS)
Indian Health Service (IHS)
Completed Actions

985. TRIBAL SELF-GOVERNANCE AMENDMENTS

Priority: Other Significant

CFR Citation: None

Completed:

Reason	Date	FR Cite
Final Rule	05/17/02	67 FR 35333

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Tribal

Agency Contact: Paula K. Williams
Phone: 301 443-7821

RIN: 0917–AA05

Department of Health and Human Services (HHS)
National Institutes of Health (NIH)
Proposed Rule Stage

986. UNDERGRADUATE SCHOLARSHIP PROGRAM REGARDING PROFESSIONS NEEDED BY THE NATIONAL INSTITUTES OF HEALTH (NIH)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; 42 USC 288-4

CFR Citation: 42 CFR 68b

Legal Deadline: None

Abstract: Section 487D of the Public Health Service Act, as added by the National Institutes of Health Revitalization Act of 1993, creates a program offering scholarships, in an amount not to exceed $20,000 per year of academic study, to individuals from disadvantaged backgrounds who are enrolled as full-time students at accredited institutions pursuing academic programs appropriate for careers in professions needed by the NIH. For each year of scholarship support, the recipient agrees to service (employment) after graduation, at the NIH, for one year. Additionally, the individual agrees to at least 10 consecutive weeks of service (employment) at the NIH during which the individual is attending the educational institution and receiving the NIH scholarship. The proposed new regulations will cover this program.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard, Rockville, MD 20852
Phone: 301 496-4606
Fax: 301 402-0169
Email: jm40z@nih.gov

RIN: 0925–AA10

HHS—NIH
Proposed Rule Stage

987. NATIONAL INSTITUTES OF HEALTH (NIH) CENTER GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; PL 106-310; PL 106-505; PL 106-525

CFR Citation: 42 CFR 52a

Legal Deadline: None

Abstract: NIH proposes to amend the current center grants regulations to reflect new authorities set forth in sections 409C, 445I, 452E, and 485F of the Public Health Service Act (PHS Act). Section 409C concerns centers of excellence regarding research on autism; section 445I concerns centers of excellence in Alzheimer's disease research and treatment; section 452E concerns centers regarding research on "fragile X;" and section 485F concerns centers of excellence for research education and training for individuals who are members of minority health disparity populations.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard, Rockville, MD 20852
Phone: 301 496-4606
Fax: 301 402-0169
Email: jm40z@nih.gov

RIN: 0925–AA24

988. NATIONAL INSTITUTES OF HEALTH (NIH) TRAINING GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; 42 USC 285g-10

CFR Citation: 42 CFR 63a

Legal Deadline: None

Abstract: NIH proposes to amend the training grants regulations to implement the new authority under section 452G of the PHS Act. This action is necessitated by enactment of the Children's Act of 2000. Section 1002 of this act adds a new section 452G that authorizes the Director of National Institute of Child Health and Human Development (NICHHD) in consultation with the Administrator of Health Resources and Services Administration (HRSA), to support activities to provide for an increase in the number and size of institutional training grants supporting pediatric training.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard, Rockville, MD 20852
Phone: 301 496-4606
Fax: 301 402-0169
Email: jm40z@nih.gov

RIN: 0925–AA28

989. • NATIONAL INSTITUTES OF HEALTH (NIH) AIDS RESEARCH LOAN REPAYMENT PROGRAM

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 216; 42 USC 288-1

CFR Citation: 42 CFR 68

Legal Deadline: None

Abstract: Section 487A of the Public Health Service Act creates a program through which appropriately qualified health professionals may obtain federally funded repayment of educational loans by conducting AIDS research as NIH employees. NIH is issuing regulations that will govern the program.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard, Rockville, MD 20852
Phone: 301 496-4606
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Email: jm40z@nih.gov

RIN: 0925–AA32

Department of Health and Human Services (HHS)
National Institutes of Health (NIH)
Final Rule Stage

990. NATIONAL INSTITUTES OF HEALTH LOAN REPAYMENT PROGRAM FOR RESEARCH GENERALLY

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; 42 USC 288-3

CFR Citation: 42 CFR 68d

Legal Deadline: None

Abstract: Regulations will be issued to govern the awarding of educational loan repayments to qualified health professionals who agree to conduct research as employees of the National Institutes of Health.

Timetable:

Action	Date	FR Cite
NPRM	08/05/02	67 FR 50622
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard, Rockville, MD 20852
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RIN: 0925–AA18

HHS—NIH — **Final Rule Stage**

991. SCIENTIFIC PEER REVIEW OF RESEARCH GRANT APPLICATIONS AND RESEARCH AND DEVELOPMENT CONTRACT PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; 42 USC 282(b)(6); 42 USC 284(c)(3); 42 USC 289a; 42 USC 290aa-3

CFR Citation: 42 CFR 52h

Legal Deadline: None

Abstract: NIH staff have been reexamining the peer review process as part of its reinvention of Government initiatives and have found ambiguities, misstatements, and voids in the existing regulations. These regulations, which govern the first level of review, are being amended to reflect current policies and procedures.

Timetable:

Action	Date	FR Cite
NPRM	09/21/00	65 FR 57132
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard, Rockville, MD 20852
Phone: 301 496-4606
Fax: 301 402-0169
Email: jm40z@nih.gov

RIN: 0925–AA20

Department of Health and Human Services (HHS)
National Institutes of Health (NIH) — **Long-Term Actions**

992. STANDARDS FOR A NATIONAL CHIMPANZEE SANCTUARY SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 287a-3a

CFR Citation: 42 CFR 52b

Legal Deadline: NPRM, Statutory, June 18, 2001.

Abstract: The National Institutes of Health proposes to establish standards for operating a national chimpanzee sanctuary system to provide for the permanent retirement of federally owned or supported chimpanzees no longer needed for research.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard, Rockville, MD 20852
Phone: 301 496-4606
Fax: 301 402-0169
Email: jm40z@nih.gov

RIN: 0925–AA31

Department of Health and Human Services (HHS)
Office of Public Health and Science (OPHS) — **Proposed Rule Stage**

993. PUBLIC HEALTH SERVICES POLICIES ON RESEARCH MISCONDUCT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; 42 USC 241; 42 USC 289b

CFR Citation: 42 CFR 93

Legal Deadline: None

Abstract: This notice of proposed rulemaking proposes substantial revisions to the existing regulations at 42 CFR part 50, subpart A, "Responsibilities of Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science," 54 FR 32449, August 8, 1989. The National Institutes of Health Revitalization Act of 1993 (NIH Act), Public Law 103-43, contains provisions that affect the current rule. For example, section 161 of the NIH Act established the Office of Research Integrity (ORI) as an independent entity reporting to the Secretary, and recent organizational changes have also affected the ORI's operations. In addition, the Office of Science and Technology Policy (OSTP) published a Governmentwide policy that applies to federally-funded research and proposals submitted to the Federal agencies for research funding, 65 FR 76260, December 6, 2000. The proposed revised regulation will implement this OSTP policy, which contains a definition of research misconduct and basic guidelines for the response of Federal agencies and research institutions to allegations of research misconduct. The current regulation, which implemented section 493(e) of the Public Health Service Act, would be deleted, and a new part 93, subparts A, B, C, D, and E would be added.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Barbara Bullman, Policy Analyst, Department of Health and Human Services, Office of Public Health and Science, Suite 700, 5515 Security Lane, Rockville, MD 20852
Phone: 301 443-5300
Fax: 301 443-5351

Chris Pascal, Director, Office of Research Integrity, Department of Health and Human Services, Office of Public Health and Science, Public Health and Science, Suite 700, 5515 Security Lane, Rockville, MD 20852
Phone: 301 443-3400

Related RIN: Related To 0940-AA01

RIN: 0940–AA04

HHS—OPHS — **Proposed Rule Stage**

994. • HUMAN SUBJECTS PROTECTION REGULATIONS: INSTITUTIONAL REVIEW BOARDS REGISTRATION REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 42 USC 289

CFR Citation: 45 CFR 46

Legal Deadline: None

Abstract: This notice of proposed rulemaking proposes to add subpart F to Department of Health and Human Services (HHS) regulations for protection of human subjects, 45 CFR part 46, to reqire registration of institutional review boards (IRBs) with the Department of Health and Human Services (HHS). The registration information would include contact information, approximate numbers of active protocols involving research conducted or supported by HHS and other Federal agencies, accreditation status, IRB membership, and staffing for the IRB. The proposed registration requirements will make it easier for Office for Human Research Protections (OHRP) to convey information to IRBs and will support the current IRB registration operated by OHRP. Under the current OHRP IRB registration system, the submission of certain registration information is required by human subjects protection regulations, and certain other information may be submitted voluntarily. This proposed information collection was submitted to te Office of Management and Budget under the Paperwork Reduction Act. Under the proposed rule, all registration information will be required, making the IRB registration system uniform with IRB registration requirements of the Food and Drug Administration (FDA), and creating a single, HHS IRB Registration system. FDA will simultaneously publish a proposed rule regarding FDA IRB registration requirements.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: George Gasparis, Department of Health and Human Services, Office of Public Health and Science, Office for Human Research Protections, The Tower Building, Suite 200, 1101 Wootton Parkway, Rockville, MD 20852
Phone: 301 496-7005

RIN: 0940–AA06

Department of Health and Human Services (HHS)
Office of Public Health and Science (OPHS) — **Final Rule Stage**

995. PUBLIC HEALTH SERVICE STANDARDS FOR THE PROTECTION OF RESEARCH MISCONDUCT WHISTLEBLOWERS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; 42 USC 241; 42 USC 289b

CFR Citation: 42 CFR 94

Legal Deadline: None

Abstract: To implement section 493(e) of the Public Health Service Act (added by section 163 of the National Institutes of Health Revitalization Act of 1993, Pub. L. 103-43), the Department is proposing to add a new part 94 to title 42 of the Code of Federal Regulations. Under this proposed regulation, covered institutions must follow certain requirements for preventing and responding to occurrences of retaliation against whistleblowers. The purpose of this part is to protect: (1) persons who make a good faith allegation that a covered institution or member thereof engaged in, or failed to respond adequately to an allegation of research misconduct; and (2) persons who cooperate in good faith with an investigation of research misconduct.

Timetable:

Action	Date	FR Cite
NPRM	11/28/00	65 FR 70830
NPRM Comment Period End	01/29/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Barbara Bullman, Policy Analyst, Department of Health and Human Services, Office of Public Health and Science, Suite 700, 5515 Security Lane, Rockville, MD 20852
Phone: 301 443-5300
Fax: 301 443-5351

Chris Pascal, Director, Office of Research Integrity, Department of Health and Human Services, Office of Public Health and Science, Public Health and Science, Suite 700, 5515 Security Lane, Rockville, MD 20852
Phone: 301 443-3400

Related RIN: Related To 0940-AA04

RIN: 0940–AA01

Department of Health and Human Services (HHS)
Centers for Medicare & Medicaid Services (CMS)

Proposed Rule Stage

996. END STAGE RENAL DISEASE (ESRD) CONDITIONS FOR COVERAGE (CMS-3818-P) (SECTION 610 REVIEW)

Regulatory Plan: This entry is Seq. No. 45 in part II of this issue of the **Federal Register**.

RIN: 0938–AG82

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997. CRITERIA FOR APPROVAL OF FACILITIES TO PERFORM COVERED HEART, LIVER, LUNG, PANCREAS, AND INTESTINAL TRANSPLANTS (CMS-3835-P)

Priority: Other Significant

Legal Authority: 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 482

Legal Deadline: None

Abstract: This proposed rule would establish conditions of participation for Medicare-covered transplants.

Timetable:

Action	Date	FR Cite
Proposed Rule	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Marty Abeln, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Centers for Medicare Management, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-1032

Kathy Linstromberg, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-8279

Eva Fung, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-06-6, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-7539

RIN: 0938–AH17

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998. HOSPICE CARE—CONDITIONS OF PARTICIPATION (CMS-3844-P)

Priority: Other Significant

Legal Authority: 42 USC 1302; 42 USC 1395x(dd); 42 USC 1395hh

CFR Citation: 42 CFR 418

Legal Deadline: None

Abstract: This proposed rule would revise existing conditions of participation that hospices must meet to participate in the Medicare program. The proposed requirements focus on the actual care delivered to patients and patients' families by hospices and the results of that care, reflect an interdisciplinary view of patient care, allow hospices greater flexibility in meeting quality standards, and eliminate unnecessary procedural requirements.

Timetable:

Action	Date	FR Cite
Proposed Rule	07/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Mary Rossi Coajou, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6051

Rachael Weinstein, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6775

RIN: 0938–AH27

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999. REQUIREMENTS FOR ESTABLISHING AND MAINTAINING MEDICARE BILLING PRIVILEGES (CMS-6002-P)

Priority: Other Significant

Legal Authority: 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 424

Legal Deadline: None

Abstract: This proposed rule is needed as part of the Administration's anti-fraud and abuse efforts. It would give us the authority to enroll and re-enroll providers with time frames for re-enrollment.

Timetable:

Action	Date	FR Cite
Proposed Rule	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State

Agency Contact: Sue Knefley, Center for Medicaid and State Operations, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-0488

RIN: 0938–AI21

1000. NATIONAL STANDARD FOR IDENTIFIERS OF HEALTH PLANS (CMS-6017-P)

Regulatory Plan: This entry is Seq. No. 46 in part II of this issue of the **Federal Register**.

RIN: 0938–AH87

1001. MEDICAL CHILD SUPPORT AND HEALTH INSURANCE COVERAGE OF DEPENDENT CHILDREN (CMS-2081-P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1302; 42 USC 1396(a)(25); 42 USC 1396(a)(45); 42 USC 1396(a)(60); 42 USC 1396(o); 42 USC 1396g-1; 42 USC 1396(k)

CFR Citation: 42 CFR 433.135; 42 CFR 433.137; 42 CFR 433.170

Legal Deadline: None

Abstract: This proposed rule would require States to provide assurances that laws relating to medical child support have satisfactorily been implemented in accordance with the Social Security Act. These laws would impose requirements on insurers, employers, and State Medicaid agencies that would result in greater enrollment opportunities for children, facilitate the filing of claims by custodial parents, and establish new payment disbursement criteria. This requirement would implement section 13623, OBRA of 1993.

Timetable:

Action	Date	FR Cite
Proposed Rule	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State

Agency Contact: Sue Knefley, Center for Medicaid and State Operations, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-0488

RIN: 0938–AI21

1002. MEDICARE HOSPICE CARE AMENDMENTS (CMS-1022-P)

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: PL 105-33, sec 1961(dd); PL 105-33, sec 1814(i); PL 105-33, sec 4441 to 4444; PL 105-33, sec 4448 to 4449; PL 106-113, sec 131; PL 106-554, sec 321 to 322

CFR Citation: 42 CFR 418

Legal Deadline: None

Abstract: This proposed rule revises certain regulations governing coverage and payments for hospice care under the Medicare program as required by the Balanced Budged Act of 1997, the Medicare, Medicaid, and State Child Health Insurance Program Balanced Budget Refinement Act of 1999, and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000.

Timetable:

Action	Date	FR Cite
Proposed Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Carol Blackford, Center for Health Plans and Providers, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-5909
Email: cblackford@hcfa.gov

Related RIN: Previously reported as 0938-AH73

RIN: 0938–AJ36

1003. SUPPLIER STANDARDS FOR HOME OXYGEN, THERAPEUTIC SHOES, HOME NUTRITION THERAPY (CMS-6010-P)

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 42 CFR 424.57

Legal Deadline: None

Abstract: This proposed rule would establish service standards for suppliers of home oxygen equipment, therapeutic shoes, and home infusion therapy.

Timetable:

Action	Date	FR Cite
Proposed Rule	08/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Frank Whelan, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C3-02-16, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-1302

RIN: 0938–AJ98

1004. ALL PROVIDER BAD DEBT PAYMENT (CMS-1126-P)

Priority: Other Significant

Legal Authority: 42 USC 1302; 42 USC 1395f(b); 42 USC 1395g; 42 USC 1395.l(a); 42 USC 1395.l(i); 42 USC 1395.l(n); 42 USC 1395x(v); 42 USC 1395cc; 42 USC 1395hh; 42 USC 1395rr; 42 USC 1395tt

CFR Citation: 42 CFR 413.80; 42 CFR 413.178

Legal Deadline: None

Abstract: This proposed rule would implement a court settlement agreement and remove the cap on End Stage Renal Disease (ESRD) bad debt reimbursement, which limits payment of allowable bad debts to the facility's unrecovered costs. This rule would also reduce the amount of reimbursement for bad debt for all providers and suppliers that receives reimbursement by 30 percent.

Timetable:

Action	Date	FR Cite
Proposed Rule	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Katie Walker, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C5-03-03, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-7278

RIN: 0938–AK02

1005. CONDITIONS OF PARTICIPATION OF INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION (CMS-3046-P)

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 1302; 42 USC 1396d

CFR Citation: 42 CFR 400; 42 CFR 435; 42 CFR 440; 42 CFR 441; 42 CFR 483

Legal Deadline: None

Abstract: This proposed rule would revise the conditions of participation for ICFs/MR. We would set forth these new requirements that ICFs/MR must meet to adhere to current trends in the field of developmental disabilities. It would address recent developments in some facilities in the District of Columbia to further protect the health and safety of this vulnerable population.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Nancy Archer, Office of Clinical Standards and Quality, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-05-27, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 401 786-0596

RIN: 0938–AK23

1006. HEALTH INSURANCE REFORM: CLAIMS ATTACHMENTS STANDARDS (CMS-0050-P)

Regulatory Plan: This entry is Seq. No. 47 in part II of this issue of the **Federal Register**.

RIN: 0938–AK62

1007. RATE OF REIMBURSEMENT OF PHOTOCOPY EXPENSES FOR PROSPECTIVE PAYMENT SYSTEM PROVIDERS (CMS-3055-P)

Priority: Economically Significant

Legal Authority: Social Security Act, sec 1102; Social Security Act, sec 1154; Social Security Act, sec 1159; Social Security Act, sec 1866; Social Security Act, sec 1871

CFR Citation: 42 CFR 476.78

Legal Deadline: None

Abstract: This proposed rule would increase the rate of reimbursement of photocopy expenses as required by the regulations governing Utilization and Quality Control Peer Review Organizations. Our current regulations identify the photocopying reimbursement methodology for prospective payment system hospitals.

Timetable:

Action	Date	FR Cite
Proposed Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Valerie Mattison-Brown, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of Clinical Standards, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-5958

RIN: 0938–AK68

1008. MODIFICATIONS TO MEDICARE MANAGED CARE RULES (CMS-4041-P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: BIPA, sec 605; BIPA, sec 606; BIPA, sec 612; BIPA, sec 615 to 617; BIPA, sec 620; BIPA, sec 621; BIPA, sec 623

CFR Citation: 42 CFR 409; 42 CFR 417; 42 CFR 422

Legal Deadline: None

Abstract: This proposed rule would implement certain Medicare payment provisions of the Medicare, Medicaid, and SCHIP Benefits and Improvement Act of 2000. The policy changes include premium reductions for M+C enrollees, uniform coverage for M+C plans in multiple locations, eliminating health disparities, ESRD enrollees, and increased civil money penalties for M+C organizations that terminate contracts mid-year. Moreover, this proposed rule describes authority to waive or modify requirements that hinder the design of, the offering of, or the enrollment in the M+C plans offered to employers or labor unions.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: CMS-4041-P was previously identified as CMS-1180-P.

Agency Contact: Frank Szeflinski, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services
Phone: 303 844-7119

RIN: 0938–AK71

1009. MEDICARE INPATIENT DISPROPORTIONATE SHARE HOSPITAL (DSH) ADJUSTMENT FORMULA (CMS-1171-P)

Priority: Other Significant

Legal Authority: Not Yet Determined

CFR Citation: 42 CFR 412106

Legal Deadline: None

Abstract: This proposed rule clarifies the Medicare DSH adjustment calculation in reference to the inclusion of Medicaid patient days. It describes the criteria to use in calculating the Medicare DSH adjustment for hospitals for purposes of payment under the hospital inpatient prospective payment system.

Timetable:

Action	Date	FR Cite
Proposed Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Stephen Phillips, Center for Health Plans and Providers, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-05-27, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4548

RIN: 0938–AK77

1010. ELIMINATION OF STATEMENT OF INTENT PROCEDURES FOR FILING MEDICARE CLAIMS (CMS-1185-P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: 42 CFR 424

Legal Deadline: None

Abstract: This proposed rule would revise the requirements concerning the written statement of intent procedures for filing Medicare claims from the current Medicare regulation.

Timetable:

Action	Date	FR Cite
Proposed Rule	04/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: State, Federal

Federalism: Undetermined

Agency Contact: David Walczak, Center for Health Plans and Providers, Plan and Provider Purchasing Policy Group, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-07-07, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-4475

RIN: 0938–AK79

1011. ORGAN PROCUREMENT ORGANIZATION CONDITIONS FOR COVERAGE (CMS-3064-P)

Regulatory Plan: This entry is Seq. No. 48 in part II of this issue of the **Federal Register**.

RIN: 0938–AK81

1012. EXTENDING MEDICARE ENTITLEMENT WHEN DISABILITY BENEFIT ENTITLEMENT ENDS BECAUSE OF SUBSTANTIAL GAINFUL ACTIVITY (CMS-4018-P)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: Sec 202 of the TWWIIA of 1999; PL 106-170

CFR Citation: 42 CFR 406.12

Legal Deadline: None

Abstract: This rule would provide working disabled individuals with continued Medicare entitlement for an additional 54 months beyond the current limit. It would implement the Ticket to Work and Work Incentives Improvement Act of 1999.

Timetable:

Action	Date	FR Cite
Proposed Rule	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Denise Cox, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-3195

RIN: 0938–AK94

1013. UPDATE INTEREST ASSESSMENT ON MEDICARE OVERPAYMENT AND UNDERPAYMENT (CMS-6014-P)

Priority: Other Significant

Legal Authority: Social Security Act, sec 1815(d); Social Security Act, sec 1833(j)

CFR Citation: 42 CFR 405.378

Legal Deadline: None

Abstract: This proposed rule would change the formula used to compute interest on provider, supplier overpayments and underpayments.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Paul Thomas Reed, Financial Management Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C3-15-07, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4001
Email: preed2@cms.hhs.gov

RIN: 0938–AL14

1014. USE OF RESTRAINT AND SECLUSION IN MEDICARE AND MEDICAID PARTICIPATING FACILITIES THAT PROVIDE INPATIENT OR RESIDENTIAL CARE (CMS-2130-P)

Regulatory Plan: This entry is Seq. No. 49 in part II of this issue of the **Federal Register**.

RIN: 0938–AL26

1015. PAYMENT FOR RESPIRATORY ASSIST DEVICES WITH BI-LEVEL CAPABILITY AND A BACK-UP RATE (CMS-1167-P)

Priority: Other Significant

Legal Authority: 42 CFR 1302; 42 CFR 1395hh; 42 CFR 1395rr(b)(1); PL 103-66

CFR Citation: 42 CFR 414

Legal Deadline: None

Abstract: This rule removes respiratory assist devices with bi-level capability and a back-up rate from the category for items requiring frequent and substantial servicing, and places them in the category for other items, or capped rental items. This rule corrects an error that occurred in 1992, where these devices were inappropriately placed in the category for items requiring frequent and substantial servicing.

Timetable:

Action	Date	FR Cite
Proposed Rule	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Joel Kaiser, Center for Medicare Management, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4499

RIN: 0938–AL27

1016. SELF-DECLARATION OF CITIZENSHIP (CMS-2085-P)

Priority: Info./Admin./Other

Legal Authority: Public Law 104-193, Sec 431

CFR Citation: 42 CFR 435.410; 42 CFR 436.410

Legal Deadline: None

Abstract: This proposed rule would require States, on a post-determination basis, to carry out a process for verifying citizenship in a sample of cases to ensure that program integrity is being maintained. This proposed rule would also clearly state that acceptance of the individual's self-declaration is an option.

Timetable:

Action	Date	FR Cite
Proposed Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Sarah DeLone, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S2-01-16, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-7010

RIN: 0938–AL33

1017. PERMITTING PREMIUM REDUCTIONS AS ADDITIONAL BENEFITS UNDER MEDICARE+CHOICE PLANS (CMS-6016-P)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: Not Yet Determined

CFR Citation: 42 CFR 408.ff

Legal Deadline: Final, Statutory, January 1, 2003.

Abstract: This proposed rule would implement section 606 of BIPA to allow M+C organizations to elect a reduction in capitation payments so that these

organizations could offer Medicare part B premium reductions to enrollees.

Timetable:

Action	Date	FR Cite
Proposed Rule	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

Agency Contact: Michele Sanders, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-0808

RIN: 0938–AL49

1018. PROSPECTIVE PAYMENT SYSTEM FOR PSYCHIATRIC HOSPITALS (CMS-1213-P)

Regulatory Plan: This entry is Seq. No. 50 in part II of this issue of the Federal Register.

RIN: 0938–AL50

1019. PROVIDER REIMBURSEMENT DETERMINATIONS AND APPEALS (CMS-1727-P)

Priority: Substantive, Nonsignificant

Legal Authority: Sec 1878 of the Social Security Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This proposed rule would redefine, clarify, and update the guidelines and procedures for provider reimbursement review board appeals.

Timetable:

Action	Date	FR Cite
Proposed Rule	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Morton Marcus, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-26-22, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-4477

RIN: 0938–AL54

1020. SCHIP; PURCHASE OF FAMILY COVERAGE—BENEFIT FLEXIBILITY IN PARENT COVERAGE (CMS-2148-P)

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 2110

CFR Citation: 42 CFR 457

Legal Deadline: None

Abstract: This proposed rule would provide flexibility to States in defining their benefit package for adults covered under the State Children's Health Insurance Program (SCHIP) family coverage options.

Timetable:

Action	Date	FR Cite
Proposed Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Terese Klitenic, Center for Medicaid and State Operations, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-25-02, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-5942

RIN: 0938–AL62

1021. REQUEST FOR INFORMATION ON BENEFIT-SPECIFIC WAITING PERIODS (CMS-2150-N)

Priority: Info./Admin./Other

Legal Authority: None

CFR Citation: None

Legal Deadline: None

Abstract: This notice requests information on the use of benefit-specific waiting periods by group health plan and group health insurance issuers.

Timetable:

Action	Date	FR Cite
Notice	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Mlawsky, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-16-26, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6851

RIN: 0938–AL64

1022. REVISIONS TO THE MEDICARE APPEALS PROCESS (CMS-4004-P)

Regulatory Plan: This entry is Seq. No. 51 in part II of this issue of the Federal Register.

RIN: 0938–AL67

1023. DMERC SERVICE AREAS AND RELATED MATTERS (CMS-1219-P)

Priority: Substantive, Nonsignificant

Legal Authority: Social Security Act, sec 1842; Social Security Act, sec 1834(a)(12); Social Security Act, sec 1834(h)(3); Social Security Act, sec 1834(j)(1)(E)

CFR Citation: 42 CFR 421.210(c); 42 CFR 421.210(d); 42 CFR 421.210(e)

Legal Deadline: None

Abstract: This proposed rule would allow flexibility in regulatory changes to the DMERC contractor structure.

Timetable:

Action	Date	FR Cite
Proposed Rule	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: James Holt, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S1-14-27, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-1953
Email: jholt@cms.hhs.gov

RIN: 0938–AL76

1024. REVISIONS TO CONDITIONS FOR COVERAGE FOR AMBULATORY SURGICAL CENTERS (CMS-3887-P)

Priority: Other Significant. Major under 5 USC 801.

Unfunded Mandates: Undetermined

Legal Authority: Social Security Act, sec 1102; Social Security Act, sec 1832; Social Security Act, sec 1871

CFR Citation: 42 CFR 410; 42 CFR 424; 42 CFR 416; 42 CFR 488; 42 CFR 489

Legal Deadline: None

Abstract: This proposed rule would revise the ambulatory surgical center conditions for coverage to reflect current innovations in healthcare delivery, quality assessment, and performance improvement.

Timetable:

Action	Date	FR Cite
Proposed Rule	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Joan Brooks, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-5526

RIN: 0938–AL80

1025. MEDICAID COVERAGE RULES FOR INMATES OF PUBLIC INSTITUTIONS (CMS-2077-P)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: Social Security Act, sec 1905(a)(A)

CFR Citation: 42 CFR 435.1008; 42 CFR 435.1009; 42 CFR 435.1012; 42 CFR 436.1004

Legal Deadline: None

Abstract: This proposed rule would provide a new interpretation of the statute in order to eliminate confusion among the States and to ensure consistent application of the FFP exclusionary rules for services provided to inmates of a public institution.

Timetable:

Action	Date	FR Cite
Proposed Rule	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: Tom Shenk, Center for Medicaid and State Operations, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-3295

RIN: 0938–AL85

1026. TARGETED CASE MANAGEMENT (CMS-2061-P)

Priority: Substantive, Nonsignificant

Legal Authority: Sec 1915(g) of the Social Security Act

CFR Citation: 42 CFR 431; 42 CFR 440; 42 CFR 441

Legal Deadline: None

Abstract: This proposed rule would amend the Medicaid regulations to provide for optional coverage of case management services furnished to specific groups, geographic areas, or political subdivisions within a State. This proposed rule rescinds the proposed rule that was published on 10/15/93.

Timetable:

Action	Date	FR Cite
Proposed Rule	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kathy Poisal, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S2-14-26, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-5940

RIN: 0938–AL87

1027. HEALTH COVERAGE PORTABILITY: TOLLING CERTAIN TIME PERIODS AND INTERACTIONS WITH FAMILY AND MEDICAL LEAVE ACT (CMS-2158-P)

Priority: Other Significant

Legal Authority: 42 USC 300 gg; PL 104-191

CFR Citation: 45 CFR 146.113; 45 CFR 146.115; 45 CFR 146.117; 45 CFR 146.120; 45 CFR 146.145

Legal Deadline: None

Abstract: This proposed rule would clarify certain portability requirements for group health plans and issuers of health insurance coverage offered in connection with a group health plan. This rule would implement changes made to the Internal Revenue Code, the Employee Retirement Income Security Act, and the Public Health Service Act enacted as part of the Health Insurance Portability and Accountability Act of 1996.

Timetable:

Action	Date	FR Cite
Proposed Rule	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: State, Local, Federal

Agency Contact: David Mlawsky, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-16-26, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6851

RIN: 0938–AL88

1028. PROSPECTIVE PAYMENT SYSTEM AND CONSOLIDATED BILLING FOR SKILLED NURSING FACILITIES—UPDATE FOR FY 2004 (CMS-1469-P)

Regulatory Plan: This entry is Seq. No. 52 in part II of this issue of the Federal Register.

RIN: 0938–AL90

1029. CHANGES TO THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM AND CALENDAR YEAR 2004 PAYMENT RATES (CMS-1471-P)

Regulatory Plan: This entry is Seq. No. 53 in part II of this issue of the Federal Register.

RIN: 0938–AL91

1030. PROSPECTIVE PAYMENT SYSTEM FOR LONG-TERM CARE HOSPITALS: FY 2004 (CMS-1472-P)

Priority: Substantive, Nonsignificant

Legal Authority: BBRA 1999, sec 123; BIPA 2000, sec 307(b)

CFR Citation: 42 CFR 412; 42 CFR 413

Legal Deadline: None

Abstract: This rule updates the Prospective Payment System for Medicare payment of inpatient hospital.

It implements section 123 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 and section 307(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tzvi Hefter, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-07-07, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-1304

RIN: 0938–AL92

1031. HOME HEALTH PROSPECTIVE PAYMENT SYSTEM RATE UPDATE FOR FY 2004 (CMS-1473-NC)

Priority: Other Significant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: Other, Statutory, June 28, 2003, notice must be published by 06/28/2003 deadline in order to meet statutory effective date of 10/01/2003.

Abstract: This notice with comment period sets forth an update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for home health agencies for FY 2004. (We must publish this notice by 06/28/04 to meet the statutory effective date of 10/01/04.)

Timetable:

Action	Date	FR Cite
Notice	06/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Susan Levy, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C5-08-27, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-9364

RIN: 0938–AL94

1032. PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT REHABILITATION HOSPITALS (CMS-1474-P)

Priority: Substantive, Nonsignificant

Legal Authority: Social Security Act, sec 1886(j); PL 105-33; PL 106-554; PL 106-113

CFR Citation: 42 CFR 412 to 413

Legal Deadline: None

Abstract: This proposed rule will update rates for the prospective payment systems for inpatient rehabilitation facilities for FY 2004.

Timetable:

Action	Date	FR Cite
Proposed Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Kuhl, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-11-06, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-4597

RIN: 0938–AL95

1033. REVISIONS TO PAYMENT POLICIES UNDER THE PHYSICIAN FEE SCHEDULE FOR CALENDAR YEAR 2004 (CMS-1476-P)

Regulatory Plan: This entry is Seq. No. 54 in part II of this issue of the **Federal Register**.

RIN: 0938–AL96

1034. • NONDISCRIMINATION IN POST-HOSPITAL REFERRAL TO HOME HEALTH AGENCIES AND OTHER ENTITIES (CMS-1224-P)

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-33, Sec 4321 of the BBA

CFR Citation: 42 CFR 482

Legal Deadline: None

Abstract: This proposed rule would establish a process for collecting and maintaining information about hospitals referring Medicare patients to home health agencies (HHAs) with which the hospitals have a financial interest. Moreover, collected information would be made available to the public in order to enhance its understanding and awareness regarding the availability of Medicare-certified HHAs to serve the Medicare population.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth Carmody, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-10-07, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-7533

RIN: 0938–AM01

1035. • MEDICAID HOME AND COMMUNITY-BASED SERVICES WAIVERS (CMS-2162-P)

Priority: Substantive, Nonsignificant

Legal Authority: Sec 1915(c) of the Social Security Act

CFR Citation: 42 CFR 441.300

Legal Deadline: None

Abstract: This proposed rule incorporates New Freedom Initiative recommendations/proposals into the HCBS waiver program to allow States greater flexibility in creating community-based long term care alternatives for eligible persons.

Timetable:

Action	Date	FR Cite
Proposed Rule	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary Clarkson, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S2-14-26, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-5918

RIN: 0938–AM05

1036. • TICKET TO WORK MEDICAID INFRASTRUCTURE GRANT (CMS-2165-N)

Priority: Routine and Frequent

Legal Authority: Social Security Act, sec 203; PL 106-170

CFR Citation: None

Legal Deadline: None

Abstract: This notice is an annual event that gives State agencies official notification of the Medicaid Grant Infrastructure Grant solicitation process.

Timetable:

Action	Date	FR Cite
Notice	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Joe A Razes, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S2-12-28, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6126
Email: jrazes@cms.hhs.gov

RIN: 0938–AM11

1037. • REVISIONS TO AVERAGE WHOLESALE PRICE METHODOLOGY (CMS-1229-P)

Regulatory Plan: This entry is Seq. No. 55 in part II of this issue of the **Federal Register**.

RIN: 0938–AM12

1038. • CRITERIA FOR DETERMINING WHETHER A DRUG IS CONSIDERED USUALLY SELF-ADMINISTERED (CMS-1228-P)

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 1861(s)(2)(B)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This proposed rule would solicit comments on the criteria to determine whether a drug is considered usually self-administered and therefore, not covered under part B of Medicare.

Timetable:

Action	Date	FR Cite
Proposed Rule	09/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Robert Niemann, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4569

RIN: 0938–AM13

1039. • ELECTRONIC MEDICARE CLAIMS SUBMISSION (CMS-0008-P)

Regulatory Plan: This entry is Seq. No. 56 in part II of this issue of the **Federal Register**.

RIN: 0938–AM22

1040. • LIABILITY OF THIRD PARTIES TO PAY FOR CARE AND SERVICES (CMS-2080-P)

Priority: Substantive, Nonsignificant

Legal Authority: Sec 13622 of OBRA '93; Sec 4741(a)(2) of BBA '97; Sec 4701(b) of BBA '97

CFR Citation: 42 CFR Part 433

Legal Deadline: None

Abstract: This rule would amend regulations governing third party liability. It adds Employee Retirement Income Security Act of 1974 (ERISA) plans, service benefit plans, and health maintenance organizations to the definition of liable third par . s.

Timetable:

Action	Date	FR Cite
Proposed Rule	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Robert Nakielny, Center for Medicaid and State Operations, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S2-14-26, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-4466

RIN: 0938–AM24

1041. • MEDICAID DEFINITION OF QUALIFIED SPEECH PATHOLOGISTS AND AUDIOLOGISTS (CMS-2132-P)

Priority: Substantive, Nonsignificant

Legal Authority: Sec 1905(a)(11) of the Social Security Act; 42 USC 1396d

CFR Citation: 42 CFR 440.110(a)

Legal Deadline: None

Abstract: This proposed rule would set forth changes in existing Medicaid regulations to establish provider standards consistent with those in the Medicare program. The Medicare definition of speech pathologist/audiologist defers to the States for the definition, and if States do not license these providers, defines specific training and education standards.

Timetable:

Action	Date	FR Cite
Proposed Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Linda Peltz, Center for Medicaid and State Operations, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-25-02, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-3399

RIN: 0938–AM26

1042. • MEDICAID ESTATE RECOVERIES (CMS-2083-P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This proposed rule would require States to seek adjustment or recovery from the estates of Medicaid beneficiaries for amounts correctly spent by Medicaid on permanently institutionalized individuals (any age) and aged 55 or older for certain services.

HHS—CMS — **Proposed Rule Stage**

Timetable:

Action	Date	FR Cite
Proposed Rule	09/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Ingrid Osborne, Center for Medicaid and State Operations, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S2-16-25, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-4461

RIN: 0938–AM30

Department of Health and Human Services (HHS)
Centers for Medicare & Medicaid Services (CMS) — **Final Rule Stage**

1043. REVISION OF MEDICARE/MEDICAID HOSPITAL CONDITIONS OF PARTICIPATION (CMS-3745-F)

Regulatory Plan: This entry is Seq. No. 57 in part II of this issue of the **Federal Register**.

RIN: 0938–AG79

1044. HOME HEALTH AGENCY (HHA) CONDITIONS OF PARTICIPATION (COPS) (CMS-3819-FC)

Priority: Other Significant

Legal Authority: 42 USC 1302; 42 USC 1395x; 42 USC 1395cc(a); 42 USC 1395hh; 42 USC 1395bb

CFR Citation: 42 CFR 484

Legal Deadline: None

Abstract: This final rule with comment period revises the existing CoPs that HHAs must meet to participate in the Medicare program. The requirements focus on the actual care delivered to patients by HHAs, reflect an interdisciplinary view of patient care, allow HHAs greater flexibility in meeting quality standards, and eliminate unnecessary procedural requirements. These changes are an integral part of the Administration's efforts to achieve broad-based improvements and measurements of the quality of care furnished through Federal programs, while at the same time reducing procedural burdens on providers.

Timetable:

Action	Date	FR Cite
NPRM	03/10/97	62 FR 11005
NPRM Comment Period End	06/09/97	
Final Rule	07/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Janice Stevenson, Office of Clinical Standards and Quality, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4882

Rachael Weinstein, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6775

RIN: 0938–AG81

1045. MEDICARE AND MEDICAID PROGRAMS; TERMS, DEFINITIONS, AND ADDRESSES: TECHNICAL AMENDMENTS (CMS-9877-F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1302; 42 USC 1395x(v)(1)(A); 42 USC 1395hh

CFR Citation: 42 CFR 400 to 440; 42 CFR 442 to 447; 42 CFR 455; 42 CFR 456; 42 CFR 462 to 466; 42 CFR 473 to 476; 42 CFR 482 to 489; 42 CFR 491 to 498

Legal Deadline: None

Abstract: This final rule would initiate the rationalization of our system of definitions, correct outdated addresses and formulas, clarify which steps of the appeals process are binding and which are final, remove content that is duplicative or unnecessary, and make other clarifying editorial changes.

Timetable:

Action	Date	FR Cite
NPRM	01/25/02	67 FR 3641
NPRM Comment Period End	03/26/02	
Final Rule	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Margaret Teeters, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C5-14-03, Division of Regulation and Issuances, 7500 Security Boulevard, Balitmore, MD 21244
Phone: 410 786-4678

RIN: 0938–AH53

1046. HEALTH INSURANCE REFORM: STANDARD UNIQUE HEALTH CARE PROVIDER IDENTIFIER (CMS-0045-F)

Regulatory Plan: This entry is Seq. No. 58 in part II of this issue of the **Federal Register**.

RIN: 0938–AH99

1047. APPEALS OF CARRIER DETERMINATION THAT A SUPPLIER FAILS TO MEET THE REQUIREMENTS FOR MEDICARE BILLING PRIVILEGES (CMS-6003-F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1302; 42 USC 1395u(b)(3)(C); 42 USC 1395ff(b)

CFR Citation: 42 CFR 405.874

Legal Deadline: None

Abstract: This final rule would extend appeal rights to all suppliers whose enrollment applications for Medicare billing privileges are disallowed by a carrier or whose Medicare billing privileges are revoked, except for those suppliers covered under other existing appeals provisions of our regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/25/99	64 FR 57431
Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

HHS—CMS — **Final Rule Stage**

Agency Contact: Charles Waldhauser, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-6140

Yvonne West, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6479

RIN: 0938–AI49

1048. SECURITY STANDARDS (CMS-0049-F)

Regulatory Plan: This entry is Seq. No. 59 in part II of this issue of the **Federal Register**.

RIN: 0938–AI57

1049. COVERAGE OF RELIGIOUS NON-MEDICAL HEALTH CARE INSTITUTIONS (CMS-1909-F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1395i-5; 42 USC 1395x(e); 42 USC 1395x(y); 42 USC 1395x(ss); 42 USC 1302

CFR Citation: 42 CFR 403; 42 CFR 440.170; 42 CFR 488.2; 42 CFR 488.6; 42 CFR 489.102; 42 CFR 412.90; 42 CFR 412.98; 42 CFR 431.610; 42 CFR 440.155; 42 CFR 442.12; 42 CFR 456.351; 42 CFR 456.601; 42 CFR 466.1

Legal Deadline: Final, Statutory, July 1, 1998, BBA, Section 4454(d).

Abstract: This final rule follows an Interm Final with Comment that removed all references in the Medicare regulations to specific religious institutions to include all religious nonmedical institutions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/30/99	64 FR 67028
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Jean Marie Moore, Center for Health Plans and Providers, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-3508

RIN: 0938–AI93

1050. EXTERNAL QUALITY REVIEW OF MEDICAID MANAGED CARE ORGANIZATIONS (CMS-2015-F)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 1302

CFR Citation: 42 CFR 438

Legal Deadline: None

Abstract: This final rule will require State agencies to contract with managed care organizations and to monitor and evaluate their performances through annual external, independent reviews conducted by accrediting organizations that are approved by CMS.

Timetable:

Action	Date	FR Cite
NPRM	12/01/99	64 FR 67223
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Sharon Gilles, Center for Medicaid and State Operations, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-1177

RIN: 0938–AJ06

1051. REPORTING OUTCOME AND ASSESSMENT INFORMATION SET (OASIS) DATA AS PART OF THE CONDITIONS OF PARTICIPATION FOR HOME HEALTH AGENCIES (CMS-3006-IFC)

Priority: Other Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect State, local or tribal governments and the private sector.

Legal Authority: 42 USC 1302; 42 USC 1395(hh)

CFR Citation: 42 CFR 484.11; 42 CFR 484.20; 42 CFR 488.68

Legal Deadline: None

Abstract: This final rule requires home health agencies to electronically report OASIS data as a condition of participation in the Medicare program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/25/99	64 FR 3748
Interim Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Janice Stevenson, Office of Clinical Standards and Quality, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4882

RIN: 0938–AJ10

1052. RURAL HEALTH CLINICS: AMENDMENTS TO PARTICIPATION REQUIREMENTS AND PAYMENT PROVISIONS, AND ESTABLISHMENT OF A QUALITY ASSESSMENT AND IMPROVEMENT PROGRAM (CMS-1910-F)

Priority: Other Significant

Legal Authority: 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 405; 42 CFR 491

Legal Deadline: None

Abstract: This rule amends the Medicare certification and payment requirements for rural health clinics (RHCs), as required by section 4205 of the Balanced Budget Act of 1997. It changes the definition of a qualifying rural shortage area in which a Medicare RHC must be located; establishes criteria for identifying RHCs essential to delivery of primary care services that we can continue to approve as Medicare RHCs in areas no longer designated as medically underserved; and limits nonphysician practitioner staffing requirements. This rule imposes payment limits on provider-based RHCs and prohibits the use of RHC space, professional staff, equipment, and other RHC resources by another Medicare entity. The rule also requires RHCs to establish a quality

assessment and performance improvement program.

Timetable:

Action	Date	FR Cite
NPRM	02/28/00	65 FR 10450
Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: David Worgo, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-15-18, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-5919

RIN: 0938–AJ17

1053. HOSPITAL CONDITIONS OF PARTICIPATION: LABORATORY SERVICES (CMS-3014-F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 482.27

Legal Deadline: None

Abstract: This final rule revises requirements for hospitals that transfuse blood and blood products regarding written procedures, quarantine, testing, and counseling for hepatitis C virus (HCV) and records maintenance.

Timetable:

Action	Date	FR Cite
NPRM	11/16/00	65 FR 69416
Final Rule	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Mary Collins, OCSQ, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-3189

RIN: 0938–AJ29

1054. USE OF RESTRAINT AND SECLUSION IN RESIDENTIAL TREATMENT FACILITIES PROVIDING INPATIENT PSYCHIATRIC SERVICES TO INDIVIDUALS UNDER AGE 21 (CMS-2065-F)

Priority: Economically Significant

Legal Authority: 42 USC 1302; 42 USC 1396d

CFR Citation: 42 CFR 441; 42 CFR 483

Legal Deadline: None

Abstract: This final rule addresses standards of practices that residential treatment facilities providing inpatient psychiatric services for individuals under age 21 must meet with regard to the use of restraints and seclusion.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/22/01	66 FR 7148
60-Day Delay of Effective Date To 05/22/2001	03/21/01	66 FR 15800
Interim Final Rule Comment Period End	03/23/01	
Interim Final Rule Effective	03/23/01	
Interim Final Rule Amendment with Clarification	05/22/01	66 FR 28110
Interim Final Rule Comment Period End	07/23/01	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Larry Cutler, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S2-14-26, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-5903

RIN: 0938–AJ96

1055. APPLICATION OF INHERENT REASONABLENESS TO ALL MEDICARE PART B SERVICES (OTHER THAN PHYSICIAN SERVICES) (CMS-1908-F)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 105-33, sec 4316

CFR Citation: 42 CFR 405

Legal Deadline: None

Abstract: This final rule sets forth the process for establishing realistic and equitable payment amounts for all Medicare part B items and services (other than physician services) when the existing payment amounts are inherently unreasonable because they are either grossly excessive or grossly deficient.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/07/98	63 FR 687
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: William J. Long, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C5-08-27, Center for Medicare Management, 7500 Security Boulevard, Baltimore, MD 21228
Phone: 410 786-5655
Email: wlong@hcfa.gov

RIN: 0938–AJ97

1056. CLINICAL LAB REQUIREMENTS—REVISIONS TO REGULATIONS IMPLEMENTING CLIA (CMS-2226-F)

Priority: Other Significant

Legal Authority: PL 100-578

CFR Citation: 42 CFR 493

Legal Deadline: None

Abstract: This rule finalizes certain laboratory requirements under the Clinical Laboratory Improvement Amendments of 1988 (CLIA).

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Cecelia Hinkel, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services
Phone: 410 786-3347

RIN: 0938–AK24

1057. FIRE SAFETY REQUIREMENTS FOR RNHCI, ASC, HOSPICES, PACE, HOSPITALS, AND LONG-TERM CARE FACILITIES AND ICFS FOR THE MENTALLY RETARDED (CMS-3047-F)

Priority: Other Significant

Legal Authority: 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 403; 42 CFR 416; 42 CFR 418; 42 CFR 460; 42 CFR 482; 42 CFR 483

Legal Deadline: None

Abstract: This final rule adopts the 2000 edition of the National Fire Protection Association's Life Safety Code as the fire standards for Religious Non-Medical Health Care Institutions, Ambulatory Surgery Centers, Hospices that provide in-patient services, Programs of All-Inclusive Care for the Elderly, Hospitals, Long-Term Care Facilities, and Intermediate Care Facilities for the Mentally Retarded.

Timetable:

Action	Date	FR Cite
Proposed Rule	10/26/01	66 FR 54179
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Tamara Syrek, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services
Phone: 410 786-3529

RIN: 0938–AK35

1058. HOSPITAL CONDITIONS OF PARTICIPATION: QUALITY ASSESSMENT AND PERFORMANCE IMPROVEMENTS (QAPI) (CMS-3050-F)

Regulatory Plan: This entry is Seq. No. 60 in part II of this issue of the **Federal Register.**

RIN: 0938–AK40

1059. IMPROVEMENTS TO THE MEDICARE+CHOICE APPEALS AND GRIEVANCE PROCEDURES (CMS-4024-F)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: BBA, sec 4001; PL 105-33; Social Security Act, sec 1851 to 1859

CFR Citation: 42 CFR 422; 42 CFR 489

Legal Deadline: NPRM, Judicial, January 19, 2001.

Abstract: This final rule sets forth several improvements to the Medicare+Choice (M+C) appeal and grievance procedures. This rule addresses the termination date of provider services, independent review process, and discharge notices.

Timetable:

Action	Date	FR Cite
NPRM	01/24/01	66 FR 7593
Final Rule	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Organizations

Government Levels Affected: None

Additional Information: The Settlement Agreement in Grijalva v. Shalala contemplates that a final rule will be published by the end of 2002.

Agency Contact: Tony Culotta, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4661

RIN: 0938–AK48

1060. REVIEW OF NATIONAL COVERAGE DETERMINATIONS AND LOCAL COVERAGE DETERMINATIONS (CMS-3063-F)

Regulatory Plan: This entry is Seq. No. 61 in part II of this issue of the **Federal Register.**

RIN: 0938–AK60

1061. REVISED PROCESS FOR MAKING MEDICARE COVERAGE DETERMINATIONS (NCDS) (CMS-3062-N)

Priority: Other Significant

Legal Authority: Sec 522 of the BIPA

CFR Citation: None

Legal Deadline: Other, Statutory, October 1, 2001, Revision notice.

Abstract: This notice will announce a revised process for making Medicare National Coverage Ddecisions.

Timetable:

Action	Date	FR Cite
Notice	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal

Agency Contact: Vadim Lubarsky, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C5-16-03, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-0840

RIN: 0938–AK61

1062. HEALTH INSURANCE REFORM: MODIFICATIONS TO STANDARDS FOR ELECTRONIC TRANSACTIONS (CMS-0003-F)

Regulatory Plan: This entry is Seq. No. 62 in part II of this issue of the **Federal Register.**

RIN: 0938–AK64

1063. PHYSICIANS' REFERRALS TO HEALTH CARE ENTITIES WITH WHICH THEY HAVE FINANCIAL RELATIONSHIPS—PHASE II (CMS-1810-FC)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 1877

CFR Citation: 42 CFR 411

Legal Deadline: None

Abstract: This final rule with comment period incorporates into regulations the provisions concerning ownership and investment exceptions in paragraphs (c) and (d) and the compensation exceptions in paragraph (e) of Section 1877 of the Social Security Act.

Timetable:

Action	Date	FR Cite
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Joanne Sinsheimer, Technical Advisor, CMM, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-4620

RIN: 0938–AK67

1064. MEDICAID MANAGED CARE; NEW PROVISIONS (CMS-2104-F2)

Priority: Info./Admin./Other

Legal Authority: BIPA '00

CFR Citation: 42 CFR 400

Legal Deadline: None

Abstract: This notice will correct typographical errors, cross references, and other discrepancies, in the rule published on June 14, 2002.

Timetable:

Action	Date	FR Cite
NPRM	08/20/01	66 FR 43613
NPRM Comment Period End	10/19/01	
Final Rule	06/14/02	67 FR 40989
Correction Notice	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bruce Johnson, Center for Medicaid and State Operations, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD
Phone: 410 786-0615

Deirdre Duzor, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4626

RIN: 0938–AK96

1065. MODIFICATIONS TO THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM (CMS-2006-F)

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-33

CFR Citation: 42 CFR 435; 42 CFR 436; 42 CFR 457

Legal Deadline: None

Abstract: This final rule responds to public comments received and will revise certain provisions to the State Children's Health Insurance Program (SCHIP) final rule, published on January 11, 2002.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/25/01	66 FR 33810
Interim Final Rule Comment Period End	07/26/01	
Interim Final Rule Effective	08/24/01	
Final Rule	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Regina Fletcher, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S2-01-16, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-3293

RIN: 0938–AL00

1066. MEDICARE LIMITS ON THE VALUATION OF A DEPRECIABLE ASSET RECOGNIZED AS AN ALLOWANCE FOR DEPRECIATION AND INTEREST ON CAPITAL INDEBTEDNESS AFTER A CHANGE OF OWNERSHIP (CMS-1004-F)

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: Sec 1861(v)(1)(O) of the Social Security Act, as amended

CFR Citation: 42 CFR 413.134

Legal Deadline: None

Abstract: This final rule responds to public comments received and makes technical corrections to the Medicare provider reimbursement regulations that set forth requirements related to allowable costs.

Timetable:

Action	Date	FR Cite
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ann Pash, Center for Medicare Management, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4516
Email: apash@hcfa.gov

RIN: 0938–AL12

1067. REQUIREMENTS FOR PAID FEEDING ASSISTANTS IN LONG-TERM CARE FACILITIES (CMS-2131-F)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: Sec 1819(a) to (f) of the Social Security Act; sec 1919(a) to (g) of the Social Security Act; PL 100-203

CFR Citation: 42 CFR 483.73; 42 CFR 483.75(c)

Legal Deadline: None

Abstract: This final rule would allow long-term care facilities to use paid feeding assistants to supplement the services of certified nurse aides. If facilities choose this option, feeding assistants must complete a specified training program.

Timetable:

Action	Date	FR Cite
Proposed Rule	03/29/02	67 FR 15149
Comment Period End	05/28/02	
Final Rule	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: State, Federal

Agency Contact: Nola Petrovich, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S2-14-26, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4671

RIN: 0938–AL18

1068. CHANGES TO THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM AND CALENDAR YEAR 2003 PAYMENT RATES (CMS-1206-F)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 1395(L); BBA '97; BBRA '99; BIPA '00

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This final rule revises the Medicare hospital outpatient payment system beginning 01/01/03.

Timetable:

Action	Date	FR Cite
Notice	03/18/02	67 FR 11969
Proposed Rule	08/09/02	67 FR 52092
Comment Period End	10/07/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Cindy Read, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-0378

RIN: 0938–AL19

1069. REVISIONS TO PAYMENT POLICIES UNDER THE PHYSICIAN FEE SCHEDULE FOR CALENDAR YEAR 2003 (CMS-1204-FC)

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 42 USC 1395W-4

CFR Citation: 42 CFR 410; 42 CFR 414

Legal Deadline: None

Abstract: This rule would make several changes affecting Medicare part B payment.

Timetable:

Action	Date	FR Cite
Proposed Rule	06/28/02	67 FR 43846
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Diane Milstead, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-3355

RIN: 0938–AL21

1070. HEALTH COVERAGE PORTABILITY FOR GROUP HEALTH PLANS AND GROUP HEALTH INSURANCE ISSUERS (CMS-2151-F)

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 42 USC 300gg; PL 104-191

CFR Citation: 45 CFR 144.103; 45 CFR 146.101; 45 CFR 146.111; 45 CFR 146.113; 45 CFR 146.115; 45 CFR 146.117; 45 CFR 146.119; 45 CFR 146.145; ...

Legal Deadline: None

Abstract: This final rule addresses limitations on preexisting exclusions periods and requests for special enrollments.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/08/97	62 FR 16894
Interim Final Rule Comment Period End	07/07/97	
Interim Final Rule Effective	07/07/97	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

Agency Contact: David Mlawsky, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-16-26, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6851

RIN: 0938–AL43

1071. INTERIM FINAL AMENDMENT FOR MENTAL HEALTH PARITY (CMS-2152-IFC)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2705; PL 107-116; PL 104-191

CFR Citation: 45 CFR 146.136

Legal Deadline: None

Abstract: This interim final rule changes the sunset date of regulations under the Mental Health Parity Act of 1996.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/22/97	62 FR 66932
Interim Final Rule Effective	01/01/98	
Interim Final Rule Comment Period End	03/23/98	
Interim Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: David Mlawsky, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-16-26, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6851

RIN: 0938–AL44

1072. ELECTRONIC SUBMISSION OF COST REPORTS (CMS-1199-F)

Priority: Substantive, Nonsignificant

Legal Authority: Social Security Act, sec 1815(a); Social Security Act, sec 1833(e)

CFR Citation: 42 CFR 413.24

Legal Deadline: None

Abstract: This final rule would establish the requirement for community mental health cneters, ESRD facilities, hospices, rural health clinics, and federally qualified health centers to file cost reports in a standardized electronic format. This rule would also provide a delay or waiver of this requirement where implementation would result in financial hardship. The provisions of this rule would allow for more accurate preparation and more efficient processing of each cost report.

Timetable:

Action	Date	FR Cite
Proposed Rule	07/26/02	67 FR 48840
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Thomas Talbott, Center for Medicare Management, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C5-01-01, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-4592

RIN: 0938–AL51

1073. INPATIENT HOSPITAL DEDUCTIBLE AND HOSPITAL AND EXTENDED CARE SERVICES COINSURANCE AMOUNTS FOR CALENDAR YEAR 2003 (CMS-8013-N)

Priority: Other Significant

Legal Authority: 42 USC 1395e-2(g)(2)

CFR Citation: None

Legal Deadline: None

Abstract: This notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year 2003 under the Medicare hospital insurance program (part A). The Medicare statute specifies the formula used to determine these amounts.

Timetable:

Action	Date	FR Cite
Notice	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Clare McFarland, Deputy Directory, Medicare and Medicaid Cost Estimates Group, Department of Health and Human Services, Centers for Medicare & Medicaid Services, N3-26-24, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6390

RIN: 0938–AL56

1074. PROGRAM FOR ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE): PROGRAM REVISIONS (CMS-1201-F)

Priority: Other Significant

Legal Authority: 42 USC 1395, as revised by sec 903 of BIPA; 42 USC 1396, as revised by sec 903 of BIPA

CFR Citation: 42 CFR 460ff

Legal Deadline: None

Abstract: This rule revises the interim final rule with comment period that established requirements for Programs of All-Inclusive Care for the Elderly (PACE) under the Medicare and Medicaid programs. These are pre-paid, capitated programs for beneficiaries who meet special eligibility requirements and who elect to enroll. The revisions in this rule will implement section 903 of BIPA.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/01/02	67 FR 61496
Final Action	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations

Government Levels Affected: State, Tribal

Federalism: Undetermined

Agency Contact: Janet Samen, Center for Medicare Management, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-08-15, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-9161

RIN: 0938–AL59

1075. MONTHLY ACTUARIAL RATES AND MONTHLY SUPPLEMENTARY MEDICAL INSURANCE PREMIUM RATE BEGINNING JANUARY 1, 2003 (CMS-8014-N)

Priority: Economically Significant

Legal Authority: 42 CFR 1395r; Social Security Act, sec 1839

CFR Citation: None

Legal Deadline: NPRM, Statutory, September 27, 2002.

Abstract: This notice announces the monthly actuarial rates for aged and disabled enrollees in the Medicare Supplementary Medical Insurance (SMI) program for 2003. It also announces the monthly SMI premium to be paid by all enrollees during 2003.

Timetable:

Action	Date	FR Cite
Notice	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Carter S. Warfield, Office of Medicare and Medicaid Cost Estimates, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6396

RIN: 0938–AL63

1076. PART A PREMIUMS FOR 2003 FOR THE UNINSURED AGED AND FOR CERTAIN DISABLED INDIVIDUALS WHO HAVE EXHAUSTED OTHER ENTITLEMENT (CMS-8015-N)

Priority: Other Significant

Legal Authority: 42 USC 1395i-2(d)(2); 42 USC 1395i-2a(d)(2)

CFR Citation: None

Legal Deadline: None

Abstract: This notice announces the hospital insurance premium for calendar year 2003 under Medicare's hospital insurance program (part A) for the uninsured aged and for certain disabled individuals who have exhausted other entitlement.

Timetable:

Action	Date	FR Cite
Notice	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Clare McFarland, Deputy Directory, Medicare and Medicaid Cost Estimates Group, Department of Health and Human Services, Centers for Medicare & Medicaid Services, N3-26-24, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6390

RIN: 0938–AL69

1077. STATE ALLOTMENTS FOR PAYMENT OF MEDICARE PART B PREMIUMS FOR QUALIFYING INDIVIDUALS; FEDERAL FISCAL YEAR 2002 (CMS-2136-FN)

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: Social Security Act, sec 1902(a)(10); Social Security Act, sec 1933; 42 USC 139; PL 105-33

CFR Citation: None

Legal Deadline: None

Abstract: This final notice announces the Federal FY 2002 allotments that are available for State agencies to pay Medicare part B premiums for two distinct categories of low-income Medicare beneficiaries. The eligible groups are called qualified individuals.

Timetable:

Action	Date	FR Cite
Proposed Notice	08/30/02	67 FR 55851
Final Notice	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Nakielny, Center for Medicaid and State Operations, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S2-14-26, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-4466

RIN: 0938–AL79

1078. CHANGES TO THE HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEM AND FY 2004 RATES (CMS-1470-N)

Regulatory Plan: This entry is Seq. No. 63 in part II of this issue of the **Federal Register**.

RIN: 0938–AL89

1079. • FEE SCHEDULE FOR PAYMENT OF AMBULANCE SERVICES—UPDATE FOR CY 2003 (CMS-1220-N)

Priority: Other Significant

Legal Authority: 42 USC 1395m(l)(1)

CFR Citation: None

Legal Deadline: None

Abstract: This notice updates the fee schedule published 2/27/02 for ambulance services under the Medicare program, implementing section 1834(l) of the Social Security Act.

Timetable:

Action	Date	FR Cite
Notice	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Robert Niemann, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4569

RIN: 0938–AL97

1080. • UPDATE OF THE LIST OF COVERED PROCEDURES FOR AMBULATORY SURGICAL CENTERS EFFECTIVE JANUARY 1, 2003 (CMS-1885-FC)

Priority: Other Significant

Legal Authority: 1883(i)(l) and (2) of the Social Security Act

CFR Citation: 42 CFR 416

Legal Deadline: None

Abstract: This final rule with comment period will make additions to and deletions from the current list of Medicare covered Ambulatory Surgical Centers procedures.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Bob Cereghino, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-03-06, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4645

Related RIN: Related To 0938-AH81

RIN: 0938–AM02

1081. • COMPREHENSIVE EMPLOYMENT DEMONSTRATION (CMS-2163-N)

Priority: Other Significant

Legal Authority: PL 106-170, sec 203

CFR Citation: None

Legal Deadline: None

Abstract: This notification of funding availability announces the establishment of the comprehensive employment opportunities demonstration whereby up to $9.0 million in funding will be awarded via a competitive process to remove barriers to employment for individuals with a disability.

Timetable:

Action	Date	FR Cite
Notice	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Karen L. Tritz, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S2-14-26, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-0789
Fax: 410 786-9004
Email: ktritz@cms.hhs.gov

RIN: 0938–AM10

1082. • NONDISCRIMINATION IN HEALTH COVERAGE IN THE GROUP MARKET (CMS-2022-F)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 300gg

CFR Citation: 45 CFR 146.121

Legal Deadline: None

Abstract: This document contains final rules governing the provisions prohibiting discrimination based on a health factor for group health plans and issuers of health insurance coverage offered in connection with a group health plan.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/08/97	62 FR 16894
Interim Final Rule Comment Period End	07/17/97	
Interim Final Rule Effective	07/17/97	
Interim Final Rule	01/08/01	66 FR 1378
Interim Final Rule Effective	03/09/01	
Interim Final Rule Comment Period End	04/09/01	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local

Agency Contact: David Mlawsky, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-16-26, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6851

RIN: 0938–AM14

HHS—CMS

Final Rule Stage

1083. • BONA FIDE WELLNESS PROGRAMS (CMS-2078-F)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 300gg

CFR Citation: 45 CFR 146.121(f)

Legal Deadline: None

Abstract: This final rule implements and clarifies the term "bona fide wellness program" as it relates to regulations implementing the nondiscrimination provisions of the Internal Revenue Code, the Employee Retirement Income Security Act, and the Public Health Service Act, as added by the Health Insurance Portability and Accountability Act of 1996.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/08/97	62 FR 16894
Interim Final Rule Comment Period End	07/07/97	
Interim Final Rule Effective	07/07/97	
NPRM	01/08/01	66 FR 1421
NPRM Comment Period End	04/09/01	
Final Action	07/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local

Agency Contact: David Mlawsky, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-16-26, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6851

RIN: 0938–AM15

1084. • TIME LIMITATION ON RECALCULATIONS AND DISPUTES UNDER THE DRUG REBATE PROGRAM (CMS-2175-IFC)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 1396r-8

CFR Citation: 42 CFR 447.534

Legal Deadline: None

Abstract: This rule will establish a three year time limitation on drug manufacturer's requests to recalculate their drug prices for the purposes of reporting data to CMS, as well as manufacturer's ability to dispute claims for rebates.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Federal

Federalism: Undetermined

Agency Contact: Marge Lee Watchorn, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S1-01-16, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4361

RIN: 0938–AM20

1085. • PHYSICIANS' REFERRALS TO HEALTH CARE ENTITIES WITH WHICH THEY HAVE FINANCIAL RELATIONSHIPS; EXTENSION OF PARTIAL DELAY OF EFFECTIVE DATE OF THE "SET IN ADVANCE" PROVISION (CMS-1809-IFC2)

Priority: Other Significant

Legal Authority: 42 USC 1302; 42 USC 1395hh; 42 USC 1395nn

CFR Citation: 42 CFR 411.354

Legal Deadline: None

Abstract: This final rule temporarily delays for six months or until publication of phase II the effective date of the last sentence of the "set in advance" provision in section 411.354(d)(1) contained in the rule entitled "Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships," published in the Federal Register on January 4, 2001 (66 FR 856).

Timetable:

Action	Date	FR Cite
Extension of Partial Delay of Final Rule Effective Date	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joanne Sinsheimer, Technical Advisor, CMM, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-4620

Related RIN: Related To 0938-AL29

RIN: 0938–AM21

1086. • INPATIENT HOSPITAL DEDUCTIBLE AND HOSPITAL AND EXTENDED CARE SERVICES COINSURANCE AMOUNTS FOR 2004 (CMS-8016-N)

Priority: Other Significant

Legal Authority: 42 USC 1395e-2(g)(2)

CFR Citation: None

Legal Deadline: None

Abstract: This notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year 2004 under Medicare's hospital insurance program (Medicare part A). The Medicare statute specifies the formulae used to determine these amounts.

Timetable:

Action	Date	FR Cite
Notice	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Clare McFarland, Deputy Directory, Medicare and Medicaid Cost Estimates Group, Department of Health and Human Services, Centers for Medicare & Medicaid Services, N3-26-24, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6390

RIN: 0938–AM31

1087. • MONTHLY ACTUARIAL RATES AND MONTHLY SUPPLEMENTARY MEDICAL INSURANCE PREMIUM RATE BEGINNING JANUARY 1, 2004 (CMS-8017-N)

Priority: Other Significant

Legal Authority: 42 CFR 1395r; Social Security Act, Sec 1839

CFR Citation: 42 CFR 407; 42 CFR 408

Legal Deadline: NPRM, Statutory, September 27, 2002.

HHS—CMS

Final Rule Stage

Abstract: This notice announces the monthly actuarial rates for aged (age 65 and over) and disabled (underage 65) enrollees in the Medicare Supplementary Medical Insurance (SMI) program for 2004. It also announces the monthly SMI premium to be paid by all enrollees during 2004.

Timetable:

Action	Date	FR Cite
Notice	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Carter S. Warfield, Office of Medicare and Medicaid Cost Estimates, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6396

RIN: 0938–AM32

1088. • PART A PREMIUMS FOR 2004 FOR THE UNINSURED AGED AND FOR CERTAIN DISABLED INDIVIDUALS WHO HAVE EXHAUSTED OTHER ENTITLEMENT (CMS-8018-N)

Priority: Other Significant

Legal Authority: 42 USC 1395i-2(d)(2); 42 USC 1395i-2a(d)(2)

CFR Citation: None

Legal Deadline: None

Abstract: This notice announces the hospital insurance premium for calendar year 2004 under Medicare's hospital insurance program (part A) for the uninsured aged and for certain disabled individuals who have exhausted other entitlement.

Timetable:

Action	Date	FR Cite
Notice	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Clare McFarland, Deputy Directory, Medicare and Medicaid Cost Estimates Group, Department of Health and Human Services, Centers for Medicare & Medicaid Services, N3-26-24, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6390

RIN: 0938–AM33

1089. • APPLICATION OF EMERGENCY MEDICAL AND TREATMENT ACT (EMTALA) (CMS-1063-F)

Regulatory Plan: This entry is Seq. No. 64 in part II of this issue of the Federal Register.

RIN: 0938–AM34

Department of Health and Human Services (HHS)
Centers for Medicare & Medicaid Services (CMS)

Completed Actions

1090. NATIONAL STANDARD EMPLOYER IDENTIFIER (CMS-0047-F)

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 45 CFR 162

Completed:

Reason	Date	FR Cite
Final Rule	05/03/02	67 FR 38009

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Patricia Peyton
Phone: 410 786-1812

RIN: 0938–AI59

1091. NON-FEDERAL GOVERNMENTAL PLANS EXEMPT FROM HEALTH INSURANCE PORTABILITY REQUIREMENTS (CMS-2033-F)

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 146

Completed:

Reason	Date	FR Cite
Interim Final Rule	07/26/02	67 FR 48802

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dave Holstein
Phone: 410 786-1564

RIN: 0938–AK00

1092. SUPPLEMENTARY MEDICAL INSURANCE PREMIUM SURCHARGE AGREEMENTS (CMS-1221-F)

Priority: Other Significant

CFR Citation: 42 CFR 408.200; 42 CFR 408.201; 42 CFR 408.202; 42 CFR 408.205; 42 CFR 408.207; 42 CFR 408.210; ...

Completed:

Reason	Date	FR Cite
Final Action	09/27/02	67 FR 60993

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Sandy Clarke
Phone: 410 786-7451

RIN: 0938–AK42

1093. PAYMENT FOR UPGRADED DURABLE MEDICAL EQUIPMENT; WITHDRAWAL OF PROPOSED RULE (CMS-1084-WN)

Priority: Info./Admin./Other

CFR Citation: None

Completed:

Reason	Date	FR Cite
Final Action	05/01/02	67 FR 21617

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William J. Long
Phone: 410 786-5655
Email: wlong@hcfa.gov

RIN: 0938–AK50

1094. PROSPECTIVE PAYMENT SYSTEM FOR LONG-TERM CARE HOSPITALS FOR FY 2003 (CMS-1177-F)

Priority: Other Significant

CFR Citation: 42 CFR 412

Completed:

Reason	Date	FR Cite
Comment Period End	05/21/02	
Final Rule	08/30/02	67 FR 55954

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Local, Federal

Agency Contact: Judith H. Richter
Phone: 410 786-2590

RIN: 0938–AK69

1095. REVISIONS TO TRANSACTION AND CODE SET STANDARDS FOR ELECTRONIC TRANSACTIONS (CMS-0005-P)

Priority: Other Significant

CFR Citation: 45 CFR 162

Completed:

Reason	Date	FR Cite
Proposed Rule	05/31/02	67 FR 38051
Merged With 0938-AK64	09/12/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Gladys Wheeler
Phone: 410 786-0273

RIN: 0938–AK76

1096. MODIFICATIONS TO MANAGED CARE RULES BASED ON PAYMENT PROVISIONS IN BIPA AND TECHNICAL CORRECTIONS (CMS-4040-F)

Priority: Economically Significant

CFR Citation: 42 CFR 417; 42 CFR 422

Completed:

Reason	Date	FR Cite
Final Action	03/22/02	67 FR 13278

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Alfred G. D'Alberto
Phone: 410 786-1100

RIN: 0938–AK90

1097. HOME HEALTH PROSPECTIVE PAYMENT SYSTEM RATE UPDATE FOR FY 2003 (CMS-1198-NC)

Priority: Other Significant

CFR Citation: None

Completed:

Reason	Date	FR Cite
Notice	06/28/02	67 FR 43616

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Susan Levy
Phone: 410 786-9364

RIN: 0938–AL16

1098. PROSPECTIVE PAYMENT SYSTEM AND CONSOLIDATED BILLING FOR SKILLED NURSING FACILITIES—UPDATE FOR FY 2003 (CMS-1202-N)

Priority: Other Significant. Major under 5 USC 801.

CFR Citation: 42 CFR 413.330 to 413.50

Completed:

Reason	Date	FR Cite
Notice	07/31/02	67 FR 49798

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: William Ullman
Phone: 401 786-5667

RIN: 0938–AL20

1099. INPATIENT REHABILITATION FACILITY PROSPECTIVE PAYMENT SYSTEM FOR FY 2003 (CMS-1205-N)

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 42 CFR 412.600 to 412.632

Completed:

Reason	Date	FR Cite
Notice	08/01/02	67 FR 49928

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Laurence Wilson
Phone: 410 786-4603

RIN: 0938–AL22

1100. HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEM FOR FY 2003 (CMS-1203-F)

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 42 CFR 405; 42 CFR 412; 42 CFR 413; 42 CFR 485; 42 CFR 489

Completed:

Reason	Date	FR Cite
NPRM	05/09/02	67 FR 31403
Final Action	08/01/02	67 FR 49982

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Stephen Phillips
Phone: 410 786-4548

RIN: 0938–AL23

1101. MEDICARE PROGRAM; MEDICARE-ENDORSED PRESCRIPTION DRUG DISCOUNT CARD ASSISTANCE INITIATIVE (CMS-4027-F)

Priority: Economically Significant

CFR Citation: None

Completed:

Reason	Date	FR Cite
Comment Period End	05/26/02	
Final Rule	09/04/02	67 FR 56618

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Paula Stannard
Phone: 202 690-7741

Teresa Decaro
Phone: 410 786-6604
Email: tdecaro@cms.hhs.gov

RIN: 0938–AL28

1102. MEDICARE-ENDORSED PRESCRIPTION DRUG DISCOUNT CARD ASSISTANCE INITIATIVE FOR STATE SPONSORS (CMS-4032-P)

Priority: Other Significant

CFR Citation: None

Completed:

Reason	Date	FR Cite
Final Action	03/06/02	67 FR 10293

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Teresa Decaro
Phone: 410 786-6604
Email: tdecaro@cms.hhs.gov

RIN: 0938–AL30

1103. PEER REVIEW ORGANIZATIONS: NAME AND OTHER CHANGES—TECHNICAL AMENDMENTS (CMS-3088-FC)

Priority: Other Significant

CFR Citation: 42 CFR 400

Completed:

Reason	Date	FR Cite
Final Rule	05/24/02	67 FR 36539

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Valerie Mattison-Brown
Phone: 410 786-5958

RIN: 0938–AL38

1104. END-STAGE RENAL DISEASE—RESCISSION OF WAIVER OF CONDITIONS FOR COVERAGE UNDER A STATE OF EMERGENCY IN HOUSTON, TEXAS AREA (CMS-3074-F2)

Priority: Other Significant

CFR Citation: 42 CFR 405

Completed:

Reason	Date	FR Cite
Final Rule	07/26/02	67 FR 48800

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lori Davis
Phone: 410 786-0710

RIN: 0938–AL39

1105. PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT REHABILITATION HOSPITAL; CORRECTING AMENDMENT (CMS-1069-F2)

Priority: Info./Admin./Other

CFR Citation: 42 CFR 412; 42 CFR 413

Completed:

Reason	Date	FR Cite
Final Rule	07/01/02	67 FR 44073

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Kuhl
Phone: 410 786-4597

RIN: 0938–AL40

1106. HOSPICE WAGE INDEX FOR FY 2003 (CMS-1211-N)

Priority: Routine and Frequent

CFR Citation: None

Completed:

Reason	Date	FR Cite
Notice	08/30/02	67 FR 56092

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lynn Riley
Phone: 410 786-1286

RIN: 0938–AL41

1107. PHYSICIAN FEE SCHEDULE FOR CY 2002: CORRECTION NOTICE (CMS-1169-CN)

Priority: Info./Admin./Other

CFR Citation: 42 CFR 405; 42 CFR 410; 42 CFR 411; 42 CFR 414; 42 CFR 415

Completed:

Reason	Date	FR Cite
Notice	04/26/02	67 FR 20681

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Diane Milstead
Phone: 410 786-3355

Related RIN: Related To 0938-AK57

RIN: 0938–AL48

1108. NOTICE OF MODIFICATION OF BENEFICIARY ASSESSMENT REQUIREMENTS FOR SKILLED NURSING FACILITIES (CMS-1209-N)

Priority: Info./Admin./Other

CFR Citation: None

Completed:

Reason	Date	FR Cite
Notice	05/31/02	67 FR 38128

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dana Burley
Phone: 410 786-4547

RIN: 0938–AL55

1109. REVISION OF THE PROCEDURES FOR REQUESTING EXCEPTIONS TO COST LIMITS FOR SKILLED NURSING FACILITIES AND ELIMINATION OF RECLASSIFICATIONS; CORRECTION (CMS-1883-F3)

Priority: Info./Admin./Other

CFR Citation: 42 CFR 413.30(d)

Completed:

Reason	Date	FR Cite
Final Rule	07/26/02	67 FR 48801

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Julie Stankivic
Phone: 410 786-5725

RIN: 0938–AL61

1110. NOTICE OF INTENT TO CONDUCT NEGOTIATED RULEMAKING FOR SPECIAL PAYMENT PROVISIONS AND STANDARDS FOR SUPPLIERS OF CUSTOM-FABRICATED ORTHOTICS AND PROSTHETICS (CMS-6012-N)

Priority: Substantive, Nonsignificant

CFR Citation: None

Completed:

Reason	Date	FR Cite
Notice	03/22/02	67 FR 13297

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Kathryn S Cox
Phone: 410 786-5954

RIN: 0938–AL68

1111. MEDICAID MANAGED CARE: WITHDRAWAL (CMS-2001-F4)

Priority: Other Significant

CFR Citation: None

Completed:

Reason	Date	FR Cite
Final Rule	06/14/02	67 FR 40988

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bruce Johnson
Phone: 410 786-0615

RIN: 0938–AL83

HHS—CMS — **Completed Actions**

1112. FY 1999 SCHIP REALLOCATION NOTICE (CMS-2137-N)

Priority: Substantive, Nonsignificant

CFR Citation: None

Completed:

Reason	Date	FR Cite
Notice	04/26/02	67 FR 20794

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard Strauss
Phone: 410 786-2019
Email: rstrauss@hcfa.gov

RIN: 0938–AL86

1113. • CRITERIA FOR ACCEPTANCE OF SUPPLEMENTAL PRACTICE EXPENSE SURVEY DATA (CMS-1223-IFC)

Priority: Other Significant

Legal Authority: Social Security Act, sec 1102; Social Security Act, sec 1871; Social Security Act, sec 1881(b); 42 USC 1302; 42 USC 1395(hh); 42 USC 1395rr(b)(1)

CFR Citation: 42 CFR 414

Legal Deadline: None

Abstract: This interim final rule with comment period modifies the criteria for physicians and non-physicians specialty groups for submitting supplemental practice expense survey data for use in determining payments under the physician fee schedule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/28/02	67 FR 43555
Interim Final Rule Effective	06/28/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Marc Hartstein, Center for Health Plans and Providers, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-4539

Related RIN: Related To 0938-AL21

RIN: 0938–AL99

Department of Health and Human Services (HHS)
Administration for Children and Families (ACF) — **Proposed Rule Stage**

1114. SAFEGUARDING CHILD SUPPORT AND EXPANDED FPLS INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 652 to 654A; 42 USC 663

CFR Citation: 45 CFR 303.3; 45 CFR 303.21; 45 CFR 303.70

Legal Deadline: None

Abstract: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 made far-reaching amendments to title IV-D of the Social Security Act, which governs the child support enforcement program. The Balanced Budget Act of 1997, the Adoption and Safe Families Act of 1997 and the Child Support Performance and Incentive Act of 1998 further amended title IV-D. A significant result of this legislation is an expansion in the scope of information available to State IV-D child support enforcement agencies. The legislation has rendered obsolete or inconsistent several regulations at 45 CFR chapter III, Office of Child Support Enforcement, including the regulations on the Federal Parent Locator Service, the State Parent Locator Services, offset of Federal payments for purposes of collecting child support, and safeguarding of information. This regulation would update various sections in 45 CFR chapter III to reflect the statutory changes.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Eileen C. Brooks, Deputy Director, Policy Division, Department of Health and Human Services, Administration for Children and Families, 4th Floor East, OCSE, DPP, 370 L'Enfant Promenade SW., Washington, DC 20447
Phone: 202 401-5369
TDD Phone: 800 877-8339
Fax: 202 401-4054
Email: ebrooks@acf.hhs.gov

RIN: 0970–AC01

1115. DEVELOPMENTAL DISABILITIES AND BILL OF RIGHTS ACT

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-402; USC 15001 et seq

CFR Citation: 45 CFR 1385 to 1388

Legal Deadline: Final, Statutory, October 30, 2001.

Abstract: A notice of proposed rulemaking will be published in the Federal Register to amend current regulations and to implement changes made by the Developmental Disabilities Assistance and Bill of Rights Act of 2000.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal

Agency Contact: Elsbeth Wyatt, Program Specialist, Department of Health and Human Services, Administration for Children and Families, ADD HHH-300F, 370 L'Enfant Promenade SW., Washington, DC 20447
Phone: 202 690-5841

RIN: 0970–AC07

1116. • CHILD SUPPORT ENFORCEMENT PROGRAM; CUSTOMER SERVICE ANNUAL STATE SELF-ASSESSMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1302; 42 USC 654(15)(A)

CFR Citation: 45 CFR 308.2; 45 CFR 308.3

HHS—ACF — **Proposed Rule Stage**

Legal Deadline: None

Abstract: This proposed rule will revise existing regulations on State child support self-assessments to add customer service as one of the required program compliance criteria.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

URL For Public Comments:
http://www.acf.hhs.gov/hypernews/

Agency Contact: Annie Miller, Program Specialist, Policy Division, Department of Health and Human Services, Administration for Children and Families, 4th Floor East, Office of Child Support Enforcement, 370 L'Enfant Promenade SW., Washington, DC 20447
Phone: 202 401-1467
TDD Phone: 800 877-8339
Fax: 202 401-4054
Email: anmiller@acf.hhs.gov

RIN: 0970–AC10

1117. • CHILD SUPPORT ENFORCEMENT PROGRAM; EXPENDITURES FOR CASEWORKER COSTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1302; 42 USC 655

CFR Citation: 45 CFR 304.23

Legal Deadline: None

Abstract: This proposed rule will revise existing regulations on expenditures for which Federal Financial Participation is available under the Child Support Enforcement program. Under the current regulations, Federal Financial Participation is not available in any costs of caseworkers who are also performing the assistance payments or social services functions under title IV-A (TANF) or title XX (Social Services Block Grants) of the Social Security Act. This proposed regulation will remove the prohibition to reflect current business practices of the Department of Health and Human Services under which costs are allocated to the benefiting program.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

URL For Public Comments:
http://www.acf.hhs.gov/hypernews/

Agency Contact: Sheck Chin, Special Assistant to the Division Director, Department of Health and Human Services, Administration for Children and Families, 4th Floor East, 370 L'Enfant Promenade SW., Washington, DC 20447
Phone: 202 260-5830
TDD Phone: 800 877-8339
Fax: 202 401-4054
Email: schin@acf.hhs.gov

RIN: 0970–AC11

Department of Health and Human Services (HHS)
Administration for Children and Families (ACF) — **Final Rule Stage**

1118. CONSTRUCTION AND MAJOR RENOVATION OF HEAD START AND EARLY HEAD START FACILITIES

Priority: Other Significant

Legal Authority: 42 USC 9801 et seq

CFR Citation: 45 CFR 1309

Legal Deadline: None

Abstract: This rule establishes procedures to be used by Head Start and Early Head Start agencies in requesting to use Head Start grant funds to construct or perform major renovation on a Head Start or Early Head Start Facility.

Timetable:

Action	Date	FR Cite
NPRM	02/08/99	64 FR 6013
NPRM Comment Period End	04/09/99	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: Local, Tribal

Agency Contact: Douglas Klafehn, Deputy Associate Commissioner, Head Start, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW., Washington, DC 20447
Phone: 202 205-8569
Email: dklafehn@acf.dhhs.gov

RIN: 0970–AB54

1119. CHILD SUPPORT ENFORCEMENT FOR INDIAN TRIBES

Priority: Other Significant

Legal Authority: 42 USC 655(f)

CFR Citation: 45 CFR 309

Legal Deadline: None

Abstract: This rule specifies how tribes can obtain direct payments from the Department of Health and Human Services for provision of child support enforcement services if they submit a plan meeting the objectives of title IV-D, including establishment of paternity, modification and enforcement of support orders, and location of absent parents.

Timetable:

Action	Date	FR Cite
NPRM	08/21/00	65 FR 50800
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Tribal

Agency Contact: Paige Biava, Division of Policy and Planning, Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, 370 L'Enfant Promenade SW., Washington, DC 20447
Phone: 202 401-9386

RIN: 0970–AB73

1120. CHILD SUPPORT ENFORCEMENT PROGRAM OMNIBUS CONFORMING REGULATION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1302

CFR Citation: 45 CFR 301 to 305

Legal Deadline: None

HHS—ACF — **Final Rule Stage**

Abstract: This rule eliminates child support enforcement program regulations rendered obsolete or inconsistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and its technical amendments, the Balanced Budget Act of 1997, the Adoption and Safe Families Act of 1997, and the Child Support Performance and Incentive Act of 1998.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/09/99	64 FR 6237
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Eileen C. Brooks, Deputy Director, Policy Division, Department of Health and Human Services, Administration for Children and Families, 4th Floor East, OCSE, DPP, 370 L'Enfant Promenade SW., Washington, DC 20447
Phone: 202 401-5369
TDD Phone: 800 877-8339
Fax: 202 401-4054
Email: ebrooks@acf.hhs.gov

RIN: 0970–AB81

1121. FAMILY CHILD CARE PROGRAM OPTION FOR HEAD START PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 9801 et seq

CFR Citation: 45 CFR 1304; 45 CFR 1306

Legal Deadline: None

Abstract: This rule would allow Head Start programs to choose Family Child Care as a Head Start program option.

Timetable:

Action	Date	FR Cite
NPRM	08/29/00	65 FR 52394
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal

Agency Contact: Douglas Klafehn, Deputy Associate Commissioner, Head Start, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW., Washington, DC 20447
Phone: 202 205-8569
Email: dklafehn@acf.dhhs.gov

RIN: 0970–AB90

1122. TECHNICAL REVISION OF HEAD START REGULATIONS TO MAKE THEM CONFORM TO RECENT STATUTORY REVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 9801 et seq

CFR Citation: 45 CFR 1301 to 1303; 45 CFR 1305; 45 CFR 1308

Legal Deadline: None

Abstract: This rule will correct several Head Start regulations that define Head Start programs as "nonprofit" agencies. Recent statutory changes now allow "for-profit" agencies to receive Head Start grant funds.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Agency Contact: Douglas Klafehn, Deputy Associate Commissioner, Head Start, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW., Washington, DC 20447
Phone: 202 205-8569
Email: dklafehn@acf.dhhs.gov

RIN: 0970–AC00

1123. • CHILD SUPPORT ENFORCEMENT PROGRAM; FEDERAL TAX REFUND OFFSET

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1302

CFR Citation: 45 CFR 303.72

Legal Deadline: None

Abstract: This interim final rule will revise existing regulations on collecting child support arrears through the Federal Tax Refund Offset process. The revisions are needed to reflect changes in data processing protocols with the Department of the Treasury. We are also updating the regulation to reflect current business practices and requests from the state child support agencies.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

URL For Public Comments: http://www.acf.hhs.gov/hypernews/

Agency Contact: Eileen C. Brooks, Deputy Director, Policy Division, Department of Health and Human Services, Administration for Children and Families, 4th Floor East, OCSE, DPP, 370 L'Enfant Promenade SW., Washington, DC 20447
Phone: 202 401-5369
TDD Phone: 800 877-8339
Fax: 202 401-4054
Email: ebrooks@acf.hhs.gov

RIN: 0970–AC09

Department of Health and Human Services (HHS)
Administration for Children and Families (ACF) — **Completed Actions**

1124. PROGRAM PERFORMANCE STANDARDS FOR THE OPERATION OF HEAD START PROGRAMS

Priority: Other Significant

CFR Citation: 45 CFR 1304

Completed:

Reason	Date	FR Cite
Withdrawn	08/30/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Douglas Klafehn
Phone: 202 205-8569
Email: dklafehn@acf.dhhs.gov

RIN: 0970–AB99

Department of Health and Human Services (HHS)
Administration on Aging (AOA) — **Proposed Rule Stage**

1125. GRANTS FOR STATE AND COMMUNITY PROGRAMS ON AGING, TRAINING, RESEARCH, AND DISCRETIONARY PROGRAMS; VULNERABLE ELDER RIGHTS; AND GRANTS TO INDIANS AND NATIVE HAWAIIANS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 3001 et seq

CFR Citation: 45 CFR 1321; 45 CFR 1326; 45 CFR 1328

Legal Deadline: None

Abstract: In response to the recent reauthorization of the Older Americans Act, Public Law 106-501, the Administration on Aging (AoA) proposes to issue a notice of proposed rulemaking by winter of 2002-03.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Tribal

Federalism: Undetermined

Additional Information: Incorrectly reported as under Section 610 Review in April 2001.

Agency Contact: Edwin Walker, Deputy Assistant Secretary for Policy and Programs, Department of Health and Human Services, Administration on Aging, Room 4733, 330 Independence Avenue SW., Cohen Building, Washington, DC 20201
Phone: 202 619-0011

RIN: 0985–AA00

[FR Doc. 02–25451 Filed 12–06–02; 8:45 am]
BILLING CODE 4150–24–S

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Federal Register

Monday,
December 9, 2002

Part IX

Department of Housing and Urban Development

Semiannual Regulatory Agenda

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Subtitles A and B

[Docket No. FR-4756-N-02]

Semiannual Regulatory Agenda

AGENCY: Department of Housing and Urban Development.

ACTION: Semiannual regulatory agenda.

SUMMARY: In accordance with section 4(b) of Executive Order 12866, "Regulatory Planning and Review," as amended, HUD is publishing its agenda of regulations already issued or that are expected to be issued over the next several months. The agenda also includes rules currently in effect that are under review, and describes those regulations that may affect small entities as required by section 602 of the Regulatory Flexibility Act. The purpose of publication of the agenda is to encourage more effective public participation in the regulatory process by providing the public with early information about pending regulatory activities.

FOR FURTHER INFORMATION CONTACT: Aaron Santa Anna, Assistant General Counsel for Regulations, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410, (202) 708-3055. (This is not a toll-free number.) A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 1-800-877-8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735), as amended by Executive Order 13258 (67 FR 9385), requires each agency to publish semiannually an agenda of (1) regulations that the agency has issued or expects to issue, and (2) rules currently in effect that are under agency review. The Regulatory Flexibility Act (5 U.S.C. 601-612) requires each agency to publish semiannually a regulatory agenda of rules expected to be proposed or promulgated that are likely to have a significant economic impact on a substantial number of "small entities," meaning small businesses, small organizations, or small governmental jurisdictions.

Executive Order 12866, as amended, and the Regulatory Flexibility Act each permits incorporation of the agenda required by these two authorities with any other prescribed agenda. Therefore, the agenda set out below combines the information required by Executive Order 12866, as amended, and the Regulatory Flexibility Act. In addition, the agenda contains certain information not required by either the Executive Order or by the Regulatory Flexibility Act which the Department considers useful, both better to inform the public and to enhance the Department's own inventory control over its body of regulations.

Section 610(c) of the Regulatory Flexibility Act requires each agency to publish annually a list of the rules that have a significant economic impact on a substantial number of small entities, and that are to be reviewed in accordance with the requirements of section 610 during the succeeding 12 months. Existing regulations that HUD proposes to amend by rules described and published in this agenda are reviewed in accordance with the principles of section 610 of the Regulatory Flexibility Act. The purpose of the review is to determine whether the rule should be continued without change, amended, or rescinded. Proposed changes to existing regulations provide the opportunity for the Department to conduct a section 610 review.

The Department also is subject to certain rulemaking requirements set forth in the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*). Section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)) requires that the Secretary transmit to the congressional committees having jurisdictional oversight of HUD (the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Banking and Financial Services) a semiannual agenda of all rules or regulations which are under development or review by the Department. A rule appearing on the agenda cannot be published for comment before or during the first 15 calendar days after transmittal of the agenda. Section 7(o) provides that if, within that period, either committee notifies the Secretary that it intends to review any rule or regulation which appears on the agenda, the Secretary must submit to both committees a copy of the rule or regulation, in the form it is intended to be proposed, at least 15 calendar days before it is published for comment. The semiannual agenda published today is the agenda transmitted to the committees in compliance with this requirement.

HUD has attempted to list in this agenda all regulations and regulatory reviews pending at the time of publication, except for minor and routine or repetitive actions, but some may have been inadvertently omitted, or may have arisen too late to be included in the published agenda. There is no legal significance to the omission of an item from the agenda. Also, where dates are provided for the next rulemaking actions, the dates are estimates and are not commitments to act on or by the date shown.

In some cases, HUD has withdrawn rules that were placed on previous agendas and for which there has been no publication activity. Withdrawal of a rule does not necessarily mean that HUD will not proceed with the rulemaking. Withdrawal allows HUD to further assess the subject matter and determine whether rulemaking for this subject matter is appropriate. Following this review, the Department may determine that certain rules listed as withdrawn under this agenda are appropriate. If that determination is made, the rules will be included in a succeeding semiannual agenda.

In addition, for a few rules that have been published as proposed or interim rules, and therefore require further rulemaking, HUD has identified the timing of the next action stage as "undetermined." These are rules that are still under review by HUD for which a determination of the next action stage and timing of the next action stage has not yet been made.

The format of the agenda remains unchanged from previous years. HUD's agenda items are divided first by program office. Within each program office, the agenda items are divided into five groups: (i) pre-rulemaking actions; (ii) publication or other implementations of notices of proposed rulemaking; (iii) publications or other implementations of final rules; (iv) long-term rules; and (v) completed actions. Within each grouping, rules are listed in chronological order by the part number of the CFR affected. Where a rule affects multiple parts of the CFR, the rule is listed by the first affected part number.

For this edition of the Department's regulatory agenda, the most important significant regulatory actions are included in **The Regulatory Plan**, which appears in part II of this issue of the **Federal Register. The Regulatory Plan** entries are listed in the table of contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

Since the purpose of publication of the agenda is to encourage more effective public participation in the regulatory process by providing the public with early information about the Department's future regulatory actions, HUD invites all interested members of the public to comment on the rules listed in the agenda.

Dated: September 12, 2002.

Alphonso Jackson,

Deputy Secretary.

HUD

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1126	24 CFR 5.603 Exclusion of Veterans' Disability Compensation for Service-Connected Disability From Income (FR-4746)	2501-AC86
1127	24 CFR 8 Nondiscrimination Based on Disability; Multifamily Homeownership Projects (FR-4776)	2501-AC87
1128	24 CFR 25 Inflation Adjustment of Civil Money Penalty Amounts (FR-4787)	2501-AC91
1129	24 CFR 203 Treble Damages for Failure To Engage in Loss Mitigation (FR-4553)	2501-AC66
1130	24 CFR 81 The Secretary of HUD's Regulation of Fannie Mae and Freddie Mac (FR-4790) **(Reg Plan Seq No. 66)**	2501-AC92
1131	24 CFR 92 Participation in HUD Programs by Faith-Based Organizations; Providing for Equal Treatment for All HUD Program Participants (FR-4782) **(Reg Plan Seq No. 65)**	2501-AC89

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1132	24 CFR 1 Rule To Conform Regulatory Definitions; Civil Rights Restoration Act (FR-4587)	2501-AC70
1133	24 CFR 5 Temporary Assistance to Needy Families (TANF); Conforming Changes to Annual Income Requirements for HUD's Public Housing and Section 8 Assistance Programs (FR-4635)	2501-AC77
1134	24 CFR 24 Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (FR-4692)	2501-AC81
1135	24 CFR 58 Environmental Review Procedures for Entities Assuming HUD's Environmental Responsibilities (FR-4523)	2501-AC83
1136	24 CFR 888 Fair Market Rents Programs: Increased Fair Market Rents for Certain Areas and Higher Payment Standards (FR-4606)	2501-AC75

Office of the Secretary—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1137	24 CFR 5 Electronic Document Retention and Consumer Disclosure Requirements in HUD-Related Transactions (FR-4686)	2501-AC79
1138	24 CFR 28 Adjustment of HUD's Civil Money Penalties Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (FR-4555)	2501-AC67
1139	24 CFR 40 Accessibility Standards for Design, Construction and Alteration of Certain Facilities Financed With Public Funds (FR-4317)	2501-AC47
1140	24 CFR 42 Prohibition Against Lump-Sum Relocation Assistance Payments, and Exclusion of Aliens Not Legally Present From Eligibility for Relocation Payments (FR-4773)	2501-AC88
1141	24 CFR 81 The Secretary of HUD's Regulation of Fannie Mae and Freddie Mac; Prohibiting the Purchase of Certain Loans With High Costs and/or Predatory Features (FR-4614)	2501-AC76
1142	24 CFR 84 Adoption of Revisions to OMB Circular A-110 (FR-4573)	2501-AC68

HUD

Office of the Secretary—Completed Actions

Sequence Number	Title	Regulation Identification Number
1143	24 CFR 5 Uniform Financial Reporting Standards for HUD Housing Programs, Additional Entity Filing Requirements (FR-4681)	2501-AC80
1144	24 CFR 15 Testimony of HUD Employees in Legal Proceedings (FR-4783)	2501-AC90
1145	24 CFR 17 Administrative Wage Garnishment (FR-4711)	2501-AC85
1146	24 CFR 92 HOME Investment Partnerships Program (FR-4111)	2501-AC30

Office of Housing—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1147	24 CFR 25 Single Family Mortgage; Lender Compliance and Accountability (FR-4761)	2502-AH87
1148	24 CFR 200.54(b) Distribution of Tax Credit Proceeds (FR-4792)	2502-AH91
1149	24 CFR 202 Revisions to FHA Credit Watch/Termination Initiative (FR-4625)	2502-AH60
1150	24 CFR 202.5 Establishment of Loan Originator Registry and Establishment of Servicing Approval Agreements (FR-4764)	2502-AH88
1151	24 CFR 202.2 Duties and Responsibilities of Loan Correspondents and Sponsors (FR-4762)	2502-AH90
1152	24 CFR 203.18 Limitation of FHA-Insured Loans to Nonprofit Agencies (FR-4702)	2502-AH71
1153	24 CFR 203.60 FHA Inspector Roster (FR-4720)	2502-AH76
1154	24 CFR 203 Lender Accountability for Appraisals (FR-4722)	2502-AH78
1155	24 CFR 203.50 Up-Front Mortgage Insurance Premiums for Loans Insured Under 24 CFR 203(k) and 234(c) of the National Housing Act (FR-4749)	2502-AH82
1156	24 CFR 203.49 Eligibility of Adjustable Rate Mortgages (ARMs) (FR-4745)	2502-AH84
1157	24 CFR 203.43 (b)(1) Home Equity Conversion Mortgages (HECM); Cooperative Housing Developments (FR-4777)	2502-AH89
1158	24 CFR 203 Eligibility of Mortgages on Hawaiian Homelands Insured Under Section 247 (FR-4779)	2502-AH92
1159	24 CFR 200.208 FHA Appraiser Watch Initiative (FR-4744) **(Reg Plan Seq No. 68)**	2502-AH81
1160	24 CFR 236 Section 236 Excess Rental Charges (FR-4689)	2502-AH68
1161	24 CFR 291 Disposition of HUD-Owned Single Family Assets in Asset Control Areas (FR-4471) **(Reg Plan Seq No. 67)**	2502-AH40
1162	24 CFR 291, Subpart F Disposition of HUD-Acquired Single Family Property; Officer/Teacher Next Door Sales Programs (FR-4712)	2502-AH72
1163	24 CFR 880 Distributions to Nonprofit Owners of Certain HUD-Assisted Multifamily Rental Projects (FR-4602)	2502-AH52
1164	24 CFR 891 Mixed Finance Development for Supportive Housing for the Elderly or Persons With Disabilities and Other Changes to 24 CFR Part 891 (FR-4725)	2502-AH83

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Office of Housing—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1165	24 CFR 200 Appraiser Qualifications for Placement on FHA Single Family Appraiser Roster (FR-4620) **(Reg Plan Seq No. 69)**	2502-AH59
1166	24 CFR 200 Section 223f Supplemental Cost Certification (FR-4793)	2502-AH93
1167	24 CFR 203 Prohibition of Property Flipping in HUD's Single Family Mortgage Insurance Programs (FR-4615)	2502-AH57
1168	24 CFR 203 Upfront Mortgage Insurance Premiums: Remittance Requirements (FR-4690)	2502-AH67
1169	24 CFR 203 Amendments to the Section 203(k) Rehabilitation Loan Insurance Program (FR-4701)	2502-AH73
1170	24 CFR 206 Insurance for Mortgages To Refinance Existing HECMs (FR-4667)	2502-AH63
1171	24 CFR 207 Mortgage Insurance Premiums in Multifamily Housing Programs (FR-4679)	2502-AH64
1172	24 CFR 234 FHA Approval of Condominium Developments Located in the Commonwealth of Puerto Rico for Mortgage Insurance Under the Section 234(c) Program (FR-4713)	2502-AH80
1173	24 CFR 245 Tenant Participation in State-Financed, HUD-Assisted Housing Developments (FR-4611)	2502-AH55
1174	24 CFR 401 Authority To Waive Regulations Under Part 401 (FR-4791)	2502-AH94
1175	24 CFR 402 Renewal of Expiring Section 8 Project-Based Assistance Contract (FR-4551)	2502-AH47
1176	24 CFR 3280 Manufactured Home Construction and Safety Standards (FR-4376)	2502-AH23

HUD

Office of Housing—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1177	24 CFR 3500 et seq RESPA—Improving the Process for Obtaining Mortgages (FR-4727) **(Reg Plan Seq No. 70)**	2502-AH85

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Office of Housing—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1178	24 CFR Ch II Sale of Unoccupied and Substandard HUD-Held Housing to Local Governments and Community Development Organizations (FR-4658)	2502-AH61
1179	24 CFR 242 Mortgage Insurance for the Refinancing of Existing Debt of Existing Hospitals (FR-4618)	2502-AH58
1180	24 CFR 401 Release of Information to Tenants and Other Parties Pursuant to MAHRA (FR-4531)	2502-AH45
1181	24 CFR 401 Mark-to-Market Program Amendments (FR-4751)	2502-AH86

Office of Housing—Completed Actions

Sequence Number	Title	Regulation Identification Number
1182	24 CFR 203 Nonprofit Organization Participation in Certain FHA Single-Family Activities; Placement and Removal Procedures (FR-4585)	2502-AH49
1183	24 CFR 203 Single-Family Mortgage Insurance; Section 203(k) Consultant Placement and Removal Procedures (FR-4592)	2502-AH51
1184	24 CFR 3280 Implementation of Manufactured Housing Improvement Act of 2000 (FR-4665)	2502-AH62

Office of Housing—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
2502-AG87	24 CFR 200 Delegation of Insuring Authority to Direct Endorsement Mortgagees (FR-4169)	09/04/2002	Withdrawn
2502-AH36	24 CFR 891 Supportive Housing for the Elderly and Persons With Disabilities; Duration of Capital Advance (FR-4466)	08/28/2002	Withdrawn
2502-AH70	24 CFR 203 Prohibition of Predatory Lending Practices: Limit on FHA Single-Family Loan Fees (FR-4700)	08/29/2002	Withdrawn
2502-AH75	24 CFR 207, 255 Agreements for Using FHA's Total Mortgage Scorecard (FR-4717)	09/04/2002	Withdrawn
2502-AH77	24 CFR 880 Special Rent Adjustments (FR-4721)	09/16/2002	Withdrawn

Office of Community Planning and Development—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1185	24 CFR 570 CDBG Brownfields/Slum/Blight (FR-4699)	2506-AC12
1186	24 CFR 574 Housing Opportunities for Persons With AIDS (HOPWA) (FR-4708)	2506-AC11
1187	24 CFR 583 Supportive Housing Program (FR-4616)	2506-AC07

HUD

Office of Community Planning and Development—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1188	24 CFR 570 CDBG Program for States; Community Revitalization Strategy Requirements and Miscellaneous Technical Amendments (FR-4081)	2506-AB83
1189	24 CFR 570 Prohibition on Use of CDBG Assistance for Job-Pirating Activities (FR-4556)	2506-AC04
1190	24 CFR 583 Supportive Housing Program — Increasing Operating Cost Percentage (FR-4576)	2506-AC05
1191	24 CFR 598 Designation of Renewal Communities and Third Round Empowerment Zones (FR-4663)	2506-AC09

Office of Community Planning and Development—Completed Actions

Sequence Number	Title	Regulation Identification Number
1192	24 CFR 570 Community Development Block Grant-Assisted Demolition of HUD-Owned Housing Units (FR-4698)	2506-AC10

Office of Fair Housing and Equal Opportunity—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1193	24 CFR 100 Fair Housing Act Regulation; Conforming Amendment; Update To Reflect Current Edition of American National Standards Institute (ANSI) (FR-4554)	2529-AA88

Office of Fair Housing and Equal Opportunity—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1194	24 CFR 100 Fair Housing Act Regulations Amendments: Standards Governing Sexual Harassment (FR-4597)	2529-AA89
1195	24 CFR 115 Certification and Funding of State and Local Fair Housing Enforcement Agencies (FR-4748)	2529-AA90
1196	24 CFR 135 Economic Opportunities for Low- and Very-Low-Income Persons (FR-2898)	2529-AA49

Office of Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1197	48 CFR 2401 HUD Acquisition Regulation (FR-4705)	2535-AA26

Office of the Inspector General—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1198	24 CFR 2004 Office of Inspector General Subpoenas and Production in Response to Subpoenas or Demands of Courts or Other Authorities (FR-4742)	2508-AA13

Office of the Inspector General—Completed Actions

Sequence Number	Title	Regulation Identification Number
1199	24 CFR 2002 Implementation of the Freedom of Information Act (FR-4716)	2508-AA12

HUD

Office of Public and Indian Housing—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1200	24 CFR 902 Changes to the Public Housing Assessment System (PHAS)(FR-4707) **(Reg Plan Seq No. 72)**	2577-AC32
1201	24 CFR 903 Streamlining and Deregulation of Public Housing Agency Plans (FR-4788) **(Reg Plan Seq No. 73)**	2577-AC40
1202	24 CFR 905 Public Housing Capital Fund Program (FR-4507)	2577-AC16
1203	24 CFR 941 Mixed-Finance Public Housing Development (FR-4499)	2577-AC09
1204	24 CFR 945 Designated Housing (FR-4755)	2577-AC36
1205	24 CFR 960.204 Denial of Admission and Termination of Tenancy of Fugitive Felons (FR-4758)	2577-AC38
1206	24 CFR 964 Resident Participation in Public and Section 8 Housing (FR-4657)	2577-AC26
1207	24 CFR 970 Public Housing Program — Demolition or Disposition of Public Housing Projects (FR-4598)	2577-AC20
1208	24 CFR 972 Conversion of Developments From Public Housing Stock; Methodology for Comparing Costs of Public Housing and Tenant-Based Assistance (FR-4718)	2577-AC33
1209	24 CFR 983 Project-Based Voucher Program (FR-4636) **(Reg Plan Seq No. 71)**	2577-AC25
1210	24 CFR 1000 Implementation of Statutory Revisions to NAHASDA (FR-4750)	2577-AC37
1211	24 CFR 1000 NAHASDA Housing Assistance for Native Hawaiians (FR-4668)	2577-AC27

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Office of Public and Indian Housing—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1212	24 CFR 902 Deregulation for Small Public Housing Agencies (FR-4753) **(Reg Plan Seq No. 74)**	2577-AC34
1213	24 CFR 906 Public Housing Homeownership Programs (FR-4504)	2577-AC15
1214	24 CFR 941 Public Housing Development Total Development Cost (TDC) (FR-4489)	2577-AC05
1215	24 CFR 972 Required Conversion of Development From Public Housing Stock (FR-4475)	2577-AC01
1216	24 CFR 972 Voluntary Conversion of Developments From Public Housing Stock (FR-4476)	2577-AC02
1217	24 CFR 982 Section 8 Housing Choice Voucher Program; Expansion of Payment Standards Protection (FR-4586)	2577-AC18
1218	24 CFR 982 Section 8 Homeownership Program; Pilot Program for Homeownership Assistance for Disabled Families (FR-4661)	2577-AC24
1219	24 CFR 982 Section 8 Homeownership Program: Downpayment Assistance Grants and Streamlining Amendments (FR-4670)	2577-AC28
1220	24 CFR 982 Housing Choice Voucher Program Homeownership Option: Eligibility of PHA Owned or Controlled Units (FR-4759)	2577-AC39
1221	24 CFR 985 Revisions to SEMAP Lease-Up Indicator (FR-4604)	2577-AC21

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Office of Public and Indian Housing—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1222	24 CFR 990 Operating Fund Allocation Formula (FR-4425)	2577-AB88

Office of Public and Indian Housing—Completed Actions

Sequence Number	Title	Regulation Identification Number
1223	24 CFR 5 Implementation of Public Law 106-504: Eligibility of Citizens of the Freely Associated States for Federally Assisted Housing (FR-4754)	2577-AC35
1224	24 CFR 903 Public Housing Agency Plans: Deconcentration—Amendment to Established Income Range Definition (FR-4677)	2577-AC31
1225	24 CFR 982 Exception Payment Standard To Offset Increase in Utility Costs In the Housing Choice Voucher Program (FR-4672)	2577-AC29

Department of Housing and Urban Development (HUD)
Office of the Secretary (HUDSEC)

Proposed Rule Stage

1126. EXCLUSION OF VETERANS' DISABILITY COMPENSATION FOR SERVICE-CONNECTED DISABILITY FROM INCOME (FR-4746)

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 42 USC 1437a (b)(4)

CFR Citation: 24 CFR 5.603; 24 CFR 5.609; 24 CFR 92.203; 24 CFR 583.315

Legal Deadline: None

Abstract: This rule would exclude service-related veterans' disability payment from the calculation of income for eligibility and tenant rent purposes in HUD-assisted housing programs.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patricia Arnaudo, Senior Housing Program Manager, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 7th Street SW., Washington, DC 20410
Phone: 202 708-0744

RIN: 2501–AC86

1127. • NONDISCRIMINATION BASED ON DISABILITY; MULTIFAMILY HOMEOWNERSHIP PROJECTS (FR-4776)

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 794; 42 USC 3535(d); 42 USC 5309

CFR Citation: 24 CFR 8

Legal Deadline: None

Abstract: This rule clarifies the applicability of HUD's accessibility requirements (nondiscrimination based on disability) to multifamily homeownership projects receiving financial assistance from HUD. In addition, this rule conforms this part to statutory changes by replacing the term "handicap" with "disability" and by removing obsolete references.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cheryl Kent, Special Advisor for Disabiliy Policy, Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity
Phone: 202 708-1734

RIN: 2501–AC87

1128. • INFLATION ADJUSTMENT OF CIVIL MONEY PENALTY AMOUNTS (FR-4787)

Priority: Other Significant

Legal Authority: 12 USC 1708(c), 1708(d), 1709(s), 1735(f)-14; 42 USC 3535(d); 28 USC 1264; 31 USC 3801

CFR Citation: 24 CFR 25; 24 CFR 28; 24 CFR 30

Legal Deadline: None

Abstract: This rule makes several changes with respect to the Department's civil money penalty regulations. Specifically, this rule makes inflation adjustments to the civil money penalties imposed by the Deaprtment.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Phillip A. Murray, Director, Office of Lender Activities and Program Compliance, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-1515

RIN: 2501–AC91

1129. TREBLE DAMAGES FOR FAILURE TO ENGAGE IN LOSS MITIGATION (FR-4553)

Priority: Other Significant

Legal Authority: 12 USC 1715u; 12 USC 1735f-14; 42 USC 3535(d)

CFR Citation: 24 CFR 203; 24 CFR 30

Legal Deadline: None

Abstract: This rule would implement sections 601(f), (g), and (h) of the fiscal year 1999 HUD Appropriations Act (Pub. L. 105-276, approved October 21, 1998). These sections amend the National Housing Act, which establishes the basic framework for HUD's single family mortgage insurance programs. Specifically, section 601(f) amends section 230 of the National Housing Act (42 U.S.C. 1715u) (entitled Authority to Assist Mortgagors in Default) to provide that, upon default of an insured single family mortgage, lenders must engage in loss mitigation activities for the purpose of providing an alternative to foreclosure. Further, sections 601(g) and (h) amend section 536 of the National Housing Act (12 U.S.C. 1735f-14) (entitled Civil Money Penalties Against Mortgagees, Lenders, and Other Participants in FHA Programs) to provide for the imposition of treble civil money penalties on lenders that fail to engage in loss mitigation activities, as required under amended section 230.

Timetable:

Action	Date	FR Cite
ANPRM	12/06/00	65 FR 76520
ANPRM Comment Period End	02/05/01	
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Reyes, Office of the Deputy Assistant Secretary for Single Family Housing, Department of Housing and Urban Development, Office of the Secretary
Phone: 405 553-7576

RIN: 2501–AC66

1130. • THE SECRETARY OF HUD'S REGULATION OF FANNIE MAE AND FREDDIE MAC (FR-4790)

Regulatory Plan: This entry is Seq. No. 66 in part II of this issue of the **Federal Register**.

RIN: 2501–AC92

HUD—HUDSEC

Proposed Rule Stage

1131. • PARTICIPATION IN HUD PROGRAMS BY FAITH-BASED ORGANIZATIONS; PROVIDING FOR EQUAL TREATMENT FOR ALL HUD PROGRAM PARTICIPANTS (FR-4782)

Regulatory Plan: This entry is Seq. No. 65 in part II of this issue of the **Federal Register**.

RIN: 2501–AC89

Department of Housing and Urban Development (HUD)
Office of the Secretary (HUDSEC)

Final Rule Stage

1132. RULE TO CONFORM REGULATORY DEFINITIONS; CIVIL RIGHTS RESTORATION ACT (FR-4587)

Priority: Other Significant

Legal Authority: 42 USC 2000d-1; 42 USC 2000d-7; 42 USC 3535(d)

CFR Citation: 24 CFR 1; 24 CFR 8; 24 CFR 146

Legal Deadline: None

Abstract: Title VI of the Civil Rights Act of 1964 (Title VI), section 504 of the Rehabilitation Act of 1972 (Section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act) prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to Title VI, and it added a definition of "program or activity" to Section 504 and the Age Discrimination Act. The promulgation of this rule incorporates the CRRA's definition of "program or activity" and "program" into title VI, section 504, and Age Discrimination Act regulations.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Elizabeth Frank, Deputy Director, Office of Enforcement, Department of Housing and Urban Development, Office of the Secretary, Office of Fair Housing and Equal Opportunity
Phone: 202 708-0836

RIN: 2501–AC70

1133. TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF); CONFORMING CHANGES TO ANNUAL INCOME REQUIREMENTS FOR HUD'S PUBLIC HOUSING AND SECTION 8 ASSISTANCE PROGRAMS (FR-4635)

Priority: Other Significant

Legal Authority: 42 USC 1437a; 42 USC 1437c; 42 USC 1437d; 42 USC 1437f; 42 USC 1437n; 42 USC 3535(d); ...

CFR Citation: 24 CFR 5

Legal Deadline: None

Abstract: This rule updates and clarifies HUD's annual income requirements for its public housing and Section 8 assistance programs. Specifically, this rule clarifies that annual income includes payments under the Temporary Assistance for Needy Families (TANF) program, but only to the extent such payments qualify as "assistance" under the TANF program regulations issued by the Department of Health and Human Services and are not otherwise excluded under HUD's regulation. The clarifications will make the annual income requirements easier to understand for both program participants and public housing agencies. These changes will also ensure greater conformity between HUD's annual income requirements and the TANF program regulations. The final rule follows publication of an April 20, 2001 proposed rule, and takes into consideration the public comments received on the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	04/20/01	66 FR 20368
NPRM Comment Period End	06/19/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patricia Arnaudo, Senior Housing Program Manager, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 7th Street SW., Washington, DC 20410
Phone: 202-708-0744

RIN: 2501–AC77

1134. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FR-4692)

Priority: Other Significant

Legal Authority: 42 USC 3535(d)

CFR Citation: 24 CFR 21; 24 CFR 24

Legal Deadline: None

Abstract: This rule will make substantive changes and amendments to the Governmentwide nonprocurement common rule for debarment and suspension and the Governmentwide rule implementing the Drug Free Workplace Act of 1988. This rule is part of a common rule on debarment and suspension that would limit the mandatory lower tier application of an exclusion to the first procurement level under a nonprocurement covered transaction. Also, the common rule on debarment and suspension would set the dollar threshold on prohibited lower-tier

procurement transactions with excluded persons at $25,000.

Timetable:

Action	Date	FR Cite
NPRM	07/22/02	67 FR 48006
NPRM Comment Period End	09/20/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dane Narode, Deputy Chief Counsel for Administrative Proceedings, Department of Housing and Urban Development, Enforcement Center
Phone: 202 708-2350

RIN: 2501–AC81

1135. ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD'S ENVIRONMENTAL RESPONSIBILITIES (FR-4523)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1707 note; 25 USC 4115; 42 USC 1437o(i)(1); 42 USC 1437o(i)(2); 42 USC 1437x; 42 USC 3535(d); 42 USC 3547; 42 USC 4332; 42 USC 4852; 42 USC 5304 (g); 42 USC 11402; 42 USC 12588; ...

CFR Citation: 24 CFR 58; 24 CFR 574; 24 CFR 582; 24 CFR 583; 24 CFR 941; 24 CFR 968; 24 CFR 970; ...

Legal Deadline: None

Abstract: This rule would update the list of programs and statutory authorities for which other entities may assume HUD's environmental responsibilities and make other changes to update the regulations on assumption of HUD's environmental responsibilities.

Timetable:

Action	Date	FR Cite
NPRM	06/26/02	67 FR 43207
NPRM Comment Period End	08/26/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Walter Prybyla, Deputy Director for Policy Environmental Review Division, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708-1201

RIN: 2501–AC83

1136. FAIR MARKET RENTS PROGRAMS: INCREASED FAIR MARKET RENTS FOR CERTAIN AREAS AND HIGHER PAYMENT STANDARDS (FR-4606)

Priority: Economically Significant

Legal Authority: 42 USC 1437a; 42 USC 1437c; 42 USC 1437f; 42 USC 3535(d)

CFR Citation: 24 CFR 888; 24 CFR 982; 24 CFR 985

Legal Deadline: None

Abstract: This rule follows the interim final rule that implemented HUD's new fair market rent (FMR) policy. The new FMR policy targets relief to areas where higher FMRs are needed to help families, assisted under HUD's Housing Choice Voucher Program as well as other HUD programs, find and lease decent and affordable housing. The new FMR policy increases FMRs needed to promote residential choice, help families move closer to areas of job growth, and deconcentrate poverty. The increased FMR applies to all the HUD programs that use FMRs in that metropolitan area.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/02/00	65 FR 58870
Interim Final Rule Comment Period End	11/16/00	
Interim Final Rule Effective	12/01/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0477

RIN: 2501–AC75

Department of Housing and Urban Development (HUD) Office of the Secretary (HUDSEC) — Long-Term Actions

1137. ELECTRONIC DOCUMENT RETENTION AND CONSUMER DISCLOSURE REQUIREMENTS IN HUD-RELATED TRANSACTIONS (FR-4686)

Priority: Other Significant

Legal Authority: 12 USC 1701 et seq; 12 USC 1715Z-13a; 12 USC 2601 to 2617; 15 USC 1701 to 1706; 15 USC 7001 to 7006; ...

CFR Citation: 24 CFR 5

Legal Deadline: None

Abstract: This rule will implement the Electronic Signature Act which allows agencies to issue regulations, pursuant to their existing regulatory authority, interpreting section 101 of ESIGN (15 U.S.C. 7001) and setting performance standards for the accuracy, integrity, and accessibility of electronically retained documents. The rule will set performance standards for the accessibility, integrity and accuracy of electronically retained documents.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Koren McKenzie-John, Attorney-Advisor, Multifamily Mortgage Division, Department of Housing and Urban Development, Office of the General Counsel
Phone: 202 708-4090

RIN: 2501–AC79

1138. ADJUSTMENT OF HUD'S CIVIL MONEY PENALTIES PURSUANT TO THE FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT ACT OF 1990 (FR-4555)

Priority: Substantive, Nonsignificant

Legal Authority: 28 USC 2461 note; 31 USC 3701 note

CFR Citation: 24 CFR 28; 24 CFR 30; 24 CFR 3282; 24 CFR 3500; 24 CFR 81

Legal Deadline: None

Abstract: This final rule would adjust for inflation the maximum amounts of HUD's civil money penalties, as required by the Federal Civil Money Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701 note). HUD is required to adjust the maximum amounts of its civil money penalties at least once every 4 years. HUD last adjusted these maximum amounts in a final rule that became effective October 24, 1996 (61 FR 50208). Accordingly, HUD must adjust the maximum amounts of its civil money penalties before October 24, 2000.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Dane Narode, Deputy Chief Counsel for Administrative Proceedings, Department of Housing and Urban Development, Enforcement Center
Phone: 202 708-2350

RIN: 2501–AC67

1139. ACCESSIBILITY STANDARDS FOR DESIGN, CONSTRUCTION AND ALTERATION OF CERTAIN FACILITIES FINANCED WITH PUBLIC FUNDS (FR-4317)

Priority: Other Significant

Legal Authority: 42 USC 3535(d); 42 USC 4151 et seq

CFR Citation: 24 CFR 40; 24 CFR 41

Legal Deadline: None

Abstract: The U.S. Architectural and Transportation Barriers Compliance Board (Access Board), of which HUD is a voting member, is revising and updating its accessibility guidelines for buildings and facilities covered by the Americans with Disabilities Act and the Architectural Barriers Act (ABA). The guidelines cover new construction and alterations and serve as the basis for enforceable standards issued by other Federal agencies, including HUD. HUD, as one of the four standard setting agencies, must adopt standards that are equivalent to or stricter than those guidelines issued by the Access Board. Thus, HUD must both update its regulations for the ABA at 24 CFR 40 and 41, and must also update/replace its Uniform Federal Accessibility Standards (UFAS) with standards equivalent to or stricter than the Access Board's guidelines.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Milton Turner, Director, Program Compliance and Disability Rights Support Division, Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity
Phone: 202 708-2333

RIN: 2501–AC47

1140. • PROHIBITION AGAINST LUMP-SUM RELOCATION ASSISTANCE PAYMENTS, AND EXCLUSION OF ALIENS NOT LEGALLY PRESENT FROM ELIGIBILITY FOR RELOCATION PAYMENTS (FR-4773)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 3535(d), 3537c, 4601, 5304, and 12705(b)

CFR Citation: 24 CFR 42

Legal Deadline: None

Abstract: The purpose of this rule is to update HUD's relocation regulations to conform to two statutory changes. The first change prohibits lump-sum payments except for moving expenses, downpayments on a replacement residence, and the incidental expenses related to these two eligible types of payments. The second statutory change excludes aliens who are not lawfully present in the United States from eligibility for relocation payments.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joan Morgan, Office of Affordable Housing Programs, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708-2470

RIN: 2501–AC88

1141. THE SECRETARY OF HUD'S REGULATION OF FANNIE MAE AND FREDDIE MAC; PROHIBITING THE PURCHASE OF CERTAIN LOANS WITH HIGH COSTS AND/OR PREDATORY FEATURES (FR-4614)

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 12 USC 1451 et seq; 12 USC 1716 et seq; 12 USC 4501 et seq; 42 USC 3535(d)

CFR Citation: 24 CFR 81

Legal Deadline: None

Abstract: A report issued in June 2000 by HUD and the Department of Treasury entitled "Curbing Predatory Home Mortgage Lending" noted that by providing a source of funding, entities that purchase or securitize loans with high cost and/or predatory features are, knowingly or unknowingly, supporting the activities of predatory loan originators. The report recommended regulatory restrictions that would prohibit the two Government-Sponsored Enterprises (GSEs), Fannie Mae and Freddie Mac, from purchasing certain types of loans with high costs and/or predatory features altogether. Through this rulemaking, HUD will establish regulatory restrictions, consistent with the GSEs' voluntary restrictions, that will prohibit the GSEs from purchasing certain loans with high costs and/or predatory features.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sandra Fostek, Director, Office of Government Sponsored Enterprise Oversight, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2224

RIN: 2501–AC76

HUD—HUDSEC

Long-Term Actions

1142. ADOPTION OF REVISIONS TO OMB CIRCULAR A-110 (FR-4573)

Priority: Other Significant

Legal Authority: 42 USC 3535(d)

CFR Citation: 24 CFR 5; 24 CFR 44; 24 CFR 45; 24 CFR 84; 24 CFR 85

Legal Deadline: None

Abstract: This document presents the final revision to the codification, at 24 CFR part 84, of Office of Management and Budget (OMB) Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations." OMB issued a final revision to Circular A-110 on September 30, 1999, as required by Public Law 105-227. This rule provides uniform administrative requirements for all grants and cooperative agreements to institutions of higher education, hospitals, and other nonprofit organizations. FR-4258 (RIN 2501-AC39), which makes final an interim rule that adopted revised OMB Circular A-133 to obtain consistency and uniformity among Federal agencies for the audit of States, local governments, and nonprofit organizations expending Federal awards, is also merged with this rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/11/00	65 FR 30498
Interim Final Rule Effective	06/12/00	
Interim Final Rule Comment Period End	07/10/00	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Barbara Dorf, Director, Office of Departmental Grants Management and Oversight, Department of Housing and Urban Development, Office of Administration
Phone: 202 708-0667

RIN: 2501–AC68

Department of Housing and Urban Development (HUD)
Office of the Secretary (HUDSEC)

Completed Actions

1143. UNIFORM FINANCIAL REPORTING STANDARDS FOR HUD HOUSING PROGRAMS, ADDITIONAL ENTITY FILING REQUIREMENTS (FR-4681)

Priority: Substantive, Nonsignificant

CFR Citation: 24 CFR 5; 24 CFR 202

Completed:

Reason	Date	FR Cite
Final Action	08/15/02	67 FR 53450

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Stacey Kniff
Phone: 202 708-4932

RIN: 2501–AC80

1144. • TESTIMONY OF HUD EMPLOYEES IN LEGAL PROCEEDINGS (FR-4783)

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 42 USC 3535(d)

CFR Citation: 24 CFR 15

Legal Deadline: None

Abstract: This rule amends HUD's regulations regarding the testimony or employees in legal proceedings to authorize the Secretary of HUD or the General Counsel to authorize an employee to testify as an expert or opinion witness in matters in which the United States is a party as well as in matters exclusively among private parties.

Timetable:

Action	Date	FR Cite
Final Action	10/23/02	67 FR 65276
Final Action Effective	11/22/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Carole W. Wilson, Associate General Counsel for Litigation and Fair Housing Enforcement, Department of Housing and Urban Development, Office of the General Counsel
Phone: 202 708-0570

RIN: 2501–AC90

1145. ADMINISTRATIVE WAGE GARNISHMENT (FR-4711)

Priority: Substantive, Nonsignificant

CFR Citation: 24 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	07/18/02	67 FR 47433
Final Action Effective	08/19/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Samuel B. Rothman
Phone: 202 708-4184

RIN: 2501–AC85

1146. HOME INVESTMENT PARTNERSHIPS PROGRAM (FR-4111)

Priority: Other Significant

CFR Citation: 24 CFR 92

Completed:

Reason	Date	FR Cite
Final Action	10/01/02	67 FR 61752
Final Action Effective	10/31/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Mary Kolesar
Phone: 202 708-2470

RIN: 2501–AC30

Department of Housing and Urban Development (HUD)
Office of Housing (OH)

Proposed Rule Stage

1147. • SINGLE FAMILY MORTGAGE; LENDER COMPLIANCE AND ACCOUNTABILITY (FR-4761)

Priority: Other Significant

Legal Authority: 12 USC 1703; 12 USC 1708(c); 12 USC 1708 (d); 12 USC 1709; 12 USC 1709(s); 12 USC 1715(b); 12 USC 1735;; 12 UDC 1735(f)-14; 42 USC 3535(d)

CFR Citation: 24 CFR 25; 24 CFR 202

Legal Deadline: None

Abstract: The rule would allow the Department to be more restrictive as to who can be an owner or officer of an FHA-approved lending entity, better hold the owners and principal officers and loan officers accountable for noncompliance, clarify duties and responsibilities of all parties involved in the loan origination process, and update FHA's lender requirements to reflect current operating practices in the mortgage industry. The rule would make several other nonsubstantive corrections and clarifications to the regulations.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Phillip A. Murray, Director, Office of Lender Activities and Program Compliance, Department of Housing and Urban Development, Office of Housing, P3214, 451 7th Street SW., Washington, DC 20410
Phone: 202 708-1515

RIN: 2502–AH87

1148. • DISTRIBUTION OF TAX CREDIT PROCEEDS (FR-4792)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1702 to 1715z-21; 42 USC 3535(d)

CFR Citation: 24 CFR 200.54(b)

Legal Deadline: None

Abstract: This rule amends 24 CFR 200.54(b) to provide that low-income housing tax credit syndication proceeds and historic tax credit syndication proceeds will be treated in the same manner as funds provided by a grant or loan from a Federal, State or local government agency or instrumentality to the extent that these proceeds do not have to be fully disbursed before the disbursement of mortgage proceeds.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-1142

RIN: 2502–AH91

1149. REVISIONS TO FHA CREDIT WATCH/TERMINATION INITIATIVE (FR-4625)

Priority: Other Significant

Legal Authority: 12 USC 1703; 12 USC 1709; 12 USC 1715b; 42 USC 3535(d)

CFR Citation: 24 CFR 202

Legal Deadline: None

Abstract: This rule would make several amendments to HUD's regulations for the Federal Housing Administration (FHA) Credit Watch/Termination Initiative. Under the Credit Watch/Termination Initiative, HUD identifies mortgagees with unsatisfactory performance levels and takes ameliorative action at an early stage. The proposed rule will state that mortgagees will be responsible for using HUD's Electronic Neighborhood Watch Early Warning System to monitor their performance. Among other changes, the rule would also prohibit a mortgagee that has received a notice of proposed termination of its origination approval agreement from establishing a new branch for the origination of FHA-insured mortgages in the lending area covered by the proposed termination. The rule also would establish that the default and claim thresholds underlying the Credit Watch/Termination Initiative apply to both underwriting and originating mortgagees.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Phillip A. Murray, Director, Office of Lender Activities and Program Compliance, Department of Housing and Urban Development, Office of Housing, P3214, 451 7th Street SW., Washington, DC 20410
Phone: 202 708-1515

RIN: 2502–AH60

1150. • ESTABLISHMENT OF LOAN ORIGINATOR REGISTRY AND ESTABLISHMENT OF SERVICING APPROVAL AGREEMENTS (FR-4764)

Priority: Other Significant

Legal Authority: 12 USC 1703; 12 USC 1709; 12 USC 1715b; 42 USC 3535(d)

CFR Citation: 24 CFR 202.5

Legal Deadline: None

Abstract: This rule would authorize the Department to establish a loan originator registry and a servicing approval agreement for FHA-approved lenders. The loan originator registry would limit registration of a loan originator to one FHA-approved lender at a time and give the Department the ability to monitor a loan originator's loan performance. The rule would provide for sanctions against loan originators for poor performance. Also, the rule would clarify that a loan originator must be an employee of a lender. This rule also would create a servicing approval agreement that would require FHA approval. The Department believes that the servicing agreement would enhance its authority to supervise the servicing of FHA-insured mortgages and to take action against mortgagees that fail to perform required servicing functions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Phillip A. Murray, Director, Office of Lender Activities and Program Compliance, Department of Housing and Urban Development, Office of Housing, P3214, 451 7th Street SW., Washington, DC 20410
Phone: 202 708-1515

RIN: 2502–AH88

1151. • DUTIES AND RESPONSIBILITIES OF LOAN CORRESPONDENTS AND SPONSORS (FR-4762)

Priority: Other Significant

Legal Authority: 12 USC 1703, 1709, 1710; 12 USC 1715b; 12 USC 1715y; 42 USC 3535(d)

CFR Citation: 24 CFR 202.2; 24 CFR 202.8(b)(7); 24 CFR 207.255(b) (11)

Legal Deadline: None

Abstract: This rule would describe the duties and responsibilities of FHA-approved loan correspondents and sponsors. The Department believes it necessary to delineate clearly the different responsibilities and duties of loan correspondents and sponsors to ensure compliance with FHA program requirements. The rule also would define the terms "origination" and "underwriting."

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Phillip A. Murray, Director, Office of Lender Activities and Program Compliance, Department of Housing and Urban Development, Office of Housing, P3214, 451 7th Street SW., Washington, DC 20410
Phone: 202 708-1515

RIN: 2502–AH90

1152. LIMITATION OF FHA-INSURED LOANS TO NONPROFIT AGENCIES (FR-4702)

Priority: Other Significant

Legal Authority: 12 USC 1709; 42 USC 3535(d)

CFR Citation: 24 CFR 203.18; 24 CFR 203.36; 24 CFR 291.210(a)

Legal Deadline: None

Abstract: This rule limits nonprofit corporations to ten outstanding single family insured loans at any one time. In addition, the rule limit nonprofits to loans secured by properties with no more than one dwelling unit.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Margaret Burns, Director, Program Support Division, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-0317

RIN: 2502–AH71

1153. FHA INSPECTOR ROSTER (FR-4720)

Priority: Other Significant

Legal Authority: 12 USC 1709; 42 USC 3535(d)

CFR Citation: 24 CFR 200.170; 24 CFR 200.171; 24 CFR 200.172

Legal Deadline: None

Abstract: This rule establishes the criteria for inclusion on, and removal from, the FHA Inspector Roster. FHA officials will review the credentials of individuals desiring placement on this Roster or recertification to the Roster. The rule also identifies when a mortgagee must use the services of those individuals appearing on the Roster.

Timetable:

Action	Date	FR Cite
NPRM	10/12/02	67 FR 63198
NPRM Comment Period End	12/09/02	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AH76

1154. LENDER ACCOUNTABILITY FOR APPRAISALS (FR-4722)

Priority: Other Significant

Legal Authority: 12 USC 1708 to 1710; 12 USC 1715b; 12 USC 1715u; 12 USC 1735f-14; 42 USC 3535(d)

CFR Citation: 24 CFR 25; 24 CFR 203

Legal Deadline: None

Abstract: This rule clarifies and strengthens HUD's regulations concerning the responsibilities of lenders approved by the Federal Housing Administration (FHA) in the selection of appraisers to perform appraisals on properties that will be the security for FHA-insured mortgages. First, the rule provides that lenders are to be held strictly accountable for the quality of appraisals on properties securing FHA-insured mortgages. Further, the rule specifically provides that lenders that submit appraisals to HUD that do not meet FHA requirements are subject to the imposition of sanctions by the HUD Mortgagee Review. The rule would apply to both sponsor lenders, who underwrite loans, and loan correspondent lenders, who originate loans on behalf of their sponsors. HUD believes these proposed changes will help protect the FHA Insurance Fund, ensure better compliance with appraisal standards, and help to ensure that homebuyers receive an accurate statement of appraised value.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AH78

1155. UP-FRONT MORTGAGE INSURANCE PREMIUMS FOR LOANS INSURED UNDER 24 CFR 203(K) AND 234(C) OF THE NATIONAL HOUSING ACT (FR-4749)

Priority: Other Significant

Legal Authority: 12 USC 1709(c); 42 USC 3535(d)

CFR Citation: 24 CFR 203.50; 24 CFR 203.284; 24 CFR 203.285

Legal Deadline: None

Abstract: This rule amends 24 CFR part 203 to require an up-front payment at the beginning of the loan of the insurance premium for loans insured under sections 203(k) and 234(c) of the National Housing Act. Formerly, these loans required only monthly premium payments.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Beavers, Loan Specialist (Realty), Department of Housing and Urban Development, Office of Housing, Room 9270, 451 7th Street, SW, Washington, DC 20410
Phone: 202 708-2121

RIN: 2502–AH82

1156. ELIGIBILITY OF ADJUSTABLE RATE MORTGAGES (ARMS) (FR-4745)

Priority: Other Significant

Legal Authority: 12 USC 1715z-16; 42 USC 3535(d)

CFR Citation: 24 CFR 203.49

Legal Deadline: None

Abstract: This rule would implement section 206 of HUD's FY 2002 Appropriations Act and enhance home buying opportunities through additional product offerings, "hybrid ARMs," tailored to the financial conditions of lenders. Except for additional provisions for the frequency and magnitude of the interest rate changes, these products would be subject to existing regulatory requirements at 24 CFR 203.49.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AH84

1157. • HOME EQUITY CONVERSION MORTGAGES (HECM); COOPERATIVE HOUSING DEVELOPMENTS (FR-4777)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1715b; 12 USC 1715z to 1720;; 42 USC 3535(d)

CFR Citation: 24 CFR 203.43 (b)(1); 24 CFR 206.45 (b)

Legal Deadline: None

Abstract: This rule would expand the Home Equity Conversion Mortgage (HECM) program to cover approved cooperative housing developments. The rule would implement an amendment to the National Housing Act that authorizes HUD to insure HECM mortgages in cooperative housing developments. The expansion of the HECM program, in the Department's view, would contribute to the effort to broaden reverse mortgage financing opportunities for elderly homeowners.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AH89

1158. • ELIGIBILITY OF MORTGAGES ON HAWAIIAN HOMELANDS INSURED UNDERSECTION 247 (FR-4779)

Priority: Other Significant

Legal Authority: 12 USC 1709; 12 USC 1710; 12 USC 1715b; 12 USC 1715u; 42 USC 3535(d)

CFR Citation: 24 CFR 203

Legal Deadline: None

Abstract: This rule would amend the regulations that define the terms "native Hawaiian" and "eligibility of mortgagor" to conform them to the revised definitions enacted by a recent statutory change to the National Housing Act.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AH92

1159. FHA APPRAISER WATCH INITIATIVE (FR-4744)

Regulatory Plan: This entry is Seq. No. 68 in part II of this issue of the Federal Register.

RIN: 2502–AH81

1160. SECTION 236 EXCESS RENTAL CHARGES (FR-4689)

Priority: Other Significant

Legal Authority: 12 USC 1715z-1; 42 USC 3535(d)

CFR Citation: 24 CFR 236

Legal Deadline: None

Abstract: This rule would establish the terms and conditions to permit owners of projects receiving section 236 rental assistance to participate in retaining some or all of their excess charges for project use. In addition, it would permit owners to retain excess charges for non-project use after a determination by HUD that the project is well maintained housing in good condition and that the owner has not engaged in material adverse financial or managerial actions or omissions.

Timetable:

Action	Date	FR Cite
NPRM	08/12/02	67 FR 52526
NPRM Comment Period End	10/11/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Janice Nimmer, Housing Project Manager, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-3944

RIN: 2502–AH68

HUD—OH **Proposed Rule Stage**

1161. DISPOSITION OF HUD-OWNED SINGLE FAMILY ASSETS IN ASSET CONTROL AREAS (FR-4471)

Regulatory Plan: This entry is Seq. No. 67 in part II of this issue of the **Federal Register**.

RIN: 2502–AH40

1162. DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY; OFFICER/TEACHER NEXT DOOR SALES PROGRAMS (FR-4712)

Priority: Other Significant

Legal Authority: 12 USC 1701 et seq; 42 USC 1441; 42 USC 1441a; 42 USC 1551a; 42 USC 3535(d)

CFR Citation: 24 CFR 291, subpart F

Legal Deadline: None

Abstract: This rule codifies the policies and procedures concerning the Teacher Next Door (TND) Sales Program. The TND Sales Program has been operating since December 7, 1999 as a temporary program. This rule establishes the TND Sales Program as a permanent part of HUD's single family property disposition program. Through the TND Sales Program, HUD makes HUD-acquired single family properties available to eligible teachers for purchase at a discount from the list price. The TND Sales Program is closely modelled after HUD's Officer Next Door (OND) Sales Program, which provides the same benefits to eligible law enforcement officers. In addition to codifying the TND Sales Program, the rule would also clarify and revise certain requirements applicable to both the OND and TND Sales Programs. Among other such changes, the proposed rule would: (1) expand eligibility for the OND Sales Program to include Native American tribal police officers; (2) cap the total number of HUD-acquired homes that will be sold in a fiscal year under the OND/TND Sales Program; (3) establish new requirements regarding refinancing.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal

Agency Contact: Joseph McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, Office of Housing, Room 9172
Phone: 202 708-1672

RIN: 2502–AH72

1163. DISTRIBUTIONS TO NONPROFIT OWNERS OF CERTAIN HUD-ASSISTED MULTIFAMILY RENTAL PROJECTS (FR-4602)

Priority: Other Significant

Legal Authority: 12 USC 1710 to 1715

CFR Citation: 24 CFR 880; 24 CFR 881; 24 CFR 883

Legal Deadline: None

Abstract: This rule adds an exception to HUD's current Section 8 regulations that prohibit any distributions to nonprofit owners of projects receiving project-based assistance. HUD may now permit distributions of surplus cash to owners of projects with expiring Section 8 project-based assistance contracts who agree to renew their contracts, if distributions are necessary to ensure continued participation of the owners in the Section 8 program.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-3000

RIN: 2502–AH52

1164. MIXED FINANCE DEVELOPMENT FOR SUPPORTIVE HOUSING FOR THE ELDERLY OR PERSONS WITH DISABILITIES AND OTHER CHANGES TO 24 CFR PART 891 (FR-4725)

Priority: Other Significant

Legal Authority: PL 106-569, sec 831 to 834 (Am. Homeownership & Economic Opportunity Act of 2000

CFR Citation: 24 CFR 891

Legal Deadline: None

Abstract: This rule permits for-profit limited partners to partner with a non-profit general partner in developing assisted housing for elderly and disabled using a mixed finance model, where HUD funding and non-Federal funding sources are combined in a single project. This rule would implement this program, providing for rules for the use of different funding sources, application procedures, procedures for the dispersal of funds, and other matters involved in program implementation.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Aretha Williams, Housing Project Manager, Department of Housing and Urban Development, Office of Housing, Room 6142, Washington, DC 20410
Phone: 202 708-2866

RIN: 2502–AH83

Department of Housing and Urban Development (HUD)
Office of Housing (OH) **Final Rule Stage**

1165. APPRAISER QUALIFICATIONS FOR PLACEMENT ON FHA SINGLE FAMILY APPRAISER ROSTER (FR-4620)

Regulatory Plan: This entry is Seq. No. 69 in part II of this issue of the **Federal Register**.

RIN: 2502–AH59

1166. • SECTION 223F SUPPLEMENTAL COST CERTIFICATION (FR-4793)

Priority: Other Significant

Legal Authority: 12 USC 1701 to 1715z-20

CFR Citation: 24 CFR 200

Legal Deadline: None

Abstract: This regulation will eliminate the supplemental cost certification requirement for FHA loans insured pursuant to section 223f where repairs are required after endorsement of the loan. This change will eliminate an unnecessary burden to the public. At closing/endorsement, an escrow is established sufficient to complete all repairs, and inspection of repairs is required. Once repairs are completed, the balance of escrow is returned to the owner by the mortgagee. If repairs are not completed, the mortgagee uses the balance of escrow.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-1142

RIN: 2502–AH93

1167. PROHIBITION OF PROPERTY FLIPPING IN HUD'S SINGLE FAMILY MORTGAGE INSURANCE PROGRAMS (FR-4615)

Priority: Other Significant

Legal Authority: 12 USC 1709; 12 USC 1710; 12 USC 1715b; 12 USC 1715u; 42 USC 3535(d)

CFR Citation: 24 CFR 203

Legal Deadline: None

Abstract: This rule addresses property "flipping," the practice whereby a property recently acquired is resold for a considerable profit with an artificially inflated value, often abetted by a lender's collusion with the appraiser. Specifically, the final rule will establish certain new requirements regarding the eligibility of properties for FHA mortgage insurance. The regulatory amendments made by this rule will comply with congressional mandates to maintain the FHA Insurance Fund in a sound actuarial manner. The new requirements will make flipped properties ineligible for FHA financing, thus precluding FHA home purchasers from becoming victims of property flipping. The rule follows publication of a September 5, 2001 proposed rule, and takes into consideration the public comments received on the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	09/05/01	66 FR 46502
NPRM Comment Period End	11/05/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AH57

1168. UPFRONT MORTGAGE INSURANCE PREMIUMS: REMITTANCE REQUIREMENTS (FR-4690)

Priority: Other Significant

Legal Authority: 42 USC 3535(d); 12 USC 1709

CFR Citation: 24 CFR 203

Legal Deadline: None

Abstract: This rule will change the remittance period of mortgage insurance premiums. The rule will also implement a more precise definition of when the remittance period begins.

Timetable:

Action	Date	FR Cite
NPRM	08/21/02	67 FR 54312
NPRM Comment Period End	10/21/02	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AH67

1169. AMENDMENTS TO THE SECTION 203(K) REHABILITATION LOAN INSURANCE PROGRAM (FR-4701)

Priority: Other Significant

Legal Authority: 12 USC 1709; 12 USC 1710; 12 USC 1715b; 12 USC 1715u; 42 USC 3535 (d)

CFR Citation: 24 CFR 203

Legal Deadline: None

Abstract: This rule will make two amendments to HUD's regulations for the Section 203(k) Rehabilitation Loan Insurance Program. The 203(k) Program is the Federal Housing Administration's (FHA's) primary program for the rehabilitation and repair of single family properties. The rule will limit 203(k) rehabilitation loan insurance to one-unit properties. This rule will also cap the total cost of rehabilitation to twenty percent of the single family mortgage limit established by HUD for a one-unit home in a "high cost area." These changes would simplify the 203(k) Program for both lenders and homebuyers, and strengthen HUD's capacity to safeguard the FHA mortgage insurance fund. This rule follows publication of an August 21, 2002 proposed rule, and takes into consideration the public comments received on the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	08/21/02	67 FR 54308
NPRM Comment Period End	10/21/02	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AH73

1170. INSURANCE FOR MORTGAGES TO REFINANCE EXISTING HECMS (FR-4667)

Priority: Other Significant

Legal Authority: 12 USC 1715b; 12 USC 1715z to 1720; 42 USC 3535(d)

CFR Citation: 24 CFR 206

Legal Deadline: Final, Statutory, June 27, 2001, Section 201 of the American Homeownership and Economic Opportunity Act of 2000 requires that HUD issue final regulations within 180 days of enactment.

Abstract: This rule amends HUD's regulations for the Home Equity Conversion Mortgage (HECM) Program to implement the amendments made by section 201(a) of the American Homeownership and Economic Opportunity Act of 2000. The HECM Program enables older homeowners to withdraw some of the equity in their homes in the form of payments for life, a fixed term, or at intervals through a line of credit. Section 201(a) authorizes HUD to offer mortgage insurance for refinancing of existing HECMs, and provides consumer safeguards for such refinancings. This rule follows publication of a June 5, 2001 proposed rule, and takes into consideration the public comments received on the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	06/05/01	66 FR 30278
NPRM Comment Period End	07/05/01	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AH63

1171. MORTGAGE INSURANCE PREMIUMS IN MULTIFAMILY HOUSING PROGRAMS (FR-4679)

Priority: Other Significant

Legal Authority: 12 USC 1701z-11(e); 12 USC 1709(c)(1); 12 USC 1713; 12 USC 1715b; 42 USC 3535(d)

CFR Citation: 24 CFR 207

Legal Deadline: None

Abstract: This rule amends the regulations for HUD's multifamily mortgage insurance programs by revising 24 CFR part 207 to permit the Secretary to set mortgage insurance premiums (MIPs) at any rate within his statutory authority, rather than setting specific MIP rates by regulation. Under this rule, HUD will be able to set mortgage insurance premiums at any rate between one-fourth and one percent of the outstanding principal balance of the insured loan. For several insured housing programs, this underwriting change will eliminate the need for positive credit subsidy. Promulgation of this rule will allow HUD to avoid a shutdown of these mortgage insurance programs.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/02/01	66 FR 35070
Interim Final Rule Effective	08/01/01	
Interim Final Rule Comment Period End	08/31/01	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, Federal, State

Agency Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-1142

RIN: 2502–AH64

1172. FHA APPROVAL OF CONDOMINIUM DEVELOPMENTS LOCATED IN THE COMMONWEALTH OF PUERTO RICO FOR MORTGAGE INSURANCE UNDER THE SECTION 234(C) PROGRAM (FR-4713)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1715b; 12 USC 1715y; 42 USC 3535(d)

CFR Citation: 24 CFR 234

Legal Deadline: None

Abstract: This rule would amend the Department's regulations under part 234 to provide that the date of recordation for purposes of obtaining FHA approval of a condominium development in the Commonwealth of Puerto Rico for mortgage insurance under the 234(c) program is the date the condominium legal documents are presented to the Commonwealth Registry of the Property.

Timetable:

Action	Date	FR Cite
NPRM	08/21/02	67 FR 54316
NPRM Comment Period End	10/21/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AH80

1173. TENANT PARTICIPATION IN STATE-FINANCED, HUD-ASSISTED HOUSING DEVELOPMENTS (FR-4611)

Priority: Other Significant

Legal Authority: 12 USC 1715z-1a; 12 USC 1715z-1b; 42 USC 3535(d)

CFR Citation: 24 CFR 245

Legal Deadline: None

Abstract: HUD's current regulations protecting the statutory right of tenants in HUD-assisted and insured multifamily housing developments to organize and participate in the operation of the development do not currently cover State-financed housing developments that receive assistance under certain HUD programs. However, the statutory right of tenants to organize includes those State-financed housing developments. This rule will extend the protection of tenant organization to include State-financed developments assisted under certain HUD programs.

This rule also makes a minor technical correction to a citation in the existing tenant participation regulation. Section 245.135(a)(3) of the rule intended to cross-reference 24 CFR part 24, subpart G; the CFR part was omitted.

Timetable:

Action	Date	FR Cite
NPRM	06/18/02	67 FR 41582
NPRM Comment Period End	08/19/02	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-3000

RIN: 2502–AH55

1174. • AUTHORITY TO WAIVE REGULATIONS UNDER PART 401 (FR-4791)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1715z-1; 12 USC 1735f-19(b); 42 USC 1437f; 42 USC 3535(d)

CFR Citation: 24 CFR 401

Legal Deadline: None

Abstract: This rule revises 24 CFR 401.3, indicating that the Assistant Secretary for Housing-Federal Housing Commissioner, and not the Director of the Office of Multifamily Housing Assistance Restructuring (OMHAR), can waive regulations under part 401 of title 24 of the Code of Federal Regulations.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Eliot Horowitz, Attorney Advisor/Office of the Assistant Secretary for Housing, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-1490

RIN: 2502–AH94

1175. RENEWAL OF EXPIRING SECTION 8 PROJECT-BASED ASSISTANCE CONTRACT (FR-4551)

Priority: Other Significant

Legal Authority: 12 USC 1715z-1; 12 USC 1735f-19(b); 42 USC 1437(c)(8); 42 USC 1437f note; 42 USC 3535(d)

CFR Citation: 24 CFR 401; 24 CFR 402

Legal Deadline: None

Abstract: This rule will replace interim part 402, which was published on September 11, 1998, together with interim part 401 that established the Mark-to-Market program. Subsequently HUD decided to separate the two parts and publish final part 401 separately, although the current rule makes minor conforming amendments to part 401 as well. Final part 402 will set forth the regulations governing the renewal of expiring Section 8 project-based assistance contracts, whether the projects rents are above or below market, except for renewals made as part of a mark-to-market restructuring plan under part 401.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-3000

RIN: 2502–AH47

1176. MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS (FR-4376)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 3535(d); 42 USC 5403; 42 USC 5424

CFR Citation: 24 CFR 3280

Legal Deadline: None

Abstract: This rule will amend the Federal Manufactured Home Construction and Safety Standards (FMHCSS) to update many of the standards that are incorporated by reference therein. These reference standards, which are developed by voluntary consensus or industry groups, provide necessary technical standards for the FMHCSS. These amendments will keep the FMHCSS current with the industries that use these reference standards by incorporating the latest edition of these standards and new relevant standards.

Timetable:

Action	Date	FR Cite
NPRM	10/30/98	63 FR 58570
NPRM Comment Period End	12/29/98	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth Cocke, Acting Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-6409

RIN: 2502–AH23

1177. RESPA—IMPROVING THE PROCESS FOR OBTAINING MORTGAGES (FR-4727)

Regulatory Plan: This entry is Seq. No. 70 in part II of this issue of the Federal Register.

RIN: 2502–AH85

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Department of Housing and Urban Development (HUD)
Office of Housing (OH)

Long-Term Actions

1178. SALE OF UNOCCUPIED AND SUBSTANDARD HUD-HELD HOUSING TO LOCAL GOVERNMENTS AND COMMUNITY DEVELOPMENT ORGANIZATIONS (FR-4658)

Priority: Other Significant

Legal Authority: 12 USC 1715z-11a; 42 USC 3535(d)

CFR Citation: 24 CFR ch II

Legal Deadline: None

Abstract: This proposed rule would provide for a program to sell properties that are vacant or substandard to local governments and community development corporations. The properties must be used for community revitalization purposes and must be held in the HUD inventory for at least 6 months.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joseph McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-1672

RIN: 2502–AH61

1179. MORTGAGE INSURANCE FOR THE REFINANCING OF EXISTING DEBT OF EXISTING HOSPITALS (FR-4618)

Priority: Other Significant

Legal Authority: 12 USC 1715b; 12 USC 1715n; 12 USC 1715z-7; 42 USC 3535(d)

CFR Citation: 24 CFR 242

Legal Deadline: None

Abstract: This rule will implement section 223(f) of the National Housing Act, which authorizes the Secretary of HUD to insure mortgages executed in connection with refinancing the debt of existing multifamily properties and health care facilities. This rule will implement this authority with respect to acute care hospitals. The purpose of the section 223(f) program is to provide hospitals the opportunity to refinance their long-term debt so that the hospitals can reduce their annual debt service and thus improve their financial viability. This in turn will further the congressional policy of assisting urgently needed hospitals that treat and care for persons who are acutely ill or injured and who otherwise require medical care and related services customarily furnished only by hospitals.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roger Miller, Acting Director for Office of Insured Health Facilities, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-0599

RIN: 2502–AH58

1180. RELEASE OF INFORMATION TO TENANTS AND OTHER PARTIES PURSUANT TO MAHRA (FR-4531)

Priority: Other Significant

Legal Authority: 42 USC 1437f note

CFR Citation: 24 CFR 401

Legal Deadline: None

Abstract: The rule is designed to provide tenants and other interested parties with access to the information needed for meaningful participation in the development of a restructuring plan, while ensuring appropriate protection of legitimate interest of project owners in confidential and proprietary business information.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Andrew Fay, Enforcement Liaison Specialist, Department of Housing and Urban Development, Office of Multifamily Assistance Restructuring
Phone: 202 708-0001

RIN: 2502–AH45

1181. MARK-TO-MARKET PROGRAM AMENDMENTS (FR-4751)

Priority: Other Significant

Legal Authority: PL 107-116, title VI

CFR Citation: 24 CFR 401

Legal Deadline: None

Abstract: This rule would make conforming changes to the mark-to-market regulations as necessary to fully implement the Mark-to-Market Program Extension Act of 2001, enacted as title VI of Pub. L. 107-116.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-3000

RIN: 2502–AH86

Department of Housing and Urban Development (HUD)
Office of Housing (OH)

Completed Actions

1182. NONPROFIT ORGANIZATION PARTICIPATION IN CERTAIN FHA SINGLE FAMILY ACTIVITIES; PLACEMENT AND REMOVAL PROCEDURES (FR-4585)

Priority: Other Significant

CFR Citation: 24 CFR 200

Completed:

Reason	Date	FR Cite
Final Action	06/06/02	67 FR 39238
Final Action Effective	07/08/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Vance Morris
Phone: 202 708-2121

RIN: 2502–AH49

HUD—OH

Completed Actions

1183. SINGLE FAMILY MORTGAGE INSURANCE; SECTION 203(K) CONSULTANT PLACEMENT AND REMOVAL PROCEDURES (FR-4592)

Priority: Other Significant

CFR Citation: 24 CFR 200; 24 CFR 203

Completed:

Reason	Date	FR Cite
Final Action	08/09/02	67 FR 52378
Final Action Effective	09/09/02	
Final Comment Period End	10/08/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Vance Morris
Phone: 202 708-2121

RIN: 2502–AH51

1184. IMPLEMENTATION OF MANUFACTURED HOUSING IMPROVEMENT ACT OF 2000 (FR-4665)

Priority: Other Significant

CFR Citation: 24 CFR 3284

Completed:

Reason	Date	FR Cite
NPRM	04/15/02	67 FR 18397
Final Action	08/13/02	67 FR 52832
Final Action Effective	09/12/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth Cocke
Phone: 202 708-6409

RIN: 2502–AH62

Department of Housing and Urban Development (HUD)
Office of Community Planning and Development (CPD)

Proposed Rule Stage

1185. CDBG BROWNFIELDS/SLUM/BLIGHT (FR-4699)

Priority: Other Significant

Legal Authority: 42 USC 3535(d); 42 USC 5301 et seq

CFR Citation: 24 CFR 570

Legal Deadline: None

Abstract: This rule will improve the ability of entitlement communities and States' grant recipients to use Community Development Block Grant (CDBG) funds for brownfields activities. The rule will clarify the eligibility of activities involving the cleanup and development of environmentally contaminated properties under section 105(a) of the Housing and Community Development Act of 1974, as amended. The rule also will increase CDBG recipients' flexibility to undertake activities meeting the national objective of preventing or eliminating slums or blighting conditions. The criteria for meeting the slum/blight national objective will be revised to specifically recognize economic obsolescence of buildings and the presence of environmental contaminants as blighting influences on an area or property. This rule will further clarify the list of activities that may be undertaken to address the slum/blight national objective criteria on a spot basis. Finally, this rule makes corresponding changes in the eligibility regulations governing the Section 108 Loan Guarantee component of the CDBG program.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: Steve Johnson, Director, State and Small Cities Division, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708-1322

RIN: 2506–AC12

1186. HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS (HOPWA) (FR-4708)

Priority: Other Significant

Legal Authority: 42 USC 12901 et seq

CFR Citation: 24 CFR 574

Legal Deadline: None

Abstract: The Housing Opportunities for Persons With AIDS (HOPWA) program was authorized in 1992 by title VIII, subtitle D, of the Cranston-Gonzalez National Affordable Housing Act/the AIDS Housing Opportunity Act. The program is designed to provide States and localities with resources and incentives to provide long-term comprehensive strategies for meeting the housing needs of persons with HIV/AIDS. This update to the regulation is intended to respond to the increased program knowledge in administering housing programs for persons living with HIV/AIDS.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Vos, Director, Office of HIV/AIDS Housing, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708-1934

RIN: 2506–AC11

1187. SUPPORTIVE HOUSING PROGRAM (FR-4616)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 11381; 42 USC 11389; 42 USC 3535(d)

CFR Citation: 24 CFR 583

Legal Deadline: None

Abstract: The Department of Housing and Urban Development is proposing to amend the Supportive Housing Program regulations. The regulations will be updated to clarify existing program requirements and to add new program requirements in accordance with recent statutory changes including requirements for some local matching funds and for permanent housing. Additionally, this rule will make the Supportive Housing Program regulations clearer and allow for the full flexibility of the McKinney Act.

HUD—CPD — **Proposed Rule Stage**

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local

Agency Contact: John D. Garrity, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708-4300

RIN: 2506–AC07

Department of Housing and Urban Development (HUD) Office of Community Planning and Development (CPD) — Final Rule Stage

1188. CDBG PROGRAM FOR STATES; COMMUNITY REVITALIZATION STRATEGY REQUIREMENTS AND MISCELLANEOUS TECHNICAL AMENDMENTS (FR-4081)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 11331 to 11388; 42 USC 12701 to 12711; 42 USC 12741 to 12756; 42 USC 12901 to 12912; 42 USC 3535(d); 42 USC 3601 to 3619; 42 USC 5300 to 5320

CFR Citation: 24 CFR 570; 24 CFR 91

Legal Deadline: None

Abstract: This rule integrates the Community Revitalization Strategies concept with the State CDBG program. This concept will provide States additional flexibility in meeting certain requirements regarding the program's national objectives and public benefit. This rule also makes several technical amendments to correct errors from previous rulemaking and to enhance and clarify the regulation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/22/96	61 FR 54914
Interim Final Rule Effective	11/21/96	
Interim Final Rule Comment Period End	02/16/97	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steve Johnson, Director, State and Small Cities Division, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708-1322

RIN: 2506–AB83

1189. PROHIBITION ON USE OF CDBG ASSISTANCE FOR JOB-PIRATING ACTIVITIES (FR-4556)

Priority: Other Significant

Legal Authority: 42 USC 3535(d); 42 USC 5301 to 5320

CFR Citation: 24 CFR 570

Legal Deadline: None

Abstract: This rule will implement section 588 of the Quality Housing and Work Responsibility Act of 1998 by revising HUD's regulations for the Community Development Block Grant (CDBG) program. Section 588 prohibits State and local governments from using CDBG funds for "job pirating" activities that are likely to result in significant job loss. Job pirating, in this context, refers to the use of CDBG funds to lure or attract a business and its jobs from one community to another community. The rule follows publication of an October 24, 2000 proposed rule, and takes into consideration the public comments received on the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	10/24/00	65 FR 63756
NPRM Comment Period End	12/26/00	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Richard J. Kennedy, Office of Block Grant Assistance, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708-3587

RIN: 2506–AC04

1190. SUPPORTIVE HOUSING PROGRAM — INCREASING OPERATING COST PERCENTAGE (FR-4576)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 11389; 42 USC 3535(d)

CFR Citation: 24 CFR 583

Legal Deadline: None

Abstract: This rule amended the Supportive Housing Program regulations by changing the number of years for which the grant can cover 75 percent of operating costs from the first two years to all years of the grant term. This rule will be made final as part of FR-4616, revising the Supportive Housing Program generally.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/12/00	65 FR 30822
Interim Final Rule Effective	06/12/00	
Interim Final Rule Comment Period End	07/11/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local

Agency Contact: John D. Garrity, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708-4300

RIN: 2506–AC05

1191. DESIGNATION OF RENEWAL COMMUNITIES AND THIRD ROUND EMPOWERMENT ZONES (FR-4663)

Priority: Other Significant

Legal Authority: PL 106-554; 26 USC subchapter U; 26 USC subchapter X; 42 USC 3535(d)

HUD—CPD — **Final Rule Stage**

CFR Citation: 24 CFR 598; 24 CFR 599

Legal Deadline: Final, Statutory, April 23, 2001, Community Renewal Tax Relief Act of 2000 requires Renewal Communities regulations no later than 4 months after the date of enactment, December 21, 2000.

Abstract: Renewal Communities: This part of the rule will implement section 101 of the Community Renewal and Tax Relief Act of 2000 by setting forth policies and procedures applicable to the designation of Renewal Communities, authorized under subchapter X of the Internal Revenue Code of 1986.

Empowerment Zones: Third Round - This part of the rule will implement section 111 of the Community Renewal and Tax Relief Act of 2000 by setting forth policies and procedures applicable to the third round of designations of urban empowerment zones, authorized under subchapter U of the Internal Revenue Code 1986.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/09/01	66 FR 35850
Interim Final Rule Effective	08/08/01	
Interim Final Rule Comment Period End	09/07/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Pamela Glekas, Director, Empowerment Zones/Empowerment Communities Initiative, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708-6339

RIN: 2506–AC09

Department of Housing and Urban Development (HUD) Office of Community Planning and Development (CPD) — Completed Actions

1192. COMMUNITY DEVELOPMENT BLOCK GRANT-ASSISTED DEMOLITION OF HUD-OWNED HOUSING UNITS (FR-4698)

Priority: Substantive, Nonsignificant

CFR Citation: 24 CFR 570

Completed:

Reason	Date	FR Cite
Final Action	07/17/02	67 FR 47212
Final Action Effective	08/16/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sue Miller
Phone: 202 708-1577

RIN: 2506–AC10

Department of Housing and Urban Development (HUD) Office of Fair Housing and Equal Opportunity (FHEO) — Final Rule Stage

1193. FAIR HOUSING ACT REGULATION; CONFORMING AMENDMENT; UPDATE TO REFLECT CURRENT EDITION OF AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI) (FR-4554)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 3535(d); 42 USC 3600 to 3620

CFR Citation: 24 CFR 100

Legal Deadline: None

Abstract: Subpart D of HUD's Fair Housing Act regulations (24 CFR part 100), which address the accessibility requirements of the Fair Housing Act, has not been updated since 1991. These regulations reference compliance with the building standards of the American National Standards Institute (ANSI), but the reference to the ANSI edition of 1986 has long been superseded by two more recent editions of 1992 and 1998. Although parties subject to the Fair Housing Act regulations may continue to refer to the 1986 edition of ANSI, the regulations need to be updated to also offer compliance with the 1992 and 1998 editions as a safe harbor for compliance. This rule will update the regulations to provide that compliance with the appropriate requirements of the 1986, 1992 or 1998 editions of ANSI A117.1 suffices to satisfy the accessibility requirements of the Fair Housing Act.

Timetable:

Action	Date	FR Cite
Notice	03/23/00	65 FR 15740
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Cheryl Kent, Special Advisor for Disability Policy, Office of Enforcement, Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity
Phone: 202 708-2333

RIN: 2529–AA88

Department of Housing and Urban Development (HUD)
Office of Fair Housing and Equal Opportunity (FHEO)

Long-Term Actions

1194. FAIR HOUSING ACT REGULATIONS AMENDMENTS: STANDARDS GOVERNING SEXUAL HARASSMENT (FR-4597)

Priority: Other Significant

Legal Authority: 42 USC 3535(d); 42 USC 3600 to 3620

CFR Citation: 24 CFR 100

Legal Deadline: None

Abstract: This final rule would amend HUD's Fair Housing regulations to clarify the standards the Department will use in sexual harassment cases.

Timetable:

Action	Date	FR Cite
NPRM	11/13/00	65 FR 67666
NPRM Comment Period End	01/12/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Enzel, Deputy Asistant Secretary for Enforcement and Programs, Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity
Phone: 202 619-8046

RIN: 2529–AA89

1195. CERTIFICATION AND FUNDING OF STATE AND LOCAL FAIR HOUSING ENFORCEMENT AGENCIES (FR-4748)

Priority: Other Significant

Legal Authority: 42 USC 3601 to 3619; 42 USC 3535(d)

CFR Citation: 24 CFR 115

Legal Deadline: None

Abstract: The Fair Housing Assistance Program (FHAP) provides assistance to State and local fair housing enforcement agencies to build an intergovernmental enforcement structure to further fair housing. HUD provides assistance to State and local fair housing enforcement agencies that administer fair housing laws that are substantially equivalent to the Fair Housing Act (Title VIII of the Civil Rights Act of 1968; 42 USC 3601-3619). The FHAP program provides support for complaint processing, training, technical assistance, education and outreach, data and information systems and other activities that will further fair housing within the State or local agency's jurisdiction. HUD intends to update its part 115 regulations with respect to both the certification of substantially equivalent agencies and the overall administration of the FHAP program.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: Myron Newry, Director, FHIP/FHAP Support Division, Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity
Phone: 202 708-0800

RIN: 2529–AA90

1196. ECONOMIC OPPORTUNITIES FOR LOW- AND VERY-LOW-INCOME PERSONS (FR-2898)

Priority: Other Significant

Legal Authority: 12 USC 1701u; 42 USC 1450; 42 USC 3301; 42 USC 3535(d)

CFR Citation: 24 CFR 135

Legal Deadline: None

Abstract: The regulations at 24 CFR part 135 were revised substantially to incorporate the statutory amendments in the Housing and Community Development Act of 1992, to reflect certain changes in the design of the Department's programs that are subject to the section 3 regulations, to clarify the obligations of individuals and entities subject to the requirements of section 3, and to simplify the Department's administration of section 3 requirements. The final rule may make further revisions in response to public comment.

Timetable:

Action	Date	FR Cite
NPRM	10/08/93	58 FR 52534
Notice	11/09/93	58 FR 59423
Notice Comment Period End	12/08/93	
Interim Final Rule	06/30/94	59 FR 33886
Interim Final Rule Effective	08/01/94	
Interim Final Rule Comment Period End	08/29/94	
Extension of Effective Period of Interim Rule	05/31/95	60 FR 28325
Extension Effective	06/30/96	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local

Agency Contact: Valerie Hayes, Director, Office of Management & Policy, Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity
Phone: 202 708-3685

RIN: 2529–AA49

Department of Housing and Urban Development (HUD)
Office of Administration (OA)

Final Rule Stage

1197. HUD ACQUISITION REGULATION (FR-4705)

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 41 USC 251; 42 USC 3535(d)

CFR Citation: 48 CFR 2401

Legal Deadline: None

Abstract: This rule will implement miscellaneous changes to the HUD Acquisition Regulation (HUDAR) including but not limited to corrections of regulatory citations due to revisions made to the Federal Acquisition Regulation (FAR) since the last publication of the HUDAR; revisions reflecting changes in the Department's requirements regarding organizational conflict of interest, ratification of unauthorized commitments; and disclosure of information provided to contractors.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	

HUD—OA

Final Rule Stage

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Edward L. Girovasi Jr., Director, Policy & Field Operations Division, Office of the Chief Procurement Officer, Department of Housing and Urban Development, Office of Administration
Phone: 202 708-0294

RIN: 2535–AA26

Department of Housing and Urban Development (HUD)
Office of the Inspector General (HUDIG)

Proposed Rule Stage

1198. OFFICE OF INSPECTOR GENERAL SUBPOENAS AND PRODUCTION IN RESPONSE TO SUBPOENAS OR DEMANDS OF COURTS OR OTHER AUTHORITIES (FR-4742)

Priority: Routine and Frequent

Legal Authority: Inspector General Act of 1976 as authorized (5 USC app.) and 42 USC 3537(d)

CFR Citation: 24 CFR 2004

Legal Deadline: None

Abstract: This rule would amend the regulations of the Office of Inspector General (OIG) to implement the statutory requirements concerning the issuance of OIG subpoenas and responses to subpoenas issued to OIG employees in proceedings where OIG is not a party.

Timetable:

Action	Date	FR Cite
NPRM	09/20/02	67 FR 59428
NPRM Comment Period End	11/19/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bryan Saddler, Counsel to the Inspector General, Department of Housing and Urban Development, Office of the Inspector General, Room 8260, 451 7th Street, SW, Washington, DC 20410
Phone: 202 708-1613

RIN: 2508–AA13

Department of Housing and Urban Development (HUD)
Office of the Inspector General (HUDIG)

Completed Actions

1199. IMPLEMENTATION OF THE FREEDOM OF INFORMATION ACT (FR-4716)

Priority: Substantive, Nonsignificant

CFR Citation: 24 CFR 2002

Completed:

Reason	Date	FR Cite
Final Action	07/17/02	67 FR 47216
Final Action Effective	08/16/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bryan Saddler
Phone: 202 708-1613

RIN: 2508–AA12

Department of Housing and Urban Development (HUD)
Office of Public and Indian Housing (PIH)

Proposed Rule Stage

1200. CHANGES TO THE PUBLIC HOUSING ASSESSMENT SYSTEM (PHAS)(FR-4707)

Regulatory Plan: This entry is Seq. No. 72 in part II of this issue of the **Federal Register**.

RIN: 2577–AC32

1201. • STREAMLINING AND DEREGULATION OF PUBLIC HOUSING AGENCY PLANS (FR-4788)

Regulatory Plan: This entry is Seq. No. 73 in part II of this issue of the **Federal Register**.

RIN: 2577–AC40

1202. PUBLIC HOUSING CAPITAL FUND PROGRAM (FR-4507)

Priority: Other Significant

Legal Authority: 42 USC 1437g; 42 USC 3535(d)

CFR Citation: 24 CFR 905

Legal Deadline: None

Abstract: This rule will implement the regulatory framework for the Capital Fund Program that will govern the use of the assistance made available through the Capital Fund formula. The new rule at part 905 will replace and remove several other rules that currently govern a PHA's use of HUD assistance including part 941 - Public Housing Development and part 968 - Public Housing Modernization. This rule will continue and expand the streamlining of procedures and requirements initiated under the Comprehensive Grant and Comprehensive Improvement programs at part 968.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William Thorson, Director, Office of Capital Improvements, Department of Housing

and Urban Development, Office of Public and Indian Housing
Phone: 202 708-1640

RIN: 2577–AC16

1203. MIXED-FINANCE PUBLIC HOUSING DEVELOPMENT (FR-4499)

Priority: Other Significant

Legal Authority: 42 USC 1437z-7; 42 USC 3535(d)

CFR Citation: 24 CFR 905

Legal Deadline: None

Abstract: This rule will implement amendments to the Department's Mixed Finance Program to reflect statutory changes enacted on October 21, 1998. Also, the rule will revise the Mixed Finance Program so that the program conforms to HUD's new Capital Fund regulations and will clarify the specific program requirements and procedures that apply to the Mixed Finance Program, including operating-subsidy-only mixed-finance developments.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Milan Ozdinec, Deputy Assistant Secretary, Office of Public Housing Investments, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 401-8881

RIN: 2577–AC09

1204. • DESIGNATED HOUSING (FR-4755)

Priority: Other Significant

Legal Authority: 42 USC 1437c

CFR Citation: 24 CFR 945

Legal Deadline: None

Abstract: This rule provides streamlined requirements for Public Housing Agencies (PHAs) that plan to designate projects for elderly families only, disabled families only, or elderly and disabled families.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patricia Arnaudo, Senior Housing Program Manager, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 7th Street SW., Washington, DC 20410
Phone: 202 708-0744

RIN: 2577–AC36

1205. DENIAL OF ADMISSION AND TERMINATION OF TENANCY OF FUGITIVE FELONS (FR-4758)

Priority: Other Significant

Legal Authority: 42 USC 13661 (c); 42 USC 1437d (l); 42 USC 1437f (d)(1)(B)

CFR Citation: 24 CFR 960.204; 24 CFR 966.4; 24 CFR 982.310; 24 CFR 982.553

Legal Deadline: None

Abstract: This rule amends the regulation for public housing and Section 8 programs to provide for denial of admission and termination of tenancy for fugitive felons.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patricia Arnaudo, Senior Housing Program Manager, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 7th Street SW., Washington, DC 20410
Phone: 202 708-0744

RIN: 2577–AC38

1206. RESIDENT PARTICIPATION IN PUBLIC AND SECTION 8 HOUSING (FR-4657)

Priority: Other Significant

Legal Authority: 42 USC 1437c-1; 42 USC 1437r; 42 USC 1437t; 42 USC 1437z-6; 42 USC 3535(d); 42 USC 1437d; 42 USC 1437g; 42 USC 1437l; 42 USC 1437; 12 USC 1715z-1b(a)

CFR Citation: 24 CFR 964

Legal Deadline: None

Abstract: This rule would update existing provisions of 24 CFR 964 and incorporate new provisions of the Quality Housing and Work Responsibility Act of 1998 related to resident/tenant participation. In particular, the rule would establish policies, procedures, and requirements for participating in the Resident Opportunities and Self-Sufficiency (ROSS) Program. Additionally, the proposed rule contains expanded definitions and other general information sections as part of HUD's long-standing efforts to support resident organizations and resident self-sufficiency.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Jeraldene White, Senior Program Manager, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-4214

RIN: 2577–AC26

1207. PUBLIC HOUSING PROGRAM — DEMOLITION OR DISPOSITION OF PUBLIC HOUSING PROJECTS (FR-4598)

Priority: Other Significant

Legal Authority: 42 USC 1437p; 42 USC 3535(d)

CFR Citation: 24 CFR 970

Legal Deadline: None

Abstract: This rule will revise HUD's regulations regarding demolition and disposition of public housing projects, in accordance with section 531 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276). This rule will establish the general and specific requirements for HUD approval of demolition and disposition applications, relocation of residents, resident participation in the form of consultation and opportunity to purchase, new requirements regarding resident relocation, the PHA Plan and local government consultation and a new authority for a PHA to demolish a small number of their units without a formal application under certain circumstances, referred to as "de minimis" demolition.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ainars Rodins, Director, Special Applications Center, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 312 353-6236

RIN: 2577–AC20

1208. CONVERSION OF DEVELOPMENTS FROM PUBLIC HOUSING STOCK; METHODOLOGY FOR COMPARING COSTS OF PUBLIC HOUSING AND TENANT-BASED ASSISTANCE (FR-4718)

Priority: Other Significant

Legal Authority: 42 USC 1437t; 1437z-5; 3535(d)

CFR Citation: 24 CFR 972

Legal Deadline: None

Abstract: This rule would establish the cost methodology that Public Housing Agencies (PHAs) must use under HUD's programs for the required and voluntary conversion of public housing developments to tenant-based assistance. Both programs require that PHAs, before undertaking any conversion activity, compare the cost of providing tenant-based assistance with the cost of continuing to operate the development as public housing. The cost methodology would be codified as an appendix to HUD's regulations for the required and voluntary conversion programs at 24 CFR part 972. The cost methodology was originally contained in HUD's July 23, 1999 proposed rule on voluntary conversions (although the methodology also applies to required conversions). HUD has decided to significantly revise the proposed cost methodology, based both on the public comments received on the proposed rule and upon further consideration of the cost factors that should be assessed by PHAs in making conversion determinations. Accordingly, HUD has decided to issue this new rule, which will provide the public with an additional opportunity to comment on the methodology that will be used for the required cost comparisons.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rod Solomon, Deputy Assistant Secretary for Policy, Program and Legislative Initiatives, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0713

RIN: 2577–AC33

1209. PROJECT-BASED VOUCHER PROGRAM (FR-4636)

Regulatory Plan: This entry is Seq. No. 71 in part II of this issue of the Federal Register.

RIN: 2577–AC25

1210. IMPLEMENTATION OF STATUTORY REVISIONS TO NAHASDA (FR-4750)

Priority: Other Significant

Legal Authority: 25 USC 4101 et seq; 42 USC 3535(d)

CFR Citation: 24 CFR 1000

Legal Deadline: None

Abstract: This rule would implement statutory amendments made to the Native American Housing Assistance and Self-Determination Act of 1996 (25 USC 4101 et seq) (NAHASDA) by the American Homeownership and Economic Opportunity Act (Pub.L. 106-569, approved December 27, 2000) and the Omnibus Indian Advancement Act (Pub.L. 106-568, approved December 27, 2000). (With minor exceptions, these two laws made identical amendments to NAHASDA). The rule will update the NAHASDA regulations to conform to self-implementing statutory amendments not reflected in the regulations.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Tribal

Agency Contact: Ted Key, Acting Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, Office of Public and Indian Housing, Washington, DC 20741
Phone: 202 401-7914

RIN: 2577–AC37

1211. NAHASDA HOUSING ASSISTANCE FOR NATIVE HAWAIIANS (FR-4668)

Priority: Other Significant

Legal Authority: 12 USC 1715z-13a; 25 USC 4101 et seq; 42 USC 3535(d)

CFR Citation: 24 CFR 1006; 24 CFR 1007

Legal Deadline: Final, Statutory, October 1, 2001.
Section 807 of the American Homeownership and Economic Opportunity Act of 2001 requires that HUD issue final regulations by October 1, 2001.

Abstract: This rule implements the provisions contained in title V, subtitle B of the American Homeownership and Economic Opportunity Act of 2000. These provisions add a new title VIII to the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996. Under NAHASDA, HUD provides grants, loan guarantees, and technical assistance to Indian tribes and Alaska Native villages for the development and operation of low-income housing in Indian areas. New title VIII expands the scope of NAHASDA to include housing assistance to Native Hawaiians, and establishes statutory requirements specific to Native Hawaiian assistance. Part 1006 of this rule will implement the Native Hawaiian Housing Block Grant Program. Part 1007 will implement the Native Hawaiian Housing Loan Guarantee Program. HUD will publish a separate rule with additional program administration requirements.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/13/02	67 FR 40774
Interim Final Rule Effective	07/15/02	
Interim Final Rule Comment Period End	08/12/02	
NPRM	11/00/02	

HUD—PIH

Proposed Rule Stage

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ted Key, Acting Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, Office of Public and Indian Housing, Washington, DC 20741
Phone: 202 401-7914

RIN: 2577–AC27

Department of Housing and Urban Development (HUD)
Office of Public and Indian Housing (PIH)

Final Rule Stage

1212. DEREGULATION FOR SMALL PUBLIC HOUSING AGENCIES (FR-4753)

Regulatory Plan: This entry is Seq. No. 74 in part II of this issue of the Federal Register.

RIN: 2577–AC34

1213. PUBLIC HOUSING HOMEOWNERSHIP PROGRAMS (FR-4504)

Priority: Other Significant

Legal Authority: 42 USC 1437z-4; 42 USC 3535(d)

CFR Citation: 24 CFR 906

Legal Deadline: None

Abstract: This rule will set forth the requirements and procedures governing a new statutory homeownership program to be administered by public housing agencies. Under this rule, a PHA makes public housing dwelling units available for purchase by low-income families as their principal residences.

Timetable:

Action	Date	FR Cite
NPRM	09/14/99	64 FR 49932
NPRM Comment Period End	11/15/99	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Milan Ozdinec, Deputy Assistant Secretary, Office of Public Housing Investments, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 401-8881

RIN: 2577–AC15

1214. PUBLIC HOUSING DEVELOPMENT TOTAL DEVELOPMENT COST (TDC) (FR-4489)

Priority: Other Significant

Legal Authority: 42 USC 1437b; 42 USC 1437c; 42 USC 1437g; 43 USC 3535(d)

CFR Citation: 24 CFR 941

Legal Deadline: None

Abstract: This rule will amend HUD's regulations governing Total Development Cost (TDC) for the development of public housing. The amendments will implement changes made to the statutory TDC requirements. Among other changes, this rule will limit the amount of public housing funds that a public housing agency may use to pay for housing construction costs. The rule will also provide that demolition and environmental hazard remediation costs are included in TDC only to the extent that such costs are associated with the replacement of public housing units on the project site.

Timetable:

Action	Date	FR Cite
NPRM	01/04/01	66 FR 1008
NPRM Comment Period End	03/05/01	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William Thorson, Director, Office of Capital Improvements, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-1640

RIN: 2577–AC05

1215. REQUIRED CONVERSION OF DEVELOPMENT FROM PUBLIC HOUSING STOCK (FR-4475)

Priority: Other Significant

Legal Authority: 42 USC 1437z-5; 42 USC 3535(d)

CFR Citation: 24 CFR 972

Legal Deadline: None

Abstract: This rule implements a revision to the statute that authorizes HUD's public housing and Section 8 housing assistance programs. The revision requires Public Housing Agencies (PHAs) to identify distressed public housing developments that must be converted to tenant-based assistance. If it would be more expensive to modernize and operate a distressed development for its remaining useful life than to provide tenant-based assistance to all residents, or the PHA cannot assure the long-term viability of a distressed development, then the PHA must develop and carry out a five-year plan to remove the development from its public housing inventory, and convert it to tenant-based assistance. This rule follows publication of a July 23, 1999 proposed rule, and takes into consideration the public comments received on the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	07/23/99	64 FR 40232
NPRM Comment Period End	09/21/99	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rod Solomon, Deputy Assistant Secretary for Policy, Program and Legislative Initiatives, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0713

RIN: 2577–AC01

HUD—PIH

Final Rule Stage

1216. VOLUNTARY CONVERSION OF DEVELOPMENTS FROM PUBLIC HOUSING STOCK (FR-4476)

Priority: Other Significant

Legal Authority: 42 USC 1437t; 42 USC 3535(d)

CFR Citation: 24 CFR 972

Legal Deadline: None

Abstract: This rule implements a revision to the statute authorizing HUD's public housing and Section 8 housing assistance programs. The revision authorizes Public Housing Agencies (PHAs) to convert a development to tenant-based assistance by removing the development (or a portion of a development) from its public housing inventory and providing for relocation of the residents or provision of tenant-based assistance to them. This action is permitted only when that change would be cost effective, be beneficial to residents of the development and the surrounding area, and not have an adverse impact on the availability of affordable housing. This rule follows publication of a July 23, 1999 proposed rule, and takes into consideration the public comments received on the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	07/23/99	64 FR 40240
NPRM Comment Period End	09/21/99	
Final Rule	06/22/01	66 FR 33616
Final Rule Effective	07/23/01	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rod Solomon, Deputy Assistant Secretary for Policy, Program and Legislative Initiatives, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0713

RIN: 2577–AC02

1217. SECTION 8 HOUSING CHOICE VOUCHER PROGRAM; EXPANSION OF PAYMENT STANDARDS PROTECTION (FR-4586)

Priority: Other Significant

Legal Authority: 42 USC 1437f; 42 USC 3535(d)

CFR Citation: 24 CFR 982

Legal Deadline: None

Abstract: This rule amends HUD's regulations for the Housing Choice Voucher Program to expand the regulatory payment standard protection against subsidy reduction. The previous regulations limited payment standard protection to the first 24 months of the lease term. This rule provides that a family is not subject to a subsidy reduction until the second regular reexamination of family income and composition following the payment standard reduction. This protection extends for the duration of the lease term. This rule follows publication of a July 10, 2000 interim rule, and takes into consideration the public comments received on the interim rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/10/00	65 FR 42508
Interim Final Rule Effective	08/09/00	
Interim Final Rule Comment Period End	09/08/00	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0477

RIN: 2577–AC18

1218. SECTION 8 HOMEOWNERSHIP PROGRAM; PILOT PROGRAM FOR HOMEOWNERSHIP ASSISTANCE FOR DISABLED FAMILIES (FR-4661)

Priority: Other Significant

Legal Authority: 42 USC 1437f; 42 USC 3535(d)

CFR Citation: 24 CFR 982

Legal Deadline: None

Abstract: This rule implements the three-year pilot program authorized by section 302 of the American Homeownership and Economic Opportunity Act of 2000 (Pub.L. 106-569, approved December 27, 2000). A public housing agency (PHA) may elect to provide homeownership assistance to a disabled family under the pilot program, rather than under the Housing Choice Voucher Program homeownership option. Under the pilot program, a PHA provides homeownership assistance to a disabled family residing in a home purchased and owned by one or more members of the family. The final rule incorporates the requirements for the pilot program in HUD's regulations for the homeownership option. In addition to the amendments implementing section 302, HUD has taken the opportunity afforded by this rule to make several clarifying and technical amendments to its September 12, 2000 final rule establishing the homeownership option. This final rule follows publication of a June 22, 2001 interim rule, and takes into consideration the public comments received on the interim rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/22/01	66 FR 33610
Interim Final Rule Effective	07/23/01	
Interim Final Rule Comment Period End	08/21/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0477

RIN: 2577–AC24

1219. SECTION 8 HOMEOWNERSHIP PROGRAM: DOWNPAYMENT ASSISTANCE GRANTS AND STREAMLINING AMENDMENTS (FR-4670)

Priority: Other Significant

Legal Authority: 42 USC 1437f; 42 USC 3535(d)

CFR Citation: 24 CFR 982

Legal Deadline: None

Abstract: This rule implements section 301 of the American Homeownership and Economic Opportunity Act of 2000, which amends the "homeownership option" under the Housing Choice

Voucher Program. Under section 301, a Public Housing Agency (PHA) may, in lieu of paying a monthly homeownership assistance payment on behalf of a family, provide homeownership assistance for the family in the form of a single grant to be used toward the downpayment required in connection with the purchase of the home. Implementation of these downpayment assistance grants is anticipated for Federal fiscal year 2003. In addition to implementation of section 301, this final rule also clarifies and streamlines several regulatory requirements applicable to both downpayment grants and monthly homeownership assistance payments provided under the homeownership option. This rule follows publication of a June 13, 2001 proposed rule and takes into consideration the public comments received on the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	06/13/01	66 FR 32198
NPRM Comment Period End	08/13/01	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0477

RIN: 2577–AC28

1220. HOUSING CHOICE VOUCHER PROGRAM HOMEOWNERSHIP OPTION: ELIGIBILITY OF PHA OWNED OR CONTROLLED UNITS (FR-4759)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1437f; 42 USC 3535(I)

CFR Citation: 24 CFR 982

Legal Deadline: None

Abstract: This rule provides that units owned or substantially controlled by a public housing agency (PHA) are eligible for purchase under the Housing Choice Voucher Program homeownership option. The inclusion of PHA owned or controlled properties among properties eligible for purchase under the homeownership option will expand the availability of housing and affordable homeownership opportunities for voucher families participating in the homeownership option. The rule also establishes procedures to remove potential conflicts of interest where the PHA is the seller. Specifically, the rule provides that an independent entity must perform certain administrative duties for which the PHA would normally be responsible. These provisions are modeled on the requirements for PHA-owned units in the voucher rental program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/28/02	67 FR 65864
Interim Final Rule Effective	11/27/02	
Interim Final Rule Comment Period End	12/27/02	
Final Rule	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0477

RIN: 2577–AC39

1221. REVISIONS TO SEMAP LEASE-UP INDICATOR (FR-4604)

Priority: Other Significant

Legal Authority: 42 USC 1437a; 42 USC 1437c; 42 USC 1437f; 42 USC 3535(d)

CFR Citation: 24 CFR 985

Legal Deadline: None

Abstract: This rule revises the way HUD measures and verifies performance under the lease-up indicator for the Section 8 Management Assessment Program (SEMAP). The rule revises the lease-up standard to measure the higher of the percent of units leased during the Public Housing Agency's (PHA) SEMAP rating period or the percent of available budget authority expended during the PHA's SEMAP rating period. In addition, this rule also revises the SEMAP regulations to provide for automated signature of the required SEMAP certification. The rule follows publication of an October 1, 2001, interim rule, and takes into consideration the public comments received on the interim rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/01/01	66 FR 50004
Interim Final Rule Effective	10/31/01	
Interim Final Rule Comment Period End	11/30/01	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0477

RIN: 2577–AC21

Department of Housing and Urban Development (HUD)
Office of Public and Indian Housing (PIH)

Long-Term Actions

1222. OPERATING FUND ALLOCATION FORMULA (FR-4425)

Priority: Other Significant

Legal Authority: 42 USC 1437g; 42 USC 3535(d)

CFR Citation: 24 CFR 990

Legal Deadline: None

Abstract: This final rule will follow publication of a March 29, 2001 interim rule that governs the determination of funding distribution to public housing agencies under the Operating Fund. The Conference Report to HUD's FY 2000 Appropriations Act (Pub. L. 106-74, approved October 20, 1999) directs

HUD to contract with the Harvard University Graduate School of Design to conduct a study of the cost incurred in operating well run public housing and provides the results to the negotiated rulemaking committee and the appropriate congressional committees. As portions of the study are completed, HUD is meeting with representatives of the negotiated rulemaking committee that helped HUD develop the Operating Fund proposed rule, as well as other interested parties. These meetings have also been open to the public. HUD will develop the final rule once the cost study is completed, taking into account the input from interested members of the public.

Timetable:

Action	Date	FR Cite
Notice	02/03/99	64 FR 5570
Notice Comment Period End	03/05/99	
NPRM	07/10/00	65 FR 42488
NPRM Comment Period End	08/09/00	
Interim Final Rule	03/29/01	66 FR 17276
Interim Final Rule Effective	04/30/01	
Interim Final Rule Comment Period End	05/29/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen Sprague, Funding and Financial Management Division, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-1872

RIN: 2577–AB88

Department of Housing and Urban Development (HUD)
Office of Public and Indian Housing (PIH)

Completed Actions

1223. IMPLEMENTATION OF PUBLIC LAW 106-504: ELIGIBILITY OF CITIZENS OF THE FREELY ASSOCIATED STATES FOR FEDERALLY ASSISTED HOUSING (FR-4754)

Priority: Substantive, Nonsignificant

CFR Citation: 24 CFR 5; 24 CFR 960.206; 24 CFR 960.207; 24 CFR 960.407

Completed:

Reason	Date	FR Cite
Final Rule	10/23/02	67 FR 65272
Final Action Effective	11/22/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Rod Solomon
Phone: 202 708-0713

RIN: 2577–AC35

1224. PUBLIC HOUSING AGENCY PLANS: DECONCENTRATION—AMENDMENT TO ESTABLISHED INCOME RANGE DEFINITION (FR-4677)

Priority: Other Significant

CFR Citation: 24 CFR 903

Completed:

Reason	Date	FR Cite
Final Action	08/06/02	67 FR 51030
Final Rule Effective	09/05/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local

Agency Contact: Rod Solomon
Phone: 202 708-0713

RIN: 2577–AC31

1225. EXCEPTION PAYMENT STANDARD TO OFFSET INCREASE IN UTILITY COSTS IN THE HOUSING CHOICE VOUCHER PROGRAM (FR-4672)

Priority: Substantive, Nonsignificant

CFR Citation: 24 CFR 982

Completed:

Reason	Date	FR Cite
Final Action	09/04/02	67 FR 56688
Final Action Effective	10/04/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Gerald J. Benoit
Phone: 202 708-0477

RIN: 2577–AC29

[FR Doc. 02–23909 Filed 12–06–02; 8:45 am]

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Federal Register

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The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions

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Part X

Department of the Interior

Semiannual Regulatory Agenda

DEPARTMENT OF THE INTERIOR (DOI)

DEPARTMENT OF THE INTERIOR

Office of the Secretary

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Semiannual Regulatory Agenda

AGENCY: Office of the Secretary, Interior.

ACTION: Semiannual regulatory agenda.

SUMMARY: This notice provides the semiannual agenda of rules scheduled for review or development between October 2002 and April 2003. The Regulatory Flexibility Act and Executive Order 12866 require publication of the agenda.

ADDRESSES: Unless otherwise indicated, all agency contacts are located at the Department of the Interior, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: You should direct all comments and inquiries with regard to these rules to the appropriate agency contact. You should direct general comments relating to the agenda to the Office of Executive Secretariat, Department of the Interior, at the address above or on 202-208-5257 or 202-208-3071.

SUPPLEMENTARY INFORMATION: With this publication, the Department satisfies the requirement of Executive Order 12866 that the Department publish an agenda of rules that we have issued or expect to issue and of currently effective rules that we have scheduled for review.

Simultaneously, the Department meets the requirement of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) to publish an agenda in April and October of each year identifying rules that will have significant economic effects on a substantial number of small entities. We have specifically identified in the agenda rules that will have such effects.

For this edition of the Department's regulatory agenda, we have included the most important significant regulatory actions in the Regulatory Plan, which appears in part II of today's **Federal Register**. The table of contents below lists the Regulatory Plan entries and denotes them by a bracketed bold reference that directs the reader to the appropriate sequence number in part II.

Date: October 3, 2002.

Richard A. Stephan,

Federal Register Liaison Officer.

Assistant Secretary for Policy, Management and Budget—Proposed Rule Stage

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Assistant Secretary for Policy, Management and Budget—Final Rule Stage

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Assistant Secretary for Policy, Management and Budget—Completed Actions

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United States Fish and Wildlife Service—Prerule Stage

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United States Fish and Wildlife Service—Prerule Stage (Continued)

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United States Fish and Wildlife Service—Proposed Rule Stage

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1245	Endangered and Threatened Wildlife and Plants; Tibetan Antelope	1018-AF49
1246	Injurious Wildlife; Addition of the Asian Swamp Eel	1018-AF53
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1252	Endangered and Threatened Wildlife; Establishment of a Nonessential Experimental Population of 2 Fishes in Shoal Creek, Alabama and Tennessee	1018-AH44
1253	Endangered and Threatened Plants; Reclassification of the Papery Whitlow-Wort, Wireweed and Sandlace From Endangered to Threatened.	1018-AH51
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1360	Fiscal Year 2002 Private Stewardship Grants Program; Program Implementation	1018-AI56
1361	Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of the Black-Footed Ferret in South-Central South Dakota	1018-AI60
1362	Endangered and Threatened Wildlife and Plants; Listing the Sonoma County Distinct Population Segment of the California Tiger Salamander as Endangered	1018-AI61

United States Fish and Wildlife Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1363	Migratory Bird Permits; Specific Permit Provisions; Import and Export Permits; Banding or Marking Permits; and Scientific Collecting Permits	1018-AE63
1364	Migratory Bird Permits; Introduction, General Requirements and Exceptions	1018-AE64
1365	Implementation of the 1994 Amendments to the Marine Mammal Protection Act	1018-AE72
1366	Endangered and Threatened Wildlife and Plants; Delisting of the Bald Eagle Throughout the Lower 48 States	1018-AF21
1367	Taking of Marine Mammals by Level B Harassment; Issuance of General Authorization for Scientific Research and Permits for Photography, Educational, and Commercial Purposes	1018-AF26
1368	Endangered and Threatened Wildlife and Plants; Establishment of a Special Rule for the Canada Lynx	1018-AF40
1369	Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Three Plants From the Mariana Islands and Guam	1018-AG09
1370	Endangered and Threatened Wildlife and Plants; Endangered Status for 12 Species of Picture-Wing Flies From the Hawaiian Islands	1018-AG23
1371	Migratory Bird Permits; Take of Migratory Birds by Federal Agencies	1018-AG56
1372	Endangered and Threatened Wildlife and Plants; Listing of the Miami Blue Butterfly	1018-AH30
1373	Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for the Scaleshell Mussel	1018-AH35
1374	Endangered and Threatened Wildlife and Plants; Listing of the Sacramento Mountains Checkerspot Butterfly and Proposed Designation of Critical Habitat	1018-AH40
1375	Endangered and Threatened Wildlife; Removal of Four Ash Meadow Species From the List of Endangered and Threatened Wildlife and Plants	1018-AH49
1376	Endangered and Threatened Wildlife; Reclassification of the Marianna Fruit Bat on Guam From Endangered to Threatened	1018-AH55
1377	Endangered and Threatened Wildlife and Plants; Listing the Dolly Varden as a Threatened Species in Washington Due to Similarity of Appearance to Bull Trout	1018-AH68
1378	Migratory Bird Permits; Regulations Governing Education; 50 CFR 21	1018-AH71
1379	Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Grizzly Bears in the Bitterroot Area of Idaho and Montana; Removal of Regulations	1018-AI03
1380	Endangered and Threatened Wildlife and Plants; Listing of the Rota Bridled White-Eye	1018-AI16
1381	Endangered and Threatened Wildlife and Plants; Reclassification of the Gray Bat From Endangered to Threatened	1018-AI40
1382	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Southwestern Willow Flycatcher	1018-AI49
1383	Endangered and Threatened Wildlife and Plants; Conservation Education; 50 CFR 17.21	1018-AI66
1384	Endangered and Threatened Wildlife and Plants; Permits for Foreign Listed Species	1018-AI67

United States Fish and Wildlife Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
1385	Reclassification of the Vicuna From Endangered to Threatened With a Special Rule	1018-AE04
1386	Injurious Wildlife; Addition of Brush-Tailed Possum	1018-AE34

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United States Fish and Wildlife Service—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
1387	Endangered and Threatened Wildlife and Plants; Prebles Meadow Jumping Mouse; Special Rule	1018-AF30
1388	Endangered and Threatened Wildlife and Plants; Listing the Chiricahua Leopard Frog With a Special Rule	1018-AF41
1389	Administration of the National Coastal Wetlands Conservation Grant Program	1018-AF51
1390	Endangered and Threatened Wildlife and Plants; Endangered Status for Southern California Distinct Vertebrate Population Segment (DPS) of Mountain Yellow-Legged Frog	1018-AF83
1391	Endangered and Threatened Wildlife and Plants; Endangered Status for San Diego Ambrosia	1018-AF86
1392	Endangered and Threatened Wildlife and Plants; Establishment of Nonessential Experimental Populations for Four Fishes: Duskytail Darter, Smoky Madtom, Yellowfin Madtom, and Spotfin Chub	1018-AF96
1393	Endangered and Threatened Wildlife and Plants; Critical Habitat for the Santa Cruz Tarplant	1018-AG73
1394	Endangered and Threatened Wildlife and Plants; Critical Habitat for Kneeland Prairie Pennycress	1018-AG92
1395	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Chorizanthe Pungens var. Pungens (Monterey Spineflower)	1018-AH04
1396	Endangered and Threatened Wildlife and Plants; Prudency and Critical Habitat for a Mollusk, the Carolina Heelsplitter	1018-AH31
1397	Endangered and Threatened Wildlife and Plants; Prudency and Critical Habitat Designation for a Mollusk, the Appalachian Elktoe	1018-AH33
1398	Endangered and Threatened Plants; Removal of the Robin's Cinquefoil From the List of Endangered and Threatened Species	1018-AH56
1399	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Polygonum Hickmanii (Scotts Valley Polygonum) and Chorizanthe Robusta var. Hartwegii (Scotts Valley Spineflower)	1018-AH82
1400	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Chorizanthe Robusta var. Robusta (Robust Spineflower)	1018-AH83
1401	Subsistence Management Regulations for Public Lands in Alaska, Subparts A and B	1018-AH85
1402	Procedures for Establishing Spring/Summer Subsistence Harvest Regulations for Migratory Birds	1018-AH88
1403	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Newcomb's Snail	1018-AH95
1404	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Great Plains Breeding Population of the Piping Plover	1018-AH96
1405	Endangered and Threatened Wildlife and Plants: Retention of Threatened Status for Argali in Kyrgyzstan, Mongolia, and Tajikistan	1018-AI02
1406	Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2002-2003 Subsistence Taking of Wildlife Regulations	1018-AI06
1407	Endangered and Threatened Wildlife and Plants; Emergency Listing of the Carson's Wandering Skipper	1018-AI18
1408	Endangered and Threatened Wildlife and Plants; Emergency Listing of the Tumbling Creek Cavesnail	1018-AI19
1409	Migratory Bird Hunting; Proposed 2002-2003 Migratory Game Bird Hunting Regulations (Preliminary) With Requirements for Indian Tribal Proposals	1018-AI30
1410	2002-2003 Refuge-Specific Hunting and Sport Fishing Regulations	1018-AI34
1411	Injurious Wildlife Species; Snakeheads	1018-AI36

United States Fish and Wildlife Service—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
1018-AF45	Endangered and Threatened Wildlife and Plants; Listing and Special Rule for the Coastal Cutthroat Trout	07/05/2002	Withdrawn
1018-AF71	Endangered and Threatened Wildlife and Plants; Special Rule for Bull Trout in Washington State	08/21/2002	Withdrawn
1018-AH54	Endangered and Threatened Wildlife; Establishment of a Nonessential Experimental Population of the Black-Footed Ferret in Wyoming	08/23/2002	Withdrawn
1018-AH78	Export of Caviar: Labeling of Sturgeon and Paddlefish (Acipenseriformes) Caviar Containers Intended for International Trade; 50 CFR 23	08/13/2002	Withdrawn
1018-AH81	National Wildlife Refuge System; Reserved/Excepted Rights Management	08/08/2002	Withdrawn
1018-AI42	Endangered and Threatened Wildlife and Plants; Reclassification of the Schaus Swallowtail Butterfly From Endangered to Threatened	08/21/2002	Withdrawn
1018-AI53	Federal Aid in Sport Fish Restoration Program; Recreational Boating Access	08/09/2002	Withdrawn

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National Park Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1412	Vehicles and Traffic Safety; Operating Under the Influence of Alcohol or Drugs	1024-AC69
1413	Procedures for State, Tribal, and Local Government Historic Preservation Programs	1024-AC79
1414	Commercial Use Authorizations	1024-AC85
1415	Glen Canyon National Recreation Area; Personal Watercraft	1024-AC90
1416	Lake Mead National Recreation Area; Personal Watercraft	1024-AC91
1417	Big Thicket National Preserve; Personal Watercraft	1024-AC92
1418	Pictured Rocks National Lakeshore; Personal Watercraft	1024-AC93
1419	Fire Island National Seashore; Personal Watercraft	1024-AC94
1420	Gateway National Recreation Area; Personal Watercraft	1024-AC95
1421	Bighorn Canyon National Recreation Area; Personal Watercraft	1024-AC96
1422	Lake Meredith Recreation Area; Personal Watercraft	1024-AC97
1423	Chickasaw Recreation Area; Personal Watercraft	1024-AC98
1424	Curecanti Recreation Area; Personal Watercraft	1024-AC99
1425	Amistad Recreation Area; Personal Watercraft	1024-AD00
1426	Lake Roosevelt Recreation Area; Personal Watercraft	1024-AD01
1427	Native American Graves Protection and Repatriation Act; Future Applicability	1024-AD05
1428	Boating and Water Use Activities	1024-AD07
1429	Disposition of Culturally Unidentifiable Human Remains	1024-AD08

National Park Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1430	Native American Graves Protection and Repatriation Act Regulations; Civil Penalties	1024-AC84
1431	Assateague Island National Seashore; Personal Watercraft	1024-AD02
1432	Yellowstone National Park, Grand Teton National Park, John D. Rockefeller Memorial Parkway Winter Use Regulations	1024-AD06
1433	Snowmobile Regulations; Yellowstone and Grand Teton National Parks and John D. Rockefeller Memorial Parkway **(Reg Plan Seq No. 75)**	1024-AD09

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

National Park Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1434	Special Regulations of the National Park System; Religious Ceremonial Collection of Golden Eaglets in Wupatki National Monument	1024-AC86
1435	Virgin Islands Coral Reef National Monument; Special Regulations	1024-AC89
1436	Golden Gate National Recreation Area; Special Regulations	1024-AD03

National Park Service—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
1024-AC74	World Heritage Convention	07/25/2002	Withdrawn - Extensive rewrite of entire part to occur within two years.
1024-AD04	Dry Tortugas National Park; Special Regulations	07/25/2002	Withdrawn - Rulemaking authority in the Park under legal challenge.

DOI

Bureau of Indian Affairs—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1437	Irrigation Projects and Systems	1076-AD44
1438	Indian Electric Power Utilities	1076-AD45
1439	Buy Indian Act Regulations	1076-AE07
1440	Tribal Revenue Allocation Plans	1076-AE24

Bureau of Indian Affairs—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1441	Indian Business Development Program	1076-AD70
1442	Certificates of Degree of Indian Blood	1076-AD97
1443	Arrangement With States, Territories, or Other Agencies for Relief of Distress and Social Welfare of Indians	1076-AD98
1444	Alaska Resupply Operation	1076-AE04
1445	Protection of Products of Indian Art and Craftsmanship	1076-AE16
1446	Indian Reservation Roads Program	1076-AE17
1447	Trust Management Reform: Repeal of Outdated Rules	1076-AE20
1448	Technical Amendments to Housing Improvement Program Regulations	1076-AE31

Bureau of Indian Affairs—Completed Actions

Sequence Number	Title	Regulation Identification Number
1449	Indian School Equalization Program — Provisions for Exceptional Children	1076-AE14
1450	Adult Education Program	1076-AE29
1451	Indian Reservation Roads — FY 2002 Funds Distribution	1076-AE32
1452	Courts of Indian Offenses — Santa Fe	1076-AE33

Bureau of Indian Affairs—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
1076-AE21	Appeals of Administrative Actions	08/01/2002	Withdrawn - No further action will be taken at this time.
1076-AE22	Trust Funds for Tribes and Individual Indians	08/01/2002	Withdrawn - No further action scheduled.
1076-AE23	Leases and Permits	08/01/2002	Withdrawn - No further action scheduled.
1076-AE25	Probate of Indian Estates Except for Members of the Five Civilized Tribes	08/01/2002	Withdrawn - No further action will be taken.

Minerals Management Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1453	Late and Overpayment Interest	1010-AC27
1454	Takes vs. Entitlements Reporting	1010-AC29
1455	Accounting Relief for Marginal Properties	1010-AC30
1456	Prepayment of Royalties	1010-AC31
1457	Incident Reporting	1010-AC57
1458	Royalty Relief Terms	1010-AC58
1459	MMS Hearings and Investigations	1010-AC79

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Minerals Management Service—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1460	Appeals of Minerals Management Service Orders	1010-AC80
1461	Dealing With Sustained Casing Pressure	1010-AC83
1462	Definition of Control	1010-AC88
1463	Documents Incorporated by Reference — API RP 14F and API 510	1010-AC89
1464	Reporting Amendments	1010-AC90
1465	Rights-of-Use and Easements and Pipeline Rights-of-Way	1010-AC91
1466	Blowout Prevention for Production Tree Coiled Tubing Workover Operations	1010-AC96
1467	Data Release and Definitions	1010-AC99
1468	Relief or Reduction in Royalty Rates — Deep Gas Provisions **(Reg Plan Seq No. 76)**	1010-AD01
1469	Reduction to Royalty Relief in Special Circumstances	1010-AD02

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Minerals Management Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1470	Oil and Gas Drilling Operations	1010-AC43
1471	Plans and Information	1010-AC47
1472	Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Safety Measures and Procedures for Pipeline Modifications and Repairs	1010-AC75
1473	Proprietary Terms and Data Disclosure	1010-AC81
1474	Documents Incorporated by Reference — API Specification 2C	1010-AC82
1475	Documents Incorporated by Reference for Offshore Floating Production Facilities	1010-AC85
1476	Outer Continental Shelf Oil and Gas Leasing — Clarifying Amendments	1010-AC94
1477	Document Incorporated by Reference—API 510—Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration	1010-AC95
1478	Valuation of Oil from Indian Leases **(Reg Plan Seq No. 77)**	1010-AD00

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Minerals Management Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
1479	Prospecting for Minerals Other Than Oil, Gas, and Sulphur in the Outer Continental Shelf	1010-AC48
1480	Decommissioning Activities	1010-AC65
1481	Deep Water Royalty Relief for Outer Continental Shelf Oil and Gas Leases Issued After 2000	1010-AC71
1482	Technical Amendments	1010-AC87
1483	Suspension of Operations for Exploration Under Salt Sheets	1010-AC92
1484	Documents Incorporated by Reference - API RP 14C	1010-AC93

Office of Surface Mining Reclamation and Enforcement—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1485	Abandoned Coal Refuse Sites—Title I	1029-AB70
1486	Revegetation	1029-AC02
1487	Placement of Excess Spoil	1029-AC04
1488	Financial Assurances	1029-AC05

DOI

Office of Surface Mining Reclamation and Enforcement—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1489	Indian Lands	1029-AB83
1490	Abandoned Mine Land Reclamation Notices	1029-AB99

Office of Surface Mining Reclamation and Enforcement—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
1029-AB79	Contemporaneous Reclamation	08/01/2002	Withdrawn No further action will be taken at this time.
1029-AB92	Emergency Action Plans—Impoundments	08/01/2002	Withdrawn - No further action will be taken at this time.

Bureau of Reclamation—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1491	Authorization of Law Enforcement Officers at Reclamation Facilities	1006-AA42

Bureau of Reclamation—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1492	Acreage Limitation	1006-AA43
1493	Trespass on Reclamation Lands and Facilities	1006-AA44
1494	Public Conduct on Reclamation Lands and Projects	1006-AA45

Bureau of Land Management—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1495	Sales—Federal Land Policy and Management Act	1004-AB77
1496	Desert Land Entries	1004-AC56
1497	Disposal of Reserved Minerals Under the Stock Raising Homestead Act	1004-AC59
1498	Mineral Patent Applications; Adverse Claims, Protests, and Conflicts	1004-AD32
1499	Conservation; Helium Leasing	1004-AD35
1500	Grazing Administration—Exclusive of Alaska	1004-AD42
1501	Permits for Recreation on Public Lands	1004-AD45
1502	Wilderness Management	1004-AD54

Bureau of Land Management—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1503	Cost Recovery; Mineral Filings and Operations	1004-AC64
1504	Rights-of-Way, Principles and Procedures; Rights-of-Way Under the Mineral Leasing Act	1004-AC74
1505	Indian Allotments	1004-AC77
1506	Use Authorizations (Recreation)	1004-AD25
1507	Location Recording and Maintenance of Mining Claims and Sites	1004-AD31
1508	Coal Management: Noncompetitive Leases; Management Provisions and Limitations	1004-AD43

DOI

Bureau of Land Management—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1509	Wilderness Management	1004-AD46
1510	Disclaimers of Interest	1004-AD50
1511	Rights-of-Way Under the Mineral Leasing Act; Timing of Approvals	1004-AD55
1512	Oil and Gas Leasing Operations; Bonding	1004-AD56

Bureau of Land Management—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1513	Leases, Permits, and Easements	1004-AB51
1514	Coalbed Methane Development	1004-AC27
1515	Carey Act Grants	1004-AC80
1516	Oil and Gas Leasing and Operations	1004-AC94
1517	Appeals Procedures; Hearings Procedures	1004-AC99
1518	Hazardous Materials Compliance	1004-AD38
1519	Supplementary Rules for Public Demonstrations at Grand Staircase-Escalante National Monument	1004-AD40
1520	Surface Management; Segregated or Withdrawn Lands	1004-AD51
1521	Mining Claims Under the General Mining Laws; Surface Management	1004-AD53

Bureau of Land Management—Completed Actions

Sequence Number	Title	Regulation Identification Number
1522	Location Recording and Maintenance of Mining Claims or Sites	1004-AD52

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1523	Wild and Scenic Rivers	1093-AA08

Department of the Interior (DOI)
Assistant Secretary for Policy, Management and Budget (ASPMB)

Proposed Rule Stage

1226. NATURAL RESOURCE DAMAGE ASSESSMENTS: TYPE B PROCEDURES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 9651(c)

CFR Citation: 43 CFR 11

Legal Deadline: None

Abstract: CERCLA and the Clean Water Act allow natural resource trustees to bring a claim against a potentially responsible party for resources that have been injured by a release of a hazardous substance. CERCLA requires that natural resource damage assessment regulations be promulgated and that the regulations be reviewed, and revised as appropriate, every two years. This rulemaking is the biennial review of the administrative process for conducting assessments as well as the so-called type B procedures for determining injury and damages through scientific and economic studies. This rulemaking will also address the calculation of lost non-use values of natural resources, in compliance with State of Ohio v. Department of the Interior, 880 F.2d 432 (D.C. Cir. 1989), which ordered the Department to allow for the assessment of all reliably calculated values lost as a result of a natural resource injury.

Timetable:

Action	Date	FR Cite
ANPRM	07/16/96	61 FR 37031
ANPRM Comment Period End	09/16/96	
NPRM	05/00/03	
NPRM Comment Period End	07/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

DOI—ASPMB

Proposed Rule Stage

Agency Contact: Frank DeLuise, Assessment Program, Department of the Interior, Assistant Secretary for Policy, Management and Budget, Room 4449, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-4143

RIN: 1090–AA29

1227. DEPARTMENT HEARINGS AND APPEALS; SPECIAL RULES APPLICABLE TO PUBLIC LAND HEARINGS AND APPEALS

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1201

CFR Citation: 43 CFR 4.401(c)(2); 43 CFR 4.403 to 4.408; 43 CFR 4.414; 43 CFR 4.415; 43 CFR 4.422(c)(2); 43 CFR 4.450-5

Legal Deadline: None

Abstract: This document proposes to amend procedural rules governing hearings and appeals in public-lands cases. The amendments are necessary to conform the rules to procedural practices contained in decisions of the Interior Board of Land Appeals. The amended rules would provide parties more complete information and more up-to-date procedures than the existing rules.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Will A. Irwin, Administrative Judge, Department of the Interior, Assistant Secretary for Policy, Management and Budget, Interior Board of Appeals, 4015 Wilson Blvd., Arlington, VA 22203
Phone: 703 235-3750

RIN: 1090–AA68

1228. DEPARTMENT HEARINGS AND APPEALS; PROCEDURES APPLICABLE IN ADJUDICATIONS BEFORE THE HEARINGS DIVISION

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 372; 25 USC 373; 25 USC 373a; 25 USC 373b; 25 USC 374; 30 USC 1201 et seq; 43 USC 1201; 5 USC 571 to 583

CFR Citation: 25 CFR 15; 30 CFR 301; 43 CFR 1850; 43 CFR 4

Legal Deadline: None

Abstract: This proposed rule would amend regulations governing case management and case processing by administrative law judges in OHA field offices. The rules are necessary to increase efficiency in case processing.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Charles E. Breece, Deputy Director, Department of the Interior, Assistant Secretary for Policy, Management and Budget, 1849 C Street N.W., Washington, DC 20240
Phone: 703 235-3810

RIN: 1090–AA73

1229. NONPROCUREMENT SUSPENSION AND DEBARMENT; DRUG-FREE WORKPLACE GRANT REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 6101; 41 USC 252a; 41 USC 701 et seq; EO 12549; EO 12689; PL 103-355

CFR Citation: 43 CFR 42; 43 CFR 43

Legal Deadline: None

Abstract: This proposed rule would implement a common Governmentwide rule for debarment and suspension and a common Governmentwide rule for the Drug-Free Workplace Act of 1988, including several specific provisions that apply to the Department of the Interior.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Debra E. Sonderman, Property Management, Department of the Interior, Assistant Secretary for Policy, Management and Budget, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-6431

RIN: 1090–AA79

1230. DEPARTMENT HEARINGS AND APPEALS PROCEDURES; PROCEDURES APPLICABLE IN INDIAN PROBATE HEARINGS

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 2; 25 USC 331; 25 USC 372; 25 USC 373; 25 USC 373a; 25 USC 373b; 25 USC 374; 25 USC 9

CFR Citation: 43 CFR 4

Legal Deadline: None

Abstract: This proposed rule will revise the procedural rules for the Hearings Division of the Office of Hearings and Appeals concerning probate hearings. Hearings Division regulations must be amended to reflect OHA policy changes, new developments in probate case law, and other probate developments.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles E. Breece, Deputy Director, Department of the Interior, Assistant Secretary for Policy, Management and Budget, 1849 C Street N.W., Washington, DC 20240
Phone: 703 235-3810

RIN: 1090–AA81

1231. • AMENDMENT OF AUTHORITY TO GRANT STAYS OF GRAZING DECISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1201; 43 USC 315

CFR Citation: 43 CFR 4160

Legal Deadline: None

Abstract: This rule will grant authority to administrative law judges to rule on petitions for stay of Bureau of Land Management grazing decisions and on requests to place them into immediate effect.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

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DOI—ASPMB — **Proposed Rule Stage**

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Will A. Irwin, Administrative Judge, Department of the Interior, Assistant Secretary for Policy, Management and Budget, Interior Board of Appeals, 4015 Wilson Blvd., Arlington, VA 22203
Phone: 703 235-3750

RIN: 1090–AA83

Department of the Interior (DOI) — **Final Rule Stage**
Assistant Secretary for Policy, Management and Budget (ASPMB)

1232. RECORDS AND TESTIMONY; FREEDOM OF INFORMATION ACT

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 552

CFR Citation: 43 CFR 2

Legal Deadline: None

Abstract: 43 CFR part 2, subparts A and B, are being revised in their entirety to reflect the provisions of the new FOIA law Electronic FOIA Amendments of 1996, Pub. L. 104-231, the recommendations of the National Performance Review lab, and to make other changes as necessary.

Timetable:

Action	Date	FR Cite
NPRM	07/16/01	66 FR 36966
NPRM Comment Period End	09/14/01	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Alexandra Mallus, DOI FOIA Officer (OIRM), Department of the Interior, Assistant Secretary for Policy, Management and Budget, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-5342

RIN: 1090–AA61

1233. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF THE INTERIOR ON THE BASIS OF RACE, COLOR NATIONAL ORIGIN, HANDICAP, OR AGE

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 794; 42 USC 2000d-1; 42 USC 6101 et seq

CFR Citation: 43 CFR 17

Legal Deadline: None

Abstract: This proposed joint rule will incorporate the broadened definitions of the terms program and program or activity as contained in the Civil Rights Restoration Act of 1987 (CRRA). The CRRA broadened the definitions of those terms so that all operations of an entity that receives Federal financial assistance are covered, not just the particular part receiving the Federal assistance.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Melvin C. Fowler, Civil Rights Staff Assistant, Department of the Interior, Assistant Secretary for Policy, Management and Budget, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-3455

RIN: 1090–AA77

Department of the Interior (DOI) — **Completed Actions**
Assistant Secretary for Policy, Management and Budget (ASPMB)

1234. • SPECIAL RULES APPLICABLE TO SURFACE COAL MINING HEARINGS AND APPEALS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1256; 30 USC 1260; 30 USC 1261; 30 USC 1264; 5 USC 301

CFR Citation: 43 CFR 4

Legal Deadline: None

Abstract: This rule corrects addresses, phone numbers, and cross references to rules in title 30 of the Code of Federal Regulations.

Timetable:

Action	Date	FR Cite
Final Action	10/01/02	67 FR 61506

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Will A. Irwin, Administrative Judge, Department of the Interior, Assistant Secretary for Policy, Management and Budget, Interior Board of Appeals, 4015 Wilson Blvd., Arlington, VA 22203
Phone: 703 235-3750

RIN: 1090–AA82

BILLING CODE 4310–RK–S

Department of the Interior (DOI) — **Prerule Stage**
United States Fish and Wildlife Service (FWS)

1235. CONSIDERATION OF LISTING THE GREEN IGUANA (IGUANA IGUANA) AS INJURIOUS, PURSUANT TO THE LACEY ACT

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 42

CFR Citation: 50 CFR 16

Legal Deadline: None

Abstract: The Humane Society of the United States requested that the Service list the green iguana as injurious under the Lacey Act. Iguanas are released into the wild by their owners for various reasons. These iguanas may be carriers of Salmonella bacteria and could negatively impact native populations. A notice requesting information will be published so that data can be gathered as to the injurious nature of the iguanas. This information will be analyzed to determine whether listing is warranted.

Timetable:

Action	Date	FR Cite
Notice of Inquiry	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

URL For Public Comments: http://GreenIguana@fws.gov

Agency Contact: Kari Jonell Duncan, Fishery Biologist, Division of Environmental Quality, Department of the Interior, United States Fish and Wildlife Service, Room 810B, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2464
Email: kari_duncan@fws.gov

RIN: 1018–AF08

1236. PARTNERS FOR FISH AND WILDLIFE PROGRAM

Priority: Info./Admin./Other

Legal Authority: 16 USC 742(a) to 754

CFR Citation: None

Legal Deadline: None

Abstract: Portions of the U.S. Fish and Wildlife Service manual are being revised to update policy on the implementation of the Partners for Fish and Wildlife Program. This program provides private landowners with cost-sharing and restoration expertise to restore fish and wildlife habitat. The program does not acquire lands and is a voluntary incentive program. The revisions update policy, incorporate Office of Inspector General recommendations, and clarify technical assistance and cost-sharing in light of changes in U.S. Department of Agriculture conservation programs.

Timetable:

Action	Date	FR Cite
Notice of Availability	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Hannibal Bolton, Chief, Division of Fish and Wildlife Management and Habitat Restoration, Department of the Interior, United States Fish and Wildlife Service, Room 840, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1718

RIN: 1018–AH98

1237. RELEASE OF CAPTIVE-REARED MALLARDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 703 to 712; 16 USC 742(a) to 742(j)

CFR Citation: 50 CFR 21

Legal Deadline: None

Abstract: This notice announces our intent to resume review of all aspects of regulations pertaining to the release and harvest of captive-reared mallards.

Timetable:

Action	Date	FR Cite
Notice of Intent	08/28/01	66 FR 45274
Notice of Availability	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: brian_millsap@fws.gov

RIN: 1018–AI05

1238. NORTH AMERICAN WETLANDS CONSERVATION ACT GRANT ADMINISTRATION POLICIES

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 16 USC 4401 et seq

CFR Citation: None

Legal Deadline: None

Abstract: Grant Administration Policies are being published as an interim measure to guide the North American Wetlands Conservation Act (NAWCA) grants process and to provide advance notice of rulemaking; the Service intends to engage in rulemaking to set out its own regulations for NAWCA grants administration that will supersede the Grant Administration Policies.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

URL For More Information: http://birdhabitat.fws.gov

Agency Contact: David A Smith, Chief, Division of Bird Habitat Conservation, Department of the Interior, United States Fish and Wildlife Service, Suite 110, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1784
Fax: 703 358-2282

RIN: 1018–AI13

Department of the Interior (DOI)
United States Fish and Wildlife Service (FWS)

Proposed Rule Stage

1239. GENERAL PROVISIONS AND GENERAL PERMIT PROCEDURES—50 CFR PART 13

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 668a; 16 USC 704; 16 USC 712; 16 USC 742j-1; 16 USC 1382; 16 USC 1538(d); 16 USC 1539; 16 USC 1540(f); 16 USC 3374; 16 USC 4901 to 4916; 18 USC 42; 19 USC 1202; 31 USC 9701; EO 11911

CFR Citation: 50 CFR 13

Legal Deadline: None

Abstract: The Service proposes to amend 50 CFR part 13, which provides uniform permit procedures relating to the general administration of Service permits, to update the permit application fee schedule. Permit fees have not been revised since 1982. This change is necessary in order to recover a larger percentage of the cost of processing the permits.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: brian__millsap@fws.gov

RIN: 1018–AC57

1240. SEIZURE AND FORFEITURE PROCEDURES — 50 CFR PART 12

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 4222 to 4241; 16 USC 4901 to 4916; 18 USC 42

CFR Citation: 50 CFR 12

Legal Deadline: None

Abstract: The Service proposes to amend regulations in 50 CFR part 12 that establish procedures relating to property seized and administrative forfeiture under various laws enforced by the Service. This revision is intended to provide uniform guidance for the bonded release, appraisement, administrative proceeding petition for remission, and disposal of items subject to forfeiture. Also, these revisions are intended to provide for greater consistency of Service seizure and forfeiture procedures with those of the U.S. Customs Service. In August 2000, the Civil Asset Forfeiture Reform Act became law. CAFRA mandated many changes to 50 CFR 12 that are incorporated in this proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	11/27/95	60 FR 58468
Second NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

Agency Contact: Kevin Adams, Assistant Director for Law Enforcement, Department of the Interior, United States Fish and Wildlife Service
Phone: 703 358-1949
Email: kevin__adams@fws.gov

RIN: 1018–AC89

1241. REVISIONS TO THE FEDERAL AID ADMINISTRATIVE REQUIREMENTS

Priority: Other Significant

Legal Authority: 16 USC 777i; 16 USC 669i; 18 USC 701

CFR Citation: 50 CFR 80

Legal Deadline: None

Abstract: The Service proposes to revise part 80 to clarify the language in the administrative requirements section and simplify some of the procedures to enable the States and the public to better understand the procedures and requirements for obtaining and administering grants under the Federal Aid in Fish and Federal Aid in Wildlife Restoration Acts.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Tribal

Agency Contact: Kim Galvan, Management Analyst, Division of Federal Aid, Department of the Interior, United States Fish and Wildlife Service, MS 140, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1851
Email: kim__galvan@fws.gov

RIN: 1018–AE17

1242. U.S. PROPOSALS FOR CITES APPENDIX III; AMERICAN EEL

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq; 16 USC 4201; PL 99-625

CFR Citation: 50 CFR 23

Legal Deadline: None

Abstract: Listing of native U.S. species in appendix III to CITES for more effective monitoring of trade, to ensure that traded specimens are legally acquired in their State(s) of origin, and to obtain the cooperation of other countries that are parties to CITES, in controlling the trade in such specimens.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Marie Maltese, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: marie__maltese@fws.gov

RIN: 1018–AF09

1243. HUMANE AND HEALTHFUL TRANSPORT OF WILD MAMMALS, BIRDS, REPTILES AND AMPHIBIANS TO THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 42; 16 USC 3371 to 3378

CFR Citation: 50 CFR 14

Legal Deadline: None

Abstract: The proposed rule contains amendments designed to add numerous transport standards to part 14 for reptiles and amphibians. Standards have already been promulgated for mammals and birds.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

DOI—FWS

Proposed Rule Stage

Government Levels Affected: Federal

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2095
Email: peter__thomas@fws.gov

RIN: 1018–AF27

1244. IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE, 50 CFR PART 14

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 704, 712, 1382, 1538(d) to (f), and 1540(f); 16 USC 3371 to 3378, 4223 to 4244, and 4901 to 4916; 18 USC 42; 31 USC 483(a)

CFR Citation: 50 CFR 14

Legal Deadline: None

Abstract: This proposed rule will revise the importation, exportation and transportation regulations pertaining to the movement of all wildlife into or out of the United States.

Timetable:

Action	Date	FR Cite
ANPRM	07/15/98	63 FR 38143
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Kevin Adams, Assistant Director for Law Enforcement, Department of the Interior, United States Fish and Wildlife Service
Phone: 703 358-1949
Email: kevin__adams@fws.gov

RIN: 1018–AF46

1245. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; TIBETAN ANTELOPE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Other, Statutory, 12 month finding.

Abstract: We received a petition to list the Tibetan antelope as endangered. We must determine if status review shows that the petitioned action is warranted. If so, we will propose endangered status for the Tibetan antelope, or chiru (Pantholops hodgsoni). The antelope is a wild ungulate native to Tibet, Kashmir, and north-central China. It is threatened by illegal trade in its wool, known as shahtoosh, which is exceptionally fine. The wool and shawls made from it are in great demand on the black market, resulting in the slaughter of thousands of these animals annually. The species has experienced dramatic declines in recent years despite efforts by range countries to control poaching, as well as a prohibition on international commercial trade through listing in appendix I of CITES.

Timetable:

Action	Date	FR Cite
Notice	04/25/00	65 FR 24171
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kurt Johnson, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: kurt__johnson@fws.gov

RIN: 1018–AF49

1246. INJURIOUS WILDLIFE; ADDITION OF THE ASIAN SWAMP EEL

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 42

CFR Citation: 50 CFR 16

Legal Deadline: None

Abstract: We will review economic and biologic information on the 17 species in the swamp eel family, Synbranchidae, for possible addition to the list of injurious wildlife under the Lacey Act.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Kari Jonell Duncan, Fishery Biologist, Division of Environmental Quality, Department of the Interior, United States Fish and Wildlife Service, Room 810B, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2464
Email: kari__duncan@fws.gov

RIN: 1018–AF53

1247. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PROPOSED RECLASSIFICATION OF THE STRAIGHT-HORNED MARKHOR POPULATION OF THE TORGHAR REGION OF BALUCHISTAN, PAKISTAN, FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Other, Statutory, 12 month finding.

Abstract: We received a petition to reclassify a certain population of the straight-horned markhor from endangered to threatened. We must determine if a status review shows that the petitioned action is warranted and if so, we will propose to change the classification of the straight-horned markhor population of the Torghar Hills region of Baluchistan Province, Pakistan, from endangered to threatened under the Endangered Species Act of 1973. The markhor is a species of wild goat that occurs in small, isolated populations in rugged, arid mountain habitats in Afghanistan, India, Pakistan, Tajikistan, Turkmenistan, and Uzbekistan.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kurt Johnson, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: kurt__johnson@fws.gov

RIN: 1018–AG00

1248. FEDERAL FALCONRY STANDARDS AND FALCONRY PERMITTING

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 703 to 711

CFR Citation: 50 CFR 21.28; 50 CFR 21.29

Legal Deadline: None

Abstract: We will propose changes in the regulations governing the practice of falconry in the United States. We propose substantial reorganization of the current regulations, combining 50 CFR 21.28 and 21.29 and reorganizing the topics in those sections. We will add or change some provisions in the current regulations. The changes will make it easier to understand the requirements for falconry and the procedures for obtaining a falconry permit.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Tribal

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: brian__millsap@fws.gov

RIN: 1018–AG11

1249. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DELISTING THE GULF COAST DISTINCT POPULATION SEGMENT OF THE BROWN PELICAN POPULATION IN THE SOUTHEASTERN UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose to remove the remaining Gulf coast population of the Brown pelican (Texas, Louisiana, Mississippi) from the list of threatened and endangered species.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AG40

1250. WILD BIRD CONSERVATION ACT: REVIEW OF APPROVED LIST OF CAPTIVE-BRED SPECIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 4901 to 4916

CFR Citation: 50 CFR 15

Legal Deadline: None

Abstract: Under the Wild Bird Conservation Act, a species may be exempt from the prohibitions of the Act if it qualifies for inclusion in an approved list. One way for a species to be included is if the species occurs in trade only as captive-bred specimens. We intend to seek information and consider whether to amend this approved list, which was established in 1994.

Timetable:

Action	Date	FR Cite
Notice	05/29/01	66 FR 29072
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael Kreger, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: michael__kreger@fws.gov

RIN: 1018–AG64

1251. INTERAGENCY GUIDANCE FOR THE PRESCRIPTION OF FISHWAYS PURSUANT TO SECTION 18 OF THE FEDERAL POWER ACT

Priority: Other Significant

Legal Authority: 16 USC 791(a) et seq

CFR Citation: None

Legal Deadline: None

Abstract: This will make publicly available internal guidance for us and the National Marine Fisheries Service regarding the prescription of fishways under section 18 of the Federal Power Act, for non-Federal hydropower projects licensed by the Federal Energy Regulatory Commission. The guidance document will be reviewed following a two-year trial period, and the information obtained will be used to support a final action.

Timetable:

Action	Date	FR Cite
Notice	12/22/00	65 FR 80898
Notice of Availability	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Dr. Benjamin Tuggle, Chief, Division of Federal Program Activities, Department of the Interior, United States Fish and Wildlife Service, Room 400, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2161
Fax: 703 358-1869

RIN: 1018–AH42

1252. ENDANGERED AND THREATENED WILDLIFE; ESTABLISHMENT OF A NONESSENTIAL EXPERIMENTAL POPULATION OF 2 FISHES IN SHOAL CREEK, ALABAMA AND TENNESSEE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose the establishment of nonessential experimental populations for 2 fishes, the Boulder darter and Spotfin chub, in Shoal Creek, Alabama and Tennessee.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH44

1253. ENDANGERED AND THREATENED PLANTS; RECLASSIFICATION OF THE PAPERY WHITLOW-WORT, WIREWEED AND SANDLACE FROM ENDANGERED TO THREATENED.

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose to reclassify the papery whitlow-wort, wireweed and sandlace plants from endangered to threatened.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH51

1254. ENDANGERED AND THREATENED WILDLIFE; REMOVAL OF THE SAN MARCOS GAMBUSIA, A FISH, FROM THE LIST OF ENDANGERED AND THREATENED WILDLIFE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We propose to remove the San Marcos gambusia, a fish, from the List of Endangered and Threatened Wildlife.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH52

1255. ENDANGERED AND THREATENED PLANTS; REMOVAL OF THE JOHNSTON'S FRANKENIA FROM THE LIST OF ENDANGERED AND THREATENED PLANTS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose to remove the Johnston's frankenia, a plant which occurs in Texas, from the List of Endangered and Threatened Plants.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH53

1256. ENDANGERED AND THREATENED WILDLIFE; RECLASSIFICATION OF THE GILA TROUT FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We propose to reclassify from endangered to threatened the Gila trout.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH57

1257. ENDANGERED AND THREATENED PLANTS; RECLASSIFICATION OF THE MISSOURI BLADDER-POD, A PLANT, FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose to reclassify the Missouri bladder-pod, a plant, from endangered to threatened.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203

Phone: 703 358-2171

RIN: 1018–AH59

1258. EXPORT OF LIVE ALLIGATORS

Priority: Substantive, Nonsignificant

Legal Authority: EO 13112

CFR Citation: 50 CFR 13; 50 CFR 17; 50 CFR 23

Legal Deadline: None

Abstract: This policy will prohibit the export of live American alligators because of invasive species concerns in the countries of destination of the animals.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Tribal, Federal

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2095
Email: peter__thomas@fws.gov

RIN: 1018–AH65

1259. EAGLE PERMITS: NEW DEFINITIONS, PERMITS FOR INCIDENTAL TAKING OF BALD EAGLES NECESSARY TO PROTECT OTHER INTERESTS IN ANY PARTICULAR LOCALITY

Priority: Other Significant

Legal Authority: 16 USC 668a

CFR Citation: 50 CFR 22

Legal Deadline: None

Abstract: This rule would allow take of bald eagles under the Eagle Protection Act incidental to otherwise lawful activities, in the event the species is removed from the U.S. Endangered Species List.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Tribal, Federal

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: brian__millsap@fws.gov

RIN: 1018–AH74

1260. MARINE MAMMALS: INCIDENTAL TAKE DURING SPECIFIED ACTIVITIES (MANATEES)

Priority: Other Significant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 18

Legal Deadline: NPRM, Judicial, March 6, 2001, Settlement agreement.

Abstract: We intend to develop a rule that would allow for the incidental, unintentional take of small numbers of Florida manatees that results from government activities related to watercraft and watercraft access facilities within the geographic area of the species' range in Florida for a period of not more than 5 years.

Timetable:

Action	Date	FR Cite
ANPRM	03/12/01	66 FR 14352
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

Agency Contact: Dr. Benjamin Tuggle, Chief, Division of Federal Program Activities, Department of the Interior, United States Fish and Wildlife Service, Room 400, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2161
Fax: 703 358-1869

RIN: 1018–AH86

1261. IMPORTATION OF EXOTIC WILD BIRDS INTO THE UNITED STATES; ADDING BLUE-FRONTED AMAZON PARROTS FROM ARGENTINA'S APPROVED SUSTAINABLE USE MANAGEMENT PLAN TO THE APPROVED LIST OF NON-CAPTIVE BRED SPECIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 4901 to 4916

CFR Citation: 50 CFR 15

Legal Deadline: None

Abstract: This rule would allow the import into the United States of parrots removed from the wild in Argentina under an approved sustainable use management plan. This is the first such plan that, if approved, would contribute to the goals of the Wild Bird Conservation Act to promote the conservation of exotic birds through sustainable use.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2095
Email: peter__thomas@fws.gov

RIN: 1018–AH89

1262. MARINE MAMMALS: INCIDENTAL TAKE DURING SPECIFIED ACTIVITIES (BEAUFORT SEA POLAR BEAR AND WALRUS)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 18

Legal Deadline: None

Abstract: The Marine Mammal Protection Act authorizes issuance of regulations to allow the incidental, unintentional take of small numbers of marine mammals in activities (other than commercial fishing) in specific geographical areas. These regulations would authorize incidental take of polar bears and walrus in the Beaufort Sea during oil and gas energy activities for up to 5 years, when current regulations expire on March 31, 2003.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Agency Contact: Dr. Benjamin Tuggle, Chief, Division of Federal Program Activities, Department of the Interior, United States Fish and Wildlife Service, Room 400, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2161
Fax: 703 358-1869

RIN: 1018–AH92

1263. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; REVISIONS TO THE REGULATIONS APPLICABLE TO PERMITS ISSUED UNDER THE ENDANGERED SPECIES ACT.

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 13; 50 CFR 17

Legal Deadline: None

Abstract: Presently, Safe Harbor Agreements and Candidate Conservation Agreements with Assurances only allow incidental take of species. The Service is proposing to amend the policies to allow for intentional take of species.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH93

1264. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR BLACKBURN'S SPHINX MOTH

Priority: Other Significant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, November 2001, Court order.

Abstract: We propose to designate critical habitat for the Blackburn's sphinx moth.

Timetable:

Action	Date	FR Cite
NPRM	06/13/02	67 FR 40633
NPRM	08/26/02	67 FR 54763
NPRM Comment Period End	12/30/02	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH94

1265. CIVIL PROCEDURES, 50 CFR PART 11

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 3371

CFR Citation: 50 CFR 11

Legal Deadline: None

Abstract: These regulations will contain uniform rules and procedures for the assessment of civil penalties in connection with violations of certain laws and regulations enforced by the Service.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kevin Adams, Assistant Director for Law Enforcement, Department of the Interior, United States Fish and Wildlife Service
Phone: 703 358-1949
Email: kevin__adams@fws.gov

RIN: 1018–AH97

1266. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; RECLASSIFICATION OF TWO AUSTRALIAN PARAKEETS FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq; 16 USC 4201; PL 99-625

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We propose to reclassify these two species of Australian parakeets so that their listing under the Endangered Species Act accurately reflects their current status.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Agency Contact: Michael Kreger, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: michael__kreger@fws.gov

RIN: 1018–AI04

1267. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; BELUGA STURGEON

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq; 16 USC 4201; PL 99-625

CFR Citation: 50 CFR 17

Legal Deadline: Other, Statutory, Notice of 90-day finding.
We must determine if petitioned action is warranted within 90 days or as soon as possible after receipt of petition.

Abstract: Based upon a review of the species in response to a petition, we may propose to list the Beluga sturgeon (Huso huso) as endangered. This species historically inhabited the Caspian, Black, Azov and Adriatic Seas and all rivers flowing into them. The Adriatic Sea population has been extirpated, and no wild Beluga sturgeon has been found in the Sea of Azov since the mid 1980s. This species has declined due to fishing pressure. This species is highly valued for its caviar

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and is subject to both legal and substantial levels of illegal fishing. The Beluga sturgeon has also been impacted by dam building and other forms of habitat modification.

Timetable:

Action	Date	FR Cite
Notice	06/20/02	67 FR 41918
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Marie Maltese, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: marie__maltese@fws.gov

RIN: 1018–AI11

1268. CORRECTIONS TO RIGHTS-OF-WAY REGULATIONS

Priority: Info./Admin./Other

Legal Authority: PL 101-475

CFR Citation: 50 CFR 29

Legal Deadline: None

Abstract: The Service proposes to make revisions to the Rights-of-Way General Regulations in 50 CFR 29 - subpart B. The revisions will correct the address of our Region 5 Office in 50 CFR 29.21-2(c)(5). We will also implement section 1 of Public Law 101-475 by correcting the names of the House and Senate Committees we must notify upon receipt of an application for a right-of-way for an oil and gas pipeline that is 24 inches or more in diameter and again before granting right-of-way. Finally, the proposed revised regulation will delete the reference to a 60-day waiting period after notification of our intent to grant the right-of-way. (The waiting period was repealed by Congress.)

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Barbara Ann Wyman, Program Manager, Division of Realty, Department of the Interior, United States Fish and Wildlife Service, Room 622, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1811
Fax: 703 358-2223
Email: barbara__wyman@fws.gov

RIN: 1018–AI12

1269. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR THE VENTURA MARSH MILKVETCH

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, October 1, 2002, Settlement agreement.

Abstract: We propose to designate critical habitat for the plant, the Ventura Marsh milkvetch, which occurs in California.

Timetable:

Action	Date	FR Cite
NPRM	10/09/02	67 FR 62926
NPRM Comment Period End	12/09/02	
Final Rule	10/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI21

1270. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR 6 GUAM SPECIES

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, June 1, 2002, Settlement agreement.

Abstract: We propose to designate critical habitat for 6 Guam species. These include two mammals, the Little Mariana fruit bat and the Mariana fruit bat, and four birds, the Guam broadbill, the Mariana crow, the Guam Micronesian kingfisher and the Guam bridled white-eye.

Timetable:

Action	Date	FR Cite
NPRM	10/15/02	67 FR 63737
NPRM Comment Period End	12/16/02	
Final Rule	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI25

1271. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR FOUR FAIRY SHRIMP AND 11 PLANTS IN CALIFORNIA

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, November 30, 2001, Settlement agreement.

Abstract: We propose to designate critical habitat for four fairy shrimp and 11 plants in California. The fairy shrimp are the Conservancy fairy shrimp, the Longhorn fairy shrimp, the Vernal Pool fairy shrimp and the Vernal Pool tadpole shrimp.

Timetable:

Action	Date	FR Cite
NPRM	09/24/02	67 FR 59883
NPRM Comment Period End	11/25/02	
Final Rule	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI26

1272. MIGRATORY BIRD PERMITS; REGULATIONS FOR MANAGING RESIDENT CANADA GEESE POPULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 703 to 712; 16 USC 742(a) to 742(j)

CFR Citation: 50 CFR 20

Legal Deadline: None

Abstract: This rule would establish a regulation authorizing State wildlife agencies to conduct indirect and/or direct population control management activities on resident Canada geese including the take of birds. The intent of this rule is to allow State wildlife management agencies sufficient flexibility to deal with problems caused by resident Canada geese and guide and direct Canada goose population growth and management activities in the conterminous United States.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Tribal

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: brian__millsap@fws.gov

RIN: 1018–AI32

1273. SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPART C AND SUBPART D—2004 SUBSISTENCE TAKING OF FISH AND SHELLFISH REGULATIONS

Priority: Routine and Frequent

Legal Authority: 16 USC 3124

CFR Citation: 50 CFR 100; 36 CFR 242

Legal Deadline: None

Abstract: This rulemaking will revise the regulations for seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2004 regulatory year. This rulemaking is necessary because subpart D is subject to an annual review cycle.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: William Knauer, Office of Subsistence Management, Department of the Interior, United States Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503
Phone: 907 786-3888

RIN: 1018–AI37

1274. SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPART C—NONRURAL DETERMINATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 3124

CFR Citation: 50 CFR 100; 36 CFR 242

Legal Deadline: None

Abstract: This rule will revise the rural/nonrural determinations based on the new 2000 Federal census data. This review/revision is called for in 50 CFR 100.15 and 36 CFR 242.15.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: William Knauer, Office of Subsistence Management, Department of the Interior, United States Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503
Phone: 907 786-3888

RIN: 1018–AI38

1275. MIGRATORY BIRD PERMITS; REGULATIONS FOR MANAGING DOUBLE-CRESTED CORMORANT DAMAGES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 712

CFR Citation: 50 CFR 21

Legal Deadline: None

Abstract: We are proposing to establish, in cooperation with State wildlife agencies and USDA-APHIS-wildlife services, a cormorant damage management program. This program is designed to provide a biologically sound, cost-effective, and flexible method for the control of damages associated with cormorants.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

URL For More Information: http://migratorybirds.fws.gov/issues/cormorant/cormorant.html

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: brian__millsap@fws.gov

RIN: 1018–AI39

1276. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; RECLASSIFICATION OF THE AMERICAN CROCODILE FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose to reclassify the American crocodile from endangered to threatened.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and

State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI41

1277. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING THE SOUTHWEST ALASKAN DISTINCT POPULATION SEGMENT OF THE NORTHERN SEA OTTER

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We will propose listing the southwest Alaskan distinct population segment of the Northern sea otter, found mostly in the Aleutian Islands and the Alaska peninsula and adjacent waters.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI44

1278. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING THE MOUNTAIN PLOVER WITH A SPECIAL RULE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Final, Statutory, February 16, 2000.

Abstract: We will amend our proposed listing of the Mountain plover based on new information. We will also publish a proposed Special Rule under section 4(d) of the Endangered Species Act.

Timetable:

Action	Date	FR Cite
NPRM	02/16/99	64 FR 7587
NPRM Comment Period Extended	04/19/99	64 FR 19108
Second NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI45

1279. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE CACTUS FERRUGINOUS PYGMY OWL

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, July 13, 2002.

Abstract: We will propose a new designation of critical habitat for the Cactus ferruginous pygmy owl distinct population segment found in Arizona.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI48

1280. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE COLUMBIA-KLAMATH DISTINCT POPULATION SEGMENT OF THE BULL TROUT

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, September 1, 2002.

Abstract: We propose to designate critical habitat for the Columbia-Klamath distinct population segment of the Bull trout.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Energy Effects: Statement of Energy Effects planned as required by Executive Order 13211.

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI52

1281. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ESTABLISHMENT OF NONESSENTIAL EXPERIMENTAL POPULATION STATUS AND REINTRODUCTION OF 16 MUSSELS, 1 SNAIL, AND 5 FISHES IN TENNESSEE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We propose the establishment of Nonessential Experimental Population status and reintroduction of 16 mussels, 1 snail, and 5 fishes in Tennessee

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI54

1282. • IMPLEMENTATION GUIDELINES FOR FISCAL YEAR (FY) 2002 LANDOWNER INCENTIVE PROGRAM (NON-TRIBAL PORTION) FOR STATES, TERRITORIES AND THE DISTRICT OF COLUMBIA

Priority: Other Significant

Legal Authority: PL 88-578

CFR Citation: None

Legal Deadline: Final, Statutory, December 2002.

Abstract: The Landowner Incentive Program (LIP) is a $40 million (LWCF derived) grant program authorized in the FY 2002 Interior Appropriations Bill that provides competitive matching grants to States, territories, the District of Columbia, and tribes. The grants will establish or supplement landowner incentive programs that provide technical and financial assistance to private landowners for projects that protect and restore habitats of listed species or species determined to be at-risk. It is important to note this action includes the "non-tribal" portion of this program only. Separate policy guidelines are being developed by the Service for the tribal LIP program.

Timetable:

Action	Date	FR Cite
Policy	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Kim Galvan, Management Analyst, Division of Federal Aid, Department of the Interior, United States Fish and Wildlife Service, MS 140, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1851
Email: kim_galvan@fws.gov

RIN: 1018–AI55

1283. • TRIBAL WILDLIFE GRANTS PROGRAM IMPLEMENTATION GUIDELINES FOR FISCAL YEAR (FY) 2002

Priority: Other Significant

Legal Authority: PL 107-63

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Service is providing draft implementation guidance for this $5 million program, which derives from the State Wildlife Grant Program. Proposed guidelines, ranking criteria, and additional information are presented for public comment.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Patrick Durham, Native American Liaison, Department of the Interior, United States Fish and Wildlife Service, Room 3012, 1849 C Street, Washington, DC 20240
Phone: 202 208-4133

RIN: 1018–AI58

1284. • TRIBAL LANDOWNER INCENTIVE PROGRAM (T-LIP) IMPLEMENTATION GUIDELINES FOR FISCAL YEAR (FY) 2002

Priority: Other Significant

Legal Authority: PL 88-578

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Service is providing draft implementation guidance for the $4 million tribal component of the Landowner Incentive Program. Proposed guidelines, ranking criteria, and additional information are presented for public comment.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Patrick Durham, Native American Liaison, Department of the Interior, United States Fish and Wildlife Service, Room 3012, 1849 C Street, Washington, DC 20240
Phone: 202 208-4133

RIN: 1018–AI59

1285. • SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPART C AND SUBPART D — 2003-2004 SUBSISTENCE TAKING OF WILDLIFE REGULATIONS

Priority: Routine and Frequent

Legal Authority: 16 USC 3124

CFR Citation: 50 CFR 100; 36 CFR 242

Legal Deadline: None

Abstract: This rule will revise the regulations for seasons, harvest limits, methods and means for the subsistence taking of wildlife during the 2003 regulatory year. This rulemaking is necessary because subpart D is subject to an annual review cycle.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: William Knauer, Office of Subsistence Management, Department of the Interior, United States Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503
Phone: 907 786-3888

RIN: 1018–AI62

1286. • 2003-2004 REFUGE SPECIFIC HUNTING AND SPORT FISHING REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 16 USC 460; 16 USC 664; 16 USC 668(dd) to 668(ee); 16 USC 715(i)

CFR Citation: 50 CFR 32

Legal Deadline: None

Abstract: We propose to open additional National Wildlife Refuges to hunting and/or sport fishing and to provide refuge-specific regulations for those activities. This is an annual update for the National Wildlife Refuge System that ensures adequate public notice of openings/changes each fall. We operate hunting/fishing programs on National Wildlife Refuges in furtherance of the implementation of the National Wildlife Refuge System Improvement Act of 1997 directives to facilitate compatible priority wildlife-dependant recreational opportunities.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Leslie Marler, Management Analyst, National Wildlife Refuge System, Department of the Interior, United States Fish and Wildlife Service, Room 670, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2397

RIN: 1018–AI63

1287. • MIGRATORY BIRD PERMITS; EIDERDOWN FROM ICELAND

Priority: Substantive, Nonsignificant

Legal Authority: PL 95-616; 16 USC 712(2); PL 106-108

CFR Citation: 50 CFR 21

Legal Deadline: None

Abstract: This rulemaking will allow the importation into the United States of processed Icelandic eiderdown.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: brian__millsap@fws.gov

RIN: 1018–AI64

1288. • IMPORT OF POLAR BEAR TROPHIES FROM CANADA; FINDING FOR THE GULF OF BOOTHIA POPULATION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 18.30

Legal Deadline: None

Abstract: This rule announces proposed findings on the import of polar bears (Ursus maritimus) taken in sport hunts from the Canadian Gulf of Boothia polar bear population under the Marine Mammal Protection Act.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2095
Email: peter__thomas@fws.gov

RIN: 1018–AI65

1289. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING THE CALIFORNIA SALAMANDER (RANGEWIDE)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, May 15, 2003.

Abstract: We will propose to list the California tiger salamander throughout its range, to include areas where it is not already listed, under the Endangered Species Act.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI68

1290. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE DESERT YELLOWHEAD

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, March 8, 2003, Settlement agreement.

Abstract: We will propose to designate critical habitat for the Desert yellowhead, a threatened plant found in Wyoming.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI69

1291. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE SOUTHWESTERN WILLOW FLYCATCHER

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, June 1, 2003.

Abstract: We will propose designation of critical habitat for the Southwestern willow flycatcher, an endangered bird found in Arizona, California, Colorado, New Mexico, Nevada, Texas and Utah.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI70

1292. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE SAN DIEGO FAIRY SHRIMP

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, April 11, 2003, Court order.

Abstract: We will propose designation of critical habitat for the endangered San Diego Fairy shrimp, a freshwater crustacean found in southern California.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI71

1293. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE CALIFORNIA GNATCATCHER

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, April 11, 2003, Court order.

Abstract: We will propose to designate critical habitat for the Coastal California gnatcatcher, a threatened bird found in southern California.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI72

1294. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR 9 APPALACHIAN BIVALVES (FRESHWATER MUSSELS)

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, March 17, 2003, Court order.

Abstract: We will propose to designate critical habitat, if prudent, for nine species of Appalachian bivalves, or freshwater mussels.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI73

1295. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR BRAUN'S ROCKCRESS

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, May 19, 2003, Court order.

Abstract: We will propose designation of critical habitat for Braun's rockcress, an endangered plant found in Kentucky and Tennessee.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI74

1296. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE CUMBERLAND ELKTOE

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, May 19, 2003, Court order.

Abstract: We will propose designation of critical habitat, if prudent, for the Cumberland elktoe, an endangered freshwater mussel found in Kentucky and Tennessee.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI75

1297. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR FOUR APPALACHIAN MUSSELS

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, June 16, 2003, Court order.

Abstract: We will propose designation of critical habitat, if prudent, for four

species of Appalachian bivalves, or freshwater mussels.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI76

1298. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR A PLANT, THE PEIRSON'S MILKVETCH

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, July 28, 2003, Court order.

Abstract: We will propose designation of critical habitat for Pierson's milkvetch, a threatened plant found in California.

Timetable:

Action	Date	FR Cite
NPRM	07/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI77

1299. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR A PLANT, THE LANE MOUNTAIN MILKVETCH

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, September 15, 2003, Court order.

Abstract: We will propose designation of critical habitat for the Lane Mountain milkvetch, an endangered plant found in California.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI78

1300. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DELISTING OF A PLANT, THE ARIZONA AGAVE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose to remove the Arizona agave (Agave arizonica) from the list of threatened and endangered species.

Timetable:

Action	Date	FR Cite
NPRM	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI79

1301. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; NONESSENTIAL EXPERIMENTAL POPULATION OF THE NORTHERN APLOMADO FALCON

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to establish a nonessential experimental population for the Northern aplomado falcon (Falco femoralis septentrionalis), to facilitate the recovery of this endangered species and to provide that its re-introduction will not impose new restrictions.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI80

1302. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ENDANGERED STATUS FOR THE DUGONG IN THE REPUBLIC OF PALAU

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to reopen the comment period on the proposed listing, as endangered, of the dugong in the Republic of Palau. The proposed rule was published in the Federal Register on August 5, 1993.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Gabel, Chief, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, Room 750, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: roddy__gabel@fws.gov

RIN: 1018–AI81

1303. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ENDANGERED STATUS FOR THE SCIMITAR-HORNED ORYX, ADDAX, AND DAMA GAZELLE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to reopen the comment period on the proposed listing of the Scimitar-Horned oryx, addax and the Dama gazelle as endangered. The proposed rule was published in the Federal Register on November 5, 1991.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Gabel, Chief, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, Room 750, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: roddy__gabel@fws.gov

RIN: 1018–AI82

1304. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DOWNLISTING THE WOOD BISON FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to publish a proposed rule to downlist the Wood bison from endangered to threatened. This action is being considered due to progress in the recovery of this species.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Gabel, Chief, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, Room 750, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: roddy__gabel@fws.gov

RIN: 1018–AI83

1305. • MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA; REGULATIONS FOR THE SPRING AND SUMMER 2003 SEASON

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 703 to 712; 16 USC 742a to 742j

CFR Citation: 50 CFR 92

Legal Deadline: None

Abstract: This is the first of annual regulations that will prescribe frameworks for harvest dates, the species that can be taken, and methods and means for subsistence harvest of migratory birds during the spring and summer in Alaska. These regulations were developed under a new process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. A 1916 treaty with Canada established a closed season for the taking of migratory birds between March 10 and September 1. The governments of Canada, Mexico, and the United States recently amended the 1916 treaty and a subsequent 1936 treaty to provide for the legal subsistence harvest of migratory birds and their eggs in Alaska and Canada during the closed season.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Donna Dewhurst, Department of the Interior, United States Fish and Wildlife Service, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503
Phone: 907 786-3499
Email: donna__dewhurst@fws.gov

RIN: 1018–AI84

1306. • SAFE HARBOR AGREEMENTS AND CANDIDATE CONSERVATION AGREEMENTS WITH ASSURANCES; REVISIONS TO THE REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531

CFR Citation: 50 CFR 13.25; 50 CFR 17.22; 50 CFR 17.32

Legal Deadline: None

Abstract: FWS is proposing to revise the implementing regulations for permits issued under Safe Harbor Agreements and Candidate Conservation Agreements With Assurances. These minor regulatory revisions will make SHAs and CCAAs easier to understand and implement. After practical application of the policy and regulations, we see some inconsistencies and a need to refine/define some terminology.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Jody Elizabeth Brown, Biologist, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 N. Fairfax Dr., Arlington, VA 22203
Phone: 703 358-2105
Fax: 703 358-2324
Email: jody__brown@fws.gov

RIN: 1018–AI85

Department of the Interior (DOI)
United States Fish and Wildlife Service (FWS)

Final Rule Stage

1307. LIST OF MIGRATORY BIRDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 704; 16 USC 712

CFR Citation: 50 CFR 10.13

Legal Deadline: None

Abstract: The List of Migratory Birds found at 50 CFR 10.13 is being revised to (1) bring the list into conformity with generally accepted taxonomy and nomenclature—English (common) and scientific names, as reflected in four published supplements to the 6th (1983) edition of the American Ornithologists' Union Checklist of North American Birds; and (2) add species that are of regular occurrence in the United States that are not included on the current list.

Timetable:

Action	Date	FR Cite
NPRM	05/09/95	60 FR 24686
Second NPRM	10/12/01	66 FR 52281
Second NPRM Comment Period End	11/13/01	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: brian__millsap@fws.gov

RIN: 1018–AB72

1308. CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES (CITES)

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 23

Legal Deadline: None

Abstract: This will be a revision to an existing rule that will incorporate decisions/interpretations made at nine conferences of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

Timetable:

Action	Date	FR Cite
NPRM	05/08/00	65 FR 26663
Correction	06/29/00	65 FR 40167
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Federal

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2095
Email: peter__thomas@fws.gov

RIN: 1018–AD87

1309. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; RECLASSIFICATION OF THE GRAY WOLF IN CERTAIN PARTS OF ITS RANGE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to make a final determination on the proposed rule to reclassify certain populations of the gray wolf from endangered to threatened status under the Endangered Species Act, based on the recent recovery achievements, and to establish distinct population segments.

Timetable:

Action	Date	FR Cite
NPRM	07/13/00	65 FR 43449
Notice - Meetings and Hearings	07/26/00	65 FR 45956
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AF20

1310. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; REMOVAL OF THE DOUGLAS COUNTY, OREGON, POPULATION OF THE COLUMBIA WHITE-TAILED DEER FROM THE LIST OF ENDANGERED AND THREATENED SPECIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to make a final determination on a proposed rule to remove the Douglas County, Oregon, population of the Columbia white-tailed deer from the list of endangered and threatened species.

Timetable:

Action	Date	FR Cite
NPRM	05/11/99	64 FR 25263
NPRM Comment Period Reopened	11/03/99	64 FR 59729
NPRM Comment Period Reopened	12/29/99	64 FR 72992
Second NPRM	06/21/02	67 FR 42217
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AF43

1311. IMPORTATION OF CAPTIVE-BRED EXOTIC BIRDS INTO THE UNITED STATES FROM BREEDING FACILITIES IN OTHER COUNTRIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 4901 to 4916

CFR Citation: 50 CFR 15.41; 50 CFR 15.42

Legal Deadline: None

Abstract: We will establish the information requirements and approval criteria for the import of captive-bred wild exotic birds from overseas breeding facilities. This rule applies primarily to species listed in the appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which are otherwise prohibited from import by the Wild Bird Conservation Act of 1992. The rule also describes the process for handling petitions to approve qualifying facilities, establishes the duration of approval, provides for the suspension and revocation of approval, and provides for notice of approved facilities in the Federal Register.

Timetable:

Action	Date	FR Cite
NPRM	03/17/94	59 FR 12784
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Gabel, Chief, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, Room 750, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: roddy__gabel@fws.gov

RIN: 1018–AF44

DOI—FWS

Final Rule Stage

1312. POLICY FOR EVALUATION OF CONSERVATION EFFORTS IN ENDANGERED SPECIES DECISIONMAKING

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: The Fish and Wildlife Service and the National Marine Fisheries Service announce a draft policy for the evaluation of conservation efforts in making listing decisions under the Endangered Species Act of 1973, as amended (Act). The policy identifies criteria to be used in determining whether conservation agreements, conservation plans, management plans, or other formalized conservation efforts remove the need to list a species as threatened or endangered under the Act.

Timetable:

Action	Date	FR Cite
NPRM	06/13/00	65 FR 37102
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AF55

1313. POLICY ON GENERAL CONSERVATION PERMITS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq; 16 USC 1361 et seq; 16 USC 703 et seq

CFR Citation: None

Legal Deadline: None

Abstract: This policy will contain provisions to issue permits to qualified organizations to conduct general conservation activities over a specified period of time instead of issuing multiple permits for each activity.

Timetable:

Action	Date	FR Cite
Notice of Proposed Policy	10/28/99	64 FR 58086
Final Action	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2095
Email: peter__thomas@fws.gov

RIN: 1018–AF63

1314. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DELISTING THE NORTHERN POPULATION OF THE TIDEWATER GOBY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: The Service plans to make a final determination on the proposed rule to remove the northern population of the tidewater goby from the List of Threatened and Endangered Species. Currently, all tidewater goby populations in California are on the List of Endangered and Threatened Species.

Timetable:

Action	Date	FR Cite
NPRM	06/24/99	64 FR 33816
NPRM Comment Period Reopened	02/15/00	65 FR 7483
NPRM Comment Period Reopened	01/03/01	66 FR 345
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AF67

1315. U.S. PROPOSALS FOR CITES APPENDIX III; CERTAIN TURTLE SPECIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 23

Legal Deadline: None

Abstract: This action would add certain native turtle species to Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. If adopted, exports of the species would require CITES documentation from the Service to ensure that foreign countries accept the shipments. This action is necessary to monitor the impact of trade on the species in an effort to maintain healthy populations.

Timetable:

Action	Date	FR Cite
NPRM	01/26/00	65 FR 4217
NPRM Comment Period End	03/13/00	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Marie Maltese, Biologist, Division of Scientific Authority, Department of the Interior,

United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: marie_maltese@fws.gov

RIN: 1018–AF69

1316. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DETERMINATION OF ENDANGERED STATUS AND DESIGNATION OF CRITICAL HABITAT FOR THE GILA CHUB

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Final, Judicial, August 18, 2001, Court Order.

Abstract: We are proposing endangered status and the designation of critical habitat for the Gila chub.

Timetable:

Action	Date	FR Cite
NPRM	08/09/02	67 FR 51947
NPRM Comment Period End	09/23/02	
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AG16

1317. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DELISTING OF THE HOOVER'S WOOLY-STAR

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to make a final determination on the proposed rule to remove the Hoover's Wooly-Star from the list of Endangered and Threatened Plants. This action is based on information that indicates this plant is more widespread and abundant than previously thought, more resilient and less vulnerable to certain activities, and adequately protected on public lands.

Timetable:

Action	Date	FR Cite
NPRM	03/06/01	66 FR 13474
NPRM Comment Period End	05/07/01	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AG41

1318. NATIONAL WILDLIFE REFUGE SYSTEM; MISSION, GOALS, AND PURPOSES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 668(dd) to 668(ee)

CFR Citation: None

Legal Deadline: None

Abstract: This proposed policy will address the mission, goals and purposes of the National Wildlife Refuge System in the context of the National Wildlife Refuge System Improvement Act of 1997.

Timetable:

Action	Date	FR Cite
Proposed Policy	01/16/01	66 FR 3668
Comment Period Extended	03/15/01	66 FR 15136
NPRM Comment Period Reopened	05/15/01	66 FR 26879
NPRM Comment Period Reopened	06/21/01	66 FR 33268
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

Agency Contact: James W. Kurth, Deputy Chief, National Wildlife Refuge System, Department of the Interior, United States Fish and Wildlife Service, MS 670 ARLSQ, Washington, DC 20240
Phone: 703 358-1744

RIN: 1018–AG46

1319. INJURIOUS WILDLIFE - ADDITION OF BLACK CARP

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 42

CFR Citation: 50 CFR 16

Legal Deadline: None

Abstract: We will review economic and biological information on the Black carp (Mylopharyngodon piceus) for possible addition to the list of injurious wildlife under the Lacey Act.

Timetable:

Action	Date	FR Cite
NPRM	07/30/02	67 FR 49280
NPRM Comment Period End	09/30/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

URL For Public Comments: http://BlackCarp@fws.gov

Agency Contact: Kari Jonell Duncan, Fishery Biologist, Division of Environmental Quality, Department of the Interior, United States Fish and Wildlife Service, Room 810B, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2464
Email: kari_duncan@fws.gov

RIN: 1018–AG70

1320. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DETERMINATIONS OF WHETHER DESIGNATION OF CRITICAL HABITAT IS PRUDENT FOR 81 PLANTS AND PROPOSED DESIGNATIONS FOR 76 PLANTS FROM KAUAI AND NIIHAU, HAWAII

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500; 16 USC 1531 to 1544

CFR Citation: 50 CFR 17

Legal Deadline: Final, Judicial, December 16, 2001, Court Order.

Abstract: We propose to designate for a second time critical habitat for 77 plants from the islands of Kauai and Niihau, Hawaii.

Timetable:

Action	Date	FR Cite
NPRM	11/07/00	65 FR 66807
Correction	11/13/00	65 FR 67796
NPRM Comment Period Reopened	03/07/01	66 FR 13691
Second NPRM	01/28/02	67 FR 3939
Correction	02/11/02	67 FR 6214
NPRM	08/26/02	67 FR 54766
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AG71

1321. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR THE PURPLE AMOLE

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, September 30, 2001, Settlement agreement.

Abstract: We will determine critical habitat for the Purple amole in California.

Timetable:

Action	Date	FR Cite
NPRM	11/08/01	66 FR 56508
NPRM Comment Period End	01/07/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AG75

1322. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR THREE COASTAL CALIFORNIA PLANTS

Priority: Other Significant

Legal Authority: 16 USC 1531 to 1544; 16 USC 1361 to 1407; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, September 30, 2001, Court order.

Abstract: We propose to designate critical habitat for three coastal plants in California: LaGraciosa thistle; Lompac Yerba Santa; and Gaviota tarplant.

Timetable:

Action	Date	FR Cite
NPRM	11/15/01	66 FR 57559
NPRM Comment Period End	01/14/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AG88

1323. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR THE KECK'S CHECKERMALLOW

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, June 10, 2002, Court order.

Abstract: We propose to designate critical habitat for the Keck's checkermallow in California.

Timetable:

Action	Date	FR Cite
NPRM	06/19/02	67 FR 41669
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AG93

1324. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR THE BAKER'S LARKSPUR AND THE YELLOW LARKSPUR

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, June 10, 2002, Court order.

Abstract: We propose to determine critical habitat for the Baker's larkspur and the Yellow larkspur in California.

Timetable:

Action	Date	FR Cite
NPRM	06/18/02	67 FR 41367
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AG96

1325. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR THE OTAY TARPLANT

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, May 30, 2001, Settlement agreement.

Abstract: We will designate critical habitat for the Otay tarplant in California.

Timetable:

Action	Date	FR Cite
NPRM	06/13/01	66 FR 32052
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH00

1326. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR TWO CAVE INVERTEBRATES FROM KAUAI

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: Final, Judicial, January 1, 2002, Court order to finalize by 01/01/02.

Abstract: We propose to designate critical habitat for the Kauai cave amphipod and the Kauai cave wolf spider.

Timetable:

Action	Date	FR Cite
NPRM	03/27/02	67 FR 14671
NPRM Comment Period End	05/28/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH01

1327. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR 58 PLANTS IN HAWAII

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: Final, Judicial, April 30, 2002, 145 plants final by 04/30/02.

Abstract: We propose to determine critical habitat for 58 plants on the island of Hawaii. This action is part of litigation involving 245 Hawaiian plants.

Timetable:

Action	Date	FR Cite
NPRM	05/28/02	67 FR 36967
NPRM	08/26/02	67 FR 54766
NPRM Comment Period Reopened	09/24/02	67 FR 59811
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH02

1328. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DETERMINATIONS OF WHETHER DESIGNATION OF CRITICAL HABITAT IS PRUDENT FOR 20 PLANTS AND RE-PROPOSED DESIGNATIONS FOR 32 PLANTS FROM MOLOKAI, HAWAII

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, March 20, 2002, Settlement agreement.

Abstract: We re-propose to determine critical habitat for 50 plants on Molokai, Hawaii, and 2 plants in the Maui/NUI Complex, Hawaii, as the result of litigation.

Timetable:

Action	Date	FR Cite
NPRM	12/29/00	65 FR 83157
NPRM Comment Period Extended	02/22/01	66 FR 11132
Second NPRM	04/05/02	67 FR 16491
Second NPRM Comment Period End	05/20/02	
NPRM	08/26/02	67 FR 54766
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH08

1329. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR PLANTS OF THE NORTHWEST ISLANDS, HAWAII

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, November 30, 2000, 100 Hawaiian plants.
Final, Judicial, November 30, 2001, 100 Hawaiian plants.

Abstract: We propose to determine critical habitat for 8 plants on the Northwest Islands of Hawaii, as a result of litigation.

Timetable:

Action	Date	FR Cite
NPRM	05/14/02	67 FR 34521
NPRM	08/26/02	67 FR 54766
NPRM	09/12/02	67 FR 57784
NPRM Comment Period End	10/15/02	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and

Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH09

1330. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DETERMINATIONS OF WHETHER DESIGNATION OF CRITICAL HABITAT IS PRUDENT FOR 8 PLANTS AND REPROPOSED DESIGNATIONS FOR 18 PLANTS FROM LANAI, HAWAII

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, February 16, 2002, settlement.

Abstract: We will determine critical habitat for listed plants on the island of Hawaii, as a result of litigation.

Timetable:

Action	Date	FR Cite
NPRM	12/27/00	65 FR 82085
NPRM	02/22/01	66 FR 11133
NPRM	04/06/01	66 FR 18223
NPRM	03/04/02	67 FR 9805
NPRM Comment Period End	04/18/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH10

1331. ENDANGERED AND THREATENED PLANTS; REMOVAL OF THE TRUCKEE BARBERRY FROM THE LIST OF ENDANGERED AND THREATENED PLANTS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose to remove the Truckee barberry from the List of Endangered and Threatened Plants.

Timetable:

Action	Date	FR Cite
NPRM	09/03/02	67 FR 56254
Final Action	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH47

1332. ENDANGERED AND THREATENED WILDLIFE; REMOVAL OF THE GUAM BROADBILL AND MARIANA MALLARD FROM THE LIST OF ENDANGERED AND THREATENED WILDLIFE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to make a final determination on the proposed rule to remove the Guam broadbill and the Mariana mallard from the List of Endangered and Threatened Wildlife.

Timetable:

Action	Date	FR Cite
NPRM	01/25/02	67 FR 3675
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH50

1333. ADDITION OF THE BASKING SHARK AND THE STAG BEETLE TO APPENDIX III UNDER CITES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 23

Legal Deadline: None

Abstract: This action will amend the regulations in 50 CFR part 23 by adding the basking shark and the stag beetle to appendix III under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2095
Email: peter_thomas@fws.gov

RIN: 1018–AH66

1334. AUDIT RESOLUTION POLICY

Priority: Substantive, Nonsignificant

Legal Authority: OMB Circular A-133

CFR Citation: 50 CFR 80; 43 CFR 12

Legal Deadline: None

Abstract: We will publish 6 USFWS Manual chapters regarding Federal Government auditing standards as they pertain to State grantees.

Timetable:

Action	Date	FR Cite
Policy	12/14/01	66 FR 64845
Policy	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Federal

Agency Contact: Kim Galvan, Management Analyst, Division of Federal Aid, Department of the Interior, United States Fish and Wildlife Service, MS 140, 4401 North Fairfax Drive, Arlington, VA 22203

Phone: 703 358-1851
Email: kim_galvan@fws.gov

RIN: 1018–AH69

1335. ENDANGERED AND THREATENED WILDLIFE AND PLANTS: REPROPOSED DETERMINATIONS OF PRUDENCY AND PROPOSED DESIGNATIONS OF CRITICAL HABITAT FOR PLANTS FROM MAUI AND KAHOOLAWE, HAWAII

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, November 30, 2000, 100 Hawaii plants. Final, Judicial, November 30, 2001, 100 Hawaii plants.

Abstract: We will determine critical habitat for approximately 63 plants from Maui and Kahoolawe, Hawaii.

Timetable:

Action	Date	FR Cite
NPRM	12/18/00	65 FR 79191
NPRM	02/22/01	66 FR 11131
NPRM Comment Period End	04/02/01	
NPRM	04/03/02	67 FR 15855
NPRM Comment Period End	05/20/02	
NPRM	08/26/02	67 FR 54764
NPRM	08/26/02	67 FR 54766
NPRM Comment Period Reopened	10/02/02	67 FR 61845
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH70

1336. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; REOPENING OF COMMENT PERIOD ON THE THREATENED STATUS OF THE SACRAMENTO SPLITTAIL (POGONICHTHYS MACROLEPIDOTIS)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Final, Judicial, January 31, 2002, Settlement agreement.

Abstract: We were ordered by a court to reanalyze the information concerning the listing decision for the Sacramento splittail. Therefore, we have reopened the comment period for this issue. The previous regulatory action that finalized the listing decision for the Sacramento splittail was assigned RIN 1018-AC26, and was completed with the publication of the final rule designating the Sacramento splittail as a threatened species, effective March 10, 1999 (64 FR 5963). Since RIN 1018-AC26 has been completed, we are considering the reopening of the comment period on this issue to be a new regulatory action, which has been assigned this current RIN.

Timetable:

Action	Date	FR Cite
Comment Period Extended	01/12/01	66 FR 2828
Comment Period Reopened	05/08/01	66 FR 23181
Comment Period End	06/07/01	
Comment Period Reopened	08/17/01	66 FR 43145
Comment Period End	10/01/01	
NPRM Comment Period Reopened	03/21/02	67 FR 13095
NPRM Correction	04/01/02	67 FR 15337
NPRM Comment Period End	05/20/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH73

1337. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PROPOSED ENDANGERED STATUS FOR POLYGONUM HICKMANII (SCOTTS VALLEY POLYGONUM)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Final, Judicial, October 19, 2001, Settlement agreement.

Abstract: We propose to list the Scotts Valley polygonum as an endangered species.

Timetable:

Action	Date	FR Cite
NPRM	11/09/00	65 FR 67335
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH76

1338. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ESTABLISHMENT OF PROTECTION AREAS FOR THE WEST INDIAN MANATEE IN FLORIDA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, August 2001, Settlement agreement. Final, Judicial, January 2002, Settlement agreement.

Abstract: In August 2001, pursuant to a settlement agreement, we published a proposal to create 16 manatee protection areas in Florida. On January 7, 2002, we published a final rule establishing manatee refuges at two of those sites, while deferring action on making a determination in a final rule on the remaining 14 sites until December 2002. Now, in response to comments received during the public comment period on the August 2001 proposed rule, we are proposing to create an exception to the regulations governing the Barge Canal manatee refuge in Brevard County. Under this exception, parties may apply for authorization to conduct otherwise prohibited activities in the refuge if they can demonstrate to us that the activity can be pursued in such a manner that manatees will not be taken. This exception is being proposed only for the Barge Canal refuge so that we may assess the efficacy of the process in a controlled fashion before considering whether to make the exception more widely available.

Timetable:

Action	Date	FR Cite
NPRM	08/10/01	66 FR 42318
NPRM	08/29/01	66 FR 45662
Final Rule	01/07/02	67 FR 680
NPRM	04/16/02	67 FR 18572
NPRM Comment Period End	06/17/02	
Emergency Rule	09/20/02	67 FR 59487
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH80

1339. MIGRATORY BIRD PERMITS; REGULATIONS GOVERNING REHABILITATION ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 712(2)

CFR Citation: 50 CFR 21

Legal Deadline: None

Abstract: The Service proposes to amend the Migratory Bird Permit regulations which authorize permits to take, possess, transport, sell, purchase, barter, import and export migratory birds. The Service proposes to establish a new section to authorize rehabilitation permits, which currently are authorized under 50 CFR 21.27, Special Purpose permits.

Timetable:

Action	Date	FR Cite
NPRM	12/06/01	66 FR 63349
NPRM Comment Period End	03/06/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: brian_millsap@fws.gov

RIN: 1018–AH87

1340. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE RIO GRANDE SILVERY MINNOW

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, November 30, 2001, Settlement agreement.

Abstract: We propose to designate critical habitat for the Rio Grande silvery minnow in New Mexico.

Timetable:

Action	Date	FR Cite
Notice of Intent	04/05/01	66 FR 18107
NPRM	06/06/02	67 FR 39205
NPRM	09/12/02	67 FR 57783
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH91

1341. PUBLIC NOTICE FOR CITES APPENDIX III LISTING OF SPANISH CEDAR AND BIGLEAF MAHOGANY BY THE GOVERNMENT OF PERU

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq; 16 USC 4201; PL 99-625

CFR Citation: 50 CFR 23

Legal Deadline: None

Abstract: This notice advises the public that, by unilateral action provided for in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Government of Peru has listed Spanish cedar and bigleaf mahogany in CITES appendix III. This listing invokes certain permitting requirements to assist Peru in controlling trade in these species.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Pat Ford, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: pat_ford@fws.gov

RIN: 1018–AH99

1342. MIGRATORY BIRD HUNTING AND PERMITS; REGULATIONS FOR MANAGING HARVEST OF LIGHT GOOSE POPULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 703 to 712; 16 USC 742(a) to 742(j)

CFR Citation: 50 CFR 20; 50 CFR 21 subpart E

Legal Deadline: None

Abstract: This rule authorizes new methods of take for light goose hunting under 50 CFR part 20 and revises subpart E of 50 CFR part 21 for the management of overabundant light goose populations. It also modifies the conservation order that will increase take of such populations under the authority of this subpart.

Timetable:

Action	Date	FR Cite
NPRM	10/12/01	66 FR 52077
NPRM Correction	11/07/01	66 FR 56266
NPRM Comment Period Extended	12/10/01	66 FR 63665
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Tribal

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the

Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: brian_millsap@fws.gov

RIN: 1018–AI07

1343. ADDITION BY INDONESIA OF RAMIN TO APPENDIX III UNDER THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq; 16 USC 4201; PL 99-625

CFR Citation: 50 CFR 23

Legal Deadline: None

Abstract: This notice advises the public that, by unilateral action provided for in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Government of Indonesia has listed the tree species, Ramin, in CITES appendix III. This listing invokes certain permitting requirements to assist Indonesia in controlling trade in this species.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Pat Ford, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: pat_ford@fws.gov

RIN: 1018–AI08

1344. SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPART C AND SUBPART D—2003 SUBSISTENCE TAKING OF FISH AND SHELLFISH REGULATIONS

Priority: Routine and Frequent

Legal Authority: 16 USC 3124

CFR Citation: 50 CFR 100; 36 CFR 242

Legal Deadline: None

Abstract: This rulemaking will revise the regulations for seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2003 regulatory year. This rulemaking is necessary because subpart D is subject to an annual review cycle.

Timetable:

Action	Date	FR Cite
NPRM	02/11/02	67 FR 6334
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: William Knauer, Office of Subsistence Management, Department of the Interior, United States Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503
Phone: 907 786-3888

RIN: 1018–AI09

1345. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; REMOVAL OF THE TINIAN MONARCH FLYCATCHER FROM THE LIST OF ENDANGERED AND THREATENED SPECIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: The Service is planning to make a final determination on the proposed rule to delist the Tinian monarch flycatcher from the list of endangered and threatened species, due to apparent increases in population numbers and likely improvement in habitat quality. This bird occurs on Tinian Island in the Marianas. The proposed rule was published in the Federal Register on February 22, 1999, page 8533, under RIN 1018-AE40.

Timetable:

Action	Date	FR Cite
NPRM	02/22/99	64 FR 8533
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI14

1346. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING AND DESIGNATION OF CRITICAL HABITAT FOR THREE SNAILS AND ONE AMPHIPOD

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, February 6, 2002, Settlement agreement.

Abstract: We propose to list and designate critical habitat for Koster's tyronia, Noel's amphipod, Pecos assiminea and the Roswell springsnail in New Mexico and Texas.

Timetable:

Action	Date	FR Cite
NPRM	02/12/02	67 FR 6459
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI15

1347. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; EMERGENCY LISTING OF THE PYGMY RABBIT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: Other, Judicial, November 23, 2001, Settlement agreement.

Abstract: We are emergency listing the Columbia Basin Distinct Population Segment of the Pygmy rabbit in Washington.

Timetable:

Action	Date	FR Cite
NPRM	11/30/01	66 FR 59769
Emergency Final Rule	11/30/01	66 FR 59734
NPRM Comment Period Reopened	02/07/02	67 FR 5780
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI17

1348. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR THE TOPEKA SHINER

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, August 13, 2002, Settlement agreement.

Abstract: We propose to designate critical habitat for the fish, the Topeka shiner, which occurs in Iowa, Kansas, Minnesota, Missouri, and South Dakota.

Timetable:

Action	Date	FR Cite
NPRM	08/21/02	67 FR 54261
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI20

1349. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR THE GULF STURGEON

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, February 2, 2002, Settlement agreement.

Abstract: We propose to designate critical habitat for the Gulf sturgeon.

Timetable:

Action	Date	FR Cite
NPRM	08/08/02	67 FR 51530
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI23

1350. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR 103 OAHU, HAWAII, PLANTS

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, April 30, 2002, Settlement agreement.

Abstract: We propose to designate critical habitat for 103 Oahu, Hawaii, plants.

Timetable:

Action	Date	FR Cite
NPRM	05/28/02	67 FR 37107
NPRM	08/26/02	67 FR 54766
NPRM Comment Period Reopened	10/10/02	67 FR 63066
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI24

1351. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR FIVE CARBONATE PLANTS IN CALIFORNIA

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, January 30, 2002, Settlement agreement.

Abstract: We propose to designate critical habitat for five carbonate plants in California: Parish's daisy; Cushenbury buckwheat; Cushenbury milk-vetch; San Bernardino Mountains bladderpod; and Cushenbury oxytheca.

Timetable:

Action	Date	FR Cite
NPRM	02/12/02	67 FR 6577
NPRM Comment Period Reopened	09/20/02	67 FR 59239
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI27

1352. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING OF THE ISLAND FOX

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, November 30, 2001, Settlement agreement.

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Abstract: We propose to list the Island fox, which occurs on the Channel Islands off California.

Timetable:

Action	Date	FR Cite
NPRM	12/10/01	66 FR 63654
Final Action	07/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203 Phone: 703 358-2171

RIN: 1018–AI28

1353. SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPART D; SUBSISTENCE TAKING OF FISH, CUSTOMARY TRADE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 3124

CFR Citation: 50 CFR 100; 36 CFR 242

Legal Deadline: None

Abstract: This rulemaking will establish the guidelines under which the subsistence taking of fish and shellfish can be considered customary trade.

Timetable:

Action	Date	FR Cite
NPRM	02/27/02	67 FR 8918
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: William Knauer, Office of Subsistence Management, Department of the Interior, United States Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503 Phone: 907 786-3888

RIN: 1018–AI31

1354. MIGRATORY BIRD HUNTING; APPROVAL OF TUNGSTEN-IRON-NICKEL-TIN SHOT AS NONTOXIC FOR HUNTING WATERFOWL AND COOTS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 703 to 712; 16 USC 742(a) to 742(j)

CFR Citation: 50 CFR 20

Legal Deadline: None

Abstract: We will propose approval of shot comprised of 65 percent tungsten, 10.4 percent iron, 2.8 percent nickel, and 21.8 percent tin for waterfowl and coot hunting.

Timetable:

Action	Date	FR Cite
NPRM	05/10/02	67 FR 31754
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203 Phone: 703 358-1714 Email: brian__millsap@fws.gov

RIN: 1018–AI33

1355. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING OF COOK'S LOMATIUM AND LARGE-FLOWERED WOOLLY MEADOWFOAM

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Final, Judicial, October 31, 2002, court order.

Abstract: We will make a final listing determination for Cook's lomatium and the large-flowered woolly meadowfoam, two plants in Oregon.

Timetable:

Action	Date	FR Cite
NPRM	05/15/00	65 FR 30941
NPRM Comment Period Reopened	01/14/02	67 FR 1712
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Energy Effects: Statement of Energy Effects planned as required by Executive Order 13211.

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203 Phone: 703 358-2171

RIN: 1018–AI43

1356. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE PREBLE'S MEADOW JUMPING MOUSE

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, June 4, 2002.

Abstract: We will propose critical habitat for the Preble's Meadow jumping mouse, which is found in Colorado and Wyoming.

Timetable:

Action	Date	FR Cite
NPRM	07/17/02	67 FR 47153
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203 Phone: 703 358-2171

RIN: 1018–AI46

1357. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR 9 INVERTEBRATE SPECIES IN BEXAR COUNTY, TEXAS

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, June 30, 2002.

Abstract: We will propose designation of critical habitat for 9 species of cave-dwelling invertebrates found in Bexar County, Texas.

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Timetable:

Action	Date	FR Cite
NPRM	08/27/02	67 FR 55063
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203 Phone: 703 358-2171

RIN: 1018–AI47

1358. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING THE SLICKSPOT PEPPERGRASS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We will propose listing the slickspot peppergrass, a plant found in Idaho, under the Endangered Species Act.

Timetable:

Action	Date	FR Cite
NPRM	07/15/02	67 FR 46441
NPRM Comment Period Reopened	09/25/02	67 FR 60206
Final Action	07/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203 Phone: 703 358-2171

RIN: 1018–AI50

1359. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING THE FLAT-TAILED HORNED LIZARD

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Other, Judicial, December 26, 2001, court order.

Abstract: We will reconsider our 1997 withdrawal of a proposed rule to list the Flat-tailed horned lizard under the Endangered Species Act. As directed by the 9th Circuit Court, on December 26, 2001, we published a notice reinstating our 1993 proposal. A decision to list would extend the protection of the ESA to this species.

Timetable:

Action	Date	FR Cite
Notice	12/26/01	66 FR 66384
NPRM Comment Period Reopened	05/30/02	67 FR 37752
NPRM Comment Period End	07/29/02	
NPRM Comment Period Reopened	09/24/02	67 FR 59809
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203 Phone: 703 358-2171

RIN: 1018–AI51

1360. • FISCAL YEAR 2002 PRIVATE STEWARDSHIP GRANTS PROGRAM; PROGRAM IMPLEMENTATION

Priority: Other Significant

Legal Authority: PL 107-63

CFR Citation: None

Legal Deadline: None

Abstract: We are soliciting proposals for Federal assistance under the Private Stewardship Grants Program (PSGP). This action describes how to apply for funding under the PSGP and how we will determine which proposals will be funded.

Timetable:

Action	Date	FR Cite
Notice	06/07/02	67 FR 39419
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Martin Miller, Deputy Chief, Division of Consultation, HCPs and Recovery, Department of the Interior, United States Fish and Wildlife Service, Room 434, 4401 North Fairfax Drive, Arlington, VA 22203 Phone: 703 358-2171

RIN: 1018–AI56

1361. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ESTABLISHMENT OF A NONESSENTIAL EXPERIMENTAL POPULATION OF THE BLACK-FOOTED FERRET IN SOUTH-CENTRAL SOUTH DAKOTA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to reintroduce and establish a population of Black-footed ferrets into south-central South Dakota, on the Rosebud Sioux Reservation.

Timetable:

Action	Date	FR Cite
NPRM	09/11/02	67 FR 57558
NPRM Comment Period End	10/11/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203 Phone: 703 358-2171

RIN: 1018–AI60

1362. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING THE SONOMA COUNTY DISTINCT POPULATION SEGMENT OF THE CALIFORNIA TIGER SALAMANDER AS ENDANGERED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

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Abstract: We are planning to list the Sonoma County Distinct Population Segment (DPS) of the California tiger salamander as an endangered species.

Timetable:

Action	Date	FR Cite
NPRM	07/22/02	67 FR 47758
Emergency Final Rule	07/22/02	67 FR 47726
NPRM	08/26/02	67 FR 54761
NPRM Comment Period End	10/21/02	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI61

Department of the Interior (DOI)
United States Fish and Wildlife Service (FWS)

Long-Term Actions

1363. MIGRATORY BIRD PERMITS; SPECIFIC PERMIT PROVISIONS; IMPORT AND EXPORT PERMITS; BANDING OR MARKING PERMITS; AND SCIENTIFIC COLLECTING PERMITS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 712(2)

CFR Citation: 50 CFR 21

Legal Deadline: None

Abstract: The Service proposes to amend the Migratory Bird Permit Regulations providing permits for the taking, possession, transportation, sale, purchase, importation, exportation, and banding or marking of migratory birds. The Service is revising the requirements for scientific collecting, banding or marking permits and import and export permits.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: brian__millsap@fws.gov

RIN: 1018–AE63

1364. MIGRATORY BIRD PERMITS; INTRODUCTION, GENERAL REQUIREMENTS AND EXCEPTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 712(2)

CFR Citation: 50 CFR 21

Legal Deadline: None

Abstract: The Service proposes to amend the migratory-bird permit regulations providing permits for the taking, possession, transportation, sale, purchase, and barter of migratory birds. The Service is revising these permit regulations to update them, simplify language, and ensure consistency in text between all parts and sections.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal; Federal

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: brian__millsap@fws.gov

RIN: 1018–AE64

1365. IMPLEMENTATION OF THE 1994 AMENDMENTS TO THE MARINE MAMMAL PROTECTION ACT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 to 1374

CFR Citation: 50 CFR 18

Legal Deadline: None

Abstract: Section 104 of the Marine Mammal Protection Act authorizes the Director of the Service, acting on behalf of the Secretary of the Interior, to issue permits for activities otherwise prohibited by the Act. Regulations will be developed for issuance of permits and the 1994 amendments to the Act.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2095
Email: peter__thomas@fws.gov

RIN: 1018–AE72

1366. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DELISTING OF THE BALD EAGLE THROUGHOUT THE LOWER 48 STATES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: The bald eagle was reclassified to threatened status throughout the lower 48 States in 1995. Continued recovery gains and increasing population trends now make it possible to consider removing the bald eagle from the endangered species list. The Service plans to make a final determination on the proposal to delist the bald eagle.

Timetable:

Action	Date	FR Cite
NPRM	07/06/99	64 FR 36454
NPRM Comment Period End	10/06/99	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

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Long-Term Actions

Government Levels Affected: None

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AF21

1367. TAKING OF MARINE MAMMALS BY LEVEL B HARASSMENT; ISSUANCE OF GENERAL AUTHORIZATION FOR SCIENTIFIC RESEARCH AND PERMITS FOR PHOTOGRAPHY, EDUCATIONAL, AND COMMERCIAL PURPOSES

Priority: Substantive, Nonsignificant

Legal Authority: PL 103-238; 16 USC 1361 to 1407

CFR Citation: 50 CFR 18

Legal Deadline: None

Abstract: The Service proposes to issue regulations that would allow us to authorize harassment but not injury or death of marine mammals under our jurisdiction, for scientific research and for photography for educational or commercial purposes. This rule would further implement the 1994 Amendments to the Marine Mammal Protection Act.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2095
Email: peter__thomas@fws.gov

RIN: 1018–AF26

1368. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ESTABLISHMENT OF A SPECIAL RULE FOR THE CANADA LYNX

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17.40

Legal Deadline: None

Abstract: The Fish and Wildlife Service plans to propose a special rule under section 4(d) of the Endangered Species Act to provide an alternative voluntary mechanism for the authorization of incidental take of lynx resulting from otherwise lawful trapping or hunting of wildlife other than lynx. The rule will establish criteria that must be satisfied by State or tribal trapping and hunting programs to minimize the likelihood of the incidental take of lynx by trappers and hunters pursuing bobcat or other species.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AF40

1369. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PROPOSED ENDANGERED STATUS FOR THREE PLANTS FROM THE MARIANA ISLANDS AND GUAM

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Final, Statutory, June 1, 2001.

Abstract: We, the U.S. Fish and Wildlife Service (Service), propose endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for three plants (no common names): Nesogenes rotensis, Osmoxylon mariannense, and Tabernaemontana rotensis. Nesogenes rotensis and O. mariannense are found only on the island of Rota in the U.S. Commonwealth of the Northern Mariana Islands (CNMI). Tabernaemontana rotensis occurs on both Rota and the United States Territory of Guam.

Timetable:

Action	Date	FR Cite
NPRM	06/01/00	65 FR 35025
NPRM Comment Period Reopened	10/30/00	65 FR 64649
NPRM Comment Period End	11/29/00	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AG09

1370. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ENDANGERED STATUS FOR 12 SPECIES OF PICTURE-WING FLIES FROM THE HAWAIIAN ISLANDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Final, Judicial, July 31, 2001, Court Order.

Abstract: We propose endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for 12 species of Hawaiian picture-wing flies—Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. neoclavisetae, D. obatai, D. ochrobasis, D. substenoptera, and D. tarphytrichia. These species are found on one or more of the following Hawaiian Islands: Kauai, Oahu, Molokai, Maui, and Hawaii. These 12 species face substantial threats from one or more of the following: habitat degradation, loss of host plants, biological pest control, and predation from alien arthropods.

Timetable:

Action	Date	FR Cite
NPRM	01/17/01	66 FR 3964
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AG23

1371. MIGRATORY BIRD PERMITS; TAKE OF MIGRATORY BIRDS BY FEDERAL AGENCIES

Priority: Other Significant

Legal Authority: 16 USC 703 to 712

CFR Citation: 50 CFR 21.15

Legal Deadline: None

Abstract: According to a recent ruling of the United States Court of Appeals for the District of Columbia Circuit, Federal Agencies are subject to the Migratory Bird Treaty Act (MBTA) and must have authorization under the MBTA to take migratory birds. Our current regulations authorize issuance of permits to take migratory birds for activities such as scientific research, education, and depredation control. For many other activities that result in take of migratory birds, no permits have been available. This rule would allow Federal activities to take migratory birds that are not covered by existing permit regulations, provided certain conditions are met, until more specific regulations can be developed.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: brian_millsap@fws.gov

RIN: 1018–AG56

1372. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING OF THE MIAMI BLUE BUTTERFLY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: Other, Judicial, December 2001, Settlement agreement. A 90-day finding for the Miami Blue butterfly must be completed by December 2001.

Abstract: We will complete a 12-month finding for the Miami Blue butterfly in Florida.

Timetable:

Action	Date	FR Cite
Notice of Petition Finding	01/03/02	67 FR 280
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH30

1373. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DETERMINATION OF CRITICAL HABITAT FOR THE SCALESHELL MUSSEL

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, October 1, 2001, Settlement agreement.

Abstract: We propose to determine critical habitat for the Scaleshell, a mollusk, in Arkansas, Missouri, and Oklahoma.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH35

1374. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING OF THE SACRAMENTO MOUNTAINS CHECKERSPOT BUTTERFLY AND PROPOSED DESIGNATION OF CRITICAL HABITAT

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, August 31, 2001, Court order.

Abstract: We will make a final listing determination for the Sacramento Mountain checkerspot butterfly as endangered, including a critical habitat determination in New Mexico. This will extend the protection of the Endangered Species Act to this species.

Timetable:

Action	Date	FR Cite
NPRM	09/06/01	66 FR 46575
NPRM Comment Period Extended	09/26/01	66 FR 49158
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH40

1375. ENDANGERED AND THREATENED WILDLIFE; REMOVAL OF FOUR ASH MEADOW SPECIES FROM THE LIST OF ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose to remove four species of Ash Meadow plants and animals from the List of Endangered and Threatened Wildlife and Plants: Ash Meadows Amargusa pupfish; Ash Meadows sunray; Ash Meadows gumplant; Spring Loving centaury.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH49

1376. ENDANGERED AND THREATENED WILDLIFE; RECLASSIFICATION OF THE MARIANNA FRUIT BAT ON GUAM FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to reclassify the Marianna fruit bat on Guam from endangered to threatened.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH55

1377. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING THE DOLLY VARDEN AS A THREATENED SPECIES IN WASHINGTON DUE TO SIMILARITY OF APPEARANCE TO BULL TROUT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We propose to list the Dolly Varden (Salvelinus malma) as threatened under the "Similarity of Appearance" provision of the Endangered Species Act in Washington, due to its similarity of appearance to the bull trout.

Timetable:

Action	Date	FR Cite
NPRM	01/09/01	66 FR 1628
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH68

1378. MIGRATORY BIRD PERMITS; REGULATIONS GOVERNING EDUCATION; 50 CFR 21

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 712(2)

CFR Citation: 50 CFR 21

Legal Deadline: None

Abstract: The Service proposes to amend the migratory bird permit regulations to establish a new section to authorize possession for education, which currently is authorized under 50 CFR 21.27, Special Purpose permits.

Timetable:

Action	Date	FR Cite
Notice	11/20/00	65 FR 69726
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: brian_millsap@fws.gov

RIN: 1018–AH71

1379. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ESTABLISHMENT OF A NONESSENTIAL EXPERIMENTAL POPULATION OF GRIZZLY BEARS IN THE BITTERROOT AREA OF IDAHO AND MONTANA; REMOVAL OF REGULATIONS

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: The Service plans to make a final determination on the proposal to select the no-action alternative, as analyzed in the Bitterroot Final Environmental Impact Statement, as the preferred alternative.

Timetable:

Action	Date	FR Cite
NPRM	06/22/01	66 FR 33620
NPRM Comment Period End	08/21/01	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI03

1380. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING OF THE ROTA BRIDLED WHITE-EYE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat.3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, September 29, 2001, Settlement agreement.

Abstract: We propose to list a bird, the Rota bridled white-eye, which occurs in the Mariana Islands.

Timetable:

Action	Date	FR Cite
NPRM	10/03/01	66 FR 50383
NPRM Comment Period End	12/03/01	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI16

1381. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; RECLASSIFICATION OF THE GRAY BAT FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose to reclassify the Gray bat from endangered to threatened.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Endangered Species: Chief, Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI40

1382. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE SOUTHWESTERN WILLOW FLYCATCHER

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We will repropose critical habitat for the Southwestern willow flycatcher, a small bird found in the southwestern United States.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI49

1383. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CONSERVATION EDUCATION; 50 CFR 17.21

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17.21(g)

Legal Deadline: None

Abstract: Part 17.21(g) of title 50, of the Code of Federal Regulations addresses education as a valid component of Endangered Species Act approved programs. An advanced notice of proposed rulemaking will request public input on conservation education requirements that will be used in the development of a proposed rule that will propose a Service position on conservation education.

Timetable:

Action	Date	FR Cite
ANPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy J. Van Norman, Chief, Branch of Permits, International, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2350
Fax: 703 358-2281
Email: tim__vannorman@fws.gov

RIN: 1018–AI66

1384. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PERMITS FOR FOREIGN LISTED SPECIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We will issue a proposed rule to clarify the process used for issuing Endangered Species Act permits for foreign listed species.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy J. Van Norman, Chief, Branch of Permits, International, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2350
Fax: 703 358-2281
Email: tim__vannorman@fws.gov

RIN: 1018–AI67

1385. RECLASSIFICATION OF THE VICUNA FROM ENDANGERED TO THREATENED WITH A SPECIAL RULE

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	05/30/02	67 FR 37695

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: Kurt Johnson
Phone: 703 358-1708
Email: kurt__johnson@fws.gov

RIN: 1018–AE04

1386. INJURIOUS WILDLIFE; ADDITION OF BRUSH-TAILED POSSUM

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 16

Completed:

Reason	Date	FR Cite
Final Action	06/11/02	67 FR 39865

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Kari Jonell Duncan
Phone: 703 358-2464
Email: kari__duncan@fws.gov

RIN: 1018–AE34

1387. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PREBLES MEADOW JUMPING MOUSE; SPECIAL RULE

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17.40

Completed:

Reason	Date	FR Cite
Final Action	10/01/02	67 FR 61531

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Leonard
Phone: 703 358-2171

RIN: 1018–AF30

1388. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING THE CHIRICAHUA LEOPARD FROG WITH A SPECIAL RULE

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17.11

Completed:

Reason	Date	FR Cite
Final Action	06/13/02	67 FR 40789

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Chris Nolin
Phone: 703 358-2171

RIN: 1018–AF41

1389. ADMINISTRATION OF THE NATIONAL COASTAL WETLANDS CONSERVATION GRANT PROGRAM

Priority: Other Significant

CFR Citation: 50 CFR 87

Completed:

Reason	Date	FR Cite
Final Action	07/30/02	67 FR 49264

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Hannibal Bolton
Phone: 703 358-1718

RIN: 1018–AF51

1390. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ENDANGERED STATUS FOR SOUTHERN CALIFORNIA DISTINCT VERTEBRATE POPULATION SEGMENT (DPS) OF MOUNTAIN YELLOW-LEGGED FROG

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	07/02/02	67 FR 44382

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Chris Nolin
Phone: 703 358-2171

RIN: 1018–AF83

1391. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ENDANGERED STATUS FOR SAN DIEGO AMBROSIA

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	07/02/02	67 FR 44372

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Chris Nolin
Phone: 703 358-2171

RIN: 1018–AF86

1392. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ESTABLISHMENT OF NONESSENTIAL EXPERIMENTAL POPULATIONS FOR FOUR FISHES: DUSKYTAIL DARTER, SMOKY MADTOM, YELLOWFIN MADTOM, AND SPOTFIN CHUB

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	08/12/02	67 FR 52420

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Leonard
Phone: 703 358-2171

RIN: 1018–AF96

1393. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR THE SANTA CRUZ TARPLANT

Priority: Other Significant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Rule	10/16/02	67 FR 63967

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin
Phone: 703 358-2171

RIN: 1018–AG73

1394. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR KNEELAND PRAIRIE PENNYCRESS

Priority: Other Significant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Rule	10/09/02	67 FR 62897

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin
Phone: 703 358-2171

RIN: 1018–AG92

1395. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR CHORIZANTHE PUNGENS VAR. PUNGENS (MONTEREY SPINEFLOWER)

Priority: Other Significant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	05/29/02	67 FR 37497

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin
Phone: 703 358-2171

RIN: 1018–AH04

1396. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PRUDENCY AND CRITICAL HABITAT FOR A MOLLUSK, THE CAROLINA HEELSPLITTER

Priority: Other Significant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	07/02/02	67 FR 44501

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin
Phone: 703 358-2171

RIN: 1018–AH31

1397. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PRUDENCY AND CRITICAL HABITAT DESIGNATION FOR A MOLLUSK, THE APPALACHIAN ELKTOE

Priority: Other Significant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Rule	09/27/02	67 FR 61016

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin
Phone: 703 358-2171

RIN: 1018–AH33

1398. ENDANGERED AND THREATENED PLANTS; REMOVAL OF THE ROBIN'S CINQUEFOIL FROM THE LIST OF ENDANGERED AND THREATENED SPECIES

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	08/27/02	67 FR 54968

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Leonard
Phone: 703 358-2171

RIN: 1018–AH56

1399. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR POLYGONUM HICKMANII (SCOTTS VALLEY POLYGONUM) AND CHORIZANTHE ROBUSTA VAR. HARTWEGII (SCOTTS VALLEY SPINEFLOWER)

Priority: Other Significant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	05/29/02	67 FR 37336

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin
Phone: 703 358-2171

RIN: 1018–AH82

1400. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR CHORIZANTHE ROBUSTA VAR. ROBUSTA (ROBUST SPINEFLOWER)

Priority: Other Significant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	05/28/02	67 FR 36822

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin
Phone: 703 358-2171

RIN: 1018–AH83

1401. SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPARTS A AND B

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 100; 36 CFR 242

Completed:

Reason	Date	FR Cite
Final Action	05/07/02	67 FR 30559

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: William Knauer
Phone: 907 786-3888

RIN: 1018–AH85

1402. PROCEDURES FOR ESTABLISHING SPRING/SUMMER SUBSISTENCE HARVEST REGULATIONS FOR MIGRATORY BIRDS

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 92

Completed:

Reason	Date	FR Cite
NPRM	04/08/02	67 FR 16707
Final Action	08/16/02	67 FR 53511

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Bob Stevens
Phone: 907 786-3499

RIN: 1018–AH88

1403. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR NEWCOMB'S SNAIL

Priority: Other Significant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	06/20/02	67 FR 54025

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin
Phone: 703 358-2171

RIN: 1018–AH95

1404. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE GREAT PLAINS BREEDING POPULATION OF THE PIPING PLOVER

Priority: Other Significant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	09/11/02	67 FR 57637

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin
Phone: 703 358-2171

RIN: 1018–AH96

1405. ENDANGERED AND THREATENED WILDLIFE AND PLANTS: RETENTION OF THREATENED STATUS FOR ARGALI IN KYRGYZSTAN, MONGOLIA, AND TAJIKISTAN

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	05/22/02	67 FR 35942

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Kurt Johnson
Phone: 703 358-1708
Email: kurt_johnson@fws.gov

RIN: 1018–AI02

1406. SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPART C AND SUBPART D—2002-2003 SUBSISTENCE TAKING OF WILDLIFE REGULATIONS

Priority: Routine and Frequent

CFR Citation: 50 CFR 100; 36 CFR 242

Completed:

Reason	Date	FR Cite
Final Action	06/28/02	67 FR 43710

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: William Knauer
Phone: 907 786-3888

RIN: 1018–AI06

1407. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; EMERGENCY LISTING OF THE CARSON'S WANDERING SKIPPER

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	08/07/02	67 FR 51116

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

Agency Contact: Chris Nolin
Phone: 703 358-2171

RIN: 1018–AI18

1408. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; EMERGENCY LISTING OF THE TUMBLING CREEK CAVESNAIL

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	08/14/02	67 FR 52879

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

Agency Contact: Chris Nolin
Phone: 703 358-2171

RIN: 1018–AI19

1409. MIGRATORY BIRD HUNTING; PROPOSED 2002-2003 MIGRATORY GAME BIRD HUNTING REGULATIONS (PRELIMINARY) WITH REQUIREMENTS FOR INDIAN TRIBAL PROPOSALS

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 50 CFR 20

Completed:

Reason	Date	FR Cite
NPRM	06/11/02	67 FR 40128
NPRM	07/17/02	67 FR 47224
NPRM	07/29/02	67 FR 49176
NPRM	08/16/02	67 FR 53689
Final Rule	08/29/02	67 FR 55623
Final Rule	09/19/02	67 FR 59109
Final Rule	09/20/02	67 FR 59357
Final Rule	09/20/02	67 FR 59385

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, State, Tribal

Agency Contact: Brian Millsap
Phone: 703 358-1714
Email: brian_millsap@fws.gov

RIN: 1018–AI30

1410. 2002-2003 REFUGE-SPECIFIC HUNTING AND SPORT FISHING REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 32

Completed:

Reason	Date	FR Cite
NPRM	06/20/02	67 FR 41920
Final Rule	09/18/02	67 FR 58935

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Leslie Marler
Phone: 703 358-2397

RIN: 1018–AI34

1411. INJURIOUS WILDLIFE SPECIES; SNAKEHEADS

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 16

Completed:

Reason	Date	FR Cite
NPRM	07/26/02	67 FR 48855
Final Rule	10/04/02	67 FR 62193

Regulatory Flexibility Analysis Required: Undetermined

DOI—FWS

Completed Actions

Government Levels Affected: Undetermined
Federalism: Undetermined

Agency Contact: Kari Jonell Duncan
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Email: kari__duncan@fws.gov
RIN: 1018–AI36
BILLING CODE 4310–55–S

Department of the Interior (DOI)
National Park Service (NPS)

Proposed Rule Stage

1412. VEHICLES AND TRAFFIC SAFETY; OPERATING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS

Priority: Substantive, Nonsignificant
Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462k; 16 USC 9a
CFR Citation: 36 CFR 4.23
Legal Deadline: None

Abstract: The National Park Service (NPS) is proposing to amend its regulations concerning motor vehicle operation under the influence of alcohol within units of the NPS. Current NPS regulations prohibit operation with a blood alcohol concentration (BAC) of 0.10 grams or more of alcohol per 100 milliliters of blood or 0.10 grams of alcohol per 210 liters of breath. On March 3, 1998, President Clinton directed the NPS to promulgate regulations adopting a stricter limit of 0.08 grams BAC within units of the NPS.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No
Government Levels Affected: None
Agency Contact: Kym A. Hall, Regulations Program Manger, Department of the Interior, National Park Service, 1849 C Street NW., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym__hall@nps.gov
RIN: 1024–AC69

1413. PROCEDURES FOR STATE, TRIBAL, AND LOCAL GOVERNMENT HISTORIC PRESERVATION PROGRAMS

Priority: Substantive, Nonsignificant
Legal Authority: 16 USC 470 et seq
CFR Citation: 36 CFR 61
Legal Deadline: None

Abstract: The NPS proposes to establish the requirements and procedures by which those Indian tribes that choose to do so can assume State Historic Preservation Officer duties with regard to tribal lands and become eligible for grants-in-aid to carry out those duties.

Timetable:

Action	Date	FR Cite
NPRM	08/12/02	67 FR 52532
NPRM Comment Period End	12/10/02	

Regulatory Flexibility Analysis Required: No
Government Levels Affected: Tribal
Agency Contact: Bryan Mitchell, Division, Department of the Interior, National Park Service, NC330, 1849 C Street N.W., NC330, Washington, DC 20240
Phone: 202 343-9558
Fax: 202 343-3921
Email: bryan__mitchell@nps.gov
RIN: 1024–AC79

1414. COMMERCIAL USE AUTHORIZATIONS

Priority: Substantive, Nonsignificant
Legal Authority: PL 105-391
CFR Citation: 36 CFR 52
Legal Deadline: None

Abstract: Public Law 105-391 became effective on November 13, 1998. The new Act mandates revised procedures for issuing commercial use authorizations. Section 417 of Public Law 105-391 requires that the Secretary promulgate implementing regulations as soon as practicable after the effective date of the Act. Existing regulations governing commercial use within National Parks are not adequate to administer the provisions of the new statute and must be revised to reflect new requirements.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No
Government Levels Affected: None
Agency Contact: Cynthia Orlando, Chief of Concessions, Department of the Interior, National Park Service, 1849 C Street N.W., Washington, DC 20240
Phone: 202 565-1211
Fax: 202 565-1224
Email: cindy__orlando@nps.gov
RIN: 1024–AC85

1415. GLEN CANYON NATIONAL RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant
Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a
CFR Citation: 36 CFR 7.70
Legal Deadline: None

Abstract: This proposed rule would allow personal watercraft use in designated areas of the park. This rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System expired on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No
Government Levels Affected: None
Agency Contact: Kym A. Hall, Regulations Program Manger, Department of the Interior, National Park Service, 1849 C Street NW., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym__hall@nps.gov
RIN: 1024–AC90

DOI—NPS

Proposed Rule Stage

1416. LAKE MEAD NATIONAL RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant
Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a
CFR Citation: 36 CFR 7.48
Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necesary because the regulations that currently allow personal watercraft use in units of the National Park System expired on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	09/05/02	67 FR 56785
NPRM Comment Period End	11/04/02	

Regulatory Flexibility Analysis Required: No
Government Levels Affected: None
Agency Contact: Kym A. Hall, Regulations Program Manger, Department of the Interior, National Park Service, 1849 C Street NW., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym__hall@nps.gov
RIN: 1024–AC91

1417. BIG THICKET NATIONAL PRESERVE; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant
Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a
CFR Citation: 36 CFR 7.85
Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System expired on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No
Government Levels Affected: None
Agency Contact: Kym A. Hall, Regulations Program Manger, Department of the Interior, National Park Service, 1849 C Street NW., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym__hall@nps.gov
RIN: 1024–AC92

1418. PICTURED ROCKS NATIONAL LAKESHORE; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant
Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a
CFR Citation: 36 CFR 7.32
Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System expired on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No
Government Levels Affected: None
Agency Contact: Kym A. Hall, Regulations Program Manger, Department of the Interior, National Park Service, 1849 C Street NW., Washington, DC 20240
Phone: 202 208-4206
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Email: kym__hall@nps.gov
RIN: 1024–AC93

1419. FIRE ISLAND NATIONAL SEASHORE; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant
Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a
CFR Citation: 36 CFR 7.20
Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System expired on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No
Government Levels Affected: None
Agency Contact: Kym A. Hall, Regulations Program Manger, Department of the Interior, National Park Service, 1849 C Street NW., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym__hall@nps.gov
RIN: 1024–AC94

1420. GATEWAY NATIONAL RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant
Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a
CFR Citation: 36 CFR 7.29
Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System expired on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No
Government Levels Affected: None
Agency Contact: Kym A. Hall, Regulations Program Manger, Department of the Interior, National Park Service, 1849 C Street NW., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym__hall@nps.gov
RIN: 1024–AC95

1421. BIGHORN CANYON NATIONAL RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant
Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

DOI—NPS

Proposed Rule Stage

CFR Citation: 36 CFR 7.92

Legal Deadline: None

Abstract: This proposed rule would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System expired on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manger, Department of the Interior, National Park Service, 1849 C Street NW., Washington, DC 20240
Phone: 202 208-4206
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Email: kym_hall@nps.gov

RIN: 1024–AC96

1422. LAKE MEREDITH RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.57

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System expired on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manger, Department of the Interior, National Park Service, 1849 C Street NW., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym_hall@nps.gov

RIN: 1024–AC97

1423. CHICKASAW RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.50

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System expired on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manger, Department of the Interior, National Park Service, 1849 C Street NW., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym_hall@nps.gov

RIN: 1024–AC98

1424. CURECANTI RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.51

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System expired on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manger, Department of the Interior, National Park Service, 1849 C Street NW., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym_hall@nps.gov

RIN: 1024–AC99

1425. AMISTAD RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.79

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in areas of the National Park System expired on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manger, Department of the Interior, National Park Service, 1849 C Street NW., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym_hall@nps.gov

RIN: 1024–AD00

1426. LAKE ROOSEVELT RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.55

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in areas of the National Park System expired on April 22, 2002.

DOI—NPS

Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manger, Department of the Interior, National Park Service, 1849 C Street NW., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym_hall@nps.gov

RIN: 1024–AD01

1427. NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT; FUTURE APPLICABILITY

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 3001 et seq

CFR Citation: 43 CFR 10.13

Legal Deadline: None

Abstract: This proposed rule relates to one section of the regulations that implement the Native American Graves Protection and Repatriation Act. This section will clarify the applicability of NAGPRA to museums and Federal agencies following the statutory deadlines for completion of summaries and inventories.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Robbins, Assistant Director, Cultural Resources, Department of the Interior, National Park Service, NC340, 1849 C Street N.W., NC-340, Washington, DC 20240
Phone: 202 343-3388
Fax: 202 343-5260
Email: john_robbins@nps.gov

RIN: 1024–AD05

1428. • BOATING AND WATER USE ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 1a-2(h); 16 USC 3

CFR Citation: 36 CFR 3

Legal Deadline: None

Abstract: This part was last updated comprehensively in the early 1980's. This regulation will help to address new and emerging technology, clarify some regulations for the benefit of the public and enforcement staff, implement changes to reduce safety concerns, and make NPS regulations more consistent with State regulations in order to reduce confusion with the public.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Kym A. Hall, Regulations Program Manger, Department of the Interior, National Park Service, 1849 C Street NW., Washington, DC 20240
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Fax: 202 208-6756
Email: kym_hall@nps.gov

RIN: 1024–AD07

1429. • DISPOSITION OF CULTURALLY UNIDENTIFIABLE HUMAN REMAINS

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 3001 et seq

CFR Citation: 43 CFR 10.11

Legal Deadline: None

Abstract: This regulation will outline procedures for the disposition of culturally unidentifiable human remains in the possession of museums or Federal agencies as required by the Native American Graves Protection and Repatriation Act.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: John Robbins, Assistant Director, Cultural Resources, Department of the Interior, National Park Service, NC340, 1849 C Street N.W., NC-340, Washington, DC 20240
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Fax: 202 343-5260
Email: john_robbins@nps.gov

RIN: 1024–AD08

Department of the Interior (DOI)
National Park Service (NPS)

Final Rule Stage

1430. NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT REGULATIONS; CIVIL PENALTIES

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 3001 et seq

CFR Citation: 43 CFR 10

Legal Deadline: None

Abstract: This final rule relates to one section of the regulations that implement the Native American Graves Protection and Repatriation Act of 1990. This section outlines procedures for assessing civil penalties upon museums that fail to comply with applicable provisions of the Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/13/97	62 FR 1820
Interim Final Rule Effective	02/12/97	
Interim Final Rule Comment Period End	04/14/97	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Robbins, Assistant Director, Cultural Resources, Department of the Interior, National Park Service, NC340, 1849 C Street N.W., NC-340, Washington, DC 20240
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Fax: 202 343-5260
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RIN: 1024–AC84

DOI—NPS

Final Rule Stage

1431. ASSATEAGUE ISLAND NATIONAL SEASHORE; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.65

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in areas of the National Park System expired on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	05/06/02	67 FR 30339
NPRM Comment Period End	07/05/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manger, Department of the Interior, National Park Service, 1849 C Street NW., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym__hall@nps.gov

RIN: 1024–AD02

1432. YELLOWSTONE NATIONAL PARK, GRAND TETON NATIONAL PARK, JOHN D. ROCKEFELLER MEMORIAL PARKWAY WINTER USE REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 460(q); 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.13; 36 CFR 7.22

Legal Deadline: NPRM, Statutory, March 29, 2002.

Abstract: This rule will propose a delay of one year for implementing existing snowmobile regulations at the parks.

Timetable:

Action	Date	FR Cite
NPRM	03/29/02	67 FR 15145
NPRM Comment Period End	05/28/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manger, Department of the Interior, National Park Service, 1849 C Street NW., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym__hall@nps.gov

RIN: 1024–AD06

1433. • SNOWMOBILE REGULATIONS; YELLOWSTONE AND GRAND TETON NATIONAL PARKS AND JOHN D. ROCKEFELLER MEMORIAL PARKWAY

Regulatory Plan: This entry is Seq. No. 75 in part II of this issue of the Federal Register.

RIN: 1024–AD09

Department of the Interior (DOI)
National Park Service (NPS)

Long-Term Actions

1434. SPECIAL REGULATIONS OF THE NATIONAL PARK SYSTEM; RELIGIOUS CEREMONIAL COLLECTION OF GOLDEN EAGLETS IN WUPATKI NATIONAL MONUMENT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 42 USC 1996; 42 USC 2000bb

CFR Citation: 36 CFR 7.101

Legal Deadline: None

Abstract: The NPS has preliminarily determined that under certain circumstances it is appropriate to allow the Hopi Tribe to collect golden eaglets within Wupâtki National Monument for religious ceremonial purposes. This rule would authorize this activity upon terms and conditions sufficient to protect park resources against impairment, and consistent with the Bald and Golden Eagle Protection Act.

Timetable:

Action	Date	FR Cite
NPRM	01/22/01	66 FR 6516
NPRM Comment Period End	03/23/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Patricia L. Parker, Chief, American Indian Liaison Office, Department of the Interior, National Park Service, 1849 C Street N.W., Room 3410, Washington, DC 20240
Phone: 202 208-5475
Fax: 202 273-0870
Email: pat__parker@nps.gov

RIN: 1024–AC86

1435. VIRGIN ISLANDS CORAL REEF NATIONAL MONUMENT; SPECIAL REGULATIONS

Priority: Other Significant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.103; 36 CFR 7.73

Legal Deadline: None

Abstract: This is an interim regulation to implement Presidential Proclamation No. 7932, which established the Virgin Islands Coral Reef National Monument. This regulation prohibits extractive uses, with some exceptions, and anchoring within the monument, and expands the boundaries of Buck Island Reef National Monument. The regulation also implements Presidential Proclamation No. 7399, which prohibits all extractive uses and boat anchoring, except in deep sand areas (all other anchoring is subject to permit) at Buck Island. Both proclamations require NPS to prepare management plans for each park within three years. We are soliciting comments on this interim rule and will take them into account in developing the final rule once we have completed the general management plans.

DOI—NPS

Long-Term Actions

Timetable:

Action	Date	FR Cite
Interim Final Rule - Awaiting GAO report before proceeding.	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

Agency Contact: Kym A. Hall, Regulations Program Manger, Department of the Interior, National Park Service, 1849 C Street NW., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym__hall@nps.gov

RIN: 1024–AC89

1436. GOLDEN GATE NATIONAL RECREATION AREA; SPECIAL REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 9a

CFR Citation: 36 CFR 7.97

Legal Deadline: None

Abstract: This advance notice of proposed rulemaking will seek public comment on a range of potential management options for addressing appropriate pet management within the Golden Gate National Recreation Area, consistent with protecting national park resources and assuring visitor safety.

Timetable:

Action	Date	FR Cite
ANPRM	01/11/02	67 FR 1424
ANPRM Comment Period End	03/12/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Brian O'Neill, Superintendent, Department of the Interior, National Park Service, Golden Gate NAtional Recreation Area, Fort Mason, Building 201, San Francisco, CA 94123-0022
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RIN: 1024–AD03

BILLING CODE 4310–70–S

Department of the Interior (DOI)
Bureau of Indian Affairs (BIA)

Proposed Rule Stage

1437. IRRIGATION PROJECTS AND SYSTEMS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 385

CFR Citation: 25 CFR 171

Legal Deadline: None

Abstract: BIA is revising this rule to incorporate new procedures on billing and collection of government debt. Once these changes are made, BIA will publish a new proposed rule for public comment.

Timetable:

Action	Date	FR Cite
NPRM	07/05/96	61 FR 35167
NPRM Comment Period End	09/03/96	
NPRM	11/00/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ross Mooney, Civil Engineer, Department of the Interior, Bureau of Indian Affairs, Room 4559, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-5480

RIN: 1076–AD44

1438. INDIAN ELECTRIC POWER UTILITIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 385

CFR Citation: 25 CFR 175

Legal Deadline: None

Abstract: This rule contains procedures governing the operation of BIA-owned power utilities. BIA is revising this rule to incorporate new procedures on billing and collection of government debt. Once these changes are made, BIA will publish a new proposed rule for public comment.

Timetable:

Action	Date	FR Cite
NPRM	06/07/96	61 FR 29040
NPRM Comment Period End	08/06/96	
NPRM	10/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ross Mooney, Civil Engineer, Department of the Interior, Bureau of Indian Affairs, Room 4559, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-5480

RIN: 1076–AD45

1439. BUY INDIAN ACT REGULATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 47; 36 Stat 861; 41 USC 253(c)(5)

CFR Citation: 48 CFR 14 app A

Legal Deadline: None

Abstract: This rule will regulate the implementation of BIA's longstanding policy of contracting with Indian-owned firms on a preferential basis and will regulate the determination of eligibility and availability of Indian firms to perform a specific requirement for products, services, and road construction outside the State of Oklahoma and regulate the authority to deviate from the general policy and will regulate the determination of eligibility throughout contractual performance.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Kaye Armstrong, Division of Tribal Government Services, Department of the Interior, Bureau of

DOI—BIA

Proposed Rule Stage

Indian Affairs, 1849 C Street NW., Washington, DC 20240
Phone: 202 208-4400

RIN: 1076–AE07

1440. TRIBAL REVENUE ALLOCATION PLANS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 2; 25 USC 2710; 25 USC 9; 5 USC 301

CFR Citation: 25 CFR 290

Legal Deadline: None

Abstract: The Secretary of the Interior is responsible for reviewing tribal plans for allocating revenues from gaming activities. The Secretary must determine whether the proposed rule is sufficient to promote tribal economic development and fund essential tribal programs, benefits, and services. BIA plans to revise the regulations in part 290 to include additional criteria to assist the Secretary in making this determination.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: George Skibine, Director, Indian Gaming Management Staff, Department of the Interior, Bureau of Indian Affairs, MS 2070 MIB, 1849 C Street NW., Washington, DC 20240
Phone: 202 219-4066

RIN: 1076–AE24

Department of the Interior (DOI)
Bureau of Indian Affairs (BIA)

Final Rule Stage

1441. INDIAN BUSINESS DEVELOPMENT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 1524

CFR Citation: 25 CFR 286

Legal Deadline: None

Abstract: The rule for the Indian Business Development Program is being rewritten in plain English as part of the President's regulatory reform initiative. Entities already having received grants must submit business financial statements. BIA has consulted with tribes about the rule at various meetings and trade fairs. This consultation process will continue during the coming months before the final rule is published.

Timetable:

Action	Date	FR Cite
NPRM	01/30/97	62 FR 4497
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David B. Johnson, Department of the Interior, Bureau of Indian Affairs, Office of the Solicitor, Division of Indian Affairs, 1849 C Street NW, Washington, DC 20240
Phone: 202 208-3026

RIN: 1076–AD70

1442. CERTIFICATES OF DEGREE OF INDIAN BLOOD

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 13; 25 USC 9

CFR Citation: 25 CFR 70

Legal Deadline: None

Abstract: This rule will codify procedures for processing certificates of degree of Indian blood.

Timetable:

Action	Date	FR Cite
NPRM	04/18/00	65 FR 20775
NPRM Comment Period Extended	06/20/00	65 FR 38228
NPRM Comment Period End	07/17/00	
NPRM Comment Period Extended	08/16/00	
NPRM Comment Period Extended	06/25/01	66 FR 33654
NPRM Comment Period End	12/31/01	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Duane Bird Bear, Department of the Interior, Bureau of Indian Affairs, Tribal Government Services, 1849 C Street NW, Washington, DC 20240
Phone: 202 208-5097

RIN: 1076–AD97

1443. ARRANGEMENT WITH STATES, TERRITORIES, OR OTHER AGENCIES FOR RELIEF OF DISTRESS AND SOCIAL WELFARE OF INDIANS

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 2

CFR Citation: 25 CFR 21

Legal Deadline: None

Abstract: This part, which allows BIA to seek arrangements with States or counties or other Federal agencies to provide welfare for Indians residing in a State within the exterior boundaries of Indian reservations under BIA jurisdiction, will be deleted because it has never been used.

Timetable:

Action	Date	FR Cite
NPRM	03/26/02	67 FR 13733
NPRM Comment Period End	05/28/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Larry R. Blair, Chief, Division of Social Services, Department of the Interior, Bureau of Indian Affairs, MS 4641, MS 4641 MIB, 1849 C Street NW, Washington, DC 20240
Phone: 202 208-2721

RIN: 1076–AD98

DOI—BIA

Final Rule Stage

1444. ALASKA RESUPPLY OPERATION

Priority: Info./Admin./Other

Legal Authority: 25 USC 13; 25 USC 9; 38 Stat. 486; 42 Stat. 208; 5 USC 301; R.S. 463; R.S. 465

CFR Citation: 25 CFR 142

Legal Deadline: None

Abstract: This proposed rule makes technical revisions to reflect terms now in common usage, e.g., Regional Director and Traffic Manager. A new section refers to the application of Indian preference in hiring pursuant to the Indian Reorganization Act of 1934 (25 USC 479).

Timetable:

Action	Date	FR Cite
NPRM	08/03/00	65 FR 47704
NPRM Comment Period End	10/02/00	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Duncan Brown, Regulatory Analyst, Department of the Interior, Bureau of Indian Affairs, Room 7229 MIB, 1849 C Street NW., Washington, DC 20240
Phone: 202 208-4582
Fax: 202 219-2100
Email: duncan_l_brown@ios.doi.gov

RIN: 1076–AE04

1445. PROTECTION OF PRODUCTS OF INDIAN ART AND CRAFTSMANSHIP

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 1159; 25 USC 305 et seq

CFR Citation: 25 CFR 309

Legal Deadline: None

Abstract: This rule establishes regulations to provide guidance to persons who produce, market, or purchase products marketed as Indian arts and crafts, as defined under the Indian Arts and Crafts Act of 1990, PL 101-644. The proposed regulations further clarify the definition of "Indian product" by including specific examples of "Indian product," as well as examples of what is not an "Indian product," in the regulations implementing the Indian Arts and Crafts Enforcement Act of 2000, Public Law 101-497, an amendment to the Indian Arts and Crafts Act of 1990, Public Law 101-644.

Timetable:

Action	Date	FR Cite
NPRM	05/21/01	66 FR 27915
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Meridith Stanton, Department of the Interior, Bureau of Indian Affairs, MS 4004 MIB, Indian Arts and Crafts Board, 1849 C Street NW., Washington, DC 20240
Phone: 202 208-3773

RIN: 1076–AE16

1446. INDIAN RESERVATION ROADS PROGRAM

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 2; 25 USC 202; 5 USC 301

CFR Citation: 25 CFR 170

Legal Deadline: None

Abstract: This proposed rule would establish policies and procedures governing the Indian Reservation Roads (IRR) Program. It expands transportation activities available to tribes and tribal organizations and provides guidance to tribes and tribal organizations for planning, designing, constructing, and maintaining transportation facilities. This rule also includes a proposed funding formula for allocating IRR Program funds based upon the relative needs of Indian tribes, and reservation or tribal communities, for transportation assistance; and the relative administrative capacities of various tribes.

Timetable:

Action	Date	FR Cite
NPRM	08/07/02	67 FR 51328
NPRM Comment Period End	10/07/02	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State, Tribal

Agency Contact: LeRoy Gishi, Chief, Division of Transportation, Department of the Interior, Bureau of Indian Affairs, MS 4058 MIB, 1849 C Street NW, Washington, DC 20240
Phone: 202 208-4359

RIN: 1076–AE17

1447. TRUST MANAGEMENT REFORM: REPEAL OF OUTDATED RULES

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 121; 25 USC 331; 25 USC 355; 25 USC 408; 25 USC 474; 25 USC 500; 25 USC 883; 43 USC 1601

CFR Citation: 25 CFR 112; 25 CFR 116; 25 CFR 121; 25 CFR 123; 25 CFR 125; 25 CFR 154; 25 CFR 156; 25 CFR 178; 25 CFR 243

Legal Deadline: None

Abstract: BIA plans to repeal various outdated regulations in many different areas because the regulations are no longer required. Some of the regulations govern payments that have already been completed, other regulations pertain to programs that are obsolete or no longer reflect Department policy.

Timetable:

Action	Date	FR Cite
NPRM	02/21/02	67 FR 7985
NPRM Comment Period End	04/22/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Duncan Brown, Regulatory Analyst, Department of the Interior, Bureau of Indian Affairs, Room 7229 MIB, 1849 C Street NW., Washington, DC 20240
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RIN: 1076–AE20

1448. • TECHNICAL AMENDMENTS TO HOUSING IMPROVEMENT PROGRAM REGULATIONS

Priority: Info./Admin./Other

Legal Authority: 25 USC 256

CFR Citation: 25 CFR 256

Legal Deadline: None

Abstract: This rule makes technical amendments to the housing

DOI—BIA

Final Rule Stage

Improvement Program rule published in the Federal Register on March 2, 1998. The amendments revise the terminology to make the rule consistent and add several other clarifications.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: June Henkel, Chief, Division of Housing Assistance, Department of the Interior, Bureau of Indian Affairs, MS 4641 MIB, 1849 C Street NW, Washington, DC 20240 Phone: 202 208-3667

RIN: 1076–AE31

Department of the Interior (DOI) Bureau of Indian Affairs (BIA)

Completed Actions

1449. INDIAN SCHOOL EQUALIZATION PROGRAM — PROVISIONS FOR EXCEPTIONAL CHILDREN

Priority: Substantive, Nonsignificant

CFR Citation: 25 CFR 39

Completed:

Reason	Date	FR Cite
Final Action	08/13/02	67 FR 52828

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Dave Allison Phone: 801 722-4300

RIN: 1076–AE14

1450. ADULT EDUCATION PROGRAM

Priority: Info./Admin./Other

CFR Citation: 25 CFR 46

Completed:

Reason	Date	FR Cite
Final Action	03/25/02	67 FR 13568

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: George Skibine Phone: 202 219-4066

RIN: 1076–AE29

1451. • INDIAN RESERVATION ROADS — FY 2002 FUNDS DISTRIBUTION

Priority: Substantive, Nonsignificant

Legal Authority: 36 Stat 861; 78 Stat 241; 45 Stat 750 (25 USC 47; 42 USC 2000e(b); 23 USC 101(a))

CFR Citation: 25 CFR 170

Legal Deadline: None

Abstract: This rule was issued for the purpose of distributing the remaining 25 percent of the fiscal year 2002 Indian Reservation Roads funds to projects on or near Indian Reservations using the relative need formula.

Timetable:

Action	Date	FR Cite
Final Action	07/02/02	67 FR 44355

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: LeRoy Gishi, Chief, Division of Transportation, Department of the Interior, Bureau of Indian Affairs, MS 4058 MIB, 1849 C Street NW, Washington, DC 20240 Phone: 202 208-4359

RIN: 1076–AE32

1452. • COURTS OF INDIAN OFFENSES — SANTA FE

Priority: Substantive, Nonsignificant

Legal Authority: RS 463; 25 USC 2; 38 Stat 586; 25 USC 200

CFR Citation: 25 CFR 11

Legal Deadline: None

Abstract: This rule amends the regulations by adding the Santa Fe Indian School property (Southwest Region, New Mexico) to the listing of Courts of Indian Offenses, section 11.100(a)(14). This amendment will establish a Court of Indian Offenses for a period not to exceed one year. It is necessary to establish a Court of Indian Offenses with jurisdiction over the Santa Fe Indian School property in order to protect lives and property.

Timetable:

Action	Date	FR Cite
Final Action	07/02/02	67 FR 44353

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Ralph Gonzales, Housing Program Specialist, Department of the Interior, Bureau of Indian Affairs, 1849 C Street NW, Washington, DC 20240 Phone: 202 208-4401

RIN: 1076–AE33

BILLING CODE 4310–02–S

Department of the Interior (DOI) Minerals Management Service (MMS)

Proposed Rule Stage

1453. LATE AND OVERPAYMENT INTEREST

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 1001 et seq; 25 USC 1301 et seq; 25 USC 1331 et seq; 25 USC 1701 et seq; 25 USC 1735; 25 USC 1801 et seq; 25 USC 181 et seq; 25 USC 2101 et seq; 25 USC 351 et seq; 25 USC 3716; 25 USC 3720a; 25 USC 396 et seq; 25 USC 396a et seq; 25 USC 9701; 5 USC 301 et seq

CFR Citation: 30 CFR 206; 30 CFR 218; 30 CFR 230

Legal Deadline: None

Abstract: This rule allows MMS to pay interest on Federal onshore and offshore oil and gas royalty overpayments and makes interest charges more equitable between the payor and the recipient. Interest will be paid on overpayments related to

DOI—MMS

Proposed Rule Stage

royalty, rent and estimates resulting from sales of Federal onshore and offshore oil and gas production.

Timetable:

Action	Date	FR Cite
NPRM	08/00/03	
NPRM Comment Period End	10/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Sharron Gebhardt, Regulatory Specialist, Department of the Interior, Minerals Management Service, MS 320B2, PO Box 25165, Denver, CO 80225-3211 Phone: 303 231-3211 Fax: 303 231-3385 Email: sharron.gebhardt@mms.gov

RIN: 1010–AC27

1454. TAKES VS. ENTITLEMENTS REPORTING

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1735

CFR Citation: 30 CFR 205

Legal Deadline: None

Abstract: This rule addresses reporting and payment requirements for production removed and sold from a Federal lease, unit participating area, or communitization agreement beginning September 1996.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
NPRM Comment Period End	04/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Sharron Gebhardt, Regulatory Specialist, Department of the Interior, Minerals Management Service, MS 320B2, PO Box 25165, Denver, CO 80225-3211 Phone: 303 231-3211 Fax: 303 231-3385 Email: sharron.gebhardt@mms.gov

RIN: 1010–AC29

1455. ACCOUNTING RELIEF FOR MARGINAL PROPERTIES

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1735

CFR Citation: 30 CFR 204

Legal Deadline: None

Abstract: This rule allows reporters to seek accounting, reporting, and auditing relief for their marginal properties in accordance with section 117(c) of the Federal Oil and Gas Royalty Management Act of 1982 as amended by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996.

Timetable:

Action	Date	FR Cite
NPRM	01/21/99	64 FR 3360
NPRM Comment Period End	03/22/99	
Supplementary NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Sharron Gebhardt, Regulatory Specialist, Department of the Interior, Minerals Management Service, MS 320B2, PO Box 25165, Denver, CO 80225-3211 Phone: 303 231-3211 Fax: 303 231-3385 Email: sharron.gebhardt@mms.gov

RIN: 1010–AC30

1456. PREPAYMENT OF ROYALTIES

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1735

CFR Citation: 30 CFR 204

Legal Deadline: None

Abstract: This rule allows payors to prepay royalty in lieu of monthly royalty payments for their marginal properties with approval from the affected States. It will establish the criteria used by payors, States, and MMS to calculate, report, and monitor royalty prepayments.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
NPRM Comment Period End	08/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Sharron Gebhardt, Regulatory Specialist, Department of the Interior, Minerals Management Service, MS 320B2, PO Box 25165, Denver, CO 80225-3211 Phone: 303 231-3211 Fax: 303 231-3385 Email: sharron.gebhardt@mms.gov

RIN: 1010–AC31

1457. INCIDENT REPORTING

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: There continues to be rapid growth in offshore exploration and production activities in the Gulf of Mexico. Since safety is our top priority, we must upgrade our accident investigation functions. To do this we need accurate and timely information. This rule is the only way to require operators, lessees, and permit holders in the Outer Continental Shelf (OCS) to give us a written report about each OCS accident. It will also establish clearer guidelines for accident reporting thresholds and timing.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC57

1458. ROYALTY RELIEF TERMS

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 396 et seq

CFR Citation: 30 CFR 203

Legal Deadline: None

Abstract: This rule amends the circumstances that discontinue the existing royalty relief for end-of-life oil

and gas leases and also introduces a categorical royalty relief program for deep gas drilling on existing shallow water tracts.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC58

1459. MMS HEARINGS AND INVESTIGATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1717

CFR Citation: 30 CFR 240

Legal Deadline: None

Abstract: This rule will explain how the Minerals Management Service will conduct hearings and investigations necessary and appropriate to carrying out the Secretary's duties under the Federal Oil and Gas Royalty Management Act of 1982.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	
NPRM Comment Period End	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharron Gebhardt, Regulatory Specialist, Department of the Interior, Minerals Management Service, MS 320B2, PO Box 25165, Denver, CO 80225-3211
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RIN: 1010–AC79

1460. APPEALS OF MINERALS MANAGEMENT SERVICE ORDERS

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 242; 30 CFR 290; 43 CFR 4

Legal Deadline: None

Abstract: This rule streamlines the appeals process to facilitate processing appeals within the 33-month deadline required by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA). It also implements the requirements of OMB Circular A-25, which establishes guidelines for Federal agencies to assess fees to cover the costs of Government-provided services or benefits beyond those accruing to the general public. The proposed rule will: (1) require the appellant to file its Notice of Appeal and Statement of Reasons directly with the MMS Appeals Division and file copies with the office that issued the order; (2) implement most of the recommendations made by the Royalty Policy Committee; (3) eliminate the requirement for an MMS field report containing MMS's arguments; (4) clarify the right of the States and tribes to participate in the appeals process; and (5) provide for settlement negotiations as required in RSFA.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
NPRM Comment Period End	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Platte Clark, Senior Appeals Specialist, Department of the Interior, Minerals Management Service, 4230 MIB, 1849 C Street NW, Washington, DC 20240
Phone: 202 208-2394

RIN: 1010–AC80

1461. DEALING WITH SUSTAINED CASING PRESSURE

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: This proposed rulemaking amends subpart E (Oil and Gas Well-Completion Operations) of MMS operating regulations. It describes procedures for dealing with sustained casing pressure in oil and gas wells on the Outer Continental Shelf. Currently lessees must request a departure from MMS regulations to operate a well that has sustained casing pressure. When granting a departure, MMS requires that lessees perform periodic checks and evaluations to ensure that the pressure is not a danger to personnel, equipment, or the environment. This proposed rule will codify these procedures and ensure uniform regulatory practices among MMS regional offices. The proposed changes will also help ensure that lessees will continue to conduct operations in a safe manner.

Timetable:

Action	Date	FR Cite
NPRM	11/09/01	66 FR 56620
Comment Period Extended to 3/9/2002	01/03/02	67 FR 275
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC83

1462. DEFINITION OF CONTROL

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1001 et seq; 30 USC 1701 et seq; 30 USC 181 et seq; 30 USC 351 et seq; 31 USC 9701; 43 USC 1301 et seq; 43 USC 1331 et seq; 43 USC 1801 et seq; 5 USC 2101 et seq; 5 USC 301 et seq; 5 USC 396 et seq; 5 USC 396a et seq

CFR Citation: 30 CFR 206

Legal Deadline: None

Abstract: MMS is amending the definition of "control" in 30 CFR part 206 based upon the relevance to MMS regulations of the decision National Mining Association v. Department of the Interior, 177 F.3rd 1 (DC Cir., May 28, 1999).

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC88

1463. DOCUMENTS INCORPORATED BY REFERENCE — API RP 14F AND API 510

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: This rule will update a document incorporated by reference and incorporate by reference a new document. Incorporation by reference makes a widely available technical document part of our regulations. The updated reference, API RP 14F, is the fourth edition of the American Petroleum Institute's (API) "Recommended Practice for Design and Installation of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class 1, Division 1, and Division 2 Locations. The new document, API RP 14 FZ, is titled "Recommended Practice for Design and Installation of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Unclassified and Class 1, Zone 0, Zone 1 and Zone 2 Locations.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1010–AC89

1464. REPORTING AMENDMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 2107; 25 USC 396; 30 USC 1023; 30 USC 1751(a); 30 USC 189; 30 USC 190; 30 USC 359; 31 USC 3716; 31 USC 9701; 43 USC 1334; 43 USC 1801; 44 USC 3506(a); 5 USC 301 et seq

CFR Citation: 30 CFR 206; 30 CFR 210; 30 CFR 216; 30 CFR 218

Legal Deadline: None

Abstract: MMS is amending its regulations to: (1) update reporting instructions; (2) eliminate unnecessary report forms; (3) add approved information collections previously omitted; (4) remove the extended due date for production reports submitted electronically; (5) require production reporting on leases and agreements until all production has ceased and all inventory has been disposed of; and (6) eliminate certain reporting assessments and electronic reporting options.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	
NPRM Comment Period End	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC90

1465. RIGHTS-OF-USE AND EASEMENTS AND PIPELINE RIGHTS-OF-WAY

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: MMS is proposing to modify requirements governing rights-of-use and easement and pipeline rights-of-way in the Outer Continental Shelf. These changes will increase rental rates for pipeline rights-of-way and establish rentals for rights-of-use and easement. The proposed rule will also allow MMS to charge additional payment when the right-of-use and easement or the pipeline right-of-way prevents MMS from making the area available to other companies for exploration and possible development and production. This change is needed because of requests by lessees and pipeline right-of-way holders to use large areas outside of the area covered by their lease and pipeline right-of-way for accessory structures.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kumkum Ray, Geologist, Department of the Interior, Minerals Management Service, 381 Elden Street, Herndon, VA 20170
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RIN: 1010–AC91

1466. • BLOWOUT PREVENTION FOR PRODUCTION TREE COILED TUBING WORKOVER OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: The rule would upgrade blowout prevention requirements for well workover operations conducted using coiled tubing while the well-head production tree is in place.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kumkum Ray, Geologist, Department of the Interior,

DOI—MMS — **Proposed Rule Stage**

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RIN: 1010–AC96

1467. • DATA RELEASE AND DEFINITIONS

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331

CFR Citation: 30 CFR 250 subpart A

Legal Deadline: None

Abstract: This rule will amend 30 CFR part 250 by adding a new definition, revising existing definition, clarifying or expanding certain requirements, and making administrative changes. We are adding a new definition for the term "production in paying quantities" to enable us to determine how much production qualifies as lease holding production. We are specifying the submission or from progress reports and final reports for suspensions of production and suspensions of operations to ensure that the lessee/operator is diligent in pursuing performance of their lease. We are adding a new section pertaining to notifying MMS on production status. We are reorganizing the forms data release table and adding entries for three new forms. We are expanding the requirements pertaining to submitting digital data.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kumkum Ray, Geologist, Department of the Interior, Minerals Management Service, 381 Elden Street, Herndon, VA 20170
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RIN: 1010–AC99

1468. • RELIEF OR REDUCTION IN ROYALTY RATES — DEEP GAS PROVISIONS

Regulatory Plan: This entry is Seq. No. 76 in part II of this issue of the **Federal Register**.

RIN: 1010–AD01

1469. • REDUCTION TO ROYALTY RELIEF IN SPECIAL CIRCUMSTANCES

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 203

Legal Deadline: None

Abstract: The recently published final rule 1010-AC71 created a process for certain leases (those that are inadequately helped by our formal relief systems) to seek special royalty relief. However, overly restrictive eligibility criteria may exclude some leases that fulfill statutory purposes while redundant criteria may include other leases that do not fit statutory purposes. This rule will refine the eligibility criteria to include marginal discoveries in the shallow water part of the Gulf of Mexico that may offer meaningful conservation or infrastructure preservation benefits. The revision will also disallow a royalty relief request by a lease or project that does not promote wider program goals or is only temporarily unable to benefit from a formal royalty relief program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kumkum Ray, Geologist, Department of the Interior, Minerals Management Service, 381 Elden Street, Herndon, VA 20170
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RIN: 1010–AD02

Department of the Interior (DOI)
Minerals Management Service (MMS)

Final Rule Stage

1470. OIL AND GAS DRILLING OPERATIONS

Priority: Other Significant

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: The rule will be written in plain English, substantive changes will be incorporated, and the rule will reflect the results of the blowout preventer study.

Timetable:

Action	Date	FR Cite
NPRM	06/21/00	65 FR 38453
NPRM Comment Period End	10/19/00	65 FR 46126
Final Action	11/00/02	
Final Action Effective	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC43

1471. PLANS AND INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331 et seq

CFR Citation: 25 CFR 250

Legal Deadline: None

Abstract: MMS requires companies to submit for approval their exploration and development plans for activities on the Outer Continental Shelf. The companies must submit these plans before they can begin any activities, except preliminary activities. This rule would rewrite the requirements into clearer language and organize them into discrete sections by topic, to make them easier to follow.

DOI—MMS — **Final Rule Stage**

Timetable:

Action	Date	FR Cite
NPRM	05/17/02	67 FR 35372
Comment Period Extended	12/13/02	67 FR 46616
Final Action	10/00/03	
Final Action Effective	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC47

1472. OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF—SAFETY MEASURES AND PROCEDURES FOR PIPELINE MODIFICATIONS AND REPAIRS

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: The rule will address problems that arise out of the fact that eventually all pipeline valves leak internally. This is due to abrasion and deposition of operational residues on valve seats. Internal valve leakage poses a potential safety problem to offshore workers at the time pipeline repairs are performed because hydrocarbons and pressure differentials in the lines can pose a significant hazard of fire and explosion. The rule will require that lessees and operators consider and submit in writing the measures they plan to take and the procedures they plan to follow to ensure the safety of company or contract workers and to prevent pollution before beginning a pipeline modification or repair, and it will amend section 250.1006(b)(1) by requiring that a blind flange be installed at the platform end of any pipeline taken out of service to prevent seepage into the line through leaking valves.

Timetable:

Action	Date	FR Cite
NPRM	08/28/01	66 FR 45236
NPRM Comment Period End	10/29/01	
Final Action	06/00/03	
Final Action Effective	07/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC75

1473. PROPRIETARY TERMS AND DATA DISCLOSURE

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331

CFR Citation: 30 CFR 250; 30 CFR 251

Legal Deadline: None

Abstract: This rule would modify the proprietary terms for geophysical data and information and any of their derivatives that MMS acquires under 30 CFR part 251. We propose to change the beginning of the proprietary terms from the date of submission to MMS to the date MMS issues the permit. The rule would also allow selective disclosure of geological and geophysical data and information and allow selective disclosure of data and information generated on a lease to persons with a direct interest in issues concerning field determination and royalty relief eligibility.

Timetable:

Action	Date	FR Cite
NPRM	07/17/02	67 FR 46942
NPRM Comment Period End	09/18/02	
Final Action	04/00/03	
Final Action Effective	05/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1010–AC81

1474. DOCUMENTS INCORPORATED BY REFERENCE — API SPECIFICATION 2C

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: MMS is proposing to incorporate by reference the Fifth Edition of the American Petroleum Institute's Specification for Offshore Cranes into our regulations. MMS is proposing this action to establish a minimum design standard for new cranes installed on fixed platforms on the Outer Continental Shelf (OCS) and to require all existing cranes installed on OCS fixed platforms to be equipped with anti-two block safety devices. This proposed rule would ensure that OCS lessees use the best available and safest technologies for the design and construction of cranes used in the OCS.

Timetable:

Action	Date	FR Cite
NPRM	07/19/01	66 FR 37611
NPRM Comment Period End	10/17/01	
Final Action	11/00/02	
Final Action Effective	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kumkum Ray, Geologist, Department of the Interior, Minerals Management Service, 381 Elden Street, Herndon, VA 20170
Phone: 703 787-1600
Fax: 703 787-1093
Email: kumkum.ray@mms.gov

RIN: 1010–AC82

1475. DOCUMENTS INCORPORATED BY REFERENCE FOR OFFSHORE FLOATING PRODUCTION FACILITIES

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: We are proposing to amend our regulations to better address floating offshore platforms that, until now, have not been expressly covered. This will require a complete rewrite of subpart I to include floating production systems. These systems are variously described as column-stabilized units;

DOI—MMS — **Final Rule Stage**

floating production, storage, and offloading facilities; tension-leg platforms; spars; etc. We are also incorporating into our regulations a body of industry standards pertaining to floating productions systems, and this will save the public the costs of developing government standards.

Timetable:

Action	Date	FR Cite
NPRM	12/27/01	66 FR 66851
Comment Period Extended to 3/27/2002	02/12/02	67 FR 6453
Comment Period Extended to 5/28/2002	03/28/02	67 FR 14902
Final Action	11/00/02	
Final Action Effective	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kumkum Ray, Geologist, Department of the Interior, Minerals Management Service, 381 Elden Street, Herndon, VA 20170
Phone: 703 787-1600
Fax: 703 787-1093
Email: kumkum.ray@mms.gov

RIN: 1010–AC85

1476. OUTER CONTINENTAL SHELF OIL AND GAS LEASING — CLARIFYING AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 260

Legal Deadline: None

Abstract: This rule proposes clarifying amendments to regulations on OCS bidding systems in 30 CFR part 260, revised as of July 1, 2001. The proposed amendments make explicit that water depth and production timing on leases issued after 2000 and placed on a field with leases issued earlier play no role in the way we determine the royalty suspension volume applicable to eligible leases on the field.

Timetable:

Action	Date	FR Cite
NPRM	02/12/02	67 FR 6454
NPRM Comment Period End	03/14/02	
Final Action	11/00/02	
Final Action Effective	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kumkum Ray, Geologist, Department of the Interior, Minerals Management Service, 381 Elden Street, Herndon, VA 20170
Phone: 703 787-1600
Fax: 703 787-1093
Email: kumkum.ray@mms.gov

RIN: 1010–AC94

1477. DOCUMENT INCORPORATED BY REFERENCE—API 510—PRESSURE VESSEL INSPECTION CODE: MAINTENANCE INSPECTION, RATING, REPAIR, AND ALTERATION

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: This rule proposes adding a document to be incorporated by reference into MMS's regulations governing oil and gas and sulphur operations in the outer continental shelf (OCS). This revision will ensure that lessees use the best available and safest technologies while operating in the OCS. The new document, API 510, is titled "Pressure Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration."

Timetable:

Action	Date	FR Cite
NPRM	12/27/01	66 FR 66848
NPRM Comment Period End	02/25/02	
Final Action	10/00/03	
Final Action Effective	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kumkum Ray, Geologist, Department of the Interior, Minerals Management Service, 381 Elden Street, Herndon, VA 20170
Phone: 703 787-1600
Fax: 703 787-1093
Email: kumkum.ray@mms.gov

RIN: 1010–AC95

1478. • VALUATION OF OIL FROM INDIAN LEASES

Regulatory Plan: This entry is Seq. No. 77 in part II of this issue of the **Federal Register**.

RIN: 1010–AD00

Department of the Interior (DOI)
Minerals Management Service (MMS) — **Completed Actions**

1479. PROSPECTING FOR MINERALS OTHER THAN OIL, GAS, AND SULPHUR IN THE OUTER CONTINENTAL SHELF

Priority: Substantive, Nonsignificant

CFR Citation: 30 CFR 280

Completed:

Reason	Date	FR Cite
Final Action	07/17/02	67 FR 46855
Final Action Effective	08/16/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kumkum Ray
Phone: 703 787-1600
Fax: 703 787-1093
Email: kumkum.ray@mms.gov

RIN: 1010–AC48

1480. DECOMMISSIONING ACTIVITIES

Priority: Substantive, Nonsignificant

CFR Citation: 30 CFR 250

Completed:

Reason	Date	FR Cite
Final Action	05/17/02	67 FR 35398
Final Action Effective	07/16/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kumkum Ray
Phone: 703 787-1600
Fax: 703 787-1093
Email: kumkum.ray@mms.gov

RIN: 1010–AC65

DOI—MMS — **Completed Actions**

1481. DEEP WATER ROYALTY RELIEF FOR OUTER CONTINENTAL SHELF OIL AND GAS LEASES ISSUED AFTER 2000

Priority: Other Significant

CFR Citation: 30 CFR 203

Completed:

Reason	Date	FR Cite
Final Rule Effective	02/14/02	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: Marshall B. Rose
Phone: 703 787-1536
Fax: 703 787-1141
Email: marshall.rose@mms.gov

RIN: 1010–AC71

1482. TECHNICAL AMENDMENTS

Priority: Info./Admin./Other

CFR Citation: 30 CFR 201; 30 CFR 206; 30 CFR 212; 30 CFR 216; 30 CFR 217; 30 CFR 218; 30 CFR 219; 30 CFR 220; 30 CFR 227; 30 CFR 228; 30 CFR 230; 30 CFR 241; 30 CFR 243

Completed:

Reason	Date	FR Cite
Final Action	04/18/02	67 FR 19109
Final Action Effective	04/18/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Carol Shelby
Phone: 303 231-3191
Fax: 303 231-3385
Email: carol.shelby@mms.gov

RIN: 1010–AC87

1483. SUSPENSION OF OPERATIONS FOR EXPLORATION UNDER SALT SHEETS

Priority: Substantive, Nonsignificant

CFR Citation: 30 CFR 250

Completed:

Reason	Date	FR Cite
Final Action	07/02/02	67 FR 44357
Final Action Effective	08/01/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kumkum Ray
Phone: 703 787-1600
Fax: 703 787-1093
Email: kumkum.ray@mms.gov

RIN: 1010–AC93

BILLING CODE 4310–MR–S

Department of the Interior (DOI)
Office of Surface Mining Reclamation and Enforcement (OSMRE) — **Proposed Rule Stage**

1485. ABANDONED COAL REFUSE SITES—TITLE I

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 30 USC 1201 et seq

CFR Citation: 30 CFR 785; 30 CFR 829; 30 CFR 830; 30 CFR 845; 30 CFR 870

Legal Deadline: None

Abstract: OSM intends to propose new rules governing permitting and performance standards for the recovery of coal from abandoned coal refuse piles. The rules are required to implement section 2503(e) of the Energy Policy Act of 1992.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Larry Trainor, Mining Engineer, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW, Washington, DC 20240
Phone: 202 208-2617

RIN: 1029–AB70

1486. REVEGETATION

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1201 et seq

CFR Citation: 30 CFR 816

Legal Deadline: None

Abstract: This rule will revise the topsoil replacement and revegetation standards. The revisions will encourage species diversity on reclaimed lands, remove a possible impediment to the use of woody vegetation in revegetating mined land, and provide similar revegetation success standards in both areas of more than 26 inches of precipitation and in areas of less than 26 inches of precipitation.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Larry Trainor, Mining Engineer, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW, Washington, DC 20240
Phone: 202 208-2617

RIN: 1029–AC02

1487. PLACEMENT OF EXCESS SPOIL

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1201 et seq

CFR Citation: 30 CFR 701; 30 CFR 773; 30 CFR 780; 30 CFR 781; 30 CFR 785; 30 CFR 816; 30 CFR 817

Legal Deadline: None

Abstract: This rule will establish permit application requirements and review procedures for applications that propose to place excess spoil from surface coal mining operations into waters of the United States. In addition, it will modify the backfilling and

DOI—OSMRE — **Proposed Rule Stage**

grading regulations to minimize the creation of excess spoil and it will revise the regulations governing surface coal mining operations within 100 feet of a perennial or intermittent stream to more closely track the underlying statutory provisions.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Craynon, Chief, Technology Development Staff, Department of the Interior, Office of Surface Mining Reclamation and Enforcement
Phone: 202 208-2866

RIN: 1029–AC04

1488. • FINANCIAL ASSURANCES

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1201 et seq

CFR Citation: 30 CFR 773; 30 CFR 780; 30 CFR 784; 30 CFR 800

Legal Deadline: None

Abstract: We are considering rulemaking to ensure adequate funding for the treatment of unanticipated long-term pollutant discharges, including acid or toxic mine drainage, that develop as a result of surface mining operations.

Timetable:

Action	Date	FR Cite
ANPRM	05/17/02	67 FR 35070
ANPRM Comment Period End	10/15/02	67 FR 46617
NPRM	09/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Ruth Stokes, Regulatory Analyst, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, MS 252 SIB, 1951 Constitution Avenue NW, Washington, DC 20240
Phone: 202 208-2611

RIN: 1029–AC05

Department of the Interior (DOI)
Office of Surface Mining Reclamation and Enforcement (OSMRE) — **Final Rule Stage**

1489. INDIAN LANDS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1201 et seq

CFR Citation: 30 CFR 700; 30 CFR 740; 30 CFR 750

Legal Deadline: None

Abstract: OSM regulates mining on Indian lands and the State regulates mining on non-Indian lands. OSM proposes to amend its regulations to clarify that the definition of "Indian lands" at 30 CFR 700.5 includes individual Indian trust allotments located within an approved tribal land consolidation area. The proposed clarification was required under the terms of a settlement agreement between the Department of the Interior and the Navajo Nation and Hopi Tribe to settle the tribes' challenges to a May 1989 Indian lands rulemaking. OSM has developed a preliminary draft rule that specifies that allotted lands would qualify as Indian lands for purposes of the Surface Mining Control and Reclamation Act when OSM determines, on a case-by-case basis, that the allotments are supervised by an Indian tribe.

Timetable:

Action	Date	FR Cite
NPRM	02/19/99	64 FR 8464
NPRM Comment Period End	06/21/99	64 FR 18585
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Stephen Sheffield, Chief, Division of Technical Support, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, MS 10 SIB, 1849 C Street NW, Washington, DC 20240
Phone: 202 208-2883

RIN: 1029–AB83

1490. ABANDONED MINE LAND RECLAMATION NOTICES

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1201 et seq

CFR Citation: 30 CFR 875

Legal Deadline: None

Abstract: This rule will eliminate the requirement to publish a Federal Register notice announcing the receipt of, and seeking comments on, applications for construction of public facilities that are funded from the abandoned mine land fund. The publication requirement will become a discretionary action. Previous Federal Register notices have generated little interest from the public and have added delays to the construction of AML projects.

Timetable:

Action	Date	FR Cite
NPRM	06/19/02	67 FR 41756
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Larry Trainor, Mining Engineer, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW, Washington, DC 20240
Phone: 202 208-2617

RIN: 1029–AB99

BILLING CODE 4310–05–S

Department of the Interior (DOI)
Bureau of Reclamation (RB) — **Proposed Rule Stage**

1491. AUTHORIZATION OF LAW ENFORCEMENT OFFICERS AT RECLAMATION FACILITIES

Priority: Other Significant

Legal Authority: 16 USC 4602-31; 43 USC 373b

CFR Citation: 43 CFR 422

Legal Deadline: None

Abstract: The Bureau of Reclamation is issuing this rule to establish criteria for the use of non-Reclamation law enforcement personnel within a Bureau project or on Reclamation lands. We are required by law to issue this rule in order to provide for the security of dams, facilities, and resources under our jurisdiction.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John J. Lambert, Policy Analyst, Department of the Interior, Bureau of Reclamation, D-6020, Building 67, PO Box 25007, Denver, CO 80225
Phone: 303 445-3640

RIN: 1006–AA42

Department of the Interior (DOI)
Bureau of Reclamation (RB) — **Final Rule Stage**

1492. ACREAGE LIMITATION

Priority: Info./Admin./Other

Legal Authority: 5 USC 301

CFR Citation: 43 CFR 426.24

Legal Deadline: None

Abstract: The Office of Hearings and Appeals has recently moved. This rule changes the Office's address to reflect this move.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John J. Lambert, Policy Analyst, Department of the Interior, Bureau of Reclamation, D-6020, Building 67, PO Box 25007, Denver, CO 80225
Phone: 303 445-3640

RIN: 1006–AA43

1493. TRESPASS ON RECLAMATION LANDS AND FACILITIES

Priority: Other Significant

Legal Authority: PL 102-575; PL 107-69

CFR Citation: 43 CFR 423

Legal Deadline: None

Abstract: This rule establishes the minimum requirements necessary to ensure the safety of the public, Reclamation employees, dams facilities, and other resources under our jurisdiction. We are developing a comprehensive public conduct rule that will replace this rule at a later date. We will use comments received on this rule to aid us in drafting a proposed public conduct rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John J. Lambert, Policy Analyst, Department of the Interior, Bureau of Reclamation, D-6020, Building 67, PO Box 25007, Denver, CO 80225
Phone: 303 445-3640

RIN: 1006–AA44

1494. • PUBLIC CONDUCT ON RECLAMATION LANDS AND PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-69; 43 USC 373b; 16 USC 4601-31

CFR Citation: 43 CFR 423

Legal Deadline: None

Abstract: This rule establishes regulations regarding public conduct on Reclamation lands and Reclamation projects, waters, and real property subject to the administration of Reclamation or in its custody. The rule is necessary to ensure the safety of the public, Reclamation employees, dams, facilities, and other resources in our jurisdiction. This rule replaces an interim rule that we issued on April 17, 2002.

Timetable:

Action	Date	FR Cite
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: John J. Lambert, Policy Analyst, Department of the Interior, Bureau of Reclamation, D-6020, Building 67, PO Box 25007, Denver, CO 80225
Phone: 303 445-3640

RIN: 1006–AA45

BILLING CODE 4310–09–S

Department of the Interior (DOI)
Bureau of Land Management (BLM) — **Proposed Rule Stage**

1495. SALES—FEDERAL LAND POLICY AND MANAGEMENT ACT

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1701; 43 USC 1713

CFR Citation: 43 CFR 2710

Legal Deadline: None

Abstract: This rule will amend 43 CFR part 2710 to provide for improved administration of sales of public land under the Federal Land Policy and Management Act. It will add a provision to allow the sale of public land to State or local government entities for affordable housing. Such

sales may be for less than fair market value.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ted Hudson, Regulatory Analyst, Department of the Interior, Bureau of Land Management, Room 420, 1849 C Street N.W., Washington, DC 20240
Phone: 202 452-5042
Fax: 202 653-5287
Email: ted__hudson@blm.gov

RIN: 1004–AB77

1496. DESERT LAND ENTRIES

Priority: Info./Admin./Other

Legal Authority: 43 USC 1740

CFR Citation: 43 CFR 2520

Legal Deadline: None

Abstract: This rule will transfer much of the regulation on entries of desert land to the BLM Manual if the underlying statute is not repealed as no longer practical.

Timetable:

Action	Date	FR Cite
NPRM	07/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jeff O. Holdren, Deputy Group Manager, Department of the Interior, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240
Phone: 202 452-7779
Fax: 202 452-7708
Email: jeff__holdren@blm.gov

RIN: 1004–AC56

1497. DISPOSAL OF RESERVED MINERALS UNDER THE STOCK RAISING HOMESTEAD ACT

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 299

CFR Citation: 43 CFR 3814

Legal Deadline: Final, Statutory, October 13, 1993.

Abstract: This rule will establish new procedures for mineral exploration and development under the General Mining Law of 1872 on lands where the surface was patented under the Stock Raising Homestead Act of 1916 and the mineral estate remains reserved to the Federal Government.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Roger Haskins, Mining Law Specialist, Department of the Interior, Bureau of Land Management
Phone: 202 452-0355
Email: roger__haskins@blm.gov

RIN: 1004–AC59

1498. MINERAL PATENT APPLICATIONS; ADVERSE CLAIMS, PROTESTS, AND CONFLICTS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 22 to 54; 43 USC 1201; 43 USC 1740

CFR Citation: 43 CFR 3730; 43 CFR 3740; 43 CFR 3820; 43 CFR 3860; 43 CFR 3870

Legal Deadline: None

Abstract: This rule will revise the filing and administrative procedures for mineral patent applications. It will also revise the procedures for filing adverse claims or protests against mineral patent applications and for mineral-in-character challenges to non-mineral land entries.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Roger Haskins, Mining Law Specialist, Department of the Interior, Bureau of Land Management
Phone: 202 452-0355
Email: roger__haskins@blm.gov

RIN: 1004–AD32

1499. CONSERVATION; HELIUM LEASING

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1701 et seq; 50 USC 167

CFR Citation: 43 CFR 16; 43 CFR 3196

Legal Deadline: None

Abstract: This rule will redesignate, amend, and extend the regulations on conservation of helium to facilitate administration and implementation of provisions in the Helium Privatization Act. The rule will move these regulations to 43 CFR subpart 3196 to consolidate helium-related regulations in one area for ease in finding and complying with them.

Timetable:

Action	Date	FR Cite
ANPRM	12/19/00	65 FR 79325
ANPRM Comment Period End	03/26/01	
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Joseph B. Peterson, Chief, Division of Helium Resources, Department of the Interior, Bureau of Land Management, Amarillo Field Office, 801 S. Fillmore, Suite 500, Amarillo, TX 79101
Phone: 806 324-2614

RIN: 1004–AD35

1500. GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 118(d); 43 USC 1701 et seq; 43 USC 1901 et seq; 43 USC 315 et seq; 7 USC 1012

CFR Citation: 43 CFR 4100

Legal Deadline: None

Abstract: This rule will remove provisions for conservation use of grazing privileges. These provisions were determined by the Federal Circuit Court to be not consistent with the statutory authority of the Secretary of the Interior. The rule will also: (1) provide a full force and effect provision for grazing decisions; (2) include standards for determining socioeconomic impacts of grazing decisions; (3) include a provision allowing permittees to claim ownership of range improvements under certain circumstances; (4) address circumstances under which a grazing permittee may lose his grazing privileges upon conviction of a crime; and (5) extend the permit term from 3 to 5 years.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kenneth M. Visser, Rangeland Management Specialist, Department of the Interior, Bureau of Land Management, 314 L Street, Washington, DC 20240
Phone: 202 452-7743
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Email: kenneth__visser@blm.gov

RIN: 1004–AD42

1501. PERMITS FOR RECREATION ON PUBLIC LANDS

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1740

CFR Citation: 43 CFR 2930

Legal Deadline: None

Abstract: This rule would add a section on prohibited acts to the regulations on campgrounds and other fee areas to facilitate law enforcement at these sites. The rule would also change the maximum term for a special recreation permit from 5 years to 10 years.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lee Larson, Recreation Specialist, Department of the Interior, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240
Phone: 202 452-5168
Email: lee__larson@blm.gov

RIN: 1004–AD45

1502. WILDERNESS MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1133; 43 USC 1733; 43 USC 1740; 43 USC 1782

CFR Citation: 43 CFR 6300

Legal Deadline: None

Abstract: This rule will add provisions on use of timber on mining claims and clarify procedures on issuing patents for mining claims.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeff Jarvis, Wilderness Specialist, Department of the Interior, Bureau of Land Management, 1849 C Street N.W., Washington, DC 20240
Phone: 202 452-5189
Email: jeff__jarvis@blm.gov

Related RIN: Related To 1004-AB69

RIN: 1004–AD54

Department of the Interior (DOI)
Bureau of Land Management (BLM)

Final Rule Stage

1503. COST RECOVERY; MINERAL FILINGS AND OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1001 et seq; 30 USC 181 et seq; 30 USC 22; 30 USC 351 to 360; 31 USC 9701; 43 USC 1734; 50 USC app 565

CFR Citation: 43 CFR 3100; 43 CFR 3200; 43 CFR 3400; 43 CFR 3500; 43 CFR 3600; 43 CFR 3700; 43 CFR 3800

Legal Deadline: None

Abstract: This rule will amend regulations for user fees for locatable minerals, mineral materials, and leasable minerals (solids and fluids) to adjust current fees or establish new fees in accordance with title V of the Independent Offices Appropriations Act of 1952 (user charges), OMB Circular A-25 User Charges and section 304 of the Federal Land Policy and Management Act of 1976.

Timetable:

Action	Date	FR Cite
NPRM	12/15/00	65 FR 78440
NPRM Comment Period End	02/13/01	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Durga N. Rimal, Geologist, Department of the Interior, Bureau of Land Management, 1849 C Street N.W., Washington, DC 20240
Phone: 202 452-0350
Email: durga__rimal@blm.gov

RIN: 1004–AC64

1504. RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES; RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1740

CFR Citation: 43 CFR 2800; 43 CFR 2880

Legal Deadline: None

Abstract: The rule will amend the regulations governing rights-of-way issued under both the Federal Land Policy and Management Act and the Mineral Leasing Act by revising cost recovery policies and procedures and adjusting cost recovery fees to reflect cost increases since the current regulations became effective in 1987. The rule will also eliminate the automatic exemptions from cost recovery for Federal agencies except when they are exempted by law. It will also establish policies on paying rent in advance and a financial penalty for paying rent late.

Timetable:

Action	Date	FR Cite
NPRM	06/15/99	64 FR 32106
NPRM Comment Period End	10/13/99	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ron Montagna, Realty Specialist, Department of the Interior, Bureau of Land Management, 260, 1849 C Street N.W., Washington, DC 20240

Phone: 202 452-7782
Email: ron__montagna@blm.gov

RIN: 1004–AC74

1505. INDIAN ALLOTMENTS

Priority: Info./Admin./Other

Legal Authority: 25 USC 334; 25 USC 336; 43 USC 1201

CFR Citation: 43 CFR 2530

Legal Deadline: None

Abstract: This rule will convert existing regulations to plain English and remove those portions that relate to procedural matters.

Timetable:

Action	Date	FR Cite
NPRM	10/16/96	61 FR 53887
NPRM Comment Period End	09/13/99	64 FR 38172
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeff O. Holdren, Deputy Group Manager, Department of the Interior, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240
Phone: 202 452-7779
Fax: 202 452-7708
Email: jeff__holdren@blm.gov

RIN: 1004–AC77

1506. USE AUTHORIZATIONS (RECREATION)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 460l-6a; 43 USC 1740

CFR Citation: 43 CFR 8370

Legal Deadline: None

Abstract: This rule will revise the regulations on the issuance of special recreation permits for purposes of clarification and updating and will add regulations on the issuance of recreation use permits for the use of fee areas.

Timetable:

Action	Date	FR Cite
NPRM	05/16/00	65 FR 31233
NPRM Comment Period End	07/17/00	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeff O. Holdren, Deputy Group Manager, Department of the Interior, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240
Phone: 202 452-7779
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Email: jeff__holdren@blm.gov

RIN: 1004–AC74

1507. LOCATION RECORDING AND MAINTENANCE OF MINING CLAIMS AND SITES

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 30 USC 22 to 54; 43 USC 1201; 43 USC 1740

CFR Citation: 43 CFR 3710; 43 CFR 3730; 43 CFR 3810; 43 CFR 3820; 43 CFR 3830; 43 CFR 3840; 43 CFR 3850

Legal Deadline: None

Abstract: This rule will amend the mining claim recordation and annual fee collection procedures to conform to the fiscal year 1999 Interior and Related Agencies Appropriations Act. It will also consolidate duplicative portions of 43 CFR part 3700 et seq. into 43 CFR part 3800 et seq., and remove the duplicative portions of these regulations from title 43. The interim final rule only implemented the statutory changes in the FY 99 Appropriations Act.

Timetable:

Action	Date	FR Cite
NPRM	08/27/99	64 FR 47023
Interim Final Rule	08/27/99	64 FR 47018
NPRM Comment Period End	10/26/99	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Roger Haskins, Mining Law Specialist, Department of the Interior, Bureau of Land Management
Phone: 202 452-0355
Email: roger__haskins@blm.gov

RIN: 1004–AD31

1508. COAL MANAGEMENT: NONCOMPETITIVE LEASES; MANAGEMENT PROVISIONS AND LIMITATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 181 et seq; 43 USC 1740; PL 106-463

CFR Citation: 43 CFR 3430; 43 CFR 3470

Legal Deadline: None

Abstract: This rule will increase the maximum acreage of Federal coal leases that may be leased to one entity in any one State from 46,080 to 75,000 acres to conform with legislation enacted in 2000, and to correct a technical error in the regulations by removing the requirements of a public hearing and publication of a notice of availability of environmental analysis documents for coal lease modifications. It will also raise the nationwide acreage limitation on coal leases that one entity can hold from 100,000 to 150,000 acres.

Timetable:

Action	Date	FR Cite
NPRM	01/18/02	67 FR 2618
NPRM Comment Period End	02/19/02	
NPRM Comment Period Reopened	04/12/02	67 FR 17962
NPRM Comment Period End	05/13/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ted Hudson, Regulatory Analyst, Department of the Interior, Bureau of Land Management, Room 420, 1849 C Street N.W., Washington, DC 20240
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Email: ted__hudson@blm.gov

RIN: 1004–AD43

1509. WILDERNESS MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1740

CFR Citation: 43 CFR 6300

Legal Deadline: None

Abstract: This rule would add provisions on use of fixed anchors for rock climbing in wilderness areas.

Timetable:

Action	Date	FR Cite
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Jeff Jarvis, Wilderness Specialist, Department of the Interior, Bureau of Land Management, 1849 C Street N.W., Washington, DC 20240
Phone: 202 452-5189
Email: jeff__jarvis@blm.gov

Related RIN: Related To 1004-AB69, Split From 1004-AD54

RIN: 1004–AD46

1510. DISCLAIMERS OF INTEREST

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1740

CFR Citation: 43 CFR 1864

Legal Deadline: None

Abstract: BLM proposes to make two minor amendments to the recordable disclaimer regulations at 43 CFR 1864.1-1 and .1-3. Presently the regulations state that any present owner of record may file an application to have a disclaimer of interest issued. Neither FLPMA nor its implementing regulations define the term present owner of record. Neither the Federal Courts nor the Interior Board of Land Appeals have defined or elaborated on the phrase. As such, BLM wishes to amend the regulations to eliminate the phrase. Such an amendment would prevent any legal challenge to BLM's interpretation of the phrase to include state applications.

Timetable:

Action	Date	FR Cite
NPRM	02/22/02	67 FR 8216
NPRM Comment Period End	04/23/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State

Agency Contact: Jeff O. Holdren, Deputy Group Manager, Department of the Interior, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240
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RIN: 1004–AD50

1511. • RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT; TIMING OF APPROVALS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 185

CFR Citation: 43 CFR 2882

Legal Deadline: None

Abstract: This rule will make our regulations consistent with the Mineral Leasing Act by allowing BLM to approve a right-of-way for pipelines 24 or more inches in diameter as soon as the Secretary notifies the appropriate committees of Congress. Existing regulations require BLM to allow 60 days to pass after notifying Congress before issuing a right-of-way for a pipeline 24 or more inches in diameter.

Timetable:

Action	Date	FR Cite
NPRM	06/15/99	64 FR 32106
NPRM Comment Period End	11/12/99	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ian Senio, Regulatory Analyst, Department of the Interior, Bureau of Land Management, MS 401, Regulatory Management Group (WO-630), 1849 C Street NW., Washington, DC 20240
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Email: ian__senio@blm.gov

RIN: 1004–AD55

1512. • OIL AND GAS LEASING OPERATIONS; BONDING

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 189; 30 USC 359; 43 USC 1732; 43 USC 1733; 43 USC 1740

CFR Citation: 43 CFR 3100; 43 CFR 3104; 43 CFR 3154

Legal Deadline: None

Abstract: This rule increases minimum bond amounts for individual lease bonds and statewide bonds. It changes BLM's current policy of terminating only the period of liability of bonds. Under the new rule, we will cancel bonds after determining that all lease obligations are met. Finally, the rule clarifies the responsibilities of record title holders and operating rights owners. The final rule is based upon a portion of a proposed rule published with the RIN 1004-AC94.

Timetable:

Action	Date	FR Cite
NPRM	12/03/98	63 FR 66840
NPRM Comment Period End	07/19/99	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ian Senio, Regulatory Analyst, Department of the Interior, Bureau of Land Management, MS 401, Regulatory Management Group (WO-630), 1849 C Street NW., Washington, DC 20240
Phone: 202 452-5049
Email: ian__senio@blm.gov

RIN: 1004–AD56

1513. LEASES, PERMITS, AND EASEMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 43 USC 1732; 43 USC 1740

CFR Citation: 43 CFR 2920

Legal Deadline: None

Abstract: This rule will amend the existing regulations to provide for improved administration of leases, permits and easements under the Federal Land Policy and Management Act.

Timetable:

Action	Date	FR Cite
NPRM	11/21/90	55 FR 48810
NPRM Comment Period End	01/22/91	
Second NPRM	02/09/95	60 FR 7878
Second NPRM Comment Period End	04/10/95	
Final Rule for Minimum Impact Land Use Permits Only	06/24/96	61 FR 32351
Final Rule Effective for Minimum Impact Land Use Permits Only	07/24/96	
Third NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeff O. Holdren, Deputy Group Manager, Department of the Interior, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240
Phone: 202 452-7779
Fax: 202 452-7708
Email: jeff__holdren@blm.gov

RIN: 1004–AB51

1514. COALBED METHANE DEVELOPMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 13368

CFR Citation: 43 CFR 3170

Legal Deadline: Final, Statutory, October 24, 1995.

Abstract: The rule will implement section 1339 of the Energy Policy Act of 1992. It will prevent conflicts in ownership of coalbed methane from impeding development of that resource by requiring pooling of development and payment of the proceeds into an escrow account until the ownership issue is resolved by a State entity of competent jurisdiction. The rule will also allow States to avoid the Federal regulations by promulgating their own regulations that substantially comply with Federal requirements.

Timetable:

Action	Date	FR Cite
NPRM	09/15/95	60 FR 47920
NPRM Comment Period End	11/14/95	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Agency Contact: David R. Stewart, Mineral Resources, Department of the Interior, Bureau of Land Management
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Email: dave__stewart@blm.gov

RIN: 1004–AC27

1515. CAREY ACT GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 641 et seq

CFR Citation: 43 CFR 2610

Legal Deadline: None

Abstract: This rule will update these regulations as they are inconsistent with present-day management policies. Application of these provisions of the Carey Act is rarely feasible due to limited water and suitable lands.

Timetable:

Action	Date	FR Cite
NPRM	09/10/96	61 FR 47725
NPRM Comment Period End	10/10/96	
Supplementary NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeff O. Holdren, Deputy Group Manager, Department of the Interior, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240
Phone: 202 452-7779
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Email: jeff__holdren@blm.gov

RIN: 1004–AC80

1516. OIL AND GAS LEASING AND OPERATIONS

Priority: Other Significant

Legal Authority: 30 USC 181 et seq

CFR Citation: 43 CFR 3100

Legal Deadline: None

Abstract: This rule will revise BLM's current Federal oil and gas leasing and operations regulations, except those concerning drainage (section 3100.2-2), combined hydrocarbon leasing (part 3140) and oil and gas leasing in the National Petroleum Reserve—Alaska (part 3130). The rule will: (1) Cite industry standards and incorporate them by reference rather than repeat those standards in the rule; (2) incorporate the requirements of the Onshore Oil and Gas Orders and national notices to lessees into the regulations to eliminate overlap with current regulations; (3) use performance standards in certain places instead of prescriptive requirements to allow more flexibility for operators and to protect the environment and Federal royalty interests; and (4) eliminate redundancies, clarify procedures and regulatory requirements and streamline procedures.

Timetable:

Action	Date	FR Cite
NPRM	12/03/98	63 FR 66840
NPRM Comment Period End	07/19/99	64 FR 29256
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local

Agency Contact: Ian Senio, Regulatory Analyst, Department of the Interior, Bureau of Land Management, MS 401, Regulatory Management Group (WO-630), 1849 C Street NW., Washington, DC 20240
Phone: 202 452-5049
Email: ian__senio@blm.gov

RIN: 1004–AC94

1517. APPEALS PROCEDURES; HEARINGS PROCEDURES

Priority: Info./Admin./Other

Legal Authority: 43 USC 1701; 43 USC 1740

CFR Citation: 43 CFR 1840; 43 CFR 1850

Legal Deadline: None

Abstract: BLM proposes to amend its regulations that govern administrative review procedures for protests of proposed decisions contested appeals of BLM decisions, and hearings on the record. The proposed regulations would provide more consistent procedures for administrative review of BLM decisions, and would clarify when and how BLM decisions go into effect and whether an appeal will stay the effectiveness of a BLM decision.

Timetable:

Action	Date	FR Cite
NPRM	10/17/96	61 FR 54120
NPRM Comment Period End	01/17/97	61 FR 58160
Second NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cynthia Ellis, Regulatory Analyst, Department of the Interior, Bureau of Land Management, 1849 C Street N.W., Washington, DC 20240
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RIN: 1004–AC99

1518. HAZARDOUS MATERIALS COMPLIANCE

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1701 et seq

CFR Citation: 43 CFR 1890

Legal Deadline: None

Abstract: This rule will clarify the respective responsibilities of BLM and the holders of various BLM authorizations with regard to releases of hazardous materials and other violations of environmental law caused by the holder or the holder's operator on public lands.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Cynthia Ellis, Regulatory Analyst, Department of the Interior, Bureau of Land Management, 1849 C Street N.W., Washington, DC 20240
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RIN: 1004–AD38

1519. SUPPLEMENTARY RULES FOR PUBLIC DEMONSTRATIONS AT GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT

Priority: Substantive, Nonsignificant

Legal Authority: 43 CFR 8365.1-6

CFR Citation: 43 CFR 8365

Legal Deadline: None

Abstract: This interim final rule would require a permit for public demonstrations at Grand Staircase-Escalante National Monument and associated facilities, and establish procedures for obtaining such a permit. It would also provide for some locations to be designated as open for demonstrations, and others to be closed to protect sensitive resources and public health and safety.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/01/00	65 FR 53516
Interim Final Rule Comment Period End	10/02/00	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ted Hudson, Regulatory Analyst, Department of the Interior, Bureau of Land Management, Room 420, 1849 C Street N.W., Washington, DC 20240
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RIN: 1004–AD40

1520. SURFACE MANAGEMENT; SEGREGATED OR WITHDRAWN LANDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1280; 30 USC 22; 30 USC 612; 43 USC 1201; 43 USC 1732; 43 USC 1733; 43 USC 1740; 43 USC 1781; 43 USC 1782

CFR Citation: 43 CFR 3809

Legal Deadline: None

Abstract: This rule will provide that a mineral examination is not required for claims on specific categories of withdrawn lands in Alaska before approving plans of operations or allowing notice-level mining to begin, but will be discretionary with BLM on those lands. For mining claims on lands withdrawn for inclusion in land conservation systems like wilderness, wild and scenic rivers, etc., mineral examinations will remain mandatory.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael H. Schwartz, Group Manager, Regulatory Affairs, Department of the Interior, Bureau of Land Management, 1849 C Street N.W., Washington, DC 20240
Phone: 202 452-5198
Email: michael__schwartz@blm.gov

RIN: 1004–AD51

1521. MINING CLAIMS UNDER THE GENERAL MINING LAWS; SURFACE MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1280; 30 USC 22; 30 USC 612; 43 USC 1201; 43 USC 1732; 43 USC 1733; 43 USC 1740; 43 USC 1781; 43 USC 1782

CFR Citation: 43 CFR 3809

Legal Deadline: None

Abstract: This rule will amend existing regulations by removing certain provisions of the regulations and restoring others to those in effect on January 19, 2001, intending to prevent unnecessary or undue degradation of BLM-administered lands by mining operations authorized under the mining laws. The approach BLM will take will balance the Nation's need to maintain reliable sources of strategic and industrial minerals, while ensuring protection of the environment and natural resources on public lands. The rule will make the hardrock mining regulations consistent with the recommendations of the National Research Council and protect the Federal Government from financial risk if operators are unable to perform reclamation.

Timetable:

Action	Date	FR Cite
NPRM	10/30/01	66 FR 54863

DOI—BLM

Long-Term Actions

Action	Date	FR Cite
NPRM Comment Period End	02/15/02	
NPRM Comment Period Reopened	04/12/02	67 FR 17962
NPRM Comment Period End	05/13/02	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Michael H. Schwartz, Group Manager, Regulatory Affairs, Department of the Interior, Bureau of Land Management, 1849 C Street N.W., Washington, DC 20240
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RIN: 1004–AD53

Department of the Interior (DOI)
Bureau of Land Management (BLM)

Completed Actions

1522. LOCATION RECORDING AND MAINTENANCE OF MINING CLAIMS OR SITES

Priority: Info./Admin./Other

CFR Citation: 43 CFR 3730; 43 CFR 3820; 43 CFR 3830; 43 CFR 3850

Completed:

Reason	Date	FR Cite
Final Action	06/03/02	67 FR 38203

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Roger Haskins
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RIN: 1004–AD52

BILLING CODE 4310–84–S

Department of the Interior (DOI)
Office of the Secretary (OS)

Final Rule Stage

1523. WILD AND SCENIC RIVERS

Priority: Other Significant

Legal Authority: 16 USC 1278

CFR Citation: 43 CFR 39

Legal Deadline: None

Abstract: This rule would establish uniform standards and procedures by which the Department of the Interior, through its agencies that administer rivers in the National Wild and Scenic Rivers System (Bureau of Land Management, Fish and Wildlife Service, and National Park Service), will consider Federal licensing of, or assistance to, water resources projects affecting designated Wild and Scenic Rivers or congressionally authorized Study Rivers.

Timetable:

Action	Date	FR Cite
NPRM	12/09/98	63 FR 67834
NPRM Comment Period End	02/08/99	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: John Haubert, Outdoor Recreation Planner, Department of the Interior, Office of the Secretary, Room 3230, 1849 C Street N.W., Room 3230, Washington, DC 20240
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RIN: 1093–AA08

[FR Doc. 02–26338 Filed 12–06–02; 8:45 am]

BILLING CODE 4310–10–S

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Monday,
December 9, 2002

Part XI

Department of Justice

Semiannual Regulatory Agenda

DEPARTMENT OF JUSTICE (DOJ)

DEPARTMENT OF JUSTICE

8 CFR Ch. I

21 CFR Ch. I

28 CFR Ch. I

Regulatory Agenda

AGENCY: Department of Justice.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Department of Justice is publishing its October 2002 regulatory agenda pursuant to Executive Order 12866 "Regulatory Planning and Review," 58 FR 51735, and the Regulatory Flexibility Act, 5 U.S.C. sections 601-612 (1988).

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, Department of Justice, Room 7236, 950 Pennsylvania Avenue NW., Washington, DC 20530, (202) 514-8059.

SUPPLEMENTARY INFORMATION: For this edition of the Department of Justice's regulatory agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Regulatory Plan entries are listed in the table of contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

The Regulatory Flexibility Act (RFA) requires that, each year, the Department publish a list of those regulations that have a significant economic impact upon a substantial number of small entities and are to be reviewed under section 610 of the Act during the succeeding 12 months. This edition of the Department's unified agenda includes three regulations requiring such a review: "Reduction of the Number of Acceptable Documents and Other Changes to Employment Verification Requirements" (RIN 1115-AB73); "Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities" (RIN 1190-AA44); and "Nondiscrimination on the Basis of Disability in State and Local Government Services" (RIN 1190-AA46). In accordance with the RFA, comments are specifically invited on this regulation. Those comments should be addressed to the contact persons listed in the entries for these items.

Dated: September 30, 2002.

Viet D. Dinh

Assistant Attorney General, Office of Legal Policy

Bureau of Prisons—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1524	Release of Information	1120-AA96
1525	Drug Abuse Treatment Program: Subpart Revision and Clarification	1120-AB07
1526	Inmate Fees for Health Care Services	1120-AB11
1527	Good Conduct Time: Aliens With Confirmed Orders of Deportation, Exclusion, or Removal	1120-AB12
1528	Civil Contempt of Court Commitments: Revision To Accommodate Commitments Under the DC Code	1120-AB13
1529	Inmate Discipline—Subpart Revision	1120-AB18
1530	Administrative Safeguards for Psychiatric Treatment and Medication	1120-AB20

Bureau of Prisons—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1531	Volunteer Community Service Projects	1120-AA03
1532	Intensive Confinement Centers	1120-AA11
1533	Incoming Publications	1120-AA15
1534	Postsecondary Education Programs	1120-AA25
1535	Literacy Program	1120-AA33
1536	Telephone Regulations and Inmate Financial Responsibility	1120-AA39
1537	Telephone Regulations and Inmate Financial Responsibility	1120-AA49
1538	Incoming Publications: Nudity and Sexually Explicit Material or Information	1120-AA59
1539	Good Conduct Time	1120-AA62
1540	Visiting Regulations: Prior Relationship	1120-AA77
1541	Over-the-Counter (OTC) Medications	1120-AA81
1542	Designation of Offenses Subject to Sex Offender Release Notification	1120-AA85
1543	Inmate Commissary Account Deposit Procedures	1120-AA86
1544	Drug Abuse Treatment Programs: Disincentives and Enhanced Incentives	1120-AA88
1545	Searches of Housing Units, Inmates, Inmate Work Areas, and Persons Other Than Inmates: Electronic Devices	1120-AA90
1546	Occupational Educational Programs	1120-AA92
1547	Drug Testing Program	1120-AA95
1548	Correspondence: Inspection of Outgoing General Correspondence	1120-AA98
1549	Release Gratuities, Transportation, and Clothing: Aliens	1120-AA99
1550	Religious Beliefs and Practices: Nomenclature Change	1120-AB04

DOJ

Bureau of Prisons—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1551	Suicide Prevention Program	1120-AB06
1552	National Security; Prevention of Acts of Violence and Terrorism	1120-AB08
1553	District of Columbia Youth Rehabilitation Act (DCYRA) Sentences: No Further Benefit Determinations	1120-AB09
1554	Central Inmate Monitoring (CIM) System: Streamlining Rules	1120-AB14
1555	Admission and Orientation Program: Removal From Rules	1120-AB16
1556	Bureau of Prisons Emergencies	1120-AB17
1557	Clarifying of Release Gratuities—Release Transportation Regulations To More Closely Conform to Statutory Provisions	1120-AB21

Bureau of Prisons—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1558	Infectious Disease Management	1120-AB03
1559	District of Columbia Educational Good Time Credit	1120-AB05

Bureau of Prisons—Completed Actions

Sequence Number	Title	Regulation Identification Number
1560	Administrative Remedy Program: Excluded Matters	1120-AA72

Bureau of Prisons—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
1120-AA23	Infectious Diseases	07/25/2002	Merged With RIN 1120-AB03

Civil Rights Division—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1561	Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities **(Section 610 Review) (Reg Plan Seq No. 78)**	1190-AA44
1562	Nondiscrimination on the Basis of Disability in State and Local Government Services **(Section 610 Review) (Reg Plan Seq No. 79)**	1190-AA46
1563	Nondiscrimination on the Basis of Disability in State and Local Government Services; Public Accommodations and Commercial Facilities; Accessibility Standards; Recreation Facilities	1190-AA47
1564	American Competitiveness and Workforce Improvement Act of 1998 Complaint Process	1190-AA48
1565	Nondiscrimination on the Basis of Disability in State or Local Government Facilities; Public Accommodations and Commercial Facilities; Accessibility Standards; Play Areas	1190-AA50
1566	Amendments to Procedures Advising States and Political Subdivisions Specially Covered Under the Voting Rights Act How To Seek Preclearance From the Attorney General of Proposed Voting Changes	1190-AA51
1567	Amendments to Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs—Implementation of Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act 1973	1190-AA52
1568	Procedures To Review Police Departments for a Pattern or Practice of Conduct That Deprives Persons of Rights, Privileges, or Immunities Secured or Protected by the Constitution or Laws of the U.S.	1190-AA53

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

DOJ

Civil Rights Division—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1569	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	1190-AA49

Drug Enforcement Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
1570	Chemical Mixtures Containing Listed Forms of Phosphorus	1117-AA66

Drug Enforcement Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1571	Guidelines for Providing Controlled Substances to Ocean Vessels	1117-AA40
1572	Sale by Federal Departments or Agencies of Chemicals Usable To Manufacture a Controlled Substance	1117-AA47
1573	Exemption From Import/Export Requirements for Personal Medical Use	1117-AA56
1574	Electronic Orders for Schedule I and II Controlled Substances	1117-AA60
1575	Electronic Prescriptions for Controlled Substances	1117-AA61
1576	Security Requirements for Handlers of Pseudoephedrine, Ephedrine, and Phenylpropanolamine	1117-AA62
1577	Reorganization and Clarification of DEA Regulations	1117-AA63
1578	Chemical Mixtures Containing Gamma-Butyrolactone	1117-AA64
1579	Chemical Registration Waivers; Exemption From Chemical Registration Fees for Certain Persons	1117-AA67
1580	Authority for Practitioners To Dispense or Prescribe Approved Narcotic (Opiod) Substances for Maintenance or Detoxification Treatment	1117-AA68
1581	Controlled Substances Registration and Reregistration Application Fees	1117-AA70
1582	Recordkeeping and Reporting Requirements for Drug Products Containing Hydroxybutyric Acid (GHB)	1117-AA71
1583	Chemical Registration and Reregistration Fees	1117-AA72

Drug Enforcement Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1584	Definition and Registration of Reverse Distributors	1117-AA19
1585	Exemption of Chemical Mixtures	1117-AA31
1586	Chemical Registration and Reregistration Fees	1117-AA50
1587	Placement of Gamma-Butyrolactone in List I of the Controlled Substances Act (21 U.S.C. 802)	1117-AA52
1588	Industrial Use of Products and Materials Derived From Cannabis Plants	1117-AA55
1589	Control of Red Phosphorus, White Phosphorus, and Hypophosphorous Acid (and Its Salts) as List I Chemicals	1117-AA57
1590	Allowing Central Fill Pharmacies To Fill Prescriptions for Controlled Substances on Behalf of Retail Pharmacies	1117-AA58
1591	Implementation of the Methamphetamine Anti-Proliferation Act: Thresholds for Retailers and for Distributors Required To Submit Reports Under 21 U.S.C. 830(b)(3); Changes to Mail Order Reporting	1117-AA69

Drug Enforcement Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
1592	Registration and Reregistration Application Fees	1117-AA34
1593	Change of Address for Filing Chemical Import/Export Declarations (DEA Form 486), Reports for the Importation or Exportation of Tableting and Encapsulating Machines, and Other Related Reports	1117-AA65

DOJ

Executive Office for Immigration Review—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1594	Authority of Immigration Judges To Issue Civil Money Penalties	1125-AA18
1595	Suspension of Deportation and Cancellation of Removal for Certain Battered Spouses and Children; Motions To Reopen for Certain Battered Spouses and Children	1125-AA35

Executive Office for Immigration Review—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1596	Suspension of Deportation and Cancellation of Removal	1125-AA25
1597	Authorities Delegated to the Director of the Executive Office for Immigration Review	1125-AA27
1598	Motions To Reopen for Suspension of Deportation and Special Rule Cancellation of Removal Pursuant to Section 1505(c) of the LIFE Act Amendments	1125-AA31
1599	Section 212(c) Relief for Aliens With Certain Criminal Convictions Before April 1, 1997	1125-AA33
1600	Protective Orders in Immigration Administration Proceedings	1125-AA38

Executive Office for Immigration Review—Completed Actions

Sequence Number	Title	Regulation Identification Number
1601	Board of Immigration Appeals; Procedural Reforms To Improve Case Management	1125-AA36

Federal Bureau of Investigation—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1602	Claims of Exemptions From Provisions of the Privacy Act as to FBI Records	1110-AA08

Federal Bureau of Investigation—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1603	Implementation of Sections 104 and 109 of the Communications Assistance for Law Enforcement Act	1110-AA00
1604	Implementation of the National Stolen Passenger Motor Vehicle Information System (NSPMVIS)	1110-AA01
1605	Regulations Under the Pam Lychner Sexual Offender Tracking and Identification Act	1110-AA04
1606	National Instant Criminal Background Check System	1110-AA07

Federal Bureau of Investigation—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
1110-AA09	Federal Bureau of Investigation Criminal Justice Information Services Division Systems and Procedures	08/25/2002	Withdrawn

DOJ

Immigration and Naturalization Service—Prerule Stage

Sequence Number	Title	Regulation Identification Number
1607	Restricting Citizens of Bangladesh, India, Pakistan, and Sri Lanka From Participation in the International-to-International (ITI) Program	1115-AG30

Immigration and Naturalization Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1608	Revised Grounds of Inadmissibility, Exceptions, and Waivers for Immigrants and Nonimmigrants, and Exceptions	1115-AB45
1609	Fees for Participation in Dedicated Commuter Lanes at Selected Ports of Entry; Collection of Fees Under the Dedicated Commuter Lane Program	1115-AD82
1610	Inspection of Persons Applying for Admission; International-to-International User Fee	1115-AE37
1611	Filing Factual Statements About Alien Prostitutes	1115-AE60
1612	Employment Verification by Employers That Are Members of a Multi-Employer Association	1115-AE67
1613	Use of Parole for Humanitarian Reasons or Significant Public Benefit	1115-AE68
1614	Certification of Certain Health Care Workers	1115-AE73
1615	Special Immigrant Juvenile Petitions	1115-AF11
1616	Immigrant and Nonimmigrant; Religious Workers	1115-AF12
1617	Documentary Requirements for Returning Residents	1115-AF26
1618	Dismissal of Asylum Application for Unexcused Failure To Appear and Effect on Eligibility for Employment Authorization	1115-AF38
1619	Special Immigrant Status for Certain NATO Civilian Employees	1115-AF44
1620	Contracts With Transportation Lines	1115-AF46
1621	Adjustment of Status Under the 1966 Cuban Adjustment Act	1115-AF48
1622	Inadmissibility To Enter the United States for Former U.S. Citizens Who Renounced Citizenship To Avoid Taxation	1115-AF69
1623	Establishment of Fee for Processing Genealogical Research Requests for INS Records	1115-AF88
1624	Intercountry Adoptions	1115-AF96
1625	Waiver of Fees	1115-AG02
1626	Adoption of Siblings, Adopted Alien Children Less Than 18 Years of Age Considered a "Child"	1115-AG04
1627	Adjustment to Lawful Resident Status of Certain Class Action Participants Who Entered Before January 1, 1982, Under the Legal Immigration and Family Equity Act (LIFE Act)	1115-AG06
1628	Procedures for Checking Juvenile Criminal Records and Submitting Fingerprints of That Additional Class of Aliens Ineligible for Family Unity	1115-AG07
1629	Adjustment of Status Under Section 245(k)	1115-AG10
1630	Implementation of the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), the American Competitiveness in the Twenty-First Century Act of 2000 (AC21), and Other Related Bills	1115-AG11
1631	Construction Work and the B Nonimmigrant Visa Classification	1115-AG15
1632	Adjustment of Fees for Dedicated Commuter Lanes and Secure Electronic Network for Travelers' Rapid Inspection (SENTRI) Programs at Land Border Ports of Entry	1115-AG18
1633	Removal and Adjustment Procedures for Victims of Trafficking and Certain Criminal Activities	1115-AG21
1634	Definitions of Notice To Appear and Arrest Warrant	1115-AG24
1635	Visa Waiver Program: Guam Visa Waiver Program	1115-AG25
1636	Procedures for Detainee Hunger Strikes	1115-AG26
1637	Consent To Reapply for Admission After Removal	1115-AG28
1638	Waivers of the 2-Year Foreign Residence Requirement for Certain Exchange Visitors	1115-AG31
1639	Extension of the Validity Period for Employment Authorization Documents for Aliens Seeking Adjustment of Status	1115-AG32
1640	Illegal Entries, Unlawful Presence, and Automatic Voiding of Nonimmigrant Visas	1115-AG36
1641	Medical Examination Requirements and Designation of Civil Surgeons	1115-AG37
1642	Medical Grounds of Inadmissibility and Waivers	1115-AG38
1643	New Classification for Victims of Certain Criminal Activity; Eligibility for the U Nonimmigrant Status	1115-AG39
1644	Judicial Review of the Decisions of the Immigration and Naturalization Service	1115-AG49
1645	Carrier Arrival and Departure Electronic Manifest Requirements **(Reg Plan Seq No. 80)**	1115-AG57
1646	Limiting the Number of Transit Without Visa (TWOV) Stops in the United States to One	1115-AG59
1647	Termination of Lawful Permanant Resident Status Through Abandonment	1115-AG64
1648	Strengthening Control Over Immigration Surety Bonds	1115-AG65
1649	Limiting the Use of Duration of Status for Certain F, J, and I Nonimmigrants	1115-AG76
1650	Petitions for Aliens To Perform Temporary Nonagricultural Services or Labor (H-2B)	1115-AG78

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Immigration and Naturalization Service—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1651	Adjustment of the Immigration Benefit Application Fee Schedule To Recover Costs Associated With Additional Security Checks	1115-AG82

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Immigration and Naturalization Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1652	Reduction of the Number of Acceptable Documents and Other Changes to Employment Verification Requirements **(Section 610 Review)**	1115-AB73
1653	Adjustment of Status to That of Person Admitted for Permanent Residence: Conditional Residents and Fiance(e)s	1115-AC70
1654	Nonimmigrant Classes; S Classification; Law Enforcement Initiatives; Alien Witnesses	1115-AD86
1655	Establishing Criteria for Determining Countries Whose Citizens Are Ineligible for the Transit Without Visa (TWOV) Program	1115-AD96
1656	Petition To Classify Alien as Immediate Relative of a U.S. Citizen or as a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Alien Spouses and Children	1115-AE04
1657	Conditions on Nonimmigrant Status; Disclosure of Information	1115-AE17
1658	Regulations Relating to Temporary Protected Status	1115-AE26
1659	Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings	1115-AE47
1660	Agreement Promising Non-Deportation or Other Immigration Benefits	1115-AE50
1661	Definition of the Term "Lawfully Present" for Purposes of Eligibility for Public Benefits	1115-AE51
1662	Affidavit of Support on Behalf of Immigrants	1115-AE58
1663	Suspension of Privilege To Transport Aliens to the United States	1115-AE59
1664	Limiting Liability for Certain Technical and Procedural Violations of Paperwork Requirements	1115-AE70
1665	Implementation of Hernandez v. Reno Settlement Agreement; Certain Aliens Eligible for Family Unity Benefits After Sponsoring Family Member's Naturalization	1115-AE72
1666	Regulations Pertaining to Battered Aliens and to Mail Order Bride Businesses, as Mandated by IIRIRA	1115-AE77
1667	Establishment of Preinspected Automated Lane (PAL) Program at Immigration and Naturalization Service	1115-AE80
1668	Requiring Aliens Ordered Removed From the United States To Surrender to the Immigration and Naturalization Service for Removal	1115-AE82
1669	Early Release for Removal of Criminal Aliens in State Custody for Nonviolent Offenses	1115-AE83
1670	Amendment of the Regulatory Definition of Arriving Alien	1115-AE87
1671	Adjustment of Status, Continued Validity of Nonimmigrant Status, and Unexpired Employment Authorization for Applicants Maintaining Nonimmigrant H or L Status	1115-AE96
1672	Verification of Eligibility for Public Benefits	1115-AE99
1673	Fingerprinting Applicants and Petitioners for Immigration Benefits; Establishing a Fee for Fingerprinting by the Service	1115-AF03
1674	Processing, Detention, and Release of Juveniles	1115-AF05
1675	Suspension of Deportation and Special Rule Cancellation of Removal for Certain Nationals of Guatemala, El Salvador, and Former Soviet Bloc Countries	1115-AF14
1676	Elimination of Immigration and Naturalization Service-Issued Mexican and Canadian Border Crossing Cards	1115-AF24
1677	Filing of Proposals for Designation as a Regional Center Approved To Participate in the Immigrant Investor Pilot Program	1115-AF27
1678	Nonimmigrant Visa Exemption for Nationals of the British Virgin Islands Entering the United States Through St. Thomas, United States Virgin Islands	1115-AF28
1679	Regulations Concerning the Convention Against Torture	1115-AF39
1680	Application for Refugee Status; Acceptable Sponsorship Agreement Guaranty of Transportation	1115-AF49
1681	Nonimmigrant Classes: Q-2 Irish Peace Process Cultural and Training Program Visitor	1115-AF51
1682	Clarification of Parole Authority	1115-AF53
1683	Authorizing Collection of Fee Levied on F, J, and M Nonimmigrant Classifications Under Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)	1115-AF56
1684	Battered and Abused Conditional Residents; Termination of Marriage by Conditional Residents	1115-AF59
1685	Extension of 25-Mile Limit at Select Arizona Ports-of-Entry	1115-AF60
1686	Revoking Grants of Naturalization	1115-AF63
1687	Entry Requirements for Citizens of the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau	1115-AF65
1688	Registration and Fingerprinting of Aliens in the United States: Control of Employment of Aliens	1115-AF71

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Immigration and Naturalization Service—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1689	National Interest Waivers for Second Preference Employment-Based Immigrant Physicians Serving in Medically Underserved Areas or at Department of Veterans Affairs Facilities	1115-AF75
1690	Petitioning Requirements for the H-1C Nonimmigrant Classification Under Public Law 106-95	1115-AF76
1691	Expansion of Dedicated Commuter Lanes; Clarification of Driver's License Requirement for Applicants to Dedicated Commuter Lanes and Automated Permit Port Programs	1115-AF77
1692	Waiving the Fingerprinting Requirement for Certain Disabled Naturalization Applicants	1115-AF80
1693	Update of List of Countries Whose Citizens or Nationals Are Ineligible for Transit Without Visa (TWOV) Privileges to the United States Under the TWOV Program	1115-AF81
1694	Implementation of the Numerical Limit on Asylum Grants and Refugee Admissions Based on Resistance to Coercive Population Control Measures	1115-AF84
1695	Adding Actuaries and Plant Pathologists to the North American Free Trade Agreement	1115-AF85
1696	Power of Attorney General To Terminate Deportation Proceedings and Initiate Removal Proceedings	1115-AF87
1697	Employment Authorization for Certificate of Citizenship Applicants	1115-AF90
1698	Adjustment of Status to That of Person Admitted for Permanent Residence; Temporary Removal of Certain Restrictions of Eligibility	1115-AF91
1699	Asylum and Withholding Definitions	1115-AF92
1700	Academic Honorarium for B Nonimmigrant Aliens	1115-AF97
1701	Children Born Outside the United States; Applications for Certificate of Citizenship	1115-AF98
1702	Allowing for the Filing of Form I-140 Visa Petition Concurrently With a Form I-485 Application in Certain Circumstances	1115-AG00
1703	Special Immigrant Visa for Fourth Preference Employment-Based Broadcasters	1115-AG01
1704	Establishing Premium Processing Service for Employment-Based Petitions and Applications	1115-AG03
1705	Adjustment of Status for Certain Nationals of Nicaragua, Cuba, and Haiti	1115-AG05
1706	Nonimmigrant Classes; Spouses and Children of Lawful Permanent Residents; V Classification	1115-AG08
1707	K Nonimmigrant Classification, Legal Immigration Family Equity Act (LIFE)	1115-AG12
1708	Adjustment of Status for Certain Syrian Nationals Granted Asylum in the United States	1115-AG13
1709	Adjustment of Status of Certain Aliens From Vietnam, Cambodia, and Laos in the United States	1115-AG14
1710	Adding Colombia to the List of Countries Whose Citizens or Nationals Are Ineligible for Transit Without Visa (TWOV) Privileges to the United States Under the TWOV Program	1115-AG16
1711	New Classification for Victims of Severe Forms of Trafficking in Persons Eligible for the T Nonimmigrant Status	1115-AG19
1712	Protection and Assistance for Victims of Trafficking	1115-AG20
1713	Removing Russia From the List of Countries Whose Citizens or Nationals Are Ineligible for Transit Without Visa (TWOV) Privileges to the United States Under the TWOV Program	1115-AG27
1714	Detention of Aliens Subject to Final Orders of Removal	1115-AG29
1715	Allowing Citizens and Nationals of the People's Republic of China Limited Transit Without Visa (TWOV) Privileges at TWOV-Designated Alaska International Airports	1115-AG33
1716	Custody Procedures	1115-AG40
1717	Limiting the Period of Admission for B Nonimmigrant Aliens	1115-AG43
1718	Documentary Requirements for Certain Temporary Residents	1115-AG44
1719	Establishment of a $3 Immigration User Fee for Certain Commercial Vessel Passengers Previously Exempt	1115-AG47
1720	Change in Business Practices; Acceptance of Payments of Fees By Credit Card and Other Electronic Means Where Possible	1115-AG48
1721	Adding and Removing Institutions To and From the List of Recognized American Institutions of Research	1115-AG52
1722	Revision of the Regulations Concerning F, J, and M Nonimmigrant Classifications **(Reg Plan Seq No. 81)**	1115-AG55
1723	Requiring Change of Status From B to F-1 or M-1 Nonimmigrant Prior To Pursuing a Course of Study	1115-AG60
1724	Address Notification To Be Filed With Designated Applications	1115-AG61
1725	Reengineering of Part 214, Nonimmigrant Classes To Clarify and Restate Admission Requirements	1115-AG62
1726	Waivers for Nonimmigrants Under Section 212(d)(3)(A) of the Immigration and Nationality Act	1115-AG63
1727	Establishing San Bernardino, Santa Ana, and Ventura Suboffices Under the Jurisdiction of the Los Angeles District Office	1115-AG66
1728	Release of Information Regarding Immigration and Naturalization Service Detainees in Non-Federal Facilities	1115-AG67
1729	Removal of Visa and Passport Waiver for Certain Permanent Residents of Canada and Bermuda	1115-AG68
1730	Requiring Recertification of All Service-Approved Schools for Enrollment in the Student and Exchange Visitor Information System (SEVIS)	1115-AG71
1731	Posting of Security Guard at Gangway of Vessel for Detaining Alien Crewman	1115-AG72
1732	Electronic Arrival-Departure Manifest for Visa Waiver Program	1115-AG73
1733	Registration Requirements and Work Authorization Eligibility for Aliens in the United States	1115-AG74
1734	Reduced Course Load for Certain F and M Nonimmigrant Students at Border Communities	1115-AG75

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Immigration and Naturalization Service—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1735	Procedures for Conducting Examinations and Waiving the Oath of Allegiance for Naturalization Applicants With Disabilities	1115-AG77
1736	Electronic Signature on Applications and Petitions for Immigration and Naturalization Benefits	1115-AG79

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Immigration and Naturalization Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1737	Visa Waiver Program	1115-AB93
1738	Employer Sanctions Modifications	1115-AE21
1739	Authorizing Suspension of Employment Authorization Requirements on the Basis of Severe Economic Hardship for F-1 Students and Emergent Circumstances	1115-AF15
1740	Availability of Material Under Freedom of Information Act and Privacy Act	1115-AF32
1741	Interim Designation of Acceptable Receipts for Employment Eligibility Verification	1115-AF42
1742	Inadmissibility and Deportability on Public Charge Grounds	1115-AF45
1743	Expansion of Expedited Removal of Certain Criminal Aliens Held in Federal, State, and Local Jails	1115-AF50
1744	Extending the Period of Duration of Status for Certain F and J Nonimmigrant Aliens	1115-AF54
1745	Imposition of Fines for Violations of the Immigration and Nationality Act	1115-AF70
1746	Petition To Classify Alien as Immediate Relative of a U.S. Citizen or Preference Immigrant; Adjustment of Status to That of a Person Admitted for Permanent Residence	1115-AF94
1747	Increasing the Number of Officers Authorized To Issue Notices To Appear and Arrest Warrants for Immigration Violations	1115-AG22

Immigration and Naturalization Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
1748	Powers of the Attorney General To Authorize State or Local Law Enforcement Officers To Carry Out Immigration Enforcement	1115-AF20
1749	Delegation of the Adjudication of Certain H-2A Petitions to the Department of Labor	1115-AF29
1750	Delegation of Authorities for Various Detention and Removal Authorities	1115-AG69
1751	Registration and Monitoring of Certain Nonimmigrants	1115-AG70

Immigration and Naturalization Service—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
1115-AF55	Adjustment of Fees for Services at Land Border Ports of Entry	08/01/2002	Withdrawn
1115-AF99	Time Limit for Appeal From Denial of Relative Visa Petition	09/30/2002	Withdrawn
1115-AG42	Control of Aliens Departing From the United States	08/02/2002	Withdrawn

Legal Activities—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1752	Certification and Decertification in Connection With Certain Suits Based Upon Acts or Omissions of Federal Employees and Other Persons	1105-AA62
1753	Designation of Agencies To Receive and Investigate Reports Required Under the Protection of Children From Sexual Predators Act	1105-AA65
1754	Motor Vehicle Salvage Regulations	1105-AA71

DOJ

Legal Activities—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1755	Enhanced Notice and Release Procedures for Owners of Seized Property Pursuant to the CAFRA of 2000; Disposition of Seized Property Too Costly To Maintain; Consolidation of Department Regulations	1105-AA74
1756	DNA Sampling of Federal Offenders Under the USA Patriot Act of 2001	1105-AA78

Legal Activities—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1757	Foreign Agents Registration Act; Regulations Revised and Clarified To Reflect Changes in the Law	1105-AA45
1758	Ethical Standards for Attorneys for the Government	1105-AA67
1759	Claims Under the Radiation Exposure Compensation Act Amendments of 2000: Technical Amendments; Expansion of Coverage to Uranium Millers and Ore Transporters; Expansion of Coverage for Uranium Miners	1105-AA75
1760	Establishment of Minimum Safety and Security Standards for Private Companies That Transport Violent Prisoners	1105-AA77
1761	Screening of Aliens and Other Designated Individuals Seeking Flight Training	1105-AA80
1762	Guidelines for the Campus Sex Crimes Prevention Act Amendment to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act	1105-AA81

Legal Activities—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1763	Waiver for Firearm Prohibition on Nonimmigrant Visa Holders	1105-AA66

Office of Justice Programs—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1764	Correctional Facilities on Tribal Lands Grant Program	1121-AA41
1765	Public Safety Officers' Benefits Program	1121-AA56
1766	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	1121-AA57
1767	Criminal Intelligence Systems Operating Policies	1121-AA59
1768	Victims of Crime Act (VOCA) Program Regulations for the Victim Compensation Grant Program and Victim Assistance Program	1121-AA61
1769	International Terrorism Victim Compensation Program	1121-AA63
1770	Violence Against Women Grant Programs	1121-AA64

Office of Justice Programs—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1771	Bulletproof Vest Partnership Grant Acts of 1998 and 2000	1121-AA48
1772	Environmental Impact Review Procedures for the VOI/TIS Grant Program	1121-AA52

Department of Justice (DOJ)
Bureau of Prisons (BOP)

Proposed Rule Stage

1524. RELEASE OF INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552; 5 USC 552a; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510; 31 USC 3711(f)

CFR Citation: 28 CFR 513

Legal Deadline: None

Abstract: This document revises Bureau regulations implementing the Freedom of Information Act and the Privacy Act in order to simplify the procedures and to eliminate unnecessary regulatory text.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
NPRM Comment Period End	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi, Rules Administrator, Department of Justice, Bureau of Prisons, 320 First Street NW, HOLC Building, Washington, DC 20534
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RIN: 1120–AA96

1525. DRUG ABUSE TREATMENT PROGRAM: SUBPART REVISION AND CLARIFICATION

Priority: Info./Admin./Other

Legal Authority: 18 USC 3521 to 3528, 4042, 4046, 4081, 4082, 5006 to 5024, 5039; 28 USC 848, 509, 510; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; ...

CFR Citation: 28 CFR 550

Legal Deadline: None

Abstract: In this document, the Bureau of Prisons proposes to amend its regulations on the drug abuse treatment program. We intend this amendment to streamline and clarify these regulations, eliminating unnecessary text and obsolete language, and removing internal agency procedures that need not be in rules text.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi, Rules Administrator, Department of Justice, Bureau of Prisons, 320 First Street NW, HOLC Building, Washington, DC 20534
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RIN: 1120–AB07

1526. • INMATE FEES FOR HEALTH CARE SERVICES

Priority: Other Significant

Legal Authority: 5 USC 301; 18 USC 3621 to 3622, 4001, 4005, 4014, 4042, 4045, 4081 to 4082; 18 USC 4161 to 4166, 4241 to 4247, 5006 to 5024, 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 549

Legal Deadline: None

Abstract: In this document, the Bureau of Prisons (Bureau) proposes rules describing procedures we will follow for charging inmates fees for certain kinds of health services, as required under the Federal Prisoner Health Care Copayment Act of 2000 (Pub. L. 106-294, October 12, 2000, 114 Stat. 1038).

Timetable:

Action	Date	FR Cite
NPRM	10/10/02	67 FR 63059
NPRM Comment Period End	12/09/02	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi, Rules Administrator, Department of Justice, Bureau of Prisons, 320 First Street NW, HOLC Building, Washington, DC 20534
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Fax: 202 305-4577
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RIN: 1120–AB11

1527. • GOOD CONDUCT TIME: ALIENS WITH CONFIRMED ORDERS OF DEPORTATION, EXCLUSION, OR REMOVAL

Priority: Substantive, Nonsignificant

Legal Authority: 28 USC 509 to 510; 5 USC 301; 18 USC 3621 to 3622, 3568, 4001, 4042, 4081 to 4082; 18 USC 4161 to 4166, 5006 to 5024, 5039

CFR Citation: 28 CFR 523.20

Legal Deadline: None

Abstract: In this document, the Bureau of Prisons (Bureau) proposes to amend its rules in 28 CFR part 523 on Good Conduct Time (GCT). When considering GCT, we propose to allow 54 days GCT for each year served if the inmate is an alien with a confirmed order of deportation, exclusion, or removal from the Immigration and Naturalization Service (INS).

This proposed rule will exempt such inmate aliens from the "satisfactory progress in a literacy program" provision of the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA) and/or the Prison Litigation Reform Act of 1995 (PLRA). The Bureau's Literacy Program, described in 28 CFR part 544, subpart H, currently comprises only GED attainment.

This means that inmate aliens who have confirmed orders of deportation, exclusion, or removal, but do not have a high school diploma or GED, will not need to demonstrate satisfactory progress toward earning a GED credential to be considered for the full benefits of GCT.

In this document, we also propose to reorganize the rule for clarity and accuracy. Other than the substantive change regarding sentenced deportable aliens, we make no further substantive changes.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi, Rules Administrator, Department of Justice, Bureau of Prisons, 320 First Street NW, HOLC Building, Washington, DC 20534
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Fax: 202 305-4577

DOJ—BOP

Proposed Rule Stage

Email: squreshi@bop.gov

RIN: 1120–AB12

1528. • CIVIL CONTEMPT OF COURT COMMITMENTS: REVISION TO ACCOMMODATE COMMITMENTS UNDER THE DC CODE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 18 USC 3621 to 3622, 3568, 3585, 4001, 4042, 4081 to 4082; 18 USC 4161 to 4166, 5006 to 5024, 5039; 28 USC 509 to 510; DC Code 24-101(a) and (b)

CFR Citation: 28 CFR 522

Legal Deadline: None

Abstract: In this document, the Bureau of Prisons (Bureau) revises its rules on Civil Contempt of Court Commitments to include references to relevant DC Code provisions regarding civil contempt commitments. We make this revision to accommodate DC Code offenders in Bureau institutions or Bureau contract facilities under the National Capital Revitalization and Self-Government Improvement Act of 1997 (DC Revitalization Act), DC Code section 24-101(a) and (b). We also revise this rule to clarify existing provisions by using simpler organization and language. For further simplification, we remove language relating solely to internal agency practices and procedures. We do not, however, make any substantive changes to the current rules.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi, Rules Administrator, Department of Justice, Bureau of Prisons, 320 First Street NW, HOLC Building, Washington, DC 20534
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RIN: 1120–AB13

1529. • INMATE DISCIPLINE—SUBPART REVISION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 18 USC 3621 to 3622, 4001, 4042, 4081 to 4082; 18 USC 4161 to 4166, 5006 to 5024, 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 541

Legal Deadline: None

Abstract: In this document, the Bureau of Prisons (Bureau) proposes to amend its Inmate Discipline and Special Housing Unit (SHU) regulations. We intend this amendment to streamline and clarify these regulations, eliminating unnecessary text and obsolete language and removing internal agency procedures (guidance to staff on how to implement disciplinary processes) that need not be in rules text. The changes involve extensive reorganization and updates to obsolete and unnecessary disciplinary codes and processes.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AB18

1530. • ADMINISTRATIVE SAFEGUARDS FOR PSYCHIATRIC TREATMENT AND MEDICATION

Priority: Other Significant

Legal Authority: 5 USC 301; 10 USC 876b; 18 USC 3621, 3622, 3524, 4001, 4005, 4042, 4045, 4081, 4082; 18 USC 4241 to 4247, 5006 to 5024, 5039; 28 USC 509, 510

CFR Citation: 28 CFR 549

Legal Deadline: None

Abstract: In this document, the Bureau of Prisons (Bureau) amends its regulations on Psychiatric Treatment and Medication. We make several minor word changes to conform more closely with the language of 18 U.S.C. sections 4241 to 4247 on psychiatric hospitalization. We remove from the rule one element of the standard for determining whether treatment or psychotropic medication is necessary because this element is inconsistent with community standards and case law. We also change the rules to conform with statutory authority regarding military prisoners and District of Columbia (DC) Code violators in Bureau custody. Previously, our procedures for involuntary psychiatric treatment and medication did not apply to military prisoners or DC Code violators. Under new statutory authority, military prisoners who are incompetent to stand trial, or who have been found not guilty by reason of lack of mental responsibility may now be committed to the Bureau's custody. Sentenced DC Code offenders may now be involuntarily committed to a Bureau psychiatric hospital. Such military prisoners and DC Code violators are subject to our regulations. We revise the applicability statement accordingly.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AB20

Department of Justice (DOJ)
Bureau of Prisons (BOP)

Final Rule Stage

1531. VOLUNTEER COMMUNITY SERVICE PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 1512; 18 USC 5039; 28 USC 509 to 510; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4005; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 4161 to 4166; 18 USC 5006 to 5024

CFR Citation: 28 CFR 551.60

Legal Deadline: None

Abstract: This document finalizes provisions for Volunteer Community Service Projects. A volunteer community service project is a project designed to provide for the public good, which has been developed by local government or by a nonprofit charitable organization for approval by the Bureau.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/19/93	58 FR 5210
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA03

1532. INTENSIVE CONFINEMENT CENTERS

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4046; 18 USC 4081 to 4082; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 524.31 to 524.34

Legal Deadline: None

Abstract: This document finalizes procedures for the operation of a specialized program combining features of a military boot camp with the traditional correctional values of the Bureau of Prisons. Inmates who successfully complete this program may be placed in community-based programs for longer periods of time than ordinarily permitted.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/26/96	61 FR 18658
Interim Final Rule Effective	05/28/96	
Interim Final Rule Comment Period End	06/25/96	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA11

1533. INCOMING PUBLICATIONS

Priority: Other Significant

Legal Authority: 5 USC 551; 18 USC 5039; 28 USC 509 to 510; 28 USC 1346(b); 28 USC 2671 to 2680; 5 USC 552a; 18 USC 1791; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 5006 to 5024

CFR Citation: 28 CFR 540.71

Legal Deadline: None

Abstract: This document amends Bureau regulations on Incoming Publications to require that inmates in medium security, high security, and administrative institutions may receive softcover publications only from the publisher, book club, or bookstore.

Timetable:

Action	Date	FR Cite
NPRM	01/18/94	59 FR 2668
NPRM Comment Period End	03/21/94	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA15

1534. POSTSECONDARY EDUCATION PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 544

Legal Deadline: None

Abstract: This document revises the Bureau's regulations on postsecondary education to exclude courses which are offered as part of an occupational education program. Courses which are offered as part of an occupational education program are to be covered by the Bureau's regulations on occupational education. The inmate is consequently responsible for paying postsecondary education tuition costs either through personal funds, community resources, or scholarships available to the inmate. This revision is intended to simplify the organization of the Bureau's regulations.

Timetable:

Action	Date	FR Cite
NPRM	07/17/00	65 FR 44400
NPRM Comment Period End	09/15/00	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA25

1535. LITERACY PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510

DOJ—BOP

Final Rule Stage

CFR Citation: 28 CFR 544.70 to 544.76

Legal Deadline: None

Abstract: This document makes changes to the Bureau's literacy program regulations for the sake of clarification or simplification.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/26/97	62 FR 50791
Interim Final Rule Effective	11/03/97	
Interim Final Rule Comment Period End	11/25/99	
Final Action	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi, Rules Administrator, Department of Justice, Bureau of Prisons, 320 First Street NW, HOLC Building, Washington, DC 20534
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RIN: 1120–AA33

1536. TELEPHONE REGULATIONS AND INMATE FINANCIAL RESPONSIBILITY

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 5006 to 5024; 18 USC 5039

CFR Citation: 28 CFR 540

Legal Deadline: None

Abstract: The Bureau of Prisons (Bureau) is withdrawing certain provisions in its rules on telephone regulations and on the inmate financial responsibility program (IFRP) which were published in the Federal Register on April 4, 1994 (59 FR 15812).

In the April 4, 1994, revision of its rules on telephone regulations and on the IFRP, the Bureau delayed the effective date for provisions in sections 540.105(c) and 545.11(d)(10) which imposed limitations on the telephone privileges of inmates refusing to participate in the IFRP. These provisions were to become effective January 3, 1995. Due to ongoing litigation in Washington v. Reno, the effective date for these provisions was further delayed until January 4, 1996 (60 FR 240).

In accordance with the Court-approved settlement in Washington v. Reno, through this rule, the Bureau withdrew these provisions and the reference to the IFRP telephone restrictions in 28 CFR § 540.100(a) and published at 61 FR 92 a new proposed rule to impose a different restriction on the telephone privileges of inmates who refuse to participate in the IFRP. This rule was finalized on December 28, 1999 (64 FR 72798, see RIN 1120-AA49).

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/02/96	61 FR 90
Interim Final Rule Comment Period End	03/04/96	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA39

1537. TELEPHONE REGULATIONS AND INMATE FINANCIAL RESPONSIBILITY

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 551; 18 USC 3663; 18 USC 4001; 18 USC 4042; 18 USC 4081; 18 USC 4082; 18 USC 5006 to 5024; 5 USC 552a; 18 USC 1791; 18 USC 3013; 18 USC 3571; 18 USC 3572; 18 USC 3621; 18 USC 3622; 18 USC 3624

CFR Citation: 28 CFR 540.105; 28 CFR 545.11

Legal Deadline: None

Abstract: On January 2, 1996, BOP published an NPRM proposing limitations on telephone privileges and commissary privileges for inmates who refuse to participate in the inmate financial responsibility program (BOP 1050). On December 28, 1999, BOP finalized that portion of the NPRM pertaining to limitations on commissary privileges. BOP is continuing to work on addressing issues raised by its proposed limitations on telephone privileges for inmates who are inmate financial responsibility program refusees. BOP will finalize that portion of its January 1996 NPRM in a separate document (BOP 1102).

Timetable:

BOP 1050
NPRM 01/02/96 (61 FR 92)
NPRM Comment Period End 03/04/96
Final Action 12/28/99 (64 FR 72798)
Final Action Effective 01/27/00

BOP 1102
Final Action 11/00/02
Final Action Effective 01/00/03

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA49

1538. INCOMING PUBLICATIONS: NUDITY AND SEXUALLY EXPLICIT MATERIAL OR INFORMATION

Priority: Other Significant

Legal Authority: 5 USC 551; 18 USC 5039; 28 USC 509 to 510; PL 104-208; 5 USC 552a; 18 USC 1791; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 5006 to 5024

CFR Citation: 28 CFR 540.70 to 540.72

Legal Deadline: None

Abstract: This rule modifies the Bureau of Prisons rule on Incoming Publications in order to implement the provisions of the Fiscal Year 1997 Omnibus Budget Act (Public Law 104-208) prohibiting use of appropriated funds for distributing or making available to an inmate any commercially published information or material when such information or material is sexually explicit or features nudity.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/06/96	61 FR 57568
Interim Final Rule Effective	12/01/96	

DOJ—BOP

Final Rule Stage

Action	Date	FR Cite
Interim Final Rule Comment Period End	01/06/97	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA59

1539. GOOD CONDUCT TIME

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3568; 28 USC 509 to 510; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 4161 to 4166; 18 USC 5006 to 5024; 18 USC 5039

CFR Citation: 28 CFR 523

Legal Deadline: None

Abstract: This document notes the statutory requirements for the awarding of good conduct time, including the Bureau's consideration in instances where the inmate does not have a high school diploma or GED and is not making satisfactory progress toward earning a high school diploma or GED.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/26/97	62 FR 50786
Interim Final Rule Effective	11/03/97	
Interim Final Rule Comment Period End	11/25/97	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA62

1540. VISITING REGULATIONS: PRIOR RELATIONSHIP

Priority: Other Significant

Legal Authority: 5 USC 551; 28 USC 509 to 510; 5 USC 552a; 18 USC 1791; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4081 to 4082; 18 USC 5006 to 5024; 18 USC 5039

CFR Citation: 28 CFR 540.44

Legal Deadline: None

Abstract: This document revises regulations on visiting to require that visiting privileges at all institutions ordinarily shall be extended to friends and associates only when the relationship had been established prior to confinement. Previously this requirement was applicable only at Medium Security Level, High Security Level, and Administrative Institutions.

Timetable:

Action	Date	FR Cite
NPRM	05/18/99	64 FR 27166
NPRM Comment Period End	07/19/99	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA77

1541. OVER-THE-COUNTER (OTC) MEDICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 28 USC 509 to 510; 18 USC 3624; 18 USC 4001; 18 USC 4005; 18 USC 4045; 18 USC 4081 to 4082; 18 USC 4241 to 4247; 18 USC 5006 to 5024; 18 USC 5039

CFR Citation: 28 CFR 549.30 to 549.31

Legal Deadline: None

Abstract: This document establishes procedures governing inmate access to over-the-counter (OTC) medications. Selected OTC medications are currently available to the inmate population through commissary purchase. The Bureau will continue to dispense OTC medications at sick call only if the inmate does not already have the OTC medications and health services staff determine the inmate has an immediate medical need that needs to be addressed before the inmate's regularly scheduled commissary visit or that the inmate is without funds.

Timetable:

Action	Date	FR Cite
NPRM	03/01/99	64 FR 10094
NPRM Comment Period End	04/30/99	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA81

1542. DESIGNATION OF OFFENSES SUBJECT TO SEX OFFENDER RELEASE NOTIFICATION

Priority: Other Significant

Legal Authority: 18 USC 3565; 18 USC 5006 to 5024; 18 USC 5031 to 5042; 28 USC 509 to 510; 18 USC 2568 to 3569; 18 USC 3582; 18 USC 3621 to 3622; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 4161 to 4166; 18 USC 4201 to 4218

CFR Citation: 28 CFR 571

Legal Deadline: None

Abstract: This document designates various offenses as sexual offenses for purposes of 18 U.S.C. 4042(c). The designations ensure that notifications can be made for military offenders, for District of Columbia Code offenders, and for these and other Federal inmates with a sex offense in their criminal history.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/16/98	63 FR 69386

DOJ—BOP

Final Rule Stage

Action	Date	FR Cite
Interim Final Rule Comment Period End	02/16/99	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA85

1543. INMATE COMMISSARY ACCOUNT DEPOSIT PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 18 USC 509 to 510; 31 USC 725; 18 USC 3624; 18 USC 4001; 18 USC 4005; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 4161 to 4166; 18 USC 5006 to 5024; 18 USC 5039

CFR Citation: 28 CFR 506; 28 CFR 540.23; 28 CFR 540.51

Legal Deadline: None

Abstract: This document specifies how an inmate may receive funds from family, friends, and other sources. Any funds sent from family or friends will be sent directly to a centralized inmate commissary account for receipt and posting. Funds received from other sources such as tax refunds, dividends from stocks, or State benefits will be forwarded for deposit to the centralized inmate commissary account.

Timetable:

Action	Date	FR Cite
NPRM	04/23/99	64 FR 20126
NPRM Comment Period End	06/22/99	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA86

1544. DRUG ABUSE TREATMENT PROGRAMS: DISINCENTIVES AND ENHANCED INCENTIVES

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3521 to 3528; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510; 18 USC 3621; 18 USC 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4046; 18 USC 4081; 18 USC 4082

CFR Citation: 28 CFR 550

Legal Deadline: None

Abstract: This document broadens the eligibility criteria for the drug abuse education program. In addition, this document establishes disincentives which may be imposed for the purpose of encouraging inmates to participate in the residential drug treatment program.

Timetable:

Action	Date	FR Cite
NPRM	09/20/00	65 FR 56840
NPRM Comment Period End	11/20/00	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA88

1545. SEARCHES OF HOUSING UNITS, INMATES, INMATE WORK AREAS, AND PERSONS OTHER THAN INMATES: ELECTRONIC DEVICES

Priority: Other Significant

Legal Authority: 18 USC 751 to 752; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510; 18 USC 1791 to 1793; 18 USC 3050; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4012; 18 USC 4042; 18 USC 4081 to 4082

CFR Citation: 28 CFR 511; 28 CFR 552

Legal Deadline: None

Abstract: This document clarifies provisions in the Bureau's regulations which pertain to the use of electronic devices in searches of inmates and persons other than inmates.

Timetable:

Action	Date	FR Cite
NPRM	02/25/99	64 FR 9431
NPRM Comment Period End	04/26/99	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA90

1546. OCCUPATIONAL EDUCATIONAL PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 544

Legal Deadline: None

Abstract: This rule revises the Bureau's regulations on occupational educational programs to remove obsolete or redundant provisions.

Timetable:

Action	Date	FR Cite
NPRM	07/17/00	65 FR 44401
NPRM Comment Period End	09/15/00	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1120–AA92

DOJ—BOP

Final Rule Stage

1547. DRUG TESTING PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 4251 to 4255; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 550

Legal Deadline: None

Abstract: This document consolidates into a single drug testing program separately stated regulations on alcohol testing and urine surveillance. The consolidated regulations provide for more flexibility in the use of testing methods.

Timetable:

Action	Date	FR Cite
NPRM	09/21/00	65 FR 57126
NPRM Comment Period End	11/20/00	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA95

1548. CORRESPONDENCE: INSPECTION OF OUTGOING GENERAL CORRESPONDENCE

Priority: Other Significant

Legal Authority: 5 USC 551; 5 USC 552a; 18 USC 1791; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 540.14

Legal Deadline: None

Abstract: This document amends the Bureau's regulations on correspondence to require that outgoing inmate general correspondence at all institutions may not be sealed and may be read and inspected by staff. This amendment is intended to provide for the continued efficient and secure operation of the institution and to protect the public. The requirement does not apply to special mail.

Timetable:

Action	Date	FR Cite
NPRM	07/27/99	64 FR 40718
NPRM Comment Period End	09/27/99	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA98

1549. RELEASE GRATUITIES, TRANSPORTATION, AND CLOTHING: ALIENS

Priority: Other Significant

Legal Authority: 18 USC 3565; 18 USC 3568 to 3569; 18 USC 3582; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 4161 to 4166; 18 USC 4201 to 4218; 18 USC 5006 to 5024; 18 USC 5031 to 5042; 28 USC 509 to 510

CFR Citation: 28 CFR 571.21

Legal Deadline: None

Abstract: This document amends the Bureau's regulations on release gratuities, transportation, and clothing to require that aliens being released to immigration authorities for the purpose of release, transfer to a community corrections center, or another processing center, be provided a $10 gratuity. Aliens being released with an order of deportation, exclusion, or removal, or aliens detained or serving 60 days or less in contract facilities would not receive the gratuity.

Timetable:

Action	Date	FR Cite
NPRM	10/04/99	64 FR 53872
NPRM Comment Period End	12/03/99	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1120–AA99

1550. RELIGIOUS BELIEFS AND PRACTICES: NOMENCLATURE CHANGE

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621; 18 USC 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081; 18 USC 4082; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510; 42 USC 1996; ...

CFR Citation: 28 CFR 548

Legal Deadline: None

Abstract: This regulation renames the special diet that accommodates inmates' religious dietary practices. The old name was "common fare" and the new name will be "the religious diet menu."

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	
Interim Final Rule Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AB04

DOJ—BOP

Final Rule Stage

1551. SUICIDE PREVENTION PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621, 3622, 3624, 4001, 4042, 4081, 4082, 5006 to 5024, 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 552

Legal Deadline: None

Abstract: This document revises Bureau regulations on the suicide prevention program for the sake of clarity and in order to remove Agency management procedures which do not need to be stated in regulations. The revised regulations more clearly delineate for the inmate the procedures used to identify and protect inmates deemed to be at risk for suicide.

Timetable:

Action	Date	FR Cite
NPRM	11/13/00	65 FR 67670
NPRM Comment Period End	01/12/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi, Rules Administrator, Department of Justice, Bureau of Prisons, 320 First Street NW, HOLC Building, Washington, DC 20534
Phone: 202 307-2105
Fax: 202 305-4577
Email: squreshi@bop.gov

RIN: 1120–AB06

1552. • NATIONAL SECURITY; PREVENTION OF ACTS OF VIOLENCE AND TERRORISM

Priority: Other Significant

Legal Authority: 5 USC 301; 18 USC 3621, 3622, 3624, 4001, 4042, 4081, 4082, 4161 to 4166, 5006 to 5024; 18 USC 5039; 28 USC 509, 510

CFR Citation: 28 CFR 500, 501

Legal Deadline: None

Abstract: Current Bureau of Prisons regulations on institutional management authorize the Bureau to impose special administrative measures with respect to specified inmates, based on information provided by senior intelligence or law enforcement officials, where it has been determined to be necessary to prevent the dissemination either of classified information that could endanger the national security or of other information that could lead to acts of violence and terrorism.

This rule extends the period of time for which such special administrative measures may be imposed from 120 days to up to 1 year and modifies the standards for approving extensions of such special administrative measures for further increments of time. In addition, in those cases where the Attorney General has certified that reasonable suspicion exists to believe that an inmate may use communications with attorneys or their agents to further or facilitate acts of violence or terrorism, this rule amends the existing regulations to provide that the Bureau is authorized to monitor mail or communications with attorneys in order to deter such acts, subject to specific procedural safeguards, to the extent permitted under the Constitution and laws of the United States. Finally, this rule provides that the head of each component of the Department of Justice that has custody of persons for whom special administrative measures are determined to be necessary may exercise the same authority to impose such measures as the Director of the Bureau of Prisons.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/30/01	66 FR 55062
Interim Final Rule Effective	10/31/01	
Interim Final Rule Comment Period End	12/31/01	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Sarah N. Qureshi, Rules Administrator, Department of Justice, Bureau of Prisons, 320 First Street NW, HOLC Building, Washington, DC 20534
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RIN: 1120–AB08

1553. • DISTRICT OF COLUMBIA YOUTH REHABILITATION ACT (DCYRA) SENTENCES: NO FURTHER BENEFIT DETERMINATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 18 USC 223, 3521 to 3528, 3621 to 3622, 4001, 4042, 4081 to 4082; 18 USC 4046, 4161 to 4166, 5006 to 5024, 5039; 21 USC 848; 28 USC 509 to 510

CFR Citation: 28 CFR 524

Legal Deadline: None

Abstract: In this document, the Bureau of Prisons (Bureau) proposes rules describing how the Director of the Bureau will make "no further benefit" (NFB) determinations for inmates convicted of violating the District of Columbia (DC) criminal code and sentenced to a term of imprisonment under the DC Youth Rehabilitation Act (YRA), DC Code sections 24-901 through 24-907. The Director of the Bureau is authorized to make NFB determinations pursuant to DC Code sections 24-10(a), (b), and 24-905.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi, Rules Administrator, Department of Justice, Bureau of Prisons, 320 First Street NW, HOLC Building, Washington, DC 20534
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RIN: 1120–AB09

1554. • CENTRAL INMATE MONITORING (CIM) SYSTEM: STREAMLINING RULES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 18 USC 3621 to 3622, 3624, 4001, 4042, 4081 to 4082; 18 USC 223; 18 USC 5006 to 5024, 5039; 28 USC 509 to 510; ...

CFR Citation: 28 CFR 524

Legal Deadline: None

Abstract: In this document, the Bureau of Prisons (Bureau) proposes to streamline its rules on the Central Inmate Monitoring system (CIM). We intend this amendment to streamline our regulations by removing internal agency management procedures that need not be stated in regulation. Bureau policy is a more appropriate vehicle through which to provide instruction and guidance to staff. All the provisions we removed consist of our instruction and guidance to Bureau staff. These provisions relate solely to internal agency management and practice and do not impose obligations or confer any benefits upon our regulated entities (the inmates) or the public. The procedures that were in these regulations will continue to exist, unchanged, in our policy statement on the Admission and Orientation Program. Any requirement imposed on our staff in these rules will remain a Bureau-wide requirement in our policy. It is important to note that we have not changed the substance of the CIM rules.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi, Rules Administrator, Department of Justice, Bureau of Prisons, 320 First Street NW, HOLC Building, Washington, DC 20534
Phone: 202 307-2105
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RIN: 1120–AB14

1555. • ADMISSION AND ORIENTATION PROGRAM: REMOVAL FROM RULES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 18 USC 3621 to 3622, 4001, 4042, 4081 to 4082; 18 USC 4161 to 4166, 5006 to 5024, 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 522

Legal Deadline: None

Abstract: In this document, the Bureau of Prisons (Bureau) proposes to remove its rules on the Admission and Orientation Program from the CFR. We intend this amendment to streamline our regulations by removing internal agency management procedures that need not be stated in regulation. The three rules in 28 CFR subpart E, sections 522.40, 522.41, and 522.43, contained descriptions of the Bureau's Admission and Orientation Program. Although we are removing these rules from the CFR, we retain the language of these rules in our Admission and Orientation policy, which is an instructional document for Bureau employees and institutional staff.

Section 522.40 required institutions and staff to "offer each newly committed inmate an orientation to the institution," which includes information on inmate rights, responsibilities, obligations, and the institution's programs and disciplinary system.

Section 522.41 delineated Warden and staff responsibility for conducting the Admission and Orientation (A&O) program. This section required staff involved in the A&O program to develop an outline of information to present during A&O and develop written orientation materials. This section also instructed staff to monitor inmates with significant emotional stress during A&O, so that the institution could provide them with appropriate assistance.

Section 522.42 contained guidelines for institution A&O programs, including such details as location, activities, and length of the program.

All of these rules consist of our instruction and guidance to Bureau staff. These rules relate solely to internal agency management and practice and do not impose obligations or confer any benefits upon our regulated entities (the inmates) or the public.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi, Rules Administrator, Department of Justice, Bureau of Prisons, 320 First Street NW, HOLC Building, Washington, DC 20534
Phone: 202 307-2105
Fax: 202 305-4577
Email: squreshi@bop.gov

RIN: 1120–AB16

1556. • BUREAU OF PRISONS EMERGENCIES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 18 USC 3621 to 3622, 3624, 4001, 4042, 4081 to 4082; 18 USC 4161 to 4166, 5006 to 5024, 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 501.1

Legal Deadline: None

Abstract: The Bureau of Prisons (Bureau) makes this interim final rule to clarify that, when there is an institutional or system-wide Bureau emergency which the Director or designee, such as a Warden, considers a threat to human life or safety, the Director or designee may suspend the operation of the rules in this chapter as necessary to handle the emergency. This rule clarifies that the Director may suspend Bureau rules as needed in light of any emergency affecting the Bureau, and the Warden may do so to deal with emergencies at the institution level. This rule change clarifying the Director's authority to modify Bureau rules to handle emergencies is especially necessary in light of the recent terrorist attacks, threats to national security, threats of anthrax surrounding mail processing, and other events occurring on and after September 11, 2001.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi, Rules Administrator, Department of Justice, Bureau of Prisons, 320 First Street NW, HOLC Building, Washington, DC 20534
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Fax: 202 305-4577
Email: squreshi@bop.gov

RIN: 1120–AB17

1557. • CLARIFYING OF RELEASE GRATUITIES—RELEASE TRANSPORTATION REGULATIONS TO MORE CLOSELY CONFORM TO STATUTORY PROVISIONS

Priority: Other Significant

Legal Authority: 5 USC 301; 18 USC 3565, 3568 to 3569, 3582, 3621 to 3622,

DOJ—BOP — **Final Rule Stage**

3624, 4001, 4042, 4081 to 4082; 18 USC 4161-4166, 4201 to 4218, 5006 to 5024, 5031 to 5042; 28 USC 509, 510; US Cost, Art II, sec 2

CFR Citation: 28 CFR 571.22

Legal Deadline: None

Abstract: This document makes a minor clarifying change to the Bureau of Prisons (Bureau) regulations on release gratuities, transportation, and clothing. The amendment will clarify that the Bureau is authorized, upon an inmate's release, to provide transportation to an inmate's place of conviction or his legal residence only within the United States, under 18 U.S.C. 3624(d)(3). We intend this clarification to remove the misapprehension that the Bureau is authorized to provide transportation outside the United States.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi, Rules Administrator, Department of Justice, Bureau of Prisons, 320 First Street NW, HOLC Building, Washington, DC 20534
Phone: 202 307-2105
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Email: squreshi@bop.gov

RIN: 1120–AB21

Department of Justice (DOJ)
Bureau of Prisons (BOP) — **Long-Term Actions**

1558. INFECTIOUS DISEASE MANAGEMENT

Priority: Substantive, Nonsignificant

CFR Citation: 28 CFR 549

Timetable:

Action	Date	FR Cite
NPRM	07/12/02	67 FR 46136
NPRM Comment Period End	09/10/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi
Phone: 202 307-2105
Fax: 202 305-4577
Email: squreshi@bop.gov

RIN: 1120–AB03

1559. DISTRICT OF COLUMBIA EDUCATIONAL GOOD TIME CREDIT

Priority: Substantive, Nonsignificant

CFR Citation: 28 CFR 523

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/24/02	67 FR 48385
Interim Final Rule Comment Period End	09/23/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi
Phone: 202 307-2105
Fax: 202 305-4577
Email: squreshi@bop.gov

RIN: 1120–AB05

Department of Justice (DOJ)
Bureau of Prisons (BOP) — **Completed Actions**

1560. ADMINISTRATIVE REMEDY PROGRAM: EXCLUDED MATTERS

Priority: Substantive, Nonsignificant

CFR Citation: 28 CFR 542

Completed:

Reason	Date	FR Cite
Final Action	08/06/02	67 FR 50804
Final Action Effective	08/06/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi
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Fax: 202 305-4577
Email: squreshi@bop.gov

RIN: 1120–AA72

Department of Justice (DOJ)
Civil Rights Division (CRT) — **Proposed Rule Stage**

1561. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES (SECTION 610 REVIEW)

Regulatory Plan: This entry is Seq. No. 78 in part II of this issue of the **Federal Register**.

RIN: 1190–AA44

1562. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES (SECTION 610 REVIEW)

Regulatory Plan: This entry is Seq. No. 79 in part II of this issue of the **Federal Register**.

RIN: 1190–AA46

1563. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES; PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES; ACCESSIBILITY STANDARDS; RECREATION FACILITIES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 28 USC 509 to 510; 42 USC 12134; 42 USC 12186; PL 101-336

CFR Citation: 28 CFR 35; 28 CFR 36

Legal Deadline: None

Abstract: On July 9, 1999, the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) published a Notice of Proposed Rulemaking to amend the ADA Accessibility Guidelines (ADAAG), which form the basis of the Department's ADA Standards for Accessible Design. After receiving public comments, the Access Board published a summary of proposed changes to the guidelines for public comment on July 21, 2000. This Notice of Proposed Rulemaking would, for the first time, establish accessibility guidelines for the design of recreation facilities, such as health clubs, golf courses, and amusement parks. The ADA (sections 204(c) and 306(c)) requires the Department's accessibility standards to be consistent with the Access Board's guidelines. Therefore, the Department expects to publish a Notice of Proposed Rulemaking proposing to adopt the revisions proposed by the Access Board and proposing related changes to the Department's regulations with respect to the operation of recreation facilities.

Individuals with disabilities cannot participate in the social and economic realms of the Nation without being able to access public entities and public accommodations throughout the country. Promulgating this amendment to the Department's ADA regulations will ensure that the regulations are consistent with the ADAAG, thereby preventing the confusion that could develop if the Department's regulations were inconsistent with the Access Board guidelines. In addition, amending the Department's ADA regulations will improve the Department's overarching goal of improving access for persons with disabilities. The proposed rule will ensure that new recreation facilities are readily accessible to and usable by individuals with disabilities. As new recreation facilities are designed and constructed to be accessible, individuals with disabilities will enjoy the benefits of these facilities. Operators of recreation facilities will experience increased usage and patronage by individuals with disabilities. Designers and manufacturers will have a clear and consistent set of standards with which to work. Establishing uniform standards for accessibility has resulted in innovation and new designs that are cost effective and beneficial to everyone.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

Agency Contact: John L. Wodatch, Chief, Disability Rights Section, Department of Justice, Civil Rights Division, P.O. Box 66738, Washington, DC 20035-6738
Phone: 800 514-0301
TDD Phone: 800 514-0383
Fax: 202 307-1198

RIN: 1190–AA47

1564. AMERICAN COMPETITIVENESS AND WORKFORCE IMPROVEMENT ACT OF 1998 COMPLAINT PROCESS

Priority: Other Significant

Legal Authority: 8 USC 1182(n)(5)

CFR Citation: 28 CFR 44.500

Legal Deadline: None

Abstract: The American Competitiveness and Workforce Improvement Act (ACWIA)—enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1998—made various changes to the Immigration and Nationality Act (the INA) relating to temporary nonimmigrant professionals. In this rule (RIN 1190-AA48), the Department's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) will implement the ACWIA "failure to select" protections—codified in the INA at section 212(n)(5)—by establishing a process under which U.S. workers may file complaints against employers for denying them employment opportunities by improperly hiring temporary foreign professionals on H-1B visas. Under this process, OSC may receive and review these complaints, and then—if there is reasonable cause to believe the allegations—initiate binding arbitration proceedings through the Federal Mediation and Conciliation Service (FMCS). A companion to this rule will include changes to the regulations of the Office of the Chief Administrative Hearing Officer of the Executive Office for Immigration Review to provide for the review of arbitrators' decisions and, where appropriate, the award of administrative relief. These rules are being coordinated with the Immigration and Naturalization Service (INS), the Department of Labor (DOL), and the FMCS.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Additional Information: Through RIN 1115-AF40 (INS No. 1974-99), INS will implement the ACWIA "whistleblower" protection provisions—codified in the INA at section 212(n)(2)(C)(iv) and (v)—

prohibiting retaliation against H-1B workers who disclose information which they believe indicates their employer has violated the law or regulations pertaining to labor condition applications for nonimmigrants. That rule will also enable an H-1B worker who files a complaint alleging retaliation to remain in the United States and seek authorization to work in the United States for a temporary period while his or her complaint is under review.

Through RIN 1115-AF41 (INS No. 1975-99), INS will implement portions of ACWIA pertaining to new penalties for employers misrepresenting material facts in an H-1B application. That rule complements regulations issued by the Department of Labor (DOL). It also defines the term "United States employer" and implements other provisions of ACWIA.

Agency Contact: Juan Carlos Benitez, Special Counsel, Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration Related Unfair Employment Practices, 950 Pennsylvania Avenue NW, Washington, DC 20530
Phone: 202 616-5594
Fax: 202 616-5509

Larry P. Cote, Department of Justice, Executive Office for Immigration Review
Phone: 703 305-0470

RIN: 1190–AA48

1565. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE OR LOCAL GOVERNMENT FACILITIES; PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES; ACCESSIBILITY STANDARDS; PLAY AREAS

Priority: Other Significant

Legal Authority: 5 USC 301; 28 USC 509 to 510; 42 USC 12134; 42 USC 12186; PL 101-336

CFR Citation: 28 CFR 35; 28 CFR 36

Legal Deadline: None

Abstract: On October 18, 2000, the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) published a final rule to supplement the ADA Accessibility Guidelines (ADAAG), which form the basis of the Department's ADA Standards for Accessible Design. These guidelines establish for the first time accessibility guidelines for the design of play areas. The ADA (sections 204(c) and 306(c)) requires the Department's accessibility standards to be consistent with the Access Board's guidelines. Therefore, the Department expects to publish a Notice of Proposed Rulemaking proposing to adopt the revisions of the Access Board and proposing related changes to the Department's regulations with respect to the operation of play areas.

Persons with disabilities cannot participate in the social and economic realms of the Nation without being able to access public entities and public accommodations throughout the country. Promulgating this amendment to the Department's ADA regulations will ensure that the regulations are consistent with the ADAAG, thereby preventing the confusion that could develop if the Department's regulations were inconsistent with the Access Board Guidelines. In addition, amending the Department's ADA regulations will improve the Department's overarching goal of improving access for persons with disabilities. This rule is designed to ensure that new play areas are readily accessible to and usable by persons with disabilities. As new play areas are designed and constructed to be accessible, persons with disabilities will enjoy the benefits of these areas. Operators of play areas will experience increased usage and patronage by persons with disabilities. Designers and manufacturers will have a clear and consistent set of standards with which to work. Establishing uniform standards for accessibility has resulted in innovation and new designs that are cost effective and beneficial to everyone.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

Agency Contact: John L. Wodatch, Chief, Disability Rights Section, Department of Justice, Civil Rights Division, P.O. Box 66738, Washington, DC 20035-6738
Phone: 800 514-0301
TDD Phone: 800 514-0383
Fax: 202 307-1198

RIN: 1190–AA50

1566. AMENDMENTS TO PROCEDURES ADVISING STATES AND POLITICAL SUBDIVISIONS SPECIALLY COVERED UNDER THE VOTING RIGHTS ACT HOW TO SEEK PRECLEARANCE FROM THE ATTORNEY GENERAL OF PROPOSED VOTING CHANGES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 28 USC 509 to 510; 42 USC 1973a(c); 42 USC 1973c

CFR Citation: 28 CFR 51

Legal Deadline: None

Abstract: Section 5 of the Voting Rights Act of 1965 requires that certain States and their political subdivisions (covered jurisdictions) obtain "preclearance" from the Federal Government of proposed changes in voting practices and procedures prior to their implementation. Preclearance may be obtained either through litigation in the United States District Court for the District of Columbia or administratively from the Attorney General. In 1971 the Department first issued procedures for the administration of section 5 to inform covered jurisdictions concerning the manner in which they could comply with section 5 in the administrative proceeding before the Attorney General. In subsequent years, the Department has amended these procedures to reflect changes in section 5 law, in the Attorney General's internal practices, and to make the procedures clearer and easier to follow. In the 14 years since the last major amendment to the procedures, there have been significant changes in section 5 law and in the practices employed by the Department in processing submissions, which are not reflected in the existing Procedures.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	
NPRM Comment Period End	07/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Joseph D. Rich, Chief, Voting Section, Department of Justice, Civil Rights Division, Room 7254, 1800 G Street NW, Washington, DC 20006
Phone: 202 307-2870

RIN: 1190–AA51

1567. AMENDMENTS TO COORDINATION OF ENFORCEMENT OF NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS—IMPLEMENTATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND SECTION 504 OF THE REHABILITATION ACT 1973

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2000d et seq; 29 USC 706; 29 USC 794; EO 12250

CFR Citation: 28 CFR 42.401 to 42.415; 28 CFR 41.1 to 41.58

Legal Deadline: None

Abstract: In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. In a joint rulemaking described at RIN 1190-AA49, the Department and other Federal agencies are conforming their implementation regulations to the CRRA and to several other statutes.

In the rulemaking described under this RIN (1190-AA52) the Department of Justice proposes to make amendments to its coordination regulations concerning agency enforcement of title VI of the Civil Rights Act of 1964, 28 CFR 42.401 to 42.415, and agency enforcement of section 504 of the Rehabilitation Act of 1972, 28 CFR 41.1 to 41.58. The proposed amendments explicitly incorporate the CRRA's definition of "program or activity" and "program" into the Department's title VI and section 504 coordination regulations.

Further, this joint rule will include similar amendments to the regulations of the Department of Defense and the Department of Housing and Urban Development implementing title VI, section 504, and/or the Age Discrimination Act, which are not participating in the joint rule at 1190-AA49.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	
NPRM Comment Period End	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

Agency Contact: Merrily A. Friedlander, Chief, Coordination and Review Section, Department of Justice, Civil Rights Division, P.O. Box 66560, Washington, DC 20035-6560
Phone: 202 307-2222
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Email: merrily.a.friedlander@usdoj.gov

RIN: 1190–AA52

1568. PROCEDURES TO REVIEW POLICE DEPARTMENTS FOR A PATTERN OR PRACTICE OF CONDUCT THAT DEPRIVES PERSONS OF RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED OR PROTECTED BY THE CONSTITUTION OR LAWS OF THE U.S.

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 28 USC 509

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. section 14141 ("section 14141"), the Attorney General is authorized to file lawsuits seeking court orders to reform police departments engaging in a pattern or practice of conduct that deprives persons of rights, privileges, or immunities secured by the Constitution or laws of the United States. To date, the Department of Justice has conducted reviews of police departments pursuant to section 14141 using informal procedures. The purpose of this rule is to formalize the procedures by which the Department reviews police departments for a pattern or practice of unlawful conduct.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Robert Driscoll, Deputy Assistant Attorney General, Department of Justice, Civil Rights Division, Room 5541, 950 Pennsylvania Avenue NW, Washington, DC 20530
Phone: 202 353-0742

RIN: 1190–AA53

Department of Justice (DOJ)
Civil Rights Division (CRT)

Final Rule Stage

1569. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 28 CFR 42.101 to 42.112; 28 CFR 42.501 to 42.540; 28 CFR 42.700 to 42.736

Legal Deadline: None

Abstract: The Department of Justice is amending its regulations implementing title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this regulation explicitly incorporates the CRRA's definition of "program or activity" and "program" into the Department's title VI, section 504, and Age Discrimination Act regulations. The Department's regulation will be published as part of a joint final rule involving up to 24 Federal agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

Agency Contact: Merrily A. Friedlander, Chief, Coordination and Review Section, Department of Justice, Civil Rights Division, P.O. Box 66560, Washington, DC 20035-6560
Phone: 202 307-2222
TDD Phone: 202 307-2678
Fax: 202 307-0595
Email: merrily.a.friedlander@usdoj.gov

RIN: 1190–AA49

Department of Justice (DOJ)
Drug Enforcement Administration (DEA)

Prerule Stage

1570. CHEMICAL MIXTURES CONTAINING LISTED FORMS OF PHOSPHORUS

Priority: Other Significant

Legal Authority: 21 USC 802; 21 USC 830; 21 USC 871(b)

CFR Citation: 21 CFR 1310

Legal Deadline: None

Abstract: In a previous rulemaking, (RIN 1117-AA57) DEA made red phosphorus, white phosphorus, and hypophosphorous acid (and its salts) List I chemicals. Although 1117-AA57 was effective as of November 16, 2001, (and it remains in effect) DEA asked for and received comments at the final rule stage on an exemption. DEA is still considering these comments and will publish a second final rule under the RIN 1117-AA57 finalizing that rulemaking.

By this rulemaking (1117-AA66) DEA is requesting information from interested parties to propose regulations governing chemical mixtures containing the List I chemicals red phosphorus, white phosphorus, and hypophosphorous acid (and its salts). Currently, all chemical mixtures containing red phosphorus, white phosphorus, and hypophosphorous acid (and its salts) are exempt from regulation. These mixtures will remain exempt until publication of rulemakings regarding chemical mixtures (see RIN 1117-AA31). These three List I chemicals are used industrially and have multiple commercial purposes. They are also used in the illicit production of methamphetamine and amphetamine. Information sought will help determine whether there are chemical mixtures containing red phosphorus, white phosphorus, and hypophosphorous acid (and its salts) which should be exempt from the regulations governing listed chemicals.

Timetable:

Action	Date	FR Cite
ANPRM	01/00/03	
ANPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA-228

Agency Contact: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7183

Related RIN: Related To 1117-AA57, Related To 1117-AA31

RIN: 1117–AA66

Department of Justice (DOJ)
Drug Enforcement Administration (DEA)

Proposed Rule Stage

1571. GUIDELINES FOR PROVIDING CONTROLLED SUBSTANCES TO OCEAN VESSELS

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 871(b)

CFR Citation: 21 CFR 1301

Legal Deadline: None

Abstract: DEA is considering whether to propose amending its regulations regarding the supply of controlled substances to ocean vessels to provide a means of supply more consistent with current industry practices for other materials. The decision on whether to propose amendments will be based on the information and comments submitted in response to this notice of proposed rulemaking and DEA's experience with the existing procedures and practices for supplying controlled substances to ocean vessels.

Timetable:

Action	Date	FR Cite
ANPRM	09/18/96	61 FR 49086
ANPRM Comment Period End	11/18/96	
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA-142

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

RIN: 1117–AA40

1572. SALE BY FEDERAL DEPARTMENTS OR AGENCIES OF CHEMICALS USABLE TO MANUFACTURE A CONTROLLED SUBSTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 802; 21 USC 830; 21 USC 871(b); 21 USC 880; 21 USC 958(f); 21 USC 965; 21 USC 890

CFR Citation: 21 CFR 1310; 21 CFR 1316

Legal Deadline: None

Abstract: DEA is proposing to amend its regulations to provide that a Federal department or agency may not sell from the stocks of the department or agency any chemical which could be used in the manufacture of a controlled substance unless the Administrator of DEA certifies in writing to the head of the department or agency that there is no reasonable cause to believe that the sale of the chemical would result in the illegal manufacture of a controlled substance. The proposed rulemaking provides regulatory guidelines and establishes a procedure for prospective bidder and/or broker to appeal if they are aggrieved by DEA's failure to provide such certification.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: DEA-176

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

RIN: 1117–AA47

1573. EXEMPTION FROM IMPORT/EXPORT REQUIREMENTS FOR PERSONAL MEDICAL USE

Priority: Other Significant

Legal Authority: 21 USC 821; 21 USC 822; 21 USC 823; 21 USC 824; 21 USC 871(b); 21 USC 875; 21 USC 877; 21 USC 956

CFR Citation: 21 CFR 1301

Legal Deadline: None

Abstract: DEA is proposing to amend its regulations to restrict to 50 dosage units the total quantity of Schedule II, III, IV, and V controlled substances that may be imported for personal medical use by United States (U.S.) residents entering the U.S. A dosage unit is considered by DEA to be the basic unit used to quantify the amount to be taken in normal usage. The proposed 50 dosage unit limit would not apply to a U.S. resident who has a valid U.S. practitioner's prescription. This proposed rulemaking implements and extends the provisions of the Controlled Substances Trafficking Prohibition Act of 1998.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	
NPRM Comment Period End	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA-192

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

RIN: 1117–AA56

1574. ELECTRONIC ORDERS FOR SCHEDULE I AND II CONTROLLED SUBSTANCES

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 821; 21 USC 827; 21 USC 828; 21 USC 871(b); 21 USC 958(e); 21 USC 965

CFR Citation: 21 CFR 1304; 21 CFR 1305

Legal Deadline: None

Abstract: DEA is proposing to revise its regulations to provide the option of ordering Schedule I and II controlled substances electronically in a manner consistent with the requirements of the Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.). The regulations will propose that this electronic system may also be used for controlled substances in Schedules III, IV, and V. These proposed regulations would be in addition to, not a replacement of, the existing rules. These regulations are needed to give manufacturers, distributors, importers, exporters, pharmacies, and hospitals the option to use modern technology for controlled substance transactions. The proposed regulations would reduce paperwork and transaction times for DEA registrants who distribute, purchase, or handle controlled substances. These proposed regulations are consistent with paperwork reduction mandates. These proposed regulations also respond to the requirements of Public Law 106-229, the "Electronic

Signatures in Global and National Commerce Act," while maintaining a closed system of distribution of controlled substances and ensuring security and authentication. In addition, DEA is proposing to revise its regulations to permit DEA-registered prescribers to electronically write, sign, and transmit prescriptions.

Timetable:

Electronic Orders for Schedule I and II Controlled Substances
ANPRM 03/05/01 (66 FR 13274)
NPRM 02/00/03
NPRM Comment Period End 04/00/03
Notice of Intent To Conduct Performance Verification Testing of Public Key Infrastructure Enabled Controlled Substance Orders
Notice 01/11/02 (67 FR 1507)

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: ANPRM: DEA-214

Notice: DEA-224

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

Related RIN: Related To 1117-AA61

RIN: 1117–AA60

1575. ELECTRONIC PRESCRIPTIONS FOR CONTROLLED SUBSTANCES

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 821; 21 USC 829; 21 USC 871(b)

CFR Citation: 21 CFR 1306

Legal Deadline: None

Abstract: DEA is proposing to revise its regulations to permit DEA-registered prescribers to electronically write, sign, and transmit prescriptions. These proposed regulations would be an addition to, not a replacement of, the existing rules. These regulations are needed to give pharmacies, hospitals, and practitioners the ability to use modern technology for controlled substance prescriptions, while maintaining the closed system of distribution of controlled substances dispensing. The proposed regulations would reduce paperwork and transaction times for DEA registrants who dispense or prescribe controlled substances. The proposed regulations would also reduce the number of prescription errors caused by illegible handwriting and misunderstood oral prescriptions. They would allow pharmacies and hospitals to integrate prescription records into other medical records more directly, increasing efficiency, and would reduce the time patients spend waiting to have prescriptions filled. These proposed regulations are consistent with paperwork reduction mandates. These proposed regulations also respond to the requirements of Public Law 106-229, the "Electronic Signatures in Global and National Commerce Act," while ensuring security and authentication. In addition, DEA is proposing to revise its regulations to provide the option of ordering Schedule I and II controlled substances electronically in a manner consistent with the requirements of the Controlled Substances Act (CSA)(21 USC 801 et seq.)

Timetable:

Action	Date	FR Cite
ANPRM	03/05/01	66 FR 13274
NPRM	05/00/03	
NPRM Comment Period End	07/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: DEA-214

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

Related RIN: Related To 1117-AA60

RIN: 1117–AA61

1576. SECURITY REQUIREMENTS FOR HANDLERS OF PSEUDOEPHEDRINE, EPHEDRINE, AND PHENYLPROPANOLAMINE

Priority: Other Significant

Legal Authority: 21 USC 821; 21 USC 822; 21 USC 823; 21 USC 824; 21 USC 830

CFR Citation: 21 CFR 1309

Legal Deadline: None

Abstract: DEA is proposing to require that manufacturers, distributors, importers and exporters of pseudoephedrine, ephedrine and phenylpropanolamine implement security procedures similar to those of Schedules III-V controlled substances to prevent the theft and diversion of these List I chemicals. Pseudoephedrine and ephedrine are used in the illegal manufacture of methamphetamine, and phenylpropanolamine is used in the illegal manufacture of amphetamine.

The vast majority of these clandestine laboratories were producing methamphetamine using over-the-counter regulated drug products. Some of the product found at these clandestine laboratories came from thefts at manufacturers, distributors, importers and exporters. Almost all of the reports of List I chemical thefts reported to DEA in the past few years have involved pseudoephedrine, ephedrine, or phenylpropanolamine.

Therefore, to address the problem of diversion of pseudoephedrine, ephedrine and phenylpropanolamine through theft, DEA is proposing that manufacturers, distributors, importers and exporters of these three chemicals implement security procedures similar to those now used by registrants handling Schedules III through V controlled substances. These procedures include the storage of substances in a secure safe or steel cabinet, cage, or room and installation of a monitored alarm system linked to a central location. DEA will also be seeking input regarding alternative means to effectively prevent the theft and diversion of these products. Keeping pseudoephedrine, ephedrine, and phenylpropanolamine products in such secure areas will limit the opportunity for theft.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
NPRM Comment Period End	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA-211

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

RIN: 1117–AA62

1577. REORGANIZATION AND CLARIFICATION OF DEA REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 871(b)

CFR Citation: 21 CFR 1300; 21 CFR 1301; 21 CFR 1302; 21 CFR 1303; 21 CFR 1304; 21 CFR 1305; 21 CFR 1306; 21 CFR 1307; 21 CFR 1308; 21 CFR 1309; 21 CFR 1310; 21 CFR 1312; 21 CFR 1313; ...

Legal Deadline: None

Abstract: DEA is proposing a revision and reorganization of Title 21, Code of Federal Regulations, Chapter II. These regulations relate to the manufacture, distribution, dispensing, importation, and exportation of controlled substances and the manufacture, distribution, importation, and exportation of listed chemicals. This action is being taken to further clarify and reorganize the current regulations. The regulations will be drafted in plain language to make them easier to understand.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA-221

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

RIN: 1117–AA63

1578. CHEMICAL MIXTURES CONTAINING GAMMA-BUTYROLACTONE

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 802; 21 USC 830; 21 USC 871(b)

CFR Citation: 21 CFR 1310

Legal Deadline: None

Abstract: In previous rulemakings, DEA made gamma-butyrolactone (GBL) a List I chemical and established thresholds for transactions involving this chemical. DEA is requesting information from interested persons in order to propose regulations governing chemical mixtures containing gamma-butyrolactone (GBL), a List I chemical. Currently, all chemical mixtures containing GBL are exempt from regulation. These mixtures will remain exempt until publication of rulemakings regarding chemical mixtures (see RIN 1117-AA31). GBL is used in the illicit manufacture of GHB, a Schedule I controlled substance. Specifically, DEA is seeking information on the types of products containing GBL; the concentration levels of GBL in the product formulations; and the packaging, distribution, use, and commercial availability of these products. This information will help to determine whether there are chemical mixtures containing GBL which should be exempt from the regulations governing listed chemicals.

Timetable:

Action	Date	FR Cite
ANPRM	07/19/02	67 FR 47493
Correction	08/19/02	67 FR 53842
Correction	09/05/02	67 FR 56776
ANPRM Comment Period End	09/17/02	
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA-222

Agency Contact: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7183

Related RIN: Related To 1117-AA52, Related To 1117-AA31

RIN: 1117–AA64

1579. CHEMICAL REGISTRATION WAIVERS; EXEMPTION FROM CHEMICAL REGISTRATION FEES FOR CERTAIN PERSONS

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 821; 21 USC 822; 21 USC 823; 21 USC 824; 21 USC 830; 21 USC 871(b); 21 USC 875; 21 USC 877; 21 USC 958

CFR Citation: 21 CFR 1309; 21 CFR 1310

Legal Deadline: None

Abstract: DEA is proposing amending its regulations to waive the requirement of registration for contract processors, medical/first aid kit providers, distributors of sample packages of drug products, distributors of research/reference standards, and rural wholesale distributors. These actions are being taken in response to industry comments and suggestions. DEA has determined that requiring registration for these activities is not necessary for effective enforcement under the Controlled Substances Act (CSA), and waiving the requirement of registration will ease regulatory burdens for the affected industries. DEA is also proposing exempting charitable organizations and governmental entities from initial and renewal registration fees. These fee exemptions will bring the chemical regulations into conformance with the controlled substances regulations.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	
NPRM Comment Period End	06/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State, Local, Federal

Additional Information: DEA-189

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

RIN: 1117–AA67

1580. • AUTHORITY FOR PRACTITIONERS TO DISPENSE OR PRESCRIBE APPROVED NARCOTIC (OPIOD) SUBSTANCES FOR MAINTENANCE OR DETOXIFICATION TREATMENT

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 821; 21 USC 822; 21 USC 823; 21 USC 824; 21 USC 829; 21 USC 871(b); 21 USC 875; 21 USC 877; 21 USC 956; ...

CFR Citation: 21 CFR 1301; 21 CFR 1306

Legal Deadline: None

Abstract: DEA is proposing amendments to its regulations to implement the Drug Addiction Treatment Act of 2000 (DATA). These amendments would allow qualified practitioners to dispense and prescribe narcotic (opiod) controlled substances approved by the Food and Drug Administration (FDA) specifically for use in maintenance or detoxification treatment.

The Controlled Substances Act (CSA) and current regulations require that practitioners who want to conduct maintenance or detoxification treatment using narcotic (opiod) controlled substances to be registered with DEA as narcotic treatment programs (NTPS) in addition to the practitioners' personal registrations. The separate NTP registrations authorize the practitioners to dispense or administer, but not prescribe, narcotic (opiod) controlled substances.

These regulations establish an exemption from the separate registration requirement for qualified practitioners dispensing or prescribing Schedule III, IV, and V narcotic (opiod) controlled substances approved by the FDA specifically for use in maintenance or detoxification treatment. This NPRM would allow "qualifying physicians," whether they are already registered as NTPs or not, to dispense and prescribe Schedule III, IV, and V narcotic (opiod) controlled substances or combinations of controlled substances approved by FDA specifically for use in maintenance or detoxification treatment.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
NPRM Comment Period End	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA-202

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

RIN: 1117–AA68

1581. • CONTROLLED SUBSTANCES REGISTRATION AND REREGISTRATION APPLICATION FEES

Priority: Other Significant

Legal Authority: 21 USC 821; 21 USC 822; 21 USC 823; 21 USC 824; 21 USC 871(b); 21 USC 875; 21 USC 877; ...

CFR Citation: 21 CFR 1301

Legal Deadline: None

Abstract: DEA is proposing to adjust the current fee schedule for DEA controlled substances registration to adequately recover necessary costs associated with the Diversion Control Program (DCP) as mandated by the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993, section 111(b), Public Law 102-395. DEA published its last fee revision in 1993. Since that time, fees have remained unchanged. This NPRM proposes the fee structure under the existing registration system to fully support the operations of the DCP for fiscal years 2003 through 2005. DEA is required by law to collect the full costs of the DCP.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA-232

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

RIN: 1117–AA70

1582. • RECORDKEEPING AND REPORTING REQUIREMENTS FOR DRUG PRODUCTS CONTAINING HYDROXYBUTYRIC ACID (GHB)

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 802; 21 USC 821; 21 USC 827; 21 USC 829; 21 USC 830; 21 USC 871(b); 21 USC 958; 21 USC 965; ...

CFR Citation: 21 CFR 1304; 21 CFR 1306; 21 CFR 1310

Legal Deadline: None

Abstract: The Drug Enforcement Administration (DEA) is publishing a Notice of Proposed Rulemaking (NPRM) to amend its regulations to require additional recordkeeping and reporting requirements for drug products containing gamma-hydroxybutyric acid (GHB) for which an application has been approved under the Federal Food, Drug, and Cosmetic Act. The Hillary J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000 establishes specific reporting and recordkeeping requirements with respect to the distribution and dispensing of drug products containing GHB.

This NPRM proposes recordkeeping requirements for practitioners dispensing Schedule III GHB drug products and reporting requirements for manufacturers and distributors of Schedule III GHB drug products. Specifically, this NPRM would require pharmacies and practitioners dispensing GHB to maintain and make available for inspection the name of the prescribing practitioner, the prescribing practitioner's Federal and State registration numbers with expiration dates, verification that the prescribing practitioner possesses appropriate registration, the patient's insurance provider, if available, as well as the patient's medical need for the drug. This NPRM also proposes to include Schedule III GHB drug products as controlled substances that must be reported under the Automation of Reports and Consolidated Orders System (ARCOS).

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	
NPRM Comment Period End	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA-234

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

RIN: 1117–AA71

1583. • CHEMICAL REGISTRATION AND REREGISTRATION FEES

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 821; 21 USC 830; 21 USC 871(b); 21 USC 958

CFR Citation: 21 CFR 1309

Legal Deadline: None

Abstract: On December 1, 1999, DEA published a Notice of Proposed Rulemaking (see RIN 1117-AA50) regarding its chemical registration and reregistration fees. Subsequent to publication of this rule, DEA's investigative activities increased. As has been previously noted elsewhere, costs for investigative activities including, but not limited to, extensive investigation and collection of documentation of violative practices by registrants, attorney review and preparation by DEA's Office of Chief Counsel, staff and attorney time to prepare for proceedings to deny or revoke a registration, and Administrative Law Judge and staff to conduct registration denial hearings were not included in previous fee calculations. Due to the increased costs associated with these investigative activities, DEA is re-evaluating the costs of the chemical control program and calculating new fees to incorporate these increased costs.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
NPRM Comment Period End	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA-235

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

Related RIN: Related To 1117-AA50

RIN: 1117–AA72

Department of Justice (DOJ)
Drug Enforcement Administration (DEA)

Final Rule Stage

1584. DEFINITION AND REGISTRATION OF REVERSE DISTRIBUTORS

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 821; 21 USC 822; 21 USC 823; 21 USC 824; 21 USC 871(b); 21 USC 875; 21 USC 877

CFR Citation: 21 CFR 1301

Legal Deadline: None

Abstract: In years past, most pharmaceutical manufacturers and wholesalers, as a service to their customers, accepted returns of outdated/damaged merchandise. Also, agencies such as DEA and State Boards of Pharmacy accepted surrendered drugs or witnessed their disposal by controlled substance registrants. Over the past several years, environmental concerns and regulations have eliminated many of the disposal options which had been available. As a result, drug producers and government agencies alike are increasingly reluctant to be involved in the disposal process. Due to these factors and the time and resources expended by DEA and manufacturers, DEA is proposing the establishment of this essential link in the legitimate distribution chain.

Timetable:

Action	Date	FR Cite
NPRM	08/23/95	60 FR 43732
NPRM Comment Period End	10/23/95	
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: DEA-108

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

RIN: 1117–AA19

1585. EXEMPTION OF CHEMICAL MIXTURES

Priority: Other Significant

Legal Authority: 21 USC 802; 21 USC 830; 21 USC 871(b)

CFR Citation: 21 CFR 1310

Legal Deadline: None

Abstract: The Domestic Chemical Diversion Control Act of 1993 removed the exemption from regulation for chemical mixtures. Chemical mixtures are now regulated, unless specifically exempted by the Administrator. In the proposed rule regarding the implementation of the Domestic Chemical Diversion Control Act of 1993, DEA proposed regulations regarding exemption of chemical mixtures. Based on industry comments, the proposed regulations were subsequently withdrawn for reassessment and consultation with industry. Based on extensive consultations with industry, DEA has published proposed regulations intended to establish the least possible burden on industry while remaining consistent with the requirements of the law. Comments received on the proposed regulations are currently being reviewed.

Timetable:

Action	Date	FR Cite
NPRM	09/16/98	63 FR 49506

Action	Date	FR Cite
NPRM Comment Period Extended to 04/16/99	02/12/99	64 FR 7144
NPRM Comment Period End	04/16/99	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: DEA-137

Agency Contact: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7183

RIN: 1117–AA31

1586. CHEMICAL REGISTRATION AND REREGISTRATION FEES

Priority: Other Significant

Legal Authority: 21 USC 821; 21 USC 822; 21 USC 823; 21 USC 824; 21 USC 830; 21 USC 871 (b); 21 USC 875; 21 USC 877; 21 USC 958

CFR Citation: 21 CFR 1309

Legal Deadline: None

Abstract: In December 1999, the Drug Enforcement Administration (DEA) proposed to amend its application fees for registration and reregistration of manufacturers, distributors, importers, and exporters of List I chemicals, as authorized by section 3(a) of the Domestic Chemical Diversion Control Act of 1993 (DCDCA), reducing the fees from $595.00 to $326.00 for initial registration, and the reregistration fees from $477.00 to $171.00. Fees for retail registrants were proposed to increase from $255.00 to $326.00 for registration, and from $116.00 to $171.00 for reregistration. Office of Management and Budget Circular A-25 requires a periodic review of user charges for agency programs. Subsequent to publication, concerns were raised about costs included in this user fee.

As DEA has noted in previous rulemakings on this subject, certain costs for investigative activities have not been included in previous fees. Specifically, costs for investigative activities including, but not limited to, extensive investigation and collection of documentation of violative practices by registrants, attorney review and preparation by DEA's Office of Chief Counsel, staff and attorney time to prepare for proceedings to deny or revoke a registration, and Administrative Law Judge and staff to conduct registration denial hearings were not included in previous fee calculations. Costs for these investigative activities have risen as DEA activities have increased necessitating the re-evaluation of this user fee. Based on these concerns, DEA will be publishing a notice to formally withdraw the rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	12/01/99	64 FR 67216
NPRM Comment Period End	01/31/00	
Notice: Withdrawing Rulemaking	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: DEA-185

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

Related RIN: Related To 1117-AA72

RIN: 1117–AA50

1587. PLACEMENT OF GAMMA-BUTYROLACTONE IN LIST I OF THE CONTROLLED SUBSTANCES ACT (21 U.S.C. 802)

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 802; 21 USC 830; 21 USC 871(b)

CFR Citation: 21 CFR 1310

Legal Deadline: None

Abstract: Public Law 106-172, signed into law on February 18, 2000, and known as the "Hillary J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000" amends section 102(34) of the Controlled Substances Act as amended (CSA) by designating gamma-butyrolactone (GBL), the precursor to gamma-hydroxybutyric acid (GHB), as a List I chemical. Reflecting this change in statute, on April 24, 2000, the Drug Enforcement Administration (DEA) amended its regulations to reflect the status of GBL as a List I chemical subject to the requirements of the CSA and its regulations. Establishment of a threshold for GBL is the subject of a separate rulemaking, proposed on October 24, 2001. Therefore, unless and until a threshold is established, any distribution of GBL is a regulated transaction as described by 21 CFR 1300.02(b)(28). All handlers of GBL must comply with the CSA regulatory requirements pertaining to List I chemicals as described in the body of this document. Further, DEA is considering regulations regarding exemption of chemical mixtures containing GBL (RIN 1117-AA64).

Timetable:

Action	Date	FR Cite
Placement of Gamma-Butyrolactone in List I of the Controlled Substance Act (21 U.S.C. 802)		
Final Rule 04/24/00 (65 FR 21645)		
Threshold for Gamma-Butyrolactone		
NPRM 10/24/01 (66 FR 53746)		
Correction 12/12/01 (66 FR 64173)		
NPRM Comment Period End 12/24/01		
Final Action 04/00/03		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA-199, DEA-203

Agency Contact: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7183

Related RIN: Related To 1117-AA64

RIN: 1117–AA52

1588. INDUSTRIAL USE OF PRODUCTS AND MATERIALS DERIVED FROM CANNABIS PLANTS

Priority: Other Significant

Legal Authority: 21 USC 802; 21 USC 811; 21 USC 812; 21 USC 871(b)

CFR Citation: 21 CFR 1308

Legal Deadline: None

Abstract: DEA published three rules simultaneously in the Federal Register regarding the status of products manufactured from the cannabis plant. The three rules were as follows.

The first rule was an interpretive rule, which provided DEA's interpretation of existing law with respect to the listing of tetrahydrocannabinols (THC) in Schedule I of the Controlled Substances Act (CSA) and DEA regulations. (Please see "Additional Information" for further details.)

The second rule was a proposed rule to revise the wording of the DEA regulations to more clearly reflect DEA's interpretation of the law as set forth in the interpretive rule. The proposed rule made clear that the listing of THC in Schedule I included both natural and synthetic THC and that any substance containing any amount of THC is a Schedule I controlled substance—even if such substance was made from "hemp."

The third rule was an interim rule, which exempted from application of the CSA and DEA regulations certain industrial "hemp" products. DEA issued this rule to allow the continuation of what have historically been considered legitimate industrial uses of "hemp." Under this rule, industrial "hemp" products such as paper, rope, and clothing may continue to be marketed in the United States without being subject to the CSA. At the same time, in order to protect the public health and safety, the interim rule did not allow "hemp" products that result in THC entering the human body. In this manner, it remained clear that the only lawful way THC may enter the human body is when a person is using a federally approved drug or when the person is the subject of federally approved research.

Timetable:

Action	Date	FR Cite
Clarification of Listing of Tetrahydrocannabinols		
NPRM 10/09/01 (66 FR 51535)		
NPRM Comment Period End 12/10/01		
Final Action 03/00/03		
Exemption From Control of Certain Industrial Products and Material Derived From the Cannabis Plant		
Interim Final Rule 10/09/01 (66 FR 51539)		
Interim Final Rule Comment Period End 12/10/01		
Interim Final Rule Extending Grace Period 02/15/02 (67 FR 7073)		
Final Action 03/00/03		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Additional Information: While agencies are not required to include information regarding interpretive rules in the Unified Agenda, DEA is providing a description of this interpretive rule for informational purposes. The interpretive rule provided DEA's interpretation of existing law with respect to the listing of tetrahydrocannabinols (THC) in Schedule I of the Controlled Substances Act (CSA) and DEA regulations. The rule further provided DEA's interpretation of the current legal status of products containing THC. In recent months, DEA received numerous inquiries from members of the public about the legal status of products made from "hemp" (portions of the cannabis plant excluded from the CSA definition of marijuana). As stated in this rule, DEA interprets the CSA such that any substance containing any amount of THC is a Schedule I controlled substance—even if such substance is made from "hemp."

Agency Contact: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7183

RIN: 1117–AA55

1589. CONTROL OF RED PHOSPHORUS, WHITE PHOSPHORUS, AND HYPOPHOSPHOROUS ACID (AND ITS SALTS) AS LIST I CHEMICALS

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 802; 21 USC 830; 21 USC 871(b)

CFR Citation: 21 CFR 1310

Legal Deadline: None

Abstract: Because of their use and importance in the illicit manufacture of methamphetamine, a Schedule II controlled substance, DEA is proposing the addition of red phosphorus, white phosphorus (also known as yellow phosphorus), and hypophosphorous acid (and its salts) as List I chemicals. These phosphorus chemicals have been identified as being important chemicals for the illicit production of methamphetamine. As List I chemicals, handlers of these materials will be subject to Controlled Substances Act (CSA) chemical regulatory controls including registration, recordkeeping, reporting, and import/export requirements. DEA has determined that these controls are necessary to prevent the diversion of these chemicals to clandestine drug laboratories.

DEA has conducted an extensive review of the phosphorus industry, publishing an Advanced Notice of Proposed Rulemaking. DEA's review indicated that there are only two domestic producers of white phosphorus and three producers of red phosphorus, or hypophosphorous acid (and its salts). While producers of white phosphorus will be required to register with DEA and maintain records of each regulated transaction (i.e., all transactions of these chemicals), over 98 percent of the phosphorus produced is converted to a form not impacted by this regulation. The remaining 2 percent of the phosphorus (used domestically) is utilized in its elemental form (i.e., as red phosphorus or white phosphorus) or used to produce all other phosphorus chemicals. Therefore, this regulation will only affect the distribution of less than 2 percent of the industry at the end user level. Further, DEA is considering regulations regarding the exemption of chemical mixtures containing red phosphorus, white phosphorus, and hypophosphorous acid (and its salts).

Timetable:

Action	Date	FR Cite
ANPRM	02/02/00	65 FR 4913
ANPRM Comment Period End	04/03/00	
NPRM	09/25/00	65 FR 57577
NPRM Comment Period End	11/24/00	
Final Rule	10/17/01	66 FR 52670
Comment Period End	11/16/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA-198

Agency Contact: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7183

Related RIN: Related To 1117-AA66

RIN: 1117–AA57

DOJ—DEA

Final Rule Stage

1590. ALLOWING CENTRAL FILL PHARMACIES TO FILL PRESCRIPTIONS FOR CONTROLLED SUBSTANCES ON BEHALF OF RETAIL PHARMACIES

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 802; 21 USC 821; 21 USC 822; 21 USC 823; 21 USC 824; 21 USC 871 (b); 21 USC 875; 21 USC 877

CFR Citation: 21 CFR 1300; 21 CFR 1301; 21 CFR 1304; 21 CFR 1305; 21 CFR 1306; 21 CFR 1307

Legal Deadline: None

Abstract: DEA is amending its regulations to provide for the use of central fill pharmacies, also known as refill pharmacies, fulfillment centers, or call centers. Unlike retail pharmacies which dispense controlled substances directly to the patient, central fill pharmacies provide a service to retail pharmacies by preparing and packaging prescriptions for retail pharmacies to dispense to the patient. Prescription information is transmitted from a retail pharmacy to a central fill pharmacy where the prescription is filled or refilled. The filled prescription is delivered to the retail pharmacy for pickup by the patient. Industry has expressed interest in utilizing central fill pharmacy operations to allow for more efficient delivery of prescriptions to patients.

Timetable:

Action	Date	FR Cite
NPRM	09/06/01	66 FR 46567
NPRM Comment Period End	11/05/01	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA-208

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

RIN: 1117–AA58

1591. • IMPLEMENTATION OF THE METHAMPHETAMINE ANTI-PROLIFERATION ACT: THRESHOLDS FOR RETAILERS AND FOR DISTRIBUTORS REQUIRED TO SUBMIT REPORTS UNDER 21 U.S.C. 830(B)(3); CHANGES TO MAIL ORDER REPORTING

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 802; 21 USC 821; 21 USC 822; 21 USC 823; 21 USC 824; 21 USC 830; 21 USC 871(b); 21 USC 875; 21 USC 977; 21 USC 951; 21 USC 958; ...

CFR Citation: 21 CFR 1300; 21 CFR 1309; 21 CFR 1310

Legal Deadline: None

Abstract: This final rule is a conforming regulation that implements the provisions of the Methamphetamine Anti-Proliferation Act of 2000 (MAPA). For retailers and for distributors required to submit monthly mail order reports under 21 U.S.C. 830(b)(3), MAPA reduced the transaction thresholds for pseudoephedrine and phenylpropanolamine drug products to 9 grams per single transaction and added a package size restriction of 3 grams. MAPA added the requirement that distributors who are subject to submitting mail order reports must report certain export transactions. To reduce the burden on the regulated industry, MAPA established certain exemptions to the mail order reporting requirement and gave DEA authority to grant additional exemptions as warranted.

Timetable:

Action	Date	FR Cite
Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA-210

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

RIN: 1117–AA69

Department of Justice (DOJ)
Drug Enforcement Administration (DEA)

Completed Actions

1592. REGISTRATION AND REREGISTRATION APPLICATION FEES

Priority: Other Significant

CFR Citation: 21 CFR 1301

Completed:

Reason	Date	FR Cite
Final Action	08/09/02	67 FR 51987

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia M. Good
Phone: 202 307-7297

RIN: 1117–AA34

1593. CHANGE OF ADDRESS FOR FILING CHEMICAL IMPORT/EXPORT DECLARATIONS (DEA FORM 486), REPORTS FOR THE IMPORTATION OR EXPORTATION OF TABLETING AND ENCAPSULATING MACHINES, AND OTHER RELATED REPORTS

Priority: Substantive, Nonsignificant

CFR Citation: 21 CFR 1310; 21 CFR 1313

Completed:

Reason	Date	FR Cite
Final Action	07/31/02	67 FR 49568

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia M. Good
Phone: 202 307-7297

RIN: 1117–AA65

Department of Justice (DOJ)
Executive Office for Immigration Review (EOIR)

Proposed Rule Stage

1594. AUTHORITY OF IMMIGRATION JUDGES TO ISSUE CIVIL MONEY PENALTIES

Priority: Other Significant

Legal Authority: 5 USC 301; 3 CFR, 1949 to 1953 Comp, p 1002; 8 USC 1103; 8 USC 1252 note; 8 USC 1101 note; 8 USC 1362; 28 USC 509; 8 USC 1324b; 28 USC 510; 28 USC 1746; Reorg Plan No 2 of 1950, sec 2

CFR Citation: 8 CFR 1; 8 CFR 3

Legal Deadline: None

Abstract: This rule proposes to amend the regulations by implementing the statutory authority given to Immigration Judges to sanction by civil money penalty any action or inaction in contempt of the Judge's proper exercise of authority. This statutory authority is derived from section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208 (IIRIRA), September 30, 1996. This rule sets forth the types of conduct for which civil money penalty sanctions may be imposed, the procedures for imposing these sanctions, the affirmative defenses which may excuse the imposition of a civil money penalty sanction, and the procedures for appealing such sanctions. The rule also adds an additional ground for disciplinary sanctions under 8 CFR section 3.102 for engaging in a pattern and practice of conduct which has been found to be in contempt of the Immigration Judge's proper exercise of authority.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
NPRM Comment Period End	08/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041
Phone: 703 305-0470

RIN: 1125–AA18

1595. SUSPENSION OF DEPORTATION AND CANCELLATION OF REMOVAL FOR CERTAIN BATTERED SPOUSES AND CHILDREN; MOTIONS TO REOPEN FOR CERTAIN BATTERED SPOUSES AND CHILDREN

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 8 USC 1101 note; 8 USC 1103; 8 USC 1182; 8 USC 1186a; 8 USC 1224 to 1227; 8 USC 1251; 8 USC 1252 note; 8 USC 1251a; 8 USC 1252b; 8 USC 1324b; 8 USC 1362; 28 USC 509 to 510; 28 USC 1746; Reorg Plan No 2 of 1950; 3 CFR 1949 to 1953 Comp, sec 2; PL 105-100, sec 202-203; PL 105-277, sec 902; PL 106-386, sec 1506; PL 106-554, sec 1505; PL 106-554, sec 1510; 8 CFR 2; 8 CFR 3; 8 CFR 240

CFR Citation: 8 CFR 3; 8 CFR 240

Legal Deadline: None

Abstract: This rule amends Department regulations by establishing procedures incorporating the amended requirements of cancellation of removal for battered spouses and children under 240A(b)(2) of the Immigration and Nationality Act (Act), and suspension of deportation under former section 244(a)(3) of the Act (as it existed before April 1, 1997), which were amended by section 1504 of the Battered Immigrant Women Protection Act of 2000.

This rule also amends Department regulations by establishing procedures for certain battered spouses and children to reopen their removal or deportation proceedings to apply for the relief of cancellation of removal or suspension of deportation under 240(c)(6)(C)(iv) of the Act (as amended by section 1506 of the Battered Immigrant Women Protection Act of 2000).

Additionally, this rule establishes procedures which must be followed by EOIR when an alien applies for a domestic violence victim waiver under section 237(a)(7) of the Act (as amended by section 1505(b) of the Battered Immigrant Women Protection Act of 2000).

Timetable:

Action	Date	FR Cite
NPRM	07/00/03	
NPRM Comment Period End	09/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041
Phone: 703 305-0470

RIN: 1125–AA35

Department of Justice (DOJ)
Executive Office for Immigration Review (EOIR)

Final Rule Stage

1596. SUSPENSION OF DEPORTATION AND CANCELLATION OF REMOVAL

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1182; 8 USC 1186a; 8 USC 1224 to 1227; 8 USC 1251 to 1252; 8 USC 1362; PL 105-100, sec 202

CFR Citation: 8 CFR 240

Legal Deadline: None

Abstract: This rule amends the regulations of the Executive Office for Immigration Review and the Immigration and Naturalization Service by eliminating the conditional grant process at 8 CFR 240.21 and establishing a permanent procedure for processing suspension of deportation and cancellation of removal cases. This rule is necessary to implement the numerical limitation on suspension of deportation and cancellation of removal and adjustment of status imposed by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA).

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/30/98	63 FR 52134
Interim Final Rule Comment Period End	11/30/98	
Final Action	08/00/03	

DOJ—EOIR — **Final Rule Stage**

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041
Phone: 703 305-0470

RIN: 1125–AA25

1597. AUTHORITIES DELEGATED TO THE DIRECTOR OF THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Priority: Info./Admin./Other

Legal Authority: 5 USC 301; 8 USC 1103; 8 USC 1252 note; 8 USC 1252b; 8 USC 1362; 28 USC 509 to 510; 28 USC 1746

CFR Citation: 8 CFR 3; 8 CFR 240; 28 CFR

Legal Deadline: None

Abstract: This rule outlines the authorities and powers (and limitations thereto) delegated by the Attorney General to the Director of the Executive Office for Immigration Review (EOIR), the Chairman of the Board of Immigration Appeals (BIA), and the Chief Immigration Judge. These authorities include such managerial responsibilities as: Issuing operational instructions, setting policies, providing for the training of staff, and ensuring the efficient disposition of cases. One of the limitations on the powers of the Director of EOIR, the Chairman of the BIA, and the Chief Immigration Judge is that they cannot direct the result of a case adjudication assigned to someone else. Further, the Director of EOIR cannot adjudicate cases.

Additionally, this rule makes technical amendments to better describe EOIR's components: The Board of Immigration Appeals (BIA), the Office of the Chief Immigration Judge (OCIJ), and the Office of the Chief Administrative Hearing Officer (OCAHO).

Timetable:

Action	Date	FR Cite
NPRM	12/26/00	65 FR 81434
NPRM Comment Period End	02/26/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041
Phone: 703 305-0470

RIN: 1125–AA27

1598. MOTIONS TO REOPEN FOR SUSPENSION OF DEPORTATION AND SPECIAL RULE CANCELLATION OF REMOVAL PURSUANT TO SECTION 1505(C) OF THE LIFE ACT AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 8 USC 1103, 1252 note, 1252b, 1324b, 1362; 28 USC 509 to 510; 28 USC 1746; sec 203 of PL 105-100; secs 1506 and 1510 of PL 106-386; sec 1505 of PL 106-554

CFR Citation: 8 CFR 3

Legal Deadline: None

Abstract: The rule amends the regulations of the Executive Office for Immigration Review (EOIR) by establishing a special procedure for the filing and adjudication of motions to reopen to apply for suspension of deportation and cancellation of removal pursuant to section 1505(c) of the Legal Immigration Family Equity Act Amendments of 2000 (LIFE Act Amendments). Motions to reopen under this rule must have been filed on or before October 16, 2001.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/17/01	66 FR 37119
Interim Final Rule Comment Period End	09/17/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041
Phone: 703 305-0470

RIN: 1125–AA31

1599. SECTION 212(C) RELIEF FOR ALIENS WITH CERTAIN CRIMINAL CONVICTIONS BEFORE APRIL 1, 1997

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1182; 8 USC 1186a; 8 USC 1224-1227; 8 USC 1251; 8 USC 1252 note; 8 USC 1252a; 8 USC 1252b; PL 105-110, sec 202-203; PL 105-277, sec 902; 8 CFR 2

CFR Citation: 8 CFR 3

Legal Deadline: None

Abstract: The rule amends the regulations of the EOIR and the INS by establishing procedures for certain lawful permanent residents (LPRs) with certain criminal convictions to apply for a waiver of inadmissibility pursuant to former section 212(c) of the INA. It is only applicable to certain LPRs whose convictions were prior to April 1, 1997. It applies to certain LPRs who have cases pending before EOIR or are under final administrative orders. This rule will broaden eligibility for INA section 212(c) relief in light of the recent Supreme Court decision in INS v. St. Cyr, 121 (S. Ct. 2271 (2001)).

Timetable:

Action	Date	FR Cite
NPRM	08/13/02	67 FR 52627
Correction	08/22/02	67 FR 54360
NPRM Comment Period End	10/15/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041
Phone: 703 305-0470

RIN: 1125–AA33

1600. • PROTECTIVE ORDERS IN IMMIGRATION ADMINISTRATION PROCEEDINGS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 8 USC 1101 note, 1103, 1231, 1252 note, 1252b, 1324b, 1253, 1362; 28 USC 509, 510, 1746; sec 2, Reorg Plan No 2 of 1950; 3 CFR 1949-1953 Comp, p 1002; section 203 of PL 105-100, 111 Stat 2196-200; sections 1506 and 1510 of PL 106-386, 114 Stat 1527-29, 1531-32;

DOJ—EOIR — **Final Rule Stage**

section 1505 of PL 106-554, 114 Stat 2763A-326 to 2763A-328

CFR Citation: 8 CFR 3

Legal Deadline: None

Abstract: This rule amends regulations governing the Executive Office for Immigration Review (EOIR) by authorizing immigration judges to issue protective orders to limit public disclosure of sensitive law enforcement or national defense information during immigration proceedings. The rule is applicable in all proceedings before immigration judges, but involves only a small number of cases.

Timetable:

Action	Date	FR Cite
NPRM	05/28/02	67 FR 36799
NPRM Comment Period End	07/29/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041
Phone: 703 305-0470

RIN: 1125–AA38

Department of Justice (DOJ)
Executive Office for Immigration Review (EOIR)

Completed Actions

1601. BOARD OF IMMIGRATION APPEALS; PROCEDURAL REFORMS TO IMPROVE CASE MANAGEMENT

Priority: Substantive, Nonsignificant

CFR Citation: 8 CFR 3; 8 CFR 280

Completed:

Reason	Date	FR Cite
Final Rule	08/26/02	67 FR 54878
Final Rule Effective	09/25/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch
Phone: 703 305-0470

RIN: 1125–AA36

Department of Justice (DOJ)
Federal Bureau of Investigation (FBI)

Proposed Rule Stage

1602. CLAIMS OF EXEMPTIONS FROM PROVISIONS OF THE PRIVACY ACT AS TO FBI RECORDS

Priority: Info./Admin./Other

Legal Authority: 5 USC 552a

CFR Citation: 28 CFR 16.96

Legal Deadline: None

Abstract: This rule clarifies the meaning of 28 CFR 16.96 "Exemption of Federal Bureau of Investigation Systems—Limited Access" by reorganizing the material and amplifying the reasons for exempting various FBI record systems from some provisions of the Privacy Act. The benefits will be greater ease of use by the public and more understandable, targeted claims of exemptions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Beth Haley, Assistant General Counsel, Department of Justice, Federal Bureau of Investigation, Room 7338, J. Edgar Hoover Building, 935 Pennsylvania Avenue NW, Washington, DC 20535-0001
Phone: 202 324-4523

David M. Hardy, Supervisory Attorney-Advisor, Department of Justice, Federal Bureau of Investigation, 6296, J. Edgar Hoover Bldg., 935 Pennsylvania Avenue NW, Washington, DC 20535-0001
Phone: 202 324-3000

RIN: 1110–AA08

Department of Justice (DOJ)
Federal Bureau of Investigation (FBI)

Final Rule Stage

1603. IMPLEMENTATION OF SECTIONS 104 AND 109 OF THE COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT

Priority: Other Significant

Legal Authority: PL 103-414 Communications Assistance for Law Enforcement Act; PL 104-208 Omnibus Consolidated Appropriations Act of 1997

CFR Citation: 28 CFR 100

Legal Deadline: Other, Statutory, October 25, 1998, While CALEA required telecommunications carriers to be in compliance with section 103 by October 25, 1998, the FCC exercised (continued in Additional Information).

Abstract: As required by section 109 of the Communications Assistance for Law Enforcement Act (CALEA), the FBI promulgated Cost Recovery Regulations allowing telecommunications carriers to recover certain costs associated with implementing CALEA. The final rule was published on March 20, 1997 (62 FR 13307), and became effective on April 21, 1997. In response to public comment received during this rulemaking, the FBI published an ANPRM on November 19, 1996 (61 FR 58799), which solicited input on the

definition of the term "significant upgrade or major modification" as used by CALEA. The "significant upgrade or major modification" NPRM was published on April 28, 1998 (63 FR 23231). The FBI is currently preparing a supplemental notice of proposed rulemaking, which will define the terms "replaced" and "significantly upgraded or otherwise undergone major modification," which when codified will amend the Cost Recovery Regulations.

Additionally, CALEA section 104 requires the Attorney General to publish a Notice of Actual and Maximum Capacity in order to provide telecommunications carriers with the information they will need to meet law enforcement's future simultaneous electronic surveillance requirements. For local exchange, cellular, and broadband PCS, the FBI published an Initial Notice of Capacity on October 16, 1995 (60 FR 53643), and a Second Notice of Capacity on January 14, 1997 (62 FR 1902). The FBI published the Final Notice of Capacity for local exchange, cellular, and broadband PCS on March 12, 1998 (63 FR 12218). Additionally, the FBI published a Notice of Inquiry (NOI) in the Federal Register on December 18, 1998 (63 FR 70160), which solicited information on and suggestions for developing reasonable methodologies for characterizing capacity requirements for telecommunications services and technologies other than local exchange, cellular, and broadband PCS. Comments were due on February 16, 1999. Information gathered in response to the NOI was used in publishing the Further Notice of Inquiry (FNOI) on June 30, 2000 (65 FR 40694). Comments were due August 29, 2000. Information gathered in response to the FNOI will be used in the publication of an Initial Notice of Capacity for developing reasonable capacity methodologies for the paging, mobile satellite, specialized mobile radio, and enhanced specialized mobile radio services.

Timetable:

"Significant upgrade or major modification"	
ANPRM	11/19/96 (61 FR 58799)
ANPRM Comment Period End	12/19/96
NPRM	04/28/98 (63 FR 23231)
NPRM Comment Period End	06/29/98
Supplemental NPRM Proposing Definitions	10/05/01 (66 FR 50931)
Supplemental NPRM Comment Period End	12/04/01
Final Action	03/00/03
Cost Recovery Rule (Telecom. Carriers)	
NPRM	05/10/96 (61 FR 21396)
NPRM Comment Period End	07/09/96
Final Rule	03/20/97 (62 FR 13307)
Final Rule Effective	04/21/97
Notice of Actual and Max. Cap.-local exch, cellular, broadb PCS	
Initial Notice	10/16/95 (60 FR 53643)
Second Notice	01/14/97 (62 FR 1902)
Final Notice	03/12/98 (63 FR 12217)
Notice of Actual and Max. Cap.-paging, MSS, SMR, ESMR	
Notice of Inquiry (Cap Methodology)	12/18/98 (63 FR 70160)
Further Notice of Inquiry (Cap Methodology)	06/30/00 (65 FR 40694)
Initial Notice of Capacity	05/00/03

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: STATUTORY DEADLINE CONT: its authority under section 107 of CALEA to grant carriers extensions of this compliance date. As a result of the FCC's order, carriers must now be in compliance with section 103 by June 30, 2000. If compliance is not reasonably achievable through application of available technology, the carrier may petition the FCC for a section 107 extension of up to 2 years. By subsequent FCC orders, the assistance capability compliance date for packet mode communication is November 19, 2001, and for the additional capabilities/"punchlist" capabilities is June 30, 2002. Carriers may again petition the FCC for a section 107 extension. Lastly, as a result of the publication of the Final Notice of Capacity for local exchange, cellular, and broadband PCS carriers, these carriers must be in compliance with section 104 by March 12, 2001.

Transferred from RIN 1105-AA39.

Agency Contact: Walter V. Meslar, Unit Chief, Telecommunications Contracts and Audit Unit, Department of Justice, Federal Bureau of Investigation, Suite 300, 14800 Conference Center Drive, Chantilly, VA 20151
Phone: 703 814-4900

Leslie M. Szwajkowski, Unit Chief, Department of Justice, Federal Bureau of Investigation, Suite 300, 14800 Conference Center Drive, Chantilly, VA 20151
Phone: 703 814-4800
Fax: 703 814-4720

RIN: 1110–AA00

1604. IMPLEMENTATION OF THE NATIONAL STOLEN PASSENGER MOTOR VEHICLE INFORMATION SYSTEM (NSPMVIS)

Priority: Other Significant

Legal Authority: 49 USC 33109 to 33111

CFR Citation: 28 CFR 89

Legal Deadline: None

Abstract: The Attorney General is required to establish a National Stolen Passenger Motor Vehicle Information System (NSPMVIS) pursuant to the Anti Car Theft Act of 1992 (49 U.S.C. 33109 to 33111). The FBI is coordinating efforts in this matter and, under delegated authority from the Attorney General, the FBI is issuing this rule to establish a national system to verify the theft status of major motor vehicle component parts and junk or salvage vehicles. The system will include certain information about each passenger motor vehicle reported to a law enforcement agency as stolen and not recovered. The rule provides how an individual or entity may obtain information from the system on whether a vehicle or part is listed as stolen. The rule also provides verification procedures to be followed by insurance carriers and certain motor vehicle part businesses. In order to verify the theft status of a part or junk or salvage vehicle, an identification number will have to be obtained from the part or vehicle.

Timetable:

Action	Date	FR Cite
NPRM	04/09/02	67 FR 17027
NPRM Comment Period End	06/10/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: (RIN 1110-AA01 has been transferred from RIN 1105-AA44.)

The Criminal Division will issue a related regulation to implement the National Motor Vehicle Title Information System (NMVTIS). As required by statute, 49 U.S.C. section 30504(a), the regulation will direct junk yard and salvage yard operators and insurance carriers to file monthly reports with the operator of the NMVTIS concerning vehicles in their possession. (See RIN 1105-AA71.)

Agency Contact: Buffy M. Bonafield, Criminal Info Coordination, Department of Investigation, CJIS Division Module C-3, Clarksburg, WV 26306
Phone: 304 625-2000
Fax: 304 625-3875

RIN: 1110–AA01

1605. REGULATIONS UNDER THE PAM LYCHNER SEXUAL OFFENDER TRACKING AND IDENTIFICATION ACT

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: PL 104-236, sec 9

CFR Citation: Not Yet Determined

Legal Deadline: Other, Statutory, October 3, 1999, The Act does not distinguish between NPRM and final regulations.

Abstract: The FBI is issuing regulations to carry out the Pam Lychner Sexual Offender Tracking and Identification Act of 1996. These regulations include guidelines as to the operation and use of the national sex offender registry established by the FBI and the notice to be provided to the FBI in the event a registered sex offender moves interstate. The Bureau published its proposed rule on February 16, 1999, at 64 Fed Register 7562.

Timetable:

Action	Date	FR Cite
NPRM	02/16/99	64 FR 7562
NPRM Comment Period End	04/19/99	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Additional Information: Transferred from RIN 1105-AA56.

Agency Contact: Susan R. Davis, Management Analyst, Department of Justice, Federal Bureau of Investigation, CJIS Division MOD C3, 1000 Custer Hollow Road, Clarksburg, WV 26306
Phone: 304 625-2000

RIN: 1110–AA04

1606. NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM

Priority: Other Significant

Legal Authority: 18 USC 922 to 925; 5 USC 605(b); EO 12866; EO 13132; 5 USC 804; ...

CFR Citation: 28 CFR 25(b)(1); 28 CFR 25(b)(2); 28 CFR 25(b)(3); 28 CFR 25.9(b)(4); 28 CFR 25.2; ...

Legal Deadline: Other, Judicial, October 22, 2001, Written comments regarding proposed rule must be submitted on or before.

Abstract: The Department promulgated regulations to govern the National Instant Criminal Background Check System (NICS) in 1998 when the NICS became operational, and adopted amendments which became effective on July 3, 2001.

In this proposed rule, the Department published for public comment and further consideration, five proposals to make additional changes in the NICS regulations. The proposed changes balance the legitimate privacy interests of law-abiding firearms purchasers and the Department's obligation to enforce the Brady Act and the Gun Control Act to prevent prohibited persons from purchasing firearms.

Timetable:

Action	Date	FR Cite
NPRM	07/06/01	66 FR 35567
NPRM Comment Period End	09/04/01	
NPRM Comment Period Reopened	09/20/01	66 FR 48390
NPRM Reopened Comment Period End	10/22/01	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Tribal

Agency Contact: Fanny L. Haslebacher, Attorney Advisor, Access Integrity Unit, Department of Justice, Federal Bureau of Investigation, CJIS Division, 1000 Custer Hollow Road, Clarksburg, WV 26306-0147
Phone: 304 625-2000

RIN: 1110–AA07

Department of Justice (DOJ)
Immigration and Naturalization Service (INS)

Prerule Stage

1607. RESTRICTING CITIZENS OF BANGLADESH, INDIA, PAKISTAN, AND SRI LANKA FROM PARTICIPATION IN THE INTERNATIONAL-TO-INTERNATIONAL (ITI) PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 8 CFR 212.1(f)(2)

Legal Deadline: None

Abstract: This regulatory action advises the public that the Immigration and Naturalization Service (Service) is amending its policy that allowed citizens from Bangladesh, India, Pakistan, and Sri Lanka the privilege to participate in the International-to-International (ITI) program despite Service regulations at title 8, section 212, part 1(f) (2) barring the citizens of these countries from participation in the Transit Without Visa (TWOV) and ITI programs. This notice proposes to correct this conflict between policy and regulations.

Timetable:

Action	Date	FR Cite
ANPRM	12/00/02	
ANPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2157-01

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7499
Email: robert.f.hutnick@usdoj.gov

RIN: 1115–AG30

Department of Justice (DOJ)
Immigration and Naturalization Service (INS)

Proposed Rule Stage

1608. REVISED GROUNDS OF INADMISSIBILITY, EXCEPTIONS, AND WAIVERS FOR IMMIGRANTS AND NONIMMIGRANTS, AND EXCEPTIONS

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 5 USC 552; 8 USC 1158; 8 USC 1159; 8 USC 1160; 8 USC 1182; 8 USC 1183; 8 USC 1184; 5 USC 552a; 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1157

CFR Citation: 8 CFR 103; 8 CFR 207; 8 CFR 208; 8 CFR 210; 8 CFR 212; ; 8 CFR 240; 8 CFR 241; 8 CFR 245; 8 CFR 245a; 8 CFR 249; 8 CFR 274a; 8 CFR 299; ...

Legal Deadline: None

Abstract: This rulemaking covers several grounds of inadmissibility applicable to those aliens seeking admission to the United States temporarily or permanently—criminal, security, labor certification, licensure requirements for foreign medical graduates and health care workers, failure to attend a removal proceeding, fraud, improperly issued immigrant visa, permanent ineligibility for U.S. citizenship and miscellaneous grounds. It implements several pieces of legislation. The most significant is the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), signed on September 30, 1996, which substantially revised most grounds of inadmissibility under section 212 of the Act and the waivers available to both immigrants and nonimmigrants.

Separately, INS will also publish the following regulations which focus on specific issues and include the following proposed rules: "Medical Examination Requirements and Designation of Civil Surgeons" RIN 1115-AG37, INS No. 2165-01; "Consent to Reapply for Admission After Removal" RIN 1115-AG28, INS No. 2147-01; "Waivers of the 2-Year Foreign Residence Requirement for Certain Exchange Visitors" RIN 1115-AG35, INS No. 2158-01; "Illegal Entries, Unlawful Presence, and Automatic Voidance of Nonimmigrant Visas" RIN 1115-AG36, INS No. 2166-01 and "Medical Grounds of Inadmissibility and Waivers" RIN 1115-AG38, INS No.2167-01.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Additional Information: INS No. 1413-92

Consolidated INS Rules 1304, RIN 1115-AC01; 1235, RIN 1115-AB39; 1232, RIN 1115-AB45; and 1648, RIN 1115-AD62.

Agency Contact: Sophia Cox, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

Related RIN: Merged With 1115-AB39

RIN: 1115–AB45

1609. FEES FOR PARTICIPATION IN DEDICATED COMMUTER LANES AT SELECTED PORTS OF ENTRY; COLLECTION OF FEES UNDER THE DEDICATED COMMUTER LANE PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1224; 8 USC 1225; 8 USC 1226; 8 USC 1227; 8 USC 1228; 8 USC 1252; 8 USC 1103; 8 USC 1201; 8 USC 1252 note; 8 USC 1252b; 8 USC 1304; 8 USC 1356; 8 USC 1182; 8 USC 1183

CFR Citation: 8 CFR 103; 8 CFR 235; 8 CFR 286; 8 CFR 299

Legal Deadline: None

Abstract: These rules provide for the collection of a fee at the time of application for participation in a Dedicated Commuter Lane (DCL), instead of at the time of approval of the application. The DCL program is a pilot project established at selected land border ports of entry to expedite the transborder movement of eligible, pre-screened, low-risk groups through designated traffic lanes. The first interim rule clarifies the requirements for the use of the DCL (INS No. 1675). The second interim rule will set forth the fee required of participants in order to cover the technological costs (INS No. 1794).

INS No. 2058-00 will propose to remove restrictions currently in place that limit the locations where the INS can establish commuter lanes. In addition, the proposed rule will incorporate other projects designed to enhance border security and effective traffic management at port of entry. Finally, the rule may adjust the fee structure in order to administer these projects.

Timetable:

Action	Date	FR Cite
Interim Final Rule-INS No. 1675 Eff. 9/29/95; Comment Period End 11/28/95	09/29/95	60 FR 50386
Interim Final Rule Comment Period End	11/28/95	
Interim Final Rule (INS 1794-96)	10/11/96	61 FR 53303
Final Action (INS 1675-94)--Effective 10/16/1996	10/16/96	61 FR 53830
NPRM (INS 2058-00)	03/00/03	
Final Action (INS 1794-96)	06/00/03	
NPRM Comment Period End (INS 2058-00)	08/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Organizations

Government Levels Affected: Federal

Additional Information: INS Nos. 1675 and 1794-96

Agency Contact: Thomas C. Campbell, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4214, 425 I Street NW, Washington, DC 20536
Phone: 202 305-9246

RIN: 1115–AD82

1610. INSPECTION OF PERSONS APPLYING FOR ADMISSION; INTERNATIONAL-TO-INTERNATIONAL USER FEE

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1356

CFR Citation: 8 CFR 286

Legal Deadline: None

Abstract: This rule proposes to amend the Immigration and Naturalization Service (Service) regulations to require air carriers to charge and collect a user fee from every International-to-International (ITI) passenger arriving in the United States, except those

DOJ—INS

Proposed Rule Stage

individuals exempted under section 286(e)(1) of the Immigration and Nationality Act (Act). This action is necessary since the Service is required to inspect all aliens who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: INS No. 1757

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7499
Email: robert.f.hutnick@usdoj.gov

RIN: 1115–AE37

1611. FILING FACTUAL STATEMENTS ABOUT ALIEN PROSTITUTES

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 2424; PL 104-208

CFR Citation: 28 CFR 94

Legal Deadline: None

Abstract: On September 30, 1996, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) was enacted. This law not only amended significant portions of title 8 of the United States Code, but also changed the provisions of title 18 United States Code (Crimes and Criminal Procedures). Because section 325 amends 18 U.S.C., the Immigration and Naturalization Service will publish an implementing regulation dealing with the filing of statements by individuals who keep, maintain, control, support, or harbor alien prostitutes.

Timetable:

Action	Date	FR Cite
NPRM-INS No. 1810-96	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: INS No. 1810-96

Agency Contact: Elizabeth Goyer, Senior Special Agent, Investigations, Office of Field Operations, Department of Justice, Immigration and Naturalization Service, 425 I Street NW, Washington, DC 20536
Phone: 202 616-3722

RIN: 1115–AE60

1612. EMPLOYMENT VERIFICATION BY EMPLOYERS THAT ARE MEMBERS OF A MULTI-EMPLOYER ASSOCIATION

Priority: Other Significant

Legal Authority: 8 USC 1324a; PL 104-208

CFR Citation: 8 CFR 274a

Legal Deadline: None

Abstract: This proposed action clarifies when an employer, that is a member of a multi-employer association employing an individual under a collective bargaining agreement entered into between one or more employee organizations and the multi-employer association, may rely upon an Employment Eligibility Verification Form (Form I-9) completed for the individual by a previous employer that is a member of the same multi-employer association.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Re INS No. 1817-96; PL 104-208, title 4

Agency Contact: Marguerite Przbylski Kleczek, Attorney, Office of General Counsel, Department of Justice, Immigration and Naturalization Service, Room 6100, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2895

RIN: 1115–AE67

1613. USE OF PAROLE FOR HUMANITARIAN REASONS OR SIGNIFICANT PUBLIC BENEFIT

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1182

CFR Citation: 8 CFR 212

Legal Deadline: NPRM, Statutory, September 11, 1997.

Abstract: Changes to the current regulations are necessitated by section 602 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. This section has reworded certain parole authority by stipulating parole on a case-by-case basis for urgent humanitarian reasons or significant public benefit.

Timetable:

Action	Date	FR Cite
NPRM-INS No. 1840-97	03/00/03	
NPRM Comment Period End	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

Additional Information: INS No. 1840-97

See also RIN 1115-AF53 (INS No. 2004-99): This interim final rule published on December 28, 2000, amended the regulations concerning the authority to grant the parole of aliens from Service custody by specifically identifying the scope of that authority to include the Commissioner, the Deputy Commissioner, the Executive Associate Commissioner for Field Operations, and Regional Directors. This action was taken to clarify which individuals are authorized by the Attorney General, acting through the Commissioner, to grant parole from Service custody.

Agency Contact: Kenneth Leutbecker, Director, Parole and Humanitarian Assistance Branch, Office of International Affairs, Department of Justice, Immigration and Naturalization Service, Attn: ULLICO Bldg, Third Floor, 111 Massachusetts Avenue NW, Washington, DC 20001
Phone: 202 305-2670

Related RIN: Related To 1115-AF53

RIN: 1115–AE68

1614. CERTIFICATION OF CERTAIN HEALTH CARE WORKERS

Priority: Other Significant

Legal Authority: 8 USC 1182(a)(5); PL 104-208

CFR Citation: 8 CFR 204; 8 CFR 212; 8 CFR 214.2; 8 CFR 245; 8 CFR 248

Legal Deadline: Other, Statutory, January 19, 2001, Abraham v. Reno (D.D.C.).

Abstract: On September 30, 1996, the President signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Section 343 prohibits the entry of any alien who seeks to enter the U.S. for the purpose of performing labor as a health care worker (other than a physician) without a certificate as to the alien's qualifications and English ability from the Commission on Graduates of Foreign Nursing Schools (CGFNS) or an equivalent independent organization approved by the Attorney General.

The Service published an interim rule (INS 1879-97) to address shortages in the occupations of nursing and occupational therapy on October 14, 1998. In addition, the Service issued a second interim rule on April 30, 1999, to grant CGFNS authorization to issue certificates to foreign health care workers in the occupations of occupational therapy and physical therapy. This rule also granted the Foreign Credentialing Commission on Physical Therapy the authority to issue certificates to foreign-trained physical therapists. The second interim rule (INS 1979-99) was published under RIN 1115-AF43 and now is consolidated with this Unified Agenda of Federal Regulations entry. A third interim rule (INS 2089-00) was published on January 16, 2001, to address certification requirements for Speech Language Pathologists, Audiologists, Medical Technologists, and Physician Assistants.

The Service will be publishing a proposed rule (INS 2089-02) to fully implement section 343, including solicitation of public comments on the requirements relating to the designation of covered health care occupations, the procedures and requirements for certifying organizations, the content of the certificates, and the process for presentation of the certificates.

Timetable:

Action	Date	FR Cite
Interim Final Rule-INS 1879	10/14/98	63 FR 55007
Interim Final Rule Effective-INS 1879	12/14/98	
Interim Final Rule Comment Period End-INS 1879	02/11/99	
Interim Final Rule-INS 1979-99	04/30/99	64 FR 23174
Interim Final Rule Comment Period End-INS 1979-99	06/29/99	
Interim Final Rule Effective-INS 1979-99	06/29/99	
Interim Final Rule-INS 2089-00	01/16/01	66 FR 3440
Interim Final Rule Comment Period End	03/19/01	
Interim Final Rule Effective-INS 2089-00	03/19/01	
NPRM-INS No. 2080-02	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Molly Johnson, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7435

RIN: 1115–AE73

1615. SPECIAL IMMIGRANT JUVENILE PETITIONS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 CFR 2

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: The Service proposes to amend its regulations to add eligibility and consent requirements for approvals of special immigrant juvenile petitions (Form I-360). The proposed rule would require petitioners for special immigrant juvenile classification to demonstrate that a dependency order relating to the juvenile beneficiary (juvenile) was granted on account of abuse, neglect, or abandonment and establish that a court has determined that the juvenile should not be returned to the home country. The proposed rule would also provide that a dependency order may not serve as a precondition to the approval of the petition unless the Attorney General gives his express consent. These changes are necessary to conform the regulations to the statutory eligibility changes made by the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998 (the Appropriations Act of 1998).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1948-98

Agency Contact: Emily C. Frazelle, Program Analyst, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3040, 425 I Street NW, Washington, DC 20536
Phone: 202 514-0717
Email: emily.frazelle@usdoj.gov

Pearl Chang, Branch Chief, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7440

RIN: 1115–AF11

1616. IMMIGRANT AND NONIMMIGRANT; RELIGIOUS WORKERS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1182; 8 USC 1186a; 8 USC 1255; 8 CFR 2

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: On June 8, 1995, at 60 FR 29751, INS published a final rule that provided that all persons, other than ministers, immigrating to the U.S. as religious workers must immigrate or adjust status to permanent residence before October 1, 1997. By statute this special immigrant category for religious workers expired on October 1, 2000. Congress has extended the category again for an additional 3 years, until October 1, 2003. This regulation will implement the extension of this category and modify qualifying employment experience requirements for those persons affected by this provision of immigration regulations. In order to maintain consistency in the adjudication of nonimmigrant and special immigrant religious worker classifications, the nonimmigrant religious workers classification will, where appropriate, reflect the special immigration religious worker changes.

Timetable:

Action	Date	FR Cite
NPRM-INS No. 1436-94	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1436-94

Agency Contact: Irene Hoffman, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7435

RIN: 1115–AF12

1617. DOCUMENTARY REQUIREMENTS FOR RETURNING RESIDENTS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1181; 8 USC 1182; 8 USC 1203; 8 USC 1225; 8 USC 1257

CFR Citation: 8 CFR 211

Legal Deadline: None

Abstract: This rule proposes to amend INS regulations to specify how an alien admitted for permanent residence, on returning to the United States, may prove that he or she is not to be considered an applicant for admission. This rule is necessary to implement section 101(a)(13)(C) of the Act and to clarify the responsibility for carriers who transport to the United States aliens who claim to be to be returning residents. This rule will ensure that aliens who present themselves as lawful permanent residents are properly documented as such.

Timetable:

Action	Date	FR Cite
NPRM-INS No. 1932-98	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1932-98.

Agency Contact: Michael D. Jones, Acting Director, National Fines Office of Inspections, Department of Justice, Immigration and Naturalization Service, Suite 425, 1525 Wilson Boulevard, Arlington, VA 22209
Phone: 202 305-7018

RIN: 1115–AF26

1618. DISMISSAL OF ASYLUM APPLICATION FOR UNEXCUSED FAILURE TO APPEAR AND EFFECT ON ELIGIBILITY FOR EMPLOYMENT AUTHORIZATION

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1158; 8 USC 1226; 8 USC 1252; 8 USC 1282; 8 CFR 2; 8 USC 1101; 8 USC 1329a

CFR Citation: 8 CFR 208; 8 CFR 274a

Legal Deadline: None

Abstract: On December 6, 2000, the Service published a final rule to implement the asylum provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). This rule proposes to amend the current rule to clarify that dismissal of an asylum application will result in ineligibility for asylum-based employment authorization.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2011-99

Agency Contact: Joanna Ruppel, Supervisor for Asylum Operations, International Affairs, Department of Justice, Immigration and Naturalization Service, 3rd Floor, 111 Massachusetts Avenue NW, Washington, DC 20536
Phone: 202 305-2663

RIN: 1115–AF38

1619. SPECIAL IMMIGRANT STATUS FOR CERTAIN NATO CIVILIAN EMPLOYEES

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154

CFR Citation: 8 CFR 204; 8 CFR 214; 8 CFR 245; 8 CFR 274

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service regulations by establishing procedures for certain North Atlantic Treaty Organization (NATO) civilian employees and their family members to receive special immigrant status in the U.S. and become lawful permanent residents of this country. This rule also offers nonimmigrant status to any parent or child of a NATO civilian employee who has been granted special immigrant status. This rule is intended to ensure the qualifying NATO employees and their family members are aware of their opportunity to acquire special immigrant status and adjustment of status or otherwise obtain corresponding nonimmigrant status.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1984-99

Agency Contact: Donna Crump, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 353-8177

RIN: 1115–AF44

1620. CONTRACTS WITH TRANSPORTATION LINES

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1228

CFR Citation: 8 CFR 233

Legal Deadline: None

Abstract: This rule proposes to amend INS regulations by providing signature authority for forms I-420, Agreement Between Transportation Line and the U.S., I-425, Agreement (Pre-Inspection) Between Transportation Line and the U.S. (At Places Outside U.S.), and I-426, Immediate and Continuous Transit Agreement Between a Transport Line & U.S., to the Commissioner or his delegated representative. This change is required by section 308 of IIRIRA which amended section 233 (a) of the I&NA by requiring carriers transporting aliens to the U.S. from all "foreign territory and adjacent islands" to enter into a contract with the U.S. prior to transportation of such aliens. Another change is to remove the signature authority of the Associate Commissioner for Examinations for the aforementioned Agreements because the position was abolished.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
NPRM Comment Period End	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No.1994-99

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7499
Email: robert.f.hutnick@usdoj.gov

RIN: 1115–AF46

1621. ADJUSTMENT OF STATUS UNDER THE 1966 CUBAN ADJUSTMENT ACT

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1255; PL 105-100, sec 202; ...

CFR Citation: 8 CFR 245

Legal Deadline: None

Abstract: This interim rule specifies what effect an alien's arrival in the United States at a place other than an open port of entry will have on the alien's ability to obtain permanent residence under section 1 of the Cuban Adjustment Act of 1966, as amended. This rule is necessary to establish uniform rules relating to both the alien's eligibility for this relief and to the proper exercise of the discretion to grant or deny this relief.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Suzy Nguyen, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AF48

1622. INADMISSIBILITY TO ENTER THE UNITED STATES FOR FORMER U.S. CITIZENS WHO RENOUNCED CITIZENSHIP TO AVOID TAXATION

Priority: Other Significant

Legal Authority: 8 USC 1182(a)(10); PL 104-208

CFR Citation: 8 CFR 212

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service regulations by establishing procedures to be followed by Service personnel and Department of State personnel in determining whether or not an expatriate alien is inadmissible to the United States under section 212(a)(10)(E) of the Immigration and Nationality Act. This ground of inadmissibility relates to former U.S. citizens who renounced U.S. citizenship on or after September 30, 1996, and the Attorney General has determined that such renunciation was done for the purpose of avoiding taxation by the United States.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
NPRM Comment Period End	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2039-99

Agency Contact: Sophia Cox, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AF69

1623. ESTABLISHMENT OF FEE FOR PROCESSING GENEALOGICAL RESEARCH REQUESTS FOR INS RECORDS

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1103; 8 USC 1201; 8 USC 1252; 8 USC 1252b

CFR Citation: 8 CFR 103; 8 CFR 299

Legal Deadline: None

Abstract: Under the Freedom of Information Act and Privacy Act the Immigration and Naturalization Service (Service) processes all requests for Service records including historical and genealogical records. This rule proposes to amend the Service's regulations by establishing the Historical Records Services (HRS) Program to process requests for the Service's historical records. The Service will charge a fee to recover the cost of searching, locating, retrieving, copying, reviewing, and mailing these records to the requester. The HRS program is necessary to provide a more timely response to requests for genealogical and historical records.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: INS No. 2074-00

Agency Contact: Marian L. Smith, Historian, Office of Files and Forms Management, Department of Justice, Immigration and Naturalization Service, Room 1100, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2837
Fax: 202 305-8251

RIN: 1115–AF88

1624. INTERCOUNTRY ADOPTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1182; 8 USC 1186a; 8 USC 1255; 8 USC 1641; 8 CFR 2

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: The Immigration and Naturalization Service (Service) proposes to amend its regulations regarding the immigration of children of foreign states adopted by United States citizens. The proposed rule would establish a new definition of child to include children adopted from countries which have implemented the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Convention). The proposed rule would also change evidentiary requirements for the immigration of adopted children to state that a certificate of adoption or custody issued by the Secretary of State of the United States is conclusive evidence of the relationship between an adoptive parent and the adoptive child. These changes are necessary to conform the regulations to the Intercountry Adoption Act of 2000(IAA) (Pub. L. 106-279).

The proposed rule would also make other technical changes.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2098-00: The legal deadline for this rulemaking is 1 year from implementation of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

Agency Contact: Elizabeth N. Lee, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 307-2353
Email: elizabeth.n.lee@usdoj.gov

RIN: 1115–AF96

1625. WAIVER OF FEES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1201; 8 USC 1252; 8 USC 1252(b); 8 USC 1252(note); 8 USC 1304; 8 USC 1356

CFR Citation: 8 CFR 103; 8 CFR 244

Legal Deadline: None

Abstract: This rule proposes to amend the INS regulations concerning the adjudication of requests for fee waivers filed by applicants for Service benefits pursuant to 8 CFR 103.7(c). This applies to a waiver of fees by an immigration judge for benefit applications, petitions, appeals, motions, or requests in any case when an alien substantiates that they cannot pay the fee. When implemented, this rule will facilitate the adjudication of these requests. This rule also proposes to amend 8 CFR 244.20, which is a waiver of fees for Temporary Protected Status (TPS) applicants, for the same reasons as stated in 8 CFR 103.7(c). The rule will also be implemented in conjunction with the new Form I-912, Request for Fee Waiver Form.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	
NPRM Comment Period End	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2091-00

Agency Contact: Irene Hoffman, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7435

RIN: 1115–AG02

1626. ADOPTION OF SIBLINGS, ADOPTED ALIEN CHILDREN LESS THAN 18 YEARS OF AGE CONSIDERED A "CHILD"

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-139; 8 USC 1103; 8 CFR 2

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: This proposed rule changes the definition of an adopted "child" or "orphan" from 16 years old to 18 years old in cases where the alien has a younger sibling, under the age of 16, who is also the subject of an orphan petition held by the same U.S. citizen or lawful permanent resident. The change is necessary to conform the regulations to the statutory eligibility changes made by Public Law 106-139. This change allows natural siblings, who might otherwise be separated, to be adopted together into the family of a citizen or lawful permanent resident of the United States.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2110-01

Agency Contact: Elizabeth N. Lee, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 307-2353
Email: elizabeth.n.lee@usdoj.gov

RIN: 1115–AG04

1627. ADJUSTMENT TO LAWFUL RESIDENT STATUS OF CERTAIN CLASS ACTION PARTICIPANTS WHO ENTERED BEFORE JANUARY 1, 1982, UNDER THE LEGAL IMMIGRATION AND FAMILY EQUITY ACT (LIFE ACT)

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1255a; 8 USC 1225a note

CFR Citation: 8 CFR 245a

Legal Deadline: None

Abstract: This interim rule (INS No. 2115-01) implements section 1104 of the Legal Immigration Family Equity Act (LIFE Act) and LIFE Act Amendments pertaining to adjustment of status of certain class action participants (specifically, Catholic Social Services v. Meese (CSS), 509 U.S. 43 (1993), League of United Latin American Citizens v. INS (LULAC), 509 U.S. 43 (1993), and Zambrano v. INS, 509 U.S. 918 (1993) class applicants) who entered before January 1, 1982, to that of person admitted for lawful residence. This rule establishes procedures for a 1-year application period to allow CSS, LULAC, and Zambrano class applicants to apply for adjustment of status to that of lawful permanent residence.

INS No. 2145-01 proposes to amend the Service's regulations by establishing procedures to apply for Family Unity benefits for certain spouses and unmarried children of aliens who adjusted to lawful permanent resident (LPR) status pursuant to section 1104 of the Legal Immigration Family Equity (LIFE) Act — known as the LIFE Legalization provision. It applies to those persons who are no longer present in the United States to allow them to apply for Family Unity benefits pursuant to section 1504 of the LIFE Act Amendments. This rule also establishes procedures for certain spouses and unmarried children who previously were granted Family Unity benefits pursuant to section 1504 of the LIFE Act Amendments to apply for an extension of their Family Unity benefits. This rule is necessary to ensure that those aliens eligible to apply for, and extend, Family Unity benefits under the provisions of the LIFE Act Amendments are able to do so in a timely manner.

Timetable:

Action	Date	FR Cite
Interim Final Rule-INS No. 2115 Life Legalization	06/01/01	66 FR 29661
Interim Final Rule Comment Period End	07/31/01	
Notice	08/29/01	66 FR 45694
Final Action-INS No. 2115-01	06/04/02	67 FR 38341
Final Action Effective	06/04/02	
NPRM-INS 2145 Family Unity Benefits	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2115-01

INS No. 2145-01

Agency Contact: Suzy Nguyen, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AG06

1628. PROCEDURES FOR CHECKING JUVENILE CRIMINAL RECORDS AND SUBMITTING FINGERPRINTS OF THAT ADDITIONAL CLASS OF ALIENS INELIGIBLE FOR FAMILY UNITY

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 5031

CFR Citation: 8 CFR 236

Legal Deadline: None

Abstract: This rule describes procedures necessary for INS Service Centers, District Offices, and Application Support Centers to follow when checking juvenile criminal records and fingerprints of aliens who committed a specific act of juvenile delinquency that, if committed by an adult, would be classified as a felony "crime of violence against another individual." Section 383 of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provides that aliens who committed a specific act of juvenile delinquency, as defined in 18 U.S.C. 5031, are ineligible for benefits under the Family Unity Program.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
NPRM Comment Period End	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: INS No. 2116-01

Agency Contact: Elizabeth N. Lee, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 307-2353
Email: elizabeth.n.lee@usdoj.gov

RIN: 1115–AG07

1629. ADJUSTMENT OF STATUS UNDER SECTION 245(K)

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-119

CFR Citation: 9 CFR 245

Legal Deadline: None

Abstract: This rule proposes amending Service regulations for persons using section 245(k) of the Immigration and Nationality Act to adjust status to that of lawful permanent resident (LPR). Section 245(k) of the Act allows an alien with an approved employment-based petition to adjust status to LPR despite violations of status if those violations have lasted no longer than 180 days since the alien's last entry. This rule proposes eligibility criteria and adjustment procedures for persons wishing to use this section of the Act to become an LPR without leaving the United States.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2120-01

Agency Contact: Michael Valverde, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2763
Email: michael.valverde@usdoj.gov

RIN: 1115–AG10

1630. IMPLEMENTATION OF THE AMERICAN COMPETITIVENESS AND WORKFORCE IMPROVEMENT ACT OF 1998 (ACWIA), THE AMERICAN COMPETITIVENESS IN THE TWENTY-FIRST CENTURY ACT OF 2000 (AC21), AND OTHER RELATED BILLS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186a; 8 USC 1187; 8 USC 1221; 8 USC 1255; ...

CFR Citation: 8 CFR 103; 8 CFR 202; 8 CFR 212; 8 CFR 214; 8 CFR 245; ...

Legal Deadline: None

Abstract: The American Competitiveness in the 21st Century Act, Public Law 106-313, was enacted on October 17, 2000, along with two bills, the Visa Waiver Permanent Program Act, Public Law 106-311, and a bill to increase the fee for certain H-1B petitions. An earlier piece of legislation, the American Competitiveness and Workforce Improvement Act (ACWIA), Public Law 105-277, was enacted to place certain conditions on the employment of H-1B workers. Together, these bills make significant changes to the H-1B classification. Public Law 106-313 increases the numerical H-1B cap to 195,000 for FY 2000-2002 and the percentage of the fees that INS receives to 4 percent. It exempts certain aliens from the numerical cap, provides for the "portability" of employment authorization, and in certain circumstances extensions of stay for certain aliens who have permanent residence applications pending. Public Law 105-277 imposes penalties for employers violating certain representations and prohibits retaliation against H-1B workers who disclose these violations. This regulation clarifies several interpretive questions raised by the bills and ensures INS practice is consistent with these laws.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS rule (RIN 1115-AF40) that implemented the American Competitiveness and Workforce Improvement Act (ACWIA) was merged into the INS rule (RIN 1115-AG11) because three additional pieces of legislation relating to H-1B classification became law while rule AF40 was being reviewed by the Department of Justice. ACWIA increased the numerical cap on H-1B nonimmigrant aliens; required certain dependent employers to make additional attestations to the Department of Labor (DOL); increased the penalties for employers who have been found to be in violation of DOL's rules; and created a "whistleblower" clause to protect H-1B workers who filed complaints against their employer.

In 1190-AA48, the Civil Rights Division, in cooperation with DOL, will implement in the Justice Department's regulations the ACWIA "failure to select" protections — codified in the Immigration and Nationality Act at section 212(n)(5) — by establishing a process under which United States workers may file complaints against employers for denying them employment opportunities by improperly hiring temporary foreign professionals on H-1B visas. Under that process, the Attorney General is to receive and review these complaints and then — where there is reasonable cause to believe a complainant's allegations — initiate binding arbitration proceedings through Federal Mediation and Conciliation Service.

Agency Contact: Irene Hoffman, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7435

Deborah Misir, Attorney, Office of General Counsel, Department of Justice, Immigration and Naturalization Service, 425 I Street NW, Washington, DC 20536
Phone: 202 307-6596

RIN: 1115–AG11

1631. CONSTRUCTION WORK AND THE B NONIMMIGRANT VISA CLASSIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 8 CFR 214

Legal Deadline: None

Abstract: The INS has solicited comments from the public on the issue of aliens admitted to the U.S. as B nonimmigrant visitors whose intent is to engage in construction work during the alien's stay. In particular the Service is exploring the feasibility of defining the term construction as it relates to B nonimmigrant visitors. A standard definition of construction may assist both the public and the Service in determining if an alien admitted as a B nonimmigrant visitor may engage in construction during his or her period of authorized stay. The Immigration and Naturalization Service is considering a rulemaking on this subject.

Timetable:

Action	Date	FR Cite
ANPRM	09/19/01	66 FR 48223
ANPRM Comment Period End	11/19/01	
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2126-01

Agency Contact: Craig S. Howie, Senior Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3040, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7867
Fax: 202 514-0198
Email: craig.s.howie@usdoj.gov

RIN: 1115–AG15

1632. ADJUSTMENT OF FEES FOR DEDICATED COMMUTER LANES AND SECURE ELECTRONIC NETWORK FOR TRAVELERS' RAPID INSPECTION (SENTRI) PROGRAMS AT LAND BORDER PORTS OF ENTRY

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1201; ...

CFR Citation: 8 CFR 103

Legal Deadline: None

Abstract: This rule proposes to adjust the fees for the Land Border Inspection Fee Account (LBIFA) for the Form I-823, Application for Alternative Inspection Services at land border ports of entry and related systems cost fees for participants in the Dedicated Commuter Lane (DCL) program. Form I-823 is used by applicants to the Port Passenger Accelerated Service System (PORTPASS) that includes the DCL program and several other land border programs. The Secure Electronic Network for Travelers' Rapid Inspection (SENTRI) Program at certain assigned POEs is part of the overall DCL program.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	
NPRM Comment Period End	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2031-99

Agency Contact: Penny Pastiva, Budget Analyst, Department of Justice, Immigration and Naturalization Service, Room 5236, 425 I Street NW, Washington, DC 6254
Phone: 202 514-6254
Email: penny.pastiva@usdoj.gov

RIN: 1115–AG18

1633. REMOVAL AND ADJUSTMENT PROCEDURES FOR VICTIMS OF TRAFFICKING AND CERTAIN CRIMINAL ACTIVITIES

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1104; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1201; 8 USC 1224; 8 USC 1225; 8 USC 1226; 8 USC 1227; 8 USC 1252; 8 USC 1252a; 8 USC 1255; 22 USC 7101; 22 USC 7105; ...

CFR Citation: 8 CFR 204; 8 CFR 214; 8 CFR 245

Legal Deadline: None

Abstract: This rule sets forth measures by which certain victims of severe forms of trafficking and victims of certain crimes who have been granted T or U nonimmigrant status may apply for adjustment to permanent resident status in accordance with Public Law 106-386, the Victims of Trafficking and Violence Protection Act of 2000.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	
NPRM Comment Period End	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No 2134-01

Agency Contact: Pearl Chang, Branch Chief, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7440

RIN: 1115–AG21

1634. DEFINITIONS OF NOTICE TO APPEAR AND ARREST WARRANT

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 CFR 2

CFR Citation: 8 CFR 1

Legal Deadline: None

Abstract: This proposed rule adds definitions for the terms Notice to Appear and Arrest Warrant. This proposed revision clarifies what is meant by those terms as they relate to the administration of immigration law. The action is necessary to improve the efficiency of the INS and to clarify how a Notice to Appear and an Arrest Warrant issued pursuant to the Immigration and Nationality Act differ from such documents issued under another statute.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2140-01

Agency Contact: Donna Kay Barnes, Acting Special Assistant, Office of Field Operations, Department of Justice, Immigration and Naturalization Service, Room 7114, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7488

Related RIN: Related To 1115-AG22

RIN: 1115–AG24

1635. VISA WAIVER PROGRAM: GUAM VISA WAIVER PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1158; 8 USC 1182; 8 USC 1184; 8 USC 1187; ...

CFR Citation: 8 CFR 103; 8 CFR 208; 8 CFR 212; 8 CFR 217; 8 CFR 233; ...

Legal Deadline: None

Abstract: On October 30, 2000, the Visa Waiver Permanent Program Act, Public Law 106-396 made the Visa Waiver Pilot Program (VWPP) permanent with some modifications. The VWPP permits nationals from participating countries to apply for admission to the U.S. for 90 days or less as nonimmigrant visitors for business or pleasure without first obtaining a nonimmigrant visa. The proposed rule will clarify and explain the new VWP requirements as well as ensure that the VWP removal provisions apply fairly and equally to all inadmissible nonimmigrants regardless of nationality.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Merges actions pending for INS Nos. 1447-91, 1622-94, 1685-95, 1777-96, 1782, 17686, 2002-99, and 2188-02 into INS No. 1799.

See also INS No. 2099-00, RIN 1115-AF95

Agency Contact: Marty Newingham, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536

Phone: 202 616-7992

RIN: 1115–AG25

1636. PROCEDURES FOR DETAINEE HUNGER STRIKES

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1223; 8 USC 1227; 8 USC 1251; 8 USC 1253; ...

CFR Citation: 8 CFR 241.19

Legal Deadline: None

Abstract: This rule proposes standards and procedures for responding to hunger strikes by individuals detained by the Service. All proposed medical treatments in this regulation conform to accepted medical practice. Also, this rule would supersede the INS Detention Standard on Hunger Strikes.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2142-01

Agency Contact: Nik Maravich, Detention and Deportation Officer, Department of Justice, Immigration and Naturalization Service, Room 800, Detention and Removal Operations, Office of Programs, 801 I Street NW, Washington, DC 20536
Phone: 202 514-1999

RIN: 1115–AG26

1637. CONSENT TO REAPPLY FOR ADMISSION AFTER REMOVAL

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1225; 8 USC 1226; 8 USC 1227; 8 USC 1228; 8 USC 1252

CFR Citation: 8 CFR 212; 8 CFR 299

Legal Deadline: None

Abstract: This rule proposes to amend the provisions regarding consent to reapply after removal to conform with the requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). This rulemaking intends to remove the provisions contained in 8 CFR 212.2(i) relating to a request for consent to reapply in conjunction with an application for admission at a port-of-entry or with an application for adjustment of status. The proposed removal of section 212.2(i) reflects the overall scope of the changes made by IIRIRA and congressional intent to impose severe penalties on aliens who enter illegally or otherwise violate the U.S. immigration laws, by restricting the relief available to them in the U.S.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2147-01

Agency Contact: Kevin J. Cummings, Assistant Director, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

Pearl Chang, Branch Chief, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7440

RIN: 1115–AG28

1638. WAIVERS OF THE 2-YEAR FOREIGN RESIDENCE REQUIREMENT FOR CERTAIN EXCHANGE VISITORS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; ...

CFR Citation: 8 CFR 212 and 299

Legal Deadline: None

Abstract: This rule proposes to amend the Immigration and Naturalization Service (Service) regulations relating to the 2-year foreign residence requirement under section 212(e) of the Immigration and Nationality Act (Act). The proposed changes would conform to the requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), and the Department of Justice Appropriations Act, 2000. The proposed rulemaking would affect aliens who enter the United States as J-1 or J-2 nonimmigrant exchange visitors and who are subject to the requirement of section 212(e) of the Act, which stipulates that they must return to their home country for a period of 2 years before they are eligible to change to a different nonimmigrant classification or apply for lawful permanent residence in the United States.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No 2158-01

Agency Contact: Kevin J. Cummings, Assistant Director, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

Pearl Chang, Branch Chief, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7440

RIN: 1115–AG31

1639. EXTENSION OF THE VALIDITY PERIOD FOR EMPLOYMENT AUTHORIZATION DOCUMENTS FOR ALIENS SEEKING ADJUSTMENT OF STATUS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1201; ...

CFR Citation: 8 CFR 247.a12(c)(9)

Legal Deadline: None

Abstract: This rule proposes to amend the Immigration and Naturalization Service (Service) regulations by enabling the INS to issue Employment Authorization Documents (EADs) for those applying for work authorization

under 8 CFR 274a.12(c) (9) for a validity period of up to 2 years. This category is reserved for those applying for adjustment of status, having filed Form I-485, Application to Register Permanent Residence or Adjust Status with the Service. The rule change would give INS the flexibility to issue EADs for the length of time it anticipates that adjudication of a given case will take.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No 2152-01

Agency Contact: Michael Hardin, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-3048

RIN: 1115–AG32

1640. ILLEGAL ENTRIES, UNLAWFUL PRESENCE, AND AUTOMATIC VOIDING OF NONIMMIGRANT VISAS

Priority: Other Significant

Legal Authority: 5 USC 552; 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; ...

CFR Citation: 8 CFR 103; 8 CFR 212; ; 8 CFR 299

Legal Deadline: None

Abstract: This proposed rule defines the categories of aliens who are not eligible to be issued a visa or be admitted if: they are in the U.S. illegally because they entered without proper inspection at a port-of-entry (section 212(a)(6)(A) of the Act); they accumulated certain periods of unlawful presence because they entered the U.S. illegally or stayed in the U.S. longer than authorized (section 212(a)(9)(B) of the Act); or they entered the U.S. illegally (or attempted an illegal entry) after they accumulated unlawful presence or after they were removed (section 212(a)(9)(C) of the Act). This proposed rule also describes how a nonimmigrant visa becomes automatically void, as provided under section 222(g) of the Act. This proposed rule also explains when the provisions for unlawful presence (sections 212(a)(9)(B) and (C) of the Act) do not apply, and the legal and documentary requirements for a waiver. Promulgation of this rule ensures that the admission to the U.S. of any ineligible alien would not adversely affect the national welfare, safety, or security of the U.S.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: Split out of INS No. 1413 to move forward as a stand-alone rule.

Related RIN 1115-AB45, "Revised Grounds of Inadmissibility, Waivers for Immigrants and Nonimmigrants, and Exceptions."

Agency Contact: Sophia Cox, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

Kevin J. Cummings, Assistant Director, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

Related RIN: Related To 1115-AB45

RIN: 1115–AG36

1641. MEDICAL EXAMINATION REQUIREMENTS AND DESIGNATION OF CIVIL SURGEONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552; 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1222; ...

CFR Citation: 8 CFR 103, 232, and 299

Legal Deadline: None

Abstract: This proposed rule defines the medical examination requirements for arriving aliens. It also overhauls the civil surgeon program to create standards for designation, procedures for periodic review of the civil surgeon designation, and specific provisions for revocation, when necessary.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: Split out of INS No. 1413 to move forward as a stand-alone rule.

Related RIN 1115-AB45, "Revised Grounds of Inadmissibility, Waivers for Immigrants and Nonimmigrants, and Exceptions."

Agency Contact: Sophia Cox, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

Kevin J. Cummings, Assistant Director, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

Related RIN: Related To 1115-AB45

RIN: 1115–AG37

1642. MEDICAL GROUNDS OF INADMISSIBILITY AND WAIVERS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552; 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1157; ...

CFR Citation: 8 CFR 103, 212, and 299

Legal Deadline: None

Abstract: This proposed rule describes the medical grounds of inadmissibility under section 212(a)(1) of the Immigration and Nationality Act (Act). It also describes which medical grounds of inadmissibility can be waived and the requirements for those waivers (including conditions for compliance).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Action	Date	FR Cite
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: Split out of INS No. 1413 to move forward as a stand-alone rule.

Agency Contact: Sophia Cox, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
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Kevin J. Cummings, Assistant Director, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AG38

1643. NEW CLASSIFICATION FOR VICTIMS OF CERTAIN CRIMINAL ACTIVITY; ELIGIBILITY FOR THE U NONIMMIGRANT STATUS

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1101 note; 8 USC 1102; ...

CFR Citation: 8 CFR 103; 8 CFR 204; 8 CFR 212; 8 CFR 214; 8 CFR 299

Legal Deadline: None

Abstract: This rule sets forth application requirements for a new nonimmigrant status. The U classification is for non-United States Citizen/Lawful Permanent Resident victims of certain crimes who cooperate with an investigation or prosecution of those crimes. There is a limit of 10,000 principals per year.

This rule establishes the procedures to be followed in order to petition for the U nonimmigrant classifications. Specifically, the rule addresses: the essential elements that must be demonstrated to receive the nonimmigrant classification; procedures that must be followed to make an application; and evidentiary guidance to assist in the petitioning process. Eligible victims will be allowed to remain in the United States.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	
NPRM Comment Period End	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Agency Contact: Laura M. Dawkins, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3040, 425 I Street NW, Washington, DC 20536
Phone: 202 307-4754
Email: laura.dawkins@usdoj.gov

RIN: 1115–AG39

1644. JUDICIAL REVIEW OF THE DECISIONS OF THE IMMIGRATION AND NATURALIZATION SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552; 5 USC 552(a); 5 USC 704; 8 USC 1101; 8 USC 1103; ...

CFR Citation: 8 CFR 103

Legal Deadline: None

Abstract: This rule clarifies that, if the Administrative Procedure Act (APA) provides the authority for judicial review, a person must exhaust all administrative appeals available as a matter of right before the person may seek judicial review of a Service decision under the Immigration and Nationality Act (Act) that is within the appellate jurisdiction of the Board of Immigration Appeals or of the Associate Commissioner for Examinations. This amendment is necessary to prevent the filing of premature lawsuits, by ensuring that the proper administrative appellate authority has the opportunity to review and correct any errors in the original decision before the party may seek judicial review.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	
NPRM Comment Period End	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1785-96.

1115-AE46 was the old RIN assigned to this rule when it was final; it then changed to a proposed rule.

Agency Contact: Janice B. Podolny, Associate General, Chief Examinations Division, Office of General Counsel, Department of Justice, Immigration and Naturalization Service, Room 6100, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2895

Related RIN: Previously reported as 1115-AE46

RIN: 1115–AG49

1645. CARRIER ARRIVAL AND DEPARTURE ELECTRONIC MANIFEST REQUIREMENTS

Regulatory Plan: This entry is Seq. No. 80 in part II of this issue of the **Federal Register.**

RIN: 1115–AG57

1646. LIMITING THE NUMBER OF TRANSIT WITHOUT VISA (TWOV) STOPS IN THE UNITED STATES TO ONE

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282

CFR Citation: 8 CFR 214.2 (c)

Legal Deadline: None

Abstract: The Office of Inspector General (OIG) recently completed a follow-up review of the Immigration and Naturalization Service's (Service) efforts to improve security of the Transit Without Visa (TWOV) program. The OIG report found that several security concerns described in the original 1993 report continue to exist, specifically the 1) continued allowance for TWOV passengers to make two stops in the United States, with the second stop being a domestic arrival; and 2) lack of carrier standards and accountability for supervising TWOV passengers waiting for their connecting flights in public, domestic areas. This proposed rule informs the public that the Service intends to amend its regulations by limiting the number of transit stops in the United States for TWOV passengers to one stop. These TWOV program modifications will enhance U.S. national security while

still providing the traveling public TWOV privileges.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7499
Email: robert.f.hutnick@usdoj.gov

RIN: 1115–AG59

1647. • TERMINATION OF LAWFUL PERMANANT RESIDENT STATUS THROUGH ABANDONMENT

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 CFR 211; 22 CFR 42

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This rule establishes procedures to terminate on notice the lawful permanent resident status of an alien who has remained outside the country for a continuous period of over 1 year since his or her departure from the United States, if it is determined that such alien has abandoned his or her permanent residency and is no longer eligible for admission as a returning resident. This process will allow the Service to terminate the status of a permanent resident due to abandonment when it becomes aware of that fact rather than, as is current practice, having to wait for such alien to present himself or herself for inspection at a port-of-entry.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
NPRM Comment Period End	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Suzy Nguyen, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AG64

1648. • STRENGTHENING CONTROL OVER IMMIGRATION SURETY BONDS

Priority: Other Significant

Legal Authority: 8 USC 1103, 1356; 31 USC 9701, 9305, 9308; PL 104-208

CFR Citation: 8 CFR 103

Legal Deadline: None

Abstract: During the past several years the Immigration and Naturalization Service (Service) has experienced problems collecting funds relating to breached surety bonds. Several surety companies and/or their bonding agents have circumvented administrative remedies to address immigration surety bond claims sent out by the Service and furthermore have evaded the judicial review process.

This rule proposes to strengthen the Service's control over the collection of immigration surety bonds by tightening current Service procedures relating to the collection of surety bonds and by providing the Service with more powerful enforcement measures. Specifically, this rule will require surety companies and bonding agents to exhaust administrative remedies by using Service appeal procedures as a prerequisite to challenging the Service's actions under the Administrative Procedures Act (5 U.S.C. 701 et seq.) before seeking judicial review of Service actions. In addition, this rule limits the exposure of the Service in the case of bonding agents who have acted improperly or whose authorities have been denied by their corporate principals; encourages surety companies and bonding agents to respond early if there are any issues or disputes with the Service's claim and formalizes the Service's reporting requirements to the Department of Treasury (Treasury); provides for notification to the Treasury of high dollar volume of unpaid debt over 90 days; and lastly, adds an enforcement tool to suspend acceptance of surety bonds from bonding agents and/or surety companies that have large unpaid balances or who do not otherwise respond to Service invoices. This rule is necessary to ensure that the Service receives funds owed by surety companies.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2193-02

Agency Contact: Jim Landolt, Branch Chief, Policy, Office of Financial Management, Department of Justice, Immigration and Naturalization Service, 425 I Street NW, Washington, DC 20536
Phone: 202 353-0229

RIN: 1115–AG65

1649. • LIMITING THE USE OF DURATION OF STATUS FOR CERTAIN F, J, AND I NONIMMIGRANTS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1101 note; 8 USC 1103; 8 USC 1182; 8 USC 1184; ...

CFR Citation: 8 CFR 214

Legal Deadline: None

Abstract: This rule concerns the duration of status for nonimmigrants in the F (student), J (exchange visitor), and I (media representative) categories. This rule will set forth standards and procedures for the admission of certain nonimmigrants in these categories for a fixed period (subject to extension) rather than for the duration of their course of study, exchange program, or approved employment. This action will allow the INS to more effectively ensure that affected nonimmigrants are engaging in activities consistent with their classification and to take necessary action. By ensuring more effective control over nonimmigrants in the U.S., this rule will enhance the integrity of the immigration process.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2222-02

Agency Contact: Maura Deadrick, Assistant Director, Adjudication Division, Department of Justice, Immigration and Naturalization Service, Room 3040, 425 I Street NW, Washington, DC 20536
Phone: 202 514-3228

RIN: 1115–AG76

1650. • PETITIONS FOR ALIENS TO PERFORM TEMPORARY NONAGRICULTURAL SERVICES OR LABOR (H-2B)

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186a; 8 USC 1187; 8 USC 1221; 8 USC 1281; 8 USC 1282

CFR Citation: 8 CFR 2

Legal Deadline: None

Abstract: The Immigration and Naturalization Service, after consulting with the Departments of Labor and the Department of State, is proposing significant changes to its regulations that are designed to increase the effectiveness of the H-2B nonimmigrant classification. These proposals will increase the usefulness of the program for United States employers by eliminating certain regulatory barriers, by adding protections for foreign workers, and increasing Government efficiency and coordination.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: INS No.2228-02

Agency Contact: Molly Johnson, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7435

RIN: 1115–AG78

1651. • ADJUSTMENT OF THE IMMIGRATION BENEFIT APPLICATION FEE SCHEDULE TO RECOVER COSTS ASSOCIATED WITH ADDITIONAL SECURITY CHECKS

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552(a); 8 USC 1101; 8 USC 1103; 8 USC 1304; ...

CFR Citation: 8 CFR 103

Legal Deadline: None

Abstract: The rule proposes to adjust the immigration benefit application fee by $5 to recover costs associated with performing additional security checks on all immigration benefit applications. Fees collected from persons filing immigration benefit applications are deposited into the Immigration Examinations Fee Account and used to fund the full cost of processing immigration benefit applications and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants, as specified in the regulation, at no charge. Federal guidelines require the Immigration and Naturalization Service to establish and collect fees to recover the full cost of processing benefit applications. These security checks are necessary to try to protect the United States from future terrorist attacks.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2233-02

Agency Contact: Paul Schlesinger, Chief, Immigration Services Branch, Office of Budget, Department of Justice, Immigration and Naturalization Service, Room 5307, 425 I Street NW, Washington, DC 20536
Phone: 202 616-0563
Email: paul.l.schlesinger@usdoj.gov

RIN: 1115–AG82

Department of Justice (DOJ)
Immigration and Naturalization Service (INS)

Final Rule Stage

1652. REDUCTION OF THE NUMBER OF ACCEPTABLE DOCUMENTS AND OTHER CHANGES TO EMPLOYMENT VERIFICATION REQUIREMENTS (SECTION 610 REVIEW)

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 8 USC 1324a; PL 104-208

CFR Citation: 8 CFR 274a

Legal Deadline: Final, Statutory, March 31, 1998, An interim rule, published September 30, 1997, makes the minimal changes required by statute. The provisions will remain in effect until completion of this rulemaking.

Abstract: On September 30, 1996, the President signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Section 412(a) of IIRIRA requires a reduction in the number of documents that may be accepted in the employment verification process. Section 412(d) clarifies the applicability of section 274A to the Federal Government. Section 610 of the Regulatory Flexibility Act requires agencies to review rules that have a significant economic impact on a substantial number of small entities every 10 years. The Service is conducting this review in conjunction with IIRIRA implementation. The proposed rulemaking published 2/12/98 implements sections 212(a) and (d) of IIRIRA and proposes other changes to the employment verification process identified through that review. A revised Form I-9 was included with the proposed rulemaking.

The comment period closed on 4/3/98. The Service is analyzing the comments and taking into consideration issues raised by the Alien Registration Form (I-551) program. It should be noted that

this action supersedes the previously published regulatory action titled "Reduction in the Number of Documents Accepted for Employment Verification." In order to avoid confusion, this regulatory action is being referenced under the current RIN, which captures all prior actions related to employment verification.

INS No. 1947-98, Interim Rule published 2/9/99 (64 FR 6187). The "Receipt Rule" permits employees to present their employer certain types of "receipts" in lieu of a document listed on the Form I-9. (Previously under RIN 1115-AE94, which was withdrawn and placed under AB73 due to the relationship of the regulations.)

Timetable:

Action	Date	FR Cite
NPRM-INS No. 1399 Comment Period End 12/23/93	11/23/93	58 FR 61846
NPRM-INS No. 1339S Comment Period End 07/24/95	06/22/95	60 FR 32472
Notice-INS No. 1713 INS No. 1713 Applications Due 01/29/96	11/30/95	60 FR 61630
Appl. Extension Through 3/8/96 Notice Pilot Demonstration Program-INS No. 1713	02/06/96	61 FR 4378
Final Rule-INS No. 1399E	09/04/96	61 FR 46534
Interim Final Rule INS No. 1818	09/30/97	62 FR 51001
NPRM-INS No. 1890-97 Comment Period End 04/03/98	02/02/98	63 FR 5287
Final Rule INS No. 1890-97	03/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal, Federal

Additional Information: The deadline for implementing section 412(a) of IIRIRA was extended to March 31, 1998, by Public Law 105-54. This rulemaking has been delayed by the need to coordinate implementation with other provisions of IIRIRA, by several complex policy and regulatory issues that have taken time to resolve, and by the review required by section 610 of the Regulatory Flexibility Act, and by the need to coordinate policy issues with the Border Security Act of 2002 and, more generally, the post-September 11th environment in which document security is of a paramount concern.

INS No. 1890-97; PL 104-208, title 4.

INS Nos. 1399 and 1399S-94, Control of Employment of Aliens, Supplemental Rule; Action for INS Nos. 1399 and 1399S is canceled as a result of IIRIRA requirements.

INS No. 1399E is an extracted portion of INS No. 1399, published separately to allow for the production of a new, more secure Employment Authorization Document.

INS No. 1713-95, Demonstration Project for Electronic I-9.

Interim Rule INS No. 1818 was published on 9/30/97 at 62 FR 51001 to maintain the status quo as much as possible until the Service completes the more comprehensive document reduction initiative designated by INS No. 1890-97.

Agency Contact: Michael Hardin, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-3048

RIN: 1115–AB73

1653. ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE: CONDITIONAL RESIDENTS AND FIANCE(E)S

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1154; 8 USC 1182; 8 USC 1186a; 8 USC 1255; 8 USC 1257; 8 CFR 2

CFR Citation: 8 CFR 245

Legal Deadline: None

Abstract: This final rule amends the Immigration and Naturalization Service (Service) regulations by clarifying that an alien remains ineligible for adjustment of status after termination of conditional permanent resident status. The clarification is necessary in view of the determination by the Board of Immigration Appeals (Board) that the current regulations do not prohibit the adjustment of status of an alien whose conditional resident status has been terminated. This final rule would also modify provisions regulating the adjustment of status of nonimmigrant fiancé(e)s to reflect the current statue and to eliminate hardships on certain persons who are unable, despite their good faith intentions, to marry until after the expiration of the alien spouse's period of admission as a nonimmigrant fiancé(e).

Timetable:

Action	Date	FR Cite
NPRM	08/20/96	61 FR 43028
NPRM Comment Period End	10/21/96	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: INS No. 1353-91

Agency Contact: Elizabeth N. Lee, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 307-2353
Email: elizabeth.n.lee@usdoj.gov

RIN: 1115–AC70

1654. NONIMMIGRANT CLASSES; S CLASSIFICATION; LAW ENFORCEMENT INITIATIVES; ALIEN WITNESSES

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1324a; 8 CFR 2; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1225; 8 USC 1226; 8 USC 1228; 8 USC 1252

CFR Citation: 8 CFR 212; 8 CFR 214; 8 CFR 274a; 8 CFR 299; 8 CFR 103

Legal Deadline: None

Abstract: Two regulatory initiatives dealing with the processing of alien witnesses have been prepared by the INS. INS No. 1683-94 provides the application and approval process for the admission of aliens in S nonimmigrant classification. It provides guidance to the various law enforcement agencies needing alien witnesses and informants to complete critical law enforcement initiatives in the United States. INS No. 1728-95 establishes a fee for the processing of Form I-854, Inter-Agency Alien Witness and Informant Record, for Law Enforcement Agency (LEA) requests for S nonimmigrant classification for eligible alien witnesses and informants. The fee recovers the costs of the processing of requests for immigration benefits and is needed to comply with specific Federal immigration laws and Federal user fee statute and regulations.

Timetable:

Action	Date	FR Cite
Interim Final Rule-INS No. 1683 Eff. 8/25/95; Comment Period End 12/4/95	08/25/95	60 FR 44260
Interim Final Rule-INS No. 1683 Correction	10/05/95	60 FR 52068
Interim Final Rule-INS No. 1683 Correction	10/05/95	60 FR 52248
Final Action-INS No.1683	11/00/02	
NPRM-INS No. 1728	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal, Federal

Additional Information: INS No. 1683-94; and INS No. 1728-95.

Agency Contact: Lydia St. John-Mellado, Investigator, Department of Justice, Immigration and Naturalization Service, Room 1000, Investigations Division, 425 I Street NW, Washington, DC 20536
Phone: 202 514-5097

RIN: 1115–AD86

1655. ESTABLISHING CRITERIA FOR DETERMINING COUNTRIES WHOSE CITIZENS ARE INELIGIBLE FOR THE TRANSIT WITHOUT VISA (TWOV) PROGRAM

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 CFR 2; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1225; 8 USC 1226; 8 USC 1228; 8 USC 1252; 8 USC 1221; 8 USC 1229

CFR Citation: 8 CFR 212; 8 CFR 234.2

Legal Deadline: None

Abstract: This rule proposes to amend Service regulations by removing the list of those countries that are ineligible to participate in the TWOV program from the regulation. In its place, the Service proposes to publish and update the list of countries that are ineligible to participate in the TWOV program by Federal Register notice. This rule also sets forth a non-exhaustive list of factors that may be considered in determining those countries whose citizens or nationals are ineligible countries and provides for a regular review of all countries to determine their eligibility for participation in the TWOV program. The TWOV program allows the Service, acting jointly with the Department of State, to waive the passport and visa requirement for aliens from certain countries who request immediate and continuous transit privileges through the United States.

Timetable:

Action	Date	FR Cite
NPRM	01/05/01	66 FR 1053
NPRM Comment Period End	03/05/01	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: INS No. 1696-95

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7499
Email: robert.f.hutnick@usdoj.gov

RIN: 1115–AD96

1656. PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A U.S. CITIZEN OR AS A PREFERENCE IMMIGRANT; SELF-PETITIONING FOR CERTAIN BATTERED OR ABUSED ALIEN SPOUSES AND CHILDREN

Priority: Other Significant

Legal Authority: 8 USC 1101; PL 103-322; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1182; 8 USC 1186a; 8 USC 1255

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: The INS published an interim rule on this subject in 1996. This final rule allows battered and abused spouses and children of United States citizens and lawful permanent residents to petition for immigrant classification. The consent of the abuser would not be required. The final rule uses the term abused to mean either battered or subjected to extreme cruelty.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/26/96	61 FR 13061
Interim Final Rule Effective	03/26/96	
Interim Final Rule Comment Period End	05/28/96	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: INS No. 1705-95.

Agency Contact: Laura M. Dawkins, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3040, 425 I Street NW, Washington, DC 20536
Phone: 202 307-4754
Email: laura.dawkins@usdoj.gov

RIN: 1115–AE04

1657. CONDITIONS ON NONIMMIGRANT STATUS; DISCLOSURE OF INFORMATION

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186A; 8 USC 1187; 8 USC 1221; 8 USC 1281; 8 USC 1282

CFR Citation: 8 CFR 214

Legal Deadline: None

Abstract: This rule removes the current regulatory language conditioning an alien's nonimmigrant status on his or her providing full and truthful information requested by the INS, regardless of the requested information's materiality. This rule would clarify that the nonimmigrant's stay is conditioned on, among other things, the provision of all information deemed necessary to ensure that the alien has acquired, and is maintaining, lawful nonimmigrant status during the entire period of his or her stay, or is eligible to receive any other benefit under the INA.

Timetable:

Action	Date	FR Cite
NPRM	06/14/96	61 FR 30188

Action	Date	FR Cite
NPRM Comment Period End	08/13/96	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1732-95

Agency Contact: Michael Hardin, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-3048

RIN: 1115–AE17

1658. REGULATIONS RELATING TO TEMPORARY PROTECTED STATUS

Priority: Other Significant

Legal Authority: 8 USC 1103; 5 USC 552; 5 USC 552a; 8 USC 1201; 28 USC 509; 31 USC 9701; 8 USC 1254a; 8 USC 1254a note; 8 USC 1362; 8 USC 1324a; 8 USC 1101; 8 USC 1303; 8 CFR 2; 5 USC 301

CFR Citation: 8 CFR 103; 8 CFR 244; 8 CFR 299

Legal Deadline: None

Abstract: Regulations published under this RIN implement provisions of the Immigration and Nationality Act as established by section 302 of the Immigration Act of 1990, Pub. L. 101-649, which allow for the establishment and implementation of Temporary Protected Status (TPS). Currently, nationals of countries have been accorded TPS Status through the publication of separate Federal Register Notices as listed in this RIN.

Previously published TPS regulations were cited by RIN 1115-AC30.

Current regulatory actions:

INS No. 1608 provides for exceptions to deadlines for registering for TPS and updates the application process.

INS No. 1612 provides for the removal of obsolete TPS language.

INS No. 2229 terminates TPS for Sierra Leone

Timetable:

Action	Date	FR Cite
TPS Final Rule (INS No. 1612) Removal of Obsolete Sections Covering TPS for Salvadorans	09/10/96	61 FR 47667
TPS Notice (INS No. 1832-97) Extension and Redesignation of Liberia	04/07/97	62 FR 16608
TPS Notice (INS No. 1853-97) Extension and Termination of Rwanda Eff. 06/07/97	06/19/97	62 FR 33442
TPS Notice (INS No. 1862-97) Extension of Bosnia-Herzegovina	08/01/97	62 FR 41420
TPS Notice (INS No. 1863-97) Extension of Somalia	08/01/97	62 FR 41421
TPS Notice (INS No. 1878-97) TPS Designation of Montserrat	08/28/97	62 FR 45685
TPS Notice (INS No. 1775-96) TPS Designation of Burundi	11/04/97	62 FR 59735
TPS Notice (INS No. 1877-97) TPS Designation of Sierra Leone	11/04/97	62 FR 59736
TPS Notice (INS No. 1780-97) TPS Designation of Sudan	11/04/97	62 FR 59737
TPS Notice (INS No. 1910-98) Termination of Designation of Liberia	03/31/98	63 FR 15437
TPS Notice (INS No. 1929-98) TPS Designation of Province	06/09/98	63 FR 31527
TPS Notice (INS No. 1945-98) Extension of Designation of Somalia	09/28/98	63 FR 51602
TPS Notice (INS No. 1953-98) Redesignation of Liberia	09/29/98	63 FR 51958
TPS Notice (INS No. 1957-98) TPS Extension of Designation of Burundi	11/03/98	63 FR 59334
TPS Notice (INS No. 1958-98) TPS Extension of Designation of Sierra Leone	11/03/98	63 FR 59336
TPS Notice (INS No. 1959-98) Extension of Designation of Sudan	11/03/98	63 FR 59337
Final Action, Temporary Protected Status, Exception to Registration Deadlines	11/16/98	63 FR 63593
TPS Notice (INS No. 1964-98) TPS Designation of Honduras	01/05/99	64 FR 524
TPS Notice (INS No. 1965-98) TPS Designation of Nicaragua	01/05/99	64 FR 526
TPS Notice (INS No. 1960-98) TPS Designation of Guinea-Bissau	03/11/99	64 FR 12181
TPS Notice (INS No. 1986-99) TPS Extension and Redesignation of the Province of Kosovo	06/08/99	64 FR 30542
TPS Notice (INS No. 1953-99) Termination of TPS Designation of Liberia	07/30/99	64 FR 41463
TPS Notice (INS No. 2009-99) Extension of the TPS Registration Period for Hondurans and Nicaraguans	08/06/99	64 FR 42991
TPS Notice (INS No. 2006-99) Extension of TPS Designation of Bosnia-Herzegovina	08/11/99	64 FR 43720
TPS Notice (INS No. 2010-99) Extension of TPS Designation of Montserrat	09/02/99	64 FR 48190
TPS Notice (INS No. 2015-99) Extension of TPS Designation of Somalia	09/13/99	64 FR 49511
TPS Notice (INS No. 2022-99) Extension and Redesignation of Burundi Under Temporary Protected Status	11/09/99	64 FR 61123
TPS Notice (INS No. 2024-99) Extension and Redesignation of Sierra Leone Under Temporary Protected S	11/09/99	64 FR 61125
TPS Notice (INS No. 2023-99) Extension and Redesignation of Sudan Under the Temporary Protected Stat	11/09/99	64 FR 61128

TPS Notice (INS No. 2043-00) Extension and Termination of Designation of Guinea-Bissau Under TPS	03/20/00	65 FR 15016
TPS Notice (INS No. 2044-00) Designation of Angola Under TPS	03/29/00	65 FR 16634
TPS Notice (INS No. 2065-00) Extension of Designation Hondurans	05/11/00	65 FR 30438
TPS Notice (INS No. 2064-00) Extension of Nicaragua Designation	05/11/00	65 FR 30440
TPS Notice (INS No. 2066-00) Termination of the Kosovo...	05/23/00	65 FR 33356
TPS Notice (INS No. 2065R-00) Extension of Re-Registration for Hondurans	06/09/00	65 FR 36719
TPS Notice (INS No. 2064R-00) Extension of Re-Registration for Nicaraguans	06/09/00	65 FR 36729
TPS Notice (INS No. 2079-00) Termination of Bosnia-Herzegovina	08/30/00	65 FR 52789
TPS Notice (INS No. 2087-00) Extension of Designation of Montserrat Under Temporary Protected Status	10/02/00	65 FR 58806
TPS Notice (INS No. 2096-00) Extension of Designation of Burundi	11/09/00	65 FR 67404
TPS Notice (INS No. 2095-00) Extension of Designation of Sierra Leone	11/09/00	65 FR 67405
TPS Notice (INS No. 2094-00) Extension of Designation of Sudan	11/09/00	65 FR 67407
Correction TPS Notice (INS No.2090-00) Extension of Designation of Somalia	12/08/00	65 FR 69789
TPS Notice (INS 2125-01) Designation of El Salvador	03/09/01	66 FR 14214
TPS Notice (INS 2114-01) Extension and Redesignation of Angola	04/05/01	66 FR 18111
TPS Notice (INS 2135-01) Extension of Designation of Honduras under TPS	05/08/01	66 FR 23269
TPS Notice (INS 2136-01) Extension of Designation of Nicaragua under TPS	05/08/01	66 FR 23271
TPS Notice (INS 2148-01) Automatic Ext. of Work Authorization for Hondurans & Nicaraguans Under TPS	07/03/01	66 FR 35270
TPS Notice (INS 2146-01) Extension of the Designation of Montserrat under TPS	08/03/01	66 FR 40834
TPS Notice (INS 2162-01) Extension of Designation of Burundi under TPS	08/31/01	66 FR 46027
TPS Notice (INS 2163-01) Extension of the Designation of Sierra Leone under TPS	08/31/01	66 FR 46029
TPS Notice (INS 2164-01) Extension of the Designation of Sudan under TPS	08/31/01	66 FR 46031
TPS Notice (INS 2151-01) Extension of Redesignation of Somalia under TPS	09/04/01	66 FR 46288
TPS Notice (INS 2114-01) Extension of the Designation of Angola under TPS	02/01/02	67 FR 4997
TPS Notice (INS No. 2212-02) Extension of Designation of El Salvador	07/11/02	67 FR 46000
TPS Notice (INS No. 2209-02) Extension of Designation of Montserrat	07/17/02	67 FR 47002
TPS Notice (INS 2225-02) Extension of Designation of Burundi under TPS	08/30/02	67 FR 55875
TPS Notice (INS 2226-02) Extension of the Designation of Sudan under TPS	08/30/02	67 FR 55877
TPS Notice (INS 2235-02) Designation of Liberia under TPS	10/01/02	67 FR 61664
TPS Notice (INS 2237-02) Extension of TPS for Sierra Leone	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: The Attorney General may designate other countries for TPS.

INS Nos. 1608, 1612, 1832-97, 1853-97 and 1877-97

INS No. 1608 issued as an interim rule on 11/5/93 at 58 FR 58935

Agency Contact: Elizabeth N. Lee, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
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Charles Adkins-Blanch, General Counsel, Executive Office for Immgration Review, Department of Justice, Immigration and Naturalization Service, Suite 2400, 2600 Skyline Tower, 5106 Leesburg Pike, Falls Church, VA 22041
Phone: 703 305-0470

RIN: 1115–AE26

1659. INSPECTION AND EXPEDITED REMOVAL OF ALIENS; DETENTION AND REMOVAL OF ALIENS; CONDUCT OF REMOVAL PROCEEDINGS

Priority: Other Significant

Legal Authority: 5 USC 301; 8 USC 1182; 8 USC 1183; 8 USC 1184; 8 USC 1185; 8 USC 1186a; 8 USC 1187; 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1154; 8 USC 1181

CFR Citation: 8 CFR 1; 8 CFR 213; 8 CFR 214; 8 CFR 216; 8 CFR 217; 8 CFR 221; 8 CFR 223; 8 CFR 3; 8 CFR 103; 8 CFR 204; 8 CFR 207; 8 CFR 209; 8 CFR 211; 8 CFR 212; ...

Legal Deadline: Other, Statutory, March 1, 1997, The statute requires the Attorney General to promulgate implementing regulations by March 1, 1997.

Abstract: Many of the provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) became effective April 1, 1997. Some provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) that were not superseded by IIRIRA became effective November 1, 1996. On March 6, 1997, INS and Executive Office of Immigration Review

(EOIR) published an interim rule revising the asylum process; providing a mechanism for the determination and review of certain applicants who demonstrate a credible fear of persecution if returned to their own country; defining the inspection and admission process including new expedited removal procedures for aliens attempting to enter the United States through fraud or misrepresentation by apprehension, detention, and removal of aliens; addressing conduct of removal proceedings; and revising many other sections of the regulations to conform with the new laws. On December 6, 2000, INS published the rule "Asylum Procedures" (INS No. 1865-97; RIN 1115-AE93) which finalized the asylum portions of this interim rule. INS still intends to publish a final rule under RIN 1115-AE47 to finalize the portions of this rulemaking relating to inspection and expedited removal of aliens, detention and deportation and removal of aliens, and the conduct of removal proceedings.

Timetable:

Action	Date	FR Cite
Final Action-INS No. 1669-94	03/22/96	61 FR 11717
NPRM-INS No. 1788-96 Comment Period End 2/3/97	01/03/97	62 FR 444
Interim Final Rule-INS No. 1788-96 Comment Period End 7/15/97	03/06/97	62 FR 10312
Interim Final Rule Correction (Effective 04/01/97)	04/01/97	62 FR 15362
Interim Final Rule-INS No. 1788-96 Correction	04/09/97	62 FR 17048
Final Rule-INS No. 1920-98	07/22/98	63 FR 39217
Final Action INS No. 1788-96	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1788-96 (Final Action)

CFR CITATIONS CONT: 8 CFR 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 248, 251, 252, 253, 274a, 286, 287, 292, 299, 316, 318, and 329.

LEGAL AUTHORITY CONT: 8 USC 1186b, 1187, 1201, 1203, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1251, 1252, 1252 note, 1252a, 1252b, 1253, 1254, 1254a note, 1255, 1256, 1258, 1259, 1281, 1282, 1304, 1324a, 1330, 1356, 1357, 1362, 1429, 1440, 1443, 1447; 28 USC 509, 510, 1746; 31 USC 9701; 3 CFR, 1982 Comp, p 166; 8 CFR part 2.

INS Rule No. 1920-98 makes a correction to the services regulations that govern the documentary requirements for immigrants and corresponding waivers. This rule relates to changes promulgated by INS 1169-94 and INS No. 1788-96.

INS Rule No. 1865-97, AG Order No. 2340-2000, Final Rule, Asylum Procedures published on December 6, 2000, at 65 FR 76121, amended portions of the title III IIRIRA governing cases in which an applicant has established past persecution or in which an applicant may be able to avoid persecution in a particular country by relocating to another area of that country.

Agency Contact: Linda Loveless, Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7489

Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041
Phone: 703 305-0470

RIN: 1115–AE47

1660. AGREEMENT PROMISING NON-DEPORTATION OR OTHER IMMIGRATION BENEFITS

Priority: Other Significant

Legal Authority: 5 USC 301; 28 USC 509; 28 USC 510; 28 USC 515; 28 USC 516; 28 USC 517; 28 USC 518; 28 USC 519

CFR Citation: 28 CFR 0.197

Legal Deadline: None

Abstract: This rule will finalize a 1996 interim rule that requires Federal prosecutors, law enforcement agencies, and other officials to obtain written consent from the Immigration and Naturalization Service when entering into a plea agreement, cooperation agreement, or similar agreement promising an alien favorable treatment by the Service. This rule ensures that favorable treatment under the immigration laws is extended only after a full consideration of its effect on overall immigration enforcement, alleviates confusion over the authority to enforce the immigration laws, and prevents the Service from being bound by agreements undertaken without its knowledge and approval. The interim rule codified a long-standing position of the Department of Justice.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/13/96	61 FR 48405
Interim Final Rule Comment Period End	11/12/96	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1791-96

Agency Contact: Joan S. Lieberman, Attorney, Office of General Counsel, Department of Justice, Immigration and Naturalization Service, Room 6100, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2895

RIN: 1115–AE50

1661. DEFINITION OF THE TERM "LAWFULLY PRESENT" FOR PURPOSES OF ELIGIBILITY FOR PUBLIC BENEFITS

Priority: Other Significant

Legal Authority: 5 USC 552; 31 USC 9701; EO 12356; 47 FR 14874 to 15557; 3 CFR 1982 comp; 8 CFR 2; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1201; 8 USC 1252 note; 8 USC 1252B; 8 USC 1304; 8 USC 1356

CFR Citation: 8 CFR 103

Legal Deadline: None

Abstract: Section 401(a) of the Personal Responsibility and Work Reconciliation Act of 1996 (PRWORA) provides that; with limited exceptions, only qualified aliens, as defined under section 431, may receive certain Federal public benefits. Section 401(b)(2) provides an exception which allows aliens who are "lawfully present in the United States" as determined by the Attorney General to receive social security benefits under title II of the Social Security Act. PRWORA, and other laws, use the term "lawfully present" in other benefit-related contexts as well.

The interim final rule published September 6, 1996, amended the Immigration and Naturalization Service (Service) regulations to define the term "an alien who is lawfully present in the United States" so that the Social Security Administration may determine which aliens are eligible for benefits under title II of the Social Security Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/06/96	61 FR 47039
Interim Final Rule Comment Period End	11/05/96	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Federal

Additional Information: INS No. 1792-96

Agency Contact: Michael Hardin, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-3048

RIN: 1115–AE51

1662. AFFIDAVIT OF SUPPORT ON BEHALF OF IMMIGRANTS

Priority: Other Significant

Legal Authority: 8 USC 1183a; PL 104-208; PL 104-193; 8 CFR 2

CFR Citation: 8 CFR 213a; 8 CFR 299

Legal Deadline: None

Abstract: This rule amends the INS regulations by establishing that an individual (the sponsor) who files an affidavit of support under section 213A of the Immigration and Nationality Act (INA) on behalf of an intending immigrant incurs an obligation that may be enforced by a civil action. This rule also specifies the requirements that Federal, State, or local agencies or private entities must meet to request reimbursement from the sponsor for provision of means-tested public benefits and provides procedures for imposing the civil penalty provided for under section 213A of the INA, if the sponsor fails to give notice of any change of address. This rule is necessary to ensure that sponsors of aliens meet their obligations under section 213A of the INA.

Timetable:

Action	Date	FR Cite
Interim Final Rule-INS No. 1807-96;	10/20/97	62 FR 52346
Interim Final Rule Comment Period End	02/07/98	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1807-96; PL 104-208, title IV; and PL 104-193, title IV

Agency Contact: Lisa Roney, Policy Analyst, Office of Policy and Planning, Department of Justice, Immigration and Naturalization Service, Room 6052, 425 I Street NW, Washington, DC 20536
Phone: 202 514-3242

Michael Hardin, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-3048

RIN: 1115–AE58

1663. SUSPENSION OF PRIVILEGE TO TRANSPORT ALIENS TO THE UNITED STATES

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1252; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1225; 8 USC 1226; 8 USC 1227

CFR Citation: 8 CFR 103; 8 CFR 273

Legal Deadline: None

Abstract: The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) added a provision to the Immigration and Nationality Act that allows INS to suspend a commercial airline's privilege to transport aliens to the United States if the carrier has a record of bringing in aliens who have fraudulent documents. After consultation with other interested Government agencies, INS is proposing to implement appropriate standards and procedures governing the use of this power to suspend a carrier's privilege to transport aliens to the United States.

Timetable:

Action	Date	FR Cite
NPRM	10/23/98	63 FR 56869
NPRM Comment Period End	12/22/98	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: This rule required coordination with several other Government agencies. INS No. 1809-96.

Agency Contact: Michael D. Jones, Acting Director, National Fines Office of Inspections, Department of Justice, Immigration and Naturalization Service, Suite 425, 1525 Wilson Boulevard, Arlington, VA 22209
Phone: 202 305-7018

RIN: 1115–AE59

1664. LIMITING LIABILITY FOR CERTAIN TECHNICAL AND PROCEDURAL VIOLATIONS OF PAPERWORK REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1324a; PL 104-208

CFR Citation: 8 CFR 274a

Legal Deadline: None

Abstract: This rule will implement section 411 of IIRIRA which allows employers that have made a good faith attempt to comply with a particular employment verification requirement to correct technical or procedural failures to meet the requirement before such failures are deemed to be violations of the Act. This rule will explain the good faith rule, define the term technical or procedural failure to meet such requirement, and explain how an employer can correct technical or procedural failures.

Timetable:

Action	Date	FR Cite
NPRM	04/07/98	63 FR 16909
NPRM Comment Period End	06/08/98	
Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: INS No. 1819-96 and Public Law 104-208, title IV.

Agency Contact: Marguerite Przbylski Kleczek, Attorney, Office of General Counsel, Department of Justice, Immigration and Naturalization Service, Room 6100, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2895

Related RIN: Related To 1115-AE21

RIN: 1115–AE70

1665. IMPLEMENTATION OF HERNANDEZ V. RENO SETTLEMENT AGREEMENT; CERTAIN ALIENS ELIGIBLE FOR FAMILY UNITY BENEFITS AFTER SPONSORING FAMILY MEMBER'S NATURALIZATION

Priority: Other Significant

Legal Authority: 8 USC 1225a note; PL 104-208

CFR Citation: 8 CFR 236.23

Legal Deadline: None

Abstract: On September 30, 1996, the President signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The INS will publish a regulation implementing a new basis of ineligibility for Family Unity benefits for certain juvenile offenders.

Timetable:

Action	Date	FR Cite
Interim Final Rule-INS No. 1823-96	07/14/00	65 FR 43677
Interim Final Rule Comment Period End	09/12/00	
Final Rule	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1823-96; PL 104-208, title III, section 38; and this regulation will affect 8 CFR 242.5 that will be renumbered 8 CFR 236.25.

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Phone: 202 307-2353
Email: elizabeth.n.lee@usdoj.gov

RIN: 1115–AE72

1666. REGULATIONS PERTAINING TO BATTERED ALIENS AND TO MAIL ORDER BRIDE BUSINESSES, AS MANDATED BY IIRIRA

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1641(c); PL 104-208

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) included a number of provisions relating to battered aliens and to mail order bride businesses. The INS anticipates rulemaking in the following areas:

INS document No. 1845-97 is necessitated by section 501 of IIRIRA, which provides certain types of public benefits for those aliens who have made a prima facie case for eligibility pursuant to the INS interim rule on self-petitions by battered aliens, published at 61 FR 13061 (March 26, 1995; INS No. 1705-95). This new rule will define what constitutes a prima facie case.

INS document No. 1838-97, an advance notice of proposed rulemaking, is to solicit public input into the regulation of certain functions of the international matchmaking industry (also referred to as "mail order bride businesses"), as required by section 652 of IIRIRA, was published on 7/16/97 (62 FR 38041).

The INS plans to publish a proposed rule to require international matchmaking organizations doing business in the United States to provide certain information to any person recruited for introductions to clients.

Timetable:

Action	Date	FR Cite
ANPRM-INS No. 1838-97 Comments Due 09/15/97	07/16/97	62 FR 38041
Interim Final Rule-INS No. 1845-97	11/13/97	62 FR 60769
Interim Final Rule Comment Period End-INS 1845-97	01/12/98	
Final Action-INS No. 1845	12/00/02	
NPRM-INS No. 1838	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No.1838-97. The Service submitted its report on international matchmaking organizations which can be found on the INS web site. The Service is currently preparing the informational brochures which the organizations will be required to provide to women recruits.

Agency Contact: Laura M. Dawkins, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3040, 425 I Street NW, Washington, DC 20536
Phone: 202 307-4754
Email: laura.dawkins@usdoj.gov

RIN: 1115–AE77

1667. ESTABLISHMENT OF PREINSPECTED AUTOMATED LANE (PAL) PROGRAM AT IMMIGRATION AND NATURALIZATION SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1182; 8 USC 1225; 8 USC 1226; 8 USC 1251; 8 USC 1252; 8 USC 1357; 8 CFR 2

CFR Citation: 8 CFR 287; 8 CFR 299

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service regulations by establishing a Preinspected Automated Lane (PAL) Program for the use of eligible persons and vehicles at immigration checkpoints within the United States. This rule will facilitate the passage of people and vehicles through INS checkpoints while safeguarding the integrity of law enforcement objectives at the checkpoints.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/18/97	62 FR 19024
Interim Final Rule Comment Period End	06/17/97	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1830-97

Agency Contact: Rudolph J. Miranda, Chief Patrol Agent, Department of Justice, Immigration and Naturalization Service, Room 4226, 425 I Street NW, Washington, DC 20536
Phone: 202 514-3072

RIN: 1115–AE80

1668. REQUIRING ALIENS ORDERED REMOVED FROM THE UNITED STATES TO SURRENDER TO THE IMMIGRATION AND NATURALIZATION SERVICE FOR REMOVAL

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1231; 8 USC 1253

CFR Citation: 8 CFR 240.13; 8 CFR 240.14; 8 CFR 240.15; 8 CFR 240.16; 8 CFR 240.17; 8 CFR 240.18; 8 CFR 240.19

Legal Deadline: None

Abstract: This rule requires aliens subject to a final order of removal to surrender to the INS. This rule also establishes procedures for surrender and bars persons violating these procedures from obtaining discretionary immigration benefits.

Timetable:

Action	Date	FR Cite
NPRM	09/04/98	63 FR 47205
NPRM Comment Period End	11/03/98	
Supplemental NPRM	05/09/02	67 FR 31157
Supplemental NPRM Comment Period End	06/10/02	
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lisa Batey, Associate General Counsel, Department of Justice, Immigration and Naturalization Service, Room 6100, 425 I Street NW, Washington, DC 20536
Phone: 503 353-1825

RIN: 1115–AE82

1669. EARLY RELEASE FOR REMOVAL OF CRIMINAL ALIENS IN STATE CUSTODY FOR NONVIOLENT OFFENSES

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1223; 8 USC 1227; 8 USC 1251; 8 USC 1253; 8 USC 1255; 8 USC 1330; 8 CFR 2

CFR Citation: 8 CFR 241

Legal Deadline: None

Abstract: The final rule will establish an administrative process whereby criminal aliens in State custody convicted of nonviolent offenses may be removed prior to completion of their sentence of imprisonment. The rule will implement the authority contemplated by Congress to enhance the ability of the United States to remove criminal aliens.

Timetable:

Action	Date	FR Cite
NPRM-INS No. 1848-97	07/12/99	64 FR 37461
NPRM Comment Period End	09/10/99	
Final Action-INS No. 1848-97	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Federal

Additional Information: INS No.1848-97

Agency Contact: Joan S. Lieberman, Attorney, Office of General Counsel, Department of Justice, Immigration and Naturalization Service, Room 6100, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2895

Ron Dodson, Supervisory Special Agent, Headquarters Investigations, Department of Justice, Immigration and Naturalization Service, Room 1000, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7310

RIN: 1115–AE83

1670. AMENDMENT OF THE REGULATORY DEFINITION OF ARRIVING ALIEN

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 CFR 2

CFR Citation: 8 CFR 1

Legal Deadline: None

Abstract: This rule amends the INS regulations by changing the regulatory definition of an arriving alien. Under section 235(b)(1)(A)(i) of the Immigration and Nationality Act (Act), which was effective on April 1, 1997, certain arriving aliens are subject to expedited removal procedures. The existing regulatory definition of arriving aliens includes parolees. As a matter of policy, the Department has decided that it is appropriate to exempt from the new expedited removal procedures aliens who were paroled into the United States before April 1997. This rule clarifies that these aliens as well as certain other aliens who were paroled into the United States pursuant to advance parole, will not be subjected to expedited removal upon termination at parole. The rule also makes several changes in the ordering of 1.1(q) to use language that is clearer and more consistent with the wording of the statute.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/20/98	63 FR 19382
Interim Final Rule Comment Period End	06/19/98	
Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Re: INS No. 1868-97

Agency Contact: Jerry Liu, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 514-3410

RIN: 1115–AE87

1671. ADJUSTMENT OF STATUS, CONTINUED VALIDITY OF NONIMMIGRANT STATUS, AND UNEXPIRED EMPLOYMENT AUTHORIZATION FOR APPLICANTS MAINTAINING NONIMMIGRANT H OR L STATUS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1282; 8 CFR 2; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186a; 8 USC 1187; 8 USC 1221; 8 USC 1255; 8 USC 1281

CFR Citation: 8 CFR 214; 8 CFR 245

Legal Deadline: None

Abstract: Over the last several years, the Service has issued numerous policy statements regarding its position on employment authorization, advance parole, and extension of nonimmigrant status for certain skilled nonimmigrant workers who have filed for adjustment to permanent resident status. This interim final rule: (1) Codified existing

Service policy statements by incorporating them into the Service's regulations and (2) eliminated the requirement for service permission for overseas travel for adjustment applicants who are maintaining H-1 or L nonimmigrant status. The Service will be publishing a final rule in response to public comments.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/01/99	64 FR 29208
Interim Final Rule Comment Period End	08/02/99	
Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1881-97

Agency Contact: Michael Valverde, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2763
Email: michael.valverde@usdoj.gov

RIN: 1115–AE96

1672. VERIFICATION OF ELIGIBILITY FOR PUBLIC BENEFITS

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1642

CFR Citation: 8 CFR 104

Legal Deadline: NPRM, Statutory, November 3, 1997.
Final, Statutory, February 22, 1998, Statutory deadline to promulgate regulations for State and local public benefits was previously 11/03/98. Deadline for regulations for Federal public benefits was 02/22/98.

Abstract: This regulatory action requires entities (other than nonprofit charitable organizations) providing Federal public benefits (with certain exceptions) to verify by examining documents and using an INS automated verification system that alien applicants are eligible for the benefits under Federal benefit reform legislation. This rule also sets forth provisions by which State or local governments can verify whether aliens applying for State or local public benefits are eligible for such benefits under Federal laws. In addition, the rule establishes procedures for verifying the U.S. nationality of individuals applying for benefits in a fair and nondiscriminatory manner.

The Interim Verification Guidelines were published as a notice on 11/17/97 at 62 FR 61344. The guidelines set forth procedures that benefit-granting agencies can use to verify U.S. citizens, non-citizen nationals, and qualified aliens for eligibility under title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) prior to issuance of final regulations.

The proposed rule for the Verification of Eligibility for Public Benefits was published on 8/04/98 at 63 FR 41662. The changes made in response to the comments received on the proposed rule were significant enough and dealt with complex and important issues that another opportunity to comment is warranted. The next version of the rule will be issued as an interim rule, rather than a final rule, in order to implement the statutory directive to promulgate verification regulations and start the subsequent 2-year period in which Federal public benefit-granting agencies must come into compliance. The interim rule is in the concurrence process and has not yet been published.

Timetable:

Action	Date	FR Cite
NPRM-INS No. 1902-98	08/04/98	63 FR 41662
NPRM Comment Period End	10/05/98	
Interim Final Rule-INS No. 1902-98	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

Additional Information: INS No. 1902-98 should be referenced for any inquiries concerning this rulemaking action.

Agency Contact: Phillip Busch, Senior Counsel, Department of Justice, Immigration and Naturalization Service, 6100, Office of General Counsel, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2895

RIN: 1115–AE99

1673. FINGERPRINTING APPLICANTS AND PETITIONERS FOR IMMIGRATION BENEFITS; ESTABLISHING A FEE FOR FINGERPRINTING BY THE SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1201; 8 USC 1252 note; 8 USC 1252b; 8 USC 1304; 8 USC 1356

CFR Citation: 8 CFR 103; 8 CFR 299; 8 CFR 316; 8 CFR 335

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service regulations relating to fingerprinting applicants and petitioners for benefits under the Immigration and Nationality Act by: Canceling the Designated Fingerprinting Service program; requiring applicants and petitioners for benefits to be fingerprinted at either a Service Office, a State or local law enforcement agency, or at a United States consular or military office; establishing a fee for fingerprinting by the Service; and requiring confirmation from the Federal Bureau of Investigation (FBI) that a full criminal background check has been completed before adjudication of a naturalization application is completed.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/17/98	63 FR 12979
Interim Final Rule Effective	03/29/98	
Interim Final Rule Correction	04/09/98	63 FR 17489
Interim Final Rule Comment Period End	05/18/98	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Additional Information: INS No. 1891-97

Agency Contact: Pamela T. Wallace, Adjudications Officer, Immigration Services Division, Department of Justice, Immigration and Naturalization Service, Room 980, 801 I Street NW, Washington, DC 20536
Phone: 202 514-9475

RIN: 1115–AF03

1674. PROCESSING, DETENTION, AND RELEASE OF JUVENILES

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1182; 8 USC 1224; 8 USC 1225; 8 USC 1226; 8 USC 1227; 8 USC 1362

CFR Citation: 8 CFR 236.3

Legal Deadline: Final, Judicial, July 31, 1998.
The court-approved settlement agreement in Flores v. Reno (C.D. Cal.) required INS to initiate action to publish regulations in July 1998. However, the changes brought by AEDPA and IIRIRA delayed issuance of the regulations. The INS later re-published the rule for comments.

Abstract: The rule amends the Immigration and Naturalization Service regulations by establishing the procedures for processing alien juveniles from custody and the detention of unreleased juveniles in State-licensed programs and detention facilities. This rule also governs the transportation and transfer of juveniles in Service custody.

Timetable:

Action	Date	FR Cite
NPRM-INS No. 1906-98	07/24/98	63 FR 39759
NPRM Comment Period End	09/22/98	
NPRM Comment Period Reopened	01/14/02	67 FR 1670
Second NPRM Comment Period End	03/15/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1906-98.

Agency Contact: Mark A. Matese, Director of Juvenile Affairs, Department of Justice, Immigration and Naturalization Service, 8th Floor, Office of Field Operations, 801 I Street NW, Washington, DC 20536
Phone: 202 514-2162

RIN: 1115–AF05

1675. SUSPENSION OF DEPORTATION AND SPECIAL RULE CANCELLATION OF REMOVAL FOR CERTAIN NATIONALS OF GUATEMALA, EL SALVADOR, AND FORMER SOVIET BLOC COUNTRIES

Priority: Other Significant

Legal Authority: 5 USC 552; 8 USC 1225; 8 USC 1226; 8 USC 1227; 8 USC 1251; 8 USC 1252 note; 8 USC 1252a; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1158; 8 USC 1182; 8 USC 1186a; 8 USC 1224

CFR Citation: 8 CFR 103; 8 CFR 208; 8 CFR 240; 8 CFR 246; 8 CFR 274a;

Legal Deadline: None

Abstract: This rule implements section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), enacted as title II of Public Law No. 105-100, 111 Stat. 2160, 2193 (1997) (as amended by Technical Corrections to the Nicaraguan Adjustment and Central American Relief Act (NACARA), Public Law 105-139, Stat. 2644 (1997)). Section 203 of NACARA provides that certain Guatemalans, Salvadorans, and nationals of former Soviet Bloc countries are eligible to apply for cancellation of removal under the standards for suspension of deportation similar to those that existed prior to enactment of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). The rule establishes the authority of INS asylum officers to adjudicate certain applications under section 203 of NACARA, provides application and adjudication procedures, identifies factors and standards relevant to eligibility, and establishes a rebuttable presumption of extreme hardship for certain NACARA beneficiaries.

Timetable:

Action	Date	FR Cite
NPRM-INS No. 1915-98	11/24/98	63 FR 64895
NPRM Comment Period End-INS No. 1915-98	01/25/99	
Interim Rule-INS No. 1915-98	05/21/99	64 FR 27856
Interim Rule Comment Period End	07/20/99	
Final Rule	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: INS No. 1915-98

Agency Contact: Joanna Ruppel, Supervisor for Asylum Operations, International Affairs, Department of Justice, Immigration and Naturalization Service, 3rd Floor, 111 Massachusetts Avenue NW, Washington, DC 20536
Phone: 202 305-2663

RIN: 1115–AF14

1676. ELIMINATION OF IMMIGRATION AND NATURALIZATION SERVICE-ISSUED MEXICAN AND CANADIAN BORDER CROSSING CARDS

Priority: Other Significant

Legal Authority: 5 USC 552; 8 USC 1228; 8 USC 1252; 8 USC 1304; 8 USC 1356; 8 USC 1304; 8 USC 1356; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1201; 8 USC 1225; 8 USC 1226; 8 USC 1227

CFR Citation: 8 CFR 103; 8 CFR 212; 8 CFR 214; 8 CFR 235; 8 CFR 247; 8 CFR 264; 8 CFR 286; 8 CFR 299

Legal Deadline: Final, Statutory, October 1, 2002.

Abstract: This rule amends the Immigration and Naturalization Service (Service) regulations to eliminate the use of Form I-175, Application for Nonresident Alien Canadian Border Crossing Card, and Form I-190, Application for Nonresident Alien Mexican Border Crossing Card. It also terminates the production of Form I-185, Nonresident Alien Canadian Border Crossing Card, and Form I-586, Nonresident Alien Mexican Border Crossing Card. In addition, this rule prohibits the use of Form I-186 (previous version of Mexican Border Crossing Card), Form I-185 and Form I-586 Border Crossing Cards (BCCs) after September 30, 2002, for required use of a card containing a machine readable biometric identifier for entry (such as the fingerprint or handprint of the alien). Under the provisions of this rulemaking, an alien seeking entry into the United States by presentation of a BCC must complete a biometric verification upon each entry.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	
Interim Final Rule Comment Period End	01/00/03	

DOJ—INS

Final Rule Stage

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1931-98

Agency Contact: Michael J. Flemmi, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 305-9247

RIN: 1115–AF24

1677. FILING OF PROPOSALS FOR DESIGNATION AS A REGIONAL CENTER APPROVED TO PARTICIPATE IN THE IMMIGRANT INVESTOR PILOT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1154; 8 USC 1182; 8 USC 1186a

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: The regulation changes the location for the filing and adjudication of proposals to participate in the Immigrant Investor Pilot Program from Headquarters, Adjudication, to the Texas and California Service Centers. This change is necessary to ensure the uniform and effective adjudication of these complex proposals related to economic development, export trade, and job creation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	
Interim Final Rule Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: INS No. 1944-98

Agency Contact: Maurice R. Berez, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 353-8177

RIN: 1115–AF27

1678. NONIMMIGRANT VISA EXEMPTION FOR NATIONALS OF THE BRITISH VIRGIN ISLANDS ENTERING THE UNITED STATES THROUGH ST. THOMAS, UNITED STATES VIRGIN ISLANDS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1252; 8 USC 1102; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1225; 8 USC 1226; 8 USC 1227; 8 USC 1228

CFR Citation: 8 CFR 212

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service's regulations to allow nonimmigrant visitors for business or pleasure who are nationals of the British Virgin Islands to apply for admission to the United States without a visa at the ports-of-entry of St. Thomas, United States Virgin Islands. Since visas are no longer issued from the British Virgin Islands by the Department of State, all persons needing a nonimmigrant visa have to either travel or mail their applications to Barbados, the nearest visa-issuing location. The Service's action will facilitate travel to the United States for nationals of the British Virgin Islands while still ensuring that the proper application provisions of the I&NA are met.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/18/99	64 FR 7989
Interim Final Rule Comment Period End	04/18/99	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

Additional Information: INS No. 1956-98

Agency Contact: Dennis Thompson, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 514-3019

RIN: 1115–AF28

1679. REGULATIONS CONCERNING THE CONVENTION AGAINST TORTURE

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1158; 8 USC 1226; 8 USC 1252; 8 USC 1282

CFR Citation: 8 CFR 3; 8 CFR 208; 8 CFR 235; 8 CFR 238; 8 CFR 240; 8 CFR 241

Legal Deadline: Other, Statutory, February 18, 1999, The Act requires promulgation by 02/18/99.

Abstract: This rule implements Article 3 of the United Nations Convention Against Torture or Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment for persons who may be subject to removal from the United States under the provisions of the Immigration and Nationality Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/19/99	64 FR 8478
Interim Final Rule Effective	03/22/99	
Interim Final Rule Corrections	03/22/99	64 FR 13881
Interim Final Rule Comment Period End	04/20/99	
Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1976-99

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041
Phone: 703 305-0470

Mary Giovagnoli, Acting Chief, Refugee and Asylum Branch, Department of Justice, Immigration and Naturalization Service, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2895

RIN: 1115–AF39

DOJ—INS

Final Rule Stage

1680. APPLICATION FOR REFUGEE STATUS; ACCEPTABLE SPONSORSHIP AGREEMENT, GUARANTY OF TRANSPORTATION

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1157; 8 USC 1158; ...

CFR Citation: 8 CFR 207

Legal Deadline: None

Abstract: Section 207 of the Immigration and Nationality Act authorizes the Attorney General to admit refugees to the United States under certain conditions, including those provided for by regulation. The Immigration and Naturalization Service regulations require that sponsorship agreements be secured before an applicant is granted admission as a refugee at a U.S. port-of-entry (POE). The determination of whether or not someone is classified as a refugee is described in the Act as a separate decision from whether a refugee may be admitted to the United States in refugee status. This rule amends the Service regulations by removing language that erroneously implies that the Service requires a sponsorship agreement and guarantee of transportation prior to determining whether an applicant is a refugee. This rule is necessary to clarify issues that may appear ambiguous in the existing regulation, and provides more advantageous treatment for the limited number of applicants for refugee status who have their Service interviews before sponsorship agreements have been secured.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/21/99	64 FR 27660
Interim Final Rule Comment Period End	07/20/99	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1999-99

Agency Contact: Kathleen Thompson, Staff Officer, Office of International Affairs, Department of Justice, Immigration and Naturalization Service, 425 I Street NW, Washington, DC 20536
Phone: 202 305-2756

RIN: 1115–AF49

1681. NONIMMIGRANT CLASSES: Q-2 IRISH PEACE PROCESS CULTURAL AND TRAINING PROGRAM VISITOR

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1184; 8 USC 1186; 8 USC 1187; ...

CFR Citation: 8 CFR 214; 8 CFR 245; 8 CFR 248; 8 CFR 274

Legal Deadline: None

Abstract: This rule amends the regulations to establish a new visa classification, Q-2. Public Law 105-319, also known as the Irish Peace Process Cultural and Training Program Act of 1998, provides the basis for this regulatory change. The Q-2 visa classification identifies those visitors from Northern Ireland and certain designated counties in the Republic of Ireland to come to the United States temporarily for training employment and to experience coexistence and conflict resolution in a diverse society.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/17/00	65 FR 14774
Interim Final Rule Effective	03/17/00	
Interim Final Rule Comment Period End	05/16/00	
Revised Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2000-99

Agency Contact: Donna Crump, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 353-8177

RIN: 1115–AF51

1682. CLARIFICATION OF PAROLE AUTHORITY

Priority: Info./Admin./Other

Legal Authority: 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; ...

CFR Citation: 8 CFR 212

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service (Service) regulations concerning the authority to grant the parole of aliens from Service custody by specifically identifying the scope of that authority to include the Commissioner, the Deputy Commissioner, the Executive Associate Commissioner for Field Operations, and regional directors. This action is being taken to clarify which individuals are authorized by the Attorney General, acting through the Commissioner, to grant parole from Service custody.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/28/00	65 FR 82254
Interim Final Rule Comment Period End	12/28/00	
Interim Final Rule Delay of Effective Date until 03/30/2001	01/26/01	66 FR 7863
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2004-99

(See Also 1115-AE68)

Agency Contact: Kenneth Leutbecker, Director, Parole and Humanitarian Assistance Branch, Office of International Affairs, Department of Justice, Immigration and Naturalization Service, Attn: ULLICO Bldg, Third Floor, 111 Massachusetts Avenue NW, Washington, DC 20001
Phone: 202 305-2670

Related RIN: Related To 1115-AE68

RIN: 1115–AF53

1683. AUTHORIZING COLLECTION OF FEE LEVIED ON F, J, AND M NONIMMIGRANT CLASSIFICATIONS UNDER ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT (IIRIRA)

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186a; ...

CFR Citation: 8 CFR 103; 8 CFR 214; 8 CFR 299

Legal Deadline: None

Abstract: This rule amends INS regulations to establish a fee, pursuant to section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), as amended by Public Law 106-396. In accordance with these statutes, the alien will remit the fee directly to the Attorney General at a time prior to the alien being classified as an F, J, or M nonimmigrant. The rule will outline the fee amounts, who is subject, when the fee must be paid, and the consequences that an F-1, J-1, and M-1 nonimmigrant faces upon failure to pay the fee. This rule is necessary to implement section 641 of the IIRIRA, as amended, as well as authorized under section 103 and 214 of the Immigration and Nationality Act and under 31 U.S.C. 9701.

Timetable:

Action	Date	FR Cite
NPRM	12/21/99	64 FR 71323
NPRM Comment Period End	02/22/00	
Interim Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1991-99 (See also RIN 1115-AG55; INS No. 2185-02 which amends Service regulations governing the retention and reporting of information about F, J, and M nonimmigrants.)

Agency Contact: Maura Deadrick, Assistant Director, Adjudication Division, Department of Justice, Immigration and Naturalization Service, Room 3040, 425 I Street NW, Washington, DC 20536
Phone: 202 514-3228

RIN: 1115–AF56

1684. BATTERED AND ABUSED CONDITIONAL RESIDENTS; TERMINATION OF MARRIAGE BY CONDITIONAL RESIDENTS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1154; 8 USC 1184; 8 USC 1186a

CFR Citation: 8 CFR 216; 8 CFR 299

Legal Deadline: None

Abstract: Enacted on November 10, 1986, the Immigration Marriage Fraud Amendments of 1986 (IMFA) made a number of changes to the Act to deter aliens from marrying solely to obtain immigration benefits. IMFA established a conditional resident status for aliens who obtained lawful permanent resident status based upon a marriage of less than 2 years duration. The interim rule published on May 16, 1991, established procedures to allow a conditional resident who married in good faith but whose marriage was terminated by the United States citizen or lawful permanent resident spouse to seek a waiver of the joint filing requirement. The interim rule published on 5/16/91 also was necessary to provide a method by which a battered conditional resident, or a conditional resident parent of an abused conditional resident child, may apply for removal of the conditional basis of resident status without filing a joint petition. This interim rule implements certain technical changes made by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and addresses comments received in response to the interim rule published on 5/16/91.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/16/91	56 FR 22635
Interim Final Rule	12/00/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Interim Rule for INS No. 1423-91 that was published on 5/16/1991.

Agency Contact: Pearl Chang, Branch Chief, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7440

Elizabeth N. Lee, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 307-2353
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RIN: 1115–AF59

1685. EXTENSION OF 25-MILE LIMIT AT SELECT ARIZONA PORTS-OF-ENTRY

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1183; 8 USC 1201; ...

CFR Citation: 8 CFR 235

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service regulations to extend the distance Mexican nationals with border crossing cards to travel into the United States without obtaining additional Immigration documentation at selected ports-of-entry (POEs) along the United States and Mexico border. The selected POEs are located in the State of Arizona at Sasabe, Nogales, Mariposa, Douglas, and Naco. Once visitors to Arizona meet the inspection requirements of legal entry to the United States, they will be able to travel within the 75-mile border region of Arizona. This rule is intended to promote commerce in the southern Arizona border area while still ensuring that sufficient safeguards are in place to prevent illegal entry to the United States.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/08/99	64 FR 68616
Interim Final Rule Comment Period End	02/07/00	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2026-99

Agency Contact: Jerry Liu, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 514-3410

RIN: 1115–AF60

1686. REVOKING GRANTS OF NATURALIZATION

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1443

CFR Citation: 8 CFR 340

Legal Deadline: None

Abstract: This rule amends the INS regulations relating to administrative revocation of naturalization by changing the burden of proof the INS must satisfy in order to administratively revoke a grant of naturalization and by clarifying the 180-day period for the rendering of the district director's decision. This rule provides that INS will only initiate revocation proceedings based on clear, unequivocal, and convincing evidence and that the burden of proof remains with INS throughout the administrative process.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/31/00	65 FR 17127
Interim Final Rule Comment Period End	05/30/00	
Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No.1858-97

Agency Contact: Michael Neifach, Attorney, Office of the General Counsel, Department of Justice, Immigration and Naturalization Service, Room 6100, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2895

RIN: 1115–AF63

1687. ENTRY REQUIREMENTS FOR CITIZENS OF THE REPUBLIC OF THE MARSHALL ISLANDS, THE FEDERATED STATES OF MICRONESIA, AND PALAU

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1181; 8 USC 1182; 8 USC 1203; 8 USC 1225; 8 USC 1257; 8 CFR 2

CFR Citation: 8 CFR 211; 8 CFR 212

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service regulations by adding documentary requirements for a naturalized citizen of the Marshall Islands, the Federated States of Micronesia, or Palau (Compact Countries) to enter into the United States, lawfully engage in occupations, accept employment, and establish residence as a nonimmigrant in the United States and its territories and possessions. This rule also clarifies the documentary requirements for an adopted child from Compact Countries who is immigrating to the United States. Without clarification of the documentary requirements for an adopted child from the Compact Countries, the Compact Countries may not consent to the adoption of children by U.S. citizens and legal permanent residents.

Timetable:

Action	Date	FR Cite
NPRM	07/18/01	66 FR 37429
NPRM Comment Period End	08/17/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2047-00

Agency Contact: Elizabeth N. Lee, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 307-2353
Email: elizabeth.n.lee@usdoj.gov

RIN: 1115–AF65

1688. REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES: CONTROL OF EMPLOYMENT OF ALIENS

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1201; 8 USC 1201a; 8 USC 1301; 8 USC 1305

CFR Citation: 8 CFR 264; 8 CFR 274a

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service regulations governing applications for renewal of 10-year Permanent Resident Cards upon their expiration. This rule adds documents to the acceptable list of registration requirements and clarifies the requirements for Lawful Permanent Resident (LPRs) to file Form I-90, Application to Replace Alien Registration Card, if they are also applying for naturalization. This rule also provides additional methods to verify employment eligibility for those in the process of renewing their expired or expiring Form I-551, Permanent Resident Card. These changes are necessary to facilitate the 10-year Form I-551 renewal process. This rule also clarifies the fingerprinting requirements for lawful permanent residents who reach the age of 14 years.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/03	
Interim Final Rule Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No.2042-00

Agency Contact: Michael Hardin, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-3048

RIN: 1115–AF71

1689. NATIONAL INTEREST WAIVERS FOR SECOND PREFERENCE EMPLOYMENT-BASED IMMIGRANT PHYSICIANS SERVING IN MEDICALLY UNDERSERVED AREAS OR AT DEPARTMENT OF VETERANS AFFAIRS FACILITIES

Priority: Other Significant

Legal Authority: PL 106-113; 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1182; 8 USC 1186a; 8 USC 1255; 8 USC 1641

CFR Citation: 8 CFR 204; 8 CFR 245

Legal Deadline: None

Abstract: On November 29, 1999, Public Law 106-113 was enacted. Section 117 amended the Immigration and Nationality Act (Act) at section 203 to provide national interest waivers to alien physicians agreeing to practice 5 years in designated medically underserved areas or at Veterans Affairs facilities. The Service proposes an amendment to 8 CFR 204 and 245 in order to implement the new statutory provisions. The Service issued an interim regulation so that applicants may begin to take advantage of the new provisions.

DOJ—INS

Final Rule Stage

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/06/00	65 FR 53889
Correction to Interim Final Rule	09/27/00	65 FR 57943
Interim Final Rule Effective	10/06/00	
Correction to Interim Final Rule	10/20/00	65 FR 63118
Interim Final Rule Comment Period End	11/06/00	
Final Rule	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2048-00

Agency Contact: Craig S. Howie, Senior Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3040, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7867
Fax: 202 514-0198
Email: craig.s.howie@usdoj.gov

RIN: 1115–AF75

1690. PETITIONING REQUIREMENTS FOR THE H-1C NONIMMIGRANT CLASSIFICATION UNDER PUBLIC LAW 106-95

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1182; 8 USC 1184; 8 USC 1186a; 8 USC 1187; ...

CFR Citation: 8 CFR 214.2

Legal Deadline: None

Abstract: On November 12, 1999, the Nursing Relief for Disadvantaged Areas Act (NRDAA) was enacted creating a new H-1C nonimmigrant nurse category. This rule amends the Service's regulations in order to implement the NRDAA as it relates to the adjudication petitions for H-1C classification. This rule will facilitate the hiring of alien registered nurses to reduce the shortage of nurses in certain areas of the United States while protecting the rights of U.S. nurses.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/11/01	66 FR 31107
Interim Final Rule Comment Period End	08/10/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2050-00

Agency Contact: Molly Johnson, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7435

RIN: 1115–AF76

1691. EXPANSION OF DEDICATED COMMUTER LANES; CLARIFICATION OF DRIVER'S LICENSE REQUIREMENT FOR APPLICANTS TO DEDICATED COMMUTER LANES AND AUTOMATED PERMIT PORT PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1183; 8 USC 1201; ...

CFR Citation: 8 CFR 235

Legal Deadline: None

Abstract: This interim rule amends the Immigration and Naturalization Service regulations governing the Dedicated Commuter Lanes (DCL) and Automated Permit Port programs by establishing DCLs along the northern borders of the United States. The rule proposes to clarify that non-driving passengers who do not have a driver's license, for example, children, certain elderly people, and others who are ineligible to drive or otherwise choose not to drive, are not required to have or present a driver's license before their application is approved.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/03	
Interim Final Rule Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2060-00

Agency Contact: Pamela T. Wallace, Adjudications Officer, Immigration Services Division, Department of Justice, Immigration and Naturalization Service, Room 980, 801 I Street NW, Washington, DC 20536

DOJ—INS

Final Rule Stage

Phone: 202 514-9475

RIN: 1115–AF80

1693. UPDATE OF LIST OF COUNTRIES WHOSE CITIZENS OR NATIONALS ARE INELIGIBLE FOR TRANSIT WITHOUT VISA (TWOV) PRIVILEGES TO THE UNITED STATES UNDER THE TWOV PROGRAM

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1221; 8 USC 1225; 8 USC 1226; 8 USC 1228; 8 USC 1229; 8 USC 1252

CFR Citation: 8 CFR 212; 8 CFR 233

Legal Deadline: None

Abstract: This interim rule (INS No. 2020-99) updates the list of those countries that the Service, acting on behalf of the Attorney General and jointly with the Department of State, has determined to be ineligible for participation in the TWOV program. This rule also removes certain countries from the ineligible listing so that aliens from these countries can have their passport and visa requirements waived. This rule is intended to benefit the traveling public by expanding the number of countries whose citizens or nationals may transit the United States without a visa while preventing an increase in the abuse of the TWOV program by citizens or nationals of countries placed on the ineligible list.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/05/01	66 FR 1017
Interim Final Rule Delay of Effective Date	02/02/01	66 FR 8743
Interim Final Rule Comment Period End	03/06/01	
Interim Final Rule Effective	04/06/01	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: See also 1115-AD96 (INS No. 2129-01) "Establishing Criteria for Determining Countries Whose Citizens are Ineligible for the Transit Without Visa (TWOV) Program".

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RIN: 1115–AF81

1694. IMPLEMENTATION OF THE NUMERICAL LIMIT ON ASYLUM GRANTS AND REFUGEE ADMISSIONS BASED ON RESISTANCE TO COERCIVE POPULATION CONTROL MEASURES

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1157; 8 USC 1158; 8 USC 1226; 8 USC 1252; 8 USC 1282; 8 CFR 2

CFR Citation: 8 CFR 208; 8 CFR 274a

Legal Deadline: None

Abstract: Section 601(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provides that, for any fiscal year, not more than a total of 1,000 refugees may be admitted or granted asylum based solely on resistance to coercive population control measures. This rule authorizes the Immigration and Naturalization Service and the Executive Office for Immigration Review to make conditional grants of asylum in those cases in which an applicant is found to merit asylum solely on the basis of resistance to coercive population control measures and establishes a mechanism for converting no more than 1,000 conditional grants per fiscal year to final asylum grants. The rule also establishes procedures for administering a waiting list in those years that the number of conditional grants exceeds the statutory limit for final grants, reserves a certain number of authorization numbers for purposes of refugee admission, and addresses procedures for administering derivative conditional grants, terminating conditional grants, and other procedures specific to this rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule With Request for Comments	12/00/02	
Interim Final Rule Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2067-00

Agency Contact: Joanna Ruppel, Supervisor for Asylum Operations, International Affairs, Department of Justice, Immigration and Naturalization Service, 3rd Floor, 111 Massachusetts Avenue NW, Washington, DC 20536
Phone: 202 305-2663

RIN: 1115–AF84

1695. ADDING ACTUARIES AND PLANT PATHOLOGISTS TO THE NORTH AMERICAN FREE TRADE AGREEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186a; 8 USC 1187; 8 USC 1221; 8 USC 1281; 8 USC 1282

CFR Citation: 8 CFR 214.6

Legal Deadline: None

Abstract: The rule proposes to amend 8 CFR 214.6 by adding the occupations of actuary and plant pathologists to Appendix 1603.D.1. This rule proposes to modify the licensure requirements for Canadian citizens seeking admission to the U.S. as a TN nonimmigrant category alien. These amendments are being proposed to reflect the agreements made among the three parties to the North American Free Trade Agreement.

Timetable:

Action	Date	FR Cite
NPRM	12/19/00	65 FR 79320
NPRM Comment Period End	02/20/01	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2068-00

Agency Contact: Molly Johnson, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536

Phone: 202 616-7435

RIN: 1115–AF85

1696. POWER OF ATTORNEY GENERAL TO TERMINATE DEPORTATION PROCEEDINGS AND INITIATE REMOVAL PROCEEDINGS

Priority: Substantive, Nonsignificant

Legal Authority: PL 104-208

CFR Citation: 8 CFR 309

Legal Deadline: None

Abstract: This rule proposes to implement section 309(c)(3) of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) by affording certain aliens rendered ineligible for relief from deportation by recent changes in the law the opportunity to have their deportation proceedings terminated and removal proceedings initiated in order to apply for relief. Certain permanent resident aliens rendered ineligible for section 212(c) relief by the Antiterrorism and Effective Death Penalty Act (AEDPA) and certain non-permanent resident aliens rendered ineligible for suspension of deportation by the stop-time rule in IIRIRA may apply for "repapering" (as it is commonly known) under this rule. This process would not apply to aliens eligible for 212(c) relief pursuant to the procedures described in the Executive Office for Immigration Review (EOIR) rulemaking (RIN 1125-AA29).

Timetable:

Action	Date	FR Cite
NPRM	11/30/00	65 FR 71273
NPRM Comment Period End	01/29/01	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2083-00

Agency Contact: Christina Hamilton, Chief, Enforcement Division, Office of General Counsel, Department of Justice, Immigration and Naturalization Service, 6100, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2895

RIN: 1115–AF87

1697. EMPLOYMENT AUTHORIZATION FOR CERTIFICATE OF CITIZENSHIP APPLICANTS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1324a; 8 USC 1443; 8 USC 1448; 8 CFR 2

CFR Citation: 8 CFR 274a, 8 CFR 341

Legal Deadline: None

Abstract: This interim rule amends the Immigration and Naturalization Service regulations by providing a procedure under which aliens who, believing they are actually citizens, have filed applications for certificates of citizenship (Forms N-600) may obtain employment authorization while their applications are pending. This interim rule is necessary to establish a uniform procedure to accommodate Form N-600 applicants, without creating a strong incentive for aliens to file applications in bad faith, seeking simply to obtain employment authorization.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/00/03	
Interim Final Rule Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No.2076-00

Agency Contact: Richard Sheridan, Staff Officer, Immigration Services Division, Department of Justice, Immigration and Naturalization Service, Room 980, 801 I Street NW, Washington, DC 20536
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RIN: 1115–AF90

1698. ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE; TEMPORARY REMOVAL OF CERTAIN RESTRICTIONS OF ELIGIBILITY

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1201; 8 USC 1252; 8 USC 1252b; 8 USC 1304; 8 USC 1356

CFR Citation: 8 CFR 103; 8 CFR 205; 8 CFR 245

Legal Deadline: None

Abstract: The Immigration and Naturalization Service is amending its regulations governing eligibility for adjustment of status under section 245(i) of the Immigration and Nationality Act to conform the regulations to existing policy and procedures and to remove language that has been superseded by subsequent legislation. Specifically, this interim rule conforms the regulations to include the changes made by Public Law 105-119 and Public Law 106-544. It also provides for the changes contained in the Legal Immigration Family Equity Act of 2000 (LIFE ACT). As required by the Life Act, this rule changes the sunset date of section 245(i) of the Immigration and Naturalization Act to the new date of April 30, 2001, for filing of qualifying petitions or applications that enable the applicant to apply to adjust status using section 245(i) and clarifies the effect of the new sunset date on eligibility. This means that in order to preserve the ability to apply for adjustment of status under section 245(i), an alien must be the beneficiary of a visa petition for classification under section 204 of the Act or application for labor certification properly filed on or before April 30, 2001, and determined to have approval when filed. This rule also provides guidance on the standard for review of filing for immigrant visa petitions and applications for labor certification on or before April 30, 2001.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/26/01	66 FR 16383
Interim Final Rule Effective	03/26/01	
Interim Final Rule Comment Period End	05/25/01	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2078-00; This rulemaking supersedes RIN 1115-AD83.

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RIN: 1115–AF91

1699. ASYLUM AND WITHHOLDING DEFINITIONS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1158; 8 USC 1226; 8 USC 1252; 8 USC 1282; 8 CFR 2

CFR Citation: 8 CFR 208

Legal Deadline: None

Abstract: This rule proposes to amend regulations that govern establishing asylum eligibility by providing guidance on certain issues that have arisen in the context of asylum adjudications. The amendments focus on portions of the regulations that deal with the definitions of persecution, membership in a particular social group, and State action. This rule codifies long-standing concepts of the definition of persecution. It clarifies that gender can be a basis for membership in a particular social group. It also clarifies that a person who has suffered or fears domestic violence may be considered a member of a particular social group. The Department of Justice believes this issue required further examination after the Board of Immigration Appeals decision, Matter of R-A. This rule also clarifies that the factors considered in Ninth Circuit case law regarding membership in a particular social group are non-determinative. Finally, the rule offers further guidance on what is required to show a State's inability or unwillingness to control a persecutor. Finally, this rule establishes circumstances under which the Board of Immigration Appeals (BIA) must remand proceedings to the Immigration Judge to resolve questions of fact.

Timetable:

Action	Date	FR Cite
NPRM	12/07/00	65 FR 76588
NPRM Comment Period End	01/22/01	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No 2092-00

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RIN: 1115–AF92

1700. ACADEMIC HONORARIUM FOR B NONIMMIGRANT ALIENS

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-277; 8 USC 1182; 8 USC 1184

CFR Citation: 8 CFR 214

Legal Deadline: None

Abstract: The Immigration and Naturalization Service is proposing to amend its regulations relating to the acceptance of academic honoraria by nonimmigrant aliens admitted to the United States as a B visa visitor status. This is necessary to implement changes to section 212 of the Immigration and Nationality Act made by the American Competitiveness and Workforce Improvement Act of 1998. The amendment outlines the proposed procedures necessary for a nonimmigrant alien visiting the United States in valid B visa status to accept honoraria in connection with usual academic activities.

Timetable:

Action	Date	FR Cite
NPRM	05/30/02	67 FR 37727
NPRM Comment Period End	07/29/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2100-00

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RIN: 1115–AF97

1701. CHILDREN BORN OUTSIDE THE UNITED STATES; APPLICATIONS FOR CERTIFICATE OF CITIZENSHIP

Priority: Other Significant

Legal Authority: PL 106-395

CFR Citation: 8 CFR 103; 8 CFR 299; 8 CFR 310; 8 CFR 320; 8 CFR 322; 8 CFR 338; 8 CFR 341; 8 CFR 499; ...

Legal Deadline: Final, Statutory, February 27, 2001, Mandated by Law.

Abstract: This rule implements title I of the Child Citizenship Act of 2000 (CCA), Public Law 106-395. First, it amends the Immigration and Naturalization Service (Service) regulations by adding a new part which addresses application procedures for foreign-born children residing in the United States pursuant to a lawful admission for permanent residence, who acquire citizenship automatically under section 320 of the Immigration and Nationality Act (Act), as amended. This rule established procedures for these foreign-born children, including adopted children, to obtain certificates of citizenship. Second, this rule also addresses application procedures for foreign-born children residing outside the United States, who can acquire citizenship under section 322 of the Act, as amended, by approval of an application and taking the oath of allegiance.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/13/01	66 FR 32138
Interim Final Rule Effective	06/13/01	
Interim Final Rule Comment Period End	08/13/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No 2101-00

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RIN: 1115–AF98

1702. ALLOWING FOR THE FILING OF FORM I-140 VISA PETITION CONCURRENTLY WITH A FORM I-485 APPLICATION IN CERTAIN CIRCUMSTANCES

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1182; 8 USC 1186a; 8 USC 1255; 8 USC 1641

CFR Citation: 8 CFR 204; 8 CFR 245

Legal Deadline: None

Abstract: The current regulations provide that an alien worker who wants to apply for permanent residence by filing the appropriate Form I-485, Application To Register Permanent Residence or Adjust Status, cannot do so until he or she obtains approval of the underlying petition, Form I-140, Immigrant Petition for Alien Worker. This procedure has resulted in aliens experiencing unnecessary delays due to the heavy backlog created by increasing numbers of cases received by the Immigration and Naturalization Service. This rule amends the Service's regulations by allowing the Forms I-140 and I-485 to be filed concurrently when a visa is immediately available, thereby improving the efficiency of the system, as well as customer service. This rule will also allow the alien worker to apply for employment authorization (Form I-765, Application for Employment Authorization) and advance parole authorization (Form I-131, Application for Travel Document) while the Form I-485 is pending.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/31/02	67 FR 49561
Interim Final Rule Effective	07/31/02	
Interim Final Rule Comment Period End	09/30/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2104-00

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RIN: 1115–AG00

1703. SPECIAL IMMIGRANT VISA FOR FOURTH PREFERENCE EMPLOYMENT-BASED BROADCASTERS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1182; 8 USC 1186a; 8 USC 1255; 8 USC 1641

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: This interim rule amends the Immigration and Naturalization Service regulations by establishing the procedure under which the International Broadcasting Bureau of the United States Broadcasting Board of Governors (BBG), or a BBG grantee organization, may file special fourth preference immigrant petitions for alien broadcasters. This rule explains the requirements the alien broadcaster must meet in order to be the beneficiary of an immigrant visa petition. This regulatory change is necessary in order to assist the BBG in fulfilling its statutory obligation to hire alien broadcasters.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/11/01	66 FR 51819
Interim Final Rule Effective	11/13/01	
Interim Final Rule Comment Period End	12/10/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2106-00

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RIN: 1115–AG01

1704. ESTABLISHING PREMIUM PROCESSING SERVICE FOR EMPLOYMENT-BASED PETITIONS AND APPLICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103

CFR Citation: 8 CFR 103; 8 CFR 299

Legal Deadline: None

Abstract: This rule changes the Immigration and Naturalization Service regulations to establish premium processing service for certain employment-based petitions and applications. If an individual pays a fee for premium processing service, the INS will process the petition or application in 15 days. Premium Processing Service will give American businesses an option to pay for more rapid processing of petitions and applications to meet their needs for foreign workers.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/01/01	66 FR 29682
Interim Final Rule Effective	06/01/01	
Interim Final Rule Comment Period End	07/31/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2108-01

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RIN: 1115–AG03

1705. ADJUSTMENT OF STATUS FOR CERTAIN NATIONALS OF NICARAGUA, CUBA, AND HAITI

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1255

CFR Citation: 8 CFR 241; 8 CFR 245

Legal Deadline: None

Abstract: This final rule implements the provisions of the Legal Immigration Family Equity Act (LIFE) and its technical amendments to both the Nicaraguan Adjustment and Central American Relief Act (NACARA), and the Haitian Refugee Immigration Fairness Act (HRIFA) of 1998. Specifically, section 1505 of the amendments to LIFE states that section 241(a)(5) of the INA does not apply to adjustment applicants under NACARA/HRIFA and that the grounds of inadmissibility under section 212(a)(9)(A) and (C) of the INA may be waived for NACARA/HRIFA adjustment applicants. Section 241(a)(5) of the Immigration and Nationality Act (Act) provides for the reinstatement of a removal order against any alien who illegally re-enters the United States after having been removed or after having departed voluntarily under an order of removal. It also bars any alien whose removal order has been reinstated from receiving any relief under the Act, including any waivers of grounds of inadmissibility necessary for the grant of adjustment of status. Sections 212(a)(9)(A) and 212(a)(9)(C) of the Act are grounds of inadmissibility relating to aliens previously removed and aliens who are unlawfully present in the United States after previous immigration violations, respectively. Section 1505 of the amendments to LIFE also states that an alien who has become eligible for benefits under NACARA/HRIFA as a result of the enactment of LIFE may file a motion to reopen his or her removal proceedings in order to apply for adjustment or to apply for cancellation of removal or suspension of deportation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/31/01	66 FR 29449
Interim Final Rule Comment Period End	05/31/01	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2113-01

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RIN: 1115–AG05

1706. NONIMMIGRANT CLASSES; SPOUSES AND CHILDREN OF LAWFUL PERMANENT RESIDENTS; V CLASSIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1102; PL 106-553

CFR Citation: 8 CFR 103; 8 CFR 204; 8 CFR 205; 8 CFR 212; 8 CFR 214; 8 CFR 245; 8 CFR 248; 8 CFR 299

Legal Deadline: None

Abstract: Section 1102 of the LIFE Act of 2000 amends the Immigration and Nationality Act to create a new nonimmigrant classification V for the spouses and children of lawful permanent residents awaiting the availability of an immigrant visa number in the appropriate preference category in accordance with the State Department's monthly Visa Bulletin. Eligible spouses and children of lawful permanent residents residing abroad that obtain the V nonimmigrant visa from the Department of State may work and reside in the United States on the basis of the V classification until they can apply for adjustment of status to that of lawful permanent resident. Certain eligible spouses and children of lawful permanent residents already present in the United States may be granted V classification until they can apply to adjust status to that of lawful permanent resident. This rule sets forth eligibility criteria and procedures for obtaining the V visa classification and related employment authorization.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/07/01	66 FR 46697
Interim Final Rule Effective	09/07/01	
Interim Final Rule Comment Period End	11/06/01	
Final Rule	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2117-01

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RIN: 1115–AG08

1707. K NONIMMIGRANT CLASSIFICATION, LEGAL IMMIGRATION FAMILY EQUITY ACT (LIFE)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-553

CFR Citation: 8 CFR 212; 8 CFR 214; 8 CFR 245; 8 CFR 248; 8 CFR 274a

Legal Deadline: Final, Statutory, December 21, 2000.

Abstract: Section 1103 of the Legal Immigration Family Equity Act (LIFE), Public Law 106-553, creates a new nonimmigrant classification under the Immigration and Nationality Act101(a)(15)(K) for the spouses and children of U.S. citizens who have pending immigrant visa applications. This rule establishes this classification in the INS regulations, including creating filing and adjudication procedures, as well as procedures for adjusting status from this new nonimmigrant classification to that of a lawful permanent resident.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/14/01	66 FR 42587
Interim Final Rule Comment Period End	10/15/01	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: LIFE creates another separate nonimmigrant classification V and also amends the INA for other purposes. Each of these will be addressed in a separate rule. [INS No. 2127-01]

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RIN: 1115–AG12

DOJ—INS

Final Rule Stage

1708. ADJUSTMENT OF STATUS FOR CERTAIN SYRIAN NATIONALS GRANTED ASYLUM IN THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1255; sec 202, PL 105-100, 111 Stat 2160, 2193; 8 CFR 2

CFR Citation: None

Legal Deadline: None

Abstract: On October 27, 2000, the President signed into law Public Law 106-378,Adjustment of Status of Certain Syrian Nationals, which provides for the adjustment of status to lawful permanent resident of certain Syrian nationals, without regard to the annual numerical limitation requirement. This interim rule discusses eligibility and sets forth application procedures for persons wishing to adjust status on the basis of Public Law 106-378. The INS has issued this action as an interim rule because Public Law 106-378 provided for a 1-year application period, which will end on October 26, 2001. Publication of the interim rule ensures that applicants were provided with as much time as possible to apply for the benefits under Public Law 106-378. The Service is now reviewing comments and is drafting a final rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/17/01	66 FR 27445
Interim Final Rule Effective	05/17/01	
Interim Final Rule Comment Period End	07/17/01	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1115–AG13

1709. ADJUSTMENT OF STATUS OF CERTAIN ALIENS FROM VIETNAM, CAMBODIA, AND LAOS IN THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1255

CFR Citation: 8 CFR 245

Legal Deadline: None

Abstract: On November 6, 2000, the President signed into law Public Law 106-429, the Foreign Operations Appropriations Act of 2001, section 586 of which provides for the adjustment of status for certain aliens from Vietnam, Cambodia, and Laos. To apply for adjustment under this provision, eligible applicants must have been physically present in the United States since October 1, 1997, and inspected and paroled into the United States from Vietnam under the Orderly Departure Program from a refugee camp in East Asia or from a displaced persons camp administered by the United Nations in Thailand. This rule further discusses eligibility, sets forth application procedures, and amends Service regulations to provide for adjustments of status on the basis of section 586 of Public Law 106-429.

Timetable:

Action	Date	FR Cite
NPRM	07/09/02	67 FR 45402
NPRM Comment Period End	09/09/02	
Final Rule	12/00/02	
Final Rule Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2124-01

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RIN: 1115–AG14

1710. ADDING COLOMBIA TO THE LIST OF COUNTRIES WHOSE CITIZENS OR NATIONALS ARE INELIGIBLE FOR TRANSIT WITHOUT VISA (TWOV) PRIVILEGES TO THE UNITED STATES UNDER THE TWOV PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1225; 8 USC 1226; 8 USC 1227; 8 USC 1228; 8 USC 1252; 8 USC 1227

CFR Citation: 8 CFR 212

Legal Deadline: None

Abstract: The Transit Without Visa program allows certain aliens to transit the United States en route to a specified foreign country without a passport or visa provided they are traveling on a carrier signatory to an agreement with the Immigration and Naturalization Service in accordance with section 233(c) of the Act. This interim rule adds Colombia to the list of those countries that the Service, acting on behalf of the Attorney General and jointly with the Department of State, has determined to be ineligible for participation in the TWOV program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/30/01	66 FR 17321
Interim Final Rule Effective	04/02/01	
Interim Final Rule Comment Period End	05/29/01	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No 2129-01

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RIN: 1115–AG16

DOJ—INS

Final Rule Stage

1711. NEW CLASSIFICATION FOR VICTIMS OF SEVERE FORMS OF TRAFFICKING IN PERSONS ELIGIBLE FOR THE T NONIMMIGRANT STATUS

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1104; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1201; 8 USC 1224; 8 USC 1225; 8 USC 1226; 8 USC 1227; 8 USC 1252; 8 USC 1252a; 22 USC 7101; 22 USC 7105; ...

CFR Citation: 8 CFR 103; 8 CFR 212; 8 CFR 212; 8 CFR 214; 8 CFR 274a; 8 CFR 299

Legal Deadline: None

Abstract: This rule sets forth application requirements for a new nonimmigrant classification. The T classification was created by 107(e) of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Public Law 106-386. The T nonimmigrant classification was designed for eligible victims of severe forms of trafficking in persons who aid the Government with their case against the traffickers and who can establish that they would suffer extreme hardship involving unusual and severe harm if they were removed from the United States after having completed their assistance to law enforcement. The rule establishes application procedures and responsibilities for the Immigration and Naturalization Service (Service) and provides guidance to the public on how to meet certain requirements to obtain T nonimmigrant status.

There is a statutory cap for T nonimmigrant status for victims of a severe form of trafficking (principals), which is set at 5,000 per annum. The law also provides that certain family members can derive T status through the principal's application.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/31/02	67 FR 4784
Interim Final Rule Effective	03/04/02	
Interim Final Rule Comment Period End	04/01/02	
Final Rule	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Federal

Additional Information: INS No. 2132-01; AG Order No. 2554-2002

There is a related rulemaking, INS No. 2170-01, the new U nonimmigrant status. [RIN 1115-AG39]

Agency Contact: Pearl Chang, Branch Chief, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7440

RIN: 1115–AG19

1712. PROTECTION AND ASSISTANCE FOR VICTIMS OF TRAFFICKING

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1104; 8 USC 1252; 22 USC 7101; 22 USC 7105; ...

CFR Citation: 28 CFR 1100

Legal Deadline: Other, Statutory, April 28, 2001, Statutory deadline for promulgation of regulations.

Abstract: This rule amends 28 CFR and sets forth implementing guidance for section 107(c) of the Victims of Trafficking and Violence Protection Act of 2000. The Attorney General and the Secretary of State are promulgating these regulations for law enforcement, Immigration, and Department of State (DOS) officials regarding the protection of victims of severe forms of trafficking who are in custody, the access of such victims to information about their rights and translation services, and the training of appropriate Department of Justice and DOS personnel in identifying and protecting such victims. The rule also addresses the authority of Federal law enforcement officials to permit the continued presence in the United States of certain victims of severe forms of trafficking who are potential witnesses in order to aid prosecutions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/24/01	66 FR 38514
Interim Final Rule Comment Period End	10/22/01	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Federalism: Undetermined

Additional Information: INS No 2133-01

Agency Contact: Anne M Veysey, Acting Director, Program Strategy and Development Branch, Department of Justice, Immigration and Naturalization Service, Investigations Division, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7372

RIN: 1115–AG20

1713. REMOVING RUSSIA FROM THE LIST OF COUNTRIES WHOSE CITIZENS OR NATIONALS ARE INELIGIBLE FOR TRANSIT WITHOUT VISA (TWOV) PRIVILEGES TO THE UNITED STATES UNDER THE TWOV PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; ...

CFR Citation: 8 CFR 212

Legal Deadline: None

Abstract: The Transit Without Visa (TWOV) Program allows certain aliens to transit the United States en route to a specified foreign country without a passport or visa provided they are traveling on a carrier signatory to an agreement with the Immigration and Naturalization Service (Service) in accordance with section 233 (c) of the Immigration and Nationality Act (Act). This interim rule removes Russia from the list of those countries that the Service, acting on behalf of the Attorney General and jointly with the Department of State, has determined to be eligible for participation in the TWOV program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/15/01	66 FR 32529
Interim Final Rule Comment Period End	08/15/01	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2144-01

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service,

Room 4064, 425 I Street NW,
Washington, DC 20536
Phone: 202 616-7499
Email: robert.f.hutnick@usdoj.gov

RIN: 1115–AG27

1714. DETENTION OF ALIENS SUBJECT TO FINAL ORDERS OF REMOVAL

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1223; 8 USC 1227; 8 USC 1231; 8 USC 1253; ...

CFR Citation: 8 CFR 241

Legal Deadline: None

Abstract: This rule amends the custody review process governing the detention of aliens who are the subject of a final order of removal, deportation or exclusion (see 8 CFR 241.4) in light of the decision of the U.S. Supreme Court in Zadvydas v. Davis, 533 U.S.____, 121 S. Ct. 2491 (2001). This rule adds new provisions governing cases for the INS to determine whether there is a significant likelihood that an alien will be removed from the United States in the reasonably foreseeable future, and cases where there are special circumstances justifying the continued detention of certain aliens. This rule also makes conforming changes to the existing post-removal period detention regulations, and provides procedures to implement the statutory provision for the extension of the removal period beyond 90 days if the alien conspires or acts to prevent his or her removal or fails or refuses to assist the Service in obtaining documents necessary to his or her removal.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/14/01	66 FR 56967
Interim Final Rule Comment Period End	01/14/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No 2156-01

Agency Contact: Joan S. Lieberman, Attorney, Office of General Counsel, Department of Justice, Immigration and Naturalization Service, Room 6100, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2895

RIN: 1115–AG29

1715. ALLOWING CITIZENS AND NATIONALS OF THE PEOPLE'S REPUBLIC OF CHINA LIMITED TRANSIT WITHOUT VISA (TWOV) PRIVILEGES AT TWOV-DESIGNATED ALASKA INTERNATIONAL AIRPORTS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; ...

CFR Citation: 8 CFR 212

Legal Deadline: None

Abstract: The Transit Without Visa (TWOV) Program allows certain aliens to transit the United States en route to a specified foreign country without passport or visa provided they are traveling on a carrier signatory to an agreement with the Immigration and Naturalization Service (Service) in accordance with section 233(c) of the Act and meet certain other requirements as enumerated in Service regulations at 8 CFR 212.1(f) and 214.2(c). This interim rule allows citizens and nationals of the People's Republic of China limited TWOV privileges at TWOV-designated Alaska international airports provided they meet additional requirements enumerated in the rule. This rule is intended to benefit the economy of Alaska by allowing citizens and nationals of the People's Republic of China to transit the United States without a visa at TWOV-designated Alaska international airports while limiting the risk of abuse of the TWOV program by citizens or nationals of the People's Republic of China by restricting this policy to certain Alaskan ports of entry.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/03	
Interim Final Rule Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2160-01;

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7499
Email: robert.f.hutnick@usdoj.gov

RIN: 1115–AG33

1716. CUSTODY PROCEDURES

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1182; 8 USC 1225; 8 USC 1226; 8 USC 1251; ...

CFR Citation: 8 CFR 287

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service (Service) regulations on the period of time after an alien's arrest within which the Service must make a determination whether the alien will be continued in custody or released on bond or recognizance and whether to issue a notice to appear and warrant of arrest. This rule provides that unless voluntary departure has been granted, the Service must make such determinations within 48 hours of arrest, except in the event of emergency or other extraordinary circumstance in which case the Service must make such determinations within an additional reasonable period of time.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	09/17/01	66 FR 48334
Interim Final Rule Published	09/20/01	66 FR 48334
Interim Final Rule Comment Period End	11/19/01	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No 2171-01

Agency Contact: Daniel Brown, Attorney, Office of General Counsel, Department of Justice, Immigration and Naturalization Service, Room 6100, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2895

RIN: 1115–AG40

1717. LIMITING THE PERIOD OF ADMISSION FOR B NONIMMIGRANT ALIENS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186a; 8 USC 1187; 8 USC 1101; 8 USC 1101 note; 8 USC 1102; 8 USC 1103; 8 USC 1182; ...

CFR Citation: 8 CFR 214; 8 CFR 235; 8 CFR 248

Legal Deadline: None

Abstract: This rule eliminates the minimum admission period of a B-2 visitor for pleasure, reducing the maximum admission period of B-1 and B-2 visitors from 1 year to 6 months, and establishing greater control over a B visitor's ability to extend the status or to change status to that of a nonimmigrant student. These changes will enhance the Service's authority under sections 214(a) and 248 of the Immigration and Nationality Act (Act) and will help lessen the probability that alien visitors will establish permanent ties in the United States and thus remain in the country illegally.

Timetable:

Action	Date	FR Cite
NPRM	04/12/02	67 FR 18065
NPRM Comment Period End	05/13/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: INS No. 2176-01

Agency Contact: Craig S. Howie, Senior Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3040, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7867
Fax: 202 514-0198
Email: craig.s.howie@usdoj.gov

RIN: 1115–AG43

1718. DOCUMENTARY REQUIREMENTS FOR CERTAIN TEMPORARY RESIDENTS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1181; 8 USC 1182; 8 USC 1203; 8 USC 1225; 8 USC 1257; 8 CFR 2

CFR Citation: 8 CFR 211

Legal Deadline: None

Abstract: This final rule adds a document to the list of documents that may be presented by certain returning temporary residents in lieu of an immigrant visa. This rule will allow the Form I-797, Notice of Action, issued to certain aliens who have adjusted to temporary resident status pursuant to 8 CFR 245a to be used as an entry document at a port-of-entry. This rule is necessary to ensure that those temporary resident aliens eligible to reenter the United States with a Form I-797 are able to do so.

Timetable:

Action	Date	FR Cite
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2177-01

Agency Contact: Elizabeth N. Lee, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 307-2353
Email: elizabeth.n.lee@usdoj.gov

RIN: 1115–AG44

1719. ESTABLISHMENT OF A $3 IMMIGRATION USER FEE FOR CERTAIN COMMERCIAL VESSEL PASSENGERS PREVIOUSLY EXEMPT

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 8 USC 1356; PL 107-77

CFR Citation: 8 CFR 286

Legal Deadline: None

Abstract: The rule removes the current exemption for cruise ship passengers whose journeys originated in Canada, Mexico, a territory or possession of the United States and adjacent islands and will allow the Immigration and Naturalization Service to collect a $3 fee for passengers, according to the Department of Justice Appropriation Act (Public Law 107-77), dated November 28, 2001. Also, the regulations will be modified to exempt passengers of Great Lakes International ferries or vessels on the Great Lakes or connecting waterways when they operate on a regular schedule. This fee will be used to pay for inspection services and other related activities.

Timetable:

Action	Date	FR Cite
NPRM	04/03/02	67 FR 15753
NPRM Comment Period End	05/28/02	67 FR 34414
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2180-01

Agency Contact: Georgia Mayers, Chief of Cash Management, Department of Justice, Immigration and Naturalization Service, Room 6034, 425 I Street NW, Washington, DC 20536
Phone: 202 305-1200
Email: georgia.a.mayers@usdoj.gov

Penny Pastiva, Budget Analyst, Department of Justice, Immigration and Naturalization Service, Room 5236, 425 I Street NW, Washington, DC 6254
Phone: 202 514-6254
Email: penny.pastiva@usdoj.gov

RIN: 1115–AG47

1720. CHANGE IN BUSINESS PRACTICES; ACCEPTANCE OF PAYMENTS OF FEES BY CREDIT CARD AND OTHER ELECTRONIC MEANS WHERE POSSIBLE

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: PL 98-369; 31 USC 3720

CFR Citation: 8 CFR 103.7

Legal Deadline: None

Abstract: The Immigration and Naturalization Service proposes to expand the acceptance of credit cards and other electronic means to collect fees from the public. The Service currently accepts fees at seven locations in three of its 33 districts. The Service proposes to implement credit card acceptance at 16 of these districts by the end of FY 2002 with full implementation by the end of FY 2003.

The intended benefit is two-fold: To provide the Service with a faster, more efficient collection and record keeping mechanism while affording the customer a convenient alternative payment method.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	
Interim Final Rule Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No 2181-01

Agency Contact: Georgia Mayers, Chief of Cash Management, Department of Justice, Immigration and Naturalization Service, Room 6034, 425 I Street NW, Washington, DC 20536
Phone: 202 305-1200
Email: georgia.a.mayers@usdoj.gov

RIN: 1115–AG48

1721. ADDING AND REMOVING INSTITUTIONS TO AND FROM THE LIST OF RECOGNIZED AMERICAN INSTITUTIONS OF RESEARCH

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1181; 8 USC 1182; 8 USC 1443; 8 USC 1447

CFR Citation: 8 CFR 316

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service regulations by adding the Rutgers, Indiana and Harvard Universities to the list of American institutions of research located in section 316 of the Immigration and Naturalization Act, recognized by the Attorney General for the purpose of preserving residence in the United States for naturalization eligibility. This rule also removes the recently dissolved Harvard Institute for International Development from the same list.

Timetable:

Action	Date	FR Cite
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2131-01

Agency Contact: Gerard Casale, Senior Adjudications Officer, Adjudications and Nationality, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-5014

RIN: 1115–AG52

1722. REVISION OF THE REGULATIONS CONCERNING F, J, AND M NONIMMIGRANT CLASSIFICATIONS

Regulatory Plan: This entry is Seq. No. 81 in part II of this issue of the Federal Register.

RIN: 1115–AG55

1723. REQUIRING CHANGE OF STATUS FROM B TO F-1 OR M-1 NONIMMIGRANT PRIOR TO PURSUING A COURSE OF STUDY

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1184; 8 USC 1258; 8 CFR 2

CFR Citation: 8 CFR 214; 8 CFR 248

Legal Deadline: None

Abstract: The interim rule amends the Immigration and Naturalization Service (Service) regulation by eliminating the current provision allowing a nonimmigrant visitor for business or pleasure to enroll in a Service-approved school without first obtaining approval of a change of nonimmigrant status request from the Service. The amendment will ensure that no B nonimmigrant is allowed to begin taking classes until the Service has approved the alien's request to change nonimmigrant status to that of F or M student

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/12/02	67 FR 18061
Interim Final Rule Comment Period End	06/11/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2195-02

Agency Contact: Craig S. Howie, Senior Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3040, 425 I Street NW, Washington, DC 20536
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RIN: 1115–AG60

1724. ADDRESS NOTIFICATION TO BE FILED WITH DESIGNATED APPLICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1304; ...

CFR Citation: 8 CFR 103; 8 CFR 299

Legal Deadline: None

Abstract: The proposed rule would amend the regulations of the Immigration and Naturalization Service (Service) by requiring every alien who is applying for immigration benefits to acknowledge having received notice that he or she is required to provide a valid current address to the Service, including any change of address within 10 days of the change; that the Service will use the most recent address provided by the alien for all purposes, including the service of a Notice to Appear if the Service initiates removal proceedings; and, if the alien has changed address and failed to provide the new address to the Service, that the alien will be held responsible for any communications sent to the most recent address provided by the alien. This rule will satisfy the requirements or advance notice to the alien of the obligation to provide a current address to the Service, and of the consequences that may result for failure to do so, including the entry of an in absentia removal order against the alien if the alien fails to appear at a removal hearing.

Timetable:

Action	Date	FR Cite
NPRM	07/26/02	67 FR 48818
NPRM Comment Period End	08/26/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2198-02

Agency Contact: Barry O'Melinn, Chief, Appellate Counsel, Department of Justice, Immigration and Naturalization Service, Room 200, 5113 Leesburg Pike, Falls Church, VA 22041
Phone: 703 756-6257

RIN: 1115–AG61

1725. REENGINEERING OF PART 214, NONIMMIGRANT CLASSES TO CLARIFY AND RESTATE ADMISSION REQUIREMENTS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186; ...

CFR Citation: 8 CFR 214; 8 CFR 252

Legal Deadline: None

Abstract: The purpose of this regulation is to reorganize, streamline and rewrite 8 CFR 214. This is an administrative action only, making no substantive changes to the requirements for nonimmigrant admission or status.

The current regulation has grown in size and complexity, especially during the past 15 years, as Congress has added at least 10 new nonimmigrant classes and expanded the requirements and restrictions on many of the existing classes. The regulatory outline for part 214 has become overly complicated, making the placement and revision of new materials and even the identification of correct paragraph citations exceedingly difficult. The INS plans to reorganize part 214 by adding new provisions relating to each nonimmigrant classification.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/00/03	
Interim Final Rule Comment Period End	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No.2218-02

Agency Contact: Efren Hernandez, Director, Business and Trade Branch, Adjudications Division, Department of Justice, Immigration and Naturalization Service, 425 I Street NW, Washington, DC 20536
Phone: 202 353-8177

RIN: 1115–AG62

1726. • WAIVERS FOR NONIMMIGRANTS UNDER SECTION 212(D)(3)(A) OF THE IMMIGRATION AND NATIONALITY ACT

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184

CFR Citation: 8 CFR 212

Legal Deadline: None

Abstract: This rule amends regulations pertaining to the process by which waiver requests are referred to the INS by the Department of State (DOS) for certain nonimmigrants. This rule affects individuals located outside of the United States who are applying for temporary visas. Promulgation of this rulemaking ensures that INS' rules are consistent with long-standing Agency practices.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	
Interim Final Rule Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2200-02

Agency Contact: Sophia Cox, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AG63

1727. • ESTABLISHING SAN BERNARDINO, SANTA ANA, AND VENTURA SUBOFFICES UNDER THE JURISDICTION OF THE LOS ANGELES DISTRICT OFFICE

Priority: Info./Admin./Other

Legal Authority: 8 USC 1103

CFR Citation: 8 CFR 100

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service (Service) by adding the San Bernardino, Santa Ana, and Ventura Suboffices to the listing of internal suboffices. The Service is opening these three suboffices to better serve the residents within the jurisdiction of the Los Angeles District Office. The San Bernardino, Santa Ana, and Ventura Suboffices will enable Service customers to significantly reduce the commuting distance to a Service office as well as the wait time for assistance. The intended effect of this regulation is to reallocate Service resources and improve processing efficiency for the Los Angeles District.

Timetable:

Action	Date	FR Cite
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2192-02

Agency Contact: Sharon M Lucas, Special Assistant, Department of Justice, Immigration and Naturalization Service, Room 7114, Office of Field Operations, 425 I Street NW, Washington, DC 20536
Phone: 202 307-3862

RIN: 1115–AG66

1728. • RELEASE OF INFORMATION REGARDING IMMIGRATION AND NATURALIZATION SERVICE DETAINEES IN NON-FEDERAL FACILITIES

Priority: Other Significant

Legal Authority: 5 USC 301; 5 USC 552; 5 USC 552a; 8 USC 1103; 8 USC 1182; ...

CFR Citation: 8 CFR 236

Legal Deadline: None

Abstract: This rule governs the public disclosure by any State or local government entity or by any privately operated facility of the name or other information relating to any immigration detainee being housed or otherwise maintained or provided service on behalf of the INS. This rule establishes a uniform policy on the public release of information on INS' detainees and

ensure the INS' ability to support the law enforcement and security needs of the U.S.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/22/02	67 FR 19508
Interim Final Rule Comment Period End	06/21/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2203-02

Agency Contact: Dea Carpenter, Associate General Counsel, Office of General Counsel, Department of Justice, Immigration and Naturalization Service, Room 6100, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2895

RIN: 1115–AG67

1729. • REMOVAL OF VISA AND PASSPORT WAIVER FOR CERTAIN PERMANENT RESIDENTS OF CANADA AND BERMUDA

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1225; 8 USC 1226; 8 USC 1227; ...

CFR Citation: 8 CFR 2; 8 CFR 212; 8 CFR 231; 8 CFR 235; 8 CFR 286

Legal Deadline: None

Abstract: Currently, certain permanent residents of Canada and Bermuda are permitted to enter the United States without a passport or visa. Many of these former British Commonwealth countries have high rates of fraud and abuse, and the documents presented by these permanent residents, for entry to the United States, do not meet current document security standards. This rule amends the Immigration and Naturalization Service's (Service) regulations by providing that a passport and visa will be required for permanent residents of Canada and Bermuda having a common nationality with Canadian Nationals or with British subjects in Bermuda. These permanent residents of Canada and Bermuda will be required to present a passport and visa to enter the United States. This rule also amends several other sections of the regulations that provide exceptions for these individuals based on the prior passport and visa exemption. The Service is taking this action in conjunction with the Department of State. This rule is intended to increase security and safeguard the United States.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	
Interim Final Rule Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2202-02

Agency Contact: Joyce Broughman, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 514-3019

RIN: 1115–AG68

1730. • REQUIRING RECERTIFICATION OF ALL SERVICE-APPROVED SCHOOLS FOR ENROLLMENT IN THE STUDENT AND EXCHANGE VISITOR INFORMATION SYSTEM (SEVIS)

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1304; 8 USC 1356; 31 USC 1907; EO 12356

CFR Citation: 8 CFR 103; 8 CFR 214

Legal Deadline: None

Abstract: On October 30, 2001, the President issued Homeland Security Directive No. 2 requiring the INS to conduct periodic reviews of all institutions certified to receive nonimmigrant students. The Enhanced Border Security and Visa Entry Reform Act of 2002, Public Law 107-173 enacted May 14, 2002, also requires a periodic review of school approvals.

This rule governs the review and certification process that INS uses to approve schools to enroll foreign students. It also continues the implementation of the process by which schools may be approved to obtain access to the Student and Exchange Visitor Information System (SEVIS). While the INS has in place an existing process for certifying and decertifying schools, the INS is requiring that all previously approved schools must apply for certification in accordance with these new mandates cited above, prior to being allowed to enroll in SEVIS.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/25/02	67 FR 60107
Interim Final Rule Effective	09/25/02	
Interim Final Rule Comment Period End	11/25/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2217-02

Agency Contact: Maura Deadrick, Assistant Director, Adjudication Division, Department of Justice, Immigration and Naturalization Service, Room 3040, 425 I Street NW, Washington, DC 20536
Phone: 202 514-3228

RIN: 1115–AG71

1731. • POSTING OF SECURITY GUARD AT GANGWAY OF VESSEL FOR DETAINING ALIEN CREWMAN

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1184; 8 USC 1258; 8 USC 1281; 8 USC 1282

CFR Citation: 8 CFR 252

Legal Deadline: None

Abstract: The Immigration and Nationality Act (Act) provides that any immigration officer may revoke the conditional permit to land any alien crewman and require the master or commanding officer of the vessel on which the crewman arrived to receive and detain him or her on board such vessel. This interim rule amends the Immigration and Naturalization Service (Service) regulations by requiring that, upon request of an immigration officer, the master or commanding officer of a vessel will, in certain cases, not only detain an alien crewman on board the vessel, but will, at his or her own expense, provide the necessary security to ensure that the detained alien crewman does not leave the vessel. This rule is necessary to enhance the security of the United States since a detained alien crewman may seek to leave the vessel on which he or she has been detained and that his or her illegal departure may pose a significant threat to the public safety.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/03	
Interim Final Rule Comment Period End	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2210-02

Agency Contact: Andrew Taub, Assistant Chief Inspector, Office of Inspections, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 305-9244

RIN: 1115–AG72

1732. • ELECTRONIC ARRIVAL-DEPARTURE MANIFEST FOR VISA WAIVER PROGRAM

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1187

CFR Citation: 8 CFR 2

Legal Deadline: Final, Statutory, October 1, 2002, PL 106-396.

Abstract: This rule serves to further implement the automated exit entry control system mandated by section 217 (h) of the Immigration and Nationality Act (Act) by specifying those passenger data elements that must be electronically transmitted to the Immigration and Naturalization Service by carriers seeking to transport Visa Waiver Program (VWP) passengers into and out of the United States on or after October 1, 2002. This rule will also ensure that legitimate VWP travel is not disrupted after September 30, 2002, when the Attorney General will no longer have the authority to admit applicants for admission under section 217 of the Act who arrive via sea or air unless the carrier transporting such aliens is electronically transmitting specified passenger data that the Attorney General has determined is sufficient to track the arrival and departure of VWP aliens. This rule is necessary for the proper identification and monitoring of VWP aliens.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	
Interim Final Rule Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2219-02

Agency Contact: Michael J. Flemmi, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 305-9247

RIN: 1115–AG73

1733. • REGISTRATION REQUIREMENTS AND WORK AUTHORIZATION ELIGIBILITY FOR ALIENS IN THE UNITED STATES

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1201; 8 USC 1201a; 8 USC 1301 to 1305; 8 USC 1324a

CFR Citation: 8 CFR 2; 8 CFR 264; 8 CFR 274a

Legal Deadline: None

Abstract: This rule amends INS regulations regarding employment authorization and registration of aliens. First, this rule broadens the rule that permits the presentation of specified documents to satisfy the employment eligibility verification requirements for a temporary period. Second, this rule broadens the acceptable documentation available to establish that an asylee, or an alien who has applied for asylum, has complied with the requirement to be registered with the INS. This rule clarifies the employment authorization regulations by specifying that certain classes of aliens who are employment authorized incident to status are not required to apply for, or obtain an Employment Authorization Document, but are permitted to do so if they wish to have an INS-issued secure photo identity document. Fourth, this rule implements two new Federal laws enacted on January 16, 2002, involving the employment authorization of the spouses of E and L aliens, by making these classifications employment authorized incident to status, consistent with the provisions of these laws. This rule also provides for restructuring of 8 CFR 274a.12(d).

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/03	
Interim Final Rule Comment Period End	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No.2204-02

Agency Contact: Michael Hardin, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-3048

RIN: 1115–AG74

1734. • REDUCED COURSE LOAD FOR CERTAIN F AND M NONIMMIGRANT STUDENTS AT BORDER COMMUNITIES

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1101 note 1; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1221; 8 USC 1281; 48 USC 1901; 48 USC 1931; PL 104-208; ...

CFR Citation: 8 CFR 214

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service regulations governing F and M nonimmigrants. This rule will clarify that nonimmigrant aliens who reside outside the United States and regularly commute across a land border to study may do so on a part-time basis within the F or M nonimmigrant category. It is common for aliens residing outside the U.S., such as in Canada or Mexico, to enroll part-time in border educational institutions to enter the U.S. daily to pursue part-time studies. This rule will prevent the significant disruption of part-time study that has

become an accepted fact of life along the border and a settled expectation. Additionally, these changes are being made to facilitate and legitimize certain part-time study along border communities while ensuring that all applicable requirements and safeguards are met.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/27/02	67 FR 54941
Interim Final Rule Comment Period End	10/27/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2220-02

Agency Contact: Efren Hernandez, Director, Business and Trade Branch, Adjudications Division, Department of Justice, Immigration and Naturalization Service, 425 I Street NW, Washington, DC 20536
Phone: 202 353-8177

RIN: 1115–AG75

1735. • PROCEDURES FOR CONDUCTING EXAMINATIONS AND WAIVING THE OATH OF ALLEGIANCE FOR NATURALIZATION APPLICANTS WITH DISABILITIES

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1421; 8 USC 1443; 8 USC 1447; 8 CFR 2.1; ...

CFR Citation: 8 CFR 310; 8 CFR 313; 8 CFR 316; 8 CFR 319; 8 CFR 333; ...

Legal Deadline: None

Abstract: This regulation provides procedures for conducting examinations and waiving the oath of allegiance attachment requirement and the oath requirement for any individual who has a developmental, physical, or mental impairment that makes him or her unable to understand, or communicate an understanding of, the meaning of the oath. The rule incorporates changes made by Public Law 106-448, which authorized the Attorney General to waive the oath requirement for such individuals. It also specifies who is authorized to act as a designated representative on behalf of applicants who qualify for the waiver and addresses how the INS will conduct examinations with such representatives to ensure that applicants with disabilities have the opportunity to establish eligibility for naturalization.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/03	
Interim Final Rule Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2191-02

Agency Contact: Richard Sheridan, Staff Officer, Immigration Services Division, Department of Justice, Immigration and Naturalization Service, Room 980, 801 I Street NW, Washington, DC 20536
Phone: 202 616-0583

RIN: 1115–AG77

1736. • ELECTRONIC SIGNATURE ON APPLICATIONS AND PETITIONS FOR IMMIGRATION AND NATURALIZATION BENEFITS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1201; 8 1252 note; ...

CFR Citation: 8 CFR 103

Legal Deadline: Other, Statutory, September 2003, PL 105-277.

Abstract: This rule amends the Immigration and Naturalization (Service) regulations concerning the acceptance of electronic signatures on applications and petitions for immigration and naturalization benefits. The change is necessary to allow the Service to begin accepting electronically filed applications and petitions as required by law. By accepting electronically filed applications and petitions, the Service expects to streamline its information collection process, improve customer service, and move towards fulfilling the mandates of the Government Paperwork Elimination Act (GPEA).

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	
Interim Final Rule Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2224-02

Agency Contact: Ann Palmer, Special Assistant, Immigration Services Division, Department of Justice, Immigration and Naturalization Service, Room 1000, 800 K Street NW, Washington, DC 20536
Phone: 202 514-6442
Email: ann.m.palmer@usdoj.gov

RIN: 1115–AG79

Department of Justice (DOJ)
Immigration and Naturalization Service (INS)

Long-Term Actions

1737. VISA WAIVER PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 8 CFR 217

Timetable:

Action	Date	FR Cite
NPRM-INS No. 1406-91 Comment Period End 5/22/91	05/07/91	56 FR 21101
Final Rule-INS No. 1406-91 Eff. 7/18/91*	07/18/91	56 FR 32952
Interim Final Rule-INS No. 1447 Eff. 10/1/91; Comment Period End 10/15/91	09/13/91	56 FR 46716
Interim Final Rule-1622-93; Eff. 7/29/93; Com. End 8/30/93; (To be merged with 1447R-93)*	07/29/93	58 FR 40581
Public Notice-INS No. 1674 Eff. 10/25/94, Comment Period End 09/30/96	02/21/95	60 FR 9699
Interim Final Rule-INS No. 1685 Eff. 4/1/95; Comment Period End 5/30/95	03/28/95	60 FR 15855
Interim Final Rule-INS No. 1777	07/08/96	61 FR 35598
Interim Final Rule-INS No. 1782-96 With Comments (Australia)	07/29/96	61 FR 39721
Interim Final Rule-INS 1786-96 With Comments (Slovenia)	09/30/97	62 FR 50998
Final Rule-INS No. 1799	12/30/98	63 FR 71726
Interim Final Rule-INS 2002-99 With Comments (Portugal, Singapore, and Uruguay)	08/03/99	64 FR 42006
Interim Final Rule-INS 2188-02 (Removing Argentina)	02/21/02	67 FR 7943
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marty Newingham
Phone: 202 616-7992

RIN: 1115–AB93

1738. EMPLOYER SANCTIONS MODIFICATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 8 CFR 274a

Timetable:

Action	Date	FR Cite
Interim Final Rule-INS No. 1738	10/07/96	61 FR 52235
Correction (Interim Final Rule)	10/29/96	61 FR 55840
Interim Final Rule Comment Period End	11/06/96	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Joseph Donnelly
Phone: 202 514-6057

RIN: 1115–AE21

1739. AUTHORIZING SUSPENSION OF EMPLOYMENT AUTHORIZATION REQUIREMENTS ON THE BASIS OF SEVERE ECONOMIC HARDSHIP FOR F-1 STUDENTS AND EMERGENT CIRCUMSTANCES

Priority: Other Significant

CFR Citation: 8 CFR 214

Timetable:

Action	Date	FR Cite
Interim Final Rule-INS No. 1914-98	06/10/98	63 FR 31871
Interim Final Rule Comment Period End	08/10/98	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Maura Deadrick
Phone: 202 514-3228

RIN: 1115–AF15

1740. AVAILABILITY OF MATERIAL UNDER FREEDOM OF INFORMATION ACT AND PRIVACY ACT

Priority: Substantive, Nonsignificant

CFR Citation: 8 CFR 103

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Mildred Carter
Phone: 202 514-1722

RIN: 1115–AF32

1741. INTERIM DESIGNATION OF ACCEPTABLE RECEIPTS FOR EMPLOYMENT ELIGIBILITY VERIFICATION

Priority: Other Significant

CFR Citation: 8 CFR 274a

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/09/99	64 FR 6187
Action	04/12/99	
Interim Final Rule Comment Period End		
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Marguerite Przbylski Kleczek
Phone: 202 514-2895

RIN: 1115–AF42

1742. INADMISSIBILITY AND DEPORTABILITY ON PUBLIC CHARGE GROUNDS

Priority: Other Significant

CFR Citation: 8 CFR 212; 8 CFR 237

Timetable:

Action	Date	FR Cite
NPRM	05/26/99	64 FR 28676
NPRM Comment Period End	07/26/99	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Alice Smith
Phone: 202 305-9353

RIN: 1115–AF45

1743. EXPANSION OF EXPEDITED REMOVAL OF CERTAIN CRIMINAL ALIENS HELD IN FEDERAL, STATE, AND LOCAL JAILS

Priority: Other Significant

CFR Citation: 8 CFR 212; 8 CFR 235

Timetable:

Action	Date	FR Cite
ANPRM	09/22/99	64 FR 51338
ANPRM Comment Period End	11/22/99	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

Agency Contact: Robert Evans
Phone: 202 353-7218

RIN: 1115–AF50

1744. EXTENDING THE PERIOD OF DURATION OF STATUS FOR CERTAIN F AND J NONIMMIGRANT ALIENS

Priority: Substantive, Nonsignificant

CFR Citation: 8 CFR 214

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/15/99	64 FR 32146
Interim Final Rule Comment Period End	08/16/99	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Efren Hernandez
Phone: 202 353-8177

RIN: 1115–AF54

1745. IMPOSITION OF FINES FOR VIOLATIONS OF THE IMMIGRATION AND NATIONALITY ACT

Priority: Other Significant

CFR Citation: 8 CFR 280

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael D. Jones
Phone: 202 305-7018

RIN: 1115–AF70

1746. PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A U.S. CITIZEN OR PREFERENCE IMMIGRANT; ADJUSTMENT OF STATUS TO THAT OF A PERSON ADMITTED FOR PERMANENT RESIDENCE

Priority: Other Significant

CFR Citation: 8 CFR 204; 8 CFR 245

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/20/91	
Interim Final Rule Comment Period End	07/20/91	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Elizabeth N. Lee
Phone: 202 307-2353
Email: elizabeth.n.lee@usdoj.gov

RIN: 1115–AF94

1747. INCREASING THE NUMBER OF OFFICERS AUTHORIZED TO ISSUE NOTICES TO APPEAR AND ARREST WARRANTS FOR IMMIGRATION VIOLATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 8 CFR 239; 8 CFR 287

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Christina Hamilton
Phone: 202 514-2895

RIN: 1115–AG22

Department of Justice (DOJ)
Immigration and Naturalization Service (INS)

Completed Actions

1748. POWERS OF THE ATTORNEY GENERAL TO AUTHORIZE STATE OR LOCAL LAW ENFORCEMENT OFFICERS TO CARRY OUT IMMIGRATION ENFORCEMENT

Priority: Substantive, Nonsignificant

CFR Citation: 28 CFR 65

Completed:

Reason	Date	FR Cite
Final Rule	07/24/02	67 FR 49354
Final Action Effective	08/23/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Ron Dodson
Phone: 202 616-7310

RIN: 1115–AF20

1749. DELEGATION OF THE ADJUDICATION OF CERTAIN H-2A PETITIONS TO THE DEPARTMENT OF LABOR

Priority: Substantive, Nonsignificant

CFR Citation: 8 CFR 103; 8 CFR 214; 8 CFR 248; 8 CFR 264

Completed:

Reason	Date	FR Cite
Final Action	10/01/02	67 FR 61474
Final Action	10/01/02	67 FR 61568

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

Agency Contact: Irene Hoffman
Phone: 202 616-7435

John Brown
Phone: 202 514-5014

RIN: 1115–AF29

1750. • DELEGATION OF AUTHORITIES FOR VARIOUS DETENTION AND REMOVAL AUTHORITIES

Priority: Info./Admin./Other

Legal Authority: 5 USC 552; 8 USC 1101; 8 USC 1103; 8 USC 1304; 8 USC 1356; EO 12356; ...

CFR Citation: 8 CFR 2; 8 CFR 236; 8 CFR 238; 8 CFR 239; 8 CFR 240; 8 CFR 241; 8 CFR 287

Legal Deadline: None

Abstract: As part of the ongoing restructuring of the Immigration and Naturalization (Service), the chain of command for many functions related to the detention and removal of aliens, including the detention, care, and custody of juveniles, has been centralized. Previously, these functions were overseen by Service districts and regions which reported to the Executive Associate Commissioner for Field Operations. Under the reorganization, the daily oversight of overall detention and removal functions transfers to the Deputy Executive Associate Commissioner for Detention and Removal who will still report to the Executive Associate Commissioner for Field Operations. The daily oversight of functions relating to alien juveniles in the custody and care of the Service is transferred to the Director of the Office of Juvenile Affairs who reports to the Commissioner of the INS. This rule ensures that the appropriate immigration officials will have the necessary authority to carry out the daily oversight of the detention and removal of aliens consistent with the changes in responsibility.

Timetable:

Action	Date	FR Cite
Final Action	06/07/02	67 FR 39255
Final Action Effective	06/07/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2206-02

Agency Contact: John J. Pogash, Juvenile Coordinator (Headquarters), Department of Justice, Immigration and Naturalization Service, Room 800, 801 I Street NW, Washington, DC 20536
Phone: 202 305-1518

RIN: 1115–AG69

1751. • REGISTRATION AND MONITORING OF CERTAIN NONIMMIGRANTS

Priority: Other Significant

Legal Authority: 5 USC 301; 8 USC 1103; 8 USC 1184; 8 USC 1201; 8 USC 1201a; 8 USC 1301; 8 USC 1302; 8 USC 1303; 8 USC 1304; 8 USC 1305; ...

CFR Citation: 8 CFR 214; 8 CFR 264

Legal Deadline: None

Abstract: Recent terrorist incidents have underscored the need to broaden the special registration requirements for nonimmigrant aliens from certain designated countries, and other nonimmigrant aliens whose presence in the United States requires closer monitoring, to require that they provide specific information at regular intervals to ensure their compliance with the terms of their visas and admission and to ensure that they depart the United States at the end of their authorized stay. This rule modifies the existing requirements to require certain nonimmigrant aliens to make specific reports to the Immigration and Naturalization Service: Upon arrival; approximately 30 days after arrival; every 12 months after arrival; upon certain events, such as a change of address, employment, or school; and at the time of departure from the United States.

Timetable:

Action	Date	FR Cite
NPRM	06/13/02	67 FR 40581
NPRM Comment Period End	07/15/02	
Final Rule	08/12/02	67 FR 52584
Final Rule Effective	09/11/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2216-02

Agency Contact: Daniel Brown, Attorney, Office of General Counsel, Department of Justice, Immigration and Naturalization Service, Room 6100, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2895

RIN: 1115–AG70

Department of Justice (DOJ)
Legal Activities (LA)

Proposed Rule Stage

1752. CERTIFICATION AND DECERTIFICATION IN CONNECTION WITH CERTAIN SUITS BASED UPON ACTS OR OMISSIONS OF FEDERAL EMPLOYEES AND OTHER PERSONS

Priority: Substantive, Nonsignificant

Legal Authority: 28 USC 2679(b)

CFR Citation: 28 CFR 15

Legal Deadline: None

Abstract: This rule revises 28 CFR part 15, pertaining to the defense of certain suits against Federal employees, to conform the regulations to changes made by the Federal Employee Liability Reform and Tort Compensation Act, Public Law 100-694. Under prior law, the defense of suits against Federal employees for torts committed in the scope of their employment was limited to claims involving the operation of motor vehicles. Public Law 100-694 expanded the coverage of the immunity provisions to include all common law torts committed by Federal employees in the scope of their employment. This rule conforms the Department's regulations to the expanded coverage of the statute.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	
NPRM Comment Period End	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Additional Information: CIV 102

Agency Contact: James G. Touhey Jr., Trial Attorney, Torts Branch, Department of Justice, P.O. Box 888, Benjamin Franklin Station, Washington, DC 20004
Phone: 202 616-4292

RIN: 1105–AA62

1753. DESIGNATION OF AGENCIES TO RECEIVE AND INVESTIGATE REPORTS REQUIRED UNDER THE PROTECTION OF CHILDREN FROM SEXUAL PREDATORS ACT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 13032

CFR Citation: 28 CFR 81

Legal Deadline: NPRM, Statutory, April 28, 1999.

Abstract: On October 30, 1998, Congress passed the Protection of Children from Sexual Predators Act of 1998 (PCSPA). The PCSPA requires providers of an electronic communication service or a remote computing service to the public, through a facility or means of interstate or foreign commerce, to report incidents of child pornography as defined by sections 2251, 2251A, 2252, 2252A, or 2260 of title 18, United States Code, to the appropriate Federal

agency. In order to facilitate effective reporting, the PCSPA requires the Attorney General to "designate an agency" to receive and investigate such reports of child pornography. The proposed rule previously published set forth the Attorney General's proposed designations and certain other matters covered by the PCSPA's reporting requirements.

On November 29, 1999, as part of the Consolidated Appropriations Act, 2000, Public Law 106-113, 113 Stat. 1501, Congress amended 42 U.S.C. 13032 to require providers to report such incidents to the Cyber Tipline at the National Center for Missing and Exploited Children, which shall forward that report to a law enforcement agency or agencies designated by the Attorney General. A second proposed rule is being prepared for publication that will reflect the change in the Agency to receive the reports.

Timetable:

Action	Date	FR Cite
NPRM	05/26/99	64 FR 28422
NPRM Comment Period End	07/26/99	
Second NPRM	04/00/03	
Second NPRM Comment Period End	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Andrew Oosterbaan, Chief, Child Exploitation and Obscenity Section, Department of Justice, 1400 New York Avenue NW, Suite 600, Washington, DC 20530
Phone: 202 514-5780

RIN: 1105–AA65

1754. MOTOR VEHICLE SALVAGE REGULATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 30504

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Attorney General is required to issue regulations directing junk yard and salvage yard operators and insurance carriers to file monthly reports with the operator of the National Motor Vehicle Title Information System (NMVTIS) concerning vehicles in their possession. The reports are required by statute, 49 U.S.C. section 30504(a) and (b), to provide the vehicle identification numbers, the date on which the vehicle was obtained, and the name of the individual or entity from whom the vehicle was obtained. Salvage and junk yard operators are also required to provide a statement of whether the automobile was crushed or disposed of for sale or other purposes. Insurance carriers are also required to provide the name of the owner of the automobile at the time the report is filed.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: On a related issue, the FBI expects to issue regulations implementing the National Stolen Passenger Motor Vehicle Information System (NSPMVIS). (See RIN 1110-AA01.)

Agency Contact: Deborah Sorkin, Trial Attorney, Department of Justice, Office of Enforcement Operations, Criminal Division, 1301 New York Avenue NW, Washington, DC 20530
Phone: 202 305-4023
Fax: 202 305-0562

RIN: 1105–AA71

1755. ENHANCED NOTICE AND RELEASE PROCEDURES FOR OWNERS OF SEIZED PROPERTY PURSUANT TO THE CAFRA OF 2000; DISPOSITION OF SEIZED PROPERTY TOO COSTLY TO MAINTAIN; CONSOLIDATION OF DEPARTMENT REGULATIONS

Priority: Other Significant

Legal Authority: 5 USC 301; 8 USC 1103; 8 USC 1324(b); 15 USC 1177; 17 USC 509; 18 USC 981 to 983; 18 USC 1467; 18 USC 1955; 18 USC 1963; 18 USC 2253 to 2254; 18 USC 2513; 19 USC 1606 to 1608; 19 USC 1610; 19 USC 1612(b); 19 USC 1613; 19 USC 1618; 21 USC 822; 21 USC 853; 21 USC 871 to 872; 21 USC 880 to 881; 21 USC 958; 21 USC 965; 22 USC 401; 28 USC 509 to 510; 28 USC 524; PL 100-690, sec 6079

CFR Citation: 8 CFR 274; 21 CFR 1316; 28 CFR 8 (Revision); 28 CFR 9 (Revision)

Legal Deadline: Final, Statutory, August 23, 2000, CAFRA,applies to all forfeiture actions commenced on or after 8/23/00.

Abstract: By this rule, the Department does five things.

First, the Department is implementing new forfeiture procedures required by the recently enacted Civil Asset Forfeiture Reform Act of 2000 (CAFRA). CAFRA's procedural changes enhance the ability of property owners to contest the forfeiture of seized property. CAFRA also makes other changes beneficial to property owners. In particular: 1) The requirement to file a bond for costs with a claim is eliminated; 2) the time for filing a claim is extended; and 3) the release of seized property is required under various circumstances. Congress made CAFRA's changes applicable to forfeiture proceedings commenced on or after August 23, 2000.

Second, the Department is adding a provision allowing the pre-forfeiture disposition of seized property when the expense of holding the property is disproportionate to its value. This provision is needed to implement the pre-existing authority of 19 U.S.C. section 1612(b)—one of the customs laws procedural statutes incorporated by reference in forfeiture statutes enforced by the Department. This provision will enable the Department to use the authority of section 1612(b) in appropriate cases to avoid disproportionately high storage and maintenance costs for seized property pending forfeiture.

Third, this rule consolidates previously existing forfeiture regulations of the INS, DEA, and the FBI in order to achieve greater consistency and promote overall fairness in the administrative forfeiture process by avoiding unnecessary differences in component procedures.

Fourth, the rule updates the forfeiture regulations by adding discretionary authority for publication of notice of administrative forfeitures on the Internet in lieu of publication in a newspaper, by adding 18 U.S.C. section 981 seizure-for-forfeiture authority for INS in light of CAFRA's expansion of

18 U.S.C. section 981(a)(1)(C) forfeiture authority, which now includes proceeds of Immigration and Nationality Act offenses and visa and passport fraud offenses. The rule also adds seizure-for-forfeiture authority for FBI and INS in 18 U.S.C. section 1594 cases (forfeiture of property involved in peonage and slavery (Pub. L. 106-386; 114 Stat. 1464 (October 28, 2000)). In addition, to reflect reorganization of INS, the rule replaces references to INS Regional Directors with references to the INS Director, Asset Forfeiture Office.

Fifth, the rule modifies the regulations at 28 CFR part 9 governing petitions for remission or mitigation of forfeiture to refer only to DEA's "Forfeiture Counsel" as the pertinent official in DEA's forfeiture cases; to replace the reference to "INS Regional Directors" with "INS Director Asset Forfeiture Office or designee," as the pertinent official with authority to grant remission or mitigation in INS administrative forfeiture cases; to incorporate where applicable CAFRA's statutory criteria for innocent ownership; and to provide discretionary authority for the Ruling Officer to waive the payment of forfeiture-related costs and expenses, except payments of awards based on the forfeiture and payments of the recognized interests of other third parties in the property forfeited, as a condition of remission in cases in which the petitioner is a victim of the underlying offense. In addition, the discretionary authority to waive costs in remissions to owners and lienholders that is already provided at 28 CFT 9.7(a)(3) and 9.7(b)(2)(i) and (ii) is amended to incorporate the same exceptions as those applicable in remissions to victims.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Hieronymus, Forfeiture Counsel, Department of Justice, Drug Enforcement Administration, Office of Domestic Operations, Asset Forfeiture Section, Caller Number 91017, Arlington, VA 22202
Phone: 202 307-7636

Maury V. Taylor, Forfeiture Counsel, Department of Justice, Legal Forfeiture Unit, FBI, Office of the General Counsel, J. Edgar Hoover Building, 935 Pennsylvania Avenue NW, Washington, DC 20535
Phone: 202 324-9700

RIN: 1105–AA74

1756. DNA SAMPLING OF FEDERAL OFFENDERS UNDER THE USA PATRIOT ACT OF 2001

Priority: Other Significant

Legal Authority: 28 USC 509; 28 USC 510; 42 USC 14132; 41 USC 14135a; 42 USC 14135b; 10 USC 1565; PL 106-546

CFR Citation: 28 CFR 28

Legal Deadline: Other, Statutory, April 18, 2001, Determination of qualifying Federal offenses.
Final, Statutory, June 17, 2001, Commencement of collection of DNA samples.

Abstract: Section 3 of Public Law 106-546, the DNA Analysis Backlog Elimination Act of 2000 (the Act), requires the collection of DNA samples from certain categories of Federal offenders. In addition, the Act details the responsibilities of the Bureau of Prisons and Federal probation offices to collect DNA samples from offenders in their custody or supervision, and the responsibility of the FBI to analyze and index DNA samples.

On June 28, 2001, the Department of Justice published an interim rule to implement section 3 and related provisions of Public Law 106-546, the DNA Analysis Backlog Elimination Act of 2000. 66 FR 34363 (June 28, 2001). That rule, in part, specified the federal offenses that are treated as "qualifying Federal offenses" for purposes of collecting DNA samples from federal offenders.

Subsequent to the publication of that interim rule, Congress enacted Public Law 107-56, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001. Section 503 of the USA PATRIOT ACT added three new categories of qualifying Federal offenses for purposes of DNA sample collection: (1) any offense listed in section 2332b(g)(5)(B) of title 18, United States Code; (2) any crime of violence (as defined in section 16 of title 18, United States Code); and (3) any attempt or conspiracy to commit any of the above offenses. Section 503 authorized the Attorney General to determine which offenses are included in these additional categories. The purpose of this proposed rule is to revise a section of the existing regulations, 28 CFR 28.2, to add the offenses in these three new categories.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/28/01	66 FR 34363
Interim Final Rule Comment Period End	08/27/01	
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David J. Karp, Senior Counsel, Department of Justice, Office of Legal Policy, 950 Pennsylvania Avenue NW, Room 4503, Washington, DC 20530
Phone: 202 514-3273

RIN: 1105–AA78

Department of Justice (DOJ)
Legal Activities (LA)

Final Rule Stage

1757. FOREIGN AGENTS REGISTRATION ACT; REGULATIONS REVISED AND CLARIFIED TO REFLECT CHANGES IN THE LAW

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 611 et seq Foreign Agents Registration Act of 1938

CFR Citation: 28 CFR 5.5(d)(10); 28 CFR 5.203(a); 28 CFR 5.204(a); 28 CFR 5.205(a); 28 CFR 5.206(b); 28 CFR 5.304(c); 28 CFR 5.306(a); 28 CFR 5.5(d)(11); 28 CFR 5.100(c); 28 CFR 5.100(d); 28 CFR 5.200(b); 28 CFR 5.201(a)(1); 28 CFR 5.201(a)(2); 28 CFR 5.202(b); 28 CFR 5.202(e); ...

Legal Deadline: None

Abstract: As a result of the passage of the Lobbying Disclosure Act of 1995 (LDA) and the Lobbying Disclosure Technical Amendments Act of 1998 (LDTAA), the Foreign Agents Registration Unit of the Criminal Division is issuing new regulations concerning changes in the Foreign Agents Registration Act of 1938 (FARA), as amended, 22 U.S.C. 611, et seq. These regulations replace the term "political propaganda" in the existing regulations with "informational materials" as provided in the LDA and make other changes to the FARA regulations required by the passage of the LDA and the LDTAA. The regulations also make other modifications to the existing regulations to facilitate the administration of FARA.

Timetable:

Action	Date	FR Cite
NPRM	07/09/99	64 FR 37065
NPRM Comment Period End	09/07/99	
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: CFR CITATIONS CONT: 28 CFR 5.307; 28 CFR 5.400(a) to (c); 28 CFR 5.401; 28 CFR 5.402(a) to (g); 28 CFR 5.500(a)(4); 28 CFR 5.600; 28 CFR 5.601(a); 28 CFR 5.601(b).

Agency Contact: Marshall R. Williams, Chief, Registration Unit, Internal Security Section, Criminal Division, Department of Justice, Room 9300, 1400 New York Avenue NW, Washington, DC 20530
Phone: 202 514-1216

RIN: 1105–AA45

1758. ETHICAL STANDARDS FOR ATTORNEYS FOR THE GOVERNMENT

Priority: Substantive, Nonsignificant

Legal Authority: 28 USC 530B

CFR Citation: 28 CFR 77

Legal Deadline: Final, Statutory, April 19, 1999.

Abstract: This rule supersedes the Department of Justice regulations relating to Communications with Represented Persons and implements 28 U.S.C. 530B pertaining to ethical standards for attorneys for the Government. Under that provision, an attorney for the Government shall be subject to State laws and rules, and local Federal court rules governing attorneys in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State. This rule fulfills the Attorney General's obligation under section 530B and provides guidance to all Department of Justice employees who are subject to section 530B regarding their obligations and responsibilities under this new provision.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/19/99	64 FR 19273
Interim Final Rule Comment Period End	06/21/99	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Claudia J. Flynn, Director, Professional Responsibility Advisory Office, Department of Justice, Suite 500, National Theatre Building, 1325 Pennsylvania Avenue NW, Washington, DC 20530
Phone: 202 514-0458
Fax: 202 353-7491

RIN: 1105–AA67

1759. CLAIMS UNDER THE RADIATION EXPOSURE COMPENSATION ACT AMENDMENTS OF 2000: TECHNICAL AMENDMENTS; EXPANSION OF COVERAGE TO URANIUM MILLERS AND ORE TRANSPORTERS; EXPANSION OF COVERAGE FOR URANIUM MINERS

Priority: Other Significant

Legal Authority: 42 USC 2210 note, Radiation Exposure Compensation Act; PL 106-245, Radiation Exposure Compensation Act Amendments of 2000; PL 106-553

CFR Citation: 28 CFR 79

Legal Deadline: Final, Statutory, January 6, 2001.

Abstract: The Department has issued two related rulemakings to implement the Radiation Exposure Compensation Act Amendments of 2002, enacted on July 10, 2000. The first is a final rule which makes changes consistent with the new law. This final rule expands the list of diseases that are currently compensable for "downwinder" and "onsite participant" claimants; eliminates smoking distinctions for all claimants; amends the list of geographical areas to provide additional radiation-affected areas for "downwinder" claimants; modifies the burden of proof for purposes of claims processing; allows claimants who have previously been denied compensation to file up to three times; and makes other technical revisions consistent with the amended Act.

The second rulemaking is a proposed rule for which the Department invites public comments. The proposed rule describes the expanded population of eligible uranium mine workers created by lowering the radiation exposure threshold for miners; identifies the new uranium mining states with respect to which miners may be eligible for compensation; includes provisions for compensation to aboveground miners; sets forth employment eligibility criteria for the new claimant categories; describes the documentation that would be required to establish proof of employment in a uranium mine or mill or as an ore transporter; describes the medical documentation necessary to establish the existence of renal cancer and chronic renal disease; and revises the provision concerning representation of claimants before the Department with respect to claims brought under the Act.

DOJ—LA

Final Rule Stage

Timetable:

CIV 100 - Technical Amendments
Final Action 08/07/02 (67 FR 51422)
CIV 101 - Expansion of Coverage
NPRM 08/07/02 (67 FR 51440)
NPRM Comment Period End 10/07/02
Final Action 04/00/03

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dianne S. Spellberg, Senior Counsel, Department of Justice, Room 3123, 1425 New York Avenue NW, Washington, DC 20005
Phone: 202 616-4129
Fax: 202 616-4313
Email: dianne.spellberg@usdoj.gov

RIN: 1105–AA75

1760. ESTABLISHMENT OF MINIMUM SAFETY AND SECURITY STANDARDS FOR PRIVATE COMPANIES THAT TRANSPORT VIOLENT PRISONERS

Priority: Other Significant

Legal Authority: PL 106-560

CFR Citation: 20 CFR 97

Legal Deadline: Final, Statutory, June 19, 2001.

Abstract: This rule proposes to implement the Interstate Transportation of Dangerous Criminals Act of 2000, Public Law 106-560 (114 Stat. 2784)(enacted December 21, 2000). In that Act, Congress found that State and local jurisdictions are increasingly turning to private companies to transport their violent prisoners, and that escapes have occurred. Congress determined that minimum regulations for the private prisoner transport industry were necessary to provide protection against risks to the public that are inherent in the transportation of violent prisoners and to assure the safety of those being transported.

Accordingly, this rule proposes that private prisoner transport companies comply with minimum standards for background checks and preemployment drug testing for potential employees, provide minimum standards for the length and type of employee training, and establish restrictions on the number of hours that transportation employees can be on duty during a given time period.

This rule also proposes that private prisoner transport companies comply with minimum standards for the use of restraints while transporting violent prisoners, and establishes categories of violent offenders required to wear identifying clothing. Further, the rule proposes a minimum guard-to-offender ratio that must be observed while transporting violent prisoners, and proposes that private prisoner transport companies comply with standards regarding employee uniforms and employee identification.

In addition, the rule proposes to require private prisoner transport companies to notify local law enforcement officials 24 hours in advance of any scheduled stops in their jurisdiction when transporting violent prisoners. In the event of an escape by a violent offender, the proposed rule requires the private prisoner transport company personnel immediately to notify appropriate law enforcement officials in the jurisdiction where the escape occurs, as well as the governmental entity that contracted with the private prisoner transport company for the transport of the escaped violent prisoner.

Finally, the rule proposes that private prisoner transport companies adopt certain minimum standards in order to protect the safety of violent prisoners in accordance with applicable Federal and State law.

Timetable:

Action	Date	FR Cite
NPRM	12/17/01	66 FR 64934
NPRM Comment Period End	02/15/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Lizette D. Benedi, Counsel, Department of Justice, Office of Legal Policy, 950 Pennsylvania Avenue NW, Room 4529, Washington, DC 20530
Phone: 202 514-3824

RIN: 1105–AA77

1761. SCREENING OF ALIENS AND OTHER DESIGNATED INDIVIDUALS SEEKING FLIGHT TRAINING

Priority: Other Significant

Legal Authority: PL 107-71, sec 113

CFR Citation: 28 CFR 105

Legal Deadline: None

Abstract: On November 19, 2001, Congress enacted the Aviation and Transportation Security Act (ATSA), Public Law 107-71. Upon enactment, section 113 of ATSA, 49 U.S.C. 44939, imposed notification and reporting requirements on certain persons who provide aviation training to aliens and other specified individuals. Under this section, certain aviation training providers subject to regulation by the Federal Aviation Administration (FAA) are prohibited from providing training to aliens and other designated individuals in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more, unless they provide prior notification to the Attorney General. This interim rule implements a process by which aviation training providers may provide the required notification and resume instruction for candidates who do not appear to pose a risk to aviation and national security.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	
Interim Final Rule Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Keith E. Halsey, Department of Justice, Federal Bureau of Investigation, Mailbox 27, Washington, DC 20535
Phone: 703 414-9535

RIN: 1105–AA80

1762. GUIDELINES FOR THE CAMPUS SEX CRIMES PREVENTION ACT AMENDMENT TO THE JACOB WETTERLING CRIMES AGAINST CHILDREN AND SEXUALLY VIOLENT OFFENDER REGISTRATION ACT

Priority: Info./Admin./Other

Legal Authority: 42 USC 14071

CFR Citation: None

Legal Deadline: None

Abstract: These guidelines implement an amendment to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act enacted by the Campus Sex Crimes Prevention Act (CSCPA). Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, 108 Stat. 1796, 2038 (codified at 42 U.S.C. 14071)

DOJ—LA

Final Rule Stage

contains the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (the Wetterling Act). The Wetterling Act sets minimum national standards for State sex offender registration and community notification programs, and directs the Attorney General to issue guidelines for such programs. The current Wetterling Act guidelines were published on January 5, 1999, in the Federal Register (64 FR 572, with corrections at 64 FR 3590). States that fail to comply with the Wetterling Act's requirements (as implemented and explained in the Attorney General's guidelines) are subject to a mandatory 10 percent reduction of the formula grant funding available under the Edward Byrne Memorial State and Local Law Enforcement Assistance Program (42 U.S.C. 3756), which is administered by the Bureau of Justice Assistance of the Department of Justice.

Subsequent to the publication of the current Wetterling Act guidelines, the Wetterling Act was amended by the Campus Sex Crimes Prevention Act (the CSCPA), Public Law 106-386, div. B, section 1601, 114 Stat. 1464, 1537 (2000). The CSCPA provides special requirements relating to registration and community notification for sex offenders who are enrolled in or work at institutions of higher education. These supplementary guidelines are necessary to take account of the CSCPA amendment to the Wetterling Act. The deadline for state compliance with the CSCPA amendment is October 27, 2002.

The CSCPA provisions appear in subsection (j) of the Wetterling Act (42 U.S.C. 14071(j)). As provided in subsection (j), any person required to register under a State sex offender registration program must notify the State concerning each institution of higher education (i.e., post-secondary school) in the State at which the person is a student or works, and of each change in enrollment or employment status of the person at such an institution.

Timetable:

Action	Date	FR Cite
Proposed Guidelines	03/08/02	67 FR 10758
Proposed Guidelines Comment Period End	05/07/02	
Final Guidelines	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: David J. Karp, Senior Counsel, Department of Justice, Office of Legal Policy, 950 Pennsylvania Avenue NW, Room 4503, Washington, DC 20530
Phone: 202 514-3273

RIN: 1105–AA81

Department of Justice (DOJ)
Legal Activities (LA)

Long-Term Actions

1763. WAIVER FOR FIREARM PROHIBITION ON NONIMMIGRANT VISA HOLDERS

Priority: Substantive, Nonsignificant

CFR Citation: 28 CFR 25

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Frank A.S. Campbell
Phone: 202 514-2283

RIN: 1105–AA66

Department of Justice (DOJ)
Office of Justice Programs (OJP)

Proposed Rule Stage

1764. CORRECTIONAL FACILITIES ON TRIBAL LANDS GRANT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 13701 et seq

CFR Citation: 28 CFR 91

Legal Deadline: None

Abstract: The Office of Justice Programs is issuing this second Notice of Proposed Rulemaking to amend the title and the definitions of "Indian tribe" and "construction" within 28 CFR part 91, subpart C (which outlines the requirements and procedures to award grants to Indian tribes for constructing jails on tribal lands for the incarceration of offenders subject to tribal jurisdiction). Congress has mandated a new definition of "Indian tribe," and with this broader definition federal funds through the Office of Justice Programs are now available to a larger universe of tribal entities. The amendment to the definition of "construction" is simply to expand and clarify the existing definition, to assist applicants and grantees in better understanding the allowable scope a project may take.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/24/96	61 FR 49969
Correction	10/18/96	61 FR 54333
Interim Final Rule Comment Period End	10/24/96	
Second NPRM	02/00/03	
Second NPRM Comment Period End	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Tribal

Agency Contact: Philip Merkle, Special Advisor to the Director, Department of Justice, Office of Justice Programs, Correction Program Office, 810 7th Street NW, Washington, DC 20531
Phone: 202 305-2550

RIN: 1121–AA41

1765. PUBLIC SAFETY OFFICERS' BENEFITS PROGRAM

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 42 USC 3711 et seq

CFR Citation: 28 CFR 32

Legal Deadline: None

DOJ—OJP

Proposed Rule Stage

Abstract: The Bureau of Justice Assistance will be proposing a major, substantive revision of the existing regulations (28 CFR part 32) that govern the Public Safety Officers' Benefits (PSOB) Program, to streamline all aspects of the program and relieve claimants of administrative burdens no longer deemed necessary. Further, the program will need to change as BJA moves into a paperless, electronic, Web-based application/review/payment program. The proposed revised regulations will affect all components of the program: death benefits, disability benefits, education benefits, and the related administrative components governing hearing officers and independent medical examinations. As the result of the 9/11/01 terrorist attacks, the PSOB program is expected to make awards totaling more than $100 million this year.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	
NPRM Comment Period End	07/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Camille Cain, Deputy Director for Programs, Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 810 7th Street NW, Washington, DC 20531
Phone: 202 616-6500

RIN: 1121–AA56

1766. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

Legal Authority: PL 103-355, sec 2455; EO 12549

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Department of Justice will be adopting the proposed common rule on debarment and suspension, as promulgated by another agency, as a cost-saving and efficiency matter. The rule, as adopted, would limit the mandatory lower-tier application of an exclusion to the first procurement level under a nonprocurement covered transaction. Second, this proposed common rule on debarment and suspension would set the dollar threshold on prohibited lower-tier procurement transactions with excluded persons at $25,000. Third, both this proposed rule on debarment and suspension, and the proposed rule on drug-free workplace requirements, would eliminate the mandate for agencies and participants to obtain written certifications from awardees or persons with whom they propose to enter into covered transactions. Fourth, the proposed rule on drug-free workplace requirements would be separated from this proposed rule on debarment and suspension.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Linda Fallowfield, Attorney-Advisor, Department of Justice, Office of Justice Programs, Office of the General Counsel, 810 7th Street NW, Washington, DC 20531
Phone: 202 305-2534

RIN: 1121–AA57

1767. CRIMINAL INTELLIGENCE SYSTEMS OPERATING POLICIES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 3711

CFR Citation: 28 CFR 23

Legal Deadline: None

Abstract: The purpose of this regulation is to assure that all criminal intelligence systems operating through support under the Omnibus Crime Control and Safe Streets Act of 1968 are used as authorized by law. This revision of 28 CFR part 23 updates the regulation for modern technological advances, extends the use of criminal intelligence systems for public safety purposes, and is drafted in plainer language.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	02/00/03	
Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Alan M. Fisher, Attorney-Advisor, Department of Justice, Office of Justice Programs, Room 5341, Office of the General Counsel, 810 Seventh Street NW, Washington, DC 20531-0001
Phone: 202 616-3540
Fax: 202 307-1419
Email: fisheral@ojp.usdoj.gov

RIN: 1121–AA59

1768. VICTIMS OF CRIME ACT (VOCA) PROGRAM REGULATIONS FOR THE VICTIM COMPENSATION GRANT PROGRAM AND VICTIM ASSISTANCE PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 10604, sec 1407(a), Victims of Crime Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Victims of Crime Act (VOCA) funds are obtained from the Crime Victims Fund in the U.S. Treasury, which consists of fines, fees, and bond forfeitures from Federal offenders.

The program regulations for the Victim Compensation Grant Program provide the parameters under which State agencies may use these funds to reimburse crime victims directly for expenses related to crime. Expenses that must be covered are lost wages, medical and mental health costs, and funeral and burial costs. States, at their discretion, may cover loss of support, crime scene cleanup, and other such expenses.

The Victim Assistance Program Regulations provide the parameters under which State agencies may use these funds to award grants to government and nonprofit organizations to provide direct services to crime victims. Local programs include child abuse, homicide survivor, drunk driving, sexual assault, and domestic violence. More than 3 million crime victims are served through these grants.

Costs to States are limited, as the VOCA grant provides for administrative costs for these programs.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

DOJ—OJP

Proposed Rule Stage

OJP-1350 VOCA: Program Regulations for Victim Compensation Grant Program
NPRM 12/00/02
NPRM Comment Period End 02/00/03
OJP-1405 VOCA Victim Assistance Program Regulations
NPRM 01/00/03
NPRM Comment Period End 03/00/03

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Carol Watkins, Director, Department of Justice, Office of Justice Programs, State Compensation and Assistance Division, 810 7th Street NW, Washington, DC 20531
Phone: 202 514-4696

RIN: 1121–AA61

1769. INTERNATIONAL TERRORISM VICTIM COMPENSATION PROGRAM

Priority: Other Significant

Legal Authority: 42 USC 10603c, sec 1404c; PL 104-208, Victims of Trafficking and Violence Protection Act of 2000

CFR Citation: None

Legal Deadline: None

Abstract: The Office of Justice Programs (OJP) will develop these regulations to implement the International Terrorism Victim Compensation Program provisions contained in the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 104-208), which directs OJP to carry out a program to compensate victims of acts of international terrorism that occur outside the United States, for expenses associated with that victimization.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Barbara Johnson, Program Manager, Department of Justice, Office of Justice Programs, Terrorism and International Victims Unit, Office for Victims of Crime, 810 7th Street NW, Washington, DC 20531
Phone: 202 307-5983

RIN: 1121–AA63

1770. VIOLENCE AGAINST WOMEN GRANT PROGRAMS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: PL 106-386, Violence Against Women Act of 2000

CFR Citation: 28 CFR 90

Legal Deadline: None

Abstract: This proposed rule updates the existing regulations for the STOP (Services, Training, Officers, Prosecutors) Violence Against Women Formula Grant Program, the STOP Violence Against Indian Women Discretionary Grant Program, the Grants to Encourage Arrest Policies Program, and the Grants to Combat Violent Crimes Against Women on Campuses Program, to incorporate statutory changes pursuant to the Violence Against Women Act of 2000. The purpose of the original Violence Against Women Act of 1994 was to improve the criminal justice system's response to domestic violence, sexual assault, and stalking, and to increase the availability of services to victims of these crimes. VAWA 2000 reauthorized existing grant programs created under VAWA 1994, established new grant programs, and strengthened various provisions of Federal law. These grant programs are expected to award a total of over $100 million per year.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	
NPRM Comment Period End	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Marnie Shiels, Attorney-Advisor, Department of Justice, Office of Justice Programs, Violence Against Women Office, 810 7th Street NW, Washington, DC 20531
Phone: 202 305-2981

RIN: 1121–AA64

Department of Justice (DOJ)
Office of Justice Programs (OJP)

Final Rule Stage

1771. BULLETPROOF VEST PARTNERSHIP GRANT ACTS OF 1998 AND 2000

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 3796ll

CFR Citation: 28 CFR 33

Legal Deadline: NPRM, Statutory, September 14, 1998.

Abstract: The Bureau of Justice Assistance is publishing final regulations implementing the Bulletproof Vest Partnership Grant Acts of 1998 and 2000, which authorize BJA funds to eligible States, units of local government, and Indian tribes to purchase armored vests for use by law enforcement officers. This final rule reflects the revised process by which eligible jurisdictions may register, apply, and request funding under BJA's Internet-Based Bulletproof Vest Partnership Grant Program.

On September 23, 1998, BJA published an interim final rule, with a request for comments (63 FR 50759). The interim final rule established the process by which BJA would implement the Bulletproof Vest Partnership Grant Act of 1998. BJA did not receive any comments in response to the interim final rule. Nevertheless, BJA initiated numerous outreach efforts, in the form of focus groups and beta testing, to ensure that all affected parties had ample opportunity to review and participate in the program's design and development.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/23/98	63 FR 50759
Interim Final Rule Effective	09/23/98	
Interim Final Rule Comment Period End	11/23/98	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

DOJ—OJP

Final Rule Stage

Government Levels Affected: State, Local, Tribal

Agency Contact: Robert T. Watkins, Program Manager, Department of Justice, Office of Justice Programs, 810 7th Street NW, Washington, DC 20053
Phone: 202 514-3447

RIN: 1121–AA48

1772. ENVIRONMENTAL IMPACT REVIEW PROCEDURES FOR THE VOI/TIS GRANT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 13701 et seq, as amended by PL 104-134; 42 USC 4321 et seq; 40 CFR 1500 to 1508

CFR Citation: 28 CFR 91

Legal Deadline: None

Abstract: The Office of Justice Programs is issuing this final rule to set forth the procedures that it and the States that are awarded Federal funds under the Violent Offender Incarceration/Truth-in-Sentencing Grants Program must follow in order to comply with the environmental impact review procedures mandated by the National Environmental Policy Act, the Council on Environmental Quality's implementing regulations, and other related Federal environmental impact review requirements.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/08/00	65 FR 48592
Interim Final Rule Effective	08/08/00	
Interim Final Rule Comment Period End	10/10/00	
Final Rule	09/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Philip Merkle, Special Advisor to the Director, Department of Justice, Office of Justice Programs, Correction Program Office, 810 7th Street NW, Washington, DC 20531
Phone: 202 305-2550

RIN: 1121–AA52

[FR Doc. 02–25453 Filed 12–06–02; 8:45 am]
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Federal Register

Monday,
December 9, 2002

Part XII

Department of Labor

Semiannual Regulatory Agenda

DEPARTMENT OF LABOR (DOL)

DEPARTMENT OF LABOR

Office of the Secretary

20 CFR Chs. I, IV, V, VI, VII, and IX

29 CFR Subtitle A and Chs. II, IV, V, XVII, and XXV

30 CFR Ch. I

41 CFR Ch. 60

48 CFR Ch. 29

Semiannual Agenda of Regulations

AGENCY: Office of the Secretary, Labor.

ACTION: Semiannual regulatory agenda.

SUMMARY: This document sets forth the Department's semiannual agenda of regulations that have been selected for review or development during the coming year. The Department's agencies have carefully assessed their available resources and what they can accomplish in the next twelve months and have adjusted their agendas accordingly.

The agenda complies with the requirements of both Executive Order 12866 and the Regulatory Flexibility Act. The agenda lists all regulations that are expected to be under review or development between October 2002 and October 2003 as well as those completed during the past six months.

FOR FURTHER INFORMATION CONTACT: Barbara Bingham, Acting Director for the Office of Regulatory Economics, Office of the Assistant Secretary for Policy, U.S. Department of Labor, 200 Constitution Avenue NW., Room S-2312, Washington, DC 20210, (202) 693-5959.

NOTE: Information pertaining to a specific regulation can be obtained from the agency contact listed for that particular regulation.

SUPPLEMENTARY INFORMATION: Executive Order 12866 and the Regulatory Flexibility Act require the semiannual publication in the **Federal Register** of an agenda of regulations. As permitted by law, the Department of Labor is combining the publication of its agendas under the Regulatory Flexibility Act and Executive Order 12866.

Executive Order 12866 became effective September 30, 1993, and, in substance, requires the Department of Labor to publish an agenda listing all the regulations it expects to have under active consideration for promulgation, proposal, or review during the coming 1-year period. The focus of all departmental regulatory activity will be on the development of effective rules that advance the Department's goals and that are understandable and usable to the employers and employees in all affected workplaces.

For this edition of the Department of Labor's regulatory agenda, the most important significant regulatory actions are included in the Regulatory Plan, which appears in part II of this issue of the Federal Register. The Regulatory Plan entries are listed in the table of contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

The Regulatory Flexibility Act became effective on January 1, 1981, and applies only to regulations for which a notice of proposed rulemaking was issued on or after that date. It requires the Department of Labor to publish an agenda, listing all the regulations it expects to propose or promulgate that are likely to have a "significant economic impact on a substantial number of small entities" (5 U.S.C. 602).

The Regulatory Flexibility Act (under section 610) also requires agencies to periodically review rules "which have or will have a significant economic impact upon a substantial number of small entities" and to annually publish a list of the rules that will be reviewed during the succeeding 12 months. The purpose of the review is to determine whether the rule should be continued without change, amended, or rescinded.

The next 12-month review list for the Department of Labor is provided below and public comment is invited on the listing. A brief description of each rule, the legal basis for the rule, and the agency contact are provided with each agenda item. Note that the items from the Occupational Safety and Health Administration were on last year's list.

Occupational Safety and Health Administration

Occupational Exposure to Ethylene Oxide (RIN 1218-AB60)

Grain Handling Facilities (RIN 1218-AB73)

Excavations (RIN 1218-AC02)

Presence Sense Device Initiation of Mechanical Power Presses (RIN 1218-AC03)

The following 610 reviews were completed since last year. The reviews determined that none of these four regulations have a significant economic impact upon a substantial number of small entities within the meaning of Section 610(2) of the Regulatory Flexibility Act

Pension Welfare Benefit Administration

Bonding Rules Under ERISA 21974 (RIN 1210-AA82)

Enforcement Pursuant to Section 502(6)(2) (RIN 1210-AA83)

Civil Penalties Under ERISA Section 502(c)(2) (RIN 1210-AA84)

Assessment of Civil Penalties under ERISA Section 502(c)(2) (RIN 1210-AA85)

All interested members of the public are invited and encouraged to let departmental officials know how our regulatory efforts can be improved, and, of course, to participate in and comment on the review or development of the regulations listed on the agenda.

Elaine L. Chao,
Secretary of Labor.

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1773	Production or Disclosure of Information or Materials	1290-AA17

DOL

Employment Standards Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1774	Defining and Delimiting the Term "Any Employee Employed in a Bona Fide Executive, Administrative, or Professional Capacity" (ESA/W-H) **(Reg Plan Seq No. 82)**	1215-AA14
1775	Regulations To Implement the Federal Acquisition Streamlining Act of 1994	1215-AA96
1776	Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors for Special Disabled Veterans and Veterans of the Vietnam Era	1215-AB24
1777	Stock Options, Stock Appreciation Rights, and Bona Fide Employee Stock Purchase Programs Under the Fair Labor Standards Act	1215-AB31
1778	Labor Organization Annual Financial Reports	1215-AB34
1779	Family and Medical Leave Act of 1993 **(Reg Plan Seq No. 83)**	1215-AB35

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Employment Standards Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1780	Child Labor Regulations, Orders, and Statements of Interpretation (ESA/W-H) **(Reg Plan Seq No. 84)**	1215-AA09
1781	Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models	1215-AB09
1782	Government Contractors: Nondiscrimination and Affirmative Action Obligations, Executive Order 11246 (ESA/OFCCP) (Revised)	1215-AB28
1783	Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act of 2000, as Amended	1215-AB32

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Employment Standards Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1784	Implementation of the 1996 Amendments to the Fair Labor Standards Act	1215-AB13
1785	Obligation of Federal Contractors and Subcontractors, Notice of Employee Rights Concerning Payment of Union Dues or Fees	1215-AB33

Employment and Training Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1786	Federal-State Unemployment Compensation (UC) Program; Confidentiality and Disclosure of Information in State UC Records	1205-AB18
1787	Senior Community Service Employment Program **(Reg Plan Seq No. 85)**	1205-AB28
1788	Trade Adjustment Assistance for Workers **(Reg Plan Seq No. 86)**	1205-AB32

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Employment and Training Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1789	Labor Certification Process for the Permanent Employment of Aliens in the United States **(Reg Plan Seq No. 87)**	1205-AA66
1790	Indian and Native American Welfare-to-Work Program	1205-AB16
1791	Disaster Unemployment Assistance Program Amendment	1205-AB31

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

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Employment and Training Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1792	Attestations by Facilities Temporarily Employing H-1C Nonimmigrant Aliens as Registered Nurses	1205-AB27

Employment and Training Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
1793	Federal-State Unemployment Compensation Program; Unemployment Insurance Performance System	1205-AB10
1794	Labor Certification and Petition Process for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the United States; Modification of Fee Structure	1205-AB24
1795	Labor Certification and Petition Process for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the U.S.: Delegation of Authority to Adjudication Petitions	1205-AB30

Pension and Welfare Benefits Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1796	Rulemaking Relating to Notice Requirements for Continuation of Health Care Coverage **(Reg Plan Seq No. 88)**	1210-AA60
1797	Default Rollover Safe Harbor	1210-AA92
1798	Electronic Filing By Investment Advisers	1210-AA94
1799	Suspension of Benefits Regulation	1210-AA96

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Pension and Welfare Benefits Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1800	Definition of Collective Bargaining Agreement (ERISA Section 3(40))	1210-AA48
1801	Regulations Implementing the Health Care Access, Portability, and Renewability Provisions of the Health Insurance Portability and Accountability Act of 1996 **(Reg Plan Seq No. 89)**	1210-AA54
1802	Mental Health Benefits Parity	1210-AA62
1803	Health Care Standards for Mothers and Newborns	1210-AA63
1804	Reporting Requirements for MEWAs Providing Medical Care Benefits	1210-AA64
1805	Rulemaking Relating to the Women's Health and Cancer Rights Act of 1998	1210-AA75
1806	Prohibiting Discrimination Against Participants and Beneficiaries Based on Health Status **(Reg Plan Seq No. 90)**	1210-AA77
1807	Blackout Notice Regulation **(Reg Plan Seq No. 91)**	1210-AA90
1808	Blackout Notice Civil Penalty **(Reg Plan Seq No. 92)**	1210-AA91
1809	Amendment of Procedural Regulations Under ERISA	1210-AA93
1810	Civil Monetary Penalty Adjustment Regulation	1210-AA95

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Pension and Welfare Benefits Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1811	Adequate Consideration	1210-AA15

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Pension and Welfare Benefits Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
1812	Regulation Exempting Certain Broker-Dealers and Investment Advisers From Bonding Requirements	1210-AA80
1813	Bonding Rules Under the Employee Retirement Income Security Act of 1974 **(Completion of a Section 610 Review)**	1210-AA82
1814	Requests for Enforcement Pursuant to Section 502(b)(2) **(Completion of a Section 610 Review)**	1210-AA83
1815	Civil Penalties Under ERISA Section 502(c)(2) **(Completion of a Section 610 Review)**	1210-AA84
1816	Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(2) **(Completion of a Section 610 Review)**	1210-AA85

Mine Safety and Health Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
1817	Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners **(Reg Plan Seq No. 93)**	1219-AB29
1818	Focused Inspections	1219-AB30

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Mine Safety and Health Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1819	Belt Entry Use as Intake Aircourse To Ventilate Working Sections and Areas Where Mechanized Mining Equipment Is Being Installed or Removed	1219-AA76
1820	Independent Laboratory Testing	1219-AA87
1821	Improving and Eliminating Regulations	1219-AA98
1822	Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust **(Reg Plan Seq No. 94)**	1219-AB14
1823	Determination of Concentration of Respirable Coal Mine Dust **(Reg Plan Seq No. 95)**	1219-AB18
1824	Asbestos Exposure Limit **(Reg Plan Seq No. 96)**	1219-AB24

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Mine Safety and Health Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1825	Criteria and Procedures for Proposed Assessment of Civil Penalties	1219-AB32

Mine Safety and Health Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
1826	Hazard Communication	1219-AA47
1827	Air Quality, Chemical Substances, and Respiratory Protection Standards	1219-AA48
1828	Requirements for Approval of Flame-Resistant Conveyor Belts	1219-AA92
1829	Occupational Exposure to Coal Mine Dust (Lowering Concentration Limit)	1219-AB08
1830	Mine Rescue Teams	1219-AB20

DOL

Office of the Assistant Secretary for Administration and Management—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1831	Nondiscrimination on the Basis of Age in Programs and Activities Receiving Federal Financial Assistance From the Department of Labor	1291-AA21

Office of the Assistant Secretary for Administration and Management—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1832	Audits of States, Local Governments, and Nonprofit Organizations	1291-AA26
1833	Audit Requirements for Grants, Contracts, and Other Agreements	1291-AA27
1834	Implementation of the Nondiscrimination and Equal Opportunity Requirements of the Workforce Investment Act of 1998	1291-AA29
1835	Effectuation of Title VI of the Civil Rights Act of 1964 and Implementation of Section 504 of the Rehabilitation Act of 1973	1291-AA31
1836	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants) 29 CFR 98	1291-AA33
1837	Department of Labor Acquisition Regulations	1291-AA34

Office of the Assistant Secretary for Administration and Management—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1838	Grants and Agreements	1291-AA30

Occupational Safety and Health Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
1839	Confined Spaces in Construction (Part 1926): Preventing Suffocation/Explosions in Confined Spaces	1218-AB47
1840	Occupational Exposure to Ethylene Oxide **(Section 610 Review)**	1218-AB60
1841	Grain Handling Facilities **(Section 610 Review)**	1218-AB73
1842	Occupational Exposure to Beryllium	1218-AB76
1843	Hearing Conservation Program for Construction Workers	1218-AB89
1844	Presence Sensing Device Initiation of Mechanical Power Presses **(Section 610 Review)**	1218-AC03

Occupational Safety and Health Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1845	Assigned Protection Factors: Amendments to the Final Rule on Respiratory Protection **(Reg Plan Seq No. 97)**	1218-AA05
1846	Longshoring and Marine Terminals (Parts 1917 and 1918) — Reopening of the Record (Vertical Tandem Lifts (VTLs))	1218-AA56
1847	Occupational Exposure to Hexavalent Chromium (Preventing Occupational Illness: Chromium)	1218-AB45
1848	General Working Conditions for Shipyard Employment	1218-AB50
1849	Fire Protection in Shipyard Employment (Part 1915, Subpart P) (Shipyards: Fire Safety) **(Reg Plan Seq No. 98)**	1218-AB51
1850	Electric Power Transmission and Distribution; Electrical Protective Equipment	1218-AB67
1851	Occupational Exposure to Crystalline Silica **(Reg Plan Seq No. 99)**	1218-AB70
1852	Walking Working Surfaces and Personal Fall Protection Systems (1910) (Slips, Trips, and Fall Prevention)	1218-AB80
1853	Standards Improvement (Miscellaneous Changes) for General Industry, Marine Terminals, and Construction Standards (Phase II) **(Reg Plan Seq No. 100)**	1218-AB81
1854	Revision and Update of Subpart S—Electrical Standards	1218-AB95
1855	Commercial Diving Operations: Revision	1218-AB97

DOL

Occupational Safety and Health Administration—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1856	Controlled Negative Pressure Fit Testing Protocol: Amendment to the Final Rule on Respiratory Protection	1218-AC05

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Occupational Safety and Health Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1857	Update and Revision of the Exit Routes Standard **(Reg Plan Seq No. 101)**	1218-AB82
1858	Procedures for Handling of Discrimination Complaints Under the Aviation Investment and Reform Act	1218-AB99

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Occupational Safety and Health Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1859	Glycol Ethers: 2-Methoxyethanol, 2-Ethoxyethanol, and Their Acetates: Protecting Reproductive Health	1218-AA84
1860	Occupational Exposure to Tuberculosis	1218-AB46
1861	Employer Payment for Personal Protective Equipment	1218-AB77
1862	Cranes and Derricks	1218-AC01
1863	Excavations **(Section 610 Review)**	1218-AC02
1864	Occupational Injury and Illness Recording and Reporting Requirements	1218-AC06
1865	Updating OSHA Standards Based on National Consensus Standard	1218-AC08
1866	Explosives	1218-AC09

Occupational Safety and Health Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
1867	Access and Egress in Shipyards (Part 1915, Subpart E) (Shipyards: Emergency Exits and Aisles)	1218-AA70
1868	Accreditation of Training Programs for Hazardous Waste Operations (Part 1910)	1218-AB27
1869	Injury and Illness Prevention	1218-AB41
1870	Fall Protection in the Construction Industry	1218-AB62
1871	Signs, Signals, and Barricades	1218-AB88
1872	Changes to State Plans	1218-AB91

Office of the Assistant Secretary for Veterans' Employment & Training—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1873	Annual Report for Federal Contractors (2002 Revisions)	1293-AA08

Office of the Assistant Secretary for Veterans' Employment & Training—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1874	Annual Report From Federal Contractors	1293-AA07

Department of Labor (DOL)
Office of the Secretary (OS)

Proposed Rule Stage

1773. PRODUCTION OR DISCLOSURE OF INFORMATION OR MATERIALS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 5 USC 552 as amended; 5 USC Reorganization Plan No. 6 of 1950; EO 12600, 52 FR 23781 (June 25, 1987)

CFR Citation: 29 CFR 70

Legal Deadline: None

Abstract: The regulation will incorporate the provisions of the 1996 FOIA amendments. These include extending DOL processing time from 10 to 20 days for most FOIA requests and requiring that all reading room materials created since November 1, 1996, be made available by electronic means such as the Internet.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Miriam McD. Miller, of Legislation and Legislative Counsel, Department of Labor, Office of the Secretary, Room N2428, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-5500
Email: miller-miriam@dol.gov

RIN: 1290–AA17

Department of Labor (DOL)
Employment Standards Administration (ESA)

Proposed Rule Stage

1774. DEFINING AND DELIMITING THE TERM "ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY" (ESA/W-H)

Regulatory Plan: This entry is Seq. No. 82 in part II of this issue of the **Federal Register**.

RIN: 1215–AA14

1775. REGULATIONS TO IMPLEMENT THE FEDERAL ACQUISITION STREAMLINING ACT OF 1994

Priority: Substantive, Nonsignificant

Legal Authority: PL 103-355, 108 Stat. 3243

CFR Citation: 29 CFR 4; 29 CFR 5; 41 CFR 50-201; 41 CFR 50-206

Legal Deadline: NPRM, Statutory, May 11, 1995.
Final, Statutory, October 1, 1995.

Abstract: The Federal Acquisition Streamlining Act of 1994, signed on October 13, 1994, amended several acts administered by the Department of Labor: (1) the Contract Work Hours and Safety Standards Act (CWHSSA) to limit its applicability to contracts in an amount of $100,000 or greater; (2) the Davis-Bacon Act (DB) to provide waivers from the Act's prevailing wage requirements under selected laws for volunteers performing services to a State or local government or agency and for volunteers performing services to a public or private nonprofit recipient of Federal assistance; and (3) the Walsh-Healey Public Contracts Act (PCA) to eliminate the requirements that contractors on covered contracts be either manufacturers or regular dealers in the items to be supplied under the contract but retains the Secretary of Labor's authority to define the terms "regular dealer" and "manufacturer." A final rule implementing the CWHSSA and PCA changes was published on August 5, 1996 (61 FR 40714).

Timetable:

Action	Date	FR Cite
NPRM	09/07/95	60 FR 46553
NPRM Comment Period End	10/10/95	
Final Rule	08/05/96	61 FR 40714
Second NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

Agency Contact: Tammy D. McCutchen, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, FP Building Room S3502, Washington, DC 20210
Phone: 202 693-0051
Fax: 202 693-1432

RIN: 1215–AA96

1776. AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 4211; 38 USC 4212; PL 101-237; PL 102-127; PL 102-16; PL 102-484; PL 105-339; PL 93-508, amended; PL 94-502; PL 95-520; PL 96-466; PL 97-306; PL 98-223

CFR Citation: 41 CFR 60-250

Legal Deadline: None

Abstract: OFCCP proposes to amend the regulations implementing the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) 38 USC 4212, to conform with the Veterans Employment Opportunities Act (the Act) of 1998 and the Veterans Benefits and Health Care Improvement Act of 2000 (VBHCIA). The Act increases the current threshold for coverage from $10,000 to $25,000. The Act and VBHCIA of 2000 expand the scope of protection under VEVRAA to include recently separated veterans and veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized. Recently separated veterans means any veteran during the one-year period beginning on the date of such veteran's discharge or release from active duty.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: James I. Melvin, Program Development, OFCCP, Department of Labor, Employment Standards Administration, Room N3424, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
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Fax: 202 693-1304

DOL—ESA

Proposed Rule Stage

Email: jimelvin@fenix2.dol-esa.gov

RIN: 1215–AB24

1777. STOCK OPTIONS, STOCK APPRECIATION RIGHTS, AND BONA FIDE EMPLOYEE STOCK PURCHASE PROGRAMS UNDER THE FAIR LABOR STANDARDS ACT

Priority: Other Significant

Legal Authority: 29 USC 207(e)(8); PL 106-202, sec 2(e)

CFR Citation: 29 CFR 546; 29 CFR 778

Legal Deadline: None

Abstract: The Worker Economic Opportunity Act, Public Law 106-202 (May 18, 2000), amended section 7(e) of the Fair Labor Standards Act to clarify how certain employer-provided stock option programs are to be treated for purposes of overtime pay. Certain programs meeting prescribed criteria would not have to be factored into the "regular rate" otherwise required when calculating "time-and-one-half" overtime premium pay for overtime hours of work. The legislation calls for regulations to be promulgated as necessary, which will include amendments to some of the existing regulations on overtime pay.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Tammy D. McCutchen, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, FP Building Room S3502, Washington, DC 20210
Phone: 202 693-0051
Fax: 202 693-1432

RIN: 1215–AB31

1778. • LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

Priority: Other Significant

Legal Authority: 29 USC 431; 29 USC 438; 5 USC 7120(d); 22 USC 4117(d)

CFR Citation: 29 CFR 402; 29 CFR 403; 29 CFR 458

Legal Deadline: None

Abstract: This regulation will revise Form LM-2, which is used by labor organizations with $200,000 or more in annual receipts to file the annual financial reports required under title II of the Labor-Managment Reporting and Disclosure Act of 1959 (LMRDA). The proposed revisions will improve the transparency and accountability of labor organizations to their members, increase the information available to labor organization members, and make data disclosed in such reports more understandable and accessible. Among other things, unions filing the revised Form LM-2 will be required to report electronically (unless granted an exemption), to identify "major" receipts and disbursements, to allocate disbursements among categories such as contract negotiation and administration, organizing, political activity, lobbying, etc., and to report receipts and disbursements of organizations that meet the statutory definition of a "trust in which a labor organization is interested" on a new Form T-1.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Don Todd, Deputy Asst. Secretary for Labor-Management Programs, Department of Labor, Employment Standards Administration, Room N5605, 200 Constitution Avenue NW., FP Building, Washington, DC 20210
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TDD Phone: 800 877-8339
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Email: olms-mail@dol-esa.gov

RIN: 1215–AB34

1779. • FAMILY AND MEDICAL LEAVE ACT OF 1993

Regulatory Plan: This entry is Seq. No. 83 in part II of this issue of the **Federal Register**.

RIN: 1215–AB35

Department of Labor (DOL)
Employment Standards Administration (ESA)

Final Rule Stage

1780. CHILD LABOR REGULATIONS, ORDERS, AND STATEMENTS OF INTERPRETATION (ESA/W-H)

Regulatory Plan: This entry is Seq. No. 84 in part II of this issue of the **Federal Register**.

RIN: 1215–AA09

1781. LABOR CONDITION APPLICATIONS AND REQUIREMENTS FOR EMPLOYERS USING NONIMMIGRANTS ON H-1B VISAS IN SPECIALTY OCCUPATIONS AND AS FASHION MODELS

Priority: Other Significant

Legal Authority: 29 USC 49 et seq; 8 USC 1101(a)(15)(H)(i)(b); 8 USC 1182(n); 8 USC 1184; PL 102-232; PL 105-277

CFR Citation: 20 CFR 655, subparts H and I

Legal Deadline: None

Abstract: The H-1B visa program of the Immigration and Nationality Act allows employers to temporarily employ nonimmigrants admitted into the United States under the H-1B visa category in specialty occupations and as fashion models, under specified labor conditions. An employer must file a labor condition application with the Department of Labor before the Immigration and Naturalization Service may approve a petition to employ a foreign worker on an H-1B visa. The Department's Employment and Training Administration administers the labor condition application process; the Wage and Hour Division of the Department's

DOL—ESA **Final Rule Stage**

Employment Standards Administration handles complaints and investigations regarding labor condition applications. The Department published a proposed rule on January 5, 1999, in response to statutory changes in the H-1B program made by the American Competitiveness and Workforce Improvement Act of 1998 (Title IV, Pub. L. 105-277; Oct. 21, 1998). Those changes placed additional obligations on "H-1B-dependent" employers (generally, those with work forces comprised of more than 15 percent H-1B workers) and on willful violators. These employers must recruit for U.S. workers, hire U.S. workers who are at least as qualified as H-1B workers, and not displace U.S. workers by hiring H-1B workers or placing them at another employer's job site. The 1998 amendments also imposed additional obligations on all H-1B employers, such as offering benefits to H-1B workers on the same basis and according to the same criteria as offered to U.S. workers, and payment to H-1B workers during periods they are not working for an employment-related reason. The 1999 proposed rule also requested further public comment on earlier proposed provisions published in October 1995, and on particular interpretations of the statute and of the existing regulations which the Department proposed to incorporate into the regulations. Since publishing the proposed rule, Congress enacted further amendments to the H-1B provisions under the American Competitiveness in the Twenty-First Century Act of 2000 (Pub. L. 106-313; Oct. 17, 2000), the Immigration and Nationality Act - Amendments (Pub. L. 106-311; Oct. 17, 2000), and section 401 of the Visa Waiver Permanent Program Act (Pub. L. 106-396; Oct. 30, 2000).

Timetable:

Action	Date	FR Cite
NPRM	10/31/95	60 FR 55339
NPRM Comment Period End	11/30/95	
NPRM	01/05/99	64 FR 628
NPRM Comment Period End	02/04/99	
Interim Final Rule	12/20/00	65 FR 80110
Interim Final Rule Effective	01/19/01	
Interim Final Rule Comment Period End	04/23/01	66 FR 10865
Final Action	09/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Additional Information: On December 20, 2000, the Department published an interim final rule to implement the recent amendments and clarify the existing rules, and requested further public comment on those provisions. The Wage and Hour Division has removed the H-1B final rule from the Regulatory Plan as a part of the ongoing review of nonimmigrant employment programs in the light of events of September 11. The H-1B interim final rule currently in effect provides sufficient guidance to the regulated community until this reanalysis is completed. The H-1B final rule will remain on the Regulatory Agenda.

Agency Contact: Tammy D. McCutchen, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, FP Building Room S3502, Washington, DC 20210
Phone: 202 693-0051
Fax: 202 693-1432

RIN: 1215–AB09

1782. GOVERNMENT CONTRACTORS: NONDISCRIMINATION AND AFFIRMATIVE ACTION OBLIGATIONS, EXECUTIVE ORDER 11246 (ESA/OFCCP) (REVISED)

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 793; EO 11758; EO 11246, as amended; 38 USC 4211; PL 94-502; EO 11758; PL 98-223; PL 102-16; PL 102-127; PL 95-520; PL 105-339; 29 USC 706; PL 97-306; PL 102-484; 38 USC 4212; PL 93-508, amended; PL 96-466; PL 101-237

CFR Citation: 41 CFR 60-1 (Revision); 41 CFR 60-250 (Revision); 41 CFR 60-741 (Revision)

Legal Deadline: None

Abstract: The final rule would remove the obligation to visit an establishment during a compliance check, which is currently required by section 60-1.20(a)(3) in order to enhance efficiency in resource allocation. OFCCP proposes also to make the same revision in section 60-250.60(a)(3) of the regulations implementing the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA). Lastly, OFCCP proposes to conform regulations implementing section 503 of the Rehabilitation Act of 1973, as amended, to the compliance evaluation procedures contained in the regulations implementing Executive Order 11246, as amended, and the affirmative action provisions of VEVRAA, both of which expressly authorize OFCCP to use additional investigative procedures to determine a contractor's compliance with the regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/12/00	65 FR 60815
NPRM Comment Period End	12/11/00	
Final Rule	06/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: James I. Melvin, Program Development, OFCCP, Department of Labor, Employment Standards Administration, Room N3424, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
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RIN: 1215–AB28

1783. CLAIMS FOR COMPENSATION UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000, AS AMENDED

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 42 USC 7384 et seq; EO 13179

CFR Citation: 20 CFR 30

Legal Deadline: Other, Statutory, May 31, 2001, Interim Final Rule.

Abstract: The Department of Labor has issued regulations for its administration of the provisions of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended. These regulations address all questions arising under this act which have not been specifically assigned to the Secretary of Health and Human Services, to the Secretary of Energy, or to the Attorney General.

DOL—ESA **Final Rule Stage**

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/25/01	66 FR 28948
Interim Final Rule Effective	07/24/01	
Interim Final Rule Comment Period	09/24/01	66 FR 47382
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Peter M. Turcic, Occupational Illness Compensation, OWCP, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, FP Building, Washington, DC 20210
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Fax: 202 693-1465
Email: eeoicpa-mail@fenix2.dol-esa.gov

RIN: 1215–AB32

Department of Labor (DOL) **Long-Term Actions**
Employment Standards Administration (ESA)

1784. IMPLEMENTATION OF THE 1996 AMENDMENTS TO THE FAIR LABOR STANDARDS ACT

Priority: Other Significant

Legal Authority: 29 USC 201 et seq; PL 104-188, sec 2101 to 2105

CFR Citation: 29 CFR 4; 29 CFR 531; 29 CFR 541; 29 CFR 778; 29 CFR 785; 29 CFR 790; 29 CFR 870; 41 CFR 50-202

Legal Deadline: None

Abstract: The Small Business Job Protection Act of 1996 (H.R. 3448) was enacted on August 20, 1996, as Public Law 104-188. Title II of this enactment amended the Portal-to-Portal Act (PA) and the Fair Labor Standards Act (FLSA). The PA amendment excludes (under certain circumstances) from compensable "hours worked" the time spent by an employee in home-to-work travel in an employer-provided vehicle. The FLSA amendments: (1) increase the $4.25 Federal minimum hourly wage by $.90 in two steps over two years (i.e., to $4.75 on October 1, 1996, and to $5.15 on September 1, 1997); (2) provide a $4.25 subminimum wage for youth under age 20 in their first 90 calendar days of employment with an employer; (3) set the employer's direct wage payment obligation for tipped employees at $2.13 per hour (provided such employees receive the balance of the full minimum wage in tips); and (4) set the hourly compensation requirements at not less than $27.63 per hour for certain exempt professional employees in computer-related occupations. Changes will be required in the regulations to reflect these amendments.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

Agency Contact: Tammy D. McCutchen, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, FP Building Room S3502, Washington, DC 20210
Phone: 202 693-0051
Fax: 202 693-1432

RIN: 1215–AB13

1785. OBLIGATION OF FEDERAL CONTRACTORS AND SUBCONTRACTORS, NOTICE OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES

Priority: Other Significant

Legal Authority: EO 13201

CFR Citation: 29 CFR 470

Legal Deadline: None

Abstract: On January 2, 2002, the Federal District Court for the District of Columbia issued a decision in UAW-Labor Employment & Training Corp v. Chao, holding the Executive Order 13201 is invalid because it conflicts with the National Labor Relations Act. The court permanently enjoined the Department of Labor from implementing and enforcing Executive Order 13201. The decision has been appealed.

This regulation, if promulgated, would implement E.O. 13201 which requires Government contractors and subcontractors to post notices informing their employees that (1) under Federal law they cannot be required to join a union or maintain membership in a union to retain their jobs, and (2) employees who choose not to be union members may object to the use of their compulsory union dues and fees for activities other than collective bargaining, contract administration, and grievance adjustment, and may be entitled to a refund and an appropriate reduction in their future payments. The proposed regulation, in accordance with E.O. 13201, would also require that, where applicable, each Government contracting agency include certain provisions of the Order in its Government contracts, and that Government contractors and subcontractors include these provisions in their nonexempt subcontracts and purchase orders.

Timetable:

Action	Date	FR Cite
Interim Procedural Rule	04/18/01	66 FR 19988
NPRM	10/01/01	66 FR 50010
NPRM Comment Period End	11/30/01	
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Don Todd, Deputy Asst. Secretary for Labor-Management Programs, Department of Labor, Employment Standards Administration, Room N5605, 200 Constitution Avenue NW., FP Building, Washington, DC 20210
Phone: 202 693-0122
TDD Phone: 800 877-8339
Fax: 202 693-1340
Email: olms-mail@dol-esa.gov

RIN: 1215–AB33

Department of Labor (DOL)
Employment and Training Administration (ETA)

Proposed Rule Stage

1786. FEDERAL-STATE UNEMPLOYMENT COMPENSATION (UC) PROGRAM; CONFIDENTIALITY AND DISCLOSURE OF INFORMATION IN STATE UC RECORDS

Priority: Other Significant

Legal Authority: 26 USC ch 23; 42 USC 1302 (a); 42 USC 1320b-7; 42 USC 503; Secretary's Orders 4-75 and 14-75

CFR Citation: 20 CFR 603

Legal Deadline: None

Abstract: The Employment and Training Administration of the Department of Labor is preparing to issue a notice of proposed rulemaking (NPRM) on confidentiality and disclosure of information in State records collected, created, or maintained for purposes of the Federal-State UC program. The NPRM would modify and expand the regulations implementing the Income and Eligibility Verification System (IEVS) to include the statutory requirements in title III of the Social Security Act, the Federal Unemployment Tax Act, and the Wagner-Peyser Act concerning confidentiality and disclosure of information in State UC records. The use of unemployment compensation wage records under these and other statutes has increased in recent years while privacy and confidentiality issues have not yet been addressed.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: Formerly RIN 1205-AA74; was taken off regulatory agenda in 1994 due to inactivity. An earlier NPRM was published on 03/23/92 at 57 FR 10063 with comment period ending 05/22/92.

Agency Contact: Gerard Hildebrand, Chief, Division of Legislation, Department of Labor, Employment and Training Administration, Room C4518, 200 Constitution Avenue NW., FB Building, Washington, DC 20210
Phone: 202 693-3038
Email: ghildebrand@doleta.gov

RIN: 1205–AB18

1787. SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

Regulatory Plan: This entry is Seq. No. 85 in part II of this issue of the **Federal Register**.

RIN: 1205–AB28

1788. • TRADE ADJUSTMENT ASSISTANCE FOR WORKERS

Regulatory Plan: This entry is Seq. No. 86 in part II of this issue of the **Federal Register**.

RIN: 1205–AB32

Department of Labor (DOL)
Employment and Training Administration (ETA)

Final Rule Stage

1789. LABOR CERTIFICATION PROCESS FOR THE PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

Regulatory Plan: This entry is Seq. No. 87 in part II of this issue of the **Federal Register**.

RIN: 1205–AA66

1790. INDIAN AND NATIVE AMERICAN WELFARE-TO-WORK PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 612(a)(3)(c)(iii); PL 106-113, Division B, section 1000(a)(4)

CFR Citation: 20 CFR 646

Legal Deadline: Final, Statutory, November 4, 1997, 90 days from enactment.
Other, Statutory, January 1, 2000, for 1999 amendments.

Abstract: These are program regulations needed to implement the Indian and Native American set-aside under the Welfare-to-Work program authorized by section 412(a)(3) of the Social Security Act. New interim final regulations are being issued to implement changes made by the Welfare-to-Work and Child Support Amendments of 1999 and other legislation. The Consolidated Appropriations Act of 2001 authorized the Department to extend welfare-to-work grants an additional two years. Therefore, the grants may operate until September 2004.

The Department received 14 comments on the March 1, 1998 interim final rule, and none would substantively change the regulations. The Department will provide guidance in response to those comments. The March 1, 1998 Interim Final Rule will be adopted as the final rule, subject to the changes made by the new interim final rule implementing the 1999 amendments.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/01/98	63 FR 15985
Interim Final Rule Effective	04/01/98	
Interim Final Rule Comment Period	06/01/98	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Additional Information: Congress has changed eligibility criteria. A final rule will be published to conform with the State programs.

Agency Contact: Gregory Gross, Department of Labor, Employment and Training Administration, Room N4641, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-3752
Email: ggross@doleta.gov

RIN: 1205–AB16

1791. DISASTER UNEMPLOYMENT ASSISTANCE PROGRAM AMENDMENT

Priority: Other Significant

Legal Authority: 42 USC 1302; 42 USC 5177; EO 12673

CFR Citation: 20 CFR 625.5

Legal Deadline: None

Abstract: This new rule on the Disaster Unemployment Assistance Program will only address one aspect of part 625; it adds a definition of "unemployment is a direct result of the major disaster." ETA had not defined this term in its previous rule. The purpose of the new definition is to clarify eligibility for disaster unemployment assistance in the wake of the major disasters as a result of the terrorist attacks of September 11, 2001.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/13/01	66 FR 56959
Interim Final Rule Effective	11/13/01	
Interim Final Rule Comment Period End	12/13/01	
Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

Agency Contact: Betty E. Castillo, Operations, Department of Labor, Employment and Training Administration, Room S4231, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-3032

RIN: 1205–AB31

DOL—ETA

Final Rule Stage

Department of Labor (DOL)
Employment and Training Administration (ETA)

Long-Term Actions

1792. ATTESTATIONS BY FACILITIES TEMPORARILY EMPLOYING H-1C NONIMMIGRANT ALIENS AS REGISTERED NURSES

Priority: Other Significant

Legal Authority: 29 USC 49 et seq; 8 USC 1101(a)(15)(H)(i)(c); 8 USC 1182(m); 8 USC 1184; PL 106-95, 113 Stat. 1312

CFR Citation: 20 CFR 655, subparts L and M

Legal Deadline: Final, Statutory, February 11, 2000.

Abstract: The Nursing Relief for Disadvantaged Areas Act of 1999 (P.L. 106-95; November 12, 1999) amended the Immigration and Nationality Act to create a new temporary visa program for nonimmigrant aliens to work as registered nurses for up to three years in facilities serving health professional shortage areas, subject to certain conditions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/22/00	65 FR 51137
Interim Final Rule Effective	09/21/00	
Interim Final Rule Comment Period	09/21/00	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

Agency Contact: Michael Ginley, Wage and Hour Division, Department of Labor, Employment Standards Administration, Room S3510, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-0745

RIN: 1205–AB27

Department of Labor (DOL)
Employment and Training Administration (ETA)

Completed Actions

1793. FEDERAL-STATE UNEMPLOYMENT COMPENSATION PROGRAM; UNEMPLOYMENT INSURANCE PERFORMANCE SYSTEM

Priority: Other Significant

Legal Authority: 19 USC 2271 to 2322; 26 USC 3301 to 3311; 40 FR 18515; 42 USC 1302(a); 42 USC 501 to 504; 42 USC 5177 to 5189a; 5 USC 8501 to 8508; 5 USC 8521 to 8525

CFR Citation: 20 CFR 602; 20 CFR 609.6(f); 20 CFR 609.7(c); 20 CFR 614.6(f); 20 CFR 614.7(c); 20 CFR 617.51(b); 20 CFR 640; 20 CFR 650

Legal Deadline: None

Abstract: This regulation will formally establish a comprehensive system for helping ensure continuous improvement in UI operational performance. It will enunciate as the system's building blocks principles for Federal and State cooperation, key nationwide performance measures, criteria distinguishing satisfactory from unsatisfactory performance, an annual planning process, and actions which the Department may take when a State fails to perform satisfactorily.

The UI PERFORMS Regulation is consistent with the Administration's and the Secretary's emphasis on improved grants management. It is needed now to help complete the development and implementation of the UI PERFORMS system and will replace other regulations, two of which establish Secretary's Standards for first payment and lower appeals timeliness. Until those regulations have been replaced the related UI PERFORMS measures and criteria cannot be put in place. It will also establish a definitive framework for enforcing, if necessary, the elements and performance standards established as parts of the UI PERFORMS system. Until the regulation is in place, UI PERFORMS will remain incomplete.

Timetable:

Action	Date	FR Cite
ANPRM	01/16/97	62 FR 2543
ANPRM Comment Period End	03/17/97	
Withdrawn	09/16/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Federalism: Undetermined

Agency Contact: Burman Skrable, Team Leader, Division of Performance Management, Department of Labor, Employment and Training Administration, Room S4522, 200 Constitution Avenue NW, FB Building, Washington, DC 20210
Phone: 202 693-3197
Email: bskrable@doleta.gov

RIN: 1205–AB10

DOL—ETA

Completed Actions

1794. LABOR CERTIFICATION AND PETITION PROCESS FOR THE TEMPORARY EMPLOYMENT OF NONIMMIGRANT ALIENS IN AGRICULTURE IN THE UNITED STATES; MODIFICATION OF FEE STRUCTURE

Priority: Other Significant

Legal Authority: 29 USC 49 et seq; 8 USC 1101(a)(15)(h)(ii)(a); 8 USC 1184; 8 USC 1188

CFR Citation: 8 CFR 655

Legal Deadline: None

Abstract: The Employment and Training Administration (ETA) of the U.S. Department of Labor (hereafter referred to as the Department or DOL)is withdrawing its proposed rule published at 65 FR 43545 (July 13, 2001), which would have required employers seeking to temporarily employ nonimmigrant agricultural workers (H-2A) to submit, at the time of filing, a new consolidated application form, fees for the labor certification, and the associated H-2A petition. Agricultural employers and workers and their representatives strongly opposed DOL's petition to consolidate into a proposed new Form 9079 the existing two forms (Form ETA 750 and Form I-129) used by DOL for the certification process and by the Immigration and Naturalization Service for the H-2A visa petition process.

Based upon the Department's review of the rulemaking record as a whole, the Department has decided to withdraw the proposed rule and terminate the rulemaking action.

Timetable:

Action	Date	FR Cite
NPRM	07/13/00	65 FR 43545
NPRM	09/18/00	65 FR 50170
NPRM	09/27/01	66 FR 49328
Withdrawn	09/24/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dale Ziegler, Certification, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room C4318, FP Building, Washington, DC 20210
Phone: 202 693-2942
Fax: 202 693-2760
Email: dmziegler@doleta.gov

RIN: 1205–AB24

1795. LABOR CERTIFICATION AND PETITION PROCESS FOR THE TEMPORARY EMPLOYMENT OF NONIMMIGRANT ALIENS IN AGRICULTURE IN THE U.S.: DELEGATION OF AUTHORITY TO ADJUDICATION PETITIONS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 8 CFR 103.1(f)(iii)(w); 8 CFR 214.2(h)(5); 8 CFR 214.2(h)(11); 8 CFR 214.2(h)(12); 8 USC 1101(a)(15)(H)(ii)(a); 8 USC 1184; 8 USC 1188; 29 USC 49 et seq; 8 CFR 103.1

CFR Citation: 20 CFR 655, subpart B

Legal Deadline: None

Abstract: The Department of Labor (DOL or Department) is withdrawing the final rule published at 65 FR 45358 (July 13, 2000) pertaining to the delegation of authority from the Immigration and Naturalization Service (INS) to DOL to adjudicate petitions for the temporary employment of nonimmigrant aliens in agriculture in the United States.

Commenters raised a number of issues, and consequently, the Department at 66 FR 49275 (September 27, 2001) again reopened and extended the comment period on the July 13, 2000 NPRM. The Department also held two informal briefings on November 8, 2001 and November 16, 2001, (see 66 FR 49329, September 27, 2001) to give agricultural employers and workers, their representatives and other interested parties an opportunity to communicate their views directly to the Department regarding the proposal to delegate authority from INS to DOL to adjudicate petitions for the temporary employment of nonimmigrant aliens in the proposed transfer of authority between the two agencies. DOL reviewed the concerns of the agricultural employers and workers, and determined that the concerns expressed by both groups have merit. The Department has concluded that it is in the best interest of agricultural employers and workers to withdraw the final rule from the CFR.

Concurrently, the INS is also withdrawing its final rule at 65 FR 43528 (July 13, 2000) which would have transferred authority from INS to the Department to adjudicate petitions for the temporary employment of nonimmigrant workers and the authority to make determinations for revocation of petition approvals.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/27/01	66 FR 49275
Interim Final Rule Comment Period End	10/29/01	
Withdrawn	09/24/02	
Interim Final Rule Effective	09/27/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dale Ziegler, Certification, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room C4318, FP Building, Washington, DC 20210
Phone: 202 693-2942
Fax: 202 693-2760
Email: dmziegler@doleta.gov

RIN: 1205–AB30

Department of Labor (DOL)
Pension and Welfare Benefits Administration (PWBA)

Proposed Rule Stage

1796. RULEMAKING RELATING TO NOTICE REQUIREMENTS FOR CONTINUATION OF HEALTH CARE COVERAGE

Regulatory Plan: This entry is Seq. No. 88 in part II of this issue of the Federal Register.

RIN: 1210–AA60

1797. • DEFAULT ROLLOVER SAFE HARBOR

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1104(c); 29 USC 1105; PL 107-16, sec 657

CFR Citation: 29 CFR 2550

Legal Deadline: Final, Statutory, June 7, 2004, Deadline prescribed by Sec. 657(c)(2)(A) of the Economic Growth and Tax Reconciliation Act of 2001 (Pub. L. 107-16).

Abstract: This regulation would provide safe harbors under which the designation of an institution and investment of funds is deemed to satisfy the fiduciary requirements of sec. 404(a) of ERISA. The Department intends to issue a request for information in order to obtain additional information from the public to assist it in developing the required safe harbors.

Timetable:

Action	Date	FR Cite
Request for Information	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Louis J. Campagna, Supervisory Pension Law Specialist, Department of Labor, Pension and Welfare Benefits Administration, Room N5669, 200 Constitution Avenue, NW, FP Building, Washington, DC 20210
Phone: 202 693-8500

RIN: 1210–AA92

1798. • ELECTRONIC FILING BY INVESTMENT ADVISERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1135; 29 USC 1002(38); 29 USC 1002 note

CFR Citation: 29 CFR 2510.3-38

Legal Deadline: None

Abstract: Upon adoption, this proposed regulation will clarify that an electronic filing with the Investment Advisers Registration Depository (IARD), a centralized electronic filing system established by the Securities and Exchange Commission in conjunction with the NASD and State securities authorities, will satisfy the filing requirement for investment advisers seeking investment manager status under section3(38) of ERISA.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Rudy Nuissl, Senior Pension Law Specialist, Department of Labor, Pension and Welfare Benefits Administration, N5669, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-8500

RIN: 1210–AA94

1799. • SUSPENSION OF BENEFITS REGULATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1053(2)(3)(B); 29 USC 1135

CFR Citation: 29 CFR 2530.203-3

Legal Deadline: None

Abstract: This regulation would amend the requirements of 29 CFR 2530.203-3(b)(4) relating to notification of suspension of benefit payments.

Timetable:

Action	Date	FR Cite
NPRM	08/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Susan G. Lahne, Department of Labor, Pension and Welfare Benefits Administration, Room N5669, 200 Constitution Avenue NW., FP Building, Washington, DC 20210
Phone: 202 693-8500

RIN: 1210–AA96

Department of Labor (DOL)
Pension and Welfare Benefits Administration (PWBA)

Final Rule Stage

1800. DEFINITION OF COLLECTIVE BARGAINING AGREEMENT (ERISA SECTION 3(40))

Priority: Other Significant

Legal Authority: 29 USC 1002(40); 29 USC 1135

CFR Citation: 29 CFR 2510.3-40

Legal Deadline: None

Abstract: The regulation will establish standards for determining whether an employee benefit plan is established or maintained under or pursuant to one or more collective bargaining agreements for purposes of its exclusion from the Multiple Employer Welfare Arrangement (MEWA) definition in section 3(40) of ERISA, and thus exempted from State regulation. The regulation will clarify the scope of the exception from the MEWA definition for plans established or maintained under or pursuant to one or more collective bargaining agreements by providing criteria which will serve to distinguish welfare benefit arrangements which are maintained by legitimate unions pursuant to bona fide collective bargaining agreements from insurance arrangements promoted and marketed under the guise of ERISA-covered plans exempt from State insurance regulation. The regulation will also serve to limit the extent to which plans maintained pursuant to bona fide collective bargaining agreements may extend plan coverage

to individuals not covered by such agreements.

Timetable:

Action	Date	FR Cite
NPRM	08/01/95	60 FR 39208
NPRM Comment Period Extended to	09/29/95	60 FR 50508
Notice Establishing Negotiated	09/22/98	63 FR 50542
Second NPRM	10/27/00	65 FR 64498
Second NPRM Comment Period End	12/26/00	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Elizabeth A. Goodman, Pension Law Specialist, Department of Labor, Pension and Welfare Benefits Administration, Room N5669, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-8500

RIN: 1210–AA48

1801. REGULATIONS IMPLEMENTING THE HEALTH CARE ACCESS, PORTABILITY, AND RENEWABILITY PROVISIONS OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996

Regulatory Plan: This entry is Seq. No. 89 in part II of this issue of the Federal Register.

RIN: 1210–AA54

1802. MENTAL HEALTH BENEFITS PARITY

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1135; 29 USC 1182; 29 USC 1194; PL 104-204, 110 Stat. 2944

CFR Citation: 29 CFR 2590

Legal Deadline: None

Abstract: The Mental Health Parity Act of 1996 (MHPA) was enacted on September 26, 1996 (Pub. L. 104-204). MHPA amended the Public Health Service Act (PHS Act) and the Employee Retirement Income Security Act of 1974 (ERISA), as amended, to provide for parity in the application of certain mental health benefits with limits on medical and surgical benefits. These changes were subsequently added to the Internal Revenue Code (the Code). MHPA provisions are set forth in chapter 100 of subtitle K of the Code, title XXVII of the PHS Act, and part 7 of subtitle B of title I of ERISA. On January 10, 2002, President Bush signed H.R. 3061 (Pub. L. 107-116, 115 Stat. 2177), the 2002 Appropriations Act for the Departments of Labor, Health and Human Services, and Education. This legislation extends MHPA's original sunset date under ERISA, the Code, and the PHS Act, so that MHPA's provisions will not apply to benefits for services furnished on or after December 31, 2002. On March 9, 2002, President Bush signed H.R. 3090, the Job Creation and Worker Assistance Act of 2002 (Pub. L. 107-147, 116 Stat. 21), that included an amendment to section 9812 of the Code (the mental health parity provisions). This legislation further extends MHPA's original sunset date under the Code to December 31, 2003. As a result of the statutory amendments to MHPA, and to assist employers, plan sponsors, health insurance issuers, and workers, the Department of Labor developed a amendment of the interim final regulations, in consultation with the Departments of the Treasury and Health and Human Services, conforming the regulatory sunset date to the new statutory sunset date under ERISA.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/22/97	62 FR 66932
Interim Final Amendment	09/27/02	67 FR 60859
Interim Final Amendment Effective	12/31/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: LEGAL AUTHORITIES CONT: Secs. 107, 209, 505, 701-703, 711, 712

Agency Contact: Mark Connor, Supervisory Pension Law Specialist, Department of Labor, Pension and Welfare Benefits Administration, Room C5331, 200 Constitution Avenue NW., FP Building, Washington, DC 20210
Phone: 202 693-8335

RIN: 1210–AA62

1803. HEALTH CARE STANDARDS FOR MOTHERS AND NEWBORNS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1027; 29 USC 1059; 29 USC 1135; 29 USC 1185; 29 USC 1191 to 1191c

CFR Citation: 29 CFR 2590.711

Legal Deadline: None

Abstract: The Newborns' and Mothers' Health Protection Act of 1996 (NMHPA) was enacted on September 26, 1996 (PL 104-204). NMHPA amended the Public Health Service Act (PHSA) and the Employee Retirement Income Security Act of 1974, as amended, (ERISA) to provide protection for mothers and their newborn children with regard to the length of hospital stays following the birth of a child. NMHPA provisions are set forth in title XXVII of the PHSA and part 7 of subtitle B of title I of ERISA. This rulemaking will provide further guidance with regard to the provisions of the NMHPA.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/27/98	63 FR 57546
Final Action	07/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Amy Turner, Pension Law Specialist, Department of Labor, Pension and Welfare Benefits Administration, Room N5677, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-8335

RIN: 1210–AA63

1804. REPORTING REQUIREMENTS FOR MEWAS PROVIDING MEDICAL CARE BENEFITS

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 1021(g); 29 USC 1135; 29 USC 1191c

CFR Citation: 29 CFR 2520

Legal Deadline: None

Abstract: These interim final rules govern certain reporting requirements

under title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA) for multiple employer welfare arrangements (MEWAs) that provide benefits consisting of medical care. In part, the rules implement recent changes made to ERISA by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The rules also set forth elements that MEWAs would be required to file with the Department of Labor for the purpose of determining compliance with the portability, nondiscrimination, renewability and other requirements of part 7 of subtitle B of title I of ERISA including the requirements of the Mental Health Parity Act of 1996 and the Newborns' and Mothers' Protection Act of 1996. The rules provide guidance with respect to section 502(c)(5) of ERISA which authorizes the Secretary of Labor to assess a civil penalty of up to $1,000 a day for failure to comply with the new reporting requirements.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/11/00	65 FR 7152
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Amy Turner, Pension Law Specialist, Department of Labor, Pension and Welfare Benefits Administration, Room N5677, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-8335

RIN: 1210–AA64

1805. RULEMAKING RELATING TO THE WOMEN'S HEALTH AND CANCER RIGHTS ACT OF 1998

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 29 USC 1135; 29 USC 1185; 29 USC 1191c

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Women's Health and Cancer Rights Act of 1998 (WHCRA) was enacted on October 21, 1998 (P.L. 105-277). WHCRA amended the Employee Retirement Income Security Act of 1974 (ERISA) and the Public Health Service Act (PHS Act) to provide protection for patients who elect breast reconstruction in connection with a mastectomy. The WHCRA provisions are set forth in part 7 of subtitle B of title I of ERISA and in title XXVII of the PHS Act. These interim rules will provide guidance with respect to the WHCRA provisions.

Timetable:

Action	Date	FR Cite
Request for Information (RFI)	05/28/99	64 FR 29186
RFI Comment Period End	06/28/99	
Interim Final Rule	07/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elena Hornsby, Pension Law Specialist, Department of Labor, Pension and Welfare Benefits Administration, Room C5331, 200 Constitution Avenue NW, FP Building, C5331, Washington, DC 20210
Phone: 202 693-8335

RIN: 1210–AA75

1806. PROHIBITING DISCRIMINATION AGAINST PARTICIPANTS AND BENEFICIARIES BASED ON HEALTH STATUS

Regulatory Plan: This entry is Seq. No. 90 in part II of this issue of the Federal Register.

RIN: 1210–AA77

1807. • BLACKOUT NOTICE REGULATION

Regulatory Plan: This entry is Seq. No. 91 in part II of this issue of the Federal Register.

RIN: 1210–AA90

1808. • BLACKOUT NOTICE CIVIL PENALTY

Regulatory Plan: This entry is Seq. No. 92 in part II of this issue of the Federal Register.

RIN: 1210–AA91

1809. • AMENDMENT OF PROCEDURAL REGULATIONS UNDER ERISA

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1132(c); 29 USC 1135

CFR Citation: 29 CFR 2570

Legal Deadline: None

Abstract: This rulemaking would amend 29 CFR part 2570 to clarify the time at which a notice of intent to assess a civil penalty, where there is a failure to file a statement of reasonable cause, constitutes a final order of the Secretary.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/21/02	67 FR 64774
Interim Final Rule Comment Period End	11/20/02	
Interim Final Rule Effective	01/26/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Jeffrey Turner, Pension Law Specialist, Department of Labor, Pension and Welfare Benefits Administration, N 5669, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-8500

RIN: 1210–AA93

1810. • CIVIL MONETARY PENALTY ADJUSTMENT REGULATION

Priority: Info./Admin./Other

Legal Authority: 29 USC 1135; 29 USC 2461 note

CFR Citation: Not Yet Determined

Legal Deadline: Final, Statutory, July 29, 2001, PL 104-134 sec 3720C.

Abstract: The Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, requires Federal agencies to adjust civil monetary penalties for inflation at least once every four years. This rulemaking will satisfy that requirement with respect to the civil monetary penalties under title I of ERISA.

Timetable:

Action	Date	FR Cite
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Rudy F. Nuissl, Senior Pension Law Specialist,

DOL—PWBA

Final Rule Stage

Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue NW, Rm N5669, FP Building, Washington, DC 20011

Phone: 202 693-8500

RIN: 1210–AA95

Department of Labor (DOL)
Pension and Welfare Benefits Administration (PWBA)

Long-Term Actions

1811. ADEQUATE CONSIDERATION

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1002(18); 29 USC 1135

CFR Citation: 29 CFR 2510

Legal Deadline: None

Abstract: The Department intends to republish for public comment a proposed regulation originally published in 1988. The proposal sets standards for determining "adequate consideration" under section 3(18) of ERISA for assets other than securities for which there is a generally recognized market. The proposal is being republished to obtain, through public comment, updated information to assist the Department in determining whether, and what, guidance concerning the definition of "adequate consideration" would be helpful to plan participants, sponsors, fiduciaries, and other professionals providing services to employee benefit plans.

Timetable:

Action	Date	FR Cite
NPRM	05/17/88	53 FR 17632
NPRM Comment Period End	07/17/88	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Morton Klevan, Department of Labor, Pension and Welfare Benefits Administration, N5669, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-8500

RIN: 1210–AA15

Department of Labor (DOL)
Pension and Welfare Benefits Administration (PWBA)

Completed Actions

1812. REGULATION EXEMPTING CERTAIN BROKER-DEALERS AND INVESTMENT ADVISERS FROM BONDING REQUIREMENTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1112; 29 USC 1135

CFR Citation: 29 CFR 2580

Legal Deadline: None

Abstract: This proposed regulation would provide an exemption from the bonding requirements of section 412(a) of ERISA for certain broker-dealers and investment advisers who handle plan assets.

Timetable:

Action	Date	FR Cite
Withdrawn	09/12/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Additional Information: No further action is contemplated by the Agency on this item at this time.

Agency Contact: Jeffrey Turner, Pension Law Specialist, Department of Labor, Pension and Welfare Benefits Administration, N 5669, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-8500

RIN: 1210–AA80

1813. BONDING RULES UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 (COMPLETION OF A SECTION 610 REVIEW)

Priority: Info./Admin./Other

Legal Authority: 29 USC 1112; 29 USC 1135

CFR Citation: 29 CFR 2580

Legal Deadline: None

Abstract: PWBA has determined that the bonding regulations under section 412 of ERISA (29 CFR part 2580) do not have a significant economic impact upon a substantial number of small entities within the meaning of section 610(2) of the Regulatory Flexibility Act (RFA). Accordingly a substantive review thereof is not required by section 610(6) of the RFA.

Timetable:

Action	Date	FR Cite
Begin Review	12/01/00	
End Review	08/15/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rudy Nuissl, Senior Pension Law Specialist, Department of Labor, Pension and Welfare Benefits Administration, N5669, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-8500

RIN: 1210–AA82

1814. REQUESTS FOR ENFORCEMENT PURSUANT TO SECTION 502(B)(2) (COMPLETION OF A SECTION 610 REVIEW)

Priority: Info./Admin./Other

Legal Authority: 29 USC 1132(b)(2); 29 USC 1135

CFR Citation: 29 CFR 2560.502-1

Legal Deadline: None

Abstract: PWBA has determined that the regulations under section 502(b)(1) of ERISA (formerly ERISA section 502(b)(2)) do not have a significant economic impact upon a substantial number of small entities within the meaning of section 610(2) of the Regulatory Flexibility Act (RFA). Accordingly, a substantive review thereof is not required of section 610(b) of the RFA.

Timetable:

Action	Date	FR Cite
Begin Review	12/01/00	
End Review	08/15/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rudy Nuissl, Senior Pension Law Specialist, Department of Labor, Pension and Welfare Benefits Administration, N5669, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-8500

RIN: 1210–AA83

DOL—PWBA

Completed Actions

1815. CIVIL PENALTIES UNDER ERISA SECTION 502(C)(2) (COMPLETION OF A SECTION 610 REVIEW)

Priority: Other Significant

Legal Authority: 29 USC 1132(c)(2); 29 USC 1135

CFR Citation: 29 CFR 2560.502(c)(2)

Legal Deadline: None

Abstract: PWBA has determined that the regulations under section 502(c)(2) of ERISA (29 CFR 2560(c)(2)) do not have a significant economic impact upon a substantial number of small entities within the meaning of section 610(2) of the Regulatory Flexibility Act (RFA). Accordingly, a substantive review thereof is not required by section 610(b) of the RFA.

Timetable:

Action	Date	FR Cite
Begin Review	12/01/00	
End Review	08/15/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rudy Nuissl, Senior Pension Law Specialist, Department of Labor, Pension and Welfare Benefits Administration, N5669, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-8500

RIN: 1210–AA84

1816. PROCEDURES FOR THE ASSESSMENT OF CIVIL PENALTIES UNDER ERISA SECTION 502(C)(2) (COMPLETION OF A SECTION 610 REVIEW)

Priority: Info./Admin./Other

Legal Authority: 29 USC 1132(c)(2); 29 USC 1135

CFR Citation: 29 CFR 2570.60 et seq

Legal Deadline: None

Abstract: PWBA has determined that the regulation relating to the procedures for the assessment of civil penalties under section 502(c)(2) of ERISA do not have a significant economic impact upon a substantial number of small entities within the meaning of section 610(2) of the Regulatory Flexibility Act(RFA). Accordingly, a substantive review thereof is not required by section 610(b)of the RFA.

Timetable:

Action	Date	FR Cite
Begin Review	12/01/00	
End Review	08/15/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rudy Nuissl, Senior Pension Law Specialist, Department of Labor, Pension and Welfare Benefits Administration, N5669, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-8500

RIN: 1210–AA85

Department of Labor (DOL)
Mine Safety and Health Administration (MSHA)

Prerule Stage

1817. • DIESEL PARTICULATE MATTER EXPOSURE OF UNDERGROUND METAL AND NONMETAL MINERS

Regulatory Plan: This entry is Seq. No. 93 in part II of this issue of the Federal Register.

RIN: 1219–AB29

1818. • FOCUSED INSPECTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 957

CFR Citation: 30 CFR 4

Legal Deadline: None

Abstract: Compliance history and safety and health performance are factors that provide an objective means for focusing MSHA resources. MSHA seeks comment on how best to maximize the effectiveness of resources and to further develop inspection procedures based upon experience. MSHA will evaluate current guidelines and practices for conducting inspections and determine how to best balance the complimentary objectives of protecting miners while focusing inspection resources on the greatest safety and health needs within each mine.

Timetable:

Action	Date	FR Cite
ANPRM	06/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Marvin W. Nichols, Jr., Director, Office of Standards, Department of Labor, Mine Safety and Health Administration, Room 2352, 1100 Wilson Boulevard, Arlington, VA 22209-3939
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RIN: 1219–AB30

Department of Labor (DOL)
Mine Safety and Health Administration (MSHA)

Proposed Rule Stage

1819. BELT ENTRY USE AS INTAKE AIRCOURSE TO VENTILATE WORKING SECTIONS AND AREAS WHERE MECHANIZED MINING EQUIPMENT IS BEING INSTALLED OR REMOVED

Priority: Other Significant

Legal Authority: 30 USC 811; 30 USC 957; 30 USC 961

CFR Citation: 30 CFR 12; 30 CFR 48; 30 CFR 75

Legal Deadline: None

Abstract: Currently, mine operators must apply to MSHA for a modification of the existing regulations if they want to use belt entries to ventilate active working places. MSHA's current regulations prohibit belt entries from being used to ventilate areas where coal is being mined. The intent was to prevent smoke from a conveyor belt fire from traveling to a miner's workplace. Improved technology, including sophisticated monitoring devices, such as atmospheric monitoring systems (AMS), makes it possible to use belt entries safely to ventilate working sections in mines, provided certain precautions are met. An AMS is a network consisting of hardware and software capable of measuring atmospheric parameters, such as carbon monoxide and oxygen concentrations transmitting these measurements to the surface; providing local and remote alert and alarms; manipulating and cataloging atmospheric data; and providing reports.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: In 1985 MSHA published a "pre-proposal" that included a belt air provision as part of the revisions to the ventilation regulations. In 1988, MSHA published a proposed rule that included a provision that would have allowed belt air to ventilate the area where coal is being mined. Also in 1988, MSHA held six hearings to receive public comment on the proposed rule. Several thousand miners attended the hearings to voice their opposition to the belt air provision. As a result, in 1989 MSHA formed the Belt Air Ventilation Review Committee to review the use of belt air. The Committee concluded that the use of belt air could be allowed, provided environmental sensors are used to detect belt fires. Another hearing took place in 1990 to solicit further comment on the use of belt air. In 1991, the Secretary of Labor formed a Federal Advisory Committee on the use of belt air. MSHA published final ventilation rules in 1992 that omitted the use of belt air, deferring further action until the Advisory Committee recommendations were completed. In December 1992, the Advisory Committee published a report that concluded that belt air can be used to safely ventilate areas where coal is being mined, provided certain conditions are met.

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RIN: 1219–AA76

1820. INDEPENDENT LABORATORY TESTING

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 957

CFR Citation: 30 CFR 6; 30 CFR 7; 30 CFR 18; 30 CFR 19; 30 CFR 20; 30 CFR 22; 30 CFR 27; 30 CFR 33; 30 CFR 36; 30 CFR 35; 30 CFR 23

Legal Deadline: None

Abstract: This rulemaking will revise text in the CFR to reduce burden or duplication, and streamline requirements. Our current regulations set out approval requirements for MSHA testing and evaluation for approval of certain products used in gassy underground mines. The rule as proposed would allow us to accept testing and evaluation of certain mine equipment by independent laboratories; and approve products which satisfy alternative testing and evaluation requirements if those requirements are equivalent to ours, or could be enhanced to be equivalent. We are reproposing the rule based on comments received on the 1994 proposal.

Timetable:

Action	Date	FR Cite
NPRM	11/30/94	59 FR 61376
NPRM	02/13/95	60 FR 8209
Public Hearing Notice	10/10/95	60 FR 52640
Notice to Reschedule Public Hearing	02/09/96	61 FR 15743
Comment Period End	05/31/96	
Second NPRM	10/17/02	67 FR 64196
Second NPRM Comment Period End	12/31/02	
Final Rule	09/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Marvin W. Nichols Jr., Director, Office of Standards, Department of Labor, Mine Safety and Health Administration, Room 2352, 1100 Wilson Boulevard, Arlington, VA 22209
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RIN: 1219–AA87

1821. IMPROVING AND ELIMINATING REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 811; 30 USC 957

CFR Citation: 30 CFR 1 to 199

Legal Deadline: None

Abstract: This rulemaking will revise text in the CFR to reduce burden or duplication, and to streamline requirements. We have reviewed our current regulations and identified provisions that are outdated, redundant, unnecessary or otherwise require change. We will be making these changes through notice and comment rulemaking where necessary. We will also consider new regulations that reflect "best practices" in the mining industry. We view this effort to be evolving and ongoing and will continue to accept recommendations from the public. We are considering the following issues for direct final and/or proposed rulemaking: updating the 1985 SAE seat belt standard to the current 1997 standard; providing alternatives for containers which are used to store flammable liquids; addressing compliance burdens for small mines; reducing paperwork approval burden for sanitary toilet facilities; and allowing the use of spring-loaded locking devices on battery-powered machines, rather than padlocks.

Timetable:

Action	Date	FR Cite
NPRM: Phase 5 Miscellaneous Technology Improvements (Methane Testing)	09/26/02	67 FR 60611
NPRM: Phase 5 Miscellaneous Technology Improvements (Methane Testing) Comment Period End	11/25/02	
NPRM: Phase 7-Storage Containers	09/00/03	
NPRM: Phase 9-Sanitary Toilet Facilities	09/00/03	
NPRM: Phase 8-Small Mine Compliance	09/00/03	
Direct Final Rule: Phase 6-Seat Belts	09/00/03	
Direct Final Rule: Phase 10-Spring -loaded locks	09/00/03	
Direct Final Rule: Phase 9-Sanitary Toilet Facilities	09/00/03	
Direct Final Rule: Phase 8-Small Mine Compliance	09/00/03	
Direct Final Rule: Phase 7-Storage Containers	09/00/03	
Final Action: Phase 5	09/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Marvin W. Nichols Jr., Director, Office of Standards, Department of Labor, Mine Safety and Health Administration, Room 2352, 1100 Wilson Boulevard, Arlington, VA 22209
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RIN: 1219–AA98

DOL—MSHA

Proposed Rule Stage

1822. VERIFICATION OF UNDERGROUND COAL MINE OPERATORS' DUST CONTROL PLANS AND COMPLIANCE SAMPLING FOR RESPIRABLE DUST

Regulatory Plan: This entry is Seq. No. 94 in part II of this issue of the Federal Register.

RIN: 1219–AB14

1823. DETERMINATION OF CONCENTRATION OF RESPIRABLE COAL MINE DUST

Regulatory Plan: This entry is Seq. No. 95 in part II of this issue of the Federal Register.

RIN: 1219–AB18

1824. ASBESTOS EXPOSURE LIMIT

Regulatory Plan: This entry is Seq. No. 96 in part II of this issue of the Federal Register.

RIN: 1219–AB24

Department of Labor (DOL)
Mine Safety and Health Administration (MSHA)

Final Rule Stage

1825. • CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

Priority: Info./Admin./Other

Legal Authority: 30 USC 957; PL 104-134 Debt Collection Improvement Act of 1996.

CFR Citation: 30 CFR 100

Legal Deadline: None

Abstract: This rule would revise the Mine Safety and Health Administration's (MSHA) statutory penalties found in sections 110(a), 110(b), 110(c), and 110(g) of the Mine Act and the specific penalty amounts established in 30 CFR part 100 as mandated by the Debt Collection Improvement Act of 1996 (DCIA). The DCIA required that civil penalties be increased by up to 10 percent within 6 months of its enactment. This was accomplished by a final rule published in the Federal Register, 63 FR 20032, April 22, 1998. It also required subsequent increases at least once every 4 years using a formula based on the Consumer Price Index. MSHA is issuing a final rule to satisfy that requirement.

Timetable:

Action	Date	FR Cite
Final Action	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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Related RIN: Related To 1219-AB03

RIN: 1219–AB32

Department of Labor (DOL)
Mine Safety and Health Administration (MSHA)

Completed Actions

1826. HAZARD COMMUNICATION

Priority: Other Significant

Legal Authority: 30 USC 811; 30 USC 825

CFR Citation: 30 CFR 47

Legal Deadline: None

Abstract: Today's complex mining environment exposes miners to many hazards, such as wastes being burned as fuel supplements at cement kilns and other chemicals brought onto mine property.

On June 21, 2002, MSHA published a final Hazard Communication (HazCom)

rule and withdrew the interim final rule.

The purpose of this standard is to reduce chemically related injuries and illnesses among miners by increasing their knowledge and awareness of chemical hazards. It ensures that miners have the same protections that have been available to workers under OSHA's jurisdiction since 1987. MSHA's rule is consistent with OSHA's HazCom rule to the extent appropriate.

Timetable:

Action	Date	FR Cite
ANPRM	03/30/88	53 FR 10257
ANPRM Comment Period End	07/31/88	
NPRM	11/02/90	55 FR 46400
NPRM Comment Period End	02/01/91	
Notice of Public Hearing	09/25/91	56 FR 48720
Close of Record	09/25/91	56 FR 48720
Reopen Record	03/30/99	64 FR 15144
NPRM Comment Period End	06/30/99	
Interim Final Rule	10/03/00	65 FR 59048
Interim Final Rule Comment Period	11/17/00	
Public Hearing and Extension of Comment Period	12/11/00	65 FR 77292
Delay Effective Date of Interim Final Rule	08/28/01	66 FR 45167
Interim Final Rule Comment Period End	10/17/01	
Final Rule	06/21/02	67 FR 42314
Interim Final Rule Effective	06/30/02	
Final Rule Effective	09/23/02	
Final Rule Applicable to Small Entities	03/21/03	67 FR 42314

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Tribal, Federal

Additional Information: TIMETABLE CONT: The effective date for mines employing 6 or more miners is 9/23/02 and for mines employing 5 or more miners the effective date is 3/21/03.

Agency Contact: Marvin W. Nichols Jr., Director, Office of Standards, Department of Labor, Mine Safety and Health Administration, Room 2352, 1100 Wilson Boulevard, Arlington, VA 22209
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RIN: 1219–AA47

1827. AIR QUALITY, CHEMICAL SUBSTANCES, AND RESPIRATORY PROTECTION STANDARDS

Priority: Other Significant

Legal Authority: 30 USC 811; 30 USC 813

CFR Citation: 30 CFR 56; 30 CFR 57; 30 CFR 58; 30 CFR 70; 30 CFR 71; 30 CFR 72; 30 CFR 75; 30 CFR 90

Legal Deadline: None

Abstract: Our current regulations for exposure to hazardous airborne contaminants are over 25 years old. Examples of these include lead, cyanide, arsenic benzene, asbestos and other well documented hazards. MSHA plans to withdraw this item as a result of changes in agency priorities and the possible adverse effects of unfavorable case law on the proposed rule.

Timetable:

Action	Date	FR Cite
Notice of Availability	07/06/83	48 FR 31171
ANPRM	11/19/85	50 FR 47702
NPRM	08/29/89	54 FR 35760
NPRM	10/19/89	54 FR 43026
NPRM Comment Period End	08/30/91	56 FR 29201
Final Rule: Abrasive Blasting and Drill Dust Control	02/18/94	59 FR 8318
Withdrawal Notice	09/26/02	67 FR 60611

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State, Local, Tribal, Federal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Marvin W. Nichols Jr., Director, Office of Standards, Department of Labor, Mine Safety and Health Administration, Room 2352, 1100 Wilson Boulevard, Arlington, VA 22209
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RIN: 1219–AA48

1828. REQUIREMENTS FOR APPROVAL OF FLAME-RESISTANT CONVEYOR BELTS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 811; 30 USC 957

CFR Citation: 30 CFR 14; 30 CFR 18; 30 CFR 75

Legal Deadline: None

Abstract: Our current regulations require conveyor belts used in underground coal mines to be flame-resistant. The rule, as proposed, would have set new procedures and requirements for testing and approval of these belts to evaluate their resistance to fire ignition and propagation. The proposal would also have require purchase of the improved belts after one year. MSHA has withdrawn this item.

Timetable:

Action	Date	FR Cite
NPRM	12/24/92	57 FR 61524
Extension of Comment Period to	02/11/93	58 FR 8028
Reopen Record and Notice of Public Hearing	03/31/95	60 FR 16589
Record Closed	06/05/95	60 FR 16558
Record Reopened	10/31/95	60 FR 55353
Extension of Comment Period to	12/20/95	60 FR 65509
Record Reopened	12/28/99	64 FR 72617
Withdrawal Notice	07/15/02	67 FR 46431

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Marvin W. Nichols Jr., Director, Office of Standards, Department of Labor, Mine Safety and Health Administration, Room 2352, 1100 Wilson Boulevard, Arlington, VA 22209
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RIN: 1219–AA92

1829. OCCUPATIONAL EXPOSURE TO COAL MINE DUST (LOWERING CONCENTRATION LIMIT)

Priority: Other Significant

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 70; 30 CFR 71; 30 CFR 90

Legal Deadline: None

Abstract: MSHA considered rulemaking to lower the respirable coal mine dust concentration limit because miners continue to be at risk of developing dust-induced occupational lung disease. MSHA is currently developing regulatory alternatives to issues relating to respirable coal mine dust. Therefore, we are withdrawing this item at this time.

Timetable:

Action	Date	FR Cite
Withdrawn	09/04/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Marvin W. Nichols Jr., Director, Office of Standards, Department of Labor, Mine Safety and Health Administration, Room 2352, 1100 Wilson Boulevard, Arlington, VA 22209
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RIN: 1219–AB08

1830. MINE RESCUE TEAMS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 811; 30 USC 825

CFR Citation: 30 CFR 49

Legal Deadline: None

Abstract: We were assessing our current regulations to identify areas where we might increase flexibility and encourage underground mine operators to provide mine rescue and recovery capability at their mines. We hoped to increase the number and improve the quality of mine rescue teams available to assist miners in life threatening emergencies. MSHA is withdrawing this item and plans to evaluate nonregulatory alternatives.

Timetable:

Action	Date	FR Cite
Notice of Public Meeting	03/12/02	67 FR 11145
Public Meeting	03/28/02	
Withdrawn	09/04/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Marvin W. Nichols Jr., Director, Office of Standards, Department of Labor, Mine Safety and Health Administration, Room 2352, 1100 Wilson Boulevard, Arlington, VA 22209
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RIN: 1219–AB20

Department of Labor (DOL)

Proposed Rule Stage

Office of the Assistant Secretary for Administration and Management (OASAM)

1831. NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE DEPARTMENT OF LABOR

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6101 et seq, Age Discrimination Act of 1975

CFR Citation: 29 CFR 35

Legal Deadline: NPRM, Judicial, September 10, 1979, Publication is required within 90 days of submission to HHS of final rule within 120 days of NPRM.

Abstract: The proposed regulatory action implements the Age Discrimination Act of 1975 (the Act). The Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Age Act also contains specific exceptions that permit the use of certain age distinctions and factors other than age that meet the Age Act's requirements. This NPRM is the second republication of an NPRM published on December 29, 1998, with updates to reflect the passage of the Workforce Investment Act of 1998 and to add the term "program or activity as it is defined in the Civil Rights Restoration Act of 1987. These changes do not alter the substance of the NPRM.

Timetable:

Action	Date	FR Cite
NPRM	12/29/98	63 FR 71714
NPRM Comment Period End	03/01/99	
Second NPRM	06/10/02	67 FR 39829
Second NPRM Comment Period End	08/09/02	
Third NPRM	06/00/03	
Third NPRM Comment Period End	08/00/03	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Annabelle T. Lockhart, Director, Civil Rights Center, Department of Labor, Office of the Assistant Secretary for Administration and Management, Room N4123, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
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RIN: 1291–AA21

Department of Labor (DOL)
Office of the Assistant Secretary for Administration and Management (OASAM)

Final Rule Stage

1832. AUDITS OF STATES, LOCAL GOVERNMENTS, AND NONPROFIT ORGANIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 7501 Single Audit Act Amendments of 1996; OMB Circular A-110; OMB Circular A-133

CFR Citation: 29 CFR 99

Legal Deadline: None

Abstract: This action adds a new title 29 CFR 99 "Audits of States, Local Governments, and Non-Profit Organizations" as a new regulation which codifies the revised Office of Management and Budget (OMB) Circular A-133 in its entirety. The Single Audit Act Amendments of 1996 (Public Law 104-156, 110 Stat. 136) and the June 24, 1997, revision of OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," required agencies to adopt in codified regulations the standards in the revised OMB Circular A-133 by August 29, 1997, so that they will apply to audits of fiscal years beginning after June 30, 1996. The revised OMB Circular A-133 co-located audit requirements for States, local governments, and nonprofit organizations. As a consequence, the OMB rescinded OMB Circular A-128, "Audits of States and Local Governments." On August 29, 1997, the Department of Labor amended its grants common rules at 29 CFR 95 and 29 CFR 97 in accordance with OMB guidance.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/25/99	64 FR 14537
Interim Final Rule Effective	03/25/99	
Interim Final Rule Comment Period	05/24/99	64 FR 14537
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

Additional Information: The interim rule is in effect. The Final rule is expected in

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RIN: 1291–AA26

1833. AUDIT REQUIREMENTS FOR GRANTS, CONTRACTS, AND OTHER AGREEMENTS

Priority: Info./Admin./Other

Legal Authority: 31 USC 7500 et seq; OMB Circular A-133

CFR Citation: 29 CFR 96

Legal Deadline: None

Abstract: This interim final rule revises title 29 of the Code of Federal Regulations (CFR) part 96 "Audit Requirements for Grants, Contracts, and Other Agreements" to update references to the revised Office of Management and Budget (OMB) Circular A-133, which is simulanteously codified in 29 CFR part 99 and to consolidate various other provisions to ensure consistency, and continuity.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/25/99	64 FR 14537
Interim Final Rule Effective	03/25/99	
Interim Final Rule Comment Period End	05/24/99	
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Additional Information: The interim final rule is in effect. The final rule is expected

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RIN: 1291–AA27

1834. IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL OPPORTUNITY REQUIREMENTS OF THE WORKFORCE INVESTMENT ACT OF 1998

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 2938 Workforce Investment Act

CFR Citation: 29 CFR 37

Legal Deadline: Final, Statutory, August 7, 1999.

Abstract: The Workforce Investment Act of 1998 (WIA) was signed into law by President Clinton on August 7, 1998. Section 188 prohibits discrimination by recipients of financial assistance under title I of WIA on the grounds of race, color, national origin, sex, age, disability, religion, political affiliation or belief, and for beneficiaries only, participant status, and against certain noncitizens. Section 188(e) requires that the Secretary of Labor issue regulations necessary to implement section 188 not later than one year after the date of the enactment of the WIA. Such regulations will include standards for determining compliance and procedures for enforcement that are consistent with the acts referred to in section 188(a)(1), as well as procedures to ensure that complaints filed under section 188 and such acts are processed in a manner that avoids duplication of effort. The reauthorization of WIA is currently under consideration by the Congress. It may include amendments to the nondiscrimination provisions contained in section 188 that would directly impact these regulations. A final rule will be issued after congressional action on the reauthorization of WIA. In the meantime, a second interim final rule will be published to delete a particular paragraph from the earlier interim final rule and to redesignate two of the remaining paragraphs of the interim final rule.

DOL—OASAM

Final Rule Stage

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/12/99	64 FR 61692
Interim Final Rule Comment Period	12/13/99	
Second Interim Final Rule	02/00/03	
Second Interim Final Rule Comment Period End	03/00/03	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

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RIN: 1291–AA29

1835. EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND IMPLEMENTATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 794; 42 USC 2000(d)

CFR Citation: 29 CFR 31; 29 CFR 32

Legal Deadline: None

Abstract: This proposal would incorporate into 29 CFR parts 31 and 32 the term "program or activity" and the definition of that term as it was defined in the Civil Rights Restoration Act of 1987. Part 31 effectuates title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin in programs or activities that receive financial assistance from the Department of Labor. Part 32 implements section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs or activities that receive financial assistance from the Department of Labor. The publication of this rule is being coordinated by the Department of Justice and will be published as part of a Governmentwide issuance.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal

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RIN: 1291–AA31

1836. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS) 29 CFR 98

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 41 USC 701; 5 USC 301

CFR Citation: 29 CFR 94; 29 CFR 98

Legal Deadline: None

Abstract: This document proposed substantive changes and amendments to the Governmentwide nonprocurement common rule for debarment and suspension and the Governmentwide rule implementing the Drug-Free Workplace Act of 1988. The most significant changes are: (1) This proposed common rule on debarment and suspension would limit the mandatory lower tier application of an exclusion to the first procurement level under a nonprocurement covered transaction; (2) This proposed common rule on debarment and suspension would set the dollar threshold on prohibited lower-tier procurement transactions with excluded persons at $25,000; (3) Both this proposed rule on debarment and suspension and the proposed rule on drug-free workplace requirements would eliminate the mandate for agencies and participants to obtain written certifications from awardees or persons with whom they propose to enter into covered transactions. The proposed rules will allow agencies and participants the flexibility to use other means if they so choose, such as award conditions or electronic access to the GSA List on the Internet, to enforce compliance with the rules; and (4) The proposed rule on drug-free workplace requirements would be separated from this proposed rule on debarment and suspension. The drug-free workplace requirements currently are in subpart F of the Debarment and Suspension Nonprocurement Common Rule.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3265
NPRM Comment Period End	03/25/02	
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: OMB is waiting for other agencies participating in the common

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RIN: 1291–AA33

1837. DEPARTMENT OF LABOR ACQUISITION REGULATIONS

Priority: Info./Admin./Other

Legal Authority: 40 USC 486(C); 5 USC 301

DOL—OASAM — **Final Rule Stage**

CFR Citation: 48 CFR 2900 to 2999

Legal Deadline: None

Abstract: Revisions to the DOLAR reflect changes in the Federal Acquisition Regulation and organizational changes within DOL. The changes to the DOLAR are extensive and reflect the large number of changes made to the Federal Acquisition Regulation since 1986.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 1291–AA34

Department of Labor (DOL) — Long-Term Actions
Office of the Assistant Secretary for Administration and Management (OASAM)

1838. GRANTS AND AGREEMENTS

Priority: Other Significant

Legal Authority: PL 105-277

CFR Citation: 29 CFR 95

Legal Deadline: None

Abstract: The Department is joining with other Federal agencies to establish revised regulations for grants. Congress included a two-sentence provision in OMB's appropriation for fiscal year 1999, contained in Public Law 105-277, directing OMB to revise section 95.36 of Circular A-110 "to require Federal awarding agencies to ensure that all data produced under an award will be made available to public through the procedures established under the Freedom of Information Act." Circular A-110 applies to grants and cooperative agreements with institutions of higher education, hospitals, and nonprofit institutions, from all Federal agencies. OMB finalized the revision on September 30, 1999 (64 FR 54926). This interim final rule amends the agencies' codification of Circular A-110 so they reflect OMB's recent action.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/16/00	65 FR 14405
Interim Final Rule Effective	04/17/00	
Interim Final Rule Comment Period	05/15/00	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HHS is the lead agency and will coordinate the next action with

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RIN: 1291–AA30

Department of Labor (DOL) — Prerule Stage
Occupational Safety and Health Administration (OSHA)

1839. CONFINED SPACES IN CONSTRUCTION (PART 1926): PREVENTING SUFFOCATION/EXPLOSIONS IN CONFINED SPACES

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655(b); 40 USC 333

CFR Citation: 29 CFR 1926.36

Legal Deadline: None

Abstract: In January 1993, OSHA issued a general industry rule to protect employees who enter confined spaces (29 CFR 1910.146). This standard does not apply to the construction industry because of differences in the nature of the worksite in the construction industry. In discussions with the United Steel Workers of America on a settlement agreement for the general industry standard, OSHA agreed to issue a proposed rule to extend confined-space protection to construction workers appropriate to their work environment. OSHA intends to issue a proposed rule addressing this construction industry hazard next year.

Timetable:

Action	Date	FR Cite
Convene SBREFA Panel	04/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1218–AB47

DOL—OSHA — **Prerule Stage**

1840. OCCUPATIONAL EXPOSURE TO ETHYLENE OXIDE (SECTION 610 REVIEW)

Priority: Other Significant

Legal Authority: 29 USC 655(b); 5 USC 553; 5 USC 610

CFR Citation: 29 CFR 1910.1047

Legal Deadline: None

Abstract: OSHA has undertaken a review of the ethylene oxide (ETO) standard in accordance with the requirements of the Regulatory Flexibility Act and section 5 of EO 12866. The review has considered the continued need for the rule, the impacts of the rule, comments on the rule received from the public, the complexity of the rule, whether the rule overlaps, duplicates or conflicts with other Federal, State or local regulations, and the degree to which technology, economic conditions or other factors may have changed since the rule was last evaluated. The Agency's findings with respect to this review will be published in a report available to the public in 2003.

Timetable:

Action	Date	FR Cite
Begin Review	10/01/96	
End Review	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1218–AB60

1841. GRAIN HANDLING FACILITIES (SECTION 610 REVIEW)

Priority: Other Significant

Legal Authority: 29 USC 655(b); 5 USC 553; 5 USC 610

CFR Citation: 29 CFR 1910.272

Legal Deadline: None

Abstract: OSHA is undertaking a review of its grain handling standard (29 CFR 1910.272) in accordance with the requirements of section 610 of the Regulatory Flexibility Act and section 5 of EO 12866. The review will cover the continued need for the rule; the nature of complaints or comments received from the public concerning the rule; the complexity of the rule; the extent to which the rule overlaps, duplicates or conflicts with other Federal rules and, to the extent feasible, with State and local rules; and the degree to which technology, economic conditions, or other factors have changed in the industries affected by the rule.

Timetable:

Action	Date	FR Cite
Begin Review	10/01/97	
End Review	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1218–AB73

1842. OCCUPATIONAL EXPOSURE TO BERYLLIUM

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655(b); 29 USC 657

CFR Citation: 29 CFR 1910

Legal Deadline: None

Abstract: OSHA intends to issue a Request for Information and to evaluate the extensive research related to the mechanisms of disease underlying Chronic Beryllium Disease or beryllium sensitization and to identify the best ways of reducing employee exposure to beryllium. OSHA will also be identifying processes, industries, and kinds of businesses that involve the use of beryllium. This information is necessary if OSHA is to develop a rule to reduce worker exposure to dust or fumes from beryllium metal, metal oxides, or alloys, all of which may cause serious and sometimes fatal lung disease (chronic beryllium disease (CBD), lung cancer, and skin disease). In 1999 and in 2001, OSHA was petitioned to issue an emergency temporary standard by the Paper, Allied-Industrial, Chemical, and Energy Workers Union (PACE), Public Citizen Health Research group and others. The Agency denied these petitions but stated its intent to begin data gathering efforts to collect needed information on beryllium's toxicity, risks, and patterns of usage. The Request for Information will be designed to obtain such information.

Timetable:

Action	Date	FR Cite
Request for Information	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1218–AB76

1843. HEARING CONSERVATION PROGRAM FOR CONSTRUCTION WORKERS

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655(b); 40 USC 333

CFR Citation: 29 CFR 1926.52

Legal Deadline: None

Abstract: OSHA issued a section 6(b)(5) health standard mandating a comprehensive hearing conservation program for noise-exposed workers in general industry in 1983. However, no rule was promulgated to cover workers in the construction industry. A number of recent studies have shown that many construction workers experience work-related hearing loss. In addition, the use of engineering, administrative and personal protective equipment to reduce exposures to noise is not extensive in this industry. OSHA issued an advance notice of proposed rulemaking to gather information on the extent of noise-induced hearing loss

among workers in different trades in this industry, current practices to reduce this loss, and additional approaches and protections that could be used to prevent such loss in the future.

Timetable:

Action	Date	FR Cite
ANPRM	08/05/02	67 FR 50610
Comment Period End	11/04/02	
Next Step To Be Determined	04/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 1218–AB89

1844. PRESENCE SENSING DEVICE INITIATION OF MECHANICAL POWER PRESSES (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 651 et seq; 5 USC 610

CFR Citation: 29 CFR 1910.217(h), app A,B,C

Legal Deadline: None

Abstract: OSHA will undertake a review of the Agency's Presence Sensing Device Initiation of Mechanical Power Presses rule (29 CFR 1910.217) in accordance with the requirements of the Regulatory Flexibility Act and section 5 of Executive Order 12866. The review will consider among other things, the need for the rule, the impacts of the rule, public comments on the rule, the complexity of the rule, and whether the rule overlaps, duplicates, or conflicts with other regulations.

Timetable:

Action	Date	FR Cite
Begin Review	12/01/01	
Request for Comments	08/28/02	67 FR 55181
Comment Period End	01/27/03	
Next Step To Be Determined	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1218–AC03

Department of Labor (DOL)
Occupational Safety and Health Administration (OSHA)

Proposed Rule Stage

1845. ASSIGNED PROTECTION FACTORS: AMENDMENTS TO THE FINAL RULE ON RESPIRATORY PROTECTION

Regulatory Plan: This entry is Seq. No. 97 in part II of this issue of the **Federal Register**.

RIN: 1218–AA05

1846. LONGSHORING AND MARINE TERMINALS (PARTS 1917 AND 1918) — REOPENING OF THE RECORD (VERTICAL TANDEM LIFTS (VTLS))

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 29 USC 655(b); 33 USC 941

CFR Citation: 29 CFR 1918.11; 29 CFR 1918.85

Legal Deadline: None

Abstract: OSHA issued a final rule on Longshoring on July 25, 1997 (62 FR 40142). However, in that rule, the Agency reserved provisions related to vertical tandem lifts. Vertical tandem lifts (VTLs) involve the lifting of two or more empty intermodal containers, secured together with twist locks, at the same time. OSHA has continued to work with national and international organizations to gather additional information on the safety of VTLs. The Agency is going to request additional information from the public on this issue, and prepare a notice of proposed rulemaking to address the safety issues of this type of work.

Timetable:

Action	Date	FR Cite
NPRM	06/06/94	59 FR 28594
NPRM Comment Period End	09/23/94	
Final Rule on Longshoring/Marine	07/25/97	62 FR 40142
Public Meeting on VTLs - 1/27/1998	10/09/97	62 FR 52671
Request for Information (RFI)	11/00/02	
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1218–AA56

1847. OCCUPATIONAL EXPOSURE TO HEXAVALENT CHROMIUM (PREVENTING OCCUPATIONAL ILLNESS: CHROMIUM)

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 29 USC 655(b); 29 USC 657

CFR Citation: 29 CFR 1910

Legal Deadline: None

Abstract: In July 1993, the Occupational Safety and Health Administration (OSHA) was petitioned for an emergency temporary standard (ETS) to reduce the permissible exposure limit (PEL) for occupational exposures to hexavalent chromium. The Oil, Chemical, and Atomic Workers International Union (OCAW) and Public Citizen's Health Research Group (HRG) petitioned OSHA to promulgate an ETS to lower the PEL for hexavalent chromium (CrVI) compounds to 0.5 micrograms per cubic meter of air (ug/m3) as an eight-hour, time-weighted average (TWA). This would represent a significant reduction in the current PEL. The current PEL in general industry is found in 29 CFR 1910.1000 Table Z and is a ceiling value of 100 ug/m3, measured as chromium (VI) and reported as chromic anhydride (CrO3). The amount of chromium (VI) in the anhydride compound equates to a PEL of 52 ug/m3. This ceiling limit applies to all forms of hexavalent chromium (VI), including chromic acid and chromates, lead chromate, and zinc chromate. The current PEL for hexavalent chromium (VI) in the construction industry is 100 ug/m3 as a TWA PEL, which also equates to a PEL of 52 ug/m3. After reviewing the petition, OSHA denied the request for an ETS and initiated a section 6(b)(5) rulemaking.

The major illnesses associated with occupational exposure to hexavalent chromium are lung cancer and dermatoses. OSHA estimates that approximately one million workers are exposed to hexavalent chromium on a regular basis in all industries. The major uses of hexavalent chromium are: as a structural and anti-corrosive element in the production of stainless steel, ferrochromium, iron and steel, and in electroplating, welding and painting.

OSHA will make a decision on what action to take next in May 2003.

Timetable:

Action	Date	FR Cite
Request for Information	08/22/02	67 FR 54389
Comment Period End	11/20/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1218–AB45

1848. GENERAL WORKING CONDITIONS FOR SHIPYARD EMPLOYMENT

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655(b); 33 USC 941

CFR Citation: 29 CFR 1915 subpart F

Legal Deadline: None

Abstract: During the 1980s, OSHA initiated a project to update and consolidate the various OSHA shipyard standards that were applied in the shipbuilding, ship repair, and shipbreaking industries. Publication of a proposal addressing general working conditions in shipyards is part of this project. The operations addressed in this rulemaking relate to general working conditions such as housekeeping, illumination, sanitation, first aid, and lockout/tagout. About 100,000 workers are potentially exposed to these hazards annually.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 1218–AB50

1849. FIRE PROTECTION IN SHIPYARD EMPLOYMENT (PART 1915, SUBPART P) (SHIPYARDS: FIRE SAFETY)

Regulatory Plan: This entry is Seq. No. 98 in part II of this issue of the **Federal Register**.

RIN: 1218–AB51

1850. ELECTRIC POWER TRANSMISSION AND DISTRIBUTION; ELECTRICAL PROTECTIVE EQUIPMENT

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655(b); 40 USC 333

CFR Citation: 29 CFR 1910.136; 29 CFR 1910.137; 29 CFR 1910.269; 29 CFR 1926 subpart V; 29 CFR 1926.97

Legal Deadline: None

Abstract: Electrical hazards are a major cause of occupational death in the United States. The annual fatality rate for power line workers is about 50 deaths per 100,000 employees. The construction industry standard addressing the safety of these workers during the construction of electric power transmission and distribution lines is nearly 30 years old. OSHA is developing a revision of this standard that will prevent many of these fatalities, add flexibility to the standard, and update and streamline the standard. OSHA also intends to amend the corresponding standard for general industry so that requirements for work performed during the maintenance of electric power transmission and distribution installations are the same as those for similar work in construction. In addition, OSHA will be revising a few miscellaneous general industry requirements primarily affecting electric transmission and distribution work, including provisions on electrical protective equipment and foot protection. This rulemaking will also address fall protection in aerial lifts for power generation, transmission and distribution work.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1218–AB67

DOL—OSHA

Proposed Rule Stage

1851. OCCUPATIONAL EXPOSURE TO CRYSTALLINE SILICA

Regulatory Plan: This entry is Seq. No. 99 in part II of this issue of the Federal Register.

RIN: 1218–AB70

1852. WALKING WORKING SURFACES AND PERSONAL FALL PROTECTION SYSTEMS (1910) (SLIPS, TRIPS, AND FALL PREVENTION)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655 (b)

CFR Citation: 29 CFR 1910 subparts D and I

Legal Deadline: None

Abstract: In 1990, OSHA proposed a rule (55 FR 13360) addressing slip, trip, and fall hazards and establishing requirements for personal fall protection systems. Since that time, new technologies and procedures have become available to protect employees from these hazards. The Agency has been working to update these rules to reflect current technology. OSHA is publishing a notice to re-open the rulemaking for comment on a number of issues raised in the record for the NPRM, or related to technological advances. OSHA will be updating its regulatory analysis as well.

Timetable:

Action	Date	FR Cite
NPRM	04/10/90	55 FR 13360
NPRM Comment Period End	08/22/90	
Hearing	09/11/90	55 FR 29224
NPRM	12/00/02	
Reopening of Record	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 1218–AB80

1853. STANDARDS IMPROVEMENT (MISCELLANEOUS CHANGES) FOR GENERAL INDUSTRY, MARINE TERMINALS, AND CONSTRUCTION STANDARDS (PHASE II)

Regulatory Plan: This entry is Seq. No. 100 in part II of this issue of the Federal Register.

RIN: 1218–AB81

1854. REVISION AND UPDATE OF SUBPART S—ELECTRICAL STANDARDS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910 subpart S

Legal Deadline: None

Abstract: The Occupational Safety and Health Administration (OSHA) is planning to revise and update its 29 CFR 1910 Subpart S-Electrical Standards. OSHA will rely heavily on the 2000 Edition of the National Fire Protection Association's (NFPA's) 70 E standard for Electrical Safety Requirements for Employee Workplaces. This revision will provide the first update of Subpart S-Electrical Standard since they were originally published in 1981. OSHA intends to complete this project in several stages. The first stage will cover design safety standards for electrical systems, while the second stage will cover safety-related maintenance requirements and safety requirements for special equipment. It will thus allow the latest technological developments to be considered. Several of these state-of-the-art safety developments will be addressed by OSHA for the first time. OSHA initially believed that the changes in the first stage would not be controversial, and thus had planned to issue a direct final rule. However, as work has progressed, we have determined that this is not the case, and we are preparing an NPRM instead.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 1218–AB95

1855. COMMERCIAL DIVING OPERATIONS: REVISION

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.423; 29 CFR 1910.426

Legal Deadline: None

Abstract: OSHA's Commercial Diving Operations standard (29 CFR 1910.401 to 1910.441) was published in 1977. In the intervening years, major changes in the technology of diving systems and equipment have occurred. In December 1999, OSHA granted a permanent variance to Dixie Divers, Inc. permitting recreational diving instructors employed by that company to comply with the provisions of the variance rather than with paragraphs (b)(2) and (c)(3)(iii) of 1910.423 and paragraph (b)(1) of 1910.426. Since OSHA granted the variance, other employers of recreational diving instructors have asked OSHA to clarify the applicability of the variance to their operations. OSHA intends to issue a notice of proposed rulemaking to amend the commercial diving operations standard to reflect the alternative specified in the permanent variance granted to Dixie Divers, Inc.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1218–AB97

DOL—OSHA

Proposed Rule Stage

1856. CONTROLLED NEGATIVE PRESSURE FIT TESTING PROTOCOL: AMENDMENT TO THE FINAL RULE ON RESPIRATORY PROTECTION

Priority: Info./Admin./Other

Legal Authority: 29 USC 655(b); 29 USC 657

CFR Citation: 29 CFR 1910.134

Legal Deadline: None

Abstract: In January 1998, OSHA published the final Respiratory Protection standard (29 CFR 1910.134). In the final revised respirator standard, OSHA set up a mechanism for OSHA's acceptance of new fit test protocols under Mandatory Appendix A. Any person may submit to OSHA an application for approval of a new fit test protocol, and if the application meets certain criteria, OSHA will initiate a rulemaking proceeding under 6(b)(7) of the OSH Act to determine whether to list the new protocol as an approved fit test protocol in Appendix A. OSHA has been petitioned to allow the use of a modified Controlled Negative Pressure (CNP) fit test protocol.

Employers, employees, and safety and health professionals use fit testing to select respirators. Currently OSHA relies on fit testing methods specified in Appendix A of the final revised Respiratory Protection standard.

When OSHA published the final Respiratory Protection standard in 1998, it allowed for later rulemaking on new fit test methods. This rulemaking action will allow for the incorporation of new fit test methods into 1910.134.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

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RIN: 1218–AC05

Department of Labor (DOL)
Occupational Safety and Health Administration (OSHA)

Final Rule Stage

1857. UPDATE AND REVISION OF THE EXIT ROUTES STANDARD

Regulatory Plan: This entry is Seq. No. 101 in part II of this issue of the Federal Register.

RIN: 1218–AB82

1858. PROCEDURES FOR HANDLING OF DISCRIMINATION COMPLAINTS UNDER THE AVIATION INVESTMENT AND REFORM ACT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 42121; PL 106-181, Wendell H. Ford Aviation Investment and Reform Act, sec 519

CFR Citation: 29 CFR 1979

Legal Deadline: None

Abstract: On March 8, 2000, Congress enacted the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, commonly known as the Air Act. Section 519 of the Act (49 USC 42121) prohibits air carriers or air carrier contractors or subcontractors from discharging or otherwise discriminating against employees for exercising specified rights under the Act. The Act further provides that the Secretary of Labor investigate employee claims of discrimination and ultimately issue a determination and order after an opportunity for either party to request a hearing on the record. Procedural rules are needed for filing, investigating, litigating, and adjudicating complaints filed pursuant to the Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/01/02	67 FR 15453
Interim Final Rule Effective	04/01/02	
Interim Final Rule Comment Period	05/31/02	
Comment Period Extended	06/07/02	67 FR 40597
Comment Period End	06/30/02	
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1218–AB99

1859. GLYCOL ETHERS: 2-METHOXYETHANOL, 2-ETHOXYETHANOL, AND THEIR ACETATES: PROTECTING REPRODUCTIVE HEALTH

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 651; 29 USC 655; 29 USC 657

CFR Citation: 29 CFR 1910.1000; 29 CFR 1910.1031

Legal Deadline: None

Abstract: OSHA published an advance notice of proposed rulemaking (ANPRM) on April 2, 1987 (52 FR 10586). OSHA used the information received in response to the ANPRM, as well as other information and analysis, and published a proposal on March 23, 1993 (58 FR 15526), that would reduce the permissible exposure limits for four glycol ethers and provide protection for approximately 46,000 workers exposed to these substances. OSHA has re-opened the record to collect updated information before determining what action should be taken.

OSHA will make a decision on what action to take next in April 2003.

Timetable:

Action	Date	FR Cite
ANPRM	04/02/87	52 FR 10586
ANPRM Comment Period End	07/31/87	
NPRM	03/23/93	58 FR 15526
NPRM Comment Period End	06/07/93	
Reopen Record	08/08/02	67 FR 51524
Comment Period End	11/06/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1218–AA84

1860. OCCUPATIONAL EXPOSURE TO TUBERCULOSIS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.1035

Legal Deadline: None

Abstract: In 1993, the Labor Coalition to Fight TB in the Workplace petitioned the Occupational Safety and Health Administration (OSHA) to develop an occupational health standard to protect workers who care for or oversee patients or others with active tuberculosis (TB) against the transmission of TB. After reviewing the available information, OSHA preliminarily concluded that a significant risk of occupational transmission of TB exists for some workers in some work settings and began rulemaking on a proposed standard. Examples of workers at risk of contracting TB as a result of their work are health care workers, detention facility personnel, and homeless shelter employees. On October 17, 1997, OSHA published its proposed standard for occupational exposure to TB (62 FR 54160). The proposed standard would require employers to protect TB-exposed workers using infection control measures that have been shown to be highly effective in reducing or eliminating work-related TB infections. Such measures include procedures for the early identification of individuals with infectious TB, isolation of individuals with infectious TB using appropriate ventilation, use of respiratory protection in certain situations, and skin testing and training of employees.

After the close of the written comment period for the proposed standard, informal public hearings were held in Washington, DC, Los Angeles, CA, New York City, NY, and Chicago, IL. The post-hearing comment period closed on October 5, 1998. On June 17, 1999, OSHA reopened the rulemaking record for 90 days to submit the Agency's report on homeless shelters and certain other documents that became available to the Agency after the close of the post-hearing comment period. During this limited reopening of the rulemaking record, OSHA also requested interested parties to submit comments and data on the Agency's preliminary risk assessment in order to obtain the best, most recent data for providing the most accurate estimates of the occupational risk of tuberculosis.

At the request of Congress, the Institute of Medicine of the National Academy of Sciences (IOM) conducted a study of OSHA's proposal and the need for a TB standard. That study was completed in January 2001, and concluded that OSHA should move forward with a standard modeled after the CDC guidelines and tailored to the extent of TB risk present in the community. The IOM study concluded that an OSHA standard was needed to maintain national TB rates among health care and other employees at their current levels and to prevent future outbreaks of multidrug resistant and other forms of TB among these workers. OSHA has reopened the record to obtain comment on the IOM study, the draft final risk assessment and the peer reviewers' comment on the risk assessment. OSHA will make a decision on what action to take in November 2002.

Timetable:

Action	Date	FR Cite
SBREFA Panel	09/10/96	
NPRM	10/17/97	62 FR 54160
NPRM Comment Period End	02/17/98	62 FR 65388
Post Hearing Comment End	10/05/98	
Record Reopening	06/17/99	64 FR 32447
Second Reopening Comment Period End	06/28/99	64 FR 34625
Reopening Comment Period End	08/02/99	
Third Reopening Comment Period	01/24/02	67 FR 3465
Extension of Comment Period of	03/05/02	67 FR 9934
Reopening Comment Period End	03/25/02	
Comment Period End	05/24/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal, Federal

Federalism: This action may have federalism implications as defined in EO 13132.

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RIN: 1218–AB46

1861. EMPLOYER PAYMENT FOR PERSONAL PROTECTIVE EQUIPMENT

Priority: Other Significant

Legal Authority: 29 USC 655(b); 29 USC 657; 33 USC 941; 40 USC 333

CFR Citation: 29 CFR 1910.132; 29 CFR 1915.152; 29 CFR 1917.96; 29 CFR 1918.106; 29 CFR 1926.95

Legal Deadline: None

Abstract: Generally, OSHA standards require that protective equipment (including personal protective equipment (PPE)) be provided and used when necessary to protect employees from hazards that can cause them injury, illness, or physical harm. In this discussion, OSHA uses the abbreviation "PPE" to cover both personal protective equipment and other protective equipment. The Agency proposed to revise its PPE standard to clarify who is required to pay for required PPE and under what circumstances. OSHA continues to consider the issue.

Timetable:

Action	Date	FR Cite
NPRM	03/30/99	64 FR 15401
NPRM Comment Period End	06/14/99	
Informal Public Hearing End	08/13/99	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Federal

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RIN: 1218–AB77

1862. CRANES AND DERRICKS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 29 USC 651(b); 29 USC 655(b); 40 USC 333

CFR Citation: 29 CFR 1926

Legal Deadline: None

Abstract: Subpart N addresses hazards associated with various types of hoisting equipment used at construction sites. Such equipment includes cranes, derricks, hoists, elevators and conveyors. The existing rule, which dates back to 1971, is based in part on industry consensus standards from 1958, 1968 and 1969. There have been considerable technological changes since those consensus standards were developed. Industry consensus standards for derricks and for crawler, truck and locomotive cranes were updated as recently as 1995. A number of industry stakeholders have asked OSHA to update subpart N.

OSHA's subpart N is now 30 years old, and is based in part on industry consensus standards as much as 42 years old. No changes have been made to the OSHA standard since 1971. Significant changes have occurred in the industry since the OSHA standard was promulgated.

A cross-section of the industry has stated that there is a need to update subpart N. OSHA has determined that the existing rule needs to be revised. OSHA will be monitoring these activities to determine whether recommendations developed for construction should be applied to cranes in general industry as well. OSHA will make a decision on what action to take next in December 2002.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

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RIN: 1218–AC01

1863. EXCAVATIONS (SECTION 610 REVIEW)

Priority: Other Significant

Legal Authority: 29 USC 651 et seq; 5 USC 610

CFR Citation: 29 CFR 1926.650 to 1926.652

Legal Deadline: None

Abstract: OSHA will undertake a review of the Agency's trenching and excavations standard (29 CFR 1926.650 to 1926.652) in accordance with the requirements of the Regulatory Flexibility Act and section 5 of Executive Order 12866. The review will consider the continued need for the rule, the impacts of the rule, public comments on the rule, the complexity of the rule, and whether the rule overlaps, duplicates, or conflicts with other regulations.

Timetable:

Action	Date	FR Cite
Begin Review	12/01/01	
Request for Comments	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 1218–AC02

1864. OCCUPATIONAL INJURY AND ILLNESS RECORDING AND REPORTING REQUIREMENTS

Priority: Other Significant

Legal Authority: 29 USC 553; 29 USC 657

CFR Citation: 29 CFR 1904.10; 29 CFR 1904.12; 29 CFR 1904.29(b)(7)(vi)

Legal Deadline: None

Abstract: The Occupational Safety and Health Administration (OSHA) issued a final rule on Occupational Injury and Illness Recording and Reporting Requirements (66 FR 5916, January 19,2001), scheduled to become effective on January 1, 2002. Following a thorough regulatory review, the Agency

determined that all but two provisions of the final rule, regarding the recording of occupational hearing (1904.10) and musculoskeletal disorders — MSDs (1904.12), would take effect as scheduled (66 FR 35113, July 3, 2001). Following notice and comment, OSHA published a final rule delaying the effective dates for sections 1904.10, 1910.12 and a note to 1904.29(b)(7)(vi) until January 1, 2003. The same final rule provided interim guidance on recording hearing loss and MSD cases during 2002 (66 FR 52031, October 12, 2001).

OSHA issued a final 1904.10 regulation setting recording criteria for occupational hearing loss (67 FR 44037, July 1, 2002), and simultaneously issued a proposal to delay the requirements for checking a separate hearing loss column on the 300 Log, as well as an additional one-year delay for the 1904.12 MSD requirements (67 FR 44124, July 1, 2002).

OSHA is continuing to reconsider the 300 Log columns for occupational hearing loss and MSD, and for defining "musculoskeletal disorders" for recordkeeping purposes. OSHA will issue one or more final rules to deal with these injury and illness recording issues for the years 2003 and beyond. OSHA will make a decision on what action to take next in Novembwer 2002.

Timetable:

Action	Date	FR Cite
NPRM	07/03/01	66 FR 35113
NPRM Comment Period End	09/04/01	
Final Rule	10/12/01	66 FR 52031
NPRM	07/01/02	67 FR 44124
Final Rule	07/01/02	67 FR 44037
NPRM Comment Period End	08/30/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

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RIN: 1218–AC06

1865. • UPDATING OSHA STANDARDS BASED ON NATIONAL CONSENSUS STANDARD

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910; 29 CFR 1915; 29 CFR 1917; 29 CFR 1918; 29 CFR 1926

Legal Deadline: None

Abstract: Under section 6(a) of the OSH Act, during the first two years of the Act, the Agency was directed to adopt national consensus standards as OSHA standards. Some of these standards were adopted as regulatory text, while others were incorporated by reference. In the thirty years since these standards were adopted by OSHA, the organizations responsible for these consensus standards have issued updated versions of these standards. However, in most cases, OSHA has not revised its regulations to reflect later editions of the consensus standards. OSHA standards also continue to incorporate by reference various consensus standards that are now outdated and, in some cases, out of print.

The Agency is now considering the possibility of initiating rulemaking to update some of these standards. In that regard, OSHA has asked various consensus standards organizations to review their standards, compare the latest versions of these standards to the ones currently adopted by OSHA and determine which ones are most important for OSHA to update. Additionally, OSHA has asked them to consider whether the changes to these standards would be noncontroversial, and if the new versions would reduce risk. The organizations were enthusiastic about the possibility of updating references to their standards, and they have provided considerable information on priorities and other related issues. OSHA is in the process of evaluating the information it has received in order to determine the best way to proceed.OSHA will make a decision on what action to take next in June 2003.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

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RIN: 1218–AC08

1866. • EXPLOSIVES

Priority: Other Significant

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.109

Legal Deadline: None

Abstract: OSHA is considering amending 29 CFR 1910.109 that addresses explosives and small arms manufacturing. These OSHA regulations were published in 1974, and many of the provisions do not reflect technological and safety advances made by the industry since that time. Additionally, the standard contains outdated references and classifications. Two trade associations representing many of the employers subject to this rule have petitioned the Agency to consider revising it, and have recommended changes they believe address the concerns they are raising. OSHA is in the process of reviewing the petition and related information about the issue, and will determine the appropriate course of action regarding this standard when the review is completed. OSHA will make a decision on what action to take next in June 2003.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

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RIN: 1218–AC09

1867. ACCESS AND EGRESS IN SHIPYARDS (PART 1915, SUBPART E) (SHIPYARDS: EMERGENCY EXITS AND AISLES)

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 655(b); 33 USC 941

CFR Citation: 29 CFR 1915.72; 29 CFR 1915.74; 29 CFR 1915.75; 29 CFR 1915.76

Legal Deadline: None

Abstract: In the 1980s, OSHA embarked on a project to update and consolidate OSHA standards that applied to the shipbuilding, shiprepair, and shipbreaking industry. Shipyard employers are subject to both the shipyard and general industry standards, and this project aimed at establishing a vertical standard for shipyard employment. A proposal on access and egress was issued in November 1988 (53 FR 48092). OSHA plans to withdraw this proposal.

Timetable:

Action	Date	FR Cite
NPRM	11/29/88	53 FR 48130
NPRM Comment Period End	02/27/89	
Withdrawal Notice	03/21/02	67 FR 13117

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1218–AA70

1868. ACCREDITATION OF TRAINING PROGRAMS FOR HAZARDOUS WASTE OPERATIONS (PART 1910)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655(b); 5 USC 552(a); 5 USC 553; PL 101-549 (November 15, 1990)

CFR Citation: 29 CFR 1910.121

Legal Deadline: None

Abstract: The Superfund Amendments and Reauthorization Act (SARA) of 1986 (Public Law 99-499) established the criteria under which OSHA was to develop and promulgate the Hazardous Waste Operations and Emergency Response standard. OSHA issued an interim final standard on December 19, 1986 (51 FR 45654) to comply with the law's requirements. OSHA issued a permanent final rule with provisions on training to replace this interim rule on March 9, 1989 (29 CFR 1910.120).

On December 22, 1987, as part of an omnibus budget reconciliation bill (PL 100-202), Congress amended section 126(d)(3) of SARA to include accreditation of training programs for hazardous waste operations. OSHA issued a proposal on January 26, 1990 (55 FR 2776) addressing this issue. OSHA received public comments following the issuance of the proposal. OSHA also reopened the record in June 1992 to allow additional public comment on an effectiveness of training study that the Agency had conducted. Since that time, OSHA has developed nonmandatory guidelines to address training criteria for hazardous waste workers, and these have been widely adopted. In addition, the private sector has since established training accreditation procedures. At this time, the next action in this rulemaking is undetermined, and we are withdrawing this from the regulatory agenda until such time as work on it resumes.

Timetable:

Action	Date	FR Cite
NPRM	01/26/90	55 FR 2776
NPRM Comment Period End	04/26/90	
Withdrawn	08/15/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1218–AB27

1869. INJURY AND ILLNESS PREVENTION

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 653; 29 USC 655; 29 USC 657

CFR Citation: 29 CFR 1900.1

Legal Deadline: None

Abstract: The Occupational Safety and Health Administration (OSHA), many States, members of the safety and health community, insurance companies, professional organizations, companies participating in the Agency's Voluntary Protection Programs, and many proactive employers in all industries recognize the value of worksite-specific injury and illness prevention programs in reducing and preventing job-related injuries, illnesses, and fatalities. The reductions in job-related injuries and illnesses, workers' compensation costs, and absenteeism that occur after employers implement such programs dramatically demonstrate their effectiveness. OSHA has decided to withdraw this item from the regulatory agenda. The Agency plans to review and revise as appropriate its 1989 Voluntary Safety and Health Management Guidelines. OSHA has received feedback from participants in the Agency's voluntary programs and from other stakeholders on the strengths and weaknesses of the existing guidelines. Although the guidelines help employers understand the basic approach to managing safety and health in the workplace, they do not sufficiently reflect the importance of employee participation or program evaluation. In addition, the Agency will continue and expand efforts to communicate the value and benefits of injury and illness prevention programs to employers. Extended outreach efforts combined with revised voluntary guidelines will encourage more widespread adoption of comprehensive and systematic injury and illness prevention programs.

Timetable:

Action	Date	FR Cite
Withdrawn	08/15/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

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RIN: 1218–AB41

1870. FALL PROTECTION IN THE CONSTRUCTION INDUSTRY

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 655(b); 40 USC 333

CFR Citation: 29 CFR 1926

Legal Deadline: None

Abstract: OSHA issued an ANPRM to gather information on fall protection issues regarding certain construction processes such as residential home building, precast concrete operations and post frame construction. The issues relate to the fall protection rules as they now apply to roofing work, residential construction operations, climbing reinforcement steel and vendors delivering materials to construction projects. These issues have arisen since OSHA revised the fall protection standard in August 1994. OSHA has determined that additional information is needed on residential construction. No rulemaking action is anticipated during the next year. OSHA is withdrawing this entry from the agenda.

Timetable:

Action	Date	FR Cite
ANPRM	07/14/99	64 FR 38077
ANPRM Comment Period End	01/24/00	
Withdrawn	08/15/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1218–AB62

1871. SIGNS, SIGNALS, AND BARRICADES

Priority: Other Significant

Legal Authority: 29 USC 651(b); 29 USC 655(b); 40 USC 333

CFR Citation: 29 CFR 1926

Legal Deadline: None

Abstract: Subpart G of 29 CFR part 1926 addresses the types of signs, signals and barricades that must be used in situations such as work areas on highways. OSHA's rule incorporates a 1971 ANSI standard, known as the MUTCD (Manual on Uniform Traffic Control Devices). Since the early 1970s, the U.S. Department of Transportation has drafted updates to the MUTCD. DOT requires all States to comply with its updates.

Several years ago, industry stakeholders asked OSHA to update its standard to reflect new technology and provide more flexibility for compliance.

On April 15, 2002, OSHA issued a Direct Final Rule and a companion proposed rule to update its standard since it anticipated widespread support for and few objections to the change. The Agency Advisory Committee on Construction Safety and Health endorsed using a Direct Final Rule to make this change in its Winter 2000 meeting. However, on July 15, 2002, OSHA withdrew the direct final rule because two comments were received that the Agency treated as significant adverse comments. OSHA is now preparing a final rule that will address those comments.

Timetable:

Action	Date	FR Cite
Direct Final Rule	04/15/02	67 FR 18091
Final Rule	09/12/02	67 FR 57722
Final Rule Effective	12/11/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1218–AB88

1872. CHANGES TO STATE PLANS

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 667

CFR Citation: 29 CFR 1953

Legal Deadline: None

Abstract: Section 18 of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 667, provides that States that wish to assume responsibility for developing and enforcing their own occupational safety and health standards relating to any occupational safety or health issue may do so by submitting and obtaining Federal approval of a State plan. A State plan consists of the laws, standards and other regulations, and procedures under which the State operates its occupational safety and health program. From time to time after initial plan approval, States may make changes to their plans as a result of legislative, regulatory or administrative actions. If the State makes a change to its plan which differs from the Federal program, the State must notify OSHA of the change to its plan which differs from the Federal program (referred to as a plan supplement). OSHA then reviews the changes; if they meet the approval criteria OSHA publishes a notice announcing the approval of the change; if the change does not meet the criteria OSHA initiates procedures to reject the change.

OSHA is proposing to amend its regulations regarding State plan changes to streamline the review and approval process and to allow more organizational flexibility in this process. Changes which are identical to components of the Federal program would not require formal review. The proposal also would reorganize 29 CFR part 1953 to eliminate repetitive language. Cross references to part 1953 in the CFR would be changed as necessary to reflect the correct references.

Timetable:

Action	Date	FR Cite
NPRM	11/06/01	66 FR 56043
NPRM Comment Period End	01/07/02	

Action	Date	FR Cite
Final Rule	09/25/02	67 FR 60122
Final Rule Effective	11/25/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Federal

Agency Contact: Paula O. White, Director, Federal-State Operations, Department of Labor, Occupational Safety and Health Administration, Room N3700, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-2200
Fax: 202 693-1671
Email: paula.white@osha.gov

RIN: 1218–AB91

Department of Labor (DOL)
Office of the Assistant Secretary for Veterans' Employment & Training (ASVET)

Proposed Rule Stage

1873. ANNUAL REPORT FOR FEDERAL CONTRACTORS (2002 REVISIONS)

Priority: Other Significant

Legal Authority: PL 106-419 Veterans Benefits and Health Care Improvement Act of 2000

CFR Citation: 41 CFR 61-250

Legal Deadline: None

Abstract: The Veterans' Employment and Training Service (VETS) is proposing to issue a notice of proposed rulemaking (NPRM) to implement changes required by the Veterans' Benefits and Health Care Improvement Act of 2000. The Act adds an additional category of veterans, "recently separated veterans," to the list of protected veterans under the Vietnam Era Veterans' Readjustment Assistance Act, as amended (VEVRAA). This proposal will assist VETS in meeting the statutory requirement of annually collecting the VETS-100 Report.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Norm Lance, Chief, Investigations and Compliance, VETS, Department of Labor, Office of the Assistant Secretary for Veterans' Employment & Training, S-1316, 200 Constitution Avenue, NW, Washington, DC 20210
Phone: 202 693-4731
Fax: 202 693-4755

RIN: 1293–AA08

Department of Labor (DOL)
Office of the Assistant Secretary for Veterans' Employment & Training (ASVET)

Final Rule Stage

1874. ANNUAL REPORT FROM FEDERAL CONTRACTORS

Priority: Other Significant

Legal Authority: PL 105-339 Veterans Employment Opportunities Act of 1998

CFR Citation: 41 CFR 61-250

Legal Deadline: None

Abstract: The Veterans' Employment and Training Service (VETS) issued a final rule implementing changes required by the Veterans' Employment Opportunities Act of 1998. The Act requires nonexempt Federal contractors and subcontractors with a contract in the amount of $25,000 or more to report their efforts toward hiring and employment of qualified veterans. The Act adds an additional category of veterans, "other veterans who have served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized," to the list of protected veterans under the Vietnam Era Veterans' Readjustment Assistance Act, as amended (VEVRAA). The Act also adds the requirement that covered contractors and subcontractors report their minimum and maximum number of employees. This rule will assist VETS in meeting the statutory requirement of annually collecting the VETS-100 Report. After publication VETS learned that the final rule may inadvertently increase the recordkeeping burden on some contractors. Accordingly, an interim final rule was published permitting contractors flexibility in how they determine the maximum and minimum number of employees reported. A notice has been published to request comments on best practices to determine how to calculate the minimum and maximum number of employees reported. Guidance that takes the comments into consideration will then be published.

Timetable:

Action	Date	FR Cite
NPRM	10/05/00	65 FR 59683
NPRM Comment Period End	12/06/00	
Final Rule	10/11/01	66 FR 51997
Final Rule Effective	11/13/01	
Interim Final Rule	12/19/01	66 FR 65452
Notice	03/08/02	67 FR 10804
Notice Comment Period End	04/08/02	
Notice	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Norm Lance, Chief, Investigations and Compliance, VETS, Department of Labor, Office of the Assistant Secretary for Veterans' Employment & Training, S-1316, 200 Constitution Avenue, NW, Washington, DC 20210
Phone: 202 693-4731
Fax: 202 693-4755

RIN: 1293–AA07

[FR Doc. 02–25640 Filed 12–06–02; 8:45 am]
BILLING CODE 4510–23–S

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Federal Register

Monday,
December 9, 2002

Part XIII

Department of State

Semiannual Regulatory Agenda

DEPARTMENT OF STATE (STATE)

DEPARTMENT OF STATE

22 CFR Ch. I

[Public Notice 4125]

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Department of State.

ACTION: Semiannual regulatory agenda.

SUMMARY: Consistent with the Regulatory Flexibility Act of 1980, 5 U.S.C. 602, and OMB guidance to the Department of State pursuant to Executive Order 12866, the fall 2002 agenda of the Department of State is set forth below. The purpose of this publication is to provide information to the public on the Department's regulatory plans. Consistent with OMB guidance, this agenda includes active continuing items from prior agendas.

FOR FURTHER INFORMATION CONTACT: Jamison Selby Borek, Assistant Legal Adviser for Legislation and General Management, Department of State, Room 3422, 2201 C Street NW., Washington, DC 20520, telephone (202) 647-2318.

Dated: September 24, 2002.

Grant S. Green Jr.,

Under Secretary of State for Management.

Department of State—Prerule Stage

Sequence Number	Title	Regulation Identification Number
1875	Student Exchange Visitor Information System (SEVIS) Rule	1400-AB45

Department of State—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1876	New Nonimmigrant U Visa Classification	1400-AB46
1877	Elimination of Crew List Visas	1400-AB49
1878	Amendment to the U.S. Munitions List, Category XV—Spacecraft Systems and Associated Equipment	1400-AB54
1879	Amendment to the U.S. Munitions List, Categories V and XIV	1400-AB55
1880	Amendment to the U.S. Munitions List, Categories II, III, VII, XV, and XVII and Sections 123.20 and 123.27	1400-AB56
1881	Amendment to the U.S. Munitions List, Categories V and XIV	1400-AB60

Department of State—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1882	Foreign Prohibitions on Longshore Work by U.S. Nationals	1400-AA34
1883	Transit Without Visa (TWOV)	1400-AA48
1884	Hague Intercountry Adoption Convention Implementation	1400-AA88
1885	Addition of "S" Nonimmigrant Visa Classification	1400-AA91
1886	Nonimmigrant Visa Fees—UN Mission Observer Personnel	1400-AA97
1887	Revision to Department of State Acquisition Regulation (DOSAR)	1400-AB06
1888	Cultural Exchange Programs, Reinstatement	1400-AB11
1889	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	1400-AB17
1890	Documentation of Nonimmigrants: Visa Waiver Program	1400-AB21
1891	Documentation of Immigrants: International Broadcasters	1400-AB22
1892	Documentation of Nonimmigrants: Spouses and Children of U.S. Citizens and Lawful Permanent Residents	1400-AB25
1893	Documentation of Immigrants and Nonimmigrants Under the Immigration and Nationality Act, As Amended—Refusals of Individual Visas	1400-AB27
1894	Students and Exchange Visitors—Fee Receipts	1400-AB29
1895	Grounds of Inadmissibility	1400-AB32
1896	Documentation of Nonimmigrants—Classification of Spouses of Foreign Diplomats	1400-AB35
1897	Documentation of Nonimmigrants—Automatic VISA Revalidation	1400-AB36
1898	Documentation of Nonimmigrants and Immigrants Access to Criminal History; Sharing Data Records	1400-AB37
1899	Documentation of Immigrants—Immediate Relatives	1400-AB38
1900	Documentation of Immigrants—Issuance of New or Replacement Visas	1400-AB39
1901	Final Exemptions for U.S. Institutions of Higher Learning	1400-AB40
1902	Removal of Visa and Passport Waiver for Certain Permanent Residents of Canada and Bermuda	1400-AB43
1903	Visa—Inadmissibility for Trafficking in Persons	1400-AB47
1904	Visa—Inadmissibility for Traffickers in Persons	1400-AB48

STATE

Department of State—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1905	Visa—Transitional Foreign Student Monitoring Program	1400-AB50
1906	Visa—Expanded Definition of Child	1400-AB51
1907	Q-2 Visas for Irish Nationals Participating in Special Work/Training Programs	1400-AB52
1908	International Organization Employees—INTELSAT Employees	1400-AB53

Department of State—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1909	B-1 Visa Classification	1400-AA54
1910	Cultural Exchange Program, Summer Work/Travel	1400-AB10
1911	Cultural Exchange Programs, Annual Reports	1400-AB14
1912	Amendment to the ITAR: Offset Arrangements and Enhancements to Congressional Notifications	1400-AB18

Department of State—Completed Actions

Sequence Number	Title	Regulation Identification Number
1913	Amendment to the List of Proscribed Destinations	1400-AB57
1914	Removal of Afghanistan From the Proscribed Destinations	1400-AB58
1915	Amendments to the U.S. Munitions List	1400-AB59

Department of State—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
1400-AB23	Documentation of Nonimmigrants: Victims of Trafficking in Persons, Victims of Criminal Activities, and Aliens Inadmissible for Trafficking in Persons	09/18/2002	Withdrawn
1400-AB24	Documentation of Nonimmigrants: Spouses and Children of Lawful Permanent Residents	09/18/2002	Merged With RIN 1400-AB25

Department of State (STATE) **Prerule Stage**

1875. • STUDENT EXCHANGE VISITOR INFORMATION SYSTEM (SEVIS) RULE

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 8 USC 1101(a)(15)(j), 1182, 1184, 1258; 22 USC 1431 to 1442, 1475e, 2451 to 2460; Foreign Affairs Reform and Restructuring Act, PL 105-277, 112 Stat 2681 et seq; Reorganization Plan No 2 of 1977, 3 CFR 1977 Comp, p 200; EO 12048 of March 27, 1978, 3 CFR, 1978 Comp, p 168

CFR Citation: 22 CFR 62.15

Legal Deadline: None

Abstract: The Department is amending the Exchange Visitor Program regulations to facilitate the requirements established by section 641 of Public Law 104-208 (as amended) for the INS Student and Exchange Visitor Program (SEVP).

Timetable:

Action	Date	FR Cite
ANPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Federalism: Undetermined

Agency Contact: Sally J. Lawrence, Chief Exchange Visitor Program, Department of State, Room 734, 301 4th Street SW, Washington, DC 20547
Phone: 202 401-9810
Fax: 202 401-9809
Email: slawrence@pd.state.gov

RIN: 1400–AB45

Department of State (STATE) — **Proposed Rule Stage**

1876. • NEW NONIMMIGRANT U VISA CLASSIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: sec 1513, PL 106-386

CFR Citation: 22 CFR 41.85

Legal Deadline: None

Abstract: Creates a New (U) nonimmigrant classification for victims of criminal activities.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20520-0106
Phone: 202 663-3844
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AB46

1877. • ELIMINATION OF CREW LIST VISAS

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 22 CFR 41.42

Legal Deadline: None

Abstract: Rule proposes to eliminate crew list visas.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20520-0106
Phone: 202 663-3844
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AB49

1878. • AMENDMENT TO THE U.S. MUNITIONS LIST, CATEGORY XV—SPACECRAFT SYSTEMS AND ASSOCIATED EQUIPMENT

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2778

CFR Citation: 22 CFR 121

Legal Deadline: None

Abstract: This regulation will revise Category XV—Spacecraft Systems and Associated Equipment within the U.S. Munitions List to clarify "space qualified" items covered by the U.S. Munitions List.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations

Government Levels Affected: Federal

Agency Contact: Mary Frances Sweeney, Munitions Control Analyst, Department of State, 12th Floor, 2401 E Street NW, Washington, DC 20522-0112
Phone: 202 663-2865
Fax: 202 261-8199

RIN: 1400–AB54

1879. • AMENDMENT TO THE U.S. MUNITIONS LIST, CATEGORIES V AND XIV

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2778

CFR Citation: 22 CFR 121

Legal Deadline: None

Abstract: This regulation will revise the following categories within the U.S. Munitions List because certain items will no longer be covered by the U.S. Munitions List: Category V—Explosives, Propellants, Incendiary Agents and Their Constituents and Category XIV—Toxicological Agents and Equipment and Radiological Equipment.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: Federal

Agency Contact: Mary Frances Sweeney, Munitions Control Analyst, Department of State, 12th Floor, 2401 E Street NW, Washington, DC 20522-0112
Phone: 202 663-2865
Fax: 202 261-8199

RIN: 1400–AB55

1880. • AMENDMENT TO THE U.S. MUNITIONS LIST, CATEGORIES II, III, VII, XV, AND XVII AND SECTIONS 123.20 AND 123.27

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2778

CFR Citation: 22 CFR 121; 22 CFR 123

Legal Deadline: None

Abstract: This regulation will revise the following categories within the U.S. Munitions List: Category II—Artillery Projectors to include signature control materials and engines for self-propelled guns and howitzers; Category III—Ammunition to provide greater clarity; Category VII—Tanks and Military Vehicles to remove engines for self-propelled guns and howitzers; and Category XVI—Nuclear Weapons Design and Test Equipment to include nuclear radiation detection and measuring devices, manufactured to military specifications. Category XVIII, now reserved, will be entitled and addressed "Directed Energy Weapons."

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal

Agency Contact: Mary Frances Sweeney, Munitions Control Analyst, Department of State, 12th Floor, 2401 E Street NW, Washington, DC 20522-0112
Phone: 202 663-2865
Fax: 202 261-8199

RIN: 1400–AB56

1881. • AMENDMENT TO THE U.S. MUNITIONS LIST, CATEGORIES V AND XIV

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2778

STATE — **Proposed Rule Stage**

CFR Citation: 22 CFR 121

Legal Deadline: None

Abstract: This regulation will revise the following categories within the U.S. Munitions List because certain items will no longer be covered by the U.S. Munitions List: Category V—Explosives, Propellants, Incendiary Agents and Their Constituents and Category XIV—Toxicological Agents and Equipment and Radiological Equipment.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations, Businesses, Governmental Jurisdictions

Government Levels Affected: Federal

Agency Contact: Mary Frances Sweeney, Munitions Control Analyst, Department of State, 12th Floor, 2401 E Street NW, Washington, DC 20522-0112
Phone: 202 663-2865
Fax: 202 261-8199

RIN: 1400–AB60

Department of State (STATE) — **Final Rule Stage**

1882. FOREIGN PROHIBITIONS ON LONGSHORE WORK BY U.S. NATIONALS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1288(d)

CFR Citation: 22 CFR 89 (Revision)

Legal Deadline: Final, Statutory, December 31, 1998, Legal deadline reflects the statutory requirement that the list be updated on an annual basis.

Abstract: The above-mentioned statute requires the Secretary of State to compile and update annually, through notice-and-comment rulemaking procedures, a list, by particular longshore activity, of countries where performance of such activity is prohibited by law, regulation, or in practice in the country concerned. According to the statute cited above, the Attorney General will use this list for enforcing restrictions on work performed by crewmembers of vessels from such countries. Compilation of the list itself does not involve any significant costs and is based upon information being provided to the Department of State by U.S. diplomatic missions overseas, as well as by the public. Questions regarding the policy justification for the list and its use are best directed to the Departments of Labor, Transportation, and Justice.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/30/91	
Final Rule	12/27/91	56 FR 66970
Final Rule Effective	01/01/92	
Final Rule Correction	01/04/92	57 FR 1384
NPRM	02/12/02	67 FR 6447
NPRM Comment Period End	03/12/02	
Final Action	12/00/02	
Updated List of Countries		
NPRM	11/04/92	57 FR 52600
NPRM Comment Period End	12/04/92	
Final Rule	12/13/93	58 FR 65118
Final Rule Effective	12/13/93	
NPRM	03/24/94	59 FR 13904
NPRM Comment Period End	04/25/94	
NPRM	11/24/95	60 FR 58026
NPRM Comment Period End	12/26/95	
NPRM Comment Period Extended to	01/26/96	60 FR 65609
NPRM Comment Period Extended to	02/02/96	61 FR 2915
NPRM	06/06/96	61 FR 29115
Final Rule	06/13/96	61 FR 29941
NPRM	02/12/02	67 FR 6447
NPRM Comment Period End	03/12/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: In accordance with the mandate to maintain annually the list of countries, the Department will issue final rules to amend the list as appropriate.

Agency Contact: Stephen Miller, Office of Maritime and Land Transport, Bureau of Economic and Business Affairs, Department of State, 2201 C Street NW, Washington, DC 20520-5816
Phone: 202 647-6961

RIN: 1400–AA34

1883. TRANSIT WITHOUT VISA (TWOV)

Priority: Substantive, Nonsignificant

Legal Authority: sec 212(d)(4)(C) of the Immigration & Nationality Act (INA)

CFR Citation: 22 CFR 41.2(i)

Legal Deadline: None

Abstract: Under the provision of section 212(d)(4)(C), the Secretary of State and the Attorney General, acting jointly, have the authority to waive nonimmigrant visa requirements for aliens in continuous and direct transit through the United States. Yugoslavia was removed from the list of countries participating in this program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/16/93	58 FR 43438
Interim Final Rule Effective	09/15/93	
NPRM	01/05/01	66 FR 1064
Interim Final Rule	01/05/01	66 FR 1033
Interim Final Rule Effective	02/05/01	
NPRM Comment Period End	03/06/01	
Interim Final Rule Comment Period End	03/06/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Stephen K. Fischel, Office Director, Legislation and Regulation and Advisory Assistance, Department of State, 2401 E Street NW, SA-1, Washington, DC 20522-0113
Phone: 202 663-1204
Fax: 202 663-3898
Email: fishelsk@state.gov.

RIN: 1400–AA48

1884. HAGUE INTERCOUNTRY ADOPTION CONVENTION IMPLEMENTATION

Priority: Other Significant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Regulations will implement the Hague Convention for the Protection of Children and Cooperation in Respect of Intercountry Adoption

Act of 2000 and its associated legislation. Health and Human Services and the Immigration and Naturalization Service will also write regulations regarding this convention and legislation.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Edward A. Betancourt, Director, Office of Policy Review and Interagency Liaison, Department of State, Bureau of Consular Affairs, 2201 C Street NW, Washington, DC 20520-5816
Phone: 202 312-9723
Fax: 202 312-9744

RIN: 1400–AA88

1885. ADDITION OF "S" NONIMMIGRANT VISA CLASSIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104

CFR Citation: 22 CFR 41.83

Legal Deadline: None

Abstract: Implements section 130003 of Public Law 103-322 by adding a new nonimmigrant visa classification (S) under INA 101(a)(15)(S). This visa classification provides for the admission of certain alien witnesses and informants.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/24/96	61 FR 1837
Interim Final Rule Comment Period End	03/25/96	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20520-0106
Phone: 202 663-3844
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AA91

1886. NONIMMIGRANT VISA FEES—UN MISSION OBSERVER PERSONNEL

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-177, sec 410; 8 USC 1104

CFR Citation: 22 CFR 41.107

Legal Deadline: None

Abstract: This regulation reduces the fee for border crossing cards for aliens under age 15 and removes the fees for U.N. Observer Mission personnel.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/29/00	65 FR 52306
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20520-0106
Phone: 202 663-3844
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AA97

1887. REVISION TO DEPARTMENT OF STATE ACQUISITION REGULATION (DOSAR)

Priority: Info./Admin./Other

Legal Authority: PL 93-400; PL 96-83

CFR Citation: 48 CFR 6

Legal Deadline: None

Abstract: This revision to the DOSAR will make minor changes to conform the DOSAR to continuing changes in the Federal Acquisition Regulation (FAR).

Timetable:

Action	Date	FR Cite
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Gladys G. Gines, Procurement Analyst, Office of the Procurement Executive, Department of State, SA-6, Room 603, Washington, DC 20522-0602
Phone: 703 516-1691
Fax: 703 875-6155
Email: ginesgg@state.gov

RIN: 1400–AB06

1888. CULTURAL EXCHANGE PROGRAMS, REINSTATEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101(a)(15)(j), 1182, 1184, 1258; 22 USC 1431 to 1442, 1475e, 2451 to 2460; Foreign Affairs Reform and Restructuring Act, PL 105-277, 112 Stat 2681 et seq; Reorganization Plan No 2 of 1977, 3 CFR, 1977 Comp, p 200; EO 12048 of March 27, 1978, 3 CFR, 1978 Comp, p 168

CFR Citation: 22 CFR 62.45

Legal Deadline: NPRM, Statutory, April 2000.

Abstract: The Department is amending the Exchange Visitor Program regulations regarding reinstatement of J-1 exchange visitors to valid program status.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/13/99	64 FR 44023
Interim Final Rule Comment Period End	09/13/99	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sally J. Lawrence, Chief Exchange Visitor Program, Department of State, Room 734, 301 4th Street SW, Washington, DC 20547
Phone: 202 401-9810
Fax: 202 401-9809
Email: slawrence@pd.state.gov

RIN: 1400–AB11

1889. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 22 CFR 141 to 143

Legal Deadline: None

Abstract: The Department of State participated with 21 other Federal agencies to amend regulations implementing title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI, section 504, and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gloria J. Jackson, EEO Manager for Compliance Programs, Department of State, S/EEOCR; Room 4216, 2201 C Street NW, Washington, DC 20520
Phone: 202 647-9897
Fax: 202 647-4969
Email: jacksongj@state.gov

RIN: 1400–AB17

1890. DOCUMENTATION OF NONIMMIGRANTS: VISA WAIVER PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104

CFR Citation: 22 CFR 41.2(1)

Legal Deadline: None

Abstract: Makes permanent the Visa Waiver Program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20520-0106
Phone: 202 663-3844
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AB21

1891. DOCUMENTATION OF IMMIGRANTS: INTERNATIONAL BROADCASTERS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104

CFR Citation: 22 CFR 42.32(d)(8)

Legal Deadline: None

Abstract: Adds a new category of special immigrants, international broadcasters.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/18/01	66 FR 15349
Interim Final Rule Comment Period End	12/18/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20520-0106
Phone: 202 663-3844
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AB22

1892. DOCUMENTATION OF NONIMMIGRANTS: SPOUSES AND CHILDREN OF U.S. CITIZENS AND LAWFUL PERMANENT RESIDENTS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104

CFR Citation: 22 CFR 41.81

Legal Deadline: None

Abstract: Provides nonimmigrant status for spouses and children of U.S. citizens who are awaiting approval of immigrant visa petitions.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	04/01/01	
Interim Final Rule	04/16/01	66 FR 19390
Interim Final Rule Comment Period End	06/01/01	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20520-0106
Phone: 202 663-3844
Fax: 202 663-3898
Email: odomher@state.gov

Related RIN: Merged With 1400-AB24

RIN: 1400–AB25

1893. DOCUMENTATION OF IMMIGRANTS AND NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED—REFUSALS OF INDIVIDUAL VISAS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104

CFR Citation: 22 CFR 41.41; 22 CFR 41.121; 22 CFR 41.122; 22 CFR 42.81

Legal Deadline: None

Abstract: Adds to grounds of ineligibility for nonimmigrants. Adds a new restriction on place of application for alien overstays.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20520-0106
Phone: 202 663-3844
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Email: odomher@state.gov

RIN: 1400–AB27

1894. STUDENTS AND EXCHANGE VISITORS—FEE RECEIPTS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104

STATE

Final Rule Stage

CFR Citation: 22 CFR 41.61 and 41.62

Legal Deadline: None

Abstract: Requires F, J, and M nonimmigrants to produce receipts for payment of CIPRIS fees.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20520-0106
Phone: 202 663-3844
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AB29

1895. GROUNDS OF INADMISSIBILITY

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104

CFR Citation: 22 CFR 40.63; 22 CFR 40.92; 22 CFR 40.104

Legal Deadline: None

Abstract: Adds exceptions for aliens inadmissible under INA 212(a)(6)(C)(ii), INA 212(a)(9)(B), and INA 212(a)(10)(D)

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20520-0106
Phone: 202 663-3844
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Email: odomher@state.gov

RIN: 1400–AB32

1896. DOCUMENTATION OF NONIMMIGRANTS—CLASSIFICATION OF SPOUSES OF FOREIGN DIPLOMATS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104; PL 105-277, 112 Stat 2681 et seq

CFR Citation: 22 CFR 41.22

Legal Deadline: None

Abstract: Classification of Spouses of Foreign Diplomats as Gs to permit employment with international organizations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen K. Fischel, Office Director, Legislation and Regulation and Advisory Assistance, Department of State, 2401 E Street NW, SA-1, Washington, DC 20522-0113
Phone: 202 663-1204
Fax: 202 663-3898
Email: fishelsk@state.gov.

RIN: 1400–AB35

1897. DOCUMENTATION OF NONIMMIGRANTS—AUTOMATIC VISA REVALIDATION

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104; PL 105-277, 112 Stat 2681 et seq

CFR Citation: 22 CFR 41.112D

Legal Deadline: None

Abstract: Excludes automatic revalidation benefits for aliens returning from short visits to other North American countries or adjacent islands. Exclusion for aliens who are nationals of countries identified as State sponsors of terrorism.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/07/02	
Interim Final Rule Comment Period End	05/06/02	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen K. Fischel, Office Director, Legislation and Regulation and Advisory Assistance, Department of State, 2401 E Street NW, SA-1, Washington, DC 20522-0113
Phone: 202 663-1204
Fax: 202 663-3898
Email: fishelsk@state.gov.

RIN: 1400–AB36

1898. DOCUMENTATION OF NONIMMIGRANTS AND IMMIGRANTS ACCESS TO CRIMINAL HISTORY; SHARING DATA RECORDS

Priority: Other Significant

Legal Authority: 8 USC 1104

CFR Citation: 20 CFR 40.5; 22 CFR 41.105(b); 22 CFR 42.72(c)

Legal Deadline: None

Abstract: Access to certain criminal history records from the FBI. Fingerprinting of immigrants and nonimmigrants.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/25/02	67 FR 8477
Interim Final Rule Comment Period End	04/26/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen K. Fischel, Office Director, Legislation and Regulation and Advisory Assistance, Department of State, 2401 E Street NW, SA-1, Washington, DC 20522-0113
Phone: 202 663-1204
Fax: 202 663-3898
Email: fishelsk@state.gov.

RIN: 1400–AB37

1899. DOCUMENTATION OF IMMIGRANTS—IMMEDIATE RELATIVES

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104

CFR Citation: 22 CFR 42.21

Legal Deadline: None

Abstract: Expands the definition of immediate relative for spouses and children of U.S. citizens whose spouses or parents were killed in the 09/11/01 terrorist attack.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/11/02	67 FR 1414

STATE

Final Rule Stage

Action	Date	FR Cite
Interim Final Rule Comment Period End	02/12/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen K. Fischel, Office Director, Legislation and Regulation and Advisory Assistance, Department of State, 2401 E Street NW, SA-1, Washington, DC 20522-0113
Phone: 202 663-1204
Fax: 202 663-3898
Email: fishelsk@state.gov.

RIN: 1400–AB38

1900. DOCUMENTATION OF IMMIGRANTS—ISSUANCE OF NEW OR REPLACEMENT VISAS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104

CFR Citation: 22 CFR 42.72(b)

Legal Deadline: None

Abstract: Removal of citation to INA 124. The provision is no longer in effect.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/11/02	67 FR 1415
Interim Final Rule Comment Period End	03/12/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen K. Fischel, Office Director, Legislation and Regulation and Advisory Assistance, Department of State, 2401 E Street NW, SA-1, Washington, DC 20522-0113
Phone: 202 663-1204
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Email: fishelsk@state.gov.

RIN: 1400–AB39

1901. FINAL EXEMPTIONS FOR U.S. INSTITUTIONS OF HIGHER LEARNING

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2778

CFR Citation: 22 CFR 123; 22 CFR 125

Legal Deadline: None

Abstract: New exemption from export licensing requirements for U.S. universities, university-based international fundamental research cooperative activities in unclassified space research with universities located in the member countries of NATO, major non-NATO allies, the European Union and European Space Agency.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/29/02	67 FR 15099
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations

Government Levels Affected: State

Agency Contact: Mary Frances Sweeney, Munitions Control Analyst, Department of State, 12th Floor, 2401 E Street NW, Washington, DC 20522-0112
Phone: 202 663-2865
Fax: 202 261-8199

RIN: 1400–AB40

1902. • REMOVAL OF VISA AND PASSPORT WAIVER FOR CERTAIN PERMANENT RESIDENTS OF CANADA AND BERMUDA

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 22 CFR 41.2

Legal Deadline: None

Abstract: This regulation removes visa and passport waivers for certain permanent residents of Canada and Bermuda.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20520-0106
Phone: 202 663-3844
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AB43

1903. • VISA—INADMISSIBILITY FOR TRAFFICKING IN PERSONS

Priority: Substantive, Nonsignificant

Legal Authority: sec 107, PL 106-386

CFR Citation: 22 CFR 41.84

Legal Deadline: None

Abstract: Creates a new nonimmigrant (T) classification for victims of trafficking in persons.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20520-0106
Phone: 202 663-3844
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AB47

1904. • VISA—INADMISSIBILITY FOR TRAFFICKERS IN PERSONS

Priority: Substantive, Nonsignificant

Legal Authority: sec 111, PL 106-386

CFR Citation: 22 CFR 40.27

Legal Deadline: None

Abstract: Adds a new inadmissibility ground for aliens involved in trafficking in persons.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20520-0106
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Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AB48

STATE — Final Rule Stage

1905. • VISA—TRANSITIONAL FOREIGN STUDENT MONITORING PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-173

CFR Citation: 22 CFR 41.61; 22 CFR 41.62

Legal Deadline: None

Abstract: Rule creates an electronic system known as ISEAS for electronic monitoring of the VISA adjudication process for aliens who enter the United States under F, M, or J Visa classification.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	09/11/02	
Interim Final Rule	09/18/02	67 FR 58693
Interim Final Rule Comment Period End	11/18/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20520-0106
Phone: 202 663-3844
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AB50

1906. • VISA—EXPANDED DEFINITION OF CHILD

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-208

CFR Citation: 22 CFR 40.1

Legal Deadline: None

Abstract: Amends the INA to determine whether an alien is a child for purposes of classification as an immediate relative, based on the age of the alien on the date the classification petition with respect to the alien is filed, and for other purposes.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20520-0106
Phone: 202 663-3844
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AB51

1907. • Q-2 VISAS FOR IRISH NATIONALS PARTICIPATING IN SPECIAL WORK/TRAINING PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 22 CFR 41.57

Legal Deadline: None

Abstract: This regulation establishes procedures for issuing Visas to participate in a special work/training program for Irish.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/17/00	65 FR 14768
Interim Final Rule Comment Period End	05/16/00	
Final Action	10/16/01	66 FR 52500
Final Action Effective	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20520-0106
Phone: 202 663-3844
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AB52

1908. • INTERNATIONAL ORGANIZATION EMPLOYEES—INTELSAT EMPLOYEES

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 22 CFR 47.24; 22 CFR 42.32(d)(5)

Legal Deadline: None

Abstract: This regulation treats employees of INTELSAT as if they had international status as employees, after INTELSAT privatization.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/11/02	67 FR 1413
Interim Final Rule Comment Period End	03/12/02	
Interim Final Rule	04/17/02	67 FR 18821
Interim Final Rule Comment Period End	06/17/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20520-0106
Phone: 202 663-3844
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AB53

Department of State (STATE) — Long-Term Actions

1909. B-1 VISA CLASSIFICATION

Priority: Substantive, Nonsignificant

CFR Citation: 22 CFR 41.31

Timetable:

Action	Date	FR Cite
NPRM	07/26/93	58 FR 40024
NPRM Comment Period Extended to 11/23/93	09/23/93	58 FR 49456
NPRM Comment Period End	09/24/93	

STATE — Long-Term Actions

NPRM Comment Period Extended to 12/06/93	11/23/93	58 FR 61856
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Stephen K. Fischel
Phone: 202 663-1204
Fax: 202 663-3898
Email: fishelsk@state.gov.

RIN: 1400–AA54

1910. CULTURAL EXCHANGE PROGRAM, SUMMER WORK/TRAVEL

Priority: Substantive, Nonsignificant

CFR Citation: 22 CFR 62.32

Timetable:

Action	Date	FR Cite
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sally J. Lawrence
Phone: 202 401-9810
Fax: 202 401-9809
Email: slawrence@pd.state.gov

RIN: 1400–AB10

1911. CULTURAL EXCHANGE PROGRAMS, ANNUAL REPORTS

Priority: Substantive, Nonsignificant

CFR Citation: 22 CFR 62.15

Timetable:

Action	Date	FR Cite
ANPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sally J. Lawrence
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RIN: 1400–AB14

1912. AMENDMENT TO THE ITAR: OFFSET ARRANGEMENTS AND ENHANCEMENTS TO CONGRESSIONAL NOTIFICATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 22 CFR 120; 22 CFR 123; 22 CFR 124

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Agency Contact: Mary Frances Sweeney
Phone: 202 663-2865
Fax: 202 261-8199

RIN: 1400–AB18

Department of State (STATE) — Completed Actions

1913. • AMENDMENT TO THE LIST OF PROSCRIBED DESTINATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2778

CFR Citation: 22 CFR 126

Legal Deadline: Final, Statutory, March 29, 2002.

Abstract: This regulation removed Armenia and Azerbaijan from the list of proscribed destinations.

Timetable:

Action	Date	FR Cite
Final Action	03/29/02	67 FR 15101

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal

Agency Contact: Mary Frances Sweeney, Munitions Control Analyst, Department of State, 12th Floor, 2401 E Street NW, Washington, DC 20522-0112
Phone: 202 663-2865
Fax: 202 261-8199

RIN: 1400–AB57

1914. • REMOVAL OF AFGHANISTAN FROM THE PROSCRIBED DESTINATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2778

CFR Citation: 22 CFR 126

Legal Deadline: Final, Statutory, July 2, 2002.

Abstract: This regulation removed the Government of Afghanistan from the list of proscribed destinations.

Timetable:

Action	Date	FR Cite
Final Action	07/02/02	67 FR 44352

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal

Agency Contact: Mary Frances Sweeney, Munitions Control Analyst, Department of State, 12th Floor, 2401 E Street NW, Washington, DC 20522-0112
Phone: 202 663-2865
Fax: 202 261-8199

RIN: 1400–AB58

1915. • AMENDMENTS TO THE U.S. MUNITIONS LIST

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2778

CFR Citation: 22 CFR 121

Legal Deadline: Final, Statutory, April 29, 2002.

Abstract: This regulation revised Category I—Firearms within the U.S. Munitions List.

Timetable:

Action	Date	FR Cite
Final Action	04/29/02	67 FR 20894
Final Action Effective	04/29/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal

Agency Contact: Mary Frances Sweeney, Munitions Control Analyst, Department of State, 12th Floor, 2401

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STATE **Completed Actions**

E Street NW, Washington, DC 20522-0112 Phone: 202 663-2865 Fax: 202 261-8199

RIN: 1400–AB59

[FR Doc. 02–25637 Filed 12–06–02; 8:45 am]
BILLING CODE 4710–08–S



Federal Register

Monday,
December 9, 2002

Part XIV

Department of Transportation

Semiannual Regulatory Agenda

DEPARTMENT OF TRANSPORTATION (DOT)

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Chs. I-III

23 CFR Chs. I-III

33 CFR Chs. I and IV

46 CFR Chs. I-III

48 CFR Ch. 12

49 CFR Subtitle A, Chs. I-VI and Chs. X-XII

OST Docket 99-5129

Department Regulatory Agenda; Semiannual Summary

AGENCY: Office of the Secretary, DOT.

ACTION: Semiannual regulatory agenda.

SUMMARY: The regulatory agenda is a semiannual summary of all current and projected rulemakings, reviews of existing regulations, and completed actions of the Department. The agenda provides the public with information about the Department of Transportation's regulatory activity. It is expected that this information will enable the public to be more aware of and allow it to more effectively participate in the Department's regulatory activity. The public is also invited to submit comments on any aspect of this agenda.

FOR FURTHER INFORMATION CONTACT:

General

You should direct all comments and inquiries on the agenda in general to Neil R. Eisner, Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366-4723.

Specific

You should direct all comments and inquiries on particular items in the agenda to the individual listed for the regulation or the general rulemaking contact person for the operating administration in Appendix B.

Individuals who use a telecommunications device for the deaf (TDD) may call (202) 755-7687.

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Appendix C - Public Rulemaking Dockets
Appendix D - Review Plans for Section 610 and Other Requirements
Agenda

SUPPLEMENTARY INFORMATION:

Background

Improvement of our regulations is a prime goal of the Department of Transportation (Department or DOT). There should be no more regulations than necessary and those that are issued should be simpler, more comprehensible, and less burdensome. Regulations should not be issued without appropriate involvement of the public; once issued, they should be periodically reviewed and revised, as needed, to assure that they continue to meet the needs for which they originally were designed.

To help the Department achieve these goals and in accordance with Executive Order 12866 "Regulatory Planning and Review" (58 FR 51735; October 4, 1993) and the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), the Department prepares a semiannual regulatory agenda. It summarizes all current and projected rulemaking, reviews of existing regulations, and completed actions of the Department. These are matters on which action has begun or is projected during the succeeding 12 months or such longer period as may be anticipated or for which action has been completed since the last agenda.

The agendas are based on reports submitted by the offices initiating the rulemaking and are reviewed by the Department Regulations Council. The Department's last agenda was published in the **Federal Register** on May 13, 2002 (67 FR 33368). The next one is scheduled for publication in the **Federal Register** in April 2003.

The Department has created an Internet site that provides general information about its rulemaking responsibilities and activities. It includes hypertext links to numerous other departmental sites providing helpful information about DOT regulation. The web address for this site is http://regs.dot.gov.

Significant/Priority Rulemakings

The agenda covers all rules and regulations of the Department. We have classified rules as a DOT agency priority in the agenda if they are, essentially, very costly, controversial, or of substantial public interest under our Regulatory Policies and Procedures. All DOT agency priority rulemaking documents are subject to review by the Secretary of Transportation. If the Office of Management and Budget (OMB) decides a rule is subject to its review under Executive Order 12866, we have classified it as significant in the agenda.

Explanation of Information on the Agenda

The format for this agenda is required by Office of Management and Budget memorandum of July 15, 2002.

First, the agenda is divided by initiating offices. Then, the agenda is divided into five categories: (1) prerule stage, (2) proposed rule stage, (3) final rule stage, (4) long-term actions, and (5) completed actions. For each entry, the agenda provides the following information: (1) its "significance"; (2) a short descriptive title; (3) its legal basis; (4) the related regulatory citation in the Code of Federal Regulations; (5) any legal deadline and, if so, for what action (e.g., NPRM, final rule); (6) an abstract; (7) a timetable, including the earliest expected date for a decision on whether to take the action; (8) whether the rulemaking will affect small entities and/or levels of government and, if so, which categories; (9) whether a Regulatory Flexibility Act (RFA) analysis is required (for rules that would have a significant economic impact on a substantial number of small entities); (10) a listing of any analyses an office will prepare or has prepared for the action (With minor exceptions, DOT requires an economic analysis for all its rulemakings.); (11) an agency contact office or official who can provide further information; (12) a Regulation Identifier Number (RIN) assigned to identify an individual rulemaking in the agenda and facilitate tracing further action on the issue; (13) whether the action is subject to the Unfunded Mandates Reform Act; (14) whether the action is subject to the Energy Act; and (15) whether the action is major under the congressional review provisions of the Small Business Regulatory Enforcement Fairness Act. If there is information that does not fit in the other categories, it will be included under a separate heading entitled "Additional Information."

For nonsignificant regulations issued routinely and frequently as a part of an established body of technical requirements (such as the Federal Aviation Administration's Airspace Rules), to keep those requirements operationally current, we only include the general category of the regulations, the identity of a contact office or official, and an indication of the expected number of regulations; we do not list individual regulations.

In the "Timetable" column, we use abbreviations to indicate the particular documents being considered. ANPRM stands for Advance Notice of Proposed Rulemaking, SNPRM for Supplemental Notice of Proposed Rulemaking, and NPRM for Notice of Proposed Rulemaking. Listing a future date in this column does not mean we have made a decision to issue a document; it is the earliest date on which we expect to make a decision on whether to issue it. In addition, these dates are based on current schedules. Information received subsequent to the issuance of this agenda could result in a decision not to take regulatory action or in changes to proposed publication dates. For example, the need for further evaluation could result in a later publication date; evidence of a greater need for the regulation could result in an earlier publication date.

Finally, a dot (•) preceding an entry indicates that the entry appears in the agenda for the first time.

Request for Comments

General

Our agenda is intended primarily for the use of the public. Since its inception, we have made modifications and refinements that we believe provide the public with more helpful information, as well as make the agenda easier to use. We would like you, the public, to make suggestions or comments on how the agenda could be further improved.

Reviews

We also seek your suggestions on which of our existing regulations you believe need to be reviewed to determine whether they should be revised or revoked. We particularly draw your attention to the Department's review plan in Appendix D.

Regulatory Flexibility Act

The Department is especially interested in obtaining information on requirements that have a "significant economic impact on a substantial number of small entities" and, therefore, must be reviewed under the Regulatory Flexibility Act. If you have any suggested regulations, please submit them to us, along with your explanation of why they should be reviewed.

In accordance with the Regulatory Flexibility Act, comments are specifically invited on regulations that we have targeted for review under section 610 of the Act. The phrase (Section 610 Review) appears at the end of the title for these reviews. Please see Appendix D for the Department's section 610 review plans.

Federalism

Executive Order 13132 requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we encourage State and local governments to provide us with information about how the Department's rulemakings impact them.

Purpose

The Department is publishing this regulatory agenda in the **Federal Register** to share with interested members of the public the Department's preliminary expectations regarding its future regulatory actions. This should enable the public to be more aware of the Department's regulatory activity and should result in more effective public participation. This publication in the **Federal Register** does not impose any binding obligation on the Department or any of the offices within the Department with regard to any specific item on the agenda. Regulatory action, in addition to the items listed, is not precluded.

Issued in Washington, DC, on October 15, 2002.

Norman Y. Mineta,

Secretary of Transportation.

Appendix A - Instructions for Obtaining Copies of Regulatory Documents

To obtain a copy of a specific regulatory document in the agenda, you should communicate directly with the contact person listed with the regulation at the address below. We note that most if not all such documents, including the Semiannual Agenda, are available through our Internet-accessible docket at http://dms.dot.gov. See Appendix C for more information.

Transportation Security Administration (TSA)

(Name of contact person), Transportation Security Administration, 400 7th Street SW., Washington, DC 20590.

United States Coast Guard (USCG)

(Name of contact person), United States Coast Guard, 2100 2nd Street SW., Washington, DC 20593.

Federal Highway Administration (FHWA)

(Name of contact person), Federal Highway Administration, 400 7th Street SW., Washington, DC 20590.

Federal Motor Carrier Safety Administration (FMCSA)

(Name of contact person), Federal Motor Carrier Safety Administration, 400 7th Street SW., Washington, DC 20590.

Federal Railroad Administration (FRA)

(Name of contact person), Federal Railroad Administration, 400 7th Street SW., Washington, DC 20590.

National Highway Traffic Safety Administration (NHTSA)

(Name of contact person), National Highway Traffic Safety Administration, 400 7th Street SW., Washington, DC 20590.

Federal Transit Administration (FTA)

(Name of contact person), Federal Transit Administration, 400 7th Street SW., Washington, DC 20590.

Saint Lawrence Seaway Development Corporation (SLSDC)

(Name of contact person), Saint Lawrence Seaway Development Corporation, 400 7th Street SW., Room 5424, Washington, DC 20590.

Research and Special Programs Administration (RSPA)

(Name of contact person), Research and Special Programs Administration, 400 7th Street SW., Washington, DC 20590.

Maritime Administration (MARAD)

Joel C. Richard, Secretary, Maritime Administration, 400 7th Street SW., Room 7210, Washington, DC 20590, (202) 366-5746.

Bureau of Transportation Statistics (BTS)

(Name of contact person), Bureau of Transportation Statistics,400 7th Street SW., Room 7210, Washington, DC 20590.

Federal Aviation Administration (FAA)

The FAA has a mailing list system for notices and advance notices of proposed rulemaking (NPRMs and ANPRMs). Persons interested in obtaining future copies of all of those documents to be issued by the FAA or only of those concerning certain parts of the Federal Aviation Regulations should request a copy of Advisory Circular No. 11-2, which describes the application procedure, by calling (202) 267-3484 or by writing to: Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591.

Office of the Secretary (OST)

To obtain a copy of a specific regulatory document or to receive future copies of the Department's regulatory agenda write to: Assistant General Counsel for Regulation and Enforcement, C-50, Office of the General Counsel, Department of Transportation, Washington, DC 20590, (202) 366-4723.

Appendix B - General Rulemaking Contact Persons

The following is a list of persons who can be contacted within the Department for general information concerning the rulemaking process within the various operating administrations.

TSA — Mardi R. Thompson, Office of Chief Counsel, 400 7th Street SW., Washington, DC 20590, telephone: (202) 493-1227.

USCG — Steve G. Venckus, Chief, Office of Regulations and Administrative Law, USCG Headquarters Building, Room 3406, 2100 2nd Street SW., Washington, DC 20593; telephone: (202) 267-1534.

FAA - Donald Byrne, Office of Chief Counsel, Regulations and Enforcement Division, 800 Independence Avenue SW., Room 915A, Washington, DC 20591; telephone: (202) 267-3073.

FHWA — Julie Downey, Office of Chief Counsel, 400 7th Street SW., Room 4223, Washington, DC 20590; telephone: (202) 366-0761.

FMCSA - Suzanne O'Malley, Office of Chief Counsel, 400 7th Street SW., Room 8201, Washington, DC 20590; telephone: (202) 366-1367.

FRA — Kathryn Shelton, Office of Chief Counsel, 400 7th Street SW., Mail Stop 10, Washington, DC 20590; telephone: (202) 493-6028.

NHTSA - Steve Wood, Office of Chief Counsel, 400 7th Street SW., Room 5219, Washington, DC 20590; telephone: (202) 366-2992.

FTA - Richard Wong, Office of Chief Counsel, 400 7th Street SW., Room 9316, Washington, DC 20590; telephone: (202) 366-4011.

SLSDC - Marc Owen, General Counsel's Office, 400 7th Street SW., Room 5424, Washington, DC 20590; telephone: (202) 366-6823.

RSPA - Edward Bonekemper, Office of Chief Counsel, 400 7th Street SW., Room 8405, Washington, DC 20590; telephone: (202) 366-4400.

MARAD — Christine Gurland, Office of Chief Counsel, Maritime Administration, 400 7th Street SW., Room 7221, Washington, DC 20590; telephone: (202) 366-5181.

BTS — Robert Monniere SW., Room 3430, Washington, DC 20590; telephone: (202) 366-5498.

OST - Neil Eisner, Office of Regulation and Enforcement, 400 7th Street SW., Room 10424, Washington, DC 20590; telephone: (202) 366-4723.

Appendix C - Public Rulemaking Dockets

The public may review or submit comments to the dockets for all of DOT via the Internet at the following address: http://dms.dot.gov. Examples of documents that may be in the dockets are proposed rules, public comments received, supporting analyses, studies, and reports.

The public also may review regulatory dockets at, or deliver comments on proposed rulemakings to, the Dockets Office at 400 7th Street SW., Room PL 401, Washington, DC 20590, 1-800-647-5527. Working Hours: 9-5.

Appendix D - Review Plans for Section 610 and Other Requirements

Part I - The Plan

General

The Department of Transportation has long recognized the importance of regularly reviewing its existing regulations to determine whether they need to be revised or revoked. Our 1979 Regulatory Policies and Procedures require such reviews. We also have responsibilities under E.O. 12866 ("Regulatory Planning and Review") and section 610 of the Regulatory Flexibility Act to conduct such reviews. This will include the use of plain language techniques in new rules and to consider rewriting existing rules when we have the opportunity and resources permit. The Department is currently conducting a number of reviews of existing rules and is engaged in rulemaking actions resulting from these reviews.

Section 610 Review Plan

Section 610 requires that we conduct reviews of rules that (1) have been published within the last ten years and (2) have a "significant economic impact on a substantial number of small entities" (SEIOSNOSE). It also requires that we publish in the **Federal Register** each year a list of any such rules that we will review during the next year. To better comply with section 610, the Department has updated its regulatory review plan published on June 29, 1981, to accomplish a more systematic review of all of its regulations. The Office of the Secretary and each of the Department's Operating Administrations (except for FMCSA) have a 10-year review plan. These reviews are in accordance with section 610 of the Regulatory Flexibility Act.

Other Review Plans

All elements of the Department, except for the FMCSA and Federal Aviation Administration (FAA), have also elected to use this 10-year plan process to comply with the review requirements of the Department's Regulatory Policies and Procedures, and Executive Order 12866. FMCSA and FAA are using different approaches, which are described in Part II to this Appendix.

Changes to the Review Plan

Some reviews may be conducted earlier than scheduled. For example, to the extent resources permit, the plain language reviews will be conducted more quickly. Other events, such as accidents, may result in the need to conduct earlier reviews of some rules. Other factors may also result in the need to make changes; for example, we may make changes in response to public comment on this plan or in response to a Presidentially mandated review. If there is any change to the review plan, we will note the change in the following Unified Agenda. For any section 610 review, we will provide the required notice prior to the review.

Part II - The Review Process

The Analysis

Generally, the agencies have divided their rules into 10 different groups and plan to analyze one group each year. For purposes of these reviews, a year will coincide with the fall-to-fall schedule for publication of the Agenda. Thus, Year 1 (1998) began in the fall of 1998 and ends in the fall of 1999; Year 2 (1999) begins in the fall of 1999 and ends in the fall of 2000; and so on. We request public comment on the timing of the reviews. For example, is there a reason for scheduling an analysis and review for a particular rule earlier than we have? Any comments concerning the plan or particular analyses can be submitted to the regulatory contacts listed in Appendix B, General Rulemaking Contact Persons.

Section 610 Review

The agency will analyze each of the rules in a given year's group to determine whether any rule has a SEIOSNOSE and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. The level of analysis will, of course, depend on the nature of the rule and its applicability.

Publication of agencies' section 610 analyses list each fall in this Agenda provides the public with notice and an opportunity to comment consistent with the requirements of the Regulatory Flexibility Act. We request that public comments be submitted to us early in the analysis year concerning the small entity impact of the rules to help us in making our determinations.

In each Fall Agenda, the agency will publish the results of the analyses it has completed during the previous year. For rules that had a negative finding on SEIOSNOSE, we will give a short explanation (e.g., "these rules only establish petition processes that have no cost impact" or "these rules do not apply to any small entities"). For parts, subparts or other discrete sections of rules that do have a SEIOSNOSE, we will announce that we will be conducting a formal section 610 review during the following 12 months. At this stage, we will add an entry to the Agenda in the prerulemaking section describing the review in more detail. We also will seek public comment on how best to lessen the impact of these rules and provide a name or docket to which public comments can be submitted. In some cases, the section 610 review may be part of another unrelated review of the rule. In such a case, we plan to clearly indicate which parts of the review are being conducted under section 610.

Other Reviews

The agency will also examine the specified rules to determine whether any other reasons exist for revising or revoking the rule or for rewriting the rule in plain language. In each Fall Agenda, the agency will also publish information on the results of the examinations completed during the previous year.

FAA

The Federal Aviation Administration, in addition to reviewing its rules in accordance with the schedule below, has established a process by which the public is asked for its comments on which rules need review the most. Any information that the FAA receives in connection with its annual section 610 analyses would, of course, also be reviewed in the spirit of E.O. 12866. In addition, in response to a recommendation of the White House Commission on Aviation Safety and Security, the FAA has completed a review of all its existing regulations to identify those in need of rewriting as performance-based or plain language regulations. The agency also reviewed ongoing regulatory projects and proposals to identify additional candidates for revision. In all, the agency reviewed 68 parts of the CFR, containing 3,884 sections, appendices, and Special Federal Aviation Regulations. In addition to using plain language in its current and future regulations, the FAA intends to revise those regulations identified in its study when it has the opportunity and resources to do so.

FMCSA

Because of resources needed to conduct a zero-based review of its regulations, the FMCSA has decided to revisit its method of review. The FMCSA will identify their new regulatory review process in the Spring 2003 Semiannual Regulatory Agenda.

Part III- List of Pending Section 610 Reviews

The Agenda identifies the pending DOT Section 610 Reviews by inserting "(Section 610 Review)" after the title for the specific entry. Also, a Governmentwide list of section 610 reviews can be located in an index at the end of the Agenda. For further information on the pending reviews, see the Agenda entries.

OFFICE OF THE SECRETARY SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	14 CFR parts 200 through 212	1998	1999
2	14 CFR parts 213 through 232	1999	2000
3	14 CFR parts 234 through 254	2000	2001
4	14 CFR parts 255 through 298 and part 40	2001	2002
5	14 CFR parts 300 through 373	2002	2003
6	14 CFR parts 374 through 398	2003	2004
7	14 CFR part 399 and 49 CFR parts 1 through 11	2004	2005

DOT

OFFICE OF THE SECRETARY (Continued)
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
8	49 CFR parts 17 through 28	2005	2006
9	49 CFR parts 29 through 39 and parts 41 through 89	2006	2007
10	49 CFR parts 91 through 99, 48 CFR parts 1201 through 1253, and new parts and subparts	2007	2008

Year 4 (Fall 2001) List of rules analyzed and a summary

14 CFR part 255 — Carrier-owned computer reservation systems
- Section 610: SEIOSNOSE. The rule has a significant economic impact on a substantial number of small entities. The Department is conducting a comprehensive review to determine whether these rules should be readopted. The Department is also looking at ways to lessen impacts on small entities.
- Plain language: Where confusing or wordy language is identified, we will make revisions.
- General: Comments will be requested from the affected industry to assess the economic impact of any proposed changes.

14 CFR part 256 — Display of joint operations in carrier-owned computer reservation systems
- Section 610: SEIOSNOSE. The rule has a significant economic impact on a substantial number of small entities. The Department's review of part 255 may have a potential impact on this regulation. If so, we will solicit comments oh how to lessen the impact to small entities.
- Plain language: Where confusing or wordy language is identified, we will make revisions.

14 CFR part 257 — Disclosure of code—sharing arrangements and long-term wet leases
- Section 610: No SEIOSNOSE. The rule does not have a significant economic impact on a substantial number of small entities.
- Plain language: Where confusing or wordy language is identified, we will make revisions.
- General: This section was revised in 1999. If additional updates become desirable, changes will be proposed.

14 CFR part 258 — Disclosure of change—of-gauge services
- Section 610: No SEIOSNOSE. The rule does not have a significant economic impact on a substantial number of small entities.
- Plain language: Where confusing or wordy language is identified, we will make revisions.
- General: This section was revised in 1999. If additional updates become desirable, changes will be proposed.

14 CFR part 271 — Guidelines for subsidizing air carriers providing essential air transportation
- Section 610: SEIOSNOSE. The rule has a significant economic impact on a substantial number of small entities.
- Plain language: Where confusing or wordy language is identified, we will make revisions.
- General: This rule was revised in 1995. If additional updates become desirable, changes will be proposed.

14 CFR part 272 — Essential air service to the Freely Associated States
- Section 610: No SEIOSNOSE. The rule does not currently have a significant economic impact on a substantial number of small entities.
- Plain language: As indicated below, should the rule later become effective, where confusing or wordy language is identified, we would make revisions.
- General: This program governed by this rule was terminated on October 1, 1998. By its terms, the provisions of this rule are not currently effective. However, the rule specifically states that Congress could reestablish the program. Because of these circumstances, we recommend that the rule be deleted at this time.

49 CFR part 40 — Procedures for transportation workplace drug testing programs
- Section 610: No SEIOSNOSE. A final rule was published in 2000, as a result of a 610 Review. The rule certified that the rule did not have a significant economic impact on a substantial number of small entities.
- Plain language: The 2000 final rule was written using the plain language technique. If confusing or wordy language is further identified, we will make revisions.
- General: If additional updates become desirable, changes will be proposed.

14 CFR part 291 — Cargo operations in interstate air transportation
- Section 610: SEIOSNOSE. This rule has a significant economic impact on a substantial number of small entities.
- Plain language: Where confusing or wordy language is identified, we will make revisions.
- General: This rule was revised in 1995. If additional updates become desirable, changes will be proposed.

14 CFR part 292 — International cargo transportation
- Section 610: No SEIOSNOSE. This rule does not have a significant economic impact on a substantial number of small entities.
- Plain language: Where confusing or wordy language is identified, we will make revisions.
- General: This rule was revised in 1995. If additional updates become desirable, changes will be proposed.

14 CFR part 293 — International passenger transportation
- Section 610: No SEIOSNOSE. This rule does not have a significant economic impact on a substantial number of small entities.
- Plain language: Where confusing or wordy language is identified, we will make revisions.
- General: This rule was revised in 1999. If additional updates become desirable, changes will be proposed.

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14 CFR part 294 — Canadian charter air taxi operators
- Section 610: No SEIOSNOSE. This rule does not have a significant economic impact on a substantial number of small entities.
- Plain language: Where confusing or wordy language is identified, we will make revisions.
- General: This rule was revised in 1995. If additional updates become desirable, changes will be proposed.

14 CFR part 296 — Indirect air transportation of property
- Section 610: No SEIOSNOSE. This rule does not have a significant economic impact on a substantial number of small entities.
- Plain language: Where confusing or wordy language is identified, we will make revisions.
- General: This rule was revised in 1995. If additional updates become desirable, changes will be proposed.

14 CFR part 297 — Foreign air freight forwarders and foreign cooperative shippers associations
- Section 610: No SEIOSNOSE. This rule does not have a significant economic impact on a substantial number of small entities.
- Plain language: Where confusing or wordy language is identified, we will make revisions.
- General: This rule was revised in 1995. If additional updates become desirable, changes will be proposed.

14 CFR part 298 — Exemptions for air taxi and commuter air carrier operations
- Section 610: SEIOSNOSE. This rule has a significant economic impact on a substantial number of small entities.
- Plain language: Where confusing or wordy language is identified, we will make revisions.
- General: This rule was revised in 1995. If additional updates become desirable, changes will be proposed.

Year 3 (2000) List of rules continuing to be analyzed

14 CFR part 240 — Inspection of accounts and property

Year 5 (Fall 2002) List of Rules that will be analyzed during the next year

14 CFR part 300 — Rules of conduct in DOT proceedings under this chapter
14 CFR part 302 — Review of practice in proceedings
14 CFR part 303 — Review of air carrier agreements
14 CFR part 313 — Implementation of the Energy Policy and Conservation Act
14 CFR part 314 — Employee protection program
14 CFR part 323 — Termination, suspensions, and reductions of service
14 CFR part 325 — Essential air service procedures
14 CFR part 330 — Procedures for compensation of air carriers
14 CFR part 372 — Overseas military personnel charters

Year 3 (Fall 2000) List of Rules analyzed and a summary of the results

14 CFR part 234 — Airline service quality performance reports
- Section 610: No SEIOSNOSE. The rule does not have a significant economic impact on a substantial number of small entities.
- Plain language: Where confusing or wordy language is identified, we will make revisions.
- General: This section was revised in 2001. If additional updates become desirable, changes will be proposed.

14 CFR part 241 — Uniform system of accounts and reports for large certified air carriers
- Section 610: SEIOSNOSE. The rule may have an economic impact on a substantial number of small air carriers.
- Plain language: Where confusing or wordy language is identified, we will make revisions.
- General: This section was revised in 2002. If additional updates become desirable, changes will be proposed.

14 CFR part 243 — Passenger manifest information
- Section 610: No SEIOSNOSE. The rule applies to a substantial number of small entities but does not have an economic impact.
- Plain language: Where confusing or wordy language is identified, we will make revisions.
- General: This section was revised in 1998. If additional updates become desirable, changes will be proposed.

14 CFR part 247 — Direct airport—to-airport mileage records
- Section 610: No SEIOSNOSE. The rule does not have a significant economic impact on a substantial number of small entities.
- Plain language: Where confusing or wordy language is identified, we will make revisions.
- General: This section was revised in 1995. If additional updates become desirable, changes will be proposed.

14 CFR part 248 — Submission of audit reports
- Section 610: No SEIOSNOSE. The rule does not have a significant economic impact on a substantial number of small entities.
- Plain language: Where confusing or wordy language is identified, we will make revisions.
- General: This section was revised in 1995. If additional updates become desirable, changes will be proposed.

14 CFR part 249 — Preservation of air carrier records
- Section 610: No SEIOSNOSE. The rule does not have a significant economic impact on a substantial number of small entities.
- Plain language: Where confusing or wordy language is identified, we will make revisions.
- General: This section was revised in 1995. If additional updates become desirable, changes will be proposed.

14 CFR part 250 — Oversales
- Section 610: No SEIOSNOSE. The rule does not have a significant economic impact on a substantial number of small entities.

- Plain language: Where confusing or wordy language is identified, we will make revisions.
- General: This section was revised in 2000. If additional updates become desirable, changes will be proposed.

14 CFR part 252 — Smoking aboard aircraft
- Section 610: No SEIOSNOSE. The rule does not have a significant economic impact on a substantial number of small entities.
- Plain language: Where confusing or wordy language is identified, we will make revisions.
- General: This section was revised in 2000. If additional updates become desirable, changes will be proposed.

14 CFR part 253 — Notice of terms of contract of carriage
- Section 610: No SEIOSNOSE. The rule does not have a significant economic impact on a substantial number of small entities.
- Plain language: Where confusing or wordy language is identified, we will make revisions.
- General: This section was revised in 1998. If additional updates become desirable, changes will be proposed.

14 CFR part 254 — Domestic baggage liability
- Section 610: No SEIOSNOSE. The rule does not have a significant economic impact on a substantial number of small entities.
- Plain language: Where confusing or wordy language is identified, we will make revisions.
- General: This section was revised in 1999. If additional updates become desirable, changes will be proposed.

OST Note:

The preceding items were scheduled for review in year-3. However, because of limited resources, the agency did not complete the analysis as scheduled.

UNITED STATES COAST GUARD
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	33 CFR parts 1 through 124	1998	1999
2	33 CFR parts 125 through 199	1999	2000
3	46 CFR parts 1 through 40	2000	2001
4	46 CFR parts 41 through 69	2001	2002
5	46 CFR parts 70 through 89	2002	2003
6	46 CFR parts 90 through 139	2003	2004
7	46 CFR parts 140 through 155	2004	2005
8	46 CFR parts 156 through 165	2005	2006
9	46 CFR parts 166 through 199	2006	2007
10	New parts and subparts	2007	2008

Year 3 (Fall 2000) List of rules analyzed and a summary of the results

33 CFR part 126 — Handling of Class 1 (explosive) materials or other dangerous cargoes within or contiguous to waterfront facilities
- Section 610: No SEIOSNOSE. These rules are administrative in nature and have no economic impact on any entities.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 127 — Waterfront facilities handling liquefied natural gas and liquefied hazardous gas
- Section 610: No SEIOSNOSE. These rules do not affect a substantial number of small entities. Any economic impact is avoidable.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 128 — Security of passenger terminals
- Section 610: No SEIOSNOSE. These rules impose a low cost on a small number of entities.
- Plain language: These rules were drafted using plain language..
- General: No revision needed.

33 CFR part 135 — Offshore oil pollution compensation fund
- Section 610: No SEIOSNOSE. These rules impose no new substantive requirements and involve only minimal costs.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 138 — Financial responsibility for water pollution (vessels)
- Section 610: No SEIOSNOSE. These rules retain existing procedures and have minimal impact on small entities.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 140 — General
- Section 610: No SEIOSNOSE. These rules regulating facilities and vessels engaged in activities on the Outer Continental Shelf tend to affect major corporations rather than small entities. Of the few small entities affected, the cost of this rule over the next 10 years for units not already in compliance is typically the cost of one day of operation. The cost is offset by several measures to accommodate the needs of small entities and provide flexibility.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 141 — Personnel
- Section 610: No SEIOSNOSE. These rules regulating facilities and vessels engaged in activities on the Outer Continental Shelf tend to affect major corporations rather than small entities. Of the few small entities affected, the cost of this rule over the next 10 years for units not already in compliance is typically the cost of one day of operation. The cost is offset by several measures to accommodate the needs of small entities and provide flexibility.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 142 — Workplace safety and health
- Section 610: No SEIOSNOSE. These rules regulating facilities and vessels engaged in activities on the Outer Continental Shelf tend to affect major corporations rather than small entities. Of the few small entities affected, the cost of this rule over the next 10 years for units not already in compliance is typically the cost of one day of operation. The cost is offset by several measures to accommodate the needs of small entities and provide flexibility.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 143 — Design and equipment
- Section 610: No SEIOSNOSE. These rules regulating facilities and vessels engaged in activities on the Outer Continental Shelf tend to affect major corporations rather than small entities. Of the few small entities affected, the cost of this rule over the next 10 years for units not already in compliance is typically the cost of one day of operation. The cost is offset by several measures to accommodate the needs of small entities and provide flexibility.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 144 — Lifesaving appliances
- Section 610: No SEIOSNOSE. These rules regulating facilities and vessels engaged in activities on the Outer Continental Shelf tend to affect major corporations rather than small entities. Of the few small entities affected, the cost of this rule over the next 10 years for units not already in compliance is typically the cost of one day of operation. The cost is offset by several measures to accommodate the needs of small entities and provide flexibility.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 145 — Firefighting equipment
- Section 610: No SEIOSNOSE. These rules regulating facilities and vessels engaged in activities on the Outer Continental Shelf tend to affect major corporations rather than small entities. Of the few small entities affected, the cost of this rule over the next 10 years for units not already in compliance is typically the cost of one day of operation. The cost is offset by several measures to accommodate the needs of small entities and provide flexibility.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 146 — Operations
- Section 610: No SEIOSNOSE. These rules regulating facilities and vessels engaged in activities on the Outer Continental Shelf tend to affect major corporations rather than small entities. Of the few small entities affected, the cost of this rule over the next 10 years for units not already in compliance is typically the cost of one day of operation. The cost is offset by several measures to accommodate the needs of small entities and provide flexibility.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 151 — Vessels carrying oil, noxious liquid substances, garbage, municipal or commercial waste, and ballast water
- Section 610: No SEIOSNOSE. These rules primarily affect large entities and few small entities are affected.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 153 — Control of pollution by oil or hazardous substances, discharge removal
- Section 610: No SEIOSNOSE. These rules do not impose significant costs and come into play only when unlawful discharges occur.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 154 — Facilities transferring oil or hazardous materials in bulk
- Section 610: No SEIOSNOSE. These rules primarily affect large entities and few small entities are affected.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 155 — Oil or hazardous material pollution prevention regulations for vessels
- Section 610: No SEIOSNOSE. These rules primarily affect large entities. The costs to the small entities are minimal.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 156 — Oil or hazardous material transfer operations

- Section 610: No SEIOSNOSE. These rules primarily affect large entities. The costs to the small entities are minimal.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 157 — Rules for the protection of the marine environment relating to tank vessels carrying oil in bulk
- Section 610: No SEIOSNOSE. These rules primarily affect large entities. Some may affect several small entities, but where this is so (e.g., double hull requirements) it is unlikely that the impact directly attributable to the rule is significant.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 158 — Reception facilities for oil, noxious liquid substances, and garbage
- Section 610: No SEIOSNOSE. Few small entities are affected and the cost is low.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 161 — Vessel traffic management
- Section 610: No SEIOSNOSE. This part prescribes standards for marine sanitation devices and provides a certification procedure. It does not impose significant costs on a substantial number of small entities.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 162 — Inland waterways navigation regulations
- Section 610: No SEIOSNOSE. These rules enhance navigational safety and impose minimal costs on regulated entities.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 163 — Towing of barges
- Section 610: No SEIOSNOSE. These rules enhance navigational safety and impose minimal costs on regulated entities.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 164 — Navigation safety regulations
- Section 610: No SEIOSNOSE. These rules enhance navigational safety and impose minimal costs on regulated entities.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 165 — Regulated navigation areas and limited access areas
- Section 610: No SEIOSNOSE. These rules enhance navigational safety and impose minimal costs on regulated entities.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 168 — Escort requirements for certain tankers
- Section 610: No SEIOSNOSE. These rules affect few if any small entities.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 173 — Vessel numbering and casualty and accident reporting
- Section 610: No SEIOSNOSE. The vessel numbering and accident reports required do not have a significant economic impact on small entities.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 179 — Defect notification
- Section 610: Probable SEIOSNOSE. This part will be scheduled for full 610 Review.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 181 — Manufacturer requirements
- Section 610: Probable SEIOSNOSE. This part will be scheduled for full 610 Review.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 183 — Boats and associated equipment
- Section 610: Probable SEIOSNOSE. This part will be scheduled for full 610 Review.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR part 184 — 186 Reserved

33 CFR part 187 — Vessel identification system
- Section 610: No SEIOSNOSE. Affects only states and imposes no mandatory cost.
- Plain language: plain language revision is not needed.
- General: No revision needed.

33 CFR parts 188 through 199 — Reserved

46 CFR part 1 — Organization, general course and methods governing marine safety functions
- Section 610: No SEIOSNOSE. Procedural in nature; imposes no cost.
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 2 — Vessel inspections
- Section 610: No SEIOSNOSE. These rules provide for vessel inspections and certification and impose minimal costs on small entities.
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 3 — Designation of oceanographic research vessels
- Section 610: No SEIOSNOSE. These rules apply only to owners and operators who desire designation and do not impose a significant cost.
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 4 — Marine casualties and investigations
- Section 610: No SEIOSNOSE. These rules apply only in the event of a marine casualty and impose no cost on small entities.
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 5 — Marine investigation regulations — personnel action
- Section 610: No SEIOSNOSE. These rules apply only to an insignificant number of mariners.
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 6 — Waivers of navigation and vessel inspection laws and regulations
- Section 610: No SEIOSNOSE. These rules provide for waivers in the interest of national defense and do not impose significant costs.
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 7 — Boundary lines
- Section 610: No SEIOSNOSE. These rules demarcate boundaries and impose no cost.
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 8 — Vessel inspection alternatives
- Section 610: No SEIOSNOSE. These rules establish an alternative program and impose no cost.
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 9 — Extra compensation for overtime services
- Section 610: No SEIOSNOSE. These rules involve services by a small class of employees and do not impose significant costs.
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 10 — Licensing of maritime personnel
- Section 610: No SEIOSNOSE. These rules primarily affect individuals and do not impose significant costs on small entities..
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 12 — Certification of seamen
- Section 610: No SEIOSNOSE. These rules primarily affect individuals and do not impose significant costs on small entities.
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 13 — Certification of tankermen
- Section 610: No SEIOSNOSE. These rules primarily affect individuals and do not impose significant costs on small entities.
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 14 — Shipment and discharge of merchant mariners
- Section 610: No SEIOSNOSE. These rules continue practices in effect at least since 1937, relate primarily to individuals rather than small entities, and were revised in 1996 to reduce any burdens on small entities.
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 15 — Manning requirements
- Section 610: No SEIOSNOSE. These rules primarily affect individuals and have been revised several times in the past 10 years in ways that minimize any impact on small entities.
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 16 — Chemical testing
- Section 610: Probable SEIOSNOSE. These rules require small entities to conduct chemical testing for dangerous drugs in certain circumstances. In adopting these rules in 1988, the Coast Guard concluded that they could have a significant

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economic impact on substantial number of small entities. We took steps then to ameliorate that impact. A formal Section 610 Review will be planned for these parts.
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 24 — General provisions
- Section 610: No SEIOSNOSE. These uninspected vessel rules largely affect small entities, but their impact is either nonsignificant or voluntary.
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 25 — Requirements
- Section 610: No SEIOSNOSE. These uninspected vessel rules largely affect small entities, but their impact is either nonsignificant or voluntary.
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 26 — Operations
- Section 610: No SEIOSNOSE. These uninspected vessel rules largely affect small entities, but their impact is either nonsignificant or voluntary.
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 28 — Requirements for commercial fishing industry vessels
- Section 610: No SEIOSNOSE. These rules, when adopted in 1991, were deemed to have an insignificant economic impact on most small entities. Any significant impact is likely to have been absorbed at the time of adoption and would not be continuing..
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 30 — General provisions
- Section 610: Possible SEIOSNOSE. A small entities evaluation for the Subchapter D tank vessel regulations as a whole has not been published. Therefore, to comply with the spirit of the Regulatory Flexibility Act, we will schedule a full Section 610 Review for these parts.
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 31 — Inspection and certification
- Section 610: Possible SEIOSNOSE. A small entities evaluation for the Subchapter D tank vessel regulations as a whole has not been published. Therefore, to comply with the spirit of the Regulatory Flexibility Act, we will schedule a full Section 610 Review for these parts.
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 32 — Special equipment, machinery, and hull requirements
- Section 610: Possible SEIOSNOSE. A small entities evaluation for the Subchapter D tank vessel regulations as a whole has not been published. Therefore, to comply with the spirit of the Regulatory Flexibility Act, we will schedule a full Section 610 Review for these parts.
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 34 — Firefighting equipment
- Section 610: Possible SEIOSNOSE. A small entities evaluation for the Subchapter D tank vessel regulations as a whole has not been published. Therefore, to comply with the spirit of the Regulatory Flexibility Act, we will schedule a full Section 610 Review for these parts.
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 35 — Operations
- Section 610: Possible SEIOSNOSE. A small entities evaluation for the Subchapter D tank vessel regulations as a whole has not been published. Therefore, to comply with the spirit of the Regulatory Flexibility Act, we will schedule a full Section 610 Review for these parts.
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 36 — Elevated temperature cargoes
- Section 610: Possible SEIOSNOSE. A small entities evaluation for the Subchapter D tank vessel regulations as a whole has not been published. Therefore, to comply with the spirit of the Regulatory Flexibility Act, we will schedule a full Section 610 Review for these parts.
- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 38 — Liquefied flammable gases
- Section 610: Possible SEIOSNOSE. A small entities evaluation for the Subchapter D tank vessel regulations as a whole has not been published. Therefore, to comply with the spirit of the Regulatory Flexibility Act, we will schedule a full Section 610 Review for these parts.

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- Plain language: plain language revision is not needed.
- General: No revision needed.

46 CFR part 39 — Vapor control systems
- Section 610: Possible SEIOSNOSE. A small entities evaluation for the Subchapter D tank vessel regulations as a whole has not been published. Therefore, to comply with the spirit of the Regulatory Flexibility Act, we will schedule a full Section 610 Review for these parts.
- Plain language: plain language revision is not needed.
- General: No revision needed.

Year 4 (Fall 2001) List of rules analyzed and summary of the results

46 CFR part 42 — Domestic and foreign voyages by sea
- Section 610: Possible SEIOSNOSE. A small entities evaluation for the Subchapter E load lines regulations as a whole has been published. Therefore, to comply with the spirit of the Regulatory Flexibility Act, we will schedule a full Section 610 Review for these parts.
- Plain language: Plain language revision is not needed.
- General: No revision needed.

46 CFR part 44 — Special service limited domestic voyage
- Section 610: Possible SEIOSNOSE. A small entities evaluation for the Subchapter E load lines regulations as a whole has been published. Therefore, to comply with the spirit of the Regulatory Flexibility Act, we will schedule a full Section 610 Review for these parts.
- Plain language: Plain language revision is not needed.
- General: No revision needed.

46 CFR part 45 — Great lakes load lines
- Section 610: Possible SEIOSNOSE. A small entities evaluation for the Subchapter E load lines regulations as a whole has been published. Therefore, to comply with the spirit of the Regulatory Flexibility Act, we will schedule a full Section 610 Review for these parts.
- Plain language: Plain language revision is not needed.
- General: No revision needed.

46 CFR part 46 — Subdivision load lines for passenger vessels
- Section 610: Possible SEIOSNOSE. A small entities evaluation for the Subchapter E load lines regulations as a whole has been published. Therefore, to comply with the spirit of the Regulatory Flexibility Act, we will schedule a full Section 610 Review for these parts.
- Plain language: Plain language revision is not needed.
- General: No revision needed.

46 CFR part 47 — Combination load lines
- Section 610: Possible SEIOSNOSE. A small entities evaluation for the Subchapter E load lines regulations as a whole has been published. Therefore, to comply with the spirit of the Regulatory Flexibility Act, we will schedule a full Section 610 Review for these parts.
- Plain language: Plain language revision is not needed.
- General: No revision needed.

46 CFR part 50 — General provisions
- Section 610: Possible SEIOSNOSE. A small entities evaluation for the Subchapter F marine engineering regulations as a whole has been published. Therefore, to comply with the spirit of the Regulatory Flexibility Act, we will schedule a full Section 610 Review for these parts (with the exception of part 62, which we conclude has no SEIOSNOSE).
- Plain language: Plain language revision is not needed.
- General: No revision needed.

46 CFR part 52 — Power boilers
- Section 610: Possible SEIOSNOSE. A small entities evaluation for the Subchapter F marine engineering regulations as a whole has been published. Therefore, to comply with the spirit of the Regulatory Flexibility Act, we will schedule a full Section 610 Review for these parts (with the exception of part 62, which we conclude has no SEIOSNOSE).
- Plain language: Plain language revision is not needed.
- General: No revision needed.

46 CFR part 53 — Heating boilers
- Section 610: Possible SEIOSNOSE. A small entities evaluation for the Subchapter F marine engineering regulations as a whole has been published. Therefore, to comply with the spirit of the Regulatory Flexibility Act, we will schedule a full Section 610 Review for these parts (with the exception of part 62, which we conclude has no SEIOSNOSE).
- Plain language: Plain language revision is not needed.
- General: No revision needed.

46 CFR part 54 — Pressure vessels
- Section 610: Possible SEIOSNOSE. A small entities evaluation for the Subchapter F marine engineering regulations as a whole has been published. Therefore, to comply with the spirit of the Regulatory Flexibility Act, we will schedule a full Section 610 Review for these parts (with the exception of part 62, which we conclude has no SEIOSNOSE).
- Plain language: Plain language revision is not needed.
- General: No revision needed.

46 CFR part 56 — Piping systems and appurtenances

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- Section 610: Possible SEIOSNOSE. A small entities evaluation for the Subchapter F marine engineering regulations as a whole has been published. Therefore, to comply with the spirit of the Regulatory Flexibility Act, we will schedule a full Section 610 Review for these parts (with the exception of part 62, which we conclude has no SEIOSNOSE).
- Plain language: Plain language revision is not needed.
- General: No revision needed.

46 CFR part 57 — Welding and brazing
- Section 610: Possible SEIOSNOSE. A small entities evaluation for the Subchapter F marine engineering regulations as a whole has been published. Therefore, to comply with the spirit of the Regulatory Flexibility Act, we will schedule a full Section 610 Review for these parts (with the exception of part 62, which we conclude has no SEIOSNOSE).
- Plain language: Plain language revision is not needed.
- General: No revision needed.

46 CFR part 58 — Main auxiliary machinery and related systems
- Section 610: Possible SEIOSNOSE. A small entities evaluation for the Subchapter F marine engineering regulations as a whole has been published. Therefore, to comply with the spirit of the Regulatory Flexibility Act, we will schedule a full Section 610 Review for these parts (with the exception of part 62, which we conclude has no SEIOSNOSE).
- Plain language: Plain language revision is not needed.
- General: No revision needed.

46 CFR part 59 — Repairs to boilers, pressure vessels and appurtenances
- Section 610: Possible SEIOSNOSE. A small entities evaluation for the Subchapter F marine engineering regulations as a whole has been published. Therefore, to comply with the spirit of the Regulatory Flexibility Act, we will schedule a full Section 610 Review for these parts (with the exception of part 62, which we conclude has no SEIOSNOSE).
- Plain language: Plain language revision is not needed.
- General: No revision needed.

46 CFR part 61 — Periodic tests and inspections
- Section 610: Possible SEIOSNOSE. A small entities evaluation for the Subchapter F marine engineering regulations as a whole has been published. Therefore, to comply with the spirit of the Regulatory Flexibility Act, we will schedule a full Section 610 Review for these parts (with the exception of part 62, which we conclude has no SEIOSNOSE).
- Plain language: Plain language revision is not needed.
- General: No revision needed.

46 CFR part 62 — Vital systems automation
- Section 610: No SEIOSNOSE. The primary impact of these rules is on large entities; they do not affect a substantial number of small entities
- Plain language: Plain language revision is not needed.
- General: No revision needed.

46 CFR part 63 — Automatic auxiliary boilers
- Section 610: Possible SEIOSNOSE. A small entities evaluation for the Subchapter F marine engineering regulations as a whole has been published. Therefore, to comply with the spirit of the Regulatory Flexibility Act, we will schedule a full Section 610 Review for these parts (with the exception of part 62, which we conclude has no SEIOSNOSE).
- Plain language: Plain language revision is not needed.
- General: No revision needed.

46 CFR part 64 — Marine portable tanks and cargo handling systems
- Section 610: Possible SEIOSNOSE. A small entities evaluation for the Subchapter F marine engineering regulations as a whole has been published. Therefore, to comply with the spirit of the Regulatory Flexibility Act, we will schedule a full Section 610 Review for these parts (with the exception of part 62, which we conclude has no SEIOSNOSE).
- Plain language: Plain language revision is not needed.
- General: No revision needed.

46 CFR part 67 — Documentation of vessels
- Section 610: No SEIOSNOSE. The cost of documentation is not significant.
- Plain language: Plain language revision is not needed.
- General: No revision needed.

46 CFR part 68 — Documentation of vessels pursuant to extraordinary legislative grants
- Section 610: No SEIOSNOSE. The cost of documentation is not significant.
- Plain language: Plain language revision is not needed.
- General: No revision needed.

46 CFR part 69 — Measurement of vessels
- Section 610: No SEIOSNOSE. These regulations are primarily administrative and do not impose a significant cost.
- Plain language: Plain language revision is not needed.
- General: No revision needed.

Year 5 (Fall 2002) List of rules that will be analyzed during the next year

46 CFR part 70 — General provisions
46 CFR part 71 — Inspection and certification
46 CFR part 72 — Construction and arrangement
46 CFR part 76 — Fire protection equipment
46 CFR part 77 — Vessel control and miscellaneous systems and equipment

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46 CFR part 78 — Operations
46 CFR part 80 — Disclosure of safety standards and country of registry

FEDERAL AVIATION ADMINISTRATION
SECTION 610 REVIEW PLAN

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	14 CFR parts 1 through 21	1998	1999
2	14 CFR parts 23 through 34	1999	2000
3	14 CFR parts 35 through 49	2000	2001
4 *	14 CFR parts 61 through 77	2001	2002
5	14 CFR parts 91 through 105	2002	2003
6	14 CFR parts 107 through 133	2003	2004
7	14 CFR parts 135 through 147	2004	2005
8	14 CFR parts 150 through 169	2005	2006
9	14 CFR parts 170 through 198	2006	2007
10	14 CFR parts 400 through 415	2007	2008

* FAA will also review all other rules dealing with alcohol and drugs

Year 4 (Fall 2001) List of Rules analyzed and a summary of the results

14 CFR 61 — Certification: pilots, flight instructors and ground instructions
- Section 610; No SEIOSNOSE. This rule applies to a significant number of small entities, but amendments over the past decade do not have a substantial economic impact. Accordingly, a periodic review was not required.
- Plain Language: To the extent that the FAA's plain language study identified a need for revisions in this part, revisions will be made when the FAA has the opportunity and resources to do so.

14 CFR 63 — Certification: flight crewmembers other than pilots
- Section 610; No SEIOSNOSE. This rule applies to a significant number of small entities, but amendments over the past decade do not have a substantial economic impact. Accordingly, a periodic review was not required.
- Plain Language: To the extent that the FAA's plain language study identified a need for revisions in this part, revisions will be made when the FAA has the opportunity and resources to do so.

14 CFR 65 — Certification: airmen other than flight crewmembers
- Section 610; No SEIOSNOSE. This rule applies to a significant number of small entities, but amendments over the past decade do not have a substantial economic impact. Accordingly, a periodic review was not required.
- Plain Language: To the extent that the FAA's plain language study identified a need for revisions in this part, revisions will be made when the FAA has the opportunity and resources to do so.

14 CFR 67 — Medical standards and certification
- Section 610; No SEIOSNOSE. This rule applies to a significant number of small entities, but amendments over the past decade do not have a substantial economic impact. Accordingly, a periodic review was not required.
- Plain Language: To the extent that the FAA's plain language study identified a need for revisions in this part, revisions will be made when the FAA has the opportunity and resources to do so.

14 CFR 70 — Designation of class A, class B, class C, class D and class E airspace areas; airway routes and reporting points
- Section 610; No SEIOSNOSE. This rule applies to a significant number of small entities, but amendments over the past decade do not have a substantial economic impact. Accordingly, a periodic review was not required.
- Plain Language: To the extent that the FAA's plain language study identified a need for revisions in this part, revisions will be made when the FAA has the opportunity and resources to do so.

14 CFR 73 — Special use airspace
- Section 610; No SEIOSNOSE. This rule applies to a significant number of small entities, but amendments over the past decade do not have a substantial economic impact. Accordingly, a periodic review was not required.
- Plain Language: To the extent that the FAA's plain language study identified a need for revisions in this part, revisions will be made when the FAA has the opportunity and resources to do so.

14 CFR part 77 —Objects affecting navigable airspace
- Section 610; FAA will conduct a formal 610 review during the following 12 months.
- Plain Language: To the extent that the FAA's plain language study identified a need for revisions in this part, revisions will be made when the FAA has the opportunity and resources to do so.

Year 5 (Fall 2002) List of rules that will be analyzed during the next year

14 CFR part 35 — Airworthiness standards: propellers
14 CFR part 36 — Noise standards: aircraft type and airworthiness
14 CFR part 39 — Airworthiness directives
14 CFR part 43 — Maintenance, preventive maintenance; rebuilding and alteration
14 CFR part 45 — Identification and registration marking
14 CFR part 47 — Aircraft registration
14 CFR part 49 — Recording of aircraft titles and security

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FAA Note:

The preceding parts for analysis were erroneously listed in the Fall 2001 Regulatory Agenda in the list of completed analyses and identified for review in the following year. While the FAA's 10-year plan called for completion of these analyses before the Fall 2002, lack of available resources prevented this. In addition, the 10-year plan calls for analysis of 14 CFR parts 91-105 in this coming year; resources are not available, however, to analyze these parts. Should resources become available during the year, the FAA will announce its intention to analyze some or all of these parts in the Federal Register.

FEDERAL HIGHWAY ADMINISTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	None	1998	1999
2	None	1999	2000
3	23 CFR parts 450, 657 and 771	2000	2001
4	23 CFR parts 1-260	2001	2002
5	23 CFR parts 420, 460-480	2002	2003
6	23 CFR part 500	2003	2004
7	23 CFR parts 600-656, 658-669	2004	2005
8	23 CFR parts 710-924	2005	2006
9	23 CFR parts 1200-1252	2006	2007
10	New parts and subparts	2007	2008

Year 4 (Fall 2001) List of rules analyzed and a summary of the results

23 CFR part 1 — General management and administration
- Section 610: No SEIOSNOSE. This section applies primarily to State transportation agencies that are not small entities.
- Plain language: FHWA's plain language review of these rules indicates no need for substantial revision.

23 CFR part 140 — Payment procedures
- Section 610: No SEIOSNOSE. These rules apply primarily to State transportation agencies that are not small entities.
- Plain language: FHWA's plain language review of these rules indicates no need for substantial revision.

23 CFR part 172 — Administration of engineering and design related service contracts
- Section 610: No SEIOSNOSE. These rules apply primarily to State transportation agencies that are not small entities.
- Plain language: The FHWA recently issued a final rule updating the regulation to comply with new law and used plain language techniques to update the rule.

23 CFR part 180 — Credit assistance for surface transportation projects
- Section 610: No SEIOSNOSE. This rule implements a Federal credit assistance program for surface transportation projects. There will be a substantial economic impact on the projects funded. Applicants are usually States and large public, or quasi-public entities.
- Plain language: FHWA's plain language review of these rules indicates no need for substantial revision. The regulation is written clearly.

23 CFR part 190 — Incentive procedures for controlling outdoor advertising on the interstate system
- Section 610: No SEIOSNOSE. These rules apply primarily to State transportation agencies that are not small entities.
- Plain language: FHWA's plain language review of these rules indicates no need for substantial revision.

23 CFR part 192 — Drug offenders driver's license suspension
- Section 610: No SEIOSNOSE. This regulation applies primarily to State transportation agencies not to small entities.
- Plain language: FHWA's plain language review of these rules indicates no need for substantial revision as the rule is clearly written.

23 CFR part 200 — Title VI program and related statutes-implementation and review procedures
- Section 610: No SEIOSNOSE. These rules provide requirements and guidelines to State highway agencies to implement the Title VI Program requirement and do not impact small entities.
- Plain language: FHWA's plain language review of these rules indicates no need for substantial revision; however, if it is necessary for the FHWA to update these rules, plain language techniques will be used.

23 CFR part 230 — External equal employment opportunity programs
- Section 610: No SEIOSNOSE. This regulation applies to the State transportation agencies not to small entities.
- Plain language: FHWA's plain language review of these rules indicates no need for substantial revision.

23 CFR part 260 — Education and training programs
- Section 610: No SEIOSNOSE. This regulation establishes authority for Fellowship and Scholarship programs and the funding to conduct the program. It does not impact on small entities.
- Plain language: FHWA's plain language review of these rules indicates no need for substantial revision.

Year 5 (Fall 2002) List of rules to be analyzed during the next year

23 CFR part 420 — Planning and research program administration
23 CFR part 460 — Public road mileage for apportionment of highway safety funds
23 CFR part 470 — Highway systems
23 CFR part 476 — Interstate highway system

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Federal-Aid Highway Program

The FHWA has adopted regulations in title 23 of the CFR, chapter I, related to the Federal-aid highway program. These regulations implement and carry out the provisions of Federal law relating to the administration of Federal aid for highways. The primary law authorizing Federal aid for highways is chapter 1 of title 23 of the USC. Section 145 of title 23 expressly provides that chapter 1 provides for a federally assisted State program. For this reason, the regulations adopted by the FHWA in title 23 of the CFR primarily relate to requirements that States must meet to receive Federal funds for the construction and other work related to highways.

Because the regulations in title 23 primarily relate to States, which are not defined as small entities under the Regulatory Flexibility Act, the FHWA believes that its regulations in title 23 do not have a significant economic impact on a substantial number of small entities. The FHWA solicits public comment on this preliminary conclusion.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	49 CFR parts 501 through 526 and 571.213	1998	1999
2	49 CFR parts 571.131 and 571.220 through 571.222	1999	2000
3	49 CFR parts 591 through 594	2000	2001
4	49 CFR parts 571.101 through 571.110 and 571.135	2001	2002
5	49 CFR parts 529 through 579, except part 571	2002	2003
6	49 CFR parts 571.111 through 571.129 and parts 580 through 590	2003	2004
7	49 CFR part 571.201 through 571.212	2004	2005
8	49 CFR parts 571.214 through 571.219	2005	2006
9	49 CFR parts 571.223 through 571.304, part 500 and new parts and subparts under 49 CFR	2006	2007
10	23 CFR parts 1200s and 1300s and new parts and subparts under 23 CFR	2007	2008

Year 4 (Fall 2001) List of rules analyzed and a summary of the results

49 CFR parts 571.101 — Standard No. 101; Controls and displays
- Section 610: No SEIOSNOSE. The economic impact on small entities of these rules will not be significant. Accordingly, a periodic review was not required.
- Plain Language: NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR parts 571.102 — Standard No. 102; Transmission shift lever sequence starter interlock, and transmission braking effect
- Section 610: No SEIOSNOSE. The economic impact on small entities of these rules will not be significant. Accordingly, a periodic review was not required.
- Plain Language: NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR parts 571.103 — Standard No. 103; Windshield defrosting and defogging systems
- Section 610: No SEIOSNOSE. The economic impact on small entities of these rules will not be significant. Accordingly, a periodic review was not required.
- Plain Language: NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR parts 571.104 — Standard No. 104; Windshield wiping and washing systems
- Section 610: No SEIOSNOSE. The economic impact on small entities of these rules will not be significant. Accordingly, a periodic review was not required.
- Plain Language: NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR parts 571.105 — Standard No. 105; Hydraulic and electric brake systems
- Section 610: No SEIOSNOSE. The economic impact on small entities of these rules will not be significant. Accordingly, a periodic review was not required.
- Plain Language: NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR parts 571.106 — Standard No. 106; Brake hoses
- Section 610: No SEIOSNOSE. The economic impact on small entities of these rules will not be significant. Accordingly, a periodic review was not required.
- Plain Language: NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR parts 571.107 — Standard No. 107; [Reserved]

49 CFR parts 571.108 — Standard No. 108; lamps, reflective devices, and associated equipment
- Section 610: No SEIOSNOSE. The economic impact on small entities of these rules will not be significant. Accordingly, a periodic review was not required.
- Plain Language: NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR parts 571.109 — Standard No. 109; New pneumatic tires
- Section 610: No SEIOSNOSE. The economic impact on small entities of these rules will not be significant. Accordingly, a periodic review was not required.
- Plain Language: NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR parts 571.110 — Standard No. 110; Tire selection and rims
- Section 610: No SEIOSNOSE. The economic impact on small entities of these rules will not be significant. Accordingly, a periodic review was not required.

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• Plain Language: NHTSA's plain language review of these rules indicates no need for substantial revision.
49 CFR parts 571.135 — Standard No. 135; Passenger car brake systems
• Section 610: No SEIOSNOSE. The economic impact on small entities of these rules will not be significant. Accordingly, a periodic review was not required.
• Plain Language: NHTSA's plain language review of these rules indicates no need for substantial revision.

Year 5 (Fall 2002) list of rules that will be analyzed during the next year
49 CFR part 529 — Manufacturers of multistage automobiles
49 CFR part 531 — Passenger automobile average fuel economy standards
49 CFR part 533 — Light truck fuel economy standards
49 CFR part 535 — 3-year carryforward and carryback of credits for light trucks
49 CFR part 537 — Automotive fuel economy reports
49 CFR part 538 — Manufacturing incentives for alternative fuel vehicles
49 CFR part 541 — Federal motor vehicle theft prevention standard
49 CFR part 542 — Procedures for selecting lines to be covered by the theft prevention standard
49 CFR part 543 — Exemption from vehicle theft prevention standard
49 CFR part 544 — Insurer reporting requirements
49 CFR part 551 — Procedural rules
49 CFR part 552 — Petitions for rulemaking, defect, and noncompliance orders
49 CFR part 553 — Rulemaking procedures
49 CFR part 554 — Standards enforcement and defect investigation
49 CFR part 555 — Temporary exemption from motor vehicle safety and bumper standards
49 CFR part 556 — Exemption for inconsequential defect or non-compliance
49 CFR part 557 — Petitions for hearing on notification and remedy of defects
49 CFR part 564 — Replacement light source information
49 CFR part 565 — Vehicle identification number requirements
49 CFR part 566 — Manufacturer identification
49 CFR part 567 — Certification
49 CFR part 568 — Vehicles manufactured in two or more stages
49 CFR part 569 — Regrooved tires
49 CFR part 570 — Vehicle in use inspection standards
49 CFR part 572 — Anthropomorphic test devices
49 CFR part 573 — Defect and noncompliance reports
49 CFR part 574 — Tire identification and recordkeeping
49 CFR part 575 — Consumer information regulations
49 CFR part 576 — Record retention
49 CFR part 577 — Defect and noncompliance notification
49 CFR part 578 — Civil penalties
49 CFR part 579 — Defect and noncompliance responsibility

FEDERAL RAILROAD ADMINISTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	49 CFR parts 200 through 201	1998	1999
2	49 CFR parts 207, 209, 211, 215, and 256	1999	2000
3	49 CFR parts 210, 212, 214, and 217	2000	2001
4	49 CFR part 219	2001	2002
5	49 CFR parts 218 and 221	2002	2003
6	49 CFR parts 216 and 228 through 229	2003	2004
7	49 CFR parts 223 and 233	2004	2005
8	49 CFR parts 225, 231, and 234	2005	2006
9	49 CFR parts 235 through 236, 250, 260, and 266	2006	2007
10	49 CFR parts 213, 220, 230, 232, 239, 240, and 265	2007	2008

Year 4 (Fall 2001) List of rules analyzed and a summary of the results
49 CFR part 219 — Control of alcohol and drug regulations
• Section 610: No SEIOSNOSE. These are minimum Federal standards for control of alcohol and drug use. To FRA's knowledge, the control of alcohol and drug use regulation has not imposed any significant burden on any small railroad. The smallest railroads are exempt from many of the rule's provisions.
• Plain Language: FRA's plain language review of this rule indicates no need for substantial revision.
• General: Having minimum Federal standards for control of alcohol and drug use will provide safety and security not only for railroad employees but also for the general public.
49 CFR part 214 — Railroad workplace safety regulations

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• Section 610: In the Fall 2001 Regulatory Agenda, FRA determined that subpart B of 49 CFR part 214 has a SEIOSNOSE. Therefore, FRA solicits comments regarding how this regulation can be amended to reduce its impact on small entities.
49 CFR part 215 — Railroad freight car safety standards
• Section 610: In the Fall 2000 Regulatory Agenda, FRA determined that 49 CFR part 215 has a SEIOSNOSE. Therefore, FRA solicits comments regarding how this regulation can be amended to reduce its impact on small entities.

Year 5 (Fall 2002) List of rules that will be analyzed during the next year
49 CFR part 218 — Railroad operating practice regulations
49 CFR part 221 — Rear end marking device regulations

FEDERAL TRANSIT ADMINISTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	None	1998	1999
2	None	1999	2000
3	None	2000	2001
4	49 CFR part 661	2001	2002
5	49 CFR part 665	2002	2003

Year 4 (Fall 2001) List of rules analyzed and a summary of the results
49 CFR part 661 —Buy America requirements-Surface Transportation Assistance Act of 1982, as amended
• Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant. Further rulemaking will not be undertaken until the TEA-21 reauthorization process is completed.
• Plain language: FTA's plain language review indicates no need for substantial revision. As resources permit, FTA will make such changes as may be necessary.
• General: Part 661 contains provisions to mitigate the burden on small entities by providing a process for affected small entities to request waivers from some provisions.
49 CFR part 66 — Bus testing
• Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant. FTA plans to issue a final rule.
• Plain language: New rulemaking will be drafted in plain language.
• General: Part 665 is an interim rule that provides for bus testing procedures and will be finalized.

MARITIME ADMINISTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	46 CFR parts 201 through 207	1998	1999
2	46 CFR parts 221 through 232	1999	2000
3	46 CFR parts 249 through 295	2000	2001
4	46 CFR part 298	2001	2002
5	46 CFR parts 307 through 310	2002	2003
6	46 CFR parts 315 through 399	2003	2004
7	46 CFR parts 340 and 347	2004	2005
8	46 CFR parts 349 through 380	2005	2006
9	46 CFR parts 381 through 387	2006	2007
10	46 CFR parts 390 through 391	2007	2008

Year 4 (Fall 2001) List of Rules analyzed and a summary of the results
46 CFR part 298 — Obligation Guarantees
• Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
• Plain Language: These regulations were rewritten in plain language in 2000.
• General: In 2000, MARAD amended part 298 by simplifying existing administrative practices governing ship financing guarantees. The revisions simplify the process for applicants. MARAD will continue to review these regulations and make additional changes when appropriate.

Year 5 (Fall 2002) List of Rules that will be analyzed during the next year
46 CFR part 307 — Establishment of mandatory position reporting system for vessels
46 CFR part 308 — War risk insurance
46 CFR part 309 — Values for war risk insurance
46 CFR part 310 — Merchant marine training

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RESEARCH AND SPECIAL PROGRAMS ADMINSTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	49 CFR sections 171.15, 171.16 (incident reports)	1998	1999
2	49 CFR parts 106 and 107 (hazardous materials safety procedures), 171 (general hazmat requirements), 190 (pipeline safety procedures), and 195 (hazardous liquid pipeline corrosion control)	1999	2000
3	49 CFR parts 174, 177 (rail and highway carriage), 191 (gas pipeline transportation reports), and 192 (gas pipeline corrosion control)	2000	2001
4	49 CFR parts 176 (vessel carriage) and 199 (pipeline employee drug and alcohol testing)	2001	2002
5	49 CFR parts 172, 173, 174, 175, 176, 177, and 178 (radioactive material)	2002	2003
6	49 CFR parts 172, 173, 174, 176, and 178 (explosives), and 193 (liquefied natural gas facilities), and parts 172, 173, 178, and 180 (cylinders)	2003	2004
7	49 CFR 173 (shipper requirements) and 194 (onshore oil pipeline response plans)	2004	2005
8	49 CFR parts 178 (non-bulk packaging) and 195 (hazardous liquid pipeline transportation)	2005	2006
9	49 CFR parts 178 through 180 (bulk packaging) and 198 (State pipeline safety grants)	2006	2007
10	49 CFR parts 172 (communications, emergency response, training and hazmat table) and 175 (air carriage)	2007	2008

Year 4 (Fall 2001) List of Rules analyzed and a summary of the results
49 CFR part 176 — Carriage by vessel
- Section 610: No SEIOSNOSE. The requirements apply to ocean-going vessels and to coastal and inland water transportation. Most operators of ocean-going vessels are not small entities. Further, the requirements are consistent with international standards applicable to vessel transportation and, therefore, impose few additional costs of doing business on ocean-going vessels. Vessels operating in domestic transportation are also permitted to utilize international standards in place of these requirements; domestic vessel operators incur only minimal costs incurred as a result of normal business practices. Finally, the requirements have little or no impact on entry to or exit from the industry.
- Plain language: As resources permit, RSPA will rewrite regulations using plain language techniques.

Year 5 (Fall 2002) List of rules that will be analyzed during the next year
49 CFR part 172 — Hazardous materials table, special provisions, hazardous materials communications, emergency response information, and training requirements
49 CFR part 173 — Shippers—general requirements for shipments and packagings
49 CFR part 174 — Carriage by rail
49 CFR part 175 — Carriage by aircraft
49 CFR part 176 — Carriage by vessel
49 CFR part 177 — Carriage by public highway
49 CFR part 178 — Specifications for packagings (radioactive material)

BUREAU OF TRANSPORTATION STATISTICS
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	14 CFR part 241, Form 41	1998	1999
2	14 CFR part 241, Schedule T-100, and part 217	1999	2000
3	14 CFR part 298, 49 CFR 1420	2000	2001
4	14 CFR part 241, section 19-7	2001	2002
5	14 CFR part 291	2002	2003
6	14 CFR part 234	2003	2004
7	14 CFR part 249	2004	2005
8	14 CFR part 248	2005	2006
9	14 CFR part 250	2006	2007
10	14 CFR part 374a, ICAO	2007	2008

Year 4 (Fall 2001) List of Rules analyzed and a summary of the results
14 CFR part 241, section 19-7 — Passenger Origin and Destination Survey
- Section 610: No SEIOSNOSE. This data collection applies only to large entities.
- General: This rule is being reviewed as part of an overall aviation data requirements review and modernization program, which will also take into account the plain language initiative.

Year 5 (Fall 2002) List of Rules that will be analyzed during the next year
14 CFR part 291 — Cargo operations in interstate air transportation

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SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	33 CFR parts 401 through 403	1998	1999

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1916	+Computer Reservations System Regulations Comprehensive Review (**Reg Plan Seq No. 102**)	2105-AC65
1917	+Aviation Data Requirements Review and Modernization Program	2105-AC71
1918	Nondiscrimination on the Basis of Disability in Air Travel	2105-AC97
1919	Drug and Alcohol Management Information System Reporting	2105-AD14
1920	DBE Airport Concessionaires Size Standards	2105-AD21

+ DOT-designated significant regulation
References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1921	Direct Flights	2105-AA73
1922	Use of Direct Final Rulemaking	2105-AC11
1923	Overbooking of Flights: Elimination of Airport Notice Signs	2105-AC45
1924	Fees and Charges for Special Services: Reinvention	2105-AC47
1925	Nondiscrimination in Air Travel; Boarding Where Level-Entry Is Unavailable	2105-AC81
1926	+Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations	2105-AC83
1927	+Americans With Disabilities Act Accessibility Standards	2105-AC86
1928	Participation by Disadvantaged Business Enterprises in Department of Transportation Programs: Memorandum of Understanding With Small Business Administration; Uniform Forms and Other Revisions	2105-AC88
1929	Participation by Minority Business Enterprises in Department of Transportation Financial Assistance Programs: Threshold Requirements and Other Technical Revisions	2105-AC89
1930	Participation by Disadvantaged Business Enterprises in Department of Transportation Programs	2105-AC91
1931	Nondiscrimination in Federally Assisted Programs	2105-AC96
1932	Over-the-Road Buses: Extension of Due Date for Information Collection	2105-AC98
1933	Standard Time Zone Boundary in the State of North Dakota: Morton County	2105-AD03
1934	Reporting Requirement for Air Carriers Regarding Disability-Related Complaints	2105-AD04
1935	Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting From Federal Financial Assistance; Transportation Services for Individuals With Disabilities (ADA)	2105-AD05

+ DOT-designated significant regulation

Office of the Secretary—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1936	Policy Statement on Airline Preemption	2105-AA46
1937	+Statement of Enforcement Policy on Rebating	2105-AB39
1938	+Accessibility of Passenger Vessels to Individuals With Disabilities	2105-AB87
1939	Use of Oxygen by Air Carrier Passengers	2105-AC29
1940	+Domestic Passenger Manifest Information	2105-AC62
1941	Electronic Filing Option in DOT Proceedings	2105-AC79
1942	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace Grants	2105-AD01

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Office of the Secretary—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
1943	Governmentwide Debarment and Suspension (Nonprocurement)/Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)	2105-AD07

+ DOT-designated significant regulation

Office of the Secretary—Completed Actions

Sequence Number	Title	Regulation Identification Number
1944	+Direct Air Carrier Responsibility for Returning Stranded Charter Passengers	2105-AA40
1945	Air Travelers: Age Discrimination	2105-AA45
1946	Diversion of Flights Within a Metropolitan Area	2105-AA78
1947	Simplified Aviation Exemption Procedures	2105-AA82
1948	Baggage Liability Notices in International Air Transportation	2105-AA84
1949	Simplified Airline Counter-Sign Notices	2105-AA88
1950	+Price Advertising	2105-AB50
1951	+Proceedures for Transportation Workplace Drug-Testing Programs	2105-AB71
1952	+Transportation for Individuals With Disabilities (Accessibility Guidelines)	2105-AC06
1953	Amendments to Modal Alcohol Testing Rules: Pre-Employment Testing	2105-AC50
1954	Statement of Policy on Alternative Dispute Resolution	2105-AC94
1955	+Procedures for Compensation of Air Carriers	2105-AD06
1956	Supplemental Standards of Ethical Conduct for Employees of the Department of Transportation	2105-AD08
1957	Reporting Prohibited Communications	2105-AD10
1958	Procedures for Nonevidential Alcohol Screening Devices Procedures for Transportation Workplace Drug and Alcohol Programs	2105-AD13
1959	Public Availability of Information; Maintenance of and Access to Records Pertaining to Individuals	2105-AD15
1960	+Withdrawal of Proposed Rulemaking Actions	2105-AD16

+ DOT-designated significant regulation

Transportation Security Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1961	Protection of Sensitive Security Information in Information Circulars for Nonaviation Modes of Transportation	2110-AA07
1962	+Fingerprint-Based Criminal History Records Checks: Escorted Access	2110-AA08
1963	+Protection of Sensitive Security Information for All Modes of Transportation	2110-AA10

+ DOT-designated significant regulation

Transportation Security Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1964	+Civil Aviation Security Rules	2110-AA03
1965	+Security Programs for Aircraft Weighing 12,500 Pounds or More	2110-AA04
1966	+Private Charter Security Rules	2110-AA05
1967	+Security Threat Assessments for Federal Aviation Administration Certificate Holders and Applicants	2110-AA14

+ DOT-designated significant regulation

DOT

Transportation Security Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1968	+Imposition and Collection of Passenger Civil Aviation Security Service Fees	2110-AA01
1969	+Aviation Security Infrastructure Fees	2110-AA02
1970	Investigative and Enforcement Procedures	2110-AA09

+ DOT-designated significant regulation

U.S. Coast Guard—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1971	Claims Procedures Under the Oil Pollution Act of 1990 (CGD 91-035)	2115-AD90
1972	+Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions (USCG-2001-8661)	2115-AG05
1973	+Post Casualty Drug and Alcohol Testing (USCG-2001-8773)	2115-AG07
1974	+Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade (USCG-2001-8825)	2115-AG08
1975	Territorial Seas, Navigable Waters, and Jurisdiction (USCG-2001-9044)	2115-AG13
1976	Update of Rules on Aids to Navigation Affecting Buoys, Sound Signals, International Rules at Sea, Communications Procedures, and Large Navigational Buoys (USCG-2001-10714)	2115-AG25
1977	Marine Events: Permit Procedures (USCG-2001-10713)	2115-AG26
1978	Drawbridge Operations Regulations; Revisions (USCG-2001-10881)	2115-AG27
1979	Rates for Pilotage on the Great Lakes (USCG-2002-11288)	2115-AG30
1980	Wearing of Personal Flotation Devices by Persons Operating or Riding on Personal Watercraft or Being Towed Behind Recreational Vessels (USCG-2002-11421)	2115-AG32
1981	+Automatic Identification System Carriage Requirement (USCG-2002-11721)	2115-AG36
1982	Protection for Whistleblowers in Coast Guard (USCG-2002-13016)	2115-AG49
1983	+Penalties for Non-Submission of Ballast Water Management Reports (USCG-2002-13147)	2115-AG50

+ DOT-designated significant regulation

U.S. Coast Guard—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1984	Reporting Marine Casualties (USCG-2000-6927)	2115-AD98
1985	Handling of Explosives or Other Dangerous Cargoes Within or Contiguous to Waterfront Facilities (USCG-1998-4302)	2115-AE22
1986	Licensing and Manning for Officers of Towing Vessels (USCG 1999-6224)	2115-AF23
1987	Limited Service Domestic Voyage Load Lines for River Barges on Lake Michigan (USCG-1998-4623)	2115-AF38
1988	Outer Continental Shelf Activities (USCG-1998-3868)	2115-AF39
1989	Fire-Suppression Systems and Voyage Planning for Towing Vessels (USCG 2000-6931)	2115-AF53
1990	+Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil (USCG-1998-3417) **(Reg Plan Seq No. 103)**	2115-AF60
1991	Deepwater Ports (USCG-1998-3884)	2115-AF63
1992	Anchorage Ground; Safety Zone; Speed Limit; Tongass Narrows and Ketchikan, AK (CGD17-99-002)	2115-AF81
1993	Training and Qualifications for Personnel on Passenger Ships (USCG 1999-5610)	2115-AF83
1994	Alternate Hull Examination Program for Certain Passenger Vessels, and Underwater Surveys for Passenger, Nautical School, and Sailing School Vessels (USCG-2000-6858)	2115-AF95
1995	Allowing Alternative Source to Incandescent Lights, and Establishing Standards for New Lights, in Private Aids to Navigation (USCG-2000-7466)	2115-AF98
1996	Wearing of Personal Flotation Devices (PFDs) by Certain Children Aboard Recreational Vessels (USCG-2000-8589)	2115-AG04
1997	Federal Requirements for Propeller Injury Avoidance Measures (USCG 2001-10163)	2115-AG18
1998	Safety Zones for Outer Continental Shelf Facilities in the Gulf of Mexico (CGD08-01-025)	2115-AG22
1999	Safety Zone for Outer Continental Shelf Facility in the Gulf of Mexico (CGD08-01-043)	2115-AG31
2000	Notifications of Arrival and Departure in Ports or Places in the United States (USCG-2001-11865)	2115-AG35
2001	Great Lakes Maritime Academy — Eligibility of Certain Graduates for Unrestricted Third-Mate Licenses (USCG-2002-13213)	2115-AG43

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U.S. Coast Guard—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2002	Traffic Separation Schemes: In the Strait Of Juan De Fuca and Its Approaches; In Puget Sound and Its Approaches; In Haro Strait, Boundary Pass, and in the Strait of Georgia (USCG-2002-12702)	2115-AG45
2003	Temporary Requirements for Notification of Arrival in U.S. Ports (USCG-2001-10689)	2115-AG47

+ DOT-designated significant regulation
References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

U.S. Coast Guard—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2004	Safety and Security Zone Regulations	2115-AA97
2005	Special Anchorage Areas/Anchorage Grounds Regulations	2115-AA98
2006	+Discharge-Removal Equipment for Vessels Carrying Oil (CGD 90-068)	2115-AD66
2007	+Escort Vessels for Certain Tankers (CGD 91-202)	2115-AE10
2008	State Access to the Oil Spill Liability Trust Fund (CGD 92-014)	2115-AE19
2009	Regatta and Marine Parade Regulations	2115-AE46
2010	Drawbridge Regulations	2115-AE47
2011	+Escort Vessels in Certain U.S. Waters (CGD 91-202a)	2115-AE56
2012	Regulated Navigation Areas	2115-AE84
2013	+Marine Transportation-Related Facility Response Plans for Hazardous Substances (USCG-1999-5705)	2115-AE87
2014	+Tank Vessel Response Plans for Hazardous Substances (USCG-1998-4354)	2115-AE88
2015	Numbering of Undocumented Barges (USCG-1998-3798)	2115-AF13
2016	+Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1978 (STCW) (CGD 95-062)	2115-AF26
2017	Rules of Practice, Procedure, and Evidence for Administrative Proceedings of the Coast Guard (USCG 1998-3472)	2115-AF59
2018	Commercial Diving Operations (USCG-1998-3786)	2115-AF64
2019	+Improvements to Maritime Safety in Puget Sound-Area Waters (USCG-1998-4501)	2115-AF68
2020	Vessel Traffic Service Lower Mississippi River (USCG-1998-4399)	2115-AF75
2021	Cargo Securing on Vessels Operating in U.S. Waters (USCG-2000-7080)	2115-AF97
2022	Electronic Chart Display and Information System (ECDIS) (USCG-2001-8826)	2115-AG09
2023	+Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters (USCG-2001-10486)	2115-AG21
2024	+Alternate Tonnage Convention: Small Passenger Vessels	2115-AG29
2025	Port Security Plans	2115-AG37
2026	Facility Security Plan	2115-AG38
2027	Passenger Facility Security Plan	2115-AG39
2028	Maritime Security: Passenger Vessel Security	2115-AG40
2029	Maritime Security: High Consequence Vessels	2115-AG41
2030	Identification Credentials for Maritime Security	2115-AG42

+ DOT-designated significant regulation

U.S. Coast Guard—Completed Actions

Sequence Number	Title	Regulation Identification Number
2031	+Emergency Response Plans for Passenger Vessels (USCG-1998-3473)	2115-AF61
2032	Safety of Uninspected Passenger Vessels Under the Passenger Vessel Safety Act of 1993 (USCG-1999-5040)	2115-AF69
2033	Barges Carrying Bulk Liquid Hazardous Material (USCG-1999-5117)	2115-AF77
2034	Notification of Arrival: Addition of Charterer to Required Information (USCG-2001-8659)	2115-AG06
2035	+Tank Level or Pressure Monitoring Devices (USCG-2001-9046)	2115-AG10
2036	Inspection and Enforcement of Coast Guard Regulations for Fixed Facilities by Minerals Management Service (USCG-2001-9045)	2115-AG14
2037	Revise Options for Responding to Notices of Violations (USCG-2001-9175)	2115-AG15
2038	Traffic Separation Scheme: In Prince William Sound, Alaska (USCG-2001-10254)	2115-AG20
2039	Protection of Naval Vessels (LANT AREA-01-001 and PAC AREA-01-001)	2115-AG23
2040	Liferaft Servicing Intervals (USCG-2001-11118)	2115-AG28

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U.S. Coast Guard—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
2041	Protection of Naval Vessels (LANT AREA-02-001 and PAC AREA-02-001)	2115-AG33
2042	Navigation and Navigable Waters — Technical Amendments, Organizational Changes, Miscellaneous Editorial Changes and Conforming Amendments (USCG-2002-12471)	2115-AG44
2043	Basic Rates and Charges on Lake Erie and the Navigable Waters From Southeast Shoal to Port Huron, MI (USCG-2002-12840)	2115-AG46
2044	Shipping — Technical and Conforming Amendments (USCG-2002-13058)	2115-AG48

+ DOT-designated significant regulation

Federal Aviation Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2045	Objects Affecting Navigable Airspace	2120-AA09
2046	+Improved Water Survival Equipment	2120-AC72
2047	+Retrofit of Improved Seats in Air Carrier Transport Category Airplanes	2120-AC84
2048	+Corrosion Control Program	2120-AE92
2049	+National Air Tour Safety Standards	2120-AF07
2050	+Flight Crewmember Duty Period Limitations, Flight Time Limitations, and Rest Requirements **(Reg Plan Seq No. 104)**	2120-AF63
2051	+False and Misleading Statements Regarding Aircraft Parts	2120-AG08
2052	+Noise Limitations for Aircraft Operations in the Vicinity of Grand Canyon National Park	2120-AG34
2053	Licensing and Safety Requirements for Launch	2120-AG37
2054	+Child Restraint Systems	2120-AG43
2055	Revision of Air Carrier Crewmember and Training Regulations	2120-AG57
2056	Training in the Recognition of Hazardous Material	2120-AG75
2057	+Air Tour Operations in State of Hawaii	2120-AH02
2058	+Flight Simulation Device Qualification	2120-AH07
2059	Refusal To Submit to an Authorized Drug Test	2120-AH23
2060	Public Address System	2120-AH30
2061	Safe, Efficient Use and Preservation of the Navigable Airspace	2120-AH31
2062	Design Requirements for Pressurization and Pneumatic Systems Installed on Transport Category Airplanes	2120-AH33
2063	Design Standards for Fuselage Doors on Transport Category Airplanes	2120-AH34
2064	Reverse Thrust and Propeller Pitch Settings Below the Flight Regime	2120-AH35
2065	Trim Systems and Protective Breathing Equipment	2120-AH40
2066	Revisions to Passenger Facility Charge Rule for Compensation to Air Carriers	2120-AH43
2067	Noise Stringency Increase for Single-Engine Propeller-Driven Small Airplanes	2120-AH44
2068	Airworthiness Standards for Classes B and F Cargo Compartment for Transport Category Airplanes	2120-AH47
2069	Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight-Free Zones	2120-AH48
2070	+Security Programs for Charter Operations Using Aircraft 12,500 Pounds and Over	2120-AH66
2071	+Transponder Continuous Operation	2120-AH67
2072	Revised Checked Pitching Maneuver for Transport Airplanes	2120-AH71
2073	Revised Requirements for Gust and Continuous Turbulence Design Loads	2120-AH73
2074	Harmonization of Airworthiness Standards Flight Rules, Static Lateral-Directional Stability, and Speed Increase and Recovery Characteristics	2120-AH74
2075	+Picture Identification Requirements	2120-AH76
2076	Area Navigation (RNAV) and Miscellaneous Amendments	2120-AH77
2077	Flight Visibility; Vision Enhancing Equipment	2120-AH78
2078	Establishment of Organization Designation Authorization Procedures	2120-AH79
2079	Airworthiness Standards; Fire Protection	2120-AH80
2080	Refusal To Take a DOT-Required Drug or Alcohol Test	2120-AH82
2081	Performance and Handling Qualities Requirements for Rotorcraft	2120-AH87
2082	+Revisions to Cockpit Voice Recorder and Digital Flight Data Recorder Regulations	2120-AH88

+ DOT-designated significant regulation
References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

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Federal Aviation Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2083	+Fuel System Vent Fire Protection	2120-AA49
2084	Miscellaneous Amendments	2120-AA50
2085	1-G Stalling Speed as a Basis for Aircraft Parts	2120-AD40
2086	+Revision of Part 108, Aircraft Operator Security	2120-AD45
2087	+Revision of Part 107, Airport Security	2120-AD46
2088	+Aging Aircraft Safety	2120-AE42
2089	Air Traffic Control Radar Beacon System and Mode S Transponder Requirements in the National Airspace System	2120-AE81
2090	+Revised Access to Type III Exits	2120-AF01
2091	+Revision of Emergency Evacuation Demonstration Procedures To Improve Participant Safety	2120-AF21
2092	+Overflights of Units of the National Park System	2120-AF46
2093	Revised Precision Approach Landing Systems Policy	2120-AG16
2094	+Prohibition of the Transportation of Devices Designed as Chemical Generators as Cargo in Aircraft	2120-AG35
2095	+Revised Standards for Cargo or Baggage Compartments in Transport Category Airplanes	2120-AG42
2096	+Screening of Checked Baggage on Flights Within the United States	2120-AG51
2097	+Policy Regarding Airport Rates and Charges	2120-AG58
2098	+Certification of Screening Companies	2120-AG84
2099	+Revisions to Digital Flight Data Recorder Regulations for B-737 Airplanes and for Part 125 Operators	2120-AG87
2100	+Traffic Alert and Collision Avoidance Systems	2120-AG90
2101	+Improved Flammability Standards for Thermal/Acoustic Insulation Materials Used in Transport Category Airplanes (**Reg Plan Seq No. 105**)	2120-AG91
2102	Fire Protection of Electrical System Components on Transport Category Airplanes	2120-AG92
2103	+Certification Procedures for Products and Parts (**Section 610 Review**)	2120-AG93
2104	+Certification of Airports (**Reg Plan Seq No. 106**)	2120-AG96
2105	Special Flight Rules in the Vicinity of Grand Canyon National Park	2120-AG97
2106	+Fractional Ownership	2120-AH06
2107	Noise Certification Regulations for Helicopters	2120-AH10
2108	Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities	2120-AH14
2109	+Certification of Pilots, Aircraft, and Repairmen for the Operation of Light Sport Aircraft	2120-AH19
2110	Revision to Airspeed Indicating System Requirements for Transport Category Airplanes	2120-AH26
2111	Electrical Installation, Nickel Cadmium Battery Installation, and Nickel Cadmium Battery Storage	2120-AH27
2112	Design and Installation of Electronic Equipment on Transport Category Airplanes	2120-AH28
2113	Electrical Cables	2120-AH29
2114	Material Strength Properties and Design Values	2120-AH36
2115	Revisions to Various Powerplant Installation Requirements for Transport Category Airplanes	2120-AH37
2116	Lower Deck Service Compartments on Transport Category Airplanes	2120-AH38
2117	Miscellaneous Flight Requirements	2120-AH39
2118	Harmonization of Noise Certification Standards for Propeller-Driven Small Airplanes	2120-AH42
2119	Digital Flight Data Recorder Resolutions Requirements	2120-AH46
2120	+Criminal History Background Checks	2120-AH53
2121	Flight Restrictions in the Vicinity of Niagara Falls	2120-AH57
2122	+Screeners, Qualifications, Training, and Testing	2120-AH59
2123	Procedures for Reimbursement of Airports, On-Airport Parking Lots and Vendors of On-Airfield Direct Services to Air Carriers for Security Mandates	2120-AH60
2124	+Enhanced Security Procedures for Operations at Certain Airports	2120-AH62
2125	Powerplant Controls on Transport Category Airplanes, General	2120-AH65
2126	+Reduced Vertical Separation Minimum in United States Domestic Airspace	2120-AH68
2127	Reports by Carriers on Incidents Involving Animals During Air Transport	2120-AH69
2128	+Security Considerations for the Flightdeck on Foreign Operated Transport Category Airplanes	2120-AH70
2129	Aircraft Registration Requirements; Clarification of "Court of Competent Jurisdiction"	2120-AH75
2130	+Prohibition of Construction or Alteration in the Vicinity of the Private Residence of the President of the United States	2120-AH83
2131	+Revocation of Pilot Certificates or Denial of an Application Based on Security Disqualification	2120-AH84
2132	Flightdeck Security on Foreign Operated Airplanes	2120-AH86

+ DOT-designated significant regulation
References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

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Federal Aviation Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2133	IFR Altitudes; Miscellaneous Amendments	2120-AA63
2134	Airworthiness Directives	2120-AA64
2135	Standard Instrument Approach Procedures; Miscellaneous Amendments	2120-AA65
2136	Airspace Actions	2120-AA66
2137	+Drug Enforcement Assistance	2120-AD16
2138	Type Certificates for Some Surplus Aircraft of the Armed Forces	2120-AE41
2139	Civil Penalty Assessment Procedures	2120-AE84
2140	Miscellaneous Cabin Safety Changes	2120-AF77
2141	Bird Strike	2120-AF80
2142	+Security Programs of Foreign Air Carriers and Foreign Operators of U.S.-Registered Air Carriers Engaged in Common Carriage	2120-AG13

+ DOT-designated significant regulation

Federal Aviation Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2143	Low Fuel Quantity Alerting System	2120-AB46
2144	Aircraft Engines: Fuel and Induction Systems	2120-AB76
2145	Installation of Crashworthy Fuselage Fuel Tanks and Fuel Lines	2120-AC87
2146	Airplane Engine Cowling Retention	2120-AD34
2147	+Aircraft Ground Deicing and Anti-Icing Program	2120-AE70
2148	Flight Attendant English Language Proficiency	2120-AE98
2149	+Training and Checking in Ground Icing Conditions	2120-AF09
2150	Los Angeles, CA, Class B Airspace	2120-AF16
2151	Revision of Braking Systems Airworthiness Standards to Harmonize With European Airworthiness Standards for Transport Category Airplanes	2120-AG80
2152	Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes	2120-AH03
2153	Alcohol and Drug Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities	2120-AH15
2154	Airworthiness Directives	2120-AH17
2155	Powered Lift Operations	2120-AH20
2156	Transition to an All Stage 3 Fleet Operating in the 48 Contiguous United States and the District of Columbia	2120-AH41
2157	Enduring Freedom Special Federal Aviation Regulation (SFAR)	2120-AH58
2158	Revisions to Digital Flight Data Recorder Requirements	2120-AH81
2159	Equivalent Safety Provisions for Fuel Tank System Fault Tolerance Evaluation Requirements	2120-AH85

+ DOT-designated significant regulation

Federal Highway Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2160	Advanced Construction of Federal Aid Projects	2125-AD59
2161	Work Zone Mobility and Safety	2125-AE29
2162	+Federal Lands Highway Program; Management Systems Pertaining to the National Park Service, Including the Park Roads and Parkways Program	2125-AE52
2163	+Federal Lands Highway Program; Management Systems Pertaining to the Bureau of Indian Affairs, Including the Indian Reservations Road Program	2125-AE53
2164	+Federal Lands Highway Program; Management Systems Pertaining to the Fish and Wildlife Service, Including the Refuge Roads Program	2125-AE54
2165	+Federal Lands Highway Program; Management Systems Pertaining to the Forest Service, Including the Forest Highways Program	2125-AE55
2166	Revision of the Manual on Uniform Traffic Control Devices; Traffic Control Devices on Federal-Aid and Other Streets and Highways; Standards	2125-AE78
2167	+National Bridge Inspection Standards	2125-AE86
2168	Debt Financing	2125-AE91

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Federal Highway Administration—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2169	+Designation of Dromedary-Equipped Truck Tractor-Semitrailers as Specialized Equipment	2125-AE94
2170	Truck Size and Weight; National Network; Virginia	2125-AE96

+ DOT-designated significant regulation

Federal Highway Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2171	Federal-Aid Highway Systems	2125-AD74
2172	Railroad Highway Projects	2125-AD86
2173	Standards for Dedicated Short-Range Communications (DSRC) Applications for Use by Commercial Vehicles in Intelligent Transportation Systems Projects	2125-AE63
2174	+Design-Build Contracting	2125-AE79
2175	Discretionary Bridge Candidate Rating Factor	2125-AE88
2176	+Statewide Transportation Planning; Metropolitan Transportation Planning	2125-AE95

+ DOT-designated significant regulation

Federal Highway Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2177	Indian Reservation Road Bridge Program	2125-AE57
2178	Revisions to Highway Bridge Replacement and Rehabilitation Program	2125-AE75
2179	Commercial Vehicle Width Exclusive Devices	2125-AE90
2180	Manual on Uniform Traffic Control Devices	2125-AE93

Federal Highway Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2181	Certification of Size and Weight Enforcement	2125-AC60
2182	Administration of Engineering and Design-Related Services Contracts	2125-AE45
2183	+Statewide and Metropolitan Planning	2125-AE62
2184	+NEPA and Related Procedures for Transportation Decisionmaking; Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites	2125-AE64
2185	Traffic Control Devices on Federal-Aid and Other Streets and Highways; Color Specifications for Retroreflective Sign and Pavement Marking Materials	2125-AE67
2186	+Railroad-Highway Crossing Projects	2125-AE81
2187	National Standards for Traffic Control Devices; Manual on Uniform Traffic Control Devices; Accessible Pedestrian Signals	2125-AE83
2188	Planning and Research Program Administration	2125-AE84
2189	Landscape and Roadside Development	2125-AE85
2190	Metropolitan Transportation Planning and Programming	2125-AE92

+ DOT-designated significant regulation

Federal Motor Carrier Safety Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
2191	Security Requirements for Motor Carriers Transporting Hazardous Materials	2126-AA71

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Federal Motor Carrier Safety Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2192	+Qualification of Drivers; Vision	2126-AA05
2193	+Commercial Driver Physical Fitness as Part of the CDL Process	2126-AA10
2194	Safety Performance History of New Drivers	2126-AA17
2195	+Unified Registration System	2126-AA22
2196	Safety Fitness Procedures	2126-AA37
2197	+Federal Motor Carrier Safety Regulations; Interstate School Bus Safety	2126-AA53
2198	Posting of Employee Protections Information	2126-AA68
2199	+Hours of Service of Drivers; Supporting Documents	2126-AA76
2200	Safety Fitness Procedures; Safety Ratings	2126-AA77

+ DOT-designated significant regulation

Federal Motor Carrier Safety Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2201	+Railroad-Highway Grade Crossing Safety	2126-AA18
2202	+Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations **(Rulemaking Resulting From a Section 610 Review) (Reg Plan Seq No. 107)**	2126-AA23
2203	Electronic Filing of Surety Bonds, Trust Fund Agreements, Insurance Certificates; Cancellations	2126-AA24
2204	+Transportation of Household Goods; Consumer Protection Regulations **(Rulemaking Resulting From a Section 610 Review)**	2126-AA32
2205	Out-of-Service Criteria	2126-AA36
2206	Federal Motor Carrier Safety Regulations; Waivers, Exemptions, and Pilot Programs; Rules and Procedures	2126-AA41
2207	+Federal Motor Carrier Safety Regulations; Safety Requirements for Operators of Small Passenger-Carrying Commercial Motor Vehicles Used in Interstate Commerce	2126-AA52
2208	+Limitations on Issuance of Commercial Driver's License With Hazardous Materials Endorsement **(Reg Plan Seq No. 108)**	2126-AA70
2209	+Penalties, Inspection, and Decal Display Requirements for Mexico-Domiciled Motor Carriers	2126-AA72

+ DOT-designated significant regulation
References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Federal Motor Carrier Safety Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2210	+Commercial Driver's License Standards; Biometric Identifier	2126-AA01
2211	Commercial Learner Permits	2126-AA03
2212	+Federal Motor Carrier Safety Regulations; General Transportation of Hazardous Materials	2126-AA07
2213	+Minimum Training Requirements for Operators and Training Instructors of Multiple Trailer Combination Vehicles	2126-AA08
2214	+Training for Entry-Level Drivers of Commercial Motor Vehicles	2126-AA09
2215	Parts and Accessories Necessary for Safe Operation; Sleeper Berths on Motor Coaches	2126-AA12
2216	Rules of Practice for Motor Carrier Proceedings; Investigations; Disqualifications and Penalties	2126-AA15
2217	Parts and Accessories Necessary for Safe Operation; Television Receivers and Data Display Units	2126-AA19
2218	General Jurisdiction Over Freight Forwarder Service	2126-AA25
2219	+English Language Requirement; Qualifications of Drivers	2126-AA31
2220	+Application by Certain Mexico-Domiciled Motor Carriers To Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border	2126-AA34
2221	+Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States	2126-AA35
2222	+General Requirements; Inspection, Repair, and Maintenance; Intermodal Container Chassis and Trailers	2126-AA38
2223	+Federal Motor Carrier Safety Regulations; Zero-Base Revision	2126-AA39
2224	+Post-Accident Controlled Substances and Alcohol Test Results; Reporting Requirements for the Fatality Analysis Reporting System	2126-AA50
2225	+New Entrant Safety Assurance Process	2126-AA59
2226	Parts and Accessories Necessary for Safe Operation; General Amendments	2126-AA61

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Federal Motor Carrier Safety Administration—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
2227	Rules of Practice for Administrative Proceedings	2126-AA63
2228	+Certification of Safety Auditors, Safety Investigators, and Safety Inspectors	2126-AA64
2229	+Certification of Compliance With Federal Motor Vehicle Safety Standards (FMVSS)	2126-AA69
2230	+Registration Enforcement	2126-AA78

+ DOT-designated significant regulation

Federal Motor Carrier Safety Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2231	Development of a North American Standard for Protection Against Shifting and Falling Cargo	2126-AA27
2232	Brake Performance Requirements for CMVs Inspected by Performance-Based Brake Testers	2126-AA46
2233	Commercial Driver's License Standards; Requirements and Penalties; Noncommercial Motor Vehicle Violations	2126-AA55
2234	Commercial Driver's License Standards; Requirements and Penalties; Commercial Driver's License Program Improvements	2126-AA60
2235	Revision to Periodic Tire Check Requirement for Motor Carriers Transporting Hazardous Materials	2126-AA74
2236	+Hazardous Material Route Plans	2126-AA75

+ DOT-designated significant regulation

National Highway Traffic Safety Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
2237	Review: Odometer Fraud	2127-AF53
2238	Review: American Automobile Labeling Act	2127-AG18
2239	Review: Heavy Truck Conspicuity	2127-AG19
2240	Motorcycle-Mounted Reflex Reflector Height	2127-AG92
2241	Review: Child Safety Seat Registration	2127-AG93
2242	Review: Air Bag On-Off Switches	2127-AH12
2243	Child Restraints for Older Children	2127-AH14
2244	Defect Reporting and Notification	2127-AH89

National Highway Traffic Safety Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2245	Procedures for Considering Environmental Impacts	2127-AB79
2246	Seating Systems Performance	2127-AD08
2247	Certification Requirements of Multistage Vehicles	2127-AE27
2248	Convex Cross-View Mirrors	2127-AG41
2249	Political Subdivision Participation in State Highway Safety Programs and State Highway Safety Agency	2127-AH00
2250	Definition of Multifunctional School Activity Bus	2127-AH23
2251	Metric Conversion—Phase III	2127-AH27
2252	Upgrade Door Retention Performance	2127-AH34
2253	Administrative Rewrite of the Lighting Requirements Other Than Headlamps	2127-AH37
2254	Exemption for Inconsequential Defect or Noncompliance	2127-AH58
2255	Compliance and Enforcement	2127-AH63
2256	Registered Importers of Vehicles Not Originally Manufactured To Conform With the Federal Motor Vehicle Safety Standards	2127-AH67
2257	+Frontal Offset Protection **(Reg Plan Seq No. 109)**	2127-AH73
2258	Special Purpose Vehicles	2127-AH75
2259	Brake Hoses	2127-AH79
2260	Low-Speed Vehicle Performance Requirements	2127-AH80

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National Highway Traffic Safety Administration—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2261	Headlamp Glare	2127-AH81
2262	Stowable or Fold-Away Child Restraint Anchorages	2127-AH85
2263	Motorcycle Headlamp System	2127-AH92
2264	Improve Motorcycle Helmet Head Protection	2127-AI03
2265	Reorganize and Harmonize Controls and Displays	2127-AI09
2266	Seat Belt Emergency Locking Retractor	2127-AI38
2267	Adaptation of Instrumented Lower Legs for Hybrid III Male and Female Adult Dummies	2127-AI39
2268	Voluntarily Installed Seat Belt Assembly Anchorages	2127-AI40
2269	Idle Stop Technology Used in Some Hybrid Electric Vehicles	2127-AI43
2270	+Operation of Motor Vehicles by Intoxicated Persons	2127-AI44
2271	Procedures for Participating In and Receiving Data From the National Driver Registration Problem Driver Pointer System	2127-AI45
2272	Parking Brakes for Non-School Bus Vehicles	2127-AI47
2273	Cargo Carrying Capacity	2127-AI50
2274	Convex Mirrors for Commercial Trucks	2127-AI52
2275	Enhance Passenger-Side Mirror System	2127-AI53
2276	Horizontal Discharge Trailers	2127-AI56
2277	Heavier Hybrid III Type 6-Year-Old-Size Test Dummy	2127-AI58
2278	Allow Roll-Bar During Brake Testing	2127-AI63
2279	Child Restraint System Webbing Strength	2127-AI66
2280	Motorcycle Brake Controls	2127-AI67
2281	+Light Truck Average Fuel Economy Standard, Model Years 2005-2010	2127-AI70
2282	+Event Data Recorders	2127-AI72
2283	GM Petition on Amending FMVSS No. 301 and FMVSS Nos. 208, 212, 219, 303, and 305	2127-AI76
2284	Exemption for Inconsequential Defect or Noncompliance	2127-AI78
2285	+Consumer Information Regulations; Federal Motor Vehicle Safety Standards; Rollover Resistance	2127-AI81
2286	Incorporation of EuroSID II Dummy into 49 CFR Part 572	2127-AI89
2287	Rear Center Lap/Shoulder Belt Requirement - Std. 208	2127-AI91

+ DOT-designated significant regulation
References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

National Highway Traffic Safety Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2288	+Crashworthiness Ratings	2127-AA03
2289	+Flammability of Interior Materials—School Buses	2127-AA44
2290	+Platform Lift Systems	2127-AD50
2291	Upgrade Fuel Integrity Performance Requirements	2127-AF36
2292	Alternative Geometric Visibility Requirements for Lamps	2127-AF75
2293	Power-Operated Windows: Roof Panels	2127-AF83
2294	Door Latch Exemption for Vehicles Equipped With Wheelchair Lifts and Ramps	2127-AG18
2295	Dealer Notification of Defect or Noncompliance Determination	2127-AG27
2296	Seat Belt Positioning Devices	2127-AG49
2297	Glare Reduction From Daytime Running Lamps	2127-AG86
2298	Administrative Rewrite for Headlamp Requirements	2127-AG87
2299	Signal Lamps Used With Light-Emitting Diodes	2127-AG88
2300	+Allocation of Fuel Economy Credits	2127-AG97
2301	Incorporate the 1996 Revision of the American National Standards Institute (ANSI) into Glazing Standard	2127-AH08
2302	+Harmonization of Head Restraints	2127-AH09
2303	Heavy Vehicle Antilock Brake System (ABS) Performance Requirement	2127-AH18
2304	Upper Interior Impact	2127-AH61
2305	Accelerator Control Systems	2127-AH71
2306	Vehicles With Raised Roofs	2127-AH74
2307	Clarify Test Procedures for Brake Fluids	2127-AH96
2308	Guidelines for States on Enforcement of Light Transmission	2127-AH97
2309	Child Restraint Anchorage Systems—Part 2	2127-AH99

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National Highway Traffic Safety Administration—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2310	Label Placement on Rear Impact Guards	2127-AI04
2311	Moving Barrier Tire Specification	2127-AI05
2312	+Confidential Business Information	2127-AI13
2313	Acceleration of Manufacturer Remedy Program	2127-AI27
2314	Disposition of Replaced Tires	2127-AI29
2315	+Improve Tire Safety Information	2127-AI32
2316	Improving the Safety of Child Restraints	2127-AI34
2317	Seat Belt Fit	2127-AI36
2318	+Automotive Fuel Economy Manufacturing Incentive for Alternative Fuel Vehicles	2127-AI41
2319	Expanding the Auto Parts Marking Requirement	2127-AI46
2320	Compliance for Multistage Manufacturers and Alterers	2127-AI49
2321	+Improved Tire Safety	2127-AI54
2322	Retroactive Certification (Policy Statement)	2127-AI59
2323	Record Retention of Retroactively Certified Vehicles	2127-AI60
2324	Importation of Commercial Motor Vehicles	2127-AI64
2325	Child Restraint Safety Rating	2127-AI65
2326	+Advanced Air Bag Requirements	2127-AI71
2327	Theft Data for Calendar Year 2000	2127-AI75
2328	FMVSS No. 208 Advanced Air Bag Petitions for Reconsideration (Part 2)	2127-AI82
2329	Warning Label and Additional Conspicuity Features for Low Speed Vehicles.	2127-AI84
2330	+FMVSS No. 208 Advanced Air Bag Petitions for Reconsideration (Part 1)	2127-AI85
2331	FMVSS No. 201 Upper Interior Impact Multi-Stage Vehicle Compliance	2127-AI86
2332	List of Nonconforming Vehicles Eligible for Importation	2127-AI87
2333	Use of Seat Mounted Child Restraints on School Bus Seats.	2127-AI88
2334	+Tire Pressure Monitoring System; Petitions for Reconsideration	2127-AI90
2335	+Reporting of Information and Documents About Potential Defects	2127-AI92

+ DOT-designated significant regulation

National Highway Traffic Safety Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2336	Radiator Safety Cap	2127-AE59
2337	+Review: Side-Impact Protection	2127-AF54
2338	Power Window Safety Switches	2127-AG36
2339	Upgrade Roof Crashworthiness	2127-AG51
2340	Hybrid III 95th Percentile Male	2127-AG79
2341	Placement of Wheelchair Restraints on Buses	2127-AH03
2342	Review: Redesigned Air Bags	2127-AH13
2343	Use of Universal Child Seats in Aircraft	2127-AH56
2344	Hybrid III Type 6-Year-Old-Size Test Dummy	2127-AI00
2345	Fifth Percentile Female Test Dummy	2127-AI01
2346	Review: Antilock Brake Systems for Heavy Trucks	2127-AI14
2347	Review: Rear-Impact Guards for Truck Trailers	2127-AI15
2348	Daytime Running Lamps Intensity Reduction Phase II	2127-AI62
2349	+Federal Motor Vehicle Safety Standards; Child Restraint Systems	2127-AI83

+ DOT-designated significant regulation

National Highway Traffic Safety Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2350	Brake Lining	2127-AC66
2351	Buy America Requirements	2127-AG99
2352	Ejection Mitigation Using Advanced Glazing	2127-AH50

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National Highway Traffic Safety Administration—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
2353	Review: Head Restraints for Light Trucks	2127-AH98
2354	+Early Warning Defect Reporting Requirements	2127-AI25
2355	Defects in Foreign Countries	2127-AI26
2356	Reimbursement Prior to Recall	2127-AI28
2357	Prohibition of Sale or Lease of Equipment	2127-AI30
2358	+Tire Pressure Monitoring System	2127-AI33
2359	Civil Penalties	2127-AI42
2360	Trailer Test Rig	2127-AI48
2361	Child Safety Information Labels	2127-AI55
2362	List of Nonconforming Vehicles Eligible for Importation	2127-AI61
2363	Modified Front-Opening Hood Requirements	2127-AI69
2364	Insurer Reporting Requirements/List of Insurers Required To File Reports for October 2002	2127-AI73
2365	High-Theft Lines for Model Year 2002	2127-AI74
2366	Schedule of Fees Authorized by 49 U.S.C. 30141	2127-AI77
2367	Exemption From the Make-Inoperative Prohibition	2127-AI80

+ DOT-designated significant regulation

Federal Railroad Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2368	Locomotive Crashworthiness	2130-AB23
2369	Locomotive Event Recorders	2130-AB34
2370	Revision to Railroad Safety Enforcement Procedures	2130-AB35
2371	Rules of Practice	2130-AB36
2372	Railroad Car Conspicuity	2130-AB41
2373	Revision to the Accident/Incident Reporting Regulations and Guide	2130-AB51
2374	Occupational Noise Exposure for Railroad Operating Employees	2130-AB56

Federal Railroad Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2375	+Whistle Bans at Highway-Rail Grade Crossings	2130-AA71
2376	+Standards for Development and Use of Processor-Based Signal and Train Control Systems **(Reg Plan Seq No. 110)**	2130-AA94
2377	Small Railroads; Policy Statement on Enforcement Program	2130-AB15
2378	Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, Acquisitions of Control, and Start-Up Operations	2130-AB24
2379	Roadway Maintenance Machines	2130-AB28
2380	Annual Adjustment of Monetary Threshold for Reporting Rail Equipment Accidents/Incidents	2130-AB30
2381	Determination of Minimum Testing Rate for Random Drug and Alcohol Testing	2130-AB31
2382	+Locational Requirement for Dispatching of United States Rail Operations	2130-AB38
2383	+Application of Random Testing and Other Alcohol and Drug Regulations to Employees of Foreign Railroads	2130-AB39

+ DOT-designated significant regulation
References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Federal Railroad Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2384	Local Rail Freight Assistance to States	2130-AA60
2385	Blue Signal and Related Protections	2130-AA90

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Federal Railroad Administration—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
2386	Crane Safety Standards	2130-AB27
2387	+Minimum Standards for Temperature in the Locomotive Cab	2130-AB46
2388	Automatic Train Control (ATC) and Advanced Civil Speed Enforcement System (ACSES); Northeast Corridor (NEC) Railroads	2130-AB55

+ DOT-designated significant regulation

Federal Railroad Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2389	Passenger Equipment Safety Standards	2130-AB48
2390	Improvements to the System for Reporting Train Accidents	2130-AB50

Federal Transit Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2391	+Bus Testing	2132-AA30

+ DOT-designated significant regulation

Federal Transit Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2392	Buy America Requirements; Amendment to Certification Procedures	2132-AA62
2393	School Bus Operations	2132-AA67
2394	Buy America Requirements; Permanent Waiver for Microcomputers	2132-AA68
2395	State Safety Oversight; Rail Fixed Guideway Systems	2132-AA69
2396	+Statewide Transportation Planning; Metropolitan Transportation Planning	2132-AA75

+ DOT-designated significant regulation

Federal Transit Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2397	+NEPA and Related Procedures for Transportation Decisionmaking; Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites	2132-AA43
2398	+Clean Fuels Formula Grant Program	2132-AA64
2399	+Statewide Transportation Planning; Metropolitan Transportation Planning	2132-AA66

+ DOT-designated significant regulation

Research and Special Programs Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
2400	Hazardous Materials: Revision of Requirements for Carriage by Aircraft	2137-AD18
2401	+Hazardous Materials: Safety Requirements for External Product Piping on Cargo Tanks Transporting Flammable Liquids	2137-AD36
2402	Hazardous Materials: Frangible Discs on Tank Cars	2137-AD57

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Research and Special Programs Administration—Prerule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2403	Pipeline Safety: Annual Update of Standards Incorporated by Reference	2137-AD68

+ DOT-designated significant regulation

Research and Special Programs Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2404	Pipeline Safety: Gas Gathering Line Definition	2137-AB15
2405	Pipeline Safety: Periodic Underwater Inspections	2137-AC54
2406	Pipeline Safety: Further Regulatory Review; Gas Pipeline Safety Standards	2137-AD01
2407	Hazardous Materials: Hazard Communication Requirements—Petitions for Rulemaking and Miscellaneous Amendments	2137-AD28
2408	+Hazardous Materials Safety: Transportation of Oxygen Cylinders and Oxygen Generators Aboard Aircraft	2137-AD33
2409	+Pipeline Safety: Pipeline Integrity Management in High-Consequence Areas (Gas Transmission Pipeline Operators) **(Reg Plan Seq No. 111)**	2137-AD54
2410	Hazardous Materials: Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization Technical Instructions	2137-AD66
2411	Hazardous Materials: Security Requirements for Motor Carriers Transporting Hazardous Materials	2137-AD70
2412	Hazardous Materials: Miscellaneous Revisions to the Hazardous Materials Regulations	2137-AD73
2413	Hazardous Materials: Transportation of Division 1.5 explosives (Blasting Agents) and Ammonium Nitrate Mixtures in Bulk	2137-AD75
2414	Pipeline Safety: National Pipeline Mapping System	2137-AD76

+ DOT-designated significant regulation
References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Research and Special Programs Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2415	+Pipeline Safety: Response Plans for Onshore Oil Pipelines	2137-AC30
2416	Hazardous Materials: Retention of Shipping Papers	2137-AC64
2417	+Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage	2137-AC68
2418	Hazardous Materials: Requirements for Cargo Tanks	2137-AC90
2419	Pipeline Safety: Recommendations To Change Hazardous Liquid Pipeline Safety Standards	2137-AD10
2420	Hazardous Materials: Revisions to Incident Reporting Requirements and Detailed Hazardous Materials Incident Report DOT Form	2137-AD21
2421	Hazardous Materials: Air Carrier Emergency Telephone Number Requirements	2137-AD29
2422	Pipeline Safety: Periodic Updates to Pipeline Safety Requirements (1999)	2137-AD35
2423	Pipeline Safety: Producer-Operated Outer Continental Shelf Gas and Hazardous Liquid Pipelines That Cross Directly Into State Waters	2137-AD42
2424	Revisions; Definition of Administrator	2137-AD43
2425	Hazardous Materials: Miscellaneous Amendments for Unloading IM Portable Tanks on a Transport Vehicle—Petition for Rulemaking	2137-AD44
2426	Hazardous Materials: Transportation of Lithium Batteries	2137-AD48
2427	Hazardous Materials: Reduction of Registration Fees	2137-AD53
2428	Pipeline Safety: Hazardous Liquid Pipeline Operator Annual Reports	2137-AD59
2429	Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials	2137-AD67
2430	Hazardous Materials: Revision to Periodic Tire Check Requirement for Motor Carriers Transporting Hazardous Materials	2137-AD69
2431	Hazardous Materials: Revision to Penalty Guidelines	2137-AD71

+ DOT-designated significant regulation

DOT

Research and Special Programs Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2432	Pipeline Safety: Passage of Internal Inspection Devices	2137-AB71
2433	+Safeguarding Food From Contamination During Transportation	2137-AC00
2434	Hazardous Materials: Cargo Tank Rollover Requirements	2137-AD34
2435	Hazardous Materials: Adoption of Latest IAEA and Other Miscellaneous Revisions and Clarifications	2137-AD40
2436	Hazardous Materials: Revision of the Requirements for Hazardous Waste Manifests	2137-AD50

+ DOT-designated significant regulation

Research and Special Programs Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2437	+Hazardous Materials: Requirements for Cylinders	2137-AA92
2438	DOT 3AL Aluminum Cylinders; Safety Problems	2137-AB51
2439	+Hazardous Materials: Revisions to Standards for Infectious Substances and Genetically Modified Microorganisms	2137-AD13
2440	Hazardous Materials: Revised and Clarified Hazardous Materials Safety Rulemaking and Program Procedures	2137-AD20
2441	Pipeline Safety: Enforcement Procedures	2137-AD22
2442	Pipeline Safety: Pressure Testing Older Pipelines in Terminals	2137-AD26
2443	Harmonization With United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions	2137-AD41
2444	Pipeline Safety: Pipeline Integrity Management in High-Consequence Areas (Hazardous Liquid Operators With Less Than 500 Miles of Pipeline)	2137-AD49
2445	Hazardous Materials: Requirements for Maintenance, Requalification, and Repair of DOT Specification Cylinders	2137-AD58
2446	Pipeline Safety: Integrity Management Communication	2137-AD62
2447	Pipeline Safety: Controlling Corrosion on Gas Pipelines	2137-AD63
2448	Pipeline Safety: High Consequence Areas for Gas Transmission Operators	2137-AD64
2449	Hazardous Materials: Hazardous Substances—Additions, Revisions and Deletions	2137-AD65
2450	Hazardous Materials: Minor Editorial Corrections and Clarifications	2137-AD72
2451	Hazardous Materials: Miscellaneous Revisions to the Registration Requirements	2137-AD74

+ DOT-designated significant regulation

Maritime Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2452	+Cargo Preference Regulations—Carriage of Oceangoing Cargo Generated by Government Programs	2133-AB37

+ DOT-designated significant regulation

Maritime Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2453	Requirements To Document U.S.-Flag Fishing Industry Vessels of 100 Feet or Greater in Registered Length and To Hold Preferred Mortgage on Such Vessels	2133-AB46

Maritime Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2454	Amendment of MARAD's Regulations Establishing and Administering Deposit Funds Authorized by Section 1109 of Merchant Marine Act, 1936, as Amended	2133-AB47

DOT

Bureau of Transportation Statistics—Prerule Stage

Sequence Number	Title	Regulation Identification Number
2455	Modernizing the Passenger Origin-Destination Survey	2139-AA01

Bureau of Transportation Statistics—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2456	+Amendment to Part 234 To Collect Causal Information for Airline Delays and Cancellations	2139-AA09

+ DOT-designated significant regulation

Bureau of Transportation Statistics—Completed Actions

Sequence Number	Title	Regulation Identification Number
2457	Amendment to Definitions of Revenue and Nonrevenue Passengers	2139-AA07
2458	Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market	2139-AA08

Department of Transportation (DOT)
Office of the Secretary (OST)

Proposed Rule Stage

1916. +COMPUTER RESERVATIONS SYSTEM REGULATIONS COMPREHENSIVE REVIEW

Regulatory Plan: This entry is Seq. No. 102 in part II of this issue of the **Federal Register**.

RIN: 2105–AC65

1917. +AVIATION DATA REQUIREMENTS REVIEW AND MODERNIZATION PROGRAM

Priority: Other Significant

Legal Authority: 49 USC 40101; 49 USC 41101; 49 USC 41708; 49 USC 41709; 49 USC 41301; 49 USC 41501; 49 USC 41701

CFR Citation: 14 CFR 241; 14 CFR 250; 14 CFR 298; 14 CFR 374a; 14 CFR 234

Legal Deadline: None

Abstract: The Department is undertaking an aviation data requirements review and modernization program. The review is designed to harmonize the Department's aviation data systems with current regulatory and statutory needs; improve the quality of the Department's aviation data bases; and eliminate obsolete data reporting and processing systems. The ANPRM was the first step in an outreach program to review aviation data collected by the Department and the measures that should be taken to modernize and improve aviation data reporting and processing systems. The Department solicited public comments from aviation data users on the nature, scope, source, and means for collecting, processing, and distributing airline traffic, fare, and financial data. Specifically, the Department invited comments to determine whether existing aviation data should be amended, supplemented, or replaced; whether selected forms and reports should be retained, modified, or eliminated; whether the Department should require all aviation data to be filed electronically; and how the aviation data system should be reengineered to enhance efficiency and to reduce costs for both the Department and airline industry. The Department has reviewed the comments and reply comments and is in the process of redefining the data elements and restructuring the data reporting requirements to be included in a NPRM. This action is significant due to substantial public and industry interest.

Timetable:

Action	Date	FR Cite
ANPRM	07/15/98	63 FR 38128
ANPRM Comment Period End	09/14/98	
Reply Comment Period End	10/13/98	
NPRM	08/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Undetermined

Agency Contact: Todd Homan, Industry Economist, Department of Transportation, Office of the Secretary, X-55, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-9605

RIN: 2105–AC71

1918. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

Priority: Substantive, Nonsignificant

Legal Authority: 14 USC 41702; 14 USC 41705; 14 USC 41712

CFR Citation: 14 CFR 382

DOT—OST

Proposed Rule Stage

Legal Deadline: None

Abstract: The Department is proposing to amend its rules implementing the Air Carrier Access Act of 1986 concerning requirements for movable aisle armrests. The amendment would clarify the application of the movable armrest requirement to all classes of service in an aircraft. In addition, in response to changed practices in parts of the airline industry, the Department is proposing to require preboarding to be made available for passengers with disabilities.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723
TDD Phone: 202 755-7687
Email: bob.ashby@ost.dot.gov

RIN: 2105–AC97

1919. • DRUG AND ALCOHOL MANAGEMENT INFORMATION SYSTEM REPORTING

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 102, 301, 322, 5331, 20140, 31306, 45101

CFR Citation: 49 CFR 40

Legal Deadline: None

Abstract: This rule proposes to revise the management information system forms by standardizing the information collected and to reduce the amount of data reported by transportation employers. Annual drug and alcohol program data is currently submitted by Federal Motor Carrier Safety Administration, Federal Aviation Administration, Federal Transit Administration, Federal Railroad Administration, Research and Special Programs Administration, and the United States Coast Guard.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local

Agency Contact: Jim L Swart, Drug and Alcohol policy Advisor, Department of Transportation, Office of the Secretary, Room 10403, 400 7th Street SW, Washington, DC 20590
Phone: 202 366-6369
Fax: 202 366-3897
Email: jim.swart@ost.dot.gov

RIN: 2105–AD14

1920. • DBE AIRPORT CONCESSIONAIRES SIZE STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 200d et seq.; 49 USC 47107 and 47123; EO 12138; 3 CFR; 1979 Comp., p. 393

CFR Citation: 49 CFR 23

Legal Deadline: None

Abstract: This action seeks comment on an adjustment to size standards for current DBE concessionaires.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State, Local

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723
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Email: bob.ashby@ost.dot.gov

RIN: 2105–AD21

Department of Transportation (DOT)
Office of the Secretary (OST)

Final Rule Stage

1921. DIRECT FLIGHTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 1381

CFR Citation: 14 CFR 399

Legal Deadline: None

Abstract: Donald L. Pevsner petitioned the CAB to institute a rulemaking proceeding to ban use of the term "direct flight" because it is deceptive, and to declare use of the term to be a prima facie violation of section 411 of the Federal Aviation Act of 1958. The Department is now considering what action to take in response to the petition.

Timetable:

Action	Date	FR Cite
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: The petition is filed in Docket 41217.

Agency Contact: Joanne Petrie, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723

RIN: 2105–AA73

1922. USE OF DIRECT FINAL RULEMAKING

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 1657

CFR Citation: 49 CFR 5.21; 49 CFR 5.35

Legal Deadline: None

Abstract: The Department is considering a new rulemaking procedure to expedite the processing of noncontroversial changes to its regulations. Rules that the Secretary

DOT—OST

Final Rule Stage

judges to be unlikely to result in public comment would be published as direct final rules. Such direct final rules would advise the public that no adverse comment is anticipated and that, unless written adverse comment or notice of intent to submit such comment is received within a specified number of days, the rule will become effective 60 days from the date of publication in the Federal Register.

Timetable:

Action	Date	FR Cite
NPRM	08/04/95	60 FR 39919
NPRM Comment Period End	10/03/95	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Neil Eisner, Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, Room 10424 Nassif Building, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723
Fax: 202 366-9313

RIN: 2105–AC11

1923. OVERBOOKING OF FLIGHTS: ELIMINATION OF AIRPORT NOTICE SIGNS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 401; 49 USC 411; 49 USC 413; 49 USC 417

CFR Citation: 14 CFR 250

Legal Deadline: None

Abstract: This action would eliminate a consumer notice about airline overbooking of flights that is required to appear on signs at airports, city ticket offices, and travel agencies. However, that information would be available to consumers because it must accompany every ticket.

Timetable:

Action	Date	FR Cite
NPRM	06/03/96	61 FR 27818
NPRM Comment Period End	07/18/96	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Other rulemakings: RIN 2105-AA88, Simplified Airline Counter-Sign Notices. RIN 2105-AC36, Ticketless Travel: Passenger Notices, Statement of Compliance Policy published 4/22/97, 62 FR 19473.

Agency Contact: Tim Kelly, Aviation Consumer Protection Division, Office of the General Counsel, Department of Transportation, Office of the Secretary, C-75, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5952

RIN: 2105–AC45

1924. FEES AND CHARGES FOR SPECIAL SERVICES: REINVENTION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 40101; 49 USC 46101; 31 USC 9701

CFR Citation: 14 CFR 389

Legal Deadline: None

Abstract: This action would remove or update obsolete provisions and organizational references, and adjust the fee schedule for certain special services related to aviation economic proceedings that the Department makes available to the public. The regulation has not been comprehensively updated since 1985 and the revisions will take the form of a complete reissuance of part 389.

Timetable:

Action	Date	FR Cite
NPRM	01/21/99	64 FR 3229
NPRM Comment Period End	03/22/99	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: John Miller, Analyst, Planning and Special Projects Office, Department of Transportation, Office of the Secretary, X-60, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4868

RIN: 2105–AC47

1925. NONDISCRIMINATION IN AIR TRAVEL; BOARDING WHERE LEVEL-ENTRY IS UNAVAILABLE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 41702; 49 USC 41705; 49 USC 41712

CFR Citation: 14 CFR 382

Legal Deadline: None

Abstract: This action requires air carriers and airports to work jointly to make lifts or other boarding devices available for aircraft, of whatever size, where level-entry loading bridges or existing lifts are not present. This action is intended to facilitate the boarding of aircraft by individuals with disabilities. It amends existing rules that implement the Air Carrier Access Act of 1986 and the Rehabilitation Act of 1973.

Timetable:

Action	Date	FR Cite
NPRM	08/26/99	64 FR 46611
NPRM Comment Period End	11/24/99	
Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723
TDD Phone: 202 755-7687
Email: bob.ashby@ost.dot.gov

RIN: 2105–AC81

1926. +UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NONPROFIT ORGANIZATIONS

Priority: Other Significant

Legal Authority: 49 USC 322(a)

CFR Citation: 49 CFR 19

Legal Deadline: None

Abstract: This action implements changes to OMB Circular A-110 that were issued by OMB on October 8, 1999, providing uniform guidance for administering grants to institutions of higher education, hospitals, and other

nonprofit organizations. The change provides guidance on making data produced under awards available to the public. The regulation is essentially a word-for-word issuance of the requirements in OMB Circular A-110. An interim final rule was issued because of the limited ability to change the requirements from those in the circular. We are awaiting OMB instructions regarding whether there will be any Governmentwide changes to the final rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/16/00	65 FR 14406
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2105–AC83

1927. +AMERICANS WITH DISABILITIES ACT ACCESSIBILITY STANDARDS

Priority: Other Significant

Legal Authority: 5 USC 552a

CFR Citation: 49 CFR 27; 49 CFR 37

Legal Deadline: None

Abstract: The Department of Transportation is proposing to amend its rules implementing the Americans with Disabilities Act (ADA) by adopting as its standards revised accessibility guidelines proposed by the Architectural and Transportation Barriers Compliance Board (Access Board). The Access Board published a notice of proposed rulemaking (NPRM) to revise and update the accessibility guidelines for the ADA and the Architectural Barriers Act (ABA) in the November 16, 1999 issue of the Federal Register. This proposed rule would adopt the Access Board's revised and updated ADA guidelines and make a conforming change to the Department's rule implementing the ADA.

Timetable:

Action	Date	FR Cite
NPRM	08/08/00	65 FR 48444
NPRM Comment Period End	09/07/00	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Blane A. Workie, Attorney, Department of Transportation, Office of the Secretary, Room 4116/C-70, 400 7th Street SW., Washington, DC 20590
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RIN: 2105–AC86

1928. PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION PROGRAMS: MEMORANDUM OF UNDERSTANDING WITH SMALL BUSINESS ADMINISTRATION; UNIFORM FORMS AND OTHER REVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-178; 112 Stat. 107 and 113; 42 USC 2000d; PL 102-581

CFR Citation: 49 CFR 26

Legal Deadline: None

Abstract: This rule would implement a memorandum of understanding (MOU) between DOT and the Small Business Administration. The MOU would establish reciprocity and streamline certification procedures for participation in SBA's 8(a) Business Development and Small Disadvantaged Business program, and DOT's DBE program. This document would provide a uniform certification application form and a uniform reporting form.

Timetable:

Action	Date	FR Cite
NPRM	05/08/01	66 FR 23208
NPRM Comment Period End	06/07/01	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

Agency Contact: Laura Aguilar, Attorney, Department of Transportation, Office of the Secretary, C-10, Room 10102
Phone: 202 366-0365
Fax: 202 366-9170
Email: laura.aguilar@ost.dot.gov

RIN: 2105–AC88

1929. PARTICIPATION BY MINORITY BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS: THRESHOLD REQUIREMENTS AND OTHER TECHNICAL REVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-178, TEA-21; PL 102-581

CFR Citation: 49 CFR 26.11 (Revision); 49 CFR 26.21 (Revision); 49 CFR 26.37 (Revision); 49 CFR 26.45 (Revision); 49 CFR 26.55 (Revision)

Legal Deadline: None

Abstract: This interim final rule changes threshold requirements for Federal Transit Administration and Federal Aviation Administration recipients to establish DBE programs and overall goals. Each August 1, recipients must submit DBE goals for the following fiscal year. This change will reduce burdens on entities receiving smaller Federal grants. The DOT is issuing an interim final rule in order to reduce the burden, this fiscal year, for the smallest grant recipients. This document also makes technical changes to 49 CFR part 26.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/15/00	65 FR 68949
Interim Final Rule Effective	11/15/00	

Action	Date	FR Cite
Interim Final Rule Comment Period End	01/02/01	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Laura Aguilar, Attorney, Department of Transportation, Office of the Secretary, C-10, Room 10102
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Email: laura.aguilar@ost.dot.gov

RIN: 2105–AC89

1930. PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 324; 42 USC 2000d et seq; 49 USC 1611, 47107, 47113, 47123; EO 12138; 3 CFR 1951 comp., p. 393, sec 1101 (b); ...

CFR Citation: 49 CFR 2a, subpart G

Legal Deadline: Final, Statutory, June 30, 1993.

Abstract: In May 1997, the Department issued a supplemental notice of proposed rulemaking (SNPRM) to revise its disadvantaged business enterprise (DBE) regulation. The SNPRM included proposals for revising the airport concessions portion of the DBE program. When the Department, in February 1999, issued a final rule based on the SNPRM, we did not publish a final version of the airport concessions proposal.

This SNPRM seeks comments on an airport concessions subpart to part 26 that takes into account comments on the May 1997 SNPRM, adapts provisions of the rest of part 26 to the concessions context, and proposes options for provisions affecting car rental operations at airports. These options are based in part on a recent memorandum of understanding between the American Car Rental Association and the Airport Minority Advisory Council making recommendations to the Department on this aspect of the rulemaking. This SNPRM was inadvertently published under RIN 2105-AB92.

Timetable:

Action	Date	FR Cite
SNPRM	09/08/00	65 FR 54454
SNPRM Comment Period End	10/23/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723
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RIN: 2105–AC91

1931. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 49 CFR 21; 49 CFR 27

Legal Deadline: None

Abstract: This rule proposes to amend DOT's regulations implementing Title VI of the Civil Rights Act of 1964 (Title VI), Section 504 of the Rehabilitation Act of 1972 (Section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to Title VI and added a definition of "program or activity" to Section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation incorporates the CRRA's definition of "program or activity" and "program" into Title VI, Section 504, and the Age Discrimination Act regulations. This proposed regulation also promotes consistency and enforceability of these statutes. This is a joint notice of proposed rulemaking with other Federal agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Blane A. Workie, Attorney, Department of Transportation, Office of the Secretary, Room 4116/C-70, 400 7th Street SW., Washington, DC 20590
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RIN: 2105–AC96

1932. OVER-THE-ROAD BUSES: EXTENSION OF DUE DATE FOR INFORMATION COLLECTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 12101 to 12213; 49 USC 322

CFR Citation: 49 CFR 37

Legal Deadline: None

Abstract: The Department of Transportation is amending its Americans with Disabilities Act regulations concerning accessibility of over-the-road buses with respect to information collection requirements by postponing the requirement for bus companies to submit information reporting ridership on accessible fixed route service and the acquisition of buses and designating of the Federal Motor Carrier Safety Administration as the recipient of the data.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/06/01	66 FR 10968
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Blane A. Workie, Attorney, Department of Transportation, Office of the Secretary, Room 4116/C-70, 400 7th Street SW., Washington, DC 20590
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Fax: 202 366-7152
Email: blane.workie@ost.dot.gov

RIN: 2105–AC98

1933. STANDARD TIME ZONE BOUNDARY IN THE STATE OF NORTH DAKOTA: MORTON COUNTY

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 260 to 267

CFR Citation: 49 CFR 71

Legal Deadline: None

Abstract: This rule would relocate Morton County, ND, from mountain time to central time. This proposal is based on a request from the Chairman of the Board of County Commissioners for Morton County, ND.

Timetable:

Action	Date	FR Cite
NPRM	08/03/01	66 FR 40666
NPRM Comment Period End	09/17/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joanne Petrie, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723

RIN: 2105–AD03

1934. REPORTING REQUIREMENT FOR AIR CARRIERS REGARDING DISABILITY-RELATED COMPLAINTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 41702; 49 USC 41705

CFR Citation: 49 CFR 382

Legal Deadline: Other, Statutory, Implementation of Plan Required by PL 106-181, sec 707.

Abstract: The Office of the Secretary will propose in the NPRM a reporting requirement for air carriers to periodically file information with DOT regarding disability-related complaints they receive. The NPRM will include detailed categories for the reporting which will be of use to DOT, disabled air travelers, and Congress. DOT will report to Congress each year on the results of the review as required by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century.

Timetable:

Action	Date	FR Cite
NPRM	02/14/02	67 FR 6892
Extension of Comment Period	04/10/02	67 FR 17308
NPRM Comment Period End	04/15/02	
2nd Comment Period End	06/01/02	
Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Blane A. Workie, Attorney, Department of Transportation, Office of the Secretary, Room 4116/C-70, 400 7th Street SW., Washington, DC 20590
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RIN: 2105–AD04

1935. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE; TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES (ADA)

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 16(a); 49 USC 16 (d); 49 USC 142; 42 USC 12101-12213; 47 USC 225; 49 USC 322; ...

CFR Citation: 44 CFR 27; 44 CFR 37

Legal Deadline: None

Abstract: This rule would create a procedure within the Department to improve coordination of guidance and interpretations related to disability issues.

Timetable:

Action	Date	FR Cite
Final Rule	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2105–AD05

Department of Transportation (DOT)
Office of the Secretary (OST)

Long-Term Actions

1936. POLICY STATEMENT ON AIRLINE PREEMPTION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 41713

CFR Citation: 14 CFR 399

Legal Deadline: None

Abstract: The Civil Aeronautics Board in 1979 issued an interim Policy Statement on preemption. It discusses the policy of the Department with respect to three areas in which State law has been preempted by the Airline Deregulation Act of 1978: regulation of commuter air carriers and air taxis, the rights of airport proprietors, and general State authority as it directly or indirectly affects air transportation competition. The Supreme Court has classified that section 105 of the ADA preempts even indirect State regulation that "has a connection with or reference to" airline rates, routes, or services, but does not preempt State contract law with respect to interpretation and enforcement of agreements voluntarily entered into by air carriers. Other courts continue to issue decisions applying this provision to a multitude of different circumstances. The Department believes that this process of exploring the interpretation of section 105 will continue, and is considering the admissibility of terminating this proceeding.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/15/79	44 FR 9948
Interim Final Rule Comment Period End	04/16/79	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local, Federal

Additional Information: PSDR-56, Docket 34684 The 1995 decision issued by the Supreme Court is American Airlines v. Wolens (S. Ct. No. 93-1286).

Agency Contact: Paul Smith, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-9285

RIN: 2105–AA46

1937. +STATEMENT OF ENFORCEMENT POLICY ON REBATING

Priority: Other Significant

Legal Authority: 5 USC 601; 49 USC 1301 to 1302; 49 USC 1305; 49 USC 1324(a); 49 USC 1371 to 1379; 49 USC 1381 to 1382; 49 USC 1384; 49 USC 1386; 49 USC 1461; 49 USC 1481 to 1482; 49 USC 1502; 49 USC 1504

CFR Citation: 14 CFR 399.80; 14 CFR 399.85

Legal Deadline: None

Abstract: Airlines are required by 49 USC §41510, formerly section 403 of the Federal Aviation Act, to file tariffs with the Department that state their passenger fares, cargo rates, and associated charges in foreign air transportation. On October 21, 1988, the Department issued an NPRM (53 FR 41353) in response to concerns raised by travel agents concerning rebating of international airline prices. The NPRM proposed to establish an enforcement policy concerning the rebating of international airline prices, as a policy statement, in the regulations on aviation proceeding. Since publication of the NPRM, many conditions in the airline industry related to rebating have changed. For example, the United States has increasingly negotiated with success for liberal pricing regimes in our bilateral agreements with foreign nations. Therefore, the Department believes that the proposed enforcement policy.is no longer necessary and is withdrawing the 1988 NPRM.

Timetable:

Action	Date	FR Cite
NPRM	10/21/88	53 FR 41353
NPRM Comment Period End	12/20/88	
NPRM Comment Period Extended	02/03/89	54 FR 5497
Correction	02/10/89	54 FR 6475
Extended Comment Period End	02/21/89	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Betsy Wolf, Senior Trial Attorney, Office of the General Counsel, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-9349

RIN: 2105–AB39

1938. +ACCESSIBILITY OF PASSENGER VESSELS TO INDIVIDUALS WITH DISABILITIES

Priority: Other Significant

Legal Authority: 42 USC 12101 et seq; PL 101-336, Americans with Disabilities Act

CFR Citation: 49 CFR 37

Legal Deadline: None

Abstract: The Department's Americans with Disabilities Act (ADA) final rule, published September 6, 1991 (56 FR 45584), reserved portions of the rule concerning passenger vessels. The ADA covers passenger vessels, but issuing accessibility requirements for vessels involves complex issues unlike those affecting land transportation. This action will address these issues and propose feasible requirements to make passenger vessels accessible to, and usable by, individuals with disabilities. DOT is participating in an ongoing advisory committee effort convened by the Access Board to study passenger vessel accessibility issues. September and November 1998 meetings were held. This rulemaking is considered significant because of substantial public and congressional interest.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2105–AB87

1939. USE OF OXYGEN BY AIR CARRIER PASSENGERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 41705

CFR Citation: 14 CFR 382

Legal Deadline: None

Abstract: The Department is considering the use of regulatory negotiation to seek consensus among air carriers, consumers, airports, equipment manufacturers, oxygen suppliers, and safety regulators concerning the use of oxygen by passengers on air carriers when individuals need special private supplies. The need for action stems from a current situation where not all carriers allow passengers to bring their own oxygen aboard. Issues involve conformance with RSPA and FAA hazardous materials rules and the question of providing oxygen during long layovers. The Department is considering whether to begin a regulatory negotiation.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

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Government Levels Affected: None

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2105–AC29

1940. +DOMESTIC PASSENGER MANIFEST INFORMATION

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 49 USC 40101; 49 USC 40113 to 40114; 49 USC 41702; 49 USC 41708 to 41709; 49 USC 41711; 49 USC 46301; 49 USC 46310; 49 USC 46316

CFR Citation: 14 CFR 243

Legal Deadline: None

Abstract: This notice requested comments concerning operational and cost issues related to U.S. air carriers collecting information such as full name, date of birth and/or social security number, emergency contact and telephone number from passengers traveling on flights within the United States. This notice was issued on the Department's initiative in response to difficulties with notification in the aftermath of domestic aviation disasters and to comply with a recommendation contained in the initial report of the White House Commission on Aviation Safety and Security (1996) that urged the Department to explore immediately the costs and effects of a comprehensive passenger manifest requirement on the domestic aviation system. DOT will review the implementation of the international passenger manifest requirements (RIN 2105-AB78, 2/18/98, 63 FR 8258) as it determines how to proceed with this rulemaking.

Timetable:

Action	Date	FR Cite
ANPRM	03/13/97	62 FR 11789
ANPRM Comment Period End	05/12/97	
Comment Period Reopened	05/30/97	62 FR 29313
Comment Period End	06/20/97	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Bernestine Allen, Director, Office of International Transportation and Trade, Department of Transportation, Office of the Secretary, X-20, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4368

RIN: 2105–AC62

1941. ELECTRONIC FILING OPTION IN DOT PROCEEDINGS

Priority: Info./Admin./Other

Legal Authority: 49 USC 322; 49 USC 1655; 49 USC 1657; 45 USC 431

CFR Citation: 14 CFR 11

Legal Deadline: None

Abstract: This action amends existing rules, where necessary, to allow electronic filing in all DOT proceedings as an alternative to filing hard copy. The electronic filing option will help us serve the public more quickly and efficiently and will enable the public to participate more easily in DOT proceedings. This rulemaking addresses only the procedures for filing electronically, not technical issues such as media, word-processing formats, and mechanisms for payment of filing fees.

Timetable:

Action	Date	FR Cite
Notice Requesting Comment	05/26/98	63 FR 28545
Comment Period End	07/27/98	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: This is a procedural change that presents no substantive issue that we could reasonably expect to produce further meaningful comment. It also will relieve a restriction. Therefore, good cause exists to publish this rule without prior formal notice and comments.

Agency Contact: Charlotte Boeck, Administrative Officer, Office of the General Counsel, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20015
Phone: 202 366-4713

RIN: 2105–AC79

1942. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 103-355; EO 11738; EO 12549; EO 12689

CFR Citation: 49 CFR 29; 49 CFR 32

Legal Deadline: None

Abstract: This action would provide DOT-specific amendments for a uniform Governmentwide rule on debarment and suspension (nonprocurement) and drug-free workplace.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ladd Hakes, Department of Transportation, Office of the Secretary, Office of the Senior Executive (M-62), 400 Seventh Street, SW, Washington, DC 20590
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RIN: 2105–AD01

1943. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)/ GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Priority: Substantive, Nonsignificant

Legal Authority: EO 11738; EO 12689; EO 12549; PL 103-355; PL 108; 31 USC 6101

CFR Citation: 49 CFR 29; 49 CFR 32

Legal Deadline: None

Abstract: Executive Orders 12549 and 12689 established a Governmentwide system for nonprocurement suspension and debarment. All Federal departments and major agencies codified these requirements as part of a common rule. DOT is joining 34 other departments and major agencies to update those requirements. Part one of this action is separating the drug-free workplace provisions from the existing common rule and placing them in a separate part.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Ladd Hakes, Department of Transportation, Office of the Secretary, Office of the Senior Executive (M-62), 400 Seventh Street, SW, Washington, DC 20590
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RIN: 2105–AD07

Department of Transportation (DOT)
Office of the Secretary (OST)

Completed Actions

1944. +DIRECT AIR CARRIER RESPONSIBILITY FOR RETURNING STRANDED CHARTER PASSENGERS

Priority: Other Significant

Legal Authority: 49 USC 1324; 49 USC 1371

CFR Citation: 14 CFR 207; 14 CFR 208

Legal Deadline: None

Abstract: This action proposed to make direct air carriers responsible for returning charter passengers stranded by strikes or other service interruptions, by eliminating the force majeure clause from charter contracts. However, the CAB subsequently issued an interpretive rule (ER-1387, 49 FR 33436) which was affirmed in court. (Arrow Air, Inc. v. Dole, 784 F2d 1118 (1986)) Therefore, this action is now moot; the NPRM has been withdrawn.

Timetable:

Action	Date	FR Cite
NPRM	07/11/80	45 FR 46812
NPRM Comment Period End	09/25/80	
Reply Comment Period End	10/10/80	
Withdrawn	10/03/02	67 FR 61996

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: EDR 405, Docket 37169.

Agency Contact: Joanne Petrie, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723

RIN: 2105–AA40

1945. AIR TRAVELERS: AGE DISCRIMINATION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6102

CFR Citation: 14 CFR 376

Legal Deadline: None

Abstract: This rulemaking action was initiated by the Civil Aeronautics Board to implement the Age Discrimination Act of 1975. A draft final rule was submitted to HHS, as required by that Act, and was approved. However, in view of current airline practices with respect to travel by the elderly, and the absence of complaints of discrimination based on age, there no longer appears to be a need for further rulemaking action, and the NPRM has been withdrawn.

Timetable:

Action	Date	FR Cite
NPRM	09/26/79	44 FR 55383
Final Action Adopted by the Board	04/10/80	
HHS Approved Final Rule With Changes	07/13/84	
Withdrawn	10/03/02	67 FR 61996

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SPDR-74, Docket 36639.

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RIN: 2105–AA45

1946. DIVERSION OF FLIGHTS WITHIN A METROPOLITAN AREA

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 1301; 49 USC 1302; 49 USC 1305; 49 USC 1324; 49 USC 1371; 49 USC 1375; 49 USC 1377 to 1379; 49 USC 1381; 49 USC 1382; 49 USC 1386; 49 USC 1461; 49 USC 1481; 49 USC 1482; 49 USC 1502; 49 USC 1504; PL 96-354; 5 USC 601

CFR Citation: 14 CFR 253; 14 CFR 399

Legal Deadline: None

Abstract: The CAB proposed to amend its rules requiring notice of contract terms for domestic travel to require that actual notice be given to passengers of terms absolving carriers from any responsibility to transport a passenger to the destination named on the ticket, or to reimburse the passenger for expenses in reaching the airport noted on the ticket when a flight is diverted to another airport in the same metropolitan area. Alternatively, the Board proposed to declare it to be an unfair and deceptive practice to divert a passenger without arranging and paying for alternate transportation to the destination airport named on the passenger's ticket. The Board considered a final rule but did not decide what action to take. DOT is withdrawing the NPRM as unnecessary since it appears that carriers no longer have the policies that promoted the CAB's concern.

Timetable:

Action	Date	FR Cite
NPRM	09/23/83	48 FR 43343
NPRM Comment Period End	11/07/83	
Withdrawn	10/03/02	67 FR 61996

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket 41683, EDR 468/PSDR-81.

Agency Contact: Joanne Petrie, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723

RIN: 2105–AA78

1947. SIMPLIFIED AVIATION EXEMPTION PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 1371; 49 USC 1372; 49 USC 1386

CFR Citation: 14 CFR 302; 14 CFR 389; 14 CFR 399

Legal Deadline: None

Abstract: A Civil Aeronautics Board rulemaking proposed to revise and simplify the requirements and procedures for applying for exemptions under section 416(b) of the Federal Aviation Act. This action has become unnecessary since the Department included most of its provisions in its rule transferring the CAB's rules to DOT. Therefore, the NPRM has been withdrawn.

Timetable:

Action	Date	FR Cite
NPRM	10/05/84	49 FR 39337
NPRM Comment Period End	12/04/84	
Withdrawn	10/03/02	67 FR 61996

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: PDR-88/ODR-27/PSDR-83.

Agency Contact: Joanne Petrie, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723

RIN: 2105–AA82

1948. BAGGAGE LIABILITY NOTICES IN INTERNATIONAL AIR TRANSPORTATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 1302; 49 USC 1324; 49 USC 1371 to 1374; 49 USC 1381; 49 USC 1386; 49 USC 1481 to 1482

CFR Citation: 14 CFR 221

Legal Deadline: None

Abstract: In response to a petition by Mr. Howard Boros, the CAB proposed to amend the baggage liability notices provided to passengers in foreign air travel. The NPRM proposed to eliminate the disclaimer of liability for fragile and perishable items because that notice is false and misleading. Because of the amount of time that has elapsed since the proposal was issued, the Department is withdrawing it.

Timetable:

Action	Date	FR Cite
NPRM	12/18/84	49 FR 49111
NPRM Comment Period End	03/19/85	
Withdrawn	10/03/02	67 FR 61996

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket 41690; EDR-477.

Agency Contact: Joanne Petrie, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723

RIN: 2105–AA84

1949. SIMPLIFIED AIRLINE COUNTER-SIGN NOTICES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 1301; 49 USC 1302; 49 USC 1324; 49 USC 1371 to 1374; 49 USC 1381; 49 USC 1386; 49 USC 1481; 49 USC 1482

CFR Citation: 14 CFR 221; 14 CFR 250; 14 CFR 256

Legal Deadline: None

Abstract: The American Association of Airport Executives, the Airport Operators Council International, and the Air Transport Association of America petitioned the CAB to simplify its counter-sign requirements. Presently, airlines are required to display four different consumer protection notices on their ticket counters. The petitioners alleged that the current notices are hard to read and, therefore, do not provide much notice to passengers. They proposed replacing the four notices with one simplified counter sign. A CAB NPRM proposed a number of alternatives, such as a long and/or short notice, where the notices would be required to be posted, and whether a smoking notice should be included. DOT decided not to act on these counter signs separately, but rather to consider whether there should be a comprehensive re-examination of all forms of notice to passengers, including notices on tickets. This NPRM has been withdrawn.

Timetable:

Action	Date	FR Cite
NPRM	08/01/84	49 FR 30742
NPRM Comment Period End	09/17/84	
Reply Comment Period End	10/02/84	
Withdrawn	10/03/02	67 FR 61996

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket 41971; EDR-474

Agency Contact: Joanne Petrie, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723

RIN: 2105–AA88

1950. +PRICE ADVERTISING

Priority: Other Significant

Legal Authority: 49 USC 1371; 49 USC 1381

CFR Citation: 14 CFR 380; 14 CFR 399

Legal Deadline: None

Abstract: The Department proposed in 1989 to amend its rule and policy statement with respect to air transportation price advertising. This rulemaking is significant because of substantial public interest. Because of the amount of time that has elapsed since the proposal was issued, the Department has withdrawn it.

Timetable:

Action	Date	FR Cite
NPRM	07/26/89	54 FR 31052
NPRM Extended Comment Period	08/23/89	54 FR 35005

Action	Date	FR Cite
NPRM Comment Period End	08/25/89	
NPRM Comment Period End	09/25/89	
Withdrawn	10/03/02	67 FR 61996

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joanne Petrie, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723

RIN: 2105–AB50

1951. +PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG-TESTING PROGRAMS

Priority: Other Significant

Legal Authority: 49 USC 101; 49 USC 102; 49 USC 301; 49 USC 302; 49 USC 322

CFR Citation: 49 CFR 40

Legal Deadline: None

Abstract: The NPRM in 1990 concerned the question of to whom reports of negative drug test results may be sent. It will be formally withdrawn when the Department issues an NPRM under RIN 2105-AC49, Update of Drug and Alcohol Procedural Rules. This action is significant because of substantial public and congressional interest, and multimodal impact.

Timetable:

Action	Date	FR Cite
NPRM	07/13/90	55 FR 28782
NPRM Comment Period End	08/13/90	
Withdrawn	10/03/02	67 FR 61996

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: ANALYSIS: Regulatory Evaluation, 07/13/90, 55 FR 28782

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2105–AB71

1952. +TRANSPORTATION FOR INDIVIDUALS WITH DISABILITIES (ACCESSIBILITY GUIDELINES)

Priority: Other Significant

Legal Authority: 5 USC 552a

CFR Citation: 49 CFR 27; 49 CFR 37

Legal Deadline: None

Abstract: This action would amend the rules implementing the Americans with Disabilities Act by adopting the revised accessibility guidelines issued by the Architectural and Transportation Barriers Compliance Board, published June 20, 1994 (59 FR 31676) as interim final rules. The proposed rule would also conform the Department's rule implementing section 504 of the Rehabilitation Act of 1973.

Timetable:

Action	Date	FR Cite
NPRM	06/20/94	59 FR 31818
NPRM Comment Period End	08/19/94	
Withdrawn	10/03/02	67 FR 61996

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2105–AC06

1953. AMENDMENTS TO MODAL ALCOHOL TESTING RULES: PRE-EMPLOYMENT TESTING

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 102; 49 USC 301; 49 USC 5331; 49 USC 20140; 49 USC 31306; 49 USC 45101; 49 USC 45106

CFR Citation: 49 CFR 219; 49 CFR 382; 49 CFR 653; 49 CFR 654; 49 CFR 121

Legal Deadline: None

Abstract: This rule would implement a statutory change required by the National Highway Systems Act of 1995, section 342, to the existing pre-employment alcohol testing provisions. It would make pre-employment testing voluntary for employers.

Timetable:

Action	Date	FR Cite
NPRM	05/09/96	61 FR 21149
NPRM Comment Period End	07/08/96	
Withdrawn	10/03/02	67 FR 61996

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: This action involves four operating administrations: FAA, FHWA, FTA, and FRA. On May 10, 1995 (60 FR 24765), DOT suspended its pre-employment alcohol testing requirements after a court decision vacated the requirements of the FHWA alcohol testing rule.

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RIN: 2105–AC50

1954. STATEMENT OF POLICY ON ALTERNATIVE DISPUTE RESOLUTION

Priority: Info./Admin./Other

Legal Authority: 5 USC 571 to 583; 5 USC 561 to 570

CFR Citation: None

Legal Deadline: None

Abstract: This statement of policy defines alternative dispute resolution (ADR) and commits the Department to considering ADR and furthering its use across the Department. It also states that the Department will provide ADR-related training to employees, allocate resources to support ADR, and evaluate and assess our ADR uses. This statement of policy encourages employees and persons who interact with the Department to identify opportunities for collaborative, consensual approaches to dispute resolution or rulemaking.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/15/00	65 FR 69121
Interim Final Rule Comment Period End	01/16/01	
Final Action	06/12/02	67 FR 40367
Final Action Effective	06/12/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Judith S. Kaleta, Senior Counsel for Dispute Resolution, Department of Transportation, Office of the Secretary, Room 10428, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-0992
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Email: judy.kaleta@ost.dot.gov

RIN: 2105–AC94

1955. +PROCEDURES FOR COMPENSATION OF AIR CARRIERS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: PL 104-42

CFR Citation: 49 CFR 62

Legal Deadline: None

Abstract: This rule establishes procedures for air carriers to apply for direct compensation authorized by the Air Transportation Safety and System Stabilization Act of 2001. The rule governs the distribution of $1.775 billion of authorized funds.

Timetable:

Action	Date	FR Cite
Final Rule; Request for Comments	10/29/01	66 FR 54616
Final Rule Effective	10/29/01	
Comment Period End	11/13/01	
NPRM	01/02/02	67 FR 263
Final Rule	01/02/02	67 FR 250
Final Rule Effective	01/02/02	
NPRM Comment Period End	01/16/02	
Final Rule; Amendment	02/01/02	67 FR 4899
Final Rule Effective	02/01/02	
Final Action	08/20/02	67 FR 54058
Final Action Effective	08/20/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Randall Bennett, Acting Director, Office of Aviation Analysis, Department of Transportation, Office of the Secretary, X-50, 400 Seventh Street SW., Washington, DC 20590
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Email: randall.bennett@ost.dot.gov

RIN: 2105–AD06

1956. SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF TRANSPORTATION

Priority: Info./Admin./Other

Legal Authority: 5 USC 301; 5 USC 7301; 5 USC 7353

CFR Citation: 5 CFR 6100

Legal Deadline: Final, Statutory, November 16, 2001.

Abstract: This rule amends the Supplemental Standards of Ethical Conduct for Employees of the Department of Transportation. The amendment adds authority to waive the general prohibition against Federal Aviation Administration employees holding stock or other securities in airline or aircraft manufacturing companies or suppliers of aircraft parts. The exercise of this waiver authority will be conditioned in each case upon determination that employee conduct will not result in an appearance of misuse of position or loss of impartiality.

Timetable:

Action	Date	FR Cite
Final Rule	12/03/01	66 FR 60131
Final Rule Effective	12/03/01	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William R. Register, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-9161

RIN: 2105–AD08

1957. REPORTING PROHIBITED COMMUNICATIONS

Priority: Info./Admin./Other

Legal Authority: 49 USC 401, 411, 413. 415, 417, 419, 421, 449, 461, 463, 465

CFR Citation: 49 CFR 300

Legal Deadline: None

Abstract: The proposed amendment to 14 CFR 300.3, dealing with the reporting of prohibited communications, would update that section in order to reflect the Department's conversion to an electronic docket management system (DMS). The proposed changes apply to procedures already in place thereby omitting obsolete references, and would make section 300.3 consistent with the rest of the DOT's regulations already taking DMS into account.

Timetable:

Action	Date	FR Cite
Final Rule	05/06/02	67 FR 30324
Final Action Effective	05/06/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Colleen Hanley, Attorney Advisor, Department of Transportation, Office of the Secretary, Room 10118, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-2509
Fax: 202 366-9188
Email: colleen.hanley@ost.dot.gov

RIN: 2105–AD10

1958. • PROCEDURES FOR NONEVIDENTIAL ALCOHOL SCREENING DEVICES PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 102, 301, 322, 5331, 20140, 31306, 45101

CFR Citation: 49 CFR 40

Legal Deadline: None

Abstract: This rule will establish procedures for use of an alcohol screening device that differs from other nonevidential alcohol screening devices recognized in part 40 of the regulations.

Timetable:

Action	Date	FR Cite
Final Rule	10/01/02	67 FR 61521
Final Action Effective	10/31/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local

Agency Contact: Jim L Swart, Drug and Alcohol policy Advisor, Department of Transportation, Office of the Secretary, Room 10403, 400 7th Street SW, Washington, DC 20590
Phone: 202 366-6369
Fax: 202 366-3897
Email: jim.swart@ost.dot.gov

RIN: 2105–AD13

1959. • PUBLIC AVAILABILITY OF INFORMATION; MAINTENANCE OF AND ACCESS TO RECORDS PERTAINING TO INDIVIDUALS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552; 31 USC 9701; 49 USC 322; EO 12600

CFR Citation: 49 CFR 7; 49 CFR 10

Legal Deadline: None

Abstract: This rule would amend DOT regulations implementing the Freedom of Information Act and the Privacy Act to reflect establishment within DOT of the Transportation Security Administration

Timetable:

Action	Date	FR Cite
Final Action	08/26/02	67 FR 54746
Final Action Effective	08/26/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert I. Ross, Office of General Counsel, C-10, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-9156
Fax: 202 366-9170
Email: bob.ross@ost.dot.gov

RIN: 2105–AD15

1960. • +WITHDRAWAL OF PROPOSED RULEMAKING ACTIONS

Priority: Other Significant

Legal Authority: 49 USC 1324; 49 USC 1371; 42 USC 6102; PL 96-354; 49 USC 1371-1372; 49 USC 1386; 49 USC 1302; 49 USC 45106; 49 USC 1324; 49 USC 1371-1374; 49 USC 1381; 49 USC 1386; 49 USC 1481-1482; 49 USC 101; 49 USC 102; 49 USC 301-302; 49 USC 322; 49 USC 5331; 49 USC 20140; 49 USC 31306; 49 USC 45101

CFR Citation: 14 CFR 121,207, 208, 221, 250, 253, and 256; 14 CFR 302, 380, 389, and 399; 49 CFR 27, 37, 40, 219, 376, and 382; 49 CFR 653, and 654

Legal Deadline: None

Abstract: This document withdraws a number of notices of proposed rulemakings (NPRMs) issued by the Department of Transportation and the Civil Aeronautics Board that have been superseded by more recent rulemakings or other actions that make the proposed actions no longer necessary or appropriate. This withdrawal is significant because several of the NPRMs were significant.

Timetable:

Action	Date	FR Cite
Notice of Withdrawal	10/03/02	67 FR 61996

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: This document withdraws RIN numbers 2105-AA45, 2105-AA40, 2105-AA78, 2105-AA88, 2105-AA82, 2105-AA84, 2105-AB50, 2105-AB71, 2105-AC06, and 2105-AC50.

Agency Contact: Jennifer Abdul-Wali, Transportation Specialist, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-6322
Fax: 202 366-9313
Email: jennifer.abdul-wali@ost.dot.gov

RIN: 2105–AD16

Department of Transportation (DOT)
Transportation Security Administration (TSA)

Proposed Rule Stage

1961. • PROTECTION OF SENSITIVE SECURITY INFORMATION IN INFORMATION CIRCULARS FOR NONAVIATION MODES OF TRANSPORTATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 114; 49 USC 5103; 49 USC 40119; 49 USC 44901 to 44907; 49 USC 44913 to 44914; 49 USC 44916 to 44918; 49 USC 44935 to 44936; 49 USC 44942; 49 USC 46105

CFR Citation: 49 CFR 1520

Legal Deadline: None

Abstract: TSA is proposing to amend its regulation governing the protection of sensitive security information (SSI) in order to require persons operating in various nonaviation modes of transportation to safeguard information about security concerns that TSA disseminates to those persons in the form of Information Circulars (ICs). This will facilitate the dissemination of ICs to entities and individuals in nonaviation sectors of transportation by bringing them within the regulatory framework governing the protection of ICs from disclosure. Recipients of ICs will be required to restrict disclosure of and access to their contents to persons with an operational need to know. Persons subject to the SSI regulation that fail to protect ICs in accordance with the regulation's requirements will be subject to civil penalties and other enforcement action by TSA.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: Brandon B. Straus, Associate Chief Counsel for Regulations, Department of Transportation, Transportation Security Administration, TSA-2, Chief Counsel, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493-1224
Fax: 202 493-1266
Email: brandon.straus@tsa.dot.gov

RIN: 2110–AA07

DOT—TSA

Proposed Rule Stage

1962. • +FINGERPRINT-BASED CRIMINAL HISTORY RECORDS CHECKS: ESCORTED ACCESS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 40101 et seq (PL 107-71)

CFR Citation: 49 CFR 1542; 49 CFR 1544

Legal Deadline: None

Abstract: This action will address criminal history background checks for individuals who regularly have escorted access to secured areas of an airport.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Christine Beyer, Attorney, Regulations Division, Department of Transportation, Transportation Security Administration, TSA-2, Chief Counsel, 400 Seventh Street SW, Washington, DC 20590
Phone: 202 493-1340
Fax: 202 493-1741
Email: christine.beyer@tsa.dot.gov

RIN: 2110–AA08

1963. • +PROTECTION OF SENSITIVE SECURITY INFORMATION FOR ALL MODES OF TRANSPORTATION

Priority: Other Significant

Legal Authority: 49 USC 114; 49 USC 40119; 49 USC 44901 to 44907; 49 USC 44913 to 44914; 49 USC 44916 to 44918; 49 USC 44935 to 44936; 49 USC 46105

CFR Citation: 49 CFR 1520

Legal Deadline: None

Abstract: TSA is proposing to amend its regulation governing the protection of sensitive security information (SSI) to expand the regulation's coverage to security information related to non-aviation modes of transportation. The current regulation covers information primarily related to aviation security. The proposed rule will make several revisions to the regulation. In addition, in order to implement its new statutory authority to protect sensitive security information in all modes of transportation, TSA will amend the SSI regulation to specifically cover information in all modes regulated by the Department of Transportation and relevant entities in those modes that may create and receive SSI.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Brandon B. Straus, Associate Chief Counsel for Regulations, Department of Transportation, Transportation Security Administration, TSA-2, Chief Counsel, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493-1224
Fax: 202 493-1266
Email: brandon.straus@tsa.dot.gov

RIN: 2110–AA10

Department of Transportation (DOT)
Transportation Security Administration (TSA)

Final Rule Stage

1964. +CIVIL AVIATION SECURITY RULES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 40101 et seq (PL 107-71)

CFR Citation: 14 CFR 91; 14 CFR 107 to 109; 14 CFR 121; 14 CFR 129; 14 CFR 135; 14 CFR 139; 14 CFR 191; 49 CFR 1500 to 1550

Legal Deadline: Final, Statutory, February 17, 2002.

Abstract: This action transfers the FAA security rules to the Transportation Security Administration.

Timetable:

Action	Date	FR Cite
Final Rule Effective	02/17/02	
Final Rule	02/22/02	67 FR 8340
Final Rule Comment Period End	03/25/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

URL For More Information: http://www.tsa.gov/laws__regs/gov__index.shtm

Agency Contact: Mardi Ruth Thompson, Acting Deputy Chief Counsel for Regulations, Department of Transportation, Transportation Security Administration, TSA-2, Chief Counsel, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493-1227
Fax: 202 493-1266
Email: mardi.thompson@tsa.dot.gov

RIN: 2110–AA03

1965. +SECURITY PROGRAMS FOR AIRCRAFT WEIGHING 12,500 POUNDS OR MORE

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 114; 49 USC 5103; 49 USC 40119; 49 USC 44901 to 44907; 49 USC 44913 to 44914; 49 USC 44916 to 44918; 49 USC 44935 to 44936; 49 USC 44942; 49 USC 46105

CFR Citation: 49 CFR 1540; 49 CFR 1544

Legal Deadline: Final, Statutory, February 17, 2002.

Abstract: This action requires operators of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more to implement a Transportation Security Administration approved security program.

Timetable:

Action	Date	FR Cite
Final Rule	02/22/02	67 FR 8205

DOT—TSA

Final Rule Stage

Action	Date	FR Cite
Final Rule Comment Period End	04/23/02	
Final Rule Effective	06/24/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: The TSA will develop the final security program after affected operators have an opportunity to comment on it. The TSA will publish a notice in the Federal Register when this occurs.

URL For More Information: http://www.tsa.gov/laws__regs/gov__index.shtm

Agency Contact: Christine Beyer, Attorney, Regulations Division, Department of Transportation, Transportation Security Administration, TSA-2, Chief Counsel, 400 Seventh Street SW, Washington, DC 20590
Phone: 202 493-1340
Fax: 202 493-1741
Email: christine.beyer@tsa.dot.gov

RIN: 2110–AA04

1966. • +PRIVATE CHARTER SECURITY RULES

Priority: Other Significant

Legal Authority: 49 USC 114; 49 USC 5102; 49 USC 40119; 49 USC 44901 to 44907; 49 USC 44913 to 44914; 49 USC 44916 to 44918; 49 USC 44935 to 44936; 49 USC 44942; 49 USC 46105

CFR Citation: 49 CFR 1540; 49 CFR 1544

Legal Deadline: None

Abstract: This rule amends the rules that apply to private charter aircraft. Private charter aircraft with a maximum certificated takeoff weight of 95,000 pounds or more will now be required to ensure that passengers and their accessible property are screened prior to boarding.

Timetable:

Action	Date	FR Cite
Final Rule	06/19/02	67 FR 41635
Final Rule Comment Period End	07/19/02	
Final Rule Effective	08/19/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: The TSA will develop the final security program after affected operators have an opportunity to comment on it. The TSA will publish a notice in the Federal Register when this occurs.

URL For More Information: http://www.tsa.gov/laws__regs/gov__index.shtm

Agency Contact: Lon M Siro, Aviation Security Operations Specialist, Department of Transportation, Transportation Security Administration, TSA-7-500, Air Carrier Operations Division, Building 10A, Room 325, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-9661
Fax: 202 267-5359
Email: lon.siro@faa.gov

RIN: 2110–AA05

1967. • +SECURITY THREAT ASSESSMENTS FOR FEDERAL AVIATION ADMINISTRATION CERTIFICATE HOLDERS AND APPLICANTS

Priority: Other Significant

Legal Authority: 49 USC 114; 49 USC 5102; 49 USC 40119 to 44907; 49 USC 44913 to 44914; 49 USC 44916 to 44918; 49 USC 44935 to 44936; 49 USC 44942; 49 USC 46105

CFR Citation: 49 CFR 1540

Legal Deadline: None

Abstract: This action provides the process by which the Transportation Security Administration (TSA) will notify a holder of, or an applicant for, a Federal Aviation Administration (FAA) certificate, and the FAA, if the TSA has determined that the certificate holder or applicant poses a security threat. This process, in a normal case, offers the certificate holder the opportunity to respond to an initial notification.

Timetable:

Action	Date	FR Cite
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Brandon B. Straus, Associate Chief Counsel for Regulations, Department of Transportation, Transportation Security Administration, TSA-2, Chief Counsel, 400 Seventh Street SW., Washington, DC 20590
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Fax: 202 493-1266
Email: brandon.straus@tsa.dot.gov

Related RIN: Related To 2120-AH84

RIN: 2110–AA14

Department of Transportation (DOT)
Transportation Security Administration (TSA)

Long-Term Actions

1968. +IMPOSITION AND COLLECTION OF PASSENGER CIVIL AVIATION SECURITY SERVICE FEES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 44940

CFR Citation: 49 CFR 1510

Legal Deadline: None

Abstract: The Transportation Security Agency announces the imposition of a security service fee in the amount of $2.50 per emplanement on passengers of domestic and foreign carriers in air transportation, foreign air transportation, and intrastate air transportation originating in the US.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/31/01	66 FR 67698
Notice Information Collection	01/31/02	67 FR 4866

Action	Date	FR Cite
Notice Information Collection	02/19/02	67 FR 7582
Interim Final Rule Comment Period End	03/01/02	
Comment Period Reopened	03/28/02	67 FR 14879
Comment Period End	04/30/02	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

URL For More Information:
http://www.tsa.gov/laws_regs/gov_index.shtm

Agency Contact: Randall Fiertz, Acting Chief TSA Revenue, Department of Transportation, Transportation Security Administration, TSA-14, Associate US for Finance and Administration, 400 Seventh Street SW, Washington, DC 20590
Phone: 202 385-1209
Email: randall.fiertz@tsa.dot.gov

RIN: 2110–AA01

1969. +AVIATION SECURITY INFRASTRUCTURE FEES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 44901; 49 USC 44940

CFR Citation: 49 CFR 1511

Legal Deadline: None

Abstract: TSA announces the imposition of an air carrier fee each fiscal year on air carriers and foreign air carriers in air transportation, foreign air transportation, and intrastate air transportation. The fee is necessary to help defray TSA's costs of providing U.S. civil aviation security services.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	02/18/02	
Interim Final Rule	02/20/02	67 FR 7926
Correction	02/22/02	67 FR 8579
Notice Information Collection	02/28/02	67 FR 9355
Interim Final Rule Comment Period End	03/18/02	
Comment Period Extended	03/20/02	67 FR 12954
Comment Period End	04/02/02	
Notice Guidance App A	05/01/02	67 FR 21582
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

URL For More Information:
http://www.tsa.gov/laws_regs/gov_index.shtm

Agency Contact: Randall Fiertz, Acting Chief TSA Revenue, Department of Transportation, Transportation Security Administration, TSA-14, Associate US for Finance and Administration, 400 Seventh Street SW, Washington, DC 20590
Phone: 202 385-1209
Email: randall.fiertz@tsa.dot.gov

RIN: 2110–AA02

1970. • INVESTIGATIVE AND ENFORCEMENT PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 6002; 28 USC 2461 (note); 49 USC 114; 49 USC 40113 to 40114; 49 USC 40119; 49 USC 44901 to 44907; 49 USC 46101 to 46107; 49 USC 46109 to 46110; 49 USC 46301; 49 USC 46305; 49 USC 46311; 49 USC 46313 to 46314

CFR Citation: 49 CFR 1503

Legal Deadline: None

Abstract: This rulemaking establishes the interim investigative and enforcement procedural rules that the TSA will use to address statutory and regulatory violations. It adopts, in large part, the Federal Aviation Administration's (FAA) investigative and enforcement procedures.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/08/02	67 FR 51480
Interim Final Rule Effective	08/08/02	
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information:
http://www.tsa.gov/laws_regs/gov_index.shtm

Agency Contact: Quang Nguyen, Attorney, Enforcement Division, Department of Transportation, Transportation Security Administration, TSA-2, Chief Counsel, 400 Seventh Street SW, Washington, DC 20590
Phone: 202 493-1233
Fax: 202 493-1266
Email: quang.nguyen@tsa.dot.gov

RIN: 2110–AA09

Department of Transportation (DOT)
U.S. Coast Guard (USCG)

Proposed Rule Stage

1971. CLAIMS PROCEDURES UNDER THE OIL POLLUTION ACT OF 1990 (CGD 91-035)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 2713; 33 USC 2714

CFR Citation: 33 CFR 136

Legal Deadline: None

Abstract: This rulemaking implements section 1013 (Claims Procedures) and section 1014 (Designation of Source and Advertisement) of the Oil Pollution Act of 1990. The Interim Rule provides the requirements for the filing of claims for uncompensated removal costs or damages resulting from the discharge of oil, for the designation of the sources of the discharge, and for the advertisement of where claims are to be filed. The interim rule also included the processing of natural resource damage (NRD) claims. The NRD claims, however, were not processed until September 25, 1997, when the Department of Justice issued an opinion that the Oil Spill Liability Trust Fund (OSLTF) is available without further appropriation to pay trustee NRD claims under the general claims provisions of the Oil Pollution Act of 1990, 33 U.S.C. 2712(a)(4). Release of the more comprehensive NPRM has been delayed while the Coast Guard gained experience on NRD claims, as well as other OPA damages. This rulemaking supports the Coast Guard's strategic goal of protection of natural resources.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/12/92	57 FR 36314
Correction	09/09/92	57 FR 41104
Interim Final Rule Comment Period End	12/10/92	
NPRM	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: None

URL For More Information:
http://dms.dot.gov

URL For Public Comments:
http://dms.dot.gov

Agency Contact: Linda Burdette, Project Manager, National Pollution Fund Center, Department of Transportation, U.S. Coast Guard, Suite 1000, 4200 Wilson Boulevard, Arlington, VA 22203-1804
Phone: 202 493-6831

RIN: 2115–AD90

1972. +VESSEL AND FACILITY RESPONSE PLANS FOR OIL: 2003 REMOVAL EQUIPMENT REQUIREMENTS AND ALTERNATIVE TECHNOLOGY REVISIONS (USCG-2001-8661)

Priority: Other Significant

Legal Authority: 33 USC 1321

CFR Citation: 33 CFR 153; 33 CFR 154; 33 CFR 155

Legal Deadline: None

Abstract: This rulemaking will propose changes to the Vessel Response Plans and Marine Transportation Facility Response Plans, and revise the language in the Code of Federal Regulations concerning methods and procedures for removing oil from coastal waters. This rulemaking supports the Coast Guard's strategic goal of protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	10/11/02	67 FR 63331
NPRM Comment Period End	01/09/03	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Pond Project Manager, G-MOR-2, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001
Phone: 202 267-6603

RIN: 2115–AG05

1973. +POST CASUALTY DRUG AND ALCOHOL TESTING (USCG-2001-8773)

Priority: Other Significant

Legal Authority: PL 105-383, sec 304

CFR Citation: 46 CFR 4

Legal Deadline: None

Abstract: This project will revise the requirements for chemical testing following a serious marine incident. The revision will establish procedures to ensure that alcohol testing be conducted within 2 hours of a serious marine incident, as required by the Coast Guard Authorization Act of 1998. The rule will also make additional minor procedural changes to the part. This rule supports the Coast Guard strategic goal of maritime safety.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Governmental Jurisdictions, Businesses

Government Levels Affected: Undetermined

Agency Contact: Robert C. Schoening, Project Manager, G-MOA-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0684

RIN: 2115–AG07

1974. +VESSEL DOCUMENTATION: LEASE FINANCING FOR VESSELS ENGAGED IN THE COASTWISE TRADE (USCG-2001-8825)

Priority: Other Significant

Legal Authority: 46 USC 12106; 46 USC 12120; 46 USC 12122

CFR Citation: 46 CFR 67

Legal Deadline: None

Abstract: This rulemaking will amend the regulations on the documentation of vessels engaged in the coastwise trade. It is a spin-off of Vessel Documentation (USCG 1998-4784) RIN 2115-AF71. These proposals address statutory amendments eliminating certain barriers to seeking foreign financing by lease for U.S. flag vessels. These proposals would clarify the information needed to determine the eligibility of a vessel financed in this manner for a coastwise endorsement. This rulemaking supports the Coast Guard's strategic goal of maritime mobility.

Timetable:

Action	Date	FR Cite
NPRM	05/02/01	66 FR 21902
NPRM Comment Period Extended to 09/04/2001	05/29/01	66 FR 34603
NPRM Comment Period End	07/02/01	
NPRM Comment Period Reopened	12/14/01	66 FR 64784
Reopened Comment Period End	01/28/02	
Supplemental NPRM	08/09/02	67 FR 51804
Second NPRM Comment Period End	10/08/02	
Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

URL For More Information:
http://dms.dot.gov

URL For Public Comments:
http://dms.dot.gov

Agency Contact: Patricia Williams, Project Manager, NVDC, Department of Transportation, U.S. Coast Guard, National Vessel Documentation Center, 792 T.J. Jackson Drive, Falling Waters, WV 25419
Phone: 304 271-2506

Related RIN: Related To 2115-AF71

RIN: 2115–AG08

1975. TERRITORIAL SEAS, NAVIGABLE WATERS, AND JURISDICTION (USCG-2001-9044)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 2103; 46 USC 3306 to 3307; 46 USC 3703; 49 USC 1804; 49 USC 1655; 14 USC 633; 14 USC 80; ...

CFR Citation: 33 CFR 2; 33 CFR 26; 33 CFR 62; 33 CFR 64; 33 CFR 95; 33 CFR 100; 33 CFR 165

Legal Deadline: None

Abstract: This project will make substantive changes to current regulations, but only to the extent required to conform to the congressionally mandated changes in the laws administered and enforced by the Coast Guard as listed in section 301 of the Coast Guard Authorization Act of 1998 (a. Ports and Waterways Safety Act, b. subtitle II of title 46). We will redefine the "territorial sea," "navigable waters of the United States," "high seas," "contiguous zone," and "exclusive economic zone" to clarify the varying definitions of those terms under different laws administered and enforced by the Coast Guard, as well as relevant Presidential proclamations. This project supports the Coast Guard's strategic goal of marine safety.

Timetable:

Action	Date	FR Cite
NPRM	08/14/02	67 FR 52906
Correction to NPRM	09/18/02	67 FR 58752
NPRM Comment Period End	11/12/02	
Final Rule	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: Alex Weller, Project Manager (G-LMI), Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0097

RIN: 2115–AG13

1976. UPDATE OF RULES ON AIDS TO NAVIGATION AFFECTING BUOYS, SOUND SIGNALS, INTERNATIONAL RULES AT SEA, COMMUNICATIONS PROCEDURES, AND LARGE NAVIGATIONAL BUOYS (USCG-2001-10714)

Priority: Info./Admin./Other

Legal Authority: 14 USC 81; 33 USC 1231; 43 USC 1333; 46 USC 4302

CFR Citation: 33 CFR 60-76

Legal Deadline: None

Abstract: The Assistant Commandant for Operations proposes to revise 33 CFR subchapter C — Aids to Navigation: parts 60 through 76. In these parts, he would update technical information concerning buoys, sound signals, international rules at sea, communications procedures, and Large Navigational Buoys (LNBs). The Assistant Commandant for Operations would also rewrite these parts using plain language. The proposed changes would update the existing rules both to reflect current practices and to make them easier to understand.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Daniel Andrusiak, Project Manager, G-OPN-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0327

RIN: 2115–AG25

1977. MARINE EVENTS: PERMIT PROCEDURES (USCG-2001-10713)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1233

CFR Citation: 33 CFR 100

Legal Deadline: None

Abstract: This rule would revise Coast Guard procedures to expedite approval of organized marine events conducted on the navigable waters of the United States. These new procedures would establish general permits with nationwide or regional applicability and would encourage sponsors to submit information to the Coast Guard by electronic means. These new procedures would reduce the paperwork burden on both the public and the Coast Guard without adversely affecting vessel safety or the environment in the event areas. This project supports the Coast Guard's strategic goals of maritime safety and maritime mobility.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Carlton Perry, Project Manager, G-OPB-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0979

RIN: 2115–AG26

1978. DRAWBRIDGE OPERATIONS REGULATIONS; REVISIONS (USCG-2001-10881)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 499

CFR Citation: 33 CFR 117

Legal Deadline: None

Abstract: The Coast Guard is proposing changes to its drawbridge regulations that provide guidance for general requirements relating to the use and operation of drawbridges. This project will create a new deviation for short-term closures, provide Coast Guard Eight District Bridges Administration St. Louis with a general bridge closure requirement during the winter season when navigation is reduced and eliminate any unnecessary distinction between commercial and recreational vessels in subpart B. It will also make changes throughout part 117 to remove redundancies, make amendments and technical corrections, and remove special bridge regulations that are no longer functional. Corrections and clarification of these requirements will help to streamline the drawbridge regulatory process and should shorten and simplify part 117 for the reader. This rulemaking supports the Coast Guard's strategic goal of maritime mobility.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: J. Christopher Jaufmann, Project Manager (G-OPT-1), Department of Transportation, U.S. Coast Guard, U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0377

RIN: 2115–AG27

1979. RATES FOR PILOTAGE ON THE GREAT LAKES (USCG-2002-11288)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 9303(f)

CFR Citation: 46 CFR 401

Legal Deadline: None

Abstract: The Coast Guard conducts an annual review of the Great Lakes Pilotage based on the "Ratemaking Analyses and Methodology" published in the Federal Register on May 9, 1996. Depending on the results of this review, the Coast Guard can make rate adjustments in accordance with 46 CFR part 404, App. A, step 7; or, if the director determines that pilotage rates are within a reasonable range of their target, make no adjustments. This rulemaking may take place annually. It supports the Coast Guard's strategic goal of maritime mobility.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Lawler, Project Manager, G-M-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20590-0001
Phone: 202 267-1401

Related RIN: Related To 2115-AG46

RIN: 2115–AG30

1980. WEARING OF PERSONAL FLOTATION DEVICES BY PERSONS OPERATING OR RIDING ON PERSONAL WATERCRAFT OR BEING TOWED BEHIND RECREATIONAL VESSELS (USCG-2002-11421)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 4302

CFR Citation: 33 CFR 175

Legal Deadline: None

Abstract: This rule would require every person to wear a personal flotation device (PFD)—also called a lifejacket—while operating or riding on personal watercraft (PWC) or being towed behind a recreational vessel. On waters subject to the jurisdiction of the United States within any State or territory, the rule would not preempt any requirement established for such persons as specified by that State. The rule would set a Federal requirement on waters subject to the jurisdiction of the United States within any State or territory. The new requirement would reduce the number of persons who drown while participating in these activities.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Carlton Perry, Project Manager, G-OPB-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0979

RIN: 2115–AG32

1981. +AUTOMATIC IDENTIFICATION SYSTEM CARRIAGE REQUIREMENT (USCG-2002-11721)

Priority: Other Significant

Legal Authority: 33 USC 1223(a)

CFR Citation: 33 CFR 161; 33 CFR 164; 33 CFR 165

Legal Deadline: None

Abstract: This project will implement an Automatic Identification System (AIS) carriage requirement for SOLAS and non-SOLAS vessels operating on designated waters (i.e., Vessel Traffic Service [VTS] areas, coastal zones, inland waterways and other major waterways). AIS automatically exchanges navigational and positional information in ship-to-ship and ship-to-shore-to-ship modes. Traditional VTS have been based on radar and video surveillance and rely on voice communications by VHF-FM radio; AIS-based VTS will use this technology to perform the majority of both surveillance and information exchange. AIS unburdens mariners from VTS reporting, reduces the cost of operating a VTS and eliminates much of the potentially distracting voice communications associated with traditional VTS operations. Establishing an AIS-based VTS will meet clear Congressional direction and maritime community desires to improve port efficiency and vessel traffic safety (particularly on the Lower Mississippi River area) and will enhance maritime domain awareness. This rulemaking supports the Coast Guard's strategic goals of safety, protection of natural resources and mobility. At the Department of Transportation level, this rulemaking supports the goals of safety, mobility and protection of the human and natural environment. Additionally, AIS will be a key link between maritime transportation and DOT's Intelligent Transportation System Initiative and is a major element within the Marine Transportation System Initiative. This rulemaking is significant because of significant public interest in this proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Additional Information: This proposed rule is expected to reduce the number of collisions, allisions and groundings; the number of tank vessel groundings and collisions resulting from inadequate passage or port transit planning; the number of and/or impact of waterway impediments; crewmember deaths/injuries on U.S. commercial vessels; the risk of major loss of life on passenger vessels; the amount of oil discharged into the marine environment; and the amount of chemicals entering the environment.

Agency Contact: Jorge Arroyo, Project Manager, G-MWV, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-6277

Related RIN: Split From 2115-AF75

RIN: 2115–AG36

1982. • PROTECTION FOR WHISTLEBLOWERS IN COAST GUARD (USCG-2002-13016)

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 1034

CFR Citation: 33 CFR 53

Legal Deadline: None

DOT—USCG — **Proposed Rule Stage**

Abstract: This rulemaking would amend 33 CFR part 53 both by extending coverage to uniformed members of the Coast Guard who make "protected" communications either to an organization within the Department of Transportation concerned with audit, inspection, or law enforcement, or to any other person or organization (including any person or organization in the chain of command) designated pursuant to regulations to receive such communications, and by extending the nature of protected communications to comprise complaints (a) of violations of law or regulation prohibiting sexual harassment, (b) or unlawful discrimination, and (c) of gross mismanagement.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: CDR Peter Ganser, Project Manager, G-LGL, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-1553

RIN: 2115–AG49

1983. • +PENALTIES FOR NON-SUBMISSION OF BALLAST WATER MANAGEMENT REPORTS (USCG-2002-13147)

Priority: Other Significant

Legal Authority: 16 USC 4711

CFR Citation: 33 CFR 151

Legal Deadline: None

Abstract: This rulemaking would set penalties for failure to submit ballast water management reports, as required in subpart D of 33 CFR 151. It supports the Coast Guard's strategic goals of protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: LCDR M. Pat McKeown, Project Manager, G-MSO, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0500

RIN: 2115–AG50

Department of Transportation (DOT)
U.S. Coast Guard (USCG) — **Final Rule Stage**

1984. REPORTING MARINE CASUALTIES (USCG-2000-6927)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 6101; 33 USC 1901 et seq

CFR Citation: 33 CFR 151; 46 CFR 4

Legal Deadline: None

Abstract: This action would add to the definition of a reportable marine casualty, "significant harm to the environment." Some casualty reporting requirements are extended to include foreign tank vessels operating in U.S. waters, including the Exclusive Economic Zone. This project supports the Coast Guard's Marine Safety and Environmental Protection program's goal to reduce the consequence of pollution incidents and further supports the Coast Guard's strategic goal of protection of natural resources.

Timetable:

Action	Date	FR Cite
Request for Comments	12/20/94	59 FR 65522
Comment Period End	02/20/95	
NPRM	11/02/00	65 FR 65808
Supplemental NPRM	07/12/01	66 FR 36530
Supplemental NPRM Comment Period End	09/10/01	
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: This rulemaking was formerly docketed under CGD 91-216. In the 2002 Spring Agenda, the next action listed ("To Be Withdrawn") was in error. This rulemaking remains active and we propose to publish a final rule in November 2002.

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: LCDR Charles Barbee, Project Manager, G-MOA-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001
Phone: 202 267-1418

RIN: 2115–AD98

1985. HANDLING OF EXPLOSIVES OR OTHER DANGEROUS CARGOES WITHIN OR CONTIGUOUS TO WATERFRONT FACILITIES (USCG-1998-4302)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1231

CFR Citation: 33 CFR 126

Legal Deadline: None

Abstract: This rulemaking was intended to revise existing regulations covering waterfront facilities that handle dangerous cargoes. The present regulations are outdated and do not reflect improved safety procedures and modern transportation methods, such as the use of containers. Where appropriate, the regulations incorporate industry standards regarding the handling of hazardous materials at waterfront facilities. This project supports the Vice Commandant's workload reduction initiative and also supports the Coast Guard's strategic goal of maritime safety by reducing deaths and injuries in the maritime industry.

Timetable:

Action	Date	FR Cite
ANPRM	01/13/93	58 FR 4127
ANPRM Comment Period End	04/13/93	
NPRM	10/29/98	63 FR 57964
NPRM Comment Period End	12/28/98	
NPRM Comment Period Reopened	01/12/99	64 FR 1770
NPRM Comment Period End	03/01/99	
Final Rule	11/00/02	

DOT—USCG — **Final Rule Stage**

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: An independent study has been completed and incorporated with comments from the public in the preparation of the rulemaking. Old Docket Number CGD 92-026.

The NPRM was published under the more precisely descriptive title of Handling of Class I (Explosive) Materials or Other Dangerous Cargoes Within or Contiguous to Waterfront Facilities.

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: Michael A. Jendrossek, Project Manager, G-MSO-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001
Phone: 202 267-0836

RIN: 2115–AE22

1986. LICENSING AND MANNING FOR OFFICERS OF TOWING VESSELS (USCG 1999-6224)

Priority: Substantive, Nonsignificant

Legal Authority: 14 USC 633; 44 USC 3507; 46 USC 2103; 46 USC 7101; 46 USC 7106; 46 USC 7107; 46 USC 7701

CFR Citation: 46 CFR 10; 46 CFR 15

Legal Deadline: None

Abstract: This rulemaking is necessary as part of an overall initiative by the Coast Guard to improve navigational safety for towing vessels. It will help ensure that the mariner piloting a towing vessel has the proper training and qualifications to handle the tug and tow. It has introduced a third level of license where there have been only two. Each level requires greater experience and proficiency than the one below. This rulemaking also introduces a requirement for demonstration of proficiency as a prerequisite to being issued an original license. This will be in addition to the current requirements for sea service, physical examination, testing for drugs, and successful testing for competence. This project supports the Coast Guard's strategic goal of maritime safety.

Timetable:

Action	Date	FR Cite
NPRM	06/19/96	61 FR 31332
Correction	07/11/96	61 FR 36608
Correction	08/07/96	61 FR 41208
Notice of Meeting	08/26/96	61 FR 43720
NPRM Comment Period End	10/17/96	
Notice of Intent	12/18/96	61 FR 66642
SNPRM	10/27/97	62 FR 55548
Public Meeting Memphis 02/11/98	01/21/98	63 FR 3070
Public Meeting Houston 02/13/98	01/21/98	63 FR 3070
Public Meeting Boston 02/18/98	01/21/98	63 FR 3070
Public Meeting Seattle 02/24/98	01/21/98	63 FR 3070
SNPRM Comment Period End	02/24/98	
Interim Final Rule	11/19/99	64 FR 63213
Interim Final Rule Comment Period End	02/17/00	
Interim Final Rule	10/27/00	65 FR 64388
Notice Concerning Review	02/09/01	66 FR 9673
Interim Final Rule	04/26/01	66 FR 20931
Interim Final Rule Effective	05/21/01	
Notice of Public Meeting	07/11/01	66 FR 36223
Interim Final Rule Comment Period End	07/25/01	
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Old Docket Number CGD 94-055.

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: LCDR Luke Harden, Project Manager, G-MSO-1, Department of Transportation, U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593-0001
Phone: 202 267-1838

RIN: 2115–AF23

1987. LIMITED SERVICE DOMESTIC VOYAGE LOAD LINES FOR RIVER BARGES ON LAKE MICHIGAN (USCG-1998-4623)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 51

CFR Citation: 46 CFR 45

Legal Deadline: None

Abstract: This regulatory project will allow certain unmanned dry cargo river barges operating on Lake Michigan to be exempted from the normal Great Lakes load line requirements. Instead, they may qualify for a conditional load line exemption, or for a limited service domestic voyage load line (depending on which Lake Michigan route). This rulemaking pertains to two specific routes: Chicago to Milwaukee, and Chicago to Muskegon. This will allow certain non-hazardous cargoes originating at inland river ports to be transported as far as Milwaukee and Muskegon by river barge, thereby benefiting from the relatively low cost per ton-mile of river barge transportation. Compliance is not mandatory other than for those river barge operators who voluntarily seek to expand their operations onto these routes. This rulemaking supports the Coast Guard's strategic goal of marine safety.

Timetable:

Action	Date	FR Cite
NPRM	11/02/98	63 FR 58679
NPRM Comment Period Extended	12/28/98	63 FR 71411
Comment Period End	01/04/99	
NPRM Comment Period End	03/04/99	
Interim Final Rule	04/23/02	67 FR 19685
Interim Final Rule Effective	05/23/02	
Interim Final Rule--Announcement of Effective Date of COI Sections	06/20/02	67 FR 41847
Collection of Information Sections Effective	06/20/02	
Interim Final Rule Comment Period End	10/23/02	
Final Rule	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: Old Docket Number CGD 95-015.

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: Thomas Jordan, Project Manager, G-MSE-2, Department

of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-2988

RIN: 2115–AF38

1988. OUTER CONTINENTAL SHELF ACTIVITIES (USCG-1998-3868)

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1333(d)(1); 43 USC 1348(c); 43 USC 1356

CFR Citation: 33 CFR 140 to 147

Legal Deadline: None

Abstract: This project would revise the regulations on Outer Continental Shelf (OCS) activities to: add new requirements for fixed OCS facilities for lifesaving, fire protection, training, hazardous materials used as stores, and accommodation spaces; require foreign vessels engaged in OCS activities to comply with requirements similar to those imposed on U.S. vessels similarly engaged; and allow all mobile inland drilling units (MIDUs) to operate on the OCS out to a defined boundary line if they meet requirements for lifesaving, firefighting, and operations similar to those for fixed OCS facilities. This project would affect the owners and operators of facilities and vessels engaged in offshore activities associated with the exploration for, development of, or production of the resources of the OCS. The preliminary estimate of costs imposed by these amendments varies according to the unit. The Coast Guard is consulting with the Minerals Management Service, part of the Department of the Interior. It supports the Coast Guard's strategic goal of marine safety and environmental protection.

Timetable:

Action	Date	FR Cite
Request for Comments	06/27/95	60 FR 33185
Comment Period End	09/25/95	
NPRM	12/07/99	64 FR 68416
NPRM Correction	02/22/00	65 FR 8671
NPRM Comment Period Extended	03/16/00	65 FR 14226
NPRM Comment Period Extended	06/30/00	65 FR 40559
NPRM Comment Period End	11/30/00	
Final Rule	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: The Notice of Request for Comments published June 27, 1995, was assigned Coast Guard docket number 95-016. Following the request for comments this docket was terminated. This project continues under docket USCG-1998-3868 and RIN 2115-AF39.

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: James Magill, Project Manager, G-MSO-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-1082

RIN: 2115–AF39

1989. FIRE-SUPPRESSION SYSTEMS AND VOYAGE PLANNING FOR TOWING VESSELS (USCG 2000-6931)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 3719; 46 USC 4102

CFR Citation: 33 CFR 157; 46 CFR 27

Legal Deadline: NPRM, Statutory, October 1, 1997.

Abstract: The Coast Guard proposes requirements for (a) total-flooding or other installed systems for suppressing fires on existing towing vessels and (b) voyage-planning. The purpose of this rulemaking is to reduce oil spills from single-hull, non-self-propelled barges. Drifting oil barges have run aground and spilled their cargoes, causing considerable damage to marine life and the environment. This project was developed in cooperation with the Towing Safety Advisory Committee. It supports the Coast Guard's strategic goals of maritime safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	10/06/97	62 FR 52057
Comment Period End	01/05/98	
Comment Period Reopened	02/27/98	63 FR 9980
Notice of Public Meeting	02/27/98	63 FR 9980
Comment Period End	05/11/98	
SNPRM	11/08/00	65 FR 66941
Notice of Public Meeting	12/28/00	65 FR 82303
SNPRM Comment Period End	03/08/01	
SNPRM; Notice of Mtg. & Second Reopening Comment Period	07/11/01	66 FR 36223
Second Reopened Comment Period End	09/15/01	
Interim Rule	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: This rulemaking was formerly titled "Towing Vessel Safety (Fire Suppression Systems and Other Measures for Towing Vessels)" (CGD 97-064). It originally proposed requirements for three sets of issues relative to the safety of towing vessel safety issues: Fire-suppression systems and other measures; control measures for tank barges; and fire-protection measures for towing vessels. The latter two components have developed into separate rulemakings: Emergency Control Measures for Tank Barges (USCG 1998-4443) (RIN 2115-AF65) and Fire Protection Measures for Towing Vessels (USCG 1998-4445) (RIN 2115-AF66).

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: Randall Eberly, Project Manager, G-MSE-4, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-1861

Related RIN: Split From 2115-AF65, Split From 2115-AF66

RIN: 2115–AF53

1990. +SALVAGE AND MARINE FIREFIGHTING REQUIREMENTS; VESSEL RESPONSE PLANS FOR OIL (USCG-1998-3417)

Regulatory Plan: This entry is Seq. No. 103 in part II of this issue of the Federal Register.

RIN: 2115–AF60

1991. DEEPWATER PORTS (USCG-1998-3884)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1503

CFR Citation: 33 CFR 148 to 150

Legal Deadline: None

Abstract: The purpose of this rulemaking is to update the Deepwater Port Regulations. Section 502 of the Coast Guard Authorization Act of 1996 necessitates changes to the current Deepwater Port regulations. These regulations were developed in the 1970s when there were no deepwater ports in the United States. The Coast Guard will be revising the regulations to: remove from the regulations, and place in the license conditions, those requirements which belong in the license conditions; and remove from the regulations those things which can be addressed in an operations manual. The Coast Guard will also consider revising the regulations to address technological advancements and operational experience gained over the last 20 years. In accordance with section 610 of the Regulatory Flexibility Act, the Coast Guard is also reviewing these regulations for their impacts on small businesses and the potential to reduce any such impacts. Public comment on small business impacts is specifically requested. This rulemaking will encompass a complete review of the Deepwater Port Regulations. This project supports the Coast Guard's strategic goals of maritime safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
ANPRM	08/29/97	62 FR 45774
ANPRM Comment Period End	10/13/97	
NPRM	05/30/02	67 FR 37920
NPRM Comment Period End	07/29/02	
NPRM Comment Period Reopened	08/19/02	67 FR 53764
Second NPRM Comment Period End	09/18/02	
Final Rule	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: ANPRM was published under Docket Number USCG-1998-4441. This docket number is replaced with USCG-1998-3884.

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: CDR Mark Prescott, Project Manager, G-MSO, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0225

RIN: 2115–AF63

1992. ANCHORAGE GROUND; SAFETY ZONE; SPEED LIMIT; TONGASS NARROWS AND KETCHIKAN, AK (CGD17-99-002)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 471; 33 USC 1231; 33 USC 2071

CFR Citation: 33 CFR 162; 33 CFR 165; 33 CFR 110

Legal Deadline: None

Abstract: This rulemaking would grant an exemption from the present 7-knot speed limit in Tongass Narrows, AK, for float plane take-off and landing and vessels 23 feet in length or less. The geographic area for the speed limit would be expanded. A safety zone used for cruise ship anchorages would be redesignated as an anchorage area to reflect actual usage of the area and transiting vessels would be required to move quickly and directly through the anchorage, without rapid course changes, to increase safety. This project supports the Coast Guard's strategic goal of marine safety.

Timetable:

Action	Date	FR Cite
NPRM	03/25/99	64 FR 14414
NPRM Comment Period End	05/10/99	
Interim Final Rule	06/02/99	64 FR 29554
Interim Final Rule Comment Period End	11/30/99	
Interim Final Rule	04/07/00	65 FR 18242
Interim Final Rule Comment Period End	10/31/00	
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: LT Kenneth Kostecki, Project Manager, Department of Transportation, U.S. Coast Guard, 2030 Sealevel Drive, Suite 203, Ketchikan, AK 99901
Phone: 907 225-4496

RIN: 2115–AF81

1993. TRAINING AND QUALIFICATIONS FOR PERSONNEL ON PASSENGER SHIPS (USCG 1999-5610)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 2103; 46 USC ch 71; 46 USC ch 73

CFR Citation: 46 CFR 12; 46 CFR 15; 46 CFR 10

Legal Deadline: None

Abstract: This project will implement new amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), that impose requirements for training and qualifications of masters, officers, engineers, and "ratings." The following training courses are mandatory for the personnel on passenger ships other than roll-on, roll-off, carrying more than 12 passengers operating on international voyages: (1) Crisis Management and Human Behavior; (2) Crowd Management; (3) Special Safety; (4) Passenger Safety, with special attention given to disabled persons and others needing assistance; and (5) Special Familiarization. This rulemaking supports the Coast Guard's strategic goals of maritime safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	06/15/00	65 FR 37507
NPRM Comment Period End	09/13/00	
Interim Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: Mark Gould, Project Manager, G-MSO-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001

DOT—USCG

Final Rule Stage

Phone: 202 267-6890

RIN: 2115–AF83

1994. ALTERNATE HULL EXAMINATION PROGRAM FOR CERTAIN PASSENGER VESSELS, AND UNDERWATER SURVEYS FOR PASSENGER, NAUTICAL SCHOOL, AND SAILING SCHOOL VESSELS (USCG-2000-6858)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 3305; 46 USC 3308

CFR Citation: 46 CFR 71; 46 CFR 115; 46 CFR 167; 46 CFR 169; 46 CFR 176

Legal Deadline: None

Abstract: This regulatory project will establish hull examination alternatives and a drydock extension policy for qualifying passenger vessels that operate exclusively on benign, low-risk environments, and that have limited time under way. In addition, the proposed regulations would provide the option of alternating drydock examinations with underwater surveys for passenger vessels. This project supports the Coast Guard's strategic Marine Safety, Security and Environmental Protection Program's goal of mobility by facilitating commerce and eliminating interruptions and impediments to the economical movement of goods and people.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/29/02	67 FR 21062
Interim Final Rule Effective	06/28/02	
Interim Final Rule Comment Period End	07/29/02	
Interim Final Rule; announcement of effective date	08/28/02	67 FR 55162
Collection of Information Interim Rule Sections Effective	08/28/02	
Final Rule	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: This project is a split-off of RIN 2115-AF73. The split was a result of comments received under the NPRM that was published under RIN 2115-AF73, 11/15/1999, 64 FR 62018, entitled Frequency of Inspection Alternate Hull Exam Program for Certain Passenger Vessels, and Underwater Surveys for Passenger, Nautical School, and Sailing School Vessels.

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: Martin Walker, Project Manager, G-MOC, Department of Transportation, U.S. Coast Guard, 2100 Second St. SW,, Washington, DC 20593-0001
Phone: 202 267-1047

Related RIN: Split From 2115-AF73

RIN: 2115–AF95

1995. ALLOWING ALTERNATIVE SOURCE TO INCANDESCENT LIGHTS, AND ESTABLISHING STANDARDS FOR NEW LIGHTS, IN PRIVATE AIDS TO NAVIGATION (USCG-2000-7466)

Priority: Substantive, Nonsignificant

Legal Authority: 14 USC 83; 14 USC 85; 43 USC 1333

CFR Citation: 33 CFR 66

Legal Deadline: None

Abstract: The Coast Guard is seeking to let the lighting industry and owners of private aids to navigation take advantage of a recent improvement in technology—one that enables the use of lanterns based on Light-Emitting Diodes (LEDs), which would reduce the consumption of power and simplify the maintenance of the aids. The use of these lanterns should stimulate competition in the industry, reduce maintenance and therefore operating costs, and allow the marking of the aids in a desirable manner. This rule supports the Coast Guard's strategic goals of maritime safety and maritime mobility.

Timetable:

Action	Date	FR Cite
Direct Final Rule	10/04/00	65 FR 59124
Direct Final Rule Withdrawn	01/02/01	66 FR 8
NPRM	06/24/02	67 FR 42512
NPRM Comment Period End	08/23/02	
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: The Coast Guard withdrew the direct final rule because it received an adverse comment. The Coast Guard published an NPRM to solicit additional comments from the public.

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: Daniel Andrusiak, Project Manager, G-OPN-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0327

RIN: 2115–AF98

1996. WEARING OF PERSONAL FLOTATION DEVICES (PFDS) BY CERTAIN CHILDREN ABOARD RECREATIONAL VESSELS (USCG-2000-8589)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 4302

CFR Citation: 33 CFR 175, subpart B

Legal Deadline: None

Abstract: This rule requires every child under the age of 13 to wear a personal flotation device (PFD)—also called a lifejacket—while aboard a recreational vessel under way and while not below decks or in an enclosed cabin. It adopts, on waters subject to the jurisdiction of the United States within any State, any requirement for the wearing of a PFD established by that State for a child under an age specified by that State. The rule also sets, on waters subject to the jurisdiction of the United States within any State lacking any such requirement, its own, comparable requirements. This project supports the Coast Guard's strategic goal of maritime safety.

Timetable:

Action	Date	FR Cite
NPRM	05/01/01	66 FR 21717
NPRM Comment Period End	08/29/01	
Final Rule	02/27/02	67 FR 8881
Notice of Withdrawal of Final Rule	03/27/02	67 FR 19643
Withdrawal of Final Rule Effective	03/27/02	
Interim Final Rule	06/24/02	67 FR 42488
Interim Final Rule Comment Period End	08/23/02	

DOT—USCG

Final Rule Stage

Action	Date	FR Cite
Interim Final Rule	12/23/02	
Effective		
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: After publication of the final rule, the State Boating Law Administrator (BLA) of Ohio raised a concern about possible adverse impacts due to Federal enforcement of PFD-wearing requirements on vessels not subject to State requirements because of vessels' lengths. The Coast Guard withdrew the Final Rule before its effective date and later published an Interim Rule that allows public comment on a new alternative, which removes the potential differences between Federal and State requirements.

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: Carlton Perry, Project Manager, G-OPB-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0979

RIN: 2115–AG04

1997. FEDERAL REQUIREMENTS FOR PROPELLER INJURY AVOIDANCE MEASURES (USCG 2001-10163)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 4302

CFR Citation: 33 CFR 175

Legal Deadline: None

Abstract: This rule would establish Federal requirements for non-planing recreational houseboats equipped with propeller driven propulsion located aft of the transom. This rule would require owners of these non-planing recreational houseboats to install either one or two propulsion unit measures (a propeller guard or a jet pump drive) or employ three combined measures (use of an ignition cut-off switch, where installed, and install a swim ladder interlock device and an aft-visibility device). Owners of rental houseboats would have to also install an ignition cut-off switch, if not already installed. These requirements would reduce the number of boaters who are seriously or fatally injured when struck by the propeller of a non-planing recreational houseboat. This rulemaking would implement recommendations made by the National Boating Safety Advisory Council. It supports the Coast Guard's strategic goal of marine safety.

Timetable:

Action	Date	FR Cite
NPRM	12/10/01	66 FR 63645
NPRM Comment Period End	03/11/02	
NPRM Comment Period Extended	03/26/02	67 FR 13738
NPRM Comment Period End	05/11/02	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: Carlton Perry, Project Manager, G-OPB-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0979

Related RIN: Related To 2115-AF28

RIN: 2115–AG18

1998. SAFETY ZONES FOR OUTER CONTINENTAL SHELF FACILITIES IN THE GULF OF MEXICO (CGD08-01-025)

Priority: Substantive, Nonsignificant

Legal Authority: 14 USC 85; 33 USC 2071

CFR Citation: 33 CFR 147

Legal Deadline: None

Abstract: The Coast Guard proposes to establish safety zones around five petroleum and gas production facilities in the Outer Continental Shelf in the Gulf of Mexico. The four platforms and one moored spar buoy need to be protected from vessels operating outside the normal shipping channels and fairways. Placing safety zones around these facilities will significantly reduce the threat of allisions, oil spills and releases of natural gas. The proposed regulation would prevent all vessels from entering or remaining in specified areas around the platforms except for the following: an attending vessel; a vessel under 100 feet in length overall not engaged in towing; or a vessel authorized by the Eighth Coast Guard District Commander. The proposed safety zones are necessary to protect the safety of life, property and the environment and support the Coast Guard's strategic goals of marine safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	12/10/01	66 FR 63642
NPRM Comment Period End	02/08/02	
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: LT Karrie Trebbe, Department of Transportation, U.S. Coast Guard, Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130
Phone: 504 589-6271

RIN: 2115–AG22

1999. SAFETY ZONE FOR OUTER CONTINENTAL SHELF FACILITY IN THE GULF OF MEXICO (CGD08-01-043)

Priority: Substantive, Nonsignificant

Legal Authority: 14 USC 85; 43 USC 1333

CFR Citation: 33 CFR 147

Legal Deadline: None

Abstract: The Coast Guard proposes to establish a safety zone around a high-production, manned oil and natural gas facility in the Outer Continental Shelf in the Gulf of Mexico in Green Canyon 205A. The facility needs to be protected from vessels operating outside the normal shipping channels and fairways. Placing a safety zone around the facility will significantly reduce the threat of allisions, oil spills, and releases of natural gas. The proposed regulation would prevent all vessels from entering or remaining in specified areas around the facility except for the following: An attending vessel; a vessel under 100

feet in length overall not engaged in towing; or a vessel authorized by the Eighth Coast Guard District Commander. The proposed safety zone is necessary to protect life, property, and the environment and supports the Coast Guard's strategic goals of marine safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	04/02/02	67 FR 15505
NPRM Comment Period End	06/03/02	
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: LT Karrie Trebbe, Department of Transportation, U.S. Coast Guard, Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130
Phone: 504 589-6271

RIN: 2115–AG31

2000. NOTIFICATIONS OF ARRIVAL AND DEPARTURE IN PORTS OR PLACES IN THE UNITED STATES (USCG-2001-11865)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1223(a)(5); 33 USC 1226; 33 USC 1231

CFR Citation: 33 CFR 160

Legal Deadline: None

Abstract: The Coast Guard needs to permanently amend its regulations relating to the Notifications of Arrival (NOA) and Departure (NOD) requirements in 33 CFR part 160 to ensure port safety, security, and environmental protection as well as maintain the uninterrupted flow of commerce. Subsequent to the terrorist attacks of September 2001, we published an emergency temporary final rule (96-hour rule) amending the NOA and NOD requirements for commercial vessels bound for or departing from ports or places in the United States. The temporary final rule terminates on June 15, 2002. In this rulemaking we propose to make permanent most of the changes introduced by the temporary final rule.

Timetable:

Action	Date	FR Cite
NPRM	06/19/02	67 FR 41659
NPRM Comment Period End	08/19/02	
Final Rule	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: LT(Jg) Marcus Lines, Project Manager, G-MP, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001
Phone: 202 267-6854

Related RIN: Related To 2115-AG47

RIN: 2115–AG35

2001. • GREAT LAKES MARITIME ACADEMY — ELIGIBILITY OF CERTAIN GRADUATES FOR UNRESTRICTED THIRD-MATE LICENSES (USCG-2002-13213)

Priority: Substantive, Nonsignificant

Legal Authority: 14 USC 633; 31 USC 9701; 46 USC 2101; 46 USC 2103; 46 USC 2110; ...

CFR Citation: 46 CFR 10

Legal Deadline: None

Abstract: This rulemaking removes a restriction on the eligibility of some Great Lakes Maritime Academy graduates for ocean vessel third mate licensing. It furthers the Coast Guard's strategic goals of maritime safety, protection of natural resources, and maritime mobility.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mr. Donald Kerlin, Department of Transportation, U.S. Coast Guard, National Maritime Center (NMCd), 4200 Wilson Blvd., Suite 600, Arlington, VA 22203-1804
Phone: 202 493-1006

RIN: 2115–AG43

2002. • TRAFFIC SEPARATION SCHEMES: IN THE STRAIT OF JUAN DE FUCA AND ITS APPROACHES; IN PUGET SOUND AND ITS APPROACHES; IN HARO STRAIT, BOUNDARY PASS, AND IN THE STRAIT OF GEORGIA (USCG-2002-12702)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1223

CFR Citation: 33 CFR 167

Legal Deadline: None

Abstract: This rulemaking will propose amendments to the existing traffic separation schemes: In the Strait of Juan de Fuca and its approaches; In Puget Sound and its approaches; in Haro Strait, Boundary Pass, and in the Strait of Georgia. These amendments are approved by the International Maritime Organization and have been validated by several recent vessel routing studies. With the amendments in place, commercial vessels would be routed farther offshore when entering or departing the TSS, providing an extra margin of safety and environmental protection in the Olympic Coast National Marine Sanctuary and adjacent waters. This rulemaking will incorporate the modified TSS into the Code of Federal Regulations. This project supports the Coast Guard's strategic goals of safety and protecting the marine environment.

Timetable:

Action	Date	FR Cite
NPRM	08/27/02	67 FR 54981
NPRM Comment Period End	10/28/02	
Final Rule	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Detweiler, Project Manager G-MWV, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001
Phone: 202 267-0574

RIN: 2115–AG45

2003. • TEMPORARY REQUIREMENTS FOR NOTIFICATION OF ARRIVAL IN U.S. PORTS (USCG-2001-10689)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1223; 33 USC 1226; 33 USC 1231; 49 CFR 1.46

CFR Citation: 33 CFR 160

Legal Deadline: None

Abstract: To ensure public safety and security and to ensure the uninterrupted flow of commerce, the Coast Guard is extending its temporary rule changing notification requirements for vessels bound for or departing from U.S. ports. This rulemaking will lengthen the usual notification period from 24 to 96 hours prior to port entry, require submission of reports to a central national clearinghouse, suspend exemptions for vessels operating in compliance with the Automated Mutual Assistance Vessel Rescue System, for some vessels operating on the Great Lakes, and vessels on scheduled routes, and require information about persons onboard these vessels. This rulemaking is necessary to ensure receipt of comprehensive and timely information on vessels entering U.S. ports. The extension of the temporary rule will allow the Coast Guard to complete its rulemaking to permanently revise the notice of arrival requirement. This rulemaking supports the Coast Guard's strategic goal of maritime security.

Timetable:

Action	Date	FR Cite
NPRM--Change of Effective Period of Temporary Rule	07/23/02	67 FR 48073
NPRM Comment Period End	08/22/02	
Temporary Rule; Extending Effective Period to 03/31/2003	08/28/02	67 FR 55115
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: The temporary rule this rulemaking proposed to extend is assigned RIN 2115-AG24. The following four documents have been published in the Federal Register under RIN 2115-AG24: A temporary final rule (TFR) effective from October 4, 2001 to June 15, 2002 (67 FR 37682, May 30, 2002), two TFR corrections (66 FR 57877, November 19, 2001; and 67 FR 2571, January 18, 2002)), and a TFR that extended the effective period through September 30, 2002 (67 FR 37682, May 30, 2002). Because the first TFR was treated as a completed action, RIN 2115-AG24 did not appear in the Agenda.

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: LT(Jg) Marcus Lines, Project Manager, G-MP, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001
Phone: 202 267-6854

Related RIN: Related To 2115-AG35, Related To 2115-AG24

RIN: 2115–AG47

Department of Transportation (DOT)
U.S. Coast Guard (USCG)

Long-Term Actions

2004. SAFETY AND SECURITY ZONE REGULATIONS

Priority: Routine and Frequent

Legal Authority: 33 USC 1225; 33 USC 1226; 33 USC 1231; 33 USC 1233; 50 USC 191

CFR Citation: 33 CFR 100; 33 CFR 165

Legal Deadline: None

Abstract: The Coast Guard uses these routine and frequent regulations to establish control of access to areas to ensure the safety or security of events, vessels, waterfront facilities, or individuals. Many of these zones are of short duration, ranging from a few hours to a few days, and all are geographically limited in area. Safety zones are established for events such as fireworks displays, high speed races, or the transit of dangerous cargoes such as explosives or liquefied petroleum gas. Security zones are established for Presidential or Vice Presidential visits, high profile events such as the Olympics, controversial events such as transport of spent nuclear fuel, and in response to the threat of terrorist attacks. Safety and security zones are promulgated by Captains of the Port or District Commanders. These routine and frequent rulemakings support the Coast Guard's strategic goals of marine safety, mobility, maritime security, and national defense. Total actions expected 10/01/2002 to 10/01/2003: 300.

Timetable:

Action	Date	FR Cite
Actions Will Continue Through	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Routine and frequent rulemakings issued under this RIN will have individual docket numbers.

Agency Contact: Ed LaRue, Project Manager, G-MWV, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0416

RIN: 2115–AA97

2005. SPECIAL ANCHORAGE AREAS/ANCHORAGE GROUNDS REGULATIONS

Priority: Routine and Frequent

Legal Authority: 33 USC 471; 33 USC 2030; 33 USC 2035; 33 USC 2071

CFR Citation: 33 CFR 110

Legal Deadline: None

Abstract: These routine and frequent regulations are established where maritime and commercial interests require them for safety of navigation. Special anchorage areas are areas in which vessels of not more than 65 feet may anchor without displaying the required lights or sound signals. These special anchorage areas are limited geographically, and depending upon the purpose, establish both long- and short-term anchorages. Anchorage grounds are limited geographically, delineate the types and size of vessel which may use the anchorage, and may place time and other restrictions on its use. Special anchorage areas and anchorage grounds are promulgated by District Commanders in response to requests from appropriate officials.

These routine and frequent rulemakings support the Coast Guard's strategic goal of marine safety. Total actions expected 10/01/2002 to 10/01/2003: 10.

Timetable:

Action	Date	FR Cite
Actions Will Continue Through	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Routine and frequent rulemakings issued under this RIN will have individual docket numbers.

Agency Contact: Ed LaRue, Project Manager, G-MWV, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0416

RIN: 2115–AA98

2006. +DISCHARGE-REMOVAL EQUIPMENT FOR VESSELS CARRYING OIL (CGD 90-068)

Priority: Other Significant

Legal Authority: 33 USC 1321

CFR Citation: 33 CFR 155

Legal Deadline: Final, Statutory, August 18, 1992.

Abstract: The Oil Pollution Act of 1990 directed the President by August 18, 1992, to require periodic inspection of discharge-removal equipment to ensure that it is available in an emergency, and to require carriage of discharge-removal equipment by vessels operating in the navigable waters of the United States and carrying oil or hazardous substances. This action implemented those provisions. This project supports the Coast Guard's strategic goal of protection of natural resources. This project is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	08/30/91	56 FR 43534
ANPRM Comment Period End	10/16/91	
NPRM	09/29/92	57 FR 44912
NPRM Comment Period Extended	10/26/92	57 FR 48489
NPRM Comment Period End	10/29/92	
NPRM Comment Period Extended	11/16/92	
Interim Final Rule	12/22/93	58 FR 67988
Interim Final Rule Effective	01/21/94	
Correction	01/26/94	59 FR 3749
Interim Final Rule Comment Period End	02/22/94	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: David A. DuPont, Project Manager, G-MSR-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001
Phone: 202 267-0971

RIN: 2115–AD66

2007. +ESCORT VESSELS FOR CERTAIN TANKERS (CGD 91-202)

Priority: Other Significant

Legal Authority: 46 USC 3703

CFR Citation: 33 CFR 168

Legal Deadline: None

Abstract: This rulemaking developed standards which implement section 4116(c) of the Oil Pollution Act of 1990. It addressed the areas of Prince William and Puget Sounds and requires a two-vessel escort for single-hull tankers greater than 5,000 gross tons. On November 1, 1994, the crash stop criteria were suspended because of industry concerns about meeting the criteria. On February 1, 1995, a notice of availability of a two-part study assessing the capability of escort tugs to control disabled tankers in Prince William Sound was published. This project supports the Coast Guard's Marine Safety and Environmental Protection program's goal to reduce the amount of oil discharged into the marine environment and the Coast Guard's strategic goal of protecting natural resources. This project is considered significant because of substantial public and State government interest.

Timetable:

Action	Date	FR Cite
NPRM	07/07/92	57 FR 30058
NPRM Comment Period End	09/08/92	
NPRM Comment Period Reopened	03/26/93	58 FR 16391
Notice of Public Hearings	04/29/93	58 FR 25959
Correction	05/19/93	58 FR 29157
NPRM Comment Period End	06/24/93	
Notice of Availability--Part 1 of Study	01/10/94	59 FR 1411
Final Rule	08/19/94	59 FR 42962
Final Rule--Suspension of Crash-Stop Provision	11/01/94	59 FR 54519
Final Rule Effective	11/17/94	
Final Rule--Partial Suspension Effective	11/17/94	
Notice of Availability--Part II of Study	02/01/95	60 FR 6345
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: We are in the process of deciding how to respond to the comments we have received. The Coast Guard, in cooperation with the Prince William Sound Regional Citizens Advisory Council, PWS Tanker Association, and Alaska Pipeline, conducted a disabled-tanker towing study. The results of the study were considered in this rulemaking. Tug escort requirements in areas other than Prince William Sound and Puget Sound are addressed in the project listed under RIN 2115-AE56.

ANALYSIS: Regulatory Evaluation, 08/19/94, 59 FR 42962

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: LT Sam Stevens, Project Manager, G-MSE-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001
Phone: 202 267-0173

Related RIN: Related To 2115-AE10

RIN: 2115–AE10

2008. STATE ACCESS TO THE OIL SPILL LIABILITY TRUST FUND (CGD 92-014)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 2712

CFR Citation: 33 CFR 133

Legal Deadline: NPRM, Statutory, February 18, 1991.

Abstract: Pursuant to the Oil Pollution Act of 1990 (OPA 90), this action specifies how the authority to obligate the pollution trust fund for oil spill response and cleanup efforts and to enter into agreements with the States will be exercised. The Coast Guard is evaluating the performance of the interim rule. This rulemaking supports the Coast Guard's strategic goal of the protection of natural resources.

Timetable:

Action	Date	FR Cite
Interim Rule	11/13/92	57 FR 53968
Interim Final Rule Comment Period End	02/11/93	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: Rulemaking was downgraded from Other Significant to Substantive Nonsignificant in the 11/14/94 Agenda; however, due to administrative error, the document erroneously reflected Other Significant in subsequent Agenda entries.

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: Allen R. Thuring, Project Manager, National Pollution Funds Center, Department of Transportation, U.S. Coast Guard, Suite 1000, 4200 Wilson Boulevard, Arlington, VA 22203-1804
Phone: 202 493-6801

RIN: 2115–AE19

2009. REGATTA AND MARINE PARADE REGULATIONS

Priority: Routine and Frequent

Legal Authority: 33 USC 1233

CFR Citation: 33 CFR 100

Legal Deadline: None

Abstract: These routine and frequent special local regulations ensure the safety of participants and spectators during regattas and marine parades. The regulations or rules specify such controls as separate participant and spectator areas, separation schemes for watercraft in the area of the event, and temporary restrictions on waterways to accommodate the event. These rules are short term in nature, usually applying to a single event not exceeding 8 hours in duration, and usually encompassing only a small portion of a navigable waterway. These rules are promulgated by District Commanders in response to a request from an event-sponsoring organization. These routine and frequent rulemakings support the Coast Guard's strategic goals of maritime safety and maritime mobility of commercial and recreational vessel traffic. Total actions expected 10/01/2002 to 10/01/2003: 75.

Timetable:

Action	Date	FR Cite
Action Will Continue Through	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: Routine and frequent rulemakings issued under this RIN will have individual docket numbers.

Agency Contact: Carlton Perry, Project Manager, G-OPB-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0979

RIN: 2115–AE46

2010. DRAWBRIDGE REGULATIONS

Priority: Routine and Frequent

Legal Authority: 33 USC 499

CFR Citation: 33 CFR 117

Legal Deadline: None

Abstract: These routine and frequent regulations establish operating schedules, and notice requirements, for drawbridges across navigable waterways. Drawbridge regulations establish the permanent draw operation schedules for bridges and specify what notice mariners must give to request an opening. Short-term deviations from the permanent schedule may be issued for bridge repairs or to test the effectiveness of a proposed new opening schedule. Drawbridge regulations are promulgated by District Commanders usually at the request of the bridge owner or operator, or of local officials or local Coast Guard bridge administration officials. These routine and frequent rulemakings support the Coast Guard's strategic goals of maritime safety and maritime mobility of commercial and recreational vessel traffic. Total actions expected 10/01/2002 to 10/01/2003: 150.

Timetable:

Action	Date	FR Cite
Action Will Continue Through	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: None

Additional Information: Routine and frequent rulemakings issued under this RIN will have individual docket numbers.

Agency Contact: Alesia Steinberger, Project Manager, G-OPT-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-6215

RIN: 2115–AE47

2011. +ESCORT VESSELS IN CERTAIN U.S. WATERS (CGD 91-202A)

Priority: Other Significant

Legal Authority: 46 USC 3703

CFR Citation: 33 CFR 168

Legal Deadline: None

Abstract: This regulation would designate those U.S. waters, other than Prince William Sound and Puget Sound, where tankers and other vessels must be escorted by a towing vessel or other appropriate vessel. This project supports the Coast Guard's Marine Safety and Environmental Protection program's goal to reduce the amount of oil discharged into the marine environment and the Coast Guard's strategic goal of protecting natural resources. This action is considered significant because of substantial public and State government interest.

Timetable:

Action	Date	FR Cite
ANPRM	04/27/93	58 FR 25766
Comment Period End	06/28/93	
Request for Comments	12/21/94	59 FR 65741
Comment Period End	02/13/95	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Additional Information: We are in the process of deciding how to respond to the comments we have received. This rulemaking is a companion to 2115-AE10, which concerns Prince William Sound and Puget Sound.

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: LT Sam Stevens, Project Manager, G-MSE-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001
Phone: 202 267-0173

Related RIN: Related To 2115-AE10

RIN: 2115–AE56

2012. REGULATED NAVIGATION AREAS

Priority: Routine and Frequent

Legal Authority: 33 USC 1231; 50 USC 191

CFR Citation: 33 CFR 165

Legal Deadline: None

Abstract: These routine and frequent regulations establish operating requirements for vessels within specified geographic areas to ensure safety on the navigable waters where some special or unusual circumstance exists. Regulated navigation areas are limited areas in which the Coast Guard specifies operational or vessel restrictions such as vessel entry, movement or departure; and vessel size, speed, horsepower, or draft limitations. Regulated navigation areas are promulgated by District Commanders, usually at the request of Coast Guard marine safety or local maritime safety officials. These routine and frequent rulemakings support the Coast Guard's strategic goals of waterways management, marine safety, and maritime mobility. Total actions expected 10/01/2002 to 10/01/2003: 10.

Timetable:

Action	Date	FR Cite
Actions Will Continue Through	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Routine and frequent rulemakings issued under this RIN will have individual docket numbers.

Agency Contact: Ed LaRue, Project Manager, G-MWV, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0416

RIN: 2115–AE84

2013. +MARINE TRANSPORTATION-RELATED FACILITY RESPONSE PLANS FOR HAZARDOUS SUBSTANCES (USCG-1999-5705)

Priority: Other Significant

Legal Authority: 33 USC 1321(j); PL 101-380

CFR Citation: 33 CFR 154

Legal Deadline: None

Abstract: This project would implement provisions of the Oil Pollution Act of 1990 that require an owner or operator of a marine transportation-related facility transferring bulk hazardous substances to develop and operate in accordance with an approved response plan. The regulations would apply to marine transportation-related facilities that, because of their location, could cause harm to the environment by discharging a hazardous substance into or on the navigable waters or adjoining shoreline. A separate rulemaking, under RIN 2115-AE88, was developed in tandem with this rulemaking and addresses hazardous substances response plan requirements for tank vessels. This project supports the Coast Guard's strategic goals of maritime safety and protection of natural resources by reducing the amount of chemicals entering the environment, as well as reducing the consequence of pollution incidents. This action is considered significant because of substantial public and industry interest.

Timetable:

Action	Date	FR Cite
ANPRM	05/03/96	61 FR 20084
Notice of Public Hearings	07/03/96	61 FR 34775
ANPRM Comment Period End	09/03/96	
NPRM	03/31/00	65 FR 17416
NPRM Comment Period End	06/29/00	
Interim Final Rule	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Old Docket Number CGD 94-048. Public hearings regarding this rulemaking were held in Washington, DC, on July 30, 1996; Houston, TX, on August 5, 1996; and Houston, TX, on February 26 and 27, 1997. Public meetings for the NPRM were held in New Orleans, LA, on May 10 and 11, 2000.

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: LCDR Susan Klein, Project Manager, G-MOR, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-1983

Related RIN: Related To 2115-AE88

RIN: 2115–AE87

2014. +TANK VESSEL RESPONSE PLANS FOR HAZARDOUS SUBSTANCES (USCG-1998-4354)

Priority: Other Significant

Legal Authority: 33 USC 1231; 33 USC 1321(j); PL 101-380

CFR Citation: 33 CFR 155

Legal Deadline: None

Abstract: This project would implement provisions of the Oil Pollution Act of 1990 that require an owner or operator of a tank vessel carrying bulk hazardous substances to develop and operate in accordance with an approved response plan. The regulations would apply to vessels operating on the navigable waters or within the Exclusive Economic Zone (EEZ) of the United States that carry bulk hazardous substances. A separate rulemaking under RIN 2115-AE87 would address hazardous substances response plan requirements for marine transportation-related facilities. This project supports the Coast Guard's strategic goals of maritime safety and protection of natural resources by reducing the amount of chemicals entering the environment, as well as reducing the consequences of pollution incidents. This project is considered significant because of substantial public and industry interest.

Timetable:

Action	Date	FR Cite
ANPRM	05/03/96	61 FR 20084
Notice of Public Hearings	07/03/96	61 FR 34775
ANPRM Comment Period End	09/03/96	
NPRM	03/22/99	64 FR 13734
Notice of Public Hearing	06/15/99	64 FR 31994
NPRM Comment Period Extended	06/15/99	
NPRM Comment Period End	06/21/99	
NPRM Extended Comment Period End	08/30/99	
Interim Final Rule	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Old Docket Number CGD 94-032.

Public meetings regarding this rulemaking were held in Washington, DC, on July 30, 1996; Houston, TX, on August 5, 1996; and Houston, TX, on February 26 and 27, 1997. Public meetings for the NPRM were held in Houston, TX on August 12 and 13, 1999.

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: LCDR Susan Klein, Project Manager, G-MOR, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-1983

Related RIN: Related To 2115-AE87

RIN: 2115–AE88

2015. NUMBERING OF UNDOCUMENTED BARGES (USCG-1998-3798)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 12301

CFR Citation: 33 CFR 189

Legal Deadline: None

Abstract: Title 46 U.S.C. 12301, as amended by the Abandoned Barge Act of 1992, requires that all undocumented barges more than 100 gross tons operating on the navigable waters of the United States be numbered. This rulemaking would establish a numbering system for these barges. The numbering of undocumented barges will allow identification of owners of barges found abandoned and help prevent future marine pollution. This rulemaking supports the Coast Guard's strategic goal of protection of natural resources.

Timetable:

Action	Date	FR Cite
Request for Comments	10/18/94	59 FR 52646
Comment Period End	01/17/95	
ANPRM	07/06/98	63 FR 36384
ANPRM Comment Period End	11/03/98	
NPRM	01/11/01	66 FR 2385
NPRM Comment Period End	04/11/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Old Docket Number CGD 93-091. In the 2002 Spring Agenda we announced that we would be withdrawing this rulemaking but we are currently reevaluating that decision. We are in the process of deciding how to respond to the comments we have received.

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: Thomas Willis, Project Manager, National Vessel Documentation Center, Department of Transportation, U.S. Coast Guard, 792 T. J. Jackson Dr, Falling Waters, WV 25419-9502
Phone: 304 271-2506

RIN: 2115–AF13

2016. +IMPLEMENTATION OF THE 1995 AMENDMENTS TO THE INTERNATIONAL CONVENTION ON STANDARDS OF TRAINING, CERTIFICATION, AND WATCHKEEPING FOR SEAFARERS, 1978 (STCW) (CGD 95-062)

Priority: Other Significant

Legal Authority: 44 USC 3507; 46 USC 2103; 46 USC 7101; 46 USC 7107

CFR Citation: 46 CFR 10; 46 CFR 12; 46 CFR 15

Legal Deadline: None

Abstract: The International Maritime Organization (IMO) comprehensively amended the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), in 1995. The amendments came into force on February 1, 1997. This project implements them by revising current regulations to ensure that the United States complies with their requirements on: the training of merchant mariners, the documenting of their qualifications, and watch-standing and other arrangements aboard seagoing merchant ships of the United States. This project supports the Coast Guard's strategic goal of maritime safety. It also supports the goal of our directorate for Marine Safety and Environmental Protection for reducing deaths and injuries of crewmembers on domestic merchant vessels and eliminating substandard vessels from the navigable waters of the United States. This rulemaking is significant due to the potential impact on industry and the potential effect on international interests.

Timetable:

Action	Date	FR Cite
Notice of Meeting	08/02/95	60 FR 39306
Comment Period End	09/29/95	
Notice of Inquiry	11/13/95	60 FR 56970
Comment Period End	01/12/96	
NPRM	03/26/96	61 FR 13284
Notice of Public Meetings	04/08/96	61 FR 15438
Comment Period End	07/24/96	
Notice of Intent	02/04/97	62 FR 5197
Interim Rule	06/26/97	62 FR 34505
Interim Rule Effective	07/28/97	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Old Docket Number CGD 95-062.

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: Mark Gould, Project Manager, G-MSO-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-6890

RIN: 2115–AF26

2017. RULES OF PRACTICE, PROCEDURE, AND EVIDENCE FOR ADMINISTRATIVE PROCEEDINGS OF THE COAST GUARD (USCG 1998-3472)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 7701; 46 USC 7702; 33 USC 1321; 42 USC 9609

CFR Citation: 33 CFR 20; 46 CFR 5

Legal Deadline: None

Abstract: The Coast Guard maintains two separate sets of procedural rules: for administrative adjudication against merchant mariners' licenses, certificates of registry, and documents, and for the adjudication of class II civil penalties. The rules for suspension and revocation, contained in part 5 of title 46 of the Code of Federal Regulations (CFR), date from 1948 and are based on criminal procedure. The rules for class II civil penalties, contained in part 20 of title 33 of the CFR, date from 1994 and are based on the Model Rules of Administrative Procedure and on other modern rules for civil procedure. Neither set implements the authority of the Oil Pollution Act of 1990 (OPA 90), which provides for the temporary suspension of a license, certificate of registry, or document for up to 45 days without a hearing, in certain circumstances, and a hearing within 30 days of any such suspension. This rulemaking would consolidate all procedural rules for administrative adjudications for class II civil penalties, and allow the Coast Guard to promulgate regulations implementing the OPA 90 authority. This project supports the strategic goal of the Coast Guard to promote marine safety. We are in the process of deciding how to respond to comments.

Timetable:

Action	Date	FR Cite
NPRM	04/06/98	63 FR 16731
NPRM Comment Period End	05/06/98	
NPRM Comment Period Reopened	05/20/98	63 FR 27700
NPRM Comment Period End	06/19/98	
Interim Final Rule	05/24/99	64 FR 28054
Interim Final Rule Effective	06/23/99	
Interim Final Rule Correction	06/28/99	64 FR 34540
Interim Final Rule Comment Period End	07/23/99	
Interim Final Rule Comment Period Reopened	10/05/99	64 FR 53970
Interim Final Rule Comment Period End	04/03/00	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: This rulemaking revises in part the previous docket of CGD 94-101 (RIN 2115-AD94), which was terminated on December 20, 1995.

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: George Jordan, Project Manager, G-CJ, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-2940

Related RIN: Related To 2115-AD94

RIN: 2115–AF59

2018. COMMERCIAL DIVING OPERATIONS (USCG-1998-3786)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1509; 43 USC 1333; 46 USC 3306; 46 USC 3703; 46 USC 6101

CFR Citation: 46 CFR 197; 49 CFR 1.46

Legal Deadline: None

Abstract: This project involves reviewing and updating the commercial diving regulations, which are over 20 years old. A review of the commercial diving regulations is needed to determine what parts should be updated or changed based on the current standards of safety, technology, and industry practices and to evaluate and minimize any significant economic impact of the rules upon small entities. The project supports the Coast Guard Marine Safety, Security and Environmental Protection Program's goal to reduce deaths and injuries on U.S. commercial vessels and the Coast Guard's strategic goal of maritime safety.

Timetable:

Action	Date	FR Cite
ANPRM	06/26/98	63 FR 34840
ANPRM Comment Period Extended	09/23/98	63 FR 50848
ANPRM Comment Period End	11/09/98	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: Michael A. Jendrossek, Project Manager, G-MSO-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001
Phone: 202 267-0836

RIN: 2115–AF64

2019. +IMPROVEMENTS TO MARITIME SAFETY IN PUGET SOUND-AREA WATERS (USCG-1998-4501)

Priority: Other Significant

Legal Authority: 33 USC 1223 to 1224

CFR Citation: 33 CFR 1

Legal Deadline: None

Abstract: This rulemaking would promulgate measures to improve maritime safety in Puget Sound-Area waters including Puget Sound, the Strait of Juan de Fuca, passages around and through the San Juan Islands, and the Olympic Coast National Marine Sanctuary. Based on a determination by the Secretary of Transportation regarding the status of maritime safety in the Puget Sound area, the Coast Guard has initiated a comprehensive cost-benefit analysis to study the feasibility of implementing new safety measures, including extended tug escort requirements and a dedicated response vessel. Public input will help focus this cost-benefit analysis and develop any future proposed rules, if deemed necessary. This rulemaking supports the Coast Guard Marine Safety and Environmental Protection Program's goal to reduce the amount of oil discharged into the marine environment and the Coast Guard's strategic goal of protection of natural resources. This is a significant action due to substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	11/24/98	63 FR 64937
ANPRM Comment Period End	05/24/99	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: LT Sam Stevens, Project Manager, G-MSE-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001
Phone: 202 267-0173

RIN: 2115–AF68

2020. VESSEL TRAFFIC SERVICE LOWER MISSISSIPPI RIVER (USCG-1998-4399)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1223(a)

CFR Citation: 33 CFR 26; 33 CFR 161; 33 CFR 165

Legal Deadline: None

Abstract: This project proposes to establish a new Vessel Traffic Service (VTS) area in the Lower Mississippi River region. This Vessel Traffic Service Area (VTSA) will span from 20 miles north of Baton Rouge (mile 255 AHP) out to sea, including the South and Southwest Pass. As part of the VTSA, a VTS Special Area will be designated between mile 93.5 and 95 AHP. Unlike traditional VTSs, which are based on radar and video surveillance and rely on voice communications by VHF-FM radio, when fully operational VTS Lower Mississippi River will use Automatic Identification System transponder technology to perform the majority of both surveillance and information exchange. This rulemaking supports the Coast Guard's strategic goals of maritime safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	04/26/00	65 FR 24616
NPRM Comment Period End	07/25/00	
NPRM Comment Period Reopened	08/18/00	65 FR 50479
NPRM Comment Period End	12/01/00	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: This project was originally entitled "Vessel Traffic Service Lower Mississippi/Automatic Identification System Carriage Requirement." The VTS LMR will retain RIN 2115-AF75. The AIS carriage requirement will be developed in a separate rulemaking.

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: Jorge Arroyo, Project Manager, G-MWV, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-6277

Related RIN: Split From 2115-AG36

RIN: 2115–AF75

2021. CARGO SECURING ON VESSELS OPERATING IN U.S. WATERS (USCG-2000-7080)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 3306

CFR Citation: 33 CFR 97

Legal Deadline: None

Abstract: This rulemaking would amend the cargo stowage and securing rules for U.S. vessels operating in U.S. waters. In addition, it would amend rules to require cargo-securing manuals for U.S. or foreign vessels of 500 gross tons or more on international voyages. Its goal is to reduce hazardous material cargo losses from vessels in U.S. waters. It supports the Coast Guard's strategic goals of maritime safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	12/01/00	65 FR 75201
NPRM Comment Period End	03/01/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: This rulemaking is being returned to a long-term schedule. In the 2002 Spring agenda we announced we would be withdrawing this rulemaking but we are currently reevaluating that decision.

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: Michael A. Jendrossek, Project Manager, G-MSO-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001
Phone: 202 267-0836

RIN: 2115–AF97

2022. ELECTRONIC CHART DISPLAY AND INFORMATION SYSTEM (ECDIS) (USCG-2001-8826)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1223; 33 USC 1231; 46 USC 2103; 46 USC 3703; 46 USC 6101; 46 USC 8502

CFR Citation: 33 CFR 164

Legal Deadline: None

Abstract: This rulemaking would allow commercial vessels the option of using an IMO-approved Electronic Charting Display and Information System (ECDIS) as a primary means of navigation in U.S. waters instead of paper charts. Compliance with this rule would be optional; any vessel choosing not to use such an ECDIS must could continue to navigate using corrected and updated printed charts and publications. This regulation supports the Coast Guard's strategic goal of maritime safety.

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Timetable:

Action	Date	FR Cite
ANPRM	05/02/01	66 FR 21899
ANPRM Comment Period End	07/02/01	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: This rulemaking is being shifted onto a long-term schedule. In the 2002 Spring Agenda we announced that we would be withdrawing this rulemaking but we are currently reevaluating that decision.

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: LT Alan Blume, Project Manager, G-MWV-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0550

RIN: 2115–AG09

2023. +STANDARDS FOR LIVING ORGANISMS IN SHIPS' BALLAST WATER DISCHARGED IN U.S. WATERS (USCG-2001-10486)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 4711

CFR Citation: 33 CFR 151

Legal Deadline: None

Abstract: This rulemaking would add a performance standard (to 33 CFR part 151, subpart D) for all ballast water treatment methods being used as alternatives to midocean ballast water exchange. It supports the Coast Guard's strategic goals of marine safety and protection of natural resources. This project is significant due to high interest among several Federal and State agencies.

Timetable:

Action	Date	FR Cite
ANPRM	03/04/02	67 FR 9632
ANPRM Comment Period End	06/03/02	
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: Dr. Richard Everett, Project Manager, Department of Transportation, U.S. Coast Guard, Office of Operating & Env'tl. Stds. (G-MSO), 2100 Second Street SW, Washington, DC 20593
Phone: 202 267-2243

RIN: 2115–AG21

2024. +ALTERNATE TONNAGE CONVENTION: SMALL PASSENGER VESSELS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 14 USC 14104

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The referenced initiative is not a current rulemaking project and therefore we have not yet determined the USCG strategic goals that regulatory action would serve. We are considering whether to exercise the Coast Guard's discretionary authority to undertake rulemaking. Rulemaking would amend small passenger vessel regulations, retaining the tonnage thresholds based on measurement under 46 U.S.C. 14502, but adding alternate tonnage thresholds based on measurement under 46 U.S.C. 14302.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Peter D. Earekson, Project Manager, Marine Safety Center, Department of Transportation, U.S. Coast Guard, 400 7th Street SW, Washington, DC 20590-0001
Phone: 202 366-6502

RIN: 2115–AG29

2025. PORT SECURITY PLANS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Coast Guard is considering a project to update plans for port security. We are currently reviewing comments from the public workshop of January 2002 on maritime security (notice of meeting published December 17, 2001 (66 FR 65020) and notice of availability of workshop agenda published January 16, 2002 (67 FR 2271)). This project would support the Coast Guard's strategic goals of maritime security, maritime safety, protection of natural resources, and mobility.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: CDR David Scott, Project Manager, G-MP, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0971

RIN: 2115–AG37

2026. FACILITY SECURITY PLAN

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Coast Guard is considering a project to establish security plans for facilities other than passenger facilities. We are currently reviewing comments from the January 2002 public workshop on maritime security (notice of meeting published December 17, 2001 (66 FR 65020) and notice of workshop agenda published January 16, 2002 (67 FR 2271)). This project would be expected to support the Coast Guard strategic goals of maritime security, maritime safety, protection of natural resources, and mobility.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: LCDR John Farthing, G-MP, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-2420

RIN: 2115–AG38

2027. PASSENGER FACILITY SECURITY PLAN

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Coast Guard is considering a project to update passenger facility security plans. We are currently reviewing comments from the January 2002 public workshop on maritime security (notice of meeting published December 17, 2001 (66 FR 65020) and notice of workshop agenda published January 16, 2002 (67 FR 2271)). This project would be expected to support the Coast Guard strategic goals of maritime security, maritime safety, protection of natural resources, and mobility.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: LCDR John Farthing, G-MP, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-2420

RIN: 2115–AG39

2028. MARITIME SECURITY: PASSENGER VESSEL SECURITY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 33 USC 1231

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Coast Guard is considering a project to establish security plans for passenger vessels. We are currently reviewing comments from the January 2002 public workshop on maritime security (notice of meeting published December 17, 2001 (66 FR 65020) and notice of workshop agenda published January 16, 2002 (67 FR 2271)). This project would be expected to support the Coast Guard strategic goals of maritime security, maritime safety, protection of natural resources, and mobility.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: LCDR Stephen Shapiro, G-MPV, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001
Phone: 202 267-1005

RIN: 2115–AG40

2029. MARITIME SECURITY: HIGH CONSEQUENCE VESSELS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 33 USC 1231

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Coast Guard is considering a project to establish security plans for high consequence and other vessels. We are currently reviewing comments from the January 2002 public workshop on maritime security (notice of meeting published December 17, 2001 (66 FR 65020) and notice of workshop agenda published January 16, 2002 (67 FR 2271)). This project would be expected to support the Coast Guard strategic goals of maritime security, maritime safety, protection of natural resources, and mobility.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: LCDR Stephen Shapiro, G-MPV, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001
Phone: 202 267-1005

RIN: 2115–AG41

2030. IDENTIFICATION CREDENTIALS FOR MARITIME SECURITY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 46 USC 2103

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Coast Guard is considering a project to update standards and procedures for identifying people aboard vessels, and at ports and facilities on waterfronts. These standards and procedures might include checks of backgrounds for people in security-sensitive positions, but would take account of (and as far as possible be compatible with) efforts to the same effect from international bodies, other Federal agencies, and States.

The purpose of the project would be to deter terrorism. The project would support the Coast Guard's strategic goals of maritime security, maritime safety, protection of natural resources, and mobility.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Gerald P. Miante, Project Manager, G-MSE-3, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-2206

RIN: 2115–AG42

Department of Transportation (DOT)
U.S. Coast Guard (USCG)

Completed Actions

2031. +EMERGENCY RESPONSE PLANS FOR PASSENGER VESSELS (USCG-1998-3473)

Priority: Other Significant

Legal Authority: 14 USC 633; 33 USC 1221; 33 USC 1223; 33 USC 1224; 33 USC 1231; 33 USC 1232; 46 USC 3306

CFR Citation: 46 CFR 1; 46 CFR 7 to 10; 46 CFR 199

Legal Deadline: None

Abstract: This rulemaking would require owners or operators of high-capacity passenger vessels in domestic service to develop, maintain, and exercise emergency response plans. Such plans would establish a process that prevents injury and loss of life during collisions, allisions, groundings, fires, and other emergencies. They would address issues such as passenger egress, crew training, and available emergency resources both on a vessel and in a vessel's operating area. This rulemaking supports the Coast Guard's strategic goals of maritime safety and protection of natural resources. It is significant because of substantial public interest in passenger safety. This rule is being withdrawn so the Coast Guard can focus on new security projects.

Timetable:

Action	Date	FR Cite
ANPRM	02/26/98	63 FR 9916
ANPRM Comment Period End	06/28/98	
Withdrawn	08/26/02	67 FR 54759

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Undetermined

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: CDR Linda Fagan, Project Manager, G-MOC, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-2978

RIN: 2115–AF61

2032. SAFETY OF UNINSPECTED PASSENGER VESSELS UNDER THE PASSENGER VESSEL SAFETY ACT OF 1993 (USCG-1999-5040)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 2101; 46 USC 2113; 46 USC 3306; 46 USC 4105

CFR Citation: 46 CFR 15; 46 CFR 24 to 28; 46 CFR 70; 46 CFR 169; 46 CFR 175; 33 CFR 175; 33 CFR 177; 33 CFR 179; 33 CFR 181; 33 CFR 183; 46 CFR 10; 46 CFR 2; 46 CFR 30; 46 CFR 90; 46 CFR 114; 46 CFR 188; 46 CFR 199; ...

Legal Deadline: None

Abstract: This rulemaking implements the Passenger Vessel Safety Act (PVSA) (Pub. L. 103-206) by amending the rules for Uninspected Passenger Vessels (UPVs). Specifically, the Coast Guard is considering amending existing UPV definitions to create a new class of UPV of at least 100 gross tons carrying not more than 12 passengers. The Coast Guard is considering operating, equipment, licensing and special permit application requirements appropriate for the new class of vessel. The Coast Guard is also considering adding definitions of "passenger," "passenger for hire," and "consideration" to bring its rules into conformity with the PVSA. This project supports the Coast Guard's strategic goal of marine safety.

Timetable:

Action	Date	FR Cite
ANPRM	04/01/99	64 FR 15709
ANPRM Comment Period End	06/30/99	
NPRM	03/02/00	65 FR 11410
Interim Final Rule	04/28/00	65 FR 24878
NPRM Comment Period End	05/31/00	
Final Rule	05/15/02	67 FR 34756
Final Rule Effective	06/14/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: Michael A. Jendrossek, Project Manager, G-MSO-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001
Phone: 202 267-0836

RIN: 2115–AF69

2033. BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL (USCG-1999-5117)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 3703

CFR Citation: 46 CFR 151

Legal Deadline: None

Abstract: This rulemaking project will update the regulations for barges carrying bulk hazardous material to account for modernization of the industry. The current regulations for barges carrying bulk liquid hazardous materials were originally published in 1970. Over the past three decades, technology has advanced and industry practices have changed. This project will first ask for public comment to identify the rules which need to be updated. Once those rules are identified, the project will propose appropriate revisions to the Code of Federal Regulations. This project supports the Coast Guard's strategic goal of marine safety. This rule has been withdrawn so the Coast Guard can focus on new security projects.

Timetable:

Action	Date	FR Cite
ANPRM	09/09/99	64 FR 48976
ANPRM Comment Period End	03/07/00	
Withdrawn	04/23/02	67 FR 19730

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: Thomas J. Felleisen, Project Manager, G-MSO, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001
Phone: 202 267-0085

RIN: 2115–AF77

DOT—USCG

Completed Actions

2034. NOTIFICATION OF ARRIVAL: ADDITION OF CHARTERER TO REQUIRED INFORMATION (USCG-2001-8659)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1231

CFR Citation: 33 CFR 160

Legal Deadline: None

Abstract: This rulemaking will require an owner, master, operator, or person in charge of a vessel to provide the identification of a vessel's charterer in addition to the already required information when making an advance notice of arrival for vessels bound for ports or places in the United States. This project supports the Coast Guard's strategic goals of maritime safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
Request for Comments	08/18/00	65 FR 50481
Comment Period End	10/02/00	
NPRM	05/01/01	66 FR 21710
Correction Notice	05/16/01	66 FR 27216
Correction Notice	05/24/01	66 FR 28774
NPRM Comment Period End	07/02/01	
Final Rule	08/19/02	67 FR 53735
Final Rule Effective	09/18/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: Michael A. Jendrossek, Project Manager, G-MSO-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001
Phone: 202 267-0836

RIN: 2115–AG06

2035. +TANK LEVEL OR PRESSURE MONITORING DEVICES (USCG-2001-9046)

Priority: Other Significant

Legal Authority: 46 USC 3703

CFR Citation: 46 CFR 32; 33 CFR 157

Legal Deadline: Final, Statutory, August 1991, Section 4110 of the Oil Pollution Act of 1990 (OPA 90). Final, Judicial, May 2002.

Abstract: The U.S. Court of Appeals for the District of Columbia issued a writ of mandamus requiring the Coast Guard to promulgate regulations for tank level or pressure monitoring (TLPM) devices as mandated by OPA 90. This regulatory project will establish performance standards for TLPM devices and require tank vessels to install such devices. This project is considered significant because of substantial public and industry interest and the considerable economic impact of the rulemaking. This rulemaking falls under the Coast Guard's strategic goal of protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	10/01/01	66 FR 49877
NPRM Comment Period End	11/30/01	
Final Rule	09/17/02	67 FR 58515
Final Action Effective	10/17/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: In March 2001, this project was reopened with a new RIN and DMS docket number. The Coast Guard reopened this project per writ of mandamus by the D.C. Circuit Court directing the Coast Guard to implement certain provisions of the Oil Pollution Act of 1990. It was previously captioned with docket number 90-071, and RIN 2115-AD69.

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: Martin L. Jackson, Project Manager, G-MSR-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-1140

Related RIN: Related To 2115-AD69

RIN: 2115–AG10

2036. INSPECTION AND ENFORCEMENT OF COAST GUARD REGULATIONS FOR FIXED FACILITIES BY MINERALS MANAGEMENT SERVICE (USCG-2001-9045)

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1348

CFR Citation: 33 CFR 140

Legal Deadline: None

Abstract: The Coast Guard proposes to authorize the Mineral Management Service (MMS) to perform inspections, on behalf of the Coast Guard, on fixed facilities engaged in Outer Continental Shelf activities and to enforce Coast Guard regulations applicable to those facilities. MMS already performs inspections on these facilities to determine whether they comply with MMS regulations. By authorizing MMS to also check for compliance with Coast Guard regulations, we avoid duplicating functions, reduce Federal costs, and increase the frequency of inspections. This project supports the Coast Guard's strategic goals of maritime safety and environmental protection.

Timetable:

Action	Date	FR Cite
NPRM	05/10/01	66 FR 23871
NPRM Comment Period End	07/09/01	
Final Rule	02/07/02	67 FR 5912
Final Rule; Announcement of Effective Date (See Addl Info)	04/16/02	67 FR 18493
Final Rule Effective	06/07/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: Section 140.103(c) contains a collection-of-information requirement that had not been approved by the Office of Management and Budget when the final rule was published. After OMB approval, we published an announcement of the effective date of that section in the Federal Register.

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: James Magill, Project Manager, G-MSO-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-1082

RIN: 2115–AG14

2037. REVISE OPTIONS FOR RESPONDING TO NOTICES OF VIOLATIONS (USCG-2001-9175)

Priority: Substantive, Nonsignificant

Legal Authority: 14 USC 633; PL 100-690

CFR Citation: 33 CFR 1.07; 49 CFR 1.46

Legal Deadline: None

Abstract: This project would revise 33 CFR 1.07, Notice of violation, to change the process for a "no action" option. This change would preserve the existing options of paying the "ticket" and closing the case, or requesting a hearing; it would replace the current default of the "no action resulting in referral to a hearing officer" to "no action resulting in a finding of proved and assessment of a penalty." This project supports the Commandant's workload reduction initiative by increasing the efficiency of Coast Guard resources by removing a time-consuming, unnecessary step in the processing of notices of violations for which no response was received.

Timetable:

Action	Date	FR Cite
NPRM	12/10/01	66 FR 63640
NPRM Comment Period End	02/08/02	
Final Rule	06/04/02	67 FR 38386
Final Rule Effective	07/05/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: Doug Rabe, Project Manager, G-MOA, Department of Transportation, U.S. Coast Guard, Room 2407, 2100 Second Street SW., Washington, DC 20593
Phone: 202 267-1428

RIN: 2115–AG15

2038. TRAFFIC SEPARATION SCHEME: IN PRINCE WILLIAM SOUND, ALASKA (USCG-2001-10254)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1223

CFR Citation: 33 CFR 167; 33 CFR 161

Legal Deadline: None

Abstract: This rulemaking would implement amendments to the existing Prince William Sound Traffic Separation Scheme (TSS). The amendments to the TSS have been approved by the International Maritime Organization, and have been validated by a recent Port Access Route Study (PARS). Implementing these amendments into the Code of Federal Regulations would provide straight traffic lanes between the Bligh Reef Pilot Station and Cape Hinchinbrook, and should reduce the risk for vessels operating within the area. The length of transit in Prince William Sound would also be reduced. With the course change removed from the original TSS, the minimum distance from the center of the southbound traffic lane to Naked Island would increase from six (6) to nine (9) nautical miles, reducing the risk of drift groundings. This project supports the Coast Guard's strategic goals of increasing maritime-mobility, protecting natural resources and improving marine safety.

Timetable:

Action	Date	FR Cite
NPRM	02/06/02	67 FR 5538
NPRM Comment Period End	03/08/02	
Final Rule	08/19/02	67 FR 53740
Final Rule Effective	09/18/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: In the 2002 spring agenda the Coast Guard indicated it was going to withdraw this rulemaking, but since then we have determined that we will be able to complete it without disrupting work on new security projects.

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: George Detweiler, Project Manager G-MWV, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001
Phone: 202 267-0574

RIN: 2115–AG20

2039. PROTECTION OF NAVAL VESSELS (LANT AREA-01-001 AND PAC AREA-01-001)

Priority: Substantive, Nonsignificant

Legal Authority: 14 USC 91

CFR Citation: 33 CFR 165

Legal Deadline: None

Abstract: Following terrorist attacks in New York and Washington, D.C., the Coast Guard is establishing temporary regulations for the safety or security of U.S. naval vessels in the navigable waters of the United States. The regulations are issued under the authority contained in 14 U.S.C. 91. Naval Vessel Protection Zones will provide for the regulation of vessel traffic in the vicinity of U.S. naval vessels in the navigable waters of the United States. This rule supports the strategic goal of maritime safety and maritime security.

Timetable:

Action	Date	FR Cite
Temporary Final Rule Effective	09/14/01	
Temporary Final Rule (Atlantic Area)	09/21/01	66 FR 48780
Temporary Final Rule (Pacific Area)	09/21/01	66 FR 48782
Temporary Final Rule Ends	06/15/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: Joe Billy, Commander (Poft), Department of Transportation, U.S. Coast Guard, Coast Guard Pacific Area, Coast Guard Island, Alameda, CA 94501
Phone: 510 437-3505

CDR Chris Doane, Project Manager, Department of Transportation, U.S. Coast Guard, Atlantic Area Marine Safety Div. Response Branch (Amr), 431 Crawford Street, Portsmouth, VA 23704-5004
Phone: 757 398-6372

Related RIN: Related To 2115-AG33

RIN: 2115–AG23

2040. LIFERAFT SERVICING INTERVALS (USCG-2001-11118)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 2103; 46 USC 3306; 46 USC 3307; 46 USC 3703; 46 USC 3316

CFR Citation: 46 CFR 28.140; 46 CFR 109.301; 46 CFR 122.730; 46 CFR 131.580; 46 CFR 185.730; ...

Legal Deadline: None

Abstract: This rulemaking would eliminate inconsistencies in the requirements for the first servicing of inflatable liferafts in 46 CFR, chapter I, subchapters C, I-A, K, L, Q, R, T, and W. The equipment regulations in subchapter Q, and vessel regulations in subchapters C and L, allow the first servicing of a new inflatable liferaft on a non-SOLAS vessel to be deferred to 2 years from initial packing. Subchapters I-A, K, R, T, and W do not incorporate this allowance. This inconsistency results in an unnecessary burden on operators of vessels, as well as confusion among both the public and Coast Guard field personnel. This project supports the Coast Guard's strategic goals of maritime safety and mobility.

Timetable:

Action	Date	FR Cite
NPRM	03/05/02	67 FR 9939
Correction to NPRM	03/14/02	67 FR 11549
NPRM Comment Period End	05/06/02	
Final Rule	09/17/02	67 FR 58537
Final Rule Effective	09/30/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: Kurt Heinz, Project Manager, G-MSE-4, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001
Phone: 202 267-1444

RIN: 2115–AG28

2041. PROTECTION OF NAVAL VESSELS (LANT AREA-02-001 AND PAC AREA-02-001)

Priority: Substantive, Nonsignificant

Legal Authority: 14 USC 91; 14 USC 633

CFR Citation: 33 CFR 165

Legal Deadline: None

Abstract: The Coast Guard is establishing regulations for the safety and security of U.S. naval vessels in the navigable waters of the United States. The regulations are issued under the authority contained in 14 U.S.C. 91. Naval Vessel Protection Zones will provide for the regulation of vessel traffic in the vicinity of U.S. naval vessels in the navigable waters of the United States. This rule supports the Coast Guard's strategic goals of maritime safety and maritime security.

Timetable:

Action	Date	FR Cite
NPRM (Atlantic Area)	02/21/02	67 FR 7992
NPRM (Pacific Area)	03/20/02	67 FR 12940
NPRM (Pacific Area) Correction	04/08/02	67 FR 16668
Atlantic Area NPRM Comment Period End	04/22/02	
Pacific Area NPRM Comment Period End	05/06/02	
Final Rule (Atlantic Area)	05/13/02	67 FR 31958
Final Rule (Pacific Area)	06/04/02	67 FR 38391
Final Rule Effective (Atlantic and Pacific Areas)	06/15/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

URL For More Information: http://dms.dot.gov

URL For Public Comments: http://dms.dot.gov

Agency Contact: CDR Chris Doane, Project Manager, Department of Transportation, U.S. Coast Guard, Atlantic Area Marine Safety Div. Response Branch (Amr), 431 Crawford Street, Portsmouth, VA 23704-5004
Phone: 757 398-6372

CDR Steve Danscuk, Project Manager, Department of Transportation, U.S. Coast Guard, Pacific Area Marine Transportation Branch (Pmt), Coast Guard Island, Alameda, CA 94501
Phone: 510 437-5839

Related RIN: Related To 2115-AG23

RIN: 2115–AG33

2042. • NAVIGATION AND NAVIGABLE WATERS — TECHNICAL AMENDMENTS, ORGANIZATIONAL CHANGES, MISCELLANEOUS EDITORIAL CHANGES AND CONFORMING AMENDMENTS (USCG-2002-12471)

Priority: Info./Admin./Other

Legal Authority: 5 USC 553; 14 USC 633

CFR Citation: 33 CFR 1.01-70; 33 CFR 1.01-80; 33 CFR 1.05-1; 33 CFR 1.07-15; 33 CFR 1.07-35; 33 CFR 1.07-50; 33 CFR 1.07-60; 33 CFR 3.25-10; 33 CFR 3.25-10; 33 CFR 3.25-20; ...

Legal Deadline: None

Abstract: This rule makes editorial and technical changes throughout title 33 of the Code of Federal Regulations to update the title before it is recodified on July 1, 2002. It updates organization names and addresses, and makes conforming amendments and technical corrections. This rule, which will have no substantive effect on the regulated public, supports the Coast Guard strategic goals of maritime safety and maritime mobility by clarifying and insuring the accuracy of navigation and navigable waters regulations.

Timetable:

Action	Date	FR Cite
Final Rule	06/18/02	67 FR 41329
Final Rule; Delay of Effective Date of 2 Amendments	06/27/02	67 FR 43252
Final Rule Effective	06/28/02	
Amendments to 2 Sections Effective (See Addl Info)	10/01/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: The effective date for the revisions to 33 CFR 3.25-10(b) and 3.25-20(b) in the final rule published June 18, 2002, was delayed from June 28, 2002, until October 1, 2002, to reflect the date of an organizational change in boundaries between Hampton Roads Marine Inspection/Captain of the Port Zone and the Wilmington Marine Inspection/Captain of the Port Zone.

URL For More Information:

http://dms.dot.gov

URL For Public Comments:
http://dms.dot.gov

Agency Contact: Robert S. Spears, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001
Phone: 202 267-1099

RIN: 2115–AG44

2043. • BASIC RATES AND CHARGES ON LAKE ERIE AND THE NAVIGABLE WATERS FROM SOUTHEAST SHOAL TO PORT HURON, MI (USCG-2002-12840)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 9303(f)

CFR Citation: 46 CFR 401.407

Legal Deadline: Final, Judicial, July 21, 2002.

Abstract: This temporary final rule amends the rates charged for Great Lakes pilotage on the Designated Waters of Area 5 in District Two and restores them to those effective until August 13, 2001. The Lake Pilots Association, representing pilots in District Two, challenged the ratemaking effective on and after that date, and sued. The Coast Guard, while not agreeing with the allegations in the complaint, did learn during the course of litigation that it had inadvertently accounted for hours of delay and detention in District Two differently from in Districts One and Three. The Coast Guard is currently working on an updated ratemaking (2115-AG30) that will, among other things, correct this error. In the interim, it considers it in the best interest of the public to temporarily return the rates (in District Two, Area 5) to those effective until August 13, 2001. This temporary final rule will not be retroactive, and future rates will not depend on this action. This rulemaking supports the Coast Guard's strategic goal of maritime mobility.

Timetable:

Action	Date	FR Cite
Temporary Final Rule	07/19/02	67 FR 47464
Temporary Final Rule Effective (to 07/21/03)	07/19/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: In addition to RIN 2115-AF91, Great Lakes Pilotage Rates, RIN 2115-AG30, Rates for Pilotage on the Great Lakes, is also a related rulemaking.

URL For More Information:
http://dms.dot.gov

URL For Public Comments:
http://dms.dot.gov

Agency Contact: Paul Wasserman, Project Manager, Department of Transportation, U.S. Coast Guard, Office of Maritime and International Law (G-LMI), 2100 Second Street SW., Washington, DC 20593
Phone: 202 267-0093

Related RIN: Related To 2115-AF91, Related To 2115-AG30

RIN: 2115–AG46

2044. • SHIPPING — TECHNICAL AND CONFORMING AMENDMENTS (USCG-2002-13058)

Priority: Info./Admin./Other

Legal Authority: 14 USC 633; 46 USC 2103

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This rule will make editorial and technical changes throughout title 46 of the Code of Federal Regulations to update the title before it is recodified on October 1, 2002. We plan to update organization names and addresses, and make conforming amendments and technical corrections. This rule, which will have no substantive effect on the regulated public, supports the Coast Guard strategic goals of maritime safety and maritime mobility by clarifying and insuring the accuracy of shipping waters regulations.

Timetable:

Action	Date	FR Cite
Final Rule	09/30/02	67 FR 61276
Final Rule Effective	09/30/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert S. Spears, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001
Phone: 202 267-1099

RIN: 2115–AG48

Department of Transportation (DOT)
Federal Aviation Administration (FAA)

Proposed Rule Stage

2045. OBJECTS AFFECTING NAVIGABLE AIRSPACE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113 to 40114; 49 USC 44502; 49 USC 44701; 49 USC 44718; 49 USC 46101 to 46102; 49 USC 46104

CFR Citation: 14 CFR 77

Legal Deadline: None

Abstract: This action would amend the standards, aeronautical studies, scope, and notice provisions concerning objects affecting navigable airspace. The notice consisted primarily of changes required by recent legislation or recommended by a government/industry task group of the National Airspace Review Advisory Committee. This action would also cover electromagnetic interference phenomena that could create a hazard to air navigation.

Timetable:

Action	Date	FR Cite
Notice of Review	06/19/78	43 FR 26322
Review Conference	12/08/80	
NPRM	08/03/90	55 FR 31722
NPRM Correction	08/13/90	55 FR 32999
NPRM Correction	08/16/90	55 FR 33577
NPRM Correction	08/28/90	55 FR 35152
NPRM Correction	09/10/90	55 FR 37287
NPRM Comment Period End	12/31/90	
SNPRM	10/16/95	60 FR 53680
SNPRM Comment Period End	11/30/95	
NPRM	12/00/02	

Action	Date	FR Cite
SNPRM To Be Withdrawn	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: ATO-85-015R.

ANALYSIS: Regulatory Evaluation, 08/03/90, 55 FR 31722

Agency Contact: Ellen Crum, Air Traffic Rules Procedures Branch, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-3155

RIN: 2120–AA09

2046. +IMPROVED WATER SURVIVAL EQUIPMENT

Priority: Other Significant

Legal Authority: 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702

CFR Citation: 14 CFR 121; 14 CFR 135

Legal Deadline: None

Abstract: This action would add new requirements for water survival equipment carried aboard airplanes and rotorcraft. The requirements would apply, after specified dates, to U.S.-certificate holders that conduct common-carriage operations with airplanes and rotorcraft. This action is in response to the Airport and Airway Safety and Capacity Enhancement Act of 1987 (PL 100-223) and relates to safety recommendations by the National Transportation Safety Board. The requirements are intended to increase the likelihood of aircraft passengers surviving a crash landing in water and, thus, this rulemaking is significant because of the safety implications.

Timetable:

Action	Date	FR Cite
NPRM	06/30/88	53 FR 24890
NPRM Comment Period End	11/28/88	
SNPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: AIR-85-265R.

ANALYSIS: Regulatory Evaluation, 06/30/88, 53 FR 24890

Agency Contact: Hal Jensen, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-9574

RIN: 2120–AC72

2047. +RETROFIT OF IMPROVED SEATS IN AIR CARRIER TRANSPORT CATEGORY AIRPLANES

Priority: Other Significant

Legal Authority: 49 USC 44713; 49 USC 44715; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44712

CFR Citation: 14 CFR 121; 14 CFR 135

Legal Deadline: NPRM, Statutory, April 28, 1988.

Abstract: This action would require that all seats of transport category airplanes used in air carrier operations and transport category airplanes used in scheduled intrastate service comply with improved crashworthiness standards. The Airport and Airways Safety and Capacity Expansion Act of 1987 directs the Secretary of Transportation to initiate a rulemaking proceeding to consider requiring all seats on board all air carrier aircraft to meet improved crashworthiness standards based upon the best available testing standards. The intended effect of this action is to increase passenger protection and survivability in survivable impact accidents. This rulemaking is considered significant because of its safety implications and statutory requirements.

Timetable:

Action	Date	FR Cite
NPRM	05/17/88	53 FR 17650
NPRM Comment Period End	10/14/88	
NPRM Comment Period Reopened	10/30/98	63 FR 58331
NPRM Comment Period End	01/08/99	
SNPRM	10/04/02	67 FR 62294
SNPRM Comment Period End	12/03/02	
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket 25611. Project Number: AIR-88-136R.

ANALYSIS: Regulatory Evaluation, 05/17/88, 53 FR 17650

Agency Contact: Hal Jensen, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-9574

RIN: 2120–AC84

2048. +CORROSION CONTROL PROGRAM

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40104 to 40105; 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44902

CFR Citation: 14 CFR 121; 14 CFR 125; 14 CFR 129; 14 CFR 135

Legal Deadline: None

Abstract: This project would ensure that airplanes used or not used in common carriage in air transportation have a comprehensive corrosion prevention program within their maintenance or inspection programs. In April 1988, a commercial transport airplane experienced an in-flight decompression and separation of approximately 18 feet of the fuselage skin and structure at the top of the airplane. The airplane had been in service for 19 years and had flown almost 90,000 flights. The National Transportation Safety Board concluded that the failure of the airline to detect skin disbonding resulted in corrosion and metal fatigue leading to separation of the airplane's skin structure. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: AFS-93-382R

Agency Contact: Frederick Sobeck, Aircraft Maintenance Division, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591 Phone: 202 267-7355

RIN: 2120–AE92

2049. +NATIONAL AIR TOUR SAFETY STANDARDS

Priority: Other Significant

Legal Authority: 49 USC 44709; 49 USC 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716; 49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701; 49 USC 44702; 49 USC 44705

CFR Citation: 14 CFR 91; 14 CFR 135

Legal Deadline: None

Abstract: FAA will propose new regulations for air tour and sightseeing operations that are currently allowed to operate under less stringent regulations than those applied to other types of commercial operations. Over the past decade the number of these operations and the number of accidents and incidents associated with these operations have increased. Hot air balloons and gliders would not be included in this amendment. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: AFS-91-012R. RIN 2120-AF61 which was proposed as a new item for this agenda was a duplicate of this rulemaking and has been terminated. This rulemaking was previously titled "Sightseeing Operations."

ANALYSIS: Regulatory Evaluation, 04/00/01

Agency Contact: Katherine Hakala Perfetti, Flight Standards Service, Department of Transportation, Federal Aviation Administration Phone: 202 267-3760

RIN: 2120–AF07

2050. +FLIGHT CREWMEMBER DUTY PERIOD LIMITATIONS, FLIGHT TIME LIMITATIONS, AND REST REQUIREMENTS

Regulatory Plan: This entry is Seq. No. 104 in part II of this issue of the Federal Register.

RIN: 2120–AF63

2051. +FALSE AND MISLEADING STATEMENTS REGARDING AIRCRAFT PARTS

Priority: Other Significant

Legal Authority: 49 USC 44913

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This action proposes additional rules that would prohibit certain false or misleading statements regarding civil aircraft, airframes, aircraft engines, propellers, appliances, component parts, and materials; including standard parts, that are used, or may be used, on civil aircraft. The proposals would also permit increased inspection by the FAA of records regarding the quality of aircraft parts. The additional rules are needed to help prevent persons from representing parts as suitable for use on civil aircraft when in fact they may not be. The proposals are intended to provide assurance that aircraft owners and operators, and persons who maintain aircraft, have truthful information on which to determine whether a part may be used in a given civil aircraft application. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: AVR-94-549R.

ANALYSIS: Regulatory Evaluation 08/00/01

Agency Contact: Mardi Ruth Thompson, Regulations Division, Office of the Chief Counsel, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591 Phone: 202 267-3073

RIN: 2120–AG08

2052. +NOISE LIMITATIONS FOR AIRCRAFT OPERATIONS IN THE VICINITY OF GRAND CANYON NATIONAL PARK

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40106; 49 USC 40109; 49 USC 40113; 49 USC 44502; 49 USC 44514; 49 USC 44701; 49 USC 44719; 49 USC 46301

CFR Citation: 14 CFR 93

Legal Deadline: None

Abstract: This rulemaking will establish noise limitations for certain aircraft operated in the vicinity of Grand Canyon National Park. This action is one part of an overall strategy to reduce further the impact of aircraft noise on the park environment and to assist the National Park Service (NPS) in achieving its statutory mandate imposed by Public Law 100-91 to provide for the substantial restoration of natural quiet and experience in Grand Canyon National Park. The supplemental amendment removes two sections from the December 31, 1996, notice of proposed rulemaking (NPRM) that proposed to establish a corridor through the National Canyon area as an incentive route for quiet technology aircraft. The FAA and NPS have determined not to proceed with an air tour route in the vicinity of National Canyon and are presently considering alternatives to this route. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	12/31/96	61 FR 69334
NPRM Comment Period End	03/31/97	
SNPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: A final rule, which was published on 12/31/96 (61 FR 69302), establishes new operating restrictions at Grand Canyon National Park. See RIN 2120-AF93 published elsewhere in this Agenda.

ANALYSIS: Regulatory Evaluation, 12/31/96, 61 FR 69334

Agency Contact: Tom Connor, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591 Phone: 202 267-8933

RIN: 2120–AG34

2053. LICENSING AND SAFETY REQUIREMENTS FOR LAUNCH

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 70101 to 70119

CFR Citation: 14 CFR 415; 14 CFR 417

Legal Deadline: None

Abstract: This action would establish requirements for licensing the conduct of a launch from a non-Federal launch site. The law requires anyone who proposes to conduct a launch within the United States, or a U.S. citizen proposing to conduct a launch site outside the United States, to obtain a license from DOT. This action would govern obtaining a license to conduct such a launch. Currently, commercial rocket launches take place from Federal Government installations operated by the Department of Defense and NASA. Licensing requirements for those launches are being developed in a related licensing rulemaking (RIN 2120-AF99). In this action, DOT proposes to implement rules regarding obtaining a license to conduct a launch from a commercial launch site, where DOT, rather than NASA or the military, has primary responsibility.

Timetable:

Action	Date	FR Cite
NPRM	10/25/00	65 FR 63922
NPRM Comment Period End	02/22/01	
SNPRM	07/30/02	67 FR 49456
NPRM: Additional Information	08/27/02	67 FR 54978
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Additional Information: Project Number: AST-97-088R.

ANALYSIS: Regulatory Evaluation, 10/25/00, 65 FR 63922.

Agency Contact: Michael Dook, Licensing and Safety Division, Office of Commercial Space, Department of Transportation, Federal Aviation Administration, 400 Seventh Street SW., Washington, DC 20590 Phone: 202 366-9305

RIN: 2120–AG37

2054. +CHILD RESTRAINT SYSTEMS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701; 49 USC 44709; 49 USC 44711; 49 USC 44712; 49 USC 44715 to 44718; 49 USC 44722; 49 USC 46306; 49 USC 46315; 49 USC 46502

CFR Citation: 14 CFR 91; 14 CFR 121; 14 CFR 125; 14 CFR 135

Legal Deadline: None

Abstract: This action sought public comment on issues relating to the use of child restraint systems in aircraft during all phases of flight (i.e., taxi, takeoff, landing, or any other time the seat belt sign is illuminated). Specifically, the agency sought information about existing child restraint systems, the development of new and improved child restraint systems, the ease with which existing or new child restraint systems can be used, and the effectiveness of changing the current child restraint system regulations. The advance notice gathered information in response to a recommendation made by the White House Commission on Aviation Safety and Security. Approximately 130 comments were received on the ANPRM. This information is needed so that the FAA can determine the best way to ensure the safety of children while on board aircraft. After such a determination is made, the FAA may issue a Notice of Proposed Rulemaking with specific regulatory proposals that respond to the Commission's recommendations regarding the use of child restraint systems. This action is considered significant because of safety implications.

Timetable:

Action	Date	FR Cite
ANPRM	02/18/98	63 FR 8324
ANPRM Comment Period End	06/18/98	
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: Project Number: AFS-97-261R

Agency Contact: Cindy Nordlie, Office of Rulemaking, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591 Phone: 202 267-7627

RIN: 2120–AG43

2055. REVISION OF AIR CARRIER CREWMEMBER AND TRAINING REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701; 49 USC 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105

CFR Citation: 14 CFR 60; 14 CFR 121

Legal Deadline: None

Abstract: This action proposes to revise title 14 of the Code of Federal Regulations part 121 subparts N, O, and P. The proposed revision and creation will address Advanced Qualification Programs and additional training programs. The rulemaking is needed to enhance crew resource management training, to permit rapid changes to training and checking requirements for emerging technologies, to improve safety, and to respond to numerous recommendations from various sources.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: AFS-97-335R.

Agency Contact: Jan Demuth, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591 Phone: 202 267-8166

RIN: 2120–AG57

2056. TRAINING IN THE RECOGNITION OF HAZARDOUS MATERIAL

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 4711; 49 USC 44713; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903; 49 USC 44912; 49 USC 46105

CFR Citation: 14 CFR 121; 14 CFR 135

Legal Deadline: None

Abstract: The FAA is proposing to amend its hazardous materials (hazmat) training requirements for air carriers and commercial operators certificated to operate under part 121 or part 135. This action also proposes that repair stations certificated under part 145 document for the FAA that persons handling hazmat for transportation have been trained as required by DOT's Hazardous Materials Regulations. The FAA is updating its regulations because hazmat transport and the aviation industry have changed significantly since the FAA promulgated its Hazmat training regulations over 25 years ago. This action proposes to set clear training standards and ensure uniform compliance with training requirements.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William Wilkening, Office of Security, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591 Phone: 202 267-5885

Jan Demuth, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591 Phone: 202 267-8166

RIN: 2120–AG75

2057. +AIR TOUR OPERATIONS IN STATE OF HAWAII

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44701; 49 USC 44711; 49 USC 44712; 49 USC 44715; 49 USC 44717; 49 USC 44722; 49 USC 46306; 49 USC 46315; 49 USC 46316; 49 USC 46502; 49 USC 46504; 49 USC 46504; 49 USC 46506; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47530

CFR Citation: 14 CFR 91

Legal Deadline: None

Abstract: This action proposes to extend SFAR 71, which established certain procedural, operational, and equipment requirements for air tour operators in the State of Hawaii. The FAA intends to issue a national air tour safety proposal in the near future, but until this rulemaking becomes final, there is a need to extend SFAR 71 to ensure the continuing safe environment for conducting air tours in Hawaii. During the 9-year period between 1982 and 1991, there were 11 air tour accidents with 24 fatalities in Hawaii. The apparent causes of the accidents ranged from engine power loss to encounters with adverse weather. On September 26, 1994, the FAA published an emergency final rule as SFAR 71. The rule established additional operating procedures, including minimum safe altitudes (and associated increases in visual flight rules weather minimums), minimum equipment requirements, and operational limitations for air tour aircraft in the State of Hawaii. SFAR 71 was subsequently extended until October 26, 2003. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gary Davis, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591 Phone: 202 267-8166

RIN: 2120–AH02

2058. +FLIGHT SIMULATION DEVICE QUALIFICATION

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44703; 49 USC 44707; 49 USC 44709; 49 USC 44711; 49 USC 45102 to 45103; 49 USC 45301 to 45302

CFR Citation: 14 CFR 1; 14 CFR 11; 14 CFR 60; 14 CFR 61; 14 CFR 63; 14 CFR 141; 14 CFR 142

Legal Deadline: None

Abstract: The FAA proposes to amend the regulations to establish flight simulation device qualification requirements for all certificate holders in a new part. The basis of these requirements currently exists in different parts of the FAA's regulations and in advisory circulars. The proposed changes would consolidate and update flight simulation device requirements. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	09/25/02	67 FR 20284
NPRM Comment Period End	12/24/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Edward Cook, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337 Phone: 404 305-6100

RIN: 2120–AH07

2059. REFUSAL TO SUBMIT TO AN AUTHORIZED DRUG TEST

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44703; 49 USC 44707; 49 USC 44709 to 44711; 49 SUC 45102 to 45103; 49 USC 45301 to 45303

CFR Citation: 14 CFR 67

Legal Deadline: None

Abstract: This action proposes to amend airman medical standards to add as a medical disqualification the refusal to submit to an authorized drug test. Refusal to submit to a drug test includes adulteration or substitution of a urine sample. The intended effect is to ensure that airmen who may have substance abuse problems are not allowed to gain flight status until they have been examined and found fit by the Federal Air Surgeon.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sheri deVries, Office of Aviation Medicine, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591 Phone: 202 267-8693

RIN: 2120–AH23

2060. PUBLIC ADDRESS SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: The FAA proposes to shorten the time for passenger announcements in an emergency in transport category airplanes. This proposal would shorten the time for passenger announcements in an emergency from 10- to 3-seconds between the removal of the microphone from its stowage by a flight crewmember and its operation. Adopting this proposal would eliminate regulatory differences between the airworthiness standards for the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-00-227.

Agency Contact: Kirk Baker, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 3960 Paramount Boulevard, Lakewood, CA 90712 Phone: 562 627-5345

RIN: 2120–AH30

2061. SAFE, EFFICIENT USE AND PRESERVATION OF THE NAVIGABLE AIRSPACE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40113 to 40114; 49 USC 44502; 49 USC 44701; 49 USC 44718

CFR Citation: 14 CFR 77

Legal Deadline: None

Abstract: This notice of proposed rulemaking proposes to add and amend definitions for terms commonly used during the aeronautical evaluation process. This action proposes amendments to obstruction standards for civil airport imaginary surfaces in order to promote and facilitate harmonization with other FAA directives. This proposal also proposes to simplify and clarify the rule language in accordance with the plain language initiative.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ATA-00-490.

Agency Contact: Ellen Crum, Air Traffic Rules Procedures Branch, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591 Phone: 202 267-3155

RIN: 2120–AH31

2062. DESIGN REQUIREMENTS FOR PRESSURIZATION AND PNEUMATIC SYSTEMS INSTALLED ON TRANSPORT CATEGORY AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This proposal would revise the airworthiness standards for transport category airplanes by incorporating the more defined design and compliance criteria currently contained in the counterpart European standards. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kenneth Frey, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055-4056 Phone: 425 227-2673

RIN: 2120–AH33

2063. DESIGN STANDARDS FOR FUSELAGE DOORS ON TRANSPORT CATEGORY AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action would amend the design standards for fuselage doors, hatches, and exits on transport category airplanes. This proposal would relieve a certification burden on industry by eliminating regulatory differences between the air standards of the United States and Joint Aviation Requirements of Europe without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-96-398.

Agency Contact: Jeff Gardlin, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2136

RIN: 2120–AH34

2064. REVERSE THRUST AND PROPELLER PITCH SETTINGS BELOW THE FLIGHT REGIME

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action proposes to require a means to prevent the flightcrew on turbo-propeller-powered airplanes from inadvertently or intentionally placing the power lever below flight idle while in flight, unless the airplane has been certified for in-flight operation. This action proposes to eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-00-700.

Agency Contact: Jennifer Abdul-Wali, Transportation Specialist, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-6322
Fax: 202 366-9313
Email: jennifer.abdul-wali@ost.dot.gov

Mike Kaszycki, Transport Airplane Directorate, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055-4056
Phone: 425 227-2137

RIN: 2120–AH35

2065. TRIM SYSTEMS AND PROTECTIVE BREATHING EQUIPMENT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This proposed action would amend airworthiness standards for transport category airplanes concerning trim systems and protective breathing equipment. The proposed action would add language that would require a clearly marked range on the trim indication system where take-off is safe for all center-of-gravity positions. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the United States and the Joint Aviation Requirements of Europe without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	10/02/02	67 FR 61836
NPRM Comment Period End	12/02/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-00-567.

Agency Contact: Kenneth Frey, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055-4056
Phone: 425 227-2673

RIN: 2120–AH40

2066. REVISIONS TO PASSENGER FACILITY CHARGE RULE FOR COMPENSATION TO AIR CARRIERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40116 to 40117; 49 USC 47111; 49 USC 47114 to 47116; PL 106-181

CFR Citation: 14 CFR 158

Legal Deadline: None

Abstract: FAA proposes to amend the passenger facility charge (PFC) rules by changing the amount and basis of compensation an air carrier may receive for collecting, handling, and remitting PFC revenue. This action is necessary because statute mandates that air carriers receive fair and reasonable compensation for their expenses.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: APP-00-672R.

Agency Contact: Eric Gabler, Passenger Facility Charge Branch, Department of Transportation, Federal Aviation Administration
Phone: 202 267-3845

RIN: 2120–AH43

2067. NOISE STRINGENCY INCREASE FOR SINGLE-ENGINE PROPELLER-DRIVEN SMALL AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321; 49 USC 106(g); 49 USC 40113; 49 USC 44701; 49 USC 44702; 49 USC 44704; 49 USC 44715

CFR Citation: 14 CFR 36

Legal Deadline: None

Abstract: The FAA is proposing a change to the noise limits for propeller-driven small airplanes. The FAA, the European Joint Aviation Authorities (JAA), and representatives from the United States and European propeller-driven small airplane industries developed the ICAO Annex 16 noise limit change in a joint effort. The proposed change would provide nearly uniform noise certification standards for airplanes certificated in the United States and in the JAA countries.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: AEE-01-133R.

Agency Contact: Mehmet Marsan, Office of Environment and Energy, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-7703

RIN: 2120–AH44

2068. AIRWORTHINESS STANDARDS FOR CLASSES B AND F CARGO COMPARTMENT FOR TRANSPORT CATEGORY AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: The FAA proposes to amend the airworthiness standards for transport category airplanes to incorporate revised standards for Class B cargo compartments and establish standards for a new Class F cargo compartment, and to harmonize those requirements with standards proposed for the European Joint Aviation Requirements 25.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-93-725-A.

Agency Contact: Mahinder K. Wahi, Transport Airplane Directorate, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055
Phone: 425 227-2142

RIN: 2120–AH47

2069. MODIFICATION OF THE DIMENSIONS OF THE GRAND CANYON NATIONAL PARK SPECIAL FLIGHT RULES AREA AND FLIGHT-FREE ZONES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 14 USC 40103; 49 USC 40113

CFR Citation: 14 CFR 91; 14 CFR 93

Legal Deadline: None

Abstract: This action proposes to modify the Grand Canyon National Park Special Flight Rules Area and two-associated Flight-Free Zones in the east end of the Park. In addition this action proposes minor modifications to the Bright Angel and Desert View Flight-Free Zone. The FAA is proposing these actions to assist the National Park Service in fulfilling its statutory mandate to substantially restore the natural quiet and experience in Grand Canyon National Park.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Howard Nesbitt, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 493-4981

RIN: 2120–AH48

2070. • +SECURITY PROGRAMS FOR CHARTER OPERATIONS USING AIRCRAFT 12,500 POUNDS AND OVER

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 41706; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 41717; 49 USC 44722; 49 USC 46105

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This rule will set forth security requirements for charter operators using aircraft over 12,500 pounds take-off weight. The FAA is issuing this final rule with comment to promulgate regulations that will assist in establishing a secure environment for the traveling public. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Linda Valencia, Office of Civil Aviation Security Policy and Planning, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-3413

RIN: 2120–AH66

2071. • +TRANSPONDER CONTINUOUS OPERATION

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 45101 to 45105; 49 USC 46105

CFR Citation: 14 CFR 21

Legal Deadline: None

Abstract: This proposal would amend the instrument and equipment requirements for airplanes operated in domestic, flag, and supplemental operations. Specifically, the FAA proposes to require affected airplanes to be equipped with provisions that would help assure immediate activation of the designated air traffic control (ATC) hijack alert code, and continuous transmission of that code to ATC during the hijack situation. The FAA is proposing this action in response to the heightened threat to U.S. civil action. This action is significant because of substantial public safety interest.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard Jennings, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1895 Phoenix Boulevard, Suite 450, Atlanta, GA 30349
Phone: 770 703-6090

RIN: 2120–AH67

2072. • REVISED CHECKED PITCHING MANEUVER FOR TRANSPORT AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 14 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: The FAA proposes to revise the checked pitching maneuver design load requirement for transport category airplanes by incorporating changes developed in cooperation with the Joint Aviation Authorities of Europe, Transport Canada, and the U.S., Europeans, and Canadian aviation industries. These proposals are intended to benefit the public interest by standardizing certain requirements, concepts, and procedures without reducing the current level of safety.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Todd Martin, Aircraft Certifickation Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055-4056
Phone: 425 227-1179

RIN: 2120–AH71

2073. • REVISED REQUIREMENTS FOR GUST AND CONTINUOUS TURBULENCE DESIGN LOADS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g): 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: The FAA proposes to revise the airworthiness standards for transport category airplanes by incorporating changes to the continuous turbulence design loads requirements developed in cooperation with the Joint Aviation Authorities of Europe and the U.S. Canadian and European aviation industries. This proposal is intended to improve the requirements for continuous turbulence by revising the turbulence intensity criteria, eliminating the mission analysis method, providing a multi-axis discrete gust criterion, and reorganizing and clarifying the rule.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Todd Martin, Aircraft Certifickation Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055-4056
Phone: 425 227-1179

RIN: 2120–AH73

2074. • HARMONIZATION OF AIRWORTHINESS STANDARDS FLIGHT RULES, STATIC LATERAL-DIRECTIONAL STABILITY, AND SPEED INCREASE AND RECOVERY CHARACTERISTICS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: The FAA proposes to amend the airworthiness standards for transport category airplanes to allow a reduction in the minimum speed margin between the minimum safe flyaway speed and the liftoff speed during takeoff for geometry-limited airplanes. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Don Stimson, Flight Test and Systems Branch, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, WA 98055-4056
Phone: 425 227-4056

RIN: 2120–AH74

2075. • +PICTURE IDENTIFICATION REQUIREMENTS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44711; 49 USC 45102 to 45103; 49 USC 45301 to 45302

CFR Citation: 14 CFR 61

Legal Deadline: None

Abstract: The FAA is proposing to revise the pilot certificate requirements to require a person to carry a photo identification acceptable to the Administrator when exercising the privileges of a pilot certificate. These measures are intended to address security concerns regarding the identification of pilots. This rulemaking is significant because of safety and substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John D. Lynch, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-3844

RIN: 2120–AH76

2076. • AREA NAVIGATION (RNAV) AND MISCELLANEOUS AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 1155; 49 USC 40103 to 40105; 49 USC 40113; 49 USC 40119 to 40120; 49 USC 41706; 49 USC 44101; 49 USC 44111; 49 USC 44113; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44713; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 44901 to 44904; 49 USC 44906; 49 USC 44912; 49 USC 46105; 49 USC 46306; 49 USC 46315; 49 USC 46316; 49 USC 465504; 49 USC 46506 to 46507; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47531

CFR Citation: 14 CFR 1; 14 CFR 71; 14 CFR 91; 14 CFR 95; 14 CFR 97; 14 CFR 121; 14 CFR 129; 14 CFR 135

Legal Deadline: None

Abstract: The FAA is proposing to amend its regulations to reflect technological advances that support area navigation (RNAV) and ensure that certain terms are consistent with those of the International Civil Aviation Organization. The proposed changes are intended to promote the transition from ground-based navigation and to increase efficiency of the National Airspace System.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lawrence Buehler, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW,, Washington, DC 20591
Phone: 202 267-8452

RIN: 2120–AH77

2077. • FLIGHT VISIBILITY; VISION ENHANCING EQUIPMENT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701; 49 USC 44709; 49 USC 44711; 49 USC 44712; 49 USC 44715; 49 USC 44716; 49 USC 44717; 49 USC 44722; 49 USC 46306; 49 USC 46317; 49 USC 44722; 49 USC 46306; 49 USC 46315

CFR Citation: 14 CFR 91

Legal Deadline: None

Abstract: This proposed rule would allow persons who voluntarily equip their airplanes with certain vision enhancing devices to descend below decision height or minimum descent altitude when flight visibility is below minimums, subject to certain training and other requirements.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert J. O'Haver, General Aviation and Commercial Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-7031

RIN: 2120–AH78

2078. • ESTABLISHMENT OF ORGANIZATION DESIGNATION AUTHORIZATION PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40105; 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44707; 49 USC 44709; 49 USC 44711; 49 USC 44715; 49 USC 45303; 49 USC 46105

CFR Citation: 14 CFR 21; 14 CFR 121; 14 CFR 135; 14 CFR 145; 14 CFR 183

Legal Deadline: None

Abstract: This proposed rulemaking would create an Organization Designation Authorization (ODA) Program that would incorporate all organization designee rules within 14 CFR 183. It will expand the approval functions of FAA organization designees, standardize these functions to increase efficiency, and expand eligibility for organization designees, including organizations not eligible under the current rules. These actions would provide the FAA with amore efficient process to delegate certain tasks to external organizations while preserving and increasing aviation safety in an environment where the government is committed to reducing its workforce.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ralph Meyer, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 6500 S. MacArthur Blvd, ARB Room 304A, Oklahoma City, OK 73169
Phone: 405 954-7072

RIN: 2120–AH79

2079. • AIRWORTHINESS STANDARDS; FIRE PROTECTION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 448701; 49 USC 44701 to 44702; 49 USC 44704

CFR Citation: 14 CFR 33

Legal Deadline: None

Abstract: The FAA proposes to change the fire protection standards for the issuance of original and appropriate amended type certificates for aircraft engines. This proposal resulted from an effort to harmonize the Federal aviation regulations with European requirements being proposed by the Joint Aviation Authorities.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Marc Bouthillier, Engine & Propeller Standards Staff, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803
Phone: 617 238-7111

RIN: 2120–AH80

2080. • REFUSAL TO TAKE A DOT-REQUIRED DRUG OR ALCOHOL TEST

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44703; 49 USC 44707; 49 USC 44709 to 44711; 49 USC 45102 to 45103; 49 USC 45301 to 45302

CFR Citation: 14 CFR 61

Legal Deadline: None

Abstract: The FAA proposes to amend the airman medical standards to disqualify an airman based on a refusal

to take a DOT-required drug or alcohol test and to report pre-employment and return-to-duty test refusals to the FA. This action is necessary to ensure that persons who have refused to take a drug or alcohol test do not operate aircraft or perform contract air traffic control tower operations.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sherry deVries, Office of Aerospace Medicine, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-8693

RIN: 2120–AH82

2081. • PERFORMANCE AND HANDLING QUALITIES REQUIREMENTS FOR ROTORCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704

CFR Citation: 14 CFR 27; 14 CFR 29

Legal Deadline: None

Abstract: This action proposes new and revised airworthiness standards for normal and transport category rotorcraft due to technological advances in design and operational trends in normal and transport rotorcraft performance and handling qualities. The changes would enhance the safety standards for performance and handling qualities to reflect the evolution of rotorcraft capabilities.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lance T Gant, Air Certification Service, Department of Transportation, Federal Aviation Administration, 2601 Meachum Blvd., Fort Worth, TX 76193-0110
Phone: 817 222-5114

RIN: 2120–AH87

2082. • +REVISIONS TO COCKPIT VOICE RECORDER AND DIGITAL FLIGHT DATA RECORDER REGULATIONS

Priority: Other Significant

Legal Authority: 49 USC 100(g); 49 USC 40113; 49 USC 40119; 49 USC 41706; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44713; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903; 49 USC 44904; 49 USC 44912; 49 USC 46105; 49 USC 44113

CFR Citation: 14 CFR 121; 14 CFR 125; 14 CFR 135

Legal Deadline: None

Abstract: This action proposes to amend the cockpit voice recorder and digital flight data recorder regulations for certain air carriers, operators, and aircraft manufacturers. This proposal is based on recommendations issued by the National Transportation Safety Board following the investigations of several accidents and incidents, and includes other revisions that the FAA has determined are necessary. This proposal would require that all newly manufactured airplanes have CVR installed that "receives its electrical power from the bus that provides the maximum reliability for operation of the cockpit voice recorder without jeopardizing service to essential or emergency loads". This same language is in the proposed certification rules for the CVR and DFDR installations.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gary Davis, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-8166

RIN: 2120–AH88

Department of Transportation (DOT)
Federal Aviation Administration (FAA)

Final Rule Stage

2083. +FUEL SYSTEM VENT FIRE PROTECTION

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44704; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716 to 44717; 49 USC 44721; 49 USC 44722; 49 USC 44901

CFR Citation: 14 CFR 25; 14 CFR 121; 14 CFR 135

Legal Deadline: None

Abstract: This action would have amended the airworthiness standards for transport category airplanes to require fuel vent system protection during post-crash ground fires. This proposed rule would have applied to air carriers, air taxi operators, and commercial operators of transport category airplanes, as well as the manufacturers of such airplanes. This action was considered significant because of substantial public interest and the safety implications. This rulemaking will be withdrawn from the agenda.

Timetable:

Action	Date	FR Cite
ANPRM	09/26/84	49 FR 38078
ANPRM Comment Period End	01/25/85	
NPRM	02/02/95	60 FR 6632
NPRM Comment Period End	06/02/95	
To Be Withdrawn	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket 24251. Formerly entitled Implementation of SAFER Propulsion System

Recommendations. Project Number: ANM-82-050R.

ANALYSIS: Regulatory Evaluation, 02/02/95, 60 FR 6632

Agency Contact: Mike McRae, Airframe and Propulsion Branch, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2133

RIN: 2120–AA49

2084. MISCELLANEOUS AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7572; 49 USC 106(g); 49 USC 5103; 49 USC 40105; 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44703; 49 USC 44705; 49 USC 44706; 49 USC 44707; 49 USC 44709; 49 USC 44710; 49 USC 44711; 49 USC 44712

CFR Citation: 14 CFR 21; 14 CFR 65; 14 CFR 107; 14 CFR 121; 14 CFR 135; 14 CFR 145

Legal Deadline: None

Abstract: The FAA is withdrawing a previously published notice of proposed rulemaking (NPRM) that proposed to amend various sections of the regulations. The proposal was to clarify language, correct improper or obsolete references, and to relax certain existing requirements. Since publication of the NPRM, many other completed, in-process, or planned actions have addressed or will address many of the issues involved. The FAA has determined that all unresolved issues have been included in more recent actions dealing with the specific sections of the regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/03/83	48 FR 45214
NPRM Comment Period End	12/02/83	
To Be Withdrawn	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. 23781. Project Number: ARM-81-128R.

ANALYSIS: Regulatory Evaluation, 10/03/83, 48 FR 45214

Agency Contact: Linda L. Williams, Office of Rulemaking, ARM-100, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-9685

RIN: 2120–AA50

2085. 1-G STALLING SPEED AS A BASIS FOR AIRCRAFT PARTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321; 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704; 49 USC 44715

CFR Citation: 14 CFR 25; 14 CFR 36

Legal Deadline: None

Abstract: This action would amend the Federal Aviation Regulations to redefine the airplane reference stalling speed as the 1-g stalling speed in lieu of the minimum stalling speed. It would: (1) provide for a consistent, repeatable reference stalling speed; (2) ensure consistent and dependable maneuvering margins; (3) clarify the requirement for the use of 1-g stalling speeds in determining structural design speeds; (4) increase the head-on gust structural design requirement; and (5) provide for adjusted multiplying factors to maintain essentially equivalent requirements in areas where the use of minimum stalling speed has proven adequate. These changes are needed since the stalling characteristics of modern jet transports as determined by current methods can result in inconsistent reference stalling speeds. These changes may result in a higher level of safety where current methods have resulted in artificially low reference stalling speeds.

Timetable:

Action	Date	FR Cite
NPRM	01/18/96	61 FR 1260
Correction	02/26/96	61 FR 7157
NPRM Comment Period End	05/17/96	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-86-041R.

ANALYSIS: Regulatory Evaluation, 01/18/96, 61 FR 1260

Agency Contact: Don Stimson, Flight Test and Systems Branch, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, WA 98055-4056
Phone: 425 227-4056

RIN: 2120–AD40

2086. +REVISION OF PART 108, AIRCRAFT OPERATOR SECURITY

Priority: Other Significant

Legal Authority: 40 USC 106(g); 49 USC 5103; 49 USC 40113; 49 USC 40119; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44901 to 44905; 49 USC 44907; 49 USC 44913 to 44914; 49 USC 44932; 49 USC 44935 to 44936; 49 USC 46105

CFR Citation: 14 CFR 108

Legal Deadline: None

Abstract: This action amends part 108 of the Federal Aviation Regulations to incorporate new requirements in response to worldwide terrorist activity. This final rule contains changes that are intended to enhance security for the traveling public and aircraft operators. A final rule establishing a compliance program is forthcoming, which would require compliance programs for aircraft operators. This rulemaking is considered significant because of its safety implications and substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	08/01/97	62 FR 41730
Notice of Public Meeting	09/15/97	62 FR 48190
NPRM Comment Period End	12/01/97	
Notice of Public Meeting	04/21/98	63 FR 19691
NPRM Comment Period Reopened	08/10/99	64 FR 43322
Comment Period End	09/24/99	
Final Action	07/17/01	66 FR 37330
Final Action Effective	11/14/01	
Final Action; Compliance Program	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: ACS-87-107R.

ANALYSIS: Regulatory Evaluation, 08/01/97, 62 FR 41730

Agency Contact: Linda Valencia, Office of Civil Aviation Security Policy and Planning, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-3413

RIN: 2120–AD45

2087. +REVISION OF PART 107, AIRPORT SECURITY

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 5103; 49 USC 40113; 49 USC 40119; 49 USC 44701 to 44702; 49 USC 44706; 49 USC 44901 to 44905; 49 USC 44907; 49 USC 44913 to 44914; 49 USC 44932; 49 USC 44935 to 44936; 49 USC 46105

CFR Citation: 14 CFR 107

Legal Deadline: None

Abstract: This action will amend part 107 of the Federal Aviation Regulations to incorporate new requirements in response to the worldwide terrorist activity. The intent of this final rule is to enhance security for the traveling public, aircraft operators, and persons employed by or conducting business at public airports by increasing awareness of and compliance with civil aviation security measures. A final rule is forthcoming on compliance, which would require compliance program for airport security. This rulemaking is considered significant because of its safety implications and substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	08/01/97	62 FR 41760
Notice of Public Meeting	09/15/97	62 FR 48190
NPRM Comment Period End	12/01/97	
Comment Period End 6/26/98	04/21/98	63 FR 19691
Notice of Public Meeting	04/21/98	63 FR 19691
NPRM Comment Period Reopened	08/10/99	64 FR 43321
Final Action	07/17/01	66 FR 37274
Final Action Effective	11/14/01	
Final Action; Compliance Program	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: ACS-87-106R.

ANALYSIS: Regulatory Evaluation, 08/01/97, 62 FR 41760

Agency Contact: Bob Cammaroto, Office of Civil Aviation Security, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-7723

RIN: 2120–AD46

2088. +AGING AIRCRAFT SAFETY

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40104 to 40105; 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 44901 to 44904; 49 USC 44906

CFR Citation: 14 CFR 121; 14 CFR 125; 14 CFR 129; 14 CFR 135; 14 CFR 183

Legal Deadline: Other, Statutory, April 24, 1992, Action must be initiated by 04/24/92 per Aging Aircraft Safety Act of 1991.

Abstract: On October 5, 1993, the FAA published an NPRM that proposed to require air carriers of certain aircraft used in air transportation to demonstrate that the aircraft's maintenance has been adequate to ensure the highest degree of safety. After further review, and taking into consideration public comments to the NPRM, the FAA withdrew that NPRM. On March 19, 1999, the FAA issued a new NPRM that would ensure the continuing airworthiness of the most significant aging airplanes operating in air transportation by mandating aging aircraft records reviews and inspections for certain air carriers and certain aircraft and also by applying modern damage-tolerance analyses and inspection techniques to older airplane structures that were certificated before such techniques were available. The comment period closed on October 18, 1999. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	10/05/93	58 FR 51944
NPRM Comment Period End	02/02/94	
Comment Period End 3/4/94	02/08/94	59 FR 5741
NPRM	04/02/99	64 FR 16298
NPRM Comment Period End	08/02/99	
NPRM Comment Period Reopened	08/18/99	64 FR 45090
Comment Period End	10/08/99	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number AFS-92-029R.

ANALYSIS: Regulatory Evaluation, 04/02/99, 64 FR 16298

Agency Contact: Frederick Sobeck, Aircraft Maintenance Division, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-7355

RIN: 2120–AE42

2089. AIR TRAFFIC CONTROL RADAR BEACON SYSTEM AND MODE S TRANSPONDER REQUIREMENTS IN THE NATIONAL AIRSPACE SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912

CFR Citation: 14 CFR 121; 14 CFR 135

Legal Deadline: None

Abstract: This action would revise the Mode S transponder requirement for all aircraft operating under part 135 and certain aircraft operating under part 121 based on the expected availability of operational capabilities of Mode S ground sensors. For part 121 operators, the action would affect only those aircraft not required to have Traffic Alert and Collision Avoidance System II. An aviation rulemaking advisory committee has recommended that the FAA conduct a study of the installed Mode S ground sensor to determine the extent of the benefits derived and the costs involved in equipage. This action is a relieving action made necessary by the fact that ground sensors are not in place to support the requirement. Further, FAA is studying the need for Mode S transponders in part 135 and certain part 121 operations in light of the fact that transponders may not substantially increase ATC ability to view air traffic.

Timetable:

Action	Date	FR Cite
NPRM	05/23/96	61 FR 26036
NPRM Correction	06/17/96	61 FR 30551
NPRM Comment Period End	07/22/96	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: AFS-92-297R.

ANALYSIS: Regulatory Evaluation, 05/23/96, 61 FR 26036

Agency Contact: Daniel V. Meier, Jr., Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-3749

RIN: 2120–AE81

2090. +REVISED ACCESS TO TYPE III EXITS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105

CFR Citation: 14 CFR 25; 14 CFR 121

Legal Deadline: None

Abstract: This action proposed to adjust requirements for access to type III emergency exits in transport category airplanes with 60 or more passenger seats. The adjustments would reflect new data from tests conducted at the FAA's Civil Aeromedical Institute (CAMI) and intended to improve the ability of occupants to evacuate an airplane under emergency conditions. The FAA is withdrawing this proposed rulemaking as some of the information is outdated. The CAMI research is still ongoing. The FAA may issue a new rulemaking in the future. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	01/30/95	60 FR 5794
NPRM Comment Period End	05/01/95	
To Be Withdrawn	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-93-005R.

Agency Contact: Mahinder K. Wahi, Transport Airplane Directorate, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055
Phone: 425 227-2142

RIN: 2120–AF01

2091. +REVISION OF EMERGENCY EVACUATION DEMONSTRATION PROCEDURES TO IMPROVE PARTICIPANT SAFETY

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704

CFR Citation: 14 CFR 25; 49 CFR 1.47

Legal Deadline: None

Abstract: This action would amend part 25 of the FAR by revising appendix J, Emergency Evacuation, to allow certain alternative procedures in conducting full-scale emergency evacuation demonstrations for transport category airplanes. This is in response to recommendations from the Aviation Rulemaking Advisory Committee. The changes, which are intended to make full-scale emergency evacuation demonstrations safer for participants and to codify existing practices, would also affect manufacturers and operators of transport category airplanes. This action is considered significant because of substantial public interest and safety implications.

Timetable:

Action	Date	FR Cite
NPRM	07/18/95	60 FR 36932
Correction	08/25/95	60 FR 44387
NPRM Comment Period End	10/16/95	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-94-124A

ANALYSIS: Regulatory Evaluation, 07/18/95, 60 FR 36932

Agency Contact: Franklin Tiangsing, Regulations Branch, ANM-114, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2121

RIN: 2120–AF21

2092. +OVERFLIGHTS OF UNITS OF THE NATIONAL PARK SYSTEM

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44701; 49 USC 44702; 49 USC 44705; 49 USC 44709; 49 USC 44711 to 44713; 49 USC 44715; 49 USC 44716; 49 USC 44717; 49 USC 44722; 49 USC 46306

CFR Citation: 14 CFR 91; 14 CFR 93; 14 CFR 121; 15 CFR 135

Legal Deadline: None

Abstract: The FAA and National Park Service (NPS) established a joint working group which is tasked with developing a notice of proposed rulemaking to reduce or prevent adverse effects of aircraft noise over our national park system. At the same time, the working group is charged with affording those persons who wish to visit our national parks from the air the opportunity to do so. The working group met from May to November 1997, and developed a concept paper that was approved by the Aviation Rulemaking Advisory Committee and the NPS Advisory Board in December 1997. A notice of proposed rulemaking has been developed and is now being reviewed by the FAA and NPS. In April 1999, the FAA issued a disposition of comments to the ANPRM. That document summarizes those comments to the ANPRM and provides an update to the public on matters concerning air tours over units of the national park

system. In response to Public Law 106-181, April 5, 2000, the FAA and NPRS developed an NPRM that proposes to codify the language of the legislation and to adopt an altitude that would define a commercial air tour operation. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	03/17/94	59 FR 12740
ANPRM Correction	04/01/94	59 FR 15350
ANPRM Comment Period End	06/15/94	
Comment Period End 07/15/94	06/20/94	59 FR 31883
Notice of Public Meeting	06/06/97	62 FR 31187
Notice of Public Meeting	04/07/98	63 FR 17040
Disposition of Comments	04/09/99	64 FR 17293
NPRM	04/27/01	66 FR 21264
NPRM Comment Period End	06/11/01	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Refer to 1999 Regulatory Plan entry RIN 2120-AF93, Airspace Management: Special Flight Rules in the Vicinity of the Grand Canyon and also RIN 2120-AG11, Special Flight Rules in the Vicinity of the Rocky Mountain National Park. Project Number: ARM-97-318A

Agency Contact: Howard Nesbitt, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591 Phone: 202 493-4981

RIN: 2120–AF46

2093. REVISED PRECISION APPROACH LANDING SYSTEMS POLICY

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This statement announces the FAA's proposed policy for acquisition, installation, maintenance, and decommissioning of the instrument landing system (ILS) and the microwave landing system (MLS) during the transition to the global positioning system (GPS). The policy statement of December 1989 announced the transition from the ILS to the MLS for precision approach service in the National Airspace System. Since that time, advancement of GPS-based landing system technology has provided a more economical means of providing approach services.

Timetable:

Action	Date	FR Cite
Policy Statement	12/27/89	54 FR 53231
Policy Statement	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Wedge, Airway Facilities Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591 Phone: 202 267-7848

RIN: 2120–AG16

2094. +PROHIBITION OF THE TRANSPORTATION OF DEVICES DESIGNED AS CHEMICAL GENERATORS AS CARGO IN AIRCRAFT

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716; 49 USC 44722; 49 USC 46301

CFR Citation: 14 CFR 121; 14 CFR 125; 14 CFR 135

Legal Deadline: None

Abstract: The FAA is withdrawing proposed amendments regarding the transportation of devices designed as oxygen generators, including ones that have been discharged and ones that are newly manufactured but not yet charged. After the NPRM was issued, the FAA's concerns were addressed in other regulations or found to be unnecessary. In addition, the FAA is announcing that a proposed amendment to require that unexpired chemical oxygen generators be placed in a central location in an accessible compartment and separated from other cargo in all-cargo operations is being withdrawn because the Research and Special Programs Administration (RSPA) is considering requiring outer packaging, which would satisfy the intent of the FAA's NPRM.

This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	08/27/98	63 FR 45912
Correction	09/24/98	63 FR 51048
NPRM Comment Period End	10/26/98	
Correction	11/10/98	63 FR 69276
To Be Withdrawn	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Additional Information: Project Number: AFS-97-065R

ANALYSIS: Regulatory Evaluation, 08/27/98, 63 FR 45912

Agency Contact: David L. Catey, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591 Phone: 202 267-8166

RIN: 2120–AG35

2095. +REVISED STANDARDS FOR CARGO OR BAGGAGE COMPARTMENTS IN TRANSPORT CATEGORY AIRPLANES

Priority: Other Significant

Legal Authority: 49 USC 44715 to 44717; 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704; 49 USC 44705; 49 USC 44711 to 44713

CFR Citation: 14 CFR 25; 14 CFR 121; 14 CFR 135

Legal Deadline: None

Abstract: This action upgrades the fire safety standards for cargo or baggage compartments in certain transport category airplanes by eliminating Class D compartments altogether. Compartments that could no longer be designated as Class D would have to meet the standards for Class C or Class E compartments, as applicable. Certain other transport category airplanes that would not have to meet these new standards for type certification would have to meet them for use in air carrier, commuter, on-demand, or commercial service. These improved standards are needed to increase protection from possible in-flight fires. This rulemaking is considered significant because of the safety implications.

Timetable:

Action	Date	FR Cite
NPRM	06/13/97	62 FR 32412
NPRM Comment Period End	09/11/97	
Final Rule Request for Comments	02/17/98	63 FR 8032
Final Rule Effective	03/19/98	
Final Rule Comment Period End	06/17/98	
To Be Withdrawn	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: ANM-97-009R

ANALYSIS: Regulatory Evaluation, 06/13/97, 62 FR 32412

Regulatory Evaluation, 02/17/98, 63 FR 8032

Agency Contact: Mahinder K. Wahi, Transport Airplane Directorate, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055 Phone: 425 227-2142

RIN: 2120–AG42

2096. +SCREENING OF CHECKED BAGGAGE ON FLIGHTS WITHIN THE UNITED STATES

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 49 USC 106(g); 49 USC 5103; 49 USC 40113; 49 USC 40119; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44901 to 44905; 49 USC 44907; 49 USC 44913 to 44914; 49 USC 44932; 49 USC 44935 to 44936; 49 USC 46105

CFR Citation: 14 CFR 108

Legal Deadline: None

Abstract: The FAA is proposing the screening or bag matching of passenger-checked baggage on domestic flights by utilizing an FAA-approved Computer Assisted Passenger Screening (CAPS) system. This is in response to a recommendation from the White House Commission on Aviation Safety and Security (the Commission) "Final Report to President Clinton." The Commission recommended that one of the steps that should be taken to improve airline passenger security is the implementation by the FAA of a computerized system for profiling airline passengers flying out of airports located in the United States. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	04/19/99	64 FR 19220
Correction	05/03/99	64 FR 23554
Correction	05/28/99	64 FR 28945
Comment Period Extended	06/11/99	64 FR 31686
NPRM Comment Period End	06/18/99	
Comment Period End	08/17/99	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Lon M Siro, Aviation Security Operations Specialist, Department of Transportation, Transportation Security Administration, TSA-7-500, Air Carrier Operations Division, Building 10A, Room 325, 800 Independence Avenue SW, Washington, DC 20591 Phone: 202 267-9661 Fax: 202 267-5359 Email: lon.siro@faa.gov

RIN: 2120–AG51

2097. +POLICY REGARDING AIRPORT RATES AND CHARGES

Priority: Other Significant

Legal Authority: 49 USC 47129

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: A statement of policy, Policy Regarding Airport Rates and Charges (Policy Statement), which was required by Congress as part of the DOT Authorization Act of 1994, was published in the Federal Register (61 FR 31994) on June 21, 1996. That Policy Statement announced DOT and FAA policy on the fees charged by federally assisted airports to air carriers and other aeronautical users. This proposed action requests comments on replacement provisions for the portions of the Policy Statement vacated by the United States Court of Appeals for the District of Columbia Circuit. The Court disallowed a portion of the policy that had to do with historic cost valuation of airport property. DOT and FAA are beginning this proceeding in order to carry out their responsibility to establish reasonableness guidelines for airport fees. This policy is significant due to substantial industry interest. This proposed policy is being withdrawn because the issues are being considered as part of a preliminary Department of Transportation study of congestion pricing at airports.

Timetable:

Action	Date	FR Cite
Advance Notice of Proposed Policy	08/12/98	63 FR 43228
Comment Period End	10/13/98	
Comment Period Extended	12/22/98	63 FR 70834
Comment Period End	01/31/99	
To Be Withdrawn	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: None

Additional Information: Citation per reference in abstract paragraph, United States Court of Appeals for the District of Columbia Circuit in Air Transport Association of America v. Department of Transportation, 119 F.3d 38 (D.C. Cir. 1997), as modified on rehearing, Order of Oct. 15, 1997. Previous RIN for the Policy Statement published in the Federal Register is 2120-AF90.

Agency Contact: Barry Molar, Manager, Airport Compliance Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591 Phone: 202 267-3446

RIN: 2120–AG58

2098. +CERTIFICATION OF SCREENING COMPANIES

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 5103; 49 USC 40104 to 40105; 49 USC 40113; 49 USC 40119; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44707; 49 USC 44712; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901 to 44905; 49 USC 44906; 49 USC 44907; 49 USC 44913 to 44914

CFR Citation: 14 CFR 108; 14 CFR 109; 14 CFR 111; 14 CFR 129

Legal Deadline: None

Abstract: This action will require that all companies that perform aviation security screening be certificated by the FAA and meet enhanced requirements. This action is in response to a recommendation by the White House Commission on Aviation Safety and Security and to a congressional mandate in the Federal Aviation Reauthorization Act of 1996. The action is intended to improve the screening of passengers, accessible property, checked baggage, and cargo, and to provide standards for consistent high performance and increased accountability of screening companies. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	01/05/00	65 FR 560
NPRM Comment Period End	04/04/00	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ACP-98-299R.

ANALYSIS: Regulatory Evaluation, 01/05/2000, 65 FR 560

Agency Contact: Scott Cummings, Office of Civil Aviation Security, Policy, and Planning, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW.,, Washington, DC 20951 Phone: 202 267-3413

RIN: 2120–AG84

2099. +REVISIONS TO DIGITAL FLIGHT DATA RECORDER REGULATIONS FOR B-737 AIRPLANES AND FOR PART 125 OPERATORS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105

CFR Citation: 14 CFR 121; 14 CFR 125

Legal Deadline: None

Abstract: The FAA proposes to amend the digital flight data recorder rules for transport category airplanes to add a requirement for all Boeing 737 (B-737) series airplanes to record additional flight data parameters. This amendment is based on safety recommendations issued by the National Transportation Safety Board following the investigation of the 1994 USAir Flight 427 accident. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	11/18/99	64 FR 63139
NPRM Comment Period End	12/20/99	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: AIR-99-272R.

ANALYSIS: Regulatory Evaluation, 11/18/99, 64 FR 63139

Agency Contact: George Kaseote, Policy and Procedures Branch, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591 Phone: 202 267-8541

RIN: 2120–AG87

2100. +TRAFFIC ALERT AND COLLISION AVOIDANCE SYSTEMS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105

CFR Citation: 14 CFR 121; 14 CFR 129

Legal Deadline: None

Abstract: This action proposes to require the installation and use of a traffic alert and collision system (TCAS) on certain cargo airplanes. Current regulations do not require TCAS installation on all-cargo airplanes. However, because the air cargo industry has experienced rapid growth and is increasingly sharing air space with other air carriers, the FAA is proposing this action to minimize the possibility of midair collisions involving cargo airplanes. This rulemaking proposes that affected airplanes be equipped with TCAS II, or another approved traffic alert and collision avoidance system, as appropriate, no later than October 31, 2003. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	11/01/01	66 FR 55506
NPRM Comment Period End	12/31/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project No. AFS-98-314R

Agency Contact: Alberta Brown, Air Transportation Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591 Phone: 202 267-8321

RIN: 2120–AG90

2101. +IMPROVED FLAMMABILITY STANDARDS FOR THERMAL/ACOUSTIC INSULATION MATERIALS USED IN TRANSPORT CATEGORY AIRPLANES

Regulatory Plan: This entry is Seq. No. 105 in part II of this issue of the Federal Register.

RIN: 2120–AG91

2102. FIRE PROTECTION OF ELECTRICAL SYSTEM COMPONENTS ON TRANSPORT CATEGORY AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701; 49 USC 44702; 40 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This rulemaking will amend the airworthiness standards for transport category airplanes concerning the protection of electrical system components. This action will eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices

Timetable:

Action	Date	FR Cite
NPRM	05/15/01	66 FR 26964
NPRM Comment Period End	07/16/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mahinder K. Wahi, Transport Airplane Directorate, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055 Phone: 425 227-2142

Massoud Sadeghi, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055-4056 Phone: 425 227-2117

RIN: 2120–AG92

2103. +CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS (SECTION 610 REVIEW)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7572; 49 USC 106(g); 49 USC 40101; 49 USC 40103; 49 USC 40109; 49 USC 40113; 49 USC 44110; 49 USC 44502; 49 USC 44701; 49 USC 44702; 49 USC 44709; 49 USC 44711; 49 USC 44713; 49 USC 44715

CFR Citation: 14 CFR 21

Legal Deadline: None

Abstract: The FAA intends to conduct a 610 review (a review under section 610 of the Regulatory Flexibility Act) of this part, and RIN 2120-AG93 has been added to the Agenda to reflect this review. The FAA carries out its responsibility to promote safety of flight of civil aircraft in air commerce by prescribing minimum standards governing the design and construction of aircraft, aircraft engines and propellers and appliances as may be required in the interest of safety. The FAA has established procedural requirements in 14 CFR part 21 for the issuance of the following certificates and approvals: (1) type certificates and changes to type certificates; (2) production certificates; (3) airworthiness certificates; (4) export airworthiness certificates and approvals; and (5) approvals of certain materials, parts processes and appliances produced for sale or installation on a type certificated product. Also contained in this part are the rules governing the holders of certificates. In order to be issued a type certificate, the applicant must show that the product complies with the airworthiness standards for the product (aircraft, aircraft engine, or propeller). The airworthiness standards are amended as needed to reflect continually changing technology, correct design deficiencies, and provide safety enhancements.

Timetable:

Action	Date	FR Cite
Review To Be Completed	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Paul Larson, Office of Aviation Policy and Plans, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, Washington, DC 20591 Phone: 202 267-3296

RIN: 2120–AG93

2104. +CERTIFICATION OF AIRPORTS

Regulatory Plan: This entry is Seq. No. 106 in part II of this issue of the Federal Register.

RIN: 2120–AG96

2105. SPECIAL FLIGHT RULES IN THE VICINITY OF GRAND CANYON NATIONAL PARK

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701; 49 USC 44709; 49 USC 44704; 49 USC 44711; 49 USC 44712; 49 USC 44715; 49 USC 44722; 49 USC 46306; 49 USC 46315; 49 USC 46316; 49 USC 46502; 49 USC 46504; 49 USC 46506 to 46507; 49 USC 47122; 49 USC 47508; 49 USC 48528 to 47531

CFR Citation: 14 CFR 91; 14 CFR 93; 14 CFR 121; 14 CFR 135

Legal Deadline: None

Abstract: This action will further postpone the effective date for the flight-free zones, Special Flight Rules Area, and corridors portions of the December 31, 1996, Grand Canyon final rule until January 31, 2001. The FAA finds that this rule is needed so that it may issue new regulations that will substantially restore natural quiet to the Grand Canyon National Park.

Timetable:

Action	Date	FR Cite
Final Rule Effective	01/31/00	
Final Rule; Request for Comments	02/03/00	65 FR 5396
Comment Period End	03/06/00	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Reginald C. Matthews, Office of Air Traffic Airspace Management, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591 Phone: 202 267-8783

RIN: 2120–AG97

2106. +FRACTIONAL OWNERSHIP

Priority: Other Significant

Legal Authority: 49 USC 106(g0; 49 USC 1155; 49 USC 40103; 49 USC 40119; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44713; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105; 49 USC 46306; 49 USC 46315; 49 USC 46316; 49 USC 46504; 49 USC 46506 to 46507; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47531

CFR Citation: 14 CFR 61; 14 CFR 91; 14 CFR 125; 14 CFR 135

Legal Deadline: None

Abstract: The FAA proposes to update and revise the regulations governing operations by aircraft in fractional ownership programs. Current regulations do not adequately define fractional ownership programs nor clearly allocate responsibility and authority for safety and compliance with the regulations. This proposal will define fractional ownership programs and their participants, allocate responsibility and authority for safety of flight operations for purposes of compliance with the regulations, and

ensure that fractional ownership program aircraft operations maintain a high level of safety. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	07/18/01	66 FR 37520
NPRM Comment Period End	10/16/01	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Katherine Hakala Perfetti, Flight Standards Service, Department of Transportation, Federal Aviation Administration
Phone: 202 267-3760

RIN: 2120–AH06

2107. NOISE CERTIFICATION REGULATIONS FOR HELICOPTERS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321; 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704; 49 USC 44715; PL 96-193; EO 11514

CFR Citation: 14 CFR 36

Legal Deadline: None

Abstract: This proposal is based on a joint effort by the FAA, the European Joint Aviation Authorities (JAA), and the Aviation Rulemaking Advisory Committee (ARAC) to harmonize the U.S. noise certification regulations and the European Joint Aviation Requirements (JAR) for helicopters. The proposed changes would provide nearly uniform noise certification standards for helicopters certificated in the U.S., the JAA countries, and other countries that have adopted as their national regulation either the U.S. regulations, the JAA regulations, or the International Civil Aviation Organization standards. The harmonization of the noise certification standards would simplify airworthiness approvals for import and export purposes.

Timetable:

Action	Date	FR Cite
NPRM	10/05/00	65 FR 59634
NPRM Comment Period End	01/04/01	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: AEE-94-367A.

Agency Contact: Sandy Liu, Office of Environment and Energy, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 493-4864

RIN: 2120–AH10

2108. ANTIDRUG AND ALCOHOL MISUSE PREVENTION PROGRAMS FOR PERSONNEL ENGAGED IN SPECIFIED AVIATION ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105; 49 USC 46301

CFR Citation: 14 CFR 121

Legal Deadline: None

Abstract: This action proposes to revise the FAA's Antidrug and Alcohol Misuse Prevention Programs in accordance with changes the Department of Transportation is making to 49 CFR 40. In addition, the FAA proposes some minor revisions to its Antidrug and Alcohol Misuse Prevention Program so that the requirements conform to 14 CFR 67.

Timetable:

Action	Date	FR Cite
NPRM	02/28/02	67 FR 9366
NPRM Comment Period End	05/29/02	
NPRM Comment Period Extended	05/29/02	67 FR 37361
NPRM Comment Period End	07/29/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Diane Wood, Acting Manager, Drug Abatement Branch, Office of Aviation Medicine, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 366-6710

RIN: 2120–AH14

2109. +CERTIFICATION OF PILOTS, AIRCRAFT, AND REPAIRMEN FOR THE OPERATION OF LIGHT SPORT AIRCRAFT

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40105; 49 USC 44101; 49 USC 44111; 49 USC 44701 to 44703; 49 USC 44707; 49 USC 44709 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 45102 to 45103; 49 USC 45301 to 45303; 49 USC 46306; 49 USC 46315; 49 USC 46316; 49 USC 46504; 49 USC 46506 to 46507; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47531

CFR Citation: 14 CFR 1; 14 CFR 21; 14 CFR 61; 14 CFR 65; 14 CFR 91

Legal Deadline: None

Abstract: The FAA is proposing to establish the certification and training requirements for pilots and repairmen to operate and maintain light-sport aircraft. The FAA is proposing a new sport pilot certificate and a flight instructor certificate with a sport pilot rating. The FAA also is proposing two new light-sport aircraft airworthiness certificates for existing and newly manufactured light-sport aircraft. In addition, this action proposes a new type of repairman certificate for individuals who would inspect and maintain light-sport aircraft. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	02/05/02	67 FR 5268
NPRM Comment Period End	05/06/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Susan Gardner, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-3735

RIN: 2120–AH19

2110. REVISION TO AIRSPEED INDICATING SYSTEM REQUIREMENTS FOR TRANSPORT CATEGORY AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701; 49 USC 44702; 49 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action amends the airworthiness standards for transport category airplanes concerning the airspeed indicating system. This rule adds airspeed indication requirements for speeds greater than and less than the speed range for which airspeed indication accuracy requirements currently apply, would add a requirement that airspeed indications not cause the pilot undue difficulty between the initiation of rotation and the achievement of a steady climbing condition during takeoff, and would also add a requirement to limit the effects of airspeed lag. Adopting this rulemaking eliminates a regulatory difference between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	05/15/01	66 FR 26948
NPRM Comment Period End	07/16/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Don Stimson, Flight Test and Systems Branch, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, WA 98055-4056
Phone: 425 227-4056

RIN: 2120–AH26

2111. ELECTRICAL INSTALLATION, NICKEL CADMIUM BATTERY INSTALLATION, AND NICKEL CADMIUM BATTERY STORAGE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701; 49 USC 44702; 49 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action amends the airworthiness standards for transport category airplanes concerning electrical equipment and nickel cadmium battery installations, and nickel cadmium battery storage. This rulemaking eliminates regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	05/17/01	66 FR 27582
NPRM Comment Period End	07/16/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Massoud Sadeghi, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2117

RIN: 2120–AH27

2112. DESIGN AND INSTALLATION OF ELECTRONIC EQUIPMENT ON TRANSPORT CATEGORY AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701; 49 USC 44702; 49 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action amends the airworthiness standards for transport category airplanes concerning the design and installation of electronic equipment. The rule requires that such equipment be designed and installed so that it does not cause essential loads to become inoperative as a result of electrical power supply transients or transients from other causes. Adopting this rulemaking would eliminate regulatory differences between the airworthiness standards of the United States and the Joint Aviation Requirements of Europe, without affecting current industry design practices

Timetable:

Action	Date	FR Cite
NPRM	05/15/01	66 FR 26956
NPRM Comment Period End	07/16/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Massoud Sadeghi, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-4056

RIN: 2120–AH28

2113. ELECTRICAL CABLES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701; 49 USC 44702; 49 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This rule amends the airworthiness standards for transport category airplanes concerning electrical cables. This action harmonizes part 25 and JAR-25 requirements concerning cable installations and clarifies the cable design requirements ensuring that the designer considers the critical conditions, routings, and markings of a proper installation. This rulemaking eliminates regulatory differences between the airworthiness standards of the United States and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	05/15/01	66 FR 26942
NPRM Comment Period End	07/16/01	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Massoud Sadeghi, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2117

RIN: 2120–AH29

2114. MATERIAL STRENGTH PROPERTIES AND DESIGN VALUES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: The FAA proposes to revise the material strength properties and material design values requirement for transport category airplanes by incorporating changes developed in cooperation with the Joint Aviation Authorities of Europe and the U.S. and European aviation industry through the Aviation Rulemaking Advisory Committee. This proposal is intended to achieve common requirements and language between the requirements of the U.S. regulations and the Joint Aviation Requirements of Europe, while maintaining at least the level of safety provided by the current regulations.

Timetable:

Action	Date	FR Cite
NPRM	01/29/02	67 FR 4318
NPRM Comment Period End	04/01/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-98-300.

Agency Contact: Rich Yarges, Airframe and Airworthiness Branch, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2143

RIN: 2120–AH36

2115. REVISIONS TO VARIOUS POWERPLANT INSTALLATION REQUIREMENTS FOR TRANSPORT CATEGORY AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action proposes to revise the standards applicable to thrust or power augmentation systems, fuel filling points, designated fire zones, and powerplant instruments. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	01/31/02	67 FR 4856
NPRM Comment Period End	04/01/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-01-467.

Agency Contact: Mike McRae, Airframe and Propulsion Branch, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2133

RIN: 2120–AH37

2116. LOWER DECK SERVICE COMPARTMENTS ON TRANSPORT CATEGORY AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action proposes to require that two-way voice communication systems between lower deck service compartments and the flight deck remain available following loss of the normal electrical power generating system. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	01/24/02	67 FR 3456
NPRM Comment Period End	03/25/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-00-554.

Agency Contact: Jayson Claar, Transport Airplane Directorate, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055-4056
Phone: 425 227-2194

RIN: 2120–AH38

2117. MISCELLANEOUS FLIGHT REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: The FAA proposes to amend the airworthiness standards for transport category airplanes concerning miscellaneous flight requirements. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	01/14/02	67 FR 1846
NPRM Comment Period End	03/15/02	
Final Action	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-00-226.

Agency Contact: Don Stimson, Flight Test and Systems Branch, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, WA 98055-4056
Phone: 425 227-4056

RIN: 2120–AH39

2118. HARMONIZATION OF NOISE CERTIFICATION STANDARDS FOR PROPELLER-DRIVEN SMALL AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321; 49 USC 106(g); 49 USC 40113; 49 USC 44701; 49 USC 44702; 49 USC 44704; 49 USC 44715

CFR Citation: 14 CFR 36

Legal Deadline: None

Abstract: This final rule harmonizes two technical items with international regulations to provide uniform noise certification standards for airplanes certificated in the U.S. and JAA (European Joint Aviation Authorities) countries. This will help to simplify airworthiness approvals for import and export purposes. The revisions to these two items will apply only to a small number of older technology airplanes.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: AEE-01-134.

Agency Contact: Mehmet Marsan, Office of Environment and Energy, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-7703

RIN: 2120–AH42

2119. DIGITAL FLIGHT DATA RECORDER RESOLUTIONS REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 41706; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44713; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105; 49 USC 44113

CFR Citation: 14 CFR 121; 14 CFR 125; 14 CFR 135

Legal Deadline: None

Abstract: This action allows operators of specified airplanes to operate those airplanes under parts 121, 125, or 135 without meeting the resolution requirements for certain parameters of information recorded by flight data recorders. This action is needed to allow operators of these airplanes to continue operating these airplanes with their current recording capabilities until the FAA is able to determine the appropriate remedy for this problem.

Timetable:

Action	Date	FR Cite
Final Rule Effective	08/17/01	
Final Rule; Request for Comments	08/22/01	66 FR 44270
Comment Period End	09/21/01	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: AFS-01-551-E.

Agency Contact: Gary Davis, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-8166

RIN: 2120–AH46

2120. +CRIMINAL HISTORY BACKGROUND CHECKS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 5103; 49 USC 40113; 49 USC 40119; 49 USC 44701 to 44702; 49 USC 44706; 49 USC 44901 to 44905; 40 USC 44907; 49 USC 44913 to 44914; 49 USC 44932; 49 USC 44935 to 44936; 49 USC 46105

CFR Citation: 14 CFR 107; 14 CFR 108

Legal Deadline: None

Abstract: This rule requires each airport operator and aircraft operator that has adopted a security program under part 107 and part 108, respectively, to conduct fingerprint-based criminal history record checks for individuals if they have not already undergone criminal history record checks. This rule will ensure that individuals in these positions do not have disqualifying criminal offenses. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
Final Rule; Request for Comments	12/06/01	66 FR 63473
Final Rule Effective	12/06/01	
Comment Period End	01/07/02	
Comment Period Reopened	01/25/02	67 FR 3810
Comment Period End	03/11/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Linda Valencia, Office of Civil Aviation Security Policy and Planning, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-3413

RIN: 2120–AH53

2121. FLIGHT RESTRICTIONS IN THE VICINITY OF NIAGARA FALLS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40106; 49 USC 40109; 49 USC 40113; 49 USC 44502; 49 USC 444514; 49 USC 44701; 49 USC 44719; 49 USC 46301

CFR Citation: 14 CFR 93

Legal Deadline: None

Abstract: This action proposes to codify current flight restrictions for aircraft operating in U.S. airspace in the vicinity of Niagara Falls, NY. The FAA is proposing this action to complement flight management procedures established for Niagara Falls by Transport Canada.

Timetable:

Action	Date	FR Cite
NPRM	09/04/02	67 FR 56740
NPRM Comment Period End	10/21/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Terry Brown, Airspace and Rules Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-8783

RIN: 2120–AH57

2122. +SCREENERS, QUALIFICATIONS, TRAINING, AND TESTING

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 5103; 49 USC 40104 to 40105; 49 USC 40113; 49 USC 40119; 49 USC 41706; 49 USC 44701 to 44702; 49 USC 44705 to 44706; 49 USC 44712; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901 to 44907; 49 USC 44913 to 44914; 49 USC 44935 to 44936; 49 USC 46105

CFR Citation: 14 CFR 108; 14 CFR 129; 14 CFR 191

Legal Deadline: None

Abstract: This final rule provides additional qualifications, training, and testing of individuals who screen persons and property that are carried in passenger aircraft. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Scott Cummings, Office of Civil Aviation Security, Policy, and Planning, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW.,, Washington, DC 20951
Phone: 202 267-3413

RIN: 2120–AH59

2123. PROCEDURES FOR REIMBURSEMENT OF AIRPORTS, ON-AIRPORT PARKING LOTS AND VENDORS OF ON-AIRFIELD DIRECT SERVICES TO AIR CARRIERS FOR SECURITY MANDATES

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-71; 115 Stat. 597

CFR Citation: 14 CFR 154

Legal Deadline: None

Abstract: The FAA is proposing procedures for certain operators to apply for reimbursement of allowable costs incurred to comply with certain security requirements imposed by the FAA or Transportation Security Administration on or after September 11, 2001. These procedures are needed to inform airport operations, on-airport parking lots, and vendors of on-airfield direct services to air carriers how to apply for reimbursement of allowable costs.

Timetable:

Action	Date	FR Cite
NPRM	12/21/01	66 FR 66238
NPRM Comment Period End	01/22/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Barry Molar, Manager, Airport Compliance Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-3446

RIN: 2120–AH60

2124. +ENHANCED SECURITY PROCEDURES FOR OPERATIONS AT CERTAIN AIRPORTS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 1155; 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 40101; 49 USC 44111; 49 USC 44701; 49 USC 44709; 49 USC 44711; 49 USC 44712; 49 USC 44715; 49 USC 44716; 49 USC 44717; 49 USC 44722; 49 USC 46306; 49 USC 46315; 49 USC 46316; 49 USC 46504; 49 USC 46506 to 46507; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47531

CFR Citation: 14 CFR 91

Legal Deadline: None

Abstract: This rule requires any person operating an aircraft to or from College Park Airport, Potomac Airfield, and Washington Executive/Hyde Field to conduct those operations in accordance with security procedures approved by the Administrator. This action is being taken to restore aircraft operations at these airports while attempting to counter possible terrorist threats to the National Capital region. This action is significant because of substantial public interest and safety implications.

Timetable:

Action	Date	FR Cite
Final Rule Effective	02/13/02	
Final Rule; Request for Comments	02/19/02	67 FR 7538
Comment Period End	04/22/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bruce Landry, Office of Civil Aviation Security, Policy, and Planning, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-8320

RIN: 2120–AH62

2125. POWERPLANT CONTROLS ON TRANSPORT CATEGORY AIRPLANES, GENERAL

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This rulemaking proposes to amend the airworthiness standards for transport category airplanes concerning design requirements for powerplant valves controlled from the flightdeck. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	05/08/02	67 FR 30820

Action	Date	FR Cite
NPRM Comment Period End	07/08/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jennifer Abdul-Wali, Transportation Specialist, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-6322
Fax: 202 366-9313
Email: jennifer.abdul-wali@ost.dot.gov

Mike McRae, Airframe and Propulsion Branch, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2133

RIN: 2120–AH65

2126. • +REDUCED VERTICAL SEPARATION MINIMUM IN UNITED STATES DOMESTIC AIRSPACE

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 1155; 49 USC 40103; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701; 49 USC 44709; 49 USC 44711; 49 USC 44712; 49 USC 44715; 49 USC 44715; 49 USC 44716; 49 USC 46504; 49 USC 46506 to 46507; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47531

CFR Citation: 14 CFR 91

Legal Deadline: None

Abstract: This action proposes to permit Reduced Vertical Separation Minimum flights in the airspace over the contiguous 48 States of the United States and Alaska and that portion of the Gulf of Mexico where the FAA provides air traffic services. This reduction of vertical separation minima would only be applied between those aircraft the meet stringent altimeter and auto-pilot performance requirements. The FAA is proposing this action to enhance airspace capacity and to assist aircraft operators to save fuel and time.

Timetable:

Action	Date	FR Cite
NPRM	05/10/02	67 FR 31920
NPRM Comment Period End	08/08/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roy Grimes, Technical Programs Division, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-3755

RIN: 2120–AH68

2127. • REPORTS BY CARRIERS ON INCIDENTS INVOLVING ANIMALS DURING AIR TRANSPORT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 1153; 49 USC 40101; 49 USC 40102; 49 USC 40103; 49 USC 40113; 49 USC 41721; 49 USC 44105; 49 USC 44111; 49 USC 44701 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903; 49 USC 44904; 49 USC 44906; 49 USC 44912; 49 USC 44914; 49 USC 44936; 49 USC 44938; 49 USC 46103; 49 USC 46105

CFR Citation: 14 CFR 119

Legal Deadline: None

Abstract: This action implements Section 710 of P.L. 106-181, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century by requiring air carriers that provide scheduled passenger air transportation to submit monthly to the Secretary of Transportation, through the Animal & Plant Health Inspection Service of the United States Department of Agriculture, a report on any incidents involving the loss, injury, or death of an animal during air transport provided by the air carrier.

Timetable:

Action	Date	FR Cite
NPRM	09/27/02	67 FR 61238
NPRM Comment Period Extended to 12/27/2002	10/18/02	67 FR 64331
NPRM Comment Period End	10/28/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Anthony Washington, Office of the Chief Counsel, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW,, Washington, DC 20591
Phone: 202 267-3480

RIN: 2120–AH69

2128. • +SECURITY CONSIDERATIONS FOR THE FLIGHTDECK ON FOREIGN OPERATED TRANSPORT CATEGORY AIRPLANES

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40104 to 40105; 49 USC 40113; 49 USC 40119; 49 USC 44701 to 44702; 49 USC 44712; 49 USC 44716 to 44717; 49 USC 44722

CFR Citation: 14 CFR 129

Legal Deadline: None

Abstract: This amendment requires improved flightdeck security and operational procedural changes to prevent unauthorized access to the flightdeck on passenger-carrying aircraft operated by foreign carriers under the provisions of part 129. This amendment applies the same flightdeck security enhancements to foreign air carriers as were previously applied to U.S. air carriers. This action is significant because of safety and substantial public interest.

Timetable:

Action	Date	FR Cite
Final Rule	06/21/02	67 FR 42450
Final Rule Effective	06/21/02	
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jeff Gardlin, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2136

RIN: 2120–AH70

2129. • AIRCRAFT REGISTRATION REQUIREMENTS; CLARIFICATION OF "COURT OF COMPETENT JURISDICTION"

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113 to 40114; 49 USC 44101 to 44108; 49 USC 44703 to 44704; 49

USC 44713; 49 USC 45302; 49 USC 46104

CFR Citation: 14 CFR 47

Legal Deadline: None

Abstract: This NPRM proposes to amend language in the aircraft registration regulations governing aircraft last previously registered in a foreign country. This action is needed to clarify the term "court of competent jurisdiction". This action intends to clearly describe what constitutes satisfactory evidence to the Administrator that foreign registration of an aircraft has ended or is invalid.

Timetable:

Action	Date	FR Cite
NPRM	06/17/02	67 FR 41302
NPRM Comment Period End	07/17/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Julie A. Stanford, Aircraft Regulation Branch, Department of Transportation, Federal Aviation Administration, P.O. Box 25504, Oklahoma City, OK 73125
Phone: 405 954-3131

RIN: 2120–AH75

2130. • +PROHIBITION OF CONSTRUCTION OR ALTERATION IN THE VICINITY OF THE PRIVATE RESIDENCE OF THE PRESIDENT OF THE UNITED STATES

Priority: Other Significant

Legal Authority: 49 USC 302; 49 USC 322; 49 USC 324

CFR Citation: 14 CFR 76

Legal Deadline: None

Abstract: This final rule will establish a new part 76 under title 14 of the Code of Federal Regulations that prohibits the construction of any new object or the alteration of any existing object that would exceed 50 feet above ground level and is within the vicinity of the private residence of the President of the United States. The Secretary of Transportation is adopting this final rule as part of his statutory authority to ensure the National security by protecting the area of the private residence of the President of the United States. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sheri Edgett-Baron, Air Traffic Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW.,, Washington,, DC 20591
Phone: 202 267-9354

RIN: 2120–AH83

2131. • +REVOCATION OF PILOT CERTIFICATES OR DENIAL OF AN APPLICATION BASED ON SECURITY DISQUALIFICATION

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44703; 49 USC 44707; 49 USC 44709 to 44711; 49 USC 45102 to 45103; 49 USC 45301 to 45302

CFR Citation: 14 CFR 61

Legal Deadline: None

Abstract: This action provides the authority to revoke a pilot certificate or deny an application for a pilot certificate based on a written determination by the Under Secretary of Transportation for Security that an individual poses a security risk related to aviation. This final rule addresses the security concerns of who should hold a pilot certificate issued by the FAA and is necessary to enhance security in air transportation. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John D. Lynch, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-3844

RIN: 2120–AH84

2132. • FLIGHTDECK SECURITY ON FOREIGN OPERATED AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40104 to 40105; 49 USC 40113; 49 USC 40119; 49 USC 41706; 49 USC 44701 to 44702; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901 to 44904; 49 USC 44906

CFR Citation: 14 CFR 129

Legal Deadline: None

Abstract: This final rule excludes airplanes with fewer than 19 passenger seats, eliminates the term "or on overflights", changes the compliance date for affected airplanes, and changes the term "transport category aircraft" to "transport category airplanes".

Timetable:

Action	Date	FR Cite
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Brian Staurseth, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW.,, Washington, DC 20591
Phone: 202 385-4561

RIN: 2120–AH86

2133. IFR ALTITUDES; MISCELLANEOUS AMENDMENTS

Priority: Routine and Frequent

Legal Authority: 49 USC 40120; 49 USC 44502; 49 USC 44514; 49 USC 44719; 49 USC 44721; 49 USC 106(g); 49 USC 40103; 49 USC 40106; 49 USC 40113; 49 USC 40114

CFR Citation: 14 CFR 95

Legal Deadline: None

Abstract: This is a nonsignificant body of regulations which prescribes altitudes for the operation of aircraft under instrument flight rules (IFR) on Federal airways, jet routes, area navigation low or high routes, or other direct routes for which a minimum en route IFR altitude is designated in 14 CFR part 95. In addition, mountainous areas and changeover points are designated. These regulations are an established body of technical requirements that are issued routinely and frequently to maintain operational efficiency. Total actions expected—270. 10/00/2002 - 10/00/2003.

Timetable:

Action	Date	FR Cite
Actions Will Continue Through	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael L. Henry, General Aviation and Commercial Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-8212

Jennifer Abdul-Wali, Transportation Specialist, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-6322
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Email: jennifer.abdul-wali@ost.dot.gov

Don Pate, Mike Monroney Aeronautical Center, Department of Transportation, Federal Aviation Administration, 6500 South MacArthur, Oklahoma City, OK 73125
Phone: 405 954-4161

RIN: 2120–AA63

2134. AIRWORTHINESS DIRECTIVES

Priority: Routine and Frequent

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701

CFR Citation: 14 CFR 39

Legal Deadline: None

Abstract: The FAA issues type certificates for "products," which are aircraft, engines, propellers, and some appliances. The FAA issues a regulation called an Airworthiness Directive (AD) to address an unsafe condition in a type certificated product, if that unsafe condition is likely to exist or develop in products of the same type design. Part 39 of title 14 requires each operator of a product affected by an AD to comply with the terms of the AD, in order to operate that product; the AD may mandate operational limitations, maintenance, or alterations for the affected product. The vast majority of routine and frequent Airworthiness Directives are nonsignificant. Total actions expected—540. 10/00/2002 to 10/00/2003.

Timetable:

Action	Date	FR Cite
Actions Will Continue Through	10/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Agency Contact: Jack McGrath, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-9580

RIN: 2120–AA64

2135. STANDARD INSTRUMENT APPROACH PROCEDURES; MISCELLANEOUS AMENDMENTS

Priority: Routine and Frequent

Legal Authority: 49 USC 40103; 49 USC 40106; 49 USC 40113 to 40114; 49 USC 40120; 49 USC 44502; 49 USC 44514; 49 USC 44701; 49 USC 44719; 49 USC 44721 to 44722; 49 USC 106(g)

CFR Citation: 14 CFR 97

Legal Deadline: None

Abstract: Standard Instrument Approach Procedures (SIAP) provide for instrument letdown to airports in the United States. They are a nonsignificant body of regulations that are complex and technical in nature and require routine and frequent rulemaking to maintain efficiency. The FAA issues, revises, and cancels SIAPs by adopting amendments that are incorporated into 14 CFR part 97. Contemporaneously with publication in the Federal Register, the SIAPs are made available to the Aeronautical Charting and Cartography Office in the FAA and other publishers of aeronautical charts where they are published as approach procedure charts or "approach plates." These charts are made available to the members of the aviation community for use by pilots in making instrument approaches. Total actions expected—3,200. 10/00/2002 - 10/00/2003.

Timetable:

Action	Date	FR Cite
Actions Will Continue Through	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael L. Henry, General Aviation and Commercial Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-8212

Don Pate, Mike Monroney Aeronautical Center, Department of Transportation, Federal Aviation Administration, 6500 South MacArthur, Oklahoma City, OK 73125
Phone: 405 954-4161

RIN: 2120–AA65

2136. AIRSPACE ACTIONS

Priority: Routine and Frequent

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40120; EO 10854

CFR Citation: 14 CFR 71; 14 CFR 73; 14 CFR 75

Legal Deadline: None

Abstract: This is a nonsignificant body of regulations which designates airspace areas, airways, routes, and reporting points to facilitate safe navigation. These regulations are

technical in nature and are issued routinely and frequently to maintain operational efficiency. Total actions expected—450. 10/00/2002 through 10/00/2003.

Timetable:

Action	Date	FR Cite
Actions Will Continue Through	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Pat Crawford, Manager, Airspace Branch, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-9255

RIN: 2120–AA66

2137. +DRUG ENFORCEMENT ASSISTANCE

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 5121 to 5124; 49 USC 40113 to 40114; 49 USC 44101 to 44108; 49 USC 44110 to 44111; 49 USC 44702 to 44703; 49 USC 44704; 49 USC 44709 to 44710; 49 USC 44713; 49 USC 46101 to 46110; 49 USC 46301 to 46316; 49 USC 46501 to 46502; 49 USC 46504 to 46507; 49 USC 47106; 49 USC 47111

CFR Citation: 14 CFR 13; 14 CFR 47

Legal Deadline: Final, Statutory, September 18, 1989.

Abstract: This action would revise certain requirements concerning registration of aircraft, certification of pilots, and penalties associated with registration and certification violations. This notice also announced new procedures for processing major repair and alteration forms which pertain to fuel system modifications. Actions announced in this notice respond to the FAA Drug Enforcement Assistance Act. The requirements and adopted procedures are intended to assist law enforcement agencies in their efforts to stop drug trafficking in general aviation aircraft. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	03/12/90	55 FR 9270
NPRM Comment Period End	05/11/90	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project No. AFS-89-035R.

ANALYSIS: Regulatory Evaluation, 03/12/90, 55 FR 9270

Agency Contact: Sharon Ashford, Registry Modernization Staff, Department of Transportation, Federal Aviation Administration, 6500 South MacArthur Boulevard, Oklahoma City, OK 73125-4939
Phone: 405 954-7038

RIN: 2120–AD16

2138. TYPE CERTIFICATES FOR SOME SURPLUS AIRCRAFT OF THE ARMED FORCES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7572; 49 USC 106(g); 49 USC 40105; 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44707; 49 USC 44709; 49 USC 44711; 49 USC 44713; 49 USC 44715; 49 USC 45303

CFR Citation: 14 CFR 21

Legal Deadline: None

Abstract: Following World War II, a substantial number of surplus military airplanes were offered for sale to the public in order to meet an increased demand for civilian-use aircraft not being met by the civil aircraft industry. The current regulation permits both type and airworthiness certification for surplus military aircraft based on the particular aircraft's safety record and condition. As military aircraft have become increasingly complex and sophisticated, that practice is no longer acceptable. This action would remove the regulations for issuing type certificates for these surplus aircraft and eliminate references to obsolete standards. Surplus military aircraft would still be certificated in the normal, utility, acrobatic, commuter, transport, and restricted categories upon compliance with the applicable regulations.

Timetable:

Action	Date	FR Cite
NPRM	04/21/94	59 FR 19114
NPRM Comment Period End	06/20/94	
Comment Period End 08/26/94	07/07/94	59 FR 34779
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Additional Information: Project Number: AIR-91-354R.

ANALYSIS: Regulatory Evaluation, 04/21/94, 59 FR 19114

Agency Contact: Brian A. Yanez, Policy and Procedures Branch, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-6561

RIN: 2120–AE41

2139. CIVIL PENALTY ASSESSMENT PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 6002; 49 USC 106(g); 49 USC 5121 to 5124; 49 USC 40113 to 40114; 49 USC 44103 to 44106; 49 USC 44702 to 44703; 49 USC 44709 to 44710; 49 USC 44713; 49 USC 46101 to 46110; 49 USC 46301 to 46316; 49 USC 46501 to 46502; 49 USC 46504 to 46507; 49 USC 47106; 49 USC 47111; 49 USC 47122

CFR Citation: 14 CFR 13

Legal Deadline: None

Abstract: This action would revise the procedures for the assessment of civil penalties for violations of the Federal Aviation Regulations and other provisions. The procedures proposed would implement the requirements of the FAA Civil Penalty Administrative Assessment Act of 1992, as they modify the procedures for adjudicating a civil penalty against a person acting in the capacity of a pilot, flight engineer, mechanic, or repairman.

Timetable:

Action	Date	FR Cite
NPRM	08/05/94	59 FR 40192
NPRM Comment Period End	10/04/94	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: AGC-93-076R. This rulemaking was considered significant; however, after receiving only two comments on the NPRM issued in 8/94, and the lack of controversy regarding this rule, the FAA does not consider this a significant rulemaking.

ANALYSIS: Regulatory Evaluation, 08/05/94, 59 FR 40192

Agency Contact: Joyce Redos, Regulations Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-7158

RIN: 2120–AE84

2140. MISCELLANEOUS CABIN SAFETY CHANGES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 46105; 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912

CFR Citation: 14 CFR 121

Legal Deadline: None

Abstract: This action proposes to revise the airworthiness standards for transport category airplanes relating to flight attendant assist space, flight attendant assist handles, door hold open features, outside viewing means, interior compartment doors and portable oxygen equipment. With one exception, these proposals are not the result of any specific incident or recommendation, but are part of the FAA's continuing effort to upgrade the regulations to improve the overall level of safety in areas where the state-of-the-art and good design practice have indicated that such upgrades are warranted. These proposals would result in both new type design regulations as well as requirements applicable to existing designs implemented via the operating rules.

Timetable:

Action	Date	FR Cite
NPRM	07/24/96	61 FR 38552
NPRM Comment Period End	11/21/96	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: ANM-90-016R.

ANALYSIS: Regulatory Evaluation, 07/24/96, 61 FR 38552

Agency Contact: Jeff Gardlin, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2136

RIN: 2120–AF77

2141. BIRD STRIKE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action proposes to develop or revise requirements for the evaluation of transport category airplane structure for in-flight collision with a bird, including the size of the bird and the location of the impact on the airplane. These changes are intended to harmonize the bird strike requirements of the FAR and the Joint Aviation Requirements.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: ANM-93-762A. This is an Aviation Rulemaking Advisory Committee project.

Agency Contact: Bill Perrella, Transport Airplane Directorate, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2116

RIN: 2120–AF80

2142. +SECURITY PROGRAMS OF FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIR CARRIERS ENGAGED IN COMMON CARRIAGE

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40104 to 40105; 49 USC 40113; 49 USC 40119; 49 USC 44701 to 44702; 49 USC 44712; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901 to 44904; 49 USC 44906

CFR Citation: 14 CFR 129

Legal Deadline: None

Abstract: As an action intended to implement the Antiterrorism and Effective Death Penalty Act of 1996 (PL 104-132, 4/14/96), the FAA is proposing to amend existing airplane operator security rules for foreign air carriers and foreign operators of U.S. registered aircraft. The proposed amendment would require the Administrator to accept a foreign air carrier's program only if the Administrator finds that the security program provides for identical security measures to those provided by U.S. air carriers serving the same airport. The proposed rule will establish the obligation to use identical security measures. The actual measures to be used will be identified through changes to the nonpublic security program of the foreign air carriers. This rule is considered significant due to substantial public interest and concern of foreign governments.

Timetable:

Action	Date	FR Cite
NPRM	11/23/98	63 FR 64764
Notice of Public Meeting	11/23/98	63 FR 64764
Second NPRM	03/22/99	64 FR 13880
NPRM Comment Period End	03/23/99	
Second NPRM Comment Period End	05/24/99	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ACP-96-363R.

Agency Contact: Moira Lozada, Civil Aviation Security Division, Office of Civil Aviation Security Policy, Department of Transportation, Federal

Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591

Phone: 202 267-3373

RIN: 2120–AG13

Department of Transportation (DOT)
Federal Aviation Administration (FAA)

Completed Actions

2143. LOW FUEL QUANTITY ALERTING SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action would have amended the airworthiness standards for transport category airplanes to require a means to alert the flight crew of potentially unsafe low fuel quantities. There have been several fuel depletion incidents involving loss of power or thrust on all engines that could have resulted in forced landings and injury or loss of life. Most of these incidents resulted from improper fuel management techniques. This proposed amendment would have required new transport category airplane designs to incorporate a low fuel quantity alert system that would have allowed for correction of certain fuel management errors or provide the flight crew the opportunity to make a safe landing prior to engine fuel starvation. This proposed rulemaking is being withdrawn because of technology advances and future harmonization efforts.

Timetable:

Action	Date	FR Cite
NPRM	05/12/87	52 FR 17890
NPRM Comment Period End	09/09/87	
Withdrawn	08/22/02	67 FR 54380

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket No. 25213. Project Number: ANM-83-039R.

ANALYSIS: Regulatory Evaluation, 05/12/87, 52 FR 17890

Agency Contact: Neil Schalekamp, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW, Renton, WA 98055-4056

Phone: 425 227-2112

RIN: 2120–AB46

2144. AIRCRAFT ENGINES: FUEL AND INDUCTION SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704

CFR Citation: 14 CFR 33

Legal Deadline: None

Abstract: This action would have added a new section 33.35(f) to the Federal Aviation Regulations which would incorporate a requirement for the fuel mixture and throttle controls to automatically move to a position allowing continued safe flight if either control becomes disconnected. Based upon comments and after further analysis, the FAA has withdrawn this rulemaking. There are existing regulations that adequately cover the issues contained in the NPRM, and Advisory Circular No. 20-143, Installation, Inspection, and Maintenance of Controls for General Aviation Reciprocating Aircraft Engines, issued on June 6, 2000, provides additional guidance on maintenance procedures.

Timetable:

Action	Date	FR Cite
ANPRM	02/28/86	51 FR 7224
ANPRM Comment Period End	04/29/86	
NPRM	10/20/92	57 FR 47934
NPRM Comment Period End	02/17/93	
Withdrawn	05/02/02	67 FR 22019

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: ANE-85-002R. Former title: Engine Fuel and Induction Systems.

ANALYSIS: Regulatory Evaluation, 10/20/92, 57 FR 47934

Agency Contact: Locke Easton, Engine and Propeller Standards Staff, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, MA 01803
Phone: 617 273-7088

RIN: 2120–AB76

2145. INSTALLATION OF CRASHWORTHY FUSELAGE FUEL TANKS AND FUEL LINES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: NPRM, Statutory, February 3, 1989.

Abstract: This preliminary action was initiated to determine the feasibility of installing, in all air carrier aircraft, crashworthy fuselage fuel tanks and fuselage fuel lines which are rupture resistant and which disconnect and seal in the event of an accident. This notice solicited public participation in identifying and selecting a regulatory course of action by inviting interested persons to submit specific comments and arguments concerning this proposed regulatory action. Originally this rulemaking was considered significant. However, because there is no substantial public interest, this rulemaking is no longer significant. This rulemaking is withdrawn because of technology advancements.

Timetable:

Action	Date	FR Cite
ANPRM	05/02/89	54 FR 18824
ANPRM Comment Period End	10/30/89	
Withdrawn	08/23/02	67 FR 54591

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: ANM-89-005R.

Agency Contact: Mike Dostert, Transport Airplane Directorate, Aircraft

Certification Service, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2132

RIN: 2120–AC87

2146. AIRPLANE ENGINE COWLING RETENTION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action would have amended the airworthiness standards for transport category airplanes to require improved cowling retention devices. A review of a number of inflight incidents where engine cowlings were lost revealed that the largest single cause of such losses was improper latching of the cowlings. If adopted, this proposal would have provided additional design standards to detect improperly latched cowlings and ensure the integrity of the latching system. This proposed rule is being withdrawn because of technology advances and future harmonization efforts.

Timetable:

Action	Date	FR Cite
NPRM	09/19/89	54 FR 38610
NPRM Comment Period End	03/19/90	
Withdrawn	08/22/02	67 FR 54379

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-87-004R.

Agency Contact: Mike McRae, Airframe and Propulsion Branch, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2133

RIN: 2120–AD34

2147. +AIRCRAFT GROUND DEICING AND ANTI-ICING PROGRAM

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105

CFR Citation: 14 CFR 121

Legal Deadline: None

Abstract: This action establishes a requirement for part 121 certificate holders to develop an FAA-approved ground deicing/anti-icing program and to comply with that program any time conditions are such that frost, ice, or snow could adhere to the aircraft's wings, control surfaces, or propellers. This action is necessary because several accidents and the recent International Conference on Airplane Ground Deicing indicate that, under present procedures, the pilot in command may be unable to effectively determine whether critical airplane components are free of all frost, ice, or snow prior to attempting a takeoff. The action provides an added level of safety to flight operations in adverse weather conditions and is considered significant because of its safety implications.

Timetable:

Action	Date	FR Cite
NPRM	07/23/92	57 FR 32846
NPRM Comment Period End	08/07/92	
Interim Final Rule	09/29/92	57 FR 44924
Interim Final Rule Effective	11/01/92	
Interim Final Rule Correction	11/09/92	57 FR 53385
Final Rule Effective	11/09/92	
Interim Final Rule Comment Period End	04/15/93	
Final Rule	08/27/02	67 FR 54946

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: AFS-92-280-R.

A proposed advisory circular providing guidance on the program elements that should be included in an air carrier's approved ground deicing and anti-icing program was published September 29, 1992, requesting comments (57 FR 44944).

Various documents of this proceeding were erroneously published under RIN 2120-AE51.

ANALYSIS: Regulatory Evaluation, 09/29/92, 57 FR 44924

Agency Contact: James Gardner, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-9579

RIN: 2120–AE70

2148. FLIGHT ATTENDANT ENGLISH LANGUAGE PROFICIENCY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40119; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716 to 44717; 49 USC 44722

CFR Citation: 14 CFR 91; 14 CFR 121; 14 CFR 125; 14 CFR 135

Legal Deadline: None

Abstract: The FAA has reviewed the Aviation Rulemaking Advisory Committee recommendation to proceed with this rulemaking. The FAA has determined that it would be most appropriate to address the flight attendant English language issue in the overall context of crew training. Therefore, because the FAA will incorporate the flight attendant English language issue into the proposed revision of part 121 subpart N and O notice of proposed rulemaking, this rulemaking entry is withdrawn.

Timetable:

Action	Date	FR Cite
ANPRM	04/18/94	59 FR 18456
ANPRM Comment Period End	07/18/94	
Withdrawn	05/02/02	67 FR 22020

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: AFS-93-745A

Agency Contact: Cindy Nordlie, Office of Rulemaking, Department of

Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-7627

RIN: 2120–AE98

2149. +TRAINING AND CHECKING IN GROUND ICING CONDITIONS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44710 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716 to 44717; 49 USC 44722

CFR Citation: 14 CFR 125; 14 CFR 135

Legal Deadline: None

Abstract: This amendment requires parts 125 and 135 certificate holders to provide pilot training or testing in ground deicing/anti-icing procedures and to check the airplane for contamination by frost, ice, or snow during ground icing conditions. The proposal is intended to provide an added level of safety to flight operations in adverse weather conditions under parts 125 and 135. This rulemaking is significant because it affects a substantial portion of the aviation industry.

Timetable:

Action	Date	FR Cite
NPRM	09/21/93	58 FR 49164
NPRM Comment Period End	10/06/93	
Interim Final Rule	12/30/93	58 FR 69620
Advisory Circular Published	12/30/93	58 FR 69631
Interim Final Rule Effective	01/31/94	58 FR 69620
Final Action Effective	01/31/94	
Final Action	08/27/02	67 FR 54946

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: AFS-93-459R

ANALYSIS: Regulatory Evaluation, 12/30/93, 58 FR 69620

Agency Contact: James Gardner, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-9579

RIN: 2120–AF09

2150. LOS ANGELES, CA, CLASS B AIRSPACE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40120; EO 10854

CFR Citation: 14 CFR 71

Legal Deadline: None

Abstract: This final rule alters the Los Angeles, CA, Class B airspace area. This action lowers certain ceilings while raising others to provide more visual flight rules altitudes to circumnavigate the Los Angeles Class B airspace and to provide for better containment of arriving turbojets. This action will be handled as a routine airspace action.

Timetable:

Action	Date	FR Cite
NPRM	11/22/94	59 FR 60244
NPRM Comment Period End	01/23/95	
Final Action	12/19/96	61 FR 66902
Final Action Effective	07/17/97	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ATP-94-035T

RIN 2120-AF38 was inadvertently used when this rulemaking was published in the Federal Register on November 22, 1994. The correct RIN is 2120-AF16.

RIN 2120-AA66 was inadvertently used when the final rule was published in the Federal Register on December 19, 1996. This error was recently discovered and the rulemaking is now completed.

Agency Contact: William C. Nelson, Airspace and Obstruction Evaluation Branch, Air Traffic Rules and Procedures Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-9295

RIN: 2120–AF16

2151. REVISION OF BRAKING SYSTEMS AIRWORTHINESS STANDARDS TO HARMONIZE WITH EUROPEAN AIRWORTHINESS STANDARDS FOR TRANSPORT CATEGORY AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701; 49 USC 44702; 49 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action revises the airworthiness standards for transport category airplanes to harmonize braking systems design and test requirements in cooperation with the Joint Aviation Authorities of Europe, Transport Canada, and the U.S. and European aviation industry through the Aviation Rulemaking Advisory Committee.

Timetable:

Action	Date	FR Cite
NPRM	08/10/99	64 FR 43570
Correction	08/20/99	64 FR 45589
NPRM Comment Period End	11/08/99	
SNPRM	12/18/00	65 FR 79278
SNPRM Comment Period End	02/16/01	
Final Action	04/24/02	67 FR 20414
Final Action Effective	05/24/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-98-302A.

ANALYSIS: Regulatory Evaluation, 08/10/99, 64 FR 43570

Agency Contact: Mahinder K. Wahi, Transport Airplane Directorate, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055
Phone: 425 227-2142

RIN: 2120–AG80

2152. NOISE CERTIFICATION STANDARDS FOR SUBSONIC JET AIRPLANES AND SUBSONIC TRANSPORT CATEGORY LARGE AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321; 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704; 49 USC 44715

CFR Citation: 14 CFR 36

Legal Deadline: None

Abstract: This action makes changes to the noise certification standards for subsonic jet airplanes and subsonic transport category large airplanes. These changes are based on the joint effort of the FAA, the European Joint Aviation Authorities (JAA), and Aviation Rulemaking Advisory Committee (ARAC), to harmonize the U.S. noise certification regulations and the European Joint Aviation Requirements for subsonic jet airplanes and subsonic transport category large airplanes. These changes would provide nearly uniform noise certifications standards for airplanes certificated in the U.S. and in the JAA countries. The harmonization of the noise certification standards would simplify airworthiness approvals for import and export purposes.

Timetable:

Action	Date	FR Cite
NPRM	07/11/00	65 FR 42796
NPRM Comment Period End	10/10/00	
Final Rule	07/08/02	67 FR 45194
Final Rule Effective	08/07/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Skalecky, Office of Environment and Energy, Department of Transportation, Federal Aviation Administration
Phone: 202 267-3699

RIN: 2120–AH03

2153. ALCOHOL AND DRUG MISUSE PREVENTION PROGRAMS FOR PERSONNEL ENGAGED IN SPECIFIED AVIATION ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105; 49 USC 46301

CFR Citation: 14 CFR 121

Legal Deadline: None

Abstract: This action eliminates the need for approval by FAA of antidrug program and alcohol misuse prevention program plans and deletes periodic drug testing requirement, and changes the pre-employment testing requirements to require pre-hire rather than preemployment drug testing. This action will also make other minor or terminological changes to the regulations. The FAA believes that changing or eliminating these requirements would not compromise safety and would lessen a burden on the regulated public.

Timetable:

Action	Date	FR Cite
NPRM	04/30/01	66 FR 21492
NPRM Comment Period End	06/14/01	
Final Rule Effective	08/01/01	
Final Rule	08/09/01	66 FR 41959
Final Rule; Technical Amendment	11/19/01	66 FR 57865
Final Rule Effective	11/19/01	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Diane Wood, Acting Manager, Drug Abatement Branch, Office of Aviation Medicine, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 366-6710

RIN: 2120–AH15

2154. AIRWORTHINESS DIRECTIVES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701

CFR Citation: 14 CFR 39

Legal Deadline: None

Abstract: This final rule incorporates several standard provisions previously included in most airworthiness directive into the Code of Federal Regulations. The FAA will no longer include these provisions in individual airworthiness directives. This will shorten individual airworthiness directives, making them easier for readers to use. Also, the FAA is proposing this regulation in plain language. The regulation has been reworded and reorganized using plain language techniques.

Timetable:

Action	Date	FR Cite
Final Rule	07/22/02	67 FR 47998
Final Rule Effective	08/21/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Donald P. Byrne, Assistant Chief Counsel, Regulations Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-3073

RIN: 2120–AH17

2155. POWERED LIFT OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40101; 49 USC 40102; 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44106; 49 USC 44111; 49 USC 44701; 49 USC 44702; 49 USC 44705; 49 USC 44707; 49 USC 44709; 49 USC 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716; 49 USC 44717; 49 USC 44722; 49 USC 44722; 49 USC 44901; 49 USC 44903; 49 USC 44904; 49 USC 46506 to 46507; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47531

CFR Citation: 14 CFR 1; 14 CFR 43; 14 CFR 61; 14 CFR 91; 14 CFR 119; 14 CFR 133; 14 CFR 135; 14 CFR 145

Legal Deadline: None

Abstract: The FAA was proposing to amend its regulations to cover powered-lift aircraft, a new category of aircraft that can perform as an airplane and a helicopter. This action was necessary because, as a new category of aircraft, powered-lift aircraft cannot operate under the regulations that govern airplanes or helicopters. The intended effect of this action was to allow the operation of powered-lift aircraft under FAA regulations. The FAA is reviewing the scope and priority of this rulemaking. Therefore, this action is withdrawn.

Timetable:

Action	Date	FR Cite
Withdrawn	08/22/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William H. Wallace, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-3771

RIN: 2120–AH20

2156. TRANSITION TO AN ALL STAGE 3 FLEET OPERATING IN THE 48 CONTIGUOUS UNITED STATES AND THE DISTRICT OF COLUMBIA

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 106(g); 49 USC 1155; 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701; 49 USC 44709; 49 USC 44711; 49 USC 44712; 49 USC 44715; 49 USC 44716; 49 USC 44717; 49 USC 44722; 49 USC 46306; 49 USC 46315; 49 USC 46316; 49 USC 46504; 49 USC 46506; 49 USC 46507; 49 USC 47122; z49 USC 47508; 49 USC 47528 to 487531

CFR Citation: 14 CFR 91

Legal Deadline: None

Abstract: This final rule removes outdated language, revises several sections, and adds one new section to the noise operating regulations. Some revisions are a result of recent statutory changes to the Airport Noise and Capacity Act. The new section defines specific filing procedures and criteria for special flight authorizations. These revisions will make the noise operating regulations consistent with recent statutory provisions.

Timetable:

Action	Date	FR Cite
Final Rule	07/15/02	67 FR 46568
Final Rule Effective	07/15/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: AEE-00-159.

Agency Contact: Laurie Fisher, Policy and Regulatory Division, Office of Environment and Energy, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-3561

RIN: 2120–AH41

2157. ENDURING FREEDOM SPECIAL FEDERAL AVIATION REGULATION (SFAR)

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 1354(a); 49 USC 1355; 49 USC 1421; 49 USC 1422; 49 USC 1427

CFR Citation: 14 CFR 61; 14 CFR 63; 14 CFR 65

Legal Deadline: None

Abstract: The FAA is issuing a Special Federal Aviation Regulation (SFAR) that allows Flight Standards District Offices (FSDO) to accept expired flight instructor certificates and inspection authorizations for renewals from civilian and military personnel who serve in Operation Enduring Freedom. The effect of this action is to give these airmen extra time to meet certain eligibility requirements in the current rules.

Timetable:

Action	Date	FR Cite
Final Rule	05/06/02	67 FR 30524
Final Rule Effective	05/06/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John D. Lynch, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-3844

RIN: 2120–AH58

2158. • REVISIONS TO DIGITAL FLIGHT DATA RECORDER REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40105; 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44707; 49 USC 44709; 49 USC 44711 to 44713; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105

CFR Citation: 14 CFR 121; 14 CFR 125

Legal Deadline: None

Abstract: This action amends the digital flight data recorder (DFDR) regulations by expanding the recording ranges of two data parameters for all covered airplanes. This amendment is necessary because certain airplanes are unable to record the two flight parameters within the regulation's resolution criteria without undergoing unintended and expensive retrofit. The changes to the rule are minor, and the affected airplanes already record flight data at a level considered satisfactory for accident investigation purposes.

Timetable:

Action	Date	FR Cite
Final Rule Effective	08/20/02	
Final Rule	08/21/02	67 FR 54320

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Forest Rawls, Office of Rulemaking, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW.,, Washington, DC 20951
Phone: 202 267-8033

Gary Davis, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-8166

RIN: 2120–AH81

2159. • EQUIVALENT SAFETY PROVISIONS FOR FUEL TANK SYSTEM FAULT TOLERANCE EVALUATION REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44707; 49 USC 44709; 49 USC 44711; 49 USC 44713; 49 USC 44715; 49 USC 45303

CFR Citation: 14 CFR 21

Legal Deadline: None

Abstract: This action adds a provision to the existing requirements for fuel tank system fault tolerance evaluations to allow certificate holders to use equivalent safety provisions for demonstrating compliance. Current regulations do not provide such provisions. This final rule will allow current certificate holders to use the same equivalent safety provisions already available to applicants for new or changed type design approval.

Timetable:

Action	Date	FR Cite
Final Rule Effective	08/30/02	

Action	Date	FR Cite
Final Rule	09/10/02	67 FR 57490
Final Rule Comment Period End	10/10/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mike Dostert, Transport Airplane Directorate, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2132

RIN: 2120–AH85

Department of Transportation (DOT)
Federal Highway Administration (FHWA)

Proposed Rule Stage

2160. ADVANCED CONSTRUCTION OF FEDERAL AID PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 101(a); 23 USC 104 to 106; 23 USC 109; 23 USC 110; 23 USC 113; 23 USC 115; 23 USC 118; 23 USC 120(e); 23 USC 121(c); 23 USC 125; 23 USC 134; 23 USC 315; 23 USC 320

CFR Citation: 23 CFR 630; 23 CFR 1.32; 49 CFR 1.48

Legal Deadline: None

Abstract: The FHWA is proposing to revise the existing regulations that prescribe policies and procedures for advancing the construction of Federal-aid highway projects without obligating Federal funds apportioned or allocated to the States. These regulations should be revised to conform to changes made to title 23, United States Code, by technical amendments in the Transportation Equity Act of the 21st Century (TEA-21), Pub. L. 105-178, and changes made by the National Highway System Designation Act of 1995 (NHS), Pub. L. 104-59.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/19/95	60 FR 36991
Interim Final Rule Comment Period End	09/18/95	
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Max Inman, Office of Budget and Finance, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2853

RIN: 2125–AD59

2161. WORK ZONE MOBILITY AND SAFETY

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 105; 23 USC 106; 23 USC 109; 23 USC 110; 23 USC 115; 23 USC 315; 23 USC 320; PL 102-240, sec 1051; PL 104-59, sec 358

CFR Citation: 23 CFR 636; 23 CFR 1.32; 49 CFR 1.48; 23 CFR 630

Legal Deadline: None

Abstract: The FHWA is proposing to amend its regulations on traffic safety and mobility in highway and street work zones. Section 1051 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) required the Secretary of Transportation (Secretary) to develop and implement a highway work zone safety program which would improve work zone safety at highway construction sites. This provision of ISTEA was implemented through non-regulatory action.

A notice published in the Federal Register on October 24, 1995 (60 FR 54562) provided an outline of the work zone safety initiative.

The current proposed regulatory action will further enhance the work zone safety initiative by expanding its focus to include both safety and mobility. The proposed action will incorporate the use of new work zone techniques and technologies, update current policy and regulation, and emphasize issues affecting the safety and mobility of highway workers and highway users.

Timetable:

Action	Date	FR Cite
ANPRM	02/06/02	67 FR 5532
ANPRM Comment Period End	06/06/02	
Notice of Public Meetings	08/09/02	67 FR 51802
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Scott Battles, Office of Transportation Operations, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4372

RIN: 2125–AE29

2162. +FEDERAL LANDS HIGHWAY PROGRAM; MANAGEMENT SYSTEMS PERTAINING TO THE NATIONAL PARK SERVICE, INCLUDING THE PARK ROADS AND PARKWAYS PROGRAM

Priority: Other Significant

Legal Authority: 23 USC 134; 23 USC 135; 23 USC 204; 23 USC 315; PL 105-178

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The FHWA was delegated the authority to serve as the lead agency to develop transportation planning procedures pertaining to the National Park Service, the Forest Service, the Fish and Wildlife Service and the Bureau of Indian Affairs that are consistent with the metropolitan and statewide transportation planning processes. The FHWA and the appropriate Federal land management agencies are also given the authority to develop safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program (FLHP). The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads and Indian reservation roads.

The FHWA sought public comment on four related ANPRMs that were published on September 1, 1999. The comment period closed on November 1, 1999. Six organizations provided comments on the ANPRM pertaining to

the National Park Service (NPS) and the park roads and parkways program. The comments generally supported the development of a separate rule for each agency including one for the NPS. In an NPRM, the FHWA will seek public comment on a proposed rule to implement section 1115(d) of the Transportation Equity Act for the 21st Century (TEA-21) implementing safety, bridge, pavement, and congestion management systems developed by FHWA's Federal Lands Highway program office in consultation with the NPS. The NPRM is designated as significant under E.O. 12866 and the DOT regulatory policies and procedures because of the high level of interagency interest in the notices and involved program. The transportation planning procedures will be addressed in a separate NPRM.

Timetable:

Action	Date	FR Cite
ANPRM	09/01/99	64 FR 47749
ANPRM Comment Period End	11/01/99	
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Butch Wlaschin, Federal Lands Highway Office, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-9486

RIN: 2125–AE52

2163. +FEDERAL LANDS HIGHWAY PROGRAM; MANAGEMENT SYSTEMS PERTAINING TO THE BUREAU OF INDIAN AFFAIRS, INCLUDING THE INDIAN RESERVATIONS ROAD PROGRAM

Priority: Other Significant

Legal Authority: 23 USC 315; PL 105-178; 23 USC 134; 23 USC 135; 23 USC 204

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The FHWA was delegated the authority to serve as the lead agency to develop transportation planning procedures pertaining to the National Park Service, the Forest Service, the Fish and Wildlife Service and the Bureau of Indian Affairs that are consistent with the metropolitan and statewide transportation planning processes. The FHWA and the appropriate Federal land management agencies are also given the authority to develop safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program (FLHP). The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads and Indian reservation roads.

The FHWA sought public comment on four related ANPRMs that were published on September 1, 1999. The comment period closed on November 1, 1999. Eight organizations provided comments on the ANPRM pertaining to the Bureau of Indian Affairs (BIA) and the Indian reservation roads program. The comments generally supported the development of a separate rule for each agency including one for the BIA. In an NPRM, the FHWA will seek public comment on a proposed rule to implement section 1115(d) of the Transportation Equity Act for the 21st Century (TEA-21), for the proposed safety, bridge, pavement, and congestion management systems developed by FHWA's Federal Lands Highway program office in consultation with the BIA. The NPRM is designated as significant under E.O. 12866 and the DOT regulatory policies and procedures because of the high level of interagency interest in the notices and involved program. The transportation planning procedures will be addressed in a separate NPRM.

Timetable:

Action	Date	FR Cite
ANPRM	09/01/99	64 FR 47746
ANPRM Comment Period End	11/01/99	
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Butch Wlaschin, Federal Lands Highway Office, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-9486

RIN: 2125–AE53

2164. +FEDERAL LANDS HIGHWAY PROGRAM; MANAGEMENT SYSTEMS PERTAINING TO THE FISH AND WILDLIFE SERVICE, INCLUDING THE REFUGE ROADS PROGRAM

Priority: Other Significant

Legal Authority: 23 USC 134; 23 USC 135; 23 USC 204; 23 USC 315; PL 105-178

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The FHWA was delegated the authority to serve as the lead agency to develop transportation planning procedures pertaining to the National Park Service, the Forest Service, the Fish and Wildlife Service and the Bureau of Indian Affairs that are consistent with the metropolitan and statewide transportation planning processes. The FHWA and the appropriate Federal Land Management agencies are also given the authority to develop safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program (FLHP). The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads and Indian reservation roads.

The FHWA sought public comment on four related ANPRMs that were published on September 1, 1999. The comment period closed on November 1, 1999. Six organizations provided comments on the ANPRM pertaining to the Fish and Wildlife Service (FWS) and the refuge roads program. The comments generally supported the development of a separate rule for each agency including one for the FWS. In an NPRM, the FHWA will seek public comment on a proposed rule to implement section 1115(d) of the Transportation Equity Act for the 21st Century (TEA-21) for the proposed safety, bridge, pavement and congestion management systems developed by FHWA's Federal Lands Highway program office in consultation with the FWS. The NPRM is designated as significant under E.O. 12866 and the DOT regulatory policies and procedures because of the high level of interagency interest in the notices and involved program. The transportation planning procedures will be addressed in a separate NPRM.

Timetable:

Action	Date	FR Cite
ANPRM	09/01/99	64 FR 47741
ANPRM Comment Period End	11/01/99	
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Butch Wlaschin, Federal Lands Highway Office, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-9486

RIN: 2125–AE54

2165. +FEDERAL LANDS HIGHWAY PROGRAM; MANAGEMENT SYSTEMS PERTAINING TO THE FOREST SERVICE, INCLUDING THE FOREST HIGHWAYS PROGRAM

Priority: Other Significant

Legal Authority: 23 USC 135; 23 USC 204; 23 USC 315; PL 105-178; 23 USC 134

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The FHWA was delegated the authority to serve as the lead agency to develop transportation planning procedures pertaining to the National Park Service, the Forest Service, the Fish and Wildlife Service and the Bureau of Indian Affairs that are consistent with the metropolitan and statewide transportation planning processes. The FHWA and the appropriate Federal land managment agencies are given the authority to develop safety, bridge pavement, and congestion management systems for roads funded under the Federal lands highways program. The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads and Indian reservation roads.

The FHWA sought public comment on four related ANPRMs that were published on September 1, 1999. The comment period closed on November 1, 1999. Seven organizations provided comments on the ANPRM pertaining to the Forest Service (FS) and the forest highway program. The comments generally supported the development of a separate rule for each agency including one for the FS. In an NPRM, the FHWA will seek public comment on a proposed rule to implement section 1115(d) of the Transportation Equity Act for the 21st Century (TEA-21) for the proposed safety, bridge, pavement and congestion management systems developed by FHWA's Federal Lands Highway program office in consultation with the FS. The NPRM is designated as significant under E.O. 12866 and the DOT regulatory policies and procedures because of the high level of interagency interest in the notices and involved program. The transportation planning procedures will be addressed in a separate NPRM.

Timetable:

Action	Date	FR Cite
ANPRM	09/01/99	64 FR 47744
ANPRM Comment Period End	11/01/99	
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Butch Wlaschin, Federal Lands Highway Office, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-9486

RIN: 2125–AE55

2166. REVISION OF THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES; TRAFFIC CONTROL DEVICES ON FEDERAL-AID AND OTHER STREETS AND HIGHWAYS; STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 101(a); 23 USC 104; 23 USC 109(d); 23 USC 114(a); 23 USC 217; 23 USC 315; 23 USC 402(a)

CFR Citation: 23 CFR 1.32; 49 CFR 1.48(b)

Legal Deadline: None

Abstract: The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, and is recognized as the national standard for traffic control devices on all public roads. Due to the reorganization of the FHWA and the deletion of 23 CFR 1204.4 by the National Highway Traffic Safety Administration (NHTSA), 23 CFR part 655.603 is outdated. The proposed amendments included herein will bring 23 CFR part 655 up to date.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ernest D.L. Huckaby, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-9064

RIN: 2125–AE78

2167. +NATIONAL BRIDGE INSPECTION STANDARDS

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 23 USC 109(a); 23 USC 109(h); 23 USC 144; 23 USC 151; 23 USC 315; 23 USC 319; EO 11988; ...

CFR Citation: 23 CFR 650; 23 CFR 1.32; 49 CFR 1.48(b)

Legal Deadline: None

Abstract: The FHWA solicited comments on whether its regulation on National Bridge Inspection Standards (NBIS) should be revised and updated. The FHWA asked in an ANPRM whether there is a need to update the regulations to incorporate current, state of the art bridge inspection practices which public authorities may be using. A public authority means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with the authority to finance, build, operate, or maintain toll or toll-free facilities. The primary purpose of the NBIS is to identify bridges that need work to ensure the safety of the traveling public. The NBIS regulation was last updated 14 years ago. Based on the comments received to the ANPRM, the FHWA plans to propose to revise its regulation on the NBIS.

Timetable:

Action	Date	FR Cite
ANPRM	09/26/01	66 FR 49154
ANPRM Comment Period End	12/26/01	
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

DOT—FHWA — **Proposed Rule Stage**

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Wade F. Casey, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-9487

RIN: 2125–AE86

2168. DEBT FINANCING

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 122

CFR Citation: 23 CFR 140

Legal Deadline: None

Abstract: In this action, the FHWA proposes to amend its regulation on reimbursement for bond issue projects to implement the changes made to 23 USC 122 by the National Highway System Designation Act of 1995 (NHS) (Pub. L. 104-59, November 28, 1995, 109 Stat. 568). Section 311 of the NHS amended 23 USC 122 to make debt financing costs related to title 23 projects eligible for Federal reimbursement.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dale M. Gray, Federal-Aid Financial Management Division, Department of Transportation, Federal Highway Administration, Room 4313, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-0978

RIN: 2125–AE91

2169. +DESIGNATION OF DROMEDARY-EQUIPPED TRUCK TRACTOR-SEMITRAILERS AS SPECIALIZED EQUIPMENT

Priority: Other Significant

Legal Authority: 49 USC 31111(g)

CFR Citation: 23 CFR 658

Legal Deadline: None

Abstract: The FHWA is requesting comments on this proposal, which would designate dromedary-equipped truck tractor-semitrailers, when hauling munitions for the Department of Defense (DOD), as specialized equipment. No State would be able to limit this combination to less than 75 feet.

This proposal is in response to a petition from DOD that would help expedite the hauling of munitions.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Phillip J. Forjan, Transportation Specialist, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-6817

RIN: 2125–AE94

2170. • TRUCK SIZE AND WEIGHT; NATIONAL NETWORK; VIRGINIA

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 127; 23 USC 315; 49 USC 31111; 49 USC 31112; 49 USC 31114; 49 CFR 1.48(b)(19); 49 CFR 1.48(c)(19)

CFR Citation: 23 CFR 658

Legal Deadline: None

Abstract: The FHWA proposes to modify the National Network (NN) for commercial motor vehicles by adding 119 route segments in Virginia in response to a specific request from the Commonwealth of Virginia. These proposed additional route segments have been reviewed by State and FHWA offices for general adherence to the criteria for the NN and were found to provide for the safe operation of larger commercial vehicles and for the needs of interstate commerce.

Commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act of 1982 must be allowed to operate on the NN, which includes highways located in all 50 States, the District of Columbia, and Puerto Rico. Specific routes on the NN include the Interstate System and those listed in appendix A of 23 CFR 658.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kathy Busby, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2976

RIN: 2125–AE96

Department of Transportation (DOT)
Federal Highway Administration (FHWA) — **Final Rule Stage**

2171. FEDERAL-AID HIGHWAY SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 103(b); 23 USC 103(c); 23 USC 315

CFR Citation: 23 CFR 470

Legal Deadline: None

Abstract: This regulatory action amends 23 CFR 470 in accordance with legislation enacted in 1991, 1995, and 1998. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) rescinded the Federal-aid Primary and Secondary and Urban Systems; established an interim National Highway System (NHS); and defined Federal-aid highways. The NHS Designation Act of 1995 (NHS Act) authorized the initial National Highway System and also authorized the Secretary to approve modifications. The Transportation Equity Act for the 21st Century (TEA-21) authorized the initial NHS connectors to major intermodal terminals and recodified 23 U.S.C. 103 (Federal-aid systems). The action also consolidates in appendices all nonregulatory guidance material issued previously by the FHWA on Federal-aid highway systems.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/19/97	62 FR 33351

DOT—FHWA — **Final Rule Stage**

Action	Date	FR Cite
Interim Final Rule Effective	07/21/97	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: The FHWA issued an interim final rule with an opportunity for public comment. This rule amends regulations that the States comply with as part of the Federal-aid highway program. The FHWA has worked closely with the States, and the States have operated under the basic policies covered by this regulation for many years. A number of technical revisions are required as a result of the TEA-21 recodification of 23 U.S.C. 103, including incorporation of the provisions of former 23 U.S.C. 139 (Additions to Interstate System).

Agency Contact: Frank Clark, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5006

RIN: 2125–AD74

2172. RAILROAD HIGHWAY PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 315; 23 USC 109(e); 23 USC 120(c); 23 USC 130

CFR Citation: 23 CFR 140; 23 CFR 646

Legal Deadline: None

Abstract: The FHWA amends its regulations on railroad highway projects. The amendments now require railroads to submit final billings within one year following completion of work, delete the requirements of a State's certification that work was completed, increase the ceiling for lump sum agreements from $25,000 to $100,000 and incorporate changes brought about by ISTEA. The FHWA believes these changes will conform railroad/highway regulations to more recent laws or regulations, and provide State highway agencies clarification and more flexibility in implementing them.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/27/97	62 FR 45326
Interim Final Rule Comment Period End	10/27/97	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Robert Winans, Office of Highway Safety Information, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 386-4656

RIN: 2125–AD86

2173. STANDARDS FOR DEDICATED SHORT-RANGE COMMUNICATIONS (DSRC) APPLICATIONS FOR USE BY COMMERCIAL VEHICLES IN INTELLIGENT TRANSPORTATION SYSTEMS PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 307; 23 USC 315; 23 USC 502 note; PL 102-240, sec. 6055(b); PL 105-178, sec. 5206(e)

CFR Citation: 23 CFR 1001; 49 CFR 1.48

Legal Deadline: None

Abstract: The FHWA proposes to amend its regulations to require the use of Dedicated Short-Range Communications (DSRC) Standards for ITS commercial vehicle projects using Federal funds. DSRC Systems use microwave communications over very short distances to allow moving vehicles to communicate with fixed roadside locations. In commercial motor vehicle applications, DSRC devices can transfer information regarding vehicle safety, performance, regulatory compliance and credentials from the vehicle to inspection stations.

The use of DSRC standards would promote interoperability among, and enable integration of ITS systems for, North American commercial vehicle applications, such as electronic clearance, automated weight stations and border crossings. Interoperability would also encourage institutional integration and cooperation.

Timetable:

Action	Date	FR Cite
NPRM	12/30/99	64 FR 73674
NPRM Comment Period End	02/28/00	
Supplemental NPRM	12/12/00	65 FR 77534
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William S. Jones, ITS Joint Program Office, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2128

RIN: 2125–AE63

2174. +DESIGN-BUILD CONTRACTING

Priority: Other Significant

Legal Authority: PL 105-178, sec 1307(c); 23 USC 112

CFR Citation: 23 CFR 635

Legal Deadline: Final, Statutory, June 9, 2001.

Abstract: The FHWA proposes to revise its regulations to implement design-build contracting as mandated by section 1307(c) of the Transportation Equity Act for the 21st Century (TEA-21), enacted on June 9, 1998. TEA-21 requires the Secretary of Transportation to issue regulations to allow design-build contracting for selected projects. The regulations would list the criteria and procedures that will be used by the FHWA in approving the use of design-build contracting by State Transportation Departments (STDs). The regulation would not require the use of design-build contracting but rather would allow it as an optional technique in addition to traditional contracting methods.

The FHWA is soliciting comments on its proposed regulation which would establish prescribed policies and procedures for utilizing the design-build contracting technique for Federal-aid highway projects. This action is significant because of the substantial State and industry interest in the design-build contracting technique.

Timetable:

Action	Date	FR Cite
NPRM	10/19/01	66 FR 53288
NPRM Comment Period End	12/19/01	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

DOT—FHWA

Final Rule Stage

Government Levels Affected: State

Additional Information: The NPRM published at 66 FR 53288 on October 19, 2001, contained an incorrect docket number. The correct docket number for the NPRM is FHWA-2000-7799. A notice of correction was published in the Federal Register on October 31, 2001 (67 FR 54964).

Agency Contact: Gerald Yakowenko, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590 Phone: 202 366-1562

RIN: 2125–AE79

2175. DISCRETIONARY BRIDGE CANDIDATE RATING FACTOR

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 109(a); 23 USC 109(h); 23 USC 144; 23 USC 151; 23 USC 315; ...

CFR Citation: 23 CFR 650

Legal Deadline: None

Abstract: The FHWA proposes to revise its regulation on the discretionary bridge program rating factor in order to incorporate several administrative considerations that have proven effective in the project selection process. This proposed action would amend the current regulations according to a provision in TEA-21 which requires the Secretary of Transportation to publish both the statutory and regulatory criteria that will apply to the discretionary bridge program.

These proposed changes would require that the candidate projects be ready to begin construction in the fiscal year in which funds are available for obligation; allow leveraged funds from local, State, county, or private sources to be used to reduce the total project cost for use in the rating factor formula; disallow any discretionary allocation to a State that has transferred Highway Bridge Replacement and Rehabilitation Program funds to other categories of Federal funding in the previous year; and change the definition of one term in the rating factor formula.

Timetable:

Action	Date	FR Cite
NPRM	01/22/02	67 FR 2837
NPRM Comment Period End	03/25/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven Ernst, Office of Bridge Technology, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590 Phone: 202 366-4619

RIN: 2125–AE88

2176. • +STATEWIDE TRANSPORTATION PLANNING; METROPOLITAN TRANSPORTATION PLANNING

Priority: Other Significant

Legal Authority: 23 USC 134; 23 USC 135; 23 USC 315; 49 USC 5305 to 5306

CFR Citation: 23 CFR 450; 49 CFR 1.48(b); 49 CFR 1.51

Legal Deadline: None

Abstract: On May 25, 2000, the FHWA and the FTA jointly published an NPRM on statewide and metropolitan transportation planning (RIN 2125-AE62; 2132-AA66). The agencies have carefully considered all of the data, recommendations, and ongoing issues with respect to statewide and metropolitan transportation planning. In light of the current situation, the agencies are proposing to amend 23 CFR 450 to include provisions related to consultation with non-metropolitan, local officials and further refine processes related to public involvement.

The purpose of this proposal is to ensure that the concerns of local and rural transportation officials are adequately represented in Federal transportation planning activities. This proposal is in addition to the section on consultation with non-metropolitan local officials that was proposed in the NPRM in May 2000.

Timetable:

Action	Date	FR Cite
Supplemental NPRM	06/19/02	67 FR 41648
Comment Period Extended	08/15/02	67 FR 53326
Comment Period End	09/19/02	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Jill Hochman, Director, Office of Intermodal and Statewide Programs, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590 Phone: 202 366-0233

Related RIN: Related To 2132-AA75

RIN: 2125–AE95

Department of Transportation (DOT)
Federal Highway Administration (FHWA)

Long-Term Actions

2177. INDIAN RESERVATION ROAD BRIDGE PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 120(j) and (k); 23 USC 202; 23 USC 315; PL 105-178, sec 1115; 49 CFR 1.48

CFR Citation: 23 CFR 661

Legal Deadline: None

Abstract: Section 1115 of the Transportation Equity Act for the 21st Century establishes a nationwide priority program for improving deficient Indian reservation road (IRR) bridges and reserves $13 million of IRR funds per year to replace and rehabilitate bridges that are in poor condition. The FHWA, Federal Lands Highway Office (FLH), and the Bureau of Indian Affairs, Division of Transportation (BIADOT), intend to implement the IRR bridge program (IRRBP) to promptly address the deficient IRR bridges. Toward that end, the FLH and the BIADOT, in consultation with Indian tribal governments, have developed project selection/fund allocation procedures for uniform application of the legislation. The FHWA is announcing the project selection/fund allocation procedures for the IRRBP.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/19/99	64 FR 38565

DOT—FHWA

Long-Term Actions

Action	Date	FR Cite
Interim Final Rule Effective	07/19/99	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Public comment was solicited in a February 12, 1999, Federal Register notice (64 FR 7229). These comments will be addressed in the final rule.

Agency Contact: Wade F. Casey, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590 Phone: 202 366-9487

RIN: 2125–AE57

2178. REVISIONS TO HIGHWAY BRIDGE REPLACEMENT AND REHABILITATION PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: PL 97-424, sec 161; 23 USC 109(a); 23 USC 144(g); PL 105-178, sec 1101(a)(3); 23 USC 109(h); 23 USC 144; 23 USC 151; 23 USC 315; 23 USC 319; 33 USC 401; 33 USC 409 et seq; 33 USC 511 et seq; PL 97-134, sec 4(b); PL 105-206; ...

CFR Citation: 23 CFR 650; 23 CFR 1.32; 49 CFR 1.48(b)

Legal Deadline: None

Abstract: The FHWA is seeking comments regarding improvements that can be made to its regulation outlining the highway bridge replacement and rehabilitation program. In addition, the FHWA is considering the inclusion and/or modification of existing policies so that they provide the flexibility necessary for the State and local governments to better manage their bridge assets. Currently,the FHWA is reviewing the comments we received in response to the advanced notice of proposed rulemaking to determine what action to take next.

The FHWA is also considering proposed revisions to the discretionary bridge program rating factor, which will be addressed in a separate rulemaking action.

Timetable:

Action	Date	FR Cite
ANPRM	09/26/01	66 FR 49152
ANPRM Comment Period End	12/26/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Raymond McCormick, Director, Office of Bridge Technology, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590 Phone: 202 366-4675

RIN: 2125–AE75

2179. COMMERCIAL VEHICLE WIDTH EXCLUSIVE DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 31111; 49 USC 31113

CFR Citation: 23 CFR 658

Legal Deadline: None

Abstract: This action responds to two unique requests with respect to the exclusion of certain devices from established truck length and width requirements.

Proposed is an increase from 3 to 4 inches of the distance from the side of a commercial vehicle within which non-cargo carrying devices are excluded from vehicle width measurement.

In a separate matter, the Senate Committee on Appropriations has requested the FHWA consider a special allowance, within reasonable safety limitations, concerning the commercial movement of recreational vehicles (RVs) with incidental appurtenances, such as retractable awnings, that extend beyond current Federal width limitations. A number of States have enacted laws that allow incidental appurtenances on noncommercial RVs to exceed State width limitations.

The FHWA proposes to make these two changes to its regulation governing truck length and width exclusive devices.

Timetable:

Action	Date	FR Cite
NPRM	07/29/02	67 FR 48994
NPRM Comment Period End	09/27/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Robert E.L. Davis, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590 Phone: 202 366-2997

RIN: 2125–AE90

2180. MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 109(d); 23 USC 315; 23 USC 402(a)

CFR Citation: 23 CFR 655, subpart F

Legal Deadline: None

Abstract: The Manual on Uniform Traffic Control Devices contains the Standards, Guidance, and Options for installing all traffic control devices (signs, traffic signals, and pavement markings) on the nation's roadways opened to public travel. By following the manual drivers, pedestrians, and bicyclists encounter the same uniform signs, traffic signals, and pavement markings, used in identical ways, along their trip. As a result of changes in technology, materials, and management strategies, the devices in the manual and their uses need to be updated and amended on an annual basis.

This proposed amendment is in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of highways.

Timetable:

Action	Date	FR Cite
Notice of Proposed Amendments	05/21/02	67 FR 35850
Comment Period End	08/19/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ernest D.L. Huckaby, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590 Phone: 202 366-9064

RIN: 2125–AE93

Department of Transportation (DOT)
Federal Highway Administration (FHWA)

Completed Actions

2181. CERTIFICATION OF SIZE AND WEIGHT ENFORCEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 127; 23 USC 141; 23 USC 315

CFR Citation: 23 CFR 657

Legal Deadline: None

Abstract: The FHWA terminates this rulemaking action. The agency originally initiated this action to consider revising the criteria for determining State compliance with the existing Federal requirement for an annual certification of State size and weight enforcement. Recently, however, the National Research Council of the Transportation Research Board issued a congressionally mandated report that, among other things, recommended additional study be undertaken of ways to improve enforcement of truck weight laws.

The recommendations of the TRB report provide a basis for a broader review of the Federal and State truck size and weight programs. In light of this situation, we have withdrawn this rulemaking action.

Timetable:

Action	Date	FR Cite
ANPRM	12/16/93	58 FR 65830
ANPRM Comment Period Extended to 05/18/94	03/15/94	59 FR 11956
ANPRM Comment Period End	03/16/94	
Supplemental ANPRM	09/28/00	65 FR 58233
Supplemental ANPRM Comment Period End	12/27/00	
Withdrawn	07/26/02	67 FR 48821

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert E.L. Davis, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2997

RIN: 2125–AC60

2182. ADMINISTRATION OF ENGINEERING AND DESIGN-RELATED SERVICES CONTRACTS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 112(b); 23 USC 114(a); 23 USC 302; 23 USC 315; 23 USC 402; 41 USC 253; 41 USC 259

CFR Citation: 23 CFR 172; 49 CFR 1.48(b)

Legal Deadline: None

Abstract: This action amends procurement procedures on administration of engineering and design related services contracts to reflect the changes made by section 307 of Public Law 104-59, National Highway System Designation Act and section 1205 of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, June 9, 1998.

Timetable:

Action	Date	FR Cite
NPRM	07/18/00	65 FR 44486
NPRM Comment Period End	09/18/00	
Final Action	06/12/02	67 FR 40149
Final Action Effective	07/12/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Gary E. Moss, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4654

RIN: 2125–AE45

2183. +STATEWIDE AND METROPOLITAN PLANNING

Priority: Other Significant

Legal Authority: 23 USC 104(f); 23 USC 134; 23 USC 135; 23 USC 217; 23 USC 315; 42 USC 7410 et seq; 49 USC 5305 to 5309

CFR Citation: 23 CFR 450; 49 CFR 613; 49 CFR 1.48(b); 49 CFR 1.51

Legal Deadline: None

Abstract: FHWA and FTA partially withdraw the proposed rulemaking in which the agencies proposed to amend the requirements on Statewide and metropolitan planning. This partial withdrawal is based on the level of critical comment received, the development of alternate means for implementing the topics addressed in the NPRM and the pendency of reauthorization of the surface transportation program. The agencies withdraw this proposed rulemaking except for those sections that relate to "consultation with nonmetropolitan local officials," which is addressed in the SNPRM published on June 19, 2002, at 67 FR 41648.

Timetable:

Action	Date	FR Cite
NPRM	05/25/00	65 FR 33958
NPRM Comment Period Extended	07/07/00	65 FR 41891
NPRM Comment Period End	09/23/00	
Partial Withdrawal	09/20/02	67 FR 59219
Partial Withdrawal Effective	09/20/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State

Agency Contact: Sheldon M. Edner, Team Leader, Department of Transportation, Federal Highway Administration, Room 3232, 400 Seventh Street SW, Washington, DC 20590
Phone: 202 366-4066
Email: sheldon.edner@fhwa.dot.gov

Charles Goodman, Division Chief, Department of Transportation, Federal Transit Administration, Room 9413, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-1924

RIN: 2125–AE62

2184. +NEPA AND RELATED PROCEDURES FOR TRANSPORTATION DECISIONMAKING; PROTECTION OF PUBLIC PARKS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES

Priority: Other Significant

Legal Authority: 42 USC 4321 et seq; 49 USC 303; 23 USC 109; 23 USC 128; 23 USC 134; 23 USC 138; 23 USC 315; ...

CFR Citation: 23 CFR 530; 23 CFR 540

Legal Deadline: None

Abstract: The agencies withdraw this proposed rulemaking proceeding that proposed to update and revise our National Environmental Policy Act (NEPA) implementation regulation for projects funded or approved by FHWA or FTA. The agencies intended to modify the regulation to reflect experience gained in administering these requirements and substantial changes in legislation that occurred since the regulations were issued in 1987. The agencies have determined that the proposed changes generated such a diversity and disparity of comments that substantial further work is necessary to develop new proposals and accommodate these comments.

Timetable:

Action	Date	FR Cite
NPRM	05/25/00	65 FR 33960
NPRM Comment Period Extended	07/07/00	65 FR 41892
NPRM Comment Period End	09/23/00	
Withdrawn	09/20/02	67 FR 59225

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Fred Skaer, Office of Environment and Planning, Department of Transportation, Federal Highway Administration, Room 3232, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2058

RIN: 2125–AE64

DOT—FHWA

Completed Actions

2185. TRAFFIC CONTROL DEVICES ON FEDERAL-AID AND OTHER STREETS AND HIGHWAYS; COLOR SPECIFICATIONS FOR RETROREFLECTIVE SIGN AND PAVEMENT MARKING MATERIALS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 109(d); 23 USC 114(a); 23 USC 315; 23 USC 402(a)

CFR Citation: 23 CFR 655

Legal Deadline: None

Abstract: The FHWA revises its color specifications for retroreflective sign materials. This revision includes daytime and nighttime specification for both assigned and unassigned colors found in the Manual on Uniform Traffic Control Devices (MUTCD). Color specifications for fluorescent colors and pavement marking material also would be included.

Timetable:

Action	Date	FR Cite
NPRM	12/21/99	64 FR 71354
NPRM Comment Period End	06/23/00	
Final Action	07/31/02	67 FR 49569
Final Action Effective	08/30/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ernest D.L. Huckaby, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-9064

RIN: 2125–AE67

2186. +RAILROAD-HIGHWAY CROSSING PROJECTS

Priority: Other Significant

Legal Authority: PL 91-458

CFR Citation: 23 CFR 646

Legal Deadline: None

Abstract: In response to a recent Supreme Court decision, the FHWA was contemplating amending its regulations on railroad-highway crossing projects to clarify that installation projects for passive crossing control devices, done solely to meet the minimum crossing signing requirements, do not preempt or displace State laws concerning adequacy. The FHWA is terminating this rulemaking action because the agency has decided to address the issues raised by the Supreme Court decision administratively.

Timetable:

Action	Date	FR Cite
Withdrawn	07/26/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Rudolph M. Umbs, Office of Highway Safety, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2177

RIN: 2125–AE81

2187. NATIONAL STANDARDS FOR TRAFFIC CONTROL DEVICES; MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES; ACCESSIBLE PEDESTRIAN SIGNALS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 101(a); 23 USC 104; 23 USC 109(d); 23 USC 114(a); 23 USC 217; 23 USC 315; 23 USC 402(a); ...

CFR Citation: 23 CFR 655

Legal Deadline: None

Abstract: The FHWA, in response to comment, amends the 2000 Millennium Edition of the Manual on Uniform Traffic Control Devices (MUTCD) that became effective on January 17, 2001. Section 4E.06 of the MUTCD relates to accessible pedestrian signals. Upon publication of the Millennium Edition, the FHWA was advised that the support and guidance statements relative to evaluation of signalized intersections to accommodate persons with visual disabilities did not adequately address the needs of such persons. Accordingly, the FHWA revises these support and guidance statements.

The FHWA issued an interim final rule to provide an opportunity for the public to review and make comments on the necessary changes to the pertinent electronic files on the FHWA's MUTCD internet site (http://mutcd.fhwa.dot.gov) to comply with section 508 of the Rehabilitation Act of 1973. There were no comments to the interim final rule, therefore the FHWA adopted it as a final rule.

Timetable:

Action	Date	FR Cite
Notice of Proposed Amendments	05/17/01	66 FR 27480
Comment Period End	06/18/01	
Interim Final Rule	02/15/02	67 FR 7073
Interim Final Rule Effective	03/18/02	
Interim Final Rule Comment Period End	04/18/02	
Final Rule	07/30/02	67 FR 49235
Final Rule Effective	08/29/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ernest D.L. Huckaby, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-9064

RIN: 2125–AE83

2188. PLANNING AND RESEARCH PROGRAM ADMINISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 104(f); 23 USC 103(c); 23 USC 115; 23 USC 120; 23 USC 133(b); 23 USC 134(b); 23 USC 303(g); 23 USC 315; 23 USC 505

CFR Citation: 49 CFR 1.48(b)

Legal Deadline: None

DOT—FHWA — **Completed Actions**

Abstract: The FHWA updates its regulation for administration of planning and research funds provided to State DOTs under the provisions of title 23, United States Code. The revisions are necessary to reflect current legislation and OMB grant administration circulars.

Timetable:

Action	Date	FR Cite
NPRM	11/27/01	66 FR 59188
NPRM Comment Period End	01/28/02	
Final Action	07/18/02	67 FR 47268
Final Action Effective	08/19/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tony Solury, Program Coordinator, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5003

RIN: 2125–AE84

2189. LANDSCAPE AND ROADSIDE DEVELOPMENT

Priority: Substantive, Nonsignificant

Legal Authority: EO 13148; EO 13112

CFR Citation: 23 CFR 752

Legal Deadline: None

Abstract: In this action, the FHWA planned to propose a change to the current regulation at 23 CFR 752.4, to clarify and reflect FHWA policy change for the improvement of landscaping best management practices. At the present time, however, the FHWA is terminating this action in light of the imminent reauthorization of the Transportation Equity Act for the 21st Century (TEA-21).

Additionally, the FHWA feels that any necessary changes to this program could be accomplished through administrative means such as technical assistance, training, developing and promoting case studies. This in no way precludes the FHWA from pursuing a rulemaking action on this subject in the future.

Timetable:

Action	Date	FR Cite
Action Terminated	06/25/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Bonnie Harper-Lore, Landscape Architect, Department of Transportation, Federal Highway Administration, Galtier Plaza, Box 75, 175 E. Fifth Street, Suite 500, St. Paul, MN 55101-2904
Phone: 651 291-6104

RIN: 2125–AE85

2190. METROPOLITAN TRANSPORTATION PLANNING AND PROGRAMMING

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 134

CFR Citation: 23 CFR 450.322

Legal Deadline: None

Abstract: The FHWA is considering amending its regulation on Planning and Assistance Standards, specifically the metropolitan transportation planning process, to provide New York City Metropolitan Area additional time to review and update its transportation plan in light of the terrorist attacks that occurred on September 11, 2001. The Metropolitan Planning Organization (MPO) for the New York City area is the New York Metropolitan Council (NYMTC). NYMTC occupied office space in the World Trade Towers in New York City. Because NYMTC's offices and files were destroyed on September 11, 2001, it will be impossible for NYMTC to review and update its transportation plan by 2002 as required by 23 CFR 450.322(2). Accordingly, the FHWA is considering proposing to provide NYMTC an additional three years to review and update its transportation plan.

Timetable:

Action	Date	FR Cite
Final Rule	10/07/02	67 FR 62370
Final Rule Effective	10/07/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Sheldon M. Edner, Team Leader, Department of Transportation, Federal Highway Administration, Room 3232, 400 Seventh Street SW, Washington, DC 20590
Phone: 202 366-4066
Email: sheldon.edner@fhwa.dot.gov

RIN: 2125–AE92

Department of Transportation (DOT)
Federal Motor Carrier Safety Administration (FMCSA) — **Prerule Stage**

2191. SECURITY REQUIREMENTS FOR MOTOR CARRIERS TRANSPORTING HAZARDOUS MATERIALS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 322; 49 USC 5112 and 5125; 49 USC 31136 and 31502; 49 CFR 1.73

CFR Citation: 49 CFR 397

Legal Deadline: None

Abstract: The ANPRM discusses security concerns involving transporting high-risk hazardous materials and steps that DOD and DOE have taken to protect their shipments such as escorts, pre-notification of States, and satellite tracking. It also discusses other technology such as electronic ignition locks that could improve HM security. FMCSA asked for comments on the feasibility of mandating one or more of these strategies for some segment (the highest risk) of hazmat transportation. The agency also asked for comments on the need for safe havens or the need for standards about what can be a safe haven. Currently, there are no standards for safe havens.

Timetable:

Action	Date	FR Cite
ANPRM	07/16/02	67 FR 46622
ANPRM Comment Period End	10/15/02	

DOT—FMCSA — **Prerule Stage**

Action	Date	FR Cite
ANPRM Comment Period End Extended to	11/15/02	67 FR 62681
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: William A. Quade, Chief, Hazardous Materials Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-ECH, Office of Enforcement and Compliance, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-2172

Related RIN: Duplicate of 2137-AD70

RIN: 2126–AA71

Department of Transportation (DOT)
Federal Motor Carrier Safety Administration (FMCSA) — **Proposed Rule Stage**

2192. +QUALIFICATION OF DRIVERS; VISION

Priority: Other Significant

Legal Authority: 49 USG 504; 49 USC 31502

CFR Citation: 49 CFR 391

Legal Deadline: None

Abstract: As part of a review of the medical qualification standards applicable to interstate CMV driver, the agency (then the FHWA) requested comments on the need, if any, to amend the driver qualification requirements relating to the vision standard. A temporary waiver program was initiated and was concluded on March 31, 1996, to permit the agency to observe and collect data on the driving experience of a group of vision-deficient drivers who meet certain preconditions. The agency considered further research to develop comprehensive performance-based visual standards for all commercial drivers. Information about the proposed research plan and public hearing on the subject was published on June 5, 1996. The agency entered into a contract with a medical center to develop medically based recommendations for amending the current Federal vision requirements. Recommendations were delivered in October 1998. The FMCSA is further evaluating and considering these recommendations to decide what, if any, further proposals should be made concerning the vision standard. Based on findings of the medical panel, FMCSA anticipates publishing an NPRM to amend its regulation governing the visual field requirement in the vision standard.

Section 4007 of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178) enacted effective June 9, 1998, changed the agency's authority to issue waivers and exemptions. Procedures to implement the new authority were published on December 8, 1998 (63 FR 67600). We are, and have been, considering all requests for exemptions from the vision requirements in the Federal Motor Carrier Safety Regulations. This action is significant because of substantial public and congressional interest and safety implications.

Timetable:

Action	Date	FR Cite
ANPRM	02/28/92	57 FR 6793
ANPRM Comment Period End	04/28/92	
Notice Request for Comments	06/05/96	61 FR 28547
Interim Final Rule	12/08/98	63 FR 67600
Interim Final Rule Effective	12/08/98	
Interim Final Rule Comment Period End	02/08/99	
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: FHWA adopted a final rule to allow drivers holding valid waivers from both the vision and diabetes standards to continue to operate in interstate commerce after March 31, 1996. See NPRM (61 FR 606, Jan. 8, 1996); Final Rule (61 FR 13338, March 26, 1996); Final Rule; technical correction (61 FR 17253, April 19, 1996). (See notices published February 28, 1992 (57 FR 6793); March 25, 1992 (57 FR 10295); June 3, 1992 (57 FR 22370); October 6, 1994 (59 FR 50887); and November 17, 1994 (59 FR 59386).)

Agency Contact: Sandra L. Zywokarte, Health and Welfare Specialist, Office of Bus and Truck Standards and Operations, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSD, 400 Seventh Street NW., Washington, DC 20590
Phone: 202 366-2987

RIN: 2126–AA05

2193. +COMMERCIAL DRIVER PHYSICAL FITNESS AS PART OF THE CDL PROCESS

Priority: Other Significant

Legal Authority: PL 106-159, sec. 215; 49 USC 31305; 49 USC 31502

CFR Citation: 49 CFR 383, 391.11, 391.45; and 49 CFR 1.73

Legal Deadline: None

Abstract: FMCSA would propose to include the certification of fitness to operate a CMV in the commercial driver's license (CDL) process. Incorporating the commercial driver fitness determination into State-administered CDL procedures could allow elimination of the requirement that CMV drivers carry a separate medical certificate. The CDL would be evidence that the CMV driver is physically fit as well as operationally qualified to operate CMVs safely. This action addresses the driver's physical qualifications as they relate to the CDL process; it does not address whether those standards are correct or should be changed. This action is significant due to anticipated substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	07/15/94	59 FR 36338
ANPRM Comment Period End	11/14/94	
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Governmental Jurisdictions, Businesses

Government Levels Affected: Undetermined

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Agency Contact: Teresa Doggett, Transportation Specialist, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSD, Office of Bus and Truck Standards and Operations, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-2990

RIN: 2126–AA10

2194. SAFETY PERFORMANCE HISTORY OF NEW DRIVERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 508; 49 USC 31133; 49 USC 31136; 49 USC 31301 et seq; 49 USC 31502; PL 103-311

CFR Citation: 49 CFR 382; 49 CFR 383; 49 CFR 390; 49 CFR 391; 49 CFR 1.73

Legal Deadline: NPRM, Statutory, January 1999, See PL 105-178, sec 4014.

Abstract: FMCSA is proposing to amend the Federal motor carrier regulations to include minimum safety information that new and prospective employers must seek from former employers during the investigation of a driver's employment record. FMCSA is also proposing to increase the time period that carriers must record accident information in the accident register, from one year to three years. The Hazardous Materials Transportation Authorization Act of 1994 initially mandated this revision. The agency is preparing a supplemental notice of proposed rulemaking in response to Small Business Administration (SBA) comments to the docket and sec. 4014 of TEA-21 (Pub. L. 105-178). SBA had requested more in-depth Paperwork Reduction Act and Regulatory Flexibility Act analyses of the proposal. The TEA-21 provided limited employer protection from liability, strengthened employee due process provisions, and established a new statutory deadline.

Timetable:

Action	Date	FR Cite
NPRM	03/14/96	61 FR 10548
NPRM Comment Period End	05/13/96	
Supplemental NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David Goettee, Regulatory Development Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PRR, Office of Policy Plans and Regulation, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-4097

RIN: 2126–AA17

2195. +UNIFIED REGISTRATION SYSTEM

Priority: Other Significant

Legal Authority: PL 104-88; 49 USC 13908

CFR Citation: 49 CFR 360

Legal Deadline: Final, Statutory, January 1, 1998.

Abstract: Section 103 of the ICC Termination Act of 1995 which added 49 USC 13908, required the Secretary to initiate a rulemaking proceeding to replace the current USDOT identification number system, the single-State registration system, the registration/licensing system, and the financial responsibility system, with a single, online Federal system. The statutory deadline was not met due to range and depth of issues involved. This action is considered significant due to substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	08/26/96	61 FR 43816
ANPRM Comment Period End	10/25/96	
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Federal

Agency Contact: Nathaniel Jackson, Driver and Carrier Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSD, Office of Bus and Truck Standards and Operations, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-6406

RIN: 2126–AA22

2196. SAFETY FITNESS PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 31144

CFR Citation: 49 CFR 385

Legal Deadline: None

Abstract: The agency (then the FHWA) published a final rule on November 6, 1997 (62 FR 60035), which incorporated the safety fitness rating methodology into 49 CFR 385 as appendix B. In that document, FHWA identified its ultimate goal as creating a more performance-based means of determining the fitness of carriers to conduct commercial motor vehicle (CMV) operations in interstate commerce. The ANPRM requested comments on the future of a rating system that could be used both in making safety fitness determinations and meeting the demands of shippers, insurers and other present and potential users interested in evaluating motor carrier performance.

Timetable:

Action	Date	FR Cite
ANPRM	07/20/98	63 FR 38788
ANPRM Comment Period End	09/18/98	
NPRM	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Larry M. Minor, Chief, Vehicle and Roadside Operations, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSV, Office of Truck and Bus Standards and Operations, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-4009

RIN: 2126–AA37

2197. +FEDERAL MOTOR CARRIER SAFETY REGULATIONS; INTERSTATE SCHOOL BUS SAFETY

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: PL 105-178, sec 4024

CFR Citation: 49 CFR 390; 49 CFR 391; 49 CFR 392; 49 CFR 393; 49 CFR 395

Legal Deadline: Other, Statutory, December 9, 1998, PL 105-178, sec. 4024.

Abstract: FMCSA is considering making the Federal Motor Carrier Safety Regulations (FMCSRs) apply to all interstate school transportation operations by local educational agencies. This action is in response to section 4024 of the Transportation Equity Act for the 21st Century (TEA-21) which mandates the FMCSA to make a determination whether to make the FMCSRs applicable to such operations. FMCSA requested comments, data, and information to assist the agency in making this determination. This action is considered significant because of the anticipated substantial interest by the public and private sectors if the agency expands the FMCSRs to cover government-operated school buses in interstate commerce.

Timetable:

Action	Date	FR Cite
ANPRM	10/22/01	66 FR 53373
ANPRM Comment Period End	01/22/02	
NPRM	10/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State

Federalism: Undetermined

Agency Contact: Philip Hanley, Commercial Passenger Carrier Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSB, Office of Bus and Truck Standards and Operations, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-6811

RIN: 2126–AA53

2198. POSTING OF EMPLOYEE PROTECTIONS INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 31136

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: FMCSA is considering requiring employers to display a poster to notify commercial motor vehicle (CMV) operators and other employees of their whistleblower rights under 49 U.S.C. 31105. The poster would also provide information on filing a complaint with the Occupational Safety and Health Administration for investigation.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David Goettee, Regulatory Development Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PRR, Office of Policy Plans and Regulation, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-4097

RIN: 2126–AA68

2199. • +HOURS OF SERVICE OF DRIVERS; SUPPORTING DOCUMENTS

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: PL 103-311, sec 113

CFR Citation: 49 CFR 385, 390, and 395; 49 CFR 1.73

Legal Deadline: Final, Statutory, February 1996.

Abstract: The FMCSA would propose amending the hours-of-service recordkeeping requirements to clarify that the duty of motor carriers is to verify the accuracy of drivers' hours of service (HOS) and records of duty status (RODS) including automatic on-board records, and that the driver's duty is to collect and submit to the motor carrier all supporting documents with the RODS. The agency would also propose to require carriers to maintain supporting documents with the RODS. The agency would propose that a supporting document based self-monitoring system be the primary method for ensuring compliance with the HOS regulations. Recognizing developing technologies, FMCSA would propose to permit use of electronic documents as a supplement to, and in certain instances in lieu of, paper supporting documents. These proposals would be intended to clarify definitions of "supporting documents," "employee," and "driver," and to clarify the current requirement that each motor carrier use a self-monitoring system to verify accuracy of the HOS and RODS including automatic on-board records.

Timetable:

Action	Date	FR Cite
NPRM	04/20/98	63 FR 19457
NPRM Comment Period End	06/19/98	
Supplemental NPRM	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Jerry Fulnecky, Office of Enforcement and Compliance, Department of Transportation, Federal Motor Carrier Safety Administration, MC-EC, 400 Seventh Street SW., Room 8310, Washington, DC 20590
Phone: 202 366-4553

Related RIN: Split From 2126-AA23

RIN: 2126–AA76

2200. • SAFETY FITNESS PROCEDURES; SAFETY RATINGS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 113

CFR Citation: 49 CFR 385

Legal Deadline: None

Abstract: The FMCSA proposes to update the safety fitness rating methodology (SFRM), which is used to measure the safety fitness of motor carriers against the safety standard, as outlined in appendix B to the Safety Fitness Procedures regulations. It is necessary to amend the list of acute and critical regulations because the agency has established operating procedures and issued several regulations required by the ICC Termination Act of 1995, the Transportation Equity Act for the 21st Century, and the Motor Carrier Safety Improvement Act of 1999.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Michael J. Lamm, Team Leader, Enforcement, Department of Transportation, Federal Motor Carrier Safety Administration, MC-ECE, Office of Enforcement and Compliance, 400 Seventh Street, SW., Room 8310, Washington, DC 20590
Phone: 202 366-6093

RIN: 2126–AA77

Department of Transportation (DOT)
Federal Motor Carrier Safety Administration (FMCSA)

Final Rule Stage

2201. +RAILROAD-HIGHWAY GRADE CROSSING SAFETY

Priority: Other Significant

Legal Authority: PL 102-240; PL 103-311; 49 USC 5101; 49 USC 31136; 49 USC 31502; 49 CFR 1.73

CFR Citation: 49 CFR 392

Legal Deadline: Final, Statutory, February 26, 1995.

Abstract: This action would prohibit operators of commercial motor vehicles from driving onto a railroad grade crossing unless there is sufficient space to drive completely through the crossing without stopping. This action is required by the Hazardous Materials Transportation Authorization Act of 1994 (Pub. L. 103-311, sec. 112), and it is intended to reduce the incidence of collisions between trains and commercial motor vehicles. This action is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	07/30/98	63 FR 40691
NPRM Comment Period End	11/27/98	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: David M. Lehrman, Attorney, Regulatory Development Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PRR, Office of Policy Plans and Regulation, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-0994

RIN: 2126–AA18

2202. +HOURS OF SERVICE OF DRIVERS; DRIVER REST AND SLEEP FOR SAFE OPERATIONS (RULEMAKING RESULTING FROM A SECTION 610 REVIEW)

Regulatory Plan: This entry is Seq. No. 107 in part II of this issue of the **Federal Register**.

RIN: 2126–AA23

2203. ELECTRONIC FILING OF SURETY BONDS, TRUST FUND AGREEMENTS, INSURANCE CERTIFICATES; CANCELLATIONS

Priority: Substantive, Nonsignificant

Legal Authority: PL 104-88; 49 USC 13906

CFR Citation: 49 CFR 387.323

Legal Deadline: None

Abstract: This action proposed requiring all filings of surety bonds, trust fund agreements, insurance certificates and cancellations of these instruments to be accomplished electronically. Optional electronic filing has proven economical and efficient for both the FMCSA and for electronic filers. Given this success, cost of processing paper filings can no longer be justified. Mandatory electronic filings should not impose any significant costs or burdens on either the FMCSA or the filers. This action will be withdrawn.

Timetable:

Action	Date	FR Cite
To Be Withdrawn	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gladys Cole, Chief, Insurance Compliance, Department of Transportation, Federal Motor Carrier Safety Administration, ECI, Office of Enforcement and Compliance, 400 Virginia Avenue SW., Suite 600, Washington, DC 20024
Phone: 202 358-7039

RIN: 2126–AA24

2204. +TRANSPORTATION OF HOUSEHOLD GOODS; CONSUMER PROTECTION REGULATIONS (RULEMAKING RESULTING FROM A SECTION 610 REVIEW)

Priority: Other Significant

Legal Authority: PL 74-255; 49 USC 13301; 49 USC 14104; PL 104-88; PL 106-59; 49 USC 13101; 49 USC 13501 et seq.; 49 USC 14104; 49 USC 14708; 49 USC 14901 et seq.; 49 USC 14912; 49 USC 13301 et seq.

CFR Citation: 49 CFR 375; 49 CFR 377; 49 CFR 1.73

Legal Deadline: None

Abstract: FMCSA proposed to amend the regulations governing the transportation of household goods. These regulations protect individual consumers who ship household goods, as defined in 49 USC 13102(10), by commercial motor vehicle. This action is necessary to implement the ICC Termination Act of 1995 (ICCTA), and to update the regulations. The intended effect of this proposal is to make the regulations easier to read and understand, remove an outdated report, address hostage freight problems (situations where non-binding estimates are lower than actual charges and the carrier refuses to deliver freight even after 110 percent of the estimate is paid at the time of delivery), modify a consumer protection publication, consider industry requests to change the rules, and propose conforming and technical amendments.

Timetable:

Action	Date	FR Cite
NPRM	05/15/98	63 FR 27126
NPRM Comment Period End	07/14/98	
NPRM Extension and Reopening of Comment Period	08/12/98	63 FR 43128
NPRM Comment Period End	10/13/98	
Interim Final Rule	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gladys Cole, Chief, Insurance Compliance, Department of Transportation, Federal Motor Carrier Safety Administration, ECI, Office of Enforcement and Compliance, 400 Virginia Avenue SW., Suite 600, Washington, DC 20024
Phone: 202 358-7039

RIN: 2126–AA32

2205. OUT-OF-SERVICE CRITERIA

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 31133, 31136, 31310, and 31502; PL 104-59

CFR Citation: 49 CFR 395 and 396; 49 CFR 1.73

Legal Deadline: None

Abstract: This action requested public comment on the North American Uniform Out-of-Service Criteria (OOS Criteria). During roadside inspections, Federal, State, and local safety inspectors use the OOS Criteria as a guide in determining whether to place commercial motor vehicles (CMVs), or their drivers, "out of service." Such status means that the CMVs or drivers are so unsafe that corrections must be undertaken before operations can resume. The FHWA was seeking public comment on the future scope and effect of the OOS Criteria, which are not part of the Federal Motor Carrier Safety Regulations. In addition, FMCSA has considered information regarding whether it needs to formalize these guidelines pursuant to a notice and comment rulemaking.

Timetable:

Action	Date	FR Cite
ANPRM	07/20/98	63 FR 38791
ANPRM Comment Period End	09/18/98	
Extension of Comment Period	10/09/98	63 FR 54432
Comment Period End	12/08/98	
To Be Withdrawn	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Larry M. Minor, Chief, Vehicle and Roadside Operations, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSV, Office of Truck and Bus Standards and Operations, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-4009

RIN: 2126–AA36

DOT—FMCSA

Final Rule Stage

2206. FEDERAL MOTOR CARRIER SAFETY REGULATIONS; WAIVERS, EXEMPTIONS, AND PILOT PROGRAMS; RULES AND PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 31315; PL 105-178, sec 4007

CFR Citation: 49 CFR 381

Legal Deadline: Final, Statutory, December 9, 1998.

Abstract: The FMCSA is adopting regulations to implement section 4007 of the Transportation Equity Act for the 21st Century (TEA-21), concerning waivers and exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs), and the administration of pilot programs to evaluate innovative alternatives to the regulations. The regulations establish the procedures persons must follow to request waivers and to apply for exemptions from the FMCSRs, and the procedures FMCSA will use to process the requests for waivers and applications for exemptions. The regulations also codify statutory requirements concerning the agency's administration of pilot programs. This rulemaking is intended to provide procedures to ensure the timely processing of requests for waivers and applications for exemptions, and public disclosure of the procedures the agency would use in initiating and managing pilot programs. The agency (then the FHWA) issued an interim final rule with an opportunity for public comment after publication in order to meet the statutory deadline for issuance of a final rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/08/98	63 FR 67600
Interim Final Rule Effective	12/08/98	
Interim Final Rule Comment Period End	02/08/99	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: Transferred from RIN 2125-AE48.

Agency Contact: Larry M. Minor, Chief, Vehicle and Roadside Operations, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSV, Office of Truck and Bus Standards and Operations, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-4009

RIN: 2126–AA41

2207. +FEDERAL MOTOR CARRIER SAFETY REGULATIONS; SAFETY REQUIREMENTS FOR OPERATORS OF SMALL PASSENGER-CARRYING COMMERCIAL MOTOR VEHICLES USED IN INTERSTATE COMMERCE

Priority: Other Significant

Legal Authority: 49 USC 13301; 49 USC 13902; 49 USC 31132; 49 USC 31133; 49 USC 31136; 49 USC 31502; 49 USC 31504; PL 104-88, sec 204

CFR Citation: 49 CFR 1.73; 49 CFR 390

Legal Deadline: Final, Statutory, December 9, 2000, PL 106-159, sec 212.

Abstract: The FMCSA would amend the Federal Motor Carrier Safety Regulations (FMCSRs) to require that motor carriers who operate commercial motor vehicles (CMVs), designed or used to transport between 9 and 15 passengers (including the driver) in interstate commerce, must comply with the FMCSRs when they are directly compensated for such services, and the vehicle is operated beyond a 75 air mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location. These motor carriers, drivers, and vehicles operated by them would be subject to the same safety requirements as motorcoach operators, except for the commercial driver's license, controlled substances and alcohol testing regulations. This action is required by sec. 212 of the Motor Carrier Safety Improvement Act of 1999. It is significant because of substantial public interest and safety implications.

Timetable:

Action	Date	FR Cite
NPRM	01/11/01	66 FR 2767
NPRM Comment Period End	04/11/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Larry M. Minor, Chief, Vehicle and Roadside Operations, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSV, Office of Truck and Bus Standards and Operations, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-4009

RIN: 2126–AA52

2208. +LIMITATIONS ON ISSUANCE OF COMMERCIAL DRIVER'S LICENSE WITH HAZARDOUS MATERIALS ENDORSEMENT

Regulatory Plan: This entry is Seq. No. 108 in part II of this issue of the **Federal Register**.

RIN: 2126–AA70

DOT—FMCSA

Final Rule Stage

2209. +PENALTIES, INSPECTION, AND DECAL DISPLAY REQUIREMENTS FOR MEXICO-DOMICILED MOTOR CARRIERS

Priority: Other Significant

Legal Authority: 49 USC 31136; 49 USC 31502; PL 107-87, sec. 350

CFR Citation: 49 CFR 386; 49 CFR 396

Legal Deadline: None

Abstract: FMCSA amends part 396 of the Federal Motor Carrier Safety Regulations (FMCSRs) to incorporate the requirement, as codified in parts 365 and 385, that all commercial motor vehicles operated by Mexico-domiciled motor carriers holding authority to transport property or passengers beyond the commercial zones of U.S. municipalities on the United States-Mexico border must display a Commercial Vehicle Safety Alliance (CVSA) decal issued by a CVSA-certified inspector. Adding this requirement to part 396 will enable FMCSA to assess civil penalties against Mexico-domiciled long-haul motor carriers that operate vehicles without the necessary CVSA decal. This rule also clarifies that carriers will be required to obtain the necessary inspection decal before proceeding beyond border ports of entry. By providing for more effective enforcement of the inspection and decal requirements, this rule will help to ensure that these motor carriers operate safe vehicles in the United States. This rulemaking is significant because of substantial public and congressional interest.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Joanne Cisneros, Transborder Office, Department of Transportation, Federal Motor Carrier Safety Administration, PO Box 530870, San Diego, CA 92153-0870
Phone: 909 653-2299

RIN: 2126–AA72

Department of Transportation (DOT)
Federal Motor Carrier Safety Administration (FMCSA)

Long-Term Actions

2210. +COMMERCIAL DRIVER'S LICENSE STANDARDS; BIOMETRIC IDENTIFIER

Priority: Other Significant

Legal Authority: PL 100-690, sec 9105

CFR Citation: 49 CFR 383

Legal Deadline: Final, Statutory, December 31, 1990.

Abstract: The Truck and Bus Regulatory Reform Act of 1988 required the Transportation Secretary to issue regulations establishing minimum uniform standards for a biometric identification system for commercial motor vehicle (CMV) operators. In 1989, the agency (then the FHWA) published an ANPRM to request comments on a pilot demonstration project using biometric identifiers that included retinal eye scans and fingerprint technologies. After considering the comments to the ANPRM, the FHWA determined that technology had not progressed to the point where a nationwide identification system could be cost-effective and provide the benefits for which a system was intended. In 1991, the FHWA published a Notice of Information summarizing the results of the pilot study and the comments to demonstrate how the technologies studied fell short of the demands in the commercial licensing environment at the time.

Section 4011(c) of the TEA-21, 49 USC 31308 amended, requires each commercial driver's license (CDL) issued by the States after January 1, 2001, to have unique identifiers (which may include biometric identifiers). The FMCSA established a pilot study to collect over 16,000 sample digital facial images and sets of fingerprints from volunteers in California, Georgia, and West Virginia: California provided the lead for this study. The pilot study has been completed, and the contractor is finalizing the study results. The final report is expected in November 2002. This action is significant because of substantial public and congressional interest.

Timetable:

Action	Date	FR Cite
ANPRM	05/15/89	54 FR 20875
ANPRM Comment Period End	07/14/89	
Information Notice	03/08/91	56 FR 9925
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State

Agency Contact: Ronald Finn, Transportation Specialist, Department of Transportation, Federal Motor Carrier Safety Administration, MC-ESS, Office of Safety Programs, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-0647

RIN: 2126–AA01

2211. COMMERCIAL LEARNER PERMITS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 31136; PL 99-570; 49 USC 31102

CFR Citation: 49 CFR 383, 384, 386, and 395; 49 CFR 1.73

Legal Deadline: None

Abstract: The agency (then the FHWA), reviewed learner permit practices of the States for processing a driver from the initial non-CDL driver to being a fully licensed CDL driver. A number of variations in state learner permit practices were found. The FHWA planned to establish more uniform practices, such as: Screening drivers before permitting them to initially drive a CMV without having obtained a full CDL; the length of time a State allows the driver to hold a learner's permit; procedures for drivers to obtain CDL training in a State other than their normal residency; supervision requirements for learner permit drivers; and commercial driver license information systems (CDLIS) recordkeeping requirements.

Timetable:

Action	Date	FR Cite
NPRM	08/22/90	55 FR 34478
NPRM Comment Period End	10/22/90	
NPRM Comment Period Extended to 11/30/90	10/23/90	55 FR 42741
Supplemental NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State

Additional Information: Because other regulatory changes have been made since the NPRM was published in 1990, the FMCSA intends to issue a supplemental NPRM to solicit comments on including additional requirements consistent with changes in the CDL program.

ANALYSIS: Regulatory Evaluation, 08/22/90, 55 FR 34478

Agency Contact: Robert Redmond, Senior Transportation Specialist, State Programs Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-ESS, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5014

RIN: 2126–AA03

2212. +FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL TRANSPORTATION OF HAZARDOUS MATERIALS

Priority: Other Significant

Legal Authority: 49 USC 5105; 49 USC 5109

CFR Citation: 49 CFR 390.3, and 397; 49 CFR 1.73

Legal Deadline: Final, Statutory, November 15, 1991.

Abstract: This rulemaking will implement the statutory requirements of 49 USC 5109 and 49 USC 5105. Section 5109 addresses the establishment of motor carrier safety permit regulations for motor carriers transporting Class A or B explosives, liquefied natural gases, hazardous materials designated as extremely toxic by inhalation, or highway route controlled quantity radioactive materials. Section 5105 requires inspection of vehicles transporting those radioactive materials before each trip. The proposed rule will incorporate those provisions into the safety permit regulations. This action is considered significant because of substantial public and congressional interest and safety implications.

Timetable:

Action	Date	FR Cite
NPRM	06/17/93	58 FR 33418
NPRM Comment Period End	08/16/93	
Supplemental NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: William A. Quade, Chief, Hazardous Materials Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-ECH, Office of Enforcement and Compliance, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-2172

RIN: 2126–AA07

2213. +MINIMUM TRAINING REQUIREMENTS FOR OPERATORS AND TRAINING INSTRUCTORS OF MULTIPLE TRAILER COMBINATION VEHICLES

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: PL 102-240, sec 4007(b)(2)

CFR Citation: 49 CFR 383

Legal Deadline: Final, Statutory, December 18, 1993.

Abstract: This action proposes minimum training requirements for operators of multiple trailer combination vehicles and the instructors who train these operators. The training would include certification of an operator's proficiency by an instructor who has met the requirements established by the Secretary of Transportation. This action is considered significant due to substantial public interest and safety.

Timetable:

Action	Date	FR Cite
ANPRM	01/15/93	58 FR 4638
ANPRM Comment Period End	03/16/93	
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Larry M. Minor, Chief, Vehicle and Roadside Operations, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSV, Office of Truck and Bus Standards and Operations, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-4009

RIN: 2126–AA08

2214. +TRAINING FOR ENTRY-LEVEL DRIVERS OF COMMERCIAL MOTOR VEHICLES

Priority: Other Significant

Legal Authority: PL 102-240, sec 4007

CFR Citation: 49 CFR 383

Legal Deadline: Final, Statutory, December 18, 1993.

Abstract: Section 4007 of the Motor Carrier Act of 1991 (title IV of the Intermodal Surface Transportation Efficiency Act of 1991) required the Department to initiate a rulemaking on the need to require training of all entry-level drivers of commercial motor vehicles. On 02/05/96, the agency submitted a report to Congress on the effectiveness of private sector efforts to ensure adequate training of all entry-level drivers. This report included a cost-benefit study of requiring training of entry-level drivers. Public comments were solicited on the report. This rulemaking action is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	06/21/93	58 FR 33874
ANPRM Comment Period End	08/20/93	
Report to Congress	02/05/96	
Notice of Availability of Report	04/25/96	61 FR 18355
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: The report is available through the National Technical Information Service (Order No. PB96-141536). For further information, please call 1-800-553-6847.

DOT—FMCSA

Long-Term Actions

Agency Contact: David Goettee, Regulatory Development Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PRR, Office of Policy Plans and Regulation, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-4097

RIN: 2126–AA09

2215. PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION; SLEEPER BERTHS ON MOTOR COACHES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 31136 and 31502

CFR Citation: 49 CFR 393; 49 CFR 1.73

Legal Deadline: None

Abstract: On January 12, 1993, the agency (then the FHWA) published an ANPRM to request comments on the suitability of existing driver sleeper berth regulations for motor coaches and possible amendment to account for design differences between trucks and motor coaches.

Timetable:

Action	Date	FR Cite
ANPRM	01/12/94	59 FR 1706
ANPRM Comment Period End	03/14/94	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Philip Hanley, Commercial Passenger Carrier Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSB, Office of Bus and Truck Standards and Operations, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-6811

RIN: 2126–AA12

2216. RULES OF PRACTICE FOR MOTOR CARRIER PROCEEDINGS; INVESTIGATIONS; DISQUALIFICATIONS AND PENALTIES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 113 and 307

CFR Citation: 49 CFR 385 and 386; 49 CFR 1.73

Legal Deadline: None

Abstract: FMCSA would propose to amend its rules of practice for motor carrier safety, hazardous materials, and other enforcement proceedings, motor carrier safety ratings, driver qualification proceedings and its schedule of penalties for violations of the FMCSRs and the Hazardous Materials Regulations. FMCSA would also propose to add provisions on investigative authority and procedures and general motor carrier responsibilities. These rules would increase the efficiency of the procedures, enhance due process and the awareness of the public and regulated community, and accommodate recent program changes. The rules would apply to all motor carriers, other business entities and individuals involved in motor carrier safety and hazardous materials administrative actions.

Timetable:

Action	Date	FR Cite
NPRM	04/29/96	61 FR 18866
NPRM Comment Period End	07/29/96	
SNPRM	10/21/96	61 FR 54601
SNPRM Comment Period End	11/20/96	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Valerie Height, Regulatory Development Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PRR, Office of Policy Plans and Regulation, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-0901

RIN: 2126–AA15

2217. PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION; TELEVISION RECEIVERS AND DATA DISPLAY UNITS

Priority: Substantive, Nonsignificant

Legal Authority: PL 102-240; 49 USC 31136 and 31502

CFR Citation: 49 CFR 393; 49 CFR 1.73

Legal Deadline: None

Abstract: The agency (then the FHWA) proposed amending the Federal Motor Carrier Safety Regulations regarding television viewers or screens in commercial motor vehicles. The agency was concerned that the current restrictions on locations of such devices may have the unintended effect of discouraging use of certain Intelligent Transportation System (ITS) technologies, such as collision avoidance and traveler information systems, which could improve the safety and efficiency of commercial vehicle operations. After reviewing comments to the April 3, 1993 NPRM to rescind the regulation concerning television viewers or screens, FMCSA is considering an SNPRM to propose retaining an explicit prohibition against television viewers or screens but revising the regulation to ensure that it does not impede the development and use of ITS-related technologies.

Timetable:

Action	Date	FR Cite
NPRM	04/03/96	61 FR 14733
NPRM Comment Period End	06/03/96	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gary R. Woodford, Vehicle and Roadside Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSV, Office of Bus and Truck Standards and Operations, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-4009

RIN: 2126–AA19

2218. GENERAL JURISDICTION OVER FREIGHT FORWARDER SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 13701

CFR Citation: 49 CFR 373; 49 CFR 1.73

Legal Deadline: None

Abstract: This action gives notice of the FMCSA's general jurisdiction over all segments of the freight forwarding industry (not just household good freight forwarders), in accordance with the ICC Termination Act of 1995, proposes changes to existing regulations to comport with those mandated by Congress, and clarifies the FMCSA's jurisdiction over freight forwarders in other areas.

Timetable:

Action	Date	FR Cite
NPRM	01/28/97	62 FR 4096
NPRM Comment Period End	03/31/97	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Transferred from RIN 2125-AE00.

Agency Contact: Michael Falk, Office of the Chief Counsel, Department of Transportation, Federal Motor Carrier Safety Administration, MC-CC, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-0834

RIN: 2126–AA25

2219. +ENGLISH LANGUAGE REQUIREMENT; QUALIFICATIONS OF DRIVERS

Priority: Other Significant

Legal Authority: 49 USC 504; 49 USC 31133, 31136, and 31502

CFR Citation: 49 CFR 391; 49 CFR 1.73

Legal Deadline: None

Abstract: This action resulted because the American Civil Liberties Union (ACLU) wrote to the Department asserting that the regulation, as written, is overly broad and subject to arbitrary enforcement, causing potential interference with constitutional guarantees of due process and equal protection. The current regulation is little changed from the original rule adopted in 1936. The ACLU requested an opportunity to submit a comprehensive analysis of this issue. The ANPRM was intended to provide the ACLU with such an opportunity and to open this issue for public comment. The FMCSA is considering modifying current regulations to require drivers to possess the basic functional communication/comprehension ability necessary to ensure safety, consistent with applicable law. This action is considered significant due to anticipated public interest and controversy.

Timetable:

Action	Date	FR Cite
ANPRM	08/26/97	62 FR 45200
ANPRM Comment Period End	10/27/97	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: Transferred from RIN 2125-AE19.

Agency Contact: Robert Schultz, Driver and Carrier Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSD, Office of Bus and Truck Standards and Operations, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-4001

RIN: 2126–AA31

2220. +APPLICATION BY CERTAIN MEXICO-DOMICILED MOTOR CARRIERS TO OPERATE BEYOND U.S. MUNICIPALITIES AND COMMERCIAL ZONES ON THE U.S.-MEXICO BORDER

Priority: Other Significant

Legal Authority: 5 USC 553; 5 USC 559; 16 USC 1456; 49 USC 13101; 49 USC 13301; 49 USC 13901 et seq; 49 USC 31138; 49 USC 31144

CFR Citation: 49 CFR 365; 49 CFR 1.73

Legal Deadline: None

Abstract: This action revises the regulations and form, OP-1(MX), governing applications by Mexico-domiciled property and passenger carriers who want to operate within the United States beyond the municipalities adjacent to Mexico in Texas, New Mexico, Arizona, and California and beyond the commercial zones of such municipalities ("border zones"). The action is taken in anticipation of a presidential order lifting the current statutory moratorium on authorizing such operations. The form requires additional information about the applicant's business and operating practices to help the FMCSA to determine if the applicant will be able to meet the safety standards established for operating in interstate commerce in the United States. The interim rule included requirements that were not proposed in the NPRM but which were necessary to comply with the FY 2002 DOT Appropriations Act. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	05/03/01	66 FR 22371
NPRM Comment Period End	07/02/01	
Interim Final Rule	03/19/02	67 FR 12702
Interim Final Rule Comment Period End	04/18/02	
Interim Final Rule Effective	05/03/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joanne Cisneros, Transborder Office, Department of Transportation, Federal Motor Carrier Safety Administration, PO Box 530870, San Diego, CA 92153-0870
Phone: 909 653-2299

RIN: 2126–AA34

2221. +SAFETY MONITORING SYSTEM AND COMPLIANCE INITIATIVE FOR MEXICO-DOMICILED MOTOR CARRIERS OPERATING IN THE UNITED STATES

Priority: Other Significant

Legal Authority: 49 USC 113; 49 USC 504; 49 USC 521(b)(5)(A); 49 USC 5113; 49 USC 31136; 49 USC 31144; 49 USC 31502; Pub. L. 107-87, Sec. 350

CFR Citation: 49 CFR 385

Legal Deadline: None

Abstract: This action implements a safety monitoring system and compliance initiative designed to evaluate the continuing safety fitness of all Mexico-domiciled motor carriers within 18 months after receiving a provisional Certificate of Registration or provisional authority to operate in the United States. The rule also establishes suspension and revocation procedures for provisional Certificates of Registration and operating authority and incorporates criteria to be used by FMCSA in evaluating whether Mexico-domiciled carriers exercise basic safety management controls. The interim rule included requirements that were not proposed in the NPRM, but which are necessary to comply with the FY 2002 DOT Appropriations Act. This action is significant due to anticipated public interest and safety-related issues.

Timetable:

Action	Date	FR Cite
NPRM	05/03/01	66 FR 22415
NPRM Comment Period End	07/02/01	
Interim Final Rule	03/19/02	67 FR 12758
Interim Final Rule Comment Period End	04/18/02	
Interim Final Rule Effective	05/03/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Michael J. Lamm, Team Leader, Enforcement, Department of Transportation, Federal Motor Carrier Safety Administration, MC-ECE, Office of Enforcement and Compliance, 400 Seventh Street, SW., Room 8310, Washington, DC 20590
Phone: 202 366-6093

RIN: 2126–AA35

2222. +GENERAL REQUIREMENTS; INSPECTION, REPAIR, AND MAINTENANCE; INTERMODAL CONTAINER CHASSIS AND TRAILERS

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 504; 49 USC 31133; 49 USC 31136; 49 USC 31502

CFR Citation: 49 CFR 1.73; 49 CFR 390; 49 CFR 396

Legal Deadline: None

Abstract: In response to a petition for rulemaking filed by the American Trucking Association, Inc. (ATA) and the ATA Intermodal Conference (the petitioners), the FMCSA (then the FHWA) agreed to consider revisions to the requirements in parts 390 and 396 of the Federal Motor Carrier Safety Regulations that place upon motor carriers the responsibility for maintaining intermodal container chassis and trailers. These regulations provide the requirements for the inspection, repair and maintenance of commercial motor vehicles. This action is considered significant because of substantial industry and public interest.

Timetable:

Action	Date	FR Cite
ANPRM	02/17/99	64 FR 7849
ANPRM Comment Period End	04/19/99	
Comment Period End	05/05/99	64 FR 24128
Comment Period Extended	08/30/99	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Deborah M. Freund, Senior Transportation Specialist, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSV, Office of Bus and Truck Standards and Operation, 400 Seventh Street, SW., Washington, DC
Phone: 202 366-4009

RIN: 2126–AA38

2223. +FEDERAL MOTOR CARRIER SAFETY REGULATIONS; ZERO-BASE REVISION

Priority: Other Significant

Legal Authority: 49 USC 113; 49 USC 501 and 504; 49 USC 13101, 13301, 13902; 49 USC 31101, 31132, 31136, 31301, and 31502; PL 104-88

CFR Citation: 49 CFR 325, 393, 398, and 399; 49 CFR 1.73

Legal Deadline: None

Abstract: The FMCSA considered this action as a means to simplifying, clarifying, and reorganizing the Federal Motor Carrier Safety Regulations (FMCSRs). In 1992, a "zero-based review" was launched to improve the organization, format and clarity of the FMCSRs and collateral regulations. This proposal represents the most recent phase of a "zero-based" review of motor carrier safety regulations to establish more effective, enforceable requirements. It would propose provisions that could affect public safety and potentially raises novel policy issues concerning federalism.

FMCSA planned to release a new rulebook in incremental stages for an ordered approach to analyzing comments and to ensure that the final rulebook is consistent and compatible. The rulebook would constitute a major rewrite of the FMCSRs, including significant format and organizational changes. This action is considered significant due to anticipated public interest.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Valerie Height, Regulatory Development Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PRR, Office of Policy Plans and Regulation, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-0901

RIN: 2126–AA39

2224. +POST-ACCIDENT CONTROLLED SUBSTANCES AND ALCOHOL TEST RESULTS; REPORTING REQUIREMENTS FOR THE FATALITY ANALYSIS REPORTING SYSTEM

Priority: Other Significant

Legal Authority: PL 74-255; PL 98-554; PL 99-570; PL 102-143; PL 106-159; 49 USC 31136; 49 USC 31301 et seq; 49 USC 31502

CFR Citation: 49 CFR 1.73; 49 CFR 382

Legal Deadline: None

Abstract: FMCSA is considering amending its controlled substances and alcohol testing regulations to require employers subject to those requirements to report certain information to State-employed Fatality Analysis Reporting System (FARS) analysts concerning fatal crashes/accidents. Currently, only FMCSA and State officials with regulatory authority over the employer or any of its drivers may obtain information concerning controlled substances and alcohol testing results and records. This action would require employers to provide information to FARS analysts, irrespective of their State authority, working under contract with the National Highway Traffic Safety Administration (NHTSA). The information employers would be required to submit to the analysts would enable NHTSA, in conjunction with FMCSA, to compile and analyze data on the incidence of commercial motor vehicle (CMV) drivers who test positive for controlled substances and/or alcohol use in post-accident tests conducted after fatal crashes.

FMCSA would also use the data to help assess the effectiveness of its controlled substances and alcohol testing regulations.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations

Government Levels Affected: Local, Federal

Agency Contact: David R. Miller, Regulatory Development Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PRR, Office of Policy Plans and Regulation, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-5011

RIN: 2126–AA50

2225. +NEW ENTRANT SAFETY ASSURANCE PROCESS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: PL 106-159, sec 210

CFR Citation: 49 CFR 385

Legal Deadline: None

Abstract: This action will establish minimum requirements for new entrant motor carriers to ensure that they are knowledgeable about applicable Federal motor carrier safety standards. After ensuring that they are knowledgeable, the new entrants will operate for 18 months in which time they must pass a safety review in order to receive permanent operating authority. This rule is significant because of public and congressional interest in rules required by MCSIA.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/13/02	67 FR 31978
Interim Final Rule Comment Period End	07/12/02	
Interim Final Rule Effective	01/01/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Larry M. Minor, Chief, Vehicle and Roadside Operations, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSV, Office of Truck and Bus Standards and Operations, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-4009

RIN: 2126–AA59

2226. PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION; GENERAL AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 102-240, sec 1041(b); 49 USC 31136; 49 USC 31502

CFR Citation: 49 CFR 392; 49 CFR 393

Legal Deadline: None

Abstract: FMCSA is amending part 393 of the Federal Motor Carrier Safety Regulations, Parts and Accessories Necessary for Safe Operation. The amendments are intended to remove obsolete and redundant regulations; respond to several petitions for rulemaking; provide improved definitions of vehicle types, systems, and components; resolve inconsistencies between part 393 and the National Highway Traffic Safety Administration's Federal Motor Vehicle Safety Standards (49 CFR 571); and codify certain FMCSA regulatory guidance concerning the requirements of part 393. Generally, the amendments do not involve the establishment of new or more stringent requirements but a clarification of existing requirements.

Timetable:

Action	Date	FR Cite
NPRM	04/14/97	62 FR 18170
NPRM Comment Period Extended	06/12/97	62 FR 32066
NPRM Comment Period End	06/13/97	
Comment Period End	07/28/97	
Public Meeting	02/20/98	63 FR 8606
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Larry M. Minor, Chief, Vehicle and Roadside Operations, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSV, Office of Truck and Bus Standards and Operations, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-4009

RIN: 2126–AA61

2227. RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-159, sec 205

CFR Citation: 49 CFR 386

Legal Deadline: None

Abstract: FMCSA proposes to adopt procedural rules in order to conduct administrative proceedings under section 205 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). This section provides for the issuance of out-of-service orders. On February 16, 2000, FMCSA issued a final rule amending the Rules of Practice to include violations of commercial regulations. However, this modification to the administrative rules applied only to civil penalty proceedings.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David M. Lehrman, Attorney, Regulatory Development Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PRR, Office of Policy Plans and Regulation, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-0994

RIN: 2126–AA63

2228. +CERTIFICATION OF SAFETY AUDITORS, SAFETY INVESTIGATORS, AND SAFETY INSPECTORS

Priority: Other Significant

Legal Authority: PL 106-159, sec 211

CFR Citation: 49 CFR 385

Legal Deadline: Final, Statutory, December 9, 2000.

Abstract: This rule would require that any safety inspection, audit, or review be conducted by a certified investigator. It would give the FMCSA authority to decertify an investigator, including a third-party investigator for failure to

meet the prescribed certification standards. It is required by section 211 of the Motor Carrier Safety Improvement Act of 1999. This rule is significant because of public and congressional interest in rules required by MCSIA.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/19/02	67 FR 12776
Interim Final Rule Comment Period End	05/20/02	
Interim Final Rule Effective	06/17/02	
Effective Date Delayed until July 17, 2002	06/17/02	67 FR 41196
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Larry M. Minor, Chief, Vehicle and Roadside Operations, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSV, Office of Truck and Bus Standards and Operations, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-4009

RIN: 2126–AA64

2229. +CERTIFICATION OF COMPLIANCE WITH FEDERAL MOTOR VEHICLE SAFETY STANDARDS (FMVSS)

Priority: Other Significant

Legal Authority: PL 102-240, sec 1041(b); 105 Stat. 1914; 49 USC 31136; 49 USC 31502; 49 CFR 1.73

CFR Citation: 49 CFR 393.8

Legal Deadline: None

Abstract: FMCSA proposes to amend the Federal Motor Carrier Safety Regulations so that motor carriers ensure that each commercial motor vehicle (CMV) they operate in interstate commerce displays a label certifying that the vehicle complies with all applicable Federal Motor Vehicle Safety Standards (FMVSS) in effect on the date of manufacture. This rulemaking ensures that all motor carriers operating CMVs in the United States use only vehicles that were certified by the manufacturer as meeting all applicable Federal safety performance requirements. This action is significant because of substantial public and congressional interest and safety implications.

Timetable:

Action	Date	FR Cite
NPRM	03/19/02	67 FR 12782
NPRM Comment Period End	05/20/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Deborah M. Freund, Senior Transportation Specialist, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSV, Office of Bus and Truck Standards and Operation, 400 Seventh Street, SW., Washington, DC
Phone: 202 366-4009

Related RIN: Related To 2127-AI59, Related To 2127-AI60, Related To 2127-AI64

RIN: 2126–AA69

2230. • +REGISTRATION ENFORCEMENT

Priority: Other Significant

Legal Authority: PL 106-159, sec 205; 113 Stat 1762

CFR Citation: 49 CFR 350 and 392; 49 CFR 1.73

Legal Deadline: None

Abstract: This rule prohibits a motor carrier who is subject to the registration requirements under 49 U.S.C. 13902 from operating a commercial motor vehicle in interstate commerce unless it has registered with FMCSA. Motor carriers are also prohibited from operating beyond the scope of their registered authorization. If vehicles are discovered operating in violation of such registration requirements, they will be placed out of service, and the carrier may be subject to additional penalties. This action makes State enforcement of the registration requirements a condition of MCSAP eligibility. This action is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/28/02	67 FR 55162
Interim Final Rule Effective	09/27/02	
Interim Final Rule Comment Period End	10/28/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Local, State

Agency Contact: Larry M. Minor, Chief, Vehicle and Roadside Operations, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSV, Office of Truck and Bus Standards and Operations, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-4009

RIN: 2126–AA78

2231. DEVELOPMENT OF A NORTH AMERICAN STANDARD FOR PROTECTION AGAINST SHIFTING AND FALLING CARGO

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 31136; 49 USC 31502

CFR Citation: 49 CFR 393; 49 CFR 1.73

Legal Deadline: None

Abstract: FMCSA is amending its regulations concerning cargo securement requirements for commercial motor vehicles engaged in interstate commerce. The FMCSA intends to adopt new cargo securement guidelines that will be based upon the results of a multi-year comprehensive research program to evaluate current regulations and industry practices.

Timetable:

Action	Date	FR Cite
ANPRM	10/17/96	61 FR 54142
ANPRM Comment Period End	12/16/96	
Notice of Meeting	04/21/97	62 FR 19252
NPRM	12/18/00	65 FR 79050
NPRM Comment Period End	03/19/01	
Final Action	09/27/02	67 FR 61212
Final Action Effective	12/26/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Larry M. Minor, Chief, Vehicle and Roadside Operations, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSV, Office of Truck and Bus Standards and Operations, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-4009

RIN: 2126–AA27

2232. BRAKE PERFORMANCE REQUIREMENTS FOR CMVS INSPECTED BY PERFORMANCE-BASED BRAKE TESTERS

Priority: Substantive, Nonsignificant

Legal Authority: PL 102-240, sec 1041(b); 49 USC 31136; 49 USC 31502

CFR Citation: 49 CFR 393; 49 CFR 1.73

Legal Deadline: None

Abstract: FMCSA amends the Federal Motor Carrier Safety Regulations to establish pass/fail criteria for use with performance-based brake testers (PBBTs), which measure the braking performance of commercial motor vehicles (CMVs). The specific types of PBBTs addressed in this action are the roller dynamometer, breakaway torque tester, and flat-plate tester. This rule allows State and local enforcement officials to issue citations based on PBBT braking force measurements.

Timetable:

Action	Date	FR Cite
NPRM	08/09/00	65 FR 48660
NPRM Comment Period End	10/10/00	
Final Rule	08/09/02	67 FR 51770
Correction; Effective Date	08/14/02	67 FR 53048
Final Rule Effective	02/05/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gary R. Woodford, Vehicle and Roadside Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSV, Office of Bus and Truck Standards and Operations, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-4009

RIN: 2126–AA46

2233. COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES; NONCOMMERCIAL MOTOR VEHICLE VIOLATIONS

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-159, sec 201(b); PL 106-159, sec 202(h)

CFR Citation: 49 CFR 383 and 384

Legal Deadline: Final, Statutory, December 9, 2000, PL 106-159, sec 201(b).

Abstract: The proposals in this NPRM were merged with the final rule in 2126-AA60. The proposed regulations specified that a driver who holds a commercial driver's license (CDL) and is convicted of a drug- or alcohol-related offense or another offense that results in the revocation, cancellation, or suspension of the CDL, while operating a noncommercial motor vehicle, be disqualified from operating a commercial motor vehicle. This action was in response to sections 201(b) and 202(h) of the Motor Carrier Safety Improvement Act of 1999.

Timetable:

Action	Date	FR Cite
NPRM	05/04/01	66 FR 22499
NPRM Comment Period End	08/02/01	
Final Rule	07/31/02	67 FR 49742
Final Rule Effective	09/30/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Robert Redmond, Senior Transportation Specialist, State Programs Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-ESS, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5014

Related RIN: Merged With 2126-AA60

RIN: 2126–AA55

2234. COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES; COMMERCIAL DRIVER'S LICENSE PROGRAM IMPROVEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-159, sec 103(c); PL 106-159, sec 103(e); PL 106-159, sec 201(c); PL 106-159, sec 202; PL 106-159, sec 203; PL 106-159, sec 208; PL 106-159, sec 214

CFR Citation: 49 CFR 350; 49 CFR 383; 49 CFR 384

Legal Deadline: None

Abstract: This action amended various provisions of the Commercial Driver's License (CDL) program requirements to implement changes mandated by the Motor Carrier Safety Improvement Act of 1999. Specific issues to be addressed include the following:

(1) Emergency grants to States in non-compliance with CDL requirements;

(2) Withholding MCSAP funds from States in non-compliance with CDL requirements;

(3) Disqualification for driving while suspended; Disqualified and causing a fatality;

(4) Emergency disqualification of drivers posing an imminent hazard;

(5) Expanding the definition of serious traffic violations;

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(6) Expanded driver record check;

(7) New notification requirements;

(8) Prohibition on hardship license to drivers who lose base license;

(9) Penalties for violating minimum licensing requirements;

(10) Maintaining a record of all violations;

(11) Masking prohibition;

(12) Decertification of State CDL programs for noncompliance;

(13) Definition of imminent hazard;

(14) School bus endorsement.

Timetable:

Action	Date	FR Cite
NPRM	07/27/01	66 FR 39248
NPRM Comment Period End	10/25/01	
Final Rule	07/31/02	67 FR 49742
Final Rule Effective	09/30/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Robert Redmond, Senior Transportation Specialist, State Programs Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-ESS, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5014

Related RIN: Merged With 2126-AA55

RIN: 2126–AA60

2235. REVISION TO PERIODIC TIRE CHECK REQUIREMENT FOR MOTOR CARRIERS TRANSPORTING HAZARDOUS MATERIALS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 31136 and 31502; 49 CFR 1.73

CFR Citation: 49 CFR 397

Legal Deadline: None

Abstract: This action eliminates the periodic tire inspections for vehicles carrying hazardous materials because of technological advances related to tire fires and because of terrorist concerns associated with numerous stops. This final rule was published by FMCSA in conjunction with RSPA under Docket No. RSPA-02-12773 (HM-232B), and RIN 2137-AD69. This action was inadvertently identified as significant in the spring 2002 regulatory agenda.

Timetable:

Action	Date	FR Cite
NPRM	07/16/02	67 FR 46624
NPRM Comment Period End	08/15/02	
Final Action	10/04/02	67 FR 62191
Final Action Effective	11/04/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William A. Quade, Chief, Hazardous Materials Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-ECH, Office of Enforcement and Compliance, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-2172

Related RIN: Previously reported as 2126-AA74

RIN: 2126–AA75

2236. +HAZARDOUS MATERIAL ROUTE PLANS

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 5112 and 5125; 49 CFR 1.73

CFR Citation: 49 CFR 397

Legal Deadline: None

Abstract: Hazardous materials carriers would be required to prepare and sign a route plan. The plan must be in the posession of the driver of any Table 1 hazardous material (explosives, radioactive materials, poison by inhalation hazard materials). Certain regulatory actions by RSPA made this action less necessary. The agency terminated this action on 07/05/2002.

Timetable:

Action	Date	FR Cite
Terminated	07/05/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: William A. Quade, Chief, Hazardous Materials Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-ECH, Office of Enforcement and Compliance, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-2172

RIN: 2126–AA74

Department of Transportation (DOT)
National Highway Traffic Safety Administration (NHTSA) — **Prerule Stage**

2237. REVIEW: ODOMETER FRAUD

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 580

Legal Deadline: None

Abstract: This review involves analysis of the incident rates and costs of odometer fraud and an assessment of State and Federal efforts to combat odometer fraud. To complete this review, the agency requested permission to collect a sample of odometer readings of registered passenger cars that are less than 10 years old from vehicle dealers, distributors, vehicle title files, and State Department of Motor Vehicle agencies. Congress directed the agency to conduct this review.

Timetable:

Action	Date	FR Cite
Begin Review	10/01/95	
Collection of Information	09/23/96	61 FR 49809
Comment Period End	11/11/96	
Collection of Information	06/06/97	62 FR 31186
Comment Period End	07/07/97	
Technical Report	07/16/02	67 FR 46703
End Review	03/00/03	

DOT—NHTSA — **Prerule Stage**

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: There are approximately 452,000 cases of odometer fraud per year in the United States. There is a 3.47 percent chance that a vehicle would have its odometer rolled back at some point during the first 11 years of its life. Consumers pay on average $2,336 more for a rolled-back vehicle then they would have been willing to pay if they had known its true mileage.

Agency Contact: Charles J. Kahane, Chief, Evaluation Division, Office of Plans and Policy, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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Fax: 202 366-2559
Email: ckahane@nhtsa.dot.gov

RIN: 2127–AF53

2238. REVIEW: AMERICAN AUTOMOBILE LABELING ACT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 32304

CFR Citation: 49 CFR 583

Legal Deadline: None

Abstract: The American Automobile Labeling Act requires new passenger cars and light trucks, beginning October 1, 1994, to bear labels providing information on the extent to which their parts are of domestic origin. The objective of this review is to determine the extent to which new-vehicle buyers know about, understand and use this information, and to estimate the effect of the labels on vehicle production and sales.

Timetable:

Action	Date	FR Cite
Begin Review	12/01/95	
Collection of Information	07/24/97	62 FR 39886
Comment Period End	09/22/97	
Collection of Information	02/18/98	63 FR 8249
Collection of Information	02/26/98	63 FR 9897
Technical Report	03/06/01	66 FR 13625
End Review	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: In a survey of 646 recent or imminent new-vehicle buyers, over 75 percent were unaware of the existence of automobile parts content labels. Among those who had read the labels, many said they used the country-of-assembly information, but none said they used the numerical U.S./Canadian parts content score. Overall U.S./Canadian parts content in new cars and light trucks dropped from an average of 70 percent in model year 1995 to 67.6 percent in 1988. However, it increased from 47 to 59 percent in transplants while dropping from 89 to 84 percent in Big 3 vehicles.

Agency Contact: Charles J. Kahane, Chief, Evaluation Division, Office of Plans and Policy, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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Fax: 202 366-2559
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RIN: 2127–AG18

2239. REVIEW: HEAVY TRUCK CONSPICUITY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: The agency is conducting a study to evaluate the safety effects of the conspicuity systems requirement (section 5.7) of Federal Motor Vehicle Safety Standard No. 108. To carry out the study, the agency had special motor vehicle crash data collected by the Florida Highway Patrol and the Pennsylvania State Police.

Timetable:

Action	Date	FR Cite
Begin Review	09/01/95	
Collection of Information	07/01/96	61 FR 33891
Comment Period End	08/30/96	
Technical Report	05/04/01	66 FR 22640
End Review	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Retroreflective tape enhances the visibility of heavy trailers in the dark. The tape reduces side and rear impacts by other vehicles into trailers by 29 percent in dark conditions (including dark-not-lighted, dark-lighted, dawn and dusk). In dark-not-lighted conditions, the tape reduces side and rear impacts by 41 percent. When all heavy trailers have the tape, it will prevent an estimated 191 to 350 fatalities, 3,100 to 5,000 injuries and 7,800 crashes per year.

Agency Contact: Charles J. Kahane, Chief, Evaluation Division, Office of Plans and Policy, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2560
Fax: 202 366-2559
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RIN: 2127–AG19

2240. MOTORCYCLE-MOUNTED REFLEX REFLECTOR HEIGHT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering allowing a lower minimum mounting height for side reflex reflectors on motorcycles. The intent is to harmonize United States lighting safety standards with European and Asian reflector position regulations and improve the flow of trade by creating "windows of harmonization" that will allow manufacturers to market "common" vehicles in global markets.

Timetable:

Action	Date	FR Cite
Agency Decision	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Kenneth Hardie, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, NPS-21, Visibility and Injury Prevention Division, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-2720
Fax: 202 366-4329

RIN: 2127–AG92

DOT—NHTSA — **Prerule Stage**

2241. REVIEW: CHILD SAFETY SEAT REGISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.213; 49 CFR 588

Legal Deadline: None

Abstract: This evaluation involves analysis of the effectiveness of registering child safety seats to increase response to reports of recalled seats. This regulation was selected for review because of public interest in child passenger safety.

Timetable:

Action	Date	FR Cite
Begin Review	10/01/97	
End Review	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles J. Kahane, Chief, Evaluation Division, Office of Plans and Policy, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AG93

2242. REVIEW: AIR BAG ON-OFF SWITCHES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 40 USC 30166

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: This standard allows passenger vehicles to be equipped with an on-off switch for the right front passenger air bag if the rear seat cannot accommodate a rear-facing infant seat. The standard also enables vehicle owners to obtain an on-off switch for their passenger and/or driver air bag if they transport people who should not be exposed to an air bag deployment. The agency will determine, by observation of vehicles in use, the percentage of on-off switches that are being correctly used. This regulation was selected for review because of its public interest and potential benefit.

Timetable:

Action	Date	FR Cite
Begin Review	04/01/98	
End Review	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Preliminary results of the observational survey are that the switches were left on (when they should be off) for 9 percent of infant passengers, 27 percent of child passengers age 1-6, and 56 percent of child passengers age 7-12. They were turned off for 18 percent of teen and adult passengers, depriving them of any potential benefits of air bags.

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RIN: 2127–AH12

2243. CHILD RESTRAINTS FOR OLDER CHILDREN

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.213

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency requested comments on whether the child restraint standard should be amended to facilitate the production of lap belt-installed booster seats and other child restraints for children weighing over 18 kilograms, such as by allowing use of a tether in some of the compliance tests.

Timetable:

Action	Date	FR Cite
Request for Comment	07/07/99	64 FR 36657
Comment Period End	09/07/99	
Agency Decision	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH14

2244. DEFECT REPORTING AND NOTIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30102 to 30103; 49 USC 30112; 49 USC 30115 to 30121; 49 USC 30166 to 30167

CFR Citation: 49 CFR 573; 49 CFR 576; 49 CFR 577

Legal Deadline: None

Abstract: The agency was planning to amend its current regulations on Defect and Noncompliance Reports and Defect and Noncompliance Notification. The amendments would have addressed the availability of information regarding safety-related defects and noncompliance's and the notification to consumers of recalls of defective and noncomplying motor vehicles and motor vehicle equipment. NHTSA has decided to focus its resources on implementing the defect and noncompliance-related provisions of the Transportation Recall Enhancement, Accountability, and Documentation Act of 2000 and therefore has no present plans to move forward with this project.

Timetable:

Action	Date	FR Cite
Agency Decision	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jonathan D. White, Chief, Recall Analysis Division, Office of Defects Investigation, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5226
Fax: 202 366-7882

RIN: 2127–AH89

Department of Transportation (DOT)
National Highway Traffic Safety Administration (NHTSA) — **Proposed Rule Stage**

2245. PROCEDURES FOR CONSIDERING ENVIRONMENTAL IMPACTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321 et seq (National Environmental Policy Act-NEPA)

CFR Citation: 49 CFR 520

Legal Deadline: None

Abstract: NHTSA's regulation will be reviewed and revised, as necessary, where it conflicts with or is duplicative of the regulations of Council on Environmental Quality (CEQ), 40 CFR parts 1500-1508, and with DOT Order 5610.1C, each of which implements the National Environmental Policy Act (NEPA), 42 USC 4321 et seq.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen Wood, Division Chief, Rulemaking Division, Office of the Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2992

RIN: 2127–AB79

2246. SEATING SYSTEMS PERFORMANCE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.207

Legal Deadline: None

Abstract: Environmental Research and Safety Technologists of Flagstaff, AZ, petitioned the agency to reexamine the seatback performance requirements of the standard in rear impact crashes.

Timetable:

Action	Date	FR Cite
ANPRM	10/04/89	54 FR 40896
ANPRM Comment Period End	12/04/89	
Request for Comments	11/23/92	57 FR 54958
Comment Period End	01/22/93	
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Petitions for rulemaking were granted 07/24/89. See a related rulemaking action involving these petitioners under RIN 2127-AC57. The first part of the research is complete. A computer model and a prototype seat were developed. Information on this research is available in the docket along with a report on crash data analysis. The agency is currently evaluating the research results and conducting dynamic seat testing.

Agency Contact: Lori Summers, Division Chief, Department of Transportation, National Highway Traffic Safety Administration, NVS-112, Light Duty Vehicles Division, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-4917
Fax: 202 366-4329

RIN: 2127–AD08

2247. CERTIFICATION REQUIREMENTS OF MULTISTAGE VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 567; 49 CFR 568; 49 CFR 1.50

Legal Deadline: None

Abstract: The agency proposed to amend the certification requirements that apply to incomplete vehicles other than chassis-cabs. Incomplete vehicles are vehicles that include at least a frame and chassis structure, power train, steering system, suspension system, and brake system, but need further manufacturing performed on them to become completed vehicles. The agency proposed to extend the certification requirements currently applying to chassis-cabs to all types of incomplete vehicles. The agency recognizes that manufacturers who build vehicles in more than one stage are faced with somewhat different problems than manufacturers who build vehicles in a single stage, especially when it comes to certifying vehicles to meet Federal Motor Vehicle Safety Standards. The agency held a public meeting to listen to the views of these groups and others with respect to improving the vehicle certification process. The agency established a negotiated rulemaking advisory committee to develop recommended amendments to the existing regulations. The agency will publish the findings and recommendations of the negotiated rulemaking advisory committee and request comments from the public.

Timetable:

Action	Date	FR Cite
NPRM	12/03/91	56 FR 61392
NPRM Comment Period End	01/31/92	
Announced Public Meeting	11/17/95	60 FR 57694
Notice of Intent	05/20/99	64 FR 27499
Notice of Formation of Advisory Committee	11/26/99	64 FR 66447
Notice of Meetings	02/07/00	65 FR 5847
Notice	04/19/00	65 FR 20936
SNPRM	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: The agency has published a list of scheduled meetings.

ANALYSIS: Regulatory Evaluation, 12/03/91, 56 FR 61392

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AE27

2248. CONVEX CROSS-VIEW MIRRORS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.111

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency requested comments on the issue of rear mounted cross-view mirrors on light and medium duty trucks for the purpose of eliminating the blind spot directly

behind the vehicle. The petitioner requested that these mirrors be mandated to eliminate backing accidents where children could be seriously injured or killed. Petition was granted.

Timetable:

Action	Date	FR Cite
Request for Comments	06/17/96	61 FR 30586
Comment Period End	10/15/96	
ANPRM	11/27/00	65 FR 70681
ANPRM Comment Period End	01/26/01	
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Chris Flanigan, General Engineer, Special Project Staff, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4931

RIN: 2127–AG41

2249. POLITICAL SUBDIVISION PARTICIPATION IN STATE HIGHWAY SAFETY PROGRAMS AND STATE HIGHWAY SAFETY AGENCY

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 402

CFR Citation: 23 CFR 1250; 23 CFR 1251

Legal Deadline: None

Abstract: The agency is proposing to amend certain provisions concerning the State Highway Safety Programs to streamline them, address statutory changes, and delete obsolete or unnecessary requirements.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal

Agency Contact: John Donaldson, Senior Attorney, Office of Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-1834

RIN: 2127–AH00

2250. DEFINITION OF MULTIFUNCTIONAL SCHOOL ACTIVITY BUS

Priority: Substantive, Nonsignificant

Legal Authority: 9 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is proposing to amend various sections of part 571 to create a new vehicle type, tentatively called community transportation vehicles, that will have to meet the crashworthiness standards applicable to school buses, but will not have to meet some of the crash avoidance standards (i.e., stop arms, flashing lights, etc.). This would allow manufacturers to certify vehicles that will be less expensive and as safe as a school bus for transportation of Head Start students because we have tentatively decided that the school bus crash avoidance features are unnecessary when there is no curb-side pickup.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH23

2251. METRIC CONVERSION—PHASE III

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166; PL 100-418, sec 5164

CFR Citation: 49 CFR 571

Legal Deadline: None

Abstract: The agency is amending selected Federal motor vehicle safety standards by converting English measurements in those standards to metric measurements. This rulemaking is the third and final in a series that the agency will undertake to implement the Federal policy that the metric system is the preferred system of weights and measures for U.S. trade and commerce. The conversions are not intended to change the stringency of the affected Federal motor vehicles safety standards.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Noble Bowie, Director, Office of Planning and Consumer Programs, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-0842

RIN: 2127–AH27

2252. UPGRADE DOOR RETENTION PERFORMANCE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.206

Legal Deadline: None

Abstract: Based upon annual average estimates from the 1988 through 1996 Fatal Analysis Reporting System (FARS) and the National Automotive Sampling System (NASS), there is an annual average of 2,515 fatalities and 1,882 serious injuries due to door ejections. Side door ejections are the second leading cause of ejections in all crashes, superseded only by ejections through fixed glazing. One of the activities of agency rollover research focuses on reducing injuries and fatalities resulting from side door ejections. This research has led the agency to identify potential significant solutions to mitigating a substantial number of these fatalities and injuries by improving side door retention performance. Therefore, the agency is proposing to upgrade the door retention requirements.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AH34

2253. ADMINISTRATIVE REWRITE OF THE LIGHTING REQUIREMENTS OTHER THAN HEADLAMPS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: The agency is proposing to rewrite the reflective devices and associated equipment requirements to make the standard more readable and understandable. The standard has grown over the last 30 years by the incorporation of dozens of amendments. The document has become unwieldy to use and the agency decided to rewrite it to separate it into sections that address each lighting function separately. These sections will state the basic performance necessary for each lighting function and for lamp installation on various vehicle types. The rewrite will continue to reference Society of Automotive Engineers (SAE) and other standards and recommended practices for test procedures if too lengthy to incorporate changes. Moreover, it will codify various agency interpretations of its rules to make the standard more explicit. The proposed administrative rewrite of the headlamp regulations can be found under RIN 2127-AG87.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Michael Cole, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, NPS-21, Visibility and Injury Prevention Division, 400 Seventh Street, SW, Washington, DC 20590
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RIN: 2127–AH37

2254. EXEMPTION FOR INCONSEQUENTIAL DEFECT OR NONCOMPLIANCE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30113

CFR Citation: 49 CFR 556

Legal Deadline: None

Abstract: Present regulation requires a petitioner to submit data "supporting its petition" which advocates excusing it from its notification and remedial obligations. Because the petitioner may have pertinent data relevant to the agency's decision that would not support granting it, the agency is proposing a clarification that all data pertaining to the subject in the possession of the petitioner be part of the petition. The agency also is proposing the petitioner provide a full and accurate analysis of its petition and certify that it is accurate and complete. NHTSA had deferred action on this rulemaking action on 8/2/01, to allow it to focus its limited resources on the defects and noncompliance related rulemaking actions required by the Transportation Recall Enhancement, Accountability, and Documentation Act of 2000.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Taylor Vinson, Senior Attorney, Office of the Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH58

2255. COMPLIANCE AND ENFORCEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571

Legal Deadline: None

Abstract: The agency is proposing to codify our long-standing general policy that motor vehicles and items of motor vehicle equipment must be capable of satisfying the requirements of each particular standard or regulation with the adjustable components of the vehicle or vehicle equipment adjusted to any position they can occupy while the vehicle is being operated unless the particular standard or regulation specifies otherwise or the manufacturer explicitly warns against placing the equipment or vehicle in that position. The agency is also proposing that where a standard provides manufacturers with more than one compliance option, manufacturers must select which compliance option(s) they are certifying to by the time they certify a vehicle or equipment item.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen Wood, Division Chief, Rulemaking Division, Office of the Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2992

RIN: 2127–AH63

2256. REGISTERED IMPORTERS OF VEHICLES NOT ORIGINALLY MANUFACTURED TO CONFORM WITH THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30141; 49 USC 30147

CFR Citation: 49 CFR 592

Legal Deadline: None

Abstract: The agency proposed to reduce regulatory burdens associated with importation of Canadian vehicles for resale in the United States when those vehicles already comply in essential respects with the Federal motor vehicle safety standards. This proposal would enhance safety by revising application procedures to ensure a higher caliber of registered importers and clarifying existing obligations.

Timetable:

Action	Date	FR Cite
NPRM	11/20/00	65 FR 69810
NPRM Comment Period	02/01/01	
SNPRM	12/00/02	
Final Action	12/00/02	
Final Action Effective	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2127–AH67

2257. +FRONTAL OFFSET PROTECTION

Regulatory Plan: This entry is Seq. No. 109 in part II of this issue of the Federal Register.

RIN: 2127–AH73

2258. SPECIAL PURPOSE VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.224

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering whether to amend the standard for new trailers and semitrailers with a gross vehicle weight rating (GVWR) of 4,536 kilograms (10,000 pounds) or more be equipped with a rear impact guard by revising the definition of "special purpose vehicles." These are vehicles with rear mounted liftgates that operate by swinging through the area or reside in any part of the area that is designated for the horizontal member of the rear impact guard.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH75

2259. BRAKE HOSES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.106

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering whether to adopt portions of the brake component Federal safety provisions that are now in the Federal Motor Carrier Safety Administration regulations into the agency's brake regulation.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jeffrey Woods, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, NPS-22, Vehicle Dynamics Division, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-2720
Fax: 202 366-4329

RIN: 2127–AH79

2260. LOW-SPEED VEHICLE PERFORMANCE REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.500

Legal Deadline: None

Abstract: Low-speed vehicles (LSV) have a maximum speed of between 20 and 25 miles per hour (mph). These vehicles are required to have certain equipment some of which does not have any performance requirements. The agency is proposing to set performance criteria for the various safety systems and hardware necessary for use on these vehicles.

Timetable:

Action	Date	FR Cite
NPRM	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Mike Pyne, Safety Standards Engineer, Office of Crash Avoidance, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4171

RIN: 2127–AH80

2261. HEADLAMP GLARE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: The current standard sets minimum and maximum headlamp intensities to ensure the driver of the vehicle sees as much of the roadway as possible, while minimizing glare for other drivers using the road. The agency has been receiving a significant number of public complaints about headlamp glare from other vehicles. Technological changes, fleet mix changes, and an increase in the average driver age, cause the agency to reexamine seeing distance and glare.

Timetable:

Action	Date	FR Cite
Request for Comments	09/28/01	66 FR 49594
Reopen Comment Period	11/30/01	66 FR 59769
Comment Period End	12/22/01	
Comment Period End	01/28/02	
NPRM	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard VanIderstine, Division Chief, Visibility and Injury Prevention Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2720
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RIN: 2127–AH81

2262. STOWABLE OR FOLD-AWAY CHILD RESTRAINT ANCHORAGES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.225

Legal Deadline: None

Abstract: This action proposes requests by petitions for reconsideration to permit stowing and fold-away anchors on vehicles. The proposal would set performance and other requirements for such anchors. This pertains to the requirements established in the final rule published March 5, 1999 (64 FR 10785, RIN 2127-AG50).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Other issues raised by the petitioners are being addressed in RIN 2127-AH65 - Child Restraint Anchorage Systems - Part 1 and RIN 2127-AH86 - Child Restraint Anchorage Systems - Part 2.

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RIN: 2127–AH85

2263. MOTORCYCLE HEADLAMP SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering whether to modify the motorcycle headlamp system height of upper beam and number of headlamp and light source.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Kenneth Hardie, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, NPS-21, Visibility and Injury Prevention Division, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-2720
Fax: 202 366-4329

RIN: 2127–AH92

2264. IMPROVE MOTORCYCLE HELMET HEAD PROTECTION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.218

Legal Deadline: None

Abstract: In 1998, 2,284 motorcyclists were killed and 49,000 injured in traffic crashes on U.S. highways. The agency believes that helmet usage by motorcyclists is the most effective method to reduce deaths and injuries in motorcycle crashes. In order to improve the head protection for motorcyclists, the agency is proposing to upgrade the performance standards and test procedures to incorporate the technological advancements available in the current market and to review the standard for harmonization with other major helmet standards.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI03

2265. REORGANIZE AND HARMONIZE CONTROLS AND DISPLAYS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 SC 30166

CFR Citation: 49 CFR 571.101

Legal Deadline: None

Abstract: The agency is proposing to reorganize the controls and displays requirements to make them more user-friendly and to harmonize the standard with the Canadian Motor Vehicle Safety Standard No. 101 on the same subject. These proposed changes will list the

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symbols used in the standard to improve driver recognition of the function of controls and the meaning of telltales.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gayle Dalrymple, Safety Engineer, Vehicle Controls and Adapted Vehicle Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5559

RIN: 2127–AI09

2266. SEAT BELT EMERGENCY LOCKING RETRACTOR

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.209

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is proposing clarifications concerning the test procedure for the acceleration pulse shape, onset rate, time duration, and acceleration tolerance for seat belt emergency locking retractors.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Lori Summers, Division Chief, Department of Transportation, National Highway Traffic Safety Administration, NVS-112, Light Duty Vehicles Division, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-4917
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RIN: 2127–AI38

2267. ADAPTATION OF INSTRUMENTED LOWER LEGS FOR HYBRID III MALE AND FEMALE ADULT DUMMIES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 572

Legal Deadline: None

Abstract: The agency is proposing the use of crash test dummies with instrumented lower legs to assess the crashworthiness and the potential of lower limb injuries to occupants of passenger cars, vans, light trucks, and sport utility vehicles. The new legs would be retrofits for un-instrumented legs in current Hybrid III male and female adult size dummies. The legs will be used to monitor both the inertial impact and floor pan intrusion effects upon injury potential to the knees, tibia, ankle and feet. The new legs will permit the agency to assess the injury potential to the lower legs in current motor vehicles during crashes and also enable the vehicle manufacturers to design and construct vehicles that will minimize lower limb injuries.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard Morgan, Biomechanics Specialist, General Engineer, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590
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RIN: 2127–AI39

2268. VOLUNTARILY INSTALLED SEAT BELT ASSEMBLY ANCHORAGES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.210

Legal Deadline: None

Abstract: In a final rule published June 12, 1998 (63 FR 32143, RIN 2127-AF91), the agency required anchorages for voluntarily installed shoulder belts to comply with the current requirements for 3-point belts. This change applied mainly to seat locations where belts are required, such as the center rear seat in passenger cars. This change did not apply to seats where no seat belt was required. The agency is proposing to extend the anchorage requirement to seats where the entire seat belt assembly is voluntarily installed. This change will mainly affect passenger seats on large buses and large school buses where the customer decides to order the bus with seat belts.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: This action is currently in research.

Agency Contact: Lori Summers, Division Chief, Department of Transportation, National Highway Traffic Safety Administration, NVS-112, Light Duty Vehicles Division, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-4917
Fax: 202 366-4329

RIN: 2127–AI40

2269. IDLE STOP TECHNOLOGY USED IN SOME HYBRID ELECTRIC VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.102

Legal Deadline: None

Abstract: The agency is proposing to amend the standard to clarify the intent of the standard and allow it to accommodate "idle stop technology" used in some hybrid electric vehicles. This will respond to existing interpretations which promised such a modification.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: William Evans, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, NPS-23, Vehicle Controls and Adpated Vehilce Division, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-2720
Fax: 202 366-4329

RIN: 2127–AI43

2270. +OPERATION OF MOTOR VEHICLES BY INTOXICATED PERSONS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: PL 106-346, sec 351

CFR Citation: 23 CFR 1225

Legal Deadline: None

Abstract: The Transportation Equity Act for the 21st Century (TEA-21) established a grant program under which States could qualify for incentive funds if they enacted and enforced a law that provides that any person with a blood alcohol concentration of .08 percent or greater while operating a motor vehicle in the State is deemed to have committed a per se offense of driving while intoxicated or an equivalent per se offense. The agency published a final rule implementing that incentive grant program. Section 351 of the Department of Transportation (DOT) Appropriations Act for Fiscal Year (FY) 2001 (PL 106-346) contains a new provision requiring the withholding of certain Federal-aid highway funds from a State, beginning in fiscal year 2004, if the State has not enacted and is not enforcing such a law. The agency is proposing to amend the regulation implementing the incentive grant program established in TEA-21 to reflect the new sanctions provisions established in the DOT appropriations set for FY 2001.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Heidi L. Coleman, Assistant Chief Counsel for General Law, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-1834

Marlene Markison, Chief, Program Support, Office of State and Community Services, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2121

RIN: 2127–AI44

2271. PROCEDURES FOR PARTICIPATING IN AND RECEIVING DATA FROM THE NATIONAL DRIVER REGISTRATION PROBLEM DRIVER POINTER SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30301 to 30308; PL 106-159, sec 204

CFR Citation: 23 CFR 1327

Legal Deadline: None

Abstract: The agency is proposing to amend the National Driver Register regulations to implement an amendment made by the Motor Carrier Safety Improvement Act of 1999 (PL 106-159). The amendment requires a State, before issuing or renewing a motor vehicle operator's license to an individual, to query both the National Driver Register and the Commercial Driver's License Information System on the individual's driving record.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Glenn Karr, Division Chief, Driver Register and Traffic Records, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590
Phone: 202 366-4800

RIN: 2127–AI45

2272. PARKING BRAKES FOR NON-SCHOOL BUS VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.105

Legal Deadline: None

Abstract: The agency is proposing to update the standard to require non-school bus vehicles with a gross vehicle weight rating (GVWR) over 10,000 pounds to be equipped with a hydraulic parking brake system.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Samuel Daniel, General Engineer, Special Projects Staff, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4921

RIN: 2127–AI47

2273. CARGO CARRYING CAPACITY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 575

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering mandatory consumer information in the form of a label that will inform the consumer of the Cargo Carrying Capacity (CCC) of motor homes, travel trailers, and 5th wheel travel trailers. Such labeling will help the consumer make informed decisions during the purchasing process, act as a reference during cargo loading and encourage the recreational vehicle industry to allow for greater cargo carrying capacities which in turn will reduce instances of overloading.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: William Evans, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, NPS-23, Vehicle Controls and Adpated Vehilce Division, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-2720
Fax: 202 366-4329

RIN: 2127–AI50

2274. CONVEX MIRRORS FOR COMMERCIAL TRUCKS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.111

Legal Deadline: None

Abstract: In response to a petition for rulemaking from Ms. Barbara Sandord, the agency is considering amending the standard to require that all commercial trucks traveling on the interstate highway system have convex mirrors affixed to their front right and left fenders (such as those required on school buses).

Timetable:

Action	Date	FR Cite
Request for Comments	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Chris Flanigan, General Engineer, Special Project Staff, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4931

Related RIN: Related To 2127-AI53

RIN: 2127–AI52

2275. ENHANCE PASSENGER-SIDE MIRROR SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.111

Legal Deadline: None

Abstract: In response to a petition for rulemaking from AM General, the agency is considering amending the standard by extending the requirements to MPVs and trucks (independent of their weight) to allow enhanced passenger-side mirror systems.

Timetable:

Action	Date	FR Cite
Request for Comments	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Chris Flanigan, General Engineer, Special Project Staff, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4931

Related RIN: Related To 2127-AI52

RIN: 2127–AI53

2276. HORIZONTAL DISCHARGE TRAILERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 UCS 30117; 49 USC 30166

CFR Citation: 49 CFR 571.224

Legal Deadline: None

Abstract: In response to two petitions for rulemaking, the agency is considering excluding semitrailers equipped with "horizontal discharge trailers" from the current standard.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4919
Fax: 202 366-4329
Email: gmouchahoir@nhtsa.dot.gov

RIN: 2127–AI56

2277. HEAVIER HYBRID III TYPE 6-YEAR-OLD-SIZE TEST DUMMY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166; ...

CFR Citation: 49 CFR 572

Legal Deadline: None

Abstract: The agency is proposing to incorporate a heavier 6-year-old child dummy as part of the Hybrid III test dummy family. This dummy will have weight added to the existing dummy, making it heavier than 60 pounds. The weighted 6-year-old dummy would have application for testing child restraint systems which are rated for weights above the current 6-year-old dummy weight and would serve as an interim device until such time as the Hybrid III 10-year-old dummy has been fully developed.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Stanley Backaitis, Engineer, Office of Crashworthiness Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4912
Fax: 202 366-4329
Email: sbackaitis@nhtsa.dot.gov

RIN: 2127–AI58

2278. ALLOW ROLL-BAR DURING BRAKE TESTING

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.105

Legal Deadline: None

Abstract: The agency is proposing to allow vehicles with a gross vehicle weight rating of over 10,000 pounds to use a roll-bar during braking tests.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Samuel Daniel, General Engineer, Special Projects Staff, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4921

Related RIN: Related To 2127-AH16

RIN: 2127–AI63

2279. CHILD RESTRAINT SYSTEM WEBBING STRENGTH

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.213

Legal Deadline: None

Abstract: The agency is proposing to require minimum breaking strengths for child restraint systems webbing.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4919
Fax: 202 366-4329
Email: gmouchahoir@nhtsa.dot.gov

RIN: 2127–AI66

2280. MOTORCYCLE BRAKE CONTROLS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.123

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is proposing to allow a handlebar lever instead of a foot pedal to control the rear brakes on motorcycles which have no clutch control.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Mike Pyne, Safety Standards Engineer, Office of Crash Avoidance, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4171

RIN: 2127–AI67

2281. +LIGHT TRUCK AVERAGE FUEL ECONOMY STANDARD, MODEL YEARS 2005-2010

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 49 USC 329

CFR Citation: 49 CFR 533

Legal Deadline: None

Abstract: The purpose of this request for comments is to acquire information to assist the agency in developing a proposal for fuel economy standards for light trucks beyond model year 2004. The agency plans to propose standards for some or all of model years 2005 to 2010. The agency is seeking information that will help it assess the extent to which manufacturers can improve light truck fuel economy during the period in question, the benefits and costs to consumers of fuel economy improvements, the benefits to the nation of reducing fuel consumption, and the number of model years that should be covered by the proposal. The agency is also seeking comments on possible modifications and/or reforms to the Corporate Average Fuel Economy program.

Timetable:

Action	Date	FR Cite
Request for Comments	02/07/02	67 FR 5767
NPRM	11/00/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Rosalind Proctor, Division Chief, Consumer Programs Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-0846
Fax: 202 366-4329
Email: rproctor@nhtsa.dot.gov

RIN: 2127–AI70

2282. +EVENT DATA RECORDERS

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: In the past several years, there has been considerable interest from the safety community in establishing requirements for event data recorders (EDRs). We believe it is timely to consider what role NHTSA should take in implementing EDRs in motor vehicles. Recently, NHTSA received a petition requesting that NHTSA initiate rulemaking to require the installation of EDRs in new vehicles. The agency decided to issue a Federal Register notice asking for comments. NHTSA will decide what to do after review of comments and other related information.

Timetable:

Action	Date	FR Cite
Request for Comments	10/11/02	67 FR 63493
Comment Period End	01/09/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Dr. William R.S. Fan, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, Room

5320F, NPS-10, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4922
Fax: 202 366-4329

RIN: 2127–AI72

2283. GM PETITION ON AMENDING FMVSS NO. 301 AND FMVSS NOS. 208, 212, 219, 303, AND 305

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1497

CFR Citation: 49 CFR 571.208; 49 CFR 571.212; 49 CFR 571.219; 49 CFR 571.301; 49 CFR 571.303; ...

Legal Deadline: None

Abstract: NHTSA published an NPRM on November 13, 2000, proposing to upgrade the rear- and side-impact tests in FMVSS No. 301, Fuel System Integrity. The NPRM requested comments on a number of particular issues. One of the requests, item 3.h, proposed to eliminate the second sentence in the standard's S7.11(b), which describes the test vehicle loading conditions. GM submitted comments on the issue and recommended specific changes. In addition, GM petitioned NHTSA to amend FMVSS Nos. 208, 212, 219, 303 and 305 with identical language that GM recommended for amending FMVSS No. 301.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4919
Fax: 202 366-4329
Email: gmouchahoir@nhtsa.dot.gov

RIN: 2127–AI76

2284. EXEMPTION FOR INCONSEQUENTIAL DEFECT OR NONCOMPLIANCE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30118(d), 30120(h); Delegation of Authority at 49 CFR 1.50

CFR Citation: 49 CFR 556

Legal Deadline: None

Abstract: Amendment to existing rules on inconsequential petitions to address appeals to the agency of denials of petitions for exemptions from notification and remedy requirements on the grounds that the noncompliance or defect is inconsequential as it relates to motor vehicle safety.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Andrew DiMarsico, Trial Attorney, Department of Transportation, National Highway Traffic Safety Administration, 5219, NCC-10, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-5263
Fax: 202 366-3820

RIN: 2127–AI78

2285. • +CONSUMER INFORMATION REGULATIONS; FEDERAL MOTOR VEHICLE SAFETY STANDARDS; ROLLOVER RESISTANCE

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 575

Legal Deadline: Final, Statutory, November 22, 2002.
TREAD Act Mandate.

Abstract: This action establishes a consumer information program on rollover resistance using both dynamic and static vehicle measurements in response to section 12 of the TREAD Act. It replaces the current rollover resistance consumer information that is based only on static measurements. This action has no regulatory effect on vehicle manufacturers or the public. The cost of collecting the information and making it available to the public is entirely the responsibility of NHTSA as part of its New Car Assessment Program (NCAP).

Timetable:

Action	Date	FR Cite
NPRM	10/07/02	67 FR 62528
NPRM Comment Period End	11/21/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Patrick Boyd, Division Chief, Vehicle Controls & Adapted Vehicles Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-2720
Fax: 202 366-4329
Email: pboyd@nhtsa.dot.gov

RIN: 2127–AI81

2286. • INCORPORATION OF EUROSID II DUMMY INTO 49 CFR PART 572

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 1.50

Legal Deadline: None

Abstract: Incorporation of the EuroSID II, Side Impact Crash Test Dummy, into Part 572 is needed to support the forthcoming upgrade of FMVSS 214, Side Impact Regulation and to attain harmonization of crash test tools on a worldwide basis. The EuroSID will be cited as one of the alternative crash test tools to upgrade FMVSS 214. Incorporation of the EuroSID II will have one time cost to the government of approximately $300,000, but no long term costs. Costs to the vehicle manufacturers are negligible on a per manufactured vehicle basis. There are no direct safety benefits in use of the crash test dummies.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stanley Backaitis, Engineer, Office of Crashworthiness Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4912
Fax: 202 366-4329
Email: sbackaitis@nhtsa.dot.gov

RIN: 2127–AI89

2287. • REAR CENTER LAP/SHOULDER BELT REQUIREMENT - STD. 208

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30177; 49 USC 30166

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: The agency is considering an amendment to its occupant protection standard, FMVSS No. 208, to require the installation of Type 2 (lap/shoulder belt) assemblies for all rear non-outboard designated seating positions (DSPs) in passenger cars, trucks and multipurpose passenger vehicles with a Gross Vehicle Weight Rating (GVWR) of 4,536 kg (10,000 lbs.) or less.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lori Summers, Division Chief, Department of Transportation, National Highway Traffic Safety Administration, NVS-112, Light Duty Vehicles Division, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-4917
Fax: 202 366-4329

RIN: 2127–AI91

Department of Transportation (DOT)
National Highway Traffic Safety Administration (NHTSA)

Final Rule Stage

2288. +CRASHWORTHINESS RATINGS

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 5

Legal Deadline: None

Abstract: This action would require manufacturers to disseminate crashworthiness performance information concerning their cars to the public, to provide consumers with comparative information on the crashworthiness performance of new car models. This rulemaking is considered significant because of the impact on manufacturers, the interest shown by consumers, and the potential significant effects on the automotive marketplace. The agency requested public comments on the National Academy of Sciences (NAS) study titled "Shopping for Safety — Providing Consumer Automotive Safety Information," (TRB Special Report 248) and how that study should be reflected in the agency's decision on whether, and if so, how, to proceed with a crashworthiness rating for automobiles.

Timetable:

Action	Date	FR Cite
NPRM	01/22/81	46 FR 7025
NPRM Comment Period End	04/22/81	
Request for Comments	05/20/97	62 FR 27648
Comment Period End	08/18/97	
To Be Withdrawn	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary Versailles, Office of Planning and Consumer Programs, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2057

RIN: 2127–AA03

2289. +FLAMMABILITY OF INTERIOR MATERIALS—SCHOOL BUSES

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.302

Legal Deadline: None

Abstract: Advance notice of proposed rulemaking requested comments regarding possible upgrade of Standard 302 to reduce the risk of fire to school bus occupants. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	11/04/88	53 FR 44627
ANPRM Comment Period End	01/03/89	
Request for Comments	02/26/91	56 FR 7826
Comment Period End	04/29/91	
To Be Withdrawn	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4919
Fax: 202 366-4329
Email: gmouchahoir@nhtsa.dot.gov

RIN: 2127–AA44

2290. +PLATFORM LIFT SYSTEMS

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.403; 49 CFR 571.404

Legal Deadline: None

Abstract: The supplemental notice proposed to establish two new safety standards: an equipment standard specifying requirements for platform lifts; and a vehicle standard for all vehicles equipped with such lifts. This supplemental notice significantly differed from our original proposal in several respects. Most notably, the scope of our proposal expanded to platform lifts installed on all motor vehicles. Other significant changes were additional interlock requirements, improved wheelchair retention and platform slip resistance tests, and, in some instances, lesser compliance standards for lifts installed on vehicles typically used solely for private transport. This action is not considered economically significant, but has substantial public interest from individuals with disabilities.

Timetable:

Action	Date	FR Cite
NPRM	02/26/93	58 FR 11562
NPRM Comment Period End	04/27/93	
SNPRM	07/27/00	65 FR 46227
Correction	08/04/00	65 FR 47946
SNPRM Comment Period End	10/25/00	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: William Evans, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, NPS-23, Vehicle Controls and Adpated Vehilce Division, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-2720
Fax: 202 366-4329

RIN: 2127–AD50

2291. UPGRADE FUEL INTEGRITY PERFORMANCE REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.301

Legal Deadline: None

Abstract: An advance notice of proposed rulemaking in 1995 announced the agency's plan to consider upgrading the standard by making the current crash requirements more stringent and by broadening the standard's focus to include mitigation concepts related to fuel system components and environmental and aging tests related to components. The notice also requested comments on the agency's plan to explore a three-phase approach to upgrading the standard, data, methods, and strategies which may assist in the agency's regulatory decisions in defining specific requirements and test procedures for upgrading the standard. Based on the responses to the notice and available data, the agency proposed replacing the current rear-impact test procedures with a more stringent test procedure. The agency also proposed replacing the standard's current side-impact test requirements with the side impact test requirements of Federal Motor Vehicle Safety Standard No. 214, Side-Impact Protection.

Timetable:

Action	Date	FR Cite
Request for Comments	12/14/92	57 FR 59041
Comment Period End	02/12/93	
ANPRM	04/12/95	60 FR 18566
ANPRM Comment Period End	06/12/95	
NPRM	11/13/00	65 FR 67693
NPRM Comment Period End	02/12/01	66 FR 78461
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: This action will respond to RIN 2127-AE83. On December 15, 2000, an extension of comment period was published in response to petitions.

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4919
Fax: 202 366-4329
Email: gmouchahoir@nhtsa.dot.gov

RIN: 2127–AF36

2292. ALTERNATIVE GEOMETRIC VISIBILITY REQUIREMENTS FOR LAMPS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency proposed to harmonize the lighting standard's geometric visibility requirements for signal lamps and rear side marker color with those of the ECE. Harmonization of the standard worldwide, without reducing safety, would allow manufacturers to reduce costs by producing to a single world vehicle standard rather than several, thus reducing costs and improving the flow of trade. The agency issued additional/alternative proposals.

Timetable:

Action	Date	FR Cite
NPRM	10/26/95	60 FR 54833
NPRM Comment Period End	12/26/95	
SNPRM	12/10/98	63 FR 68233
SNPRM Comment Period End	03/10/99	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: On February 27, 1997 (62 FR 8883), the agency terminated rulemaking in which the agency had asked for comments on whether the performance and installation of front and rear fog lamps should be regulated. In response to these comments, the SAE has established a Fog Lamp Task Force to develop an internationally acceptable fog lamp standard on which a Federal standard could be based.

ANALYSIS: Regulatory Evaluation, 10/26/95, 60 FR 54833

Agency Contact: Michael Cole, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, NPS-21, Visibility and Injury Prevention Division, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-2720

Fax: 202 366-4329

RIN: 2127–AF75

2293. POWER-OPERATED WINDOWS: ROOF PANELS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.118

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering whether to amend the test procedure used to demonstrate compliance by adding an alternative testing specification for a non-contact automatic reversal system, in order to provide a more meaningful and realistic method for evaluating the compliance of such systems which do not rely on contact to sense an obstruction. Petition was granted.

Timetable:

Action	Date	FR Cite
NPRM	06/04/96	61 FR 28124
Correction	06/14/96	61 FR 30209
NPRM Comment Period End	08/05/96	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Mike Pyne, Safety Standards Engineer, Office of Crash Avoidance, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4171

RIN: 2127–AF83

2294. DOOR LATCH EXEMPTION FOR VEHICLES EQUIPPED WITH WHEELCHAIR LIFTS AND RAMPS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.206

Legal Deadline: None

Abstract: In response to granting a petition for rulemaking from Independent Mobility Systems, the agency is considering removing the exemption in FMVSS No. 206 for wheelchair lift door retention components. Prior to 1998, wheelchair adaptive equipment manufacturers disabled door retention components when installing wheelchair ramp and lift systems. However, recent changes in technology have eliminated the necessity for modifying door retention for wheelchair lift/ramp installations and therefore, it is no longer necessary to provide the lift exemption in FMVSS No. 206

Timetable:

Action	Date	FR Cite
Next Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: On 05/31/96 (61 FR 27325), the agency published a grant notice. The agency believes that the suggested changes made by the petitioner merit additional study and research. The agency is currently conducting research to determine if door latch exemptions are still necessary. Simultaneously, the agency is developing a door latch procedure for sliding doors.

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RIN: 2127–AG16

2295. DEALER NOTIFICATION OF DEFECT OR NONCOMPLIANCE DETERMINATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30102; 49 USC 30103; 49 USC 30111; 49 USC 30112; 49 USC 30115; 49 USC 30116; 49 USC 30118; 49 USC 30119; 49 USC 30120; 49 USC 30163; 49 USC 30165

CFR Citation: 49 CFR 573; 49 CFR 577

Legal Deadline: None

Abstract: The rule will implement an amendment to 49 USC chapter 301 which prohibits dealers from selling motor vehicles or motor vehicle equipment that has been determined to contain a safety-related defect or noncompliance with a Federal motor vehicle safety standard until the defect or noncompliance is remedied. It will set forth criteria to govern the timing and content of notifications of defects and noncompliances that manufacturers must send to their dealers.

Timetable:

Action	Date	FR Cite
NPRM	09/27/93	58 FR 50314
NPRM Comment Period End	10/27/93	
SNPRM	05/19/99	64 FR 27227
SNPRM Comment Period End	06/18/99	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jonathan D. White, Chief, Recall Analysis Division, Office of Defects Investigation, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5226
Fax: 202 366-7882

RIN: 2127–AG27

2296. SEAT BELT POSITIONING DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 575

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency proposed a labeling requirement for seat belt positioning devices. This label would consist of a warning regarding the suitability of these devices for a particular height/weight/age of child.

Timetable:

Action	Date	FR Cite
NPRM	08/13/99	64 FR 44164
NPRM Comment Period End	10/12/99	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AG49

2297. GLARE REDUCTION FROM DAYTIME RUNNING LAMPS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: The agency proposed to amend the lighting standard to reduce glare from daytime running lamps (DRLs). A final rule is imminent. This action is intended to provide the public with all the conspicuity benefits of DRLs while reducing glare and is based on research that has become available since the final rule establishing DRLs was published in 1993.

Timetable:

Action	Date	FR Cite
NPRM	08/07/98	63 FR 42348
NPRM Comment Period End	09/21/98	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard VanIderstine, Division Chief, Visibility and Injury Prevention Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AG86

2298. ADMINISTRATIVE REWRITE FOR HEADLAMP REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: The agency has proposed to rewrite the sections relating to headlighting. The rewrite is important because of the standard's age and numerous amendments which have made it difficult to read and interpret. The revised standard should reduce burden, especially to small manufacturers, because of improved clarity. The reorganization of the sections relating to other lamps will be addressed in a separate rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	11/12/98	63 FR 63258
NPRM Comment Period Extended to 4/11/99	02/08/99	64 FR 6021
NPRM Comment Period End	02/10/99	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Michael Cole, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, NPS-21, Visibility and Injury Prevention Division, 400 Seventh Street, SW, Washington, DC 20590
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Fax: 202 366-4329

RIN: 2127–AG87

2299. SIGNAL LAMPS USED WITH LIGHT-EMITTING DIODES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency proposed to revise the requirements for signal lamps equipped with 3 or more light-emitting diodes (LEDs). The current requirements have become design restrictive and a service burden for vehicle and signal lamp manufacturers.

Timetable:

Action	Date	FR Cite
NPRM	06/24/98	63 FR 34350
NPRM Comment Period Extended	08/03/98	63 FR 41222
NPRM Comment Period End	10/09/98	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Chris Flanigan, General Engineer, Special Project Staff, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4931

RIN: 2127–AG88

2300. +ALLOCATION OF FUEL ECONOMY CREDITS

Priority: Other Significant

Legal Authority: 49 USC 32903

CFR Citation: 49 CFR 534

Legal Deadline: None

Abstract: The agency is proposing rulemaking to clarify when and how predecessor and successor automobile manufacturers may use the fuel economy credits of the predecessor or successor. The use of carry forward or carry back credits will be specified for manufacturers that merge. This action is considered significant because it will affect the treatment of the Corporate Average Fuel Economy (CAFE) penalties.

Timetable:

Action	Date	FR Cite
NPRM	01/22/01	66 FR 6523
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Edward Glancy, Senior Attorney Advisor, Office of the Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2992

RIN: 2127–AG97

2301. INCORPORATE THE 1996 REVISION OF THE AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI) INTO GLAZING STANDARD

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.205

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency proposed to incorporate the 1996 revision of the American National Standards Institute (ANSI) standard for safety glazing used in motor vehicles and other minor revisions into the agency's current standard for safety glazing used in motor vehicles.

Timetable:

Action	Date	FR Cite
NPRM	08/04/99	64 FR 42330
NPRM Comment Period End	10/04/99	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Lori Summers, Division Chief, Department of Transportation, National Highway Traffic Safety Administration, NVS-112, Light Duty Vehicles Division, 400 Seventh Street, SW, Washington, DC 20590
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Fax: 202 366-4329

RIN: 2127–AH09

2302. +HARMONIZATION OF HEAD RESTRAINTS

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166; 49 USC 322

CFR Citation: 49 CFR 571.202

Legal Deadline: None

Abstract: The agency has proposed to upgrade the current head restraint requirements to increase safety. The proposal also, until the upgraded requirements become effective, allows manufacturers to certify their vehicles either to the existing U.S. requirements or to the Economic Commission for Europe (ECE) Regulation No. 25. The upgrade proposed performance requirements intended to assure that the head restraint, if adjusted, will remain locked in specific height positions and calls for the installation of head restraints in rear seats. This action is considered significant due to the expected high cost to the private sector for the modifications to the standard.

Timetable:

Action	Date	FR Cite
NPRM	01/04/01	66 FR 967
NPRM Comment Period End	03/05/01	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Lori Summers, Division Chief, Department of Transportation, National Highway Traffic Safety Administration, NVS-112, Light Duty Vehicles Division, 400 Seventh Street, SW, Washington, DC 20590
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RIN: 2127–AH08

2303. HEAVY VEHICLE ANTILOCK BRAKE SYSTEM (ABS) PERFORMANCE REQUIREMENT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.105; 49 CFR 571.121

Legal Deadline: None

Abstract: The agency has proposed performance tests for ABS-equipped single-unit trucks and buses. ABS equipment requirements became effective for air-braked single-unit trucks, buses, and trailers on March 1, 1998, and for hydraulic-braked trucks and buses becomes effective on March 1, 1999. The agency indicated in prior rulemaking notices that it would consider supplementing these ABS equipment requirements with performance requirements after conducting tests to determine if such testings are practicable and repeatable for trucks and buses.

Timetable:

Action	Date	FR Cite
NPRM	12/21/99	64 FR 71377
NPRM Comment Period End	02/22/00	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jeffrey Woods, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, NPS-22, Vehicle Dynamics Division, 400 Seventh Street, SW, Washington, DC 20590
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Related RIN: Related To 2127-AI63

RIN: 2127–AH16

2304. UPPER INTERIOR IMPACT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.201

Legal Deadline: None

Abstract: At the request of the manufacturers' organizations, the agency proposed to amend the upper interior impact requirements (1) to modify the minimum distance between certain targets on vertical surfaces inside a vehicle and (2) to add new definitions and test procedures for new-style door frames and vertical seat belt mounting structures.

Timetable:

Action	Date	FR Cite
NPRM	04/05/00	65 FR 17843
NPRM Comment Period End	06/05/00	
NPRM Comment Period Extended	06/07/00	65 FR 36106
NPRM Comment Period End	07/05/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AH61

2305. ACCELERATOR CONTROL SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.124

Legal Deadline: None

Abstract: The agency reviewed this standard and published a Request for Comments to obtain information on electronic accelerator controls. After reviewing the comments received on this notice, the agency plans to propose a revision of the standard that will make explicit the application of the standard to electronic accelerator controls and the electric vehicles. The proposal will recognize that electronic engine controls vastly increase the ways manufacturers can achieve fail-safe performance in the event of a disconnection or severance of the accelerator control system and will propose a number of alternative compliance tests for fail-safe performance to avoid design restrictions.

Timetable:

Action	Date	FR Cite
Request for Comments	12/04/95	60 FR 62061
Comment Period End	02/02/96	
NPRM	07/23/02	67 FR 48117
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Mike Pyne, Safety Standards Engineer, Office of Crash Avoidance, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4171

RIN: 2127–AH71

2306. VEHICLES WITH RAISED ROOFS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.216

Legal Deadline: None

Abstract: In response to petitions for reconsideration of a final rule published on April 27, 1999 (64 FR 22567, RIN 2127-AF40) that made testing more suitable for vehicles with raised- or sloped-roof structures, the petitioners requested that the agency modify the portion of the rule that pertains to raised-roof vehicles, particularly those vehicles used for transporting disabled persons. The petitioners claim that the test plate position requirement for these vehicles causes the plate's rear edge to contact the raised-roof structure in a manner which causes abnormal penetration and failure.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/31/00	65 FR 4579
Interim Final Rule Effective	01/31/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AH74

2307. CLARIFY TEST PROCEDURES FOR BRAKE FLUIDS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.116

Legal Deadline: None

Abstract: The agency has proposed to revise the corrosion and evaporation test procedures for brake fluids. These revisions are intended to improve the levels of compliance test repeatability and/or reproducibility.

Timetable:

Action	Date	FR Cite
NPRM	01/16/01	66 FR 3527
NPRM Comment Period End	03/19/01	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Samuel Daniel, General Engineer, Special Projects Staff, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4921

RIN: 2127–AH96

2308. GUIDELINES FOR STATES ON ENFORCEMENT OF LIGHT TRANSMISSION

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 402(a)

CFR Citation: 49 CFR 553.21

Legal Deadline: None

Abstract: The agency is requesting comments to gather information that will help develop uniform guidelines for States to use in the enforcement of the light transmission standards for window glazing on passenger cars and light trucks. This action responds to a statutory directive to establish these guidelines.

Timetable:

Action	Date	FR Cite
Request for Comment	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Richard VanIderstine, Division Chief, Visibility and Injury Prevention Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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Heidi L. Coleman, Assistant Chief Counsel for General Law, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-1834

RIN: 2127–AH97

2309. CHILD RESTRAINT ANCHORAGE SYSTEMS—PART 2

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.225

Legal Deadline: None

Abstract: This action responds to several petitions for reconsideration concerning long-term testing procedures regarding the strength and other issues of universal child-restraint anchors. These requirements were established by the final rule on universal child-restraint anchorages published on March 5, 1999 (64 FR 10785, RIN 2127-AG50). An earlier action (RIN 2127-AH65) responded to other issues raised by the petitions.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH99

2310. LABEL PLACEMENT ON REAR IMPACT GUARDS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.223

Legal Deadline: None

Abstract: In response to petitions for rulemaking, the agency is proposing to allow trailer manufacturers additional flexibility in the placement of the permanent label on the guard to minimize the probability that the label will be exposed to conditions — environmental, operational, or otherwise — that may damage or destroy the guard while maintaining a location that is easily accessible and visible for inspection and enforcement purposes. Other portions of the petitions are denied.

Timetable:

Action	Date	FR Cite
NPRM	03/29/02	67 FR 15154
NPRM Comment Period End	05/28/02	
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AI04

2311. MOVING BARRIER TIRE SPECIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.214; 49 CFR 571.301

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency proposed changing the currently specified G78-15 tires used in the moving barrier test and replacing them with P215-75R15 radial tires. The current tires are not readily available.

Timetable:

Action	Date	FR Cite
NPRM	10/10/01	66 FR 51629
NPRM Comment Period End	12/10/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Lori Summers, Division Chief, Department of Transportation, National Highway Traffic Safety Administration, NVS-112, Light Duty Vehicles Division, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-4917
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RIN: 2127–AI05

2312. +CONFIDENTIAL BUSINESS INFORMATION

Priority: Other Significant

Legal Authority: 49 USC 30166(M)

CFR Citation: 49 CFR 512

Legal Deadline: None

Abstract: The agency is revising the confidential business information regulations to simplify them and improve their clarity, and to update specific sections to reflect current case law and legislative action. This action will help ensure the efficient processing of requests for confidential treatment and the proper protection of sensitive business information.

Timetable:

Action	Date	FR Cite
NPRM	04/30/02	67 FR 21198
NPRM Comment Period End	07/01/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Heidi L. Coleman, Assistant Chief Counsel for General Law, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-1834

RIN: 2127–AI13

2313. ACCELERATION OF MANUFACTURER REMEDY PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30120(c)

CFR Citation: 49 CFR 573

Legal Deadline: None

Abstract: Rule to implement section 6(a) of the TREAD Act, PL 106-414 by amending NHTSA's existing regulation on Defect and Noncompliance Reports (49 CFR part 573) to require manufacturers to accelerate recalls that are not likely to be capable of completion in a reasonable time.

Timetable:

Action	Date	FR Cite
NPRM	12/11/01	66 FR 64087
NPRM Comment Period End	02/11/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2127–AI27

2314. DISPOSITION OF REPLACED TIRES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30102 to 30103; 49 USC 30112; 49 USC 30117 to 30121; 49 USC 30166 to 30167; Delegation of authority 49 CFR 1.50

CFR Citation: 49 CFR 573

Legal Deadline: None

Abstract: Rule to implement section 7 of the TREAD Act, PL 106-414 49 USC 30120(d) by requiring a manufacturer who conducts a campaign to remedy a safety-related defect or noncompliance that involves the replacement of tires to develop a plan regarding the disposition of the tires that are replaced. The plan would address how to prevent, by means reasonably within the manufacturer's control, the disposal of replaced tires in landfills, particularly through shredding, crumbling, recycling, recovery, and other alternative beneficial nonvehicular uses.

Timetable:

Action	Date	FR Cite
NPRM	12/18/01	66 FR 65165
SNPRM	07/26/02	67 FR 48852
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Enid Rubenstein, Trial Attorney, Department of Transportation, National Highway Traffic Safety Administration, 5219, NCC-10, 400 Seventh Street, SW, Washington, DC 20590
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RIN: 2127–AI29

2315. +IMPROVE TIRE SAFETY INFORMATION

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 575

Legal Deadline: Other, Statutory, December 1, 2000, Advanced Notice of Proposed Rulemaking.
Final, Statutory, June 1, 2002.

Abstract: The recently enacted Transportation Recall Enhancement Accountability and Documentation (TREAD) Act requires the Secretary of Transportation to initiate rulemaking to improve the labeling of tires to assist consumers in identifying tires that may be the subject of a safety recall. Pursuant to that Act, the Agency published an ANPRM stating that the agency is considering amendments to its regulations to improve the tire information and its availability and understandability to consumers. To aid in this effect, the agency sought responses from the public to questions relating to such matters as Tire Identification Number content, readability and location, loading, plies and cords, tread wear indicator, Uniform Tire Quality Grading System, speed rating, run-flat and extended mobility tires, tire inflation pressure, and dissemination of tire safety information. This action is considered to be significant because of substantial public and congressional interest.

Timetable:

Action	Date	FR Cite
ANPRM	12/01/00	65 FR 75222
ANPRM Comment Period End	01/30/01	
NPRM	12/19/01	66 FR 65535
Comment Period End	02/19/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roger Kurrus, Team Leader, Department of Transportation, National Highway Traffic Safety Administration, Office of Planning and Consumer Programs, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-2750

RIN: 2127–AI32

2316. IMPROVING THE SAFETY OF CHILD RESTRAINTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.213

Legal Deadline: Final, Statutory, November 30, 2002.

Abstract: The recently enacted Transportation Recall Enhancement Accountability and Documentation (TREAD) Act requires the Secretary of Transportation to initiate rulemaking that will improve the safety of child restraints, including minimizing head injuries from side-impact collisions. The agency will consider whether to (1) require more comprehensive tests of child restraints using an array of crash conditions and an updated test seat assembly; (2) use test dummies that represent a greater range of sizes of children and that incorporate current technologies; (3) require improved protection from head injuries in side- and rear-impact crashes; (4) provide consumer information on the physical compatibility of child restraints and vehicle seats on a model-by-model basis; (5) prescribe clearer and simpler labels and instructions on child restraints; (6) consider restraints for children weighing up to 80 pounds; (7) apply scaled injury criteria performance levels, including neck injury; and (8) include a child restraint in each vehicle crash tested under the New Car Assessment Program.

Timetable:

Action	Date	FR Cite
NPRM	05/01/02	67 FR 21805
Final Rule	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AI34

2317. SEAT BELT FIT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: The agency is reviewing a petition for rulemaking requesting the extension of seat belt length be an option when purchasing a new vehicle and requesting vehicle manufacturers to make seat belt extenders available for all models.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Lori Summers, Division Chief, Department of Transportation, National Highway Traffic Safety Administration, NVS-112, Light Duty Vehicles Division, 400 Seventh Street, SW, Washington, DC 20590
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RIN: 2127–AI36

2318. +AUTOMOTIVE FUEL ECONOMY MANUFACTURING INCENTIVE FOR ALTERNATIVE FUEL VEHICLES

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 49 USC 32905(f); 49 USC 32906(a)(l)(B)

CFR Citation: 49 CFR 538

Legal Deadline: Final, Statutory, December 31, 2001, Notice to either extend up to four years or discontinue the program after Model Year 2004.

Abstract: The agency must, by December 31, 2001, publish a notice that either extends the incentive program whereby automotive manufacturers earn Corporate Average Fuel Economy credits for the production of dual-fuel vehicles for up to four years beyond model year 2004, with a maximum allowable increase in average fuel economy per manufacturer of 0.9 miles per gallon, or explains the rationale for not extending the incentive program.

Timetable:

Action	Date	FR Cite
Notice of Intent	01/07/02	67 FR 713
NPRM	03/11/02	67 FR 10873
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Kenneth Richard Katz, Lead Engineer, Consumer Program Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4936
Fax: 202 366-4329
Email: kkatz@nhtsa.dot.gov

RIN: 2127–AI41

2319. EXPANDING THE AUTO PARTS MARKING REQUIREMENT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 33103

CFR Citation: 49 CFR 541

Legal Deadline: None

Abstract: In accordance with the Anti Car Theft Act of 1992, the Attorney General was required to report on the effectiveness of expanding the parts marking requirements of the theft prevention standard to the remaining motor vehicle lines. On the basis of the available evidence presented, the Attorney General found that the evidence did not support a finding that requiring parts marking would not substantially inhibit chop shop operations and auto theft and therefore, recommended expanding the parts marking requirements to the remaining motor vehicle lines. Based on the results of the report, the agency is required to conduct a rulemaking to extend the theft prevention standard to the remaining motor vehicle lines.

Timetable:

Action	Date	FR Cite
NPRM	06/26/02	67 FR 43075
NPRM Comment Period End	08/26/02	
Final Action	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Rosalind Proctor, Division Chief, Consumer Programs Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-0846
Fax: 202 366-4329
Email: rproctor@nhtsa.dot.gov

RIN: 2127–AI46

2320. COMPLIANCE FOR MULTISTAGE MANUFACTURERS AND ALTERERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.225

Legal Deadline: None

Abstract: The agency is responding to a petition for extraordinary relief of the compliance date by which final-stage manufacturers and alterers must install tether anchorages in affected vehicles to comply with our final rule published March 5, 1999 (64 FR 10786, RIN 2127-AG50).

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4919
Fax: 202 366-4329
Email: gmouchahoir@nhtsa.dot.gov

RIN: 2127–AI49

2321. +IMPROVED TIRE SAFETY

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.139

Legal Deadline: Final, Statutory, June 1, 2002.

Abstract: The Transportation Recall Enhancement Accountability and Documentation (TREAD) Act requires the Secretary of Transportation to initiate rulemaking to improve the safety requirements of tires. The agency is proposing a new tire standard applicable to radial and non-radial tires that are mounted on passenger cars, light truck vehicles, and multipurpose vehicles, but not tires for motorcycles and heavy trucks. The proposed requirements include tests for high speed performance, endurance, low pressure validation, low pressure high speed performance, road hazard impact, resistance to bead unseating and aging.

Timetable:

Action	Date	FR Cite
NPRM	03/05/02	67 FR 10050
NPRM Comment Period End	05/06/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Scott, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, NPS-22, Vehicle Dynamics Division, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-2720
Fax: 202 366-4329

RIN: 2127–AI54

2322. RETROACTIVE CERTIFICATION (POLICY STATEMENT)

Priority: Info./Admin./Other

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30166; 49 USC 32502; ...

CFR Citation: 49 CFR 567

Legal Deadline: None

Abstract: Policy statement will detail circumstances under which the agency will allow retroactive certification of heavy trucks and buses manufactured for use in Canada and Mexico.

Timetable:

Action	Date	FR Cite
Request for Comments	03/19/02	67 FR 12790
Comment Period End	05/20/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rebecca MacPherson, Attorney Advisor, Office of Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2992

RIN: 2127–AI59

2323. RECORD RETENTION OF RETROACTIVELY CERTIFIED VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30112,; 49 USC 30115; 49 USC 30117-21; 49 USC 30166-67

CFR Citation: 49 CFR 576

Legal Deadline: None

Abstract: Record retention requirements for manufacturers who retroactively certify that heavy trucks and buses manufactured for use in Canada and Mexico met all applicable Federal motor vehicle safety standards on date of original manufacture.

Timetable:

Action	Date	FR Cite
NPRM	03/19/02	67 FR 12800
NPRM Comment Period End	05/20/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rebecca MacPherson, Attorney Advisor, Office of Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2992

RIN: 2127–AI60

2324. IMPORTATION OF COMMERCIAL MOTOR VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30112

CFR Citation: 49 CFR 591

Legal Deadline: None

Abstract: This rulemaking would propose a definition of the term "import."

Timetable:

Action	Date	FR Cite
NPRM	03/19/02	67 FR 12806
NPRM Comment Period End	05/20/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Edward Glancy, Senior Attorney Advisor, Office of the Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2992

RIN: 2127–AI64

2325. CHILD RESTRAINT SAFETY RATING

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 575

Legal Deadline: NPRM, Statutory, November 1, 2001.

Abstract: The recently enacted Transportation Recall Enhancement Accountability and Documentation (TREAD) Act requires a notice of proposed rulemaking be issued to establish a child restraint safety rating consumer information program to provide practicable, readily understandable, and timely information to consumers for use in making informed decisions in the purchase of child restraint systems (CRS).

Timetable:

Action	Date	FR Cite
NPRM	11/06/01	66 FR 56048
NPRM Comment Period End	01/07/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: On 11/06/2001 (66 FR 56146), the agency published a request for comment notice on a proposed safety rating program for child restraint systems.

Agency Contact: Roger Saul, Director, Office of Crashworthiness Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-1740
Fax: 202 366-4329
Email: rsaul@nhtsa.dot.gov

RIN: 2127–AI65

2326. +ADVANCED AIR BAG REQUIREMENTS

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering possible changes in the advanced air bag requirements.

Timetable:

Action	Date	FR Cite
NPRM	09/24/02	67 FR 59800
NPRM Comment Period End	10/24/02	
Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Lori Summers, Division Chief, Department of Transportation, National Highway Traffic Safety Administration, NVS-112, Light Duty Vehicles Division, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-4917
Fax: 202 366-4329

RIN: 2127–AI71

2327. THEFT DATA FOR CALENDAR YEAR 2000

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 33104 (b) (4)

CFR Citation: 49 CFR 541

Legal Deadline: None

Abstract: This action will publish the preliminary theft data on passenger motor vehicles that occurred in calendar year 2000 for model year 2000 vehicles. The theft data indicate the overall vehicles' theft rate in 2000. Publication of this data fulfills the agency's obligation to periodically obtain accurate and timely data and publish the information for review and comment.

Timetable:

Action	Date	FR Cite
NPRM	03/12/02	67 FR 11161
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Deborah Mazyck, Program Analyst, Department of Transportation, National Highway Traffic Safety Administration, NPS-32, Office of Planning and Consumer Programs, 400 Seventh Street, Room 5320, Washington, DC 20590
Phone: 202 366-0846
Fax: 202 493-2290
Email: dmazyck@nhtsa.dot.gov

RIN: 2127–AI75

2328. • FMVSS NO. 208 ADVANCED AIR BAG PETITIONS FOR RECONSIDERATION (PART 2)

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: This notice is the second in a series addressing the Petitions for Reconsideration received for the December 18, 2001, FMVSS No. 208 Final Rule. It addresses detailed dummy and seat positioning issues and other test procedure clarification requested in the Petitions for Reconsideration.

Timetable:

Action	Date	FR Cite
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Louis Molino, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, Office of Crashworthiness Standards, NPS-11, 400 Seventh Street, SW, Room 5320, Washington, DC 20590
Phone: 202 366-1833
Fax: 202 366-4329

RIN: 2127–AI82

2329. • WARNING LABEL AND ADDITIONAL CONSPICUITY FEATURES FOR LOW SPEED VEHICLES.

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 500

Legal Deadline: None

Abstract: Low speed vehicles (whose top speed capability is, by definition, 25 mph) are required by NHTSA to meet certain minimum safety requirements. These requirements are less stringent and comprehensive than those for all other passenger motor vehicles. While low speed vehicles originally intended for use on roadways in neighborhoods, gated communities, and similar environments with limited

traffic, some States now permit them to be used on roads with posted speed limits up to 35 mph, and even higher in a few cases. Additionally, because various States treat these vehicles as zero emission vehicles, it is likely that larger volumes of these vehicles will enter service beginning in 2003. Given the small size of these vehicles and their limited safety features, they offer less protection in a crash than a regular car, van, or truck does. This means a higher risk of injury or death in crashes, even at low speeds. Consequently, the agency is considering a label warning of this higher risk and measures for increasing the conspicuity of low speed vehicles.

Timetable:

Action	Date	FR Cite
NPRM	07/12/02	67 FR 46149
Final Rule	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard VanIderstine, Division Chief, Visibility and Injury Prevention Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2720
Fax: 202 366-4329

RIN: 2127–AI84

2330. • +FMVSS NO. 208 ADVANCED AIR BAG PETITIONS FOR RECONSIDERATION (PART 1)

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: The agency is responding to petitions for reconsideration on our December 18, 2001 final rule; response to petitions for reconsideration (66 FR 5376, RIN 2127-AI10), which both granted and denied portions of the petitions for reconsideration to our May 12, 2000 final rule (65 FR 30679, RIN 2127-AG70). The agency is responding to the petitions in two parts. The first part will address higher priority issues that can be addressed most expeditiously. Remaining issues requiring more time to resolve will be in the second part at a later date.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Louis Molino, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, Office of Crashworthiness Standards, NPS-11, 400 Seventh Street, SW, Room 5320, Washington, DC 20590
Phone: 202 366-1833
Fax: 202 366-4329

RIN: 2127–AI85

2331. • FMVSS NO. 201 UPPER INTERIOR IMPACT MULTI-STAGE VEHICLE COMPLIANCE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 322; 49 USC 21411; 49 USC 21415; 49 USC 21417; 49 USC 21466

CFR Citation: 49 CFR 571.201

Legal Deadline: None

Abstract: The agency received petitions for rulemaking from Recreational Vehicle Industry Association (RVIA) and National Truck Equipment Association (NTEA). There is not sufficient time for the agency to consider the issues raised in these petitions before the compliance date for multi-stage vehicles manufacturers. This action would extend the compliance date for multi-stage vehicles by one year, i.e., from 9/1/02 to 9/1/03.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/18/02	67 FR 41348
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dr. William R.S. Fan, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, Room 5320F, NPS-10, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4922
Fax: 202 366-4329

RIN: 2127–AI86

2332. • LIST OF NONCONFORMING VEHICLES ELIGIBLE FOR IMPORTATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30141

CFR Citation: 49 CFR 593

Legal Deadline: None

Abstract: This final action amends the list of vehicles not originally manufactured to conform to all applicable Federal motor vehicle safety standards that NHTSA has decided to be eligible for importation. The list is published as an appendix to NHTSA's regulations at 49 CFR part 593 that establish the procedures through which the agency makes import eligibility decisions. The amendment will add to the list all vehicles that NHTSA has decided to be eligible for importation since the list was last published on October 1, 2001.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Because this rule only furnishes information and imposes no regulatory requirement, the agency has good cause to dispense with a notice of proposed rulemaking to solicit comments on this amendment.

Agency Contact: Coleman R. Sachs, Trial Attorney, Office of Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5263
Email: csachs@nhtsa.dot.gov

RIN: 2127–AI87

2333. • USE OF SEAT MOUNTED CHILD RESTRAINTS ON SCHOOL BUS SEATS.

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1392

CFR Citation: 49 CFR 571.213

Legal Deadline: None

Abstract: This action responds to petitions to amend FMVSS No. 213, Child Restraint Systems, to allow the use of seat-mounted child restraint systems on school buses. Currently, FMVSS No. 213 does not allow child restraint systems to be attached to a vehicle seat cushion or vehicle seat back except by vehicle seat belts.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4919
Fax: 202 366-4329
Email: gmouchahoir@nhtsa.dot.gov

RIN: 2127–AI88

2334. • +TIRE PRESSURE MONITORING SYSTEM; PETITIONS FOR RECONSIDERATION

Priority: Economically Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.138; 49 CFR 571.101

Legal Deadline: None

Abstract: The agency received petitions for reconsideration on the new standard for tire pressure monitoring system (TPMS) required on every new vehicle that uses a passenger car tire. A TPMS would detect low pressure in a tire and alert the driver through a "low tire" warning signal. This rule was required by the Transportation Recall Enhancement Accountability and Documentation (TREAD) Act.

Timetable:

Action	Date	FR Cite
Final Rule	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Scott, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, NPS-22, Vehicle Dynamics Division, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-2720
Fax: 202 366-4329

RIN: 2127–AI90

2335. • +REPORTING OF INFORMATION AND DOCUMENTS ABOUT POTENTIAL DEFECTS

Priority: Other Significant

Legal Authority: 49 U.S.C. 30166 (m)

CFR Citation: 49 CFR 579

Legal Deadline: None

Abstract: Final rule responding to petition for reconsideration of final rule on reporting of information and documents about potential defects published on July 10, 2002 (67 FR 45882).

Timetable:

Action	Date	FR Cite
Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Taylor Vinson, Senior Attorney, Office of the Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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Fax: 202 366-3820
Email: tvinson@nhtsa.dot.gov

Related RIN: Related To 2127-AI25

RIN: 2127–AI92

Department of Transportation (DOT)
National Highway Traffic Safety Administration (NHTSA)

Long-Term Actions

2336. RADIATOR SAFETY CAP

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.402

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is proposing a new Federal motor vehicle safety standard regulating new radiator caps and coolant reservoir caps, and new passenger cars, multipurpose passenger vehicles and light trucks with such caps. The agency believes that this new standard, if implemented, would result in fewer scald injuries that occur when people attempt to remove caps from motor vehicle radiators or coolant reservoirs that are under high pressure and contain hot fluids. However, this rulemaking would not require that radiator caps or coolant reservoir caps be provided on any motor vehicle,

Timetable:

Action	Date	FR Cite
Request for Comments	06/10/93	58 FR 32503
Comment Period End	08/09/93	
NPRM	06/01/01	66 FR 29747
NPRM Comment Period End	07/31/01	
NPRM Comment Period Extended	08/02/01	66 FR 40176
NPRM Comment Period End	09/28/01	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Kenneth Hardie, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, NPS-21, Visibility and Injury Prevention

Division, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-2720
Fax: 202 366-4329

RIN: 2127–AE59

2337. +REVIEW: SIDE-IMPACT PROTECTION

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.214

Legal Deadline: None

Abstract: This standard requires passenger cars manufactured after September 1, 1996, to provide occupant protection when impacted in the side by a moving deformable barrier. The agency has compared the actual risk of occupant injury in side-impact crashes of cars meeting the standard to the risk in pre-standard cars. The cost of the standard has been estimated. The technical report has been published. This regulation was selected for review because of its costs, potential benefits, and public interest.

Timetable:

Action	Date	FR Cite
Begin Review	10/01/94	
Technical Report: Phase I	12/08/99	64 FR 68717
Comment Period End	04/06/00	
Summary and Discussion of Public Comments Sent to Docket: Phase 1	08/11/00	
End Review	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: The Phase I evaluation report indicates that the test injury criterion TTI(d) has a statistically significant association with fatality risk in actual side-impact crashes on the highway. In model years 1981-93 cars, models with low TTI(d) on the Federal motor vehicle safety standard no. 214 test tend to have low fatality risk.

Agency Contact: Charles J. Kahane, Chief, Evaluation Division, Office of Plans and Policy, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2560
Fax: 202 366-2559
Email: ckahane@nhtsa.dot.gov

RIN: 2127–AF54

2338. POWER WINDOW SAFETY SWITCHES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.118

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency proposed to require each power-operated window, interior partition, and roof panel in a motor vehicle to be equipped with a switch designed so that contact by a form representing a small child's knee would not close window, partition, or panel. The agency is currently gathering non-crash fatality data from state records to determine the scope of the problem.

Timetable:

Action	Date	FR Cite
NPRM	11/15/96	61 FR 58504
NPRM Comment Period End	01/14/97	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Mike Pyne, Safety Standards Engineer, Office of Crash Avoidance, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4171

RIN: 2127–AG36

2339. UPGRADE ROOF CRASHWORTHINESS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.216

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering whether to upgrade the roof crashworthiness particularly since a larger percentage of American vehicles consist of light duty and utility vehicles, a class of vehicles more prone to rollover accidents. Petition was granted.

Timetable:

Action	Date	FR Cite
Request for Comments	10/22/01	66 FR 53376
Comment Period End	12/06/01	
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4919
Fax: 202 366-4329
Email: gmouchahoir@nhtsa.dot.gov

RIN: 2127–AG51

2340. HYBRID III 95TH PERCENTILE MALE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 572; 49 CFR 571.208

Legal Deadline: None

Abstract: The agency is examining the possibility of proposing specifications for a new 95th percentile male Hybrid III size test dummy for possible use in test procedures being proposed in amendments to Federal Motor Vehicle Safety Standard No. 208. The new test dummy and procedures are being proposed to facilitate the development and introduction of new advanced air bags and other types of advanced restraints technologies for crash protection in frontal impacts.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Stanley Backaitis, Engineer, Office of Crashworthiness Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4912
Fax: 202 366-4329
Email: sbackaitis@nhtsa.dot.gov

RIN: 2127–AG79

2341. PLACEMENT OF WHEELCHAIR RESTRAINTS ON BUSES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30117; 49 USC 30166; 49 USC 322; 49 USC 30111; 49 USC 30115

CFR Citation: 49 CFR 571.217

Legal Deadline: None

Abstract: To prevent blocking of the emergency exits, the agency proposed to add a new section to the standard to not allow the placement of wheelchair securement anchorages or other devices that protrude into the aisle of an emergency exit in all buses.

Timetable:

Action	Date	FR Cite
NPRM	03/05/99	64 FR 10604
NPRM Comment Period End	05/04/99	
Final Rule	04/19/02	67 FR 19343
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4919
Fax: 202 366-4329
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RIN: 2127–AH03

2342. REVIEW: REDESIGNED AIR BAGS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: This standard was temporarily amended to make the unbelted test for vehicles with air bags less stringent and, in effect, make it easier for manufacturers to quickly depower their air bags. Redesigned air bags are likely to benefit out-of-position occupants and reduce drivers' arm injuries, but they might be less effective than earlier air bags for some occupants. This regulation was selected for review because of public interest, potential benefits, and possibility of higher risk for some vehicle occupants.

Timetable:

Action	Date	FR Cite
Begin Review	05/01/98	
End Review	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles J. Kahane, Chief, Evaluation Division, Office of Plans and Policy, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2560
Fax: 202 366-2559
Email: ckahane@nhtsa.dot.gov

RIN: 2127–AH13

2343. USE OF UNIVERSAL CHILD SEATS IN AIRCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.213

Legal Deadline: None

Abstract: This action responds to a concern expressed by the Federal Aviation Administration (FAA) regarding some new universal child seats that may be equipped with rigid connectors or prongs. FAA believes that if a universal child seat equipped with non-folding, non-retracting rigid connectors or prongs were installed on an aircraft seat, the connectors or prongs might damage the aircraft seat cushions and might protrude into the leg space and egress path of the passenger sitting immediately behind the child seat.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: See RIN 2127-AG50 for the Uniform Child Restraint Anchorage Systems rule.

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RIN: 2127–AH56

2344. HYBRID III TYPE 6-YEAR-OLD-SIZE TEST DUMMY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 572

Legal Deadline: None

Abstract: The agency is responding to petitions for reconsideration of our final rule published January 13, 2000 (65 FR 2059, RIN 2127-AG76) which established design and performance specifications for a new, more advanced 6-year-old-child dummy.

Timetable:

Action	Date	FR Cite
Final Rule	07/18/02	67 FR 47321
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Stanley Backaitis, Engineer, Office of Crashworthiness Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI00

2345. FIFTH PERCENTILE FEMALE TEST DUMMY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 572

Legal Deadline: None

Abstract: The agency is responding to petitions for reconsideration of our final rule published March 1, 2000 (65 FR 10961, RIN 2127-AG66) which adopted the Hybrid III small female size dummy.

Timetable:

Action	Date	FR Cite
Final Rule	07/15/02	67 FR 46400
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Stanley Backaitis, Engineer, Office of Crashworthiness Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI01

2346. REVIEW: ANTILOCK BRAKE SYSTEMS FOR HEAVY TRUCKS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.105; 49 CFR 571.121

Legal Deadline: None

Abstract: These standards require antilock brake systems (ABS) on truck-tractors manufactured after March 1, 1997, semi-trailers and single-unit trucks equipped with air brakes after March 1, 1998, and single-unit trucks over 10,000 pounds GVWR equipped with hydraulic brakes after March 1, 1999. The agency will study the influence of ABS on crash involvement rates and estimate the cost of ABS. These regulations were selected for review because of their costs, potential benefits, and public interest.

Timetable:

Action	Date	FR Cite
Begin Review	04/01/00	
Evaluation Plan Published	08/14/00	65 FR 49633
Collection of Information	10/05/01	66 FR 51093
Comment Period End	12/04/01	
End Review	12/00/06	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Charles J. Kahane, Chief, Evaluation Division, Office of Plans and Policy, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI14

2347. REVIEW: REAR-IMPACT GUARDS FOR TRUCK TRAILERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.223; 49 CFR 571.224

Legal Deadline: None

Abstract: These standards set requirements for the geometry, configuration, strength, and energy absorption capability of rear-impact guards on full trailers and semi-trailers over 10,000 pounds GVWR manufactured after January 26, 1998. The agency will study the influence of these guards on injuries in passenger vehicles that rear-impact trailers. The cost of the standards will also be estimated. These regulations were selected for review because of their costs, potential benefits, and public interest.

Timetable:

Action	Date	FR Cite
Begin Review	04/15/00	
Evaluation Plan Published	08/14/00	65 FR 49633
Collection of Information	10/05/01	66 FR 51093
Comment Period End	12/04/01	
End Review	12/00/06	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Charles J. Kahane, Chief, Evaluation Division, Office of Plans and Policy, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI15

2348. DAYTIME RUNNING LAMPS INTENSITY REDUCTION PHASE II

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: The agency is proposing to further lower glare while minimizing the change in conspicuity.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard VanIderstine, Division Chief, Visibility and Injury Prevention Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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Fax: 202 366-4329

Related RIN: Related To 2127-AG86

RIN: 2127–AI62

2349. • +FEDERAL MOTOR VEHICLE SAFETY STANDARDS; CHILD RESTRAINT SYSTEMS

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.213

Legal Deadline: Other, Statutory, November 1, 2001, Initiate Rulemaking. Other, Statutory, November 1, 2002, Final Rule or Report to Congress.

TREAD ACT MANDATE (November 2002).

Abstract: Section 14(a) of the TREAD Act requires NHTSA to initiate a rulemaking for the purpose of improving the safety of child restraints, including minimizing head injuries from side impact collisions. The action specifically addresses the prospective adoption of a dynamic side impact test in FMVSS No. 213; currently, only frontal tests are conducted. If side impact test requirements are not proposed, the TREAD Act requires NHTSA to submit a Report to Congress explaining the rationale for these actions.

Timetable:

Action	Date	FR Cite
ANPRM	05/01/02	67 FR 21836
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI83

Department of Transportation (DOT)
National Highway Traffic Safety Administration (NHTSA)

Completed Actions

2350. BRAKE LINING

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571

Legal Deadline: None

Abstract: Petitions from R. Grabowsky and American Trucking Association (ATA) requested initiation of rulemaking concerning brake linings (all vehicles and aftermarket). Mr. Grabowsky petitioned relative to stability, friction level, fade, wear, and identification of linings. ATA petitioned relative to friction level and identification of linings for heavy vehicles only. Petitions concerned both performance levels and test procedures, and were granted.

Timetable:

Action	Date	FR Cite
Termination	07/09/02	67 FR 45440

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Soodoo, Division Leader, Vehicle Dynamics Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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Email: gsoodoo@nhtsa.dot.gov

RIN: 2127–AC66

2351. BUY AMERICA REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 97-424

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The agency was proposing to exempt certain purchases by grantees from the requirements of the Department of Transportation's Buy America provisions to streamline and improve the grant process. The agency has decided not to proceed with this action, as the Buy America restrictions contain sufficient flexibility to accommodate program concerns.

Timetable:

Action	Date	FR Cite
Withdrawn	07/01/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John Donaldson, Senior Attorney, Office of Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-1834

RIN: 2127–AG99

2352. EJECTION MITIGATION USING ADVANCED GLAZING

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.205

Legal Deadline: None

Abstract: In response to the Intermodal Surface Transportation Efficiency Act of 1991, the agency requested comments on the report titled "Ejection Mitigation Using Advanced Glazing: Status Report II." This report is to inform the public about the agency's research findings to date on advanced glazing materials that may prevent ejection on vehicle occupants through motor vehicle windows during crashes.

Timetable:

Action	Date	FR Cite
Request for Comments	07/19/00	65 FR 44710
Comment Period End	11/16/00	
Withdrawn	06/18/02	67 FR 41365

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: John Lee, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, NPS-11, 400 Seventh Street, SW, Washington, DC 20590
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Email: johnlee@nhtsa.dot.gov

RIN: 2127–AH50

2353. REVIEW: HEAD RESTRAINTS FOR LIGHT TRUCKS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.202

Legal Deadline: None

Abstract: This standard requires pick-up trucks, vans, and sport utility vehicles with gross vehicle weight of 10,000 pounds or less, manufactured after September 1, 1991, to have head restraints or high seatbacks for the driver and right-front passenger. The agency will compare the occupant injury rates in rear-crashes of trucks equipped with head restraints and trucks not equipped with head restraints. The cost of the standard will also be established. This regulation was selected for review of its costs, potential benefits, and public interest.

Timetable:

Action	Date	FR Cite
Begin Review	09/29/99	
Technical Report	05/10/01	66 FR 23974

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Charles J. Kahane, Chief, Evaluation Division, Office of Plans and Policy, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH98

2354. +EARLY WARNING DEFECT REPORTING REQUIREMENTS

Priority: Other Significant

Legal Authority: PL 106-414

CFR Citation: 49 CFR 554; 49 CFR 573

Legal Deadline: Final, Statutory, June 30, 2002.
Initiation of rulemaking required not later than March 1, 2001.

Abstract: TREAD Act requires NHTSA to publish a rule requiring manufacturers of motor vehicles and motor vehicle equipment to report on possible defects in their products, whether in United States or abroad, based on information in the possession of the manufacturer. This action is considered significant because of substantial public and congressional interest.

Timetable:

Action	Date	FR Cite
ANPRM	01/22/01	66 FR 6532
ANPRM Comment Period End	03/23/01	
NPRM	12/21/01	66 FR 66190
NPRM Comment Period End	02/04/02	
Final Action	07/10/02	67 FR 45822

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: This will also respond to RIN AI31. This Rulemaking will combine the two RIN's AI25 and AI31 as of 8/2/01.

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RIN: 2127–AI25

2355. DEFECTS IN FOREIGN COUNTRIES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30166(m)

CFR Citation: 49 CFR 573

Legal Deadline: None

Abstract: Rulemaking to implement statutory requirement that a manufacturer of motor vehicle and equipment report to NHTSA when it determines to conduct a safety-related recall on identical or substantially similar products outside the U.S. and when a foreign government determines that a safety-related campaign should be conducted.

Timetable:

Action	Date	FR Cite
NPRM	10/11/01	66 FR 51907
NPRM Comment Period End	12/10/01	
Final Rule	10/11/02	67 FR 63295
Final Rule Effective	11/12/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2127–AI26

2356. REIMBURSEMENT PRIOR TO RECALL

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30120(d)

CFR Citation: 49 CFR 573; 49 CFR 577

Legal Deadline: None

Abstract: Rule to implement section 6(b) of the TREAD Act, PL 106-414 by amending 49 CFR part 573, Defect and Noncompliance Notification, to add requirements that manufacturers' remedy programs concerning safety-related defects and noncompliance include plans for reimbursing owners or purchasers who incurred the cost of remedy within a "reasonable time" prior to the manufacturer's notification of the defect or noncompliance.

Timetable:

Action	Date	FR Cite
NPRM	12/11/01	66 FR 64078
NPRM Comment Period End	02/11/02	
Final Rule	10/17/02	67 FR 64049
Final Rule Effective	01/15/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Andrew DiMarsico, Trial Attorney, Department of Transportation, National Highway Traffic Safety Administration, 5219, NCC-10, 400 Seventh Street, SW, Washington, DC 20590
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RIN: 2127–AI28

2357. PROHIBITION OF SALE OR LEASE OF EQUIPMENT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30120(j)

CFR Citation: 49 CFR 573; 49 CFR 577

Legal Deadline: None

Abstract: Rule regarding statutory prohibitions on the sale or lease of noncompliant and defective motor vehicles and equipment.

Timetable:

Action	Date	FR Cite
NPRM	07/23/01	66 FR 38247
NPRM Comment Period End	09/21/01	
Final Action	04/23/02	67 FR 19693
Final Action Effective	05/23/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Lloyd Guerci, Assistant Chief Counsel for Litigation, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5263

RIN: 2127–AI30

2358. +TIRE PRESSURE MONITORING SYSTEM

Priority: Economically Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.138; 49 CFR 571.101

Legal Deadline: Final, Statutory, November 30, 2001.

Abstract: The recently enacted Transportation Recall Enhancement Accountability and Documentation (TREAD) Act requires the Secretary of Transportation to initiate rulemaking to require a warning system in new motor vehicles to indicate to the operator when a tire is significantly underinflated. The agency proposed to establish a new standard for tire pressure monitoring system (TPMS) on every new vehicle that uses a passenger car tire. A TPMS would detect low pressure in a tire and alert the driver through a "low tire" warning signal.

Timetable:

Action	Date	FR Cite
NPRM	07/26/01	66 FR 38982
NPRM Comment Period End	09/06/01	
Final Rule	06/05/02	67 FR 38703
Final Rule Effective	08/05/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Scott, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, NPS-22, Vehicle Dynamics Division, 400 Seventh Street, SW, Washington, DC 20590
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RIN: 2127–AI33

2359. CIVIL PENALTIES

Priority: Substantive, Nonsignificant

Legal Authority: 28 USC 2461 note; 31 USC 3701 note

CFR Citation: 49 CFR 578

Legal Deadline: Final, Statutory, March 4, 2001.
Statute requires civil penalty adjustments at least once every 4 years.

Abstract: Civil penalties for violations of certain statutes administered by NHTSA are required to be adjusted for inflation at least once every 4 years.

Timetable:

Action	Date	FR Cite
NPRM	05/18/01	66 FR 27621
Final Rule	08/07/01	66 FR 41149
Final Rule Effective	09/16/01	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2127–AI42

2360. TRAILER TEST RIG

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.121

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency published a technical amendment to the standard to delete a figure which is no longer referenced and to correct several typographical errors and omissions.

Timetable:

Action	Date	FR Cite
Final Action	05/28/02	67 FR 36819
Final Action Effective	06/27/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jeffrey Woods, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, NPS-22, Vehicle Dynamics Division, 400 Seventh Street, SW, Washington, DC 20590
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RIN: 2127–AI48

2361. CHILD SAFETY INFORMATION LABELS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.213

Legal Deadline: Final, Statutory, November 1, 2002.

Abstract: The recently enacted Transportation Recall Enhancement Accountability and Documentation (TREAD) Act requires the Secretary of Transportation to initiate rulemaking to improve the consumer information for child restraints by prescribing clearer and simpler labels and instructions that are required to be placed on child restraints.

Timetable:

Action	Date	FR Cite
NPRM	11/02/01	66 FR 55623
Correction	11/29/01	66 FR 59549
NPRM Comment Period End	01/02/02	
Final Rule	10/01/02	67 FR 61523
Final Rule Effective	10/01/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Mary Versailles, Office of Planning and Consumer Programs, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590

Phone: 202 366-2057

RIN: 2127–AI55

2362. LIST OF NONCONFORMING VEHICLES ELIGIBLE FOR IMPORTATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30141

CFR Citation: 49 CFR 593

Legal Deadline: None

Abstract: This final action will amend the list of vehicles not originally manufactured to conform to all applicable Federal Motor Vehicle Safety Standards that NHTSA has decided to be eligible for importation. This list is published as an appendix to NHTSA's regulations at 49 CFR part 593 that establish the procedures through which the agency makes import eligibility decisions. The amendments will add to the list all vehicles that NHTSA has decided are to be eligible for importation since the list was last published on October 1, 2000.

Timetable:

Action	Date	FR Cite
Final Action	09/20/01	66 FR 48363

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Because this rule only furnishes information and imposes no regulatory requirement, the agency has good cause to dispense with notice and comments on it.

Agency Contact: Coleman R. Sachs, Trial Attorney, Office of Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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Email: csachs@nhtsa.dot.gov

RIN: 2127–AI61

2363. MODIFIED FRONT-OPENING HOOD REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.401

Legal Deadline: None

Abstract: In response to petitions for reconsideration of a final rule published on August 17, 2001 (66 FR 43113 RIN 2127-AI51) which specifically excluded passenger cars with a back door, such as hatchbacks and station wagons, from the standard and revised the definitions of "trunk lid" and "trunk compartment" to exclude interior storage compartments and sub-compartments within the trunk compartment from the requirements of the standard, the agency is adding a paragraph indicating that in passenger cars with front-opening hoods, the interior trunk release must release the primary, but not the secondary, latch when the passenger car is in motion. At all other times, the interior trunk release must completely release all latches.

Timetable:

Action	Date	FR Cite
Final Rule	04/22/02	67 FR 19518

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Kenneth Hardie, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, NPS-21, Visibility and Injury Prevention Division, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-2720
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RIN: 2127–AI69

2364. INSURER REPORTING REQUIREMENTS/LIST OF INSURERS REQUIRED TO FILE REPORTS FOR OCTOBER 2002

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 33112

CFR Citation: 49 CFR 544

Legal Deadline: None

Abstract: NHTSA proposes to update its lists in appendices A, B, and C of part 544 of passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experience. If these revised appendices are adopted in a final rule, each insurer included in any of these appendices must file a report for the 1998 calendar year not later than October 25, 2002. Further, as long as the insurer remains listed, it must submit reports by each subsequent October 25.

Timetable:

Action	Date	FR Cite
Request for Comments	03/12/02	67 FR 11161
NPRM	03/27/02	67 FR 14667
NPRM Comment Period End	05/28/02	
Final Action	07/16/02	67 FR 46608
Final Theft Data	08/19/02	67 FR 53756

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rosalind Proctor, Division Chief, Consumer Programs Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI73

2365. HIGH-THEFT LINES FOR MODEL YEAR 2002

Priority: Substantive, Nonsignificant

Legal Authority: 49 CFR 33104

CFR Citation: 49 CFR 541

Legal Deadline: None

Abstract: This action will list the likely high-theft vehicle lines that are subject to the parts-marking requirements of the theft prevention standard and high-theft lines that are exempted from the parts-marking requirements for model year 2003.

Timetable:

Action	Date	FR Cite
Final Action	07/01/02	67 FR 44085
Final Action Effective	07/01/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rosalind Proctor, Division Chief, Consumer Programs Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI74

2366. SCHEDULE OF FEES AUTHORIZED BY 49 U.S.C. 30141

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30141; 31 USC 9701

CFR Citation: 49 CFR 594

Legal Deadline: None

Abstract: NHTSA proposes to amend its regulations establishing fees authorized by 49 U.S.C. 30141 for the purpose of reimbursing the agency for certain costs incurred in administering the vehicle importation program. The amendments will adjust the fees to the level necessary for the agency to recover its actual costs. Section 301419(e) requires the agency to review and adjust these fees at least every two years. The fees were last adjusted in September 2000.

Timetable:

Action	Date	FR Cite
NPRM	08/16/02	67 FR 53552
Final Rule	09/26/02	67 FR 60596
Final Rule Effective	10/01/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Coleman R. Sachs, Trial Attorney, Office of Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI77

2367. • EXEMPTION FROM THE MAKE-INOPERATIVE PROHIBITION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30122(c)

CFR Citation: 49 CFR 595

Legal Deadline: None

Abstract: The agency is responding to petitions for reconsideration of our final rule published February 27, 2001 (66 FR 12637), which established a limited exemption from the statutory make-inoperative prohibition to facilitate the modification of motor vehicles for use by persons with disabilities.

Timetable:

Action	Date	FR Cite
Final Action	06/04/02	67 FR 38423

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gayle Dalrymple, Safety Engineer, Vehicle Controls and Adapted Vehicle Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5559

RIN: 2127–AI80

Department of Transportation (DOT)
Federal Railroad Administration (FRA)

Proposed Rule Stage

2368. LOCOMOTIVE CRASHWORTHINESS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 229

Legal Deadline: Final, Statutory, March 3, 1995, Rule or Report to Congress. Report to Congress issued 9/18/96.

Abstract: The agency has proposed to address the crashworthiness of locomotives pursuant to the Rail Safety Enforcement and Review Act (1992). FRA investigated locomotive crashworthiness, as well as a variety of locomotive working conditions (See RIN 2130-AA89) and reported its finding to Congress. On October 31, 1996, the Railroad Safety Advisory Committee (RSAC) accepted a preliminary planning task to schedule handling of these issues. The Locomotive Crew Safety Working Group met on January 23, 1997 to develop task statements that were forwarded to the full RSAC and accepted on June 24, 1997. The RSAC Locomotive Crashworthiness Working Group last met in January, 2002, to consider specific recommendations for regulatory action. Originally this project was considered significant; however, it appears likely that important incremental changes in current design standards can be made without significant disruption or controversy.

Timetable:

Action	Date	FR Cite
Open Meeting Notice	07/22/94	59 FR 37528
Report to Congress	09/18/96	
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: This rulemaking was originally included in RIN 2130-AA89, Locomotive Cab Working Conditions.

Agency Contact: Daniel Alpert, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493-6026

RIN: 2130–AB23

2369. LOCOMOTIVE EVENT RECORDERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 229

Legal Deadline: None

Abstract: FRA will propose improvements in the crashworthiness of event recorders and will propose additional requirements for data capture and recording for event recorders installed in new and rebuilt locomotives. FRA is awaiting the advice and recommendations of RSAC before taking further regulatory action.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: This rulemaking was previously titled "Crashworthy Event Recorders."

Agency Contact: Thomas Herrmann, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493-6036

RIN: 2130–AB34

2370. REVISION TO RAILROAD SAFETY ENFORCEMENT PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 209

Legal Deadline: None

Abstract: This action will revise and update FRA's enforcement procedures. This action is expected to address the recodification of the railroad safety laws and revise certain administrative hearing procedures.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Kathryn E. Shelton, Department of Transportation, Federal Railroad Administration
Phone: 202 493-6063
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RIN: 2130–AB35

2371. RULES OF PRACTICE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 211

Legal Deadline: None

Abstract: This action will revise and update FRA's rulemaking procedures, and the procedures for participation in the rulemaking process, such as petitions for rulemaking, petitions for reconsideration, and petitions for waiver. These procedures will be modified to reflect the recodification of the railroad safety laws, and changes in the application of FRA's regulatory procedures that have developed over time.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Colleen A. Brennan, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 493-6028

RIN: 2130–AB36

2372. RAILROAD CAR CONSPICUITY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103; 49 USC 20148

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: FRA is considering requiring that retroreflective tape be applied to all railroad cars. FRA has established a docket so that interested parties may submit relevant information.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John A. Winkle, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 493-6067

RIN: 2130–AB41

2373. REVISION TO THE ACCIDENT/INCIDENT REPORTING REGULATIONS AND GUIDE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103; 49 USC 20901; 49 USC 20902

CFR Citation: 49 CFR 225; 49 CFR 219; 49 CFR 240

Legal Deadline: None

Abstract: FRA intends to conform its regulations for accident/incident reporting to revised OSHA regulations, and to make appropriate revisions to the FRA Guide for Preparing Accident/Incident Reports. On January 19, 2001, OSHA published revised regulations for Occupational Injury and Illness Recording and Reporting (66 FR 5965). FRA accident/incident regulations pertaining to occupational injury and illness are patterned after the prior OSHA regulations and must be maintained in general conformity with those regulations to permit compatibility of data and integration of railroad industry data into national statistical data bases. OSHA's final rule became effective on January 1, 2002. Accordingly, FRA needs to revise its own injury codes and narratives, cause codes and narratives, and circumstance codes and narratives (as set forth in the FRA Reporting Guide) as soon as feasible. Minor administrative issues have also arisen since the last general revision of part 225 on January 1, 1997 that will be considered in relation to possible amendments to the regulations or the Reporting Guide.

Timetable:

Action	Date	FR Cite
NPRM	10/09/02	67 FR 63022
NPRM Comment Period End	11/08/02	
Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Anna Nassif, Trial Attorney, Department of Transportation, Federal Railroad Administration, Mail Stop 10, 1120 Vermont Avenue, N.W., Washington, DC 20590
Phone: 202 493-6166

RIN: 2130–AB51

2374. • OCCUPATIONAL NOISE EXPOSURE FOR RAILROAD OPERATING EMPLOYEES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 229

Legal Deadline: None

Abstract: FRA has proposed to address crew working conditions on locomotives, pursuant to the Rail Safety Enforcement and Review Act (1992). FRA investigated a variety of locomotive working conditions, including noise, and reported its findings to Congress in 1996. FRA presented the subject of locomotive working conditions to the Railroad Safety Advisory Committee (RSAC). The RSAC process, which involves participation of all parties with significant interests, provides a forum for consensual rulemaking and program development.

Through the RSAC process, FRA is amending its occupational noise standards for railroad employees whose predominant noise exposure occurs in the locomotive cab. FRA's existing standard concerning cab noise, 49 CFR 229.121, limits cab employee noise exposure to certain levels based on the duration of their experience. FRA would like to update its regulation to incorporate new measures. This proposal would require railroads to implement a hearing conservation program, which would include hearing tests (audiograms), training, and monitoring. It would also set design standards for new locomotives and maintenance standards for all locomotives.

Timetable:

Action	Date	FR Cite
Report to Congress	09/18/96	
NPRM	05/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Christina McDonald, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493-6032

RIN: 2130–AB56

Department of Transportation (DOT)
Federal Railroad Administration (FRA)

Final Rule Stage

2375. +WHISTLE BANS AT HIGHWAY-RAIL GRADE CROSSINGS

Priority: Other Significant

Legal Authority: 49 USC 20153

CFR Citation: 49 CFR 222

Legal Deadline: Final, Statutory, November 2, 1996, subsequent enactment prohibited issuance prior to July 1, 2001.

Abstract: This action would govern when train whistles at grade crossings must be sounded. FRA has found that failing to use the locomotive horn can significantly increase the number of collisions with motorists using the crossing. This action is considered significant because of substantial public interest. This action is being taken pursuant to statutory mandate. FRA studied the consequences of the proposed action and prepared a draft environmental impact statement (EIS) for the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	01/13/00	65 FR 2230
NPRM Comment Period End	05/26/00	
Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Federal

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: An Omnibus Bill at the end of the 106th Congress prohibited publication of a final rule before July 2001.

Agency Contact: Mark H. Tessler, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493-6061

RIN: 2130–AA71

2376. +STANDARDS FOR DEVELOPMENT AND USE OF PROCESSOR-BASED SIGNAL AND TRAIN CONTROL SYSTEMS

Regulatory Plan: This entry is Seq. No. 110 in part II of this issue of the Federal Register.

RIN: 2130–AA94

2377. SMALL RAILROADS; POLICY STATEMENT ON ENFORCEMENT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 601 et seq; PL 104-121; 49 USC 20101 et seq

CFR Citation: 49 CFR 209

Legal Deadline: Other, Statutory, March 29, 1997, 180 Days to Final Rule.

Abstract: The Small Business Regulatory Enforcement Act (SBREFA) of 1996 requires, among other things, that Federal agencies establish communication and enforcement programs to address the unique concerns and operations of small entities.

Pursuant to SBREFA, FRA published communication and enforcement policies with respect to small entities in an Interim Statement of Agency Policy and undertook an interim definition of "small entity" in this process. Also, FRA invited comment from the public for the purpose of adopting a new definition of "small entity" in the future, and conducted a public meeting with all interested parties to discuss this issue. FRA will issue a Final Statement of Policy.

Timetable:

Action	Date	FR Cite
Interim Policy Statement	08/11/97	62 FR 43024
Interim Policy Statement Effective	10/10/97	
Comment Period End	11/30/97	
Final Policy Statement	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Local

Additional Information: A public meeting was held on September 28, 1999. (See 64 FR 46468, 8/25/99.)

Agency Contact: Nancy Lummen Lewis, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590

DOT—FRA

Final Rule Stage

Phone: 202 493-6047

RIN: 2130–AB15

2378. REGULATIONS ON SAFETY INTEGRATION PLANS GOVERNING RAILROAD CONSOLIDATIONS, MERGERS, ACQUISITIONS OF CONTROL, AND START-UP OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103; 49 USC 20107; 49 USC 21301; 28 USC 2461

CFR Citation: 49 CFR 244; 49 CFR 1.49

Legal Deadline: None

Abstract: FRA is drafting its response to petitions for reconsideration of the final rule, published on March 15, 2002, that requires a railroad to file a Safety Integration Plan with the Federal Railroad Administration whenever a Class I railroad proposes to merge, consolidate, or acquire control of another Class I or Class II railroad with which it proposes to amalgamate operations. See 67 FR 11582. The final rule prescribed content and subject matter areas that must be addressed in each plan before FRA may approve of such plan. FRA prepared the final rule and coordinated with the Surface Transportation Board to issue rulemaking actions covering these transactions within the framework of each agency's jurisdiction.

Timetable:

Action	Date	FR Cite
NPRM	12/31/98	63 FR 72225
NPRM Comment Period Extended	04/21/99	64 FR 19512
Public Hearing - Notice	04/21/99	64 FR 19512
NPRM Comment Period End	05/04/99	
Final Rule	03/15/02	67 FR 11582
Final Rule; Response to Petitions for Reconsideration	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: A public hearing on this rulemaking was held on May 4, 1999.

Agency Contact: Jon Kaplan, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493-6042

RIN: 2130–AB24

2379. ROADWAY MAINTENANCE MACHINES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 214

Legal Deadline: None

Abstract: FRA proposed regulations governing operational and design safety of on-track equipment used by railroads for track maintenance. The regulations would cover self-propelled rail-mounted non-highway machines where light weight exceeds 7500 pounds. This rulemaking was requested by the Brotherhood of Maintenance of Way Employees (BMWE) as part of the organization's petition requesting revision of the track safety standards. FRA decided to respond to this portion of the BMWE petition in a rulemaking separate from the track safety standards revision. FRA is now preparing the final rule.

Timetable:

Action	Date	FR Cite
NPRM	01/10/01	66 FR 1930
NPRM Comment Period End	03/12/01	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: This rulemaking is an offshoot of the rulemaking to revise the track safety standards. FRA has changed the title of the current entry to the Unified Regulatory Agenda, which was originally entitled "Roadway Maintenance Machine Safety" to more accurately reflect what this action is expected to address.

Agency Contact: Nancy Lummen Lewis, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493-6047

RIN: 2130–AB28

2380. ANNUAL ADJUSTMENT OF MONETARY THRESHOLD FOR REPORTING RAIL EQUIPMENT ACCIDENTS/INCIDENTS

Priority: Info./Admin./Other

Legal Authority: 49 USC 20103

CFR Citation: None

Legal Deadline: None

Abstract: This annual determination establishes the monetary threshold for reporting rail equipment accidents/incidents involving railroad property damage. This action ensures and maintains comparability between different years of data by having the threshold keep pace with fluctuations in equipment and labor costs. It is required by statute. The reporting threshold is based on the formula adopted in a final rule 5/18/96, 61 FR 60632. This agenda entry will be updated each year to show the latest annual determination. Cites for determinations already issued are provided below.

Timetable:

Action	Date	FR Cite
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: The 2001 final rule of 12/26/2001, 66 FR 66346, increases the monetary threshold from $6,600 to $6,700 for accidents/incidents that occur during the calendar year 2002. After the 1997 final rule of 2/2/97, 62 FR 63675, increased the monetary threshold from $6,500 to $6,600, the monetary threshold remained at $6,600 from calendar years 1998 through 2000. The 1996 final rule of 11/29/96, 61 FR 60632, increased the monetary threshold from $6,300 to $6,500.

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Phone: 202 493-6166

RIN: 2130–AB30

DOT—FRA

Final Rule Stage

2381. DETERMINATION OF MINIMUM TESTING RATE FOR RANDOM DRUG AND ALCOHOL TESTING

Priority: Info./Admin./Other

Legal Authority: 49 USC 20103

CFR Citation: None

Legal Deadline: None

Abstract: Each year FRA announces the minimum random drug and alcohol testing rates for the following year for the railroad industry. This determination is based on a review of rail industry drug and alcohol management information system data, as well as data from compliance reviews of rail industry drug and alcohol testing programs. Procedures were established in a final rule published on December 2, 1994, 59 FR 62218. For the calendar year 2002, the minimum random drug and alcohol testing rates of covered railroad employees continue to be 25 percent and 10 percent, respectively. This agenda entry will be updated each year to show the latest annual determination. Cites for determinations already issued are provided below.

Timetable:

Action	Date	FR Cite
Annual Determination	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: In the notice of determination of January 2, 2002 (67 FR 21), the minimum random drug and alcohol testing rates of covered railroad employees remained at 25 percent and 10 percent, respectively, for calendar year 2002. In the notices of determination of 2/18/98 (63 FR 8143), 12/30/98 (63 FR 71789), 12/27/99 (64 FR 72289), and 12/19/00 (65 FR 79318), the minimum rates remained at 25 percent and 10 percent for calendar years 1998, 1999, 2000 and 2001.

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Phone: 202 493-6060
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RIN: 2130–AB31

2382. +LOCATIONAL REQUIREMENT FOR DISPATCHING OF UNITED STATES RAIL OPERATIONS

Priority: Other Significant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 241

Legal Deadline: None

Abstract: This interim final rule requires that all railroad operations in the United States be dispatched in the United States, with certain exceptions. This action is considered significant because of substantial interdepartmental concerns.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/11/01	66 FR 63942
Interim Final Rule Effective	01/10/02	
Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John A. Winkle, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 493-6067

RIN: 2130–AB38

2383. +APPLICATION OF RANDOM TESTING AND OTHER ALCOHOL AND DRUG REGULATIONS TO EMPLOYEES OF FOREIGN RAILROADS

Priority: Other Significant

Legal Authority: 49 USC 20103; 49 USC 20140

CFR Citation: 49 CFR 219

Legal Deadline: None

Abstract: This action would apply FRA's random testing and other alcohol and drug requirements to employees of a foreign railroad whose primary reporting point is outside the United States, and who perform train service or dispatching service in the United States. Such employees are currently exempt from random testing, pre-employment testing, and requirements for employee self-referral and co-worker report policies. This action is considered significant because of substantial inter-departmental concerns.

Timetable:

Action	Date	FR Cite
NPRM	12/11/01	66 FR 64000
Notice of Hearing	01/23/02	67 FR 3138
NPRM Comment Period End	02/11/02	
Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

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RIN: 2130–AB39

Department of Transportation (DOT)
Federal Railroad Administration (FRA)

Long-Term Actions

2384. LOCAL RAIL FREIGHT ASSISTANCE TO STATES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 22101

CFR Citation: 49 CFR 266

Legal Deadline: None

Abstract: This action is to revise the procedures and requirements for the receipt of financial assistance contained in part 266. These changes are required to reflect statutory modifications resulting from the Local Rail Service Reauthorization Act of 1989. The Local Freight Assistance Program has not been reauthorized after FY 1995. However, final regulations are necessary because States continue to submit applications for new projects to be funded from loan funds repaid to States by previous borrowers. FRA is reconsidering the need for these regulations.

Timetable:

Action	Date	FR Cite
NPRM	11/30/90	55 FR 49648
NPRM Comment Period End	12/31/90	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: While this action was to be terminated in October of 1995, the agency reconsidered and decided to move forward with a final rule. FRA is now reconsidering that determination.

ANALYSIS: Regulatory Evaluation, 11/30/90, 55 FR 49648

Agency Contact: JoAnne McGowan, Chief, Freight Programs Division, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493-3290

RIN: 2130–AA60

2385. BLUE SIGNAL AND RELATED PROTECTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 218

Legal Deadline: None

Abstract: FRA is in the process of reconsidering amendments to its "Blue Signal" regulations, which prescribe minimum requirements for the protection of railroad employees engaged in the inspection, testing, repair, and servicing of rolling equipment. This task was assigned to RSAC, and the working group met for the first time in October 2000. There have been six subsequent meetings. Currently, the working group is still considering several issues and, thus, the next action on this rule is undetermined.

Timetable:

Action	Date	FR Cite
Final Rule Amendments	03/01/95	60 FR 11047
Comment Period End	05/01/95	
Comment Period Reopened	06/09/95	60 FR 30469
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: The final rule on utility employees was published August 16, 1993 (58 FR 43287), RIN 2130-AA77. FRA has changed the title of the current entry to the Unified Agenda, which was originally titled "Protection of Utility Employees," to more accurately reflect what this action is expected to address.

Agency Contact: John A. Winkle, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 493-6067

RIN: 2130–AA90

2386. CRANE SAFETY STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: In response to a petition for rulemaking, FRA will consider whether to adopt regulations governing functional and design safety of on-track railroad cranes used for track maintenance. FRA is awaiting the advice and recommendations of RSAC before taking further regulatory action.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Mark H. Tessler, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493-6061

RIN: 2130–AB27

2387. +MINIMUM STANDARDS FOR TEMPERATURE IN THE LOCOMOTIVE CAB

Priority: Other Significant

Legal Authority: 49 USC 20103; 49 USC 20701 to 20703

CFR Citation: 49 CFR 229

Legal Deadline: None

Abstract: FRA is considering amending current minimum temperature requirements and establishing maximum cab temperature requirements.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Cynthia Walters, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493-6064

RIN: 2130–AB46

2388. AUTOMATIC TRAIN CONTROL (ATC) AND ADVANCED CIVIL SPEED ENFORCEMENT SYSTEM (ACSES); NORTHEAST CORRIDOR (NEC) RAILROADS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: None

Legal Deadline: None

Abstract: An order is in effect, but amendments for technical matters or for the phasing of implementation will be added as needed. Through the February 2002 amendment, FRA granted a second extension of a previously granted exception that allowed MBTA to follow temporary operating protocols whenever it could not dispatch a train equipped with ACSES. The February 2002 amendment extended this exception through April 5, 2002.

Timetable:

Action	Date	FR Cite
Amendment	02/12/02	67 FR 6573
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2130–AB55

Department of Transportation (DOT)
Federal Railroad Administration (FRA)

Completed Actions

2389. PASSENGER EQUIPMENT SAFETY STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20133; 49 USC 20103

CFR Citation: 49 CFR 216; 49 CFR 238

Legal Deadline: Final, Statutory, November 2, 1997.

Abstract: These actions respond to the remaining issues raised in the petitions for reconsideration of FRA's May 12, 1999 final rule, which established comprehensive Federal safety standards for railroad passenger equipment. See 64 FR 25540. These actions clarify and amend the final rule, principally those sections related to fire safety and the structure of railroad passenger equipment. These actions follow a response to the petitions for reconsideration related to the inspection, testing, and maintenance of railroad passenger equipment, as well as the movement of defective equipment provisions of the May 12, 1999 final rule. See 65 FR 41284. These actions complete the first phase of the rulemaking.

Timetable:

Action	Date	FR Cite
Final Rule	05/12/99	64 FR 25540
Final Rule; Response to Petitions for Reconsideration	04/23/02	67 FR 19970
Final Rule; Response to Petitions for Reconsideration	06/25/02	67 FR 42892

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Daniel Alpert, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493-6026

RIN: 2130–AB48

2390. IMPROVEMENTS TO THE SYSTEM FOR REPORTING TRAIN ACCIDENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103; 49 USC 20901; 49 USC 20902

CFR Citation: 49 CFR 225

Legal Deadline: None

Abstract: FRA initiated a pilot study to investigate a possible approach for developing a new system of reporting train accidents, potentially leading to a revision of the regulations for reporting rail equipment accidents/incidents involving railroad property damage. Under the current system, railroads are required to report any event involving property damage or injury if the total cost of the event for all railroads involved exceeds a threshold. The cost of repairing the damage therefore acts as a surrogate measure of severity. Repair cost, however, is unsatisfactory as a surrogate measure of severity. Costs can be substantially affected by factors that have no relevancy to severity, such as the newness of any destroyed equipment and facilities. Nevertheless, current regulations mandate that if a locomotive engineer has been found to be at fault for causing an event, he or she can be disqualified only if it is reportable as a train accident. The perceived unfairness of disqualification being only loosely tied to accident severity is something FRA wishes to remedy by changing the reporting requirement to more closely reflect the severity of the event rather than just the book cost. FRA is also interested in changing the system to reduce time and effort spent by railroads in reporting and recording train accidents. The current reporting system causes substantial inconvenience and places a burden on the railroads. The railroads' initial estimates of repair costs are somewhat subjective, yet they have to decide whether to report an event on the basis of the estimate. In addition, if the actual cost of an event deviates from initial estimates by more than 10 percent and exceeds the threshold, then the railroad would be required to submit a report if the initial estimate was below the threshold and an amendment if the initial estimate was above. The uncertainty about the status of an event may put undue pressure on railroads to report more events as train accidents than necessary.

Timetable:

Action	Date	FR Cite
Withdrawn	02/13/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: The results of the pilot study were insufficient to permit FRA to try out certain aspects of the proposed approach to developing a new system.

Agency Contact: Nancy Friedman, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493-6034

RIN: 2130–AB50

Department of Transportation (DOT)
Federal Transit Administration (FTA)

Final Rule Stage

2391. +BUS TESTING

Priority: Other Significant

Legal Authority: 49 USC 5323(c)

CFR Citation: 49 CFR 665

Legal Deadline: None

Abstract: This regulation implements a statutory provision that requires any new bus model purchased after September 30, 1989, to be tested at a facility established pursuant to 49 USC 5318. This regulation is significant because of the large amount of public interest.

Timetable:

Action	Date	FR Cite
NPRM	05/25/89	54 FR 22716
NPRM Comment Period End	07/24/89	
Interim Final Rule	08/23/89	54 FR 35158
Comment Period Reopened	11/30/89	54 FR 49297
Interim Final Rule - Second	10/09/90	55 FR 41174
Interim Procedures	09/13/91	56 FR 46572
Interim Final Rule - New Vehicle Types	07/28/92	57 FR 33394
Interim Final Rule - Partial Effectiveness Postponed	10/13/92	57 FR 46814
Interim Final Rule - Comment Period Reopened to 01/29/93	01/07/93	58 FR 2989
Interim Final Rule - Partial Effectiveness Postponed	02/23/93	58 FR 10989
Notice of Meeting	02/26/93	58 FR 11549
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: None

Additional Information: Former section 12(h) of the FT Act, as amended (now 49 USC 5302(a)(9)), defines a "new bus model" as a bus model which has not been used in mass transportation service in the United States before the date of production of such model, or a bus model which has been used in such service, but which is being produced with a major change in configuration or components. A third interim final rule, published on 07/28/92, added two new categories of buses required to be tested. On 10/13/92 FTA published a notice postponing the application of the interim final rule for these vehicle types until 02/10/93. FTA's fourth interim final rule, issued on 11/3/93, established four subcategories of small vehicles to facilitate the phase-in of testing.

Because the existing fourth interim final rule completes the categories of vehicles subject to testing under FTA's grantmaking program, FTA intends to publish it as the final rule in November 2002.

ANALYSIS: Regulatory Evaluation, 07/28/92, 57 FR 33394

Agency Contact: Richard Wong, Attorney-Advisor, Department of Transportation, Federal Transit Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2132–AA30

Department of Transportation (DOT)
Federal Transit Administration (FTA)

Long-Term Actions

2392. BUY AMERICA REQUIREMENTS; AMENDMENT TO CERTIFICATION PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-178, sec 3020(b)

CFR Citation: 49 CFR 661.11; 49 CFR 661.13

Legal Deadline: None

Abstract: This action would amend FTA's Buy America regulation, 49 CFR 661 in accordance with section 3020(b) of the Transportation Equity Act for the 21st Century. Section 3020(b) amended 49 USC 5323(g) to allow a bidder on an FTA-funded contract to correct an incomplete certification or a certification of noncompliance with Buy America resulting from an inadvertent or clerical error.

Timetable:

Action	Date	FR Cite
NPRM	02/18/99	64 FR 8051
NPRM Comment Period End	04/19/99	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local

Agency Contact: Meghan Ludtke, Attorney Advisor, Department of Transportation, Federal Transit Administration, Room 9316, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4011
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RIN: 2132–AA62

2393. SCHOOL BUS OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5323(f)

CFR Citation: 49 CFR 605

Legal Deadline: None

Abstract: This rulemaking amends the definition of "tripper" service, which is mass transportation service modified to meet the needs of school students and personnel. The amended definition will prohibit the use of certain signage without the express written permission of the FTA Administrator, and provides that tripper buses must stop only at stops that are marked as available to the public. In the previous agenda, FTA had stated that it intended to withdraw the proposed amendment. However, upon further consideration, the agency has decided to hold this matter in abeyance pending reauthorization of the Transportation Equity Act for the 21st Century (TEA-21).

Timetable:

Action	Date	FR Cite
NPRM	05/03/99	64 FR 23590
NPRM Comment Period End	07/02/99	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State, Local

DOT—FTA

Long-Term Actions

Agency Contact: Elizabeth S. Martineau, Attorney Advisor, Department of Transportation, Federal Transit Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-1936
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RIN: 2132–AA67

2394. BUY AMERICA REQUIREMENTS; PERMANENT WAIVER FOR MICROCOMPUTERS

Priority: Substantive, Nonsignificant

Legal Authority: PL 97-424

CFR Citation: 49 CFR 661

Legal Deadline: None

Abstract: Section 165(b)(2) of the Surface Transportation Assistance Act of 1982 provides that a waiver of the Buy America requirements may be granted if materials and products being procured are not produced in the United States in sufficient and reasonable quantities and of satisfactory quality. Such a waiver was permanently granted in 1986 for microcomputers, as FTA grantees were experiencing difficulty in purchasing domestically produced microcomputer equipment appropriate to their needs. At that time, FTA reserved the right to reassess the need for a waiver based on the changing market for microcomputers. Since both the international and domestic market for microcomputers has changed since the permanent waiver was issued, FTA is soliciting comments as to whether this waiver should be revoked, modified or retained.

Timetable:

Action	Date	FR Cite
ANPRM	10/08/99	64 FR 54855

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Meghan Ludtke, Attorney Advisor, Department of Transportation, Federal Transit Administration, Room 9316, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4011
Fax: 202 366-3809

RIN: 2132–AA68

2395. STATE SAFETY OVERSIGHT; RAIL FIXED GUIDEWAY SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5330

CFR Citation: 49 CFR 659

Legal Deadline: None

Abstract: Due to the receipt of an adverse comment, FTA withdrew the direct final rule issued on June 11, 2002, which would have amended the definition of "accident". The agency concluded that coordination with other stakeholders is warranted but has been required to expend its resources on other security initiatives during this last year. For these reasons, this rulemaking will be held in abeyance while the next course of action is determined.

Timetable:

Action	Date	FR Cite
Direct Final Rule	04/03/02	67 FR 15725
Withdrawal of Direct Final Rule	07/01/02	67 FR 44091

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Federalism: This action may have federalism implications as defined in EO 13132.

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Phone: 202 366-2896

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RIN: 2132–AA69

2396. • +STATEWIDE TRANSPORTATION PLANNING; METROPOLITAN TRANSPORTATION PLANNING

Priority: Other Significant

Legal Authority: 23 USC 134; 23 USC 135; 23 USC 315; 49 USC 5305 to 5306

CFR Citation: 23 CFR 450; 49 CFR 1.48(b); 49 CFR 1.51

Legal Deadline: None

Abstract: On May 25, 2000, the FHWA and FTA jointly published an NPRM on statewide and metropolitan transportation planning (RIN 2125-AE62; 2132-AA66). The agencies have carefully considered all of the data, recommendations, and ongoing issues with respect to statewide and metropolitan transportation planning. In light of the current situation, the agencies are proposing to amend 23 CFR 450 to include provisions related to consultation with non-metropolitan, local officials and further refine processes related to public involvement.

The purpose of this proposal is to ensure that the concerns of local and rural transportation officials are adequately represented in Federal transportation planning activities. This proposal is in addition to the section on consultation with non-metropolitan local officials that was proposed in the NPRM in May 2000.

Timetable:

Action	Date	FR Cite
Supplemental NPRM	06/19/02	67 FR 41648
SNPRM Comment Period Extended	08/15/02	67 FR 53326
SNPRM Comment Period End	09/19/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Scott A. Biehl, Assistant Chief Counsel, Department of Transportation, Federal Transit Administration, 400 Seventh Street SW., Washington, DC 20590
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Related RIN: Related To 2125-AE95

RIN: 2132–AA75

Department of Transportation (DOT)
Federal Transit Administration (FTA)

Completed Actions

2397. +NEPA AND RELATED PROCEDURES FOR TRANSPORTATION DECISIONMAKING; PROTECTION OF PUBLIC PARKS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES

Priority: Other Significant

Legal Authority: 23 USC 109, 128, 134, 138 and 315; 42 USC 2000d-2000d-4, 4321 et seq. and 7401 et seq.; 49 USC 303 , 5301(e), 5303, 5309 and 5324(b) and (c); 49 CFR 1.48 and 1.51; 33 CFR 115.60(b); 40 CFR 1500 to 1508

CFR Citation: 23 CFR 771; 23 CFR 1420; 23 CFR 1430; 49 CFR 622; 49 CFR 623

Legal Deadline: None

Abstract: The agencies withdraw this proposed rulemaking proceeding that proposed to update and revise our National Environmental Policy Act (NEPA) implementation regulation for projects funded or approved by the FHWA or the FTA. The agencies intended to modify the regulation to reflect experience gained in administering these requirements and substantial changes in legislation that occurred since the regulations were issued in 1987. The agencies have determined that the proposed changes generated such diversity and disparity of comments that substantial further work is necessary to develop new proposals and accomodate these comments.

Timetable:

Action	Date	FR Cite
NPRM	05/25/00	65 FR 33960
NPRM Comment Period Extended	07/07/00	65 FR 41892
NPRM Comment Period End	09/23/00	
Withdrawn	09/20/02	67 FR 59225

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: The corresponding FHWA RIN is 2125-AE64. This incorporates the issues contained in RIN 2125-AD32.

Agency Contact: Scott A. Biehl, Assistant Chief Counsel, Department of Transportation, Federal Transit Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-0952
Fax: 202 366-3809

RIN: 2132–AA43

2398. +CLEAN FUELS FORMULA GRANT PROGRAM

Priority: Other Significant

Legal Authority: PL 105-178, sec 3008; 49 USC 5308

CFR Citation: 49 CFR 624

Legal Deadline: None

Abstract: Section 3008 of the Transportation Equity Act for the 21st Century establishes the Clean Fuels Formula Grant Program. This grant program will assist transit systems in purchasing or leasing clean fuel vehicles; constructing clean fuel or electrical re-charging facilities; modifying existing garage facilities to accommodate clean fuel vehicles; repowering pre-1993 engines with clean fuel technology which meets the current bus emission standards; and retrofitting or rebuilding pre-1993 engines before their half-life for rebuilding. This provision requires the Secretary to issue an implementing regulation that sets forth eligibility requirements and an apportionment formula for eligible projects. In FY 1999, all funds were apportioned to earmarked projects. This action is considered significant because of considerable congressional and public interest.

Timetable:

Action	Date	FR Cite
NPRM	08/28/01	66 FR 45551
NPRM Comment Period End	10/21/01	
Final Action	06/11/02	67 FR 40100
Correction	06/18/02	67 FR 41579
Final Action Effective	07/11/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local

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RIN: 2132–AA64

2399. +STATEWIDE TRANSPORTATION PLANNING; METROPOLITAN TRANSPORTATION PLANNING

Priority: Other Significant

Legal Authority: 23 USC 134; 23 USC 135; 23 USC 315; 42 USC 7410 et seq.; 49 USC 5303 to 5305; 49 CFR 1.48 and 1.51

CFR Citation: 23 CFR 450; 23 CFR 1410; 49 CFR 613; 49 CFR 621

Legal Deadline: None

Abstract: FHWA amd FTA partially withdraw the proposed rulemaking in which the agencies proposed to amend the requirements on Statewide and metropolitan planning. The partial withdrawal is based on the level of critical comment received and the development of alternate means for implementing the topics addressed in the NPRM and the pendency of reauthorization of the surface transportation program. The agencies withdraw this proposed rulemaking except for the sections that relate to "consultation with nonmetropolitan local officials," which is addressed in the SNPRM published on June 19, 2002, at 67 FR 41648.

Timetable:

Action	Date	FR Cite
NPRM	05/25/00	65 FR 33922
NPRM Comment Period Extended	07/07/00	65 FR 41891
NPRM Comment Period End	09/23/00	
Partial Withdrawal	09/20/02	67 FR 59219

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State, Local

Additional Information: The corresponding FHWA RIN is 2125-AE62.

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RIN: 2132–AA66

Department of Transportation (DOT)
Research and Special Programs Administration (RSPA)

Prerule Stage

2400. HAZARDOUS MATERIALS: REVISION OF REQUIREMENTS FOR CARRIAGE BY AIRCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 48 USC 5101 to 5127

CFR Citation: 49 CFR 175

Legal Deadline: None

Abstract: Part 175 is being revised and rewritten in order to simplify and clarify the requirements, further align them with the international requirements (ICAO) and eliminate obsolete requirements.

Timetable:

Action	Date	FR Cite
ANPRM	02/26/02	67 FR 8769
Comment Period Extended	05/13/02	67 FR 32002
ANPRM Comment Period End	05/31/02	
Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations, Businesses, Governmental Jurisdictions

Government Levels Affected: None

Additional Information: Docket No. HM-228; RSPA-02-11654.

Agency Contact: Deborah Boothe, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD18

2401. +HAZARDOUS MATERIALS: SAFETY REQUIREMENTS FOR EXTERNAL PRODUCT PIPING ON CARGO TANKS TRANSPORTING FLAMMABLE LIQUIDS

Priority: Other Significant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 173; 49 CFR 180

Legal Deadline: None

Abstract: This rulemaking will address requirements to reduce the risks associated with the retention of flammable liquid in unprotected product piping on a cargo tank motor vehicle during transportation (wetlines). It responds to an NTSB recommendation. It is significant because of industry concerns about its cost implications.

Timetable:

Action	Date	FR Cite
ANPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM Docket: HM-213B; RSPA-99-6223.

Agency Contact: Michael Stevens, Transportation Specialist, Department of Transportation, Research and Special Programs Administration, Washington, DC 20590
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RIN: 2137–AD36

2402. HAZARDOUS MATERIALS: FRANGIBLE DISCS ON TANK CARS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 173

Legal Deadline: None

Abstract: RSPA is proposing to clarify current inspection requirements for frangible discs in pressure relief devices on rail tank cars used to transport hazardous materials.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: HM Docket: HM-216A

Agency Contact: Eileen Edmonson, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD57

2403. PIPELINE SAFETY: ANNUAL UPDATE OF STANDARDS INCORPORATED BY REFERENCE

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 5103, 60102, 60103, 60104, 60108, 60109, 60110, 60113, and 60118

CFR Citation: 49 CFR 191; 49 CFR 193; 49 CFR 195

Legal Deadline: None

Abstract: More than 70 voluntary consensus technical standards are incorporated by reference in the Federal gas pipeline, hazardous liquid pipeline, and liquefied natural gas (LNG) safety regulations. The Office of Pipeline Safety will propose to incorporate updated standards early in each calendar year.

Timetable:

Action	Date	FR Cite
ANPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Docket No RSPA-02-11457.

Agency Contact: Richard D. Huriaux, Director, Technology & Regulations, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4565

RIN: 2137–AD68

Department of Transportation (DOT)
Research and Special Programs Administration (RSPA)

Proposed Rule Stage

2404. PIPELINE SAFETY: GAS GATHERING LINE DEFINITION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 60101 to 60125

CFR Citation: 49 CFR 192

Legal Deadline: Final, Statutory, October 24, 1994.

Abstract: The existing definition of "gathering line" would be clearly defined to eliminate confusion in distinguishing these pipelines from transmission lines in rural areas. The costs should be minimal since the definition will conform to prevailing practices in government and industry.

Timetable:

Action	Date	FR Cite
NPRM	09/25/91	56 FR 48505
Request for Comments	03/11/99	64 FR 12147
Electronic Public Meeting	04/13/99	64 FR 12147
Extension of Comment Period	04/30/99	64 FR 23256
Comment Period Ends	07/07/99	64 FR 23256
Second NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket No. RSPA-98-4868 (Formerly PS-122).

ANALYSIS: Regulatory Evaluation, 09/25/91, 56 FR 48505

Agency Contact: L.E. Herrick, Transportation Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5523

RIN: 2137–AB15

2405. PIPELINE SAFETY: PERIODIC UNDERWATER INSPECTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 60101 to 60125

CFR Citation: 49 CFR 192; 49 CFR 195

Legal Deadline: Final, Statutory, October 24, 1995.

Abstract: This action would require operators of natural gas and hazardous liquid pipelines to conduct periodic underwater inspections of offshore pipelines and those in navigable waterways. This action would also define what constitutes an exposed underwater pipeline and what constitutes a hazard to navigation.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: Docket No. RSPA-97-3001. This action could include requirements for the reburial of exposed pipelines. Under an OPS contract, Texas A&M University completed a study of the issues related to burial depth and inspection requirements for underwater pipelines.

An NPRM is being drafted that will incorporate the Texas A&M recommendation for a risk-based approach.

Agency Contact: L.E. Herrick, Transportation Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5523

RIN: 2137–AC54

2406. PIPELINE SAFETY: FURTHER REGULATORY REVIEW; GAS PIPELINE SAFETY STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 60101 to 60125

CFR Citation: 49 CFR 192

Legal Deadline: None

Abstract: This action would change miscellaneous gas pipeline safety standards to provide clarity, eliminate unnecessary or overly burdensome requirements, and foster economic growth. The proposed changes result from RSPA's further review of the standards and changes recommended by the National Association of Pipeline Safety Representatives (NAPSR) in its November 1992 report on the standards and by the State Industry Regulatory Review Committee in its April 26, 1999 report. The proposed changes would reduce costs in the pipeline industry without compromising safety.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket No. RSPA-02-13208. Formerly Docket No. PS-124. The NAPSR report was published November 9, 1993, at 58 FR 59431, as part of the earlier review of the standards.

Early in 1992, RSPA began an extensive review of the Federal gas pipeline safety regulations (49 CFR 192) and invited the public to participate (57 FR 4745; February 7, 1992). RSPA published a notice of proposed rulemaking (NPRM), proposing changes to 38 regulations in part 192 (Notice 1: 57 FR 39572; August 31, 1992). In addition, the National Association of Pipeline Safety Representatives (NAPSR) reported on a separate but related review of part 192. Because the NAPSR report concerned a few of the regulations covered by the NPRM and had similar objectives, we published the report and requested public comment on its various recommended rule changes (Notice 2: 58 FR 59431; November 9, 1992) and later extended the comment period (Notice 3: 58 FR 68382; December 27, 1993). A final rule was published on June 6, 1996.

However, not all the changes suggested by the commenters were incorporated in the final rule. A further review of the regulations in part 192, based on the record in this docket, was initiated in late 1996. This review identified proposals from the Gas Piping Technology Committee (GPTC), the ASME B31.8 (gas pipeline safety standards) committee, and NAPSR that have not yet been addressed.

In October 1997, NAPSR and the gas pipeline industry formed the State Industry Regulatory Review Committee (SIRRC) to discuss the regulatory proposals of NAPSR and other issues. On May 3, 1999, the SIRRC provided OPS a report on outcome of the discussion on 39 proposed changes in the gas pipeline safety regulations.

Most of the SIRRC recommendations will be addressed in a subsequent notice of proposed rulemaking. However, the welding recommendations are being adopted in

DOT—RSPA

Proposed Rule Stage

the periodic update (Docket No. RSPA-99-6106 RIN 2137-AD35). And the corrosion control recommendations are being considered in a review of the gas pipeline corrosion regulations in RIN 2137-AD63.

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RIN: 2137–AD01

2407. HAZARDOUS MATERIALS: HAZARD COMMUNICATION REQUIREMENTS—PETITIONS FOR RULEMAKING AND MISCELLANEOUS AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 171; 49 CFR 172

Legal Deadline: None

Abstract: This rulemaking action would amend the Hazardous Materials Regulations (HMR) to continue improving the hazard communication requirements to better identify hazardous materials in transportation, in response to several petitions for rulemaking and RSPA initiatives. The primary areas addressed are shipping papers, marking, labeling, and placarding requirements. The proposed action is intended to improve safety for transportation workers, emergency responders, and the public. The effect of the proposed regulatory action would be to simplify, clarify, correct, or provide relief from certain regulatory requirements.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket No. HM-206B; RSPA-99-5005.

Agency Contact: Helen L. Engrum, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD28

2408. +HAZARDOUS MATERIALS SAFETY: TRANSPORTATION OF OXYGEN CYLINDERS AND OXYGEN GENERATORS ABOARD AIRCRAFT

Priority: Other Significant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 172; 49 CFR 175

Legal Deadline: None

Abstract: RSPA proposes to amend the Hazardous Materials Regulations to require oxygen cylinders and oxygen generators, when transported aboard aircraft, to be packed in an outer packaging that meets prescribed thermal and heat resistance requirements. These requirements will increase the level of safety associated with transportation of oxidizing gases by air. This rule has no impact on the use of passenger-owned oxygen cylinders. This rule is significant due to public interest.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: HM Docket: HM-224B. A separate rulemaking addressing the use of passenger-owned cylinders of oxygen during a flight is under RIN 2105-AC29. Previously titled Hazardous Materials Safety: Transportation of Oxygen Cylinders on Aircraft.

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RIN: 2137–AD33

2409. +PIPELINE SAFETY: PIPELINE INTEGRITY MANAGEMENT IN HIGH-CONSEQUENCE AREAS (GAS TRANSMISSION PIPELINE OPERATORS)

Regulatory Plan: This entry is Seq. No. 111 in part II of this issue of the Federal Register.

RIN: 2137–AD54

2410. HAZARDOUS MATERIALS: HARMONIZATION WITH THE UNITED NATIONS RECOMMENDATIONS, INTERNATIONAL MARITIME DANGEROUS GOODS CODE, AND INTERNATIONAL CIVIL AVIATION ORGANIZATION TECHNICAL INSTRUCTIONS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 171 to 180

Legal Deadline: None

Abstract: To amend the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to maintain alignment with international standards by incorporating numerous changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations and vessel stowage requirements.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket HM-215E.

Agency Contact: Joan McIntyre, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD66

DOT—RSPA

Proposed Rule Stage

2411. • HAZARDOUS MATERIALS: SECURITY REQUIREMENTS FOR MOTOR CARRIERS TRANSPORTING HAZARDOUS MATERIALS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 et seq; 49 USC 322; ...

CFR Citation: 49 CFR 397

Legal Deadline: None

Abstract: This is a joint rulemaking action. The Research and Special Programs Administration and the Federal Motor Carrier Safety Administration are examining the need for enhanced security requirements for motor carrier transportation of hazardous materials. The two agencies are seeking comments on the feasibility of specific security enhancements and the potential costs and benefits of deploying such enhancements.

Timetable:

Action	Date	FR Cite
ANPRM	07/16/02	67 FR 46622
ANPRM Comment Period End	10/15/02	
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: FMCSA RIN 2136-AA71

Docket No. HM-232A

Agency Contact: Susan Gorsky, Senior Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD70

2412. • HAZARDOUS MATERIALS: MISCELLANEOUS REVISIONS TO THE HAZARDOUS MATERIALS REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 171 to 173; 49 CFR 177 to 178

Legal Deadline: None

Abstract: This rule proposes to make miscellaneous amendments to the hazardous materials regulations based on petitions for rulemaking and RSPA's initiatives.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM Docket: HM-218B

Agency Contact: Gigi L. Corbin, Transportation Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW, Washington, DC 20590
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RIN: 2137–AD73

2413. • HAZARDOUS MATERIALS: TRANSPORTATION OF DIVISION 1.5 EXPLOSIVES (BLASTING AGENTS) AND AMMONIUM NITRATE MIXTURES IN BULK

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 171 to 173

Legal Deadline: None

Abstract: This rulemaking proposes to revise the packaging for Division 1.5 explosives (blasting agents) and current ammonium nitrate mixtures to authorize transportation in certain bulk packagings, currently authorized under exemptions.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket: HM-235

Agency Contact: Helen L. Engrum, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD75

2414. • PIPELINE SAFETY: NATIONAL PIPELINE MAPPING SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5103, 60102, 60104, 60108, 60109, 60113, 60118; and 49 CFR 1.53.

CFR Citation: 49 CFR 192; 49 CFR 195

Legal Deadline: None

Abstract: RSPA aims to implement a requirement that all gas transmission and hazardous liquid operators submit pipeline geospatial data to the National Pipeline Mapping System (NPMS). This rule covers interstate and intrastate pipelines and offshore pipelines under the jurisdiction of the Research and Special Programs Administration. The proposed rule will address the procedures by which pipeline operators create, submit and maintain the data submitted to the NPMS.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. RSPA-97-2426.

Agency Contact: Steve Fischer, GIS Manager, Department of Transportation, Research and Special Programs Administration, Room 7128, 400 7th Street, SW, Wasington, DC 20590
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RIN: 2137–AD76

Department of Transportation (DOT)
Research and Special Programs Administration (RSPA)

Final Rule Stage

2415. +PIPELINE SAFETY: RESPONSE PLANS FOR ONSHORE OIL PIPELINES

Priority: Other Significant

Legal Authority: 49 USC 60101 to 60125

CFR Citation: 49 CFR 194

Legal Deadline: Final, Statutory, August 18, 1992.

Abstract: The interim final rule established regulations requiring response plans for certain onshore oil pipelines. Those regulations are mandated by the Federal Water Pollution Control Act as amended by the Oil Pollution Act of 1990 (Pub. L. 101-380). Pipeline operators filed response plans under this interim final rule, and numerous tabletop exercises and area exercises have been conducted to validate the planning process. The purpose of these requirements is to improve response capabilities and minimize the impact of onshore oil spills from pipelines. This rule is significant because of substantial public and congressional interest. A final rule incorporating the comments will be published in December 2002.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/05/93	58 FR 244
Interim Final Rule Comment Period End	02/19/93	
Notice of Public Meeting	06/15/94	59 FR 30755
Notice of Public Hearing	11/29/96	61 FR 60679
Correction	01/21/97	62 FR 2989
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. PS-130.

ANALYSIS: Regulatory Evaluation, 01/05/93, 58 FR 244

Agency Contact: James Taylor, Response Plans Officer, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-8860

RIN: 2137–AC30

2416. HAZARDOUS MATERIALS: RETENTION OF SHIPPING PAPERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 172; 49 CFR 174; 49 CFR 175; 49 CFR 176; 49 CFR 177

Legal Deadline: None

Abstract: This action amends the Hazardous Materials Regulations by requiring shippers and carriers to retain a copy of the hazardous material shipping paper or an electronic image of the shipping paper for a period of 375 days. A one-year retention of shipping papers is a current statutory requirement in 49 U.S.C. 5110(e); this rule makes the public, which relies almost exclusively on the HMR, aware of this requirement.

Timetable:

Action	Date	FR Cite
NPRM	09/12/01	66 FR 47443
NPRM Comment Period End	11/13/01	
Final Action	07/12/02	67 FR 46123
Final Action Effective	08/12/02	
Response to Petitions	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Additional Information: Docket No. HM-207B; RSPA-01-10568.

Agency Contact: Deborah Boothe, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AC64

2417. +APPLICABILITY OF THE HAZARDOUS MATERIALS REGULATIONS TO LOADING, UNLOADING, AND STORAGE

Priority: Other Significant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 106 to 107; 49 CFR 171 to 180

Legal Deadline: None

Abstract: This rulemaking proposes to better define the applicability of the Federal Hazardous Materials Regulations (HMR) in order to clarify the relationship among Federal, State, local, and tribal agencies in the regulation of hazardous materials. Under circumstances specified in Federal statutes, the regulations of other Federal agencies (EPA and OSHA) and non-Federal governments (States, localities, and Indian tribes) must be consistent with or defer to RSPA's regulation of the transportation of hazardous materials in commerce. However, other Federal and non-Federal requirements are generally not limited where hazardous materials are not in transportation. Activities relating to loading, unloading, and storage of hazardous materials have become areas of particular uncertainty and concern to both industry and non-Federal governments. This action is significant because of the substantial public interest in reducing uncertainty and avoiding conflicting regulations.

Timetable:

Action	Date	FR Cite
ANPRM	07/29/96	61 FR 39522
ANPRM Comment Period End	11/30/96	
SANPRM	04/27/99	64 FR 22718
SANPRM Comment Period End Extended to 08/25/1999	07/26/99	
NPRM	06/14/01	66 FR 32420
NPRM Comment Period Extended to 08/02/2001 & Public Meetings	08/02/01	66 FR 40174
NPRM Comment Period End	11/30/01	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Tribal, Federal

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: Docket No. HM-223; RSPA-98-4952. As a result of comments received to the ANPRM, we have upgraded this rulemaking to significant.

Agency Contact: Susan Gorsky, Senior Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-8553

DOT—RSPA

Final Rule Stage

Email: rules@rspa.dot.gov

RIN: 2137–AC68

2418. HAZARDOUS MATERIALS: REQUIREMENTS FOR CARGO TANKS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 107; 49 CFR 173; 49 CFR 178; 49 CFR 180

Legal Deadline: None

Abstract: This rulemaking revises and clarifies certain manufacturing, maintenance and use requirements pertaining to cargo tank motor vehicles that may be used for hazardous materials transportation. FMCSA inspections have resulted in a preliminary determination that these regulations need to be amended to make them more practical, understandable, and enforceable.

Timetable:

Action	Date	FR Cite
NPRM	12/04/01	66 FR 63905
NPRM Comment Period Extended	02/01/02	67 FR 4941
NPRM Comment Period End	04/04/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations, Businesses, Governmental Jurisdictions

Government Levels Affected: None

Additional Information: HM-213; RSPA-98-3554.

Agency Contact: Michael Johnsen, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AC90

2419. PIPELINE SAFETY: RECOMMENDATIONS TO CHANGE HAZARDOUS LIQUID PIPELINE SAFETY STANDARDS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 60101 to 60128

CFR Citation: 49 CFR 195

Legal Deadline: None

Abstract: In 1995, the National Association of Pipeline Safety Representatives (NAPSR) completed its review of the hazardous liquid pipeline safety regulations. NAPSR provided RSPA with 28 recommendations for changes to 49 CFR part 195, the hazardous liquid pipeline regulations. NAPSR's recommendations are aimed at making the regulations more explicit, understandable, and enforceable. This action would address the need to change part 195 as NAPSR recommended.

Timetable:

Action	Date	FR Cite
NPRM	09/06/02	67 FR 56970
Final Rule	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket No. RSPA-97-2717.

Agency Contact: L. M. Furrow, Regulations Manager, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4559

RIN: 2137–AD10

2420. HAZARDOUS MATERIALS: REVISIONS TO INCIDENT REPORTING REQUIREMENTS AND DETAILED HAZARDOUS MATERIALS INCIDENT REPORT DOT FORM

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5105 to 5127

CFR Citation: 49 CFR 171

Legal Deadline: None

Abstract: This rulemaking would revise the hazardous materials incident reporting regulations in 49 CFR part 171, including the hazardous materials incident report (form 5800.1). The goal of this rulemaking is to simplify, update and review the requirements while enhancing the ability of the Research and Special Programs Administration and the DOT modal administrations to gather information vital to increasing safety of transporting hazardous materials.

Timetable:

Action	Date	FR Cite
ANPRM	03/23/99	64 FR 13943
ANPRM Comment Period End	06/21/99	
NPRM	07/03/01	66 FR 35155
NPRM Comment Period End	10/01/01	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal

Additional Information: Docket No. HM-229; RSPA-99-5013.

Agency Contact: Michael Johnsen, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AD21

2421. HAZARDOUS MATERIALS: AIR CARRIER EMERGENCY TELEPHONE NUMBER REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 172; 49 CFR 175

Legal Deadline: None

Abstract: The rulemaking addresses safety recommendations from the National Transportation Safety Board to require that air carriers transporting hazardous materials have the means, 24 hours per day, to quickly retrieve and provide to emergency responders consolidated specific information about the identity and location of all hazardous materials on an aircraft in a timely manner.

Timetable:

Action	Date	FR Cite
ANPRM	08/15/00	65 FR 49777
ANPRM Comment Period End	11/13/00	
NPRM	02/13/02	67 FR 6669
NPRM Comment Period End	04/26/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

DOT—RSPA

Final Rule Stage

Additional Information: Docket No. HM-206C; RSPA-00-7762.

Agency Contact: Gigi L. Corbin, Transportation Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW, Washington, DC 20590
Phone: 202 366-8553
Fax: 202 366-3012
Email: rules@rspa.dot.gov

RIN: 2137–AD29

2422. PIPELINE SAFETY: PERIODIC UPDATES TO PIPELINE SAFETY REQUIREMENTS (1999)

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 60101 et seq

CFR Citation: 49 CFR 190; 49 CFR 191; 49 CFR 192; 49 CFR 195

Legal Deadline: None

Abstract: This periodic update revises and updates the pipeline safety regulations to provide clarity and remove unnecessary burdens to the regulated pipeline community. Revisions include updated references to voluntary specifications and standards incorporated by reference in the pipeline safety regulations, and various clarifications and grammatical corrections. These updates reflect the most recent editions of each specification and standard incorporated by reference. These updates enable pipeline operators to utilize current technology, materials, and practices, thereby reducing costs and enhancing economic growth.

Timetable:

Action	Date	FR Cite
NPRM	03/22/00	65 FR 15290
NPRM Comment Period End	05/22/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. RSPA-99-6106

Agency Contact: Richard D. Huriaux, Director, Technology & Regulations, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4565

RIN: 2137–AD35

2423. PIPELINE SAFETY: PRODUCER-OPERATED OUTER CONTINENTAL SHELF GAS AND HAZARDOUS LIQUID PIPELINES THAT CROSS DIRECTLY INTO STATE WATERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 60101 et seq

CFR Citation: 49 CFR 192; 49 CFR 195

Legal Deadline: None

Abstract: This proposed rule would implement a provision of the December 10, 1998 Memorandum of Understanding (MOU) between the Department of the Interior (DOI) and the Department of Transportation (DOT) regarding Outer Continental Shelf (OCS) Pipelines. This rule would address producer-operated pipelines that cross into State waters without first connecting with a transporting operator's facility on the OCS. It is complementary to the Direct Final Rule that addressed OCS oil or gas pipelines located upstream of the points at which operating responsibility for the pipelines transfers from a producing operator to a transporting operator (62 FR 61692, November 19, 1997; and 63 FR 126598, March 16, 1998). The proposed rule also would address the procedures by which producer and transportation pipeline operators would petition for permission to operate under either DOT or DOI regulations governing pipeline design, construction, operation, and maintenance according to the operational circumstances of their respective pipelines.

Timetable:

Action	Date	FR Cite
NPRM	04/05/02	67 FR 15355
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. RSPA-99-6132.

Agency Contact: L.E. Herrick, Transportation Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5523

RIN: 2137–AD42

2424. REVISIONS; DEFINITION OF ADMINISTRATOR

Priority: Info./Admin./Other

Legal Authority: 33 USC 1321; 49 USC 5101 to 5127, 44701, 60101 et seq; PL 104-121, sec 212 to 213; 49 CFR 1.45 and 1.53

CFR Citation: 49 CFR 171 to 180; 49 CFR 190 to 199

Legal Deadline: None

Abstract: Modifies or adds the definition of "Administrator" for clarification and consistency within the RSPA regulations.

Timetable:

Action	Date	FR Cite
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Astrid Lopez-Goldberg, Attorney, Department of Transportation, Research and Special Programs Administration
Phone: 202 366-4400

RIN: 2137–AD43

2425. HAZARDOUS MATERIALS: MISCELLANEOUS AMENDMENTS FOR UNLOADING IM PORTABLE TANKS ON A TRANSPORT VEHICLE—PETITION FOR RULEMAKING

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 177

Legal Deadline: None

Abstract: RSPA is responding to a petition for rulemaking regarding the requirements applicable to the unloading of intermodal (IM) portable tanks while on a transport vehicle.

Timetable:

Action	Date	FR Cite
NPRM	02/22/02	67 FR 8220
NPRM Comment Period End	04/08/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM-218A; RSPA-01-10533.

DOT—RSPA — Final Rule Stage

Agency Contact: Joan McIntyre, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AD44

2426. HAZARDOUS MATERIALS: TRANSPORTATION OF LITHIUM BATTERIES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 172 to 175

Legal Deadline: None

Abstract: RSPA is revising requirements applicable to lithium batteries for consistency with international requirements.

Timetable:

Action	Date	FR Cite
NPRM	04/02/02	67 FR 15510
NPRM Comment Period End	06/14/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM Docket: HM-224C

Agency Contact: John A. Gale, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW, Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AD48

2427. HAZARDOUS MATERIALS: REDUCTION OF REGISTRATION FEES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 107

Legal Deadline: None

Abstract: RSPA proposed to reduce the hazmat registration fee for all persons who transport or offer for transportation certain categories and quantities of hazmat, replace the reference to the standard industrial classification (SIC) code with the North American Industry Classification System (NAICS), and clarify the registration fee for not-for-profit organizations. RSPA is delaying final action on these proposals because of their interaction with final action on the FY 2003 Federal budget.

Timetable:

Action	Date	FR Cite
NPRM	12/07/00	65 FR 76890
NPRM Comment Period End	02/02/01	
NPRM; Status	05/02/01	66 FR 22080
Final Rule	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket No. HM-208D; RSPA-00-8439.

Agency Contact: Deborah Boothe, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AD53

2428. PIPELINE SAFETY: HAZARDOUS LIQUID PIPELINE OPERATOR ANNUAL REPORTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5103; 49 USC 60102; 49 USC 60104; 49 USC 60108; 49 USC 60109; 49 USC 60118; 49 CFR 1.53

CFR Citation: 49 CFR 195

Legal Deadline: None

Abstract: This rulemaking would amend the pipeline safety regulations to require hazardous liquid pipeline operators to submit a Hazardous Liquid Operator Annual Report. The information on the hazardous liquid operator annual report form is needed to normalize hazardous liquid accident information for identifying safety trends in the accident data. The inventory information that the annual report would provide addresses a major deficiency in the current information collection. Through a separate rulemaking, RSPA is also improving the hazardous liquid accident form by expanding "failure cause" categories and collecting more detailed information about the impact of failed pipelines. Together with the improved hazardous liquid accident report, the proposed Hazardous Liquid Operator Annual Report will address the concerns of RSPA/OPS, the National Transportation Safety Board (NTSB), Congress, and others, increase the overall usefulness of the data, and make analysis more efficient and meaningful.

Timetable:

Action	Date	FR Cite
NPRM	07/26/02	67 FR 48844
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. RSPA-01-9832.

Agency Contact: Roger Little, Department of Transportation, Research and Special Programs Administration
Phone: 202 366-4569

RIN: 2137–AD59

2429. HAZARDOUS MATERIALS: SECURITY REQUIREMENTS FOR OFFERORS AND TRANSPORTERS OF HAZARDOUS MATERIALS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 107; 49 CFR 172; 49 CFR 173; 49 CFR 177; 49 CFR 397

Legal Deadline: None

Abstract: This interim final rule will establish certain requirements designed to enhance the security of hazardous materials in transportation.

Timetable:

Action	Date	FR Cite
NPRM	05/02/02	67 FR 22028
Comment Period Extended	05/23/02	67 FR 36138
NPRM Comment Period End	07/03/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket HM-232; RSPA-02-12064.

Agency Contact: Susan Gorsky, Senior Regulations Specialist, Department of Transportation, Research and Special

DOT—RSPA — Final Rule Stage

Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AD67

2430. • HAZARDOUS MATERIALS: REVISION TO PERIODIC TIRE CHECK REQUIREMENT FOR MOTOR CARRIERS TRANSPORTING HAZARDOUS MATERIALS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 et seq; 49 USC 322

CFR Citation: 49 CFR 397

Legal Deadline: None

Abstract: This is a joint rulemaking. The Research and Special Programs Administration and the Federal Motor Carrier Safety Administration are proposing to eliminate an outdated requirement for operators of motor vehicles transporting hazardous materials to stop periodically to check tires.

Timetable:

Action	Date	FR Cite
NPRM	07/16/02	67 FR 46624
NPRM Comment Period End	08/15/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. HM-232B; RSPA-02-12773.

Agency Contact: Susan Gorsky, Senior Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AD69

2431. • HAZARDOUS MATERIALS: REVISION TO PENALTY GUIDELINES

Priority: Info./Admin./Other

Legal Authority: 49 USC 5101 et seq

CFR Citation: 49 CFR app A to subpart D

Legal Deadline: None

Abstract: This final rule will make revisions to RSPA's guidelines in appendix A to 49 CFR part 107, subpart D, which set forth policy and procedures for assessing civil penalties for violations of the Federal Hazardous Materials Transportation Law and the Hazardous Materials Regulations. This rule will add baseline penalty amounts for additional violations, adjust baseline penalty amounts for other violations, and state that RSPA now considers prior violations for 6 years rather than 5.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Machado, Attorney, Department of Transportation, Research and Special Programs Administration
Phone: 202 366-4400
Fax: 202 366-7041

RIN: 2137–AD71

Department of Transportation (DOT)
Research and Special Programs Administration (RSPA)

Long-Term Actions

2432. PIPELINE SAFETY: PASSAGE OF INTERNAL INSPECTION DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 60101 to 60125

CFR Citation: 49 CFR 192; 49 CFR 195

Legal Deadline: None

Abstract: A final rule (59 FR 17275; April 12, 1994) amended the gas and hazardous liquid pipeline safety regulations to require that new and certain replacement pipelines be designed and constructed to accommodate the passage of instrumented internal inspection devices ('smart pigs'). This action was in response to a mandate in the pipeline Safety Reauthorization Act of 1988. The intended effect of amended regulations was to improve the safety of gas, hazard liquid, and carbon dioxide pipelines by permitting their inspection by 'smart pigs' using the latest technology for detecting and recording abnormalities in the pipe wall. This rule required new and replacement pipelines to be capable of passing a 'pig' for internal inspection.

In response to two petitions for reconsideration, Notice 2 (59 FR 49896; September 30, 1994) was published to extend the compliance date for existing gas transmission lines and to modify the requirements for modification of line sections based on partial replacement of gas transmission pipelines located offshore and in rural areas. Subsequently, Notice 3 (60 FR 7133; February 7, 1995) was published to suspend enforcement of the final rule requirements for new and existing offshore gas transmission lines and for modifications to line segments based on partial replacement of pipe in existing onshore gas transmission lines. Nonetheless, hazardous liquid pipelines, carbon dioxide pipelines, new onshore gas transmission lines, and the actual replaced components in existing onshore gas transmission lines must comply with the final rule of April 1994. The next action is undetermined.

Timetable:

Action	Date	FR Cite
NPRM	11/20/92	57 FR 54745
NPRM Comment Period End	01/19/93	
Final Rule	04/12/94	59 FR 17275
NPRM	09/30/94	59 FR 49896
NPRM Correction	10/19/94	59 FR 52863
Limited Suspension of Enforcement	02/07/95	60 FR 7133
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket No. PS-126. The integrity testing proposal in Proposals for Pipeline Safety, RIN 2137-AB27, was consolidated, in part, into this rulemaking. The final rule (59 FR 17275; April 12, 1994) amended the gas and hazardous liquid pipeline safety regulations to require that new and

certain replacement pipelines be designed and constructed to accommodate the passage of instrumented internal inspection devices ('smart pigs'). This action was in response to a mandate in the Pipeline Safety Reauthorization Act of 1988. The intended effect of these amended regulations was to improve the safety of gas, hazardous liquid, and carbon dioxide pipelines by permitting their inspection by 'smart pigs' using the latest technology for detecting and recording abnormalities in the pipe wall. This rule required new and replacement pipelines to be capable of passing a 'pig' for internal inspection.

ANALYSIS: Regulatory Evaluation, 04/12/94, 59 FR 17275

Agency Contact: Richard D. Huriaux, Director, Technology & Regulations, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4565

RIN: 2137–AB71

2433. +SAFEGUARDING FOOD FROM CONTAMINATION DURING TRANSPORTATION

Priority: Other Significant

Legal Authority: 49 USC 5701 to 5714

CFR Citation: 49 CFR 1

Legal Deadline: Final, Statutory, August 1, 1991.

Abstract: The Sanitary Food Transportation Act of 1990 (49 USC 5701 et seq.) requires the Secretary of Transportation, in consultation with the Secretaries of Agriculture and Health and Human Services and the Administrator of the Environmental Protection Agency, to issue regulations concerning the transportation of food, food additives, drugs, devices, and cosmetics in motor and rail vehicles also used to transport nonfood products that could pose an unreasonable danger to human or animal health when so transported. This rulemaking will implement the statutory requirements. This rulemaking is significant because of substantial public and congressional interest. RSPA's next action is undetermined because it has requested personnel resources from Congress necessary to perform these food safety functions.

Timetable:

Action	Date	FR Cite
ANPRM	02/20/91	56 FR 6934
ANPRM Comment Period Extended to 04/29/1991	03/21/91	56 FR 11982
NPRM	05/21/93	58 FR 29698
Notice of Public Hearing	05/21/93	58 FR 29698
NPRM Comment Period End	10/18/93	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Additional Information: ANALYSIS: Regulatory Evaluation, 05/21/93, 58 FR 29698

Agency Contact: Michael Johnsen, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AC00

2434. HAZARDOUS MATERIALS: CARGO TANK ROLLOVER REQUIREMENTS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 178

Legal Deadline: None

Abstract: The purpose of this advance notice of proposed rulemaking is to request comments concerning the need, if any, for amending the Hazardous Materials Regulations with regard to standards for cargo tank rollover protection devices on specification DOT 406, 407 and 412 cargo tank motor vehicles.

Timetable:

Action	Date	FR Cite
ANPRM	11/16/99	64 FR 62161
ANPRM Comment Period End	05/15/00	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Additional Information: HM Docket: HM-213A; RSPA-99-5921.

Agency Contact: Michael Stevens, Transportation Specialist, Department of Transportation, Research and Special Programs Administration, Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AD34

2435. HAZARDOUS MATERIALS: ADOPTION OF LATEST IAEA AND OTHER MISCELLANEOUS REVISIONS AND CLARIFICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 171 to 180

Legal Deadline: None

Abstract: This rulemaking proposes to harmonize the requirements for the packaging and transportation of Class 7 (radioactive) materials with the International Atomic Energy Agency (IAEA) regulations for the safe transportation of radioactive material and the United Nations recommendations.

Timetable:

Action	Date	FR Cite
ANPRM	12/28/99	64 FR 72633
ANPRM Comment Period Extended	03/01/00	65 FR 11028
ANPRM Comment Period End	03/29/00	
ANPRM Comment Period End	06/29/00	
NPRM	04/30/02	67 FR 21328
NPRM Comment Period End	07/29/02	
Final Action	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM-230; RSPA-99-6283.

Agency Contact: Charles E. Betts, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AD40

2436. HAZARDOUS MATERIALS: REVISION OF THE REQUIREMENTS FOR HAZARDOUS WASTE MANIFESTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101-5127

CFR Citation: 49 CFR 172

Legal Deadline: None

Abstract: The NPRM proposed to update the Hazardous Waste Manifest requirements to accommodate changes the Environmental Protection Agency has proposed, including the use of electronic versions of the Hazardous Waste Manifest and electronic signatures.

Timetable:

Action	Date	FR Cite
NPRM	08/08/01	66 FR 41490
NPRM Comment Period End	10/04/01	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Tribal, Federal

Additional Information: HM Docket: HM-206E; RSPA-01-10292.

Agency Contact: Michael Johnsen, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AD50

Department of Transportation (DOT) — Completed Actions
Research and Special Programs Administration (RSPA)

2437. +HAZARDOUS MATERIALS: REQUIREMENTS FOR CYLINDERS

Priority: Other Significant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 172; 49 CFR 173; 49 CFR 178

Legal Deadline: None

Abstract: This rulemaking proposed to amend the Hazardous Materials Regulations (HMR) by updating and consolidating requirements for the manufacture, maintenance, requalification, repair, and use of compressed gas cylinders. Because of significant adverse comment, this rulemaking will be terminated. RSPA will address the proposals in this rulemaking applicable to maintenance, requalification and repair of DOT specification cylinders; approval for cylinder requalifiers, independent inspection agencies, and non-domestic chemical analyses and tests in a final rule under RIN 2137-AD58. Cylinder manufacturing issues will be addressed in a separate rulemaking action.

Timetable:

Action	Date	FR Cite
NPRM	10/30/98	63 FR 58460
NPRM Comment Period Extended to 09/30/1999	05/28/99	64 FR 28065
NPRM Comment Period End	05/28/99	
Withdrawn	02/13/02	67 FR 6667

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Formerly entitled Review: Consolidation of Specifications for High-Pressure Seamless Cylinders. Docket No. HM-220.

Agency Contact: Charles E. Betts, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AA92

2438. DOT 3AL ALUMINUM CYLINDERS; SAFETY PROBLEMS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 178

Legal Deadline: None

Abstract: Certain DOT 3AL cylinders made of aluminum alloy 6351 have developed cracks during service, and occasionally leaks developed resulting in loss of contents. The ANPRM was intended to alert and inform all persons possessing these cylinders of the problems, identify those cylinders at risk, and suggest steps to minimize risks. Safety issues will be handled and this rulemaking addressed under RIN 2137-AD58.

Timetable:

Action	Date	FR Cite
ANPRM	07/10/87	52 FR 26027
ANPRM Comment Period End	08/10/87	
Final Action	08/08/02	67 FR 51626
Final Action Effective	10/01/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Undetermined

Additional Information: Docket No. HM-176A. Safety issues originally considered by this action are being addressed in Docket HM-220D, RIN 2137-AD58.

ANALYSIS: Regulatory Evaluation

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RIN: 2137–AB51

2439. +HAZARDOUS MATERIALS: REVISIONS TO STANDARDS FOR INFECTIOUS SUBSTANCES AND GENETICALLY MODIFIED MICROORGANISMS

Priority: Other Significant

Legal Authority: 33 USC 1321; 49 USC 5101 to 5127

CFR Citation: 49 CFR 171; 49 CFR 172; 49 CFR 173; 49 CFR 174; 49 CFR 175; 49 CFR 176; 49 CFR 177; 49 CFR 178

Legal Deadline: None

Abstract: This rulemaking amends the Hazardous Materials Regulations to provide for the transport of infectious medical waste in bulk packagings, remove the blanket exception for transporting biological products and diagnostic specimens, and revises the

definition, hazardous communication, and packaging requirements for other infectious substances and genetically modified microorganisms to make them consistent with international transportation requirements. RSPA held a public meeting on the ANPRM via the Internet.

Timetable:

Action	Date	FR Cite
ANPRM	09/02/98	63 FR 46844
ANPRM Comment Period End	12/01/98	
NPRM	01/22/01	66 FR 7942
NPRM Comment Period End	04/23/01	
Final Action	08/14/02	67 FR 53118
Final Rule Correction	08/27/02	67 FR 54967
Final Action Effective	02/14/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: Docket No. HM-226. DMS Docket No. RSPA- 98-3971.

Agency Contact: Susan Gorsky, Senior Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD13

2440. HAZARDOUS MATERIALS: REVISED AND CLARIFIED HAZARDOUS MATERIALS SAFETY RULEMAKING AND PROGRAM PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 106; 49 CFR 107

Legal Deadline: None

Abstract: This rulemaking makes minor substantive changes to 49 CFR parts 106 and 107 of the hazardous materials procedural regulations, and results in a revision of those parts in language that is easier to understand. This action was taken to update RSPA's hazardous materials procedural regulations and to rewrite the current requirements to be more user-friendly.

Timetable:

Action	Date	FR Cite
NPRM	12/11/98	63 FR 68624
NPRM Comment Period End	02/09/99	
Final Rule	06/25/02	67 FR 42948
Final Rule Effective	07/25/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Additional Information: Docket No. RSPA-98-3974. (RSP-4)

Agency Contact: Karin V. Christian, Attorney, Room 8407, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD20

2441. PIPELINE SAFETY: ENFORCEMENT PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 60101 to 60125

CFR Citation: 49 CFR 190.209; 49 CFR 190.213

Legal Deadline: None

Abstract: This action sought to revise RSPA's pipeline safety enforcement procedures to minimize paperwork in uncontested cases where a person pays a proposed civil penalty or agrees to a proposed compliance order. The procedures will be changed to show that both responses are considered offenses in determining any future civil penalty assessments. These changes have been made without the need for a rulemaking. Therefore, this action is terminated.

Timetable:

Action	Date	FR Cite
NPRM	08/12/99	64 FR 43972
NPRM Comment Period End	10/12/99	
Withdrawn	08/16/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. RSPA-98-4284. The changes to part 190 modify agency rules of practice and procedure.

Agency Contact: Linda Daugherty, Enforcement Officer, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD22

2442. PIPELINE SAFETY: PRESSURE TESTING OLDER PIPELINES IN TERMINALS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 60101 to 60125

CFR Citation: 49 CFR 195.302

Legal Deadline: None

Abstract: Certain older pipelines in terminals and tank farms must be pressure tested before December 7, 2003. Based on a petition, RSPA is reconsidering this testing requirement in light of the risk and low operating stress of these pipelines. RSPA has stayed enforcement of the testing requirement against pipelines designed not to operate above 20 percent of specified minimum yield strength. Because of the new integrity management rules issued in other dockets, there is no longer a need to separately address the risks and testing requirements for terminals and tank farms. Therefore, this action is terminated.

Timetable:

Action	Date	FR Cite
Withdrawn	08/16/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Additional Information: Docket No. RSPA-98-4316. Notice requesting comment 2/10/98 (63 FR 6677) in Docket No. PS-121. Enforcement Stay (63 FR 63210; November 12, 1998).

Agency Contact: Mike Israni, General Engineer, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD26

2443. HARMONIZATION WITH UNITED NATIONS RECOMMENDATIONS, INTERNATIONAL MARITIME DANGEROUS GOODS CODE, AND INTERNATIONAL CIVIL AVIATION ORGANIZATION'S TECHNICAL INSTRUCTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 171 to 180

Legal Deadline: None

Abstract: In a final rule published on June 21, 2001, RSPA amended the Hazardous Materials Regulations (HMR) to maintain alignment with international standards, promulgated by the United Nations, the International Maritime Organization, the International Civil Aviation Organization, and the International Atomic Energy Agency, by incorporating numerous changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air-transport quantity limitations and vessel stowage requirements.

In a final rule published in the Federal Register on February 1, 2001, RSPA adopted some of the standards proposed in the NPRM.

Timetable:

Action	Date	FR Cite
NPRM	10/23/00	65 FR 63294
NPRM Comment Period End	12/23/00	
Final Rule	02/01/01	66 FR 8644
Final Rule	06/21/01	66 FR 33316
Correction	04/03/02	67 FR 15736
Final Action Effective	04/03/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM-215D. Docket No. RSPA-00-7702.

Agency Contact: Joan McIntyre, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD41

2444. PIPELINE SAFETY: PIPELINE INTEGRITY MANAGEMENT IN HIGH-CONSEQUENCE AREAS (HAZARDOUS LIQUID OPERATORS WITH LESS THAN 500 MILES OF PIPELINE)

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5121; 49 USC 60102 to 60104; 49 USC 60117 to 60118; 49 USC 60124; 49 CFR 1.53

CFR Citation: 49 CFR 195

Legal Deadline: None

Abstract: The rule will apply to hazardous liquid pipeline operators who own or operate less than 500 miles of pipelines. The rule will require integrity assessment of pipeline segments that could affect high-consequence areas, and consideration of additional preventive and mitigative actions to protect these locations from pipeline spills. OPS is proposing that an operator develop and follow an integrity management program that continually assesses and evaluates the integrity of those pipelines that could affect a high-consequence area, through internal inspection or pressure testing, and data integration and analysis.

Timetable:

Action	Date	FR Cite
NPRM	03/21/01	66 FR 15821
NPRM Comment Period End	05/21/01	
Final Action	01/16/02	67 FR 2136

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Docket No. RSPA-00-7408.

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RIN: 2137–AD49

2445. HAZARDOUS MATERIALS: REQUIREMENTS FOR MAINTENANCE, REQUALIFICATION, AND REPAIR OF DOT SPECIFICATION CYLINDERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 107; 49 CFR 171 to 173; 49 CFR 177 to 178; 49 CFR 180

Legal Deadline: None

Abstract: The rulemaking makes changes to the Hazardous Materials Regulations to revise the requirements for maintenance, requalification and repair of all DOT specification cylinders. In addition it revises the requirements for approval of cylinder requalifiers, independent inspection agencies, and nondomestic chemical analysis and tests, and revises certain requirements in certain cylinder inspections. Certain cylinder manufacturing proposals will be handled in a separate rulemaking action. The NPRM was under RIN 2127-AA92.

Timetable:

Action	Date	FR Cite
NPRM	10/30/98	63 FR 38460
NPRM Comment Period End	09/30/99	64 FR 28965
Final Action	08/08/02	67 FR 51626
Final Action - Extension of Compliance Dates and Corrections	09/30/02	67 FR 61287
Final Action Effective	10/01/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: HM Docket: HM-220D; RSPA-01-10373.

Agency Contact: Charles E. Betts, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD58

2446. PIPELINE SAFETY: INTEGRITY MANAGEMENT COMMUNICATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5103, 60102, 60104, 60108, 60110, 601132, 60118; 49 CFR 1.53

CFR Citation: 49 CFR 192; 49 CFR 195

Legal Deadline: None

Abstract: In connection with the series of rules on Pipeline Integrity Management in High-Consequence

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Areas, the Office of Pipeline Safety (OPS) had planned to propose related rules governing operator communications with local public officials and agencies. The issuance of integrity management rules for hazardous liquid pipelines and the upcoming proposed rule for gas transmission pipelines, along with voluntary communications efforts by the pipeline industry and regulators, eliminates the need for action in this docket. Therefore, this action is terminated.

Timetable:

Action	Date	FR Cite
Withdrawn	08/16/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. RSPA-00-7795.

Agency Contact: Mike Israni, General Engineer, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD62

2447. PIPELINE SAFETY: CONTROLLING CORROSION ON GAS PIPELINES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5103, 60102, 60104, 60108, 60109, 60113, 60118; 49 CFR 1.53

CFR Citation: 49 CFR 192

Legal Deadline: None

Abstract: The corrosion-control regulations for gas pipelines would be revised to incorporate the latest safety practices for corrosion protection of steel pipe. Any changes would be comparable to the requirements for hazardous liquid and carbon dioxide pipelines in 49 CFR part 195. At this time, the gas pipeline corrosion regulations are consistent with the latest standards. Therefore, no action is needed and this matter is terminated.

Timetable:

Action	Date	FR Cite
Withdrawn	08/16/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. RSPA-01-10337. Information in Docket No. RSPA-97-2762 (RIN 2137-AD24) will be considered in this proceeding.

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RIN: 2137–AD63

2448. PIPELINE SAFETY: HIGH CONSEQUENCE AREAS FOR GAS TRANSMISSION OPERATORS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5103, 60102, 60104, 60108, 60109, 60118 and 49 CFR 1.53

CFR Citation: 49 CFR 192

Legal Deadline: None

Abstract: The Office of Pipeline Safety (OPS) considers "high-consequence" areas (HCA) to be areas where the potential consequences of a gas pipeline accident may be significant, including the risk of significant harm to people and property. For gas transmission pipelines, this rulemaking proposes to define HCAs to include all Class 3 and 4 areas (as specified in part 192); any areas within 660 feet of the pipeline (or within 1,000 feet where the pipeline is greater than 30 inches in diameter and operates at maximum allowable operating pressure (MAOP) of 100 pounds per square inch (psig) or greater) where there are hospitals, schools, day-care centers, retirement homes, prisons, or other hard-to-evacuate places occupied by 20 or more persons where at least 20 people congregate at least 50 days in any 12-month period (such as beaches, recreational facilities, camping grounds and museums, etc.).

Timetable:

Action	Date	FR Cite
NPRM	01/09/02	67 FR 1108
Final Rule	08/06/02	67 FR 50824
Final Rule Effective	09/05/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: Docket No. RSPA-00-7666. This proceeding relates to RIN 2137-AD54.

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RIN: 2137–AD64

2449. HAZARDOUS MATERIALS: HAZARDOUS SUBSTANCES—ADDITIONS, REVISIONS AND DELETIONS

Priority: Routine and Frequent

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 172

Legal Deadline: None

Abstract: RSPA is making minor revisions, additions, and deletions to the Hazardous Substances Reportable Quantities (RQ) Table to reflect changes in the 42 CFR section 302.4 table which designates hazardous substances and their reportable quantities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). This action is necessary to comply with the Superfund Amendments and Reauthorization Act (LSARA) of 1986 which amended CERCLA (1980) to mandate RSPA to regulate, under the HMR, all hazardous substances designated by the Environmental Protection Agency (EPA).

Timetable:

Action	Date	FR Cite
Final Action	03/05/02	67 FR 9926
Correction	03/25/02	67 FR 13680
Final Action Effective	10/01/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM Docket: HM-145M; RSPA-02-11675.

Agency Contact: Michael Johnsen, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD65

2450. • HAZARDOUS MATERIALS: MINOR EDITORIAL CORRECTIONS AND CLARIFICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 105; 49 CFR 107; 49 CFR 171 to 180

Legal Deadline: None

Abstract: This final rule corrects editorial errors, makes minor regulatory changes, and, in response to requests for clarification, improves the clarity of certain provisions in the Hazardous Materials Regulations.

Timetable:

Action	Date	FR Cite
Final Rule	09/27/02	67 FR 61006
Final Rule Effective	09/27/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM Docket: HM-189T

Agency Contact: Eileen Edmonson, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD72

2451. • HAZARDOUS MATERIALS: MISCELLANEOUS REVISIONS TO THE REGISTRATION REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5191 to 5127

CFR Citation: 49 CFR 107

Legal Deadline: None

Abstract: RSPA is amending its regulations by making miscellaneous revisions to the registration requirements in the hazardous materials regulations. The revisions address use of the Small Business Administration's North American Industry Classification System to determine if an entity is a small business, provide that not-for-profit organizations will pay the fee assessed on small businesses, and clarify other registration procedures. These revisions were proposed under RSPA-00-8439 (HM-208D); RIN 2137-AD53.

Timetable:

Action	Date	FR Cite
Final Action	09/16/02	67 FR 58343
Final Action Effective	01/16/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM Docket: HM208E the NPRM for this rulemaking was issued under RIN: 2137-AD53 RSPA-008439 (HM-208D)

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RIN: 2137–AD74

Department of Transportation (DOT)
Maritime Administration (MARAD)

Proposed Rule Stage

2452. +CARGO PREFERENCE REGULATIONS—CARRIAGE OF OCEANGOING CARGO GENERATED BY GOVERNMENT PROGRAMS

Priority: Other Significant

Legal Authority: 46 app USC 1101; 1114(b), 1122(d), 1241

CFR Citation: 46 CFR 381; 49 CFR 1.66

Legal Deadline: None

Abstract: This action proposes to clarify the Maritime Administration's cargo preference regulations governing the carriage of oceangoing cargo generated by Government programs. The rulemaking will concern, among other issues: (1) incorporating into part 381 MARAD's existing rules on priority of service of various U.S.-flag services; (2) clarifying how shipper agencies should comply with the existing provisions of the regulations regarding geographic areas and booking cargo on U.S.-flag vessels before foreign-flag vessels; (3) redefining certain terms for clarity to bring them in line with commercial practices; and (4) other related issues. This rule is significant because of public interest.

Timetable:

Action	Date	FR Cite
ANPRM	01/28/99	64 FR 4382
ANPRM Comment Period End	03/29/99	
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Thomas W. Harrelson, Director, Office of Cargo Preference, Room 8118, Department of Transportation, Maritime Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5515

RIN: 2133–AB37

Department of Transportation (DOT)
Maritime Administration (MARAD)

Final Rule Stage

2453. REQUIREMENTS TO DOCUMENT U.S.-FLAG FISHING INDUSTRY VESSELS OF 100 FEET OR GREATER IN REGISTERED LENGTH AND TO HOLD PREFERRED MORTGAGE ON SUCH VESSELS

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-20

CFR Citation: 46 CFR 356

Legal Deadline: None

Abstract: The Maritime Administration is amending its regulations at 46 CFR part 356 which implement the U.S. citizenship requirements set forth in the American Fisheries Act of 1998 (AFA) for vessels of 100 feet or greater in registered length for which a fishery endorsement to the vessel's documentation is sought. On July 24, 2001, Congress passed a package of amendments to the AFA as part of the Supplemental Appropriations Act, 2001, section 2202, PL 107-20. This final rule will implement those new statutory requirements for owners and mortgagees of Fishing Vessels, Fish Processing Vessels and Fish Tender Vessels of 100 feet or greater (collectively referred to as "Fishing Industry Vessels"), amend the requirements to hold a preferred mortgage on such Fishing Industry Vessels, and make other minor amendments to the regulations to address issues that arose during the early stages of MARAD's implementation of the new AFA regulations.

Timetable:

Action	Date	FR Cite
NPRM	04/16/02	67 FR 18547
NPRM Comment Period End	06/17/02	
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2133–AB46

Department of Transportation (DOT)
Maritime Administration (MARAD)

Completed Actions

2454. AMENDMENT OF MARAD'S REGULATIONS ESTABLISHING AND ADMINISTERING DEPOSIT FUNDS AUTHORIZED BY SECTION 1109 OF MERCHANT MARINE ACT, 1936, AS AMENDED

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-107

CFR Citation: 46 CFR 298

Legal Deadline: None

Abstract: Recent legislation added section 1109 of the Merchant Marine Act, 1936, as amended. Section 1109 now authorizes the Secretary of Transportation to deposit with the United States Treasury and invest in obligations of the United States, funds belonging to Title XI obligors as collateral for the United States. As a consequence, MARAD will no longer deposit Title XI funds (held as collateral) in private banks. This final rule makes changes to existing procedures for establishing Construction Funds and Reserve Funds. The intended effect of the amendments is to simplify, reduce costs of, and expedite Title XI closings.

Timetable:

Action	Date	FR Cite
NPRM	06/12/02	67 FR 40260
NPRM Comment Period End	08/12/02	
Final Rule	09/30/02	67 FR 61280
Final Rule Effective	10/30/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard M. Lorr, Assistant Chief Counsel for Ship Financing, Department of Transportation, Maritime Administration, 400 Seventh St., SW, Washington, DC 20590
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Email: richard.lorr@marad.dot.gov

RIN: 2133–AB47

Department of Transportation (DOT)
Bureau of Transportation Statistics (BTS)

Prerule Stage

2455. MODERNIZING THE PASSENGER ORIGIN-DESTINATION SURVEY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 41708; 49 USC 41709

CFR Citation: 14 CFR 241

Legal Deadline: None

Abstract: Historically, the source document for the Passenger Origin-Destination Survey was the auditor's coupon of the ticket. Until recently, these coupons provided all the information that was needed for the Survey. In the last few years, the carriers have begun using trip passes in conjunction with the tickets, thereby eliminating some of the data that is required to be reported in the Survey. Other innovations used by the industry, such as change-of-gauge flights and code-sharing, have impacted the Survey and obscured some of the data that is required to be reported, such as change of planes and junction points. This rulemaking will explore whether there are alternative sources for the data and modernize the collection system to keep pace with the industry.

DOT—BTS

Prerule Stage

Timetable:

Action	Date	FR Cite
ANPRM	04/00/03	
NPRM	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: This action is related to and may be affected by RIN 2105-AC71. This action was formerly under RIN 2137-AB92 but is now being administered by the Bureau of Transportation Statistics (BTS) under RIN 2139-AA01 since the Office of Aviation Information has been transferred to BTS from RSPA.

Agency Contact: M. Clay Moritz, Jr., Acting Chief, Regulations Division, Office of Airline Information, K-14, Department of Transportation, Bureau of Transportation Statistics, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4385

RIN: 2139–AA01

Department of Transportation (DOT)
Bureau of Transportation Statistics (BTS)

Final Rule Stage

2456. +AMENDMENT TO PART 234 TO COLLECT CAUSAL INFORMATION FOR AIRLINE DELAYS AND CANCELLATIONS

Priority: Other Significant

Legal Authority: PL 106-181, sec 227

CFR Citation: 14 CFR 234

Legal Deadline: None

Abstract: DOT proposes to collect information on the causes of airline delays and cancellations. The information will be used by the Office of the Secretary, the Federal Aviation Administration, air carriers and airport operators to identify specific problem areas within the national aviation system. With this knowledge, the appropriate party or parties can take action to reduce or rectify the problem.

Timetable:

Action	Date	FR Cite
NPRM	12/27/01	66 FR 66833
NPRM Comment Period End	02/25/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: M. Clay Moritz Jr., Acting Chief, Regulations Division, Office of Airline Information, Department of Transportation, Bureau of Transportation Statistics, K-14, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4385

RIN: 2139–AA09

Department of Transportation (DOT)
Bureau of Transportation Statistics (BTS)

Completed Actions

2457. AMENDMENT TO DEFINITIONS OF REVENUE AND NONREVENUE PASSENGERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 329

CFR Citation: 14 CFR 217; 14 CFR 241; 14 CFR 298

Legal Deadline: None

Abstract: This action revises the definitions of revenue passenger and nonrevenue passenger. It specifies that a passenger traveling on a ticket or voucher received as compensation for denied boarding or as settlement of a consumer complaint is considered a revenue passenger. The revised definitions harmonize Departmental regulations with those adopted by the International Civil Aviation Organization (ICAO). This change prevents air carriers from being required to keep two sets of traffic enplanement statistics.

Timetable:

Action	Date	FR Cite
NPRM	08/22/00	65 FR 50946
NPRM Comment Period End	10/23/00	
Final Action	09/18/02	67 FR 58691
Final Action Effective	10/18/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: M. Clay Moritz Jr., Acting Chief, Regulations Division, Office of Airline Information, Department of Transportation, Bureau of Transportation Statistics, K-14, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2139–AA07

2458. AIR CARRIER TRAFFIC AND CAPACITY DATA BY NONSTOP SEGMENT AND ON-FLIGHT MARKET

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 41708

CFR Citation: 14 CFR 217; 14 CFR 241; 14 CFR 291; 14 CFR 298

Legal Deadline: None

Abstract: The Department of Transportation has modified certain parts of the Traffic Reporting System to require operating carriers to report joint-service operations. This final rule requires a report change for small certificated, commuter, and all-cargo air carriers on their air traffic activity. This requires U.S. carriers to report the detailed market and segment information for all their military, domestic all-cargo, and domestic charter flights.

Timetable:

Action	Date	FR Cite
NPRM	08/28/01	66 FR 45201

Action	Date	FR Cite
NPRM Comment Period End	11/26/01	
Final Action	07/30/02	67 FR 49217

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: M. Clay Moritz Jr., Acting Chief, Regulations Division, Office of Airline Information, Department of Transportation, Bureau of Transportation Statistics, K-14, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4385

RIN: 2139–AA08

[FR Doc. 02–27761 Filed 12–06–02; 8:45 am]
BILLING CODE 4910–62–S



Federal Register

Monday,
December 9, 2002

Part XV

Department of the Treasury

Semiannual Regulatory Agenda

DEPARTMENT OF THE TREASURY (TREAS)

DEPARTMENT OF THE TREASURY

31 CFR Subtitle A, Chs. I and II

Semiannual Agenda and Fiscal Year 2003 Regulatory Plan

AGENCY: Department of the Treasury.

ACTION: Semiannual regulatory agenda and fiscal year 2003 regulatory plan.

SUMMARY: This notice is given pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, September 19, 1980) and Executive Order (E.O.) 12866 ("Regulatory Planning and Review," September 30, 1993), which require the publication by the Department of a semiannual agenda of regulations. E.O. 12866 also requires the publication by the Department of a regulatory plan for fiscal year 2003.

FOR FURTHER INFORMATION CONTACT: For additional information about a specific entry in the agenda or plan, contact the "Agency Contact" identified in the agenda item relating to that regulation.

SUPPLEMENTARY INFORMATION: The semiannual agenda and The Regulatory Plan of the Department of the Treasury conform to the Unified Agenda format developed by the Regulatory Information Service Center (RISC).

For this edition of Treasury's regulatory agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Regulatory Plan entries are listed in the table of contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

Dated: October 3, 2002.

Richard S. Carro,

Senior Advisor to the General Counsel (Regulatory Affairs).

Departmental Offices—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2459	17 CFR 403.4 Amendments to the Government Securities Act Regulations: Customer Protection-Reserves and Custody of Securities	1505-AA94

Departmental Offices—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2460	17 CFR 420 Amendments to the Large Position Rules	1505-AA88
2461	48 CFR ch 10 Department of the Treasury Acquisition Regulation	1505-AA89
2462	31 CFR 5 Treasury Debt Collection	1505-AA90
2463	12 CFR 1806 Bank Enterprise Award (BEA) Program	1505-AA91
2464	12 CFR 1805 Community Development Financial Institutions (CDFI) Program	1505-AA92
2465	12 CFR 1805 Community Development Financial Institutions (CDFI) Program NPRM	1505-AA93

Departmental Offices—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2466	31 CFR ch II Possible Regulation of Access to Accounts at Financial Institutions Through Payment Service Providers	1505-AA74
2467	Financial Activities of Financial Subsidiaries	1505-AA80
2468	Financial Subsidiaries	1505-AA81
2469	12 CFR 1501.2 Secretary's Determination of Real Estate Brokerage	1505-AA84
2470	12 CFR 1501.2 Secretary's Determination of Other Activities Financial in Nature	1505-AA85
2471	31 CFR 19 Common Rule Suspension and Debarment	1505-AA86

Departmental Offices—Completed Actions

Sequence Number	Title	Regulation Identification Number
2472	31 CFR 104 Counter Money Laundering Requirements—Correspondent Accounts; Foreign Shell Banks	1505-AA87

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Financial Crimes Enforcement Network—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2473	31 CFR 103 Amendment to the Bank Secrecy Act Regulations—Delegation of Authority to Assess Civil Money Penalties on Depository Institutions	1506-AA08
2474	31 CFR 103.65 Amendments to the Bank Secrecy Act Regulations—Requirement that Financial Institutions Establish Anti-Money Laundering Programs	1506-AA28
2475	31 CFR 103.20 Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Requirement that Currency Exchangers Report Suspicious Transactions	1506-AA34
2476	31 CFR 103.16 Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations Requirement that Insurance Companies Report Suspicious Transactions	1506-AA36

Financial Crimes Enforcement Network—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2477	31 CFR 103 Amendment to the Bank Secrecy Act Regulations Regarding Reporting of Cross-Border Transportation of Certain Monetary Instruments	1506-AA15
2478	31 CFR 103 Amendment to the Bank Secrecy Act Regulations—Exemptions from the Requirement to Report Transactions in Currency	1506-AA23
2479	31 CFR 103.30 Amendment to the Bank Secrecy Act Regulations—Requirement that Nonfinancial Trades or Businesses Report Certain Currency Transactions	1506-AA25
2480	31 CFR 103.175-103.178 Due Diligence Requirements for Correspondent Accounts and Private Banking Accounts	1506-AA29
2481	31 CFR 103.121 Customer Identification Programs for Banks, Savings Associations, and Credit Unions	1506-AA31
2482	31 CFR 103.122 Customer Identification Program for Broker-Dealers	1506-AA32
2483	31 CFR 103.131 Customer Identification Program for Mutual Funds	1506-AA33

Financial Crimes Enforcement Network—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2484	31 CFR 103 Amendments to the Bank Secrecy Act Regulations—Special Reporting and Recordkeeping Requirements—Money Services Businesses (MSBs)	1506-AA19

Financial Crimes Enforcement Network—Completed Actions

Sequence Number	Title	Regulation Identification Number
2485	31 CFR 103 Amendments to the Bank Secrecy Act Regulations—Suspicious Activity Reporting—Broker/Dealers	1506-AA21
2486	31 CFR 103 Amendments to the Bank Secrecy Act Regulations—Suspicious Activity Reporting—Casinos	1506-AA22
2487	31 CFR 103.90 Financial Crimes Enforcement Network; Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity	1506-AA27
2488	Notice of Withdrawal of Exemption	1506-AA30
2489	31 CFR 104 Counter Money Laundering Requirements—Correspondent Accounts; Foreign Shell Banks	1506-AA35

Financial Management Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2490	31 CFR 240 Indorsement and Payment of Checks Drawn on the United States Treasury	1510-AA45
2491	31 CFR 245 Claims on Account of Treasury Checks	1510-AA51
2492	31 CFR 203 Payment of Federal Taxes and the Treasury Tax and Loan Program	1510-AA79
2493	31 CFR 206 Management of Federal Agency Receipts and Disbursements; Operation of the Cash Management Improvement Fund	1510-AA86

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Financial Management Service—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2494	31 CFR 215 Withholding of District of Columbia, State, City and County Income or Employment Taxes by Federal Agencies	1510-AA90

Financial Management Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2495	31 CFR 281 Foreign Exchange Operations	1510-AA48
2496	31 CFR 256 Payments Under Judgment and Private Relief Acts	1510-AA52
2497	31 CFR 285.5 Offset of Federal Payments (Other Than Tax Refund and Federal Benefit Payments) To Collect Past-Due, Legally Enforceable Nontax Debt	1510-AA65
2498	31 CFR 285.7 Salary Offset	1510-AA70
2499	31 CFR 285.8 Offset of Tax Refund Payment To Collect State Income Tax Obligations	1510-AA78
2500	31 CFR 210 2003 ACH Rules	1510-AA89

Financial Management Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2501	31 CFR 285.6 Offset of Federal Payments (Other Than Tax Refund and Federal Benefit Payments) To Collect Past-Due Debts Owed to States (Other Than Child Support)	1510-AA66
2502	31 CFR 285.14 Public Dissemination of Identity of Delinquent Debtors	1510-AA72
2503	31 CFR 223 Surety Bond Reimbursement Fund	1510-AA85

Financial Management Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
2504	31 CFR 205 Rules and Procedures for Efficient Federal-State Funds Transfers	1510-AA38

Bureau of Alcohol, Tobacco and Firearms—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2505	27 CFR 252 Exportation of Liquors	1512-AA98
2506	27 CFR 7 Revision of Brewery Regulations and Issuance of Regulations for Taverns on Brewery Premises (Brewpubs) **(Reg Plan Seq No. 112)**	1512-AB37
2507	27 CFR 4 Prohibition of Alcohol Beverage Containers and Standard of Fill for Distilled Spirits and Wine	1512-AB89
2508	27 CFR 4 Amended Standard of Identity for Sherry	1512-AB96
2509	27 CFR 7 Flavored Malt Beverages	1512-AC11
2510	27 CFR 16 Alcohol Beverage Health Warning Statement	1512-AC12
2511	27 CFR 24 Production of Dried Fruit and Honey Wines	1512-AC48
2512	27 CFR 9 Petition to Establish the Santa Barbara Highlands Viticultural Area	1512-AC53
2513	27 CFR 9 Proposed San Bernabe Viticultural Area	1512-AC60
2514	27 CFR 9 Petition to Establish the Trinity Lake Viticultural Area	1512-AC62
2515	27 CFR 4 Correction of Technical Error in 27 CFR Part 4	1512-AC63
2516	27 CFR 9 Petition to Establish Red Hills American Viticultural Area	1512-AC66
2517	27 CFR 9 Petition to Establish "Seneca Lake" as an American Viticultural Area	1512-AC70
2518	27 CFR 9 Petition to Establish "Bennett Valley" as an American Viticultural Area	1512-AC72
2519	27 CFR 9 Petition for the Establishment of "Red Hill" as an American Viticultural Area	1512-AC76
2520	27 CFR 9 Petition to Change the Temecula Viticultural Area's Name to Temecula Valley	1512-AC77

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Bureau of Alcohol, Tobacco and Firearms—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2521	27 CFR 9 Petition to Establish "Eola Hills" as a New American Viticultural Area	1512-AC78
2522	27 CFR 4 Proposed Addition of "Moscato Greco" as a Grape Variety Name for American Wines	1512-AC79
2523	27 CFR 9 Petition to Establish "Columbia Gorge" as a New American Viticultural Area	1512-AC81
2524	27 CFR 9 Petition to Establish "Alexandria Lakes" as a New American Viticultural Area	1512-AC85
2525	27 CFR 9 Petition to Establish "Red Hills of Dundee" as a New American Viticultural Area	1512-AC91
2526	27 CFR 9 Petition to Establish "Santa Maria Bench" as a New American Viticultural Area	1512-AC93
2527	27 CFR 9 Petition to Establish "Grand Lake O' the Cherokees" as a New American Viticultural Area	1512-AC97
2528	27 CFR 9 Petition to Establish "Snake River Valley" as a New Viticultural Area	1512-AC98
2529	27 CFR 9 Petition to Expand the Livermore Valley Viticultural Area	1512-AC99
2530	27 CFR 9 San Francisco Bay and Central Coast Viticultural Areas—Boundary Realignment/Expansion	1512-AD00
2531	27 CFR 9 Petition to Establish "Upper Arroyo Grande" as a New American Viticultural Area	1512-AD01
2532	27 CFR 9 Petition to Establish "Chehalem Mountains" as a New American Viticultural Area	1512-AD02
2533	27 CFR 9 Petition to Establish "Ribbon Ridge" as a New American Viticultural Area	1512-AD03
2534	27 CFR 9 Petition to Establish "Yamhill-Carlton District" as a New American Viticultural Area	1512-AD04
2535	27 CFR 55 Commerce in Explosives (Including Explosives in the Fireworks Industry) **(Rulemaking Resulting From a Section 610 Review) (Reg Plan Seq No. 113)**	1512-AB48
2536	27 CFR Part 55 Identification Markings Placed on Explosive Materials	1512-AC25
2537	27 CFR 55 Commerce in Explosives—Explosive Pest Control Devices	1512-AC80
2538	27 CFR 178 Implementation of Public Law 105-277, Making Omnibus Consolidated and Emerg. Supplemental Appropriations for FY 1999, Relating to the Permanent Provisions of the Brady Handgun Violence Prevention Act	1512-AB83
2539	27 CFR 178 Implementation of Public Law 105-277 Relating to Secure Gun Storage	1512-AC67
2540	Electronic Signatures; Electronic Submission of ATF Forms (2000R-458P)	1512-AC84
2541	27 CFR 270 Determination of Tax and Recordkeeping on Large Cigars	1512-AC22
2542	27 CFR 44 Regulatory Changes From Customs Service Final Rule (2001R-140T)	1512-AC56
2543	27 CFR 40 Shipments of Tobacco Products or Cigarette Papers or Tubes Without Payment of Tax.	1512-AC57
2544	27 CFR 45 Removal of Tobacco Products and Cigarette Papers and Tubes Without Payment of Tax for Use of the United States	1512-AC75
2545	27 CFR 40 Marks, Labels, Notices and Bonds for, and Removal of, Tobacco Products, and Cigarette Papers and Tubes	1512-AC90
2546	27 CFR 40 In-Transit Stops of Tobacco Products, and Cigarette Papers and Tubes, and Related Records, Without Payment of Tax	1512-AC95

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Bureau of Alcohol, Tobacco and Firearms—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2547	27 CFR 5 Labeling of Unaged Grape Brandy	1512-AB46
2548	27 CFR 19.11 Distilled Spirits Plant Regulatory Initiative Proposal	1512-AB58
2549	27 CFR 24.278 Implementation of Wine Credit Provisions of Public Law 104-188	1512-AB65
2550	27 CFR 24.66 Implementation of Public Law 105-34, Section 1416, Relating to Refund of Tax for Domestic Wine Returned to Bond Regardless of Merchantability (Taxpayer Relief Act of 1997)	1512-AB74
2551	27 CFR 4 Health Claims and Other Health Related Statements in the Labeling and Advertising of Alcohol Beverages	1512-AB97
2552	27 CFR 9 Petition to Propose "Yadkin Valley" as a New American Viticultural Area	1512-AC82
2553	27 CFR 4 Organic Claims in Labeling and Advertising of Alcohol Beverages	1512-AC87
2554	27 CFR 25 Brewery Forms	1512-AC88
2555	27 CFR 9 Petition to Establish "Oak Knoll District" as a New American Viticultural Area	1512-AC89
2556	27 CFR 178 Commerce in Firearms and Ammunition (Omnibus Consolidated Appropriations Act of 1997)	1512-AB64
2557	27 CFR 178 Residency Requirement for Persons Acquiring Firearms	1512-AB66
2558	27 CFR 55 Implementation of Public Law 104-208, the Omnibus Consolidated Appropriations Act of 1997, Relating to the Establishment of a National Repository for Arson and Explosives Information	1512-AB73
2559	27 CFR 178 Public Law 105-277, Making Omnibus Consolidated and Emergency Supplemental Appropriations for FY99, Relating to Firearms Disabilities for Nonimmigrant Aliens	1512-AB93
2560	27 CFR 178 Commerce in Firearms and Ammunition—Annual Inventory	1512-AC08
2561	27 CFR 7 Plain Language in Part 7	1512-AC10
2562	27 CFR 70 Delegation of Authority for Part 70	1512-AC74

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Bureau of Alcohol, Tobacco and Firearms—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2563	31 CFR 8 Eliminate Requirement to Enroll to Practice Before the Bureau	1512-AC96
2564	27 CFR 275 Tobacco Products and Cigarette Papers and Tubes Shipped from Puerto Rico to the United States	1512-AC24
2565	27 CFR 41 Importation of Tobacco Products and Cigarette Papers and Tubes; Recodification of Regulations	1512-AC46

Bureau of Alcohol, Tobacco and Firearms—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2566	27 CFR 7 Alcoholic Content Labeling for Malt Beverages	1512-AB17
2567	Sake Regulations	1512-AC09
2568	27 CFR 4.32(d) Removal of Requirement to Disclose Saccharin in the Labeling of Wine, Distilled Spirits and Malt Beverages	1512-AC17
2569	27 CFR 31 Liquor Dealers; Recodification of Regulations	1512-AC45
2570	27 CFR 31 Delegation of Authority in 27 CFR Part 31	1512-AC49
2571	27 CFR 19, subpart W Proposed Revisions of 27 CFR Part 19	1512-AC52
2572	27 CFR 4 Proposal to Recognize Synonyms for Petite Sirah and Zinfandel Grape Varieties	1512-AC65
2573	27 CFR 9 Petition to Establish "Capay Valley" as an American Viticultural Area	1512-AC71
2574	27 CFR 17 Taxpaid Distilled Spirits Used in Manufacturing Products Unfit for Beverage Use	1512-AC73
2575	27 CFR 19 Delegation of Authority in 27 CFR Part 19	1512-AC06
2576	27 CFR 47 Commerce in Firearms and Ammunition; Recodification of Regulations (2002R-013P)	1512-AC68
2577	27 CFR 47 Machine Guns, Destructive Devices, and Certain Other Firearms; Recodification of Regulations	1512-AC69
2578	27 CFR 55 Delegation of Authority in 27 CFR Part 55—Commerce in Explosives	1512-AC94
2579	27 CFR 275 Implementation of Public Law 105-33, Section 9302, Requiring the Qualification of Tobacco Product Importers and Miscellaneous Technical Amendments	1512-AC07
2580	27 CFR 275 Prohibited Marks on Packages of Tobacco Products and Cigarette Papers and Tubes Imported or Brought into the United States	1512-AC14
2581	27 CFR 270 Elimination of Statistical Classes for Large Cigars	1512-AC33
2582	27 CFR 40 Delegation of Authority in 27 CFR Part 40	1512-AC54
2583	27 CFR 44 Voluntary Waiver of Filing Claim for Credit, Refund, Allowance or Credit of Tax for Tobacco Products Manufactured in Canada	1512-AC64

Bureau of Alcohol, Tobacco and Firearms—Completed Actions

Sequence Number	Title	Regulation Identification Number
2584	27 CFR 251 Recodification of Part 251	1512-AC27
2585	27 CFR 4 Albarino, Black Corinth and Fiano Grape Varieties	1512-AC29
2586	27 CFR 252 Delegation of Authority in 27 CFR Part 252	1512-AC44
2587	27 CFR 4 Proposed Addition of "Tannat" as a Grape Variety Name for American Wines	1512-AC50
2588	27 CFR 251 Delegation of Authority in 27 CFR Part 251	1512-AC58
2589	27 CFR 9 Petition to Establish "California Coast" as a New American Viticultural Area	1512-AC83
2590	27 CFR 9 Petition to Expand the Lodi Viticultural Area	1512-AC92
2591	27 CFR 47 Delegation of Authority (27 CFR 47)	1512-AC86
2592	27 CFR 270 Elimination of Application to Remove Tobacco Products from Manufacturer's Premises for Experimental Purposes	1512-AC32
2593	27 CFR 44 Delegation of Authority in 27 CFR Part 44	1512-AC36

Bureau of Alcohol, Tobacco and Firearms—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
1512-AA07	27 CFR 9 American Viticultural Areas	09/10/2002	Withdrawn

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Bureau of Alcohol, Tobacco and Firearms—Discontinued Entries (Continued)

Regulation Identification Number	Title	Date	Comments
1512-AC51	27 CFR 5.22 Petition to Amend the Standards of Identity for Whisky and Brandy	05/03/2002	Withdrawn

Comptroller of the Currency—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2594	12 CFR 19 Uniform Rules of Practice and Procedure; Regulation Review	1557-AB43
2595	Fair Credit Reporting Regulations	1557-AB78
2596	Recordkeeping Requirements for Bank Exceptions from Securities Dealer Registration	1557-AB93
2597	12 CFR 5 Rules, Policies, and Procedures for Corporate Activities and Bank Activities and Operations	1557-AB97
2598	12 CFR 19 Maintenance of Records	1557-AB99
2599	12 CFR 5 Payday Lending	1557-AC01
2600	12 CFR 28 International Banking Activities	1557-AC04
2601	12 CFR 30 Interagency Guidelines Establishing Standards for Safety and Soundness	1557-AC08
2602	12 CFR 24 Community Development Corporations, Community Development Projects, and Other Public Welfare Investments (12 CFR Part 24)	1557-AC09
2603	12 CFR 19 Removal, Suspension, and Debarment of Independent Accountants from Performance of Audit Services	1557-AC10
2604	12 CFR 5 Rules, Policies, and Procedures for Corporate Activities	1557-AC11

Comptroller of the Currency—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2605	12 CFR 3 Capital Rules	1557-AB14
2606	31 CFR 103 Customer Identification Programs for Banks, Savings Associations, and Credit Unions	1557-AC06

Comptroller of the Currency—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2607	Rules and Procedures for Claims Against OCC-Appointed Receiverships for Uninsured Financial Institutions	1557-AB59
2608	12 CFR 25 Community Reinvestment Act Regulation	1557-AB98

Comptroller of the Currency—Completed Actions

Sequence Number	Title	Regulation Identification Number
2609	12 CFR 34 Real Estate Appraisals	1557-AB70
2610	12 CFR 37 Debt Cancellation Contracts and Debt Suspension Agreements	1557-AB75
2611	12 CFR 7.1002 Electronic Activities (Formerly Electronic Banking)	1557-AB76
2612	31 CFR 1 Notice of Exempt Privacy Act Systems of Records	1557-AB83
2613	12 CFR 25 Prohibition Against Use of Interstate Branches Primarily for Deposit Production	1557-AB95
2614	12 CFR 5 Financial Subsidiaries and Noncontrolling Investments of Federal Branches and Agencies	1557-AC02
2615	12 CFR 28.15 International Banking Activities: Capital Equivalency Deposit	1557-AC05
2616	12 CFR 8 Assessment of Fees	1557-AC07

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United States Customs Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2617	19 CFR 12 Textiles and Textile Products Subject to Textile Trade Agreements	1515-AB54
2618	19 CFR 159 Liquidation; Extension; Suspension	1515-AB66
2619	19 CFR 12 Detention, Seizure, and Forfeiture of "Bootleg" Sound Recording and Music Videos of Live Musical Performances	1515-AB74
2620	19 CFR 142 Reconciliation	1515-AB85
2621	19 CFR 111 Remote Location Filing	1515-AC23
2622	19 CFR 123 Simplification of In-Transit Truck Shipments Between Canada and the United States	1515-AC65
2623	19 CFR 142 Requirements for Future Customs Transactions When Payment to Customs on Prior Transactions is Delinquent and/or Dishonored	1515-AC68
2624	19 CFR 145 Customs Examination of In-Transit Mail Shipments	1515-AC71
2625	19 CFR 24 Reimbursable Customs Inspectional Services: Increase in Hourly Rate Charge	1515-AC77
2626	19 CFR 12 Patent Surveys	1515-AC93
2627	19 CFR 122 Advance Notice Requirements for Aircraft Landings and Arrivals	1515-AD10
2628	19 CFR 162 Prior Disclosure and Lost Duty or Revenue Demands When Penalty Claim Not Issued	1515-AD13
2629	19 CFR 111 Performance of Customs Business by Parent and Subsidiary Corporations	1515-AD14

United States Customs Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2630	19 CFR 4 Harbor Maintenance Fee	1515-AA57
2631	19 CFR 24 Donated Cargo Exemption From Harbor Maintenance Fee	1515-AA87
2632	19 CFR 181 North American Free Trade Agreement (NAFTA)—Implementation of Duty-Deferral Program Provisions	1515-AB87
2633	19 CFR 141 Customs Entry Documentation Pursuant to Anticounterfeiting Consumer Protection Act	1515-AC15
2634	19 CFR 134 Country-of-Origin Marking	1515-AC32
2635	19 CFR 113 Importation and Entry Bond Conditions Regarding Other Agency Documentation Requirements	1515-AC44
2636	19 CFR 4 Deferral of Duty on Large Yachts Imported for Sale	1515-AC58
2637	19 CFR 4 User and Navigation Fees; Other Reimbursable Charges	1515-AC63
2638	19 CFR 10 African Growth and Opportunity Act and Generalized System of Preferences	1515-AC72
2639	19 CFR 146 Expanded Weekly Entry Procedure for Foreign Trade Zones	1515-AC74
2640	19 CFR 10 United States-Caribbean Basin Trade Partnership Act and Caribbean Basin Initiative	1515-AC76
2641	19 CFR 102 Rules of Origin for Textile and Apparel Products	1515-AC80
2642	19 CFR 24 User Fees	1515-AC81
2643	19 CFR 12 Dog and Cat Protection Act	1515-AC87
2644	19 CFR 10 Prototypes Used Solely For Product Development, Testing, Evaluation or Quality Control Purposes	1515-AC88
2645	19 CFR 10 Preferential Treatment of Brassieres Under the United States-Caribbean Basin Trade Partnership Act	1515-AC89
2646	19 CFR 141 Single Entry for Split Shipments	1515-AC91
2647	19 CFR 141 Single Entry for Unassembled or Disassembled Entities Imported on Multiple Conveyances	1515-AC94
2648	19 CFR 133 Civil Fines For Importation of Merchandise Bearing a Counterfeit Mark	1515-AC98
2649	19 CFR 122 Passenger and Crew Manifests Required for Passenger Flights in Foreign Air Transportation to the United States	1515-AC99
2650	19 CFR 191 Manufacturing Substitution Drawback: Duty Apportionment	1515-AD02
2651	19 CFR 122 Access to Customs Security Areas at Airports	1515-AD04
2652	19 CFR 141 Conditional Release Period and Customs Bond Obligations For Food, Drugs, Devices and Cosmetics	1515-AD05
2653	19 CFR 122 Passenger Name Record Information Required For Passengers On Flights In Foreign Air Transportation To Or From the United States	1515-AD06
2654	19 CFR 12 Entry of Certain Steel Products	1515-AD15

United States Customs Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2655	19 CFR 12 Entry of Softwood Lumber Shipments From Canada	1515-AB97
2656	19 CFR 123 Designated Land Border Crossing Locations for Certain Conveyances	1515-AC12

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United States Customs Service—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
2657	19 CFR 24 Expanded Methods of Payment of Duties, Taxes, Interest and Fees	1515-AC40
2658	19 CFR 12 Entry of Softwood Lumber Shipments from Canada	1515-AC62
2659	19 CFR 122 Private Aircraft Programs: Establishment of the General Aviation Telephonic Entry (GATE) Program and Revisions to the Overflight Program	1515-AC73
2660	19 CFR 10 Amendment to Wool Duty Refund Program	1515-AC85
2661	19 CFR 24 Procedures Governing the Border Release Advanced Screening and Selectivity (BRASS) Program	1515-AC92

United States Customs Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
2662	19 CFR 177 Administrative Rulings	1515-AC56
2663	19 CFR 4 General Order Warehouses	1515-AC57
2664	19 CFR 10 Civil Aircraft	1515-AC59
2665	19 CFR 191 Merchandise Processing Fee Eligible to be Claimed as Unused Merchandise Drawback	1515-AC67
2666	19 CFR 10 Duty-Free Treatment for Certain Beverages Made with Caribbean Rum	1515-AC78
2667	19 CFR 24 Amended Procedure for Obtaining Refunds of Harbor Maintenance Fees Paid on Exports of Merchandise	1515-AC82
2668	19 CFR 132 Licenses for Certain Worsted Wool Fabrics Subject to Tariff-Rate Quota	1515-AC83
2669	19 CFR 12 Import Restrictions Imposed on Pre-Classical and Classical Archaeological Material Originating in Cyprus	1515-AC86
2670	19 CFR 122 Re-Use of Air Waybill Number on Air Cargo Manifest	1515-AD01
2671	19 CFR 132 Elimination of Tariff-Rate Quota on Imported Lamb Meat	1515-AD09
2672	19 CFR 4 Presentation of Vessel Cargo Manifest to Customs Before Cargo is Laden Aboard Vessel at Foreign Port for Transport to the United States	1515-AD11
2673	19 CFR 12 Extension of Import Restrictions Imposed on Archaeological and Ethnological Material from Peru	1515-AD12
2674	19 CFR 12 Extension of Import Restrictions Imposed on Archaeological Material from Mali	1515-AD16
2675	19 CFR 12 Extension of Import Restrictions Imposed on Archaeological Material from Guatemala	1515-AD17

Internal Revenue Service—Prerule Stage

Sequence Number	Title	Regulation Identification Number
2676	Circular 230—Phase 2 Non-Shelter Revisions	1545-BA72
2677	Communications Excise Tax; Taxable Communication Services	1545-BB04
2678	Mixed Use Output Facilities	1545-BB23

Internal Revenue Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2679	Integrated Financial Transaction	1545-AR20
2680	Intercompany Transfer Pricing for Services	1545-AR32
2681	Capital Gain Guidance Relating to CRTs	1545-AW35
2682	Constructive Sales of Appreciated Financial Positions	1545-AW97
2683	Straddles—One Side Larger Than the Other	1545-AX16
2684	Cash or Deferred Arrangements	1545-AX26
2685	Inspection of Written Determinations	1545-AX40
2686	Cash or Deferred Arrangements	1545-AX43
2687	Awarding of Costs and Certain Fees	1545-AX46
2688	Highly Compensated Employee	1545-AX48
2689	Modification to Section 367(a) Stock Transfer Regulations	1545-AX77
2690	Assumption of Partnership Liabilities	1545-AX93

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Internal Revenue Service—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2691	Like-Kind Exchanges	1545-AX95
2692	Electing Mark-to-Market for Marketable Stock of a PFIC	1545-AY17
2693	Guidance on Changes to the Laws for Corporate Estimated Taxes	1545-AY22
2694	Use of Taxpayer Identifying Numbers	1545-AY24
2695	Dual Consolidated Loss Recapture Events	1545-AY27
2696	Taxable Years of CFCs and FPHCs	1545-AY30
2697	Allocation of Income and Deductions from Intangibles	1545-AY38
2698	Dollar-Value LIFO	1545-AY39
2699	Normal Retirement Age for Pension Plans	1545-AY61
2700	Liabilities Assumed in Certain Corporate Transactions	1545-AY74
2701	Normalization	1545-AY75
2702	Disclosure of Returns and Return Information in Judicial and Administrative Tax Proceedings	1545-AY89
2703	Payments For Interest in Partnership	1545-AY90
2704	Tax Shelter Penalties	1545-AY97
2705	Expenditures in Connection with the Creation of Intangible Assets	1545-BA00
2706	Allocation and Apportionment of Interest Expense	1545-BA02
2707	Reductions of Accruals and Allocations Because of Increased Age	1545-BA10
2708	Transactions Involving Obligations of Consolidated Group Members	1545-BA11
2709	Deductibility of Employer Contributions for Deferred Compensation	1545-BA13
2710	Continuation of a Consolidated Group	1545-BA14
2711	Property Exempt from Levy	1545-BA22
2712	Gasoline Tax Claims	1545-BA27
2713	Suspension of Statutes of Limitation in John Doe and Third-Party Summons Disputes and Expansion of Taxpayers' Rights to Receive Notice and Seek Judicial Review of Third Party Summonses	1545-BA31
2714	Amendments to Rules for Allocation of Basis	1545-BA32
2715	Earned Income Credit	1545-BA34
2716	Income From Sources Within Specified Possession	1545-BA37
2717	Multi-Family Housing Bonds	1545-BA45
2718	Determination of Basis of Partner's Interest; Special Rules	1545-BA50
2719	Partnership Options	1545-BA53
2720	User Fees for Offers to Compromise	1545-BA54
2721	Modification of Check the Box (Temporary)	1545-BA58
2722	Modification of Check the Box	1545-BA59
2723	Abatement of Interest on Large Erroneous Refunds	1545-BA61
2724	Allocation and Apportionment Rules: Guidance on Selected Issues	1545-BA64
2725	Provisions Regarding Cross-Border Transactions	1545-BA65
2726	Interest Other Than That of a Creditor	1545-BA69
2727	Definition of Reorganizations	1545-BA71
2728	Controlled Foreign Partnership Reporting	1545-BA77
2729	Disclosure of Relative Value of Distribution Forms	1545-BA78
2730	Redemptions Treated as Dividends	1545-BA80
2731	Partnership Transactions Involving Long-Term Contracts	1545-BA81
2732	Allocation of New Markets Tax Credit	1545-BA84
2733	Carryover and Stacking Rule Amendment	1545-BA85
2734	Guidance on Reporting of Deposit Interest Paid to Nonresident Aliens	1545-BA86
2735	Aggregate Computation and Allocation of Research Credit	1545-BA88
2736	Designated IRS Officer or Employee	1545-BA89
2737	Transfer of Notes or Stock to Provide for Satisfaction of Contested Liabilities	1545-BA90
2738	Transfer of Notes or Stock to Provide for Satisfaction of Contested Liabilities (Temporary)	1545-BA91
2739	Inclusion Ratio	1545-BA94
2740	Employment Taxes—Failure-to-Deposit Penalty	1545-BA97
2741	Designated IRS Officer or Employee (Temporary)	1545-BA98
2742	Timely Mailing Treatment	1545-BA99
2743	Hand Carry Returns	1545-BB00
2744	Reduced Exclusion of Gain from Sale or Exchange of Principal Residence	1545-BB01
2745	Reduced Exclusion of Gain from Sale or Exchange of Principal Residence (Temporary)	1545-BB02
2746	Heavy Vehicle Tax; Definition of Highway Tractor	1545-BB03
2747	Change in Use; Accelerated Cost Recovery Sytstem	1545-BB05
2748	Depreciation of Vans and Light Trucks	1545-BB06

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Internal Revenue Service—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2749	Capital Account Bookup	1545-BB10
2750	Allocation of Foreign Tax Credits Among Partners	1545-BB11
2751	Distributions of Property	1545-BB12
2752	Penalties for Unauthorized Inspection of Returns	1545-BB13
2753	Structured Settlement Factoring Transactions	1545-BB14
2754	Testimony Authorizations and Requests for IRS Information	1545-BB15
2755	Investigative Disclosures	1545-BB16
2756	Investigative Disclosures (Temporary)	1545-BB17
2757	Toll Telephone Service-Definition	1545-BB18
2758	Substantiation of Incidental Expenses (Temporary)	1545-BB19
2759	Substantiation of Incidental Expenses	1545-BB20
2760	Duplicate Tax Benefits	1545-BB25
2761	Cost Sharing	1545-BB26
2762	Application of Separate Limitations to Dividends from Noncontrolled Section 902 Corporation	1545-BB28
2763	Extension of Time for Filing Returns	1545-BB29
2764	Exclusions from Gross Income of Foreign Corporations	1545-BB30
2765	Tax Shelter Disclosure Statements	1545-BB32
2766	Requirement to Maintain List of Investors in Potentially Abusive Tax Shelters	1545-BB33
2767	Other Assessable Penalties With Respect to the Preparation of Income Tax Returns for Other Persons	1545-BB34
2768	Fractional Parts of a Dollar	1545-BB35

Internal Revenue Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2769	Golden Parachute Payments	1545-AH49
2770	Nonrecognition of Corporate Distributions and Reorganizations Under the Foreign Investment in Real Property Tax Act	1545-AK79
2771	Computation of a Branch's Taxable Income; Taxation of Exchange Gain or Loss on Branch Remittances	1545-AM12
2772	Limitations on Passive Activity Losses and Credits—Self-Charged Items	1545-AN64
2773	Taxation of Global Trading	1545-AP01
2774	Interest-Free Adjustments	1545-AQ61
2775	Definition of "Highly Compensated Employee"	1545-AQ74
2776	Escrow Funds and Other Similar Funds	1545-AR82
2777	Mark-to-Market Upon Disposition	1545-AS85
2778	Straddles—Miscellaneous Issues	1545-AT46
2779	Agreements for Payment of Tax Liabilities in Installments	1545-AU97
2780	Definition of "Private Activity Bonds" Allocation and Accounting Regulations	1545-AU98
2781	Return of Levied Property in Certain Cases	1545-AV01
2782	Interest on Education Loans	1545-AW01
2783	Mark-to-Market Accounting for Dealers in Commodities and Traders in Securities and Commodities	1545-AW06
2784	Election To Treat Trust as Estate	1545-AW24
2785	Corporate Tax Shelter Registration	1545-AW26
2786	Intercompany Obligations	1545-AW30
2787	Reporting of Payments to Attorney	1545-AW72
2788	Qualified Offers	1545-AW99
2789	Notice of Contact of Third Parties	1545-AX04
2790	Allocation of Research Credit	1545-AX05
2791	Delay Rental Payments	1545-AX06
2792	Highway Vehicle—Definition	1545-AX10
2793	Guidance on Cost Recovery in the Entertainment Industry	1545-AX12
2794	Allocating Basis Adjustments	1545-AX18
2795	Exclusion of Gain on the Sale or Exchange of Principal Residence	1545-AX28
2796	Special Rules for Retroactive Payments Under Section 417(a)(7)(A) for Qualified Retirement Plans	1545-AX34
2797	Compensation Deferred Under Eligible Section 457(b) Plans	1545-AX52
2798	Stock Transfer Rules: Carryover of Earnings and Taxes	1545-AX65
2799	Loans to Participants or Beneficiaries from Qualified Employee Plans	1545-AX68

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Internal Revenue Service—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2800	Requirement to Maintain List of Investors in Potentially Abusive Tax Shelters	1545-AX79
2801	Tax Shelter Disclosure Statements	1545-AX81
2802	Disclosure of Return and Return Information to Designee of Taxpayer	1545-AX85
2803	Statute of Limitations on Collection Installment Agreements	1545-AX89
2804	Definition of Income	1545-AX96
2805	Constructive Transfers and Transfers of Property to Third Parties on Behalf of a Spouse	1545-AX99
2806	Damages for Intentional or Reckless Disregard of the Internal Revenue Code	1545-AY08
2807	Investment Type Property (Prepayment)	1545-AY12
2808	Authorized Placement Agency	1545-AY18
2809	HIPAA General Nondiscrimination	1545-AY32
2810	HIPAA Nondiscrimination/Exception for Church Plans	1545-AY33
2811	HIPAA Nondiscrimination/Bona Fide Wellness Programs	1545-AY34
2812	Recognition of Gain on Certain Distributions or Stock of Securities in Connection with an Acquisition	1545-AY42
2813	Modified Guaranteed Contracts	1545-AY48
2814	Electronic Furnishing of Payee Statements	1545-AY50
2815	Disclosure of Return Information to Officers and Employees of the Department of Commerce for Certain Statistical Purposes and Related Activities	1545-AY52
2816	Tax Treatment of Cafeteria Plans	1545-AY67
2817	Obligation of States and Political Subdivisions	1545-AY71
2818	Qualified S Election-for Testamentary Trusts	1545-AY76
2819	Disclosure of Returns and Return Information by Other Agencies	1545-AY77
2820	Research Credit III	1545-AY82
2821	Low-Income Taxpayer Clinics	1545-AY84
2822	New Market Tax Credit	1545-AY87
2823	Net Gift Treatment	1545-AY91
2824	Excise Tax Imposed on Foreign Insurers or Reinsurers	1545-AY93
2825	Definition of Agent and Safeguard Certifications	1545-AY94
2826	Consolidated Return Intercompany Transaction Rules	1545-BA05
2827	Mergers Involving Disregarded Entities	1545-BA06
2828	Notice of Significant Reduction in the Rate of Future Benefit Accrual	1545-BA08
2829	Consolidated Returns; Non-Applicability of Section 357(c)	1545-BA09
2830	Counting 2100 Notices	1545-BA18
2831	Catch-Up Contributions for Individuals Age 50 or Over	1545-BA24
2832	Unit Livestock Pricing Method	1545-BA25
2833	Guidance Regarding Foreign Personal Holding Company Income	1545-BA33
2834	Withholding at Treaty Rate Exception for Taxpayer Identifying Number	1545-BA38
2835	Split-Dollar Life Insurance	1545-BA44
2836	Amendment to the Definition of Refunding	1545-BA46
2837	Treatment of Funded Welfare Benefit Plans	1545-BA47
2838	Loss Limitation Rules	1545-BA52
2839	Carryback of Consolidated Net Operating Losses to Separate Return Years	1545-BA73
2840	Statutory Options	1545-BA75
2841	Earnings Calculation for Returned or Recharacterized Contributions	1545-BA82
2842	Reporting Requirements for Widely Held Fixed Investment Trusts	1545-BA83
2843	Low-Income Taxpayer Clinics	1545-BA95
2844	6038 Issues Relating to Certain Foreign Corporations and Partnerships	1545-BB36

Internal Revenue Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2845	Income Tax—Taxpayer's Obligation To File a Notice of Redetermination of Foreign Tax and Civil Penalties for Failure to File	1545-AC09
2846	Income Tax—Definition of Qualified Possession Source Investment Income for Purposes of Puerto Rico and Possession Tax Credit	1545-AC10
2847	FSC Transfer Pricing Rules, Distributions, Dividends Received, Deduction, and Other Special Rules for FSC	1545-AI16
2848	Information From Passport and Immigration Applicants	1545-AJ93

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Internal Revenue Service—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
2849	Foreign Corporations	1545-AK74
2850	Foreign Insurance Companies	1545-AL82
2851	Income of Foreign Governments and International Organizations	1545-AL93
2852	Clarification of Treatment of Separate Limitation Losses	1545-AM11
2853	Earnings and Profits of Controlled Foreign Corporations	1545-AM90
2854	Caribbean Basin Investments	1545-AM91
2855	Outbound Transfers of Property to Foreign Corporations	1545-AM97
2856	Railroad Unemployment Repayment Tax	1545-AN40
2857	Consolidated Alternative Minimum Tax	1545-AN73
2858	Conforming Taxable Years of CFCs and FPHCs: 1989 Change	1545-AO22
2859	Earnings Stripping Payments	1545-AO24
2860	Foreign Insurance Company—Domestic Election	1545-AO25
2861	Fringe Benefit Sourcing Under Section 861	1545-AO72
2862	Information Reporting and Record Maintenance	1545-AP10
2863	Charitable Contributions	1545-AP30
2864	Registration Required Obligations	1545-AP33
2865	Guidance in Notice 89-37, Which Treats the Receipt of a Corporate Partner's Stock by the Corporate Partner as a Circumvention of General Utilities Repeal	1545-AP52
2866	Use of GAAP Earnings as E&P of Foreign Corporations	1545-AQ55
2867	The Treatment of Accelerated Death Benefits	1545-AQ70
2868	Foreign Trusts Regulations	1545-AR25
2869	Treatment of Dual Consolidated Losses	1545-AR26
2870	Allocation of Accrued Benefits Between Employer and Employee Contributions	1545-AT82
2871	Foreign Corporations Regulations	1545-AT96
2872	Treatment of Obligation-Shifting Transactions	1545-AU19
2873	Application of Grantor Trust Rules to Nonexempt Employees' Trust	1545-AU29
2874	Recomputation of Life Insurance Reserves	1545-AU49
2875	Source Rules for Payments Made Pursuant to Certain Swap Arrangements	1545-AU89
2876	Application of Attribution Rules to Foreign Trusts	1545-AU91
2877	FASIT—Start-up/Operational/Transition	1545-AU94
2878	Electronic Transmission of Withholding Certificates	1545-AV27
2879	Removal of Temporary Regulations That Provide Rules for Substantiating Travel Expense Deductions for Members of Congress	1545-AV55
2880	Foreign Tax Credit Anti-abuse Regulation	1545-AV97
2881	Stocks and Securities Safe Harbor Exception	1545-AW13
2882	Transportation of Persons and Property by Air	1545-AW19
2883	Contingent Debt Instrument	1545-AW33
2884	Source of Income From Certain Space and Ocean Activities and for Communications Income	1545-AW50
2885	Guidance Under Subpart F Relating to Certain Hybrid Transactions	1545-AW63
2886	Education Credits	1545-AW65
2887	Certain Asset Transfers to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs)	1545-AW92
2888	Rules for Sourcing Certain Transportation Income, Space or Ocean Activity Income, and Related Foreign Base Company Shipping Income	1545-AX02
2889	Definition of Accounting Method	1545-AX21
2890	Guaranteed Investment Contracts	1545-AX22
2891	Changes in Entity Classification: Special Rule for Certain Foreign Eligible Entities	1545-AX39
2892	Definition of Private Activity Bond—Refunding Regulations	1545-AX55
2893	Allocation and Apportionment of Interest Expense and Certain Other Expenses	1545-AX72
2894	Definition of Passive Foreign Investment Company Under Section 1297	1545-AX78
2895	HIPAA Portability	1545-AX84
2896	Application of Separate Foreign Tax Credit Limitations	1545-AX88
2897	Clarification of Foreign-Based Company Sales Income Rules	1545-AX91
2898	Capitalization of Interest and Carrying Charges Properly Allocable to Straddles	1545-AX92
2899	Definition of Diesel Fuel	1545-AX97
2900	Guidance Necessary to Facilitate Electronic Tax Administration	1545-AY04
2901	Active Conduct of an Insurance Business Under PFIC Rules	1545-AY20
2902	Disallowance of Deductions and Credits for Failure to File Timely Return	1545-AY26
2903	Withholding Tax on Foreign Partners' Share of Effectively Connected Income	1545-AY28
2904	Information Reporting on Cancellation of Indebtedness	1545-AY35

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Internal Revenue Service—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
2905	Special Rules Relating to Transfers of Intangibles to Foreign Corporations	1545-AY41
2906	Special Rules for S Corporations	1545-AY44
2907	Election—Assets Acquisitions of Insurance Companies	1545-AY49
2908	Previously Taxed Earnings and Profits Under Subpart F	1545-AY54
2909	Treatment of Community Income for Certain Individuals Not Filing Joint Returns	1545-AY83
2910	Charitable Lead Interest	1545-AY86
2911	Transitional Relief for Qualified Intermediaries	1545-AY92
2912	Procurement/Purchasing Card Reporting	1545-BA17
2913	Application of the Federal Insurance Contributions Act, Federal Unemployment Tax Act and Collection of Income Tax at Source to Statutory Stock Options	1545-BA26
2914	Transfers of C Corporation Property to RICs or REITs	1545-BA36
2915	Treatment of Certain Obligation-shifting Transactions	1545-BA41
2916	Information Reporting for Qualified Tuition and Related Expenses; Magnetic Media Filing Requirements for Information Returns	1545-BA43
2917	Compensatory Stock Options Under Section 482	1545-BA57
2918	Required Distributions from Retirement Plans	1545-BA60
2919	Circular 230—Tax Shelter Amendments	1545-BA70
2920	Foreign Corporations—Treatment of Distributions or Liquidations	1545-BA79
2921	Allocation and Apportionment of Interest Expense	1545-BA92
2922	Earnings and Profits Attribution Principles	1545-BA93
2923	Guidance To Facilitate Electronic Tax Administration	1545-BA96
2924	Disclosure of Reportable Transactions	1545-BB07
2925	Registration of Reportable Transactions	1545-BB08
2926	List Maintenance Requirement for Reportable Transactions	1545-BB09
2927	Authorization for IRS to Charge Fees For Copying Exempt Organization Returns	1545-BB21
2928	Authorization for IRS to Charge Fees For Copying Exempt Organizations Returns (Temporary)	1545-BB22
2929	Structured Settlement Factoring Transactions (Temporary)	1545-BB24
2930	Accrual Rules for Creditable Foreign Taxes and Guidance on Change in Taxable Year	1545-BB27
2931	Treatment of Services Under Section 482	1545-BB31

Internal Revenue Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
2932	Electing Small Business Trust	1545-AU76
2933	Required Distributions From Qualified Plans and Individual Retirement Plans	1545-AV82
2934	Middleman Regulation	1545-AW48
2935	Relief From Joint and Several Liability on Joint Return	1545-AW64
2936	Information Reporting for Payments of Interest on Education Loans	1545-AW67
2937	Modifications and Additions to the Unified Partnership Audit Procedures	1545-AW86
2938	Compromises	1545-AW88
2939	Transfer of REMIC Residual Interest	1545-AW98
2940	Change of Annual Accounting Period	1545-AX15
2941	Agent for the Consolidated Group	1545-AX56
2942	Equity Options with Flexible Terms	1545-AX66
2943	Clarification of Entity Classification Rules	1545-AX75
2944	Determination of Basis of Partners' Interest; Special Rules	1545-AX94
2945	Hedging Transactions	1545-AY02
2946	Regulations Governing Practice Before the Internal Revenue Service	1545-AY05
2947	Guidance for Imposing Tax Liability on Foreign Persons	1545-AY13
2948	Mid-Contract Change in Taxpayer	1545-AY31
2949	Guidance Under Subpart F Relating to Partnerships	1545-AY45
2950	Guidance Necessary to Facilitate Electronic Tax Administration	1545-AY56
2951	Insurance Companies—Tax Under Subchapter L	1545-AY60
2952	Foreign Partners	1545-AY66
2953	Notice to Interested Parties	1545-AY68
2954	Required Distributions from Retirement Plans	1545-AY69

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Internal Revenue Service—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
2955	Required Distributions from Retirement Plans	1545-AY70
2956	Guidance Under Section 355(e); Recognition of Gain on Certain Distributions of Stock or Securities in Connection with an Aquisition	1545-BA55
2957	Disclosures of Return Information to Officers and Employees of the Department of Agriculture for Certain Statistical Purposes and Related Activities	1545-BA56
2958	Modification of Tax Shelter Rules III	1545-BA62
2959	Taxation of Tax-Exempt Organization's Income from Corporate Sponsorship	1545-BA68
2960	Loss Limitation Rules—Amended	1545-BA74
2961	Carryback of Consolidated Net Operating Losses to Separate Return Years	1545-BA76
2962	Refund of Mistaken Contributions	1545-BA87

Internal Revenue Service—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
1545-AJ57	Income Tax—Reciprocal Exemptions for Certain Transportation Income	08/02/2002	Withdrawn
1545-AU15	Reporting Requirements for Widely Held Fixed Investment Trusts	06/20/2002	Withdrawn
1545-AW21	Estate Tax Deduction for Qualified Family-Owned Business Interests (QFOBI)	04/30/2002	Withdrawn
1545-AW36	Disregarded Entities	11/15/2001	Withdrawn
1545-AW61	Merchandise Regulation	07/31/2002	Withdrawn
1545-AY62	Guidance on Reporting of Deposit Interest Paid to Nonresident Aliens	08/02/2002	Withdrawn
1545-AY95	Termination of QSub Election	08/09/2002	Withdrawn
1545-BA12	Guidance Regarding the Treatment by a Corporation of Financial Instruments Based on the Value of that Corporation's Stock	08/12/2002	Withdrawn
1545-BA15	Consolidated Returns; Investment Adjustments Involving Preferred Stock	08/08/2002	Withdrawn
1545-BA35	Disclosures of Return Information to Officers and Employees of the Department of Agriculture for Certain Statistical Purposes and Related Activities	06/19/2002	Withdrawn
1545-BA63	Primary Profit Motive	07/24/2002	Withdrawn
1545-BA66	Modification of Tax Shelter Rules III	05/08/2002	Withdrawn
1545-BA67	Modification of Tax Shelter Rules III (Temporary)	05/08/2002	Withdrawn

Office of Thrift Supervision—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2963	12 CFR 567 Capital Rules	1550-AB11
2964	12 CFR 571 Fair Credit Reporting	1550-AB33

Office of Thrift Supervision—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2965	12 CFR 550 Recordkeeping and Confirmation Requirements for Securities Transactions; Fiduciary Powers of Savings Associations	1550-AB49
2966	12 CFR 562 Regulatory Reporting Standards: Qualifications for Independent Public Accounts Performing Audit Services for Voluntary Audit Filers	1550-AB54

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Office of Thrift Supervision—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2967	12 CFR 545 Directors and Officers	1550-AB19
2968	12 CFR 563e Community Reinvestment Act	1550-AB48

Office of Thrift Supervision—Completed Actions

Sequence Number	Title	Regulation Identification Number
2969	12 CFR 563b Mutual Savings Associations, Mutual Holding Company Reorganizations, and Conversions	1550-AB24
2970	12 CFR 567 Capital: Qualifying Mortgage Loan, Interest Rate Risk Component, and Miscellaneous Changes	1550-AB45
2971	12 CFR 560 Alternative Mortgage Transaction Parity Act; Preemption	1550-AB51

Department of the Treasury (TREAS)
Departmental Offices (DO)
Proposed Rule Stage

2459. • AMENDMENTS TO THE GOVERNMENT SECURITIES ACT REGULATIONS: CUSTOMER PROTECTION-RESERVES AND CUSTODY OF SECURITIES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 78o-5(b)(1)(A); 15 USC 78o-5(b)(4)

CFR Citation: 17 CFR 403.4

Legal Deadline: None

Abstract: The proposal would allow for the expansion of the categories of collateral registered Government securities brokers and dealers may pledge when borrowing fully paid or excess margin securities from customers. This proposal is a conforming technical amendment to the Government Securities Act regulations based on the Securities and Exchange Commission's previously proposed revisions to its customer protection requirements for brokers and dealers subject to the requirements of 17 CFR 240.15c3-3(b)(3).

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1505–AA94

Department of the Treasury (TREAS)
Departmental Offices (DO)
Final Rule Stage

2460. AMENDMENTS TO THE LARGE POSITION RULES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 78o-5(f)

CFR Citation: 17 CFR 420

Legal Deadline: None

Abstract: The rule amends the large position recordkeeping and reporting requirements pertaining to very large positions in certain Treasury securities. The modifications will improve the information available to Treasury and other regulators.

Timetable:

Action	Date	FR Cite
NPRM	07/31/02	67 FR 49630
NPRM Comment Period End	09/16/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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TREAS—DO
Final Rule Stage

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RIN: 1505–AA88

2461. • DEPARTMENT OF THE TREASURY ACQUISITION REGULATION

Priority: Substantive, Nonsignificant

Legal Authority: EO 12931, as amended, 41 USC 401, et seq; 41 USC 414; 31 USC 5136; 48 CFR ch 1, subpart 1.3

CFR Citation: 48 CFR ch 10

Legal Deadline: None

Abstract: The Department of the Treasury is revising the Department of the Treasury Regulation (DTAR) in its entirety. Treasury has rewritten the DTAR into plain English, and has also updated the regulation to reflect changes to the Federal Acquisition Regulation. The DTAR includes both policy direction and regulatory guidance.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Angelie Jackson, Department of the Treasury, Suite 400w, Office of the Procurement Executive, 1500 Pennsylvania Avenue NW., c/o 1310 G Street NW., Washington, DC 20220
Phone: 202 622-0245
Fax: 202 622-2273
Email: angelie.jackson@do.treas.gov

RIN: 1505–AA89

2462. • TREASURY DEBT COLLECTION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5514; 26 USC 6402; 31 USC 321; 31 USC 3701; 31 UC 3711; 31 USC 3716 to 3718; 31 USC 3720A; 31 USC 3720B; 31 USC 3720D

CFR Citation: 31 CFR 5

Legal Deadline: None

Abstract: This rule updates the Department of the Treasury's debt collection regulations to conform with the Debt Collection Improvement Act of 1996, the revised Federal Claims Collection Standards, and other laws applicable to the collection of debts owed to Treasury. This rule also updates Treasury's regulations governing the offset of Treasury-issued payments to collect debts owed to other Federal agencies.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	
Interim Final Rule Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Cathy Thomas, Department of the Treasury, Metropolitan Square Room 6228, Office of the Deputy Chief Financial Officer, 1500 Pennsylvania Avenue NW., Washington, DC 20220
Phone: 202 622-0817
Fax: 202 622-2318

RIN: 1505–AA90

2463. • BANK ENTERPRISE AWARD (BEA) PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1834a; 12 USC 4703 note; 12 USC 4713; 31 USC 321; PL 104-19

CFR Citation: 12 CFR 1806

Legal Deadline: None

Abstract: The revisions contain a number of changes, which clarify current requirements, and change some others. This rule also simplifies current requirements and updates various references. However, in order to facilitate implementation of the BEA Program regulations by participating insured depository institutions, the complete text of the regulations, as amended, is published by this interim rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	
Interim Final Rule Comment Period End	01/00/03	

Action	Date	FR Cite
Interim Final Rule Effective	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ashanti McCallum, Legal Assistant, Department of the Treasury, Suite 200, 601 13th Street NW., Washington, DC 20005
Phone: 202 622-9018
Fax: 202 622-8244
Email: mccallum@cdfi.treas.gov

RIN: 1505–AA91

2464. • COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS (CDFI) PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 4703; 12 USC 4703 note; 12 USC 4717; 31 USC 321

CFR Citation: 12 CFR 1805

Legal Deadline: None

Abstract: This revised interim rule: revises the primary mission eligibility test to comply with the plain meaning of the Community Development Banking and Financial Institutions Act of 1994 (the Act); reduces the frequency of previously approved collections of information by replacing semiannual reporting requirements with annual reporting requirements; clarifies the terms and conditions underlying an award of assistance prior to the execution of an assistance program; achieves regulatory economy and efficiency by deleting references to application content requirements and other matters that have been and will continue to be thoroughly addressed in the various applications and in the Notices of Funds Availability (NOFA); and makes technical and clarifying changes that the Fund believes will generally inure to the benefit of CDFIs and entities proposing to become CDFIs.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	
Interim Final Rule	11/00/02	
Interim Final Rule Comment Period End	01/00/03	

TREAS—DO

Final Rule Stage

Action	Date	FR Cite
Interim Final Rule Effective	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ashanti McCallum, Legal Assistant, Department of the Treasury, Suite 200, 601 13th Street NW., Washington, DC 20005
Phone: 202 622-9018
Fax: 202 622-8244
Email: mccallum@cdfi.treas.gov

RIN: 1505–AA92

2465. • COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS (CDFI) PROGRAM NPRM

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 4703; 12 USC 4703 note; 12 USC 4717; 31 USC 321

CFR Citation: 12 CFR 1805

Legal Deadline: None

Abstract: We are proposing changes to require entities certified by us as Community Development Financial Institutions (CDFIs) to submit reports that we may from time to time require to enable us to better: 1) evaluate the impact of the CDFI Program; and 2) monitor such entities' continued eligibility as certified CDFIs. We are also proposing to give the Fund the discretion to decertify a certified CDFI that does not timely submit such required reports.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	
Interim Final Rule	11/00/02	
Interim Final Rule Comment Period End	01/00/03	
Interim Final Rule Effective	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ashanti McCallum, Legal Assistant, Department of the Treasury, Suite 200, 601 13th Street NW., Washington, DC 20005
Phone: 202 622-9018
Fax: 202 622-8244
Email: mccallum@cdfi.treas.gov

RIN: 1505–AA93

Department of the Treasury (TREAS)
Departmental Offices (DO)

Long-Term Actions

2466. POSSIBLE REGULATION OF ACCESS TO ACCOUNTS AT FINANCIAL INSTITUTIONS THROUGH PAYMENT SERVICE PROVIDERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

CFR Citation: 31 CFR ch II

Timetable:

Action	Date	FR Cite
ANPRM	01/08/99	64 FR 1149
ANPRM Comment Period End	04/08/99	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Roger Bezdek
Phone: 202 622-1807

RIN: 1505–AA74

2467. FINANCIAL ACTIVITIES OF FINANCIAL SUBSIDIARIES

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/20/00	65 FR 14819
Interim Final Rule Effective	03/14/00	
Interim Final Rule Comment Period End	05/15/00	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gary W. Sutton
Phone: 202 622-1976
Fax: 202 622-1974
Email: gary.sutton@do.treas.gov

RIN: 1505–AA80

2468. FINANCIAL SUBSIDIARIES

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gary W. Sutton
Phone: 202 622-1976
Fax: 202 622-1974
Email: gary.sutton@do.treas.gov

RIN: 1505–AA81

2469. SECRETARY'S DETERMINATION OF REAL ESTATE BROKERAGE

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 1501.2

Timetable:

Action	Date	FR Cite
NPRM	01/03/01	66 FR 307
NPRM Comment Period End	03/02/01	
NPRM Comment Period Extended	05/01/01	66 FR 12440

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gary W. Sutton
Phone: 202 622-1976
Fax: 202 622-1974
Email: gary.sutton@do.treas.gov

RIN: 1505–AA84

2470. SECRETARY'S DETERMINATION OF OTHER ACTIVITIES FINANCIAL IN NATURE

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 1501.2

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/02/01	66 FR 257
Interim Final Rule Effective	01/02/01	
Interim Final Rule Comment Period End	02/02/01	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gary W. Sutton
Phone: 202 622-1976
Fax: 202 622-1974
Email: gary.sutton@do.treas.gov

RIN: 1505–AA85

TREAS—DO

Long-Term Actions

2471. COMMON RULE SUSPENSION AND DEBARMENT

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 19; 31 CFR 20

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3265
NPRM Comment Period End	03/25/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cathy Thomas
Phone: 202 622-0817
Fax: 202 622-2318

RIN: 1505–AA86

Department of the Treasury (TREAS)
Departmental Offices (DO)

Completed Actions

2472. COUNTER MONEY LAUNDERING REQUIREMENTS—CORRESPONDENT ACCOUNTS; FOREIGN SHELL BANKS

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 103

Completed:

Reason	Date	FR Cite
Transferred To 1506-AA35	09/23/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gary W. Sutton
Phone: 202 622-1976
Fax: 202 622-1974
Email: gary.sutton@do.treas.gov

RIN: 1505–AA87

BILLING CODE 4810–25–S

Department of the Treasury (TREAS)
Financial Crimes Enforcement Network (FINCEN)

Proposed Rule Stage

2473. AMENDMENT TO THE BANK SECRECY ACT REGULATIONS—DELEGATION OF AUTHORITY TO ASSESS CIVIL MONEY PENALTIES ON DEPOSITORY INSTITUTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 5321(e), Bank Secrecy Act

CFR Citation: 31 CFR 103

Legal Deadline: None

Abstract: This NPRM proposes to delegate to the appropriate Federal banking regulatory agencies, the authority to assess civil money penalties on depository institutions for violations of the Bank Secrecy Act. The regulation would prescribe the parameters of the delegated authority.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905-3590
Fax: 703 905-3735

RIN: 1506–AA08

2474. AMENDMENTS TO THE BANK SECRECY ACT REGULATIONS—REQUIREMENT THAT FINANCIAL INSTITUTIONS ESTABLISH ANTI-MONEY LAUNDERING PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 5316(h)

CFR Citation: 31 CFR 103.65; 31 CFR 103.66; 31 CFR 103.67

Legal Deadline: Final, Statutory, April 24, 2002, PL 107-56, sec 352.

Abstract: FinCEN will issue a series of regulations regarding anti-money laundering program requirements for various financial institutions, as defined in the Bank Secrecy Act (BSA).

Timetable:

Anti-Money Laundering Programs for Businesses Engaged in Vehicle Sales, Including Automobile, Airplane & Boat Sales
NPRM 12/00/02

Anti-Money Laundering Programs for Dealers in Precious Metals, Stones or Jewels
NPRM 11/00/02

Anti-Money Laundering Programs for Financial Institutions
Interim Final Rule 04/29/02 (67 FR 21110)
Interim Final Rule Comment Period End 05/29/02
Final Action 12/00/02

Anti-Money Laundering Programs for Insurance Companies
NPRM 09/26/02 (67 FR 60625)
NPRM Comment Period End 11/25/02
Final Rule 12/00/02

Anti-Money Laundering Programs for Loan & Finance Companies
NPRM 11/00/02

Anti-Money Laundering Programs for Money Services Businesses
Interim Final Rule 04/29/02 (67 FR 21114)
Interim Final Rule Comment Period End 05/29/02
Final Action 12/00/02

Anti-Money Laundering Programs for Mutual Funds
Interim Final Rule 04/29/02 (67 FR 21117)
Interim Final Rule Comment Period End 05/29/02
Final Action 12/00/02

Anti-Money Laundering Programs for Operators of a Credit Card System
Interim Final Rule 04/29/02 (67 FR 21121)
Interim Final Rule Comment Period End 05/29/02
Final Action 12/00/02
Anti-Money Laundering Programs for Unregistered Investment Companies
NPRM 09/26/02 (67 FR 60617)
NPRM Comment Period End 11/25/02
Final Rule 12/00/02

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905-3590
Fax: 703 905-3735

RIN: 1506–AA28

2475. • FINANCIAL CRIMES ENFORCEMENT NETWORK; AMENDMENT TO THE BANK SECRECY ACT REGULATIONS—REQUIREMENT THAT CURRENCY EXCHANGERS REPORT SUSPICIOUS TRANSACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 5318(g)

CFR Citation: 31 CFR 103.20

Legal Deadline: None

Abstract: This NPRM proposes to require currency exchangers to report suspicious transactions to the Department of the Treasury. The amendments constitute a further step in the creation of a comprehensive systems (to which other money services businesses are already subject) for the reporting of suspicious transactions by financial institutions. Such a system is a core component of the counter-money laundering strategy of the Department of the Treasury.

Timetable:

Action	Date	FR Cite
NPRM	10/17/02	67 FR 64075
NPRM Comment Period End	12/16/02	
Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905-3590
Fax: 703 905-3735

RIN: 1506–AA34

2476. • FINANCIAL CRIMES ENFORCEMENT NETWORK; AMENDMENT TO THE BANK SECRECY ACT REGULATIONS REQUIREMENT THAT INSURANCE COMPANIES REPORT SUSPICIOUS TRANSACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1829b; 12 USC 1951 to 1959; 31 USC 5311 to 5332

CFR Citation: 31 CFR 103.16

Legal Deadline: None

Abstract: This NPRM proposes to require insurance companies to report suspicious transactions to the Department of the Treasury. The amendments constitute a further step in the creation of a comprehensive system for the reporting of suspicious transactions by the major categories of financial institutions operating in the U.S. as a part of the counter-money laundering program of the Department of the Treasury.

Timetable:

Action	Date	FR Cite
NPRM	10/17/02	67 FR 64067
NPRM Comment Period End	12/16/02	
Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905-3590
Fax: 703 905-3735

RIN: 1506–AA36

Department of the Treasury (TREAS) — Financial Crimes Enforcement Network (FINCEN) — Final Rule Stage

2477. AMENDMENT TO THE BANK SECRECY ACT REGULATIONS REGARDING REPORTING OF CROSS-BORDER TRANSPORTATION OF CERTAIN MONETARY INSTRUMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 5312(a)(3), Bank Secrecy Act

CFR Citation: 31 CFR 103

Legal Deadline: None

Abstract: This rule will require reporting of cross-border transportation of certain negotiable instruments.

Timetable:

Action	Date	FR Cite
NPRM	01/22/97	62 FR 3249
NPRM Comment Period End	04/22/97	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905-3590
Fax: 703 905-3735

RIN: 1506–AA15

2478. AMENDMENT TO THE BANK SECRECY ACT REGULATIONS—EXEMPTIONS FROM THE REQUIREMENT TO REPORT TRANSACTIONS IN CURRENCY

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1829b; 12 USC 1951 to 1959; 31 USC 5311 to 5330

CFR Citation: 31 CFR 103

Legal Deadline: None

Abstract: This document contains an interim rule that further reforms and simplifies the process by which depository institutions may exempt transactions of retail and other

businesses from the requirement to report transactions in currency in excess of $10,000. The interim rule is part of a continuing program to reduce unnecessary burdens upon financial institutions complying with the Bank Secrecy Act and increase the cost-effectiveness of the counter-money laundering policies of the Department of the Treasury.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/28/00	65 FR 46356
Interim Final Rule Effective	07/31/00	
Interim Final Rule Comment Period End	09/26/00	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905-3590
Fax: 703 905-3735

RIN: 1506–AA23

2479. AMENDMENT TO THE BANK SECRECY ACT REGULATIONS—REQUIREMENT THAT NONFINANCIAL TRADES OR BUSINESSES REPORT CERTAIN CURRENCY TRANSACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1829b; 12 USC 1951 to 1959; 31 USC 5311 et seq.; PL 107-56

CFR Citation: 31 CFR 103.30

Legal Deadline: Final, Statutory, April 26, 2002, Interim rule published 12/31/2001.

Abstract: This document contains an interim rule amending the Bank Secrecy Act regulations to require certain persons to report currency received in the course of their trade or business.

Timetable:

Action	Date	FR Cite
NPRM	12/31/01	66 FR 67685
NPRM Comment Period End	03/01/02	
Interim Final Rule	12/31/01	66 FR 67680
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905-3590
Fax: 703 905-3735

RIN: 1506–AA25

2480. • DUE DILIGENCE REQUIREMENTS FOR CORRESPONDENT ACCOUNTS AND PRIVATE BANKING ACCOUNTS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 31 USC 5318(i)

CFR Citation: 31 CFR 103.175-103.178

Legal Deadline: Final, Statutory, July 23, 2002, PL 107-56, sec 312.

Abstract: Section 5318(i) of title 31, U.S. Code, added by section 312 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001 requires U.S. financial institutions to establish due diligence policies, procedures, and controls reasonably designed to detect and report money laundering through correspondent accounts and private banking accounts that U.S. financial institutions establish or maintain for non-U.S. persons. Section 312 takes effect on July 23, 2002, whether or not Treasury has issued a final rule implementing that provision.

Timetable:

Action	Date	FR Cite
NPRM	05/30/02	67 FR 37736
NPRM Comment Period End	07/01/02	
Interim Final Rule	07/23/02	67 FR 48347
Interim Final Rule Effective	07/23/02	
Interim Final Rule Comment Period End	08/22/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905-3590
Fax: 703 905-3735

RIN: 1506–AA29

2481. • CUSTOMER IDENTIFICATION PROGRAMS FOR BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 5318(l)

CFR Citation: 31 CFR 103.121

Legal Deadline: Final, Statutory, October 25, 2002, PL 107-56, sec 352.

Abstract: This NPRM proposes to require banks, savings associations, and credit unions to establish written customer identification programs.

Timetable:

Action	Date	FR Cite
NPRM	07/23/02	67 FR 48290
NPRM Comment Period End	09/06/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905-3590
Fax: 703 905-3735

RIN: 1506–AA31

2482. • CUSTOMER IDENTIFICATION PROGRAM FOR BROKER-DEALERS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 5318(l)

CFR Citation: 31 CFR 103.122

Legal Deadline: Final, Statutory, October 25, 2002, PL 107-56, sec 352.

Abstract: This NPRM proposes to require securities broker-dealers to establish written customer identification programs.

Timetable:

Action	Date	FR Cite
NPRM	07/23/02	67 FR 48206
NPRM Comment Period End	09/06/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

TREAS—FINCEN — **Final Rule Stage**

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905-3590
Fax: 703 905-3735

RIN: 1506–AA32

2483. • CUSTOMER IDENTIFICATION PROGRAM FOR MUTUAL FUNDS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 5318(l)

CFR Citation: 31 CFR 103.131

Legal Deadline: Final, Statutory, October 25, 2002, PL 107-56, sec 352.

Abstract: This NPRM proposes to require mutual funds to establish written customer identification programs.

Timetable:

Action	Date	FR Cite
NPRM	07/23/02	67 FR 48318
NPRM Comment Period End	09/06/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905-3590
Fax: 703 905-3735

RIN: 1506–AA33

Department of the Treasury (TREAS)
Financial Crimes Enforcement Network (FINCEN) — **Long-Term Actions**

2484. AMENDMENTS TO THE BANK SECRECY ACT REGULATIONS—SPECIAL REPORTING AND RECORDKEEPING REQUIREMENTS—MONEY SERVICES BUSINESSES (MSBS)

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 103

Timetable:

Action	Date	FR Cite
NPRM	05/21/97	62 FR 27909
NPRM Comment Period End	09/30/97	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel
Phone: 703 905-3590
Fax: 703 905-3735

RIN: 1506–AA19

Department of the Treasury (TREAS)
Financial Crimes Enforcement Network (FINCEN) — **Completed Actions**

2485. AMENDMENTS TO THE BANK SECRECY ACT REGULATIONS—SUSPICIOUS ACTIVITY REPORTING—BROKER/DEALERS

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 103

Completed:

Reason	Date	FR Cite
Final Action	07/01/02	67 FR 44048

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel
Phone: 703 905-3590
Fax: 703 905-3735

RIN: 1506–AA21

2486. AMENDMENTS TO THE BANK SECRECY ACT REGULATIONS—SUSPICIOUS ACTIVITY REPORTING—CASINOS

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 103

Completed:

Reason	Date	FR Cite
Final Action	09/26/02	67 FR 60722

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel
Phone: 703 905-3590
Fax: 703 905-3735

RIN: 1506–AA22

2487. FINANCIAL CRIMES ENFORCEMENT NETWORK; SPECIAL INFORMATION SHARING PROCEDURES TO DETER MONEY LAUNDERING AND TERRORIST ACTIVITY

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 103.90; 31 CFR 103.110

Completed:

Reason	Date	FR Cite
Final Action	09/26/02	67 FR 60579

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel
Phone: 703 905-3590
Fax: 703 905-3735

RIN: 1506–AA27

TREAS—FINCEN — **Completed Actions**

2488. • NOTICE OF WITHDRAWAL OF EXEMPTION

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 5318(a)(6); 31 CFR 103.86

CFR Citation: None

Legal Deadline: None

Abstract: This notice rescinded an exemption from the provisions of the Bank Secrecy Act regulations granted in 1972 to persons required to register as brokers or dealers in securities ("broker-dealers") solely to permit the sale of variable annuities contracts issued by life insurance companies. Such entities must now comply with Bank Secrecy Act regulations with respect to activity requiring the company to register with the Securities Exchange Commission as a broker-dealer.

Timetable:

Action	Date	FR Cite
Final Action	07/24/02	67 FR 48388
Final Action Effective	08/23/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905-3590
Fax: 703 905-3735

RIN: 1506–AA30

2489. COUNTER MONEY LAUNDERING REQUIREMENTS—CORRESPONDENT ACCOUNTS; FOREIGN SHELL BANKS

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 103

Completed:

Reason	Date	FR Cite
Final Rule	09/26/02	67 FR 60562

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel
Phone: 703 905-3590
Fax: 703 905-3735

Related RIN: Previously reported as 1505-AA87

RIN: 1506–AA35

BILLING CODE 4820–02–S

Department of the Treasury (TREAS)
Financial Management Service (FMS) — **Proposed Rule Stage**

2490. INDORSEMENT AND PAYMENT OF CHECKS DRAWN ON THE UNITED STATES TREASURY

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 12 USC 391; 31 USC 321; 31 USC 3327; 31 USC 3328; 31 USC 3331; 31 USC 3334; 31 USC 3343; 31 USC 3702; 31 USC 3702 note; 31 USC 3711; 31 USC 3712; 31 USC 3716; 31 USC 3717; 318 US 363 (1943); 332 US 234 (1947)

CFR Citation: 31 CFR 240

Legal Deadline: None

Abstract: Notice of proposed rulemaking II (NPRM II) was a reissuance of NPRM I published on 9/21/95, which proposed to fix the time by which Treasury can decline payment on Treasury checks, provide financial institutions with a date certain for final payments, and provide greater clarity by defining previously undefined terms. NPRM I also proposed that the Department of the Treasury may instruct Federal Reserve Banks to intercept benefit payment checks to deceased payees and to return, unpaid, those checks. In addition to the revisions proposed in NPRM I, NPRM II announced the Department of the Treasury's intent that this regulation supersede Federal common law regarding the risk of loss on checks containing forged disbursing officer signatures, such as counterfeits. The Interim Final Rule will amend this regulation to implement provisions of the Debt Collection Improvement Act of 1996 authorizing the collection of debts owed by presenting banks through Treasury Check Offset. NPRM III is a reissuance of NPRM II and will address, at a minimum, the issues in NPRMs I and II.

Timetable:

Action	Date	FR Cite
NPRM I	09/21/95	60 FR 48940
NPRM Comment Period End	11/06/95	
NPRM II	05/30/97	62 FR 29314
NPRM III	12/00/02	
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Ronald E. Brooks, Senior Program and Policy Analyst, Financial Operations, Department of the Treasury, Financial Management Service, Room 725-D, 3700 East-West Highway, Hyattsville, MD 20782
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RIN: 1510–AA45

2491. CLAIMS ON ACCOUNT OF TREASURY CHECKS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 321; 31 USC 3328; 31 USC 3331; 31 USC 3343; 31 USC 3702; 31 USC 3712

CFR Citation: 31 CFR 245

Legal Deadline: None

Abstract: Title 31 CFR part 245 governs the issuance of replacement checks for checks drawn on the United States Treasury when: 1) the original check has been lost, stolen, destroyed or mutilated or defaced to such an extent that it is rendered non-negotiable; 2) the original check has been negotiated and paid on a forged or unauthorized indorsement; and 3) the original check has been cancelled pursuant to 31 CFR part 240. This regulation is being revised to update the regulation's definitions to make them consistent with the language of the proposed revisions to the definitions in 31 CFR part 240. Other revisions will govern the use of the Check Forgery Insurance Fund (Fund). The Fund is a revolving fund established to settle payee claims of non-receipt where the original check has been fraudulently negotiated. The Fund ensures that innocent payees, whose Treasury checks have been

TREAS—FMS — **Proposed Rule Stage**

fraudulently cashed, receive replacement checks in a timely manner.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Ella White, Program Analyst, Department of the Treasury, Financial Management Service, Room 8D25, 3700 East-West Highway, Hyattsville, MD 20782
Phone: 202 874-8445

RIN: 1510–AA51

2492. PAYMENT OF FEDERAL TAXES AND THE TREASURY TAX AND LOAN PROGRAM

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 12 USC 90; 12 USC 265; 12 USC 266; 12 USC 321; 12 USC 323; 12 USC 332; 12 USC 391; 12 USC 1452(d); 12 USC 1464(k); 12 USC 1767; 12 USC 1789(a); 12 USC 2013; 12 USC 2122; 12 USC 3102; 12 USC 6302; 31 USC 3301 to 3304

CFR Citation: 31 CFR 203

Legal Deadline: None

Abstract: This first rule amends the regulation to provide the Secretary greater flexibility to adjust the rate of interest charged on funds loaned through the Treasury Tax and Loan (TT&L) program. The rule also allows for a new TT&L investment option for financial institutions. This second rule includes general revisions that will provide needed updates to support operational changes to the system used for the collection of corporate withholding taxes and the investment of the Government's excess operating funds; streamline the regulation by converting to the plain language standard; and incorporate other needed updates.

Timetable:

General Revisions
NPRM 11/00/02
Final Action 06/00/03

Treasury Tax and Loan Rate of Interest
NPRM 07/30/99 (64 FR 41747)
NPRM Comment Period End 09/28/99
Final Action 03/15/02 (67 FR 11573)

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Walt Henderson, Senior Financial Program Specialist, Cash Management Policy and Planning Directorate, Department of the Treasury, Financial Management Service, 401 14th Street SW., Washington, DC 20227
Phone: 202 874-6705
Email: walt.henderson@fms.treas.gov

RIN: 1510–AA79

2493. MANAGEMENT OF FEDERAL AGENCY RECEIPTS AND DISBURSEMENTS; OPERATION OF THE CASH MANAGEMENT IMPROVEMENT FUND

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 5 USC 301; 31 USC 321; 31 USC 3301; 31 USC 3302; 31 USC 3321; 31 USC 3327; 31 USC 3332; 31 USC 3335; 31 USC 3720; 31 USC 6503

CFR Citation: 31 CFR 206

Legal Deadline: None

Abstract: This regulation governs collection and deposit regulations requiring timely methods, principally Electronic Funds Transfer (EFT), for the collection and deposit of funds as authorized by section 2652 of the Deficit Reduction Act of 1984. This regulation also incorporates revisions authorized by the Cash Management Act of 1990 and the Cash Management Improvement Act Amendments of 1992. These revisions require executive agencies to use effective, efficient disbursement mechanisms, principally EFT, in the delivery of payments. An agency's failure to comply with this regulation may result in a charge equal to the cost of such non-compliance to the Treasury's General Fund.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Stephen Kenneally, Financial Program Specialist, Cash Management Policy and Planning Division, Department of the Treasury, Financial Management Service, Room 408D, 401 14th Street SW., Washington, DC 20227
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RIN: 1510–AA86

2494. WITHHOLDING OF DISTRICT OF COLUMBIA, STATE, CITY AND COUNTY INCOME OR EMPLOYMENT TAXES BY FEDERAL AGENCIES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5516; 5 USC 5517; 5 USC 5520; EO 1197, sec 4

CFR Citation: 31 CFR 215

Legal Deadline: None

Abstract: This regulation governs the agreements entered into by the Department of the Treasury and State and local governments for the withholding of State and local income taxes from the compensation of Federal employees.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Agency Contact: Stephen Kenneally, Financial Program Specialist, Cash Management Policy and Planning Division, Department of the Treasury, Financial Management Service, Room 408D, 401 14th Street SW., Washington, DC 20227
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RIN: 1510–AA90

Department of the Treasury (TREAS)
Financial Management Service (FMS) — **Final Rule Stage**

2495. FOREIGN EXCHANGE OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2363; 31 USC 3513; EO 10488; EO 10900

CFR Citation: 31 CFR 281

Legal Deadline: None

Abstract: This regulation governs the administration of the purchase, custody, deposit, transfer, sale and reporting of foreign exchange (including credits and currencies) by executive departments and agencies. Currently, this regulation allows the purchase of foreign currency to an amount which, together with the balance on hand in the bank, may not exceed estimated requirements for a 30-day period. The revised rule allows the purchase of foreign currency to a balance "commensurate with immediate disbursing requirements."

Timetable:

Action	Date	FR Cite
NPRM	01/29/96	61 FR 2750
NPRM Comment Period End	02/28/96	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Stephen Kenneally, Financial Program Specialist, Cash Management Policy and Planning Division, Department of the Treasury, Financial Management Service, Room 408D, 401 14th Street SW., Washington, DC 20227
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Email: stephen.kenneally@fms.treas.gov

Walt Henderson, Senior Financial Program Specialist, Cash Management Policy and Planning Directorate, Department of the Treasury, Financial Management Service, 401 14th Street SW., Washington, DC 20227
Phone: 202 874-6705
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RIN: 1510–AA48

2496. PAYMENTS UNDER JUDGMENT AND PRIVATE RELIEF ACTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 104-53; PL 104-316; 28 USC 2414; 28 USC 2517; 31 USC 1304

CFR Citation: 31 CFR 256

Legal Deadline: None

Abstract: This regulation governs the procedures for securing payment for money judgments against the United States. The proposed revision will update these procedures. This revision will benefit claimants and others in understanding the judgment payment process. This regulation currently describes a process that involves the General Accounting Office (GAO) and the Treasury Department. The revision will remove the GAO from this description to reflect legislative amendments that effect this change. Also, the regulation currently identifies monetary thresholds that no longer exist. The change will reflect the removal of these monetary limitations. These revisions will make the regulation consistent with current procedures for securing payment of money judgments against the United States.

Timetable:

Action	Date	FR Cite
NPRM	01/08/96	61 FR 552
NPRM Comment Period End	02/07/96	
Final Action	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Wanda Rogers, Director, Financial Accounting and Services Division, Department of the Treasury, Financial Management Service, Room 620D, 3700 East-West Highway, Hyattsville, MD 20782
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RIN: 1510–AA52

2497. OFFSET OF FEDERAL PAYMENTS (OTHER THAN TAX REFUND AND FEDERAL BENEFIT PAYMENTS) TO COLLECT PAST-DUE, LEGALLY ENFORCEABLE NONTAX DEBT

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 321; 31 USC 3716

CFR Citation: 31 CFR 285.5

Legal Deadline: None

Abstract: This rule governs the administrative offset of Federal payments by disbursing officials of the United States.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Gerry Isenberg, Financial Program Specialist, Debt Management Service, Department of the Treasury, Financial Management Service, Room 44AB, 401 14th Street SW., Washington, DC 20227
Phone: 202 874-6660

RIN: 1510–AA65

2498. SALARY OFFSET

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5514

CFR Citation: 31 CFR 285.7

Legal Deadline: None

Abstract: This rule governs the centralized computer matching of Federal employee records for purposes of salary offset to collect nontax delinquent debt owed the Federal Government.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/28/98	63 FR 23353
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Gerry Isenberg, Financial Program Specialist, Debt Management Service, Department of the Treasury, Financial Management Service, Room 44AB, 401 14th Street SW., Washington, DC 20227
Phone: 202 874-6660

RIN: 1510–AA70

2499. OFFSET OF TAX REFUND PAYMENT TO COLLECT STATE INCOME TAX OBLIGATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6402(e)

CFR Citation: 31 CFR 285.8

Legal Deadline: None

Abstract: This rule governs the offset of Federal tax refund payments to collect delinquent State income taxes.

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TREAS—FMS — **Final Rule Stage**

Timetable:

Action	Date	FR Cite
NPRM	12/20/99	64 FR 71233
Interim Final Rule	12/20/99	64 FR 71227
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

Federalism: Undetermined

Agency Contact: Dean Balamaci, Director, Business and Agency Liaison Division, Department of the Treasury, Financial Management Service
Phone: 202 874-6660

RIN: 1510–AA78

2500. 2003 ACH RULES

Priority: Other Significant

Legal Authority: 5 USC 5525; 12 USC 391; 31 USC 321; 31 USC 3301; 31 USC 3302; 31 USC 3321; 31 USC 3332; 31 USC 3335; 31 USC 3720

CFR Citation: 31 CFR 210

Legal Deadline: None

Abstract: This revision of 31 CFR part 210 will reconcile Government Automated Clearing House (ACH) regulations and private industry rules, as set forth by the National Automated Clearing House Association, by updating the incorporation of certain industry rules into Federal law for the year 2003.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Walt Henderson, Senior Financial Program Specialist, Cash Management Policy and Planning Directorate, Department of the Treasury, Financial Management Service, 401 14th Street SW., Washington, DC 20227
Phone: 202 874-6705
Email: walt.henderson@fms.treas.gov

RIN: 1510–AA89

Department of the Treasury (TREAS)
Financial Management Service (FMS) — **Long-Term Actions**

2501. OFFSET OF FEDERAL PAYMENTS (OTHER THAN TAX REFUND AND FEDERAL BENEFIT PAYMENTS) TO COLLECT PAST-DUE DEBTS OWED TO STATES (OTHER THAN CHILD SUPPORT)

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 285.6

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Federalism: Undetermined

Agency Contact: Gerry Isenberg
Phone: 202 874-6660

RIN: 1510–AA66

2502. PUBLIC DISSEMINATION OF IDENTITY OF DELINQUENT DEBTORS

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 285.14

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Gerry Isenberg
Phone: 202 874-6660

RIN: 1510–AA72

2503. SURETY BOND REIMBURSEMENT FUND

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

CFR Citation: 31 CFR 223

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Wanda Rogers
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RIN: 1510–AA85

Department of the Treasury (TREAS)
Financial Management Service (FMS) — **Completed Actions**

2504. RULES AND PROCEDURES FOR EFFICIENT FEDERAL-STATE FUNDS TRANSFERS

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 205

Completed:

Reason	Date	FR Cite
Final Action	05/10/02	67 FR 31880

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Stephen Kenneally
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RIN: 1510–AA38

BILLING CODE 4810–35–S

Department of the Treasury (TREAS)
Bureau of Alcohol, Tobacco and Firearms (BATF) — **Proposed Rule Stage**

ALCOHOL

2505. EXPORTATION OF LIQUORS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 252

Legal Deadline: None

Abstract: ATF proposes the recodification of 27 CFR part 252 to part 28 to eliminate obsolete or unnecessary rules and forms and streamline export processing, while providing adequate protection for the revenue.

Timetable:

Action	Date	FR Cite
ANPRM	09/08/92	57 FR 40887
ANPRM Comment Period End	10/08/92	
ANPRM Comment Period Extended	10/15/92	57 FR 47320
ANPRM Comment Period Extended End	12/07/92	
ANPRM	08/09/96	61 FR 41500
ANPRM Comment Period End	12/10/96	
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joanne Brady, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 215 597-5288

RIN: 1512–AA98

2506. REVISION OF BREWERY REGULATIONS AND ISSUANCE OF REGULATIONS FOR TAVERNS ON BREWERY PREMISES (BREWPUBS)

Regulatory Plan: This entry is Seq. No. 112 in part II of this issue of the Federal Register.

RIN: 1512–AB37

2507. PROHIBITION OF ALCOHOL BEVERAGE CONTAINERS AND STANDARD OF FILL FOR DISTILLED SPIRITS AND WINE

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4; 27 CFR 5; 27 CFR 7

Legal Deadline: None

Abstract: ATF proposes to amend regulations to clarify the standards of fill for distilled spirits and wine. ATF also proposes to amend regulations to prohibit certain alcohol beverage containers that are likely to mislead consumers as to the identity or character of the distilled spirits, wine, or malt beverage products or to be confused with other (nonalcohol) food products.

Timetable:

Action	Date	FR Cite
NPRM	02/09/99	64 FR 6486
NPRM Comment Period End	04/12/99	
Revised NPRM-Aggregate Packaging	03/00/03	
Revised NPRM-Deceptive Packaging	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lisa Marie Gesser, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Room 5000, Regulations Division, 650 Massachusetts Avenue NW., Washington, DC 20226
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RIN: 1512–AB89

2508. AMENDED STANDARD OF IDENTITY FOR SHERRY

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4

Legal Deadline: None

Abstract: ATF is considering a petition to allow certain types of wine to be labeled as "sherry" rather than "light sherry."

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Marjorie D. Ruhf, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210
Email: mdruhf@atfhq.atf.treas.gov

RIN: 1512–AB96

2509. FLAVORED MALT BEVERAGES

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 211, 205; 26 USC 5052

CFR Citation: 27 CFR 7; 27 CFR 25

Legal Deadline: None

Abstract: ATF issued ATF Rulings 96-1 and 2002-2 to address production and labeling of flavored malt beverages. ATF is studying the issue of flavored malt beverages and is considering rulemaking to address production, identity, labeling, formulation, and tax issues.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	
Final Action	09/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Charles N. Bacon, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Room 701, 10 Causeway Street, Boston, MA 02222
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Fax: 617 557-1251
Email: cnbacon@bost.atf.treas.gov

RIN: 1512–AC11

2510. ALCOHOL BEVERAGE HEALTH WARNING STATEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205; 27 USC 215

CFR Citation: 27 CFR 16

Legal Deadline: None

Abstract: ATF is considering amending the regulations concerning the placement, legibility, and noticeability of the congressionally mandated health warning statement required to appear on the labels of all containers of alcohol beverages. Based on a petition we have received, we wish to gather information by inviting comments from the public and industry as to whether the existing regulations should be revised.

Timetable:

Action	Date	FR Cite
ANPRM	05/22/01	66 FR 28135
ANPRM Comment Period End	08/20/01	
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Ficaretta, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AC12

2511. PRODUCTION OF DRIED FRUIT AND HONEY WINES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 5381; 26 USC 5382; 26 USC 5385; 26 USC 5386; 26 USC 5387

CFR Citation: 27 CFR 24

Legal Deadline: None

Abstract: ATF has received two petitions relating to the production of agricultural wines. One petition proposes that the wine regulations be amended to allow for the production of dried fruit wines with an alcohol by volume content of more than 14 percent. The second petition proposes that the regulations be amended to allow for the production of honey wines with a starting Brix of less than 22 degrees.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jennifer Berry, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 111 W. Huron Street, Room 219, Buffalo, NY 14202-2301
Phone: 716 551-4048

RIN: 1512–AC48

2512. PETITION TO ESTABLISH THE SANTA BARBARA HIGHLANDS VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing the establishment of Santa Barbara Highlands as an American viticultural area. The proposed Santa Barbara Highlands area is located in Santa Barbara and Ventura Counties in California. The petition was submitted by Mr. Nebil Zarif, President, Barnwood Vineyards.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy P. DeVanney, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., RM 5000, Washington, DC 20226
Phone: 202 927-8196
Fax: 202 927-8525

RIN: 1512–AC53

2513. PROPOSED SAN BERNABE VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms has received petitions proposing the establishment of the San Bernabe viticultural area and the realignment of the San Lucas American Viticultural Area (AVA). Both areas are situated within the Central Coast AVA and the Monterey AVA and are located in central Monterey County, California. The proposed San Bernabe AVA would consist of 24,796 acres of land that the petitioner states is predominantly rolling hills with sandy soils that differ from the surrounding Monterey AVA. The San Lucas realignment would transfer 1,100 of its northwest acres to the proposed San Bernabe southern area in an effort to conform with geographic considerations of the new area. These proposals are the result of petitions filed by Claude Hoover of Delicato Family Vineyards.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Sutton, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 415 947-5192

RIN: 1512–AC60

2514. PETITION TO ESTABLISH THE TRINITY LAKE VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms has received a petition from Keith Groves of Alpen Cellars proposing the establishment of a viticultural area located in Trinity County, California. The proposed Trinity Lake viticultural area consists of approximately 96,000 acres.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy P. DeVanney, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., RM 5000, Washington, DC 20226
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Fax: 202 927-8525

RIN: 1512–AC62

2515. CORRECTION OF TECHNICAL ERROR IN 27 CFR PART 4

Priority: Info./Admin./Other

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms is correcting a technical error in 27 CFR 4.22(b) regarding the ameliorating of non-grape wines.

Timetable:

Action	Date	FR Cite
NPRM	10/03/02	67 FR 61998
NPRM Comment Period End	12/02/02	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jennifer Berry, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 111 W. Huron Street, Room 219, Buffalo, NY 14202-2301
Phone: 716 551-4048

RIN: 1512–AC63

2516. PETITION TO ESTABLISH RED HILLS AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: This proposed viticultural area of northern California lies within the Clear Lake viticultural area in Lake County, which is entirely within the multi-county North Coast viticultural area. The area consists of approximately 31,250 acres of hilly terrain covered with rocky, volcanic soil.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Sutton, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 415 947-5192

RIN: 1512–AC66

2517. PETITION TO ESTABLISH "SENECA LAKE" AS AN AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms is requesting comments from interested parties concerning the proposed establishment of "Seneca Lake" as an American viticultural area. The proposed Seneca Lake viticultural area encompasses about 204,600 acres of land surrounding Seneca Lake in upstate New York. The proposed area is located within the approved Finger Lakes viticultural area.

Timetable:

Action	Date	FR Cite
NPRM	10/21/02	67 FR 64575
NPRM Comment Period End	12/20/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kristy Colon, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 202 927-8206

RIN: 1512–AC70

2518. PETITION TO ESTABLISH "BENNETT VALLEY" AS AN AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The proposed 8,100-acre viticultural area is located entirely within the North Coast viticultural area of northern California, Sonoma County, and predominantly within the Sonoma Valley viticultural area. There are small overlaps into the Sonoma Coast and Sonoma Mountain viticultural areas. The petitioned area is approximately 40 miles northeast of San Francisco and is bordered by mountains, foothills, and the City of Santa Rosa. Currently, there are 650 acres of vineyards.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Sutton, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 415 947-5192

RIN: 1512–AC72

2519. PETITION FOR THE ESTABLISHMENT OF "RED HILL" AS AN AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 205(e)

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms has received a petition proposing the establishment of "Red Hill" as an American viticultural area located within the State of Oregon. The proposed viticultural area consists of approximately 1,668 acres or 8.6 square miles.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy P. DeVanney, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., RM 5000, Washington, DC 20226
Phone: 202 927-8196
Fax: 202 927-8525

RIN: 1512–AC76

2520. PETITION TO CHANGE THE TEMECULA VITICULTURAL AREA'S NAME TO TEMECULA VALLEY

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The proposed name change from Temecula to Temecula Valley is intended to provide a more accurate portrayal of the viticultural area, geographically and politically, and to provide clarity to wine consumers. The boundaries will not change.

Timetable:

Action	Date	FR Cite
NPRM	10/21/02	67 FR 64573
NPRM Comment Period End	12/20/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Sutton, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 415 947-5192

RIN: 1512–AC77

2521. • PETITION TO ESTABLISH "EOLA HILLS" AS A NEW AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms has received a petition proposing the establishment of "Eola Hills" as a new American viticultural area in Oregon.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jennifer Berry, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 111 W. Huron Street, Room 219, Buffalo, NY 14202-2301
Phone: 716 551-4048

RIN: 1512–AC78

2522. • PROPOSED ADDITION OF "MOSCATO GRECO" AS A GRAPE VARIETY NAME FOR AMERICAN WINES

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms has received a petition proposing to add a new name, "Mosquito Greco," to the list of grape variety names used to designate American wines.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jennifer Berry, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 111 W. Huron Street, Room 219, Buffalo, NY 14202-2301
Phone: 716 551-4048

RIN: 1512–AC79

2523. • PETITION TO ESTABLISH "COLUMBIA GORGE" AS A NEW AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms has received a petition proposing the establishment of the "Columbia Gorge" viticultural area located in Hood River and Wasco Counties, Oregon and Skamania and Klickitat Counties, Washington. The area is approximately 280 square miles covering 179,200 acres with 284 acres presented planted to wine grapes.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bernard J. Kipp, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 503 356-1341

RIN: 1512–AC81

2524. • PETITION TO ESTABLISH "ALEXANDRIA LAKES" AS A NEW AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms proposes to establish "Alexandria Lakes" as a new American viticultural area. The proposed area is located in Douglas County, Minnesota. This proposal is a result of a petition filed by Robert G. Johnson on behalf of Carlos Creek Winery.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lisa M. Gesser, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Room 5000, Washington, DC 20226
Phone: 202 927-9347
Fax: 202 927-8525
Email: lmgesser@atfhq.atf.treas.gov

RIN: 1512–AC85

2525. • PETITION TO ESTABLISH "RED HILLS OF DUNDEE" AS A NEW AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms has received a petition from the North Willamette Valley AVA Group proposing to establish the "Red Hills of Dundee"

American viticultural area in Yamhill County, Oregon. This petitioned viticultural area has 6,490 acres, with 1,264 acres planted to wine grapes, and is on the north side of the Willamette Valley viticultural area in northwest Oregon.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Sutton, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 415 947-5192

RIN: 1512–AC91

2526. • PETITION TO ESTABLISH "SANTA MARIA BENCH" AS A NEW AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms received a petition from Cambria Winery and Vineyard proposing to establish the "Santa Maria Bench" viticultural area in Santa Barbara County, California. The petitioned viticultural area has 3,200 acres, with 1,500 acres planted to wine grapes, and is within the established Santa Maria and the Central Coast viticultural areas.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Sutton, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 415 947-5192

RIN: 1512–AC93

2527. • PETITION TO ESTABLISH "GRAND LAKE O' THE CHEROKEES" AS A NEW AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms received a petition proposing "Grand Lake O' the Cherokees" as a new American viticultural area in Oklahoma. The proposed area is located in the northeastern region of the State. The proposed viticultural area encompasses Craig and portions of Ottawa, Delaware, and Hayes Counties.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy P. DeVanney, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., RM 5000, Washington, DC 20226
Phone: 202 927-8196
Fax: 202 927-8525

RIN: 1512–AC97

2528. • PETITION TO ESTABLISH "SNAKE RIVER VALLEY" AS A NEW VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms received a petition proposing "Snake River Valley" as a new American viticultural area located in the States of Idaho and Washington.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy P. DeVanney, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., RM 5000, Washington, DC 20226
Phone: 202 927-8196
Fax: 202 927-8525

RIN: 1512–AC98

2529. • PETITION TO EXPAND THE LIVERMORE VALLEY VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms received a petition proposing to expand the boundaries of approved American viticultural area "Livermore Valley" located in the State of California. The proposed expanded boundaries encompass approximately 259,000 acres, of which 4,355 acres are devoted to vineyards. The expansion would add approximately 163,000 acres, 120 acres of vineyards and four wineries to the area.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy P. DeVanney, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., RM 5000, Washington, DC 20226
Phone: 202 927-8196
Fax: 202 927-8525

Related RIN: Related To 1512-AD00

RIN: 1512–AC99

2530. • SAN FRANCISCO BAY AND CENTRAL COAST VITICULTURAL AREAS—BOUNDARY REALIGNMENT/EXPANSION

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

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Abstract: The Bureau of Alcohol, Tobacco and Firearms received a petition proposing an expansion/realignment of the boundaries of approved American viticultural areas "San Francisco Bay" and "Central Coast" located in the State of California. In total, the proposed expanded boundaries encompass approximately 20,000 acres.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy P. DeVanney, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., RM 5000, Washington, DC 20226
Phone: 202 927-8196
Fax: 202 927-8525

Related RIN: Related To 1512-AC99

RIN: 1512–AD00

2531. • PETITION TO ESTABLISH "UPPER ARROYO GRANDE" AS A NEW AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms received a petition proposing the establishment of "Upper Arroyo Grande," located in the State of California, as a new American viticultural area.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy P. DeVanney, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., RM 5000, Washington, DC 20226
Phone: 202 927-8196
Fax: 202 927-8525

RIN: 1512–AD01

2532. • PETITION TO ESTABLISH "CHEHALEM MOUNTAINS" AS A NEW AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms has received a petition proposing the establishment of the "Chehalem Mountains" viticultural area located in Yamhill, Washington, and Clackamas Counties, Oregon.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bernard J. Kipp, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 503 356-1341

RIN: 1512–AD02

2533. • PETITION TO ESTABLISH "RIBBON RIDGE" AS A NEW AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms has received a petition proposing the establishment of the "Ribbon Ridge" viticultural area located in the northern part of Yamhill County, Oregon between Newberg and Gaston.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bernard J. Kipp, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 503 356-1341

RIN: 1512–AD03

2534. • PETITION TO ESTABLISH "YAMHILL-CARLTON DISTRICT" AS A NEW AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms has received a petition proposing the establishment of the "Yamhill-Carlton District" viticultural area. The proposed area falls within the approved boundaries of the Willamette Valley viticultural area in northwest Oregon.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bernard J. Kipp, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 503 356-1341

RIN: 1512–AD04

EXPLOSIVES

2535. COMMERCE IN EXPLOSIVES (INCLUDING EXPLOSIVES IN THE FIREWORKS INDUSTRY) (RULEMAKING RESULTING FROM A SECTION 610 REVIEW)

Regulatory Plan: This entry is Seq. No. 113 in part II of this issue of the Federal Register.

RIN: 1512–AB48

2536. IDENTIFICATION MARKINGS PLACED ON EXPLOSIVE MATERIALS

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 847

CFR Citation: 27 CFR 55

Legal Deadline: None

Abstract: ATF is considering amending the regulations to require licensed importers to legibly identify by marking all imported explosive materials. Based on a petition we have received, we wish to gather information by inviting comments from the public and industry on whether the regulations should be amended.

Timetable:

Action	Date	FR Cite
ANPRM	11/03/00	65 FR 67669
ANPRM Comment Period End	01/12/01	
NPRM	10/16/02	67 FR 63862
NPRM Comment Period End	01/14/03	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: James Ficaretta, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AC25

2537. • COMMERCE IN EXPLOSIVES—EXPLOSIVE PEST CONTROL DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 847

CFR Citation: 27 CFR 55

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms is proposing to amend the explosive regulations to provide a limited exemption from the requirements of part 55 for wildlife pest control devices that are used for agricultural and other pest control operations.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Ficaretta, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AC80

FIREARMS

2538. IMPLEMENTATION OF PUBLIC LAW 105-277, MAKING OMNIBUS CONSOLIDATED AND EMERG. SUPPLEMENTAL APPROPRIATIONS FOR FY 1999, RELATING TO THE PERMANENT PROVISIONS OF THE BRADY HANDGUN VIOLENCE PREVENTION ACT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552(a); 18 USC 847; 18 USC 921 to 930; 44 USC 3504(h)

CFR Citation: 27 CFR 178

Legal Deadline: None

Abstract: ATF will amend the regulations to implement the provision of Public Law 105-277, Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999, relating to the permanent provisions of the Brady Handgun Violence Prevention Act. The new law allows a licensed pawnbroker to contact the national instant criminal background check system (NICS) prior to taking or receiving a firearm in pawn. If NICS advises the pawnbroker that receipt or possession of the firearm would be in violation of the law, the licensee must advise local law enforcement within 48 hours after receipt of information.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: James Ficaretta, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AB83

2539. IMPLEMENTATION OF PUBLIC LAW 105-277 RELATING TO SECURE GUN STORAGE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552(a); 18 USC 847; 18 USC 421 to 430; 44 USC 3504(h)

CFR Citation: 27 CFR 178

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms will issue a notice of proposed rulemaking amending the regulations to implement the provisions of Public Law 105-277, Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999. Regulations are proposed with regard to: 1) certification by applicants for dealers' licenses that secure gun storage or safety devices will be available at any place where firearms are sold to nonlicensed individuals; and 2) an amended definition of "antique firearm," to include certain muzzle loading firearms.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Ficaretta, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

Related RIN: Related To 1512-AB93

RIN: 1512–AC67

PROCEDURAL

2540. • ELECTRONIC SIGNATURES; ELECTRONIC SUBMISSION OF ATF FORMS (2000R-458P)

Priority: Other Significant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms proposes to amend the regulations to permit industry members to use electronic technology to reduce the need for and storage of paper documents. In order to accomplish our goals, we are proposing to allow industry members to: (1) use electronic signatures to sign certain ATF forms instead of using traditional handwritten signatures; and (2) submit certain forms to ATF electronically through an electronic document receiving system that we approve.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lisa M. Gesser, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Room 5000, Washington, DC 20226
Phone: 202 927-9347
Fax: 202 927-8525
Email: lmgesser@atfhq.atf.treas.gov

RIN: 1512–AC84

TOBACCO PRODUCTS

2541. DETERMINATION OF TAX AND RECORDKEEPING ON LARGE CIGARS

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 5701; 27 USC 5702

CFR Citation: 27 CFR 40; 27 CFR 275

Legal Deadline: None

Abstract: This notice incorporates most of the parts of ATF Industry Circular 91-3, dated March 19, 1991, entitled "Large Cigar Taxes On and After January, 1991" that have not been placed in the regulations. ATF Industry Circular 91-3 addressed questions about determining the amount of tax for large cigars based on their sale price. In addition, this notice proposes: 1) to give guidance on tax adjustments for large cigars provided at no cost in connection with a sale, and 2) recordkeeping requirements for persons in Puerto Rico, who bring large cigars upon prepayment or deferred payment of tax into the United States from Puerto Rico.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AC22

2542. REGULATORY CHANGES FROM CUSTOMS SERVICE FINAL RULE (2001R-140T)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 44

Legal Deadline: None

Abstract: The temporary rule prescribes ATF regulations relating to a U.S. Customs Service (USCS) final rule (T.D. 92-181, 57 FR 37692). The USCS published this final rule to create a separate class of customs bonded warehouses, class 9 (duty-free store). A class 9 customs bonded warehouse (duty-free store) may receive tobacco products or cigarette papers or tubes without payment of Federal excise tax. The temporary rule prescribes the regulations that allow a manufacturer of tobacco products or cigarette papers and tubes and an export warehouse proprietor to send such articles to a class 9 customs bonded warehouse. In addition, the temporary rule prescribes regulations that allow a proprietor of a customs bonded manufacturing warehouse where cigars are manufactured to send such cigars to a class 9 customs bonded warehouse. This notice of proposed rulemaking invites comments on the temporary rule.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AC56

2543. SHIPMENTS OF TOBACCO PRODUCTS OR CIGARETTE PAPERS OR TUBES WITHOUT PAYMENT OF TAX.

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 40; 27 CFR 275

Legal Deadline: None

Abstract: The proposed rule clarifies regulations and establishes procedures governing tobacco products or cigarette papers or tubes brought in bond from Puerto Rico to the Untied States. In addition, the proposed rule would allow a manufacturer of tobacco products to receive in bond, cigarette papers and tubes for placement in packages of roll-your-own tobacco and would eliminate filing bond extensions for tobacco products and cigarette papers or tubes from the Virgin Islands.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AC57

2544. REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES WITHOUT PAYMENT OF TAX FOR USE OF THE UNITED STATES

Priority: Info./Admin./Other

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 45

Legal Deadline: None

Abstract: This proposed rule revises, in plain language, the existing regulations relating to the removal of tobacco products and cigarette papers and tubes, without payment of tax, for use of the United States. ATF is proposing this rule to clearly communicate the requirements of these regulations. In addition, we are liberalizing the requirements for emergency variations.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AC75

2545. • MARKS, LABELS, NOTICES AND BONDS FOR, AND REMOVAL OF, TOBACCO PRODUCTS, AND CIGARETTE PAPERS AND TUBES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 5704; 26 USC 7805

CFR Citation: 27 CFR 40; 27 CFR 275

Legal Deadline: None

Abstract: This notice of proposed rulemaking requires labels, notices and marks for removals, in bond, of tobacco products or cigarette papers and tubes that are not in packages. This notice proposes new sections that prohibit the removal of tobacco products or cigarette papers or tubes which are not in packages for domestic uses. Packages are the immediate containers in which a manufacturer or importer places the tobacco products or cigarette papers or tubes for sale or delivery to the consumer. Also, this notice broadens the language for extending bonds so that manufacturers may receive tobacco products, cigarette papers and tubes, without payment of tax, from Puerto Rico. This notice may affect the operations conducted by manufacturers of tobacco products or cigarette papers and tubes and importers of tobacco products.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AC90

2546. • IN-TRANSIT STOPS OF TOBACCO PRODUCTS, AND CIGARETTE PAPERS AND TUBES, AND RELATED RECORDS, WITHOUT PAYMENT OF TAX

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 5704

CFR Citation: 27 CFR 40; 27 CFR 44

Legal Deadline: None

Abstract: This notice is the result of a petition from the Cigar Association of America and the Pipe Tobacco Council. The petition requests that ATF change its position regarding in-transit stops of tobacco products or cigarette papers and tubes after removal without payment of tax from a factory. ATF has taken the position that the law provides that manufacturers may remove the tobacco products and cigarette papers and tubes by paying the excise tax and subsequently filing a claim for drawback. This notice proposes clarifying the regulations to recognize such in-transit stops and specifies records that manufacturers and export warehouse proprietors maintain relating to the removals without payment of tax.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AC95

Department of the Treasury (TREAS)
Bureau of Alcohol, Tobacco and Firearms (BATF)

Final Rule Stage

ALCOHOL

2547. LABELING OF UNAGED GRAPE BRANDY

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 5

Legal Deadline: None

Abstract: ATF proposes to amend the regulations to permit the use of the word "unaged" as an alternative to "immature," to describe grape brandy that has not been stored in oak containers.

Timetable:

Action	Date	FR Cite
NPRM	06/13/96	61 FR 30015
NPRM Comment Period End	09/11/96	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James Ficaretta, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AB46

2548. DISTILLED SPIRITS PLANT REGULATORY INITIATIVE PROPOSAL

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 19.11; 27 CFR 19.1003; 27 CFR 19.1010; 27 CFR 19.49; 27 CFR 19.153; 27 CFR 19.201 to 206; 27 CFR 19.311; 27 CFR 19.454; 27 CFR 19.605; 27 CFR 19.770; 27 CFR 19.1001

Legal Deadline: None

Abstract: ATF proposes changes to the distilled spirits plant regulations to reduce the regulatory burden and streamline requirements. ATF believes these proposed changes will benefit distilled spirits plant proprietors and other industry members by enabling them to operate more easily and with less regulatory oversight from the Government. ATF is also requesting comments on the possibility of revising the distilled spirits plant recordkeeping requirements to accomplish the reinventing Government goals through a system that would be based, as much

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as possible, on proprietors' own recordkeeping methods.

Timetable:

Action	Date	FR Cite
NPRM	11/30/98	63 FR 65720
NPRM Comment Period End	01/29/99	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joanne Brady, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 215 597-5288

RIN: 1512–AB58

2549. IMPLEMENTATION OF WINE CREDIT PROVISIONS OF PUBLIC LAW 104-188

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552(a); 26 USC 5041

CFR Citation: 27 CFR 24.278; 27 CFR 24.279

Legal Deadline: None

Abstract: ATF is amending wine regulations to implement a change in the law that allows certain transferees in bond to deduct the tax credit for small wine producers. Changes to bond calculations are also included in this regulation.

Timetable:

Action	Date	FR Cite
NPRM	06/02/97	62 FR 29681
Interim Final Rule	06/02/97	62 FR 29663
NPRM Comment Period End	08/01/97	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Marjorie D. Ruhf, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210
Email: mdruhf@atfhq.atf.treas.gov

RIN: 1512–AB65

2550. IMPLEMENTATION OF PUBLIC LAW 105-34, SECTION 1416, RELATING TO REFUND OF TAX FOR DOMESTIC WINE RETURNED TO BOND REGARDLESS OF MERCHANTABILITY (TAXPAYER RELIEF ACT OF 1997)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 5044; 26 USC 5361; 26 USC 5367; 26 USC 5371

CFR Citation: 27 CFR 24.66; 27 CFR 24.295; 27 CFR 24.312

Legal Deadline: None

Abstract: ATF is issuing changes to the wine regulations as a result of the enactment of the Taxpayer Relief Act of 1997 and the Internal Revenue Service Reconstruction and Reform Act of 1998. This amendment informs interested parties of changes by these acts that provide for a refund of the tax for all wine returned to bond, rather than exclusively for unmerchantable or domestic wine returned to bond.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Marjorie D. Ruhf, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210
Email: mdruhf@atfhq.atf.treas.gov

RIN: 1512–AB74

2551. HEALTH CLAIMS AND OTHER HEALTH RELATED STATEMENTS IN THE LABELING AND ADVERTISING OF ALCOHOL BEVERAGES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4; 27 CFR 5; 27 CFR 7

Legal Deadline: None

Abstract: ATF proposes to amend the regulations to prohibit the appearance on labels or in advertisements of any statement that makes a substantive claim regarding health benefits associated with the consumption of alcohol beverages unless such claim is properly qualified. This notice also addresses the use of directional health-related statements and seeks comments on whether the negative consequences of alcohol consumption or abuse disqualify these products entirely from entitlement to any health-related statements.

Timetable:

Action	Date	FR Cite
NPRM	10/25/99	64 FR 57413
NPRM Comment Period End	02/22/00	
Public Hearing	02/28/00	65 FR 10434
Cancellation/ Rescheduling of Hearing	04/25/00	65 FR 24158
Comment Period Extended	04/25/00	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Ficaretta, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AB97

2552. • PETITION TO PROPOSE "YADKIN VALLEY" AS A NEW AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms received a petition proposing "Yadkin Valley" as a new American viticultural area in North Carolina. The proposed area consists of approximately 1,321,000 acres encompassing all of Surry, Wilkes, Yadkin, and portions of Stokes, Forsyth and Davie Counties.

Timetable:

Action	Date	FR Cite
NPRM	02/07/02	67 FR 5756
NPRM Comment Period End	04/08/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy P. DeVanney, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., RM 5000, Washington, DC 20226
Phone: 202 927-8196
Fax: 202 927-8525

Related RIN: Previously reported as 1512-AA07

RIN: 1512–AC82

2553. • ORGANIC CLAIMS IN LABELING AND ADVERTISING OF ALCOHOL BEVERAGES

Priority: Info./Admin./Other

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4; 27 CFR 5; 27 CFR 7; 27 CFR 13

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms plans to amend its alcohol beverage labeling rules to cross-reference the United States Department of Agriculture's National Organic Program (NOP) rules. The mandatory compliance date for the NOP rules is October 21, 2002. ATF will request comments on the temporary rule in an associated notice of proposed rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	10/08/02	67 FR 62860
Temporary Rule	10/08/02	67 FR 62856
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Marjorie D. Ruhf, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210
Email: mdruhf@atfhq.atf.treas.gov

RIN: 1512–AC87

2554. • BREWERY FORMS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 5401; 26 USC 5555

CFR Citation: 27 CFR 25

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms (ATF) has revised the operational report form for breweries and created a new operations report form for small breweries and brewpubs. ATF has also created new bond forms for use by brewers. These new bond forms are for use when a security is posted as the bond in lieu of a corporate surety. Amended regulations will reference these new forms in 27 CFR 25.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Charles N. Bacon, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Room 701, 10 Causeway Street, Boston, MA 02222
Phone: 617 557-1323
Fax: 617 557-1251
Email: cnbacon@bost.atf.treas.gov

RIN: 1512–AC88

2555. • PETITION TO ESTABLISH "OAK KNOLL DISTRICT" AS A NEW AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms is proposing the establishment of the "Oak Knoll District" viticultural area in Napa County, California. This action is in response to a petition by the Oak Knoll District Committee.

Timetable:

Action	Date	FR Cite
NPRM	07/09/02	67 FR 45437
NPRM Comment Period End	09/09/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joanne Brady, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 215 597-5288

Related RIN: Previously reported as 1512-AA07

RIN: 1512–AC89

FIREARMS

2556. COMMERCE IN FIREARMS AND AMMUNITION (OMNIBUS CONSOLIDATED APPROPRIATIONS ACT OF 1997)

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 847; 18 USC 921 to 930

CFR Citation: 27 CFR 178

Legal Deadline: None

Abstract: The Omnibus Consolidated Appropriations Act of 1997 contains amendments to the Gun Control Act of 1986 (18 U.S.C. chapter 44). These amendments add to the category of "prohibited persons" anyone convicted of a "misdemeanor crime of domestic violence." The amendments require individuals acquiring handguns from Federal firearms licensees to certify (in accordance with the Brady Law) that they have not been convicted of such a crime. The amendments also provide for sales between Federal firearms licensees of curio and relic firearms away from their licensed premises.

Timetable:

Action	Date	FR Cite
NPRM	06/30/98	63 FR 35551
Interim Final Rule	06/30/98	63 FR 35520
NPRM Comment Period End	09/28/98	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James Ficaretta, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AB64

2557. RESIDENCY REQUIREMENT FOR PERSONS ACQUIRING FIREARMS

Priority: Other Significant

Legal Authority: 5 USC 552(a); 18 USC 847; 18 USC 921 to 930; 44 USC 3504(h)

CFR Citation: 27 CFR 178

Legal Deadline: None

Abstract: The temporary rule amends the regulations to provide for a firearms purchaser's affirmative statement of his or her State of residence on ATF Form 4473 (Firearms Transaction Record) and ATF Form 5300.35 (Statement of Intent to Obtain a Handgun) in acquiring a firearm from a Federal firearms licensee. The temporary rule also amends the regulations to require that aliens purchasing firearms provide proof of residency through the use of substantiating documentation, such as utility bills or a lease agreement. In addition, the regulations are being amended to require that licensees examine a photo identification document from aliens purchasing firearms. These regulations implement firearms initiatives intended to protect the American public from gun violence.

Timetable:

Action	Date	FR Cite
NPRM	04/21/97	62 FR 19446
Interim Final Rule	04/21/97	62 FR 19442
NPRM Comment Period End	07/21/97	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James Ficaretta, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AB66

2558. IMPLEMENTATION OF PUBLIC LAW 104-208, THE OMNIBUS CONSOLIDATED APPROPRIATIONS ACT OF 1997, RELATING TO THE ESTABLISHMENT OF A NATIONAL REPOSITORY FOR ARSON AND EXPLOSIVES INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 846(b)

CFR Citation: 27 CFR 55

Legal Deadline: None

Abstract: ATF will issue this notice of proposed rulemaking to implement certain provisions of Public Law 104-208, the Omnibus Consolidated Appropriations Act of 1997 (the Act), enacted September 30, 1996. The Act amended the Federal explosives laws in 18 U.S.C. chapter 40 to require all Federal agencies to report to ATF any information involving arson or the suspected criminal misuse of explosives. The Act also authorizes ATF to establish a repository for this information. In addition, the law provides that such repository will contain information on incidents voluntarily reported to ATF by State and local authorities.

Timetable:

Action	Date	FR Cite
NPRM	11/15/01	66 FR 57404
NPRM Comment Period End	02/13/02	
Final Rule	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Ficaretta, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AB73

2559. PUBLIC LAW 105-277, MAKING OMNIBUS CONSOLIDATED AND EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR FY99, RELATING TO FIREARMS DISABILITIES FOR NONIMMIGRANT ALIENS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552(a); 18 USC 847; 18 USC 921 to 930; 44 USC 3504(h)

CFR Citation: 27 CFR 178

Legal Deadline: None

Abstract: ATF will issue a temporary rule amending the regulations to implement the provisions of Public Law 105-277, Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999. The regulations implement the law by prohibiting, with certain exceptions, the transfer to and possession of firearms by aliens admitted to the United States under a nonimmigrant visa.

Timetable:

Action	Date	FR Cite
NPRM	02/05/02	67 FR 5428
Interim Final Rule	02/05/02	67 FR 5422
Interim Final Rule Comment Period End	05/06/02	
Final Rule	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Ficaretta, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AB93

2560. COMMERCE IN FIREARMS AND AMMUNITION—ANNUAL INVENTORY

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552(a); 18 USC 847; 18 USC 921 to 930; 44 USC 3504(h)

CFR Citation: 27 CFR 178

Legal Deadline: None

Abstract: ATF is proposing to amend the regulations to require federally licensed importers, manufacturers, and dealers of firearms to take at least one physical inventory each year. The proposed regulations also specify the circumstances under which these licensees must conduct a special physical inventory. In addition, these proposed regulations clarify who is responsible for reporting a firearm that is stolen or lost in transit between licensees.

Timetable:

Action	Date	FR Cite
NPRM	08/28/00	65 FR 52054
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Ficaretta, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AC08

PROCEDURAL

2561. PLAIN LANGUAGE IN PART 7

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 7

Legal Deadline: None

Abstract: This project revises regulations to plain language. The revision will make no substantive changes to the current 27 CFR part 7.

Timetable:

Action	Date	FR Cite
NPRM	06/27/02	67 FR 43496
NPRM Comment Period Extended	08/22/02	67 FR 54388
NPRM Comment Period End	08/26/02	
NPRM Comment Period End	09/25/02	
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Charles N. Bacon, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Room 701, 10 Causeway Street, Boston, MA 02222
Phone: 617 557-1323
Fax: 617 557-1251
Email: cnbacon@bost.atf.treas.gov

RIN: 1512–AC10

2562. DELEGATION OF AUTHORITY FOR PART 70

Priority: Info./Admin./Other

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 70

Legal Deadline: None

Abstract: This final rule references an additional ATF order, ATF Order 1130.32, for delegating certain ATF authorities contained in its Procedure and Administration regulations. ATF Order 1130.32 delegates the authority to accept or reject offers in compromise other than forfeiture to the appropriate ATF officer. A previous final rule (T.D. ATF-450, 66 FR 29021) referenced only ATF Order 1130.19. ATF Order 1130.19 delegates all other authorities in its Procedure and Administration regulations.

Timetable:

Action	Date	FR Cite
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy P. DeVanney, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., RM 5000, Washington, DC 20226
Phone: 202 927-8196
Fax: 202 927-8525

RIN: 1512–AC96

TOBACCO PRODUCTS

2564. TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES SHIPPED FROM PUERTO RICO TO THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 5701; 27 USC 7652

CFR Citation: 27 CFR 275

Legal Deadline: None

Abstract: This temporary rule eliminates ATF onsite supervision of tobacco products and cigarette papers and tubes of Puerto Rican manufacture that are shipped from Puerto Rico to the United States. It also eliminates related ATF forms. This rule requires that persons who ship such articles maintain records so that the amount of tax is calculated and recorded for ATF audit and examination. Also, this temporary rule revises certain sections to simplify and clarify, and it corrects a few errors.

Timetable:

Action	Date	FR Cite
NPRM	03/08/01	66 FR 13864
Interim Final Rule	03/08/01	66 FR 13849
NPRM Comment Period End	05/07/01	66 FR 13864
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AC24

2563. • ELIMINATE REQUIREMENT TO ENROLL TO PRACTICE BEFORE THE BUREAU

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 330

CFR Citation: 31 CFR 8

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms will published a final rule (Treasury Decision) to eliminate the requirement to enroll to practice before the Bureau.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AC74

2565. IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES; RECODIFICATION OF REGULATIONS

Priority: Info./Admin./Other

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 41; 27 CFR 275

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms is recodifying the regulations in part 275, Importation of Tobacco Products and Cigarette Papers and Tubes. The purpose of this recodification is to reissue the regulations in part 275 of title 27 of the Code of Federal Regulations (CFR) as 27 CFR part 41. This change improves the organization of title 27 CFR.

Timetable:

Action	Date	FR Cite
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

TREAS—BATF — **Final Rule Stage**

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Sutton, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 415 947-5192

RIN: 1512–AC46

Department of the Treasury (TREAS)
Bureau of Alcohol, Tobacco and Firearms (BATF) — Long-Term Actions

ALCOHOL

2566. ALCOHOLIC CONTENT LABELING FOR MALT BEVERAGES

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 7

Timetable:

Action	Date	FR Cite
NPRM	04/19/93	58 FR 21233
Interim Final Rule	04/19/93	58 FR 21228
NPRM Comment Period End	07/19/93	
NPRM Comment Period Extended	07/19/93	58 FR 38543
NPRM Comment Period Extended End	09/17/93	
Second NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bernard J. Kipp
Phone: 503 356-1341

RIN: 1512–AB17

2567. SAKE REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Bernard J. Kipp
Phone: 503 356-1341

RIN: 1512–AC09

2568. REMOVAL OF REQUIREMENT TO DISCLOSE SACCHARIN IN THE LABELING OF WINE, DISTILLED SPIRITS AND MALT BEVERAGES

Priority: Info./Admin./Other

CFR Citation: 27 CFR 4.32(d); 27 CFR 5.32(b)(6); 27 CFR 7.22(b)(5)

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Marjorie D. Ruhf
Phone: 202 927-8210
Email: mdruhf@atfhq.atf.treas.gov

RIN: 1512–AC17

2569. LIQUOR DEALERS; RECODIFICATION OF REGULATIONS

Priority: Info./Admin./Other

CFR Citation: 27 CFR 31; 27 CFR 194; ...

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Karl Joedicke
Phone: 202 927-7460

RIN: 1512–AC45

2570. DELEGATION OF AUTHORITY IN 27 CFR PART 31

Priority: Info./Admin./Other

CFR Citation: 27 CFR 31

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Karl Joedicke
Phone: 202 927-7460

RIN: 1512–AC49

2571. PROPOSED REVISIONS OF 27 CFR PART 19

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 19

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Daniel J. Hiland
Phone: 202 927-8210

RIN: 1512–AC52

2572. PROPOSAL TO RECOGNIZE SYNONYMS FOR PETITE SIRAH AND ZINFANDEL GRAPE VARIETIES

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 4

Timetable:

Action	Date	FR Cite
NPRM	04/10/02	67 FR 17312
NPRM Comment Period Extended	06/06/02	67 FR 38915
NPRM Comment Period End	06/10/02	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jennifer Berry
Phone: 716 551-4048

RIN: 1512–AC65

2573. PETITION TO ESTABLISH "CAPAY VALLEY" AS AN AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 9

Timetable:

Action	Date	FR Cite
NPRM	07/25/02	67 FR 48597

TREAS—BATF — **Long-Term Actions**

Action	Date	FR Cite
NPRM Comment Period End	09/23/02	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kristy Colon
Phone: 202 927-8206

RIN: 1512–AC71

2574. TAXPAID DISTILLED SPIRITS USED IN MANUFACTURING PRODUCTS UNFIT FOR BEVERAGE USE

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 17

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Linda Wade-Chapman
Phone: 202 927-8181

RIN: 1512–AC73

PROCEDURAL

2575. DELEGATION OF AUTHORITY IN 27 CFR PART 19

Priority: Info./Admin./Other

CFR Citation: 27 CFR 19

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf
Phone: 202 927-8210

RIN: 1512–AC06

2576. COMMERCE IN FIREARMS AND AMMUNITION; RECODIFICATION OF REGULATIONS (2002R-013P)

Priority: Info./Admin./Other

CFR Citation: 27 CFR 47; 27 CFR 50; 27 CFR 178; 27 CFR 179; 27 CFR 70

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lisa Marie Gesser
Phone: 202 927-9347
Fax: 202 927-8525
Email: lmgesser@atfhq.atf.treas.gov

RIN: 1512–AC68

2577. MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS; RECODIFICATION OF REGULATIONS

Priority: Info./Admin./Other

CFR Citation: 27 CFR 47; 27 CFR 51; 27 CFR 55; 27 CFR 70; 27 CFR 179; ...

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lisa Marie Gesser
Phone: 202 927-9347
Fax: 202 927-8525
Email: lmgesser@atfhq.atf.treas.gov

RIN: 1512–AC69

2578. • DELEGATION OF AUTHORITY IN 27 CFR PART 55—COMMERCE IN EXPLOSIVES

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 847

CFR Citation: 27 CFR 55

Legal Deadline: None

Abstract: This final rule places most of ATF authorities contained in 27 CFR 55 with the "appropriate ATF officer," and requires that persons file documents with the "appropriate ATF officer" or in accordance with the instructions on the form. Also, this rule removes definitions of references to the words "ATF officer," "Chief, Firearms and Explosives Licensing Center," "Region," and "Regional Director." The result of removing these words will consolidate the Director's delegations of authority for part 55 into one delegation instrument.

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Karl Joedicke, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 202 927-7460

RIN: 1512–AC94

TOBACCO PRODUCTS

2579. IMPLEMENTATION OF PUBLIC LAW 105-33, SECTION 9302, REQUIRING THE QUALIFICATION OF TOBACCO PRODUCT IMPORTERS AND MISCELLANEOUS TECHNICAL AMENDMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 275

Timetable:

Action	Date	FR Cite
NPRM	12/22/99	64 FR 71955
Interim Final Rule	12/22/99	64 FR 71947
Interim Final Rule Effective	01/01/00	
Interim Final Rule Comment Period End	05/03/00	65 FR 17477
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf
Phone: 202 927-8210

RIN: 1512–AC07

2580. PROHIBITED MARKS ON PACKAGES OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES IMPORTED OR BROUGHT INTO THE UNITED STATES

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 275

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Robert P. Ruhf

Phone: 202 927-8210

RIN: 1512–AC14

2581. ELIMINATION OF STATISTICAL CLASSES FOR LARGE CIGARS

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 40; 27 CFR 275

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf
Phone: 202 927-8210

RIN: 1512–AC33

2582. DELEGATION OF AUTHORITY IN 27 CFR PART 40

Priority: Info./Admin./Other

CFR Citation: 27 CFR 40

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf
Phone: 202 927-8210

RIN: 1512–AC54

2583. VOLUNTARY WAIVER OF FILING CLAIM FOR CREDIT, REFUND, ALLOWANCE OR CREDIT OF TAX FOR TOBACCO PRODUCTS MANUFACTURED IN CANADA

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 44

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf
Phone: 202 927-8210

RIN: 1512–AC64

Department of the Treasury (TREAS)
Bureau of Alcohol, Tobacco and Firearms (BATF)

2584. RECODIFICATION OF PART 251

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 251

Completed:

Reason	Date	FR Cite
Final Action	05/08/02	67 FR 30796
Final Action Effective	05/08/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jennifer Berry
Phone: 716 551-4048

RIN: 1512–AC27

2585. ALBARINO, BLACK CORINTH AND FIANO GRAPE VARIETIES

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 4

Completed:

Reason	Date	FR Cite
Final Action	03/18/02	67 FR 11917
Final Action Effective	05/17/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jennifer Berry
Phone: 716 551-4048

RIN: 1512–AC29

2586. DELEGATION OF AUTHORITY IN 27 CFR PART 252

Priority: Info./Admin./Other

CFR Citation: 27 CFR 252

Completed:

Reason	Date	FR Cite
Final Rule	04/15/02	67 FR 18086
Final Rule Effective	04/15/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf
Phone: 202 927-8210

RIN: 1512–AC44

2587. PROPOSED ADDITION OF "TANNAT" AS A GRAPE VARIETY NAME FOR AMERICAN WINES

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 4

Completed:

Reason	Date	FR Cite
Final Rule	09/04/02	67 FR 56479
Final Rule Effective	11/04/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jennifer Berry
Phone: 716 551-4048

RIN: 1512–AC50

2588. DELEGATION OF AUTHORITY IN 27 CFR PART 251

Priority: Info./Admin./Other

CFR Citation: 27 CFR 251

Completed:

Reason	Date	FR Cite
Final Rule	03/13/02	67 FR 11230
Final Rule Effective	03/13/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf
Phone: 202 927-8210

RIN: 1512–AC58

2589. • PETITION TO ESTABLISH "CALIFORNIA COAST" AS A NEW AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms received a petition to establish "California Coast" as a new American viticultural area.

Timetable:

Action	Date	FR Cite
NPRM	09/26/00	65 FR 57763
NPRM Comment Period End	12/26/00	

Action	Date	FR Cite
NPRM Comment Period Extended	12/26/00	65 FR 81455
NPRM Comment Period End	04/25/01	
Final Action - Petition Denied	08/07/02	67 FR 51156

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Sutton, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 415 947-5192

Related RIN: Previously reported as 1512-AA07

RIN: 1512–AC83

2590. • PETITION TO EXPAND THE LODI VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms has received a petition from a group of San Joaquin County grape growers proposing to expand the established 458,000-acre Lodi viticultural area, 27 CFR 9.107, to the south and the west.

Timetable:

Action	Date	FR Cite
NPRM	02/07/00	65 FR 5828
NPRM Comment Period End	04/07/00	
Final Rule	09/04/02	67 FR 56481
Final Rule Effective	11/04/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Sutton, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 415 947-5192

Related RIN: Previously reported as 1512-AA07

RIN: 1512–AC92

2591. • DELEGATION OF AUTHORITY (27 CFR 47)

Priority: Info./Admin./Other

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 47

Legal Deadline: None

Abstract: This final rule places all ATF authorities contained in its Importation of Arms, Ammunition and Implements of War regulations with the "appropriate ATF officer." Consequently, this final rule removes the definitions of, and references to, specific officers subordinate to the Director. It also requires persons to file documents required by these regulations with the "appropriate ATF officer" or in accordance with the instructions on the ATF form. Concurrently with this Treasury Decision, ATF is issuing ATF Order 1130.34, which will be made available as specified in this rule. Through this order the Director delegates all of the authorities to the appropriate ATF officers and specifies the ATF officers with whom applications, notices, and other reports, that are not ATF forms, are filed.

Timetable:

Action	Date	FR Cite
Final Rule	10/21/02	67 FR 64525

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AC86

2592. ELIMINATION OF APPLICATION TO REMOVE TOBACCO PRODUCTS FROM MANUFACTURER'S PREMISES FOR EXPERIMENTAL PURPOSES

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 40

Completed:

Reason	Date	FR Cite
Final Action	04/19/02	67 FR 19332
Final Action Effective	05/20/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf
Phone: 202 927-8210

RIN: 1512–AC32

2593. DELEGATION OF AUTHORITY IN 27 CFR PART 44

Priority: Info./Admin./Other

CFR Citation: 27 CFR 44

Completed:

Reason	Date	FR Cite
Final Action	05/08/02	67 FR 30799

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf
Phone: 202 927-8210

RIN: 1512–AC36

BILLING CODE 4810–31–S

Department of the Treasury (TREAS)
Comptroller of the Currency (OCC)

2594. UNIFORM RULES OF PRACTICE AND PROCEDURE; REGULATION REVIEW

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 504; 12 USC 1831o; 12 USC 1972; 12 USC 3102; 12 USC 3108; 12 USC 3909; 5 USC 554 to 557; 12 USC 93a; 12 USC 93(b); 12 USC 164; 12 USC 505; 12 USC 1817; 12 USC 1818; 12 USC 1820

CFR Citation: 12 CFR 19

Legal Deadline: None

Abstract: The OCC is considering what regulatory actions may be necessary to implement section 112(g)(4) of the Federal Deposit Insurance Corporation Improvement Act of 1991 to develop joint agency procedures for the suspension and debarment of accountants, upon a showing of good cause, from performing certain audit services.

Timetable:

Action	Date	FR Cite
NPRM - Suspension and Debarment of Accountants	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mitchell Plave, Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities Division, 250 E Street SW, Washington, DC 20219
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RIN: 1557–AB43

2595. FAIR CREDIT REPORTING REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 93a; 15 USC 1681s; PL 106-102, sec 506

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The rule will address the sharing of transactional, experiential, and other consumer information among persons related by common ownership or affiliated by corporate control. Such sharing of this information constitutes an exclusion from the definition of "consumer report" under section 603(d) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)).

Timetable:

Action	Date	FR Cite
NPRM	10/20/00	65 FR 63120
NPRM Comment Period End	12/04/00	
NPRM Update	03/27/01	66 FR 16624
Second NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Lee Walzer, Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Analysis Division, 250 E Street SW, Washington, DC 20219
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RIN: 1557–AB78

2596. RECORDKEEPING REQUIREMENTS FOR BANK EXCEPTIONS FROM SECURITIES DEALER REGISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 93a; 12 USC 1828(t)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This notice of proposed rulemaking will seek comment on recordkeeping requirements for banks relying on exceptions to the definitions of broker or dealer in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Martha Vestal Clarke, Acting Assistant Director, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities, Division, 250 E Street SW, Washington, DC 20219
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RIN: 1557–AB93

2597. RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES AND BANK ACTIVITIES AND OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1 et seq; 12 USC 24 (Seventh); 12 USC 92a; 12 USC 93a; 12 USC 161; 12 USC 602; 12 USC 1818; 12 USC 1828(n); 12 USC 1828 note; 12 USC 1831n note; 12 USC 1831o; 12 USC 1835; 12 USC 3102; 12 USC 3108; 12 USC 3901 et seq; 12 USC 3907; 12 USC 3909; Section 5136 of the Revised Statutes (12 USC 24a); 15 USC 78q; 15 USC 78q-1; 15 USC 78w

CFR Citation: 12 CFR 3; 12 CFR 5; 12 CFR 6; 12 CFR 7; 12 CFR 9; 12 CFR 28

Legal Deadline: None

Abstract: The OCC plans to amend part 5 to implement the authority for national banks to merge with one or more of their nonbank affiliates contained in section 1206 of the American Homeownership and Economic Opportunity Act of 2000 (AHEOA). The proposal will also amend part 5 to implement the authority in section 1204 of AHEOA by adding a new section setting forth the application and prior approval requirements for national banks contemplating reorganization as a subsidiary of a bank holding company. In addition, the OCC also plans to implement section 1205 of AHEOA by amending part 7 to permit national banks to adopt by-laws providing for staggered boards of directors and to permit national banks to apply to expand the size of their boards of directors over 25 members. The OCC also plans to make other amendments to parts 5, 7, and 9, as well as certain technical amendments to parts 3, 6, 7, and 28.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Andra Shuster, Counsel, Department of the Treasury, Comptroller of the Currency
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RIN: 1557–AB97

2598. MAINTENANCE OF RECORDS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 504; 5 USC 554 to 557; 12 USC 93a; 12 USC 93(b); 12 USC 164; 12 USC 481; 12 USC 505; 12 USC 1817; 12 USC 1818; 12 USC 1820; 12 USC 1831o; 12 USC 1867; 12 USC 1972; 12 USC 3102; 12 USC 3108(a); 12 USC 3909; 12 USC 4717; 15 USC 78(h); 15 USC 78(i); 15 USC 78o-4(c); 15 USC 78o-5; 15 USC 78q-1; 15 USC 78u; 15 USC 78-u2; 15 USC 78-u3; 15 USC 78w; 28 USC 2461 note; 31 USC 330; 31 USC 5321; 42 USC 4012a

CFR Citation: 12 CFR 19

Legal Deadline: None

Abstract: The notice of proposed rulemaking would invite comment on a rule that would add a new subpart P to 12 CFR part 19, which would require national banks, national bank affiliates, Federal branches and agencies of foreign banks, and bank service companies that perform services for, or contract with, national banks to establish and maintain accurate and complete documentation and records, and allow the OCC timely access to such records.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Tierney, Attorney, Department of the Treasury, Comptroller of the Currency
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RIN: 1557–AB99

2599. PAYDAY LENDING

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 24(Seventh); 12 USC 93a; 12 USC 1818; 12 USC 1861 to 1867

CFR Citation: 12 CFR 5; 12 CFR 32

Legal Deadline: None

Abstract: The OCC is considering amending 12 CFR part 5 and 12 CFR part 32 to address payday lending activities engaged in by national banks through arrangements with third-party lending companies. The purpose of this rulemaking would be to adopt provisions intended to ensure that payday lending is conducted in a manner that is consistent with safe and sound banking practices.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Mitchell Plave, Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities Division, 250 E Street SW, Washington, DC 20219
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RIN: 1557–AC01

2600. INTERNATIONAL BANKING ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1 et seq; 12 USC 24 (Seventh); 12 USC 93a; 12 USC 161; 12 USC 602; 12 USC 1818; 12 USC 3101 et seq; 12 USC 3901 et seq

CFR Citation: 12 CFR 28; 12 CFR 5

Legal Deadline: None

Abstract: The OCC plans to issue a notice of proposed rulemaking to clarify or revise a number of application or notice procedures, including the standards for approval that would apply. In addition, the OCC plans to implement a number of OCC interpretations regarding the capital equivalency deposit required of Federal branch and agencies. Finally, the OCC plans to revise several definitions.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lee Walzer, Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Analysis Division, 250 E Street SW, Washington, DC 20219
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RIN: 1557–AC04

2601. • INTERAGENCY GUIDELINES ESTABLISHING STANDARDS FOR SAFETY AND SOUNDNESS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 12 USC 93a; 12 USC 1818; 12 USC 1831-p; 12 USC 3102(b); 15 USC 6801; 15 USC 6805(b)(6)

CFR Citation: 12 CFR 30

Legal Deadline: None

Abstract: The OCC, along with the banking agencies, plans to issue a notice of proposed rulemaking to amend their Interagency Guidelines Establishing Standards for Safety and Soundness. The amendment would add a new subsection to require a depository institution to implement new policies and procedures designed to ensure an effective system of corporate governance. This amendment is intended to address particular weaknesses in management and corporate governance practices.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michele Meyer, Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities Division, 250 E Street SW.
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RIN: 1557–AC08

2602. • COMMUNITY DEVELOPMENT CORPORATIONS, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS (12 CFR PART 24)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 24 (Eleventh); 12 USC 93a; 12 USC 481; 12 USC 1818

CFR Citation: 12 CFR 24

Legal Deadline: None

Abstract: The OCC plans to issue a notice of proposed rulemaking to amend part 24, its regulation governing national bank investments that are designed to promote the public welfare. The proposal would update the definition section of the regulation to reflect the additional types of public welfare investment structures that have come into use by national banks in recent years; set forth the method a national bank should use to measure the aggregate amount of its public welfare investments; and simplify the regulation's investment self-certification and prior approval processes. These changes will simplify the regulation and reduce the burden associated with part 24 investments and thereby encourage additional public welfare investments by national banks.

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TREAS—OCC

Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michele Meyer, Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities Division, 250 E Street SW.
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RIN: 1557–AC09

2603. • REMOVAL, SUSPENSION, AND DEBARMENT OF INDEPENDENT ACCOUNTANTS FROM PERFORMANCE OF AUDIT SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1831m(g)(4)(B)

CFR Citation: 12 CFR 19

Legal Deadline: None

Abstract: The OCC plans to issue a notice of proposed rulemaking to amend 12 CFR part 19, the Rules of Practice and Procedure by adding a new subpart P, "Removal, Suspension, and Debarment of Independent Public Accountants from Performance of Audit Services." Section 112 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) gave the OCC, along with the other Federal banking agencies, the authority to remove, suspend, or debar accountants for good cause from performing annual audit services. The proposed rule would establish policies and procedures for the OCC to take such actions. The proposed rule would also make conforming changes to part 19. The Board of Governors of the Federal Reserve System, the FDIC, and the Office of Thrift Supervision are promulgating similar rules concurrently with the OCC to implement section 112 of FDICIA.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mitchell Plave, Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities Division, 250 E Street SW, Washington, DC 20219
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RIN: 1557–AC10

2604. • RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1 et seq; 12 USC 24a; 12 USC 24 (Seventh); 12 USC 93a; 12 USC 3101 et seq

CFR Citation: 12 CFR 5

Legal Deadline: None

Abstract: The OCC plans to issue a notice of proposed rulemaking that will require a national bank to obtain prior approval of the OCC before making material changes to its business plan.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Heidi M. Thomas, Special Counsel, Department of the Treasury, Comptroller of the Currency, 250 E Street SW, Washington, DC 20219
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RIN: 1557–AC11

Department of the Treasury (TREAS)
Comptroller of the Currency (OCC)

Final Rule Stage

2605. CAPITAL RULES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 93a; 12 USC 161; 12 USC 1828 note; 12 USC 1828(n); 12 USC 1831n note; 12 USC 1835; 12 USC 3907; 12 USC 3909

CFR Citation: 12 CFR 3

Legal Deadline: None

Abstract: As part of the OCC's ongoing efforts to develop and refine capital standards to ensure the safety and soundness of the national banking system and to implement statutory requirements, the OCC is amending various provisions of the capital rules for national banks. Specifically, these changes include: 1) new Basel capital accord (Basel II) (formerly referred to as domestic capital framework); and 2) securities borrowing transactions. The OCC is conducting both of these rulemakings jointly with the other Federal banking agencies.

Timetable:

Action	Date	FR Cite
Implementation of a Revised Basel Capital Accord (formerly Domestic Capital Framework)		
ANPRM	11/03/00	65 FR 66193
ANPRM Comment Period End	02/01/01	
NPRM	06/00/03	
Securities Borrowing Transactions		
Interim Final Rule	12/05/00	65 FR 75856
Interim Final Rule Comment Period End	01/19/01	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ron Shimabukuro, Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities Division, 250 E Street SW, Washington, DC 20219
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RIN: 1557–AB14

TREAS—OCC

Final Rule Stage

2606. CUSTOMER IDENTIFICATION PROGRAMS FOR BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 93a; 31 USC 5318(l)

CFR Citation: 31 CFR 103

Legal Deadline: Final, Statutory, October 26, 2002, Must take effect one year before date of enactment of USA Patriot Act.

Abstract: The Secretary of the Treasury, the OCC, the Board of Governors of the Federal Reserve System, the FDIC, the Office of Thrift Supervision, and the National Credit Union Administration (the Agencies) plan to issue a regulation implementing section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. Section 326 requires a regulation that contains minimum standards that financial institutions must implement: 1) to verify the identity of any person seeking to open an account; 2) to maintain records of the information used to verify the person's identity; and 3) to determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any Government agency.

Timetable:

Action	Date	FR Cite
NPRM	07/23/02	67 FR 48290
NPRM Comment Period End	09/06/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Deborah Katz, Senior Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities Divison, 250 E Street SW, Washington, DC 20219
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RIN: 1557–AC06

Department of the Treasury (TREAS)
Comptroller of the Currency (OCC)

Long-Term Actions

2607. RULES AND PROCEDURES FOR CLAIMS AGAINST OCC-APPOINTED RECEIVERSHIPS FOR UNINSURED FINANCIAL INSTITUTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 93a; 12 USC 192; 12 USC 206; 12 USC 3108

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This regulation will establish rules and procedures for processing claims against receivers for uninsured Federal institutions that are chartered by the OCC.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mitchell Plave, Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities Division, 250 E Street SW, Washington, DC 20219
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RIN: 1557–AB59

2608. COMMUNITY REINVESTMENT ACT REGULATION

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 21; 12 USC 22; 12 USC 26; 12 USC 27; 12 USC 30; 12 USC 36; 12 USC 93a; 12 USC 161; 12 USC 215; 12 USC 215a; 12 USC 481; 12 USC 1814; 12 USC 1816; 12 USC 1828(c); 12 USC 1835a; 12 USC 2901 to 2907; 12 USC 3101 to 3111

CFR Citation: 12 CFR 25

Legal Deadline: None

Abstract: The OCC, in conjunction with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (the agencies), has issued an advance notice of proposed rulemaking to solicit comment on the agencies' existing Community Reinvestment Act (CRA) regulations. The agencies are conducting a review of their CRA regulations to determine their effectiveness in achieving their goals.

Timetable:

Action	Date	FR Cite
ANPRM	07/19/01	66 FR 37602
ANPRM Comment Period End	10/17/01	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Margaret Hesse, Special Counsel, Department of the Treasury, Comptroller of the Currency, Community and Consumer Law Division, 250 E Street SW, Washington, DC 20219
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RIN: 1557–AB98

Department of the Treasury (TREAS)
Comptroller of the Currency (OCC)

Completed Actions

2609. REAL ESTATE APPRAISALS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 93a; 12 USC 3331 et seq

CFR Citation: 12 CFR 34

Legal Deadline: None

Abstract: This rulemaking would amend the OCC's appraisal regulation to exempt transactions involving mortgage-backed securities (MBS) from its principal appraisal requirements.

Timetable:

Action	Date	FR Cite
Withdrawn	09/30/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mitchell Plave, Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities Division, 250 E Street SW, Washington, DC 20219
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RIN: 1557–AB70

2610. DEBT CANCELLATION CONTRACTS AND DEBT SUSPENSION AGREEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 24 (Seventh); 12 USC 93a

CFR Citation: 12 CFR 37

Legal Deadline: None

Abstract: The OCC issued a final rule governing the offering of debt cancellation contracts and debt suspension agreements. The purposes of the customer protections are to facilitate customers' informed choice about whether to purchase debt cancellation contracts and debt suspension agreements, based on an understanding of the costs, benefits, and limitations of the products, and to discourage inappropriate or abusive practices.

Timetable:

Action	Date	FR Cite
ANPRM	01/26/00	65 FR 4176
ANPRM Comment Period End	03/27/00	
NPRM	04/18/01	66 FR 19901
NPRM Comment Period End	06/18/01	
Final Rule	09/19/02	67 FR 58962
Final Rule Effective	06/16/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1557–AB75

2611. ELECTRONIC ACTIVITIES (FORMERLY ELECTRONIC BANKING)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1 et seq; 12 USC 93a

CFR Citation: 12 CFR 7.1002; 12 CFR 7.1019; 12 CFR 7.5000 to 7.5010

Legal Deadline: None

Abstract: The OCC issued a notice of proposed rulemaking that addressed ways to facilitate national banks' efforts to engage in various forms of electronic banking consistent with safety and soundness. The proposal addresses national banks' exercise of their Federally authorized powers through electronic means; the applicability of state law to the exercise of those powers; the location of a national bank that engages in electronic activities; and the disclosures required when a national bank provides its customers with access to other service providers through hyperlinks in the bank's web site or other shared electronic space.

Timetable:

Action	Date	FR Cite
ANPRM	02/02/00	65 FR 4895
ANPRM Comment Period End	04/03/00	
NPRM	07/02/01	66 FR 34855
NPRM Comment Period End	08/31/01	
Final Rule	05/17/02	67 FR 34992
Final Rule Effective, section 7.5010 only (All other final rule sections effective 06/17/2002)	07/01/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Heidi M. Thomas, Special Counsel, Department of the Treasury, Comptroller of the Currency, 250 E Street SW, Washington, DC 20219
Phone: 202 874-5090
Fax: 202 874-4889
Email: heidi.thomas@occ.treas.gov

RIN: 1557–AB76

2612. NOTICE OF EXEMPT PRIVACY ACT SYSTEMS OF RECORDS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 5 USC 321; 5 USC 552; 5 USC 552a

CFR Citation: 31 CFR 1

Legal Deadline: None

Abstract: The OCC, with the concurrence of the Department of the Treasury, issued a final rule to amend the Treasury Regulation that sets forth the systems of records maintained by Treasury Department agencies and bureaus that are exempt from certain provisions of the Privacy Act of 1974 (Privacy Act). The OCC amended this regulation to update and expand the list of its systems of records that are exempt from certain provisions of the Privacy Act and to clarify the bases for these exemptions.

Timetable:

Action	Date	FR Cite
NPRM	10/26/01	66 FR 54175
NPRM Comment Period End	11/26/01	
Final Rule	05/14/02	67 FR 34402
Final Rule Effective	05/14/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Harold J. Hansen, Assistant Director, Department of the Treasury, Comptroller of the Currency, Administrative and Internal Law Division, 250 E Street SW, Washington, DC 20219
Phone: 202 874-4460
Fax: 202 874-4555
Email: harold.hansen@occ.treas.gov

RIN: 1557–AB83

TREAS—OCC

Completed Actions

2613. PROHIBITION AGAINST USE OF INTERSTATE BRANCHES PRIMARILY FOR DEPOSIT PRODUCTION

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 21; 12 USC 22; 12 USC 26; 12 USC 27; 12 USC 30; 12 USC 36; 12 USC 93a; 12 USC 161; 12 USC 215; 12 USC 215a; 12 USC 481; 12 USC 1814; 12 USC 1816; 12 USC 1828(c); 12 USC 1835a; 12 USC 2901 through 2907; 12 USC 3101 through 3111

CFR Citation: 12 CFR 25

Legal Deadline: None

Abstract: The final rule amended regulations implementing section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 to effectuate the amendment of section 109 of the Gramm-Leach-Bliley Act of 1999. Section 109 prohibits a bank from establishing or acquiring a branch or branches outside of its home state for the purpose of deposit production. Additionally, section 109 contains guidelines for determining whether a bank is reasonably helping to meet the credit needs of communities served by an out-of-state branch or branches. The final rule amended the section 109 deposit production prohibition to include any bank or branch controlled by an out-of-state bank holding company, including a bank consisting only of a main office.

Timetable:

Action	Date	FR Cite
NPRM	04/09/01	66 FR 18411
NPRM Comment Period End	06/08/01	
Final Rule	06/06/02	67 FR 38844
Final Rule Effective	10/01/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Tierney, Attorney, Department of the Treasury, Comptroller of the Currency
Phone: 202 874-5090
Fax: 202 874-4889
Email: patrick.tierney@occ.treas.gov

RIN: 1557–AB95

2614. FINANCIAL SUBSIDIARIES AND NONCONTROLLING INVESTMENTS OF FEDERAL BRANCHES AND AGENCIES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1 et seq; 12 USC 24a; 12 USC 24 (Seventh); 12 USC 93a, 12 USC 3101 et seq

CFR Citation: 12 CFR 5

Legal Deadline: None

Abstract: The OCC proposes to clarify that a Federal branch or agency may establish, acquire, or maintain a qualified subsidiary company in generally the same manner that a national bank may establish and operate a financial subsidiary if certain conditions are satisfied.

Timetable:

Action	Date	FR Cite
Withdrawn	09/30/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Martha Vestal Clarke, Acting Assistant Director, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities, Division, 250 E Street SW, Washington, DC 20219
Phone: 202 874-5090
Email: martha.clarke@occ.treas.gov

RIN: 1557–AC02

2615. INTERNATIONAL BANKING ACTIVITIES: CAPITAL EQUIVALENCY DEPOSIT

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1 et seq; 12 USC 24 (Seventh); 12 USC 93a; 12 USC 161; 12 USC 602; 12 USC 1818; 12 USC 3101 et seq; 12 USC 3901 et seq

CFR Citation: 12 CFR 28.15

Legal Deadline: None

Abstract: The OCC issued a final rule that revised certain requirements and prohibitions relating to the capital equivalency deposit arrangements that a foreign bank must establish and maintain for its Federal branch or agency.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/30/02	67 FR 4325
Interim Final Rule Effective	01/30/02	
Interim Final Rule Comment Period End	04/01/02	
Final Action	06/19/02	67 FR 41619
Final Rule Effective	06/19/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Martha Vestal Clarke, Acting Assistant Director, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities, Division, 250 E Street SW, Washington, DC 20219
Phone: 202 874-5090
Email: martha.clarke@occ.treas.gov

RIN: 1557–AC05

2616. • ASSESSMENT OF FEES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 93a; 12 USC 481; 12 USC 482; 12 USC 1867; 12 USC 3102; 12 USC 3108; 15 USC 78c; 15 USC 78l; 26 DC Code 102

CFR Citation: 12 CFR 8

Legal Deadline: None

Abstract: The Office of the Comptroller of the Currency (OCC) plans to issue a notice of proposed rulemaking to amend 12 CFR part 8. The proposal would amend 12 CFR 8.6(c), which addresses assessments for independent trust banks. The proposal would update section 8.6 to reference the appropriate portion of new forms issued by the Federal Financial Institutions Examination Council (FFIEC), which replace the FFIEC form currently referenced in section 8.6(c). A technical correction to section 8.1 is also included.

Timetable:

Action	Date	FR Cite
NPRM	04/25/02	67 FR 20466
NPRM Comment Period End	05/17/02	
Final Action	05/30/02	67 FR 37664
Final Action Effective	06/01/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Andra Shuster, Counsel, Department of the Treasury, Comptroller of the Currency
Phone: 202 874-5090
Fax: 202 874-4889

TREAS—OCC

Completed Actions

Email: andra.shuster@occ.treas.gov

RIN: 1557–AC07

BILLING CODE 4810–33–S

Department of the Treasury (TREAS)
United States Customs Service (CUSTOMS)

Proposed Rule Stage

2617. TEXTILES AND TEXTILE PRODUCTS SUBJECT TO TEXTILE TRADE AGREEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1624; 7 USC 1854

CFR Citation: 19 CFR 12

Legal Deadline: None

Abstract: Amendment to the country of origin standards and documentary requirements applicable to textiles and textile products subject to section 204 of the Agricultural Act of 1956. Amendment involves simplification of regulatory text, has no substantive effect on the U.S. textile import program as administered by Customs, and is intended to ensure that the wording of the Customs Regulations is consistent with the product coverage of section 204.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dick Crichton, Operations Officer, Office of Field Operations, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0162

RIN: 1515–AB54

2618. LIQUIDATION; EXTENSION; SUSPENSION

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1500; 19 USC 1504; 19 USC 1624

CFR Citation: 19 CFR 159

Legal Deadline: None

Abstract: Document would amend the Customs Regulations to implement amendments to section 504 of the Tariff Act of 1930, as amended, which pertains to limitations on the liquidation of entries that were contained in the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act. Amendments would allow the reconciliation of entries to be treated as if they were entry summaries, subject to normal liquidation requirements; authorize the electronic transmittal of notices of extension and suspension of liquidation; extend the time period in which Customs must liquidate a suspended entry after the suspension is removed; remove the application of the four-year limitation to suspended entries; and provide that Customs must also inform sureties when an entry is suspended or extended.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William G. Rosoff, Chief, Duty Refund and Determination Branch, Department of the Treasury, United States Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8807

RIN: 1515–AB66

2619. DETENTION, SEIZURE, AND FORFEITURE OF "BOOTLEG" SOUND RECORDING AND MUSIC VIDEOS OF LIVE MUSICAL PERFORMANCES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 17 USC 602; 17 USC 603; 31 USC 9701; 19 USC 66; 19 USC 1202; 19 USC 58a; 19 USC 58b; 19 USC 58c; 19 USC 66; 17 USC 101; 17 USC 601

CFR Citation: 19 CFR 12; 19 CFR 24; 19 CFR 133

Legal Deadline: None

Abstract: Amendment to provide for the detention, seizure, and forfeiture of unauthorized (bootleg) copies of sound recordings and music videos of live musical performances recorded outside of and imported into the United States, as provided by section 513(a) of the Uruguay Round Agreements Act.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: George F. McCray, Attorney, Intellectual Property Rights Branch, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8707

RIN: 1515–AB74

2620. RECONCILIATION

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1484; 19 USC 1500; 19 USC 1624

CFR Citation: 19 CFR 142; 19 CFR 159

Legal Deadline: None

Abstract: Amendment to allow those elements of an entry, other than those elements relating to the admissibility of the merchandise, that are undetermined at the time an entry summary or an import activity summary is required to be submitted, to be provided to Customs at a later date.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Leonard, Program Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229

TREAS—CUSTOMS

Proposed Rule Stage

Phone: 202 927-0915

RIN: 1515–AB85

2621. REMOTE LOCATION FILING

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1484; 19 USC 1624; 19 USC 1641

CFR Citation: 19 CFR 111; 19 CFR 113; 19 CFR 141; 19 CFR 143

Legal Deadline: None

Abstract: Amendment to allow entry filers to electronically file entries of merchandise with Customs from locations within the United States other than at the port of arrival of the merchandise or the location of examination of the merchandise.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Millie Gleason, Chief, Summary Management, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0625

RIN: 1515–AC23

2622. SIMPLIFICATION OF IN-TRANSIT TRUCK SHIPMENTS BETWEEN CANADA AND THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1431; 19 USC 1433; 19 USC 1436; 19 USC 1448; 19 USC 1553; 19 USC 1624

CFR Citation: 19 CFR 123

Legal Deadline: None

Abstract: Amendment to simplify reporting procedures for the in-transit movement of truck shipments between Canada and the United States. Amendment is designed to reduce traffic congestion along the northern border by reducing the number of reporting stops.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Raymond Janiszewski, Supervisory Import Specialist, Office of Field Operations, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0365

RIN: 1515–AC65

2623. REQUIREMENTS FOR FUTURE CUSTOMS TRANSACTIONS WHEN PAYMENT TO CUSTOMS ON PRIOR TRANSACTIONS IS DELINQUENT AND/OR DISHONORED

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1448; 19 USC 1484; 19 USC 1624; 5 USC 301; 19 USC 1505

CFR Citation: 19 CFR 142; 19 CFR 24

Legal Deadline: None

Abstract: Amendment concerning how Customs will handle the future transactions of importers or other parties financially obligated to Customs who are delinquent in a payment to Customs or have had payments to the agency returned as dishonored by their financial institution. Amendment provides, among other things, that where an importer or other party financially obligated to Customs ("debtor") has not paid monies owed to Customs by the due date in a Customs bill or collection notice, including a bill or collection notice requesting payment of an amount owed to Customs that has been returned as dishonored by the debtor's financial institution, Customs may require the debtor to file entry summary documentation at the time of entry with estimated duties, taxes and fees attached (to make "live entry"). This requirement will be imposed on all the debtor's future importations at all ports of entry until Customs receives full payment of the debtor's overdue amount, including accrued interest, or until the debt has been resolved other than by Customs termination of the collection action. Amendment also concerns when Customs will require all future payments be made by certified check, money order, cash, or if authorized, by Automated Clearinghouse credit payment. Amendments are necessary to support Customs collection efforts and to ensure a uniform and consistent approach in the manner by which Customs responds to delinquent and dishonored payments.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Reiley, Financial Officer, Financial Management Division, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1504

RIN: 1515–AC68

2624. CUSTOMS EXAMINATION OF IN-TRANSIT MAIL SHIPMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1624

CFR Citation: 19 CFR 145

Legal Deadline: None

Abstract: Amendment to provide that Customs has the authority to examine and search international mail without regard as to whether it is transiting the United States or the U.S. Virgin Islands, or is being delivered within the Customs territory of the United States or the U.S. Virgin Islands.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Glen E. Vereb, Senior Attorney, Entry Procedures and Carriers Branch, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8718

RIN: 1515–AC71

2625. REIMBURSABLE CUSTOMS INSPECTIONAL SERVICES: INCREASE IN HOURLY RATE CHARGE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 5 USC 6103; 19 USC 58a to 58c; 19 USC 66; 19 USC 261; 19 USC 267; 19 USC 1202;

19 USC 1450 to 1452; 19 USC 1456; 19 USC 1505; 19 USC 1557; 19 USC 1562; 19 USC 1624; 26 USC 4461; 26 USC 4462; 31 USC 9701; 46 USC 2110 to 2112

CFR Citation: 19 CFR 24; 19 CFR 101

Legal Deadline: None

Abstract: Amendment to increase the rate of charge for reimbursable Customs inspectional services.

Timetable:

Action	Date	FR Cite
NPRM	02/01/01	66 FR 8554
NPRM Comment Period End	04/02/01	
Second NPRM	10/09/02	67 FR 62920
Second NPRM Comment Period End	12/09/02	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dennis Lomax, Accountant, Department of the Treasury, United States Customs Service, Accounting Services Division, Office of Finance, Indianapolis, IN 46278
Phone: 317 298-1200

RIN: 1515–AC77

2626. PATENT SURVEYS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1624

CFR Citation: 19 CFR 12; 19 CFR 24

Legal Deadline: None

Abstract: Amendment to eliminate patent surveys.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Louis Alfano, Customs Officer, Commercial Enforcement, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0005

RIN: 1515–AC93

2627. • ADVANCE NOTICE REQUIREMENTS FOR AIRCRAFT LANDINGS AND ARRIVALS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 58b; 19 USC 66; 19 USC 1433; 19 USC 1436; 19 USC 1448; 19 USC 1459; 19 USC 1590; 19 USC 1594; 19 USC 1623; 19 USC 1624; 19 USC 1644; 19 USC 1644a

CFR Citation: 19 CFR 122

Legal Deadline: None

Abstract: Amendment to require that the owners or operators of commercial aircraft that operate as scheduled airlines and enter the United States from foreign areas who intend to land at landing rights or user fee airports, request from Customs permission to land in writing at least 30 days before the first flight date and secure Customs approval to land before the first flight begins. Amendment would also make the advance notice of arrival requirement applicable to all aircraft. The advance notice of arrival would be required to be given by the aircraft commander directly to the appropriate Customs location at least one hour before the aircraft crosses any border or coastline of the United States.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth Tritt, Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-4434

RIN: 1515–AD10

2628. • PRIOR DISCLOSURE AND LOST DUTY OR REVENUE DEMANDS WHEN PENALTY CLAIM NOT ISSUED

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1592; 19 USC 1593a; 19 USC 1624

CFR Citation: 19 CFR 162

Legal Deadline: None

Abstract: Amendment pertaining to prior disclosure and to the procedure for demanding payment of duties, taxes, fees, or revenue for violations of 19 U.S.C. 1592 or 1593a when a penalty claim is not issued. Amendments are designed to encourage participation in the prior disclosure program and to enhance the effectiveness of the duty/revenue demand process.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Alan Cohen, Senior Attorney, Penalties Branch, Department of the Treasury, United States Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8742

RIN: 1515–AD13

2629. • PERFORMANCE OF CUSTOMS BUSINESS BY PARENT AND SUBSIDIARY CORPORATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1624; 19 USC 1641

CFR Citation: 19 CFR 111

Legal Deadline: None

Abstract: Amendment to specify circumstances in which a corporate entity may perform certain customs business on behalf of a parent corporation or subsidiary corporation or sister subsidiary corporation without the need to obtain a customs broker license. It is anticipated that the amendment would improve the operational efficiency of the affected corporate entities and thereby enhance their ability to ensure compliance with applicable customs laws and regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/15/02	67 FR 63576
NPRM Comment Period End	12/16/02	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gina Grier, Attorney, Entry Procedures and Carriers Branch,

Department of the Treasury, United States Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8730

RIN: 1515–AD14

Department of the Treasury (TREAS)
United States Customs Service (CUSTOMS)

Final Rule Stage

2630. HARBOR MAINTENANCE FEE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; PL 99-662; 19 USC 66; 19 USC 81a to 81u; 19 USC 623; 19 USC 1202; 19 USC 1624; 31 USC 9701; PL 99-272; PL 99-509

CFR Citation: 19 CFR 4; 19 CFR 24; 19 CFR 146; 19 CFR 178

Legal Deadline: Final, Statutory, April 1, 1987.

Abstract: Amendments to the Customs Regulations to implement provisions of the Water Resources Development Act of 1986, which authorizes Customs to assess a harbor maintenance fee of 0.125 percent (.00125) on the value of commercial cargo loaded on or unloaded from a commercial vessel at a port unless specifically exempted from the fee. Proceeds of the fee are deposited in a trust fund for the U.S. Army Corps of Engineers to use for the improvement and maintenance of U.S. ports and harbors.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/08/92	57 FR 607
Interim Final Rule Effective	01/08/92	
Interim Final Rule Comment Period End	03/09/92	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Deborah Thompson, Accountant, Accounts Receivable Branch, Department of the Treasury, United States Customs Service, Office of Finance, Indianapolis, IN 46278
Phone: 317 298-1200

RIN: 1515–AA87

2631. DONATED CARGO EXEMPTION FROM HARBOR MAINTENANCE FEE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 58a; 19 USC 66; 19 USC 1202; 19 USC 1624; 31 USC 9701; 19 USC 58b; 19 USC 58c

CFR Citation: 19 CFR 24

Legal Deadline: None

Abstract: Amends interim Customs Regulations relating to harbor maintenance fees. The interim regulations established a shipping fee for transporting cargo on specified U.S. waterways. The Act was amended to include an exemption for nonprofit organizations or cooperatives, which own or finance cargo determined by Customs to be intended for use in humanitarian or development assistance overseas. This amendment sets forth the applicability and terms of this exemption.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	03/01/87	
Interim Final Rule	03/30/87	52 FR 10198
Interim Final Rule Comment Period End	05/29/87	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Deborah Thompson, Accountant, Accounts Receivable Branch, Department of the Treasury, United States Customs Service, Office of Finance, Indianapolis, IN 46278
Phone: 317 298-1200

RIN: 1515–AA57

2632. NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)—IMPLEMENTATION OF DUTY-DEFERRAL PROGRAM PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1448; 19 USC 1481; 19 USC 1484; 19 USC 1202; 19 USC 1315; 19 USC 1624; 19 USC 3314

CFR Citation: 19 CFR 181; 19 CFR 113; 19 CFR 141; 19 CFR 144; 19 CFR 10

Legal Deadline: Final, Statutory, January 1, 1996.

Abstract: Document amends regulations to establish procedural and other requirements that apply to the collection, waiver, and reduction of duties under the duty-deferral program provisions of the North American Free Trade Agreement. The document prescribes the documentary and other requirements that must be followed when merchandise is withdrawn from a U.S. duty-deferral program, either for exportation to another NAFTA country or for entry into a duty-deferral program of another NAFTA country, the procedures that must be followed in filing a claim for a waiver or reduction of duties collected on such merchandise, and the procedures for finalization of duty collections and duty waiver or reduction claims.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	01/01/96	
Interim Final Rule	01/30/96	61 FR 2908
Interim Final Rule Comment Period End	04/01/96	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Shawn Filion, Commercial Program Specialist, Department of the Treasury, United States Customs Service, Office of Field Operations, North Star Commercial, P.O. Box 400, Buffalo, NY 14225
Phone: 716 551-3053

RIN: 1515–AB87

2633. CUSTOMS ENTRY DOCUMENTATION PURSUANT TO ANTICOUNTERFEITING CONSUMER PROTECTION ACT

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1448; 19 USC 1484; 19 USC 1624

CFR Citation: 19 CFR 141

Legal Deadline: Final, Statutory, January 2, 1997.

Abstract: Document implements section 12 of the Anticounterfeiting

Consumer Protection Act of 1996 (ACPA), which was enacted by Congress to protect consumers and American businesses from counterfeit copyrighted and trademarked products. Section 12 of the ACPA concerns the content of entry documentation required by Customs to determine whether the imported merchandise or its packaging bears an infringing trademark. Amendment requires importers to provide on the invoice a listing of all trademarks appearing on imported merchandise and its packaging.

Timetable:

Action	Date	FR Cite
NPRM	09/13/99	64 FR 49423
NPRM Comment Period End	12/13/99	64 FR 62135
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joanne R. Stump, Chief, Intellectual Property Rights, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8709

RIN: 1515–AC15

2634. COUNTRY-OF-ORIGIN MARKING

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1304; 19 USC 1624

CFR Citation: 19 CFR 134

Legal Deadline: None

Abstract: Amendments clarify the country-of-origin marking rules set forth in part 134 of the Customs Regulations. Amendments promote the concept of informed compliance by the trade and proper field administration of the statutory requirement.

Timetable:

Action	Date	FR Cite
NPRM	01/26/00	65 FR 4193
NPRM Comment Period End	04/26/00	65 FR 17473
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Monika Rice Brenner, Attorney-Advisor, Special Classification and Marking Branch, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8837

Kristen VerSteeg, Attorney-Advisor, Special Classification and Marking Branch, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8832

RIN: 1515–AC32

2635. IMPORTATION AND ENTRY BOND CONDITIONS REGARDING OTHER AGENCY DOCUMENTATION REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1623; 19 USC 1624

CFR Citation: 19 CFR 113

Legal Deadline: None

Abstract: Amendment with regard to the basic importation and entry bond condition under which, if merchandise is conditionally released to the principal named in the bond, the principal agrees to furnish Customs with any document or evidence as required by law or regulation. Amendment would extend this requirement, and consequently the potential liability for payment of liquidated damages for a breach of the bond condition, to documents and evidence submitted to other Government agencies under laws and regulations of those other agencies.

Timetable:

Action	Date	FR Cite
NPRM	08/06/99	64 FR 42872
NPRM Comment Period End	10/05/99	
Final Action	07/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeremy Baskin, Attorney-Advisor, Penalties Branch, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8753

RIN: 1515–AC44

2636. DEFERRAL OF DUTY ON LARGE YACHTS IMPORTED FOR SALE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1484b; 19 USC 1623; 19 USC 1624

CFR Citation: 19 CFR 4; 19 CFR 113

Legal Deadline: None

Abstract: Amendment to set forth procedures for the deferral of entry filing and duty collection on certain yachts imported for sales at boat shows in the United States.

Timetable:

Action	Date	FR Cite
NPRM	06/15/00	65 FR 37501
NPRM Comment Period End	08/14/00	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Larry L. Burton, Chief, Entry Procedures and Carriers Branch, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8724

RIN: 1515–AC58

2637. USER AND NAVIGATION FEES; OTHER REIMBURSABLE CHARGES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 58a to 58c; 19 USC 66; 19 USC 1202; 19 USC 1431; 19 USC 1433; 19 USC 1434; 19 USC 1505; 19 USC 1624; 31 USC 9701; 46 USC 2110 to 2112

CFR Citation: 19 CFR 4; 19 CFR 24; 19 CFR 101

Legal Deadline: None

Abstract: Amendment regarding the proper assessment of user and navigation fees, as well as other reimbursement charges for Customs services performed in connection with, among other things, the processing of vehicles, vessels, aircraft and merchandise arriving in the United States. The purpose of the amendment is to conform the regulations with the intent of the Customs user fee statute and to reflect existing operational policy and administrative practice in this area.

Timetable:

Action	Date	FR Cite
NPRM	05/01/01	66 FR 21705
NPRM Comment Period End	07/02/01	
Final Action	07/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kimberly Nott, Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0042

RIN: 1515–AC63

2638. AFRICAN GROWTH AND OPPORTUNITY ACT AND GENERALIZED SYSTEM OF PREFERENCES

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1321; 19 USC 1481; 19 USC 1484; 19 USC 1498; 19 USC 1508; 19 USC 1623; 19 USC 1624; 19 USC 2461; 19 USC 3314; 19 USC 3721

CFR Citation: 19 CFR 10; 19 CFR 163

Legal Deadline: Final, Statutory, October 1, 2000, Public Law 106-200.

Abstract: Amendments to implement the trade benefit provisions for sub-Saharan Africa contained in title I of the Trade and Development Act of 2000. The trade benefits under title I, also referred to as the African Growth and Opportunity Act, apply to sub-Saharan African countries designated by the President and involve the extension of duty-free treatment under the Generalized System of Preferences (GSP) to non-import-sensitive, non-textile articles normally excluded from GSP duty-free treatment, and the entry of specific textile and apparel articles free of duty and free of any quantitative limits.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	10/01/00	
Interim Final Rule	10/05/00	65 FR 59668
Interim Final Rule Comment Period End	12/04/00	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cynthia Reese, Senior Attorney, Department of the Treasury, United States Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8812

Leon Hayward, Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-9704

RIN: 1515–AC72

2639. EXPANDED WEEKLY ENTRY PROCEDURE FOR FOREIGN TRADE ZONES

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 81a to 81u; 19 USC 1202; 19 USC 1484i; 19 USC 1623; 19 USC 1624

CFR Citation: 19 CFR 146

Legal Deadline: None

Abstract: Amendment in conformance with the Trade and Development Act of 2000 to expand the weekly entry procedure for foreign trade zones to include merchandise involved in activities other than exclusively assembly-line production operations. Under the expanded weekly procedure, weekly entries covering estimated removals of merchandise from a foreign trade zone for any seven-day period and the associated entry summaries will have to be filed exclusively through the Automated Broker Interface, with duties, fees and taxes being scheduled for payment through the Automated Clearinghouse.

Timetable:

Action	Date	FR Cite
NPRM	07/25/02	67 FR 48594
NPRM Comment Period End	09/23/02	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Debbie Scott, Chief, Entry and Drawback Management, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1962

RIN: 1515–AC74

2640. UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT AND CARIBBEAN BASIN INITIATIVE

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1321; 19 USC 1481; 19 USC 1484; 19 USC 1498; 19 USC 1508; 19 USC 1623; 19 USC 1624; 19 USC 2701; 19 USC 3314

CFR Citation: 19 CFR 10; 19 CFR 163

Legal Deadline: Final, Statutory, October 1, 2000, Public Law 106-200.

Abstract: Amendments to implement the trade benefit provisions for Caribbean Basin countries contained in title II of the Trade and Development Act of 2000. The trade benefits under title II, also referred to as the United States-Caribbean Basin Trade Partnership Act (the CBTPA), apply to Caribbean Basin countries designated by the President and involve the entry of specific textile and apparel articles free of duty and free of any quantitative restrictions, limitations, or consultation levels and the extension of NAFTA duty treatment standards to non-textile articles that are excluded from duty-free treatment under the Caribbean Basin Initiative program.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	10/01/00	65 FR 59650
Interim Final Rule	10/05/00	65 FR 59650
Interim Final Rule Comment Period End	12/04/00	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Craig Walker, Senior Attorney-Advisor, Department of the Treasury, United States Customs Service, Special Classification and Marking Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8836

Leon Hayward, Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-9704

Cynthia Reese, Senior Attorney, Department of the Treasury, United States Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8812

RIN: 1515–AC76

2641. RULES OF ORIGIN FOR TEXTILE AND APPAREL PRODUCTS

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1624; 19 USC 3314; 19 USC 3592

CFR Citation: 19 CFR 102

Legal Deadline: None

Abstract: Amendment to align the existing country of origin rules for textiles and apparel products with the statutory amendments to section 334 of the Uruguay Round Agreements Act, as set forth in section 405 within title IV of the Trade and Development Act of 2000. The amendment to the Customs Regulations reflects the amendments set forth in section 405 regarding the processing operations necessary to confer country of origin status to certain textile fabrics and made-up articles.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/01/01	66 FR 21660
Interim Final Rule Effective	05/01/01	
Interim Final Rule Comment Period End	07/02/01	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cynthia Reese, Senior Attorney, Department of the Treasury, United States Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8812

RIN: 1515–AC80

2642. USER FEES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 58a to 58c; 19 USC 66; 19 USC 1202; 19 USC 1505; 19 USC 1624; 26 USC 4461; 26 USC 4462; 31 USC 9701

CFR Citation: 19 CFR 24; 19 CFR 111

Legal Deadline: None

Abstract: Amendment to reflect amendments to 19 U.S.C. 58c, the Customs user fee statute, made by the Miscellaneous Trade and Technical Corrections Act of 1999 (the Act), as well as prior legislative changes to that user fee statute. Amendment sets forth, pursuant to the Act, the new fee structure for passengers arriving in the United States aboard commercial vessels and aircraft, and clarifies how Customs administers certain user fees.

Timetable:

Action	Date	FR Cite
NPRM	03/18/02	67 FR 11954
NPRM Comment Period End	05/17/02	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Reiley, Financial Officer, Financial Management Division, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1504

RIN: 1515–AC81

2643. DOG AND CAT PROTECTION ACT

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1308; 19 USC 1592; 19 USC 1593a; 19 USC 1624

CFR Citation: 19 CFR 12; 19 CFR 113; 19 CFR 151; 19 CFR 162

Legal Deadline: Final, Statutory, August 9, 2001, Public Law 106-476.

Abstract: Amendment to implement certain provisions of the Dog and Cat Protection Act of 2000. The Dog and Cat Protection Act of 2000 prohibits the importation of any products containing dog or cat fur, and provides for civil and criminal penalties for violations of the Act. Amendment sets forth the prohibitions on dog and cat fur importations and the penalties for violations. Amendment also implements the provision of the Act pertaining to Customs certification process of commercial laboratories, both domestic and foreign, that can determine if articles intended to be imported into the United States contain dog or cat fur.

Timetable:

Action	Date	FR Cite
NPRM	08/10/01	66 FR 42163
NPRM Comment Period End	10/09/01	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Luan Cotter, Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1249

Renee Stevens, Science Officer, Department of the Treasury, United States Customs Service, Office of Laboratories and Scientific Services, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0941

Jeremy Baskin, Attorney-Advisor, Penalties Branch, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8753

RIN: 1515–AC87

2644. PROTOTYPES USED SOLELY FOR PRODUCT DEVELOPMENT, TESTING, EVALUATION OR QUALITY CONTROL PURPOSES

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1321; 19 USC 1481; 19 USC 1484; 19 USC 1498; 19 USC 1508; 19 USC 1623; 19 USC 1624; PL 106-476

CFR Citation: 19 CFR 10; 19 CFR 163

Legal Deadline: Final, Statutory, September 9, 2001, Public Law 106-476.

Abstract: Amendment to establish rules and procedures under the Product Development and Testing Act of 2000 (PDTA). The purpose of the PDTA is to promote product development and testing in the United States by allowing the duty-free entry of articles, commonly referred to as prototypes, that are to be used exclusively in product development, testing, evaluation and quality control.

Amendments set forth the procedures for both the identification of those prototypes properly entitled to duty-free entry, as well as the permissible sale of such prototypes, following use in the United States, as scrap, waste, or for recycling.

Timetable:

Action	Date	FR Cite
NPRM	03/08/02	67 FR 10636
NPRM Comment Period End	04/08/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Fitzpatrick, Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1106

RIN: 1515–AC88

2645. PREFERENTIAL TREATMENT OF BRASSIERES UNDER THE UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1321; 19 USC 1481; 19 USC 1484; 19 USC 1498; 19 USC 1508; 19 USC 1623; 19 USC 1624; 19 USC 2701; 19 USC 3314

CFR Citation: 19 CFR 10; 19 CFR 163

Legal Deadline: Final, Statutory, October 1, 2001, Public Law 106-200.

Abstract: Amendment to implement those provisions within the United States-Caribbean Basin Trade Partnership Act (the CBTPA) that establish standards for preferential treatment for brassieres imported from CBTPA beneficiary countries. The amendments involve specifically the methods, procedures and related standards that will apply for purposes of determining compliance with the 75 percent aggregate U.S. fabric components content requirement under the CBTPA brassieres provision.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/04/01	66 FR 50534
Interim Final Rule Effective	10/04/01	
Correction	10/11/01	66 FR 51864
Interim Final Rule Comment Period End	12/03/01	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dick Crichton, Operations Officer, Office of Field Operations, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0162

Cynthia Reese, Senior Attorney, Department of the Treasury, United States Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8812

RIN: 1515–AC89

2646. SINGLE ENTRY FOR SPLIT SHIPMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1448; 19 USC 1484; 19 USC 1624

CFR Citation: 19 CFR 141; 19 CFR 142

Legal Deadline: Final, Statutory, May 9, 2001, Public Law 106-476.

Abstract: Amendment to allow an importer of record, under certain conditions, to submit a single entry to cover multiple portions of a single shipment which was split by the carrier and arrives in the United States at different times.

Timetable:

Action	Date	FR Cite
NPRM	11/16/01	66 FR 57688
NPRM Comment Period End	01/15/02	
Comment Period Extended	02/14/02	67 FR 3135
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Larry L. Burton, Chief, Entry Procedures and Carriers Branch, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8724

RIN: 1515–AC91

2647. SINGLE ENTRY FOR UNASSEMBLED OR DISASSEMBLED ENTITIES IMPORTED ON MULTIPLE CONVEYANCES

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1448; 19 USC 1484; 19 USC 1624

CFR Citation: 19 CFR 141; 19 CFR 142

Legal Deadline: Final, Statutory, May 9, 2001, Public Law 106-476.

Abstract: Amendment to allow an importer of record, under certain conditions, to submit a single entry to cover multiple portions of a single entity which, due to its size or nature, arrives in the United States on separate conveyances. Amendment implements statutory changes made to the merchandise entry laws by the Tariff Suspension and Trade Act of 2000.

Timetable:

Action	Date	FR Cite
NPRM	04/08/02	67 FR 16664
NPRM Comment Period End	06/07/02	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Larry L. Burton, Chief, Entry Procedures and Carriers Branch, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8724

Patricia Fitzpatrick, Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1106

RIN: 1515–AC94

2648. CIVIL FINES FOR IMPORTATION OF MERCHANDISE BEARING A COUNTERFEIT MARK

Priority: Substantive, Nonsignificant

Legal Authority: 17 USC 101; 17 USC 601 to 603; 19 USC 66; 19 USC 1624; 31 USC 9701

CFR Citation: 19 CFR 133

Legal Deadline: None

Abstract: Amendment pertaining to the importation of merchandise bearing a counterfeit mark to clarify the limit on the amount of a civil fine which may be assessed by Customs when merchandise bearing a counterfeit mark is imported. Current regulations use, as a measurement for determining the limit, the domestic value of merchandise as if it had been genuine, based on the manufacturer's suggested retail price of the merchandise at the time of seizure. The amendment adheres more closely to the statutory language, basing the limit of the civil fine on the value of the genuine goods according to the manufacturer's suggested retail price, without any reference to domestic value.

Timetable:

Action	Date	FR Cite
NPRM	06/07/02	67 FR 39321
NPRM Comment Period End	08/06/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lynne O. Robinson, Attorney, Penalties Branch, Department of the Treasury, United States Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8743

RIN: 1515–AC98

2649. PASSENGER AND CREW MANIFESTS REQUIRED FOR PASSENGER FLIGHTS IN FOREIGN AIR TRANSPORTATION TO THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 58b; 19 USC 66; 19 USC 1433; 19 USC 1436; 19 USC 1448; 19 USC 1459; 19 USC 1590; 19 USC 1594; 19 USC 1623; 19 USC 1624; 19 USC 1644; 19 USC 1644a; 49 USC 44909(c); 19 USC 1431

CFR Citation: 19 CFR 122

Legal Deadline: None

Abstract: Amendment to implement a provision of the Aviation and Transportation Security Act which requires that each air carrier, foreign and domestic, operating a passenger flight in foreign air transportation to the United States electronically transmit to Customs in advance of arrival a passenger and crew manifest that contains certain specified information. The submission of this information to Customs is required for purposes of ensuring aviation safety and protecting national security.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/31/01	66 FR 67482
Interim Final Rule Comment Period End	03/01/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James Jeffers, Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-4444

RIN: 1515–AC99

2650. MANUFACTURING SUBSTITUTION DRAWBACK: DUTY APPORTIONMENT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1313; 19 USC 1624

CFR Citation: 19 CFR 191

Legal Deadline: None

Abstract: Amendment to provide the method for calculating manufacturing substitution drawback where imported merchandise, which is dutiable on its value, contains a chemical element and amounts of that chemical element are used in the manufacture or production of articles which are either exported or destroyed under Customs supervision. Recent court cases have held that a chemical element that is contained in an imported material that is subject to an ad valorem rate of duty may be designated as same kind and quality merchandise for drawback purposes. Amendment provides the method by which the duty attributable to the chemical element can be apportioned. Amendment requires a drawback claimant, where applicable, to make this apportionment calculation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/24/02	67 FR 48368
Interim Final Rule Effective	07/24/02	
Interim Final Rule Comment Period End	09/23/02	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William G. Rosoff, Chief, Duty Refund and Determination Branch, Department of the Treasury, United States Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8807

RIN: 1515–AD02

2651. ACCESS TO CUSTOMS SECURITY AREAS AT AIRPORTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 58b; 19 USC 66; 19 USC 1433; 19 USC 1436; 19 USC 1448; 19 USC 1459; 19 USC 1590; 19 USC 1594; 19 USC 1623; 19 USC 1624; 19 USC 1644; 19 USC 1644a

CFR Citation: 19 CFR 122

Legal Deadline: None

Abstract: Amendments regarding the standards for employee access to Customs security areas at airports that accommodate international air commerce. Amendments involve the addition of a biennial access approval reapplication requirement, an expansion of the grounds for denial of an application for access, the addition of a requirement that each employee granted access must report to Customs certain changes in the employee's circumstances, the inclusion of several new employer responsibilities, an expansion of the grounds for revocation or suspension of access and for proposed revocation or suspension of access, and a limitation of the opportunity to have a hearing in a revocation or suspension action to only cases in which there is a genuine issue regarding a material fact. The changes are needed to enhance the security areas and are commensurate with the heightened enforcement posture of the Federal Government following the September 11, 2001, terrorist attacks.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/29/02	67 FR 48977
Interim Final Rule Effective	07/29/02	
Interim Final Rule Comment Period End	09/27/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth Tritt, Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-4434

RIN: 1515–AD04

2652. CONDITIONAL RELEASE PERIOD AND CUSTOMS BOND OBLIGATIONS FOR FOOD, DRUGS, DEVICES AND COSMETICS

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1448; 19 USC 1484; 19 USC 1499; 19 USC 1623; 19 USC 1624; 21 USC 381

CFR Citation: 19 CFR 141; 19 CFR 151

Legal Deadline: None

Abstract: Amendment to provide for a specific conditional release period for any food, drug, device, or cosmetic which has been released under bond and for which admissibility is to be determined under the provisions of the Food, Drug and Cosmetic Act. Amendment also clarifies the amount of liquidated damages that may be assessed when there is a breach of the terms and conditions of the Customs bond. Lastly, amendment authorizes any representative of the Food and Drug Administration to obtain a sample of any food, drug, device, or cosmetic, the importation of which is governed by section 801 of the Food, Drug and Cosmetic Act, as amended.

Timetable:

Action	Date	FR Cite
NPRM	06/07/02	67 FR 39322
NPRM Comment Period End	08/06/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeremy Baskin, Attorney-Advisor, Penalties Branch, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8753

RIN: 1515–AD05

2653. PASSENGER NAME RECORD INFORMATION REQUIRED FOR PASSENGERS ON FLIGHTS IN FOREIGN AIR TRANSPORTATION TO OR FROM THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 58b; 19 USC 66; 19 USC 1433; 19 USC 1436; 19 USC 1448; 19 USC 1459; 19 USC 1590; 19 USC 1594; 19 USC 1623; 19 USC 1624; 19 USC 1644; 19 USC 1644a; 19 USC 1431; 49 USC 44909(c)

CFR Citation: 19 CFR 122

Legal Deadline: None

Abstract: Amendment to implement a provision of the Aviation and Transportation Security Act which requires that air carriers make Passenger Name Record (PNR) information available to Customs upon request. The availability of PNR information to Customs is necessary for purposes of ensuring aviation safety and protecting national security.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/25/02	67 FR 42710
Interim Final Rule Effective	06/25/02	
Interim Final Rule Comment Period End	08/26/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Liliana Quintero, Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenu NW., Washington, DC 20229
Phone: 202 927-2531

RIN: 1515–AD06

2654. • ENTRY OF CERTAIN STEEL PRODUCTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1624

CFR Citation: 19 CFR 12

Legal Deadline: None

Abstract: Amendment to set forth special requirements for the entry of certain steel products. The steel products in question are those listed by the President in Proclamation 7529 of March 5, 2002, pursuant to the safeguard provisions of section 203 of the Trade Act of 1974, including those products subject to country exceptions and product exclusions. Amendment would require the inclusion of an import license number on the entry summary documentation filed with Customs for any steel product for which the U.S. Department of Commerce requires an import license under its steel licensing and import monitoring program.

Timetable:

Action	Date	FR Cite
NPRM	08/09/02	67 FR 51800
NPRM Comment Period End	09/09/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Fitzpatrick, Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1106

RIN: 1515–AD15

Department of the Treasury (TREAS)
United States Customs Service (CUSTOMS)

Long-Term Actions

2655. ENTRY OF SOFTWOOD LUMBER SHIPMENTS FROM CANADA

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 12; 19 CFR 113

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/26/97	62 FR 8620
Interim Final Rule Effective	02/26/97	
Interim Final Rule Comment Period End	04/28/97	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Leon Hayward
Phone: 202 927-9704

Related RIN: Related To 1515-AC62

RIN: 1515–AB97

2656. DESIGNATED LAND BORDER CROSSING LOCATIONS FOR CERTAIN CONVEYANCES

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 123

Timetable:

Action	Date	FR Cite
NPRM	11/17/97	62 FR 61251
NPRM Comment Period End	01/16/98	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Dennis Dore
Phone: 202 927-3274

RIN: 1515–AC12

2657. EXPANDED METHODS OF PAYMENT OF DUTIES, TAXES, INTEREST AND FEES

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 24

Timetable:

Action	Date	FR Cite
NPRM	03/17/99	64 FR 13141
NPRM Comment Period End	05/17/99	
Final Action	10/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Linda Lloyd
Phone: 202 927-0119

RIN: 1515–AC40

2658. ENTRY OF SOFTWOOD LUMBER SHIPMENTS FROM CANADA

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 12

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/23/00	65 FR 33251
Interim Final Rule Effective	05/23/00	
Interim Final Rule Comment Period End	07/24/00	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Leon Hayward
Phone: 202 927-9704

Related RIN: Related To 1515-AB97

RIN: 1515–AC62

2659. PRIVATE AIRCRAFT PROGRAMS: ESTABLISHMENT OF THE GENERAL AVIATION TELEPHONIC ENTRY (GATE) PROGRAM AND REVISIONS TO THE OVERFLIGHT PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 122; 19 CFR 123

Timetable:

Action	Date	FR Cite
NPRM	08/03/01	66 FR 40649
NPRM Comment Period End	10/02/01	
Final Action	10/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steve Gilbert
Phone: 202 927-1391

RIN: 1515–AC73

2660. AMENDMENT TO WOOL DUTY REFUND PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 10

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/23/01	66 FR 20392
Interim Final Rule Effective	04/23/01	
Interim Final Rule Comment Period End	06/22/01	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Debbie Scott
Phone: 202 927-1962

RIN: 1515–AC85

2661. PROCEDURES GOVERNING THE BORDER RELEASE ADVANCED SCREENING AND SELECTIVITY (BRASS) PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 24; 19 CFR 123; 19 CFR 132; 19 CFR 142

Timetable:

Action	Date	FR Cite
NPRM	02/01/02	67 FR 4930
NPRM Comment Period End	04/02/02	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Enrique S. Tamayo
Phone: 202 927-0693

RIN: 1515–AC92

Department of the Treasury (TREAS)
United States Customs Service (CUSTOMS)

Completed Actions

2662. ADMINISTRATIVE RULINGS

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 177

Completed:

Reason	Date	FR Cite
Final Action	08/16/02	67 FR 53483
Final Action Effective	09/16/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Elkins
Phone: 202 572-8813

RIN: 1515–AC56

2663. GENERAL ORDER WAREHOUSES

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 4; 19 CFR 19; 19 CFR 122; 19 CFR 123; 19 CFR 127

Completed:

Reason	Date	FR Cite
Final Action	11/08/02	67 FR 68027
Final Action Effective	12/09/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Raymond Janiszewski
Phone: 202 927-0365

RIN: 1515–AC57

2664. CIVIL AIRCRAFT

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 10

Completed:

Reason	Date	FR Cite
Final Action	06/07/02	67 FR 39286
Final Action Effective	07/08/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard Wallio
Phone: 202 927-9704

RIN: 1515–AC59

2665. MERCHANDISE PROCESSING FEE ELIGIBLE TO BE CLAIMED AS UNUSED MERCHANDISE DRAWBACK

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 191

Completed:

Reason	Date	FR Cite
Final Action	07/25/02	67 FR 48547
Final Action Effective	07/25/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William G. Rosoff
Phone: 202 572-8807

RIN: 1515–AC67

2666. DUTY-FREE TREATMENT FOR CERTAIN BEVERAGES MADE WITH CARIBBEAN RUM

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 10; 19 CFR 163

Completed:

Reason	Date	FR Cite
Final Action	10/09/02	67 FR 62880
Final Action Effective	10/09/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Leon Hayward
Phone: 202 927-9704

RIN: 1515–AC78

2667. AMENDED PROCEDURE FOR OBTAINING REFUNDS OF HARBOR MAINTENANCE FEES PAID ON EXPORTS OF MERCHANDISE

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 24

Completed:

Reason	Date	FR Cite
Final Action	05/13/02	67 FR 31948
Final Action Effective	05/13/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Deborah Thompson
Phone: 317 298-1200

RIN: 1515–AC82

2668. LICENSES FOR CERTAIN WORSTED WOOL FABRICS SUBJECT TO TARIFF-RATE QUOTA

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 132; 19 CFR 163

Completed:

Reason	Date	FR Cite
Final Action	08/30/02	67 FR 55722
Final Action Effective	08/30/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Thomas Fitzpatrick
Phone: 202 927-5385

RIN: 1515–AC83

2669. • IMPORT RESTRICTIONS IMPOSED ON PRE-CLASSICAL AND CLASSICAL ARCHAEOLOGICAL MATERIAL ORIGINATING IN CYPRUS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1624; 19 USC 2612

CFR Citation: 19 CFR 12

Legal Deadline: None

Abstract: Amendment to reflect the imposition of import restrictions on certain archaeological material originating in Cyprus and representing the pre-Classical and Classical periods of its cultural heritage, ranging in date from approximately the 8th millenium B.C. to approximately 330 A.D. These restrictions are being imposed pursuant to an agreement between the United States and the Republic of Cyprus that has been entered into under the authority of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

Timetable:

Action	Date	FR Cite
Final Action	07/19/02	67 FR 47447
Final Action Effective	07/19/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joseph Howard, Attorney, Intellectual Property Rights Branch, Department of the Treasury, United States Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8701

Alfred Morawski, Chief, Other Government Agencies Branch, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229

Phone: 202 927-0402

RIN: 1515–AC86

2670. RE-USE OF AIR WAYBILL NUMBER ON AIR CARGO MANIFEST

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 122

Completed:

Reason	Date	FR Cite
Final Action	08/30/02	67 FR 55720
Final Action Effective	09/30/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Scholtens
Phone: 202 927-3459

RIN: 1515–AD01

2671. ELIMINATION OF TARIFF-RATE QUOTA ON IMPORTED LAMB MEAT

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 132; 19 CFR 163

Completed:

Reason	Date	FR Cite
Final Action	07/16/02	67 FR 46588
Final Action Effective	07/16/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Thomas Fitzpatrick
Phone: 202 927-5385

RIN: 1515–AD09

2672. • PRESENTATION OF VESSEL CARGO MANIFEST TO CUSTOMS BEFORE CARGO IS LADEN ABOARD VESSEL AT FOREIGN PORT FOR TRANSPORT TO THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1431; 19 USC 1433; 19 USC 1434; 19 USC 1446; 19 USC 1450; 19 USC 1486; 19 USC 1490; 19 USC 1623; 19 USC 1624; 46 USC app 3; 46 USC app 91; 46 USC app 883a

CFR Citation: 19 CFR 4; 19 CFR 113

Legal Deadline: None

Abstract: Amendment to require the advance and accurate presentation of manifest information prior to lading at the foreign port and to encourage the electronic presentation of such information in advance. Amendment also to allow a non-vessel operating common carrier (NVOCC) having an International Carrier Bond to electronically present this cargo manifest information to Customs. This information is required in advance and is urgently needed in order to enable Customs to evaluate the risk of smuggling before goods are loaded on vessels for importation into the United States, including the risk of smuggling of weapons of mass destruction through the use of oceangoing cargo containers, while at the same time, enabling Customs to facilitate the prompt release of legitimate cargo.

Timetable:

Action	Date	FR Cite
NPRM	08/08/02	67 FR 51519
NPRM Comment Period End	09/09/02	
Final Action	10/31/02	67 FR 66318
Final Action Effective	12/02/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Larry L. Burton, Chief, Entry Procedures and Carriers Branch, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8724

Kimberly Nott, Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0042

RIN: 1515–AD11

2673. • EXTENSION OF IMPORT RESTRICTIONS IMPOSED ON ARCHAEOLOGICAL AND ETHNOLOGICAL MATERIAL FROM PERU

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1624; 19 USC 2612

CFR Citation: 19 CFR 12

Legal Deadline: None

Abstract: Amendment to extend the import restrictions on certain archaeological and ethnological materials originating in Peru.

Timetable:

Action	Date	FR Cite
Final Action	06/06/02	67 FR 38877
Final Action Effective	06/09/02	67 FR 43247

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joseph Howard, Attorney, Intellectual Property Rights Branch, Department of the Treasury, United States Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8701

Alfred Morawski, Chief, Other Government Agencies Branch, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0402

RIN: 1515–AD12

2674. • EXTENSION OF IMPORT RESTRICTIONS IMPOSED ON ARCHAEOLOGICAL MATERIAL FROM MALI

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1624; 19 USC 2612

CFR Citation: 19 CFR 12

Legal Deadline: None

Abstract: Amendment to extend the import restrictions on certain archaeological material from Mali.

Timetable:

Action	Date	FR Cite
Final Action	09/20/02	67 FR 59159
Final Action Effective	09/19/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joseph Howard, Attorney, Intellectual Property Rights Branch, Department of the Treasury, United States Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8701

Alfred Morawski, Chief, Other Government Agencies Branch, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0402

RIN: 1515–AD16

2675. • EXTENSION OF IMPORT RESTRICTIONS IMPOSED ON ARCHAEOLOGICAL MATERIAL FROM GUATEMALA

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1624; 19 USC 2612

CFR Citation: 19 CFR 12

Legal Deadline: None

Abstract: Amendment to extend the import restrictions on certain archaeological material originating in the Republic of Guatemala.

Timetable:

Action	Date	FR Cite
Final Action	09/30/02	67 FR 61259
Final Action Effective	09/29/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joseph Howard, Attorney, Intellectual Property Rights Branch, Department of the Treasury, United States Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8701

Alfred Morawski, Chief, Other Government Agencies Branch, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0402

RIN: 1515–AD17

BILLING CODE 4820–02–S

Department of the Treasury (TREAS)
Internal Revenue Service (IRS)

Prerule Stage

2676. • CIRCULAR 230—PHASE 2 NON-SHELTER REVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 330

CFR Citation: 26 CFR 10

Legal Deadline: None

Abstract: These regulations propose amendments to the rules governing practice before the Internal Revenue Service.

Timetable:

Action	Date	FR Cite
ANPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-122380-02

Drafting attorney: Brinton T. Warren (202) 622-4940

Reviewing attorney: Richard S. Goldstein (202) 622-7820

Treasury attorney: Julian Kim (202) 622-1981

CC:P&A:APJP

Agency Contact: Brinton T. Warren, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4940

RIN: 1545–BA72

2677. • COMMUNICATIONS EXCISE TAX; TAXABLE COMMUNICATION SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 4251; 26 USC 7805

CFR Citation: 26 CFR 49

Legal Deadline: None

Abstract: This regulation provides a definition of taxable communications services under section 4251..

Timetable:

Action	Date	FR Cite
ANPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG-137076-02

Drafting attorney: Cynthia McGreevy (202) 622-3130

Reviewing attorney: Richard A. Kocak (202) 622-3130

Treasury attorney: John Parcell (202) 622-2578

CC:P&SI

Agency Contact: Cynthia McGreevy, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3130

RIN: 1545–BB04

2678. • MIXED USE OUTPUT FACILITIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This advance notice of proposed rulemaking describes and illustrates rules that the Internal Revenue Service and Treasury Department expect to propose in a notice of proposed rulemaking.

Timetable:

Action	Date	FR Cite
ANPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: State, Local

Federalism: Undetermined

Additional Information: REG-142599-02

Drafting attorney: Rose M. Weber (202) 622-3980

Reviewing attorney: Bruce M. Serchuk (202) 622-3980

Treasury attorney: Stephen J. Watson (202) 622-1322

CC:TEGE

Agency Contact: Rose M. Weber, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3980

TREAS—IRS **Prerule Stage**

Fax: 202 622-4437
RIN: 1545–BB23

Department of the Treasury (TREAS)
Internal Revenue Service (IRS) **Proposed Rule Stage**

2679. INTEGRATED FINANCIAL TRANSACTION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 864

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation addresses whether matched book sale and repurchase transactions conducted by securities dealers qualify as integrated financial transactions under section 1.861-10(c).

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-209604-93 (INTL-001-93)

Drafting attorney: Kenneth P. Christman (202) 622-3870

Reviewing attorney: Paul S. Epstein (202) 622-3870

Treasury attorney: Patricia Brown (202) 622-1781

CC:INTL

Agency Contact: Kenneth P. Christman, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3870

RIN: 1545–AR20

2680. INTERCOMPANY TRANSFER PRICING FOR SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will address the transfer pricing of services between related parties.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-209579-92 (INTL-051-92)

Drafting attorney: J. Peter Luedtke (202) 874-1490

Reviewing attorney: Elizabeth Beck (202) 874-1490

Treasury attorney: Rocco Femia (202) 622-1755

CC:INTL

Agency Contact: J. Peter Luedtke, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 950 L'Enfant Plaza SW, Washington, DC 20024
Phone: 202 874-1490

RIN: 1545–AR32

2681. CAPITAL GAIN GUIDANCE RELATING TO CRTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1; 26 USC 664

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation provides capital gain guidance relating to charitable remainder trusts in light of the changes made to section 1(h) of the Internal Revenue Code by the Taxpayer Relief Act of 1997.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-110896-98

Drafting attorney: William C. Bomar (202) 622-7830

Reviewing attorney: Katherine A. Mellody (202) 622-3090

Treasury attorney: Catherine Hughes (202) 622-9407

CC:P&SI

Agency Contact: William C. Bomar, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7830

RIN: 1545–AW35

2682. CONSTRUCTIVE SALES OF APPRECIATED FINANCIAL POSITIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1259

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations relate to principles for determining if a taxpayer has constructively sold an appreciated financial position.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: REG-102191-98

Drafting attorney: Kathleen Sleeth (202) 622-3920

Reviewing attorney: Alvin Kraft (202) 622-3920

Treasury attorney: Michael Novey (202) 622-1339

CC:FI&P

Agency Contact: Kathleen Sleeth, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3920

RIN: 1545–AW97

TREAS—IRS **Proposed Rule Stage**

2683. STRADDLES—ONE SIDE LARGER THAN THE OTHER

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 1092

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: A "straddle" occurs, for purposes of section 1092 of the Internal Revenue Code, when a taxpayer enters into two separate positions in financial instruments that "offset" each other. Positions offset each other when, taken together, they substantially diminish the taxpayer's risk of loss. A taxpayer in a "straddle" is subject to various limitations on recognition of loss on the positions until both positions are liquidated. These regulations deal with the situation in which one position is larger than the other (that is, the diminution of the risk of loss for one position is only partial).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-107335-99

Drafting attorney: Charles W. Culmer (202) 622-3960

Reviewing attorney: Robert Williams (202) 622-3960

Treasury attorney: Viva Hammer (202) 622-0869

CC:FI&P

Agency Contact: Charles W. Culmer, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3960

RIN: 1545–AX16

2684. CASH OR DEFERRED ARRANGEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation updates and revises regulations on qualified cash or deferred arrangements, "matching" contributions, and employee contributions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG-108639-99

Drafting attorney: R. Lisa Mojiri-Azad (202) 622-6080

Reviewing attorney: Marjorie Hoffman (202) 622-6030

Treasury attorney: W. Thomas Reeder (202) 622-1341

CC:TEGE

Agency Contact: R. Lisa Mojiri-Azad, Senior Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6080

RIN: 1545–AX26

2685. INSPECTION OF WRITTEN DETERMINATIONS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation amends Treasury Regulation section 301.6110 to include Chief Counsel Advice.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-113129-98

Drafting attorney: Deborah Lambert-Dean (202) 622-4570

Reviewing attorney: Donald Squires (202) 622-4570

Treasury attorney: Elizabeth Askey (202) 622-0224

CC:P&A:D&PL

Agency Contact: Deborah Lambert-Dean, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4570
Fax: 202 622-9888

RIN: 1545–AX40

2686. CASH OR DEFERRED ARRANGEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations update and revise regulations for cash or deferred arrangements.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG-108639-99

Drafting attorney: R. Lisa Mojiri-Azad (202) 622-6080

Reviewing attorney: Marjorie Hoffman (202) 622-6030

Treasury attorney: W. Thomas Reeder (202) 622-1341

CC:TEGE

Agency Contact: R. Lisa Mojiri-Azad, Senior Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6080

RIN: 1545–AX43

2687. AWARDING OF COSTS AND CERTAIN FEES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 7430

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed amendments to the Treasury Regulations incorporate the 1997 and 1998 amendments to 26 U.S.C. 7430, relating to the awarding of attorney's fees in administrative and court proceedings. The amendments to 26 U.S.C. 7430 were enacted under the Taxpayer Relief Act of 1997 and the IRS Restructuring and Reform Act of 1998.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-111833-99

Drafting attorney: Kerry H. Bryan (202) 622-7940

Reviewing attorneys: Susan T. Mosley (202) 622-7940 and Henry S. Schneiderman (202) 622-7820

Treasury attorney: Julian Kim (202) 622-1981

CC:PA:APJP

Agency Contact: Kerry H. Bryan, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7940

RIN: 1545–AX46

2688. HIGHLY COMPENSATED EMPLOYEE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 414

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations provide the definition of highly compensated employee.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-111277-99

Drafting attorney: R. Lisa Mojiri-Azad (202) 622-6080

Reviewing attorney: Marjorie Hoffman (202) 622-6030

CC:TEGE

Agency Contact: R. Lisa Mojiri-Azad, Senior Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6080

RIN: 1545–AX48

2689. MODIFICATION TO SECTION 367(A) STOCK TRANSFER REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 367

CFR Citation: 26 CFR 1; 26 CFR 602

Legal Deadline: None

Abstract: This regulation will modify section 367(a), stock transfer regulations, to address abuses under check-the-box and through the use of convertible stock.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-116053-99

Drafting attorney: Robert W. Lorence (202) 622-3860

Reviewing attorney: Charles Besecky (202) 622-3860

Treasury attorney: Michael Caballero (202) 622-0851

CC:INTL

Agency Contact: Robert W. Lorence, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3860
Fax: 202 622-4476

RIN: 1545–AX77

2690. ASSUMPTION OF PARTNERSHIP LIABILITIES

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 752

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation prevents the acceleration or duplication of losses through the assumption of liabilities in transactions involving partnerships.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG-106736-00

Drafting attorney: Horace Howells (202) 622-3050

Reviewing attorney: Dianna Miosi (202) 622-3050

Treasury attorney: Deborah Harrington (202) 622-1788

CC:P&SI

Agency Contact: Horace Howells, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3050

RIN: 1545–AX93

2691. LIKE-KIND EXCHANGES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 168; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations relate to like-kind exchanges under section 168 of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-106590-00

Drafting attorney: Alan H. Cooper (202) 622-3110

Reviewing attorney: Charles Ramsey (202) 622-3110

Treasury attorney: Christopher Ohmes (202) 622-1335

CC:P&SI

Agency Contact: Alan H. Cooper, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3110

RIN: 1545–AX95

2692. ELECTING MARK-TO-MARKET FOR MARKETABLE STOCK OF A PFIC

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1296

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation describes the methods and procedures for electing mark-to-market treatment for marketable stock of a PFIC.

Timetable:

Action	Date	FR Cite
NPRM	07/31/02	67 FR 49634
Hearing	11/06/02	67 FR 49634
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: REG-112306-00

Drafting attorney: Mark R. Pollard (202) 622-3850

Reviewing attorney: Phyllis Marcus (202) 622-3840

CC:INTL

Agency Contact: Mark R. Pollard, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3850

RIN: 1545–AY17

2693. GUIDANCE ON CHANGES TO THE LAWS FOR CORPORATE ESTIMATED TAXES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 6655

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The proposed regulations provide guidance on changes to the law for corporate estimated taxes.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG-107722-00

Drafting attorney: Robert A. Desilets, Jr. (202) 622-4910

Reviewing attorney: Pamela W. Fuller (202) 622-4910

Treasury attorney: Christopher Ohmes (202) 622-1335

CC:P&A:APJP

Agency Contact: Robert A. Desilets Jr., Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4910

RIN: 1545–AY22

2694. USE OF TAXPAYER IDENTIFYING NUMBERS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 6109; 26 USC 1445; 26 USC 897

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation requires the use of taxpayer identifying numbers on submissions made by foreign taxpayers to reduce or eliminate tax under sections 897 and 1445 of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	07/26/02	67 FR 48823
Hearing	11/13/02	67 FR 48823
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: REG-106876-00

Drafting attorney: Robert W. Lorence (202) 622-3860

Reviewing attorney: Charles Besecky (202) 622-3860

Treasury attorney: Michael Caballero (202) 622-0851

CC:INTL

Agency Contact: Robert W. Lorence, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3860
Fax: 202 622-4476

RIN: 1545–AY24

2695. DUAL CONSOLIDATED LOSS RECAPTURE EVENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation will revise provisions in section 1503(d) of the Internal Revenue Code relating to dual consolidated losses.

Timetable:

Action	Date	FR Cite
NPRM	08/01/02	67 FR 49892
Hearing	12/03/02	67 FR 49892
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: REG-106879-00

Drafting attorney: Kathryn T. Holman (202) 622-3860 and Kenneth D. Allison (202) 622-3860

Reviewing attorney: Michael H. Frankel (202) 622-3860

CC:INTL

Agency Contact: Kathryn T. Holman, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3860

Kenneth D. Allison, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3860

RIN: 1545–AY27

2696. TAXABLE YEARS OF CFCS AND FPHCS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 898

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide definitions and rules for determining the required year for CFCs and FPHCs.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG-108523-00

Drafting attorney: Carl M. Cooper (202) 622-3840

Reviewing attorney: Phyllis Marcus (202) 622-3840

Treasury attorney: Patrick Brown (202) 622-1754

CC:INTL

Agency Contact: Carl M. Cooper, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3840

RIN: 1545–AY30

2697. ALLOCATION OF INCOME AND DEDUCTIONS FROM INTANGIBLES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 482

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will address the allocation of income and deductions from intangible property.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: REG-115037-00

Drafting attorney: John M. Breen (202) 874-1490

Reviewing attorney: Anne P. Shelburne (202) 874-1490

Treasury attorney: Rocco Femia (202) 622-1755

CC:INTL

Agency Contact: John M. Breen, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 950 L'Enfant Plaza SW, Washington, DC 20224
Phone: 202 874-1490

RIN: 1545–AY38

2698. DOLLAR-VALUE LIFO

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 472; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide guidance under the dollar-value last-in, first-out (LIFO) inventory method for taxpayers that define LIFO items based on components of cost.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG-107580-00

Drafting attorney: Scott H. Rabinowitz (202) 622-4970

Reviewing attorney: Jeffery G. Mitchell (202) 622-4970

Treasury attorney: Sharon Kay (202) 622-0865

CC:IT&A

Agency Contact: Scott H. Rabinowitz, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4970

RIN: 1545–AY39

2699. NORMAL RETIREMENT AGE FOR PENSION PLANS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: These regulations will provide guidance regarding the determination of normal retirement age in a pension plan, including a money purchase pension plan, target benefit plan and defined benefit plan. Section 411(a)(8) defines the term normal retirement age as the earlier of: 1) the time a participant attains normal retirement age under the plan; or 2) the later of the time a plan participant attains age 65, or the 5th anniversary of the time a plan participant commenced participation in the plan. These regulations also would provide section 411(d)(6) relief for amendments that modify a pension plan's normal retirement age to conform with the proposed regulation.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-125499-00

Drafting attorney: Janet A. Laufer (202) 622-6090

Reviewing attorney: Marjorie Hoffman (202) 622-6030

Treasury attorney: William Bortz (202) 622-1352

CC:TEGE

Agency Contact: Janet A. Laufer, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6090
Fax: 202 622-4084

RIN: 1545–AY61

2700. LIABILITIES ASSUMED IN CERTAIN CORPORATE TRANSACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 357

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These proposed regulations relate to the assumption of liabilities in certain corporate transactions under section 357 of the Internal Revenue Code, and affect corporations and their shareholders.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-100818-01

Drafting attorney: Douglas C. Bates (202) 622-7550

Reviewing attorney: Debra Carlisle (202) 622-7550

CC:CORP

Agency Contact: Douglas C. Bates, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7550

RIN: 1545–AY74

2701. NORMALIZATION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 167; 26 USC 168; 26 USC 46

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations relate to the sale or deregulation of generation assets.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG-104385-01

Drafting attorney: David Selig (202) 622-3040

Reviewing attorney: Peter Friedman (202) 622-3110

Treasury attorney: John Parcell (202) 622-2578

CC:P&SI

Agency Contact: David Selig, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3040

RIN: 1545–AY75

2702. DISCLOSURE OF RETURNS AND RETURN INFORMATION IN JUDICIAL AND ADMINISTRATIVE TAX PROCEEDINGS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 6103

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This proposed rule relates to the disclosure of returns and return information in judicial and administrative tax proceedings pursuant to 26 U.S.C. 6103(h)(4).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-120297-01

Drafting attorney: David L. Fish (202) 622-4590

Treasury attorney: Elizabeth Askey (202) 622-0224

CC:P&A:DPL

Agency Contact: David L. Fish, Senior Technician Reviewer, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4590

RIN: 1545–AY89

2703. PAYMENTS FOR INTEREST IN PARTNERSHIP

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 736

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations relate to section 736(b)(3)(B), regarding payments for interest in a partnership if the retiring or deceased partner was a general partner in the partnership.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-123382-01

Drafting attorney: James M. Gergurich (202) 622-3070

Reviewing attorney: Christine Ellison (202) 622-3070

CC:P&SI

Agency Contact: James M. Gergurich, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3070

RIN: 1545–AY90

2704. TAX SHELTER PENALTIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6662; 26 USC 6664

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The proposed regulations relate to sections 6662 and 6664 regarding tax shelter penalties. The project has arisen in connection with the revision to Circular 230.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-126016-01

Drafting attorney: Brinton T. Warren (202) 622-4940

Reviewing attorney: Richard S. Goldstein (202) 622-7820

Treasury attorney: Julian Kim (202) 622-1981

CC:P&A:APJP

Agency Contact: Brinton T. Warren, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4940

RIN: 1545–AY97

2705. EXPENDITURES IN CONNECTION WITH THE CREATION OF INTANGIBLE ASSETS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 263

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations provide guidance on the treatment of

costs incurred in connection with the creation of an intangible asset.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-125638-01

Drafting attorney: Andrew J. Keyso, Jr. (202) 622-5020

Reviewing attorney: Robert Casey (202) 622-4950

Treasury attorney: Jodi Cohen (202) 622-0160

CC:IT&A

Agency Contact: Andrew J. Keyso Jr., Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-5020

RIN: 1545–BA00

2706. ALLOCATION AND APPORTIONMENT OF INTEREST EXPENSE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 864

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation provides guidance with respect to methods of apportioning interest expense under section 864(e) of the Code.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-129447-01

Drafting attorney: Melissa D. Arndt (202) 622-3850

Reviewing attorney: Anne Devereaux (202) 622-3850

Treasury attorneys: Michael Caballero (202) 622-0851, John Harrington (202) 622-0589

CC:INTL

Agency Contact: Melissa D. Arndt, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3850

RIN: 1545–BA02

2707. REDUCTIONS OF ACCRUALS AND ALLOCATIONS BECAUSE OF INCREASED AGE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 411; 26 USC 411

CFR Citation: 26 CFR 1

Legal Deadline: Final, Statutory, February 1, 1988.

Abstract: These regulations will prescribe rules regarding the requirement that accruals and allocations under qualified retirement plans cannot be reduced because of the attainment of any age.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: REG-209500-86

Drafting attorney: Linda S.F. Marshall (202) 622-6090

Reviewing attorney: Marjorie Hoffman (202) 622-6090

Treasury attorney: Harlan Weller (202) 622-1001

CC:TEGE

Agency Contact: Linda S.F. Marshall, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6090

RIN: 1545–BA10

2708. TRANSACTIONS INVOLVING OBLIGATIONS OF CONSOLIDATED GROUP MEMBERS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1502

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations are in regard to intercompany obligations.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-107592-00

Drafting attorney: Frances Kelly (202) 622-7770

Reviewing attorney: Michael J. Wilder (202) 622-7750

Treasury attorney: Audrey Nacamuli (202) 622-5721

CC:CORP

Agency Contact: Frances Kelly, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7770

RIN: 1545–BA11

2709. DEDUCTIBILITY OF EMPLOYER CONTRIBUTIONS FOR DEFERRED COMPENSATION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will update and clarify the general rules for deductibility of employer contributions to qualified retirement plans and other deferred compensation arrangements.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG-139449-01

Drafting attorney: Linda S.F. Marshall (202) 622-6090

Reviewing attorney: Mark Schwimmer (202) 622-6090

Treasury attorney: Thomas Reeder (202) 622-1341

CC:TEGE

Agency Contact: Linda S.F. Marshall, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6090

RIN: 1545–BA13

2710. CONTINUATION OF A CONSOLIDATED GROUP

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 1502

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation addresses issues related to the continuation of consolidated groups under 1.1502-75.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-126022-01

Drafting attorney: Christopher M. Bass (202) 622-7770

Reviewing attorney: Edward Cohen (202) 622-7770

CC:CORP

Agency Contact: Christopher M. Bass, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7770

RIN: 1545–BA14

2711. PROPERTY EXEMPT FROM LEVY

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6334

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation will describe the judicial procedures for approval of a principal residence seizure, pursuant to I.R.C. sections 6334(a)(13(B)(i) and 6334(e)(1).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-140378-01

Drafting attorney: Robin M. Ferguson (202) 622-3610

Reviewing attorney: Alan Levine (202) 622-3610

CC:P&A:CB&S

Agency Contact: Robin M. Ferguson, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3610

RIN: 1545–BA22

2712. GASOLINE TAX CLAIMS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 48

Legal Deadline: None

Abstract: The proposed regulation will provide guidance regarding claims for credit or refund of the gasoline tax under section 6416(a)(4) of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
ANPRM	10/23/01	66 FR 53564
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local, Tribal

Additional Information: REG-143219-01

Drafting attorney: Frank K. Boland (202) 622-3130

CC:P&SI

Agency Contact: Frank K. Boland, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3130

RIN: 1545–BA27

2713. SUSPENSION OF STATUTES OF LIMITATION IN JOHN DOE AND THIRD-PARTY SUMMONS DISPUTES AND EXPANSION OF TAXPAYERS' RIGHTS TO RECEIVE NOTICE AND SEEK JUDICIAL REVIEW OF THIRD PARTY SUMMONSES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The proposed regulation provides guidance regarding modified rules for serving summonses on third-party recordkeepers, the broadened range of summonses subject to the notice requirements, and the suspension of limitations periods when court actions are brought or when a summoned third party fails to fully respond to a summons. This proposed regulation incorporates the changes enacted in RRA 1998, OBRA 1990, TAMRA 1988, and TRA 1986. This regulation is a continuation of the regulation project previously numbered at REG-208225-88.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-153037-01

Drafting attorney: Elizabeth D. Rawlins (202) 622-3630

Reviewing attorney: Robert A. Miller (202) 622-3630

CC:P&A:CB&S

Agency Contact: Elizabeth D. Rawlins, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3630

RIN: 1545–BA31

2714. AMENDMENTS TO RULES FOR ALLOCATION OF BASIS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 755

CFR Citation: 26 CFR 755

Legal Deadline: None

Abstract: The proposed regulation amends the regulations under section 755 (section 1.755-1) in order to better coordinate with recent revisions to section 1.755-2 relating to rules for allocation of basis.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-155345-01

Drafting attorney: Craig A. Gerson (202) 622-3050

Reviewing attorney: David Haglund (202) 622-3050

Treasury attorney: Deborah Harrington (202) 622-1788

CC:P&SI

Agency Contact: Craig A. Gerson, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3050

RIN: 1545–BA32

2715. EARNED INCOME CREDIT

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation removes 26 CFR 1.32-2 because of legislative changes.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-135061-01

Drafting attorney: Shoshanna Chaiton (202) 622-6080

Reviewing attorney: Karin Loverud (202) 622-6080

CC:TEGE

Agency Contact: Shoshanna Chaiton, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6080

RIN: 1545–BA34

2716. INCOME FROM SOURCES WITHIN SPECIFIED POSSESSION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 931; 26 USC 911

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will remove the reference to section 911 in the section 931 regulations and update the definition of a possession under those regulations.

Timetable:

Action	Date	FR Cite
NPRM	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-159068-01

Drafting attorney: Jonathan A. Sambur (202) 622-3840

Reviewing attorney: Phyllis E. Marcus (202) 622-3840

Treasury attorney: Michael Mundaca (202) 622-1752

CC:INTL

Agency Contact: Jonathan A. Sambur, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington
Phone: 202 622-3840

RIN: 1545–BA37

2717. MULTI-FAMILY HOUSING BONDS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations relate to various issues with respect to multi-family housing bonds.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: State, Local

Additional Information: REG-163765-01

Drafting attorney: Rose M. Weber (202) 622-3980

Reviewing attorney: Bruce M. Serchuk (202) 622-3980

Treasury attorney: Stephen J. Watson (202) 6622-1322

CC:TEGE

Agency Contact: Rose M. Weber, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3980
Fax: 202 622-4437

RIN: 1545–BA45

2718. DETERMINATION OF BASIS OF PARTNER'S INTEREST; SPECIAL RULES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: These proposed regulations will provide the appropriate basis adjustment under section 705 in certain situations in which a corporation has a direct or indirect interest in a partnership that owns stock in that corporation where the partnership distributes money or other property to another partner and that partner recognizes gain on the distribution during a year in which the partnership does not have an election under section 754 in effect, and the partnership subsequently sells or exchanges the stock.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-167648-01

Drafting attorney: Barbara MacMillan (202) 622-3050

Reviewing attorney: David Haglund (202) 622-3050

Treasury attorney: Stephanie Robinson (202) 622-9858

CC:P&SI

Agency Contact: Barbara MacMillan, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3050

RIN: 1545–BA50

2719. PARTNERSHIP OPTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 704; 26 USC 721

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation provides tax treatment of partnership options.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG-103580-02

Drafting attorney: Audrey W. Ellis (202) 622-3188

Reviewing attorneys: Matthew Lay (202) 622-3060 and Jeanne Sullivan (202) 622-3060

Treasury attorney: Deborah Harrington (202) 622-1788

CC:P&SI

Agency Contact: Audrey W. Ellis, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3188

RIN: 1545–BA53

2720. USER FEES FOR OFFERS TO COMPROMISE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 31 USC 9701

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations relating to user fees would be amended to provide for the imposition of a user fee for processing of offers to compromise. The charging of user fees implements the Independent Offices Appropriations Act, 31 U.S.C. 9701.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-103777-02

Drafting attorney: Gene W. Beard (202) 622-3620

Reviewing attorney: Frederick W. Schindler (202) 622-3620

Treasury attorney: Jodi Cohen (202) 622-0160

CC:P&A:CB&S

Agency Contact: Gene W. Beard, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3620

RIN: 1545–BA54

2721. MODIFICATION OF CHECK THE BOX (TEMPORARY)

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 26 CFR 1; 26 CFR 301

Legal Deadline: None

Abstract: The Modification of Check the Box regulations will add a new section to the 301.7701-2 regulations to provide that in certain circumstances, namely in State law mergers and conversions, a surviving disregarded entity will be regarded for purposes of assessment and collection of prior year tax liabilities of predecessor entities. Thus, following a transaction in which a regarded entity is merged or converted into a disregarded entity, the Commissioner will be able to exercise collection and assessment authority against the disregarded entity for any liabilities stemming from tax periods of the regarded entity prior to the date of the transaction.

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG-106681-02

Drafting attorney: James M. Gergurich (202) 622-3070

Reviewing attorney: Jeanne Sullivan (202) 622-3070

Treasury attorney: Stephanie Robinson (202) 622-9858

CC:P&SI

Agency Contact: James M. Gergurich, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3070

RIN: 1545–BA58

2722. MODIFICATION OF CHECK THE BOX

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 26 CFR 1; 26 CFR 301

Legal Deadline: None

Abstract: The Modification of Check the Box regulation will add a new section to the 301.7701-2 regulations to provide that in certain circumstances, namely in State law mergers and conversions, a surviving disregarded entity will be regarded for purposes of assessment and collection of prior year tax liabilities of predecessor entities. Thus, following a transaction in which a regarded entity is merged or converted into a disregarded entity, the Commissioner will be able to exercise collection and assessment authority against the disregarded entity for any liabilities stemming from tax periods of the regarded entity prior to the date of the transaction.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG-106681-02

Drafting attorney: James M. Gergurich (202) 622-3070

Reviewing attorney: Jeanne Sullivan (202) 622-3070

Treasury attorney: Stephanie Robinson (202) 622-9858

CC:P&SI

Agency Contact: James M. Gergurich, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3070

RIN: 1545–BA59

2723. ABATEMENT OF INTEREST ON LARGE ERRONEOUS REFUNDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 6404(e)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This proposed regulation will provide rules that address whether the Internal Revenue Service may abate interest on an erroneous refund exceeding $50,000 pursuant to I.R.C. section 6404(e) (26 U.S.C. 6404(e)).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG-167500-01

Drafting attorney: David A. Abernathy (202) 622-7940

Reviewing attorney: Richard Goldman (202) 622-7940

CC:P&A:AP JP

Agency Contact: David A. Abernathy, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7940

RIN: 1545–BA61

2724. ALLOCATION AND APPORTIONMENT RULES: GUIDANCE ON SELECTED ISSUES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 863

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance with respect to the allocation and apportionment under section 861 of selected deductions; e.g., charitable contributions and research and experimentation expenses.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-128240-01

Drafting attorney: Teresa B. Hughes (202) 622-3850

Reviewing attorney: Anne Devereaux (202) 622-3850

Treasury attorney: John Harrington (202) 622-0589

CC:INTL

Agency Contact: Teresa B. Hughes, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3850

RIN: 1545–BA64

2725. PROVISIONS REGARDING CROSS-BORDER TRANSACTIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805; 26 USC 368(a)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation will make conforming changes to account for cross-border section 368(a)(1)(A) mergers.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: REG-125628-01

Drafting attorney: Robert W. Lorence (202) 622-3860

Reviewing attorney: Charles Besecky (202) 622-3860

CC:INTL

Agency Contact: Robert W. Lorence, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3860
Fax: 202 622-4476

RIN: 1545–BA65

2726. • INTEREST OTHER THAN THAT OF A CREDITOR

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 465; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance under section 465(b)(3) of the Internal Revenue Code. The regulations state when 465(b)(3) will apply to activities and clarify who has an interest other than that of a creditor.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG-209377-89

Drafting attorney: Tara P. Volungis (202) 622-3080

Reviewing attorney: Christine Ellison (202) 622-3070

Treasury attorney: John Parcell (202) 622-2578

CC:P&SI

Agency Contact: Tara P. Volungis, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224

Phone: 202 622-3080

RIN: 1545–BA69

2727. • DEFINITION OF REORGANIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation addresses the continuity of business enterprise and continuity of interest requirements for a reorganization when stock ownership in the target corporation represents an insubstantial part of the entire value of the target corporation.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-119726-02

Drafting attorney: Richard C. Starke (202) 622-7750

Reviewing attorney: Kenneth Cohen (202) 622-7790

Treasury attorney: Audrey Nacamuli (202) 622-5721

CC:CORP

Agency Contact: Richard C. Starke, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7750

RIN: 1545–BA71

2728. • CONTROLLED FOREIGN PARTNERSHIP REPORTING

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805; 26 USC 6038

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide guidance regarding controlled foreign partnership reporting.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG-124069-02

Drafting attorney: Tasheaya Warren (202) 622-3860

Reviewing attorney: Michael H. Frankel (202) 622-3860

CC:INTL

Agency Contact: Tasheaya Warren, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3860

RIN: 1545–BA77

2729. • DISCLOSURE OF RELATIVE VALUE OF DISTRIBUTION FORMS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805(b); 26 USC 417(a)(3)(A)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will specify the disclosures that must be made to participants in qualified pension plans to describe the relative value of the available optional forms of benefit.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: REG-124667-02

Drafting attorney: Linda S.F. Marshall (202) 622-6090

Reviewing attorney: Marjorie Hoffman (202) 622-6000

Treasury attorney: Harlan Weller (202) 622-1001

CC:TEGE

Agency Contact: Linda S.F. Marshall, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224

Phone: 202 622-6090

RIN: 1545–BA78

2730. • REDEMPTIONS TREATED AS DIVIDENDS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation under section 302 of the Internal Revenue Code (Code), permits basis of redeemed stock to be recovered by the redeemed shareholder. Proposed regulations under section 304 of the Code reflect changes made by the Internal Revenue Service Restructuring and Reform Act of 1998, Taxpayer Relief Act of 1997, Tax Reform Act of 1986, Deficit Reduction Act of 1984, and the Tax Equity and Fiscal Responsibility Act of 1982 to the statute. Proposed regulations under section 304 also reference proposed regulations under section 302 as they relate to the treatment of basis of redeemed stock in redemptions treated as dividends.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-150313-01

Drafting attorney: Lisa K. Leong (202) 622-7530

Reviewing attorney: Lewis K. Brickates (202) 622-7530

Treasury attorney: Audrey Nacamuli (202) 622-5721

CC:CORP

Agency Contact: Lisa K. Leong, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7530

RIN: 1545–BA80

2731. • PARTNERSHIP TRANSACTIONS INVOLVING LONG-TERM CONTRACTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 460

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Currently, regulations under section 460 divide the rules regarding a mid-contract change in taxpayer engaged in completing long-term contracts into two categories-constructive completion transactions and step-in-the-shoes transactions. The regulations provide that a transfer described in section 721(a) of a long-term contract to a partnership and a transfer of a partnership interest are step-in-the-shoes transactions. These regulations will explain the tax consequences of contributions of long-term contracts to, transfers of interests in, and distributions from, partnerships holding long-term contracts.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG-128203-02

Drafting attorney: Richard T. Probst (202) 622-3060

Reviewing attorney: Matthew Lay (202) 622-3060

Treasury attorney: Deborah Harrington (202) 622-1788

CC:P&SI

Agency Contact: Richard T. Probst, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3060

RIN: 1545–BA81

2732. • ALLOCATION OF NEW MARKETS TAX CREDIT

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 45D; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will address how the section 45D new markets tax credit should be allocated to the partners of a partnership under section 704(b) of the Internal Revenue Code and will address related partnership issues.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG-131999-02

Drafting attorney: James A. Quinn (202) 622-3070

Reviewing attorney: Matthew Lay (202) 622-3060

CC:P&SI

Agency Contact: James A. Quinn, Senior Counsel, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3070

RIN: 1545–BA84

2733. • CARRYOVER AND STACKING RULE AMENDMENT

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 42

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The low-income housing tax credit rules that concern carryover allocations under section 1.42-6 and stacking rules under section 1.42-14 are amended to reflect changes under the Community Renewal Tax Relief Act of 2000.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG-131997-02

Drafting attorney: Christopher J. Wilson (202) 622-3040

Reviewing attorney: Susan Reaman (202) 622-3040

Treasury attorney: Steve Watson (202) 622-1322

CC:P&SI

Agency Contact: Christopher J. Wilson, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3040

RIN: 1545–BA85

2734. • GUIDANCE ON REPORTING OF DEPOSIT INTEREST PAID TO NONRESIDENT ALIENS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1; 26 CFR 31

Legal Deadline: None

Abstract: This regulation will provide guidance on the reporting requirements for interest on deposits maintained at U.S. offices of certain financial institutions and paid to nonresident aliens that are residents of certain specified countries.

Timetable:

Action	Date	FR Cite
NPRM	08/02/02	67 FR 50386
Hearing	12/05/02	67 FR 50386
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-133254-02

Drafting attorney: Alexandra R. Helou (202) 622-3840

Reviewing attorney: Valerie Mark Lippe (202) 622-3840

Treasury attorney: Patrick Brown (202) 622-1781

CC:INTL

Agency Contact: Alexandra R. Helou, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3840

RIN: 1545–BA86

2735. • AGGREGATE COMPUTATION AND ALLOCATION OF RESEARCH CREDIT

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 41

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide guidance on the proper method of computing the research credit for a controlled group. In addition, this regulation will provide guidance on the allocation of the research credit among members of a controlled group.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-133791-01

Drafting attorney: Jolene J. Shiraishi (202) 622-3120

Reviewing attorneys: Joseph Makurath (202) 622-3120

Christine Ellison (202) 622-3070

Treasury attorney: Julian Kim (202) 622-1981

CC:P&SI

Agency Contact: Jolene J. Shiraishi, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20044
Phone: 202 622-3120

Related RIN: Related To 1545-AX05

RIN: 1545–BA88

2736. • DESIGNATED IRS OFFICER OR EMPLOYEE

Priority: Routine and Frequent

Legal Authority: 26 USC 7602

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulatory amendment clarifies that Chief Counsel attorneys can receive the designated authority to take summoned testimony under oath.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-134026-02

Drafting attorney: Elizabeth D. Rawlins (202) 622-3630

Reviewing attorney: Robert A. Miller (202) 622-3630

CC:P&A:CB&S

Agency Contact: Elizabeth D. Rawlins, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3630

Related RIN: Related To 1545-BA98

RIN: 1545–BA89

2737. • TRANSFER OF NOTES OR STOCK TO PROVIDE FOR SATISFACTION OF CONTESTED LIABILITIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations would amend section 1.461-2 that allows a taxpayer to deduct in the taxable year of transfer the amount of money on other property transferred to satisfy an asserted liability that the taxpayer contests. The amendment to section 1.461-2(c)(1) would provide that transfers of a taxpayer's own note or stock of the note or stock of a related person are not transfers to provide for the satisfaction of an asserted liability, except where the transfer has been made to the person who is asserting the liability.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-136890-02

Drafting attorney: Norma C. Rotunno (202) 622-7900

Reviewing attorney: Thomas D. Moffitt (202) 622-7900

Treasury attorney: Christopher Ohmes (202) 622-1335

CC:IT&A

Agency Contact: Norma C. Rotunno, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7900

Related RIN: Related To 1545-BA91

RIN: 1545–BA90

2738. • TRANSFER OF NOTES OR STOCK TO PROVIDE FOR SATISFACTION OF CONTESTED LIABILITIES (TEMPORARY)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The temporary regulations would amend section 1.461-2 that allows a taxpayer to deduct in the taxable year of transfer the amount of money or other property transferred to satisfy an asserted liability that the taxpayer contests. The amendment to section 1.461-2(c)(1) would provide that transfers of a taxpayer's own note or stock or the note or stock of a related person are not transfers to provide for the satisfaction of an asserted liability, except where the transfer has been made to the person who is asserting the liability.

Timetable:

Action	Date	FR Cite
Temporary Regulations	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-136890-02

Drafting attorney: Norma C. Rotunno (202) 622-7900

Reviewing attorney: Thomas D. Moffitt (202) 622-7900

Treasury attorney: Christopher Ohmes (202) 622-1335

CC:IT&A

Agency Contact: Norma C. Rotunno, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7900

Related RIN: Related To 1545-BA90

RIN: 1545–BA91

2739. • INCLUSION RATIO

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 2642

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation issue regulations under section 642(g) relating to relief provisions.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-136761-02

Drafting attorney: Lian A. Mito (202) 622-7830

Reviewing attorney: James F. Hogan (202) 622-7830

Treasury attorney: Catherine Hughes (202) 622-9407

CC:P&SI

Agency Contact: Lian A. Mito, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7830

RIN: 1545–BA94

2740. • EMPLOYMENT TAXES—FAILURE-TO-DEPOSIT PENALTY

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6656; 26 USC 6302

CFR Citation: 26 CFR 31

Legal Deadline: None

Abstract: Reconsideration of Rev. Rul. 75-191 (situations 1 and 2) regarding the application of the section 6656 failure-to-deposit penalty where employment taxes should have been withheld but were not. Ruling provides employer will not be subject to the penalty if employer did not actually withhold the taxes. In contrast, Treas. Reg. section 1.1461-1(a)(2) provides that penalty will be due for taxes under chapter 3 of the Code if the withholding agent should have withheld the tax but in fact did not withhold as required. Regulation will conform treatment of employment taxes to chapter 3 taxes.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-136778-02

Drafting attorney: Charles A. Hall (202) 622-4940

Reviewing attorney: Judith Wall (202) 622-4940

Treasury attorney: John Parcell (202) 622-2578

CC:PA:APJP

Agency Contact: Charles A. Hall, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4940

RIN: 1545–BA97

2741. • DESIGNATED IRS OFFICER OR EMPLOYEE (TEMPORARY)

Priority: Routine and Frequent

Legal Authority: 26 USC 7602(a)

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulatory amendment clarifies that Chief Counsel attorneys can receive the designated authority to take summoned testimony under oath.

Timetable:

Action	Date	FR Cite
Temporary Regulations	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-134026-02

Drafting attorney: Elizabeth D. Rawlins (202) 622-3630

Reviewing attorney: Robert Miller (202) 622-3630

CC:P&A:CB&S

Agency Contact: Elizabeth D. Rawlins, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3630

Related RIN: Related To 1545-BA89

RIN: 1545–BA98

2742. • TIMELY MAILING TREATMENT

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7502

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation will expressly provide that a registered or certified mail receipt is the sole means to prove delivery of a document to the Internal Revenue Service.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-138176-02

Drafting attorney: Charles A. Hall (202) 622-4940

Reviewing attorney: Ashton Trice (202) 622-4940

Treasury attorney: John Parcell (202) 622-2578

CC:PA:APJP

Agency Contact: Charles A. Hall, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4940

RIN: 1545–BA99

2743. • HAND CARRY RETURNS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6091

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance to taxpayers on the proper place to file a return by hand carrying the return to the Internal Revenue Service. Currently, the regulations provide that handcarried returns should be filed with the District Director.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-138173-02

Drafting attorney: Ann M. Kramer (202) 622-4940

Reviewing attorney: Ashton Trice (202) 622-4940

Treasury attorney: John Parcell (202) 622-2578

CC:PA:APJP

Agency Contact: Ann M. Kramer, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4940

RIN: 1545–BB00

2744. • REDUCED EXCLUSION OF GAIN FROM SALE OR EXCHANGE OF PRINCIPAL RESIDENCE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 121; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation provides guidance on when a taxpayer who has not owned and used the property for two years or who has claimed the exclusion within the last two years is eligible to claim a reduced exclusion under section 121(c).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-138882-02

Drafting attorney: Sara P. Shepherd (202) 622-4960

Reviewing attorney: George Baker (202) 622-4930

Treasury attorney: Elizabeth Askey (202) 622-0224

CC:IT&A

Agency Contact: Sara P. Shepherd, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4960

RIN: 1545–BB01

2745. • REDUCED EXCLUSION OF GAIN FROM SALE OR EXCHANGE OF PRINCIPAL RESIDENCE (TEMPORARY)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 121; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance on when a taxpayer who has not owned and used the property for two years or who has claimed the exclusion within the last two years is eligible to claim a reduced exclusion under section 121(c).

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-138882-02

Drafting attorney: Sara P. Shepherd (202) 622-4960

Reviewing attorney: George Baker (202) 622-4930

Treasury attorney: Elizabeth Askey (202) 622-0224

CC:IT&A

Agency Contact: Sara P. Shepherd, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4960

RIN: 1545–BB02

2746. • HEAVY VEHICLE TAX; DEFINITION OF HIGHWAY TRACTOR

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 4051; 26 USC 7805

CFR Citation: 26 CFR 48

Legal Deadline: None

Abstract: This regulation provides the definition of highway tractor under section 4051.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG-137079-02

Drafting attorney: Celia A. Gabrysh (202) 622-3130

Reviewing attorney: Richard A. Kocak (202) 622-3130

Treasury attorney: John Parcell (202) 622-2570

CC:P&SI

Agency Contact: Celia A. Gabrysh, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3130

RIN: 1545–BB03

2747. • CHANGE IN USE; ACCELERATED COST RECOVERY SYTSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 168

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation provides guidance under section 168 regarding depreciation of property for which the use changes.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG-138499-02

Drafting attorney: Kathleen Reed (202) 622-3110

Reviewing attorney: Charles Ramsey (202) 622-3110

CC:P&SI

Agency Contact: Kathleen Reed, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3110

RIN: 1545–BB05

2748. • DEPRECIATION OF VANS AND LIGHT TRUCKS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 280F(d)(5)(B)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation amends section 1.280F-6T(c)(3) to provide that a truck or van that is a qualified nonpersonal use vehicle, as defined in section 274(i) and section 1.274-5T(k), is not a "passenger automobile" for purposes of section 280F.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-138495-02

Drafting attorney: Bernard P. Harvey, III (202) 622-3110

Reviewing attorney: Charles B. Ramsey (202) 622-3110

Treasury attorney: John Parcell (202) 622-2578

CC:P&SI

Agency Contact: Bernard P. Harvey III, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3110

RIN: 1545–BB06

2749. • CAPITAL ACCOUNT BOOKUP

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 704; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation will expand the circumstances under which a revaluation of partnership capital accounts is permitted.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-139796-02

Drafting attorney: Craig A. Gerson (202) 622-3050

Reviewing attorney: David Haglund (202) 622-3050

Treasury attorney: Deborah Harrington (202) 622-1788

CC:P&SI

Agency Contact: Craig A. Gerson, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3050

RIN: 1545–BB10

2750. • ALLOCATION OF FOREIGN TAX CREDITS AMONG PARTNERS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 704(b); 26 USC 703(b)(3); 26 USC 702(a)(b)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide guidance on how foreign tax credits must be allocated to partners under section 704(b).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-139792-02

Drafting attorney: Beverly M. Katz (202) 622-3050

Reviewing attorney: Daniel Carmody (202) 622-3050

Treasury attorney: Deborah Harrington (202) 622-1788

CC:P&SI

Agency Contact: Beverly Katz, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3050

RIN: 1545–BB11

2751. • DISTRIBUTIONS OF PROPERTY

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 1023; 26 USC 1024; 26 USC 2032

CFR Citation: 26 CFR 301; 26 CFR 20

Legal Deadline: None

Abstract: This regulation will clarify the language in section 301.9100-6T to remove confusion as to whether relief for making an election under section 2032 is available under sections 301.9100-1 and 301-9100-3.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-139845-02

Drafting attorney: Theresa M. Melchiorre (202) 622-7830

Reviewing attorney: Katherine A. Mellody (202) 622-7830

Treasury attorney: Catherine Hughes (202) 622-9407

CC:P&SI

Agency Contact: Theresa M. Melchiorre, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7830

RIN: 1545–BB12

2752. • PENALTIES FOR UNAUTHORIZED INSPECTION OF RETURNS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6103(n)

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation amends 26 CFR 301.6103(n)-1 to require that contractors notify their employees regarding penalties for unauthorized inspection of returns and/or return information necessitated by amendment of 26 U.S.C. 7213A.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-129271-02

Drafting attorney: Carol A. Marchant (202) 622-4590

Reviewing attorney: Michael B. Froseh (202) 622-4590

Treasury attorney: Elizabeth Askey (202) 622-0224

CC:P&A:D&PL

Agency Contact: Carol A. Marchant, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4590

RIN: 1545–BB13

2753. • STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 115

CFR Citation: 26 CFR 1; 26 CFR 602

Legal Deadline: None

Abstract: These regulations relate to section 5891 of the Internal Revenue Code. Section 5891 imposes 240 percent excise tax upon any person who acquires certain payment rights in a structured settlement factoring transaction. The regulations provide guidance necessary to comply with the reporting requirements of the excise tax.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-139768-02

Drafting attorney: Shareen S. Pflanz (202) 622-4920

Reviewing attorney: Charles Strickland (202) 622-4960

CC:IT&A

Agency Contact: Shareen S. Pflanz, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4920

Related RIN: Related To 1545-BB24

RIN: 1545–BB14

2754. • TESTIMONY AUTHORIZATIONS AND REQUESTS FOR IRS INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This proposed regulation will amend existing regulations on testimony authorizations and requests for IRS information.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-140930-02

Drafting attorney: James A. Clark (202) 622-4590

Reviewing attorney: David L. Fish (202) 622-4590

CC:P&A:DP&L

Agency Contact: James A. Clark, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4590

RIN: 1545–BB15

2755. • INVESTIGATIVE DISCLOSURES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6103(k)(6)

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This proposed regulation will amend existing regulations on disclosure of return information by Internal Revenue Officers and employees for investigative purposes.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: REG-140808-02

Drafting attorney: Helene R. Newsome (202) 622-4570

Reviewing attorney: Donald M. Squires (202) 622-4570

Treasury attorney: Elizabeth Askey (202) 622-0224

CC:P&A:DP&L

Agency Contact: Helene R. Newsome, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4570

Related RIN: Related To 1545-BB17

RIN: 1545–BB16

2756. • INVESTIGATIVE DISCLOSURES (TEMPORARY)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6103(K)(6)

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This proposed regulation will amend existing regulations on disclosure of return information by Internal Revenue Officers and employees for investigative purposes.

Timetable:

Action	Date	FR Cite
Temporary Regulation	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: REG-140808-02

Drafting attorney: Helene R. Newsome (202) 622-4570

Reviewing attorney: Donald M. Squires (202) 622-4570

Treasury attorney: Elizabeth Askey (202) 622-0224

CC:P&A:DP&L

Agency Contact: Helene R. Newsome, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4570

Related RIN: Related To 1545-BB16

RIN: 1545–BB17

2757. • TOLL TELEPHONE SERVICE-DEFINITION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 49

Legal Deadline: None

Abstract: This proposed regulation provides amendments to regulations relating to definition of toll telephone service.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG-141097-02

Drafting attorney: Bernard H. Weberman (202) 622-3130

Reviewing attorney: Richard Kocak (202) 622-3130

Treasury attorney: John Parcell (202) 622-2578

CC:P&SI

Agency Contact: Bernard H. Weberman, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3130

RIN: 1545–BB18

2758. • SUBSTANTIATION OF INCIDENTAL EXPENSES (TEMPORARY)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 274(d)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These temporary regulations amend the regulations under section 1.274-5 to grant the Commissioner authority to establish a method under which a taxpayer may elect to use a specified amount or amounts for incidental expenses paid or incurred while traveling away from home in lieu of substantiating the actual incidental expenses.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: REG-141832-02

Drafting attorney: John Moriarty (202) 622-4930

Reviewing attorney: Donna Crissali (202) 622-4800

CC:IT&A

Agency Contact: John P. Moriarty, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4930

Related RIN: Related To 1545-BB20

RIN: 1545–BB19

2759. • SUBSTANTIATION OF INCIDENTAL EXPENSES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 274(d)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These proposed regulations amend the regulations under section 1.274-5 to grant the Commissioner authority to establish a method under which a taxpayer may elect to use a specified amount or amounts for incidental expenses paid or incurred while traveling away from home in lieu of substantiating the actual incidental expenses.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-131478-02

Drafting attorney: Aimee K. Meacham (202) 622-7530

Reviewing attorney: Sean Duffley (202) 622-7530

CC:CORP

Agency Contact: Aimee K. Meacham, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7530

RIN: 1545–BB25

2760. • DUPLICATE TAX BENEFITS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation prevents a consolidated group from deriving more than one tax benefit from a single economic loss. A loss on consolidated return, with respect to the sale of a subsidiary's stock, will be suspended to the extent of duplication (i.e. the group retains the loss asset) as long as a the subsidiary remains a member of the group. In addition, there is a basis leveling rule, which prevents groups from loading onto a single block of subsidiary stock and selling only that stock, while maintaining that subsidiary as part of the group.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-131478-02

Drafting attorney: Aimee K. Meacham (202) 622-7530

Reviewing attorney: Sean Duffley (202) 622-7530

CC:CORP

Agency Contact: Aimee K. Meacham, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7530

RIN: 1545–BB25

2761. • COST SHARING

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 482

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These proposed regulations will provide additional guidance on cost sharing arrangements under section 482.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: REG-144615-02

Drafting attorney: Bradley A. Smith (202) 874-1490

Reviewing attorney: Elizabeth G. Beck (202) 874-1490

Treasury attorney: Rocco Femia (202) 622-1755

CC:INTL

Agency Contact: Bradley A. Smith, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 950 L'Enfant Plaza South SW, Washington, DC 20024
Phone: 202 874-1490

RIN: 1545–BB26

2762. • APPLICATION OF SEPARATE LIMITATIONS TO DIVIDENDS FROM NONCONTROLLED SECTION 902 CORPORATION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 904(d)(6)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The Taxpayer Relief Act of 1997 amended the foreign tax credit limitation rules under section 904(d) and extended lookthrough treatment to dividends paid by a 10/50 lookthrough corporation, effective for earnings and profits accumulated in tax years beginning after 12/31/02. These regulations would provide guidance needed to comply with these changes, including transition rules for dividends paid by a 10/50 lookthrough corporation.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-144784-02

Drafting attorney: Ginny Y. Chung (202) 622-3850

Reviewing attorney: Bethany Ingwalson (202) 622-3850

CC:INTL

Agency Contact: Ginny Y. Chung, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3850

RIN: 1545–BB28

2763. • EXTENSION OF TIME FOR FILING RETURNS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6081

CFR Citation: 26 CFR 31

Legal Deadline: None

Abstract: This regulation will amend the section 6081 regulations to remove the signature requirement for Form 8809, Request for Extension of Time to File Information Returns. This will enable filers of information returns to request an extension of time to file using an online version of the Form 8809.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-107618-02

Drafting attorney: Charles A. Hall (202) 622-4940

Reviewing attorney: Judith Wall (202) 622-4940

CC:P&A:APJP

Agency Contact: Charles A. Hall, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4940

RIN: 1545–BB29

2764. • EXCLUSIONS FROM GROSS INCOME OF FOREIGN CORPORATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 883; 26 USC 872

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide rules with respect to whether a foreign country will be considered to grant a reciprocal Aircraft/Shipping exemption to U.S. corporations for purposes of section 883 of the Code. This regulations will also provide rules with respect to whether a foreign corporation satisfies the ownership requirements of section 883(c) and the activity requirements of section 883(a). The regulation affects a large segment of the shipping and air transport industries.

Timetable:

Action	Date	FR Cite
NPRM	08/02/02	67 FR 50510
Hearing	11/12/02	67 FR 50510
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG-136311-01

Drafting attorneys: Patricia A. Bray (202) 622-3880 and David L. Lundy (202) 622-3880

Reviewing attorney: Elizabeth U. Karzon (202) 622-3880

Treasury attorney: Dirk Suringa (202) 622-1779

This regulation (formerly 1545-BA07) is being reproposed and

Reg-208280 (1545-AJ57) is being withdrawn.

CC:INTL

Agency Contact: Patricia A. Bray, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3880

David L. Lundy, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3880

RIN: 1545–BB30

2765. • TAX SHELTER DISCLOSURE STATEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 6001; 26 USC 601(a)

CFR Citation: 26 CFR 1

TREAS—IRS — **Proposed Rule Stage**

Legal Deadline: None

Abstract: These regulations modify the rules relating to the disclosure of reportable transactions by certain taxpayers under section 6011(a).

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-103735-00

Drafting attorney: Tara P. Volungis (202) 622-3080

Reviewing attorney: Christine Ellison (202) 622-3080

Treasury attorney: Julian Kim (202) 622-1981

CC:P&SI

Agency Contact: Tara P. Volungis, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3080

Related RIN: Related To 1545-AX81, Related To 1545-BA62

RIN: 1545–BB32

2766. • REQUIREMENT TO MAINTAIN LIST OF INVESTORS IN POTENTIALLY ABUSIVE TAX SHELTERS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USG 7805; 26 USC 6112

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: These regulations modify the rules relating to the list maintenance requirements for sellers and organizers of potentially abusive tax shelters under section 6112.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-103736-00

Drafting attorney: Charlotte Chyr (202) 622-3080

Reviewing attorney: Mary Beth Collins (202) 622-3080

Treasury attorney: Julian Kim (202) 622-1981

CC:P&SI

Agency Contact: Charlotte Chyr, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3080

Related RIN: Related To 1545-AX79, Related To 1545-BA62

RIN: 1545–BB33

2767. • OTHER ASSESSABLE PENALTIES WITH RESPECT TO THE PREPARATION OF INCOME TAX RETURNS FOR OTHER PERSONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6107; 26 USC 6061; 26 USC 6695; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation relates to persons who prepare income tax returns for compensation who may satisfy the requirement of providing a signed copy of the return to the taxpayer by copies which are singed electronically or as otherwise prescribed by the Secretary.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-141659-02

Drafting attorney: Richard C. Grosenick (202) 622-7940

Reviewing attorney: Stuart Spielman (202) 622-7940

CC:P&A:APJP

Agency Contact: Richard C. Grosenick, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7940

RIN: 1545–BB34

2768. • FRACTIONAL PARTS OF A DOLLAR

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7504

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These proposed regulations will authorize the Internal Revenue Service to round figures when transcribing amounts from forms into the Service's databases.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: REG-147965-02

Drafting attorney: Marcy W. Mendelsohn (202) 622-4940

Reviewing attorney: Charles A. Hall (20) 622-4940

CC:P&A:APJP

Agency Contact: Marcy W. Mendelsohn, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4940

RIN: 1545–BB35

Department of the Treasury (TREAS)
Internal Revenue Service (IRS) — **Final Rule Stage**

2769. GOLDEN PARACHUTE PAYMENTS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805; 26 USC 280G

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules relating to restrictions on golden parachute payments. The regulations will provide guidance to taxpayers, who must comply with section 280G, by delineating the circumstances under which payments may be considered excess parachute payments.

Timetable:

Action	Date	FR Cite
NPRM	05/05/89	54 FR 19390
NPRM Comment Period End	07/05/89	
Hearing	11/21/89	54 FR 39548
Second NPRM	02/20/02	67 FR 7630
Second NPRM Comment Period End	06/05/02	
Public Hearing	06/26/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-209114-90 (EE-30-90)

Drafting attorney: Erinn Madden (202) 622-6060

Reviewing attorney: Robert Misner (202) 622-6060

CC:TEGE

Agency Contact: Erinn M. Madden, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6030

RIN: 1545–AH49

2770. NONRECOGNITION OF CORPORATE DISTRIBUTIONS AND REORGANIZATIONS UNDER THE FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 897

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules concerning the effect of certain distributions including dividends, redemptions, distributions pursuant to reorganizations, and liquidations on corporations and their shareholders under the Foreign Investment in Real Property Tax Act. Regulations will also provide rules for determining the extent to which nonrecognition would apply to certain transfers of real property interests and the extent to which certain reorganizations will be treated as sales of property at fair market value.

Timetable:

Action	Date	FR Cite
NPRM	05/05/88	53 FR 16233
Hearing	03/01/89	54 FR 1189
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-209039-87 (INTL-491-87)

Drafting attorney: Robert W. Lorence (202) 622-3860

Reviewing attorney: Charles P. Besecky (202) 622-3860

CC:INTL

Agency Contact: Robert W. Lorence, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3860
Fax: 202 622-4476

RIN: 1545–AK79

2771. COMPUTATION OF A BRANCH'S TAXABLE INCOME; TAXATION OF EXCHANGE GAIN OR LOSS ON BRANCH REMITTANCES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations relate to branch rules and how to translate branch income, the taxation of exchange gain or loss on branch remittances.

Timetable:

Action	Date	FR Cite
NPRM	09/25/91	56 FR 48457
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-208270-86 (INTL-965-86)

Drafting attorney: Kenneth P. Christman (202) 622-3870

Reviewing attorney: Jeffrey Dorfman (202) 622-3870

Treasury attorney: Patrick Brown (202) 622-1754

CC:INTL

Agency Contact: Kenneth P. Christman, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3870

RIN: 1545–AM12

2772. LIMITATIONS ON PASSIVE ACTIVITY LOSSES AND CREDITS—SELF-CHARGED ITEMS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 0469

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulation addresses the treatment of self-charged items of income and expense in connection with transactions between passthrough entities and owners of interests in those entities.

Timetable:

Action	Date	FR Cite
NPRM	04/05/91	56 FR 14034
Hearing	09/06/91	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-209365-89 (PS-39-89)

Drafting attorney: Danielle M. Grimm (202) 622-3080

Reviewing attorney: Jeanne Sullivan (202) 622-3080

Treasury attorney: John Parcell (202) 622-2578

CC:P&SI

Agency Contact: Danielle M. Grimm, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3080

RIN: 1545–AN64

2773. TAXATION OF GLOBAL TRADING

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 864; 26 USC 482; 26 USC 863

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will improve the taxation of global trading.

Timetable:

Action	Date	FR Cite
ANPRM	08/28/90	55 FR 35152
NPRM	03/06/98	63 FR 11177
NPRM Comment Period End	06/04/98	
Hearing	07/14/98	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-208299-90 (INTL-70-90)

Drafting attorney: Kenneth P. Christman (202) 622-3870

Reviewing attorney: Paul S. Epstein (202) 622-3870

Treasury attorney: Patricia Brown (202) 622-1781

CC:INTL

Agency Contact: Kenneth P. Christman, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
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RIN: 1545–AP01

2774. INTEREST-FREE ADJUSTMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 6205

CFR Citation: 26 CFR 31

Legal Deadline: None

Abstract: Under section 6205(a)(1) of the Code, if less than the correct amount of tax imposed under the FICA, the RRTA, or the income tax withholding provisions is paid with respect to any payment of wages or compensation, proper adjustments with respect to both the tax and amount to be deducted must be made without interest in such manner and in such times as the Secretary may by regulations prescribe. The proposed amendments would add language to clarify that an interest-free adjustment can be made in certain situations in which the error is ascertained before the appropriate return is filed. The proposed amendments are intended to apply only to situations in which no return was filed because the employer improperly failed to treat its workers as employees.

Timetable:

Action	Date	FR Cite
NPRM	12/10/92	57 FR 58423
NPRM Comment Period End	02/08/93	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-209538-92 (EE-12-92)

Drafting attorney: Karin Loverud (202) 622-6060

Reviewing attorney: Mary Oppenheimer (202) 622-6010

CC:TEGE

Agency Contact: Karin Loverud, Tax Law Specialist, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6060

RIN: 1545–AQ61

2775. DEFINITION OF "HIGHLY COMPENSATED EMPLOYEE"

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 414

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations define the term "highly compensated employee" under section 414(q) of the Code. Temporary and proposed regulations, under sections 414(q) and 414(s), were published February 19, 1988 (53 FR 4965). Final regulations, under section 414(s), were published September 19, 1991 (56 FR 47659) under project EE-129-86. The regulations under 414(q) were split off from project EE-129-86. It is anticipated that proposed regulations under section 414(q) will be published in the future under project REG-209558-92 (EE-32-92).

Timetable:

Action	Date	FR Cite
NPRM	02/19/88	53 FR 4999
NPRM Comment Period End	04/19/88	
Partially Closed by TD 8548	06/27/94	59 FR 32911
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Federalism: Undetermined

Additional Information: REG-209558-92

Drafting attorney: R. Lisa Mojiri-Azad (202) 622-6080

Reviewing attorney: Marjorie Hoffman (202) 622-6030

Treasury attorney: W. Thomas Reeder (202) 622-1341

CC:TEGE

Agency Contact: R. Lisa Mojiri-Azad, Senior Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6080

RIN: 1545–AQ74

2776. ESCROW FUNDS AND OTHER SIMILAR FUNDS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 0468B

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides further guidance relating to certain escrow funds and other similar funds.

Timetable:

Action	Date	FR Cite
NPRM	02/01/99	64 FR 4801
NPRM Comment Period End	05/03/99	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-209619-93 (IA-17-93)

Drafting attorney: Richard Shevak (202) 622-4930

Reviewing attorney: Jeffery G. Mitchell (202) 622-4930

CC:IT&A

Agency Contact: Richard Shevak, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4930

RIN: 1545–AR82

2777. MARK-TO-MARKET UPON DISPOSITION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 475

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations address the relationship between mark-to-market accounting and accrual of stated interest, discount and premium, and between mark-to-market accounting and the tax treatment of bad debts. The regulations also provide that securities are to be marked to market upon disposition by a dealer and the exemption from marking to market in certain securitization transactions.

Timetable:

Action	Date	FR Cite
NPRM	01/04/95	60 FR 397
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-209724-94 (FI-42-94)

Drafting attorney: Stephen J. Coleman (202) 622-3060

Reviewing attorney: Al Kraft (202) 622-3920

CC:FI&P

Sections 1.475(a)-3 finalized in TD 8700. Sections 1.475(b)-4 finalized in TD 8700. Sections 1.475(c)-2 finalized in TD 8700.

Agency Contact: Stephen J. Coleman, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3060

RIN: 1545–AS85

2778. STRADDLES—MISCELLANEOUS ISSUES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1092

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation holds equity swaps to be straddles.

Timetable:

Action	Date	FR Cite
NPRM	05/02/95	60 FR 21482
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-209768-95 (FI-21-95)

Drafting attorney: Mary Truchly (202) 622-3960

Reviewing attorney: Christina Morrison (202) 622-3960

CC:FI&P

Agency Contact: Mary Truchly, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3960

RIN: 1545–AT46

2779. AGREEMENTS FOR PAYMENT OF TAX LIABILITIES IN INSTALLMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The regulations reflect the amendment of IRC section 6159, section 202 of the Taxpayer Bill of Rights 2, which provides that upon request by a taxpayer the Secretary shall provide an independent review of the termination of an installment agreement. The regulations reflect the amendment to section 6159, which guarantees the availability of installment agreements to taxpayers.

Timetable:

Action	Date	FR Cite
NPRM	12/31/97	62 FR 68241
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-100841-97

Drafting attorney: Frederick W. Schindler (202) 622-3620

Reviewing attorney: Lawrence Schattner (202) 622-3620

CC:P&A:CB&S

Agency Contact: Frederick W. Schindler, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3620

RIN: 1545–AU97

2780. DEFINITION OF "PRIVATE ACTIVITY BONDS" ALLOCATION AND ACCOUNTING REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 141; 26 USC 142; 26 USC 145; 26 USC 148; 26 USC 150

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide general allocation and accounting rules for purposes of applying the private activity bond tests to tax-exempt bonds issued by State and local governments.

Timetable:

Action	Date	FR Cite
NPRM	12/30/94	59 FR 67658
NPRM Comment Period End	05/01/95	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-101563-97

Drafting attorney: Bruce M. Serchuk (202) 622-3980

CC:TEGE

Agency Contact: Bruce M. Serchuk, Senior Technician Reviewer, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
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RIN: 1545–AU98

2781. RETURN OF LEVIED PROPERTY IN CERTAIN CASES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: Section 501(b) of the Taxpayer Bill of Rights 2 amended section 6343 of the Internal Revenue Code to authorize the Secretary to return levied property in four enumerated circumstances. Section 1102(d)(1)(B) of RRA 98 changed "Taxpayer Advocate" to "National Taxpayer Advocate" as a person who determines what is in the best interest of the taxpayer. The regulations set forth the circumstances in which the Secretary may return property and procedures to implement these sections.

Timetable:

Action	Date	FR Cite
NPRM	02/14/01	66 FR 10249
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-101520-97

Drafting attorney: Kevin B. Connelly (202) 622-3630

Reviewing attorney: Robert Miller (202) 622-3630

Treasury attorney: Rita Cavanagh (202) 622-1981

CC:P&A:CB&S

Agency Contact: Kevin B. Connelly, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3630

RIN: 1545–AV01

2782. INTEREST ON EDUCATION LOANS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 221; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance on the deduction of interest on education loans under section 221.

Timetable:

Action	Date	FR Cite
NPRM	01/21/99	64 FR 3257
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-116826-97

Drafting attorney: Kelly M. Davidson (202) 622-5020

Drating attorney: Donna Crisalli (202) 622-5020

CC:IT&A

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Phone: 202 622-5020

RIN: 1545–AW01

2783. MARK-TO-MARKET ACCOUNTING FOR DEALERS IN COMMODITIES AND TRADERS IN SECURITIES AND COMMODITIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 475; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance concerning mark-to-market accounting for securities traders and commodities dealers and traders.

Timetable:

Action	Date	FR Cite
NPRM	01/28/99	64 FR 4374
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-104924-98

Drafting attorney: Stephen J. Coleman (202) 622-3060

Reviewing attorney: Alvin Kraft (202) 622-3920

CC:FI&P

Agency Contact: Stephen J. Coleman, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3060

RIN: 1545–AW06

2784. ELECTION TO TREAT TRUST AS ESTATE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 645; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide guidance regarding the operation of section 645 of the Internal Revenue Code, relating to certain revocable trusts treated as part of an estate.

Timetable:

Action	Date	FR Cite
NPRM	12/18/00	65 FR 79015
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-106542-98

Drafting attorney: Faith Colson (202) 622-3060

Reviewing attorney: J. Thomas Hines (202) 622-3060

CC:P&SI

Agency Contact: Faith Colson, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3060

RIN: 1545–AW24

2785. CORPORATE TAX SHELTER REGISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 6111

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation provides guidance on the registration requirements for confidential corporate tax shelters under section 6111(d) of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	03/02/00	65 FR 11272
Public Hearing	06/20/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-110311-98

Drafting attorneys: Danielle M. Grimm (202) 622-3080 and Tara P. Volungis (202) 622-3080

Reviewing attorney: Christine Ellison (202) 622-3070

CC:P&SI

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Related RIN: Related To 1545-AX81, Related To 1545-AX79, Related To 1545-BA62

RIN: 1545–AW26

2786. INTERCOMPANY OBLIGATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 1502; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation provides clarification of the tax treatment of certain transfers of intercompany obligations by or to a member of a consolidated group.

Timetable:

Action	Date	FR Cite
NPRM	12/18/98	63 FR 70354
NPRM Comment Period End	03/22/99	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-105964-98

Drafting attorney: Theresa Abell (202) 622-7700

Reviewing attorney: Ken Cohen (202) 622-7790

CC:CORP

Agency Contact: Theresa Abell, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7700

RIN: 1545–AW30

2787. REPORTING OF PAYMENTS TO ATTORNEY

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 6045

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation provides information reporting requirements for payments of gross proceeds made in the course of a trade or business to attorneys in connection with legal services.

Timetable:

Action	Date	FR Cite
NPRM	05/21/99	64 FR 27730
Second NPRM	05/17/02	67 FR 35064
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-126024-01

Drafting attorney: Nancy L. Rose (202) 622-4910

Reviewing attorney: James C. Gibbons (202) 622-4910

Treasury attorney: Michael Novey (202) 622-1339

CC:P&A:APJP

Agency Contact: Nancy L. Rose, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4910

RIN: 1545–AW72

2788. QUALIFIED OFFERS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation relates to the qualified offer rule allowing the recovery of reasonable administrative or litigation costs.

Timetable:

Action	Date	FR Cite
NPRM	01/04/01	66 FR 749
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-121928-98

Drafting attorney: Melinda G. Williams (202) 622-7940

Reviewing attorneys: Henry Schneiderman (202) 622-7820 and Susan T. Mosley (202) 622-7940

Treasury attorney: Julian Kim (202) 622-1981

CC:PA:APJP

Agency Contact: Melinda G. Williams, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7940

RIN: 1545–AW99

2789. NOTICE OF CONTACT OF THIRD PARTIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation implements and interprets section 7602(c) of the Internal Revenue Code, concerning third-party contacts. The Restructuring and Reform Act of 1998, section 3417(a), created a new section 7602(c), which provides that the IRS may not contact third parties with respect to the

determination or collection of the tax liability of a taxpayer without providing reasonable notice to the taxpayer in advance. It also requires the IRS to keep a list of contacts and provide it periodically to the taxpayer.

Timetable:

Action	Date	FR Cite
NPRM	01/02/01	66 FR 77
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-104906-99

Drafting attorney: Charles B. Christopher (202) 622-3630

Reviewing attorney: Robert A. Miller (202) 622-3630

Treasury attorney: Julian Kim (202) 622-1981

CC:P&A:CB&S

Agency Contact: Charles B. Christopher, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3630

RIN: 1545–AX04

2790. ALLOCATION OF RESEARCH CREDIT

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 41

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide guidance on the proper method of computing the research credit for a controlled group and the allocation of the research credit among members of the controlled group.

Timetable:

Action	Date	FR Cite
NPRM	01/04/00	65 FR 258
Public Hearing	04/26/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-105606-99

Drafting attorney: Jolene J. Shiraishi (202) 622-3120

Reviewing attorney: Joseph H. Makurath (202) 622-3120

Treasury attorney: Julian Kim (202) 622-1981

CC:P&SI

Agency Contact: Jolene J. Shiraishi, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20044
Phone: 202 622-3120

Related RIN: Related To 1545-BA88

RIN: 1545–AX05

2791. DELAY RENTAL PAYMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 263

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations clarify that section 1.612-3(c) applies to delay rental payments to the extent that section 263A does not require the payments to be capitalized.

Timetable:

Action	Date	FR Cite
NPRM	02/08/00	65 FR 6090
Public Hearing	05/26/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-103882-99

Drafting attorney: Brenda M. Stewart (202) 622-3120

Reviewing attorney: J.H. Makurath (202) 622-3120

Treasury attorney: John Parcell (202) 622-2578

CC:P&SI

Agency Contact: Brenda M. Stewart, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3120

RIN: 1545–AX06

2792. HIGHWAY VEHICLE—DEFINITION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 48

Legal Deadline: None

Abstract: This regulation provides amendments to regulations relating to definition of a highway vehicle.

Timetable:

Action	Date	FR Cite
NPRM	06/06/02	67 FR 38913
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-103829-99

Drafting attorney: Bernard H. Weberman (202) 622-3130

Reviewing attorney: Richard Kocak (202) 622-3130

Treasury attorney: John Parcell (202) 622-2578

CC:P&SI

Agency Contact: Bernard H. Weberman, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3130

RIN: 1545–AX10

2793. GUIDANCE ON COST RECOVERY IN THE ENTERTAINMENT INDUSTRY

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation relates to the application of the income forecast method under section 167(g) of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	05/31/02	67 FR 38025
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-103823-99

Drafting attorney: Bernard P. Harvey, III (202) 622-3110

Reviewing attorney: Charles B. Ramsey (202) 622-3110

Treasury attorney: Christopher Ohmes (202) 622-0865

CC:P&SI

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Phone: 202 622-3110

RIN: 1545–AX12

2794. ALLOCATING BASIS ADJUSTMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 755; 26 USC 1060

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide rules for determining the fair market value of partnership assets for the purpose of allocating basis adjustments under sections 732(d), 734(b) and 743(b) among partnership assets under section 755, using the residual method of section 1060 of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	04/05/00	65 FR 17829
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-107872-99

Drafting attorney: Craig A. Gerson (202) 622-3050

Reviewing attorney: David Haglund (202) 622-3050

Treasury attorney: Deborah Harrington (202) 622-1788

CC:P&SI

Agency Contact: Craig A. Gerson, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3050

RIN: 1545–AX18

2795. EXCLUSION OF GAIN ON THE SALE OR EXCHANGE OF PRINCIPAL RESIDENCE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 121

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations reflect changes made by the Taxpayer Relief Act of 1997 to sections 121 and 1034 of the Code, relating to the exclusion of gain from the sale or exchange of a taxpayer's principal residence.

Timetable:

Action	Date	FR Cite
NPRM	10/10/00	65 FR 60136
Public Hearing	01/23/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-105235-99

Drafting attorney: Sara P. Shepherd (202) 622-4960

Reviewing attorney: George Baker (202) 622-4960

Treasury attorney: Elizabeth Askey (202) 622-0224

CC:IT&A

Agency Contact: Sara P. Shepherd, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4960

RIN: 1545–AX28

2796. SPECIAL RULES FOR RETROACTIVE PAYMENTS UNDER SECTION 417(A)(7)(A) FOR QUALIFIED RETIREMENT PLANS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 417; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation provides guidance regarding the special rule in IRC section 417(a)(7)(A), which permits qualified retirement plans to provide written explanation of QJSA after the annuity starting date.

Timetable:

Action	Date	FR Cite
NPRM	01/17/01	66 FR 3916
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG-109481-99

Drafting attorney: Robert M. Walsh (202) 622-6090

Reviewing attorney: Marjorie Hoffman (202) 622-6000

CC:TEGE

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Phone: 202 622-6090

RIN: 1545–AX34

2797. COMPENSATION DEFERRED UNDER ELIGIBLE SECTION 457(B) PLANS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 457

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations relate to deferred compensation plans of State and local governments and tax-exempt entities under section 457 of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	05/08/02	67 FR 30826
Public Hearing	08/29/02	67 FR 43574
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: State, Local

Federalism: Undetermined

Additional Information: REG-105885-99

Drafting attorney: Cheryl E. Press (202) 622-6060

Reviewing attorney: Robert Patchell (202) 622-6060

Treasury attorney: William Bortz (202) 622-1352

CC:TEGE

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RIN: 1545–AX52

2798. STOCK TRANSFER RULES: CARRYOVER OF EARNINGS AND TAXES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 367

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance with respect to how earnings and profits and foreign income tax accounts carry over under section 381 and are allocated under section 312 in certain transactions described in section 367(b) of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	11/15/00	65 FR 69138
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-116050-99

Drafting attorney: Mark R. Pollard (202) 622-3850

Reviewing attorney: Anne Devereaux (202) 622-3850

Treasury attorney: Michael Caballero (202) 622-0851

CC:INTL

Agency Contact: Mark R. Pollard, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
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RIN: 1545–AX65

2799. LOANS TO PARTICIPANTS OR BENEFICIARIES FROM QUALIFIED EMPLOYEE PLANS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 72

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide guidance on the application of rules for determining the income tax treatment to be accorded loans to participants or beneficiaries from qualified employer plans. The loans rules are provided in section 72(p) of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	07/31/00	65 FR 46677
Hearing	12/06/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-116495-99

Drafting attorney: Vernon Carter (202) 622-6060

Reviewing attorney: Catherine Fernandez (202) 622-6030

Treasury attorney: William Bortz (202) 622-1352

CC:TEGE

Agency Contact: Vernon Carter, Tax Law Specialist, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6060

RIN: 1545–AX68

2800. REQUIREMENT TO MAINTAIN LIST OF INVESTORS IN POTENTIALLY ABUSIVE TAX SHELTERS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6112; 26 USC 7805

CFR Citation: 26 CFR 301; 26 CFR 602

Legal Deadline: None

Abstract: These regulations require the maintenance of lists of investors in potentially abusive tax shelters described in section 6112 of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	03/02/00	65 FR 11271
Hearing	06/20/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-103736-00

Drafting attorneys: Danielle M. Grimm (202) 622-3080 and Tara P. Volungis (202) 622-3080

Reviewing attorney: Christine Ellison (202) 622-3080

CC:P&SI

Agency Contact: Danielle M. Grimm, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
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Tara P. Volungis, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
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Related RIN: Related To 1545-AW26, Related To 1545-AX81, Related To 1545-BA62

RIN: 1545–AX79

2801. TAX SHELTER DISCLOSURE STATEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6011; 26 USC 7805

CFR Citation: 26 CFR 1; 26 CFR 602

Legal Deadline: None

Abstract: The regulations require certain taxpayers to file a statement under section 6011 and maintain certain documents under section 6001 of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	03/02/00	65 FR 11269
Public Hearing	06/20/00	65 FR 11270
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-103735-00

Drafting attorneys: Danielle M. Grimm (202) 622-3080 and Tara P. Volungis (202) 622-3080

Reviewing attorney: Christine Ellison (202) 622-3080

CC:P&SI

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Tara P. Volungis, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
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Related RIN: Related To 1545-AW26, Related To 1545-AX81, Related To 1545-BA62

RIN: 1545–AX81

2802. DISCLOSURE OF RETURN AND RETURN INFORMATION TO DESIGNEE OF TAXPAYER

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6103

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation finalizes regulations implementing the amendment contained in the Taxpayer Bill of Rights II (TBOR II) to Internal Revenue Code section 6103(c). TBOR II eliminated the requirement for a request or consent for disclosure to be in writing. The proposed regulations which will be identical to temporary regulations already in effect will permit the Internal Revenue Service to disclose returns and return information to a taxpayer's designee, pursuant to a non-written request for or consent to disclosure. The regulations will also provide rules and guidance for consent in an electronic environment. Additionally, the regulations will provide guidance to Internal Revenue Service personnel to clarify a number of issues that have arisen since the regulation was initially promulgated in the late 1970s.

Timetable:

Action	Date	FR Cite
NPRM	01/11/01	66 FR 2373
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-103320-00

Drafting attorney: Joseph E. Conley (202) 622-4580

Reviewing attorney: David Fish (202) 622-4570

Treasury attorney: Elizabeth Askey (202) 622-0224

CC:P&A:D&PL

Agency Contact: Joseph E. Conley, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4580

RIN: 1545–AX85

2803. STATUTE OF LIMITATIONS ON COLLECTION INSTALLMENT AGREEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6331

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation provides for the prohibition of levy while an installment agreement is pending with the Secretary, while an installment agreement is in effect, and following the rejection or termination of an installment agreement. This levy prohibition is established in section 6331(k) of title 26, as added by the IRS Restructuring and Reform Act of 1998. The regulation clarifies when levy is prohibited and the effect of the prohibition on the statute of limitations for collection.

Timetable:

Action	Date	FR Cite
NPRM	04/17/02	67 FR 18839
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-104762-00

Drafting attorney: Frederick W. Schindler (202) 622-3620

Reviewing attorney: Lawrence Schattner (202) 622-3620

CC:P&A:CB&S

Agency Contact: Frederick W. Schindler, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3620

RIN: 1545–AX89

2804. DEFINITION OF INCOME

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 643; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations provide guidance under section 643 of the Internal Revenue Code, on whether State law definition of trust income is trust income for Federal tax purposes.

Timetable:

Action	Date	FR Cite
NPRM	02/15/01	66 FR 1039
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG-106513-00

Drafting attorney: Bradford R. Poston (202) 622-3060

Reviewing attorney: J. Thomas Hines (202) 622-3060

CC:P&SI

Agency Contact: Bradford R. Poston, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3060

RIN: 1545–AX96

2805. CONSTRUCTIVE TRANSFERS AND TRANSFERS OF PROPERTY TO THIRD PARTIES ON BEHALF OF A SPOUSE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide rules for determining when a redemption by a corporation of the stock of one spouse or former spouse results in a constructive transfer to the other spouse or former spouse of the proceeds of the redemption.

Timetable:

Action	Date	FR Cite
NPRM	08/03/01	66 FR 40659
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-107151-00

Drafting attorney: Edward C. Schwartz (202) 622-4960

Reviewing attorney: William A. Jackson (202) 622-4960

CC:IT&A

Agency Contact: Edward C. Schwartz, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4960

RIN: 1545–AX99

2806. DAMAGES FOR INTENTIONAL OR RECKLESS DISREGARD OF THE INTERNAL REVENUE CODE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation will implement a number of new provisions of section 7433, including raising the cap on damages for the intentional or reckless disregard of the Internal Revenue Code, or regulations in connection with a collection action, authorizing actions for the negligent disregard of the Code or regulations. It will provide rules with respect to administrative claims for damages caused by violations of the automatic stay and discharge provisions of the Bankruptcy Code.

Timetable:

Action	Date	FR Cite
NPRM	03/05/02	67 FR 9929
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-107366-00

Drafting attorney: Robert A. Miller (202) 622-3640

Reviewing attorney: Kevin B. Connelly (202) 622-3630

Treasury attorney: Rita Cavanagh (202) 622-1981

CC:P&A:CB&S

Agency Contact: Robert A. Miller, Technical Assistant, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3640

RIN: 1545–AY08

2807. INVESTMENT TYPE PROPERTY (PREPAYMENT)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation defines investment type property for purposes of determining whether bonds are arbitrage bonds under section 148 of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	08/25/99	64 FR 46320
Second NPRM	04/17/02	67 FR 18835
Public Hearing	06/28/02	67 FR 43574
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Additional Information: REG-105369-00

Drafting attorney: Johanna L. Som de Cerff (202) 622-3980

Reviewing attorney: Rebecca L. Harrigal (202) 622-3980

Treasury attorney: Stephen Watson (202) 622-1322

CC:TEGE

The previous notice of proposed rulemaking (REG-113526-98; 64 FR 46320), published on August 25, 1999, relating to arbitrage and related restrictions applicable to tax-exempt bonds issued by State and Local governments, is withdrawn (67 FR 18835).

Agency Contact: Johanna L. Som de Cerff, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
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Related RIN: Related To 1545-AW44

RIN: 1545–AY12

2808. AUTHORIZED PLACEMENT AGENCY

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 152

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations amend the definition of "authorized placement agency" (for purposes of determining whether a child placed for legal adoption in a taxpayer's home is a dependent of the taxpayer) to include biological parents and other persons authorized by State law to place children for legal adoption.

Timetable:

Action	Date	FR Cite
NPRM	11/30/00	65 FR 71277
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-107279-00

Drafting attorney: Elizabeth K. Kaye (202) 622-4910

Reviewing attorney: Pamela W. Fuller (202) 622-4910

CC:P&A:APJP

Agency Contact: Elizabeth K. Kaye, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4910
Fax: 202 622-6232

RIN: 1545–AY18

2809. HIPAA GENERAL NONDISCRIMINATION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 9833

CFR Citation: 26 CFR 54

Legal Deadline: None

Abstract: These regulations provide guidance regarding the requirements imposed on group health plans not to discriminate in rules for eligibility under the plan on the basis of any health factor, and not to require any individual to pay a higher premium or contribution for coverage under the plan than any similarly situated individual based on any health factor.

Timetable:

Action	Date	FR Cite
NPRM	01/08/01	66 FR 1435
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-114082-00

Drafting attorney: Russell Weinheimer (202) 622-6080

Reviewing attorney: Alan Tawshunsky (202) 622-6000

Treasury attorney: Kevin Knopf (202) 622-2329

CC:TEGE

Agency Contact: Russell Weinheimer, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6080

RIN: 1545–AY32

2810. HIPAA NONDISCRIMINATION/EXCEPTION FOR CHURCH PLANS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 7853

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations provide guidance on the exception for certain grandfathered church plans from the general rule requiring group health plans not to discriminate in rules for eligibility on the basis of any health factor.

Timetable:

Action	Date	FR Cite
NPRM	01/10/01	66 FR 1437
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-114083-00

Drafting attorney: Russell Weinheimer (202) 622-6080

Reviewing attorney: Alan Tawnshunsky (202) 622-6000

Treasury attorney: Kevin Knopf (202) 622-2329

Agency Contact: Russell Weinheimer, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6080

RIN: 1545–AY33

2811. HIPAA NONDISCRIMINATION/BONA FIDE WELLNESS PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 9833

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations provide guidance regarding the exception for certain wellness programs to the general rule imposed on group health plans not to require a higher premium or contribution from an individual than from a similarly situated individual based on any health factor.

Timetable:

Action	Date	FR Cite
NPRM	01/08/01	66 FR 1421
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-114084-00

Drafting attorney: Russell Weinheimer (202) 622-6080

Reviewing attorney: Alan Tawnshunsky (202) 622-6080

Treasury attorney: Kevin Knopf (202) 622-2329

CC:TEGE

Agency Contact: Russell Weinheimer, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6080

RIN: 1545–AY34

2812. RECOGNITION OF GAIN ON CERTAIN DISTRIBUTIONS OR STOCK OF SECURITIES IN CONNECTION WITH AN ACQUISITION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 355(e)(5)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides that a distributing corporation will recognize gain on the distribution of stock of a controlled corporation if 50 percent of the stock of the distributing corporation or controlled corporation is acquired pursuant to a plan that includes the distribution.

Timetable:

Action	Date	FR Cite
NPRM	04/26/02	67 FR 20711
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-163892-01

Drafting attorney: Amber R. Cook (202) 622-7530

Reviewing attorney: Stephen P. Fattman (202) 622-7700

Treasury attorney: Audrey Nacamuli (202) 622-5721

CC:CORP

On January 2, 2001, a notice of proposed rulemaking was published in the Federal Register (REG-107566-00; 66 FR 66) under section 355(e) of the Internal Revenue Code of 1986. A public hearing regarding those proposed regulations was held on May 15, 2001. On August 3, 2001, those proposed regulations were published as temporary regulations in the Federal Register (REG-107566-00; 66 FR 40590). The notice of proposed rulemaking withdraws the notice of proposed rulemaking that was published on January 2, 2001 and provides new rules under section 355(e) of the Internal Revenue Code of 1986 by cross-reference to temporary regulations published in the same issue of the Federal Register.

Agency Contact: Amber R. Cook, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7530

RIN: 1545–AY42

2813. MODIFIED GUARANTEED CONTRACTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 817A

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide guidance to issuers of modified guaranteed contracts.

Timetable:

Action	Date	FR Cite
NPRM	06/03/02	67 FR 38214
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-248110-96

Drafting attorney: Ann H. Logan (202) 622-3970

Reviewing attorney: Donald J. Drees (202) 622-3970

CC:FI&P

Agency Contact: Ann H. Logan, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3970

RIN: 1545–AY48

2814. ELECTRONIC FURNISHING OF PAYEE STATEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6050; 26 USC 6051; 26 USC 6041; 26 USC 6724

CFR Citation: 26 CFR 1; 26 CFR 31

Legal Deadline: None

Abstract: This regulation amends the regulations to allow for the electronic furnishing of Forms W-2, 1098-E and 1098-T.

Timetable:

Action	Date	FR Cite
NPRM	02/14/01	66 FR 10247
NPRM Comment Period End	07/06/01	66 FR 32279
Public Hearing	07/25/01	66 FR 32279
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: REG-107186-00

Drafting attorney: Michael E. Hara (202) 622-4910

Reviewing attorney: John McGreevy (202) 622-4910

Treasury attorney: John Parcell (202) 622-2578

CC:PA:APJP

Agency Contact: Michael E. Hara, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue, Washington, DC 20224
Phone: 202 622-4910

RIN: 1545–AY50

2815. DISCLOSURE OF RETURN INFORMATION TO OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF COMMERCE FOR CERTAIN STATISTICAL PURPOSES AND RELATED ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6103

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The regulations relate to additions to the list of items of information disclosed to the Bureau of the Census for use in the Longitudinal Employer-Household Dynamics (LEHD) project and the Survey of Income and Program Participation (SIPP) project.

Timetable:

Action	Date	FR Cite
NPRM	02/13/01	66 FR 9991
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: REG-121109-00

Drafting attorney: Christine Irwin (202) 622-4570

Reviewing attorney: Donald Squires (202) 622-4570

Treasury attorney: Elizabeth Askey (202) 622-0224

CC:PA:DPL

Agency Contact: Christine Irwin, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4570

RIN: 1545–AY52

2816. TAX TREATMENT OF CAFETERIA PLANS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 125

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides information about the tax treatment of cafeteria plans.

Timetable:

Action	Date	FR Cite
NPRM	01/10/01	66 FR 1923
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: REG-209461-79

Drafting attorney: Shoshanna Chaiton (202) 622-6080

Reviewing attorney: Janet A. Laufer (202) 622-6090

CC:TEGE

Agency Contact: Shoshanna Chaiton, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6080

RIN: 1545–AY67

2817. OBLIGATION OF STATES AND POLITICAL SUBDIVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance to State and local governments that issue bonds for output facilities. This document also withdraws the NPRM REG-110965-97, 1545-AV47, published on January 22, 1998 (63 FR 3296).

Timetable:

Action	Date	FR Cite
NPRM	01/18/01	66 FR 4754
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Additional Information: REG-114998-99 and REG-145082-02

Drafting attorney: Rose M. Weber (202) 622-3980

Reviewing attorney: Bruce M. Serchuk (202) 622-3980

Treasury attorney: Stephen J. Watson (202) 622-1322

The Notice of Proposed Rulemaking partially withdraws the NPRM REG-110965-97, 1545-AV47 published on Jan. 22, 1998 (63 FR 3296)

REG-114998-99, RIN 1545-AY71 was published on Jan. 18, 2001 at 66 FR 4754. REG-145082-02 (final regulation), will finalize those regulations.

CC:TEGE

Agency Contact: Rose M. Weber, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3980
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RIN: 1545–AY71

2818. QUALIFIED S ELECTION FOR TESTAMENTARY TRUSTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1361

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These final regulations relate to the qualified subchapter S election for testamentary trusts. A testamentary trust may qualify as a permitted shareholder of an S corporation for a two-year period beginning on the day the stock is transferred to the trust. These regulations would provide that the beneficiary of a qualifying testamentary trust that also qualifies as a qualified subchapters S trust (QSST) may make a QSST election at any time up to the end of the 16-day-and-2-month period beginning after the two-year qualifying period.

Timetable:

Action	Date	FR Cite
NPRM	08/24/01	66 FR 44565
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-106431-01

Drafting attorney: Deane M. Burke (202) 622-3070

Reviewing attorney: Mary Beth Collins (202) 622-3070

Treasury attorney: Elizabeth Askey (202) 622-0224

CC:P&SI

Agency Contact: Deane M. Burke, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3070

RIN: 1545–AY76

2819. DISCLOSURE OF RETURNS AND RETURN INFORMATION BY OTHER AGENCIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation permits the Commissioner to authorize agencies with access to returns and return information under section 6103 of the Code to redisclose such returns and return information, with the Commissioner's approval, to the Congressional Budget Office and other agencies authorized to receive such information in accordance with IRC section 6103.

Timetable:

Action	Date	FR Cite
NPRM	12/17/01	66 FR 64386
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: REG-105344-01

Drafting attorney: Julie C. Schwartz (202) 622-4570

Reviewing attorney: Philip Lendenmuth (202) 622-4560

Treasury attorney: Elizabeth Askey (202) 622-0224

CC:P&A:D&PL

Agency Contact: Julie C. Schwartz, Senior Counsel, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4570

RIN: 1545–AY77

2820. RESEARCH CREDIT III

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 41

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation relates to the computation of the research credit under section 41(c) and the definition of the qualified research under section 41(d) of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	12/26/01	66 FR 66362
Hearing	03/27/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG-112991-01

Drafting attorney: Nicole R. Cimino (202) 622-3120

Reviewing attorneys: Leslie Finlow (202) 622-3120 and Brenda Stewart (202) 622-3120

Treasury attorney: Julian Kim (202) 622-1981

CC:P&SI

Agency Contact: Nicole R. Cimino, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3120

RIN: 1545–AY82

2821. LOW-INCOME TAXPAYER CLINICS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will amend the regulations pertaining to the definition of income tax return preparer to exclude low-income taxpayer clinics and their volunteers when operating as authorized by 26 U.S.C. 7526.

Timetable:

Action	Date	FR Cite
NPRM	06/11/02	67 FR 39915
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-115285-01

Drafting attorney: Brinton T. Warren (202) 622-4940

Reviewing attorney: Judith M. Wall (202) 622-4940

Treasury attorney: Julian Kim (202) 622-1981

CC:P&A:APJP

Agency Contact: Brinton T. Warren, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4940

RIN: 1545–AY84

2822. NEW MARKET TAX CREDIT

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 45D; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations relate to the new markets tax credit under section 45D, which was enacted by section 121(a) of the Community Renewal Tax Relief Act of 2000 (Pub. L. 106-554).

Timetable:

Action	Date	FR Cite
ANPRM	05/01/01	66 FR 21844
NPRM	12/26/01	66 FR 66376
Public Hearing	03/14/02	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG-119436-01

Drafting attorney: Paul F. Handleman (202) 622-3040

Reviewing attorney: Susan Reaman (202) 622-3040

Treasury attorney: Steve Watson (202) 622-1322

CC:P&SI

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RIN: 1545–AY87

2823. NET GIFT TREATMENT

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 25

Legal Deadline: None

Abstract: This regulation is intended to cover the effect of gift tax entitled to be recovered by the donor, pursuant to the right of recovery under section 2207A, on the amount of the gift under section 2519 (i.e., whether the transfer is a "net gift"). The section was reserved when the regulations under section 2519 were finalized, because of uncertainty regarding whether section 2207A shifts the liability for the gift tax to the beneficiaries of the transfer. After considering the issue in conjunction with several TAMS and PLRS, we have adopted a position that section 2207A does not shift the liability for the gift tax imposed on a section 2519 transfer.

Timetable:

Action	Date	FR Cite
NPRM	07/22/02	67 FR 47755
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-123345-01

Drafting attorney: DeAnn K. Malone (202) 622-7830

Reviewing attorney: Melissa Liquerman (202) 622-7076

CC:P&SI

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Phone: 202 622-7830

RIN: 1545–AY91

2824. EXCISE TAX IMPOSED ON FOREIGN INSURERS OR REINSURERS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 4374

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation is intended to amend Treasury Regulation section 46.4374-1(a), which deals with an excise tax imposed on foreign insurers or reinsurers. The existing regulation was published in 1970 and provides that the "tax shall be remitted by the person who makes the payment of the premium to a foreign insurer or reinsurer or to any nonresident agent, solicitor, or broker. For purposes of this paragraph, the person who makes payment means that resident person who actually transfers the money, check, or its equivalent to the foreign insurer or reinsurer (including transfers to any bank, trust fund, or similar recipient, designated by the foreign insurer or reinsurer), or to any nonresident agent, solicitor, or broker." In 1976, I.R.C. section 4374 was amended to impose liability on "any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued or sold." For example, there have been cases recently where a foreign parent corporation has purchased from a foreign insurer policies covering risks and policies for the benefit of a U.S. subsidiary. The IRS often has no ability to collect the excise tax on such a policy from the foreign parent, and the U.S. subsidiary has relied on the existing regulation to argue that the IRS may not collect the tax from the subsidiary, because it did not actually pay the premium to the foreign insurer.

Timetable:

Action	Date	FR Cite
NPRM	01/07/02	67 FR 708
NPRM Comment Period End	02/26/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG-125450-01

Drafting attorney: Amanda A. Ehrlich (202) 622-3880

Reviewing attorney: W. Edward Williams (202) 622-3880

Treasury attorney: Michael Caballero (202) 622-0851

CC:INTL

Agency Contact: Amanda A. Ehrlich, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3880

RIN: 1545–AY93

2825. DEFINITION OF AGENT AND SAFEGUARD CERTIFICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6103

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation relates to the definition of agent for purposes of I.R.C. sections 6103(1) and (m).

Timetable:

Action	Date	FR Cite
NPRM	02/01/02	67 FR 4938
NPRM Comment Period End	05/02/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Federal, Local

Additional Information: REG-120135-01

Drafting attorney: Helene R. Newsome (202) 622-4570

Reviewing attorney: Donald M. Squires (202) 622-4570

CC:P&A:D&PL

Agency Contact: Helene R. Newsome, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4570

RIN: 1545–AY94

2826. CONSOLIDATED RETURN INTERCOMPANY TRANSACTION RULES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 446; 26 USC 1502

CFR Citation: 26 CFR 446

Legal Deadline: None

Abstract: The regulation is related to the treatment of the consolidated return intercompany transaction rules as a method of accounting.

Timetable:

Action	Date	FR Cite
NPRM	11/07/01	66 FR 56262
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-125161-01

Drafting attorney: Marie C. Milnes-Vasquez (202) 622-7770

Reviewing attorney: Edward Cohen (202) 622-7770

Treasury attorney: Audrey Nacamuli (202) 622-5721

CC:CORP

Agency Contact: Marie Milnes-Vasquez, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7770

RIN: 1545–BA05

2827. MERGERS INVOLVING DISREGARDED ENTITIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 368

Legal Deadline: None

Abstract: The regulation will provide guidance concerning the requirements to be met in order for a merger or consolidation to qualify as a reorganization under section 368(a)(1)(A). They will also address whether certain mergers involving disregarded entities can qualify as reorganizations under section 368(a)(1)(A).

Timetable:

Action	Date	FR Cite
NPRM	11/15/01	66 FR 57400
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-126485-01

Drafting attorneys: Richard Heinecke (202) 622-7930

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Treasury attorney: Audrey Nacamuli (202) 622-5721

CC:CORP

Agency Contact: Richard M. Heinecke, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7930

RIN: 1545–BA06

2828. NOTICE OF SIGNIFICANT REDUCTION IN THE RATE OF FUTURE BENEFIT ACCRUAL

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 4980

CFR Citation: 26 CFR 1; 26 CFR 54; 26 CFR 602

Legal Deadline: None

Abstract: The final regulations will update the regulations currently in section 1.411(d) for changes made as a result of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). EGTRAA amends ERISA section 204(h) and adds section 4980F to the Code. Section 4980F imposes an excise tax for failure to satisfy notice requirements.

Timetable:

Action	Date	FR Cite
NPRM	04/23/02	67 FR 19713
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-136193-01

Drafting attorney: Pamela R. Kinard (202) 622-6060

Reviewing attorney: Janet A. Laufer (202) 622-6090

Treasury attorney: William Bortz (202) 622-6090

CC:TEGE

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Phone: 202 622-6060

RIN: 1545–BA08

2829. CONSOLIDATED RETURNS; NON-APPLICABILITY OF SECTION 357(C)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1502

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations make amendments to section 1.1502-80(d) of the consolidated return regulations dealing with the scope of the non-applicability of section 357(c) in a consolidated group.

Timetable:

Action	Date	FR Cite
NPRM	11/14/01	66 FR 57021
Public Hearing	03/21/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-137519-01

Drafting attorney: Thomas I. Russell (202) 622-7930

Reviewing attorney: Al Bishop (202) 622-7930

Treasury attorney: Audrey Nacamuli (202) 622-5721

CC:CORP

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Phone: 202 622-7930

RIN: 1545–BA09

2830. COUNTING 2100 NOTICES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 3406

CFR Citation: 26 CFR 31

Legal Deadline: None

Abstract: The regulations will amend the rule for determining the number of notices a payer received from the Internal Revenue Service for purposes of determining whether a payer must impose backup withholding pursuant to section 31.3406(d).

Timetable:

Action	Date	FR Cite
NPRM	07/03/02	67 FR 44579
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-142499-01

Drafting attorney: John T. Ricotta (202) 622-6060

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Treasury attorney: Elizabeth Drigotas (202) 622-1332

CC:TEGE

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Phone: 202 622-6060

RIN: 1545–BA24

2831. CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS AGE 50 OR OVER

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would provide guidance for plans that permit individuals aged 50 or over to make catch-up contributions under the plan.

Timetable:

Action	Date	FR Cite
NPRM	10/23/01	66 FR 53555
Public Hearing	04/30/02	67 FR 7656
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-142499-01

Drafting attorney: John T. Ricotta (202) 622-6060

Reviewing attorney: Marjorie Hoffman (202) 622-6060

Treasury attorney: Elizabeth Drigotas (202) 622-1332

CC:TEGE

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Phone: 202 622-6060

RIN: 1545–BA24

2832. UNIT LIVESTOCK PRICING METHOD

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 471; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The final action contains requirements to annually reevaluate and upwardly or downwardly adjust unit livestock prices.

Timetable:

Action	Date	FR Cite
NPRM	02/04/02	67 FR 5074
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG-125626-01

Drafting attorney: A. Katharine Kiss (202) 622-4930

Reviewing attorney: Gerald M. Horan (202) 622-4970

CC:IT&A

Agency Contact: A. Katharine Kiss, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4930

RIN: 1545–BA25

2833. GUIDANCE REGARDING FOREIGN PERSONAL HOLDING COMPANY INCOME

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805; 26 USC 954(h)(8)

CFR Citation: 26 CFR 1.954-2(f); 26 CFR 1.954-2(g)

Legal Deadline: None

Abstract: These proposed regulations relate to the definition of foreign personal holding company income in the case of gain or loss arising from certain commodities hedging transactions and in the case of currency gain or loss arising from certain interest-bearing liabilities.

Timetable:

Action	Date	FR Cite
NPRM	05/13/02	67 FR 31995
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG-154920-01

Drafting attorneys: Theodore Setzer (202) 622-3870, Kenneth P. Christman (202) 622-3870

Reviewing attorney: Jeffrey Dorfman (202) 622-3870

Treasury attorney: Patrick Brown: (202) 622-1754

CC:INTL

Agency Contact: Kenneth P. Christman, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
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RIN: 1545–BA33

2834. WITHHOLDING AT TREATY RATE EXCEPTION FOR TAXPAYER IDENTIFYING NUMBER

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1441

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will address the taxpayer identifying number rule when taxpayer claims treaty rate and is entitled to an immediate payment.

Timetable:

Action	Date	FR Cite
NPRM	01/17/02	67 FR 2387
Final Action	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-159079-01

Drafting attorney: Jonathan A. Sambur (202) 622-3840

Reviewing attorney: Phyllis E. Marcus (202) 622-3840

Treasury attorney: Patrick Brown (202) 622-1754

CC:INTL

Agency Contact: Jonathan A. Sambur, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington
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RIN: 1545–BA38

2835. SPLIT-DOLLAR LIFE INSURANCE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 7872

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance under sections 7872, 61, and 83 on the taxation of split-dollar life insurance arrangements pursuant to Notice 2001-10 and Notice 2002-8.

Timetable:

Action	Date	FR Cite
NPRM	07/09/02	67 FR 95414
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-164754-01

Drafting attorney: Rebecca E. Asta (202) 622-3940

Reviewing attorney: David Silber (202) 622-3524

Treasury attorney: Mike Novey (202) 622-1339

CC:FI&P

Agency Contact: Rebecca E. Asta, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3940

RIN: 1545–BA44

2836. AMENDMENT TO THE DEFINITION OF REFUNDING

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation would amend the definition of a refunding issue applicable to tax-exempt bonds issued by States and local governments.

Timetable:

Action	Date	FR Cite
NPRM	04/10/02	67 FR 17310
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Additional Information: REG-165706-01

Drafting attorney: Michael P. Brewer (202) 622-3980

Reviewing attorney: Bruce Serchuk (202) 622-3980

CC:TEGE

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Phone: 202 622-3980

RIN: 1545–BA46

2837. TREATMENT OF FUNDED WELFARE BENEFIT PLANS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides special rules concerning employer deductions for contributions to a welfare benefit fund that is part of a 10 or more employer plan.

Timetable:

Action	Date	FR Cite
NPRM	07/11/02	67 FR 45933
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-165868-01

Drafting attorney: Betty J. Clary (202) 622-6080

Reviewing attorney: Mark Schwimmer (202) 622-6080

Treasury attorney: Harlan Weller (202) 622-1001

CC:TEGE

Agency Contact: Betty J. Clary, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
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RIN: 1545–BA47

2838. LOSS LIMITATION RULES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 337(d)

CFR Citation: 26 CFR 1; 26 CFR 602

Legal Deadline: None

Abstract: The regulations provide guidance on the treatment of certain losses recognized on sales of subsidiary stock by members of a consolidated group under section 337(d) and section 1502 of the Internal Revenue Code. For related matters see the proposed regulations published on March 12, 2002 at 67 FR 11070 regarding REG-102740-02.

Timetable:

Action	Date	FR Cite
NPRM	05/31/02	67 FR 38040
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-123305-02

Drafting attorney: Lola L. Johnson (202) 622-7550

Reviewing attorney: Sean P. Duffley (202) 622-7530

CC:CORP

Agency Contact: Lola L. Johnson, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
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Related RIN: Related To 1545-BA51, Related To 1545-BA74

RIN: 1545–BA52

2839. • CARRYBACK OF CONSOLIDATED NET OPERATING LOSSES TO SEPARATE RETURN YEARS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1502

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will harmonize the waiver election in section 1.1502-21(b)(3) with the Amendments to IRC 172(b) with the Job Creation and Worker Assistance Act of 2002.

Timetable:

Action	Date	FR Cite
NPRM	05/31/02	67 FR 38039
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-122564-02

Drafting and reviewing attorney: Marie C. Milnes-Vasquez (202) 622-7770

Treasury attorney: Audrey Nacamuli (202) 622-5721

CC:CORP

Agency Contact: Marie Milnes-Vasquez, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
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Related RIN: Related To 1545-BA76

RIN: 1545–BA73

2840. • STATUTORY OPTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 421

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides rules for the creation, and or maintenance, of a statutory stock option plan. It includes rules on adopting a plan, plan requirements, permissible provisions of a plan, and disqualification of a statutory option.

Timetable:

Action	Date	FR Cite
NPRM	06/30/02	
Comment Period End	09/30/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-122917-02

Drafting attorney: Erinn M. Madden (202) 622-6030

Reviewing attorney: Robert Misner (202) 622-6030

Treasury attorney: Elizabeth Drigotas (202) 622-1332

CC:TEGE

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Phone: 202 622-6030

RIN: 1545–BA75

2841. • EARNINGS CALCULATION FOR RETURNED OR RECHARACTERIZED CONTRIBUTIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation sets forth a rule for calculating net income attributable to IRA contributions being returned under Code section 408(d)(4) or recharacterized under Code section 408A(d)(6).

Timetable:

Action	Date	FR Cite
NPRM	07/23/02	67 FR 48067
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG-124256-02

Drafting attorney: Cathy A. Vohs (202) 622-6090

Reviewing attorney: Marjorie Hoffman (202) 622-6090

CC:TEGE

Agency Contact: Cathy A. Vohs, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6090

RIN: 1545–BA82

2842. • REPORTING REQUIREMENTS FOR WIDELY HELD FIXED INVESTMENT TRUSTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation relates to reporting requirements for widely held fixed investment trusts.

Timetable:

Action	Date	FR Cite
NPRM	06/20/02	67 FR 41892
NPRM Comment Period End	09/18/02	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-106871-00

Drafting attorney: Faith Colson (202) 622-3060

Reviewing attorney: J. Thomas Hines (202) 622-3060

Treasury attorney: Viva Hammer (202) 622-0869

CC:P&SI

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Phone: 202 622-3060

Related RIN: Related To 1545-AU15

RIN: 1545–BA83

2843. • LOW-INCOME TAXPAYER CLINICS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation amends the provisions pertaining to the definition of income tax return preparer to exclude low-income taxpayer clinics and their volunteers when operating as authorized by 26 U.S.C. 7526.

Timetable:

Action	Date	FR Cite
NPRM	06/11/02	67 FR 39915
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-115285-01

Drafing attorney: Brinton T. Warren (202) 622-4940

Reviewing attorney: Judith Wall (202) 622-4940

Treasury attorney: Elizabeth Askey (202) 622-0224

CC:P&A:APJP

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Related RIN: Related To 1545-AY84

RIN: 1545–BA95

2844. • 6038 ISSUES RELATING TO CERTAIN FOREIGN CORPORATIONS AND PARTNERSHIPS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805; 26 USC 6038

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide guidance regarding controlled foreign partnership reporting.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG-124069-02

Drafting attorney: Tasheaya Warren (202) 622-3860

Reviewing attorney: Michael H. Frankel (202) 622-3860

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RIN: 1545–BB36

Department of the Treasury (TREAS)
Internal Revenue Service (IRS)

Long-Term Actions

2845. INCOME TAX—TAXPAYER'S OBLIGATION TO FILE A NOTICE OF REDETERMINATION OF FOREIGN TAX AND CIVIL PENALTIES FOR FAILURE TO FILE

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1; 26 CFR 301; 26 CFR 602

Timetable:

Action	Date	FR Cite
NPRM	06/23/88	53 FR 23659
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Margaret A. Hogan
Phone: 202 622-3850

RIN: 1545–AC09

2846. INCOME TAX—DEFINITION OF QUALIFIED POSSESSION SOURCE INVESTMENT INCOME FOR PURPOSES OF PUERTO RICO AND POSSESSION TAX CREDIT

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/21/86	51 FR 2726
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No
Government Levels Affected: None
Agency Contact: W. Edward Williams
Phone: 202 622-3880
RIN: 1545–AC10

2847. FSC TRANSFER PRICING RULES, DISTRIBUTIONS, DIVIDENDS RECEIVED, DEDUCTION, AND OTHER SPECIAL RULES FOR FSC
Priority: Substantive, Nonsignificant
CFR Citation: 26 CFR 1
Timetable:

Action	Date	FR Cite
NPRM	03/03/87	52 FR 6467
NPRM Comment Period End	05/02/87	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No
Small Entities Affected: No
Government Levels Affected: None
Agency Contact: Douglas L. Giblen
Phone: 202 874-1490
RIN: 1545–AI16

2848. INFORMATION FROM PASSPORT AND IMMIGRATION APPLICANTS
Priority: Substantive, Nonsignificant
CFR Citation: 26 CFR 301
Timetable:

Action	Date	FR Cite
NPRM	12/24/92	57 FR 61373
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No
Small Entities Affected: No
Government Levels Affected: None
Agency Contact: Amanda A. Ehrlich
Phone: 202 622-3880
RIN: 1545–AJ93

2849. FOREIGN CORPORATIONS
Priority: Substantive, Nonsignificant
CFR Citation: 26 CFR 1
Timetable:

Action	Date	FR Cite
NPRM	05/16/86	51 FR 17990
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No
Small Entities Affected: No
Government Levels Affected: None
Agency Contact: Michael H. Frankel
Phone: 202 622-3860
RIN: 1545–AK74

2850. FOREIGN INSURANCE COMPANIES
Priority: Substantive, Nonsignificant
CFR Citation: 26 CFR 1
Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No
Small Entities Affected: No
Government Levels Affected: None
Agency Contact: Steven D. Jensen
Phone: 202 622-3870
RIN: 1545–AL82

2851. INCOME OF FOREIGN GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS
Priority: Substantive, Nonsignificant
CFR Citation: 26 CFR 1
Timetable:

Action	Date	FR Cite
NPRM	06/27/88	53 FR 24100
NPRM Comment Period End	08/26/88	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No
Small Entities Affected: No
Government Levels Affected: None
Agency Contact: David A. Juster
Phone: 202 622-3850
RIN: 1545–AL93

2852. CLARIFICATION OF TREATMENT OF SEPARATE LIMITATION LOSSES
Priority: Substantive, Nonsignificant
CFR Citation: 26 CFR 1
Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No
Small Entities Affected: No
Government Levels Affected: None
Agency Contact: Richard L. Chewning
Phone: 202 622-3850
RIN: 1545–AM11

2853. EARNINGS AND PROFITS OF CONTROLLED FOREIGN CORPORATIONS
Priority: Substantive, Nonsignificant
CFR Citation: 26 CFR 1
Timetable:

Action	Date	FR Cite
NPRM	01/25/90	55 FR 2535
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No
Small Entities Affected: No
Government Levels Affected: None
Agency Contact: Margaret A. Hogan
Phone: 202 622-3850
RIN: 1545–AM90

2854. CARIBBEAN BASIN INVESTMENTS
Priority: Substantive, Nonsignificant
CFR Citation: 26 CFR 1
Timetable:

Action	Date	FR Cite
NPRM	05/13/91	56 FR 21963
Hearing	07/12/91	56 FR 21963
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined
Small Entities Affected: No
Government Levels Affected: None
Agency Contact: W. Edward Williams
Phone: 202 622-3880
RIN: 1545–AM91

2855. OUTBOUND TRANSFERS OF PROPERTY TO FOREIGN CORPORATIONS
Priority: Substantive, Nonsignificant
CFR Citation: 26 CFR 1
Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No
Small Entities Affected: No
Government Levels Affected: None

Agency Contact: Aaron A. Farmer
Phone: 202 622-3860
RIN: 1545–AM97

2856. RAILROAD UNEMPLOYMENT REPAYMENT TAX
Priority: Substantive, Nonsignificant
CFR Citation: 26 CFR 31
Timetable:

Action	Date	FR Cite
NPRM	05/13/93	58 FR 28374
NPRM Comment Period End	07/12/93	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined
Small Entities Affected: No
Government Levels Affected: None
Agency Contact: Kyle A. Finizio
Phone: 202 622-6040
RIN: 1545–AN40

2857. CONSOLIDATED ALTERNATIVE MINIMUM TAX
Priority: Substantive, Nonsignificant
CFR Citation: 26 CFR 1
Timetable:

Action	Date	FR Cite
NPRM	12/30/92	57 FR 62251
NPRM Comment Period End	03/01/93	
Hearing	04/06/93	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined
Small Entities Affected: No
Government Levels Affected: None
Agency Contact: Martin Scully
Phone: 202 622-4960
RIN: 1545–AN73

2858. CONFORMING TAXABLE YEARS OF CFCS AND FPHCS: 1989 CHANGE
Priority: Substantive, Nonsignificant
CFR Citation: 26 CFR 1
Timetable:

Action	Date	FR Cite
NPRM	01/05/93	58 FR 290
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No
Small Entities Affected: No
Government Levels Affected: None
Agency Contact: Carl M. Cooper
Phone: 202 622-3840
RIN: 1545–AO22

2859. EARNINGS STRIPPING PAYMENTS
Priority: Substantive, Nonsignificant
CFR Citation: 26 CFR 1
Timetable:

Action	Date	FR Cite
NPRM	06/18/91	56 FR 27907
Hearing	09/25/91	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No
Small Entities Affected: No
Government Levels Affected: None
Agency Contact: Jeffrey L. Dorfman
Phone: 202 622-3870
RIN: 1545–AO24

2860. FOREIGN INSURANCE COMPANY—DOMESTIC ELECTION
Priority: Substantive, Nonsignificant
CFR Citation: 26 CFR 1
Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No
Small Entities Affected: No
Government Levels Affected: None
Agency Contact: Valerie A. Mark-Lippe
Phone: 202 622-3840
RIN: 1545–AO25

2861. FRINGE BENEFIT SOURCING UNDER SECTION 861
Priority: Substantive, Nonsignificant
CFR Citation: 26 CFR 1
Timetable:

Action	Date	FR Cite
NPRM	01/21/00	65 FR 3402
Public Hearing	07/18/00	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No
Small Entities Affected: No
Government Levels Affected: None
Agency Contact: David F. Bergkuist
Phone: 202 622-3850
RIN: 1545–AO72

2862. INFORMATION REPORTING AND RECORD MAINTENANCE
Priority: Substantive, Nonsignificant
CFR Citation: 26 CFR 1
Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No
Small Entities Affected: No
Government Levels Affected: None
Agency Contact: Garrett D. Gregory
Phone: 202 622-3870
RIN: 1545–AP10

2863. CHARITABLE CONTRIBUTIONS
Priority: Substantive, Nonsignificant
CFR Citation: 26 CFR 1
Timetable:

Action	Date	FR Cite
NPRM	03/12/91	56 FR 10395
Hearing	08/01/91	56 FR 23823
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No
Small Entities Affected: No
Government Levels Affected: None
Agency Contact: Teresa B. Hughes
Phone: 202 622-3850
RIN: 1545–AP30

2864. REGISTRATION REQUIRED OBLIGATIONS
Priority: Substantive, Nonsignificant
CFR Citation: 26 CFR 1
Timetable:

Action	Date	FR Cite
NPRM	01/21/93	58 FR 5316
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No
Small Entities Affected: No
Government Levels Affected: None
Agency Contact: Carl M. Cooper
Phone: 202 622-3840
RIN: 1545–AP33

2865. GUIDANCE IN NOTICE 89-37, WHICH TREATS THE RECEIPT OF A CORPORATE PARTNER'S STOCK BY THE CORPORATE PARTNER AS A CIRCUMVENTION OF GENERAL UTILITIES REPEAL

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/15/92	57 FR 59324
NPRM Comment Period End	01/20/93	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lisa K. Leong
Phone: 202 622-7530

RIN: 1545–AP52

2866. USE OF GAAP EARNINGS AS E&P OF FOREIGN CORPORATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	07/01/92	57 FR 29246

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Margaret A. Hogan
Phone: 202 622-3850

RIN: 1545–AQ55

2867. THE TREATMENT OF ACCELERATED DEATH BENEFITS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/15/92	57 FR 59319
NPRM Comment Period End	02/26/93	
Hearing	03/19/93	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ann H. Logan
Phone: 202 622-3970

RIN: 1545–AQ70

2868. FOREIGN TRUSTS REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Karen Rennie Quarrie
Phone: 202 622-3880

RIN: 1545–AR25

2869. TREATMENT OF DUAL CONSOLIDATED LOSSES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kenneth D. Allison
Phone: 202 622-3860

RIN: 1545–AR26

2870. ALLOCATION OF ACCRUED BENEFITS BETWEEN EMPLOYER AND EMPLOYEE CONTRIBUTIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/22/95	60 FR 66532
NPRM Comment Period End	03/21/96	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Janet A. Laufer
Phone: 202 622-6090
Fax: 202 622-4084

RIN: 1545–AT82

2871. FOREIGN CORPORATIONS REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	03/08/96	61 FR 9377

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kenneth P. Christman
Phone: 202 622-3870

RIN: 1545–AT96

2872. TREATMENT OF OBLIGATION-SHIFTING TRANSACTIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/27/96	61 FR 68175
NPRM Comment Period End	04/08/97	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Christina A. Morrison
Phone: 202 622-3950

RIN: 1545–AU19

2873. APPLICATION OF GRANTOR TRUST RULES TO NONEXEMPT EMPLOYEES' TRUST

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	09/27/96	61 FR 50778
NPRM Comment Period End	12/26/96	
Hearing	01/15/97	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: M. Grace Fleeman
Phone: 202 622-3880

Linda S.F. Marshall
Phone: 202 622-6090

James A. Quinn
Phone: 202 622-3070

RIN: 1545–AU29

2874. RECOMPUTATION OF LIFE INSURANCE RESERVES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/02/97	62 FR 71

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mark S. Smith
Phone: 202 622-3970

RIN: 1545–AU49

2875. SOURCE RULES FOR PAYMENTS MADE PURSUANT TO CERTAIN SWAP ARRANGEMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Paul S. Epstein
Phone: 202 622-3870

RIN: 1545–AU89

2876. APPLICATION OF ATTRIBUTION RULES TO FOREIGN TRUSTS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: W. Edward Williams
Phone: 202 622-3880

RIN: 1545–AU91

2877. FASIT—START-UP/OPERATIONAL/TRANSITION

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 301; 26 CFR 1

Timetable:

Action	Date	FR Cite
ANPRM	11/04/96	61 FR 56648
ANPRM Comment Period End	12/31/96	
NPRM	02/07/00	65 FR 5807

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Courtney Shepardson
Phone: 202 622-3930

RIN: 1545–AU94

2878. ELECTRONIC TRANSMISSION OF WITHHOLDING CERTIFICATES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	10/14/97	62 FR 53504
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Carl M. Cooper
Phone: 202 622-3840

RIN: 1545–AV27

2879. REMOVAL OF TEMPORARY REGULATIONS THAT PROVIDE RULES FOR SUBSTANTIATING TRAVEL EXPENSE DEDUCTIONS FOR MEMBERS OF CONGRESS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1; 26 CFR 5

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Edwin B. Cleverdon
Phone: 202 622-7900

RIN: 1545–AV55

2880. FOREIGN TAX CREDIT ANTI-ABUSE REGULATION

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bethany Ingwalson
Phone: 202 622-3850

RIN: 1545–AV97

2881. STOCKS AND SECURITIES SAFE HARBOR EXCEPTION

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	06/12/98	63 FR 32164
Hearing	09/09/98	
NPRM Comment Period End	09/10/98	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Paul S. Epstein
Phone: 202 622-3870

RIN: 1545–AW13

2882. TRANSPORTATION OF PERSONS AND PROPERTY BY AIR

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 49

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick S. Kirwan
Phone: 202 622-3130

RIN: 1545–AW19

2883. CONTINGENT DEBT INSTRUMENT

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Milton M. Cahn
Phone: 202 622-3870

RIN: 1545–AW33

2884. SOURCE OF INCOME FROM CERTAIN SPACE AND OCEAN ACTIVITIES AND FOR COMMUNICATIONS INCOME

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/17/01	66 FR 3903
Hearing	05/23/01	66 FR 12916
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Edward R. Barret
Phone: 202 874-1490

RIN: 1545–AW50

2885. GUIDANCE UNDER SUBPART F RELATING TO CERTAIN HYBRID TRANSACTIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	07/13/99	64 FR 37727
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Valerie A. Mark-Lippe
Phone: 202 622-3840

RIN: 1545–AW63

2886. EDUCATION CREDITS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/06/99	64 FR 794
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Donna J. Welch
Phone: 202 622-4910
Fax: 202 927-9248

RIN: 1545–AW65

2887. CERTAIN ASSET TRANSFERS TO REGULATED INVESTMENT COMPANIES (RICS) AND REAL ESTATE INVESTMENT TRUSTS (REITS)

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	02/03/00	65 FR 5805
Comment Period Ends	04/19/00	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Jennifer D. Sledge
Phone: 202 622-7750

RIN: 1545–AW92

2888. RULES FOR SOURCING CERTAIN TRANSPORTATION INCOME, SPACE OR OCEAN ACTIVITY INCOME, AND RELATED FOREIGN BASE COMPANY SHIPPING INCOME

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patricia A. Bray
Phone: 202 622-3880

RIN: 1545–AX02

2889. DEFINITION OF ACCOUNTING METHOD

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jeffery G. Mitchell
Phone: 202 622-4970

RIN: 1545–AX21

2890. GUARANTEED INVESTMENT CONTRACTS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	08/27/99	64 FR 46876
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: Rose M. Weber
Phone: 202 622-3980
Fax: 202 622-4437

RIN: 1545–AX22

2891. CHANGES IN ENTITY CLASSIFICATION: SPECIAL RULE FOR CERTAIN FOREIGN ELIGIBLE ENTITIES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 301

Timetable:

Action	Date	FR Cite
NPRM	11/29/99	64 FR 66591
Public Hearing	01/31/00	
NPRM Comment Period End	02/28/00	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Aaron A. Farmer
Phone: 202 622-3860

RIN: 1545–AX39

2892. DEFINITION OF PRIVATE ACTIVITY BOND—REFUNDING REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/30/94	59 FR 67658
NPRM Comment Period End	05/01/95	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bruce M. Serchuk
Phone: 202 622-3980
Fax: 202 622-4437

RIN: 1545–AX55

2893. ALLOCATION AND APPORTIONMENT OF INTEREST EXPENSE AND CERTAIN OTHER EXPENSES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	02/05/90	55 FR 3750
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David F. Bergkuist
Phone: 202 622-3850

RIN: 1545–AX72

2894. DEFINITION OF PASSIVE FOREIGN INVESTMENT COMPANY UNDER SECTION 1297

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Alexandra R. Helou
Phone: 202 622-3840

RIN: 1545–AX78

2895. HIPAA PORTABILITY

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 54

Timetable:

Action	Date	FR Cite
NPRM	04/08/97	62 FR 16977
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Russell Weinheimer
Phone: 202 622-6080

RIN: 1545–AX84

2896. APPLICATION OF SEPARATE FOREIGN TAX CREDIT LIMITATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/03/01	66 FR 319
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bethany Ingwalson
Phone: 202 622-3850

RIN: 1545–AX88

2897. CLARIFICATION OF FOREIGN-BASED COMPANY SALES INCOME RULES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Valerie A. Mark-Lippe
Phone: 202 622-3840

RIN: 1545–AX91

2898. CAPITALIZATION OF INTEREST AND CARRYING CHARGES PROPERLY ALLOCABLE TO STRADDLES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/18/01	66 FR 4746
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary Truchly
Phone: 202 622-3960

RIN: 1545–AX92

2899. DEFINITION OF DIESEL FUEL

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 48

Timetable:

Action	Date	FR Cite
NPRM	05/16/02	67 FR 34882
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Frank K. Boland
Phone: 202 622-3130

RIN: 1545–AX97

2900. GUIDANCE NECESSARY TO FACILITATE ELECTRONIC TAX ADMINISTRATION

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1; 26 CFR 301

Timetable:

Action	Date	FR Cite
NPRM	04/24/02	67 FR 20072
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sara P. Shepherd
Phone: 202 622-4960

Related RIN: Related To 1545-AY56

RIN: 1545–AY04

2901. ACTIVE CONDUCT OF AN INSURANCE BUSINESS UNDER PFIC RULES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Mark R. Pollard
Phone: 202 622-3850

RIN: 1545–AY20

2902. DISALLOWANCE OF DEDUCTIONS AND CREDITS FOR FAILURE TO FILE TIMELY RETURN

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/29/02	67 FR 4217
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Nina E. Chowhdry
Phone: 202 622-3880

RIN: 1545–AY26

2903. WITHHOLDING TAX ON FOREIGN PARTNERS' SHARE OF EFFECTIVELY CONNECTED INCOME

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: David J. Sotos
Phone: 202 622-3050

RIN: 1545–AY28

2904. INFORMATION REPORTING ON CANCELLATION OF INDEBTEDNESS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	06/13/02	67 FR 40629
Public Hearing	10/08/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joseph Dewald
Phone: 202 622-4910

RIN: 1545–AY35

2905. SPECIAL RULES RELATING TO TRANSFERS OF INTANGIBLES TO FOREIGN CORPORATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Thomas D. Beem
Phone: 202 622-3860

RIN: 1545–AY41

2906. SPECIAL RULES FOR S CORPORATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 301; 26 CFR 601

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: David A. Juster
Phone: 202 622-3850

Related RIN: Split From 1545-AP35, Related To 1545-AS88

RIN: 1545–AY44

2907. ELECTION—ASSETS ACQUISITIONS OF INSURANCE COMPANIES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	03/08/02	67 FR 10640
Public Hearing	09/18/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mark Weiss
Phone: 202 622-7790

Gary E. Geisler
Phone: 202 622-3970

RIN: 1545–AY49

2908. PREVIOUSLY TAXED EARNINGS AND PROFITS UNDER SUBPART F

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Jonathan A. Sambur
Phone: 202 622-3840

RIN: 1545–AY54

2909. TREATMENT OF COMMUNITY INCOME FOR CERTAIN INDIVIDUALS NOT FILING JOINT RETURNS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/22/02	67 FR 2841
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robin M. Tuczak
Phone: 202 622-4940

RIN: 1545–AY83

2910. CHARITABLE LEAD INTEREST

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	07/23/02	67 FR 48070
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Susan B. Hurwitz
Phone: 202 622-3090

RIN: 1545–AY86

2911. TRANSITIONAL RELIEF FOR QUALIFIED INTERMEDIARIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Laurie M. Hatten-Boyd
Phone: 202 622-3840

RIN: 1545–AY92

2912. PROCUREMENT/PURCHASING CARD REPORTING

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Donna J. Welch
Phone: 202 622-4910
Fax: 202 927-9248

RIN: 1545–BA17

2913. APPLICATION OF THE FEDERAL INSURANCE CONTRIBUTIONS ACT, FEDERAL UNEMPLOYMENT TAX ACT AND COLLECTION OF INCOME TAX AT SOURCE TO STATUTORY STOCK OPTIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

CFR Citation: 26 CFR 31

Timetable:

Action	Date	FR Cite
NPRM	11/13/01	66 FR 57023
Public Hearing	05/14/02	67 FR 5076
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen B. Tackney
Phone: 202 622-6040

RIN: 1545–BA26

2914. TRANSFERS OF C CORPORATION PROPERTY TO RICS OR REITS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/02/02	67 FR 48
Comment Period End	04/20/02	
Public Hearing	05/01/02	67 FR 1672
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Jennifer D. Sledge
Phone: 202 622-7750

RIN: 1545–BA36

2915. TREATMENT OF CERTAIN OBLIGATION-SHIFTING TRANSACTIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jeffrey L. Vinnik
Phone: 202 622-3840

RIN: 1545–BA41

2916. INFORMATION REPORTING FOR QUALIFIED TUITION AND RELATED EXPENSES; MAGNETIC MEDIA FILING REQUIREMENTS FOR INFORMATION RETURNS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1; 26 CFR 301

Timetable:

Action	Date	FR Cite
NPRM	06/29/02	67 FR 20923
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Donna J. Welch
Phone: 202 622-4910
Fax: 202 927-9248

RIN: 1545–BA43

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2917. COMPENSATORY STOCK OPTIONS UNDER SECTION 482

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Douglas L. Giblen
Phone: 202 874-1490

RIN: 1545–BA57

2918. REQUIRED DISTRIBUTIONS FROM RETIREMENT PLANS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	04/17/02	67 FR 18834
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cathy A. Vohs
Phone: 202 622-6090

Related RIN: Related To 1545-AY69, Related To 1545-AY70

RIN: 1545–BA60

2919. • CIRCULAR 230—TAX SHELTER AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 330

CFR Citation: 31 CFR 10

Legal Deadline: None

Abstract: These regulations propose amendments to the standards for tax opinions related to tax shelters.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-122379-02

Drafting attorney: Brinton T. Warren (202) 622-4940

Reviewing attorney: Richard S. Goldstein (202) 622-7820

Treasury attorney: Julian Kim (202) 622-1981

CC:P&A:APJP

Agency Contact: Brinton T. Warren, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4940

RIN: 1545–BA70

2920. • FOREIGN CORPORATIONS—TREATMENT OF DISTRIBUTIONS OR LIQUIDATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will revise section 367(e) of the Internal Revenue Code, relating to the treatment of distributions described in section 355 or liquidations under 332.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Reg-127380-02

Drafting attorney: Aaron A. Farmer (202) 622-3860

Reviewing attorney: Charles P. Besecky (202) 622-3860

CC:INTL

Agency Contact: Aaron A. Farmer, Senior Counsel, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3860

RIN: 1545–BA79

2921. • ALLOCATION AND APPORTIONMENT OF INTEREST EXPENSE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 864; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance with respect to methods of apportioning interest expense under section 864(e).

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-129447-01

Drafting attorney: Melissa D. Arndt (202) 622-3850

Reviewing attorney: Anne Devereaux (202) 622-3850

Treasury attorney: Michael Caballero (202) 622-0851

CC:INTL

Agency Contact: Melissa D. Arndt, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3850

Related RIN: Related To 1545-BA02

RIN: 1545–BA92

2922. • EARNINGS AND PROFITS ATTRIBUTION PRINCIPLES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will address the manner in which earnings and profits are attributed to shares under sections 1248 and 367.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG-135866-02

Drafting attorney: Mark R. Pollard (202) 622-3850

Reviewing attorney: Richard L. Chewning (202) 622-3850

CC:INTL

Agency Contact: Mark R. Pollard, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3850

RIN: 1545–BA93

2923. • GUIDANCE TO FACILITATE ELECTRONIC TAX ADMINISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will facilitate electronic tax administration.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-137243-02

Drafting attorney: Brinton T. Warren (202) 622-4940

Reviewing attorney: Judith Wall (202) 622-4940

Treasury attorney: Elizabeth Askey (202) 622-0224

CC:PA&APJP

Agency Contact: Brinton T. Warren, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4940

RIN: 1545–BA96

2924. • DISCLOSURE OF REPORTABLE TRANSACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance under section 6011 regarding disclosure of reportable transactions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-138618-02

Drafting attorney: Tara P. Volungis (202) 622-3080

Reviewing attorney: Christine Ellison (202) 622-3070

Treasury attorney: Julian Kim (202) 622-1981

CC:P&SI

Agency Contact: Tara P. Volungis, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3080

RIN: 1545–BB07

2925. • REGISTRATION OF REPORTABLE TRANSACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 6111

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation provides guidance under section 6111 regarding the registration of reportable transactions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-138621-02

Drafting attorney: Tara P. Volungis (202) 622-3080

Reviewing attorney: Christine Ellison (202) 622-3070

Treasury attorney: Julian Kim (202) 622-1981

CC:P&SI

Agency Contact: Tara P. Volungis, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3080

RIN: 1545–BB08

2926. • LIST MAINTENANCE REQUIREMENT FOR REPORTABLE TRANSACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 6112

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation provides guidance under section 6112 regarding the maintenance and furnishing of lists of investors in reportable transactions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-138624-02

Drafting attorney: Tara P. Volungis (202) 622-3080

Reviewing attorney: Christine Ellison (202) 622-3070

Treasury attorney: Julian Kim (202) 622-1981

CC:P&SI

Agency Contact: Tara P. Volungis, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3080

RIN: 1545–BB09

2927. • AUTHORIZATION FOR IRS TO CHARGE FEES FOR COPYING EXEMPT ORGANIZATION RETURNS

Priority: Info./Admin./Other

Legal Authority: 26 USC 6104

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The proposed regulation provides authorization for Internal Revenue Service to charge fees for copying Exempt Organization returns.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-142538-02

Drafting attorney: Sarah Tate (202) 622-4590

Reviewing attorney: Lynnette Platt (202) 622-4590

CC:P&A:DP&L

Agency Contact: Sarah Tate, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4590

Related RIN: Related To 1545-BB22

RIN: 1545–BB21

2928. • AUTHORIZATION FOR IRS TO CHARGE FEES FOR COPYING EXEMPT ORGANIZATIONS RETURNS (TEMPORARY)

Priority: Info./Admin./Other

Legal Authority: 26 USC 6104

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The temporary regulation provides authorization for Internal Revenue Service to charge fees for copying Exempt Organization returns.

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-142538-02

Drafting attorney: Sarah Tate (202) 622-4590

Reviewing attorney: Lynnette Platt (202) 622-4590

CC:P&A:DP&L

Agency Contact: Sarah Tate, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4590

Related RIN: Related To 1545-BB21

RIN: 1545–BB22

2929. • STRUCTURED SETTLEMENT FACTORING TRANSACTIONS (TEMPORARY)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 115

CFR Citation: 26 CFR 1; 26 CFR 602

Legal Deadline: None

Abstract: These regulations relate to section 5891 of Internal Revenue Code. Section 5891 imposes a 40 percent excise tax upon any person who acquires structured settlement payment rights in a structured settlement factoring transaction. These regulations provide the manner and method of reporting and paying the excise tax.

Timetable:

Action	Date	FR Cite
Temporary Regulations	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-139768-02

Drafting attorney: Shareen S. Pflanz (202) 622-4920

Reviewing attorney: Charles Strickland (202) 622-4960

CC:IT&A

Agency Contact: Shareen S. Pflanz, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4920

Related RIN: Related To 1545-BB14

RIN: 1545–BB24

2930. • ACCRUAL RULES FOR CREDITABLE FOREIGN TAXES AND GUIDANCE ON CHANGE IN TAXABLE YEAR

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These proposed regulations will clarify the rules for determining when a creditable foreign tax accrues and may be claimed as a credit, and will provide guidance for determining the allowable foreign tax credit upon a change in the U.S. taxable year.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG-144597-02

Drafting attorney: Margaret A. Hogan (202) 622-3850

Reviewing attorney: Barbara A. Felker (202) 622-3850

CC:INTL

Agency Contact: Margaret A. Hogan, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3850

RIN: 1545–BB27

2931. • TREATMENT OF SERVICES UNDER SECTION 482

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 482

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These proposed regulations would provide additional guidance under section 482 regarding services.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: REG-146893-02

Drafting attorney: Douglas L. Giblen (202) 874-1490

Reviewing attorney: John M. Breen (202) 874-1490

Treasury attorney: Rocco Femia (202) 622-1755

CC:INTL

Agency Contact: Douglas L. Giblen, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 950 L'Enfant Plaza SW, Washington, DC 20024
Phone: 202 874-1490

RIN: 1545–BB31

2932. ELECTING SMALL BUSINESS TRUST

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1; 26 CFR 602

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8994	05/14/02	67 FR 34388

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James A. Quinn
Phone: 202 622-3070

Bradford R. Poston
Phone: 202 622-3060

RIN: 1545–AU76

2933. REQUIRED DISTRIBUTIONS FROM QUALIFIED PLANS AND INDIVIDUAL RETIREMENT PLANS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8987	04/17/02	67 FR 18988

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cathy A. Vohs
Phone: 202 622-6090

Related RIN: Related To 1545-AY69, Related To 1545-AY70

RIN: 1545–AV82

2934. MIDDLEMAN REGULATION

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9010	07/26/02	67 FR 48754

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Nancy L. Rose
Phone: 202 622-4910

RIN: 1545–AW48

2935. RELIEF FROM JOINT AND SEVERAL LIABILITY ON JOINT RETURN

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9003	07/18/02	67 FR 47278

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles A. Hall
Phone: 202 622-4940

RIN: 1545–AW64

2936. INFORMATION REPORTING FOR PAYMENTS OF INTEREST ON EDUCATION LOANS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1; 26 CFR 301

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8992	04/29/02	67 FR 37671

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Donna J. Welch
Phone: 202 622-4910
Fax: 202 927-9248

RIN: 1545–AW67

2937. MODIFICATIONS AND ADDITIONS TO THE UNIFIED PARTNERSHIP AUDIT PROCEDURES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 301

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8965	10/04/01	66 FR 50541

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Horace Howells
Phone: 202 622-3050

RIN: 1545–AW86

2938. COMPROMISES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 301

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9007	07/23/02	67 FR 48025

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Frederick W. Schindler
Phone: 202 622-3620

RIN: 1545–AW88

2939. TRANSFER OF REMIC RESIDUAL INTEREST

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9004	07/19/02	67 FR 47451

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Courtney Shepardson
Phone: 202 622-3930

RIN: 1545–AW98

2940. CHANGE OF ANNUAL ACCOUNTING PERIOD

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8996	05/17/02	67 FR 35009

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael F. Schmit
Phone: 202 622-4960

RIN: 1545–AX15

2941. AGENT FOR THE CONSOLIDATED GROUP

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1; 26 CFR 602

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9002	06/28/02	67 FR 43538

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: George Robert Johnson
Phone: 202 622-7930
Fax: 202 622-6889

RIN: 1545–AX56

2942. EQUITY OPTIONS WITH FLEXIBLE TERMS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8990	04/29/02	67 FR 20896

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Pamela Lew
Phone: 202 622-3950
Fax: 202 622-5699

RIN: 1545–AX66

2943. CLARIFICATION OF ENTITY CLASSIFICATION RULES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 301

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9012	08/01/02	67 FR 49862

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Camille B. Evans
Phone: 202 622-3870

RIN: 1545–AX75

2944. DETERMINATION OF BASIS OF PARTNERS' INTEREST; SPECIAL RULES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8986	03/29/02	67 FR 15112

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Barbara MacMillan
Phone: 202 622-3050

RIN: 1545–AX94

2945. HEDGING TRANSACTIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1; 26 CFR 602

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8985	03/20/02	67 FR 12863

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth Handler
Phone: 202 622-3940

RIN: 1545–AY02

2946. REGULATIONS GOVERNING PRACTICE BEFORE THE INTERNAL REVENUE SERVICE

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 10

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9011	07/26/02	67 FR 48760

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Brinton T. Warren
Phone: 202 622-4940

RIN: 1545–AY05

2947. GUIDANCE FOR IMPOSING TAX LIABILITY ON FOREIGN PERSONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8999	06/12/02	67 FR 40157

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Karen Rennie Quarrie
Phone: 202 622-3880

RIN: 1545–AY13

2948. MID-CONTRACT CHANGE IN TAXPAYER

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1; 26 CFR 602

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8995	05/15/02	67 FR 34603

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John M. Aramburu
Phone: 202 622-4960

RIN: 1545–AY31

2949. GUIDANCE UNDER SUBPART F RELATING TO PARTNERSHIPS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9008	07/23/02	67 FR 48020

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jonathan A. Sambur
Phone: 202 622-3840

RIN: 1545–AY45

2950. GUIDANCE NECESSARY TO FACILITATE ELECTRONIC TAX ADMINISTRATION

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1; 26 CFR 301

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8989	04/24/02	67 FR 20028

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sara P. Shepherd
Phone: 202 622-4960

Related RIN: Related To 1545-AY04

RIN: 1545–AY56

2951. INSURANCE COMPANIES—TAX UNDER SUBCHAPTER L

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8993	05/07/02	67 FR 30547

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick E. White
Phone: 202 622-3920

RIN: 1545–AY60

2952. FOREIGN PARTNERS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9009	07/23/02	67 FR 48017

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Daniel Carmody
Phone: 202 622-3050

RIN: 1545–AY66

2953. NOTICE TO INTERESTED PARTIES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1; 26 CFR 601

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9006	07/19/02	67 FR 47454

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Pamela R. Kinard
Phone: 202 622-6060

RIN: 1545–AY68

2954. REQUIRED DISTRIBUTIONS FROM RETIREMENT PLANS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1; 26 CFR 54

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8987	04/17/02	67 FR 18988

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cathy A. Vohs
Phone: 202 622-6090

Related RIN: Related To 1545-AV82, Related To 1545-AY70

RIN: 1545–AY69

2955. REQUIRED DISTRIBUTIONS FROM RETIREMENT PLANS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1; 26 CFR 54

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8987	04/17/02	67 FR 18988

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cathy A. Vohs
Phone: 202 622-6090

Related RIN: Related To 1545-AY69, Related To 1545-AV82

RIN: 1545–AY70

2956. GUIDANCE UNDER SECTION 355(E); RECOGNITION OF GAIN ON CERTAIN DISTRIBUTIONS OF STOCK OR SECURITIES IN CONNECTION WITH AN AQUISITION

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8988	04/26/02	67 FR 20632

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Amber R. Cook
Phone: 202 622-7530

RIN: 1545–BA55

2957. DISCLOSURES OF RETURN INFORMATION TO OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF AGRICULTURE FOR CERTAIN STATISTICAL PURPOSES AND RELATED ACTIVITIES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 301

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9001	06/19/02	67 FR 41621

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joseph E. Conley
Phone: 202 622-4580

RIN: 1545–BA56

2958. MODIFICATION OF TAX SHELTER RULES III

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1; 26 CFR 301; 26 CFR 602

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9000	06/18/02	67 FR 41324

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Danielle M. Grimm
Phone: 202 622-3080

Tara P. Volungis
Phone: 202 622-3080

Related RIN: Related To 1545-AW26, Related To 1545-AX79, Related To 1545-AX81

RIN: 1545–BA62

2959. • TAXATION OF TAX-EXEMPT ORGANIZATION'S INCOME FROM CORPORATE SPONSORSHIP

Priority: Routine and Frequent

Legal Authority: 26 USC 965

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These final regulations provide that qualified sponsorship payments are not unrelated business taxable income. A qualified

sponsorship payment is defined as a payment of money, a transfer of property, or the performance of services, by any person engaged in a trade or business, where there is no arrangement or expectation that the person will receive an substantial return benefit in exchange for the payment. A substantial return benefit is defined as any benefit other than (1) use or acknowledgement of the payor's name or logo, or (2) certain goods or services that have an insubstantial value. Payments made for naming rights are considered qualified sponsorship payments; however, payments made for exclusive provider rights are not qualified sponsorship payments.

Timetable:

Action	Date	FR Cite
NPRM	03/01/00	65 FR 11012
Final Action Completed by TD 8991	04/25/02	67 FR 20433

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal, Federal

Additional Information: REG-209601-92

Drafting attorney: Barbara E. Beckman (202) 622-6080

Reviewing attorney: Stephanie Cohen (202) 622-6080 and Susan Brown (202) 622-0999

CC:TEGE

Agency Contact: Barbara E. Beckman, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6080

Related RIN: Related To 1545-AR19

RIN: 1545–BA68

2960. • LOSS LIMITATION RULES—AMENDED

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 337(d)

CFR Citation: 26 CFR 1; 26 CFR 602

Legal Deadline: None

Abstract: To clarify certain aspects of the temporary regulations relating to the deductibility of losses recognized on dispositions of subsidiary stock by members of a consolidated group.

Timetable:

Action	Date	FR Cite
Final Action Completed by TD 8998	05/31/02	67 FR 37998

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-123305-02

Drafting attorney: Lola L. Johnson (202) 622-7550

Reviewing attorney: Sean P. Duffley (202) 622-7530

CC:CORP

Agency Contact: Lola L. Johnson, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7550

Related RIN: Related To 1545-BA52, Related To 1545-BA51

RIN: 1545–BA74

2961. • CARRYBACK OF CONSOLIDATED NET OPERATING LOSSES TO SEPARATE RETURN YEARS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1502

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will harmonize the waiver election in section 1.1502-21(b)(3) with the amendments to IRC 172(b) in the Job Creation and Worker Assistance Act of 2002.

Timetable:

Action	Date	FR Cite
Final Action Completed by TD 8997	05/31/02	67 FR 38000

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-122564-02

Drafting and reviewing attorney: Marie Milnes-Vasquez (202) 622-7770

Treasury attorney: Audrey Nacamuli (202) 622-5721

CC:CORP

Agency Contact: Marie Milnes-Vasquez, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7770

Related RIN: Related To 1545-BA73

RIN: 1545–BA76

2962. • REFUND OF MISTAKEN CONTRIBUTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The final regulations provide guidance relating to the return of employer contributions or withdrawal liability payments from multi-employer plans.

Timetable:

Action	Date	FR Cite
NPRM	03/01/83	48 FR 10374
Final Action Completed by TD 9005	07/22/02	67 FR 47692

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-209481-80

Drafting attorney: John T. Ricotta (202) 622-6060

Reviewing attorney: Jerry Holmes (202) 622-6090

Treasury attorney: Harlan Weller (202) 622-1001

CC:TEGE

Agency Contact: John T. Ricotta, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6060

RIN: 1545–BA87

BILLING CODE 4830–01–S

2963. CAPITAL RULES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1462; 12 USC 1462a; 12 USC 1463; 12 USC 1464; 12 USC 1467a; 12 USC 1835; 12 USC 1848; 12 USC 4808

CFR Citation: 12 CFR 567

Legal Deadline: None

Abstract: OTS has underway a number of regulatory amendments to its capital standards for savings associations. These amendments implement section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA). CDRIA requires the Federal banking agencies to make their capital rules and other rules more uniform.

The agencies jointly issued a final rule that treats recourse obligations and direct credit substitutes consistently. The rule also adds new standards for the treatment of residual interests, including a concentration limit for credit-enhancing interest only strips. In addition, the rule varies the risk-based capital requirement for positions in securitized asset transactions according to relative risk exposure.

The agencies plan to issue a notice of proposed rulemaking (NPRM) that would introduce the domestic implementation of the New Basel Capital Accord (Basel II). This would include modifications to the current U.S. domestic capital framework, and an introduction to an advanced internal ratings-based (IRB) approach to credit risk.

Timetable:

Action	Date	FR Cite
Claims on Securities Firms		
NPRM	12/06/00	65 FR 76180
NPRM Comment Period End	01/22/01	
Final Rule	04/09/02	67 FR 16971
Implementation of a Revised Basel Capital Accord (formerly Modified Domestic Capital Framework)		
NPRM	06/00/03	
Recourse Arrangements and Direct Credit Substitutes/Residuals in Securitizations		
Recourse ANPRM	05/25/94	59 FR 27116
Recourse NPRM	05/25/94	59 FR 27116
Recourse NPRM	11/05/97	62 FR 59944
Recourse NPRM Correction	11/20/97	62 FR 62234
Recourse NPRM	03/08/00	65 FR 12320
Recourse NPRM Comment Period End	06/07/00	
Residuals NPRM	09/27/00	65 FR 57993
Residuals NPRM Comment Period End	12/26/00	
Recourse/Residuals Final Rule	11/29/01	66 FR 59614

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael D. Solomon, Senior Program Manager for Capital Policy, Supervision Policy, Department of the Treasury, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552
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Teresa Scott, Counsel (Banking and Finance), Department of the Treasury, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552
Phone: 202 906-6478
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Email: teresa.scott@ots.treas.gov

David Riley, Project Manager for Capital Policy, Supervision Policy, Department of the Treasury, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552
Phone: 202 906-6669

RIN: 1550–AB11

2964. FAIR CREDIT REPORTING

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1462a; 12 USC 1463; 12 USC 1464; 12 USC 1467a; 12 USC 1828; ...

CFR Citation: 12 CFR 571

Legal Deadline: Final, Statutory, May 12, 2000.

Abstract: OTS and the other Federal banking agencies are developing regulations implementing provisions of the Fair Credit Reporting Act. Subject to certain conditions, these regulations would permit institutions to share "other information" with affiliates without becoming consumer reporting agencies (affiliate sharing). The proposed regulations would specify that institutions must provide notice and an opportunity to opt-out to consumers before sharing "other information" with their affiliates.

The agencies have analyzed the comments received and are now in the process of developing a revised notice of proposed rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	10/20/00	65 FR 63120
NPRM Comment Period End	12/04/00	
NPRM Update	03/27/01	66 FR 16624
Second NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cindy Baltierra, Program Analyst, Compliance Policy, Department of the Treasury, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552
Phone: 202 906-6540

Paul Robin, Special Counsel, Department of the Treasury, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552
Phone: 202 906-6648

RIN: 1550–AB33

2965. RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS; FIDUCIARY POWERS OF SAVINGS ASSOCIATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1462a; 12 USC 1463; 12 USC 1464

CFR Citation: 12 CFR 550; 12 CFR 551

Legal Deadline: None

Abstract: OTS issued a proposed rule adopting new recordkeeping and confirmation requirements for securities transactions. This rule would afford thrift customers the same protections and disclosures as bank customers; ensure that OTS examiners will be able to evaluate a thrift's compliance with securities laws and to assess whether thrifts effect securities transactions safely and soundly; and provide savings associations with formal guidance for effecting securities transactions. The proposed rule would

TREAS—OTS **Final Rule Stage**

amend OTS's regulations governing the fiduciary powers of Federal savings associations to codify recent OTS interpretive letters and make other changes.

Timetable:

Action	Date	FR Cite
NPRM	06/11/02	67 FR 39886
NPRM Comment Period End	08/12/02	
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Timothy Leary, Counsel (Banking and Finance), Regulations and Legislation Division, Department of the Treasury, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552
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Phone: 202 906-5636

RIN: 1550–AB49

2966. • REGULATORY REPORTING STANDARDS: QUALIFICATIONS FOR INDEPENDENT PUBLIC ACCOUNTS PERFORMING AUDIT SERVICES FOR VOLUNTARY AUDIT FILERS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1463

CFR Citation: 12 CFR 562

Legal Deadline: None

Abstract: The Office of Thrift Supervision (OTS) is adopting an interim final rule that amends its annual independent audit requirements for small, nonpublic, highly rated savings associations that voluntarily obtain independent audits. OTS is eliminating the requirement that the public accountant performing the voluntary audits comply with the independent requirements and interpretations of the Securities and Exchange Commission and its staff. This change will make OTS' requirements more consistent with those of the other Federal banking agencies and will avoid the potential regulatory burden that could otherwise result from other regulatory action.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Teresa Scott, Counsel (Banking and Finance), Department of the Treasury, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552
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Christine Smith, Project Manager (Supervision Policy), Department of the Treasury, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552
Phone: 202 906-5740

RIN: 1550–AB54

Department of the Treasury (TREAS)
Office of Thrift Supervision (OTS) **Long-Term Actions**

2967. DIRECTORS AND OFFICERS

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 545; 12 CFR 563

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robyn Dennis
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David A. Permut
Phone: 202 906-7505

Karen Osterloh
Phone: 202 906-6639

RIN: 1550–AB19

2968. COMMUNITY REINVESTMENT ACT

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 563e

Timetable:

Action	Date	FR Cite
Joint ANPRM	07/19/01	66 FR 37602
Joint ANPRM Comment Period End	10/17/01	
Joint NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Richard Bennett
Phone: 202 906-7409

Theresa A. Stark
Phone: 202 906-7054

Celeste Anderson
Phone: 202 906-7990

RIN: 1550–AB48

Department of the Treasury (TREAS)
Office of Thrift Supervision (OTS) **Completed Actions**

2969. MUTUAL SAVINGS ASSOCIATIONS, MUTUAL HOLDING COMPANY REORGANIZATIONS, AND CONVERSIONS

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 563b; 12 CFR 575

Completed:

Reason	Date	FR Cite
Second NPRM	04/09/02	67 FR 17228
Second NPRM Comment Period End	05/09/02	
Final Rule	08/09/02	67 FR 52010

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Mary Jo Johnson
Phone: 202 906-5739

David A. Permut
Phone: 202 906-7505

RIN: 1550–AB24

2970. CAPITAL: QUALIFYING MORTGAGE LOAN, INTEREST RATE RISK COMPONENT, AND MISCELLANEOUS CHANGES

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 567

Completed:

Reason	Date	FR Cite
Final Rule	05/10/02	67 FR 31722

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Teresa Scott
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David Riley
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Michael D. Solomon
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RIN: 1550–AB45

2971. ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT; PREEMPTION

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 560

Completed:

Reason	Date	FR Cite
NPRM	04/25/02	67 FR 20468
Final Rule	09/26/02	67 FR 60542

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Theresa A. Stark
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Karen Osterloh
Phone: 202 906-6639

RIN: 1550–AB51

BILLING CODE 6720–01–S

[FR Doc. 02–26339 Filed 12–06–02; 8:45 am]

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December 9, 2002

Part XVI

Department of Veterans Affairs

Semiannual Regulatory Agenda

DEPARTMENT OF VETERANS AFFAIRS (VA)

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Ch. I

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Department of Veterans Affairs.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda announces the regulations that the Department of Veterans Affairs (VA) will have under development or review during the 12-month period beginning October 2002. The purpose in publishing the Department's regulatory agenda is to allow all interested persons the opportunity to participate in VA's regulatory planning.

ADDRESSES: Interested persons are invited to comment on the entries listed in the agenda by contacting the individual agency contact listed for each entry or by writing to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Gloria Armstrong at (202) 273-8605.

SUPPLEMENTARY INFORMATION: This document is issued pursuant to Executive Order 12866 "Regulatory Planning and Review" (and implementing guidance) and the Regulatory Flexibility Act, which require that executive agencies semiannually publish in the **Federal Register** an agenda of regulations that VA will have under development or review. For this edition of the Department of Veterans Affairs regulatory agenda, VA's most important significant regulatory action is included in The Regulatory Plan.

Roland Halstead,

Acting Director, Office of Regulatory Law.

Department of Veterans Affairs—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2972	Waivers	2900-AK29
2973	Payment for Non-VA Physician Services Associated With Either Outpatient or Inpatient Care Provided at Non-VA Facilities	2900-AK94
2974	Reasonable Charges for Medical Care or Services	2900-AL06
2975	VA Homeless Providers Grant and Per Diem Program Regulations	2900-AL30
2976	Schedule for Rating Disabilities—The Musculoskeletal System	2900-AE91
2977	Schedule for Rating Disabilities—Neurological Conditions and Convulsive Disorders	2900-AF23
2978	Schedule for Rating Disabilities—Digestive System	2900-AF24
2979	Schedule for Rating Disability: The Spine	2900-AJ60
2980	Education Provisions of the Veterans Programs Enhancement Act of 1998	2900-AJ68
2981	Definition of Psychosis for Certain VA Purposes	2900-AK21
2982	Additional Disability or Death Due to Hospital Care, Medical or Surgical Treatment, Examination, Training and Rehabilitation Services, or Compensated Work Therapy Program	2900-AK77
2983	Tuition Assistance Top Up, Licensing and Certification, and Duty To Assist	2900-AK80
2984	Veterans Education: Additional Opportunity To Participate in the Montgomery GI Bill and Other Miscellaneous Issues	2900-AK81
2985	Schedule for Rating Disabilities; Evaluation of Tinnitus	2900-AK86
2986	Accelerated Payments Under the Montgomery GI Bill—Active Duty Program	2900-AL22
2987	Amendments to Training and Rehabilitation Programs	2900-AL24
2988	Schedule for Rating Disabilities; Malignant Neoplasms	2900-AL27
2989	Schedule for Rating Disabilities; Evaluation of Multiple Scars	2900-AL32
2990	Presumption of Service Connection for Cirrhosis of the Liver in Former Prisoners of War	2900-AL36
2991	Effective Dates of Benefits for Disability or Death Caused by Herbicide Exposure; Disposition of Unpaid Benefits After Death of Beneficiary	2900-AL37
2992	Administration of VA Education Benefits—Centralized Certification	2900-AL43
2993	Universal Product Numbers (UPNs)	2900-AJ45
2994	Department of Veterans Affairs Acquisition Regulations Plain Language Rewrite	2900-AK78
2995	State Cemetery Grants: Aid to States for Establishment, Expansion, and Improvement of Veterans Cemeteries	2900-AH46
2996	Standards for Collection, Compromise, Suspension, or Termination of Collection Effort; Regional Office Committee on Waiver and Compromises	2900-AK10
2997	Audits of States, Local Governments, and Nonprofit Organizations; Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations	2900-AJ62
2998	Privacy Act of 1974—Exemption of Police and Security Records	2900-AL33

VA

Department of Veterans Affairs—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2999	Provision of Drugs and Medicines Prescribed by Non-VA Physicians	2900-AJ24
3000	Advanced Health Care Planning	2900-AJ28
3001	Provision of Drugs and Medicines to Certain Veterans in State Nursing Homes	2900-AJ34
3002	Grants to States for Construction and Acquisition of State Home Facilities	2900-AJ43
3003	Payment or Reimbursement for Emergency Treatment Furnished at Non-VA Facilities **(Reg Plan Seq No. 114)**	2900-AK08
3004	Reasonable Charges for Medical Care or Services	2900-AK39
3005	Reasonable Charges for Medical Care or Services	2900-AK73
3006	Health Care for Children Born With One or More Covered Birth Defects to Vietnam Veterans	2900-AK88
3007	Civilian Health and Medical Program of Department of Veterans Affairs (CHAMPVA)	2900-AK89
3008	Fisher Houses and Other Temporary Lodging	2900-AL13
3009	Copayments for Inpatient Hospital Care Under Geographic Means Test	2900-AL35
3010	Priorities for Outpatient Medical Services and Inpatient Hospital Care	2900-AL39
3011	Total Disability Evaluations Based on Inability of the Individual To Engage in Substantially Gainful Employment	2900-AH21
3012	Schedule for Rating Disabilities; The Eye	2900-AH43
3013	Claims Based on Aggravation of Nonservice-Connected Disability	2900-AI42
3014	Exclusions From Income and Net Worth Computations	2900-AJ52
3015	State Department as Agent of Department of Veterans Affairs	2900-AK03
3016	Governmentwide Debarment and Suspension (Nonprocurement) and Requirement for Drug-Free Workplace (Assistance)	2900-AK16
3017	Finality of Decisions	2900-AK18
3018	Renouncement of Benefits	2900-AK23
3019	Independent Medical Opinions	2900-AK31
3020	Evidence From Foreign Countries	2900-AK37
3021	Filipino Veterans Benefit Improvements	2900-AK65
3022	Loan Guaranty: Pre-Purchase Counseling Requirements	2900-AK76
3023	Vocational Training for Certain Children of Vietnam Veterans—Covered Birth Defects and Spina Bifida	2900-AK90
3024	Time Limit for Request for De Novo Review	2900-AK97
3025	Extension of the Presumptive Period for Compensation for Gulf War Veterans' Undiagnosed Illnesses	2900-AK98
3026	Plain Language (Reader Focused Writing) Initiative; National Service Life Insurance (NSLI)	2900-AL09
3027	Exceptions to Definition of Date of Receipt Based on Special or Unforeseen Circumstances	2900-AL12
3028	Increase in Rates Payable Under the Montgomery GI Bill—Active Duty and Survivors' and Dependents' Educational Assistance Program	2900-AL17
3029	Service Connection by Presumption of Aggravation of a Chronic Preexisting Disease; Presumption of Herbicide Exposure	2900-AL20
3030	Loan Guaranty: Implementation of Public Law 107-103	2900-AL23
3031	Schedule for Rating Disabilities; Guidelines for Application of Evaluation Criteria for Certain Respiratory and Cardiovascular Conditions; Evaluation of Hypertension With Heart Disease	2900-AL26
3032	Veterans Education: Veterans Education and Benefits Expansion Act of 2001	2900-AL28
3033	Compensation and Pension Provisions of the Veterans Education and Benefits Expansion Act of 2001	2900-AL29
3034	Independent Study Approved for Certificate Programs and Other Miscellaneous Issues	2900-AL34
3035	Testimony Certified or Under Oath	2900-AL38
3036	Increase in Rates Payable Under the Montgomery GI Bill—Selective Reserve	2900-AL41
3037	Department of Veterans Affairs Acquisition Regulation—Simplified Acquisition Procedures for Health Care Resources	2900-AI71
3038	Sealed Bidding and Competitive Proposals	2900-AI99
3039	The Board of Veterans' Appeals; Rules of Practice—Motion for Review of Decisions on Grounds of Clear and Unmistakable Error: Content of Record; Advancement on the Docket	2900-AJ85
3040	Rules of Practice: Medical Opinions From the Veterans Health Administration	2900-AK52
3041	Appeals Regulations: Title for Members of the Board of Veterans Appeals	2900-AK62
3042	Board of Veterans' Appeals: Rules of Practice—Appeal Withdrawal	2900-AK71
3043	Board of Veterans' Appeals: Speeding Appellate Review for Aging Veterans	2900-AL08
3044	Board of Veterans' Appeals Rules of Practice: Use of Supplemental Statement of the Case	2900-AL42
3045	Eligibility for Burial of Dependent Adult Children of Eligible Veterans; and Eligibility for Burial of Certain Filipino Veterans	2900-AI95
3046	Headstone and Marker Application Required	2900-AL40
3047	Nondiscrimination on the Basis of Race, Color, or National Origin; Handicap; and Age in Programs and Activities Receiving Federal Assistance	2900-AK13
3048	Release of Information From Department of Veterans Affairs Records	2900-AH98
3049	Recognition of Organizations and Accreditation of Representatives	2900-AI93

VA

Department of Veterans Affairs—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
3050	Referral of Information Regarding Criminal Violations	2900-AL31

References in boldface appear in the **Regulatory Plan** in part II of this issue of the **Federal Register**.

Department of Veterans Affairs—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3051	Protection of Human Subjects	2900-AJ08
3052	Appeals Regulations; Rules of Practice	2900-AE78

Department of Veterans Affairs—Completed Actions

Sequence Number	Title	Regulation Identification Number
3053	Medical Benefits Package; Copayments for Extended Care Services	2900-AK32
3054	Enrollment—Provision of Hospital and Outpatient Care to Veterans	2900-AK38
3055	Copayments for Inpatient Hospital Care and Outpatient Medical Care	2900-AK50
3056	Filipino Veterans Eligible for Hospital Care, Nursing Home Care, and Medical Services	2900-AL18
3057	Schedule for Rating Disabilities—The Skin	2900-AF00
3058	Revised Definition of Net Value and Revised Criteria for Pre-Foreclosure Debt Waivers	2900-AG20
3059	Evidence on File at Date of Death	2900-AH42
3060	Intervertebral Disc Syndrome	2900-AI22
3061	Ankylosis and Limitation of Motion of Digits of the Hands	2900-AI44
3062	Accelerated Benefits Option for Servicemembers' Group Life Insurance and Veterans' Group Life Insurance	2900-AJ80
3063	National Service Life Insurance	2900-AK43
3064	Veterans Vocational Rehabilitation and Education: Title Change	2900-AK46
3065	Monetary Allowances for Certain Children of Vietnam Veterans; Identification of Covered Birth Defects	2900-AK67
3066	Recoupment of Nondisability Severance Pay From VA Compensation	2900-AK95
3067	Increase in Rates Payable Under the Educational Assistance Test Program	2900-AL02
3068	Adjudication, Fiduciary Activities—Nomenclature Changes	2900-AL10
3069	Cross Reference Change in Forms To Be Furnished	2900-AL19
3070	Duty Periods; Inactive Duty for Training	2900-AL21
3071	Construction and Architect-Engineer Contracts	2900-AJ56
3072	Board of Veterans' Appeals—Rules of Practice—Attorney Fee Matters	2900-AI98
3073	Board of Veterans Appeals: Rules of Practice—Effect of Procedural Defects in Motions for Revision of Decisions on Grounds of Clear and Unmistakable Error	2900-AK74
3074	Board of Veterans' Appeals: Rules of Practice—Attorney Fee Matters; Notice of Disagreement Matters	2900-AL25
3075	Prohibition of Interment or Memorialization in National Cemeteries and Certain State Cemeteries Due to Capital Crimes	2900-AJ77

Department of Veterans Affairs—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
2900-AD48	Operation of Child Care Centers at VA Facilities	07/30/2002	Withdrawn
2900-AK58	Loan Guaranty: Multifamily Transitional Housing for Homeless Veterans Program	08/13/2002	Withdrawn
2900-AK75	Veterans Affairs Acquisition Regulation: Revisions to VA Acquisition Regulations Parts 801 Through 805	08/16/2002	Withdrawn
2900-AK92	Enrollment Decision Levels—Provision of Hospital and Outpatient Care to Veterans	06/21/2002	Withdrawn
2900-AL05	Reasonable Charges for Medical Care or Services	09/13/2002	Withdrawn

VA

Department of Veterans Affairs—Discontinued Entries (Continued)

Regulation Identification Number	Title	Date	Comments
2900-AL16	Loan Guaranty: Availability of Vendee Financing for VA-Acquired Properties	10/08/2002	Withdrawn

Department of Veterans Affairs (VA) — **Proposed Rule Stage**

VETERANS HEALTH ADMINISTRATION

2972. WAIVERS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 1722A; PL 106-117

CFR Citation: 38 CFR 17.105

Legal Deadline: None

Abstract: The purpose of this document is to provide regulations to formally establish the waiver process for veterans' copayments.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2900–AK29

2973. PAYMENT FOR NON-VA PHYSICIAN SERVICES ASSOCIATED WITH EITHER OUTPATIENT OR INPATIENT CARE PROVIDED AT NON-VA FACILITIES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501

CFR Citation: 38 CFR 17.56

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs (VA) medical regulations concerning payment for non-VA physician services that are associated with either outpatient or inpatient care provided to eligible VA beneficiaries at non-VA facilities. Currently, 38 CFR 17.56 requires all VA facilities to reimburse for non-VA physician services based upon the Centers for Medicare and Medicaid Services (CMS) physician fee schedule in effect at the time the services are provided. However, it has been determined that special circumstances exist in the State of Alaska. Since a large portion of VA health care provided in Alaska is obtained from non-VA sources, this could negatively impact the quality of care provided veterans living in that State. Therefore, to ensure that the amounts paid to physicians better represent the local cost to furnish a service and to achieve program cost reduction, VA is proposing through this document that an Alaska-specific payment methodology be established for inpatient and outpatient non-VA physician services with that State.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rex Gilmore, Health Administration Service (10C3), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-8300

RIN: 2900–AK94

2974. REASONABLE CHARGES FOR MEDICAL CARE OR SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 1721; 38 USC 1729

CFR Citation: 38 CFR 17.101

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs (VA) medical regulations concerning "reasonable charges" for medical care or services provided or furnished by VA to veterans for nonservice-connected disabilities. This document amends the regulations to revise the charge structure and update other provisions for the purpose of providing more precise charges.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Cleaver, Chief Business Office (161), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
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Related RIN: Related To 2900-AJ30, Related To 2900-AK39, Related To 2900-AK73

RIN: 2900–AL06

2975. • VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 2011; PL 107-95

CFR Citation: 38 CFR 17; 38 CFR 61

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs medical regulations concerning the VA Homeless Providers Grant and Per Diem Program to implement the provisions of the Homeless Veterans

Comprehensive Assistance Act of 2001 (HVCAA).

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roger J. Casey, Mental Health and Behavioral Science Program, Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AL30

VETERANS BENEFITS ADMINISTRATION

2976. SCHEDULE FOR RATING DISABILITIES—THE MUSCULOSKELETAL SYSTEM

Priority: Other Significant

Legal Authority: 38 USC 1155

CFR Citation: 38 CFR 4.71(a)

Legal Deadline: None

Abstract: This document proposes to amend the Department of Veterans Affairs Schedule for Rating Disabilities that addresses musculoskeletal conditions. The intended effect is to update this portion of the rating schedule to ensure that it uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review. We also propose to make nonsubstantive editorial changes throughout this portion of the Schedule.

Timetable:

Action	Date	FR Cite
ANPRM	12/28/90	55 FR 53315
ANPRM Comment Period End	02/26/91	
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Caroll McBrine, Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7211

RIN: 2900–AF23

2977. SCHEDULE FOR RATING DISABILITIES—NEUROLOGICAL CONDITIONS AND CONVULSIVE DISORDERS

Priority: Other Significant

Legal Authority: 38 USC 1155

CFR Citation: 38 CFR 4.120; 38 CFR 4.121; 38 CFR 4.122; 38 CFR 4.123; 38 CFR 4.124; 38 CFR 4.124a

Legal Deadline: None

Abstract: These amendments will contain additions, deletions, and revisions of terminology resulting from a systematic review of the medical criteria used to evaluate disabilities of the neurological system.

Timetable:

Action	Date	FR Cite
ANPRM	05/02/91	56 FR 20169
ANPRM Comment Period End	07/01/91	
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Caroll McBrine, Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7211

RIN: 2900–AE91

2978. SCHEDULE FOR RATING DISABILITIES—DIGESTIVE SYSTEM

Priority: Other Significant

Legal Authority: 38 USC 1155

CFR Citation: 38 CFR 4.114

Legal Deadline: None

Abstract: These amendments will contain additions, deletions, and revisions of terminology resulting from a systematic review of the medical criteria used to evaluate disabilities of the digestive system.

Timetable:

Action	Date	FR Cite
ANPRM	05/02/91	56 FR 20168
ANPRM Comment Period End	07/01/91	
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Caroll McBrine, Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7211

RIN: 2900–AF24

2979. SCHEDULE FOR RATING DISABILITY: THE SPINE

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 1155

CFR Citation: 38 CFR 4.71a

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs Schedule for Rating Disabilities by revising that portion of the Musculosketetal System that addresses disabilities of the spine. The intended effect of this action is to update this portion of the rating schedule to ensure that it uses current medical terminology and unambiguous criteria and that it reflects medical advances that have occurred since the last review.

Timetable:

Action	Date	FR Cite
NPRM	09/04/02	67 FR 56509
NPRM Comment Period End	11/04/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Caroll McBrine, Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7211

RIN: 2900–AJ60

2980. EDUCATION PROVISIONS OF THE VETERANS PROGRAMS ENHANCEMENT ACT OF 1998

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 16136; 38 USC 3034; 38 USC 3241; 38 USC 3485; 38 USC 3537; 38 USC 3677; 38 USC 3684; 38 USC 5101

CFR Citation: 38 CFR 21.4145; 38 CFR 21.4200; 38 CFR 21.4206; 38 CFR 21.4262

Legal Deadline: None

Abstract: This rule will bring VA's educational assistance regulations into agreement with the Veterans Program Enhancement Act of 1998. This will include revising the calculation of the reporting fee paid to educational institutions; making advance payments to work-study students optional rather than mandatory; and revising the approval criteria for on-job training programs offered by the Federal Government or by State or local governments. This rule is being amended to reflect additional work study opportunities provided under the Veterans Education and Benefits Expansion Act of 2001.

Timetable:

Action	Date	FR Cite
NPRM	10/11/02	67 FR 63352
NPRM Comment Period End	12/10/02	
Final Action	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AK21

2981. DEFINITION OF PSYCHOSIS FOR CERTAIN VA PURPOSES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a)

CFR Citation: 38 CFR 3.384

Legal Deadline: None

Abstract: This document proposes to amend the Department of Veterans Affairs adjudication regulations to define the term "psychosis." The term is used but not defined in certain statutes that provide presumptive service connection for compensation or health care purposes.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William G. Susling Jr., Assistant Director for Policy and Program Development (225), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AJ68

2982. ADDITIONAL DISABILITY OR DEATH DUE TO HOSPITAL CARE, MEDICAL OR SURGICAL TREATMENT, EXAMINATION, TRAINING AND REHABILITATION SERVICES, OR COMPENSATED WORK THERAPY PROGRAM

Priority: Other Significant

Legal Authority: 38 USC 1151

CFR Citation: 38 CFR 3.358; 38 CFR 3.800

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations concerning awards of compensation or dependency and indemnity compensation for additional disability or death caused by VA hospital care, medical or surgical treatment, examination, training and rehabilitation services, or compensated work therapy (CWT) program. Under the proposed amendment, benefits will be payable for additional disability or death caused by hospital care, medical or surgical treatment, or examination only if VA is at fault or "an event not reasonably foreseeable" proximately caused the disability or death. Benefits will also be payable for additional disability or death proximately caused by VA's provision of training and rehabilitation services or CWT program.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Beth McCoy, Consultant, Regulations Staff, Compensation and Pension Service (211A), Department of Veterans Affairs, Veterans Benefit Administration, 111 W. Huron Street, Room 22, Buffalo, NY 14202
Phone: 716 551-4842

RIN: 2900–AK77

2983. TUITION ASSISTANCE TOP UP, LICENSING AND CERTIFICATION, AND DUTY TO ASSIST

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 3014; 38 USC 3015; 38 USC 3034; 38 USC 3241; 38 USC 3471; 38 USC 3513; 38 USC 3501

CFR Citation: 38 CFR 21.1029 to 21.1033; 38 CFR 21.4005; 38 CFR 21.4008; 38 CFR 21.4009; 38 CFR 21.4146

Legal Deadline: None

Abstract: Regulations implementing provisions of the Veterans Benefits and Health Care Improvement Act of 2000, Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, and the Veterans Claims Assistance Act of 2000 that affect VA education benefits programs. These provisions include payment under Survivors' and Dependents' Educational Assistance Program, Post-Vietnam Era Veterans Educational Assistance Program, and The Montgomery GI Bill-Active Duty Program for the costs of taking tests needed to obtain a license or certification. They also include payment of benefits under the Montgomery GI Bill-Active Duty Program of the difference between the portion of tuition and fees covered by the tuition assistance program administered by the various military departments and the actual charges made by an educational institution. The proposed rule also establishes clear guidelines consistent with the intent of Congress regarding the timing and scope of assistance VA will provide to a claimant who files a substantially complete application for benefits under

any of the education programs VA administers or who tries to reopen a previously denied claim.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AK80

2984. VETERANS EDUCATION: ADDITIONAL OPPORTUNITY TO PARTICIPATE IN THE MONTGOMERY GI BILL AND OTHER MISCELLANEOUS ISSUES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 3011 to 3012; 38 USC 3015; 38 USC 3018C; 38 USC 3080; 38 USC 16132

CFR Citation: 38 CFR 21.4138; 38 CFR 21.7020; 38 CFR 21.7042; 38 CFR 21.7136; 38 CFR 21.7540

Legal Deadline: None

Abstract: The Veterans Benefits and Health Care Improvement Act of 2000 affects the Montgomery GI Bill—Active Duty and the Montgomery GI Bill—Selected Reserve. These include providing an opportunity for some service members to participate in the Montgomery GI Bill—Active Duty; repealing the requirement that only the initial period of active duty be considered in determining eligibility for the Montgomery GI Bill—Active Duty; increasing the Montgomery GI Bill—Active Duty for those who contribute additional money; and changing the rules for determining when benefits may be paid during the interval between terms. The regulations governing Montgomery GI Bill will be revised accordingly.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AK81

2985. SCHEDULE FOR RATING DISABILITIES; EVALUATION OF TINNITUS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 1155

CFR Citation: 38 CFR 4.87 (Diagnostic Code 6260)

Legal Deadline: None

Abstract: This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities to state more explicitly the method of evaluation of tinnitus under diagnostic code 6260 in that portion of the rating schedule that addresses evaluation of disabilities of the ear. The intended effect of this action is to codify current standard VA practice by stating that recurrent tinnitus will be assigned only a single 10-percent evaluation, whether it is perceived in one ear, both ears, or somewhere in the head.

Timetable:

Action	Date	FR Cite
NPRM	09/19/02	67 FR 59033
NPRM Comment Period End	11/18/02	
Final Action	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: RIN 2900-AK86 withdrawn

Agency Contact: Caroll McBrine, Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7211

RIN: 2900–AK86

2986. ACCELERATED PAYMENTS UNDER THE MONTGOMERY GI BILL—ACTIVE DUTY PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 3013, 3014A; 38 USC 3034; 38 USC 3452; 38 USC 3501; 38 USC 3684

CFR Citation: 38 CFR 21.4000; 38 CFR 21.7020; 38 CFR 21.7076; 38 CFR 21.7140; 38 CFR 21.7142

Legal Deadline: None

Abstract: This document amends the education regulations governing various aspects of the educational assistance programs the Department of Veterans Affairs administers in order to implement some of the provisions of the Veterans Education and Benefits Expansion Act of 2001. These provisions include accelerated payments to individuals under the Montgomery GI Bill—Active Duty program who are enrolled in approved training programs that lead to employment in high tech industries and whose charged tuition and fees exceed an amount equal to 200 percent of the monthly basic rate of educational assistance otherwise payable. This document also amends the regulation defining educational institution to include certain private technology industries.

Timetable:

Action	Date	FR Cite
NPRM	09/11/02	67 FR 57543
NPRM Comment Period End	11/12/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AL22

2987. AMENDMENTS TO TRAINING AND REHABILITATION PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 3100 to 3121; PL 102-568; PL 104-275; PL 106-419; PL 107-103

CFR Citation: 38 CFR 21, subpart A

Legal Deadline: None

Abstract: This complete revision of 38 CFR 21 (subpart A) implements changes to the chapter 31 Vocational Rehabilitation and Employment Program. Substantive changes are required under the several public laws that this revision implements. This revision also implements a number of decisions by the U.S. Court of Appeals for Veterans Claims. The following changes are representative of the changes proposed: Authorizes increases in subsistence allowance; extends eligibility for vocational rehabilitation and employment to veterans with 10 percent service-connected conditions under certain circumstances; amends chapter 31 entitlement criteria; redefines employment handicap and serious employment handicap; changes requirements for an independent living program; requires veterans who complete training to actively participate in a job search to receive an employment adjustment allowance; prohibits benefits to fugitive felons; authorizes extensions of the period of chapter 31 eligibility and restoration of entitlement used by certain reservists recalled to active duty; and increases the limit on the number of new entrants into an independent living program in a fiscal year. This revision streamlines administrative procedures and clarifies the intent of the governing sections of title 38, United States Code. In addition, this revision also implements regulatory reform and plain-language English.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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Related RIN: Merged With 2900-AG00

RIN: 2900–AL24

2988. • SCHEDULE FOR RATING DISABILITIES; MALIGNANT NEOPLASMS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 1155

CFR Citation: 38 CFR 4

Legal Deadline: None

Abstract: This amendment would raise the criteria for evaluating malignant neoplasms throughout the rating schedule in order to assure that they reflect the effect of current treatment methods to ensure that veterans with malignant neoplasms receive fair and consistent evaluations.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Caroll McBrine, Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7211

RIN: 2900–AL27

2989. • SCHEDULE FOR RATING DISABILITIES; EVALUATION OF MULTIPLE SCARS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 115

CFR Citation: 38 CFR 4.118

Legal Deadline: None

Abstract: This amendment would clarify the method of evaluating multiple scars in a uniform and consistent manner.

Timetable:

Action	Date	FR Cite
NPRM	10/29/02	67 FR 65915
NPRM Comment Period End	12/30/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Caroll McBrine, Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7211

RIN: 2900–AL32

2990. • PRESUMPTION OF SERVICE CONNECTION FOR CIRRHOSIS OF THE LIVER IN FORMER PRISONERS OF WAR

Priority: Other Significant

Legal Authority: 38 USC 501(a); 38 USC 1112(b)

CFR Citation: 38 CFR 3.309(c)

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations concerning presumptive service connection for certain diseases. The proposed amendment would add cirrhosis of the liver to the list of diseases for which entitlement to service connection is presumed for former prisoners of war (POWs). The intended effect is to make it easier for former POWs to obtain compensation benefits for cirrhosis based on scientific and medical research showing a higher risk of death from cirrhosis in former POWs than in the general population.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Beth McCoy, Consultant, Regulations Staff, Compensation and Pension Service (211A), Department of Veterans Affairs, Veterans Benefit Administration, 111 W. Huron Street, Room 22, Buffalo, NY 14202
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Related RIN: Previously reported as 2900-AK86

RIN: 2900–AL36

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2991. • EFFECTIVE DATES OF BENEFITS FOR DISABILITY OR DEATH CAUSED BY HERBICIDE EXPOSURE; DISPOSITION OF UNPAID BENEFITS AFTER DEATH OF BENEFICIARY

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a)

CFR Citation: 38 CFR 3.816

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations concerning certain awards of disability compensation and dependency and indemnity compensation (DIC). Under the proposed amendment, certain awards of disability compensation or DIC made pursuant to liberalizing regulations concerning diseases presumptively associated with herbicide exposure may be made effective retroactive to the date of the claim or the date of a previously denied claim, even if such date is earlier than the effective date of the regulation establishing the presumption. The proposed rule also provides that VA may pay to certain survivors or the estate of a deceased beneficiary any amounts the beneficiary was entitled to receive under the effective-date provisions of this proposed rule, but which were not paid prior to the beneficiary's death. This amendment is necessary to reflect the requirements of court orders in a class-action case.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Barrans, Staff Attorney (022), Department of Veterans Affairs, Office of General Counsel, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-6332

RIN: 2900–AL37

2992. • ADMINISTRATION OF VA EDUCATION BENEFITS—CENTRALIZED CERTIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 3672; 38 USC 3675; 38 USC 3676

CFR Citation: 38 CFR 21.4266

Legal Deadline: None

Abstract: This document proposes to amend VA education regulations to allow educational institutions to centralize recordkeeping and certification duties to one location for branch campuses. Current regulations require the branches to maintain records for veterans and dependents receiving VA educational assistance benefits at the branch campus.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lynn M. Cossette, Education Advisor (225C), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AL43

OFFICE OF ACQUISITION AND MATERIEL MANAGEMENT

2993. UNIVERSAL PRODUCT NUMBERS (UPNS)

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 40 USC 486(c)

CFR Citation: 48 CFR 811; 48 CFR 852

Legal Deadline: None

Abstract: This rulemaking action would provide new contract clauses whereby Department of Veterans Affairs contracting officers could require contractors to furnish products marked at the case, box, and unit of use levels with Universal Product Numbers (UPNs) for scanning using bar code readers.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Donald E. Kaliher, Senior Procurement Analyst (0495A), Department of Veterans Affairs, Office of Acquisition & Materiel Management, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AJ45

2994. DEPARTMENT OF VETERANS AFFAIRS ACQUISITION REGULATIONS PLAIN LANGUAGE REWRITE

Priority: Info./Admin./Other

Legal Authority: 38 USC 501; 48 USC 486(c)

CFR Citation: 38 CFR 8

Legal Deadline: None

Abstract: This rulemaking action would amend the Department of Veterans Affairs acquisition regulation to update position titles, to remove obsolete or duplicative material, to delegate authority, and to make plain language revisions to the text. In addition, the rule would update material to correspond to the requirements of the Federal Acquisition Regulation (FAR) and would provide agency procedures for compliance with FAR requirements.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Donald E. Kaliher, Senior Procurement Analyst (0495A), Department of Veterans Affairs, Office of Acquisition & Materiel Management, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AK78

NATIONAL CEMETERY SYSTEM

2995. STATE CEMETERY GRANTS: AID TO STATES FOR ESTABLISHMENT, EXPANSION, AND IMPROVEMENT OF VETERANS CEMETERIES

Priority: Other Significant

Legal Authority: 38 USC 2408

CFR Citation: 38 CFR 39.1; 38 CFR 39.2; 38 CFR 39.3; 38 CFR 39.7; 38 CFR 39.8; 38 CFR 39.9 (New)

Legal Deadline: None

Abstract: The proposed rule revises 38 CFR part 39 to amend Department of Veterans Affairs (VA) regulations for the State Cemetery Grants Program to implement and update information on program requirements and the application process for participants. The amendment formalizes new standards and provides guidance on how States may obtain funding for grants to expand, establish, or improve State veterans cemeteries. The rule will be published as proposed in the Federal Register to provide information to the public on how to apply for Federal funding for State veterans cemeteries. A 60-day public comment period will be provided. It is subject to the requirements of the Administrative Procedures Act and E.O. 12866 because the rule is an interpretation of statute. The proposed rule will not have a significant economic impact on a substantial number of small entities; only those States that apply for funding may be direct beneficiaries.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Karen Barber, Program Analyst (402B3), Department of Veterans Affairs, National Cemetery Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-5183
Fax: 202 273-6697
Email: karen.barber@mail.va.gov

RIN: 2900–AH46

OFFICE OF FINANCIAL MANAGEMENT

2996. STANDARDS FOR COLLECTION, COMPROMISE, SUSPENSION, OR TERMINATION OF COLLECTION EFFORT; REGIONAL OFFICE COMMITTEE ON WAIVER AND COMPROMISES

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 3700 et seq; 38 USC 501; 38 USC 5302; 38 USC 5314; 38 USC 5315

CFR Citation: 31 CFR 900 to 904; 38 CFR 1.900 to 1.970

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) proposes to revise its current regulations on debt collection by eliminating some and cross-referencing the remainder to the revised DOJ/Treasury Governmentwide Federal Claims Collection Standards (31 CFR parts 900 to 904). These regulations will also be updated to comply with the Debt Collection Improvement Act of 1996. In addition, VA also proposes to amend regulations pertaining to the administration of our Regional Office Committees on Waivers and Compromises.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Peter T. Mulhern, Office of Finance (047GC1), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-5570
TDD Phone: 202 273 6574

RIN: 2900–AK10

OFFICE OF POLICY AND PLANNING

2997. AUDITS OF STATES, LOCAL GOVERNMENTS, AND NONPROFIT ORGANIZATIONS; GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NONPROFIT ORGANIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 75; 38 USC 501; PL 98-502

CFR Citation: 38 CFR 41; 38 CFR 49

Legal Deadline: None

Abstract: This document proposes to amend part 41 of VA's regulations to add new subparts to codify revised OMB Circular A-133. The Circular provides standards for consistency and uniformity among Federal agencies for the audits of States, local governments, and nonprofit organizations expending Federal awards. Further, this amendment proposes to add a new part 49 to VA's regulations to bring VA in step with other Federal agencies who have already adopted OMB Circular A-110 as a common rule. The Circular provides for uniform administrative requirements for Federal agencies with grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

Agency Contact: Judith Jamison, Office of Policy and Planning (008), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-5117

RIN: 2900–AJ62

2998. • PRIVACY ACT OF 1974—EXEMPTION OF POLICE AND SECURITY RECORDS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 552

CFR Citation: 38 CFR 1.582

Legal Deadline: None

VA

Proposed Rule Stage

Abstract: This document proposes to amend the Department of Veterans Affairs regulations governing the confidentiality and release of VA records subject to the Privacy Act, 5 U.S.C. 552a. We propose to revise section 1.582, which exempts certain records from the provisions of the Privacy Act authorized under 5 U.S.C. 552a(j)(2) and (k)(2). This revision would have the intended effect of permitting VA to exempt a new Privacy Act systems of records relating to policy and security records.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tanya Al-Khateeb, Office of Security and Law Enforcement (07B), Department of Veterans Affairs, Office of Policy and Planning, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-5511

RIN: 2900–AL33

Department of Veterans Affairs (VA)

Final Rule Stage

VETERANS HEALTH ADMINISTRATION

2999. PROVISION OF DRUGS AND MEDICINES PRESCRIBED BY NON-VA PHYSICIANS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 1721

CFR Citation: 38 CFR 17.96

Legal Deadline: None

Abstract: This document amends the "Medical" regulations concerning the criteria for provision of drugs and medicines by non-VA physicians for certain veterans. It is our view that the statutory framework inherently requires that the drugs provided be suitable; i.e., FDA-approved, high quality, and best value. In this regard, we have established a list of suitable drugs and medicines in the VA national formulary. Also, we have established a mechanism for allowing the provision of drugs and medicines not listed in the formulary. These changes are needed to ensure that VA provides only those drugs and medicines intended to be provided under the statutory authority. Also, this document makes nonsubstantive changes for the purpose of avoiding unnecessary duplication.

Timetable:

Action	Date	FR Cite
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeff Ramirez, Pharmacy Service (119), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-8428

RIN: 2900–AJ24

3000. ADVANCED HEALTH CARE PLANNING

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 1721

CFR Citation: 38 CFR 17.32

Legal Deadline: None

Abstract: This document amends the VA medical regulations to codify VA policy regarding advanced health care planning. The rule sets forth a mechanism for the use of written advance directives; i.e., a VA living will, a VA durable power of attorney for health care, and a State-authorized advance directive. The rule also sets forth a mechanism for honoring verbal or nonverbal instructions from a patient when the patient is admitted to care when critically ill and loss of capacity may be imminent and the patient is not physically able to sign an advance directive form or the appropriate form is not readily available. This is intended to help ensure that VA acts in compliance with patients' wishes concerning future health care.

Timetable:

Action	Date	FR Cite
NPRM	11/02/98	63 FR 58677
NPRM Comment Period End	01/04/99	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ellen Fox M.D., Director, National Center for Ethics (10AE), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-6926

RIN: 2900–AJ28

3001. PROVISION OF DRUGS AND MEDICINES TO CERTAIN VETERANS IN STATE NURSING HOMES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 1721

CFR Citation: 38 CFR 17.96

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs medical regulations concerning the provision of drugs and medicines prescribed by non-VA physicians for certain veterans who are permanently housebound or in need of regular aid and attendance. The regulations are amended to allow prescriptions to be filled by non-VA pharmacies in State homes under contract with VA for filling prescriptions for patients in State homes. This is consistent with VA's special relationship with State homes. It will eliminate duplication in services and will help improve timeliness for filling prescriptions in State homes.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/14/98	63 FR 37779
Interim Final Rule Effective	07/14/98	
Interim Final Rule Comment Period End	09/14/98	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

VA

Final Rule Stage

Government Levels Affected: None

Agency Contact: Jeff Ramirez, Pharmacy Service (119), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-8428

RIN: 2900–AJ34

3002. GRANTS TO STATES FOR CONSTRUCTION AND ACQUISITION OF STATE HOME FACILITIES

Priority: Other Significant

Legal Authority: 38 USC 501; 38 USC 1721

CFR Citation: 38 CFR 17.216; 38 CFR 17.222

Legal Deadline: None

Abstract: This rule amends the Department of Veterans Affairs regulations concerning State homes. VA provides funds to States for projects for the construction, acquisition, or renovation of State veterans nursing homes and State veterans domiciliaries. This rulemaking requests comments regarding what regulations should be established with respect to the priorities for awarding State home grants for construction, acquisition, or renovation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/26/01	66 FR 33845
Interim Final Rule Comment Period End	08/27/01	
Final Action	09/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Frank Salvas, Geriatrics and Extended Care (114), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-8536

RIN: 2900–AJ43

3003. PAYMENT OR REIMBURSEMENT FOR EMERGENCY TREATMENT FURNISHED AT NON-VA FACILITIES

Regulatory Plan: This entry is Seq. No. 114 in part II of this issue of the Federal Register.

RIN: 2900–AK08

3004. REASONABLE CHARGES FOR MEDICAL CARE OR SERVICES

Priority: Other Significant

Legal Authority: 38 USC 501; 38 USC 1721; 38 USC 1729

CFR Citation: 38 CFR 17.101

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs (VA) medical regulations concerning "reasonable charges" for medical care or services provided or furnished by VA to a veteran: For a non-service-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract; for a non-service-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or for a non-service-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance. This document amends the regulations to update data bases and other provisions for the purpose of providing more precise charges.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/02/00	65 FR 65906
Interim Final Rule Comment Period End	01/02/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Cleaver, Chief Business Office (161), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-8210
Fax: 202 273-4897

Related RIN: Related To 2900-AJ30, Related To 2900-AK73, Related To 2900-AL05, Related To 2900-AL06

RIN: 2900–AK39

3005. REASONABLE CHARGES FOR MEDICAL CARE OR SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 1721; 38 USC 1729

CFR Citation: 38 CFR 17.101

Legal Deadline: None

Abstract: This document amends VA's medical regulations concerning "reasonable charges" for medical care or services provided or furnished by VA to a veteran for nonservice-connected disabilities.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/08/01	66 FR 23326
Interim Final Rule Comment Period End	07/09/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Cleaver, Chief Business Office (161), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-8210
Fax: 202 273-4897

Related RIN: Related To 2900-AJ30, Related To 2900-AK39, Related To 2900-AL05, Related To 2900-AL06

RIN: 2900–AK73

3006. HEALTH CARE FOR CHILDREN BORN WITH ONE OR MORE COVERED BIRTH DEFECTS TO VIETNAM VETERANS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 1721; PL 106-419

CFR Citation: 38 CFR 17.900 to 1905

Legal Deadline: None

Abstract: The document proposed to establish regulations regarding health care benefits for women Vietnam veterans' children with covered birth defects. It would revise the current regulations regarding health care for Vietnam veterans' children suffering from spina bifida to also encompass health care for women Vietnam veterans' children with certain other birth defects. This is necessary to provide health care for such children

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in accordance with recently enacted legislation (Pub. L. 106-419, November 1, 2000).

Timetable:

Action	Date	FR Cite
NPRM	01/02/02	67 FR 209
NPRM Comment Period End	02/01/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Susan K. Schmetzer, Chief, Policy and Strategic Planning, Health Administration Center, Department of Veterans Affairs, 300 South Jackson Street, Denver, CO 80209
Phone: 303 331-7552
Email: schmetzer@champva.denver.va.gov

RIN: 2900–AK88

3007. CIVILIAN HEALTH AND MEDICAL PROGRAM OF DEPARTMENT OF VETERANS AFFAIRS (CHAMPVA)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-398; PL 107-14; 38 USC 1713

CFR Citation: 38 CFR 17.271; 38 CFR 17.272; 38 CFR 17.274

Legal Deadline: Final, Statutory, October 1, 2001.

Abstract: This document implements provisions of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 and the Veterans' Survivor Benefits Improvement Act of 2001. These changes extend CHAMPVA eligibility to persons age 65 and over who would have otherwise lost their CHAMPVA eligibility due to attainment of entitlement to hospital insurance benefits under Medicare Part A. This rule also implements coverage of physical examinations required in connection with school enrollment for beneficiaries through age 17 and reduces the catastrophic cap for CHAMPVA dependents and survivors for each calendar year. These regulatory changes implement the statutory provisions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/30/02	67 FR 4357
Interim Final Rule Effective	01/30/02	
Correction to Interim Final Rule	02/14/02	67 FR 6874
Interim Final Rule Comment Period End	04/01/02	67 FR 4357
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: EFFECTIVE DATES: This document was effective on January 30, 2002, except for 38 CFR 17.271(b) and 17.272(a)(31)(x), which was effective October 1, 2001, and for 38 CFR 17.274(c), which was effective January 1, 2002.

Agency Contact: Susan K. Schmetzer, Chief, Policy and Strategic Planning, Health Administration Center, Department of Veterans Affairs, 300 South Jackson Street, Denver, CO 80209
Phone: 303 331-7552
Email: schmetzer@champva.denver.va.gov

RIN: 2900–AK89

3008. FISHER HOUSES AND OTHER TEMPORARY LODGING

Priority: Other Significant

Legal Authority: PL 106-414, sec 221

CFR Citation: 38 CFR 60 (New)

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) proposes to establish requirements regarding the use of Fisher Houses and other temporary lodging by veterans receiving VA medical care or Compensation and Pension (C&P) examinations and by family members or other persons accompanying veterans to provide the equivalent of familial support. This is necessary to implement provisions of the Veterans Benefits and Health Care Improvement Act of 2000.

Timetable:

Action	Date	FR Cite
NPRM	04/30/02	67 FR 21191
NPRM Comment Period End	07/01/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jill E. Manske, Director, Social Work Service (110B), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-8549
Fax: 202 273-8385
Email: jill.manske@hq.med.va.gov

RIN: 2900–AL13

3009. • COPAYMENTS FOR INPATIENT HOSPITAL CARE UNDER GEOGRAPHIC MEANS TEST

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-135; 38 USC 1710

CFR Citation: 38 CFR 17.108

Legal Deadline: None

Abstract: This document proposes to amend the Department of Veterans Affairs (VA) medical regulations concerning inpatient hospital care copayments. To be consistent with the Veterans' Health Care Program Enhancement Act of 2001, this proposed amendment will have the intended effect of reducing the amount certain veterans will pay for inpatient care copayment who live in high cost of living areas.

Timetable:

Action	Date	FR Cite
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jill E. Manske, Director, Social Work Service (110B), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-8549
Fax: 202 273-8385
Email: jill.manske@hq.med.va.gov

RIN: 2900–AL35

3010. • PRIORITIES FOR OUTPATIENT MEDICAL SERVICES AND INPATIENT HOSPITAL CARE

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 101; 38 USC 501; 38 USC 1705; 38 USC 1710; PL 104-262

CFR Citation: 38 CFR 17.49

Legal Deadline: None

Abstract: The Department of Veterans Affairs is amending its medical regulations to establish that in scheduling appointments for non-emergent outpatient medical services and admissions for inpatient hospital care, VA will give priority to veterans with service-connected disabilities rated 50 percent or greater and veterans needing care for a service-connected disability. The Veterans' Eligibility Reform Act of 1996 authorizes VA to ensure that these two categories of veterans receive priority access to this type of care. The intended effect of this proposed rule is to carry out that authority.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/17/02	67 FR 58528
Interim Final Rule Effective	09/17/02	
Interim Final Rule Comment Period End	11/18/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Amy Hertz, Program Analyst, Office of Policy and Planning (105), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-8412

RIN: 2900–AL39

VETERANS BENEFITS ADMINISTRATION

3011. TOTAL DISABILITY EVALUATIONS BASED ON INABILITY OF THE INDIVIDUAL TO ENGAGE IN SUBSTANTIALLY GAINFUL EMPLOYMENT

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 512(a); 38 USC 1110; 38 USC 1131; 38 USC 1155; 38 USC 1502; 38 USC 1521(a)

CFR Citation: 38 CFR 3.321; 38 CFR 3.340; 38 CFR 3.341; 38 CFR 3.342; 38 CFR 4.16; 38 CFR 4.17; 38 CFR 4.18

Legal Deadline: None

Abstract: This action amends the regulations in part 3 of title 38, United States Code, and in the Schedule for Rating Disabilities in part 4 to provide clear and objective standards for determining whether a veteran is entitled to a total evaluation based on his or her inability to perform substantially gainful employment due to disability.

Timetable:

Action	Date	FR Cite
NPRM	10/01/01	66 FR 49886
NPRM Comment Period End	11/30/01	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Janice Jacobs, Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7211

RIN: 2900–AH21

3012. SCHEDULE FOR RATING DISABILITIES; THE EYE

Priority: Other Significant

Legal Authority: 38 USC 1155

CFR Citation: 38 CFR 4.75

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) is proposing to amend that portion of its Schedule for Rating Disabilities that addresses disabilities of the eye. The intended effect of this action is to update this portion of the rating schedule to ensure that it uses current medical terminology and unambiguous criteria and that it reflects medical advances that have occurred since the last review.

Timetable:

Action	Date	FR Cite
NPRM	05/11/99	64 FR 25246
NPRM Comment Period End	07/12/99	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Caroll McBrine, Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7211

RIN: 2900–AH43

3013. CLAIMS BASED ON AGGRAVATION OF NONSERVICE-CONNECTED DISABILITY

Priority: Other Significant

Legal Authority: 38 USC 501(a)

CFR Citation: 38 CFR 3.310

Legal Deadline: None

Abstract: This document amends VA regulations concerning secondary service connection for certain disabilities. This amendment is necessary because of a recent decision by the U.S. Court of Veterans Appeals and will establish a new means by which veterans may be compensated for disabilities related to other service-connected conditions.

Timetable:

Action	Date	FR Cite
NPRM	06/04/97	62 FR 30547
NPRM Comment Period End	08/04/97	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John Bisset Jr., Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefit Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7213
Fax: 202 275-1728

RIN: 2900–AI42

3014. EXCLUSIONS FROM INCOME AND NET WORTH COMPUTATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 10602(c)

CFR Citation: 38 CFR 3.261; 38 CFR 3.262; 38 CFR 3.272

Legal Deadline: None

Abstract: To exclude from countable income for VA purposes amounts received under the Victims of Crime Act of 1984.

VA — Final Rule Stage

Timetable:

Action	Date	FR Cite
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Beth McCoy, Consultant, Regulations Staff, Compensation and Pension Service (211A), Department of Veterans Affairs, Veterans Benefit Administration, 111 W. Huron Street, Room 22, Buffalo, NY 14202
Phone: 716 551-4842

RIN: 2900–AJ52

3015. STATE DEPARTMENT AS AGENT OF DEPARTMENT OF VETERANS AFFAIRS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 5106

CFR Citation: 38 CFR 3; 38 CFR 3.108

Legal Deadline: None

Abstract: This document reorganizes and rewrites in "plain language" the regulation that identifies the State Department as an agent of the Department of Veterans Affairs for purposes of accepting, developing, and assisting with claims and evidence. It incorporates a provision in the adjudication procedures manual regarding services offered by the Department of State.

Timetable:

Action	Date	FR Cite
NPRM	08/22/01	66 FR 44095
NPRM Comment Period End	10/22/01	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John Bisset Jr., Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefit Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7213
Fax: 202 275-1728

RIN: 2900–AK03

3016. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND REQUIREMENT FOR DRUG-FREE WORKPLACE (ASSISTANCE)

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a)

CFR Citation: 38 CFR 44; 38 CFR 48 (New)

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) is planning to revise its portion of the Governmentwide nonprocurement common rule (NCR) for debarment and suspension found at 38 CFR part 44. These changes include: Drafting the rule in a plain language style and format; reconciling technical differences between the NCR and the Federal Acquisition Regulation; enhancing and clarifying the existing rule; and establishing a separate part at 38 CFR part 48 for the drug-free workplace requirements that are in subpart F of the existing rule.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3099
NPRM Comment Period End	03/25/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Robert Finneran, Assistant Director for Policy and Valuation (262), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7368
Fax: 202 275-3523
Email: lgyrfinn@vba.va.gov

RIN: 2900–AK16

3017. FINALITY OF DECISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 502; 38 USC 511; 38 USC 5104; 38 USC 5109A; 38 USC 5112(b)(6)

CFR Citation: 38 CFR 3.104

Legal Deadline: None

Abstract: This amendment informs claimants in "plain language" when a VA decision is final, how a decision by one VA office affects other VA offices, and under what circumstances a VA decision may be changed.

Timetable:

Action	Date	FR Cite
NPRM	10/23/01	66 FR 53565
NPRM Comment Period End	12/24/01	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John Bisset Jr., Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefit Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7213
Fax: 202 275-1728

RIN: 2900–AK18

3018. RENOUNCEMENT OF BENEFITS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 5306

CFR Citation: 38 CFR 3.106

Legal Deadline: None

Abstract: This revision explains in "plain language" who has the right to renounce benefits, how to renounce benefits, and what renouncement means to a claimant. It discusses effective dates for the termination of renounced benefits, as well as the right to reapply for benefits that have been renounced. A substantive change in the effective date of a renouncement is proposed to cover the renouncement of benefits when an award is already in suspense.

Timetable:

Action	Date	FR Cite
NPRM	09/24/01	66 FR 48845
NPRM Comment Period End	11/23/01	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John Bisset Jr., Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefit Administration, 810 Vermont Avenue NW, Washington, DC 20420

VA — Final Rule Stage

Phone: 202 273-7213
Fax: 202 275-1728

RIN: 2900–AK23

3019. INDEPENDENT MEDICAL OPINIONS

Priority: Info./Admin./Other

Legal Authority: 38 USC 5109; 38 USC 5701(b)(1); 38 USC 52a(f)(3)

CFR Citation: 38 CFR 3.328

Legal Deadline: None

Abstract: This amendment is a plain language restatement of the existing regulation dealing with independent medical opinions that may be requested to resolve complex or controversial medical issues that may arise in a claim for veterans' benefits.

Timetable:

Action	Date	FR Cite
NPRM	12/07/01	66 FR 64174
NPRM Comment Period End	02/11/02	
Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert M. White, Compensation and Pension Service (211), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7228
Fax: 202 275-4800
Email: capbwhit@vba.va.gov

RIN: 2900–AK31

3020. EVIDENCE FROM FOREIGN COUNTRIES

Priority: Info./Admin./Other

Legal Authority: 38 USC 5712

CFR Citation: 38 CFR 3.202

Legal Deadline: None

Abstract: This is a plain language restatement of the adjudication regulation dealing with the authentication requirements for evidence given under oath before an official in a foreign country.

Timetable:

Action	Date	FR Cite
NPRM	10/19/01	66 FR 53139
NPRM Comment Period End	12/18/01	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Bisset Jr., Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefit Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7213
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RIN: 2900–AK37

3021. FILIPINO VETERANS BENEFIT IMPROVEMENTS

Priority: Other Significant

Legal Authority: 38 USC 107

CFR Citation: 38 CFR 3.8; 38 CFR 3.10; 38 CFR 3.1600

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs (VA) adjudication regulations to reflect changes made by the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 2001, which changed the rate of compensation payments to certain Filipino veterans residing in the U.S., and the Veterans Benefits and Health Care Improvement Act of 2000, which changed the amount of the burial benefit paid to the survivors of certain Filipino veterans who were residing in the U.S. at the time of their deaths.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/27/01	66 FR 66763
Interim Final Rule Effective	12/27/01	
Interim Final Rule Comment Period End	02/25/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2900–AK65

3022. LOAN GUARANTY: PRE-PURCHASE COUNSELING REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 3203; 38 USC 3210; 38 USC 3220

CFR Citation: 38 CFR 36.4332

Legal Deadline: None

Abstract: The Department of Veterans Affairs is amending its loan guaranty regulations to require that all first-time homebuyers seeking to obtain VA guaranteed home loans complete 3 hours of homeowners' counseling.

Timetable:

Action	Date	FR Cite
NPRM	10/11/01	66 FR 51893
NPRM Comment Period End	12/10/01	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AK76

3023. VOCATIONAL TRAINING FOR CERTAIN CHILDREN OF VIETNAM VETERANS—COVERED BIRTH DEFECTS AND SPINA BIFIDA

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 101; 38 USC 501; 38 USC 512; 38 USC 5112; PL 106-419, sec 401

CFR Citation: 38 CFR 21.8010 to 21.8410

Legal Deadline: None

Abstract: This document proposes to establish regulations regarding provision of vocational training and rehabilitation for women Vietnam veterans' children with covered birth defects. It revises the current regulations regarding vocational training and rehabilitation for Vietnam veterans' children suffering from spina bifida to also encompass vocational training and rehabilitation for women

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Vietnam veterans' children with certain other birth defects.

Timetable:

Action	Date	FR Cite
NPRM	01/02/02	67 FR 215
NPRM Comment Period End	02/01/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AK90

3024. TIME LIMIT FOR REQUEST FOR DE NOVO REVIEW

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 5109(a); 38 USC 7105(a)

CFR Citation: 38 CFR 3.2600

Legal Deadline: None

Abstract: This document amends VA regulations concerning the time a claimant has in which to request a de novo review of their claim at the Veterans Service Center level. (This would reduce the time from the current 60 days to 15 days.) We believe this amendment will reduce unnecessary delays in the appeals process and will not adversely affect claimants.

Timetable:

Action	Date	FR Cite
NPRM	03/11/02	67 FR 10866
NPRM Comment Period End	05/10/02	
Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bill Russo, Attorney-Advisor, Compensation and Pension (211), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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Email: capbruss@vba.va.gov

RIN: 2900–AK97

3025. EXTENSION OF THE PRESUMPTIVE PERIOD FOR COMPENSATION FOR GULF WAR VETERANS' UNDIAGNOSED ILLNESSES

Priority: Other Significant

Legal Authority: 38 USC 501(a)

CFR Citation: 38 CFR 3.317

Legal Deadline: None

Abstract: The Department of Veterans Affairs extends the period within which undiagnosed illnesses due to service in the Gulf War Theater of Operations must become manifest to a compensable degree in order for service connection to be established, to an ending date of December 31, 2006.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/09/01	66 FR 56614
Interim Final Rule Effective	11/09/01	
Interim Final Rule Comment Period End	01/08/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John Bisset Jr., Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefit Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7213
Fax: 202 275-1728

RIN: 2900–AK98

3026. PLAIN LANGUAGE (READER FOCUSED WRITING) INITIATIVE; NATIONAL SERVICE LIFE INSURANCE (NSLI)

Priority: Info./Admin./Other

Legal Authority: 38 USC 501; 38 USC 1901 to 1929; 38 USC 1981 to 1988

CFR Citation: 38 CFR 8.3 to 8.11

Legal Deadline: None

Abstract: This rule will amend 38 CFR 8.3 through 8.32 by revising the text into a different format to promote better communication to policyholders and program administrators. This amendment is written in conjunction with VA's Plain Language (Reader Focused Writing) Initiative.

Timetable:

Action	Date	FR Cite
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gregory C. Hosmer, Senior Attorney/Insurance Specialist, Insurance Program Administration & Oversight, Department of Veterans Affairs, P.O. Box 13399, Philadelphia, PA 19101
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RIN: 2900–AL09

3027. EXCEPTIONS TO DEFINITION OF DATE OF RECEIPT BASED ON SPECIAL OR UNFORESEEN CIRCUMSTANCES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 5110

CFR Citation: 38 CFR 3.1(r)

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning the definition of "date of receipt" by authorizing the Under Secretary for Benefits to establish exceptions to the general rule when special or unforeseen circumstances hinder the normal course by which VA would receive a claim, information, or evidence. The intended effect is to ensure that a significant number of claimants are not deprived of potential entitlement to benefits because of unexpected delays or impediments not caused by the claimants.

Timetable:

Action	Date	FR Cite
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Beth McCoy, Consultant, Regulations Staff, Compensation and Pension Service (211A), Department of Veterans Affairs, Veterans Benefit Administration, 111 W. Huron Street, Room 22, Buffalo, NY 14202
Phone: 716 551-4842

RIN: 2900–AL12

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3028. INCREASE IN RATES PAYABLE UNDER THE MONTGOMERY GI BILL—ACTIVE DUTY AND SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 3015; 38 USC 3032; 38 USC 3532; 38 USC 3686; 38 USC 3687

CFR Citation: 38 CFR 21.3045; 38 CFR 21.3131; 38 CFR 21.3300; 38 CFR 21.3333; 38 CFR 21.7136-7137

Legal Deadline: None

Abstract: By statute, the rates of basic educational assistance under the Montgomery GI Bill—Active Duty and Survivors' and Dependents' Educational Assistance programs must be adjusted each fiscal year. In accordance with the statutory formula, the regulations governing these programs for fiscal year 2002 are changed to show a 3.4 percent increase in these rates. In addition, the regulations are changed to show a separate increase for both programs effective January 1, 2002, due to an increase provided for in the Veterans Education and Benefits Expansion Act of 2001, Public Law No. 107-103. Public Law No. 107-103 also provides an increase in Montgomery GI Bill—Active Duty program rates for October 1, 2003, and October 1, 2004. The regulations are amended to show these two additional statutory rate increases.

Timetable:

Action	Date	FR Cite
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lynn M. Cossette, Education Advisor (225C), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AL17

3029. SERVICE CONNECTION BY PRESUMPTION OF AGGRAVATION OF A CHRONIC PREEXISTING DISEASE; PRESUMPTION OF HERBICIDE EXPOSURE

Priority: Other Significant

Legal Authority: 38 USC 1112; 38 USC 1116

CFR Citation: 38 CFR 3.307; 38 CFR 3.309

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning presumptive service connection to provide for service connection for aggravation of a chronic disease which preexisted the veteran's entry into military service. The United States Court of Appeals for the Federal Circuit has concluded that the current prohibition against granting service connection for aggravation of disability that preexisted the veteran's entry into active military service is not in accordance with the statute. This document also amends a VA adjudication regulation to conform to a recently enacted Public Law which eliminated the requirement that a Vietnam veteran must develop a disease associated with herbicide agents before the VA will presume exposure to herbicides during the veteran's service in Vietnam. This amendment is necessary to make the regulations conform with the statute.

Timetable:

Action	Date	FR Cite
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John Bisset Jr., Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefit Administration, 810 Vermont Avenue NW, Washington, DC 20420
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Fax: 202 275-1728

RIN: 2900–AL20

3030. LOAN GUARANTY: IMPLEMENTATION OF PUBLIC LAW 107-103

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 2102; 38 USC 3703(a)(1) and (c)(1); 38 USC 3714(d); 38 USC 3761

CFR Citation: 38 CFR 36.4302; 38 CFR 36.4308; 38 CFR 36.4404; 38 CFR 36.4527

Legal Deadline: None

Abstract: VA is amending its loan guaranty regulations to implement certain provisions of Public Law 107-103, the Veterans Education and Benefits Expansion Act of 2001. VA proposes to incorporate into the regulations the following changes: (1) An increase in the maximum amount of entitlement from $50,750 to $60,000; (2) a revision of the requirements for direct housing loans to Native American veterans; (3) a revision of the loan assumption notice requirement; and (4) an increase in the amount of assistance for specially adapted housing from $43,000 to $48,000 for severely disabled veterans and from $8,250 to $9,250 for less severely disabled veterans.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Anne DeSena, Assistant Director for Loan Policy and Valuation (262), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AL23

3031. • SCHEDULE FOR RATING DISABILITIES; GUIDELINES FOR APPLICATION OF EVALUATION CRITERIA FOR CERTAIN RESPIRATORY AND CARDIOVASCULAR CONDITIONS; EVALUATION OF HYPERTENSION WITH HEART DISEASE

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 1155

CFR Citation: 38 CFR 4.104

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Legal Deadline: None

Abstract: This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities, 38 CFR part 4, in order to clarify the evaluation of certain respiratory and cardiovascular conditions and to explain that hypertension and hypertensive or other heart diseases will be separately evaluated. The intended effect of this amendment is to clarify the use of the current criteria for evaluating respiratory and cardiovascular conditions, particularly in cases where alternative criteria are provided, in order to ensure that veterans receive consistent evaluations and are not required to undergo unnecessary tests.

Timetable:

Action	Date	FR Cite
NPRM	08/22/02	67 FR 54394
NPRM Comment Period End	10/21/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Caroll McBrine, Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AL26

3032. • VETERANS EDUCATION: VETERANS EDUCATION AND BENEFITS EXPANSION ACT OF 2001

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 3511; 38 USC 3512; 38 USC 3540; 38 USC 3543; 38 USC 3672; 38 USC 3675; 38 USC 3680A; 38 USC 3011(c)

CFR Citation: 38 CFR 21.3045; 38 CFR 21.3046; 38 CFR 21.3104; 38 CFR 21.3300; 38 CFR 21.3301; 38 CFR 21.3302; 38 CFR 21.3303; 38 CFR 21.3305; 38 CFR 21.3306

Legal Deadline: None

Abstract: Final regulations implementing some of the provisions in The Veterans Education and Benefits Expansion Act of 2001. The provisions are: Restoring benefits for individuals ordered to active duty on or after September 11, 2001; an additional opportunity for Vietnam Era Veterans to qualify for benefits under the Montgomery GI Bill program; establishing an ending date to the eligibility period for spouses under the Survivors' and Dependents' Educational Assistance program; expanding special restorative training benefits to include certain disabled spouses and surviving disabled spouses; allowing payment of education benefits for distance learning courses that are part of a certificate program offered by institutions of higher learning; and increasing the amount of scholarship funds someone in a Senior Reserve Officer Training Corps program can receive and remain eligible under the Montgomery GI Bill.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lynn M. Cossette, Education Advisor (225C), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AL28

3033. • COMPENSATION AND PENSION PROVISIONS OF THE VETERANS EDUCATION AND BENEFITS EXPANSION ACT OF 2001

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-103

CFR Citation: 38 CFR 3.3; 38 CFR 3.307; 38 CFR 3.317; 38 CFR 3.353; 38 CFR 3.665; 38 CFR 3.666; ...

Legal Deadline: None

Abstract: The document amends the Department of Veterans Affairs (VA) adjudication regulations to reflect the statutory provisions of the Veterans Education and Benefits Expansion Act of 2001. These changes address the presumption of service connection for respiratory cancers based on herbicide exposure in Vietnam; benefits for Gulf War veterans' chronic disabilities; repeal of the limitation of benefits for incompetent institutionalized veterans; non-service-connected pension eligibility; the limitation on pension for certain recipients of Medicaid-covered nursing home care; the prohibition on certain benefits to fugitive felons; and the limitation on the payment of compensation for veterans remaining incarcerated since October 7, 1980.

Timetable:

Action	Date	FR Cite
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AL29

3034. • INDEPENDENT STUDY APPROVED FOR CERTIFICATE PROGRAMS AND OTHER MISCELLANEOUS ISSUES

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 16131; 10 USC 16132; 10 USC 16133; 10 USC 16136

CFR Citation: 38 CFR 21.7540; 38 CFR 21.7550; 38 CFR 21.7576; 38 CFR 21.7620

Legal Deadline: None

Abstract: Changes are made to existing regulations to show that Montgomery GI Bill—Selected Reserve benefits may be provided for distance education courses that are part of a certificate program. The certificate must be offered by an institution of higher education. Payment for these courses was provided in the Veterans Education and Benefits Expansion Act of 2001. We also will amend the regulations to remove the language "in connection with the Persian Gulf war" and "during the Persian Gulf war" to reflect the removal of this language from title 10 U.S.C. The language was removed from sections in title 10 U.S.C. that address preservation of entitlement for those ordered to active duty in support of contingency operations.

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Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lynn M. Cossette, Education Advisor (225C), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AL34

3035. • TESTIMONY CERTIFIED OR UNDER OATH

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 5711(a)(3)

CFR Citation: 38 CFR 3.200

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulation that requires written and oral testimony to be certified or given under oath or affirmation in most cases. VA believes that the global requirements in this regulation are no longer necessary to establish the credibility of most testimony offered in support of a claim for benefits. Removal of this regulation will help to streamline the claims process without affecting program integrity.

Timetable:

Action	Date	FR Cite
NPRM	07/31/02	67 FR 49646
NPRM Comment Period End	09/30/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: See related RIN 2900-AK24. On March 5, 2002, VA inadvertently withdrew RIN 2900-AK24 in the April 2002 Unified Agenda but subsequently published the proposed rule on 7/31/02 at 67 FR 49646.

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Related RIN: Duplicate of 2900-AK24

RIN: 2900–AL38

3036. • INCREASE IN RATES PAYABLE UNDER THE MONTGOMERY GI BILL—SELECTIVE RESERVE

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 16131

CFR Citation: 38 CFR 21.7636

Legal Deadline: None

Abstract: By statute, the monthly rates of basic educational assistance payable to reservists under the Montgomery GI Bill—Selected Reserve program must be adjusted each fiscal year. In accordance with the statutory formula, the regulations governing the basic rates payable under the Montgomery GI Bill—Selected Reserve for fiscal year 2003 (October 1, 2002, through September 30, 2003) are changed to show a 1.5 percent increase in these rates.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AL41

OFFICE OF ACQUISITION AND MATERIEL MANAGEMENT

3037. DEPARTMENT OF VETERANS AFFAIRS ACQUISITION REGULATION—SIMPLIFIED ACQUISITION PROCEDURES FOR HEALTH CARE RESOURCES

Priority: Info./Admin./Other

Legal Authority: 38 USC 8153

CFR Citation: 48 CFR 801; 48 CFR 806; 48 CFR 812; 48 CFR 837; 48 CFR 852; 48 CFR 873

Legal Deadline: None

Abstract: VA withdrew the proposed rule concerning simplified acquisition procedures for health care resources published in the Federal Register on November 9, 1998 (63 FR 60256), and promulgated a new proposed rule concerning simplified acquisition procedures for health care resources. The new proposed rule document amends the Department of Veterans Affairs Acquisition Regulation (VAAR) to establish simplified procedures for the competitive acquisition of health care resources, consisting of commercial services or the use of medical equipment or space, pursuant to 38 U.S.C. 8151-8153. Public Law 104-262, the Veterans' Health Care Eligibility Reform Act of 1996, authorized VA to prescribe simplified procedures for the procurement of health care resources. The rule prescribes those procedures.

Timetable:

Action	Date	FR Cite
NPRM	11/09/98	63 FR 60256
NPRM Comment Period End	01/08/99	
Second NPRM	06/07/01	66 FR 30659
Second NPRM Comment Period End	08/06/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2900–AI71

3038. SEALED BIDDING AND COMPETITIVE PROPOSALS

Priority: Info./Admin./Other

Legal Authority: 38 USC 501; 40 USC 486(c)

CFR Citation: 48 CFR 806

Legal Deadline: None

Abstract: The Department of Veterans Affairs is amending its Acquisition Regulations. Section 806.401 is amended to remove material that conflicts with the Federal Acquisition Regulation.

Timetable:

Action	Date	FR Cite
NPRM	03/11/98	63 FR 11865
NPRM Comment Period End	05/11/98	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Donald E. Kaliher, Senior Procurement Analyst (0495A), Department of Veterans Affairs, Office of Acquisition & Materiel Management, 810 Vermont Avenue NW, Washington, DC 20420
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Related RIN: Merged With 2900-AK78

RIN: 2900–AI99

BOARD OF VETERANS APPEALS

3039. THE BOARD OF VETERANS' APPEALS; RULES OF PRACTICE—MOTION FOR REVIEW OF DECISIONS ON GROUNDS OF CLEAR AND UNMISTAKABLE ERROR: CONTENT OF RECORD; ADVANCEMENT ON THE DOCKET

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 7104(d); 38 USC 7111

CFR Citation: 38 CFR 20.1403; 38 CFR 20.1405(a); 38 CFR 20.1405(b)

Legal Deadline: None

Abstract: The Board of Veterans Appeals is amending its Rules of Practice at 38 CFR part 20 to add procedures which would (1) eliminate a provision relating to "constructive notice" as to the record to be reviewed in connection with challenges to Board decisions on the grounds of clear and unmistakable error (CUE) and (2) add a provision to provide for advancing CUE motions on the docket.

Timetable:

Action	Date	FR Cite
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven L. Keller, Senior Deputy Vice Chairman, Department of Veterans Affairs, Board of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 565-5978

RIN: 2900–AJ85

3040. RULES OF PRACTICE: MEDICAL OPINIONS FROM THE VETERANS HEALTH ADMINISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 5107(a)

CFR Citation: 38 CFR 20.901(a)

Legal Deadline: None

Abstract: The Board of Veterans' Appeals (Board) is amending its appeals regulations to clarify that it may obtain medical opinions from VA's Veterans Health Administration (VHA). The current rule, 38 CFR 20.901(a), makes an obsolete reference to the "Chief Medical Director," a title eliminated in 1992 and replaced by "Under Secretary for Health." The revised rule would clarify that the Board may obtain opinions from VHA, not from the individual who happens to be the Under Secretary for Health.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/23/01	66 FR 38158
Interim Final Rule Effective	07/23/01	
Interim Final Rule Comment Period End	09/21/01	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven L. Keller, Senior Deputy Vice Chairman, Department of Veterans Affairs, Board of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 565-5978

RIN: 2900–AK52

3041. APPEALS REGULATIONS: TITLE FOR MEMBERS OF THE BOARD OF VETERANS APPEALS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 512; 38 USC 7101(a)

CFR Citation: 38 CFR 19.2

Legal Deadline: None

Abstract: The Board of Veterans' Appeals proposes to amend its appeals regulations to provide that a member of the Board of Veterans' Appeals (Board) may also be known as a "Veteran Law Judge." This duplicates, in proposed rule format, a final rule previously published in the Federal Register on September 14, 2000 (65 FR 55461). Individuals deciding appeals in other parts of the Federal Government are typically known as "judges"; e.g., "administrative law judges" and "administrative judges." Giving board members the title of "veteran law judges" would provide a more accurate title than "member" and would enhance confidence in the system through recognition that appeals are being adjudicated by legal professionals.

Timetable:

Action	Date	FR Cite
NPRM	03/06/01	66 FR 13463
NPRM Comment Period End	05/07/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven L. Keller, Senior Deputy Vice Chairman, Department of Veterans Affairs, Board of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 565-5978

RIN: 2900–AK62

3042. BOARD OF VETERANS' APPEALS: RULES OF PRACTICE—APPEAL WITHDRAWAL

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 7105(b)(2)

CFR Citation: 38 CFR 20.204

Legal Deadline: None

Abstract: The Board of Veterans' Appeals is removing a restriction in its Rules of Practice (Rule of Practice 204; 38 CFR 20.204) that bars an appellant's representative from withdrawing a Notice of Disagreement or a Substantive Appeal that the appellant filed personally without the appellant's written consent. VA believes that the restriction, adopted in the early 1960s, is an outdated and unnecessary intrusion into the relationship between appellants and their representatives, which creates needless delay through unnecessary procedural complexity.

Timetable:

Action	Date	FR Cite
NPRM	02/01/02	67 FR 4939
NPRM Comment Period End	04/02/02	
Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Steven L. Keller, Senior Deputy Vice Chairman, Department of Veterans Affairs, Board of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 565-5978

RIN: 2900–AK71

3043. BOARD OF VETERANS' APPEALS: SPEEDING APPELLATE REVIEW FOR AGING VETERANS

Priority: Other Significant

Legal Authority: 38 USC 501(a); 38 USC 7107

CFR Citation: 38 CFR 20.900(c)

Legal Deadline: None

Abstract: The Board of Veterans' Appeals may advance a case on its docket for earlier consideration for "sufficient cause shown," 38 U.S.C. section 7107(a)(2). This regulation will expand the regulatory definition of "sufficient cause" in the Board's Rules of Practice to include advanced age. This will permit the Board, on motion, to expedite consideration of appeals from veterans and dependents, age 75 or more, who may be nearing the end of their life expectancy. There is now a sizable cohort of veterans of advanced age, particularly surviving combat veterans from World War II and the Korean War. No other alternatives are available. This amendment will not entail any risks or costs to the public or to the Government other than the costs normally associated with drafting, Agency review, and publication.

Timetable:

Action	Date	FR Cite
NPRM	06/12/02	67 FR 40255
NPRM Comment Period End	08/12/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Steven L. Keller, Senior Deputy Vice Chairman, Department of Veterans Affairs, Board of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 565-5978

RIN: 2900–AL08

3044. • BOARD OF VETERANS' APPEALS RULES OF PRACTICE: USE OF SUPPLEMENTAL STATEMENT OF THE CASE

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 7105(d); 38 USC 7105A

CFR Citation: 38 CFR 20.302(c); 38 CFR 20.501(c)

Legal Deadline: None

Abstract: The Board of Veterans' Appeals is amending its Rules of Practice to remove the requirement that an appellant must file a timely substantive appeal with respect to issues covered in a Supplemental Statement of the Case (SSOC) that were not in the original Statement of the Case (SOC). This rule amends 38 CFR 20.302(c) and 20.501(c) to eliminate the language relating to responding to "new issues" in SSOCs.

Timetable:

Action	Date	FR Cite
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Steven L. Keller, Senior Deputy Vice Chairman, Department of Veterans Affairs, Board of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 565-5978

Related RIN: Related To 2900-AK91

RIN: 2900–AL42

NATIONAL CEMETERY SYSTEM

3045. ELIGIBILITY FOR BURIAL OF DEPENDENT ADULT CHILDREN OF ELIGIBLE VETERANS; AND ELIGIBILITY FOR BURIAL OF CERTAIN FILIPINO VETERANS

Priority: Other Significant

Legal Authority: 38 USC 2402(5); PL 106-419

CFR Citation: 38 CFR 1.620(c)

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) proposes to amend regulations to specify that the eligibility of veterans' adult children for burial in a national cemetery is only for those who have become permanently incapable of self support before attaining the age of 21 years due to a physical or mental disability. Current regulations do not clearly express this requirement. It also proposes to amend regulations to specify that the eligibility of certain Filipino veterans will be eligible for burial in a National Cemetery. Certain Filipino veterans of WWII, to include Commonwealth Army veterans and veterans of Recognized Guerilla Forces, may be eligible if the veteran was a permanent resident of the U.S. and met other enabling conditions.

Timetable:

Action	Date	FR Cite
NPRM	04/16/02	67 FR 34884
NPRM Comment Period End	07/15/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Karen Barber, Program Analyst (402B3), Department of Veterans Affairs, National Cemetery Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-5183
Fax: 202 273-6697
Email: karen.barber@mail.va.gov

RIN: 2900–AI95

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VA — Final Rule Stage

3046. • HEADSTONE AND MARKER APPLICATION REQUIRED

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-103, sec. 502

CFR Citation: 38 CFR 1.632

Legal Deadline: None

Abstract: This rule will amend the Department of Veterans Affairs (VA) regulations to reflect changes made by the Veterans Education and Benefits Expansion Act of 2001. We propose to amend through regulation the changes to burial benefits that will allow VA to furnish an appropriate Government headstone or marker for the graves of eligible veterans buried in private cemeteries, regardless of whether the grave has been previously marked with a privately purchased marker. The provision applies to eligible veterans who have died on or after December 27, 2001, the date of enactment of Public Law 107-103.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Karen Barber, Program Analyst (402B3), Department of Veterans Affairs, National Cemetery Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-5183
Fax: 202 273-6697
Email: karen.barber@mail.va.gov

RIN: 2900–AL40

OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

3047. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, OR NATIONAL ORIGIN; HANDICAP; AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 794; 42 USC 2000d-1; 42 USC 6101

CFR Citation: 38 CFR 18

Legal Deadline: None

Abstract: The Department of Justice, pursuant to Executive Order 12250, is requesting that Federal agencies with title VI, section 504, and Age Discrimination Act regulations jointly issue amendments to their regulations to incorporate the Civil Rights Restoration Act of 1987 revisions.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tyrone Eddins, External Affairs Manager, Office of Resolution Management (08), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 501-2801
Fax: 202 501-2885

RIN: 2900–AK13

OFFICE OF THE GENERAL COUNSEL

3048. RELEASE OF INFORMATION FROM DEPARTMENT OF VETERANS AFFAIRS RECORDS

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a; 38 USC 5701

CFR Citation: 38 CFR 1.500 to 1.584

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs regulations governing the confidentiality and release of VA records subject to the Privacy Act, 5 U.S.C. 552a, the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the veterans' records confidentiality statute (section 5701), 38 U.S.C. 5701. The amendments will implement court decisions and executive branch guidance issued since the regulations were originally published. The amendment is part of the Administration's effort to simplify, clarify, and modernize Federal regulations.

Timetable:

Action	Date	FR Cite
NPRM	09/10/98	63 FR 48455
NPRM Comment Period End	11/09/98	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lorraine M. Johnson, Deputy Assistant General Counsel (024A), Department of Veterans Affairs, Office of General Counsel, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-6381

RIN: 2900–AH98

3049. RECOGNITION OF ORGANIZATIONS AND ACCREDITATION OF REPRESENTATIVES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 38 USC 501(a); 38 USC 5901 to 5905

CFR Citation: 38 CFR 14.626 to 14.635

Legal Deadline: None

Abstract: The Department of Veterans Affairs proposes to revise and clarify existing procedures and requirements regarding certification or recognition of service organizations and their representatives and other individuals, agents, and attorneys representing claimants for benefits administered by VA. The revisions are designed to improve VA's ability to assure high quality representation of claimants.

Timetable:

Action	Date	FR Cite
NPRM	11/04/98	63 FR 59495
NPRM Comment Period End	01/04/99	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Richard J. Hipolit, Deputy Assistant General Counsel (022), Department of Veterans Affairs, Office of General Counsel, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-6329

RIN: 2900–AI93

Department of Veterans Affairs (VA) — Long-Term Actions

VETERANS HEALTH ADMINISTRATION

3051. PROTECTION OF HUMAN SUBJECTS

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 16

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Judy Williams
Phone: 202 273-8284

RIN: 2900–AJ08

BOARD OF VETERANS APPEALS

3052. APPEALS REGULATIONS; RULES OF PRACTICE

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 19.3 (Revision); 38 CFR 20.609 (Revision); 38 CFR 20.903 (Revision); 38 CFR 20.1000; 38 CFR 20.1001; 38 CFR 20.1002; 38 CFR 20.1100 (Revision); 38 CFR 19.10; 38 CFR 19.15 (Revision); 38 CFR 19.39; 38 CFR 20.3; 38 CFR 20.101 (Revision); 38 CFR 20.102 (Revision); 38 CFR 20.201 (Revision); 38 CFR 20.605 (Revision); ...

Timetable:

Action	Date	FR Cite
NPRM	02/03/92	57 FR 4131
NPRM Comment Period End	03/04/92	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven L. Keller
Phone: 202 565-5978

RIN: 2900–AE78

Department of Veterans Affairs (VA) — Completed Actions

3053. MEDICAL BENEFITS PACKAGE; COPAYMENTS FOR EXTENDED CARE SERVICES

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 17.36; 38 CFR 17.38; 38 CFR 17.111

Completed:

Reason	Date	FR Cite
Final Action	05/17/02	67 FR 35037
Final Action Effective	06/17/02	67 FR 53037

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Nancy Howard
Phone: 202 273-8198
Fax: 202 273-4897
Email: nancy.howard@hq.med.va.gov

RIN: 2900–AK32

3054. ENROLLMENT—PROVISION OF HOSPITAL AND OUTPATIENT CARE TO VETERANS

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 17.36

Completed:

Reason	Date	FR Cite
NPRM	07/23/02	67 FR 48078
Final Action	10/09/02	67 FR 62887
Final Action Effective	11/08/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Roscoe G. Butler
Phone: 202 273-8302
Fax: 202 273-9609
Email: roscoe.butler@hq.med.va.gov

RIN: 2900–AK38

3055. COPAYMENTS FOR INPATIENT HOSPITAL CARE AND OUTPATIENT MEDICAL CARE

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 17.108; 38 CFR 17.110

Completed:

Reason	Date	FR Cite
Final Action	05/02/02	67 FR 21998
Final Action Effective	05/02/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Nancy Howard
Phone: 202 273-8198
Fax: 202 273-4897
Email: nancy.howard@hq.med.va.gov

RIN: 2900–AK50

3056. FILIPINO VETERANS ELIGIBLE FOR HOSPITAL CARE, NURSING HOME CARE, AND MEDICAL SERVICES

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 3.42; 38 CFR 17.39

Completed:

Reason	Date	FR Cite
Final Action	06/17/02	67 FR 41178
Final Action Effective	06/17/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Roscoe G. Butler
Phone: 202 273-8302
Fax: 202 273-9609
Email: roscoe.butler@hq.med.va.gov

RIN: 2900–AL18

3057. SCHEDULE FOR RATING DISABILITIES—THE SKIN

Priority: Other Significant

CFR Citation: 38 CFR 4.118

Completed:

Reason	Date	FR Cite
Final Action	07/31/02	67 FR 49590
Final Action Effective	08/30/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Caroll McBrine
Phone: 202 273-7211

RIN: 2900–AF00

3058. REVISED DEFINITION OF NET VALUE AND REVISED CRITERIA FOR PRE-FORECLOSURE DEBT WAIVERS

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 36.4301; 38 CFR 36.4323

Completed:

Reason	Date	FR Cite
Final Action	10/08/02	67 FR 62646
Final Action Effective	11/07/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard Fyne
Phone: 202 273-7380

RIN: 2900–AG20

3059. EVIDENCE ON FILE AT DATE OF DEATH

Priority: Other Significant

CFR Citation: 38 CFR 3.1000

Completed:

Reason	Date	FR Cite
Final Action	10/28/02	67 FR 65707
Final Action Effective	11/27/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Bisset
Phone: 202 273-7213
Fax: 202 275-1728

RIN: 2900–AH42

3060. INTERVERTEBRAL DISC SYNDROME

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 4.71(a)

Completed:

Reason	Date	FR Cite
Final Action	08/22/02	67 FR 54345
Final Action Effective	09/23/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Caroll McBrine
Phone: 202 273-7211

RIN: 2900–AI22

3061. ANKYLOSIS AND LIMITATION OF MOTION OF DIGITS OF THE HANDS

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 4.71a

Completed:

Reason	Date	FR Cite
Final Action	07/26/02	67 FR 48784
Final Action Effective	08/26/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Caroll McBrine
Phone: 202 273-7211

RIN: 2900–AI44

3062. ACCELERATED BENEFITS OPTION FOR SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 9.1(b); 38 CFR 9.14

Completed:

Reason	Date	FR Cite
Final Action	08/12/02	67 FR 52413
Final Action Effective	08/12/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gregory C. Hosmer
Phone: 215 842-2000
Fax: 215 381-3502
Email: issghosm@vba.va.gov

RIN: 2900–AJ80

3063. NATIONAL SERVICE LIFE INSURANCE

Priority: Info./Admin./Other

CFR Citation: 38 CFR 8.0; 38 CFR 8.1

Completed:

Reason	Date	FR Cite
Final Action	08/26/02	67 FR 54737
Final Action Effective	08/26/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: George Poole
Phone: 215 842-2000
Fax: 215 381-3502
Email: issgpool@vba.va.gov

RIN: 2900–AK43

3064. VETERANS VOCATIONAL REHABILITATION AND EDUCATION: TITLE CHANGE

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 21.50; 38 CFR 21.53; 38 CFR 21.60; 38 CFR 21.68; 38 CFR 21.74; 38 CFR 21.98; 38 CFR 21.100; 38 CFR 21.155; 38 CFR 21.4250; ...

Completed:

Reason	Date	FR Cite
Final Action	08/22/01	66 FR 44052
Final Action Effective	08/22/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William G. Susling
Phone: 202 273-7187
Fax: 202 275-2636
Email: edubsusl@vba.va.gov

RIN: 2900–AK46

3065. MONETARY ALLOWANCES FOR CERTAIN CHILDREN OF VIETNAM VETERANS; IDENTIFICATION OF COVERED BIRTH DEFECTS

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 3.27; 38 CFR 3.29; 38 CFR 3.114; 38 CFR 3.216; 38 CFR 3.261

Completed:

Reason	Date	FR Cite
Final Action	07/31/02	67 FR 49585
Final Action Effective	07/31/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Caroll McBrine
Phone: 202 273-7211

Related RIN: Related To 2900-AK88, Related To 2900-AK90

RIN: 2900–AK67

3066. RECOUPMENT OF NONDISABILITY SEVERANCE PAY FROM VA COMPENSATION

Priority: Other Significant

CFR Citation: 38 CFR 3.700

Completed:

Reason	Date	FR Cite
Final Action	09/27/02	67 FR 60867
Final Action Effective	09/27/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Bisset
Phone: 202 273-7213
Fax: 202 275-1728

RIN: 2900–AK95

3067. INCREASE IN RATES PAYABLE UNDER THE EDUCATIONAL ASSISTANCE TEST PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 21.5820; 38 CFR 21.5822

Completed:

Reason	Date	FR Cite
Final Action	05/14/02	67 FR 34404
Final Action Effective	05/14/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William G. Susling
Phone: 202 273-7187
Fax: 202 275-2636
Email: edubsusl@vba.va.gov

RIN: 2900–AL02

3068. ADJUDICATION, FIDUCIARY ACTIVITIES—NOMENCLATURE CHANGES

Priority: Info./Admin./Other

CFR Citation: 38 CFR 3; 38 CFR 14

Completed:

Reason	Date	FR Cite
Final Action	07/17/02	67 FR 46868
Final Action Effective	07/17/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Randy A. McKevitt
Phone: 202 273-7138
Fax: 202 273-1728
Email: caprmcke@vba.va.gov

RIN: 2900–AL10

3069. CROSS REFERENCE CHANGE IN FORMS TO BE FURNISHED

Priority: Other Significant

CFR Citation: 38 CFR 3.150

Completed:

Reason	Date	FR Cite
Final Action	06/14/02	67 FR 40867
Final Action Effective	06/14/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Randy A. McKevitt
Phone: 202 273-7138
Fax: 202 273-1728
Email: caprmcke@vba.va.gov

RIN: 2900–AL19

3070. DUTY PERIODS; INACTIVE DUTY FOR TRAINING

Priority: Other Significant

CFR Citation: 38 CFR 3.6

Completed:

Reason	Date	FR Cite
Final Action	07/31/02	67 FR 49584
Final Action Effective	07/31/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Randy A. McKevitt
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Fax: 202 273-1728
Email: caprmcke@vba.va.gov

RIN: 2900–AL21

3071. CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Priority: Info./Admin./Other

CFR Citation: 48 CFR 801; 48 CFR 832; 48 CFR 836; 48 CFR 843; 48 CFR 846; 48 CFR 852

Completed:

Reason	Date	FR Cite
Final Action	07/30/02	67 FR 49257
Final Action Effective	08/29/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Donald E. Kaliher
Phone: 202 273-8819
Fax: 202 273-9302
Email: donald.kaliher@mail.va.gov

RIN: 2900–AJ56

3072. BOARD OF VETERANS' APPEALS—RULES OF PRACTICE—ATTORNEY FEE MATTERS

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 20.3; 38 CFR 20.609; 38 CFR 20.610

Completed:

Reason	Date	FR Cite
Final Action	05/23/02	67 FR 36102
Final Action Effective	06/24/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven L. Keller
Phone: 202 565-5978

RIN: 2900–AI98

3073. BOARD OF VETERANS' APPEALS: RULES OF PRACTICE—EFFECT OF PROCEDURAL DEFECTS IN MOTIONS FOR REVISION OF DECISIONS ON GROUNDS OF CLEAR AND UNMISTAKABLE ERROR

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 20.1404(b); 38 CFR 20.1409(b)

Completed:

Reason	Date	FR Cite
Final Action	07/17/02	67 FR 46869
Final Action Effective	07/17/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven L. Keller
Phone: 202 565-5978

RIN: 2900–AK74

3074. BOARD OF VETERANS' APPEALS: RULES OF PRACTICE—ATTORNEY FEE MATTERS; NOTICE OF DISAGREEMENT MATTERS

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 20.609

Completed:

Reason	Date	FR Cite
Final Action	07/31/02	67 FR 49599

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven L. Keller
Phone: 202 565-5978

RIN: 2900–AL25

3075. PROHIBITION OF INTERMENT OR MEMORIALIZATION IN NATIONAL CEMETERIES AND CERTAIN STATE CEMETERIES DUE TO CAPITAL CRIMES

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 1; 38 CFR 39

Completed:

Reason	Date	FR Cite
Final Action	10/08/02	67 FR 62642
Final Action Effective	11/07/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Karen Barber
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Email: karen.barber@mail.va.gov

RIN: 2900–AJ77

[FR Doc. 02–23908 Filed 12–06–02; 8:45 am]
BILLING CODE 8320–01–S

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Federal Register

Monday,
December 9, 2002

Part XVII

Advisory Council on Historic Preservation

Semiannual Regulatory Agenda

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ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP)

ADVISORY COUNCIL ON HISTORIC PRESERVATION

36 CFR Ch. VIII

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Advisory Council on Historic Preservation.

ACTION: Semiannual regulatory agenda.

SUMMARY: The following Advisory Council on Historic regulations are scheduled for development. They are submitted herein for publication in the Unified Agenda of Federal Regulatory and Deregulatory Actions.

FOR FURTHER INFORMATION CONTACT: The Advisory Council contact person for Unified Agenda matters is Javier E. Marques, Associate General Counsel, (202) 606-8503, 1100 Pennsylvania Avenue NW., Suite 809, Washington, DC 20004.

Dated: September 20, 2002.

Advisory Council on Historic Preservation.

John M. Fowler,

Executive Director.

Advisory Council on Historic Preservation—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3076	Protection of Historic Properties	3010-AA06

Advisory Council on Historic Preservation (ACHP) — **Long-Term Actions**

3076. • PROTECTION OF HISTORIC PROPERTIES

Priority: Other Significant

Legal Authority: 16 USC 470s

CFR Citation: 36 CFR 800

Legal Deadline: None

Abstract: The Advisory Council on Historic Preservation envisions undergoing rulemaking to amend its regulations that implement section 106 of the National Historic Preservation Act. These few amendments would make the regulations comport with the court decision of National Mining Association v. Nav, and would allow the Advisory Council to pursue section 106 exemptions on its own initiative.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Tribal, Federal

Agency Contact: Javier Esteban Marques, Associate General Counsel, Advisory Council on Historic Preservation, Room 809, 1100 Pennsylvania Avenue NW., Washington, DC 20004-2501
Phone: 202 606-8503
Fax: 202 606-8672
Email: jmarques@achp.gov

RIN: 3010–AA06

[FR Doc. 02–25200 Filed 12–06–02; 8:45 am]
BILLING CODE 4310–10–S

Federal Register

Monday,
December 9, 2002

Part XVIII

Agency for International Development

Semiannual Regulatory Agenda

AGENCY FOR INTERNATIONAL DEVELOPMENT (AID)

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Ch. II

Federal Regulations; USAID Regulatory Agenda Semiannual Summary

AGENCY: U.S. Agency for International Development.

ACTION: Semiannual regulatory agenda.

SUMMARY: The U.S. Agency for International Development (USAID) is publishing this agenda as required by Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), and the Regulatory Flexibility Act. This agenda reports the status of those regulations currently under review and gives USAID's plan for the issuance of proposed regulations during the next 12 months. It is expected that the information provided in this agenda will enable the public to be more aware of and to participate more effectively in USAID's regulatory process.

FOR FURTHER INFORMATION CONTACT:

General: For further information on the agenda or the review list in general, contact: Joanne M. Paskar, Chief, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Washington, DC 20523; Telephone (202) 712-1217, e-mail: jpaskar@usaid.gov.

Specific: For further information about any particular item on the agenda, contact the individual listed as the contact for that item.

SUPPLEMENTARY INFORMATION: Executive Order 12866 and the Regulatory Flexibility Act require the semiannual publication in the **Federal Register** of an agenda of regulations. The Regulatory Flexibility Act applies only to regulations for which a notice of proposed rulemaking was issued on or after September 19, 1980. USAID is required to publish an agenda listing all the regulations it expects to propose or promulgate that are likely to have a "significant economic impact on a substantial number of small entities." The Executive order became effective on September 30, 1993, and it is required that USAID publish a listing of all the regulations it expects to have under active consideration for proposal or review during the coming one-year period.

Dated: September 10, 2002.

Roberto J. Miranda,

Director of Administrative Services.

Agency for International Development—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3077	USAID Acquisition Regulation (AIDAR) Deletion of Appendix D and Appendix J	0412-AA43
3078	USAID Acquisition Regulation (AIDAR) Creation of Appendix A	0412-AA49

Agency for International Development—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3079	Administration of Grants and Cooperative Agreements	0412-AA21
3080	Miscellaneous Amendments to the AIDAR (AIDAR Notice 98-2)	0412-AA30
3081	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	0412-AA45
3082	Adding Vietnam, Cambodia, and Afghanistan to the List of Countries Eligible for USAID Financing	0412-AA48

Agency for International Development—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3083	Governmentwide Debarment and Suspension; Requirements for Drug-Free Workplace (Financial Assistance)	0412-AA47

Agency for International Development (AID) — **Proposed Rule Stage**

3077. USAID ACQUISITION REGULATION (AIDAR) DELETION OF APPENDIX D AND APPENDIX J

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2381

CFR Citation: 48 CFR ch 7, app D; 48 CFR ch 7, app J

Legal Deadline: None

Abstract: Deletion of appendices D and J of the AIDAR, regarding personal service contracts with U.S. citizens and cooperating country and third country nationals. Policy statements in the appendices will be consolidated into internal policy manuals, and information of a regulatory nature will be incorporated into a new appendix A.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
NPRM Comment Period End	04/00/03	
Final Action	07/00/03	
Final Action Effective	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom M. Henson, Senior Procurement Analyst, Agency for International Development, Room 7.08-106, Policy Division, Office of Procurement, 1300 Pennsylvania Avenue NW., Washington, DC 20523
Phone: 202 712-5448
Fax: 202 216-3136
Email: thenson@usaid.gov

RIN: 0412–AA43

3078. USAID ACQUISITION REGULATION (AIDAR) CREATION OF APPENDIX A

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 48 CFR ch 7, app A

Legal Deadline: None

Abstract: Appendix A will replace, in substance, the existing appendix D and J scheduled to be deleted commensurate to this action.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
NPRM Comment Period End	04/00/03	
Final Action	07/00/03	
Final Action Effective	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom M. Henson, Senior Procurement Analyst, Agency for International Development, Room 7.08-106, Policy Division, Office of Procurement, 1300 Pennsylvania Avenue NW., Washington, DC 20523
Phone: 202 712-5448
Fax: 202 216-3136
Email: thenson@usaid.gov

RIN: 0412–AA49

Agency for International Development (AID) — **Final Rule Stage**

3079. ADMINISTRATION OF GRANTS AND COOPERATIVE AGREEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2381

CFR Citation: 22 CFR 226

Legal Deadline: None

Abstract: This regulation will implement the Governmentwide uniform administrative requirements for grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations issued by the Office of Management and Budget.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/19/95	60 FR 3743
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Allen Eisenberg, Senior Policy Analyst, Agency for International Development, 1300 Pennsylvania Avenue NW., Washington, DC 20523
Phone: 202 712-0824
Email: aeisenberg@usaid.gov

RIN: 0412–AA21

3080. MISCELLANEOUS AMENDMENTS TO THE AIDAR (AIDAR NOTICE 98-2)

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2381

CFR Citation: 48 CFR 712; 48 CFR 727; 48 CFR 742; 48 CFR 752; 48 CFR ch 7, app I

Legal Deadline: None

Abstract: The USAID Acquisition Regulation will be amended to clarify USAID policy on the use of Government facilities and personnel in commercial products, establish an Agency policy regarding contract clauses to clarify withholding requirements under IQC contracts, revise reporting requirements, and coordinate the Agency's academic publication policy with the FAR's Rights in Data coverage by removing it from appendix I into a new part 727. This new AIDAR part will also provide for contractual coverage of Rights in Data in USAID's contracts performed overseas and awarded to U.S. organizations, provide guidance on Rights in Data coverage for overseas contracts with non-U.S. entities, and provide an alternate paragraph to add to the applicable FAR clause to reserve USAID's right to restrict release of data when release may negatively impact the Government's development or diplomatic relationship with the cooperating countries.

Timetable:

Action	Date	FR Cite
NPRM	11/04/98	63 FR 59501
NPRM Comment Period End	01/04/99	
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Diane M. Howard, Senior Procurement Analyst, Agency for International Development, Room 7.08-082U, M/OP/P, 1300 Pennsylvania Avenue NW., Washington, DC 20523-7801
Phone: 202 712-0206
Fax: 202 216-3395
Email: dhoward@usaid.gov

RIN: 0412–AA30

AID — Final Rule Stage

3081. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 22 CFR 209.1 to 209.13; 22 CFR 217.1 to 217.47; 22 CFR 218.01 to 218.39

Legal Deadline: None

Abstract: The Agency for International Development proposes to make amendments to its regulations implementing title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRRA's definition of "program or activity" and "program" into the Department's title VI, section 504, and Age Discrimination Act regulations. The Department's proposed regulation will be published as part of a joint Notice of Proposed Rulemaking involving up to 24 Federal agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76459
NPRM Comment Period End	01/05/01	
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Jessalyn L. Pendarvis, Director, Office of Equal Opportunity Programs, Agency for International Development, Room 2.09-77, 1300 Pennsylvania Avenue NW., Washington, DC 20523-2901
Phone: 202 712-1110
Fax: 202 216-3370
Email: jpendarvis@usaid.gov

RIN: 0412–AA45

3082. ADDING VIETNAM, CAMBODIA, AND AFGHANISTAN TO THE LIST OF COUNTRIES ELIGIBLE FOR USAID FINANCING

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2381

CFR Citation: 22 CFR 228

Legal Deadline: None

Abstract: Vietnam, Cambodia, and Afghanistan will be removed from the restricted countries list for source/origin/nationality purposes.

Timetable:

Action	Date	FR Cite
Final Action	02/00/03	
Final Action Effective	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Frances M. Maki, Senior Procurement Analyst, Agency for International Development, Room 7.08-094, M OP/P, 1300 Pennsylvania Avenue NW., Washington, DC 20523
Phone: 202 712-4978
Email: fmaki@usaid.gov

RIN: 0412–AA48

Agency for International Development (AID) — Long-Term Actions

3083. GOVERNMENTWIDE DEBARMENT AND SUSPENSION; REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Priority: Substantive, Nonsignificant

CFR Citation: 22 CFR 208; 22 CFR 210

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3315
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Frances M. Maki
Phone: 202 712-4978
Email: fmaki@usaid.gov

RIN: 0412–AA47

[FR Doc. 02–23907 Filed 12–06–02; 8:45 am]
BILLING CODE 6116–01–S

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Monday,
December 9, 2002

Part XIX

Architectural and Transportation Barriers Compliance Board

Semiannual Regulatory Agenda

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD (ATBCB)

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Ch. XI

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Architectural and Transportation Barriers Compliance Board submits the following agenda of proposed regulatory activities, which may be conducted by the agency during the next 12 months. This regulatory agenda may be revised by the agency during the coming months as a result of action taken by the Board.

ADDRESSES: Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., Suite 1000, Washington, DC 20004-1111.

FOR FURTHER INFORMATION CONTACT: For information concerning Board regulations and proposed actions, contact James J. Raggio, General Counsel, (202) 272-0040 (voice) or (202) 272-0034 (TDD).

James J. Raggio,

General Counsel, Architectural and Transportation Barriers Compliance Board.

Architectural and Transportation Barriers Compliance Board—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3084	Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities	3014-AA20

Architectural and Transportation Barriers Compliance Board—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3085	Americans with Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles: Passenger Vessels	3014-AA11
3086	Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities: Outdoor Developed Areas	3014-AA22
3087	Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities: Public Rights-of-Way	3014-AA26

Architectural and Transportation Barriers Compliance Board—Completed Actions

Sequence Number	Title	Regulation Identification Number
3088	Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities: Recreation Facilities	3014-AA16

Architectural and Transportation Barriers Compliance Board (ATBCB)

Final Rule Stage

3084. AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 42 USC 12204, Americans with Disabilities Act of 1990; 29 USC 792, Rehabilitation Act

CFR Citation: 36 CFR 1191; 36 CFR 1190

Legal Deadline: None

Abstract: This regulation will revise and update the accessibility guidelines for the Americans with Disabilities Act (ADA) and the Architectural Barriers Act.

Timetable:

Action	Date	FR Cite
Notice of Intent to Establish Advisory Committee	04/06/94	59 FR 16175
Establishment of Advisory Committee	09/14/94	59 FR 47165
NPRM	11/16/99	64 FR 62248
Notice Extending Comment Period	03/09/00	65 FR 12493
NPRM Comment Period End	03/15/00	
Extension Period End	05/15/00	
Availability of Draft Final Guidelines	04/02/02	67 FR 15509
Second NPRM	09/03/02	67 FR 56441
Second NPRM Comment Period End	10/03/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

ATBCB

Final Rule Stage

Agency Contact: James J. Raggio, General Counsel, Architectural and Transportation Barriers Compliance
Board, Suite 1000, 1331 F Street NW., Washington, DC 20004-1111
Phone: 202 272-0040
TDD Phone: 202 272-0034
Fax: 202 272-0081
Email: raggio@access-board.gov

RIN: 3014–AA20

Architectural and Transportation Barriers Compliance Board (ATBCB)

Long-Term Actions

3085. AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR TRANSPORTATION VEHICLES: PASSENGER VESSELS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 12204, Americans with Disabilities Act of 1990

CFR Citation: 36 CFR 1192

Legal Deadline: None

Abstract: This regulation will amend the Americans with Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles to include additional requirements for ferries, excursion boats, and other passenger vessels.

Timetable:

Action	Date	FR Cite
Notice of Intent to Establish Advisory Committee	03/30/98	63 FR 15175
Establishment of Advisory Committee	08/12/98	63 FR 43136
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: James J. Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, Suite 1000, 1331 F Street NW., Washington, DC 20004-1111
Phone: 202 272-0040
TDD Phone: 202 272-0034
Fax: 202 272-0081
Email: raggio@access-board.gov

RIN: 3014–AA11

3086. AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES: OUTDOOR DEVELOPED AREAS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 12204, Americans with Disabilities Act of 1990

CFR Citation: 36 CFR 1191

Legal Deadline: None

Abstract: This regulation will amend the Americans with Disabilities Act (ADA) Accessibility Guidelines to include requirements for outdoor developed areas.

Timetable:

Action	Date	FR Cite
Notice of Intent to Conduct Regulatory Negotiation	04/18/97	62 FR 19084
Establishment of Regulatory Negotiation Committee	06/04/97	62 FR 30546
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: James J. Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, Suite 1000, 1331 F Street NW., Washington, DC 20004-1111
Phone: 202 272-0040
TDD Phone: 202 272-0034
Fax: 202 272-0081
Email: raggio@access-board.gov

RIN: 3014–AA22

3087. AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES: PUBLIC RIGHTS-OF-WAY

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 12204, Americans with Disabilities Act; 29 USC 792, Rehabilitation Act

CFR Citation: 36 CFR 1190; 36 CFR 1191

Legal Deadline: None

Abstract: This regulation will amend the accessibility guidelines for the Americans with Disabilities Act and the Architectural Barriers Act to include requirements for public rights-of-way.

Timetable:

Action	Date	FR Cite
Notice of Intent to Form Advisory Committee	08/12/99	64 FR 43980
Notice of Appointment of Advisory Committee Members	10/20/99	64 FR 56482
Availability of Draft Guidelines	06/17/02	67 FR 41206
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State, Local, Tribal, Federal

Federalism: Undetermined

Agency Contact: James J. Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, Suite 1000, 1331 F Street NW., Washington, DC 20004-1111
Phone: 202 272-0040
TDD Phone: 202 272-0034
Fax: 202 272-0081
Email: raggio@access-board.gov

RIN: 3014–AA26

Architectural and Transportation Barriers Compliance Board (ATBCB)

Completed Actions

3088. AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES: RECREATION FACILITIES

Priority: Other Significant

Legal Authority: 42 USC 12204, Americans with Disabilities Act of 1990

CFR Citation: 36 CFR 1191

Legal Deadline: None

Abstract: To amend the Americans with Disabilities Act (ADA) Accessibility Guidelines to include requirements for recreational facilities.

Timetable:

Action	Date	FR Cite
Notice of Intent to Form Advisory Committee	02/03/93	58 FR 6949
Notice of Appointment of Advisory Committee Members	06/10/93	58 FR 32511
ANPRM	09/21/94	59 FR 48542
ANPRM Comment Period End	12/20/94	
NPRM	07/09/99	64 FR 37326
NPRM Comment Period End	12/08/99	
Availability of Draft Final Guidelines Summary	07/21/00	65 FR 45331
Final Action	09/03/02	67 FR 56352

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal

Agency Contact: James J. Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, Suite 1000, 1331 F Street NW., Washington, DC 20004-1111
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TDD Phone: 202 272-0034
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RIN: 3014–AA16

[FR Doc. 02–23905 Filed 12–06–02; 8:45 am]
BILLING CODE 8150–01–S

VOL 67 ISS 236 DEC 9 2002 UMI



Federal Register

Monday,
December 9, 2002

Part XX

Commission on Civil Rights

Semiannual Regulatory Agenda

COMMISSION ON CIVIL RIGHTS (CCR)

COMMISSION ON CIVIL RIGHTS

45 CFR Ch. VII

Semiannual Agenda of Regulations

AGENCY: Commission on Civil Rights.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda announces the regulations the U.S. Commission on Civil Rights will have under development during the six-month period from October 1, 2002 through April 30, 2003. The purpose for publishing this agenda is to give notice of any regulatory activity by the Commission in order to allow the public an opportunity to participate in the rulemaking process.

FOR FURTHER INFORMATION CONTACT: For further information on any items in the agenda, contact Debra A. Carr, Deputy General Counsel, U.S. Commission on Civil Rights, Room 620, 624 Ninth Street NW., Washington, DC 20425, (202) 376-8351.

SUPPLEMENTARY INFORMATION: In accordance with Executive Order 12866, "Regulatory Planning and Review" and the Regulatory Flexibility Act (5 U.S.C. 605), executive agencies are required to publish in the **Federal Register** semiannual regulatory agendas each year.

The regulations being considered by the Commission are not "significant" rules within the meaning of Executive Order 12866, and no regulatory impact analysis is required. The Commission has determined that the regulations under consideration will not impose compliance costs or reporting burdens on the public, nor will the regulations have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory analysis is required.

Debra A. Carr,

Deputy General Counsel.

Commission on Civil Rights—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3089	Commission on Civil Rights—Update and Revision	3035-AA02

Commission on Civil Rights (CCR) — **Long-Term Actions**

3089. COMMISSION ON CIVIL RIGHTS—UPDATE AND REVISION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1975 to 1975f; 5 USC 552(a); 5 USC 552(b)

CFR Citation: 45 CFR 701; 45 CFR 702; 45 CFR 703

Legal Deadline: None

Abstract: The regulation updates and revises most of the Commission's current regulations, specifically 45 CFR 701, 702, 703. 45 CFR 701 identifies the organization and functions of the Commission. 45 CFR 702 specifies the rules on hearings, reports, and meetings of the Commission. 45 CFR 703 identifies the operations and functions of the Commission's State Advisory Committees.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Debra A. Carr, Deputy General Counsel, Commission on Civil Rights, Room 625, 624 9th Street NW., Washington, DC 20425-0001
Phone: 202 376-8351
Email: dcarr@usccr.gov

RIN: 3035–AA02

[FR Doc. 02–23889 Filed 12–06–02; 8:45 am]

BILLING CODE 6335–01–S

Federal Register

Monday,
December 9, 2002

Part XXI

Corporation for National and Community Service

Semiannual Regulatory Agenda

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE (CNCS)

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Chs. XII, XXV

Executive Order 12866 "Regulatory Planning and Review"

AGENCY: Corporation for National and Community Service.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda announces the regulations that the Corporation will have under development, revision, or review during the next year. The purpose for publishing this agenda is to give notice of any regulatory activity by the Agency in order to provide the public an opportunity to participate in the rulemaking process.

FOR FURTHER INFORMATION CONTACT: The public is encouraged to contact the agency official listed for the particular agenda item. For other information concerning Corporation regulations or this semiannual agenda, contact Frank R. Trinity, General Counsel, Corporation for National and Community Service, 1201 New York Avenue NW., Washington, DC 20525, (202) 606-5000, ext. 290.

SUPPLEMENTARY INFORMATION: In accordance with Executive Order 12866 "Regulatory Planning and Review" and the Regulatory Flexibility Act (5 U.S.C. 601), executive agencies are required to publish in the **Federal Register** semiannual regulatory agendas in April and October of each year.

The Corporation for National and Community Service has determined that the regulations under consideration will not impose compliance costs or reporting burdens on the public and that the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory analysis is required under 5 U.S.C. 602.

Dated: September 20, 2002.

Wendy Zenker,

Chief Operating Officer.

Corporation for National and Community Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3090	Implementation of the Privacy Act of 1974; Amendment	3045-AA25

Corporation for National and Community Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3091	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	3045-AA27

Corporation for National and Community Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3092	Claims Collection	3045-AA20
3093	AmeriCorps and Learn & Serve Grant Regulations	3045-AA23
3094	Discrimination Complaint Procedures for Service Members, Participants, and Other Beneficiaries	3045-AA24
3095	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)	3045-AA28
3096	Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments	3045-AA33
3097	Corporation for National and Community Service Regulations	3045-AA34
3098	Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by ACTION	3045-AA35
3099	AmeriCorps*VISTA Program Regulations	3045-AA36
3100	ACTION Cooperative Volunteer Program	3045-AA37
3101	Official Seal	3045-AA38
3102	National Senior Service Corps Regulations	3045-AA39

Corporation for National and Community Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
3103	Senior Companion Program	3045-AA29
3104	Foster Grandparent Program	3045-AA30

CNCS

Corporation for National and Community Service—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
3105	AmeriCorps Grant Regulations	3045-AA32

Corporation for National and Community Service (CNCS) — Proposed Rule Stage

3090. IMPLEMENTATION OF THE PRIVACY ACT OF 1974; AMENDMENT

Priority: Info./Admin./Other

Legal Authority: 5 USC 552a; 42 USC 12501 et seq; 42 USC 4950 et seq

CFR Citation: 45 CFR 2508

Legal Deadline: None

Abstract: This action updates several minor changes to the Corporation for National Service's current Privacy Act regulation found at 45 CFR 2508. These amendments are in accordance with the Privacy Act found at 5 U.S.C. 552a.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mr. William L. Hudson, Law Office Manager, Corporation for National and Community Service, Room 8200, 1201 New York Avenue NW, Washington, DC 20525
Phone: 202 606-5000
TDD Phone: 202 565-2799
Fax: 202 565-2796
Email: whudson@cns.gov

RIN: 3045–AA25

Corporation for National and Community Service (CNCS) — Final Rule Stage

3091. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 45 CFR 1203; 45 CFR 1232

Legal Deadline: None

Abstract: The Corporation proposes to make amendments to its regulations implementing title VI of the Civil Rights Act of 1964 (title VI) and section 504 of the Rehabilitation Act of 1972 (section 504). Together, these statutes prohibit discrimination on the basis of race, color, national origin, and disability in programs and activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRAA's definition of "program or activity" and "program" into the Corporation's title VI and section 504 regulations. The Corporation's final regulation, which has been prepared, will be published as part of a joint rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	04/00/03	
Final Action Effective	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: The RIN 3045-AA29, published in the Federal Register at 65 FR 76460 and 76512, dated December 6, 2000, was incorrect and should have been 3045-AA27.

Agency Contact: Nancy B. Voss, Director, Equal Opportunity, Corporation for National and Community Service, Room 7100, 1201 New York Avenue NW, Washington, DC 20525
Phone: 202 606-5000
Fax: 202 565-2796
Email: nvoss@cns.gov

RIN: 3045–AA27

3092. CLAIMS COLLECTION

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 2506

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/28/99	64 FR 4315
Interim Final Rule Comment Period End	03/29/99	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal

Agency Contact: Suzanne K. Dupre
Phone: 202 606-5000
Fax: 202 565-2796
Email: sdupre@cns.gov

RIN: 3045–AA20

3093. AMERICORPS AND LEARN & SERVE GRANT REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 2510; 45 CFR 2513; 45 CFR 2515 to 2540; 45 CFR 2550

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Frank Robert Trinity
Phone: 202 606-5000
Fax: 202 565-2796
Email: ftrinity@cns.gov

RIN: 3045–AA23

3094. DISCRIMINATION COMPLAINT PROCEDURES FOR SERVICE MEMBERS, PARTICIPANTS, AND OTHER BENEFICIARIES

Priority: Other Significant

CFR Citation: 45 CFR 2504

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Nancy B. Voss
Phone: 202 606-5000
Fax: 202 565-2796
Email: nvoss@cns.gov

RIN: 3045–AA24

3095. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 2542; 45 CFR 2545

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Suzanne K. Dupre
Phone: 202 606-5000
Fax: 202 565-2796
Email: sdupre@cns.gov

RIN: 3045–AA28

3096. • UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Priority: Info./Admin./Other

Legal Authority: 42 USC 12501 et seq; 42 USC 4950 et seq

CFR Citation: 45 CFR 1234

Legal Deadline: None

Abstract: When the Corporation for National and Community Service, created under the National and Community Service Act of 1990, as amended, took control of the programs run by its predecessor, the ACTION Agency, in April 1994, the ACTION Agency ceased to exist. Therefore, 45 CFR part 1234, which covers the enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by ACTION, is outdated and will be superseded by 45 CFR 2541.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Britanya E. Rapp, Associate General Counsel, Corporation for National and Community Service, Room 8209, 1201 New York Avenue NW, Washington, DC 20525
Phone: 202 606-5000
TDD Phone: 202 565-2799
Fax: 202 565-2796
Email: brapp@cns.gov

RIN: 3045–AA34

3098. • ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY ACTION

Priority: Info./Admin./Other

Legal Authority: 42 USC 12501 et seq; 42 USC 4950 et seq

CFR Citation: 45 CFR 1214

Legal Deadline: None

Abstract: When the Corporation for National and Community Service, created under the National and Community Service Act of 1990, as amended, took control of the programs run by its predecessor, the ACTION Agency, in April 1994, the ACTION Agency ceased to exist. Therefore, 45 CFR part 1214, which covers the enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by ACTION, is outdated and will be superceded by 45 CFR part 2532.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mr. William L. Hudson, Law Office Manager, Corporation for National and Community Service, Room 8200, 1201 New York Avenue NW, Washington, DC 20525
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TDD Phone: 202 565-2799
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RIN: 3045–AA33

3097. • CORPORATION FOR NATIONAL AND COMMUNITY SERVICE REGULATIONS

Priority: Info./Admin./Other

Legal Authority: 42 USC 12501 et seq; 42 USC 4950 et seq

CFR Citation: 45 CFR 1201

Legal Deadline: None

Abstract: The Corporation for National and Community Service plans to redesignate the regulatory provisions currently in 45 CFR chapter 12 to 45 CFR chapter 25, where the Corporation's other regulations are published.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mr. William L. Hudson, Law Office Manager, Corporation for National and Community Service, Room 8200, 1201 New York Avenue NW, Washington, DC 20525
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RIN: 3045–AA35

3099. • AMERICORPS*VISTA PROGRAM REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 12501 et seq; 42 USC 4950 et seq

CFR Citation: 45 CFR 1206; 45 CFR 1210 to 1211; 45 CFR 1216 to 1232; 45 CFR 1234 to 1235

Legal Deadline: None

Abstract: The Corporation for National and Community Service plans to revise regulations governing the AmeriCorps*VISTA program under the National and Community Service Act of 1990, as amended, and the Domestic Volunteer Service Act of 1973 to implement administrative reforms and/or possible statutory amendments. In addition, the Corporation plans to remove all references to the Corporation's predecessor agency—ACTION—and to redesignate the regulatory provisions currently in 45 CFR chapter 12 to 45 CFR chapter 25, where the Corporation's other regulations are published.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal

Agency Contact: Robert Bush, Acting Director of AmeriCorps*VISTA, Corporation for National and Community Service, 1201 New York Avenue NW, Washington, DC 20525
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RIN: 3045–AA36

3100. • ACTION COOPERATIVE VOLUNTEER PROGRAM

Priority: Info./Admin./Other

Legal Authority: 42 USC 12501 et seq; 42 USC 4950 et seq

CFR Citation: 45 CFR 1213

Legal Deadline: None

Abstract: When the Corporation for National and Community Service, created under the National and Community Service Act of 1990, as amended, took control of the programs run by its predecessor, the ACTION Agency, in April 1994, the ACTION Agency ceased to exist. Therefore, 45 CFR part 1213, which covers the ACTION Cooperative Volunteer Program, is outdated and will be rescinded.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mr. William L. Hudson, Law Office Manager, Corporation for National and Community Service, Room 8200, 1201 New York Avenue NW, Washington, DC 20525
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RIN: 3045–AA37

3101. • OFFICIAL SEAL

Priority: Info./Admin./Other

Legal Authority: 42 USC 12501 et seq; 42 USC 4950 et seq

CFR Citation: 45 CFR 1204

Legal Deadline: None

Abstract: When the Corporation for National and Community Service, created under the National and Community Service Act of 1990, as amended, took control of the programs run by its predecessor, the ACTION Agency, in April 1994, the ACTION Agency ceased to exist. Therefore, 45 CFR part 1204, which covers the use of the ACTION Agency Official Seal, is outdated and will be rescinded.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mr. William L. Hudson, Law Office Manager, Corporation for National and Community Service, Room 8200, 1201 New York Avenue NW, Washington, DC 20525
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RIN: 3045–AA38

3102. • NATIONAL SENIOR SERVICE CORPS REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 12501 et seq; 42 USC 5000 et seq

CFR Citation: 45 CFR 2551; 45 CFR 2552; 45 CFR 2553; 45 CFR 1235

Legal Deadline: None

Abstract: The Corporation for National and Community Service plans to revise regulations governing the National Senior Service Corps—including the Senior Companion Program, the Foster Grandparent Program, and the Retired and Senior Volunteer Program—under the National and Community Service Act of 1990, as amended, and the Domestic Volunteer Service Act of 1973 to implement administrative reforms and/or possible statutory amendments. In addition, the Corporation plans to redesignate provisions from 45 CFR chapter 12 to 45 CFR chapter 25, where the Corporation's other regulations are published.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal

CNCS — **Long-Term Actions**

Agency Contact: Peter Boynton, Program Officer, Corporation for National and Community Service, 1201 New York Avenue NW, Washington, DC 20525
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RIN: 3045–AA39

Corporation for National and Community Service (CNCS) — **Completed Actions**

3103. SENIOR COMPANION PROGRAM

Priority: Info./Admin./Other

CFR Citation: 45 CFR 2551

Completed:

Reason	Date	FR Cite
NPRM	04/17/02	67 FR 18846
Correction	04/25/02	67 FR 20485
Final Action	09/27/02	67 FR 60997

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Peter Boynton
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RIN: 3045–AA29

3104. FOSTER GRANDPARENT PROGRAM

Priority: Info./Admin./Other

CFR Citation: 45 CFR 2552

Completed:

Reason	Date	FR Cite
NPRM	04/17/02	67 FR 18847
Final Action	09/27/02	67 FR 60999

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Peter Boynton
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RIN: 3045–AA30

3105. AMERICORPS GRANT REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 2520; 45 CFR 2521; 45 CFR 2522; 45 CFR 2524; 45 CFR 2525; 45 CFR 2526; 45 CFR 2528; 45 CFR 2550

Completed:

Reason	Date	FR Cite
Final Action	07/09/02	67 FR 45357

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Frank Robert Trinity
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RIN: 3045–AA32

[FR Doc. 02–25199 Filed 12–06–02; 8:45 am]
BILLING CODE 6050–$$–S

Federal Register

Monday,
December 9, 2002

Part XXII

Court Services and Offender Supervision Agency for the District of Columbia

Semiannual Regulatory Agenda

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COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA (CSOSA)

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Ch. VIII

Semiannual Regulatory Agenda

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) is publishing its semiannual regulatory agenda pursuant to Executive Order 12866 (58 FR 51735) and the Regulatory Flexibility Act (5 U.S.C. chapter 6). The regulatory agenda lists all agency regulations that are scheduled for development during the next 12 months or that have been issued since the publication of the previous regulatory agenda.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Records Manager, Office of the General Counsel, CSOSA, Room 1253, 633 Indiana Avenue NW., Washington, DC 20004 (telephone: (202) 220-5359; e-mail: roy.nanovic@csosa.gov).

SUPPLEMENTARY INFORMATION: No new regulations have been identified for inclusion in this submission to the regulatory agenda.

George E. Pruden II,
General Counsel.

Court Services and Offender Supervision Agency for the District of Columbia—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3106	Agency Seal	3225-AA05
3107	Acceptance of Gifts	3225-AA06

Court Services and Offender Supervision Agency for the District of Columbia—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3108	Community Supervision: Administrative Sanctions Schedule	3225-AA00
3109	Disclosure of Records	3225-AA01
3110	District of Columbia Sex Offender Registration	3225-AA03
3111	Collection and Use of DNA Information	3225-AA04

Court Services and Offender Supervision Agency for the District of Columbia—Completed Actions

Sequence Number	Title	Regulation Identification Number
3112	Federal Tort Claims Act Procedures	3225-AA02

Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) — **Proposed Rule Stage**

3106. AGENCY SEAL

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-33; 18 USC 506; 18 USC 1017

CFR Citation: 28 CFR 803 (New)

Legal Deadline: None

Abstract: CSOSA proposes to adopt regulations on the use of its official seal and the official seal for the District of Columbia Pretrial Services Agency (PSA), an independent entity within CSOSA. Use by any person or organization outside of the Agency may be made only with CSOSA's or PSA's prior written approval. Wrongful use of an official seal is subject to administrative action and/or criminal penalty.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	
Final Action	07/00/03	
Final Action Effective	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roy Nanovic, Records Manager, Court Services and Offender Supervision Agency for the District of Columbia, Room 1253, 633 Indiana Avenue NW., Washington, DC 20004
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RIN: 3225–AA05

CSOSA — **Proposed Rule Stage**

3107. ACCEPTANCE OF GIFTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-96

CFR Citation: 28 CFR 804 (New)

Legal Deadline: None

Abstract: CSOSA proposes to adopt regulations on the acceptance and use of gifts by itself and by the District of Columbia Pretrial Services Agency (PSA), an independent entity within CSOSA. CSOSA and PSA have been granted specific authority by Congress to accept and use gifts in the form of in-kind contributions of space and hospitality for the purpose of supporting offender and defendant programs and equipment and vocational training services to educate and train offenders and defendants. These regulations establish procedures for the public to follow when offering a gift, criteria for accepting and using gifts, and procedures for audit and public inspection of records pertaining to the acceptance and use of gifts.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	
Final Action	08/00/03	
Final Action Effective	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roy Nanovic, Records Manager, Court Services and Offender Supervision Agency for the District of Columbia, Room 1253, 633 Indiana Avenue NW., Washington, DC 20004
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RIN: 3225–AA06

Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) — **Final Rule Stage**

3108. COMMUNITY SUPERVISION: ADMINISTRATIVE SANCTIONS SCHEDULE

Priority: Other Significant

Legal Authority: PL 105-33

CFR Citation: 28 CFR 810 (New)

Legal Deadline: None

Abstract: CSOSA issued interim regulations on administrative sanctions which may be imposed on offenders under CSOSA's supervision who violate the general or specific conditions of their release. The purpose of imposing sanctions is to enable CSOSA staff to respond as swiftly, certainly, and consistently as practicable to noncompliant behavior. Using sanctions will reduce the number of violation reports sent to the releasing authority (for example, the sentencing court or the United States Parole Commission). CSOSA staff will be able to refer offenders back to the releasing authority having demonstrated that CSOSA has exhausted the range of options at its disposal to change the offender's noncompliant behavior. The releasing authority may then concentrate on those referrals which fully merit scrutiny. The purpose of the regulations is to prevent crime, reduce recidivism, and support the fair administration of justice through the promotion of effective community supervision.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/20/01	66 FR 48336
Interim Final Rule Effective	09/20/01	
Interim Final Rule Comment Period End	11/19/01	
Final Action	12/00/02	
Final Action Effective	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roy Nanovic, Records Manager, Court Services and Offender Supervision Agency for the District of Columbia, Room 1253, 633 Indiana Avenue NW., Washington, DC 20004
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RIN: 3225–AA00

3109. DISCLOSURE OF RECORDS

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a

CFR Citation: 28 CFR 802 (New)

Legal Deadline: None

Abstract: CSOSA proposes to adopt regulations on the disclosure of CSOSA or the District of Columbia Pretrial Services Agency (PSA) records. These regulations include procedures for processing requests for disclosure under the Freedom of Information Act, under the Privacy Act, and for production of records in response to a demand from a court or other noncongressional authority in connection with a proceeding to which CSOSA or PSA is not a party. The regulations also identify Privacy Act system of records exemptions for both CSOSA and PSA. These regulations are necessary in order to ensure that the public has appropriate access to information maintained by the CSOSA and PSA and that adequate safeguards are in place to protect the privacy rights of individuals.

Timetable:

Action	Date	FR Cite
NPRM	03/15/02	67 FR 11804
NPRM Comment Period End	05/14/02	
Final Action	11/00/02	
Final Action Effective	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roy Nanovic, Records Manager, Court Services and Offender Supervision Agency for the District of Columbia, Room 1253, 633 Indiana Avenue NW., Washington, DC 20004
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RIN: 3225–AA01

Final Rule Stage

CSOSA — **Completed Actions**

CSOSA — **Final Rule Stage**

3110. DISTRICT OF COLUMBIA SEX OFFENDER REGISTRATION

Priority: Other Significant

Legal Authority: PL 105-23; PL 106-113

CFR Citation: 28 CFR 811 (New)

Legal Deadline: None

Abstract: CSOSA has issued interim regulations for the registration of sex offenders in the District of Columbia. These regulations provide notice to sex offenders of their duties under the law and under the regulations of the Metropolitan Police Department of the District of Columbia to register with CSOSA. In most instances, sex offenders will receive notification that they are subject to registration when they are being sentenced by the Superior Court of the District of Columbia after being found guilty (or found not guilty by reason of insanity or adjudicated as a sexual psychopath) or when CSOSA becomes responsible for their supervision. In those cases where the offender has previously committed a registration offense and is not currently under supervision, the offender must contact CSOSA to register in order to avoid possible criminal penalty. These regulations are intended to provide for the protection of the public and to ensure that the District of Columbia may provide appropriate notification regarding the presence of sex offenders in the community.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/21/02	67 FR 54093
Interim Final Rule Comment Period End	10/21/02	
Final Action	01/00/03	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Roy Nanovic, Records Manager, Court Services and Offender Supervision Agency for the District of Columbia, Room 1253, 633 Indiana Avenue NW., Washington, DC 20004
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RIN: 3225–AA03

3111. COLLECTION AND USE OF DNA INFORMATION

Priority: Other Significant

Legal Authority: PL 106-546

CFR Citation: 28 CFR 812 (New)

Legal Deadline: Final, Statutory, June 17, 2001.

Abstract: CSOSA has issued interim regulations on the collection and use of DNA information. DNA information is collected under CSOSA's supervision from individuals who have been convicted of specific offenses identified by District of Columbia statute. The DNA information becomes part of the combined DNA Index System (CODIS), a national data base of DNA profiles from convicted offenders, unsolved crime scenes, and missing persons. The regulations specify that the DNA sample will be collected in accordance with FBI guidelines. The regulations also establish procedures for cooperating with the Federal Bureau of Prisons to ensure that unnecessary samples will not be collected; establish a standard for what constitutes an individual's refusal to cooperate in the collection of the sample; define what steps CSOSA deems to be reasonably necessary to take when an individual refuses to cooperate; and list in an appendix the offenses which qualify for DNA collection.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/21/02	67 FR 54098
Interim Final Rule Comment Period End	10/21/02	
Final Action	01/00/03	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roy Nanovic, Records Manager, Court Services and Offender Supervision Agency for the District of Columbia, Room 1253, 633 Indiana Avenue NW., Washington, DC 20004
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RIN: 3225–AA04

Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) — **Completed Actions**

3112. FEDERAL TORT CLAIMS ACT PROCEDURES

Priority: Other Significant

Legal Authority: PL 105-33; 28 CFR 14.11

CFR Citation: 28 CFR 801 (New)

Legal Deadline: None

Abstract: CSOSA has adopted regulations to supplement Department of Justice regulations for processing administrative claims under the Federal Tort Claims Act (FTCA). These supplemental regulations state in plain language what members of the public need to do to file a claim for money damages under the FTCA with CSOSA or with the District of Columbia Pretrial Services Agency (PSA). These regulations are necessary to help ensure that persons who suffer proven monetary loss, personal injury, or wrongful death due to a negligent or otherwise wrongful act or omission of a CSOSA or PSA employee committed while acting within the scope of his or her employment will be properly compensated.

Timetable:

Action	Date	FR Cite
NPRM	11/20/01	66 FR 58083
NPRM Comment Period End	01/22/02	
Final Action	09/13/02	67 FR 57947
Final Action Effective	10/15/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roy Nanovic, Records Manager, Court Services and Offender

CSOSA — **Completed Actions**

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RIN: 3225–AA02

[FR Doc. 02–24260 Filed 12–06–02; 8:45 am]
BILLING CODE 3129–01–S

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Federal Register

12–9–02 Monday
Vol. 67 No. 236 Dec. 9, 2002

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Monday,
December 9, 2002

Part XXIII

Environmental Protection Agency

Semiannual Regulatory Agenda

ENVIRONMENTAL PROTECTION AGENCY (EPA)

ENVIRONMENTAL PROTECTION AGENCY (EPA)

40 CFR Ch. I

FRL-7390-2

Fall 2002 Regulatory Agenda

AGENCY: Environmental Protection Agency.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Environmental Protection Agency (EPA) publishes the Semiannual Regulatory Agenda to update the public about:

- Regulations and major policies currently under development,
- Reviews of existing regulations and major policies, and
- Regulations and major policies completed or canceled since the last Agenda.

TO BE PLACED ON THE AGENDA MAILING LIST: If you would like to subscribe, please send an e-mail with your name and address to: ncepimal@one.net, or call 800-490-9198. There is no charge for single copies of the Agenda.

FOR FURTHER INFORMATION OR TO MAKE GENERAL SUGGESTIONS CONTACT: If you have questions or comments about a particular action, please get in touch with the agency contact listed in each Agenda entry. If you have general questions about or suggestions for improving the Agenda or questions about EPA's decision making process, please contact: Phil Schwartz (1806A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; phone: (202)564-6564; e-mail: schwartz.philip@epa.gov

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A. What Is EPA's Overriding Objective in Developing Regulations and Policies and What Key Principles Drive EPA's Rulemaking and Policymaking Process?

EPA must ensure that the Nation's system of regulatory and nonregulatory environmental controls is even-handed, cost-effective and fully protective of human health and the environment. Key to this objective is our commitment to prepare high quality scientific, economic, and policy analyses which form the foundations of our regulations. These efforts are paramount, because success is measured in the credibility of our decisions and ultimately our effectiveness in protecting human health and the environment. With this in mind, appropriate scientific, economic and policy analyses must be planned and initiated at early stages in the regulatory development process, so that Agency decision makers are well informed of the qualitative and quantitative benefits and costs as they select among alternative approaches.

It is also important that EPA continue to apply new and improved methods to protect the environment, such as: building flexibility into regulations from the very beginning, creating strong partnerships with States and businesses, vigorously engaging in public outreach and involvement, and using effective nonregulatory approaches. Research, testing and adoption of new environmental protection methods must also be a central tenet in environmental problem solving. The integration of all these elements via a well managed regulatory development process and a strong commitment to innovative solutions will ensure that we all benefit from significant environmental improvements that are fair, efficient, and protective.

B. What External Controls Help Shape the Agency's Regulatory Development Efforts?

Beyond the Agency's own practices, Congress and the President have also established certain parameters for our regulatory development activities through various laws and Executive Orders, respectively.

The basic legal requirements we must follow when we issue a regulation generally are contained in the Administrative Procedure Act, the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act, the Unfunded Mandates Reform Act, the Paperwork Reduction Act, the National Technology Transfer and Advancement Act, and the Congressional Review Act. You can find information on many of these laws at http://www4.law.cornell.edu/uscode/

We also must meet a number of requirements contained in Executive Orders. Of particular significance for EPA rulemakings are Executive Orders 12866 (Regulatory Planning and Review), 13045 (Children's Health Protection), 13175 (Consultation and Coordination with Indian Tribal Governments), 13132 (Federalism), and 13211 (Energy). You can find information on these and other Executive orders at http://www.archives.gov/federal_register/executive_orders/disposition_tables.html

C. How Can You Effectively Participate in EPA's Decisionmaking Process?

You may participate by getting in touch with the contact person provided in each Agenda entry. You may also participate by commenting on proposed rules that we publish in the Federal Register. Once we have proposed a rule, we will consider and address comments before issuing a final rule. To be most effective, comments should contain information and data that support your position, and you also should explain why we should incorporate your suggestion in the final rule. You can be particularly helpful and persuasive if you provide examples to illustrate your concerns and offer specific alternatives.

We believe our rules will be more cost-effective and fairer if our development process includes external

EPA

stakeholders working with us in deciding on the solutions to problems. We urge you to participate with us in this process.

D. What Is the Relationship Between the Regulatory Agenda and Regulatory Plan?

Document	How Often?	Why?	What Is Included?
Regulatory Agenda	Spring and Fall	Originally an EPA initiative, now required by EO 12866 and the Regulatory Flexibility Act.	Introductory preamble and rule entries with description, contact person, deadlines, schedule, authority, OMB priority, RFA & UMRA impacts, & sectors affected
Regulatory Plan	Fall, published with the regulatory agenda	Required by EO 12866.	Statement of Priorities and highest priority actions. Entries include all regulatory information plus statement of need, costs & alternatives & risks.

E. What Actions Are Included in the Agenda?

EPA includes regulations and certain major noncodified policy documents in the Agenda. We generally do not include minor amendments or the following categories of actions in the Agenda:

- Administrative regulations such as delegations of authority, changes of address or phone numbers.
- Under the Clean Air Act: Revisions to State Implementation Plans; Equivalent Methods for Ambient Air Quality Monitoring; Deletions from the New Source Performance Standards source categories list; Delegations of Authority to States; Area Designations for Air Quality Planning Purposes.
- Under the Federal Insecticide, Fungicide, and Rodenticide Act: Actions regarding pesticide tolerances and food additive regulations; decision documents defining and establishing registration standards; decision documents and termination decisions for the Special Review Registration process; and data call-in requests made under section 3(c)(2)(B).
- Under the Resource Conservation and Recovery Act: Authorization of State solid waste management plans; hazardous waste delisting petitions.
- Under the Clean Water Act: State Water Quality Standards; deletions from the section 307(a) list of toxic pollutants; suspensions of toxic testing requirements under the National Pollutant Discharge Elimination System (NPDES); delegations of NPDES authority to States.
- Under the Safe Drinking Water Act: Actions on State underground injection control programs.

There is no legal significance to the omission of an item from the agenda.

F. How Is the Agenda Organized?

We have organized the agenda:

- First, by the law that would authorize a particular regulation;
- Second, by the current stage of development (proposal, final, etc.); and
- Third, by the section number of the statute which requires or authorizes the rule.

The following 14 sections deal with 13 laws that EPA administers and a fourteenth broader section called "General" that includes cross-cutting actions, such as rules authorized by multiple statutes and general acquisition rules:

1. General
2. The Clean Air Act (CAA)
3. The Atomic Energy Act (AEA)
4. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
5. The Federal Food, Drug, and Cosmetic Act (FFDCA)
6. The Toxic Substances Control Act (TSCA)
7. The Emergency Planning and Community Right-to-Know Act (EPCRA)
8. Chemical Safety Information, Site Security and Fuels Regulatory Relief Act
9. The Resource Conservation and Recovery Act (RCRA)
10. The Oil Pollution Act (OPA)
11. The Comprehensive Environmental Response, Compensation, and Liability Act Superfund (CERCLA)
12. The Clean Water Act (CWA)
13. The Safe Drinking Water Act (SDWA)
14. The Shore Protection Act (SPA)

In each of these 14 sections, there are up to 5 headings covering the following stages of rulemaking:

1. Prerulemakings - Prerulemaking actions are intended to determine whether EPA should initiate rulemaking. Prerulemakings may include anything that influences or leads to rulemaking, such as advance notices of proposed rulemaking (ANPRMs), significant studies or analyses of the possible need for regulatory action, announcement of reviews of existing regulations required under section 610 of the Regulatory Flexibility Act, requests for public comment on the need for regulatory action, or important preregulatory policy proposals,
2. Proposed Rules - This section includes EPA rulemaking actions that are within a year of proposal (publication of Notices of Proposed Rulemakings (NPRMs)).
3. Final Rules - This section includes rules that are within a year of final promulgation.
4. Long-Term Actions - This section includes rulemakings for which the

next scheduled regulatory action is after November 2003.

5. Completed Actions - This section contains actions that have been promulgated and published in the **Federal Register** since publication of the spring 2002 Agenda. It also includes actions that we are no longer considering. If an action appears in the completed section, it will not appear in future Agendas unless we decide to initiate action again, in which case it will appear as a new entry. EPA also announces the results of our Regulatory Flexibility Act section 610 reviews in this section of the Agenda.

G. What Information Is in Agenda Entries?

Agenda entries include the following information, where applicable:

Sequence Number: This indicates where the entry appears in the Agenda.

Title: Titles for new entries (those that have not appeared in previous Agendas) are preceded by a bullet (•). The notation "Section 610 Review" follows the title if we are reviewing the rule as part of our periodic review of existing rules under section 610 of the Regulatory Flexibility Act (5 U.S.C. 610).

Priority: Entries are placed into one of five categories described below.

Economically Significant: As defined in Executive Order 12866, a rulemaking action that may have an annual effect on the economy of $100 million or more or will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. OMB reviews all economically significant rules under Executive Order 12866.

Other Significant: A rulemaking that is not economically significant but is considered significant by the agency. This category includes rules that are an EPA priority and rules that EPA anticipates will be reviewed by the Office of Management and Budget under Executive Order 12866 because they may:

- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles in Executive Order 12866.

Substantive, Nonsignificant: A rulemaking that has substantive impacts but is neither Significant, nor Routine and Frequent, nor Informational/Administrative/Other.

Routine and Frequent: A rulemaking that is a specific case of a recurring application of a regulatory program in the Code of Federal Regulations (e.g., certain State Implementation Plans, National Priority List updates, Significant New Use Rules, State Hazardous Waste Management Program actions, and Tolerance exemptions). If an action that would normally be classified Routine and Frequent is reviewed by the Office of Management and Budget under E.O. 12866, then we would classify the action as either "Economically Significant" or "Other Significant."

Informational/Administrative/Other: A rulemaking that is primarily informational or pertains to agency matters not central to accomplishing the agency's regulatory mandate but that the agency places in the Agenda to inform the public of the activity.

Also, if we believe that a rule may be "major" as defined in the Congressional Review Act (5 U.S.C. 801, *et seq.*) because it is likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in this law, we indicate this under the "Priority" heading with the statement "Major under 5 U.S.C. 801."

Legal Authority: The sections of the United States Code (U.S.C.), Public Law (P.L.), Executive Order (E.O.), or common name of the law that authorizes the regulatory action.

CFR Citation: The sections of the Code of Federal Regulations that will be affected by the action.

Legal Deadline: An indication of whether the rule is subject to a statutory or judicial deadline, the date of that deadline, and whether the deadline pertains to a Notice of Proposed Rulemaking, a Final Action, or some other action.

Abstract: A brief description of the problem the regulation will address; the need for a Federal solution; to the extent available, the alternatives that the agency is considering to address the problem; and the potential advantages and disadvantages of the action.

Timetable: The dates (and citations) that documents for this action were published in the **Federal Register** and, where possible, a projected date for the next step. Projected publication dates frequently change during the course of a rule development. The projections in the Agenda are our best estimates as of the date we submit the Agenda for publication. For some entries, the timetable indicates that the date of the next action is "to be determined."

Regulatory Flexibility Analysis Required: Indicates whether EPA has prepared or anticipates that it will be preparing a regulatory flexibility analysis under section 603 or 604 of the Regulatory Flexibility Act. Generally, such an analysis is required for proposed or final rules that EPA believes may have a significant economic impact on a substantial number of small entities.

Small Entities Affected: Indicates whether we expect the rule to have any effect on small businesses, small governments, or small nonprofit organizations

Government Levels Affected: Indicates whether we expect the rule to have any effect on levels of government and, if so, whether the governments are State, local, tribal, or Federal.

Federalism Implications: Indicates whether the action is expected to have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Unfunded Mandates: Section 202 of the Unfunded Mandates Reform Act requires an assessment of anticipated costs and benefits if a rule includes a mandate that may result in expenditures of more than $100 million in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. If we expect to exceed this $100 million threshold, we note it in this section.

Energy Impacts: Indicates whether the action is a significant energy action under Executive Order 13211.

Agency Contact: The name, address, phone number, and e-mail address, if

available, of a person who is knowledgeable about the regulation.

SAN Number: A code number that EPA uses to identify and track rulemakings.

URL's: For some of our actions we include the Internet addresses for: reading copies of rulemaking documents; submitting comments on proposals; and getting more information about the rulemaking and the program that it is part of.

RIN: The Regulatory Identifier Number is used by OMB to identify and track rulemakings. The first four digits of the RIN stand for the EPA office with lead responsibility for developing the action.

H. What Tools Are Available To Help Quickly Identify Actions of Interest?

The Regulatory Information Service Center (RISC), the Government Printing Office (GPO), and the EPA have created a number of aids to help you find actions that are of interest to you.

For Rules That Directly Affect a Particular Industry: See Appendix F "Environmental Protection Agency Subject Index to the Unified Agenda." If you have access to the Internet, you can use the EPA Regulatory Agenda search engine which is located in the Small Business Regulatory Library section of the EPA website at www.epa.gov/regagenda. Click on "Search Regulatory Action Database" and then "Access the Database." This tool can be used to search all Agenda entries by keyword and we invite everyone to use it. The GPO also has a search engine which is located at http://www.access.gpo.gov/su_docs/multidb.html.

For Lists of the following types of rules:

- Rules which may have Significant Adverse Economic Impacts on a Substantial Number of Small Businesses, Small Governments, or Small Nonprofit Organizations:
- For Rules that We Expect Will Have Some Adverse Economic Impact on Some Small Entities but Less Than a Significant Impact on a Substantial Number of Them:
- For Rules that Affect State, Local, or Tribal Governments, or Other Federal Agencies:

See the appendices following this Agenda, or you may view them online at http://ciir.cs.umass.edu/ua/Fall2002/indexes_index.html.

I. How Can You Access Federal Register Documents and Interpretive Documents via the Internet and via E-mail?

Like many organizations in the public and private sector, EPA is harnessing the power of the Internet to meet the needs of those we serve. The EPA Web site offers more than 100,000 files online. If you want to get automatic e-mails about areas of particular interest as they appear in the **Federal Register** (FR), we maintain 12 collections including: air; water; wastes and emergency response; pesticides; toxic substances; right-to-know and toxic release inventory; environmental impacts; endangered species; meetings; the Science Advisory Board; daily full-text notices with page numbers; and general information. For more information and to subscribe via our FR Web site, visit: http://www.epa.gov/fedrgstr/subscribe.htm. If you have e-mail without full Internet access, please send an e-mail to envsubset@epa.gov to request instructions for subscribing to the EPA Federal Register listservers.

Several Web sites allow access to the full text of **Federal Register** documents.

- The GPO site has a number of databases online including the Unified Agenda and the **Federal Register** going back to 1994. This site is the official source for the electronic **Federal Register**. It provides public access via telnet, Internet, and dial-up connection and is located at http://www.access.gpo.gov/su_docs/multidb.html.
- EPA's site (http://www.epa.gov/fedrgstr/) has environmental rules issued by EPA and other Federal agencies dating back to October 1994 and lets you search by date, page citation or keyword. It includes links to the RISC and GPO sites. We also have a Regulatory Agenda search engine at: http://www.epa/regagenda. To use, first select "Search Regulatory Action Database" and then select "Access the Database."
- RISC maintains a site to help users who want to find information about Federal, State, and local regulations at http://www.reginfo.gov/. This site includes links to all agencies' regulatory agendas and regulatory plans going back to October 1995.

In the "Additional Information" section of many of the entries in this Agenda we include the Internet address for documents that we have already published as part of the rulemaking.

We have recently opened an Internet site through which you can access a collection of non-binding guidance materials issued by EPA Headquarters offices since January 1, 1999. The collection includes documents issued to Regions, States, and/or the regulated community that describe how the Agency intends to exercise its discretionary authority and explain what a statute or regulation means. The collection is located at: http://www.epa.gov/guidance/.

J. What is the New EPA Dockets (EDOCKET) System?

When you want to submit comments on a rule that has been proposed in the *Federal Register* you can use EPA Dockets (EDOCKET). This is an online public docket and comment system designed to expand access to EPA's major headquarter dockets and facilitate the online submission of public comments. EDOCKET provides an unprecedented level of online access to EPA's programs and rulemaking processes, which include documents such as Federal Register notices, supporting materials, and public comments. EDOCKET also includes non-regulatory information such as selected guidance documents. EDOCKET allows the public and EPA staff to search available dockets online, view their contents, and print materials. Visit EDOCKET at http://www.epa.gov/edocket. The official public docket is maintained in paper form at the EPA Docket Center (EPA/DC) 1301 Constitution Avenue, NW, Washington, DC, Public Reading Room B-102.

K. What Special Attention Do We Give to the Impacts of Rules on Small Businesses, Small Governments, and Small Nonprofit Organizations?

For each of our rulemakings we consider whether there will be any adverse impact on any small entity. We attempt to fit the regulatory requirements, to the extent feasible, to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulation. As required by the Regulatory Flexibility Act (RFA), for rules which we expect may have a significant

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economic impact on a substantial number of small entities we convene a Small Business Advocacy Review Panel to consider the rulemaking before it is proposed. We also prepare regulatory flexibility analyses on these rules. See Appendix B at the end of the Agenda, "Index to Environmental Protection Agency Entries for which a Regulatory Flexibility Analysis is Required" for a list of these rules. See Appendix C for a list of the rules that may affect small entities, but which will not have a significant impact on a substantial number of them.

L. Acknowledgment of Participants in the Rulemaking Process

Finally, I would like to thank and acknowledge the members of the public who take us up on our offer to participate in the rulemaking process. Experience has taught us that we must listen to and involve our stakeholders if we hope to fully understand the issues and write the fairest, most effective rules. Over the years you, the public, have submitted thousands of comments on our rulemakings. We have heard all of them and adopted many. Protecting human health and the environment is one of our nation's most important quests and I thank you for joining us in this endeavor.

Dated: October 4, 2002.

Thomas J. Gibson,

Associate Administrator, Office of Policy, Economics, and Innovation.

GENERAL—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3113	SAN No. 4056 Utilization of Small, Minority and Women's Business Enterprises in Procurement Under Assistance Agreements	2020-AA39
3114	SAN No. 3580 Incorporation of Class Deviations Into EPAAR	2030-AA37
3115	SAN No. 3876 Incrementally Funding Fixed Price Contracts	2030-AA50
3116	SAN No. 4292 Proposed Revision to EPA's Implementing NEPA Regulations	2020-AA42
3117	SAN No. 4618 Revision of Procedural Rules for Hearings on Cancellations, Suspensions, Changes in Classifications, and Denials of Pesticide Registrations	2020-AA44
3118	SAN No. 4693 Privacy Act Regulations	2025-AA13
3119	SAN No. 4191 Revision to EPAAR 1552.211-73, Level of Effort	2030-AA64
3120	SAN No. 4319 Revisions to Acquisition Regulation Concerning Conflict of Interest	2030-AA67
3121	SAN No. 4733 Background Investigations for Contract Employees Performing Services On or Within Federally Owned or Federally Occupied Facilities, Superfund, Oil Pollution Act	2030-AA80
3122	SAN No. 4463 Persistent, Bioaccumulative, and Toxic (PBT) Pollutants Strategy	2070-AD45

GENERAL—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3123	SAN No. 3817 Implementation of Changes to Governmentwide Debarment and Suspension Common Rule	2030-AA48
3124	SAN No. 4021 Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	2020-AA36
3125	SAN No. 4180 Rewriting of EPA Regulations Implementing the Freedom of Information Act	2025-AA04
3126	SAN No. 4270 Cross-Media Electronic Reporting (ER) and Recordkeeping Rule **(Reg Plan Seq No. 148)**	2025-AA07
3127	SAN No. 4185 Electronic Funds Transfer	2030-AA57
3128	SAN No. 4187 EPAAR Coverage on Local Hiring and Training	2030-AA62
3129	SAN No. 4572 Fellowship Grant Regulation Revision	2030-AA77
3130	SAN No. 4650 Contractor Performance Evaluations	2030-AA79
3131	SAN No. 4686 Waste Isolation Pilot Plant (WIPP) FY 2001 Report to Congress	2060-AK39
3132	SAN No. 4473 Regulatory Incentives for the National Environmental Performance Track Program	2090-AA13
3133	SAN No. 4530 EPA Agencywide Public Involvement Policy	2090-AA23
3134	SAN No. 4536 Project XL Site-Specific Rulemaking for NASA White Sands Test Facility Electronic Reporting in Las Cruces, New Mexico	2090-AA27

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

GENERAL—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3135	SAN No. 3240 Public Information and Confidentiality Regulations	2025-AA02
3136	SAN No. 3671 Guidelines for Carcinogen Risk Assessment	2080-AA06
3137	SAN No. 4533 New Jersey Gold Track Project XL Rule	2090-AA28

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GENERAL—Completed Actions

Sequence Number	Title	Regulation Identification Number
3138	SAN No. 4400 Administrative Corrections to EPAAR 1515, Contracting by Negotiation	2030-AA73

CLEAN AIR ACT (CAA)—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3139	SAN No. 4684 Modification of Source Category Listing for Seven Specific Pollutants — CAA Section 112(c)(6)	2060-AK34

CLEAN AIR ACT (CAA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3140	SAN No. 3826 Plastic Parts and Products (Surface Coating) NESHAP	2060-AG57
3141	SAN No. 4676 Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Routine Maintenance, Repair, and Replacement **(Reg Plan Seq No. 127)**	2060-AK28
3142	SAN No. 3263 Performance Warranty and Inspection/Maintenance Test Procedures	2060-AE20
3143	SAN No. 3262 Inspection/Maintenance Recall Requirements	2060-AE22
3144	SAN No. 3649 Amendments to Method 24 (Water-Based Coatings)	2060-AF72
3145	SAN No. 3958 Addition of Opacity Method to Appendix M of 40 CFR Part 51 (Method 203)	2060-AH23
3146	SAN No. 3917 Transportation Conformity Rule Amendment: Clarification of Trading Provisions	2060-AH31
3147	SAN No. 3975 Review of Minor New Sources and Modifications in Indian Country	2060-AH37
3148	SAN No. 4119 Performance Specification 16 - Specifications and Test Procedures for Predictive Emission Monitoring Systems in Stationary Sources	2060-AH84
3149	SAN No. 4003 Technical Change to Dose Methodology for 40 CFR Part 190, Subpart B and 40 CFR 191, Subpart A	2060-AH90
3150	SAN No. 1002 NAAQS: Sulfur Dioxide (Response to Remand)	2060-AA61
3151	SAN No. 4625 Implementation Rule for 8-hour Ozone NAAQS **(Reg Plan Seq No. 125)**	2060-AJ99
3152	SAN No. 3657 NESHAP: Combustion Turbine	2060-AG67
3153	SAN No. 3343 NESHAP: Iron and Steel Foundries	2060-AE43
3154	SAN No. 3746 NESHAP: Paint Stripping Operations	2060-AG26
3155	SAN No. 3656 NESHAP: Reciprocating Internal Combustion Engine **(Reg Plan Seq No. 120)**	2060-AG63
3156	SAN No. 3837 NESHAP: Industrial, Commercial, and Institutional Boilers and Process Heaters **(Reg Plan Seq No. 121)**	2060-AG69
3157	SAN No. 3651 NESHAP: Lime Manufacturing	2060-AG72
3158	SAN No. 3906 NESHAP: Metal Can Manufacturing (Surface Coating) Industry	2060-AG96
3159	SAN No. 3907 NESHAP: Surface Coating of Automobiles and Light-Duty Trucks **(Reg Plan Seq No. 122)**	2060-AG99
3160	SAN No. 3924 NESHAP: Primary Magnesium Refining	2060-AH03
3161	SAN No. 3939 NESHAP: Group I Polymers and Resins and Group IV Polymers and Resins-Amendments	2060-AH47
3162	SAN No. 4162 NESHAP: Oil and Natural Gas Production	2060-AI13
3163	SAN No. 4571 Electric Utility Steam Generating Unit MACT Regulation	2060-AJ65
3164	SAN No. 3673 Protection of Stratospheric Ozone: Reconsideration of Section 608 Sales Restriction	2060-AG20
3165	SAN No. 4045 Rulemaking To Modify the List of Source Categories From Which Fugitive Emissions Are Considered in Major Source Determinations	2060-AH58
3166	SAN No. 3820 NESHAP: Plywood and Composite Wood Products **(Reg Plan Seq No. 119)**	2060-AG52
3167	SAN No. 4309 National VOC Emission Standards for Consumer Products; Proposed Amendments	2060-AI62
3168	SAN No. 4380 NESHAP: Taconite Iron Ore Processing Industry	2060-AJ02
3169	SAN No. 4555 Electric Arc Furnace NSPS Amendment	2060-AJ68
3170	SAN No. 4687 NESHAP: Revision of Area Source Category List Under Section 112(c)(3) and 112(k)(3)(B)(ii)	2060-AK40
3171	SAN No. 4712 NESHAP: Hazardous Organic Amendments (HON)	2060-AK49
3172	SAN No. 4714 NESHAP for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units; Amendments	2060-AK51
3173	SAN No. 4715 NESHAP: Sources Categories: General Provisions; and Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sec.112(g) & 112(j); Proposed Amendments	2060-AK52
3174	SAN No. 4340 Transportation Conformity Amendments: Response to March 2, 1999, Court Decision **(Reg Plan Seq No. 123)**	2060-AI56

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CLEAN AIR ACT (CAA)—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
3175	SAN No. 4626 Control of Emissions From Spark Ignition Marine Vessels and Highway Motorcycles **(Reg Plan Seq No. 124)**	2060-AJ90
3176	SAN No. 4675 Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel **(Reg Plan Seq No. 126)**	2060-AK27
3177	SAN No. 4393 Control of Methyl Tertiary Butyl Ether (MTBE)	2060-AJ00
3178	SAN No. 4542 Federal Implementation Plan (FIP) for the Billings/Laurel, Montana Sulfur Dioxide (SO2) Area	2008-AA00
3179	SAN No. 4310 NESHAP: Printing and Publishing Industry; Amendments	2060-AI66
3180	SAN No. 4313 Petitions to Delist Hazardous Air Pollutants: Methyl Ethyl Ketone	2060-AI72
3181	SAN No. 4348 Inspection Maintenance Program Requirements for Federal Facilities; Amendment to the Final Rule	2060-AI97
3182	SAN No. 4390 Utility Sector New Source Review (NSR) Alternative Compliance Program	2060-AJ14
3183	SAN No. 4415 Petitions to Delist Source Categories From the Source Category List, Developed Pursuant to Section 112(c) of the Clean Air Act	2060-AJ23
3184	SAN No. 4421 Revising Regulations on Ambient Air Quality Monitoring	2060-AJ25
3185	SAN No. 4428 Protection of Stratospheric Ozone: Phaseout of Chlorobromomethane (Halon 1011) Production and Consumption	2060-AJ27
3186	SAN No. 4441 Federal Plan Requirements for Commercial and Industrial Solid Waste Incineration Units Constructed on or Before November 30, 1999	2060-AJ28
3187	SAN No. 4450 Revisions to Regional Haze Rule To Address Concerns Raised by DC Circuit Regarding Best Available Retrofit Technology (BART)	2060-AJ31
3188	SAN No. 4478 Standards of Performance for New Stationary Sources: Municipal Solid Waste Landfills: Amendment	2060-AJ41
3189	SAN No. 4479 NESHAP: Gasoline Distribution Facilities — Amendment	2060-AJ42
3190	SAN No. 4583 Modification of Federal On-Board Diagnostic Regulations for 2004 Model Year Vehicles Below 14,000 lbs.	2060-AJ77
3191	SAN No. 4585 Portland Cement Manufacturing Industry NESHAP: Amendment To Implement Court Remand	2060-AJ78
3192	SAN No. 4547 Modification of Authority To Grant Alternative Method Approvals	2060-AJ83
3193	SAN No. 4584 Performance Specifications for Continuous Parameter Monitoring Systems	2060-AJ86
3194	SAN No. 4325 NESHAP: Brick and Structural Clay Products Manufacturing	2060-AJ91
3195	SAN No. 4632 Modification of Anti-Dumping Baselines for Gasoline Produced or Imported for Use in Hawaii, Alaska and the U.S. Territories	2060-AK02
3196	SAN No. 4633 Performance-Based Measurement System for Fuels: Criteria for Self-Qualifying Alternative Test Methods; Description of Optional Statistical Quality Control Measures	2060-AK03
3197	SAN No. 4634 Regulation of Fuel and Fuel Additives: Extension of California Enforcement Exemptions for Reformulated Gasoline to California Phase 3 Gasoline	2060-AK04
3198	SAN No. 4599 Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances—N-Propylbromide	2060-AK26
3199	SAN No. 4683 Air Quality: Revision to Definition of Volatile Organic Compounds — Exclusion of 4 Compounds	2060-AK37
3200	SAN No. 4689 Section 126 Rule Withdrawal Provision	2060-AK41
3201	SAN No. 4691 Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Clean Units	2060-AK42
3202	SAN No. 4694 Extension of Alternative Compliance Periods Under the Anti-Dumping Program	2060-AK43
3203	SAN No. 4697 Protection of Stratospheric Ozone: Adjusting Allowances for Class I Substances for Export to Article 5 Countries	2060-AK45
3204	SAN No. 4700 Selection of the Order of Sanctions for Title V Operating Permits Programs	2060-AK46
3205	SAN No. 4710 Protection of Stratospheric Ozone: Allocation of Essential Use Allowances for Calendar Year 2003	2060-AK48
3206	SAN No. 4719 NESHAP for Source Categories: General Provisions; Amendments for Pollution Prevention Alternative Compliance Requirements	2060-AK54
3207	SAN No. 4722 California Gasoline Technical Correction	2060-AK56

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

CLEAN AIR ACT (CAA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3208	SAN No. 4315 Source-Specific Federal Implementation Plan for Navajo Generating Station; Navajo Nation	2009-AA00
3209	SAN No. 3569 Source-Specific Federal Implementation Plan for Navajo Generating Station; Four Corners Power Plant	2009-AA01

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CLEAN AIR ACT (CAA)—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
3210	SAN No. 4115 NESHAP: Chromium Electroplating Amendment	2060-AH69
3211	SAN No. 4255 Review of the National Ambient Air Quality Standards for Particulate Matter	2060-AI44
3212	SAN No. 4466 Overview of Rulemakings for the Purpose of Reducing Interstate Ozone Transport **(Reg Plan Seq No. 139)**	2060-AJ20
3213	SAN No. 4604 Modification of the Anti-Dumping Baseline Date Cut-Off Limit for Data Used in Development of an Individual Baseline	2060-AJ82
3214	SAN No. 4154 Emissions From Nonroad Spark-Ignition Engines and Standards for Recreational Spark-Ignition Engines	2060-AI11
3215	SAN No. 4532 Motor Vehicle and Engine Compliance Program Fees for: Light-Duty Vehicles and Trucks; Heavy-Duty Vehicles and Engines; Nonroad Engines; and Motorcycles	2060-AJ62
3216	SAN No. 3380 NSPS: SOCMI — Wastewater, and Amendment to Appendix C of Part 63 and Appendix J of Part 60	2060-AE94
3217	SAN No. 3741 Service Information Regulation for Light-Duty Vehicles and Trucks	2060-AG13
3218	SAN No. 3900 Addition of Method 207 to Appendix M of 40 CFR Part 51 Method for Measuring Isocyanates in Stationary Source Emissions	2060-AG88
3219	SAN No. 4022 NESHAP: Coke Ovens: Pushing, Quenching, and Battery Stacks	2060-AH55
3220	SAN No. 4120 Protection of Stratospheric Ozone: Allowance System for Controlling HCFC Production, Import and Export	2060-AH67
3221	SAN No. 4111 NESHAP: Fumed Silica Production	2060-AH72
3222	SAN No. 4104 NESHAP: Hydrochloric Acid Production Industry	2060-AH75
3223	SAN No. 4096 Phase I (FIP) To Reduce the Regional Transport of Ozone in the Eastern United States	2060-AH87
3224	SAN No. 4254 Revision to the Definition of Volatile Organic Compound (VOC) To Exclude Tertiary Butyl Acetate	2060-AI45
3225	SAN No. 4464 Rulemaking on Section 126 Petitions From New York and Connecticut Regarding Sources in Michigan; Revision of Definition of Applicable Requirement for Title V Operating	2060-AJ36
3226	SAN No. 3470 Requirements for Preparation, Adoption, and Submittal of State Implementation Plans (Guideline on Air Quality Models)	2060-AF01
3227	SAN No. 3346 NESHAP: Integrated Iron and Steel	2060-AE48
3228	SAN No. 3326 NESHAP: Reinforced Plastic Composites Production	2060-AE79
3229	SAN No. 3452 National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing	2060-AE82
3230	SAN No. 3449 NESHAP: Mercury Cell Chlor-Alkali Plants	2060-AE85
3231	SAN No. 3825 NESHAP: Miscellaneous Metal Parts and Products (Surface Coating)	2060-AG56
3232	SAN No. 3655 NESHAP: Asphalt Processing and Asphalt Roofing Manufacturing	2060-AG66
3233	SAN No. 3652 NESHAP: Refractory Products Manufacturing	2060-AG68
3234	SAN No. 3902 NESHAP: Semiconductor Production	2060-AG93
3235	SAN No. 3909 NESHAP: Fabric Printing, Coating and Dyeing	2060-AG98
3236	SAN No. 3968 NESHAP: Site Remediation	2060-AH12
3237	SAN No. 3972 NESHAP: Rocket Engine Test Firing	2060-AH35
3238	SAN No. 3971 NESHAP: Organic Liquids Distribution (Non-Gasoline)	2060-AH41
3239	SAN No. 2665 Importation of Nonconforming Vehicles; Amendments to Regulations	2060-AI03
3240	SAN No. 3556 Protection of Stratospheric Ozone: Supplemental Rule Regarding a Recycling Standard Under Section 608	2060-AF36
3241	SAN No. 3560 Protection of Stratospheric Ozone: Refrigerant Recycling Rule Amendment To Include Substitute Refrigerants	2060-AF37
3242	SAN No. 3827 Paper and Other Web Coating NESHAP	2060-AG58
3243	SAN No. 3904 NESHAP: Wood Building Products (Surface Coating)	2060-AH02
3244	SAN No. 3969 NESHAP: Municipal Solid Waste Landfills	2060-AH13
3245	SAN No. 4107 NESHAP: Asphalt/Coal Tar Application on Metal Pipes	2060-AH78
3246	SAN No. 4460 NESHAP: Friction Products Manufacturing	2060-AJ18
3247	SAN No. 4449 NESHAP: Flexible Polyurethane Foam Fabrication Operations	2060-AJ19
3248	SAN No. 4546 NESHAP: Publicly Owned Treatment Works (POTW)—Amendments II	2060-AJ66
3249	SAN No. 4685 NESHAP: Chlorine Production	2060-AK38
3250	SAN No. 4713 NESHAP for Primary Aluminum Reduction Plants; Amendments	2060-AK50
3251	SAN No. 4717 Site Specific Rule for Weyerhauser Sulfite Mill	2060-AK53
3252	SAN No. 4723 NESHAP: Secondary Aluminum Industry Amendments	2060-AK57
3253	SAN No. 3259 Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Baseline Emissions Determination, Actual-to-Future-Actual Methodology, Plantwide Applicability	2060-AE11
3254	SAN No. 4030 Expanded Definitions for Alternative-Fueled Vehicles and Engines Meeting Low-Emission Vehicle Exhaust Emission Standards	2060-AH52

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CLEAN AIR ACT (CAA)—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
3255	SAN No. 4622 Control of Emissions of Air Pollution From New Marine Compression-Ignition Engines At or Above 30 Liters per Cylinder **(Reg Plan Seq No. 140)**	2060-AJ98
3256	SAN No. 3412 Operating Permits: Revisions (Part 70)	2060-AF70
3257	SAN No. 4487 Federal Implementation Plans for Indian Reservations in Idaho, Oregon and Washington	2012-AA01
3258	SAN No. 3824 Metal Furniture (Surface Coating) NESHAP	2060-AG55
3259	SAN No. 4253 Protection of Stratospheric Ozone: Process for Exempting Quarantine and Preshipment Applications of Methyl Bromide	2060-AI42
3260	SAN No. 4325 NESHAP: Brick and Structural Clay Products Manufacturing	2060-AI67
3261	SAN No. 4343 NESHAP: Clay Ceramics Manufacturing	2060-AI68
3262	SAN No. 4144 NESHAP: Engine Test Cells/Stands	2060-AI74
3263	SAN No. 4273 Amend Subpart H and I, 40 CFR Part 61, for Emissions of Radionuclides Other Than Radon From DOE Facilities	2060-AI90
3264	SAN No. 4433 Interstate Ozone Transport: Response to Court Decisions on the NOx SIP Call, NOx SIP Call Technical Amendments, and Section 126 Rules	2060-AJ16
3265	SAN No. 4426 Clarification to Existing Part 63 NESHAP Delegations' Provisions-Work Practices	2060-AJ26
3266	SAN No. 4457 NESHAP: Pesticides Active Ingredients—Amendments	2060-AJ34
3267	SAN No. 4454 Federal Plan for Small Municipal Waste Combustion Units	2060-AJ46
3268	SAN No. 4495 Revisions to Regional Haze Rule To Incorporate Sulfur Dioxide Milestones and Backstop Emissions Trading Program for Nine Western States	2060-AJ50
3269	SAN No. 4508 Standards of Performance for New Stationary Sources: Volatile Organic Liquid Storage Vessels; Amendments	2060-AJ53
3270	SAN No. 4524 NESHAP: Portland Cement Manufacturing Industry, Amendments to Rule To Implement Settlement Agreement	2060-AJ57
3271	SAN No. 4554 Control of Hazardous Air Pollutants From Mobile Sources; Correction	2060-AJ67
3272	SAN No. 4548 Compilation of Source-Specific Alternative Methods Being Approved for Source-Category Wide Application	2060-AJ84
3273	SAN No. 4591 Benzene Waste Operations NESHAP; Amendments	2060-AJ87
3274	SAN No. 4605 Proposed Amendments to Performance Standards and Monitoring Requirements for Particulate Matter at Stationary Sources	2060-AJ88
3275	SAN No. 4600 State and Federal Operating Permits Program: Removal of Amendments to Part 70 and Part 71 Compliance Certification Requirements	2060-AJ89
3276	SAN No. 4621 Control of Hazardous Air Pollutants From Mobile Sources: Default Baseline Revision and Minor Corrections	2060-AJ97
3277	SAN No. 4631 Adoption of the Amended International NOx Standard for Aircraft Engines	2060-AK01
3278	SAN No. 4647 Reduction of the Ambient Air Monitoring Fine Particulate Collocated Precision Requirement.	2060-AK05
3279	SAN No. 4671 Amendments to Compliance Certification Requirements for State and Federal Operating Permits Programs	2060-AK11
3280	SAN No. 4688 Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances	2060-AK30
3281	SAN No. 4681 Revision of Combustion Turbines NSPS - Part 60, Subpart GG	2060-AK35
3282	SAN No. 4682 Revisions to the Appeal Procedures and the Federal NOx Budget Trading Program, Parts 78 and 97	2060-AK36
3283	SAN No. 4696 Protection of Stratospheric Ozone: Additional Reconsideration of Petition Criteria and Incorporation of Montreal Protocol Decisions	2060-AK44
3284	SAN No. 4707 Amendment to the Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Regulations	2060-AK47
3285	SAN No. 4721 Control of Air Pollution from New Motor Vehicles: Amendment to the Tier 2 Motor Vehicle Emission Standards	2060-AK55
3286	SAN No. 4278 Project XL Site-Specific Rulemaking for Andersen Corporation's Facility in Bayport, Minnesota	2090-AA21

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

CLEAN AIR ACT (CAA)—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3287	SAN No. 4511 Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Third Party Audit Provisions	2050-AE85

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CLEAN AIR ACT (CAA)—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
3288	SAN No. 4607 Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Availability of Information to the Public; Technical Amendment	2050-AE95
3289	SAN No. 4619 Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(3); Revisions to the List of Substances	2050-AE96
3290	SAN No. 4531 Evaluation of Updated Test Procedures for the Certification of Gasoline Deposit Control Additives	2060-AJ61
3291	SAN No. 2915 Methods for Measurement of Visible Emissions—Addition of Methods 203A, 203B, and 203C to Appendix M of Part 51	2060-AF83
3292	SAN No. 3922 Revised Permit Revision Procedures for the Federal Operating Permits Program	2060-AG92
3293	SAN No. 4046 Federal Major New Source Review (NSR) Program for Nonattainment Areas	2060-AH53
3294	SAN No. 4070 General Conformity Regulations; Revisions	2060-AH93
3295	SAN No. 4247 Revisions to Air Pollution Emergency Episode Requirements (Subpart H, 40 CFR Part 51)	2060-AI47
3296	SAN No. 2841 NESHAP: Chromium Electroplating Amendment	2060-AH08
3297	SAN No. 3479 Amendments to Parts 51, 52, 63, 70 and 71 Regarding the Provisions for Determining Potential To Emit	2060-AI01
3298	SAN No. 3751 NSPS and Emission Guidelines for Other Solid Waste Incinerators	2060-AG31
3299	SAN No. 3919 Prevention of Significant Deterioration of Air Quality: Permit Application Review Procedures for Non-Federal Class I Areas	2060-AH01
3300	SAN No. 3979 Review of Federal Test Procedures for Emissions From Motor Vehicles; Test Procedure Adjustments to Fuel Economy and Emission Test Results	2060-AH38
3301	SAN No. 3525 Protection of Stratospheric Ozone: Update of the Substitutes List Under (SNAP) Program	2060-AG12
3302	SAN No. 4662 NESHAP: Perchloroethylene Dry Cleaning Facilities Residual Risk Standards	2060-AK18
3303	SAN No. 4672 NESHAP: Solvent Extraction for Vegetable Oil: Amendments	2060-AK32
3304	SAN No. 4654 NESHAP: Ethylene Oxide for Sterilization Facilities - Residual Risk Standards	2060-AK09
3305	SAN No. 4655 NESHAP: Gasoline Distribution (Stage I) Residual Risk Standards	2060-AK10
3306	SAN No. 4656 NESHAP: Group I Polymers and Resins — Residual Risk Standards	2060-AK12
3307	SAN No. 4657 NESHAP: Group II Polymers and Resins — Residual Risk Standards	2060-AK13
3308	SAN No. 4659 NESHAP: Hazardous Organic NESHAP (HON) Residual Risk Standards	2060-AK14
3309	SAN No. 4658 NESHAP: Group IV Polymers and Resins — Residual Risk Standards	2060-AK15
3310	SAN No. 4660 NESHAP: Industrial Process Cooling Towers Residual Risk Standards	2060-AK16
3311	SAN No. 4661 NESHAP: National Emission Standards for Marine Tank Vessel Loading Operations — Residual Risk Standard	2060-AK17
3312	SAN No. 4665 NESHAP: Secondary Lead Smelting Residual Risk Standards	2060-AK19
3313	SAN No. 4666 NESHAP: Shipbuilding and Ship Repair Surface Coating — Residual Risk Standards	2060-AK20
3314	SAN No. 4667 NESHAP: Wood Furniture Manufacturing Operations — Residual Risk Standards	2060-AK21
3315	SAN No. 4668 NESHAP: Halogenated Solvent Cleaning — Residual Risk Standards	2060-AK22
3316	SAN No. 4669 NESHAP: Magnetic Tape Manufacturing Operations Residual Risk Standard	2060-AK23
3317	SAN No. 4664 NESHAP: Printing and Publishing Industry — Residual Risk Standards	2060-AK24
3318	SAN No. 4663 NESHAP: Petroleum Refineries — Residual Risk Standards	2060-AK25
3319	SAN No. 4653 NESHAP: Aerospace Manufacturing and Rework Facilities Residual Risk Standards	2060-AK08
3320	SAN No. 3910 Streamlined Evaporative Test Procedures	2060-AH34
3321	SAN No. 4266 Review National Ambient Air Quality Standards for Carbon Monoxide	2060-AI43
3322	SAN No. 4383 Interstate Ozone Transport: Rulemaking on Section 126 Petitions From the District of Columbia, Delaware, Maryland, and New Jersey	2060-AI99
3323	SAN No. 4391 Rescinding Finding That Preexisting PM10 Standards Are No Longer Applicable in Northern Ada County/Boise, Idaho	2060-AJ05
3324	SAN No. 4535 Protection of Stratospheric Ozone: Process for Exempting Critical and Emergency Uses of Methyl Bromide	2060-AJ63
3325	SAN No. 4570 Control of Air Pollution From Motor Vehicles and Engines: Alternative Low-Sulfur Highway Diesel Fuel Transition Program for Alaska	2060-AJ72
3326	SAN No. 4620 National Emission Standards for Coke Oven Batteries — Residual Risk Standards	2060-AJ96
3327	SAN No. 4471 Project XL Site-Specific Rulemaking for Georgia-Pacific Corporation's Facility in Big Island, Virginia	2090-AA26

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CLEAN AIR ACT (CAA)—Completed Actions

Sequence Number	Title	Regulation Identification Number
3328	SAN No. 4730 Nonconformance Penalties for 2004 and Later Model Year Heavy-Duty Diesel Engines and Vehicles	2060-AK58
3329	SAN No. 3549 NESHAP: Petroleum Refineries; Catalytic Cracking Units, Catalytic Reforming Units and Sulfur Recovery Units	2060-AF28
3330	SAN No. 3986 Consolidated Emissions Reporting Rule	2060-AH25
3331	SAN No. 4082 NESHAP: Wet-Formed Fiberglass Mat Production	2060-AH89
3332	SAN No. 3638 Revision of EPA's Radiological Emergency Response Plan	2060-AI49
3333	SAN No. 3340 NESHAP: Primary Copper Smelting	2060-AE46
3334	SAN No. 3551 Amendments to General Provisions Subparts A and B for 40 CFR 63	2060-AF31
3335	SAN No. 3749 NESHAP: Rubber Tire Manufacturing	2060-AG29
3336	SAN No. 3823 NESHAP: Large Appliance (Surface Coating)	2060-AG54
3337	SAN No. 3905 NESHAP: Metal Coil (Surface Coating) Industry	2060-AG97
3338	SAN No. 3964 NESHAP: Leather Finishing Operations	2060-AH17
3339	SAN No. 4276 Revision to NOx SIP Call Emission Budgets for Connecticut, Massachusetts and Rhode Island	2060-AI80
3340	SAN No. 3970 NESHAP: Cellulose Production Manufacturing	2060-AH11
3341	SAN No. 4105 NESHAP: Generic MACT for Carbon Black, Ethylene, Cyanide and Spandex	2060-AH68
3342	SAN No. 4114 NESHAP: Polyvinyl Chloride and Copolymers Production	2060-AH82
3343	SAN No. 4679 Notice and Response to Court Remand on NOx SIP Call and Section 126 Petitions	2060-AK33
3344	SAN No. 4538 Revisions to the Definitions and the Continuous Emission Monitoring Provisions of the Acid Rain Program and the NOx Budget Trading Program	2060-AJ43
3345	SAN No. 4558 Transportation Conformity Rule Amendments: Minor Revision and Addition of Grace Period for Newly Designated Nonattainment Areas	2060-AJ70
3346	SAN No. 4569 Control of Air Pollution from New Motor Vehicles; Second Amendment to the Tier 2/Gasoline Sulfur Regulations	2060-AJ71
3347	SAN No. 4574 Protection of Stratospheric Ozone: Availability of Allowances to Produce Methyl Bromide for Developing Countries	2060-AJ74
3348	SAN No. 4646 Amendments to NESHAP for Solvent Extraction for Vegetable Oil Production	2060-AJ93
3349	SAN No. 4614 NESHAP: Generic MACT Amendments	2060-AJ95
3350	SAN No. 4627 NESHAP: Pesticide Active Ingredient Production — Amendment	2060-AK00
3351	SAN No. 4648 Revision to Regulations Implementing the Federal Permits Program in Areas for Which the Indian Country Status Is in Question	2060-AK06
3352	SAN No. 4652 Direct Final Rulemaking for Modifications to Reformulated Gasoline (RFG) "Covered Area" Provisions	2060-AK07

ATOMIC ENERGY ACT (AEA)—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3353	SAN No. 4054 Environmental Radiation Protection Standards for the Disposal of Low-Activity Mixed Radioactive Waste	2060-AH63

ATOMIC ENERGY ACT (AEA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3354	SAN No. 4403 Revision of the 40 CFR Part 194 Waste Isolation Pilot Plant Compliance Criteria	2060-AJ07

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ATOMIC ENERGY ACT (AEA)—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
2060-AF39	SAN No. 3602 Protective Action Guidance for Drinking Water	09/05/2002	Withdrawn - Agency plans no further action.

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3355	SAN No. 4727 Endocrine Disruptor Screening Program; Priority Setting Criteria **(Reg Plan Seq No. 116)**	2070-AD59
3356	SAN No. 4610 Acceptability of Research Using Human Subjects	2070-AD57
3357	SAN No. 4216 Pesticides; Emergency Exemption Process Revisions **(Reg Plan Seq No. 115)**	2070-AD36

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3358	SAN No. 2687 Pesticides; Data Requirements for Conventional Chemicals	2070-AC12
3359	SAN No. 4173 Pesticides; Data Requirements for Antimicrobials	2070-AD30
3360	SAN No. 4596 Pesticides; Data Requirements for Biochemical and Microbial Products	2070-AD51
3361	SAN No. 4728 Endocrine Disrupter Screening Program; Implementing the Screening and Testing Phase **(Reg Plan Seq No. 128)**	2070-AD61
3362	SAN No. 4170 Pesticides; Procedures for the Registration Review Program	2070-AD29
3363	SAN No. 4609 Pesticides; Exemption of Medical Devices Treated With Antimicrobial Pesticides	2070-AD54

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3364	SAN No. 4027 Pesticides; Tolerance Processing Fees	2070-AD23
3365	SAN No. 4602 Plant Incorporated Protectants (PIPs); Exemption for Those Based on Viral Coat Proteins	2070-AD49
3366	SAN No. 2659 Pesticide Management and Disposal; Standards for Pesticide Containers and Containment	2070-AB95
3367	SAN No. 3731 Pesticides; Worker Protection Standard (WPS); Glove Amendment	2070-AC93
3368	SAN No. 3892 Pesticides; Registration Requirements for Antimicrobial Pesticide Products	2070-AD14

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3369	SAN No. 4175 Pesticide Tolerance Reassessment Program	2070-AD24
3370	SAN No. 2684 Plant-Incorporated Protectants (Formerly Plant Pesticides) Rulemakings	2070-AC02
3371	SAN No. 3432 Pesticide Management and Disposal	2020-AA33
3372	SAN No. 4611 Plant-Incorporated Protectants (PIPs); Exemption for Those Derived Through Genetic Engineering From Sexually Compatible Plants	2070-AD55
3373	SAN No. 4612 Plant Incorporated Protectants (PIPs); Exemption for PIPs That Act by Primarily Affecting the Plant	2070-AD56
3374	SAN No. 3222 Groundwater and Pesticide Management Plan Rule	2070-AC46

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FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
2070-AD26	SAN No. 4143 Endocrine Disruptor Screening Program	08/10/2002	Withdrawn - Follow-up items are now split into separate entries.
2070-AD47	SAN No. 4496 Pesticides; Data Requirements for Environmental Fate and Ecological Effects	08/21/2002	Merged With RIN 2070-AC12

TOXIC SUBSTANCES CONTROL ACT (TSCA)—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3375	SAN No. 4174 Testing Agreement for Certain Oxygenated Fuel Additives	2070-AD28
3376	SAN No. 4734 Sustainable Futures; Voluntary Pilot Project Under the TSCA New Chemical Program **(Reg Plan Seq No. 117)**	2070-AD60

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

TOXIC SUBSTANCES CONTROL ACT (TSCA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3377	SAN No. 3557 Lead-Based Paint Activities; Training and Certification for Renovation and Remodeling	2070-AC83
3378	SAN No. 2150 Polychlorinated Biphenyls (PCBs); Exemptions From the Prohibitions Against Manufacturing, Processing, and Distribution in Commerce	2070-AB20
3379	SAN No. 4635 Amendment to the Premanufacture Notification Exemptions; Revisions of Exemptions for Polymers (40 CFR Part 723)	2070-AD58
3380	SAN No. 2563 Test Rule; Certain Chemicals on the ATSDR Priority List of Hazardous Substances	2070-AB79
3381	SAN No. 4395 Test Rule; Developmental and Reproductive Toxicity	2070-AD44
3382	SAN No. 1923 Follow-Up Rules on Existing Chemicals	2070-AA58
3383	SAN No. 4512 Significant New Use Rule; Selected Flame Retardant Chemical Substances for Use in Residential Upholstered Furniture	2070-AD48
3384	SAN No. 4598 TSCA Policy Statement on Oversight of Transgenic Organisms (Including Plants)	2070-AD53

TOXIC SUBSTANCES CONTROL ACT (TSCA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3385	SAN No. 3508 Lead; Management and Disposal of Lead-Based Paint Debris	2070-AC72
3386	SAN No. 4172 Lead; Notification Requirements for Lead-Based Paint Abatement Activities and Training	2070-AD31
3387	SAN No. 1976 Significant New Use Rules; Follow-Up Rules on Non-5(e) New Chemical Substances	2070-AA59
3388	SAN No. 3495 Significant New Use Rule (SNUR); Chemical-Specific SNURs To Extend Provisions of Section 5(e) Orders	2070-AB27
3389	SAN No. 3493 Test Rule; Generic Entry for ITC Related Testing Decisions	2070-AB94
3390	SAN No. 3487 Test Rule; Hazardous Air Pollutants (HAPs)	2070-AC76
3391	SAN No. 3990 Test Rule; Certain High Production Volume (HPV) Chemicals	2070-AD16
3392	SAN No. 4425 Test Rule; In Vitro Dermal Absorption Rate Testing of Certain Chemicals of Interest to the Occupational Safety and Health Administration	2070-AD42
3393	SAN No. 2779 Acrylamide and N-methylolacrylamide Grouts	2070-AC17
3394	SAN No. 2178 TSCA Section 8(a) Preliminary Assessment Information Rules	2070-AB08
3395	SAN No. 1139 TSCA Section 8(d) Health and Safety Data Reporting Rules	2070-AB11
3396	SAN No. 3118 TSCA Section 8(e) Policy; Notice of Clarification	2070-AC80
3397	SAN No. 3301 TSCA Inventory Update Rule Amendments	2070-AC61
3398	SAN No. 3528 Significant New Use Rule; Refractory Ceramic Fibers (RCFs)	2070-AC37
3399	SAN No. 4176 Chemical Right-To-Know Initiative; High Production Volume (HPV) Chemicals	2070-AD25

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TOXIC SUBSTANCES CONTROL ACT (TSCA)—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
3400	SAN No. 4475 Significant New Use Rule; Perfluoroalkyl Sulfonates (PFOA)	2070-AD43

TOXIC SUBSTANCES CONTROL ACT (TSCA)—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3401	SAN No. 3148 Asbestos Model Accreditation Plan Revisions	2070-AC51
3402	SAN No. 3252 Lead Fishing Sinkers; Response to Citizens Petition and Proposed Ban	2070-AC21
3403	SAN No. 4376 Lead-Based Paint Activities; Training, Accreditation, and Certification Rule and Model State Plan Rule - Bridges and Structures	2070-AC64
3404	SAN No. 4597 Disposal of Polychlorinated Biphenyls: Implementation Issues	2070-AD52
3405	SAN No. 2865 Voluntary Children's Chemical Evaluation Program (VCCEP)	2070-AC27
3406	SAN No. 3882 Test Rule; Certain Metals	2070-AD10
3407	SAN No. 3559 Notice of TSCA Section 4 Reimbursement Period and TSCA Section 12(b) Export Notification Period Sunset Dates for TSCA Section 4 Substances	2070-AC84

TOXIC SUBSTANCES CONTROL ACT (TSCA)—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
2070-AD27	SAN No. 4179 Polychlorinated Biphenyls (PCBs); Use Authorizations	08/31/2002	Withdrawn - Agency plans no further action.

EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA)—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3408	SAN No. 4392 TRI: APA Petition-EPCRA 313 Definition of Overburden As It Relates to the Mining Industry	2025-AA08

EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3409	SAN No. 4015 TRI; Review of Chemicals on the Original TRI List	2025-AA03
3410	SAN No. 2425 TRI; Responses to Petitions Received To Add or Delete or Modify Chemical Listings on the Toxic Release Inventory	2025-AA00
3411	SAN No. 4265 TRI; Revisions to the Otherwise Use Activity Exemptions and the Coal Extraction Activities Exemption	2025-AA06
3412	SAN No. 4595 Rulemaking To Change Toxics Release Inventory (TRI) Reporting Requirements From Standard Industrial Classification (SIC) Codes to North American Industrial Classification System	2025-AA10
3413	SAN No. 4616 Clarify TRI Reporting Obligations Under EPCRA Section 313 for the Metal Mining Activities of Extraction and Beneficiation	2025-AA11
3414	SAN No. 4692 Addition of Toxicity Equivalency (TEQ) Reporting and Quantity Data for Individual Members of the Dioxin and Dioxin-Like Compounds Category Under EPCRA, Section 313	2025-AA12

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EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA)—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3415	SAN No. 3215 Emergency Planning and Community Right-To-Know Act: Amendments and Streamlining Rule	2050-AE17
3416	SAN No. 3994 Response to a Petition Requesting Deletion of Phosmet From the Extremely Hazardous Substances (EHSs) List	2050-AE42
3417	SAN No. 3993 Modification of Threshold Planning Quantity for Isophorone Diisocyanate	2050-AE43
3418	SAN No. 3007 TRI; Chemical Expansion; Finalization of Deferred Chemicals	2025-AA01
3419	SAN No. 2847 TRI; Pollution Prevention Act Information Requirements	2025-AA09

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3420	SAN No. 4094 Land Disposal Restrictions; Notice of Data Availability: Mercury Treatability Studies	2050-AE54

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3421	SAN No. 3989 Methods Innovation Rule	2050-AE41
3422	SAN No. 4230 Revisions to Solid Waste Landfill Criteria—Leachate Recirculation on Alternative Liners	2050-AE67
3423	SAN No. 4091 Modifications to RCRA Rules Associated With Solvent-Contaminated Shop Towels and Wipes **(Reg Plan Seq No. 129)**	2050-AE51
3424	SAN No. 4501 Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures **(Reg Plan Seq No. 130)**	2050-AE84
3425	SAN No. 4651 Increase Metals Reclamation From F006 Waste Streams **(Reg Plan Seq No. 131)**	2050-AE97
3426	SAN No. 4670 Revisions to the Definition of Solid Waste **(Reg Plan Seq No. 132)**	2050-AE98
3427	SAN No. 4606 Revisions for Transboundary Shipments of Hazardous Waste for Recovery Within the Organization for Economic Cooperation and Development	2050-AE93
3428	SAN No. 4735 RCRA Burden Reduction Initiative, Phase 2	2050-AF01
3429	SAN No. 4534 Project XL Site-Specific Rulemaking for Anne Arundel County Millersville Landfill, Severn, Maryland	2090-AA25
3430	SAN No. 4565 Project XL Site-Specific Rulemaking for the IBM Semiconductor Manufacturing Facility in Hopewell Junction, New York	2090-AA29

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3431	SAN No. 4028 Standardized Permit for RCRA Hazardous Waste Management Facilities **(Reg Plan Seq No. 142)**	2050-AE44
3432	SAN No. 3545 Revisions to the Comprehensive Guideline for Procurement of Products Containing Recovered Materials	2050-AE23
3433	SAN No. 3856 Management of Cement Kiln Dust (CKD) **(Reg Plan Seq No. 141)**	2050-AE34
3434	SAN No. 4525 Criteria for Classification of Solid Waste Disposal Facilities and Practices and Criteria for Municipal Solid Waste Landfills: Disposal of Residential Lead-Based Paint Waste	2050-AE86
3435	SAN No. 4575 Municipal Solid Waste Landfill Location Restrictions for Airport Safety	2050-AE91
3436	SAN No. 4588 Research, Development, and Demonstration Permits for Municipal Solid Waste Landfill	2050-AE92
3437	SAN No. 4084 Office of Solid Waste Burden Reduction Project **(Reg Plan Seq No. 143)**	2050-AE50
3438	SAN No. 4731 Land Disposal Restrictions; National Treatment Variance for Radioactively Contaminated Cadmium, Mercury, and Silver Waste Batteries	2050-AE99
3439	SAN No. 4701 E-Cycling Pilot Project for Region 3 States (ECOS); Streamlining RCRA Regulations To Encourage Reuse, Recycling, and Recovery of Electronic Equipment	2003-AA00
3440	SAN No. 4439 Project XL — Ortho-McNeil Pilot Project Allowing On-Site Treatment of Low-Level Mixed Wastes Without RCRA Permit	2090-AA14

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

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RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3441	SAN No. 4470 Standards for the Management of Coal Combustion Wastes Generated by Commercial Electric Power Producers	2050-AE81
3442	SAN No. 4469 Standards for the Management of Coal Combustion Wastes — Non-Power Producers and Minefilling	2050-AE83
3443	SAN No. 3147 Hazardous Waste Manifest Regulation	2050-AE21
3444	SAN No. 4411 Regulation of Hazardous Oil-Bearing Secondary Materials From Petroleum Refining Industry and Other Hazardous Secondary Materials Processed in a Gasification System	2050-AE78
3445	SAN No. 3189 Final Determination of the Applicability of the Toxicity Characteristic Rule to Petroleum Contaminated Media and Debris from Underground Storage Tanks	2050-AD69
3446	SAN No. 3066 Listing Determination of Wastes Generated During the Manufacture of Azo, Anthraquinone, and Triarylmethane Dyes and Pigments	2050-AD80
3447	SAN No. 4092 Recycling of Cathode Ray Tubes (CRTs) and Mercury-Containing Equipment: Changes to Hazardous Waste Regulations	2050-AE52
3448	SAN No. 2647 RCRA Subtitle C Financial Test Criteria (Revision)	2050-AC71
3449	SAN No. 4233 Land Disposal Restrictions; Treatment Standards for Spent Potliners From Primary Aluminum Reduction (K088) and Regulatory Classification of K088 Vitrification Units	2050-AE65
3450	SAN No. 3333 NESHAPS: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors — Phase II Covering Boilers and Certain Industrial Furnaces	2050-AE01
3451	SAN No. 4418 NESHAPS: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors	2050-AE79

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)—Completed Actions

Sequence Number	Title	Regulation Identification Number
3452	SAN No. 3805 Paint Manufacturing Wastes Listing: Hazardous Waste Management System: Identification and Listing of Hazardous Waste	2050-AE32
3453	SAN No. 4208 Requirements for Zinc Fertilizer Made From Recycled Hazardous Secondary Materials	2050-AE69
3454	SAN No. 4608 Project XL Site-Specific Rulemaking for Implementing Waste Treatment Systems at Two Virginia Landfills	2090-AA30

OIL POLLUTION ACT (OPA)—Completed Actions

Sequence Number	Title	Regulation Identification Number
3455	SAN No. 2634 Oil Pollution Prevention Regulation: Revisions	2050-AC62

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3456	SAN No. 3423 Reportable Quantity Adjustments for Carbamates and Carbamate-Related Hazardous Waste Streams; Reportable Quantity Adjustment for Inorganic Chemical Manufacturing Process Waste	2050-AE12
3457	SAN No. 4737 Correction of Errors and Adjustment of CERCLA Reportable Quantities	2050-AF03
3458	SAN No. 4739 Standards and Practices for Conducting "All Appropriate Inquiry"	2050-AF04
3459	SAN No. 4740 Clarification to Interim Standards and Practices for All Appropriate Inquiry Under CERCLA and Notice of Future Rulemaking Action	2050-AF05
3460	SAN No. 4177 Revise 40 CFR Part 35 Subpart O: Cooperative Agreements and Superfund State Contracts for Superfund Response Actions	2050-AE62

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COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3461	SAN No. 3439 National Priorities List for Uncontrolled Hazardous Waste Sites: Proposed and Final Rules	2050-AD75
3462	SAN No. 4201 Criteria for the Designation of Hazardous Substances Under CERCLA Section 102(a)	2050-AE63
3463	SAN No. 4736 Administrative Reporting Exemption for Certain Air Releases of NOx	2050-AF02

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT—Completed Actions

Sequence Number	Title	Regulation Identification Number
3464	SAN No. 3929 Correct Typographical Errors and Remove Obsolete Language in 40 CFR Part 302	2050-AE88

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
2050-AE38	SAN No. 3885 Streamlining the Preauthorization Mixed Funding for Application and Implementation of Claims Against Superfund	09/05/2002	Withdrawn - Agency plans no further action.

CLEAN WATER ACT (CWA)—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3465	SAN No. 2804 Clean Water Act Definition of Waters of the United States **(Reg Plan Seq No. 118)**	2040-AB74

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

CLEAN WATER ACT (CWA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3466	SAN No. 4526 Revisions to the National Oil and Hazardous Substances Pollution Contingency Plan; Subpart J Product Schedule Listing Requirements	2050-AE87
3467	SAN No. 4264 Water Quality Standards for Alabama—Phase II	2040-AD35
3468	SAN No. 4049 Test Procedures for the Analysis of Co-Planar and Mono-Ortho-Substituted Polychlorinated Biphenyls (PCBs) Under the Clean Water Act	2040-AD09
3469	SAN No. 4377 Test Procedures for the Analysis of Mercury Under the Clean Water Act (Method 245.7)	2040-AD52
3470	SAN No. 4378 Revisions to Method Detection and Quantification for Use Under the Clean Water Act and Safe Drinking Water Act	2040-AD53
3471	SAN No. 4540 Test Procedures: New and Updated Test Procedures for the Analysis of Pollutants Under the Clean Water Act and Safe Drinking Water Act	2040-AD71
3472	SAN No. 4543 Minimizing Adverse Environmental Impact From Cooling Water Intake Structures at Existing Facilities Under Section 316(b) of the Clean Water Act, Phase 3 **(Reg Plan Seq No. 136)**	2040-AD70
3473	SAN No. 3999 NPDES Permit Requirements for Municipal Sanitary and Combined Sewer Collection Systems, Municipal Satellite Collection Systems, Sanitary Sewer Overflows, and Peak Excess Flow Treatment Facilities **(Reg Plan Seq No. 133)**	2040-AD02
3474	SAN No. 4446 Ocean Discharges Criteria Revisions	2040-AD60
3475	SAN No. 4623 Watershed Rule: Total Maximum Daily Load (TMDL) Program Revisions **(Reg Plan Seq No. 137)**	2040-AD82
3476	SAN No. 4729 Withdrawal of Total Maximum Daily Load (TMDL) Program Revisions **(Reg Plan Seq No. 138)**	2040-AD84
3477	SAN No. 4690 National Pollutant Discharge Elimination System Permit Requirements for Municipal Wastewater Treatment During Wet Weather Conditions	2040-AD87

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

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CLEAN WATER ACT (CWA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3478	SAN No. 2806 Effluent Guidelines and Standards for the Metal Products and Machinery Category, Phases 1 and 2 **(Reg Plan Seq No. 145)**	2040-AB79
3479	SAN No. 4153 National Pollutant Discharge Elimination System Permit Regulation and Effluent Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs) **(Reg Plan Seq No. 146)**	2040-AD19
3480	SAN No. 4047 Test Procedures for Analysis for Biological Contaminants Under Clean Water Act	2040-AD08
3481	SAN No. 4409 Test Procedures: Clean Water Act and Safe Drinking Water Act Methods Update	2040-AD59
3482	SAN No. 4541 Test Procedures for the Analysis of Mercury Under the Clean Water Act (Revisions to Method 1631)	2040-AD72
3483	SAN No. 4514 Rule To Revise and To Ratify or Withdraw Whole Effluent Toxicity Test Methods	2040-AD73
3484	SAN No. 4474 Minimizing Adverse Environmental Impact From Cooling Water Intake Structures at Existing Facilities Under Section 316(b) of the Clean Water Act, Phase 2 **(Reg Plan Seq No. 147)**	2040-AD62
3485	SAN No. 3288 Comparison of Dredged Material to Reference Sediment	2040-AC14
3486	SAN No. 3488 Round 2 Standards for the Use or Disposal of Sewage Sludge	2040-AC25
3487	SAN No. 4624 Modification to Competitive Process Used by EPA for Water Quality Cooperative Agreements and Wetland Program Development Grants	2040-AD83
3488	SAN No. 4726 Revisions to Minimizing Adverse Environmental Impacts From Cooling Water Intake Structures Under Section 316(b) of the Clean Water Act — Phase I	2040-AD85

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

CLEAN WATER ACT (CWA)—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3489	SAN No. 4280 Effluent Guidelines and Standards for the Construction and Development Industry	2040-AD42
3490	SAN No. 4370 Effluent Guidelines and Standards for the Pulp, Paper, and Paperboard Point Source Category, Dissolving Kraft and Dissolving Sulfite Subcategories (Phase III)	2040-AD49
3491	SAN No. 4406 Effluent Guidelines and Standards for the Concentrated Aquatic Animal Production Industry	2040-AD55
3492	SAN No. 4407 Effluent Guidelines and Standards for the Meat and Poultry Products Point Source Category (Revisions)	2040-AD56
3493	SAN No. 4344 Water Quality Standards for Indian Country Waters	2040-AD46
3494	SAN No. 3702 Test Procedures for the Analysis of Trace Metals Under the Clean Water Act	2040-AC75
3495	SAN No. 3714 Test Procedures: Increased Method Flexibility for Test Procedures Approved for Clean Water Act Compliance Monitoring	2040-AC92
3496	SAN No. 3713 Test Procedures: Performance-Based Measurement System (PBMS) Procedures and Guidance for Clean Water Act Test Procedures	2040-AC93
3497	SAN No. 3155 Test Procedures for the Analysis of Miscellaneous Metals, Anions, and Volatile Organics Under the Clean Water Act, Phase One	2040-AC95
3498	SAN No. 4089 Test Procedures for the Analysis of Miscellaneous Metals, Anions, and Volatile Organics Under the Clean Water Act, Phase Two	2040-AD12
3499	SAN No. 4357 Uniform National Discharge Standards for Vessels of the Armed Forces - Phase II	2040-AD39
3500	SAN No. 3663 Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution	2040-AC58
3501	SAN No. 3786 NPDES Streamlining Rule — Round III	2040-AC84
3502	SAN No. 4493 Clean Water State Revolving Fund Regulation Revisions Re: Use as Matching Funds	2040-AD68

CLEAN WATER ACT (CWA)—Completed Actions

Sequence Number	Title	Regulation Identification Number
3503	SAN No. 3833 Effluent Guidelines and Standards for the Iron and Steel Manufacturing Point Source Cafegory (Revisions)	2040-AC90
3504	SAN No. 4192 Effluent Guidelines and Standards for the Bleached Papergrade Kraft Subcategory of the Pulp, Paper, and Paperboard Category; Certification in Lieu of Monitoring for Chloroform	2040-AD23
3505	SAN No. 4576 Effluent Guidelines 2002 Program Plan	2040-AD78
3506	SAN No. 4375 Revision to Clean Water Act Regulatory Definition of Fill Material	2040-AD51

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CLEAN WATER ACT (CWA)—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
2040-AD10	SAN No. 4050 Effluent Guidelines and Standards for the Pulp, Paper, and Paperboard Category, Phase II	09/13/2002	Withdrawn - Agency plans no further action at this time.
2040-AD57	SAN No. 4408 Effluent Guidelines and Standards for the Industrial Container and Drum Cleaning Point Source Category	09/13/2002	Withdrawn - Agency plans no further action at this time.

SAFE DRINKING WATER ACT (SDWA)—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3507	SAN No. 4447 Drinking Water: Regulatory Determinations Regarding Contaminants on the Drinking Water Contaminant Candidate List	2040-AD61
3508	SAN No. 4424 6-Year Review of Existing National Primary Drinking Water Regulations	2040-AD67

SAFE DRINKING WATER ACT (SDWA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3509	SAN No. 4341 National Primary Drinking Water Regulations: Long Term 2 Enhanced Surface Water Treatment Rule **(Reg Plan Seq No. 134)**	2040-AD37
3510	SAN No. 4342 National Primary Drinking Water Regulations: Stage 2 Disinfection Byproducts Rule **(Reg Plan Seq No. 135)**	2040-AD38
3511	SAN No. 4703 Drinking Water Contaminant Candidate List 2	2040-AD86
3512	Drinking Water Contaminant Candidate List 2	2040-AD88

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

SAFE DRINKING WATER ACT (SDWA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3513	SAN No. 4638 Unregulated Contaminant Monitoring Regulation: Analytical Method for Aeromonas & National Primary & Secondary Drinking Water Regulations: Analytical Methods for Chemical & Microbiological Contaminants	2040-AD81
3514	SAN No. 2340 National Primary Drinking Water Regulations: Groundwater Rule **(Reg Plan Seq No. 144)**	2040-AA97
3515	SAN No. 4561 Minor Revisions to the Public Notification Rule, Consumer Confidence Report Rule, and Primacy Rule	2040-AD77

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

SAFE DRINKING WATER ACT (SDWA)—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3516	SAN No. 2281 National Primary Drinking Water Regulations: Radon	2040-AA94
3517	SAN No. 3238 National Primary Drinking Water Regulations: Aldicarb	2040-AC13
3518	SAN No. 4404 National Secondary Drinking Water Regulations (NSDWR): Methyl Tertiary Butyl Ether (MTBE) and Technical Corrections to the NSDWR	2040-AD54
3519	SAN No. 4236 Update of State Underground Injection Control Programs	2040-AD40

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SAFE DRINKING WATER ACT (SDWA)—Completed Actions

Sequence Number	Title	Regulation Identification Number
3520	SAN No. 4451 Underground Injection Control Class V Phase 2 Revisions	2040-AD63

SAFE DRINKING WATER ACT (SDWA)—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
2040-AD31	SAN No. 4212 Use of Screening Methods for Compliance Monitoring of Drinking Water Contaminants	10/25/2002	Withdrawn - No further action planned at this time.
2040-AD48	SAN No. 4369 Regulated Drinking Water Contaminant Occurrence Reporting	10/25/2002	Withdrawn - No further action planned at this time.

SHORE PROTECTION ACT (SPA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3521	SAN No. 2820 Shore Protection Act, Section 4103(b) Regulations	2040-AB85

Environmental Protection Agency (EPA) **Proposed Rule Stage**
General

3113. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES IN PROCUREMENT UNDER ASSISTANCE AGREEMENTS

Priority: Other Significant

Legal Authority: PL 101-507; PL 102-389; PL 101-549 sec 1001; 42 USC 9605(f); PL 100-590; EO 12432; EO 12138; EO 11625

CFR Citation: 40 CFR 33

Legal Deadline: None

Abstract: The regulation will codify revisions to the Agency's program for the utilization of Small, Minority and Women's Business Enterprises in procurements under assistance agreements (i.e., grants and cooperative agreements awarded by EPA as well as grants and cooperative agreements awarded by other agencies under interagency agreements with EPA). The revisions are necessary to ensure consistency with the Supreme Court's decision in Adarand Constructors, Inc. v. Pena, 115 S.Ct. 2097 (1995), and were identified as part of the Clinton Administration's review of affirmative action programs. They include: (1) placing greater emphasis on requiring assistance agreement recipients to submit documentation supporting proposed fair share procurement objectives for Minority Business Enterprises (MBEs) and Women's Business Enterprises (WBEs) based on the availability of qualified MBEs and WBEs in the relevant geographic market; (2) authorizing or requiring recipients and their prime contractors to take reasonable race/gender-conscious measures (e.g., bidding credits) in the event that race/gender-neutral efforts prove inadequate to meet fair share objectives; and (3) administering statutory MBE/WBE objectives as a national goal, allowing smaller or larger fair share objectives for particular grants or cooperative agreements based on the availability standard.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
Final Action	01/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4056

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RIN: 2020–AA39

3114. INCORPORATION OF CLASS DEVIATIONS INTO EPAAR

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 1537; 48 CFR 1552

Legal Deadline: None

Abstract: The Agency has approved a number of class deviations (e.g., changes to reporting requirements and monthly progress reports) to the

EPAAR since its promulgation in April 1994. This proposed rule would incorporate most of the class deviations to the EPAAR.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3580

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RIN: 2030–AA37

3115. INCREMENTALLY FUNDING FIXED PRICE CONTRACTS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 1532

Legal Deadline: None

Abstract: This proposed rule will add subpart 1532.7, Contract Funding, to the Environmental Protection Agency's Acquisition Regulation (EPAAR). It also will revise part 1552 of the EPAAR to include a clause for incrementally funding fixed price contracts.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3876

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RIN: 2030–AA50

3116. PROPOSED REVISION TO EPA'S IMPLEMENTING NEPA REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321

CFR Citation: 40 CFR 6

Legal Deadline: None

Abstract: The proposed revision is necessary to clarify and update EPA's National Environmental Policy Act (NEPA) regulation. The revision would clarify Agency responsibilities for congressionally funded special appropriation projects and EPA-funded grant programs. The revision would clarify public involvement procedures and organization responsibilities. The proposal would revise the list of actions which are categorically excluded from analyses. The revision is also needed to incorporate a number of Executive orders and other cross-cutting requirements into the NEPA process.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 4292

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RIN: 2020–AA42

3117. REVISION OF PROCEDURAL RULES FOR HEARINGS ON CANCELLATIONS, SUSPENSIONS, CHANGES IN CLASSIFICATIONS, AND DENIALS OF PESTICIDE REGISTRATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136a(c) to 136a(d); 7 USC 136b(d)to 136b(f); 7 USC 136d(b)to 7 USC 136d(e); 7 USC 136w(a)

CFR Citation: 40 CFR 164 (Revision)

Legal Deadline: None

Abstract: EPA is preparing a comprehensive revision of the Rules of Practice governing the conduct of licensing adjudications under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The existing Rules of Practice were originally promulgated by EPA in 1973. In the subsequent 19 years, Congress has substantially amended FIFRA, creating a number of additional types of licensing adjudications which are not expressly provided for in the existing Rules of Practice. In order to include provisions tailored to these new types of proceedings, and to incorporate the standard practices which have evolved and the precedents which have been established since these rules were first promulgated, EPA intends to comprehensively revise the FIFRA Rules of Practice.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4618

Sectors Affected: 111 Crop Production; 112 Animal Production; 32532 Pesticide and Other Agricultural Chemical Manufacturing

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RIN: 2020–AA44

3118. • PRIVACY ACT REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552a

CFR Citation: 40 CFR 16 (Revised)

Legal Deadline: None

Abstract: This action proposed to revise the Privacy Act regulation to exempt new systems and systems currently claiming to be exempt from the Act. Other revisions are generally minor and include revising the access provision so that a copy of a record can be obtained without a personal inspection; changing the time limit for appeals of denials from 10 days to 30 days; changing the process for accessing Privacy Act records and contesting Privacy Act records from the system manager to the Freedom of Information Office; and referring appeals from denials of system of records maintained by the Office of Inspector General to that office for decision. The proposed rule does not have implications on small businesses nor State/local/tribal government.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 4693

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RIN: 2025–AA13

3119. REVISION TO EPAAR 1552.211-73, LEVEL OF EFFORT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301 sec 205(c); 63 Stat 390 as amended

CFR Citation: 48 CFR 1552

Legal Deadline: None

Abstract: This rule will revise EPAAR 1552.211-73, Level of Effort, to define more concisely the services being acquired, and to more accurately reflect the relationship between services provided and fee payments.

Timetable:

Action	Date	FR Cite
NPRM (Pending Legal Review)	01/00/03	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4191

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RIN: 2030–AA64

3120. REVISIONS TO ACQUISITION REGULATION CONCERNING CONFLICT OF INTEREST

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The purpose of this rule is to revise the Agency's conflict of interest (COI) acquisition regulations. The specific revisions involve more stringent requirements for submission of relevant information from Agency contractors and potential contractors regarding their relationships with parent companies, affiliates, subsidiaries, and sister companies. Current Agency regulations do not require the submission of this level of information. Receipt and evaluation of this information is critical in order for the Agency to decide whether or not COI situations exist and how they are to be handled. This revised rule will also codify several COI clauses that have been developed since the issuance of the previous rule in 1994.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4319

Sectors Affected: 5413 Architectural, Engineering and Related Services; 5416 Management, Scientific and Technical Consulting Services; 54162 Environmental Consulting Services; 5417 Scientific Research and Development Services; 562 Waste Management and Remediation Services

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RIN: 2030–AA67

3121. • BACKGROUND INVESTIGATIONS FOR CONTRACT EMPLOYEES PERFORMING SERVICES ON OR WITHIN FEDERALLY OWNED OR FEDERALLY OCCUPIED FACILITIES, SUPERFUND, OIL POLLUTION ACT

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: NPRM, Statutory, September 6, 2002.
Final, Statutory, December 5, 2002.

Abstract: Executive Orders 10450 and 12968 require that all persons entering Federal service, including contract employees, be investigated for suitability.

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EPA—General — **Proposed Rule Stage**

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4733

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RIN: 2030–AA80

3122. PERSISTENT, BIOACCUMULATIVE, AND TOXIC (PBT) POLLUTANTS STRATEGY

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: As described in the Agency's 1998 PBT Strategy, EPA is developing and implementing National Action Plans for certain priority PBT pollutants. These pollutants pose risks because they are toxic, persist in ecosystems, and accumulate in fish and up the food chain. The PBT challenges remaining stem from the pollutants' ability to travel long distances, to transfer rather easily among air, water, and land, and to linger for generations. EPA is forging a new approach to reduce risks from and exposures to priority PBT pollutants through increased coordination among EPA national and regional programs. This approach also requires the significant involvement of stakeholders, including international, state, local, and tribal organizations, the regulated community, environmental groups, and private citizens. EPA is initially focusing action on 12 substances either individually or as categories and two major cross-cutting issues (monitoring and outreach/risk communication). The action plans will use the full range of tools to prevent and reduce releases of these substances. These tools include international, voluntary, outreach, programmatic, remedial, compliance monitoring and assistance, enforcement, research, and regulatory tools. EPA will integrate and sequence actions within and across action plans, and will seek to leverage these actions on international and industry-sector bases. Beyond these first 12 substances EPA will identify additional PBTs for development of National Action Plans. Although these Plans are not regulatory actions, EPA has included them in the Regulatory Agenda to inform the public and regulated community because the Action Plans may discuss regulatory alternatives for consideration.

Timetable:

Action	Date	FR Cite
Notice - Multimedia Strategy for PBTs	11/17/98	63 FR 63926
Notice - Draft National Action Plan for Mercury	11/17/98	63 FR 63926
Notice - Proposed National Action Plan for Alkyl-lead	08/25/00	65 FR 51823
Notice - Proposed National Action Plan for Octachlorostyrene (OCS)	08/25/00	65 FR 51825
Notice - Draft Action Plan for Level 1 Pesticides	11/01/00	65 FR 65314
Notice - Draft Action Plan for Hexachlorobezene (HCB)	12/08/00	65 FR 77026
Notice - Final Action Plan for Alkyl-lead	07/23/02	67 FR 48177
Notice - Draft Action Plan for Benzo(a)pyrene (B(a)P)	11/00/02	
Notice - Reproposed Action Plan for Mercury	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4463

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RIN: 2070–AD45

Environmental Protection Agency (EPA) — **Final Rule Stage**

General

3123. IMPLEMENTATION OF CHANGES TO GOVERNMENTWIDE DEBARMENT AND SUSPENSION COMMON RULE

Priority: Substantive, Nonsignificant

Legal Authority: EO 12549; EO 12689 and FASA

CFR Citation: 40 CFR 32

Legal Deadline: None

Abstract: Periodically OMB amends the Governmentwide common rule for suspension and debarment of contractors and assistance participants who threaten the integrity of Federal programs because of criminal misconduct or poor performance. All agencies must issue changes to their individual codified versions to conform to the common rule. Recently, the Interagency Suspension and Debarment Coordinating Committee prepared recommendations for comprehensive changes to the common rule to conform to changes made in the Federal Acquisition Regulation (FAR) as a result of the Federal Acquisition Streamlining Act (FASA). In addition, several other proposals to improve or change the rule were recommended by various agencies. In December 1996, OMB declined to implement the

EPA—General — **Final Rule Stage**

changes at that time due to differences with some agencies about some changes unrelated to those occasioned by FASA.

Among other things, FASA replaced the small purchase threshold ($25,000) with the simplified acquisition amount ($100,000). That change unintentionally exposed certain EPA programs to participation by contractors who may have been debarred for serious misconduct already. OMB has agreed to permit agencies to amend the coverage section of their individual agency rules to reduce or eliminate exposure to suspended or debarred persons.

EPA intends to issue a notice of proposed rulemaking to amend 40 CFR 32.110 to reduce EPA exposure to such consequences.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3265
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3817

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RIN: 2030–AA48

3124. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 28 CFR 42.101 to 42.112; 28 CFR 42.501 to 42.540; 28 CFR 42.700 to 42.736

Legal Deadline: None

Abstract: The Department of Justice proposes to make amendments to its regulations implementing title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of program or activity and program to title VI and added a definition of program or activity to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRRA's definition of program or activity and program into the Department's title VI, section 504, and Age Discrimination Act regulations. The Department's proposed regulation will be published as part of a joint notice of proposed rulemaking involving up to 24 Federal agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 4021

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RIN: 2020–AA36

3125. REWRITING OF EPA REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552

CFR Citation: 40 CFR 2

Legal Deadline: None

Abstract: This document proposes revisions to EPA's regulations under the Freedom of Information Act (FOIA). The FOIA regulations have been streamlined and written in plain English wherever possible. They also reflect developments in the case law and include updated cost figures for calculating and charging fees. In addition, the proposed revisions include provisions implementing the Electronic Freedom of Information Act Amendments of 1996. These revisions will simplify and expedite responses to FOIA requests.

Timetable:

Action	Date	FR Cite
NPRM	04/12/00	65 FR 19703
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 4180

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RIN: 2025–AA04

3126. CROSS-MEDIA ELECTRONIC REPORTING (ER) AND RECORDKEEPING RULE

Regulatory Plan: This entry is Seq. No. 148 in part II of this issue of the **Federal Register.**

RIN: 2025–AA07

3127. ELECTRONIC FUNDS TRANSFER

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301 Sec 205(c); 63 Stat 390 as amended

CFR Citation: 48 CFR 1532.11

Legal Deadline: None

Abstract: This rule complies with the revised Federal Acquisition Regulations (FAR) coverage regarding implementation of the Debt Collection Improvement Act. Because the revised FAR offers choices in implementation, each agency must communicate with its vendor community its choices. This rule will let our vendor community know that EPA will require the use of FAR Clause 52.232-34, Payment by Electronic Funds Transfer (Non-CCR), as prescribed in FAR 32.1105(a)(2). Within the Clause, under (c) the payment office shall be inserted as the

prescribed designated office. Further inserted shall be that the required EFT information shall be provided no later than 15 days prior to submission of the first request for payment.

Timetable:

Action	Date	FR Cite
Direct Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4185

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RIN: 2030–AA57

3128. EPAAR COVERAGE ON LOCAL HIRING AND TRAINING

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301 sec 205(c); 63 Stat 390 as amended

CFR Citation: 48 CFR 1526; 48 CFR 1552

Legal Deadline: None

Abstract: This rule will amend the EPA Acquisition Regulation (EPAAR) to include part 1526, Other Socioeconomic Programs, and to revise part 1552, Solicitation Provisions and Contract Clauses. The purpose is to provide an incentive for prime contractors to utilize local hiring and provide training to local hires in specific geographical locations where contractual requirements will be performed. This incentive will support economic development in areas where EPA contracts are performed.

Timetable:

Action	Date	FR Cite
NPRM	12/09/98	63 FR 67845
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4187

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RIN: 2030–AA62

3129. FELLOWSHIP GRANT REGULATION REVISION

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 40 CFR part 46

Legal Deadline: None

Abstract: The fellowship rule (part 46) establishes the requirements applicable to granting all EPA fellowships. It supplements 40 CFR part 30, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations." The rule requires submission of data to the Agency; however, a new ICR is not required. The rule is already cleared under current ICR approval.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4572

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RIN: 2030–AA77

3130. • CONTRACTOR PERFORMANCE EVALUATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301 sec. 205(c); 63 stat. 390 as amended; 40 USC 486(c); 41 USC 418b

CFR Citation: 48 CFR 1509 and 1552

Legal Deadline: None

Abstract: This action will revise EPAAR clauses at 1509 and 1552 pertaining to contractor performance evaluations. EPAAR clauses will be amended to provide for use of the National Institutes of Health (NIH) construction module in the NIH Contractor Performance System.

Timetable:

Action	Date	FR Cite
NPRM	02/20/02	67 FR 7657
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4650

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RIN: 2030–AA79

3131. • WASTE ISOLATION PILOT PLANT (WIPP) FY 2001 REPORT TO CONGRESS

Priority: Info./Admin./Other

Legal Authority: PL 102-579, sec 23(a)(2)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This Report to Congress is required by section 23(a)(2) of the WIPP Land Withdrawal Act, which requires EPA to submit an annual report to Congress "on the status of and resources required for the fulfillment of the Administrator's responsibilities under the Act" regarding the Waste Isolation Pilot Plant (WIPP). This report summarizes the activities and progress EPA has made in fulfilling its responsibilities under the Act and outlines the resources required for the Agency to meet its commitments. The WIPP is an underground repository for the permanent disposal of radioactive waste generated as byproducts from nuclear weapons production. It was constructed by the Department of Energy (DOE) and is located near Carlsbad, New Mexico. In 1998, EPA certified that the WIPP complies with EPA's radioactive waste disposal standards at subpart B and C of 40 CFR 191 and EPA's WIPP compliance criteria at 40 CFR 194, and thus is safe to contain radioactive waste. Since that time, the DOE has begun emplacing waste in the WIPP. The waste is stored approximately 2,100 feet underground in excavated, natural salt formations. EPA also has responsibility for assuring continual compliance with EPA's radioactive waste disposal standards. EPA continues to have an oversight role at the WIPP to ensure that it continues to protect human health and the environment. This report summarizes EPA's activities past and present.

Timetable:

Action	Date	FR Cite
Report to Congress	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4686

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RIN: 2060–AK39

3132. REGULATORY INCENTIVES FOR THE NATIONAL ENVIRONMENTAL PERFORMANCE TRACK PROGRAM

Priority: Other Significant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The National Environmental Performance Track is designed to recognize facilities that consistently meet their legal requirements and have implemented high-quality environmental management systems, and to encourage them to achieve more by continuously improving their environmental performance and informing and involving the public. Facilities gain entrance to Performance Track by submitting an application that documents that four specific criteria are met: operating environmental management system; commitment to continuous environmental improvement through documented past improvements and future commitments; engaging the public; and a strong record of compliance. To promote participation in the program, and the environmental and other benefits that will come with it, EPA intends to offer several incentives. Among those incentives are the adjustments in current regulatory requirements that are the subjects of this rulemaking. These include reducing the frequency of reports required under the Maximum Achievable Control Technology (MACT) provisions of the Clean Air Act; streamlined reporting by publicly owned treatment works (POTWs) under the Clean Water Act; extending on-site storage of RCRA waste to 180 days; and soliciting comment on opportunities for PerformanceTrack facilities to consolidate reporting under various environmental statutes into a single report.

Timetable:

Action	Date	FR Cite
NPRM	08/13/02	67 FR 52674
Final Action	07/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Additional Information: SAN No. 4473

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RIN: 2090–AA13

3133. EPA AGENCYWIDE PUBLIC INVOLVEMENT POLICY

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Environmental Protection Agency is revising its 1981 Public Participation Policy. The policy was updated to reflect changes over the intervening years such as additional Agency responsibilities, new regulations, expanded public involvement techniques, and the changed nature of public access due to the Internet. The policy will provide guidance and direction to EPA officials on reasonable and effective means to involve the public in its regulatory and program decisions.

Timetable:

Action	Date	FR Cite
Draft Public Involvement Policy	12/28/00	65 FR 82335
Final Public Involvement Policy	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 4530

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RIN: 2090–AA23

3134. PROJECT XL SITE-SPECIFIC RULEMAKING FOR NASA WHITE SANDS TEST FACILITY ELECTRONIC REPORTING IN LAS CRUCES, NEW MEXICO

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The purpose of the NASA White Sands Test Facility (WSTF) Electronic Reporting site-specific rule is to enable the NASA WSTF to electronically submit compliance reports and permit information to the New Mexico Environmental Department (NMED) in lieu of submitting paper reports. The rule will set forth guidelines to ensure that the information submitted by NASA WSTF to NMED is accurate by outlining procedures for data authentication, use

EPA—General — **Final Rule Stage**

of electronic signature and encryption processes.

Timetable:

Action	Date	FR Cite
NPRM	10/31/01	66 FR 55050
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4536

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RIN: 2090–AA27

Environmental Protection Agency (EPA) — **Long-Term Actions**

General

3135. PUBLIC INFORMATION AND CONFIDENTIALITY REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2005; 15 USC 2601 et seq; 21 USC 346; 33 USC 1251 et seq; 33 USC 1414; 42 USC 11001 et seq; 42 USC 300(f) et seq; 42 USC 4912; 42 USC 6901 et seq; 42 USC 7401 et seq; 42 USC 9601 et seq; 5 USC 552; 7 USC 136 et seq

CFR Citation: 40 CFR 2; 40 CFR 57; 40 CFR 122; 40 CFR 123; 40 CFR 145; 40 CFR 233; 40 CFR 260; 40 CFR 270; 40 CFR 271; 40 CFR 281; 40 CFR 350; 40 CFR 403; 40 CFR 85; 40 CFR 86

Legal Deadline: NPRM, Statutory, August 31, 2000, Proposed rule to eliminate the special treatment of CBI substantiations.

Abstract: EPA regulations at 40 CFR part 2, subpart B, provide procedures for handling and disclosing information claimed as confidential business information (CBI). Although the current regulations have succeeded in protecting CBI, changes in Agency workload, practice, and statutory authority have made it difficult to handle CBI activities as expeditiously as desired. EPA is examining its CBI regulations to determine whether changes are needed to make them more efficient and effective. Provision 40 CFR 2.205(c), which automatically protects CBI substantiations claimed as confidential, is being examined individually and as part of the CBI regulations as a whole.

Timetable:

Action	Date	FR Cite
NPRM/CBI Regs Proposal to revise EPA's CBI regulations	11/23/94	59 FR 60446
Final/CBI Substant. Final rule to eliminate special treatment of substantiations	To Be	Determined
NPRM/CBI Regs Proposal to revise CBI regs--40 CFR Part 2, Subpart B	To Be	Determined
Final Rule/CBI Regs Final rule revising CBI regs--40 CFR Part 2, Subpart B	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 3240

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RIN: 2025–AA02

3136. GUIDELINES FOR CARCINOGEN RISK ASSESSMENT

Priority: Info./Admin./Other

Legal Authority: Not applicable

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Agency will use these guidelines to evaluate suspect carcinogens in line with the policies and procedures established in the statutes administered by the EPA. These guidelines revise and replace EPA Guidelines for Carcinogen Risk Assessment published at 51 FR 33992, September 24, 1986. These guidelines provide EPA staff and decision-makers with the directions and perspectives necessary to develop and use risk assessments. The guidelines also provide the general public with basic information about the Agency's approaches to risk assessment.

To develop guidelines the Agency must find a balance between consistency and innovation. Consistent risk assessments provide consistent bases to support regulatory decisionmaking. On the other hand, innovation is necessary so the Agency will base its decisions on current scientific thinking. In balancing these and other science policies, the Agency relies on input from the general scientific community through established scientific peer review processes. The guidelines incorporate basic principles and science policies based on evaluation of the currently available information. The revisions place increased emphasis on the role of carcinogenic mechanisms in risk assessment and clearer explication of underlying assumptions in risk assessment.

These guidelines will have minimal to no impact on small businesses or State, local, and tribal governments.

Timetable:

Action	Date	FR Cite
Reproposed Guidelines	04/23/96	61 FR 17960
Implementation Policy	06/25/96	61 FR 32799
Final Guidelines	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

EPA—General — **Long-Term Actions**

Government Levels Affected: None

Additional Information: SAN No. 3671

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RIN: 2080–AA06

3137. NEW JERSEY GOLD TRACK PROJECT XL RULE

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Gold Track Program is a crucial part of NJDEP's efforts to create a State-run tiered performance-based program. Currently, facilities may join NJDEP's Silver Track Program, which is a lower-level tier that provides recognition for commitments to a certain level of environmental enhancement. Gold Track expands upon these environmental commitments, and offers proportionally greater recognition, as well as actual federal regulatory flexibility to participating facilities. NJDEP is partnering with EPA in the Gold Track effort under the XL program, so as to be able to offer federal regulatory flexibility to Gold Track participants.

Timetable:

Action	Date	FR Cite
NPRM	04/16/02	67 FR 18528
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: SAN No. 4533

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RIN: 2090–AA28

Environmental Protection Agency (EPA) — **Completed Actions**

General

3138. ADMINISTRATIVE CORRECTIONS TO EPAAR 1515, CONTRACTING BY NEGOTIATION

Priority: Info./Admin./Other

CFR Citation: Not Yet Determined

Completed:

Reason	Date	FR Cite
Merged into RIN 2030-AA59	10/02/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2030–AA73

Environmental Protection Agency (EPA) — **Prerule Stage**

Clean Air Act (CAA)

3139. • MODIFICATION OF SOURCE CATEGORY LISTING FOR SEVEN SPECIFIC POLLUTANTS — CAA SECTION 112(C)(6)

Priority: Info./Admin./Other

Legal Authority: Clean Air Act sec 112(c)(6)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This is a notice, not a rule; it will be signed by the AA/OAR, not the Administrator. This action will remove eight source categories from potential regulation under CAA section 112. Section 112(c)(6) of the CAA requires that the EPA identify categories of sources of seven specific pollutants (alkylated lead compounds, polycyclic organic matter (POM), mercury, hexachlorobenzene, PCBs, dioxins and furans) that account for not less than 90 percent of the aggregate emissions of each pollutant and subject these sources to standards. EPA published that source category listing in April 1998. With this new action, we are removing eight area source categories, all emissions sources of POM, from the list previously identified in April 1998. These categories are no longer needed to achieve the 90 percent requirement. This is because we now are able to count the contribution of area source emissions from Gasoline Distribution (Stage 1) toward the 90 percent requirement for POM. We added this category to our regulatory agenda under a July 1999 Federal Register notice for the Urban Air Toxics Strategy. We are also removing Open Burning of Scrap Tires, an area source category for POM, from the list of anthropogenic stationary source categories included in the section 112(c)(6) inventory analysis. Consequently, this source category will no longer be a candidate for regulation under section 112(c)(6). This is similar to our exclusion of a number of other source categories (e.g., wildfires) that we do not consider appropriate for regulation under section 112 of the CAA. Open burning of scrap tires is a result of arson, accident, or lightning. It is already banned in all 50 States. With these changes EPA is still able to meet the 90 percent requirement. Note that CAA section 112(c)(6) is currently the subject of a deadline lawsuit. Negotiations with the litigant are ongoing and could result in a court-ordered schedule for these modifications.

Timetable:

Action	Date	FR Cite
Notice	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

EPA—Clean Air Act (CAA)

Prerule Stage

Government Levels Affected: None

Additional Information: SAN No. 4684

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RIN: 2060–AK34

Environmental Protection Agency (EPA)
Clean Air Act (CAA)

Proposed Rule Stage

3140. PLASTIC PARTS AND PRODUCTS (SURFACE COATING) NESHAP

Priority: Other Significant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: This action would address the hazardous air pollutants (HAP) emissions from the coating of plastic parts. Pollution prevention approaches will be considered.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 3826

Sectors Affected: 337214 Nonwood Office Furniture Manufacturing; 32614 Polystyrene Foam Product Manufacturing; 326199 All Other Plastics Product Manufacturing; 32615 Urethane and Other Foam Product (except Polystyrene) Manufacturing; 333313 Office Machinery Manufacturing; 33422 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing; 336399 All Other Motor Vehicle Parts Manufacturing; 336999 All Other Transportation Equipment Manufacturing; 339111 Laboratory Apparatus and Furniture Manufacturing; 339112 Surgical and Medical Instrument Manufacturing; 33992 Sporting and Athletic Goods Manufacturing; 33995 Sign Manufacturing; 339999 All Other Miscellaneous Manufacturing

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RIN: 2060–AG57

3141. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) AND NONATTAINMENT NEW SOURCE REVIEW (NSR): ROUTINE MAINTENANCE, REPAIR, AND REPLACEMENT

Regulatory Plan: This entry is Seq. No. 127 in part II of this issue of the Federal Register.

RIN: 2060–AK28

3142. PERFORMANCE WARRANTY AND INSPECTION/MAINTENANCE TEST PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7541; 42 USC 7601

CFR Citation: 40 CFR 51; 40 CFR 85

Legal Deadline: None

Abstract: This action establishes a new short test procedure for use in I/M programs required by the Clean Air Act Amendments of 1990. Vehicles that are tested and failed using this procedure and that meet eligibility requirements established by the act would be eligible for free warranty repair from the manufacturers.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3262

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RIN: 2060–AE22

3143. INSPECTION/MAINTENANCE RECALL REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7511(a)(2)(b); 42 USC 7511(a)(2)(b)(2)

CFR Citation: 40 CFR 51

Legal Deadline: None

Abstract: This action specifies requirements for enhanced I/M programs to establish a program to ensure compliance with recall notices. This is pursuant to the Clean Air Act Amendments of 1990.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3262

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RIN: 2060–AE20

EPA—Clean Air Act (CAA)

Proposed Rule Stage

3144. AMENDMENTS TO METHOD 24 (WATER-BASED COATINGS)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7410

CFR Citation: 40 CFR 60

Legal Deadline: Final, Statutory, June 15, 2001.

Abstract: The determination of volatile organic compounds (VOCs) content of a surface coating by reference Method 24 involves determination of its water content and calculation of its VOC content as the difference of the two measurements (volatile content minus water content). Method 24 is inherently less precise for water-based coatings than it is for solvent-based coatings and the imprecision increases as water content increases. This action will amend Method 24 by adding a direct measurement procedure for measuring VOC content of water-based coatings. The precision of Method 24 for water-based coatings will be improved.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3649

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RIN: 2060–AF72

3145. ADDITION OF OPACITY METHOD TO APPENDIX M OF 40 CFR PART 51 (METHOD 203)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7410

CFR Citation: 40 CFR 51

Legal Deadline: Final, Statutory, June 15, 2001.

Abstract: This rulemaking proposes to add a method, Method 203, for the measurement of opacity from stationary sources, to appendix M (Example Test Methods for State Implementation Plans) in 40 CFR part 51. This action provides States with an instrumental test method which can be used in determining, on a continuous basis, compliance with stationary source opacity emission limitations.

Timetable:

Action	Date	FR Cite
NPRM	10/07/92	57 FR 46114
Supplemental NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3958

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RIN: 2060–AH23

3146. TRANSPORTATION CONFORMITY RULE AMENDMENT: CLARIFICATION OF TRADING PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 to 7671 CAA sec 176(c)

CFR Citation: 40 CFR 51; 40 CFR 93

Legal Deadline: None

Abstract: The transportation conformity rule, promulgated in November 1993, ensures that transportation and air quality planning are consistent with Clean Air Act air quality standards. The Open Market Trading Guidance provides guidance to states for establishing a method to quantify emissions reductions (called discrete emissions reductions or DERs) that can be traded among parties and how such trading should occur. This action will amend the transportation conformity rule to clarify how emissions trading could be reconciled in the conformity process.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 3917

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RIN: 2060–AH31

3147. REVIEW OF MINOR NEW SOURCES AND MODIFICATIONS IN INDIAN COUNTRY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7410

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: As required by the Clean Air Act's New Source Review (NSR) provisions, the EPA is proposing Federal regulations governing preconstruction permitting of minor and major stationary sources of air pollution in Indian country. Pursuant to the Tribal Air Rule, eligible Indian Tribes may receive EPA authorization to develop and implement such programs. The Federal NSR permitting programs would be effective throughout Indian country and would be implemented by EPA if eligible Indian Tribes do not elect, or do not receive authorization, to manage such programs. The proposed Federal minor NSR rule would require sources in Indian country, with certain exceptions, to obtain a permit prior to construction if they are: (1) new minor sources, (2) existing minor sources undergoing modification, or (3) existing major sources undergoing minor modification. The proposed rule also would allow new or existing stationary sources to accept enforceable limits on their production capacity or hours of operation in order to be considered

minor sources and avoid being subject to other Clean Air Act requirements such as the title V operating permit program. The proposed Federal major NSR rule would require sources in nonattainment areas in Indian country to obtain a permit prior to construction if they are: (1) new major sources, or (2) existing major sources undergoing major modification. These rules would not impose any mandates on Tribal governments to implement NSR permitting programs. Tribal governments may be affected, however, insofar as they own or operate sources that must obtain a permit from the EPA under the final Federal permitting program regulations.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, Tribal

Additional Information: SAN No. 3975

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RIN: 2060–AH37

3148. PERFORMANCE SPECIFICATION 16 - SPECIFICATIONS AND TEST PROCEDURES FOR PREDICTIVE EMISSION MONITORING SYSTEMS IN STATIONARY SOURCES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7411 CAA sec 111

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: Performance Specification 16 is being proposed to provide performance criteria for predictive emission monitoring systems. Predictive systems represent a new technology that uses process information or parameters to predict pollutant emissions instead of directly measuring them. The Agency is allowing their use in recently-promulgated rules and they are being considered by a number of regulated facilities. The specification lists the requirements for acceptable systems that are met by passing tests that compare the monitoring system with standardized methods and audit gases to determine system accuracy and stability. Performance Specification 16 will primarily apply to facilities whose emissions can be predicted from process parameters such as combustion processes (including gas turbines and internal combustion engines).

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: SAN No. 4119

Sectors Affected: 33241 Power Boiler and Heat Exchanger Manufacturing; 333611 Turbine and Turbine Generator Set Unit Manufacturing; 333618 Other Engine Equipment Manufacturing; 336399 All Other Motor Vehicle Parts Manufacturing

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RIN: 2060–AH84

3149. TECHNICAL CHANGE TO DOSE METHODOLOGY FOR 40 CFR PART 190, SUBPART B AND 40 CFR 191, SUBPART A

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2021 Atomic Energy Act of 1954; Reorganization Plan No. 3 of 1970; Nuclear Waste Policy Act of 1982

CFR Citation: 40 CFR 190(B); 40 CFR 191(A)

Legal Deadline: None

Abstract: The purpose of this action is to make a technical change to the dose methodology used in subpart A of 40 CFR 191, entitled Environmental Radiation Protection Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level Waste and Transuranic Waste The current methodology is outdated. The dose methodology used in the rule published on September 19, 1985, was based on the target organ approach recommended by the International Commission on Radiological Protection (ICRP) in Report 12. Since that time science has progressed and a new methodology based on an effective dose equivalent approach is currently being recommended by the ICRP in Report 26. This action would update the 40 CFR 191, subpart A dose limits published in 1985 from the target organ to the state-of-the-art effective dose equivalent system. There would be no change in the level of protection, just the scientific methodology for determining compliance with the levels of protection established in 1985.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 4003

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RIN: 2060–AH90

3150. NAAQS: SULFUR DIOXIDE (RESPONSE TO REMAND)

Priority: Other Significant

Legal Authority: 42 USC 7409 CAA sec 109

CFR Citation: 40 CFR 50.4; 40 CFR 50.5

Legal Deadline: None

Abstract: On November 15, 1994, the Environmental Protection Agency (EPA) proposed not to revise the existing 24-hour and annual primary standards. The EPA sought public comment on the need to adopt additional regulatory measures to address the health risk to asthmatic individuals posed by short-term peak sulfur dioxide exposure. On March 7, 1995, EPA proposed implementation strategies for reducing short-term high concentrations of sulfur dioxide emissions in the ambient air. On May 22, 1996, EPA published its final decision not to revise the primary sulfur dioxide NAAQS. The notice stated that EPA would shortly propose a new implementation strategy to assist States in addressing short-term peaks of sulfur dioxide. The new implementation strategy - the Intervention Level Program - was proposed on January 2, 1997. In July 1996, the American Lung Association and the Environmental Defense Fund petitioned the U.S. Court of Appeals for the D.C. Circuit for a judicial review of EPA's decision not to establish a new 5-minute NAAQS. On January 30, 1998, the court found that EPA did not adequately explain its decision and remanded the case so EPA could explain its rationale more fully. EPA published a schedule for responding to the remand in the May 5, 1998, Federal Register. Since that notice, EPA has continued to work on the proposed response to the remand by reviewing additional SO2 air quality information. EPA published an informational notice in the Federal Register on January 9, 2001 (66 FR 1665). EPA is conducting monitoring to evaluate sources of SO2 peaks. The results of this project will inform the response to the remand.

Timetable:

Action	Date	FR Cite
NPRM NAAQS Review	11/15/94	59 FR 58958
NPRM NAAQS Implementation (Part 51)	03/07/95	60 FR 12492
Final Rule NAAQS Review	05/22/96	61 FR 25566
NPRM Revised NAAQS Implementation (Part 51)	01/02/97	62 FR 210
Notice Schedule for Response to NAAQS Remand	05/05/98	63 FR 24782
Notice Informational FR Notice	01/09/01	66 FR 1665
Notice	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

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RIN: 2060–AA61

3151. IMPLEMENTATION RULE FOR 8-HOUR OZONE NAAQS

Regulatory Plan: This entry is Seq. No. 125 in part II of this issue of the **Federal Register**.

RIN: 2060–AJ99

3152. NESHAP: COMBUSTION TURBINE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412 CAA sec 112

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: The combustion turbine source category is listed as a major source of hazardous air pollutants (HAPs) under section 112 of the Clean Air Act (CAA). A major source is one which emits more than 10 tons/yr of one HAP or more than 25 tons/yr of a combination of 189 HAPs. Combustion turbines also emit NOx, SO2, CO, and PM. Combustion turbines are already regulated for NOx and SO2 emissions under section 111 of the CAA. The EPA will gather information on HAP emissions from combustion turbines and determine the appropriate maximum achievable control technology (MACT) to reduce HAP emissions. The EPA information that has already been developed will be used if possible and additional information will be gathered by working with State/local agencies, vendors, manufacturers of combustion turbines, owners and operators of combustion turbines, and environmentalists.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: None

Additional Information: SAN No. 3657

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RIN: 2060–AG67

3153. NESHAP: IRON AND STEEL FOUNDRIES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: Iron foundries and steel foundries have been identified by the EPA as potentially significant sources of air emissions of manganese compounds, lead compounds, and other substances that are among the pollutants listed as hazardous air pollutants in section 112 of the Clean Air Act, as amended in November of 1990. As such, these industries may be source categories for which national emission standards may be warranted.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3343

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RIN: 2060–AE43

3154. NESHAP: PAINT STRIPPING OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412 CAA sec 112

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: The EPA has determined that paint stripping operations emit at least one of the HAP's listed in section 112(b) of the Clean Air Act. As a result, the source category was included on the initial list of HAP-emitting categories scheduled for promulgation within 10 years of enactment of the Act. There are several emission standards for other source categories (for example, aerospace manufacturing and wood furniture manufacturing) that already address emissions from paint stripping operations. We are currently in the process of determining if there are any other major sources of HAP emissions from paint stripping operations that are not already regulated. Furthermore, HAP emissions from paint stripping operations that are area sources will be regulated in the future as part of the urban air toxics strategy.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3746

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RIN: 2060–AG26

3155. NESHAP: RECIPROCATING INTERNAL COMBUSTION ENGINE

Regulatory Plan: This entry is Seq. No. 120 in part II of this issue of the **Federal Register**.

RIN: 2060–AG63

3156. NESHAP: INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL BOILERS AND PROCESS HEATERS

Regulatory Plan: This entry is Seq. No. 121 in part II of this issue of the **Federal Register**.

RIN: 2060–AG69

3157. NESHAP: LIME MANUFACTURING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq; 44 USC 350 et seq; 5 USC 605

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: Section 112 of the Clean Air Act Amendments of 1990 requires the EPA to develop emission standards for each major source category of hazardous air pollutants (HAPs). The standards are to be technology-based and are to require the maximum degree of emission reduction determined to be achievable by the Administrator of the EPA. The EPA has determined that some lime manufacturing plants may be major sources for one or more HAPs. As a consequence, a regulation (emission standards) is being developed for the lime manufacturing industry.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 3651

Sectors Affected: 32741 Lime Manufacturing

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RIN: 2060–AG72

3158. NESHAP: METAL CAN MANUFACTURING (SURFACE COATING) INDUSTRY

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: This action will result in the reduction of hazardous air pollutants emitted by the metal can industry.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3906

Sectors Affected: 332431 Metal Can Manufacturing; 332812 Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers; 332115 Crown and Closure Manufacturing

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RIN: 2060–AG96

3159. NESHAP: SURFACE COATING OF AUTOMOBILES AND LIGHT-DUTY TRUCKS

Regulatory Plan: This entry is Seq. No. 122 in part II of this issue of the **Federal Register**.

RIN: 2060–AG99

3160. NESHAP: PRIMARY MAGNESIUM REFINING

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7412 CAA sec 112

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: Section 112 of the Clean Air Act (Act), as amended November 1990, requires the EPA to regulate categories of major and area sources of hazardous air pollutants (HAPs) listed in section 112(b). The EPA has determined that sources that manufacture primary magnesium may reasonably be anticipated to emit several of the 189 HAPs listed (including chlorine and hydrochloric acid) in quantities sufficient to designate them as a major source. As a consequence, primary magnesium refining is among the HAP emitting source categories selected for regulation and is in the group of categories for which final rules are scheduled to be promulgated by November 15, 2000 (58 FR 63941, December 3, 1993).

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: SAN No. 3924

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RIN: 2060–AH03

3161. NESHAP: GROUP I POLYMERS AND RESINS AND GROUP IV POLYMERS AND RESINS-AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63.480 to 63.506 (Revision); 40 CFR 63.1310 to 63.1335 (Revision)

Legal Deadline: None

Abstract: During the development of the National Emission Standard for Hazardous Air Pollutants (NESHAP) for elastomers (Group I polymers and resins) and thermoplastics (Group IV polymers and resins) (RINs 2060-AD56 and 2060-AE37), many of the provisions contained in the Hazardous Organic NESHAP (HON) were referenced directly by these polymers and resins regulations due to similarities in processes, emission characteristics, and control technologies. On January 17, 1997, the EPA promulgated changes to the HON to remove ambiguity, to clearly convey EPA intent, and to make the rule easier to understand and implement in response to industry petitions. It is necessary to make parallel changes to the polymers and resins NESHAP; otherwise inconsistencies will exist for NESHAPs regulating similar source categories. An ANPRM was published in the Federal Register on 11/25/96 (61 FR 59849), to explain the nature of changes planned. Subsequently, six litigants have petitioned for review of the elastomers and thermoplastics regulations. Four companies have petitioned EPA to reconsider specific provisions in the thermoplastics regulation. Revisions will be proposed to parallel HON changes and to resolve petitioners' issues. There are no impacts anticipated for small businesses or State/local/tribal governments.

Timetable:

Action	Date	FR Cite
ANPRM Petitions for Jud. Review-Dow,UCC,Exxon)	11/25/96	61 FR 59849
NPRM Petitions for Judicial Review-Prop. Amend.	03/09/99	64 FR 11559
NPRM Petition for Recons. - Equip. Leaks	06/08/99	64 FR 30453
NPRM Petition for Recons. - Equip. Leaks	06/08/99	64 FR 60456
Direct Final Action Petition for Reconsid.-Equip Leaks	06/08/99	64 FR 30406
Final Action Petitions for Judicial Review-Amendments	06/19/00	65 FR 38030
Direct Final Rule Stay	08/29/00	65 FR 52319
Direct Final Rule Withdrawal - Polymers and Resins	10/26/00	65 FR 64161
Final Rule Amend. Petition for Recons.-Cooling Towers	02/23/01	66 FR 11233
Final Rule Amend. Petition for Jud. Review-Tech. Corr.	07/16/01	66 FR 36924
Final-Amend. & Denial Petition for Reconsideration-Equip. Leaks	08/06/01	66 FR 40903
NPRM Petition for Reconsideration-Cooling Towers	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3939

Sectors Affected: 325211 Plastics Material and Resin Manufacturing

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RIN: 2060–AH47

3162. NESHAP: OIL AND NATURAL GAS PRODUCTION

Priority: Other Significant

Legal Authority: 42 USC 7412 CAA sec 112

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: On February 2, 1998, we proposed NESHAP for oil and gas production (major sources), oil and gas

production (area sources) , and natural gas transmission and storage in one package. On June 17, 1999, we promulgated NESHAP for oil and gas production (major sources) and natural gas transmission and storage. In this action, we will publish a supplemental proposal for the oil and gas production glycol dehydrators (area sources) and subsequently promulgate the proposal.

Timetable:

Action	Date	FR Cite
Supplemental NPRM	06/00/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4162

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RIN: 2060–AI13

3163. ELECTRIC UTILITY STEAM GENERATING UNIT MACT REGULATION

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: This action may affect State, local or tribal governments and the private sector.

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Judicial, December 15, 2003.
Final, Judicial, December 15, 2004.

Abstract: In December 2000, the EPA determined that regulation of hazardous air pollutant emissions (HAP) from oil- and coal-fired electric utility steam generating units was necessary and appropriate. This finding was based on the results of the study mandated by section 112(n)(1)(A) of the Clean Air Act, as amended. The regulation(s) will be developed under section 112 and will result in standards based on the use of maximum achievable control technology (MACT). The primary benefit will be the reduction of mercury emissions to the atmosphere from coal-fired units but other HAP will also be reduced. Small businesses and State/local/tribal governments could be impacted (particularly those governments owning or operating oil- or coal-fired electric generation facilities).

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Rule	12/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Local

Additional Information: SAN No. 4571

Sectors Affected: 221112 Fossil Fuel Electric Power Generation

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RIN: 2060–AJ65

3164. PROTECTION OF STRATOSPHERIC OZONE: RECONSIDERATION OF SECTION 608 SALES RESTRICTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7671(g) CAA sec 608

CFR Citation: 40 CFR 82 subpart F

Legal Deadline: None

Abstract: The rule will include the reconsideration of the sales restriction as it relates to split systems. The Agency was petitioned to reconsider the part of the sales restriction that included the sale of pre-charged split systems. It restricted such sales to certified technicians. Since then, EPA stayed that portion of the sales restriction in response to the petition. This rule will include the determination of the Agency related to the reconsideration. It addresses environmental problems of ozone depletion resulting from emissions of chlorofluorocarbons, hydrochlorofluorocarbons, and other ozone-depleting substances. Through restricting sales of certain pre-charged items to persons certified as technicians, emissions to the atmosphere are decreased. The impact on small businesses and governments would be negligible, since persons can become certified if the EPA determination is a full restriction. Most businesses and governments will have at least one certified technician on board. This action has no impact on small business and State, local, and tribal governments.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3673

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RIN: 2060–AG20

3165. RULEMAKING TO MODIFY THE LIST OF SOURCE CATEGORIES FROM WHICH FUGITIVE EMISSIONS ARE CONSIDERED IN MAJOR SOURCE DETERMINATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7602 CAA sec 302(j)

CFR Citation: 40 CFR 51; 40 CFR 52; 40 CFR 70; 40 CFR 71

Legal Deadline: None

Abstract: This rulemaking will modify the list of source categories from which fugitive emissions are to be considered in major source determinations under the New Source Review (Prevention of Significant Deterioration and Nonattainment New Source Review) and title V programs. As provided by section 302(j) of the Act, EPA adopted rules on August 7, 1980 that require, for specific source categories, the inclusion of fugitive emissions when determining if a stationary source is a major source. In its 1980 rulemaking, EPA identified one such specific source category as those stationary source categories being regulated, as of August 7, 1980, under section 111 or 112 of the Clean Air Act. Moreover, EPA indicated that at the time of any future rulemaking proposing to regulate additional categories of sources under section 111 or 112, the EPA would conduct a parallel rulemaking under section 302(j) to determine whether fugitive emissions from sources within these source categories needed to be considered in determining whether the sources were major stationary sources. EPA did not conduct these parallel rulemakings as intended and is now conducting a rulemaking pursuant to section 302(j) to address the source categories which became subject to section 111 and 112 standards after August 7, 1980.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal, State, Local, Tribal

Federalism: Undetermined

Additional Information: SAN No. 4045

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RIN: 2060–AH58

3166. NESHAP: PLYWOOD AND COMPOSITE WOOD PRODUCTS

Regulatory Plan: This entry is Seq. No. 119 in part II of this issue of the **Federal Register**.

RIN: 2060–AG52

3167. NATIONAL VOC EMISSION STANDARDS FOR CONSUMER PRODUCTS; PROPOSED AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 59

Legal Deadline: None

Abstract: Amendments to the consumer products rule are being proposed to clarify and correct the rule.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4309

Sectors Affected: 32599 All Other Chemical Product Manufacturing

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RIN: 2060–AI62

3168. NESHAP: TACONITE IRON ORE PROCESSING INDUSTRY

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412 CAA 112

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, May 1, 2001.

Abstract: The taconite iron ore processing source category is comprised of eight facilities operating in the United States. Six facilities are located in Minnesota and two are located in Michigan. The expected sources of HAP emissions for this source category include: fossil fuel combustion sources, and possibly the handling and transfer of mined ore containing naturally occurring inorganic compounds. Anticipated HAP emissions released from these sources primarily include: formaldehyde, manganese, nickel, arsenic, and chromium. The quantities of HAP released are expected to exceed major source levels.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: SAN No. 4380

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RIN: 2060–AJ02

3169. ELECTRIC ARC FURNACE NSPS AMENDMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7411

CFR Citation: 40 CFR 60.270 to 60.276a

Legal Deadline: None

Abstract: Sources affected by the NSPS for electric arc furnaces (Subparts AA,

and AAa) have expressed concerns with the requirements in the NSPS to use a continuous opacity monitor (COM) to monitor opacity and report periods when the COM indicated greater than 3 percent opacity as periods of excess emissions, and have petitioned the EPA to reconsider the COM requirements. These concerns arise from recent information that indicate that COM readings may have an error of up to 4 percent, which in itself is greater than the 3 percent excess emissions threshold. The EPA is reconsidering the COM requirements, and may amend the NSPS to add alternative monitoring requirements.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4555

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RIN: 2060–AJ68

3170. • NESHAP: REVISION OF AREA SOURCE CATEGORY LIST UNDER SECTION 112(C)(3) AND 112(K)(3)(B)(II)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: This is a notice, not a rule; it will be signed by the AA/OAR, not the Administrator. This action is required under the Clean Air Act section 112(c)(3) and 112(k)(3)(B)(ii), which both require EPA to develop a list of urban area source categories for regulation under section 112(d). Under these CAA provisions, EPA is to list enough urban area source categories to address 90 percent of the emissions of each of the 30 hazardous air pollutants (HAP) identified as posing the greatest risk in urban areas. Under a consent decree with the Sierra Club, EPA was to have completed this list in July 1999. In July 1999, EPA did publish a list of categories as part of its Urban Air Toxics Strategy document, which was developed by an Agency workgroup made up of the individuals listed on this form in the Workgroup section (Item 32). However, the list in the Strategy document was not inclusive enough to meet the requirements of either the consent decree or the CAA 90 percent requirement. As part of an ongoing litigation action with Earth Justice (representing the Sierra Club and others), EPA has agreed to listing additional source categories to satisfy the 90 percent requirement. EPA agreed to do this in two groups. The first group which included 18 area source categories appeared in the FR on June 24, 2002. This final listing (to be completed by the end of December 2002) will add enough additional source categories to satisfy the 90 percent requirement. Both of these listings are based on the same data that was used to develop the list of categories published in the aforementioned Strategy. Listing a source category makes a category eligible for regulation, but does not itself levy any requirements on any sources. Any regulations would be developed in other, future actions.

Timetable:

Action	Date	FR Cite
Notice - First Group	11/00/02	
Notice - Second Group	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 4687

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RIN: 2060–AK40

3171. • NESHAP: HAZARDOUS ORGANIC AMENDMENTS (HON)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412 CAA 112

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: This action proposes to amend the Hazardous Organic NESHAP to allow vapor balancing as a control option for storage vessels. There are no environmental, cost, or economic impacts associated with this action.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4712

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RIN: 2060–AK49

3172. • NESHAP FOR PETROLEUM REFINERIES: CATALYTIC CRACKING UNITS, CATALYTIC REFORMING UNITS, AND SULFUR RECOVERY UNITS; AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63 (Revision)

Legal Deadline: None

Abstract: The NESHAP for Petroleum Refineries is an existing rulemaking (40 CFR part 63, subpart CC) to control hazardous air pollutant emissions from equipment in the petroleum refining industry. This rulemaking will amend the Petroleum Refinery NESHAP to incorporate an additional compliance option for catalytic reforming units at refineries. Clarifying language and missing tables will also be added. This action will not increase costs or change the emission reductions expected for this rule.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4714

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RIN: 2060–AK51

3173. • NESHAP: SOURCES CATEGORIES: GENERAL PROVISIONS; AND REQUIREMENTS FOR CONTROL TECHNOLOGY DETERMINATIONS FOR MAJOR SOURCES IN ACCORDANCE WITH CLEAN AIR ACT SEC.112(G) & 112(J); PROPOSED AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq.

CFR Citation: 40 CFR 63 (Revision)

Legal Deadline: None

Abstract: These amendments implement a settlement agreement reached with EarthJustice. The amendments would reduce the time required to submit certain applications, and would revise certain aspects of the startup, shutdown, and malfunction plan.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State

Additional Information: SAN No. 4715

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RIN: 2060–AK52

3174. TRANSPORTATION CONFORMITY AMENDMENTS: RESPONSE TO MARCH 2, 1999, COURT DECISION

Regulatory Plan: This entry is Seq. No. 123 in part II of this issue of the Federal Register.

RIN: 2060–AI56

3175. CONTROL OF EMISSIONS FROM SPARK IGNITION MARINE VESSELS AND HIGHWAY MOTORCYCLES

Regulatory Plan: This entry is Seq. No. 124 in part II of this issue of the Federal Register.

RIN: 2060–AJ90

3176. CONTROL OF EMISSIONS OF AIR POLLUTION FROM NONROAD DIESEL ENGINES AND FUEL

Regulatory Plan: This entry is Seq. No. 126 in part II of this issue of the Federal Register.

RIN: 2060–AK27

3177. CONTROL OF METHYL TERTIARY BUTYL ETHER (MTBE)

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: EPA is considering taking action to control the use of Methyl Tertiary Butyl Ether (MTBE), which is an organic compound that is primarily used as a fuel additive in gasoline. MTBE has been used to meet the oxygen requirement established by the Federal Reformulated Gasoline Program (RFG) established by the 1990 amendments to the Clean Air Act (CAA). Over 85 percent of reformulated gasoline contains MTBE. EPA is concerned that the widespread use of MTBE may have resulted in the contamination of groundwater and drinking water supplies, threatening their future use. While current detections levels are generally believed to be below levels that may cause public health concerns, low level MTBE contamination may render water unpotable due to offensive taste and odor. In November of 1998, EPA established a Blue Ribbon Panel to investigate air quality benefits and water quality concerns associated with oxygenates, including MTBE, in gasoline, and to provide independent advice and recommendations on ways to maintain air quality while protecting water quality. In September, 1999, the panel recommended that the use of MTBE be substantially reduced. EPA is now evaluating the Blue Ribbon Panel's recommendations, and has conducted a preliminary review of authorities available to address risks associated with MTBE. EPA intends to issue an Advance Notice of Proposed Rulemaking to inform the public of this preliminary inquiry, and to solicit public comment on possible regulatory action.

Timetable:

Action	Date	FR Cite
ANPRM	03/24/00	65 FR 16094
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State

Additional Information: SAN No. 4393

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RIN: 2060–AJ00

3178. FEDERAL IMPLEMENTATION PLAN (FIP) FOR THE BILLINGS/LAUREL, MONTANA SULFUR DIOXIDE (SO2) AREA

Priority: Other Significant

Legal Authority: 12 USC 1701 et seq

CFR Citation: 40 CFR 52

Legal Deadline: None

Abstract: The State of Montana submitted a sulfur dioxide (SO2) State Implementation Plan (SIP) for the Billings/Laurel, Montana area. On 7/28/99 we proposed to partially approve, conditionally approve and partially disapprove Montana's SO2 SIP for Billings/Laurel. EPA intends to propose a Federal Implementation Plan (FIP) to cover those parts of the State's plan we disapprove. EPA's FIP will assure that the Billings/Laurel area will attain and maintain the SO2 NAAQS.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: SAN No. 4542

Sectors Affected: 32411 Petroleum Refineries

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RIN: 2008–AA00

3179. NESHAP: PRINTING AND PUBLISHING INDUSTRY; AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412 CAAA 112

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 1994.

Abstract: The amendments will clarify the rule and ensure it reflects the EPA's intent. The clarifications respond to industry comments asking for clarification on a number of technical points.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Additional Information: SAN No. 4310

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RIN: 2060–AI66

3180. PETITIONS TO DELIST HAZARDOUS AIR POLLUTANTS: METHYL ETHYL KETONE

Priority: Substantive, Nonsignificant

Legal Authority: Clean Air Act sec 112(b)(3)

CFR Citation: Not Yet Determined

Legal Deadline: NPRM, Statutory, February 28, 2000.

Abstract: The Agency has received 4 petitions to remove certain pollutants (i.e., methanol, methyl ethyl ketone, ethylene glycol butyl ether, and methyl isobutyl ketone) from the list of hazardous air pollutants (HAPs) under Section 112(b) of the Clean Air Act. The Agency must review the petitions and either grant or deny the petition within 18 months of the date the complete petition was received. If the Agency grants a petition, a notice of proposed rulemaking will be published in the Federal Register, allowing the opportunity for public comment. If the Agency denies a petition, a notice of denial will be published in the Federal Register providing an explanation for such denial. If the Agency grants a petition and ultimately removes the pollutant from the HAP list then sources emitting such pollutants would not be required to meet MACT emissions standards for the pollutant. If on the other hand, the Agency denies the petition, then MACT standards would be issued as currently planned under Section 112(c) and 112(d) of the Clean Air Act for sources emitting such pollutants. Depending on the 4 individual determinations, the Agency will issue separate notices for each.

Timetable:

Action	Date	FR Cite
Denial Notice: Methanol petition -- final action	05/02/01	66 FR 21929
Action:MEK Prop. rule to delist/denial notice-3 petitions by 06/2002	11/00/02	
Action: EGBE Prop. rule to delist or denial notice	12/00/02	
Action: MIBK Prop. rule to delist or denial notice	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 4313

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RIN: 2060–AI72

3181. INSPECTION MAINTENANCE PROGRAM REQUIREMENTS FOR FEDERAL FACILITIES; AMENDMENT TO THE FINAL RULE

Priority: Other Significant

Legal Authority: 23 USC 101; 42 USC 7401 et seq

CFR Citation: 40 CFR 51 (Revision); 40 CFR 93 (New)

Legal Deadline: None

Abstract: The Environmental Protection Agency (EPA) has had oversight and policy development authority for Inspection and Maintenance (I/M) programs since the passage of the Clean Air Act (CAA) in 1970. The 1977 amendments to the CAA mandated I/M for certain areas with long-term air quality problems and the 1990 amendments set forth standards for implementation of I/M programs. EPA used the statutory requirements of the Act, including I/M requirements for Federal facilities, to promulgate regulations which states would use in the development of their I/M State Implementation Plans (SIPs). Those rule requirements effectively gave States certain authorities over the Federal government. The Department of Justice has now ruled that Federal sovereign immunity was not fully waived under the CAA for those requirements and EPA should amend its rule to remove the requirement that States include those elements in their SIPs. EPA is proposing to: (1) Amend the Federal facilities I/M requirements by removing that section; (2) correct existing I/M SIP approval actions which include these elements; (3) establish new Federal facilities I/M program requirements which Federal facilities in I/M program areas must meet in order to comply with the Act; and (4) designate for each State which section of the Act Federal agencies must comply with based on how that State promulgated its I/M regulations. These changes will have minimal to no impact on the States as no new requirements are being created. The States are under no obligation, legal or otherwise, to modify existing SIPs meeting the previously applicable requirements as a result of this action, nor will emissions reduction credit be affected. However, the changes will clarify for affected Federal facilities what they must do to meet the CAA requirements by establishing new regulations per those requirements.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4348

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RIN: 2060–AI97

3182. UTILITY SECTOR NEW SOURCE REVIEW (NSR) ALTERNATIVE COMPLIANCE PROGRAM

Priority: Other Significant

Legal Authority: 42 USC 7401 to 7671q

CFR Citation: 40 CFR 51; 40 CFR 52.21

Legal Deadline: None

Abstract: The New Source Review (NSR) Program is the principal means by which EPA assures that new pollution sources install reasonably effective air pollution controls before they are allowed to begin operation. EPA is currently involved in a comprehensive rulemaking (NSR Improvement, SAN 3259), intended to streamline the NSR program and reduce its administrative burden. The Utility Sector NSR Alternative Compliance Program is a proposed rulemaking that is an outgrowth of the aforementioned comprehensive reform effort and will provide industries with the flexibility to focus more on existing pollution sources, with the goal of achieving as good or better environmental results than could be achieved focusing strictly on new sources.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 4390

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RIN: 2060–AJ14

3183. PETITIONS TO DELIST SOURCE CATEGORIES FROM THE SOURCE CATEGORY LIST, DEVELOPED PURSUANT TO SECTION 112(C) OF THE CLEAN AIR ACT

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: NPRM, Statutory, April 21, 2000.

Abstract: The EPA has received 1 petition to remove a SC (2-Piece Can Manufacturing) from the SC List developed pursuant to Section 112(c) of the Clean Air Act (CAA). The most current SC List was published on February 12, 2002 (67 FR 6521). Section 112(c)(9), which provides the legislative authority and guidelines for such actions, states that the Administrator may delete a SC from the list under Section 112(c), on petition of any person or on the Administrator's own motion, whenever the Administrator determines that no source in the category emits hazardous air pollutants (HAPs) in quantities which may cause a lifetime risk of cancer greater than 1 in one million to the individual in the population who is most exposed and that emissions from no source in the category exceed a level which is adequate to protect public health with an ample margin of safety and that no adverse environmental effect will result. As of August 14, 2002, 1 petition to delist a SC has been received. It contains information on HAP emissions, exposures, health effects, human risks, and potential ecological concerns as well as the petitioner's explanation why the 2-Piece Can Manufacturing should be removed from the SC List. The EPA is reviewing the petition. Once the review is completed, the EPA will decide whether to grant or deny the petition. Section 112(c)(9) requires that within 12 months of receipt of a petition, the Administrator shall either grant or deny the petition by publishing a written explanation of the reasons for the Administrator's decision. We believe that petitions to delist source categories are non-significant actions

because they do not meet any of the principles outlined in Section A above.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 4415

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RIN: 2060–AJ23

3184. REVISING REGULATIONS ON AMBIENT AIR QUALITY MONITORING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 50 (Revision); 40 CFR 53 (Revision); 40 CFR 58 (Revision)

Legal Deadline: None

Abstract: Air pollution control authorities use air quality data to determine compliance with the National Ambient Air Quality Standards and in subsequent work to develop air pollution mitigation strategies. The data come primarily from ambient air monitoring stations run by state and local agencies, although federal, tribal, and industrial organizations also run stations. The design of the monitoring networks is regulated under 40 CFR 58. This rule was originally written in 1979 and several revisions have been made in the intervening years. Air pollution control authorities have improved their parts of the network in response to changes in air quality, advances in the understanding of the movements and health effects of air pollutants, and developments in air pollution measurement technology. EPA has also cooperated with air pollution control authorities to improve the networks, but we have not revised the applicable regulations comprehensively. The proposed revisions would remove real or perceived constraints on redeploying air monitoring stations; more accurately reflect the roles of EPA and other control authorities in designing, reviewing, and modifying networks; bring provisions related to quality assurance up to date; and recognize technological changes. The current regulations require states to develop plans to deploy air monitoring networks, but they do not emphasize administering the networks. States generally develop new plans only when new monitoring is needed, such as for a new NAAQS. The regulations need to be revised to reflect the roles of EPA and the state and local agencies.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4421

Sectors Affected: 92411 Air and Water Resource and Solid Waste Management; 334519 Other Measuring and Controlling Device Manufacturing

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RIN: 2060–AJ25

3185. PROTECTION OF STRATOSPHERIC OZONE: PHASEOUT OF CHLOROBROMOMETHANE (HALON 1011) PRODUCTION AND CONSUMPTION

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: EPA is proposing to add chlorobromomethane (CBM) to the list of controlled substances subject to production and consumption controls in accordance with both the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) and EPA's regulations under the Clean Air Act Amendments of 1990. Today's action proposes to create a new group (Group VIII) of class I substances for CBM, and to designate the value of CBM's "ozone depleting potential" as 0.12. In accordance with the Protocol, today's action proposes phasing out CBM production and consumption upon publication of the final rule with permitted exemptions. Today's action also proposes to restrict trade in CBM with countries who are not parties to the Beijing Amendments to the Protocol.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4428

Sectors Affected: 325199 All Other Basic Organic Chemical Manufacturing; 325412 Pharmaceutical Preparation Manufacturing; 32532 Pesticide and Other Agricultural Chemical Manufacturing; 42269 Other Chemical and Allied Products Wholesalers; 54138 Testing Laboratories; 6215 Medical and Diagnostic Laboratories; 54171 Research and Development in the Physical Sciences and Engineering Sciences

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RIN: 2060–AJ27

3186. FEDERAL PLAN REQUIREMENTS FOR COMMERCIAL AND INDUSTRIAL SOLID WASTE INCINERATION UNITS CONSTRUCTED ON OR BEFORE NOVEMBER 30, 1999

Priority: Substantive, Nonsignificant

Legal Authority: 1990 Amendments to the Clean Air Act sections 111; 1990 Amendments to the Clean Air Act sections 129; 1990 Amendments to the Clean Air Act sections 301(a)(d)

CFR Citation: 40 CFR 62

Legal Deadline: None

Abstract: The Clean Air Act Amendments of 1990 directed the Environmental Protection Agency (EPA) to set emission guidelines for existing incinerators combusting commercial or industrial waste under sections 111 and 129. Final emission guidelines for Commercial and Industrial Solid Waste Incineration (CISWI) were published on December 1, 2000 (see 65 FR 75338). In accordance with section 129, any State with affected sources must submit a State plan by December 1, 2001 describing how the State will implement the emission guidelines for existing CISWI. Section 129 requires the Administrator to develop and implement a Federal plan for existing CISWI units located in any State which has not submitted an approvable plan within 2 years of promulgation of the emissions guidelines. In this CISWI Federal plan rulemaking, EPA becomes the implementing authority in those instances where the State has failed to submit a plan or a plan has not yet been approved. Therefore, consistent with section 129(b)(3) of the Act, EPA is proposing a plan that applies to CISWI in any State that has not submitted an approvable plan within the time allotted. This action makes no changes to the requirements in the rule, and is intended to fulfill EPA's duty under section 129(b)(3) to promulgate a Federal plan as a gap-filling measure until the State fulfills its statutory obligations. When the State submits an approvable State Plan, the Federal plan will no longer apply to units in that State.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State

Additional Information: SAN No. 4441

Sectors Affected: 321 Wood Product Manufacturing; 325 Chemical Manufacturing

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RIN: 2060–AJ28

3187. REVISIONS TO REGIONAL HAZE RULE TO ADDRESS CONCERNS RAISED BY DC CIRCUIT REGARDING BEST AVAILABLE RETROFIT TECHNOLOGY (BART)

Priority: Other Significant

Legal Authority: 42 USC 7410; 42 USC 7414; 42 USC 7421; 42 USC 7470-7479; 42 USC 7491; 42 USC 7492; 42 USC 7601; 42 USC 7602

CFR Citation: 40 CFR 51.308(e)(1); 40 CFR 51 Appendix Y (New)

Legal Deadline: None

Abstract: To meet the Clean Air Act's requirements, EPA published the regional haze rule on July 1, 1999 (64 FR 35714). On May 24, 2002, the DC Circuit vacated certain provisions of the regional haze rule related to best available retrofit technology (BART). Because of this court decision, we will need to re-propose and publish revised BART provisions in the regional haze rule. On July 20, 2001, we proposed guidelines intended to add further clarifications to the BART requirements in the regional haze rule. These proposed BART guidelines also will require a re-proposal. The purpose of this rulemaking is to provide the appropriate changes to the BART requirements and guidelines, and to address additional issues related to reasonable progress goals for the visibility program.

Timetable:

Action	Date	FR Cite
NPRM	07/20/01	66 FR 38108
NPRM	06/00/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4450

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RIN: 2060–AJ31

3188. STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES: MUNICIPAL SOLID WASTE LANDFILLS: AMENDMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401; 42 USC 7411; 42 USC 7414; 42 USC 7416; 42 USC 7429; 42 USC 7601

CFR Citation: 40 CFR 60.750; 40 CFR 60.751; 40 CFR 60.752(b)(2)(iii)(B); 40 CFR 60.752(b)(2)(iii)(C); 40 CFR 60.752(b)(2)(iii)(D); 40 CFR 60758

Legal Deadline: None

Abstract: This action will amend the existing regulation entitled Standards of Performance for New Stationary Sources: Municipal Solid Waste Landfills, subpart WWW of 40 CFR Part 60, promulgated on March 12, 1996. The amendment is being undertaken in response to requests to clarify our intent regarding what constitutes an adequate landfill gas treatment system. This action also clarifies our intent to exempt from control landfill gas that is treated/upgraded. Furthermore, it clarifies who is responsible for control of untreated landfill gas that is sold. This action is necessary to clarify our intent regarding the issues discussed above. It will improve implementation and compliance with this regulation.

Timetable:

Action	Date	FR Cite
NPRM NSPS: Municipal Solid Waste Landfills	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4478

Sectors Affected: 562212 Solid Waste Landfill

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RIN: 2060–AJ41

3189. NESHAP: GASOLINE DISTRIBUTION FACILITIES — AMENDMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401

CFR Citation: 40 CFR 63.425(e)

Legal Deadline: None

Abstract: This action will add a DOT test method as an alternative for measuring emissions from railcars. This method came to our attention subsequent to promulgation of the original rule.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4479

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RIN: 2060–AJ42

3190. MODIFICATION OF FEDERAL ON-BOARD DIAGNOSTIC REGULATIONS FOR 2004 MODEL YEAR VEHICLES BELOW 14,000 LBS.

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1701q

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This rule proposes revisions to the existing Light-Duty On-Board Diagnostic Requirements, including revisions that will: (1) require vehicle manufacturers to monitor the catalyst for NOx emission performance in addition to existing requirements to monitor NMHC performance, whichever is more stringent; (2) require monitoring of the evaporative emissions systems for the presence of 0.020" leaks or greater and allow for non-intrusive, engine-off methods to perform monitoring instead of the current requirements to monitor for the presence of a 0.040" leak or greater during vehicle operation; (3) allow the use of the Control Area Network (CAN) Protocol (SAE 15765-4) for OBD communications in addition to the other allowable SAE (J1850, J1939) and ISO (9141, 14230-4); (4) new software and hardware changes to aid in OBD-I/M program implementation including adding vehicle identification number (VIN) to the generic datastream, confining the physical location of the data link connector, and allowing the use of the malfunction indicator lamp (MIL) and a special key sequence to indicate readiness; (5) add new generic data stream parameters to aid in the repair and diagnosis of vehicle malfunctions;(6) require manufacturers to record critical pieces of OBD information under the CAP 2000 In-Use Verification Program (IUVP); and(7) establish new OBD in-use performance demonstration standards used to determine appropriate frequency of monitoring in the real world; such in-use performance standards do not currently exist which places a greater burden on our in use program.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4583

Sectors Affected: 33611 Automobile and Light Duty Motor Vehicle Manufacturing

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RIN: 2060–AJ77

3191. PORTLAND CEMENT MANUFACTURING INDUSTRY NESHAP: AMENDMENT TO IMPLEMENT COURT REMAND

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 40 CFR 63.1340 to 63.1359 (Revision)

Legal Deadline: None

Abstract: The Portland Cement Manufacturing Industry NESHAP was promulgated June 14, 1999, and has been codified in 40 Code of Federal Regulations 63, Subpart LLL. The Sierra Club and the National Lime Association petitioned the court to review Subpart LLL, while the American Portland Cement Alliance (APCA) opted to negotiate a settlement agreement. (Note that there is currently a separate rule under development to amend Subpart LLL to implement the settlement agreement with the APCA — SAN 4524, RIN 2060-AJ57) On December 15, 2000, a panel of the D.C. Circuit issued its opinion in National Lime Ass'n v. EPA. The Court remanded the three standards for which we established floors of no control (hydrogen chloride [HCl], total hydrocarbon [THC], and mercury [Hg]). The Court found that we committed error in not considering other means of control, in particular, control of HAPs in raw materials and in fossil fuels. The Court also remanded that we consider setting beyond-the-floor standards for HAP metals, for which particulate matter (PM) is a surrogate. This action will consist of amendments to respond to the court remand.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: SAN No. 4585

Sectors Affected: 32731 Cement Manufacturing

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RIN: 2060–AJ78

3192. MODIFICATION OF AUTHORITY TO GRANT ALTERNATIVE METHOD APPROVALS

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Currently, stationary source regulations cite specific test methods to demonstrate compliance. If a source locates a test method which will measure the regulated pollutant(s) with similar precision and accuracy to the method cited in the regulation, and would like to use the alternative method, the source must petition the EPA (along with data documenting the applicability of the alternative) to allow the alternative method. Each of these alternative method approvals by letter may currently only be granted to a specific source. Source category-wide approvals must be published for comment in the Federal Register. Due to budgetary and time constraints, the process constrains industry trade associations from developing and submitting alternative test methods. Therefore, the purpose of this rulemaking is to modify the regulations to allow source category-wide alternative method approvals to be issued by letter.

Timetable:

Action	Date	FR Cite
NPRM	10/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 4547

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RIN: 2060–AJ83

3193. PERFORMANCE SPECIFICATIONS FOR CONTINUOUS PARAMETER MONITORING SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 60 app B (New); 40 CFR 60 app F (Revision)

Legal Deadline: None

Abstract: This action proposes Performance Specification 17 (PS-17), Quality Assurance (QA) Procedure 4, and amendments to Appendix F, QA Procedure 1. Performance Specification 17 and QA Procedure 4 apply to continuous parameter monitoring systems (CPMS). Many of the rules promulgated under 40 CFR part 63 require owners and operators of affected emission units to install and operate CPMS to monitor various parameters, such as temperature, pressure, flow rate, and pH, associated with the operation and performance of emission control devices. However, few, if any, of those rules specify complete procedures for ensuring the quality of the data measured by CPMS. The proposed PS-17 establishes procedures and other requirements that will ensure that those CPMS are properly selected, installed, and placed into operation. The proposed QA Procedure 4 specifies procedures that will ensure that those CPMS provide quality data on an ongoing basis. Both PS-17 and QA Procedure 4 will help to ensure compliance with emission limitations established under 40 CFR part 63. Procedure 1 of Appendix F currently addresses QA procedures for continuous emission monitoring systems (CEMS) that measure a single pollutant. The proposed amendments to QA Procedure 1 broadens the procedure to address the unique requirements of CEMS that are used for monitoring multiple pollutants. Because several of the regulations promulgated under 40 CFR part 63 require multiple pollutant CEMS, these amendments are needed to ensure those CEMS are operated in a manner that ensures the quality of the emission data collected. This action is not expected to have any impacts on small entities or State, local, or tribal governments.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4584

Sectors Affected: 21 Mining; 22 Utilities; 31-33 Manufacturing; 486 Pipeline Transportation; 562212 Solid Waste Landfill; 562213 Solid Waste Combustors and Incinerators

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RIN: 2060–AJ86

3194. NESHAP: BRICK AND STRUCTURAL CLAY PRODUCTS MANUFACTURING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, May 1, 2001.

Abstract: The brick and structural clay products industry primarily includes facilities that manufacture brick, clay, pipe, roof tile, extruded floor and wall tile, and other extruded dimensional clay products from clay, shale, or a combination of the two. The manufacture of brick and structural clay products involves mining, raw material processing (crushing, grinding, and screening), mixing, forming, cutting or shaping, drying, and firing.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4325

Sectors Affected: 327121 Brick and Structural Clay Tile Manufacturing; 327123 Other Structural Clay Product Manufacturing

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RIN: 2060–AJ91

3195. MODIFICATION OF ANTI-DUMPING BASELINES FOR GASOLINE PRODUCED OR IMPORTED FOR USE IN HAWAII, ALASKA AND THE U.S. TERRITORIES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7545; 42 USC 7601(a)

CFR Citation: 40 CFR 80 (Revision)

Legal Deadline: None

Abstract: "Dumping" refers to the practice whereby refiners making clean fuels for certain markets (such as reformulated gasoline for clean-air purposes) take the pollutants removed from the clean fuels and "dump" them into other fuels they are producing for other markets. This, if allowed, would make those other fuels even dirtier than before, and so the Clean Air Act prohibits this practice. EPA has existing "anti-dumping" rules on the books that codify this Clean Air Act prohibition. This action proposes to allow refiners and importers of conventional gasoline produced or imported for use in Hawaii, Alaska, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands to petition EPA to modify their baselines to use the most appropriate seasonal baseline and Complex Model for purposes of compliance with the RFG program's anti-dumping requirements. Specifically, this action would allow refiners and importers to petition EPA to use the summer Complex Model for all anti-dumping baseline and compliance determinations for conventional gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands. This action would allow refiners and importers to petition EPA to use the winter Complex Model for all anti-dumping baseline and compliance purposes in Alaska. We are proposing this action to address certain inconsistencies in the RFG program's anti-dumping provisions which may have significant unintended negative impacts on refiners and importers. In addition, this action proposes to modify the anti-dumping provisions to address compliance in certain situations where a refinery becomes non-operational during the annual averaging period. This action is intended to address compliance issues where a refinery does not produce sufficient "summer" gasoline to offset the higher emissions of "winter gasoline due to the refinery becoming non-operational during the annual averaging period. Today's proposed actions would not compromise the environmental goals of the RFG program, or result in any environmental degradation. Today's proposed actions would not have any negative impact on small businesses or State/local/tribal governments.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: SAN No. 4632

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RIN: 2060–AK02

3196. PERFORMANCE-BASED MEASUREMENT SYSTEM FOR FUELS: CRITERIA FOR SELF-QUALIFYING ALTERNATIVE TEST METHODS; DESCRIPTION OF OPTIONAL STATISTICAL QUALITY CONTROL MEASURES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7545

CFR Citation: 40 CFR 80

Legal Deadline: None

Abstract: Transportation fuels (like gasoline and diesel fuel) are regulated by EPA under the Clean Air Act to control the emissions that result when they are burned in engines, and also to protect engines' emission control equipment. Fuels regulations require measurement of various of the fuels' properties, and prescribe "designated" analytical methods for that purpose. This regulation is intended to provide a way for regulated parties to self-qualify alternatives to the designated measurement methods that may be cheaper, quicker, simpler, more amenable to automation, or otherwise preferable. The regulation will also prescribe a minimum level of statistical quality control for all fuels test methods, designated or alternative. The regulations should quicken the adoption of new measurement technologies by removing the need for multiple method-specific rule-makings, but to do so in a way that will not degrade the performance of the overall measurement system. The qualification criteria are designed to admit only methods that are as precise as the designated methods and can be made to accurately predict designated method measurements. Introduction of statistical quality control for all methods should improve measurement precision and accuracy in actual practice across all methods.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4633

Sectors Affected: 324199 All Other Petroleum and Coal Products Manufacturing; 54199 All Other Professional, Scientific and Technical Services; 42271 Petroleum Bulk Stations and Terminals; 48691 Pipeline Transportation of Refined; 334516 Analytical Laboratory Instrument Manufacturing

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RIN: 2060–AK03

3197. REGULATION OF FUEL AND FUEL ADDITIVES: EXTENSION OF CALIFORNIA ENFORCEMENT EXEMPTIONS FOR REFORMULATED GASOLINE TO CALIFORNIA PHASE 3 GASOLINE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7545; 42 USC 7601(a)

CFR Citation: 40 CFR 80.81

Legal Deadline: None

Abstract: EPA is proposing to exempt refiners, importers, and blenders of gasoline subject to the State of California's reformulated gasoline regulations from certain enforcement provisions in the federal reformulated (RFG) regulations. Certain exemptions under the Federal RFG program already apply to California Phase 2 gasoline, but additional exemptions are necessary to cover Phase 3 gasoline.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4634

Sectors Affected: 32411 Petroleum Refineries; 32511 Petrochemical Manufacturing

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RIN: 2060–AK04

3198. PROTECTION OF STRATOSPHERIC OZONE: LISTING OF SUBSTITUTES FOR OZONE-DEPLETING SUBSTANCES—N-PROPYLBROMIDE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7601; 42 USC 7671 to 7671q

CFR Citation: 40 CFR 82 (Revision)

Legal Deadline: None

Abstract: This rule proposes to add n-propylbromide (nPB) to the list of acceptable substitutes for class I and class II ozone depleting substances used as solvents for general metals, precision, and electronics cleaning, as well as in aerosol solvent applications. This would provide another alternative to solvents with higher ozone depletion potential that industry is interested in using. The rule would propose finding nPB not acceptable as a substitute for use in adhesives due to its toxicity and the greater emissions from that application. The rule also would propose specific conditions on the use of nPB as a solvent. These might include limiting the specific applications in which it may be used to those with low emissions and requiring exposure limits consistent with industry practices. This will ensure that nPB is used in a manner that is safe and environmentally protective. OSHA does not currently regulate nPB. EPA would revise our ruling to adopt whatever OSHA requires if OSHA later regulates the use of nPB. If finalized as proposed, this rule would be consistent with most existing industry practices and would impose little or no burden on industry.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4599

Sectors Affected: 331 Primary Metal Manufacturing; 332 Fabricated Metal Product Manufacturing; 333 Machinery Manufacturing; 334 Computer and Electronic Product Manufacturing; 336 Transportation Equipment Manufacturing; 337 Furniture and Related Product Manufacturing; 32615 Urethane and Other Foam Product (except Polystyrene) Manufacturing

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RIN: 2060–AK26

3199. • AIR QUALITY: REVISION TO DEFINITION OF VOLATILE ORGANIC COMPOUNDS — EXCLUSION OF 4 COMPOUNDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7407(d)

CFR Citation: 40 CFR 51

Legal Deadline: None

Abstract: This is a deregulatory action to exclude four compounds from the list of volatile organic compounds (VOCs) on the basis that these compounds make a negligible contribution to tropospheric ozone formation. These four compounds are: 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C3F7OCH3; 3-ethoxy-,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (known as HFE-7500, HFE-s702, T-7145, and L-15381); 1,1,1,2,3,3,3-heptafluoropropane (known as HFC 227ea); and methyl formate (HCOOCH3). These compounds have potential for use as refrigerants, fire suppressants, aerosol propellants, sterilants, blowing agents (used in the manufacture of foamed plastic), and solvents. This action will remove the necessity to control these four compounds as VOCs in State Implementation Plans for attaining the ozone standard.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4683

Sectors Affected: 325 Chemical Manufacturing

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RIN: 2060–AK37

3200. • SECTION 126 RULE WITHDRAWAL PROVISION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7426

CFR Citation: 40 CFR 52

Legal Deadline: None

Abstract: EPA is proposing to revise one narrow aspect of the Section 126 Rule, which was promulgated January 18, 2000. The rule requires certain sources located in the eastern United States to reduce their NOx emissions for purposes of reducing ozone transport. EPA coordinated the Section 126 Rule with a related ozone transport rule, known as the NOx State implementation plan call (NOx SIP Call), which also addresses ozone transport in the eastern United States. The EPA established the same compliance date for both rules, May 1, 2003. The EPA included a provision in the Section 126 Rule which provided that where a State adopted, and EPA approved, a SIP controlling transport under the NOx SIP Call, and with a May 1, 2003 compliance date, EPA would withdraw the Section 126 requirements for sources in that State. This was a practical way to address the overlap between the two rules and avoid having sources be subject to two sets of potentially different NOx transport control requirements. As the result of court actions, the compliance dates for the Section 126 Rule and the NOx SIP Call have both been delayed until May 31, 2004. In addition, the NOx SIP Call has been divided into two phases. Therefore, it is necessary to revise the Section 126 Rule withdrawal provision so that it will continue to operate under these new circumstances. This proposal would not create any new requirements and there are no associated costs.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4689

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RIN: 2060–AK41

3201. • PREVENTION OF SIGNIFICANT DETERIORATION (PSD) AND NONATTAINMENT NEW SOURCE REVIEW (NSR): CLEAN UNITS

Priority: Other Significant

Legal Authority: Clean Air Act Title I

CFR Citation: 40 CFR 51

Legal Deadline: None

Abstract: This proposed rule would revise the provisions for the clean unit test contained in the major New Source Review (NSR) requirements. This action proposes to revise the length of the clean unit designation period contained in the final NSR rules. The current rules allow for clean unit designation to be used for 10 years provided the source meets the requirements to maintain clean unit status. This proposed rule would recognize that the average life expectancy of control equipment is 15 years rather than the 10 years contained in the final rules. Permitting agencies and industry will benefit from this action by potentially reducing the number of future permit actions. As a result, this action reduces the compliance burden, including annual compliance costs, for all sources subject to the major NSR program requirements.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4691

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RIN: 2060–AK42

3202. • EXTENSION OF ALTERNATIVE COMPLIANCE PERIODS UNDER THE ANTI-DUMPING PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: CAA sec 114; CAA sec 211; CAA sec 301(a)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: "Dumping" refers to the practice whereby refiners making clean fuels for certain markets (such as reformulated gasoline for clean-air purposes) take the pollutants removed from the clean fuels and "dump" them into other fuels they are producing for other markets. This, if allowed, would make those other fuels even dirtier than before, and so the Clean Air Act prohibits this practice. EPA has existing "anti-dumping" rules on the books that codify this Clean Air Act prohibition. This direct final rule will amend the existing anti-dumping regulations by setting forth procedures for allowing an alternative compliance period of not more than seven years for a small, start up refiner.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Direct Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4694

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RIN: 2060–AK43

3203. • PROTECTION OF STRATOSPHERIC OZONE: ADJUSTING ALLOWANCES FOR CLASS I SUBSTANCES FOR EXPORT TO ARTICLE 5 COUNTRIES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7601; 42 USC 7671-7671q

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This action reinforces the economic incentives related to the transition of Article 5 countries to ozone-depleting substance alternatives. Currently, Article 5 allowances are determined as a percentage of total production allowances assigned to US companies for Class I ozone-depleting substances. In accordance with the Beijing Amendments of the Montreal Protocol, this action establishes Article 5 allowances independently of total production allowances.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4697

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RIN: 2060–AK45

3204. • SELECTION OF THE ORDER OF SANCTIONS FOR TITLE V OPERATING PERMITS PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7661a(d); 42 USC 7661a(g); 42 USC 7661a(i)

CFR Citation: 40 CFR 70

Legal Deadline: None

Abstract: This rule would establish the order of sanctions for operating permits program deficiencies under the mandatory sanctions provisions of title V of the Clean Air Act. This rule would stipulate that an emission offset sanction applies first and a highway funding sanction six months later. Sanction application under section 502 of the Clean Air Act is automatic under the timeframes prescribed once EPA selects the sanction order; EPA's only discretion concerns the ordering of sanctions as discussed above. Thus, the only relevant potential impact is the effect of applying, as a general matter, the emission offset sanction six months before the highway sanction. The EPA does not believe this will have a significant impact given the short period of time the offset sanction will apply before the highway sanction would apply when States fail to correct title V deficiencies. Moreover, EPA also believes that, in the event applying the highway sanction is not necessary six months following the offset sanction, because the State has corrected the deficiency prompting the finding, applying the offset sanction first eliminates the need for EPA and other agencies to bear the greater administrative and implementation burden of having to effectuate the highway sanction.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4700

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RIN: 2060–AK46

EPA—Clean Air Act (CAA) — Proposed Rule Stage

3205. • PROTECTION OF STRATOSPHERIC OZONE: ALLOCATION OF ESSENTIAL USE ALLOWANCES FOR CALENDAR YEAR 2003

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7601; 42 USC 7671; 42 USC 7671q

CFR Citation: 40 CFR 82.4

Legal Deadline: None

Abstract: With this action, EPA will be allocating essential-use allowances for import and production of class I stratospheric ozone depleting substances (ODSs) for calendar year 2003. Essential-use allowances permit a person to obtain controlled class I ODSs as an exemption to the January 1, 1996 regulatory phase-out of class I ODS solely for the designated essential purpose. This regulation will allocate essential use allowances for CFCs for use in metered dose inhalers for the treatment of asthma and chronic obstructive lung disease, and methyl chloroform for use in the space shuttle and titan rockets.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4710

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RIN: 2060–AK48

3206. • NESHAP FOR SOURCE CATEGORIES: GENERAL PROVISIONS; AMENDMENTS FOR POLLUTION PREVENTION ALTERNATIVE COMPLIANCE REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq.

CFR Citation: 40 CFR 63.2 (Amended); 40 CFR 63.17

Legal Deadline: None

Abstract: We are proposing amendments to the Part 63 General Provisions that would allow facilities that are subject to a maximum achievable control technology (MACT) subpart to discontinue unnecessary requirements if, through pollution prevention measures, they achieve and can demonstrate continued hazardous air pollutant (HAP) emission reductions equivalent to or better than the MACT level of control. We are proposing these amendments to encourage and promote pollution prevention, which is our strategy of first choice in reducing HAP emissions. We expect these amendments to result in no additional burden for sources and air pollution control agencies. This effort is the product of discussions with State and local air pollution control officials. There also are no significant policy issues.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4719

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RIN: 2060–AK54

3207. • CALIFORNIA GASOLINE TECHNICAL CORRECTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7521(1); 42 USC 7545; 42 USC 7601(a)

CFR Citation: 40 CFR 80.81(a)

Legal Deadline: None

Abstract: This rule corrects final regulations which were published in the Federal Register on March 29, 2001 (66 FR 17230). The corrected regulatory provision restores the definition of California gasoline as used in the enforcement exemptions for California gasoline under the regulation of fuels and fuel additives.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Direct Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4722

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RIN: 2060–AK56

Environmental Protection Agency (EPA)
Clean Air Act (CAA) — Final Rule Stage

3208. SOURCE-SPECIFIC FEDERAL IMPLEMENTATION PLAN FOR NAVAJO GENERATING STATION; NAVAJO NATION

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 49 CFR 123

Legal Deadline: None

Abstract: EPA proposes to federalize standards from the Arizona and New Mexico State Implementation Plans (SIPS) applicable to the Navajo generating station. Where necessary, EPA's proposed emission standards modify the standards extracted from the States' regulatory programs to ensure comprehensive emission control and Federal consistency.

Timetable:

Action	Date	FR Cite
NPRM	09/08/99	64 FR 48725
Notice	01/26/00	65 FR 4244
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4315

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RIN: 2009–AA00

3209. SOURCE-SPECIFIC FEDERAL IMPLEMENTATION PLAN FOR NAVAJO GENERATING STATION; FOUR CORNERS POWER PLANT

Priority: Other Significant

Legal Authority: 42 USC 1740

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: EPA proposes to federalize standards from the Arizona and New Mexico State Implementation Plans (SIPS) applicable to the Four Corners Plant, respectively. Where necessary, EPA's proposed emission standards modify the standards extracted from the States' regulatory programs to ensure comprehensive emission control and Federal consistency.

Timetable:

Action	Date	FR Cite
NPRM	09/08/99	64 FR 48731
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: SAN No. 3569

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RIN: 2009–AA01

3210. NESHAP: CHROMIUM ELECTROPLATING AMENDMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63 (Revision)

Legal Deadline: None

Abstract: This proposed amendment will also allow hard chromium electroplating facilities using fume suppressants for emission control to meet a surface tension limit similar to the requirements for decorative chromium electroplating and chromium anodizing facilities instead of the present requirement to meet an emission limit. Facilities choosing to use fume suppressants for emission control would be required to monitor the surface tension at the same frequency currently required for decorative chromium and chromium anodizing tanks and demonstrate compliance with the surface tension operating limit. Like decorative chromium electroplating and chromium anodizing facilities, hard chromium electroplating facilities would now be allowed to monitor surface tension to demonstrate compliance in lieu of performance testing..

Timetable:

Action	Date	FR Cite
NPRM	06/05/02	67 FR 38810
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4115

Sectors Affected: 332813 Electroplating, Plating, Polishing, Anodizing and Coloring

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RIN: 2060–AH69

3211. REVIEW OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR PARTICULATE MATTER

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 7408; 42 USC 7409

CFR Citation: 40 CFR 50

Legal Deadline: Final, Statutory, July 1, 2002, Under the Clean Air Act - the next standards review is to be completed July 2002.

Abstract: On July 18, 1997, the EPA published a final rule revising the national ambient air quality standards (NAAQS) for particulate matter (PM) (62 FR 38652). While retaining the PM10 standard levels, new standards were added for fine particles (PM2.5) to provide increased protection against both health and environmental effects of PM. On the same day, a Presidential Memorandum (62 FR 38421, July 16, 1997) was published that, among other things, anticipated that EPA would complete the next review of the PM NAAQS by July 2002. The EPA's plans and schedule for the next periodic review of the PM NAAQS were published on October 23, 1997 (62 FR 55201). Due to the unprecedented volume of new research, the completion of the Criteria Document has been extended and as a result the overall schedule for the review of the

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PM NAAQS has extended beyond the original target of July 2002. As with other NAAQS reviews, a rigorous assessment of relevant scientific information will be presented in a Criteria Document (CD) prepared by EPA's National Center for Environmental Assessment. The EPA's Office of Air Quality Planning and Standards will then prepare a Staff Paper (SP) for the Administrator which will evaluate the policy implications of the key studies and scientific information contained in the CD and additional technical analyses and identify critical elements that EPA staff believe should be considered in reviewing the standards. The CD and SP will be reviewed by the Clean Air Scientific Advisory Committee (CASAC) and the public, and both final documents will reflect the input received through these reviews. As the PM NAAQS review is completed, the Administrator's proposal to revise or reaffirm the PM NAAQS will be published with a request for public comment. Input received during the public comment period will be reflected in the Administrator's final decision.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 4255

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RIN: 2060–AI44

3212. OVERVIEW OF RULEMAKINGS FOR THE PURPOSE OF REDUCING INTERSTATE OZONE TRANSPORT

Regulatory Plan: This entry is Seq. No. 139 in part II of this issue of the Federal Register.

RIN: 2060–AJ20

3213. MODIFICATION OF THE ANTI-DUMPING BASELINE DATE CUT-OFF LIMIT FOR DATA USED IN DEVELOPMENT OF AN INDIVIDUAL BASELINE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7521(1); 42 USC 7545; 42 USC 7601(a)

CFR Citation: 40 CFR 80.91(b)(1)(i); 40 CFR 80.93(a)

Legal Deadline: None

Abstract: "Dumping" refers to the practice whereby refiners making clean fuels for certain markets (such as reformulated gasoline for clean-air purposes) take the pollutants removed from the clean fuels and "dump" them into other fuels they are producing for other markets. This, if allowed, would make those other fuels even dirtier than before, and so the Clean Air Act prohibits this practice. EPA has existing "anti-dumping" rules on the books that codify this Clean Air Act prohibition. This regulation is a minor technical amendment to those existing regulations. It would amend a portion of those regulations to allow the use of data collected after January 1, 1995 in the development of baselines, and it would establish a cut-off date of January 1, 2002 for the submission of all individual baselines under the anti-dumping program. This date is the same as that allowed for foreign refineries seeking a unique individual baseline under the anti-dumping program.)

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4604

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RIN: 2060–AJ82

3214. EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES AND STANDARDS FOR RECREATIONAL SPARK-IGNITION ENGINES

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 42 USC 7401 to 7671(q)

CFR Citation: 40 CFR 94

Legal Deadline: NPRM, Judicial, September 14, 2001.
Final, Judicial, September 13, 2002.

Abstract: Emissions from large spark-ignition engines are currently unregulated. EPA and California Air Resources Board (CARB) are cooperating in an effort to set emission standards for these engines to substantially reduce their contribution to the emission inventory.

Timetable:

Action	Date	FR Cite
Proposed Finding	02/08/99	64 FR 6008
ANPRM Final Finding	12/07/00	65 FR 76790
NPRM	10/05/01	66 FR 51098
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4154

Sectors Affected: 333924 Industrial Truck, Tractor, Trailer and Stacker Machinery Manufacturing; 335312 Motor and Generator Manufacturing; 42183 Industrial Machinery and Equipment Wholesalers

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RIN: 2060–AI11

3215. MOTOR VEHICLE AND ENGINE COMPLIANCE PROGRAM FEES FOR: LIGHT-DUTY VEHICLES AND TRUCKS; HEAVY-DUTY VEHICLES AND ENGINES; NONROAD ENGINES; AND MOTORCYCLES

Priority: Other Significant

Legal Authority: 42 USC 7552; 31 USC 9701; 42 USC 4370(c)

CFR Citation: 40 CFR 86 (Revision)

Legal Deadline: None

Abstract: Under the Motor Vehicle and Engine Compliance (MVECP) Fee Program user fees are collected for certification and compliance activities. Currently, user fees are required by manufacturers of light-duty vehicles, light-duty trucks, heavy-duty vehicles, heavy-duty engines and motorcycles. Through this Notice, EPA is finalizing the notice to update the current fee provisions for the existing industries and incorporate fees for nonroad manufacturers. In addition, the fee schedule will be updated to reflect costs in administering compliance activities for new regulations such as the Tier 2 automobile standards and nonroad engine standards.

Timetable:

Action	Date	FR Cite
NPRM	08/07/02	67 FR 51401
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4532

Sectors Affected: 333 Machinery Manufacturing; 3331 Agriculture, Construction, and Mining Machinery Manufacturing; 333111 Farm Machinery and Equipment Manufacturing; 333112 Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing; 33312 Construction Machinery Manufacturing; 333131 Mining Machinery and Equipment Manufacturing; 3336 Engine, Turbine, and Power Transmission Equipment Manufacturing; 33651 Railroad Rolling Stock Manufacturing; 3361 Motor Vehicle Manufacturing; 33611 Automobile and Light Duty Motor Vehicle Manufacturing; 336112 Light Truck and Utility Vehicle Manufacturing; 33612 Heavy Duty Truck Manufacturing; 336311 Carburetor, Piston, Piston Ring and Valve Manufacturing; 336412 Aircraft Engine and Engine Parts Manufacturing; 33661 Ship and Boat Building; 336991 Motorcycle, Bicycle and Parts Manufacturing; 333 Machinery Manufacturing; 33392 Material Handling Equipment Manufacturing; 333924 Industrial Truck, Tractor, Trailer and Stacker Machinery Manufacturing; 33399 All Other General Purpose Machinery Manufacturing; 333991 Power-Driven Hand Tool Manufacturing

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RIN: 2060–AJ62

3216. NSPS: SOCMI — WASTEWATER, AND AMENDMENT TO APPENDIX C OF PART 63 AND APPENDIX J OF PART 60

Priority: Other Significant

Legal Authority: CAAA

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: This rule will develop a new source performance standard to control air emissions of volatile organic compounds from wastewater treatment operations of the synthetic chemical manufacturing industry.

Timetable:

Action	Date	FR Cite
NPRM	09/12/94	59 FR 46780
Supp NPRM-1st	10/11/95	60 FR 52889
Supp NPRM-2nd Appendix J to Part 60	12/09/98	63 FR 67988
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3380

Sectors Affected: 3251 Basic Chemical Manufacturing

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RIN: 2060–AE94

3217. SERVICE INFORMATION REGULATION FOR LIGHT-DUTY VEHICLES AND TRUCKS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7521(m)

CFR Citation: 40 CFR 86

Legal Deadline: None

Abstract: This rule will require manufacturers of automobiles to provide necessary information needed to make use of emission control diagnostic systems as well as that needed to make emission-related diagnosis and repairs by any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines. This will allow independent service repair garages, individual owners, parts manufacturers, etc., to have access to emission control information to better service automobiles and ensure clean air compliance requirements.

Timetable:

Action	Date	FR Cite
NPRM	06/08/01	66 FR 30830
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3741

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RIN: 2060–AG13

3218. ADDITION OF METHOD 207 TO APPENDIX M OF 40 CFR PART 51 METHOD FOR MEASURING ISOCYANATES IN STATIONARY SOURCE EMISSIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7410

CFR Citation: 40 CFR 51

Legal Deadline: None

Abstract: The Clean Air Act Amendments of 1990 listed certain isocyanate compounds as hazardous air pollutants (HAPs). The Agency does not have any published test methods that would measure air emissions of these isocyanate compounds from stationary sources. This action would add a validated test method to measure isocyanate emissions to appendix M of part 51. Test methods in part 51 can be adopted by any State for use in any regulation that requires the measurement of any of the isocyanate compounds on the HAP list. This action would not impose any new regulatory requirements that do not already exist. It should benefit State governments by providing them with a validated test procedure for measuring the emissions of isocyanate compounds.

Timetable:

Action	Date	FR Cite
NPRM	12/08/97	62 FR 64532
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3900

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RIN: 2060–AG88

3219. NESHAP: COKE OVENS: PUSHING, QUENCHING, AND BATTERY STACKS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: There are currently 20 active domestic coke plants, 15 of which are furnace coke plants and 5 of which are foundry coke plants. Coke oven batteries used to produce metallurgical coke at these plants emit hazardous air pollutants (HAPs) such as coke oven emissions and polycyclic organic matter listed in section 112 of the Clean Air Act (CAA). This action will establish a National Emission Standard for Hazardous Air Pollutants (NESHAP) for three specific operations associated with coke ovens, namely pushing, quenching, and battery stacks.

Timetable:

Action	Date	FR Cite
NPRM	07/03/01	66 FR 35326
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4022

Sectors Affected: 324199 All Other Petroleum and Coal Products Manufacturing; 331111 Iron and Steel Mills

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RIN: 2060–AH55

3220. PROTECTION OF STRATOSPHERIC OZONE: ALLOWANCE SYSTEM FOR CONTROLLING HCFC PRODUCTION, IMPORT AND EXPORT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 82.5(h); 40 CFR 82.6(h); 40 CFR 82.8; 40 CFR 82.4(n)-(s); 40 CFR 82.4(u)

Legal Deadline: None

Abstract: The Stratospheric Protection Division currently oversees an allowance allocation system for the class I ozone-depleting substances. An allowance allocation system for class II ozone-depleting substances or hydrochlorofluorocarbons (HCFCs) had not been established prior to 1998 because consumption figures had hovered around 80 percent of the cap imposed by the Montreal Protocol in 1992. U.S. consumption for 1999 through 2001 has been fluctuating between 80 percent and 95 percent. In 1999, the Protocol imposed a production cap effective January 1, 2004. An allowance allocation system for HCFCs will allow the U.S. to remain under the consumption and production caps. This rule also contains the mechanism to implement the phaseout of HCFC-141b, effective January 1, 2003.

Timetable:

Action	Date	FR Cite
ANPRM	04/04/99	64 FR 16373
NPRM	07/20/01	66 FR 38064
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4120

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RIN: 2060–AH67

3221. NESHAP: FUMED SILICA PRODUCTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412 CAAA sec 112; EO 12866

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: Fumed silica is produced at four facilities is three States. There is no NSPS for the source category. Based on preliminary results of a screening study, the source category emits chlorine, HCl, and chlorinated organics. This source category was included in the hydrochloric acid production industry at proposal.

Timetable:

Action	Date	FR Cite
NPRM	09/18/01	66 FR 4874
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Additional Information: SAN No. 4111

Sectors Affected: 325188 All Other Basic Inorganic Chemical Manufacturing

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RIN: 2060–AH72

3222. NESHAP: HYDROCHLORIC ACID PRODUCTION INDUSTRY

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1857 et seq; 44 USC 350 et seq; 5 USC 605; EO 12291; EO 12866

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: Title III of the Clean Air Act Amendments of 1990 requires the EPA to develop emission standards for each major source category of hazardous air pollutants (HAPs). The standards are to be technology-based and are to require the maximum degree of emission reduction determined to be achievable by the Administrator of the EPA. The EPA has determined that some hydrochloric acid plants may be major sources for one or more HAPs. As a consequence, a regulation (emission standards) will be developed for the hydrochloric acid production industry.

Timetable:

Action	Date	FR Cite
NPRM	09/18/01	66 FR 48174
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4104

Sectors Affected: 325211 Plastics Material and Resin Manufacturing; 325199 All Other Basic Organic Chemical Manufacturing; 325181 Alkalies and Chlorine Manufacturing; 325188 All Other Basic Inorganic Chemical Manufacturing

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RIN: 2060–AH75

3223. PHASE I (FIP) TO REDUCE THE REGIONAL TRANSPORT OF OZONE IN THE EASTERN UNITED STATES

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect State, local or tribal governments and the private sector.

Legal Authority: 42 USC 7410

CFR Citation: 40 CFR 52; 40 CFR 97

Legal Deadline: NPRM, Statutory, January 25, 2003, EPA is required to promulgate FIPs by January 25 2003 unless States submit approvable plans.

Abstract: This action would promulgate Federal Implementation Plans (FIPs) which require nitrogen oxides (NOx) emissions decreases. The intended effect is to reduce the transport of ozone (smog) pollution and one of its main precursors — NOx — across State boundaries in the eastern half of the United States. On October 27, 1998, EPA published a final rule (the NOx SIP Call) which allowed States 12 months to develop, adopt, and submit revisions to their State Implementation Plans (SIPs) to address the transport problem. The Administrator is required to promulgate a FIP within 2 years of: (1) finding that a State has failed to make a required submittal or (2) finding that a submittal is not complete or (3) disapproving a SIP submittal. On June 22, 2000, the D.C. Court of Appeals assigned a new SIP submittal date of October 30, 2000. Eleven States (Virginia, West Virginia, Alabama, Kentucky, North Carolina, South Carolina, Tennessee, Illinois, Indiana, Michigan, and Ohio) and the District of Columbia had not submitted adequate SIPs, as announced in a findings rule published on December 26, 2000. EPA is continuing to work with these States to assist them in adopting State plans that meet the requirements of the NOx SIP Call. Only Michigan has not yet submitted a fully approvable plan. (Note: The FIPs discussed here will apply to all elements of the NOx SIP call that were not remanded to EPA by the court on March 3, 2000. The portions of the SIP call that were remanded to EPA will be covered under Phase 2 SIPs, and if necessary, separate FIP actions will be prepared for those.)

Timetable:

Action	Date	FR Cite
NPRM	10/21/98	63 FR 56393
Findings Rule	12/26/00	65 FR 81366
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: SAN No. 4096

Sectors Affected: 322122 Newsprint Mills; 322121 Paper (except Newsprint) Mills; 32213 Paperboard Mills; 32211 Pulp Mills; 325998 All Other Miscellaneous Chemical Product Manufacturing; 325131 Inorganic Dye and Pigment Manufacturing; 325188 All Other Basic Inorganic Chemical Manufacturing; 325211 Plastics

Material and Resin Manufacturing; 32511 Petrochemical Manufacturing; 325188 All Other Basic Inorganic Chemical Manufacturing; 32512 Industrial Gas Manufacturing; 325199 All Other Basic Organic Chemical Manufacturing; 327211 Flat Glass Manufacturing; 327213 Glass Container Manufacturing; 327212 Other Pressed and Blown Glass and Glassware Manufacturing; 32731 Cement Manufacturing; 324199 All Other Petroleum and Coal Products Manufacturing; 331111 Iron and Steel Mills; 331221 Cold-Rolled Steel Shape Manufacturing; 33611 Automobile and Light Duty Motor Vehicle Manufacturing; 333618 Other Engine Equipment Manufacturing; 333415 Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing; 221122 Electric Power Distribution; 221112 Fossil Fuel Electric Power Generation; 221121 Electric Bulk Power Transmission and Control; 48621 Pipeline Transportation of Natural Gas; 221122 Electric Power Distribution; 221112 Fossil Fuel Electric Power Generation; 221121 Electric Bulk Power Transmission and Control; 22133 Steam and Air-Conditioning Supply

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RIN: 2060–AH87

3224. REVISION TO THE DEFINITION OF VOLATILE ORGANIC COMPOUND (VOC) TO EXCLUDE TERTIARY BUTYL ACETATE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401-7671q

CFR Citation: 40 CFR 51.100(s)

Legal Deadline: None

Abstract: The definition of VOC is proposed to be revised to add tertiary butyl acetate to the list of negligibly reactive compounds. This is a deregulatory action that will remove tertiary butyl acetate from the necessity to be controlled as a VOC in SIPs for attaining the ozone standard. This is not expected to have a significant impact on small businesses or local governments.

Timetable:

Action	Date	FR Cite
NPRM	09/30/99	64 FR 52731
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4254

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RIN: 2060–AI45

3225. RULEMAKING ON SECTION 126 PETITIONS FROM NEW YORK AND CONNECTICUT REGARDING SOURCES IN MICHIGAN; REVISION OF DEFINITION OF APPLICABLE REQUIREMENT FOR TITLE V OPERATING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7426

CFR Citation: 40 CFR 52; 40 CFR 75; 40 CFR 97

Legal Deadline: None

Abstract: The EPA is proposing to revise the Section 126 Rule in light of the March 3, 2000 court decision on the NOx SIP Call. The court vacated, and remanded to EPA for further consideration, the inclusion of Georgia and Missouri in the NOx SIP Call in light of the Ozone Transport Assessment Group conclusions that emissions from coarse grid portions of States did not merit controls. The reasoning of the Court regarding the significance of NOx emissions from sources in Georgia and Missouri calls into question the inclusion of the coarse grid portion of Michigan in the NOx SIP Call. In a separate proposal, EPA is proposing to withdraw the NOx SIP Call requirements for the Michigan coarse grid area. The Section 126 Rule is based on many of the same analyses and information used for the NOx SIP call and covers part of Michigan. Thus, EPA is proposing to withdraw its section 126 findings and control requirements with respect to sources located in the small part of the coarse grid portion of Michigan that is currently covered by the Section 126 Rule. The EPA has not identified any existing section 126 sources that would be affected by the proposal, however this proposal would eliminate findings and control requirements for new sources locating in the coarse grid. This proposal does not create any new requirements, thus there are no associated costs. The EPA is also proposing to revise the definition "applicable requirement" for title V operating permit programs by providing expressly that any standard or other requirement under section 126 is an applicable requirement and must be included in operating permits issued under title V of the CAA.

Timetable:

Action	Date	FR Cite
NPRM	02/22/02	67 FR 8386
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4464

Sectors Affected: 221112 Fossil Fuel Electric Power Generation

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RIN: 2060–AJ36

3226. REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF STATE IMPLEMENTATION PLANS (GUIDELINE ON AIR QUALITY MODELS)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7410 CAAA sec 110(a)(2); CAAA sec 165(e); CAAA sec 172(a); CAAA sec 172(c); 42 USC 7601 CAAA sec 301(a)(1); CAAA sec 320

CFR Citation: 40 CFR 51.112; 40 CFR 51.160; 40 CFR 51.166; 40 CFR 52.21

Legal Deadline: None

Abstract: This action proposes revisions to the Guideline on Air Quality Models, published as appendix W to 40 CFR part 51. Such models are used to predict ambient concentrations of pollutants for programs ranging from Prevention of Significant Deterioration (PSD) to State Implementation Plans (SIPs) for controlling air pollution sources. Appendix W to 40 CFR part 51 fulfills a Clean Air Act mandate for EPA to specify models for air management purposes. This proposed rulemaking enhances appendix W with new and/or improved techniques.

Timetable:

Action	Date	FR Cite
NPRM	04/21/00	65 FR 21505
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3470

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RIN: 2060–AF01

3227. NESHAP: INTEGRATED IRON AND STEEL

Priority: Other Significant

Legal Authority: 42 USC 7412 CAAA sec 112

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: The Clean Air Act, as amended November 1990, requires the EPA to regulate categories of major and area sources of hazardous air pollutants (HAP). The EPA has determined that integrated iron and steel mills emit several of the 188 HAP listed (including compounds of chromium, lead, manganese, toluene, and polycyclic organic matter) in quantities sufficient to designate them as major sources. As a consequence, integrated iron and steel facilities are among the HAP-emitting source categories selected for regulation.

Timetable:

Action	Date	FR Cite
NPRM	07/13/01	66 FR 36836
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3346

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RIN: 2060–AE48

3228. NESHAP: REINFORCED PLASTIC COMPOSITES PRODUCTION

Priority: Other Significant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, November 15, 2000.

Abstract: Project is to develop a NESHAP for the source category which involves the manufacture of composite products involving thermoset resins and re-enforcements. Some of the specific products in the source category are tubs/showers, auto/truck parts, appliances, furniture, piping, construction materials, sporting goods using such materials, and intermediate compounds such as bulk molding compound and sheet molding compounds. The most common HAP in the resins used is styrene, which is present in polyester and vinylester resins as a monomer. Styrene is listed as a candidate urban area source HAP. So is methylene chloride, which is sometimes used for cleaning, and xylenes, which may appear in some mold release formulas. All HAPs, except for methylene chloride, are also VOCs.

Timetable:

Action	Date	FR Cite
NPRM	08/02/01	66 FR 40324
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3326

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RIN: 2060–AE79

3229. NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS: MISCELLANEOUS ORGANIC CHEMICAL MANUFACTURING

Priority: Other Significant

Legal Authority: 42 USC 7412 CAAA sec 112

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, November 15, 2000.

Abstract: This regulation will cover organic chemical manufacturing processes not covered by the HON or other MACT standards. The regulation will control process vents (continuous and batch, including mixing operations), equipment leaks, storage

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tanks, wastewater, solvent recovery, and heat exchange systems.

Timetable:

Action	Date	FR Cite
NPRM	04/04/02	67 FR 16154
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3452

Sectors Affected: 325 Chemical Manufacturing

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RIN: 2060–AE82

3230. NESHAP: MERCURY CELL CHLOR-ALKALI PLANTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412 CAAA sec 112

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, May 15, 2002.

Abstract: Section 112(c)(6) of the Clean Air Act requires us to list categories of sources for seven specific pollutants (including mercury) assuring that sources accounting for not less than 90 percent of the aggregate emissions of each pollutant are subject to standards pursuant to section 112(d)(2). Chlor-alkali plants are among the source categories listed to achieve the 90 percent goal for mercury. Currently, the source category includes 11 plants located in 10 States engaged in the production of chlorine and caustic using mercury cells. Together, these plants account for 45 percent of the nationwide mercury inventory for non-combustion sources.

Timetable:

Action	Date	FR Cite
NPRM	07/03/02	67 FR 44672
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3449

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RIN: 2060–AE85

3231. NESHAP: MISCELLANEOUS METAL PARTS AND PRODUCTS (SURFACE COATING)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, November 15, 2000.

Abstract: This regulation will control emissions of hazardous air pollutants (HAPs) from operations that apply surface coatings to metal parts and products. Although this rule would cover a wide variety of coating operations, it would not apply to specific coating operations for which regulations have been developed (e.g., plastic parts coating, can coating, large appliance coating, etc.). This regulation is required under section 112 of the Clean Air Act of 1990.

Timetable:

Action	Date	FR Cite
NPRM	08/13/02	67 FR 52780
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Local

Additional Information: SAN No. 3825

Sectors Affected: 33121 Iron and Steel Pipes and Tubes Manufacturing from Purchased Steel; 331221 Cold-Rolled Steel Shape Manufacturing; 331316 Aluminum Extruded Product Manufacturing; 331319 Other Aluminum Rolling and Drawing; 331511 Iron Foundries; 332311 Prefabricated Metal Building and Component Manufacturing; 33612 Heavy Duty Truck Manufacturing; 335312 Motor and Generator Manufacturing; 33312 Construction Machinery Manufacturing; 332312 Fabricated Structural Metal Manufacturing; 326291 Rubber Product Manufacturing for Mechanical Use; 336212 Truck Trailer Manufacturing; 331111 Iron and Steel Mills

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RIN: 2060–AG56

3232. NESHAP: ASPHALT PROCESSING AND ASPHALT ROOFING MANUFACTURING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412 CAAA sec 112

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: The CAA required EPA to publish an initial list of all categories of major and area sources of hazardous air pollutants (HAPs) listed in section 112(b) of the CAA and to establish and meet dates for promulgation of emissions standards for each of the listed categories of HAP emissions sources. The standards are to be technology-based and are to require the maximum degree of reduction determined to be achievable by the Administrator. The EPA has determined that the asphalt roofing and processing industry may be reasonably anticipated to emit one or more of the pollutants listed in section 112(b) of the CAA. As a consequence, the source category is included on the initial list of HAP-emitting categories scheduled for standards promulgation within ten years of enactment of the CAA Amendments of 1990. The purpose of this action is to pursue a regulatory development program such that emission standards may be proposed and promulgated according to the mandated schedule.

Timetable:

Action	Date	FR Cite
NPRM	11/21/01	66 FR 58610
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3655

Sectors Affected: 324122 Asphalt Shingle and Coating Materials Manufacturing

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RIN: 2060–AG66

3233. NESHAP: REFRACTORY PRODUCTS MANUFACTURING

Priority: Other Significant

Legal Authority: 42 USC 7412 CAA sec 112

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: The proposed rulemaking will apply to existing and new refractory products manufacturing facilities. There are approximately 8 existing refractory products manufacturing facilities in the United States located at major source facilities. It is estimated that no new refractory products manufacturing facilities will be built at least for the next 3 years. The HAP that will be reduced by this proposed rule are polycyclic organic matter (POM), phenol, formaldehyde, methanol, and ethylene glycol. Implementation of the proposed rule would reduce emissions of air toxics by approximately 132 tons per year, a reduction of 46 percent from current levels. No significant adverse economic impact is expected to occur as a result of implementing this proposed rulemaking. The capital cost associated with the proposed rulemaking is approximately $3.5 million. The total annual cost of the proposed rulemaking is approximately $1.7 million.

Timetable:

Action	Date	FR Cite
NPRM	06/20/02	67 FR 42108
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3652

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RIN: 2060–AG68

3234. NESHAP: SEMICONDUCTOR PRODUCTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63 BBBBB

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: This rule will establish a MACT (maximum available control technology) for semiconductor production facilities. There is currently 1 major source that would be affected by the NESHAP. This action will result in little or no additional emission reduction but will establish a Federal MACT level for large facilities.

Timetable:

Action	Date	FR Cite
NPRM	05/08/02	67 FR 30848
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3902

Sectors Affected: 334413 Semiconductor and Related Device Manufacturing

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RIN: 2060–AG93

3235. NESHAP: FABRIC PRINTING, COATING AND DYEING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: This action will result in the reduction of hazardous air pollutants (HAP) emitted from fabric printing, coating, and dyeing. The Agency will identify and study the types and sources of HAP emissions from these processes, and evaluate pollution prevention and other control techniques which can reduce these emissions.

Timetable:

Action	Date	FR Cite
NPRM	07/11/02	67 FR 46028
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State, Local

Additional Information: SAN No. 3909

Sectors Affected: 3133 Textile and Fabric Finishing and Fabric Coating Mills; 3132 Fabric Mills; 3141 Textile Furnishings Mills; 3399 Other Miscellaneous Manufacturing

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RIN: 2060–AG98

3236. NESHAP: SITE REMEDIATION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq; PL 101-549 104 Stat. 2399

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, November 15, 2000.
Final, Statutory, November 15, 2000.

Abstract: Superfund, RCRA corrective action, gasoline stations, farms and residential sites are exempt from rule requirements.

Timetable:

Action	Date	FR Cite
NPRM	07/30/02	67 FR 49398
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Additional Information: SAN No. 3968

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RIN: 2060–AH12

3237. NESHAP: ROCKET ENGINE TEST FIRING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, May 1, 2001.

Abstract: As required by section 112(c) of the Clean Air Act, the Environmental Protection Agency has developed a list of categories of sources of hazardous air pollutants (HAP's). The HAP's are listed in section 112(b) of the Clean Air Act. The Rocket Engine Test Firing source category and the Engine Test Facilities source category are included on EPA's list of sources of HAP's. The Rocket Engine Test Firing source category includes facilities engaged in test firing of rocket engines using solid or liquid propellants. The Engine Test Facilities source category includes any facility engaged in the testing of stationary or mobile engines, including turbines and reciprocating engines.

Timetable:

Action	Date	FR Cite
NPRM	05/14/02	67 FR 34548
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Additional Information: SAN No. 3972

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RIN: 2060–AH35

3238. NESHAP: ORGANIC LIQUIDS DISTRIBUTION (NON-GASOLINE)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, November 15, 2000.

Abstract: This project is to develop national emission standards for hazardous air pollutants by establishing maximum achievable control technology (MACT) for facilities distributing organic liquids. MACT standards are under development to reduce the release of hazardous air pollutants (HAPs) from all industries to protect the public health and environment. This project should include but is not limited to those activities associated with the storage and distribution of organic liquids other than gasoline at sites that serve as distribution points from which organic liquids may be obtained for further use and processing.

Timetable:

Action	Date	FR Cite
NPRM	04/02/02	67 FR 15674
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3971

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RIN: 2060–AH41

3239. IMPORTATION OF NONCONFORMING VEHICLES; AMENDMENTS TO REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7522 CAA sec 203; 42 USC 7525 CAA sec 206; 42 USC 7541 CAA sec 207; 42 USC 7542 CAA sec 208; 42 USC 7601 CAA sec 301; 42 USC 7522 CAA sec 203; 42 USC 7550 CAA sec 216; 42 USC 7601 CAA sec 301

CFR Citation: 40 CFR 85

Legal Deadline: None

Abstract: This action will amend the regulations in 40 CFR part 85, subpart P to allow entry into the United States of vehicles which are originally sold in Canada and which are identical to their U.S. counterparts, without obtaining a certificate of conformity from EPA. This action is in response to a petition for review of import rules. The final rule also will address certain other issues in part 85, subpart P and subpart R, including: (1) formalizing a long-standing EPA policy regarding the importation of owned vehicles that are proven to be identical to a vehicle certified for sale in the United States; (2) establishing new emission standards applicable to imported nonconforming vehicles; (3) clarifying the regulatory language that concerns exclusions and exemptions from meeting Federal emission requirements; and (4) providing several minor clarifications to the existing regulations.

Timetable:

Action	Date	FR Cite
NPRM	03/24/94	59 FR 13912
Supplemental NPRM	02/12/96	61 FR 5840
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 2665

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RIN: 2060–AI03

3240. PROTECTION OF STRATOSPHERIC OZONE: SUPPLEMENTAL RULE REGARDING A RECYCLING STANDARD UNDER SECTION 608

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq CAA sec 608

CFR Citation: 40 CFR 82 subpart F

Legal Deadline: None

Abstract: This rule will amend the recordkeeping aspects of the technician certification program, clarify aspects of a sales restriction, and adopt an updated version of ARI standard 740. The rule will also clarify the distinction between major and non-major repairs and amend several definitions including small appliances. The rule also addresses the transfers of unreclaimed refrigerant between majority-owned and majority-controlled subsidiaries.

Timetable:

Action	Date	FR Cite
NPRM 1	02/29/96	61 FR 7858
NPRM	11/01/96	61 FR 56493
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3556

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RIN: 2060–AF36

3241. PROTECTION OF STRATOSPHERIC OZONE: REFRIGERANT RECYCLING RULE AMENDMENT TO INCLUDE SUBSTITUTE REFRIGERANTS

Priority: Other Significant

Legal Authority: 42 USC 7401 et seq; 42 USC 7671(g); CAA sec 608

CFR Citation: 40 CFR 82(F)

Legal Deadline: None

Abstract: This action would facilitate fulfillment of the statutory mandate to apply the venting prohibition to substitute refrigerants. The action would provide regulations covering recovery/recycling equipment, recovery/recycling practices, and applicable certifications that would be required to accomplish compliance with the venting prohibition. Requirements would parallel those of the current section 608 regulations, expanding applicability, where appropriate, to substitute refrigerants.

Timetable:

Action	Date	FR Cite
NPRM	06/11/98	63 FR 32044
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: None

Additional Information: SAN No. 3560

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RIN: 2060–AF37

3242. PAPER AND OTHER WEB COATING NESHAP

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 59; 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: This action would result in the reduction of hazardous air pollutants (HAPs) emitted by the paper and other web coating industries.

Timetable:

Action	Date	FR Cite
NPRM	09/13/00	65 FR 55332
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3827

Sectors Affected: 322211 Corrugated and Solid Fiber Box Manufacturing; 322212 Folding Paperboard Box Manufacturing; 322221 Coated and Laminated Packaging Paper and Plastics Film Manufacturing; 322222 Coated and Laminated Paper Manufacturing; 322223 Plastics, Foil, and Coated Paper Bag Manufacturing; 323111 Commercial Gravure Printing; 323116 Manifold Business Form Printing

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EPA—Clean Air Act (CAA) — Final Rule Stage

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RIN: 2060–AG58

3243. NESHAP: WOOD BUILDING PRODUCTS (SURFACE COATING)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: This action will result in the reduction of hazardous air pollutants (HAP) emitted by the wood building product surface coating industry. The Agency will study the various HAP emitted by the industry and evaluate pollution prevention and control techniques which can reduce these emissions.

Timetable:

Action	Date	FR Cite
NPRM	06/21/02	67 FR 42400
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3904

Sectors Affected: 321212 Softwood Veneer and Plywood Manufacturing; 321219 Reconstituted Wood Product Manufacturing; 321911 Wood Window and Door Manufacturing; 321918 Other Millwork (including Flooring); 321999 All Other Miscellaneous Wood Product Manufacturing; 321211 Hardwood Veneer and Plywood Manufacturing; 32199 All Other Wood Product Manufacturing

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RIN: 2060–AH02

3244. NESHAP: MUNICIPAL SOLID WASTE LANDFILLS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: This project is to develop national emission standards for hazardous air pollutants (HAP) by establishing maximum achievable control technology (MACT) for municipal solid waste landfills.

Timetable:

Action	Date	FR Cite
NPRM	11/07/00	65 FR 66672
Supplemental NPRM	05/23/02	67 FR 36460
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: None

Additional Information: SAN No. 3969

Sectors Affected: 562212 Solid Waste Landfill

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RIN: 2060–AH13

3245. NESHAP: ASPHALT/COAL TAR APPLICATION ON METAL PIPES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, November 15, 2000.

Abstract: The Clean Air Act (CAA), as amended in 1990, requires the EPA to: (1) publish an initial list of all categories of major and area sources of the hazardous air pollutants (HAPs) listed in section 112(b) of the CAA; (2) promulgate a schedule establishing a date for the promulgation of emission standards for each of the listed categories of HAPs emission sources; and (3) develop emission standards for each source of HAPs. These standards are to be technology-based and are to require the maximum degree of emission reduction determined to be achievable by the Administrator. The Agency has determined that the application of asphalt or coal tar to metal pipes may reasonably be anticipated to emit several of the 189 HAPs listed in section 112(b) of the CAA. As a consequence, a regulatory development program is being pursued for the asphalt/coal tar application on metal pipes industry to promulgate emission standards.

Timetable:

Action	Date	FR Cite
NPRM	08/13/02	67 FR 52780
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4107

Sectors Affected: 332812 Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers

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RIN: 2060–AH78

3246. NESHAP: FRICTION PRODUCTS MANUFACTURING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

EPA—Clean Air Act (CAA) — Final Rule Stage

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: This action will propose NESHAP for friction products manufacturing in order to comply with the Clean Air Act of 1990 (CAA). The friction products source category includes any facility that manufactures friction products such as brakes and clutches. The rule is expected to limit HAP emissions, including toluene, hexane, and 1,1,1 trichloroethane) from solvent mixing operations.

Timetable:

Action	Date	FR Cite
NPRM	10/04/01	66 FR 50768
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4460

Sectors Affected: 3363 Motor Vehicle Parts Manufacturing; 3364 Aerospace Product and Parts Manufacturing; 3369 Other Transportation Equipment Manufacturing

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RIN: 2060–AJ18

3247. NESHAP: FLEXIBLE POLYURETHANE FOAM FABRICATION OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 7401 et seq

CFR Citation: 40 CFR 63 (Revision)

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: The Clean Air Act (CAA) requires development of emission standards for major sources emitting any of the hazardous air pollutants (HAP) listed in section 112(b) of the CAA. The EPA is proposing a rule to reduce emissions of toxic air pollutants from flexible polyurethane foam fabrication operations. Toxic air pollutants, or air toxics, are those pollutants known, or suspected, to cause cancer and other serious health problems. EPA identified two subcategories under the flexible polyurethane foam fabrication operations source category. These subcategories are loop slitter HAP-based adhesive use and flame lamination. Loop slitters are equipment at foam fabrication operations that are used to slice large foam blocks into thin sheets. Flame lamination refers to the bonding of foam to other substrates (i.e., cloth, foam, plastic, and other materials), where the bonding agent is scorched or melted foam.

Timetable:

Action	Date	FR Cite
NPRM	08/08/01	66 FR 41718
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4449

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RIN: 2060–AJ19

3248. NESHAP: PUBLICLY OWNED TREATMENT WORKS (POTW)—AMENDMENTS II

Priority: Other Significant

Legal Authority: 42 USC 7412(e)(5) CAAA sec 112(e)(5); 42 USC 7412(n)(3) CAAA sec 112(n)(3)

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: This action will amend the existing rule to implement a settlement agreement with the Pharmaceutical Research and Manufacturers of America regarding their petition for judicial review.

Timetable:

Action	Date	FR Cite
NPRM	03/22/02	67 FR 13496
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: None

Additional Information: SAN No. 4546

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RIN: 2060–AJ66

3249. • NESHAP: CHLORINE PRODUCTION

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: This action announces our decision not to issue regulations for the Chlorine Production source category. The source category is composed of nearly 50 facilities that produce chlorine using several different methods. We have determined that 21 of these facilities are major sources, including 20 chlor-alkali plants that produce chlorine and caustic as co-products through the electrolysis of brine, and one primary magnesium refining facility that produces chlorine as a by-product of magnesium metal production. Primary magnesium refining is a separately listed source category and, as such, the one refiner will be addressed in a separate rulemaking. None of the 20 chlor-alkali plants are in and of themselves major sources. All are well-controlled and emit negligible amounts of chlorine and, in some cases, additional negligible amounts of hydrochloric acid. These sources are major only due

to collocation. That is, they are part of larger establishments that are major sources. These larger establishments include organic chemical manufacturers, polymer and resin producers, and pulp and paper mills, all of which are already subject to one or more NESHAP. Section 112(d)(4) gives us the discretion to consider risk in issuing MACT standards for pollutants for which a health threshold has been established, provided that the public health is protected with an ample margin of safety. Chlorine and HC1 are both threshold pollutants for which we have defined threshold values in the form of Inhalation Reference Concentrations (RfCs). We have modeled chlorine and HC1 emissions from each of the 20 chlor-alkali plants and have determined that none of the plants emit chlorine or HC1 in quantities that result in human exposures in the ambient air at levels approaching the threshold values. Therefore, we conclude that no further control or regulation is necessary. NOTE: Three of the 20 chlor-alkali plants operate mercury cells. We are addressing mercury emissions from mercury cell chlor-alkali plants in a separate proposal, which is currently in the review cycle in headquarters. To facilitate comment, we plan to publish both the mercury cell proposal and this action on chlorine production in the same issue of the Federal Register.

Timetable:

Action	Date	FR Cite
NPRM	07/03/02	67 FR 44713
Final Action	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4685

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RIN: 2060–AK38

3250. • NESHAP FOR PRIMARY ALUMINUM REDUCTION PLANTS; AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The NESHAP for Primary Aluminum Reduction Plants was promulgated in 1997 (40 CFR part 63, subpart LL). The amendments described here would revise the emission limit for polycyclic organic matter applicable to one subcategory of source based on newly available data more representative of performance from the top five performing sources. The proposed amendments would also clarify language on compliance dates and add specific provisions for startup of new or reconstructed affected sources and affected sources that restart after being idled for long periods of time. More time would be allowed due to the nature of the process operation, depending on the type of source. No additional costs or information collection requirements would be incurred as a result of the amendments. There also are no significant policy issues. State agency and industry representatives concur with the changes, which will improve implementation of the 1997 rule.

Timetable:

Action	Date	FR Cite
Proposed Amendment	11/00/02	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: SAN No. 4713

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RIN: 2060–AK50

3251. • SITE SPECIFIC RULE FOR WEYERHAUSER SULFITE MILL

Priority: Substantive, Nonsignificant

Legal Authority: Clean Air Act sec 112(c)(6)

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: This rule will apply to the Weyerhaeuser sulfite mill in Cosmopolis, WA. The rule will allow the mill to control the non regulated hog fuel dryer at the mill rather than controlling the sulfite recovery furnace. It is expected that the source will achieve greater emission reductions at a lower cost than would occur otherwise.

Timetable:

Action	Date	FR Cite
Direct Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4717

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RIN: 2060–AK53

3252. • NESHAP: SECONDARY ALUMINUM INDUSTRY AMENDMENTS

Priority: Other Significant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: Final, Judicial, December 15, 1999.

Abstract: EPA promulgated MACT to control emissions of HAP from the secondary aluminum production industry on March 23, 2000. After

publication, two groups representing four industry trade groups filed a petition for review of the rule. EPA reached an initial settlement agreement with industry to develop a separate rule for aluminum die casters, aluminum foundries, and aluminum extruders and publish a proposed stay of the rule with respect to these sources. Later the EPA reached a separate settlement agreement with groups representing aluminum die casters, aluminum foundries, and aluminum extruders that resulted in these groups remaining subject to the rule with certain technical changes to the rule itself. EPA also reached a separate settlement agreement with the Aluminum Association to make certain technical changes in the rule. A direct final rule and parallel proposal and a proposed rule was published in the FR to implement the settlement agreements on June 14, 2002. The settlement agreement with industry require EPA to have the Administrator sign the rule to promulgate the changes in the settlement agreement by December 13, 2002.

Timetable:

Action	Date	FR Cite
Direct Final Rule Amend.	06/14/02	67 FR 41118
NPRM Amendments	06/14/02	67 FR 41125
Withdrawal of Direct Final Rule	08/13/02	67 FR 52616
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4723

Sectors Affected: 331314 Secondary Smelting and Alloying of Aluminum

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RIN: 2060–AK57

3253. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) AND NONATTAINMENT NEW SOURCE REVIEW (NSR): BASELINE EMISSIONS DETERMINATION, ACTUAL-TO-FUTURE-ACTUAL METHODOLOGY, PLANTWIDE APPLICABILITY

Priority: Other Significant

Legal Authority: CAA as amended title I

CFR Citation: 40 CFR 51.160 to 51.166; 40 CFR 52.21; 40 CFR 52.24

Legal Deadline: None

Abstract: This action is to revise the CAA new source review (NSR) regulations, which govern the preconstruction air quality review and permitting programs that are implemented by States and the Federal Government for new and modified major stationary sources of air pollution. These revisions include changes in NSR applicability requirements for modifications (and provisions to allow States to make similar changes in their major NSR programs) to allow sources more flexibility to respond to rapidly changing markets and to plan for future investments in pollution control and prevention technologies. These changes reflect EPA's consideration of discussions and recommendations of the Clean Air Act Advisory Committee's (CAAAC) Subcommittee on NSR, Permits and Toxics, comments filed by the public, and meetings and discussions with interested stakeholders. The changes are intended to provide greater regulatory certainty, administrative flexibility, and permit streamlining, while ensuring the current level of environmental protection and benefit derived from the program. Regulations that will be affected are State implementation plan requirements for review of new sources and modifications to existing sources (40 CFR 51.160-166), the Federal prevention of significant deterioration program (40 CFR 52.21), and Federal restriction on new source construction (40 CFR 52.24).

Timetable:

Action	Date	FR Cite
NPRM	07/23/96	61 FR 38249
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Federalism: Undetermined

Additional Information: SAN No. 3259

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RIN: 2060–AE11

3254. EXPANDED DEFINITIONS FOR ALTERNATIVE-FUELED VEHICLES AND ENGINES MEETING LOW-EMISSION VEHICLE EXHAUST EMISSION STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2001; 15 USC 2002; 15 USC 2003; 15 USC 2005; 15 USC 2006; 15 USC 213; 42 USC 7521; 42 USC 7522; 42 USC 7524; 42 USC 7525; 42 USC 7541; 42 USC 7542; 42 USC 7549; 42 USC 7550; 42 USC 7552

CFR Citation: 40 CFR 86; 40 CFR 88

Legal Deadline: None

Abstract: This action will ease the burden of certification for both Original Equipment Manufacturers (OEMs) and after-market conversion entities. This action will, for vehicles and engines meeting LEV emission standards, broaden the definition of the term dedicated fuel system, broaden the criteria for engine families, and provide an exemption from certification fees. This action is not a deregulatory action. This action will provide another means for small business to remain active entities in supplying alternatively fueled vehicles to the market place. The above three changes are intended to reduce the cost of complying with the requirements of certification, and small business will benefit from these changes. This action will enhance the ability for the regulated industry to provide alternatively fueled vehicles to the consumer in support of the Executive Order 13031.

Timetable:

Action	Date	FR Cite
NPRM	07/20/98	63 FR 38767
Notice	05/14/99	64 FR 26410
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

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Government Levels Affected: None

Additional Information: SAN No. 4030

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RIN: 2060–AH52

3255. CONTROL OF EMISSIONS OF AIR POLLUTION FROM NEW MARINE COMPRESSION-IGNITION ENGINES AT OR ABOVE 30 LITERS PER CYLINDER

Regulatory Plan: This entry is Seq. No. 140 in part II of this issue of the Federal Register.

RIN: 2060–AJ98

3256. OPERATING PERMITS: REVISIONS (PART 70)

Priority: Other Significant

Legal Authority: 42 USC 7661 et seq

CFR Citation: 40 CFR 51; 40 CFR 52; 40 CFR 70

Legal Deadline: None

Abstract: In response to litigation on the operating permits rule regulations, 40 CFR part 70, to provide more effective implementation of part 70, and to address comments provided in response to notices of proposed rulemaking, parts 70, 51 and 52 are being revised. The changes streamline the procedures for revising stationary-source operating permits issued by State and local permitting authorities under title V of the Clean Air Act.

Timetable:

Action	Date	FR Cite
NPRM	08/29/94	59 FR 44460
Supplemental NPRM Part 71	04/27/95	60 FR 20804
Supplemental NPRM Part 70	08/31/95	60 FR 45530
NPRM	12/00/03	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local

Additional Information: SAN No. 3412

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RIN: 2060–AF70

3257. FEDERAL IMPLEMENTATION PLANS FOR INDIAN RESERVATIONS IN IDAHO, OREGON AND WASHINGTON

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 49.121 to 49.139; 40 CFR 49.9861 to 49.17810

Legal Deadline: None

Abstract: This Federal Implementation Plan (FIP) proposes basic air rules to apply on Indian reservations in Idaho, Oregon, and Washington. The rules provide some basic air quality protection similar to what the State implementation plans (SIPs) require for Idaho, Oregon, and Washington. These rules are needed to establish a level playing field and create basic federally enforceable rules under the Clean Air Act.

Timetable:

Action	Date	FR Cite
NPRM	03/15/02	67 FR 11748
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, Tribal

Federalism: Undetermined

Additional Information: SAN No. 4487

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RIN: 2012–AA01

3258. METAL FURNITURE (SURFACE COATING) NESHAP

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: This regulation will apply to surface coating of metal furniture products and parts. This regulation will reduce nationwide emissions of HAPs from surface coating of metal furniture products and parts, which is required under section 112 of the Clean Air Act.

Timetable:

Action	Date	FR Cite
NPRM	04/24/02	67 FR 20206
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN No. 3824

Sectors Affected: 337124 Metal Household Furniture Manufacturing; 33636 Motor Vehicle Fabric Accessories and Seat Manufacturing; 337215 Showcase, Partition, Shelving, and Locker Manufacturing; 337127 Institutional Furniture Manufacturing; 332116 Metal Stamping; 332612 Wire Spring Manufacturing; 337215 Showcase, Partition, Shelving, and Locker Manufacturing

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RIN: 2060–AG55

3259. PROTECTION OF STRATOSPHERIC OZONE: PROCESS FOR EXEMPTING QUARANTINE AND PRESHIPMENT APPLICATIONS OF METHYL BROMIDE

Priority: Other Significant

Legal Authority: 42 USC 7414; 42 USC 7671-7671(q)

CFR Citation: 40 CFR 82.1 to 82.13

Legal Deadline: None

Abstract: The Montreal Protocol exempts quarantine and preshipment from the methyl bromide production and import baseline; therefore, a regulation must be promulgated to allow for the exemption in EPA's current allowance system.

Timetable:

Action	Date	FR Cite
Interim Final Action	07/19/01	66 FR 37752
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4253

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RIN: 2060–AI42

3260. NESHAP: BRICK AND STRUCTURAL CLAY PRODUCTS MANUFACTURING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: The brick and structural clay products industry primarily includes facilities that manufacture brick, clay, pipe, roof tile, extruded floor and wall tile, and other extruded dimensional clay products from clay, shale, or a combination of the two. The manufacture of brick and structural clay products involves mining, raw material processing (crushing, grinding, and screening), mixing, forming, cutting or shaping, drying, and firing.

Timetable:

Action	Date	FR Cite
NPRM	07/22/02	67 FR 47894
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4325

Sectors Affected: 327121 Brick and Structural Clay Tile Manufacturing; 327123 Other Structural Clay Product Manufacturing

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RIN: 2060–AI67

3261. NESHAP: CLAY CERAMICS MANUFACTURING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: Ceramics are defined as a class of inorganic, nonmetallic solids that are subject to high temperature in manufacture and/or use. The clay ceramics manufacturing source category includes facilities that manufacture traditional ceramics. Traditional ceramics include ceramic tile, dinnerware, sanitaryware, pottery, and porcelain. The primary raw material used in the manufacture of traditional ceramics is clay. the manufacture of clay ceramics involves raw material processing (crushing, grinding, and screening), mixing, forming, shaping, drying, glazing, and firing.

Timetable:

Action	Date	FR Cite
NPRM	07/22/02	67 FR 47894
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4343

Sectors Affected: 327122 Ceramic Wall and Floor Tile Manufacturing; 327111 Vitreous China Plumbing Fixture and China and Earthenware Fittings and Bathroom Accessories Manufacturing

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RIN: 2060–AI68

3262. NESHAP: ENGINE TEST CELLS/STANDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: As required by section 112(c) of the Clean Air Act, the Environmental Protection Agency has developed a list of categories of sources of hazardous air pollutants (HAP's). The HAP's are listed in section 112(b) of the Clean Air Act. The Engine Test Facilities source category are included on EPA's list of sources of HAP's. The Engine Test Facilities source category includes any facility engaged in the testing of stationary or mobile engines, including turbines and reciprocating engines and rocket engines. Aircraft engine testing consists of facilities which perform testing on uninstalled aircraft engines. Non-aerospace engine test facilities consists of facilities which perform testing on uninstalled engines such as automotive engines, stationary turbines, IC engines, and diesel engines.

Timetable:

Action	Date	FR Cite
NPRM	05/14/02	67 FR 34548
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4144

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RIN: 2060–AI74

3263. AMEND SUBPART H AND I, 40 CFR PART 61, FOR EMISSIONS OF RADIONUCLIDES OTHER THAN RADON FROM DOE FACILITIES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412 CAAA 112(g) (q); PL 95-95

CFR Citation: 40 CFR 61.93(a); 40 CFR 61.93(b)(2)(ii)

Legal Deadline: None

Abstract: Subparts H and I of 40 CFR part 61 establish limits, under the Clean Air Act, for radionuclide emissions (other than radon) from Department of Energy (DOE) and other non-DOE federal facilities. These Subparts require emission sampling, monitoring, and calculations to identify compliance with the standard. The current air sampling methodology required by the standards is embodied in ANSI-N13.1-1969, a consensus guidance document that is incorporated by reference in EPA's standards. That guidance was updated in 1999, and contains new technical recommendations (that differ from the 1969 version) for obtaining representative air samples. In this rule, EPA is updating subparts H and I to incorporate the new sampling guidance, ANSI-N13.1-1999, and require its use for new facilities and for those undergoing significant changes to ventilation systems. Existing facilities will be allowed to continue sampling in accordance with the current requirements.

Timetable:

Action	Date	FR Cite
NPRM	05/09/00	65 FR 29934
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 4273

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RIN: 2060–AI90

3264. INTERSTATE OZONE TRANSPORT: RESPONSE TO COURT DECISIONS ON THE NOX SIP CALL, NOX SIP CALL TECHNICAL AMENDMENTS, AND SECTION 126 RULES

Priority: Other Significant

Legal Authority: 42 USC 7410(a)(2)(D); 42 USC 7410(k)(5)

CFR Citation: 40 CFR 51 (Revision)

Legal Deadline: None

Abstract: On October 27, 1998 (63 FR 57355), EPA issued a rule to reduce smog in the eastern half of the country. The rule required 22 States and the District of Columbia to reduce emissions of nitrogen oxides (NOx), which reacts with other chemicals in the atmosphere to form smog. EPA required these reductions because pollution from each of these States was transported by the wind and significantly contributed to unhealthy air quality in downwind states. In response to litigation from several parties on the NOx SIP call, the United States Court of Appeals for the District of Columbia issued a decision on March 3, 2000 making it clear that EPA and States can and should move forward to implement this regional strategy. The ruling remanded certain relatively minor portions of the original rule back to the EPA. This rulemaking covers the portion of the rule associated with the remanded issues: certain cogeneration units, internal combustion engines, the partial State requirements for Georgia & Missouri and the exclusion of Wisconsin. In this rulemaking, EPA will consider the partial State issue for Alabama & Michigan and propose SIP submittal dates and compliance dates, as well. The D.C. Circuit Court also remanded, or remanded and vacated, the cogeneration unit issue in decisions on the NOx SIP Call Technical Amendments, and Section 126 Rule on June 8, 2001 and May 15, 2001, respectively. These remands will also be addressed in this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	02/22/02	67 FR 8395
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Additional Information: SAN No. 4433

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RIN: 2060–AJ16

3265. CLARIFICATION TO EXISTING PART 63 NESHAP DELEGATIONS' PROVISIONS-WORK PRACTICES

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: 40 CFR part 63 contains OAR's air-toxics emissions regulations, often referred to as MACT rules or NESHAPS. We are revising some part 63 standards to reflect changes in delegation provisions. We are also revising some sections in the part 63 regulations to clarify what are standards and what are compliance assurance measures. The benefits of the changes will include clarifying what authorities in each standard can be delegated to State and local air pollution control agencies and meshing the standards with revisions previously made to other part 63 regulations.

Timetable:

Action	Date	FR Cite
NPRM	01/16/02	67 FR 2286
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4426

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RIN: 2060–AJ26

3266. NESHAP: PESTICIDES ACTIVE INGREDIENTS—AMENDMENTS

Priority: Other Significant

Legal Authority: 42 USC 7412 CAA sec 112

CFR Citation: 40 CFR 63

Legal Deadline: Final, Judicial, September 6, 2002, Administrator's Signature.

Abstract: On June 23, 1999, EPA promulgated the NESHAP for Pesticide Active Ingredient Production several petitions were filed for judicial review. These amendments are based on the settlement agreement.

Timetable:

Action	Date	FR Cite
NPRM	04/10/02	67 FR 17492
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4457

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RIN: 2060–AJ34

3267. FEDERAL PLAN FOR SMALL MUNICIPAL WASTE COMBUSTION UNITS

Priority: Substantive, Nonsignificant

Legal Authority: 1990 Amendments to the CAA sections 111(d) 129 and 301(a)(d)

CFR Citation: 40 CFR 62 (new)

Legal Deadline: None

Abstract: The Clean Air Act Amendments of 1990 directed the EPA to set emission guidelines for existing municipal waste combustion units (MWCs) under Sections 111 and 129. On 12/19/95, the EPA adopted emission guidelines for MWCs under the authority of Sections 111(d) and 129 of the Clean Air Act. These emission guidelines covered all MWC units located at plants with an aggregate plant combustion capacity larger than 35 tons per day of municipal solid waste. Subsequent litigation cancelled the emission guidelines for small MWC units, but the Court directed EPA to adopt a new rule for small MWC units. This rule was adopted on December 6, 2000. This action is a follow-on activity to this rulemaking. In this proposed MWC Federal Plan for small units, EPA becomes the implementing authority in those instances where the state or local Agency fails to submit a plan or a plan has not yet been approved. This action makes no changes to the rule and is intended to fulfill EPA's duty under Section 129(b)(3) to promulgate a Federal Plan as a gap-filling measure until the state fulfills its statutory obligations. When the state submits an approvable State Plan, the Federal Plan will no longer apply to units in the state.

Timetable:

Action	Date	FR Cite
NPRM	06/14/01	66 FR 32484
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Local

Additional Information: SAN No. 4454

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RIN: 2060–AJ46

3268. REVISIONS TO REGIONAL HAZE RULE TO INCORPORATE SULFUR DIOXIDE MILESTONES AND BACKSTOP EMISSIONS TRADING PROGRAM FOR NINE WESTERN STATES

Priority: Other Significant

Legal Authority: 42 USC 7410; 42 USC 7414; 42 USC 7421; 42 USC 7470-7479; 42 USC 7491; 42 USC 7492; 42 USC 7601; 42 USC 7602

CFR Citation: 40 CFR 51.309

Legal Deadline: None

Abstract: This regulation is for an action anticipated by the regional haze rule that we published in July 1999. One portion of the regional haze rule was an optional visibility protection program for nine Western States. Part of this program for the West, a long-term program to reduce stationary source emissions of sulfur dioxide, was incomplete at the time of the 1999 rule. Accordingly, the rule required Western States to submit an "Annex" to an earlier report of the Grand Canyon Visibility Transport Commission. We required the Annex to contain sulfur dioxide milestones for the years 2003 to 2018, to establish a program to track emissions from stationary sources over this time period, and to provide the details of a market trading program that would be triggered if a milestone is exceeded. The Western Regional Air Partnership submitted the Annex on September 29, 2000. The purpose of this rulemaking is to determine whether the Annex meets the requirements of the regional haze rule

and the Clean Air Act, and if it does, to amend the regional haze rule to incorporate its provisions.

Timetable:

Action	Date	FR Cite
NPRM	05/06/02	67 FR 30418
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: SAN No. 4495

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RIN: 2060–AJ50

3269. STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES: VOLATILE ORGANIC LIQUID STORAGE VESSELS; AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401; 42 USC 7411; 42 USC 7414; 42 USC 7416; 42 USC 7601

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: This direct final action revises existing standards for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) by amending the storage vessel volume applicability criteria and adding a vapor pressure applicability criterion. This is a narrow technical amendment responding to new information that came in after the original rule was promulgated.

Timetable:

Action	Date	FR Cite
Direct Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4508

Sectors Affected: 325 Chemical Manufacturing; 324 Petroleum and Coal Products Manufacturing; 42271 Petroleum Bulk Stations and Terminals

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RIN: 2060–AJ53

3270. NESHAP: PORTLAND CEMENT MANUFACTURING INDUSTRY, AMENDMENTS TO RULE TO IMPLEMENT SETTLEMENT AGREEMENT

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 40 CFR 63.1340 to 63.1359

Legal Deadline: None

Abstract: The Portland Cement Manufacturing Industry NESHAP was promulgated June 14, 1999. The rule is codified in 40 CFR 63, Subpart LLL. This rule is being revised to reflect a pending settlement agreement with the American Portland Cement Alliance. The rule changes will be minor, and mostly will help to clarify requirements, provide monitoring alternatives and/or remove minor monitoring requirements.

Timetable:

Action	Date	FR Cite
NPRM	04/05/02	67 FR 16625
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4524

Sectors Affected: 32731 Cement Manufacturing

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RIN: 2060–AJ57

3271. CONTROL OF HAZARDOUS AIR POLLUTANTS FROM MOBILE SOURCES; CORRECTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7521(l); 42 USC 7545; 42 USC 7601(a)

CFR Citation: 40 CFR 80.81(a)(1)

Legal Deadline: None

Abstract: This rule corrects a final regulatory action which was published in the Federal Register on March 29, 2001 (66 FR 17230). The correction consists of restoring a paragraph that was inadvertently omitted when the final rule was published.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2060–AJ67

3272. COMPILATION OF SOURCE-SPECIFIC ALTERNATIVE METHODS BEING APPROVED FOR SOURCE-CATEGORY WIDE APPLICATION

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Sources have applied for approval of alternative test methods for use at their facility. The Agency has approved these methods and issued letters of approval to each requestor. The Agency has determined that these methods could be used at similar sources, thus giving those sources an alternative test method to the one cited in the regulation. This action seeks to publish these facility-specific approvals in order to provide other facilities within the source category the option of using the alternative method.

Timetable:

Action	Date	FR Cite
Direct Final Rule	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4548

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RIN: 2060–AJ84

3273. BENZENE WASTE OPERATIONS NESHAP; AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 to 7626

CFR Citation: 40 CFR 61

Legal Deadline: None

Abstract: This amendment will add a compliance option for tanks, making the Benzene Waste Operations NESHAP consistent with the RCRA CC rules. Hazardous waste treatment facilities have requested these amendments because they must comply with both rules. There is no emission reduction as a result of this action. However, facilities may save money. We expect no negative impacts on small businesses and State/local/tribal governments. Industry and government support this change.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4591

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing; 3311 Iron and Steel Mills and Ferroalloy Manufacturing; 562211 Hazardous Waste Treatment and Disposal

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RIN: 2060–AJ87

3274. PROPOSED AMENDMENTS TO PERFORMANCE STANDARDS AND MONITORING REQUIREMENTS FOR PARTICULATE MATTER AT STATIONARY SOURCES

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 40 CFR 60 app B; 40 CFR 60 app F

Legal Deadline: None

Abstract: This action would repropose some monitoring specifications that were originally included in an OSWER proposal to regulate air emissions from hazardous waste combustors (as explained further below). It revises several standards and requirements related to continuous emission monitoring systems for particulate matter (PM). These include: specifications and test procedures known as Performance Specification 11 (PS-11), and quality assurance requirements known as "Procedure 2". The proposed revisions clarify and update performance standards and monitoring requirements for facilities required to install and use continuous monitoring equipment to measure particulate matter emissions from stacks and ducts. The action does not change any emission standards or add any additional recordkeeping requirements. This action is a supplement to actions by EPA's OSWER that included proposed regulations for hazardous waste combustors. The first action was published in the Federal Register on December 30, 1997 (62 FR 67788). Recent OAR field studies have revealed needed revisions to PS-11 and Procedure 2. In view of the significant amount of time that has passed since the last proposal was published (December 30, 1997) and the significant amount of knowledge we have recently gained from our field studies, we believe that a supplemental proposal and another opportunity for the public to comment on PS-11 and Procedure 2 are appropriate.

Timetable:

Action	Date	FR Cite
NPRM	12/12/01	66 FR 64176
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4605

Sectors Affected: 221112 Fossil Fuel Electric Power Generation

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RIN: 2060–AJ88

3275. STATE AND FEDERAL OPERATING PERMITS PROGRAM: REMOVAL OF AMENDMENTS TO PART 70 AND PART 71 COMPLIANCE CERTIFICATION REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414a; 42 USC 7661 to 7661f

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EPA—Clean Air Act (CAA) **Final Rule Stage**

CFR Citation: 40 CFR 70; 40 CFR 71 (Revisions)

Legal Deadline: None

Abstract: Action is in response to the October 29, 1999, United States Circuit Court of Appeals decision to remand to EPA part of the October 22, 1997, Compliance Assurance Monitoring rulemaking that included revisions to parts 70 and 71 compliance certification requirements. The Court ruled that the compliance certification must address whether the affected facility has been in continuous or intermittent compliance.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4600

Split from RIN 2060-AJ04

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RIN: 2060–AJ89

3276. CONTROL OF HAZARDOUS AIR POLLUTANTS FROM MOBILE SOURCES: DEFAULT BASELINE REVISION AND MINOR CORRECTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7521(1); 42 USC 7545; 42 USC 7601(a)

CFR Citation: 40 CFR 80

Legal Deadline: Final, Statutory, October 31, 2001, 80.855(b)(2) directs EPA to revise the default baseline by this date.

Abstract: The final rule, Control of Emissions of Hazardous Air Pollutants From Mobile Sources (66 FR 17230, 3/29/01), directed EPA to revise the default toxics baselines in the rule to include year 2000 data when it becomes available. When revised, the default toxics baseline values will be the average toxics values for gasoline over the period 1998-2000. This data is now available, and this rule will promulgate those revised baseline values, and also incorporate several minor technical corrections to the existing rule.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4621

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RIN: 2060–AJ97

3277. ADOPTION OF THE AMENDED INTERNATIONAL NOX STANDARD FOR AIRCRAFT ENGINES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq; CAA 231 to 232; 42 USC 7571 to 7572; 5 USC 552(a)

CFR Citation: 40 CFR 87.1; 40 CFR 87.21; 40 CFR 87.64; 40 CFR 87.71; 40 CFR 87.10; 40 CFR 87.31(b); 40 CFR 87.82; 40 CFR 87.89

Legal Deadline: None

Abstract: The purpose of this proposed rulemaking is to amend the existing United States regulations governing the exhaust emissions from new commercial aircraft gas turbine engines. The amendment will codify into United States law the recently amended voluntary NOx emission standard of the United Nation's International Civil Aviation Organization (ICAO), thus bringing the United States emission standards into alignment with the internationally adopted standards. This NOx standard was adopted at the ICAO/Committee on Aviation Environmental Protection (CAEP) 4 meeting in 1998. The implementation of the standard is to begin in January 2004. Further, this amendment will establish consistency between U.S. and international requirements and test procedures. This action is necessary to ensure that domestic commercial aircraft meet international standards and the public can be assured that they are receiving the air quality benefits of the international standards.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 4631

Sectors Affected: 3336 Engine, Turbine, and Power Transmission Equipment Manufacturing; 33641 Aerospace Product and Parts Manufacturing; 336412 Aircraft Engine and Engine Parts Manufacturing; 336413 Other Aircraft Part and Auxiliary Equipment Manufacturing

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RIN: 2060–AK01

3278. REDUCTION OF THE AMBIENT AIR MONITORING FINE PARTICULATE COLLOCATED PRECISION REQUIREMENT.

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7410; 42 USC 7601(a); 42 USC 7619

CFR Citation: 40 CFR 58

Legal Deadline: None

Abstract: This rule will amend the regulations governing the monitoring of ambient fine particulate pollution (PM2.5) conducted by State and local governments as part of their programs to meet the National Ambient Air Quality Standard (NAAQS) for PM2.5. This direct final rule reduces the requirement to collocate PM2.5 samplers from 25 percent of a reporting organization's sites to 15 percent. Collocation is a technique used to provide an estimate of precision or repeatability of the PM2.5 network. The process involves setting up a second PM2.5 sampling instrument within 1 to 4 meters of the primary sampler instrument and collecting a sample during the same time period as the primary sampler. EPA analysis now shows that a reduction in the precision requirement would not significantly affect confidence in precision estimates. Since precision values are collected every sixth day at the monitoring sites and the precision data quality objectives are developed over 3 years, EPA feels that enough precision data will be collected at the proposed frequency (15 percent) to provide acceptable estimates of achievement of the precision data quality objectives. This change should reduce the monitoring burden of all organizations implementing State and local Ambient Monitoring Sites.

EPA—Clean Air Act (CAA) **Final Rule Stage**

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Additional Information: SAN No. 4647

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RIN: 2060–AK05

3279. AMENDMENTS TO COMPLIANCE CERTIFICATION REQUIREMENTS FOR STATE AND FEDERAL OPERATING PERMITS PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414a; 42 USC 7661 to 7661f

CFR Citation: 40 CFR 70; 40 CFR 71 (Revisions)

Legal Deadline: None

Abstract: Action is in response to the October 29, 1999, United States Circuit Court of Appeals decision to remand to EPA part of the October 22, 1997, Compliance Assurance Monitoring rulemaking that included revisions to parts 70 and 71 compliance certification requirements. The Court ruled that the compliance certification must address whether the affected facility has been in continuous or intermittent compliance.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4671

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RIN: 2060–AK11

3280. • PROTECTION OF STRATOSPHERIC OZONE: LISTING OF SUBSTITUTES FOR OZONE-DEPLETING SUBSTANCES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7601; 42 USC 7671 to 7671(q)

CFR Citation: 40 CFR 82 (Revision)

Legal Deadline: None

Abstract: This action lists three substitutes for ozone-depleting substances in the fire suppression and explosion protection sector as acceptable (subject to use restrictions) under EPA's Significant New Alternatives Policy (SNAP) program. The SNAP program evaluates substitutes for ozone-depleting substances and publishes lists of acceptable and unacceptable substitutes. The intended effect of the SNAP program is to support the transition away from ozone-depleting substances through review of substitutes and their effects on human health and the environment.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4688

Sectors Affected: 2333 Nonresidential Building Construction; 325 Chemical Manufacturing; 32599 All Other Chemical Product Manufacturing; 336413 Other Aircraft Part and Auxiliary Equipment Manufacturing; 336611 Ship Building and Repairing; 336992 Military Armored Vehicle, Tank and Tank Component Manufacturing; 54138 Testing Laboratories; 54133 Engineering Services; 92216 Fire Protection

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RIN: 2060–AK30

3281. • REVISION OF COMBUSTION TURBINES NSPS - PART 60, SUBPART GG

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 40 CFR 60 (Revision)

Legal Deadline: None

Abstract: The NSPS for Combustion Turbines has not been revised since

1980. Revisions are needed to reduce the burden on EPA and State/local agencies, of approving, on a case-by-case basis, alternate testing and monitoring protocols due to advances in emission control technologies. The revisions are also intended to bring consistency between the monitoring and testing requirements in the Combustion Turbines NSPS (part 60) and the Acid Rain Program (part 75) so that the same data can be used to comply with both regulations.

Timetable:

Action	Date	FR Cite
Direct Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Additional Information: SAN No. 4681

Sectors Affected: 2211 Electric Power Generation, Transmission and Distribution; 211111 Crude Petroleum and Natural Gas Extraction; 211112 Natural Gas Liquid Extraction; 221 Utilities

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RIN: 2060–AK35

3282. • REVISIONS TO THE APPEAL PROCEDURES AND THE FEDERAL NOX BUDGET TRADING PROGRAM, PARTS 78 AND 97

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7601; 42 USC 7651 et seq; 42 USC 7401; 42 USC 7403:; 42 USC 7426

CFR Citation: 40 CFR 75 (Revision); 40 CFR 97 (Revision)

Legal Deadline: None

Abstract: This rule is a set of revisions which will simplify and streamline the interface between the existing Acid Rain Program and the NOx Budget Trading Program.

Timetable:

Action	Date	FR Cite
NPRM	06/13/01	66 FR 31978
NPRM Comment Period Extended	07/27/01	66 FR 39123
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4682

Sectors Affected: 221111 Hydroelectric Power Generation

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RIN: 2060–AK36

3283. • PROTECTION OF STRATOSPHERIC OZONE: ADDITIONAL RECONSIDERATION OF PETITION CRITERIA AND INCORPORATION OF MONTREAL PROTOCOL DECISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7601; 42 USC 7671 to 7671q

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The content of this rule was promulgated as part of a direct final rule in August 1998. In October 1998 EPA withdrew portions of that direct final rule that had subsequently received adverse comment. We are now promulgating those withdrawn portions in this final rule, which changes the recordkeeping and reporting requirements for Essential Use Allowance holders and clarifies the petition process for import of used class I controlled substances. Additionally, in response to a petition submitted to EPA, this final rule removes the requirement in the petition process for imports of used class I controlled substances whereby a person must certify knowledge of tax liability.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4696

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RIN: 2060–AK44

3284. • AMENDMENT TO THE HEAVY-DUTY ENGINE AND VEHICLE STANDARDS AND HIGHWAY DIESEL FUEL SULFUR REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7545(c); 42 USC 7545(g); 42 USC 7545(i); 42 USC 7625-1; 42 USC 7414; 42 USC 7545; 42 USC 7601(a); 42 USC 7401 to 7671q

CFR Citation: 40 CFR 69; 40 CFR 80; 40 CFR 86

Legal Deadline: None

Abstract: This action would clarify, correct, amend and revise certain provisions of the Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Regulations (66 FR 5002, January 18, 2001).

Timetable:

Action	Date	FR Cite
Direct Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4707

Sectors Affected: 336112 Light Truck and Utility Vehicle Manufacturing; 811112 Automotive Exhaust System Repair; 811198 All Other Automotive Repair and Maintenance

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RIN: 2060–AK47

3285. • CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES: AMENDMENT TO THE TIER 2 MOTOR VEHICLE EMISSION STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 40 CFR part 86 (Revision)

Legal Deadline: None

Abstract: This action includes technical amendments needed to resolve errors, inconsistencies, or lack of clarity in recently promulgated light-duty and heavy-duty emissions control programs. These issues include flexibilities for diesel vehicles under the Tier 2 program, amendments to the requirements for independent commercial importers (ICI), amendments to the test weight requirements for complete heavy-duty gasoline vehicles, and amendments to the heavy-duty onboard diagnostics (OBD) requirements for chassis-certified heavy-duty diesel engines and vehicles.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4721

Sectors Affected: 33611 Automobile and Light Duty Motor Vehicle Manufacturing; 33612 Heavy Duty Truck Manufacturing

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RIN: 2060–AK55

3286. PROJECT XL SITE-SPECIFIC RULEMAKING FOR ANDERSEN CORPORATION'S FACILITY IN BAYPORT, MINNESOTA

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 to 7671q

CFR Citation: 40 CFR 52

Legal Deadline: None

Abstract: This site-specific rule, applicable only to the Andersen Bayport facility, provides regulatory changes under the Clean Air Act (CAA) to implement Andersen Corporation's XL project. In this project, the facility will be allowed to increase production levels without undergoing case-by-case reviews prompted by its Volatile Organic Compounds (VOC) emission changes, as long as its VOC emissions per unit of production remain below the performance ratio and its overall emissions remain below a facilitywide VOC cap.

Timetable:

Action	Date	FR Cite
NPRM	04/19/99	64 FR 19097
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: SAN No. 4278

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RIN: 2090–AA21

Environmental Protection Agency (EPA)

Clean Air Act (CAA)

Long-Term Actions

3287. ACCIDENTAL RELEASE PREVENTION REQUIREMENTS: RISK MANAGEMENT PROGRAMS UNDER THE CLEAN AIR ACT, SECTION 112(R)(7); THIRD PARTY AUDIT PROVISIONS

Priority: Other Significant

Legal Authority: 42 USC 7412(r); 42 USC 7601 (a)(1)

CFR Citation: 40 CFR 68

Legal Deadline: None

Abstract: This action establishes requirements, incentives, and procedures for third party audits of Risk Management Plans (RMPs) under 40 CFR part 68 that would reduce the need for, and thus the incidence of, government audits of RMPs submitted by facilities that volunteer for such an audit. In this context, a third party is someone not employed by either an RMP-regulated facility or a government agency responsible for implementing the RMP program (implementing agency).

In the preamble to the final risk management program rule, EPA endorsed the concept of using third parties to assist in rule compliance and oversight (61 FR 31705), provided that any such proposal: not weaken the compliance responsibilities of facility owner/operators; offer cost savings and benefits to the industry, community, and implementing agencies that significantly exceed the cost of implementing the approach; lead to a net increase in process safety, particularly for smaller, less technically sophisticated facilities; and promote cost-effective agency prioritization of oversight resources. However, no specific criteria or requirements were specified in the RMP rule to regulate the activities of facilities, implementing agencies, or third parties with respect to third party assistance.

A facility's participation in the third party audit program proposed by this action would be totally voluntary. For facilities who choose not to participate in the program, this action would have no effect. However if a facility participates, this regulation would establish the requirements and regulatory incentives for their

participation. For participating sources, the action would offer the potential for reduced regulatory burden (while maintaining their compliance responsibilities), flexible auditing options, and other benefits, provided the source meets the applicable requirements described in the rule. This action also would specify the proposed qualification requirements for persons desiring to act as third party auditors.

EPA believes that this action would promote increased safety among facilities covered by the risk.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4511

Sectors Affected: 49312 Refrigerated Warehousing and Storage Facilities; 22132 Sewage Treatment Facilities; 22131 Water Supply and Irrigation Systems; 31161 Animal Slaughtering and Processing; 49311 General Warehousing and Storage Facilities; 42291 Farm Supplies Wholesalers; 42269 Other Chemical and Allied Products Wholesalers; 49313 Farm Product Warehousing and Storage Facilities; 32512 Industrial Gas Manufacturing; 11511 Support Activities for Crop Production

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RIN: 2050–AE85

3288. ACCIDENTAL RELEASE PREVENTION REQUIREMENTS: RISK MANAGEMENT PROGRAMS UNDER THE CLEAN AIR ACT, SECTION 112(R)(7); AVAILABILITY OF INFORMATION TO THE PUBLIC; TECHNICAL AMENDMENT

Priority: Info./Admin./Other

Legal Authority: CAA 112(r)

CFR Citation: 40 CFR 68.210

Legal Deadline: None

Abstract: Section 112(r)(7) of the Clean Air Act (CAA) and its implementing regulations at 40 CFR part 68 require certain stationary sources to report an Off-site Consequence Analysis (OCA), including a worst-case release scenario, in a Risk Management Plan (RMP) that is to be made available to the public. In response to concerns that posting OCA information on the Internet might increase the risk of terrorist and other criminal activities, on August 5, 1999, the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act was enacted. The Act requires the President to promulgate regulations governing the distribution of the OCA sections of RMPs that, in the opinion of the President, would minimize the likelihood of accidental releases and the risk of terrorist and other criminal activities associated with posting this information. The President delegated his rulemaking authority to the Attorney General and the Administrator of EPA, who jointly promulgated the required regulations at 40 CFR part 1400. The part 1400 regulations restrict the public's access to the OCA sections of RMPs in certain ways. As currently drafted, however, section 68.210(a) of part 68 states that RMPs are available to the public under CAA section 114, which makes information collected under the CAA, including RMPs in their entirety, available to the public, except for confidential business information. EPA is therefore revising 40 CFR section 68.210(a) to reflect the August 2000 rulemaking and the revision will state that OCA data is made available to the public under the provisions of 40 CFR part 1400.

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4607

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RIN: 2050–AE95

3289. ACCIDENTAL RELEASE PREVENTION REQUIREMENTS: RISK MANAGEMENT PROGRAMS UNDER THE CLEAN AIR ACT, SECTION 112(R)(3); REVISIONS TO THE LIST OF SUBSTANCES

Priority: Substantive, Nonsignificant

Legal Authority: CAA 112(r)

CFR Citation: 40 CFR 68.130

Legal Deadline: None

Abstract: The list of substances subject to the Chemical Accident Prevention requirements at 40 CFR part 68 was promulgated on January 31, 1994. The Clean Air Act states that the list may be revised from time to time by EPA's own motion or by petition and shall be reviewed at least every 5 years. Since the January 1994 final list rule, EPA has modified the listing for hydrochloric acid; deleted a category of explosive chemicals; exempted flammable substances in gasoline used as fuel and in naturally occurring hydrocarbon mixtures prior to initial processing; and excluded flammable substances used as a fuel or held for sale as a fuel at a retail facility. In fulfillment of the statute's five-year review requirement, EPA has conducted a thorough review of the list. Based on that review, EPA is proposing additions, deletions and modifications to the list of substances. Deletions are based on EPA's review of the chemical toxicity, physical property, production/use quantity and accident history of currently listed substances and new information or erroneous data that impacts the basis of the chemical's listing. Other toxic and flammable chemicals are proposed to be added because they meet the criteria for listing a toxic or flammable substance. In addition, EPA proposes to revise the reporting threshold and toxic endpoints of several toxic substances based on updated toxicity information. Facilities with more than the threshold quantity of a listed substance in a process are required to develop a Risk Management Program and submit a Risk Management Plan to EPA. The proposed changes to the list will ensure that facilities are properly managing risks of the most acutely toxic and flammable chemicals that could have an adverse impact on the facility and surrounding community in event of an accidental release.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4619

Sectors Affected: 325 Chemical Manufacturing; 32411 Petroleum Refineries

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RIN: 2050–AE96

3290. EVALUATION OF UPDATED TEST PROCEDURES FOR THE CERTIFICATION OF GASOLINE DEPOSIT CONTROL ADDITIVES

Priority: Substantive, Nonsignificant

Legal Authority: CAA Section 211

CFR Citation: 40 CFR 80

Legal Deadline: None

Abstract: All gasoline must contain additives to control the formation of deposits in the fuel supply system and engine of motor vehicles. If uncontrolled, such deposits can result in a significant increase in motor vehicle emissions. This action will propose that updated test procedures be adopted for the certification of gasoline deposit control additives regarding their ability to control fuel injector and intake valve deposits. The adoption of the updated procedures will ensure that the gasoline deposit control program continues to ensure an adequate level of deposit control, thereby preventing an increase in motor vehicle emissions. The updated test procedures require less time to perform and are less costly. Therefore, the adoption of the proposed procedures will reduce the burden on industry of complying with the gasoline deposit control program. The proposed action will not impact small businesses, or state, local, or tribal governments.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4531

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RIN: 2060–AJ61

3291. METHODS FOR MEASUREMENT OF VISIBLE EMISSIONS—ADDITION OF METHODS 203A, 203B, AND 203C TO APPENDIX M OF PART 51

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401(b)(1); 42 USC 7410; 42 USC 7470 to 7479; 42 USC 7501 to 7508; 42 USC 7601(a)

CFR Citation: 40 CFR 51

Legal Deadline: None

Abstract: This rulemaking adds Test Methods 203A, 203B, and 203C to 40 CFR part 51, appendix M (entitled Example Test Methods for State Implementation Plans). These methods describe procedures for estimating the opacity of visible emissions. States have requested that EPA promulgate these methods so that they can use them in State Implementation Plans in enforcing visible emissions regulations from Stationary Sources.

Timetable:

Action	Date	FR Cite
NPRM	11/22/93	58 FR 61639
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 2915

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RIN: 2060–AF83

3292. REVISED PERMIT REVISION PROCEDURES FOR THE FEDERAL OPERATING PERMITS PROGRAM

Priority: Other Significant

Legal Authority: 42 USC 7661(a)(d)(3)

CFR Citation: 40 CFR 71.7

Legal Deadline: None

Abstract: The proposed regulatory change would streamline permit revisions procedures for stationary air sources that are subject to the Federal operating permits program.

The Agency does not anticipate any significant impact on small businesses and State/local/tribal governments.

Timetable:

Action	Date	FR Cite
NPRM	12/00/05	
Final Action	12/00/06	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 3922

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RIN: 2060–AG92

3293. FEDERAL MAJOR NEW SOURCE REVIEW (NSR) PROGRAM FOR NONATTAINMENT AREAS

Priority: Other Significant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 124; 40 CFR 51.165; 40 CFR 52.10; 40 CFR 52.24

Legal Deadline: None

Abstract: The Clean Air (title I, part D) requires that construction permit programs for new or modified major stationary sources of air pollution be established for areas not attaining the NAAQS. This action will add Federal rules at 40 CFR 52.10 for permitting the construction of new or modified major stationary sources in certain nonattainment areas where State, local, or tribal rules in whole or in part are not in place that meet the statutory permitting requirements. These rules will basically incorporate the requirements for State nonattainment NSR permit programs, codified at 40 CFR 51.165(a), with supplemental provisions added to make explicit the permit requirements of section 173 of the Act and certain long-standing policies regarding nonattainment NSR permitting. This action will also change 40 CFR 52.24 to specify that the requirements of 40 CFR 52.10 govern any permits issued in certain nonattainment areas where acceptable nonattainment NSR rules are not in place. Changes to 40 CFR part 124 will specify that the permit processing, public participation, and permit appeal requirements that otherwise apply to Federal PSD permitting will also apply, in most cases, to Federal nonattainment NSR permitting under 40 CFR 52.10.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	
Final Action	07/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Federalism: Undetermined

Additional Information: SAN No. 4046

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RIN: 2060–AH53

3294. GENERAL CONFORMITY REGULATIONS; REVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401-7671

CFR Citation: 40 CFR 51.850 to 51.860; 40 CFR 93.150 to 93.160

Legal Deadline: None

Abstract: Section 176(c) of the Clean Air Act prohibits Federal entities from taking actions which do not conform to the State implementation plan (SIP) for the attainment and maintenance of the national ambient air quality standards (NAAQS). In November 1993, EPA promulgated two sets of regulations to implement section 176(c). First, on November 24, EPA promulgated the Transportation Conformity Regulations to establish the criteria and procedures for determining that transportation plans, programs, and projects which are funded under title 23 U.S.C. or the Federal Transit Act conform with the SIP. Then, on November 30, EPA promulgated regulations, known as the General Conformity Regulations, to ensure that other Federal actions also conformed to the SIPs. The EPA has not reviewed or revised the General Conformity Regulations since their 1993 promulgation. Several Federal agencies have identified concerns over the implementation of the General Conformity Regulations, including the requirements for areas designated nonattainment for the newly promulgated NAAQS. In conjunction with an ad hoc work group of representatives from several Federal agencies, EPA will review the implementation of the General Conformity Regulations. The EPA will then propose and promulgate any appropriate revision to those regulations.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

Federalism: Undetermined

Additional Information: SAN No. 4070

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RIN: 2060–AH93

3295. REVISIONS TO AIR POLLUTION EMERGENCY EPISODE REQUIREMENTS (SUBPART H, 40 CFR PART 51)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7410(a)(2)(G); 42 USC 7603

CFR Citation: 40 CFR 51 Appendix L; 40 CFR 51.150 to 51.153

Legal Deadline: None

Abstract: 40 CFR part 51.150-51.153 requires States to have contingency plans to prevent air pollution levels from reaching the significant harm level (SHL) for CO, O3, SO2, NOx, and PM. Appendix L provides example guidance to the States on appropriate courses of action to take at each episode stage (i.e., alert, warning, and emergency) to ensure the SHL is not reached. These requirements were developed in the 1970's, based on the NAAQS from that era. Since that time, ambient air quality levels have decreased nationwide. Today, many areas/sources that no longer need episode plans must still develop them. This rule would update and simplify the criteria used to determine which areas would require episode plans. Areas with no more than one exceedance of the Alert level over the past 5 years would not need to develop emergency episode plans. Sources with the potential to cause exceedances of the SHL due to a process/control equipment malfunction would need to develop source contingency plans to prevent (and to respond to) such malfunctions. Appendix L would also be revised to reflect the revised program requirements. The result will be a sensible, credible program replacing an outdated program.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4247

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RIN: 2060–AI47

3296. NESHAP: CHROMIUM ELECTROPLATING AMENDMENT

Priority: Other Significant

Legal Authority: 42 USC 7412 CAA 112

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: Final standards under section 112(d) for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks (40 CFR 63, Subpart N) were promulgated on January 25, 1995. Since promulgation, the Agency has determined that a class of chromium electroplating operations were inadvertently excluded from regulation. Specifically, the final standards do not apply to sources engaged in continuous chromium electroplating of steel sheet used to make cans and other containers. It is the Agency's intent to regulate all facilities engaged in chromium electroplating. Therefore, the Agency plans to amend the chromium electroplating rule to extend its applicability to continuous chromium electroplating operations.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 2841

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RIN: 2060–AH08

3297. AMENDMENTS TO PARTS 51, 52, 63, 70 AND 71 REGARDING THE PROVISIONS FOR DETERMINING POTENTIAL TO EMIT

Priority: Other Significant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: This action proposes to amend regulations already established to implement the new Federal air toxics program under section 112, including the General Provisions, the Federal operating permit program under title V, and the major source preconstruction programs under parts C and D of title I.

The proposed rule will address issues related to the determination of a stationary source's potential to emit in response to three court decisions.

This action resulted from splitting of RINs 2060-AC98 and 2060-AC63.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3479

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RIN: 2060–AI01

3298. NSPS AND EMISSION GUIDELINES FOR OTHER SOLID WASTE INCINERATORS

Priority: Other Significant

Legal Authority: 42 USC 7509 CAA sec 129

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: Section 129 of the Clean Air Act of 1990 requires the Agency to promulgate New Source Performance Standards (NSPS) and Emission Guidelines (EG) for solid waste incinerators. Section 129 specifically required the Administrator to publish a schedule for regulating Other Solid Waste Incinerators (OSWI). A notice published on November 9, 2000 announced that the Administrator would promulgate OSWI standards by November 15, 2005. The notice also listed what classes of incinerators might be covered by the OSWI standards. Standards will be set for the following pollutants: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead cadmium, mercury, and dioxins and dibenzofurans.

Timetable:

Action	Date	FR Cite
ANPRM	11/09/00	65 FR 66850
NPRM	11/00/04	
Final Action	11/00/05	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: State, Local

Additional Information: SAN No. 3751

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RIN: 2060–AG31

3299. PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY: PERMIT APPLICATION REVIEW PROCEDURES FOR NON-FEDERAL CLASS I AREAS

Priority: Other Significant

Legal Authority: 42 USC 7670-7479 CAA sec 160-169

CFR Citation: 40 CFR 51.166; 40 CFR 52.21

Legal Deadline: None

Abstract: Under the Clean Air Act's prevention of significant deterioration (PSD) program, a State or tribe may redesignate their lands as class I areas to provide enhanced protection for their air quality resources. This rule will clarify the PSD permit review procedures for new and modified major stationary sources near these non-Federal class I areas. EPA seeks to develop clarifying PSD permit application procedures that are effective, efficient, and equitable.

Timetable:

Action	Date	FR Cite
ANPRM	05/16/97	62 FR 27158
NPRM	10/00/04	
Final Action	10/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Tribal

Additional Information: SAN No. 3919

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RIN: 2060–AH01

3300. REVIEW OF FEDERAL TEST PROCEDURES FOR EMISSIONS FROM MOTOR VEHICLES; TEST PROCEDURE ADJUSTMENTS TO FUEL ECONOMY AND EMISSION TEST RESULTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 101-549

CFR Citation: 40 CFR 600; 40 CFR 86

Legal Deadline: None

Abstract: This action considers potential adjustments to fuel economy and emission test results to compensate for test procedure changes previously adopted; it applies to light-duty vehicles and light-duty trucks. This aspect of the previous rulemaking (SAN 3323, RIN 2060-AE27) was deferred.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3979

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RIN: 2060–AH38

3301. PROTECTION OF STRATOSPHERIC OZONE: UPDATE OF THE SUBSTITUTES LIST UNDER (SNAP) PROGRAM

Priority: Other Significant

Legal Authority: 42 USC 7414; 42 USC 7601; 42 USC 7671(k) CAA sec 612

CFR Citation: 40 CFR 82; 40 CFR 9

Legal Deadline: None

Abstract: Section 612 of the Clean Air Act requires EPA to identify alternatives to Class I and II ozone depleting substances and to publish lists of acceptable and unacceptable substitutes. Producers of substitutes must notify EPA at least 90 days before alternatives are introduced into interstate commerce. Unlike acceptable alternatives (see Notices), substitutes which are deemed by EPA to be unacceptable or acceptable subject to use restrictions must go through notice and comment rulemaking. Substitute lists are updated intermittently depending on the volume of notifications.

Timetable:

Action	Date	FR Cite
ANPRM	01/16/92	57 FR 1984
NPRM	05/12/93	58 FR 28094
Final Rule	03/18/94	59 FR 13044
Notice 1	08/26/94	59 FR 44240
NPRM 1	09/26/94	59 FR 49108
Notice 2	01/13/95	60 FR 3318
Final Rule 1	06/13/95	60 FR 31092
Notice 3	07/28/95	60 FR 38729
NPRM 2	10/02/95	60 FR 51383
Notice 4	02/08/96	61 FR 4736
NPRM 3	05/22/96	61 FR 25604
Final Rule 2	05/22/96	61 FR 25585
Notice 5	09/05/96	61 FR 47012
Final Rule 3	10/16/96	61 FR 54030
Notice 6	03/10/97	62 FR 10700
NPRM 4	05/21/97	62 FR 27874
Notice 7	06/03/97	62 FR 30275
NPRM 5	02/03/98	63 FR 5491
Notice 8	02/24/98	63 FR 9151
Notice 9	05/22/98	63 FR 28251
Interim Final Rule 7	01/26/99	64 FR 3861
Interim Final Rule 8	01/26/99	64 FR 3865
ANPRM 9	02/18/99	64 FR 8043
NPRM 6	02/18/99	64 FR 8038
Final Rule 5	04/28/99	64 FR 22981
Notice 10	06/08/99	64 FR 30410
Notice 11	12/06/99	64 FR 68039
Notice 12	04/11/00	65 FR 19327
Final Rule 6	04/26/00	65 FR 24387
Notice 13	06/19/00	65 FR 37900
Notice 14	12/18/00	65 FR 78977
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3525

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RIN: 2060–AG12

3302. NESHAP: PERCHLOROETHYLENE DRY CLEANING FACILITIES RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, September 22, 2002, Final Action.

Abstract: EPA developed technology-based emission standards for this source category under section 112(d) of the Clean Air Act. The current action, required by section 112(f) of the Clean Air Act, is to assess residual risks and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: SAN No. 4662

Sectors Affected: 81232 Drycleaning and Laundry Services (except Coin-Operated)

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RIN: 2060–AK18

3303. • NESHAP: SOLVENT EXTRACTION FOR VEGETABLE OIL: AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: This action develops National Emission Standards for Hazardous Air Pollutants (NESHAP) for vegetable oil production facilities as authorized under section 112(d) of the Clean Air Act (Act). The action is based on the determination that vegetable oil production plants emit organic hazardous air pollutants (HAPs) listed in section 112(b) of the Act. On July 16, 1992, EPA listed vegetable oil production as a source for which NESHAP are to be promulgated. On December 3, 1993, EPA published a schedule for promulgating NESHAP for vegetable oil production plants by November 15, 2000. NESHAP developed under section 112(d) apply to both new and existing facilities. NESHAP for existing facilities are to be based on the average emission limitation achieved by the best performing 12 percent of existing sources.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4672

Sectors Affected: 311222 Soybean Processing; 311223 Other Oilseed Processing; 311225 Fats and Oils Refining and Blending; 311225 Fats and Oils Refining and Blending

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RIN: 2060–AK32

3304. NESHAP: ETHYLENE OXIDE FOR STERILIZATION FACILITIES - RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, December 6, 2002.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA. The current action, required by section 112(f) of the CAA, is to assess residual risks and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4654

Sectors Affected: 3254 Pharmaceutical and Medicine Manufacturing; 311942 Spice and Extract Manufacturing

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RIN: 2060–AK09

3305. NESHAP: GASOLINE DISTRIBUTION (STAGE I) RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, December 14, 2002.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA. The current action, required by section 112(f) of the CAA, is to assess residual risks and develop additional emission standards, as necessary, to provide an ample margin of safety. The sources covered are Stage I gasoline distribution sources, i.e., sources of air emissions from processes involved with the wholesale distribution of gasoline to gas stations.

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Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAN No. 4655

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RIN: 2060–AK10

3306. NESHAP: GROUP I POLYMERS AND RESINS — RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: Not Yet Determined

Legal Deadline: Final, Statutory, September 6, 2004.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA, codified in 40 CFR part 63, subpart U. This source category covers chemical process units used to manufacture elastomer products from raw materials. The current action, required by section 112(f) of the CAA, is to assess residual risks from this same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4656

Sectors Affected: 325212 Synthetic Rubber Manufacturing

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RIN: 2060–AK12

3307. NESHAP: GROUP II POLYMERS AND RESINS — RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, March 8, 2003.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA. This source category covers certain chemical process units used to manufacture products. The current action, required by section 112(f) of the CAA, is to assess residual risks from this same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4657

Sectors Affected: 325211 Plastics Material and Resin Manufacturing

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RIN: 2060–AK13

3308. NESHAP: HAZARDOUS ORGANIC NESHAP (HON) RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, April 22, 2003.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA. The current action, required by section 112(f) of the CAA, is to assess residual risks and develop additional emission standards, as necessary, to provide an ample margin of safety. This rule will cover the major sources of air emissions within the synthetic organic chemical industry.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAN No. 4659

Sectors Affected: 325 Chemical Manufacturing

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RIN: 2060–AK14

3309. NESHAP: GROUP IV POLYMERS AND RESINS — RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: Not Yet Determined

Legal Deadline: Final, Statutory, September 12, 2004.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA, codified in 40 CFR part 63, subpart JJJ. This source category covers chemical process units used to manufacture thermoplastic products from raw materials. The current action, required by section 112(f) of the CAA, is to assess residual risks from this same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4658

Sectors Affected: 325211 Plastics Material and Resin Manufacturing

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RIN: 2060–AK15

3310. NESHAP: INDUSTRIAL PROCESS COOLING TOWERS RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, September 30, 2002.

Abstract: A national emission standard for hazardous air pollutants (NESHAP) for industrial process cooling towers (IPCT) was previously promulgated under Section 112(d) of the Clean Air Act. That standard effectively bans the use of chromium-based water treatment chemicals in IPCT used to remove heat from chemical or industrial processes. The Clean Air Act Section 112(f) requires us to assess within 8 years of promulgation of a NESHAP the remaining risk to the public and to develop additional more stringent standards if such standards are needed to protect the public health with an ample margin of safety. This action is to examine the remaining risk from IPCT and, if warranted, to develop new risk based standards.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Additional Information: SAN No. 4660

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RIN: 2060–AK16

3311. NESHAP: NATIONAL EMISSION STANDARDS FOR MARINE TANK VESSEL LOADING OPERATIONS — RESIDUAL RISK STANDARD

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, September 19, 2003, Final Action.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA, codified in 40 CFR part 63, subpart Y. This source category covers tanks or ships that contain gasoline, crude oil, or HAPs in bulk. The current action, required by section 112(f) of the CAA, is to assess residual risks from this same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4661

Sectors Affected: 483 Water Transportation

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RIN: 2060–AK17

3312. NESHAP: SECONDARY LEAD SMELTING RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, June 23, 2003, Final Action.

Abstract: National emission standards for hazardous air pollutants (NESHAP) for secondary lead smelting were promulgated on June 23, 1995 under Clean Air Act Section 112(d). The standards establish emission limitations and work practice standards for all new and existing secondary lead smelters that produce refined lead from lead scrap, mainly lead acid batteries. Clean Air Act Section 112(f) requires us to assess within 8 years of promulgation of a NESHAP the remaining risk to the public and to develop additional more stringent standards if such standards are needed to protect the public health with an ample margin of safety. This action is to examine the remaining risk from secondary lead smelters and to develop new risk based standards, if warranted.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Additional Information: SAN No. 4665

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Sectors Affected: 331492 Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum)

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RIN: 2060–AK19

3313. NESHAP: SHIPBUILDING AND SHIP REPAIR SURFACE COATING — RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, December 31, 2003, Final Action.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA, codified in 40 CFR Part 63, Subpart II (that's not a capital two, it's a double "I"). This source category covers air-toxic emissions from the painting of ships under construction or repair in major sources. The current action, required by section 112(f) of the CAA, is to assess residual risks from this same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN No. 4666

Sectors Affected: 336611 Ship Building and Repairing

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RIN: 2060–AK20

3314. NESHAP: WOOD FURNITURE MANUFACTURING OPERATIONS — RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR Part 63

Legal Deadline: Final, Statutory, December 7, 2003.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA, codified in 40 CFR part 63, subpart JJ. This source category covers air-toxic emissions from wood-furniture manufacturing, including wood finishing, gluing, and painting. The current action, required by section 112(f) of the CAA, is to assess residual risks from this same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4667

Sectors Affected: 337 Furniture and Related Product Manufacturing; 337211 Wood Office Furniture Manufacturing

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RIN: 2060–AK21

3315. NESHAP: HALOGENATED SOLVENT CLEANING — RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, December 2, 2002.

Abstract: This action is required by the CAA to assess residual risk and develop standards as necessary to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 4668

Sectors Affected: 332999 All Other Miscellaneous Fabricated Metal Product Manufacturing; 337124 Metal Household Furniture Manufacturing; 335999 All Other Miscellaneous Electrical Equipment and Component Manufacturing; 336999 All Other Transportation Equipment Manufacturing; 332116 Metal Stamping; 336 Transportation Equipment Manufacturing; 339 Miscellaneous Manufacturing; 332999 All Other Miscellaneous Fabricated Metal Product Manufacturing

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RIN: 2060–AK22

3316. NESHAP: MAGNETIC TAPE MANUFACTURING OPERATIONS RESIDUAL RISK STANDARD

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, December 15, 2002.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA. The current action, required by section 112(f) of the CAA, is to assess residual risks and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4669

Sectors Affected: 33461 Manufacturing and Reproducing Magnetic and Optical Media; 334613 Magnetic and Optical Recording Media Manufacturing

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RIN: 2060–AK23

3317. NESHAP: PRINTING AND PUBLISHING INDUSTRY — RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, May 30, 2004.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA, codified in 40 CFR Part 63, Subpart KK. This source category covers air-toxic emissions from many activities located at printing and publishing facilities — primarily the printing process itself, plus affiliated equipment such as cleaning, ink and solvent mixing, chemical storage, and solvent recovery. The current action, required by section 112(f) of the CAA, is to assess residual risks from this same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: SAN No. 4664

Sectors Affected: 322222 Coated and Laminated Paper Manufacturing; 322212 Folding Paperboard Box Manufacturing; 322221 Coated and Laminated Packaging Paper and Plastics Film Manufacturing; 322222 Coated and Laminated Paper Manufacturing; 322225 Laminated Aluminum Foil Manufacturing for Flexible Packaging Uses; 322223 Plastics, Foil, and Coated Paper Bag Manufacturing; 323111 Commercial Gravure Printing; 323112 Commercial Flexographic Printing; 323119 Other Commercial Printing

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RIN: 2060–AK24

3318. NESHAP: PETROLEUM REFINERIES — RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, August 31, 2003.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA, codified in 40 CFR Part 63, Subpart CC. This source category covers air-toxic emissions from equipment at petroleum refineries, such as process vents, storage vessels, and valve leaks. The current action, required by section 112(f) of the CAA, is to assess residual risks from this same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4663

Sectors Affected: 32411 Petroleum Refineries

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RIN: 2060–AK25

3319. NESHAP: AEROSPACE MANUFACTURING AND REWORK FACILITIES RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, September 30, 2003.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA, codified in 40 CFR Part 63, Subpart GG. The current action, required by section 112(f) of the CAA, is to assess residual risks from the same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: SAN No. 4653

Sectors Affected: 33641 Aerospace Product and Parts Manufacturing

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RIN: 2060–AK08

3320. STREAMLINED EVAPORATIVE TEST PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7521(m)

CFR Citation: 40 CFR 86 (Revision)

Legal Deadline: None

Abstract: This action will streamline the test procedure used to establish compliance with evaporative emission requirements for light duty vehicles and trucks. The current test procedure requires both two and three day diurnal emission tests, as well as running-loss testing. The revisions will delete the three day requirement and add flexibilities for running-loss compliance. This will enable manufacturers to save significant resources without any decrease in environmental benefits.

Timetable:

Action	Date	FR Cite
Direct Final Rule	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3910

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RIN: 2060–AH34

3321. REVIEW NATIONAL AMBIENT AIR QUALITY STANDARDS FOR CARBON MONOXIDE

Priority: Other Significant

Legal Authority: Clean Air Act Title I

CFR Citation: 40 CFR 50

Legal Deadline: Final, Statutory, May 31, 2001, Clean Air Act requires reviews every five years.

Abstract: Review of the national ambient air quality standards (NAAQS) for carbon monoxide (CO) every 5 years is mandated by the Clean Air Act. This review assesses the available scientific data about the health and environmental effects of CO and translates the science into terms that can be used in making recommendations about whether or how the standards should be changed. The last review of the CO NAAQS was completed in 1994 with a final decision that revisions were not appropriate at that time.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	
Final Action	05/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 4266

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RIN: 2060–AI43

3322. INTERSTATE OZONE TRANSPORT: RULEMAKING ON SECTION 126 PETITIONS FROM THE DISTRICT OF COLUMBIA, DELAWARE, MARYLAND, AND NEW JERSEY

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7426

CFR Citation: 40 CFR 52; 40 CFR 97

Legal Deadline: Final, Statutory, December 14, 1999, The rulemaking includes action on 4 separate petitions.

Abstract: In April through July 1999, 3 Northeastern States (New Jersey, Maryland, and Delaware) and the District of Columbia submitted individual petitions to EPA in accordance with section 126 of the Clean Air Act (CAA). Each petition specifically requests that EPA make a finding that nitrogen oxides (NOx) emissions from certain stationary sources in other States significantly contribute to ozone nonattainment and maintenance problems with respect to the 1-hour and 8-hour ozone standards in the petitioning State. If EPA makes such a finding of significant contribution, EPA is authorized to establish Federal emissions limits for the sources. The petitions rely on the analyses from EPA's NOx SIP call. The sources targeted by the petitions are large electricity generating units and large non-electricity generating units, as defined in EPA's NOx SIP call. The EPA took rulemaking action on similar petitions from 8 other Northeastern States that were submitted in 1997.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: SAN No. 4383

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RIN: 2060–AI99

3323. RESCINDING FINDING THAT PREEXISTING PM10 STANDARDS ARE NO LONGER APPLICABLE IN NORTHERN ADA COUNTY/BOISE, IDAHO

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 50.6(d); 40 CFR 52.676; 40 CFR 81.313

Legal Deadline: None

Abstract: The EPA had previously taken action to revoke the PM-10 national ambient air quality standards (NAAQS) for the Boise/Ada County area in anticipation that a revised PM-10 NAAQS would soon be in place. However, the DC Circuit court subsequently vacated the revised PM-10 NAAQS, the effectiveness of which served as the underlying basis for EPA's decision to revoke the pre-existing PM-10 NAAQS. Therefore, in order to protect public health in the Boise/Ada County area, EPA is proposing to reinstate the pre-existing PM-10 NAAQS. Without this action there would be no Federal PM-10 NAAQS applicable to this area. This action is tentatively subject to the terms of a settlement agreement that was signed by all parties in January 2001. A Federal Register notice of the proposed settlement requesting public comment was published January 30, 2001 in accordance with section 113(g) of the Act. Written comments on the proposed settlement agreement must be received by EPA (Mike Prosper) by March 1, 2001. Unless EPA or DOJ determines, following the comment period, that consent is inappropriate, the settlement agreement will then be executed by the parties. This action will then be fully subject to the terms of the settlement agreement. No negative comments received. EPA/DOJ signed the settlement agreement, and the State is in the process of carrying out its obligations under the settlement agreement. The next milestone under the agreement is for the State to submit a maintenance plan to EPA for the area in September.

Timetable:

Action	Date	FR Cite
NPRM	06/26/00	65 FR 39321
Notice Extension of Comment Period	07/26/00	65 FR 45953
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Undetermined

Additional Information: SAN No. 4391

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RIN: 2060–AJ05

3324. PROTECTION OF STRATOSPHERIC OZONE: PROCESS FOR EXEMPTING CRITICAL AND EMERGENCY USES OF METHYL BROMIDE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7671c; PL 764

CFR Citation: 40 CFR 82

Legal Deadline: None

Abstract: With this action, EPA will revise the accelerated phaseout regulations that govern the production, import, export, transformation and destruction of substances that deplete the ozone layer. The amendments will incorporate exemptions permitted under the Montreal Protocol on Substances that Deplete the Ozone Layer and recent changes to the Clean Air Act. Specifically, the amendments will create a process to exempt production and consumption of quantities of methyl bromide for critical and emergency uses from the 2005 phaseout of methyl bromide. Because this is an exemption, the rule will confer a benefit on affected entities.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 4535

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RIN: 2060–AJ63

3325. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES AND ENGINES: ALTERNATIVE LOW-SULFUR HIGHWAY DIESEL FUEL TRANSITION PROGRAM FOR ALASKA

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7545; 42 USC 7601(a); 42 USC 7625-1

CFR Citation: 40 CFR 69 and 80 (Revision)

Legal Deadline: None

Abstract: This action will carry out a flexibility provision for Alaska that was included in EPA's heavy-duty diesel rule, which was promulgated on January 18, 2001. That rule established more stringent national emission standards for heavy-duty highway vehicles and engines for the 2007 model year, and a technology-enabling sulfur limit of 15 ppm for highway diesel fuel beginning in 2006. In that rule, EPA recognized Alaska's unique geographical, meteorological, air quality, and economic factors and provided Alaska an opportunity to develop its own plan to transition to low-sulfur highway diesel fuel, as an alternative to the national transition program. Our goal in offering this flexibility is to transition Alaska into the low-sulfur fuel program in a manner that minimizes costs, while ensuring that the new vehicles and engines receive the low-sulfur fuel they need. As stated in the Federal Register notice for the diesel rule, if Alaska submits an alternative plan by April 1, 2002, and if EPA determines that it provides a reasonable alternative, EPA

intends to initiate rulemaking and, within one year from the date of Alaska's submittal, promulgate a final rule to incorporate the alternative plan. A stakeholder process to develop options is already underway in Alaska, and the State informed EPA that it intends to submit an alternative transition plan in late 2001 or early 2002. This action will be in response to that anticipated submittal.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 4570

Sectors Affected: 336112 Light Truck and Utility Vehicle Manufacturing

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RIN: 2060–AJ72

3326. NATIONAL EMISSION STANDARDS FOR COKE OVEN BATTERIES — RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, October 27, 2001, National Emission Standards for Coke Ovens - Residual Risk Standards.

Abstract: The Clean Air Act (CAA) section 112(f), standard to protect health and the environment is the statutory authority for this rulemaking. In accordance with section 112(f)(2), EPA must promulgate residual risk standards 8 years after promulgation of emission standards. We promulgated emission standards for charging, topside leaks, and door leaks at coke ovens on October 27, 1993. This rule will further reduce coke oven emissions from charging, topside leaks, and door leaks at the affected coke plants.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4620

Sectors Affected: 331111 Iron and Steel Mills

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RIN: 2060–AJ96

3327. PROJECT XL SITE-SPECIFIC RULEMAKING FOR GEORGIA-PACIFIC CORPORATION'S FACILITY IN BIG ISLAND, VIRGINIA

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63 (Revision)

Legal Deadline: None

Abstract: Under the Project XL program, the EPA is supporting a project for the Georgia-Pacific Corporation facility located in Big Island, Virginia. The EPA is promulgating this rule, applicable only to the Georgia-Pacific Big Island facility, to help implement the project. Under the XL project, Georgia-Pacific will install and operate the first commercial scale black liquor gasification system in the United States. This system will provide superior air emissions reductions and energy benefits compared to use of conventional recovery technology for black liquor in the pulp and paper industry. However, since this will be the first commercial scale demonstration of this technology, there is some risk that the technology will take longer than planned to work properly or may not ever work properly. If either of these scenarios happens, Georgia-Pacific requires relief from otherwise applicable air emission standards to allow time for the new technology to achieve expected performance or, in the event of failure, to allow time for Georgia-Pacific to build conventional recovery technology that will meet applicable standards. Without this relief, Georgia-Pacific would not undertake commercialization of this promising technology. Therefore, this rule provides relief (in the form of limited duration compliance extensions)from otherwise applicable hazardous air pollutant emission standards, as needed during the conduct of the XL project.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4471

Sectors Affected: 32211 Pulp Mills; 32211 Pulp Mills

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RIN: 2090–AA26

3328. • NONCONFORMANCE PENALTIES FOR 2004 AND LATER MODEL YEAR HEAVY-DUTY DIESEL ENGINES AND VEHICLES

Priority: Other Significant

Legal Authority: 42 USC 7524

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Clean Air Act requires EPA to issue a certificate of conformity for heavy-duty engines or heavy-duty vehicles which exceed an applicable emission standard but do not exceed an upper limit associated with that standard if the manufacturer pays a nonconformance penalty established by a rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	01/16/02	67 FR 2159
Final Action	08/08/02	67 FR 51464

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4730

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RIN: 2060–AK58

3329. NESHAP: PETROLEUM REFINERIES; CATALYTIC CRACKING UNITS, CATALYTIC REFORMING UNITS AND SULFUR RECOVERY UNITS

Priority: Other Significant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	04/11/02	67 FR 17762

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AF28

3330. CONSOLIDATED EMISSIONS REPORTING RULE

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 51.321 to 51.323

Completed:

Reason	Date	FR Cite
Final Action	06/10/02	67 FR 39602

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AH25

3331. NESHAP: WET-FORMED FIBERGLASS MAT PRODUCTION

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	04/11/02	67 FR 17824

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AH89

3332. REVISION OF EPA'S RADIOLOGICAL EMERGENCY RESPONSE PLAN

Priority: Info./Admin./Other

CFR Citation: None

Completed:

Reason	Date	FR Cite
Final Plan - Date reflects Administrator's Signature.	01/10/00	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AI49

3333. NESHAP: PRIMARY COPPER SMELTING

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	06/12/02	67 FR 40477

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AE46

3334. AMENDMENTS TO GENERAL PROVISIONS SUBPARTS A AND B FOR 40 CFR 63

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63.1-15; 40 CFR 63.50-56

Completed:

Reason	Date	FR Cite
Final Action	04/05/02	67 FR 16582

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AF31

3335. NESHAP: RUBBER TIRE MANUFACTURING

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	07/09/02	67 FR 45587

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AG29

3336. NESHAP: LARGE APPLIANCE (SURFACE COATING)

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	07/23/02	67 FR 48254

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AG54

3337. NESHAP: METAL COIL (SURFACE COATING) INDUSTRY

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	06/10/02	67 FR 39794

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AG97

3338. NESHAP: LEATHER FINISHING OPERATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	02/27/02	67 FR 9156

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AH17

3339. REVISION TO NOX SIP CALL EMISSION BUDGETS FOR CONNECTICUT, MASSACHUSETTS AND RHODE ISLAND

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 51

Completed:

Reason	Date	FR Cite
Final Action	12/27/00	65 FR 81743

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 2060–AI80

3340. NESHAP: CELLULOSE PRODUCTION MANUFACTURING

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	06/11/02	67 FR 40044

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AH11

3341. NESHAP: GENERIC MACT FOR CARBON BLACK, ETHYLENE, CYANIDE AND SPANDEX

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	07/12/02	67 FR 46258

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AH68

3342. NESHAP: POLYVINYL CHLORIDE AND COPOLYMERS PRODUCTION

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	07/10/02	67 FR 45885

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

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RIN: 2060–AH82

3343. • NOTICE AND RESPONSE TO COURT REMAND ON NOX SIP CALL AND SECTION 126 PETITIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7410(a)(2)(D); 42 USC 7410(k)(5)

CFR Citation: 40 CFR 51; 40 CFR 52(a)

Legal Deadline: None

Abstract: Ozone and ozone precursors are transported across the northeastern United States. The Ozone Transport Assessment Group (OTAG) was formed in 1995 to document the amount and extent of this transport and to develop control recommendations. The OTAG was a collaborative process conducted by the affected States. Building on the work of OTAG, in October of 1998, EPA promulgated the NOx SIP Call (SAN 3945, 63 FR 57355, 10/27/98), which is intended to reduce the ozone and ozone precursors blowing into nonattainment areas by requiring the upwind States to reduce NOx emissions. EPA also promulgated a backup plan (SAN 4095, Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport, 64 FR 28250, 5/25/99) to assure that emissions are reduced in cases where the States do not fulfill their obligations under the NOx SIP Call. Subsequent court decisions raised questions about some of the data EPA had used to develop both of these rulemakings, and directed EPA to review the data in light of any new information that may have come to light since the rules were promulgated. This notice presents the results of EPA's review and the associated conclusions drawn from it.

Timetable:

Action	Date	FR Cite
NPRM	02/22/02	67 FR 8395
Notice	05/01/02	67 FR 21868

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: SAN No. 4679

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RIN: 2060–AK33

3344. REVISIONS TO THE DEFINITIONS AND THE CONTINUOUS EMISSION MONITORING PROVISIONS OF THE ACID RAIN PROGRAM AND THE NOX BUDGET TRADING PROGRAM

Priority: Other Significant

CFR Citation: 40 CFR 75 (Revision); 40 CFR 97 (Revision)

Completed:

Reason	Date	FR Cite
Final Action	06/12/02	67 FR 40394

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AJ43

3345. TRANSPORTATION CONFORMITY RULE AMENDMENTS: MINOR REVISION AND ADDITION OF GRACE PERIOD FOR NEWLY DESIGNATED NONATTAINMENT AREAS

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 51; 40 CFR 93

Completed:

Reason	Date	FR Cite
Final Action	08/06/02	67 FR 50808

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

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RIN: 2060–AJ70

3346. CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES; SECOND AMENDMENT TO THE TIER 2/GASOLINE SULFUR REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 80; 40 CFR 86

Completed:

Reason	Date	FR Cite
Direct Final Rule	06/12/02	67 FR 40169

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AJ71

3347. PROTECTION OF STRATOSPHERIC OZONE: AVAILABILITY OF ALLOWANCES TO PRODUCE METHYL BROMIDE FOR DEVELOPING COUNTRIES

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 82.1 to 82.13

Completed:

Reason	Date	FR Cite
NPRM	04/29/02	67 FR 21135
Direct Final Rule	04/29/02	67 FR 21130

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AJ74

3348. AMENDMENTS TO NESHAP FOR SOLVENT EXTRACTION FOR VEGETABLE OIL PRODUCTION

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63.2852; 40 CFR 63.2861(d); 40 CFR 63.2870" (Table 1 entry for 63.6(e)

Completed:

Reason	Date	FR Cite
Direct Final Rule	04/05/02	67 FR 16317

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AJ93

EPA—Clean Air Act (CAA) — **Completed Actions**

3349. NESHAP: GENERIC MACT AMENDMENTS

Priority: Other Significant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Direct Final Rule - Amendment for Process Vents	06/07/02	67 FR 34301

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AJ95

3350. NESHAP: PESTICIDE ACTIVE INGREDIENT PRODUCTION — AMENDMENT

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Direct Final Rule	11/21/01	66 FR 58396

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AK00

3351. REVISION TO REGULATIONS IMPLEMENTING THE FEDERAL PERMITS PROGRAM IN AREAS FOR WHICH THE INDIAN COUNTRY STATUS IS IN QUESTION

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 71.4(b); 40 CFR 71.9(p)

Completed:

Reason	Date	FR Cite
Direct Final Rule	06/03/02	67 FR 38328

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

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RIN: 2060–AK06

3352. DIRECT FINAL RULEMAKING FOR MODIFICATIONS TO REFORMULATED GASOLINE (RFG) "COVERED AREA" PROVISIONS

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 80.70 (Revision)

Completed:

Reason	Date	FR Cite
Direct Final Rule	06/04/02	67 FR 38398

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AK07

Environmental Protection Agency (EPA) — **Prerule Stage**

Atomic Energy Act (AEA)

3353. ENVIRONMENTAL RADIATION PROTECTION STANDARDS FOR THE DISPOSAL OF LOW-ACTIVITY MIXED RADIOACTIVE WASTE

Priority: Other Significant

Legal Authority: 42 USC 2021 Atomic Energy Act of 1954; Reorganization Plan No. 3 of 1970; Nuclear Waste Policy Act of 1982

CFR Citation: 40 CFR 193

Legal Deadline: None

Abstract: This voluntary action will allow low-activity mixed radioactive wastes to be disposed in facilities that meet the design requirements for RCRA-C disposal cells. The wastes intended to be disposed of in these cells are mixed wastes, consisting of a chemically hazardous component and low levels of radioactivity. These wastes are anticipated to arise in the commercial sector from various sources. The rule is intended to increase disposal options for these wastes and offer a streamlined regulatory process which melds hazardous chemical protection and radioactivity protection requirements while protecting public health and safety. The rule does not mandate a disposal method, but rather permits an alternative to existing disposal methods. The U.S. Nuclear Regulatory Commission is anticipated to be the implementing Agency for the application of this rule.

Timetable:

Action	Date	FR Cite
ANPRM	12/00/02	
Proposed Action	12/00/03	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 4054

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RIN: 2060–AH63

Environmental Protection Agency (EPA) — **Final Rule Stage**

Atomic Energy Act (AEA)

3354. REVISION OF THE 40 CFR PART 194 WASTE ISOLATION PILOT PLANT COMPLIANCE CRITERIA

Priority: Substantive, Nonsignificant

Legal Authority: 106 Stat. 4777 as amended by the 1996 LWA Amendments; PL 102-579; PL 104-201; Waste Isolation Pilot Plant Land Withdrawal Act of 1992

CFR Citation: 40 CFR 194.8(b)

Legal Deadline: None

Abstract: EPA is proposing several revisions to the compliance criteria in 40 CFR part 194: (1) addition of a process for making minor changes to the provisions of the Compliance Criteria (194.6); (2) changes to the approval process for waste characterization programs at the Department of Energy transuranic (TRU) waste sites (194.8(b)); (3) changes to allow for submission of compliance applications and reference materials in alternative format (e.g., compact disk) (194.12 & 194.13); and (4) replacement of the term "process knowledge" with "acceptable knowledge". The second item is the most significant change. Section 194.8(b) requires EPA to inspect TRU waste sites on a waste stream basis, and to initiate a notice-and-comment process for each inspection. If a site receives our approval to ship a single waste stream or group of waste streams, that site cannot ship a different waste stream until we perform an additional 194.8(b) inspection. Based on actual site inspection experience, we have learned that for regulatory purposes emphasis is better placed on the processes used to characterize the wastes streams rather than on the particular waste streams themselves. Also, we had witnessed DOE's capacity to properly characterize numerous waste streams at different waste generator sites. On this basis, we are proposing to alter the waste characterization approval process so that only one approval would be issued per site. EPA will assign reporting requirements for waste characterization activities and specify any limitations that would necessitate additional inspections. The purpose of the proposed revisions to 194.8(b) is to achieve process and resources efficiencies while maintaining our confidence in DOE's technical capability to characterize wastes destined for the Waste Isolation Pilot Plant.

Timetable:

Action	Date	FR Cite
NPRM	08/09/02	67 FR 51930
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 4403

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RIN: 2060–AJ07

Environmental Protection Agency (EPA) — **Prerule Stage**

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

3355. • ENDOCRINE DISRUPTOR SCREENING PROGRAM; PRIORITY SETTING CRITERIA

Regulatory Plan: This entry is Seq. No. 116 in part II of this issue of the **Federal Register**.

RIN: 2070–AD59

3356. ACCEPTABILITY OF RESEARCH USING HUMAN SUBJECTS

Priority: Other Significant

Legal Authority: 7 USC 136a; 21 USC 346a

CFR Citation: 40 CFR 26 (Revision)

Legal Deadline: None

Abstract: EPA is evaluating how its current policy with respect to the protection of human research subjects should be applied to testing not conducted or supported by the Agency. Current EPA regulations apply to research conducted or supported by the Agency or "otherwise subject to regulation." No action has been taken to give effect to the "otherwise subject to regulation" phrase. In addition, EPA has asked the advice of the National Academy of Sciences on several issues surrounding the acceptability and interpretation of third party studies involving deliberate dosing of human subjects for the purpose of defining or quantifying toxic endpoints. EPA will seek public comment on issues related to Agency use of human research data in its regulatory decisionmaking. EPA believes the process being initiated will serve two important Agency goals: ensuring the availability of sound and appropriate scientific data in its decisions, and protection of the interests, rights and safety of human research subjects. EPA may issue one or more documents, which may include policy statements, rulemaking or requests for public comment.

Timetable:

Action	Date	FR Cite
ANPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 4610

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing

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RIN: 2070–AD57

3357. PESTICIDES; EMERGENCY EXEMPTION PROCESS REVISIONS

Regulatory Plan: This entry is Seq. No. 115 in part II of this issue of the **Federal Register**.

RIN: 2070–AD36

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Environmental Protection Agency (EPA)
Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
Proposed Rule Stage

3358. PESTICIDES; DATA REQUIREMENTS FOR CONVENTIONAL CHEMICALS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136(a) to 136(y)

CFR Citation: 40 CFR 158

Legal Deadline: None

Abstract: EPA will update the data requirements specifically necessary for the Agency to evaluate the registrability of conventional pesticide products. The revisions will clarify all data requirements to reflect current practice. Procedural and explanatory sections of the current regulations will be amended to make them consistent with the revised data requirements and new use indexing. EPA intends to accomplish this revision through a series of proposals, covering different data disciplines and product types. This proposal will covers the data requirements for environmental fate, ecological effects, product chemistry, residue chemistry, and human health and exposure data requirements for conventional pesticides.

Timetable:

Action	Date	FR Cite
NPRM - Product Chemistry and Human Health Portions	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 2687

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing

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RIN: 2070–AC12

3359. PESTICIDES; DATA REQUIREMENTS FOR ANTIMICROBIALS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136a; 7 USC 136c; 7 USC 136w

CFR Citation: 40 CFR 158

Legal Deadline: None

Abstract: EPA will update and revise its pesticide data requirements for antimicrobial products. The data requirements specify the data that are required for EPA to evaluate the registrability of a pesticide product. The revisions will clarify all antimicrobial data requirements to reflect current practice.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 4173

Sectors Affected: 32519 Other Basic Organic Chemical Manufacturing; 32532 Pesticide and Other Agricultural Chemical Manufacturing; 32551 Paint and Coating Manufacturing; 32561 Soap and Cleaning Compound Manufacturing

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RIN: 2070–AD30

3360. PESTICIDES; DATA REQUIREMENTS FOR BIOCHEMICAL AND MICROBIAL PRODUCTS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136

CFR Citation: 40 CFR 158

Legal Deadline: None

Abstract: EPA will update the data requirements necessary to register a biochemical or microbial pesticide product. The revisions will codify data requirements to reflect current regulatory and scientific standards. The data requirements will cover all scientific disciplines for biochemical and microbial pesticides, including product chemistry and residue chemistry, toxicology and environmental fate and effects. The revision will not include plant incorporated protectants.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Federal

Additional Information: SAN No. 4596

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing

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RIN: 2070–AD51

3361. • ENDOCRINE DISRUPTER SCREENING PROGRAM; IMPLEMENTING THE SCREENING AND TESTING PHASE

Regulatory Plan: This entry is Seq. No. 128 in part II of this issue of the Federal Register.

RIN: 2070–AD61

3362. PESTICIDES; PROCEDURES FOR THE REGISTRATION REVIEW PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136a (g); 7 USC 136w

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Agency will establish procedures to implement section 3(g) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) which provides for periodic review of

EPA—Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
Proposed Rule Stage

pesticide registrations. The goal of these regulations is to review a pesticide's registration every 15 years.

Timetable:

Action	Date	FR Cite
ANPRM - Pesticides-Procedural Regulations for Registration Review	04/26/00	65 FR 24586
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 4170

Sectors Affected: 32519 Other Basic Organic Chemical Manufacturing; 32532 Pesticide and Other Agricultural Chemical Manufacturing; 32551 Paint and Coating Manufacturing; 32561 Soap and Cleaning Compound Manufacturing

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RIN: 2070–AD29

3363. PESTICIDES; EXEMPTION OF MEDICAL DEVICES TREATED WITH ANTIMICROBIAL PESTICIDES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136w

CFR Citation: 40 CFR 152.20

Legal Deadline: None

Abstract: This action will exempt from pesticide regulation medical devices treated with antimicrobial pesticides. EPA has determined that these treated medical devices are adequately regulated by the Food and Drug Administration. This action would eliminate dual regulation of these products by EPA and FDA. EPA would continue to regulate the antimicrobial pesticide used to treat the medical device.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4609

Sectors Affected: 32619 Other Plastics Product Manufacturing; 31499 All Other Textile Product Mills

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RIN: 2070–AD54

Environmental Protection Agency (EPA)
Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
Final Rule Stage

3364. PESTICIDES; TOLERANCE PROCESSING FEES

Priority: Other Significant

Legal Authority: 21 USC 346(a)

CFR Citation: 40 CFR 180

Legal Deadline: None

Abstract: In 1996, the Food Quality Protection Act amended the Federal Food, Drug, and Cosmetic Act to require EPA to charge tolerance fees that, in the aggregate, will cover all costs associated with processing tolerance actions, including filing a tolerance petition, and establishing, modifying, leaving in effect, or revoking a tolerance or tolerance exemption. Since 1983 (the last time a cost analysis was conducted), factors such as expanded data requirements, changes in risk assessment methods, improvements in data base management and tracking systems, and the increasing complexity of scientific review of petitions have resulted in costs substantially exceeding the fees currently charged. This rule will adjust the fee structure and fee amounts for tolerance actions.

Timetable:

Action	Date	FR Cite
NPRM Pesticides-Tolerance Processing Fees	06/09/99	64 FR 31039
Supplemental NPRM Processing Fees for Inert Ingredients	07/24/00	65 FR 45569
Supplemental NPRM Reopening of Comment Period	08/31/00	65 FR 52979
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 4027

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing

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RIN: 2070–AD23

3365. PLANT INCORPORATED PROTECTANTS (PIPS); EXEMPTION FOR THOSE BASED ON VIRAL COAT PROTEINS

Priority: Other Significant

Legal Authority: 21 USC 346(a) et seq; 7 USC 136 et seq

CFR Citation: 40 CFR 174

Legal Deadline: None

Abstract: EPA is considering the addition of plant-incorporated protectants based on viral coat proteins to its plant-incorporated protectants exemptions at 40 CFR 174. Substances which plants produce for protection against pests, and the genetic material necessary to produce them, are

pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), if humans intend these substances to "prevent, repel or mitigate any pest". These substances are also "chemical pesticide residues" under the Federal Food, Drug, and Cosmetic Act (FFDCA). EPA has determined that it will no longer issue split registrations for biotechnology products. Therefore, EPA is concurrently considering the exemption of plant-incorporated protectants based on viral coat proteins from the requirement of a tolerance under section 408 of the FFDCA. Due to public interest and new scientific information, additional public comment on this proposal, originally published in 1994, was requested in a recent Supplemental Proposal (66 FR 37855).

Timetable:

Action	Date	FR Cite
NPRM	11/23/94	59 FR 60496
Supplemental NPRM	07/22/96	61 FR 37891
Supplemental NPRM	05/16/97	62 FR 27132
Supplemental NPRM Request for Comment on Alternate Name	04/23/99	64 FR 19958
Supplemental NPRM Seeks Additional Comment based on NAS Report	07/19/01	66 FR 37855
FFDCA Final Action	06/00/03	
FIFRA Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Additional Information: SAN No. 4602

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing; 111 Crop Production; 54171 Research and Development in the Physical Sciences and Engineering Sciences

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RIN: 2070–AD49

3366. PESTICIDE MANAGEMENT AND DISPOSAL; STANDARDS FOR PESTICIDE CONTAINERS AND CONTAINMENT

Priority: Other Significant

Legal Authority: 7 USC 136(q) FIFRA sec 19; 7 USC 136(a) FIFRA sec 3; 7 USC 136(w) FIFRA sec 25

CFR Citation: 40 CFR 156; 40 CFR 165

Legal Deadline: Final, Statutory, December 24, 1991.

Abstract: FIFRA sec. 19 gives EPA authority to regulate the management of pesticides and their containers, including storage, transportation and disposal. As proposed, this rule would establish standards for removal of pesticides from containers and for rinsing containers; facilitate the safe use, refill, reuse, and disposal of pesticide containers by establishing standards for container design, labeling and refilling; and establish requirements for containment of stationary bulk containers and for containment of pesticide dispensing areas.

Timetable:

Action	Date	FR Cite
NPRM (Container Design & Residue Removal & Bulk Containment)	02/11/94	59 FR 6712
Supplemental NPRM Extension of Comment Period	12/21/99	64 FR 71368
Supplemental NPRM Extension of Comment Period	02/24/00	65 FR 9234
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 2659

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing; 11511 Support Activities for Crop Production; 42291 Farm Supplies Wholesalers

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RIN: 2070–AB95

3367. PESTICIDES; WORKER PROTECTION STANDARD (WPS); GLOVE AMENDMENT

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136(w)

CFR Citation: 40 CFR 170

Legal Deadline: None

Abstract: This rule would create greater flexibility in requirements of the 1992 Worker Protection Standard related to the use of gloves by workers and applicators.

Timetable:

Action	Date	FR Cite
NPRM Glove Requirement	09/09/97	62 FR 47544
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 3731

Sectors Affected: 111 Crop Production; 1114 Greenhouse, Nursery and Floriculture Production; 1131 Timber Tract Operations; 115 Support Activities for Agriculture and Forestry

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RIN: 2070–AC93

3368. PESTICIDES; REGISTRATION REQUIREMENTS FOR ANTIMICROBIAL PESTICIDE PRODUCTS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136(a)(h); 7 USC 136(w)

CFR Citation: 40 CFR 152

Legal Deadline: Final, Statutory, September 15, 2000, The final rule is due 240 days after close of comment period.

Abstract: This regulation will specify antimicrobial registration reforms that will reduce to the extent possible the review time for antimicrobial pesticides. The regulation will clarify criteria for completeness of applications, and will specify or refer to a definition of the various classes of antimicrobial pesticide use patterns and the associated data and labeling requirements that would be consistent with the degree and type of risk presented by each class. In addition, the regulation will also include labeling standards for public health antimicrobial products.

Timetable:

Action	Date	FR Cite
NPRM Reg. Require. for Anti Pest. Products/Other Pest Reg Changes	09/17/99	64 FR 50671
Notice Extends Comment Period to January 18, 2000	11/16/99	64 FR 62145
Final Action - Labeling and Other Regulatory Portions	12/14/01	66 FR 64759
Final Action - Antimicrobial Procedural Portion Only	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 3892

Sectors Affected: 32519 Other Basic Organic Chemical Manufacturing; 32532 Pesticide and Other Agricultural Chemical Manufacturing; 32551 Paint and Coating Manufacturing; 32561 Soap and Cleaning Compound Manufacturing

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RIN: 2070–AD14

Environmental Protection Agency (EPA)

Long-Term Actions

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

3369. PESTICIDE TOLERANCE REASSESSMENT PROGRAM

Priority: Routine and Frequent

Legal Authority: 21 USC 346(a) to 346(q)

CFR Citation: 40 CFR 180

Legal Deadline: Other, Statutory, August 3, 2006, See additional information.

Abstract: EPA will reassess pesticide tolerances and exemptions for raw and processed foods established prior to August 3, 1996, to determine whether they meet the reasonable certainty of no harm standard of the Federal Food, Drug and Cosmetic Act (FFDCA). FFDCA sec. 408(q), as amended by the Food Quality Protection Act (FQPA). FQPA requires that EPA conduct this reassessment on a phased 10-year schedule. Based on its reassessment, EPA will take a series of regulatory actions to modify or revoke tolerances. Since such actions are issued on a chemical-by-chemical basis, this regulatory plan entry does not list the individual actions that are likely to occur under this program. For status information about the individual chemicals, go to http://www.epa.gov/pesticides.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 4175

LEGAL DEADLINE CONT: EPA is required to complete reassessments on a phased schedule of: 33 percent by August 3, 1999; 66 percent by August 3, 2002; and 100 percent by August 3, 2006. The Agency will continue to assess pesticide tolerances throughout each year. EPA has satisfied the 1999 and 2002 deadlines.

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing

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RIN: 2070–AD24

3370. PLANT-INCORPORATED PROTECTANTS (FORMERLY PLANT PESTICIDES) RULEMAKINGS

Priority: Other Significant

Legal Authority: 21 USC 346(a) et seq; 7 USC 136 et seq

CFR Citation: 40 CFR 152.20; 40 CFR 174

Legal Deadline: None

Abstract: Substances that plants produce to protect themselves against pests are pesticides under FIFRA if humans intend to use them to destroy, prevent, repel or mitigate any pest. The Agency designates these substances, along with the genetic material necessary to produce them, plant-pesticides. This rulemaking will change the name of these pesticides to plant-incorporated protectants and will clarify the relationship between plants and plant-incorporated protectants and

exempt conventional breeding and establishes a new part in title 40 of the CFR, part 174, which consolidates regulations specific for plant-pesticides in one part of the CFR. The proposed consolidation is expected to benefit the public by providing greater focus, enhanced clarity and ease of use. These actions may reduce burden on both the regulated community and EPA.

Timetable:

Action	Date	FR Cite
NPRM	11/23/94	59 FR 60496
Supplemental NPRM	07/22/96	61 FR 37891
Supplemental NPRM	05/16/97	62 FR 27132
Supplemental NPRM Request for Comment on Alternate Name	04/23/99	64 FR 19958
Final Action Plant-Incorporated Protectants (PIPs) Under FIFRA	07/19/01	66 FR 37771
Supplemental NPRM Seeks Additional Comment on Other Exemptions	07/19/01	66 FR 37855
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Federal

Additional Information: SAN No. 2684

The Agency has created a new Agenda entry for the action that is still pending.

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing; 111 Crop Production; 54171 Research and Development in the Physical Sciences and Engineering Sciences

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RIN: 2070–AC02

3371. PESTICIDE MANAGEMENT AND DISPOSAL

Priority: Other Significant

Legal Authority: 7 USC 136 et seq

CFR Citation: 40 CFR 165

Legal Deadline: None

Abstract: This action develops procedures for mandatory and voluntary recall actions under section 19(b) of FIFRA and would establish criteria for acceptable storage and disposal plans which registrants may submit to this Agency to become eligible for reimbursement of storage costs. This action establishes procedures for indemnification of owners of suspended and canceled pesticides for disposal.

Timetable:

Action	Date	FR Cite
NPRM	05/05/93	58 FR 26856
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN No. 3432

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RIN: 2020–AA33

3372. PLANT-INCORPORATED PROTECTANTS (PIPS); EXEMPTION FOR THOSE DERIVED THROUGH GENETIC ENGINEERING FROM SEXUALLY COMPATIBLE PLANTS

Priority: Other Significant

Legal Authority: 7 USC 136 et seq; 21 USC 346a et seq

CFR Citation: 40 CFR 174

Legal Deadline: None

Abstract: EPA is considering the addition of plant-incorporated protectants derived through genetic engineering from sexually compatible plants to its plant-incorporated protectants exemptions at 40 CFR 174. Substances which plants produce for protection against pests, and the genetic material necessary to produce them, are pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), if humans intend these substances to "prevent, repel or mitigate any pest". These substances are also "chemical pesticide residues" under the Federal Food, Drug, and Cosmetic Act (FFDCA). EPA has determined that it will no longer issue split registrations for biotechnology products. Therefore, EPA is concurrently considering the exemption of plant-incorporated protectants derived through genetic engineering from sexually compatible plants from the requirement of a tolerance under section 408 of the FFDCA. Due to public interest and new scientific information, additional public comment on this proposal, originally published in 1994, was requested in a recent supplemental proposal (66 FR 37855).

Timetable:

Action	Date	FR Cite
NPRM	11/23/94	59 FR 60496
Supplemental NPRM	07/22/96	61 FR 37891
Supplemental NPRM	05/16/97	62 FR 27132
Supplemental NPRM Request for Comment on Alternate Name	04/23/99	64 FR 19958
Supplemental NPRM Extension of Comment Period	08/20/01	66 FR 43552
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Additional Information: SAN No. 4611

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing; 111 Crop Production; 54171 Research and Development in the Physical Sciences and Engineering Sciences

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RIN: 2070–AD55

3373. PLANT INCORPORATED PROTECTANTS (PIPS); EXEMPTION FOR PIPS THAT ACT BY PRIMARILY AFFECTING THE PLANT

Priority: Other Significant

Legal Authority: 7 USC 136 et seq; 21 USC 346a et seq

CFR Citation: 40 CFR 174

Legal Deadline: None

Abstract: EPA is considering the addition of plant-incorporated protectants that act by primarily affecting the plant to its plant-incorporated protectants exemptions at 40 CFR 174. Substances which plants produce for protection against pests, and the genetic material necessary to produce them, are pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), if humans intend these substances to "prevent, repel or mitigate any pest". These substances are also "chemical pesticide residues" under the Federal Food, Drug, and Cosmetic Act (FFDCA). EPA has determined that it will no longer issue split registrations for biotechnology products. Therefore, EPA is concurrently considering the exemption of plant-incorporated protectants that act by primarily affecting the plant from the requirement of a tolerance under section 408 of the FFDCA. Due to public interest and new scientific information, additional public comment on this proposal, originally published in 1994, was requested in a recent Supplemental Proposal (66 FR 37855).

Timetable:

Action	Date	FR Cite
NPRM FIFRA Exemption	11/23/94	59 FR 60496
Supplemental NPRM	07/22/96	61 FR 37891
Supplemental NPRM	05/16/97	62 FR 27132
Supplemental NPRM	04/23/99	64 FR 19958
Supplemental NPRM	07/19/01	66 FR 37855
FFDCA NPRM FFDCA Tolerance Exemption	To Be	Determined
FFDCA Final Action FFDCA Tolerance Exemption	To Be	Determined
FIFRA Final Action FIFRA Exemption	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Additional Information: SAN No. 4612

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing; 111 Crop Production; 54171 Research and Development in the Physical Sciences and Engineering Sciences

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RIN: 2070–AD56

3374. GROUNDWATER AND PESTICIDE MANAGEMENT PLAN RULE

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 7 USC 136(a) FIFRA sec 3; 7 USC 136(w)

CFR Citation: 40 CFR 152.170

Legal Deadline: None

Abstract: This regulation as proposed would establish pesticide management plans (PMPs) as a new regulatory requirement for certain pesticides. Unless a State or tribal authority had an EPA-approved plan specifying risk-reduction measures, use of the chemical would be prohibited. The rule would also specify procedures and deadlines for development, approval and modification of plans by States and tribal authorities. Several parameters of the program described in the proposed rule are being reconsidered to determine whether the program can address water quality issues rather than groundwater only, and to determine the best partnership approach to implementation.

Timetable:

Action	Date	FR Cite
NPRM	06/26/96	61 FR 33259
Notice of Availability Regarding Metolachlor	02/23/00	65 FR 8925
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Tribal

Federalism: Undetermined

Additional Information: SAN No. 3222

Sectors Affected: 9241 Administration of Environmental Quality Programs

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RIN: 2070–AC46

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Environmental Protection Agency (EPA)
Toxic Substances Control Act (TSCA)

Prerule Stage

3375. TESTING AGREEMENT FOR CERTAIN OXYGENATED FUEL ADDITIVES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2603; 15 USC 2611; 15 USC 2625

CFR Citation: 40 CFR 790 to 799

Legal Deadline: None

Abstract: EPA's Office of Air and Radiation (OAR), in the administration of section 211 of the Clean Air Act (CAA), has requested that OPPT use its TSCA section 4 testing authority to obtain health effects data on a number of Oxygenated Fuel Additives (OFA's). These data are needed by EPA and others to increase understanding of the toxicity of these substances individually and in comparison to each other as well as to other OFA's such as methyl t-butyl ether (MTBE). EPA will be soliciting interested parties to work on an Enforceable Consent Agreement (ECA) under TSCA section 4, through which responsible parties can agree to provide data to EPA. Although not currently a rulemaking, EPA is including this in the Regulatory Agenda to inform the public of this activity which will have a regulatory impact once an ECA is finalized.

Timetable:

Action	Date	FR Cite
Notice To Solicit Interested Parties	06/00/03	
Notice - ECA	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4174

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AD28

3376. • SUSTAINABLE FUTURES; VOLUNTARY PILOT PROJECT UNDER THE TSCA NEW CHEMICAL PROGRAM

Regulatory Plan: This entry is Seq. No. 117 in part II of this issue of the Federal Register.

RIN: 2070–AD60

Environmental Protection Agency (EPA)
Toxic Substances Control Act (TSCA)

Proposed Rule Stage

3377. LEAD-BASED PAINT ACTIVITIES; TRAINING AND CERTIFICATION FOR RENOVATION AND REMODELING

Priority: Other Significant. Major under 5 USC 801.

Unfunded Mandates: Undetermined

Legal Authority: 15 USC 2603 TSCA title IV; PL 102-550 sec 402(c)(3)

CFR Citation: 40 CFR 745

Legal Deadline: Final, Statutory, October 28, 1996.

Abstract: Under section 402(c)(2) of the Toxic Substances Control Act (TSCA) title IV, EPA conducted a study of the extent to which persons engaged in renovation and remodeling activities in target housing are exposed to lead in the conduct of such activities or disturb lead and create a lead-based paint hazard. EPA must use the results of this study and consult with interested parties to determine which categories of renovation and remodeling activities require training and certification. EPA must then revise the training and certification regulations originally developed for individuals performing lead-based paint abatement under section 402(c)(a) of TSCA Title IV to apply them to the renovation and remodeling categories. If EPA determines that any category does not require certification, EPA must publish an explanation of the basis for that determination.

Timetable:

Action	Date	FR Cite
NPRM	10/00/03	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Federalism: Undetermined

Additional Information: SAN No. 3557

Sectors Affected: 23321 Single Family Housing Construction; 23322 Multifamily Housing Construction; 23521 Painting and Wall Covering Contractors; 23551 Carpentry Contractors; 23599 All Other Special Trade Contractors; 53111 Lessors of Residential Buildings and Dwellings; 531311 Residential Property Managers; 54138 Testing Laboratories

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RIN: 2070–AC83

3378. POLYCHLORINATED BIPHENYLS (PCBS); EXEMPTIONS FROM THE PROHIBITIONS AGAINST MANUFACTURING, PROCESSING, AND DISTRIBUTION IN COMMERCE

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2605 TSCA sec 6(e)(3)(B)

CFR Citation: 40 CFR 761

Legal Deadline: None

EPA—Toxic Substances Control Act (TSCA)

Proposed Rule Stage

Abstract: Section 6(e)(3)(B) of the Toxic Substances Control Act (TSCA) provides that the Administrator may grant, by rule, exemptions from the prohibitions against manufacturing, processing and distribution in commerce of PCBs upon finding that: (1) no unreasonable risk to health or the environment will occur; and (2) good faith efforts have been made by the petitioner to develop a substitute for PCB which does not pose an unreasonable risk of injury to health or the environment. In addition, the interim procedural rules were amended to require certain petitioners to reapply for EPA approval to continue PCB activities previously approved by EPA.

Timetable:

Action	Date	FR Cite
NPRM (1) Group I	12/06/94	59 FR 62875
NPRM (2) Group II, Response to DoD Petitions	11/00/02	
Final Action (1) Group I	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal

Additional Information: SAN No. 2150

Sectors Affected: 211 Oil and Gas Extraction; 2211 Electric Power Generation, Transmission and Distribution; 31-33 Manufacturing; 5133 Telecommunications; 6113 Colleges, Universities and Professional Schools; 622 Hospitals; 921 Executive, Legislative, Public Finance and General Government

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RIN: 2070–AB20

3379. AMENDMENT TO THE PREMANUFACTURE NOTIFICATION EXEMPTIONS; REVISIONS OF EXEMPTIONS FOR POLYMERS (40 CFR PART 723)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2604

CFR Citation: 40 CFR 723

Legal Deadline: None

Abstract: This regulatory action will eliminate exemptions under the Polymer Exemption Rule for certain chemicals containing or related to perfluorooctyl sulfonate (PFOS) and perfluorooctonoic acid (PFOA). Based on data on PFOS and PFOA, EPA believes that these substances and other structurally related substances may persist in the environment, bioaccumulate, and be toxic. Certain polymers which contain PFOS, PFOA, or structurally similar substances, or which could release such substances as a degradation on incineration product would no longer qualify for exemption from TSCA section 5 reporting.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4635

Sectors Affected: 325 Chemical Manufacturing; 326 Plastics and Rubber Products Manufacturing; 327 Nonmetallic Mineral Product Manufacturing

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RIN: 2070–AD58

3380. TEST RULE; CERTAIN CHEMICALS ON THE ATSDR PRIORITY LIST OF HAZARDOUS SUBSTANCES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2603 TSCA 4; 42 USC 9604(i) CERCLA 104(i); 42 USC 9601 CERCLA; 15 USC 2611 TSCA 12; 42 USC 7401 112(b)(4) CAA; 42 USC 7412 (b)(4)&(b)(1) CAA; 42 USC 7403 (d) CAA

CFR Citation: 40 CFR 790

Legal Deadline: None

Abstract: EPA is proposing a test rule under section 4(a) of the Toxic Substances Control Act (TSCA) requiring manufacturers and processors of eight chemicals to fulfill data needs identified by the Agency for Toxic Substances and Disease Registry (ATSDR), the National Toxicology Program (NTP), and EPA pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 104(i). Under CERCLA, ATSDR is to establish a list of priority hazardous substances found at superfund sites, develop toxicological profiles for the hazardous substances, identify priority data needs, and establish a research program obtaining the necessary data. This action is a component of ATSDR's research program. Data from this action would provide specific information about the substances for the public and scientific community. The information would be used in conducting comprehensive public health assessments of populations living near hazardous waste sites. Scientific data improves the quality of risk assessments used by EPA, other Federal agencies, and State and local governments. The risk assessments affect standards, guidelines, listing/delisting, and other decisions affecting public health and the environment. In addition, this action would require manufacturers and processors to develop data for these chemicals that will be used by EPA under the Clean Air Act (CAA) to evaluate residual risks from hazardous air pollutants (HAPs) on the list of HAPs in the CAA under section 112(f), 42 USC 7412(f) and sections 112(d and e). Data from this action would also be used to support implementation of several provisions of section 112 of the CAA including, determining risks remaining after the application of technology based standards under

section 112(d) of the CAA, estimating the risks associated with accidental releases, and determining whether or not substances should be removed (delisted) from section (b)(1) of the CAA list of HAPS.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 2563

Sectors Affected: 325 Chemical Manufacturing; 32411 Petroleum Refineries

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RIN: 2070–AB79

3381. TEST RULE; DEVELOPMENTAL AND REPRODUCTIVE TOXICITY

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2603; 15 USC 2607(a); 15 USC 2611; 15 USC 2625

CFR Citation: 40 CFR 799; 40 CFR 704

Legal Deadline: None

Abstract: EPA is proposing a test rule under section 4 of the Toxic Substances Control Act (TSCA) that would require manufacturers, defined by statute to include importers, and processors of seven (7) substances to conduct testing for developmental and/or reproductive toxicity. EPA is also proposing reporting rules for two of the seven substances. These rules would require the reporting of production volumes so it will be possible to determine when the testing program can be triggered for the two substances without causing a significant impact on revenues. This is a reproposal of a test rule announced March 4, 1991 (56 FR 9092).

Timetable:

Action	Date	FR Cite
NPRM	03/04/91	56 FR 9092
NPRM Reproposal	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 4395

Sectors Affected: 325 Chemical Manufacturing; 32411 Petroleum Refineries

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RIN: 2070–AD44

3382. FOLLOW-UP RULES ON EXISTING CHEMICALS

Priority: Routine and Frequent

Legal Authority: 15 USC 2604 TSCA 5; 15 USC 2607 TSCA 8

CFR Citation: 40 CFR 704; 40 CFR 707; 40 CFR 710; 40 CFR 721

Legal Deadline: None

Abstract: EPA has established a program to monitor the commercial development of existing chemicals of concern and/or to gather information to support planned or ongoing risk assessments on such chemicals. As these chemicals are identified, EPA will initiate rulemakings under the Toxic Substances Control Act (TSCA) sections 5 and/or 8 to require reporting of appropriate needed information by the manufacturers, importers and/or processors of these chemicals. Individual proposed or final rules will be published on at least the chemicals listed below.

Timetable:

Action	Date	FR Cite
NPRM 2,4-Pentanedione SNUR	09/27/89	54 FR 39548
NPRM Chloranil	05/12/93	58 FR 27980
NPRM Benzidine-based Chemical Substances	08/30/95	60 FR 45119
Final Action Benzidine-based Chemical Substances	10/07/96	61 FR 52287
NPRM Heavy Metal-Based Pigments in Aerosol Spray Paints SNUR	01/15/02	67 FR 1937
NPRM Methylcyclopentane SNUR	12/00/02	
NPRM 2-Ethoxyethanol & 2-Methoxyethanol & 2-Methoxyethanol Acetate	12/00/02	
NPRM 2 ,4-Pentanedione SNUR (Reproposal)	05/00/03	
NPRM p-Aminophenol & Bromochloro-methane 8(a) Chemical Specific Rule	06/00/03	
NPRM Certain Chemical Substances No Longer in Production SNUR	06/00/03	
Final Action Heavy Metal-Based Pigments in Aerosol Spray Paints SNUR	06/00/03	
NPRM o-Tolidine & o-Dianisidine-based Dyes (Benzidine Congener Dyes)	09/00/03	
NPRM Proposed Amendment to Benzidine-based Chemical Substances SNUR	12/00/03	
Final Action Amendment to Benzidine-based Chemical Substances SNUR	06/00/04	
Final Action Final Chloranil SNUR	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal

Additional Information: SAN No. 1923

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AA58

3383. SIGNIFICANT NEW USE RULE; SELECTED FLAME RETARDANT CHEMICAL SUBSTANCES FOR USE IN RESIDENTIAL UPHOLSTERED FURNITURE

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2604 TSCA 5

CFR Citation: 40 CFR 704; 40 CFR 721; 40 CFR 707; 40 CFR 710

Legal Deadline: None

Abstract: EPA is proposing a significant new use rule (SNUR) under section 5 of the Toxic Substances Control Act (TSCA) covering certain flame retardant chemicals for use in residential upholstered furniture. The SNUR would require companies wanting to import or manufacture these chemicals for the significant new uses described in the proposed rule to submit a significant new use notice (SNUN) to the Agency at least 90 days prior to beginning those activities.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State

Additional Information: SAN No. 4512

Sectors Affected: 325 Chemical Manufacturing; 313 Textile Mills; 337121 Upholstered Household Furniture Manufacturing

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RIN: 2070–AD48

3384. TSCA POLICY STATEMENT ON OVERSIGHT OF TRANSGENIC ORGANISMS (INCLUDING PLANTS)

Priority: Other Significant

Legal Authority: 15 USC 2604

CFR Citation: 40 CFR 720

Legal Deadline: None

Abstract: As a follow-up to the final Biotechnology Rule under the Toxic Substances Control Act (TSCA) EPA intends to address TSCA oversight of transgenic plants and other organisms. Recent information indicates that transgenic plants and other organisms are being developed for uses which appear to be subject to TSCA jurisdiction. For example, plants are being genetically modified to produce industrial grade, rather than food grade, oils. Many of these plant are subject to oversight by the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture while being tested in the environment. Following APHIS approval of a petition for non-regulated status filed pursuant to APHIS' regulations implementing the Federal Plant Pest Act at 7 CFR Part 340, however, these plants cease to be subject to regulation by USDA. Additionally, transgenic animals that are not under the jurisdiction of FDA appear to be subject to TSCA. Such animals may be genetically improved livestock for commercial purposes. The policy statement would address whether EPA should exercise jurisdiction under TSCA over such transgenic organisms prior to their commercial use.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Federal

Additional Information: SAN No. 4598

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RIN: 2070–AD53

Environmental Protection Agency (EPA)
Toxic Substances Control Act (TSCA)

Final Rule Stage

3385. LEAD; MANAGEMENT AND DISPOSAL OF LEAD-BASED PAINT DEBRIS

Priority: Other Significant

Legal Authority: 15 USC 2601 to 2671; 42 USC 6901 to 6992

CFR Citation: 40 CFR 745

Legal Deadline: None

Abstract: Currently, waste derived from lead-based paint (LBP) abatements is managed under the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations. Other Federal agencies (Department of Housing and Urban Development, Department of Health and Human Services) and several States and advocacy groups have expressed concern that the costs associated with the disposal of large volume architectural components (e.g., doors and windows) may interfere with

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abatement activities. EPA's Office of Prevention, Pesticides and Toxic Substances and the Office of Solid Waste have initiated a joint rulemaking to address the disposal of these architectural components. This rulemaking would develop disposal standards for these components under the Toxic Substances Control Act (TSCA) title IV, (the definition of abatement under TSCA title IV, section 401(1)(B), includes disposal). The TSCA regulations would establish appropriate disposal standards for LBP architectural components and identify recycling and incineration activities that would be controlled or prohibited. To minimize duplication of waste management requirements, EPA is developing a companion RCRA rule to suspend temporarily hazardous waste management regulations applicable to lead-based paint debris which will be subject to the new TSCA standards.

Timetable:

Action	Date	FR Cite
NPRM - TSCA Proposal	12/18/98	63 FR 70189
NPRM Comment Period Extended	02/12/99	64 FR 7159
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 3508

Sectors Affected: 23332 Commercial and Institutional Building Construction; 23521 Painting and Wall Covering Contractors; 23542 Drywall, Plastering, Acoustical and Insulation Contractors; 23511 Plumbing, Heating and Air-Conditioning Contractors; 23594 Wrecking and Demolition Contractors; 23592 Glass and Glazing Contractors; 54138 Testing Laboratories; 562111 Solid Waste Collection; 23321 Single Family Housing Construction; 233 Building, Developing and General Contracting

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RIN: 2070–AC72

3386. LEAD; NOTIFICATION REQUIREMENTS FOR LEAD-BASED PAINT ABATEMENT ACTIVITIES AND TRAINING

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2682 TSCA 402; 15 USC 2687 TSCA 407; PL 102-550

CFR Citation: 40 CFR 745

Legal Deadline: None

Abstract: EPA is issuing this rule under the authority of Section 407 of the Toxic Substances Control Act (TSCA) to establish notification procedures for lead abatement professionals (certified under 40 CFR 745.226) conducting lead-based paint activities, and training programs (accredited under 40 CFR 225) providing lead-based paint activities courses. Specifically, this rule seeks to establish procedures to notify the Agency prior to commencement of lead-based paint abatement activities as required by 40 CFR 745.227(e)(4). In addition, this rule seeks to establish provisions which would require training programs accredited under 40 CFR 745.225 to notify the Agency under the following conditions: 1) prior to providing lead-based paint activities, training , and 2) following completion of lead-based paint activities courses. These notification requirements are necessary to provide EPA compliance monitoring and enforcement personnel with information necessary to track compliance activity and to prioritize inspections. This rule supports 40 CFR part 745, subpart L to ensure that lead abatement professionals who inspect, assess and remove lead-based paint, dust or soil are well qualified, trained, and certified to conduct these activities.

Timetable:

Action	Date	FR Cite
NPRM	01/22/01	66 FR 7207
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4172

Sectors Affected: 611519 Other Technical and Trade Schools

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RIN: 2070–AD31

3387. SIGNIFICANT NEW USE RULES; FOLLOW-UP RULES ON NON-5(E) NEW CHEMICAL SUBSTANCES

Priority: Routine and Frequent

Legal Authority: 15 USC 2604 TSCA sec 5

CFR Citation: 40 CFR 704; 40 CFR 721

Legal Deadline: None

Abstract: EPA regulates the commercial development of new chemicals that have completed premanufacture notice (PMN) review. In a PMN review, the Agency assesses whether or not a chemical's manufacture, import, process, distribution, use, or disposal outside the activities described in the PMN may present an unreasonable risk. EPA will issue Significant New Use Rules (SNURs) requiring 90-day notification to EPA from any manufacturer, importer, or processor who would engage in activities that are designated as significant new uses. Under the Expedited Follow-up Rule (EFUR) which became effective on October 12, 1989, EPA will identify such new chemicals and publish them in a batch SNUR 3-4 times per year. Chemicals that were subject to a proposed SNUR before the effective date of the EFUR or do not qualify under the EFUR, may be regulated individually by notice and comment rulemaking and are listed below.

Timetable:

Action	Date	FR Cite
NPRM Alkyl & Sulfonic Acid & Ammonium Salt (84-1056)	06/11/86	51 FR 21199
NPRM 1-Decanimine-N-Decyl-N-Methyl-N-Oxide (86-566)	12/08/87	52 FR 46496
NPRM Aluminum Cross-linked Sodium Carboxy-methylcellulose	06/11/93	58 FR 32628
Final Action Alkyl & Sulfonic Acid & Ammonium Salt (84-1056)	06/00/03	
Final Action 1-Decanimine-N-Decyl-N-Methyl-N-Oxide (86-566)	06/00/03	
Final Action Aluminum Cross-linked Sodium Carboxy-methylcellulose	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 1976

Sectors Affected: 324 Petroleum and Coal Products Manufacturing; 325 Chemical Manufacturing

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RIN: 2070–AA59

3388. SIGNIFICANT NEW USE RULE (SNUR); CHEMICAL-SPECIFIC SNURS TO EXTEND PROVISIONS OF SECTION 5(E) ORDERS

Priority: Routine and Frequent

Legal Authority: 15 USC 2604 TSCA sec 5

CFR Citation: 40 CFR 721

Legal Deadline: None

Abstract: When the Agency determines that uncontrolled manufacture, import, processing, distribution, use or disposal of a premanufacture notification (PMN) substance may present an unreasonable risk, it may issue a section 5(e) consent order to limit these activities. However, such orders apply only to the PMN submitter. Once the new substance is entered on the Toxic Substances Control Act (TSCA) chemical inventory, others can manufacture, import or process the substance without controls. Therefore, EPA extends the controls to apply to others by designating manufacture, import or processing of the substances for uses without the specified controls as significant new uses. Under the Expedited Follow-Up Rule, which became effective on October 10, 1989 (54 FR 31314), EPA routinely publishes batch SNURs containing routine section 5(e) and non-5(e) SNURs. However, certain activities, such as modifications, withdrawals, revocations, and SNURs upon which comments are received in the direct final publication process, are subject to notice and comment rulemaking and are listed below.

Timetable:

Action	Date	FR Cite
NPRM Batch SNUR: 84-660/-704 & 84-105/-106/-107 & 85-433	05/27/93	58 FR 30744
NPRM Aromatic Amino Ether (P90-1840)	06/06/94	59 FR 29255
NPRM Alkenyl Ether of Alkanetriol Polymer (93-458)	12/19/94	59 FR 65289
NPRM Certain Chemical Substances (91-1299/95-1667 91-1298 91-1297	06/26/97	62 FR 34421
NPRM Certain Chemical Substances	09/09/98	63 FR 48157
Final Action Batch SNUR: 84-660/-704 & 84-105/-106/-107 & 85-433	05/11/02	67 FR 17643
Final Action Certain Chemical Substances (91-1299/95-1667 91-1298 91-1297	03/00/03	
Final Action Aromatic Amino Ether (P90-1840)	03/00/03	
Final Action Alkenyl Ether of Alkanetriol Polymer (93-458)	03/00/03	
Final Action Certain Chemical Substances	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3495

Sectors Affected: 324 Petroleum and Coal Products Manufacturing; 325 Chemical Manufacturing

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RIN: 2070–AB27

3389. TEST RULE; GENERIC ENTRY FOR ITC RELATED TESTING DECISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2603 TSCA 4; 15 USC 2611 TSCA 12

CFR Citation: 40 CFR 790 to 799

Legal Deadline: None

Abstract: EPA is requiring testing via rules, or will obtain testing through enforceable consent agreements (ECAs) or publish a notice which provides the reasons for not doing so for chemicals listed herein. These chemicals have been designated for priority testing consideration by the ITC or recommended for testing consideration (for which the 12-month statutory requirement does not apply). The list also includes chemicals or categories of chemicals which have been identified for testing consideration by other Federal or other EPA offices through EPA review processes.

Timetable:

Action	Date	FR Cite
ANPRM Aryl Phosphates (ITC List 2)	12/29/83	48 FR 57452
NPRM Brominated Flame Retardants	06/25/91	56 FR 29140
NPRM Aryl Phosphates (ITC List 2)	01/17/92	57 FR 2138

Action	Date	FR Cite
Final Action-ECA DiBasic Esters (CPSC)	08/05/99	64 FR 42692
Final Action-ECA 1,1,2-Trichloroethane (TCE)	06/15/00	65 FR 37550
Final Action-ECA Ethylene Dichloride (EDC)	12/00/02	
Final Action ITC Chemicals (ITC List 28)	12/00/02	
Final Action-ECA Maleic Anhydride	06/00/03	
Final Action-ECA Hydrogen Fluoride	06/00/03	
Final Action-ECA Phthalic Anhydride	06/00/03	
Final Action-ECA Aryl Phosphates (ITC List 2)	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 3493

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AB94

3390. TEST RULE; HAZARDOUS AIR POLLUTANTS (HAPS)

Priority: Other Significant

Legal Authority: 15 USC 2603 TSCA 4; 42 USC 7412 CAA 112; 42 USC 7403 CAA 103; 15 USC 2611 TSCA 12

CFR Citation: 40 CFR 790 to 799

Legal Deadline: None

Abstract: EPA is proposing health effects testing under TSCA section 4 in support of programs and activities required under section 112 of the Clean Air Act (CAA), governing Hazardous Air Pollutants (HAPs). Section 112 of the CAA directs EPA to determine the risk to health and the environment remaining after application of technology-based emissions standards to major and area sources. Section 112 also sets forth a mechanism for revising and modifying the statutory list of 189 HAPs under section 112(b), and requirements for an accidental release control program. These data will also be important for the right-to-know program given the large release of these chemicals to the atmosphere. In order to implement these and other programs and requirements under section 112, EPA must identify the health and environment effects of potential concern from exposure to HAPs, ascertain the minimum data needed to adequately characterize those health and environmental effects, and assess the risks posed by HAPs. In addition, under section 103(d), EPA is required to conduct a research program on the short- and long-term effects of air pollutants on human health, ascertain the minimum data needed to adequately characterize those health and environmental effects, and assess the risks posed by HAPs.

Timetable:

Action	Date	FR Cite
NPRM	06/26/96	61 FR 33178
Supplemental NPRM	12/24/97	62 FR 67466
Supplemental NPRM	04/21/98	63 FR 19694
Final Action	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 3487

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AC76

3391. TEST RULE; CERTAIN HIGH PRODUCTION VOLUME (HPV) CHEMICALS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2603; 15 USC 2611 to 2612; 15 USC 2625 to 2626

CFR Citation: 40 CFR 790 to 799

Legal Deadline: None

Abstract: This rule will require testing and recordkeeping requirements for certain high production volume (HPV) chemicals (i.e., chemicals which are manufactured (including imported) in the aggregate at more than 1 million pounds on an annual basis. Although varied based on specific data needs for the particular chemical, the data generally collected under this rule may include: acute toxicity, repeat dose toxicity, developmental and reproductive toxicity; mutagenicity ecotoxicity and environmental fate. The first rule proposed testing for 37 HPV chemicals with substantial worker exposure. The action is part of the Chemical Right-to-Know Initiative, which is described in The Regulatory Plan.

Timetable:

Action	Date	FR Cite
NPRM	12/26/00	65 FR 81658
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 3990

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AD16

3392. TEST RULE; IN VITRO DERMAL ABSORPTION RATE TESTING OF CERTAIN CHEMICALS OF INTEREST TO THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2603 TSCA 4; 15 USC 2611 TSCA 12

CFR Citation: 40 CFR 700 to 799

Legal Deadline: None

Abstract: EPA is requiring manufacturers (which is defined by statute to include importers) and processors of 38 chemical substances of interest to the Occupational Safety and Health Administration (OSHA) to conduct testing for in vitro dermal absorption rate testing. These chemicals, and others, were designated for in vitro dermal absorption rate testing in the 31st, 32nd, and 35th Reports of the TSCA section 4(e) Interagency Testing Committee (ITC) to the EPA. Each of the chemical substances included in this proposed rule is produced in an amount equal to or greater than one million pounds per year. In addition, each of the chemicals in this proposed rule was identified in the National Occupational Exposure Survey (NOES) has having a total potential worker exposure of greater than 1,000 workers. OSHA has indicated that it needs quantitative measures of dermal absorption rate in order to evaluate the potential hazard of these chemicals to workers.

Timetable:

Action	Date	FR Cite
NPRM - OSHA Chemicals Dermal Testing (ITC List 31, 32 & 35)	06/09/99	64 FR 31074
Final Action - OSHA Chemical Dermal Testing	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 4425

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AD42

3393. ACRYLAMIDE AND N-METHYLOLACRYLAMIDE GROUTS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2605 TSCA sec 6; 15 USC 2607 TSCA sec 8

CFR Citation: 40 CFR 764

Legal Deadline: None

Abstract: On October 2, 1991, EPA proposed a regulation to prohibit the manufacture, importation, distribution and use of acrylamide and NMA grouts based on the unreasonable risk to workers who apply these grouts. Since that time, personal protective equipment that can provide adequate protection to workers has become available. EPA is now considering whether it is still necessary to prohibit the use of these grouts to protect the health of grouters.

Timetable:

Action	Date	FR Cite
NPRM	10/02/91	56 FR 49863
Notice Reopening Record for Comments on Durability of NMA	02/28/96	61 FR 7454
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 2779

Sectors Affected: 23491 Water, Sewer, and Pipeline Construction; 23491 Water, Sewer, and Pipeline Construction; 32519 Other Basic Organic Chemical Manufacturing; 32519 Other Basic Organic Chemical Manufacturing; 42269 Other Chemical and Allied Products Wholesalers; 22132 Sewage Treatment Facilities

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RIN: 2070–AC17

3394. TSCA SECTION 8(A) PRELIMINARY ASSESSMENT INFORMATION RULES

Priority: Routine and Frequent

Legal Authority: 15 USC 2607(a) TSCA sec 8(a)

CFR Citation: 40 CFR 712

Legal Deadline: None

Abstract: These rules add chemicals to the list of chemicals and designated mixtures subject to the requirements of the Toxic Substances Control Act, section 8(a) Preliminary Assessment Information Rule (40 CFR part 712). These chemicals have been identified by the Office of Pollution Prevention and Toxics, other EPA offices, and other Federal agencies, as well as recommended for testing consideration by the Interagency Testing Committee. Manufacturers and importers are required to submit exposure-related data (EPA Form No. 7710-35) on the chemicals. These data will be used to monitor the levels of production, import and/or processing of these substances and the avenues of human and environmental exposure to these substances. These data will also support risk assessment and test rule decisions.

Timetable:

Action	Date	FR Cite
Final Action 37th ITC List	02/28/96	61 FR 7421
Final Action 38th ITC List	10/29/96	61 FR 55871
Final Action 38th ITC List - Stay	12/11/96	61 FR 65186
Final Action 38th ITC List - Stay/Technical Amendments	01/07/98	63 FR 684

Action	Date	FR Cite
Final Action 38th ITC List - Revocation	01/11/00	65 FR 1548
Final Action 39th ITC List	01/11/00	65 FR 1548
Final Action 41st ITC List	07/05/00	65 FR 41371
Final Action 42nd ITC List	07/24/00	65 FR 45535
Final Action 47th ITC List	07/26/01	66 FR 38955
Final Action 48th ITC List	11/00/02	
Final Action 50th ITC List	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 2178

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AB08

3395. TSCA SECTION 8(D) HEALTH AND SAFETY DATA REPORTING RULES

Priority: Routine and Frequent

Legal Authority: 15 USC 2607(d) TSCA sec 8(d)

CFR Citation: 40 CFR 716

Legal Deadline: None

Abstract: These rules require manufacturers, importers and processors to submit unpublished health and safety data on chemicals added to the requirements of the Toxic Substances Control Act section 8(d) Health and Safety Data Reporting Rule (40 CFR part 716). These chemicals have been identified by the Office of Pollution Prevention and Toxics, other EPA offices, and other Federal agencies, as well as recommended for testing consideration by the Interagency Testing Committee.

Timetable:

Action	Date	FR Cite
Final 38th ITC List	10/29/96	61 FR 55871
Final 38th ITC List - Stay	12/11/96	61 FR 65186
Final 38th ITC List - Stay/Technical Amendment	01/07/98	63 FR 684
Final Action 38th ITC List - Revocation	01/11/00	65 FR 1548
Final Action 39th, 41st and 42nd ITC List	02/00/03	
Final Action 47th ITC List	03/00/03	
Final Action 48th ITC List	04/00/03	
Final Action 50th ITC List	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 1139

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AB11

3396. TSCA SECTION 8(E) POLICY; NOTICE OF CLARIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2607(e) TSCA sec 8(e)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The TSCA section 8(e) Notice of Clarification and Solicitation of Public Comment would change certain aspects of the 1978 TSCA section 8(e) Policy Statement. The 1978 Policy Statement describes the types of information that EPA considers reportable under section 8(e), the substantial risk reporting provision of TSCA, and describes the procedures for reporting such information to EPA. This clarification effort derives from a review of the existing section 8(e) guidance done in the context of questions raised by companies considering participating in the section 8(e) Compliance Audit Program (CAP). As a result of this review, EPA determined that parts of the 1978 Policy Statement concerning the reportability of information on widespread and previously unsuspected distribution in environmental media and emergency incidents of environmental contamination needed some refinement. The subject Federal Register action solicited comment on refined reporting guidance concerning widespread and previously unsuspected distribution in environmental media and provides additional circumstances where information is not reportable because it is considered known to the Administrator. Finally, the notice solicited comments on changes to the section 8(e) reporting deadline and the standards for claims of confidentiality for information contained in a notice of substantial risk under section 8(e).

Timetable:

Action	Date	FR Cite
NPRM	07/13/93	58 FR 37735
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3118

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AC80

3397. TSCA INVENTORY UPDATE RULE AMENDMENTS

Priority: Other Significant

Legal Authority: 15 USC 2607(a) TSCA 8(a)

CFR Citation: 40 CFR 710

Legal Deadline: None

Abstract: This action would amend the current TSCA Inventory Update Rule (IUR) to require chemical manufacturers to report to EPA data on exposure-related information and the industrial and consumer end uses of chemicals they produce or import. Currently, EPA requires chemical manufacturers to report the names of the chemicals they produce, as well as the locations of manufacturing facilities and the quantities produced. About 3,000 facilities reported data on about 9,000 unique chemicals during the last reporting cycle under the IUR. Data obtained would be used by EPA and others to: better understand the potential for chemical exposures; screen the chemicals now in commerce and identify those of highest concern; establish priorities and goals for their chemical assessment, risk management and prevention programs, and monitor the programs' progress; encourage pollution prevention by identifying potentially safer substitute chemicals for uses of potential concern; and enhance the effectiveness of chemical risk communication efforts. Additionally, EPA is making other amendments to the IUR. These include removing the inorganic chemicals exemption, thereby providing the information to better assess and manage risks of inorganic chemicals; improving the linkages of IUR data to other data sources to enhance the data's usefulness; and altering the confidential business information (CBI) claim procedures to reduce the frequency of CBI claims, allowing the public greater access to relevant information on toxic chemicals. EPA has held meetings with representatives of the chemical industry, environmental groups, environmental justice leaders, labor groups, State governments and other Federal agencies to ensure public involvement in the TSCA Inventory Update Rule Amendments Project.

Timetable:

Action	Date	FR Cite
NPRM	08/26/99	64 FR 46771
NPRM Comment Period Extended	10/22/99	64 FR 56998
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 3301

Sectors Affected: 324 Petroleum and Coal Products Manufacturing; 325 Chemical Manufacturing

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RIN: 2070–AC61

3398. SIGNIFICANT NEW USE RULE; REFRACTORY CERAMIC FIBERS (RCFS)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2604 TSCA 5; 15 USC 2605 TSCA 6

CFR Citation: 40 CFR 704; 40 CFR 721

Legal Deadline: None

Abstract: EPA has instituted a program to monitor the commercial development of existing chemicals of concern and/or to gather information to support risk assessments on such chemicals. As these chemicals are identified, EPA will initiate rulemakings under the Toxic Substances Control Act (TSCA) sections 5 and/or 6 to require reporting by the manufacturers, importers and/or processors of these chemicals. Proposed rules may be published on at least the chemicals listed on the timetable below.

Timetable:

Action	Date	FR Cite
NPRM	03/21/94	59 FR 13294
Final Action	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3528

Sectors Affected: 327999 All Other Miscellaneous Nonmetallic Mineral Product Manufacturing

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RIN: 2070–AC37

3399. CHEMICAL RIGHT-TO-KNOW INITIATIVE; HIGH PRODUCTION VOLUME (HPV) CHEMICALS

Priority: Other Significant

Legal Authority: 15 USC 4 TSCA; 15 USC 8 TSCA; 42 USC 313 TRI; 7 USC 136 FIFRA

CFR Citation: 40 CFR 700 et seq

Legal Deadline: None

Abstract: The Chemical RTK Initiative was established in 1998 in response to the finding that most commercial chemicals have very little, if any, publicly available toxicity information on which to make sound judgments about potential risks. There are three key components to this initiative, each of which is being implemented by EPA. These are: collecting and making public screening level toxicity data for 2,800 widely used commercial chemicals; additional health effects assessment for chemicals to which children are substantially exposed; and the listing and lowering of thresholds for persistent, bioaccumulative, toxic chemicals reported to the Toxic Release Inventory (TRI). This Initiative will involve several separate activities, with

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any regulatory related actions included as separate entries in the Regulatory Agenda.

Timetable:

Action	Date	FR Cite
Notice Data Collection and Development on HPV Chemicals	12/26/00	65 FR 81686
Initiative Completed HPV Data To Be Received	06/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal

Additional Information: SAN No. 4176

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AD25

3400. SIGNIFICANT NEW USE RULE; PERFLUOROALKYL SULFONATES (PFOA)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2604 TSCA 5

CFR Citation: 40 CFR 704; 40 CFR 721

Legal Deadline: None

Abstract: EPA is proposing a significant new use rule (SNUR) under section 5 of the Toxic Substances Control Act (TSCA) covering certain perfluoroalkyl sulfonates. This SNUR would require companies who wanted to manufacture or import these chemicals for the significant new uses described in the proposed rule to submit a significant new use notice (SNUN) to the Agency at least 90 days prior to beginning those activities.

Timetable:

Action	Date	FR Cite
NPRM	10/18/00	65 FR 62319
NPRM Comment Period Extended	11/21/00	65 FR 69889
Notice of Public Meeting on NPRM	02/23/01	66 FR 11243
Supplemental NPRM	03/11/02	67 FR 11014
Final Action for Certain Uses in the Proposal	03/11/02	67 FR 11008
Final Action for Remaining Uses in the Proposal	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4475

Sectors Affected: 325 Chemical Manufacturing

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RIN: 2070–AD43

Environmental Protection Agency (EPA) — Toxic Substances Control Act (TSCA) — Long-Term Actions

3401. ASBESTOS MODEL ACCREDITATION PLAN REVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2646 TSCA sec 206

CFR Citation: 40 CFR 763

Legal Deadline: Final, Statutory, November 28, 1992.

Abstract: The Asbestos School Hazard Abatement Reauthorization Act (ASHARA) amended TSCA to require that EPA revise its asbestos model accreditation plan (MAP) to extend training and accreditation requirements to include persons performing certain asbestos-related work in public or commercial buildings, to increase the minimum number of training hours required for accreditation purposes and to effect other changes necessary to implement the amendments.

Timetable:

Action	Date	FR Cite
Model Plan	05/13/92	57 FR 20438
Interim Final Rule	02/03/94	59 FR 5236
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Federalism: Undetermined

Additional Information: SAN No. 3148

Sectors Affected: 611519 Other Technical and Trade Schools

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RIN: 2070–AC51

3402. LEAD FISHING SINKERS; RESPONSE TO CITIZENS PETITION AND PROPOSED BAN

Priority: Other Significant

Legal Authority: 15 USC 2605 TSCA 6

EPA—Toxic Substances Control Act (TSCA) — Long-Term Actions

CFR Citation: 40 CFR 745

Legal Deadline: None

Abstract: On October 20, 1992, the Environmental Defense Fund (EDF), Federation of Fly Fishers, Trumpeter Swan Society, and North American Loon Fund petitioned EPA under section 21 of the Toxic Substances Control Act (TSCA), and the Administrative Procedure Act (APA), to initiate rulemaking proceedings under section 6 of TSCA to require that the sale of lead fishing sinkers be accompanied by an appropriate label or notice warning that such products are toxic to wildlife. EPA granted the petition, however, the Agency believes that a labeling provision would not adequately address the risk of injury to waterfowl and other birds (waterbirds), from ingestion of lead fishing sinkers. In addition, EPA also believes that zinc fishing sinkers adversely affect waterbirds, and can cause mortality. Therefore, EPA has proposed a rule under section 6(a) of TSCA to prohibit the manufacturing, processing, and distribution in commerce in the United States, of certain smaller size fishing sinkers containing lead and zinc, and mixed with other substances, including those made of brass.

Timetable:

Action	Date	FR Cite
ANPRM	05/13/91	56 FR 22096
NPRM - Ban of Fishing Sinkers	03/09/94	59 FR 11122
Final Action - Fishing Sinkers	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 3252

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RIN: 2070–AC21

3403. LEAD-BASED PAINT ACTIVITIES; TRAINING, ACCREDITATION, AND CERTIFICATION RULE AND MODEL STATE PLAN RULE - BRIDGES AND STRUCTURES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: This action may affect State, local or tribal governments and the private sector.

Legal Authority: 15 USC 2603 TSCA title IV; PL 102-550 sec 402; PL 102-550 sec 404

CFR Citation: 40 CFR 745

Legal Deadline: Final, Statutory, April 28, 1994.

Abstract: The Residential Lead-Based Paint Hazard Reduction Act of 1992 mandates that EPA promulgate regulations governing lead-based paint (LBP) activities to ensure that individuals engaged in such activities are properly trained, that LBP training programs are accredited, and that contractors engaged in such activities are certified. In addition, EPA must promulgate a Model State program which may be adopted by any State which seeks to administer and enforce a State Program. EPA promulgated regulations for training and certification of training programs for LBP activities and child occupied facilities in 1996 (see 40 CFR 745). Regulations for LBP activities in public and commercial buildings and bridges and other structures are still under development.

Timetable:

Action	Date	FR Cite
NPRM (Buildings & Structures)	03/00/04	
Final Action (Buildings & Structures)	10/00/05	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Federalism: Undetermined

Additional Information: SAN No. 4376

Sectors Affected: 23411 Highway and Street Construction; 611519 Other Technical and Trade Schools

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RIN: 2070–AC64

3404. DISPOSAL OF POLYCHLORINATED BIPHENYLS: IMPLEMENTATION ISSUES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 2607 (TSCA sec 6)

CFR Citation: 40 CFR 761 (Revision)

Legal Deadline: None

Abstract: This proposed regulation will clarify and expand on implementation issues that have arisen as a result of the publication of the 1998 PCB Disposal Amendments (63 FR 35384). Topics will include but not be limited to, Use Authorizations, Public Participation Process, Appeals Process, Natural Gas Pipelines, Testing and Analysis, Manifesting of PCB Waste, Publication Process for Validated Alternate Decontamination Solvents and PCB Analytical Methods and Storage of Dedicated PCB Equipment. The action to authorize certain non-liquid PCB applications is also included in this action.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Federalism: Undetermined

Additional Information: SAN No. 4597

Sectors Affected: 92 Public Administration; 22 Utilities; 31-33

Manufacturing; 48-49 Transportation; 53 Real Estate and Rental and Leasing; 54 Professional, Scientific and Technical Services; 562 Waste Management and Remediation Services; 81 Other Services (except Public Administration)

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RIN: 2070–AD52

3405. VOLUNTARY CHILDREN'S CHEMICAL EVALUATION PROGRAM (VCCEP)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2603 TSCA 4; 15 USC 2611 TSCA 12; 15 USC 2625 TSCA 26

CFR Citation: 40 CFR 790 to 799

Legal Deadline: None

Abstract: This is a voluntary program to evaluate commercial chemicals to which children may have a high likelihood of exposure. Designed with extensive stakeholder participation, the purpose of this voluntary program is to obtain toxicity and exposure data needed to assess the risk of childhood exposure to commercial chemicals. EPA launched a pilot of this program on December 26, 2000. Manufacturers of 20 of the 23 pilot chemicals have volunteered to sponsor their chemicals in tier 1 in the pilot. A workshop was held in December 2001 to provide sponsors with additional guidance on the scope and content of the exposure assessments they will prepare. A peer consultation process will be used to evaluate the scientific merits of the hazard, exposure, and risk assessments submitted by sponsors. The first assessments developed for VCCEP are expected to be received in mid 2002. Although not currently involving a rulemaking, EPA has included this pilot program in the regulatory agenda to inform the public about activities like this related to its chemical testing program.

Timetable:

Action	Date	FR Cite
Notice Cancellation of Public Meeting	01/13/00	65 FR 2163
Notice Stakeholder Involvement Process - Notice of Public Meeting	03/29/00	65 FR 16590
Notice Voluntary Children's Chemical Evaluation Program - Pilot	12/26/00	65 FR 81700
Notice Update	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 2865

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AC27

3406. TEST RULE; CERTAIN METALS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2603 TSCA 4; 15 USC 2611 TSCA 12; 15 USC 2625 TSCA 26; 42 USC 9604(i) CERCLA 104(i)

CFR Citation: 40 CFR 790

Legal Deadline: None

Abstract: EPA is proposing a test rule under section 4(a) of the Toxic Substances Control Act (TSCA) requiring manufacturers and processors of certain metals to fill data needs identified by the Agency for Toxic Substances and Disease Registry (ATSDR), the National Toxicology Program (NTP), and EPA pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 104(I). Under CERCLA, ATSDR is to establish a list of priority hazardous substances found at superfund sites, develop toxicological profiles for the hazardous substances, identify priority data needs, and establish a research program obtaining the necessary data. This action is a component of ATSDR's research program. Data from this action would provide specific information about the substances for the public and scientific community. The information would be used in conducting comprehensive public health assessments of populations living near hazardous waste sites. Scientific data improves the quality of risk assessments used by EPA, other Federal agencies, and State and local governments. The risk assessments affect standards, guidelines, listing/delisting, and other decisions affecting public health and the environment. The metals are also hazardous air pollutants (HAPs) under the Clean Air Act (CAA) section 112. Data from this action would also be used to implement several provisions of section 112 of the CAA, including determining risks remaining after the application of technology based standards under section 112(d) of the CAA, estimating the risks associated with accidental releases, and determining whether or not substances should be removed from the CAA section (b)(1) list of HAPs (delisting).

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 3882

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AD10

3407. NOTICE OF TSCA SECTION 4 REIMBURSEMENT PERIOD AND TSCA SECTION 12(B) EXPORT NOTIFICATION PERIOD SUNSET DATES FOR TSCA SECTION 4 SUBSTANCES

Priority: Info./Admin./Other

Legal Authority: 15 USC 2603 TSCA 4; 15 USC 2611 TSCA 12

CFR Citation: 40 CFR 707; 40 CFR 790; 40 CFR 791; 40 CFR 799

Legal Deadline: None

Abstract: EPA developed a list of substances that are or have been subject to TSCA section 4 testing actions which required testing under rules or enforceable consent orders. EPA identified sunset, or termination, dates that identified: (1) the end of section 4 reporting requirements (40 CFR 790); (2) the end of the reimbursement period under which persons subject to test rules are subject to an obligation to reimburse test sponsors (40 CFR 791); and (3) the end of the period during which export notification requirements under TSCA section 12(b) are triggered. This action is now complete.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal

Additional Information: SAN No. 3559

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AC84

Environmental Protection Agency (EPA) Prerule Stage

Emergency Planning and Community Right-to-Know Act (EPCRA)

3408. TRI: APA PETITION-EPCRA 313 DEFINITION OF OVERBURDEN AS IT RELATES TO THE MINING INDUSTRY

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 11001 et seq

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: The regulatory definition for EPCRA section 313 defines overburden to mean any unconsolidated material that overlies a deposit of useful material or ores. It does not include any portion of ore or waste rock. Overburden generally lacks any recoverable materials and contains only trace amounts of EPCRA section 313 chemicals. Under section 313, all activities related to overburden are exempt from threshold determinations and release and other waste management calculations because overburden contains TRI chemicals in negligible amounts and reporting is unlikely to provide the public with valuable information. On December 22, 1998, the National Mining Association (NMA) petitioned EPA, pursuant to the Administrative Procedures Act (APA) to change the current EPCRA 313 definition of overburden to include both consolidated material and unconsolidated material. By making such a change, consolidated material that overlies an ore deposit would be eligible for the overburden exemption (i.e., overburden generally lacks any recoverable minerals and contains only trace amounts of EPCRA section 313 chemicals). NMA asserts that EPA's definition of overburden is inconsistent with that of industry. NMA considers overburden to be all material, both consolidated and unconsolidated, that overlies an ore deposit of useful material and must be removed to allow access to ore deposit.

Timetable:

Action	Date	FR Cite
Notice	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4392

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RIN: 2025–AA08

VOL 67 ISS 236 DEC 9 2002 UMI

Environmental Protection Agency (EPA)
Emergency Planning and Community Right-to-Know Act (EPCRA)
Proposed Rule Stage

3409. TRI; REVIEW OF CHEMICALS ON THE ORIGINAL TRI LIST

Priority: Other Significant

Legal Authority: 42 USC 1101 et seq

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: When TRI was established by Congress in 1986, the statutory language placed 309 chemicals and 20 categories of chemicals on the TRI list; that is referred to as the original TRI list. The chemicals on the original list were taken from two existing lists of toxic substances: the Maryland Chemical Inventory Report List of Toxic or Hazardous Substances, and the New Jersey Environmental Hazardous Substances list. This action constitutes the first systematic review of toxicology and environmental data for all the chemicals on the original TRI list to determine whether data for those chemicals conform with the statutory criteria for listing of chemicals on TRI. Chemicals for which data do not meet the statutory criteria will be delisted.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4015

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RIN: 2025–AA03

3410. TRI; RESPONSES TO PETITIONS RECEIVED TO ADD OR DELETE OR MODIFY CHEMICAL LISTINGS ON THE TOXIC RELEASE INVENTORY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 11013 EPCRA 313

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: These actions grant or deny petitions received to add or delete or modify chemicals on the list of toxic chemicals under section 313 of the Emergency Planning and Community Right to Know Act (EPCRA) that are subject to reporting under the Toxic Chemical Release Reporting Rule. The actions cover individual chemicals or groups of chemicals for which petitions have been received.

Timetable:

Action	Date	FR Cite
Notice DBNPA (Request to Delete)	10/27/95	60 FR 54949
NPRM Chromite Ore From Transvaal Reg. of S.A.	02/23/99	64 FR 8775
NPRM Diisononyl Phthalate (DINP) (Request To Add)	09/05/00	65 FR 53681
Final Action Chromite Ore From Transvaal Reg. of S.A.	05/11/01	66 FR 24066
Response Chromium, Antimony, Titanite Petition	12/00/02	
Final Response DBNPA (Request To Delete)	12/00/03	
Final Action Diidononyl Phthalate (DINP) Request To Add	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN No. 2425

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RIN: 2025–AA00

3411. TRI; REVISIONS TO THE OTHERWISE USE ACTIVITY EXEMPTIONS AND THE COAL EXTRACTION ACTIVITIES EXEMPTION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 11001 et seq

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: The Toxics Release Inventory (TRI) requires reporting from facilities that manufacture or process at least 25,000 pounds of a listed non-PBT chemical, or otherwise use 10,000 pounds of a listed non-PBT chemical. The activity thresholds are lower for listed PBT chemicals. In determining amounts of listed chemicals that are manufactured, processed or otherwise used, facilities may consider specific exemptions from reporting. EPA is presently reviewing a group of these exemptions. The categories of exemptions presently being reconsidered by EPA are the personal use exemption, and the motor vehicle maintenance exemption. Also known as otherwise use exemptions because they are limited to otherwise use activities, these exemptions are expressly provided for at 40 CFR 372.38(c). EPA is also considering changes to the coal mining extraction activities exemption provided for at 40 CFR 372.38(g).

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN No. 4265

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RIN: 2025–AA06

EPA—Emergency Planning and Community Right-to-Know Act (EPCRA)
Proposed Rule Stage

3412. RULEMAKING TO CHANGE TOXICS RELEASE INVENTORY (TRI) REPORTING REQUIREMENTS FROM STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODES TO NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM

Priority: Info./Admin./Other

Legal Authority: Not Yet Determined

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: The Office of Management and Budget (OMB) published a Federal Register notice of final decision (62 FR 68) to adopt the North American Industry Classification System (NAICS) for the United States. This rulemaking initiates the conversion from TRI reporting using Standard Industrial Classification (SIC) codes to TRI Reporting using NAICS codes. The TRI program will convert to NAICS without producing any changes in the facilities that are now subject to TRI reporting. Therefore, there should be no increased burden resulting from this action.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
Final Action	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: SAN No. 4595

Sectors Affected: 212 Mining (except Oil and Gas); 221 Utilities; 562 Waste Management and Remediation Services; 422 Wholesale Trade, Nondurable Goods

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RIN: 2025–AA10

3413. CLARIFY TRI REPORTING OBLIGATIONS UNDER EPCRA SECTION 313 FOR THE METAL MINING ACTIVITIES OF EXTRACTION AND BENEFICIATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 11001 et seq

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: The Toxics Release Inventory (TRI) currently requires reporting from metal mining facilities if they manufacture or process 25,000 pounds or more of a listed chemical or otherwise use 10,000 pounds or more of a listed chemical. These mining facilities engage in the removal of naturally occurring materials from the earth. EPA had considered naturally occurring materials to be manufactured by natural processes. A recent court order set aside EPA's interpretation of manufacture stating that naturally occurring ores can not be manufactured within the meaning of EPCRA section 313. EPA is considering clarifying how the definitions of manufacturing and processing under EPCRA section 313 apply to the mining sector processes of extraction and beneficiation. This action will not affect the coal extraction activities exemption.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: SAN No. 4616

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RIN: 2025–AA11

3414. • ADDITION OF TOXICITY EQUIVALENCY (TEQ) REPORTING AND QUANTITY DATA FOR INDIVIDUAL MEMBERS OF THE DIOXIN AND DIOXIN-LIKE COMPOUNDS CATEGORY UNDER EPCRA, SECTION 313

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 11001 et seq

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: Under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (i.e., the Toxics Release Inventory (TRI)), dioxin and dioxin-like compounds are reported in units of grams for the category. This project will add toxic equivalency (TEQ) reporting for the category and quantity data for individual members of the category to the grams only reporting currently required for the category under EPCRA section 313. TEQs are a weighted quantity measure based on the toxicity of each dioxin congener relative to the most toxic dioxin congeners, 2,3,7,8-tetrachlorodibenzo-p-dioxin and 1,2,3,7,8-pentachlorodibenzo-p-dioxin. The addition of TEQ reporting will allow better understanding of the releases and waste management quantities currently reported to the TRI for dioxin and dioxin-like compounds. TEQ reporting will also make it easier to compare TRI data on dioxin and dioxin-like compounds with other EPA activities which present data on dioxin and dioxin-like compounds in terms of TEQs. Several industry groups have written OMB supporting the addition of TEQ reporting to TRI.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 4692

URL For More Information: http:///www.epa.gov

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RIN: 2025–AA12

Environmental Protection Agency (EPA)
Emergency Planning and Community Right-to-Know Act (EPCRA)
Long-Term Actions

3415. EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT: AMENDMENTS AND STREAMLINING RULE

Priority: Other Significant

Legal Authority: 42 USC 11002; 42 USC 11004; 42 USC 11048; 42 USC 11021; 42 USC 11022

CFR Citation: 40 CFR 355; 40 CFR 370

Legal Deadline: None

Abstract: This rule will address the remaining issues from the proposed rule of June 8, 1998. (Reporting thresholds for gasoline and diesel fuel at retail gas stations were included in a separate final rule; 64 FR 7031, February 11, 1999.) A supplemental proposal will address reporting thresholds for chemicals that pose minimal risk. The final rule will address: reporting thresholds for rock salt, sand, gravel and other chemicals that pose minimal risk; plain language rewrite and possibly reporting thresholds for facilities with some similarities to gas stations (motor pools, marinas, etc.); and guidance on approaches to State flexibility.

Timetable:

Action	Date	FR Cite
NPRM	06/08/98	63 FR 31268
Supplemental NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Additional Information: SAN No. 3215

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RIN: 2050–AE17

3416. RESPONSE TO A PETITION REQUESTING DELETION OF PHOSMET FROM THE EXTREMELY HAZARDOUS SUBSTANCES (EHSS) LIST

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 11002; 42 USC 11004; 42 USC 11048

CFR Citation: 40 CFR 355

Legal Deadline: None

Abstract: EPA has received a petition to remove phosmet from the extremely hazardous substance (EHS) list under the Emergency Planning and Community Right-to-Know Act (EPCRA). This rulemaking will address the petitioner's claims.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3994

Sectors Affected: 11133 Noncitrus Fruit and Tree Nut Farming; 111421 Nursery and Tree Production; 42291 Farm Supplies Wholesalers

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RIN: 2050–AE42

3417. MODIFICATION OF THRESHOLD PLANNING QUANTITY FOR ISOPHORONE DIISOCYANATE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 11002; 42 USC 11004; 42 USC 11048

CFR Citation: 40 CFR 355

Legal Deadline: None

Abstract: On October 12, 1994 (59 FR 51816), EPA proposed to modify the listing of several chemicals on the extremely hazardous substances (EHS) list under the Emergency Planning and Community Right-to-Know Act. One petitioner requested the removal of isophorone diisocyanate (IPDI). EPA rejected the petitioner's request. However, in the review of the petition, EPA noticed that there was an error in the setting of the threshold planning quantity (TPQ) for IPDI, and proposed to correct the error in the October 12, 1994 notice of proposed rulemaking. The other modifications to the EHS list were made final on May 7, 1996; however, the TPQ for IPDI was not included in that final rule. The goal is to finalize the TPQ for IPDI.

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3993

Sectors Affected: 325 Chemical Manufacturing

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RIN: 2050–AE43

3418. TRI; CHEMICAL EXPANSION; FINALIZATION OF DEFERRED CHEMICALS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 11013 EPCRA 313; 42 USC 11023; 42 USC 11048; 42 USC 11076

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: On November 30, 1994, EPA added 286 chemicals and chemical categories to the EPCRA section 313 list, including 39 chemicals as part of two delineated categories. Each chemical and chemical category was found to meet the statutory criteria described in EPCRA section 313(d)(2)(A)-(C). At this time, EPA deferred final action on 40 chemicals and one chemical category until a later date. These were deferred because the comments received on them raised difficult technical or policy issues which required additional time to address. EPA chose not to delay final action on the 286 chemicals and chemical categories because of the additional time needed to address the issues surrounding the smaller group of 40 chemicals and one chemical category; rather, EPA believed it to be in the spirit of community right-to-know to proceed with the final rulemaking of the additional chemicals and chemical categories.

Timetable:

Action	Date	FR Cite
NPRM	01/12/94	59 FR 1788
Supplemental NPRM Deferred Chemicals	12/00/03	
Final Action Deferred Chemicals	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN No. 3007

Sectors Affected: 42269 Other Chemical and Allied Products Wholesalers

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RIN: 2025–AA01

3419. TRI; POLLUTION PREVENTION ACT INFORMATION REQUIREMENTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 11013 Pollution Prevention Act

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: Section 6607(b) of the Pollution Prevention Act of 1990 (PPA) (Pub. L. 101-508) requires the addition of several data elements to the Toxic Chemical Release Inventory (TRI) reporting requirements as promulgated under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (Pub. L. 99-499). Section 313 of EPCRA requires owners or operators of certain facilities that manufacture, process, or otherwise use listed toxic chemicals to annually report their releases of these chemicals to each environmental medium. The PPA mandates that section 313 covered facilities also report on source reduction and recycling activities relating to the toxic chemicals beginning with the 1991 reporting year. Since 1991 covered facilities have been providing this information to EPA in section 8, Source Reduction and Recycling Activities, of EPA Form R. On September 25, 1991 (56 FR 48475), EPA proposed regulations which would provide definitions and instructions for reporting the PPA data elements on the EPA Form R. In this action, EPA will amend certain aspects of the September 25, 1991, proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	09/25/91	56 FR 48475
Response	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN No. 2847

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RIN: 2025–AA09

Environmental Protection Agency (EPA)
Resource Conservation and Recovery Act (RCRA)
Prerule Stage

3420. LAND DISPOSAL RESTRICTIONS; NOTICE OF DATA AVAILABILITY: MERCURY TREATABILITY STUDIES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6905; 42 USC 6912(a); 42 USC 6921; 42 USC 6924

CFR Citation: 40 CFR 268

Legal Deadline: None

Abstract: This notice of data availability (NODA) makes available to the public two studies conducted on the treatment of mercury wastes. The studies were performed to demonstrate the conditions that affect the stability of waste residues created from the treatment of high mercury wastes. This NODA also makes available the results of the peer review for these studies.

EPA—Resource Conservation and Recovery Act (RCRA)

Prerule Stage

Timetable:

Action	Date	FR Cite
ANPRM	05/28/99	64 FR 28949
NoDA	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4094

Sectors Affected: 325181 Alkalies and Chlorine Manufacturing; 3353 Electrical Equipment Manufacturing; 3254 Pharmaceutical and Medicine Manufacturing; 32551 Paint and Coating Manufacturing

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RIN: 2050–AE54

Environmental Protection Agency (EPA)
Resource Conservation and Recovery Act (RCRA)

Proposed Rule Stage

3421. METHODS INNOVATION RULE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6905; 42 USC 6912(a); 42 USC 6921; 42 USC 6922; 42 USC 6923; 42 USC 6924; 42 USC 6925; 42 USC 6926; 42 USC 6927; 42 USC 6930; 42 USC 6934; 42 USC 6935; 42 USC 6936; 42 USC 6937; 42 USC 6938; ...

CFR Citation: 40 CFR 258; 40 CFR 260; 40 CFR 261; 40 CFR 264; 40 CFR 265; 40 CFR 266; 40 CFR 270; 40 CFR 279

Legal Deadline: None

Abstract: EPA has been actively working to break down the barriers that the environmental monitoring community faces when trying to use new monitoring techniques. As a first step, EPA has accelerated its review process for new methods by eliminating several unnecessary internal review steps, and by streamlining the internal approval process for each new method. However, there are currently 32 citations in title 40 of the Code of Federal Regulations (CFR) where the use of SW-846 methods is required. As a second step for speeding up the approval process, EPA plans to remove the requirements to use SW-846 methods for other than method-defined parameters (i.e., where the method defines the regulations, such as the Toxicity Characteristic Leaching Procedure) from 40 CFR. This will likely lead to an even more streamlined approval process since SW-846 will then be able to be handled strictly as guidance and not need the regulatory process for approval. This additional streamlining will permit new, more cost-effective methods to attain public and regulatory authority acceptance in much less time, allowing required monitoring to be done more cheaply, faster and, in some cases, more accurately.

Since many advances have occurred in waste sampling strategies since initial guidance was published in 1984, EPA is announcing the availability of a new guidance document for public comment entitled RCRA Waste Sampling Draft Technical Guidance.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 3989

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RIN: 2050–AE41

3422. REVISIONS TO SOLID WASTE LANDFILL CRITERIA—LEACHATE RECIRCULATION ON ALTERNATIVE LINERS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6907; 42 USC 6912; 42 USC 6944; 42 USC 6949a

CFR Citation: 40 CFR 258

Legal Deadline: None

Abstract: EPA plans to propose a rule to allow leachate recirculation over alternative liner systems which meet the performance standard specified by the municipal solid waste landfill (MSWLF) criteria. The performance determination would be made by the state director of an approved MSWLF program. EPA also plans to propose a new section to the MSWLF criteria which will allow the alternative of clean closure of landfills rather than require the installation of a landfill cap, which would allow the solid waste in the MSWLF to be totally removed from the site and be properly disposed of at another site. Finally, EPA plans to propose an additional factor to 258.54 for determining the frequency of ground water monitoring for the detection monitoring program specified in this subpart. The additional factor for consideration concerns liner performance where there is some direct system for determining liner performance. However, the minimum monitoring frequency would still be no less than once a year as stated in the existing regulation.

Timetable:

Action	Date	FR Cite
NoDA Request for Information and Data	04/06/00	65 FR 18014
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local, Tribal

Additional Information: SAN No. 4230

Sectors Affected: 562 Waste Management and Remediation Services

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EPA—Resource Conservation and Recovery Act (RCRA)

Proposed Rule Stage

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RIN: 2050–AE67

3423. MODIFICATIONS TO RCRA RULES ASSOCIATED WITH SOLVENT-CONTAMINATED SHOP TOWELS AND WIPES

Regulatory Plan: This entry is Seq. No. 129 in part II of this issue of the **Federal Register**.

RIN: 2050–AE51

3424. REVISION OF WASTEWATER TREATMENT EXEMPTIONS FOR HAZARDOUS WASTE MIXTURES

Regulatory Plan: This entry is Seq. No. 130 in part II of this issue of the **Federal Register**.

RIN: 2050–AE84

3425. INCREASE METALS RECLAMATION FROM F006 WASTE STREAMS

Regulatory Plan: This entry is Seq. No. 131 in part II of this issue of the **Federal Register**.

RIN: 2050–AE97

3426. REVISIONS TO THE DEFINITION OF SOLID WASTE

Regulatory Plan: This entry is Seq. No. 132 in part II of this issue of the **Federal Register**.

RIN: 2050–AE98

3427. REVISIONS FOR TRANSBOUNDARY SHIPMENTS OF HAZARDOUS WASTE FOR RECOVERY WITHIN THE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6901 et seq

CFR Citation: 40 CFR 262 subpart H (Revision)

Legal Deadline: None

Abstract: The Agency is considering changing the existing regulation 40 CFR 262 subpart H, which regulates transboundary movement of hazardous waste within all countries that are members of the Organization for Economic Cooperation and Development (OECD). This regulation would be amended to comply with changes passed by the OECD Council. Existing waste lists may be restructured to comply with the new OECD waste lists. As such, previously existing waste lists may be renamed according to adopted OECD terminology. Shipments of small waste amounts destined for laboratory analysis may be exempted from filing certain paperwork requirements that are otherwise required. A certificate of recovery may be required upon final recovery of wastes and timeframes for recovery operations may be changed to reflect the decisions made by the OECD Council.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
Direct Final Rule - Revisions for Transboundary Shipments of Hazardous Waste	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 4606

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RIN: 2050–AE93

3428. • RCRA BURDEN REDUCTION INITIATIVE, PHASE 2

Priority: Other Significant

Legal Authority: 42 USC 6907; 42 USC 6912(a); 42 USC 6921 to 6927; 42 USC 6930; 42 USC 6934; 42 USC 6935; 42 USC 6937 to 6939; 42 USC 6944; 42 USC 6949(a); 42 USC 6974; PL 104-13

CFR Citation: 40 CFR 260; 40 CFR 261; 40 CFR 264; 40 CFR 265; 40 CFR 266; 40 CFR 268; 40 CFR 270

Legal Deadline: None

Abstract: As part of its response to the Paperwork Reduction Act, OSW formed the RCRA Burden Reduction Initiative. The Initiative group reviewed all of the RCRA paperwork reporting and recordkeeping requirements, and developed ideas for streamlining or eliminating a third of them. On January 17, 2002, a proposed rule was published in the Federal Register with these ideas. As part of the second phase of the Initiative, we are considering proposing additional burden reduction ideas.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4735

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RIN: 2050–AF01

3429. PROJECT XL SITE-SPECIFIC RULEMAKING FOR ANNE ARUNDEL COUNTY MILLERSVILLE LANDFILL, SEVERN, MARYLAND

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6907; 42 USC 6912; 42 USC 6945; 42 USC 6949)

CFR Citation: 40 CFR 258

Legal Deadline: None

Abstract: Anne Arundel County proposes to demonstrate that a bioreactor with an alternative liner system is as effective, or superior to a bioreactor with the standard composite liner currently allowed by regulations. The main goal of this project is to deliver superior environmental performance (SEP) by capturing the additional airspace gained by accelerated decomposition of

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the waste. This benefits the County and its citizens by prolonging the life of the landfill and thereby postponing the siting of new solid waste management facilities, with their attendant social impacts, environmental impacts, and economic costs.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Additional Information: SAN No. 4534

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RIN: 2090–AA25

3430. PROJECT XL SITE-SPECIFIC RULEMAKING FOR THE IBM SEMICONDUCTOR MANUFACTURING FACILITY IN HOPEWELL JUNCTION, NEW YORK

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6905; 42 USC 6912(a); 42 USC 6921; 42 USC 6922; 42 USC 6924(y); 42 USC 6938

CFR Citation: 40 CFR 261.4(a)

Legal Deadline: None

Abstract: This rulemaking provides a site-specific exclusion from the regulatory definition of solid waste for certain wastewater treatment sludges (otherwise designated as Hazardous Waste No. F006) when they are used as ingredients in the production of cement. Without this exclusion, the sludges being legitimately recycled as substitutes for raw materials would remain subject to hazardous waste regulatory requirements, including the need for a storage permit by the cement manufacturer, which is a major disincentive to recycling the sludges in this manner. This XL project tests the presumption that these sludges can be safely recycled without regulatory oversight.

Timetable:

Action	Date	FR Cite
NPRM	06/06/01	66 FR 30349
Supplemental NPRM	12/00/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4565

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RIN: 2090–AA29

Environmental Protection Agency (EPA)
Resource Conservation and Recovery Act (RCRA) — **Final Rule Stage**

3431. STANDARDIZED PERMIT FOR RCRA HAZARDOUS WASTE MANAGEMENT FACILITIES

Regulatory Plan: This entry is Seq. No. 142 in part II of this issue of the **Federal Register**.

RIN: 2050–AE44

3432. REVISIONS TO THE COMPREHENSIVE GUIDELINE FOR PROCUREMENT OF PRODUCTS CONTAINING RECOVERED MATERIALS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6912(a) RCRA sec 6002(e)

CFR Citation: 40 CFR 247

Legal Deadline: None

Abstract: RCRA section 6002 and E.O. 13101 require EPA to prepare guidelines in the Federal Register which designate items that are or can be made with recovered materials and to issue recommendations for government procurement of these items. Once designated, procuring agencies are required to purchase these items with the highest percentage of recovered materials practicable. Government procurement of EPA-designated items containing recovered materials fosters markets for recovered materials and, thereby, closes the recycling loop. To date, EPA has designated 54 items under three Comprehensive Procurement Guidelines (CPG1, CPG2 and CPG3). EPA has also issued a Recovered Materials Advisory Notice (RMAN) with each CPG which provides recommendations on buying the designated items. The E.O. requires EPA to update the CPG every two years. The newest action issues final item designations in CPG4.

Timetable:

Action	Date	FR Cite
Notice -- Paper Products Recovered Materials Advisory Notice	06/08/98	63 FR 31214
Notice -- Recovered Materials Advisory Notice I Update	06/08/98	63 FR 31217
NPRM (CPG3 and RMAN 3)	08/26/98	63 FR 45558
Notice Notice of Availability of Final Document	01/19/00	65 FR 3082
Final Action (CPG3 and RMAN 3)	01/19/00	65 FR 3069
NPRM (CPG4 and RMAN 4)	08/28/01	66 FR 45256
Final-CPG4 (CPG4 and RMAN 4)	12/00/02	
NPRM-CPG5	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

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Government Levels Affected: Federal, State, Local

Additional Information: SAN No. 3545

Sectors Affected: 92111 Executive Offices; 92119 All Other General Government

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RIN: 2050–AE23

3433. MANAGEMENT OF CEMENT KILN DUST (CKD)

Regulatory Plan: This entry is Seq. No. 141 in part II of this issue of the **Federal Register**.

RIN: 2050–AE34

3434. CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES AND CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS: DISPOSAL OF RESIDENTIAL LEAD-BASED PAINT WASTE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6907(a)(3); 42 USC 6912(a); 42 USC 6944; 42 USC 6949a

CFR Citation: 40 CFR 257; 40 CFR 258

Legal Deadline: None

Abstract: To help accelerate the pace of lead-based paint removal from residences, and thereby reduce exposure to children and adults from the health risks associated with lead, the Agency plans to expressly allow residential lead-based paint waste to be disposed of in construction and demolition landfills. The rule would revise the definition of "municipal solid waste landfill (MSWLF) unit," and add definitions of "construction and demolition landfill" and "residential lead-based paint waste in the Criteria for Classification of Solid Waste Disposal Facilities and Practices (part 257) and Criteria for Municipal Solid Waste Landfills (part 258).

Timetable:

Action	Date	FR Cite
NPRM	10/23/01	66 FR 53566
Direct Final Rule	10/23/01	66 FR 53535
Withdraw Direct Final Rule	12/28/01	66 FR 67108
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4525

Sectors Affected: 235 Special Trade Contractors; 23599 All Other Special Trade Contractors; 562212 Solid Waste Landfill

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RIN: 2050–AE86

3435. MUNICIPAL SOLID WASTE LANDFILL LOCATION RESTRICTIONS FOR AIRPORT SAFETY

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6902(a); 42 USC 6907; 42 USC 6912(a); 42 USC 6944; 42 USC 6945(c); 42 USC 6949(c)

CFR Citation: 40 CFR 258.10(e)-(f)

Legal Deadline: None

Abstract: The direct final rule amends the municipal solid waste landfill (MSWLF) location restrictions for airport safety by adding location restrictions to conform with those contained in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century. The rule prohibits the construction or establishment of a new MSWLF within six miles of a public airport (1) that has received grants under the Airport and Airway Improvement Act of 1982, as amended, and (2) that is primarily designed for 60 passengers or less. MSWLFs in the State of Alaska are exempt. Because new MSWLFS are subject to the statutory location restrictions in addition to regulatory location restrictions currently in effect under 40 CFR 258.10, EPA has promulgated the rule amendment to prevent confusion regarding applicable location restrictions for MSWLFs for airport safety purposes, as well as to notify affected entities of these statutory restrictions. EPA also proposed a parallel rule identical to this direct final action in order to provide opportunity for comment on the rule, although we view the action as noncontroversial and do not anticipate any adverse comments. If adverse comments are received, we will withdraw the final rule. The regulated entities are: (1) Federal agencies and state, local, municipal and tribal governments constructing or establishing new MSWLFs within six miles of a public airport and (2) industries involved in constructing or establishing new landfills within six miles of a public airport.

Timetable:

Action	Date	FR Cite
NPRM	07/11/02	67 FR 45948
Direct Final Rule	07/11/02	67 FR 45915
Withdrawal of Direct Final Rule	10/08/02	67 FR 62647
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4575

Sectors Affected: 23 Construction; 5622 Waste Treatment and Disposal; 56221 Waste Treatment and Disposal; 562212 Solid Waste Landfill

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RIN: 2050–AE91

3436. RESEARCH, DEVELOPMENT, AND DEMONSTRATION PERMITS FOR MUNICIPAL SOLID WASTE LANDFILL

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6907; 42 USC 6912; 42 USC 6944; 42 USC 6949a

CFR Citation: 40 CFR 258.4

Legal Deadline: None

Abstract: EPA is considering adding a new section to the Criteria for Municipal Solid Waste Landfills (MSWLF) to allow states to issue research, development, and demonstration (RD&D) permits for landfill operations at variance with some parts of the criteria, as long as

it is demonstrated that these operations will not result in an increased risk to human health and the environment. Waivers of location restrictions, groundwater monitoring, corrective action requirements, the financial assurance criteria, and explosive gases control would not be allowed by this action. EPA is considering this alternative to stimulate new technologies and alternatives in the landfilling of municipal solid waste.

Timetable:

Action	Date	FR Cite
NoDA - Request for Information and Data	04/06/00	65 FR 18014
NPRM	06/10/02	67 FR 39662
Final Action	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local

Additional Information: SAN No. 4588

Sectors Affected: 562 Waste Management and Remediation Services

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RIN: 2050–AE92

3437. OFFICE OF SOLID WASTE BURDEN REDUCTION PROJECT

Regulatory Plan: This entry is Seq. No. 143 in part II of this issue of the **Federal Register**.

RIN: 2050–AE50

3438. • LAND DISPOSAL RESTRICTIONS; NATIONAL TREATMENT VARIANCE FOR RADIOACTIVELY CONTAMINATED CADMIUM, MERCURY, AND SILVER WASTE BATTERIES

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 40 CFR 268; 40 CFR 278

Legal Deadline: None

Abstract: In response to a rulemaking petition from the Department of Energy, the United States Environmental Protection Agency is planning to grant the requested national treatment variance by designating new treatment subcategories for radioactively contaminated cadmium-, mercury-, and silver-containing batteries. The current treatment standards of thermal recovery for cadmium batteries and of roasting and retorting for mercury batteries are technically inappropriate because any recovered metals would likely contain residual radioactive contamination and be unusable. The current numerical treatment standard for silver batteries is also inappropriate because of the potential increase in radiation exposure to workers associated with manually segregating silver-containing batteries for the purpose of treatment. Macroencapsulation in accordance with the provisions of 40 CFR 268.45 is proposed as the required treatment prior to land disposal.

Timetable:

Action	Date	FR Cite
NPRM	10/07/02	67 FR 62626
Direct Final Rule	10/07/02	67 FR 62618
NPRM Comment Period End	11/06/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: SAN No. 4731

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RIN: 2050–AE99

3439. • E-CYCLING PILOT PROJECT FOR REGION 3 STATES (ECOS); STREAMLINING RCRA REGULATIONS TO ENCOURAGE REUSE, RECYCLING, AND RECOVERY OF ELECTRONIC EQUIPMENT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 6905; 42 USC 6912(a); 42 USC 6921; 42 USC 6922; 42 USC 6924(y); 42 USC 6938

CFR Citation: 40 CFR 261.4(a)(24); 40 CFR 261.40

Legal Deadline: None

Abstract: This project is the result of an Environmental Council of States (ECOS) partnership agreement that EPA Region 3 entered into with the six State environmental agencies. As part of the partnership agreement, the region agreed to prepare a regional rule and to expedite its promulgation by using the direct final rulemaking process. By using this innovative approach to have a regional e-Cycling Pilot Project, EPA Region 3 and the Mid-Atlantic States (DE, DC, MD, PA, VA, WV) will be able to provide additional information about EPA's national proposed cathode ray tube (CRT) exclusion from the definition of solid waste (e.g., CRTs are the video display components of televisions and computer monitors). The Regional e-Cycling Pilot Project could serve as a model for electronic recycling nationwide, and the States believe that the recycling program will function effectively as a result of this regulatory flexibility.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Additional Information: SAN No. 4701

Sectors Affected: 56292 Materials Recovery Facilities; 56211 Waste Collection

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RIN: 2003–AA00

3440. PROJECT XL — ORTHO-MCNEIL PILOT PROJECT ALLOWING ON-SITE TREATMENT OF LOW-LEVEL MIXED WASTES WITHOUT RCRA PERMIT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6905; 42 USC 6912(a); 42 USC 6921; 42 USC 6922; 42 USC 6924(y); 42 USC 6938

CFR Citation: 40 CFR 261

Legal Deadline: None

Abstract: This site-specific rulemaking would allow Ortho-McNeil Pharmaceutical to treat small volumes of low-level mixed wastes on-site using a bench-scale catalytic oxidizing treatment unit. This treatment effectively destroys the organic component of the wastestream, yielding a residual that is only a low-level radioactive waste.

Timetable:

Action	Date	FR Cite
NPRM	07/24/01	66 FR 38395
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4439

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RIN: 2090–AA14

Environmental Protection Agency (EPA)
Resource Conservation and Recovery Act (RCRA)

Long-Term Actions

3441. STANDARDS FOR THE MANAGEMENT OF COAL COMBUSTION WASTES GENERATED BY COMMERCIAL ELECTRIC POWER PRODUCERS

Priority: Economically Significant

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 42 USC 6907(a)(3); 42 USC 6944(a)

CFR Citation: 40 CFR 257

Legal Deadline: None

Abstract: This action is for the development of proposed RCRA subtitle D regulations for the management of coal combustion wastes in landfills and surface impoundments that are generated by producers of electric power, including electric utilities and independent power producers. On April 25, 2000 EPA issued a regulatory determination for fossil fuel combustion wastes (65 FR 32214, May 22, 2000). The purpose of the determination was to decide whether certain wastes from the combustion of fossil fuels (including coal, oil and natural gas) should remain exempt from subtitle C (management as hazardous waste) of the Resource Conservation and Recovery Act (RCRA) for the coal, oil and natural gas combustion wastes that were addressed. The Agency's decision was to retain the exemption from hazardous waste management for all of the fossil fuel combustion wastes. However, the Agency also determined and announced that waste management regulations under RCRA subtitle D (management as non-hazardous wastes) are appropriate for certain coal combustion wastes that are disposed in landfills and surface impoundments. The utility industry has made significant improvements in its waste management practices over recent years, and most state regulatory programs are similarly improving. Nevertheless, public comments and other analyses have convinced the Agency that coal combustion wastes could pose risks to human health and the environment if they are not properly managed. There is sufficient evidence that adequate controls may not be in place. For example, while most states can now require newer waste management units to include liners and groundwater monitoring, 62 percent of existing utility surface impoundments do not have groundwater monitoring. In the Agency's view, this justifies the development of national regulations. We note, however, that some waste management units may not warrant liners and/or groundwater monitoring, depending on site-specific characteristics. The Agency is initiating this action to develop and issue appropriate waste management regulations under Subtitle D of RCRA.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Federalism: Undetermined

Additional Information: SAN No. 4470

Sectors Affected: 221112 Fossil Fuel Electric Power Generation

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RIN: 2050–AE81

3442. STANDARDS FOR THE MANAGEMENT OF COAL COMBUSTION WASTES — NON-POWER PRODUCERS AND MINEFILLING

Priority: Economically Significant

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 42 USC 6907(a)(3); 42 USC 6944

CFR Citation: 40 CFR 257

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Legal Deadline: None

Abstract: EPA is developing a proposed regulation for the management of coal combustion wastes that are generated by non-electric utility coal burners and managed in landfills and surface impoundments, and for the practice of minefilling of coal combustion wastes. On April 25, 2000 EPA issued a regulatory determination for fossil fuel combustion wastes (65 FR 32214, May 22, 2000) to announce its decision that certain wastes from the combustion of fossil fuels (including coal, oil and natural gas) should remain exempt from subtitle C (management as hazardous waste) of RCRA. This regulatory determination also announced that regulations under RCRA subtitle D (management as nonhazardous wastes) are appropriate for management of certain coal combustion wastes that are disposed in landfills and surface impoundments. In addition, EPA stated its plan to consult with the U.S. Department of the Interior on appropriate measures under the Surface Mining Control and Reclamation Act (SMCRA) or RCRA or some combination of both, to address the disposal of coal combustion wastes when used for minefilling in surface or underground mines.

Although industry has made significant improvements in waste management practices over recent years, and most State regulatory programs are similarly improving, public comments and other analyses have convinced the Agency that coal combustion wastes could pose risks to human health and the environment, if they are not properly managed. There is sufficient evidence that adequate controls may not be in place. For example, while most States can now require newer waste management units to include liners and groundwater monitoring, less than about 50 percent of existing nonutility landfills are lined (these statistics exclude municipal solid waste landfills which are not the subject of this action). EPA acknowledges that some waste management units may not warrant liners and/or groundwater monitoring, depending on site-specific characteristics. The Agency also decided that the practice of minefilling coal combustion wastes could present a danger to human health and the environment under certain circumstances. Since there are few states that currently operate comprehensive programs that specifically address the unique circumstances of minefilling, the Agency believes national regulations under RCRA subtitle D and/or SMCRA may be appropriate.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local, Tribal

Federalism: Undetermined

Additional Information: SAN No. 4469

Sectors Affected: 311 Food Manufacturing; 313 Textile Mills; 337 Furniture and Related Product Manufacturing; 2121 Coal Mining; 322 Paper Manufacturing; 325 Chemical Manufacturing; 331 Primary Metal Manufacturing; 336 Transportation Equipment Manufacturing; 62 Health Care and Social Assistance; 22112 Electric Power Transmission, Control and Distribution

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RIN: 2050–AE83

3443. HAZARDOUS WASTE MANIFEST REGULATION

Priority: Other Significant

Legal Authority: 42 USC 6922 RCRA sec 3002; 42 USC 6923 RCRA sec 3003; 42 USC 6924 RCRA sec 3004; 42 USC 6926 RCRA sec 3006; PL 105-277; Title 17 Government Paperwork Elimination Act

CFR Citation: 40 CFR 260; 40 CFR 262; 40 CFR 263; 40 CFR 264; 40 CFR 265; 40 CFR 271

Legal Deadline: None

Abstract: The Uniform Hazardous Waste Manifest (Form 8700-22) is a multi-copy form used to identify the quantity, composition, origin, routing, and destination of hazardous waste during its transportation. The manifest system's current reliance on paper results in significant paperwork and cost burden to waste handlers and States who choose to collect manifest information. The Agency intends to pursue an optional approach that would use information technologies to conduct the manifest process electronically, thereby reducing paperwork burden, and improving the speed and accuracy of preparing, transmitting, and recordkeeping the manifest form. In addition, the Agency intends to standardize further the manifest form elements, and to specify one format for the manifest that may be used in all states. The Agency also intends to announce standard requirements for tracking rejected wastes, container residues, and international shipments of hazardous wastes.

Timetable:

Action	Date	FR Cite
NPRM	05/22/01	66 FR 28240
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 3147

Sectors Affected: 2111 Oil and Gas Extraction; 2122 Metal Ore Mining; 2211 Electric Power Generation, Transmission and Distribution; 3221 Pulp, Paper, and Paperboard Mills; 323 Printing and Related Support Activities; 325 Chemical Manufacturing; 326 Plastics and Rubber Products Manufacturing; 331 Primary Metal Manufacturing; 332 Fabricated Metal Product Manufacturing; 482 Rail Transportation; 483 Water Transportation; 484 Truck Transportation; 5621 Waste Collection; 5622 Waste Treatment and Disposal

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RIN: 2050–AE21

3444. REGULATION OF HAZARDOUS OIL-BEARING SECONDARY MATERIALS FROM PETROLEUM REFINING INDUSTRY AND OTHER HAZARDOUS SECONDARY MATERIALS PROCESSED IN A GASIFICATION SYSTEM

Priority: Other Significant

Legal Authority: 42 USC 6905; 42 USC 6912(a); 42 USC 6921; 42 USC 6922; 42 USC 6923; 42 USC 6924; 42 USC 6925; 42 USC 6926; 42 USC 6927; 42 USC 6930; 42 USC 6934; 42 USC 6935; 42 USC 6937; 42 USC 6938; 42 USC 6939; ...

CFR Citation: 40 CFR 260; 40 CFR 261

Legal Deadline: None

Abstract: The U.S. Environmental Protection Agency (EPA) is considering finalizing revisions to the RCRA hazardous regulations to exclude oil-bearing secondary materials, generated by the petroleum refining industry and others, from the definition of solid waste if the materials are destined to be processed in a gasification device manufacturing synthesis gas fuel. We are considering this exclusion in order to clarify and simplify RCRA jurisdiction, and to be consistent with other comparable existing exclusions. EPA is also considering finalizing an exclusion for certain organic-containing materials that are gasified and are generated by industries other than petroleum refining.

Timetable:

Action	Date	FR Cite
NPRM	03/25/02	67 FR 13683
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4411

Sectors Affected: 32411 Petroleum Refineries

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RIN: 2050–AE78

3445. FINAL DETERMINATION OF THE APPLICABILITY OF THE TOXICITY CHARACTERISTIC RULE TO PETROLEUM CONTAMINATED MEDIA AND DEBRIS FROM UNDERGROUND STORAGE TANKS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6921 RCRA sec 3001

CFR Citation: 40 CFR 261

Legal Deadline: None

Abstract: In the final hazardous waste Toxicity Characteristic (TC) rule published in June 1990, EPA decided to temporarily defer application of the TC rule to petroleum-contaminated media and debris, such as soils and groundwater, that result from underground storage tank (UST) corrective actions. This rule is part of the Agency's commitment to make a final determination regarding the UST temporary deferral. The temporary deferral was, in part, based on the Agency's concern that without such a deferral, UST cleanup procedures would be adversely affected, resulting in delays in remedial action and increases in remediation costs. Since this action is deregulatory, there are no adverse effects on small businesses, or on State, local, or tribal governments.

Timetable:

Action	Date	FR Cite
NPRM	02/12/93	58 FR 8504
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 3189

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RIN: 2050–AD69

3446. LISTING DETERMINATION OF WASTES GENERATED DURING THE MANUFACTURE OF AZO, ANTHRAQUINONE, AND TRIARYLMETHANE DYES AND PIGMENTS

Priority: Other Significant

Legal Authority: 42 USC 6921 RCRA sec 3001; 42 USC 9602 Superfund (CERCLA) sec 102

CFR Citation: 40 CFR 261; 40 CFR 264; 40 CFR 265; 40 CFR 271; 40 CFR 302

Legal Deadline: None

Abstract: This action addresses the potential human health and environmental risks posed by wastes from the manufacture of dyes and pigments, and determines whether these wastes should be listed as hazardous wastes under RCRA to control any potentially unacceptable risks. If listed under RCRA, these wastes would also be added to the CERCLA list of hazardous substances. This action will be implemented by EPA and States authorized under RCRA. There may be some small business impacts. EPA proposed listing decisions for most wastes in 1994 (Dyes-I), and deferred decisions on several others. Two deferred waste streams (filter aids and triarylmethane sludges) are subject to separate deadlines for proposed and final action (Dyes II rulemaking). The Dyes II NPRM was published on July 23, 1999. The rules proposed in 1994 and 1999 were incomplete because they did not contain information claimed to be confidential by industry. Therefore, a NODA for each proposal will be necessary, when EPA is able to release an adequate record. The deadlines are based on recent settlement discussions with plaintiffs in EDF v. Browner, Civil Action No. 89-0598 D.D.C.

As part of the listing of dyes and pigments effort, EPA will also develop land disposal restrictions for these dyes and pigments.

Timetable:

Action	Date	FR Cite
NPRM Dyes I	12/22/94	59 FR 66072
NPRM Dyes II - Deferred Wastes	07/23/99	64 FR 40192
NPRM Dyes I - Land Disposal Restrictions	To Be	Determined
NoDA Dyes I - See Additional Information.	To Be	Determined

Action	Date	FR Cite
NoDA Dyes II - See Additional Information	To Be	Determined
Final Action Dyes I - See Additional Information	To Be	Determined
Final Action Dyes II - (Deferred Wastes - See Additional Information	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Tribal

Additional Information: SAN No. 3066

Sectors Affected: 325132 Organic Dye and Pigment Manufacturing

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RIN: 2050–AD80

3447. RECYCLING OF CATHODE RAY TUBES (CRTS) AND MERCURY-CONTAINING EQUIPMENT: CHANGES TO HAZARDOUS WASTE REGULATIONS

Priority: Other Significant

Legal Authority: 42 USC 6912(a); 42 USC 6921; 42 USC 6922; 42 USC 6923; 42 USC 6924; 42 USC 6925

CFR Citation: 40 CFR 261; 40 CFR 273

Legal Deadline: None

Abstract: This action will ultimately revise the existing Federal hazardous waste regulations to encourage recycling and better management of Cathode Ray Tubes (CRTs) by providing a conditional exclusion from the definition of solid waste for CRTs being recycled. A CRT is the display component of a television or computer monitor. A CRT is made largely of specialized glasses, some of which contain lead to protect the user from X-rays inside the CRT. Due to the lead, when they are disposed of or reclaimed, some CRTs are hazardous wastes under the Federal Resource Conservation and Recovery Act (RCRA) regulations. This rule will also streamline RCRA requirements for managing mercury-containing equipment by adding such equipment to the universal waste rule. This rule is planned in response to a June 9, 1998 recommendation on CRT recycling from the Common Sense Initiative (CSI) Council to the Environmental Protection Agency (EPA), and in response to a petition from the Utilities Solid Waste Activities Group regarding mercury-containing equipment. The goal of this action is to improve management and encourage recycling, thereby minimizing disposal of lead, increasing resource recovery, and enhancing protection of human health and the environment.

Timetable:

Action	Date	FR Cite
NPRM	06/12/02	67 FR 40507
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4092

Sectors Affected: 334411 Electron Tube Manufacturing

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RIN: 2050–AE52

3448. RCRA SUBTITLE C FINANCIAL TEST CRITERIA (REVISION)

Priority: Other Significant

Legal Authority: 42 USC 6912(a) RCRA sec 2002(a); 42 USC 6924 RCRA sec 3004; 42 USC 6925 RCRA sec 3005; 42 USC 6926 RCRA sec 3006

CFR Citation: 40 CFR 264; 40 CFR 265; 40 CFR 280; 40 CFR 761

Legal Deadline: None

Abstract: The revised financial responsibility test is intended to improve the current test in predicting which firms will enter bankruptcy and not be able to cover their financial obligations for liability and closure costs of hazardous waste treatment, storage and disposal facilities. A bankrupt firm may be unable to afford the proper closure of a facility which would require the government to incur response costs at the facility. The rule would also qualify owners and operators of RCRA Treatment, Storage, and Disposal Facilities which must currently use more expensive ways, such as surety bonds or letters of credit, of demonstrating financial assurance, to use the less expensive corporate financial responsibility test for more of their obligations. The combined savings from screening out riskier firms and making the test more available to viable firms would be approximately $19 million annually in public and private costs. These regulatory amendments would have no effect on local or tribal governments.

Timetable:

Action	Date	FR Cite
NPRM	07/01/91	56 FR 30201
NPRM	10/12/94	59 FR 51523
Notice of Data Availability	12/00/03	
Final Action	03/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN No. 2647

Sectors Affected: 323110 Commercial Lithographic Printing; 323114 Quick Printing; 325131 Inorganic Dye and Pigment Manufacturing; 325188 All Other Basic Inorganic Chemical Manufacturing; 325998 All Other Miscellaneous Chemical Product Manufacturing; 331311 Alumina Refining; 325211 Plastics Material and Resin Manufacturing; 32551 Paint and Coating Manufacturing; 32511 Petrochemical Manufacturing; 32512 Industrial Gas Manufacturing; 325188 All Other Basic Inorganic Chemical Manufacturing; 325193 Ethyl Alcohol Manufacturing; 325199 All Other Basic Organic Chemical Manufacturing; 325998 All Other Miscellaneous Chemical Product Manufacturing; 311942 Spice and Extract Manufacturing; 32411 Petroleum Refineries; 332813 Electroplating, Plating, Polishing, Anodizing and

Coloring; 33271 Machine Shops; 33299 All Other Fabricated Metal Product Manufacturing; 333319 Other Commercial and Service Industry Machinery Manufacturing; 333999 All Other General Purpose Machinery Manufacturing; 336399 All Other Motor Vehicle Parts Manufacturing; 334 Computer and Electronic Product Manufacturing; 336 Transportation Equipment Manufacturing; 48422 Specialized Freight (except Used Goods) Trucking, Local; 56211 Waste Collection; 22111 Electric Power Generation; 221112 Fossil Fuel Electric Power Generation; 22132 Sewage Treatment Facilities; 56292 Materials-Recovery Facilities

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RIN: 2050–AC71

3449. LAND DISPOSAL RESTRICTIONS; TREATMENT STANDARDS FOR SPENT POTLINERS FROM PRIMARY ALUMINUM REDUCTION (K088) AND REGULATORY CLASSIFICATION OF K088 VITRIFICATION UNITS

Priority: Other Significant

Legal Authority: 42 USC 6905; 42 USC 6912(a); 42 USC 6921; 42 USC 6924

CFR Citation: 40 CFR 268; 40 CFR 271

Legal Deadline: None

Abstract: On July 20, 2000, EPA proposed revised treatment standards for K088 wastes. Specifically, the Agency proposed to lower the cyanide treatment standard and reinstate a treatment standard for fluoride nonwastewaters based on a deionized water leach test. Comments to the proposed rule were significant and suggest that there are significant treatment issues yet to be resolved for K088 waste. The Agency needs to further assess the treatment universe for K088 and is considered extending the possible date of a final rule or to investigate other strategies both regulatory and non-regulatory to facilitate recycling of spent aluminum potliners.

Timetable:

Action	Date	FR Cite
NPRM	07/12/00	65 FR 42937
Final Action	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4233

Sectors Affected: 3334 Ventilation, Heating, Air-Conditioning and Commercial Refrigeration Equipment Manufacturing

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RIN: 2050–AE65

3450. NESHAPS: STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR HAZARDOUS WASTE COMBUSTORS — PHASE II COVERING BOILERS AND CERTAIN INDUSTRIAL FURNACES

Priority: Other Significant

Legal Authority: 42 USC 6924 RCRA sec 3004; 42 USC 6925 RCRA sec 3005; 42 USC 7412 CAA sec 112; 42 USC 7414 CAA sec 114

CFR Citation: 40 CFR 60; 40 CFR 63; 40 CFR 260; 40 CFR 264; 40 CFR 265; 40 CFR 266; 40 CFR 270

Legal Deadline: None

Abstract: Under the Clean Air Act (CAA), EPA is required to establish National Emission Standards for Hazardous Air Pollutants (NESHAPs) for most hazardous waste combustors (HWCs) (i.e., incinerators, cement kilns, boilers, and some types of smelting furnaces). In addition, under the Resource Conservation and Recovery Act (RCRA), EPA is required to establish standards for all HWCs as necessary to ensure protection of human health and the environment. The Agency is in the process of developing a proposal to address boilers and possibly other industrial furnaces, which combust hazardous wastes.

Timetable:

Action	Date	FR Cite
NPRM Cement Kilns & Lightweight Aggregate Kilns & Incinerators	04/19/96	61 FR 17358
Final Action MACT Fasttrack	06/19/98	63 FR 33782
Final Action Cement Kilns & LWAKs & Incinerators (Final-Phase I)	09/30/99	64 FR 52828
NoDA NESHAPS Standards for HAPs Boilers & Industrial Furnaces	07/27/00	65 FR 39581
NPRM Boilers & Other Industrial Furnaces (Phase II)	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 3333

Sectors Affected: 2123 Non-Metallic Mineral Mining and Quarrying; 2211 Electric Power Generation, Transmission and Distribution; 22132 Sewage Treatment Facilities; 3241 Petroleum and Coal Products Manufacturing; 3271 Clay Product and Refractory Manufacturing; 3231 Printing and Related Support Activities; 3251 Basic Chemical Manufacturing; 3252 Resin, Synthetic Rubber, and Artificial and Synthetic Fibers and Filaments Manufacturing; 3253 Pesticide, Fertilizer and Other Agricultural Chemical Manufacturing; 3254 Pharmaceutical and Medicine Manufacturing; 3255 Paint, Coating, Adhesive, and Sealant Manufacturing; 3259 Other Chemical Product Manufacturing; 3271 Clay Product and Refractory Manufacturing; 3273 Cement and Concrete Product Manufacturing; 3274 Lime, Gypsum and Gypsum Product Manufacturing; 3279 Other Nonmetallic Mineral Product Manufacturing; 3327 Machine Shops, Turned Product, and Screw, Nut and Bolt Manufacturing; 3328 Coating, Engraving, Heat Treating and Allied Activities; 3329 Other Fabricated Metal Product Manufacturing; 3332 Industrial Machinery Manufacturing; 33351 Metalworking Machinery Manufacturing; 3339 Other General Purpose Machinery Manufacturing;

3341 Computer and Peripheral Equipment Manufacturing; 3342 Communications Equipment Manufacturing; 3343 Audio and Video Equipment Manufacturing; 3344 Semiconductor and Other Electronic Component Manufacturing; 3361 Motor Vehicle Manufacturing; 3362 Motor Vehicle Body and Trailer Manufacturing; 3363 Motor Vehicle Parts Manufacturing; 4227 Petroleum and Petroleum Products Wholesalers

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RIN: 2050–AE01

3451. NESHAPS: STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR HAZARDOUS WASTE COMBUSTORS

Priority: Other Significant

Legal Authority: 42 USC 6924 RCRA sec 3004; 42 USC 6925 RCRA sec 3005; 42 USC 7412 CAA sec 112; 42 USC 7414 CAA sec 114

CFR Citation: 40 CFR 60; 40 CFR 63; 40 CFR 260; 40 CFR 264; 40 CFR 265; 40 CFR 266; 40 CFR 270

Legal Deadline: Final, Judicial, June 14, 2005.

Abstract: Under the Clean Air Act (CAA), EPA is required to establish National Emission Standards for Hazardous Air Pollutants (NESHAPs) for most hazardous waste combustors (HWCs) (i.e., incinerators, cement kilns, boilers, and some types of recovery furnaces). In addition, under the Resource Conservation and Recovery Act (RCRA), EPA is required to establish standards for all HWCs as necessary to ensure protection of human health and the environment. Consequently, the Agency established in the HWC Maximum Achievable Control Technology (MACT) rule new emissions standards for cement kilns, lightweight aggregate kilns, and incinerators under CAA authority on September 30, 1999 (64 FR 52828). Following promulgation, issues were raised by the regulated community through informal comments and through litigation. A clarification rule was proposed on July 3, 2001 (66 FR 35126). A final rule changed and clarified a subset of the proposed amendments to the final Phase I rule (February 14, 2002, 67 FR 6968). An interim final rule was issued on February 13, 2002 to establish amendments to certain implementation requirements (67 FR 6792). EPA plans to promulgate final replacement standards to replace the interim standards promulgated on February 13, 2002.

Timetable:

Action	Date	FR Cite
Final - MACT Fasttrack	06/19/98	63 FR 33782
Final - Cement Kilns & LWAKs & Incinerators (Final-Phase I)	09/30/99	64 FR 52828
Direct Final Rule - Phase 1 Amendments	07/03/01	66 FR 35087
Parallel Proposal to Direct Final Rule	07/03/01	66 FR 35124
NPRM-Phase1 Phase I Amendments	07/03/01	66 FR 35126
Direct Final Rule - Partial Denial	10/15/01	66 FR 52361
Final (Good Cause) - Emergency Extension of Compliance Date	11/29/01	66 FR 63313
Final Action - Extension for Compliance	12/06/01	66 FR 63313
Interim Final Standards for Phase 1 Amendments Final rule (Good Cause)	02/13/02	67 FR 6791
Final Rule Standards for HAPs for HW Combustors - Phase 1 Amendments	02/14/02	67 FR 6967
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Federalism: Undetermined

Additional Information: SAN No. 4418

Sectors Affected: 2123 Non-Metallic Mineral Mining and Quarrying; 2211 Electric Power Generation, Transmission and Distribution; 22132 Sewage Treatment Facilities; 3241 Petroleum and Coal Products Manufacturing; 3271 Clay Product and Refractory Manufacturing; 3231 Printing and Related Support Activities; 3251 Basic Chemical Manufacturing; 3252 Resin, Synthetic Rubber, and Artificial and Synthetic Fibers and Filaments Manufacturing; 3253 Pesticide, Fertilizer and Other Agricultural Chemical Manufacturing; 3254 Pharmaceutical and Medicine Manufacturing; 3255 Paint, Coating, Adhesive, and Sealant Manufacturing; 3259 Other Chemical Product Manufacturing; 3271 Clay Product and Refractory Manufacturing; 3273 Cement and Concrete Product Manufacturing; 3274 Lime, Gypsum and Gypsum Product Manufacturing; 3279 Other Nonmetallic Mineral Product Manufacturing; 3327 Machine Shops, Turned Product, and Screw, Nut and Bolt Manufacturing; 3328 Coating, Engraving, Heat Treating and Allied Activities; 3332 Industrial Machinery Manufacturing; 33351 Metalworking Machinery Manufacturing; 3339 Other General Purpose Machinery Manufacturing; 3341 Computer and Peripheral Equipment Manufacturing; 3342 Communications Equipment Manufacturing; 3343 Audio and Video Equipment Manufacturing; 3344 Semiconductor and Other Electronic Component Manufacturing; 3361 Motor Vehicle Manufacturing; 3362 Motor Vehicle Body and Trailer Manufacturing; 3363 Motor Vehicle Parts Manufacturing; 4227 Petroleum and Petroleum Products Wholesalers; 45431 Fuel Dealers

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RIN: 2050–AE79

3452. PAINT MANUFACTURING WASTES LISTING: HAZARDOUS WASTE MANAGEMENT SYSTEM: IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Priority: Other Significant

CFR Citation: 40 CFR 261; 40 CFR 271; 40 CFR 302; 40 CFR 264; 40 CFR 265

Completed:

Reason	Date	FR Cite
Final Action	04/04/02	67 FR 16262

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

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RIN: 2050–AE32

3453. REQUIREMENTS FOR ZINC FERTILIZER MADE FROM RECYCLED HAZARDOUS SECONDARY MATERIALS

Priority: Other Significant

CFR Citation: 40 CFR 261; 40 CFR 266; 40 CFR 268; 40 CFR 271

Completed:

Reason	Date	FR Cite
Final Action	07/24/02	67 FR 48393

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

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RIN: 2050–AE69

3454. PROJECT XL SITE-SPECIFIC RULEMAKING FOR IMPLEMENTING WASTE TREATMENT SYSTEMS AT TWO VIRGINIA LANDFILLS

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR Part 258

Completed:

Reason	Date	FR Cite
Final Action	07/18/02	67 FR 47310

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

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RIN: 2090–AA30

3455. OIL POLLUTION PREVENTION REGULATION: REVISIONS

Priority: Other Significant

CFR Citation: 40 CFR 112

Completed:

Reason	Date	FR Cite
Final Action	07/17/02	67 FR 47042

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

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RIN: 2050–AC62

3456. REPORTABLE QUANTITY ADJUSTMENTS FOR CARBAMATES AND CARBAMATE-RELATED HAZARDOUS WASTE STREAMS; REPORTABLE QUANTITY ADJUSTMENT FOR INORGANIC CHEMICAL MANUFACTURING PROCESS WASTE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 9602(a); 42 USC 11004

CFR Citation: 40 CFR 302; 40 CFR 355

Legal Deadline: None

Abstract: EPA has listed carbamate waste streams as hazardous wastes under the Resource Conservation and Recovery Act (RCRA). RCRA listed wastes, by statute, automatically become hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and are assigned a one pound statutory reportable quantity (RQ) until EPA adjusts them. These substances also become subject to reporting requirements under the Emergency Planning and Community Right-to-Know Act (EPCRA) with a one pound threshold. EPA, in this action, will propose RQ adjustments for the carbamates. Most RQ adjustments are expected to be greater than one pound. Raising the RQs for these substances would decrease the burden on 1) the regulated community for complying with the reporting requirements under CERCLA and EPCRA; 2) Federal, State, and local authorities for program implementation; and 3) Federal, State, or local authorities, if they release hazardous substances at the RQ level or greater.

In addition, we are seeking to propose an RQ adjustment for the inorganic chemical manufacturing process waste (K178) that was proposed for listing on 9/14/00 (65 FR 55684).

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3423

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RIN: 2050–AE12

3457. • CORRECTION OF ERRORS AND ADJUSTMENT OF CERCLA REPORTABLE QUANTITIES

Priority: Other Significant

Legal Authority: 42 USC 9602-9603

CFR Citation: 40 CFR 302 (Revision)

Legal Deadline: None

Abstract: The Agency is considering proposing corrections and other changes to 40 CFR 302.4, the Designation of Hazardous Substances. The proposal may include the correction of entries for individual substances, entries for F- and K-waste streams and entries in appendix A of 40 CFR 302.4. Other aspects of the proposal may include additional substances as entries in table 302.4, appendix A to section 302.4, and the table in section 302.6(b)(iii); removal of other entries from these lists; and amendments to certain footnotes that explain entries in table 302.4.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAN No. 4737

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RIN: 2050–AF03

3458. • STANDARDS AND PRACTICES FOR CONDUCTING "ALL APPROPRIATE INQUIRY"

Priority: Other Significant

Legal Authority: 42 USC 9607

CFR Citation: 40 CFR 312

Legal Deadline: Final, Statutory, January 11, 2004, Small Business Liability Protection Act section 223, CERCLA 101(35)(B)(2)(ii).

Abstract: The Small Business Liability Relief and Brownfields Revitalization Act amends CERCLA 101(35)(B) and includes new provisions regarding the innocent landowner defense. As part of these provisions, the Act addresses the need to conduct "all appropriate inquiry" to establish that the property owner had no reason to know of any contamination at the property when it is acquired. In the Act, Congress directed EPA to develop regulations establishing standards and practices for conducting "all appropriate inquiry." Section 101(35)(B)(2)(iii) of the Act includes criteria that EPA is to include in setting these standards and practices. This regulation will establish the Federal standards for conducting "all appropriate inquiry," pursuant to the Act.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State, Local, Tribal

Additional Information: SAN No. 4739

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RIN: 2050–AF04

3459. • CLARIFICATION TO INTERIM STANDARDS AND PRACTICES FOR ALL APPROPRIATE INQUIRY UNDER CERCLA AND NOTICE OF FUTURE RULEMAKING ACTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 9601(35)

CFR Citation: 40 CFR 312

Legal Deadline: None

Abstract: EPA is pursuing a rule to explain and clarify a provision included in recent amendments to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA plans to addresses certain interim standards established in the Small Business Liability Relief and Brownfields Revitalization Act (the Brownfields Act) for conducting "all appropriate inquiry," to establish exemptions from liability under CERCLA or establish that a landowner had no reason to know of contamination at a property under CERCLA liability provisions prior to purchasing the property. The Brownfields Act provides clarification of provisions related to CERCLA liability for certain parties including contiguous property owners, prospective purchasers, and innocent landowners. Among the requirements added to CERCLA is the requirement that such parties undertake "all appropriate inquiry" into prior ownership and use of certain property.

Under the Brownfields Act, Congress provided an interim standard for conducting all appropriate inquiry, the American Society for Testing and Materials (ASTM) standard known as Standard E1527-97 (entitled Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process). This interim standard applies to properties purchased after May 31, 1997, until EPA promulgates regulations establishing standards and practices for conducting all appropriate inquiry. The rule will clarify the interim requirements for conducting "all appropriate inquiry" in the case of property purchased on or after May 31, 1997, and the conduct of such activities to establish an innocent landowner defense.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Direct Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4740

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RIN: 2050–AF05

3460. REVISE 40 CFR PART 35 SUBPART O: COOPERATIVE AGREEMENTS AND SUPERFUND STATE CONTRACTS FOR SUPERFUND RESPONSE ACTIONS

Priority: Other Significant

Legal Authority: 42 USC 9601 to 9675

CFR Citation: 40 CFR 35 subpart O

Legal Deadline: None

Abstract: 40 CFR part 35 subpart O is the Superfund Administrative Regulation that governs awarding of Superfund cooperative agreements (CAs) to States, Indian tribes, and territories of the United States. Subpart O covers State-lead, site-specific cooperative agreements for non-time-critical removal, preremedial, remedial, and enforcement actions, and site-specific management assistance for federal-lead projects. Also covered by subpart O are non-site-specific Core Program and Voluntary Cleanup Program State infrastructure development, as well as Brownfields pilots, and Brownfields assessments. The requirements for Superfund State contracts, financial administration, property, procurement, reporting, recordkeeping, and closeout are provided in subpart O.

Subpart O was promulgated 6/5/1990, and became effective on 7/5/1990. Many changes in the Superfund program have occurred over the past almost ten years and these need to be reflected in subpart O. The six categories of CAs presently used in subpart O need greater flexibility to accommodate the new types of CAs that have developed. For example, the number of Block Funding Reform pilots, begun in 1997, to consolidate several of the cooperative agreements offered in subpart O, has grown to about 16 for fiscal year 2000, and have generated at least 60 approved deviation requests from subpart O and 40 CFR part 31. These pilot projects offer considerable administrative relief to States, tribes, and EPA by reducing reporting requirements, broadening scope changes without amendment, increasing the ability to move monies within and among CAs, and relaxing application requirements regarding site-specific identification of cooperative agreement funds to certain activities, while maintaining site-specific drawdown requirements needed for cost recovery and Superfund accounting. Subpart O also needs to be conformed with part 31 (Uniform Administrative Requirements for Grants and Cooperative Agreements).

EPA expects to institutionalize the combining of CA types, create more flexible reporting requirements, permit greater scope changes without amendment, provide more flexible money movement within and among CAs, and other policy advances in State/tribal/EPA interaction.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4177

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RIN: 2050–AE62

Environmental Protection Agency (EPA) Long-Term Actions

Comprehensive Environmental Response, Compensation and Liability Act

3461. NATIONAL PRIORITIES LIST FOR UNCONTROLLED HAZARDOUS WASTE SITES: PROPOSED AND FINAL RULES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 9605 Superfund (CERCLA) sec 105

CFR Citation: 40 CFR 300.425

Legal Deadline: None

Abstract: This action will revise the sites included on the National Priorities List (NPL) of uncontrolled waste sites in the National Contingency Plan (NCP). CERCLA requires that the Agency revise the NPL at least annually. Periodic revisions will allow EPA to include sites on the NPL with known or threatened hazardous substance releases and to delete sites that have been cleaned up.

Timetable:

Action	Date	FR Cite
NPRM 24	03/06/98	63 FR 11340
Final Action 20	03/06/98	63 FR 11332
NPRM 25	07/28/98	63 FR 40247
Final Action 21	07/28/98	63 FR 40182
Final Action (Tex-Tin Corp)	09/18/98	63 FR 49855
NPRM 26	09/29/98	63 FR 51882
Final Action 22	09/29/98	63 FR 51848
NPRM 27	01/19/99	64 FR 2950
Final Action 23	01/19/99	64 FR 2942
NPRM (Midnight Mine)	02/16/99	64 FR 7564
NPRM 28	04/23/99	64 FR 19968
NPRM (Almeda)	05/10/99	64 FR 24990
Final Action 24	05/10/99	64 FR 24949
NPRM 29	07/22/99	64 FR 39886
Final Action 25	07/22/99	64 FR 39878
NPRM 30	10/22/99	64 FR 56992
Final Action	10/22/99	64 FR 56966
NPRM 31	02/04/00	65 FR 5468
Final Action 26	02/04/00	65 FR 5435
NPRM 32	05/11/00	65 FR 30489
Final Action 28	05/11/00	65 FR 30482
NPRM 33	07/27/00	65 FR 46131
Final Action 29	07/27/00	65 FR 46096
NPRM Alabama/Malone	08/24/00	65 FR 51567

EPA—Comprehensive Environmental Response, Compensation and Liability Act — Long-Term Actions

Action	Date	FR Cite
NPRM 34	12/01/00	65 FR 75215
Final Action 30	12/01/00	65 FR 75179
NPRM 35	01/11/01	66 FR 2380
NPRM 36	06/14/01	66 FR 32287
Final Action 31	06/14/01	66 FR 32235
NPRM 37	09/13/01	66 FR 47612
Final Action 32	09/13/01	66 FR 47583
NPRM	02/26/02	67 FR 8836
NPRM	09/05/02	67 FR 56794
Final Rule	09/05/02	67 FR 56757

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Additional Information: SAN No. 3439

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RIN: 2050–AD75

3462. CRITERIA FOR THE DESIGNATION OF HAZARDOUS SUBSTANCES UNDER CERCLA SECTION 102(A)

Priority: Other Significant

Legal Authority: 42 USC 9602

CFR Citation: 40 CFR 302.4

Legal Deadline: None

Abstract: This action will address the development of evaluation criteria for the designation of substances as hazardous under CERCLA. It is necessary to develop evaluation criteria because the Agency has the authority under CERCLA 102(a) to designate substances as hazardous; however, the Agency does not have criteria to do so. To date the only substances designated as CERCLA hazardous substances are as a result of their appearance on other Acts' lists defined under CERCLA 101(14). Using CERCLA designation criteria the Agency may establish CERCLA hazardous substances independently from other Acts, in the interest of public health and the environment.

The purpose of this action is to have well thought-out criteria for designating hazardous substances that may be applied to individual substances for evaluation and decision as to whether or not the substance should be appropriately designated a CERCLA 102(a) hazardous substance. The Agency already has the authority to designate substances as hazardous; in this action, criteria will be developed to implement that authority.

Timetable:

Action	Date	FR Cite
ANPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4201

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RIN: 2050–AE63

3463. • ADMINISTRATIVE REPORTING EXEMPTION FOR CERTAIN AIR RELEASES OF NOX

Priority: Other Significant

Legal Authority: 42 USC 9603

CFR Citation: 40 CFR 302.6(c)

Legal Deadline: None

Abstract: The Agency is considering proposing to administratively exempt from reporting requirements the releases of certain NOx emissions to air. This would eliminate reports from facilities emitting NOx where the Agency has determined that the releases pose little or no risk or to which a Federal response is infeasible or inappropriate. Requiring reports of such releases would serve little or no useful purpose and could, instead, impose a significant burden on the Federal response system and on the persons responsible for notifying the Federal government of the release.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: SAN No. 4736

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RIN: 2050–AF02

Environmental Protection Agency (EPA) — Completed Actions

Comprehensive Environmental Response, Compensation and Liability Act

3464. CORRECT TYPOGRAPHICAL ERRORS AND REMOVE OBSOLETE LANGUAGE IN 40 CFR PART 302

Priority: Info./Admin./Other

CFR Citation: 40 CFR 302 (Revision)

Completed:

Reason	Date	FR Cite
NPRM	07/09/02	67 FR 45440
Direct Final Rule	07/09/02	67 FR 45314

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2050–AE88

Environmental Protection Agency (EPA) — Prerule Stage

Clean Water Act (CWA)

3465. CLEAN WATER ACT DEFINITION OF WATERS OF THE UNITED STATES

Regulatory Plan: This entry is Seq. No. 118 in part II of this issue of the **Federal Register**.

RIN: 2040–AB74

Environmental Protection Agency (EPA) — Proposed Rule Stage

Clean Water Act (CWA)

3466. REVISIONS TO THE NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN; SUBPART J PRODUCT SCHEDULE LISTING REQUIREMENTS

Priority: Other Significant

Legal Authority: 33 USC 1321(d)(2); CWA section 311(d)(2)

CFR Citation: 40 CFR 300

Legal Deadline: None

Abstract: This action will propose revisions to subpart J of the National Contingency Plan (NCP) (40 CFR part 300.900). Section 311(d)(2)(G) of the Clean Water Act requires that EPA prepare a schedule of dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the NCP. Under subpart J, respondents wishing to add a product to the product schedule must submit technical product data specified in 40 CFR 300.915 to EPA. This rulemaking will propose revisions to subpart J to clarify and change protocols for effectiveness and toxicity testing. It will clarify EPA authority to remove products from the product schedule. These changes will help ensure protection of the environment when these products are used to clean up and mitigate oil spills into or upon navigable waters, adjoining shorelines, the waters of the contiguous zone, or which may affect natural resources belonging to or under the exclusive management authority of the United States.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN No. 4526

Sectors Affected: 54 Professional, Scientific and Technical Services; 3259 Other Chemical Product Manufacturing; 325 Chemical Manufacturing; 3251 Basic Chemical Manufacturing

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RIN: 2050–AE87

3467. WATER QUALITY STANDARDS FOR ALABAMA—PHASE II

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1313 CWA 303

CFR Citation: 40 CFR 131

Legal Deadline: NPRM, Judicial, October 15, 2002, See additional information.

Abstract: Under the CWA, States have primary authority in developing water quality standards for waters within their jurisdiction. EPA maintains oversight authority in that States must submit their water quality standards to EPA for review and approval or disapproval. If a State's water quality standards are not consistent with the requirements of the CWA and its supporting regulations, and are subsequently disapproved by EPA, the State must revise the disapproved water quality standards. If the State does not revise the disapproved water quality standards, the CWA requires the EPA Administrator to promulgate Federal water quality standards to supersede those disapproved provisions in the states' water quality standards. EPA is developing a proposed rule to determine the appropriate use designations for seven waterbodies in Alabama that EPA disapproved in 1986 and 1991.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4264

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RIN: 2040–AD35

3468. TEST PROCEDURES FOR THE ANALYSIS OF CO-PLANAR AND MONO-ORTHO-SUBSTITUTED POLYCHLORINATED BIPHENYLS (PCBS) UNDER THE CLEAN WATER ACT

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(h); 33 USC 1361(a)

CFR Citation: 40 CFR 136; 40 CFR 503

Legal Deadline: None

Abstract: This regulatory action would propose to amend the Guidelines Establishing Test Procedures for the Analysis of Pollutants under 40 CFR

parts 136 and 503 to approve EPA Method 1668 for the congener-specific determination of co-planar and mono-ortho-substituted polychlorinated biphenyls (PCBs) in effluent, ambient water, and sludge. This method is necessary for the implementation of water quality-based permits under the National Pollutant Discharge Elimination System (NPDES) of the Clean Water Act. Water quality-based permits are necessary when technology-based controls do not ensure that a particular water body would meet the State's designated water quality standard. At present there is no EPA analytical method for determination of these PCBs at the levels of concern. Therefore, approval of a new EPA test procedure is necessary.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4049

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RIN: 2040–AD09

3469. TEST PROCEDURES FOR THE ANALYSIS OF MERCURY UNDER THE CLEAN WATER ACT (METHOD 245.7)

Priority: Substantive, Nonsignificant

Legal Authority: CWA 304(h); CWA 501(a); 33 USC 1314(h); 33 USC 1361(a)

CFR Citation: 40 CFR 136.3(IB)

Legal Deadline: None

Abstract: This regulatory action would propose to amend the Guidelines Establishing Test Procedures for the Analysis of Pollutants under 40 CFR part 136 to approve a new analytical test procedure (method) for the determination of mercury in the wastewater program as authorized under the Clean Water Act (CWA). This new test procedure is capable of measuring mercury at low parts-per-trillion (ppt; ng/L) concentrations and would be an alternative to the recently promulgated EPA Method 1631, which also determines mercury at low ppt concentrations. EPA Method 245.7 uses similar technology to EPA Method 1631 (cold vapor atomic fluorescence spectrometry), but it does not require the use of a gold trap. Laboratories claim that EPA Method 245.7 is a less burdensome and more cost-effective method than EPA Method 1631.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4377

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RIN: 2040–AD52

3470. REVISIONS TO METHOD DETECTION AND QUANTIFICATION FOR USE UNDER THE CLEAN WATER ACT AND SAFE DRINKING WATER ACT

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(h); 33 USC 1361(a); 42 USC 300f; 42 USC 300j

CFR Citation: 40 CFR 136(b)

Legal Deadline: NPRM, Judicial, February 28, 2003, Settlement Agreement.
Final, Judicial, September 30, 2004, Settlement Agreement.

Abstract: This regulatory action would propose to amend the guidelines establishing test procedures for the analysis of pollutants under 40 CFR part 136 related to the detection and quantification procedures currently used by EPA for analytes regulated in the wastewater program as authorized under the Clean Water Act (CWA) and in the drinking water program under the Safe Drinking Water Act (SDWA). The current method detection limit (MDL) procedure is set forth at 40 CFR part 136, appendix B. EPA has not promulgated a generic procedure for quantification but it uses the minimum level of quantitation (ML) in its wastewater program and the practical quantitation level (PQL) in its drinking water program. The ML is defined in analytical methods and is generally set at 3.18 times the MDL. The PQL is generally set at five to ten times the MDL. The Office of Water has been working to revise and refine these concepts in response to the need to regulate pollutants at low levels (often levels that are lower than measurement capabilities will allow) and to address other potential approaches to detection and quantification, including concepts being introduced by outside organizations such as voluntary consensus standards bodies (VCSBs). The rulemaking would also reevaluate the current MDL and quantification approaches and assess alternative approaches.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4378

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RIN: 2040–AD53

3471. TEST PROCEDURES: NEW AND UPDATED TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS UNDER THE CLEAN WATER ACT AND SAFE DRINKING WATER ACT

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(h); 33 USC 1361(a); 42 USC 300f; 42 USC 300g-1; 42 USC 300j-4; 42 USC 300j-9(a)

CFR Citation: 40 CFR 136

Legal Deadline: None

Abstract: This regulatory action would amend the "Guidelines Establishing Test Procedures for the Analysis of Pollutants" under 40 CFR Parts 136 and 141 to approve new and updated EPA methods for wastewater, ambient water quality, and drinking water, including new and updated versions of methods from voluntary consensus standards bodies and other organizations. These methods are used to comply with monitoring requirements in the wastewater, ambient water quality and/or drinking water programs, as authorized under the Clean Water Act (CWA) and Safe Drinking Water Act. This regulation would propose new methods for metals such as Method 1638 (which utilizes ICP/MS), new methods for chemical pollutants (e.g., Method 245.7), and updated methods for chemical and biological pollutants (e.g., Methods 625 and 1625), including methods from voluntary consensus standards bodies (VCSBs), and from other external organizations. The new and updated methods include methods from organizations such as the American Society for Testing and Materials (ASTM), Standard Methods, Association of Official Analytical Methods-International, and U.S. Geological Survey.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4540

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RIN: 2040–AD71

3472. MINIMIZING ADVERSE ENVIRONMENTAL IMPACT FROM COOLING WATER INTAKE STRUCTURES AT EXISTING FACILITIES UNDER SECTION 316(B) OF THE CLEAN WATER ACT, PHASE 3

Regulatory Plan: This entry is Seq. No. 136 in part II of this issue of the **Federal Register**.

RIN: 2040–AD70

3473. NPDES PERMIT REQUIREMENTS FOR MUNICIPAL SANITARY AND COMBINED SEWER COLLECTION SYSTEMS, MUNICIPAL SATELLITE COLLECTION SYSTEMS, SANITARY SEWER OVERFLOWS, AND PEAK EXCESS FLOW TREATMENT FACILITIES

Regulatory Plan: This entry is Seq. No. 133 in part II of this issue of the **Federal Register**.

RIN: 2040–AD02

3474. OCEAN DISCHARGES CRITERIA REVISIONS

Priority: Other Significant

Legal Authority: 33 USC 1343 et seq

CFR Citation: 40 CFR 125.121(a); 40 CFR 125.121(e); 40 CFR 125.122; 40 CFR 125.123; 40 CFR 125.124

Legal Deadline: None

Abstract: EPA is proposing to modify the existing regulations implementing the ocean protection provisions of section 403 of the Clean Water Act. A key element of the proposed rule would provide for establishment of baseline water quality standards for ocean waters beyond three miles offshore. These waters, designated "Healthy Ocean Waters," would be protected by both a narrative statement of desired quality and pollutant-specific numeric criteria. The proposed rule also would strengthen the requirements for a permit to discharge to any ocean waters, and would create a process for establishing Special Ocean Sites (SOSs), which are areas within ocean waters that are of outstanding value, where new and significantly expanded discharges would be prohibited. The proposed rule will enhance the protection of the ocean environment and meet the goals of the Executive Order on Marine Protected Areas (E.O. 13158).

Timetable:

Action	Date	FR Cite
NPRM	07/00/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Tribal

Additional Information: SAN No. 4446

Sectors Affected: 21111 Oil and Gas Extraction; 22132 Sewage Treatment Facilities; 221111 Hydroelectric Power Generation; 221112 Fossil Fuel Electric Power Generation; 42271 Petroleum Bulk Stations and Terminals; 325412 Pharmaceutical Preparation Manufacturing; 311711 Seafood Canning

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RIN: 2040–AD60

3475. WATERSHED RULE: TOTAL MAXIMUM DAILY LOAD (TMDL) PROGRAM REVISIONS

Regulatory Plan: This entry is Seq. No. 137 in part II of this issue of the **Federal Register**.

RIN: 2040–AD82

3476. • WITHDRAWAL OF TOTAL MAXIMUM DAILY LOAD (TMDL) PROGRAM REVISIONS

Regulatory Plan: This entry is Seq. No. 138 in part II of this issue of the **Federal Register**.

RIN: 2040–AD84

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EPA—Clean Water Act (CWA) — **Proposed Rule Stage**

3477. • NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT REQUIREMENTS FOR MUNICIPAL WASTEWATER TREATMENT DURING WET WEATHER CONDITIONS

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1251 et seq

CFR Citation: 40 CFR 122.41(m)

Legal Deadline: None

Abstract: During periods of wet weather, wastewater flows received by municipal sewage treatment plants can significantly increase. Significant increases in wastewater flow caused by wet weather conditions can create operational challenges for sewage treatment facilities. Where peak flows approach or exceed the design capacity of a treatment plant they can seriously reduce treatment efficiency or damage treatment units. In addition to hydraulic concerns, wastewater associated with peak flows may have low organic strength, which can also decrease treatment efficiencies. EPA plans to clarify NPDES requirements for municipal sewage treatment plants regarding treatment of peak flows generated during wet weather conditions. This action would provide principles under which peak wet weather discharges from POTWs that consist of effluent routed around biological treatment units blended together with the effluent from the biological units prior to discharge can be authorized in an NPDES permit.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Federal, State

Federalism: Undetermined

Additional Information: SAN No. 4690

Sectors Affected: 22132 Sewage Treatment Facilities

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RIN: 2040–AD87

Environmental Protection Agency (EPA)
Clean Water Act (CWA) — **Final Rule Stage**

3478. EFFLUENT GUIDELINES AND STANDARDS FOR THE METAL PRODUCTS AND MACHINERY CATEGORY, PHASES 1 AND 2

Regulatory Plan: This entry is Seq. No. 145 in part II of this issue of the Federal Register.

RIN: 2040–AB79

3479. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT REGULATION AND EFFLUENT GUIDELINES AND STANDARDS FOR CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOS)

Regulatory Plan: This entry is Seq. No. 146 in part II of this issue of the Federal Register.

RIN: 2040–AD19

3480. TEST PROCEDURES FOR ANALYSIS FOR BIOLOGICAL CONTAMINANTS UNDER CLEAN WATER ACT

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(h) CWA 304(h); 33 USC 1361 CWA 501(a)

CFR Citation: 40 CFR 136

Legal Deadline: None

Abstract: This regulatory action would amend the guidelines establishing test procedures for the analysis of pollutants under 40 CFR part 136 to approve EPA Method 1622 and to approve microbiological methods for monitoring ambient water for the detection of Cryptosporidium, Giardiai, E. coli and Enterococci. in ambient waters by filtration of a 10-L sample in laboratory, separation of target organisms from other debris using immunomagnetic separation, and detection of the organisms using immunofluorescence assay and differential interference contrast microscopy and confirmation examination of the organisms using vital dye stains. This proposed regulation would approve test procedures to be available for use by testing laboratories.

Timetable:

Action	Date	FR Cite
NPRM	08/30/01	66 FR 45811
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4047

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RIN: 2040–AD08

3481. TEST PROCEDURES: CLEAN WATER ACT AND SAFE DRINKING WATER ACT METHODS UPDATE

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(h); 33 USC 1361(a); 42 USC 300 g-1; 42 USC 300f(1); 42 USC 300j-4; 42 USC 300j-9(a)

CFR Citation: 40 CFR 136; 40 CFR 141; 40 CFR 143

Legal Deadline: None

Abstract: This regulatory action would amend the Guidelines Establishing Test Procedures for the Analysis of Pollutants under 40 CFR part 136, National Primary Drinking Water Regulations under 40 CFR part 141, and

EPA—Clean Water Act (CWA) — **Final Rule Stage**

National Secondary Drinking Water Regulations under 40 CFR part 143 to approve updated versions of analytical test procedures (methods) from voluntary consensus standards bodies and other organizations. These methods are used to comply with monitoring requirements in the wastewater and drinking water programs, as authorized under the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA). This regulation would approve updated versions of methods for determination of chemical, radiological, and microbiological pollutants in wastewater and drinking water. The updates are to methods from voluntary consensus standards bodies (the American Society for Testing and Materials and Standard Methods) and from the U.S. Geological Survey and the Department of Energy. Previously approved versions of the methods being updated remain approved. Because EPA received adverse comments on the direct final rule published on January 16, 2001, the Agency withdrew the direct final on May 15, 2001. EPA plans to issue a final rulemaking addressing the adverse comments by November 2002, based on a companion proposal to the direct final rule.

Timetable:

Action	Date	FR Cite
Direct Final Rule	01/16/01	66 FR 3466
Notice of Withdrawal of Direct Final Rule	05/15/01	66 FR 26795
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4409

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RIN: 2040–AD59

3482. TEST PROCEDURES FOR THE ANALYSIS OF MERCURY UNDER THE CLEAN WATER ACT (REVISIONS TO METHOD 1631)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(h); 33 USC 1361(a)

CFR Citation: 40 CFR 136.3

Legal Deadline: NPRM, Judicial, September 30, 2001, Settlement agreement.
Final, Judicial, September 30, 2002, Settlement agreement.

Abstract: This action would amend EPA Method 1631 to add new requirements for clean techniques and quality control (QC) beyond those specified in EPA Method 1631 for the determination of mercury at water quality criteria levels. EPA Method 1631 was promulgated at 40 CFR 136 in June 1999. Later that year, the Alliance of Automobile Manufacturers, the Chemical Manufacturers Association, and the Utility Water Act Group (Petitioners) filed a petition for judicial review of the final rule. One of the issues in the petition related to the clean sampling techniques and QC requirements in the Method. As part of a Settlement Agreement in October 2000, EPA agreed to sign a Federal Register notice proposing additional clean techniques and QC requirements for Method 1631 by September 30, 2001, and to take final action by September 30, 2002.

Timetable:

Action	Date	FR Cite
Final Action Technical Correction	06/18/01	66 FR 32774
NPRM	10/09/01	66 FR 51518
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4541

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RIN: 2040–AD72

3483. RULE TO REVISE AND TO RATIFY OR WITHDRAW WHOLE EFFLUENT TOXICITY TEST METHODS

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(h); 33 USC 1361(a)

CFR Citation: 40 CFR 136.3

Legal Deadline: NPRM, Judicial, September 24, 2001, Settlement Agreement.
Final, Judicial, November 8, 2002, Settlement Agreement.

Abstract: This regulatory action would amend the Guidelines Establishing Test Procedures for the Analysis of Pollutants under 40 CFR part 136 by revising several whole effluent toxicity (WET) test methods and by ratifying or withdrawing WET test methods listed in Table IA for use under the Clean Water Act. These methods were promulgated on October 16, 1995 (60 FR 53529). The regulation is needed to satisfy the terms of two settlement agreements (entered into by EPA and Edison Electric Institute, et al., and Western Coalition of Arid States on July 24, 1998; and entered into by EPA and Lone Star Steel in January, 1997). This action will amend the 1995 rule by revising three WET method manuals, and by ratifying or withdrawing each of the WET test methods challenged in the settlement agreements from these three manuals. Specific revisions include: the requirement of blocking by parentage in Method 1002, the requirement for demonstration of valid concentration-response relationships, the inclusion of specific procedures to control pH drift, and the inclusion of procedures to reduce pathogenic interferences in Method 1000.

Timetable:

Action	Date	FR Cite
NPRM	09/28/01	66 FR 49794
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4514

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RIN: 2040–AD73

3484. MINIMIZING ADVERSE ENVIRONMENTAL IMPACT FROM COOLING WATER INTAKE STRUCTURES AT EXISTING FACILITIES UNDER SECTION 316(B) OF THE CLEAN WATER ACT, PHASE 2

Regulatory Plan: This entry is Seq. No. 147 in part II of this issue of the Federal Register.

RIN: 2040–AD62

3485. COMPARISON OF DREDGED MATERIAL TO REFERENCE SEDIMENT

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1344CWA sec 404

CFR Citation: 40 CFR 230

Legal Deadline: None

Abstract: This action would revise the testing provisions of the Clean Water Act section 404(b)(1) Guidelines to provide for comparisons between dredged material proposed for discharge and reference sediment. Reference sediment would be defined as sediment that reflects conditions at the disposal site had no dredged material disposal ever occurred there. Because the disposal site itself is currently used as the point of comparison, this action would make a technical improvement in assessing cumulative impacts and help make dredged material testing under section 404 more consistent with that conducted for ocean disposal, which currently employs a reference sediment approach. This action is not expected to have a significant impact on state, local, or tribal governments or small business, as the action will be limited to Corps projects and permit applications for which dredged material testing is necessary, and because the effect of the action will be limited to changing the location of an otherwise collected sample.

Timetable:

Action	Date	FR Cite
NPRM	01/04/95	60 FR 419
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 3288

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RIN: 2040–AC14

3486. ROUND 2 STANDARDS FOR THE USE OR DISPOSAL OF SEWAGE SLUDGE

Priority: Other Significant

Legal Authority: 33 USC 1345 CWA sec 405; 33 USC 1361(a) CWA sec 501(a)

CFR Citation: 40 CFR 503 (Revision)

Legal Deadline: NPRM, Judicial, December 15, 1999.
Final, Judicial, October 17, 2003.

Abstract: This rulemaking concerns dioxin and dioxin-like compounds in sewage sludge that is applied to the land. Section 405 of the Clean Water Act (CWA) requires EPA to promulgate regulations providing guidelines for the use and disposal of sewage sludge, including numeric standards for toxic pollutants which may adversely affect human health and the environment and management practices. EPA promulgated the first round of regulations, which set standards for toxic pollutants in sewage sludge for which information was available and management practices for land application, surface disposal and incineration of sewage sludge. (58 FR 9248, Feb. 19, 1993). EPA proposed the second round of regulations, for other toxic pollutants not regulated in the first round, of regulations, for other toxic pollutants not regulated in the first round, in December 1999 (64 FR 72045, Dec. 23, 1999). The proposed rule would establish a limit of 300 nanograms of TEQ dioxins per kilogram of dry sewage sludge for land application along with monitoring requirements. The proposal also proposed to take no regulatory action with respect to dioxins in sewage sludge that is disposed of at a surface disposal site or incinerated in a sewage sludge incinerator. EPA signed a final notice of its determination not to further regulate for dioxins in sewage sludge that is disposed of at a surface disposal site or incinerated in a sewage sludge incinerator, and stated that final action on the proposal to amend the land application rule will be published separately at a later date. (66 FR 66228, Dec. 21, 2001). The deadline for taking final action on the land application rule is subject to a consent decree deadline of October 17, 2003.

Timetable:

Action	Date	FR Cite
NPRM	12/23/99	64 FR 72045
Notice of Data Availability re: Land Application	06/12/02	67 FR 40554
Final Action Land Application	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 3488

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RIN: 2040–AC25

3487. MODIFICATION TO COMPETITIVE PROCESS USED BY EPA FOR WATER QUALITY COOPERATIVE AGREEMENTS AND WETLAND PROGRAM DEVELOPMENT GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1251 sec 104

CFR Citation: 40 CFR 35.362; 40 CFR 35.382

Legal Deadline: None

Abstract: EPA is proposing to modify the requirement that a competitive process be used for the award of Water Quality Cooperative Agreements (WQCA) and Wetland Program Development Grants (WPDG). The proposed modification would provide Regions with the discretion to allocate a portion of WQCA and WPDG funds to States in accordance with program guidance instead of awarding funds based on a competition among States. The proposed changes would provide State, interstate, and local agencies greater flexibility in developing comprehensive programs.

Timetable:

Action	Date	FR Cite
Final Action	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Additional Information: SAN No. 4624

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RIN: 2040–AD83

3488. • REVISIONS TO MINIMIZING ADVERSE ENVIRONMENTAL IMPACTS FROM COOLING WATER INTAKE STRUCTURES UNDER SECTION 316(B) OF THE CLEAN WATER ACT — PHASE I

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1251 et seq

CFR Citation: 40 CFR 125 subpart I

Legal Deadline: None

Abstract: This action will make three minor technical corrections to the final rule implementing section 316(b) of the Clean Water Act (CWA) for new facilities that use water withdrawn from rivers, streams, lakes, reservoirs, estuaries, oceans or other waters of the United States for cooling purposes. (EPA published the final rule on December 18, 2001, 66 FR 65256.) The final rule established national technology-based performance requirements applicable to the location, design, construction, and capacity of cooling water intake structures at new facilities. The regulatory language did not correctly reflect EPA's intent in three minor instances. Therefore, EPA will make three minor changes to the regulatory text: (1) delete inadvertent requirement that quarterly monitoring occur at a low-flow condition that occurs once every ten years; (2) clarify that the permit director will consider information from fishery agencies about whether certain requirements should be put in a permit, not allow the fishery manager to make the determination; and (3) delete unnecessary cross references between the Track 2 compliance option and the alternative requirements provision.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4726

Sectors Affected: 221111 Hydroelectric Power Generation; 221112 Fossil Fuel Electric Power Generation; 221113 Nuclear Electric Power Generation; 221119 Other Electric Power Generation; 221121 Electric Bulk Power Transmission and Control; 221122 Electric Power Distribution; 111991 Sugar Beet Farming; 11193 Sugarcane Farming; 21221 Iron Ore Mining; 212391 Potash, Soda, and Borate Mineral Mining; 311221 Wet Corn Milling; 311311 Sugarcane Mills; 311312 Cane Sugar Refining; 311313 Beet Sugar Manufacturing; 311222 Soybean Processing; 311225 Fats and Oils Refining and Blending; 31214 Distilleries; 312229 Other Tobacco Product Manufacturing; 31221 Tobacco Stemming and Redrying; 31321 Broadwoven Fabric Mills; 321912 Cut Stock, Resawing Lumber, and Planing; 321113 Sawmills; 321918 Other Millwork (including Flooring); 321999 All Other Miscellaneous Wood Product Manufacturing; 321212 Softwood Veneer and Plywood Manufacturing; 321219 Reconstituted Wood Product Manufacturing; 3221 Pulp, Paper, and Paperboard Mills; 322121 Paper (except Newsprint) Mills; 32213 Paperboard Mills; 322121 Paper (except Newsprint) Mills

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RIN: 2040–AD85

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3489. EFFLUENT GUIDELINES AND STANDARDS FOR THE CONSTRUCTION AND DEVELOPMENT INDUSTRY

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect State, local or tribal governments.

Legal Authority: 33 USC 1311 CWA 301; 33 USC 1314 CWA 304; 33 USC 1316 CWA 306; 33 USC 1317 CWA 307; 33 USC 1318 CWA 308; 33 USC 1342 CWA 402; 33 USC 1361 CWA 501

CFR Citation: 40 CFR 450

Legal Deadline: NPRM, Judicial, May 15, 2002.
Final, Judicial, March 31, 2004.

Abstract: The effluent guidelines will apply to some construction activities associated with new development, as well as to those associated with redevelopment activities. The regulations will address storm water runoff from construction sites during the active phase of construction. Construction activity is a major source of sediment and other pollutants discharged to the nation's waters. Industries potentially affected by this rulemaking include land developers, home builders, builders of commercial and industrial property, and other private and public sector construction site owners and operators. EPA will develop design criteria for erosion and sediment controls. These requirements will be implemented in NPDES storm water permits issued to construction site owners and operators.

Timetable:

Action	Date	FR Cite
NPRM	06/24/02	67 FR 42644
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4280

Sectors Affected: 233 Building, Developing and General Contracting; 234 Heavy Construction

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RIN: 2040–AD42

3490. EFFLUENT GUIDELINES AND STANDARDS FOR THE PULP, PAPER, AND PAPERBOARD POINT SOURCE CATEGORY, DISSOLVING KRAFT AND DISSOLVING SULFITE SUBCATEGORIES (PHASE III)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1311; 33 USC 1314; 33 USC 1316; 33 USC 1317; 33 USC 1318; 33 USC 1342; 33 USC 1361

CFR Citation: 40 CFR 430.10 to 430.18; 40 CFR 430.40 to 430.48

Legal Deadline: None

Abstract: On December 17, 1993, EPA proposed revised effluent limitations, guidelines and standards and best management practices regulations for the Dissolving Kraft and Dissolving Sulfite Subcategories of the Pulp, Paper, and Paperboard Point Source Category (40 CFR Part 430). This action, which OW refers to as Phase III of the Cluster Rules, will respond to comments and reflect new data. There are five domestic mills in these two subcategories. The final rule is anticipated to set limits for adsorbable organic halides (AOX), chemical oxygen demand (COD), chloroform, dioxin, furan, and 12 specific chlorinated phenolics.

Timetable:

Action	Date	FR Cite
NPRM	12/17/93	58 FR 66078
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4370

Sectors Affected: 3221 Pulp, Paper, and Paperboard Mills

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RIN: 2040–AD49

3491. EFFLUENT GUIDELINES AND STANDARDS FOR THE CONCENTRATED AQUATIC ANIMAL PRODUCTION INDUSTRY

Priority: Other Significant

Legal Authority: CWA sec 301; CWA sec 304; CWA sec 306; CWA sec 307; CWA sec 308; CWA sec 318; CWA sec 402; CWA sec 501

CFR Citation: 40 CFR 451

Legal Deadline: NPRM, Judicial, August 14, 2002.
Final, Judicial, June 30, 2004.

Abstract: EPA is focusing new efforts to help reduce nutrient loadings from commercial agricultural and industrial operations nationwide. Currently, there are no federal technology-based standards for aquatic animal production facilities, which are part of the aquaculture industry. This action is a new effort to develop pollutant controls in the form of nationally applicable discharge standards for commercial and public aquaculture operations. In assessments of surface water quality, States most frequently cite siltation, nutrients, and pathogens as the major cause of water quality impairment. With the growth of the aquaculture industry, and inconsistent state of regulatory oversight, EPA will examine available technologies for the control of solids which in turn control other pollutants, primarily nutrients. This action was formerly titled Aquaculture.

Timetable:

Action	Date	FR Cite
NPRM	09/12/02	67 FR 57871
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Tribal

Additional Information: SAN No. 4406

Sectors Affected: 112511 Finfish Farming and Fish Hatcheries; 112512 Shellfish Farming; 112519 Other Animal Aquaculture; 71213 Zoos and Botanical Gardens

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RIN: 2040–AD55

3492. EFFLUENT GUIDELINES AND STANDARDS FOR THE MEAT AND POULTRY PRODUCTS POINT SOURCE CATEGORY (REVISIONS)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1311; 33 USC 1314; 33 USC 1316; 33 USC 1317; 33 USC 1318; 33 USC 1361; 33 USC 1342

CFR Citation: 40 CFR 432 (Revision)

Legal Deadline: NPRM, Judicial, January 30, 2002.
Final, Judicial, December 31, 2003.

Abstract: The Agency has proposed revisions to the effluent limitations guidelines and standards for the meat and poultry products point source category. The current regulations, at 40 CFR 432, are more than 20 years old and are limited to a few conventional pollutants. Recent concerns about nutrient discharges from these facilities might be resolved by these additional effluent limitations. In particular, the current regulations do not address ammonia nitrogen for red meat slaughterhouses/packinghouses (subparts A-D). Nutrients are a significant remaining water quality problem for impaired streams. Revisions to the current regulations also include effluent limitations for poultry processing, which is not currently covered by any effluent guideline.

Timetable:

Action	Date	FR Cite
NPRM	02/25/02	67 FR 8582
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4407

Sectors Affected: 311611 Animal (except Poultry) Slaughtering; 311612 Meat Processed from Carcasses; 311613 Rendering and Meat By-product Processing; 311615 Poultry Processing

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RIN: 2040–AD56

3493. WATER QUALITY STANDARDS FOR INDIAN COUNTRY WATERS

Priority: Other Significant

Legal Authority: 33 USC 1251 et seq

CFR Citation: 40 CFR 131; 40 CFR 121.17 (New); 40 CFR 122.4 (Amended); 40 CFR 123.1 (Amended); 40 CFR 131.4 (Amended); 40 CFR 131.40 (New); 40 CFR 230.10 (Amended); 40 CFR 233.1 (Amended); 40 CFR 233.51 (Amended)

Legal Deadline: None

Abstract: EPA is considering proposing a national rule containing core federal water quality standards (WQS) to support tailored, site-specific decisions for certain waters in Indian country that do not have EPA-approved Tribal standards. EPA is contemplating this rule as a first step towards ensuring that the core Clean Water Act (CWA) framework for protecting water quality is in place for all such waters. The core federal water quality standards would establish: use designations consistent with CWA section 101(a) goals, cultural and traditional, and other uses; water quality criteria for protecting the designated uses; and an antidegradation policy designed to protect water quality. Such standards would provide a basis for EPA (in consultation with a Tribe) to affect pollution discharges occurring upstream from Tribal waters, provide a basis for including water quality based limitations or conditions in permits or certifications for discharges within Indian country; and provide the basis for establishing Total Maximum Daily Loads (TMDLs) for Indian country waters. A federal promulgation would not prevent Tribes from developing their own standards. The Office of Management and Budget reviewed the proposal and returned it to EPA on October 2, 2001, for further consideration and analysis. EPA is considering how to proceed.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Tribal

Additional Information: SAN No. 4344

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RIN: 2040–AD46

3494. TEST PROCEDURES FOR THE ANALYSIS OF TRACE METALS UNDER THE CLEAN WATER ACT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 33 USC 1314(h) CWA 304(h); 33 USC 1361(a) CWA 501

CFR Citation: 40 CFR 136

Legal Deadline: None

Abstract: This regulatory action would propose to amend the guidelines establishing test procedures for the analysis of pollutants under 40 CFR part 136 to approve new EPA methods for the determination of trace metals at EPA's water quality criteria levels. These methods are necessary for the implementation of water quality-based permits under the National Pollutant Discharge Elimination System (NPDES) of the Clean Water Act. Water quality-based permits are necessary when technology-based controls do not ensure that a particular water body would meet the State's designated

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water quality standard. Because the methods currently approved under 40 CFR part 136 were designed to support primarily technology-based permitting needs, and because these technology-based levels are as much as 280 times higher than water quality-based criteria for metals, approval of new EPA test procedures is necessary.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Federalism: Undetermined

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RIN: 2040–AC75

3495. TEST PROCEDURES: INCREASED METHOD FLEXIBILITY FOR TEST PROCEDURES APPROVED FOR CLEAN WATER ACT COMPLIANCE MONITORING

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(h) CWA 304 (h); 33 USC 1361(a) CWA 501 (a)

CFR Citation: 40 CFR 136

Legal Deadline: None

Abstract: This regulatory action would highlight the flexibility already contained in the 600 and 1600 series of EPA Methods that are currently approved for Clean Water Act compliance monitoring under 40 CFR part 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants. These methods typically contain a statement that, in recognition of advances that are occurring in analytical technology, and to allow the analyst to overcome sample matrix interferences, the analyst is permitted certain options to improve separations or lower the costs of measurements. These options include alternate extraction, concentration, cleanup procedures, and changes in columns and detectors. The methods further require the analyst to demonstrate that the method modifications will not adversely affect the quality of data by generating quality control results that meet the specifications contained in the method. Despite this stated flexibility, the Agency has found that many NPDES and pretreatment permitting authorities are not aware of this flexibility when issuing or enforcing NPDES and pretreatment permits. Therefore, this regulatory action will highlight the existing method flexibility and clarify EPA's position regarding its application. This action will also extend this flexibility to other methods currently approved under 40 CFR part 136. The purpose of extending this flexibility to other methods is to (1) increase consistency between methods, (2) provide for increased recognition of advances in analytical technology, and (3) reduce costs associated with analytical measurements.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

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RIN: 2040–AC92

3496. TEST PROCEDURES: PERFORMANCE-BASED MEASUREMENT SYSTEM (PBMS) PROCEDURES AND GUIDANCE FOR CLEAN WATER ACT TEST PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(h) CWA 304(h); 33 USC 1361(a) CWA 501(a)

CFR Citation: 40 CFR 136

Legal Deadline: None

Abstract: This regulatory action would establish the use of performance-based measurement procedures and guidance for use in Clean Water Act compliance monitoring under 40 CFR part 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants. The new procedures would include guidance concerning the format, content, quality assurance/quality control, and data validation requirements for use of test methods. This regulatory action would also describe increased program guidance in the form of a clearinghouse, technical bulletins, and/or guidance documents geared towards clarifying technical and policy issues associated with the use of test methods approved for use in the program.

Timetable:

Action	Date	FR Cite
NPRM	03/28/97	62 FR 14975
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

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RIN: 2040–AC93

3497. TEST PROCEDURES FOR THE ANALYSIS OF MISCELLANEOUS METALS, ANIONS, AND VOLATILE ORGANICS UNDER THE CLEAN WATER ACT, PHASE ONE

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(h) CWA 304(h); 33 USC 1361(a) CWA 501(a)

CFR Citation: 40 CFR 136

Legal Deadline: None

Abstract: This regulatory action would amend the Guidelines Establishing Test Procedures for the Analysis of Pollutants under 40 CFR part 136 to approve new procedures for the analysis of miscellaneous metals, anions, and volatile organics under the Clean Water Act (CWA). These methods are used for implementing water quality based permits under the National Pollutant Discharge Elimination System (NPDES) of the CWA. This regulation would approve test procedures to be used in measuring this group of compounds under the NPDES Program unless the Regional Administrator approves an alternative procedure. EPA plans to segment the rulemaking into two phases to accommodate different amounts of data for the long list of compounds.

Timetable:

Action	Date	FR Cite
NPRM	10/18/95	60 FR 53988
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 3155

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RIN: 2040–AC95

3498. TEST PROCEDURES FOR THE ANALYSIS OF MISCELLANEOUS METALS, ANIONS, AND VOLATILE ORGANICS UNDER THE CLEAN WATER ACT, PHASE TWO

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(h) CWA 304(h); 33 USC 1361(a) CWA 501(a)

CFR Citation: 40 CFR 136

Legal Deadline: None

Abstract: This regulatory action would amend the Guidelines Establishing Test Procedures for the Analysis of Pollutants under 40 CFR Part 136 to approve new procedures for the analysis of miscellaneous metals, anions, and volatile organics under the Clean Water Act (CWA). These methods are used for implementing water quality based permits under the National Pollutant Discharge Elimination System (NPDES) of the CWA. This regulation would approve test procedures to be used in measuring this group of compounds under the NPDES unless the Regional Administrator approves an alternative procedure. This rulemaking would constitute the second of two segments of rulemaking initially proposed as one action.

Timetable:

Action	Date	FR Cite
NPRM	10/18/95	60 FR 53988
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4089

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RIN: 2040–AD12

3499. UNIFORM NATIONAL DISCHARGE STANDARDS FOR VESSELS OF THE ARMED FORCES - PHASE II

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1322; 33 USC 1361

CFR Citation: 40 CFR 1700

Legal Deadline: Final, Statutory, May 10, 2001.

Abstract: This action is Phase II of implementing regulations on Uniform National Discharge Standards for Vessels of the Armed Forces. In 1996 the Clean Water Act was amended to create section 312(n), Uniform National Discharge Standards for Vessels of the Armed Forces. Section 312(n) directs EPA and DOD to work together to provide Armed Forces vessels with a nationally uniform set of discharge standards, which preempt State discharge standards for these vessels. The purpose of the statute is to allow DOD to plan, design and build environmentally sound vessels, to encourage innovative pollution control technology, and to improve operational flexibility. EPA and DOD jointly promulgated Phase I of these regulations, 40 CFR part 1700, on May 10, 1999 (64 FR 25126). The Phase I rulemaking concluded that 25 discharges from Armed Forces vessels would require control devices. Some of these discharges have the potential to introduce oil or other organics into receiving waters (such as bilge water); some have the potential to introduce copper or other metals (such as fire main); and some have the potential to introduce nonindigenous invasive aquatic species (such as ballast water). Phase II will establish performance standards for control devices for these 25 discharges. Once DOD implements rules for achieving the standards set in Phase II, covered discharges from Armed Forces vessels will be required to meet these standards, and will not be subject to discharge standards established by States.

Timetable:

Action	Date	FR Cite
NPRM	01/00/05	
Final Action	09/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Federalism: Undetermined

Additional Information: SAN No. 4357

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RIN: 2040–AD39

3500. STREAMLINING THE GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

Priority: Other Significant

Legal Authority: 33 USC 1314 CWA sec 304; 33 USC 1317 CWA sec 307; 33 USC 1342 CWA sec 402; 33 USC 1361 CWA sec 501

CFR Citation: 40 CFR 403

Legal Deadline: None

Abstract: The final rule will be promulgated as a program streamlining activity. The rule will revise certain provisions in the general pretreatment regulations (40 CFR part 403) that address restrictions on and oversight of industrial discharges into publicly owned treatment works (POTWs). The final rule will include exclusions or variable requirements for smaller facilities that contribute insignificant amounts of pollutants, clarify requirements for implementing pretreatment standards, and provide more flexible reporting, inspection and sampling requirements. The revisions should provide greater flexibility, reduce burden, and achieve improved environmental results at less cost for regulatory authorities and the regulated community.

Timetable:

Action	Date	FR Cite
NPRM	07/22/99	64 FR 39564
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 3663

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RIN: 2040–AC58

3501. NPDES STREAMLINING RULE — ROUND III

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1311 CWA sec 301; 33 USC 1312 CWA sec 302; 33 USC 1314 CWA sec 304; 33 USC 1316 CWA sec 306; 33 USC 1318 CWA sec 308; 33 USC 1342 CWA sec 402; 33 USC 1361 CWA sec 501

CFR Citation: 40 CFR 122; 40 CFR 123; 40 CFR 124

Legal Deadline: None

Abstract: EPA plans to issue several rulemaking packages to revise NPDES requirements in parts 122, 123, and 124 to eliminate redundant regulations, provide clarification, and remove or streamline unnecessary procedures. Revisions under consideration in this rule include adding additional permit modifications that can be considered minor modifications at 122.63, and changes to requirements concerning EPA's review of State permits. Other revisions may be considered as work on this rule progresses. This rulemaking is expected to affect entities which implement the NPDES program or are regulated by it. This includes small businesses and State, tribal and local governments. Most of these effects are expected to be deregulatory or streamlining in nature.

Timetable:

Action	Date	FR Cite
NPRM	11/00/06	
Final Action	08/00/07	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 3786

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RIN: 2040–AC84

3502. CLEAN WATER STATE REVOLVING FUND REGULATION REVISIONS RE: USE AS MATCHING FUNDS

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1383(h)

CFR Citation: 40 CFR 35.3125(b)(1)

Legal Deadline: None

Abstract: This regulation will revise the Clean Water State Revolving Fund (CWSRF) Regulations to allow the use of loans from the non-Federal and non-State match share of CWSRF funds as a match for infrastructure grants. In 1990, EPA issued regulations implementing the CWSRF program, established as title VI of the Clean Water Act (CWA) in 1987. Section 603(h) of the CWA prohibits use of the CWSRF loan as matching funds with respect to the non-Federal share of the cost of a treatment works project for which a municipality or agency is receiving assistance from the Administrator under any other authority. In issuing its regulations at 40 CFR 35.3125(b)(1), EPA interpreted this prohibition broadly, applying the restriction to all treatment works construction. At that time, EPA believed the replacement of the construction grants program authorized by title II of the CWA by the CWSRF would result in a significant decrease in the use of other Federal grant funds for treatment works construction. However, from FY 1995 onward, Congress has authorized and appropriated funds for infrastructure construction grants in various Appropriations Acts. There are currently over 700 projects totaling over $3.3 billion dollars. In several cases, EPA has been asked to allow CWSRF funds to be used as a match for these grants; but 40 CFR 35.3125(b)(1) prohibits such action. Upon reconsideration, EPA has decided its initial reading in 1990 was too broad, and the intent of Congress was only to prohibit use of CWSRF loans as a match for title II construction grants.

This action will revise the regulations to allow a State, in its operation of the CWSRF, to permit a CWSRF loan for non-title II infrastructure construction grant projects to be used as a non-federal match in certain circumstances. The prohibition on the use of CWSRF as a match for a title II construction grant will continue.

Timetable:

Action	Date	FR Cite
Direct Final Rule Direct Final with companion proposal.	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4493

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RIN: 2040–AD68

Environmental Protection Agency (EPA)
Clean Water Act (CWA)

Completed Actions

3503. EFFLUENT GUIDELINES AND STANDARDS FOR THE IRON AND STEEL MANUFACTURING POINT SOURCE CATEGORY (REVISIONS)

Priority: Other Significant

CFR Citation: 40 CFR 420

Completed:

Reason	Date	FR Cite
Final Action	10/17/02	67 FR 64216

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local

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RIN: 2040–AC90

3504. EFFLUENT GUIDELINES AND STANDARDS FOR THE BLEACHED PAPERGRADE KRAFT SUBCATEGORY OF THE PULP, PAPER, AND PAPERBOARD CATEGORY; CERTIFICATION IN LIEU OF MONITORING FOR CHLOROFORM

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 430

Completed:

Reason	Date	FR Cite
Final Action	09/19/02	67 FR 58990

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local

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RIN: 2040–AD23

3505. EFFLUENT GUIDELINES 2002 PROGRAM PLAN

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Completed:

Reason	Date	FR Cite
NPRM	06/18/02	67 FR 41417
Final Action	08/27/02	67 FR 55012

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2040–AD78

3506. REVISION TO CLEAN WATER ACT REGULATORY DEFINITION OF FILL MATERIAL

Priority: Substantive, Nonsignificant

CFR Citation: 33 CFR 323.2(e); 40 CFR 232.2

Completed:

Reason	Date	FR Cite
Final Action	05/09/02	67 FR 31129

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

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RIN: 2040–AD51

Environmental Protection Agency (EPA)
Safe Drinking Water Act (SDWA)

Prerule Stage

3507. DRINKING WATER: REGULATORY DETERMINATIONS REGARDING CONTAMINANTS ON THE DRINKING WATER CONTAMINANT CANDIDATE LIST

Priority: Other Significant

Legal Authority: 42 USC 300f et seq; SDWA 1412(b)(1)(B)

CFR Citation: Not Yet Determined

Legal Deadline: Other, Statutory, August 6, 2001, Final Regulatory Determination.

Abstract: The 1996 amendments to the Safe Drinking Water Act (SDWA) requires EPA to publish a list of non-regulated contaminants every five years, which may warrant regulation due to their health effects and their potential for occurrence in public water systems (PWSs). The first list, called the Contaminant Candidate List (CCL), was published in the Federal Register on March 2, 1998 (63 FR 10274). When establishing the 1998 CCL, EPA divided the contaminants among three main categories: 1) contaminants which are priorities for additional research; 2) contaminants which need additional occurrence data; and 3) contaminants which are priorities for consideration for rulemaking. These contaminants are collectively referred to as the Regulatory Determination Priority contaminants. In addition to publishing the drinking water CCL, the SDWA also requires the Agency to select five or more contaminants from the CCL and determine, by August 2001, whether to regulate these contaminants with a National Primary Drinking Water Regulation (NPDWR). The Regulatory Determination Priority category is the list of contaminants from which the Agency will determine whether or not regulations are necessary. There are currently nine contaminants that have sufficient scientific information to make regulatory determinations: Acanthamoeba; Aldrin; Dieldrin; Hexachlorobutadiene; Manganese; Metribuzin; Naphthalene; Sodium; and Sulfate. In order make a decision whether or not to develop a NPDWR for a contaminant, the SDWA requires three statutory tests be met: 1) the contaminant may have an adverse effect on the health of persons; 2) the contaminant is known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern; and 3) in the sole judgment of the Administrator, regulation of the contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems. Using these three statutory tests to make regulatory decisions, there are three possible outcomes: 1) regulate the contaminant with a NPDWR; 2) develop guidance (e.g. Health or Consumer Advisory); or 3) determine no action is necessary.

Timetable:

Action	Date	FR Cite
Notice of Preliminary Regulatory Determinations	06/03/02	67 FR 38222
Notice of Final Regulatory Determinations	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4447

Sectors Affected: 22131 Water Supply and Irrigation Systems

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RIN: 2040–AD61

3508. 6-YEAR REVIEW OF EXISTING NATIONAL PRIMARY DRINKING WATER REGULATIONS

Priority: Other Significant

Legal Authority: 42 USC 300f et seq

CFR Citation: Not Yet Determined

Legal Deadline: Other, Statutory, August 6, 2002, Complete review for contaminants with NPDWRs promulgated prior to August 1996.

Abstract: The Safe Drinking Water Act (SDWA) requires EPA to review and revise, if appropriate, all National Primary Drinking Water Regulations (NPDWRs) no less frequently than once every six years. According to SDWA, any revisions of drinking water regulations must maintain, or increase, the level of public health protection provided; however, EPA may identify regulation changes that will streamline or reduce existing requirements without lessening the level of public health protection. As a part of this action, EPA will do two things: (1) develop an overall protocol for conducting each six year review; and (2) review 69 NPDWRs published prior to 1996. The remaining NPDWRs published prior to 1996 (e.g., arsenic, radionuclides, most microbiological NPDWRs) have been, or are being, reviewed in the context of recent or ongoing rulemakings. No new requirements will be imposed by this action. The purpose of the review is to determine whether new data, technology, or other factors exist that justify revisions to existing NPDWRs. The outcome of each review will be a Federal Register notice making available the results of the Agency's review and a planned rulemaking schedule for the regulations that the Agency believes are appropriate candidates for revision at that time. EPA may decide that any of the following need to be revised: maximum contaminant level goals, maximum contaminant levels, analytical methods, monitoring, treatment, recordkeeping and reporting requirements. EPA plans extensive stakeholder outreach and consultation in the development of the protocol and throughout the review process.

Timetable:

Action	Date	FR Cite
Notice of Preliminary Decision	04/17/02	67 FR 19030
Notice of Final Decision	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4424

Sectors Affected: 22131 Water Supply and Irrigation Systems

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EPA—Safe Drinking Water Act (SDWA)

Prerule Stage

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Environmental Protection Agency (EPA)
Safe Drinking Water Act (SDWA)

Proposed Rule Stage

3509. NATIONAL PRIMARY DRINKING WATER REGULATIONS: LONG TERM 2 ENHANCED SURFACE WATER TREATMENT RULE

Regulatory Plan: This entry is Seq. No. 134 in part II of this issue of the Federal Register.

RIN: 2040–AD37

3510. NATIONAL PRIMARY DRINKING WATER REGULATIONS: STAGE 2 DISINFECTION BYPRODUCTS RULE

Regulatory Plan: This entry is Seq. No. 135 in part II of this issue of the Federal Register.

RIN: 2040–AD38

3511. • DRINKING WATER CONTAMINANT CANDIDATE LIST 2

Priority: Routine and Frequent

Legal Authority: SDWA Amendments of 1996 Sec 1412(b)(1)(B)

CFR Citation: Not Yet Determined

Legal Deadline: Other, Statutory, February 28, 2003, 1-5 years after CCL.

Abstract: This tiering action is to develop the Second Drinking Water Contaminant Candidate List (CCL2). To meet the Safe Drinking Water Act (SDWA) requirements under section 1412(b)(1)(B)(i), as amended in 1996, OGWDW will publish a list of contaminants that are known or anticipated to occur in public water systems which may require regulation under the SDWA. In developing this list of contaminants, that are not currently subject to any proposed or promulgated NPDWRs, EPA must consult with the SAB, provide an opportunity for public comments, consider the National Contaminant Occurrence Database (developed under SDWA section 1445(g)), consider contaminants referred to in section 101(4) of CERCLA, and substances registered as pesticides under FIFRA. Similar to CCL1, the CCL2 will be based on readily available occurrence and health effects information and evaluated by EPA. SDWA required the first CCL to be published 18 months after the date of enactment (2/98), and a new CCL every 5 years thereafter. The methods used to develop the CCL are described in the Federal Register (FR 62193). To respond to comments received on the draft drinking water CCL, the Agency requested assistance from the National Research Council (NRC) for guidance on methods and processes to identify and narrow a very broad universe of potential contaminants into a smaller, more focused list for the future CCLs. The details of the NRC recommendation are available in the report entitled "Classifying Drinking Water Contaminants for Regulatory Considerations." The NRC recommendations are being evaluated by a National Drinking Water Advisory Council work group, and the results of this parallel effort will be used for future CCLs.

Timetable:

Action	Date	FR Cite
Announcement of Draft	11/00/02	
Announcement of CCL	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4703

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RIN: 2040–AD86

3512. • DRINKING WATER CONTAMINANT CANDIDATE LIST 2

Priority: Routine and Frequent

Legal Authority: SDWA Amendments of 1996, sec 1412(b)(1)(B)

CFR Citation: None

Legal Deadline: Other, Statutory, February 28, 2003, Within 1 to 5 years after CCL.

Abstract: This action is to develop the Second Drinking Water Contaminant Candidate List (CCL2). To meet the Safe Drinking Water Act (SDWA) requirements under section 1412(b)(1)(B), as amended in 1996, OGWDW will publish a list of contaminants that are known or anticipated to occur in public water systems which may require regulation under the SDWA. In developing this list of contaminants that are not currently subject to any proposed or promulgated NPDWRs, EPA must consult with the SAB, provide an opportunity for public comments, consider the National Contaminant Occurrence Database (developed under SDWAS section 1445(g)), consider contaminants referred to in section 101(4) of CERCLA, and substances registered as pesticides under FIFRA. Like CCL1, the CCL2 will be based on readily available occurrence and health effects information and evaluated by EPA. SDWA required the first CCL to be published 18 months after the date of enactment (2/98), and a new CCL every 5 years thereafter. To respond to comments received on the draft drinking water CCL, the Agency requested assistance from the National Research Council (NRC) for guidance e on metho9ds and processes to identify and narrow a very broad universe of potential contaminants into a smaller, more focused list for the future CCLs. The details of the NRC recommendation are available in the report entitled Classifying Drinking Water Contaminants for Regulatory Considerations. The NRC recommendations are being evaluated by a National Drinking Water Advisory Council Work Group and the results of this parallel effort will be used for future CCLs.

EPA—Safe Drinking Water Act (SDWA) — **Proposed Rule Stage**

Timetable:

Action	Date	FR Cite
Draft	11/00/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2040–AD88

Environmental Protection Agency (ERA)
Safe Drinking Water Act (SDWA) — **Final Rule Stage**

3513. UNREGULATED CONTAMINANT MONITORING REGULATION: ANALYTICAL METHOD FOR AEROMONAS & NATIONAL PRIMARY & SECONDARY DRINKING WATER REGULATIONS: ANALYTICAL METHODS FOR CHEMICAL & MICROBIOLOGICAL CONTAMINANTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 300f; 42 USC 300g-1; 42 USC 300g-2; 42 USC 300g-3; 42 USC 300g-4; 42 USC 300g-5; 42 USC 300g-6; 42 USC 300j-4; 42 USC 300j-9; 42 USC 300j-11

CFR Citation: 40 CFR 141.40

Legal Deadline: None

Abstract: This action proposes the analytical method and an associated Minimum Reporting Level (MRL) for the analysis of Aeromonas to support the Unregulated Contaminant Monitoring Regulation's List 2 monitoring of 120 large and 180 small public water systems from January 1, 2003 through December 31, 2003. Only these 300 systems must monitor for Aeromonas. Additionally, EPA proposes to approve EPA Method 515.4 to support previously required National Primary Drinking Water Regulation (NPDWR) compliance monitoring for 2,4-D (as acid, salts and esters), 2,4,5-TP (Silvex), dinoseb, pentachlorophenol, picloram and dalapon, and EPA Method 531.2 to support previously required NPDWR monitoring for carbofuran and oxamyl. Finally, EPA proposed to approve eight additional industry developed analytical methods to support previously required NPDWR compliance monitoring. These eight methods include: a method for the determination of atrazine, two methods for the determination of cyanide, three methods for the determination of total coliforms, a method for the determination of heterotrophic bacteria and a method for the determination of turbidity.

Timetable:

Action	Date	FR Cite
NPRM	03/07/02	67 FR 10532
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4638

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RIN: 2040–AD81

3514. NATIONAL PRIMARY DRINKING WATER REGULATIONS: GROUNDWATER RULE

Regulatory Plan: This entry is Seq. No. 144 in part II of this issue of the **Federal Register**.

RIN: 2040–AA97

3515. MINOR REVISIONS TO THE PUBLIC NOTIFICATION RULE, CONSUMER CONFIDENCE REPORT RULE, AND PRIMACY RULE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 300f et seq

CFR Citation: 40 CFR 141; 40 CFR 142

Legal Deadline: None

Abstract: As part of a settlement agreement, EPA agreed to make specific changes to the health effects language, in the Public Notification and Consumer Confidence Report Rules, concerning di(2-ethylhexyl)adipate (DEHA) and di(2-ethylhexyl)phthalate (DEHP). With respect to DEHA, the proposed new wording would replace a reference to "general toxic effects" with specific toxic effects wording (i.e., weight loss and liver enlargement) and add the word "possible" to the reference to reproductive effects. With respect to DEHP, the proposed revision would add the word "well" in front of the phrase in excess of the MCL to describe when the health effects may be experienced. In addition, this proposal would include a negotiated paragraph on the proper use of the Agency's Integrated Risk Information System (IRIS). EPA is also making the following minor changes to the Consumer Confidence Report Rule: removing "leaching from wood preservatives" as a likely source for copper contamination; revising appendix A to move some disinfection byproducts contaminants from the "volatile organic contaminants" section to the "inorganic contaminants" section; and revising Appendix A to change "chloride dioxide" to "chlorine dioxide." Finally, EPA is removing an outdated provision of the Primacy Rule, since the Administrator no longer has authority to waive NPDWRs for federally owned public water systems.

Timetable:

Action	Date	FR Cite
NPRM	09/07/01	66 FR 46928
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

EPA—Safe Drinking Water Act (SDWA) — **Final Rule Stage**

Additional Information: SAN No. 4561

Sectors Affected: 22131 Water Supply and Irrigation Systems

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RIN: 2040–AD77

Environmental Protection Agency (EPA)
Safe Drinking Water Act (SDWA) — **Long-Term Actions**

3516. NATIONAL PRIMARY DRINKING WATER REGULATIONS: RADON

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect State, local or tribal governments.

Legal Authority: 42 USC 300f et seq; SDWA 1412

CFR Citation: 40 CFR 141; 40 CFR 142

Legal Deadline: NPRM, Statutory, August 6, 1999.
Final, Statutory, November 2, 2000.
Other, Statutory, November 2, 2000, Publish radon health risk reduction and cost analysis.

Abstract: EPA proposed regulations for radon in drinking water which provide flexibility in how to manage the health risks from radon, in both drinking water and in indoor air. States and systems would be able to focus their efforts on the highest radon risks to the public — in indoor air — while reducing the highest risks from radon in drinking water. The proposal was based on the unique framework in the 1996 Safe Drinking Water Act (SDWA). The proposed regulation would provide two options to States and water systems for reducing public health risks from radon. Under the first option, States may choose to develop enhanced State programs to address the health risks from indoor radon while water systems reduce radon levels in drinking water to at or below the higher, alternative maximum contaminant level MCL proposed at 4,000 pCi/L (picoCuries per liter, a standard unit of radiation) . EPA is encouraging the States to adopt this approach as the most cost-effective way to achieve the greatest radon risk reduction. If a State does not elect this option, the second option would require water systems in that State to either reduce radon in drinking water levels to the MCL of 300 pCi/L, or to develop a local indoor radon program and reduce levels in drinking water to 4000 pCi/L.

Timetable:

Action	Date	FR Cite
ANPRM	09/30/86	51 FR 34836
NPRM	07/18/91	56 FR 33050
Notice	02/26/99	64 FR 9560
NPRM	11/02/99	64 FR 59245
Notice	06/23/00	65 FR 39113
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: SAN No. 2281

Sectors Affected: 22131 Water Supply and Irrigation Systems

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RIN: 2040–AA94

3517. NATIONAL PRIMARY DRINKING WATER REGULATIONS: ALDICARB

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 300f et seq; SDWA 1412

CFR Citation: 40 CFR 141; 40 CFR 142

Legal Deadline: None

Abstract: EPA promulgated MCLs for aldicarb, aldicarb sulfoxide, and aldicarb sulfone in the Phase II rulemaking in 1991 at levels of 0.003, 0.004, and 0.002 ug/l, respectively. In response to an administrative petition from the manufacturer Rhone-Poulenc, the Agency issued an administrative stay of the effective date. EPA will reexamine risk assessment and occurrence data on aldicarb and make a determination of what further action is appropriate.

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	
Final Action	08/00/05	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Federalism: Undetermined

Additional Information: SAN No. 3238

Sectors Affected: 22131 Water Supply and Irrigation Systems

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RIN: 2040–AC13

3518. NATIONAL SECONDARY DRINKING WATER REGULATIONS (NSDWR): METHYL TERTIARY BUTYL ETHER (MTBE) AND TECHNICAL CORRECTIONS TO THE NSDWR

Priority: Other Significant

Legal Authority: 42 USC 300f et seq

CFR Citation: 40 CFR 143 (Revision)

Legal Deadline: None

EPA—Safe Drinking Water Act (SDWA) — **Long-Term Actions**

Abstract: Methyl tertiary butyl ether (MTBE) is a fuel additive used primarily to increase the oxygen content in gasoline. It has been used in increasing quantity in the 1990s to meet the requirements of the Federal reformulated gasoline (RFG) and oxyfuels programs required by the Clean Air Act Amendments of 1990. Although the use of MTBE in gasoline has helped to reduce harmful air emissions, it is being detected in ground water and surface water throughout the country. In some instances the affected waters are drinking water sources. At relatively low levels, MTBE's taste and odor can make drinking water supplies unacceptable to consumers. In this action, EPA is proposing a secondary standard for MTBE, which would provide guidance for taste and odor acceptability and to protect the public welfare.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4404

Sectors Affected: 22131 Water Supply and Irrigation Systems

Agency Contact: James Taft, Environmental Protection Agency, Water, 4607M, Washington, DC 20460
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RIN: 2040–AD54

3519. UPDATE OF STATE UNDERGROUND INJECTION CONTROL PROGRAMS

Priority: Info./Admin./Other

Legal Authority: 42 USC 300h-1; SDWA sec 1422; 42 USC 300h-4; SDWA sec 1425

CFR Citation: 40 CFR 147 (Revision)

Legal Deadline: None

Abstract: EPA provides a place in part 147 of its UIC regulations where all the State UIC programs are summarized. Included in this summarization are all the authorities and regulations used by the States to implement the UIC program, as well as all other documents that are relevant to the program. The primary reason for this is to provide one place where all the UIC programs nationwide are presented. A second reason, more importantly, is to allow EPA to incorporate by reference into the Code of Federal Regulations the State program authorities. Current citations to State regulations in 40 CFR part 147 are out of date for many States. This update is necessary to ensure that the CFR accurately reflects current approved State UIC programs and that elements of those programs are federally enforceable if necessary. EPA regional offices will be submitting State revision packages as they are completed. Part 147 will then be updated in several stages. This is the first stage. This effort should have no impact on the regulated community because we will merely be incorporating by reference elements of already effective State programs.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4236

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RIN: 2040–AD40

Environmental Protection Agency (EPA)
Safe Drinking Water Act (SDWA) — **Completed Actions**

3520. UNDERGROUND INJECTION CONTROL CLASS V PHASE 2 REVISIONS

Priority: Info./Admin./Other

CFR Citation: 40 CFR 144

Completed:

Reason	Date	FR Cite
Notice of Final Determination	06/07/02	67 FR 39584

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2040–AD63

Environmental Protection Agency (EPA)
Shore Protection Act (SPA) — **Final Rule Stage**

3521. SHORE PROTECTION ACT, SECTION 4103(B) REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 2601 Shore Protection Act of 1988; PL 100-688 4103(b)

CFR Citation: 40 CFR 237

Legal Deadline: None

Abstract: This rule will implement the Shore Protection Act (SPA) and is designed to prevent the deposit of municipal and commercial waste into U.S. coastal waters. This rule establishes minimum waste handling practices for vessels and waste handling facilities involved in the transport of municipal or commercial wastes in the coastal waters of the United States. The rule may require certain vessels and waste handling facilities to develop an operation and maintenance manual that identifies procedures to prevent, report, and clean up deposits of waste into coastal waters. Local governments and businesses involved with the vessel transportation and shore side handling of these wastes would be affected by this rule. Currently no tribes are known to be involved in waste handling of this type; therefore none would be affected by this rule. In regards to small businesses, EPA has provided guidance on development of operation and maintenance manuals and encourages the use and documentation of existing industry practices that meet or exceed the EPA proposed minimum waste handling standards. All indications are that this regulation as proposed would have a minimal economic impact. This regulation will result in reduction of municipal and commercial wastes deposited in coastal waters.

Timetable:

Action	Date	FR Cite
NPRM	08/30/94	59 FR 44798
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Local

Additional Information: SAN No. 2820

Agency Contact: Steven Giordano, Environmental Protection Agency, Water, 4504T, Washington, DC 20460
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RIN: 2040–AB85

[FR Doc. 02–26641 Filed 12–06–02; 8:45 am]
BILLING CODE 6560–50–S

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Federal Register

Monday,
December 9, 2002

Part XXIV

Equal Employment Opportunity Commission

Semiannual Regulatory Agenda

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Ch. XIV

Semiannual Regulatory Agenda

AGENCY: Equal Employment Opportunity Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Equal Employment Opportunity Commission (EEOC or Commission) is publishing its semiannual regulatory agenda pursuant to Executive Order 12866, 58 FR 51735, and the Regulatory Flexibility Act, 5 U.S.C. chapter 6. The agenda lists all regulations that are scheduled for review or development during the next 12 months or that have been finalized since the publication of the last agenda.

FOR FURTHER INFORMATION CONTACT: David L. Frank, Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street NW, Washington, DC 20507; telephone (202) 663-4614.

SUPPLEMENTARY INFORMATION: The Commission has identified four items for inclusion in this regulatory agenda. For this edition of EEOC's regulatory agenda, the most important significant regulatory action is included in The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Regulatory Plan entry is listed in the table of contents below and is denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

Signed in Washington, DC, this 16th day of September 2002.

For the Commission.

Cari M. Dominguez,
Chair.

Equal Employment Opportunity Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3522	Coordination of Retiree Health Benefits With Medicare and State Health Benefits **(Reg Plan Seq No. 149)**	3046-AA72

References in boldface appear in the **Regulatory Plan** in part II of this issue of the **Federal Register**.

Equal Employment Opportunity Commission—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3523	Procedures—The Age Discrimination in Employment Act	3046-AA54

Equal Employment Opportunity Commission—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3524	Federal Sector Equal Employment Opportunity Complaint Processing	3046-AA73

Equal Employment Opportunity Commission—Completed Actions

Sequence Number	Title	Regulation Identification Number
3525	Federal Sector Equal Employment Opportunity	3046-AA57

Equal Employment Opportunity Commission (EEOC) — **Proposed Rule Stage**

3522. COORDINATION OF RETIREE HEALTH BENEFITS WITH MEDICARE AND STATE HEALTH BENEFITS

Regulatory Plan: This entry is Seq. No. 149 in part II of this issue of the **Federal Register**.

RIN: 3046–AA72

Equal Employment Opportunity Commission (EEOC) — **Final Rule Stage**

3523. PROCEDURES—THE AGE DISCRIMINATION IN EMPLOYMENT ACT

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 628, sec 115, Civil Rights Act of 1991

CFR Citation: 29 CFR 1626

Legal Deadline: None

Abstract: Section 115 of the Civil Rights Act of 1991 deleted references to the Portal-to-Portal Act from the private suit provisions of the Age Discrimination in Employment Act (ADEA) and replaced them with a requirement that suit be filed no later than 90 days after termination of proceedings or dismissal of a charge by EEOC. Accordingly, section 1626.7(a) is being deleted and section 1626.15(b) is being revised because they were both based upon the Portal-to-Portal Act. New sections are being added concerning termination of EEOC proceedings and the issuance of notices of the new 90-day limitation period.

Timetable:

Action	Date	FR Cite
NPRM	08/12/02	67 FR 52431
NPRM Comment Period End	10/11/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Thomas J. Schlageter, Assistant Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street NW, Washington, DC 20507
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RIN: 3046–AA54

Equal Employment Opportunity Commission (EEOC) — **Long-Term Actions**

3524. • FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT PROCESSING

Priority: Other Significant

Legal Authority: 29 USC 206(d), 633a, 791, and 794; 42 USC 2000e-16; EO 10577, 11222, 11478, and 12106; Reorganization Plan No. 1 of 1978

CFR Citation: 29 CFR 1614

Legal Deadline: None

Abstract: The existing process has been criticized as time-consuming, costly, and self-serving. The Commission is reviewing the process, considering alternatives, and consulting stakeholders about reform of the process. The Commission proposes to promulgate an NPRM to reform the Federal EEO process to make it more efficient and effective, consistent with the President's Strategic Management of Human Capital initiative.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Thomas J. Schlageter, Assistant Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street NW, Washington, DC 20507
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RIN: 3046–AA73

Equal Employment Opportunity Commission (EEOC) — **Completed Actions**

3525. FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY

Priority: Other Significant

CFR Citation: 29 CFR 1614

Completed:

Reason	Date	FR Cite
Final Action	05/21/02	67 FR 35732

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Carol Miaskoff
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RIN: 3046–AA57

[FR Doc. 02–24262 Filed 12–06–02; 8:45 am]
BILLING CODE 6570–01–S

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December 9, 2002

Part XXV

Federal Emergency Management Agency

Semiannual Regulatory Agenda

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Ch. I

Semiannual Regulatory Agenda

AGENCY: Federal Emergency Management Agency.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Federal Emergency Management Agency (FEMA) publishes its semiannual regulatory agenda to inform interested parties of progress on FEMA regulations. The agenda lists regulations that will be under development or review during the period October 1, 2002 to March 31, 2003.

ADDRESSES: For information about specific regulations, please contact the person listed as the agency contact in the agenda.

FOR FURTHER INFORMATION CONTACT: For general information on FEMA's regulatory agenda, contact Michael S. Herman, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Room 840, Washington, DC 20472, (202) 646-4097, (Fax) (202) 646-4536, or e-mail: michael.herman@fema.gov.

SUPPLEMENTARY INFORMATION: Executive Order 12866 "Regulatory Planning and Review" directs each executive agency to publish only such regulations as are required by law, are necessary to interpret the law, or are necessary by compelling public need. We and other Federal departments and agencies publish an agenda of regulations semiannually in order to give you adequate notice of agency rulemaking activities. We also publish a regulatory agenda of rules likely to be significant regulatory actions when that is appropriate.

To fulfill the requirements of Executive Order 12866, this agenda describes current and projected regulatory actions and rules that will be under review or development during the period October 1, 2002 to March 31, 2003. This agenda also contains information on regulations on which we completed action since the last FEMA semiannual agenda was published on May 13, 2002 at 67 FR 33890 to 33896.

We invite your comments on the agenda, including comments by State and local governments. Please submit any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Room 840, Washington, DC 20472, (Fax) (202) 646-4536 or e-mail: rules@fema.gov. Please refer to the title of the rule that you are inquiring about, or commenting on, and to the rule's Regulation Identifier Number (RIN) found at the end of each agenda entry.

The agenda is not limited to significant regulatory actions and it contains information about FEMA regulations to be developed, reviewed, or published in the next 12 months, except for routine flood elevation determinations, listings of eligible communities under the National Flood Insurance Program, listings of suspended communities and similar designations under the National Flood Insurance Program, and FEMA organizational and management matters.

Dated: September 10, 2002.

Mark D. Wallace,

General Counsel.

Federal Emergency Management Agency—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3526	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	3067-AD14
3527	Hazard Mitigation Planning and Hazard Mitigation Grant Program	3067-AD22
3528	Disaster Assistance; Federal Assistance to Individuals and Households	3067-AD25
3529	National Flood Insurance Program (NFIP); Group Flood Insurance Policy (GFIP)	3067-AD31

Federal Emergency Management Agency—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3530	Flood Mitigation Assistance Program	3067-AC45
3531	Criminal and Civil Penalties Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act	3067-AC61
3532	Disaster Assistance; Hazard Mitigation Grant Program	3067-AC69
3533	Production or Disclosure of Information	3067-AC75
3534	Taxpayer Identification Numbers	3067-AC76
3535	Debt Collection	3067-AC77
3536	Debt Collection	3067-AC84
3537	National Urban Search and Rescue Response System	3067-AC93
3538	Administration of Grants: Audits of States, Local Governments, and Nonprofit Organizations	3067-AC98
3539	National Flood Insurance Program; Insurance Coverage and Rates	3067-AD02
3540	Organizational Units, Functions and Delegations of Authority	3067-AD03
3541	Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations	3067-AD07
3542	Governmentwide Debarment and Suspension (Nonprocurement)	3067-AD15

FEMA

Federal Emergency Management Agency—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
3543	National Flood Insurance Program (NFIP); Inspection of Insured Structures by Communities	3067-AD16
3544	Disaster Assistance; Public Assistance Program and Community Disaster Loan Program Statutory Changes	3067-AD20
3545	Assistance to Firefighters (FIRE) Grant Program	3067-AD21
3546	Disaster Assistance Definitions; Statutory Change	3067-AD26
3547	Cost Principles, Admin. Requirements and Audits of Grants and Cooperative Agreements for State, Local and Indian Tribal Govts., Institutions of Higher Ed. and Other Non-Profit Orgs.—44 CFR Part 14	3067-AD28
3548	Management Costs	3067-AD29

Federal Emergency Management Agency—Completed Actions

Sequence Number	Title	Regulation Identification Number
3549	National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers	3067-AD30

Federal Emergency Management Agency (FEMA) — Final Rule Stage

3526. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 44 CFR 7; 44 CFR 16

Legal Deadline: None

Abstract: This rule would amend FEMA's regulations implementing title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1972, and the Age Discrimination Act of 1975. Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. Publication of this rule would explicitly incorporate the Civil Rights Restoration Act definitions of "program or activity" and "program."

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Pauline C. Campbell, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
Phone: 202 646-4122
Email: pauline.campbell@fema.gov

RIN: 3067–AD14

3527. HAZARD MITIGATION PLANNING AND HAZARD MITIGATION GRANT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 5121

CFR Citation: 44 CFR 201; 44 CFR 206

Legal Deadline: None

Abstract: This regulation would implement the new hazard mitigation planning requirements of section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as it was amended by the Disaster Mitigation Act of 2000.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/26/02	67 FR 8844
Interim Final Rule Effective	02/26/02	
Interim Final Rule Comment Period End	04/29/02	
Interim Final Rule	10/01/02	67 FR 61512
Interim Final Rule Effective	10/01/02	
Interim Final Rule Comment Period End	12/02/02	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Terry Baker, Federal Emergency Management Agency
Phone: 202 646-4648
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Email: terry.baker@fema.gov

RIN: 3067–AD22

3528. DISASTER ASSISTANCE; FEDERAL ASSISTANCE TO INDIVIDUALS AND HOUSEHOLDS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 42 USC 5174; 42 USC 5178; PL 106-390 sec 206

CFR Citation: 44 CFR 206

Legal Deadline: Final, Statutory, May 1, 2002.

Abstract: This rule would implement subsection 206(a) of the Disaster Mitigation Act of 2000, that amends section 408 of the Robert T. Stafford

Disaster Relief and Emergency Assistance Act, and changes the title of the provision from "Temporary Housing Assistance" to "Federal Assistance to Individuals and Households." In addition, subsection 206(c) of the Disaster Mitigation Act of 2000 repeals section 411 of the Stafford Act.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3412
NPRM Comment Period End	03/11/02	
Interim Final Rule	09/30/02	67 FR 61446
Interim Final Rule Effective	09/30/02	
Interim Final Rule Comment Period End	04/15/03	
Corrections	10/09/02	67 FR 62896
Corrections Effective	10/09/02	
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

Agency Contact: Michael B. Hirsch, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
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RIN: 3067–AD25

3529. • NATIONAL FLOOD INSURANCE PROGRAM (NFIP); GROUP FLOOD INSURANCE POLICY (GFIP)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4001 et seq

CFR Citation: 44 CFR 61

Legal Deadline: None

Abstract: This interim final rule amends the Group Flood Insurance Policy (GFIP), as a result of the consolidation of sections 408 and 411 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act by section 206 of the Disaster Mitigation Act of 2000.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/30/02	67 FR 61460
Interim Final Rule Effective	09/30/02	
Interim Final Rule Comment Period End	04/15/03	
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Charles M. Plaxico Jr., Federal Insurance Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
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Related RIN: Related To 3067-AD25

RIN: 3067–AD31

Federal Emergency Management Agency (FEMA) — Long-Term Actions

3530. FLOOD MITIGATION ASSISTANCE PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4104c; 42 USC 4104d

CFR Citation: 44 CFR 78

Legal Deadline: None

Abstract: This interim final rule implements sections 553 and 554 of the National Flood Insurance Reform Act of 1994, to provide grants under the National Flood Mitigation Fund to States and communities for planning assistance and for mitigation projects that reduce the risk of flood damages to structures covered under contracts for flood insurance.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/20/97	62 FR 13346
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Deborah Ingram, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
Phone: 202 646-2856

RIN: 3067–AC45

3531. CRIMINAL AND CIVIL PENALTIES UNDER THE ROBERT T. STAFFORD DISASTER RELIEF AND EMERGENCY ASSISTANCE ACT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 5157(d); PL 101-410; 28 USC 2461; PL 104-134, sec 31001(s)

CFR Citation: 44 CFR 206

Legal Deadline: None

Abstract: This rule would increase the maximum civil penalty under the Robert T. Stafford Disaster Relief and Emergency Assistance Act from $5,000 to $5,500.

Timetable:

Action	Date	FR Cite
NPRM	02/10/97	62 FR 5957
NPRM Comment Period End	04/11/97	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robin Maresco, Office of Financial Management, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
Phone: 202 646-4287
Email: robin.maresco@fema.gov

RIN: 3067–AC61

3532. DISASTER ASSISTANCE; HAZARD MITIGATION GRANT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 5121 et seq

CFR Citation: 44 CFR 206

Legal Deadline: None

Abstract: This rule would revise the categories of projects eligible for funding under the Hazard Mitigation Grant Program. It emphasizes

nonstructural flood mitigation measures to reduce the number of flood-prone structures and clarifies that major structural flood control projects will not be considered for funding under the grant program.

Timetable:

Action	Date	FR Cite
NPRM	05/01/98	63 FR 24143
NPRM Comment Period End	07/01/98	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Deborah Ingram, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
Phone: 202 646-2856

RIN: 3067–AC69

3533. PRODUCTION OR DISCLOSURE OF INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: PL 104-231

CFR Citation: 44 CFR 5

Legal Deadline: None

Abstract: This rule would give the public access to Government information and records maintained in an electronic format: 1) provide for expedited processing of certain requests; 2) establish an "electronic reading room;" 3) require edited material to be estimated or indicated in an agency's delay in processing requests; and 4) require FEMA to make an agency reference guide available on the Freedom of Information Act.

Timetable:

Action	Date	FR Cite
NPRM	08/28/98	63 FR 45982
NPRM Comment Period End	10/27/98	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Eileen Leshan, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
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RIN: 3067–AC75

3534. TAXPAYER IDENTIFICATION NUMBERS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 7701(c)

CFR Citation: 44 CFR 6

Legal Deadline: None

Abstract: This rule would implement the Debt Collection Improvement Act requirement that any person doing business with a Federal agency must provide the agency with the person's taxpayer identification number.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robin Maresco, Office of Financial Management, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
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RIN: 3067–AC76

3535. DEBT COLLECTION

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 3720A

CFR Citation: 44 CFR 11

Legal Deadline: None

Abstract: Under this rule, FEMA will refer delinquent debts owed to this agency to the Department of the Treasury for collection under the Governmentwide Treasury Offset Program and for tax-refund offsets at the same time. FEMA amends its regulations to allow administrative offset against delinquent debtor States and units of general local government. FEMA also amends its regulations to change the method for calculating interest, penalty and administrative charges assessed on delinquent debts and to make States and units of general local government subject to such changes.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/08/98	63 FR 1063
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Robin Maresco, Office of Financial Management, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
Phone: 202 646-4287
Email: robin.maresco@fema.gov

RIN: 3067–AC77

3536. DEBT COLLECTION

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 3720A

CFR Citation: 44 CFR 11

Legal Deadline: None

Abstract: This rule would implement policies used by FEMA to collect debts under the Debt Collection Act of 1982, including measures to collect and to compromise or terminate collection action.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robin Maresco, Office of Financial Management, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
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Email: robin.maresco@fema.gov

RIN: 3067–AC84

3537. NATIONAL URBAN SEARCH AND RESCUE RESPONSE SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 5121 et seq

CFR Citation: 44 CFR 208

Legal Deadline: None

Abstract: This rule would prescribe policies and procedures pertaining to FEMA's National Urban Search and Rescue Response System.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local

Agency Contact: Dave Webb, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472

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Email: dave.webb@fema.gov

RIN: 3067–AC93

3538. ADMINISTRATION OF GRANTS: AUDITS OF STATES, LOCAL GOVERNMENTS, AND NONPROFIT ORGANIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 7501

CFR Citation: 44 CFR 14

Legal Deadline: None

Abstract: This rule implements the Single Audit Act of 1984, as amended, on an agencywide basis within FEMA. It requires recipients of financial assistance from FEMA to comply with OMB Circular A-133, which sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of States, local governments, and nonprofit organizations expending Federal awards.

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Richard L. Skinner, Deputy Inspector General, Federal Emergency Management Agency, Washington, DC 20472
Phone: 202 646-3910
Fax: 202 646-3298
Email: rick.skinner@fema.gov

RIN: 3067–AC98

3539. NATIONAL FLOOD INSURANCE PROGRAM; INSURANCE COVERAGE AND RATES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4001 et seq

CFR Citation: 44 CFR 61

Legal Deadline: None

Abstract: This rule would apply full-risk premium rates under the NFIP to structures that have suffered multiple flood losses and whose owners decline an offer of funding to eliminate or reduce future flood damage.

Timetable:

Action	Date	FR Cite
NPRM	08/05/99	64 FR 42632
NPRM Comment Period End	09/07/99	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Howard Leikin, Deputy Administrator, Federal Insurance Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
Phone: 202 646-2784
Email: howard.leikin@fema.gov

RIN: 3067–AD02

3540. ORGANIZATIONAL UNITS, FUNCTIONS AND DELEGATIONS OF AUTHORITY

Priority: Info./Admin./Other

Legal Authority: Reorganization Plan No. 3 of 1978

CFR Citation: 44 CFR 2

Legal Deadline: None

Abstract: This rule revises 44 CFR part 2 to reflect changes in FEMA's organizational structure, functions of new directorates and offices, and delegations of authority.

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael S. Herman, Legislative and Regulatory Counsel, Federal Emergency Management Agency, Room 840, 500 C Street SW., Washington, DC 20472
Phone: 202 646-4097
Fax: 202 646-4536
Email: michael.herman@fema.gov

RIN: 3067–AD03

3541. UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NONPROFIT ORGANIZATIONS

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: PL 105-277

CFR Citation: 44 CFR 13

Legal Deadline: None

Abstract: This interim final rule presents an interim final revision to the agencies' codification of OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations." It provides uniform administrative requirements for all grants and cooperative agreements to institutions of higher education, hospitals, and other nonprofit organizations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles F. McNulty, Federal Emergency Management Agency, Office of Financial Management, 500 C Street SW., Washington, DC 20472
Phone: 202 646-2976
Email: charles.mcnulty@fema.gov

RIN: 3067–AD07

3542. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Priority: Substantive, Nonsignificant

Legal Authority: PL 103-355; 31 USC 6101 note

CFR Citation: 44 CFR 17; 44 CFR 20

Legal Deadline: None

Abstract: This common rule would make changes to the existing Governmentwide nonprocurement common rule for debarment and suspension, and the Governmentwide rule implementing the Drug-Free Workplace Act of 1988.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3315
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Charles F. McNulty, Federal Emergency Management Agency, Office of Financial Management, 500 C Street SW., Washington, DC 20472
Phone: 202 646-2976
Email: charles.mcnulty@fema.gov

RIN: 3067–AD15

3543. NATIONAL FLOOD INSURANCE PROGRAM (NFIP); INSPECTION OF INSURED STRUCTURES BY COMMUNITIES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4001 et seq

CFR Citation: 44 CFR 59; 44 CFR 61

Legal Deadline: None

Abstract: This rule would amend FEMA regulations to clarify that areas of Monroe County, Florida that incorporate on or after January 1, 1999 and become eligible for the sale of flood insurance must participate in the inspection procedure to help the communities of Monroe County and the Village of Islamorda verify that structures comply with the community's floodplain management ordinance, and to ensure that property owners pay flood insurance premiums to the NFIP commensurate with their flood risk.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/08/02	67 FR 10631
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Don Beaton, Federal Insurance Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
Phone: 202 646-3442
Fax: 202 646-4327
Email: donald.beaton@fema.gov

Lois Forster, Mitigation Directorate, Federal Emergency Management Agency
Phone: 202 646-2720
Fax: 202 646-2577
Email: lois.forster@fema.gov

RIN: 3067–AD16

3544. DISASTER ASSISTANCE; PUBLIC ASSISTANCE PROGRAM AND COMMUNITY DISASTER LOAN PROGRAM STATUTORY CHANGES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 5121

CFR Citation: 44 CFR 206

Legal Deadline: None

Abstract: This rule amends FEMA's regulations for the Public Assistance Program and the Community Disaster Loan Program to reflect statutory changes to these programs. Specifically the rule: 1) changes the Federal contribution for Large in Lieu Contributions also known as "alternate projects;" 2) adds irrigation districts to the list of eligible private nonprofit (PNP) facilities; 3) institutes a loan requirement for certain non-critical PNP facilities; and 4) limits Community Disaster Loans to $5 million and requires that loan applicants not be in arrears on any previous loan.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/04/01	66 FR 22443
Interim Final Rule Comment Period End	07/03/01	
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Margaret Earman, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
Phone: 202 646-4172
Email: margie.earman@fema.gov

RIN: 3067–AD20

3545. ASSISTANCE TO FIREFIGHTERS (FIRE) GRANT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2201 et seq

CFR Citation: 44 CFR 152

Legal Deadline: None

Abstract: This interim final rule will provide guidance on a new program to make grants directly to fire departments of a State for the purpose of enhancing their ability to protect the health and safety of the public, as well as that of the firefighting personnel facing fire and fire-related hazards. The grants will be awarded on a competitive basis, based on demonstrated financial need for and maximum benefit to be derived from the grant funds.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/21/01	66 FR 15968
Second Interim Final Rule	02/27/02	67 FR 9142
Second Interim Final Rule Comment Period End	04/29/02	
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Brian Cowan, Director, Grants Program Office, U.S. Fire Administration, Federal Emergency Management Agency, Room 304, 500 C Street SW., Washington, DC 20472
Phone: 866 274-0960
Email: usfagrants@fema.gov

RIN: 3067–AD21

3546. DISASTER ASSISTANCE DEFINITIONS; STATUTORY CHANGE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 5121 to 5204(c)

CFR Citation: 44 CFR 206.2

Legal Deadline: None

Abstract: This rule would amend the definitions of "State," "United States," and "Local Government," as set forth in the Code of Federal Regulations, to coincide with those definitions established by the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: State, Local

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Michael S. Herman, Legislative and Regulatory Counsel, Federal Emergency Management

FEMA — **Long-Term Actions**

Agency, Room 840, 500 C Street SW., Washington, DC 20472
Phone: 202 646-4097
Fax: 202 646-4536
Email: michael.herman@fema.gov

RIN: 3067–AD26

3547. • COST PRINCIPLES, ADMIN. REQUIREMENTS AND AUDITS OF GRANTS AND COOPERATIVE AGREEMENTS FOR STATE, LOCAL AND INDIAN TRIBAL GOVTS., INSTITUTIONS OF HIGHER ED. AND OTHER NON-PROFIT ORGS.—44 CFR PART 14

Priority: Other Significant

Legal Authority: 31 USC 503, Chief Financial Officers Act

CFR Citation: 44 CFR 14

Legal Deadline: None

Abstract: This final rule revises 44 CFR part 14 to adopt all of the Office of Management and Budget (OMB) circulars that govern cost principles, administrative requirements, and audits of grants and cooperative agreements for State, local, and Indian tribal governments, institutions of higher education, hospitals, and other nonprofit organizations, including applicable exceptions to the common rules.

Timetable:

Action	Date	FR Cite
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State, Local, Tribal

Federalism: Undetermined.

Agency Contact: Charles F. McNulty, Federal Emergency Management Agency, Office of Financial Management, 500 C Street SW., Washington, DC 20472
Phone: 202 646-2976
Email: charles.mcnulty@fema.gov

RIN: 3067–AD28

3548. • MANAGEMENT COSTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 5165 (b)

CFR Citation: 44 CFR 206; 44 CFR 207

Legal Deadline: None

Abstract: This rule implements the management costs provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), simplifies and clarifies the method by which FEMA contributes to costs incurred by grantees and subgrantees in implementing the Public Assistance and Hazard Mitigation Grant programs, and establishes fixed management cost rates for compensating eligible grantees and subgrantees while adequately protecting Federal financial interests.

Timetable:

Action	Date	FR Cite
NPRM	08/30/02	67 FR 56130
NPRM Comment Period End	09/30/02	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Veandeen Pace, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
Phone: 202 646-3256
Fax: 202 646-3846
Email: veandeen.pace@fema.gov

RIN: 3067–AD29

Federal Emergency Management Agency (FEMA) — **Completed Actions**

3549. • NATIONAL FLOOD INSURANCE PROGRAM (NFIP); ASSISTANCE TO PRIVATE SECTOR PROPERTY INSURERS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4001 et seq

CFR Citation: 44 CFR 62

Legal Deadline: None

Abstract: This final rule changes the effective date of the Financial Assistance/Subsidy Arrangement to October 1, 2002. The Arrangement defines the duties and responsibilities of insurers that sell and service the insurance under the Write Your Own program. It also identifies the responsibilities of the Government to provide financial and technical assistance to those insurers.

Timetable:

Action	Date	FR Cite
Final Action	08/09/02	67 FR 51768
Final Action Effective	10/01/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Edward L. Connor, Federal Insurance & Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
Phone: 202 646-3429
Fax: 202 646-3445
Email: edward.connor@fema.gov

RIN: 3067–AD30

[FR Doc. 02–23899 Filed 12–06–02; 8:45 am]
BILLING CODE 6718–01–S

Federal Register

Monday,
December 9, 2002

Part XXVI

Federal Mediation and Conciliation Service

Semiannual Regulatory Agenda

FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS)

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Ch. XII

Semiannual Regulatory Agenda

AGENCY: Federal Mediation and Conciliation Service (FMCS).

ACTION: Semiannual regulatory agenda.

SUMMARY: This document sets forth the Federal Mediation and Conciliation Service's (FMCS) regulatory agenda issued under Executive Order 12866 and the Regulatory Flexibility Act. The agenda lists regulations that are currently under development or review or that FMCS expects to have under development or review during the next 12 months. The effect of this agenda is to advise the public of FMCS' current and future regulatory activities.

FOR FURTHER INFORMATION CONTACT: For further information on the agenda in general, contact Arthur B. Pearlstein, General Counsel, Office of the General Counsel, Federal Mediation and Conciliation Service, at (202) 606-5444. For information about a specific regulation project listed on the agenda, contact the person designated in the agenda for that regulation.

SUPPLEMENTARY INFORMATION: Under the President's order on Regulatory Planning and Review, Executive Order 12866 (58 FR 51735, October 4, 1993), each agency is required to prepare an agenda of all regulations under development or review. The Regulatory Flexibility Act, Public Law 98-354, has a similar agenda requirement (5 U.S.C. 602). Under the law, the agenda must list any regulation that is likely to have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has issued guidelines prescribing the form and content of the regulatory agenda. Under those guidelines, the agenda must list all regulatory activities being conducted or reviewed in the next 12 months and provide certain specified information on each regulation. All of the items on this agenda are current or projected rulemakings.

Dated: September 27, 2002.

Arthur B. Pearlstein,

General Counsel, FMCS.

Federal Mediation and Conciliation Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3550	Arbitration Schedule of Fees	3076-AA09
3551	Access to Neutrals	3076-AA10

Federal Mediation and Conciliation Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3552	Public Information	3076-AA06

Federal Mediation and Conciliation Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3553	Governmentwide Debarment and Suspension Nonprocurement: Governmentwide Requirement for Drug-Free Work Place	3076-AA08

Federal Mediation and Conciliation Service (FMCS) — **Proposed Rule Stage**

3550. • ARBITRATION SCHEDULE OF FEES

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 172 and 173 et seq

CFR Citation: 29 CFR 1404 app

Legal Deadline: None

Abstract: FMCS is proposing to revise the appendix to 29 CFR part 1404 to add two new fee schedule categories and to increase the rates for some arbitration panel requests.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Vella M. Traynham, Director of Arbitration Services, Federal Mediation and Conciliation Service, 2100 K Street NW, Washington, DC 20427-0001
Phone: 202 606-5111
Fax: 202 606-3749
Email: vtraynham@fmcs.gov

RIN: 3076–AA09

FMCS — **Proposed Rule Stage**

3551. • ACCESS TO NEUTRALS

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 172 and 173 et seq

CFR Citation: 29 CFR 1480

Legal Deadline: None

Abstract: FMCS proposes to establish a list of neutrals for use by private individuals and/or organizations for employment-related alternative dispute resolution services.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Peggy A. McNeive, Director of the Neutrals Initiative, Federal Mediation and Conciliation Service, Suite 501, 801 Walnut Street, Kansas City, MO 64106-1823
Phone: 816 374-6215
Fax: 816 374-6026

RIN: 3076–AA10

Federal Mediation and Conciliation Service (FMCS) — **Final Rule Stage**

3552. PUBLIC INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552 et seq

CFR Citation: 29 CFR 1401 (Revision)

Legal Deadline: None

Abstract: The proposed revision to FMCS' Public Information regulations is intended to incorporate the recent amendments to the Freedom of Information Act into FMCS' portion of the Code of Federal Regulations.

Timetable:

Action	Date	FR Cite
NPRM	11/03/99	64 FR 59697
NPRM Comment Period End	01/03/00	
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Arthur Pearlstein, General Counsel, Federal Mediation and Conciliation Service, 2100 K Street NW, Room 603, Washington, DC 20427-0001
Phone: 202 606-5444
Fax: 202 606-5345
Email: apearlstein@fmcs.gov

RIN: 3076–AA06

Federal Mediation and Conciliation Service (FMCS) — **Long-Term Actions**

3553. GOVERNMENTWIDE DEBARMENT AND SUSPENSION NONPROCUREMENT: GOVERNMENTWIDE REQUIREMENT FOR DRUG-FREE WORK PLACE

Priority: Substantive, Nonsignificant

CFR Citation: 29 CFR 1471 and 1472

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3322
NPRM Comment Period End	03/25/02	
Final Action	To Be Determined	
Final Action Effective	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Arthur Pearlstein
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RIN: 3076–AA08

[FR Doc. 02-25452 Filed 12-06-02; 8:45 am]
BILLING CODE 6732-01-S

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Federal Register

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December 9, 2002

Part XXVII

General Services Administration

Semiannual Regulatory Agenda

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GENERAL SERVICES ADMINISTRATION (GSA)

GENERAL SERVICES ADMINISTRATION

41 CFR Chs. 101, 102, 105, 300, 301, 302, 303, and 304

48 CFR Ch. 5

Fall 2002 Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: General Services Administration (GSA).

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda announces the proposed regulatory actions that GSA plans for the next 12 months and those that were completed since the spring 2002 edition. This agenda was developed under the guidelines in an Office of Management and Budget memorandum, dated July 30, 2002. GSA's purpose in publishing this agenda is to allow interested persons an opportunity to participate in the rulemaking process. GSA also invites interested persons to recommend existing significant regulations for review to determine whether they should be modified or eliminated.

FOR FURTHER INFORMATION CONTACT: Rodney P. Lantier, Regulatory and Federal Assistance Publication Division, (202) 501-2647.

SUPPLEMENTARY INFORMATION: This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions includes The Regulatory Plan, which appears in part II of this issue of the Federal Register. GSA's Statement of Regulatory Priorities is included in part II.

Dated: September 26, 2002.

G. Martin Wagner,

Associate Administrator, Office of Governmentwide Policy.

General Services Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3554	Enforcement of Nondiscrimination on the Basis of Handicap in Federally Assisted Programs	3090-AE32
3555	Discrimination Prohibited on the Basis of Age	3090-AH46
3556	Nondiscrimination in Programs Receiving Federal Financial Assistance	3090-AH47
3557	Nondiscrimination Based on Sex in All Programs and Activities Receiving Federal Surplus Property	3090-AH48
3558	Title IX of the Education Amendments Act	3090-AH49
3559	Enforcement of Nondiscrimination on the Basis of Handicap in Programs and Activities Conducted by General Services Administration	3090-AH59
3560	Telecommunications Management	3090-AG03
3561	Disposition of Seized and Forfeited, Voluntarily Abandoned, and Unclaimed Personal Property	3090-AH11
3562	Disposition of Personal Property With Special Handling Requirements	3090-AH21
3563	Personal Property Management	3090-AH31

General Services Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3564	GSA Privacy Act	3090-AH05
3565	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	3090-AH33
3566	Federal Travel Regulation (FTR); Chapter 304 Payment of Travel Expenses From a Non-Federal Source	3090-AE19
3567	FTR Interim Rule 7—Income Tax Reimbursement Allowance (ITRA)	3090-AG99
3568	General Services Administration Acquisition Regulation; Acquisition of Leasehold Interests in Real Property; Historic Preference	3090-AH01
3569	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	3090-AH35
3570	Centralized Field Reproduction Services	3090-AH37
3571	Internet GOV Domain	3090-AH41
3572	Real Property Policies Update	3090-AH45
3573	Real Property Policies	3090-AH60
3574	Management of Government Aircraft	3090-AH63
3575	Motor Vehicle Management	3090-AH68
3576	GSBCA Rules of Procedure (Standard Proceedings and Expedited Proceedings)	3090-AH69
3577	GSBCA Rules of Procedure for Transportation Rate Cases	3090-AH70
3578	GSBCA Rules of Procedure for Travel and Relocation Expenses Cases; GSBCA Rules of Procedure for Decisions Authorized by 31 U.S.C. 3529	3090-AH71
3579	Federal Travel Regulation (FTR); Per Diem Rates Amendment	3090-AH72
3580	Pricing Policy for Occupancy in GSA Space	3090-AG33

GSA

General Services Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3581	Prohibited Purchases of Property Sold by GSA	3090-AH50
3582	GSAR; Tax Adjustment	3090-AH03
3583	Sale of Personal Property	3090-AH10
3584	Mail Management	3090-AH13
3585	Clarification of HUBZone	3090-AH17
3586	GSAR; Identification of Energy-Efficient Office Equipment and Supplies Containing Recovered Materials or Other Environmental Attributes	3090-AH25
3587	GSAR; Guidance on Electronic Funds Transfer	3090-AH30

General Services Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
3588	Change in Consumer Price Index Minimal Value for Foreign Gifts	3090-AH53
3589	Federal Travel Regulation (FTR) Amendment, Corrections and Additions	3090-AH61
3590	Federal Travel Regulation; Maximum Per Diem Rates	3090-AH62
3591	Federal Travel Regulation (FTR); Maximum Per Diem Rates	3090-AH64
3592	Federal Travel Regulation; Maximum Per Diem Rates for the States of Florida and Georgia	3090-AH65
3593	Federal Travel Regulation; Maximum Per Diem Rates	3090-AH66

General Services Administration (GSA)

Proposed Rule Stage

OFFICE OF CIVIL RIGHTS

3554. ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY ASSISTED PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 794

CFR Citation: 41 CFR 101-8.3; 41 CFR 102-7

Legal Deadline: None

Abstract: This rulemaking revises FPMR 101-8.3 in plain language and moves it into the Federal Management Regulation at 102-7. The revised regulation updates coverage for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs or activities to include a cross-reference to the Uniform Federal Accessibility Standards.

Timetable:

Action	Date	FR Cite
NPRM	10/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Federal

Agency Contact: James M. Taylor, Director, Office of Civil Rights, General Services Administration, Washington, DC 20405
Phone: 202 501-3852
Fax: 202 219-3369

RIN: 3090–AE32

3555. DISCRIMINATION PROHIBITED ON THE BASIS OF AGE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6101 et seq

CFR Citation: 41 CFR 101-8.7

Legal Deadline: None

Abstract: This rulemaking revises FPMR 101-8.7 in plain language and moves it into the Federal Management Regulation. The rule enforces the Age Discrimination Act of 1975, which prohibits discrimination based on age in programs or activities receiving Federal financial assistance.

Timetable:

Action	Date	FR Cite
NPRM	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal

Agency Contact: James M. Taylor, Director, Office of Civil Rights, General Services Administration, Washington, DC 20405
Phone: 202 501-3852
Fax: 202 219-3369

RIN: 3090–AH46

3556. NONDISCRIMINATION IN PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 476; 42 2000d-1; 20 USC 1681

CFR Citation: 41 CFR 101-6; 41 CFR 102-4

Legal Deadline: None

Abstract: This rulemaking revises FPMR 101-6.2 in plain language and

GSA — Proposed Rule Stage

moves it into the Federal Management Regulation at 102-4. The rule enforces title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination based on race, color, or national origin in programs or activities receiving Federal financial assistance.

Timetable:

Action	Date	FR Cite
NPRM	10/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: James M. Taylor, Director, Office of Civil Rights, General Services Administration, Washington, DC 20405
Phone: 202 501-3852
Fax: 202 219-3369

RIN: 3090–AH47

3557. NONDISCRIMINATION BASED ON SEX IN ALL PROGRAMS AND ACTIVITIES RECEIVING FEDERAL SURPLUS PROPERTY

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 476

CFR Citation: 41 CFR 101-6.2

Legal Deadline: None

Abstract: The Office of Civil Rights has no implementing regulation for this provision at this time. However, the statute states that this provision shall be enforced through agency provisions and rules similar to those under title VI.

Timetable:

Action	Date	FR Cite
NPRM	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal

Agency Contact: James M. Taylor, Director, Office of Civil Rights, General Services Administration, Washington, DC 20405
Phone: 202 501-3852
Fax: 202 219-3369

RIN: 3090–AH48

3558. TITLE IX OF THE EDUCATION AMENDMENTS ACT

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 41 CFR 101-4.100 et seq

Legal Deadline: None

Abstract: Final common rule was published August 2000. Needs to be rewritten in plain language, then published for comment, then published in final. (Needs Department of Justice approval.)

Timetable:

Action	Date	FR Cite
NPRM	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal

Agency Contact: James M. Taylor, Director, Office of Civil Rights, General Services Administration, Washington, DC 20405
Phone: 202 501-3852
Fax: 202 219-3369

RIN: 3090–AH49

3559. ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES CONDUCTED BY GENERAL SERVICES ADMINISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 794

CFR Citation: 41 CFR 105-8

Legal Deadline: None

Abstract: This regulation enforces nondiscrimination on the basis of handicap in programs and activities conducted by GSA. This rulemaking will be revised and rewritten in plain language.

Timetable:

Action	Date	FR Cite
NPRM	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal

Agency Contact: James M. Taylor, Director, Office of Civil Rights, General Services Administration, Washington, DC 20405
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RIN: 3090–AH59

OFFICE OF GOVERNMENTWIDE POLICY

3560. TELECOMMUNICATIONS MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 40 USC 1424(b)

CFR Citation: 41 CFR 101-35; 41 CFR 102-172

Legal Deadline: None

Abstract: This rulemaking revises FPMR 101-35 to update GSA's telecommunications management policy and moves it into the Federal Management Regulation at 102-172. The regulation is being rewritten in a plain language, question and answer format to make it easier to use and understand.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/07/96	61 FR 41003
Interim Final Rule Effective	08/08/96	
Interim Final Rule Comment Period End	10/07/96	
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3090–AG03

3561. DISPOSITION OF SEIZED AND FORFEITED, VOLUNTARILY ABANDONED, AND UNCLAIMED PERSONAL PROPERTY

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 484(m)

CFR Citation: 41 CFR 101-48; 41 CFR 102-41

Legal Deadline: None

GSA — Proposed Rule Stage

Abstract: This rulemaking revises FPMR 101-48 and moves it into the Federal Management Regulation at 102-41. The regulation is being rewritten in a plain language, question and answer format to make the regulation easier to use and understand.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3090–AH11

3562. DISPOSITION OF PERSONAL PROPERTY WITH SPECIAL HANDLING REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c)

CFR Citation: 41 CFR 101-42; 41 CFR 102-40

Legal Deadline: None

Abstract: This rulemaking revises FPMR 101-42 and moves it into the Federal Management Regulation at 102-40. The regulation revises use, handling, and disposal requirements for special categories of personal property. The rule is being rewritten in plain language in a question and answer format.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

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RIN: 3090–AH21

3563. PERSONAL PROPERTY MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 481; 40 USC 483 to 487

CFR Citation: 41 CFR 102-35

Legal Deadline: None

Abstract: This rulemaking provides a general outline of the policies governing the management of Federal personal property and summarizes the processes provided for in FMR parts 102-36 through 102-42.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3090–AH31

General Services Administration (GSA) — Final Rule Stage

OFFICE OF THE CHIEF PEOPLE OFFICER

3564. GSA PRIVACY ACT

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c)

CFR Citation: 41 CFR 105

Legal Deadline: None

Abstract: This rulemaking updates GSA's privacy policy and procedures and provides current organizational citations, privacy-related responsibilities, and the names and addresses of persons to contact concerning the GSA Privacy Act Program and systems of records.

Timetable:

Action	Date	FR Cite
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jinaita Kanarchuk, General Services Administration, Information Management Division (CAI), Office of the Chief People Officer, Washington, DC 20405
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RIN: 3090–AH05

OFFICE OF CIVIL RIGHTS

3565. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 41 CFR 101-6; 41 CFR 101-8

Legal Deadline: None

Abstract: This rulemaking proposes to amend the FPMR to implement title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. GSA's proposed rulemaking was published as part of a joint notice of proposed rulemaking involving up to 24 agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	

GSA

Final Rule Stage

Action	Date	FR Cite
Final Action	08/00/03	
Final Action Effective	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Federal

Agency Contact: James M. Taylor, Director, Office of Civil Rights, General Services Administration, Washington, DC 20405
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RIN: 3090–AH33

OFFICE OF GOVERNMENTWIDE POLICY

3566. FEDERAL TRAVEL REGULATION (FTR); CHAPTER 304 PAYMENT OF TRAVEL EXPENSES FROM A NON-FEDERAL SOURCE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5701 to 5709; 31 USC 1353; 40 USC 486(c)

CFR Citation: 41 CFR 301-1; 41 CFR 304-1

Legal Deadline: None

Abstract: This amendment finalizes the interim rule governing the acceptance of payment for travel, subsistence, and related expenses from a non-Federal source. This rule supersedes Interim Rule 4, published at 57 FR 53283, November 9, 1992, with request for comments. The economic impact of this amendment is favorable on all Federal agencies.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	10/30/89	
Interim Final Rule	12/28/89	54 FR 53321
Interim Final Rule 3 Effective	03/06/91	
Interim Final Rule 3	03/08/91	56 FR 9878
Interim Final Rule 3 Comment Period End	05/07/91	
Interim Final Rule 4	11/09/92	57 FR 53283
Interim Final Rule 4 Effective	12/09/92	
Interim Final Rule 4 Comment Period End	01/08/93	
NPRM	05/04/01	66 FR 22491
NPRM Comment Period End	07/03/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Peggy DeProspero, Acting Director, Travel Management Policy, Office of Governmentwide Policy, General Services Administration, Washington, DC 20405
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RIN: 3090–AE19

3567. FTR INTERIM RULE 7—INCOME TAX REIMBURSEMENT ALLOWANCE (ITRA)

Priority: Other Significant

Legal Authority: 5 USC 5707

CFR Citation: 41 CFR 301-11

Legal Deadline: None

Abstract: This rulemaking amended the FTR to add authority to implement sections of the Travel and Transportation Reform Act of 1998, which authorize Federal agencies to reimburse Federal, State, and local income taxes incurred as a result of long-term official travel. It also allows for the reimbursement of penalty and interest payments due to incorrect withholdings by the employee's agency for tax years 1993 and 1994.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	01/01/93	
Interim Final Rule	06/18/99	64 FR 32812
Interim Final Rule Comment Period End	08/17/99	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3090–AG99

3568. GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION; ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY; HISTORIC PREFERENCE

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 552

Legal Deadline: None

Abstract: This rulemaking updates GSAR clause 552.270-4, Historic Preference, that is used in the acquisition of leasehold interests. E.O. 13006 requires that Federal agencies give first consideration to historic properties within historic districts. If no such property is suitable, then Federal agencies shall consider other developed or undeveloped sites within historic districts. Federal agencies shall then consider historic properties outside of historic districts, if no suitable site within a district exists. As a result of the requirements of the E.O., 552.270-4 will be revised to establish the order of precedence.

Timetable:

Action	Date	FR Cite
NPRM	06/30/99	64 FR 35122
NPRM Comment Period End	08/30/99	
Second NPRM	10/19/01	66 FR 53193
Second NPRM Comment Period End	12/18/01	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3090–AH01

GSA

Final Rule Stage

3569. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Other Significant

Legal Authority: EO 12549 (2/18/86); 41 USC 701 et seq.; 40 USC 486(c)

CFR Citation: 41 CFR 105

Legal Deadline: None

Abstract: Rewrites current rule into plain language, question and answer format and clarifies ambiguities in existing rules.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3344
NPRM Comment Period End	03/25/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Federal

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RIN: 3090–AH35

3570. CENTRALIZED FIELD REPRODUCTION SERVICES

Priority: Info./Admin./Other

Legal Authority: 41 CFR 101-5.2

CFR Citation: 41 CFR 101-5.2

Legal Deadline: None

Abstract: In January of 1998, all GSA reproduction facilities were transferred to the Defense Automated Printing Service (DAPS), Department of Defense (DoD), thereby transferring the GSA mission of providing reproduction services for customer agencies. As a result, the contents of Federal Property Management Regulation (FPMR) 101-5.2 (41 CFR 101-5.2), Centralized Field Reproduction Services, will be removed from the FPMR. Any future regulation regarding GSA's involvement in centralized field reproduction services will be issued in the Federal Management Regulation (FMR).

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3090–AH37

3571. INTERNET GOV DOMAIN

Priority: Other Significant

Legal Authority: sec 205, Federal Property and Admin Services Act of 1949 (40 USC 486(c))

CFR Citation: 41 CFR 102-173

Legal Deadline: None

Abstract: The General Services Administration (GSA) is adding coverage on the Internet GOV Domain to the Federal Management Regulation (FMR). This proposed rule establishes a new FMR part covering the Internet GOV Domain. This proposed rule provides mainly a framework for future Internet GOV Domain policy, but it also establishes policy on naming conventions for U.S. Government registration of domain names, located in subpart B of the new part.

Timetable:

Action	Date	FR Cite
NPRM	05/16/02	67 FR 34890
NPRM Comment Period End	07/15/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Keith Thurston, Assistant to Deputy Associate Administrator, Office of Information Technology Policy, General Services Administration, Washington, DC 20405
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RIN: 3090–AH41

3572. REAL PROPERTY POLICIES UPDATE

Priority: Other Significant

Legal Authority: 40 USC 486(c)

CFR Citation: 41 CFR 102-71 to 41 CFR 102-83

Legal Deadline: None

Abstract: Final Rule FMR parts 102-71 to 102-82 was published in the Federal Register on January 18, 2001, and was effective on January 18, 2001. The completion of that regulatory action initiates the start of a new initiative entitled "Real Property Policies Update." The goal of this new initiative is to amend FMR parts 102-71 to 102-82 to complete the transfer of policy from the FPMR to the FMR and to update policies, such as location of space policy, historic preservation/E.O. 13006 policy, and security policy. This regulatory action will also create a separate part, FMR part 102-83, to deal specifically with the updated location of space policy.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	
Final Action Effective	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3090–AH45

3573. REAL PROPERTY POLICIES

Priority: Other Significant

Legal Authority: 40 USC 486(c)

CFR Citation: 41 CFR 101-6; 41 CFR 101-18; 41 CFR 101-19; 41 CFR 101-20; 41 CFR 101-33; ...

Legal Deadline: None

Abstract: The General Services Administration is transferring coverage on real property policies to the Federal Management Regulation (FMR). A final rule published in the Federal Register at 66 FR 5358 (January 18, 2001) moved many of the real property policies to the FMR. This final rule completes the

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transfer by removing all FPMR coverage on real property policies and providing cross references to direct readers to the coverage in the FMR.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	
Final Action Effective	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Stanley C. Langfeld, Director, Real Property Policy Division (MPR), Office of Governmentwide Policy, General Services Administration, Washington, DC 20405
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RIN: 3090–AH60

3574. • MANAGEMENT OF GOVERNMENT AIRCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c), sec 205(c), 63 Stat 390; Budget and Accounting Act of 1921 as amended; Budget and Accounting Procedures Act of 1950 as amended; Reorganization Plan No 2 of 1970; Executive Order 11541; ...

CFR Citation: 41 CFR 101-37; 41 CFR 102-33

Legal Deadline: None

Abstract: This final rule updates, streamlines, and clarifies Federal Management Regulations (FPMR) part 101-37 and moves the part into the Federal Management Regulation (FMR). The rule is written in a plain language, question and answer format. As the FPMR part 101-37 was amended a number of times over the years, its organization became a patchwork of rules on various subjects. In the new FMR part 102-33, GSA has reorganized and streamlined the content to address the life-cycle of aircraft management, from acquisition through disposal, and to accommodate revised reporting. Despite the major changes from FPMR part 101-37 described above, the overall purpose of the part is unchanged: To provide guidance and assistance to executive agencies on minimizing costs and improving the management and use of Government aviation resources (following direction to the Administrator of General Services found in Office of Management and Budget (OMB) Circular A-126 "Improving the Management and Use of Government Aircraft," revised May 22, 1992).

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 3090–AH63

3575. • MOTOR VEHICLE MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c), sec 205(c), 63 Stat 390

CFR Citation: 41 CFR 102-34

Legal Deadline: None

Abstract: An amendment to FMR 102-34 has been drafted to incorporate recent changes in the program. The significant changes proposed are:
1. The Fleet Average Fuel Economy Standards for FY 2000 and beyond is 20.7 miles per gallon for light trucks.
2. Motor vehicle identification requirements have been changed. All required identifiers are now to be included on the license plate: "For Official Use Only," "U.S. Government," and Federal agency or bureau identification. Previously, the identifiers were on decals that were placed on the vehicles. A waiver is currently allowing agencies to deviate from the decal requirement.
3. UNICOR is the mandatory supplier of official U. S. Government license plates. Lorton Prison in Virginia was the supplier for a number of years but recently closed. The GSA Federal Vehicle Policy Division (MTV) initiated a Memorandum of Understanding (MOU) with UNICIOR to provide license plates to all Federal agencies.
4. Agencies are identified by a letter code on the license plate. For example, the letter G designates GSA Fleet. The International Broadcasting Bureau (IBB) and the Presidio Trust (PT) requested identifiers that were issued last year.
5. The exemption from displaying U.S. Government license plates and other motor vehicle identification currently did not allow agencies to request this on administrative vehicles that were not directly connected to investigative, law enforcement, or intelligence duties. Our office issued a wavier to this after the events of 9/11/01 at the request of the agencies. This note has been removed to allow agencies to request an exemption on all their vehicles.
6. Addition of a clause that agencies are required to purchase EPA-designated content products such as re-refined engine oils, retread tires, and reclaimed engine coolant.
7. The Federal Motor Vehicle Fleet Report reporting is now accomplished through the Federal Automotive Statistical Tool (FAST). FAST is an internet-based reporting system used by GSA and the Department of Energy to capture motor vehicle inventory, cost, fuel, and use data from all Federal agencies.
8. A new subpart as been added on Environmental Concerns which address hazardous wastes, Clean Air Act Amendments of 1990, Energy Policy Act of 1992, Executive Order 13149, the Federal Fleet Program, EPA-designated recycled content products, and the Federal Alternative Fuel Vehicle USER Program.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3090–AH68

3576. • GSBCA RULES OF PROCEDURE (STANDARD PROCEEDINGS AND EXPEDITED PROCEEDINGS)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 601 to 613

CFR Citation: 48 CFR 6101; 48 CFR 6102

Legal Deadline: None

Abstract: This interim rule contains revisions to the rules of procedure of the GSA Board of Contract Appeals (Board). The rules governing the standard proceedings of the Board in contract disputes are contained in 48 CFR part 6101. Rules governing expedited proceedings in contract disputes, including alternative disputes resolution, are contained in 48 CFR part 6102. The revisions to the rules provide procedures for the electronic filing of documents in cases before the Board in both standard and expedited proceedings.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 3090–AH69

3577. • GSBCA RULES OF PROCEDURE FOR TRANSPORTATION RATE CASES

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 3726(i)(1); 41 USC 601 to 613; PL 104-316, sec 201(o)

CFR Citation: 48 CFR 6103

Legal Deadline: None

Abstract: This interim rule contains revisions to the rules of procedure of the GSA Board of Contract Appeals (Board) applicable to the Board's review of claims made by a carrier or freight forwarder pursuant to 31 U.S.C. 3726(i)(1). The revisions to the rules provide procedures for the electronic filing of documents in rate determination cases.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 3090–AH70

3578. • GSBCA RULES OF PROCEDURE FOR TRAVEL AND RELOCATION EXPENSES CASES; GSBCA RULES OF PROCEDURE FOR DECISIONS AUTHORIZED BY 31 U.S.C. 3529

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 3702; 31 USC 3529; 41 USC 601 to 613; PL 104-316, sec 202(n), 202(o), 204

CFR Citation: 48 CFR 6104; 48 CFR 6105

Legal Deadline: None

Abstract: This interim rule contains revisions to the rules of procedure of the GSA Board of Contract Appeals (Board) applicable to the Board's review of claims made by Federal civilian agencies against the United States for reimbursement of expenses incurred while on temporary duty travel or in connection with relocation to a new duty station. The rules governing proceedings when a claim is filed with the Board by an employee or an employee's agency are contained in 48 CFR part 6104. Rules governing proceedings when a request for an advance decision involving certification or payment of a claim is made by a disbursing or certifying official of an agency, or the head of agency, are governed by 48 CFR part 6105. The revisions to the rules provide procedures for the electronic filing of documents in both types of travel and relocation expenses cases.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 3090–AH71

3579. • FEDERAL TRAVEL REGULATION (FTR); PER DIEM RATES AMENDMENT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5707

CFR Citation: 41 CFR 301

Legal Deadline: None

Abstract: This final rule amends the Federal Travel Regulation to remove the per diem rates tables from appendix A of chapter 301 and to establish that the continental United States (CONUS) per diem rates will be published in the Federal Register on a periodic basis by the Office of Governmentwide Policy, Office of Transportation and Personal Property, Travel Management Policy, and will also be available on the Internet at http://policyworks.gov/perdiem as Federal Travel Regulation (FTR) Per Diem Bulletin.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 3090–AH72

GSA

Final Rule Stage

PUBLIC BUILDINGS SERVICE

3580. PRICING POLICY FOR OCCUPANCY IN GSA SPACE

Priority: Other Significant

Legal Authority: sec 210(j), Fed Prop and Admin Services Act of 1949, as amended (40 USC 490(j))

CFR Citation: 41 CFR 102-85

Legal Deadline: None

Abstract: The General Services Administration (GSA) is revising the Federal Property Management Regulations (FPMR) by moving coverage of GSA's Rent Program into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR is written in plain language to provide agencies with updated regulatory material that is easy to read and understand. This interim rule establishes the pricing policy guidance for Occupancy Agreements between GSA and the customer agencies. It also governs intra-governmental pricing of space and services.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/08/01	66 FR 23169
Interim Final Rule Effective	05/08/01	
Interim Final Rule Comment Period End	07/09/01	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 3090–AG33

General Services Administration (GSA)

Long-Term Actions

OFFICE OF GENERAL COUNSEL

3581. PROHIBITED PURCHASES OF PROPERTY SOLD BY GSA

Priority: Info./Admin./Other

Legal Authority: 5 USC 7301; 5 CFR 2635.105; 5 CFR 2635 702; 5 CFR 2635.703

CFR Citation: 5 CFR 6701.103

Legal Deadline: None

Abstract: Under the current regulation at 5 CFR 6701.103, GSA employees (and their spouses and minor children) are prohibited from purchasing for themselves or others any personal or real property being sold by GSA. This regulation supplemented the prohibition on the use of public office for private gain at 5 CFR 2635.702 and the prohibition on the use of nonpublic information at 5 CFR 2635.703. GSA believes that the current prohibition at section 6701.103 for all GSA employees, their spouses, and minor children is unnecessarily broad and that the prohibition should be extended only to those employees where the possibility of using public office or nonpublic information for private gain exists or where the possibility of the appearance of a conflict of interest occurs. For that reason, GSA is retaining but liberalizing this provision, so as to allow the purchase by GSA employees of property sold by GSA, except for those GSA employees who personally and substantially participate in, or have official responsibility for, the sale of real and personal property.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3090–AH50

OFFICE OF GOVERNMENTWIDE POLICY

3582. GSAR; TAX ADJUSTMENT

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 552

Legal Deadline: None

Abstract: This rulemaking establishes a provision at GSAR 552.270-74, Tax Adjustment. The provision outlines the methodology for calculating real estate taxes for use in solicitations for offers for acquisition of leasehold interests in real property.

Timetable:

Action	Date	FR Cite
NPRM	05/25/00	65 FR 33799
NPRM Comment Period End	07/24/00	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3090–AH03

3583. SALE OF PERSONAL PROPERTY

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c)

CFR Citation: 41 CFR 101-45; 41 CFR 102-38

Legal Deadline: None

Abstract: This rulemaking revises FPMR 101-45 to streamline sales requirements and moves it into the Federal Management Regulation at 41 CFR 102-38. The regulation is being rewritten in a plain language, question and answer format to make it easier to use and understand.

GSA

Long-Term Actions

Timetable:

Action	Date	FR Cite
NPRM	07/19/02	67 FR 47494
NPRM Comment Period End	08/19/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Robert Holcombe, Director, Personal Property Management Policy Division, General Services Administration, Washington, DC 20405
Phone: 202 501-3828
Fax: 202 501-6742
Email: robert.holcombe@gsa.gov

RIN: 3090–AH10

3584. MAIL MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 44 USC 2904; PL 94-575, sec 2

CFR Citation: 41 CFR 101-9; 41 CFR 102-192

Legal Deadline: None

Abstract: This rulemaking revises FPMR 101-9 and moves it into the Federal Management Regulation at 102-192. The new rule, rewritten in plain language, establishes four requirements at the agency level. Specifically, all agencies must (1) have written security plans at the agency and facility level; (2) ensure that mail costs are identified at the program level; (3) ensure that all payments to the United States Postal Service are made using commercial payment processes (i.e., not using the Postal Service's Official Mail Accounting System)—the effective date of this requirement will be October 1, 2003; (4) have performance measures for mail operations. In addition, the new rule requires all agencies that spend over $1 million per year on postage to send GSA an annual report that states the total amounts spent on postage, verifies that facility security plans have been reviewed at the agency level, identifies performance measures in use, and describes the agency's plans to improve the efficiency and effectiveness of their mail operations.

Timetable:

Action	Date	FR Cite
NPRM	05/29/01	66 FR 29067
NPRM Comment Period End	07/30/01	
NPRM Comment Period Extended	07/31/01	66 FR 39473
NPRM Comment Period End	09/28/01	
Interim Final Rule	06/06/02	67 FR 38896
Interim Final Rule Effective	06/06/02	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Henry Maury, Senior Policy Analyst, Office of Transportation and Personal Property (MT), General Services Administration, Washington, DC 20405
Phone: 202 208-7928
Fax: 202 501-6742
Email: henry.maury@gsa.gov

RIN: 3090–AH13

3585. CLARIFICATION OF HUBZONE

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 519; 48 CFR 552

Legal Deadline: None

Abstract: This rulemaking will clarify how the HUBZone program applies to acquiring leasehold interests in real property.

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Rodney P. Lantier, Director, Regulatory and Fed. Assistance Pub. Div. (MVA), Office of Governmentwide Policy, General Services Administration, Room 4033, 1800 F Street NW, Washington, DC 20405
Phone: 202 501-2647
Fax: 202 501-2727
Email: rodney.lantier@gsa.gov

RIN: 3090–AH17

3586. GSAR; IDENTIFICATION OF ENERGY-EFFICIENT OFFICE EQUIPMENT AND SUPPLIES CONTAINING RECOVERED MATERIALS OR OTHER ENVIRONMENTAL ATTRIBUTES

Priority: Other Significant

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 538; 48 CFR 552

Legal Deadline: None

Abstract: This rulemaking would amend the GSAR for consistency with the proposed FAR revision of energy conservation regulations and President Clinton's issuance of E.O. 13123 on efficient energy management.

Timetable:

Action	Date	FR Cite
NPRM	07/18/00	65 FR 44508
NPRM Comment Period End	09/18/00	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Rodney P. Lantier, Director, Regulatory and Fed. Assistance Pub. Div. (MVA), Office of Governmentwide Policy, General Services Administration, Room 4033, 1800 F Street NW, Washington, DC 20405
Phone: 202 501-2647
Fax: 202 501-2727
Email: rodney.lantier@gsa.gov

RIN: 3090–AH25

3587. GSAR; GUIDANCE ON ELECTRONIC FUNDS TRANSFER

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 532; 48 CFR 552

Legal Deadline: None

Abstract: This rulemaking establishes procedures for implementing the Debt Collection Improvement Act of 1996 in accordance with Department of Treasury rules at 31 CFR part 208 and OMB Prompt Payment Act rules at 5 CFR 1315. To comply with these rules, GSA must collect specific vendor information. 5 CFR 1315.9(b) requires a proper invoice to include the Taxpayer Identification Number (TIN) and banking information for electronic funds transfer, unless agency procedures provide otherwise. GSA will require the TIN on each invoice but will enter banking information on the GSA Form 300 in lieu of requiring it on the invoice.

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Rodney P. Lantier, Director, Regulatory and Fed. Assistance Pub. Div. (MVA), Office of Governmentwide Policy, General Services Administration, Room 4033, 1800 F Street NW, Washington, DC 20405
Phone: 202 501-2647
Fax: 202 501-2727
Email: rodney.lantier@gsa.gov

RIN: 3090–AH30

General Services Administration (GSA) — Completed Actions

3588. CHANGE IN CONSUMER PRICE INDEX MINIMAL VALUE FOR FOREIGN GIFTS

Priority: Substantive, Nonsignificant

CFR Citation: 41 CFR 102-42

Completed:

Reason	Date	FR Cite
Final Action	09/04/02	67 FR 56495
Final Action Effective	01/01/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Gary Thompson
Phone: 202 208-7433
Fax: 202 501-6742

RIN: 3090–AH53

3589. FEDERAL TRAVEL REGULATION (FTR) AMENDMENT, CORRECTIONS AND ADDITIONS

Priority: Substantive, Nonsignificant

CFR Citation: 41 CFR 300; 41 CFR 301; 41 CFR 302

Completed:

Reason	Date	FR Cite
Final Action	09/13/02	67 FR 57963
Final Action Effective	09/13/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Peggy DeProspero
Phone: 202 501-2826
Fax: 202 501-0349
Email: peggy.deprospero@gsa.gov

RIN: 3090–AH61

3590. • FEDERAL TRAVEL REGULATION; MAXIMUM PER DIEM RATES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5701 to 5709

CFR Citation: 41 CFR 301

Legal Deadline: None

Abstract: This rulemaking revised the Federal Travel Regulation (FTR) by updating maximum per diem allowances for locations within the continental United States to adequately reflect the cost of lodging in those areas.

Timetable:

Action	Date	FR Cite
Final Action Effective	05/15/02	
Final Action	06/05/02	67 FR 38604

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Peggy DeProspero, Acting Director, Travel Management Policy, Office of Governmentwide Policy, General Services Administration, Washington, DC 20405
Phone: 202 501-2826
Fax: 202 501-0349
Email: peggy.deprospero@gsa.gov

RIN: 3090–AH62

3591. • FEDERAL TRAVEL REGULATION (FTR); MAXIMUM PER DIEM RATES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5701 to 5709

CFR Citation: 41 CFR 301

Legal Deadline: None

Abstract: This rulemaking revised the Federal Travel Regulation (FTR) by updating maximum per diem allowances for locations within the continental United States to adequately reflect the cost of lodging in those areas.

Timetable:

Action	Date	FR Cite
Final Action Effective	07/15/02	
Final Action	07/19/02	67 FR 47457

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Peggy DeProspero, Acting Director, Travel Management Policy, Office of Governmentwide Policy, General Services Administration, Washington, DC 20405
Phone: 202 501-2826
Fax: 202 501-0349
Email: peggy.deprospero@gsa.gov

RIN: 3090–AH64

3592. • FEDERAL TRAVEL REGULATION; MAXIMUM PER DIEM RATES FOR THE STATES OF FLORIDA AND GEORGIA

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5701 to 5709

CFR Citation: 41 CFR 301

Legal Deadline: None

Abstract: The rulemaking revised the Federal Travel Regulation (FTR) by updating maximum per diem allowances for locations within the continental United States to adequately reflect the cost of lodging in those areas.

Timetable:

Action	Date	FR Cite
Final Action Effective	09/01/02	
Final Action	09/09/02	67 FR 57169

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Peggy DeProspero, Acting Director, Travel Management Policy, Office of Governmentwide Policy, General Services Administration, Washington, DC 20405
Phone: 202 501-2826
Fax: 202 501-0349
Email: peggy.deprospero@gsa.gov

RIN: 3090–AH65

3593. • FEDERAL TRAVEL REGULATION; MAXIMUM PER DIEM RATES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5701 to 5709

CFR Citation: 41 CFR 301

Legal Deadline: None

Abstract: This rulemaking revised the Federal Travel Regulation (FTR) by updating maximum per diem allowances for locations within the continental United States to adequately reflect the cost of lodging in those areas.

Timetable:

Action	Date	FR Cite
Final Action	08/30/02	67 FR 56160
Final Action Effective	10/01/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Peggy DeProspero, Acting Director, Travel Management Policy, Office of Governmentwide Policy, General Services Administration, Washington, DC 20405
Phone: 202 501-2826
Fax: 202 501-0349
Email: peggy.deprospero@gsa.gov

RIN: 3090–AH66

[FR Doc. 02–25203 Filed 12–06–02; 8:45 am]

BILLING CODE 6840–34–S

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Part XXVIII

Morris K. Udall Foundation-U.S. Institute for Environmental Conflict Resolution

Semiannual Regulatory Agenda

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MORRIS K. UDALL FOUNDATION-U.S. INSTITUTE FOR ENVIRONMENTAL CONFLICT RESOLUTION (MKU-USIECR)

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

The United States Institute for Environmental Conflict Resolution

36 CFR Ch. XVI

Semiannual Regulatory Agenda

AGENCY: Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation (including the United States Institute for Environmental Conflict Resolution).

ACTION: Semiannual regulatory agenda.

SUMMARY: This notice provides the semiannual agenda of rules scheduled for development during the next 12 months. It is issued pursuant to Executive Order 12866 and the Regulatory Flexibility Act.

FOR FURTHER INFORMATION CONTACT: Ellen K. Wheeler, General Counsel, Morris K. Udall Foundation, 110 S. Church Avenue, Suite 3350, Tucson, AZ 85701; Telephone (520) 670-5299; Fax (520) 670-5530.

SUPPLEMENTARY INFORMATION: With this publication, the Foundation satisfies the requirement of Executive Order 12866 that it publish an agenda of rules that it expects to issue. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) also requires publication of an agenda identifying rules that will have significant economic effect on a substantial number of small entities; the Foundation certifies that this proposed rule will not have a significant impact on small entities.

Dated: August 19, 2002.

Ellen K. Wheeler,

Deputy Executive Director and General Counsel.

Morris K. Udall Foundation-U.S. Institute for Environmental Conflict Resolution—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3594	Confidentiality in Dispute Resolution Proceedings	3320-AA01

Morris K. Udall Foundation-U.S. Institute for Environmental Conflict Resolution (MKU-USIECR) — **Long-Term Actions**

3594. CONFIDENTIALITY IN DISPUTE RESOLUTION PROCEEDINGS

Priority: Info./Admin./Other

Legal Authority: 5 USC 571 et seq; 20 USC 5601 et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This rule implements section 574 of title 5, U.S. Code, and provides that communications prepared for a dispute resolution proceeding in which the U.S. Institute for Environmental Conflict Resolution is involved as a third-party neutral will be confidential, except in certain specified circumstances.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ellen K. Wheeler, General Counsel, Deputy Executive Director, Morris K. Udall Foundation-U.S. Institute for Environmental Conflict Resolution, Suite 3350, 110 South Church Avenue, Tucson, AZ 85701
Phone: 520 670-5299
Fax: 520 670-5530
Email: wheeler@udall.gov

RIN: 3320–AA01

[FR Doc. 02–23890 Filed 12–06–02; 8:45 am]
BILLING CODE 6820–FN–S

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Part XXIX

National Aeronautics and Space Administration

Semiannual Regulatory Agenda

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Ch. V

Regulatory Agenda

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Semiannual regulatory agenda.

SUMMARY: NASA's regulatory agenda describes those regulations being considered for development or amendment by NASA, the need and legal basis for the actions being considered, the name and telephone number of the knowledgeable official, whether a regulatory analysis is required, and the status of regulations previously reported. This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions includes The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. NASA's Statement of Regulatory Priorities is included in part II.

ADDRESSES: Director, Management Assessment Division (Code JM), Office of Management Systems, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Cheryl E. Parker (202) 358-0252.

SUPPLEMENTARY INFORMATION: OMB guidelines dated July 17, 2002, "Fall 2002 Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions" require a regulatory agenda of those regulations under development and review to be published in the **Federal Register** each April and October.

John D. Werner,

Director, Management Assessment Division.

National Aeronautics and Space Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3595	Research Misconduct	2700-AC50
3596	NASA Grant and Cooperative Agreement Handbook	2700-AC55

National Aeronautics and Space Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3597	Cross-Waiver of Liability	2700-AB51
3598	Code of Conduct for International Space Station Crew	2700-AC40

National Aeronautics and Space Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3599	Tracking and Data Relay Satellite System; Use and Reimbursement Policy for Non-U.S. Government Users	2700-AA29
3600	Miscellaneous Administrative Changes to the NASA Federal Acquisition Regulation Supplement (NFS)	2700-AC33
3601	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	2700-AC41
3602	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	2700-AC43
3603	National Environmental Policy Act and Executive Order 12114 Implementing Procedures	2700-AC49
3604	NASA Grant and Cooperative Agreement Handbook—Miscellaneous Changes	2700-AC53

National Aeronautics and Space Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
3605	NASA Grant and Cooperative Agreement Handbook—Rewrite of Section D—Cooperative Agreements With Commercial Firms and Implementation of Section 319 of Public Law 106-391, Buy American Encouragement	2700-AC44
3606	Inventions and Contributions	2700-AC47
3607	Delegation of Authority	2700-AC54

National Aeronautics and Space Administration (NASA) — Proposed Rule Stage

3595. RESEARCH MISCONDUCT

Priority: Other Significant

Legal Authority: 42 USC 2473

CFR Citation: 14 CFR 1275

Legal Deadline: None

Abstract: The proposed rule implements the "Federal Policy on Research Misconduct," issued by the Office of Science and Technology Policy in the Federal Register (FR) on December 6, 2000 (65 FR 76260). The proposed rule sets out the definition of research misconduct and the procedures for determining whether research misconduct has occurred and for recommending administrative action by NASA pursuant to applicable laws.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mayra N. Montrose, National Aeronautics and Space Administration, Office of the NASA Chief Scientist, Code AS, 300 E Street SW, Washington, DC 20744
Phone: 202 358-1492
Email: mmontros@mail.hq.nasa.gov

RIN: 2700–AC50

3596. • NASA GRANT AND COOPERATIVE AGREEMENT HANDBOOK

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2473

CFR Citation: 14 CFR 1260

Legal Deadline: None

Abstract: NASA is amending 14 CFR 1260 to provide guidance on the format and content of its Cooperative Agreement Notices (CANs).

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Paul Brundage, Office of Procurement, Code HK, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546
Phone: 202 358-0481

RIN: 2700–AC55

National Aeronautics and Space Administration (NASA) — Final Rule Stage

3597. CROSS-WAIVER OF LIABILITY

Priority: Info./Admin./Other

Legal Authority: 42 USC 2473

CFR Citation: 14 CFR 1266

Legal Deadline: None

Abstract: This provides technical amendments to implement the cross-waiver of liability provision of the intergovernmental agreement of the International Space Station and to refine and clarify contractual cross-waivers in NASA agreements involving launch services.

Timetable:

Action	Date	FR Cite
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven Mirmina, Attorney Advisor, National Aeronautics and Space Administration, NASA Headquarters (Code GS), 300 E Street SW, Washington, DC 20546
Phone: 202 358-0729
Fax: 202 358-4355
Email: smirmina@mail.hq.nasa.gov

RIN: 2700–AB51

3598. CODE OF CONDUCT FOR INTERNATIONAL SPACE STATION CREW

Priority: Other Significant

Legal Authority: 42 USC 2455, 2473, and 2475; 18 USC 799

CFR Citation: 14 CFR 1214, subpart 1214.4

Legal Deadline: None

Abstract: NASA is amending 14 CFR part 1214 by adding subpart 1214.4 to implement certain provisions of the International Space Station Intergovernmental Agreement regarding crew members' observance of a Code of Conduct.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	10/01/00	
Interim Final Rule	12/21/00	65 FR 80302
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: E. Jason Steptoe, Associate General Counsel, National Aeronautics and Space Administration, Office of General Counsel (Code GS), 300 E Street SW, Washington, DC 20546
Phone: 202 358-2432

RIN: 2700–AC40

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3599. TRACKING AND DATA RELAY SATELLITE SYSTEM; USE AND REIMBURSEMENT POLICY FOR NON-U.S. GOVERNMENT USERS

Priority: Info./Admin./Other

CFR Citation: 14 CFR 1215

Timetable:

Action	Date	FR Cite
Final Action for CY 1993 Rate Change	05/15/92	57 FR 20746
Final Action for CY 1994 Rate Change	09/28/93	58 FR 50515
Final Action for CY 1995 Rate Change	10/31/94	59 FR 54385
Final Action for CY 1997 Rate Change	05/15/95	60 FR 25843
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joseph LaCurto
Phone: 202 358-2764

RIN: 2700–AA29

3600. MISCELLANEOUS ADMINISTRATIVE CHANGES TO THE NASA FEDERAL ACQUISITION REGULATION SUPPLEMENT (NFS)

Priority: Info./Admin./Other

CFR Citation: 48 CFR 1801 to 1872

Timetable:

Action	Date	FR Cite
Final Rule	05/07/02	67 FR 30602
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Celeste M. Dalton
Phone: 202 358-1645
Email: cdalton@hq.nasa.gov

RIN: 2700–AC33

3601. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

CFR Citation: 14 CFR 1250; 14 CFR 1251; 14 CFR 1252

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: George E. Reese
Phone: 202 358-2167
Fax: 202 358-3336
Email: greese@hq.nasa.gov

RIN: 2700–AC41

3602. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

CFR Citation: 14 CFR 1265

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3265
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Paul Brundage
Phone: 202 358-0481

RIN: 2700–AC43

3603. NATIONAL ENVIRONMENTAL POLICY ACT AND EXECUTIVE ORDER 12114 IMPLEMENTING PROCEDURES

Priority: Substantive, Nonsignificant

CFR Citation: 14 CFR 1216.3

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ann H. Clarke
Phone: 202 358-0007
Email: aclarke@hq.nasa.gov

RIN: 2700–AC49

3604. NASA GRANT AND COOPERATIVE AGREEMENT HANDBOOK—MISCELLANEOUS CHANGES

Priority: Info./Admin./Other

CFR Citation: 14 CFR 1260; 14 CFR 1274

Timetable:

Action	Date	FR Cite
Final Rule	05/07/02	67 FR 30544
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rita Svarcas
Phone: 202 358-0464
Fax: 202 358-3220
Email: rsvarcas@hq.nasa.gov

Related RIN: Duplicate of 2700-AC51

RIN: 2700–AC53

3605. NASA GRANT AND COOPERATIVE AGREEMENT HANDBOOK—REWRITE OF SECTION D—COOPERATIVE AGREEMENTS WITH COMMERCIAL FIRMS AND IMPLEMENTATION OF SECTION 319 OF PUBLIC LAW 106-391, BUY AMERICAN ENCOURAGEMENT

Priority: Substantive, Nonsignificant

CFR Citation: 14 CFR 1260 and 1274

Completed:

Reason	Date	FR Cite
Final Action	07/10/02	67 FR 45790

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Eugene Johnson
Phone: 202 358-4703
Fax: 202 358-3220
Email: ejohnson@hq.nasa.gov

RIN: 2700–AC44

3606. INVENTIONS AND CONTRIBUTIONS

Priority: Substantive, Nonsignificant

CFR Citation: 14 CFR 1240

Completed:

Reason	Date	FR Cite
Final Action	05/09/02	67 FR 31119

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Paul A. Curto
Phone: 202 358-2279
Fax: 202 358-3197
Email: pcurto@hq.nasa.gov

RIN: 2700–AC47

3607. DELEGATION OF AUTHORITY

Priority: Info./Admin./Other

CFR Citation: 14 CFR 1204

Completed:

Reason	Date	FR Cite
Final Action	07/18/02	67 FR 47256

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharon Christy Foster
Phone: 202 358-1903
Fax: 202 358-3155
Email: sfoster@hq.nasa.gov

RIN: 2700–AC54

[FR Doc. 02–23891 Filed 12–06–02; 8:45 am]
BILLING CODE 7510–01–S

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Monday,
December 9, 2002

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National Archives and Records Administration

Semiannual Regulatory Agenda

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Ch. XII

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: National Archives and Records Administration.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda announces the proposed regulatory actions that the National Archives and Records Administration (NARA) plans for the next 12 months and those actions that have been completed since the spring of 2002. This agenda was developed under the guidelines in OMB's Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions, dated July 15, 2002. NARA's purpose in publishing this agenda is to allow interested persons an opportunity to have more comprehensive documentation of NARA's regulatory plans and to participate in the rulemaking process. Some of the regulations listed in the agenda are considered significant under Executive Order 12866, "Regulatory Planning and Review."

For this edition of NARA's regulatory agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Regulatory Plan entries are listed in the table of contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

FOR FURTHER INFORMATION CONTACT: Nancy Allard, Regulatory Contact, Policy and Communications Staff, (301) 837-1477.

Dated: September 13, 2002.

John W. Carlin,

Archivist of the United States.

National Archives and Records Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3608	Federal Records Management **(Reg Plan Seq No. 150)**	3095-AB16

References in boldface appear in the **Regulatory Plan** in part II of this issue of the **Federal Register**.

National Archives and Records Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3609	Revision of NARA Research Room Procedures	3095-AB10
3610	Restrictions on the Use of Records	3095-AB11
3611	Public Use of NARA Facilities	3095-AB17

National Archives and Records Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3612	Presidential Library Facilities	3095-AA82
3613	Expanding Transfer Options for Electronic Records	3095-AB03
3614	NARA Official Seals	3095-AB12

National Archives and Records Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3615	Implementation of OMB Circular A-110, Section 36	3095-AA96
3616	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	3095-AB04
3617	Records Management; Electronic Text Documents	3095-AB05
3618	Nondiscrimination in Federally Assisted Programs—Implementation of Title VI of the Civil Rights Act of 1964	3095-AB09

NARA

National Archives and Records Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
3619	Debt Collection	3095-AA77
3620	National Historical Publications and Records Commission Grant Regulations	3095-AA93
3621	Records Disposition	3095-AB02
3622	Micrographic Records Management	3095-AB06
3623	Nixon Presidential Materials; Reproduction	3095-AB07
3624	NARA Facilities; Addresses and Hours	3095-AB08
3625	Presidential Records	3095-AB13
3626	Researcher Identification Cards	3095-AB14
3627	NARA Regulations; Technical Amendments	3095-AB15

National Archives and Records Administration (NARA) **Prerule Stage**

3608. • FEDERAL RECORDS MANAGEMENT

Regulatory Plan: This entry is Seq. No. 150 in part II of this issue of the **Federal Register**.

RIN: 3095–AB16

National Archives and Records Administration (NARA) **Proposed Rule Stage**

3609. REVISION OF NARA RESEARCH ROOM PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 44 USC 2104(a)

CFR Citation: 36 CFR 1254

Legal Deadline: None

Abstract: NARA is updating and revising in plain language its regulations concerning use of records and donated historical materials in NARA research rooms.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	
Final Action	04/00/03	
Final Action Effective	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jennifer Davis Heaps, Policy Specialist, National Archives and Records Administration, Room 4100, 8601 Adelphi Road, College Park, MD 20740
Phone: 301 837-1850
Fax: 301 713-0319
Email: jennifer.heaps@nara.gov

RIN: 3095–AB10

3610. RESTRICTIONS ON THE USE OF RECORDS

Priority: Substantive, Nonsignificant

Legal Authority: 44 USC 2101 to 2118; 22 USC 1461(b)

CFR Citation: 36 CFR 1256

Legal Deadline: None

Abstract: NARA is updating and rewriting in plain language its regulations on statutory and other restrictions on access to archival records and donated historical materials transferred to the National Archives of the United States.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	
Final Action	02/00/03	
Final Action Effective	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jennifer Davis Heaps, Policy Specialist, National Archives and Records Administration, Room 4100, 8601 Adelphi Road, College Park, MD 20740
Phone: 301 837-1850
Fax: 301 713-0319
Email: jennifer.heaps@nara.gov

RIN: 3095–AB11

3611. • PUBLIC USE OF NARA FACILITIES

Priority: Substantive, Nonsignificant

Legal Authority: 44 USC 2104(a)

CFR Citation: 36 CFR 1280

Legal Deadline: None

Abstract: NARA is amending its regulations on public use of NARA facilities to clarify the grounds on which individuals may be banned from the property for harmful or disruptive behavior. There is no anticipated cost. This rule will protect our visitors, staff members, and volunteers.

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NARA — Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	
Final Action	03/00/03	
Final Action Effective	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

URL For More Information: http://www.archives.gov

URL For Public Comments: http://opp for public comment

Agency Contact: Kimberly Richardson, Policy Specialist, National Archives and Records Administration, Room 4100, 8601 Adelphi Road, College Park, MD 20602-6001
Phone: 301 837-1850
Fax: 301 837-0319
Email: kimberly.richardson@nara.gov

RIN: 3095–AB17

National Archives and Records Administration (NARA) — Final Rule Stage

3612. PRESIDENTIAL LIBRARY FACILITIES

Priority: Substantive, Nonsignificant

Legal Authority: 44 USC 2104(a); 44 USC 2112

CFR Citation: 36 CFR 1281

Legal Deadline: None

Abstract: NARA is issuing regulations relating to the acceptance of a Presidential library facility by the Archivist of the United States from a non-Federal group or institution. The regulations will address requirements in the Presidential Libraries Act of 1986 for architectural and design standards, certifications, and reporting to Congress.

Timetable:

Action	Date	FR Cite
NPRM	08/25/98	63 FR 45203
NPRM Comment Period End	10/26/98	
Final Action	11/00/02	
Final Action Effective	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Nancy Allard, Regulatory Contact, National Archives and Records Administration, Room 4100, NPOL, 8601 Adelphi Road, College Park, MD 20740-6001
Phone: 301 837-1850
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Email: nancy.allard@nara.gov

RIN: 3095–AA82

3613. EXPANDING TRANSFER OPTIONS FOR ELECTRONIC RECORDS

Priority: Other Significant

Legal Authority: 44 USC 2104(a)

CFR Citation: 36 CFR 1228.270

Legal Deadline: None

Abstract: For agencies transferring electronic records to the National Archives of the United States, this rule would add certain magnetic tape cartridges with a storage capacity of up to 40GB to the list of acceptable transfer media. In addition, media-less transfer using File Transfer Protocol and the Internet will be added as an acceptable transfer mechanism.

Timetable:

Action	Date	FR Cite
NPRM	06/26/02	67 FR 43069
NPRM Comment Period End	08/26/02	
Final Action	11/00/02	
Final Action Effective	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Nancy Allard, Regulatory Contact, National Archives and Records Administration, Room 4100, NPOL, 8601 Adelphi Road, College Park, MD 20740-6001
Phone: 301 837-1850
Fax: 301 837-0319
Email: nancy.allard@nara.gov

RIN: 3095–AB03

3614. NARA OFFICIAL SEALS

Priority: Substantive, Nonsignificant

Legal Authority: 44 USC 2104(e); 44 USC 2116(b); 44 USC 2302

CFR Citation: 36 CFR 1200

Legal Deadline: None

Abstract: NARA is reviewing its regulation on its official seals and how they may be used. The regulations will be rewritten in plain language.

Timetable:

Action	Date	FR Cite
NPRM	07/17/02	67 FR 46945
NPRM Comment Period End	08/16/02	
Final Action	11/00/02	
Final Action Effective	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Kimberly Richardson, Policy Specialist, National Archives and Records Administration, Room 4100, 8601 Adelphi Road, College Park, MD 20602-6001
Phone: 301 837-1850
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Email: kimberly.richardson@nara.gov

RIN: 3095–AB12

National Archives and Records Administration (NARA) — Long-Term Actions

3615. IMPLEMENTATION OF OMB CIRCULAR A-110, SECTION 36

Priority: Other Significant

Legal Authority: 5 USC 301

CFR Citation: 36 CFR 1210

Legal Deadline: None

Abstract: This rule will incorporate the provisions of OMB Circular A-110, section 36, regarding the availability of data produced under an award through the Freedom of Information Act (FOIA) into our NHPRC grants administration regulation at 36 CFR part 1210.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/16/00	65 FR 14406
Interim Final Rule Comment Period End	05/15/00	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

Federalism: Undetermined

Agency Contact: Nancy Allard, Regulatory Contact, National Archives and Records Administration, Room 4100, NPOL, 8601 Adelphi Road, College Park, MD 20740-6001
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Email: nancy.allard@nara.gov

RIN: 3095–AA96

3616. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Other Significant

Legal Authority: 44 USC 2104(a); EO 12549; EO 12698; 31 USC 6101 note

CFR Citation: 36 CFR 1209; 36 CFR 1211

Legal Deadline: None

Abstract: This rule will modify the Governmentwide nonprocurement common rule for debarment and suspension and the Governmentwide rule implementing the Drug-Free Workplace Act of 1988.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3265
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Nancy Allard, Regulatory Contact, National Archives and Records Administration, Room 4100, NPOL, 8601 Adelphi Road, College Park, MD 20740-6001
Phone: 301 837-1850
Fax: 301 837-0319
Email: nancy.allard@nara.gov

RIN: 3095–AB04

3617. RECORDS MANAGEMENT; ELECTRONIC TEXT DOCUMENTS

Priority: Other Significant

Legal Authority: 44 USC 2104(a)

CFR Citation: 36 CFR 1234

Legal Deadline: None

Abstract: NARA will seek Federal agency and public comment concerning the management, scheduling and preservation of text documents created in electronic form.

Timetable:

Action	Date	FR Cite
ANPRM	10/10/01	66 FR 51740
ANPRM Comment Period End	01/08/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Nancy Allard, Regulatory Contact, National Archives and Records Administration, Room 4100, NPOL, 8601 Adelphi Road, College Park, MD 20740-6001
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Email: nancy.allard@nara.gov

RIN: 3095–AB05

3618. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS—IMPLEMENTATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Priority: Other Significant

Legal Authority: 44 USC 2104(a); 42 USC 2000d to 2000d-7; EO 12250

CFR Citation: 36 CFR 1213

Legal Deadline: None

Abstract: NARA is adopting Governmentwide regulations on nondiscrimination on the grounds of race, color, or national origin in any program or activity receiving Federal financial assistance from NARA. These regulations will affect the National Historical Publications and Records Commission grant program.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Federalism: Undetermined

Agency Contact: Kimberly Richardson, Policy Specialist, National Archives and Records Administration, Room 4100, 8601 Adelphi Road, College Park, MD 20602-6001
Phone: 301 837-1850
Fax: 301 837-0319
Email: kimberly.richardson@nara.gov

RIN: 3095–AB09

National Archives and Records Administration (NARA) — Completed Actions

3619. DEBT COLLECTION

Priority: Substantive, Nonsignificant

CFR Citation: 36 CFR 1201

Completed:

Reason	Date	FR Cite
Interim Final Rule	07/05/02	67 FR 44757
Interim Final Rule Effective	08/05/02	

Interim Final Rule Comment Period End 09/03/02
Final Action 10/11/02 67 FR 63267

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Christopher M. Runkel
Phone: 301 837-1750
Fax: 301 837-0293
Email: christopher.runkel@nara.gov

Related RIN: Merged With 3095-AA76

RIN: 3095–AA77

3620. NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION GRANT REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 36 CFR 1206

Completed:

Reason	Date	FR Cite
Final Action	06/24/02	67 FR 42493
Final Action Effective	07/24/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Nancy Copp
Phone: 202 501-5603
Fax: 202 501-5601
Email: nancy.copp@.nara.gov

RIN: 3095–AA93

3621. RECORDS DISPOSITION

Priority: Substantive, Nonsignificant

CFR Citation: 36 CFR 1228.32; 36 CFR 1228.42; 36 CFR 1228.50; 36 CFR 1228.106; 36 CFR 1232.20; 36 CFR 1232.32; 36 CFR 1220; 36 CFR 1228; 36 CFR 1232; 36 CFR 1234; 36 CFR 1236

Completed:

Reason	Date	FR Cite
Final Action	05/13/02	67 FR 31961
Final Action Effective	06/12/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Nancy Allard
Phone: 301 837-1850
Fax: 301 837-0319
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RIN: 3095–AB02

3622. MICROGRAPHIC RECORDS MANAGEMENT

Priority: Other Significant

CFR Citation: 36 CFR 1230

Completed:

Reason	Date	FR Cite
Final Action	05/14/02	67 FR 34574
Final Action Effective	06/10/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Kimberly Richardson
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Fax: 301 837-0319
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RIN: 3095–AB06

3623. NIXON PRESIDENTIAL MATERIALS; REPRODUCTION

Priority: Substantive, Nonsignificant

CFR Citation: 36 CFR 1275

Completed:

Reason	Date	FR Cite
Final Action	07/05/02	67 FR 44765
Final Action Effective	08/05/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kimberly Richardson
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RIN: 3095–AB07

3624. NARA FACILITIES; ADDRESSES AND HOURS

Priority: Substantive, Nonsignificant

CFR Citation: 36 CFR 1253

Completed:

Reason	Date	FR Cite
NPRM	04/15/02	67 FR 18146
Final Action	06/27/02	67 FR 43259
Final Action Effective	06/27/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Kimberly Richardson
Phone: 301 837-1850
Fax: 301 837-0319
Email: kimberly.richardson@nara.gov

RIN: 3095–AB08

3625. PRESIDENTIAL RECORDS

Priority: Other Significant

CFR Citation: 36 CFR 1270

Completed:

Reason	Date	FR Cite
Withdrawn	08/28/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Gary M. Stern
Phone: 301 837-1750

RIN: 3095–AB13

3626. • RESEARCHER IDENTIFICATION CARDS

Priority: Substantive, Nonsignificant

Legal Authority: 44 USC 2101-2118

CFR Citation: 36 CFR 1254.6

Legal Deadline: None

Abstract: This rule will change the time period researcher identification cards are valid from three years to one year. NARA is making this change to increase our ability to obtain accurate address and telephone information from researchers who use archival materials in NARA facilities. This will allow NARA to contact researchers if necessary and to ensure better protection of NARA's holdings.

Timetable:

Action	Date	FR Cite
NPRM	07/10/02	67 FR 45683
NPRM Comment Period End	09/09/02	
Final Action	10/11/02	67 FR 63267
Final Action Effective	11/12/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jennifer Davis Heaps, Policy Specialist, National Archives and Records Administration, Room 4100, 8601 Adelphi Road, College Park, MD 20740
Phone: 301 837-1850
Fax: 301 713-0319
Email: jennifer.heaps@nara.gov

RIN: 3095–AB14

3627. • NARA REGULATIONS; TECHNICAL AMENDMENTS

Priority: Info./Admin./Other

Legal Authority: 44 USC 2104(a)

CFR Citation: 36 CFR 1228; 36 CFR 1250; 36 CFR 1254

Legal Deadline: None

Abstract: This final rule corrects the Web site addresses for references in our records management and public availability and use of records regulations.

Timetable:

Action	Date	FR Cite
Final Action	07/22/02	67 FR 47701
Final Action Effective	07/22/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Kimberly Richardson, Policy Specialist, National Archives and Records Administration, Room 4100, 8601 Adelphi Road, College Park, MD 20602-6001
Phone: 301 837-1850
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RIN: 3095–AB15

[FR Doc. 02–24255 Filed 12–06–02; 8:45 am]
BILLING CODE 7515–01–S

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Monday,
December 9, 2002

Part XXXI

National Foundation on the Arts and the Humanities

Institute of Museum and Library Services
Semiannual Regulatory Agenda

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INSTITUTE OF MUSEUM AND LIBRARY SERVICES (IMLS)

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

45 CFR Ch. XI

Semiannual Regulatory Agenda

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Semiannual regulatory agenda.

SUMMARY: Pursuant to Executive Order 12866 and the Regulatory Planning and Review Act, the Institute of Museum and Library Services publishes this regulatory agenda describing agency regulations under development or review.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, 1100 Pennsylvania Avenue NW., Washington, DC 20506, e-mail: nweiss@imls.gov, or call (202) 606-5414.

Nancy E. Weiss,

General Counsel.

Institute of Museum and Library Services—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3628	Implementation of the Electronic Freedom of Information Act Amendments of 1996	3137-AA12

Institute of Museum and Library Services—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3629	Implementation of Title IX of the Education Act Amendments of 1972	3137-AA10
3630	Nondiscrimination on the Basis of Race, Color, and National Origin in Programs and Activities Receiving Federal Financial Assistance	3137-AA13

Institute of Museum and Library Services—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3631	National Leadership Demonstration Grants	3137-AA08
3632	Governmentwide Debarment and Suspension (Nonprocurement)	3137-AA14

Institute of Museum and Library Services (IMLS) — **Proposed Rule Stage**

3628. IMPLEMENTATION OF THE ELECTRONIC FREEDOM OF INFORMATION ACT AMENDMENTS OF 1996

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552

CFR Citation: 45 CFR 1100.5

Legal Deadline: None

Abstract: Regulations will implement the Electronic Freedom of Information Act Amendments of 1996, which facilitate public requests for information.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, Suite 802, 1100 Pennsylvania Avenue NW., Washington, DC 20506
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RIN: 3137–AA12

Institute of Museum and Library Services (IMLS) — **Final Rule Stage**

3629. IMPLEMENTATION OF TITLE IX OF THE EDUCATION ACT AMENDMENTS OF 1972

Priority: Substantive, Nonsignificant

Legal Authority: 20 USC 1681 to 1683; 20 USC 1685; 20 USC 1686

CFR Citation: 45 CFR 1182

Legal Deadline: None

Abstract: Regulations will implement title IX of the Education Act Amendments of 1972, which ensure equality on the basis of sex in education programs and activities receiving Federal financial assistance.

Timetable:

Action	Date	FR Cite
NPRM	10/29/99	64 FR 58567
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal

Additional Information: Previously reported as completed in the October 2000 edition.

Agency Contact: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, Suite 802, 1100 Pennsylvania Avenue NW., Washington, DC 20506
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RIN: 3137–AA10

3630. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, AND NATIONAL ORIGIN IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2000d to 2000d-7

CFR Citation: 45 CFR 1110.1 to 1110.13

Legal Deadline: None

Abstract: The Institute of Museum and Library Services proposes to make amendments to its regulations implementing title VI of the Civil Rights Act of 1964 (title VI). This statute prohibits discrimination on the basis of race, color, and national origin in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRRA's definition of "program or activity" and "program" into the Institute's title VI regulations. The Institute's proposed regulation will be published as part of a joint Notice of Proposed Rulemaking involving up to 24 Federal agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76459
NPRM Comment Period End	01/05/01	
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, Suite 802, 1100 Pennsylvania Avenue NW., Washington, DC 20506
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RIN: 3137–AA13

Institute of Museum and Library Services (IMLS) — **Long-Term Actions**

3631. NATIONAL LEADERSHIP DEMONSTRATION GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 104-208, sec 262, Museum and Library Services Act

CFR Citation: 45 CFR 1180

Legal Deadline: None

Abstract: Regulations will be published to provide guidelines on IMLS National Demonstration Leadership Grants to enhance quality of library services nationwide and to provide coordination between museums and libraries.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, Suite 802, 1100 Pennsylvania Avenue NW., Washington, DC 20506
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RIN: 3137–AA08

3632. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Priority: Substantive, Nonsignificant

Legal Authority: EO 12866

CFR Citation: 45 CFR 1185; 45 CFR 1186

Legal Deadline: None

Abstract: The proposed rule simplifies the language of the current Governmentwide debarment and suspension (nonprocurement) regulations; clarifies the scope of debarment and suspension coverage and reporting requirements, and separates out the rules concerning maintenance of a drug-free workplace.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3265
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, Suite 802, 1100 Pennsylvania Avenue NW., Washington, DC 20506
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IMLS — Long-Term Actions

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RIN: 3137–AA14

[FR Doc. 02–24263 Filed 12–06–02; 8:45 am]

BILLING CODE 7036–01–S



Federal Register

Monday,
December 9, 2002

Part XXXII

National Foundation on the Arts and the Humanities

National Endowment for the Arts
Semiannual Regulatory Agenda

NATIONAL ENDOWMENT FOR THE ARTS (NEA)

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Ch. XI

Semiannual Regulatory Agenda

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Semiannual regulatory agenda.

SUMMARY: Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605) and Executive Order 12866, the National Endowment for the Arts publishes this regulatory agenda describing agency regulations under development or review.

FOR FURTHER INFORMATION CONTACT: Karen Elias, Deputy General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, or call (202) 682-5418.

Karen Elias,

Deputy General Counsel.

National Endowment for the Arts—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3633	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	3135-AA17

National Endowment for the Arts—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3634	Nondiscrimination in Federally Assisted Programs and Activities; Effectuation of Title VI of the Civil Rights Act of 1964	3135-AA10
3635	Nondiscrimination on the Basis of Sex in Federally Assisted Programs and Activities—Implementation of Title IX of the Education Amendments of 1972	3135-AA15
3636	Governmentwide Debarment and Suspension (Nonprocurement)	3135-AA18
3637	Governmentwide Requirements for Drug-Free Workplace (Grants)	3135-AA19

National Endowment for the Arts (NEA) — **Final Rule Stage**

3633. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 794; 42 USC 2000d-7; 41 USC 6101; EO 12250

CFR Citation: 45 CFR ch XI

Legal Deadline: None

Abstract: The National Endowment for the Arts proposes to make amendments to its regulations implementing title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRRA's definition of "program or activity" and "program" into the Arts Endowment's title VI, section 504, and Age Discrimination Act regulations. The Arts Endowment's proposed regulation will be published as part of the Department of Justice's joint notice of proposed rulemaking involving up to 24 Federal agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76459
NPRM Comment Period End	01/05/01	
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Karen Elias, Deputy General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506
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RIN: 3135–AA17

3634. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES; EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1140

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Karen Elias
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RIN: 3135–AA10

3635. NONDISCRIMINATION ON THE BASIS OF SEX IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES—IMPLEMENTATION OF TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

Priority: Other Significant

CFR Citation: 45 CFR 1155

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal

Agency Contact: Hope O'Keeffe
Phone: 202 682-5418
Fax: 202 682-5572
Email: okeeffeh@arts.endow.gov

RIN: 3135–AA15

3636. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1154

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3315
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Karen Elias
Phone: 202 682-5418
Fax: 202 682-5572
Email: eliask@arts.endow.gov

RIN: 3135–AA18

3637. GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1155

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3315
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Karen Elias
Phone: 202 682-5418
Fax: 202 682-5572
Email: eliask@arts.endow.gov

RIN: 3135–AA19

[FR Doc. 02–23895 Filed 12–06–02; 8:45 am]

BILLING CODE 7537–01–S

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Part XXXIII

National Foundation on the Arts and the Humanities

National Endowment for the Humanities
Semiannual Regulatory Agenda

NATIONAL ENDOWMENT FOR THE HUMANITIES (NEH)

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

45 CFR Ch. XI

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Semiannual regulatory agenda.

SUMMARY: Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, and Executive Order 12866, "Regulatory Planning and Review," dated September 30, 1993, the National Endowment for the Humanities is required to publish, semiannually, an agenda of proposed regulations that the Endowment has issued or expects to issue and current rules that are under agency review.

FOR FURTHER INFORMATION CONTACT: Daniel Schneider, General Counsel, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202) 606-8322.

Lynne A. Munson,

Deputy Chairman, National Endowment for the Humanities.

National Endowment for the Humanities—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3638	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	3136-AA24

National Endowment for the Humanities—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3639	Nondiscrimination in Federally Assisted Programs and Activities	3136-AA11
3640	Implementation of Title IX of the Education Act Amendments of 1972	3136-AA14
3641	Privacy Act Regulations	3136-AA18
3642	Supplemental Standards of Ethical Conduct for Employees of the National Endowment for the Humanities	3136-AA21
3643	Standards of Conduct of Employees	3136-AA22
3644	Governmentwide Debarment and Suspension (Nonprocurement)	3136-AA25
3645	Governmentwide Requirements for Drug-Free Workplace (Grants)	3136-AA26
3646	Freedom of Information Act Regulations	3136-AA27

National Endowment for the Humanities (NEH) — **Final Rule Stage**

3638. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2000d to 2000d-7; 29 USC 794

CFR Citation: 45 CFR 1110; 45 CFR 1170

Legal Deadline: None

Abstract: The National Endowment for the Humanities (NEH) proposes to make amendments to its regulations implementing title VI of the Civil Rights Act of 1964 (title VI) and Section 504 of the Rehabilitation Act of 1972 (section 504). Together, these statutes prohibit discrimination on the basis of race, color, national origin, and disability in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRRA's definition of "program or activity" and "program" into the NEH's title VI and section 504 regulations. The NEH's proposed regulations will be published as part of a joint Department of Justice Notice of Proposed Rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76459
NPRM Comment Period End	01/05/01	
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

Agency Contact: Heather C. Gottry, Attorney-Advisor, National Endowment for the Humanities, Room 530, 1100 Pennsylvania Avenue NW., Washington, DC 20506
Phone: 202 606-8322
TDD Phone: 202 606-8282
Fax: 202 606-8600

NEH — **Final Rule Stage**

Email: hgottry@neh.gov

RIN: 3136–AA24

National Endowment for the Humanities (NEH) — **Long-Term Actions**

3639. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1110; 45 CFR 1173

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Heather C. Gottry
Phone: 202 606-8322
TDD Phone: 202 606-8282
Fax: 202 606-8600
Email: hgottry@neh.gov

RIN: 3136–AA11

3640. IMPLEMENTATION OF TITLE IX OF THE EDUCATION ACT AMENDMENTS OF 1972

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1171

Timetable:

Action	Date	FR Cite
NPRM	10/29/99	64 FR 58568
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Heather C. Gottry
Phone: 202 606-8322
TDD Phone: 202 606-8282
Fax: 202 606-8600
Email: hgottry@neh.gov

RIN: 3136–AA14

3641. PRIVACY ACT REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1115

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Heather C. Gottry
Phone: 202 606-8322
TDD Phone: 202 606-8282
Fax: 202 606-8600
Email: hgottry@neh.gov

RIN: 3136–AA18

3642. SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE NATIONAL ENDOWMENT FOR THE HUMANITIES

Priority: Substantive, Nonsignificant

CFR Citation: 5 CFR 8501

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Heather C. Gottry
Phone: 202 606-8322
TDD Phone: 202 606-8282
Fax: 202 606-8600
Email: hgottry@neh.gov

RIN: 3136–AA21

3643. STANDARDS OF CONDUCT OF EMPLOYEES

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1105

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Heather C. Gottry
Phone: 202 606-8322
TDD Phone: 202 606-8282
Fax: 202 606-8600
Email: hgottry@neh.gov

RIN: 3136–AA22

3644. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1169

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Heather C. Gottry
Phone: 202 606-8322
TDD Phone: 202 606-8282
Fax: 202 606-8600
Email: hgottry@neh.gov

RIN: 3136–AA25

3645. GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1173

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Heather C. Gottry
Phone: 202 606-8322
TDD Phone: 202 606-8282
Fax: 202 606-8600
Email: hgottry@neh.gov

RIN: 3136–AA26

3646. • FREEDOM OF INFORMATION ACT REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 522

CFR Citation: 45 CFR 1100.5

Legal Deadline: None

Abstract: This regulation will amend the current Freedom of Information Act regulations to implement the Electronic Freedom of Information Act Amendments of 1996 and to perform a general updating of the Freedom of Information Act regulations.

NEH — Long-Term Actions

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Heather C. Gottry, Attorney-Advisor, National Endowment for the Humanities, Room 530, 1100 Pennsylvania Avenue NW., Washington, DC 20506
Phone: 202 606-8322
TDD Phone: 202 606-8282
Fax: 202 606-8600
Email: hgottry@neh.gov

RIN: 3136–AA27

[FR Doc. 02–23902 Filed 12–06–02; 8:45 am]
BILLING CODE 7536–01–S

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Part XXXIV

National Science Foundation

Semiannual Regulatory Agenda

NATIONAL SCIENCE FOUNDATION (NSF)

NATIONAL SCIENCE FOUNDATION

45 CFR Ch. VI

Regulatory Agenda

AGENCY: National Science Foundation.

ACTION: Semiannual regulatory agenda.

SUMMARY: The National Science Foundation is publishing its fall 2002 regulatory agenda pursuant to Executive Order 12866, "Regulatory Planning and Review" (3 CFR 1993 Comp., p. 638); the Regulatory Flexibility Act (5 U.S.C. 601-612); and the Office of Management and Budget Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions.

FOR FURTHER INFORMATION CONTACT: For further information on a particular item, call or write the individual identified as agency contact. General comments or inquiries about this agenda may be directed to William Marlowe, Administrative Officer, Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, VA 22230, (703) 292-8060.

Dated: October 2, 2002.

Lawrence Rudolph,

General Counsel.

National Science Foundation—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3647	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	3145-AA38
3648	Antarctic Meteorites	3145-AA40

National Science Foundation (NSF) — **Final Rule Stage**

3647. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 20 USC 1681 to 1683; 20 USC 1685 to 1688

CFR Citation: 45 CFR 618

Legal Deadline: None

Abstract: The National Science Foundation proposes to make amendments to its regulations implementing title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRRA's definitions of "program or activity" and "program" into the Department's title VI, section 504, and Age Discrimination Act regulations. The Foundation's proposed regulation will be published as part of a joint notice of proposed rulemaking involving up to 24 Federal agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Bijan Gilanshah, Assistant General Counsel, National Science Foundation, Room 1265; 4201 Wilson Boulevard, Arlington, VA 22230
Phone: 703 292-8060
Fax: 703 292-9041
Email: bgilansh@nsf.gov

RIN: 3145–AA38

3648. • ANTARCTIC METEORITES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 2401 et seq, Antarctic Conservation Act, as amended in 1996

CFR Citation: 45 CFR 674

Legal Deadline: None

Abstract: NSF has proposed issuing regulations authorizing collection of meteorites in Antarctica for scientific purposes only. The regulation would also provide requirements for appropriate collection, handling and curation of Antarctic meteorites to preserve their scientific value.

Timetable:

Action	Date	FR Cite
NPRM	08/27/02	67 FR 54993
NPRM Comment Period End	10/28/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Anita Eisenstadt, Assistant General Counsel, National Science Foundation, Room 1265, Office of the General Counsel, 4201 Wilson Boulevard, Arlington, VA 22230
Phone: 703 292-8060
Fax: 703 292-9041

NSF — **Final Rule Stage**

Email: aeisenst@nsf.gov

RIN: 3145–AA40

[FR Doc. 02–26341 Filed 12–06–02; 8:45 am]

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Part XXXV

Office of Federal Housing Enterprise Oversight

Semiannual Regulatory Agenda

OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT (OFHEO)

OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT

12 CFR Ch. XVII

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Office of Federal Housing Enterprise Oversight.

ACTION: Semiannual regulatory agenda.

SUMMARY: This notice is given pursuant to the requirements of the "Regulatory Flexibility Act" (Pub. L. 96-354, September 19, 1980) and Executive Order 12866 ("Regulatory Planning and Review," September 30, 1993), which require the publication of a semiannual agenda of regulations.

FOR FURTHER INFORMATION CONTACT: Alfred M. Pollard, General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW., Washington, DC 20552, (202) 414-3788.

Dated: August 26, 2002

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

Office of Federal Housing Enterprise Oversight—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3649	Risk-Based Capital: Amendment	2550-AA26

Office of Federal Housing Enterprise Oversight—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3650	12 CFR 1740 Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Office of Federal Housing Enterprise Oversight	2550-AA11
3651	Minimum Capital	2550-AA18
3652	Corporate Governance	2550-AA24
3653	Public Disclosure of Financial and Other Information	2550-AA25

Office of Federal Housing Enterprise Oversight—Completed Actions

Sequence Number	Title	Regulation Identification Number
3654	Corporate Governance	2550-AA20
3655	Safety and Soundness	2550-AA22

Office of Federal Housing Enterprise Oversight (OFHEO) — Final Rule Stage

3649. • RISK-BASED CAPITAL: AMENDMENT

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 4513; 12 USC 4514; 12 USC 4611; 12 USC 4612; 12 USC 4614; 12 USC 4615; 12 USC 4618

CFR Citation: 12 CFR 1750

Legal Deadline: None

Abstract: This amendment would modify a provision of the Risk-Based Capital rule relating to the calculation of the capital requirement set forth in the stress test. The amendment is intended to enhance the accuracy of the calculation of the risk-based capital requirement.

Timetable:

Action	Date	FR Cite
NPRM	09/12/02	67 FR 57760
NPRM Comment Period End (Technical Amendment)	09/23/02	
NPRM Comment Period End (Amendment)	10/29/02	67 FR 61300
Final Rule (Technical Amendment)	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jamie Schwing, Associate General Counsel, Office of Federal Housing Enterprise Oversight, 4th Floor, 1700 G Street NW, Washington, DC 20552
Phone: 202 414-3787

RIN: 2550–AA26

Office of Federal Housing Enterprise Oversight (OFHEO) — Long-Term Actions

3650. ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT

Priority: Info./Admin./Other

Legal Authority: 29 USC 794

CFR Citation: 12 CFR 1706

Legal Deadline: None

Abstract: The Office of Federal Housing Enterprise Oversight will propose a regulation to effectuate section 119 of the Rehabilitation Comprehensive Services, and Developmental Disabilities Amendment of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of disability in programs or activities conducted by executive agencies or the United States Postal Service.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Isabella W. Sammons, Associate General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW, Washington, DC 20552
Phone: 202 414-3790

RIN: 2550–AA11

3651. MINIMUM CAPITAL

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 4612

CFR Citation: 12 CFR 1750

Legal Deadline: None

Abstract: The Office of Federal Housing Enterprise Oversight will propose to amend its Minimum Capital rule to accommodate changes in Generally Accepted Accounting Principles, clarify reporting requirements, and make supervisory monitoring of capital more transparent.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David A. Felt, Deputy General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW, Washington, DC 20552
Phone: 202 414-3750

RIN: 2550–AA18

3652. • CORPORATE GOVERNANCE

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 4513(a); 12 USC 4513(b)(1)

CFR Citation: 12 CFR 1710

Legal Deadline: None

Abstract: The Office of Federal Housing Enterprise Oversight is proposing to amend its corporate governance regulation to incorporate changes in Federal law and standards affecting governance of public corporations.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David W. Roderer, Deputy General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW, Washington, DC 20552
Phone: 202 414-3804

Related RIN: Merged With 2550-AA20

RIN: 2550–AA24

3653. • PUBLIC DISCLOSURE OF FINANCIAL AND OTHER INFORMATION

Priority: Other Significant

Legal Authority: 12 USC 4513; 12 USC 4514; 12 USC 4631; 12 USC 4632

CFR Citation: 12 CFR 1730

Legal Deadline: None

Abstract: The Office of Federal Housing Enterprise Oversight (OFHEO) will propose a rule to complement the announced action of the Enterprises to submit volúntarily to the rules of the SEC affecting periodic disclosures by requiring concurrent filings of such disclosures with OFHEO of periodic reports as well as such other reports, statements, and filings as required under sections 14(a) and (c) and 16 of the Exchange Act and by rules and regulations adopted by the SEC.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Alfred M. Pollard, General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW, Washington, DC 20552
Phone: 202 414-3775
Fax: 202 414-6504
Email: apollard@ofheo.gov

RIN: 2550–AA25

Office of Federal Housing Enterprise Oversight (OFHEO) — Completed Actions

3654. CORPORATE GOVERNANCE

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 1710

Completed:

Reason	Date	FR Cite
Final Action	06/04/02	67 FR 38361
Final Rule Effective	08/05/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David W. Roderer
Phone: 202 414-3804

RIN: 2550–AA20

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OFHEO — Completed Actions

3655. SAFETY AND SOUNDNESS

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 1720

Completed:

Reason	Date	FR Cite
NPRM	06/21/02	67 FR 42200
Final Action	08/30/02	67 FR 55691
Final Action Effective	09/30/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Alfred M. Pollard
Phone: 202 414-3775
Fax: 202 414-6504
Email: apollard@ofheo.gov

RIN: 2550–AA22

[FR Doc. 02–23892 Filed 12–06–02; 8:45 am]
BILLING CODE 4220–SS–S



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Part XXXVI

Office of Government Ethics

Semiannual Regulatory Agenda

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OFFICE OF GOVERNMENT ETHICS (OGE)

OFFICE OF GOVERNMENT ETHICS

5 CFR Ch. XVI

Semiannual Regulatory Agenda; Fall 2002

AGENCY: Office of Government Ethics.

ACTION: Semiannual regulatory agenda.

SUMMARY: The following Office of Government Ethics (OGE) substantive and procedural regulations are scheduled for development or review during the period from October 1, 2002 through September 30, 2003. This agenda fulfills OGE's responsibility to publish a semiannual regulatory agenda under Executive Order 12866, Regulatory Planning and Review, and has been prepared in accordance with guidance received from the Office of Management and Budget. None of the OGE regulations in this agenda will have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. chapter 6. In addition, none of the listed OGE regulatory actions is procurement-related. Furthermore, the Office of Government Ethics' rulemakings are not included in the regulatory plan that is published each fall.

This publication in the **Federal Register** does not impose a binding obligation on the Office of Government Ethics with respect to any particular item on its agenda. The dates shown for the future steps of each action are estimates and not commitments to act by the date shown. Moreover, other OGE regulatory actions, in addition to the entries listed, are not precluded.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Senior Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917; Telephone: (202) 208-8000, ext. 1110; TDD: (202) 208-8025; Fax: (202) 208-8037.

Approved: September 19, 2002.

Amy L. Comstock,

Director, Office of Government Ethics.

Office of Government Ethics—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3656	Office of Government Ethics Gift Acceptance Authority and Organizational Update	3209-AA21
3657	Privacy Act Rules of the Office of Government Ethics	3209-AA18
3658	Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture	3209-AA00
3659	Interpretation, Exemptions, and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest)	3209-AA09

Office of Government Ethics—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3660	Standards of Ethical Conduct for Employees of the Executive Branch	3209-AA04
3661	Limitations on Outside Earned Income, Employment, and Affiliations for Certain Noncareer Employees	3209-AA13
3662	Executive Agency Ethics Training Programs	3209-AA07
3663	Post-Employment Conflict of Interest Restrictions	3209-AA14

Office of Government Ethics—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3664	Executive Agency Supplemental Standards of Ethical Conduct Regulations Issued Jointly With the Concurrence of the Office of Government Ethics	3209-AA15

Office of Government Ethics—Completed Actions

Sequence Number	Title	Regulation Identification Number
3665	Testimony by OGE Employees and Production of Official Records in Legal Proceedings	3209-AA23

Office of Government Ethics (OGE) — **Proposed Rule Stage**

3656. OFFICE OF GOVERNMENT ETHICS GIFT ACCEPTANCE AUTHORITY AND ORGANIZATIONAL UPDATE

Priority: Other Significant

Legal Authority: 5 USC app, Ethics in Government Act of 1978

CFR Citation: 5 CFR 2600

Legal Deadline: None

Abstract: This regulation will implement the agency gift acceptance authority of the Office of Government Ethics as set forth in the 1996 OGE Authorization Act. In addition, various provisions of OGE's part 2600 organization and functions regulation will be updated to reflect changes in OGE's organizational structure. This regulation will be written in "plain language."

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Allison C. George, Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917
Phone: 202 208-8000
TDD Phone: 202 208-8025
Fax: 202 208-8037

RIN: 3209–AA21

3657. PRIVACY ACT RULES OF THE OFFICE OF GOVERNMENT ETHICS

Priority: Other Significant

Legal Authority: 5 USC 552a; 5 USC app, Ethics in Government Act of 1978

CFR Citation: 5 CFR 2606 (New)

Legal Deadline: None

Abstract: This proposed rule would establish for the Office of Government Ethics (OGE) regulatory procedures to implement the Privacy Act of 1974, including requests for access and amendment and appeals, and would reference certain OGE systems of records (including two Governmentwide executive branch systems, which will also be updated and revised, with the addition of internal systems).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Elaine Newton, Attorney Advisor, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917
Phone: 202 208-8000
TDD Phone: 202 208-8025
Fax: 202 208-8037

RIN: 3209–AA18

3658. EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

Priority: Other Significant

Legal Authority: 5 USC app (Ethics in Government Act of 1978); EO 12674; EO 12731; 26 USC 1043; 28 USC 2461 note; PL 101-410; PL 104-134, sec 31001

CFR Citation: 5 CFR 2634

Legal Deadline: None

Abstract: Regulation revising the executive branch public and confidential financial disclosure report systems for high-level officials and certain mid-level employees, respectively, in light of the changes to the Ethics in Government Act effected by the Ethics Reform Act of 1989 (Pub. L. 101-194), as amended. These disclosure provisions apply to public reports filed since January 1, 1991. Subpart I of the regulation, effective October 5, 1992, superseded prior executive branchwide and agency-specific regulations and established a revised system of confidential reporting, modeled generally on the public reporting system, for executive branch agency mid-level employees with sensitive duties and special Government employees. This regulation also has a subpart dealing with certificates of divestiture.

Timetable:

Action	Date	FR Cite
NPRM	12/02/86	51 FR 43359
Interim Final Rule	04/07/92	57 FR 11800
Correction	05/22/92	57 FR 21854
Correction	12/31/92	57 FR 62605
Revised Interim Final Rule	07/21/93	58 FR 38911
Proposed Amendment to Interim Final Rule	09/01/93	58 FR 46096
Technical Amendments to Interim Final Rule	11/30/93	58 FR 63023
Technical (Paperwork) Amendments to Interim Final Rule	07/07/94	59 FR 34755
Proposed Amendments-Certificates of No New Interests for Confidential Filers	01/15/97	62 FR 2048
Final Amendment-Certificates of No New Interests for Confidential Filers	06/24/97	62 FR 33972
Updating Amendment to Part 2634	09/17/97	62 FR 48746
Clarifying Amendment to Section 2634.906	03/31/98	63 FR 15273
Minor Amdt. to Part 2634 (Transfer of Inactive in Lieu of Honoraria Charitable Paymts. Reporting)	08/12/98	63 FR 43067
Paperwork Revisions to Appendixes A, B, and C	11/02/98	63 FR 58619
Technical Amendments to Part 2634	12/18/98	63 FR 69991
Technical Corrections to Part 2634	01/14/99	64 FR 2421
Proposed Gifts Reporting Waiver Amendments	05/13/99	64 FR 25849
Inflation Adjustments to Civil Monetary Penalties as Reflected in Part 2634	08/30/99	64 FR 47095
Final Gifts Reporting Waiver Amendments	09/14/99	64 FR 49639
Technical Amendments to Categories of Value Reporting and Gifts/Reimbursements Thresholds	11/20/00	65 FR 69655
Final Rule Amendment to Confer Additional Agency Confidential Report Filing Extension Authority	11/05/01	66 FR 55871
Final Rule Amendments to Qualified Trusts Certificates Notices	05/03/02	67 FR 22348

OGE

Proposed Rule Stage

Action	Date	FR Cite
Final Rule Clarifying Amendment on Revocable Inter Vivos Trust Interpretation	05/31/02	67 FR 37965
Final Rule Amendments on Filing Exts. & Fee Waivers Delegations	08/01/02	67 FR 49856
Final Rule Amendment on Reporting Period for Public Reports	09/13/02	67 FR 57937
Final Rule Amendment on Increased Reporting Thresholds for Gifts & Reimbursements	10/02/02	67 FR 61761
Proposed Rule Amendment Re: Excepted Investment Funds	12/00/02	
Proposed Rule Amendments to Certificates of Divestiture Provisions (Subpart J)	01/00/03	
Final Rule Amendment to Clarify OGE Intent on Sole & Exclusive Agency Authority Conferred Under Reg.	02/00/03	
Proposed Rule Amendments to Qualified Trust Provisions	03/00/03	
Final Rule Removal of Obsolete In Lieu/Honoraria Provisions	05/00/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3209–AA00

3659. INTERPRETATION, EXEMPTIONS, AND WAIVER GUIDANCE CONCERNING 18 U.S.C. 208 (ACTS AFFECTING A PERSONAL FINANCIAL INTEREST)

Priority: Other Significant

Legal Authority: 5 USC app, Ethics in Government Act of 1978; EO 12674; EO 12731; 18 USC 208

CFR Citation: 5 CFR 2640

Legal Deadline: None

Abstract: This regulation interprets section 208(a) of title 18, U.S. Code, which prohibits officers and employees of the executive branch from officially participating personally and substantially in a particular matter in which there is a personal financial interest or a financial interest of a related person or organization (absent a waiver or exemption under 18 U.S.C. 208(b)). It also lists and describes interests considered too remote or too inconsequential to affect the integrity of the services of executive branch officers or employees, in accordance with 18 U.S.C. 208(b)(2). Such interests are exempt from the restrictions of 18 U.S.C. 208(a), generally requiring disqualification. The regulation also provides guidance to executive branch agencies as to the kinds of interests that are not so substantial as to be deemed likely to affect the integrity of the services the Government may expect from an employee and which, therefore, may be waived from the general rule of disqualification under 18 U.S.C. 208(a), pursuant to 18 U.S.C. 208(b)(1). In addition, guidance is provided concerning the issuance of waivers to special Government employee advisory committee members, pursuant to 18 U.S.C. 208(b)(3). A separate interim final rule, published in 1995 exempting certain financial interests arising from Federal Government executive branch employment as well as from Social Security or veterans' benefits from the general prohibition in section 208(a), was incorporated in the overall final rule. Additional exemptions are considered for development from time to time as appropriate.

Timetable:

Action	Date	FR Cite
Govt. Interests and Social Security and Veterans' Benefits Exemptions Interim Final Rule	08/28/95	60 FR 44706
Overall NPRM	09/11/95	60 FR 47208
Overall NPRM Comment Period End	11/13/95	
Overall Final Rule	12/18/96	61 FR 66830
Correction	01/09/97	62 FR 1361
Overall Final Rule Effective	01/17/97	
Correction	04/29/97	62 FR 23127
Interim Census Exemption Amendment	03/29/00	65 FR 16511
Final Census Exemption Amendment	08/04/00	65 FR 47830
Proposed Additional Exemption Amendments	09/06/00	65 FR 53942
Proposed Amendments Comment Period End	12/05/00	
Final Additional Exemption Amendments	03/19/02	67 FR 12443
Proposed Rule Amendment Re: Excepted Investment Funds	12/00/02	
Final Rule Amendment to Clarify OGE Intent on Sole & Exclusive Agency Authority Conferred Under Reg.	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3209–AA09

Office of Government Ethics (OGE)

Final Rule Stage

3660. STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

Priority: Other Significant

Legal Authority: 5 USC 7301; 5 USC 7351; 5 USC 7353; 5 USC app, Ethics in Government Act of 1978; EO 12674; EO 12731

CFR Citation: 5 CFR 2635

Legal Deadline: None

Abstract: Regulation implementing certain provisions of Executive Order 12674 on Principles of Ethical Conduct, as modified by Executive Order 12731, and the Ethics Reform Act of 1989 (Pub. L. 101-194), as amended. Effective February 3, 1993, this ethical conduct standards regulation generally superseded executive branch employee conduct and gifts rules, as well as pertinent portions of agency-specific conduct regulations issued under prior Executive Order 11222. For certain existing agency regulatory standards setting forth financial interest prohibitions and prior approval for outside employment/activities, an extended grace period was in effect until November 1, 1996, or until individual concerned agencies issued supplemental regulations (with Office of Government Ethics concurrence), whichever occurred first.

Timetable:

Action	Date	FR Cite
NPRM	07/23/91	56 FR 33778
NPRM Comment Period End	09/20/91	
Final Overall Regulation on Standards of Ethical Conduct	08/07/92	57 FR 35006
Correction	10/27/92	57 FR 48557
Correction	11/04/92	57 FR 52583
5 CFR 2635.403(a) and 2635.803 Grace Period Extension	02/02/94	59 FR 4779
Additional 5 CFR 2635.403(a) and 2635.803 Grace Period Extension	02/02/95	60 FR 6390
NPRM on Widely Attended Gatherings	06/15/95	60 FR 31415
Minor Correction to One Citation	10/03/95	60 FR 51667
Further 5 CFR 2635.403(a) and 2635.803 Grace Period Extension	12/27/95	60 FR 66857
Further Additional 5 CFR 2635.403(a) and 2635.803 Grace Period Extension	08/07/96	61 FR 40950
Final Rule on Widely Attended Gatherings	08/20/96	61 FR 42965
Correction to Final Rule on Widely Attended Gatherings	09/16/96	61 FR 48733
Interim Rule on Gifts From Political Organizations	09/27/96	61 FR 50689
Final Rule on Gifts From Political Organizations	03/17/97	62 FR 12531
Updating Amendments to Part 2635	09/17/97	62 FR 48746
Proposed Amendments Re: Gifts (Subpart B)	08/04/98	63 FR 41476
Further Minor Proposed Amendments to Part 2635 / Seeking Employment and Outside Activities	08/26/98	63 FR 45415
Amendments to Subpart B Gifts From Outside Sources	12/18/98	63 FR 69992
Technical Corrections to Part 2635	01/14/99	64 FR 2421
Final Amendments to Part 2635 / Seeking Employment and Outside Activities	03/17/99	64 FR 13063
Interim Rule on Travel Expenses for Certain Unofficial Teaching, Speaking, and Writing	09/05/00	65 FR 53650
Correction	09/12/00	65 FR 55076
Final Technical Amendment to Nonsponsor Widely Attended Gathering Gift Dollar Ceiling	11/20/00	65 FR 69655
Final Rule on Travel Expenses for Certain Unofficial Teaching, Speaking, and Writing	11/30/01	66 FR 59673
Final Rule Amend.- Increased Dollar Ceiling Except. for Nonsponsor Widely Attended Gatherings Gifts	10/02/02	67 FR 61761
Final Rule Amendment to Clarify OGE Intent on Sole & Exclusive Agency Authority Conferred Under Reg.	02/00/03	
Final Rule Removal of Obsolete In Lieu/Honoraria Provisions	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3209–AA04

3661. LIMITATIONS ON OUTSIDE EARNED INCOME, EMPLOYMENT, AND AFFILIATIONS FOR CERTAIN NONCAREER EMPLOYEES

Priority: Other Significant

Legal Authority: 5 USC app, Ethics in Government Act of 1978; EO 12674; EO 12731; 28 USC 2461 note; PL 101-410; PL 104-134, sec 31001

CFR Citation: 5 CFR 2636

Legal Deadline: None

Abstract: The regulation had, in pertinent part, implemented, effective January 1, 1991, the prohibition on honoraria (now declared unconstitutional by the courts as to most rank and file executive branch employees and hence determined to be eviscerated as to all other Federal employees by the Office of Legal Counsel of the Justice Department). In addition, the regulation continues to implement the limitation on outside employment as provided in the 1989 Ethics Reform Act revisions to the Ethics in Government Act, as amended. The regulation has now been amended in light of the above-noted litigation and other pertinent developments.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/17/91	56 FR 1721
Deferral of Effective Date of 5 CFR 2636.205	05/10/91	56 FR 21589

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OGE — **Final Rule Stage**

Action	Date	FR Cite
Additional Deferral of Effective Date of 5 CFR 2636.205	10/11/91	56 FR 51319
Revision of Honorarium Definition in 5 CFR 2636.203(a)	01/08/92	57 FR 601
Further Deferral of Effective Date of 5 CFR 2636.205	02/14/92	57 FR 5369
Technical Correction to Interim Final Rule	12/30/93	58 FR 69176
Technical (Paperwork) Amendments to Interim Final Rule	07/07/94	59 FR 34755
Removal of Subpart B of Part 2636	08/12/98	63 FR 43067
Technical Corrections to Part 2636	01/14/99	64 FR 2421
Inflation Adjustment to Civil Monetary Penalty As Reflected in Part 2636	08/30/99	64 FR 47095
Final Rule Amendment to Clarify OGE Intent on Sole & Exclusive Agency Authority Conferred Under Reg.	02/00/03	
Final Rule Removal of Obsolete In Lieu/Honoraria Provisions	05/00/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3209–AA13

3662. EXECUTIVE AGENCY ETHICS TRAINING PROGRAMS

Priority: Other Significant

Legal Authority: 5 USC app, Ethics in Government Act of 1978; EO 12674; EO 12731

CFR Citation: 5 CFR 2638.701 to 2638.704

Legal Deadline: None

Abstract: Regulation specifying the responsibilities of executive branch agencies and their designated agency ethics officials to develop and implement orientation and annual ethics training courses and to distribute appropriate guidance materials to their employees under section 301(b) and (c) of Executive Order 12674, as modified by Executive Order 12731. The Office of Government Ethics is proposing to rewrite the entire training regulation in "plain language" and to restructure its provisions.

Timetable:

Action	Date	FR Cite
NPRM	09/18/90	55 FR 38335
NPRM Comment Period End	11/17/90	
Final Rule on Executive Agency Ethics Training Programs	04/07/92	57 FR 11886
Correction	04/27/92	57 FR 15219
Amendment	12/10/92	57 FR 58399
Correction	12/28/92	57 FR 61612
Interim Amendments to Liberalize Certain Training Requirements	03/16/94	59 FR 12145
Interim Final Rule Comment Period End	05/16/94	
Interim Amendments to Refine Certain Training Requirements	03/12/97	62 FR 11307
Correction to Interim Training Reg. Amendments	03/19/97	62 FR 13213
Correction to Interim Training Reg. Amendments	03/27/97	62 FR 14737
Interim Amendments to Refine Certain Training Requirements Comment Period End	04/11/97	62 FR 11307
Most Interim Amendments to Refine Certain Training Requirements Effective	06/10/97	62 FR 13213
Interim Amendment to Rewrite Regulation in "Plain Language" and Restructure Its Provisions	02/14/00	65 FR 7275
Final Rule Amendment to Clarify OGE Intent on Sole & Exclusive Agency Authority Conferred Under Reg.	02/00/03	
New Proposed Amendment to Rewrite Regulation in "Plain Language" and Restructure Its Provisions	07/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3209–AA07

3663. POST-EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

Priority: Other Significant

Legal Authority: 5 USC app, Ethics in Government Act of 1978; EO 12674; EO 12731; 18 USC 207

CFR Citation: 5 CFR 2641; 5 CFR 2637 (Continuation)

Legal Deadline: None

Abstract: Interpretive regulation giving guidance for the executive branch on the various substantive restrictions of the current version of the post-Government employment conflict of interest statute 18 U.S.C. 207, which became effective January 1, 1991, pursuant to title I of the Ethics Reform Act of 1989 (Pub. L. 101-194), as amended. Parts of the regulation, dealing with procedures for waivers by the Office of Government Ethics of certain senior official constraints (based on executive agency hardship), designated senior employees, and separate agency designations, have already been published in the Federal Register; such designations are periodically updated by the Office of Government Ethics. The Office of Government Ethics also has continued to publish in the CFR the interpretive regulation, 5 CFR part 2637 (but now without the no-longer-effective former Senior Employee and old agency component designation listings), under the lifetime bar of the prior version of the post-employment law which still applies to executive branch employees who left the Government before January 1, 1991. Once a complete current post-employment law final regulation is published, the old part 2637 regulation will be removed from the CFR.

Timetable:

Action	Date	FR Cite
Interim Final Rule for One-Year Restriction of Section 207(c)	02/01/91	56 FR 3951
Designation of Senior Employees and Separate Agency Components	01/28/92	57 FR 3115
Designation of Additional Separate Agency Component	04/07/92	57 FR 11673
Amendment to Prior Post-Employment Regulation (Part 2637)	12/31/92	57 FR 62467
Amendment to Interim Final Rule (Part 2641)	06/21/93	58 FR 33755
Technical Amendment to Authority Citation of 5 CFR Part 2637	12/30/93	58 FR 69176
Technical Amendments to Interim Final Rule	07/07/94	59 FR 34755
Exempted Senior Employee and Agency Separate Component Designation Update	05/16/97	62 FR 26915
Correction: Post-Employment Reg. Update	06/11/97	62 FR 31865
Agency Separate Component Designation Update	02/05/99	64 FR 5709
Agency Separate Component Designation Update Final Rule	11/00/02	
Final Rule Amendment to Clarify OGE Intent on Sole & Exclusive Agency Authority Conferred Under Reg.	02/00/03	
Overall NPRM	02/00/03	
Overall NPRM Comment Period End	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3209–AA14

Office of Government Ethics (OGE) — **Long-Term Actions**

3664. EXECUTIVE AGENCY SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT REGULATIONS ISSUED JOINTLY WITH THE CONCURRENCE OF THE OFFICE OF GOVERNMENT ETHICS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 7301; 5 USC app, Ethics in Government Act of 1978; EO 12674; EO 12731; 5 CFR 2635.105

CFR Citation: 5 CFR 2635; 5 CFR ch XXI et seq

Legal Deadline: None

Abstract: The supplemental executive agency standards of ethical conduct regulations, once issued jointly with the concurrence of the Office of Government Ethics (OGE) at agency expense in new chapters at the end of 5 CFR, after OGE approval, supplement for each individual agency concerned the OGE executive branch standards of ethical conduct, as codified at 5 CFR part 2635. The supplemental regulations, as they are issued in accordance with sections 201(a) and 301(a) of Executive Order 12674, as modified by Executive Order 12731, set forth those agency-specific provisions under applicable law and regulation, such as regulatory restrictions on holding certain financial interests, designation of subunits and prior approval for outside employment, which are needed for certain agencies to round out the executive branchwide ethical standards for their employees.

Timetable:

Action	Date	FR Cite
FTC Employees (5 CFR Ch. XLVII) Interim Final Rule	05/27/93	58 FR 30695
OPIC Employees (5 CFR Ch. XXXIII) Interim Final Rule	06/17/93	58 FR 33319
Treasury Employees (5 CFR Ch. XXI) NPRM	08/03/93	58 FR 41193
ICC Employees (5 CFR Ch. XL) Final Rule	08/06/93	58 FR 41989
PRC Employees (5 CFR Ch. XLVI) Final Rule	08/12/93	58 FR 42839
DoD Employees (5 CFR Ch. XXVI) Interim Final Rule	09/10/93	58 FR 47619
CFTC Employees (5 CFR Ch. XLI) Final Rule	10/12/93	58 FR 52637
IAF Employees (5 CFR Ch. LXIII) Final Rule	01/27/94	59 FR 3771
5 CFR 2635.403(a) and 2635.803 Grace Period Extension (by OGE)	02/02/94	59 FR 4779
NRC Employees (5 CFR Ch. XLVIII) Final Rule	04/13/94	59 FR 17457
FDIC Employees (5 CFR Ch. XXII) NPRM	07/12/94	59 FR 35480
NASA Employees (5 CFR Ch. LIX)	09/28/94	59 FR 49335
FRTIB Employees (5 CFR Ch. LXXIV)	10/06/94	59 FR 50816
Education Employees (5 CFR Ch. LIII)	01/30/95	60 FR 5816
Additional 5 CFR 2635.403(a) and 2635.803 Grace Period Extension (by OGE)	02/02/95	60 FR 6390
OMB Employees (5 CFR Ch. LXXVII) Final Rule	03/07/95	60 FR 12396
USPS Employees (5 CFR Ch. LX)	03/27/95	60 FR 15700
Eximbank Employees (5 CFR Ch. LII)	04/07/95	60 FR 17625
FDIC Employees (5 CFR Ch. XXII)	04/25/95	60 FR 20171
Treasury Employees (5 CFR Ch. XXI) Final Rule	05/05/95	60 FR 22249

Action	Date	FR Cite
FCSIC Employees (5 CFR Ch. XXX)	06/12/95	60 FR 30773
FCA Employees (5 CFR Ch. XXXI)	06/12/95	60 FR 30778
HUD Employees (5 CFR Ch. LXV)	06/30/95	60 FR 34420
OPIC Employees (5 CFR Ch. XXXIII) Final Rule	07/21/95	60 FR 37555
USPS Employees (5 CFR Ch. LX) Final Rule	09/11/95	60 FR 47240
FCA Employees (5 CFR Ch. XXXI) Final Rule	09/13/95	60 FR 47453
OGE Concurrence in FCA Employees (5 CFR Ch. XXXI) Final Rule	12/06/95	60 FR 62319
BGFRS Employees (5 CFR Ch. LVIII)	12/19/95	60 FR 65249
Further 5 CFR 2635.403(a) and 2635.803 Grace Period Extension (by OGE)	12/27/95	60 FR 66857
FCSIC Employees (5 CFR Ch. XXX) Final Rule	02/06/96	61 FR 4349
EEOC Employees (5 CFR Ch. LXII)	02/26/96	61 FR 7065
TVA Employees (5 CFR Ch. LXIX)	05/06/96	61 FR 20117
DOE Employees (5 CFR Ch. XXIII)	07/05/96	61 FR 35085
FDIC Employees (5 CFR Ch. XXII) Amendment	07/09/96	61 FR 35915
HUD Employees (5 CFR Ch. LXV)	07/09/96	61 FR 36246
OPM Employees (5 CFR Ch. XXXV)	07/16/96	61 FR 36993
HHS Employees (5 CFR Ch. XLV)	07/30/96	61 FR 39756
FMSHRC Employees (5 CFR Ch. LXXIV)	07/31/96	61 FR 39869
DOT Employees (5 CFR Ch. L)	07/31/96	61 FR 39901
EPA Employees (5 CFR Ch. LIV)	08/02/96	61 FR 40500
NARA Employees (5 CFR Ch. LXVI)	08/05/96	61 FR 40505
Further Additional 5 CFR 2635.403(a) and 2635.803 Grace Period Extension (by OGE)	08/07/96	61 FR 40950
FERC Employees (5 CFR Ch. XXIV)	08/23/96	61 FR 43411
BGFRS Employees (5 CFR Ch. LVIII) Final Rule	10/16/96	61 FR 53827
FCC Employees (5 CFR Ch. XXIX)	10/31/96	61 FR 56109
GSA Employees (5 CFR Ch. LVII)	11/01/96	61 FR 56399
DOL Employees (5 CFR Ch. XLII)	11/06/96	61 FR 57281
DOJ Employees (5 CFR Ch. XXVIII)	11/25/96	61 FR 59811
NSF Employees (5 CFR Ch. XLIII)	11/25/96	61 FR 59815
CPSC Employees (5 CFR Ch. LXXI)	12/13/96	61 FR 65457
FDIC Employees (5 CFR Ch. XXII) Amendment	01/27/97	62 FR 3771
NLRB Employees (5 CFR Ch. LXI)	02/12/97	62 FR 6445
DOJ Employees (5 CFR Ch. XXVIII) Final Rule	05/02/97	62 FR 23941
DOJ Employees (5 CFR Ch. XXVIII) Final Rule Correction	06/11/97	62 FR 31865
OPM Employees (5 CFR Ch. XXXV) Interim Rule Correction	06/17/97	62 FR 32859
EEOC Employees (5 CFR Ch. LXII) Final Rule	07/08/97	62 FR 36447
OPM Employees (5 CFR Ch. XXXV) Final Rule	08/11/97	62 FR 42897
DOI Employees (5 CFR Ch. XXV)	10/16/97	62 FR 53713
DOI Employees (5 CFR Ch. XXV) Interim Final Rule Correction	04/15/98	63 FR 18501
DOI Employees (5 CFR Ch. XXV) Interim Final Rule Correction	04/24/98	63 FR 20447
DOI Employees (5 CFR Ch. XXV) Final Rule	06/24/98	63 FR 34258
FTC Employees (5 CFR Ch. XLVII) Final Rule Amendments	08/12/98	63 FR 43069
DOL Employees (5 CFR Ch. XLII) Final Rule	12/30/99	64 FR 73852
USDA Employees (5 CFR Ch. LXXIII) Interim Final Rule	03/24/00	65 FR 15825
USDA Employees (5 CFR Ch. LXXIII) Interim Final Rule Correction	04/20/00	65 FR 21239
USDA Employees (5 CFR Ch. LXXIII) Final Rule	10/02/00	65 FR 58635
Treasury Employees (5 CFR Ch. XXI) Final Rule Amendments	02/01/01	66 FR 8505
NASA Employees (5 CFR Ch. LIX) Final Rule Amendments	11/27/01	66 FR 59135
DOT (FAA) Employees (5 CFR Ch. L) Final Rule Amendments	12/03/01	66 FR 60139
Treasury (OCC) Employees (5 CFR Ch.XXI) Final Rule Amendments	07/17/02	67 FR 46840
USDA (FSA) Employees (5 CFR Ch. LXXIII) Final Rule Amendments	09/16/02	67 FR 58319
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3209–AA15

3665. TESTIMONY BY OGE EMPLOYEES AND PRODUCTION OF OFFICIAL RECORDS IN LEGAL PROCEEDINGS

Priority: Other Significant

Legal Authority: 5 USC app, Ethics in Government Act of 1978

CFR Citation: 5 CFR 2608 (New)

Legal Deadline: None

Abstract: This final rule set forth OGE procedures for responding to subpoenas and other requests and demands for testimony by OGE employees and documentary production relating to official OGE information and records in legal proceedings in which OGE is not a party (Touhy regulations).

Timetable:

Action	Date	FR Cite
NPRM	09/24/01	66 FR 48824
NPRM Comment Period End	11/23/01	
Final Rule	05/21/02	67 FR 35709

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3209–AA23

[FR Doc. 02–25198 Filed 12–06–02; 8:45 am]
BILLING CODE 6345–01–S

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Federal Register

Monday,
December 9, 2002

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Office of Management and Budget

Semiannual Regulatory Agenda

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OFFICE OF MANAGEMENT AND BUDGET (OMB)

OFFICE OF MANAGEMENT AND BUDGET

5 CFR Ch. III and 48 CFR Ch. 01

Federal Regulations; OMB Circulars, OFPP Policy Letters, and CASB Cost Accounting Standards Included in the Semiannual Agenda of Federal Activities

AGENCY: Office of Management and Budget.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Office of Management and Budget (OMB) is publishing its semiannual agenda of upcoming activities for OMB Circulars, Office of Federal Procurement Policy (OFPP) Policy Letters, and Cost Accounting Standards Board (CASB) Cost Accounting Standards.

OMB Circulars and OFPP Policy Letters are published in accordance with OMB's internal procedures for implementing Executive Order 12866 (October 4, 1993, 58 FR 51735). OMB Policy guidelines are issued under authority derived from several sources including: subtitles I, II, and V of title 31, United States Code; Executive Order 11541; and other specific authority as cited. OMB Circulars and OFPP Policy Letters communicate guidance and instructions of a continuing nature to executive branch agencies. As such, most OMB Circulars and OFPP Policy Letters are not regulations. Nonetheless, because these issuances are typically of public interest, they are generally published in the **Federal Register** in both proposed (for public comment) and final stages. For this reason, they are presented below in the standard format of "prerule," "proposed rule," and "final rule" stages.

CASB Cost Accounting Standards are issued under authority derived from 41 U.S.C. 422. Cost Accounting Standards are rules governing the measurement, assignment, and allocation of costs to contracts with the United States Government.

For purposes of this agenda, we have excluded directives that outline procedures to be followed in connection with the President's budget and legislative programs and directives that affect only the internal functions, management, or personnel of Federal agencies.

FOR FURTHER INFORMATION CONTACT: See agency person listed for each entry in the agenda, c/o Office of Management and Budget, Washington, DC 20503. On the overall agenda, contact Stephen A. Weigler, (202) 395-4855, at the above address.

Dated: August 22, 2002.

Stephen A. Weigler,

Deputy Assistant Director for Administration.

Office of Management and Budget—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3666	Revision of OMB Circular A-127 To Implement the Federal Financial Management Improvement Act (FFMIA) and To Reflect Updated Financial Management Policies	0348-AB46
3667	Accounting for the Cost of Post-Retirement Benefit Plans (Health Care)	0348-AB54
3668	Policies on Management of Federal Information Resources (OMB Circular A-130)	0348-AB55

Office of Management and Budget—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3669	Federal Participation in the Development and Use of Volunteer Consensus Standards and in Conformity Assessment Activities (OMB Circular A-119)	0348-AB53

Office of Management and Budget (OMB) — **Proposed Rule Stage**

3666. REVISION OF OMB CIRCULAR A-127 TO IMPLEMENT THE FEDERAL FINANCIAL MANAGEMENT IMPROVEMENT ACT (FFMIA) AND TO REFLECT UPDATED FINANCIAL MANAGEMENT POLICIES

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 503 et seq, Chief Financial Officer's Act of 1990; PL 104-208, Federal Financial Management Improvement Act of 1996; 31 USC 3111

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Federal Financial Management Improvement Act (FFMIA) of 1996 requires that financial management systems at each Federal agency covered by the CFOs Act, substantially comply with Federal financial management systems requirements, applicable Federal accounting standards, and the U.S. Government Standard General Ledger at the transaction level. The revisions are to incorporate this and other policy updates since the 1993 issuance of the last revision to A-127.

Timetable:

Action	Date	FR Cite
Proposed Revision	11/00/02	
Final Revision	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

OMB — **Proposed Rule Stage**

Federalism: Undetermined

Agency Contact: Jean Holcombe, Office of Federal Financial Management, Office of Management and Budget, Room 6025, NEOB, 725 17th Street NW., Washington, DC 20503
Phone: 202 395-5048
Email: jholcombe@omb.eop.gov

RIN: 0348–AB46

3667. ACCOUNTING FOR THE COST OF POST-RETIREMENT BENEFIT PLANS (HEALTH CARE)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 422

CFR Citation: 48 CFR 99

Legal Deadline: None

Abstract: The cost accounting standards board is proposing a new standard that provides criteria for measuring the costs of post-retirement benefit plans, assigning the measured costs to cost accounting periods, and allocating the assigned costs to segments of an organization.

Timetable:

Action	Date	FR Cite
ANPRM	10/05/00	65 FR 59504
ANPRM Comment Period End	12/19/00	
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, Office of Management and Budget, Room 9013, NEOB, 725 17th Street NW., Washington, DC 20503
Phone: 202 395-4550
Fax: 202 395-5105

RIN: 0348–AB54

3668. POLICIES ON MANAGEMENT OF FEDERAL INFORMATION RESOURCES (OMB CIRCULAR A-130)

Priority: Substantive, Nonsignificant

Legal Authority: PL 104-106

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: OMB Circular A-130 establishes policy for the management of Federal information resources, and includes procedural and analytic guidelines for implementing aspects of these policies as appendices. OMB is reviewing the Circular for consistency with the Government Information Security Reform Act.

Timetable:

Action	Date	FR Cite
Proposed Revision	05/00/03	
Final Revision	09/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kamela White, Policy Analyst, Office of Management and Budget, Room 10236, NEOB, 725 17th Street NW., Washington, DC 20503
Phone: 202 395-3785
Fax: 202 395-5167
Email: kgwhite@omb.eop.gov

RIN: 0348–AB55

Office of Management and Budget (OMB) — **Long-Term Actions**

3669. FEDERAL PARTICIPATION IN THE DEVELOPMENT AND USE OF VOLUNTEER CONSENSUS STANDARDS AND IN CONFORMITY ASSESSMENT ACTIVITIES (OMB CIRCULAR A-119)

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 1111; PL 104-113

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: OMB Circular A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards," contains reporting requirements regarding agency use of government-unique standards and voluntary consensus standards along with agency participation in voluntary consensus standards bodies. The Circular instructs agencies to use voluntary consensus standards in lieu of government-unique standards in their procurement and regulatory activities, except where inconsistent with law or otherwise impractical. Language in A-119 calls on OMB to review the Circular for effectiveness three years from the date of issuance (February 1998).

Timetable:

Action	Date	FR Cite
Proposed Revision	12/00/04	
Final Revision	04/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jacqueline Zeiher, Policy Analyst, Office of Management and Budget, Room 10236, NEOB, 725 17th Street NW., Washington, DC 20503
Phone: 202 395-4638
Fax: 202 395-4638
Email: jzeiher@omb.eop.gov

RIN: 0348–AB53

[FR Doc. 02–23893 Filed 12–06–02; 8:45 am]
BILLING CODE 3110–01–S

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Federal Register

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Part XXXVIII

Office of Personnel Management

Semiannual Regulatory Agenda

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OFFICE OF PERSONNEL MANAGEMENT (OPM)

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Ch. I

Regulatory Agenda

AGENCY: Office of Personnel Management.

ACTION: Semiannual regulatory agenda.

SUMMARY: The following Office of Personnel Management (OPM) regulations are scheduled for development or review from October 1, 2002 through September 30, 2003. This agenda carries out OPM's responsibilities to publish a semiannual agenda under Executive Order 12866 "Regulatory Planning and Review" and the Regulatory Flexibility Act (5 U.S.C. chapter 6). This publication in the **Federal Register** does not impose a binding obligation on the Office of Personnel Management with regard to any specific item on the agenda. Regulatory action in addition to the items listed is not precluded.

FOR FURTHER INFORMATION CONTACT: Jacquline D. Carter, (202) 606-1973.

SUPPLEMENTARY INFORMATION: For this edition of OPM's regulatory agenda, the Statement of Regulatory Priorities appears in part II of this issue of the **Federal Register**.

OPM has begun a comprehensive, systematic review of its Governmentwide personnel regulations. OPM has undertaken this initiative to make the regulations more readable wherever possible, to eliminate duplication, and to weed out obsolete references. OPM will incorporate any necessary substantive changes as part of this project. OPM intends to publish the revised regulations as proposed regulations during the coming year.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

Office of Personnel Management—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3670	Employment in the Excepted Service	3206-AH83
3671	Probation on Initial Appointment to a Competitive Position	3206-AI47
3672	Reemployment Priority List	3206-AI34
3673	Amendment to Selective Service Registration Requirements	3206-AI52
3674	Merit Promotion and Internal Placement	3206-AI20
3675	Other Than Full-Time Employment (Part-Time, Seasonal, Intermittent)	3206-AI22
3676	Order of Release from Competitive Level	3206-AI96
3677	Re-Employment Rights	3206-AI19
3678	Training	3206-AJ19
3679	Personnel Management Research Programs and Demonstration Projects	3206-AJ67
3680	Coverage of the General Schedule, Position Classification Appeals, Definitions, and Effective Dates	3206-AH38
3681	Superior Qualifications Appointments	3206-AI00
3682	Job Grading Reviews and Appeals of Federal Wage System Employees	3206-AI14
3683	Miscellaneous Changes in Pay and Leave Regulations	3206-AJ59
3684	Reemployment of Military and Civilian Retirees To Meet Exceptional Employment Needs	3206-AI32
3685	Retirement; Credit for Military Service	3206-AG58
3686	Retirement; State Income Tax Withholding Instrumentalities	3206-AH62
3687	Retirement; Debt Collection	3206-AE72
3688	Retirement; Court Orders Awarding Survivor Annuities; Correcting or Supplementing the First Order Dividing Marital Property	3206-AG28
3689	Retirement; FERS Elections of Coverage	3206-AG96
3690	Federal Employees' Group Life Insurance Program: Miscellaneous Changes and Clarifications	3206-AG63
3691	Federal Employees' Health Benefits Program: Continuing FEHB Coverage Into Retirement	3206-AI62
3692	Implementation of the Administrative Simplification Provisions of the Health Insurance Portability and Accountability Act of 1996 for the Federal Employees' Health Benefits Program	3206-AJ45
3693	Financial Sanctions of Health Care Providers in the Federal Employees' Health Benefits Program	3206-AJ42
3694	Federal Employees' Health Benefits Acquisition Regulation: Large Provider Agreements, Subcontracts, and Miscellaneous Changes	3206-AJ20
3695	Implementation of Additional Cost Principles in the Federal Employees' Health Benefits Program	3206-AJ10

Office of Personnel Management—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3696	Excepted Service—Career and Career-Conditional Employment	3206-AJ28
3697	Excepted Service—Schedule A Authority for Chinese, Japanese, and Hindi Interpreters	3206-AJ43
3698	Time-In-Grade Restrictions	3206-AG06
3699	Reasonable Accommodation Language for Vacancy Announcements	3206-AJ11

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Office of Personnel Management—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
3700	Recruitment and Selection Through Competitive Examination	3206-AJ52
3701	Promotion and Internal Placement; Accelerated Qualifications	3206-AG19
3702	Awards	3206-AJ65
3703	Official Duty Station Determinations for Pay Purposes	3206-AH84
3704	Pay Under the General Schedule; Subpart F—Locality-Based Comparability Payments	3206-AJ62
3705	Prevailing Rate Systems; Definition of Santa Clara, California, Nonappropriated Fund Wage Area	3206-AJ61
3706	Prevailing Rate Systems; Change in Federal Wage System Survey Job	3206-AJ63
3707	Prevailing Rate Systems; Redefinition of the Scranton-Wilkes-Barre, PA, Appropriated Fund Wage Area	3206-AJ64
3708	Basic Pay for Employees of Temporary Organizations	3206-AJ47
3709	Grade and Pay Retention	3206-AI88
3710	Pay Administration; Availability Pay for Criminal Investigators	3206-AJ49
3711	Premium Pay Limitations	3206-AJ56
3712	Administratively Uncontrollable Overtime Pay	3206-AJ57
3713	Retention Allowances	3206-AJ48
3714	Voluntary Separation Incentive Repayment Waivers	3206-AG20
3715	Retirement; Coverage—Nonappropriated Fund Instrumentalities	3206-AH57
3716	Coverage for Certain Employees of the District of Columbia	3206-AI02
3717	Retirement, Health, and Life Insurance Coverage for Certain Employees of the District of Columbia Under the District of Columbia Courts and Justice Technical Corrections Act of 1998	3206-AI55
3718	Law Enforcement Officer and Firefighter Retirement	3206-AJ39
3719	Continuation of Eligibility for Certain Civil Service Benefits for Former Federal Employees of the Civilian Marksmanship Program	3206-AJ55
3720	Correction of Retirement Coverage Errors Under the Federal Erroneous Retirement Coverage Correction Act	3206-AJ38
3721	Retirement; General Administration	3206-AI83
3722	Retirement; FERS Basic Annuity	3206-AE73
3723	Federal Employees' Group Life Insurance: Removal of Premiums and Age Bands from Regulations	3206-AJ46
3724	Federal Employees' Health Benefits Program: Payment of Premiums for Periods of Leave Without Pay or Insufficient Pay	3206-AG66
3725	Federal Employees' Health Benefits Program: Effective Dates	3206-AI37
3726	Implementation of Premium Conversion for Executive Branch Federal Employees Participating in the Federal Employees' Health Benefits (FEHB) Program	3206-AJ17
3727	Federal Employees' Health Benefits Children's Equity	3206-AJ34
3728	Debarments and Suspensions of Health Care Providers From the Federal Employees' Health Benefits Program	3206-AD76
3729	Implementation of Flexible Spending Accounts for Executive Branch Federal Employees Participating in the Federal Employees Health Benefits Program	3206-AJ66
3730	Federal Employees' Group Life Insurance Federal Acquisition Regulation	3206-AI65

Office of Personnel Management—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3731	Personnel Security and Related Programs	3206-AC21
3732	Investigations	3206-AB92
3733	Governmentwide Debarment and Suspension (Nonprocurement)	3206-AJ31

Office of Personnel Management—Completed Actions

Sequence Number	Title	Regulation Identification Number
3734	Excepted Service—Schedule A Authority for Nontemporary Part-Time or Intermittent Positions	3206-AJ06
3735	Prevailing Rate Systems; Definition of San Joaquin County, California, to a Nonappropriated Fund Wage Area	3206-AJ35
3736	Prevailing Rate Systems; Change in the Survey Cycle for the Portland, Oregon, Wage Area	3206-AJ60
3737	Pay for Administrative Appeals Judge Positions	3206-AJ44
3738	Repeal of Dual Compensation Reduction for Military Retirees	3206-AI92

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Office of Personnel Management—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
3739	Cost-of-Living Allowances (Nonforeign Areas); Commissary/Exchange Rates; Survey Frequency; Gradual Reductions	3206-AJ40
3740	Cost-of-Living Allowances (Nonforeign Areas); Methodology Changes	3206-AJ41
3741	Suspension of Enrollment in the Federal Employees' Health Benefits Program To Enroll in the CHAMPVA or TRICARE Programs	3206-AJ36

Office of Personnel Management—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
3206-AH86	Holidays and Premium Pay	08/30/2002	Withdrawn
3206-AI44	Miscellaneous Leave Regulations	08/30/2002	Withdrawn

Office of Personnel Management (OPM) — Proposed Rule Stage

3670. EMPLOYMENT IN THE EXCEPTED SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 1302; 5 USC 3301; 5 USC 3302; 5 USC 8151; EO 10577

CFR Citation: 5 CFR 302

Legal Deadline: None

Abstract: The revised regulations will make it easier for agencies to understand how to run the excepted service employment system, so they can create better and more efficient employment procedures.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tina Vay, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0830
Fax: 202 606-0390

RIN: 3206–AH83

3671. PROBATION ON INITIAL APPOINTMENT TO A COMPETITIVE POSITION

Priority: Other Significant

Legal Authority: 5 USC 3321

CFR Citation: 5 CFR 315, subpart H

Legal Deadline: None

Abstract: This regulation will permit agencies to use a competitive service probationary period of up to three years, when the work of the position cannot be properly evaluated in only one year. It will also establish one year as the minimum probationary period.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Linda Watson, Employment Service, Examining and Qualification Policy Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0830
Fax: 202 606-0023
Email: lmwatson@opm.gov

RIN: 3206–AI47

3672. REEMPLOYMENT PRIORITY LIST

Priority: Other Significant

Legal Authority: 5 USC 1315; 5 USC 8151

CFR Citation: 5 CFR 330, subpart B

Legal Deadline: None

Abstract: The Office of Personnel Management is proposing regulations covering the operation and administration of the Reemployment Priority List (RPL). The RPL provides competitive service employees, separated by reduction in force, with the first opportunity for reemployment in their former agency over candidates who do not work for the agency. The RPL also provides the same priority to former employees who were separated or downgraded because of a compensable injury or disability and have fully recovered more than one year after compensation began. These proposed regulations would update RPL procedures in order to assist agencies in providing displaced employees with maximum reemployment opportunities.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

OPM — Proposed Rule Stage

Agency Contact: Jacqueline Yeatman, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0960
Fax: 202 606-2329

RIN: 3206–AI34

3673. AMENDMENT TO SELECTIVE SERVICE REGISTRATION REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 3328

CFR Citation: 5 CFR 300

Legal Deadline: None

Abstract: Delegates to agencies' determination whether a Federal job applicant's failure to register with the Selective Service was knowing and willful. This change is authorized by an amendment to 5 U.S.C. 3328.

Timetable:

Action	Date	FR Cite
NPRM	03/29/99	64 FR 14842
NPRM Comment Period End	04/28/99	
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Larry Lorenz, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0830

RIN: 3206–AI52

3674. MERIT PROMOTION AND INTERNAL PLACEMENT

Priority: Other Significant

Legal Authority: 5 USC 3301; 5 USC 3302

CFR Citation: 5 CFR 316; 5 CFR 335

Legal Deadline: None

Abstract: In an effort to streamline selection procedures and provide agencies with greater flexibility, the Office of Personnel Management (OPM) is proposing to revise the regulations covering merit promotion and internal placement. These regulations will provide a framework within which agencies may develop merit-based programs for internal selections.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Karen Jacobs, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0830
Fax: 202 606-0023

RIN: 3206–AI20

3675. OTHER THAN FULL-TIME EMPLOYMENT (PART-TIME, SEASONAL, INTERMITTENT)

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 3301

CFR Citation: 5 CFR 340; 5 CFR 110

Legal Deadline: None

Abstract: Grants agencies and employees more flexibility by clarifying agency authority to schedule part-time employees on a pay period, rather than weekly, basis; defines job sharing; modifies seasonal employment.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Diane Tyrrell, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 9th Floor, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0960
Fax: 202 606-2329

RIN: 3206–AI22

3676. ORDER OF RELEASE FROM COMPETITIVE LEVEL

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 1302; 5 USC 3502; 5 USC 3503

CFR Citation: 5 CFR 351

Legal Deadline: None

Abstract: The Office of Personnel Management is proposing retention regulations covering the order in which agencies release competing employees from their competitive levels in a reduction in force.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Thomas A. Glennon, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0960
Fax: 202 606-2329

RIN: 3206–AI96

3677. RE-EMPLOYMENT RIGHTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 3582; 5 USC 3301; PL 103-296

CFR Citation: 5 CFR 352

Legal Deadline: None

Abstract: Updates provisions to conform to law allowing employees assigned to international organizations under certain conditions to maintain FERS and FICA retirement coverage; current regulations only mention CSRS retirement.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mike Mahoney, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0830
Fax: 202 606-0023

RIN: 3206–AI19

3678. TRAINING

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 4118

CFR Citation: 5 CFR 410

Legal Deadline: None

Abstract: Section 410.309 of title 5, CFR (continued service agreements)

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and 5 CFR 410.404 (expenses of training and meetings) need clarification. 5 CFR 410.309, as written, omits allowance for agency heads to delegate authority to define requirements for continued service. It also omits circumstances when the requirement for continued service can be waived, which has caused confusion for agencies in developing their continued service agreements. Amending 5 CFR 410.309 returns to the regulation language removed in 1996. The deletion had the unintended effect of limiting agency head authority in the area of continued service agreements for training. With increasing interest in academic education and service agreements, agencies have expressed concern about their legal authority with regard to these agreements.

As written, 5 CFR 410.404 does not sufficiently clarify distinctions between training and meetings. 5 U.S.C. 4109 provides agencies authority to pay the expenses of training. 5 U.S.C. 4110 provides them authority to pay the expenses of meetings. However, 5 CFR 410.404 blurs the distinctions between these two; amending it would make clear the distinctions and clarify conditions under which a meeting may be considered training.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: LaVeen Ponds, Office of Workforce Relations, Office of Personnel Management, Office of Human Resource Development, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-1394
Email: lmponds@opm.gov

RIN: 3206–AJ19

3679. • PERSONNEL MANAGEMENT RESEARCH PROGRAMS AND DEMONSTRATION PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 4703

CFR Citation: 5 CFR 470

Legal Deadline: None

Abstract: The Personnel Management Research Programs and Demonstration Projects regulations require revision to increase understanding, clarify interpretation, and ease implementation. Such revisions will enhance the freedom to manage within the Federal Government by providing clarity and eliminating ambiguities in the language of the regulations and making clear the intent and requirements of the law. The revisions will also serve to streamline the current provisions for research programs and demonstration projects and provide more flexibility to agencies for testing and establishing alternatives to recruit, retain, and manage a high quality workforce.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Paul R. Thompson, Office of Merit Systems Oversight and Effectiveness, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-2820
Fax: 202 606-3577
Email: hrinnovation@opm.gov

RIN: 3206–AJ67

3680. COVERAGE OF THE GENERAL SCHEDULE, POSITION CLASSIFICATION APPEALS, DEFINITIONS, AND EFFECTIVE DATES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5112

CFR Citation: 5 CFR 511, subpart A; 5 CFR 511, subpart F; 5 CFR 511, subpart G

Legal Deadline: None

Abstract: The position classification appeals regulations require updating to reflect current organizational nomenclature following a reorganization within OPM.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Melissa Drummond, Office of Merit Systems Oversight and Effectiveness, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-2530
Fax: 202 606-2663
Email: fedclass-appeals@opm.gov

RIN: 3206–AH38

3681. SUPERIOR QUALIFICATIONS APPOINTMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5333

CFR Citation: 5 CFR 531

Legal Deadline: None

Abstract: Revises regulations concerning the appointment of superior candidates above the minimum rate of pay for General Schedule positions. Clarifies and modifies what agencies should consider when making these superior qualifications appointments.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeanne D. Jacobson, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, Office of Compensation Administration, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-2858
Fax: 202 606-0824
Email: payleave@opm.gov

RIN: 3206–AI00

3682. JOB GRADING REVIEWS AND APPEALS OF FEDERAL WAGE SYSTEM EMPLOYEES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5346

CFR Citation: 5 CFR 532, subpart G

Legal Deadline: None

Abstract: The job grading reviews and appeals regulations require updating to reflect current organizational nomenclature following a reorganization within OPM.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Melissa Drummond, Office of Merit Systems Oversight and Effectiveness, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-2530
Fax: 202 606-2663
Email: fedclass-appeals@opm.gov

RIN: 3206–AI14

3683. MISCELLANEOUS CHANGES IN PAY AND LEAVE REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5307; 5 USC 5514; 5 USC 5527; 5 USC 5334; 5 USC 5338; 5 USC 5542(c); 5 USC 5548; 5 USC 6311; 5 USC 4301 et seq; Fair Labor Standards Act of 1939, as amended, sec 4(f)

CFR Citation: 5 CFR 531; 5 CFR 550; 5 CFR 551; 5 CFR 630

Legal Deadline: None

Abstract: These interim regulations will correct or clarify several provisions dealing with the pay and leave of Federal employees. The changes are needed to make regulations consistent with law and current practice and to eliminate unnecessary agency reports to OPM. Questions and comments from users of the regulations prompted the changes. The interim regulations will assist agencies in administering pay and leave programs in a consistent manner and in accordance with applicable law.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bryce Baker, Workforce Compensation and Performance Service, Office of Personnel Management, Office of Compensation Administration, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-2858
Fax: 202 606-0824
Email: payleave@opm.gov

RIN: 3206–AJ59

3684. REEMPLOYMENT OF MILITARY AND CIVILIAN RETIREES TO MEET EXCEPTIONAL EMPLOYMENT NEEDS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8344; 5 USC 8468

CFR Citation: 5 CFR 553

Legal Deadline: None

Abstract: Establishes new criteria for granting exceptions for key positions in temporary organizations established by law or Executive order. This rule will also expand and clarify the criteria used in exercising this authority.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Larry Lorenz, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AI32

3685. RETIREMENT; CREDIT FOR MILITARY SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347(a); 5 USC 8461(g); 38 USC 4331

CFR Citation: 5 CFR 8347(a); 5 CFR 8461(g); 5 CFR 842.306; 5 CFR 842.307

Legal Deadline: None

Abstract: These regulations implement changes in the treatment of certain military service under CSRS and FERS required under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Christopher H. Ziebarth, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AG58

3686. RETIREMENT; STATE INCOME TAX WITHHOLDING INSTRUMENTALITIES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8345; 5 USC 8347; 5 USC 8461; 5 USC 8469

CFR Citation: 5 CFR 831, subpart S; 5 CFR 841, subpart J

Legal Deadline: None

Abstract: These regulations modify existing regulations to reflect changes designed to expand and streamline the process of withholding State income tax from CSRS and FERS annuities.

Timetable:

Action	Date	FR Cite
NPRM	06/23/99	64 FR 33429
Second NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia A. Rochester, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AH62

3687. RETIREMENT; DEBT COLLECTION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347; 5 USC 8461

CFR Citation: 5 CFR 835, Subpart E

Legal Deadline: None

Abstract: These regulations will amend the Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS) regulations by consolidating and updating existing regulations in three different subparts

of the CSRS regulations and 5 CFR 845 in the FERS regulations to eliminate duplication of the provisions governing debt collection. This item is for subpart E of the new part 835, which will address collections of Government claims from payments made by OPM.

Timetable:

Action	Date	FR Cite
NPRM	10/05/92	57 FR 45753
Second NPRM	11/00/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia A. Rochester, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AE72

3688. RETIREMENT; COURT ORDERS AWARDING SURVIVOR ANNUITIES; CORRECTING OR SUPPLEMENTING THE FIRST ORDER DIVIDING MARITAL PROPERTY

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347; 5 USC 8461

CFR Citation: 5 CFR 838

Legal Deadline: None

Abstract: These regulations would establish standards for determining which supplemental or correcting court orders are not "modifications" and the procedures applicable to such orders. They also provide for the continuation of the former spouse's survivor coverage and the reduction in the retiree's annuity until the State court decides the extent of the former spouse's rights to retirement benefits.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Panagakos, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW., Washington,, DC 20415
Phone: 202 606-0299
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RIN: 3206–AG28

3689. RETIREMENT; FERS ELECTIONS OF COVERAGE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347(a); 5 USC 8461(g); PL 99-335, sec 301(d)(3)

CFR Citation: 5 CFR 846

Legal Deadline: None

Abstract: These regulations implement title III of the Federal Employees Retirement System (FERS) Act of 1986, as amended, dealing with the election of FERS coverage by employees under the Civil Service Retirement System and certain other employees. The regulations contain regulatory and interpretative rules concerning employees' eligibility to elect FERS coverage, procedures for electing FERS coverage, and basic benefits based on the service for employees who elect FERS coverage.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/21/87	52 FR 19235
Interim Final Rule	09/13/93	58 FR 47821
Interim Final Rule	06/18/98	63 FR 33231
NPRM	02/00/03	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James Giuseppe, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AG96

3690. FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM: MISCELLANEOUS CHANGES AND CLARIFICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8716

CFR Citation: 5 CFR 870

Legal Deadline: None

Abstract: These regulations include changes to FEGLI regulations that clarify procedures for signing and witnessing designations of beneficiary, accepting designations of beneficiary by facsimile, accepting DNA evidence to establish paternity, etc. They also change the time frame for electing Optional insurance when first eligible from 31 days to 60 days and add information on Basic insurance for certain Department of Defense employees under Public Law 106-398.

Timetable:

Action	Date	FR Cite
NPRM	10/27/00	65 FR 64530
Second NPRM	03/00/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Karen Leibach, Retirement and Insurance Service, Office of Insurance Programs, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AG63

3691. FEDERAL EMPLOYEES' HEALTH BENEFITS PROGRAM: CONTINUING FEHB COVERAGE INTO RETIREMENT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8913

CFR Citation: 5 CFR 890

Legal Deadline: None

Abstract: This proposed regulation would increase OPM's ability to waive requirements for continuing health benefits coverage into retirement when it is to the advantage of the Government to do so.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Barbara Myers, Retirement and Insurance Service, Office of Insurance Programs, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0004

RIN: 3206–AI62

3692. IMPLEMENTATION OF THE ADMINISTRATIVE SIMPLIFICATION PROVISIONS OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 FOR THE FEDERAL EMPLOYEES' HEALTH BENEFITS PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: PL 104-191

CFR Citation: 5 CFR 890

Legal Deadline: None

Abstract: The administrative simplification provisions on the Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires covered entities (providers, health plans and clearinghouses) to ensure the privacy of individually identifiable personal health information. The Federal Employees' Health Benefits (FEHB) Program has been deemed a health plan, and as such must comply with the security, privacy, and transaction standards that are part of the administrative simplification provisions of HIPAA.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Abby L. Block, Assistant Director, Office of Insurance Programs, Office of Personnel Management, Retirement and Insurance Group Room 3425, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0770

RIN: 3206–AJ45

3693. FINANCIAL SANCTIONS OF HEALTH CARE PROVIDERS IN THE FEDERAL EMPLOYEES' HEALTH BENEFITS PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8902a

CFR Citation: 5 CFR 890, subpart J

Legal Deadline: None

Abstract: These regulations will implement the financial sanctions provisions of the Federal Employees' Health Care Protection Act of 1998 (Pub. L. 105-266). In cases where a health care provider had knowingly: (1) submitted false, fraudulent, or misleading claims; (2) failed to provide claims-related information requested by OPM or a FEHBP carrier; or (3) submitted claims while debarred, the statute authorizes OPM to effectuate civil monetary penalties. These financial sanctions may be imposed in addition to suspension or debarment, which are the other forms of sanctions authorized by the statute. The regulatory provisions for suspension and debarment are being implemented in an earlier amendment to 5 CFR 890, subpart J.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: J. David Cope, Debarring Official, Office of the Inspector General, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AJ42

3694. FEDERAL EMPLOYEES' HEALTH BENEFITS ACQUISITION REGULATION: LARGE PROVIDER AGREEMENTS, SUBCONTRACTS, AND MISCELLANEOUS CHANGES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8913; 40 USC 486(c); 48 CFR 1.301

CFR Citation: 48 CFR 1602; 48 CFR 1604; 48 CFR 1615; 48 CFR 1632; 48 CFR 1644; 48 CFR 1652; 48 CFR 1602; ...

Legal Deadline: None

Abstract: The Office of Personnel Management (OPM) is proposing a new policy that establishes notification and information requirements, including audit, for Federal Employees' Health Benefits (FEHB) experience-rated carrier large provider agreements. The proposed regulation also revises the threshold for advance approval of carrier subcontracts.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mike Kaszynski, Retirement and Insurance Service, Office of Insurance Programs, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AJ20

3695. IMPLEMENTATION OF ADDITIONAL COST PRINCIPLES IN THE FEDERAL EMPLOYEES' HEALTH BENEFITS PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8913; 40 USC 486(c); 48 CFR 1.301

CFR Citation: 48 CFR 1630; 48 CFR 1631; 48 CFR 1652

Legal Deadline: None

Abstract: The Office of Personnel Management is proposing a regulation that would inform experience-rated carriers in the Federal Employees' Health Benefits Program how it intends to implement additional cost principles.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Anne Easton, Retirement and Insurance Services, Office of Insurance Programs, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AJ10

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3696. EXCEPTED SERVICE—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

Priority: Other Significant

Legal Authority: EO 13162

CFR Citation: 5 CFR 213; 5 CFR 315

Legal Deadline: None

Abstract: These regulations implement Executive Order 13162, which establishes the Federal Career Intern Program. This program will be used to attract exceptional men and women to the Federal workforce who have diverse professional experiences, academic training, or competencies and prepare them for careers in analyzing and implementing public programs.

This regulation supports the Administration's effort to recruit the highest caliber people to the Federal Government, develop their professional abilities, and retain them in Federal departments and agencies.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/14/00	65 FR 78077
Interim Final Rule Effective	12/14/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Karen Jacobs, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AJ28

3697. EXCEPTED SERVICE—SCHEDULE A AUTHORITY FOR CHINESE, JAPANESE, AND HINDI INTERPRETERS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 3301

CFR Citation: 5 CFR 213

Legal Deadline: None

Abstract: The Office of Personnel Management proposes to revoke the schedule A excepted service appointing authority for Chinese, Japanese and Hindi interpreters because the conditions justifying the original exception no longer exist.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3128
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tina Vay, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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Fax: 202 606-0390

RIN: 3206–AJ43

3698. TIME-IN-GRADE RESTRICTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 3301; 5 USC 3302; EO 10577

CFR Citation: 5 CFR 300

Legal Deadline: None

Abstract: Eliminates requirement that employees serve one year in-grade to be eligible for promotion above the GS-5 level. This is separate from the qualifications requirement for one year's experience at the next lowest grade or equivalent for promotion.

Timetable:

Action	Date	FR Cite
NPRM	06/15/94	59 FR 30717
NPRM Comment Period End	01/10/95	60 FR 2546
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tina Vay, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AG06

3699. REASONABLE ACCOMMODATION LANGUAGE FOR VACANCY ANNOUNCEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 1302; 5 USC 3301; 5 USC 3302; 5 USC 3304(f); 5 USC 3327; ...

CFR Citation: 5 CFR 302; 5 CFR 317; 5 CFR 330; 5 CFR 333; 5 CFR 335

Legal Deadline: None

Abstract: The Office of Personnel Management is publishing interim regulations requiring a reasonable accommodation statement in agency vacancy announcements.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/11/01	66 FR 63905
Interim Final Rule Effective	01/10/02	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Linda Watson, Employment Service, Examining and Qualification Policy Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AJ11

3700. RECRUITMENT AND SELECTION THROUGH COMPETITIVE EXAMINATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 3301; 5 USC 3302

CFR Citation: 5 CFR 332

Legal Deadline: None

Abstract: OPM is issuing an interim regulation to allow agencies to decide how candidates are referred for competitive appointment when agencies fill multiple vacancies simultaneously. We are codifying a long-standing practice (5 U.S.C. 3301 and 3302) of providing agencies with the option of either certifying a candidate for only one vacancy at a time, or certifying a candidate simultaneously for all vacancies for which that candidate expresses an interest, is eligible, and is within reach.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/15/02	67 FR 7055
Interim Final Rule Effective	02/15/02	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

OPM — **Final Rule Stage**

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Suzy Barker, Director, Examination and Qualification Policy Division, Office of Personnel Management, Employment Service, Washington, DC 20415
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RIN: 3206–AJ52

3701. PROMOTION AND INTERNAL PLACEMENT; ACCELERATED QUALIFICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 3301; 5 USC 3302; 5 USC 3304

CFR Citation: 5 CFR 316; 5 CFR 335; 5 CFR 338

Legal Deadline: None

Abstract: OPM will issue final regulations on Accelerated Qualifications only to authorize agencies to establish intensive training programs for acquiring qualifications at an accelerated rate.

Timetable:

Action	Date	FR Cite
NPRM	02/20/96	61 FR 6324
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Karen Jacobs, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AG19

3702. • AWARDS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 4506

CFR Citation: 5 CFR 450, subpart C

Legal Deadline: None

Abstract: Regulations at 5 CFR 450, subpart C (new), implement provisions of Public Law 107-67 (5 U.S.C. 4507a) that extend eligibility for Presidential Rank Awards to certain senior level employees.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/13/02	67 FR 52595
Interim Final Rule Effective	09/12/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Anne Kirby, Office of Executive Resources Management, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-1610

RIN: 3206–AJ65

3703. OFFICIAL DUTY STATION DETERMINATIONS FOR PAY PURPOSES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5305; 5 USC 5304; 5 USC 5941; EO 10000; PL 101-509, sec 404

CFR Citation: 5 CFR 530; 5 CFR 531; 5 CFR 591

Legal Deadline: None

Abstract: These proposed regulations would clarify the location-based pay entitlements of Federal employees who are detailed or temporarily assigned to work at a new location, including telework situations. Location-based pay entitlements include locality payments, special salary rates, and nonforeign area cost-of-living allowances.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/09/97	62 FR 25423
Interim Final Rule Comment Period End	07/08/97	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jeanne D. Jacobson, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, Office of Compensation Administration, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AH84

3704. PAY UNDER THE GENERAL SCHEDULE; SUBPART F—LOCALITY-BASED COMPARABILITY PAYMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5304

CFR Citation: 5 CFR 531

Legal Deadline: None

Abstract: Under current regulations, locality pay area boundaries change automatically whenever the Office of Management and Budget (OMB) modifies the geographic coverage of a metropolitan statistical area (MSA) or a consolidated metropolitan statistical area. OMB plans wholesale modifications in metropolitan area definitions in 2003 based on new criteria and 2000 census data. We plan to tie our locality pay area definitions to the geographic coverage of MSAs as defined in OMB Bulletin 99-4 so that locality pay area boundaries will not automatically change when OMB revises its metropolitan area definitions. This will allow the President's Pay Agent and the Federal Salary Council the opportunity to review the new metropolitan area definitions to see if they are appropriate for use in the locality pay program.

Timetable:

Action	Date	FR Cite
NPRM	09/11/02	67 FR 57536
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ62

OPM — Final Rule Stage

3705. PREVAILING RATE SYSTEMS; DEFINITION OF SANTA CLARA, CALIFORNIA, NONAPPROPRIATED FUND WAGE AREA

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5343

CFR Citation: 5 CFR 532

Legal Deadline: None

Abstract: Because of the closure of the Army and Air Force Exchange Service Oakland Distribution Center, the Office of Personnel Management (OPM) is abolishing the Alameda-Contra Costa, CA, nonappropriated fund Federal Wage System wage area. OPM will establish a new Santa Clara, CA, nonappropriated fund wage area with Santa Clara County defined as the wage area's survey area and Alameda, Contra Costa, and San Mateo Counties defined as the wage area's area of application.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/17/02	67 FR 46839
Interim Final Rule Effective	08/16/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ61

3706. • PREVAILING RATE SYSTEMS; CHANGE IN FEDERAL WAGE SYSTEM SURVEY JOB

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5343

CFR Citation: 5 CFR 532

Legal Deadline: None

Abstract: The Office of Personnel Management (OPM) is issuing a proposed rule that would permit the Department of Defense to survey the Federal Wage System's Maintenance Mechanic job on an optional basis rather than having to seek OPM's permission each time it wants to add the job to a local wage survey.

Timetable:

Action	Date	FR Cite
NPRM	08/01/02	67 FR 49879
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ63

3707. • PREVAILING RATE SYSTEMS; REDEFINITION OF THE SCRANTON-WILKES-BARRE, PA, APPROPRIATED FUND WAGE AREA

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5343

CFR Citation: 5 CFR 532

Legal Deadline: None

Abstract: The Office of Personnel Management is issuing a proposed rule to redefine Tioga County, Pennsylvania, from the Scranton-Wilkes-Barre, PA, Federal Wage System wage area to the Rochester, New York, wage area.

Timetable:

Action	Date	FR Cite
NPRM	08/01/02	67 FR 49878
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Chenty Carpenter, Workforce Compensation and Performance Service, Office of Personnel Management, Office of Compensation Administration, 1900 E Street NW., 7H31, Washington, DC 20415
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RIN: 3206–AJ64

3708. BASIC PAY FOR EMPLOYEES OF TEMPORARY ORGANIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 3161(d)

CFR Citation: 5 CFR 534

Legal Deadline: None

Abstract: The Office of Personnel Management is issuing final regulations on setting the rate of basic pay for employees of temporary organizations, as defined in 5 U.S.C. 3161(a).

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/05/02	67 FR 3581
Interim Final Rule Comment Period End	03/26/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jeanne D. Jacobson, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, Office of Compensation Administration, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AJ47

3709. GRADE AND PAY RETENTION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5361; 5 USC 5366

CFR Citation: 5 CFR 536

Legal Deadline: None

Abstract: The Office of Personnel Management is issuing final regulations giving agencies discretionary authority to grant pay retention to certain employees moving to positions under pay systems other than the General Schedule or the Federal Wage System. This new flexibility would allow agencies to prevent eligible employees from suffering a reduction in pay that would otherwise result from a management action.

Timetable:

Action	Date	FR Cite
NPRM	05/25/00	65 FR 33785
Final Action	06/00/03	

OPM — Final Rule Stage

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sharon Herzberg, Workforce Compensation and Performance Service, Office of Personnel Management, Office of Compensation Administration, 1900 E Street NW., 7H31, Washington, DC 20415
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RIN: 3206–AI88

3710. PAY ADMINISTRATION; AVAILABILITY PAY FOR CRIMINAL INVESTIGATORS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5545(h); 5 USC 5548

CFR Citation: 5 CFR 550

Legal Deadline: None

Abstract: These final regulations will clarify a number of issues relating to the administration of availability pay, a form of premium pay for criminal investigators who are required to work, or be available to work, substantial amounts of unscheduled overtime duty based on the needs of the employing agency.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/23/94	59 FR 66149
Second Interim Final Rule	01/29/99	64 FR 4517
Final Action	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ49

3711. PREMIUM PAY LIMITATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5547; 5 USC 5548

CFR Citation: 5 CFR 550

Legal Deadline: None

Abstract: The Office of Personnel Management is issuing interim regulations to implement recent statutory amendments dealing with the premium pay limitations for Federal employees. Those amendments raise the premium pay caps for most employees, provide authority to use an annual cap instead of a biweekly cap in additional circumstances, and make certain other changes.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/19/02	67 FR 19319
Interim Final Rule Effective	04/29/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bryce Baker, Workforce Compensation and Performance Service, Office of Personnel Management, Office of Compensation Administration, 1900 E Street NW., Washington, DC 20415
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Fax: 202 606-0824
Email: payleave@opm.gov

RIN: 3206–AJ56

3712. ADMINISTRATIVELY UNCONTROLLABLE OVERTIME PAY

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5547

CFR Citation: 5 CFR 550.151

Legal Deadline: None

Abstract: The Office of Personnel Management is issuing interim regulations concerning the rules governing payment of administratively uncontrollable overtime (AUO) pay. This interim rule permits agencies to pay AUO pay to an employee during a temporary assignment that would not otherwise warrant the payment of AUO pay, if the temporary assignment is directly related to a national emergency.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/13/02	67 FR 6640
Interim Final Rule Comment Period End	04/15/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kevin Kitchelt, Workforce Compensation and Performance Service, Office of Personnel Management, Office of Compensation Administration, 1900 E Street NW., Washington, DC 20415
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Fax: 202 606-0824
Email: payleave@opm.gov

RIN: 3206–AJ57

3713. RETENTION ALLOWANCES

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 5 USC 5754

CFR Citation: 5 CFR 575, subpart C

Legal Deadline: None

Abstract: These final regulations would provide agencies with greater flexibility in the use of retention allowances by allowing them to pay such allowances to employees who are likely to leave their positions for other Federal employment under certain limited circumstances.

Timetable:

Action	Date	FR Cite
NPRM	01/10/01	66 FR 5491
NPRM Comment Period End	03/20/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jeanne D. Jacobson, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, Office of Compensation Administration, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-2858
Fax: 202 606-0824
Email: payleave@opm.gov

RIN: 3206–AJ48

3714. VOLUNTARY SEPARATION INCENTIVE REPAYMENT WAIVERS

Priority: Substantive, Nonsignificant

Legal Authority: PL 103-226

CFR Citation: 5 CFR 576

Legal Deadline: None

Abstract: Public Law 103-226 authorized OPM to waive repayment of a voluntary separation incentive payment under certain circumstances if a former employee, who accepted the incentive payment, is reemployed by an executive agency of the United States within five years of separation. Later Public Laws, written for specific agencies, usually contain a waiver of repayment provision.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/09/94	59 FR 55808
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Gray, Employee Service, Office of Personnel Management, Staffing Restructuring Policy Division, 1900 E Street NW., Wasington, DC 20415
Phone: 202 606-0960

RIN: 3206–AG20

3715. RETIREMENT; COVERAGE—NONAPPROPRIATED FUND INSTRUMENTALITIES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347

CFR Citation: 5 CFR 831; 5 CFR 837; 5 CFR 841 to 844; 5 CFR 847

Legal Deadline: Final, Statutory, August 9, 1996.

Abstract: These regulations implement the provisions of Public Law 104-106 and Public Law 107-107, which allow certain employees, who have been employed by nonappropriated fund instrumentalities under the jurisdiction of the armed forces, to obtain retirement credit under limited circumstances.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/09/96	61 FR 41714
Interim Final Rule	11/00/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James Giuseppe, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0299
Email: combox@opm.gov

RIN: 3206–AH57

3716. COVERAGE FOR CERTAIN EMPLOYEES OF THE DISTRICT OF COLUMBIA

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347(a); 5 USC 8361(g); PL 105-33, sec 11202(f), 11232(e), 11246(b); PL 106-522, sec 145

CFR Citation: 5 CFR 831; 5 CFR 837; 5 CFR 842; 5 CFR 846; 5 CFR 870; 5 CFR 890

Legal Deadline: None

Abstract: These regulations implement provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997, which requires that nonjudicial employees of the District of Columbia Courts, and under certain conditions, the District of Columbia Corrections Trustee, and the District of Columbia Pretrial Services, Parole, Adult Probation and Offender Supervision Trustee and their respective employees be considered Federal employees for purposes of Federal retirement, health, and life insurance coverage.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/30/97	62 FR 50995
Interim Final Rule Comment Period End	12/01/97	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Girouard, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0299
Email: combox@opm.gov

RIN: 3206–AI02

3717. RETIREMENT, HEALTH, AND LIFE INSURANCE COVERAGE FOR CERTAIN EMPLOYEES OF THE DISTRICT OF COLUMBIA UNDER THE DISTRICT OF COLUMBIA COURTS AND JUSTICE TECHNICAL CORRECTIONS ACT OF 1998

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-274

CFR Citation: 5 CFR 831; 5 CFR 837; 5 CFR 842; 5 CFR 846; 5 CFR 870; 5 CFR 890

Legal Deadline: None

Abstract: These interim regulations implement the District of Columbia Courts and Justice Technical Corrections Act of 1998. The effect of these regulations is to extend Federal retirement, health insurance, and life insurance coverage to employees of the Public Defender Service of the District of Columbia under section 7 of the Act, and to exclude certain former employees of the District of Columbia, who are hired by the Department of Justice or by the Court Services and Offender Supervision Agency, from Federal retirement coverage if they elect, under section 3 of the Act, to continue their coverage under a retirement system for employees of the District of Columbia.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/31/99	64 FR 15286
Interim Final Rule Comment Period End	06/29/99	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Girouard, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0299
Email: combox@opm.gov

RIN: 3206–AI55

3718. LAW ENFORCEMENT OFFICER AND FIREFIGHTER RETIREMENT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347; 5 USC 8461

CFR Citation: 5 CFR 831; 5 CFR 842

Legal Deadline: None

Abstract: The Office of Personnel Management is issuing interim rules that permit certain police officers with the Metropolitan Washington Airports Authority to elect coverage under the special retirement provisions for law enforcement officers.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/25/01	66 FR 38523
Interim Final Rule Effective	07/25/01	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Jennings, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415-0001
Phone: 202 606-0299
Email: combox@opm.gov

RIN: 3206–AJ39

3719. CONTINUATION OF ELIGIBILITY FOR CERTAIN CIVIL SERVICE BENEFITS FOR FORMER FEDERAL EMPLOYEES OF THE CIVILIAN MARKSMANSHIP PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: Sec 1622(b), PL 104-106, 110 Stat. 515

CFR Citation: 5 CFR 831; 5 CFR 842; 5 CFR 870; 5 CFR 890

Legal Deadline: None

Abstract: These regulations describe conditions and procedures applicable to continuation of eligibility for certain Civil Service benefits for former Federal employees of the Civilian Marksmanship Program.

Timetable:

Action	Date	FR Cite
NPRM	06/03/02	67 FR 38210
NPRM Comment Period End	08/02/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Howard T. Newland Jr., Retirement and Insurance Service, Retirement Policy Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0299
Email: combox@opm.gov

RIN: 3206–AJ55

3720. CORRECTION OF RETIREMENT COVERAGE ERRORS UNDER THE FEDERAL ERRONEOUS RETIREMENT COVERAGE CORRECTION ACT

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-265

CFR Citation: 5 CFR 839

Legal Deadline: None

Abstract: The Office of Personnel Management is amending its regulations to include new rules for correcting certain retirement coverage errors. We are amending the regulations to implement the provisions of the Federal Erroneous Retirement Coverage Corrections Act (the FERCCA), title II of Public Law 106-265. The regulations will allow agencies to correct affected coverage errors.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/19/01	66 FR 15605
Interim Final Rule Effective	03/19/01	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Giuseppe, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0299
Email: combox@opm.gov

RIN: 3206–AJ38

3721. RETIREMENT; GENERAL ADMINISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347

CFR Citation: 5 CFR 841

Legal Deadline: None

Abstract: These regulations would allow an agency to retain the individual retirement record when an employee transfers within the same agency even though the employee would be serviced by another intra-agency payroll.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/20/00	65 FR 21119
Interim Final Rule Effective	04/20/00	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Girouard, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0299
Email: combox@opm.gov

RIN: 3206–AI83

3722. RETIREMENT; FERS BASIC ANNUITY

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8461

CFR Citation: 5 CFR 842, subparts B to G

Legal Deadline: None

Abstract: These final regulations will amend FERS Basic Annuity regulations governing Eligibility (subpart B), Credit for Service (subpart C), Computations (subpart F), and Alternative Forms of Annuity (subpart G). These regulations have been published at various times in interim final form, and have been affected by statutory changes.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/16/87	52 FR 2061
Interim Final Rule	01/16/87	52 FR 2067
Interim Final Rule	02/11/87	52 FR 4473
Interim Final Rule	02/11/87	52 FR 4479
Interim Final Rule	05/14/87	52 FR 18193
Interim Final Rule	04/08/88	53 FR 11635
Interim Final Rule	02/09/90	55 FR 4598
Final Rule	12/27/90	55 FR 53136
Interim Final Rule	02/19/91	56 FR 6549
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Girouard, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0299

OPM — Final Rule Stage

Email: combox@opm.gov

RIN: 3206–AE73

3723. FEDERAL EMPLOYEES' GROUP LIFE INSURANCE: REMOVAL OF PREMIUMS AND AGE BANDS FROM REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8716; PL 106-398

CFR Citation: 5 CFR 870

Legal Deadline: None

Abstract: Public Law 105-311 allowed retiring employees to elect to continue their option B and/or option C coverage on an unreduced basis. Since this means that more people over age 65 will have these coverages and will continue to pay premiums, the previous age band structure (with the top age band being 60 and over) needed to be expanded. OPM previously added additional age bands to option C; we now need to expand these further and to add age bands to option B. In addition, the actuaries have determined that changes in mortality rates warrant further changes to the FEGLI premiums. Since the current regulatory process doesn't allow OPM the flexibility to change premiums as quickly in an efficient and timely manner, we are removing the premiums from regulations. We will announce future premium changes in a public notice in the Federal Register.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kathleen Healy Sheridan, Retirement and Insurance Service, Office of Insurance Programs, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0004
Email: khsherid@opm.gov

RIN: 3206–AJ46

3724. FEDERAL EMPLOYEES' HEALTH BENEFITS PROGRAM: PAYMENT OF PREMIUMS FOR PERIODS OF LEAVE WITHOUT PAY OR INSUFFICIENT PAY

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8913

CFR Citation: 5 CFR 890

Legal Deadline: None

Abstract: Regulations that establish a requirement that Federal agencies counsel employees entering nonpay status, or whose pay is insufficient to cover their FEHB premium payments, of the options of continuing or terminating their FEHB coverage, and if continuing, of paying premiums directly on a current basis or incurring a debt to be withheld from future salary. These regulations are intended to ensure employees are fully aware of these alternatives. We have received comments on the interim rules, which are under review.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/22/96	61 FR 37807
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Barbara Myers, Retirement and Insurance Service, Office of Insurance Programs, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0004

RIN: 3206–AG66

3725. FEDERAL EMPLOYEES' HEALTH BENEFITS PROGRAM: EFFECTIVE DATES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8913

CFR Citation: 5 CFR 890

Legal Deadline: None

Abstract: This proposed regulation would adopt January 1 as the effective date for all open season enrollment changes and new enrollment in the Federal Employees' Health Benefits Program.

Timetable:

Action	Date	FR Cite
NPRM	08/31/98	63 FR 46180
NPRM Comment Period End	09/30/98	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Barbara Myers, Retirement and Insurance Service, Office of Insurance Programs, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0004

RIN: 3206–AI37

3726. IMPLEMENTATION OF PREMIUM CONVERSION FOR EXECUTIVE BRANCH FEDERAL EMPLOYEES PARTICIPATING IN THE FEDERAL EMPLOYEES' HEALTH BENEFITS (FEHB) PROGRAM

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 26 USC 125

CFR Citation: 5 CFR 890

Legal Deadline: None

Abstract: At the President's direction, the Office of Personnel Management (OPM) issued regulations under the Federal Employees' Health Benefits (FEHB) Program to enable employees of all executive branch agencies to pay their share of FEHB premiums with pre-tax dollars in accordance with section 125 of the Internal Revenue Code. OPM simultaneously amended salary allotment regulations at 5 CFR 550, because employees participating in premium conversion must allot a portion of salary to their employing agency that agencies then use to pay the employee share of FEHB premiums.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/19/00	65 FR 44644
Interim Final Rule Effective	09/18/00	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Laurie Bodenheimer, Retirement and Insurance Services, Office of Insurance Programs, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0770

RIN: 3206–AJ17

OPM — Final Rule Stage

3727. FEDERAL EMPLOYEES' HEALTH BENEFITS CHILDREN'S EQUITY

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-394

CFR Citation: 5 CFR 890; 5 CFR 892

Legal Deadline: None

Abstract: Public Law 106-394 requires mandatory self and family coverage for Federal Employees' Health Benefits (FEHB) eligible employees who do not comply with a court or administrative order to provide health benefits for their children. This regulation requires that employees subject to such an order be enrolled in self and family coverage in a plan that provides full benefits to his/her child(ren) in the area where they live or provide documentation to his/her employing office that he/she has other health coverage for the children. If the employee does not enroll in an appropriate health plan or provide documentation of other coverage for the children, the employing office will enroll the employee for self and family coverage in the option of the Blue Cross and Blue Shield Service Benefit Plan that provides the lower level of coverage. This type of mandatory coverage has been in effect for several years in the private sector. This regulation defines how this requirement will be implemented in the FEHB Program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nataya Battle, Retirement and Insurance Service, Office of Insurance Programs, Office of Personnel Management, 1900 E Street NW., Washington, DC 20515
Phone: 202 606-1874
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RIN: 3206–AJ34

3728. DEBARMENTS AND SUSPENSIONS OF HEALTH CARE PROVIDERS FROM THE FEDERAL EMPLOYEES' HEALTH BENEFITS PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8902a

CFR Citation: 5 CFR 890, subpart J

Legal Deadline: None

Abstract: These regulations will implement section 2 of Public Law 105-266, which amends 5 U.S.C. section 8902a, authorizing OPM to debar health care providers who have committed certain types of legal offenses or program-related violations from participation in the Federal Employees' Health Benefits Program (FEHBP), and to levy monetary penalties and assessments against individuals who have improperly obtained payments of FEHBP funds. This legislation removes unnecessary administrative constraints on the agency, provides more flexible and less time-consuming procedures, and will improve OPM's administration of sanctions against unfit health care providers.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/30/89	54 FR 43939
NPRM	12/12/01	66 FR 64160
NPRM Comment Period End	02/11/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: J. David Cope, Debarring Official, Office of the Inspector General, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-2851
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Email: jdcope@opm.gov

RIN: 3206–AD76

3729. • IMPLEMENTATION OF FLEXIBLE SPENDING ACCOUNTS FOR EXECUTIVE BRANCH FEDERAL EMPLOYEES PARTICIPATING IN THE FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 125; 26 USC 129; 26 USC 152

CFR Citation: 5 CFR 892

Legal Deadline: None

Abstract: The Office of Personnel Management (OPM) plans to issue regulations to enable employees of all executive branch agencies to elect a Health Care Flexible Spending Account (HCFSA) and/or a Dependent Care Flexible Spending Account (DCFSA) in accordance with Sections 125, 129, and 152 of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Laurie Bodenheimer, Retirement and Insurance Services, Office of Insurance Programs, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0770

RIN: 3206–AJ66

3730. FEDERAL EMPLOYEES' GROUP LIFE INSURANCE FEDERAL ACQUISITION REGULATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8716; 40 USC 486(C)

CFR Citation: 48 CFR 1.301

Legal Deadline: None

Abstract: This proposed regulation would revise the existing Federal Employees' Group Life Insurance Federal Acquisition Regulation (LIFAR) by updating and revising policy regulation with respect to the acquisition and administration of life insurance contract(s) for Federal employees.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Anne Easton, Retirement and Insurance Services, Office of Insurance Programs, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0004

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OPM — **Final Rule Stage**

Email: aseaston@opm.gov
RIN: 3206–AI65

Office of Personnel Management (OPM) — **Long-Term Actions**

3731. PERSONNEL SECURITY AND RELATED PROGRAMS

Priority: Other Significant

Legal Authority: 5 USC 3301; 5 USC 3302; 5 USC 7312; 50 USC 403; EO 10450; EO 10577

CFR Citation: 5 CFR 732

Legal Deadline: None

Abstract: With the abolishment of the Federal Personnel Manual (FPM), certain policies and procedures enunciated in the FPM are being considered for publication in another format.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/23/91	56 FR 18650
Interim Final Rule	09/16/94	59 FR 47527
Interim Final Rule Effective Date	10/17/94	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kathy Dillaman, Associate Director, Investigations Service, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415-4000
Phone: 202 606-1042

RIN: 3206–AC21

3732. INVESTIGATIONS

Priority: Other Significant

Legal Authority: PL 93-579; 5 USC 552a

CFR Citation: 5 CFR 736

Legal Deadline: None

Abstract: With the abolishment of the Federal Personnel Manual (FPM), certain policies and procedures enunciated in the FPM are being considered for publication in another format.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/23/91	56 FR 18650
Begin Review	10/01/93	
Interim Final Rule	09/16/94	59 FR 47527

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kathy Dillaman, Associate Director, Investigations Service, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415-4000
Phone: 202 606-1042

RIN: 3206–AB92

3733. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Priority: Substantive, Nonsignificant

Legal Authority: EO 12549

CFR Citation: 5 CFR 970

Legal Deadline: None

Abstract: These regulations will implement within OPM the provisions of the Governmentwide nonprocurement suspension and debarment common rule.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/25/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: J. David Cope, Debarring Official, Office of the Inspector General, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-2851
Fax: 202 606-2153
Email: jdcope@opm.gov

RIN: 3206–AJ31

Office of Personnel Management (OPM) — **Completed Actions**

3734. EXCEPTED SERVICE—SCHEDULE A AUTHORITY FOR NONTEMPORARY PART-TIME OR INTERMITTENT POSITIONS

Priority: Substantive, Nonsignificant

CFR Citation: 5 CFR 213

Completed:

Reason	Date	FR Cite
Final Action	09/04/02	67 FR 56475
Final Action Effective	09/04/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tina Vay
Phone: 202 606-0830
Fax: 202 606-0390

RIN: 3206–AJ06

3735. PREVAILING RATE SYSTEMS; DEFINITION OF SAN JOAQUIN COUNTY, CALIFORNIA, TO A NONAPPROPRIATED FUND WAGE AREA

Priority: Routine and Frequent

CFR Citation: 5 CFR 532

Completed:

Reason	Date	FR Cite
Final Action	08/01/02	67 FR 49855
Final Action Effective	09/03/02	

OPM — **Completed Actions**

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Chenty Carpenter
Phone: 202 606-2848
Fax: 202 606-4264
Email: cola@opm.gov

RIN: 3206–AJ35

3736. PREVAILING RATE SYSTEMS; CHANGE IN THE SURVEY CYCLE FOR THE PORTLAND, OREGON, WAGE AREA

Priority: Routine and Frequent

CFR Citation: 5 CFR 532

Completed:

Reason	Date	FR Cite
Interim Final Rule	04/24/02	67 FR 20009
Interim Final Rule Effective	04/24/02	
Final Action	08/01/02	67 FR 49878
Final Action Effective	09/03/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Chenty Carpenter
Phone: 202 606-2848
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Email: cola@opm.gov

RIN: 3206–AJ60

3737. PAY FOR ADMINISTRATIVE APPEALS JUDGE POSITIONS

Priority: Substantive, Nonsignificant

CFR Citation: 5 CFR 534, subpart F

Completed:

Reason	Date	FR Cite
Final Action	06/07/02	67 FR 39249
Final Action Effective	07/08/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeanne D. Jacobson
Phone: 202 606-2858
Fax: 202 606-0824
Email: payleave@opm.gov

RIN: 3206–AJ44

3738. REPEAL OF DUAL COMPENSATION REDUCTION FOR MILITARY RETIREES

Priority: Substantive, Nonsignificant

CFR Citation: 5 CFR 553

Completed:

Reason	Date	FR Cite
Final Action	06/14/02	67 FR 40837
Final Action Effective	07/15/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Larry Lorenz
Phone: 202 606-0830

RIN: 3206–AI92

3739. COST-OF-LIVING ALLOWANCES (NONFOREIGN AREAS); COMMISSARY/EXCHANGE RATES; SURVEY FREQUENCY; GRADUAL REDUCTIONS

Priority: Substantive, Nonsignificant

CFR Citation: 5 CFR 591

Completed:

Reason	Date	FR Cite
Final Action	05/03/02	67 FR 22339
Final Action Effective	06/03/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kurt Springmann
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Fax: 202 606-4264
Email: cola@opm.gov

RIN: 3206–AJ40

3740. COST-OF-LIVING ALLOWANCES (NONFOREIGN AREAS); METHODOLOGY CHANGES

Priority: Substantive, Nonsignificant

CFR Citation: 5 CFR 591

Completed:

Reason	Date	FR Cite
Final Action	05/03/02	67 FR 22339
Final Action Effective	06/03/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kurt Springmann
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Fax: 202 606-4264
Email: cola@opm.gov

RIN: 3206–AJ41

3741. SUSPENSION OF ENROLLMENT IN THE FEDERAL EMPLOYEES' HEALTH BENEFITS PROGRAM TO ENROLL IN THE CHAMPVA OR TRICARE PROGRAMS

Priority: Substantive, Nonsignificant

CFR Citation: 5 CFR 890

Completed:

Reason	Date	FR Cite
Final Action	06/18/02	67 FR 41305
Final Action Effective	06/18/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael W. Kaszynski
Phone: 202 606-0004
Fax: 202 606-0633
Email: mwkaszyn@opm.gov

RIN: 3206–AJ36

[FR Doc. 02–24267 Filed 12–06–02; 8:45 am]
BILLING CODE 6325–44–S

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Federal Register

Monday,
December 9, 2002

Part XXXIX

Peace Corps

Semiannual Regulatory Agenda

PEACE CORPS (PEACE)

PEACE CORPS

22 CFR Ch. III

Regulatory Agenda

AGENCY: Peace Corps.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda announces the regulations the Peace Corps will have under development during the 6-month period from October 1, 2002, through March 31, 2003. The purpose of publishing this agenda is to give notice of any regulatory activity by the Agency in order to allow the public an opportunity to participate in the rulemaking process.

FOR FURTHER INFORMATION CONTACT: The public is encouraged to contact the agency official listed for the particular agenda item. For other information concerning Peace Corps' regulations or this semiannual agenda, contact Suzanne B. Glasow, Associate General Counsel, Peace Corps, 1111 20th Street NW., Washington, DC 20526, (202) 692-2150.

SUPPLEMENTARY INFORMATION: In accordance with Executive Order 12866 entitled "Regulatory Planning and Review" and the Regulatory Flexibility Act, 5 U.S.C. 601-612, executive agencies are required to publish in the **Federal Register** semiannual regulatory agendas in April and October of each year. The regulations being considered by the Peace Corps are not "significant" rules within the meaning of Executive Order 12866, and no regulatory impact analysis is required. In addition, the Peace Corps has determined, under the Regulatory Flexibility Act, that the regulations under consideration will not have a significant economic impact on a substantial number of small entities. Accordingly, no Regulatory Flexibility Analysis is required. The Agency has also determined that the regulations will not impose compliance costs or reporting burdens on the public.

Dated: September 13, 2002.

Keith A. Vance,

Director, Office of Administrative Services, Peace Corps

Peace Corps—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3742	Handicapped Discrimination Prohibition and Procedures	0420-AA03
3743	Supplemental Standards of Conduct for Peace Corps Employees	0420-AA09
3744	Eligibility and Standards for Peace Corps Volunteer Service Re: Procedures—Appeals	0420-AA10
3745	Volunteer Discrimination Complaint Procedure	0420-AA11
3746	Responsibilities and Ethical Standards for Peace Corps Employees	0420-AA12
3747	Inspection and Copying of Records: Rules for Compliance With Freedom of Information Act	0420-AA14
3748	Implementation of the Privacy Act of 1974	0420-AA15
3749	Organization	0420-AA16

Peace Corps—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3750	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	0420-AA17

Peace Corps (PEACE) — **Proposed Rule Stage**

3742. HANDICAPPED DISCRIMINATION PROHIBITION AND PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 794

CFR Citation: 22 CFR 313

Legal Deadline: None

Abstract: The regulation implements section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in programs or activities conducted by executive agencies or the Postal Service.

Timetable:

Action	Date	FR Cite
NPRM	10/08/91	56 FR 50684
NPRM Comment Period End	12/09/91	
Second NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Tyler S. Posey, General Counsel, Peace Corps, Suite 8200, 1111 20th Street NW, Washington, DC 20526-0001
Phone: 202 692-2150
Fax: 202 692-2151
Email: tposey@peacecorps.gov

RIN: 0420–AA03

PEACE — **Proposed Rule Stage**

3743. SUPPLEMENTAL STANDARDS OF CONDUCT FOR PEACE CORPS EMPLOYEES

Priority: Substantive, Nonsignificant

Legal Authority: EO 12674; 5 CFR 2635.105

CFR Citation: 22 CFR 307; 5 CFR 67 (New)

Legal Deadline: None

Abstract: The Peace Corps is removing part 307 from the Code of Federal Regulations. Part 307 provides the standards of conduct applicable to Peace Corps employees. Peace Corps employees are already subject to the Governmentwide regulations on employee standards of conduct, and the Peace Corps is considering the appropriate action to take in regard to its supplemental standards of conduct.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Tyler S. Posey, General Counsel, Peace Corps, Suite 8200, 1111 20th Street NW, Washington, DC 20526-0001
Phone: 202 692-2150
Fax: 202 692-2151
Email: tposey@peacecorps.gov

RIN: 0420–AA09

3744. ELIGIBILITY AND STANDARDS FOR PEACE CORPS VOLUNTEER SERVICE RE: PROCEDURES—APPEALS

Priority: Substantive, Nonsignificant

Legal Authority: 75 Stat 612, secs 4(b), 5(a), and 22; 22 USC 2504; EO 12137, May 16, 1979; International Security & Development Coop. Act of 1981, sec 601; 95 Stat 1519 and 1540

CFR Citation: 22 CFR 305

Legal Deadline: None

Abstract: The Peace Corps is reviewing its Eligibility and Standards for Peace Corps Service, specifically with regard to establishing and publishing an appeals procedure for administrative and medical deselection. 42 U.S.C. 5057(c)(1), as amended, no longer provides authority for the listed agenda item. Therefore, 42 U.S.C. 5057, as above, shall be deleted from future printings of the Unified Agenda.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Additional Information: RFA: N

Agency Contact: Tyler S. Posey, General Counsel, Peace Corps, Suite 8200, 1111 20th Street NW, Washington, DC 20526-0001
Phone: 202 692-2150
Fax: 202 692-2151
Email: tposey@peacecorps.gov

RIN: 0420–AA10

3745. VOLUNTEER DISCRIMINATION COMPLAINT PROCEDURE

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2503; 5 USC 553 and 554

CFR Citation: 22 CFR 306; 45 CFR 1225

Legal Deadline: None

Abstract: The Peace Corps is promulgating its own regulations regarding the Volunteer Discrimination Complaint Procedure to replace the current cross-reference to the former ACTION's regulations applicable to Peace Corps volunteers, which appear in 45 CFR part 1225.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Additional Information: RFA: N

Agency Contact: Tyler S. Posey, General Counsel, Peace Corps, Suite 8200, 1111 20th Street NW, Washington, DC 20526-0001
Phone: 202 692-2150
Fax: 202 692-2151
Email: tposey@peacecorps.gov

RIN: 0420–AA11

3746. RESPONSIBILITIES AND ETHICAL STANDARDS FOR PEACE CORPS EMPLOYEES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 7301; 5 USC app Ethics in Government Act of 1978; EO 12674; 5 CFR 2635.105; 5 CFR 2635.403; 5 CFR 2635.803

CFR Citation: 22 CFR 307

Legal Deadline: None

Abstract: The Peace Corps is removing part 307 from the Code of Federal Regulations. Part 307 provides the standards of conduct applicable to Peace Corps employees. Peace Corps employees are already subject to the Governmentwide regulations on employee standards of conduct, and the Peace Corps is considering the appropriate action to take in regard to its own supplemental standards of conduct.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Tyler S. Posey, General Counsel, Peace Corps, Suite 8200, 1111 20th Street NW, Washington, DC 20526-0001
Phone: 202 692-2150
Fax: 202 692-2151
Email: tposey@peacecorps.gov

RIN: 0420–AA12

3747. INSPECTION AND COPYING OF RECORDS: RULES FOR COMPLIANCE WITH FREEDOM OF INFORMATION ACT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552; 22 USC 2503(b); EO 12137

CFR Citation: 22 CFR 303

Legal Deadline: None

Abstract: The Peace Corps is revising its Freedom of Information Act (FOIA) regulation to implement the 1996 revisions to FOIA and to include Office of Inspector General provisions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Tyler S. Posey, General Counsel, Peace Corps, Suite 8200, 1111 20th Street NW, Washington, DC 20526-0001
Phone: 202 692-2150
Fax: 202 692-2151

PEACE — **Proposed Rule Stage**

Email: tposey@peacecorps.gov
RIN: 0420–AA14

3748. IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552a; 22 USC 2503(b); EO 12137

CFR Citation: 22 CFR 308

Legal Deadline: None

Abstract: The Peace Corps is revising its Privacy Act regulation to be consistent with revisions to its systems of records and to delete unnecessary and outdated provisions.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Tyler S. Posey, General Counsel, Peace Corps, Suite 8200, 1111 20th Street NW, Washington, DC 20526-0001
Phone: 202 692-2150
Fax: 202 692-2151
Email: tposey@peacecorps.gov

RIN: 0420–AA15

3749. ORGANIZATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552; 22 USC 2503(b); EO 12137

CFR Citation: 22 CFR 302

Legal Deadline: None

Abstract: The Peace Corps is removing this rule from the Code of Federal Regulations because it is outdated and unnecessary. Information on Peace Corps' organization is routinely updated and published in the Federal Register's "United States Government Manual."

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Tyler S. Posey, General Counsel, Peace Corps, Suite 8200, 1111 20th Street NW, Washington, DC 20526-0001
Phone: 202 692-2150
Fax: 202 692-2151
Email: tposey@peacecorps.gov

RIN: 0420–AA16

Peace Corps (PEACE) — **Long-Term Actions**

3750. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

Legal Authority: sec 2455, PL 103-355, 108 Stat 3327; EO 12549, 3 CFR 1986 Comp, p 189; EO 12698, 3 CFR 1989 Comp, p 235

CFR Citation: 22 CFR 310

Legal Deadline: None

Abstract: The Peace Corps intends to publish proposed revisions to its Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) rule in 22 CFR part 310 in conjunction with other participating agencies. Under the proposed rule, Peace Corps' debarment and suspension provisions would remain in part 310 and would set out procedures to be used by the Peace Corps when it has evidence that a recipient of Peace Corps funds pursuant to a nonprocurement agreement, such as grant or cooperative agreement, has committed fraud, embezzlement, forgery, or a variety of other serious offenses.

The rule's drug-free workplace provisions would be moved to a new rule, part 312, and would include requirements, prohibitions, and procedures regarding the unlawful manufacturing, distribution, dispensing, possession, or use of a controlled substance by a grantee of the Peace Corps in conducting any activity under a Peace Corps grant.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/25/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tyler S. Posey, General Counsel, Peace Corps, Suite 8200, 1111 20th Street NW, Washington, DC 20526-0001
Phone: 202 692-2150
Fax: 202 692-2151
Email: tposey@peacecorps.gov

RIN: 0420–AA17

[FR Doc. 02–23904 Filed 12–06–02; 8:45 am]
BILLING CODE 6051–01–S

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Monday,
December 9, 2002

Part XL

Pension Benefit Guaranty Corporation

Semiannual Regulatory Agenda

VOL 67 ISS 236 DEC 9 2002 UMI

PENSION BENEFIT GUARANTY CORPORATION (PBGC)

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Ch. XL

Agenda of Regulations Under Development

AGENCY: Pension Benefit Guaranty Corporation (PBGC).

ACTION: Semiannual regulatory agenda.

SUMMARY: This document sets forth the Pension Benefit Guaranty Corporation's regulatory agenda issued under Executive Order 12866 and the Regulatory Flexibility Act. The agenda lists regulations that are currently under development or review or that PBGC expects to have under development or review during the next 12 months. The effect of this agenda is to advise the public of PBGC's current and future regulatory activities.

ADDRESSES: Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026.

FOR FURTHER INFORMATION CONTACT: For further information on the agenda in general, contact Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, (202) 326-4024. (For TTY/TDD users, call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to (202) 326-4024.) For information about a specific regulation project listed on the agenda, contact the person designated in the agenda for that regulation.

SUPPLEMENTARY INFORMATION: Under the President's order on Regulatory Planning and Review, Executive Order 12866 (58 FR 51735, October 4, 1993), each agency is required to prepare an agenda of all regulations under development or review. The Regulatory Flexibility Act, Public Law 98-354, 5 U.S.C. 601, has a similar agenda requirement. Under that law, the agenda must list any regulation that is likely to have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has issued guidelines prescribing the form and content of the regulatory agenda. Under those guidelines, the agenda must list all regulatory activities being conducted or reviewed in the next 12 months and provide certain specified information on each regulation. For this edition of the Pension Benefit Guaranty Corporation's regulatory agenda, the most important significant regulatory action is included in The Regulatory Plan, which appears in part II of this issue of the Federal Register. The Regulatory Plan entries are listed in the table of contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

Dated: October 3, 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

Pension Benefit Guaranty Corporation—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3751	Filing Rules	1212-AA89
3752	Payment of Benefits in PBGC-Trusteed Plans	1212-AA98
3753	Allocation of Assets in Single-Employer Plans; Valuation of Benefits and Assets **(Reg Plan Seq No. 151)**	1212-AA55

References in boldface appear in the **Regulatory Plan** in part II of this issue of the **Federal Register**.

Pension Benefit Guaranty Corporation—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3754	Assessment Of and Relief From Penalties	1212-AA95

Pension Benefit Guaranty Corporation—Completed Actions

Sequence Number	Title	Regulation Identification Number
3755	Rules for Administrative Review of Agency Decisions	1212-AA97
3756	Cash Balance Plans With Variable Indices	1212-AA96

Pension Benefit Guaranty Corporation (PBGC) — **Proposed Rule Stage**

3751. FILING RULES

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 1301 et seq

CFR Citation: 29 CFR 4000

Legal Deadline: None

Abstract: The PBGC's rules governing the date of filing vary, depending on the regulation involved and the method of filing used (e.g., mail postmarked by the United States Postal Service, metered mail, commercial delivery service, facsimile). The PBGC intends to clarify and simplify its filing rules and to provide greater flexibility in methods of filing (including by electronic means).

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Thomas H. Gabriel, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street NW, Washington, DC 20005-4026
Phone: 202 326-4024
TDD Phone: 800 877-8339
Fax: 202 326-4112

RIN: 1212–AA89

PBGC — **Proposed Rule Stage**

3752. • PAYMENT OF BENEFITS IN PBGC-TRUSTEED PLANS

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 1302(b)(3); 29 USC 1322; 29 USC 1344

CFR Citation: 29 CFR 4022; 29 CFR 4044

Legal Deadline: None

Abstract: When the PBGC assumes trusteeship of a terminated pension plan, it pays benefits to participants pursuant to plan provisions and title IV of ERISA. The PBGC has recently completed a rulemaking that made several changes in how it pays benefits, including giving participants more choices of annuity forms, clarifying (for certain purposes under title IV of ERISA) what it means to be able to "retire" under plan provisions, and adding rules on who will get certain payments the PBGC owes to a participant at the time of death. Final Rule, 67 FR 16950 (April 8, 2002). The PBGC is continuing to explore how to improve its benefit payments rules. This regulation will fill in gaps in the rules, clarify matters that have been handled on a case-by-case basis in the past, and otherwise address issues relating to the determination of guarantee limits and the time, form, and manner of payment.

Timetable:

Action	Date	FR Cite
NPRM	10/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005-4024
Phone: 202 326-4024
TDD Phone: 800 877-8339
Fax: 202 326-4112

RIN: 1212–AA98

3753. ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS; VALUATION OF BENEFITS AND ASSETS

Regulatory Plan: This entry is Seq. No. 151 in part II of this issue of the **Federal Register**.

RIN: 1212–AA55

Pension Benefit Guaranty Corporation (PBGC) — **Final Rule Stage**

3754. ASSESSMENT OF AND RELIEF FROM PENALTIES

Priority: Substantive, Nonsignificant

Legal Authority: 28 USC 2461 note; 29 USC 1302(b)(3); 29 USC 1303(a); 29 USC 1306; 29 USC 1307; 29 USC 1371

CFR Citation: 29 CFR 4003; 29 CFR 4007; 29 CFR 4071

Legal Deadline: None

Abstract: The PBGC has issued a number of policy statements about penalties over the last few years. For the convenience of the public, the PBGC proposes to replace those policy statements with an updated and expanded set of penalty policies codified in its regulations.

Timetable:

Action	Date	FR Cite
NPRM	01/12/01	66 FR 2856
NPRM Comment Period End	03/13/01	
Final Action	11/00/02	
Final Action Effective	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Deborah C. Murphy, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street NW, Washington, DC 20005-4026
Phone: 202 326-4024
TDD Phone: 800 877-8339
Fax: 202 326-4112

RIN: 1212–AA95

Pension Benefit Guaranty Corporation (PBGC) — **Completed Actions**

3755. RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 1302(b)(3)

CFR Citation: 29 CFR 4003

Legal Deadline: None

Abstract: The PBGC amended its administrative review regulation to expedite the appeals process by authorizing a single member of the PBGC's Appeals Board to decide routine appeals.

PBGC — **Completed Actions**

Timetable:

Action	Date	FR Cite
NPRM	03/27/02	67 FR 14663
NPRM Comment Period End	05/28/02	
Final Action	07/22/02	67 FR 47694
Final Action Effective	07/22/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Thomas H. Gabriel, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street NW, Washington, DC 20005-4026
Phone: 202 326-4024
TDD Phone: 800 877-8339
Fax: 202 326-4112

RIN: 1212–AA97

3756. CASH BALANCE PLANS WITH VARIABLE INDICES

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 1301 et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The PBGC is withdrawing this project pending clarification of the rules governing cash balance plans.

Timetable:

Action	Date	FR Cite
Request for Comments	06/06/00	65 FR 41610
Comment Period End	09/22/00	
Withdrawn	11/01/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005-4024
Phone: 202 326-4024
TDD Phone: 800 877-8339
Fax: 202 326-4112

RIN: 1212–AA96

[FR Doc. 02–25639 Filed 12–06–02; 8:45 am]
BILLING CODE 7708–01–S

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Federal Register

Monday,
December 9, 2002

Part XLI

Presidio Trust

Semiannual Regulatory Agenda

PRESIDIO TRUST (PRESIDIO)

PRESIDIO TRUST

36 CFR Ch. X

Semiannual Agenda of Regulations Pursuant to Executive Order 12866

AGENCY: The Presidio Trust.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Presidio Trust (Trust) is a wholly owned Government corporation created by Congress pursuant to title I of the Omnibus Parks and Public Lands Act of 1996, Public Law 104-333, 110 Stat. 4097. The Trust is charged with managing a portion of the former U.S. Army base known as The Presidio of San Francisco, located in San Francisco, California.

This regulatory agenda describes the regulations that the Trust will be proposing, developing, and reviewing between October 1, 2002, and March 31, 2003. This information is published in order to notify the public of the Trust's regulatory activities so that interested persons may participate in the Trust's rulemaking process.

FOR FURTHER INFORMATION CONTACT: For further information about the Trust's regulatory agenda or rulemaking process, contact Karen A. Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129-0052; telephone: 415-561-5300.

Dated: September 24, 2002.

Steven Carp,

Legal Analyst.

Presidio Trust—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3757	Interim Management of the Presidio	3212-AA00
3758	Management of the Presidio	3212-AA01

Presidio Trust (PRESIDIO) — Long-Term Actions

3757. INTERIM MANAGEMENT OF THE PRESIDIO

Priority: Other Significant

Legal Authority: PL 104-333, sec 101 to 106

CFR Citation: 36 CFR 1001; 36 CFR 1002; 36 CFR 1004; 36 CFR 1005

Legal Deadline: None

Abstract: This interim final rule governs the use and management of the area administered by the Presidio Trust. The rule is derived from the National Park Service's (NPS) regulations for managing conduct at the Presidio during the four years when the Presidio was under the NPS's jurisdiction. These regulations cover public use and recreational activities; the protection of natural, cultural, and archeological resources; vehicle and traffic safety; and commercial and private operations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/30/98	63 FR 35694
Interim Final Rule Comment Period End	08/31/98	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Steven Carp, Legal Analyst, Presidio Trust, P.O. Box 29052, 34 Graham Street, San Francisco, CA 94129-0052
Phone: 415 561-5339
Fax: 415 561-5308
Email: scarp@presidiotrust.gov

RIN: 3212–AA00

3758. MANAGEMENT OF THE PRESIDIO

Priority: Other Significant

Legal Authority: PL 104-333, sec 101 to 106; 5 USC 552; 5 USC 552a; 28 USC 2672

CFR Citation: 36 CFR 1001 to 1009

Legal Deadline: None

Abstract: This proposed rule, published in the Federal Register on September 18, 1998, at 63 FR 50024, revises and expands upon the interim final rule adopted when the Presidio was transferred from the National Park Service to the Presidio Trust (Trust). The interim final rule was published on June 30, 1998, and can be found at 63 FR 35694. These proposed rules cover general provisions (part 1001); public use and recreational activities and protection of natural, cultural, and archeological resources (part 1002); vehicle and traffic safety (part 1003); and commercial operations (part 1004) and have been revised to be consistent with existing regulations, conform with laws in neighboring jurisdictions, and simplify the language and organization of the regulations. The remaining proposed regulations address rights-of-way (part 1005); Presidio Trust symbols (part 1006); requests under the Freedom of Information and Privacy Acts (parts 1007 and 1008); and administrative claims under the Federal Tort Claims Act (part 1009).

By notice published on January 19, 1999, in the Federal Register at 64 FR 2870, the Trust held in abeyance until further notice a portion of the proposed rules: 36 CFR 1001, 1002, 1003, 1004, and 1006. Any future action on these rules will be noticed in the Federal Register and subject to additional public comment. In the interim, the Trust's final interim regulations at 36 CFR 1001, 1002, 1004, and 1005 remain in effect. The public comment period for proposed rule 36 CFR 1005 closed on January 8, 1999. Public comment on the remaining proposed rules, 36 CFR 1007, 1008, and 1009, closed on November 17, 1998, and the Trust issued final regulations on December 30, 1998, effective January 29, 1999. These regulations can be found at 63 FR 71771.

PRESIDIO — Long-Term Actions

Timetable:

FOIA; Privacy Act; Federal Tort Claims Act
NPRM 09/18/98 (63 FR 50024)
NPRM Comment Period End 11/17/98 (63 FR 50024)
Final Action 12/30/98 (63 FR 71771)
Final Action Effective 01/29/99 (63 FR 71771)

General; Resource Protection; Traffic Safety; Comm. Operations
NPRM 09/18/98 (63 FR 50024)
NPRM Comment Period End 11/17/98 (63 FR 50024)
Comment Period Extended to 01/08/99 (63 FR 64023)
Partial Abeyance of Proposed Rule 01/19/99 (64 FR 2870)
Further Action To Be Determined

Rights-of-Way
NPRM 09/18/98 (63 FR 50024)
NPRM Comment Period End 11/17/98 (63 FR 50024)
Comment Period Extended to 01/08/99 (63 FR 64023)
Final Action To Be Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Steven Carp, Legal Analyst, Presidio Trust, P.O. Box 29052, 34 Graham Street, San Francisco, CA 94129-0052
Phone: 415 561-5339
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Email: scarp@presidiotrust.gov

RIN: 3212–AA01

[FR Doc. 02–25204 Filed 12–06–02; 8:45 am]

BILLING CODE 4310–4R–S

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Monday,
December 9, 2002

Part XLII

Railroad Retirement Board

Semiannual Regulatory Agenda

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RAILROAD RETIREMENT BOARD (RRB)

RAILROAD RETIREMENT BOARD

20 CFR Ch. II

Semiannual Agenda of Regulations Under Development or Review

AGENCY: Railroad Retirement Board.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda contains lists of regulations that the Board is developing or proposes to develop in the next 12 months and regulations that are scheduled to be reviewed in that period.

ADDRESSES: 844 North Rush Street, Chicago, Illinois 60611-2092.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, Office of General Counsel, Railroad Retirement Board, (312) 751-4945, FAX (312) 751-7102, TDD (312) 751-4701.

SUPPLEMENTARY INFORMATION: For this edition of the Railroad Retirement Board's regulatory agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Regulatory Plan entries are listed in the Table of Contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

Regulations that are routine in nature or pertain solely to internal agency management have not been included in the agenda.

Dated: September 13, 2002.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

Railroad Retirement Board—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3759	Employers' Contributions and Contribution Reports	3220-AB53
3760	Application for Annuity or Lump Sum **(Reg Plan Seq No. 152)**	3220-AB55
3761	Account Benefits Ratio **(Reg Plan Seq No. 153)**	3220-AB56
3762	Electronic Filing of Applications and Claims for Benefits Under the Railroad Unemployment Insurance Act	3220-AB57

References in boldface appear in the **Regulatory Plan** in part II of this issue of the **Federal Register**.

Railroad Retirement Board—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3763	Reduction and Non-Payment of Annuities by Reason of Work	3220-AA61
3764	Determining Disability	3220-AA99
3765	Requests for Reconsideration and Appeals Within the Board **(Reg Plan Seq No. 154)**	3220-AB03
3766	Freedom of Information Act Requests	3220-AB47
3767	Appendix 1 to Part 220—Listing of Impairments	3220-AB51
3768	Retirement Age	3220-AB54

References in boldface appear in the **Regulatory Plan** in part II of this issue of the **Federal Register**.

Railroad Retirement Board—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3769	Creditable Railroad Compensation	3220-AB23
3770	Determining Disability	3220-AB50

Railroad Retirement Board—Completed Actions

Sequence Number	Title	Regulation Identification Number
3771	Application for Annuity or Lump Sum	3220-AB46

Railroad Retirement Board (RRB) — **Proposed Rule Stage**

3759. EMPLOYERS' CONTRIBUTIONS AND CONTRIBUTION REPORTS

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 345 362(l)

CFR Citation: 20 CFR 345.202 to 204

Legal Deadline: None

Abstract: The Railroad Retirement Board amends sections 345.202 to 204 of 20 CFR part 345 to explain the effective date of consolidated employer records that result in the issuance of a joint contribution rate under the "experience rating" provisions of section 8 of the Railroad Unemployment Insurance Act. The amendment also incorporates a nomenclature change due to a recent agency reorganization.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092
Phone: 312 751-4945
TDD Phone: 312 751-4701
Fax: 312 751-7102

RIN: 3220–AB53

3760. • APPLICATION FOR ANNUITY OR LUMP SUM

Regulatory Plan: This entry is Seq. No. 152 in part II of this issue of the **Federal Register**.

RIN: 3220–AB55

3761. • ACCOUNT BENEFITS RATIO

Regulatory Plan: This entry is Seq. No. 153 in part II of this issue of the **Federal Register**.

RIN: 3220–AB56

3762. • ELECTRONIC FILING OF APPLICATIONS AND CLAIMS FOR BENEFITS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 355; 45 USC 362(l)

CFR Citation: 20 CFR 321

Legal Deadline: None

Abstract: The Railroad Retirement Board amends its regulations to add a new part 321 to permit the electronic filing of applications and claims under the Railroad Unemployment Insurance Act via the Internet in accordance with the provisions of the Government Paperwork Elimination Act.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092
Phone: 312 751-4945
TDD Phone: 312 751-4701
Fax: 312 751-7102

RIN: 3220–AB57

Railroad Retirement Board (RRB) — **Final Rule Stage**

3763. REDUCTION AND NON-PAYMENT OF ANNUITIES BY REASON OF WORK

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 231f(b)(5)

CFR Citation: 20 CFR 230

Legal Deadline: None

Abstract: The Railroad Retirement Board amends 20 CFR part 230 to reflect the changes in law made by the enactment of Public Law 106-182, the Senior Citizens' Freedom to Work Act of 2000.

Timetable:

Action	Date	FR Cite
NPRM	08/16/95	60 FR 42482
NPRM Comment Period End	09/25/95	60 FR 43999
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092
Phone: 312 751-4945
TDD Phone: 312 751-4701
Fax: 312 751-7102

RIN: 3220–AA61

3764. DETERMINING DISABILITY

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 231a; 45 USC 231f

CFR Citation: 20 CFR 220.114

Legal Deadline: None

Abstract: The Railroad Retirement Board amends title 20 CFR 220.114 to expand the Board's description of the manner in which symptoms, including pain, are evaluated for purposes of determining disability.

Timetable:

Action	Date	FR Cite
NPRM	09/11/95	60 FR 47122
NPRM Comment Period End	11/13/95	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092
Phone: 312 751-4945
TDD Phone: 312 751-4701
Fax: 312 751-7102

RIN: 3220–AA99

RRB — Final Rule Stage

3765. REQUESTS FOR RECONSIDERATION AND APPEALS WITHIN THE BOARD

Regulatory Plan: This entry is Seq. No. 154 in part II of this issue of the Federal Register.

RIN: 3220–AB03

3766. FREEDOM OF INFORMATION ACT REQUESTS

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 231f(b)(5); 45 USC 362; 5 USC 552

CFR Citation: 20 CFR 200.4

Legal Deadline: None

Abstract: The Railroad Retirement Board amends 20 CFR 200.4 to direct all Freedom of Information Act requests to the Board's General Counsel, and to extend the time within which responses may be made from 10 to 20 working days as provided by the Freedom of Information Act.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092
Phone: 312 751-4945
TDD Phone: 312 751-4701
Fax: 312 751-7102

RIN: 3220–AB47

3767. APPENDIX 1 TO PART 220—LISTING OF IMPAIRMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 231a; 45 USC 231f

CFR Citation: 20 CFR 220.110; 20 CFR 220, app 1

Legal Deadline: None

Abstract: The Railroad Retirement Board amends 20 CFR 220.110 and appendix 1—Listing of Impairments, to conform the medical criteria that apply to disability determinations to the medical criteria in the Social Security Administration's regulations (20 CFR 404, subpart P, appendix 1).

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092
Phone: 312 751-4945
TDD Phone: 312 751-4701
Fax: 312 751-7102

RIN: 3220–AB51

3768. RETIREMENT AGE

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 231f(b)(5)

CFR Citation: 20 CFR 218; 20 CFR 220; 20 CFR 225

Legal Deadline: None

Abstract: The Railroad Retirement Board amends title 20 CFR sections 218, 220, and 225, to update references in those sections to the "age" required for annuity eligibility to reflect changes to full retirement age under the Railroad Retirement Act.

Timetable:

Action	Date	FR Cite
NPRM	06/17/02	67 FR 41205
NPRM Comment Period End	08/16/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092
Phone: 312 751-4945
TDD Phone: 312 751-4701
Fax: 312 751-7102

RIN: 3220–AB54

Railroad Retirement Board (RRB) — Long-Term Actions

3769. CREDITABLE RAILROAD COMPENSATION

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 231f

CFR Citation: 20 CFR 211.3

Legal Deadline: None

Abstract: The RRB amends its regulations regarding the creditability of pay for time lost to prohibit the crediting of pay for time lost beyond the date of a judgment or settlement, or in the absence of a judgment or settlement, beyond the date of payment. The Labor Member of the RRB dissents from this proposal and recommends allowing the crediting of pay for time lost in these circumstances when the accompanying railroad retirement taxes are paid on the compensation.

Timetable:

Action	Date	FR Cite
NPRM	12/04/97	62 FR 61488
NPRM Comment Period End	02/02/98	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092
Phone: 312 751-4945
TDD Phone: 312 751-4701
Fax: 312 751-7102

RIN: 3220–AB23

3770. DETERMINING DISABILITY

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 231a; 45 USC 231f

CFR Citation: 20 CFR 220.143; 20 CFR 220.170

Legal Deadline: None

Abstract: The Railroad Retirement Board amends 20 CFR sections 220.143 and 220.170 to index the amount of earnings used to determine if an individual is engaged in substantial gainful activity (SGA) to any increase in the Social Security national average wage index, and to increase (from $200 to $530) the minimum amount of monthly earnings to count during a trial work period, and then to index that amount to the Social Security national average wage index.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092
Phone: 312 751-4945
TDD Phone: 312 751-4701
Fax: 312 751-7102

RIN: 3220–AB50

RRB — Long-Term Actions

Railroad Retirement Board (RRB) — Completed Actions

3771. APPLICATION FOR ANNUITY OR LUMP SUM

Priority: Substantive, Nonsignificant

CFR Citation: 20 CFR 217.9; 20 CFR 217.30

Completed:

Reason	Date	FR Cite
Final Rule	06/25/02	67 FR 42713
Final Action Effective	06/25/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo
Phone: 312 751-4945
TDD Phone: 312 751-4701
Fax: 312 751-7102

RIN: 3220–AB46

[FR Doc. 02–24258 Filed 12–06–02; 8:45 am]

BILLING CODE 7905–01–S

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Federal Register

Monday,
December 9, 2002

Part XLIII

Selective Service System

Semiannual Regulatory Agenda

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SELECTIVE SERVICE SYSTEM (SSS)

SELECTIVE SERVICE SYSTEM

32 CFR Ch. XVI

Regulatory Agenda

AGENCY: Selective Service System.

ACTION: Semiannual regulatory agenda.

SUMMARY: The purpose of this agenda is to report the proposed rulemaking activities of the Selective Service System that might affect the processing of registrants under the Military Selective Service Act (50 U.S.C. App. 451 *et seq.*). This information will allow the public to participate in the System's decisionmaking at an early stage.

FOR FURTHER INFORMATION CONTACT: Rudy G. Sanchez, Jr., Office of the General Counsel, Selective Service System, 1515 Wilson Boulevard, Arlington, Virginia 22209-2425; Telephone (703) 605-4012.

SUPPLEMENTARY INFORMATION: The agenda is published in accordance with the requirements of Executive Order 12866. Selective Service regulations appear in 32 CFR chapter XVI.

Dated: August 28, 2002.

Alfred Rascon,

Director of Selective Service System.

Selective Service System—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3772	Selective Service Regulations	3240-AA01

Selective Service System (SSS) — **Long-Term Actions**

3772. SELECTIVE SERVICE REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 451 et seq, Military Selective Service Act

CFR Citation: 32 CFR ch XVI

Legal Deadline: None

Abstract: Various sections of 32 CFR chapter XVI will be revised to increase clarity of expression or change procedures for registrant processing.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Rudy G. Sanchez Jr., Legal Affairs Officer, Selective Service System, 5th Floor, Office of General Counsel, 1515 Wilson Boulevard, Arlington, VA 22209-2425
Phone: 703 605-4012
Fax: 703 605-4006
Email: rsanchez@sss.gov

RIN: 3240–AA01

[FR Doc. 02–23894 Filed 12–06–02; 8:45 am]

BILLING CODE 8015–01–S



Federal Register

Monday,
December 9, 2002

Part XLIV

Small Business Administration

Semiannual Regulatory Agenda

SMALL BUSINESS ADMINISTRATION (SBA)

SMALL BUSINESS ADMINISTRATION

13 CFR Ch. I

Improving Government Regulations; Semiannual Regulatory Agenda

AGENCY: Small Business Administration (SBA).

ACTION: Semiannual regulatory agenda.

SUMMARY: The entries below represent SBA's 47th semiannual regulatory agenda (agenda). SBA drafted the agenda to meet both the criteria and the spirit of the regulatory review process. SBA publishes this agenda pursuant to Executive Order 12866 and the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

FOR FURTHER INFORMATION CONTACT: For further information on agenda items, SBA encourages the public to contact the individual agency official referenced in each entry. For information concerning SBA's overall Regulatory Review and Development Program or general semiannual agenda questions, contact Martin S. Conrey, Acting Assistant General Counsel for Legislation and Regulations, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, (202) 619-0638.

SUPPLEMENTARY INFORMATION: SBA's semiannual regulatory agenda is designed to increase public knowledge of SBA's anticipated regulatory activities. Publication may encourage increased public participation in the regulatory review and development process.

SBA's agenda is divided into three parts. Part I, Proposed Rules, includes those rules that are likely to be proposed during the next 12 months. Part II, Final Rules, includes proposed rules that will probably be finalized during the agenda period. Part III, Completed Actions, includes regulations completed or withdrawn and any reviews completed since the preceding agenda.

Publication of the agenda does not impose any binding obligation on SBA with regard to any specific item. Moreover, regulatory actions not listed in the agenda are not precluded. SBA regulations are developed in a manner that promotes economic growth without imposing unnecessary regulatory burdens on the public.

For this edition of SBA's regulatory agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Regulatory Plan entries are listed in the table of contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

Hector V. Barreto,
Administrator.

Small Business Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3773	Surety Bond Guarantee	3245-AE13
3774	Development Company Loan (504) Program Changes	3245-AE41

Small Business Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3775	Supplemental Standards of Ethical Conduct for Employees of the Small Business Administration	3245-AC96
3776	Disclosure of Information Regulations; Subpart B	3245-AE03
3777	Small Business Development Centers (SBDC) Program Revisions	3245-AE05
3778	Small Business Lending Companies Regulations **(Reg Plan Seq No. 155)**	3245-AE14
3779	8(a) Business Development/Program Improvement and Technical Amendments	3245-AE38
3780	SDB Certification and Eligibility—Program Improvement and Technical Amendments	3245-AE47
3781	Small Business Investment Companies—Civil Penalties for Late Submission of Required Reports	3245-AE69
3782	Small Business Investment Companies—Amendment Under the Small Business Reauthorization Act of 2000	3245-AE70
3783	Small Business Size Regulations; Small Business Innovation Research Program	3245-AE76
3784	SBIC—Maximum Leverage Eligibility	3245-AE79
3785	Small Business Size Standards; Surety Bond Guarantee Program	3245-AE81
3786	Business Loans and Development Company Loans; Applications by Certified Development Companies (CDCs) for Liquidation and Litigation Authority/Uniform Liquidation and Litigation Procedures	3245-AE83
3787	Business Loans and Development Company Loans; Premier Certified Lender Program (PCLP)	3245-AE87
3788	Small Business Size Regulations: Rules of Procedure Governing Cases Before the Office of Hearings and Appeals	3245-AE92
3789	Record Disclosure and Privacy; The Electronic Freedom of Information Act Amendments of 1996	3245-AE94
3790	Small Business Technology Transfer Program Policy Directive	3245-AE96
3791	Small Business Size Standards; Tour Operators	3245-AE98
3792	Small Business Size Standards; New Car Dealers	3245-AF01
3793	Small Business Size Standards; Job Corp Centers	3245-AF02

References in boldface appear in the **Regulatory Plan** in part II of this issue of the **Federal Register**.

SBA

Small Business Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3794	Administrative Wage Garnishment and Administrative Offset	3245-AE50
3795	Size Standards: Inflation Adjustment	3245-AE56
3796	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs or Activities Receiving Federal Financial Assistance	3245-AE59
3797	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	3245-AE61
3798	HUBZone Empowerment Contracting Program **(Reg Plan Seq No. 156)**	3245-AE66
3799	Business Loans and Development Company Loans 2000 Act Changes	3245-AE68
3800	Small Business Size Standards; Testing Laboratories	3245-AE78
3801	Small Business Size Standards; Information Technology Value Added Resellers	3245-AE80
3802	Small Business Size Regulation; Petroleum Refineries	3245-AE84
3803	Small Business Size Standards; Forest Fire Suppression and Fuels Management Services	3245-AE89
3804	New Markets Venture Capital Program; Amendments	3245-AE91
3805	Disaster Loan Program—Disaster Mitigation Act of 2000	3245-AE97

References in boldface appear in the **Regulatory Plan** in part II of this issue of the **Federal Register**.

Small Business Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
3806	Pre-Disaster Mitigation Loan Program Amendments	3245-AE44
3807	Small Business Size Regulation; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals	3245-AE71
3808	Small Business Innovation Research (SBIR) Program Policy Directive	3245-AE72
3809	Small Business Investment Companies	3245-AE88
3810	Small Business Size Regulation; Travel Agencies Affected by September 11, 2001	3245-AE93
3811	Small Business Size Standards; Travel Agencies	3245-AE95
3812	Small Business Size Standards; Adoption of 2002 North American Industry Classification System for Size Standards	3245-AF00

Small Business Administration—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
3245-AE57	Size Standards: Subcontracting Size Standards	08/06/2002	Merged With RIN 3245-AE92
3245-AE99	Small Business Size Standards; Size Standards by 2002 North American Industry Classification System	10/17/2002	Withdrawn

Small Business Administration (SBA) — Prerule Stage

3773. SURETY BOND GUARANTEE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC app 3; 15 USC 687b; 15 USC 694b; PL 105-135; 15 USC 687c; 15 USC 694a

CFR Citation: 13 CFR 115

Legal Deadline: None

Abstract: SBA is considering revising program regulations to include policy and procedural modifications. Planned regulatory changes would pertain to both the Prior Approval and the Preferred Surety Bond programs.

Timetable:

Action	Date	FR Cite
ANPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dionne Neal, Acting AA, Office of Surety Guarantees, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6549

RIN: 3245–AE13

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SBA — Prerule Stage

3774. DEVELOPMENT COMPANY LOAN (504) PROGRAM CHANGES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 695

CFR Citation: 13 CFR 120

Legal Deadline: None

Abstract: The Office of Financial Assistance proposes to publish an Advanced Notice of Proposed Rulemaking to solicit opinions regarding our intention to propose a regulation to consider 504 program changes including a better definition of "local economic development" and the organizational and program requirements Certified Development Companies (CDCs) must satisfy in order to be in compliance with this concept and whether CDCs should be allowed to establish entities to participate as 7(a) lenders. As part of the regulation, for-profit CDCs' organizational requirements will be dealt with specifically to ensure that they are in compliance with the congressional intent for the program.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Gail Hepler, Chief, 504 Branch, Small Business Administration, Room 804, 409 Third Street SW, Washington, DC 20416
Phone: 202 653-7530

RIN: 3245–AE41

Small Business Administration (SBA) — Proposed Rule Stage

3775. SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE SMALL BUSINESS ADMINISTRATION

Priority: Other Significant

Legal Authority: 15 USC 684; 15 USC 637(a)(18); 15 USC 637(a)(19); EO 12674

CFR Citation: 5 CFR 5400

Legal Deadline: None

Abstract: The SBA and the Office of Government Ethics (OGE) are jointly issuing this rule, which is designed to establish uniform standards of ethical conduct for the officers and employees of the SBA. The rule will be published at 5 CFR chapter XLIV and will supplement the Standards of Ethical Conduct for Employees of the executive branch issued by the OGE (57 FR 35006; August 7, 1992). The rule is necessary to supplement the standards issued by OGE because it addresses ethical issues that are unique to SBA.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Robinson S. Nunn, Chief Counsel for Ethics, Small Business Administration, 409 Third Street SW, 7th Floor, Washington, DC 20416
Phone: 202 205-6642

RIN: 3245–AC96

3776. DISCLOSURE OF INFORMATION REGULATIONS; SUBPART B

Priority: Substantive, Nonsignificant

Legal Authority: PL 104-231; 5 USC 552

CFR Citation: 13 CFR 102

Legal Deadline: None

Abstract: This proposed regulation will amend 13 CFR 102, amendments to subpart B "The Privacy Act" (PA). This action proposes to add new routine disclosures, correct the definition of "system of records," require identification of requestors, clarify when lack of social security number can cause benefit denial, and provide for one free copy of an official personnel file.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Lisa Babcock, Chief, Freedom of Information Act Office, Small Business Administration, Room 2441, 409 Third Street SW, Washington, DC 20416
Phone: 202 401-8200
Fax: 202 205-7059
Email: lisa.babcock@sba.gov

RIN: 3245–AE03

3777. SMALL BUSINESS DEVELOPMENT CENTERS (SBDC) PROGRAM REVISIONS

Priority: Other Significant

Legal Authority: 15 USC 634(b)(6); 15 USC 648

CFR Citation: 13 CFR 130

Legal Deadline: None

Abstract: SBA is revising its SBDC regulations to reflect statutory and other changes. The proposed regulation incorporates provisions from Public Law 103-403, enacted on October 22, 1994; Public Law 104-208, enacted on September 30, 1996; and Public Law 105-135, enacted on December 2, 1997. This regulation will bring SBA into compliance with the statutory requirements for due process procedures in termination of Small Business Development lead centers. In addition, the funding formulas will be updated and the use of appropriated funds for administration of the program will be aligned with the statutory requirements.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Johnnie L. Albertson, AA/SBDCs, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6766

RIN: 3245–AE05

SBA — Proposed Rule Stage

3778. SMALL BUSINESS LENDING COMPANIES REGULATIONS

Regulatory Plan: This entry is Seq. No. 155 in part II of this issue of the Federal Register.

RIN: 3245–AE14

3779. 8(A) BUSINESS DEVELOPMENT/PROGRAM IMPROVEMENT AND TECHNICAL AMENDMENTS

Priority: Other Significant

Legal Authority: 15 USC 631

CFR Citation: 13 CFR 124

Legal Deadline: None

Abstract: This rule will make technical corrections and clarifying amendments to the 8(a) regulations. Among other things, the rule will clarify: The mentor/protege program, who will be considered socially disadvantaged, who will be considered economically disadvantaged, and the provision requiring firms to make substantial and sustained efforts to attain the targeted levels of non-8(a) revenue established in their business plans as it applies only to firms in the developmental stage of program participation. The rule will also give SBA the discretion to permit a disadvantaged individual to meet the full-time devotion requirement and prohibit tribes from being majority owner of more than on 8(a) concern in the same or similar line of business. The rule will set forth the procedures for terminations and early graduations and amend the rules governing Federal surplus property. The rule will clarify what criteria an 8(a) participant must meet in order to be considered eligible for a sole source 8(a) contract. Part 124 will also be amended to include certain new policies and procedures.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Luz Hopewell, Associate Administrator for Business Development, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6412

RIN: 3245–AE38

3780. SDB CERTIFICATION AND ELIGIBILITY—PROGRAM IMPROVEMENT AND TECHNICAL AMENDMENTS

Priority: Other Significant

Legal Authority: 15 USC 634(b)(6); 15 USC 636(j); 15 USC 637(a); 15 USC 637(d); PL 99-661; PL 100-656, sec 1207; PL 101-37; PL 101-574; 42 USC 9815

CFR Citation: 13 CFR 124; 13 CFR 134

Legal Deadline: None

Abstract: Program improvements and technical amendments to clarify regulations governing the SDB program. The proposed changes clarify requirements, enhance customer service, and correct omissions. For example: A procedure for recertifying eligible firms is established; circumstances under which SBA may reevaluate determinations made by Private Certifiers is broadened; provisions are made to prevent loss of SDB certification by a subcontractor following award of a contract; and stipulations are made requiring contracting officers to forward protests to SBA for determination of merit.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Luz Hopewell, Associate Administrator for Business Development, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6412

RIN: 3245–AE47

3781. SMALL BUSINESS INVESTMENT COMPANIES—CIVIL PENALTIES FOR LATE SUBMISSION OF REQUIRED REPORTS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 681 et seq; 15 USC 683; 15 USC 687(c); 15 USC 687b; 15 USC 687d; 15 USC 687g; 15 USC 687m; 15 USC 662

CFR Citation: 13 CFR 107

Legal Deadline: None

Abstract: This rule will provide for the imposition of civil penalties on small business investment companies that fail to file required reports by the applicable due date.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeffrey D. Pierson, Associate Administrator for Investment, Small Business Administration, 409 Third Street SW, Suite 6300, Washington, DC 20416
Phone: 202 205-6510
Fax: 202 205-6959

RIN: 3245–AE69

3782. SMALL BUSINESS INVESTMENT COMPANIES—AMENDMENT UNDER THE SMALL BUSINESS REAUTHORIZATION ACT OF 2000

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 681 et seq; 15 USC 683; 15 USC 687(c); 15 USC 687b; 15 USC 687d; 15 USC 687g; 15 USC 687m; PL 106-554

CFR Citation: 13 CFR 107

Legal Deadline: None

Abstract: The Small Business Reauthorization Act of 2000 made a number of changes to the Small Business Investment Act of 1958, as amended. For the Small Business Investment Companies (SBIC) Program, the changes include provisions effecting the definition of "long-term financing," the timing of permitted tax distributions by SBICs, and the establishment of subsidy fees to be paid by SBICs. This rule will incorporate these changes.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jeffrey D. Pierson, Associate Administrator for Investment, Small Business Administration, 409 Third Street SW, Suite 6300, Washington, DC 20416
Phone: 202 205-6510
Fax: 202 205-6959

RIN: 3245–AE70

SBA

Proposed Rule Stage

3783. SMALL BUSINESS SIZE REGULATIONS; SMALL BUSINESS INNOVATION RESEARCH PROGRAM

Priority: Other Significant

Legal Authority: 15 USC 632(a)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This rule will allow wholly owned subsidiaries to be eligible for Small Business Innovation Research funding agreements. Current regulations limit the eligibility of the program to businesses owned by individuals.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6618

RIN: 3245–AE76

3784. SBIC—MAXIMUM LEVERAGE ELIGIBILITY

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 662; 15 USC 681 et seq; 15 USC 683; 15 USC 687(c); 15 USC 687b; 15 USC 687d; 15 USC 687g; 15 USC 687m

CFR Citation: 13 CFR 107

Legal Deadline: None

Abstract: This rule will implement a provision of the New Markets Venture Capital Program Act of 2000 that allows small business investment companies to be eligible for additional Government leverage based on their investments in low-income areas.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeffrey D. Pierson, Associate Administrator for Investment, Small Business Administration, 409 Third Street SW, Suite 6300, Washington, DC 20416
Phone: 202 205-6510
Fax: 202 205-6959

RIN: 3245–AE79

3785. SMALL BUSINESS SIZE STANDARDS; SURETY BOND GUARANTEE PROGRAM

Priority: Other Significant

Legal Authority: 15 USC 632(a)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This rule will revise the size standard applicable to construction and service companies seeking assistance under SBA's Surety Bond Guarantee Program. Changes in the program and economic trends support an increase to the current $6 million size standard.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6618

RIN: 3245–AE81

3786. BUSINESS LOANS AND DEVELOPMENT COMPANY LOANS; APPLICATIONS BY CERTIFIED DEVELOPMENT COMPANIES (CDCS) FOR LIQUIDATION AND LITIGATION AUTHORITY/UNIFORM LIQUIDATION AND LITIGATION PROCEDURES

Priority: Other Significant

Legal Authority: 15 USC 634(b)(6); 15 USC 636(a); 15 USC 636(h); 15 USC 697(a)(2)

CFR Citation: 13 CFR 120

Legal Deadline: None

Abstract: This proposed rule would implement statutory provisions that give some Certified Development Companies (CDCs) authority to handle liquidation and litigation of loans that are funded with the proceeds of debentures guaranteed by the SBA under the 504 loan program. It also proposes uniform liquidation and litigation procedures for authorized CDCs and for lenders participating in the 7(a) business loan program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Hammersley, Director, Office of Loan Policy, Small Business Administration, 8th Floor, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6490

RIN: 3245–AE83

3787. BUSINESS LOANS AND DEVELOPMENT COMPANY LOANS; PREMIER CERTIFIED LENDER PROGRAM (PCLP)

Priority: Other Significant

Legal Authority: 15 USC 634(b)(6); 15 USC 636(a); 15 USC 636(h); 15 USC 696(3); 15 USC 697(a)(2)

CFR Citation: 13 CFR 120

Legal Deadline: None

Abstract: This proposed rule will identify certain Premier Certified Lenders Program participation requirements and various policies and procedures designed to ensure the program is properly administered, managed, and controlled.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Thomas, Director, Program Development, Small Business Administration, Office of Financial Assistance, 409 Third Street SW, 8th Floor, Washington, DC 20416
Phone: 202 205-6656

RIN: 3245–AE87

3788. SMALL BUSINESS SIZE REGULATIONS: RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-135, sec 601 et seq, 111 Stat 2592; 15 USC 632(a); 15 USC 634(b)(6); 15 USC 637(a); 15 USC 644(c); 15 USC 662(5); PL 102-486, 106 Stat 2776, 3133

CFR Citation: 13 CFR 121

Legal Deadline: None

SBA

Proposed Rule Stage

Abstract: The rule will amend SBA's Small Business Size Regulations and the regulations applying to appeals of size determinations. The rule will further amend the definitions of affiliation, annual receipts, and employees. It will also make procedural and technical changes to cover new programs such as SBA's HUBZone program and the Governmentwide Small Disadvantaged Business Program. The proposed rule will codify several long-standing precedents of SBA's Office of Hearing and Appeals and will clarify the jurisdiction of that office. Further, the rule will amend all references in part 134 from the Standard Industrial Classification code to the North American Industry Classification System (NAICS) code because on October 1, 2000, SBA converted to NAICS.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	11/12/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lisa Babcock, Chief, Freedom of Information Act Office, Small Business Administration, Room 2441, 409 Third Street SW, Washington, DC 20416
Phone: 202 401-8200
Fax: 202 205-7059
Email: lisa.babcock@sba.gov

RIN: 3245–AE94

3789. RECORD DISCLOSURE AND PRIVACY; THE ELECTRONIC FREEDOM OF INFORMATION ACT AMENDMENTS OF 1996

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552

CFR Citation: 13 CFR 102, subpart A

Legal Deadline: None

Abstract: The Electronic Freedom of Information Act Amendments of 1996 made several changes. The amended regulations will implement those changes, making more information available electronically, allowing more time to respond to requests, increasing processing fees, etc.

Timetable:

Action	Date	FR Cite
NPRM	09/11/02	67 FR 57539

3790. SMALL BUSINESS TECHNOLOGY TRANSFER PROGRAM POLICY DIRECTIVE

Priority: Other Significant

Legal Authority: 15 USC 638

CFR Citation: None

Legal Deadline: None

Abstract: This policy directive proposes to incorporate recently enacted statutory requirements. The purpose of the directive is to provide guidance to participating Federal agencies for the general conduct of the Small Business Technology Transfer Program.

Timetable:

Action	Date	FR Cite
Notice of Proposed Policy Directive	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Maurice Swinton, Assistant Administrator for Technology, Small Business Administration, Office of Government Contracting/Business Development, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6450

RIN: 3245–AE96

3791. • SMALL BUSINESS SIZE STANDARDS; TOUR OPERATORS

Priority: Other Significant

Legal Authority: 15 USC 632(a)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This rule proposes to modify how SBA calculates the size of a tour operator for determining small business eligibility. SBA uses gross receipts from all sources to measure the size of a business, except for a limited number of industries. This rule calculates the size of a tour operator based only on commissions and fees.

Timetable:

Action	Date	FR Cite
NPRM	10/02/02	67 FR 61829
NPRM Comment Period End	11/01/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6618

RIN: 3245–AE98

3792. • SMALL BUSINESS SIZE STANDARDS; NEW CAR DEALERS

Priority: Other Significant

Legal Authority: 15 USC 632(a)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This rule will revise the small business size standard for the New Car Dealer industry. Changes in the industry over the last 10 years indicate that a size standard review of the current $24.5 million is warranted.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6618

RIN: 3245–AF01

SBA — **Proposed Rule Stage**

3793. • SMALL BUSINESS SIZE STANDARDS; JOB CORP CENTERS

Priority: Other Significant

Legal Authority: 15 USC 632(a)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This rule will establish a size standard for management and operation of a Federal Job Corp Center. The activities of operating a Job Corp Center include training, counseling, outreach, food services, lodging, facilities maintenance, and general management.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6618

RIN: 3245–AF02

Small Business Administration (SBA) — **Final Rule Stage**

3794. ADMINISTRATIVE WAGE GARNISHMENT AND ADMINISTRATIVE OFFSET

Priority: Other Significant

Legal Authority: 5 USC 504; 15 USC 632; 15 USC 634(b)(6); 15 USC 637(a); 31 USC 3711; 31 USC 3720; 31 USC 3716

CFR Citation: 13 CFR 134; 13 CFR 140

Legal Deadline: None

Abstract: SBA is issuing a rule adopting administrative wage garnishment and administrative offset regulations to implement the Debt Collection Improvement Act of 1996. The rule would allow SBA to garnish the wages of a person indebted to the United States for any non-tax debt without first obtaining a judgment. The debtor generally would be entitled to a hearing before an appropriate official. The proposed rule would also include administrative offset and other remedies to comply with Treasury directives.

Timetable:

Action	Date	FR Cite
NPRM	06/27/00	65 FR 39567
NPRM Comment Period End	08/28/00	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Arnold Rosenthal, Assistant Administrator for Portfolio Management, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6481

RIN: 3245–AE50

3795. SIZE STANDARDS: INFLATION ADJUSTMENT

Priority: Other Significant

Legal Authority: 15 USC 632(a); 15 USC 634(b)(6)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This final rule adjusts SBA's receipt-based size standards for inflation since the last time they were adjusted in 1994.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/23/02	67 FR 3041
Interim Final Rule Comment Period End	02/22/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6618

RIN: 3245–AE56

3796. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 13 CFR 112; 13 CFR 113; 13 CFR 117

Legal Deadline: None

Abstract: The Department of Justice proposes that 24 Federal agencies jointly issue amendments to their regulations implementing title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition "program or activity" to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRRA's definition of "program or activity" and "program" into the Agency's title VI, section 504, and Age Discrimination Act regulations.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/06/01	
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Carol L. Walker, Director, Office of Civil Rights Compliance, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6750

RIN: 3245–AE59

SBA — **Final Rule Stage**

3797. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

Legal Authority: EO 12549 (3 CFR, 1986 Comp, p 189); EO 11738 (3 CFR, 1973 Comp, p 799); EO 12689 (3 CFR, 1989 Comp, p 235); Drug Free Workplace Act of 1988, sec 5151 to 5160; PL 100-690, title V, subtitle D; 41 USC 701 et seq; 15 USC 634(b)(6); 5 USC 301 et seq; 15 USC 631 et seq; PL 103-355, sec 2455, 108 Stat 3327 (31 USC 6160 note)

CFR Citation: 13 CFR 145

Legal Deadline: None

Abstract: This amendment proposes substantive changes and amendments to the Governmentwide nonprocurement common rule for debarment and suspension and the Governmentwide rule for implementing the Drug-Free Workplace Act of 1988. This amendment also proposes optional lower tier suspension and debarment coverage by including paragraph 145.220(d) for all contracts that equal or exceed the $25,000 award threshold under SBA nonprocurement transactions.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/25/02	
Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Michael Campilongo, Attorney Advisor, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6879

RIN: 3245–AE61

3798. HUBZONE EMPOWERMENT CONTRACTING PROGRAM

Regulatory Plan: This entry is Seq. No. 156 in part II of this issue of the Federal Register.

RIN: 3245–AE66

3799. BUSINESS LOANS AND DEVELOPMENT COMPANY LOANS 2000 ACT CHANGES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 634(b)(6); 15 USC 636(a); 15 USC 636(h); 15 USC 696(3); 15 USC 697(a)(2)

CFR Citation: 13 CFR 120

Legal Deadline: None

Abstract: Recently enacted statutory amendments require changes to SBA rules concerning loan guaranty and loan amounts, minimum guaranteed dollar amount of 7(a) loans, percentages of financing which can be guaranteed by SBA, guarantee fees paid by lenders, real estate occupancy rules, and borrower prepayment penalties. This direct final rule would implement the statutory provisions. This Direct Final Rule was withdrawn due to the possibility that SBA would receive an adverse comment concerning SBA's interpretation of the statutory language. SBA is redrafting a new Direct Final Rule.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/14/01	66 FR 56985
Direct Final Rule Withdrawn	12/14/01	66 FR 64739
Direct Final Rule Comment Period End	12/14/01	
Direct Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: James W. Hammersley, Director, Office of Loan Policy, Small Business Administration, 8th Floor, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6490

RIN: 3245–AE68

3800. SMALL BUSINESS SIZE STANDARDS; TESTING LABORATORIES

Priority: Other Significant

Legal Authority: 15 USC 632(a)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This rule will revise the size standard for the Testing Laboratories industry. Changes in the composition of the industry indicate a higher size standard than $6 million is warranted to define which businesses are small businesses.

Timetable:

Action	Date	FR Cite
NPRM	04/09/02	67 FR 17020
NPRM Comment Period End	05/10/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6618

RIN: 3245–AE78

3801. SMALL BUSINESS SIZE STANDARDS; INFORMATION TECHNOLOGY VALUE ADDED RESELLERS

Priority: Other Significant

Legal Authority: 15 USC 632(a)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This rule will establish a size standard for Information Technology (IT) Value Added Resellers. Current regulations apply the same eligibility requirements to these types of businesses as for dealers and nonmanufacturers. To establish more appropriate eligibility requirements for IT Value Added Resellers, a new industry category and size standard will be established.

Timetable:

Action	Date	FR Cite
NPRM	07/24/02	67 FR 48419
NPRM Comment Period End	08/23/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6618

RIN: 3245–AE80

3802. SMALL BUSINESS SIZE REGULATION; PETROLEUM REFINERIES

Priority: Other Significant

Legal Authority: 15 USC 632(a); 15 USC 634(b)(6); 15 USC 637(a); 15 USC 638; 15 USC 644; 15 USC 662(5)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This rule proposes to increase the size standard for petroleum refiners to 155,000 barrels per calendar day from 75,000 barrels per day. This size standard applies to only refiners competing on Federal contracts to provide petroleum products.

Timetable:

Action	Date	FR Cite
NPRM	02/12/02	67 FR 6437
NPRM Comment Period End	03/14/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6618

RIN: 3245–AE84

3803. SMALL BUSINESS SIZE STANDARDS; FOREST FIRE SUPPRESSION AND FUELS MANAGEMENT SERVICES

Priority: Other Significant

Legal Authority: 15 USC 632(a); 15 USC 634(b)(6); 15 USC 637(a); 15 USC 638; 15 USC 644(c); 15 USC 662(5)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This rule will establish a size standard for Forest Fire Suppression and Fuels Management.

Timetable:

Action	Date	FR Cite
NPRM	07/19/02	67 FR 47480
NPRM Comment Period End	08/19/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6618

RIN: 3245–AE89

3804. NEW MARKETS VENTURE CAPITAL PROGRAM; AMENDMENTS

Priority: Other Significant

Legal Authority: 15 USC 689-689q

CFR Citation: 13 CFR 108

Legal Deadline: None

Abstract: SBA proposes to make several amendments to the regulations for the New Markets Venture Capital (NMVC) program. The majority of the proposed amendments make technical changes to the regulations, to correct typographical errors and to clarify language. SBA also proposes to make some substantive amendments to the regulations, which SBA believes will result in more efficient and effective delivery of NMVC program benefits to the targeted geographic areas.

Timetable:

Action	Date	FR Cite
NPRM	05/20/02	67 FR 35449
NPRM Comment Period End	06/19/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Austin J. Belton, Director, Office of New Markets Venture Capital, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-7027

RIN: 3245–AE91

3805. • DISASTER LOAN PROGRAM—DISASTER MITIGATION ACT OF 2000

Priority: Other Significant

Legal Authority: PL 96-390

CFR Citation: 13 CFR 123

Legal Deadline: None

Abstract: Under this interim final rule, SBA will implement its disaster loan program when the President declares a major disaster, or declares an emergency, and activates the Assistance to Individuals and Household Program in an emergency disaster declaration. Under the Disaster Mitigation Act of 2000, if the President declares a major disaster that includes, or is limited to, public assistance, a private nonprofit facility which provides non-critical services must first apply for disaster loan assistance from SBA before it could seek grant assistance for permanent repairs and/or replacements from the Federal Emergency Management Agency. SBA is also implementing this legislative change, and is making certain technical changes.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	10/15/02	
Interim Final Rule	10/21/02	67 FR 64517
Interim Final Rule Comment Period End	12/20/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Becky Celeste Brantley, Loan Specialist, Small Business Administration, 409 Third Street, SW, Suite 6050, Mail code 2991, Washington, DC 20416
Phone: 202 205-6734
Fax: 202 205-7725
Email: becky.brantley@sba.gov

RIN: 3245–AE97

3806. PRE-DISASTER MITIGATION LOAN PROGRAM AMENDMENTS

Priority: Other Significant

CFR Citation: 13 CFR 123.400 et seq

Completed:

Reason	Date	FR Cite
Final Action	10/07/02	67 FR 62335

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: George Camp
Phone: 202 205-0734
Email: george.camp@sba.gov

RIN: 3245–AE44

3807. SMALL BUSINESS SIZE REGULATION; 8(A) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS; RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

Priority: Substantive, Nonsignificant

CFR Citation: 13 CFR 134

Completed:

Reason	Date	FR Cite
Final Action	07/18/02	67 FR 47244

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Gloria Blazsik
Phone: 202 401-8200

RIN: 3245–AE71

3808. SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM POLICY DIRECTIVE

Priority: Other Significant

CFR Citation: None

Completed:

Reason	Date	FR Cite
Final Action	09/24/02	67 FR 60071

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Maurice Swinton
Phone: 202 205-6450

RIN: 3245–AE72

3809. SMALL BUSINESS INVESTMENT COMPANIES

Priority: Substantive, Nonsignificant

CFR Citation: 13 CFR 107

Completed:

Reason	Date	FR Cite
NPRM	05/17/02	67 FR 35055
Final Action	10/22/02	67 FR 64789

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeffrey D. Pierson
Phone: 202 205-6510
Fax: 202 205-6959

RIN: 3245–AE88

3810. • SMALL BUSINESS SIZE REGULATION; TRAVEL AGENCIES AFFECTED BY SEPTEMBER 11, 2001

Priority: Other Significant

Legal Authority: 15 USC 632 (a); 15 USC 634(b)(6); 15 USC 637(a); 15 USC 638; 15 USC 644(c); 15 USC 662(5)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: SBA increased the size standard for travel agencies from $1 million to $3 million for purposes of eligibility of economic injury disaster loan assistance to small business concerns affected as a result of the terrorist attacks on the World Trade Center and the Pentagon.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/15/02	67 FR 11874
Interim Final Rule Comment Period End	04/15/02	
Final Rule	05/31/02	67 FR 38184
Final Rule Effective	05/31/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6618

RIN: 3245–AE93

3811. SMALL BUSINESS SIZE STANDARDS; TRAVEL AGENCIES

Priority: Other Significant

CFR Citation: 13 CFR 121

Completed:

Reason	Date	FR Cite
Final Action	05/31/02	67 FR 38186
Final Action Effective	07/01/02	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Gary M. Jackson
Phone: 202 205-6618

RIN: 3245–AE95

3812. • SMALL BUSINESS SIZE STANDARDS; ADOPTION OF 2002 NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM FOR SIZE STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 632(a)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This rule incorporates the January 2002 revisions of the North American Industry Classification System (NAICS) into SBA's table of size standards. SBA establishes size standards by NAICS industry.

Timetable:

Action	Date	FR Cite
Direct Final Rule	08/13/02	67 FR 52597
Comment Period End	09/12/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6618

RIN: 3245–AF00

[FR Doc. 02–23898 Filed 12–06–02; 8:45 am]

BILLING CODE 8025–01–S

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Federal Register

Monday,
December 9, 2002

Part XLV

Social Security Administration

Semiannual Regulatory Agenda

SOCIAL SECURITY ADMINISTRATION (SSA)

SOCIAL SECURITY ADMINISTRATION

Office of the Commissioner

20 CFR Ch. III

Semiannual Unified Regulatory Agenda

AGENCY: Social Security Administration.

ACTION: Semiannual regulatory agenda.

SUMMARY: Executive Order (E.O.) 12866 (as amended by E.O. 13258) entitled Regulatory Planning and Review, issued September 30, 1993, and the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) require each Federal agency to publish semiannually a brief description of all regulatory actions under development or review, expected to be under development or review for the next 12 months, or completed since the previous publication of the agenda. Our last agenda of regulations was published May 13, 2002.

FOR FURTHER INFORMATION CONTACT: For further information about a specific regulatory action, contact the person identified as the agency contact for that action. Comments or inquiries of a general nature should be directed to Georgia E. Myers, Regulations Officer, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235-6401; Telephone (410) 965-3632 or TTY (410) 966-5609.

SUPPLEMENTARY INFORMATION: The Social Security Administration (SSA) administers the retirement, survivors, and disability insurance programs under title II of the Social Security Act (the Act), the Supplemental Security Income (SSI) program under title XVI of the Act, and Special Benefits to Certain World War II Veterans under title VIII of the Act. Our regulations generally do not impose burdens on the private sector or on State, local, or tribal governments. Our regulations document the rules under which we make eligibility determinations and set forth both the responsibilities of the Agency towards the public and beneficiaries' rights and responsibilities under the programs we administer.

Our regulatory efforts can be placed into one of the following three categories: (1) legislative implementation; (2) program changes to improve SSA service to the public; and (3) improvements or clarifications to enhance effective stewardship of SSA programs.

We continue to seek legislative improvements for the programs we administer. However, because of the complexity of our programs, statutory language is rarely detailed enough to govern the actions of agency adjudicative decision-makers. Supporting regulations are often required. In some instances, Congress directs SSA to issue implementing regulations. For other legislative provisions, SSA regulations provide program information to applicants for benefits, current beneficiaries and their legal counsels.

Included in our agenda are items that will amend our regulations to include more provisions of "The Ticket to Work and Work Incentives Improvement Act of 1999," (Pub. L. 106-170), which was signed on December 17, 1999. Among the provisions still requiring regulations are provisions that will suspend continuing disability reviews based on work activity and expedite reinstatement of disability benefits terminated due to work activity.

We continue to work diligently to improve our program benefit regulations and to develop partnerships with large segments of the community of interest groups concerned about Social Security programs. The remainder of our Unified Agenda reflects such improvements and clarifications.

For this edition of SSA's regulatory agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Regulatory Plan entries are listed in the table of contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

The fall 2002 regulatory agenda for the Social Security Administration follows.

Dated: October 3, 2002.

Georgia E. Myers,

SSA Regulations Officer.

Social Security Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3813	Revised Medical Criteria for Evaluating Mental Disorders (886P)	0960-AF69

Social Security Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3814	Revised Medical Criteria for Endocrine Disorders (436P)	0960-AD78
3815	Supplemental Standards for Ethical Conduct for Employees of the Social Security Administration (601P)	0960-AE48
3816	Deeming of Income From an Ineligible Spouse to an Eligible Individual and an Eligible Child (606P)	0960-AE50
3817	Title VI (Civil Rights Act (1964)), Title IX (Education Amend. (1972)), Rehabilitation Act (1973), and Age Discrimination Act (1975) in Programs/Activities Receiving Financial Assistance by SSA (617P)	0960-AE63
3818	Enforcement of Nondiscrimination in Social Security Programs or Activities (661P)	0960-AE78
3819	Federal Salary Offset (Withholding a Portion of a Federal Employee's Salary To Collect a Delinquent Debt Owed to the Social Security Administration) (721P) **(Reg Plan Seq No. 157)**	0960-AE89

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Social Security Administration—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
3820	Administrative Wage Garnishment (To Repay a Debt Owed to the Social Security Administration) (724P) **(Reg Plan Seq No. 158)**	0960-AE92
3821	Work Activity Standard as a Basis for Review of an Individual's Disabled Status (Ticket to Work and Work Incentives Improvement Act of 1999) (725P)	0960-AE93
3822	Evidence Requirement for Assignment of Social Security Administration Numbers (SSNs) and Assignment of SSNs for Nonwork Purposes (751P) **(Reg Plan Seq No. 159)**	0960-AF05
3823	Medical Equivalence for Adults and Children (787P)	0960-AF19
3824	Expedited Reinstatement of Disability Benefits (Ticket to Work and Work Incentives Improvement Act) (790P)	0960-AF21
3825	SSI Trusts and Transfers of Resources (791P)	0960-AF22
3826	Revised Medical Criteria for Evaluating Genitourinary Disorders (802P)	0960-AF30
3827	Revised Medical Criteria of Evaluating Impairments Affecting Multiple Body Systems (803P)	0960-AF32
3828	Revised Medical Criteria for Evaluating Immune System Disorders (804P)	0960-AF33
3829	Revised Medical Criteria for Evaluating Special Senses and Speech Disorders (805P)	0960-AF34
3830	Revised Medical Criteria for Evaluating Neurological Disorders (806P)	0960-AF35
3831	Wage Reports and Pension Information (809P)	0960-AF38
3832	Filing Claims Under the Federal Tort Claims Act and the Military Personnel and Civilian Employees Claims Act (785P)	0960-AF39
3833	Disability Insurance Program Demonstration Project Authority (Ticket to Work and Work Incentives Improvement Act of 1999) (789P)	0960-AF41
3834	Revisions to the Medical-Vocational Guidelines (823P)	0960-AF47
3835	Revised Medical Criteria for Evaluating Cardiovascular Disorders (826P)	0960-AF48
3836	Non-Payment of Monthly Social Security Benefits to Aliens Residing in the United States Who Are Not Lawfully Present (849P)	0960-AF56
3837	Determining Disability for an Individual with Drug Addiction or Alcoholism (851P)	0960-AF57
3838	Revised Medical Criteria for Evaluating Respiratory System Disorders (859P)	0960-AF58
3839	Amendments to Annual Earnings Test Regulations (866P)	0960-AF62
3840	Revising the Rules on Consideration of Work History in Determining Whether an Individual is Disabled (875P)	0960-AF64
3841	Revising the Rules on the Steps for Evaluating Disability (894P)	0960-AF65
3842	Revised Medical Criteria for Evaluating Growth Disorders (444P)	0960-AF67
3843	Clarification of the Disability Exclusion (915P)	0960-AF71
3844	Special Benefits for Certain World War II Veterans; Reporting Requirements, Suspension and Termination Events, Overpayments, and Administrative Review Process (922P)	0960-AF72
3845	Continued Payment of Benefits to Certain Individuals Who Medically Recover While Participating in Certain Vocational Rehabilitation Programs (926P)	0960-AF75
3846	Stepchild Entitlement and Termination Requirements (934P)	0960-AF78
3847	Claimant Identification Pilot Projects (937P) **(Reg Plan Seq No. 160)**	0960-AF79
3848	Representative Payment Under Titles II, VIII, and XVI of the Social Security Act (949P) **(Reg Plan Seq No. 161)**	0960-AF83
3849	Removal of Clothing from the Definitions of Income and In-Kind Support and Maintenance, Exclusions of One Automobile and Household Goods and Personal Effects Under SSI from Resources (950P) **(Reg Plan Seq No. 162)**	0960-AF84

References in boldface appear in the **Regulatory Plan** in part II of this issue of the **Federal Register**.

Social Security Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3850	Revised Medical Criteria for Evaluating Hematologic Disorders and Malignant Neoplastic Diseases (399F)	0960-AD67
3851	Repeal of Facility of Payment Provision (508F)	0960-AE02
3852	Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations (547F)	0960-AE25
3853	Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and Indian Tribal Governments (555F)	0960-AE28
3854	Restrictions on Lobbying in Connection with the Award of Grants, Contracts, and Cooperative Agreements (556F)	0960-AE29
3855	Technical Changes to Supplemental Security Income (SSI) Regulations (664F)	0960-AE79
3856	OASDI and SSI; Administrative Review Process; Video Teleconferencing Appearances Before Administrative Law Judges of the Social Security Administration (737F) **(Reg Plan Seq No. 163)**	0960-AE97
3857	Cost of Living Increases in Primary Insurance Amounts (759F)	0960-AF14

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Social Security Administration—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
3858	Change in Retirement Age (775F)	0960-AF16
3859	Revised Medical Criteria for Evaluating Impairments of the Digestive System (800F) **(Reg Plan Seq No. 164)**	0960-AF28
3860	Revised Medical Criteria for Evaluating Skin Disorders (801F)	0960-AF29
3861	Clarification of Rules Involving RFC Assessments; Clarification of Use of Vocational Experts and Other Sources of the Sequential Evaluation Process; Incorporation of "Special Profile" Into Regs (808F)	0960-AF37
3862	Access to Information Held by Financial Institutions (815F) **(Reg Plan Seq No. 165)**	0960-AF43
3863	New Disability Claims Process—Roles of State Agency (816F) **(Reg Plan Seq No. 166)**	0960-AF44
3864	Exclusion of Representatives and Health Care Providers Convicted of Violations from Participation in Social Security Disability Programs (820F)	0960-AF46
3865	Filing of Applications and Related Forms (797F)	0960-AF52
3866	Special Benefits for Certain World War II Veterans (880F)	0960-AF61
3867	Referral of Persons Eligible for Disability or Blindness Benefits to Other Agencies for Vocational Rehabilitation Services (929F)	0960-AF80
3868	Elimination of Sanctions for Refusal of Vocational Rehabilitation Services Without Cause (938F)	0960-AF81
3869	Interrelationship of Old-Age, Survivors and Disability Insurance Program with the Railroad Retirement Program (943I)	0960-AF82

References in boldface appear in the **Regulatory Plan** in part II of this issue of the **Federal Register**.

Social Security Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3870	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants) (554F)	0960-AE27
3871	Dedicated Accounts and Installment Payments for Certain Past Due SSI Benefits (622F)	0960-AE59
3872	Privacy and Disclosure of Official Records and Information (711P)	0960-AE88
3873	Payment of Benefits to Aliens Residing Outside the United States (909F)	0960-AF70

Social Security Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
3874	Collection of Supplemental Security Income Overpayments from Title VIII Benefits (819F)	0960-AF53
3875	Extension of Expiration Date for the Respiratory System Listings (921F)	0960-AF76

Social Security Administration—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
0960-AD95	Definition of "Largest Benefit Amount" for Simultaneous Entitlement to Child's Benefits (481P)	09/05/2002	Withdrawn
0960-AE18	Old-Age, Survivors, and Disability Insurance Benefits; Replacing Social Security Number Cards (543F)	09/05/2002	Merged With 0960-AF05
0960-AF49	Representative Payment Under Title II and XVI of the Social Security Act (827P)	08/27/2002	Merged With 0960-AF83
0960-AF50	Removal of Clothing from the Definition of Income and From the Definition of In-Kind Support and Maintenance Under the Supplemental Security Income Program (834P)	08/29/2002	Merged With 0960-AF84
0960-AF51	Exclusion of One Automobile From Resources (835P)	08/29/2002	Merged With 0960-AF84
0960-AF55	Exclusion of Household Goods and Personal Effects Under the Supplemental Security Income (SSI) Program (837P)	08/29/2002	Merged With 0960-AF84
0960-AF66	Compensation for Qualified Organizations Serving as a Representative Payee (846P)	08/27/2002	Merged With 0960-AF83

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Social Security Administration—Discontinued Entries (Continued)

Regulation Identification Number	Title	Date	Comments
0960-AF74	Elimination of Sanctions for Refusal of Vocational Rehabilitation Services Without Good Cause and Elimination of Referrals for Vocational Rehabilitation Services (925P)	09/05/2002	Withdrawn

Social Security Administration (SSA) — **Prerule Stage**

3813. REVISED MEDICAL CRITERIA FOR EVALUATING MENTAL DISORDERS (886P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1500, app 1; 20 CFR 404.1520; 20 CFR 404.1520a; 20 CFR 404.1528; 20 CFR 416.920a; 20 CFR 416.928

Legal Deadline: None

Abstract: We propose to revise the criteria in the Listing of Impairments (the Listing) that we use to evaluate claims for disability benefits where the individual is alleging a mental impairment. The Listing describes, for each of the major body systems, impairments that are considered severe enough to prevent a person from doing any gainful activity. Our proposed revisions will reflect advances in medical knowledge, treatment, and methods of evaluating mental impairments in both adults and children.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/02	
NPRM	09/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Cathy Lively, Social Insurance Specialist, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 966-1180

Maria D. Smith, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-3661

RIN: 0960–AF69

Social Security Administration (SSA) — **Proposed Rule Stage**

3814. REVISED MEDICAL CRITERIA FOR ENDOCRINE DISORDERS (436P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1500, app 1

Legal Deadline: None

Abstract: Sections 9.00 and 109.00 of appendix 1 to subpart P of part 404 of our regulations (404.1501 through 404.1599) describe those endocrine impairments that are considered severe enough to prevent a person from doing any gainful activity, or in the case of a child claiming SSA payments under title XVI, that cause marked and severe functional limitations. We are proposing to revise the criteria in these sections to reflect advances in medical knowledge, treatment, and methods of evaluating endocrine impairments. The Supplemental Security Income Program incorporates and uses the same medical criteria as the Old-Age, Survivors and Disability Insurance Program.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Maria D. Smith, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-3661

RIN: 0960–AD78

3815. SUPPLEMENTAL STANDARDS FOR ETHICAL CONDUCT FOR EMPLOYEES OF THE SOCIAL SECURITY ADMINISTRATION (601P)

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC APP (Ethics in Government Act of 1978); 5 USC 7301; 5 USC 7353

CFR Citation: 5 CFR ch LXXXI (New)

Legal Deadline: None

Abstract: The Social Security Administration (SSA), with the concurrence of the Office of Government Ethics (OGE), proposes to issue regulations for officers and employees of SSA that supplement the OGE Standards of Ethical Conduct for Employees of the Executive Branch, which became effective February 3, 1993. The proposed rule specifies procedural and substantive requirements that are necessary to address ethical issues unique to SSA.

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Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Stuart M. Besser, Attorney, Social Security Administration, Office of the General Counsel, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-3194

Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

RIN: 0960–AE48

3816. DEEMING OF INCOME FROM AN INELIGIBLE SPOUSE TO AN ELIGIBLE INDIVIDUAL AND AN ELIGIBLE CHILD (606P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 902(a)(5); 42 USC 1381a; 42 USC 1382; 42 USC 1382a; 42 USC 1382b; 42 USC 1382c(f); 42 USC 1382j; 42 USC 1383

CFR Citation: 20 CFR 416.1160; 20 CFR 416.1165; 20 CFR 416.1166

Legal Deadline: None

Abstract: This rule would revise the method used under the SSI program to determine income for a child who lives with both parents where one parent is ineligible for SSI because of income deemed from an ineligible spouse. Instead of deeming any excess income from the ineligible spouse to the child, referred to as "pass-through deeming," we would deem income to the child using the method we use where neither parent files for SSI. Under current rules, "pass-through" deeming has had the unintended effect of deeming more income than would have been deemed if the regular rules for deeming from ineligible parents who do not file for SSI are used.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Patricia Hora, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-7183

RIN: 0960–AE50

3817. TITLE VI (CIVIL RIGHTS ACT (1964)), TITLE IX (EDUCATION AMEND. (1972)), REHABILITATION ACT (1973), AND AGE DISCRIMINATION ACT (1975) IN PROGRAMS/ACTIVITIES RECEIVING FINANCIAL ASSISTANCE BY SSA (617P)

Priority: Substantive, Nonsignificant

Legal Authority: 20 USC 1681; 29 USC 794; 42 USC 902(a)(5); 42 USC 2000d; 42 USC 6101

CFR Citation: 20 CFR 431

Legal Deadline: None

Abstract: Prior to March 31, 1995, SSA was an operating component of HHS and the general regulatory authority for SSA programs and administration was vested in the Secretary of Health and Human Services (the Secretary) based on section 1102 of the Social Security Act (the Act) (42 U.S.C. 1302). The Social Security Independence and Program Improvements Act (SSIPIA) established SSA as an independent agency in the Executive Branch of the Federal Government effective March 31, 1995, and vested general regulatory authority in the Commissioner of Social Security (the Commissioner). Under section 106(b) of SSIPIA, HHS regulations in effect immediately prior to March 31, 1995, which relate to functions now vested in the Commissioner by reason of SSA's independence, continue to apply to SSA until such time as they are modified, suspended, terminated or repealed by the Commissioner. SSA is promulgating regulations at 20 CFR part 431, which are based in large measure upon the HHS regulations at 45 CFR parts 80, 81, 84, 86 and 91. These SSA regulations reflect changes necessary to adapt the HHS regulations to SSA procedures. Upon SSA's rules becoming final regulations, the HHS regulations will cease to have application to SSA in accordance with section 106(b) of SSIPIA.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Eileen Inglesby-Houghton, Attorney, Social Security Administration, Office of the General Counsel, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-4816

Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

RIN: 0960–AE63

3818. ENFORCEMENT OF NONDISCRIMINATION IN SOCIAL SECURITY PROGRAMS OR ACTIVITIES (661P)

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 794; 42 USC 902

CFR Citation: 20 CFR 432

Legal Deadline: None

Abstract: These proposed regulations are intended to ensure that individuals are not subjected to discrimination on the basis of disability, race, color, national origin, sex, age, or religion in any program or activity conducted by SSA.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

RIN: 0960–AE78

3819. FEDERAL SALARY OFFSET (WITHHOLDING A PORTION OF A FEDERAL EMPLOYEE'S SALARY TO COLLECT A DELINQUENT DEBT OWED TO THE SOCIAL SECURITY ADMINISTRATION) (721P)

Regulatory Plan: This entry is Seq. No. 157 in part II of this issue of the **Federal Register**.

RIN: 0960–AE89

3820. ADMINISTRATIVE WAGE GARNISHMENT (TO REPAY A DEBT OWED TO THE SOCIAL SECURITY ADMINISTRATION) (724P)

Regulatory Plan: This entry is Seq. No. 158 in part II of this issue of the **Federal Register**.

RIN: 0960–AE92

3821. WORK ACTIVITY STANDARD AS A BASIS FOR REVIEW OF AN INDIVIDUAL'S DISABLED STATUS (TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT OF 1999) (725P)

Priority: Other Significant

Legal Authority: 42 USC 421

CFR Citation: 20 CFR 404.1590

Legal Deadline: NPRM, Statutory, January 1, 2002, Section 111 of Public Law 106-170, effective January 1, 2002.

Abstract: One of SSA's most important initiatives is to assure that Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) beneficiaries with disabilities who want to work have the opportunity to do so. Individuals with disabilities face multiple barriers in attempting to return to work. Section 111 of Public Law 106-170 provides a new statutory work incentive by eliminating the scheduling of continuing disability medical reviews solely because of an SSDI beneficiary's work activity, once the beneficiary has received SSDI benefits for 24 months. (Such beneficiaries will continue to be subject to regularly scheduled continuing disability reviews, work investigations, and benefit termination due to earnings from work activity at the level of substantial gainful activity.)

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jack Baumel, Social Insurance Specialist, Social Security Administration, Office of Employment Support programs, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-9834

Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

RIN: 0960–AE93

3822. EVIDENCE REQUIREMENT FOR ASSIGNMENT OF SOCIAL SECURITY ADMINISTRATION NUMBERS (SSNS) AND ASSIGNMENT OF SSNS FOR NONWORK PURPOSES (751P)

Regulatory Plan: This entry is Seq. No. 159 in part II of this issue of the **Federal Register**.

RIN: 0960–AF05

3823. MEDICAL EQUIVALENCE FOR ADULTS AND CHILDREN (787P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1526; 20 CFR 404.1529; 20 CFR 416.926; 20 CFR 416.929

Legal Deadline: None

Abstract: This notice of proposed rulemaking will clarify that we will consider the medical severity of the individual's impairment, based on all relevant evidence in the case record when we make a finding regarding medical equivalence. These rules will clarify our medical equivalence policy in light of the decision in Hickman v. Apfel, 187 F.3d 683 (7th Cir. 1999).

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jane Deweib, Social Insurance Specialist, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-9878

Robert J. Augustine, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-0020

RIN: 0960–AF19

3824. EXPEDITED REINSTATEMENT OF DISABILITY BENEFITS (TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT) (790P)

Priority: Other Significant

Legal Authority: 42 USC 423(i); 42 USC 1383(p)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Individuals with disabilities face multiple barriers in attempting to return to work. Section 112 of Public Law 106-170 provides a new statutory work incentive by providing for expedited reinstatement of SSDI and SSI benefits terminated due to work activity, when the former beneficiary requests reinstatement within 60 months of termination because his or her disability prevents work activity. Section 112 also provides for payment of provisional benefits for up to six months until SSA makes a determination on the requester's entitlement to reinstated benefits.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jack Baumel, Social Insurance Specialist, Social Security Administration, Office of Employment Support programs, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-9834

Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

RIN: 0960–AF21

3825. SSI TRUSTS AND TRANSFERS OF RESOURCES (791P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1382a(a); 42 USC 1382b(c); 42 USC 1382b(e); PL 106-169, sec 205; PL 106-169, sec 206

CFR Citation: 20 CFR 416

Legal Deadline: None

Abstract: We propose to amend our regulations to reflect sections 205 and 206 of Public Law 106-169, the Foster Care Independence Act of 1999. Section

205 generally provides for counting certain trusts as resources in the SSI program. Section 206 generally provides for a period of ineligibility for SSI benefits as a result of transferring resources for less than fair market value.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Albert Fatur, Social Insurance Specialist, Social Security Administration, Office of Program Benefits, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-9855

Robert J. Augustine, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-0020

RIN: 0960–AF22

3826. REVISED MEDICAL CRITERIA FOR EVALUATING GENITOURINARY DISORDERS (802P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404, subpart P, app 1

Legal Deadline: None

Abstract: We propose to revise the criteria in the Listing of Impairments (the Listings) that we use to evaluate genitourinary impairments. We apply these criteria at step three of our sequential evaluation processes for adults and children who claim Social Security or Supplemental Security Income benefits based on disability under title II and title XVI of the Social Security Act. The revisions reflect advances in medical knowledge, treatment, and methods of evaluating genitourinary impairments.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cheryl A. Williams, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 966-4163

RIN: 0960–AF30

3827. REVISED MEDICAL CRITERIA OF EVALUATING IMPAIRMENTS AFFECTING MULTIPLE BODY SYSTEMS (803P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404, subpart P, app 1

Legal Deadline: None

Abstract: We propose to revise the criteria in the Listing of Impairments that we use to evaluate claims involving impairments affecting multiple body systems. We apply these criteria when you claim benefits based on disability under title II and title XVI of the Social Security Act. The proposed revisions reflect current medical knowledge, treatment, and methods of evaluating impairments affecting multiple body systems.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cathy Lively, Social Insurance Specialist, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 966-1180

Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

RIN: 0960–AF32

3828. REVISED MEDICAL CRITERIA FOR EVALUATING IMMUNE SYSTEM DISORDERS (804P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404, subpart P, app 1

Legal Deadline: None

Abstract: We propose to revise the criteria in the Listing of Impairments that we use to evaluate claims involving impairments affecting the Immune System. We apply these criteria when you claim benefits based on disability under title II and title XVI of the Social Security Act.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Victoria Dorf, Social Insurance Specialist, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Phone: 410 965-1769

RIN: 0960–AF33

3829. REVISED MEDICAL CRITERIA FOR EVALUATING SPECIAL SENSES AND SPEECH DISORDERS (805P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404, subpart P, app 1

Legal Deadline: None

Abstract: We propose to revise the criteria in the Listing of Impairments that we use to evaluate claims involving special senses and speech disorders. We apply these criteria when you claim benefits based on disability under title II and title XVI of the Social Security Act. The proposed revisions reflect advances in medical knowledge, treatment, and methods of evaluating special senses and speech disorders.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cheryl A. Williams, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 966-4163

RIN: 0960–AF34

3830. REVISED MEDICAL CRITERIA FOR EVALUATING NEUROLOGICAL DISORDERS (806P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404, subpart P, app 1

Legal Deadline: None

Abstract: We propose to revise the criteria in the Listing of Impairments (the listings) that we use to evaluate claims involving neurological disorders at the third step of our sequential evaluation processes for adults and children under title II and title XVI of the Social Security Act (the Act). The proposed revisions reflect advances in medical knowledge, treatment, and methods of evaluating neurological disorders.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Fran O. Thomas, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 966-9822

RIN: 0960–AF35

3831. WAGE REPORTS AND PENSION INFORMATION (809P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 432; 42 USC 902(a)(5)

CFR Citation: 20 CFR 422.114

Legal Deadline: None

Abstract: The Social Security Administration (SSA) proposes to amend its rules on processing reports of wages (paper Forms W-2, "Wage and Tax Statement," and W-3 "Transmittal of Income and Tax Statements," or equivalent W-2 and W-3 magnetic media or electronic reports) submitted annually by employers. We are proposing to eliminate the acceptance level for wage reports with unidentified or incorrectly identified wage items. We are proposing including electronic filing as a means of wage reporting. Also, we propose replacing references to obsolete technical instruction bulletins with Magnetic Media Reporting and Electronic Filing instructions. We have updated form names and updated the address for obtaining a publication. These rules are intended to ensure that wages are reported to SSA with accurate information so that earnings can be properly credited to employees' Social Security records.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

RIN: 0960–AF38

3832. FILING CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT AND THE MILITARY PERSONNEL AND CIVILIAN EMPLOYEES CLAIMS ACT (785P)

Priority: Substantive, Nonsignificant

Legal Authority: 28 USC 2672; 31 USC 3721; 42 USC 905(a)(2)

CFR Citation: 20 CFR 429.101 to 429.110; 20 CFR 429.201 to 429.211; 28 CFR Part 14

Legal Deadline: None

Abstract: We propose to establish a new subpart B in part 429 that would prescribe the procedures SSA follows when claims are filed by employees against SSA for personal property damage or loss incident to their service with SSA. We also propose to make corrections and clarifications to our current procedures and practices on claims against the government for damage to or loss of property or personal injury or death that is caused by the negligent or wrongful act or omission of an SSA employee.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Jonathan R. Cantor, General Attorney, Social Security Administration, General Law Division, Office of the General Counsel, 6401 Security Boulevard, Baltimore, MD 21235
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Robert J. Augustine, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-0020

RIN: 0960–AF39

3833. DISABILITY INSURANCE PROGRAM DEMONSTRATION PROJECT AUTHORITY (TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT OF 1999) (789P)

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 434

CFR Citation: 20 CFR 404.1599

Legal Deadline: None

Abstract: One of SSA's most important initiatives is to assure that Social Security Disability Insurance (SSDI) beneficiaries with disabilities who want to work have the opportunity to do so. Section 301 of Public Law 106-170 provides the Commissioner of Social Security the authority to develop and carry out experiments and demonstration projects designed to determine the relative advantages and disadvantages of various alternative methods of treating the work activity of individuals entitled to disability insurance benefits.

Timetable:

Action	Date	FR Cite
NPRM	07/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Suzanne DiMarino, Social Insurance Specialist, Social

Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

RIN: 0960–AF41

3834. REVISIONS TO THE MEDICAL-VOCATIONAL GUIDELINES (823P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405(a); 42 USC 423; 42 USC 902(a)(5)

CFR Citation: 20 CFR 404, subpart P, app 2

Legal Deadline: None

Abstract: This rule will make several clarifications to our medical-vocational guidelines. First, for individuals whose previous semiskilled or skilled work does not allow him or her to transfer skills to other semiskilled or skilled work within his or her residual functional capacity (RFC), we will treat the past work experience as if it were unskilled. It will also clarify which medical-vocational rules apply to individuals who are illiterate or unable to communicate in English.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Elaine Tocco, Vocational Policy Specialist, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Cheryl A. Williams, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 966-4163

RIN: 0960–AF47

3835. REVISED MEDICAL CRITERIA FOR EVALUATING CARDIOVASCULAR DISORDERS (826P)

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1500, app 1

Legal Deadline: None

Abstract: Listings 4.00 and 104.00 of appendix 1 to subpart P of our regulation (20 CFR 404.1501 through 404.1599) describe those cardiovascular impairments that are considered severe enough to prevent a person from doing any gainful activity, or for a child claiming SSI payments under title XVI, that cause marked and severe functional limitations. We propose to revise the criteria that we use to evaluate cardiovascular impairments under the listings to reflect our program experience and advances in medical knowledge, treatment and methods of evaluating these disorders. The SSI program incorporates by reference and uses the same medical criteria as the old-age, survivors, and disability insurance program.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bonnie Davis, Social Insurance Specialist, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Phone: 410 965-3691

RIN: 0960–AF48

3836. NON-PAYMENT OF MONTHLY SOCIAL SECURITY BENEFITS TO ALIENS RESIDING IN THE UNITED STATES WHO ARE NOT LAWFULLY PRESENT (849P)

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1611(b)(2); 8 USC 1641; 42 USC 402(y)

CFR Citation: 20 CFR 404.401; 20 CFR 404.460; 20 CFR 404.481 (New) to 404.483 (New); 20 CFR 404.485 (New) to 404.490 (New)

Legal Deadline: None

Abstract: We propose to add rules to require evidence in our records of United States citizenship, status as a United States national or, in the case of an alien, lawful presence in the United States in order for an individual to receive benefits under title II of the Social Security Act while in the United States.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cynthia Pullen-Carroll, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-3691

RIN: 0960–AF56

3837. DETERMINING DISABILITY FOR AN INDIVIDUAL WITH DRUG ADDICTION OR ALCOHOLISM (851P)

Priority: Other Significant

Legal Authority: PL 104-121, sec 105; PL 105-33, sec 5525; PL 106-170, sec 401

CFR Citation: 20 CFR 404.315; 20 CFR 404.316; 20 CFR 404.321; 20 CFR 404.332; 20 CFR 404.335; 20 CFR 404.337; 20 CFR 404.350; 20 CFR 404.352; 20 CFR 404.402; 20 CFR 404.470; 20 CFR 404.480; 20 CFR 404.902; 20 CFR 404.1535 to 404.1541; 20 CFR 1500, app 1; 20 CFR 416.202; 20 CFR 416.214; 20 CFR 416.262; 20 CFR 416.265; 20 CFR 416.535; 20 CFR 416.542; 20 CFR 416.544; 20 CFR 416.558; 20 CFR 416.601; 20 CFR 416.610; 20 CFR 416.925; 20 CFR 416.935; 20 CFR 416.1123; 20 CFR 416.1326; 20 CFR 416.1331; 20 CFR 416.1335; 20 CFR 416.1402; 20 CFR 416.1701; 20 CFR 416.1720; 20 CFR 416.1725

Legal Deadline: None

Abstract: We propose to revise our regulations that address drug addiction and alcoholism (DAA) under title II and XVI of the Social Security Act. The proposed rules reflect provisions of section 105 of the Contract with America Advancement Act of 1996, Public Law 104-121; section 5525 of the Balanced Budget Act of 1997, Public Law 105-33; and section 401 of the Ticket to Work and Work Incentives Improvement Act of 1999, Public Law 106-170.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cheryl Wrobel, Policy Specialist, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Phone: 410 965-1769

RIN: 0960–AF57

3838. REVISED MEDICAL CRITERIA FOR EVALUATING RESPIRATORY SYSTEM DISORDERS (859P)

Priority: Other Significant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1500, app 1

Legal Deadline: None

Abstract: We propose to revise the criteria in the Listing of Impairments that we use to evaluate claims involving respiratory system disorders. The proposed revisions reflect advances in medical knowledge, treatment, and methods of evaluating respiratory disorders.

Timetable:

Action	Date	FR Cite
NPRM	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Carolyn Kiefer, Social Insurance Specialist, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Robert J. Augustine, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-0020

RIN: 0960–AF58

3839. AMENDMENTS TO ANNUAL EARNINGS TEST REGULATIONS (866P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 402; 42 USC 403; 42 USC 403(a); 42 USC 405(a); 42 USC 416; 42 USC 423; 42 USC 425; 42 USC 428(a) to 428(e); 42 USC 902(a)(5); PL 106-182

CFR Citation: 20 CFR 404.415; 20 CFR 404.416

Legal Deadline: None

Abstract: The Senior Citizen's Freedom to Work Act of 2000, enacted on April 7, 2000, eliminates the annual earnings test for beneficiaries, starting from the month in which they reach full retirement age.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

RIN: 0960–AF62

3840. REVISING THE RULES ON CONSIDERATION OF WORK HISTORY IN DETERMINING WHETHER AN INDIVIDUAL IS DISABLED (875P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 402; 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 405(h); 42 USC 416(i); 42 USC 421(a); 42 USC 421(i); 42 USC 422(c); 42 USC 423; 42 USC 425; 42 USC 902(a)(5); 42 USC 1382; 42 USC 1382c; 42 USC 1382h; 42 USC 1383(a); 42 USC 1383(c); 42 USC 1383(d)(1); 42 USC 1383b

CFR Citation: 20 CFR 404.1520; 20 CFR 404.1560; 20 CFR 404.1565; 20 CFR 404.1594(b)(4)(iii); 20 CFR 416.920; 20 CFR 416.960; 20 CFR 416.965; 20 CFR 416.994(b)(l)(iv)(c)

Legal Deadline: None

Abstract: We propose to change some of the rules we use to decide whether an individual is "disabled." These rules govern how we look at an individual's past work history. Currently, we consider work performed in the last 15 years to be relevant when we decide whether an individual is "disabled." We propose to change our rules so that we only look at work performed in the last five years.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cheryl A. Williams, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
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RIN: 0960–AF64

3841. REVISING THE RULES ON THE STEPS FOR EVALUATING DISABILITY (894P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 usc 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1520; 20 CFR 416.920

Legal Deadline: None

Abstract: We propose to combine steps 4 and 5 of the current sequential evaluation process for evaluating disability into one step. Instead of having separate steps for determining whether a claimant can do any past relevant work and other work, we would have one step where we determine if a claimant can do any substantial gainful activity (SGA) at all. This would simplify the evaluation process and save time and resources.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cheryl A. Williams, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 966-4163

RIN: 0960–AF65

3842. REVISED MEDICAL CRITERIA FOR EVALUATING GROWTH DISORDERS (444P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1302; 42 USC 1383

CFR Citation: 20 CFR 404 subpart P, app 1; 20 CFR 416 subpart I

Legal Deadline: None

Abstract: Section 100.00 of part B of appendix 1 to subpart P of part 404 of the Disability Regulations describes growth impairments considered severe enough to cause marked and severe functional limitations in a child under age 18. We are proposing revisions to the growth impairment listings. The revisions contained in these regulations reflect advances in medical knowledge, treatment, and methods of evaluating growth impairments. The Supplemental Security Income program incorporates and uses the same medical criteria as the Old-Age, Survivors, and Disability Insurance program.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Regina Connell, Social Insurance Specialist, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Related RIN: Related To 0960-AD80

RIN: 0960–AF67

3843. CLARIFICATION OF THE DISABILITY EXCLUSION (915P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 402; 42 USC 402(a); 42 USC 403(a); 42 USC 403(b); 42 USC 405(a); 42 USC 412 to 414; 42 USC 415 to 417; 42 USC 423; 42 USC 425; 42 USC 428(a) to 428(e); 42 USC 902(a)(5)

CFR Citation: 20 CFR 404.130(f); 20 CFR 404.211(b)(2); 20 CFR 404.211(e)(1); 20 CFR 404.320(a)

Legal Deadline: None

Abstract: These proposed rules amend our regulations at sections 404.130, 404.211 and 404.320 to clarify that if we count a prior period of disability in determining a person's insured status or benefit amount, the period of disability must be counted for both purposes. Similarly, if we exclude a prior period of disability when either determining insured status or the benefit amount, we must exclude it for both purposes.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ines Riley, Social Insurance Specialist, Social Security Administration, Office of Program Benefits, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Fran O. Thomas, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 966-9822

RIN: 0960–AF71

3844. SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS; REPORTING REQUIREMENTS, SUSPENSION AND TERMINATION EVENTS, OVERPAYMENTS, AND ADMINISTRATIVE REVIEW PROCESS (922P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405(a); 42 USC 405(j); 42 USC 405(k); 42 USC 902(a)(5); 42 USC 1001 to 1013; 42 USC 1104; 42 USC 1106

CFR Citation: 20 CFR 408.601; 20 CFR 408.610; 20 CFR 408.615; 20 CFR 408.620 to 408.622; 20 CFR 408.624; 20 CFR 408.625; 20 CFR 408.635; 20 CFR 408.640; 20 CFR 408.641; 20 CFR 408.645; 20 CFR 408.650; 20 CFR 408.655; 20 CFR 408.660; 20 CFR 408.665; 20 CFR 408.701; 20 CFR 408.704; 20 CFR 408.708; 20 CFR 408.710; 20 CFR 408.712; 20 CFR 408.714; 20 CFR 408.801 to 408.805; 20 CFR 408.810; 20 CFR 408.812; 20 CFR 408.814; 20 CFR 408.816; 20 CFR 408.818; 20 CFR 408.820; 20 CFR 408.900 to 408.905; 20 CFR 408.910 to 408.915; 20 CFR 408.918; 20 CFR 408.920; 20 CFR 408.922; 20 CFR 408.923; 20 CFR 408.930 to 408.933; 20 CFR 408.940 to 408.946; 20 CFR 408.1000 to 408.1007; 20 CFR 408.1009; 20 CFR 408.1011; 20 CFR 408.1013 to 408.1016; 20 CFR 408.1020 to 408.1022

Legal Deadline: None

Abstract: We propose to add six additional subchapters to part 408 (proposed) of our regulations. The title VIII program provides monthly benefits to certain World War II veterans who were previously eligible for supplemental security income payments under title XVI of the Act and reside outside the United States. These additional subparts would codify the title VIII requirements on reporting responsibilities, suspension and termination events, overpayment and underpayment policies, and the administrative review process.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert J. Augustine, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-0020

RIN: 0960–AF72

3845. CONTINUED PAYMENT OF BENEFITS TO CERTAIN INDIVIDUALS WHO MEDICALLY RECOVER WHILE PARTICIPATING IN CERTAIN VOCATIONAL REHABILITATION PROGRAMS (926P)

Priority: Other Significant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404; 20 CFR 416

Legal Deadline: None

Abstract: We propose to amend our regulations relating to the continuation of benefit payments to certain individuals under section 225(b) and 1631(a)(6) of the Social Security Act

(the Act). These sections of the Act permit the continued payment of Social Security benefits based on disability or SSI benefits based on disability or blindness to certain individuals whose disability or blindness ceases while they are participating in an approved vocational rehabilitation (VR) program. For benefits to continue, we must determine that completion of the program, or its continuation for a specified period of time, will increase the likelihood that the individual will not have to return to the disability or blindness benefit rolls. (Section 101(b) of Public Law 106-170, the Ticket to Work and Self-Sufficiency program under section 1148 of the Act.) The proposed rules will amend the existing regulations to carry out these amendments. They will expand the regulations to explain more fully the circumstances under which benefit payments may continue, including when an individual will be considered to be participating in an appropriate VR program.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Melvin Winer, Social Insurance Specialist, Social Security Administration, Office of Employment Support Programs, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

RIN: 0960–AF75

3846. • STEPCHILD ENTITLEMENT AND TERMINATION REQUIREMENTS (934P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 402; 42 USC 403(a); 42 USC 403(b); 42 USC 405(a); 42 USC 416; 42 USC 423; 42 USC 425; 42 USC 428(a) to 428(e); 42 USC 902(a)(5)

CFR Citation: 20 CFR 404.339; 20 CFR 404.352; 20 CFR 404.363; 42 CFR 404.364

Legal Deadline: None

Abstract: SSA proposes to amend its regulations to incorporate the changes to the entitlement and termination requirements for stepchild's benefits introduced by the Contract with America Advancement Act of 1996. The statutory changes require receipt of at least one-half support from the insured person (stepparent) for a child to become entitled to stepchild benefits, and benefit termination when the stepchild's natural parent and stepparent divorce. We propose to extend the termination requirement to include: (1) a divorce which ends the marriage between a stepchild's adoptive parent and stepparent; and (2) a prospective annulment which ends the marriage between a stepchild's natural or adoptive parent and stepparent. We also propose to include in the regulation our longstanding policy that a stepchild's benefits are terminated when the marriage between the stepchild's parent and the stepparent is annulled from the beginning (ab initio). These proposed rules also correct a cross-reference affecting entitlement to mother's or father's benefits, and reintroduce an inadvertently deleted definition concerning dependency determinations for grandchildren and stepgrandchildren born during the one-year support period. These rules will reflect enacted legislation and provide accurate and complete guidelines for determining entitlement to benefits.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sherry Pollack, Social Insurance Specialist, Social Security Administration, Office of Program Benefits, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Phone: 410 965-3298

RIN: 0960–AF78

3847. • CLAIMANT IDENTIFICATION PILOT PROJECTS (937P)

Regulatory Plan: This entry is Seq. No. 160 in part II of this issue of the Federal Register.

RIN: 0960–AF79

3848. • REPRESENTATIVE PAYMENT UNDER TITLES II, VIII, AND XVI OF THE SOCIAL SECURITY ACT (949P)

Regulatory Plan: This entry is Seq. No. 161 in part II of this issue of the Federal Register.

RIN: 0960–AF83

3849. • REMOVAL OF CLOTHING FROM THE DEFINITIONS OF INCOME AND IN-KIND SUPPORT AND MAINTENANCE, EXCLUSIONS OF ONE AUTOMOBILE AND HOUSEHOLD GOODS AND PERSONAL EFFECTS UNDER SSI FROM RESOURCES (950P)

Regulatory Plan: This entry is Seq. No. 162 in part II of this issue of the Federal Register.

RIN: 0960–AF84

3850. REVISED MEDICAL CRITERIA FOR EVALUATING HEMATOLOGIC DISORDERS AND MALIGNANT NEOPLASTIC DISEASES (399F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1500, app 1

Legal Deadline: None

Abstract: Sections 7.00 and 107.00 (hemic and lymphatic system), and 13.00 and 113.00 (malignant neoplastic diseases) of appendix 1 to subpart P of part 404 of our regulations (404.1501 through 404.1599) describe those impairments that are considered severe enough to prevent a person from doing any gainful activity, or for a child claiming SSI payments under title XVI, that causes marked and severe functional limitations. We are proposing revisions to these sections to ensure that the medical evaluation criteria are up-to-date and consistent with the latest advances in medical knowledge and treatment. The Supplemental Security Income program incorporates and uses the same medical criteria as the Old-Age, Survivors, and Disability Insurance program.

Timetable:

Action	Date	FR Cite
NPRM	11/27/01	66 FR 59305
NPRM Comment Period End	01/28/02	
NPRM Comment Period End Extended	04/18/02	67 FR 19138
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michelle Hungerman, Social Insurance Specialist, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Phone: 410 965-1769

RIN: 0960–AD67

3851. REPEAL OF FACILITY OF PAYMENT PROVISION (508F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 403(a)

CFR Citation: 20 CFR 404.402(b); 20 CFR 404.458

Legal Deadline: None

Abstract: These final rules amend our regulation to reflect section 309 of Public Law 103-296. That repeals the facility of payment provision under which Social Security benefits, subject to the family maximum, would not be redistributed in certain cases, and provides that the reduction for the family maximum will be made prior to a temporary suspension for work when the nonworking auxiliary resides in a separate household from the working auxiliary.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert J. Augustine, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-0020

RIN: 0960–AE02

3852. UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NONPROFIT ORGANIZATIONS, AND COMMERCIAL ORGANIZATIONS (547F)

Priority: Info./Admin./Other

Legal Authority: 31 USC 7505; 41 USC 403(11); 42 USC 902(a)(5)

CFR Citation: 20 CFR 435.000

Legal Deadline: None

Abstract: This final rule will create a new part in the Code of Federal Regulations. The new part will provide standards in the administration of grants and agreements with institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations.

The Social Security Independence and Program Improvements Act of 1994, enacted August 15, 1994, established SSA as an independent agency separate from the Department of Health and Human Services (HHS), effective March 31, 1995. To implement its own set of grants regulations, SSA proposes to codify almost verbatim the text of the Office of Management and Budget (OMB) Circular Number A-110 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations." These regulations will establish SSA grants regulations, separate from the HHS regulations.

Timetable:

Action	Date	FR Cite
NPRM	04/27/00	65 FR 24767
NPRM Comment Period End	06/26/00	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert J. Augustine, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-0020

RIN: 0960–AE25

3853. UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS AND INDIAN TRIBAL GOVERNMENTS (555F)

Priority: Info./Admin./Other

Legal Authority: 41 USC 403(ii); 42 USC 902(a)(5)

CFR Citation: 20 CFR 437.000

Legal Deadline: None

Abstract: This final regulation migrates the HHS grants regulation at 45 CFR part 92 into a new SSA regulation at 20 CFR part 437 now that SSA is an independent agency.

Timetable:

Action	Date	FR Cite
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Robert J. Augustine, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401

Phone: 410 965-0020

RIN: 0960–AE28

3854. RESTRICTIONS ON LOBBYING IN CONNECTION WITH THE AWARD OF GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS (556F)

Priority: Info./Admin./Other

Legal Authority: 31 USC 1352; 42 USC 902(a)(5)

CFR Citation: 20 CFR 438.000

Legal Deadline: None

Abstract: This final regulation migrates the HHS grants regulation at 45 CFR part 93 into a new SSA regulation at 20 CFR part 438 now that SSA is an independent agency.

Timetable:

Action	Date	FR Cite
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert J. Augustine, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-0020

RIN: 0960–AE29

3855. TECHNICAL CHANGES TO SUPPLEMENTAL SECURITY INCOME (SSI) REGULATIONS (664F)

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 20 CFR 416.1236; 20 CFR 416, app, subpart K

Legal Deadline: None

Abstract: We are amending the SSI regulations by making technical changes to our rules on income and resources. These technical changes update lists of exclusions from income and resources under the SSI program that are based on statutes other than the Social Security Act and make additional technical changes.

Timetable:

Action	Date	FR Cite
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Eric Ice, Social Insurance Specialist, Social Security Administration, Office of Program Benefits, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Robert J. Augustine, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-0020

RIN: 0960–AE79

3856. OASDI AND SSI; ADMINISTRATIVE REVIEW PROCESS; VIDEO TELECONFERENCING APPEARANCES BEFORE ADMINISTRATIVE LAW JUDGES OF THE SOCIAL SECURITY ADMINISTRATION (737F)

Regulatory Plan: This entry is Seq. No. 163 in part II of this issue of the **Federal Register**.

RIN: 0960–AE97

3857. COST OF LIVING INCREASES IN PRIMARY INSURANCE AMOUNTS (759F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 402(a); 42 USC 405(a); 42 USC 415; 42 USC 902(a)(5)

CFR Citation: 20 CFR 404.273 to 404.275

Legal Deadline: None

Abstract: This final rule revises our rules dealing with automatic cost-of-living increases to primary insurance amounts under title II of the Social Security Act. The revisions eliminate the restriction that we could only grant cost-of-living increases based on rises in the Consumer Price Index (CPI) or the Average Wage Index (AWI) if either the CPI or AWI increased by three percent or more during the prescribed measuring period. The three percent restriction was removed by legislation enacted in 1986. These regulations codify statutory provisions enacted in 1986.

Timetable:

Action	Date	FR Cite
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jeff Kunkel, Actuary, Social Security Administration, Office of the Actuary, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-3013

Cheryl A. Williams, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 966-4163

RIN: 0960–AF14

3858. CHANGE IN RETIREMENT AGE (775F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 402; 42 USC 403; 42 USC 404(a); 42 USC 404(e); 42 USC 405(a); 42 USC 405(c); 42 USC 415; 42 USC 416; 42 USC 422(b); 42 USC 423; 42 USC 424a; 42 USC 425; 42 USC 428(a) to 428(e); 42 USC 902(a)(5)

CFR Citation: 20 CFR 404.201; 20 CFR 404.277; 20 CFR 404.304; 20 CFR 404.310 to 404.313; 20 CFR 404.317; 20 CFR 404.335 to 404.338; 20 CFR 404.352; 20 CFR 404.409 to 404.413; 20 CFR 404.421; 20 CFR 404.621; 20 CFR 404.623; 20 CFR 404.762

Legal Deadline: None

Abstract: These final rules amend our regulations to reflect section 201 of Public Law 98-21, the Social Security amendments of 1983. Section 201 increases the retirement age for unreduced old-age, wife or husband and widow or widower benefits from age 65 to 67.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bill Hilton, Social Insurance Specialist, Social Security Administration, Office of Program Benefits, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-2468

Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

RIN: 0960–AF16

3859. REVISED MEDICAL CRITERIA FOR EVALUATING IMPAIRMENTS OF THE DIGESTIVE SYSTEM (800F)

Regulatory Plan: This entry is Seq. No. 164 in part II of this issue of the Federal Register.

RIN: 0960–AF28

3860. REVISED MEDICAL CRITERIA FOR EVALUATING SKIN DISORDERS (801F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404, subpart P, app 1

Legal Deadline: None

Abstract: This final rule will revise the criteria in the Listing of Impairments (the Listings) we use for evaluating skin disorders in adults and to introduce corresponding medical criteria for evaluating skin disorders in children. We will revise the skin listings to ensure that the medical evaluation criteria are up-to-date and consistent and that the latest advances in medical knowledge and treatment are included.

Timetable:

Action	Date	FR Cite
NPRM	12/10/01	66 FR 63634
NPRM Comment Period End	02/08/02	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cheryl Wrobel, Policy Specialist, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-9108

Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

RIN: 0960–AF29

3861. CLARIFICATION OF RULES INVOLVING RFC ASSESSMENTS; CLARIFICATION OF USE OF VOCATIONAL EXPERTS AND OTHER SOURCES OF THE SEQUENTIAL EVALUATION PROCESS; INCORPORATION OF "SPECIAL PROFILE" INTO REGS (808F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 402; 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 405(h); 42 USC 416(i); 42 USC 421(a); 42 USC 421(i); 42 USC 422(c); 42 USC 423; 42 USC 4215; 42 USC 902(a)(5); 42 USC 1382; 42 USC 1382c; 42 USC 1382h; 42 USC 1383(a); 42 USC 1383(c); 42 USC 1383(d)(l); 42 USC 1383b

CFR Citation: 20 CFR 404.1501; 20 CFR 404.1505; 20 CFR 404.1512; 20 CFR 404.1520; 20 CFR 404.1545; 20 CFR 404.1546; 20 CFR 404.1560; 20 CFR 404.1561; 20 CFR 404.1563; 20 CFR 404.1569a; 20 CFR 404.1594

Legal Deadline: None

Abstract: We propose changing several sections of our rules to clarify how we make determinations and decisions at steps 4 and 5 of the sequential evaluation process. Among other things, the proposed rules would clarify (1) the responsibility that claimants have to provide evidence of their disability (including evidence related to their residual functional capacity), and (2) that SSA may use a vocational expert to help determine whether a claimant is able to do his or her past relevant work at step 4 of the sequential evaluation process.

Timetable:

Action	Date	FR Cite
NPRM	06/11/02	67 FR 39904
NPRM Comment Period End	08/12/02	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

RIN: 0960–AF37

3862. ACCESS TO INFORMATION HELD BY FINANCIAL INSTITUTIONS (815F)

Regulatory Plan: This entry is Seq. No. 165 in part II of this issue of the Federal Register.

RIN: 0960–AF43

3863. NEW DISABILITY CLAIMS PROCESS—ROLES OF STATE AGENCY (816F)

Regulatory Plan: This entry is Seq. No. 166 in part II of this issue of the Federal Register.

RIN: 0960–AF44

3864. EXCLUSION OF REPRESENTATIVES AND HEALTH CARE PROVIDERS CONVICTED OF VIOLATIONS FROM PARTICIPATION IN SOCIAL SECURITY DISABILITY PROGRAMS (820F)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-169, sec 208; 42 USC 1320b-6

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This final rule would bar representatives and health care providers from participating in the Social Security disability programs if they are determined to have committed fraud. The bar would be 5 years, 10 years, and permanent exclusion for the first, second, and third offenses respectively.

Timetable:

Action	Date	FR Cite
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Robert J. Augustine, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-0020

RIN: 0960–AF46

3865. FILING OF APPLICATIONS AND RELATED FORMS (797F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 402(i); 42 USC 402(j); 42 USC 402(o); 42 USC 402(p); 42 USC 402(r); 42 USC 405; 42 USC 416(i)(2); 42 USC 423(b); 42 USC 428(a); 42 USC 902(a)(5)

CFR Citation: 20 CFR 404.610; 20 CFR 404.611; 20 CFR 422.505

Legal Deadline: None

Abstract: We will include language that explains the Internet applications completed on SSA's website and submitted to SSA are prescribed applications for filing for social security benefits. We plan to incorporate an explanation that once SSA has an approved electronic signature method in place, the signature method will be included as part of the Internet application process and will be required for the applications.

Timetable:

Action	Date	FR Cite
NPRM	08/17/01	66 FR 43136
NPRM Comment Period End	10/16/01	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Saundra Robinson, Social Insurance Speecialist, Social Security Administration, Office of Program Benefits, 6401 Security Boulevard, Baltimore, MD 21235-640
Phone: 410 965-4327

Fran O. Thomas, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 966-9822

RIN: 0960–AF52

3866. SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS (880F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405(a); 42 USC 405(j); 42 USC 405(k); 42 USC 902(a)(5); 42 USC 1001 to 1013

CFR Citation: 20 CFR 408.101 (New); 20 CFR 408.105 (New); 20 CFR 408.110 (New); 20 CFR 408.120 (New); 20 CFR 408.201 (New); 20 CFR 408.202 (New); 20 CFR 408.204 (New); 20 CFR 408.206 (New); 20 CFR 408.208 (New); 20 CFR 408.210 (New); 20 CFR 408.212 (New); 20 CFR 408.214 (New); 20 CFR 408.216 (New); 20 CFR 408.218 (New); 20 CFR 408.220 (New); 20 CFR 408.222 (New); 20 CFR 408.224 (New); 20 CFR 408.226 (New); 20 CFR 408.228 (New); 20 CFR 408.230 (New); 20 CFR 408.232 (New); 20 CFR 408.234 (New); 20 CFR 408.301 (New); 20 CFR 408.305 (New); 20 CFR 408.310 (New); 20 CFR 408.315 (New); 20 CFR 408.320 (New); 20 CFR 408.325 (New); 20 CFR 408.330 (New); 20 CFR 408.340 (New); 20 CFR 408.345 (New); 20 CFR 408.351 (New); 20 CFR 408.355 (New); 20 CFR 408.360 (New); 20 CFR 408.401 (New) to 408.406 (New); 20 CFR 408.410 (New); 20 CFR 408.412 (New); 20 CFR 408.413 (New); 20 CFR 408.420 (New); 20 CFR 408.425 (New); 20 CFR 408.430 (New); 20 CFR 408.432 (New); 20 CFR 408.435 (New); 20 CFR 408.437 (New); 20 CFR 408.501 (New); 20 CFR 408.505 (New); 20 CFR 408.510 (New); 20 CFR 408.515 (New); 20 CFR 408.601 (New); 20 CFR 408.610 (New); 20 CFR 408.615 (New); 20 CFR 408.620 (New) to 408.622 (New); 20 CFR 408.624 (New); 20 CFR 408.625 (New); 20 CFR 408.635 (New); 20 CFR 408.640 (New); 20 CFR 408.641 (New); 20 CFR 408.645 (New); 20 CFR 408.650 (New); 20 CFR 408.655 (New); 20 CFR 408.660 (New); 20 CFR 408.665 (New)

Legal Deadline: None

Abstract: We propose to add to title 20 of the CFR 5 new subparts in a new part 408 that would set forth our rules applicable to claims for special veterans benefits (SVB) under title VIII of the Social Security Act. The title VIII program provides monthly benefits to certain WWII veterans who were previously eligible for supplemental security income payments under title XVI of the Act and reside outside the United States. These initial subparts would establish the legal basis for the title VIII program as well as codify the title VIII rules on qualification, filing applications, evaluating evidence, and computing and paying benefits. We will be proposing additional subparts dealing with other aspects of the title VIII at a later date.

Timetable:

Action	Date	FR Cite
NPRM	08/30/02	67 FR 55744
NPRM Comment Period End	10/29/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert J. Augustine, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-0020

RIN: 0960–AF61

3867. • REFERRAL OF PERSONS ELIGIBLE FOR DISABILITY OR BLINDNESS BENEFITS TO OTHER AGENCIES FOR VOCATIONAL REHABILITATION SERVICES (929F)

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 405(a); 42 USC 421; 42 USC 422; 42 USC 902(a)(5); 42 USC 1381 to 133d; 42 USC 1382 Note; 42 USC 1382d; 42 USC 1382c; 42 USC 1382(e)(3); 42 USC 1383; 42 USC 1383b; 42 USC 1383b(a); 42 USC 1383(d)(1); 42 USC 1383(e); 48 USC 1681 Note

CFR Citation: 20 CFR 404.1630; 20 CFR 404.2104; 20 CFR 404.2106; 20 CFR 416.101; 20 CFR 416.110; 20 CFR 4116.1030; 20 CFR 416.1701; 20 CFR 416.1710; 20 CFR 416.2204; 20 CFR 416.2206

Legal Deadline: None

Abstract: We are revising our regulations pertaining to the requirement to refer for vocational rehabilitation (VR) services those individuals who filed for disability benefits, thereby conforming them to provisions in the Ticket to Work and Work Incentives Improvement Act of 1999. The Ticket to Work and Work Incentives Improvement Act of 1999, repealed the VR referral requirement effective with January 1, 2001. For States in which we have implemented the Ticket to Work program, we are no longer referring beneficiaries eligible for disability benefits to State vocational rehabilitation agencies.

Timetable:

Action	Date	FR Cite
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Melvin Winer, Social Insurance Specialist, Social Security Administration, Office of Employment Support Programs, 6401 Security Boulevard, Baltimore, MD 21235-6401

Phone: 410 965-9175

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Phone: 410 965-1769

Related RIN: Split From 0960-AF74

RIN: 0960–AF80

3868. • ELIMINATION OF SANCTIONS FOR REFUSAL OF VOCATIONAL REHABILITATION SERVICES WITHOUT CAUSE (938F)

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 402; 42 USC 403; 42 USC 404(a); 42 USC 404(e); 42 USC 405(a); 42 USC 405(c); 42 USC 422(b); 42 USC 423(e); 42 USC 424a; 42 USC 425; 42 USC 902(a)(5); 42 USC 1320a-8a

CFR Citation: 20 CFR 404.401; 20 CFR 404.402; 20 CFR 404.421 to 404.425; 20 CFR 404.435 to 404.437; 20 CFR 404.458; 20 CFR 404.902; 20 CFR 404.1596; 20 CFR 404.2101 to 2103; 20 CFR 404.2109; 20 CFR 404.2113; 20 CFR 404.2116; 20 CFR 404.2117; 20 CFR 416.213; 20 CFR 416.708; 20 CFR 416.1701; 20 CFR 416.1715; 20 CFR 416.2040; 20 CFR 416.2201 to 416.2203; 20 CFR 416.2209; 20 CFR 416.2213; 20 CFR 416.2216; 20 CFR 416.2217

Legal Deadline: None

Abstract: We are revising our regulations to eliminate the sanctions for refusal of vocational rehabilitation (VR) services without good cause, thereby conforming them to the amendments made by the Ticket to Work and Work Incentives Improvement Act of 1999. The Ticket to Work and Work Incentives Improvement Act of 1999, which established the Ticket to Work program, repealed the VR refusal sanctions (i.e., deductions from social security disability or suspension of Supplemental Security Income benefits) effective with January 1, 2001. Under the obsolete sanctions, we were required to suspend disability benefits or Supplemental Security Income (SSI) payments for any disability beneficiary or disabled or blind SSI recipient who refused rehabilitation services without good cause. Since January 1, 2001, refusal of rehabilitation services is no longer a reason for us to sanction disability benefits. Accordingly, we are eliminating the rules regarding the sanctions for refusal of vocational rehabilitation services without good cause.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined.

Agency Contact: Melvin Winer, Social Insurance Specialist, Social Security Administration, Office of Employment Support Programs, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

Related RIN: Split From 0960-AF74

RIN: 0960–AF81

3869. • INTERRELATIONSHIP OF OLD-AGE, SURVIVORS AND DISABILITY INSURANCE PROGRAM WITH THE RAILROAD RETIREMENT PROGRAM (943I)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: PL 107-90, sec 103; Sec 205(i) of the Social Security Act

CFR Citation: 20 CFR 404.1401; 20 CFR 404.1402; 20 CFR 404.1404; 20 CFR 404.1405; 20 CFR 404.1413

Legal Deadline: None

Abstract: These interim final rules implement section 103 of the Railroad Retirement and Survivors' Improvement Act of 2001, that established an alternative vesting requirement for railroad workers. Under the alternative provision, railroad workers with 5 or more years of service (but less than 10) become vested under the Railroad Retirement Act provided all the years of service accrued after December 31, 1995. The provision was effective on January 1, 2001.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Marylin Buster, Social Insurance Specialist, Social Security Administration, Office of Program Benefits, 6401 Security Boulevard, Baltimore, MD 21235
Phone: 410 965-5555

Robert J. Augustine, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-0020

RIN: 0960–AF82

3870. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS) (554F)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 403(11); 41 USC 701 et seq; 42 USC 902(a)(5)

CFR Citation: 20 CFR 436.000

Legal Deadline: None

Abstract: This final regulation migrates the HHS grants regulation at 45 CFR part 76 into a new SSA regulation at 20 CFR part 436 now that SSA is an independent agency.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert J. Augustine, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-0020

RIN: 0960–AE27

3871. DEDICATED ACCOUNTS AND INSTALLMENT PAYMENTS FOR CERTAIN PAST DUE SSI BENEFITS (622F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 902(a)(5); 42 USC 1381; 42 USC 1381a; 42 USC 1382(c); 42 USC 1382(e); 42 USC 1383(a) to 1383(d); 42 USC 1383(g)

CFR Citation: 20 CFR 416.545; 20 CFR 416.546; 20 CFR 416.640; 20 CFR 416.1210; 20 CFR 416.1247

Legal Deadline: Final, Statutory, November 22, 1996.
Interim Final Rules were published on 12/20/1996.

Abstract: These regulations reflect amendments to the Social Security Act made by sections 213 and 221 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Section 213 requires the establishment of accounts in financial institutions for the payment of past due SSI benefits after reimbursement to a State for Interim Assistance Reimbursement exceeding 6 months' benefits to representative payees on behalf of children under age 18. These accounts will be dedicated for certain purposes by restrictions on the use of such past due benefits.

Section 221 requires past due SSI benefits after reimbursement to a State for Interim Assistance Reimbursement which equals or exceeds 12 months' benefits to be paid in installments, with certain exceptions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/20/96	61 FR 67203
Interim Final Rule Comment Period End	02/18/97	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
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RIN: 0960–AE59

3872. PRIVACY AND DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION (711P)

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a; 42 USC 1306(a); 42 USC 902(a)(5)

CFR Citation: 20 CFR 401.30; 20 CFR 401.45; 20 CFR 401.55; 20 CFR 401.150; 20 CFR 401.180

Legal Deadline: None

Abstract: We propose to revise our privacy and disclosure rules to:

1. Describe safeguards against inappropriate disclosure of personal information when individuals request information about themselves by electronic means (e.g., through the Internet);

2. Revise our special procedures on an individual's access to medical records;

3. Add a new section to grant direct access to a minor's medical records by the minor's parent or legal guardian acting on the minor's behalf; and

4. Fully describe the role and function of the Privacy Officer.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Chris W. Johnson, Social Insurance Specialist, Social Security Administration, Office of the General Counsel, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-8563

Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

RIN: 0960–AE88

3873. PAYMENT OF BENEFITS TO ALIENS RESIDING OUTSIDE THE UNITED STATES (909F)

Priority: Other Significant

Legal Authority: 42 USC 402(k); 42 USC 405(a); 42 USC 902(a)(5)

CFR Citation: 20 CFR 404.460

Legal Deadline: None

Abstract: We are revising our rules to remove Democratic Kampuchea (now Cambodia) and Vietnam from the list of countries to which social security benefits may not be sent to aliens in those countries under Department of the Treasury (Treasury) restrictions. The removal of the Treasury restrictions on these countries permits benefit payments to accrue for aliens who are entitled to benefits for title II months in which they reside in either Cambodia or Vietnam provided they are not subject to other non-payment provisions for those months. These benefits may be paid to them if they go to the United States or to a country to which SSA can send benefits or if we receive assurance of free access to beneficiaries and vital records from appropriate officials in the country in which they reside. The revisions are necessary to reflect that Treasury has published regulations that have removed their restriction on sending Federal payments to any payees living in these countries.

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

SSA

Long-Term Actions

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert J. Augustine, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-0020

RIN: 0960–AF70

Social Security Administration (SSA)

Completed Actions

3874. COLLECTION OF SUPPLEMENTAL SECURITY INCOME OVERPAYMENTS FROM TITLE VIII BENEFITS (819F)

Priority: Substantive, Nonsignificant

CFR Citation: 20 CFR 416.570; 20 CFR 416.572

Completed:

Reason	Date	FR Cite
Final Action	06/04/02	67 FR 38381
Final Action Effective	07/05/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert J. Augustine
Phone: 410 965-0020

Patricia Hora
Phone: 410 965-7183

RIN: 0960–AF53

3875. • EXTENSION OF EXPIRATION DATE FOR THE RESPIRATORY SYSTEM LISTINGS (921F)

Priority: Other Significant

Legal Authority: 42 USC 402; 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 405(h); 42 USC 416(i); 42 USC 421(a); 42 USC 421(i); 42 USC 422(c); 42 USC 423; 42 USC 425; 42 USC 902(a)(5)

CFR Citation: 20 CFR 404.1500, app 1

Legal Deadline: None

Abstract: We adjudicate claims at the third step of our sequential evaluation process for evaluating disability using the Listing of Impairments (the Listings) under the Social Security and Supplemental Security Income (SSI) programs. This final rule extends until July 2, 2003, the date on which the respiratory system listings will no longer be effective. We have made no revisions to the medical criteria in these listings; they remain the same as they now appear in the Code of Federal Regulations. This extension will ensure that we continue to have medical evaluation criteria in the listings to adjudicate claims for disability based on respiratory impairments at step three of our sequential evaluation process.

Timetable:

Action	Date	FR Cite
Final Action	06/28/02	67 FR 43537
Final Action Effective	06/28/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jane Deweib, Social Insurance Specialist, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-9878

Fran O. Thomas, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 966-9822

RIN: 0960–AF76

[FR Doc. 02–26340 Filed 12–06–02; 8:45 am]
BILLING CODE 4191–02–S

Federal Register

Monday,
December 9, 2002

Part XLVI

Tennessee Valley Authority

Semiannual Regulatory Agenda

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TENNESSEE VALLEY AUTHORITY (TVA)

TENNESSEE VALLEY AUTHORITY

18 CFR Ch. XIII

Regulatory Agenda

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Semiannual regulatory agenda.

SUMMARY: As a nonregulatory agency, TVA originates few regulations. TVA has previously submitted a proposed regulation which would revise the requirements applicable to the construction and maintenance of obstructions in the Tennessee River system and codify policies related to management of shoreline land under the jurisdiction of TVA and, together with other Federal agencies, proposed regulations implementing title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1972, and the Age Discrimination Act of 1975 related to the definitions of "program or activity" and "program." TVA is therefore publishing a regulatory agenda in voluntary compliance with Executive Order No. 12866.

FOR FURTHER INFORMATION CONTACT:

For further information, please contact the persons listed.

Maureen H. Dunn,

General Counsel.

Tennessee Valley Authority—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3876	Nondiscrimination in Federally Assisted Programs of TVA— Effectuation of Title VI of the Civil Rights Act of 1964	3316-AA20

Tennessee Valley Authority—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3877	Approval of Construction and Regulation of Structures in the Tennessee River System and Shoreline Management	3316-AA19

Tennessee Valley Authority (TVA) — **Final Rule Stage**

3876. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF TVA— EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 18 CFR 1302; 18 CFR 1307; 18 CFR 1309

Legal Deadline: None

Abstract: The Department of Justice proposes to make amendments to its regulations implementing title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1973 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRRA's definition of "program or activity" and "program" into the Department's title VI, section 504, and Age Discrimination Act regulations. The Department's proposed regulation will be published as part of a joint Notice of Proposed Rulemaking involving up to 24 Federal agencies, including TVA.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Franklin E. Alford, Manager, Supplier and Diverse Business Relations, Tennessee Valley Authority, 1101 Market Street, WR3J, Chattanooga, TN 37402
Phone: 423 751-7203

RIN: 3316–AA20

Tennessee Valley Authority (TVA) — **Long-Term Actions**

3877. APPROVAL OF CONSTRUCTION AND REGULATION OF STRUCTURES IN THE TENNESSEE RIVER SYSTEM AND SHORELINE MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 831 to 831dd

CFR Citation: 18 CFR 1304 (Revision)

Legal Deadline: None

Abstract: This action revises the requirements applicable to construction and maintenance of obstructions in the Tennessee River System to better describe the types of facilities that would be considered for approval. It also would codify policies related to management of certain shoreline lands under the jurisdiction, custody, and control of TVA.

Timetable:

Action	Date	FR Cite
NPRM	09/20/00	65 FR 56821
NPRM Comment Period End	11/20/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Robert L. Curtis, Specialist-Land Policy, Resource Stewardship, Tennessee Valley Authority, P.O. Box 1589, 17 Ridgeway Road, Norris, TN 37828
Phone: 865 632-1552

RIN: 3316–AA19

[FR Doc. 02–25638 Filed 12–06–02; 8:45 am]
BILLING CODE 8120–08–S

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December 9, 2002

Part XLVII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

Federal Acquisition Regulation; Semiannual Regulatory Agenda

DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Ch. 1

Semiannual Regulatory Agenda

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda provides summary descriptions of regulations being developed by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in compliance with Executive Order 12866 "Regulatory Planning and Review." This agenda is being published to allow interested persons an opportunity to participate in the rulemaking process.

The Regulatory and Federal Assistance Publication Division has attempted to list all regulations pending at the time of publication, except for minor and routine or repetitive actions; however, unanticipated requirements may result in the issuance of regulations that are not included in this agenda. There is no legal significance to the omission of an item from this listing. Also, the dates shown for the steps of each action are estimated and are not commitments to act on or by the dates shown.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie Duarte, Regulatory and Federal Assistance Publication Division, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755.

SUPPLEMENTARY INFORMATION: DoD, GSA, and NASA, under their several statutory authorities, jointly issue and maintain the FAR through periodic issuance of changes published in the **Federal Register** and produced electronically as Federal Acquisition Circulars (FACs).

The electronic version of the FAR, including changes, can be accessed on the FAR website at http://www.arnet.gov/FAR.

Dated: September 18, 2002.

Al Matera,

Director, Acquisition Policy Division.

DOD/GSA/NASA(FAR)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3878	FAR Case 1999-024, Preference for U.S.-Flag Vessels	9000-AI97
3879	FAR Case 2000-306, Caribbean Basin Country End Products	9000-AJ27
3880	FAR Case 2002-009, Trade Agreements Thresholds	9000-AJ41

DOD/GSA/NASA(FAR)—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3881	FAR Case 1989-093, Implementation of the Anti-Lobbying Statute	9000-AD76
3882	FAR Case 1991-078, Small Business Subcontracting Reporting	9000-AG04
3883	FAR Case 1994-753, Travel Costs	9000-AG27
3884	FAR Case 1995-013, Government Property	9000-AH60
3885	FAR Case 1997-304, Electronic Commerce in Federal Procurement	9000-AI10
3886	FAR Case 1999-025, Cost Accounting Standards Administration	9000-AI70
3887	FAR Case 2000-007, Financing Policies	9000-AI92
3888	FAR Case 2000-302, Veterans Entrepreneurship and Small Business Development Act of 1999	9000-AI93
3889	FAR Case 2000-304, Electronic Signatures	9000-AI94
3890	FAR Case 1998-018, Trademarks for Government Products	9000-AI98
3891	FAR Case 1999-400, Geographic Use of the Term "United States"	9000-AI99
3892	FAR Case 2000-013, Contract Types for Commercial Item Acquisitions	9000-AJ03
3893	FAR Case 2001-016, E.O. 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects	9000-AJ14
3894	FAR Case 2000-608, New Consolidated Form for Selection of Architect-Engineer Contractors	9000-AJ15
3895	FAR Case 2000-308, Prompt Payment Under Cost-Reimbursement Contracts for Services	9000-AJ17
3896	FAR Case 2000-011, Revisions to Provisions/Clauses to Accommodated Sealed Bidding and Simplified Procedures in Commercial Item Acquisitions	9000-AJ18
3897	FAR Case 2001-005, Notification of Overpayment, Contract Financing Payments	9000-AJ20
3898	FAR Case 1998-020, Hazardous Material Safety Data	9000-AJ21
3899	FAR Case 2001-006, Progress Payment Requests Under Indefinite—Delivery Contracts	9000-AJ23
3900	FAR Case 2001-030, Electronic Listing of Acquisition Vehicles for Use by More Than One Agency	9000-AJ30
3901	FAR Case 2001-029, Miscellaneous Cost Principles	9000-AJ33

FAR

DOD/GSA/NASA(FAR)—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
3902	FAR Case 2000-009, Contract Terms and Conditions Required To Implement Statute or Executive Orders—Commercial Items	9000-AJ34
3903	FAR Case 2001-015, Prohibited Sources	9000-AJ35
3904	FAR Case 2001-008, Compensation Cost Principle	9000-AJ36
3905	FAR Case 2001-021, Training and Education Cost Principle	9000-AJ38
3906	FAR Case 2000-016, Federal, State, and Local Taxes	9000-AJ39
3907	FAR Case 2002-003, Temporary Emergency Procurement Authority	9000-AJ40
3908	FAR Case 2001-024, Selling Cost Principle	9000-AJ42
3909	FAR Case 2000-005, Leadership in Environmental Management (Executive Order 13148)	9000-AJ44
3910	FAR Case 2001-035, Past Performance Evaluation of Federal Prison Industries Contracts	9000-AJ45
3911	FAR Case 2002-001, Economic Planning, Employee Morale, and Travel Costs Principles	9000-AJ46

DOD/GSA/NASA(FAR)—Completed Actions

Sequence Number	Title	Regulation Identification Number
3912	FAR Case 1997-032, Relocation Costs	9000-AH96
3913	FAR Case 1999-303, Task Order and Delivery Order Contracts	9000-AI72
3914	FAR Case 1999-616, Balance of Payments Program	9000-AI90
3915	FAR Case 2000-401, Definitions of Applied Research and Development	9000-AI91
3916	FAR Case 1999-614, Federal Supply Schedule Order Disputes and Incidental Items	9000-AJ01
3917	FAR Case 2000-307, Preference for Performance-Based Contracting	9000-AJ12
3918	FAR Case 2000-406, Definition of "Claim" and Terms Relating to Termination	9000-AJ19
3919	FAR Case 2001-012, Payments Under Fixed-Price Construction Contracts	9000-AJ22
3920	FAR Case 2001-002, European Union Trade Sanctions	9000-AJ37

DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Final Rule Stage

3878. FAR CASE 1999-024, PREFERENCE FOR U.S.-FLAG VESSELS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC 137; 42 USC 2473(c)

CFR Citation: 48 CFR 2; 48 CFR 12; 48 CFR 32; 48 CFR 47; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) regarding the applicability of statutory requirements for use of U.S.-flag vessels in the transportation of supplies by sea. The FAR presently waives these requirements for subcontracts for the acquisition of commercial items. The rule requires the use of U.S.-flag vessels under certain subcontracts for commercial items. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

This is a procurement-related action for which there is no statutory requirement. There is a paperwork burden associated with this action.

Timetable:

Action	Date	FR Cite
NPRM	11/07/00	65 FR 66920
NPRM Comment Period End	01/08/01	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVP), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
Phone: 202 501-4225
Fax: 202 501-4067
Email: laurie.duarte@gsa.gov

RIN: 9000–AI97

3879. FAR CASE 2000-306, CARIBBEAN BASIN COUNTRY END PRODUCTS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 25; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to implement the determination of the United States Trade Representative (USTR) to extend the treatment of

certain end products, from countries designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act, as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic, Honduras, and Panama. On July 12, 2002 (67 FR 46239), the USTR published a notice in the Federal Register to reinstate the treatment on Government procurement of products from Honduras. The rule also implements section 211 of the United States-Caribbean Basin Trade Partnership Act and the determination of the USTR as to which countries qualify for the enhanced trade benefits under that Act. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/08/02	67 FR 6116
Interim Final Rule Effective	02/20/02	
Interim Final Rule Comment Period End	04/09/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVP), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
Phone: 202 501-4225
Fax: 202 501-4067
Email: laurie.duarte@gsa.gov

RIN: 9000–AJ27

3880. • FAR CASE 2002-009, TRADE AGREEMENTS THRESHOLDS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 22; 48 CFR 25; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to implement new dollar thresholds for application of the Trade Agreements Act (TAA) and North American Free Trade Agreement (NAFTA) as published by the U.S. Trade Representative in the Federal Register at 67 FR 14763, March 27, 2002. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVP), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
Phone: 202 501-4225
Fax: 202 501-4067
Email: laurie.duarte@gsa.gov

RIN: 9000–AJ41

DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Long-Term Actions

3881. FAR CASE 1989-093, IMPLEMENTATION OF THE ANTI-LOBBYING STATUTE

Priority: Substantive, Nonsignificant

Legal Authority: PL 101-121, sec 319

CFR Citation: 48 CFR 3; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to implement section 319 of Public Law 101-121, which added a new section 1352 to title 31 U.S.C. entitled "Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions." Section 319 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Section 319 also requires that each person who requests or receives a Federal contract, grant, or cooperative agreement, in excess of $100,000, or a loan or Federal commitment to insure or guarantee a loan, in excess of $150,000, must disclose lobbying with other than appropriated funds.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/30/90	55 FR 3190
Interim Final Rule Comment Period End	04/02/90	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVP), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
Phone: 202 501-4225
Fax: 202 501-4067
Email: laurie.duarte@gsa.gov

RIN: 9000–AD76

3882. FAR CASE 1991-078, SMALL BUSINESS SUBCONTRACTING REPORTING

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC 2301 to 2331; 42 USC 2473(c)

CFR Citation: 48 CFR 53.219

Legal Deadline: None

Abstract: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend FAR 53.219 to authorize the addition of a column to the Standard Form 295, Summary Subcontract Report, to report the number of subcontracts awarded to small business concerns, small disadvantaged business concerns, and women-owned small business enterprises. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	09/26/94	59 FR 49037
NPRM Comment Period End	11/25/94	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVP), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
Phone: 202 501-4225
Fax: 202 501-4067
Email: laurie.duarte@gsa.gov

RIN: 9000–AG04

3883. FAR CASE 1994-753, TRAVEL COSTS

Priority: Other Significant

Legal Authority: PL 103-355

CFR Citation: 48 CFR 31.205-46

Legal Deadline: Final, Statutory, October 1, 1995, The Federal Acquisition Streamlining Act eliminated the statutory requirement to the travel cost principle concerning the Federal Travel Regulations. No regulatory implementation was required.

Abstract: This rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103-355 (the Act). The Federal Acquisition Regulatory Council is considering amending the Federal Acquisition Regulation (FAR) as a result of changes to 41 U.S.C. 22 by section 2191 of the Act. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	12/14/94	59 FR 64542
NPRM Comment Period End	02/13/95	
NPRM	05/20/99	64 FR 27654
NPRM Comment Period End	07/19/99	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVP), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
Phone: 202 501-4225
Fax: 202 501-4067
Email: laurie.duarte@gsa.gov

RIN: 9000–AG27

3884. FAR CASE 1995-013, GOVERNMENT PROPERTY

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC 137; 42 USC 2473(c)

CFR Citation: 48 CFR 45; 48 CFR 52

Legal Deadline: None

Abstract: The rule amends the Federal Acquisition Regulation (FAR) to simplify procedures, reduce recordkeeping, and eliminate requirements related to the management and disposition of Government property in the possession of contractors. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	06/02/97	62 FR 30186
NPRM Comment Period End	08/15/97	
NPRM	01/10/00	65 FR 1438
NPRM Comment Period End	03/10/00	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVP), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
Phone: 202 501-4225
Fax: 202 501-4067
Email: laurie.duarte@gsa.gov

RIN: 9000–AH60

3885. FAR CASE 1997-304, ELECTRONIC COMMERCE IN FEDERAL PROCUREMENT

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-85, sec 850

CFR Citation: 48 CFR 2; 48 CFR 4; 48 CFR 5; 48 CFR 12; 48 CFR 13; 48 CFR 14; 48 CFR 19; 48 CFR 22; 48 CFR 34; 48 CFR 35; 48 CFR 36

Legal Deadline: Final, Statutory, May 16, 1998.

Abstract: This rule amends the Federal Acquisition Regulation to implement section 850 of the National Defense Act for FY 1998 (Pub. L. 105-85) to eliminate the preference for electronic commerce within the Federal Acquisition Computer Network. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/30/98	63 FR 58590
Interim Final Rule Effective	10/30/98	
Interim Final Rule Comment Period End	12/29/98	
NPRM	08/21/00	65 FR 50872
NPRM Comment Period End	10/20/00	
Interim Final Rule	05/16/01	66 FR 27407
Interim Final Rule Comment Period End	07/16/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVP), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
Phone: 202 501-4225
Fax: 202 501-4067
Email: laurie.duarte@gsa.gov

RIN: 9000–AI10

3886. FAR CASE 1999-025, COST ACCOUNTING STANDARDS ADMINISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC 137; 42 USC 2473(c)

CFR Citation: 48 CFR 30; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to delineate the process for determining and resolving the cost impact on contracts and subcontracts when a contractor makes a compliant change to a cost accounting practice or follows a noncompliant practice. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	04/18/00	65 FR 20854
NPRM Comment Period End	06/19/00	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVP), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
Phone: 202 501-4225
Fax: 202 501-4067
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RIN: 9000–AI70

3887. FAR CASE 2000-007, FINANCING POLICIES

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC 137; 42 USC 2473(c)

CFR Citation: 48 CFR 32; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to permit the use of performance-based payments type of financing on fixed-price contracts prior to definitization and to revise the criteria governing when a prime contractor can bill the Government for costs incurred, but not yet paid, for supplies and services purchased directly for the contract and for associated subcontractor financing payment requests. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804

Timetable:

Action	Date	FR Cite
NPRM	09/18/00	65 FR 56454
NPRM Comment Period End	11/17/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVP), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
Phone: 202 501-4225
Fax: 202 501-4067
Email: laurie.duarte@gsa.gov

RIN: 9000–AI92

3888. FAR CASE 2000-302, VETERANS ENTREPRENEURSHIP AND SMALL BUSINESS DEVELOPMENT ACT OF 1999

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC 137; 42 USC 2473(c); PL 106-50

CFR Citation: 48 CFR 2; 48 CFR 4; 48 CFR 5; 48 CFR 7; 48 CFR 19; 48 CFR 52; 48 CFR 53

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to implement section 803 of the Small Business Reauthorization Act of 2000, part of the Consolidated Appropriations Act 2001 (Pub. L. 106-554). The Act established new assistance programs for veterans and service-disabled veterans who own and operate small businesses. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/11/00	65 FR 60542
Interim Final Rule Effective	10/11/00	
Interim Final Rule Comment Period End	12/11/00	
Interim Final Rule	10/22/01	66 FR 53492
Interim Final Rule Effective	10/22/01	
Interim Final Rule Comment Period End	12/21/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVP), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
Phone: 202 501-4225
Fax: 202 501-4067
Email: laurie.duarte@gsa.gov

RIN: 9000–AI93

3889. FAR CASE 2000-304, ELECTRONIC SIGNATURES

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC 137; 42 USC 2473(c)

CFR Citation: 48 CFR 2; 48 CFR 4

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to clarify and encourage the use of electronic signatures in Federal procurement. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804

Timetable:

Action	Date	FR Cite
NPRM	11/01/00	65 FR 65698
NPRM Comment Period End	01/02/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVP), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
Phone: 202 501-4225
Fax: 202 501-4067
Email: laurie.duarte@gsa.gov

RIN: 9000–AI94

3890. FAR CASE 1998-018, TRADEMARKS FOR GOVERNMENT PRODUCTS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(a); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 27; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to provide guidance on the use of names, symbols, and logos that describe Government products, services, systems, and programs. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

This is a procurement-related action for which there is no statutory requirement. There may be a paperwork burden associated with this action.

Timetable:

Action	Date	FR Cite
NPRM	08/09/01	66 FR 42102
NPRM Comment Period End	10/09/01	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AI98

3891. FAR CASE 1999-400, GEOGRAPHIC USE OF THE TERM "UNITED STATES"

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 2; 48 CFR 3; 48 CFR 4; 48 CFR 5; 48 CFR 6; 48 CFR 8; 48 CFR 9; 48 CFR 14; 48 CFR 19; 48 CFR 22; 48 CFR 23; 48 CFR 25; 48 CFR 26; 48 CFR 28; 48 CFR 29; 48 CFR 31; 48 CFR 35; 48 CFR 36; 48 CFR 42; 48 CFR 47; 48 CFR 52; 48 CFR 53

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to review and clarify the use of the term "United States" in the FAR. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	07/27/01	66 FR 39230
NPRM Comment Period End	09/25/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AI99

3892. FAR CASE 2000-013, CONTRACT TYPES FOR COMMERCIAL ITEM ACQUISITIONS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC 137; 42 USC 2473(c)

CFR Citation: 48 CFR 12; 48 CFR 16

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to provide clarification on what contract types are authorized for commercial item acquisitions. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	12/29/00	65 FR 83292
NPRM Comment Period End	02/27/01	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ03

3893. FAR CASE 2001-016, E.O. 13202, PRESERVATION OF OPEN COMPETITION AND GOVERNMENT NEUTRALITY TOWARDS GOVERNMENT CONTRACTORS' LABOR RELATIONS ON FEDERAL AND FEDERALLY FUNDED CONSTRUCTION PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 17; 48 CFR 22; 48 CFR 36

Legal Deadline: None

Abstract: Executive Order (EO) 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects, which prohibits including requirements for affiliation with a labor organization as a condition for award of any contract or subcontract for construction or construction management services, is currently the subject of litigation in the Federal courts. The district court agreed with the AFL-CIO's contention that the Labor Relations Act preempts the E.O. and granted an injunction against implementation of the E.O. An appeal of this decision is pending in the United States Court of Appeals for the District of Columbia Circuit. Pending resolution of this litigation, a stay for the interim rule was published in the Federal Register on March 7, 2002, to comply with the court order. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/16/01	66 FR 27414
Interim Final Rule Effective	05/16/01	
Interim Final Rule Comment Period End	07/16/01	

Action	Date	FR Cite
Interim Final Rule (Stay)	03/07/02	67 FR 10528
Interim Final Rule Effective	03/07/02	
Interim Final Rule Comment Period End	05/06/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 9000–AJ14

3894. FAR CASE 2000-608, NEW CONSOLIDATED FORM FOR SELECTION OF ARCHITECT-ENGINEER CONTRACTORS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 36

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to replace Standard Forms 254 and 255 with proposed Standard Form 330, Architect-Engineer Qualification. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	10/19/01	66 FR 53314
NPRM Comment Period End	12/18/01	
NPRM Comment Period End (Extended)	01/08/02	66 FR 65792

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ15

3895. FAR CASE 2000-308, PROMPT PAYMENT UNDER COST-REIMBURSEMENT CONTRACTS FOR SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 32; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to require agencies to pay an interest penalty whenever they make an interim payment under a cost-reimbursement contract for services more than 30 days after the agency receives a proper invoice from the contractor. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/22/01	66 FR 53485
Interim Final Rule Effective	10/22/01	
Interim Final Rule Comment Period End	12/21/01	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ17

3896. FAR CASE 2000-011, REVISIONS TO PROVISIONS/CLAUSES TO ACCOMMODATED SEALED BIDDING AND SIMPLIFIED PROCEDURES IN COMMERCIAL ITEM ACQUISITIONS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to update FAR provisions relating to Instructions to Offerors-Commercial Items and Offeror Representations and Certifications-Commercial Items to accommodate sealed bidding and simplified acquisitions. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	08/22/01	66 FR 44288
NPRM Comment Period End	10/22/01	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ18

3897. FAR CASE 2001-005, NOTIFICATION OF OVERPAYMENT, CONTRACT FINANCING PAYMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to require the contractor to notify the contracting officer if the Government overpays the contractor when making a contract financing payment under both commercial item and non-commercial item contracts. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

This is a procurement-related action for which there is no statutory

requirement. There is a paperwork burden associated with this action.

Timetable:

Action	Date	FR Cite
NPRM	08/29/02	
NPRM Comment Period End	10/28/02	67 FR 55676

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ20

3898. FAR CASE 1998-020, HAZARDOUS MATERIAL SAFETY DATA

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 23; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to revise the language that provides policies and procedures for contractor submission of Material Safety Data Sheets (MSDSs). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804. RIN 9000-AI87 was withdrawn in the spring 2001 Unified Agenda, published in the Federal Register on May 14, 2001.

Timetable:

Action	Date	FR Cite
NPRM	01/04/02	67 FR 632
NPRM Comment Period End	03/05/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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Related RIN: Previously reported as 9000-AI87

RIN: 9000–AJ21

3899. FAR CASE 2001-006, PROGRESS PAYMENT REQUESTS UNDER INDEFINITE—DELIVERY CONTRACTS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 32; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to require, under indefinite—delivery contracts, the contractor to account for and submit progress payment requests under individual orders as if each order constitutes a separate contract, unless otherwise specified in the contract. This regulatory action was not subject to Office of Management and Budget Review under Executive Order 12866 dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	11/14/01	66 FR 57294
NPRM Comment Period End	01/14/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ23

3900. FAR CASE 2001-030, ELECTRONIC LISTING OF ACQUISITION VEHICLES FOR USE BY MORE THAN ONE AGENCY

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 5

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to require contracting activities to input information online for Governmentwide acquisition contracts, multi-agency contracts, General Services Administration (GSA) Federal Supply Schedule (FSS) contracts, blanket purchase agreements (BPAs) under FSS contracts, and other procurement instruments intended for multiple agency use. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	02/15/02	67 FR 7256
NPRM Comment Period End	04/16/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ30

3901. FAR CASE 2001-029, MISCELLANEOUS COST PRINCIPLES

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 2; 48 CFR 31; 48 CFR 47; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to delete the cost principle concerning transportation costs, and to revise the cost principles concerning cost of money, other business expenses, and deferred research and developments. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

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Timetable:

Action	Date	FR Cite
NPRM	03/20/02	67 FR 13072
NPRM Comment Period End	05/20/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AJ33

3902. FAR CASE 2000-009, CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTE OR EXECUTIVE ORDERS—COMMERCIAL ITEMS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486; 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to update the clause regarding contract terms and conditions required to implement statute or Executive orders—commercial items. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	03/20/02	67 FR 13076
NPRM Comment Period End	05/20/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ34

3903. FAR CASE 2001-015, PROHIBITED SOURCES

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 25; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to implement Executive Order 13192, Lifting and Modifying Measures With Respect to the Federal Republic of Yugoslavia (Serbia and Montenegro), and other regulations of the Department of Treasury that enforce economic sanctions imposed by the President. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. The rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	03/20/02	67 FR 13080
NPRM Comment Period End	05/20/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ35

3904. FAR CASE 2001-008, COMPENSATION COST PRINCIPLE

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 16; 48 CFR 22; 48 CFR 31; 48 CFR 37; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to revise the "compensation for personal services" cost principle. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	04/23/02	67 FR 19952
NPRM Comment Period End	06/24/02	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ36

3905. • FAR CASE 2001-021, TRAINING AND EDUCATION COST PRINCIPLE

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473

CFR Citation: 48 CFR 31

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR)"Training and Education Costs" cost principle. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	05/15/02	67 FR 34810
Correction	06/11/02	67 FR 40136
NPRM Comment Period End	07/15/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ38

3906. • FAR CASE 2000-016, FEDERAL, STATE, AND LOCAL TAXES

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473 (c)

CFR Citation: 48 CFR 29; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation to clarify the prescriptions for use of clauses relating to Federal, State, and local taxes. In addition, the rule deletes the clause regarding taxes-contracts performed in U.S. possessions or Puerto Rico and updates and moves the definitions of "local taxes". This regulatory action was not subject to review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	06/04/02	67 FR 38552
NPRM Comment Period End	08/05/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ39

3907. • FAR CASE 2002-003, TEMPORARY EMERGENCY PROCUREMENT AUTHORITY

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 2; 48 CFR 12; 48 CFR 13; 48 CFR 19; 48 CFR 25

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to implement section 836 of the Fiscal Year 2002 National Defense Authorization Act. This regulatory action was not subject to review under Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/30/02	67 FR 56120
Interim Final Rule Effective	08/30/02	
Interim Final Rule Comment Period End	10/29/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ40

3908. • FAR CASE 2001-024, SELLING COST PRINCIPLE

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 31

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to revise the "selling costs" cost principle to increase clarity and to remove excessive wording and details. This regulatory action was not subject to Office of Management and Budget review under Executive order 12866 dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	08/29/02	
NPRM Comment Period End	10/28/02	67 FR 55682
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ42

3909. • FAR CASE 2000-005, LEADERSHIP IN ENVIRONMENTAL MANAGEMENT (EXECUTIVE ORDER 13148)

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 23; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	08/29/02	
NPRM Comment Period End	10/28/02	67 FR 55670
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ44

3910. • FAR CASE 2001-035, PAST PERFORMANCE EVALUATION OF FEDERAL PRISON INDUSTRIES CONTRACTS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 8; 48 CFR 42

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to remove the prohibition on evaluating Federal Prison Industries (FPI) contract

performance. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	08/29/02	
NPRM Comment Period End	10/28/02	67 FR 55680
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ45

3911. • FAR CASE 2002-001, ECONOMIC PLANNING, EMPLOYEE MORALE, AND TRAVEL COSTS PRINCIPLES

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 31

Legal Deadline: None

Abstract: This regulation amends the Federal Acquisition Regulation (FAR) to revise the cost principles regarding economic planning costs, employee morale, health, welfare, food service, and dormitory costs and credits, and travel costs to increase clarity and readability. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	08/29/02	
NPRM Comment Period End	10/28/02	67 FR 55686
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ46

DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Completed Actions

3912. FAR CASE 1997-032, RELOCATION COSTS

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 31

Completed:

Reason	Date	FR Cite
Final Action	06/27/02	67 FR 43516
Final Action Effective	07/29/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AH96

3913. FAR CASE 1999-303, TASK ORDER AND DELIVERY ORDER CONTRACTS

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 2; 48 CFR 16

Completed:

Reason	Date	FR Cite
Final Action	08/30/02	67 FR 56117
Final Action Effective	09/30/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AI72

3914. FAR CASE 1999-616, BALANCE OF PAYMENTS PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 13; 48 CFR 25; 48 CFR 52

Completed:

Reason	Date	FR Cite
Final Action	04/30/02	67 FR 21534
Final Action Effective	05/15/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AI90

3915. FAR CASE 2000-401, DEFINITIONS OF APPLIED RESEARCH AND DEVELOPMENT

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 2; 48 CFR 31; 48 CFR 35

Completed:

Reason	Date	FR Cite
Withdrawn	06/20/02	67 FR 42174

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte
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RIN: 9000–AI91

3916. FAR CASE 1999-614, FEDERAL SUPPLY SCHEDULE ORDER DISPUTES AND INCIDENTAL ITEMS

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 8; 48 CFR 51

Completed:

Reason	Date	FR Cite
Final Action	06/27/02	67 FR 43514
Final Action Effective	07/29/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte
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RIN: 9000–AJ01

3917. FAR CASE 2000-307, PREFERENCE FOR PERFORMANCE-BASED CONTRACTING

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 2; 48 CFR 37

Completed:

Reason	Date	FR Cite
Final Action	04/30/02	67 FR 21533
Final Action Effective	05/15/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte
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RIN: 9000–AJ12

3918. FAR CASE 2000-406, DEFINITION OF "CLAIM" AND TERMS RELATING TO TERMINATION

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 2; 48 CFR 17; 48 CFR 33; 48 CFR 49; 48 CFR 52

Completed:

Reason	Date	FR Cite
Final Action	06/27/02	67 FR 43513
Correction	07/19/02	67 FR 47635
Final Action Effective	07/29/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte
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RIN: 9000–AJ19

3919. FAR CASE 2001-012, PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 52

Completed:

Reason	Date	FR Cite
Final Action	08/30/02	67 FR 56124
Final Action Effective	09/30/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte
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RIN: 9000–AJ22

3920. FAR CASE 2001-002, EUROPEAN UNION TRADE SANCTIONS

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 25

Completed:

Reason	Date	FR Cite
Final Action	04/30/02	67 FR 21538
Final Action Effective	05/15/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AJ37

[FR Doc. 02–24266 Filed 12–06–02; 8:45 am]
BILLING CODE 6820–EP–S

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Federal Register

Monday,
December 9, 2002

Part XLVIII

Commodity Futures Trading Commission

Semiannual Regulatory Agenda

COMMODITY FUTURES TRADING COMMISSION (CFTC)

COMMODITY FUTURES TRADING COMMISSION

17 CFR Ch. I

Regulatory Flexibility Agenda

AGENCY: Commodity Futures Trading Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Commodity Futures Trading Commission, in accordance with the requirements of the Regulatory Flexibility Act, is publishing a semiannual agenda of significant rules that the Commission expects to propose or promulgate over the next year. The Commission welcomes comments from small entities and others on the agenda.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Webster Black, Special Assistant to the Executive Director, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581, (202) 418-5130, bblack@cftc.gov.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (RFA), sets forth a number of requirements for agency rulemaking. Among other things, the RFA requires that:

(a) Semiannually, each agency shall publish in the **Federal Register** a regulatory flexibility agenda that shall contain:

(1) A brief description of the subject area of any rule that the agency expects to propose or promulgate, which is likely to have a significant economic impact on a substantial number of small entities;

(2) A summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking; and

(3) The name and telephone number of an agency official knowledgeable about the items listed in paragraph (1). 5 U.S.C. 602(a).

The Commission has prepared an agenda of significant rules that it presently expects may be considered during the course of the next year. These rules may have some impact on small entities.[1] In this regard, section 602(d) of the RFA, 5 U.S.C. 602(d), provides: "Nothing in [section 602] precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda or requires an agency to consider or act on any matter listed in such agenda."

The Commission's fall 2002 regulatory flexibility agenda is set forth below.

Issued in Washington, DC on September 18, 2002 by the Commission.

Jean A. Webb,

Secretary of the Commission.

Commodity Futures Trading Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3921	Denomination of Customer Funds and Location of Depositories	3038-AB31
3922	Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers	3038-AB64
3923	Regulation of Hybrid Instruments	3038-AB69
3924	Use of Broker-Dealers, Depository Institutions, and Farm Crediting System Institutions as Intermediaries on Derivatives Transaction Execution Facilities	3038-AB70
3925	Compliance Date for Security Futures Products To Be Cleared by a Clearing Agency That Has Linked and Coordinated Clearing With Other Clearing Agencies	3038-AB74
3926	Offering and Selling Security Futures Products Traded on Foreign Boards of Trade to United States Persons	3038-AB75
3927	Requirements for Foreign Stock Index Contracts To Qualify as Non-Narrow-Based Indices	3038-AB78
3928	Allocation of Bunched Orders	3038-AB93
3929	Treatment of Foreign Futures or Foreign Options Secured Amount	3038-AB96

Commodity Futures Trading Commission—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3930	Performance Disclosures for Commodity Trading Advisors and Commodity Pool Operators	3038-AB39
3931	Registration Exemptions Pertaining to the Offer and Sale of Foreign Futures and Foreign Options Contracts to Customers Located in the United States	3038-AB45

[1] The Commission published its definition of small entity to be used in connection with rulemaking proceedings on April 30, 1982 (47 FR 18618). Pursuant to that definition, the Commission is not required to list many of the agenda items contained in this regulatory flexibility agenda. See 5 U.S.C. 602(a)(1). Moreover, the Commission has previously certified, pursuant to section 605 of the RFA, 5 U.S.C. 605, that certain items contained in this agenda will not have a significant economic impact on a substantial number of small entities. Accordingly, the listing of a rule in this regulatory flexibility agenda should not, in any event, be taken as a determination that a rule, when proposed or promulgated, will in fact require a regulatory flexibility analysis. However, the Commission hopes that the publication of an agenda which includes significant rules, regardless of their potential impact on small entities, may serve the public generally by providing an early and meaningful opportunity to participate in and comment on the formulation of new or revised regulations. In addition to publishing the regulatory flexibility agenda, the Commission also makes available to the public, on a monthly basis, a calendar and, on a weekly basis, posts an advisory on its website (http://www.cftc.gov) that lists rules that the Commission is considering or will consider in the near future.

CFTC

Commodity Futures Trading Commission—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
3932	Customer Identification Program for Futures Commission Merchants and Introducing Brokers	3038-AB90
3933	Reporting Levels for Large Trader Reports; TRAKRS	3038-AB91

Commodity Futures Trading Commission—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3934	Public Reporting by Operators of Certain Large Commodity Pools—Regulations 4.7, 4.12, and 4.27	3038-AB40
3935	Trade Options on Enumerated Agricultural Commodities	3038-AB61
3936	Exemption From Compliance With the Criterion for Linked and Coordinated Clearing	3038-AB72

Commodity Futures Trading Commission—Completed Actions

Sequence Number	Title	Regulation Identification Number
3937	Margin Requirements for Security Futures Products	3038-AB71
3938	Avoidance of Duplicative or Conflicting Regulations Applicable to Dual Registrants	3038-AB76
3939	Cash Settlement and Regulatory Halts Required for Security Futures Products	3038-AB86

Commodity Futures Trading Commission—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
3038-AB73	Authority To Modify Security Futures Product Listing Standards	06/25/2002	Withdrawn

Commodity Futures Trading Commission (CFTC) — Proposed Rule Stage

3921. DENOMINATION OF CUSTOMER FUNDS AND LOCATION OF DEPOSITORIES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1a; 7 USC 2; 7 USC 5; 7 USC 6a to 6d; 7 USC 6f to 6g; 7 USC 12a; 7 USC 19

CFR Citation: 17 CFR 1.32; 17 CFR 1.49

Legal Deadline: None

Abstract: The Commission is requesting public comment on proposed rules that would permit futures commission merchants and derivatives clearing organizations, under certain conditions, to deposit customer funds in foreign depositories and in certain currencies other than United States dollars. The Commission is also requesting public comment on a proposed amendment to appendix B of its bankruptcy rules that would govern the distribution of property where the bankrupt futures commission merchant or derivatives clearing organization maintains customer property in depositories outside the United States or in a foreign currency.

Timetable:

Action	Date	FR Cite
Concept Release	12/30/97	62 FR 67841
NPRM	08/13/02	67 FR 52641
NPRM Comment Period End	10/15/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3038–AB31

3922. MINIMUM FINANCIAL REQUIREMENTS FOR FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 6f

CFR Citation: 17 CFR 1.17

Legal Deadline: None

CFTC — Proposed Rule Stage

Abstract: The Commission intends to propose amendments to Rule 1.17 that would adopt a risk-based capital requirement for futures commission merchants.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Thomas J. Smith, Deputy Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1121 21st Street NW., Washington, DC 20581
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RIN: 3038–AB64

3923. REGULATION OF HYBRID INSTRUMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1 et seq, as amended by PL 106-554, 114 Stat. 2763

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission is required, after consulting with and obtaining the concurrence of the Board of Governors of the Federal Reserve System, to prescribe regulations to govern hybrid instruments if it determines that it is in the public interest and consistent with the Commodity Exchange Act, and the product is not predominantly a banking product under the test enumerated in title IV of the Commodity Futures Modernization Act of 2000.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Elizabeth L. Ritter, Acting Deputy General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581
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RIN: 3038–AB69

3924. USE OF BROKER-DEALERS, DEPOSITORY INSTITUTIONS, AND FARM CREDITING SYSTEM INSTITUTIONS AS INTERMEDIARIES ON DERIVATIVES TRANSACTION EXECUTION FACILITIES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1 et seq, as amended by PL 106-554, 114 Stat. 2763

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission is required to coordinate with the Securities and Exchange Commission, the Secretary of the Treasury and Federal banking regulators (including the Farm Credit Administration) in adopting rules and taking any other appropriate action to implement the provisions of the Commodity Futures Modernization Act of 2000 relating to the use of broker-dealers, depository institutions, and farm credit system institutions as intermediaries on derivatives transaction execution facilities.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth L. Ritter, Acting Deputy General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581
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RIN: 3038–AB70

3925. COMPLIANCE DATE FOR SECURITY FUTURES PRODUCTS TO BE CLEARED BY A CLEARING AGENCY THAT HAS LINKED AND COORDINATED CLEARING WITH OTHER CLEARING AGENCIES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1 et seq, as amended by PL 106-554, 114 Stat. 2763

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission and the Securities and Exchange Commission are required to jointly publish in the Federal Register a notice of the compliance date for requiring security futures products to be cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products to be purchased on one market and offset on another market that trades such product within 165 days of the compliance date.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth L. Ritter, Acting Deputy General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581
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RIN: 3038–AB74

3926. OFFERING AND SELLING SECURITY FUTURES PRODUCTS TRADED ON FOREIGN BOARDS OF TRADE TO UNITED STATES PERSONS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1 et seq, as amended by PL 106-554, 114 Stat. 2763

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission and the Securities and Exchange Commission are required to jointly issue rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of security futures products traded on or subject to the rules of a foreign board of trade to United States persons.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

CFTC — Proposed Rule Stage

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RIN: 3038–AB75

3927. REQUIREMENTS FOR FOREIGN STOCK INDEX CONTRACTS TO QUALIFY AS NON-NARROW-BASED INDICES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1 et seq, as amended by PL 106-554, 114 Stat. 2763

CFR Citation: Not Yet Determined

Legal Deadline: Other, Statutory, December 21, 2001, Prior to 12/21/2001.
Within one year after the date of enactment of the Commodity Futures Modernization Act of 2000.

Abstract: The Commission and the Securities and Exchange Commission are required to jointly adopt rules and regulations that set forth the requirements for foreign stock index contracts to qualify as non-narrow-based indices.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth L. Ritter, Acting Deputy General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581
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RIN: 3038–AB78

3928. • ALLOCATION OF BUNCHED ORDERS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1 et seq, as amended by PL 106-554, 114 Stat. 2763

CFR Citation: 17 CFR 1.35

Legal Deadline: None

Abstract: The Commission intends to propose procedures for streamlining the allocation of bunched orders for futures and commodity option trades, as well as the associated recordkeeping requirements. The proposal was referred to in the Commission's intermediaries study, and it addresses concerns regarding the possibility of fraud and money-laundering activities.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Christopher Ward Cummings, Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581
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RIN: 3038–AB93

3929. • TREATMENT OF FOREIGN FUTURES OR FOREIGN OPTIONS SECURED AMOUNT

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 6

CFR Citation: 17 CFR 30.7

Legal Deadline: None

Abstract: The Commission intends to propose an amendment to Rule 30.7 to provide that a futures commission merchant that holds funds on behalf of customers for trading futures and options on foreign markets may invest such funds in certain permitted investments. The proposal would establish investments that are comparable to the investments that a futures commission merchant may make with customer funds deposited for trading on United States markets pursuant to Rule 1.25.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	
NPRM Comment Period End	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3038–AB96

Commodity Futures Trading Commission (CFTC) — Final Rule Stage

3930. PERFORMANCE DISCLOSURES FOR COMMODITY TRADING ADVISORS AND COMMODITY POOL OPERATORS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 6n; 7 USC 6o; 7 USC 12a

CFR Citation: 17 CFR 4.25; 17 CFR 4.35

Legal Deadline: None

Abstract: The Commodity Futures Trading Commission is proposing amendments to the requirements concerning the presentation of rate of return data by commodity trading advisors and commodity pool operators. The Commission's proposed rules address computational and disclosure matters relating to participating in commodity trading advisor programs on a partially funded basis.

Timetable:

Action	Date	FR Cite
ANPRM	06/18/98	63 FR 33297
ANPRM Comment Period End	09/16/98	
NPRM	08/02/99	64 FR 41843

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CFTC — **Final Rule Stage**

Action	Date	FR Cite
NPRM Comment Period End	10/01/99	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert B. Wasserman, Associate Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581
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RIN: 3038–AB39

3931. REGISTRATION EXEMPTIONS PERTAINING TO THE OFFER AND SALE OF FOREIGN FUTURES AND FOREIGN OPTIONS CONTRACTS TO CUSTOMERS LOCATED IN THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 2(a)(1)(A); 7 USC 6(b); 7 USC 6c

CFR Citation: 17 CFR 30.1; 17 CFR 30.4; 17 CFR 30.10

Legal Deadline: None

Abstract: The Commission proposes to codify some of the interpretations and positions that its staff has taken regarding registration requirements under part 30 of the Commission's rules, which governs, generally, the solicitation and sale of foreign futures and foreign options contracts to customers located in the United States. The Commission proposes to modify Rule 30.4(a) by clarifying that foreign futures and options brokers, including those with U.S. bank branches, are not required to register as futures commission merchants (FCMs) pursuant to Rule 30.4, or seek Rule 30.10 relief, if they fall generally into the following categories: (1) those that carry customer omnibus accounts for U.S. FCMs; (2) those that carry U.S. affiliate accounts that are proprietary to the foreign futures and options broker; and (3) those that carry U.S. accounts that are proprietary to a U.S. FCM. In addition, proposed Rule 30.10(a) will specify representations that must be made by a foreign futures and options broker that has U.S. bank branches in order to obtain a Rule 30.10 comparability exemption or to come within the registration exception of Rule 30.4.

Timetable:

Action	Date	FR Cite
NPRM	08/26/99	64 FR 46613
NPRM Comment Period End	10/25/99	
Final Action	12/00/02	
Final Action Effective	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Susan A. Elliott, Attorney Advisor, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581
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RIN: 3038–AB45

3932. • CUSTOMER IDENTIFICATION PROGRAM FOR FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-56, sec 326, codified at 31 USC 5318(l)

CFR Citation: 31 CFR 103; 31 CFR 123; 17 CFR 1

Legal Deadline: NPRM, Statutory, October 25, 2002.

Abstract: The Department of the Treasury and the Commodity Futures Trading Commission are required to jointly prescribe regulations relating to customer identification programs for futures commission merchants and introducing brokers.

Timetable:

Action	Date	FR Cite
NPRM	07/23/02	67 FR 48328
Comment Period End	09/06/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3038–AB90

3933. • REPORTING LEVELS FOR LARGE TRADER REPORTS; TRAKRS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 6g; 7 USC 6i; 7 USC 7; 7 USC 7a; 7 USC 12a

CFR Citation: 17 CFR 15.03

Legal Deadline: None

Abstract: The Commission is proposing to amend part 15 of its rules, 17 CFR part 15, to establish a reporting level for TRAKRS futures contracts to be traded on the Chicago Mercantile Exchange.

Timetable:

Action	Date	FR Cite
NPRM	08/05/02	67 FR 50608
NPRM Comment Period End	09/04/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gary J. Martinaitis, Deputy Associate Director, Market Surveillance Section, Division of Market Oversight, Commodity Futures Trading Commission
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RIN: 3038–AB91

Commodity Futures Trading Commission (CFTC) — **Long-Term Actions**

3934. PUBLIC REPORTING BY OPERATORS OF CERTAIN LARGE COMMODITY POOLS—REGULATIONS 4.7, 4.12, AND 4.27

Priority: Substantive, Nonsignificant

CFR Citation: 17 CFR 4.7; 17 CFR 4.12; 17 CFR 4.27 (Proposed)

Timetable:

Action	Date	FR Cite
NPRM	04/17/00	65 FR 20395
NPRM Comment Period End	06/16/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tobey Kaczensky
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RIN: 3038–AB40

3935. TRADE OPTIONS ON ENUMERATED AGRICULTURAL COMMODITIES

Priority: Substantive, Nonsignificant

CFR Citation: 17 CFR 32.13

Timetable:

Action	Date	FR Cite
NPRM	12/13/00	65 FR 77838
NPRM Comment Period End	12/28/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3038–AB61

3936. EXEMPTION FROM COMPLIANCE WITH THE CRITERION FOR LINKED AND COORDINATED CLEARING

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth L. Ritter
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RIN: 3038–AB72

Commodity Futures Trading Commission (CFTC) — **Completed Actions**

3937. MARGIN REQUIREMENTS FOR SECURITY FUTURES PRODUCTS

Priority: Substantive, Nonsignificant

CFR Citation: 17 CFR 41.43 to 41.48

Completed:

Reason	Date	FR Cite
Final Action	08/14/02	67 FR 53145
Final Action Effective	09/13/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth L. Ritter
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RIN: 3038–AB71

3938. AVOIDANCE OF DUPLICATIVE OR CONFLICTING REGULATIONS APPLICABLE TO DUAL REGISTRANTS

Priority: Substantive, Nonsignificant

CFR Citation: 17 CFR 1.3; 17 CFR 1.55; 17 CFR 41.41; 17 CFR 190

Completed:

Reason	Date	FR Cite
Final Action	09/13/02	67 FR 58284
Final Action Effective	09/13/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth L. Ritter
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RIN: 3038–AB76

3939. CASH SETTLEMENT AND REGULATORY HALTS REQUIRED FOR SECURITY FUTURES PRODUCTS

Priority: Substantive, Nonsignificant

CFR Citation: 17 CFR 41.25; 17 CFR 41.1

Completed:

Reason	Date	FR Cite
Final Action	05/24/02	67 FR 36739
Final Action Effective	06/24/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard A. Shilts
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RIN: 3038–AB86

[FR Doc. 02–25196 Filed 12–06–02; 8:45 am]
BILLING CODE 6351–01–S

VOL
67
ISS
2
3
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DE
9
2002
UMI



Federal Register

Monday,
December 9, 2002

Part XLIX

Consumer Product Safety Commission

Semiannual Regulatory Agenda

VOL
67
ISS
2
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CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Ch. II

Semiannual Regulatory Agenda

AGENCY: Consumer Product Safety Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: In this document, the Commission publishes its semiannual regulatory flexibility agenda. In addition, this document includes an agenda of regulatory actions the Commission expects to be under development or review by the agency during the next year. This document meets the requirements of the Regulatory Flexibility Act and Executive Order 12866.

DATES: The Commission welcomes comments on each subject area of the agenda, particularly from small entities. Written comments concerning the agenda should be received in the Office of the Secretary by December 31, 2002.

ADDRESSES: Comments on the regulatory flexibility agenda should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207-0001; telephone (301) 504-0800, or delivered to the Office of the Secretary, Room 502, 4330 East-West Highway, Bethesda, MD 20814-4423. Comments should be captioned "Regulatory Flexibility Agenda." Comments may also be filed by telefacsimile to (301) 504-0127, or by e-mail to cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For further information on the agenda in general, contact Stephen Lemberg, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207-0001, telephone (301) 504-0980, ext. 2218. For further information regarding a particular item on the agenda, consult the individual listed in the column headed "Contact" for that particular item.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) contains several provisions intended to reduce unnecessary and disproportionate regulatory requirements on small businesses, small governmental organizations, and other small entities. Section 602 of the RFA (5 U.S.C. 602) requires each agency to publish twice each year a regulatory flexibility agenda containing a brief description of the subject area of any rule expected to be proposed or promulgated that is likely to have a "significant economic impact" on a "substantial number" of small entities. The agency must also provide a summary of the nature of the rule, and a schedule for acting on each rule for which the agency has issued a notice of proposed rulemaking.

The regulatory flexibility agenda is also required to contain the name and address of the agency official knowledgeable about the items listed. Further, agencies are required to provide notice of their agendas to small entities and to solicit their comments by direct notification, or by inclusion in publications likely to be obtained by such entities.

Additionally, Executive Order 12866 requires each agency to publish twice each year a regulatory agenda of regulations under development or review during the next year, and states that such an agenda may be combined with the agenda published in accordance with the RFA. The regulatory flexibility agenda published below lists the regulatory activities expected to be under development or review during the next 12 months. This agenda also includes regulatory activities that have been completed by the Commission prior to publication. It includes all such activities, whether or not they may have a significant economic impact on a substantial number of small entities.

The agenda contains a brief description and summary of each regulatory activity, including the objectives and legal basis for each; an approximate schedule of target dates, subject to revision, for the development or completion of each activity, and the name and telephone number of a knowledgeable agency official concerning particular items on the agenda. All agency contacts have the same address: Consumer Product Safety Commission, Washington, DC 20207-0001.

Dated: September 11, 2002.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

Consumer Product Safety Commission—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3940	Amendment of the Standard for the Flammability of Clothing Textiles	3041-AB68
3941	Petition HP 99-1 for a Ban of Polyvinyl Chloride in Toys and Other Products Intended for Children Five Years of Age and Under	3041-AB79
3942	Petition HP 00-2 Requesting a Rule Declaring Natural Rubber Latex a Strong Sensitizer	3041-AB88
3943	Petition HP 01-1 Requesting Development of Performance Standard for Bicycle Handlebars	3041-AB94
3944	Petition HP 01-03 Requesting a Ban on Use of Chromated-Copper-Arsenate (CCA) Treated Wood in Playground Equipment	3041-AB97
3945	Petition CP 01-01 Requesting Rule Requiring Product Registration Cards for Products Intended for Children	3041-AB98
3946	Petition CP 02-3 Requesting Standard for Hunting Tree Stands and Ban of Waist Belt Restraints Used With Hunting Tree Stands	3041-AC07
3947	Petition CP 02-2 Requesting Rule to Require Performance Standard for Auxiliary Hazard Lighting Systems on Snowmobiles	3041-AC09

CPSC

Consumer Product Safety Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3948	Flammability Standard for Upholstered Furniture	3041-AB35
3949	Amendment of Safety Regulations for Cribs	3041-AB67
3950	Portable Bed Rails	3041-AB91
3951	Proposed Rule on Baby Bath Seats	3041-AC03

Consumer Product Safety Commission—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3952	Proposed Ban of Candles With Lead-Containing Wicks and Wicks Sold for Candle-Making That Contain Lead	3041-AB96
3953	Proposed Rule Exempting Certain Model Rocket Propellant Devices For Use With Lightweight Surface Vehicles	3041-AC00

Consumer Product Safety Commission—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3954	Petition CP 02-01 Requesting Rule Adopting ASTM F400, Safety Standard For Lighters as a Consumer Product Safety Standard	3041-AC01
3955	Proposed Standard To Address Open-Flame Ignition of Mattresses/Bedding	3041-AC02
3956	Test Method for Determining Applicability of Cautionary Labeling and Child-Resistant Packaging to Hydrocarbon-Containing Products in Spray Packaging	3041-AC05
3957	Standards of Conduct for Outside Attorneys Practicing Before the Consumer Product Safety Commission	3041-AC06

Consumer Product Safety Commission—Completed Actions

Sequence Number	Title	Regulation Identification Number
3958	Baby Walkers	3041-AB40
3959	Rulemaking to Exempt Hormone Replacement Therapy Products From Special Packaging Requirements	3041-AC04

Consumer Product Safety Commission (CPSC) — Prerule Stage

3940. AMENDMENT OF THE STANDARD FOR THE FLAMMABILITY OF CLOTHING TEXTILES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 1191, Flammable Fabrics Act

CFR Citation: 16 CFR 1610

Legal Deadline: None

Abstract: The Standard for the Flammability of Clothing Textiles prohibits the manufacture, importation, or sale of clothing, and fabrics and related materials intended for use in clothing, which are dangerously flammable because of rapid and intense burning. The standard prescribes the apparatus, procedure, and criteria to be used for testing to determine compliance with that standard. The standard was made mandatory by the Flammable Fabrics Act of 1953 (Pub. L. 83-88, 67 Stat. 111; June 30, 1953). Some of the equipment and procedures specified by the standard, particularly those for laundering and cleaning of test specimens, have become obsolete, unavailable, or unrepresentative of current practices. The staff prepared a briefing package describing modifications of the standard that may be needed to assure that the test in the standard is conducted with equipment and procedures representative of conditions to which garments currently are exposed. After consideration of the briefing package, the Commission decided to begin a proceeding for amendment of the standard.

Timetable:

Action	Date	FR Cite
Staff Sent Briefing Package to Commission	06/11/02	
Commission Decision	08/28/02	
ANPRM	09/12/02	67 FR 57770

Action	Date	FR Cite
ANPRM Comment Period End	11/12/02	
Staff Sends Briefing Package to Commission	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Margaret L. Neily, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, Washington, DC 20207
Phone: 301 504-0508
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RIN: 3041–AB68

3941. PETITION HP 99-1 FOR A BAN OF POLYVINYL CHLORIDE IN TOYS AND OTHER PRODUCTS INTENDED FOR CHILDREN FIVE YEARS OF AGE AND UNDER

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 1261 to 1278, Federal Hazardous Substances Act

CFR Citation: 16 CFR 1500

Legal Deadline: None

Abstract: The National Environmental Trust and 11 other organizations petitioned the Commission to ban polyvinyl chloride (PVC) in toys and other articles intended for the use of children 5 years and under, based upon concerns they have about the potential for health risks from phthalates (especially diisononyl phthalate (DINP)), lead, and cadmium that can be in PVC. A Federal Register notice was issued on December 22, 1998, requesting comment on the petition. Comments were received.

The Commission established a Chronic Hazard Advisory Panel (CHAP) of independent scientists to study issues related to the chronic toxicity and risk, including the risk of cancer, associated with exposure to DINP in children's PVC products. The CHAP submitted its report to the Commission on June 15, 2001. The Commission has completed an extensive exposure study to obtain a broader range of data from which to better define the amount of time children mouth products that could contain phthalates. The staff sent a briefing package to the Commission in September 2002. The Commission will then decide whether to grant, deny, or defer the petition.

Timetable:

Action	Date	FR Cite
Notice Advising of Receipt of Petition	12/22/98	63 FR 70756
Initiated Formation of CHAP	02/16/99	
Comment Period End	02/22/99	
Awarded Contract for Child Observation Study	09/30/99	
First Meeting of CHAP	05/10/00	
Second Meeting of CHAP	06/20/00	
Third Meeting of CHAP	09/12/00	
CHAP Sent Report to Commission	06/15/01	
Staff Sends Briefing Package to Commission	09/23/02	
Commission Decision	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Marilyn L. Wind Ph.D., Project Manager, Consumer Product Safety Commission, Directorate for Health Sciences, Washington, DC 20207
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Email: mwind@cpsc.gov

RIN: 3041–AB79

3942. PETITION HP 00-2 REQUESTING A RULE DECLARING NATURAL RUBBER LATEX A STRONG SENSITIZER

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 1261, Federal Hazardous Substances Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: A petition from Debi Adkins, Editor, Latex Allergy News, requests that the Commission issue a rule declaring that natural rubber latex (NRL) and products containing NRL are strong sensitizers under the Federal Hazardous Substances Act (FHSA) and requiring labeling. NRL is in such consumer products as gloves, adhesives, shoes, balloons, pacifiers, and carpet backing, as well as many medical products. The petitioner states that a portion of the population has developed an allergy to latex that can be debilitating, even causing death. On March 21, 2000, the Commission published a notice in the Federal Register to solicit comments on the petition from all interested persons. On May 24, 2000, at the request of several persons, the Commission published a notice extending the original due date for comments of May 22, 2000 for 30 days to June 21, 2000. Eighty-four comments were received. The staff is preparing a briefing package for consideration by the Commission. Before finalizing the briefing package, the staff plans to ask outside experts to review the staff's assessment of the health effects related to latex.

Timetable:

Action	Date	FR Cite
Petition Docketed	03/02/00	
Notice	03/21/00	65 FR 15133
Comment Period End	05/22/00	
Comment Period Extended	05/24/00	65 FR 33525
Comment Period End	06/21/00	
Expert Assessment Completed	12/00/02	
Staff Sends Briefing Package to Commission	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Suzanne Barone Ph.D., Project Manager, Consumer Product Safety Commission, Directorate for Health Sciences, Washington, DC 20207
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RIN: 3041–AB88

3943. PETITION HP 01-1 REQUESTING DEVELOPMENT OF PERFORMANCE STANDARD FOR BICYCLE HANDLEBARS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 1261, Federal Hazardous Substances Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: A petition from Flaura Koplin Winston, M.D., Ph.D., Director, Trauma Link: The Interdisciplinary Pediatric Injury Control Research Center, Children's Hospital of Philadelphia, requests that the Commission develop a performance standard for bicycle handlebars regarding energy dissipation and distribution during impact. The request was docketed as a petition on January 23, 2001. A notice requesting comment on the petition was published in the Federal Register on February 14, 2001. The initial comment period closed on April 16, 2001. The comment period was extended to May 16, 2001. The staff is preparing a briefing package for Commission consideration as to whether to grant, deny, or defer the petition.

Timetable:

Action	Date	FR Cite
Petition Docketed	01/23/01	
Notice	02/14/01	66 FR 10273
Comment Period End	04/16/01	
Notice	04/16/01	66 FR 19429
Comment Period End	05/16/01	
Staff Sends Briefing Package to Commission	10/31/02	
Commission Decision	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Barbara J. Jacobson, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207
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RIN: 3041–AB94

3944. PETITION HP 01-03 REQUESTING A BAN ON USE OF CHROMATED-COPPER-ARSENATE (CCA) TREATED WOOD IN PLAYGROUND EQUIPMENT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 1262, Federal Hazardous Substance Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: A petition from the Environmental Working Group and Healthy Building Network, docketed June 20, 2001, requests that the Commission enact an immediate ban on the use of chromated copper arsenate (CCA) treated wood in playground equipment. This treatment is used as a pesticide in the wood. The petitioners assert that a ban is necessary because recent research has shown that arsenic is more carcinogenic than was previously recognized, and is present at significant concentrations on CCA treated wood and in underlying soil. They further assert that the health risks posed by this wood are greater than was previously recognized, and that past risk assessments were incomplete. On July 13, 2001, the Commission published a notice in the Federal Register to solicit comments on the petition. The 60-day comment period ended on September 11, 2001. The petitioners also requested that the Commission review the safety of CCA treated wood for general use. Such a review would not require rulemaking to implement. Therefore, the request was not docketed. Commission staff is reviewing comments received on the petition and is conducting studies to obtain exposure data to assess possible health risks to children from the use of CCA-treated wood in playground equipment. The Conference report accompanying the Commission's FY 2002 appropriation directed the CPSC to submit a report to Congress on its work on CCA treated wood and steps taken to inform state and local governments of that work. The report was submitted to the appropriations committees of both houses of Congress on February 15, 2002. Also, in February 2002 the USEPA announced that the manufacturers of CCA had requested that registrations of CCA be cancelled, effective December 31, 2003. The Commission staff is currently preparing an options briefing package for Commission consideration. Before finalizing the briefing package, the staff plans to ask outside experts to review the staff's risk assessment related to CCA-treated wood in playground equipment.

Timetable:

Action	Date	FR Cite
Petition Docketed	06/20/01	
Notice on Petition	07/13/01	66 FR 36756
Comment Period End	09/11/01	
Notice on Protocols	09/20/01	66 FR 48428
Comment Period End	10/22/01	
Expert Assessment Completed	09/30/02	
Staff Sends Briefing Package to Commission	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Patricia Bittner, Project Manager, Consumer Product Safety Commission, Directorate for Health Sciences, Washington, DC 20207
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RIN: 3041–AB97

3945. PETITION CP 01-01 REQUESTING RULE REQUIRING PRODUCT REGISTRATION CARDS FOR PRODUCTS INTENDED FOR CHILDREN

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 2065(b), Consumer Product Safety Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: A petition from the Consumer Federation of America requests that the Commission issue a rule requiring product registration cards with every product intended for children. The petitioner asks for a rule that would "require manufacturers (or distributors, retailers, or importers) of products intended for children provide along with every product a Consumer Safety Registration Card that allows the purchaser to register information, through the mail or electronically." This would enable a manufacturer to contact the purchaser if the product were recalled or otherwise presented a safety hazard. On August 1, 2001, the Commission published a notice in the Federal Register to solicit comments on the petition from all interested persons. The comment period closed on October 1, 2001. The staff is preparing a briefing package for consideration by the Commission. The Commission has been considering how best to improve the effectiveness of recalls.

CPSC — Prerule Stage

Timetable:

Action	Date	FR Cite
Petition Docketed	07/10/01	
Notice	08/01/01	66 FR 39737
Comment Period End	10/01/01	
Staff Sends Briefing Package to the Commission	10/31/02	
Commission Decision	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Celestine T. Kiss, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, Washingon, DC 20207
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RIN: 3041–AB98

3946. • PETITION CP 02-3 REQUESTING STANDARD FOR HUNTING TREE STANDS AND BAN OF WAIST BELT RESTRAINTS USED WITH HUNTING TREE STANDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 2058(i), Consumer Product Safety Act

CFR Citation: None

Legal Deadline: None

Abstract: A petition from Carol Pollack-Nelson requests that the Commission issue regulations that would establish a mandatory standard for hunting tree stands to address the risk of falling, and ban waist belt restraints used with the tree stands. On May 1, 2002, the Commission published a notice in the Federal Register to solicit comments on the petition from all interested persons. The staff is preparing a briefing package for consideration by the Commission.

Timetable:

Action	Date	FR Cite
Petition Docketed	04/15/02	
Notice	05/01/02	67 FR 21640
Comment Period End	07/01/02	
Staff Sends Briefing Package to Commission	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: DeWane Ray, Project Manager, Consumer Product Safety Commission, Director for Engineering
Phone: 301 504-0508

RIN: 3041–AC07

3947. • PETITION CP 02-2 REQUESTING RULE TO REQUIRE PERFORMANCE STANDARD FOR AUXILIARY HAZARD LIGHTING SYSTEMS ON SNOWMOBILES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 2058, Consumer Product Safety Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: In correspondence dated February 8, 2002, Allen J. Lakosky and Michelle Robillard of Snow Glow, Inc., requested that the Commission issue a rule prescribing performance standards for auxilliary lighting systems on snowmobiles. A notice was published in the Federal Register on April 30, 2002, in which the Commission solicited public comments concerning the petition. The staff is preparing a briefing package for consideration by the Commission

Timetable:

Action	Date	FR Cite
Petition Docketed	03/15/02	
Notice	04/30/02	67 FR 21222
Comment Period End	07/01/02	
Staff Sends Briefing Package to Commission	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Timothy P. Smith, Project Manager, Consumer Product Safety Commission, Division of Human Factors, Directorate for Engineering Sciences
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RIN: 3041–AC09

Consumer Product Safety Commission (CPSC) — Proposed Rule Stage

3948. FLAMMABILITY STANDARD FOR UPHOLSTERED FURNITURE

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 15 USC 1193, Flammable Fabrics Act

CFR Citation: 16 CFR 1640

Legal Deadline: None

Abstract: On June 15, 1994, the Commission published an advance notice of proposed rulemaking (ANPRM) to begin a proceeding for development of a flammability standard to address risks of death, injury, and property damage from fires associated with ignition of upholstered furniture by small open-flame sources such as matches, lighters, or candles. This ANPRM was issued after the Commission granted part of a petition requesting development of a mandatory flammability standard to address risks of injury from ignition of upholstered furniture by: (1) small open-flame sources; (2) large open-flame sources; and (3) cigarettes. The Commission voted to deny that part of the petition requesting development of a mandatory standard to address hazards associated with ignition of upholstered furniture by large open-flame sources. The Commission also voted to defer a decision on that part of the petition requesting development of a standard to address cigarette ignition, and directed the staff to report to the Commission on the effectiveness of, and the extent of industry compliance with, a voluntary program to reduce risks of ignition of upholstered furniture by cigarettes. The Commission staff developed a draft standard to address ignition of upholstered furniture by small open-flame sources.

In 1998, the Commission deferred action and held a public hearing to gather additional information on the potential toxicity of flame-retardant chemicals that might be used to meet a standard. In CPSC's 1999 appropriations legislation, Congress directed the Commission to contract with the National Academy of Sciences (NAS) for an independent study of potential health hazards associated with the use of flame retardant chemicals that might be used in upholstered furniture fabrics to meet a CPSC standard. The final NAS report was published in July 2000. The report concluded that of 16 flame-retardant chemicals reviewed, 8 could be used in upholstered furniture fabrics without presenting health hazards to consumers.

A CPSC staff risk assessment concluded that a number of flame-retardant chemicals are available that would not present health risks to consumers, although additional data are needed for some other chemicals. The CPSC staff is also working with the National Institute of Occupational Safety and Health and the Environmental Protection Agency to evaluate possible impacts of flame-retardant chemical use on worker safety and the environment.

In 2001, the CPSC staff forwarded a briefing package to the Commission, and the Commission voted to authorize the staff to conduct a public meeting to present the direction of the staff's draft standard, to discuss supporting technical data, and to receive comments and recommendations from interested parties. The staff is also continuing to cooperate with industry representatives and voluntary standards organizations to develop possible voluntary alternatives to CPSC's regulatory action.

On June 18 and 19, 2002, the Commission staff held a public meeting to receive information on the upholstered furniture project. The staff is analyzing the information received at the hearing and will present the analysis to the Commission.

Timetable:

Action	Date	FR Cite
ANPRM	06/15/94	59 FR 30735
ANPRM Comment Period End	08/15/94	
Staff Briefing of Commission on NPRM	12/18/97	
Commission Voted To Defer Action Pending Results of Toxicity Hearing	03/02/98	
Commission Hearing May 5 & 6, 1998 on Possible Toxicity of Flame Retardant Chemicals	03/17/98	63 FR 13017
NAS Study Completed (Required by Congress)	07/10/00	
Staff Sent Briefing Package to Commission	11/01/01	
Meeting Notice	03/20/02	67 FR 12916
Staff Held Public Meeting	06/18/02	
Second Day of Public Meeting	06/19/02	
Staff Analysis of Information From Public Meeting	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Dale R. Ray, Project Manager, Directorate for Economic Analysis, Consumer Product Safety Commission, Washington, DC 20207
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RIN: 3041–AB35

3949. AMENDMENT OF SAFETY REGULATIONS FOR CRIBS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553, Administrative Procedure Act; 15 USC 1261, Federal Hazardous Substances Act

CFR Citation: 16 CFR 1508; 16 CFR 1509

Legal Deadline: None

Abstract: On December 16, 1996, the Commission published an advance notice of proposed rulemaking (ANPRM) to begin a proceeding that may result in amendment of the safety regulations for full-size and non-full-size cribs, 16 CFR parts 1508 and 1509. Among the regulatory alternatives under consideration is amendment of the regulations to add tests to assure that slats will not disengage from the side panels of cribs. The Commission began this proceeding after considering information about incidents in which crib slats disengaged from the side panels of cribs, creating a risk that children may become entrapped between the remaining slats or fall out of the crib. At the urging of CPSC staff, in April 1999, the voluntary standard for cribs designated, "Specification for Full Size Baby Cribs (ASTM F1169-99)," and published by ASTM International was revised to include performance requirements for crib slats. The Commission will consider written comments received in response to the ANPRM, and assess conformance with the voluntary standard before deciding whether to continue the proceeding by publication of a notice of proposed rulemaking (NPRM), or terminate further proceedings in reliance on the voluntary standard.

Timetable:

Action	Date	FR Cite
Staff Recommended Revisions to Voluntary Standard	09/30/96	
ANPRM	12/16/96	61 FR 65996
ANPRM Comment Period End	02/14/97	
Revisions to Voluntary Standard Approved	04/10/99	
Voluntary Certification Program Begins	03/01/00	
Staff Began Monitoring Conformance to Revised Voluntary Standard	03/27/01	
Staff Completes Monitoring Conformance	10/31/02	
Staff Sends Briefing Package to Commission	11/00/02	
Commission Decision	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Patricia L. Hackett, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, Washington, DC 20207
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RIN: 3041–AB67

CPSC — Proposed Rule Stage

CPSC — Proposed Rule Stage

3950. PORTABLE BED RAILS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 1261, Federal Hazardous Substances Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission is considering whether certain portable bed rails present an unreasonable risk of injury that should be regulated. A portable bed rail is a device intended to be installed on an adult bed to prevent a child from falling out of the bed. Such bed rails may be constructed in a manner that children can become entrapped between the portable bed rail and the bed. This entrapment can result in serious injury or death. On October 30, 2001, the Commission instructed the Office of the General Counsel to prepare a draft notice of proposed rulemaking addressing this issue for its consideration.

Timetable:

Action	Date	FR Cite
Staff Sends Briefing Package to Commission	06/28/00	
Commission Decision	09/21/00	
ANPRM	10/03/00	65 FR 58968
ANPRM Comment Period End	12/04/00	
Staff Sends Briefing Package to Commission	10/01/01	
Commission Decision	10/30/01	
Staff Sends Draft NPRM to Commission	10/31/02	
Commission Decision on NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Patricia L. Hackett, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, Washington, DC 20207
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RIN: 3041–AB91

3951. PROPOSED RULE ON BABY BATH SEATS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 15 USC 1261, Federal Hazardous Substances Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: An advance notice of proposed rulemaking (ANPRM), published in the Federal Register on August 1, 2001, requested comments on a rulemaking proceeding that could result in a mandatory rule addressing baby bath seats. These are consumer products used to hold an infant in a bathtub while the child is being bathed. The Commission voted to publish the ANPRM and proceed with rulemaking after considering the staff's analysis of available data and information provided by the petitioners, the Consumer Federation of America and other consumer groups who requested that the Commission ban baby bath seats and bath rings. The staff is addressing public comments received in reponse to the ANPRM and preparing a briefing package for Commission consideration.

Timetable:

Action	Date	FR Cite
ANPRM	08/01/01	66 FR 39692
ANPRM Comment Period End	10/01/01	
Staff Sends Briefing Package to Commission	10/31/02	
Commission Decision	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Patricia L. Hackett, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, Washington, DC 20207
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Related RIN: Related To 3041-AB93

RIN: 3041–AC03

Consumer Product Safety Commission (CPSC) — Final Rule Stage

3952. PROPOSED BAN OF CANDLES WITH LEAD-CONTAINING WICKS AND WICKS SOLD FOR CANDLE-MAKING THAT CONTAIN LEAD

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 1261, Federal Hazardous Substances Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: An advance notice of proposed rulemaking (ANPRM), published in the Federal Register on February 20, 2001, requested comments on a rulemaking proceeding that could result in a mandatory rule addressing the use of lead in candle wicks. The Commission voted to publish the ANPRM and proceed with rulemaking after considering the staff's analysis of the available data on lead-cored candle wicks as well as information provided by the petitioners Public Citizen, National Apartment Association, and National Multi-Housing Council. The staff recommended that the Commission proceed with rulemaking to ban metal-cored wicks containing more than 0.06 percent lead by weight in the metal. The staff addressed public comments received in response to the ANPRM and prepared a briefing package for Commission consideration. On April 17, 2002, the Commission voted to issue a notice of proposed rulemaking (NPRM). The NPRM was published in the Federal Register on April 24, 2002. The staff is responding to the public comments received in response to the NPRM, and is preparing a briefing package for Commission consideration.

Timetable:

Action	Date	FR Cite
ANPRM	02/20/01	66 FR 10863
ANPRM Comment Period End	04/23/01	

CPSC — Final Rule Stage

Action	Date	FR Cite
Staff Sent Briefing Package to Commission	03/20/02	
Commission Decision	04/17/02	
NPRM	04/24/02	67 FR 20062
NPRM Comment Period End	07/08/02	
Staff Sends Briefing Package to Commission	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Kristina Hatlelid, Project Manager, Consumer Product Safety Commission, Directorate for Health Sciences, Washington, DC 20207
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RIN: 3041–AB96

3953. PROPOSED RULE EXEMPTING CERTAIN MODEL ROCKET PROPELLANT DEVICES FOR USE WITH LIGHTWEIGHT SURFACE VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1261(q)(1), Federal Hazardous Substances Act

CFR Citation: 16 CFR 1500.83(a)(36); 16 CFR 1500.85(a)(14)

Legal Deadline: None

Abstract: A notice of proposed rulemaking (NPRM), published in the Federal Register on January 30, 2002, proposed to exempt from banning under the Federal Hazardous Substances Act certain model rocket propellant devices for model rocket ground vehicles if they meet requirements similar to those presently required for flyable model rockets. The Commission voted to publish the NPRM and proceed with rulemaking after considering a petition filed by Centuri Corporation that requested an exemption covering two prototype model rocket cars. The Commission decided to grant the petition in part and issue a proposed rule exempting only model rocket propellant devices to be used with surface vehicles like the smaller prototype car. The staff is addressing public comments received in response to the NPRM and is preparing a briefing package for the Commission to determine whether to issue a final rule.

Timetable:

Action	Date	FR Cite
NPRM	01/30/02	67 FR 4373
NPRM Comment Period End	04/15/02	
Staff Sends Briefing Package to Commission	10/31/02	
Commission Decision	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Terrance R. Karels, Project Manager, Consumer Product Safety Commission, Directorate for Economic Analysis, Washington, DC 20207
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Related RIN: Related To 3041-AB95

RIN: 3041–AC00

Consumer Product Safety Commission (CPSC) — Long-Term Actions

3954. PETITION CP 02-01 REQUESTING RULE ADOPTING ASTM F400, SAFETY STANDARD FOR LIGHTERS AS A CONSUMER PRODUCT SAFETY STANDARD

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 2058, Consumer Product Safety Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: A petition from the Lighter Association, Inc. requests that the Commission issue a rule adopting an ASTM voluntary standard for lighters as a consumer product safety standard. The voluntary standard contains numerous safety requirements for cigarette lighters. On January 17, 2002, the Commission published a notice in the Federal Register to solicit comments on the petition from all interested persons. The comment period closed on March 18, 2002. The staff is preparing a briefing package for consideration by the Commission.

Timetable:

Action	Date	FR Cite
Petition Docketed	12/26/01	
Notice	01/17/02	67 FR 2420
Comment Period End	03/18/02	
Staff Sends Briefing Package to Commission	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Barbara J. Jacobson, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207
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RIN: 3041–AC01

3955. PROPOSED STANDARD TO ADDRESS OPEN-FLAME IGNITION OF MATTRESSES/BEDDING

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1193, Flammable Fabrics Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission published an advance notice of proposed rulemaking (ANPRM) in the Federal Register of October 11, 2001 that requested comments on a rulemaking proceeding that could result in a mandatory flammability standard addressing open flame ignition of mattresses/bedding. In 1995, the Commission staff began a project on mattress fires, and the ANPRM reflects information obtained from that research. The ANPRM also addresses two subsequently filed petitions from the Children's Coalition for Fire-Safe Mattresses, FP 00-1 and FP 00-2, requesting certain standards to address

the open flame ignition hazard with mattresses/bedding. On October 2, 2001, the Commission voted to grant these two petitions and issue an ANPRM addressing this mattress flammability hazard. The staff will address public comments on the ANPRM and prepare a briefing package for Commission consideration.

Timetable:

Action	Date	FR Cite
ANPRM	10/11/01	66 FR 51886
ANPRM Comment Period End	12/10/01	
Staff Sends Briefing Package to Commission	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Margaret L. Neily, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, Washington, DC 20207
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Related RIN: Related To 3041-AB89

RIN: 3041–AC02

3956. TEST METHOD FOR DETERMINING APPLICABILITY OF CAUTIONARY LABELING AND CHILD-RESISTANT PACKAGING TO HYDROCARBON-CONTAINING PRODUCTS IN SPRAY PACKAGING

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 1471, Poison Prevention Packaging Act; 15 USC 1261(p), Federal Hazardous Substances Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: On January 3, 2000 CPSC issued a notice of proposed rulemaking under the Poison Prevention Packaging Act (PPPA) to require child-resistant packaging of prepackaged products that contain liquid hydrocarbons of low viscosity, including aerosol/trigger/pump packaged products (spray products) that expel product in a stream. The final rule issued on October 25, 2001 covered liquid hydrocarbon-containing products other than these spray products.

Under current CPSC guidance, special cautionary labeling under the Federal Hazardous Substances Act (FHSA) would also be required for most hydrocarbon-containing spray products that expel product as a stream. The staff has now developed a quantitative test method to identify those hydrocarbon-containing spray products that pose an aspiration hazard. The staff is preparing a briefing package for the Commission's consideration that may recommend using this test method to determine applicability of the FHSA special cautionary labeling and PPPA child-resistant packaging requirements to spray products that expel product in a stream.

Timetable:

Action	Date	FR Cite
NPRM	01/03/00	65 FR 93
NPRM Comment Period End	03/20/00	
Staff Sends Briefing Package to Commission	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Suzanne Barone Ph.D., Project Manager, Consumer Product Safety Commission, Directorate for Health Sciences, Washington, DC 20207
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Related RIN: Related To 3041-AB57

RIN: 3041–AC05

3957. STANDARDS OF CONDUCT FOR OUTSIDE ATTORNEYS PRACTICING BEFORE THE CONSUMER PRODUCT SAFETY COMMISSION

Priority: Info./Admin./Other

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission voted to publish a notice of proposed rulemaking (NPRM) to revise its regulations to extend their coverage to attorneys representing clients before the Commission in matters other than formal adjudication. Attorney conduct in adjudicative matters is already covered by Commission regulations. The Commission is presently considering whether there is any need to extend the coverage of the regulations.

Timetable:

Action	Date	FR Cite
NPRM	11/06/00	65 FR 66515
NPRM Comment Period End	01/05/01	
Staff Sends Briefing Package to Commission	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3041–AC06

Consumer Product Safety Commission (CPSC) Completed Actions

3958. BABY WALKERS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1261, Federal Hazardous Substances Act; 15 USC 1262, Federal Hazardous Substances Act

CFR Citation: None

Legal Deadline: None

Abstract: On August 2, 1994, the Commission published an advance notice of proposed rulemaking (ANPRM) that began a proceeding that could result in the issuance of mandatory design or performance requirements for baby walkers. A baby walker is a device that supports a child so that the child can use his or her feet to move about before or while learning to walk. Typically, a baby walker consists of a fabric seat that has leg openings and is mounted to a rigid plastic deck. The deck is attached to a base that is mounted on wheels to allow mobility.

In 1994, an estimated 25,500 children younger than 15 months of age were treated in hospital emergency rooms for injuries associated with baby walkers. The majority of these injuries resulted from falls down stairs. In response to the Commission's work in this area, ASTM International published revisions to the voluntary standard for baby walkers in 1997 to address the hazard of falling down stairs. In 2000, baby walker injuries to children under 15 months of age had dropped to 7,400. Based on this and the staff's assessment of the extent of industry conformance with that voluntary standard, designated "Standard Consumer Safety Specification for Infant Walkers," SF 977-97, published by ASTM, the staff recommended that the Commission terminate further regulatory proceedings. The Commission voted to do so and a Federal Register notice announcing the termination was published on May 9, 2002.

Timetable:

Action	Date	FR Cite
ANPRM	08/02/94	59 FR 39309
ANPRM Comment Period End	10/03/94	
Staff Provided Technical Recommendations to Revise Voluntary Standard	12/16/94	
Revised Voluntary Standard Approved	10/01/96	
Voluntary Certification Program Began	06/30/97	
Staff Completed Monitoring Conformance to Revised Voluntary Standard	05/31/00	
Staff Completed Special Study of Injury Data	09/29/00	
Staff Completed Testing of New Walker Designs	05/01/01	
Staff Sent Briefing Package to Commission	04/25/02	
Commission Decision to Terminate Proceeding	05/01/02	
Notice of Termination	05/09/02	67 FR 31165

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3041–AB40

3959. RULEMAKING TO EXEMPT HORMONE REPLACEMENT THERAPY PRODUCTS FROM SPECIAL PACKAGING REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1471, Poison Prevention Packaging Act

CFR Citation: 16 CFR 1700.14(a)(10)

Legal Deadline: None

Abstract: The Commission has proposed a rule to exempt hormone replacement therapy (HRT) products from the child-resistant packaging requirements of the Poison Prevention Packaging Act. HRT refers to the use of estrogen alone or estrogen and progestin to treat menopausal symptoms. The proposed exemption is based on the low acute toxicity of these products. The Commission received one comment in favor of the proposed rule. On October 24, 2002, the Commission voted to issue a final rule exempting HRT products from poison prevention packaging requirements.

Timetable:

Action	Date	FR Cite
NPRM	02/19/02	67 FR 7319
NPRM Comment Period End	05/06/02	
Staff Sends Briefing Package to Commission	10/09/02	
Commission Decision	10/24/02	
Final Rule	11/01/02	67 FR 66550
Final Rule Effective	11/01/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Jacqueline Ferrante Ph.D., Project Manager, Consumer Product Safety Commission, Directorate for Health Sciences, Washington, DC 20207
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RIN: 3041–AC04

[FR Doc. 02–23901 Filed 12–06–02; 8:45 am]
BILLING CODE 6355–01–S

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Federal Register

Monday,
December 9, 2002

Part L

Farm Credit Administration

Semiannual Regulatory Agenda

FARM CREDIT ADMINISTRATION (FCA)

FARM CREDIT ADMINISTRATION

12 CFR Ch. VI

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Farm Credit Administration.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Farm Credit Administration (FCA), as an independent regulatory agency, in compliance with Executive Order 12866, sets forth the following agenda of regulations, which it will have under development and review during the period of October 2002 through April 2003.

FOR FURTHER INFORMATION CONTACT: Cindy R. Nicholson, Technical Editor, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102, (703) 883-4498, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) contains several provisions intended to reduce unnecessary and disproportionate regulatory requirements on small entities. FCA regulations, which apply to Farm Credit banks and associations, generally do not and will not have a substantial impact on "small entities" as that term is defined in the Regulatory Flexibility Act.

The FCA, as an independent regulatory agency, is exempt from certain provisions of Executive Order 12866. It participates in this joint publication to further the public interest by including the FCA in a single source of information concerning current and projected rulemaking and reviews of existing regulations, pursuant to section 4 of Executive Order 12866.

Dated: September 13, 2002.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

Farm Credit Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3960	Loan Policies and Operations: Young, Beginning, and Small Farmers and Ranchers	3052-AC07

Farm Credit Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3961	Loan Policies and Operations (Distressed Loan Restructuring)	3052-AB69
3962	Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations (Investments in Rural America)	3052-AB92
3963	Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations and Funding Operations (OFI Lending)	3052-AB96
3964	Loan Policies and Operations (Effective Interest Rate Disclosure)	3052-AC04
3965	Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations (Capital Adequacy—Technical Amendments)	3052-AC05
3966	Eligibility and Scope of Financing; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions (Credit and Related Services)	3052-AC06
3967	Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations (Capital Adequacy—Leverage Ratio)	3052-AC08
3968	Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations (Capital Adequacy—Risk-Weighting Revisions)	3052-AC09

Farm Credit Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3969	Organization and Functions (FCA Organization)	3052-AB82
3970	Farmer Mac Regulation and Oversight	3052-AC10
3971	Disclosure to Shareholders; Accounting and Reporting Requirements (Disclosure and Reporting Requirements)	3052-AC11

Farm Credit Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
3972	Organization (Reorganization Authorities for System Institutions)	3052-AB86

FCA

Farm Credit Administration—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
3973	Electronic Commerce; Disclosure to Shareholders (E-Commerce)	3052-AC02

Farm Credit Administration (FCA) — **Prerule Stage**

3960. • LOAN POLICIES AND OPERATIONS: YOUNG, BEGINNING, AND SMALL FARMERS AND RANCHERS

Priority: Other Significant

Legal Authority: 12 USC 2207

CFR Citation: 12 CFR 614.4165

Legal Deadline: None

Abstract: The FCA is considering whether regulatory changes are needed to enhance the Farm Credit System to young, beginning, and small farmers and ranchers. Additionally, the FCA is seeking comments on the measurement and reporting of the Farm Credit System's young, beginning, and small farmer activities and performance.

Timetable:

Action	Date	FR Cite
ANPRM	09/23/02	67 FR 59479
ANPRM Comment Period End	12/23/02	
Notice of Public Meeting	10/18/02	67 FR 64320

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Regulation and Policy Division, Office of Policy and Analysis, 703-883-4498, nicholsonc@fca.gov

URL For More Information: http://www.fca.gov/handbook.nsf

URL For Public Comments: http://www.fca.gov/handbook.nsf

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RIN: 3052–AC07

Farm Credit Administration (FCA) — **Proposed Rule Stage**

3961. LOAN POLICIES AND OPERATIONS (DISTRESSED LOAN RESTRUCTURING)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 2011; 12 USC 2075; 12 USC 2091; 12 USC 2093; 12 USC 2094; 12 USC 2096; 12 USC 2121; 12 USC 2013 to 2015; 12 USC 2017; 12 USC 2018; 12 USC 2071; 12 USC 2073; 12 USC 2074

CFR Citation: 12 CFR 614

Legal Deadline: None

Abstract: This rulemaking would clarify certain provisions of the borrower rights regulations and address unnecessary burden.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Regulation and Policy Division, Office of Policy and Analysis, 703-883-4498, nicholsonc@fca.gov

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RIN: 3052–AB69

3962. FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS (INVESTMENTS IN RURAL AMERICA)

Priority: Other Significant

Legal Authority: 12 USC 2013; 12 USC 2015; 12 USC 2018 to 2020; 12 USC 2073 to 2076; 12 USC 2093; 12 USC 2122; 12 USC 2128; 12 USC 2132; 12 USC 2146; 12 USC 2154; 12 USC 2154a; 12 USC 2160; 12 USC 2202b; 12 USC 2211; 12 USC 2243; 12 USC 2252; 12 USC 2278b; 12 USC 2278b-6; 12 USC 2279aa; 12 USC 2279aa-3; 12 USC 2279aa-4; 12 USC 2279aa-6 to 2279aa-8; 12 USC 2279aa-10; 12 USC 2279aa-12

CFR Citation: 12 CFR 615

Legal Deadline: None

Abstract: This regulation develops safety and soundness standards and other criteria for investments in rural America.

Timetable:

Action	Date	FR Cite
NPRM	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Regulation and Policy Division, Office of Policy and Analysis, 703-883-4498, nicholsonc@fca.gov

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RIN: 3052–AB92

3963. LOAN POLICIES AND OPERATIONS; FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS AND FUNDING OPERATIONS (OFI LENDING)

Priority: Other Significant

Legal Authority: 12 USC 2011; 12 USC 2013 to 2015; 12 USC 2017 to 2020; 12 USC 2071; 12 USC 2073 to 2076; 12 USC 2091; 12 USC 2093; 12 USC 2094; 12 USC 2097; 12 USC 2121; 12 USC 2122; 12 USC 2124; 12 USC 2128; 12 USC 2129; 12 USC 2131; 12 USC 2132; 12 USC 2141; 12 USC 2146; 12 USC 2149; 12 USC 2154; 12 USC 2154a; 12 USC 2160; 12 USC 2183; 12 USC 2184; 12 USC 2199; ...

CFR Citation: 12 CFR 614; 12 CFR 615

Legal Deadline: None

Abstract: The regulation would address impediments for System funding of other financing institutions (OFIs).

Timetable:

Action	Date	FR Cite
ANPRM	04/20/00	65 FR 21151
ANPRM Comment Period End	06/19/00	
Comment Period Extended	06/26/00	65 FR 39319
Public Meeting	07/05/01	66 FR 35428
Public Meeting	07/19/01	66 FR 37681
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Regulation and Policy Division, Office of Policy and Analysis, 703-883-4498, nicholsonc@fca.gov

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RIN: 3052–AB96

3964. LOAN POLICIES AND OPERATIONS (EFFECTIVE INTEREST RATE DISCLOSURE)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 2011; 12 USC 2075; 12 USC 2091; 12 USC 2093; 12 USC 2094; 12 USC 2096; 12 USC 2121; 12 USC 2013 to 2015; 12 USC 2017; 12 USC 2018; 12 USC 2071; 12 USC 2073; 12 USC 2074; ...

CFR Citation: 12 CFR 614

Legal Deadline: None

Abstract: This rulemaking would clarify and provide guidance for implementing the effective interest rate disclosure requirements of the statute.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Regulation and Policy Division, Office of Policy and Analysis, 703-883-4498, nicholsonc@fca.gov

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RIN: 3052–AC04

3965. FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS (CAPITAL ADEQUACY—TECHNICAL AMENDMENTS)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 2013; 12 USC 2015; 12 USC 2018 to 2020; 12 USC 2073 to 2076; 12 USC 2093; 12 USC 2122; 12 USC 2128; 12 USC 2132; 12 USC 2146; 12 USC 2154; 12 USC 2154a; 12 USC 2160; 12 USC 2202b; 12 USC 2211; 12 USC 2243; 12 USC 2252; 12 USC 2278b; 12 USC 2278b-6; ...

CFR Citation: 12 CFR 615

Legal Deadline: None

Abstract: This rulemaking would amend the capital regulations to address various issues (including Statement of Financial Accounting Standard (SFAS) 133 and preferred stock).

Timetable:

Action	Date	FR Cite
NPRM	10/22/02	67 FR 64833
NPRM Comment Period End	11/21/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Regulation and Policy Division, Office of Policy and Analysis, 703-883-4498, nicholsonc@fca.gov

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RIN: 3052–AC05

3966. ELIGIBILITY AND SCOPE OF FINANCING; LOAN POLICIES AND OPERATIONS; FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS; GENERAL PROVISIONS (CREDIT AND RELATED SERVICES)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 2013; 12 USC 2015; 12 USC 2017 to 2019; 12 USC 2073; 12 USC 2075; 12 USC 2093; 12 USC 2122; 12 USC 2128; 12 USC 2129; 12 USC 2143; 12 USC 2206a; 12 USC 2211 to 2213; 12 USC 2243; 12 USC 2252

CFR Citation: 12 CFR 613 to 615; 12 CFR 618

Legal Deadline: None

Abstract: This rulemaking would amend regulations to provide guidance, remove unnecessary burden, and incorporate statutory changes provided by the 2002 Farm Bill.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090
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Fax: 703 734-5784
Email: carpenterd@fca.gov

RIN: 3052–AC06

3967. • FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS (CAPITAL ADEQUACY—LEVERAGE RATIO)

Priority: Other Significant

Legal Authority: 12 USC 2013; 12 USC 2015; 12 USC 2018 to 2020; 12 USC 2073 to 2076; 12 USC 2093;; 12 USC 2073 to 2076; 12 USC 2093; 12 USC 2122; 12 USC 2128; 12 USC 2132;; 12 USC 2132; 12 USC 2146; 12 USC 2154; 12 USC 2154a; 12 USC 2160; 12 USC 2202b;; 12 USC 2211; 12 USC 2243; 12 USC 2252; 12 USC 2278b; 12 USC 2278b-6;; 12 USC 2279aa; 12 USC 2279aa-3; 12 USC 2279aa-4; 12 USC 2279aa-6 to 2279aa-8; ...

CFR Citation: 12 CFR 615

Legal Deadline: None

Abstract: This rulemaking would review the net collateral ratio requirements for Farm Credit banks and consider a capital leverage ratio for other Farm Credit System institutions.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Regulations and Policy Division, Office of Policy and Analysis, 703-883-4498, nicholsonc@fca.gov

AGENCY WEBSITE: www.fca.gov

PUBLIC AFFAIRS: info-line@fca.gov

REGULATION COMMENTS: reg-comm@fca.gov

URL For More Information: http://www.fca.gov/handbook.ns

URL For Public Comments: http://www.fca.gov/handbook.ns

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RIN: 3052–AC08

3968. • FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS (CAPITAL ADEQUACY—RISK-WEIGHTING REVISIONS)

Priority: Other Significant

Legal Authority: 12 USC 2013; 12 USC 2015; 12 USC 2018 to 2020; 12 USC 2073 to 2076; 12; USC 2093; 12 USC 2122; 12 USC 2128; 12 USC 2132; 12 USC 2146; 12 USC; 2154; 12 USC 2154a; 12 USC 2160; 12 USC 2202b; 12 USC 2211; 12 USC 2243;; 12 USC 2252; 12 USC 2278b; 12 USC 2278b-6; 12 USC 2279aa; 12 USC 2279aa-10;; 12 USC 2279aa-12; ...

CFR Citation: 12 CFR 615

Legal Deadline: None

Abstract: This regulation would revise capital risk weightings of assets consistent with the other Federal bank regulatory agencies, risk weightings of OFI loans made by System banks, and other risk-weighting issues affecting System institutions.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

FCA — Proposed Rule Stage

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Regulation and Policy Division, Office of Policy and Analysis, 703-883-4498, nicholsonc@fca.gov

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URL For More Information: http://www.fca.gov/handbook.ns

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RIN: 3052–AC09

Farm Credit Administration (FCA) — Long-Term Actions

3969. ORGANIZATION AND FUNCTIONS (FCA ORGANIZATION)

Priority: Info./Admin./Other

CFR Citation: 12 CFR 600

Timetable:

Action	Date	FR Cite
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Edward Donnelly
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RIN: 3052–AB82

3970. • FARMER MAC REGULATION AND OVERSIGHT

Priority: Other Significant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This regulation would consider what changes, if any, are needed to enhance the FCA regulatory and supervisory framework of Farmer Mac.

Timetable:

Action	Date	FR Cite
Begin Review	10/01/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Regulation and Policy Division, Office of Policy and Analysis, 703-883-4498, nicholsonc@fca.gov

AGENCY WEBSITE: www.fca.gov

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REGULATION COMMENTS: reg-comm@fca.gov

URL For More Information: http://www.fca.gov/handbook.ns

URL For Public Comments: http://www.fca.gov/handbook.ns

Agency Contact: Carl Clinefelter, Director, Office of Secondary Market Oversight, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090
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RIN: 3052–AC10

3971. • DISCLOSURE TO SHAREHOLDERS; ACCOUNTING AND REPORTING REQUIREMENTS (DISCLOSURE AND REPORTING REQUIREMENTS)

Priority: Other Significant

Legal Authority: 12 USC 2252; 12 USC 2254; 12 USC 2279aa-11

CFR Citation: 12 CFR 620; 12 CFR 621

Legal Deadline: None

Abstract: This rulemaking would consider regulatory changes for disclosure and reporting requirements for FCS institutions.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Regulation and Policy Division, Office of Policy and Analysis, 703-883-4498, nicholsonc@fca.gov

AGENCY WEBSITE: www.fca.gov

PUBLIC AFFAIRS: info-line@fca.gov

REGULATION COMMENTS: reg-comm@fca.gov

URL For More Information: http://www.fca.gov/handbook.ns

URL For Public Comments: http://www.fca.gov/handbook.ns

Agency Contact: Robert Edward Donnelly, Senior Accountant, Farm Credit Administration, Office of Policy and Analysis, 1501 Farm Credit Drive, McLean, VA 22102-5090
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RIN: 3052–AC11

Farm Credit Administration (FCA) — Completed Actions

3972. ORGANIZATION (REORGANIZATION AUTHORITIES FOR SYSTEM INSTITUTIONS)

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 611; 12 CFR 614

Completed:

Reason	Date	FR Cite
Final Rule	04/12/02	67 FR 17907
Final Rule Effective	05/13/02	67 FR 31938

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Alan Markowitz
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RIN: 3052–AB86

3973. ELECTRONIC COMMERCE; DISCLOSURE TO SHAREHOLDERS (E-COMMERCE)

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 609; 12 CFR 620

Completed:

Reason	Date	FR Cite
Final Rule	04/08/02	67 FR 16627
Final Rule Effective	05/08/02	67 FR 30772

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dale L. Aultman
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RIN: 3052–AC02

[FR Doc. 02–24256 Filed 12–06–02; 8:45 am]

BILLING CODE 6705–01–S

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December 9, 2002

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Farm Credit System Insurance Corporation

Semiannual Regulatory Agenda

FARM CREDIT SYSTEM INSURANCE CORPORATION (FCSIC)

FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Ch. XIV

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Semiannual regulatory agenda.

SUMMARY: In response to Executive Order 12866, the Farm Credit System Insurance Corporation (Corporation) will have a regulation concerning golden parachutes and indemnity agreements under development and review during the period of October 2002 through April 2003.

FOR FURTHER INFORMATION CONTACT: Cindy R. Nicholson, Technical Editor, Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102, (703) 883-4498, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) contains several provisions intended to reduce unnecessary and disproportionate regulatory requirements on small entities. Corporation regulations, which apply to Farm Credit banks and associations, generally do not and will not have a substantial impact on "small entities" as that term is defined in the Regulatory Flexibility Act.

The Corporation, as an independent regulatory agency, is not subject to all of the provisions of Executive Order 12866. It participates in this joint publication to further the public interest by including the Corporation in a single source of information concerning current and projected rulemaking and reviews of existing regulations, pursuant to section 4 of the Executive Order 12866.

Dated: September 13, 2002.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit System Insurance Corporation Board.

Farm Credit System Insurance Corporation—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3974	Golden Parachute and Indemnification Payments	3055-AA08

Farm Credit System Insurance Corporation (FCSIC) — **Long-Term Actions**

3974. • GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

Priority: Other Significant

Legal Authority: PL 104-105

CFR Citation: 12 CFR 1400 to 1410

Legal Deadline: None

Abstract: This rulemaking would address the new authorities provided in the Farm Credit System Reform Act of 1996 to regulate golden parachutes and indemnity agreements.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, 703-883-4125.

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RIN: 3055–AA08

[FR Doc. 02–24257 Filed 12–06–02; 8:45 am]
BILLING CODE 6710–01–S

Federal Register

Monday,
December 9, 2002

Part LII

Federal Communications Commission

Semiannual Regulatory Agenda

FEDERAL COMMUNICATIONS COMMISSION (FCC)

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

Unified Agenda of Federal Regulatory and Deregulatory Actions — Fall 2002

AGENCY: Federal Communications Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: Twice a year, in spring and fall, the Commission publishes in the **Federal Register** a list in the Unified Agenda of those major items and other significant proceedings under development or review that pertain to the Regulatory Flexibility Act. *See* 5 U.S.C. 602. The Unified Agenda also provides the Code of Federal Regulations citations and legal authorities that govern these proceedings.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maura McGowan, Telecommunications Specialist, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, (202) 418-0990.

SUPPLEMENTARY INFORMATION:

Unified Agenda of Major and Other Significant Proceedings

The Commission encourages public participation in its rulemaking process. To help keep the public informed of significant rulemaking proceedings, the Commission has prepared a list of important proceedings now in progress. The General Services Administration publishes the Unified Agenda in the **Federal Register** in the spring and fall of each year.

The following terms may be helpful in understanding the status of the proceedings included in this report:

Docket Number — assigned to a proceeding if the Commission has issued either a Notice of Proposed Rulemaking or a Notice of Inquiry concerning the matter under consideration. The Commission has used docket numbers since January 1, 1978. Docket numbers consist of the last two digits of the calendar year in which the docket was established plus a sequential number that begins at 1 with the first docket initiated during a calendar year (*e.g.*, Docket No. 96-1 or Docket No. 99-1). The abbreviation for the responsible bureau usually precedes the docket number, as in "MM Docket No. 96-222," which indicates that the responsible bureau is the Mass Media Bureau (now the Media Bureau). A docket number consisting of only five digits (*e.g.*, Docket No. 29622) indicates that the docket was established before January 1, 1978.

Notice of Inquiry (NOI) — issued by the Commission when it is seeking information on a broad subject or trying to generate ideas on a given topic. A comment period is specified during which all interested parties may submit comments.

Notice of Proposed Rulemaking (NPRM) — issued by the Commission when it is proposing a specific change to Commission rules and regulations. Before any changes are actually made, interested parties may submit written comments on the proposed revisions.

Further Notice of Proposed Rulemaking (FNPRM) —issued by the Commission when additional comment in the proceeding is sought.

Memorandum Opinion and Order (MO&O) — issued by the Commission to deny a petition for rulemaking, conclude an inquiry, modify a decision, or address a petition for reconsideration of a decision.

Rulemaking (RM) Number — assigned to a proceeding after the appropriate bureau or office has reviewed a petition for rulemaking, but before the Commission has taken action on the petition.

Report and Order (R&O) — issued by the Commission to state a new or amended rule or state that the Commission rules and regulations will not be revised.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3975	Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996	3060-AG42
3976	Implementation of the Subscriber Selection Changes Provision of the Telecommunications Act of 1996	3060-AG46
3977	Implementation of Section 255 and Section 251(a)(2) of the Telecommunications Act of 1996; Access to Telecommunications Services Equipment and Customer Premise Equipment for Persons With Disabilities	3060-AG58
3978	In the Matter of the Telecommunications Relay Services, the Americans With Disabilities Act of 1990, and the Telecommunications Act of 1996	3060-AG75
3979	In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities; CC Docket No. 98-67	3060-AG76
3980	Establishment of Rules Governing Procedures To Be Followed When Informal Complaints Are Filed by Consumers Against Entities Regulated by the Commission	3060-AI02

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ENFORCEMENT BUREAU—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3981	In the Matter of Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Alert System	3060-AF21

OFFICE OF ENGINEERING AND TECHNOLOGY—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3982	MSS Spectrum Allocation	3060-AF75
3983	Unlicensed National Information Infrastructure at 5 GHz	3060-AG19
3984	Dedicated Short Range Communications of Intelligent Transportation Services	3060-AG94
3985	Regulations for RF Lighting Devices	3060-AG95
3986	Industry Coordination Committee System for Broadcast Digital Television Service	3060-AH13
3987	3650-3700 Government Transfer Band	3060-AH14
3988	Fixed Satellite Service and Terrestrial System in the Ku-Band	3060-AH17
3989	Spread Spectrum Devices	3060-AH25
3990	Wireless Medical Telemetry Service	3060-AH27
3991	Establishment of an Improved Model for Predicting the Broadcast Television Field Strength Received at Individual Locations	3060-AH37
3992	Conducted Emission Limits	3060-AH46
3993	Revision of the Rules Regarding Ultra-Wideband Transmission	3060-AH47
3994	Software Defined Radio Authorization	3060-AH64
3995	New Advanced Wireless Services	3060-AH65
3996	Reallocation of 27 MHz Spectrum	3060-AH66
3997	Revisions to Broadcast Auxiliary Service Rules	3060-AH78
3998	Part 15 Biennial Review	3060-AH92
3999	Amateur Radio Service Rules	3060-AI04

OFFICE OF ENGINEERING AND TECHNOLOGY—Completed Actions

Sequence Number	Title	Regulation Identification Number
4000	Allocation of 455-456 MHz and 459-460 MHz	3060-AG89
4001	Certification of Equipment in the 24.05-24.25 GHz Band at Field Strengths Up to 2500 mV/m	3060-AH16

OFFICE OF GENERAL COUNSEL—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
4002	Amendment of the Ex Parte Rules in Joint Board Proceedings	3060-AH02
4003	Amendment of Section 1.1204 of the Commission's Ex Parte Rules	3060-AH58
4004	Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission	3060-AH86

INTERNATIONAL BUREAU—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
4005	Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures; IB Docket No. 95-117	3060-AD70
4006	Satellite Communications — NGSO Mobile Satellite Service; CC Docket No. 92-166	3060-AF42
4007	Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Service in the L-Band; IB Docket No. 96-132	3060-AF89

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INTERNATIONAL BUREAU—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
4008	Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band; IB Docket No. 95-91; GEN Docket No. 90-357	3060-AF93
4009	Redesignation of the 27.5-29.5 GHz Frequency Band; CC Docket No. 92-297	3060-AF94
4010	Amendment of Policy To Allow Non-U.S. Licensed Space Stations To Provide Service in the United States; IB Docket No. 96-111; CC Docket No. 93-23	3060-AG31
4011	Allocate & Designate: Spec for Fixed-Sat Srv (37.5-38.5, 40.5-41.5 & 48.2-50.2 GHz Bands). Allocate: Fixed & Mobile 40.5-42.5 GHz; Wireless 46.9-47 GHz; Gov Oper 37-38 & 40-40.5 GHz; IB Doc No. 97-95	3060-AH23
4012	Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band; IB Docket No. 99-81	3060-AH28
4013	Policies for the Direct Broadcast Satellite Service; IB Docket No. 98-21	3060-AH29
4014	1998 Biennial Regulatory Review — Review of Accounts Settlement in Maritime Mobile & Maritime Mobile-Satellite Radio Services and Withdrawal of the Commission as Accounting Authority; IB Doc No. 98-96	3060-AH30
4015	Global Mobile Personal Communications by Satellite; IB Docket No. 99-67	3060-AH49
4016	Direct Broadcast Public Interest Obligations; MM Docket No. 93-25	3060-AH59
4017	Streamlining Earth Station Licensing Rules; IB Docket No. 00-248	3060-AH60
4018	2000 Biennial Review — Amendment of Parts 43 and 63 of the Commission's Rules; IB Docket No. 00-231	3060-AH62
4019	Licensing and Coordination of Earth Stations in the Fixed-Satellite Services; IB Docket No. 00-203	3060-AH63
4020	Policies and Rules for Non-Geostationary Satellite Orbit, Fixed Satellite Service in the KA-Band; IB Docket No. 02-19	3060-AH93
4021	Enforcement of Other Nations' Prohibitions Against the Uncompleted Call Signaling Configuration of International Callback Service; IB Docket No. 02-18	3060-AH94
4022	Space Station Licensing Reform; IB Dockets 00-248 and 02-34	3060-AH98
4023	Alaska Bush Earth Station Policy; IB Docket No. 02-30	3060-AH99
4024	Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band	3060-AI05
4025	Mitigation of Orbital Debris; IB Docket No. 02-54	3060-AI06

INTERNATIONAL BUREAU—Completed Actions

Sequence Number	Title	Regulation Identification Number
4026	Preemption of Local Zoning Regulation of Satellite Earth Stations; IB Docket No. 95-59	3060-AF92
4027	Amendment to Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems; IB Docket No. 95-41	3060-AH48

MEDIA BUREAU—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
4028	Transfer of Control of Non-Stock Entities (MM Docket No. 89-77)	3060-AE31
4029	Cable Television Rate Regulation	3060-AF41
4030	Cable Television Rate Regulation: Cost of Service	3060-AF48
4031	Customer Service Standards	3060-AF69
4032	Filing of Television Network Affiliation Contracts (MM Docket No. 95-40)	3060-AF80
4033	Rules Governing Broadcast Television Advertising (MM Docket No. 95-90)	3060-AF81
4034	Cable Home Wiring	3060-AG02
4035	Closed Captioning	3060-AG26
4036	Cable Act Reform	3060-AG27
4037	Competitive Availability of Navigation Devices	3060-AG28
4038	Minor Modifications of Broadcast Licenses Without Prior Construction Permit (MM Docket No. 96-58)	3060-AG30
4039	Pole Attachment Provisions	3060-AG71
4040	Review of Technical Rules in Parts 73 and 74 (MM Docket No. 98-93)	3060-AG81
4041	Digital Must Carry	3060-AG91
4042	Horizontal Ownership Limits	3060-AH09

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MEDIA BUREAU—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
4043	Application of Network Nonduplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmission — SHVIA	3060-AH35
4044	Retransmission Consent Issues — SHVIA	3060-AH36
4045	Digital Audio Broadcasting Systems (MM Docket No. 99-325)	3060-AH40
4046	Satellite Broadcasting Signal Carriage Requirements	3060-AH45
4047	Ancillary or Supplemental Use of DTV Capacity by Non-Commercial Licensees (MM Docket No. 98-203)	3060-AH53
4048	Periodic Review of Rules and Policies Affecting the Conversion to DTV (MM Docket No. 00-39)	3060-AH54
4049	Children's TV, Obligations of Digital TV Broadcasters (MM Docket No. 00-167)	3060-AH68
4050	Extension of Filing Requirements for Children's TV Programming Report (MM Docket No. 00-44)	3060-AH69
4051	Radio Market Definitions (MM Docket No. 00-244)	3060-AH70
4052	Enhanced and Standardized Disclosure (MM Docket No. 00-168)	3060-AH71
4053	Exclusive Contract Prohibition of the Program Access Rules	3060-AH91
4054	Revision of EEO Rules and Policies; MM Docket No. 98-204	3060-AH95
4055	Reexamination of Comparative Standards for Noncommercial Educational Applicants; MM Docket No. 95-31	3060-AH96
4056	Cross Ownership of Broadcast Stations and Newspapers	3060-AH97

OFFICE OF MANAGING DIRECTOR—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
4057	Assessment and Collection of Regulatory Fees for FY 2002	3060-AH85

WIRELESS TELECOMMUNICATIONS BUREAU—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
4058	Amendment of the Commission's Rules Concerning Maritime Communications	3060-AF14
4059	Future Development of 800 MHz SMR; Competitive Bidding Wide Area	3060-AF47
4060	Resale and Roaming Obligations Pertaining to Commercial Mobile Radio Services	3060-AF58
4061	Implementation of Section 309(j) of the Communications Act, Competitive Bidding; Narrowband PCS Competitive Bidding Rules	3060-AF99
4062	Implementation of Section 309(j) of the Communications Act, Competitive Bidding; 218-219 MHz Competitive Bidding Rules	3060-AG00
4063	39 GHz Channel Plan	3060-AG16
4064	Implementation of 309(j) of the Communications Act, Amendment of Parts 20 and 24 of the Commission's Rules - Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap	3060-AG21
4065	Revision of the Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems	3060-AG34
4066	In the Matter of the Communications Assistance for Law Enforcement Act	3060-AG74
4067	Development of Operational, Technical, and Spectrum Requirements for Public Safety Communications Requirements	3060-AG85
4068	Multiple Access Systems	3060-AG86
4069	Amendment of Part I of the Commission's Rules — Competitive Bidding Procedures	3060-AG87
4070	Amendment of Part 90 of the Rules To Adopt Regulations for Automatic Vehicle Monitoring Systems	3060-AH12
4071	Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules	3060-AH32
4072	Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended	3060-AH33
4073	1998 Biennial Regulatory Review — Spectrum Aggregation Limits for Wireless Telecommunications Carriers	3060-AH34
4074	Amendment to Parts 1, 2, 87 and 101 of the Rules to License Fixed Services at 24 GHz	3060-AH41
4075	Part 101 — Terrestrial Microwave Fixed Radio Services	3060-AH42
4076	Amendment of Parts 13 and 80 Governing Maritime Communications	3060-AH55
4077	Amendment of the Rules Regarding Installment Payment Financing for Personal Communications Services Licensees	3060-AH57
4078	Transfer of the 3650 Through 3700 MHz Band From Federal Government Use	3060-AH75
4079	2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services	3060-AH81
4080	In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets	3060-AH82

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WIRELESS TELECOMMUNICATIONS BUREAU—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
4081	In the Matter of Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services	3060-AH83
4082	Amendment of Part 90 for Licensing Low Power Operations in 450-470 MHz Band	3060-AH84
4083	Reallocation of the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands.	3060-AH87
4084	Review of Quiet Zones Application Procedures	3060-AH88
4085	Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)	3060-AH89
4086	Implementation of 911 Act	3060-AH90

WIRELINE COMPETITION BUREAU—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
4087	Administration of the North American Numbering Plan	3060-AF50
4088	Use of N11 Codes and Other Abbreviated Dialing Arrangements	3060-AF51
4089	Implementation of the Universal Service Portions of the 1996 Telecommunications Act	3060-AF85
4090	Toll-Free Service Access Codes	3060-AG11
4091	Implementation of Section 273 of the Telecommunications Act of 1996	3060-AG36
4092	Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information	3060-AG43
4093	Implementation of Section 402(b)(1)(a) of the Telecommunications Act of 1996; LEC Tariff Streamlining Provisions	3060-AG47
4094	Access Charge Reform	3060-AG49
4095	Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	3060-AG50
4096	Enhanced 911 Services for Wireline	3060-AG60
4097	Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services	3060-AG72
4098	Detariffing of Competitive Local Exchange Carriers' Interstate Exchange Access Services	3060-AG73
4099	Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, Operator Services, and Directory Assistance	3060-AH00
4100	Deployment of Wireline Services Offering Advanced Telecommunications Capability	3060-AH03
4101	Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers	3060-AH18
4102	Local Telephone Networks That LECs Must Make Available to Competitors	3060-AH44
4103	2000 Biennial Regulatory Review — Telecommunications Service Quality Reporting Requirements	3060-AH72
4104	Access Charge Reform and Universal Service Reform	3060-AH74
4105	2000 Biennial Regulatory Review — Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers; Phase 2 and Phase 3	3060-AH76
4106	Streamlining Procedures for Common Carrier Transfers of Control and Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations	3060-AH79
4107	Numbering Resource Optimization	3060-AH80
4108	Performance Measurements and Standards for Unbundled Network Elements and Interconnection	3060-AI00
4109	Performance Measurements and Standards for Interstate Special Access Services	3060-AI01
4110	Customer Premises Equipment/Enhanced Services Bundling Restrictions in Computer II	3060-AI03

WIRELINE COMPETITION BUREAU—Completed Actions

Sequence Number	Title	Regulation Identification Number
4111	1998 Biennial Regulatory Review — Review of Accounting and Cost Allocation Requirements	3060-AG98
4112	1998 Biennial Regulatory Review — Review of ARMIS Reporting Requirements	3060-AG99
4113	1998 Biennial Regulatory Review — Review of Depreciation Requirements for Incumbent Local Exchange Carriers	3060-AH20
4114	Comprehensive Review of Accounting Requirements and ARMIS Reporting Requirements, Phase 1	3060-AH43
4115	Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers; Phase 1	3060-AH77

Federal Communications Commission (FCC)
Consumer and Governmental Affairs Bureau

Long-Term Actions

3975. POLICIES AND RULES GOVERNING INTERSTATE PAY-PER-CALL AND OTHER INFORMATION SERVICES PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 228

CFR Citation: 47 CFR 64.1501; 47 CFR 64.1504; 47 CFR 64.1510

Legal Deadline: None

Abstract: The Commission has received comments on proposed rules designed to implement the 1996 Telecommunications Act with respect to information services to prevent abusive and deceptive practices by entities that might try to circumvent the statutory requirements. The proposed rules address generally the use of dialing sequences other than the 900 service access code to provide information services.

Timetable:

Action	Date	FR Cite
NPRM	06/20/96	61 FR 31481
NPRM Comment Period End	09/16/96	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AG42

3976. IMPLEMENTATION OF THE SUBSCRIBER SELECTION CHANGES PROVISION OF THE TELECOMMUNICATIONS ACT OF 1996

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 201; 47 USC 258

CFR Citation: 47 CFR 64.1100; 47 CFR 64.1150; 47 CFR 64.1160; 47 CFR 64.1170; 47 CFR 64.1180; 47 CFR 64.1190

Legal Deadline: None

Abstract: In December 1998, the Commission established new rules and policies implementing section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, which makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telecommunications exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe." The rules provide, among other things, that any telecommunications carrier that violates such verification procedures and that collects charges for telephone exchange service or telephone toll service from a subscriber, shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by the subscriber after such violation. In the FNPRM, we sought comment on several proposals to further strengthen our slamming rules. In April 2000, the Commission modified the slamming liability rules by giving victims of slamming adequate redress, ensuring that carriers that slam do not profit from their fraud, and allowing states to act as the primary administrator of slamming complaints.

In July 2000, the Commission took further action to improve the existing carrier change process for both consumers and carriers, protect the right of consumers to exercise choice among carriers, and ensure that consumers' choices are honored. In December 2000, the Commission adopted a Biennial Review FNPRM seeking comment on proposals to amend the slamming rules to lighten administrative burdens associated with selling or transferring customer bases by eliminating the need to obtain a waiver, while continuing to protect consumers. In February 2001, the Commission adopted an order modifying and clarifying certain aspects of the reporting and registration requirements it had adopted in July 2000. In May 2001, the Commission adopted streamlined procedures for the carrier-to-carrier sale or transfer of customer bases, as proposed in the Biennial Review FNPRM.

Timetable:

Action	Date	FR Cite
MO&O on Recon and FNPRM	08/14/97	62 FR 43493
FNPRM Comment Period End	09/30/97	
Second Report & Order and Second FNPRM	02/16/99	64 FR 7745
First Order on Recon	04/13/00	65 FR 47678
Third Report & Order and Second Order on Recon	11/08/00	65 FR 66934
Third FNPRM	01/29/01	66 FR 8093
Order	03/01/01	66 FR 12877
First Report & Order and Fourth Report & Order	06/06/01	66 FR 30334
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AG46

3977. IMPLEMENTATION OF SECTION 255 AND SECTION 251(A)(2) OF THE TELECOMMUNICATIONS ACT OF 1996; ACCESS TO TELECOMMUNICATIONS SERVICES EQUIPMENT AND CUSTOMER PREMISE EQUIPMENT FOR PERSONS WITH DISABILITIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 255

CFR Citation: 47 CFR 6; 47 CFR 7

Legal Deadline: None

Abstract: This proceeding is initiated to implement the provisions of sections 251(a)(2) and 255 of the Communications Act and related sections of the Telecommunications Act of 1996 regarding the accessibility of telecommunications equipment and services to persons with disabilities.

Timetable:

Action	Date	FR Cite
NOI	09/26/96	61 FR 50465
NPRM	05/22/98	63 FR 28456
NPRM Comment Period End	08/14/98	
Report & Order	11/19/99	64 FR 63235

Action	Date	FR Cite
Further NOI	11/19/99	64 FR 63277
Further NOI Comment Period End	12/14/99	
Public Notice	07/13/00	65 FR 43372

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Federal

Additional Information: Additional Bureau: Wireline Competition Bureau

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RIN: 3060–AG58

3978. IN THE MATTER OF THE TELECOMMUNICATIONS RELAY SERVICES, THE AMERICANS WITH DISABILITIES ACT OF 1990, AND THE TELECOMMUNICATIONS ACT OF 1996

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 225

CFR Citation: 47 CFR 64.604

Legal Deadline: None

Abstract: This item will address the requirement that telecommunications relay services be capable of handling any type of call normally provided by common carriers, including coin sent-paid calls. On April 5, 2001, the Commission published a Second FNPRM seeking comment on the coin sent-paid issue. This Second FNPRM suspended the enforcement of section 64.604(a)(3) of our rules until final rules in this proceeding are adopted and published in the Federal Register.

Timetable:

Action	Date	FR Cite
NPRM	12/04/90	55 FR 50037
R&O and Request for Comments	08/01/91	56 FR 36729
Order on Recon, Second R&O and FNPRM	03/03/93	58 FR 12175
MO&O	11/28/95	60 FR 58626
Order	08/23/00	
Second FNPRM	04/05/01	66 FR 18059

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Additional Bureau: Wireline Competition Bureau

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RIN: 3060–AG75

3979. IN THE MATTER OF TELECOMMUNICATIONS RELAY SERVICES AND SPEECH-TO-SPEECH SERVICES FOR INDIVIDUALS WITH HEARING AND SPEECH DISABILITIES; CC DOCKET NO. 98-67

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 225; 47 USC 255; 47 USC 610

CFR Citation: 47 CFR 64.601; 47 CFR 64.603; 47 CFR 64.604; 47 CFR 64.605

Legal Deadline: None

Abstract: In the Report and Order, released on March 6, 2000, the FCC adopted additional rules to increase the availability and usefulness of the telecommunications system for Americans with hearing and speech disabilities. Specifically, the FCC required that speech to speech and Spanish language relay services be provided. The FCC also encouraged the provision of video relay interpreting service by making it eligible for reimbursement from the telecommunications relay service (TRS) fund. In addition, the FCC revised its minimum standards in accordance with the statutory mandate that TRS must be "functionally equivalent" to voice telecommunications service to the extent possible. Among other things, these rules will improve the speed at which calls are answered and conversations relayed.

In the Further Notice of Proposed Rulemaking (FNPRM), the FCC asked for comment on how to further improve TRS. Specifically, the FNPRM asked what changes are necessary to increase public awareness of TRS among all callers, not just those with disabilities, including how a national awareness education campaign can be established; and whether other technologies, services, and features should be made available to TRS users.

In the Order on Reconsideration released on June 5, 2000, the FCC, on its own motion, amended the effective date by which parties must comply with most of the amended rules adopted in the Report and Order. The Order on Reconsideration also established a fixed date for the annual submission of complaint log summaries by States and TRS providers to the FCC by July 1 of each year. The FCC also more rigorously conformed the text of the rules concerning the submission of contact information and the treatment of emergency calls to the precise language in the Report and Order. Moreover, the FCC clarified the requirement regarding the transfer of customer profile information between outgoing and incoming TRS providers, and clarified the review process and possible disposition of informal complaints under our amended TRS rules. In addition, the Order on Reconsideration changed the nomenclature in our rules from "video relay interpreting" to "video relay services." Finally, the Order on Reconsideration corrected various typographical errors.

Timetable:

Action	Date	FR Cite
NPRM	05/20/98	63 FR 32798
NPRM Comment Period End	09/14/98	
Order on Recon	06/21/00	65 FR 38432
Report and Order	06/21/00	65 FR 38432
FNPRM	06/21/00	65 FR 38490
Public Notice	07/19/01	66 FR 37631

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State

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RIN: 3060–AG76

3980. ESTABLISHMENT OF RULES GOVERNING PROCEDURES TO BE FOLLOWED WHEN INFORMAL COMPLAINTS ARE FILED BY CONSUMERS AGAINST ENTITIES REGULATED BY THE COMMISSION

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 152; 47 USC 154(i) and 154(j); 47 USC 303(r); 47 USC 403

CFR Citation: 47 CFR 1.716 to 1.718

Legal Deadline: None

Abstract: This proceeding seeks comment on proposals to establish a unified, streamlined process for the intake and resolution of informal complaints filed by consumers in order to promote maximum compliance with the requirements of the Communications Act of 1934, as amended, (the Act) and our implementing rules and orders.

The Commission has previously emphasized that our consumer complaint mechanisms are a principal vehicle for achieving such compliance and promoting the pro-competitive goals underlying the Act and our rules. We are concerned, however, that our existing complaint mechanisms require consumers to navigate an array of rule provisions and disparate procedures administered by various offices within the Commission in order to file complaints about practices they believe violate the Act or our rules and orders. Our goal in this proceeding is to consolidate and streamline the consumer complaint mechanisms consumers use when submitting informal complaints to the Commission.

We propose to establish a consumer complaint mechanism patterned after our existing rules for informal complaints filed against common carriers pursuant to Section 208 of the Act contained in Sections 1.717-1.718 of the Commission's rules. We also invite comment on whether we should make changes to our existing informal common carrier complaint rules.

Timetable:

Action	Date	FR Cite
NPRM	04/16/02	67 FR 18560

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

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RIN: 3060–AI02

Federal Communications Commission (FCC)
Enforcement Bureau

Long-Term Actions

3981. IN THE MATTER OF AMENDMENT OF PART 73, SUBPART G, OF THE COMMISSION'S RULES REGARDING THE EMERGENCY ALERT SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 303; 47 USC 544; 47 USC 606

CFR Citation: 47 CFR 11; 47 CFR 73; 47 CFR 76

Legal Deadline: None

Abstract: The Commission adopted new rules to replace the old Emergency Broadcast System (EBS) with a new Emergency Alert System (EAS), in order to alert the public in the event of a national emergency. The Report and Order requires broadcast stations and cable TV systems to participate in the EAS and streamlines operational procedures for system participants. The new rules prescribe how existing communications services such as broadcasting, cable, and other public service providers will function under the technical standards and operational procedures of the new system. It also removed the old part of the Commission's rules concerning EBS in its entirety and incorporated the new EAS rules in a new part of the Code of Federal Regulations.

The Commission issued a Further Notice of Proposed Rulemaking (NPRM) seeking comments regarding whether the Multipoint Distribution Service (MDS), Satellite Master Antenna TV (SMATV) system, and Video Dial Tone should also be required to participate in EAS. It also sought comments on several cable issues such as whether a defined class of small cable systems should be exempted from participation in EAS, and how the Commission should define small cable systems. The Commission subsequently adopted a Second Report and Order to (1) modify EAS as it applied to cable systems; (2) address whether other video providers should be required to participate in the system; and (3) adopt rules to address issues of concern to persons with hearing disabilities.

In response to concerns that voluntary EAS activations could interrupt the transmission of emergency programming by local broadcast stations, the Commission issued a Second Further NPRM requesting comment on whether it should adopt rules to prohibit cable systems from transmitting EAS alerts for state or local emergencies during the broadcast of emergency programming by a broadcast station. In the Third Report and Order, the Commission amended its rules to permit cable systems and broadcast systems to enter into voluntary agreements regarding the transmission of local emergency information. The Commission, however, declined to adopt rules requiring cable systems to prevent the interruption of local broadcast station emergency programming. In April 2000, the Commission issued an order in which it deleted obsolete rules or rules that were no longer needed.

In March 2001, the Commission issued an NPRM proposing various revisions to the EAS rules and seeking comment on requests for rule changes filed by the National Weather Service and the Society of Broadcast Engineers.

The Commission adopted rule changes in the Report and Order that are intended to enhance the capabilities and performance of the EAS during state and local emergencies. The Commission adopted rules that add new state and local event codes to the EAS and rules that permit broadcast stations and cable stations to upgrade their existing EAS equipment to add the new event and location codes on a voluntary basis until the equipment is replaced. Additionally, the Commission adopted rules that require all existing and new models of EAS equipment manufactured after August 1, 2003, to be capable of receiving and transmitting the new codes. The Commission noted that this approach strikes an appropriate balance between promoting public safety by permitting enhancements to state and local EAS and ensuring that any such enhancements do not result in reduced voluntary participation in state and local EAS activities.

Timetable:

Action	Date	FR Cite
NPRM	10/09/91	
NPRM/FNPRM	09/17/92	57 FR 53874
R&O	12/28/94	59 FR 67090
FNPRM	12/28/94	59 FR 67104
MO&O	11/06/95	60 FR 55996
Second FNPRM	03/04/98	63 FR 15806
Second R&O	09/24/98	63 FR 29660
Third R&O	02/08/99	64 FR 5950
Order	04/24/00	65 FR 21657
NPRM	03/20/01	66 FR 16897
R&O (Release Date)	02/26/02	67 FR 18502

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Federal

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RIN: 3060–AF21

Federal Communications Commission (FCC)
Office of Engineering and Technology

Long-Term Actions

3982. MSS SPECTRUM ALLOCATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154; 47 USC 302; 47 USC 303; 47 USC 304

CFR Citation: 47 CFR 2

Legal Deadline: None

Abstract: The Second Report and Order finalized the reallocation of the 1990-2025 MHz band from Broadcast Auxiliary Service, including the Cable Television Relay Service and the Local Television Transmission Service, licensees to the new Mobile-Satellite Service (MSS), and established rules for the relocation of incumbent licensees from the 1990-2110 MHz band as well as incumbent Fixed Service (FS) microwave licensees from the 2165-2200 MHz bands, in cases where sharing between MSS and FS is not possible. The Second Memorandum Opinion and Order confirmed the Commission's decision to require new MSS licensees to bear the cost of relocating incumbent licensees in these bands.

Timetable:

Action	Date	FR Cite
NPRM	01/31/95	60 FR 11644
Order	03/08/95	60 FR 13687
First R&O	04/22/97	62 FR 19509
R&O and FNPRM	04/22/97	62 FR 19538
MO&O	12/17/98	63 FR 69606
Second R&O and Second MO&O	08/07/00	65 FR 48174
Order	08/19/02	67 FR 53754

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: ET Docket No. 95-18

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RIN: 3060–AF75

3983. UNLICENSED NATIONAL INFORMATION INFRASTRUCTURE AT 5 GHZ

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 47 USC 302; 47 USC 303

CFR Citation: 47 CFR 2; 47 CFR 15

Legal Deadline: None

Abstract: The MO&O amends the rules to permit fixed, point to point unlicensed National Information Infrastructure (U-NII) devices in the 5.725-5.285 GHz band to operate with one-watt maximum transmitter output power and directional antennas of up to 23 db:gain. It clarifies the rules regarding unwanted emissions and specifies these limits in terms of absolute radiated power levels. These actions will add to the flexibility and capability of U-NII operations without causing an increase in harmful interference to incumbent operations sharing the same spectrum.

Timetable:

Action	Date	FR Cite
NPRM	05/06/96	61 FR 24749
R&O	01/31/97	62 FR 4649
Public Notice	03/17/97	62 FR 12641
MO&O	07/31/98	63 FR 40831
Petition for Reconsideration	09/18/98	63 FR 49913

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: RM-8468 and RM-8653; ET Docket No. 96-102

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RIN: 3060–AG19

3984. DEDICATED SHORT RANGE COMMUNICATIONS OF INTELLIGENT TRANSPORTATION SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 157; 47 USC 303

CFR Citation: 47 CFR 2; 47 CFR 90

Legal Deadline: None

Abstract: The FCC proposes to allocate 75 megahertz of spectrum for use by Dedicated Short Range Communications (DSRC) of Intelligent Transportation Systems (ITS). DSRC systems are being designed that require a short range, wireless link to transfer information between vehicles and roadside systems. ITS services are expected to improve traveler safety, decrease traffic congestion, and facilitate reduction of air pollution and conservation of fossil fuels. This action furthers the goal of the U.S. Congress, the Department of Transportation, and the ITS industry to improve the efficiency of the Nation's transportation infrastructure and facilitate the growth of the ITS industry.

Timetable:

Action	Date	FR Cite
NPRM	06/30/98	63 FR 35558
NPRM Comment Period End	09/14/98	
Reply Comment Period End	10/31/98	
R&O	11/26/99	64 FR 66405
Petition for Reconsideration	02/16/00	65 FR 7873

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: ET Docket No. 98-95

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RIN: 3060–AG94

3985. REGULATIONS FOR RF LIGHTING DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 301; 47 USC 302; 47 USC 303; 47 USC 304; 47 USC 307

CFR Citation: 47 CFR 18

Legal Deadline: None

Abstract: The FCC proposed to update the regulations for RF lighting devices. This action was taken in response to new developments in RF lighting technology. Recent developments and advances in microwave RF lighting technology offer potential economic and environmental benefits for consumers and industry. The current FCC rules do not easily accommodate these advancements, and thus hinder the further development and implementation of these promising new products.

Timetable:

Action	Date	FR Cite
ANPRM	04/24/98	63 FR 20362
First Report & Order	07/12/99	64 FR 37417

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Additional Information: ET Docket No. 98-42

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RIN: 3060–AG95

3986. INDUSTRY COORDINATION COMMITTEE SYSTEM FOR BROADCAST DIGITAL TELEVISION SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 301; 47 USC 302; 47 USC 303; 47 USC 307; 47 USC 336

CFR Citation: 47 CFR 73; 47 CFR 74

Legal Deadline: None

Abstract: We seek comment on the establishment of an industry coordination committee to assist the Commission in the implementation of digital television (DTV) service. This committee system would evaluate proposed changes to the DTV Table of Allotments and perform other related functions.

Timetable:

Action	Date	FR Cite
NPRM	02/09/99	64 FR 6296
NPRM Comment Period End	03/29/99	
Reply Comment Period End	04/28/99	
Final Action	01/25/02	67 FR 3616

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: ET Docket No. 99-34

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RIN: 3060–AH13

3987. 3650-3700 GOVERNMENT TRANSFER BAND

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 157(a); 47 USC 303(c); 47 USC 303(f); 47 USC 303(g); 47 USC 303(r)

CFR Citation: 47 CFR 2

Legal Deadline: None

Abstract: The First Report and Order allocated 50 MHz of spectrum on the 3650-3700 MHz band to the fixed and mobile (base stations) terrestrial services on a primary basis. It also ensures the continuity of fixed satellite service (FSS) operations and permits new FSS operations to help alleviate congestion in the adjacent 3700-4200 MHz FSS band.

The Second Notice of Proposed Rule Making proposes to establish licensing and service rules for the assignment of fixed and mobile services licenses in the 3650-3700 MHz band. It also seeks comments on whether technical requirements or other reasons justify licensing the 3650-3700 MHz and the 4940-4990 MHz band at the same time.

Timetable:

Action	Date	FR Cite
NPRM	01/14/99	64 FR 2462
NPRM Comment Period End	03/01/99	
First R&O	11/17/00	65 FR 69454
Second NPRM	11/17/00	65 FR 69612
Petition for Reconsideration	03/28/01	66 FR 16940

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Undetermined

Additional Information: ET Docket No. 98-237

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RIN: 3060–AH14

3988. FIXED SATELLITE SERVICE AND TERRESTRIAL SYSTEM IN THE KU-BAND

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 157; 47 USC 303

CFR Citation: 47 CFR 2; 47 CFR 25

Legal Deadline: None

Abstract: The Memorandum Opinion and Order and 2nd Report and Order addressed petitions for reconsideration and established technical, service and licensing rules for Multichannel Video Distribution and Data Service (MVDDS) in the 12 GHz band. MVDDS will facilitate the delivery of new communications services, such as video and broadband services, to a wide range of populations, including those that are unserved or underserved. These rules will allow MVDDS licensees to share the 12 GHz band with new operators on a com-primary basis, and non-harmful interference basis with incumbent Direct Broadcast Satellite service providers.

Timetable:

Action	Date	FR Cite
NPRM	01/12/99	64 FR 1786
Order	02/16/99	64 FR 7577
Public Notice	12/15/99	64 FR 70028
FNPRM	01/24/01	66 FR 7607
R&O	02/16/01	66 FR 10601
Petitions for Reconsideration	04/09/01	66 FR 18474
2nd R&O	06/26/02	67 FR 43031

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: ET Docket No. 98-206

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RIN: 3060–AH17

3989. SPREAD SPECTRUM DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 301; 47 USC 302; 47 USC 303

CFR Citation: 47 CFR 15

Legal Deadline: None

Abstract: The Second Report and Order amends the Commission's rules to improve spectrum sharing by unlicensed devices operating in the 2.4 GHz band (2400-2483.5 MHz) to provide for introduction of new digital transmission technologies, and eliminate unnecessary regulations for spread spectrum systems.

Timetable:

Action	Date	FR Cite
NPRM	07/20/99	64 FR 38877
NPRM Comment Period End	11/02/99	
R&O	09/25/00	65 FR 57557
Petition for Reconsideration	11/08/00	65 FR 67009
Order	06/12/01	66 FR 31556
FNPRM	06/12/01	66 FR 31585
2nd R&O	06/25/02	67 FR 42730

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: ET Docket No. 99-231

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RIN: 3060–AH25

3990. WIRELESS MEDICAL TELEMETRY SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 301; 47 USC 302; 47 USC 303; 47 USC 304

CFR Citation: 47 CFR 2; 47 CFR 15; 47 CFR 90; 47 CFR 95

Legal Deadline: None

Abstract: The Commission amended parts 2 and 95 of the rules to allocate spectrum and to establish rules for a Wireless Medical Telemetry Service. This action will allow potentially life critical medical telemetry equipment, which currently operates on a secondary basis, unprotected from interference, to operate on a blanket licensed, interference protected basis.

Timetable:

Action	Date	FR Cite
NPRM	08/02/99	64 FR 41891
NPRM Comment Period End	10/18/99	
R&O	07/17/00	65 FR 43995
MO&O	02/11/02	67 FR 6172

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: ET Docket No. 99-255

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RIN: 3060–AH27

3991. ESTABLISHMENT OF AN IMPROVED MODEL FOR PREDICTING THE BROADCAST TELEVISION FIELD STRENGTH RECEIVED AT INDIVIDUAL LOCATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 303; 47 USC 334; 47 USC 336

CFR Citation: 47 CFR 73

Legal Deadline: Final, Statutory, May 29, 2000.

Abstract: The Commission adopted a prediction model for determining presumptively the ability of individual locations to receive over the air television stations. This model will be a useful means for establishing the eligibility of individual households to receive the signals of television broadcast network stations through satellite carriers. The Commission is complying with the new statutory requirements set forth in the Satellite Home Viewer Improvement Act of 1999.

Timetable:

Action	Date	FR Cite
NPRM	02/02/00	65 FR 4923
NPRM Comment Period End	03/07/00	
R&O	06/09/00	65 FR 36639
Petition for Reconsideration	07/31/00	65 FR 46713

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: ET Docket No. 00-11

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RIN: 3060–AH37

3992. CONDUCTED EMISSION LIMITS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 301; 47 USC 302; 47 USC 303; 47 USC 304; 47 USC 307; 47 USC 544A

CFR Citation: 47 CFR 15; 47 CFR 18

Legal Deadline: None

Abstract: The Report and Order amends the Commission's rules for Radio Frequency (RF) devices to modify the limits on the amount of RF energy that is permitted to be conducted onto alternating current (AC) power lines. These limits protect against interference to licensed radio services operating below 30 MHz. The rule changes also harmonize our domestic requirements with the international standards developed by the International Electrotechnical Commission, International Special Committee on Radio Interference. The Commission believes that such harmonization will benefit consumers and manufacturers by providing better interference protection to licensed radio services as well as promoting a global marketplace for RF devices.

Timetable:

Action	Date	FR Cite
NPRM	11/16/99	64 FR 62159
NPRM Comment Period End	02/29/00	
R&O	07/10/02	67 FR 45666

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: ET Docket No. 98-80

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RIN: 3060–AH46

3993. REVISION OF THE RULES REGARDING ULTRA-WIDEBAND TRANSMISSION

Priority: Economically Significant

Legal Authority: 47 USC 154; 47 USC 302; 47 USC 303; 47 USC 304; 47 USC 307; 47 USC 544A

CFR Citation: 47 CFR 15

Legal Deadline: None

Abstract: The First Report and Order amends the Commission's rules to permit the marketing and operation of certain types of new products incorporating ultra-wideband (UWB) technology. UWB devices operate by employing very narrow or short duration pulses that result in very large or wideband transmission bandwidths. UWB technology holds great promise for a vast array of new applications that we believe will provide significant benefits for public safety, businesses and consumers. With appropriate technical standards, UWB devices can operate using spectrum occupied by existing radio services without causing interference, thereby permitting scarce spectrum resources to be used more efficiently.

Timetable:

Action	Date	FR Cite
NPRM	06/14/00	65 FR 37332
NPRM Comment Period End	10/12/00	
1st R&O	05/16/02	67 FR 34852

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: ET Docket No. 98-153

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RIN: 3060–AH47

3994. SOFTWARE DEFINED RADIO AUTHORIZATION

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 154(j); 47 USC 155; 47 USC 225; 47 USC 303(r); 47 USC 309

CFR Citation: 47 CFR 1; 47 CFR 2

Legal Deadline: None

Abstract: The NPRM proposes to streamline the equipment authorization procedures for software defined radios. We propose to define software defined radios as a new class of equipment with equipment authorization rules that reflect the additional flexibility incorporated into such radios. The frequency and technology agility of software defined radios could increase the use of presently underutilized frequency bands.

Timetable:

Action	Date	FR Cite
NPRM	01/03/01	66 FR 341
Report & Order	10/05/01	66 FR 50834
Petitions for Reconsideration	12/07/01	66 FR 63545

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: ET Docket No. 00-47

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RIN: 3060–AH64

3995. NEW ADVANCED WIRELESS SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 157(a); 47 USC 303(c); 47 USC 303(f); 47 USC 303(g); 47 USC 303(r)

CFR Citation: 47 CFR 2

Legal Deadline: None

Abstract: This proceeding explores the possible uses of frequency bands below 3 GHz to support the introduction of new advanced wireless services, including third generations as well as future generations of wireless systems. Advanced wireless systems could provide for a wide range of voice data and broadband services over a variety of mobile and fixed networks.

Timetable:

Action	Date	FR Cite
NPRM	01/23/01	66 FR 7438
NPRM Comment Period End	03/09/01	
Final Report	04/11/01	66 FR 18740
MO&O	09/13/01	66 FR 47591
FNPRM	09/13/01	66 FR 47618
First R&O	10/25/01	66 FR 53973
Petition for Reconsideration	11/02/01	66 FR 55666

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: ET Docket No. 00-258

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RIN: 3060–AH65

3996. REALLOCATION OF 27 MHZ SPECTRUM

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 302; 47 USC 303(a); 47 USC 336

CFR Citation: 47 CFR 2

Legal Deadline: None

Abstract: The NPRM proposes to reallocate a total of 27 MHz of spectrum, transferred from Federal Government use, for non-Government services pursuant to the Omnibus Budget Act of 1977. The transfer of these bands to non-Government use should enable the development of new technologies and services, provide additional spectrum relief for congested private land mobile frequencies, and fulfill our obligation as mandated by Congress to assign this spectrum for non-Government use.

Timetable:

Action	Date	FR Cite
NPRM	01/23/01	66 FR 7443
NPRM Comment Period End	03/26/01	
R&O and MO&O	02/11/02	67 FR 6172

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal

Additional Information: ET Docket No. 00-221

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RIN: 3060–AH66

3997. REVISIONS TO BROADCAST AUXILIARY SERVICE RULES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 302; 47 USC 303(f); 47 USC 303(r); 47 USC 332; 47 USC 337

CFR Citation: 47 CFR 1; 47 CFR 2; 47 CFR 73; 47 CFR 74; 47 CFR 78

Legal Deadline: None

Abstract: The Notice of Proposed Rule Making conducts an extensive review of the Broadcast Auxiliary Services (BAS) rules and proposes changes to create a more efficient BAS that can readily adapt to regulatory and technological changes. The Commission examines the relationship between BAS, the Cable Television Relay Service (CARS), and the Fixed Microwave Television Service. The Commission also examines the use of wireless assist video devices (WAVDs) on unused television channels.

Timetable:

Action	Date	FR Cite
NPRM	05/24/01	66 FR 28686
NPRM Comment Period End	07/23/01	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: ET Docket No. 01-75

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RIN: 3060–AH78

3998. PART 15 BIENNIAL REVIEW

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 301; 47 USC 302; 47 USC 303(e)(f) and (r); 47 USC 304 and 307

CFR Citation: 47 CFR 2; 47 CFR 15; 47 CFR 18; 47 CFR 90

Legal Deadline: None

Abstract: The First Report and Order in this proceeding requires radar detectors to comply with limits on radiated emissions in the 11.7-12.2 GHz band to prevent interference to satellite services. Radar detectors are required to be approved by the Federal Communications Commission or another designated organization before they can be marketed within the United States.

Timetable:

Action	Date	FR Cite
NPRM	11/27/01	66 FR 59209
1st R&O	07/29/02	67 FR 48989

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: ET Docket No. 01-278

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RIN: 3060–AH92

3999. • AMATEUR RADIO SERVICE RULES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 302(a); 47 USC 303; 47 USC 336

CFR Citation: 47 CFR 2; 47 CFR 97

Legal Deadline: None

Abstract: The NPRM proposes to amend the Commission's rules to add a new secondary allocation to the 135.7-137.8 kHz band for the amateur service for experimentation in the low frequency region of the spectrum; and add a new secondary allocation to the 5250-5400 kHz band for the amateur service to facilitate high frequency amateur service operations; and to upgrade the amateur service allocation from secondary to primary status and add a primary allocation for the amateur-satellite service in the 2400-2402 MHz band.

Timetable:

Action	Date	FR Cite
NPRM	06/14/02	67 FR 40898
NPRM Comment Period End	08/13/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Organizations

Government Levels Affected: Federal

Additional Information: ET Docket No. 02-98

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RIN: 3060–AI04

Federal Communications Commission (FCC)
Office of Engineering and Technology

Completed Actions

4000. ALLOCATION OF 455-456 MHZ AND 459-460 MHZ

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 303

CFR Citation: 47 CFR 2; 47 CFR 25

Legal Deadline: None

Abstract: The FCC proposes to amend its rules to allocate the 455-456 MHz and 459-460 MHz bands to the Mobile Satellite Services (Earth-to-Space) (MSS Uplinks) on a primary basis for non-voice, non-geostationary satellite services (NVNG MSS).

Timetable:

Action	Date	FR Cite
NPRM	10/31/97	62 FR 58932
NPRM Comment Period End	11/30/97	
Reply Comment Period End	12/15/97	
Termination Order	06/07/02	67 FR 39307

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Additional Information: ET Docket No. 97-214

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RIN: 3060–AG89

4001. CERTIFICATION OF EQUIPMENT IN THE 24.05-24.25 GHZ BAND AT FIELD STRENGTHS UP TO 2500 MV/M

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 301; 47 USC 302; 47 USC 303

CFR Citation: 47 CFR 15

Legal Deadline: None

Abstract: The Report and Order amends the Commission's rules to allow the operation of fixed point-to-point transmitters in the 24.50-24.25 GHz band at field strengths of up to 2500 mV/m. Devices operating at these higher levels will be required to use highly directional antennas to minimize the possibility of creating harmful interference to other services in the band. This action facilitates the introduction of a variety of new, innovative products and services in the band, such as managing the network traffic on a high-speed wireless internet service or connecting a multiple building intra-office network.

Timetable:

Action	Date	FR Cite
NPRM	09/21/98	63 FR 50185
NPRM Comment Period End	01/04/99	
R&O	01/14/02	67 FR 1623
Petition for Reconsideration	04/30/02	67 FR 21236
Termination Order	07/25/02	67 FR 3616

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: ET Docket No. 98-156

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RIN: 3060–AH16

Federal Communications Commission (FCC)
Office of General Counsel

Long-Term Actions

4002. AMENDMENT OF THE EX PARTE RULES IN JOINT BOARD PROCEEDINGS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154(i); 47 USC 154(j); 47 USC 303(r); 47 USC 403

CFR Citation: 47 CFR 1.1206

Legal Deadline: None

Abstract: The FCC proposes to amend its ex parte rules to facilitate communications by the states in Joint Board proceedings and proceedings before the FCC involving a recommendation from a Joint Board.

Timetable:

Action	Date	FR Cite
NPRM	07/15/98	63 FR 38142
NPRM Comment Period End	08/31/98	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3060–AH02

4003. AMENDMENT OF SECTION 1.1204 OF THE COMMISSION'S EX PARTE RULES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 303; 47 USC 309

CFR Citation: 47 CFR 1.1204

Legal Deadline: None

Abstract: The Commission proposes to amend its regulations specifying presentations that are treated as exempt under the ex parte rules. Under the current rule, presentations to or from the Department of Justice and the Federal Trade Commission regarding telecommunications competition matters are treated as exempt. The item would expand the scope of the exemption to include the Competition Directorate of the European Commission and other international and foreign bodies with analogous functions. The item would clarify that the term "telecommunications competition matters" in the existing rules was intended to be construed broadly and was not limited to common carriers.

Timetable:

Action	Date	FR Cite
NPRM	12/26/00	65 FR 81474
NPRM Comment Period End	02/09/01	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3060–AH58

4004. AMENDMENT OF SECTION 1.17 OF THE COMMISSION'S RULES CONCERNING TRUTHFUL STATEMENTS TO THE COMMISSION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154(i); 47 USC 201(b); 47 USC 303(r)

CFR Citation: 47 CFR 1.17

Legal Deadline: None

Abstract: The Commission proposes to amend its regulations relating to the submission of truthful information to the Commission. Under the current rule, Commission regulatees must not, in any written statement submitted to the Commission, make any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission. The item would: (1) provide that the rule prohibits incorrect statements or omissions resulting from negligence and not just intentional misrepresentation or lack of candor; (2) make clearer that the rule covers statements made to the Commission in all contexts; (3) include oral statements and not just written statements; and (4) include all persons making statements to the Commission (e.g. including non-regulatees).

Timetable:

Action	Date	FR Cite
NPRM	03/08/02	67 FR 10658

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3060–AH86

Federal Communications Commission (FCC)
International Bureau

Long-Term Actions

4005. STREAMLINING THE COMMISSION'S RULES AND REGULATIONS FOR SATELLITE APPLICATION AND LICENSING PROCEDURES; IB DOCKET NO. 95-117

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 4; 47 USC 154; 47 USC 303; 47 USC 554; 47 USC 701 to 744

CFR Citation: 47 CFR 25

Legal Deadline: None

Abstract: On February 10, 1997, the FCC adopted rules and policies that streamlined the application and licensing requirements of part 25 of its rules, which deals with communication satellites and earth stations. The streamlined rules waived the construction permit requirement for satellite space stations; changed the license term for temporary fixed earth stations; and adjusted or changed the rules concerning minor modifications and basic requirements for satellite service applications. The streamlined rules also resulted in the creation of a new application form, FCC Form 312. Form 312 eliminated from the International Bureau's use the FCC Form 493, FCC Form 430, FCC Form 702, and FCC Form 704. Petitions for Reconsideration were filed in this matter. In March 1997 the Commission released a Public Notice concerning these petitions, which are presently pending before the International Bureau.

Timetable:

Action	Date	FR Cite
NPRM	09/09/95	60 FR 46252
R&O, Recon Pending	02/10/97	62 FR 5924
Public Notice/Petitions for Recon	03/26/97	62 FR 14430

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Federal

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RIN: 3060–AD70

4006. SATELLITE COMMUNICATIONS — NGSO MOBILE SATELLITE SERVICE; CC DOCKET NO. 92-166

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 301; 47 USC 303

CFR Citation: 47 CFR 2; 47 CFR 25; 47 CFR 93

Legal Deadline: None

Abstract: The Commission adopted rules in 1994 for a voice-and-data mobile satellite service (MSS) in the 1610-1626.5 MHz and 2483.5-2500 MHz frequency bands. Licenses have been issued for five systems. The Commission issued a decision in a 1996 ruling on Petitions for Reconsideration of the Report and Order making some changes in the rules. Several petitions for further reconsideration are still pending.

Timetable:

Action	Date	FR Cite
NPRM	03/14/94	59 FR 11746
NPRM Comment Period End	06/04/94	
R&O	10/21/94	59 FR 53294
Begin Review	12/01/94	
First Recon Order	03/12/96	61 FR 9944

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: CC Docket No. 92-166

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RIN: 3060–AF42

4007. ESTABLISHING RULES AND POLICIES FOR THE USE OF SPECTRUM FOR MOBILE SATELLITE SERVICE IN THE L-BAND; IB DOCKET NO. 96-132

Priority: Routine and Frequent. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154; 47 USC 303; 47 USC 316; 47 USC 403

CFR Citation: 47 CFR 25.136(d)(1-8), (e)(1-10)

Legal Deadline: None

Abstract: The Commission has established licensing policies to govern mobile-satellite services (MSS) in the L-band. Specifically, the Commission has modified the license of Motient Services, Inc. (Motient), the only U.S. MSS system currently authorized to operate in the L-band, to use up to 20 megahertz of spectrum across the entire L-band. Previously, Motient was authorized only to operate in the upper portion of the L-band. In addition, the Commission has adopted and incorporated into part 25 of the rules specific operational parameters and technical requirements to ensure the integrity of maritime distress and safety communications service will not be compromised by MSS operation in the lower portion of the L-band.

Timetable:

Action	Date	FR Cite
NPRM	06/18/96	61 FR 40772
NPRM Comment Period End	09/23/96	
R&O (Release Date)	02/07/02	67 FR 51105

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 3060–AF89

4008. ESTABLISHMENT OF RULES AND POLICIES FOR THE DIGITAL AUDIO RADIO SATELLITE SERVICE IN THE 2310-2360 MHZ FREQUENCY BAND; IB DOCKET NO. 95-91; GEN DOCKET NO. 90-357

Priority: Routine and Frequent. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 151(i); 47 USC 154(j); 47 USC 157; 47 USC 309(j)

CFR Citation: 47 CFR 25.144

Legal Deadline: None

Abstract: The Commission is proposing rules to govern satellite digital audio radio services (SDARS). The Commission adopted service rules for SDARS in 1997 and sought further comment on proposed rules governing the use of complementary terrestrial repeaters. See 62 FR 19095.

Timetable:

Action	Date	FR Cite
NPRM	06/15/95	60 FR 35166
R&O	03/11/97	62 FR 11083
FNPRM	04/18/97	62 FR 19095

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 3060–AF93

4009. REDESIGNATION OF THE 27.5-29.5 GHZ FREQUENCY BAND; CC DOCKET NO. 92-297

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 301; 47 USC 302

CFR Citation: 47 CFR 1; 47 CFR 2; 47 CFR 21; 47 CFR 25

Legal Deadline: None

Abstract: The Commission issued a Memorandum Opinion and Order that addressed a petition for clarification and/or reconsideration filed by Teledesic Corporation of the Commission's Third Report and Order, which established technical requirements and service rules for geostationary fixed satellite services (NGOS FSS) in the Ka-band.

Timetable:

Action	Date	FR Cite
NPRM	07/13/95	60 FR 43740
NPRM Comment Period End	09/07/95	
R&O	08/28/96	61 FR 44177
Third R&O	11/18/97	62 FR 61488
Order on Recon	05/25/02	67 FR 39308

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: CC Docket No. 92-297

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RIN: 3060–AF94

4010. AMENDMENT OF POLICY TO ALLOW NON-U.S. LICENSED SPACE STATIONS TO PROVIDE SERVICE IN THE UNITED STATES; IB DOCKET NO. 96-111; CC DOCKET NO. 93-23

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 303; 47 USC 308

CFR Citation: 47 CFR 25.113; 47 CFR 25.115; 47 CFR 25.130; 47 CFR 25.131; 47 CFR 25.137

Legal Deadline: None

Abstract: In the Second Order on Reconsideration in this proceeding, the Commission denied four petitions for reconsideration of the DISCO II Order.

Timetable:

Action	Date	FR Cite
NPRM	05/14/96	61 FR 32398
NPRM Comment Period End	08/16/96	
FNPRM	07/29/97	62 FR 40494
R&O	12/04/97	62 FR 64167
Public Notice	01/05/98	63 FR 227
Public Notice on Petitions for Recon	01/30/98	63 FR 4640
First Order on Recon	11/15/99	64 FR 61791
Second Order on Recon (Release Date)	11/05/01	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 3060–AG31

4011. ALLOCATE & DESIGNATE: SPEC FOR FIXED-SAT SRV (37.5-38.5, 40.5-41.5 & 48.2-50.2 GHZ BANDS). ALLOCATE: FIXED & MOBILE 40.5-42.5 GHZ; WIRELESS 46.9-47 GHZ; GOV OPER 37-38 & 40-40.5 GHZ; IB DOC NO. 97-95

Priority: Economically Significant

Legal Authority: 47 USC 154(i); 47 USC 301; 47 USC 302; 47 USC 303(e); 47 USC 303(f); 47 USC 303(g); 47 USC 303(r); 47 USC 304; 47 USC 307

CFR Citation: 47 CFR 2.106; 47 CFR 25.202; 47 CFR 25.208

Legal Deadline: None

Abstract: This item adopts a plan for non-government operations in the 36.0 - 51.4 GHz portion of the V-band, establishing priorities for different services in different parts of this band.

Timetable:

Action	Date	FR Cite
NPRM	04/04/97	62 FR 16129
Report & Order	01/15/99	64 FR 2585
Correction	02/08/99	64 FR 6138
Correction	02/10/99	64 FR 6565
Notice of Petition for Reconsideration	03/22/99	64 FR 13796
Order on Reconsideration	12/01/99	
Further NPRM	07/05/01	66 FR 35399

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: State, Local, Tribal

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RIN: 3060–AH23

4012. ESTABLISHMENT OF POLICIES AND SERVICE RULES FOR THE MOBILE SATELLITE SERVICE IN THE 2 GHZ BAND; IB DOCKET NO. 99-81

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 303; 47 USC 307; 47 USC 309; 47 USC 310; 47 USC 319

CFR Citation: 47 CFR 25.114; 47 CFR 25.115; 47 CFR 25.121; 47 CFR 25.133; 47 CFR 25.136; 47 CFR 25.137; 47 CFR 25.143; 47 CFR 25.201; 47 CFR 25.202; 47 CFR 25.203; 47 CFR 25.279

Legal Deadline: None

Abstract: The Commission amended the regulations covering the 1.6/2.4 GHz Mobile Satellite Service (MSS) to incorporate the rules for the 2 GHz MSS. The actions establish the band arrangement and service rules and policies for the 2 GHz MSS. The effect of amending the 1.6/2.4 GHz MSS rules to include 2 GHz MSS is to simplify and harmonize the rules for the types of satellite services.

Timetable:

Action	Date	FR Cite
NPRM	04/07/99	64 FR 16880
Report and Order	10/04/00	65 FR 59140
MO&O	09/13/01	66 FR 47591
Erratum	07/16/02	67 FR 46603

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 3060–AH28

4013. POLICIES FOR THE DIRECT BROADCAST SATELLITE SERVICE; IB DOCKET NO. 98-21

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154

CFR Citation: 47 CFR 25

Legal Deadline: None

Abstract: This proceeding streamlines and simplifies the Commission's rules governing direct broadcast satellite (DBS) service. It also harmonizes the rules for DBS with those of other satellite services.

Timetable:

Action	Date	FR Cite
NPRM	03/06/98	63 FR 11202
NPRM	02/02/01	66 FR 8774
R&O	08/08/02	67 FR 51110

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 3060–AH29

4014. 1998 BIENNIAL REGULATORY REVIEW — REVIEW OF ACCOUNTS SETTLEMENT IN MARITIME MOBILE & MARITIME MOBILE-SATELLITE RADIO SERVICES AND WITHDRAWAL OF THE COMMISSION AS ACCOUNTING AUTHORITY; IB DOC NO. 98-96

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 154(j); 47 USC 201; 47 USC 202; 47 USC 203; 47 USC 204; 47 USC 205; 47 USC 303(r)

CFR Citation: 47 CFR 3.10(e)

Legal Deadline: None

Abstract: The FCC has decided to withdraw from acting as an accounting authority for the settlement of accounts in the maritime mobile and maritime mobile-satellite (ship-to-shore) radio services, and to rely solely upon the various privately owned accounting authorities the FCC has authorized. In that connection the FCC amended section 3.10(e) of its rules to specify that private accounting authorities must serve the public non-discriminatorily (action 7-13-99). The Commission is gathering comment to develop a plan to ensure a smooth transition to private accounting authorities.

Timetable:

Action	Date	FR Cite
NPRM	07/24/98	63 FR 39800
Report & Order	07/28/99	64 FR 40774
Further NPRM	07/28/99	64 FR 40808
Comment Period Extended	09/03/99	64 FR 48337

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 3060–AH30

4015. GLOBAL MOBILE PERSONAL COMMUNICATIONS BY SATELLITE; IB DOCKET NO. 99-67

Priority: Economically Significant

Legal Authority: 47 USC 4(i); 47 USC 7(a); 47 USC 303(c); 47 USC 303(f); 47 USC 303(g); 47 USC 303(r); 47 USC 307; 47 USC 309; 47 USC 310

CFR Citation: 47 CFR 25.200; 47 CFR 25.213; 47 CFR 25.215; 47 CFR 25.216; 47 CFR 2.1204

Legal Deadline: None

Abstract: The FCC has proposed to adopt rules to facilitate transnational use of mobile terminals used for 2-way voice communication via satellite systems with global or international coverage. In the same proceeding, the FCC has adopted limits on out-of-band emissions from some mobile satellite terminals in order to protect reception of aeronautical satellite radionavigation signals in the 1559-1610 MHz band. The FCC also asked for comment on

the advisability of adopting rules requiring providers of mobile telecommunication service via satellite to provide 911 emergency-calling features.

Timetable:

Action	Date	FR Cite
NPRM	04/06/99	64 FR 16687
NPRM Comment Period End	05/18/99	
Public Notice	01/17/01	66 FR 3960
R&O and FNPRM (release date)	05/14/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH49

4016. DIRECT BROADCAST PUBLIC INTEREST OBLIGATIONS; MM DOCKET NO. 93-25

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 335

CFR Citation: 47 CFR 25; 47 CFR 100

Legal Deadline: None

Abstract: The Commission adopted rules in 1998 that implement Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, as codified at Section 335 of the Communications Act of 1934. Section 335 directs the Commission to impose certain public interest obligations on direct broadcast satellite providers. Several petitions for reconsideration are pending.

Timetable:

Action	Date	FR Cite
NPRM	03/08/93	58 FR 12917
Report and Order	02/08/99	64 FR 52399

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 3060–AH59

4017. STREAMLINING EARTH STATION LICENSING RULES; IB DOCKET NO. 00-248

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 701 to 744

CFR Citation: 47 CFR 23; 47 CFR 25

Legal Deadline: None

Abstract: The Commission has found several cases in which modifying or eliminating rules could facilitate licensing of earth stations, thereby expediting the provision of useful satellite services to the public, without unreasonably increasing the risk of harmful interference to existing earth station or space station operators, or terrestrial wireless operators in shared frequency bands.

Specifically, this NPRM considers the following rule revisions: (1) codifying streamlined procedures for case-by-case examination of earth stations using "non-routine" antennas, non-routine power levels, or both; (2) relaxing some current requirements, such as increasing power and power density limits, and allowing some temporary fixed earth stations to begin operation sooner than is now permitted; (3) streamlining the very small aperture terminal (VSAT) rules, and revising the Commission's power level rules to provide for various types of VSAT multiple access methods; (4) adopting a simplified license application form for "routine" earth stations; and (5) other miscellaneous rule revisions. The Commission also invites comment on extending these proposed rules to the Ka-band.

Timetable:

Action	Date	FR Cite
NPRM	01/08/01	66 FR 1283
NPRM Comment Period End	05/07/01	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 3060–AH60

4018. 2000 BIENNIAL REVIEW — AMENDMENT OF PARTS 43 AND 63 OF THE COMMISSION'S RULES; IB DOCKET NO. 00-231

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 161; 47 USC 214; 47 USC 218; 47 USC 219; 47 USC 220; 47 USC 403

CFR Citation: 47 CFR 43.81; 47 CFR 63.10; 47 CFR 63.18; 47 CFR 63.19; 47 CFR 63.20; 47 CFR 63.22; 47 CFR 63.24

Legal Deadline: None

Abstract: This adopted proceeding further streamlines measures for international telecommunications services. The Report and Order amended the procedures for filing pro forma assignments and transfers of control of Section 214 international authorizations, eliminated the benchmark settlement rate condition, and modified the rules requiring dominant international carriers to seek prior approval to discontinue service. The Report and Order also clarified rules and eliminated others no longer needed.

Timetable:

Action	Date	FR Cite
NPRM	12/20/00	65 FR 79795
Report & Order	07/09/02	67 FR 45387

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH62

4019. LICENSING AND COORDINATION OF EARTH STATIONS IN THE FIXED-SATELLITE SERVICES; IB DOCKET NO. 00-203

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154; 47 USC 301; 47 USC 302; 47 USC 303; 47 USC 307; 47 USC 309; 47 USC 332; 47 USC 701 to 744

CFR Citation: 47 CFR 25; 47 CFR 101

Legal Deadline: None

Abstract: The Third Report and Order and/or Memorandum Opinion and Order will consider an industry proposal for either "blanket licensing" or other expedited licensing procedures for FSS earth stations in the portion of the KA-band that is shared with the terrestrial fixed service.

Timetable:

Action	Date	FR Cite
NPRM	11/24/00	65 FR 70541
First R&O	06/12/01	66 FR 31557
Second R&O	01/30/02	67 FR 7287

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 3060–AH63

4020. POLICIES AND RULES FOR NON-GEOSTATIONARY SATELLITE ORBIT, FIXED SATELLITE SERVICE IN THE KA-BAND; IB DOCKET NO. 02-19

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 157(a); 47 USC 303(f); 47 USC 303(g); 47 USC 303(r)

CFR Citation: 47 CFR 25

Legal Deadline: None

Abstract: The NPRM seeks to determine a method to license multiple satellite network systems in spectrum designated on a primary basis for non-geostationary satellite orbit, fixed-satellite service. It also proposes service rules to apply to these licensees.

Timetable:

Action	Date	FR Cite
NPRM	03/04/02	67 FR 9641
NPRM Comment Period End	04/18/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3060–AH93

4021. ENFORCEMENT OF OTHER NATIONS' PROHIBITIONS AGAINST THE UNCOMPLETED CALL SIGNALING CONFIGURATION OF INTERNATIONAL CALLBACK SERVICE; IB DOCKET NO. 02-18

Priority: Info./Admin./Other

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 154 (j); 47 (USC 201(b); 47 USC 303(r); ...

CFR Citation: None

Legal Deadline: None

Abstract: The Notice of Proposed Rulemaking seeks comments on whether the Commission should eliminate the existing comity-based prohibitions and thus discontinue the policy that allows a foreign government or entity to make use of the enforcement mechanisms of the Commission to prohibit the U.S. carriers from offering one form of call-back abroad. International call-back arrangements allow foreign callers to take advantage of low U.S. international services rates, many of which are significantly lower than the rates available in their home countries.

Timetable:

Action	Date	FR Cite
NPRM	03/08/02	67 FR 10656
NPRM Comment Period End	05/15/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

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RIN: 3060–AH94

4022. SPACE STATION LICENSING REFORM; IB DOCKETS 00-248 AND 02-34

Priority: Other Significant

Legal Authority: 47 USC 154(i); 47 USC 157; 47 USC 303(c); 47 USC (f); 47 USC 303(g); 47 USC 303(r)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission has adopted a Notice of Proposed Rulemaking to streamline its procedures for reviewing satellite license applications. Currently, the Commission uses processing rounds to review those applications. In a processing round, when an application is filed, the International Bureau (Bureau) issues a public notice establishing a cut-off date for other mutually exclusive satellite applications, and then considers all those applications together. In cases where sufficient spectrum to accommodate all the applicants is not available, the Bureau directs the applicants to negotiate a mutually agreeable solution. Those negotiations usually take a long time, and delay provision of satellite services to the public.

The NPRM invites comment on two alternatives for expediting the satellite application process. One alternative is to replace the processing round procedure with a "first-come, first-served" procedure that would allow the Bureau to issue a satellite license to

the first party filing a complete, acceptable application. The other alternative is to streamline the processing round procedure by adopting one or more of the following proposals: (1) placing a time limit on negotiations; (2) establishing criteria to select among competing applicants; (3) dividing the available spectrum evenly among the applicants.

Timetable:

Action	Date	FR Cite
NPRM	03/19/02	67 FR 12498
NPRM Comment Period End	07/02/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH98

4023. ALASKA BUSH EARTH STATION POLICY; IB DOCKET NO. 02-30

Priority: Other Significant

Legal Authority: 47 USC 301

CFR Citation: None

Legal Deadline: None

Abstract: The FCC is proposing to repeal a policy against licensing "duplicative" MTS earth stations in rural Alaska.

Timetable:

Action	Date	FR Cite
NPRM	05/30/02	67 FR 37750
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3060–AH99

4024. • FLEXIBILITY FOR DELIVERY OF COMMUNICATIONS BY MOBILE SATELLITE SERVICE PROVIDERS IN THE 2 GHZ BAND, THE L-BAND, AND THE 1.6/2.4 GHZ BAND

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 154(j); 47 USC 157(a); 47 USC 301; 47 USC 303(c); 47 USC 303(f); 47 USC 303(g); 47 USC 303(r); 47 USC 303(y); 47 USC 308

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This proceeding was initiated to obtain comments on proposals to bring flexibility to the delivery of communications by mobile satellite service (MSS) providers.

Timetable:

Action	Date	FR Cite
NPRM	09/13/01	66 FR 47621
NPRM Comment Period End	10/25/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 3060–AI05

4025. • MITIGATION OF ORBITAL DEBRIS; IB DOCKET NO. 02-54

Priority: Routine and Frequent

Legal Authority: 47 USC 154(i); 47 USC 157(a); 47 USC 303(c); 47 USC 303(f); 47 USC 303(g); 47 USC 303(r)

CFR Citation: 47 CFR 5; 47 CFR 25; 47 CFR 97

Legal Deadline: None

Abstract: The Commission is proposing rules for satellite services concerning orbital debris mitigation. Orbital debris consists of artificial objects orbiting the Earth that are not functional spacecraft. The Commission is proposing a range of options for addressing orbital debris issues as part of spacecraft design and operation in order to preserve access to space for the long term.

Timetable:

Action	Date	FR Cite
NPRM	05/03/02	67 FR 22376
NPRM Comment Period End	08/16/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AI06

4026. PREEMPTION OF LOCAL ZONING REGULATION OF SATELLITE EARTH STATIONS; IB DOCKET NO. 95-59

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 165(j); 47 USC 303(r)

CFR Citation: 47 CFR 1.4000; 47 CFR 25.104

Legal Deadline: None

Abstract: The Commission adopted rules in March and August of 1996 to preempt regulations that restricted the installation and use of certain over-the-air reception devices. The Commission dismissed the Petitions for Reconsideration of the Commission's 1996 antenna Report and Order filed by parties that have not indicated an intent to pursue their respective petitions.

Timetable:

Action	Date	FR Cite
NPRM	05/15/95	60 FR 28077
NPRM Comment Period End	08/15/95	
FNPRM	03/15/96	61 FR 10710
R&O	03/18/96	61 FR 10896
R&O	09/04/96	61 FR 46559
Public Notice	10/22/01	66 FR 53417
Public Notice	03/08/02	67 FR 10727

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

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RIN: 3060–AF92

4027. AMENDMENT TO REGULATORY POLICIES GOVERNING DOMESTIC FIXED SATELLITES AND SEPARATE INTERNATIONAL SATELLITE SYSTEMS; IB DOCKET NO. 95-41

Priority: Other Significant

Legal Authority: 47 USC 154; 47 USC 721(c)

CFR Citation: 47 CFR 25.110; 47 CFR 25.113; 47 CFR 25.114; 47 CFR 25.115; 47 CFR 25.117; 47 CFR 25.130; 47 CFR 25.131; 47 CFR 25.140; 47 CFR 25.202; 47 CFR 25.210; 47 CFR 25.211; 47 CFR 25.276

Legal Deadline: None

Abstract: The Commission adopted rules in January 1996 eliminating regulatory distinctions between U.S. domestic satellite systems and U.S. international separate satellite systems. In August 2001, the Commission reaffirmed its 1995 policy and modified the standards for obtaining a waiver of the unified financial showing requirement to make it easier for small firms to seek a waiver.

Timetable:

Action	Date	FR Cite
NPRM	05/10/95	60 FR 24817
R&O	03/12/96	61 FR 9946
Order on Recon (Release Date)	08/16/01	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH48

4028. TRANSFER OF CONTROL OF NON-STOCK ENTITIES (MM DOCKET NO. 89-77)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154

CFR Citation: 47 CFR 73

Legal Deadline: None

Abstract: The Commission will consider proposals concerning the treatment of corporations and other organizational structures that are not traditional commercial corporations.

Timetable:

Action	Date	FR Cite
NOI	03/16/89	54 FR 15957
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

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RIN: 3060–AE31

4029. CABLE TELEVISION RATE REGULATION

Priority: Other Significant

Legal Authority: 47 USC 154; 47 USC 543

CFR Citation: 47 CFR 76

Legal Deadline: None

Abstract: The Commission has adopted rate regulations to implement Section 623 of the 1992 Cable Act to ensure that cable subscribers nationwide enjoy the rates that would be charged by cable systems operating in a competitive environment. Reconsideration was requested. The 14th Order on Reconsideration addresses petitions on issues governing regulated services by cable systems.

Timetable:

Action	Date	FR Cite
NPRM	01/04/93	58 FR 48
R&O and FNPRM	05/21/93	58 FR 29736
MO&O and FNPRM	08/18/93	58 FR 43816
3rd R&O	11/30/93	58 FR 63087
Order on Recon, 4th R&O, and 5th NPRM	04/15/94	59 FR 17943
3rd Order on Recon	04/15/94	59 FR 17961
5th Order on Recon and FNPRM	10/13/94	59 FR 51869

Action	Date	FR Cite
4th Order on Recon	10/21/94	59 FR 53113
6th Order on Recon, 5th R&O, and 7th NPRM	12/06/94	59 FR 62614
7th Order on Recon	01/25/95	60 FR 4863
9th Order on Recon	02/27/95	60 FR 10512
8th Order on Recon	03/17/95	60 FR 14373
6th R&O and 11th Order on Recon	07/12/95	60 FR 35854
13th Order on Recon	10/05/95	60 FR 52106
12th Order on Recon	10/26/95	60 FR 54815
10th Order on Recon	04/08/96	61 FR 15388
Order on Recon of the 1st R&O and Further NPRM	04/15/96	61 FR 16447
MO&O	02/12/97	62 FR 6491
Report on Cable Industry Prices	02/24/97	62 FR 8245
R&O	03/31/97	62 FR 15118
14th Order on Recon	10/15/97	62 FR 53572

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local

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RIN: 3060–AF41

4030. CABLE TELEVISION RATE REGULATION: COST OF SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 543

CFR Citation: 47 CFR 76

Legal Deadline: None

Abstract: The Commission has established rules pursuant to which cable operators may set rates for regulated cable service in accordance with traditional cost-of-service principles, as modified to take account of unique characteristics of the cable industry. These rules are the subject of pending petitions for reconsideration. In addition, the Commission is considering comments received in response to a Further Notice of Proposed Rulemaking concerning the rate of return that should be applied in cost-of-service cases.

Timetable:

Action	Date	FR Cite
NPRM	07/30/93	58 FR 40762
R&O	04/15/94	59 FR 17975
2nd NPRM	04/15/94	59 FR 18066
MO&O	10/14/94	59 FR 52087
2nd R&O/1st Order on Recon/FNPRM	03/08/96	61 FR 9361
Correction	03/22/96	61 FR 11749

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local

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RIN: 3060–AF48

4031. CUSTOMER SERVICE STANDARDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154(i) to 154(j); 47 USC 303; 47 USC 552

CFR Citation: 47 CFR 76

Legal Deadline: NPRM, Statutory, April 3, 1993.

Abstract: The Commission has adopted customer service standards for cable operators nationwide to implement the provisions of the Cable Act of 1992. Such standards shall include, at a minimum, cable systems office hours, telephone availability, installations, outages, service calls, and communication between the cable operator and subscriber, including billing and refunds.

Timetable:

Action	Date	FR Cite
NPRM	12/23/92	57 FR 61038
R&O	04/19/93	58 FR 21107

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local

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RIN: 3060–AF69

4032. FILING OF TELEVISION NETWORK AFFILIATION CONTRACTS (MM DOCKET NO. 95-40)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154(i); 47 USC 303(r)

CFR Citation: 47 CFR 73.3613(a)

Legal Deadline: None

Abstract: This proceeding considers changes to the requirement that stations file their network affiliation agreements with the Commission.

Timetable:

Action	Date	FR Cite
NPRM	04/19/95	60 FR 19564

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 3060–AF80

4033. RULES GOVERNING BROADCAST TELEVISION ADVERTISING (MM DOCKET NO. 95-90)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154(i); 47 USC 154(j); 47 USC 301; 47 USC 303(r); 47 USC 313; 47 USC 314

CFR Citation: 47 CFR 73.658(h); 47 CFR 73.658(i)

Legal Deadline: None

Abstract: This proceeding considers changes to two rules regulating broadcast television advertising. The first advertising rule prohibits a broadcast television network from influencing or controlling the rates its affiliates set for the sale of their non-network advertising time. The second advertising rule prohibits a broadcast television network from representing any of its affiliates in the sale of non-network advertising time.

Timetable:

Action	Date	FR Cite
NPRM	07/05/95	60 FR 34959

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AF81

4034. CABLE HOME WIRING

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 544(i)

CFR Citation: 47 CFR 76

Legal Deadline: None

Abstract: On October 6, 1997, the FCC adopted a Report and Order and Second Notice of Proposed Rulemaking (FCC 97-7360) that amends its cable inside wiring rules to enhance competition in the video distribution marketplace. The Second FNPRM seeks comment on, among other things, whether there are circumstances where the FCC should adopt restrictions on exclusive contracts in order to further promote competition in the multiple dwelling unit marketplace. A Petition for Review was filed in the U.S. Circuit Court of Appeals for the 8th Circuit on November 24, 1997. The FCC has received petitions for reconsideration and has requested the 8th Circuit to hold the pending court case in abeyance until the Commission takes action on the pending petitions. The Court granted the Commission's request.

Timetable:

Action	Date	FR Cite
NPRM	11/17/92	57 FR 54209
R&O	03/02/93	58 FR 11970
NPRM	02/01/96	61 FR 3657
First Order on Recon & FNPRM	02/16/96	61 FR 6210
FNRPM	09/03/97	62 FR 46453
R&O and Second FNPRM	11/14/97	62 FR 60165

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AG02

4035. CLOSED CAPTIONING

Priority: Other Significant

Legal Authority: 47 USC 613

CFR Citation: 47 CFR 79.1; 47 CFR 79.2

Legal Deadline: None

Abstract: The FCC adopted regulations to ensure that video programming is accessible to persons with hearing disabilities through closed captioning. The rules were adopted in August 1997 and modified in response to petitions for reconsideration in September 1998. In April 2000, the FCC adopted rules to ensure the accessibility of televised emergency information to persons with hearing disabilities through closed captioning or another method of visual presentation.

Timetable:

Action	Date	FR Cite
NOI	12/15/95	60 FR 65052
Order	01/29/96	61 FR 2781
Order	03/12/96	61 FR 9963
Report	08/14/96	61 FR 42249
NPRM	02/03/97	62 FR 4959
Order	03/24/97	62 FR 13853
R&O	09/16/97	62 FR 48487
FNRPM	01/21/98	63 FR 3070
Order	10/20/98	63 FR 55959
Order	06/23/99	64 FR 33424
Second R&O	05/09/00	65 FR 26757

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Additional Bureau: Consumer Information

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RIN: 3060–AG26

4036. CABLE ACT REFORM

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 522; 47 USC 543; 47 USC 544; 47 USC 548; 47 USC 552

CFR Citation: 47 CFR 76

Legal Deadline: None

Abstract: This proceeding implements the cable reform section of the Telecommunications Act of 1996. It addresses several issues, including the cable rate complaint process, effective competition and subscriber notifications.

Timetable:

Action	Date	FR Cite
Order & NPRM	04/30/96	61 FR 19013
Report & Order	07/02/99	64 FR 35948
Correction	08/06/99	64 FR 42855
Order on Recon	06/14/02	67 FR 40870

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local

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RIN: 3060–AG27

4037. COMPETITIVE AVAILABILITY OF NAVIGATION DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 549

CFR Citation: 47 CFR 76

Legal Deadline: None

Abstract: The Commission has adopted rules to address the mandate expressed in section 629 of the Communications Act to ensure the commercial availability of "navigation devices," the equipment used to access video programming and other services from multichannel video programming systems. Petitions for reconsideration were resolved in a recent order. The Commission also issued a Further Notice of Proposed Rulemaking and Declaratory Ruling. The Further Notice sought comment as to the effectiveness of the Commission's rules for achieving the commercial availability of navigation devices. Accompanying the Further Notice was a Declaratory Ruling which found that technology licenses requiring copy protection measures to be located within a navigation host device are consistent with the Commission's navigation devices rules.

Timetable:

Action	Date	FR Cite
NPRM	03/05/97	62 FR 10011
R&O	07/15/98	63 FR 38089
Order on Reconsideration	06/02/99	64 FR 29599
FNPRM & Declaratory Ruling	09/28/00	65 FR 58255

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AG28

4038. MINOR MODIFICATIONS OF BROADCAST LICENSES WITHOUT PRIOR CONSTRUCTION PERMIT (MM DOCKET NO. 96-58)

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 155(c)(1); 47 USC 302; 47 USC 303

CFR Citation: 47 CFR 73

Legal Deadline: None

Abstract: This proceeding will implement the Commission's new authority to eliminate the present requirement for a construction permit for a broadcast station in certain instances where the changed facilities would not have an adverse impact on other broadcast facilities. In these instances, licensees or permittees will be able to initiate the change without prior authority and file a license application to cover the change afterwards.

Timetable:

Action	Date	FR Cite
NPRM	04/08/96	61 FR 15439
R&O	09/30/97	62 FR 51052

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AG30

4039. POLE ATTACHMENT PROVISIONS

Priority: Other Significant

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 154(j); 47 USC 224; 47 USC 303; 47 USC 403

CFR Citation: 47 CFR 1.1401 to 1.1418

Legal Deadline: Final, Statutory, February 8, 1998.

Abstract: The Commission established rules relating to pole attachments. The Telecommunications Act of 1996 required that within two years the Commission prescribe regulations governing the charges for pole attachments for telecommunications attachers. These regulations are to be used by cable operators and telecommunications carriers to provide telecommunications services when the utility and attaching entity parties fail to resolve a dispute over such charges. The Report and Order released in 1998 prescribed regulations to govern these charges.

In April 2000, the Commission released a Report and Order addressing issues related to the formula used to calculate just and reasonable rates that utilities charge for pole attachments. Petitions for reconsideration of both the 1998 and 2000 orders were resolved by Order released in May 2001.

Timetable:

Action	Date	FR Cite
NPRM	08/18/97	62 FR 43963
R&O	03/12/98	63 FR 12013
R&O	05/17/00	65 FR 31270
Erratum	05/31/00	65 FR 34820
Reconsideration Order	06/29/01	66 FR 34569

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State

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RIN: 3060–AG71

4040. REVIEW OF TECHNICAL RULES IN PARTS 73 AND 74 (MM DOCKET NO. 98-93)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 307; 47 USC 319

CFR Citation: 47 CFR 73; 47 CFR 74

Legal Deadline: None

Abstract: The Second Report and Order in this radio technical streamlining proceeding continues the Commission's efforts to make the broadcast application process simpler, faster, and more efficient. In the Second Report and Order, the Commission amended the separation requirements for short-spaced FM stations, section 73.215(e), to afford second- and third-adjacent channel stations minimum relief of six kilometers from the full spacing requirements of section 73.207. The order also expands the types of facility changes covered by expedited one-step licensing procedures and provides additional technical flexibility to FM stations licensed to Puerto Rico and the U.S. Virgin Islands. The order also relaxes noncommercial educational FM second adjacent channel standard and establishes a noncommercial educational FM community coverage standard. Finally, the item creates a new commercial FM class, class C-zero, and a mechanism to reclassify class C stations that do not meet the new class minimum antenna height where there is a competing demand for spectrum.

Timetable:

Action	Date	FR Cite
NPRM	06/22/98	63 FR 33892
Report & Order	04/21/99	64 FR 19498
Second Report & Order	12/20/00	65 FR 79773

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 3060–AG81

4041. DIGITAL MUST CARRY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 534

CFR Citation: 47 CFR 76

Legal Deadline: None

Abstract: Section 614(b)(4)(B) of the Communications Act requires that, at the time the Commission prescribes standards for advanced television, it should "initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of those broadcast signals of local commercial television stations which have been changed to conform with such modified standards." In August of 1998, the FCC issued a Notice of Proposed Rulemaking seeking comments on the requirements of that section. In June 2000, based on responses to the Notice of Proposed Rulemaking, the Commission clarified that DTV-only television stations, in the context of auctioning analog channels 59-69, will ultimately have must carry rights. In January of 2001, the Commission issued a First Report and Order and Further Notice of Proposed Rulemaking resolving a number of technical and legal issues, including clarification that digital-only TV stations are entitled to mandatory carriage.

Timetable:

Action	Date	FR Cite
NPRM	08/07/98	63 FR 42330
MO&O and FNPRM	07/12/00	65 FR 42879
FNPRM	03/26/01	66 FR 16523
First R&O	03/26/01	66 FR 16533

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 3060–AG91

4042. HORIZONTAL OWNERSHIP LIMITS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 303; 47 USC 533

CFR Citation: 47 CFR 76

Legal Deadline: None

Abstract: Section 613 of the Communications Act requires the Commission to "prescribe rules and regulations establishing reasonable limits on the number of cable subscribers a person is authorized to reach through cable systems owned by such person, or in which such person has an attributable interest." On October 8, 1999, the Commission issued a Third Report and Order, FCC 99-289, in this matter. The Commission revised the horizontal ownership rules as follows: (1) all multichannel video subscribers will be counted when calculating the 30 percent ownership limit; (2) actual subscriber numbers, rather than potential subscriber numbers, will be used for calculating an owner's share; and (3) the minority exception which allowed a 35 percent ownership limit for minority-owned entities under certain circumstances was eliminated. On March 2, 2001, the District of Columbia Circuit Court reversed and remanded the cable horizontal and vertical limits. (Time Warner Entertainment Co. v. FCC, 240 F.3d 1126 (DC cir.2001)). Pursuant to the court's remand, the Commission is soliciting comment.

Timetable:

Action	Date	FR Cite
Second MO&O on Recon and FNPRM	07/14/98	63 FR 37790
Third R&O	12/01/99	64 FR 67198
Order on Recon	03/08/00	65 FR 12135
MO&O	06/08/00	65 FR 36382
FNPRM	10/11/01	66 FR 51905

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH09

4043. APPLICATION OF NETWORK NONDUPLICATION, SYNDICATED EXCLUSIVITY, AND SPORTS BLACKOUT RULES TO SATELLITE RETRANSMISSION — SHVIA

Priority: Other Significant

Legal Authority: 47 USC 339

CFR Citation: 47 CFR 73; 47 CFR 76

Legal Deadline: None

Abstract: The FCC proposed rules on its implementation of certain aspects of the Satellite Home Viewer Improvement Act of 1999. In October of 2000, the FCC issued an order adopting rules that apply the current cable rules for network non-duplication, syndicated program exclusivity and sports blackout to satellite carriers. Petitions for reconsideration were filed in response to that order.

Timetable:

Action	Date	FR Cite
NPRM	02/02/00	65 FR 4927
Report and Order	11/14/00	65 FR 68082

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH35

4044. RETRANSMISSION CONSENT ISSUES — SHVIA

Priority: Other Significant

Legal Authority: 47 USC 325

CFR Citation: 47 CFR 76.64(m); 47 CFR 76.65

Legal Deadline: None

Abstract: The Satellite Home Viewer Improvement Act of 1999 (SHVIA) requires broadcasters, until the year 2006, to negotiate in good faith with satellite carriers and other multichannel video programming distributors (MVPDs) with respect to their transmission of the broadcasters' signals, and prohibits broadcasters from entering into exclusive retransmission agreements.

The First Report and Order (Order) determined that the statute does not intend to subject retransmission consent negotiation to detailed substantive oversight by the Commission. Instead, the Order concludes that Congress intended that the Commission follow established precedent, particularly in the field of labor law, in implementing the good faith retransmission consent negotiation requirement. Consistent with this conclusion, the Order adopts a two-part test for good faith. The first part of the test consists of a brief, objective list of negotiation standards. The second part of the good faith test is based on a totality of the circumstances standard. Under this standard, an MVPD may present facts to the Commission which, even though they do not allege a violation of the specific standards enumerated above, given the totality of the circumstances constitute a failure to negotiate in good faith. The Commission's rules regarding the good faith negotiation requirement sunset on January 1, 2006. An MVPD believing itself to be aggrieved may file a complaint with the Commission.

Timetable:

Action	Date	FR Cite
NPRM	12/29/99	64 FR 72985
First R&O	03/23/00	65 FR 23805
Order on Recon	09/19/01	66 FR 48219
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH36

4045. DIGITAL AUDIO BROADCASTING SYSTEMS (MM DOCKET NO. 99-325)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154; 47 USC 303

CFR Citation: 47 CFR 73

Legal Deadline: None

Abstract: The rulemaking proceeding was initiated to obtain comments concerning the Commission's proposals to foster the development and implementation of terrestrial digital audio broadcasting (DAB). In the NPRM, the Commission (1) reaffirms its commitment to providing radio broadcasters with the opportunity to take advantage of DAB technology; (2) identifies Commission public policy objectives for the introduction of DAB service; (3) proposes criteria for the evaluation of DAB models and systems; (4) evaluates IBOC and new-spectrum DAB models; (5) inquires as to the need for a mandatory DAB transmission standard; and (6) considers certain DAB system testing, evaluation and standard selection issues.

Timetable:

Action	Date	FR Cite
NPRM	11/09/99	64 FR 61054
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH40

4046. SATELLITE BROADCASTING SIGNAL CARRIAGE REQUIREMENTS

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 338; 47 USC 534; 47 USC 535

CFR Citation: 47 CFR 76

Legal Deadline: Final, Statutory, November 29, 2000.

Abstract: The Satellite Home Viewer Improvement Act of 1999 (SHVIA) requires satellite carriers, by January 1, 2002, to carry upon request all local broadcast stations' signals. These signals must be carried in all local markets in which the satellite carriers carry at least one broadcast station signal, assuming this signal is licensed pursuant to section 122 of the Copyright Act. The SHVIA requires the Commission to issue rules implementing the Act's mandatory carriage requirements within one year of the SHVIA's enactment. On November 29, 2000 the Commission adopted a Report and Order that places satellite carriers on equal footing with cable operators with respect to the availability of programming. The applicable statutory provisions are found in section 1008 of the SHVIA and codified at section 338 of the Communications Act. The Commission implementing satellite broadcast signal carriage rule is 47 CFR 76.66.

Timetable:

Action	Date	FR Cite
NPRM	06/30/00	65 FR 40564
NPRM Comment Period End	08/04/00	
Report and Order	01/23/01	66 FR 7410
Announcement of Effective Date	06/29/01	66 FR 34582
Order on Reconsideration	09/26/01	66 FR 49124
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH45

4047. ANCILLARY OR SUPPLEMENTAL USE OF DTV CAPACITY BY NON-COMMERCIAL LICENSEES (MM DOCKET NO. 98-203)

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 4(i); 47 USC 4(j); 47 USC 303(r); 47 USC 307; 47 USC 309; 47 USC 336

CFR Citation: 47 CFR 73

Legal Deadline: None

Abstract: The Report and Order amends the Commission's rules to require that noncommercial educational (NCE) television licensees primarily provide a nonprofit, noncommercial educational service over their entire digital bitstream, including ancillary or supplementary service; and apply to them the same program to assess and collect fees as that established for commercial DTV licensees' use of DTV capacity for the provision of ancillary or supplementary services. This Report and Order also determines that the Communications Act of 1934 prohibition against the provision of advertising by NCE licensees does not apply to nonbroadcast services, such as subscription services provided on their DTV channels. The intended effect of these actions is to clarify the manner in which NCE licensees may use their excess DTV capacity for remunerative purposes.

Timetable:

Action	Date	FR Cite
NPRM	12/14/98	63 FR 68722
R&O	11/26/01	66 FR 58973
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 3060–AH53

4048. PERIODIC REVIEW OF RULES AND POLICIES AFFECTING THE CONVERSION TO DTV (MM DOCKET NO. 00-39)

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 4(i); 47 USC 4(j); 47 USC 303(r); 47 USC 307; 47 USC 309; 47 USC 336

CFR Citation: 47 CFR 73

Legal Deadline: None

Abstract: On January 18, 2001, the Commission adopted a Report and Order (R&O) and Further Notice of Proposed Rulemaking, addressing a number of issues related to the conversion of the nation's broadcast television system from analog to digital television. We received a number of petitions for reconsideration of the R&O. This Memorandum Opinion and Order on Reconsideration revised a number of the determinations the Commission made in the R&O, affirms other decisions, and provides clarification of certain rules and policies. The Commission also modifies the minimum hours of operation of certain DTV stations and establishes guidelines for television stations that may seek an extension of the May 1, 2002 and May 1, 2003 deadlines for construction of DTV facilities. The Commission will resolve several major technical issues in the R&O and FNPRM, including the issue of receiver performance standards, DTV tuners, revisions to certain components of the DTV transmission standard, and labeling requirements for television receivers, in a separate Report and Order.

Timetable:

Action	Date	FR Cite
NPRM	03/23/00	65 FR 15600
Report & Order	02/13/01	66 FR 9973
MO&O	12/18/01	66 FR 65122
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 3060–AH54

4049. CHILDREN'S TV, OBLIGATIONS OF DIGITAL TV BROADCASTERS (MM DOCKET NO. 00-167)

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 303; 47 USC 307; 47 USC 336(d)

CFR Citation: 47 CFR 73.670; 47 CFR 73.671; 47 CFR 73.673

Legal Deadline: None

Abstract: This item seeks comment on a range of issues related to application of our existing children's programming rules to digital broadcasting. The NPRM focuses primarily on two areas: the obligation of commercial television broadcast licensees to provide educational and informational programming for children and the requirement that television broadcast licensees limit the amount of advertising in children's programs.

In addition, this document seeks comment on how to address the issue of the airing in programs viewed by children promotions that may be inappropriate for children to watch. Although this document seeks comment largely on challenges unique to the digital area, it also discusses several issues that apply equally to analog and digital broadcasting.

Timetable:

Action	Date	FR Cite
NPRM	11/08/00	65 FR 66951
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH68

4050. EXTENSION OF FILING REQUIREMENTS FOR CHILDREN'S TV PROGRAMMING REPORT (MM DOCKET NO. 00-44)

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 303; 47 USC 308

CFR Citation: 47 CFR 73.3526

Legal Deadline: None

Abstract: This document seeks comment on the tentative conclusion that broadcasters who maintain Internet websites should be required to post their completed quarterly Children's Television Programming Reports (FCC Form 398) on these sites. The FCC Form 398 is required to be filed by commercial television broadcast stations each quarter. This form is used to provide information on the efforts of commercial television stations to provide children's educational and informational programs aired to meet its obligation under the Children's Television Act of 1990. Although the Children's Television Programming Reports are available in a central location on the FCC's website, members of the public may look first to their local broadcast station for information about programming at the station, making station website posting useful.

Timetable:

Action	Date	FR Cite
NPRM	05/04/00	65 FR 25895
R&O	11/09/00	65 FR 67283
Further NPRM	11/09/00	65 FR 67331

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH69

4051. RADIO MARKET DEFINITIONS (MM DOCKET NO. 00-244)

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 202(h); 47 USC 303; 47 USC 307

CFR Citation: 47 CFR 73.3555

Legal Deadline: None

Abstract: This FNPRM proposes changes to local ownership rules and policies concerning multiple ownership of radio broadcasting stations. The Commission examines the effect our current rules have had on the public and seeks comments to better serve our communities. This action is also intended to consider possible changes to our current local market radio ownership rules and policies in accordance with the Telecommunications Act of 1996. Because of the similarity of the issues presented in the Multiple Ownership of Radio Broadcast Stations in Local Markets to those in the Matter of Definition of Radio Market, the two actions were, in effect, consolidated.

Timetable:

Action	Date	FR Cite
NPRM	12/28/00	65 FR 82305
FNPRM	12/11/01	66 FR 63997

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH70

4052. ENHANCED AND STANDARDIZED DISCLOSURE (MM DOCKET NO. 00-168)

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 303; 47 USC 307; 47 USC 309; 47 USC 336

CFR Citation: 47 CFR 73.3526

Legal Deadline: None

Abstract: This item concerns rules and policies on how commercial television broadcast station licensees provide public interest information to the public. This document proposes amendments to the public inspection file rules that would standardize the format used for providing public interest information to the public and make information contained in public inspection files available on the Internet. The intended effect of this action is to propose rules that would make information regarding how television broadcast stations meet their fundamental public interest obligation to serve the needs and interests of their communities of license easier to understand or more accessible to the public.

Timetable:

Action	Date	FR Cite
NPRM	10/19/00	65 FR 62683

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH71

4053. EXCLUSIVE CONTRACT PROHIBITION OF THE PROGRAM ACCESS RULES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 548

CFR Citation: 47 CFR 76.1002

Legal Deadline: NPRM, Statutory, October 5, 2002.

Abstract: Section 628(c)(2)(D) of the Communications Act generally prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming between vertically integrated programming vendors and cable operators. Pursuant to section 628(c)(5), the prohibition on exclusive programming contracts contained in section 628(c)(2)(D) will cease to be effective on October 5, 2002, unless the FCC conducts a proceeding and finds that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming. In October 2001, the FCC issued an NPRM to initiate a proceeding in order to make that determination. In June 2002, the Commission issued an order extending the prohibition on exclusive contracts to October 5, 2007.

Timetable:

Action	Date	FR Cite
NPRM	10/31/01	66 FR 54972
R&O	07/30/02	67 FR 49247

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH91

4054. REVISION OF EEO RULES AND POLICIES; MM DOCKET NO. 98-204

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 257; 47 USC 301; 47 USC 303; 47 USC 307; 47 USC 308; 47 USC 309; 47 USC 334; 47 USC 403; 47 USC 554

CFR Citation: 47 CFR 73.2080; 47 CFR 76.73; 47 CFR 76.75; 47 CFR 76.79; 47 CFR 76.1702

Legal Deadline: None

Abstract: This Second NPRM requests comments concerning a new broadcast equal employment opportunity rule and policies consistent with the decision of the U.S. Court of Appeals for the District of Columbia Circuit in Association. The Court therein found unconstitutional one of two options for achieving broad outreach provided by the broadcast EEO outreach requirements adopted in the Report and Order. The Second NPRM proposes to retain the Commission's ban on discrimination and to require broadcasters and cable entities to maintain an EEO program that would achieve broad and inclusive outreach in recruitment to ensure a fair opportunity for all job seekers and provide administrative relief to small entities.

Timetable:

Action	Date	FR Cite
NPRM	01/14/02	67 FR 1704

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 3060–AH95

4055. REEXAMINATION OF COMPARATIVE STANDARDS FOR NONCOMMERCIAL EDUCATIONAL APPLICANTS; MM DOCKET NO. 95-31

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 152(a); 47 USC 154(i); 47 USC 303; 47 USC 307; 47 USC 309

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This FNPRM solicits additional comments on how the Commission should allocate and license "non-reserved" spectrum (i.e., spectrum that has not been set aside for exclusive use by noncommercial educational broadcast stations) in which both commercial and noncommercial entities have an interest. This FNPRM was issued in response to a court decision in National Public Radio vs. FCC.

Timetable:

Action	Date	FR Cite
FNPRM	03/05/02	67 FR 9945

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 3060–AH96

4056. CROSS OWNERSHIP OF BROADCAST STATIONS AND NEWSPAPERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 152(a); 47 USC 154(i); 47 USC 303, 307, 309,310

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This NPRM initiates a proceeding to seek comment on whether and to what extent it should revise the newspaper/broadcast cross-ownership rule, which prohibits common ownership of a broadcast station and a newspaper in the same geographic area. The local multimedia marketplace in which broadcast stations and newspapers operate has changed significantly since the Commission adopted the rule in 1975. This proceeding seeks comment on the relevance of these changes to the newspaper/broadcast cross-ownership rule.

Timetable:

Action	Date	FR Cite
NPRM	10/05/01	66 FR 50991

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH97

Federal Communications Commission (FCC)
Office of Managing Director

Long-Term Actions

4057. ASSESSMENT AND COLLECTION OF REGULATORY FEES FOR FY 2002

Priority: Economically Significant

Legal Authority: 47 USC 159

CFR Citation: 47 CFR 1.1151 et seq

Legal Deadline: None

Abstract: Section 9 of the Communications Act of 1934, as amended, 47 U.S.C. 159, requires the FCC to recover the costs of its activities by assessing and collecting annual regulatory fees from beneficiaries of the activities.

Timetable:

Action	Date	FR Cite
NPRM (Adopted Date)	04/10/02	67 FR 17325
R&O	07/12/02	67 FR 46297

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH85

Federal Communications Commission (FCC)
Wireless Telecommunications Bureau

Long-Term Actions

4058. AMENDMENT OF THE COMMISSION'S RULES CONCERNING MARITIME COMMUNICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 303

CFR Citation: 47 CFR 80

Legal Deadline: None

Abstract: Amendment of the Maritime Radio Service Rules to encourage growth and improve the regulatory structure in VHF maritime communications.

Timetable:

Action	Date	FR Cite
NOI/NPRM	11/05/92	57 FR 57717
First R&O	04/26/95	60 FR 34198
FNPRM	04/26/95	60 FR 35507
Second FNPRM	06/17/97	62 FR 37533
Second R&O	06/17/97	62 FR 40281
Third R&O and MO&O	07/06/98	63 FR 40059
MO&O	04/26/99	64 FR 26885
Third NPRM	12/08/00	65 FR 76966
Fourth R&O	12/13/00	65 FR 77821
Fourth NPRM	02/04/02	67 FR 5080
2nd MO&O and 5th R&O	07/25/02	67 FR 48560

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: PR Docket No. 92-257.

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RIN: 3060–AF14

4059. FUTURE DEVELOPMENT OF 800 MHZ SMR; COMPETITIVE BIDDING WIDE AREA

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 153; 47 USC 154(i); 47 USC 303; 47 USC 309(j); 47 USC 332

CFR Citation: 47 CFR 90

Legal Deadline: None

Abstract: This proceeding adopts service rules and competitive bidding rules for 800 MHz SMR spectrum. It also proposes licensing rules and auction procedures for lower 80 SMR and general category channels.

Timetable:

Action	Date	FR Cite
NPRM	05/13/93	58 FR 33062
FNPRM	10/20/94	59 FR 6011
Eighth R&O	02/16/96	61 FR 6138
First R&O	02/16/96	61 FR 6212
Second FNPRM	02/16/96	61 FR 6212
Second R&O	06/23/97	62 FR 41190
MO&O	06/23/97	62 FR 41225
MO&O on Recon	10/08/99	64 FR 71042
Second MO&O on Recon	07/14/00	65 FR 43716
3rd Order on Recon	03/02/01	66 FR 13022

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local

Additional Information: PR Docket No. 93-144; GEN Docket No. 93-252; PP Docket No. 93-253

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RIN: 3060–AF47

4060. RESALE AND ROAMING OBLIGATIONS PERTAINING TO COMMERCIAL MOBILE RADIO SERVICES

Priority: Substantive, Nonsignificant. Major under 5 USC 801.

Legal Authority: PL 103-66, sec 6002, Omnibus Budget Reconciliation Act of 1993

CFR Citation: 47 CFR 20; 47 CFR 22

Legal Deadline: None

Abstract: On an interim basis, the First Report and Order extends to broadband PCS and covered SMR providers the cellular rule that prohibits restricting resale of communications services. The new rules sunset five years after the last group of initial licensees for currently allocated broadband PCS spectrum is awarded. The rules also eliminate all exceptions to the rule that allowed cellular licensees to restrict resale by competing with fully operational cellular licensees in the same geographic market. The Commission successfully adopted a Second Report and Order and Third Notice of Proposed Rulemaking in this proceeding. The Second Report and Order extends the Commission's cellular rules on manual roaming by any individual whose handset is capable of accessing the network of a cellular, broadband PCS, or covered SMR provider. The Third NPRM, among other things, sought comment on whether the Commission should adopt rules requiring cellular, broadband PCS, and covered SMR providers to provide automatic roaming in their coverage areas, and whether both automatic and manual roaming requirements should sunset five years after the initial grant of PCS licenses. The Third MO.O generally affirmed the Commission's earlier decision to extend the cellular resale rule to include certain PCS and SMR providers and to sunset the rule until November 24, 2002. However, it modified the prior decision by removing customer premise equipment (CPE) and CPE in bundled packages from the scope of the resale rule, by revising the scope of the resale rule to exclude all C, D, E, and F block PCS licensees that do not own and control and are not controlled by cellular or A or B block licensees, and by exempting from the rule all SMR and other CMRS providers that do not utilize in-network switching facilities.

FCC—Wireless Telecommunications Bureau

Long-Term Actions

Timetable:

Action	Date	FR Cite
Third MO&O	08/16/94	59 FR 44058
R&O	04/23/97	62 FR 27507
FNPRM	04/23/97	62 FR 27569
Second R&O	06/06/00	65 FR 35843
Second FNPRM	06/06/00	65 FR 35875
Third R&O and Order on Reconsideration	06/04/01	66 FR 29911

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: GEN Docket No. 90-314; ET Docket No. 92-100; PP Docket No. 93-253

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RIN: 3060–AF99

4061. IMPLEMENTATION OF SECTION 309(J) OF THE COMMUNICATIONS ACT, COMPETITIVE BIDDING; NARROWBAND PCS COMPETITIVE BIDDING RULES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154(i); 47 USC 303(r); 47 USC 309(j)

CFR Citation: 47 CFR 24

Legal Deadline: None

Abstract: Report and Order and FNPRM to modify the competitive bidding rules for participation by designated entities in narrowband PCS.

Timetable:

Action	Date	FR Cite
NPRM	07/13/94	59 FR 35664
NOI	07/13/94	59 FR 35664
NPRM Comment Period End	09/29/94	
NPRM	04/04/95	60 FR 20949
NPRM Comment Period End	07/14/95	
First R&O	07/12/96	61 FR 38399
Second R&O and Third NPRM	08/15/96	61 FR 44026
MO&O and O on Recon	11/09/99	64 FR 61022

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Federal

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RIN: 3060–AF58

4062. IMPLEMENTATION OF SECTION 309(J) OF THE COMMUNICATIONS ACT, COMPETITIVE BIDDING; 218-219 MHZ COMPETITIVE BIDDING RULES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 303(r); 47 USC 309(j)

CFR Citation: 47 CFR 95

Legal Deadline: None

Abstract: Tenth Report and Order modifies the competitive bidding rules for the upcoming auction of 218-219 MHz: (1) eliminates bidding credits available to women- and minority-owned 218-219 MHz applicants; (2) extends two levels of bidding credits to small businesses based on a two-tiered small business definition; (3) clarifies the attribution rules for affiliates of 218-219 MHz applicants; and (4) increases the amount of the upfront payments required to participate in the 218-219 MHz auction.

Timetable:

Action	Date	FR Cite
R&O	04/25/94	59 FR 24947
FNPRM	08/06/96	61 FR 49103
R&O	11/15/96	61 FR 60198
FNPRM	09/30/98	63 FR 52215
MO&O	10/08/98	63 FR 54073
R&O and MO&O	11/03/99	64 FR 59656
Order on Reconsideration	12/29/99	64 FR 72956
Second Order on Reconsideration	02/07/01	66 FR 9212
3rd O on Recon of R&O and MO&O	06/24/02	67 FR 42507

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: WT Docket No. 98-169

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RIN: 3060–AG00

4063. 39 GHZ CHANNEL PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 302; 47 USC 524

CFR Citation: 47 CFR 1; 47 CFR 2; 47 CFR 101

Legal Deadline: None

Abstract: This proceeding amends the FCC's rules to facilitate more effective use of the 39 GHz band.

Timetable:

Action	Date	FR Cite
NPRM	01/26/96	61 FR 2465
NPRM Comment Period End	02/12/96	

Action	Date	FR Cite
Order	02/22/96	61 FR 6809
Reply Comments	02/27/96	
Order	05/01/96	61 FR 19236
Second NPRM	01/21/98	63 FR 3075
R&O	02/06/98	63 FR 6079
MO&O	08/23/99	64 FR 45891

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: ET Docket No. 95-183, RM-8553; PP Docket No. 93-253

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RIN: 3060–AG16

4064. IMPLEMENTATION OF 309(J) OF THE COMMUNICATIONS ACT, AMENDMENT OF PARTS 20 AND 24 OF THE COMMISSION'S RULES - BROADBAND PCS COMPETITIVE BIDDING AND THE COMMERCIAL MOBILE RADIO SERVICE SPECTRUM CAP

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 301; 47 USC 302; 47 USC 303(r); 47 USC 309(j); 47 USC 332

CFR Citation: 47 CFR 24

Legal Deadline: None

Abstract: NPRM to modify the competitive bidding rules for the Broadband PCS F Block. Report and Order, adopted 6/21/96, modified the PCS/cellular rule and the cellular spectrum cap.

Timetable:

Action	Date	FR Cite
O on Recon of Fifth MO&O and D, E, & F R&O	11/15/00	65 FR 68927

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: PP Docket No. 93-253

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RIN: 3060–AG21

4065. REVISION OF THE RULES TO ENSURE COMPATIBILITY WITH ENHANCED 911 EMERGENCY CALLING SYSTEMS

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 47 USC 134(i); 47 USC 151; 47 USC 201; 47 USC 208; 47 USC 215; 47 USC 303; 47 USC 309

CFR Citation: 47 CFR 20

Legal Deadline: None

Abstract: In a series of orders in several related proceedings issued since 1996, the Federal Communications Commission has taken action to improve the quality and reliability of 911 emergency services for wireless phone users. Rules have been adopted governing the availability of basic 911 services and the implementation of enhanced 911 (E911) for wireless services.

Timetable:

Action	Date	FR Cite
R&O	07/26/96	61 FR 40348
FNPRM	07/26/96	61 FR 40374
MO&O	01/16/98	63 FR 2631
Second Report & Order	06/28/99	64 FR 34564
Third R&O	11/04/99	64 FR 60126
Second MO&O	12/29/99	64 FR 72951
Fourth Report & Order, Third NPRM, and NPRM	09/19/00	65 FR 56752
Fourth MO&O	10/02/00	65 FR 58657
FNPRM	06/13/01	66 FR 31878
Order	11/02/01	66 FR 55618
R&O	05/23/02	67 FR 36112
Public Notice	07/17/02	67 FR 46909

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

Additional Information: CC Docket No. 94-102; CC Docket No. 96-115; CC Docket No. 92-105; WT Docket No. 00-110

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RIN: 3060–AG34

4066. IN THE MATTER OF THE COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 47 USC 229; 47 USC 1001 to 1008

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: All of the decisions in this proceeding thus far are aimed at implementation of provisions of the Communications Assistance for Law Enforcement Act.

Timetable:

Action	Date	FR Cite
NPRM	10/10/97	62 FR 63302
Order	01/13/98	63 FR 1943
FNPRM	11/16/98	63 FR 63639
Report & Order	01/29/99	64 FR 51462
Order	03/29/99	64 FR 14834
Second Report & Order	09/23/99	64 FR 51462
Third Report & Order	09/24/99	64 FR 51710
Order on Recon	09/28/99	64 FR 52244
Policy Statement	10/12/99	64 FR 55164
Second Order on Recon	05/04/01	66 FR 22446

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: CC Docket No. 97-213

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RIN: 3060–AG74

4067. DEVELOPMENT OF OPERATIONAL, TECHNICAL, AND SPECTRUM REQUIREMENTS FOR PUBLIC SAFETY COMMUNICATIONS REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 160; 47 USC 201; 47 USC 202; 47 USC 303; 47 USC 337(a); 47 USC 403

CFR Citation: 47 CFR 90

Legal Deadline: None

Abstract: This item takes steps toward developing a flexible regulatory framework to meet vital current and future public safety communications needs.

Timetable:

Action	Date	FR Cite
NPRM	10/09/97	62 FR 60199
Second NPRM	11/07/97	62 FR 60199
First R&O	08/06/98	63 FR 58645
Third NPRM	08/06/98	63 FR 58685
MO&O	04/26/99	64 FR 60123
Second R&O	08/08/00	65 FR 48393
Fourth NPRM	08/25/00	65 FR 51788
Second MO&O	09/05/00	65 FR 53641
Third R&O	11/07/00	65 FR 66644
Third MO&O	11/07/00	65 FR 66644
Fourth R&O	02/16/01	66 FR 10632
Fifth NPRM	02/16/01	66 FR 10660

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local

Additional Information: WT Docket No. 96-86

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RIN: 3060–AG85

4068. MULTIPLE ACCESS SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 302; 47 USC 303

CFR Citation: 47 CFR 101

Legal Deadline: None

Abstract: This proceeding amended the FCC's rules regarding multiple address systems (MAS) in the microwave service. It streamlined regulations and established a framework for MAS spectrum that provides opportunities for continued development of competitive service offerings by allowing a variety of services.

Timetable:

Action	Date	FR Cite
NPRM	01/19/97	62 FR 11407
Order	09/17/98	63 FR 53350
FNPRM	05/18/99	64 FR 38617
R&O	04/03/00	65 FR 17445
MO&O	07/03/01	66 FR 35107

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: WT Docket No. 97-81

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RIN: 3060–AG86

4069. AMENDMENT OF PART I OF THE COMMISSION'S RULES — COMPETITIVE BIDDING PROCEDURES

Priority: Substantive, Nonsignificant. Major under 5 USC 801.

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 202; 47 USC 303; 47 USC 309(j)

CFR Citation: 47 CFR 1; 47 CFR 21; 47 CFR 24; 47 CFR 27; 47 CFR 90; 47 CFR 95

Legal Deadline: None

Abstract: This proceeding proposes to amend and modify the competitive bidding rules for all auctionable services.

Timetable:

Action	Date	FR Cite
NPRM	03/21/97	62 FR 13570
NPRM Comment Period End	04/16/97	
Second FNPRM	01/07/98	63 FR 770
Third R&O	01/15/98	63 FR 2315
Fifth R&O, Order on Recon	08/29/00	65 FR 52323
Fourth FNPRM	08/29/00	65 FR 52401
Seventh R&O	10/29/01	66 FR 54447
8th R&O	04/08/02	67 FR 16647

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: WT Docket No. 97-82

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RIN: 3060–AG87

4070. AMENDMENT OF PART 90 OF THE RULES TO ADOPT REGULATIONS FOR AUTOMATIC VEHICLE MONITORING SYSTEMS

Priority: Substantive, Nonsignificant. Major under 5 USC 801.

Legal Authority: 47 USC 154; 47 USC 251; 47 USC 252; 47 USC 303; 47 USC 309; 47 USC 332

CFR Citation: 47 CFR 1; 47 CFR 90

Legal Deadline: None

Abstract: This Second Report and Order adopts rules and procedures governing competitive bidding for multilateration Location and Monitoring Service (LMS) frequencies.

Timetable:

Action	Date	FR Cite
NPRM	10/06/97	62 FR 52078
NPRM Comment Period End	11/20/97	
Second R&O	07/30/98	63 FR 40659

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: The NPRM sought comment on the LMS auction following the general competitive bidding procedures of Part 1, Subpart Q; the establishment of a small business definition for LMS; whether small business provisions are sufficient to promote participation by businesses owned by minorities, women or rural telephone companies; partitioning and disaggregation.

PR Docket No. 93-61

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RIN: 3060–AH12

4071. SERVICE RULES FOR THE 746-764 AND 776-794 MHZ BANDS, AND REVISIONS TO PART 27 OF THE COMMISSION'S RULES

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 1; 47 USC 4(i); 47 USC 7; 47 USC 10; 47 USC 201; 47 USC 202; 47 USC 208; 47 USC 214; 47 USC 301; 47 USC 303; 47 USC 307; 47 USC 308; 47 USC 309(j); 47 USC 309(k); 47 USC 310; 47 USC 311; 47 USC 315; 47 USC 317; 47 USC 324; 47 USC 331; 47 USC 332; 47 USC 336

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Report and Order in this proceeding adopts service rules for licensing and auction of commercial services in spectrum in the 700 MHz band to be vacated by UHF television licensees.

Timetable:

Action	Date	FR Cite
NPRM	07/07/99	64 FR 36686
R&O	01/20/00	65 FR 3139
Second R&O	04/04/00	65 FR 17594
MO&O and FNPRM	07/12/00	65 FR 42879
Second MO&O	02/06/01	66 FR 9035
Third R&O	02/14/01	66 FR 10204
Second MO&O	02/15/01	66 FR 10374
Order on Recon of Third R&O	10/10/01	66 FR 51594
3rd MO&O and Order	07/30/02	67 FR 49244
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: WT Docket No. 99-168; CS Docket No. 98-120; MM Docket No. 00-39

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RIN: 3060–AH32

4072. IMPLEMENTATION OF SECTIONS 309(J) AND 337 OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 303(r); 47 USC 309(j)

CFR Citation: 47 CFR 1; 47 CFR 22; 47 CFR 24; 47 CFR 26; 47 CFR 27; 47 CFR 73; 47 CFR 74; 47 CFR 80; 47 CFR 87

Legal Deadline: None

Abstract: This NPRM commences a proceeding to implement 309(j) and 337 of the Communications Act, as amended by the Balanced Budget Act of 1997, which was signed into law on 8/5/97. This notice seeks comment on changes to the Commission's rules and policies to implement the revised auction authority.

Timetable:

Action	Date	FR Cite
NPRM	05/03/99	64 FR 23571
R&O	01/02/01	66 FR 33
MO&O	05/16/02	67 FR 34848
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local

Additional Information: WT Docket No. 99-87

Agency Contact: Karen Franklin, Public Safety and Private Wireless Division, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street, SW, Washington, DC 20554
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RIN: 3060–AH33

4073. 1998 BIENNIAL REGULATORY REVIEW — SPECTRUM AGGREGATION LIMITS FOR WIRELESS TELECOMMUNICATIONS CARRIERS

Priority: Substantive, Nonsignificant. Major under 5 USC 801.

Legal Authority: 47 USC 154; 47 USC 161; 47 USC 332

CFR Citation: 20 CFR 20; 22 CFR 942

Legal Deadline: None

Abstract: The Commission has adopted a final rule in a proceeding examining the need for Commercial Mobile Radio Services spectrum aggregation limits.

Timetable:

Action	Date	FR Cite
NPRM	12/10/98	63 FR 70727
R&O	10/07/99	64 FR 54564
MO&O on Recon	11/08/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: WT Docket No. 98-205

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RIN: 3060–AH34

4074. AMENDMENT TO PARTS 1, 2, 87 AND 101 OF THE RULES TO LICENSE FIXED SERVICES AT 24 GHZ

Priority: Substantive, Nonsignificant. Major under 5 USC 801.

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 303; 47 USC 309(j)

CFR Citation: 47 CFR 1; 47 CFR 2; 47 CFR 101

Legal Deadline: None

Abstract: This rulemaking proposes licensing and service rules to govern the 24 GHz band generally.

Timetable:

Action	Date	FR Cite
NPRM	12/20/99	64 FR 71088
R&O	08/05/00	65 FR 59350
Order	06/01/01	66 FR 29722
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Additional Information: WT Docket No. 99-327

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RIN: 3060–AH41

4075. PART 101 — TERRESTRIAL MICROWAVE FIXED RADIO SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 302; 47 USC 303

CFR Citation: 47 CFR 101

Legal Deadline: None

Abstract: Proceeding to streamline the Commission's rules, expedite processing of authorizations for terrestrial microwave fixed radio services and clarify rules concerning the terrestrial microwave fixed radio services.

Timetable:

Action	Date	FR Cite
NPRM	01/11/95	60 FR 2722
R&O	05/28/96	61 FR 26670
Order	03/05/98	63 FR 10778
Final Action Correction	03/24/98	63 FR 14039
NPRM	06/20/00	65 FR 38333
MO&O	06/20/00	65 FR 38324
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: WT Docket No. 94-148 (closed); WT Docket No. 00-19

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RIN: 3060–AH42

4076. AMENDMENT OF PARTS 13 AND 80 GOVERNING MARITIME COMMUNICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 302; 47 USC 303

CFR Citation: 47 CFR 13; 47 CFR 80

Legal Deadline: None

Abstract: This matter concerns the amendment of the rules governing maritime communications in order to consolidate, revise and streamline the regulations as well as address new international requirements and improve the operational ability of all users of marine radios.

Timetable:

Action	Date	FR Cite
NPRM	03/24/00	65 FR 21694
NPRM	08/17/00	65 FR 50173
NPRM	05/17/02	67 FR 35086
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: WT Docket No. 00-48

Agency Contact: Jeff Tobias, Attorney Advisor, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554
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RIN: 3060–AH55

4077. AMENDMENT OF THE RULES REGARDING INSTALLMENT PAYMENT FINANCING FOR PERSONAL COMMUNICATIONS SERVICES LICENSEES

Priority: Substantive, Nonsignificant. Major under 5 USC 801.

Legal Authority: 47 USC 154; 47 USC 301 to 303; 47 USC 309; 47 USC 332

CFR Citation: 47 CFR 1; 47 CFR 24

Legal Deadline: None

Abstract: This proceeding proposes resumption of installment payments for broadband Personal Communications Services (PCS), e.g., for C and F Block, with payment deadline to be reinstated as of March 31, 1998. The proposal contemplates, inter alia, changes to the FCC's C Block rules to govern re-auction of surrendered spectrum in the C Block. The proposal was released on October 16, 1997, and published in the Federal Register.

Timetable:

Action	Date	FR Cite
2nd R&O	10/24/97	62 FR 55348
FNPRM	10/24/97	62 FR 55375
Order on Recon of Second R&O	04/08/98	63 FR 17111
Fourth R&O	09/23/98	63 FR 50791
Second Order on Recon of Second R&O	05/18/99	64 FR 26887
Recon of Fourth R&O	03/16/00	65 FR 14213
FNPRM	06/13/00	65 FR 37092
6th R&O and Order on Recon	09/05/00	65 FR 53620
Order on Recon	02/12/01	66 FR 9773
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: The Order on Reconsideration published in the Federal Register in April 1998 addresses 37 petitions, 17 oppositions, 16 replies to opposition, and 38 ex parte filings.

Additional RIN 3060-AG88.

WT Docket No. 97-82

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Related RIN: Previously reported as 3060-AG88

RIN: 3060–AH57

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4078. TRANSFER OF THE 3650 THROUGH 3700 MHZ BAND FROM FEDERAL GOVERNMENT USE

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154; 47 USC 157; 47 USC 303; 47 USC 307; 47 USC 332

CFR Citation: 47 CFR 2.106; 47 CFR 25.202; 47 CFR 27.1; 47 CFR 27.4; 47 CFR 27.5; 47 CFR 27.14; 47 CFR 27.50; 47 CFR 27.53; 47 CFR 27.55; 47 CFR 27.57; 47 CFR 27.58; 47 CFR 27.61; ...

Legal Deadline: None

Abstract: This proceeding is intended to establish licensing and service rules for frequencies in the 3650 to 3700 MHz band, transferred from government use.

Timetable:

Action	Date	FR Cite
NPRM	03/16/00	65 FR 14230
First R&O and Second NPRM	11/17/00	65 FR 69612
Petition for Reconsideration	03/28/01	66 FR 16940

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal

Additional Information: WT Docket No. 00-32; ET Docket No. 98-237

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RIN: 3060–AH75

4079. 2000 BIENNIAL REGULATORY REVIEW SPECTRUM AGGREGATION LIMITS FOR COMMERCIAL MOBILE RADIO SERVICES

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 161; 47 USC 303(g); 47 USC 303(r)

CFR Citation: 47 CFR 20.6; 47 CFR 22.942

Legal Deadline: None

Abstract: The Commission has adopted a final rule in a proceeding reexamining the need for Commercial Mobile Radio Services spectrum aggregation limits.

Timetable:

Action	Date	FR Cite
NPRM	02/12/01	66 FR 9798
NPRM Comment Period End	05/14/01	
Final Rule	01/14/02	67 FR 1626
Correction to Final Rule	01/31/02	67 FR 4675

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: WT Docket No. 01-14

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RIN: 3060–AH81

4080. IN THE MATTER OF PROMOTING EFFICIENT USE OF SPECTRUM THROUGH ELIMINATION OF BARRIERS TO THE DEVELOPMENT OF SECONDARY MARKETS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 157; 47 USC 160; 47 USC 201; 47 USC 202; 47 USC 208; 47 USC 214; 47 USC 301; 47 USC 303; 47 USC 308; 47 USC 309; 47 USC 310

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission has opened a proceeding to examine actions it may take to remove unnecessary regulatory barriers to the development of more robust secondary markets in radio spectrum usage rights.

Timetable:

Action	Date	FR Cite
NPRM	12/26/00	65 FR 81475
NPRM Comment Period End	01/29/01	66 FR 8149
New NPRM Comment Period End	03/12/01	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: WT Docket No. 00-230

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RIN: 3060–AH82

4081. IN THE MATTER OF AUTOMATIC AND MANUAL ROAMING OBLIGATIONS PERTAINING TO COMMERCIAL MOBILE RADIO SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 152(n); 47 USC 154(i); 47 USC 154(j); 47 USC 201(b); 47 USC 251(a); 47 USC 253; 47 USC 303(r); 47 USC 332(c)(1)(B); 47 USC 309

CFR Citation: 47 CFR 20.12; 47 CFR 22.901

Legal Deadline: None

Abstract: This rulemaking considers whether the Commission should adopt an automatic roaming rule for Commercial Mobile Radio Services and sunset the current manual roaming requirement.

Timetable:

Action	Date	FR Cite
NPRM	11/01/00	65 FR 69891

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: WT Docket No. 00-193

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RIN: 3060–AH83

4082. AMENDMENT OF PART 90 FOR LICENSING LOW POWER OPERATIONS IN 450-470 MHZ BAND

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 1; 47 USC 154; 47 USC 302; 47 USC 303; 47 USC 332

CFR Citation: 47 CFR 90

Legal Deadline: None

Abstract: The proposed amendments facilitate the viability of low power operations in the private land mobile radio 450-470 MHz Band.

Timetable:

Action	Date	FR Cite
NPRM	07/24/01	66 FR 47435

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local

Additional Information: WT Docket No. 01-146

Agency Contact: Guy N. Benson, Attorney, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554
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RIN: 3060–AH84

4083. REALLOCATION OF THE 216-220 MHZ, 1390-1395 MHZ, 1427-1429 MHZ, 1429-1432 MHZ, 1432-1435 MHZ, 1670-1675 MHZ, AND 2385-2390 MHZ GOVERNMENT TRANSFER BANDS.

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151, 154(i), 154(j), 155, 225, 303(r), 309, 325(e); 47 USC 154, 302(a), 303,336; 47 USC 154(i), 161, 303(g), 303(r), 332(c)(7); 47 USC 154, 303

CFR Citation: 47 CFR 1; 47 CFR 2; 47 CFR 27; 47 CFR 90; 47 CFR 95

Legal Deadline: None

Abstract: The reallocation proposes to establish new service rules for licensing 27 MHz of spectrum transferred from government to non-government use.

Timetable:

Action	Date	FR Cite
NPRM	02/15/02	67 FR 7113
R&O	06/20/02	67 FR 41847

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

Additional Information: WT Docket No. 02-08

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RIN: 3060–AH87

4084. REVIEW OF QUIET ZONES APPLICATION PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 1; 47 USC 154(i); 47 USC 161; 47 USC 303(g); 47 USC 303(r)

CFR Citation: 47 CFR 1

Legal Deadline: None

Abstract: Review of Quiet Zones rules for possible streamlining while ensuring adequate protection from interference.

Timetable:

Action	Date	FR Cite
NPRM	12/21/01	66 FR 65866
NPRM Comment Period End	02/06/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

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RIN: 3060–AH88

4085. REALLOCATION AND SERVICE RULES FOR THE 698-746 MHZ SPECTRUM BAND (TELEVISION CHANNELS 52-59)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151, 152, 154(i),155(c), 157, 201, 202, 208, 214, 301, 302(g), 303, 307; 47 USC 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 534, 535

CFR Citation: 47 CFR 2; 47 CFR 27; 47 CFR 73

Legal Deadline: Other, Statutory, September 19, 2002, See Auction Reform Act of 2002, Pub. L. No. 107-195, 116 Stat. 715. Statutory deadline to auction C and D Blocks of Lower 700 MHz band.

Abstract: The Commission has adopted allocation and service rules for the 48 MHz of spectrum in the 698-746 MHz band currently occupied by television channels 52-59.

Timetable:

Action	Date	FR Cite
NPRM	04/13/01	66 FR 19106
Report & Order	02/06/02	67 FR 5491
MO&O	07/09/02	67 FR 45380

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: GN Docket No. 01-74

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RIN: 3060–AH89

4086. IMPLEMENTATION OF 911 ACT

Priority: Economically Significant

Legal Authority: 47 USC 151, 154(i),154(j), 157, 160, 210, 202, 208, 214, 251(e),301, 303, 308; 47 USC 309(j), 310

CFR Citation: 47 CFR 20.3; 47 CFR 20.18; 47 CFR 64.3000 to 64.3004

Legal Deadline: None

Abstract: This proceeding is separate from the Commission's proceeding on Enhanced 911 Emergency Systems (E911) in that it is intended to implement provisions of the Wireless Communications and Public Safety Act of 1999 through the promotion of public safety by the deployment of a seamless, nationwide emergency communications infrastructure that includes wireless communications services. More specifically, a chief goal of the proceeding is to ensure that all emergency calls are routed to the appropriate local emergency authority to provide assistance. The E911 proceeding goes a step further and is aimed at improving the effectiveness and reliability of wireless 911 dispatchers with additional information on wireless 911 calls.

Timetable:

Action	Date	FR Cite
Final Rule	01/25/02	67 FR 3621
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

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RIN: 3060–AH90

Federal Communications Commission (FCC)
Wireline Competition Bureau

Long-Term Actions

4087. ADMINISTRATION OF THE NORTH AMERICAN NUMBERING PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 3 to 4; 47 USC 151; 47 USC 152 to 155; 47 USC 154(i); 47 USC 201 to 205; 47 USC 207 to 209; 47 USC 218; 47 USC 225 to 227; 47 USC 251 to 252; 47 USC 271; 47 USC 332; 47 USC 403

CFR Citation: 47 CFR 52.1 to 52.99; 47 CFR 151; 47 CFR 154; 47 CFR 201 to 205; 47 CFR 403

Legal Deadline: None

Abstract: The Report and Order lays the foundation for the fair and effective administration of numbering in the United States. The Report and Order establishes a model for administration of numbering resources in a competitive environment. In this model, the FCC will set broad policy objectives, be the final arbiter of domestic numbering disputes and work closely with other member countries of the North American Numbering Plan (NANP), the States, industry and consumers to ensure fair and effective number administration. The Report and Order creates the North American Number Council (NANC) under the Federal Advisory Committee Act. In the Third Report and Order, released on October 9, 1997, the Commission affirmed the NANC's selection of Lockheed Martin IMS as the new NANP administrator. The NANP administrator is a nongovernmental entity that is not aligned with any particular telecommunications industry segment, and upon selection and following a transition period, assumed Bellcore's current NANP administrator functions and the central office code administration functions currently handled by the dominant local exchange carrier in each area code. The rules were expanded to accommodate the requirements of the Telecommunications Act of 1996. See FCC 96-337, released August 8, 1996.

Timetable:

Action	Date	FR Cite
NOI	11/10/92	57 FR 53462
NPRM	05/10/94	59 FR 24103
R&O	07/28/95	60 FR 58737
Second R&O	09/06/96	61 FR 47284
Third R&O	10/23/97	62 FR 55179
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3060–AF50

4088. USE OF N11 CODES AND OTHER ABBREVIATED DIALING ARRANGEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 201 to 205; 47 USC 251(e)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: In 1992, the FCC released a Notice of Proposed Rulemaking in CC Docket 92-105 proposing that local exchange carriers (LECs) be required to make N11 codes available for access to information service providers. In this proposal, LECs could establish any reasonable assignment criteria for such allocation, including "first come, first served." The FCC's General Counsel released a letter indicating it found no regulatory or legal obstacles to assignment of N11 codes for information services. On February 19, 1997, the FCC released a First Report and Order and Further Notice of Proposed Rulemaking in that Docket (FCC 97-51) which allows incumbent LECs, in addition to the States and Bell Communications Research (Bellcore), to continue to perform the N11 code administration functions that they performed at the time of enactment of the 1996 Act amendments to the 1934 Act, until further FCC action. The FCC concluded that: (1) 311 should be assigned as a national number for access to non-emergency police calls; (2) 711 should be assigned as a national number for access to telecommunications relay services (TRS); (3) all providers of telephone exchange service must be able to have their customers call 611 and 811 to reach their repair and business service offices; and (4) a LEC may not itself offer enhanced services using a 411 code or any other N11 code, unless that LEC offers access to the code on a reasonable nondiscriminatory basis to competing enhanced service providers in the local service area for which it is using the code to facilitate

distribution of their enhanced services. In the FNPRM, the FCC asked for comment on: (1) the technical feasibility of implementing 711 for TRS access; (2) the possibility of developing an N11 gateway offering access to multiple TRS providers; (3) whether with such access, TRS calls would still be answered within mandatory minimum answer times; (4) whether such a gateway would be consistent with section 255; (5) whether other important disability services could be accessed thereby; (6) the possibility of providing both voice and text TRS services through the same abbreviated TRS code; (7) the proprietary nature of N11 codes; and (8) an FCC proposal to transfer administration of N11 codes at the local level from incumbent LECs to the North American Numbering Plan (NANP) administrator. Petitions for reconsideration or clarification on the order have been filed. Comments and replies were filed on March 31 and April 30, 1997, respectively. On June 16, 1999, the Commission released a Public Notice announcing that it would hold a public forum on September 8, 1999, on 711 access to TRS. The goal of the forum was to identify steps that must be taken to implement 711 access to TRS as well as obstacles to implementation and how those obstacles could be resolved.

On August 9, 2000, the Commission released a Second Report and Order (FCC 00-257) that addresses issues related to the deployment of 711 for access to TRS. The Commission required a nationwide rollout of 711 access to TRS and established an implementation framework. On July 31, 2000, the Commission released a Third Report and Order (FCC 00-256) that granted the petition of the United Way of America, and others, for nationwide assignment of the 211 abbreviated dialing code for access to community information and referral services. The Commission also granted the petition of the U.S. Department of Transportation for nationwide assignment of the 511 abbreviated dialing code for access to travel and traffic information. The Commission further addressed issues raised in petitions for reconsideration of the N11 First Report and Order and resolved outstanding issues from the N11 Further Notice of Proposed Rulemaking.

On August 29, 2000, the Commission released a Fourth Report and Order and Third Notice of Proposed Rulemaking in CC Docket 92-105 and a Notice of Proposed Rulemaking in WT Docket 00-110 (FCC 00-327) to implement the Wireless Communications and Public Safety Act of 1999. The Commission designated 911 as the universal emergency number and sought comment on appropriate transition periods and how the Commission should facilitate States' efforts to deploy comprehensive emergency communications systems.

Timetable:

Action	Date	FR Cite
NPRM	05/29/92	57 FR 22681
First R&O	02/26/97	62 FR 8633
FNPRM	02/26/97	62 FR 8671
Second R&O	09/11/00	65 FR 54799
Fourth R&O and Third NPRM	09/19/00	65 FR 56751
Third R&O	02/09/01	66 FR 9674
Second NPRM	04/05/01	66 FR 18059
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Additional Bureau: Consumer Information

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RIN: 3060–AF51

4089. IMPLEMENTATION OF THE UNIVERSAL SERVICE PORTIONS OF THE 1996 TELECOMMUNICATIONS ACT

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151 et seq

CFR Citation: 47 CFR 54

Legal Deadline: NPRM, Statutory, March 8, 1996.
Other, Statutory, November 8, 1996, Recommended decision.
Final, Statutory, May 8, 1997, Federal-State Joint Board R&O released May 8, 1997.

Abstract: As required by the Telecommunications Act of 1996, the Commission sought comment on proposals for reforming universal service. On November 8, 1996, the Federal-State Joint Board on Universal Service issued a recommended decision on changes to the universal service support mechanisms. In addition, on January 10, 1997, the Commission issued an NPRM and NOI on changes to the Board of Directors of the National Exchange Carrier Association (NECA), regarding the administration of universal service. On May 8, 1997, the Commission, at the direction of Congress, released its order implementing the universal service portions of the 1996 Act. On December 30, 1997, the Commission issued the 4th Order on Reconsideration which made changes and clarifications to the May 8 Order. On June 22, 1998, the Commission issued the 5th Order on Reconsideration which revised the collection levels for the schools and libraries support mechanism through June 30, 1999, and revised the collection levels for the rural health care support mechanism through December 31, 1998. The 5th Order on Reconsideration also revised the priority with which schools and libraries and rural health care providers will receive support. On October 28, 1998, the Commission issued the 5th Report and Order, in which it adopted the model platform for its forward-looking economic cost methodology, which will be used to determine support for non-rural carriers beginning July 1, 1999. On November 21, 1998, the Commission issued the 8th Order on Reconsideration in which it consolidated the administration of universal service into a single entity known as the Universal Service Administrative Company or USAC. On November 25, 1998, the Federal-State Joint Board on Universal Service issued its Second Recommended Decision in which the Joint Board made certain recommendations to the Commission regarding the high cost support mechanism.

On May 28, 1999, the Commission issued the 13th Order on Reconsideration in which it adopted the principles of a Federal high-cost support mechanism that conformed to the Second Recommended Decision and in which it sought further comment on specific elements of the support methodology. In the 13th Order on Reconsideration, the Commission also decided to implement the new high-cost support mechanism on January 1, 2000 instead of July 1, 1999, as previously planned. On May 28, 1999, the Commission also issued a Further Notice of Proposed Rulemaking

in which it sought comment on proposed input values to be used in the forward-looking model to determine non-rural LECs' cost of providing supported services in high cost areas. On August 5, 1999, the Commission adopted a Further Notice of Proposed Rulemaking in which it sought comment to ascertain the availability of, and to understand the possible impediments to, deployment and subscribership in unserved and underserved areas of the Nation, including tribal lands and other insular areas.

On November 1, 1999, the Commission issued the Fourteenth Order on Reconsideration, in which it eliminated the requirement that only carriers that have been certified as eligible telecommunications carriers may receive credit against their universal service contributions for providing telecommunications services to rural health care providers at the lower urban rates. On November 1, 1999, the Commission also issued the Fifteenth Order on Reconsideration, in which it authorized support for any commercially available telecommunications service regardless of the bandwidth, and simplified the method for determining how much support a rural health care provider can receive. On November 2, 1999, the Commission issued the Ninth Report and Order and Eighteenth Order on Reconsideration in which it adopted a new forward-looking high-cost support mechanism that will enable States to ensure the reasonable comparability of non-rural carriers' intrastate rates. On November 2, 1999, the Commission also issued the Tenth Report and Order in which it completed the selection of a cost model to estimate forward-looking cost by adopting input values for the previously adopted cost model.

On June 30, 2000, the Commission issued the Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, in response to the Further Notice of Proposed Rulemaking it adopted on August 5, 1999. In the Twelfth Report and Order, the Commission adopted measures to promote telecommunications subscribership and infrastructure deployment within American Indian and Alaska Native tribal communities.

On October 12, 2000, the Commission released a Further Notice of Proposed Rulemaking and Order to seek comment on proposals to modify the Commission's rules relating to contributions to the Federal universal service support mechanisms. On January 12, 2001, the Commission released a Further Notice of Proposed Rulemaking seeking comment on the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board) regarding a plan for reforming the universal service support mechanism for rural carriers. The Joint Board sent to the Commission the Rural Task Force Recommendation as a good foundation for implementing rural high-cost reform. The Rural Task Force recommends the use of a modified version of the current high-cost loop support mechanism based on carriers' embedded costs.

On May 23, 2001, the Commission released the Fourteenth Report and Order, Twenty-Second Order on Reconsideration and Further Notice of Proposed Rulemaking. In the Fourteenth Report and Order, the Commission adopted a five-year plan that makes modifications to the high-cost loop support mechanism for rural carriers. These modifications were based on the recommendation of the Joint Board and will provide predictable levels of support so that rural carriers can continue to provide affordable service in rural America, while ensuring that consumers in all areas of the nation, including rural areas, have access to affordable and quality telecommunications services.

On March 14, 2001, the Commission issued an order modifying the methodology used to assess contributions to universal service. The methodology was modified to reduce the interval between the accrual of revenues and the assessment of contributions based on those revenues. The order reduced the interval from an average of one year to an average of six months.

On May 8, 2001, the Commission issued a Notice of Proposed Rulemaking in which sought comment on how to streamline and reform both the manner in which the Commission assesses carrier contributions to the universal service fund and the manner in which carriers may recover those costs from their customers.

On May 22, 2001, the Commission adopted a five-year interim freeze of the Part 36 jurisdictional separations rules, pending comprehensive reform of the separations process. The five-year interim freeze was based upon the July 21, 2000 Recommended Decision of the Federal-State Joint Board on Separations. Under the interim freeze, the Part 36 categories and jurisdictional allocation factors of price cap incumbent LECs are frozen, while rate-of-return carriers had the option to freeze only their jurisdictional allocation factors. The interim freeze is in effect from July 1, 2001, to June 30, 2006 or until comprehensive reform is completed, whichever comes first.

On November 8, 2001, the Commission released the Fifteenth Report and Order and Further Notice of Proposed Rulemaking (Further Notice) reforming the interstate access charge and universal service support system for rate-of-return incumbent carriers. The Order established a new interstate support mechanism to replace implicit support in the interstate access rate structure of rate-of-return carriers with explicit, portable support. Among other things, the Further Notice sought comment on consolidating the existing Long Term Support mechanism with the new support mechanism created in the Order.

On January 25, 2002, the Commission released a Further Notice of Proposed Rulemaking and Order (Further Notice), in which it sought comment on modifications to the rules governing the schools and libraries support mechanism. The modifications address changes that would make the program more efficient, ensure that the benefits of the program are distributed in an equitable manner, and prevent waste, fraud, and abuse. In addition, the order denied certain petitions for reconsideration relating to unused funds.

On February 15, 2002, the Commission released a Notice of Proposed Rulemaking and Order, in which it sought comment on the issues from the Ninth Report and Order remanded by the United States Court of Appeals for the Tenth Circuit. The Ninth Report and Order established a federal high-cost universal service support mechanism for non-rural carriers based on forward-looking economic costs. In addition, the order referred these issues to the Federal-State Joint Board on Universal Service for a recommended decision.

On February 15, 2002, the Commission issued a Notice of Proposed Rulemaking examining the appropriate legal and policy framework under the Communications Act of 1934, as amended, for broadband access to the Internet provided over domestic wireline facilities.

On February 26, 2002, the Commission issued a Further Notice of Proposed Rulemaking and Report and Order, in which it sought comment on specific proposals to change the manner in which universal service contributions are assessed and recovered, including one proposal to assess contributions based on the number and capacity of connections provided to a public network. This proceeding also made certain modifications to the existing contribution system.

On April 19, 2002, the Commission issued a Notice of Proposed Rulemaking in which it sought comment on specific proposals to: clarify how it should treat eligible entities that also perform functions that are outside the statutory definition of "health care provider"; provide support for internet access; and change the calculation of discounted services, including the calculation of urban and rural rates.

Timetable:

Action	Date	FR Cite
Recommended Decision Federal-State Joint Board, Universal Service	11/08/96	61 FR 63778
1st R&O	05/08/97	62 FR 32862
2nd R&O	05/08/97	62 FR 32862
Order on Recon	07/10/97	62 FR 40742
R&O and 2nd Order on Recon	07/18/97	62 FR 41294
2nd R&O, and FNPRM	08/15/97	62 FR 47404
3rd R&O	10/14/97	62 FR 56118
2nd Order on Recon	11/26/97	62 FR 65036
4th Order on Recon	12/30/97	62 FR 2093
5th Order on Recon	06/22/98	63 FR 43088
5th R&O	10/28/98	63 FR 63993
8th Order on Recon	11/21/98	
2nd Recommended Decision	11/25/98	63 FR 67837
13th Order on Recon	06/09/99	64 FR 30917
FNPRM	06/14/99	64 FR 31780
FNPRM	09/30/99	64 FR 52738
14th Order on Recon	11/16/99	64 FR 62120
15th Order on Recon	11/30/99	64 FR 66778
10th R&O	12/01/99	64 FR 67372
9th R&O and 18th Order on Recon	12/01/99	64 FR 67416
19th Order on Recon	12/30/99	64 FR 73427
20th Order on Recon	05/08/00	65 FR 26513
Public Notice	07/18/00	65 FR 44507
12th R&O, MO&O and FNPRM	08/04/00	65 FR 47883
FNPRM and Order	11/09/00	65 FR 67322
FNPRM	01/26/01	66 FR 7867
R&O and Order on Recon	03/14/01	66 FR 16144
NPRM	05/08/01	66 FR 28718
Order	05/22/01	66 FR 35107
14th R&O and FNPRM	05/23/01	66 FR 30080
FNPRM and Order	01/25/02	67 FR 7327
NPRM and Order	02/15/02	67 FR 10846
NPRM	02/15/02	67 FR 9232
FNPRM and R&O	02/26/02	67 FR 11254
NPRM	04/19/02	67 FR 34653

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Undetermined

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RIN: 3060–AF85

4090. TOLL-FREE SERVICE ACCESS CODES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 201 et seq; 47 USC 251(e)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This proceeding assures that toll-free numbers are allocated on an efficient, fair, and orderly basis.

Timetable:

Action	Date	FR Cite
NPRM	10/05/95	60 FR 57157
Second R&O	04/25/97	62 FR 20126
Third R&O	10/09/97	62 FR 55179
Fourth R&O and MO&O	03/30/98	63 FR 16440
Fifth R&O	07/05/00	65 FR 53189

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 3060–AG11

4091. IMPLEMENTATION OF SECTION 273 OF THE TELECOMMUNICATIONS ACT OF 1996

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 153; 47 USC 154; 47 USC 157; 47 USC 201 to 209; 47 USC 218; 47 USC 251; 47 USC 273; 47 USC 403

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This rulemaking implements provisions of the Telecommunications Act of 1996 relating to the manufacturing of telecommunications equipment and customer premises equipment by the Bell Operating Companies and their affiliates.

Timetable:

Action	Date	FR Cite
NPRM	01/24/97	62 FR 3638

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 3060–AG36

4092. TELECOMMUNICATIONS CARRIERS' USE OF CUSTOMER PROPRIETARY NETWORK INFORMATION AND OTHER CUSTOMER INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 222; 47 USC 275; 47 USC 303(r)

CFR Citation: 47 CFR 64.2001; 47 CFR 64.2003; 47 CFR 64.2005; 47 CFR 64.2007; 47 CFR 64.2009

Legal Deadline: None

Abstract: The Commission adopted rules implementing the new statutory framework governing carrier use and disclosure of customer proprietary

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network information (CPNI) created by section 222 of the Communications Act of 1934, as amended. CPNI includes, among other things, to whom, where, and when a customer places a call, as well as the types of service offerings to which the customer subscribes and the extent to which the service is used.

Timetable:

Action	Date	FR Cite
NPRM	05/28/96	61 FR 26483
Public Notice	02/25/97	62 FR 8414
Second R&O and FNPRM	04/24/98	63 FR 20364
Order on Reconsideration	10/01/99	64 FR 53242
Final Rule, Announcement of Effective Date	01/26/01	66 FR 7865
Clarification Order & Second NPRM	09/07/01	66 FR 50140
3rd R&O and 3rd FNPRM (Release Date)	07/25/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AG43

4093. IMPLEMENTATION OF SECTION 402(B)(1)(A) OF THE TELECOMMUNICATIONS ACT OF 1996; LEC TARIFF STREAMLINING PROVISIONS

Priority: Other Significant

Legal Authority: 47 USC 151; 47 USC 154

CFR Citation: 47 CFR 1.773(a); 47 CFR 61.58

Legal Deadline: Final, Statutory, February 8, 1997, The Act of 1996 provides that streamlining provisions apply to any charge, classification, regulation, or practice filed on or after one year after date of enactment of the Act (i.e., 2/8/97).

Abstract: In this Report and Order, the FCC adopted rules to implement the specific streamlining requirements of the Telecommunications Act of 1996. Petitions for reconsideration were filed.

Timetable:

Action	Date	FR Cite
NPRM	09/24/96	61 FR 49987
NPRM Comment Period End	10/24/96	
R&O	02/07/97	62 FR 5757

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AG47

4094. ACCESS CHARGE REFORM

Priority: Economically Significant

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 154(j); 47 USC 201 to 205; 47 USC 403; 47 USC 553

CFR Citation: 47 CFR 61.41 to 61.49; 47 CFR 69

Legal Deadline: None

Abstract: On December 24, 1996, the Commission initiated a rulemaking to revise its access charge rules to make them compatible with a competitive market envisioned by the Telecommunications Act of 1996. On May 7, 1997, the Commission adopted revised access charge rate structure rules and adjusted the price cap productivity factor. The Commission also adopted a market-based approach to reducing overall access charge levels and moving such levels toward forward-looking economic costs. The Commission adopted a Further Notice of Proposed Rulemaking seeking comment on proposals to allow presubscribed interexchange carrier charges on special access lines and to adjust the allocation of General Support Facilities costs recovered through interstate access charges.

On July 10, 1997, on its own motion, and on October 9, 1997, in response to reconsideration petitions, the Commission revised or clarified certain parts of the rules adopted in the May 1997 Access Charge Reform Order. On November 26, 1997, the Commission adopted rules requiring price cap carriers to adjust the allocation of General Support Facilities costs and to reduce their price cap indices to ensure that regulated access rates do not recover those costs which are related to nonregulated services. Reconsideration petitions filed in response to the Access Charge Reform Order, if not yet addressed, will be addressed in future reconsideration orders. On May 27, 1999, the Commission initiated a further rulemaking, seeking comment on how to adjust interstate access charges in conjunction with the removal from access charges of implicit universal service support for non-rural local exchange carriers. On August 5, 1999, the Commission adopted rules implementing the market-based approach to access charge reform, pursuant to which incumbent price cap local exchange carriers receive progressively greater pricing flexibility as competition develops. The Commission also initiated a Further Notice of Proposed Rulemaking, seeking comment on additional pricing flexibility, proposed changes to the rate structure for local switching and tandem-switched transport, and the need to constrain access charges imposed by competitive local exchange carriers. Reconsideration petitions filed in response to the November 1997 General Support Facilities Order will be addressed in a future reconsideration order. On May 31, 2000, the Commission adopted an industry proposal establishing a 5-year plan for price cap local exchange carriers and resolving many outstanding issues concerning interstate access charges and interstate universal service. On April 27, 2001, the Commission revised its tariff rules to establish benchmark access rates for competitive local exchange carriers, whereby access rates at or below the benchmark will be presumed just and reasonable and may be imposed by tariff, and access rates above the benchmark will be mandatorily detariffed. The Commission adopted a rural exemption to this benchmark scheme, recognizing that a higher level of access charges is justified for certain carriers serving rural areas. On May 21, 2001, the Commission determined that price cap local exchange carriers should not be permitted to assess prescribed interexchange carrier charges on special access lines. On June 4, 2002, the Commission concluded a cost review proceeding in which it determined that price cap carriers' forward-looking costs justified scheduled increases to the subscriber line charge cap.

Timetable:

Action	Date	FR Cite
NPRM	01/31/97	62 FR 4670
FNPRM	06/06/97	62 FR 31040
R&O	06/11/97	62 FR 31868
Second Report & Order	06/11/97	62 FR 31939
Order on Reconsideration	07/29/97	62 FR 40460
Second Order on Reconsideration	10/29/97	62 FR 56121
Third Report & Order	12/15/97	62 FR 65619
Public Notice	10/09/98	63 FR 54430
Third Order on Reconsideration	10/15/98	63 FR 55334
Fourth Report & Order and FNPRM	06/09/99	64 FR 30949
Fifth Report & Order and FNPRM	09/22/99	64 FR 51258
NPRM	10/04/99	64 FR 53648
Sixth Report & Order	06/21/00	65 FR 38684
Public Notice	06/26/00	65 FR 39335
Seventh Report & Order and FNPRM	05/21/01	66 FR 27892
Order	07/20/01	66 FR 37943
Order	06/25/02	67 FR 42735

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 3060–AG49

4095. IMPLEMENTATION OF THE LOCAL COMPETITION PROVISIONS OF THE TELECOMMUNICATIONS ACT OF 1996

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151 to 155; 47 USC 157; 47 USC 201 to 205; 47 USC 207 to 209; 47 USC 218

CFR Citation: 47 CFR 51; 47 CFR 52

Legal Deadline: Final, Statutory, August 8, 1996.

Abstract: The Second Report and Order and Memorandum Opinion and Order implemented the dialing parity, nondiscriminatory access, network disclosure, and number administration provisions of the Telecommunications Act of 1996. The Order also denied the Petition for Expedited Declaratory Ruling on the area code relief plan for Dallas and Houston filed with the FCC by the Texas Public Utilities Commission on May 9, 1996. Finally, this Order addressed petitions for clarification or reconsideration in the matters of proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech and the Administration of the North American Numbering Plan. On July 19, 1999, the Commission released an order denying the petition for reconsideration of the Local Competition Second Report and Order and Memorandum Opinion and Order filed by Beehive Telephone Company, Inc., Local Competition Second Report and Order, First Order on Reconsideration, CC Docket No. 96-98, FCC 99-170, 1999 WL 507245 (1999). On August 17, 1999, Beehive filed a Notice of Appeal of this order with the U.S. Court of Appeals for the D.C. Circuit. On May 18, 2000, the Court affirmed the Commission's decision without a published opinion. On June 30, 2000, Beehive filed a Petition for Rehearing with the Court. That petition was denied on July 18, 2000.

On September 9, 1999, the Commission released the Second Order on Reconsideration of the Local Competition Second Report and Order, FCC 99-227, resolving petitions for reconsideration of rules adopted in the Local Competition Second Report and Order to implement the requirement of section 251(b)(3), 47 U.S.C. section 251(b)(3), that LECs provide non-discriminatory access to directory assistance, directory listing and operator services. At the same time the Commission released a Notice of Proposed Rulemaking (NPRM), FCC 99-227, seeking comment on issues related to developments in, and the convergence of, directory publishing and directory assistance. On October 21, 1999, the Commission released the Third Order on Reconsideration of the Local Competition Second Report and Order, FCC 99-243, resolving the petitions for reconsideration regarding numbering administration under section 251(e)(1) of the Act, 47 U.S.C. section 251(e)(1).On January 9, 2002, the Commission released an Order on Reconsideration dismissing petitions for reconsideration or clarification of the Local Competition Second Report and order and Memorandum Opinion and Order regarding dialing parity under section 251(b)(3) of the Act, 47 U.S.C. section 251(b)(3), and network disclosure under Section 251(c)(1) of the Act, 47 U.S.C. section 251(c)(1). On January 23, 2001, the Commission released a First Report and Order, FCC 01-27, resolving issues raised in the September 9th NPRM, and concluding, among other things, that competing Directory Assistance (DA) providers that are certified as CLECs, are agents of CLECs, or that offer call completion services provide telephone exchange or telephone toll service, and thus are entitled to nondiscriminatory access to LEC local DA databases.

Petitions for Reconsideration in response to this Order are currently pending before the Commission.

Timetable:

Action	Date	FR Cite
NPRM	04/25/96	61 FR 18311
NPRM Comment Period End	06/03/96	
Order	09/06/96	61 FR 47284
NPRM	09/27/99	64 FR 51949
Second Order on Recon	09/27/99	64 FR 51910
Third Order on Recon	11/18/99	64 FR 62983
First Report & Order	02/21/01	66 FR 10965

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Federal

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RIN: 3060–AG50

4096. ENHANCED 911 SERVICES FOR WIRELINE

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 201; 47 USC 222; 47 USC 251

CFR Citation: 47 CFR 64.706; 47 CFR 64.708; 47 CFR 68.2; 47 CFR 68.3; 47

CFR 68.3(a); 47 CFR 68.228; 47 CFR 68.308; 47 CFR 68.310

Legal Deadline: None

Abstract: The rules generally will assist State governments in drafting legislation that will ensure that multi-line telephone systems are compatible with the enhanced 911 network.

Timetable:

Action	Date	FR Cite
NPRM	10/11/94	59 FR 54878

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal, Federal

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RIN: 3060–AG60

4097. COMPUTER III FURTHER REMAND PROCEEDINGS: BELL OPERATING COMPANY PROVISION OF ENHANCED SERVICES

Priority: Other Significant

Legal Authority: 47 USC 151; 47 USC 152; 47 USC 154; 47 USC 160; 47 USC 161; 47 USC 202 to 205; 47 USC 251; 47 USC 271; 47 USC 272; 47 USC 274 to 276

CFR Citation: 47 CFR 51; 47 CFR 53; 47 CFR 64

Legal Deadline: None

Abstract: On January 30, 1998, the FCC released a Further Notice of Proposed Rulemaking (FNPRM) proposing to streamline the safeguards under which the Bell Operating Companies (BOCs) provide information (or enhanced) services, such as voice mail and electronic messaging. The FCC sought comment on tentative conclusions relating to nonstructural safeguards, Comparably Efficient Interconnection (CEI) plans, and network information disclosure rules, among other things. Finally, the FNPRM sought to build a record on which to respond to a partial remand of certain orders by the Court of Appeals for the Ninth Circuit. On February 25, 1999, the Commission adopted a Report and Order which streamlined the Commission's CEI and network information disclosure rules. Although the BOCs must continue to comply with their CEI obligations, they are no longer required to obtain pre-approval of their CEI plans and amendments from the Commission before initiating or altering an intra-LATA information service. Instead, the Commission requires the BOCs to post their CEI plans on their publicly accessible Internet sites, and to notify the Common Carrier Bureau upon such posting. The Commission removed the network information disclosure rules set forth in the Computer II and Computer III proceedings, with the narrow exception of the Computer II rules that require carriers to disclose changes that could affect how customer premises equipment (CPE) is attached to the network. On March 7, 2001, the FCC released a Public Notice requesting further comment on the outstanding issues discussed in its January 30, 1998 FNPRM.

Because the issues in this FNPRM overlap with certain issues that the Commission is now considering in a separate docket regarding broadband services, the Commission has incorporated the FNPRM into the broadband proceeding insofar as the FNPRM relates to the BOCs' obligations to promote access to their networks with respect to broadband services. The broadband proceeding is entitled, "Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities; Universal Service Obligations of Broadband Providers," CC Docket No. 02-33, NPRM, FCC 02-42 (rel. Feb. 15, 2002).

Timetable:

Action	Date	FR Cite
FNPRM	02/26/98	63 FR 9749
R&O	03/24/99	64 FR 14141
Public Notice	03/15/01	66 FR 15064
NPRM	02/15/02	67 FR 9232
NPRM Comment Period End	04/15/02	
Reply Comment Period End	07/01/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 3060–AG72

4098. DETARIFFING OF COMPETITIVE LOCAL EXCHANGE CARRIERS' INTERSTATE EXCHANGE ACCESS SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151 to 154; 47 USC 160; 47 USC 201 to 205

CFR Citation: 47 CFR 61.26

Legal Deadline: None

Abstract: In an Order released on April 27, 2001, the Commission addressed a number of interrelated issues concerning charges for interstate switched access services provided by competitive local exchange carriers (CLECs) and the obligations of interexchange carriers to exchange access traffic with CLECs. The Order seeks to ensure that CLEC access charges are just and reasonable, to reduce regulatory arbitrage opportunities, and to avoid disrupting the development of competition in the local telecommunications market.

In an attached Further Notice of Proposed Rulemaking, the Commission sought comment on whether tariffed CLEC-provided access service for toll free, or "8YY," numbers should be afforded different treatment than CLEC tariffed switched access traffic generally.

Timetable:

Action	Date	FR Cite
NPRM	07/17/97	62 FR 38244
FNPRM	09/22/99	64 FR 51280
Public Notice	06/26/00	65 FR 39335
Order	05/21/01	66 FR 27892
FNPRM	05/21/01	66 FR 27927

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 3060–AG73

4099. PERFORMANCE MEASUREMENTS AND REPORTING REQUIREMENTS FOR OPERATIONS SUPPORT SYSTEMS, INTERCONNECTION, OPERATOR SERVICES, AND DIRECTORY ASSISTANCE

Priority: Other Significant

Legal Authority: 47 USC 151; 47 USC 152; 47 USC 154; 47 USC 201; 47 USC 202; 47 USC 251; 47 USC 303

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: On April 17, 1998, the FCC released an NPRM seeking comment on a set of model performance measurements and reporting requirements for operations support systems, interconnection, and access to operator services and to directory assistance.

Timetable:

Action	Date	FR Cite
NPRM	04/17/98	63 FR 27021
NPRM (To Terminate Proceeding)	11/19/01	66 FR 59759

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 3060–AH00

4100. DEPLOYMENT OF WIRELINE SERVICES OFFERING ADVANCED TELECOMMUNICATIONS CAPABILITY

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 152; 47 USC 153; 47 USC 154; 47 USC 157; 47 USC 160; 47 USC 201; 47 USC 202; 47 USC 203; 47 USC 204; 47 USC 205; 47 USC 251; 47 USC 252; 47 USC 253; 47 USC 254; 47 USC 256; 47 USC 271; 47 USC 303(r)

CFR Citation: 47 CFR 51.5; 47 CFR 51.230; 47 CFR 51.231; 47 CFR 51.232; 47 CFR 51.233; 47 CFR 51.319; 47 CFR 51.321; 47 CFR 51.323; 47 CFR 51.605; 47 CFR 51.607

Legal Deadline: None

Abstract: On March 31, 1999, the Commission released a First Report and Order and Further Notice of Proposed Rulemaking (NPRM) (Advanced Services Order), in CC Docket No. 98-147, adopting several measures to enable competitive providers of advanced services such as those used to provide high-speed Internet access, to deploy new technologies on a faster, more cost-effective basis to consumers. This order is intended to create marketplace conditions conducive to the nationwide deployment of advanced telecommunications services consistent with the goals of section 706 of the Telecommunications Act of 1996. Because the Commission concluded that the record did not sufficiently address long-term spectrum compatibility issues, the Commission adopted a companion Further NPRM that sought comment on issues related to developing long-term standards and practices for spectrum compatibility and management. In the Further NPRM, the Commission also tentatively concluded that it is technically feasible for two different telecommunications carriers sharing a single line to provide traditional voice service and advanced services. The Further Notice sought comment on the operational, pricing, legal and policy ramifications of mandating such line sharing at the Federal level.

On November 9, 1999, the Commission released a Second Report and Order (Advanced Services Resale Order) in CC Docket No. 98-147, which addressed whether the discounted resale obligation of section 251(c)(4) applies to incumbent Local Exchange Carrier (LEC) provision of advanced services. The Commission determined that analysis of section 251(c)(4) requires a fact-specific evaluation of the features and characteristics of a particular transaction, and concluded that advanced services sold at retail by incumbent LECs to residential and business end-users are subject to the section 251(c)(4) discounted resale obligation, without regard to their classification as telephone exchange service or exchange access service. The Commission, however, reached a different result as to advanced services sold to Internet Service Providers for inclusion in a high-speed Internet service offering, concluding that these advanced services are inherently different from advanced services made available directly to business and residential end-users, and as such, are not subject to the discounted resale obligations of section 251(c)(4).

On December 9, 1999, the Commission released a Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (Line Sharing Order). In the Line Sharing Order, the Commission adopted measures to promote the availability of competitive broadband Digital Subscriber Line (DSL) services, especially to residential and small business customers. The Third R&O amended the Commission's network unbundling rules to require incumbent LECs to provide unbundled access to a new network element, the high frequency portion of the local loop. This enables competitive LECs to compete with incumbent LECs to provide DSL services through telephone lines that the competitive LECs can share with incumbent LECs. In addition, the Line Sharing Order adopted spectrum management policies and rules to facilitate the competitive deployment of advanced services. These rules will significantly benefit the rapid and efficient deployment of DSL technologies.

On January 19, 2001, the Commission issued an Order on Reconsideration and a Further Notice of Proposed Rulemaking in which the Commission reinforced its line sharing rules to promote availability of unbundled access to the high frequency portion of the loop. It also addressed issues in a variety of petitions for clarification and/or reconsideration filed in response to the Line Sharing Order.

On December 20, 2001, the Commission released a Notice of Proposed Rulemaking in CC Docket Nos. 01-338, 96-98, and 98-147 seeking comment on whether, in light of changed circumstances, it should retain the unbundling require

Timetable:

Action	Date	FR Cite
NPRM	08/24/98	63 FR 45140

Action	Date	FR Cite
Order	08/24/98	63 FR 45133
R&O and Further NPRM	04/30/99	64 FR 23229
Third R&O	01/10/00	65 FR 1331
Second R&O	02/11/00	65 FR 6912
Reconsideration Order and Further NPRM	02/06/01	66 FR 9035
NPRM	01/15/02	67 FR 1947
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH03

4101. PRESCRIBING THE AUTHORIZED RATE OF RETURN FOR INTERSTATE SERVICES OF LOCAL EXCHANGE CARRIERS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 201(b); 47 USC 202 to 205; 47 USC 218 to 220; 47 USC 303(r); 47 USC 403

CFR Citation: 47 CFR 65.301

Legal Deadline: None

Abstract: This Notice initiates a proceeding to represcribe the authorized rate of return for interstate access services provided by ILECs. It marks the first prescription proceeding since we revised the rules governing procedures and methodologies for prescribing and enforcing the rate of return for ILECs not subject to price cap regulation, and the first prescription proceeding since the Commission adopted its price cap rules for local exchange carriers. In this Notice, we seek comment on the methods by which we could calculate the ILECs' cost of capital. In the Notice, we propose corrections to errors in the codified formulas for the cost of debt and cost of preferred stock and seek comment on whether this proceeding warrants a change in the low-end formula adjustment for local exchange carriers subject to price caps.

Timetable:

Action	Date	FR Cite
NPRM	10/05/98	63 FR 55988
NPRM Comment Period End	04/08/99	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Andrew G. Mulitz, Legal Branch Chief, Accounting Safeguards Division, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street, SW., Washington, DC 20554
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RIN: 3060–AH18

4102. LOCAL TELEPHONE NETWORKS THAT LECS MUST MAKE AVAILABLE TO COMPETITORS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 251

CFR Citation: 47 CFR 51 (Revision)

Legal Deadline: None

Abstract: This revises the rules applicable to incumbent local exchange carriers (LECs) to permit competitive carriers to access portions of the incumbent LECs' networks on an unbundled basis. Unbundling allows competitors to lease portions of the incumbent LECs' network to provide telecommunications services. These rule changes are intended to remove uncertainty regarding the incumbent LECs' unbundling obligations under the Telecommunications Act of 1996 and are expected to accelerate the development of local exchange competition.

On April 10, 2001, the Commission issued a Public Notice seeking comment on a Joint Petition filed by BellSouth, SBC, and Verizon asking the Commission to find that high-capacity loops and dedicated transport should not be subject to mandatory unbundling. The Commission issued Public Notices on April 23, 2001 and May 14, 2001 seeking additional comment.

On December 20, 2001, the Commission issued a Notice of Proposed Rulemaking to comprehensively consider the appropriate changes, if any, to its unbundling policies in light of market developments and technological advances. 67 Fed. Reg. 1947. As part of this triennial review, the Commission incorporated the records of several pending proceedings on unbundling into this docket, including: (1) the availability of loops, transport, and combinations thereof; (2) high-capacity loops and dedicated transport; (3) local switching; and (4) next-generation networks.

On May 29, 2002, the Commission extended the reply comment date of the Notice of Proposed Rulemaking to July 17, 2002, to allow all interested parties to incorporate their review and analysis of USTA v. FCC, 290 F.3d 415 (D.C. Cir.2002). On August 1, 2002, the Commission issued a Public Notice seeking comment on a Verizon telephone companies' petition asking the Commission to forbear from applying certain section 271 checklist items if the Commission determines that the corresponding network elements no longer need to be unbundled. On August 13, 2002, the Commission issued a Public Notice seeking comment on a petition filed by WorldCom, Inc. asking the Commission to declare that requesting carriers are entitled to access certain data from incumbent LECs at cost-based rates when they use such data to provide interexchange and exchange access service.

Timetable:

Action	Date	FR Cite
Second Further NPRM	04/26/99	64 FR 20238
Fourth Further NPRM	01/14/00	65 FR 2367
Second Errata Third R&O and Fourth Further NPRM	01/18/00	65 FR 2542
Supplemental Order	01/18/00	65 FR 2542
Errata Third R&O and Fourth Further NPRM	01/18/00	65 FR 2542
Third R&O	01/18/00	65 FR 2542
Correction	04/11/00	65 FR 19334
Supplemental Order Clarification	06/20/00	65 FR 38214
Public Notice	02/01/01	66 FR 8555
Public Notice	03/05/01	66 FR 18279
Public Notice	04/10/01	
Public Notice	04/23/01	
Public Notice	05/14/01	
NPRM	01/15/02	67 FR 1947
Public Notice	05/29/02	
Public Notice	08/01/02	
Public Notice	08/13/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local

Agency Contact: Jeremy Miller, Attorney Advisor, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street, SW., Washington, DC 20554
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Fax: 202 418-1413

RIN: 3060–AH44

4103. 2000 BIENNIAL REGULATORY REVIEW — TELECOMMUNICATIONS SERVICE QUALITY REPORTING REQUIREMENTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154(i); 47 USC 154(j); 47 USC 201(b); 47 USC 303(r); 47 USC 403

CFR Citation: 47 CFR 32; 47 CFR 32.11; 47 CFR 32.1220(h); 47 CFR 32.2311(f); 47 CFR 32.2003(b); 47 CFR 32.5280(c); 47 CFR 32.27(c); 47 CFR 64.903(a)

Legal Deadline: None

Abstract: This NPRM proposes to eliminate our current service quality reports (ARMIS Report 43-05 and 43-06) and replace them with a more consumer-oriented report. The NPRM proposes to reduce the reporting categories from more than 30 to 6, and addresses the needs of carriers, consumers, state public utility commissions, and other interested parties.

Timetable:

Action	Date	FR Cite
NPRM	12/04/00	65 FR 75657
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 3060–AH72

4104. ACCESS CHARGE REFORM AND UNIVERSAL SERVICE REFORM

Priority: Economically Significant

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 154(j); 47 USC 201 to 205; 47 USC 254; 47 USC 403

CFR Citation: 47 CFR 36; 47 CFR 54; 47 CFR 61; 47 CFR 69

Legal Deadline: None

Abstract: On October 11, 2001, the Commission adopted an Order reforming the interstate access charge and universal service support system for rate-of-return incumbent carriers. The Order adopts three principal reforms. First, the Order modifies the interstate access rate structure for small carriers to align it more closely with the manner in which costs are incurred. Second, the Order removes implicit support for universal service from the rate structure and replaces it with explicit, portable support. Third, the Order permits small carriers to continue to set rates based on the authorized rate of return of 11.25 percent. The Order became effective on January 1, 2002, and the support mechanism established by the Order was implemented beginning July 1, 2002.

The Commission also adopted a Further Notice of Proposed Rulemaking (FNPRM) seeking additional comment on proposals for incentive regulation, increased pricing flexibility for rate-of-return carriers, and proposed changes to the Commission's "all-or-nothing" rule. Comments on the FNPRM were due on February 14, 2002, and reply comments on March 18, 2002.

Timetable:

Action	Date	FR Cite
NPRM	01/25/01	66 FR 7725
Report and Order	11/30/01	66 FR 59719
Further NPRM	11/30/01	66 FR 59761
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: William Scher, Attorney, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street, SW., Washington, DC 20554
Phone: 202 418-7400

RIN: 3060–AH74

4105. 2000 BIENNIAL REGULATORY REVIEW — COMPREHENSIVE REVIEW OF THE ACCOUNTING REQUIREMENTS AND ARMIS REPORTING REQUIREMENTS FOR INCUMBENT LOCAL EXCHANGE CARRIERS; PHASE 2 AND PHASE 3

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154(i); 47 USC 154(j); 47 USC 161; 47 USC 201(b); 47 USC 303(r); 47 USC 403

CFR Citation: 47 CFR 32.1 et seq

Legal Deadline: None

Abstract: This NPRM seeks comment on various measures to streamline existing accounting and ARMIS reporting requirements.

Timetable:

Action	Date	FR Cite
NPRM	11/13/00	65 FR 67675
NPRM Comment Period End	03/14/01	
Public Notice	06/26/01	66 FR 33938
Public Notice Comment Period End	07/26/01	
R&O	02/06/02	67 FR 5669
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Clifford Rand, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW, Washington, DC 20554
Phone: 202 418-0803

RIN: 3060–AH76

4106. STREAMLINING PROCEDURES FOR COMMON CARRIER TRANSFERS OF CONTROL AND IMPLEMENTATION OF FURTHER STREAMLINING MEASURES FOR DOMESTIC SECTION 214 AUTHORIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 152; 47 USC 154(i); 47 USC 154(j); 47 USC 201; 47 USC 214; 47 USC 303(r)

CFR Citation: 47 CFR 63.01; 47 CFR 63.51; 47 CFR 63.52

Legal Deadline: None

Abstract: On July 20, 2001, the Commission adopted a Notice of Proposed Rulemaking in CC Docket No. 01-150 (FCC 01-205) (Merger Streamlining NPRM). The Commission

proposes to streamline application procedures under 47 USC 214 for common carrier authorizations to acquire domestic transmission lines through acquisitions of corporate control. The Commission requests comments on the criteria it should adopt for deciding which applications would require little scrutiny to determine that they would serve the public interests.

On March 14, 2002, the Commission adopted rules to streamline the review of applications for section 214 authorization to transfer control of domestic transmission liens. The streamlining procedures allow domestic telecommunications carriers to qualify for expedited review of their merger applications, thus eliminating unnecessary regulatory burdens on carriers while increasing the efficiency and transparency of the FCC review process.

Timetable:

Action	Date	FR Cite
NPRM	08/09/01	66 FR 41823
R&O	04/17/02	67 FR 18827

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH79

4107. NUMBERING RESOURCE OPTIMIZATION

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 201 et seq.; 47 USC 251(e)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: In 1999, the Commission released the Numbering Resource Optimization Notice of Proposed Rulemaking (Notice) in CC Docket 99-200. The Notice examined and sought comment on several administrative and technical measures aimed at improving the efficiency with which telecommunications numbering resources are used and allocated. It incorporated input from the North American Numbering Council (NANC), a federal advisory committee, which advises the Commission on issues related to number administration.

In the Numbering Resource Optimization First Report and Order and Further Notice of Proposed Rulemaking (NRO First Report and Order), released on March 31, 2000, the Commission adopted a mandatory utilization data reporting requirement, a uniform set of categories of numbers for which carriers must report their utilization, and a utilization threshold framework to increase carrier accountability and incentives to use numbers efficiently. In addition, the Commission adopted a single system for allocating numbers in blocks of one thousand, rather than ten thousand, wherever possible, and established a plan for national rollout of thousands-block number pooling. The Commission also adopted numbering resource reclamation requirements to ensure that unused numbers are returned to the North American Numbering Plan (NANP) inventory for assignment to other carriers. Also, to encourage better management of numbering resources, carriers are required, to the extent possible, to first assign numbering resources within thousands blocks (a form of sequential numbering).

In the NRO Second Report and Order, the Commission adopted a measure that requires all carriers to use at least 60% of their numbering resources before they may get additional numbers in a particular area. That 60% utilization threshold increases to 75% over the next three years. The Commission also established a five-year term for the national Pooling Administrator and an auditing program to verify carrier compliance with the Commission's rules. Furthermore, the Commission addressed several issues raised in the Notice, concerning area code relief. Specifically, the Commission declined to amend the existing federal rules for area code relief or specify any new federal guidelines for the implementation of area code relief. The Commission also declined to state a preference for either all-services overlays or geographic splits as a method of area code relief. Regarding mandatory nationwide ten-digit dialing, the Commission declined to adopt this measure at the present time. Furthermore, the Commission declined to mandate nationwide expansion of the "D digit" (the "N" of an NXX or central office code) to include 0 or 1, or to grant state commissions the authority to implement the expansion of the D digit as a numbering resource optimization measure at the present time.

In the NRO Third Report and Order, the Commission addressed national thousands-block number pooling administration issues, including declining to alter the implementation date for covered CMRS carriers to participate in pooling. The Commission also addressed federal cost recovery for national thousands-block number pooling, and continued to require states to establish cost recovery mechanisms for costs incurred by carriers participating in pooling trials. The Commission reaffirmed the Months-to-Exhaust (MTE) requirement for carriers. The Commission declined to lower the utilization threshold established in the Second Report and Order, and declined to exempt pooling carriers from the utilization threshold. The Commission also established a safety valve mechanism to allow carriers that do not meet the utilization threshold in a given rate center to obtain additional numbering resources.

In the NRO Third Report and Order, the Commission lifted the ban on technology specific overlays (TSOs), and delegated authority to the Common Carrier Bureau, in consultation with the Wireless Telecommunications Bureau, to resolve any such petitions. Furthermore, the Commission found that carriers who violate our numbering requirements, or fail to cooperate with an auditor conducting either a "for cause" or random audit, should be denied numbering resources in certain instances. The Commission also reaffirmed the 180-day reservation period, declined to impose fees to extend the reservation period, and found that state commissions should be allowed password-protected access to the NANPA database for data pertaining to NPAs located within their state.

The measures adopted in the NRO orders will allow the Commission to monitor more closely the way numbering resources are used within the NANP, and will promote more efficient allocation and use of NANP resources by tying a carrier's ability to obtain numbering resources more closely to its actual need for numbers to serve its customers. These measures are designed to create national standards to optimize the use of numbering resources by: (1) minimizing the negative impact on consumers of premature area code exhausts; (2) ensuring sufficient access to numbering resources for all service providers to enter into or to compete in telecommunications markets; (3) avoiding premature exhaust of the NANP; (4) extending the life of the NANP; (5) imposing the least societal cost possible, and ensuring competitive neutrality, while obtaining the highest benefit; (6) ensuring that no class of carrier or consumer is unduly favored or disfavored by the Commission's optimization efforts; and (7) minimizing the incentives for carriers to build and carry excessively large inventories of numbers.

In NRO Third Order on Recon in CC Docket No. 99-200, Third Further Notice of Proposed Rulemaking in CC Docket No. 99-200 and Second Further Notice of Proposed Rulemaking in CC Docket No, 95-116, the Commission reconsidered its findings in the NRO Third Report and Order regarding the local Number portability (LNP) and thousands-block number pooling requirements for carriers in the top 100 Metropolitan Statistical areas (MSAs). Specifically, the Commission reversed its clarification that those requirements extend to all carriers in the largest 100 MSAs, regardless of whether they have received a request from another carrier to provide LNP. The Commission also sought comment on whether the Commission should again extend the LNP requirements to all carriers in the largest 100 MSAs, regardless of whether they receive a request to provide LNP. The Commission also sought comment on whether all carriers in the top 100 MSAs should be required to participate in thousands-block number pooling, regardless of whether they are required to be LNP capable. In addition, the Commission sought comment on whether all MSAs included in Combined Metropolitan Statistical Areas (CMSAs) on the Census Bureau's list of the largest 100 MSAs should be included on the Commission's list of the top 100 MSAs.

Timetable:

Action	Date	FR Cite
NPRM	06/17/99	64 FR 32471
R&O and Further NPRM	06/16/00	65 FR 37703
Second R&O and Second Further NPRM	02/08/01	66 FR 9528
Third R&O and Second Order on Recon	02/12/02	67 FR 643
3rd O on Recon & 3rd FNPRM	04/05/02	67 FR 16347

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Undetermined

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RIN: 3060–AH80

4108. PERFORMANCE MEASUREMENTS AND STANDARDS FOR UNBUNDLED NETWORK ELEMENTS AND INTERCONNECTION

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 47 USC 151, 152; 47 USC 154(i), 201; 47 USC 202, 206-209; 47 USC 251, 253; 47 USC 503,504,706

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: On November 8, 2001, the Commission opened a rulemaking to consider whether it should adopt a modest group of national performance measurements and standards for evaluating the provision of unbundled network elements by Incumbent Local Exchange Carriers.

Timetable:

Action	Date	FR Cite
NPRM	11/30/01	66 FR 59759

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 3060–AI00

4109. PERFORMANCE MEASUREMENTS AND STANDARDS FOR INTERSTATE SPECIAL ACCESS SERVICES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 47 USC 101, 152; 47 USC 154(i); 47 USC 201, 202; 47 USC 206 to 209, 251; 47 USC 272, 503

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: On November 16, 2001, the Commission opened a rulemaking to consider whether it should adopt national performance measurements, standards, and penalties for the provision of interstate special access services.

Timetable:

Action	Date	FR Cite
NPRM	12/10/01	66 FR 63651

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 3060–AI01

4110. CUSTOMER PREMISES EQUIPMENT/ENHANCED SERVICES BUNDLING RESTRICTIONS IN COMPUTER II

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151, 152; 47 USC 154, 160; 47 USC 161, 201 to 205; 47 USC 215, 218; 47 USC 220, 303(r)

CFR Citation: 47 CFR 64.702(e)

Legal Deadline: None

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FCC—Wireline Competition Bureau

Long-Term Actions

Abstract: This further notice of proposed rulemaking examines the need for certain restrictions on a common carrier's ability to bundle customer premises equipment (CPE), enhanced services, and regulated telecommunications services.

Timetable:

Action	Date	FR Cite
FNPRM	10/09/98	63 FR 56892
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AI03

Federal Communications Commission (FCC)
Wireline Competition Bureau

Completed Actions

4111. 1998 BIENNIAL REGULATORY REVIEW — REVIEW OF ACCOUNTING AND COST ALLOCATION REQUIREMENTS

Priority: Other Significant

Legal Authority: 47 USC 151; 47 USC 152; 47 USC 154; 47 USC 161; 47 USC 220

CFR Citation: 47 CFR 32.11; 47 CFR 32.16; 47 CFR 32.2000(b); 47 CFR 32.2114; 47 CFR 32.2115; 47 CFR 32.2116; 47 CFR 32.5280; 47 CFR 32.6114; 47 CFR 32.6115; 47 CFR 32.6116; 47 CFR 64.903; 47 CFR 64.904

Legal Deadline: None

Abstract: This Report and Order modifies the FCC's cost allocation and accounting rules as part of the biennial regulatory review process. Specifically, it (1) raises the threshold significantly for Class A accountings, thus allowing mid-sized carriers currently required to use Class A accounts to use the more streamlined Class B accounts; (2) establishes less burdensome cost allocation manual (CAM) procedures for the mid-sized incumbent local exchange carriers (LECs) and reduces the frequency with which independent audits of the cost allocations are required; and (3) makes several changes to the uniform system of accounts to reduce accounting requirements and to eliminate or consolidate accounts.

Timetable:

Action	Date	FR Cite
NPRM	06/17/98	63 FR 45208
NPRM Comment Period End	09/04/98	
Report & Order	06/30/99	64 FR 50002

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3060–AG98

4112. 1998 BIENNIAL REGULATORY REVIEW — REVIEW OF ARMIS REPORTING REQUIREMENTS

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 161; 47 USC 201; 47 USC 202; 47 USC 203; 47 USC 204; 47 USC 205; 47 USC 215; 47 USC 218; 47 USC 219; 47 USC 220; 47 USC 403

CFR Citation: 47 CFR 43.21

Legal Deadline: None

Abstract: This Report and Order reduces reporting requirements for incumbent local exchange carriers with annual operating revenues in excess of the annual indexed revenue threshold. These modifications are designed to minimize the reporting burden on carriers, improve the quality and use of the reported financial and operating data, and reduce the costs of collection, verification, and distribution of the data.

Timetable:

Action	Date	FR Cite
NPRM	07/17/98	63 FR 44220
NPRM Comment Period End	09/04/98	
Report & Order	06/30/99	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3060–AG99

4113. 1998 BIENNIAL REGULATORY REVIEW — REVIEW OF DEPRECIATION REQUIREMENTS FOR INCUMBENT LOCAL EXCHANGE CARRIERS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 161; 47 USC 201 to 205; 47 USC 215; 47 USC 218; 47 USC 220(h); 47 USC 403

CFR Citation: 47 CFR 32.2000; 47 CFR 43.43

Legal Deadline: None

Abstract: In the Report and Order we streamline further our depreciation prescription process by permitting summary filings and eliminating the prescription of depreciation rates for incumbent local exchange carriers, provided that the carrier uses depreciation factors that are within the ranges adopted by the Commission; expanding the prescribed range for the digital switching plant account; and eliminating theoretical reserve studies for mid-sized carriers. We also set forth conditions pursuant to which a waiver from the Commission's depreciation prescription process may be appropriate. In the Memorandum Opinion and Order, we deny United States Telephone Association's petition for forbearance of our depreciation prescription process. We find that the petition did not meet the three-prong forbearance test under section 10 of the Act (47 U.S.C. section 160).

In the Second Report and Order, we declined to adopt a proposal to relieve carriers of our depreciation requirements where carriers elect an above-the-line accounting treatment of the regulatory-to-financial book differential.

Timetable:

Action	Date	FR Cite
NPRM	10/14/98	63 FR 56900
NPRM Comment Period End	12/08/98	
FNPRM	04/03/00	65 FR 19725
R&O and MO&O	04/10/00	65 FR 18926
Second Report and Order	02/09/01	66 FR 9681

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3060–AH20

4114. COMPREHENSIVE REVIEW OF ACCOUNTING REQUIREMENTS AND ARMIS REPORTING REQUIREMENTS, PHASE 1

Priority: Other Significant

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 161; 47 USC 220

CFR Citation: 47 CFR 32.13; 47 CFR 32.25; 47 CFR 32.27; 47 CFR 32.903; 47 CFR 32.904; 47 CFR 32.2002; 47 CFR 32.2003; 47 CFR 32.5999

Legal Deadline: None

Abstract: This Report and Order streamlines the FCC's accounting and reporting requirements by (1) eliminating the USOA expense matrix; (2) reducing audit burdens on incumbent local exchange carriers; (3) adopting a de minimis exception to the affiliate transactions rules; (4) eliminating other accounting requirements; and (5) streamlining reporting requirements in the ARMIS 43-02 USOA Report.

Timetable:

Action	Date	FR Cite
NPRM	07/14/99	64 FR 44877
NPRM Comment Period End	09/09/99	
Report and Order	03/28/00	65 FR 16328

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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Email: msavir@fcc.gov

RIN: 3060–AH43

4115. COMPREHENSIVE REVIEW OF THE ACCOUNTING REQUIREMENTS AND ARMIS REPORTING REQUIREMENTS FOR INCUMBENT LOCAL EXCHANGE CARRIERS; PHASE 1

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 201 to 205; 47 USC 215; 47 USC 218 to 220

CFR Citation: 47 CFR 32.13; 47 CFR 32.25; 47 CFR 32.27; 47 CFR 32.2002; 47 CFR 32.2003; 47 CFR 32.5999; 47 CFR 64.903; 47 CFR 64.904

Legal Deadline: None

Abstract: This Report and Order eliminates the expense matrix filing requirement in Section 32.5999(f) of the Commission's rules, 47 CFR Section 32.5999(f), and eliminates or streamlines several other accounting requirements. In addition, this Report and Order eliminates several tables and reporting items from our ARMIS report 43-02.

Timetable:

Action	Date	FR Cite
NPRM	08/18/99	64 FR 44877
Report and Order	10/02/00	65 FR 58661

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Timothy Peterson, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street, SW., Washington, DC 20554
Phone: 202 418-1575

RIN: 3060–AH77

[FR Doc. 02–25202 Filed 12–06–02; 8:45 am]
BILLING CODE 6712–01–S

FCC—Wireline Competition Bureau

Completed Actions

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Federal Deposit Insurance Corporation

Semiannual Regulatory Agenda

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FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Ch. III

Semiannual Agenda of Regulations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is hereby publishing items for the fall 2002 Unified Agenda of Regulatory and Deregulatory Actions. The agenda contains information about FDIC's current and projected rulemakings, existing regulations under review, and completed rulemakings.

FOR FURTHER INFORMATION CONTACT: Persons identified under regulations listed in the agenda. Unless otherwise noted, the address for all FDIC staff identified in the agenda is Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Twice each year, the FDIC publishes an agenda of regulations to inform the public of its regulatory actions and to enhance public participation in the rulemaking process. Publication of the agenda is in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The FDIC amends its regulations under the general rulemaking authority prescribed in section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819) and under specific authority granted by the Act and other statutes.

A number of the actions identified in this agenda have been developed to implement provisions of the Gramm-Leach-Bliley Act, or to implement other recent statutory mandates. Many of the FDIC's regulatory actions are coordinated with other Federal regulators, primarily the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRS), and the Office of Thrift Supervision (OTS). In some cases, the FDIC also coordinates with the National Credit Union Administration (NCUA).

Interested persons may petition the FDIC for the issuance, amendment, or repeal of any regulation by submitting a written petition to the Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429. Petitioners should include complete and concise statements of their interest in the subject matter and reasons why the petitions should be granted.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.

Federal Deposit Insurance Corporation—Prerule Stage

Sequence Number	Title	Regulation Identification Number
4116	12 CFR 327 Assessments—Assessment Base	3064-AB46

Federal Deposit Insurance Corporation—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4117	12 CFR 334 Fair Credit Reporting Act Regulations	3064-AC35
4118	12 CFR 342 Brokers and Dealers	3064-AC42
4119	12 CFR 330 Deposit Insurance Coverage	3064-AC43
4120	12 CFR 325 Simplified Capital Framework for Noncomplex Financial Institutions	3064-AC44
4121	12 CFR 303 Insurance of State Banks Chartered as Limited Liability Companies	3064-AC53
4122	12 CFR 330 Deposit Insurance Regulations; Living Trust Accounts; Depository Institution Checks; Deposit Insurance Pamphlet	3064-AC54
4123	12 CFR 303 Filing Procedures	3064-AC55

Federal Deposit Insurance Corporation—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4124	12 CFR 342 Qualification Requirements for the Recommendation or Sale of Certain Securities	3064-AB85
4125	12 CFR 366 Minimum Standards of Integrity and Fitness for an FDIC Contractor **(Section 610 Review)**	3064-AC29
4126	12 CFR 325 Risk-Based Capital Guidelines: Market Risk Measure; Securities Borrowing Transactions	3064-AC46
4127	12 CFR 303 Filing Procedures and Delegations of Authority	3064-AC51

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Federal Deposit Insurance Corporation—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
4128	12 CFR 345 Community Reinvestment Act Regulations **(Section 610 Review)**	3064-AC50

Federal Deposit Insurance Corporation—Completed Actions

Sequence Number	Title	Regulation Identification Number
4129	12 CFR 360 Payment of Post-Insolvency Interest in Receiverships With Surplus Funds	3064-AB92
4130	12 CFR 325 Risk-Based Capital Standards: Claims on Securities Firms	3064-AC17
4131	12 CFR 369 Prohibition Against Use of Interstate Branches Primarily For Deposit Production	3064-AC36
4132	12 CFR 313 Procedures for Corporate Debt Collection	3064-AC40

Federal Deposit Insurance Corporation (FDIC) — Prerule Stage

4116. ASSESSMENTS—ASSESSMENT BASE

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1441; 12 USC 1817 to 1819

CFR Citation: 12 CFR 327

Legal Deadline: None

Abstract: In 1994, the FDIC sought comment on a proposal to revise the assessment base used by insured institutions to determine the premium paid for deposit insurance. That initiative did not lead to a proposed rule. Instead, the FDIC plans to revisit the issue with a new advanced notice of proposed rulemaking on alternative options for the deposit component of the assessment base and on options regarding the float deduction and use of average daily deposit balances.

Timetable:

Action	Date	FR Cite
ANPRM	10/05/94	59 FR 50710
ANPRM Comment Period End	02/02/95	
Second ANPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Steve Wagoner, Senior Assessment Specialist, Division of Finance, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 416-7152

RIN: 3064–AB46

Federal Deposit Insurance Corporation (FDIC) — Proposed Rule Stage

4117. FAIR CREDIT REPORTING ACT REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1681s; 12 USC 1819(a)(Tenth)

CFR Citation: 12 CFR 334

Legal Deadline: None

Abstract: Section 506 of the Gramm-Leach-Bliley Act requires bank regulators and FTC to publish FCRA regulations to implement the Fair Credit Reporting Act. Due to comments received from a joint notice of proposed rulemaking, dated October 20, 2000, it is anticipated that the agencies will issue a new proposed rulemaking for public comment.

Timetable:

Action	Date	FR Cite
NPRM	10/20/00	65 FR 63120
NPRM Comment Period End	12/04/00	
Second NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert A. Patrick, Counsel, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 898-3757

RIN: 3064–AC35

4118. BROKERS AND DEALERS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 78a

CFR Citation: 12 CFR 342

Legal Deadline: Final, Statutory, May 12, 2001.

Abstract: This rulemaking implements section 204 of the Gramm-Leach-Bliley Act (GLBA), which requires the Federal banking agencies to establish recordkeeping requirements for banks relying on any of the broker-dealer exemptions listed in sections 201 and 202 of GLBA.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

FDIC — Proposed Rule Stage

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Michael Phillips, Counsel, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 898-3581

Related RIN: Related To 3064-AB85

RIN: 3064–AC42

4119. DEPOSIT INSURANCE COVERAGE

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1813(l)

CFR Citation: 12 CFR 330

Legal Deadline: None

Abstract: This rulemaking establishes a uniform and streamlined appeals process for deposit insurance claims.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Catherine Ribnick, Counsel, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 736-0117

RIN: 3064–AC43

4120. SIMPLIFIED CAPITAL FRAMEWORK FOR NONCOMPLEX FINANCIAL INSTITUTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1815(a)

CFR Citation: 12 CFR 325

Legal Deadline: None

Abstract: This notice, sponsored jointly by the OCC, the FRS, the FDIC and OTS, advises the public that the Agencies are considering developing a regulatory capital framework tailored to the size, structure, complexity, and risk profile of domestic, noncomplex financial institutions. The Agencies are seeking comment on possible regulatory capital frameworks that may ease the burden on these financial institutions, such as a simplified risk-based or a modified leverage ratio framework.

Timetable:

Action	Date	FR Cite
ANPRM	11/03/00	65 FR 66193
ANPRM Comment Period End	02/01/01	
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Michael Phillips, Counsel, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 898-3581

RIN: 3064–AC44

4121. • INSURANCE OF STATE BANKS CHARTERED AS LIMITED LIABILITY COMPANIES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 378; 12 USC 1813; 12 USC 1815; 12 USC 1816; 12 USC 1817; 12 USC 1818; 12 USC 1819 (Seventh and Tenth); 12 USC 1820; 12 USC 1823; 12 USC 1828; 12 USC 1831e; 12 USC 1831o; 12 USC 1831p-1; 12 USC 1831w; 12 USC 1835a; 12 USC 1843(l); 12 USC 3104; 12 USC 3105; 12 USC 3108; 12 USC 3207; 15 USC 1601 to 1607

CFR Citation: 12 CFR 303

Legal Deadline: None

Abstract: This rulemaking clarifies that a State bank that is chartered as a limited liability company would be considered to be incorporated for the purposes of being eligible for Federal deposit insurance under certain circumstances.

Timetable:

Action	Date	FR Cite
NPRM	07/23/02	67 FR 48054
NPRM Comment Period End	10/21/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Curtis L. Vaughn, Examination Specialist, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 898-6759

RIN: 3064–AC53

4122. • DEPOSIT INSURANCE REGULATIONS; LIVING TRUST ACCOUNTS; DEPOSITORY INSTITUTION CHECKS; DEPOSIT INSURANCE PAMPHLET

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1813(l); 12 USC 1813(m); 12 USC 1817(l); 12 USC 1818(q); 12 USC 1819 (Tenth); 12 USC 1820(f); 12 USC 1821(a)

CFR Citation: 12 CFR 330

Legal Deadline: None

Abstract: This rulemaking: (1) simplifies the regulations on the insurance coverage of living trust accounts; (2) adds an exemption for deposit funds withdrawn by an "official" depository institution check issued just before an insured depository institution fails and; (3) requires FDIC-insured depository institutions to make available to their customers the FDIC's deposit insurance brochure.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joseph A. DiNuzzo, Counsel, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 898-7349

RIN: 3064–AC54

4123. • FILING PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 378

CFR Citation: 12 CFR 303

Legal Deadline: None

Abstract: This rulemaking revises information requirements for change in control, reflects certain Gramm-Leach-Bliley requirements and adds a waiver provision for filings.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

FDIC — Proposed Rule Stage

Agency Contact: Mindy West, Examination Specialist, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 898-7221

Related RIN: Related To 3064-AC51

RIN: 3064–AC55

Federal Deposit Insurance Corporation (FDIC) — Final Rule Stage

4124. QUALIFICATION REQUIREMENTS FOR THE RECOMMENDATION OR SALE OF CERTAIN SECURITIES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1818; 12 USC 1831

CFR Citation: 12 CFR 342

Legal Deadline: Final, Statutory, May 12, 2001, recordkeeping requirement.

Abstract: This proposal, sponsored jointly by the OCC, the FRS, and the FDIC, would establish qualifications for banks that sell certain securities to their customers without having to register as a broker under the Securities Exchange Act. FDIC staff are contemplating a recommendation to rescind this proposal and replace it with a second notice of proposed rulemaking (NPRM) to exempt banks from registering with the NASD/SEC as securities brokers or dealers in the event that they qualify under any of the exemption criteria in Gramm-Leach-Bliley Act sections 201 or 202.

Timetable:

Action	Date	FR Cite
NPRM	12/30/96	61 FR 68824
NPRM Comment Period End	02/28/97	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Phillips, Counsel, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 898-3581

Related RIN: Related To 3064-AC42

RIN: 3064–AB85

4125. MINIMUM STANDARDS OF INTEGRITY AND FITNESS FOR AN FDIC CONTRACTOR (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1819 (Tenth); 12 USC 1822(f)(3); 12 USC 1822(f)(4); 107 Stat 2369

CFR Citation: 12 CFR 366

Legal Deadline: None

Abstract: This rulemaking replaces the Contractor Conflicts of Interest rule and establishes standards for independent contractors governing contracting prohibitions, conflicts of interest, ethical responsibilities, confidential information, and reportable information.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/15/02	67 FR 34591
Interim Final Rule Effective	05/15/02	
Interim Final Rule Comment Period End	07/15/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Martin Blumenthal, Counsel, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 736-0359

RIN: 3064–AC29

4126. RISK-BASED CAPITAL GUIDELINES: MARKET RISK MEASURE; SECURITIES BORROWING TRANSACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1815(a); 12 USC 1815(b); 12 USC 1816; 12 USC 1818(a) to 1818(c); 12 USC 1818(t); 12 USC 1819 (Tenth); 12 USC 1828(c); 12 USC 1828(d); 12 USC 1828(i); 12 USC 1828(n); 12 USC 1828(o); 12 USC 1831o; PL 102-233; 105 Stat 1761; 105 Stat 1789; 105 Stat 1790; PL 102-242; 105 Stat 2236; 105 Stat 2355; 105 Stat 2386

CFR Citation: 12 CFR 325

Legal Deadline: None

Abstract: This rulemaking sponsored jointly by the OCC, the FRS and the FDIC, amends their market risk rules to revise the capital treatment for cash collateral that is posted in connection with certain securities borrowing transactions. The effect of the rule is to more appropriately align the capital requirements for these transactions with the risk involved and to provide a capital treatment for U.S. banking organizations that is more in line with the capital treatment applied to their domestic and foreign competitors.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/05/00	65 FR 75856
Interim Final Rule Effective	01/04/01	
Interim Final Rule Comment Period End	01/19/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert F. Storch, Chief, Accounting Section, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 898-8906

RIN: 3064–AC46

4127. FILING PROCEDURES AND DELEGATIONS OF AUTHORITY

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 378

CFR Citation: 12 CFR 303

Legal Deadline: None

Abstract: This rulemaking revises part 303 to reflect the corporate reorganization, removes all delegations

FDIC — **Final Rule Stage**

of authorities regarding filings and enforcement actions, and makes technical amendments.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Mindy West, Examination Specialist, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 898-7221

RIN: 3064–AC51

Federal Deposit Insurance Corporation (FDIC) — **Long-Term Actions**

4128. COMMUNITY REINVESTMENT ACT REGULATIONS (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 345

Timetable:

Action	Date	FR Cite
ANPRM	07/19/01	66 FR 37602
ANPRM Comment Period End	10/17/01	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Deanna Caldwell
Phone: 202 942-3366

RIN: 3064–AC50

Federal Deposit Insurance Corporation (FDIC) — **Completed Actions**

4129. PAYMENT OF POST-INSOLVENCY INTEREST IN RECEIVERSHIPS WITH SURPLUS FUNDS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1821(d)(1); 12 USC 1821(d)(10)(C); 12 USC 1821(d)(11); 12 USC 1821(e)(1); 12 USC 1821(e)(8)(D)(i); 12 USC 1823(c)(4); 12 USC 1823(e)(2); PL 101-73; 103 Stat 357

CFR Citation: 12 CFR 360

Legal Deadline: None

Abstract: This rulemaking establishes uniform rules governing the payment and priority of post-insolvency interest in insured depository institution receiverships with surplus funds.

Timetable:

Action	Date	FR Cite
NPRM	12/18/01	66 FR 65144
NPRM Comment Period End	02/19/02	
Final Action	05/14/02	67 FR 34385
Final Action Effective	06/13/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rodney D. Ray, Counsel, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 898-3556

RIN: 3064–AB92

4130. RISK-BASED CAPITAL STANDARDS: CLAIMS ON SECURITIES FIRMS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1815(a); 12 USC 1828(d); 12 USC 1828(i); 12 USC 1828(n); 12 USC 1828(o); 12 USC 1831o; 12 USC 1835; 12 USC 1815(b); 12 USC 1816; 12 USC 1818(a) to 1818(c); 12 USC 1818(t); 12 USC 1819 (Tenth); 12 USC 1828(c)

CFR Citation: 12 CFR 325

Legal Deadline: None

Abstract: This rulemaking is sponsored jointly by the OCC, the FRS, the FDIC and OTS (the Agencies), and amends their respective risk-based capital standards for banks, bank holding companies, and savings associations with regard to the risk-weighting of claims on, and claims guaranteed by, qualifying securities firms. The rule reduces the risk weight applied to claims on, and claims guaranteed by, qualifying securities firms incorporated in countries that are members of the Organization for Economic Cooperation and Development (OECD) from 100 percent to 20 percent under the Agencies' risk-based capital rules.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76180
NPRM Comment Period End	01/22/01	
Final Action	04/09/02	67 FR 16971
Final Action Effective	07/01/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert F. Storch, Chief, Accounting Section, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 898-8906

RIN: 3064–AC17

4131. PROHIBITION AGAINST USE OF INTERSTATE BRANCHES PRIMARILY FOR DEPOSIT PRODUCTION

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1819 (Tenth); 12 USC 1835a

CFR Citation: 12 CFR 369

Legal Deadline: None

Abstract: The rulemaking implements section 106 of the Gramm-Leach-Bliley Act, which amends the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, to provide that any branch of a bank controlled by an out-of-state bank holding company is considered to be an interstate branch for purposes of Riegle-Neal.

FDIC — **Completed Actions**

Timetable:

Action	Date	FR Cite
NPRM	04/09/01	66 FR 18411
NPRM Comment Period End	06/08/01	
Final Action	06/06/02	67 FR 38844
Final Action Effective	10/01/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mark A. Mellon, Counsel, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 898-3884

RIN: 3064–AC36

4132. PROCEDURES FOR CORPORATE DEBT COLLECTION

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1819(a); 5 USC 5514; 31 USC 3711; 31 USC 3716

CFR Citation: 12 CFR 313

Legal Deadline: None

Abstract: This rulemaking establishes procedures for the collection of debts owed the FDIC. The rulemaking also implements the Debt Collection Improvement Act of 1996, which requires agencies to promulgate regulations on this subject. The regulation sets forth the procedures the FDIC would follow in collecting debts through salary offset, administrative offset, and tax refund offset.

Timetable:

Action	Date	FR Cite
Final Action	07/25/02	67 FR 48525
Final Action Effective	08/26/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Manuel Palau, Counsel, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 898-8829

RIN: 3064–AC40

[FR Doc. 02–23906 Filed 12–06–02; 8:45 am]
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Federal Energy Regulatory Commission

Semiannual Regulatory Agenda

FEDERAL ENERGY REGULATORY COMMISSION (FERC)

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Ch. I

Semiannual Regulatory Agenda

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Semiannual regulatory agenda.

SUMMARY: In accordance with guidance issued by the Office of Management and Budget (OMB), the Federal Energy Regulatory Commission voluntarily submits information about rulemakings under development. Of the 19 rulemakings listed, 15 are current or projected rulemakings, and 4 are completed actions.

DATES: The dates provided represent goals, not commitments, and may be revised due to shifts in workload, changes in priorities, or extensive public comments. See the various dates listed for each specific rulemaking.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Person listed for each specific rulemaking.

Magalie R. Salas,

Secretary.

Federal Energy Regulatory Commission—Prerule Stage

Sequence Number	Title	Regulation Identification Number
4133	Standardization of Small Generator Interconnection Agreements and Procedures	1902-AC26

Federal Energy Regulatory Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4134	Electricity Market Design and Structure (Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design)	1902-AC18
4135	Hydroelectric Licensing Regulations Under the Federal Power Act	1902-AC30

Federal Energy Regulatory Commission—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
4136	Standards of Conduct for Transmission Providers	1902-AC07
4137	Electronic Filing of Documents	1902-AC09
4138	Critical Energy Infrastructure Information and Guidance for Filings in the Interim	1902-AC11
4139	Standards For Business Practices of Interstate Natural Gas Pipelines	1902-AC13
4140	Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities	1902-AC14
4141	Standardizing Generator Interconnection Agreements and Procedures	1902-AC15
4142	Electronic Tariff Filings	1902-AC19
4143	Regulations of Cash Management Practices	1902-AC23
4144	Civil Monetary Penalty Inflation Adjustment Rule	1902-AC24
4145	Assignment of Firm Capacity on Upstream Interstate Pipelines	1902-AC25
4146	Notice of Inquiry Concerning Natural Gas Pipelines Negotiated Policies and Practices	1902-AC28
4147	Standard of Review for Proposed Changes to Market-Based Rate Contracts for Wholesale Sales of Electric Energy by Public Utilities	1902-AC29

Federal Energy Regulatory Commission—Completed Actions

Sequence Number	Title	Regulation Identification Number
4148	Electronic Service of Documents	1902-AC08
4149	Revised Public Utility Filing Requirements	1902-AC16
4150	Standards For Business Practices Of Interstate Natural Gas Pipelines	1902-AC22
4151	Revised Fees for Record Requests	1902-AC27

Federal Energy Regulatory Commission (FERC) — Prerule Stage

4133. • STANDARDIZATION OF SMALL GENERATOR INTERCONNECTION AGREEMENTS AND PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 791a to 825r; 16 USC 2601 to 2645; 31 USC 9701; 42 USC 7101 to 7532

CFR Citation: 18 CFR 35

Legal Deadline: None

Abstract: The Commission seeks comments on standard small generator interconnection agreements and procedures. (Docket No. RM02-12-000)

Timetable:

Action	Date	FR Cite
ANPRM	08/26/02	67 FR 54749
ANPRM Comment Period End	11/04/02	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Michael G. Henry, Attorney, Federal Energy Regulatory Commission, Office of the General Counsel, 888 First Street NE, Washington, DC 20426
Phone: 202 502-8532

RIN: 1902–AC26

Federal Energy Regulatory Commission (FERC) — Proposed Rule Stage

4134. ELECTRICITY MARKET DESIGN AND STRUCTURE (REMEDYING UNDUE DISCRIMINATION THROUGH OPEN ACCESS TRANSMISSION SERVICE AND STANDARD ELECTRICITY MARKET DESIGN)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 791s to 825r; 16 USC 2601 to 2645; 31 USC 9701; 42 USC 7101 to 7352

CFR Citation: 18 CFR 35

Legal Deadline: None

Abstract: The Commission is proposing to amend its regulations under the Federal Power Act, to modify the pro forma open access transmission tariff established under the Commission's order No. 888, to provide for non-discriminatory standardized transmission service and wholesale electric markets, and so to remedy remaining undue discrimination in the provision of interstate transmission services and in other industry practices, and to assure just and reasonable rates within and among regional power markets. (Docket No. RM01-12-000.)

Timetable:

Action	Date	FR Cite
NPRM	08/29/02	67 FR 55452
NPRM Comment Period End	11/15/02	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Alice Fernandez, Federal Energy Regulatory Commission, Office of Markets Tariffs and Rates, 888 First Street NE, Washington, DC 20426
Phone: 202 502-6389

RIN: 1902–AC18

4135. • HYDROELECTRIC LICENSING REGULATIONS UNDER THE FEDERAL POWER ACT

Priority: Other Significant

Legal Authority: 16 USC 797(e); 16 USC 825h

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission expects to issue a notice of proposed rulemaking to amend its regulations under the Federal Power Act concerning the development and processing of applications for a hydroelectric project license. (Docket No. RM02-16-000)

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal, Federal

Agency Contact: Timothy Welch, Federal Energy Regulatory Commission, Office of Energy Projects, 888 First Street NE, Washington, DC 20426
Phone: 202 502-8760
Email: timothy.welch@ferc.gov

RIN: 1902–AC30

Federal Energy Regulatory Commission (FERC) — Long-Term Actions

4136. STANDARDS OF CONDUCT FOR TRANSMISSION PROVIDERS

Priority: Other Significant

Legal Authority: 15 USC 717 to 717w; 15 USC 3301 to 3423; 16 USC 791 to 825r; 16 USC 2601 to 2645; 31 USC 9701; 42 USC 7101 to 7352

CFR Citation: 18 CFR 37; 18 CFR 161; 18 CFR 250; 18 CFR 358

Legal Deadline: None

Abstract: The Commission is considering whether to promulgate new standards of conduct regulations that would apply uniformly to natural gas pipelines and public utilities that are currently subject to the gas standards of conduct of 18 CFR part 161 and the electric standards of conduct at 18 CFR part 37. (Docket No. RM01-10-000.)

Timetable:

Action	Date	FR Cite
NPRM	10/05/01	66 FR 50919
NPRM Comment Period End	12/20/01	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Demetra E. Anas, Attorney, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426
Phone: 202 502-8178
Fax: 202 208-0057

RIN: 1902–AC07

4137. ELECTRONIC FILING OF DOCUMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 551 to 557; 15 USC 717 to 717z; 15 USC 3301 to 3432; 16 USC 791a to 825r; 16 USC 2601 to 2645; 31 USC 9701; 42 USC 7101 to 7352; 49 USC 60502; 49 USC app 1 to 85 (1988)

CFR Citation: 18 CFR 385

Legal Deadline: Other, Statutory, October 21, 2003, Government Paperwork Elimination Act.

Abstract: The Commission has issued a rulemaking to begin implementing electronic filing of documents via the Internet, in lieu of paper filings. At this time, only specified categories of documents are being accepted, but these categories will be expanded gradually over time, in some cases by further rulemakings. Ultimately, paper filings by regulated entities will be eliminated, with limited exceptions. (Docket No. RM00-12-000.)

Timetable:

Action	Date	FR Cite
Final Rule	09/21/00	65 FR 57088
Final Rule Effective	11/01/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Wilbur Miller, General Attorney, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426
Phone: 202 502-8953
Email: wilbur.miller@ferc.fed.us

RIN: 1902–AC09

4138. CRITICAL ENERGY INFRASTRUCTURE INFORMATION AND GUIDANCE FOR FILINGS IN THE INTERIM

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301 to 305; 5 USC 551 to 557; 15 USC 717 to 717w; 15 USC 3301 to 3432; 16 USC 791 to 825r; 16 USC 2601 to 2645; 42 USC 7101 to 7352

CFR Citation: 18 CFR 375; 18 CFR 388

Legal Deadline: None

Abstract: The Commission is proposing to revise its rules to address public availability of critical energy infrastructure information. (Docket Nos. RM02-4-000, PL02-1-000.)

Timetable:

Action	Date	FR Cite
Notice of Inquiry	01/23/02	67 FR 3129
NPRM	09/13/02	67 FR 57994
NPRM Comment Period End	10/15/02	
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Carol C. Johnson, Staff Attorney, Federal Energy Regulatory Commission, Office of the General Counsel, 888 First Street NE., Washington, DC 20426
Phone: 202 502-8521
Email: carol.johnson@ferc.gov

RIN: 1902–AC11

4139. STANDARDS FOR BUSINESS PRACTICES OF INTERSTATE NATURAL GAS PIPELINES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 717 to 717w; 15 USC 3301 to 3432; 42 USC 7101 to 7532; 43 USC 1331 to 1356

CFR Citation: 18 CFR 284

Legal Deadline: None

Abstract: The Commission amended its open access regulations governing standards for conducting business practices and electronic communications with interstate natural gas pipeline. The Commission adopted the most recent version, Version 1.5, of the consensus industry standards, promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB), formerly the Gas Industry Standards Board. (Docket No. RM96-1-020.)

Timetable:

Action	Date	FR Cite
NPRM	01/02/02	67 FR 44
NPRM Comment Period End	02/01/02	
Final Rule	05/08/02	67 FR 30788
Final Rule Effective	06/07/02	
Order on Rehearing	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael Goldenberg, Attorney Advisor, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426
Phone: 202 502-8685

RIN: 1902–AC13

4140. ACCOUNTING AND REPORTING OF FINANCIAL INSTRUMENTS, COMPREHENSIVE INCOME, DERIVATIVES AND HEDGING ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 717 to 717w; 15 USC 3301 to 3432; 16 USC 791a to 825r; 16 USC 2601 to 2645; 31 USC 9701; 42 USC 7101 to 7352; 42 USC 7651 to 7651o; 49 USC 60502; 49 app. USC 1 to 85 (1988)

CFR Citation: 18 CFR 101; 18 CFR 201; 18 CFR 352

Legal Deadline: None

Abstract: The Commission proposes to revise its regulations to update the accounting and reporting requirements under its Uniform Systems of Accounts for jurisdictional public utilities, natural gas companies and oil pipelines. (Docket No. RM02-3-000.)

Timetable:

Action	Date	FR Cite
NPRM	01/08/02	67 FR 1026
NPRM Comment Period End	03/11/02	
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Julia A. Lake, General Attorney, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

Phone: 202 502-8370

RIN: 1902–AC14

4141. STANDARDIZING GENERATOR INTERCONNECTION AGREEMENTS AND PROCEDURES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 791a to 825r; 16 USC 2601 to 2645; 31 USC 9701; 42 USC 7101 to 7352

CFR Citation: 18 CFR 35

Legal Deadline: None

Abstract: The Commission proposes to amend its regulations to require public utilities to file the standardized interconnection agreement and procedures to be adopted in this proceeding and to take and provide interconnection service under them. (Docket No. RM02-1-000.)

Timetable:

Action	Date	FR Cite
ANPRM	11/01/01	66 FR 55140
Extension of Time	12/21/01	66 FR 65858
Extension of Time	01/25/02	67 FR 3632
ANPRM Comment Period End	02/01/02	
NPRM	05/02/02	67 FR 22249
NPRM Comment Period End	06/17/02	
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick G. Rooney, Federal Energy Regulatory Commission, Office of Markets, Tariffs and Rates, 888 First Street NE., Washington, DC 20426
Phone: 202 502-6205

RIN: 1902–AC15

4142. ELECTRONIC TARIFF FILINGS

Priority: Other Significant

Legal Authority: OMB Circular A-130

CFR Citation: 18 CFR 131; 18 CFR 154; 18 CFR 157; 18 CFR 35; 18 CFR 250; 18 CFR 330; 18 CFR 341; 18 CFR 342; 18 CFR 344; 18 CFR 346; 18 CFR 348; 18 CFR 385

Legal Deadline: Other, Statutory, October 21, 2003, Government Paperwork Elimination Act.

Abstract: The Commission is considering making the electronic filing format of gas, electric, and oil tariffs mandatory. (Docket No. RM01-5-000.)

Timetable:

Action	Date	FR Cite
Notice of Inquiry	03/20/01	66 FR 15673
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bolton Pierce, Federal Energy Regulatory Commission, Office of Markets, Tariffs and Rates, 888 First Street NE, Washington, DC 20426
Phone: 202 502-8803

RIN: 1902–AC19

4143. • REGULATIONS OF CASH MANAGEMENT PRACTICES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 717o; 16 USC 825(h); 49 App USC 20 (1988); 49 App USC 12 (1988)

CFR Citation: 18 CFR 101; 18 CFR 201; 18 CFR 352

Legal Deadline: None

Abstract: The Commission is proposing to establish limits on the amount of funds that can be swept from a regulated subsidiary to a nonregulated parent under so-called "cash management" programs, as well as certain other requirements. (Docket No. RM02-14-000.)

Timetable:

Action	Date	FR Cite
NPRM	08/07/02	67 FR 51150
NPRM Comment Period End	08/28/02	
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mark Klose, Federal Energy Regulatory Commission, Office of Executive Director, Divison of Regulatory Accounting Policy, 888 First Street, NE, Washington, DC 20426
Phone: 202 502-8283
Email: mark.klose@ferc.gov

RIN: 1902–AC23

4144. • CIVIL MONETARY PENALTY INFLATION ADJUSTMENT RULE

Priority: Routine and Frequent

Legal Authority: 28 USC 2461; 31 USC 3701

CFR Citation: 18 CFR 385 (Revision)

Legal Deadline: None

Abstract: The Commission issued a final rule for a Civil Monetary Penalty Inflation Adjustment as mandated by the Debt Colletion Improvement Act of 1996 (DCIA) to adjust the Commission's civil monetary penalties for inflation on a periodic bases. This rule will allow the Commission's penalties to keep pace with inflation and thereby maintain the deterrent effect Congress intended when it originally specified penalties.

The first mandatory adjustment, as mandated by the DCIA, increases all of the Commission's penalty provisions by ten percent. The Commission is required to review its penalties again at least once every four years thereafter and adjust them as necessary for inflation according to a specified formula. (Docket No. RM02-11-000.)

Timetable:

Action	Date	FR Cite
Final Rule	08/12/02	67 FR 52410
Final Rule Effective	08/12/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Carolyn Van DerJagt, Attorney Advisor, Federal Energy Regulatory Commission, Office of the General Counsel, 888 First Street NE, Washington, DC 20426
Phone: 202 502-8620

RIN: 1902–AC24

4145. • ASSIGNMENT OF FIRM CAPACITY ON UPSTREAM INTERSTATE PIPELINES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 717 to 717w; 15 USC 3301 to 3432; 42 USC 1331 to 1356

CFR Citation: 18 CFR 284

Legal Deadline: None

Abstract: The Commission proposes to remove from its regulations the Order No. 636 requirement that pipelines assign their upstream capacaity to their firm shippers. (Docket No. RM01-6-000)

Timetable:

Action	Date	FR Cite
NPRM	04/18/02	67 FR 19136

FERC — Long-Term Actions

Action	Date	FR Cite
NPRM Comment Period End	06/03/02	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cecilia Desmond, Attorney Advisor, Federal Energy Regulatory Commission, Office of the General Counsel, 888 First Street NE, Washington, DC 20426
Phone: 202 502-8695

RIN: 1902–AC25

4146. • NOTICE OF INQUIRY CONCERNING NATURAL GAS PIPELINES NEGOTIATED POLICIES AND PRACTICES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 717d; 15 USC 717e

CFR Citation: 18 CFR 284

Legal Deadline: None

Abstract: The Commission issued a notice of inquiry to seek comments on its negotiated rate policies and practices, established in Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pieplines, Regulation of Negotiated Transportation Services of Natural Gas Pipelines, Statement of Policy and Request for Comments. (Docket No. PL02-6-000)

Timetable:

Action	Date	FR Cite
Notice of Inquiry	07/25/02	67 FR 48592
Comment Period End	08/26/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael G. Henry, Attorney, Federal Energy Regulatory Commission, Office of the General Counsel, 888 First Street NE, Washington, DC 20426
Phone: 202 502-8532

RIN: 1902–AC28

4147. • STANDARD OF REVIEW FOR PROPOSED CHANGES TO MARKET-BASED RATE CONTRACTS FOR WHOLESALE SALES OF ELECTRIC ENERGY BY PUBLIC UTILITIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 601; 15 USC 717 to 717w; 15 USC 3301 to 3432; 16 USC 792 to 825y; 16 USC 2601 to 2645; 42 USC 4321 to 4361; 42 USC 7101 to 7352

CFR Citation: 18 CFR 2

Legal Deadline: None

Abstract: The Commission proposes to adopt a policy statement on the standard of review to be met to justify proposed changes in market-based rate contracts for wholesale sales of electric energy by public utilities in light of Mobile-Sierra doctrine. (Docket No. PL02-7-000)

Timetable:

Action	Date	FR Cite
Notice of Proposed Policy Statement	08/01/02	67 FR 51516
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Shaheda Sultan, Staff Attorney, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426
Phone: 202 502-8845

RIN: 1902–AC29

Federal Energy Regulatory Commission (FERC) — Completed Actions

4148. ELECTRONIC SERVICE OF DOCUMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 18 CFR 385

Completed:

Reason	Date	FR Cite
Notice of Inquiry	10/04/01	66 FR 50591

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Wilbur Miller
Phone: 202 502-8953
Email: wilbur.miller@ferc.fed.us

RIN: 1902–AC08

4149. REVISED PUBLIC UTILITY FILING REQUIREMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 18 CFR 2.8; 18 CFR 35.1; 18 CFR 35.10a; 18 CFR 35.10b

Completed:

Reason	Date	FR Cite
Final Rule	05/08/02	67 FR 31043
Final Rule Effective	07/08/02	
Order on Rehearing	07/18/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: H. Keith Pierce
Phone: 202 502-8525

RIN: 1902–AC16

4150. STANDARDS FOR BUSINESS PRACTICES OF INTERSTATE NATURAL GAS PIPELINES

Priority: Substantive, Nonsignificant

CFR Citation: 18 CFR 284

Completed:

Reason	Date	FR Cite
Final Rule Effective	04/17/02	
Order on Rehearing	07/03/02	67 FR 44529

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael Goldenberg
Phone: 202 502-8685

RIN: 1902–AC22

4151. • REVISED FEES FOR RECORD REQUESTS

Priority: Substantive, Nonsignificant

Legal Authority: 44 USC 3506(d)(4)(D)

FERC — Completed Actions

CFR Citation: 18 CFR 388

Legal Deadline: None

Abstract: The Commission amended its regulation to increase the fee for hard copies of documents printed from the Federal Energy Regulatory Records Information System (FERRIS) from 15 to 20 cents per page. (Docket No. RM02-8-000)

Timetable:

Action	Date	FR Cite
Final Rule Effective	04/26/02	
Final Rule	05/02/02	67 FR 21994

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Katherina Quijada-Cusack, Federal Energy Regulatory Commission, Office of the Chief of Information Officer, 888 First Street NE, Washington, DC 20426
Phone: 202 502-8748

RIN: 1902–AC27

[FR Doc. 02–23910 Filed 12–06–02; 8:45 am]
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Monday,
December 9, 2002

Part LV

Federal Housing Finance Board

Semiannual Regulatory Agenda

FEDERAL HOUSING FINANCE BOARD (FHFB)

FEDERAL HOUSING FINANCE BOARD

12 CFR Ch. IX

Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Federal Housing Finance Board.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Federal Housing Finance Board (Finance Board) hereby publishes items for the Unified Agenda of Federal Regulatory and Deregulatory Actions, as required by section 4 of Executive Order 12866. The Finance Board is an independent agency in the executive branch of the Government that is charged by statute with supervising and regulating the Nation's Federal Home Loan Bank (Bank) System and the Financing Corporation (FICO). The Bank System comprises 12 regional Federal Home Loan Banks that are each owned by their member financial institutions and that provide wholesale credit to members and certain nonmembers to be used for mortgage lending and related community lending activities. The Bank System also includes the Office of Finance, which issues Bank System consolidated obligations. FICO is a corporate entity separate from the Bank System that oversees outstanding debt issued to assist in resolving the savings and loan crisis of the 1980s. The Finance Board has an ongoing need to adopt various regulations dealing with the agency's internal administration and with Bank System and FICO issues.

This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions includes The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Finance Board's Statement of Regulatory Priorities is included in part II.

ADDRESSES: Secretary to the Board, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, (202) 408-2837; E-mail: bakere@fhfb.gov.

FOR FURTHER INFORMATION CONTACT: Mary H. Gottlieb, Office of General Counsel, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, (202) 408-2826; E-mail: gottliebm@fhfb.gov.

Dated: September 23, 2002.

By the Federal Housing Finance Board.

Arnold Intrater,

General Counsel.

Federal Housing Finance Board—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
4152	Amendments to Privacy Act Regulation	3069-AB07
4153	Multiple Bank Membership	3069-AB09
4154	Acquired Member Assets	3069-AB18
4155	Bank Governance	3069-AB19
4156	New Business Activities	3069-AB20
4157	Community Support Requirements	3069-AB21
4158	Public Disclosure	3069-AB22

Federal Housing Finance Board—Completed Actions

Sequence Number	Title	Regulation Identification Number
4159	Definition of "Non-Mortgage Assets"	3069-AB10
4160	Affordable Housing Program Amendments	3069-AB16

Federal Housing Finance Board—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
3069-AB08	Federal Home Loan Bank Securities Offerings	09/03/2002	Withdrawn from Consideration

Federal Housing Finance Board (FHFB) — **Long-Term Actions**

4152. AMENDMENTS TO PRIVACY ACT REGULATION

Priority: Info./Admin./Other

CFR Citation: 12 CFR 913

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Janice A. Kaye
Phone: 202 408-2505
Fax: 202 408-2580
Email: kayej@fhfb.gov

RIN: 3069–AB07

4153. MULTIPLE BANK MEMBERSHIP

Priority: Other Significant

CFR Citation: 12 CFR 925

Timetable:

Action	Date	FR Cite
Multiple Bank Membership Solicitation of Comments	10/03/01	66 FR 50366
Extension of Comment Period	12/04/01	66 FR 63007
Solicitation of Comments Period End	03/04/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Neil R. Crowley
Phone: 202 408-2990
Fax: 202 408-2580
Email: crowleyn@fhfb.gov

RIN: 3069–AB09

4154. • ACQUIRED MEMBER ASSETS

Priority: Other Significant

Legal Authority: 12 USC 1422a; 12 USC 1422b; 12 USC 1430; 12 USC 1430b; 12 USC 1431

CFR Citation: 12 CFR 955

Legal Deadline: None

Abstract: The Finance Board is considering a rulemaking to review the structure of authorized acquired member asset products to determine if Banks have sufficient flexibility in creating new products that will be responsive to member needs.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Thomas E. Joseph, Attorney-Advisor, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006
Phone: 202 408-2512
Fax: 202 408-2580
Email: josepht@fhfb.gov

RIN: 3069–AB18

4155. • BANK GOVERNANCE

Priority: Other Significant

Legal Authority: 12 USC 1422a; 12 USC 1422b; 12 USC 1426; 12 USC 1427; 12 USC 1432; ...

CFR Citation: 12 CFR 915; 12 CFR 917; 12 CFR 918

Legal Deadline: None

Abstract: The Finance Board is considering a rulemaking that would more clearly delineate the responsibilities and the accountability of the board of directors for governance of a Bank.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Arnold Intrater, General Counsel, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20552
Phone: 202 408-2536
Email: intratera@fhfb.gov

RIN: 3069–AB19

4156. • NEW BUSINESS ACTIVITIES

Priority: Other Significant

Legal Authority: 12 USC 1422a; 12 USC 1422b; 12 USC 1431; 12 USC 1432

CFR Citation: 12 CFR 980

Legal Deadline: None

Abstract: The Finance Board is considering a rulemaking to streamline its review of new business activities proposed by a Bank to more clearly focus the regulatory review process on ensuring that a new product, service, or activity will not endanger the continued safe and sound operation of the Bank.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John P. Foley, Senior Attorney, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20552
Phone: 202 408-2932
Email: foleyj@fhfb.gov

RIN: 3069–AB20

4157. • COMMUNITY SUPPORT REQUIREMENTS

Priority: Other Significant

Legal Authority: 12 USC 1422a; 12 USC 1422b; 12 USC 1430; 12 USC 1430b; 12 USC 1431

CFR Citation: 12 CFR 944

Legal Deadline: None

Abstract: The Finance Board is considering a rulemaking to streamline the community support requirements to eliminate unnecessary regulatory burden, while preserving the statutory intent of ensuring that members' access to long-term advances reflects such factors as their record of performance under the Community Reinvestment Act and their record of lending to first-time homebuyers.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharon B. Like, Senior Attorney-Advisor, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006
Phone: 202 408-2930
Fax: 202 408-2580
Email: likes@fhfb.gov

RIN: 3069–AB21

4158. • PUBLIC DISCLOSURE

Priority: Other Significant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Finance Board is considering a rulemaking that would improve public disclosure by the Banks including addressing the requirements of the Securities Act of 1933 and Securities Exchange Act of 1934, as these Acts are interpreted and applied by the SEC.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John P. Foley, Senior Attorney, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20552
Phone: 202 408-2932
Email: foleyj@fhfb.gov

RIN: 3069–AB22

4159. DEFINITION OF "NON-MORTGAGE ASSETS"

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1422b(a); 12 USC 1426(a)

CFR Citation: 12 CFR 966.3

Legal Deadline: None

Abstract: The Finance Board published a final rule to redefine "non-mortgage assets" for purposes of calculating the appropriate assets-to-capital leverage limit that applies to each Bank, pending the Bank's compliance with the new capital regulations.

Timetable:

Action	Date	FR Cite
NPRM	03/07/02	67 FR 10337
NPRM Comment Period End	04/08/02	
Final Action	05/21/02	67 FR 35713
Final Action Effective	06/20/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Neil R. Crowley, Deputy General Counsel, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006
Phone: 202 408-2990
Fax: 202 408-2580
Email: crowleyn@fhfb.gov

Thomas E. Joseph, Attorney-Advisor, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006
Phone: 202 408-2512
Fax: 202 408-2580
Email: josepht@fhfb.gov

RIN: 3069–AB10

4160. • AFFORDABLE HOUSING PROGRAM AMENDMENTS

Priority: Other Significant

Legal Authority: 12 USC 1430(j)

CFR Citation: 12 CFR 591

Legal Deadline: None

Abstract: The Finance Board published a final rule to amend its regulation governing the operation of the Affordable Housing Program (AHP) to authorize a Federal Home Loan Bank to set aside annually an additional amount, up to the greater of $1.5 million or 10 percent of the Bank's annual required AHP contribution, to assist low- or moderate-income, first-time homebuyers under the Bank's homeownership set-aside program.

Timetable:

Action	Date	FR Cite
NPRM	06/20/02	67 FR 41872
NPRM Comment Period End	08/19/02	
Final Action	09/19/02	67 FR 58978
Final Action Effective	10/21/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharon B. Like, Senior Attorney-Advisor, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006
Phone: 202 408-2930
Fax: 202 408-2580
Email: likes@fhfb.gov

Related RIN: Previously reported as 3069-AB15

RIN: 3069–AB16

[FR Doc. 02–25201 Filed 12–06–02; 8:45 am]
BILLING CODE 6725–01–S

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Monday,
December 9, 2002

Part LVI

Federal Maritime Commission

Semiannual Regulatory Agenda

FEDERAL MARITIME COMMISSION (FMC)

FEDERAL MARITIME COMMISSION

46 CFR Ch. IV

Regulatory Plan and Unified Agenda

AGENCY: Federal Maritime Commission.

ACTION: Regulatory plan and semiannual regulatory agenda.

SUMMARY: Pursuant to section 4(b) of Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Commission anticipates having under consideration, during the period from October 1, 2002, to September 30, 2003, actions in the areas listed below.

FOR FURTHER INFORMATION CONTACT: For further information concerning Commission rulemaking proceedings or the status of any matter listed below, contact: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: Section 602 of the Regulatory Flexibility Act (5 U.S.C. 602) requires the publication of an agenda of items for which regulatory agencies may propose or promulgate a rule which is likely to have a significant economic impact on a substantial number of small entities. Section 4(b) of Executive Order 12866 also requires agencies to publish a regulatory agenda. The agendas include information on regulatory activities being conducted or reviewed during the succeeding 12 months by the Commission.

The following is the Commission's unified regulatory agenda. The agenda does not necessarily include all petitions for rulemakings that are under staff review.

In addition, the Commission maintains a compilation of the status of pending rulemaking proceedings and a listing of rules that have become final since the publication of the most recent regulatory agenda. This will be made available to the public, including the press and interested persons.

The Commission currently has no actions under consideration that constitute "significant regulatory actions" under the definition in Executive Order 12866. This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions includes The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Federal Maritime Commission's Statement of Regulatory Priorities is included in part II.

Bryant L. VanBrakle,
Secretary.

Federal Maritime Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4161	Content of Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984 (Docket No. 99-13)	3072-AC11
4162	Impact of Government Paperwork Elimination Act and Electronic Signatures in Global and National Commerce Act (Docket No. 01-08)	3072-AC17
4163	Common Carrier Status Under the Shipping Act of 1984	3072-AC21
4164	Passenger Vessel Financial Responsibility	3072-AC22

Federal Maritime Commission—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
4165	Coloading Practices and Possible Section 16 Exemption for Coloading (Docket Nos. 93-22 and 94-26)	3072-AB75
4166	Port Restrictions and Requirements in the United States/Japan Trade (Docket No. 96-20)	3072-AB97

Federal Maritime Commission—Completed Actions

Sequence Number	Title	Regulation Identification Number
4167	Update of Existing and Addition of New Filing and Service Fees (Docket No. 02-05)	3072-AC19
4168	Financial Responsibility Requirements for Nonperformance of Transportation—Discontinuance of Self-Insurance and the Sliding Scale, and Guarantor Limitations (Docket No. 02-07)	3072-AC20

4161. CONTENT OF OCEAN COMMON CARRIER AND MARINE TERMINAL OPERATOR AGREEMENTS SUBJECT TO THE SHIPPING ACT OF 1984 (DOCKET NO. 99-13)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC app 1701 et seq; PL 105-258

CFR Citation: 46 CFR 535

Legal Deadline: None

Abstract: The FMC is issuing this inquiry to solicit comments concerning the appropriate content of agreements filed with the Commission pursuant to the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998. The comments received will assist the Commission in preparing a proposal to update or refine the existing content standards.

Timetable:

Action	Date	FR Cite
Notice of Inquiry	08/03/99	64 FR 42057
Inquiry Comment Period End	10/04/99	
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David R. Miles, Acting General Counsel, Federal Maritime Commission
Phone: 202 523-5740
Fax: 202 523-5738
Email: davidm@fmc.gov

RIN: 3072–AC11

4162. IMPACT OF GOVERNMENT PAPERWORK ELIMINATION ACT AND ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT (DOCKET NO. 01-08)

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-277, Government Paperwork Elimination Act; PL 106-229, Electronic Signatures in Global and National Commerce Act

CFR Citation: 46 CFR 500 et seq

Legal Deadline: Final, Statutory, October 21, 2003.

Abstract: The Federal Maritime Commission is issuing this inquiry to solicit information and comments concerning the impact of the Government Paperwork Elimination Act and the Electronic Signatures in Global and National Commerce Act on all sectors of the U.S. ocean shipping industry. These comments will assist the Commission as it analyzes the use and acceptance of documents in electronic form, as well as other means of engaging in electronic transactions. The Commission, via a rulemaking, plans to provide individuals or entities with the option to submit information or transact business with the Commission electronically, where practicable, and to maintain records electronically when practicable.

Timetable:

Action	Date	FR Cite
Notice of Inquiry	07/18/01	66 FR 37468
Comments Due	08/17/01	
Comment Perid Extended to 09/17/2001	08/17/01	66 FR 43261
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Austin L. Schmitt, Deputy Executive Director, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573
Phone: 202 523-5800
Fax: 202 523-5827
Email: austins@fmc.gov

RIN: 3072–AC17

4163. COMMON CARRIER STATUS UNDER THE SHIPPING ACT OF 1984

Priority: Other Significant

Legal Authority: 5 USC 553; 46 USC app 1701 et seq; PL 105-258

CFR Citation: 46 CFR 515; 46 CFR 520; 46 CFR 530; 46 CFR 535

Legal Deadline: None

Abstract: The Federal Maritime Commission is proposing to amend its rules to address the criteria that it will use to establish ocean common carrier status under the Shipping Act of 1984.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Florence A. Carr, Director, Bureau of Trade Analysis, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573
Phone: 202 523-5796
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Email: florence@fmc.gov

Vern W. Hill, Director, Bureau of Enforcement, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573
Phone: 202 523-5783
Fax: 202 523-5785
Email: vernh@fmc.gov

RIN: 3072–AC21

4164. • PASSENGER VESSEL FINANCIAL RESPONSIBILITY

Priority: Other Significant

Legal Authority: 5 USC 552 to 553; 46 USC app 817d to 817e; 46 USC 1716

CFR Citation: 46 CFR 540

Legal Deadline: None

Abstract: The FMC will be proposing to amend its regulations that require passenger vessel operators (PVOs) to establish financial responsibility for nonperformance of transportation. The Commission contemplates requiring PVOs to ensure that they have covered the full extent of their unearned passenger revenue. The maximum amount of coverage currently required is $15 million. The Commission believes the contemplated increase in coverage is necessary to provide adequate protection for the cruising public given current conditions in the cruise industry.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Sandra L. Kusumoto, Director, Bureau of Consumer Complaints & Licensing, Federal Maritime Commission, 800 North

FMC — **Proposed Rule Stage**

Capitol Street NW, Washington, DC 20573
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Email: sandrak@fmc.gov
RIN: 3072–AC22

Federal Maritime Commission (FMC) — **Long-Term Actions**

4165. COLOADING PRACTICES AND POSSIBLE SECTION 16 EXEMPTION FOR COLOADING (DOCKET NOS. 93-22 AND 94-26)

Priority: Substantive, Nonsignificant

CFR Citation: 46 CFR 520.11

Timetable:

Action	Date	FR Cite
NPRM	11/24/93	58 FR 62077
NPRM Comment Period End	03/11/94	59 FR 5974
Notice of Inquiry (Docket No. 94-26)	11/09/94	59 FR 55826
Comment Period End for NOI (Docket No. 94-26)	12/27/94	
NOI Comment Period Extended to 01/23/95	12/28/94	59 FR 66880
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: David R. Miles
Phone: 202 523-5740
Fax: 202 523-5738
Email: davidm@fmc.gov

RIN: 3072–AB75

4166. PORT RESTRICTIONS AND REQUIREMENTS IN THE UNITED STATES/JAPAN TRADE (DOCKET NO. 96-20)

Priority: Other Significant

CFR Citation: 46 CFR 551

Timetable:

Action	Date	FR Cite
NPRM	11/13/96	61 FR 58160
Comment Period Extended to 01/20/97	12/27/96	61 FR 68200
NPRM Comment Period End	01/13/97	
Final Rule - Report Due 08/26/1999 and Every 180 Days Thereafter	03/04/97	62 FR 9696
Final Rule Effective	04/14/97	
Status Reports and Comments Due 08/05/97	04/16/97	62 FR 18433
Amendment to Final Rule	04/16/97	62 FR 18532
Final Rule Effectiveness Extended to 09/04/97	04/16/97	62 FR 18533
Status Reports and Comments Due 07/01/97	04/16/97	62 FR 18533
Amendment to Final Rule - Denial of Petition	10/20/97	62 FR 54396
Final Rule Effectiveness Suspended 11/13/97	11/19/97	62 FR 61648
Final Rule Removed	06/07/99	64 FR 30245
Final Rule Removed Effective	06/07/99	
Requirement for Reporting Revised	08/15/01	66 FR 42859
Report Due 11/07/2001 and Every 180 Days Thereafter	08/15/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: David R. Miles
Phone: 202 523-5740
Fax: 202 523-5738
Email: davidm@fmc.gov

RIN: 3072–AB97

Federal Maritime Commission (FMC) — **Completed Actions**

4167. UPDATE OF EXISTING AND ADDITION OF NEW FILING AND SERVICE FEES (DOCKET NO. 02-05)

Priority: Substantive, Nonsignificant

CFR Citation: 46 CFR 502; 46 CFR 503; 46 CFR 515; 46 CFR 520; 46 CFR 530; ...

Completed:

Reason	Date	FR Cite
Final Rule	06/11/02	67 FR 39858
Final Rule Effective	07/15/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: JoAnn Baca
Phone: 202 523-5800
Fax: 202 523-5827
Email: joannb@fmc.gov

RIN: 3072–AC19

4168. FINANCIAL RESPONSIBILITY REQUIREMENTS FOR NONPERFORMANCE OF TRANSPORTATION—DISCONTINUANCE OF SELF-INSURANCE AND THE SLIDING SCALE, AND GUARANTOR LIMITATIONS (DOCKET NO. 02-07)

Priority: Other Significant

CFR Citation: 46 CFR 540

Completed:

Reason	Date	FR Cite
NPRM	04/23/02	67 FR 19730
Final Rule	07/05/02	67 FR 44774
Final Rule Effective	08/05/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sandra L. Kusumoto
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RIN: 3072–AC20

[FR Doc. 02–23897 Filed 12–06–02; 8:45 am]
BILLING CODE 6730–01–S

Federal Register

Monday,
December 9, 2002

Part LVII

Federal Reserve System

Semiannual Regulatory Agenda

FEDERAL RESERVE SYSTEM (FRS)

FEDERAL RESERVE SYSTEM

12 CFR Ch. II

Semiannual Regulatory Flexibility Agenda

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Board is issuing this agenda under the Regulatory Flexibility Act and the Board's Statement of Policy Regarding Expanded Rulemaking Procedures. The Board anticipates having under consideration regulatory matters as indicated below during the period October 1, 2002, through April 1, 2003. The next agenda will be published in the spring of 2003.

DATES: Comments about the form or content of the agenda may be submitted any time during the next 6 months.

ADDRESSES: Comments should be addressed to Jennifer J. Johnson, Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: A staff contact for each item is indicated with the regulatory description below.

SUPPLEMENTARY INFORMATION: The Board is publishing its fall 2002 agenda as part of the Fall 2002 Unified Agenda of Federal Regulatory and Deregulatory Actions, which is coordinated by the Office of Management and Budget under Executive Order 12866. The agenda also identifies rules the Board has selected for review under section 610(c) of the Regulatory Flexibility Act, and public comment is invited on those entries. Participation by the Board in the Unified Agenda is on a voluntary basis.

The Board's agenda is divided into three sections. The first, Proposed Rule Stage, reports on matters the Board may consider for public comment during the next 6 months. The second section, Final Rule Stage, reports on matters that have been proposed and are under Board consideration. A third section, Completed Actions, reports on regulatory matters the Board has completed or is not expected to consider further. Matters begun and completed between issues of the agenda have not been included.

A dot (•) preceding an entry indicates a new matter that was not a part of the Board's previous agenda and which the Board has not completed.

Margaret McCloskey Shanks,
Assistant Secretary of the Board.

Federal Reserve System—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4169	Regulation: A — Extensions of Credit by Federal Reserve Banks (Docket Number: R-1123)	7100-AC89
4170	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System	7100-AC73
4171	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System; and Regulation: Y — Bank Holding Companies and Change in Bank Control, Capital Appendices **(Section 610 Review)**	7100-AC88
4172	Regulation: DD — Truth in Savings Act **(Section 610 Review)**	7100-AC86

Federal Reserve System—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4173	Regulation: B — Equal Credit Opportunity (Docket Number: R-1008) **(Section 610 Review)**	7100-AC54
4174	Regulation: B — Equal Credit Opportunity; and Regulation: Z — Truth in Lending (Docket Numbers: R-1040 and R-1043)	7100-AC46
4175	Regulation: E — Electronic Fund Transfers (Docket Numbers: R-0919 and R-1041)	7100-AC06
4176	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System (Docket Number: R-1064)	7100-AC69
4177	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System; and Regulation: Y — Bank Holding Companies and Change in Bank Control (Docket Number: R-0930)	7100-AC13
4178	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System; and Regulation: Y — Bank Holding Companies and Change in Bank Control (Docket Number: R-1087)	7100-AC75
4179	Regulation: M — Consumer Leasing (Docket Number: R-1042)	7100-AC53
4180	Regulation: T — Credit by Brokers and Dealers; Regulation: U — Credit by Banks; and Regulation: X — Borrowers of Securities Credit (Docket Number: R-0995)	7100-AC45
4181	Regulation: V — Fair Credit Reporting (Docket Number: R-1082)	7100-AC68
4182	Regulation: W — Transactions Between Banks and Their Affiliates (Docket Number: R-1103)	7100-AC63
4183	Regulation: Y — Bank Holding Companies and Change in Bank Control	7100-AC66
4184	Regulation: Y — Bank Holding Companies and Change in Bank Control	7100-AC78
4185	Regulation: Y — Bank Holding Companies and Change in Bank Control (Docket Number: R-1091)	7100-AC79
4186	Regulation: Y — Bank Holding Companies and Change in Bank Control (Docket Number: R-1094)	7100-AC81
4187	Regulation: Y — Bank Holding Companies and Change in Bank Control (Docket Number: R-1092)	7100-AC82
4188	Regulation: BB — Community Reinvestment (Docket Number: R-1112) **(Section 610 Review)**	7100-AC87
4189	Regulation: DD — Truth in Savings (Docket Number: R-1044)	7100-AC34

FRS

Federal Reserve System—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
4190	Misc. Interpretations: Application of Sections 23A and 23B of the Federal Reserve Act to Derivative Transactions With Affiliates and Intraday Extensions of Credit to Affiliates (Docket Number: R-1104)	7100-AC85

Federal Reserve System—Completed Actions

Sequence Number	Title	Regulation Identification Number
4191	Regulation: C — Home Mortgage Disclosure (Docket Numbers: R-1001 and R-1120)	7100-AC51
4192	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System (Docket Number: R-1099)	7100-AC84

Federal Reserve System (FRS) — Proposed Rule Stage

4169. • REGULATION: A — EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (DOCKET NUMBER: R-1123)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 248(i)-(j); 12 USC 343 et seq; 12 USC 347; 12 USC 347a; 12 USC 347c; 12 USC 348 et seq; 12 USC 357; 12 USC 374; 12 USC 374a; 12 USC 461; ...

CFR Citation: 12 CFR part 201

Legal Deadline: None

Abstract: This proposal would restructure the credit programs that Reserve Banks make available to depository institutions. Primary and secondary credit, which would be available at above-market rates with minimal administrative burden, would replace the existing adjustment and extended credit programs. These two new programs should eliminate the concerns that currently prevent depository institutions from going to the discount window during tight money markets when obtaining Federal Reserve credit is appropriate, and also should allow the Federal Reserve to respond more quickly to liquidity strains during national emergencies. The Board has not proposed changes to the seasonal credit program but has solicited comment on whether that program is still necessary and what the applicable interest rate should be. The Board also has solicited comment on the specific economic impact of the proposed changes on small depository institutions. Following the review of the public comments, the Board is expected to take further action.

Timetable:

Action	Date	FR Cite
Board requested comment	05/24/02	67 FR 36544
Further Board action by	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Adrianne G. Threatt, Senior Attorney, Federal Reserve System, Legal Division
Phone: 202 452-3554

RIN: 7100–AC89

4170. REGULATION: H — MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 1828(t)

CFR Citation: 12 CFR 208

Legal Deadline: None

Abstract: Section 204 of the Gramm-Leach-Bliley Act added a new subsection (t) to section 18 of the Federal Deposit Insurance Act requiring the Board, in consultation with the Securities and Exchange Commission, to establish recordkeeping requirements for state member banks and branches and agencies of foreign banks that rely on the exceptions from the definition of broker or dealer provided in section 3(a)(4) or (5) of the Securities Exchange Act of 1934.

The Board anticipates issuing for public comment a rule that would implement these recordkeeping requirements. The Board notes that the Securities and Exchange Commission has, by rule, delayed the effective date of the new exemptions for banks contained in section 3(a)(4) and (5) of the Securities Exchange Act of 1934, and has requested comment on rules that would provide guidance concerning the scope of their exemptions. (Release No. 34-44291, reprinted in 66 FR 27760, May 18, 2001; Release No. 34-45897, May 8, 2002). It is not anticipated that the Board's proposal, when issued, would have a significant economic impact on a substantial number of small entities subject to the Board's regulation.

Timetable:

Action	Date	FR Cite
Board will consider requesting comment by	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Kieran Fallon, Senior Counsel, Federal Reserve System, Legal Division
Phone: 202 452-5270

RIN: 7100–AC73

FRS — Proposed Rule Stage

4171. REGULATION: H — MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM; AND REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL, CAPITAL APPENDICES (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 24; 12 USC 24a; 12 USC 36; 12 USC 92a; 12 USC 93a; 12 USC 248(a); 12 USC 248(c); 12 USC 321 to 338a; 12 USC 371d; 12 USC 461; 12 USC 481 to 486; 12 USC 601; 12 USC 611; 12 USC 1814; 12 USC 1816; ...

CFR Citation: 12 CFR 208 app A; 12 CFR 208 app D; 12 CFR 208 app E; 12 CFR 225 app A; 12 CFR 225 app D; 12 CFR 225 app E

Legal Deadline: None

Abstract: The capital appendices to Regulations H and Y set forth guidelines for institutions in calculating their regulatory capital requirements, both risk-based and leverage.

While the guidelines are continuously monitored and updated as required to reflect market innovations, accounting changes, or modifications to supervisory policy, the Board is undertaking a more comprehensive review of the guidelines to minimize regulatory burden, clarify issues arising from the Gramm-Leach-Bliley Act, enhance the overall risk sensitivity, and to comply with provisions of section 610(c) of the Regulatory Flexibility Act of 1994. Following the review, the Board will publish a notice of proposed rulemaking.

Timetable:

Action	Date	FR Cite
Board will consider requesting comment by	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Barbara Bouchard, Assistant Director, Federal Reserve System, Division of Banking Supervision and Regulation
Phone: 202 452-3072

RIN: 7100–AC88

4172. REGULATION: DD — TRUTH IN SAVINGS ACT (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 4301

CFR Citation: 12 CFR 230

Legal Deadline: None

Abstract: Regulation DD, which implements the Truth in Savings Act, requires that depository institutions uniformly disclose to customers information about the terms and conditions on which interest is paid and fees are assessed on deposit accounts.

The Board has targeted Regulation DD for review to update it and to comply with provisions of section 610(c) of the Regulatory Flexibility Act of 1994. The review is expected to commence with publication of an advance notice of proposed rulemaking in first quarter 2003 and be completed in the same year.

Timetable:

Action	Date	FR Cite
Board will consider requesting comment by	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jane Aherns, Senior Counsel, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452-3667

RIN: 7100–AC86

Federal Reserve System (FRS) — Final Rule Stage

4173. REGULATION: B — EQUAL CREDIT OPPORTUNITY (DOCKET NUMBER: R-1008) (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1691

CFR Citation: 12 CFR 202

Legal Deadline: None

Abstract: In 1998, the Board targeted Regulation B, which implements the Equal Credit Opportunity Act (ECOA), for a review to update the regulation. The ECOA makes it unlawful for creditors to discriminate against an applicant, in any aspect of a credit transaction, on the basis of race, color, religion, national origin, gender, marital status, age, and other specified bases. In March 1998, the Board issued for public comment an advance notice of proposed rulemaking for Regulation B that identified specific issues, in addition to requesting general comment on revisions to the regulation (63 FR 12326, March 12, 1998).

In August 1999, following review of the public comments on the advance notice, the Board issued for public comment a proposed rule amending Regulation B (64 FR 44582, August 16, 1999). Major revisions in the proposed rule include: removing the general prohibition against obtaining information about applicant characteristics such as national origin or gender, although such information still generally may not be considered in extending credit; adding a disclosure requirement for creditors that voluntarily collect data on applicant characteristics; requiring creditors to retain certain records for preapproved credit solicitations; and extending the record retention period for most business credit applications.

Based on the regulatory flexibility analysis, it is not expected that the proposal will have a significant impact on small entities. Although there would be a new disclosure requirement for creditors that voluntarily request information about applicant characteristics, a model form is proposed to ease compliance. Also, there is a new requirement to retain certain records for preapproved credit solicitations. For business reasons, many institutions already retain some of the preapproved credit solicitation information being sought. In addition, compliance burdens should be minimized by the fact that creditors may use a variety of methods, such as electronic storage, to retain records. Following review of the public

FRS — Final Rule Stage

comments, the Board is expected to take further action.

Timetable:

Action	Date	FR Cite
Board requested comment on advance notice	03/12/98	63 FR 12326
Board requested comment on proposed rule	08/16/99	64 FR 44582
Further Board action by	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Natalie E. Taylor, Counsel, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452-2412

RIN: 7100–AC54

4174. REGULATION: B — EQUAL CREDIT OPPORTUNITY; AND REGULATION: Z — TRUTH IN LENDING (DOCKET NUMBERS: R-1040 AND R-1043)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1601 et seq; 12 USC 4301 et seq

CFR Citation: 12 CFR 202; 12 CFR 213; 12 CFR 226; 12 CFR 230

Legal Deadline: None

Abstract: In March 1998 and September 1999, the Board issued for public comment proposed rules to permit the electronic delivery of Regulation B and Regulation Z disclosures, if the consumer agrees (63 FR 14548, March 25, 1998, and 64 FR 46988, September 14, 1999). The Board also issued similar proposed rules under other consumer financial services laws administered by the Board.

The Electronic Signatures in Global and National Commerce Act (E-Sign Act), which became effective October 1, 2000, generally governs the validity of records and signatures in electronic form. The E-Sign Act incorporated some elements of the Board's regulatory proposals governing electronic disclosures. Some provisions in the Board's proposals, however, were modified or preempted by the Act, while other provisions were not addressed by the E-Sign Act but were consistent with that Act and could be issued as final rules.

In March 2001, the Board issued interim final rules on the electronic delivery of disclosures (66 FR 17329, March 30, 2001, and 66 FR 17779, April 4, 2001). The scheduled mandatory compliance date was later lifted (66 FR 41439, August 8, 2001). Under the interim final rules, consistent with the requirements of the E-Sign Act, creditors generally must obtain consumers' affirmative consent to provide disclosures electronically. There are exceptions for certain disclosures. The interim final rules also establish uniform requirements for the timing and delivery of electronic disclosures. The March 2001 rulemakings were published as interim final rules to allow interested persons to present new information or views not considered in previous rulemakings. The rules are not expected to have a significant economic impact on a substantial number of small business entities. Following review of the public comments, the Board will take further action.

Timetable:

Action	Date	FR Cite
Board issued proposed rules	03/25/98	63 FR 14548
Board issued revised proposed rules	09/14/99	64 FR 46988
Board issued interim final rule (Regulation Z)	03/30/01	66 FR 17329
Board issued interim final rule (Regulation B)	04/04/01	66 FR 17779
Board lifted mandatory compliance date	08/08/01	66 FR 41439
Further Board action by	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Natalie E. Taylor, Counsel, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452-2412

RIN: 7100–AC46

4175. REGULATION: E — ELECTRONIC FUND TRANSFERS (DOCKET NUMBERS: R-0919 AND R-1041)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1693 et seq

CFR Citation: 12 CFR 205

Legal Deadline: None

Abstract: In March 1998 and September 1999, the Board issued for public comment an interim final rule and proposed rules under Regulation E to permit the electronic delivery of disclosures, if the consumer agrees (Docket Number: R-1002; 63 FR 14528, March 25, 1998 (interim rule), and Docket Number: R-1041; 64 FR 49699, September 14, 1999). The Board also issued similar proposed rules under other consumer financial services laws administered by the Board.

The Electronic Signatures in Global and National Commerce Act (E-Sign Act), which became effective October 1, 2000, generally provides that records and signatures may not be denied legal effect solely because they are in electronic form. The E-Sign Act incorporated some elements of the Board's regulatory proposal governing electronic disclosures. Certain provisions in the Board's proposal, however, were modified or preempted by the Act, while other provisions were not addressed by the E-Sign Act but were consistent with the Act and could be issued as final rules.

In March 2001, the Board issued an interim final rule on the electronic delivery of disclosures (66 FR 17786, April 4, 2001). The scheduled mandatory compliance date was later lifted (66 FR 41439, August 8, 2001). Under the interim final rule, consistent with the requirements of the E-Sign Act, financial institutions generally must obtain consumers' affirmative consent to provide disclosures electronically. The interim final rule also establishes uniform requirements for the timing and delivery of electronic disclosures. The March 1998 interim rule was withdrawn under the interim final rule.

The March 2001 rulemaking was published as an interim final rule to allow interested persons to present new information or views not considered in previous rulemakings. The rule is not expected to have a significant economic impact on a substantial number of small business entities. Following review of the public comments, the Board is expected to take further action.

A May 1996 Regulation E proposal to permit financial institutions to provide disclosures electronically also included proposed amendments imposing

modified requirements on stored-value products in systems that track individual transactions, cards, or consumers and providing an exemption for cards on which a maximum value of $100 can be stored (Docket Number: R-0919; 61 FR 19696, May 2, 1996); the latter proposal remains pending.

Timetable:

Action	Date	FR Cite
Board issued proposed rule on coverage of stored-value products & electronic delivery of disclosures	05/02/96	61 FR 19696
Board issued interim rule permitting electronic delivery of disclosures	03/25/98	63 FR 14528
Board issued proposed rule imposing additional requirements re: electronic delivery of disclosures	09/14/99	64 FR 49699
Board issued interim final rules	04/04/01	66 FR 17786
Board lifted mandatory compliance date of interim final rule	08/08/01	66 FR 41439
Further Board action by	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John C. Wood, Counsel, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452-2412

RIN: 7100–AC06

4176. REGULATION: H — MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (DOCKET NUMBER: R-1064)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 335; 12 USC 1835a

CFR Citation: 12 CFR 208

Legal Deadline: None

Abstract: In March 2000, the Board approved an interim rule with request for public comment amending Regulation H to implement section 121 of the Gramm-Leach-Bliley Act for state member banks (65 FR 14810, March 20, 2000). Section 121 in part authorizes state member banks to control, or hold an interest in, financial subsidiaries so as to conduct certain activities that are financial in nature or incidental to a financial activity. In August 2001, following review of the public comments, the Board adopted the final rule substantially as proposed (66 FR 42929, August 16, 2001).

The Board will also consider issuing for public comment a proposed rule in place of an existing Miscellaneous Interpretation (12 CFR 250.141) relating to member banks' purchases of stock in operations subsidiaries to update its provisions and conform to section 121. It is not anticipated that the proposal will have a significant economic impact on a substantial number of small entities subject to the Board's regulation.

Timetable:

Action	Date	FR Cite
Board requested comment on interim rule	03/20/00	65 FR 14810
Board adopted interim rule	08/16/01	66 FR 42929
Board will consider requesting comment on replacement rule for Miscellaneous Interpretation by	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael J. O'Rourke, Counsel, Federal Reserve System, Legal Division
Phone: 202 452-3288

RIN: 7100–AC69

4177. REGULATION: H — MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM; AND REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (DOCKET NUMBER: R-0930)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 36; 12 USC 248(a); 12 USC 248(c); 12 USC 321 to 338a; 12 USC 371d; 12 USC 461; 12 USC 481 to 486; 12 USC 601; 12 USC 611; 12 USC 1814; 12 USC 1823(j); 12 USC 1828(o); 12 USC 1831(o); 12 USC 1831p-1; 12 USC 3105; ...

CFR Citation: 12 CFR 208 app A

Legal Deadline: None

Abstract: In August 1996, the Board issued for public comment a proposal to revise the risk-based capital treatment for certain collateralized transactions (61 FR 42565, August 16, 1996). Under the Board's existing risk-based capital treatment, the portion of a transaction that is supported by qualifying collateral (that is, cash or OECD government securities) is risk-weighted at 20 percent. Transactions that are fully supported by collateral with a positive margin may be eligible for a zero percent risk weight. Generally, the proposal would permit a portion of a transaction that is fully supported with a positive margin of collateral to be eligible for a zero percent risk weight. The portion that is to be continuously collateralized must be identified by the parties.

This proposal was developed on an interagency basis and, if adopted, would eliminate one of the substantive differences among the agencies with regard to the risk-based capital treatment for collateralized transactions. It would implement provisions in the Riegle Community Development and Regulatory Improvement Act of 1994, which requires the agencies to make uniform regulations and guidelines implementing common supervisory policies. The effect of the proposal would be to allow institutions to hold less capital for certain collateralized transactions. It is not expected to have a significant economic impact on a substantial number of small entities.

Following review of the public comments and development of an interagency final rule, the Board is expected to take further action.

Timetable:

Action	Date	FR Cite
Board requested comment	08/16/96	61 FR 42565
Further Board action by	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Connolly, Supervisory Financial Analyst, Federal Reserve System, Division of Banking Supervision and Regulation
Phone: 202 452-3621

RIN: 7100–AC13

4178. REGULATION: H — MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM; AND REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (DOCKET NUMBER: R-1087)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 24; 12 USC 36; 12 USC 92a; 12 USC 93a; 12 USC 248(a); 12 USC 248(c); 12 USC 321 to 338a; 12 USC 371d; 12 USC 461; 12 USC 1817(j)(13); 12 USC 1818; 12 USC 1818(o); 12 USC 1831i; 12 USC 1831p-1; 12 USC 1843(c)(8); ...

CFR Citation: 12 CFR 208; 12 CFR 225

Legal Deadline: None

Abstract: In December 2000, the Board issued an interim rule, with request for public comment, amending Regulations H and Y to effectively reduce the capital requirement for certain securities borrowing transactions (65 FR 75856, December 5, 2000). The proposed amendments would recognize the historically low risk of these transactions and bring the capital requirements for U.S. banking organizations into better alignment with the capital requirements of other U.S. and non-U.S. regulators of financial institutions. The proposed amendments would have little or no effect on small banking organizations subject to the Board's regulation, as securities borrowing activities are concentrated in a relatively small number of very large banking organizations. Following review of the public comments, the Board will take further action.

Timetable:

Action	Date	FR Cite
Board requested comment	12/05/00	65 FR 75856
Further Board action by	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David Adkins, Supervisory Financial Analyst, Federal Reserve System, Division of Banking Supervision and Regulation
Phone: 202 452-5259

RIN: 7100–AC75

4179. REGULATION: M — CONSUMER LEASING (DOCKET NUMBER: R-1042)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1667

CFR Citation: 12 CFR 213

Legal Deadline: None

Abstract: In March 1998 and September 1999, the Board issued for public comment proposed rules under Regulation M, which implements the Consumer Leasing Act, to permit the electronic delivery of disclosures, if the consumer agrees (63 FR 14538, March 25, 1998 and 64 FR 49713, September 14, 1999). The Board also issued similar proposed rules under other consumer financial services regulations administered by the Board.

The Electronic Signatures in Global and National Commerce Act (E-Sign Act), which became effective October 1, 2000, generally governs the validity of records and signatures in electronic form. The E-Sign Act incorporated some elements of the Board's regulatory proposal governing electronic disclosures. Some provisions in the Board's proposal, however, were modified or preempted by the Act, while other provisions were not addressed by the E-Sign Act but were consistent with that Act and could be issued as final rules.

In March 2001, the Board issued an interim final rule on the electronic delivery of disclosures (66 FR 17322, March 30, 2001). The scheduled mandatory compliance date was later lifted (66 FR 41439, August 8, 2001). Under the interim final rule, consistent with the requirements of the E-Sign Act, lessors generally must obtain consumers' affirmative consent to provide disclosures electronically. There are exceptions for disclosures not deemed to relate to "transactions," such as disclosures in advertising. The interim final rule also establishes uniform requirements for the timing and delivery of electronic disclosures.

The March 2001 rulemaking was published as an interim final rule to allow interested persons to present new information or views not considered in previous rulemakings. The rule is not expected to have a significant economic impact on a substantial number of small business entities. Following review of the public comments, the Board will take further action.

Timetable:

Action	Date	FR Cite
Board issued proposed rule	03/25/98	63 FR 14538
Board issued revised proposed rule	09/14/99	64 FR 49713
Board issued interim final rule	03/30/01	66 FR 17322
Board lifted mandatory compliance date	08/08/01	66 FR 41439
Further Board action by	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jane Ahrens, Senior Counsel, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452-2412

RIN: 7100–AC53

4180. REGULATION: T — CREDIT BY BROKERS AND DEALERS; REGULATION: U — CREDIT BY BANKS; AND REGULATION: X — BORROWERS OF SECURITIES CREDIT (DOCKET NUMBER: R-0995)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 78G

CFR Citation: 12 CFR 220; 12 CFR 221; 12 CFR 224

Legal Deadline: None

Abstract: As part of the regular review of its regulations and in accordance with requirements of section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, and section 610(c) of the Regulatory Flexibility Act of 1994, the Board is conducting a review of its margin regulations. In order to complete this review, the Board approved issuing for public comment an advance notice of proposed rulemaking in December 1997 (63 FR 2840, January 16, 1998). The advance notice highlights issues raised by interested persons in response to previous requests for comment that had not been addressed by the Board in the course of its periodic review. It also provides an opportunity to further harmonize the treatment of bank and nonbank lenders under the revised Regulation U adopted by the Board at the same time as the advance notice. The advance notice also invites comment on all areas of the regulations.

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Following review of the public comments, the Board is expected to take further action.

Timetable:

Action	Date	FR Cite
Board requested comment	01/16/98	63 FR 2840
Further Board action by	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Scott J. Holz, Senior Counsel, Federal Reserve System, Legal Division
Phone: 202 452-2966

RIN: 7100–AC45

4181. REGULATION: V — FAIR CREDIT REPORTING (DOCKET NUMBER: R-1082)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1681 et seq

CFR Citation: 12 CFR 222

Legal Deadline: None

Abstract: In 1996, the Congress amended the Fair Credit Reporting Act (FCRA) as part of the Consumer Credit Reporting Reform Act. The amendments, among other things, prohibited the federal regulatory agencies from issuing implementing regulations. In November 1999, the Congress once again amended the FCRA as part of the Gramm-Leach-Bliley Act. The amendments lifted the prohibition and directed the Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision to issue implementing regulations jointly.

In October 2000, the agencies issued proposed regulations for public comment (65 FR 63120, October 20, 2000). The proposal is not expected to have a significant economic impact on a substantial number of small entities. Following review of the public comments, the agencies will take further action.

Timetable:

Action	Date	FR Cite
Board requested comment	10/20/00	65 FR 63120
Further Board action by	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David Stein, Senior Attorney, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452-3667

RIN: 7100–AC68

4182. REGULATION: W — TRANSACTIONS BETWEEN BANKS AND THEIR AFFILIATES (DOCKET NUMBER: R-1103)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 371c; 12 USC 371c-1

CFR Citation: 12 CFR 223

Legal Deadline: None

Abstract: In May 2001, in response to passage of the Gramm-Leach-Bliley Act, the Board issued for public comment a new regulation (Regulation W) to implement sections 23A and 23B of the Federal Reserve Act (66 FR 24186, May 11, 2001). Sections 23A and 23B regulate transactions between insured depository institutions and their affiliates. The proposed regulation codifies existing interpretations and asks for comment on new interpretations and exemptions. The proposal also requests comment on the treatment of derivatives and intra-day credit exposures between insured depository institutions and their affiliates. The Board has requested comment on the likely burden the rule will impose on small institutions. Following review of the public comments, the Board is expected to take further action.

Timetable:

Action	Date	FR Cite
Board requested comment	05/11/01	66 FR 24186
Further Board action by	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Pamela G. Nardolilli, Senior Counsel, Federal Reserve System, Legal Division
Phone: 202 452-3289

RIN: 7100–AC63

4183. REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1844(b)

CFR Citation: 12 CFR 225

Legal Deadline: None

Abstract: Title I of the Gramm-Leach-Bliley Act (GLB Act) makes a number of miscellaneous amendments to sections 3, 4, and 5 of the Bank Holding Company Act of 1956 (BHC Act) and adds a new section 10A to the BHC Act. These amendments, among other things, prohibit the Board from determining that new activities are closely related to banking under section 4(c)(8) of the BHC Act; streamline the Board's reporting, examination, and other supervisory authority over bank holding companies and their subsidiaries; reduce the restrictions applicable to companies that control "nonbank banks" that are exempt from the nonbanking restrictions of the BHC Act under section 4(f) of that Act; and repeal the savings bank life insurance provisions currently set forth in section 3(g) of the BHC Act.

The Board will consider issuing for public comment amendments to Regulation Y to implement the provisions of the GLB Act affecting the BHC Act that are not addressed in proposed rules described elsewhere in the Board's agenda. It is not anticipated that the proposals will have a significant economic impact on a substantial number of small entities subject to the Board's regulation.

Timetable:

Action	Date	FR Cite
Board will consider requesting comment by	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kieran Fallon, Senior Counsel, Federal Reserve System, Legal Division
Phone: 202 452-5270

RIN: 7100–AC66

4184. REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 24; 12 USC 24a; 12 USC 36; 12 USC 92a; 12 USC 93a; 12 USC 248(a); 12 USC 248(c); 12 USC 321 to 338a; 12 USC 371d; 12 USC 481 to 486; 12 USC 601; 12 USC 611; 12 USC 1814; 12 USC 1816; ...

CFR Citation: 12 CFR 225

Legal Deadline: None

Abstract: The Board will consider issuing for public comment proposed amendments to Regulation Y that will include a series of technical changes to Regulation Y necessitated by the Gramm-Leach-Bliley Act, as well as a general reorganization of Regulation Y. The proposal should not have a substantive economic impact on small entities.

Timetable:

Action	Date	FR Cite
Board will consider requesting comment by	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Andrew S. Baer, Counsel, Federal Reserve System, Legal Division
Phone: 202 452-2246

RIN: 7100–AC78

4185. REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (DOCKET NUMBER: R-1091)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1843

CFR Citation: 12 CFR 225.86

Legal Deadline: None

Abstract: In January 2001, the Board issued for public comment a proposed rule amending Regulation Y that would define real estate brokerage and real estate management activities as financial in nature or incidental to a financial activity and therefore permissible for financial holding companies under the Board's Regulation Y (66 FR 307, January 3, 2001). The proposal would facilitate the creation of diversified financial companies that can offer "one-stop shopping" to consumers contemplating the purchase or management of real estate. The proposal is not expected to have a significant economic impact on a substantial number of small business entities. Following review of the public comments, the Board will take further action.

Timetable:

Action	Date	FR Cite
Board requested comment	01/03/01	66 FR 307
Further Board action by	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mark E. Van Der Weide, Counsel, Federal Reserve System, Legal Division
Phone: 202 452-2263

RIN: 7100–AC79

4186. REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (DOCKET NUMBER: R-1094)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1843

CFR Citation: 12 CFR 225.86(e)

Legal Deadline: None

Abstract: In December 2000, the Board, jointly with the Department of the Treasury, issued interim rules with request for public comment that implement section 4(k)(5) of the Bank Holding Company Act and section 5136A(b)(3) of the Revised Statutes, which were added by the Gramm-Leach-Bliley Act (66 FR 257, January 3, 2001). The interim rules specify three general types of activities to be financial in nature or incidental to a financial activity, and create a mechanism by which financial holding companies, financial subsidiaries of national banks, or others may request that the Board or the Secretary of the Treasury, respectively, define particular activities within one of the three categories. Such activities would therefore be permissible for financial holding companies and financial subsidiaries of national banks. The rules are not expected to have a significant economic impact on a substantial number of small entities. Following review of the public comments, the Board will take further action.

Timetable:

Action	Date	FR Cite
Board requested comment	01/03/01	66 FR 257
Further Board action by	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Andrew S. Baer, Counsel, Federal Reserve System, Legal Division
Phone: 202 452-2246

RIN: 7100–AC81

4187. REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (DOCKET NUMBER: R-1092)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1843(k)

CFR Citation: 12 CFR 225.28; 12 CFR 225.89

Legal Deadline: None

Abstract: In December 2000, the Board issued for public comment a proposed rule that would allow all bank holding companies to conduct a greater amount of nonfinancial data processing than previously authorized (65 FR 80384, December 21, 2000). The proposed rule also would allow financial holding companies, as a complementary activity, to own companies engaged in certain data processing-related activities, such as data storage and Internet and portal hosting. The Board anticipates that the proposal would allow bank holding companies to provide a wider range of financial products and services to customers and would not have a significant economic impact on a substantial number of small entities. Following review of the public comments, the Board will take further action.

Timetable:

Action	Date	FR Cite
Board requested comment	12/21/00	65 FR 80384
Further Board action by	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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Agency Contact: Kieran Fallon, Senior Counsel, Federal Reserve System, Legal Division
Phone: 202 452-5270

RIN: 7100–AC82

4188. REGULATION: BB — COMMUNITY REINVESTMENT (DOCKET NUMBER: R-1112) (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 2901

CFR Citation: 12 CFR 228

Legal Deadline: None

Abstract: In 1995, the Board issued Regulation BB which implements the Community Reinvestment Act (CRA). Substantially similar regulations were issued by the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS). The goal of these regulations was to achieve more objective performance-based CRA examinations and to minimize burden. At the time these regulations were issued, the agencies committed to conducting a 2002 comprehensive review of the regulations' effectiveness in achieving this goal.

In July 2001, the Board, the OCC, FDIC, and OTS issued an advance notice of proposed rulemaking (ANPR) (66 FR 37602, July 19, 2001). The notice identifies key issues in addition to requesting comment generally on potential revisions to the regulation. The Board is also reviewing the regulation in accordance with requirements of section 610(c) of the Regulatory Flexibility Act of 1994.

The first issue presented in the ANPR is whether any change to the regulation is necessary and warranted, in light of the burden that change would entail. Other issues include: the effectiveness of the evaluation methods set forth in the regulations; the effectiveness of the requirement that large financial institutions collect and report data on small business, small farm, and community development lending; and whether the regulations have provided a reasonable and sufficient standard for designating the communities within which a financial institution's activities will be evaluated during a CRA examination.

It is not anticipated that any rule proposed for public comment would have a significant economic impact on a substantial number of small entities subject to the Board's regulation. Following review of the public comments, the Board is expected to take further action.

Timetable:

Action	Date	FR Cite
Board requested comment	07/19/01	66 FR 37602
Further Board action by	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Kathleen Ryan, Senior Attorney, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452-3667

RIN: 7100–AC87

4189. REGULATION: DD — TRUTH IN SAVINGS (DOCKET NUMBER: R-1044)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 4301 et seq

CFR Citation: 12 CFR 230

Legal Deadline: None

Abstract: In March 1998 and September 1999, the Board issued for public comment proposed rules and an interim rule under Regulation DD, which implements the Truth in Savings Act (TISA), to permit the electronic delivery of disclosures, if the consumer agrees (63 FR 14533, March 25, 1998, and 64 FR 49740, September 14, 1999). The interim rule permits the electronic delivery of TISA disclosures provided on periodic statements. The Board also issued similar proposed rules under other consumer financial services laws administered by the Board.

The Electronic Signatures in Global and National Commerce Act (E-Sign Act), which became effective October 1, 2000, generally governs the validity of records and signatures in electronic form. The E-Sign Act incorporated some elements of the Board's regulatory proposal governing electronic disclosures. Certain provisions in the Board's proposal, however, were modified or preempted by the Act, while other provisions were not addressed by the E-Sign Act but were consistent with that Act and could be issued as final rules.

In March 2001, the Board issued an interim final rule on the electronic delivery of disclosures (66 FR 17795, April 4, 2001). The scheduled mandatory compliance date was later lifted (66 FR 41439, August 8, 2001). Under the interim final rule, consistent with the requirements of the E-Sign Act, depository institutions generally must obtain consumers' affirmative consent to provide disclosures electronically. There are exceptions for disclosures not deemed to relate to "transactions," such as disclosures in advertising. The interim final rule also establishes uniform requirements for the timing and delivery of electronic disclosures. The 1999 interim rule permitting electronic delivery of Regulation DD disclosures on periodic statements was withdrawn under the interim final rule.

The March 2001 rulemaking was published as an interim final rule to allow interested persons to present new information or views not considered in previous rulemakings. The rule is not expected to have a significant economic impact on a substantial number of small business entities. Following review of the public comments, the Board will take further action.

Timetable:

Action	Date	FR Cite
Board issued proposed rule	03/25/98	63 FR 14533
Board issued revised proposed rule and interim rule	09/14/99	64 FR 49740
Board issued interim final rule	04/04/01	66 FR 17795
Board lifted mandatory compliance date	08/08/01	66 FR 41439
Further Board action by	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jane Ahrens, Senior Counsel, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452-2412

RIN: 7100–AC34

4190. MISC. INTERPRETATIONS: APPLICATION OF SECTIONS 23A AND 23B OF THE FEDERAL RESERVE ACT TO DERIVATIVE TRANSACTIONS WITH AFFILIATES AND INTRADAY EXTENSIONS OF CREDIT TO AFFILIATES (DOCKET NUMBER: R-1104)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 371c(f); 12 USC 371c-1(e)

CFR Citation: 12 CFR 250.247

Legal Deadline: None

Abstract: The Gramm-Leach-Bliley Act (GLB Act) required the Board to adopt, by May 12, 2001, final rules under section 23A to address credit exposures arising out of derivative transactions between insured depository institutions and their affiliates and intraday extensions of credit by insured depository institutions to their affiliates as covered transactions. In May 2001, the Board adopted interim final rules pursuant to the amendments to section 23A contained in the GLB Act and requested public comment on the rules (66 FR 24229, May 11, 2001).

The interim rule requires that an institution establish and maintain policies and procedures reasonably designed to manage the credit exposure arising from the institution's derivative transactions with affiliates and clarifies that institution-affiliate derivative transactions are subject to the market terms requirement of section 23B. The policies and procedures must at a minimum provide for monitoring and controlling the credit exposure arising from the institution's derivative transactions with each affiliate and all affiliates in the aggregate, and ensure that the institution's derivative transactions with affiliates comply with section 23B. The intraday credit rule also requires insured depository institutions to have policies and procedures in place and clarifies that the transactions are subject to section 23B.

Although the proposal is not expected to have a significant economic impact on small institutions, the Board has specifically requested comment on the likely burden the rule will impose. Following review of the public comments, the Board will take further action on this matter in connection with its review of the proposed Regulation W (Docket Number: R-1103; RIN 7100-AC63).

Timetable:

Action	Date	FR Cite
Board requested comment	05/11/01	66 FR 24229
Further Board action by	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Mark E. Van Der Weide, Counsel, Federal Reserve System, Legal Division
Phone: 202 452-2263

RIN: 7100–AC85

Federal Reserve System (FRS) — Completed Actions

4191. REGULATION: C — HOME MORTGAGE DISCLOSURE (DOCKET NUMBERS: R-1001 AND R-1120)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 2801

CFR Citation: 12 CFR 203

Legal Deadline: None

Abstract: In 1998, Regulation C, which implements the Home Mortgage Disclosure Act (HMDA) was targeted for review to update the regulation. HMDA requires most mortgage lenders located in metropolitan areas to report annually to Federal agencies and disclose to the public information about their home purchase and home improvement lending activities. In March 1998, the Board issued an advance notice of proposed rulemaking, and in December 2000 issued for public comment a proposed rule amending Regulation C (65 FR 78656, December 15, 2000).

In January 2002, following review of the public comments, the Board approved a final rule amending Regulation C (67 FR 7221, February 15, 2002). Among other things, the amendments, which are effective January 1, 2003, do the following: (1) revise definitions of certain reportable loans and the definition of application to include "preapprovals" as defined in the regulation; (2) require lenders to report loans with APRs that exceed the yield on a Treasury security of comparable maturity, if the rate spread above the Treasury rate is 3 percentage points for first lien loans and 5 percentage points for subordinate lien loans—lenders must report the rate spread above the appropriate Treasury security; (3) report whether a loan is subject to Home Ownership and Equity Protection Act and whether a loan is for manufactured housing; and (4) expand the coverage of nondepository lenders.

On May 2, 2002, the Board delayed the effective date of the final revisions to January 1, 2004, with limited exceptions relating to the use of 2000 census data.

The final rule would affect all institutions currently within the scope of the regulation, including covered small institutions. No newly covered institution would be a small mortgage lender. It is not anticipated that the final rule would have a significant economic impact on a substantial number of small entities subject to the Board's regulation.

At the time of adoption of the final rule, the Board requested comment on three additional issues: (1) whether the rate spreads of three and four percent are appropriate; (2) whether lien status should be reported; and (3) whether lenders should be required to ask about race and national origin, for example, in connection with telephone applications (67 FR 7251, February 15, 2002).

On June 3, 2002, after review of the public comments, the Board adopted additional final revisions to Regulation C. These revisions (1) establish the thresholds for determining the loans for which financial institutions must report loan pricing data (the spread between the annual percentage rate (APR) on a loan and the yield on comparable Treasury securities) as required under the final rule approved January 2002; (2) require lenders to report the lien status of applications and loan originations; and (3) effective January 1, 2003, require lenders to ask

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applicants their ethnicity, race, and sex, in applications taken by telephone.

The final rule would affect all institutions currently within the scope of the regulation, including covered small institutions. No newly covered institutions would be a small mortgage lender. It is not anticipated that the final rule would have a significant economic impact on a substantial number of small entities subject to the Board's regulation.

Except for the rule regarding telephone applications, the final rules adopted in June 2002 are effective January 1, 2004.

Timetable:

Action	Date	FR Cite
Board requested comment on advance notice	03/12/98	63 FR 12329
Board requested comment on proposed rule	12/15/00	65 FR 78656
Board adopted proposals	02/15/02	67 FR 7221
Board requested comment	02/15/02	67 FR 7251
Board delayed effective date	05/08/02	67 FR 30771
Board adopted proposals	06/27/02	67 FR 43218

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Kathleen Ryan, Senior Attorney, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452-3667

RIN: 7100–AC51

4192. REGULATION: H — MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (DOCKET NUMBER: R-1099)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1835a

CFR Citation: 12 CFR 208

Legal Deadline: None

Abstract: In April 2001, the Board, along with the other banking agencies, issued for public comment a proposed rule that would amend uniform regulations implementing section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act) to effectuate the amendment of section 109 contained in section 106 of the Gramm-Leach-Bliley Act (66 FR 18411, April 9, 2001). Section 109 prohibits a bank from establishing or acquiring a branch or branches outside of its home state for the purpose of deposit production. Additionally, section 109 contains guidelines for determining whether a bank is reasonably helping to meet the credit needs of communities served by an out-of-state branch or branches. Section 106 expanded the coverage of section 109 of the Interstate Act to include any branch of a bank controlled by an out-of-state bank holding company. The proposed rule amends the regulatory deposit production prohibition to include any bank or branch controlled by an out-of-state bank holding company, including a bank consisting only of a main office.

The rule is not expected to have a significant economic impact on a substantial number of small entities subject to the regulation. Following review of the public comments, the Board approved the joint final rule substantially as proposed on May 20, 2002.

Timetable:

Action	Date	FR Cite
Board requested comment	04/09/01	66 FR 18411
Board approved final rule	05/20/02	67 FR 38844

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael J. O'Rourke, Counsel, Federal Reserve System, Legal Division
Phone: 202 452-3288

RIN: 7100–AC84

[FR Doc. 02–24268 Filed 12–06–02; 8:45 am]
BILLING CODE 6210–01–S

Federal Register

Monday,
December 9, 2002

Part LVIII

Federal Trade Commission

Semiannual Regulatory Agenda

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FEDERAL TRADE COMMISSION (FTC)

FEDERAL TRADE COMMISSION

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Semiannual Regulatory Agenda

AGENCY: Federal Trade Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The following agenda of Commission proceedings is published in accordance with section 22(d)(1) of the Federal Trade Commission Act, 15 U.S.C. 57b-3(d)(1), and the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, title II of Pub. L. 104-121, 110 Stat. 847. The Commission's agenda follows guidelines and procedures issued July 19, 2002, by the Office of Management and Budget in accordance with the provisions of Executive Order No. 12866, "Regulatory Planning and Review" of September 30, 1993. 58 FR 51735 (October 4, 1993). This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions includes The Regulatory Plan, which appears in part II of this issue of the Federal Register. The Federal Trade Commission's Statement of Regulatory Priorities is included in part II.

The Commission has identified a rulemaking that is related to the events of September 11, 2001, because the USA PATRIOT Act, Pub.L. 107-56, 115 Stat. 272, amended the Telemarketing and Consumer Fraud and Abuse Prevention Act, 16 USC 6101-6108, and thus affects the Telemarketing Sales Rule, 16 CFR part 310.

The Commission has responded to the optional information requirement to identify rulemakings that are likely to have some impact on small entities but are not subject to the requirements of the RFA. The current rulemakings that are likely to have some impact on small entities include: (1) Smokeless Tobacco Rules, 16 CFR part 307; (2) the Pay-Per-Call Rule, 16 CFR part 308; (3) Labeling Requirements for Alternative Fuels and Alternative-Fueled Vehicles, 16 CFR part 309; (4) the Telemarketing Sales Rule, 16 CFR part 310; (5) the Franchise and Business Opportunities Rule, 16 CFR part 436; (6) the Funeral Rule, 16 CFR part 453; (7) the Trade Regulation Rule on Ophthalmic Practice Rules, 16 CFR part 456; and (8) the Rule on Labeling and Advertising of Home Insulation, 16 CFR part 460.

In addition, the agency has responded to the optional information requirement that corresponds to the requirements of Executive Order 13132, "Federalism" of August 4, 1999. 64 FR 43255 (Aug. 10, 1999). The Commission believes that none of the rules in this Agenda has "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and the responsibilities among the various levels of government" within the meaning of E.O. 13132. The Commission continues to work closely with the States and other governmental units in its rulemaking process, which explicitly considers the effect of the agency's rules on these governmental entities.

In addition, the agency has responded to the optional information requirement that corresponds to the requirements of Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use" of May 18, 2001. 66 FR 28355 (May 22, 2001). The Commission believes that none of the rules in this Agenda meets this Executive Order's criteria requiring preparation of a Statement of Energy Effects.

The agency also is conducting reviews of the Pay-Per-Call Rule as provided in the Rule and of the Telemarketing Sales Rule as required by the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 USC 6101-6108. Most of the other reviews listed in the following agenda are being conducted as part of the Commission's plan to review and seek information about all of its regulations and guides, including their costs and benefits, and regulatory and economic impact every ten years. These reviews incorporate and expand upon the review required by the Regulatory Flexibility Act and regulatory reform initiatives directing agencies to conduct a review of all regulations and eliminate or revise those that are outdated or otherwise in need of reform.

Except for notice of completed actions, the information in this agenda represents the judgment of Commission staff, based upon information now available. Each projected date of action reflects an assessment by the FTC staff of the likelihood that the specified event will occur during the coming year. No final determination by the staff or the Commission respecting the need for, or the substance of, a trade regulation rule or any other procedural option should be inferred from the notation of projected events in this agenda. In most instances, the dates of future events are listed by month, not by a specific day. The acquisition of new information, changes of circumstances, or changes in the law may alter this information.

FOR FURTHER INFORMATION CONTACT: For information about specific regulatory actions listed in the agenda, contact the agency contact listed for each particular proceeding. Comments or inquiries of a general nature about the Agenda should be directed to Sandra M. Vidas, Attorney, telephone: (202) 326-2456; e-mail: svidas@ftc.gov; or G. Richard Gold, Attorney, telephone: (202) 326-3355; e-mail: rgold@ftc.gov, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

By direction of the Commission.

Donald S. Clark,

Secretary.

Federal Trade Commission—Prerule Stage

Sequence Number	Title	Regulation Identification Number
4193	Regulatory Review	3084-AA47
4194	Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986	3084-AA48
4195	Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation	3084-AA60
4196	Trade Regulation Rule on Ophthalmic Practice Rules	3084-AA80
4197	Trade Regulation Rule on Funeral Industry Practices	3084-AA82

FTC

Federal Trade Commission—Prerule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
4198	Labeling Requirements for Alternative Fuels and Alternative-Fueled Vehicles	3084-AA89

Federal Trade Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4199	Trade Regulation Rule on Franchising and Business Opportunity Ventures	3084-AA63
4200	Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992	3084-AA78
4201	Telemarketing Sales Rule	3084-AA86

Federal Trade Commission—Completed Actions

Sequence Number	Title	Regulation Identification Number
4202	Privacy of Consumer Information—Security	3084-AA87

Federal Trade Commission (FTC) **Prerule Stage**

4193. REGULATORY REVIEW

Priority: Other Significant

Legal Authority: 15 USC 41 et seq

CFR Citation: 16 CFR 1 et seq

Legal Deadline: None

Abstract: The Commission is continuing its review of current rules and guides to identify any that should be modified or rescinded. The Commission will continue to consider ways to streamline and improve the review program. On March 4, 2002, the Commission published a tentative timetable for its regulatory review program under which all of the Commission's rules and guides are reviewed over a ten year period, and announced that it will review one rule and one guide during 2002. 67 FR 9630 (Mar. 4, 2002). No determination about whether to modify or rescind a rule, guide or interpretation or any other procedural option should be inferred from the Commission's decision to publish a request for comments. In certain instances, the reviews may also address other specific matters or issues, such as proposed amendments. Finally, the Commission may modify the rule review timetable as circumstances warrant.

Timetable:

Action	Date	FR Cite
Notice of Rules and Guides to Review in 2000	01/19/00	65 FR 2912
Notice of Rules and Guides to Review in 2002	03/04/02	67 FR 9630
Notice of Rules and Guides to Review in 2003	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3084–AA47

4194. REGULATIONS UNDER THE COMPREHENSIVE SMOKELESS TOBACCO HEALTH EDUCATION ACT OF 1986

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 4401

CFR Citation: 16 CFR 307

Legal Deadline: None

Abstract: The Comprehensive Smokeless Tobacco Health Education Act of 1986 requires health warnings on all packages and advertisements for smokeless tobacco. The Act directs the Commission to issue implementing Rules governing the format and display of the warnings. On November 4, 1986, the Commission issued its Rules setting out the provisions for the size, color, typeface, and rotation of the statutory warnings. In FY 2000, the Commission undertook a periodic review of the Rules. The purpose of the review was to determine whether the Rules continue to effectively meet the goals of the Act and to seek information concerning the Rules, particularly their economic impact, in order to decide whether they should be amended. Staff plans to forward its recommendations to the Commission early next year.

Timetable:

Action	Date	FR Cite
Recommendation to the Commission Regarding ANPRM (Regulatory Review)	01/27/00	
ANPRM (Regulatory Review)	03/07/00	65 FR 11944

Action	Date	FR Cite
Comment Period End (Regulatory Review)	04/24/00	
Comment Period Extended (Regulatory Review)	05/08/00	65 FR 26534
Extended Comment Period End (Regulatory Review)	07/21/00	
Reopening and Extension of Comment Period	10/13/00	65 FR 60899
Extended Comment Period End	10/16/00	
Recommendation to Commission (Regulatory Review)	01/00/03	
Commission Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3084–AA48

4195. TRADE REGULATION RULE CONCERNING THE LABELING AND ADVERTISING OF HOME INSULATION

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 41 et seq

CFR Citation: 16 CFR 460

Legal Deadline: None

Abstract: The Federal Trade Commission's Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation (Rule) became effective on September 29, 1980. The Rule is designed to assist consumers in evaluating and comparing the thermal performance characteristics of competing home insulation products by specifically requiring manufacturers of home insulation products to provide information about the product's degree of resistance to the flow of heat (R-Value). The Rule also establishes uniform standards for testing, information disclosure, and substantiation of product performance claims. As part of the systematic review of its rules and guides, the Commission requested comments on, among other things, the economic impact of and the continuing need for this Rule, possible conflicts between the Rule and State, local and other Federal laws, and the effect on the Rule of any technological, economic, or other industry changes. The Commission is considering the comments received in two parts. In part I, the Commission reviewed comments that addressed the current benefits, burdens, and need for the Rule and decided to retain the Rule with a few nonsubstantive amendments. In part II, the Commission is considering whether to adopt substantive revisions to the Rule. In response to the comments received, the Commission issued an advance notice of proposed rulemaking (ANPRM) seeking comment on whether it should initiate a rulemaking proceeding to amend the Rule to recognize technological advances in R-Value testing and specimen preparation procedures, and to clarify and streamline the Rule's requirements. Staff is currently reviewing the comments and expects to forward its recommendation to the Commission regarding proposed substantive amendments to the Rule and anticipates publication of the NPRM by March 2003.

Timetable:

Action	Date	FR Cite
Request for Comments	04/06/95	60 FR 17492
Commission Action/Part I	03/28/96	61 FR 13659
Commission Action/ANPRM	09/01/99	64 FR 48023
ANPRM Comment Period End	11/15/99	
Recommendation to Commission	12/00/02	
Commission Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3084–AA60

4196. TRADE REGULATION RULE ON OPHTHALMIC PRACTICE RULES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 41 et seq

CFR Citation: 16 CFR 456

Legal Deadline: None

Abstract: Issued in 1978, the Trade Regulation Rule on Ophthalmic Practice Rules, also known as the Prescription Release Rule, provides that an optometrist or ophthalmologist must give the patient, at no extra cost, a copy of the eyeglass prescription immediately after the examination is completed. The Rule also prohibits optometrists and ophthalmologists from conditioning the availability of an eye examination, as defined by the Rule, on a requirement that the patient agrees to purchase ophthalmic goods from the optometrist or ophthalmologist, and from placing on the prescription, or delivering to the patient, certain disclaimers or waivers of liability. The Rule does not require an optometrist or ophthalmologist to release a contact lens prescription to a patient after an eye exam. As part of its systematic review of all Commission rules and guides, the Commission has requested comments on the economic impact of, and the continuing need for, this Rule, possible conflict between the Rule and State, local, or other Federal laws, and the effect on the Rule of any technological, economic, or other industry changes. Staff is evaluating the comments received and formulating a recommendation as to whether the Commission should retain the Rule or initiate a rulemaking to revise or repeal it.

Timetable:

Action	Date	FR Cite
Request for Comments	04/03/97	62 FR 15865
Notice of Comment Period Extension	05/29/97	62 FR 29088
Comment Period End	09/02/97	
Recommendation to Commission	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3084–AA80

4197. TRADE REGULATION RULE ON FUNERAL INDUSTRY PRACTICES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 45; 15 USC 46(g); 15 USC 57(a)

CFR Citation: 16 CFR 453

Legal Deadline: None

Abstract: The Funeral Industry Practices Rule (Funeral Rule or Rule), which became effective in 1984, requires sellers of funeral goods and services to give price lists to consumers who visit a funeral home, and to disclose price and other information to callers who request it over the telephone. The Rule enables consumers to select and purchase only the goods and services they want, and requires funeral providers to seek authority before performing some services such as embalming. The Rule also requires funeral providers to make disclosures regarding any required purchases and prohibits misrepresentations regarding requirements and other aspects of funeral goods and services. In its 1994 review of the Rule, the Commission decided to retain the Rule, amended it to prohibit funeral providers from charging a "casket handling fee" in addition to any non-declinable basic-services fee and deleted certain affirmative telephone disclosure requirements. The Commission responded to requests to address emerging issues in the funeral industry by beginning a review of the Rule in 1998 rather than in 1999 as originally planned under its ten-year schedule for reviewing all Commission rules and guides. The Commission published a notice soliciting public comment in May 1999. Commission staff conducted a public workshop conference on November 18, 1999, to discuss and explore openly issues raised in written comments. Staff is evaluating the comments and preparing a recommendation to the Commission.

Timetable:

Action	Date	FR Cite
Recommendation to Commission Regarding Initial Notice for Comment	04/17/99	
Initial Notice for Public Comment	05/05/99	64 FR 24249
Close of Comment Period (Extended)	08/11/99	64 FR 35965
Public Workshop	11/18/99	64 FR 56717
Recommendation to Commission	03/00/03	
Commission Action	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3084–AA82

4198. • LABELING REQUIREMENTS FOR ALTERNATIVE FUELS AND ALTERNATIVE-FUELED VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 13232(a)

CFR Citation: 16 CFR 309

Legal Deadline: None

Abstract: The Rule, which became effective on November 20, 1995, requires disclosure of appropriate cost and benefit information to enable consumers to make reasonable purchasing choices and comparisons between nonliquid alternative fuels as well as alternative-fueled vehicles. As part of its ongoing systemic review of all Federal Trade Commission rules and guides, the Commission plans to request comments on, among other things, the continuing need for this Rule; possible conflict between the Rule and State, local, or other Federal laws or regulations; and the effect on the Rule of any technological, economic, or other industry changes. No Commission determination on the need for or the substance of the Rule should be inferred from the intent to publish requests for comments.

Timetable:

Action	Date	FR Cite
Request for Comments	11/00/02	
Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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Related RIN: Previously reported as 3084-AA57

RIN: 3084–AA89

Federal Trade Commission (FTC) — Proposed Rule Stage

4199. TRADE REGULATION RULE ON FRANCHISING AND BUSINESS OPPORTUNITY VENTURES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 41 to 58

CFR Citation: 16 CFR 436

Legal Deadline: None

Abstract: The Federal Trade Commission's Trade Regulation Rule on Franchising and Business Opportunity Ventures (Franchise Rule) became effective on October 21, 1979. The Rule is designed to reduce deceptive and unfair practices in the sale of franchises and business opportunities by requiring the pre-sale disclosure of material information about the franchise. For example, the Rule requires franchisors to disclose their business background and litigation history, as well as the number of failed and terminated franchise units. The Rule also requires the disclosure of material terms of the franchise relationship, such as recurring fees and termination and renewal rights. The Rule further requires the franchisor to provide an audited financial statement for the most recent three fiscal years. Finally, the Rule requires any franchisor who makes earnings representations to provide the prospective franchisee with an earnings claims document that substantiates those claims. On February 28, 1997, the Commission published an advance notice of proposed rulemaking (ANPRM) contemplating amendments

that would address new technologies and market practices and at the same time, reduce unnecessary regulatory burdens. The Commission specifically requested comments on whether to revise the Rule to more closely align Federal and State disclosure requirements governing franchise sales, and to address changes in the marketing of franchises, such as the sale of franchises internationally and through the Internet. Six public workshops were held in five cities during 1997 to promote discussions about the issues; allow the public to make statements on the record; and assist Commission staff in drafting a proposed amended Rule. On October 22, 1999, the Commission published a notice of proposed rulemaking (NPRM) with a text of the revised Rule. Comments were accepted until December 21, 1999, and rebuttal comments were accepted until January 31, 2000. Commission staff is now preparing a staff report.

Timetable:

Action	Date	FR Cite
ANPRM	02/28/97	62 FR 9115
ANPRM Comment Period End	12/31/97	62 FR 28822
Recommendation to Commission	03/26/99	
NPRM	10/22/99	64 FR 57293
NPRM Comment Period End	12/21/99	
NPRM Rebuttal Comment Period End	01/31/00	
Staff Report	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State

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RIN: 3084–AA63

4200. TRADE REGULATION RULE PURSUANT TO THE TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT OF 1992

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 5701 et seq; 15 USC 5714(1)

CFR Citation: 16 CFR 308

Legal Deadline: None

Abstract: Congress enacted the Telephone Disclosure and Dispute Resolution Act of 1992 (TDDRA) to curtail certain unfair and deceptive practices perpetrated by some pay-per-call businesses, and to encourage the growth of the legitimate pay-per-call industry. TDDRA mandated that the FTC promulgate a rule to curb these practices; the Pay-Per-Call or 900-Number Rule (Rule) became effective on November 1, 1993. TDDRA granted the Commission limited jurisdiction over common carriers for purposes of the Rule. The Rule requires that advertisements for 900-numbers contain certain disclosures; requires that anyone who calls a 900-number service be given the opportunity to hang up at the conclusion of the preamble without incurring any charge for the call; and establishes procedures for resolving billing disputes for 900-number calls and other telephone-billed purchases. The Rule itself required the Commission to initiate a review of the Rule prior to November 1997. As part of this review, the Commission published a notice in the Federal Register on March 12, 1997, requesting comments on, among other things, the economic impact of and the continuing need for the Rule, and the effect on the Rule of any technological or industry changes. The Commission also sought comments, pursuant to authority granted under the Telecommunications Act of 1996, on whether to expand the Rule to govern other similar audio information and entertainment services. Staff held a public workshop on June 19-20, 1997, during which members of the industry discussed issues raised in the comments, including billing and collection issues and possible ways to expand the definition of "pay-per-call services." Many commenters reported that the Rule has been successful in reducing the abuses that led to the passage of TDDRA. Despite the success of the Rule in correcting the abuses in the 900-number industry, complaints about other types of audiotext services (accessed via dialing patterns other than 900 numbers) are being reported. The majority of complaints now involve 800 numbers, international numbers, or other dialing patterns that do not use the 900-number prefix. Many consumer and law enforcement agencies also have been receiving complaints from consumers who have discovered unexplained charges (in some cases, recurring charges) on their telephone bills for services that were never authorized, ordered, received, or used, a practice known as "cramming." On October 30, 1998, the Commission published an NPRM that would expand the definition of "pay-per-call" services beyond 900 numbers and that would implement measures to combat telephone bill cramming. The proposed revisions would: (1) require the express authorization of the person to be billed for the purchase of any "telephone-billed purchases" that cannot be blocked by 900-number blocking; (2) prohibit vendors from billing consumers for monthly or other recurring charges for pay-per-call services unless the vendor had entered into a "presubscription agreement" with the person to be billed and had sent the consumer a written copy of the agreement; and (3) give consumers legal recourse to dispute unauthorized charges crammed on phone bills and have those charges removed. The comment period was extended to March 10, 1999, and a workshop-conference was held on May 20-21, 1999. At the workshop, participants discussed issues raised by the comments, such as the meaning of "express authorization" and the requirements for a presubscription agreement. Staff plans to forward a recommendation to the Commission by early 2003.

Timetable:

Action	Date	FR Cite
Request for Comments	03/12/97	62 FR 11749
Comment Period End	05/12/97	
Public Workshop	06/19/97	
Public Workshop	06/20/97	
Recommendation to Commission	09/08/98	
NPRM	10/30/98	63 FR 58523
Comment Period Extended	01/04/99	64 FR 61
Comment Period End	01/08/99	
Public Workshop-Conference	02/25/99	
Extended Comment Period End	03/10/99	
Public Workshop	05/20/99	
Public Workshop	05/21/99	
Recommendation to Commission	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3084–AA78

4201. TELEMARKETING SALES RULE

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 6101 to 6108

CFR Citation: 16 CFR 310

Legal Deadline: Other, Statutory, December 31, 2000, Begin Rule Review and Report to Congress.

Abstract: In 1995, the Commission issued the Telemarketing Sales Rule (TSR or Rule), 16 CFR part 310, under the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 USC 6101-6108. TSR requires telemarketers to disclose information; prohibits misrepresentations; limits the times telemarketers may call consumers; prohibits calls to a consumer who has asked not to be called again; and sets payment restrictions for the sale of certain goods and services.

As required by the 1995 Act, the Commission is reviewing TSR to evaluate the Rule's operation and report to Congress. The Commission has issued a request for public comment on the Rule, its overall costs, benefits and its regulatory and economic impact since its adoption in 1995. As part of the review, the Commission held a public forum on January 11, 2000, addressing the operation of the Rule's "do-not-call" provision. Another public forum to discuss other provisions of TSR was held on July 27-28, 2000.

On October 25, 2001, President Bush signed the USA PATRIOT Act, P.L. 107-56, into law, with provisions that have significant impact on TSR. Section 1101 of the 2001 Act amends the Telemarketing Act to extend the coverage of TSR to charitable fund raising conducted by for-profit telemarketers for, or on behalf of, charitable organizations.

On January 22, 2002, the Commission announced its proposal to amend the Rule and to publish a notice of proposed rulemaking (NPRM). Among other things, the proposed Rule would establish a centralized national "do not call" registry, would prohibit telemarketers from receiving or sharing a consumer's billing information with anyone else, and would prohibit telemarketers from blocking "Caller ID" information. In addition, as mandated by Sec. 1011 of the USA PATRIOT Act, also referred to as the Crimes Against Charitable Americans Act of 2001, 15 USC 6101 note, the Commission's proposal would add certain disclosures and other requirements applicable to for-profit telemarketers who solicit charitable donations. Staff held a three-day public workshop from June 5-7, 2002, to discuss these and other proposed changes to the Rule. On May 24, 2002, the Commission also issued a related NPRM proposing that user fees be imposed on telemarketers and their seller or telemarketer clients for access to the national "do not call" registry in order to establish and maintain the registry. See 67 FR 37362 (May 29, 2002) Staff plans to forward its recommendations to the Commission by fall 2002.

Timetable:

Action	Date	FR Cite
Announcement of Public Forum re: "Do-Not-Call" Provision	11/24/99	64 FR 66124
Public Forum re "Do-Not-Call" Provision	01/11/00	
Request for Comments	02/28/00	65 FR 10428
Comment Period End	04/27/00	
Extension of Comment Period	05/05/00	65 FR 26161
Extended Comment Period End	05/30/00	
Public Forum	07/27/00	
Public Forum	07/28/00	
USA Patriot Act Enacted	10/25/01	
NPRM	01/30/02	67 FR 4492
NPRM Comment Period End	03/29/02	
Extension of Comment Period	04/03/02	67 FR 15767
Extended Comment Period End	04/15/02	
Related NPRM	05/29/02	67 FR 37362
Public Forum	06/05/02	
Public Forum	06/06/02	
Public Forum	06/07/02	
Related NPRM Comment Period End	06/28/02	
Recommendation to Commission	11/00/02	
Commission Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3084–AA86

Federal Trade Commission (FTC)

Completed Actions

4202. PRIVACY OF CONSUMER INFORMATION—SECURITY

Priority: Other Significant

Legal Authority: PL 106-102, sec 501(b)

CFR Citation: 16 CFR 314

Legal Deadline: None

Abstract: On November 12, 1999, the Gramm-Leach-Bliley Act (GLB) was enacted. The Act repealed the key provision of the Glass-Steagall Act, that among other things, required the separation of banking, insurance, and securities institutions. Subtitle A (Disclosure of Nonpublic Personal Information) of title V (Privacy) limits the ability of the newly authorized

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financial institutions to disclose nonpublic personal information about consumers to nonaffiliated third parties, and requires them to disclose to consumers their privacy policies and practices respecting information shared with both affiliates and nonaffiliated third parties. The Commission issued the statutorily mandated Rule on the Privacy of Consumer Financial Information (Privacy Rule), 16 CFR part 313, on May 12, 2000. The Privacy Rule took effect on November 13, 2000, and full compliance was required on or before July 1, 2001.

In addition to the Privacy Rule, section 501 of subtitle A requires the agencies to establish appropriate standards for financial institutions to safeguard nonpublic personal information. In particular, section 501(b) of the Act requires the Commission to "establish appropriate standards for the financial institutions [subject to its jurisdiction] relating to administrative, technical, and physical safeguards." Section 501(b) sets out the objectives of these standards: (1) to insure the security and confidentiality of customer records and information; (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and (3) to protect against unauthorized access to or use of such records of information which could result in substantial harm or inconvenience to any customer. On September 7, 2000, the Commission issued an advance notice of proposed rulemaking (ANPRM) and a request for comments reopening its Safeguards Rule (to be codified at part 314). On August 7, 2001, the Commission published an NPRM. After analyzing over forty-four comments, the Commission issued its final rule on May 23, 2002. Like the proposal, the final rule requires each financial institution to develop a written information security program that is appropriate to its size and complexity, the nature and scope of its activities, and the sensitivity of the customer information at issue. The Commission believes that the final rule strikes an appropriate balance between allowing flexibility to financial institutions and establishing standards for safeguarding customer information that are consistent with GLB's requirements.

Timetable:

Action	Date	FR Cite
ANPRM and Request for Comments	09/07/00	65 FR 54186
Extension of Comment Period	10/06/00	65 FR 59766
Comment Period End	10/10/00	
Extended Comment Period End	10/24/00	
Commission Action	07/30/01	
NPRM	08/07/01	66 FR 41162
NPRM Comment Period End	10/09/01	
Commission Action/Final Rule	05/23/02	67 FR 36483

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3084–AA87

[FR Doc. 02–23896 Filed 12–06–02; 8:45 am]
BILLING CODE 6750–01–S

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Monday,
December 9, 2002

Part LIX

National Credit Union Administration

Semiannual Regulatory Agenda

VOL 67 ISS 236 DEC 9 2002 UMI

NATIONAL CREDIT UNION ADMINISTRATION (NCUA)

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Ch. VII

Semiannual Regulatory Agenda

AGENCY: National Credit Union Administration (NCUA).

ACTION: Semiannual regulatory agenda.

SUMMARY: Pursuant to its ongoing policy of reviewing regulations, NCUA is publishing a list of current and projected rulemakings, reviews of existing regulations, and completed actions as of July 31, 2002, to be included in the Unified Agenda of Federal Regulatory and Deregulatory Actions.

DATES: This information is current as of July 31, 2002.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

FOR FURTHER INFORMATION CONTACT: For each regulation listed, the person(s) named in the listing, at the above address, unless otherwise noted, or listed telephone number.

SUPPLEMENTARY INFORMATION: The purpose of this agenda is to enable credit unions and the public to follow regulatory development and review at NCUA and to participate in that process more effectively. Entries for the agenda appear in one of five possible categories: Prerule stage; proposed rule stage; final rule stage; long-term actions; or completed actions.

The agenda is published pursuant to NCUA Interpretive Ruling and Policy Statement Number 87-2 "Developing and Reviewing Government Regulations," 54 FR 35231 (September 18, 1987), which sets out NCUA's policy and procedures for developing and reviewing its regulations. NCUA's policy is to ensure that its regulations impose only minimum required burdens on credit unions, consumers, and the public; are appropriate for the size of the financial institutions it regulates; are issued only after full public participation; and are clear and understandable. Further, NCUA undertakes to review all regulations every 3 years to clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.

Executive Order 12866, signed by President Clinton on September 30, 1993, requires independent executive agencies, such as NCUA, to publish a regulatory agenda.

Approved by the NCUA Board on September 11, 2002.

Becky Baker,
Secretary of the Board.

National Credit Union Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4203	Requirements for Insurance	3133-AC33
4204	Credit Practices	3133-AC34
4205	Investment and Deposit Activities	3133-AC49
4206	Nondiscrimination in Federally Assisted Programs	3133-AC59
4207	Bank Secrecy Act Compliance Programs and Procedures	3133-AC62
4208	Organization and Operations of Federal Credit Unions—Benefits for Employees of Federal Credit Unions	3133-AC64
4209	Share Insurance and Appendix	3133-AC65
4210	Advertising	3133-AC67
4211	Member Business Loans	3133-AC68
4212	Federal Credit Union Chartering, Field of Membership Modifications and Conversions	3133-AC69
4213	Designation of Low-Income Status; Receipt of Secondary Capital Accounts by Low-Income-Designated Credit Unions	3133-AC70
4214	Revision of Interpretive Ruling and Policy Statement 87-2, Developing and Reviewing Government Regulations	3133-AC71

National Credit Union Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4215	Corporate Credit Unions	3133-AC28
4216	OMB Control Numbers	3133-AC52
4217	Truth in Savings	3133-AC57
4218	Prompt Corrective Action	3133-AC60

National Credit Union Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
4219	Consumer Protections for Federally Insured Credit Unions' Sale of Nondeposit Investments	3133-AC56

NCUA

National Credit Union Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
4220	Eligible Obligations—Conflict of Interest Provision	3133-AC51
4221	Federal Credit Union Chartering, Field of Membership Modification and Conversions	3133-AC63
4222	Federal Credit Union Chartering, Field of Membership Modifications and Conversions	3133-AC66

National Credit Union Administration (NCUA) — Proposed Rule Stage

4203. REQUIREMENTS FOR INSURANCE

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1756 to 1757; 12 USC 1757A; 12 USC 1766; 12 USC 1785; 12 USC 1781

CFR Citation: 12 CFR 741

Legal Deadline: None

Abstract: NCUA solicited public comment on whether NCUA should adopt a regulation that would restrict the insurance coverage for State-chartered credit unions that open branches outside the United States.

Timetable:

Action	Date	FR Cite
ANPRM	09/14/00	65 FR 55464
ANPRM Comment Period End	11/13/00	
NPRM	09/26/02	67 FR 60607
NPRM Comment Period End	11/25/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Michael J. McKenna, Senior Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6562
Email: mmckenna@ncua.gov

RIN: 3133–AC33

4204. CREDIT PRACTICES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 57a; 15 USC 1681b

CFR Citation: 12 CFR 706

Legal Deadline: None

Abstract: NCUA issued a proposed regulation under the Fair Credit Reporting Act that addresses the sharing of opt-out information between Federal credit unions and their affiliates. NCUA intends to issue a second proposal for comment.

Timetable:

Action	Date	FR Cite
NPRM	10/26/00	65 FR 64168
NPRM Comment Period End	12/26/00	
Second NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Chrisanthy J. Loizos, Staff Attorney, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314
Phone: 703 518-6567
Fax: 703 518-6569
Email: cloizos@ncua.gov

RIN: 3133–AC34

4205. INVESTMENT AND DEPOSIT ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1757(7); 12 USC 1757(8); 12 USC 1757(15)

CFR Citation: 12 CFR 703

Legal Deadline: None

Abstract: The advanced notice of proposed rulemaking solicited comments on how to update and clarify NCUA's investment and deposit activities rules. NCUA anticipates issuing a proposed rule in November 2002.

Timetable:

Action	Date	FR Cite
ANPRM	10/26/01	66 FR 54168
ANPRM Comment Period End	01/24/02	
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Frank S. Kressman, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6558
Fax: 703 518-6569
Email: fkressman@ncua.gov

RIN: 3133–AC49

4206. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 2000d et seq; 29 USC 793; 42 USC 6101 et seq

CFR Citation: 12 CFR 730

Legal Deadline: None

Abstract: The purpose of this rule is to implement Federal statutes that prohibit credit unions that receive Federal financial assistance from discrimination on certain bases.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Paul Marshall Peterson, Staff Attorney, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314

Phone: 703 518-6540
Fax: 703 518-6569
Email: ppeterson@ncua.gov

RIN: 3133–AC59

4207. BANK SECRECY ACT COMPLIANCE PROGRAMS AND PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1766(a); 12 USC 1786(q); 31 USC 5311; 31 USC 5318

CFR Citation: 12 CFR 748.2

Legal Deadline: None

Abstract: The rule will be amended to clarify and cross-reference any changes to credit unions' responsibilities for Bank Secrecy Act compliance resulting from passage of the U.S.A. Patriot's Act, Public Law 107-56, October 26, 2001.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John K. Ianno, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6540
Fax: 703 518-6569
Email: johni@ncua.gov

RIN: 3133–AC62

4208. ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS—BENEFITS FOR EMPLOYEES OF FEDERAL CREDIT UNIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1752(5); 12 USC 1755 to 1757; 12 USC 1759; 12 USC 1761a-b; 12 USC 1766 to 1767; ...

CFR Citation: 12 CFR 701.19

Legal Deadline: None

Abstract: Clarify the scope of the rule permitting Federal credit unions to provide their employees with reasonable retirement and employee benefits.

Timetable:

Action	Date	FR Cite
NPRM	12/20/01	66 FR 65662
NPRM Comment Period End	02/19/02	
Second NPRM	09/25/02	67 FR 60184
Second NPRM Comment Period End	11/25/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Frank S. Kressman, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6558
Fax: 703 518-6569
Email: fkressman@ncua.gov

RIN: 3133–AC64

4209. SHARE INSURANCE AND APPENDIX

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1752(5); 12 USC 1757; 12 USC 1765 to 1766; 12 USC 1781 to 1782; 12 USC 1787; ...

CFR Citation: 12 CFR 745

Legal Deadline: None

Abstract: Update NCUA's share insurance rules to bring them into closer parity with the Federal Deposit Insurance Corporation's deposit insurance rules.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Frank S. Kressman, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6558
Fax: 703 518-6569
Email: fkressman@ncua.gov

RIN: 3133–AC65

4210. ADVERTISING

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1766; 12 USC 1781; 12 USC 1789; 12 USC 4311

CFR Citation: 12 CFR 740

Legal Deadline: None

Abstract: Revise to address electronic advertising and transactions and to improve clarity.

Timetable:

Action	Date	FR Cite
NPRM	09/25/02	67 FR 60604
NPRM Comment Period End	11/25/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dianne M. Salva, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6540
Fax: 703 518-6569
Email: dsalva@ncua.gov

RIN: 3133–AC67

4211. • MEMBER BUSINESS LOANS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1757a

CFR Citation: 12 CFR 723

Legal Deadline: None

Abstract: NCUA plans to review its member business loan rule to determine whether amendments are necessary.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Chrisanthy J. Loizos, Staff Attorney, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314
Phone: 703 518-6567
Fax: 703 518-6569
Email: cloizos@ncua.gov

RIN: 3133–AC68

4212. • FEDERAL CREDIT UNION CHARTERING, FIELD OF MEMBERSHIP MODIFICATIONS AND CONVERSIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1752(5); 12 USC 1755 to 1757; 12 USC 1759; 12 USC 1761a; ...

CFR Citation: 12 CFR 701.1

Legal Deadline: None

Abstract: NCUA is planning on revising its field of membership manual to ease regulatory burden and redefine certain terms.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael J. McKenna, Senior Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6562
Email: mmckenna@ncua.gov

RIN: 3133–AC69

4213. • DESIGNATION OF LOW-INCOME STATUS; RECEIPT OF SECONDARY CAPITAL ACCOUNTS BY LOW-INCOME-DESIGNATED CREDIT UNIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1757(6)

CFR Citation: 12 CFR 701.34

Legal Deadline: None

Abstract: NCUA is planning on updating the definition of what is a low-income credit union.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael J. McKenna, Senior Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6562
Email: mmckenna@ncua.gov

RIN: 3133–AC70

4214. • REVISION OF INTERPRETIVE RULING AND POLICY STATEMENT 87-2, DEVELOPING AND REVIEWING GOVERNMENT REGULATIONS

Priority: Info./Admin./Other

Legal Authority: 5 USC 601 et seq; 12 USC 1752a

CFR Citation: 12 CFR 791.8

Legal Deadline: None

Abstract: Revision will update the definition of small entity in section 11.2 of the Interpretive Ruling and Policy Statement for purposes of the Regulatory Flexibility Act's analysis.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Paul Marshall Peterson, Staff Attorney, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314
Phone: 703 518-6540
Fax: 703 518-6569
Email: ppeterson@ncua.gov

RIN: 3133–AC71

National Credit Union Administration (NCUA) — Final Rule Stage

4215. CORPORATE CREDIT UNIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 1762; 12 USC 1766(a); 12 USC 1781; 12 USC 1789

CFR Citation: 12 CFR 704

Legal Deadline: None

Abstract: NCUA issued two proposed revisions to the rule governing corporate credit unions. Based on the comments, NCUA plans to issue a final rule in the fall.

Timetable:

Action	Date	FR Cite
ANPRM	07/28/99	64 FR 40787
ANPRM Comment Period End	11/26/99	
Second ANPRM	11/22/00	65 FR 70319
Second ANPRM Comment Period End	02/20/01	
NPRM	09/21/01	66 FR 48742
NPRM Comment Period End	12/20/01	
Second NPRM	07/01/02	67 FR 44270
Second NPRM Comment Period End	08/30/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary F. Rupp, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6540
Email: maryr@ncua.gov

RIN: 3133–AC28

4216. OMB CONTROL NUMBERS

Priority: Info./Admin./Other

Legal Authority: 12 USC 1766(a); 5 USC 3507(f)

CFR Citation: 12 CFR 795

Legal Deadline: None

Abstract: NCUA plans to update the display table that lists the current OMB control numbers and the 12 CFR part or section where each number is described or identified.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Regina M. Metz, Staff Attorney, Office of General Counsel,

National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314
Phone: 703 518-6540
Fax: 703 518-6569
Email: rmetz@ncua.gov

RIN: 3133–AC52

4217. TRUTH IN SAVINGS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 4311

CFR Citation: 12 CFR 707

Legal Deadline: Other, Statutory, November 6, 2001, Interim Final Rule. Mandated by Truth in Savings Act.

Abstract: NCUA amended its Truth in Savings rule in compliance with the Truth in Savings Act which requires NCUA to amend its rule in conformity with changes made by the Federal Reserve Board to its Regulation DD.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/19/01	66 FR 48206
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Frank S. Kressman, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6558
Fax: 703 518-6569
Email: fkressman@ncua.gov

RIN: 3133–AC57

4218. PROMPT CORRECTIVE ACTION

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1790d

CFR Citation: 12 CFR 702

Legal Deadline: None

Abstract: Revisions to NCUA system of minimum capital standards for federally insured credit unions and corresponding remedies to restore net worth.

Timetable:

Action	Date	FR Cite
NPRM	06/04/02	67 FR 38431
NPRM Comment Period End	08/05/02	
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Steven W. Widerman, Trial Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314
Phone: 703 518-6557
Email: widerman@ncua.gov

RIN: 3133–AC60

National Credit Union Administration (NCUA) — Long-Term Actions

4219. CONSUMER PROTECTIONS FOR FEDERALLY INSURED CREDIT UNIONS' SALE OF NONDEPOSIT INVESTMENTS

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: NCUA is considering proposing regulations to ensure that the sale to members of all nondeposit investments through various types of arrangements is done in a safe and sound manner.

Timetable:

Action	Date	FR Cite
ANPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary F. Rupp, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6540
Email: maryr@ncua.gov

RIN: 3133–AC56

National Credit Union Administration (NCUA) — Completed Actions

4220. ELIGIBLE OBLIGATIONS—CONFLICT OF INTEREST PROVISION

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1752(5); 12 USC 1755 to 1757; 12 USC 1759; 12 USC 1761a

CFR Citation: 12 CFR 701.23

Legal Deadline: None

Abstract: Section 701.23 sets forth the requirements for purchasing, selling, and pledging eligible obligations (loans) by Federal credit unions. NCUA has determined that it will not propose a conflict of interest provision for this section at this time.

Timetable:

Action	Date	FR Cite
Withdrawn	07/31/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Regina M. Metz, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314
Phone: 703 518-6540
Fax: 703 518-6569
Email: rmetz@ncua.gov

RIN: 3133–AC51

4221. FEDERAL CREDIT UNION CHARTERING, FIELD OF MEMBERSHIP MODIFICATION AND CONVERSIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1752(5); 12 USC 1755 to 1757; 12 USC 1759; 12 USC 1761a-b; 12 USC 1766 to 1767; ...

CFR Citation: 12 CFR 701.1

Legal Deadline: None

Abstract: The NCUA Board amended its chartering and field of membership manual to make two changes to ease the burden on applicants for community charters, expansions, or conversions. First, applicants need not submit documentation to establish a community area that is the same as one the NCUA has previously determined to be a well-defined local community, neighborhood, or rural district. Second, the NCUA Board deleted the category of common characteristics and background of residents from the examples of acceptable documentation because it has proven to generate documentation of limited relevance.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/20/01	66 FR 15619
Interim Final Rule Comment Period End	05/21/01	
Final Action	04/24/02	67 FR 20013

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael J. McKenna, Senior Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6562
Email: mmckenna@ncua.gov

RIN: 3133–AC63

4222. FEDERAL CREDIT UNION CHARTERING, FIELD OF MEMBERSHIP MODIFICATIONS AND CONVERSIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1752(5); 12 USC 1755 to 1756; 12 USC 1757; 12 USC 1759; 12 USC 1761a-b; ...

CFR Citation: 12 CFR 701.1

Legal Deadline: None

Abstract: An existing community charter need not document in writing how it plans on serving the entire community. The NCUA Board updated the definition of an investment area because of the release of the new census data and updated Community Development Financial Institution Fund standards.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/20/01	66 FR 65625
Interim Final Rule Comment Period End	02/19/02	
Final Action	04/24/02	67 FR 20013

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael J. McKenna, Senior Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6562
Email: mmckenna@ncua.gov

RIN: 3133–AC66

[FR Doc. 02–24264 Filed 12–06–02; 8:45 am]
BILLING CODE 7535–01–S

VOL
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ISS
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Federal Register

Monday,
December 9, 2002

Part LX

National Indian Gaming Commission

Semiannual Regulatory Agenda

VOL
67
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NATIONAL INDIAN GAMING COMMISSION (NIGC)

NATIONAL INDIAN GAMING COMMISSION

25 CFR Ch. III

Semiannual Regulatory Agenda

AGENCY: National Indian Gaming Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The National Indian Gaming Commission today is publishing an agenda of its open and anticipated rulemaking actions. The agenda is a general announcement to the public intended to provide notice of rulemaking actions in which the public may wish to participate. In the future, the Commission intends to issue Notices of Proposed Rulemaking, Advance Notices of Proposed Rulemaking, or Final Rules for the following: rules revising Freedom of Information Act procedures; rules establishing a process for the assessment, notification, and collection of debts owed the NIGC; rules revising tribal background investigation submission requirements and timing; rules concerning hearings and appeals procedures; rules concerning enforcement; rules revising the scope and review of management contracts; rules concerning net gaming revenue; rules concerning administrative fees; rules concerning gaming facility licensing standards; rules concerning practice before the Commission; rules implementing the National Environmental Policy Act (NEPA); and rules concerning technical amendments to the Minimum Internal Control Standards. The Commission invites questions and public comment on individual agenda items.

FOR FURTHER INFORMATION CONTACT: John R. Hay, National Indian Gaming Commission, 1441 L Street NW., 9th Floor, Washington, DC 20005, (202) 632-7003 (not a toll-free number).

SUPPLEMENTARY INFORMATION: In accordance with Executive Order 12866 "Regulatory Planning and Review" and the Regulatory Flexibility Act, 5 U.S.C. 605, executive agencies are required to publish semiannual regulatory agendas in the **Federal Register** each year.

The regulations being considered by the Commission are not "significant" rules within the meaning of Executive Order 12866, and no Regulatory Impact Analysis is required. The Commission also has determined, under the Regulatory Flexibility Act, that most of the regulations under consideration will not have a significant economic impact on a substantial number of small entities. For these regulations, no Regulatory Flexibility Analysis is required. The Commission has not yet determined whether the rules implementing the National Environmental Policy Act, the Privacy Act, or gaming facility licensing require a Regulatory Flexibility Analysis. Finally, most of the Commission's proposed rules are not considered major under 5 U.S.C. 801, enacted by Public Law 104-121, and therefore, are not subject to Section 801's 60-day deferral requirement. The Commission has not yet determined whether the technical amendments to the Minimum Internal Control Standards or the Privacy Act procedures are a major rule.

For this edition of the National Indian Gaming Commission's regulatory agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in part II of the **Federal Register**. The Regulatory Plan entries are listed in the table of contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

Teresa E. Poust,

Vice Chair, National Indian Gaming Commission.

National Indian Gaming Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4223	Freedom of Information Act Procedures (Amendments) **(Reg Plan Seq No. 167)**	3141-AA21

References in boldface appear in the **Regulatory Plan** in part II of this issue of the **Federal Register**.

National Indian Gaming Commission—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4224	Debt Collection **(Reg Plan Seq No. 168)**	3141-AA25

References in boldface appear in the **Regulatory Plan** in part II of this issue of the **Federal Register**.

National Indian Gaming Commission—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
4225	Practice Before the Commission	3141-AA07
4226	Hearings and Appeals Procedure	3141-AA08
4227	Enforcement	3141-AA09
4228	Management Contracts	3141-AA13
4229	Net Gaming Revenue	3141-AA14
4230	Tribal Background Investigation Submission Requirements and Timing	3141-AA15

NIGC

National Indian Gaming Commission—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
4231	Administrative Fees	3141-AA16
4232	Gaming Facility Licensing Standards	3141-AA23
4233	National Environmental Policy Act (NEPA) Implementing Regulations	3141-AA26
4234	Technical Amendments to the Minimum Internal Control Standards	3141-AA27

National Indian Gaming Commission—Completed Actions

Sequence Number	Title	Regulation Identification Number
4235	Definitions	3141-AA10
4236	Game Classification	3141-AA12
4237	Environment and Public Health and Safety	3141-AA17
4238	Technical Amendments to the Minimum Internal Control Standards	3141-AA24

National Indian Gaming Commission (NIGC) — **Proposed Rule Stage**

4223. FREEDOM OF INFORMATION ACT PROCEDURES (AMENDMENTS)

Regulatory Plan: This entry is Seq. No. 167 in part II of this issue of the **Federal Register**.

RIN: 3141–AA21

National Indian Gaming Commission (NIGC) — **Final Rule Stage**

4224. DEBT COLLECTION

Regulatory Plan: This entry is Seq. No. 168 in part II of this issue of the **Federal Register**.

RIN: 3141–AA25

National Indian Gaming Commission (NIGC) — **Long-Term Actions**

4225. PRACTICE BEFORE THE COMMISSION

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: William F. Grant
Phone: 202 632-7003
Fax: 202 632-7066

RIN: 3141–AA07

4226. HEARINGS AND APPEALS PROCEDURE

Priority: Other Significant

CFR Citation: 25 CFR 522 to 524; 25 CFR 533; 25 CFR 535; 25 CFR 539; 25 CFR 573; 25 CFR 575; 25 CFR 577

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman
Phone: 202 632-7003
Fax: 202 632-7066

RIN: 3141–AA08

4227. ENFORCEMENT

Priority: Other Significant

CFR Citation: 25 CFR 573

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman
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RIN: 3141–AA09

4228. MANAGEMENT CONTRACTS

Priority: Other Significant

CFR Citation: 25 CFR 531; 25 CFR 533; 25 CFR 536

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman
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RIN: 3141–AA13

4229. NET GAMING REVENUE

Priority: Substantive, Nonsignificant

CFR Citation: 25 CFR 571; 25 CFR 573

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman
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RIN: 3141–AA14

4230. TRIBAL BACKGROUND INVESTIGATION SUBMISSION REQUIREMENTS AND TIMING

Priority: Other Significant

CFR Citation: 25 CFR 556; 25 CFR 558

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman
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RIN: 3141–AA15

4231. ADMINISTRATIVE FEES

Priority: Substantive, Nonsignificant

CFR Citation: 25 CFR 514

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman
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RIN: 3141–AA16

4232. GAMING FACILITY LICENSING STANDARDS

Priority: Substantive, Nonsignificant

CFR Citation: 25 CFR 522.4(b)(6); 25 CFR 522.6(b)

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman
Phone: 202 632-7003
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RIN: 3141–AA23

4233. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) IMPLEMENTING REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Tribal

Agency Contact: Kathy Zebell
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RIN: 3141–AA26

4234. • TECHNICAL AMENDMENTS TO THE MINIMUM INTERNAL CONTROL STANDARDS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 2702; 25 USC 2706 (b) (10)

CFR Citation: 25 CFR 542

Legal Deadline: None

Abstract: The National Indian Gaming Commission anticipates that there will be a need to make technical changes to the minimum internal control standards (MICS) in response to changes in technology and the gaming industry. The Commission foresees routinely revising the MICS in response to these changes.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman, Deputy General Counsel, National Indian Gaming Commission, Suite 9100, 1441 L Street NW., Washington, DC 20005
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RIN: 3141–AA27

4235. DEFINITIONS

Priority: Other Significant

Legal Authority: 25 USC 2701 et seq.

CFR Citation: 25 CFR 502

Legal Deadline: None

Abstract: The rule revised the definitions of "electronic, computer or other technological aid," "electronic and electromechanical facsimile," and "games similar to bingo," set forth at 25 CFR 502.7 to 502.9.

Timetable:

Action	Date	FR Cite
NPRM	06/22/01	66 FR 33494
NPRM Comment Period End	08/21/01	
Second NPRM	03/20/02	67 FR 13296
Second NPRM Comment Period End	04/22/02	
Final Action	06/17/02	67 FR 41166

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman, Deputy General Counsel, National Indian Gaming Commission, Suite 9100, 1441 L Street NW., Washington, DC 20005
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RIN: 3141–AA10

4236. GAME CLASSIFICATION

Priority: Other Significant

Legal Authority: 25 USC 2702; 25 USC 2703; 25 USC 2705; 25 USC 2706; 25 USC 2710; 25 USC 2713

CFR Citation: 25 CFR 504

Legal Deadline: None

Abstract: This rule would establish processes for the classification, review, and approval of games and devices used in tribal gaming.

Timetable:

Action	Date	FR Cite
NPRM	11/10/99	64 FR 61234
NPRM Comment Period End	02/24/00	
Withdrawn	07/12/02	67 FR 46134

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Tribal

Agency Contact: Penny J. Coleman, Deputy General Counsel, National Indian Gaming Commission, Suite 9100, 1441 L Street NW., Washington, DC 20005
Phone: 202 632-7003
Fax: 202 632-7066

RIN: 3141–AA12

4237. ENVIRONMENT AND PUBLIC HEALTH AND SAFETY

Priority: Other Significant

Legal Authority: 25 USC-2710(b)(2)(E)

CFR Citation: 25 CFR 573

Legal Deadline: None

Abstract: The National Indian Gaming Commission promulgated this interpretive rule as an explanation of its oversight authority in the area of environment and public health and safety.

Timetable:

Action	Date	FR Cite
ANPRM	04/27/99	64 FR 22588
ANPRM Comment Period End	06/28/99	
NPRM	07/24/00	65 FR 45558
NPRM Comment Period End	01/19/01	
Second NPRM	10/02/01	66 FR 50127
Second NPRM Comment Period End	12/29/01	
Final Action	07/12/02	67 FR 46109

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Christine Nagle, National Indian Gaming Commission, Suite 9100, 1441 L Street NW., Washington, DC 20005
Phone: 202 632-7003
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RIN: 3141–AA17

4238. TECHNICAL AMENDMENTS TO THE MINIMUM INTERNAL CONTROL STANDARDS

Priority: Other Significant

Legal Authority: 25 USC 2702; 25 USC 2706(b)(10)

CFR Citation: 25 CFR 542

Legal Deadline: None

Abstract: The National Indian Gaming Commission determined that there was a need to make technical changes to the minimum internal control standards in response to changes in technology and the gaming industry. It was necessary to amend the standards to facilitate improved internal control standards with minimal anticipated costs.

Timetable:

Action	Date	FR Cite
ANPRM	11/27/00	65 FR 70673
ANPRM Comment Period End	03/30/01	66 FR 12916
NPRM	12/26/01	66 FR 66500
NPRM Comment Period End	03/04/02	
Final Action	06/27/02	67 FR 43389

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman, Deputy General Counsel, National Indian Gaming Commission, Suite 9100, 1441 L Street NW., Washington, DC 20005
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RIN: 3141–AA24

[FR Doc. 02–24269 Filed 12–06–02; 8:45 am]
BILLING CODE 7565–01–S

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Federal Register

Monday,
December 9, 2002

Part LXI

Nuclear Regulatory Commission

Semiannual Regulatory Agenda

NUCLEAR REGULATORY COMMISSION (NRC)

NUCLEAR REGULATORY COMMISSION

10 CFR Ch. I

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Nuclear Regulatory Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing its semiannual regulatory agenda in accordance with Public Law 96-354, "The Regulatory Flexibility Act," and Executive Order 12866, "Regulatory Planning and Review." The agenda is a compilation of all rules on which the NRC has recently completed action or has proposed or is considering action. This issuance updates any action occurring on rules since publication of the last semiannual agenda on May 13, 2002 (67 FR 34212).

ADDRESSES: Comments on any rule in the agenda may be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff. Comments may also be hand delivered to the One White Flint North Building, 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Comments received on rules for which the comment period has closed will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closure dates specified in the agenda.

The agenda and any comments received on any rule listed in the agenda are available for public inspection and copying for a fee at the Nuclear Regulatory Commission's Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1F21, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: For further information concerning NRC rulemaking procedures or the status of any rule listed in this agenda, contact Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-415-7163 (e-mail: mtl@nrc.gov). Persons outside the Washington, DC, metropolitan area may call, toll-free: 1-800-368-5642. For further information on the substantive content of any rule listed in the agenda, contact the individual listed under the heading "Agency Contact" for that rule.

SUPPLEMENTARY INFORMATION: The information contained in this semiannual publication is updated to reflect any action that has occurred on rules since publication of the last NRC semiannual agenda on May 13, 2002 (67 FR 34212). Within each group, the rules are ordered according to the Regulation Identifier Number (RIN).

The information in this agenda has been updated through September 13, 2002. The date for the next scheduled action under the heading "Timetable" is the date the rule is scheduled to be published in the **Federal Register**. The date is considered tentative and is not binding on the Commission or its staff. The agenda is intended to provide the public early notice and opportunity to participate in the NRC rulemaking process. However, the NRC may consider or act on any rulemaking even though it is not included in the agenda.

The NRC agenda lists all open rulemaking actions. Five rules affect small entities, one of which may potentially have a "significant economic impact on a substantial number of small entities" as defined in the Regulatory Flexibility Act.

Dated at Rockville, Maryland, this 13th day of September 2002.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services Office of Administration.

Nuclear Regulatory Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4239	Fitness for Duty Programs	3150-AF12
4240	Lessons Learned From Design Certification	3150-AG24
4241	Performance-Based, Risk-Informed Fire Protection	3150-AG48
4242	Transfers of Certain Source Materials by Specific Licensees	3150-AG64
4243	Financial Assurance Amendments for Materials Licenses	3150-AG85
4244	Event Notification Requirements	3150-AG90
4245	Nuclear Power Plant Worker Fatigue	3150-AG99
4246	Changes to Emergency Action Plan — Appendix E	3150-AH00

Nuclear Regulatory Commission—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4247	Decommissioning Trust Provisions	3150-AG52
4248	Releasing Part of a Power Reactor Site or Facility for Unrestricted Use	3150-AG56
4249	Nondiscrimination on the Basis of Race, Color, National Origin; Basis of Handicap; Basis of Age in Programs or Activities Receiving Federal Financial Assistance	3150-AG65
4250	Material Control and Accounting	3150-AG69
4251	Compatibility With IAEA Transportation Safety Standards	3150-AG71

NRC

Nuclear Regulatory Commission—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
4252	List of Approved Spent Fuel Storage Casks: Standardized Advanced NUHOMS-24PT1 Addition	3150-AG74
4253	Financial Information Requirements for Applications To Renew or Extend the Term of an Operating License for a Power Reactor	3150-AG84
4254	Incorporation by Reference of ASME BPV and OM Code Cases	3150-AG86
4255	Geological and Seismological Characteristics of Spent Fuel Storage Systems	3150-AG93
4256	NRC Public Document Room Address Change and Corrections to Information Collection Provisions	3150-AH01

Nuclear Regulatory Commission—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
4257	Update Fuel Performance Considerations and Other Fuel Cycle Issues	3150-AA31
4258	Availability of Official Records	3150-AC07
4259	Disposal by Release Into Sanitary Sewerage	3150-AE90
4260	Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste	3150-AG41
4261	Risk-Informing Special Treatment Requirements	3150-AG42
4262	Integrated Rulemaking for Decommissioning Nuclear Power Reactors	3150-AG47
4263	Changes to Adjudicatory Process	3150-AG49
4264	Reevaluation of Power Reactor Physical Protection Regulations and Position on a Definition of Radiological Sabotage	3150-AG63
4265	Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors	3150-AG76
4266	Notification Requirement	3150-AG81
4267	Entombment Options for Power Reactors	3150-AG89
4268	Modifications to Pressure-Temperature Limits	3150-AG98
4269	Federal Advisory Committee Act Regulations	3150-AH02

Nuclear Regulatory Commission—Completed Actions

Sequence Number	Title	Regulation Identification Number
4270	Electronic Maintenance and Submission of Information	3150-AF61
4271	Industry Codes and Standards	3150-AG61
4272	Debt Collection Procedures	3150-AG80
4273	Specification of a Probability for Unlikely Features, Events and Processes	3150-AG91
4274	Revision of Fee Schedules; Fee Recovery, FY 2002	3150-AG95
4275	Revision to Salary Offset Procedures	3150-AG96
4276	Cost Recovery for Contested Hearing Involving U.S. National Security Initiatives	3150-AH03
4277	List of Approved Spent Fuel Storage Casks: HI-STORM 100 Revision	3150-AH04

Nuclear Regulatory Commission (NRC) — Proposed Rule Stage

4239. FITNESS FOR DUTY PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 26

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to ensure compatibility with the Department of Health and Human Services guidelines, reduce unnecessary regulatory burden in some areas, clarify the Commission's original intent of the rule, and improve overall program effectiveness and efficiency. These revised requirements would reduce the industrywide annual cost for all licensees to comply with part 26 by approximately $15 million. The rulemaking will address the Regulatory Review Group items on audit frequency and annual submittal of data. This rulemaking would also address the petition for rulemaking submitted by the Virginia Electric and Power Company (VEPCO) (PRM-26-1). In

addition, this rulemaking subsumes a previously separate rulemaking, Reduction in the Scope of Random Fitness-For-Duty Testing Requirements for Nuclear Power Reactor Licensees (part 26)(RIN 3150-AG62). Because of the subsumption of this rulemaking and other issues raised in response to the earlier proposed rule, a new proposed rule will be published.

Timetable:

Action	Date	FR Cite
NPRM	05/09/96	61 FR 21105
NPRM Comment Period End	08/07/96	
Second NPRM	11/00/02	
Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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Phone: 301 415-2147
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Related RIN: Merged With 3150-AG62

RIN: 3150–AF12

4240. LESSONS LEARNED FROM DESIGN CERTIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 52

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's requirements for early site permits, standard design certifications, combined licensees for nuclear power plants, and for other licensing processes. The amendments are based on the NRC staff's experience with the previous design certification reviews and on discussions with stakeholders about the early site permit (ESP), design certification, and combined license (COL) processes. This action is expected to improve the effectiveness of the licensing processes for future applicants. The rulemaking also would make conforming clarifications and corrections to the NRC's regulations.

The NRC is proposing to reorganize 10 CFR part 52 to establish a separate section for each of the seven licensing processes currently described in 10 CFR part 52 (early site permits, early site reviews, standard design certification, standard design approvals, combined licenses, manufacturing licenses, and duplicate design licenses). The purpose of this reorganization is to clarify that each licensing process has equal standing. In addition, several subparts would be reserved for future licensing processes. No substantive changes are intended by the incorporation of current appendices M, N, O, and Q into the new subparts in 10 CFR part 52.

The NRC is also proposing to retitle 10 CFR part 52 as Additional Licensing Processes for Nuclear Power Plants to clarify that the licensing processes in 10 CFR part 52 are in addition to and supplement the two-step licensing process in 10 CFR part 50 and the license renewal process in 10 CFR part 54, and are not limited to the early site permit, standard design certification, and combined license processes as the current title implies.

The proposed rule would amend section 52.1 to clarify that all seven licensing processes are within the scope of 10 CFR part 52. Sections within current appendices M, N, O, and Q would also become new sections of the revised part. In addition, the proposed rule would reserve sections for future licensing processes. In doing so, the NRC hopes to convey that 10 CFR part 52 is the preferred location in 10 CFR for nuclear power plant licensing processes. The proposed rule subsumed the rulemaking, Standardized Plant Designs, Early Review of Sites Suitability Issues; Clarifying Amendments (RIN 3150-AE25), that would remove redundant appendices M, N, O, and Q from part 50. The part 52 rulemaking plan (SECY-98-282) was approved by the Commission on January 14, 1999.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jerry N. Wilson, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555-0001
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Related RIN: Merged With 3150-AE25

RIN: 3150–AG24

4241. PERFORMANCE-BASED, RISK-INFORMED FIRE PROTECTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would address the Commission's direction provided in the staff requirements memorandum dated April 1, 1999, to establish a performance-based, risk-informed alternative to the NRC's existing reactor fire protection requirements through the adoption of an industry consensus standard: NFPA 805, Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants. The rulemaking plan had been on hold until fall 2001, at which time the Nuclear Energy Institute endorsed the rulemaking effort. The schedule was reinitiated through an EDO memorandum to the Commission dated October 9, 2001. Draft rule language was posted for public comment on the NRC Rulemaking Forum Web site on December 20, 2001. Draft proposed rule language was posted on the NRC Rulemaking Forum Web site on April 2, 2002, and again on May 30, 2002, for public information. The proposed rule package was provided provided to the Commission on July 15, 2002 (SECY-02-132).

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Leon E. Whitney, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555-0001
Phone: 301 415-3081
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RIN: 3150–AG48

4242. TRANSFERS OF CERTAIN SOURCE MATERIALS BY SPECIFIC LICENSEES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 40

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to require NRC approval for transfers from licensees of unimportant quantities of source material (less than 0.05 percent by weight) to persons exempt from licensing requirements. The objective of this proposed action is to ensure that the regulations regarding transfers of materials containing low concentrations of source material are adequate to protect public health and safety.

Timetable:

Action	Date	FR Cite
NPRM	08/28/02	67 FR 55175
NPRM Comment Period End	11/12/02	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gary Comfort, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001
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RIN: 3150–AG64

4243. FINANCIAL ASSURANCE AMENDMENTS FOR MATERIALS LICENSES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 30; 10 CFR 40; 10 CFR 70

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's financial assurance regulations for materials licenses. The amendment would maintain adequate assurance of decommissioning funding.

Timetable:

Action	Date	FR Cite
NPRM	10/07/02	67 FR 62403
NPRM Comment Period End	12/23/02	
Final Rule	08/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Clark Prichard, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001
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RIN: 3150–AG85

4244. EVENT NOTIFICATION REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 72; 10 CFR 73

Legal Deadline: None

Abstract: The proposed rule would revise the Commission's notification and reporting requirement for security and other events involving licensed nuclear facilities and the transportation of certain types of nuclear material. The proposed revisions would change several event notification and security reporting requirements to conform, where appropriate, to the event reporting requirements in part 50 for independent spent fuel storage installation (ISFSI) and monitored retrievable storage (MRS) facility licenses to more closely align them with those of nuclear reactor facilities. In addition, the proposed revisions would change the requirements for when written follow-up reports on safeguards events must be submitted. This change would affect power reactors, ISFSI's and several other categories of facilities that produce, possess, or transport spent fuel or special nuclear material. The changes would reduce, consolidate, and remove some licensee reporting notifications and lengthen the reporting period for other notifications. Some new requirements would also be added to permit NRC to effectively carry out its regulatory responsibilities and respond to public and media inquiries during emergencies. Overall, the proposed changes would help the NRC and its licensees to better focus their efforts on the most safety-significant issues and to communicate timely information on recent and ongoing events.

Timetable:

Action	Date	FR Cite
NPRM	08/22/02	67 FR 54360
NPRM Comment Period End	11/05/02	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Anthony J. DiPalo, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001
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RIN: 3150–AG90

4245. NUCLEAR POWER PLANT WORKER FATIGUE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 26

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to establish thresholds for the control of working hours to ensure that working hours in excess of the thresholds are controlled through a risk-informed deviation process. This rule would provide significantly greater assurance that worker fatigue does not adversely affect the operational safety of nuclear power plants. This rulemaking would also address a petition for rulemaking submitted by Barry Quigley (PRM-26-02).

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

NRC

Proposed Rule Stage

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Desaulniers, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555-0001
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RIN: 3150–AG99

4246. CHANGES TO EMERGENCY ACTION PLAN — APPENDIX E

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would resolve an ambiguity in the Commission's regulations regarding NRC approval of nuclear power plant licensee-initiated changes to emergency action levels (EALs). The proposed rule would allow licensees to make minor changes in EALs without prior NRC approval.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Rule	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lawrence K. Cohen, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555-0001
Phone: 301 415-2923
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RIN: 3150–AH00

Nuclear Regulatory Commission (NRC)

Final Rule Stage

4247. DECOMMISSIONING TRUST PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50; 10 CFR 72

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to ensure that decommissioning trust agreements are in a form acceptable to the NRC to increase assurance that decommissioning funds will be available for their intended purpose, especially in light of economic deregulation and restructuring of the electric utility industry. Based on past experience with the NRC approval of the transfer of the operating licenses of the Three Mile Island Unit 1 and Pilgrim Nuclear Power Stations, the staff believes that this rulemaking would expedite similar transfers in the future. The staff also intends to develop guidance by revising Regulatory Guide 1.159, Assuring the Availability of Funds for Decommissioning Nuclear Reactors, that will specify more fully the provisions of the decommissioning trust agreements. The final rule was submitted to the Commission on May 5, 2002.

Timetable:

Action	Date	FR Cite
NPRM	05/30/01	66 FR 29244
NPRM Comment Period End	08/13/01	
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Brian J. Richter, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555-0001
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RIN: 3150–AG52

4248. RELEASING PART OF A POWER REACTOR SITE OR FACILITY FOR UNRESTRICTED USE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 2; 10 CFR 20; 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations by adding a new section that would identify the criteria and regulatory framework that a licensee would use to request NRC approval for a partial site release. The rulemaking would provide additional assurance that residual radioactivity would meet the radiological criteria for license termination, even if parts of the site were released before a licensee submits its license termination plans. The rulemaking would clarify that the radiological criteria for unrestricted use apply to a partial site release. The rulemaking would not provide for a partial site release under restricted conditions. Also, the rulemaking would provide for a Subpart 2 hearing if a license amendment involving a partial site release is challenged.

The rulemaking would fill a gap identified during the NRC's consideration of a technical specification amendment request for the Oyster Creek Nuclear Generating Station to remove a restriction on the sale or lease of property within the exclusion area. During the Oyster Creek review, the NRC staff concluded that it is possible for a reactor licensee to sell land that would reduce the size of its site before the license termination criteria would specifically apply to the release of the property. If the sale does not involve the transfer of licensed material, it would not require NRC approval under current regulations. Currently, the NRC must consider changes to the site boundary of a reactor site on a case-by-case basis to ensure adequate protection of the public and the environment. Because several reactor licensees have expressed interest in selling parts of the sites before they receive approval of their license termination plans, the NRC staff believes the issues should be resolved generically by rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	09/04/01	66 FR 46230

NRC

Final Rule Stage

Action	Date	FR Cite
NPRM Comment Period End	11/19/01	
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3150–AG56

4249. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN; BASIS OF HANDICAP; BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 4

Legal Deadline: None

Abstract: The rule would incorporate the Civil Rights Restoration Act's definitions of "program or activity" and "program" into Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1972, and the Age Discrimination Act of 1975, and would promote consistent and adequate enforcement of these statutes.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Marva C. Gary, Nuclear Regulatory Commission, Office of Small Business and Civil Rights, Washington, DC 20555-0001
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Email: mcg@nrc.gov

RIN: 3150–AG65

4250. MATERIAL CONTROL AND ACCOUNTING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 51; 10 CFR 61; 10 CFR 70; 10 CFR 72; 10 CFR 73; 10 CFR 74; 10 CFR 75; 10 CFR 76; 10 CFR 150

Legal Deadline: None

Abstract: The proposed rule would amend the reporting requirements for submitting Material Balance Reports and Inventory Composition Reports to provide more flexibility and to reduce the reporting frequency for most licensees. The proposed amendments would also revise the categorical exclusion for approving safeguards plans, relocate the remaining material control and accounting requirements in parts 70 through 74, make the material control and accounting requirements for Category II facilities more risk informed, and make other miscellaneous changes.

Timetable:

Action	Date	FR Cite
NPRM	05/30/01	66 FR 29251
NPRM Comment Period End	08/13/01	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Merri Horn, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001
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RIN: 3150–AG69

4251. COMPATIBILITY WITH IAEA TRANSPORTATION SAFETY STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 71

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations on packaging and transporting radioactive material to make them compatible with the International Atomic Energy Agency (IAEA) standards and to codify other applicable requirements. These changes would be compatible with TS-R-1, the latest revision of the IAEA transportation standards. This rulemaking would also address the unintended economic impact of NRC's emergency final rule entitled Fissile Material Shipments and Exemptions (February 10, 1997; 62 FR 5907) and a petition for rulemaking submitted by International Energy Consultants, Inc. (PRM-71-12)(February 19, 1998; 63 FR 8362). This proposed rule is closely related to a corresponding Department of Transportation proposed rule to amend transportation regulations (April 30, 2002; 67 FR 21328).

Timetable:

Action	Date	FR Cite
NPRM	04/30/02	67 FR 21390
NPRM Comment Period End	07/29/02	
Final Action	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Naiem S. Tanious, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001
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RIN: 3150–AG71

4252. LIST OF APPROVED SPENT FUEL STORAGE CASKS: STANDARDIZED ADVANCED NUHOMS-24PT1 ADDITION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 72

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations by adding the Standardized Advanced NUHOMS Storage System cask design to the list of approved spent fuel storage casks. The proposed rule would add a cask system that has improved shielding and the ability to withstand higher seismic response spectra than the Standardized NUHOMS Storage System which is already on the list of approved casks.

NRC — Final Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	02/11/02	67 FR 6203
NPRM Comment Period End	04/29/02	
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jayne M. McCausland, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001
Phone: 301 415-6219
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RIN: 3150–AG74

4253. FINANCIAL INFORMATION REQUIREMENTS FOR APPLICATIONS TO RENEW OR EXTEND THE TERM OF AN OPERATING LICENSE FOR A POWER REACTOR

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to remove the requirement that non-electric utility power reactor licensees submit financial qualifications information as part of the license renewal process. The proposed rule would recognize the need for a reduced level of regulatory burden for licensees falling in this category because the NRC has alternative means to ensure that these licensees are financially viable to operate their facilities and maintain public health and safety. Non-power reactor licensees would continue to submit the financial qualifications information as part of the license renewal process and are not affected by this proposed rule change.

Timetable:

Action	Date	FR Cite
NPRM	06/04/02	67 FR 38427
NPRM Comment Period End	08/19/02	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: George J. Mencinsky, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555-0001
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RIN: 3150–AG84

4254. INCORPORATION BY REFERENCE OF ASME BPV AND OM CODE CASES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: New editions of the ASME BPV and OM Codes are issued every three years and addenda to the editions are issued annually. It has been the Commission's policy to update 10 CFR 50.55a to incorporate by reference the ASME Code editions and addenda. The ASME publishes code cases for Section III and Section XI quarterly, and code cases for the OM Code annually. Code cases are generally alternatives to the requirements of the ASME BPV Code and the OM Code. It has been the NRC staff's practice to review these code cases and find them either acceptable, conditionally acceptable, or unacceptable for use by NRC licensees. These code cases are then listed in periodically revised regulatory guides (RGs), together with information on their acceptability. Footnote 6 to 10 CFR 50.55a refers to the RGs listing code cases determined by the NRC staff to be "suitable for use." No specific data or revision of the RGs is indicated in footnote 6 to 10 CFR 50.55a. In the past, these RGs have not been approved by the Office of the Federal Register for incorporation by reference in the Code of Federal Regulations. To address this matter, the staff is proposing that the use of ASME Code Cases be approved through a rulemaking incorporating by reference the applicable RGs. Thus, NRC-approved code cases would be accorded the same legal status as the corresponding requirements in the ASME BPV Code and OM Code which are already incorporated by reference in the NRC's regulations.

Timetable:

Action	Date	FR Cite
NPRM	03/19/02	67 FR 12488
NPRM Comment Period End	06/03/02	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Harry S. Tovmassian, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555-0001
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RIN: 3150–AG86

4255. GEOLOGICAL AND SEISMOLOGICAL CHARACTERISTICS OF SPENT FUEL STORAGE SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 72

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations concerning geological and seismological criteria to require the use of a risk-informed, performance-based regulatory approach. This revision would use a methodology that is consistent with the approach taken in 10 CFR part 50 and the recent revision to part 100. The proposed rule would also clarify the need for a general licensee to design cask storage pads and areas to adequately support both static and dynamic loads of the stored casks.

Timetable:

Action	Date	FR Cite
NPRM	07/22/02	67 FR 47745
NPRM Comment Period End	10/22/02	67 FR 56876
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Keith McDaniel, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001
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NRC — Final Rule Stage

Email: kkm@nrc.gov

Related RIN: Duplicate of 3150-AG16

RIN: 3150–AG93

4256. • NRC PUBLIC DOCUMENT ROOM ADDRESS CHANGE AND CORRECTIONS TO INFORMATION COLLECTION PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 1; 10 CFR 2; 10 CFR 7; 10 CFR 9;; 10 CFR 19; 10 CFR 20; 10 CFR 26; 10 CFR 30;; 10 CFR 31; 10 CFR 33; 10 CFR 39; 10 CFR 50;; 10 CFR 51; 10 CFR 52; 10 CFR 54; 10 CFR 55;; 10 CFR 71; 10 CFR 75; 10 CFR 100; 10 CFR 110

Legal Deadline: None

Abstract: The final rule amends the Commission's regulations to reflect the new address for the NRC's Public Document Room and to correct information collection sections in the Code of Federal Regulations. These amendments are necessary to inform the public of these administrative changes to the NRC regulations.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Alzonia W. Shepard, Nuclear Regulatory Commission, Office of Administration, Washington, DC 20055-0001
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RIN: 3150–AH01

Nuclear Regulatory Commission (NRC) — Long-Term Actions

4257. UPDATE FUEL PERFORMANCE CONSIDERATIONS AND OTHER FUEL CYCLE ISSUES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2011; 42 USC 2201; 42 USC 4321; 42 USC 5841; 42 USC 5842

CFR Citation: 10 CFR 51

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations by addressing uranium fuel cycle environmental data (Table S-3) and the environmental effects of transportation of fuel and waste data (Table S-4). In section 51.51, the environmental data would be reestimated and reflect changes in the structure and activities of the fuel cycle and the availability of better data. Estimates of releases of Radon-222 and Technetium-99 would be added to Table S-3. The addition of a specific value for Radon-222 would address the outstanding portion of petition for rulemaking PRM-51-1, submitted by the New England Coalition on Nuclear Pollution. To provide immediate relief to the petitioner's request, the Commission published a final rule on March 14, 1997 (42 FR 13803), that removed the original value for Radon-222 from Table S-3 so that it then became subject to case-specific litigation. It was anticipated that the Commission would add a specific value for Radon-222, but the Commission deferred action until a general updating of Table S-3 is undertaken. For section 51.52, the environmental impact estimates would be reestimated to reflect the use of more highly enriched fuel and discharge of more highly irradiated fuel from a reactor; longer onsite storage; and changes in transportation modes, transport to retrievable storage sites and a permanent repository rather than reprocessing facilities, packaging technology, and regulatory standards. The reestimates would incorporate current research information and computer codes.

This rulemaking would result in current and more accurate estimates of the environmental impact of licensing a new plant, and would eliminate the requirement to review the contribution to environmental impacts from Radon-222 and Technetium-99 in individual plant reviews. This rule is being reissued as a proposed rule and would update the initial rulemaking effort to address newly emerging issues and research.

Timetable:

Action	Date	FR Cite
NPRM	03/04/81	46 FR 15154
NPRM Comment Period End	05/04/81	
Second NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dennis P. Allison, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555-0001
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RIN: 3150–AA31

4258. AVAILABILITY OF OFFICIAL RECORDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 2

Legal Deadline: None

Abstract: The proposed rule would conform the Commission's regulations pertaining to the availability of official records to existing case law and agency practice. The amendment would address the circumstances under which proprietary, personal privacy or other confidential information submitted to the NRC by applicants, licensees, or others may be returned upon request. The rule would reaffirm that 10 CFR 2.790(c) provides submitters of information a qualified right to have their information returned upon request. This rule would inform the public of four additional circumstances where information would not be returned to the applicant, that is, (1) when submitted to an advisory committee governed by the Federal Advisory Committee Act; (2) when captured by a Freedom of Information Act request; (3) when publicly relied upon or revealed by the Commission in an open Commission meeting under the Government in the Sunshine Act; and (4) when obtained during the course of an investigation conducted by the NRC Office of Investigations. The

proposed rule would also clarify requirements on submittals to the NRC for identification of confidential information sought to be withheld from public disclosure. Further, the proposed amendment would address the NRC's procedures for handling copyrighted information, including reproduction and distribution according to normal agency practice.

Timetable:

Action	Date	FR Cite
NPRM	12/23/92	57 FR 61013
NPRM Comment Period End	03/08/93	
NPRM	10/17/01	66 FR 52721
NPRM Comment Period End	12/31/01	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3150–AC07

4259. DISPOSAL BY RELEASE INTO SANITARY SEWERAGE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 20

Legal Deadline: None

Abstract: The advance notice of proposed rulemaking (ANPRM) was published to request public comment, information, and recommendations on contemplated amendments to the Commission's regulations governing the release of radionuclides from licensed nuclear facilities into sanitary sewer systems. The Commission believes that by incorporating current sewer treatment technologies the contemplated rulemaking would improve the control of radioactive materials released to sanitary sewer systems by licensed nuclear facilities. The NRC and the Environmental Protection Agency are conducting a joint survey of sewage treatment plants to evaluate the extent of reconcentration due to release of radioactive material into sewage systems. The need for and the extent of a rulemaking will be evaluated pending the result of the survey and the associated dose assessment. This rulemaking would also address a petition for rulemaking submitted by the Northeast Ohio Sewer District (PRM-20-22).

Timetable:

Action	Date	FR Cite
ANPRM	02/25/94	59 FR 9146
ANPRM Comment Period End	05/26/94	
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lydia Chang, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001
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RIN: 3150–AE90

4260. ADVANCE NOTIFICATION TO NATIVE AMERICAN TRIBES OF TRANSPORTATION OF CERTAIN TYPES OF NUCLEAR WASTE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 71; 10 CFR 73

Legal Deadline: None

Abstract: The NRC has issued an advance notice of proposed rulemaking (ANPRM) to invite early input from affected parties and the public on the issues associated with the advance notification of Indian tribes of spent fuel shipments. The Department of Energy (DOE) has indicated that it intends to comply with NRC's physical protection requirements for shipments under the Nuclear Waste Policy Act; however, its current practices conflict with NRC regulations. For example, DOE already has asked for and will continue to ask for exemptions from the shipment itinerary information requirements of foreign research reactor fuel. DOE, as a courtesy, provides Indian tribes with notification of spent fuel shipments. NRC's current regulations do not address notification of Indian tribes. Further, DOE has developed a satellite tracking system to monitor the status of spent fuel shipments at all times. Distribution of this status information to parties other than governors' designees is not compatible with NRC regulations. A rulemaking plan was approved by the Commission on February 2, 2001.

Timetable:

Action	Date	FR Cite
ANPRM	12/21/99	64 FR 71331
ANPRM Comment Period End	07/05/00	65 FR 18010
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roger W. Broseus, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001
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RIN: 3150–AG41

4261. RISK-INFORMING SPECIAL TREATMENT REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 21; 10 CFR 50; 10 CFR 54; 10 CFR 100

Legal Deadline: None

Abstract: The advance notice of proposed rulemaking (ANPRM) invited comments, advice, and recommendations from interested parties on the contemplated rulemaking that would provide an alternative, risk-informed approach for special treatment requirements in the current regulations. Special treatment requirements are requirements imposed on structures, systems, and components (SSCs) that provide additional confidence that these SSCs are capable of meeting design basis functional requirements. The contemplated risk-informed approach would categorize SSCs and vary the associated regulatory treatment based on the SSC's safety significance. This action is a result of the Commission's continuing efforts to risk-inform its regulations. The staff plans to provide the Commission with a proposed rule package in September 2002.

Timetable:

Action	Date	FR Cite
ANPRM	03/03/00	65 FR 11488
ANPRM Comment Period End	05/17/00	
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tim Reed, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555-0001
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RIN: 3150–AG42

4262. INTEGRATED RULEMAKING FOR DECOMMISSIONING NUCLEAR POWER REACTORS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: A staff requirements memorandum dated June 23, 1999, directed the NRC staff to consider an integrated, risk-informed decommissioning rule rather than individual rulemakings to address emergency preparedness, insurance, safeguards, operator staffing, and backfit for nuclear power plants that are being decommissioned. SECY-99-168 dated June 30, 1999, recommended that the integrated approach be approved and outlined staff plans for pursuing such a rulemaking. Accordingly, the staff has subsumed previous rulemaking activities in the areas of emergency planning, insurance, safeguards, operator staffing, and backfit into one integrated rulemaking effort. This rulemaking would apply to licensees who certified, pursuant to 10 CFR 50.82(a), that they have permanently ceased facility operation(s) and have permanently removed fuel from the reactor vessel. The Commission approved this approach in an SRM dated December 21, 1999. This rulemaking would also address a petition for rulemaking submitted by the North Carolina Public Utility Commission (PRM-50-57).

In SECY-00-145, dated June 28, 2000, the NRC staff recommended a decommissioning rulemaking plan in the areas of emergency planning, insurance, safeguards, operator staffing, and backfit (the integrated decommissioning rulemaking plan). The rulemaking plan relied on a draft decommissioning risk study as a basis for its recommendations. The Commission returned the rulemaking plan to the staff for rework in September 2000, based on changes to the decommissioning risk study findings. The decommissioning risk study, NUREG-1738, was issued in January 2001. After assessing the findings in the risk study, the staff presented a policy options paper to the Commission, SECY-01-0100, dated June 4, 2001, that provided options and made recommendations on issues to be addressed in the integrated rulemaking. Following the terrorist events of September 11, 2001, the NRC staff recommended and the Commission approved the withdrawal of SECY-01-0101 because of the likely changes in the staff's position on decommissioning plant safeguards. The decommissioning policy position will be revisited when a broad-scope NRC safeguards policy is developed in response to potential terrorist acts at nuclear facilities. The schedule for the integrated rulemaking cannot be determined at this time.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William Huffman, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555-0001
Phone: 301 415-1141
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RIN: 3150–AG47

4263. CHANGES TO ADJUDICATORY PROCESS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 1; 10 CFR 2; 10 CFR 50; 10 CFR 51; 10 CFR 52; 10 CFR 54; 10 CFR 60; 10 CFR 70; 10 CFR 73; 10 CFR 75; 10 CFR 76; 10 CFR 110

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations concerning its rules of practice to make the NRC's hearing process more efficient and effective. The proposed amendments would fashion hearing procedures that are tailored to the different types of licensing and regulatory activities the NRC conducts and would better focus and use the limited resources available to involved parties. The final rule was submitted to the Commission on April 26, 2002.

Timetable:

Action	Date	FR Cite
NPRM	04/16/01	66 FR 19610
NPRM Comment Period End	09/14/01	66 FR 27045
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3150–AG49

4264. REEVALUATION OF POWER REACTOR PHYSICAL PROTECTION REGULATIONS AND POSITION ON A DEFINITION OF RADIOLOGICAL SABOTAGE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 73

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to require power reactor licensees to conduct drills and exercises to evaluate their protective strategy against a simulated design basis threat (DBT) of radiological sabotage. The proposed rulemaking would also include risk insights, supporting guidance documents and be more performance-based. Following the events of September 11, 2001, the staff recommended and the Commission approved the withdrawal of SECY-01-0101, Proposed Rule Changes to 10 CFR 73.55, which contained the staff's recommendations in the subject rulemaking. This withdrawal was

requested to allow the staff to incorporate its post-September 11, 2001, considerations in a revised recommended rule revision, then later resubmit 10 CFR 73.55 to the Commission for its consideration.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Mark C. Nolan, Nuclear Regulatory Commission, Office of Nuclear Security and Incident Response, Washington, DC 20555-0001
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RIN: 3150–AG63

4265. STANDARDS FOR COMBUSTIBLE GAS CONTROL SYSTEM IN LIGHT-WATER-COOLED POWER REACTORS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to improve safety by better focusing on the risk-significant challenges from combustible gases; ensure combustible gas control during all risk-significant events; and eliminate those aspects of current requirements that provide no safety benefit. A staff requirement memorandum dated January 19, 2001, directed the staff to proceed expeditiously with rulemakings on the risk-informed alternative of section 50.44, including completion of outstanding technical work (e.g., development of combustible gas source terms) and necessary regulatory analyses. Also, this rulemaking addresses the petition for rulemaking submitted by Bob Christie (PRM-50-68), and partially addresses the petition for rulemaking submitted by the Nuclear Energy Institute (PRM-50-71). Draft rule language was posted for public comment on the NRC Ruleforum website on November 14, 2001. The proposed rule was submitted to the Commission on May 13, 2002.

Timetable:

Action	Date	FR Cite
NPRM	08/02/02	67 FR 50374
NPRM Comment Period End	10/16/02	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Anthony W. Markley, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555-0001
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RIN: 3150–AG76

4266. NOTIFICATION REQUIREMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2111; 42 USC 2201; 42 USC 2232; 42 USC 2233; 42 USC 5841

CFR Citation: 10 CFR 35

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations by requiring a licensee to notify the NRC and an identified exposed individual after the licensee becomes aware that the individual received or is estimated to have received a dose exceeding 50mSv (5 rem) from a released patient who had been administered radioactive material.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Agency Contact: Betty Ann Torres, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001
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RIN: 3150–AG81

4267. ENTOMBMENT OPTIONS FOR POWER REACTORS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 20; 10 CFR 50

Legal Deadline: None

Abstract: The advance notice of proposed rulemaking (ANPRM) was published to request public comment, information, and recommendations on contemplated amendments to the Commission's regulations that would clarify the use of entombment for power reactors. The amendments would establish dose criteria for license termination that includes a provision that permits license termination under restricted and unrestricted release conditions. Analysis of comments on the ANPRM and recommendations are being developed.

Timetable:

Action	Date	FR Cite
ANPRM	10/16/01	66 FR 52551
ANPRM Comment Period End	12/31/01	
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patricia Eng, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001
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RIN: 3150–AG89

4268. MODIFICATIONS TO PRESSURE-TEMPERATURE LIMITS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to eliminate those requirements for pressure-temperature limits that are related to the metal temperature of the reactor pressure vessel closure head flange and vessel flange areas. The proposed rule would amend footnotes 2 and 6 to table 1 of appendix G, and simplify restructuring of the table. Also, this rulemaking would address the petition for rulemaking submitted by Westinghouse Electric Company (PRM-50-69).

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Matthew Mitchell, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555-0001
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RIN: 3150–AG98

4269. • FEDERAL ADVISORY COMMITTEE ACT REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 7

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations on the Federal Advisory Committee Act to conform with newly issued General Services Administration regulations.

Timetable:

Action	Date	FR Cite
NPRM	08/08/02	67 FR 51501
NPRM Comment Period End	10/07/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John Szabo, Nuclear Regulatory Commission, Office of the General Counsel, Washington, DC 20555-0001
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RIN: 3150–AH02

Nuclear Regulatory Commission (NRC) — Completed Actions

4270. ELECTRONIC MAINTENANCE AND SUBMISSION OF INFORMATION

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 2; 10 CFR 61; 10 CFR 62; 10 CFR 70; 10 CFR 71; 10 CFR 72; 10 CFR 73; 10 CFR 32; 10 CFR 34; 10 CFR 40; 10 CFR 50; 10 CFR 51; 10 CFR 52; 10 CFR 55; 10 CFR 60; 10 CFR 4; 10 CFR 9; 10 CFR 21; 10 CFR 20; 10 CFR 15; 10 CFR 19; 10 CFR 25; 10 CFR 30; 10 CFR 26; 10 CFR 31; 10 CFR 74; 10 CFR 75; 10 CFR 76; 10 CFR 81; 10 CFR 95; 10 CFR 110; 10 CFR 140; 10 CFR 150

Completed:

Reason	Date	FR Cite
Direct Final Rule	09/06/02	67 FR 57084
Direct Final Rule Effective	12/05/02	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Brenda J. Shelton
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Arnold E. Levin
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Email: ael1@nrc.gov

RIN: 3150–AF61

4271. INDUSTRY CODES AND STANDARDS

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 50

Completed:

Reason	Date	FR Cite
Final Rule	09/26/02	67 FR 60520
Final Rule Effective	10/02/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Stephen A. Tingen
Phone: 301 415-1280
Email: sgt@nrc.gov

RIN: 3150–AG61

4272. DEBT COLLECTION PROCEDURES

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 15

Completed:

Reason	Date	FR Cite
Final Rule	05/06/02	67 FR 30315
Final Rule Effective	06/05/02	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Leah Tremper
Phone: 301 415-7347
Email: lpt@nrc.gov

RIN: 3150–AG80

4273. SPECIFICATION OF A PROBABILITY FOR UNLIKELY FEATURES, EVENTS AND PROCESSES

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	10/08/02	67 FR 62628
Final Action Effective	11/07/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tim McCartin
Phone: 301 415-7285
Email: tjm3@nrc.gov

RIN: 3150–AG91

4274. REVISION OF FEE SCHEDULES; FEE RECOVERY, FY 2002

Priority: Economically Significant

CFR Citation: 10 CFR 170; 10 CFR 171

Completed:

Reason	Date	FR Cite
Final Rule	06/24/02	67 FR 42612
Final Rule Effective	08/23/02	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Local

Agency Contact: Glenda C. Jackson
Phone: 301 415-6057

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Robert D. Carlson
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RIN: 3150–AG95

4275. REVISION TO SALARY OFFSET PROCEDURES

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 16

Completed:

Reason	Date	FR Cite
Final Rule	09/11/02	67 FR 57506
Final Rule Effective	10/11/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Leah Tremper
Phone: 301 415-7347
Email: lpt@nrc.gov

RIN: 3150–AG96

4276. • COST RECOVERY FOR CONTESTED HEARING INVOLVING U.S. NATIONAL SECURITY INITIATIVES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 170

Legal Deadline: None

Abstract: The final rule amends the Commission's regulations to allow recovery of costs associated with contested hearings involving U.S. Government national security-related proceedings through licensing or other regulatory service fees assessed to the affected applicant or licensee. The amendment is a special exemption to the Commission's longstanding policy of not charging this type of fee for contested hearings and instead recovering the costs through the annual fees assessed to licensees within the affected class.

Timetable:

Action	Date	FR Cite
NPRM	07/31/02	67 FR 49623
NPRM Comment Period End	08/30/02	
Final Rule	10/17/02	67 FR 64033
Final Rule Effective	11/18/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Glenda C. Jackson, Nuclear Regulatory Commission, Office of the Chief Financial Officer, Washington, DC 20555-0001
Phone: 301 415-6057
Email: gcj@nrc.gov

Robert D. Carlson, Nuclear Regulatory Commission, Office of the Chief Financial Officer, Washington, DC 20555-0001
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Email: rdc@nrc.gov

RIN: 3150–AH03

4277. • LIST OF APPROVED SPENT FUEL STORAGE CASKS: HI-STORM 100 REVISION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5802

CFR Citation: 10 CFR 72

Legal Deadline: None

Abstract: The NRC is amending its regulations revising the Holtic International HI-STORM 100 cask system listing within the list of approved spent fuel storage casks to include Amendment 1 to Certificate of Compliance Number 1014. This rule was originally published as a direct final rule (under RIN 3150-AG97), on March 27, 2002 (67 FR 14627). Because the NRC received a significant adverse comment on the direct final rule, the rule was withdrawn (June 7, 2002; 67 FR 39260). The significant adverse comment related to concern with (1) interactions between the non-fuel hardware and the fuel, and (2) the absence of documentation of NRC's analysis to accept the storage of the non-fuel hardware. The NRC addressed these comments in a final rule published on July 15, 2002 (67 FR 46369).

Timetable:

Action	Date	FR Cite
Final Rule	07/15/02	67 FR 46369
Final Rule Effective	07/15/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jayne M. McCausland, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001
Phone: 301 415-6219
Email: jmm2@nrc.gov

Related RIN: Previously reported as 3150-AG97

RIN: 3150–AH04

[FR Doc. 02–24259 Filed 12–06–02; 8:45 am]

BILLING CODE 7590–01–S

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Monday,
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Part LXII

Securities and Exchange Commission

Semiannual Regulatory Agenda

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SECURITIES AND EXCHANGE COMMISSION (SEC)

SECURITIES AND EXCHANGE COMMISSION

17 CFR Ch. II

[Release Nos. 33-8130, 34-46512, 35-27569, 39-2402, IC-25735, IA-2058, File No. S7-35-02]

Regulatory Flexibility Agenda

AGENCY: Securities and Exchange Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Securities and Exchange Commission is publishing an agenda of its rulemaking actions, pursuant to the Regulatory Flexibility Act. Information in the agenda was accurate on September 17, 2002, the date on which the Commission's staff completed compilation of the data. To the extent possible, rulemaking actions by the Commission since that date have been reflected in the agenda. The Commission invites questions and public comment on the agenda and on the individual agenda entries. The Commission provides notice under section 610 of the Regulatory Flexibility Act.

DATES: Public comments are due by December 15, 2002.

ADDRESSES: Persons wishing to submit written comments should file three copies of their comments with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549-0609. All submissions should refer to File No. S7-35-02 and will be available for public inspection and copying at the Commission's Public Reference Room, Room 1026, at the same address. Interested persons may also submit comments electronically at the following e-mail address: rule-comments@sec.gov. We will post electronically submitted comment letters on the Commission's website www.sec.gov.

FOR FURTHER INFORMATION CONTACT: David R. Fredrickson or Constancio B. Cater, Office of the General Counsel, 202-942-0890.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (RFA) (Pub. L. No. 96-354, 94 Stat. 1164) (September 19, 1980) requires each Federal agency, during April and October of each year, to publish in the **Federal Register** an agenda identifying rules which the agency expects to propose or adopt that are likely to have a significant economic impact on a substantial number of small entities (5 U.S.C. 602(a)). The RFA specifically provides that publication of the agenda does not preclude an agency from considering or acting on any matter not included in the agenda and that an agency is not required to consider or act on any matter that is included in the agenda (5 U.S.C. 602(d)). The agenda includes new entries, entries carried over from previous publications, and rulemaking actions that have been completed (or withdrawn) since publication of the last agenda.

The following abbreviations for the acts administered by the Commission are used in the agenda:

"Securities Act" - Securities Act of 1933

"Exchange Act" - Securities Exchange Act of 1934

"PUHCA" - Public Utility Holding Company Act of 1935

"Investment Company Act" - Investment Company Act of 1940

"Investment Advisers Act" - Investment Advisers Act of 1940

The Commission's regulatory flexibility agenda is set forth below. The Commission invites public comment on the agenda and on the individual agenda entries.

Dated: September 18, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

DIVISION OF CORPORATION FINANCE—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4278	Industry Guide 3—Statistical Disclosure by Bank Holding Companies	3235-AI10
4279	Asset-Backed Securities Disclosure	3235-AF74
4280	Streamlining Rule 144	3235-AH13
4281	Mandated EDGAR Filing for Forms 3, 4, 5, and 144	3235-AI26
4282	Revision of Multijurisdictional Disclosure System	3235-AH99
4283	Financial Reporting and Blank Check Companies	3235-AH88
4284	Lock-Up Agreements	3235-AI09
4285	Securities Act Communications Reform	3235-AI11

DIVISION OF CORPORATION FINANCE—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4286	Form 8-K Disclosure of Certain Management Transactions	3235-AI43
4287	Disclosure in Management's Discussion and Analysis Regarding the Application of Critical Accounting Policies	3235-AI44
4288	Defining "Qualified Purchasers"	3235-AI25
4289	Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date	3235-AI47
4290	Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities Exchange Act of 1934	3235-AI55

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DIVISION OF CORPORATION FINANCE—Completed Actions

Sequence Number	Title	Regulation Identification Number
4291	Accelerating Periodic Report Disclosure and Requiring Disclosure on Company Websites	3235-AI33
4292	Ownership Reports and Trading by Officers, Directors, and Principal Security Holders	3235-AI62
4293	Mandated EDGAR Filing for Foreign Issuers	3235-AI08
4294	Certification of Disclosure in Companies' Quarterly and Annual Reports	3235-AI54

DIVISION OF CORPORATION FINANCE—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
3235-AG94	Addressing Abuses of Form S-8 by Companies Using Consultants To Raise Capital	09/24/2002	Withdrawn
3235-AH87	Updating the Regulation A Offering Circular	09/24/2002	Withdrawn

DIVISION OF INVESTMENT MANAGEMENT—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4295	Books and Records To Be Maintained by Investment Advisers	3235-AH24
4296	Principal Transactions With Investment Advisory Clients	3235-AH34
4297	Certain Thrift Institutions Deemed Not To Be Investment Advisers	3235-AI16
4298	Exemption From Registration for Certain Commodity Pool Operators	3235-AI29
4299	Disclosure of Proxy Voting Policies and Results by Investment Companies	3235-AI64
4300	Shareholder Report and Financial Statement Revisions	3235-AG64
4301	Exemption To Permit Investment Companies To Invest in Other Investment Companies	3235-AI30
4302	Certain Research and Development Companies	3235-AI57
4303	Substitution of Funds Underlying Variable Insurance Products	3235-AI58
4304	Proxy Voting Policies and Procedures for Investment Advisers	3235-AI65
4305	Exemption From Shareholder Approval for Certain Subadvisory Contracts	3235-AH80
4306	Amendments to Form N-SAR, Semiannual Report of Registered Investment Companies	3235-AF93
4307	Amendments to the Cash Solicitation Rule	3235-AH33
4308	Rulemaking for EDGAR System	3235-AI18
4309	Investment in Money Market Funds	3235-AI45
4310	Regional Transmission Organizations and Independent Transmission Companies	3235-AI27
4311	Exemptions From Section 17(c) of the Public Utility Holding Company Act Regarding Officers and Directors of Registered Holding Companies	3235-AI59

DIVISION OF INVESTMENT MANAGEMENT—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4312	Custody or Possession of Funds or Securities of Clients	3235-AH26
4313	Certain Broker-Dealers Not Deemed To Be Investment Advisers	3235-AH78
4314	Exemption for Certain Investment Advisers Operating Through the Internet	3235-AI15
4315	Amendments to Form ADV	3235-AI17
4316	Transactions of Investment Companies With Portfolio and Subadvisory Affiliates	3235-AI28
4317	Proposed Amendments to Investment Company Advertising Rules	3235-AH19
4318	Certification of Disclosure in Management Investment Companies' Reports to Shareholders	3235-AI63
4319	Custody of Investment Company Assets With a Securities Depository	3235-AG71
4320	Disclosure of Costs and Expenses for Variable Annuities	3235-AI39
4321	PUHCA: Exemption for Certain Acquisitions of Foreign Utility Companies; Subsidiaries Authorized To Perform Services or Construction or To Sell Goods	3235-AF78

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DIVISION OF INVESTMENT MANAGEMENT—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
4322	Political Contributions by Certain Investment Advisers	3235-AH72
4323	Exemption From Section 101(c)(1) of the Electronic Signatures in Global and National Commerce Act for Registered Investment Companies	3235-AH93
4324	Insurance Products: Equity Index Insurance Products Concept Release	3235-AH23

DIVISION OF INVESTMENT MANAGEMENT—Completed Actions

Sequence Number	Title	Regulation Identification Number
4325	Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate	3235-AH57
4326	Mergers of Certain Affiliated Investment Companies	3235-AH81
4327	Technical Amendments to Rules and Forms Due to the National Securities Markets Improvement Act of 1996 and the Gramm-Leach-Bliley Act	3235-AI53

DIVISION OF INVESTMENT MANAGEMENT—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
3235-AI35	Actively Managed Exchange Traded Funds	09/18/2002	Withdrawn

DIVISION OF MARKET REGULATION—Prerule Stage

Sequence Number	Title	Regulation Identification Number
4328	Amendments to the Penny Stock Rules in Light of the Electronic Signatures in Global and National Commerce Act	3235-AI02

DIVISION OF MARKET REGULATION—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4329	Risk Assessment Recordkeeping and Reporting Requirement	3235-AH06
4330	Purchases of Certain Equity Securities by the Issuer and Others	3235-AH37
4331	Concept Release: Short Sales	3235-AH84
4332	Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities and Exchange Act of 1934	3235-AI19

DIVISION OF MARKET REGULATION—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4333	Amendment to Rule 15c3-3 To Expand the Categories of Permissible Collateral	3235-AI51
4334	Research Analyst Certification	3235-AI60
4335	Rule 15c3-3 Reserve Requirements for Margin Related to Security Futures Products	3235-AI61
4336	Tender and Reorganization Agents	3235-AH53
4337	Net Capital Requirements for Brokers or Dealers—Definition of the Term Nationally Recognized Statistical Rating Organization	3235-AH28
4338	Publication or Submission of Quotations Without Specified Information	3235-AH40
4339	Processing Requirements for Cancelled Securities Certificates	3235-AH54

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DIVISION OF MARKET REGULATION—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
4340	Structural Change in the Settlement of Government Securities: Issues and Options	3235-AI48

DIVISION OF MARKET REGULATION—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
4341	Repeal of Rule 11Acl-7 Under the Securities Exchange Act of 1934	3235-AI52

DIVISION OF MARKET REGULATION—Completed Actions

Sequence Number	Title	Regulation Identification Number
4342	Customer Margin Rules Relating to Security Futures Products	3235-AI22
4343	Cash Settlement and Regulatory Halt Requirements for Security Future Products	3235-AI24
4344	Amendments to Rules 15c3-3, 17a-3, 17a-4, 17a-5, 17a-7, 17a-11, and 17a-13 To Recognize Security Futures Products	3235-AI32
4345	Confirmation Requirements of Transactions of Security Futures Products Affected in Futures Accounts	3235-AI50
4346	Assessment on Security Futures Transactions and Fees on Sales of Securities Resulting From Physical Settlement of Security Futures Pursuant to Section 31 of the Exchange Act	3235-AI49

DIVISION OF MARKET REGULATION—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
3235-AG18	Market Risk Haircuts for Instruments Subject to Interest Rate Risk	09/10/2002	Withdrawn
3235-AG24	Proposed Amendments to Transfer Agent Rules	09/01/2002	Withdrawn
3235-AH05	Net Capital Rule: Customer Protection Rule	09/10/2002	Withdrawn
3235-AH17	Exemption of Certain Foreign Brokers and Dealers	09/09/2002	Withdrawn
3235-AH38	Untimely Announcement of Record Dates	09/10/2002	Withdrawn
3235-AH58	Exemption From Exchange Act Section 11(d)(1) for Securities of Foreign Issuers Sold on an Installment Basis	09/10/2002	Withdrawn
3235-AI23	Request for Comments on the Effects of Decimal Trading in Sub-Pennies	09/10/2002	Withdrawn
3235-AI42	Possible Amendment of Form BD	09/09/2002	Withdrawn

OFFICES AND OTHER PROGRAMS—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4347	Proposal to Amendment Disclosure Requirements Related to Derivative Financial Instruments and Derivative Commodity Instruments	3235-AH98
4348	Revision of the Commission's Auditor Independence Regulations and Related Disclosure Requirements	3235-AI56

OFFICES AND OTHER PROGRAMS—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4349	Supplemental Financial Information	3235-AH86

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OFFICES AND OTHER PROGRAMS—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
4350	International Accounting Standards	3235-AH65

OFFICES AND OTHER PROGRAMS—Discontinued Entries

Regulation Identification Number	Title	Date	Comments
3235-AI41	Framework for Enhancing the Quality of Financial Information Through Improvement of Oversight of the Auditing Process	07/30/2002	Withdrawn

Securities and Exchange Commission (SEC)
Division of Corporation Finance

Proposed Rule Stage

4278. INDUSTRY GUIDE 3—STATISTICAL DISCLOSURE BY BANK HOLDING COMPANIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 77a et seq; 5 USC 78a et seq

CFR Citation: 17 CFR 229; 17 CFR 231; 17 CFR 241

Legal Deadline: None

Abstract: The Division is considering recommending that the Commission propose amendments to Securities Act Industry Guide 3 and Exchange Act Industry Guide 3, Statistical Disclosure by Banking Holding Companies, to update them and apply them more broadly to registrants engaging in lending, investing, or deposit-taking activities, in addition to banks and bank holding companies. The revisions also would likely take into account changes in financial reporting rules and the increasingly diverse lending and investing activities that expose registrants to credit risk.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Carol Stacey, Securities and Exchange Commission, Division of Corporation Finance
Phone: 202 942-2960

RIN: 3235–AI10

4279. ASSET-BACKED SECURITIES DISCLOSURE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77e; 15 USC 78o; 15 USC 78w; 15 USC 77f; 15 USC 77g; 15 USC 77h; 15 USC 77j; 15 USC 77s; 15 USC 78l; 15 USC 78m; 15 USC 78n

CFR Citation: 17 CFR 229; 17 CFR 230; 17 CFR 239; 17 CFR 240; 17 CFR 249

Legal Deadline: None

Abstract: The Division of Corporation Finance is considering whether to recommend to the Commission amendments to revise rules and forms, which would specify disclosure requirements for asset-backed securities transactions.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jeffrey Minton, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-2910

RIN: 3235–AF74

4280. STREAMLINING RULE 144

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq

CFR Citation: 17 CFR 230.144

Legal Deadline: None

Abstract: The Commission proposed revisions to Rule 144, Rule 145, and Form 144 to make the rules and form easier to understand and apply. The Division is considering recommending that the Commission repropose amendments that would, among other things, add a bright line test to the Rule 144 definition of affiliate, increase the Form 144 filing thresholds, and codify certain interpretive positions.

Timetable:

Action	Date	FR Cite
NPRM	02/20/97	62 FR 9246
NPRM Comment Period End	04/29/97	
Second NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Raymond A. Be, Office of Rulemaking, Division of Corporation Finance, Securities and Exchange Commission
Phone: 202 942-2910

RIN: 3235–AH13

SEC—Division of Corporation Finance

Proposed Rule Stage

4281. MANDATED EDGAR FILING FOR FORMS 3, 4, 5, AND 144

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq.; 15 USC 79a et seq.; 15 USC 80a-1 et seq.

CFR Citation: 17 CFR 230; 17 CFR 232; 17 CFR 239

Legal Deadline: None

Abstract: The Division is considering recommending that the Commission propose amendments that would require persons to file electronically on EDGAR their Forms 3, 4, 5, and 144. This would make the information more readily available to the investing public. The Division will also review this rulemaking in light of the Sarbanes-Oxley Act of 2002.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Mark W. Green, Senior Special Counsel, Securities and Exchange Commission, Washington, DC 20549
Phone: 202 942-1940
Fax: 202 942-9624

RIN: 3235–AI26

4282. REVISION OF MULTIJURISDICTIONAL DISCLOSURE SYSTEM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq; 15 USC 78aaa et seq

CFR Citation: 17 CFR 230; 17 CFR 239; 17 CFR 240

Legal Deadline: None

Abstract: The Division is considering recommending that the Commission propose revisions to the Multijurisidictional Disclosure System for Canadian registrants that would integrate them into the Commission's foreign issuer disclosure system in a manner more consistent with all other foreign registrants. The proposals would limit the scope of the MJDS, including the number of companies eligible to use the system and the circumstances under which they may use it, while preserving MJDS filer's ability to make offerings in the United States using Canadian offering documents and without review by Commission staff.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Mary Cascio, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-2990
Fax: 202 942-9624

RIN: 3235–AH99

4283. FINANCIAL REPORTING AND BLANK CHECK COMPANIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78a et seq

CFR Citation: 17 CFR 249.308

Legal Deadline: None

Abstract: The Division is considering recommending that the Commission propose amendments to Form 8-K that would remove the grace period for filing financial statements in a blank check company merger.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Kevin O'Neill, Division of Corporation Finance, Securities and Exchange Commission
Phone: 202 942-2950
Fax: 202 942-9516

RIN: 3235–AH88

4284. LOCK-UP AGREEMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq

CFR Citation: 17 CFR 230; 17 CFR 240

Legal Deadline: None

Abstract: The Division is considering recommending that the Commission propose a new rule under the Securities Act to clarify how to register securities that acquiring companies issue to certain target security holders who enter into lock-up agreements in connection with acquisition transactions. The Divsion also would consider recommending corresponding exemptions from certain Exchange Act rules to allow for the execution of lock-up agreements without violation of the applicable rules.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Pamela Carmody, Securities and Exchange Commission, Division of Corporation Finance
Phone: 202 942-2920

RIN: 3235–AI09

4285. SECURITIES ACT COMMUNICATIONS REFORM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 77a et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Division is considering recommending that the Commission propose modifications to the Securities Act restrictions on communications by issuers and underwriters around the time of an offering. The Division is focusing on the section 5 restrictions on pre-filing offers and free writing and the Securities Act rules that permit limited types of communication during those periods. The Division is also considering whether changes would be appropriate to the limitations on communications in certain exempt offerings. Finally, the Division is

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SEC—Division of Corporation Finance

Proposed Rule Stage

examining the requirements for delivery of final prospectuses.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Anita Klein, Securities and Exchange Commission, Division of Corporation Finance
Phone: 202 942-2980

RIN: 3235–AI11

Securities and Exchange Commission (SEC)
Division of Corporation Finance

Final Rule Stage

4286. FORM 8-K DISCLOSURE OF CERTAIN MANAGEMENT TRANSACTIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq

CFR Citation: 17 CFR 230.144; 17 CFR 239.12; 17 CFR 239.13; 17 CFR 239.16b; 17 CFR 249.308

Legal Deadline: None

Abstract: The Commission proposed amendments that would require some public companies to file current reports on Form 8-K describing: Directors' and executive officers' transactions in company equity securities, directors' and executive officers' arrangements for the purchase and sale of company equity securities, and loans of money to a director or executive officer made or guaranteed by the company or an affiliate of the company. In Release 34-46313, the Commission stated that, in light of the Sarbanes-Oxley Act of 2002 amendment of section 16(a) of the Securities Exchange Act of 1934, the Commission does not intend to consider further proposed Form 8-K reporting of directors' and executive officers' transactions in company equity securities. The Division continues to consider the proposed Form 8-K reporting of directors' and executive officers' arrangements for the purchase and sale of company equity securities and company loans and loan guarantees to directors and executive officers that are not prohibited by the Sarbanes-Oxley Act.

Timetable:

Action	Date	FR Cite
NPRM	04/23/02	67 FR 19914
NPRM Comment Period End	06/24/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Anne M. Krauskopf, Special Counsel, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-2910

RIN: 3235–AI43

4287. DISCLOSURE IN MANAGEMENT'S DISCUSSION AND ANALYSIS REGARDING THE APPLICATION OF CRITICAL ACCOUNTING POLICIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq

CFR Citation: 17 CFR 228.303; 17 CFR 229.303

Legal Deadline: None

Abstract: The Commission proposed rule provisions to require a company to discuss the application of its critical accounting policies. The proposals would encompass both critical accounting estimates that a company makes and the initial adoption by a company of an accounting policy with a material impact on its financial presentation. The new disclosure would be included in the MD&A section of a company's annual reports, registration statements, and proxy and information statements and would be update quarterly.

Timetable:

Action	Date	FR Cite
NPRM	05/20/02	67 FR 35620
NPRM Comment Period End	07/19/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Andrew Thorpe, Special Counsel, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-2910

RIN: 3235–AI44

4288. DEFINING "QUALIFIED PURCHASERS"

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78r

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission has proposed amendments to Rule 146 to provide a definition of "qualified purchaser" to fully implement the "covered securities" portion of section 18 of the Securities Act of 1933.

Timetable:

Action	Date	FR Cite
NPRM	12/27/01	66 FR 66839
NPRM Comment Period End	02/25/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Marva Simpson, Special Counsel, Securities and Exchange Commission, Washington, DC 20549
Phone: 202 942-2950
Fax: 202 942-9516

RIN: 3235–AI25

4289. ADDITIONAL FORM 8-K DISCLOSURE REQUIREMENTS AND ACCELERATION OF FILING DATE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78 et seq

SEC—Division of Corporation Finance

Final Rule Stage

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission proposed amendments to Form 8-K to add several new disclosure items to Form 8-K, amend many of the existing Form 8-K disclosure items, shorten the Form 8-K filing deadline to two business days, and reorganize the disclosure items into logical categories.

Timetable:

Action	Date	FR Cite
NPRM	06/25/02	67 FR 42914
NPRM Comment Period End	08/26/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Raymond A. Be, Office of Rulemaking, Division of Corporation Finance, Securities and Exchange Commission
Phone: 202 942-2910

RIN: 3235–AI47

4290. • EXEMPTION FOR STANDARDIZED OPTIONS FROM PROVISIONS OF THE SECURITIES ACT OF 1933 AND FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES EXCHANGE ACT OF 1934

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 77z-3; 15 USC 78l(h); 15 USC 78w(3); 15 USC 78mm

CFR Citation: 17 CFR 230.238; 17 CFR 240.9b-1; 17 CFR 240.12a-9; 17 CFR 240.12h-1

Legal Deadline: None

Abstract: The Commission proposed amendments that would exempt transactions in most standardized options from provisions of the Securities Act of 1933 and from the registration requirements of the Securities and Exchange Act of 1934.

Timetable:

Action	Date	FR Cite
NPRM	08/01/02	67 FR 50328
NPRM Comment Period End	09/03/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sean Harrison, Special Counsel, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-2910

RIN: 3235–AI55

Securities and Exchange Commission (SEC)
Division of Corporation Finance

Completed Actions

4291. ACCELERATING PERIODIC REPORT DISCLOSURE AND REQUIRING DISCLOSURE ON COMPANY WEBSITES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq

CFR Citation: 17 CFR 229.101(e); 17 CFR 240.12b-2; 17 CFR 240.13a-10; 17 CFR 240.15d-10; 17 CFR 249.308a; 17 CFR 249.310

Legal Deadline: None

Abstract: The Commission adopted amendments to revise rules and forms that would accelerate the filing by some companies of their quarterly and annual Exchange Act reports and add a requirement that these companies post their Forms 10-K, 10-Q, and 8-K reports on their Internet websites, if they have one, as soon as reasonably practicable after they file or furnish their reports with the Commission.

Timetable:

Action	Date	FR Cite
NPRM	04/23/02	67 FR 19896
NPRM Comment Period End	05/23/02	
Final Action	09/13/02	67 FR 58480
Final Action Effective	11/15/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jeffrey Minton, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-2910

RIN: 3235–AI33

4292. • OWNERSHIP REPORTS AND TRADING BY OFFICERS, DIRECTORS, AND PRINCIPAL SECURITY HOLDERS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 78k(a); 15 USC 78w(a)

CFR Citation: 17 CFR 240.16a-3; 17 CFR 240.16a-6; 17 CFR 249.103; 17 CFR 249.104; 17 CFR 249.105

Legal Deadline: Final, Statutory, August 29, 2002.

Abstract: The Commission adopted rules necessary to implement amendments to section 16(a) of Securities Exchange Act of 1934 made by section 403 of Sarbanes-Oxley Act of 2002.

Timetable:

Action	Date	FR Cite
Final Action Effective	08/29/02	
Final Action	09/03/02	67 FR 56462

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Anne M. Krauskopf, Special Counsel, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-2910

RIN: 3235–AI62

4293. MANDATED EDGAR FILING FOR FOREIGN ISSUERS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq

CFR Citation: 17 CFR 232

Legal Deadline: None

Abstract: The Commission adopted amendments that require foreign issuers to file electronically on EDGAR their Securities Act and Exchange Act registration statements and their Exchange Act reports and other documents.

SEC—Division of Corporation Finance — Completed Actions

Timetable:

Action	Date	FR Cite
NPRM	10/04/01	66 FR 50744
NPRM Comment Period End	12/03/01	
Final Action	05/24/02	67 FR 36678
Final Action Effective	11/04/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elliot Staffin, Securities and Exchange Commission, Division of Corporation Finance
Phone: 202 942-2990

RIN: 3235–AI08

4294. • CERTIFICATION OF DISCLOSURE IN COMPANIES' QUARTERLY AND ANNUAL REPORTS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 78j; 15 USC 78m; 15 USC 78o(d); 15 USC 78w(a)

CFR Citation: 17 CFR 232; 17 CFR 240; 17 CFR 249

Legal Deadline: Final, Statutory, August 29, 2002.

Abstract: The Commission adopted rules that would require a company's principal executive officer and principal financial officer to certify the company's quarterly and annual reports. In addition, the new rules would require companies to regularly maintain their procedures that enable them to fulfill their periodic and current reporting obligations. These rules were revised to be consistent with the requirements of the Sarbanes-Oxley Act of 2002.

Timetable:

Action	Date	FR Cite
NPRM	06/20/02	67 FR 41877
NPRM Comment Period End	08/19/02	
Final Action Effective	08/29/02	
Final Action	09/09/02	67 FR 57276

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Mark Borges, Special Counsel, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549
Phone: 202 942-2910

RIN: 3235–AI54

Securities and Exchange Commission (SEC) — Proposed Rule Stage
Division of Investment Management

4295. BOOKS AND RECORDS TO BE MAINTAINED BY INVESTMENT ADVISERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b-4; 15 USC 80b-6(4); 15 USC 80b-11(a)

CFR Citation: 17 CFR 275.204-2

Legal Deadline: None

Abstract: The Division of Investment Management is considering recommending that the Commission update the books and records requirements for investment advisers.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Don L. Evans, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0719

RIN: 3235–AH24

4296. PRINCIPAL TRANSACTIONS WITH INVESTMENT ADVISORY CLIENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b-6a

CFR Citation: 17 CFR 275

Legal Deadline: None

Abstract: The Division of Investment Management is considering recommending that the Commission revise the conditions under which investment advisers may enter into principal transactions with their clients.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jennifer L. Sawin, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0719

RIN: 3235–AH34

4297. CERTAIN THRIFT INSTITUTIONS DEEMED NOT TO BE INVESTMENT ADVISERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b-2(a)(11)(F)

CFR Citation: 17 CFR 275

Legal Deadline: None

Abstract: The Division of Investment Management is considering recommending a proposal to the Commission to except from the definition of investment adviser thrift institutions providing investment advice to certain clients.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jennifer L. Sawin, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0719

RIN: 3235–AI16

SEC—Division of Investment Management — Proposed Rule Stage

4298. EXEMPTION FROM REGISTRATION FOR CERTAIN COMMODITY POOL OPERATORS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b-6a

CFR Citation: 17 CFR 275.203(b)(6)-1 (New)

Legal Deadline: None

Abstract: The Division of Investment Management is considering recommending that the Commission propose a rule exempting certain commodity pool operators from investment adviser registration and addressing issues related to the Commodity Futures Modernization Act amendments to the Investment Adviser Act.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Daniel Seth Kahl, Senior Counsel, Securities and Exchange Commission, Room 5219, Mail Stop 0506, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-0665
Fax: 202 942-9659
Email: kahld@sec.gov

RIN: 3235–AI29

4299. • DISCLOSURE OF PROXY VOTING POLICIES AND RESULTS BY INVESTMENT COMPANIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77e to 77g; 15 USC 77j; 15 USC 77S(a); 15 USC 80a-8; 15 USC 80-a24; 15 USC 80a-29; 15 USC 80a-37; ...

CFR Citation: 17 CFR 239.14; 17 CFR 239.15A; 17 CFR 239.17; 17 CFR 270.30b2-1; 17 CFR 274.11A; 17 CFR 274.11a-1; 17 CFR 274.11b

Legal Deadline: None

Abstract: The proposed rules would require investment companies to disclose in their registration statements their policies, practices, and procedures that they use to determine how to vote proxies of portfolio securities. The proposed rules would also require the investment companies to disclose proxy voting results to shareholders and to file these results with the Commission.

Timetable:

Action	Date	FR Cite
NPRM	09/26/02	67 FR 60828
NPRM Comment Period End	12/06/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Christian Broadbent, Attorney-Adviser, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549
Phone: 202 942-7972

RIN: 3235–AI64

4300. SHAREHOLDER REPORT AND FINANCIAL STATEMENT REVISIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77f; 15 USC 77j; 15 USC 80a-29

CFR Citation: 17 CFR 210; 17 CFR 270.30d-1

Legal Deadline: None

Abstract: The Division of Investment Management is considering whether to recommend that the Commission propose revisions to improve investment company shareholder reports, including enhancing disclosure of fee information and revising the portfolio holdings disclosure requirements.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Peter Hong, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0721

RIN: 3235–AG64

4301. EXEMPTION TO PERMIT INVESTMENT COMPANIES TO INVEST IN OTHER INVESTMENT COMPANIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80a-6(c); 15 USC 80a-12(d)(1)(j)

CFR Citation: 17 CFR 12d1-1,12d1-2, 12d1-3

Legal Deadline: None

Abstract: The Division of Investment Management is considering recommending to the Commission new rules that would (i) allow investment companies to purchase securities issued by money market funds in excess of limits on those investments under the Investment Company Act of 1940 and (ii) alleviate certain investment and other restrictions on investment companies that invest in other investment companies ("fund of funds").

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Penelope W. Saltzman, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549-0506
Phone: 202 942-0690

RIN: 3235–AI30

4302. • CERTAIN RESEARCH AND DEVELOPMENT COMPANIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80a-6(c); 15 USC 80a-37(a)

CFR Citation: 17 CFR 270.3a-8

Legal Deadline: None

Abstract: The Division of Investment Management is considering whether to recommend that the Commission propose new Rule 3a-8 under the Investment Company Act of 1940 that would provide a safe harbor from investment company status for certain research and development companies.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Karen Goldstein, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0716

RIN: 3235–AI57

4303. • SUBSTITUTION OF FUNDS UNDERLYING VARIABLE INSURANCE PRODUCTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Division of Investment Management is considering whether to recommend that the Commission propose a rule to permit substitutions of funds underlying variable insurance products without a Commission approval order under section 26(c) of the Investment Company Act and related relief form section 17(a) for in-kind transactions in connection with the substitutions.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Keith Carpenter, Office of Insurance Products, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0679

RIN: 3235–AI58

4304. • PROXY VOTING POLICIES AND PROCEDURES FOR INVESTMENT ADVISERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b-4; 15 USC 80b-6(4); 15 USC 80b-11(a)

CFR Citation: 17 CFR 275.204; 17 CFR 275.206

Legal Deadline: None

Abstract: The staff of the Division of Investment Management is considering whether to recommend that the Commission propose new Rule 206-4(6) and amend Rule 204-2 under the Investment Advisers Act of 1940 that would require investment advisers that exercise discretionary voting authority with respect to client securities to adopt proxy voting policies and procedures.

Timetable:

Action	Date	FR Cite
NPRM	09/26/02	67 FR 60841
NPRM Comment Period End	12/06/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Daniel Seth Kahl, Senior Counsel, Securities and Exchange Commission, Room 5219, Mail Stop 0506, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-0665
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RIN: 3235–AI65

4305. EXEMPTION FROM SHAREHOLDER APPROVAL FOR CERTAIN SUBADVISORY CONTRACTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80a-6(c)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Division of Investment Management is considering recommending to the Commission a proposal of a new rule to allow certain types of funds or their investment advisers to enter into subadvisory agreements for investment management services without obtaining shareholder approval.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Adam B. Glazer, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0690

RIN: 3235–AH80

4306. AMENDMENTS TO FORM N-SAR, SEMIANNUAL REPORT OF REGISTERED INVESTMENT COMPANIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78n; 15 USC 78o(d); 15 USC 78w(a); 15 USC 80a-8; 15 USC 80a-29; 15 USC 80a-37

CFR Citation: 17 CFR 249.330; 17 CFR 274.101

Legal Deadline: None

Abstract: The Division of Investment Management is considering whether to recommend that the Commission amend Form N-SAR, the semiannual report for registered investment companies, to update the items of the form.

Timetable:

Action	Date	FR Cite
NPRM	08/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Carolyn A. Miller, Office of Financial Analysis, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0510

RIN: 3235–AF93

4307. AMENDMENTS TO THE CASH SOLICITATION RULE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b-4; 15 USC 80b-6; 15 USC 80-11(a)

CFR Citation: 17 CFR 275.206(4)-3

Legal Deadline: None

Abstract: The Division of Investment Management is considering whether to recommend revisions to the cash solicitation rule.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jennifer L. Sawin, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0719

RIN: 3235–AH33

4308. RULEMAKING FOR EDGAR SYSTEM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77f; 15 USC 77g; 15 USC 77h; 15 USC 77j; 15 USC 77s(a); 15 USC 78c; 15 USC 781; 15 USC 78m; 15 USC 78n; 15 USC 78o(d); 15 USC 78w(a); 15 USC 78ll; 15 USC 77sss; 15 USC 79c; 15 USC 79e; 15 USC 79f; 15 USC 79g; 15 USC 79j; 15 USC 79l; 15 USC 79m; 15 USC 79n; 15 USC 79q; 15 USC 79t; 15 USC 80a-8; 15 USC 80a-29; 15 USC 80a-30; 15 USC 80a-37

CFR Citation: 17 CFR 232.101 to 601

Legal Deadline: None

Abstract: In connection with the ongoing modernization of the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system, the Division is considering recommending that the Commission propose amendments to existing rules and forms to make technical and clarifying corrections and to expand the categories of mandatory electronic filings to include investment company exemptive applications and certain other investment company filings.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Shaswat K. Das, Senior Counsel, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0650

RIN: 3235–AI18

4309. INVESTMENT IN MONEY MARKET FUNDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80a-6(c); 15 USC 80a 37(a)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Division of Investment Management is considering whether to recommend that the Commission propose a new rule that would permit a company to treat money market fund shares as cash items for purposes of determining whether the company is an investment company under the Investment Company Act of 1940.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Sean Harrison, Special Counsel, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-2910

RIN: 3235–AI45

4310. REGIONAL TRANSMISSION ORGANIZATIONS AND INDEPENDENT TRANSMISSION COMPANIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 79c

CFR Citation: 17 CFR 250.18; 17 CFR 250.40; 17 CFR 250.44; 17 CFR 250.6

Legal Deadline: None

Abstract: The Division of Investment Management is considering recommending a proposal to the Commission to deem an "independent transmission company" as defined by the rule not to be a "subsidiary," "company" or "affiliate" of a registered holding company. The rule is intended to facilitate the Federal Energy Regulatory Commission's Order No. 2000, Regional Transmission Organizations.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Victoria J. Adraktas, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0545
Email: adraktasv@sec.gov

RIN: 3235–AI27

4311. • EXEMPTIONS FROM SECTION 17(C) OF THE PUBLIC UTILITY HOLDING COMPANY ACT REGARDING OFFICERS AND DIRECTORS OF REGISTERED HOLDING COMPANIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 79q(c)

CFR Citation: 17 CFR 250.70

Legal Deadline: None

Abstract: The Division of Investment Management is considering whether to recommend that the Commission propose revisions to existing Rule 70 to update the exemptions to reflect current industry conditions.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David B. Smith, Securities and Exchange Commission, Office of Public Utility Regulation, Division of Investments Management, Washington, DC 20549
Phone: 202 942-0525

RIN: 3235–AI59

Securities and Exchange Commission (SEC)
Division of Investment Management

Final Rule Stage

4312. CUSTODY OR POSSESSION OF FUNDS OR SECURITIES OF CLIENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b-3(c)(i); 15 USC 80b-4; 15 USC 80b-11; 15 USC 80b-6(4)

CFR Citation: 17 CFR 275.206(4)-2

Legal Deadline: None

Abstract: The Commission proposed revisions to the custody rule under the Investment Advisers Act of 1940. The proposed amendments are designed to conform the rule to modern custodial practices and enhance protections for client assets while reducing burdens on advisers that have custody of client assets.

Timetable:

Action	Date	FR Cite
NPRM	07/25/02	67 FR 48579
NPRM Comment Period End	09/25/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Vivian Liu, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0719

RIN: 3235–AH26

4313. CERTAIN BROKER-DEALERS NOT DEEMED TO BE INVESTMENT ADVISERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b-2(a)(11)(F)

CFR Citation: 17 CFR 275.202(a)(11)-1

Legal Deadline: None

Abstract: The Commission has proposed new Rule 202(a)(11)-1, which would exempt from the definition of investment adviser those broker-dealers offering nondiscretionary, full-service brokerage programs so long as the investment advice provided is solely incidental to the brokerage services and other conditions are satisfied.

Timetable:

Action	Date	FR Cite
NPRM	11/10/99	64 FR 61226
NPRM Comment Period End	01/14/00	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jennifer L. Sawin, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0719

RIN: 3235–AH78

4314. EXEMPTION FOR CERTAIN INVESTMENT ADVISERS OPERATING THROUGH THE INTERNET

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b-3a(c)

CFR Citation: 17 CFR 275.203A-2

Legal Deadline: None

Abstract: The Commission proposed new Rule 203A-2(f), which would permit certain investment advisers operating through the Internet to register with the Commission.

Timetable:

Action	Date	FR Cite
NPRM	04/19/02	67 FR 19500
NPRM Comment Period End	06/06/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Marilyn Barker, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0719

RIN: 3235–AI15

4315. AMENDMENTS TO FORM ADV

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b-4, 80b-6(4), 80bll(a), 80b-3(c)(1); 15 USC 77s(a); 15 USC 78(a), 78bbb(e)(2); 15 USC 77sss(a); 15 USC 78(s)-37(a)

CFR Citation: 17 CFR 275.204-2; 17 CFR 275.204-3; 17 CFR 275.206(4)-4; 17 CFR 279.1

Legal Deadline: None

Abstract: In 2000, the Commission proposed amendments to Form ADV and related rules to create an electronic filing system for investment advisers and to improve the quality of information that advisers must provide to clients and prospective clients. The proposed amendments to Form ADV and the final amendments to part 1 of Form ADV were published under RIN 3235-AD21. The Commission deferred adoption of the final amendments to part 2 of Form ADV, however. Final action on amendments to part 2 of the Form ADV (and related rules), if approved by the Commission, will be published under the new RIN.

Timetable:

Action	Date	FR Cite
NPRM	04/05/00	65 FR 20524
NPRM Comment Period End	06/13/00	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Maricha L. Cary, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, Room 5013, 450 5th Street NW, Washington, DC 20549
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Email: iarules@sec.gov

RIN: 3235–AI17

4316. TRANSACTIONS OF INVESTMENT COMPANIES WITH PORTFOLIO AND SUBADVISORY AFFILIATES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80a-6(c); 15 USC 80a-10(f); 15 USC 80-17(b); 15 USC 80a-17(d); 15 USC 80a-30(a); 15 USC 80a 37(a)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission proposed new rules and rule amendments to expand the circumstances under which a registered investment company may engage in transactions and joint enterprises with certain affiliated persons and affiliated persons of affiliated persons of the investment company.

Timetable:

Action	Date	FR Cite
NPRM	05/08/02	67 FR 31081
NPRM Comment Period End	07/19/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: William C. Middlebrooks, Jr., Attorney, Office of Regulatory Policy, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549-0506
Phone: 202 942-0690

RIN: 3235–AI28

SEC—Division of Investment Management

Final Rule Stage

4317. PROPOSED AMENDMENTS TO INVESTMENT COMPANY ADVERTISING RULES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77e; 15 USC 77b; 15 USC 77 2-3; 15 USC 77g; 15 USC 77h; 15 USC 77j; 15 USC 77s(a); 15 USC 80a-8; 15 USC 78j(b); 15 USC 78w(a); 15 USC 80a-24; 15 USC 80a-29; 15 USC 80a-37; 15 USC 80a-33; ...

CFR Citation: 17 CFR 230.482; 17 CFR 230.134; 17 CFR 230.15E; 17 CFR 270.34b-1

Legal Deadline: None

Abstract: The Commission proposed to amend Rule 482, to permit fund advertisements that are not subject to restrictions limiting the content of the advertisement to information "the substance of which" is in a fund's prospectus. The Commission also proposed amendments that would require enhanced disclosure in fund advertisements.

Timetable:

Action	Date	FR Cite
NPRM	05/24/02	67 FR 36712
NPRM Comment Period End	07/31/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: David Schwartz, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0721

RIN: 3235–AH19

4318. • CERTIFICATION OF DISCLOSURE IN MANAGEMENT INVESTMENT COMPANIES' REPORTS TO SHAREHOLDERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77e, 77f, 77g, 77q, and 77s(a); 15 USC 78j*b), 78m, 78o(d), and 78w(a); 15 USC 80a-8, 80a-24(a), 80a-29, and 80a-37; PL 107-204, 116 Stat 745 (2002)

CFR Citation: 17 CFR 249.330; 17 CFR 249.331; 17 CFR 270.8b-15; 17 CFR 270.30a-1; 17 CFR 270.30a-2; 17 CFR 270.30a-3; 17 CFR 270.30b1-1; 17 CFR 270.30b2-1; 17 CFR 274.128

Legal Deadline: None

Abstract: The Division of Investment Management is recommending proposed rule amendments that would require registered management investment companies to file certified shareholder reports with the Commission and would designate these certified reports as reports that are required under section 13(a) and 15(d) of the Securities Exchange Act of 1934. This proposal would require each registered management investment company's principal executive and financial officers to certify the information contained in these reports in the manner required by section 302 of the Sarbanes-Oxley Act of 2002.

Timetable:

Action	Date	FR Cite
NPRM	09/09/02	67 FR 57298
NPRM Comment Period End	10/16/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: John M. Faust, Office of Disclosure Regulation, Securities and Exchange Commission, Division of Investment Management, 451 5th Street NW, Washington, DC 20549
Phone: 202 942-0721

RIN: 3235–AI63

4319. CUSTODY OF INVESTMENT COMPANY ASSETS WITH A SECURITIES DEPOSITORY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80a-17(f); 15 USC 80a-06(c); 15 USC 80a-37(a)

CFR Citation: 17 CFR 270.17f-4

Legal Deadline: None

Abstract: The Commission proposed amendments to Rule 17f-4, the rule that governs investment companies' use of securities depositories. The amendments would, among other things, update and simplify the rule's compliance requirements to reflect changes in commercial law, expand the types of entities that may be used as securities depositories, and permit investment company officers to authorize custody arrangements.

Timetable:

Action	Date	FR Cite
NPRM	11/21/01	66 FR 58412
NPRM Comment Period End	01/31/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Hugh P. Lutz, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0690

RIN: 3235–AG71

4320. DISCLOSURE OF COSTS AND EXPENSES FOR VARIABLE ANNUITIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77e; 15 USC 77g; 15 USC 77h; 15 USC 77j; 15 USC 77s(a); 15 USC 80a-8; 15 USC 80a-24; 15 USC 80a-29; 15 USC 80a-37

CFR Citation: 17 CFR 239.17b; 17 CFR 274.11c

SEC—Division of Investment Management — **Final Rule Stage**

Legal Deadline: None

Abstract: The Commission proposed revisions of Form N-4, the registration form for insurance company separate accounts that are registered as unit investment trusts and that offer variable annuity contracts. The proposed amendments would revise the format of the fee table of Form N-4 to require disclosure of the range of expenses for all of the mutual funds offered through the separate account.

Timetable:

Action	Date	FR Cite
NPRM	04/23/02	67 FR 19886
NPRM Comment Period End	06/14/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Katy Mobedshahi, Division of Investment Management, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-0721

RIN: 3235–AI39

4321. PUHCA: EXEMPTION FOR CERTAIN ACQUISITIONS OF FOREIGN UTILITY COMPANIES; SUBSIDIARIES AUTHORIZED TO PERFORM SERVICES OR CONSTRUCTION OR TO SELL GOODS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 79e; 15 USC 79f(b); 15 USC 79i(c)(3); 15 USC 79t; 15 USC 79z-5a; 15 USC 79z-5b; 15 USC 79; 15 USC 79j; 15 USC 79l; 15 USC 79m; 15 USC 79n; 15 USC 79o

CFR Citation: 17 CFR 250.55 (New); 17 CFR 250.87 (Revision); 17 CFR 259.5s (Revision); 17 CFR 259.207 (Revision)

Legal Deadline: None

Abstract: Proposed rule 55 is intended to provide a safe harbor for those acquisitions of one or more foreign utility companies by a registered holding company that meet specified criteria. Proposed rule 56, previously considered in RIN 3235-AF79, clarifies that a subsidiary of a registered holding company that is engaged exclusively in the business of owning an interest in one or more foreign utility companies will be deemed a foreign utility company. The proposed amendment to rule 87 would require registered holding companies to obtain Commission approval of intrasystem agreements involving foreign utility companies and exempt wholesale generators.

Timetable:

Action	Date	FR Cite
NPRM	03/15/93	58 FR 13719
NPRM Comment Period End	04/14/93	
Second NPRM	02/07/01	66 FR 9247
Second NPRM Comment Period End	04/09/01	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Related to RIN 3235-AF79

Agency Contact: Alberto Zapata, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0545

RIN: 3235–AF78

Securities and Exchange Commission (SEC)
Division of Investment Management — **Long-Term Actions**

4322. POLITICAL CONTRIBUTIONS BY CERTAIN INVESTMENT ADVISERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 206(4); 15 USC 211(a); 15 USC 204

CFR Citation: 17 CFR 275

Legal Deadline: None

Abstract: The Commission has proposed new Rule 206(4)-5, which would prohibit an investment adviser from providing advisory services for compensation to a Government client for 2 years after the adviser or any of its partners, executive officers, or solicitors makes a contribution to certain elected officials or candidates.

The Commission also has proposed rule amendments that would require a registered adviser that has Government clients to maintain certain records of the political contributions made by the adviser or any of its partners, executive officers, or solicitors.

Timetable:

Action	Date	FR Cite
NPRM	08/10/99	64 FR 43556
NPRM Comment Period End	11/01/99	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jennifer L. Sawin, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0719

RIN: 3235–AH72

4323. EXEMPTION FROM SECTION 101(C)(1) OF THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT FOR REGISTERED INVESTMENT COMPANIES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 77s(a)

CFR Citation: 17 CFR 230.160; 17 CFR 231; 17 CFR 271

Legal Deadline: Other, Statutory, July 28, 2000, section 104(d)(2) of the Electronic Signatures Act in Global and National Commerce Act (PL 106-229).

Abstract: The Commission adopted interim final rule 160 under the Securities Act of 1933 to exempt from the consumer consent requirements of the Electronic Signatures in Global and National Commerce Act prospectuses of registered investment companies that are used for the sole purpose of permitting supplemental sales literature to be provided to prospective investors.

SEC—Division of Investment Management — **Long-Term Actions**

Parts 231 and 271 of title 17 were amended by adding Release Nos. 33-7877 and IC-24582 to the list of interpretative releases.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/02/00	65 FR 47281
Interim Final Rule Comment Period End	09/01/00	
Interim Final Rule Effective	10/01/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Paul Cellupica, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0721

RIN: 3235–AH93

4324. INSURANCE PRODUCTS: EQUITY INDEX INSURANCE PRODUCTS CONCEPT RELEASE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq

CFR Citation: 17 CFR 230.151

Legal Deadline: None

Abstract: The Commission issued a release requesting public comment on the structure of equity index insurance products, the manner in which they are marketed, and any other matters the Commission should consider in addressing Federal securities law issues raised by equity index insurance products.

Timetable:

Action	Date	FR Cite
ANPRM	08/27/97	62 FR 45359
ANPRM Comment Period End	11/20/97	
NPRM	11/21/97	62 FR 62273
NPRM Comment Period End	01/05/98	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: William Kotapish, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0670

RIN: 3235–AH23

Securities and Exchange Commission (SEC)
Division of Investment Management — **Completed Actions**

4325. EXEMPTION FOR THE ACQUISITION OF SECURITIES DURING THE EXISTENCE OF AN UNDERWRITING OR SELLING SYNDICATE

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 80a-10(f); 15 USC 80a-30(a); 15 USC 80a-37(a); 15 USC 80a-6(c)

CFR Citation: 17 CFR 270.10f-3

Legal Deadline: None

Abstract: The Commission adopted amendments to Rule 10f-3 under the Investment Company Act (i) to permit investment companies to purchase Government securities during the existence of an underwriting or selling syndicate in which an affiliate is participating.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76189
NPRM Comment Period End	02/15/01	
Final Action	05/08/02	67 FR 31076
Final Action Effective	05/10/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Hester M. Peirce, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0690

RIN: 3235–AH57

4326. MERGERS OF CERTAIN AFFILIATED INVESTMENT COMPANIES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 80a-17(a); 15 USC 80a-6(c); 15 USC 80a-37(a)

CFR Citation: 17 CFR 270.17a-8

Legal Deadline: None

Abstract: The Commission adopted amendments to Rule 17a-8 under the Investment Company Act, which exempt from the prohibitions of section 17(a) mergers and other combinations of certain affiliated investment companies. The amendments expand the rule to make it available in a broader range of circumstances and alter the conditions required for reliance on the rule.

Timetable:

Action	Date	FR Cite
NPRM	11/15/01	66 FR 57602
NPRM Comment Period End	01/18/02	
Final Action	07/24/02	67 FR 48512
Final Action Effective	07/26/02	
Compliance date	10/25/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Robert S. Kim, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-7961

RIN: 3235–AH81

4327. • TECHNICAL AMENDMENTS TO RULES AND FORMS DUE TO THE NATIONAL SECURITIES MARKETS IMPROVEMENT ACT OF 1996 AND THE GRAMM-LEACH-BLILEY ACT

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 80a-b(c); 15 USC 80a-37(a); 15 USC 78(a); 15 USC 78(w)(a)

CFR Citation: 17 CFR 270.3a-1; 17 CFR 270.3a-2; 17 CFR 270.3a-3; 17 CFR 270.3a-5; 17 CFR 270.3a-6; 17 CFR 270.6c-6; 17 CFR 270.6e-2; 17 CFR 270.6e-3(7); 17 CFR 240.16a-2; 17 CFR 240.16c-3; 17 CFR 200.206; 17 CFR 270.30f-1; ...

Legal Deadline: None

SEC—Division of Investment Management — Completed Actions

Abstract: The Commission has adopted technical amendments to rules and forms under the Investment Company Act of 1940 and the Securities Exchange Act of 1934. The amendments correct statutory references currently included in the rules and forms.

Timetable:

Action	Date	FR Cite
Final Action	06/28/02	67 FR 43534
Final Action Effective	07/08/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Hugh P. Lutz, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0690

RIN: 3235–AI53

Securities and Exchange Commission (SEC) — Division of Market Regulation — Prerule Stage

4328. AMENDMENTS TO THE PENNY STOCK RULES IN LIGHT OF THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78c(h); 15 USC 78o(g)

CFR Citation: 17 CFR 240.15g-2(c); 17 CFR 240.15g-9(e)

Legal Deadline: None

Abstract: The Division is considering recommending to the Commission proposed rules 15g-2(c) and 15(g)-9(e) under the Exchange Act that would provide that if a broker-dealer accepts a customer's electronic signature instead of a manual signature, the broker-dealer must wait at least 2 business days after receiving the electronically signed document to effect a penny stock transaction for its customer. In addition, a broker-dealer accepting an electronically transmitted penny stock agreement would be required to wait at least 2 business days after receiving the agreement to execute a penny stock transaction for a customer. The Division is also considering whether to amend the definition of "penny stock" in rule 3a51-1 in light of the NASDAQ application to become a national securities exchange, and in light of the CFMA.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Norman Reed, Securities and Exchange Commission, Division of Market Regulation
Phone: 202 942-7901

RIN: 3235–AI02

Securities and Exchange Commission (SEC) — Division of Market Regulation — Proposed Rule Stage

4329. RISK ASSESSMENT RECORDKEEPING AND REPORTING REQUIREMENT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78a(h)

CFR Citation: 17 CFR 240.17h-1T; 17 CFR 240.17h-2T

Legal Deadline: None

Abstract: The Risk Assessment Recordkeeping and Reporting Requirements, which became effective September 30, 1992, following notice and comment, were adopted as temporary rules pursuant to the Market Reform Act of 1990. These rules contain recordkeeping and reporting requirements with regard to material associated persons of broker-dealers. The Division plans to recommend that the Commission propose final rules replacing the temporary rules.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Thomas K. McGowan, Office of Risk Management, Division of Market Regulation, Securities and Exchange Commission
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RIN: 3235–AH06

4330. PURCHASES OF CERTAIN EQUITY SECURITIES BY THE ISSUER AND OTHERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78b; 15 USC 78c; 15 USC 78i(a)(6); 15 USC 78j(b); 15 USC 78m(e); 15 USC 78o(c); 15 USC 78w(a)

CFR Citation: 17 CFR 240.10b-18

Legal Deadline: None

Abstract: The Division is considering whether to recommend a proposal to simplify and update Rule 10b-18's provisions in light of market developments since the Rule's adoption. Rule 10b-18 provides a safe harbor from liability under the anti-manipulation provisions of sections 9(a)(2) and 10(b) of the Exchange Act, and Rule 10b-5 thereunder, for issuer purchases of its common stock made in compliance with Rule 10b-18's

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manner, timing, price, and volume conditions.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Joan Collopy, Office of Risk Management, Division of Market Regulation, Securities and Exchange Commission
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RIN: 3235–AH37

4331. CONCEPT RELEASE: SHORT SALES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78j(a); 15 USC 78w

CFR Citation: 17 CFR 240.10a-1

Legal Deadline: None

Abstract: As part of its comprehensive review of Exchange Act Rule 10a-1, the short sale rule, the Commission published a concept release soliciting public comment on, among other things: Lifting the limits on short sales of exchange listed securities under advancing market conditions; providing an exception for actively traded securities; focusing short sale restrictions on certain market events and trading strategies; removing short sale restrictions on hedging transactions; revising short sale regulation in response to certain market developments; revising the definition of "short sale"; extending short sale regulation to non-exchange listed securities; and eliminating short sale regulation altogether.

Timetable:

Action	Date	FR Cite
ANPRM	10/28/99	64 FR 57996
ANPRM Comment Period End	12/28/99	
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gregory J. Dumark, Division of Market Regulation, Securities and Exchange Commission
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RIN: 3235–AH84

4332. DEFINITION OF TERMS IN AND SPECIFIC EXEMPTIONS FOR BANKS, SAVINGS ASSOCIATIONS, AND SAVINGS BANKS UNDER SECTIONS 3(A)(4) AND 3(A)(5) OF THE SECURITIES AND EXCHANGE ACT OF 1934

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-102

CFR Citation: 17 CFR 240.3a4-2; 17 CFR 240.3a4-3; 17 CFR 240.3a-51; 17 CFR 240.3b-17; 17 CFR 240.3b-18; 17 CFR 200.30-3; 17 CFR 240.3a4-4 to 3a4.6; 17 CFR 240.15a-7 to 15a-9; ...

Legal Deadline: Other, Statutory, May 12, 2001, Title II of the Gramm-Leach-Bliley Act required banks to shift certain securities activities to registered broker-dealers by May 12, 2001.

Abstract: The Commission issued guidance to the meaning of terms added to the Securities Exchange Act of 1934 by the Gramm-Leach-Bliley Act of 1999. The Commission extended the implementation date for the guidance until May 12, 2003, for the definition of "broker" and November 12, 2002, for the definition of "dealer."

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/18/01	66 FR 27760
Interim Final Rule Comment Period End	07/17/01	
Interim Final Rule Extended	07/24/01	66 FR 38370
Comment Period Extended	07/24/01	66 FR 38370
Comment Period End	09/04/01	
Interim Final Rule Extended	05/08/02	
NPRM for Dealer Rules	11/00/02	
NPRM for Broker Rules	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lourdes Gonzalez, Assistant Chief Counsel, Division of Market Regulation, Securities and Exchange Commission
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RIN: 3235–AI19

Securities and Exchange Commission (SEC) — Division of Market Regulation — Final Rule Stage

4333. • AMENDMENT TO RULE 15C3-3 TO EXPAND THE CATEGORIES OF PERMISSIBLE COLLATERAL

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 78o(c)(3), 78w, 78mm

CFR Citation: 17 CFR 240.15c3-3

Legal Deadline: None

Abstract: The Commission proposed the expansion of the categories of collateral broker-dealers may pledge when borrowing securities from customers. Currently broker-dealers are required to pledge U.S. Treasury bills and notes and irrevocable bank letters of credit. The amendment would allow them also to pledge such other collateral as the Commission, by order, designates.

Timetable:

Action	Date	FR Cite
NPRM	06/10/02	67 FR 39642
NPRM Comment Period End	07/25/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Randall Roy, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
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SEC—Division of Market Regulation

Final Rule Stage

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RIN: 3235–AI51

4334. • RESEARCH ANALYST CERTIFICATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission proposed a regulation requiring analysts to provide certain certifications and disclosures regarding research reports and compensation.

Timetable:

Action	Date	FR Cite
NPRM	08/08/02	67 FR 51510
NPRM Comment Period End	09/23/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Randall Roy, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
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RIN: 3235–AI60

4335. • RULE 15C3-3 RESERVE REQUIREMENTS FOR MARGIN RELATED TO SECURITY FUTURES PRODUCTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78o(c)(3); 15 USC 78w

CFR Citation: 17 CFR 240.15c3-3a

Legal Deadline: None

Abstract: The Division is considering recommending that the Commission propose amendments designed to delineate the manner in which a broker-dealer would calculate its customer reserve requirement under Rule 15c3-3a (the "Reserve Formula") to the Exchange Act in light of enactment of the Commodity Futures Modernization Act of 2000 ("CFMA"). Specifically, the proposed amendments would set forth the Reserve Formula treatment of customer margin that a broker-dealer deposits with a clearing agency registered with the Securities and Exchange Commission or a derivatives clearing organization registered with the Commodity Futures Trading Commission to clear and settle customer transactions in security futures products conduct through securities accounts.

Timetable:

Action	Date	FR Cite
NPRM	09/23/02	67 FR 59748
NPRM Comment Period End	10/23/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Matthew Bruce Comstock, Attorney, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
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RIN: 3235–AI61

4336. TENDER AND REORGANIZATION AGENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78b; 15 USC 78k-1(a)(1)(B); 15 USC 78n(d)(4); 15 USC 78o(c)(3); 15 USC 78o(c)(6); 15 USC 78q-1(a); 15 USC 78q-1(d)(1); 15 USC 78w(a)

CFR Citation: 17 CFR 240.17Ad-14

Legal Deadline: None

Abstract: The Commission proposed amendments to Rule 17Ad-14 under the Securities Exchange Act of 1934. The amendments would require the establishment of book-entry accounts in connection with reorganization events and would provide securities depositories with 3 business days after the expiration of a tender offer, exchange offer, or reorganization event in which to deliver physical securities certificates to the agents.

Timetable:

Action	Date	FR Cite
NPRM	09/04/98	63 FR 47209
NPRM Comment Period End	11/03/98	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Michael Rae, Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission
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RIN: 3235–AH53

4337. NET CAPITAL REQUIREMENTS FOR BROKERS OR DEALERS—DEFINITION OF THE TERM NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78c; 15 USC 78o; 15 USC 78q; 15 USC 78w

CFR Citation: 17 CFR 240.15c3-1

Legal Deadline: None

Abstract: The Commission issued a release proposing amendments to the net capital rule that would define the term Nationally Recognized Statistical Rating Organization (NRSRO) for purposes of the net capital rule and set forth the process for applying for NRSRO designation.

Timetable:

Action	Date	FR Cite
NPRM	12/30/97	62 FR 68018
NPRM Comment Period End	03/02/98	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: This proposal was based in part on comments received in response to a concept release (RIN 3235-AG41; 59 FR 46314), which is now combined in this rulemaking.

Agency Contact: Thomas K. McGowan, Office of Risk Management, Division of Market Regulation, Securities and Exchange Commission
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RIN: 3235–AH28

SEC—Division of Market Regulation

Final Rule Stage

4338. PUBLICATION OR SUBMISSION OF QUOTATIONS WITHOUT SPECIFIED INFORMATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78b; 15 USC 78c; 15 USC 78j(b); 15 USC 78o(q); 15 USC 78q(a); 15 USC 78w(a)

CFR Citation: 17 CFR 240.15c2-11

Legal Deadline: None

Abstract: As part of its efforts to respond to fraud and manipulation in the microcap securities market, the Commission is considering final amendments to Rule 15c2-11. These amendments would limit the Rule's piggyback provision and increase public availability of issuer information. The amendments would modestly expand the information review requirements for non-reporting issuers and the documentation required for significant relationships between the broker-dealer and the issuer of the security to be quoted. Finally the amendments would exclude from the rule securities of larger, more liquid issuers.

Timetable:

Action	Date	FR Cite
NPRM	02/25/98	63 FR 9661
NPRM Comment Period End	04/27/98	
Second NPRM	03/08/99	64 FR 11124
Second NPRM Comment Period End	04/07/99	
Second NPRM Comment Period Extended to	04/14/99	64 FR 18393
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Thomas D. Eidt, Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission
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RIN: 3235–AH40

4339. PROCESSING REQUIREMENTS FOR CANCELLED SECURITIES CERTIFICATES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78q-1

CFR Citation: 17 CFR 240.17Ad-19

Legal Deadline: None

Abstract: The Commission proposed Rule 17Ad-19 to establish regulations for the processing of cancelled securities certificates and to require each transfer agent to establish written procedures for the storage and destruction of cancelled securities certificates.

Timetable:

Action	Date	FR Cite
NPRM	10/06/00	65 FR 59766
NPRM Comment Period End	12/05/00	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Thomas C. Etter Jr., Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission
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RIN: 3235–AH54

4340. • STRUCTURAL CHANGE IN THE SETTLEMENT OF GOVERNMENT SECURITIES: ISSUES AND OPTIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78q-1, 78s

CFR Citation: 17 CFR 240.17Ad-2

Legal Deadline: None

Abstract: The white paper "Structural Change in the Settlement of Government Securities: Issues and Options," facilitates exploration of structural change in settlements of Government securities by describing more concretely some approaches to organizing and industry utility. The staff of the Securities and Exchange Commission and the Federal Reserve Board believe further discussion of structural change is warranted because enhanced contingency backup arrangements alone do not eliminate the financial and structural vulnerabilities that the market faces. The paper also identifies possible criteria for assessing the approaches and, to encourage further discussion, offers a preliminary evaluation of the various approaches using the assessment criteria.

Timetable:

Action	Date	FR Cite
NPRM	05/13/02	67 FR 32043
NPRM Comment Period End	08/12/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

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RIN: 3235–AI48

Securities and Exchange Commission (SEC)
Division of Market Regulation

Long-Term Actions

4341. • REPEAL OF RULE 11ACL-7 UNDER THE SECURITIES EXCHANGE ACT OF 1934

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 78c(b); 15 USC 78o; 15 USC 78K-1; 15 USC 78q; 15 USC 78w(a)

CFR Citation: 17 CFR 240.11Ac1-7

Legal Deadline: None

Abstract: The Commission proposed repealing the rule that requires a broker-dealer to disclose to its customer when the customer's order for listed options is executed at a price inferior to a better published quote, unless the transaction was effected on a market that is a participant in an intermarket options linkage plan approved by the Commission or the customer order was executed as part of a block trade.

Timetable:

Action	Date	FR Cite
NPRM	06/15/02	67 FR 38610
NPRM Comment end	07/22/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Debbie Flynn, Securities and Exchange Commission
Phone: 202 942-0075

RIN: 3235–AI52

Securities and Exchange Commission (SEC)
Division of Market Regulation

Completed Actions

4342. CUSTOMER MARGIN RULES RELATING TO SECURITY FUTURES PRODUCTS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 78g(c)

CFR Citation: 17 CFR 242.400 to 242.404

Legal Deadline: None

Abstract: The Commission adopted rules 400 through 404 that will establish initial and maintenance customer margin requirements imposed by brokers, dealers, and members of national security exchanges for security futures products.

Timetable:

Action	Date	FR Cite
NPRM	10/04/01	66 FR 50720
Comment Period Extended to 12/05/2001	11/02/01	66 FR 55608
NPRM Comment Period End	11/05/01	
Final Action	08/14/02	67 FR 53146
Final Action Effective	09/13/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lisa N. Jones, Securities and Exchange Commission, Division of Market Regulation, Washington, DC
Phone: 202 942-0063

Jennifer Colihan, Securities and Exchange Commission, Division of Market Regulation, Washington, DC
Phone: 202 942-0735

RIN: 3235–AI22

4343. CASH SETTLEMENT AND REGULATORY HALT REQUIREMENTS FOR SECURITY FUTURE PRODUCTS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 78f; 15 USC 78i; 15 USC 78o-3; 15 USC 78s; 15 USC 78w(a); 15 USC 78mm

CFR Citation: 17 CFR 240.6h-1

Legal Deadline: None

Abstract: The Commission adopted proposed Rule 6h-1 to require that the final settlement price for each cash-settled security futures product fairly reflect the opening price of the underlying security or securities and that trading in any security futures product halt when a regulatory halt is instituted with respect to a security or securities underlying the security future product by the national securities exchange or national securities association listing the security.

Timetable:

Action	Date	FR Cite
NPRM	08/30/01	66 FR 45904
NPRM Comment Period End	10/01/01	
Final Action	05/24/02	67 FR 36740
Final Action Effective	06/24/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cyndi Nguyen, Securities and Exchange Commission, Division of Market Regulation, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-4163

RIN: 3235–AI24

4344. AMENDMENTS TO RULES 15C3-3, 17A-3, 17A-4, 17A-5, 17A-7, 17A-11, AND 17A-13 TO RECOGNIZE SECURITY FUTURES PRODUCTS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 78(c)(b), 78(c)(3), 78q(a), 78w(a)

CFR Citation: 17 CFR 240.15c3-3; 17 CFR 240.17a-3 to 240.17a-5; 17 CFR 240.17a-7; 17 CFR 240.17a-11; 17 CFR 240.17a-13

Legal Deadline: None

Abstract: These amendments are designed to eliminate duplicative or conflicting regulations applicable to firms that are fully registered with the CFTC as a FCM and fully registered with the SEC as a broker-dealer relating to the treatment of customer funds, securities, or property, maintenance of books and records, financial reporting or other financial responsibility rules involving security futures products ("SFP"), as directed by the Commodity Futures Modernization Act of 2000. The amendments are also designed to eliminate certain conflicting or duplicative recordkeeping, reporting, telegraphic notice, and quarterly count requirements involving SFPs for firms that are "notice" registered with the SEC under the section 15(b)(11)(A) of the Exchange Act. Final rule amendments were approved by the CFTC and Securities and Exchange Commission.

Timetable:

Action	Date	FR Cite
NPRM	10/04/01	66 FR 50786
Comment Period Extended to 12/05/2001	11/02/01	66 FR 55608

SEC—Division of Market Regulation

Completed Actions

Action	Date	FR Cite
NPRM Comment Period End	11/05/01	
Final Action	09/13/02	67 FR 58283
Final Action Effective	09/13/02	
Except Sections 240.17a.4(C) and (M)	05/02/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bonnie Lynn Gauch, Securities and Exchange Commission, Division of Market Regulation
Phone: 202 942-0756

RIN: 3235–AI32

4345. • CONFIRMATION REQUIREMENTS OF TRANSACTIONS OF SECURITY FUTURES PRODUCTS AFFECTED IN FUTURES ACCOUNTS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 78j; 15 USC 78k; 15 USC 78w(a); 15 USC 78mm(a)(1)

CFR Citation: 17 CFR 240.106-10; 17 CFR 240.11d2-1

Legal Deadline: None

Abstract: The Commission adopted amendments to Rule 10b-10 and new Rule 11d2-1 under the Exchange Act pursuant to the authority conferred by the Exchange Act. The rule and the rule amendments are designed to clarify the disclosure broker-dealers effecting transactions in securities futures products in customer futures accounts must make in the confirmations sent to customers regarding these transactions.

Timetable:

Action	Date	FR Cite
NPRM	06/10/02	67 FR 39647
NPRM Comment Period End	07/10/02	
Final Action	09/13/02	67 FR 58302
Final Action Effective	10/15/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Norman Reed, Securities and Exchange Commission, Division of Market Regulation
Phone: 202 942-7901

Mark Borges, Special Counsel, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549
Phone: 202 942-2910

RIN: 3235–AI50

4346. • ASSESSMENT ON SECURITY FUTURES TRANSACTIONS AND FEES ON SALES OF SECURITIES RESULTING FROM PHYSICAL SETTLEMENT OF SECURITY FUTURES PURSUANT TO SECTION 31 OF THE EXCHANGE ACT

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 78ee

CFR Citation: 17 CFR 240.31-1

Legal Deadline: None

Abstract: The Commission adopted an amendment to rules to clarify how to calculate assessments that are required to be paid by national securities exchanges and associations pursuant to section 31(d) of the Securities Exchange Act of 1934 for security futures transactions. In addition, the amendment provides guidance on how to calculate fees required to be paid by national securities exchanges and associations pursuant to section 31(b) and (c) of the Exchange Act, respectively, for sales of securities resulting from physical settlement of security futures.

Timetable:

Action	Date	FR Cite
NPRM	05/07/02	67 FR 30628
NPRM Comment Period End	06/06/02	
Final Action	07/12/02	67 FR 46104
Final Action Effective	08/12/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3235–AI49

Securities and Exchange Commission (SEC)
Offices and Other Programs

Proposed Rule Stage

4347. PROPOSAL TO AMENDMENT DISCLOSURE REQUIREMENTS RELATED TO DERIVATIVE FINANCIAL INSTRUMENTS AND DERIVATIVE COMMODITY INSTRUMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq; 15 USC 79a et seq; 15 USC 80a-1 et seq

CFR Citation: 17 CFR 210; 17 CFR 228; 17 CFR 229

Legal Deadline: None

Abstract: The Office of the Chief Accountant is considering recommending that the Commission publish a release proposing amendments that would conform the Commission's disclosure requirements with Financial Accounting Standards No.133.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jenifer Minke-Girard, Assistant Chief Accountant, Securities and Exchange Commission
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RIN: 3235–AH98

4348. • REVISION OF THE COMMISSION'S AUDITOR INDEPENDENCE REGULATIONS AND RELATED DISCLOSURE REQUIREMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq; 15 USC 79a et seq; 15 USC 80a-1 et seq

SEC—Offices and Other Programs

Proposed Rule Stage

CFR Citation: 17 CFR 210; 17 CFR 240

Legal Deadline: None

Abstract: The Office of the Chief Accountant will recommend rules to the Commission that will conform the Commission's auditor independence rules to the requirements of the Sarbanes-Oxley Act.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Samuel L. Burke, Associate Chief Accountant, Securities and Exchange Commission, Office of the Chief Accountant
Phone: 202 942-4400

RIN: 3235–AI56

Securities and Exchange Commission (SEC)
Offices and Other Programs

Final Rule Stage

4349. SUPPLEMENTAL FINANCIAL INFORMATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq; 15 USC 79a et seq; 15 USC 80a-1 et seq

CFR Citation: 17 CFR 210; 17 CFR 229

Legal Deadline: None

Abstract: The Commission has proposed amendments to reposition within its regulation the requirement for certain registrants to disclose changes in their valuation and loss accrual accounts and to clarify the type of information to be disclosed. The Commission also has proposed amendments to its rules to require disclosure of information concerning tangible and intangible assets and related accumulated depreciation, depletion, and amortization.

Timetable:

Action	Date	FR Cite
NPRM	01/31/00	65 FR 4585
NPRM Comment Period End	04/17/00	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John W. Albert, Associate Chief Accountant, Securities and Exchange Commission
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RIN: 3235–AH86

Securities and Exchange Commission (SEC)
Offices and Other Programs

Long-Term Actions

4350. INTERNATIONAL ACCOUNTING STANDARDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq

CFR Citation: 17 CFR 210; 17 CFR 249.220f

Legal Deadline: None

Abstract: The Commission is reviewing comments received in response to a concept release on whether the Commission should recognize accounting standards promulgated by the International Accounting Standards Committee for purposes of cross-border offerings and listings by foreign companies. The staff is considering drafting appropriate rule proposals and recommendations to the Commission.

Timetable:

Action	Date	FR Cite
ANPRM	02/23/00	65 FR 8896
ANPRM Comment Period End	05/23/00	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Susan Koski-Grafer, Securities and Exchange Commission
Phone: 202 942-4400

RIN: 3235–AH65

[FR Doc. 02–25197 Filed 12–06–02; 8:45 am]
BILLING CODE 8010–01–S

Federal Register

Monday,
December 9, 2002

Part LXIII

Surface Transportation Board

Semiannual Regulatory Agenda

SURFACE TRANSPORTATION BOARD (STB)

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Ch. X

[STB Ex Parte No. 536 (Sub-No. 13)]

Semiannual Regulatory Agenda

AGENCY: Surface Transportation Board.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Surface Transportation Board (Board or STB), in accordance with the requirements of the Regulatory Flexibility Act, is publishing a semiannual agenda of: (1) current and projected rulemakings; and (2) existing regulations being reviewed to determine whether to propose modifications through rulemaking. Listed below are the regulatory actions to be developed or reviewed during the next 12 months. Following each rule identified is a brief description of the rule, including its purpose and legal basis.

FOR FURTHER INFORMATION CONTACT: A contact person is identified for each of the rules listed below.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), sets forth a number of requirements for agency rulemaking. Among other things, the RFA requires that, during the spring and fall of each year, each agency shall publish in the **Federal Register** a regulatory flexibility agenda, which shall contain:

(1) A brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

(2) A summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking; and

(3) The name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).

Accordingly, a list of proceedings appears below containing information about subject areas in which the Board is currently conducting rulemaking proceedings or may institute such proceedings in the near future. It also contains information about existing regulations being reviewed to determine whether to propose modifications through rulemaking.

The agenda represents the Board's best estimate of rules that will be considered over the next 12 months. However, section 602(d) of the RFA, 5 U.S.C. 602(d), provides: "Nothing in [section 602] precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda or requires an agency to consider or act on any matter listed in such agenda."

The Board is publishing its fall 2002 regulatory flexibility agenda as part of the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Unified Agenda is coordinated by the Office of Management and Budget (OMB), pursuant to Executive Order 12866. The Board is participating in the program voluntarily to assist OMB.

Decided: August 30, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,
Secretary.

Surface Transportation Board—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
4351	Calculation of Variable Costs in Rate Complaint Proceedings Including Non-Class I Railroads, STB Ex Parte No. 589	2140-AA62
4352	Procedures to Expedite Resolution of Rail Rate Challenges to be Considered Under the Stand-Alone Cost Methodology, STB Ex Parte No. 638	2140-AA64

Surface Transportation Board—Completed Actions

Sequence Number	Title	Regulation Identification Number
4353	Arbitration—Various Matters Relating To Its Use As An Effective Means of Resolving Disputes That Are Subject To the Board's Jurisdiction, STB Ex Parte No. 586	2140-AA60
4354	Removal and Revision of Regulations, STB Ex Parte No. 637	2140-AA61
4355	Accounts, Records, and Reports—Technical Amendments, STB Ex Parte No. 636	2140-AA63

4351. • CALCULATION OF VARIABLE COSTS IN RATE COMPLAINT PROCEEDINGS INCLUDING NON-CLASS I RAILROADS, STB EX PARTE NO. 589

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 10707

CFR Citation: None

Legal Deadline: None

Abstract: This proceeding was instituted to settle how the STB will estimate the variable costs of non-Class I railroads in future rail rate complaint cases.

Timetable:

Action	Date	FR Cite
NPRM	04/30/02	67 FR 21321
NPRM Comment Period End	07/31/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Harold J. Warren, Transportation Industry Analyst, Surface Transportation Board, 1925 K Street NW., Washington, DC 20423
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TDD Phone: 800 877-8339
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RIN: 2140–AA62

4352. • PROCEDURES TO EXPEDITE RESOLUTION OF RAIL RATE CHALLENGES TO BE CONSIDERED UNDER THE STAND-ALONE COST METHODOLOGY, STB EX PARTE NO. 638

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 721(a)

CFR Citation: 49 CFR 1011; 49 CFR 1109; 49 CFR 1114; 49 CFR 1115; 49 CFR 1118

Legal Deadline: None

Abstract: The STB is considering a proposal to amend the Board's regulations at parts 1011, 1109, 1114, 1115, and 1118 to expedite the resolution of rail rate challenges considered under the stand-alone cost (SAC) methodology by: (1) making the standard for obtaining discovery more restrictive in SAC cases; (2) creating an employee board to hear informally and rule quickly on discovery disputes in SAC cases; and (3) instituting a requirement that a shipper seeking relief from a railroad in such cases engage in non-binding mediation of its dispute with the railroad prior to filing its complaint with the Board.

Timetable:

Action	Date	FR Cite
NPRM	09/11/02	67 FR 57557
NPRM Comment Period End	10/09/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Thomas J. Stilling, Attorney, Surface Transportation Board, 1925 K Street NW., Washington, DC 20423-0001
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RIN: 2140–AA64

4353. ARBITRATION—VARIOUS MATTERS RELATING TO ITS USE AS AN EFFECTIVE MEANS OF RESOLVING DISPUTES THAT ARE SUBJECT TO THE BOARD'S JURISDICTION, STB EX PARTE NO. 586

Priority: Info./Admin./Other

Legal Authority: 49 USC 721(a)

CFR Citation: 49 CFR 1111; 49 CFR 1109.3

Legal Deadline: None

Abstract: The Surface Transportation Board seeks to increase utilization of its existing procedures for voluntary arbitration of matters subject to the agency's jurisdiction, by adding to its rules a requirement that a party filing a formal complaint include a statement that it first considered arbitration.

Timetable:

Action	Date	FR Cite
NPRM	09/24/01	66 FR 48853
NPRM Comment Period End	01/03/02	
Final Action	05/28/02	67 FR 36822
Final Action Effective	06/21/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Alice C. Saylor, Attorney, Surface Transportation Board, 1925 K Street NW., Washington, DC 20423
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RIN: 2140–AA60

4354. • REMOVAL AND REVISION OF REGULATIONS, STB EX PARTE NO. 637

Priority: Info./Admin./Other

Legal Authority: PL 104 88, sec 204; 49 USC 10708

CFR Citation: 49 CFR 1137.2; 49 CFR 1135 (revision)

Legal Deadline: None

Abstract: The Surface Transportation Board removes regulations concerning expeditious procedures for publishing separate rates for distinct services, and revises regulations concerning rail cost recovery procedures, due to the elimination of certain statutory provisions upon which these regulations were based.

Timetable:

Action	Date	FR Cite
Final Action	08/28/02	67 FR 55166
Final Action Effective	09/27/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John J. Sado, Attorney, Surface Transportation Board, 1925 K Street NW., Washington, DC 20423-0001

STB — Completed Actions

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RIN: 2140–AA61

4355. • ACCOUNTS, RECORDS, AND REPORTS—TECHNICAL AMENDMENTS, STB EX PARTE NO. 636

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 721; 49 USC 11142 to 11145

CFR Citation: 49 CFR 1200; 49 CFR 1201; 49 CFR 1241 to 1244

Legal Deadline: None

Abstract: This proceeding amends regulations concerning accounts, records, and reports to reflect current STB organizational components, account titles, and accounting references. In addition, General Instruction 1-18, which was inadvertently omitted in recent publications of the accounting regulations, is added.

Timetable:

Action	Date	FR Cite
Final Action	09/11/02	67 FR 57532
Final Action Effective	09/30/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Paul A. Aguiar, Surface Transportation Board, 1925 K Street NW., Washington, DC 20423-0001
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RIN: 2140–AA63

[FR Doc. 02–23900 Filed 12–06–02; 8:45 am]
BILLING CODE 4915–00–S

A. INDEX TO ENTRIES THAT AGENCIES HAVE DESIGNATED FOR SECTION 610 REVIEW

Section 610(a) of the Regulatory Flexibility Act (5 U.S.C. 601) requires each agency to have a plan for the periodic review of its rules that have significant economic impact on a substantial number of small entities. Each agency must publish annually in the **Federal Register** a list of the rules that it plans to review in the next year. Some agencies use The Regulatory Plan and the Unified Agenda to fulfill this requirement. Those agencies indicate such entries by appending "(Section 610 Review)" to the titles. Some agencies have also indicated completions of section 610 reviews or rulemaking actions resulting from completed section 610 reviews.

The following index lists the regulatory actions for which agencies included this designation. The Sequence Number (Seq. No.) of the entry identifies the location of the entry in this edition. For further information, see the Regulatory Information Service Center's Introduction to The Regulatory Plan and the Unified Agenda in part II of this issue.

Seq. No.	Title
	USDA
16	Elimination of Chilling Time and Temperature Requirements for Ready-To-Cook Poultry **(Section 610 Review)**
248	Bees, Beekeeping Byproducts, and Beekeeping Equipment **(Section 610 Review)**
249	Veterinary Diagnostic User Fees—5-Year Plan for Fees **(Section 610 Review)**
254	Animal Welfare; Inspection, Licensing, and Procurement of Animals **(Section 610 Review)**
258	Nursery Stock Regulations **(Section 610 Review)**
263	Brucellosis in Sheep, Goats, and Horses; Payment of Indemnity **(Section 610 Review)**
266	Importation of Certain Embryos and Animal Semen **(Section 610 Review)**
267	Plant Pest Regulations; Update of Current Provisions **(Section 610 Review)**
	ED
22	Reauthorization of the Educational, Research, Development, Dissemination, and Improvement Act of 1994 **(Section 610 Review)**
23	Reauthorization of Title I of the Elementary and Secondary Education Act of 1965 **(Section 610 Review)**
24	Reauthorization of the Individuals With Disabilities Education Act **(Section 610 Review)**
	HHS
45	End Stage Renal Disease (ESRD) Conditions for Coverage (CMS-3818-P) **(Section 610 Review)**
969	Investigational Use New Animal Drug Regulations **(Section 610 Review)**
	DOJ
78	Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities **(Section 610 Review)**
79	Nondiscrimination on the Basis of Disability in State and Local Government Services **(Section 610 Review)**
1652	Reduction of the Number of Acceptable Documents and Other Changes to Employment Verification Requirements **(Section 610 Review)**
	DOL
1813	Bonding Rules Under the Employee Retirement Income Security Act of 1974 **(Completion of a Section 610 Review)**
1814	Requests for Enforcement Pursuant to Section 502(b)(2) **(Completion of a Section 610 Review)**
1815	Civil Penalties Under ERISA Section 502(c)(2) **(Completion of a Section 610 Review)**
1816	Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(2) **(Completion of a Section 610 Review)**
1840	Occupational Exposure to Ethylene Oxide **(Section 610 Review)**
1841	Grain Handling Facilities **(Section 610 Review)**
1844	Presence Sensing Device Initiation of Mechanical Power Presses **(Section 610 Review)**
1863	Excavations **(Section 610 Review)**
	DOT
107	Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations **(Rulemaking Resulting From a Section 610 Review)**
2103	Certification Procedures for Products and Parts **(Section 610 Review)**
2204	Transportation of Household Goods; Consumer Protection Regulations **(Rulemaking Resulting From a Section 610 Review)**
	TREAS
113	Commerce in Explosives (Including Explosives in the Fireworks Industry) **(Rulemaking Resulting From a Section 610 Review)**
	FDIC
4125	Minimum Standards of Integrity and Fitness for an FDIC Contractor **(Section 610 Review)**
4128	Community Reinvestment Act Regulations **(Section 610 Review)**

Seq. No.	Title
	FRS
4171	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System; and Regulation: Y — Bank Holding Companies and Change in Bank Control, Capital Appendices **(Section 610 Review)**
4172	Regulation: DD — Truth in Savings Act **(Section 610 Review)**
4173	Regulation: B — Equal Credit Opportunity (Docket Number: R-1008) **(Section 610 Review)**
4188	Regulation: BB — Community Reinvestment (Docket Number: R-1112) **(Section 610 Review)**

B. INDEX TO ENTRIES FOR WHICH A REGULATORY FLEXIBILITY ANALYSIS IS REQUIRED

The Regulatory Flexibility Act (5 U.S.C. 601) requires that agencies publish regulatory agendas identifying those rules that may have a significant economic impact on a substantial number of small entities. Agencies meet that requirement by including the information in their submissions for The Regulatory Plan and the Unified Agenda

The following index lists the regulatory actions in this publication for which agencies believe that the Act may require a Regulatory Flexibility Analysis because the rule is likely to have such effects on small businesses, small governmental jurisdictions, or small organizations. The Sequence Number (Seq. No.) of the entry identifies the location of the entry in this edition. For further information, see the Regulatory Information Service Center's Introduction to The Regulatory Plan and the Unified Agenda in part II of this issue.

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	USDA
1	Livestock Mandatory Reporting Program—Lamb Amendment (LS-01-08)
7	Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages
15	Egg and Egg Products Inspection Regulations
17	Emergency Regulations To Prevent Meat Food and Meat Products That May Contain the BSE Agent From Entering Commerce
18	Performance Standards for Ready-To-Eat Meat and Poultry Products
20	Nutrition Labeling of Ground or Chopped Meat and Poultry Products and Single-Ingredient Products
171	Discontinue the Official Grading of Imported Beef, Lamb, Veal, and Calf Carcasses Under the Authority of the Agricultural Marketing Act of 1946
177	Voluntary Federal Meat Grading and Certification Services (LS-02-06)
181	PACA: Coating or Battering Fruits and Vegetables Does Not Alter Their Character (FV-02-369)
182	Plant Variety Protection Services (ST-02-02)
188	Quality Systems Verification Program (LS-02-10)
189	National Organic Program, Amendment to the National List of Allowed and Prohibited Substances
197	Establishing a Lamb Promotion, Research, and Information Order (LS-01-12)
253	Importation of Solid Wood Packing Material; Adoption of International Standards
264	Low Pathogenic Avian Influenza; Payment of Indemnity
285	National Flood Insurance Regulations
293	Guaranteed Single-Family Housing
392	Ante-Mortem and Post-Mortem Inspection of Livestock and Poultry
393	Requirements for Disposition and Disposal of Inspected Raw Meat and Poultry Products
412	Special Forest Products and Forest Botanical Products
437	Affirmative Fair Housing Marketing Plan
438	Business and Industry Guaranteed Loan Program—Financing Cooperative Stock
	DOC
502	Short Supply of Fabric and Yam
509	Chemical Weapons Convention Regulations
524	Administration of State Log Exports Ban
564	Amendment 4 to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands
565	Establish Central Registry for Limited Access System Permits
566	Regulatory Amendment To Require Mandatory Observer Coverage in the At-Sea Processing Sector of the Whiting Fishery
567	Adjustment of Management Program: Bottomfish Fisheries in the Hawaiian Islands
570	Regulatory Amendment to Reinstate 6000 Pound Trip Limit of Halibut in Area Northeast of the Bering Sea
571	Enhanced Measures To Mitigate Seabird Bycatch in the Alaska Longline Fisheries
572	Amendment 7 to the Fishery Management Plan for the Bottomfish Fisheries of the Western Pacific Region
573	Amendment 18 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico
580	Fishery Management Plan (FMP) for Sargassum Habitat of the South Atlantic
583	Fishery Management Plan for the Dolphin and Wahoo Fishery of the Atlantic, Caribbean, and Gulf of Mexico (FMP)
586	Regulatory Amendment Under the Fishery Management Plan for Gulf of Mexico Reef Fish (FMP) To Establish a Red Snapper Stock Rebuilding Plan and To Set Red Snapper Overfishing Targets and Thresholds
588	Revision of American Lobster Regulations for the EEZ
589	Fishing Capacity Reduction Program for the Crab Species Covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs
600	Revise Community Development Quota Program Administration and Allocation Regulations
602	Antarctic Marine Living Resources Vessel Monitoring System and Catch Documentation Scheme
603	Amendment 10 to the Coastal Pelagic Species Fishery Management Plan
605	Amendment to Fishery Management Plan for Reef Fish Resources of Gulf of Mexico To Set 10-Year Rebuilding Plan for Red Grouper

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610	Regulatory Amendment To Adjust Permit Renewal Requirements and Transferability Restrictions in NWHIs Hoomalu Zone and Mau Limited Access Programs
623	Atlantic Highly Migratory Species (HMS); Bigeye Tuna and Swordfish Trade Statistical Document Programs
626	Atlantic Highly Migratory Species (HMS); Large Coastal Shark Commercial and Recreational Management Measures
641	Regulatory Amendment To Allocate Pacific Halibut to the Charter Boat Fleet
644	Regulatory Amendment To Change the Regulations Implementing the North Pacific Observer Program
646	Implementation of Western Pacific Coral Reef Ecosystem Fishery Management Plan (FMP)
647	Atlantic Highly Migratory Species Fisheries; Monitoring of the Atlantic Billfish and Swordfish Recreational Fisheries
649	Amendments 61/61 for BSAI and GOA Groundfish; Amendment 13 for Commercial King and Tanner Crab; and Amendment 8 for Alaska Scallop Fishery
650	Deep-Sea Red Crab Fishery Management Plan
652	American Lobster Fishery; Revisions to Lobster Trap Limits, Conservation Equivalency in New Hampshire Waters, and Clarification of Lobster Management Boundaries per Addendum 1
653	Regulatory Amendment To Allow Experimental Setnet Sablefish Landings To Qualify Limited-Entry Sablefish Endorsement Holders for Tier Assignment in the West Coast Primary Sablefish Fishery
654	Amendment 5 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region
656	Amendment to Regulations for Observer At-Sea Electronic Communication Equipment Requirements for Vessels and Shoreside Processors in the North Pacific Groundfish Fisheries
659	Amendment 60 to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska
665	Fisheries of the Exclusive Economic Zone Off Alaska — Regulatory Amendment To Implement Steller Sea Lion Protect Measures
674	Atlantic Large Whale 2002 Seasonal Area Management (SAM) Program
676	Pacific Offshore Cetacean Take Reduction Plan
678	Sea Turtle Conservation Regulations; Shrimp Fishery
685	Taking of Threatened or Endangered Species Incidental to Commercial Fishing Operations
688	Fishery Management Plan for Calico Scallop Fishery in the South Atlantic Region (FMP)
700	Adjustment of the Management Program for Precious Corals Fisheries in the Western Pacific
701	Amendment 54 to FMP for Groundfish Fishery of Bering Sea and Aleutian Islands Area and Amendment 54 to FMP for Groundfish of Gulf of Alaska
703	Crab Community Development Quota Reserves
704	Amendment 67 to the FMP for the Groundfish Fishery of the Bering Sea and the Aleutian Islands Area
705	Regulatory Amendment To Prevent or Mitigate the Take of Sea Turtles in the Western Pacific Pelagic Fisheries
708	Regulatory Amendment to Modify the Management Program for the Western Pacific Pelagic Fisheries to Mitigate the Take of Seabirds
709	Amendment 11 to Fishery Management Plan for Shrimp Fishery of Gulf of Mexico (FMP)
710	Amendments to FMPs for Gulf of Mexico Reef Fish and Gulf of Mexico and South Atlantic Coastal Migratory Pelagic Resources To Limit Entry Into Gulf of Mexico Recreational-for-Hire Fisheries
717	Atlantic Bluefish Fishery; Specifications for Fishing Year 2002
735	Mandatory Reimbursement Rules for Relocation of Federal Spectrum
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779	Incremental Funding, Fixed-Price Contracts (DFARS Case 90-037)
783	Applicability of Competition Requirements to Purchases From a Required Source (DFARS Case 2002-D003)
798	DoD Pilot Mentor-Protege Program (DFARS Case 2001-D006)
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32	Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Dietary Ingredients and Dietary Supplements
33	Control of Salmonella Enteritidis in Shell Eggs During Production and Retail
35	Bar Code Label Requirements for Human Drug Products
36	Administrative Detention
37	Establishment and Maintenance of Records to Identify Immediate Previous Source and Immediate Subsequent Recipient of Foods
38	Registration of Food and Animal Feed Facilities
39	Establishment of Prior Notification Requirement for All Imported Food Shipments
41	Labeling for Human Prescription Drugs; Revised Format
42	Food Labeling: Trans Fatty Acids in Nutrition Labeling, Nutrient Content Claims, and Health Claims
43	CGMPs for Blood and Blood Components: Notification of Consignees and Transfusion Recipients Receiving Blood and Blood Components at Increased Risk of Transmitting HCV (Lookback)
44	Toll-Free Number for Reporting Adverse Events on Labeling for Human Drugs
45	End Stage Renal Disease (ESRD) Conditions for Coverage (CMS-3818-P) **(Section 610 Review)**
46	National Standard for Identifiers of Health Plans (CMS-6017-P)
52	Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update for FY 2004 (CMS-1469-P)

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54	Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2004 (CMS-1476-P)
57	Revision of Medicare/Medicaid Hospital Conditions of Participation (CMS-3745-F)
58	Health Insurance Reform: Standard Unique Health Care Provider Identifier (CMS-0045-F)
59	Security Standards (CMS-0049-F)
60	Hospital Conditions of Participation: Quality Assessment and Performance Improvements (QAPI) (CMS-3050-F)
63	Changes to the Hospital Inpatient Prospective Payment System and FY 2004 Rates (CMS-1470-N)
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922	Seclusion and Restraint for Non-Medical Residential Facilities
930	Requirements for Submission of In Vivo Bioequivalence Data
940	Chronic Wasting Disease: Control of Food Products and Cosmetics Derived From Exposed Animal Populations
951	Over-the-Counter (OTC) Drug Review
971	Current Good Tissue Practice for Manufacturers of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps); Inspection and Enforcement
972	Premarket Notice Concerning Bioengineered Foods
979	Postmarket Surveillance
1001	Medical Child Support and Health Insurance Coverage of Dependent Children (CMS-2081-P)
1003	Supplier Standards for Home Oxygen, Therapeutic Shoes, Home Nutrition Therapy (CMS-6010-P)
1004	All Provider Bad Debt Payment (CMS-1126-P)
1008	Modifications to Medicare Managed Care Rules (CMS-4041-P)
1031	Home Health Prospective Payment System Rate Update for FY 2004 (CMS-1473-NC)
1063	Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships—Phase II (CMS-1810-FC)
1068	Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2003 Payment Rates (CMS-1206-F)
1069	Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2003 (CMS-1204-FC)
1079	Fee Schedule for Payment of Ambulance Services—Update for CY 2003 (CMS-1220-N)
1083	Bona Fide Wellness Programs (CMS-2078-F)
1084	Time Limitation on Recalculations and Disputes Under the Drug Rebate Program (CMS-2175-IFC)
1090	National Standard Employer Identifier (CMS-0047-F)
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1096	Modifications to Managed Care Rules Based on Payment Provisions in BIPA and Technical Corrections (CMS-4040-F)
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1100	Hospital Inpatient Prospective Payment System for FY 2003 (CMS-1203-F)
1110	Notice of Intent to Conduct Negotiated Rulemaking for Special Payment Provisions and Standards for Suppliers of Custom-Fabricated Orthotics and Prosthetics (CMS-6012-N)
1125	Grants for State and Community Programs on Aging, Training, Research, and Discretionary Programs; Vulnerable Elder Rights; and Grants to Indians and Native Hawaiians
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70	RESPA—Improving the Process for Obtaining Mortgages (FR-4727)
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95	Determination of Concentration of Respirable Coal Mine Dust
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1821	Improving and Eliminating Regulations
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1828	Requirements for Approval of Flame-Resistant Conveyor Belts
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104	Flight Crewmember Duty Period Limitations, Flight Time Limitations, and Rest Requirements
107	Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations **(Rulemaking Resulting From a Section 610 Review)**
110	Standards for Development and Use of Processor-Based Signal and Train Control Systems
1930	Participation by Disadvantaged Business Enterprises in Department of Transportation Programs
1936	Policy Statement on Airline Preemption
1940	Domestic Passenger Manifest Information
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2047	Retrofit of Improved Seats in Air Carrier Transport Category Airplanes
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2195	Unified Registration System
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3088	Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities: Recreation Facilities
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124	Control of Emissions from Spark Ignition Marine Vessels and Highway Motorcycles
126	Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel
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146	National Pollutant Discharge Elimination System Permit Regulation and Effluent Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs)
3153	NESHAP: Iron and Steel Foundries
3214	Emissions from Nonroad Spark-Ignition Engines and Standards for Recreational Spark-Ignition Engines
3223	Phase I (FIP) To Reduce the Regional Transport of Ozone in the Eastern United States
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3489	Effluent Guidelines and Standards for the Construction and Development Industry
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3975	Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996
3976	Implementation of the Subscriber Selection Changes Provision of the Telecommunications Act of 1996
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4001	Certification of Equipment in the 24.05-24.25 GHz Band at Field Strengths Up to 2500 mV/m
4005	Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures; IB Docket No. 95-117
4006	Satellite Communications — NGSO Mobile Satellite Service; CC Docket No. 92-166
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4008	Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band; IB Docket No. 95-91; GEN Docket No. 90-357
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4010	Amendment of Policy To Allow Non-U.S. Licensed Space Stations To Provide Service in the United States; IB Docket No. 96-111; CC Docket No. 93-23
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4012	Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band; IB Docket No. 99-81
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4014	1998 Biennial Regulatory Review — Review of Accounts Settlement in Maritime Mobile &Maritime Mobile-Satellite Radio Services and Withdrawal of the Commission as Accounting Authority; IB Doc No. 98-96
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4062	Implementation of Section 309(j) of the Communications Act, Competitive Bidding; 218-219 MHz Competitive Bidding Rules
4063	39 GHz Channel Plan
4064	Implementation of 309(j) of the Communications Act, Amendment of Parts 20 and 24 of the Commission's Rules - Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap
4065	Revision of the Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems
4066	In the Matter of the Communications Assistance for Law Enforcement Act
4067	Development of Operational, Technical, and Spectrum Requirements for Public Safety Communications Requirements
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4093	Implementation of Section 402(b)(1)(a) of the Telecommunications Act of 1996; LEC Tariff Streamlining Provisions
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4173	Regulation: B — Equal Credit Opportunity (Docket Number: R-1008) **(Section 610 Review)**
4182	Regulation: W — Transactions Between Banks and Their Affiliates (Docket Number: R-1103)
4187	Regulation: Y — Bank Holding Companies and Change in Bank Control (Docket Number: R-1092)
4188	Regulation: BB — Community Reinvestment (Docket Number: R-1112) **(Section 610 Review)**
4190	Misc. Interpretations: Application of Sections 23A and 23B of the Federal Reserve Act to Derivative Transactions With Affiliates and Intraday Extensions of Credit to Affiliates (Docket Number: R-1104)
4191	Regulation: C — Home Mortgage Disclosure (Docket Numbers: R-1001 and R-1120).

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4274	Revision of Fee Schedules; Fee Recovery, FY 2002

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4289	Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date
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C. INDEX TO ENTRIES THAT MAY AFFECT SMALL ENTITIES WHEN A REGULATORY FLEXIBILITY ANALYSIS IS NOT REQUIRED

The Regulatory Flexibility Act (5 U.S.C. 601) requires that agencies publish regulatory agendas identifying those rules that may have a significant economic impact on a substantial number of small entities. Agencies meet that requirement by including the information in their submissions for The Regulatory Plan and the Unified Agenda. Some agencies have chosen to identify additional regulatory actions that may have some impact on small entities even though a Regulatory Flexibility Analysis may not be required.

The following index lists the regulatory actions in this publication for which agencies have chosen to indicate that some impact on small entities is likely even though a Regulatory Flexibility Analysis may not be required. The Sequence Number (Seq. No.) of the entry identifies the location of the entry in this edition. For further information, see the Regulatory Information Service Center's Introduction to The Regulatory Plan and the Unified Agenda in part II of this issue.

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Executive Order 12866 entitled "Regulatory Planning and Review" (October 4, 1993; 58 FR 51735) and the Unfunded Mandates Reform Act of 1995 (P.L. 104-4) direct agencies to assess the effects of Federal regulations on State, local, and tribal governments. In addition, Executive Order 12875 entitled "Enhancing the Intergovernmental Partnership" (October 26, 1993; 58 FR 58093) directs agencies to reduce the imposition of unfunded mandates upon State, local, and tribal governments. In keeping with these efforts, agencies include in their submissions for The Regulatory Plan and the Unified Agenda information on whether their regulatory actions have an effect on various levels of government.

The following index lists the regulatory actions in this publication that agencies believe may have effects on State, local, tribal, or Federal levels of government. The Sequence Number (Seq. No.) of the entry identifies the location of the entry in this edition. For further information, see the Regulatory Information Service Center's Introduction to The Regulatory Plan and the Unified Agenda in part II of this issue.

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E. INDEX TO ENTRIES THAT MAY HAVE FEDERALISM IMPLICATIONS

Executive Order 13132 entitled "Federalism" (August 4, 1999, 64 FR 43255) directs agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have "federalism implications." This term refers to actions "that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." As part of this effort, agencies, other than independent regulatory agencies, include in their submissions for the Unified Agenda information on whether their regulatory actions have federalism implications

The following index lists the regulatory actions in this publication that agencies believe may have federalism implications. The Sequence Number (Seq. No.) of the entry identifies the location of the entry in this edition. For further information, see the Regulatory Information Service Center's Introduction to the Unified Agenda in part II of this issue.

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Federal Register

12–10–02 Tuesday
Vol. 67 No. 237 Dec. 10, 2002

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Federal Register

12–10–02 Tuesday
Vol. 67 No. 237 Dec. 10, 2002

Pages 75799–76102

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Presidential Documents

Title 3—

The President

Memorandum of November 6, 2002

Report to the Congress Regarding Conditions in Burma and U.S. Policy Toward Burma

Memorandum for the Secretary of State

Pursuant to the requirements set forth under the heading "Policy Toward Burma" in section 570(d) of the Fiscal Year 1997 Foreign Operations Appropriations Act, as contained in the Omnibus Consolidated Appropriations Act (Public Law 104–208), a report is required every 6 months following enactment concerning:

1) progress toward democratization in Burma;
2) progress on improving the quality of life of the Burmese people, including progress on market reforms, living standards, labor standards, use of forced labor in the tourism industry, and environmental quality; and
3) progress made in developing a comprehensive, multilateral strategy to bring democracy to and improve human rights practices and the quality of life in Burma, including the development of a dialogue between the State Peace and Development Council and democratic opposition groups in Burma.

You are hereby authorized and directed to transmit the attached report fulfilling these requirements to the appropriate committees of the Congress and to arrange for publication in the **Federal Register**.

THE WHITE HOUSE,
Washington, November 6, 2002.

Billing code 4710–10–M

Plan for Implementation of Section 570 of Public Law 104–208 (Omnibus Appropriations Act, Fiscal Year 1997)

Conditions in Burma and U.S. Policy Toward Burma for the Period March 28, 2002–September 27, 2002

Introduction and Summary

Progress towards a real dialogue between Burma's military regime and the NLD's Aung San Suu Kyi took a step forward in May with the government's decision to release her from effective house arrest. Since then, Aung San Suu Kyi has been free to carry out her party duties as General Secretary, and, in a change from conditions in her pre-detention days, to travel freely throughout Burma. Since her release, Aung San Suu Kyi has made trips to Moulmein, Mandalay, and Hpa'an. She has also presided over a slow revival of the NLD as a political party. Virtually crushed by the government during the days leading up to Aung San Suu Kyi's detention in September 2000, the NLD has now re-assembled most of its party leadership and reopened 62 out of over 300 offices throughout Burma. It has also benefited from the release of more than 300 of its party members who had been held as political prisoners. Unfortunately, the steps the government has taken to rebuild confidence with the NLD have not been matched by equally serious steps towards a political dialogue on constitutional issues. As a result, questions still remain regarding the government's overall commitment to political transition.

In regard to human rights, the government's record remains poor. The regime has, however, improved its cooperation with international human rights organizations, finally agreeing to allow the ILO to appoint a liaison officer in Rangoon and to conduct on-site surveys in Burma of areas along the Thai/Burmese border that have been identified by Amnesty International and others as "hot spots" for forced labor. It has also continued to work with the International Committee of the Red Cross on improvements in prison conditions and released almost 400 political prisoners over the past two years. Unfortunately, hundreds remain in prison, several students were arrested for expressing political dissent in recent months and substantive improvements in prison conditions have yet to be realized. We are also deeply concerned by ongoing egregious human rights abuses of civilians in ethnic regions, including killing, torture, rape, forced labor, and forced relocations. The regime has responded to accusations leveled by human rights groups in Thailand of widespread army rapes in Shan State with investigations by three separate teams from the Burmese Army, the Ministry of Home Affairs, and the Myanmar National Women's Cooperative Association, but concluded—incredibly—that there was no evidence that Burmese Army personnel had been involved in any rapes in Shan State between 1996 and 2001. That conclusion, together with the lack of any international involvement in the investigation, has left international observers in serious doubt about the government's willingness to deal effectively with Burmese Army abuses in areas of internal conflict.

The areas of Burma under effective control of ethnic groups make Burma one of the world's largest producers of opium, heroin, and amphetamine-type stimulants, despite the fact that its overall output of opium and heroin has declined sharply in recent years, partly as a result of improved Burmese government counternarcotics efforts. Opium production in Burma has now declined for five straight years, and, in 2002, Burma produced less than one-quarter the opium and heroin that it did six years before. Unfortunately, as opium production has declined, the production of methamphetamines has increased, particularly in outlying ethnic majority regions governed by former insurgents, areas that are not under firm government control. According to some estimates, as many as 400 to 800 million methamphetamine tablets may be produced in Burma each year, although these estimates are difficult to verify.

In July, the U.S. Centers for Disease Control and Prevention conducted a countrywide assessment of the HIV/AIDS pandemic in Burma and concluded that it had shifted from an epidemic limited to high-risk groups to a widespread epidemic affecting the general population. The government continued to downplay the extent of the epidemic in the country; however, both the government and the NLD are very interested in international assistance to combat HIV/AIDS. USAID is initiating a new $1 million HIV/AIDS prevention program in the country; assistance will be provided through international NGOs—no assistance will be directed to the government.

There are few signs of any government commitment to economic reform, despite rapidly deteriorating economic conditions. Two problems stand out. In the energy sector, a run of disastrous public investment decisions has left the economy largely without fuel for either its electric generating facilities or many of its basic industries. In the fiscal budget the situation is even more desperate. There, the deficits of Burma's state-owned enterprises are estimated to absorb all of the revenues collected by the government, leaving the government proper (i.e., the army, the navy, the health and education services, and all ministerial operations) to run on monies borrowed from the Central Bank. This in turn has produced a rapid expansion in the money supply, a commensurate surge in inflation, and a sharp depreciation in the value of the domestic currency (the kyat). It has also undermined public confidence in the military government's ability to manage the economy over the long run.

U.S. policy goals in Burma include progress towards democracy and national reconciliation, respect for human rights, a more effective counternarcotics effort, counterterrorism efforts, regional stability, HIV/AIDS mitigation, and accounting for missing servicemen from World War II. We encourage talks between the leader of the National League for Democracy (NLD) Aung San Suu Kyi and the military, recognizing that these are the best hope for meaningful democratic change and protection of human rights. Part of our strategy is to consult regularly, at senior levels, with countries with major interests in Burma and/or major concerns regarding Burma's current human rights practices.

In coordination with the European Union and other states, the United States has maintained sanctions on Burma. These include an arms embargo, an investment ban, and other measures. Our goal in applying these sanctions is to encourage a transition to democratic rule and greater respect for human rights. Should there be significant progress towards those goals as a result of dialogue between Aung San Suu Kyi and the military government, the United States would look seriously at measures to support this process of constructive change.

Measuring Progress toward Democratization

At the time of the dramatic release of NLD General Secretary Aung San Suu Kyi on May 6, 2002, the government promised that she would be free to move about the country—a promise it has generally kept in the months since. Initial difficulty in visiting some UN projects appears to have been resolved. Over the past four months Aung San Suu Kyi has traveled to Moulmein, Mandalay, and Hpa'an. On each trip she coordinated travel and security arrangements with the government, but otherwise set her own itinerary. She also met freely with NLD party workers and the general public; however, in line with general restrictions on all political parties in Burma, she was not allowed to hold outdoor rallies or meetings. In Rangoon, similarly, she has resumed her party duties with minimal government interference and has continued to meet with both Burmese and foreign visitors on a regular basis, although the government still limits her access to high-ranking foreigners. Since March, foreign visitors have included UN Special Envoy Razali Ismail, who has facilitated communication between the government and the NLD, Japanese Foreign Minister Kawaguchi, EU Troika representatives, and ambassadors of European and ASEAN countries.

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NLD efforts to rebuild itself as a political party have also accelerated to some degree over the past six months. Badly crippled by government repression during the 1990s, the NLD has now re-assembled most of its national leadership (with the notable exception of senior party adviser U Win Tin, who remains in prison). As of September 27, 2002, 62 of the NLD's party offices have re-opened, including 36 of 40 in Rangoon. All of the party's Central Executive Committee members have been released, as have a majority of the party members who were detained during the government's crackdowns in the 1090s. However, 16 of the party's MPs remain in prison. Altogether, 325 NLD party members have been released from prison or house arrest since 2000, leaving about 200 NLD prisoners still in detention.

The NLD has also resumed some normal party activities, including public meetings on major public holidays. However, outdoor meetings are banned (for both the NLD and all other registered political parties) and party elections remain forbidden under a decree first issued by the Central Election Commission in 1990. The government has refused to grant a publication license to the NLD party's newsletter, despite repeated NLD requests for permission to publish. Two student members of the NLD were also recently arrested for carrying banned political literature. The NLD, for its part, has moderated its public criticism of the regime. While it has called repeatedly for democracy in Burma, it has also stated flatly that it is prepared to work with the government on a process of political transition. Aung San Suu Kyi has indicated recently that humanitarian assistance for Burma's people could be welcome, provided that it is delivered through mechanisms that are transparent, accountable, and beneficial to the Burmese people, as opposed to the government. She told EU representatives that economic sanctions are a matter to be decided by individual foreign states.

Despite the steps the government has taken to rebuild confidence with the NLD, it has not yet responded to the NLD's calls for a serious dialogue on constitutional issues, nor has it sketched out a roadmap for reform or a timetable for elections. As a result, doubts remain regarding the government's commitment to dialogue. While it has repeatedly asserted that its goal is a restored democracy, it has yet to convince its critics, including the U.S., that it is genuinely committed to that course. The U.S. continues to recognize the results of the 1990 elections and will continue to push for the full restoration of the civil and political rights of the people of Burma.

Human Rights

The SPDC's human rights record remains poor with repression of political dissent, forced labor, ethnic persecution, lack of religious freedom and trafficking in persons all figuring prominently. Burma was designated a Country of Particular Concern for particularly severe violations religious freedom in 2001. Burma has been the scene of severe human rights abuses, particularly in ethnic minority areas, where there have been many reports of extrajudicial killings, rapes, and disappearances. Some of these were highlighted during the past six months in publications by Amnesty International and groups based on the Thai border. The Department of State's annual Human Rights Country Report on Burma includes credible reports of rape and other atrocities committed by the Burmese military, especially in ethnic minority areas. In June 2002, the Shan Human Rights Foundation (an organization initially related to the Shan United Army, a narcotics-trafficking organization), together with the Shan Women's Action Network, published a report, based on interviews with displaced persons, which alleged that Burmese Army personnel had been involved in multiple rapes involving hundreds of women between 1996 and 2001. The report also argued that the Burmese Army had used rape systematically as a weapon of war in its counter-insurgency operations. The Burmese investigated these charges with three separate teams from the Burmese Army, the Ministry of Home Affairs and the Myanmar National Women's Cooperative Association, but concluded—incredibly—that

there was no evidence that Burmese Army personnel had been involved in any rapes in Shan State during the five-year period covered by the SHRF/SWAN report. Following subsequent international pressure, the Burmese have approached both the International Committee of the Red Cross and UN Special Rapporteur Pinheiro for possible involvement in an investigation, but there remains doubt about the Burmese government's willingness to deal effectively with Burmese Army abuses in areas of internal conflict. We are urging that the UN independently investigate the reports.

The Burmese government dealt more effectively with other allegations of human rights abuses. It has continued to work with the International Committee of the Red Cross on improvements in prison conditions. It has also allowed ICRC to open up five regional offices throughout the country, staffed by 34 international volunteers, to provide protection to ethnic minorities. Similarly, it has allowed the United Nations High Commission on Refugees to maintain a presence in northern Rakhine State, providing support and protection services to more than 230,000 Rohingya Muslims who have returned from Bangladesh. After nearly a decade, however, some 22,000 Rohingya refugees still remain in two refugee camps in Bangladesh. In spite of ongoing repatriation efforts, for the last few years repatriations to Burma have not kept up with the camp birthrates and restrictions on movement in Burma have made life exceedingly difficult for this population. Furthermore, nearly 130,000 other Burmese ethnic minority displaced persons live in several camps along the border in Thailand because they do not feel it is safe to return. Given continued insurgent activity among some ethnic groups, associated human rights abuses are likely to continue.

The government has also made some progress on forced labor, which remains an issue of serious concern to the international community. In November 2000, the International Labor Organization (ILO) Governing Body concluded that the Government of Burma had not taken effective action to deal with the use of forced labor in the country and, for the first time in its history, called on all ILO members to review their policies to ensure that those policies did not support forced labor. The United States strongly supported this decision.

Over the past year, the Government of Burma has slowly begun to work with the ILO on measures to address the problem. In September 2001, it allowed an ILO High Level Team to visit Burma to assess the situation. That team concluded that the GOB had made an "obvious, but uneven" effort to curtail the use of forced labor, but that forced labor persisted, particularly in areas where the government was waging active military campaigns against insurgent forces. It also recommended that the ILO establish a permanent presence in Burma. A second ILO team visited Burma in February 2002 to follow up on this recommendation, and eventually agreement was reached with the ILO in Geneva regarding the appointment of an ILO liaison officer, pending the establishment of a permanent ILO office in Rangoon. That liaison officer has since been appointed. The ILO has also identified a permanent representative to serve in Burma. Perhaps most importantly of all, in August 2002, the ILO began field visits to sites along the Thai/Burmese border which have been identified by Amnesty International and other organizations as "hot spots" for forced labor and Burmese Army abuse of ethnic minorities. That said, there were continuing signs that forced labor remains a problem, with reports, even in Rangoon, of laborers being dragooned by the military.

Finally, the government has continued with the slow release of political prisoners. Altogether, approximately 400 political prisoners have been released from detention since October 2000. In response to an appeal from UN Special Rapporteur Pinheiro, the government has also released, on humanitarian grounds, approximately 400 women prisoners who either had small children or were pregnant. To date, releases have included a majority of the NLD members held in prison, all members of the NLDs Central Committee, several major ethnic leaders, several student leaders, and all

but 19 of the MPs elected to the 1990 Parliament. Even with these releases, however, hundreds of political prisoners remain in prison or under detention in Burma as of September 2002, including approximately 200 NLD members.

Burma is a Tier 3 human trafficking country that has not developed prevention, protection or law enforcement programs to address fully the serious trafficking problems that plague the country, but has made some progress in recognizing and publicizing the perils of trafficking in persons. It has signed the 1950 Convention for the Suppression of Traffic in Persons and the Prostitution of Others and is a participant in the UN Inter-Agency Project on the reduction of trafficking in the Mekong sub-region although its other international and regional anti-trafficking cooperation is very limited. In a report delivered to the U.S. Government in August, it also highlighted the recent information activities of Myanmar National Committee for Women's Affairs; the enforcement efforts of a newly formed Working Committee for the Prevention of Trafficking in Persons (which is chaired by the Home Minister); the legislation it has applied to combat trafficking; and the jail sentences that it has handed out to more than 100 traffickers over the past 3 years. However, information on its funding of anti-trafficking activities and its support for the repatriated victims of trafficking remains scant. The government's cooperation with international NGOs concerned about human trafficking has also been minimal. While it appears that the government has finally begun to recognize the significance of its human trafficking problems, it is equally obvious that it has not yet put together programs that can deal with all aspects of those problems. Given its current economic circumstances, we do not anticipate the emergence of effective programs in the near term.

Counternarcotics

The ethnic majority areas of Burma make it one of the world's largest producers of illicit opium, heroin, and amphetamine-type stimulants, despite the fact that its overall output of opium and heroin has declined sharply in recent years, partly as a result of improved Burmese government counternarcotics efforts. Opium production in Burma has now declined for five straight years and, in 2002, Burma produced an estimated 630 metric tons of opium, less than one-quarter of the 2,560 metric tons of opium produced six years earlier. Unfortunately, Burma's success in reducing the production of opium and heroin has been partially undercut by rapidly increasing production of amphetamine-type stimulants, particularly in outlying regions governed by former insurgents. According to some estimates, as many as 400 to 800 million methamphetamine tablets may be produced in Burma each year, although verification of this estimate is difficult due to the mobile, small-scale nature of the methamphetamine production facilities.

The policy of the SPDC central government is to end narcotics trafficking, but the SPDC realizes that this will be a long-term process as it has been elsewhere. There are reliable reports that individual Burmese officials, particularly in outlying areas, may be involved in narcotics production or trafficking, but we do not have evidence that the government is complicit in the drug trade. While the government has consistently urged former ethnic insurgents to curb narcotics production and trafficking in their self-administered areas along the Chinese border, it has only recently, with the support and assistance of China, begun to crack down on these groups. Since September 2001, it has begun to enforce pledges elicited from each former insurgent group to make their self-administered areas opium-free and, in March 2002, pressured each group (including the Wa and the Kokang Chinese) into issuing new decrees outlawing narcotics production and trafficking in areas under their control. However, the Wa have not committed to eliminating narcotics production until 2005.

The government has improved its cooperation with neighboring states, particularly China. In 2001, Burma signed Memoranda of Understanding on narcotics control with both China and Thailand. The MOU with China

established a framework for joint operations, which in turn led to a series of arrests and renditions of major traffickers in 2001 and 2002, many of whom were captured in the former insurgents' self-administered areas. Altogether, over the past 18 months, Burma has returned to China 22 fugitives from Chinese justice, including principals from one group that China described as "the largest armed drug trafficking gang in the Golden Triangle." Burma's MOU with Thailand, similarly, committed both sides to closer police cooperation on narcotics control and to the establishment of three joint "narcotics suppression coordination stations" at major crossing points on the border. That cooperation has since been interrupted by tensions on the border, but both governments have made clear that they look forward to resuming cooperation once these tensions have been cleared away.

Finally, Burma has participated in multilateral efforts to control narcotics trafficking in the Golden Triangle. Since November 2001, Burma has participated in ACCORD, the ASEAN and China Cooperative Operations in Response to Dangerous Drugs, which serves as an umbrella for a variety of global programs aimed at strengthening the rule of law, promoting alternative development, and increasing civic awareness of the dangers of drugs. It also signed UNDCP's 1993 Memorandum of Understanding among the six regional states—Burma, China, Thailand, Laos, Vietnam, and Cambodia—to control narcotics production. Finally, as China and Thailand have become more active multilaterally, Burma has joined the trilateral and quadrilateral programs organized by either to coordinate counternarcotics efforts among the four states of the Golden Triangle (Laos, Burma, China, and Thailand).

Under pressure from the Financial Action Task Force (FATF), which designated Burma as a "non-cooperating" state in June 2001, the Government of Burma has also begun to take action on money laundering issues. In June 2002, it enacted a new and potentially powerful money laundering law, which, if properly enforced, should address many of the FATF's concerns. That legislation criminalizes money laundering in connection with virtually every kind of serious criminal activity and levies heavy responsibilities on banks with regard to reporting. Penalties are also substantial. The police, in cooperation with the Central Bank and the Attorney General's office, are now training their first financial investigators and should begin prosecutions under the new law within the next few months.

Despite these steps, the United States judged earlier this year that Burma's visibly improving counternarcotics efforts were not yet commensurate with the scale of the problem. To encourage further progress, we have sustained a program of operational cooperation between police authorities in Burma and the U.S. Drug Enforcement Administration. We have also continued to work with the GOB on annual opium yield surveys in Burma, and with UNDCP and other donors on opium reduction and crop substitution programs. In September 2001, the United States pledged an additional $1,000,000 to support UNDCP's Wa Alternative Development Project, which has helped reduce opium production in the territories of the United Wa State Army. Notwithstanding the lack of Burmese financial resources and capacity, we do not, as a matter of law, provide bilateral narcotics assistance.

HIV/AIDS

In July, the U.S. Centers for Disease Control and Prevention (CDC) conducted an in-depth assessment of the HIV/AIDS epidemic in Burma, including among high-risk groups and pregnant women. The CDC assessed capacity at various levels in preventing the spread of HIV and providing care and treatment for those infected. The CDC concluded that the data, while limited, on HIV/AIDS in Burma indicates a widespread epidemic of greater than two-percent prevalence affecting the general population. Previous estimates by the World Health Organization, UNAIDS, and others had indicated an epidemic of less than two-percent prevalence limited to high-risk populations. CDC observed a limited national HIV/AIDS prevention program run by the government, but that some efforts are underway by non-governmental

organizations. Voluntary HIV testing and counseling is extremely limited, and very few people know their HIV status. Programs to prevent mother-to-child transmission of HIV are small and limited and in need of strengthening at all levels. The government has made blood safety a high priority, but quality control is questionable. Availability of care and treatment for those infected with HIV is very limited and trained staffs are few, while some non-governmental organizations provide some care services.

The government generally denies the extent of the HIV/AIDS epidemic in the country, and their programs do not reflect the latest thinking of the scientific community on prevention, treatment, and care. However, like the NLD, the government is very interested in international assistance to combat the growth of the epidemic. CDC made a number of recommendations to strengthen and improve HIV/AIDS surveillance in the country and change policy and program implementation by the government to improve the effectiveness of the response to HIV/AIDS in the country. Policy recommendations included initiating widespread voluntary HIV testing and counseling, including allowing international non-governmental organizations to conduct testing and counseling. The CDC also recommended that national implementation by the government of a mother-to-child transmission prevention program be accelerated, that a national HIV/AIDS care program be developed, and that programs targeting high risk groups be strengthened and enhanced.

The U.S. Agency for International Development (USAID) is in the process of providing $1 million to international non-governmental organizations operating HIV/AIDS prevention project in the country; none of these resources would be directed to the government.

The Quality of Life in Burma

The military government's management of the Burmese economy has been catastrophic. The government's ill-thought efforts to maintain discipline and control, and exclude foreign expertise and participation, have had predictably disastrous results.

Two problems stand out. In the energy sector, a run of disastrous public investment decisions has left the economy without fuel for either its electric generating facilities or many of its basic industries. In January 2002, the nation's peak generating capacity was sufficient to meet only about two thirds of the nation's peak demand and since then the situation has deteriorated further, with no prospect of relief until late 2003 or early 2004 at the very earliest. Until then, at least 30 to 40 percent of the nation's electricity customers will be without power at any given time.

In the fiscal budget, the situation is even more desperate. There, a failed fiscal concept, in which the GOB attempted to run the entire government mostly on the basis of the profits of the state-owned enterprises, has left the GOB without any basis for running the government over the long term, as profits have turned to losses in one state-owned enterprise after another. In fact, in Burma's fiscal year 2001/2002, the reported deficits of the state-owned enterprises actually absorbed all the revenues collected by the government, leaving the government proper (i.e., the army, the navy, the health and education services, and all ministerial operations) to run on monies borrowed from the Central Bank. This has in turn produced a rapid expansion of the money supply, a commensurate increase in inflation and a sharp depreciation in the value of the domestic currency (the kyat). Over the past two years, the kyat's unofficial value has depreciated from a rate of approximately 360/dollar in September 2000 to 1,100/dollar now, while inflation has accelerated to an annualized rate that is now approaching triple digit levels.

The government has attempted to deal with these pressures with a series of ad hoc restrictions on economic activity that reinforce (at least temporarily) its system of control while punishing private sector trade and investment. Thus far, however, the only consequence has been a crippled private sector and a weakened banking system. Inflation has not ebbed and the kyat, after a brief rally in early June 2002, has resumed its downward slide.

Looking ahead, there is really no prospect for relief for Burma without foreign financing support. The problems within the economy, and particularly within the fiscal budget, are simply too vast and too deeply entrenched to be treated now on the basis of Burma's own resources. However, access to that foreign financing support will likely depend on progress in regard to structural reforms and political transition.

Development of a Multilateral Strategy

U.S. policy goals in Burma are progress towards democracy, improved human rights, more effective counternarcotics efforts, counterterrorism efforts, regional stability, HIV/AIDS mitigation, and accounting for missing servicemen from World War II. We encourage talks between Aung San Suu Kyi and the military government in the hope that it will lead to meaningful democratic change and national reconciliation in Burma. We also consult regularly, at senior levels, with countries with major interests in Burma and/or major concerns regarding Burma's human rights practices.

The United States has co-sponsored annual resolutions at the UN General Assembly and the UN Commission on Human Rights that focus on Burma. We have also supported ILO's unprecedented decision on Burma given its failure to deal effectively with its pervasive forced labor problems. Most importantly, we strongly support the mission of the UN Secretary General's Special Representative for Burma, Razali Ismail, whose efforts have been instrumental in facilitating communication between the government and Aung San Suu Kyi.

In coordination with the European Union and other states, the United States has imposed sanctions on Burma. U.S.-imposed sanctions include an arms embargo, a ban on all new U.S. investment in Burma, the suspension of all bilateral aid, including counternarcotics assistance, the withdrawal of GSP privileges, the denial of OPIC and EXIMBANK programs, visa restrictions on Burma's senior leaders, and a hold on all new lending or grant programs by the World Bank, the IMF, the ADB, and other international financial institutions in which the United States has a major interest. We have maintained our diplomatic representation at the Chargé d'Affaires level since 1990.

Our goal in applying these sanctions is to encourage a transition to democratic rule and greater respect for human rights. Nevertheless, we remain concerned about the growing humanitarian crisis in Burma and will, during the coming year, initiate a new $1 million program to deal with the growing HIV/AIDS epidemic in Burma. This funding will go directly to international NGOs (including Population Services International) to support programs including condom distribution and educational efforts. We will also use a small portion of the funding from the U.S. Burma earmark to develop programs inside Burma in support of democracy. None of these funds will be disbursed to or through the government. We will also continue to examine the potential for law enforcement cooperation with Burma on terrorism and narcotics issues. Should there be significant progress in Burma in coming months on political transition and human rights, then the United States would look seriously at additional measures that could be applied to support this process of constructive change.

[FR Doc. 02–31247
Filed 12–9–02; 8:45 am]
Billing code 4710–10–M

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Rules and Regulations

Federal Register
Vol. 67, No. 237
Tuesday, December 10, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 562

[No. 2002–54]

RIN 1550–AB54

Regulatory Reporting Standards: Qualifications for Independent Public Accountants Performing Audit Services for Voluntary Audit Filers

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Interim final rule with request for comments; correction.

SUMMARY: The Office of Thrift Supervision (OTS) published in the **Federal Register** of November 25, 2002, a document concerning amending its annual independent audit requirements for small, non-public, highly rated savings associations that voluntarily obtain independent audits. Inadvertently, the comment period was incorrectly stated. This document corrects that comment period.

DATES: Effective on December 10, 2002.

FOR FURTHER INFORMATION CONTACT: Christine Smith, Project Manager, (202) 906–5740, Examination Policy Division, or Teresa A. Scott, Counsel (Banking & Finance), (202) 906–6478, Regulations and Legislation Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS published a document in the **Federal Register** of November 25, 2002 (67 FR 70529), FR Doc. 02–29833, that inadvertently stated an incorrect comment period. This correction sets forth the correct comment period.

In rule FR Doc. 02–29833, published on November 25, 2002 (67 FR 70529), make the following correction. On page 70530, in the first column, remove the date "December 26, 2002" and add, in its place, "January 27, 2003".

Dated: November 27, 2002.

By the Office of Thrift Supervision.

Marilyn K. Burton,

Federal Register Liaison Officer.

[FR Doc. 02–30853 Filed 12–9–02; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–31–AD; Amendment 39–12973; AD 2002–24–08]

RIN 2120–AA64

Airworthiness Directives; Cirrus Design Corporation Models SR20 and SR22 Airplanes

AGENCY: Federal Aviation Administration, DOT

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 2002–05–05, which currently applies to certain Cirrus Design Corporation (Cirrus) Models SR20 and SR22 airplanes. AD 2002–05–05 currently requires you to incorporate temporary operating limitations into the Limitation Section of the airplane flight manual (AFM) for certain affected airplanes and install a cable clamp external to the cone adapter on the Cirrus Airplane Parachute System (CAPS) activation cable for all affected airplanes. AD 2002–05–05 resulted from a report from the manufacturer that certain CAPS may not activate in an emergency situation. This AD is the result of the manufacturer redesigning the CAPS activation system. This AD requires you to modify the CAPS activation system. The actions specified by this AD are intended to prevent failure of the CAPS activation system in an emergency situation. Failure of this system could result in occupant injury and/or loss of life and loss of aircraft.

DATES: This AD becomes effective on January 24, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 24, 2003.

ADDRESSES: You may get the service information referenced in this AD from Cirrus Design Corporation, 4515 Taylor Circle, Duluth, MN 55811; telephone: (218) 727–2737. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–31–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gregory J. Michalik, Aerospace Engineer, FAA, Chicago ACO, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone: (847) 294–7135; facsimile: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA taken any action to this point? The FAA received a report from the type certificate holder that a condition exists that could cause the Cirrus Airplane Parachute System (CAPS) installed on certain Cirrus Design Corporation (Cirrus) Model SR20 and SR22 airplanes not to activate in the event of an emergency. Ballistic Recovery Systems (BRS), the supplier of the CAPS, discovered the condition during a supplemental type certificate (STC) certification test of the same unit on another airplane.

Investigation revealed that the rocket cone could allow for variance in the internal diameter at the threaded end of the rocket cone. This variance could result in the retaining nut internal to the cone adapter not being fully secured on the affected parachutes. When the igniter end of the cable housing is unsecured, the cable will not pull the igniter pin free to release the parachute.

Section 23.221 of the Federal Aviation Regulations (14 CFR 23.221) requires that single-engine, normal category airplanes demonstrate compliance with either the one-turn spin recovery or the spin-resistant requirements. The airplane, for spin recovery compliance, must recover from a one-turn spin or a three-second spin, whichever takes longer, in not more than one additional turn after the controls have been applied for recovery. The Cirrus SR20/SR22 are not certificated to meet the spin recovery requirements or spin resistant requirements of 14 CFR 23.221. Instead, Cirrus installed Cirrus Airplane

Parachute System (CAPS) that was FAA-approved as part of the SR20/SR22 type design.

Possible failure of the CAPS activation system in an emergency situation caused us to issue AD 2002–05–05, Amendment 39–12673 (67 FR 11220, March 13, 2002). AD 2002–05–05 requires the following:

—Incorporating temporary operating limitations into the Limitation Section of the airplane flight manual (AFM) for the airplanes with a CAPS that incorporates the process change; and

—Installing a cable clamp external to the cone adapter on the CAPS activation cable (as terminating action for the AFM requirements).

What has happened since AD 2002–05–05 to initiate this action? After further testing, Cirrus has made design changes to the whole CAPS activation system that now eliminate possible failure of the CAP activation system. Incorporation of the design changes eliminates the need for the actions of AD 2002–05–05.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cirrus Models SR20 and SR22 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 29, 2002 (67 FR 55357). The NPRM proposed to supersede AD 2002–05–05 with a new AD that would require you to replace the CAPS handle access cover, replace the CAPS activation handle bracket, and replace the CAPS activation cable.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 391 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the replacement of the CAPS handle access cover:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 per hour = $60	$19	$79	$79 × 391 = $30,889.

We estimate the following costs to accomplish the replacement of the CAPS activation handle bracket:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 per hour = $120	$7	$127	$127 × 391 = $49,657.

We estimate the following costs to accomplish the replacement of the CAPS activation cable:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $60 per hour = $180	$320	$500	$500 × 391 = $195,500.

We summarize the following estimated costs to accomplish the modification to the CAPS activation system:

Total labor cost	Total parts cost	Total cost per airplane	Total cost on U.S. operators
6 workhours × $60 per hour = $360	$346	$706	$706 × 391 = $276,046.

The manufacturer will provide warranty credit for labor and parts to the extent noted under WARRANTY INFORMATION in each previously-referenced service bulletin.

Compliance Time of This AD

What is the compliance time of this AD? The compliance time of this AD is "within 90 days after the effective date of this AD, unless already accomplished."

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? Failure of the CAPS is only unsafe during airplane operation; this unsafe condition is not a result of the number of times the airplane is operated. The chance of this situation occurring is the same for an airplane with 10 hours time-in-service (TIS) as it is for an airplane with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time will be utilized in this AD in order to assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–05–05, Amendment 39–12673 (67 FR March 13, 2002), and by adding a new AD to read as follows:

2002–24–08 Cirrus Design Corporation: Amendment 39–12973; Docket No. 2002–CE–31–AD.

Actions	Compliance	Procedures
Modify the Cirrus Airplane Parachute System (CAPS) by replacing the CAPS handle access cover, the CAPS activation handle bracket, and the CAPS activation cable with parts of improved design.	Within the next 90 days after January 24, 2003 (the effective date of this AD), unless already accomplished.	In accordance with the service information specified in paragraph (e) of this AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial numbers
SR20	1005 through 1195.
SR22	0002 through 0209.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the Cirrus Airplane Parachute System (CAPS) activation system in an emergency situation. Failure of this system could result in occupant injury and/or loss of life and loss of aircraft.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

(e) *What service information should I use to accomplish the actions required in paragraph (d) of this AD:* Use the service bulletins specified below, as applicable:

(1) Cirrus Service Bulletin SB 20–95–03, Issued: June 10, 2002;

(2) Cirrus Service Bulletin SB 20–95–04, Issued: July 10, 2002;

(3) Cirrus Service Bulletin SB 20–95–05, Issued: July 10, 2002; or Cirrus Service Bulletin SB 20–95–05, Rev 1: dated August 14, 2002;

(4) Cirrus Service Bulletin SB 22–95–03, Issued: June 10, 2002;

(5) Cirrus Service Bulletin SB 22–95–04, Issued: July 10, 2002; and

(6) Cirrus Service Bulletin SB 22–95–05, Issued: July 10, 2002; or Cirrus Service Bulletin SB 22–95–05, Rev 1: dated August 14, 2002.

Note 1: Cirrus Service Bulletin SB 20–95–03, Issued: June 10, 2002, on page 2 of 2, includes an incorrect reference to SB 22–95–03 in step 4. The correct reference should be to SB 20–95–03.

Note 2: Cirrus Service Bulletin SB 20–95–05, Issued: July 10, 2002, on page 9 of 16, includes an incorrect reference to SB 22–95–05 in step 15. The correct reference should be to SB 20–95–05.

(f) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Chicago Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

(2) Alternative methods of compliance approved in accordance with AD 2002–05–05, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

Note 3: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact Gregory J. Michalik, Aerospace Engineer, FAA, Chicago ACO, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone: (847) 294–7135; facsimile: (847) 294–7834.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Cirrus Service Bulletin SB 20–95–03, Issued: June 10, 2002; Cirrus Service Bulletin SB 20–95–04, Issued: July 10, 2002; Cirrus Service Bulletin SB 20–95–05, Issued: July 10, 2002; Cirrus Service Bulletin SB 20–95–05, Rev 1: dated August 14, 2002; Cirrus Service Bulletin SB 22–95–03, Issued: June 10, 2002; Cirrus Service Bulletin SB 22–95–04, Issued: July 10, 2002; Cirrus Service Bulletin SB 22–95–05, Issued: July 10, 2002; and Cirrus Service Bulletin SB 22–95–05, Rev 1: dated August 14, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Cirrus Design

Corporation, 4515 Taylor Circle, Duluth, MN 55811; telephone: (218) 727–2737. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(j) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2002–05–05, Amendment 39–12673.

(k) *When does this amendment become effective?* This amendment becomes effective on January 24, 2003.

Issued in Kansas City, Missouri, on November 26, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30685 Filed 12–9–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–34–AD; Amendment 39–12974; AD 2002–24–09]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Limited BN2T and BN2T–4R Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Pilatus Britten-Norman Limited (Pilatus Britten-Norman) BN2T and BN2T–4R series airplanes. This AD requires you to repetitively inspect the left and right engine-mounting frame for cracks and replace the frame if cracks are found. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to detect and correct cracks in the left and right engine-mounting frame, which could lead to engine mount failure. Such failure could result in separation of the engine from the airplane.

DATES: This AD becomes effective on January 27, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 27, 2003.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–34–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all Pilatus Britten-Norman BN2T and BN2T–4R Series airplanes. The CAA reports that the manufacturer has reported six occurrences of cracks in the left and right turbine engine-mounting frame detected during routine inspections by operators of aircraft used on parachute drop or pilot training operations.

What is the potential impact if FAA took no action? These cracks could lead to engine mount failure with consequent separation of the engine from the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Pilatus Britten-Norman BN2T and BN2T–4R series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 17, 2002 (67 FR 58544). The NPRM proposed to require you to repetitively inspect the left and right engine-mounting frame for cracks and replace the frame if cracks are found.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 6 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 workhours × $60 per hour = $240	No cost for parts	$240	6 × $240 = $1,440.

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
30 workhours × $60 per hour = $1,800 per frame	$5,400	$7,200.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–24–09 Pilatus Britten-Norman Limited: Amendment 39–12974; Docket No. 2002–CE–34–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models BN2T, and BN2T–4R airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the left and right engine-mounting frame, which could lead to engine mount failure. Such failure could result in separation of the engine from the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the left and right turbine engine-mounting frame, part number (P/N) NB–20–6853, or FAA-approved equivalent part number, for cracks.	Initially upon accumulating 1,000 hours time-in-service (TIS) on the engine mounting frame or within the next 50 hours TIS after January 27, 2003 (the effective date of this AD), whichever occurs later. If no cracks are found on the initial inspection, repetitively inspect every 100 hours TIS.	In accordance with Britten-Norman Service Bulletin No. SB 282, Issue 2, dated June 1, 2002.
(2) If cracks are found during any inspection required in paragraph (d)(1) of this AD, replace the mounting frame with a new frame, P/N NB–20–6853, or FAA-approved equivalent part number.	Prior to further flight after the inspection in which any crack and/or damage is found. After installing the new frame, inspect as required in paragraph (d)(1) of this AD..	In accordance with Britten-Norman Service Bulletin No. SB 282, Issue 2, dated June 1, 2002

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office Manager.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Britten-Norman Service Bulletin No. SB 282, Issue 2, dated June 1, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in British AD 002–05–2002, not dated.

(i) *When does this amendment become effective?* This amendment becomes effective on January 27, 2003.

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Issued in Kansas City, Missouri, on November 26, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30686 Filed 12–9–02; 8:45 am]

BILLING CODE 4910–13–P

POSTAL SERVICE

39 CFR Part 255

Access of Persons with Disabilities to Postal Service Programs, Activities, Facilities, and Electronic and Information Technology

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending its regulations in order to implement section 508 of the Rehabilitation Act of 1973, as amended. Section 508 requires Federal agencies to ensure that the electronic and information technology (EIT) they procure allows individuals with disabilities access to EIT comparable to the access of those who are not disabled, unless the agency would incur an undue hardship. The statute was amended by the Workforce Investment Act of 1998 to add enforcement provisions and to require agencies to add a complaint process for section 508. The complaint process for members of the public who are disabled is outlined here. The complaint process for employees and applicants who are disabled is set forth in the Postal Service's Handbook EL–603, *Equal Employment Opportunity Complaint Processing.*

DATES: The rule is effective January 9, 2003.

FOR FURTHER INFORMATION CONTACT: Joan C. Goodrich, Esq., (202) 268–3047 or Christine M. Taylor, Esq., (202) 268–3017.

SUPPLEMENTARY INFORMATION:

Background

The Workforce Investment Act of 1998, Public Law 105–220, 112 Stat. 936 (1998), amending section 508 of the Rehabilitation Act of 1973, 29 U.S.C. 794d, was signed into law on August 7, 1998. In addition to the provisions outlined above, the act required the Architectural and Transportation Barriers Compliance Board (Access Board) to publish standards defining EIT and setting forth the technical and functional performance criteria necessary for accessibility to such technology. The act, which was effective August 7, 2000, also required the Access Board to publish its final standards by February 7, 2000.

On July 13, 2000, the Military Construction Appropriations Act for Fiscal Year 2001, Public Law 106–246, which contained an amendment to section 508, was signed into law. Public Law 106–246 delayed the effective date for enforcement of section 508 to 6 months from the publication of the Access Board's final standards. The Access Board's final standards were published on December 21, 2000, in 65 FR 80500–80528. The effective date for enforcement of section 508 became June 21, 2001.

In accordance with the statutory requirements outlined above, the Postal Service published in the **Federal Register** on February 25, 2002 (67 FR 8489–93), a proposed rule adding a complaint process for section 508 to its regulations. March 27, 2002, was set as the deadline for receipt of any comments relating to the proposed rule. The Postal Service received comments from two groups concerned with the rights and interests of individuals with disabilities. These comments are discussed below. After giving thorough consideration to the comments, the Postal Service modified the proposed rule as appropriate and now publishes the final rule.

Discussion of Comments

One group commented on matters outside the scope of this rulemaking. Those comments, which addressed specific accommodations in Post Offices for the blind and visually impaired, have been passed on to the appropriate office within the Postal Service. The second group made the following comments.

1. One comment asked for clarification of how the informal complaint can be initiated, and suggested that "an informal complaint can be verbal or in writing." The comment suggested that an oral or written statement can be the means of lodging the informal complaint. The Postal Service is incorporating this comment into the rule to reflect that an informal complaint can be made orally or in writing.

2. One comment asked that the written acknowledgment of the informal complaint contain certain specific information such as "the date that the complaint was filed, a description of the complaint issue(s), notice of the complainant's right to file a formal complaint if the informal complaint is not resolved within 60 days, and notice of where to file a formal complaint." This information will be incorporated into the rule. The date of the filing of the informal complaint and the description of issues will be added to the acknowledgment letter. Notice of a choice to file a formal complaint or to proceed in any other appropriate forum will be added to the written decision detailing the final disposition of the informal complaint. Where to file a formal complaint will also be given in the notice.

3. Several miscellaneous comments suggested editing changes which have been incorporated as appropriate.

4. One comment requested that the language requiring exhaustion of the formal complaint process be deleted. The rule provides that if the decision on the informal complaint denies relief to the complainant, "the complainant may seek relief in any other appropriate forum, including the right to file a formal complaint with the Vice President and Consumer Advocate" of the Postal Service. If the complainant files such a formal complaint, "the complainant shall exhaust the formal complaint procedure before filing suit in any other forum." The exhaustion requirement was added in order to avoid the problem of one case proceeding simultaneously in two forums—administrative and judicial. There is no change to the rule as a result of this comment.

5. One comment asked that the standards of the Architectural Barriers Act for newly constructed, altered, and leased postal facilities be stated in the rule. However, the rule's purpose is to provide a complaint process for section 508. There is no change to the rule as a result of this comment.

6. One comment requested that a nonretaliation provision be added to the rule. This comment is being incorporated into the rule and such a provision is added.

List of Subjects in 39 CFR Part 255

Civil rights, Federal buildings and facilities, Individuals with disabilities.

Accordingly, the Postal Service revises 39 CFR part 255 to read as follows:

PART 255—ACCESS OF PERSONS WITH DISABILITIES TO POSTAL SERVICE PROGRAMS, ACTIVITIES, FACILITIES, AND ELECTRONIC AND INFORMATION TECHNOLOGY

Sec.
255.1 Purpose.
255.2 Definitions.
255.3 Nondiscrimination under any program or activity conducted by the Postal Service.
255.4 Accessibility to electronic and information technology.
255.5 Employment.
255.6 Complaint procedures.
255.7 Special arrangements for postal services.
255.8 Access to postal facilities.
255.9 Other postal regulations; authority of postal managers and employees.

Authority: 39 U.S.C. 101, 401, 403, 1001, 1003, 3403, 3404; 29 U.S.C. 791, 794, 794d.

§ 255.1 Purpose.

(a) This part implements section 504 of the Rehabilitation Act of 1973, as amended. Section 504 prohibits discrimination on the basis of disability in programs or activities conducted by executive agencies or by the Postal Service. This part also implements section 508 of the Rehabilitation Act of 1973, as amended. Section 508 requires that executive agencies and the Postal Service ensure, absent an undue burden, that individuals with disabilities have access to electronic and information technology that is comparable to the access of individuals who are not disabled.

(b) The standards relating to electronic and information technology expressed here are intended to be consistent with the standards announced by the Architectural and Transportation Barriers Compliance Board on December 21, 2000. Those standards are codified at 36 CFR part 1194.

§ 255.2 Definitions.

(a) *Agency* as used in this part means the Postal Service.

(b) *Area/functional vice president* also includes his or her designee.

(c) *Electronic and information technology (EIT)* includes "information technology" and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term does not include any equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

(d) *Formal complaint* means a written statement that contains the complainant's name, address, and telephone number; sets forth the nature of the complainant's disability; and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature of the alleged violation of section 504 or of section 508. It shall be signed by the complainant or by someone authorized to do so on the complainant's behalf.

(e) *Individual with a disability.* For purposes of this part, "individual with a disability" means any person who:

(1) Has a physical or mental impairment that substantially limits one or more of such person's major life activities;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment.

(f) *Information technology* means any equipment, or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

(g) *Postal manager.* As used in this part, "postal manager" means the manager or official responsible for a service, facility, program, or activity.

(h) *Qualified individual with a disability.* For purposes of this part, "qualified individual with a disability" means:

(1) With respect to any Postal Service program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with a disability who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, an individual with a disability who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(i) *Section 501* means section 501 of the Rehabilitation Act of 1973, as amended. Section 501 is codified at 29 U.S.C. 791.

(j) *Section 504* means section 504 of the Rehabilitation Act of 1973, as amended. Section 504 is codified at 29 U.S.C. 794.

(k) *Section 508* means section 508 of the Rehabilitation Act of 1973, as amended. Section 508 is codified at 29 U.S.C. 794d.

(l) *Undue burden* means significant difficulty or expense.

(m) *Vice President and Consumer Advocate* also includes his or her designee.

§ 255.3 Nondiscrimination under any program or activity conducted by the Postal Service.

In accordance with section 504 of the Rehabilitation Act, no qualified individual with a disability shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity conducted by the Postal Service.

§ 255.4 Accessibility to electronic and information technology.

(a) In accordance with section 508 of the Rehabilitation Act, the Postal Service shall ensure, absent an undue burden, that the electronic and information technology the agency procures allows:

(1) Individuals with disabilities who are Postal Service employees or applicants to have access to and use of information and data that is comparable to the access to and use of information and data by Postal Service employees or applicants who are not individuals with disabilities; and

(2) Individuals with disabilities who are members of the public seeking information or services from the Postal Service to have access to and use of information and data that is comparable to the access to and use of information and data by members of the public who are not individuals with disabilities.

(b) When procurement of electronic and information technology that meets the standards published by the Architectural and Transportation Barriers Compliance Board would pose an undue burden, the Postal Service shall provide individuals with disabilities covered by paragraph (a) of this section with the information and data by an alternative means of access that allows the individuals to use the information and data.

§ 255.5 Employment.

No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment with the Postal Service. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973, as established by the Equal Employment Opportunity Commission in 29 CFR part 1614 shall apply to employment within the Postal Service.

§ 255.6 Complaint procedures.

(a) *Applicability.* Except as provided in paragraph (b)(1) of this section, this section applies to all section 504 allegations of discrimination based upon disability in the programs or activities conducted by the Postal Service. Except as provided in paragraph (b)(2) of this section, this section applies to all allegations of section 508 violations.

(b) *Employment complaints.*

(1) The Postal Service shall process complaints of employees and applicants

alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791. In accordance with 29 CFR part 1614, the Postal Service has established procedures for processing complaints of alleged employment discrimination, based upon disability, in the agency's Handbook EL–603, *Equal Employment Opportunity Complaint Processing.*

(2) The agency shall process complaints of employees and applicants alleging violations of section 508 and involving employment in accordance with the section 508 procedures which have been added to Handbook EL–603. Section 508 complaints shall be processed to provide the remedies required by section 508 of the Rehabilitation Act.

(c) *Complaints by members of the public.* Any individual with a disability who believes that he or she has been subjected to discrimination prohibited by this part or by the alleged failure of the agency to provide access to electronic and information technology may file a complaint by following the procedures described in this section. A complainant shall first exhaust informal administrative procedures before filing a formal complaint.

(1) *Informal complaints relating to Postal Service programs or activities and to EIT.*

(i) A complainant initiates the informal process by informing the responsible postal manager orally or in writing of the alleged discrimination or inaccessibility of Postal Service programs, activities, or EIT. Postal managers or employees who receive informal complaints that they lack the authority to resolve must promptly refer any such informal complaint to the appropriate postal manager, and at the same time must notify the complainant of the name, address, and telephone number of the person handling the complaint.

(ii) *Resolution of the informal complaint and time limits.* Within 15 days of receipt of the informal complaint, the responsible postal manager must send the complainant a written acknowledgement of the informal complaint. The written acknowledgment will include the date the complaint was filed and a description of the issue(s). If the matter cannot be resolved within 30 days of its receipt, the complainant must be sent a written interim report which explains the status of the informal complaint and the proposed resolution of the matter. On or before the 60th day from the agency's receipt of the informal complaint, the appropriate area/functional vice president within the Postal Service shall send a written decision to the complainant detailing the final disposition of the informal complaint and the reasons for that disposition. The decision shall contain the notice that the complainant may challenge an informal decision which denies relief either by proceeding in any other appropriate forum or by filing a formal complaint with the Vice President and Consumer Advocate. The notice will give the address of the Vice President and Consumer Advocate. The notice shall also state that if the complainant chooses to file a formal complaint, the complainant shall exhaust the formal complaint procedures before filing suit in any other forum.

(iii) *Automatic review.* The responsible postal manager's proposed disposition of the informal complaint shall be submitted to the appropriate district/program manager for review. The district/program manager shall forward the proposed disposition to the area/functional vice president for review and issuance of the written decision. This automatic review process shall be completed such that the written decision of the area/functional vice president shall be sent to the complainant no later than the 60th day from the agency's receipt of the informal complaint.

(2) *Formal complaints.* If an informal complaint filed under paragraph (c)(1) of this section denies relief, the complainant may seek relief in any other appropriate forum, including the right to file a formal complaint with the Vice President and Consumer Advocate in accordance with the procedures in paragraph (c)(2)(i) through (iv) of this section. If the complainant files a formal complaint with the Vice President and Consumer Advocate, the complainant shall exhaust the formal complaint procedures before filing suit in any other forum.

(i) *Where to file.* Formal complaints relating to programs or activities conducted by the Postal Service or to access of Postal Service EIT may be filed with the Vice President and Consumer Advocate, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

(ii) *When to file.* A formal complaint shall be filed within 30 days of the date the complainant receives the decision of the area/functional vice president to deny relief. For purposes of determining when a formal complaint is timely filed under this paragraph (c)(2)(ii), a formal complaint mailed to the agency shall be deemed filed on the date it is postmarked. Any other formal complaint shall be deemed filed on the date it is received by the Vice President and Consumer Advocate.

(iii) *Acceptance of the formal complaint.* The Vice President and Consumer Advocate shall accept a timely filed formal complaint that meets the requirements of § 255.2(d), if filed after fulfilling the informal exhaustion procedures of paragraph (c)(1) of this section, and over which the agency has jurisdiction. The Vice President and Consumer Advocate shall notify the complainant of receipt and acceptance of the formal complaint within 15 days of the date the Vice President and Consumer Advocate received the formal complaint.

(iv) *Resolution of the formal complaint.* Within 180 days of receipt and acceptance of a formal complaint over which the agency has jurisdiction, the Vice President and Consumer Advocate shall notify the complainant of the results of the investigation of the formal complaint. The notice shall be a written decision stating whether or not relief is being granted and the reasons for granting or denying relief. The notice shall state that it is the final decision of the Postal Service on the formal complaint.

(d) *No retaliation.* No person shall be subject to retaliation for opposing any practice made unlawful by the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791, or for participating in any stage of administrative or judicial proceedings under the statute.

§ 255.7 Special arrangements for postal services.

Members of the public who are unable to use or who have difficulty using certain postal services may be eligible under postal regulations for special arrangements. Some of the special arrangements that the Postal Service has authorized are listed in this section. No one is required to use any special arrangement offered by the Postal Service, but an individual's refusal to make use of a particular special arrangement does not require the Postal Service to offer other special arrangements to that individual.

(a) The *Postal Operations Manual* offers information on special arrangements for the following postal services:

(1) Carrier delivery services and programs.

(2) Postal retail services and programs.

(i) Stamps by Mail® or stamps by phone.

(ii) Retail service from rural carriers.

(iii) Self-service postal centers. Self-service postal centers contain vending equipment for the sale of stamps and stamp items, and contain deposit boxes for parcels and letter mail. Many centers are accessible to individuals in wheelchairs. Information regarding the location of the nearest center may be obtained from a local Post Office.

(b) The *Domestic Mail Manual*, the *Administrative Support Manual*, and the *International Mail Manual* contain information regarding postage-free mailing for mailings that qualify.

(c) *Inquiries and requests.* Members of the public wishing further information about special arrangements for particular postal services may contact their local postal manager.

(d) *Response to a request or complaint regarding a special arrangement for postal services.* A local postal manager receiving a request or complaint about a special arrangement for postal services must provide any arrangement as required by postal regulations. If no special arrangements are required by postal regulations, the local postal manager, in consultation with the district manager or area manager, as needed, may provide a special arrangement or take any action that will accommodate an individual with a disability as required by section 504 of the Rehabilitation Act of 1973 or by this part.

§ 255.8 Access to postal facilities.

(a) *Legal requirements and policy.* (1) *ABA standards.* Where the design standards of the Architectural Barriers Act (ABA) of 1968, 42 U.S.C. 4151 *et seq.*, do not apply, the Postal Service may perform a discretionary retrofit to a facility in accordance with this part to accommodate individuals with disabilities.

(2) *Discretionary modifications.* The Postal Service may modify facilities not legally required to conform to ABA standards when it determines that doing so would be consistent with efficient postal operations. In determining whether modifications not legally required should be made, due regard is to be given to:

(i) The cost of the discretionary modification;

(ii) The number of individuals to be benefited by the modification;

(iii) The inconvenience, if any, to the general public;

(iv) The anticipated useful life of the modification to the Postal Service;

(v) Any requirement to restore a leased premises to its original condition at the expiration of the lease, and the cost of such restoration;

(vi) The historic or architectural significance of the property in accordance with the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*;

(vii) The availability of other options to foster service accessibility; and

(viii) Any other factor that is relevant and appropriate to the decision.

(b) *Inquiries and requests.* (1) Inquiries concerning access to postal facilities, and requests for discretionary alterations of postal facilities not covered by the design standards of the ABA, may be made to the local postal manager of the facility involved.

(2) The local postal manager's response to a request or complaint regarding an alteration to a facility will be made after consultation with the district manager or the area manager. If the determination is made that modification to meet ABA design standards is not required, a discretionary alteration may be made on a case-by-case basis in accordance with the criteria listed in paragraph (a)(2) of this section. If a discretionary alteration is not made, the local postal manager should determine if a special arrangement for postal services under § 255.7 can be provided.

§ 255.9 Other postal regulations; authority of postal managers and employees.

This part supplements all other postal regulations. Nothing in this part is intended to authorize any postal manager or employee to violate or exceed any regulatory limit, or to confer any budgetary authority on any postal official or employee outside normal budgetary procedures.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–30648 Filed 12–9–02; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 001128334–2292–10; I.D. 112702B]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, is withdrawing the temporary restrictions announced in a temporary rule published on December 3, 2002 (67 FR 71900). The purpose of this rule is to withdraw the restrictions and request fishermen to voluntarily remove lobster trap/pot and anchored gillnet gear in an area totaling approximately 1,600 square nautical miles (nm²) (2,965 km²), east of Portsmouth, NH, called Jeffreys Ledge, from December 5 through December 20, 2002.

DATES: Effective December 5, 2002.

ADDRESSES: Copies of the proposed and final Dynamic Area Management rules, Environmental Assessment (EA), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.nmfs.gov/whaletrp/*.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9145; or Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION: The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of four species of whales (right whales, fin, humpback, and minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's Dynamic Area Management (DAM) program (67 FR 1133). The DAM program provides specific authority for NMFS to temporarily restrict the use of lobster trap and anchored gillnet fishing gear in areas north of 40° N. lat. on an expedited basis to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to

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sufficiently reduce the risk of entanglement; or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period, and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75nm² (139 km²)) such that right whale density is equal to or greater than 0.04 right whales per nm² (1.85 km²). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On November 20, 2002, NMFS Aerial Survey Team reported a sighting of 8 right whales in the proximity of 43° 00′ N lat. and 70°08′ W long. This position lies east of Portsmouth, NH, in an area called Jeffreys Ledge.

In a temporary rule published on December 3, 2002 (67 FR 71900), NMFS restricted lobster trap/pot and gillnet gear set in the waters bounded by:

43°19′N, 70°35′W (NW Corner)
43°19′N, 69°40′W
42°39′N, 69°40′W
42°39′N, 70°35′W (SW Corner)

Please note that the western DAM boundary (70°35′W) from 43°11′N due north to 43°19′N will follow the coastline.

Due to rough weather conditions in the Gulf of Maine, effected fishers are unable to remove active gear as required by the temporary rule. Therefore, the AA has determined that the temporary restrictions should be withdrawn. However, the AA requests that fishermen voluntarily remove their lobster trap/pot and anchored gillnet gear in the area described above if weather conditions allow removal of the gear through December 20, 2002. Additionally, fishermen are encouraged not to set gear in the DAM area during this time period.

This rule will be announced to state officials, fishermen, Atlantic Large Whale Take Reduction Team (ALWTRT) members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

This action falls within the scope of alternatives and impacts analyzed in the Final EA prepared for the ALWTRP's DAM program. Further analysis under the National Environmental Policy Act (NEPA) is not required.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive notice and an opportunity to comment on this action to withdraw the temporary restrictions, because providing notice and an opportunity to comment on this action would be contrary to the public interest. If NMFS were to provide notice and an opportunity to comment on this action, the temporary gear restrictions would remain effective, and fishermen would risk bodily harm in trying to remove their gear due to the severe weather conditions in the Northeast region. In addition, it would be unfair to subject fishermen to changes in gear requirements when, due to weather, the affected fishermen have been unable to implement these changes.

The AA is also waiving the 30–day delay in effective date under 5 U.S.C. 553(d)(1), because this action relieves a restriction. Thus, NMFS makes this action effective beginning December 5, 2002. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as possible. NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001, the Assistant Secretary for Intergovernmental and Legislative Affairs, DOC, provided notice of the DAM program to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rule implementing the DAM program. A copy of the federalism Summary Impact Statement for that final rule is available upon request (see **ADDRESSES**).

This rule has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: December 5, 2002.

William T. Hogarth

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–31160 Filed 12–5–02; 3:09 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 237
Tuesday, December 10, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–14–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that would apply to all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes. The earlier NPRM would have required you to repetitively inspect the horizontal and vertical stabilizer attachment fittings and associated hardware for corrosion and wear (damage) and repair or replace any damaged parts. The earlier NPRM resulted from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The manufacturer has issued new service information that supersedes the service information specified in the NPRM and changes the procedures for doing the proposed inspections. These procedures impose an additional burden over that proposed in the NPRM. Therefore, we are reopening the comment period to allow the public the chance to comment on these additional actions.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before January 17, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–14–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–14–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 672345; facsimile: (01292) 671625. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–14–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes. The CAA reports that, during regular scheduled maintenance, an operator discovered fretting corrosion on the horizontal and vertical stabilizer attachment bolts on an in-service Jetstream Series 4100 airplane. The Jetstream Series 4100 airplane has a similar structural layout in the affected area to those affected by this proposed action. The corrosion is occurring on the eye bolt shanks and the horizontal and vertical stabilizer forward and rear attachment fitting lugs on the contact faces. There have been 10 reported cases of corrosion found on Jetstream Series 3101 and Jetstream Model 3201 airplanes.

What Are the Consequences If the Condition Is Not Corrected?

This condition, if not detected and corrected, could result in failure of the horizontal and vertical stabilizer attachment fittings. Such failure could lead to flutter and subsequent structural failure of the empennage.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes. This proposal was published in the **Federal**

Register as a notice of proposed rulemaking (NPRM) on July 31, 2002 (67 FR 49627). The NPRM proposed to require you to repetitively inspect the forward and rear horizontal and vertical stabilizer attachment fittings and associated hardware for corrosion and wear (damage), and replace or repair any damaged parts found during any inspection.

You would have to accomplish the proposed actions in accordance with British Aerospace Jetstream Mandatory Service Bulletin 55–JA010941, Original issue: January 25, 2002.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Incorporate New Service Information

What Is the Commenter's Concern?

The manufacturer suggests that we incorporate new service information that changes the procedures for doing the proposed inspections of the horizontal and vertical stabilizers for corrosion. The manufacture states that the inspection procedures in British Aerospace Jetstream Mandatory Service Bulletin 55–JA010941, Original Issue: January 25, 2002, do not ensure the detection of all possible fretting corrosion. Removal of the horizontal stabilizer when inspecting for fretting corrosion is now required in accordance with British Aerospace Jetstream Mandatory Service Bulletin 55–JA020543, Original Issue: October 24, 2002, which supersedes British Aerospace Jetstream Mandatory Service Bulletin 55–JA010941, Original Issue: January 25, 2002.

What Is FAA's Response to the Concern?

We concur and will change the proposed AD action accordingly. Any owner/operator of the affected airplanes will have to accomplish the requirements of this proposed AD in accordance with the new manufacturer's service bulletin. Credit will not be given for accomplishing the proposed actions in accordance with British Aerospace Jetstream Mandatory Service Bulletin 55–JA010941, Original Issue: January 25, 2002.

Comment Issue No. 2: Receive Compliance Credit for Using Current BAE Corrosion Preventative and Control Program (PCPC) Maintenance Task Number 55–10–011C1 When Doing the Inspections

What Is the Commenter's Concern?

The commenter states that operators who utilize the current FAA–BAE approved Corrosion Preventative and Control Program (CPCP) Maintenance Task Number 55–10–011C1 and Zonal Task Card 55–10–11 are already accomplishing the inspections required in the proposed AD and should receive credit for compliance using these procedures instead of the manufacturer's service bulletin. The commenter also states that language should be incorporated into the proposed AD giving owners/operators credit for using CPCP Task 55–10–011C1.

What Is FAA's Response to the Concern?

We do not concur. As earlier discussed, we are incorporating new service information into this proposed AD that requires removal of the horizontal stabilizer when doing the proposed inspection. We have confirmed with the manufacturer that CPCP Maintenance Task Number 55–10–011C1 and Zonal Task Card 55–10–11 do not require removal of the horizontal stabilizer when doing the inspection.

Therefore, we cannot give credit for accomplishing the inspection using CPCP Maintenance Task Number 55–10–011C1 and Zonal Task Card 55–10–11 as an alternative method of compliance.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 3: Change the Compliance Time

What Is the Commenter's Concern?

The manufacturer states that because the change to the inspection procedures imposes an additional burden over that proposed in the NPRM, more time should be allowed to accomplish the requirements in the proposed AD (as allowed in the new service information).

What Is FAA's Response to the Concern?

We concur and will change the proposed AD action accordingly.

The FAA's Determination

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes of the same type design that are on the U.S. registry;

—The NPRM should be changed to incorporate the new service information; and

—AD action should be taken in order to correct this unsafe condition.

The Supplemental NPRM

How Will the Changes to the NPRM Impact the Public?

Proposing that the NPRM incorporate the new service information that changes the procedures for doing the proposed inspections goes beyond the scope of what was already proposed. Therefore, we are issuing a supplemental NPRM and reopening the comment period to allow the public additional time to comment on the proposed AD.

What Are the Provisions of the Supplemental NPRM?

The proposed AD would require you to:

—Repetitively inspect the forward and rear horizontal and vertical stabilizer attachment fittings and associated hardware for corrosion and wear (damage); and

—Replace or repair any damaged parts found during any inspection.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 250 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
120 workhours × $60 = $7,200	No parts required to perform the inspection.	$7,200	$7,200 × 250 = $1,800,000.

The FAA has no method of determining the number of repetitive inspections each owner/operator would incur over the life of each of the affected airplanes so the cost impact is based on the initial inspection.

The FAA has no method of determining the number of repairs each owner/operator would incur over the life of each of the affected airplanes based on the results of the proposed inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage would vary on each airplane.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is "upon accumulating 8 calendar years on the airframe or within the next 12 months after the effective date of this AD, whichever occurs later."

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-In-Service (TIS)?

The unsafe condition specified by this proposed AD is caused by corrosion. Corrosion can occur regardless of whether the aircraft is in operation or is in storage. Therefore, to assure that the unsafe condition specified in this proposed AD does not go undetected for a long period of time, the compliance is presented in calendar time instead of hours time-in-service (TIS). This will allow the owners/operators to work the proposed inspection into regularly scheduled maintenance.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

British Aerospace: Docket No. 2002-CE–14–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct corrosion and/or wear on the horizontal and vertical stabilizer attachment fittings and associated hardware, which could result in failure of the attachment fittings. Such failure could lead to flutter and subsequent structural failure of the empennage.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Visually inspect the forward and rear horizontal stabilizer attachment bolts and associated hardward for corrosion (i.e., pitting or a change of color in the surface) and wear (damage).	Initially inspect upon accumulating 8 years on the airframe or within the next 12 calendar months after the effective date of this AD, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 8 years.	In accordance with British Aerospace Jetstream Mandatory Service Bulletin 55–JA020543, Original Issue: October 24, 2002.
(2) If corrosion or wear is found during any inspection required in paragraph (d)(1) of this AD, replace or repair any damaged part in accordance with the procedures specified in the manufacturer's service bulletin.	Prior to further flight after the inspection in which the damage was found.	In accordance with British Aerospace Jetstream Mandatory Service Bulletin 55–JA020543, Original Issue: October 24, 2002.
(3) Visually inspect the forward and rear horizontal and vertical stabilizer attachment fittings and the forward eye bolts of the vertical stabilizer for corrosion or damage at the lug faces.	Initially inspect upon accumulating 8 years on the airframe or within the next 12 calendar months after the effective date of this AD, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 8 years.	In accordance with British Aerospace Jetstream Mandatory Service Bulletin 55–JA020543, Original Issue: October 24, 2002.

Actions	Compliance	Procedures
(4) If corrosion or damage is found during any inspection required in paragraph (d)(3) of this AD: (i) replace or repair any damaged part in accordance with the procedures specified in the manufacturer's service bulletin; or (ii) if damage exceeds the limits defined in the manufacturer's service bulletin, obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD; and (iii) incorporate this repair scheme.	Prior to further flight after the inspection in which the damage was found.	Repair in accordance with the repair scheme obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA92RW, Scotland. Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD.

Note 1: Although not required by this AD, FAA highly recommends you accomplish *Highly Recommended Corrosion Prevention Tasks* in British Aerospace Jetstream Service Bulletin 55–JA020544, Original Issue: October 24, 2002, upon accomplishing the initial inspection of this AD and during repetitive inspections if damage is found.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 672345; facsimile: (01292) 671625. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in British Aerospace Jetstream Mandatory Service Bulletin 55–JA020543, Original Issue: October 24, 2002. This service bulletin is classified as mandatory by the United Kingdom Civil Aviation Authority (CAA).

Issued in Kansas City, Missouri, on December 2, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–31129 Filed 12–9–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–218–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 and –300 series airplanes. This proposal would require replacement of certain flight data recorder (FDR) and cockpit voice recorder (CVR) impact switches with certain new impact switches. This action is necessary to prevent the loss of data recorded on the FDR and CVR, which, in the event of an accident, could result in the inability to retrieve data from the FDR and CVR during the accident investigation. This loss of data could hinder the identification of the unsafe condition which caused the accident, and prevent the FAA from developing and mandating actions to prevent additional accidents caused by that same unsafe condition.

DATES: Comments must be received by January 9, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–218–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–218–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–218–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–218–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 and –300 series airplanes. The LBA advises that it received a report indicating that 3g-impact switches were found to be installed in the flight data recorder (FDR) and cockpit voice recorder (CVR). The 3g-impact switches could turn off the FDR and CVR once the loads on the airplane reached 3g, and, thus, there would be no means of recording data when the loads exceeded 3g. An airplane acceleration of 4.25g could trip the switches and turn off the FDR and CVR. In the event of an accident, after experiencing 4.25g, the FDR and CVR could be turned off and data would not be recorded. Replacement of the 3g-impact switches with new, 6g-impact switches is necessary to prevent the loss of data recorded on the FDR and CVR, which could result in the inability to retrieve data from the FDR and CVR in the event of an accident. This loss of data could hinder the identification of the unsafe condition which caused the accident, and prevent the FAA from developing and mandating actions to prevent additional accidents caused by that same unsafe condition.

FAA's Determination of Unsafe Condition

This action is necessary to prevent the loss of data recorded on the FDR and CVR. The loss of data does not directly affect the safety of the airplane. However, should an airplane with a 3g-impact switch have an unsafe condition which results in an accident, the data retrieved from the FDR and CVR would be incomplete. This lack of reliable data could hinder identification of the unsafe condition which caused the accident, and prevent the FAA from developing and mandating actions to prevent additional accidents caused by that same unsafe condition. Therefore, the FAA has determined that the proposed action is necessary.

It should be noted that the purpose of this action is not to enhance the safety of the Dornier Model 328–100 and –300 series airplanes, but rather to restore the level of safety provided by the originally approved FDR and CVR. Therefore, this AD is the appropriate regulatory vehicle to achieve this purpose.

Explanation of Relevant Service Information

Dornier has issued Service Bulletins SB–328–31–390 (for Model 328–100 series airplanes); and SB–328J–31–118 (for Model 328–300 series airplanes); both dated September 6, 2001. These service bulletins describe procedures for replacement of 3g-impact switches with new, 6g-impact switches for the FDR and the CVR. The LBA classified these service bulletins as mandatory and issued German airworthiness directives 2002–238 and 2002–239, both dated August 22, 2002, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

These airplane models are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since the loss of data recorded on the FDR and CVR may hinder the identification of an unsafe condition that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the applicable service bulletin described previously.

Cost Impact

The FAA estimates that 53 Model 328–100 series airplanes and 48 Model 328–300 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,346 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $142,006, or $1,406 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not

a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dornier Luftfahrt GmbH: Docket 2002–NM–218–AD.

Applicability: Airplanes listed in the following table of this AD, certificated in any category:

TABLE—APPLICABILITY

Model	Serial No.
328–100 series airplanes.	3005 through 3119 inclusive
328–300 series airplanes.	3105 through 3223 inclusive

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of data recorded on the flight data recorder (FDR) and cockpit voice recorder (CVR), which, in the event of accident, could result in the inability to retrieve data from the FDR and CVR during the accident investigation, and hinder the identification of the unsafe condition which caused the accident, accomplish the following:

Switch Replacement

(a) For Model 328–100 series airplanes: Within 12 months after the effective date of this AD, replace the FDR and cockpit voice recorder CVR 3g-impact switches, with new, 6g-impact switches, per the Accomplishment Instructions of Dornier Service Bulletin SB–328–31–390, dated September 6, 2001.

(b) For Model 328–300 series airplanes: Within 12 months after the effective date of this AD, replace the FDR and CVR 3g-impact switches, with new, 6g-impact switches, per the Accomplishment Instructions of Dornier Service Bulletin SB–328J–31–118, dated September 6, 2001.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in German airworthiness directives 2002–238 and 2002–239, both dated August 22, 2002.

Issued in Renton, Washington, on December 4, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–31135 Filed 12–9–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–374–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, 737–700, 737–800, 757–200, and 757–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–600, 737–700, 737–800, 757–200, and 757–300 series airplanes. This proposal would require replacing existing video distribution unit (VDU) connectors with new, improved connectors or new wire assemblies (jumpers), and performing related actions, as applicable. This action is necessary to prevent a short circuit in a VDU connector and consequent arcing and damage to wiring within the connector, which could result in damage to adjacent systems or structure and possible smoke or fire in the airplane cabin. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 24, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001-NM–374-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–374–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Binh V. Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2890; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–374–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–374–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that burned contacts have been found on certain video distribution unit (VDU) connectors installed on certain Boeing Model 737–700 and 737–800 series airplanes. In several cases, the mating connector on the VDU was damaged and, in one case, an insulation blanket near the connector was damaged. Investigation revealed that the burned contacts were caused by the presence of moisture and wire chafing in the backshell boot of the VDU connector. Moisture or chafed wiring may result in a short circuit that may cause internal arcing and damage to wiring within the connector. This condition, if not corrected, could result in damage to adjacent systems or structure, and possible smoke or fire in the airplane cabin.

The same type of VDU connectors is also installed on Boeing Model 737–600, 757–200, and 757–300 series airplanes. While the FAA has not received any reports of burned contacts on these airplane models, the VDU connectors may be subject to the same unsafe condition as those on Boeing Model 737–700 and –800 series airplanes.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Service Bulletin 737–23A1169, Revision 2, dated June 21, 2001. Part 2 of this service bulletin describes procedures for replacing existing VDU connectors with new, improved connectors having better moisture resistance and longer wires, and adding a drip loop to the wiring at the new VDU connectors.

We also have reviewed and approved Boeing Alert Service Bulletin 757–23A0060, Revision 1, dated January 11, 2001; and Boeing Alert Service Bulletin 757–23A0061, Revision 1, dated January 11, 2001. Part 2 of these service bulletins describes procedures for replacing existing VDU connectors with new, improved connectors having better moisture resistance, or—if a drip loop does not exist—with new wire assemblies (jumpers).

Accomplishment of the actions specified in the service bulletins described previously is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Service Bulletins and Proposed AD

Part 1 of the Accomplishment Instructions of the referenced service bulletins describes various interim actions intended to detect or prevent conditions that may lead to a short circuit, until the VDU connectors are replaced with new, improved VDU connectors or wire assemblies, as applicable. However, this proposed AD would not require the interim actions in part 1 of the service bulletins, but only the replacement of the VDU connectors with new, improved connectors or new wire assemblies, as applicable, as described in part 2 of the service bulletins. Mandating the replacement is based on our determination that long-term continued operational safety will be better assured by modifications or design changes to remove the source of the problem, rather than by inspections or other interim actions. Inspections and interim actions may not provide the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with inspections, has led us to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed replacement requirement is consistent with these conditions.

The service bulletins recommend that the part 2 replacement be done as soon as manpower, materials, and facilities are available. We find that such a compliance time would not ensure that the identified unsafe condition is addressed in a timely manner. In developing an appropriate compliance time for this proposed AD, we considered not only the manufacturer's recommendation, but also the degree of urgency associated with addressing the subject unsafe condition. In light of these factors, we find a compliance time of 18 months for completing the proposed actions would be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 280 airplanes of the affected design in the worldwide fleet. The FAA estimates that 28 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per airplane to accomplish the

proposed connector replacement, and that the average labor rate is $60 per work hour. Required parts would cost between $334 and $13,944 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $1,294 and $14,904 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–374–AD.

Applicability: Model 737–600, –700, and "800 series airplanes, as listed in Boeing Service Bulletin 737–23A1169, Revision 2, dated June 21, 2001; Model 757–200 series airplanes, as listed in Boeing Alert Service Bulletin 757–23A0060, Revision 1, dated January 11, 2001; and Model 757–300 series airplanes as listed in Boeing Alert Service Bulletin 757–23A0061, Revision 1, dated January 11, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a short circuit in a video distribution unit (VDU) connector and consequent arcing and damage to wiring within the connector, which could result in damage to adjacent systems or structure and possible smoke or fire in the airplane cabin, accomplish the following:

Model 737–600, –700, and –800 Series Airplanes: Inspections and Follow-on Actions

(a) For Model 737–600, –700, and –800 series airplanes: Within 18 months after the effective date of this AD, replace existing VDU connectors with new, improved connectors, and install a drip loop in the wiring at the new VDU connectors, per part 2 of the Accomplishment Instructions of Boeing Service Bulletin 737–23A1169, Revision 2, dated June 21, 2001.

Model 757–200 and –300 Series Airplanes: Inspections and Follow-on Actions

(b) For Model 757–200 and -300 series airplanes: Within 18 months after the effective date of this AD, replace existing VDU connectors with new, improved connectors, or with new wire assemblies (jumpers), as applicable, per part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 757–23A0060, Revision 1, dated January 11, 2001 (for Model 757–200 series airplanes); or Boeing Alert Service Bulletin 757–23A0061, Revision 1, dated January 11, 2001 (for Model 757–300 series airplanes); as applicable.

Part Installation

(c) As of the effective date of this AD, no person shall install a VDU connector, part number CAMA11W1P, on any airplane.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 4, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–31134 Filed 12–9–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13818; Airspace Docket No. 02–AGL–19]

Proposed Modification of Class E Airspace; Muskegon, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at Muskegon, MI. Standard Instrument Approach Procedures (SIAPS) have been developed for Muskegon County Airport, Muskegon, MI. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the area of the existing controlled airspace for Muskegon County Airport.

DATES: Comments must be received on or before January 22, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket Number FAA–2002–13818/ Airspace Docket No. 02–AGL–19, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2002–13818/Airspace Docket No. AGL–02–19." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Muskegon, MI, for Muskegon County Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Muskegon, MI [Revised]

Muskegon County Airport, MI
(Lat.43°10′10″ N., long.86°14′18″ W.)
Grand Haven Memorial Airpark, MI
(Lat.43°02′02″ N., long.86°11′53″ W.)
Muskegon VORTAC, MI
(Lat.43°10′10″ N., long.86°02′22″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Muskegon County Airport and within 2.6 miles each side of the ILS localizer southeast course extending from the 6.8-mile radius to 10.8 miles southeast of the airport, and within 2.4 miles each side of the localizer northwest course extending from the 6.8-mile radius to 12.1 miles northwest

of the airport, and within 2.8 miles each side of the Muskegon VORTAC 266° radial extending from the 6.8-mile radius to 12.7 miles west of the airport, and within 1.3 miles each side of the Muskegon VORTAC 271° radial extending from the VORTAC to the 6.8-mile radius of the airport and within a 6.3-mile radius of the Grand Haven Memorial Airpark.

* * * * *

Issued in Des Plaines, Illinois on November 13, 2002.

Richard K. Petersen,

Assistant Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–29898 Filed 12–9–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Chapter I, Subchapter E

Negotiated Rulemaking, No Child Left Behind Act of 2001, Public Law 107–110

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of intent to form a negotiated rulemaking committee; request for nominations for tribal representatives for No Child Left Behind Negotiated Rulemaking Committee membership.

SUMMARY: The Secretary of the Interior is announcing the Department's intent to form a Negotiated Rulemaking Committee to develop recommendations for proposed regulations under the No Child Left Behind Act of 2001. The Secretary will select tribal representatives for the committee from among individuals nominated by the representatives of the tribal (contract and grant schools) and tribally operated schools pursuant to this notice. As required by the No Child Left Behind Act, tribal committee representatives selected will, to the maximum extent possible, proportionately reflect students from tribes served by the Bureau of Indian Affairs-funded school system. In addition, the Secretary will consider geographical location, size, and type of school and facility and interests of parents, teachers, administrators, and school board members in selecting tribal committee representatives.

DATES: Nominations for tribal committee membership and comments on the establishment of this Committee, including additional interests other than those identified in this notice, must be postmarked or faxed by January 9, 2003.

ADDRESSES: Send nominations and comments to No Child Left Behind Negotiated Rulemaking Committee Nominations, c/o Starr Penland, Office of Indian Affairs, Bureau of Indian Affairs, U.S. Department of the Interior, MS 3512–MIB, 1849 C Street, NW., Washington, DC 20240, or FAX to Starr Penland at 202–273–0030.

Nominations and comments received will be available for inspection at the address listed above from 7:45 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Catherine Freels, Designated Federal Official, No Child Left Behind Negotiated Rulemaking, U.S. Department of the Interior, Office of the Regional Solicitor, Southwest Region, 505 Marquette Avenue, NW., Albuquerque, New Mexico, 87102, telephone 505–248–5605, FAX 505–248–5623.

SUPPLEMENTARY INFORMATION:

I. Introduction

The purpose of the No Child Left Behind Negotiated Rulemaking Committee is to serve as an advisory committee under the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA) to provide recommendations to the Secretary of the Interior for proposed regulations under Public Law 107–110 for which Congress has authorized rulemaking. (Sections 1116(g), 1124, 1127, sections 1130, 1136, and 1043.) The objectives of the committee are to represent the interests that will be significantly affected by the final regulations, to negotiate in good faith, and to reach consensus, where possible, on recommendations to the Secretary for the proposed regulations.

In order to proceed with negotiated rulemaking, the NRA requires that the Secretary make certain findings when establishing a negotiated rulemaking committee. In addition to finding that there is a need for negotiated rulemaking under the Act, the Secretary has determined that there are a limited number of identifiable interests that will be significantly affected by the rule; there is a reasonable likelihood that a committee can be convened of persons who will adequately represent those interests which would be significantly affected by the rule and who are willing to negotiate in good faith to reach a consensus on the proposed rule; the negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of the final rule; and the Department has adequate resources and is willing to commit such resources, including technical assistance, to the rulemaking committee.

II. Background

Public Law 107–110, section 1138 the No Child Left Behind Act of 2001, requires the Secretary to issue proposed regulations relating to several specific areas of Indian education by June 2003. The Act requires the Secretary to develop these regulations using the negotiated rulemaking process. It also requires the following:

1. The Secretary must form the negotiated rulemaking committee under the Negotiated Rulemaking Act (NRA) and the Federal Advisory Committee Act (FACA) to negotiate and develop recommendations for proposed regulations.

2. Before establishing a negotiated rulemaking committee, the Secretary must conduct regional consultation meetings to obtain guidance on the content of the proposed regulations.

3. In establishing a negotiated rulemaking committee, the Secretary must reflect the unique government-to-government relationship between Indian tribes and the United States.

4. The Secretary must ensure that the committee is comprised only of representatives of the Federal Government and of Indian tribes; select the tribal representatives of the committee from among individuals nominated by the representatives of the tribal and tribally operated schools; and ensure, to the maximum extent possible, that the tribal representative membership on the committee reflects the proportionate share of students from tribes served by the Bureau-funded school system. (The table at the end of this notice shows tribal enrollment in Bureau-funded schools. For each of the 20 tribes with the largest enrollment, the list shows the number of students and the percentage of total enrollment that the tribe represents. For the remaining tribes, the table contains the aggregate enrollment and percentage. We will use these percentages in determining proportional representation.)

The Act specifies six sections that are authorized to be negotiated to produce recommendations for a proposed rule by the June 2003 deadline:

1. Section 1116(g), which covers defining adequate yearly progress which is the essential measurement for determining that schools are providing quality education;

2. Section 1124, which covers establishing separate geographic attendance areas for each Bureau-funded school;

3. Section 1127, which covers establishing a formula for determining the minimum annual amount of funds necessary to fund each Bureau-funded school;

4. Section 1130, which covers establishing a system for the direct funding and support of all Bureau-funded schools under the formula established under section 1127;

5. Section 1136, which covers establishing guidelines to ensure the constitutional and civil rights of Indian students regarding the right to privacy, freedom of religion and expression, and due process in connection with disciplinary actions (suspension and expulsion); and

6. Section 1043, which covers establishing a method for administration of grants under the Tribally Controlled Schools Act of 1988. These sections of the Act are available on the OIEP web site at *http://www.OIEP.bia.edu.*

III. The Concept of Negotiated Rulemaking

The negotiated rulemaking process is fundamentally different from the usual development process for proposed rules. Most proposed regulations are drafted by a Federal agency without public participation and are then published for public comment. Affected parties submit comments supporting their positions during the public comment period without communicating with other affected parties. Under the negotiated rulemaking process, an advisory committee of representatives of the interests that will be significantly affected by the final rule negotiates the provisions of the proposed rule with the agency. Negotiated rulemaking allows the Federal agency and the affected interests represented on the committee to discuss possible approaches to various issues and to negotiate the content of the regulations before a proposed rule is published. It also allows the affected parties to share information, knowledge, expertise, and technical abilities and to resolve their concerns about the rule before publication.

The key principles of negotiated rulemaking are that agreement is by consensus of all the interests and that no one interest or group controls or dominates the process. The NRA defines consensus as the unanimous concurrence among interests represented on a negotiated rulemaking committee, unless the committee itself unanimously agrees to use a different definition. The Secretary, to the maximum extent possible consistent with the Department's legal obligations, will use the consensus of the advisory committee as the basis for the proposed regulations.

A. Facilitation

Experience of various Federal agencies in negotiated rulemaking has demonstrated that using a trained, third-party neutral to facilitate the process will assist all parties during negotiations to identify their real interests, reevaluate their positions, communicate effectively, find common ground, and reach consensus where possible. The Secretary has contracted with Lucy Moore Associates of Santa Fe, New Mexico to assist with the regional consultation meetings prior to the formation of the committee, to provide a report of issues and interests identified at those meetings, and to provide facilitation and training at the first committee meeting. With the approval of the committee, Lucy Moore Associates will facilitate the subsequent committee meetings and provide other services as outlined in the NRA. Lucy Moore has 20 years experience as a mediator and facilitator, working on a wide variety of issues with tribal governments and communities.

B. Establishing the No Child Left Behind Negotiated Rulemaking Committee

The No Child Left Behind Negotiated Rulemaking Committee is an advisory committee under FACA. As required by the Act, the committee will be formed and will operate under the NRA and FACA. The purpose of the negotiated rulemaking committee is to negotiate and recommend to the Secretary the provisions of the proposed regulations. Committee members will not receive pay for their membership, but will be compensated for travel and *per diem* expenses while performing official committee business, consistent with the provisions of 5 U.S.C. 568(c) and Federal travel regulations. Alternates will not be reimbursed for travel and *per diem* unless they are representing a committee member who is unable to attend a meeting. Alternate members will not be permitted to represent those individuals appointed by the Secretary without prior written agreement with the Department.

Because of the tight deadline for publishing proposed rules, committee members must be able to invest considerable time and effort in the negotiated rulemaking process. Committee members must be able to attend committee meetings which will be held at least monthly in the regions which have Bureau-funded schools, work on committee work groups between committee meetings, and negotiate in good faith toward a consensus on issues before the committee. The Secretary is seeking tribal committee representative nominees with demonstrated ability to communicate well with groups or interests they will represent. Because of the complexity of the issues the committee will consider and the need for continuity, the Secretary reserves the right to replace any member who is unable to fully participate in the committee's meetings.

Tribal committee membership must reflect:

- The statutory requirements under the Act for tribal representation of tribes served by Bureau-funded schools; selection from among individuals nominated by representatives of the tribal and tribally operated schools; and tribal committee membership reflecting a proportionate share of students from the tribes served by the Bureau-funded school system; and
- The interests identified through the regional consultation meetings held in August and September 2002, or in comments submitted to the Department by September 15, 2002, pursuant to the **Federal Register** notice at 67 FR 47827 (July 22, 2002) or other interests identified in response to this notice.

The Secretary's decision on the composition of the committee will be based on the requirements of the Act, achieving a balanced committee, whether an interest will be affected significantly by the final rule, whether that interest is already adequately represented by tribal nominees, and whether the potential addition would adequately represent that interest.

C. Administrative and Technical Support

The Office of Indian Education Programs will provide technical support for the committee. A Project Management Office (PMO) will arrange meeting sites and accommodations, ensure adequate logistical support (equipment, personnel, *etc.*) at committee meetings, provide committee members with all relevant information, distribute written materials, ensure timely reimbursement of authorized expenses for committee members, maintain records of the committee's work, and support the committee as otherwise required. OIEP personnel will provide technical support on various Indian Education issues as needed.

D. Training

At the first meeting of the No Child Left Behind Negotiated Rulemaking Committee, a neutral third-party facilitator will provide training on negotiated rulemaking, interest-based

negotiations, consensus-building, and team-building. In addition, at the first meeting committee members will make organizational decisions concerning protocols, scheduling, and facilitation of the committee. All committee members must attend the first meeting.

IV. Interests Identified Through Consultation

Under section 562 of the NRA, "interest" is defined as follows: "interest means, with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner." through 14 regional consultation meetings for OIEP personnel, educators at Bureau schools, and tribal officials, parents, teachers, administrators, and school board members of tribes served by Bureau-funded schools and through written comments, the following interests were identified: Teachers; parents; school board members; students; school staff; school administrators; state departments of education; public school representatives; and federal decision-makers. In addition, it was recommended that different types and sizes and geographic representation of schools should be represented in the appointments from the interest groups above, including: Grant/tribally-controlled schools; off-reservation boarding schools; small schools; and alternative schools. In addition, at each regional consultation meeting there were numerous oral comments giving guidance on proposed regulations.

There may be other interests not yet identified that will be significantly affected by the final rule. The Department is accepting comments until January 9, 2003, identifying other interests that may be significantly affected by the final regulations.

V. Request for Nominations

Under the requirements stated in the Background section, the Secretary invites representatives of tribal (contract and grant schools) and tribally operated schools to nominate tribal representatives to serve on the committee and tribal alternates to serve if the representative is unavailable. Because committee membership should reflect the diversity of tribal interests, representatives of tribal (contract and grant schools) and tribally operated schools should nominate representatives who will:

1. Represent the interests of students, parents, teachers, school board members, and school administrators they are nominated to represent;
2. Reflect the spectrum of grant/tribally-controlled schools, off-reservation boarding schools, various size schools, and alternative schools in the geographic regions;
3. Communicate with the constituencies they represent; and
4. Participate fully in the committee's activities.

VI. Submitting Nominations

The Secretary will consider only nominations for tribal committee representatives nominated through the process identified in this **Federal Register** notice. Nominations received in any other manner or for Federal representatives will not be considered. Only the Secretary may nominate Federal employees to the committee.

Nominations must include the following information about each nominee for tribal committee member:

1. the nominee's name, business address, telephone and fax number (and e-mail address, if applicable);
2. The tribal interest(s) to be represented by the nominee (teacher, parent, school administrators, or school board member) and whether the nominee will represent the interest of grant/tribally-controlled schools, off-reservation boarding schools, small or large school or alternative schools in a specific geographic region (see section IV of this notice) or other interest related to this rulemaking, as the tribe may designated; and
3. A resume reflecting the nominee's qualifications and experience in Indian education (including being a parent of a student attending a Bureau-funded school) to adequately represent the interest(s) identified in (2) above.

To be considered, nominations must be received by the close of business on January 9, 2003, at the location indicated in the **ADDRESSES** section.

Dated: December 3, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

Proportionate share is reflected in the percentages of students from the tribes served by Bureau-funded schools. The percentages of the 20 tribes with the most students is as follows:

Tribe	Student count: student year 01–02	State	Percent
Eastern Navajo	4,665	NM	
Western Navajo	4,362	AZ	
Chinle Navajo	3,579	AZ	
Ft. Defiance Navajo	3,361	AZ	
Shiprock, Navajo	2,379	NM	
Total Navajo	18,346		38.09
Oglala Sioux	3,296	SD	6.84
Turtle Mt. Chippewa	2,146	ND	4.46
MS Choctaw	1,889	MS	3.92
Cheyenne River Sioux	1,377	SD	2.86
Hopi	1,321	AZ	2.74
Eastern Cherokee	1,156	NC	2.40
Rosebud Sioux	1,008	SD	2.09
Standing Rock Sioux	948	SD/ND	1.97
White Mt. Apache	911	AZ	1.89
Gila River	864	AZ	1.79
Tohono O'odham	768	AZ	1.59
Pueblo of Laguna	562	NM	1.17
Sisseton Wahpeton Sioux	541	SD	1.12
Three Affiliated	497	ND	1.03
Spirit Lake Sioux	485	ND	1.01
Mescalero Apache	441	NM	.92
Pueblo of San Felipe	418	NM	.87

Tribe	Student count: student year 01–02	State	Percent
Ramah Navajo	393	NM	.82
Crow Creek Sioux	389	SD	.81
Total for 20 tribes	37,756		78.39
Other tribes	10,410		21.61

[FR Doc. 02–31121 Filed 12–9–02; 8:45 am]
BILLING CODE 4310–6W–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Houston–Galveston–02–009]

RIN 2115–AA97

Security Zones; Captain of the Port Houston-Galveston Zone

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is issuing a supplemental notice of proposed rulemaking for a notice of proposed rulemaking published June 11, 2002 in which we proposed to establish security zones within the Ports of Houston, Morgan's Point, Bayport, Texas City, and Freeport, Texas. These zones are needed to protect waterfront facilities, persons, and vessels from subversive or terrorist acts. Entry of persons and vessels into these zones would be prohibited except as authorized by this rule or by the Captain of the Port Houston-Galveston.

DATES: Comments and related material must reach the Coast Guard on or before February 10, 2003.

ADDRESSES: You may mail comments and related material to Marine Safety Office Houston-Galveston, 9640 Clinton Drive, Galena Park, TX, 77547. Marine Safety Office Houston-Galveston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Houston-Galveston between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) George Tobey, Marine Safety Office Houston-Galveston, Texas, Port Waterways Management, at (713) 671–5100.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP Houston-Galveston—02–009], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Houston-Galveston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. The President has continued the national emergencies he declared following those attacks (67 FR 58317 (Sep. 13, 2002) (continuing the emergency declared with respect to terrorist attacks); 67 FR 59447 (Sep. 20, 2002) (continuing emergency with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the terrorist attacks (E.O. 13,273, 67 FR 56215 (Sep. 3, 2002) (security of U.S. endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations).

In response to these terrorist acts, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary. The Captain of the Port Houston-Galveston established temporary security zones around highly industrialized areas within the Captain of the Port Houston-Galveston Zone. These zones were published on June 11, 2002 [COTP Houston-Galveston—02–011] (67 FR 39851) and November 5, 2002 [COTP Houston-Galveston—02–018] (67 FR 67301).

On June 11, 2002, we published an NPRM entitled "Security Zones; Captain of the Port Houston-Galveston Zone" [COTP Houston-Galveston—02–009] (67 FR 39919). The NPRM proposed to replace the existing temporary security zones with permanent zones. The comment period for the NPRM expired on August 12, 2002. We received only two comments on this rule and both of these comments asked for information on how to comment on the proposed rule. As a result of these comments and to reflect changes in the size of the security zones proposed, the Coast Guard is issuing a supplemental notice of proposed rulemaking.

Discussion of Proposed Rule

Vessels operating within the Captain of the Port Houston-Galveston Zone are potential targets of terrorist attacks, or platforms from which terrorist attacks may be launched upon other vessels, waterfront facilities and adjacent population centers. The Ports of Houston, Morgan's Point, Bayport, Texas City, and Freeport are all heavily industrialized areas with general cargo facilities, container terminals, and bulk liquid transfer facilities.

The proposed rule establishes security zones around areas concentrated with commercial facilities considered critical to national security. These facilities are located in narrow manmade harbors or along narrow depth-restricted ship channels. A terrorist attack within these security zones could have a significant adverse impact on national security and the national economy.

The proposed security zones are as follows:

(1) *Houston, Texas.* The size of this proposed security zone remains unchanged from the NPRM. It includes the Houston Ship Channel and all associated turning basins, bounded by a line drawn between Houston Ship Channel Light 132 and Houston Ship Channel Light 133 west to the T & N Rail Road Swing Bridge at the entrance to Buffalo Bayou, including all waters adjacent to the ship channel from shoreline to shoreline and the first 200 yards of connecting waterways.

(2) *Morgan's Point, Texas.* This proposed security zone is being updated to reflect a more accurate position for Houston Ship Channel Light 91. The Morgan's Point security zone includes the water of Barbours Cut Ship Channel and Turning Basin west of a line drawn between Junction Light "Barbours Cut" and Houston Ship Channel Light 91.

(3) *Bayport, Texas.* The proposed security zone for Bayport is being increased to create a zone slightly larger than that published in the NPRM. This will have a minimal impact on vessel traffic because the northern portion of the ship channel remains open. The Bayport security zone includes all waters of the Port of Bayport, Bayport Ship Channel and Bayport Turning Basin south of latitude 29°36′45″ N and west of the Bayport Ship Channel Light 9.

(4) *Texas City, Texas.* The size of this proposed security zone is being increased to provide protection for facilities which were previously just outside of the zone. The Texas City security zone includes all waters of the Port of Texas City Channel, Turning Basin and Industrial Canal south and west of a line drawn from Texas City Channel Light 19 through Cut B Inner Range Front Light and terminating on land in position 29°23′16″ N, 94°53′15″ W.

(5) *Freeport, Texas.* The proposed security zones for Freeport remain the same as in the NPRM. The Dow Barge Canal security zone includes all waters of canal bounded by its junction with the Intracoastal Waterway, by a line drawn between an eastern point at latitude 28°56′48″ N, 95°18′20″ W, and a western point at 28°56′40″ N, 95°18′33″ W. The Brazos Harbor security includes all waters of the harbor west of a line drawn between the northern point at 28°56′27″ N, 95°20′00″ W, and the southern point 28°56′09″ N, 95°20′00″ W at its junction with the Old Brazos River Cut.

This proposed rule will increase the level of security within the ports by reducing the number of vessels transiting the industrialized areas and limiting access to only those vessels that are conducting business with port industries. It restricts entry into the zones to all vessels except vessels engaged or assisting in commerce with waterfront facilities, vessels operated by port authorities, vessels operated by waterfront facilities within the security zones, and vessels operated by federal, state, county or municipal agencies. All other vessels having a need to enter these zones but prohibited from doing so under this rule, must obtain express permission from the Captain of the Port Houston-Galveston or his designated representative prior to entry. Restricting access to these areas reduces potential methods of attack on vessels, waterfront facilities and adjacent population centers located within these zones.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The impacts on routine navigation are expected to be minimal. Due to the highly industrialized nature of these zones they are of limited interest to recreational boaters. Vessels engaged in or assisting in, commerce with facilities located within a zone or having the express permission of the Captain of the Port Houston-Galveston, are authorized entry under this rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. These security zones will not have an impact on a substantial number of small entities because this rule will not obstruct the regular flow of commercial vessel traffic conducting business within the zones. Other vessels may seek permission for entry into the zones from the Captain of the Port Houston-Galveston. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG George Tobey, Marine Safety Office Houston-Galveston, Texas, Port Waterways Management, at (713) 671–5100.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.814 to read as follows:

§ 165.814 Security Zones; Captain of the Port Houston-Galveston Zone.

(a) *Location.* The following areas are designated as security zones:

(1) *Houston, TX.* The Houston Ship Channel and all associated turning basins, bounded by a line drawn between Houston Ship Channel Light 132 (LLNR–24445) and Houston Ship Channel Light 133 (LLNR–24450) west to the T & N Rail Road Swing Bridge at the entrance to Buffalo Bayou, including all waters adjacent to the ship channel from shoreline to shoreline and the first 200 yards of connecting waterways.

(2) *Morgan's Point, TX.* The Barbours Cut Ship Channel and Turning Basin containing all waters west of a line drawn between Junction Light "Barbours Cut" 29°41′12″ N, 94°59′12″ W (LLNR–23525), and Houston Ship Channel Light 91, 29°41′00″ N, 94°59′00″ W (LLNR–23375) (NAD 1983).

(3) *Bayport, TX.* The Port of Bayport, Bayport Ship Channel and Bayport Turning Basin containing all waters south of latitude 29°36′45″ N, and west of the Bayport Ship Channel Light 9 (LLNR–23295) (NAD 1983).

(4) *Texas City, TX.* The Port of Texas City Channel, Turning Basin and Industrial Canal containing all waters bounded by the area south and west of a line drawn from Texas City Channel Light 19 (LLNR 24180) through Cut B Inner Range Front Light (LLNR 24765), and terminating on land in position 29°23′16″ N, 94°53′15″ W (NAD 1983).

(5) *Freeport, TX.* (i) The Dow Barge Canal containing all waters bounded by its junction with the Intracoastal Waterway, by a line drawn between the eastern point at latitude 28°56′48″ N, 95°18′20″ W, and the western point at 28°56′40″ N, 95°18′33″ W (NAD 1983).

(ii) The Brazos Harbor containing all waters west of a line drawn between the northern point at 28°56′27″ N, 95°20′00″ W, and the southern point 28°56′09″ N, 95°20′00″ W (NAD 1983) at its junction with the Old Brazos River Cut.

(b) *Regulations.* (1) Entry into these zones is prohibited except for the following:

(i) Commercial vessels operating at waterfront facilities within these zones;

(ii) Commercial vessels transiting directly to or from waterfront facilities within these zones;

(iii) Vessels providing direct operational/logistic support to commercial vessels within these zones;

(iv) Vessels operated by the appropriate port authority or by facilities located within these zones; and

(v) Vessels operated by federal, state, county, or municipal agencies.

(2) Other persons or vessels requiring entry into a zone described in this section must request express permission to enter from the Captain of the Port Houston-Galveston, or designated representative.

(3) To request permission as required by these regulations contact "Houston Traffic" via VHF Channels 11½ or via phone at (713) 671–5103.

(4) All persons and vessels shall comply with the instructions of the Captain of the Port Houston-Galveston and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: November 26, 2002.

K. S. Cook,

Captain, U.S. Coast Guard, Captain of the Port Houston-Galveston.

[FR Doc. 02–31149 Filed 12–9–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition to List the Yosemite Toad

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding for a petition to list the Yosemite toad (*Bufo canorus*) under the Endangered Species Act of 1973, as amended (Act). We find that the petitioned action is warranted, but precluded by higher priority listing actions. We will develop a proposed rule to list this species pursuant to our Listing Priority System (48 FR 43098). Upon publication of this notice of 12-month petition finding, this species will be added to our candidate species list.

DATES: The finding announced in this document was made on November 27, 2002. Comments and information may be submitted until further notice.

ADDRESSES: You may send data, information, comments, or questions concerning this finding to the Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825. You may inspect the petition, administrative finding, supporting information, and comments received, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Susan Moore at the Sacramento Fish and Wildlife Office (*see* **ADDRESSES** above) (telephone 916/414–6600; facsimile 916/414–6712).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Threatened and Endangered Species containing substantial scientific and commercial information that listing may be warranted, we conduct a status review and make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other higher priority proposals. Section 4(b)(3)(C) of the Act requires that petitions for which a requested action is found to be warranted but precluded should be treated as though resubmitted on the date of such finding, *i.e.*, requiring a subsequent finding to be made within 12 months. Such 12-month findings are to be published promptly in the **Federal Register**.

Section 4(b) of the Act states that we may make warranted but precluded findings only if we can demonstrate that: (1) An immediate proposed rule is precluded by other pending actions, and (2) expeditious progress is being made on other listing actions. Due to the large amount of litigation over critical habitat, we are working on numerous court orders and settlement agreements. Complying with these orders and settlement agreements will consume all of our listing budget for fiscal year 2003. However, we can continue to place species on the candidate species list, as that work activity is funded separately from our listing program.

Taxonomy

The Yosemite toad was originally described by Camp (1916), and given the common name Yosemite Park toad. Subsequent detections of this species indicated that its range extends beyond the boundaries of Yosemite National Park, and Grinnel and Storer (1924) referred to this species as the Yosemite toad.

Similarities in appearance of the Yosemite toad and the western toad (*Bufo boreas*) were noted by Camp (1916). Based on general appearance, structure and distribution, it appears that these two species are closely related (Myers 1942; Stebbins 1951; Mullally 1956; Savage 1958). The close relationship between *B. boreas* and *B. canorus* is also supported by studies of bone structure (Tihen 1962a,b), and by the survivorship of hybrid toads produced by artificially crossing the two species (Blair 1959, 1963, 1964).

Camp (1916), using characteristics of the skull, concluded that *Bufo boreas*, *B. canorus*, and *B. nestor* (extinct) are more closely related to each other than to other North American toads, and that these species comprise the most primitive group of *Bufo* in North America. Blair (1972) grouped *B. boreas*, *B. canorus*, black toads (*B. exsul*), and Amargosa toads (*B. nelsoni*), together taxonomically as the "boreas group."

Feder (1977) found *Bufo canorus* to be genetically distinctive based on samples from a limited geographic range. However, Yosemite toads are thought to hybridize with western toads in the northern part of their range (Karlstrom 1962; Morton and Sokolski 1978). Shaffer *et al.* (2000) performed genetic analysis of a segment of mitochondrial DNA from 372 Yosemite toads found in Yosemite and Kings Canyon National Parks. Their data showed significant genetic differences in Yosemite toads between the two National Parks. They also found significant genetic variability within Yosemite National Park between drainages, and within both Parks between breeding sites. Their data also indicated that black toads are a subgroup within Yosemite toads rather than a separate species. Stephens (2001) examined mitochondrial DNA from 8 Yosemite toads (selected from the samples examined by Shaffer *et al.* (2000) to represent the range of variability found in that study) and 173 western toads. Stephens' data indicate that *Bufo* in the Sierra Nevada occur in northern and southern evolutionary groups, each of which include both Yosemite and western toads (*i.e.*, toads of both species are more closely related to each other within a group than they are to members of their own species in the other group). Further genetic analysis of Yosemite toads sampled from throughout their range, and from other toad species surrounding their range is needed to fully understand the evolutionary history and appropriate taxonomic status of the Yosemite toad (Stephens 2001).

Description and Natural History

Yosemite toads are moderately sized, with a snout-urostyle length (measured from the tip of the snout to the posterior edge of the urostyle, a bony structure at the posterior end of the spinal column) of 30 to 71 millimeters (mm) (1.2 to 2.8 inches (in)) with rounded to slightly oval paratoid glands (a pair of glands, one on each side of the head, that produce toxins) (Karlstrom 1962). The paratoid glands are less than the width of a gland apart (Stebbins 1985). A thin mid-dorsal (middle of the back) stripe is present in juveniles of both sexes. The stripe disappears or is reduced with age, and more quickly in males (Jennings and Hayes 1994). The iris of the eye is dark brown with gold iridophores (reflective pigment cells) (Jennings and Hayes 1994). Males are smaller than females, with less conspicuous warts (Stebbins 1951). Differences in coloration between males and females are more pronounced in the Yosemite toad than in any other North American frog or toad (Stebbins 1951). Females have black spots or blotches edged with white or cream that are set against a grey, tan or brown background color (Jennings and Hayes 1994). Males have a nearly uniform dorsal coloration of yellow-green to olive drab to darker greenish brown (Jennings and Hayes 1994). Karlstrom (1962) suggested that differences in coloration between the sexes evolved because they provide the Yosemite toad with protective coloration. The uniform coloration of the adult male matches and blends with the silt and grasses that they frequent during the breeding season, whereas the young and females with disruptive coloration tend to use a wider range of habitats with broken backgrounds; thus coloration may help conceal individual toads from predators.

Yosemite toads overwinter in rodent burrows (Jennings and Hayes 1994). They emerge from hibernation as soon as snowmelt pools form near their overwintering sites (Karlstrom 1962; Kagarise Sherman 1980; Jennings and Hayes 1994). Observed emergence times range from early May to the middle of June (Kagarise Sherman 1980).

Males form breeding choruses, and breeding begins soon after emergence (Jennings and Hayes 1994). Males call during the day and early evening (Stebbins 1951). The breeding call is a mellow long sustained trill with 10 to more than 20 notes (Stebbins 1951). Males have been observed to attack other males to prevent them from calling, to amplex (amplexus is a characteristic clasping of the female by the male during mating) other toads in trial and error search for females, and to attack amplexed pairs and attempt to take over the female (Kagarise Sherman 1980). In studies by Kagarise Sherman (1980), males that mated successfully were more likely to be larger, have arrived at breeding sites earlier, and have stayed at breeding sites longer.

Eggs are typically deposited in shallow water with silty bottoms (Karlstrom 1962). Ideal habitat for egg development is between 2–4 centimeters (cm) (0.8–1.6 in) deep, and eggs do not survive in water deeper than 6 cm (2.4 in) (David Martin, University of California, Santa Barbara, pers. comm. 2002). Eggs are deposited in gelatinous strings (Stebbins 1951; Karlstrom and Livezey 1955) which are intertwined with vegetation and buried in silt (Karlstrom 1962). Eggs are relatively large (2.1 mm (0.08 in) average diameter) and brownish black to jet black over the upper three quarters, and gray to tannish gray over the lower one quarter (Jennings and Hayes 1994). Females are estimated to deposit between 1,000 to 1,500 eggs (Kagarise Sherman 1980).

When not breeding, adults feed in meadow or moist upland habitat until they hibernate (Kagarise Sherman 1980; D. Martin, pers. comm. 2002). Although they are largely diurnal (active during the day) (Jennings and Hayes 1994), especially while breeding, recent evidence shows that they primarily feed and move at night (D. Martin, pers. comm. 2002).

Eggs generally hatch within 3 to 6 days depending on water temperature (Jennings and Hayes 1994), although they may take over 15 days (Kagarise Sherman 1980). Tadpoles typically transform within 40 to 50 days after fertilization. Tadpoles are not known to overwinter (Jennings and Hayes 1994), although immature tadpoles have been observed well into September (Mullally 1956). Tadpoles tend to congregate (Brattstrom 1962) and use warm shallow water during the day (Cunningham 1963), then retreat to deeper water at night (Mullally 1953). The tadpoles are uniformly black, the snout is blunt, the intestines are scarcely or not at all visible, and the dorsal fin is transparent and marked with few relatively large melanophores (dark-colored pigment cells) (Stebbins 1951). Tadpoles measure 10 to 37 mm (0.39 to 1.45 in) in length (Stebbins 1951, 1985).

Newly metamorphosed juveniles are around 10 mm (0.39 in) in snout-urostyle length (Jennings and Hayes 1994). Some individuals may reproduce at 2 years of age, but growth is slow in both sexes and most individuals require more time to reach maturity (Jennings and Hayes 1994). Males have been observed to first breed at 3 to 5 years and females at 4 to 6 years (Kagarise Sherman 1980; Kagarise Sherman and Morton 1984). Females probably do not breed every year (Morton 1981). Yosemite toads are long lived, with females documented as reaching 15 years old and males 12 years old (Kagarise Sherman and Morton 1984).

Kagarise Sherman (1980) observed one female Yosemite toad move 270 meters (m) (885 feet (ft)) in 65 days and one male move 150 m (492 ft) in 9 days. Toads in her study generally moved 150 to 230 m (492 to 755 ft) each spring from their hibernation sites to their breeding sites. In studies in which toads were repeatedly located using radiotelemetry equipment (D. Martin, pers. comm. 2002), adult toads were observed to moving up to approximately 610 m (2,000 ft) in a single night. During the active season (spring-summer), females generally spend less time at, and travel further away from, breeding ponds than males (Kagarise Sherman 1980). Young of year metamorphs (young toads that have just transformed from tadpoles) probably hibernate closer to the ponds in which they were born than adult toads (Kagarise Sherman 1980). Stebbins (1951) suggested that isolation or semi-isolation of subpopulations of Yosemite toads is likely because they are unlikely to cross large, dry, forested areas between meadows.

Adult and juvenile Yosemite toads are lie-and-wait predators. They remain motionless until a prey item approaches, then strike and capture the prey with their sticky tongues (Kagarise Sherman and Morton 1984). The examined stomach contents of Yosemite toads have included beetles, ants, centipedes, spiders, dragonfly larvae, mosquitos, and moth and butterfly larvae (Grinnel and Storer 1924; Mullally 1953). They will also prey on flies, bees, wasps, millipedes (Kagarise Sherman and Morton 1984), spider mites, crane flies, springtails, owl flies, and damsel flies (Martin 1991).

Yosemite toad tadpoles graze on detritus and plant material such as algae and will also eat other items such as lodgepole pine pollen. Yosemite toad tadpoles can also be carnivorous and will eat other Yosemite toad tadpoles (see Natural Mortality, below), Pacific chorus frog (previously Pacific treefrog) (*Pseudacris regilla*, previously *Hyla regilla*) tadpoles, diving beetle larvae, and dead mammals (Martin 1991).

Habitat Requirements

Yosemite toads use meadow habitats surrounded by lodgepole pine (*Pinus contorta*) or whitebark pine (*P. albicaulá*) (Camp 1916). They are most likely to be found in areas with thick meadow vegetation or patches of low willows (*Salix* spp.) (Mullally 1953). They are most often seen near water, but only occasionally in water (Mullally and Cunningham 1956), and use rodent burrows for overwintering and probably for temporary refuge during the summer (Jennings and Hayes 1994). They also use spaces under surface objects, including logs and rocks, for temporary refuge (Stebbins 1951; Karlstrom 1962). Breeding habitat includes the edges of wet meadows and slow-flowing streams (Jennings and Hayes 1994). Tadpoles have also been observed in shallow ponds and shallow areas of lakes (Mullally 1953). Moist upland areas such as seeps and springheads are important summer non-breeding habitats for adult toads (D. Martin, pers. comm. 2002).

Natural Mortality

Mountain yellow-legged frogs (*Rana muscosa*) (Mullally 1953), aquatic dragonfly larvae (Jennings and Hayes 1994), diving beetles (*Dytiscus* spp.) (Kagarise Sherman and Morton 1984), and possibly larval long-toed salamanders (*Ambystoma macrodactylum*) (Jennings and Hayes 1994) prey on the young life stages of Yosemite toads. American robins

(*Turdus migratorius*) prey on Yosemite toad tadpoles (Jennings and Hayes 1994). Garter snakes (*Thamnophis spp.*) have been observed to eat yearling Yosemite toads (D. Martin, pers. comm. 2002), and are probably the most significant predator on tadpoles and metamorphs (Karlstrom 1962; Jennings and Hayes 1994). California gulls (*Larus californicus*) and Clark's nutcrackers (*Nucifraga columbiana*) have been observed killing adult toads (Mulder *et al.* 1978; Kagarise Sherman 1980; Kagarise Sherman and Morton 1993). Cannibalism has been recorded in Yosemite toad tadpoles (Martin 1991; Chan 2001). The tadpoles have not been observed to kill each other, but they do wound each other in feeding frenzies, and have been observed eating dead tadpoles of their own species (Martin 1991; Chan 2001; D. Martin, pers. comm. 2002).

Dessication of breeding habitat before tadpoles metamorphose is a major cause of mortality (Zeiner *et al.* 1988; Kagarise Sherman and Morton 1993; Jennings and Hayes 1994). Eggs are sometimes killed by freezing (Kagarise Sherman and Morton 1984). Fungal growth has also been observed on eggs (Kagarise Sherman 1980), but it is unclear whether the fungus causes mortality or grows after the eggs die from other causes.

Toads may die of exposure when crossing snow or ice (Kagarise Sherman 1980). Toads that emerge from hibernation early may suffer from exposure and inability to feed if there are late-season storms (Kagarise Sherman 1980).

Adult toads of either sex may drown or asphyxiate when multiple males attempt to amplex a single female. Kagarise Sherman (1980) documented the death of a single female in this manner, and found three additional females and two males that may also have died during multiple amplexus.

Historic and Current Range and Status

The historic range of Yosemite toads in the Sierra Nevada occurs from the Blue Lakes region north of Ebbetts Pass (Alpine County) to 5 kilometers (km) (3.1 miles (mi)) south of Kaiser Pass in the Evolution Lake/Darwin Canyon area (Fresno County) (Jennings and Hayes 1994). The historic elevational range of Yosemite toads is 1,460 to 3,630 m (4,790 to 11,910 ft) (Stebbins 1985).

Pre-1990 historic records of Yosemite toad localities are primarily from museum records and incidental sightings. Systematic habitat surveys looking specifically for Yosemite toad populations have only been conducted since the early 1990s. Therefore, it is impossible to know how many populations have declined or become extinct, because we do not know how many populations originally existed. Sites first documented after 1990 are useful to illustrate the current range of the species, but are not useful in discussing its decline, due to lack of baseline data. Based on the number of historic sites that are no longer occupied (*see* below), it is possible that many populations have disappeared without ever having been documented.

Since 1990, 292 sites throughout Yosemite toads' historic range have been surveyed, and 229 sites have been confirmed to be occupied. Known Yosemite toad locations by area is based on the most comprehensive dataset on Yosemite toad localities available, which was collected by the U.S. Forest Service (USFS) for use in their conservation assessment of the species (as required by the Sierra Nevada Forest Plan Amendment (U.S. Department of Agriculture (USDA) 2001f)). This data set was compiled by the USFS and came from various sources, including University of California and California State University researchers, the California Academy of Science, the National Park Service (NPS), the U.S. Geological Survey, the California Department of Fish and Game (CDFG), and the California Natural Diversity Data Base. The following discussion on the number of Yosemite toad sites should be considered an approximation, based on best available information, because surveys are ongoing and some sites may have not yet been reported and added to the database. Also, multiple sightings in close proximity to each other have been considered as a single site for the purposes of this discussion.

The historic and current acreage of Yosemite toad habitat (wet meadows, shallow breeding waters, and moist uplands) within the historic range of Yosemite toads is unknown, although these habitats have been degraded and may be decreasing in area as a result of conifer encroachment and livestock grazing (*see* Factor A below). The vast majority of land within the range of the Yosemite toad is federally managed, with 919,011 hectares (ha) (2,270,918 acre (ac)) (99 percent of the range) on USFS, NPS, and Bureau of Land Management lands. Much of this land is within designated wilderness. The remaining land within the species' range is a mix of State, local government, and private lands.

The following known site discussion is based on the California Wildlife Habitat Relations range map, obtained as a geographic information system data from CDFG for the species, although this map includes large areas of unsuitable habitat. However, this map is the best available range map for the species, although the species has been detected in a few locations outside its boundaries, primarily at the southern end of the range. The site specific information is based on localized studies that do not represent a comprehensive range-wide assessments of the species status.

(1) Yosemite toads are known from three sites in the southeast corner of the El Dorado National Forest where it borders with the Toiyabe and Stanislaus National Forests. Two of these three sites have been confirmed as occupied since 1990.

(2) Yosemite toads are known from 25 locations along the west side of the Toiyabe National Forest, 15 of which have been confirmed as occupied since 1990.

(3) Yosemite toads are known from 28 sites on the Stanislaus National Forest, 22 of which have been confirmed as occupied since 1990. These sites occur primarily in two groups, one on the northern edge of the forest, where it borders with the El Dorado and Toiyabe National Forests, and the other in a band extending west across the Stanislaus National Forest, from its southeast border with Yosemite National Park and the Toiyabe National Forest.

(4) Yosemite toads are known from 49 sites along the west side of Inyo National Forest, 35 of which have been confirmed as occupied since 1990.

(5) Yosemite toads are known from 91 locations throughout Sierra National Forest, of which 84 have been confirmed as occupied since 1990.

(6) Yosemite toads are known from 78 sites scattered throughout Yosemite National Park, 57 of which have been confirmed occupied since 1990.

(7) Yosemite toads are known from 18 sites throughout the northern half of Kings Canyon National Park, 14 of which have been confirmed as occupied since 1990.

It is impossible to fully determine the extent to which Yosemite toads have declined, because baseline data on the number and size of historic populations are few. The following studies, which reassess the current status of historically documented populations, give the most insight into the species' decline.

Jennings and Hayes (1994) reviewed the current status of Yosemite toads using museum records of historic and recent sightings, published data, and unpublished data and field notes from biologists working with the species. They mapped 55 historically documented general localities throughout the range of the species where the toad had been present (based on 144 specific sites), and found that Yosemite toads are now absent from 29 of those localities, a decline of over 50 percent.

In 1990, David Martin surveyed 75 sites throughout the range of the Yosemite toad for which there are historic records of the species' presence, and found that 47 percent of those sites showed no evidence of any life stage of the species (Stebbins and Cohen 1997), a decline of about 63 percent.

Grinnell and Storer (1924) surveyed for vertebrates at 40 sites along a 143-km (89-mi) west-to-east transect across the Sierra Nevada, through Yosemite National Park, in 1915 and 1919. Drost and Fellers (1996) conducted more thorough surveys, specifically for amphibians, at 38 of those sites in 1992. They found that Yosemite toads were absent from 6 of 13 sites in which they had been found in the original survey. At sites where Drost and Fellers (1996) found Yosemite toads, the toads occurred in low numbers (only 15 total adult and juvenile toads at all sites), with documented declines in relative abundance in three of the Grinnel and Storer (1924) sites, as based on their generalized abundance categories such as rare, common, and abundant. Therefore, the species has declined or disappeared completely from at least 9 of 13 (69 percent) of the Grinnel and Storer (1924) sites.

The only long-term study on the size of a population of Yosemite toads indicates that the population has declined dramatically. Kagarise Sherman and Morton (1993) studied Yosemite toads at Tioga Pass Meadow (Mono County, California) intensively from 1971 to 1982, and made less systematic observations from 1983 to 1991. To estimate the adult population size, they captured and marked toads entering breeding pools. From 1974 to 1978, an average of 258 males entered the breeding pools. In 1979, the number of male toads began to decline, and by 1982, the number of males had dropped to 28. During the same time period, the number of females varied between 45 and 100, but there was no obvious trend in number observed. In periodic surveys between 1983 and 1991, it appeared that both males and females continued to decline, and breeding activity became sporadic. In 1990, the researchers were only able to locate one female, two males, and four to six egg masses. In 1991, they found only one male and two egg masses. The researchers also surveyed non-breeding habitat in the same area and found similar population declines. To date, the population at Tioga Pass Meadow has not recovered (Roland Knapp, Sierra Nevada Aquatic Research Laboratory, pers. comm. 2002).

Kagarise Sherman and Morton (1993) also conducted occasional surveys of six other populations in the eastern Sierra Nevada. Five of these populations showed serious, apparently long-term, declines between 1978 and 1981, while the sixth population held relatively steady until the final survey in 1990, at which time it dropped precipitously. In 1991, E.L. Karlstrom revisited the site at which he had studied a breeding population of Yosemite toads from 1954 to 1958, just south of Tioga Pass Meadow within Yosemite National Park (Tuolumne County, California), and found no evidence of toads or signs of breeding (Kagarise Sherman and Morton 1993).

Previous Federal Action

On April 3, 2000, we received a petition to list the Yosemite toad as endangered from the Center for Biological Diversity and Pacific Rivers Council. On October 12, 2000, we announced a 90-day petition finding in the **Federal Register** (65 FR 60607) concluding that the petition presented substantial scientific or commercial information to indicate that the listing of the Yosemite toad may be warranted.

This 12-month finding is made in accordance with a settlement agreement which requires us to complete a finding by November 30, 2002 (*Center for Biological Diversity and Pacific Rivers Council* v. *Norton and Jones*, No. C–01–2106 (N.D. Calif.)).

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act describe the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). In the case of the Yosemite toad, the specific relationship between the potential threats under each factor and the continued decline of the species remains unclear. These factors, and their application to the Yosemite toad, are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. The following discussion presents several threats to the species' habitat or range.

Grazing

Livestock grazing began in Sierra Nevada meadow and riparian areas with the settlement of California by the Spanish in the mid-1700s, and rose to a level that caused significant impacts in the mid-1800s following the gold rush (Menke *et al.* 1996). In general, livestock grazing within the range of the Yosemite toad was at a high, but undocumented, level until the establishment of National Parks (beginning in 1890) and National Forests (beginning in 1905) (Menke *et al.* 1996) in the Sierra Nevada area. Within established National Parks, livestock grazing was gradually eliminated, but packstock grazing was permitted and has increased over time (Menke *et al.* 1996).

Over time within established National Forests, the amount of grazing was gradually reduced, better documented, and the type of animals grazed shifted from predominantly sheep to cattle and packstock (Menke *et al.* 1996). In general, livestock grazing within the National Forests in the Sierra Nevada has continued with gradual reductions since the 1920s, except for an increase during World War II (Menke *et al.* 1996). Currently, there are numerous active and inactive livestock grazing allotments on the five National Forests that occur within the range of the Yosemite toad. Approximately 71 active and 36 inactive allotments occur across the Eldorado, Toiyabe, Inyo, Stanislaus, and Sierra National Forests (Laura Conway, Stanislaus National Forest, pers. comm. 2002; Holly Eddinger, Sierra National Forest, *in litt.*, 2002; Aimee Smith, Sierra National Forest, *in litt.*, 2002).

Since 1970, the continuing decrease in grazing permitted on the National Forests has been motivated by concern for resource protection (Menke *et al.* 1996). National Forests have conducted projects to minimize or rehabilitate areas impacted by grazing, including exclosures around some sensitive areas, erosion control structures, and replanting of riparian species.

Packstock grazing is the only grazing currently allowed in National Parks, and it is also allowed in National Forests. There has been very little monitoring of the impacts of packstock use in the Sierra Nevada, which increased after World War II due to increased road access, and increases in leisure time and disposable income (Menke *et al.* 1996). The recreational use of packstock and horsebackriding in the Sierra Nevada can be expected to increase further as human populations increase (State of California 2001; USDA 2001g).

Mule deer (*Odocoileus hemionus*) and bighorn sheep (*Ovis canadensis*) have always occurred within the habitats used by the Yosemite toad (Ingles 1965).

However, grazing by dense groups of large herbivores such as cattle and horses is not a natural situation in those habitats, and these habitats are vulnerable to degradation. Because Yosemite toad breeding habitat is shallow, that habitat is very vulnerable to changes in hydrology caused by grazing (D. Martin, pers. comm. 2002; R. Knapp, pers. comm. 2002).

Direct and indirect mortality of Yosemite toads have occurred as a result of livestock grazing. Cattle have been observed to trample Yosemite toad eggs and disturb eggs such that they fall into hoofprints or other deeper water and die. Metamorph Yosemite toads have been observed to fall into cattle hoofprints or to be defecated on by cattle, become trapped, and die, and adult Yosemite toads have been observed trampled to death in cattle hoofprints (D. Martin, pers. comm. 2002). Preliminary research data indicate that Yosemite toad tadpoles in grazed areas take longer to metamorphose and produce smaller metamorphs than those in areas being rested from grazing, presumably due to high bacteria and nutrient levels, causing low water quality in the grazed areas (D. Martin, pers. comm. 2002).

Grazing removes vegetative cover, and before/after surveys have shown reductions in the number of Yosemite toads using an area after the herbaceous cover was grazed (D. Martin, pers. comm. 2002). Grazing can also cause erosion by disturbing the ground, removing vegetation, and destroying peat layers in meadows, which lowers the groundwater table and summer flows (Armour *et al.* 1994; D. Martin, pers. comm. 2002). Consequently, this may increase the stranding and mortality of tadpoles, or make these areas completely unsuitable for Yosemite toads (D. Martin, pers. comm. 2002). Grazing can also degrade or destroy moist-upland areas used as non-breeding habitat by Yosemite toads (D. Martin, pers. comm. 2002), especially when nearby meadow and riparian areas have been fenced to exclude livestock. Livestock may also collapse rodent burrows used by Yosemite toads as cover and hibernation sites, or disturb toads and disrupt their behavior.

The impacts of grazing on habitat can be inferred by observing the recovery of vegetation, ground stability, and water flow that occurs when riparian areas are fenced to exclude livestock (Kattelmann and Embury 1996). An example of this, from a drainage occupied by Yosemite toads, is provided by a study of fish habitat on Silver King and Coyote Valley Creeks (tributaries of the Carson River, Alpine County, California). In this study, stream reaches were fenced to exclude cattle and, over time, bank stability increased and stream channels became deeper and narrower than the unfenced reaches. This indicated that streambank sloughing had been reduced and vegetation was stabilizing soils and reducing erosion (Overton *et al.* 1994; Kattelmann and Embury 1996).

Livestock grazing in the Sierra Nevada has been so widespread for so long that, in most places, no ungrazed areas are available to illustrate the natural condition of the habitat (Kattelmann and Embury 1996). Due to the long, and historically unregulated history (Menke *et al.* 1996) of livestock and packstock grazing in the Sierra Nevada, and the lack of historic Yosemite toad population size estimates, it is difficult to make a quantitative link between grazing and reductions in Yosemite toad populations. However, because of the documented negative effects of livestock on Yosemite toad habitat, and documented direct mortality of the species caused by livestock, the decline of some populations of Yosemite toad has been attributed to the effects of livestock grazing (Jennings and Hayes 1994; Jennings 1996).

Roads and Timber Harvest

Any activity that severely alters the terrestrial environment, such as road construction and timber harvest, is likely to result in the reduction and occasional extirpation of amphibian populations in the Sierra Nevada (Jennings 1996). By creating gaps in the natural vegetation, roads and harvested areas may act as dispersal barriers and contribute to the fragmentation of Yosemite toad habitat and populations. Habitat fragmentation has been shown to have a negative effect on amphibian species richness (Lehtinen *et al.* 1999). Timber harvest removes vegetation and causes ground disturbance and soil compaction, which makes that ground more susceptible to erosion (Helms and Tappeiner 1996). Much of the erosion caused by timber harvests is from logging roads (Helms and Tappeiner 1996). This erosion could damage Yosemite toad breeding habitat by lowering the water table, and drying out riparian habitats used by the species.

Prior to the formation of National Parks and National Forests, timber harvest was widespread and unregulated, but primarily took place at low elevations on the west slope of the Sierra Nevada, below the elevational range of the Yosemite toad (University of California (UC) 1996). Between 1900 and 1950, the majority of timber harvest took place on old growth forests on private land (UC 1996). The majority of roads in National Forests of the Sierra Nevada were built between 1950 and 1990 to allow access to the forests for timber harvest (USDA 2001h). Between 1950 and the early 1990s, the USFS allowed major increases in timber harvest on National Forests and at higher elevations, and the majority of impacts on Yosemite toads probably took place during this period.

Roads may cause the potential for direct mortality of amphibians through roadkill (deMaynadier and Hunter 2000), and the possible introduction of contaminants such as petroleum products, herbicides, and pesticides. The levels of timber harvest and road construction have declined substantially since implementation of the California Spotted Owl Sierran Province Interim Guidelines in 1993, and some existing roads have been, or are scheduled for, decomissioning (USDA 2001h). Therefore, the risks posed by new roads and timber harvests have declined, but those already existing still pose risks to the species and its habitat through erosion, roadkill, and contaminant introduction.

Vegetation and Fire Management Activities

Vegetation management includes the removal of small trees and brush to reduce fuels, and to reduce competition which allows faster growth of desired tree species (Helms and Tappeiner 1996). These activities may disturb the ground and increase erosion, which could cause damage to Yosemite toad habitat through siltation and lowering of groundwater levels. Brush removal sometimes includes the use of herbicides, which may run off into Yosemite toad habitat, causing lethal or sublethal effects on individuals (*see* Factor D and E below).

Long-term fire suppression has influenced changes in forest structure and dynamics in the Sierra Nevada. In general, the fire return interval is now much longer than it was historically, and live and dead fuels are more abundant and continuous (USDA 2001c). Fire is thought to be important in maintaining open aquatic and riparian habitats for amphibians in some systems (Russel *et al.* 1999).

Fire suppression, and changes in fire frequency and hydrology, has probably contributed to the decline of Yosemite toads through habitat loss caused by conifer encroachment on meadows (Chang 1996; NPS 2002). Under natural conditions, conifers are excluded from meadows by fire and soils too saturated for their survival. But as conifers begin to encroach on a meadow, if they are not occasionally set back by fire, they transpire water out of the meadow, reducing the saturation of the soils, and facilitating further conifer encroachment. Therefore, some vegetation treatment may be needed to maintain or restore Yosemite toad habitat.

Increases in fuel abundance have created the potential for catastrophic fires which could cause direct mortality of Yosemite toads; however, data on the direct effects of fire on Yosemite toads are lacking. Fires and mechanical fire suppression activities (such as cutting fire lines) could cause erosion and siltation that could negatively impact Yosemite toad habitat. However, amphibians in general are thought to retreat to moist or subterranean refuges and thereby suffer low mortality during natural fires (Russel *et al.* 1999).

Fire retardant chemicals contain nitrogen compounds or surfactants (soaps). Laboratory tests of these chemicals have shown that after surfactants and ammonia are released when they are added to water, they cause mortality in fish and aquatic invertebrates (Hamilton *et al.* 1996), and likely have similar effects on amphibians. Therefore, if fire retardant chemicals were dropped in or near Yosemite toad habitat, they could have negative effects on individual toads. The majority of vegetation and fire management activities take place at lower elevations, but they do pose a threat to the species when they take place within the species' elevational range.

Recreation

Recreational activities take place throughout the Sierra Nevada and can have significant negative impacts on wildlife and their habitats (USDA 2001a). Recreation is the fastest growing use of National Forests (USDA 2001f). Heavy foot traffic in riparian areas tramples vegetation, compacts soils, and can physically damage streambanks. Trails (foot, horse, bicycle, or off-highway motor vehicle) compact soil in riparian habitat, which increases erosion, replaces vegetation, and can lower the water table (Kondolph *et al.* 1996). Trampling or the collapsing of rodent burrows by recreationists, pets, and vehicles could lead to direct mortality of all life stages of the Yosemite toad. Recreational activity may also disturb toads and disrupt their behavior (Karlstrom 1962).

Dams and Water Diversion

Several artificial lakes are located in or above Yosemite toad habitat, most notably Edison, Florence, Huntington, Courtright, and Wishon Reservoirs. By altering the timing and magnitude of water flows, these reservoirs have caused changes in hydrology which may have negatively altered Yosemite toad habitat. Changes in water flows have caused increased water levels upstream of the reservoirs, which may have reduced the suitability of shallow water habitats necessary for egg laying, or allowed the invasion of predatory fish into those habitats. Water flow changes may have contributed to the mortality of eggs and tadpoles either by stranding during low water or innundation during high water. The reservoirs themselves probably cover what was once Yosemite toad habitat. Most native Sierra Nevada amphibians cannot live in or move through reservoirs (Jennings 1996). Therefore, reservoirs represent both a loss of habitat and a barrier to dispersal and gene flow. These factors have probably contributed to the decline of Yosemite toads and continue to pose a risk to the species.

B. Overutilization for commercial, recreational, scientific, or educational purposes. There is no known commercial market for Yosemite toads. There is also no documented recreational or educational use for Yosemite toads, although it is likely that they have been handled by curious members of the public and collected as pets.

Scientific research may cause some stress to Yosemite toads through disturbance and disruption of behavior, handling, and injuries associated with marking individuals. Scientific research has resulted in the death of a few individuals through accidental trampling (Green and Kagarise Sherman 2001), irradiation where Karlstrom (1957) collected data on Yosemite toad movements by implanting them with radioactive tags, and collection for museum specimens (Jennings and Hayes 1994). Given the current reduced size and number of populations (Jennings and Hayes 1994), further collection could pose a serious threat to Yosemite toad populations.

C. Disease or predation. Prior to the stocking of high Sierra Nevada lakes with salmonid fishes, which began over a century ago, fish were entirely absent from most of this region (Bradford 1989). Introduced fish, such as rainbow and golden trout (*Oncorhynchus mykiss* ssp.), brown trout (*Salmo trutta*), and brook trout (*Salvelinus fontinalis*), have been shown to have a negative impact, primarily through predation, on native populations of Sierra Nevada amphibians, including the mountain yellow-legged frog (Bradford 1989; Knapp and Matthews 2000) and Pacific chorus frog (Matthews *et al.* 2001).

Data on the effects of introduced fish on Yosemite toads are less clear, although re-surveys of historic Yosemite toad sites have shown that the species had disappeared from several lakes where they formally bred and which are now occupied by fish (Stebbins and Cohen 1997; D. Martin, pers. comm. 2002). Drost and Fellers (1994) state that Yosemite toads are less vulnerable to fish predation than frogs because they breed primarily in ephemeral waters that do not support fish. The palatability of Yosemite toad tadpoles to fish predators is unknown (Jennings and Hayes 1994), but is often assumed to be low based on the unpalatability of western toads (Drost and Fellers 1994; Kiesecker *et al.* 1996), to which Yosemite toads are closely related. Brook trout have been observed to prey on Yosemite toad tadpoles and to "pick at" Yosemite toad eggs, which later became infected with fungus (D. Martin, pers. comm. 2002). Brook trout have been observed to swim near, but ignore, Yosemite toad tadpoles, which gives evidence towards tadpoles being unpalatable, at least in some situations. If Yosemite toad tadpoles are unpalatable to trout, some tadpoles may still be taken by trout that have not learned to avoid them yet (R. Knapp, pers. comm. 2002). The palatability of metamorph Yosemite toads to trout is also unknown, but metamorph western toads have been observed in golden trout stomach contents (R. Knapp, pers. comm. 2002).

At a site where Yosemite toads normally breed in small meadow ponds, they have been observed to successfully switch breeding activities to stream habitat containing fish during years of low water (Phil Strand, Sierra National Forest, pers. comm. 2002). Thus, drought conditions can increase the toads' exposure to predatory fish. Also, although the number of lake breeding sites used by Yosemite toads is small relative to the number of ephemeral sites, lake sites may be especially important because they are more likely to be useable during years with low water (R. Knapp, pers. comm. 2002).

The effects of introduced fish on Yosemite toads needs further study, especially palatability experiments to determine the level of predation. Because Yosemite toads primarily breed in ephemeral waters, fish are probably less of an impact on them than on amphibians that breed primarily in perennial lakes and streams. However, the observed predation of Yosemite toad tadpoles by trout (Martin 1992; D. Martin, pers. comm. 2002) indicate that introduced fish do pose a risk to the species in some situations, which may

be accentuated during drought years. Therefore, introduced fish have probably contributed to the decline of the species. As Yosemite toad populations become smaller and more fragmented, the impacts of predation may be significant.

Various diseases have been confirmed in dead Yosemite toads (Green and Kagarise Sherman 2001). Those diseases, in concert with other factors, are likely to have contributed to the decline of Yosemite toads and continue to be a risk to the species. Mass die-offs of amphibians have been attributed to: chytrid fungal infections of metamorphs and adults (Carey *et al.* 1999); *Saprolegnia* fungal infections of eggs (Blaustein *et al.* 1994); iridovirus infection of larvae, metamorphs, or adults; and bacterial infections (Carey *et al.* 1999). Humans, pets, livestock, packstock, vehicles, and wild animals may all act as disease vectors. Although it has not been observed in the Sierra Nevada, introduced fish may also serve as disease vectors to amphibians. Infection of both fish and amphibians by the same pathogen has been documented with viral (Mao *et al.* 1999) and fungal (Blaustein *et al.* 1994) pathogens.

Tissue samples from dead or dying adults and from healthy tadpoles were collected during a die-off of adult Yosemite toads at Tioga Pass Meadow and Saddlebag Lake and analyzed for disease (Green and Kagarise Sherman 2001). Several infections were found in the adults, including: chytridiomycosis (chytrid fungal infection), bacillary bacterial septicemia (red-leg disease), *Dermosporidium* (a fungal infection), myxozoan infection (parasitic cnidarians (relatives of jellyfish)), *Rhabdias* spp. (a parasitic roundworm) infection, and several species of trematode (parasitic flatworm) infection. However, no single infectious disease was found in more than 25 percent of individuals, and some dead toads showed no infection that would explain their death. No evidence of infection was found in tadpoles. The authors concluded that the die-off was caused by suppression of the immune system caused by an undiagnosed viral infection or chemical contamination that made the toads susceptible to the diagnosed infections. This seems likely considering the evidence suggesting environmental contaminants as a factor contributing to the decline of Yosemite toads (see Factor E).

Carey (1993) developed a model to explain the disappearance of boreal toads (*Bufo boreas boreas*) in the Rocky Mountains. In that model, she hypothesized that the toads were stressed by some unknown environmental factor. This stress caused a physiological response that suppressed the immune system, which was further hindered by cold temperatures typical of the toads' high-elevation environment. The toads then died of infection by pathogens normally found in their environment. This model may fit Yosemite toad die-offs, given the close relationship between the two toads and their occupation of similar habitats.

Saprolegnia ferax is a species of water mold that commonly infects fish. This mold has been documented to cause massive lethal infection of eggs of western toads in Oregon (Blaustein *et al.* 1994). However, it is unclear whether the infection was caused by the introduction of the fungal pathogen via fish stocking, or if the fungus was already present and the eggs' ability to resist infection was inhibited by some unknown environmental factor. Subsequent laboratory experiments (Kiesecker *et al.* 2001), showed that the fungus could be passed from hatchery fish to western toads. Fungal growth on Yosemite toad eggs was observed by Kagarise Sherman (1980), but the fungal species was not determined, and it was unclear whether the fungus killed the eggs or grew on them after they died of some other cause.

D. The inadequacy of existing regulatory mechanisms. The Yosemite toad occurs on Federal, State, and private lands. Existing regulatory mechanisms do not fully protect this species or its habitat on these lands. Federal, State, and local laws have been insufficient to prevent past and ongoing losses of the limited habitat of the Yosemite toad.

Under section 404 of the Clean Water Act (CWA), the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill material into waters of the United States, including wetlands. However, 99 percent of the Yosemite toad's range is on Federal land, so few projects that include fill of wetlands are likely in these areas. Therefore, section 404 of the CWA is not likely to be relevant to the Yosemite toad in most cases.

Yosemite toads may not be taken or possessed within a National Park without a special permit from the NPS. In addition, cattle grazing, stocking of invasive fish, and most timber harvest are prohibited within National Park boundaries (NPS 2001). However, Yosemite toads have continued to decline within the National Parks in which the species occurs. This may be, in part, due to the Parks allowing such activities as packstock grazing and recreation in Yosemite toad habitat, as well as chemical contamination of the species and its habitat from sources outside the Parks.

The Wilderness Act of 1964 calls for designated wilderness land "to be protected and managed so as to preserve its natural conditions." Timber harvest and the use of motor vehicles are generally prohibited within wilderness areas, but cattle grazing and invasive fish stocking are permitted within National Forest wilderness lands and pose a threat to the species and its habitat. The species has declined sharply (Jennings and Hayes 1994) regardless of wilderness designation in large portions of its range.

The Yosemite toad is considered a sensitive species by the USFS. Each National Forest was required to complete a Land and Resource Management Plan (LRMP) by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976 (NFMA). Those acts require that the LRMPs provide for multiple use and sustained yield of the products and services obtained from the National Forests, including wildlife. The Sierra Nevada Forest Plan Amendment (Amendment) (USDA 2001d) amends the LRMPs of National Forests within the Sierra Nevada to address issues pertaining to: old forest ecosystems and associated species; aquatic, riparian, and meadow ecosystems and associated species; fire and fuels; noxious weeds; and lower westside hardwood ecosystems. The Amendment calls for the preparation of a conservation assessment, activity-related standards and guidelines, and conservation measures by the USFS to protect Yosemite toads and their habitat occurring in National Forests within the Sierra Nevada.

Under the Amendment to the LRMPs of National Forests within the Sierra Nevada, (USDA 2001f), the USFS is to provide the following conservation measures for Yosemite toads under: (A) Exclude livestock (including pack and saddle stock) from standing water and saturated soils in wet meadows and associated streams and springs occupied by Yosemite toads, or identified as "essential habitat" in the conservation assessment for the Yosemite toad during the breeding and rearing season (as determined locally). If physical exclusion of livestock, such as fencing, is impractical, then exclude grazing from the entire meadow until the meadow has been dry for 2 weeks. Wet meadows are defined as relatively open meadows with low to moderate amounts of woody vegetation that have standing water and saturated soils after the first of June; if these conditions do not persist in the meadow for more than 2 weeks, allow grazing only in those portions of the meadow where dry conditions exist; (B) Monitor a sample of occupied Yosemite toad sites to assess: (1) Habitat conditions, and (2) Yosemite toad occupancy and population dynamics. Based on the monitoring data, modify or suspend grazing if Yosemite toad conservation is not being accomplished. These grazing restrictions may be modified through formal adaptive management studies, developed in cooperation with the USFS's Pacific Southwest Research Station, designed to assess the effects of grazing intensity and frequency on Yosemite toad habitat conditions and site occupancy; and (C) Conduct surveys of unoccupied suitable habitat for the Yosemite toad within this species' historic range to determine presence of Yosemite toads. Complete surveys of these areas within 3 years of January 2001. If surveys are not completed within the 3-year period, consider unsurveyed meadows as occupied habitat and apply restrictions for excluding livestock described in (A).

Conservation measures also include direction to avoid application of pesticides within 152 m (500 ft) of known Yosemite toad sites, and the removal of invasive fish from some areas of mountain yellow-legged frog habitat, which could benefit Yosemite toads if they are also using those areas (USDA 2001d). The conservation measures also set limits for grazing utilization of grasses and shrubs, livestock use and road construction in willow flycatcher (*Empidonax traillii*) habitat (which includes areas that may also be inhabited by Yosemite toads), packstock use of Yosemite toad habitat during the breeding and rearing season, and disturbance of streambanks and lakeshores. The conservation measures also recommend removing livestock gathering and handling facilities from riparian and meadow areas and providing off-stream watering devices for livestock. The Amendment also includes requirements for monitoring to review how well the objectives established by the Amendment have been met, and how closely management standards and guidelines have been applied (USDA 2001e).

The USFS has been implementing these conservation measures since 2001, but they have not yet been fully implemented. The Amendment is currently being reviewed, and it remains unknown if these measures will be changed, or if any additional protection of the Yosemite toad will be included. Therefore, the Amendment has not yet provided sufficient protection for the Yosemite toad and its habitat, and it is not known if it will in the future. Also, the effect of the LRMPs in place on National Forests within the Sierra Nevada is unknown. Yosemite toads have continued to decline (Jennings and Hayes 1994).

The State of California considers the Yosemite toad a species of special concern, but it is not State listed as a threatened or endangered species under the California Endangered Species Act. California Sport Fishing Regulations include the Yosemite toad as a protected species that may not be taken or possessed at any time except under special permit from the CDFG. This gives the Yosemite toad some legal protection from collecting, but does not protect it from other causes of mortality or alterations to its habitat.

The California Environmental Quality Act (CEQA) requires review of any project that is undertaken, funded, or permitted by a State or local governmental agency. If a project with potential impacts on Yosemite toad were reviewed, CDFG personnel could determine that, although not listed, the toad is a *de facto* endangered, threatened, or rare species under section 15380 of CEQA. Once significant effects are identified, the lead agency has the option of requiring mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible (CEQA Sec. 21002). In the latter case, projects may be approved that cause significant environmental damage, such as destruction of listed endangered species or their habitat. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the agency involved.

The California Forest Practice rules set guidelines for the design of timber harvests on private land to reduce impacts on non-listed species. However, these rules have little application to the protection of Yosemite toad because approximately 99 percent of the species' range is on Federal land.

The California Department of Pesticide Regulation has authority to restrict the use of pesticides. Their Toxic Air Contaminant (TAC) Program includes assessment of the risks posed by airborne pesticides by collecting air samples near sites of pesticide application and in communities near those sites. If air samples indicate that reductions in exposure are needed, mitigation measures are developed to bring about those reductions (California Department of Pesticide Regulation 2001). However, the TAC program is intended primarily to protect human health, and air samples are not taken at far distant locations from application sites, like those inhabited by Yosemite toads.

E. Other natural or manmade factors affecting its continued existence.

Yosemite toads probably are exposed to a variety of pesticides and other chemicals throughout their range. Environmental contaminants could negatively affect the species by causing direct mortality; suppressing the immune system; disrupting breeding behavior, fertilization, growth or development of young; and disrupting the ability to avoid predation (Carey and Bryant 1995). Hydrocarbon and other contamination from oil production and road runoff; the application of numerous chemicals for agricultural production; roadside maintenance; and rodent and vector control programs may all have negative effects on Yosemite toad populations. Also, the airborne transport of pesticides as a result of drift from agricultural applications, including chlorothalonil, malathion, diazinon, and chlorpyrifos, from the Central Valley of California to the Sierra Nevadas, has been documented (Aston and Seiber 1997; McConnell *et al.* 1998) in samples of air, rain, snow, lake water, and pine needles.

Cholinesterase is an enzyme that functions in the nervous system and is disrupted by organophosphorus pesticides, including malathion, chlorpyrifos, and diazinon (Sparling *et al.* 2001). Reduced cholinesterase activity and pesticide residues have been found in Pacific chorus frog larvae collected in the Sierra Nevada downwind of the Central Valley (Sparling *et al.* 2001). Cholinesterase activity was significantly lower in samples from the Sierra Nevada than from samples taken from coastal California, upwind of the Central Valley. No samples were taken above approximately 1,500 m (4,900 ft) elevation (Sparling *et al.* 2001), which barely overlaps the 1,460 to 3,630 m (4,790 to 11,910 ft) elevational range (Stebbins 1985) of Yosemite toads. However, significant amounts of pesticide residues have been documented as high as 1,920 m (6,300 ft) in Sequoia National Park, south of Yosemite and Kings Canyon National Parks (Aston and Seiber 1997; McConnell *et al.* 1998). In addition to interfering with nerve function, contaminants may act as estrogen mimics (Jennings 1996), or may otherwise disrupt endocrine function (Carey and Bryant 1995), and may have a negative effect on amphibian populations.

Dichlorodiphenyltrichloroethane (DDT) and its residues were found in frogs throughout the Sierra Nevada during the late 1960s (Corey *et al.* 1970), and those residues still appear in Pacific chorus frog larvae collected in the late 1990s (Sparling *et al.* 2001), over 25 years after DDT was banned for use in the United States.

Spatial analysis of populations of Yosemite toads shows a trend towards greater decline in populations downwind of areas of the Central Valley with more agriculture, where there is presumably more pesticide use; however this trend is not statistically significant (Carlos Davidson, California State University, Sacramento, *in litt.*, 2002).

Snow core samples from the Sierra Nevada contain a variety of contaminants from industrial and automotive sources including: hydrogen ions (indicative of acidic precipitation), nitrogen and sulfur compounds (NH_4, NO_3, SO_2, and SO_4), and heavy metals (Pb, Fe, Mn, Cu, and Cd) (Laird *et al.* 1986). The pattern of recent frog extinctions in the southern Sierra Nevada corresponds with the pattern of highest concentration of air pollutants from automotive exhaust, possibly due to increases in nitrification (or other changes), caused by those pollutants (Jennings 1996).

The effects of contaminants on amphibians needs further research (Hall and Henry 1992), and there are few, if any, studies on the direct effect of contaminants on Yosemite toads. However, we know of one study which shows that there are significant levels of contaminants that have been deposited in the Sierra Nevada, and the correlative evidence between areas of contamination in the Sierra Nevadas and areas of amphibian decline (Jennings 1996; Sparling *et al.* 2001; C. Davidson, *in litt.*, 2002), and the significant evidence of an adverse physiologic effect of pesticides on Sierra Nevada amphibians in the field (Sparling *et al.* 2001), indicate that contaminants may be a severe risk to the Yosemite toad and may have contributed to the species' decline.

Rodent control programs probably have an adverse indirect effect on Yosemite toad populations. Control of rodents that create burrows, such as ground squirrels, could significantly reduce the number of burrows available for use by Yosemite toads that require them for hibernation. Because the burrow density required to support Yosemite toads in an area is not known, the loss of burrows as a result of control programs cannot be quantified at this time. Active rodent colonies probably are needed to sustain Yosemite toads because inactive burrow systems become progressively unsuitable over time. Loredo *et al.* (1996) found that burrow systems collapsed within 18 months following abandonment by, or loss of, the ground squirrels. Rodent control programs must be analyzed and implemented carefully in Yosemite toad habitat so the persistence of the species is not threatened. Much of the species' range is occupied by livestock, primarily cattle, and most livestock owners seek to eliminate rodent burrows because of the threat of cows breaking their legs if they accidentally step into a burrow.

The last century has included some of the most variable climate reversals, at both the annual (extremes and high frequency of El Nino and La Nina events) and near decadal scales (periods of 5- to 8-year drought and wet periods) that has been documented (USDA 2001b). These events may have negative effects on Yosemite toads. Severe winters (El Nino) would force longer hibernation times, and could stress the toads by reducing the time available for them to feed and breed. Severe winters may also depress reproductive effort. Morton (1981) theorized that fluctuations in energy storage from year to year may explain why many female Yosemite toads do not breed on a yearly basis. Alternately, during mild winters (La Nina), precipitation is reduced. This reduction in precipitation could lead to stranding and death of Yosemite toad eggs and tadpoles, a major documented source of mortality (Zeiner *et al.* 1988; Kagarise Sherman and Morton 1993; Jennings and Hayes 1994), or to increased exposure to predatory fish.

Changes in climate that occur faster than the ability of endangered species to adapt could cause local extinctions (U.S. Environmental Protection Agency (EPA) 1989). Analysis of the Antarctic Vostok ice core has shown that over the past 160,000 years, temperatures have varied with the concentrations of greenhouse gasses such as carbon dioxide and methane (Harte 1996). Since the pre-industrial era, atmospheric concentrations of carbon dioxide have increased nearly 30 percent, methane concentrations have more than doubled, and nitrous oxide (another greenhouse gas) levels have risen approximately 15 percent (EPA 1997). The burning of fossil fuels is the primary source of these increases (EPA 1997). Global mean surface temperatures have increased 0.3 to 0.7 Celsius (0.6–1.2 Fahrenheit) since the late 19th century (EPA 1997). Climate modeling indicates that the overall effects of global warming on California will include higher average temperatures in all seasons, higher total annual precipitation, and decreased spring and summer runoff due to decreases in snowpacks (EPA 1989, 1997). Decreases in spring and summer runoff could lead to the loss of breeding habitat for Yosemite toads and an increase in stranding mortality of eggs and tadpoles.

Changes in temperature may also affect virulence of pathogens to a different degree than the immune systems of amphibians (Carey *et al.* 1999), and may make Yosemite toads more susceptible to disease. An experimental increase in stream water temperature was shown to decrease density and biomass in invertebrates (Hogg and Williams 1996), thus global warming might have a negative impact on the Yosemite toad prey base.

Drought has contributed to the decline of Yosemite toads (Jennings and Hayes 1994), and the effects of climate change may also have contributed to that decline. These effects pose an ongoing, range-wide risk to the species.

Acid precipitation has been hypothesized as a cause of amphibian declines in the Sierra Nevada, because waters there are extremely low in acid neutralizing capacity, and therefore susceptible to changes in water chemistry due to acidic deposition (Bradford *et al.* 1994). Precipitation acidity in the Sierra Nevada has been documented to have significantly increased at a collection station at approximately 2,100 m (6,900 ft) elevation near Lake Tahoe (Byron *et al.* 1991). In addition to raising the acidity of water, acidic deposition may also cause increases in dissolved aluminum, because aluminum is more soluble at higher acidity. These increases in dissolved aluminum may be toxic to amphibians (Bradford *et al.* 1992). In laboratory experiments (Bradford *et al.* 1992; Bradford and Gordon 1992), high acidity and high aluminum concentrations did not have significant effects on survival of Yosemite toad embryos or newly hatched tadpoles. However, at pH 5.0 (pH represents acidity on a negative scale, with 7 being neutral and lower numbers being more acidic) and at high aluminum concentrations, Yosemite toad embryos hatched earlier and the tadpoles showed a reduction in body size. In a complementary field study of 235 randomly selected potential amphibian breeding sites (Bradford *et al.* 1994), no significant difference was found in pH between sites occupied and unoccupied by Yosemite toads. These data indicate that acid precipitation is an unlikely cause of decline in Yosemite toad populations (Bradford *et al.* 1994). Therefore, acid deposition is considered a low risk to the species at this time, but should still be considered in conservation efforts because of the possibility of sublethal effects (Bradford *et al.* 1992), of its interaction with other factors, and the potential for more severe acidic deposition in the future.

Ambient ultraviolet-b (UV–B) radiation (280 to 320 nanometers (11.0 to 12.6 microinches)) has increased at north temperate latitudes in the past two decades (Adams *et al.* 2001). Ambient levels of UV–b were demonstrated to cause significant decreases in survival of western toad eggs in field experiments (Blaustein 1994). In a laboratory experiment (Kats *et al.* 2000), metamorph western toads exposed to levels of uv–b below those found in ambient sunlight showed a lower alarm response to chemical cues of injured toads than metamorphs that were completely shielded from UV–B. This indicates that ambient levels of UV–B may cause sublethal effects on toad behavior that may increase their vulnerability to predation. In a field experiment (Kiesecker and Blaustein 1995), the synergistic effects of exposure to ambient levels of UV–B radiation, and exposure to a pathogenic fungus (*Saprolegnia*), were shown to cause significantly higher mortality of western toad embryos than either factor alone.

Sadinsky *et al.* (1997) observed a high percentage of embryo mortality in Yosemite toads at six breeding sites in Yosemite National Park, but in a preliminary field experiment this mortality did not appear to be related to UV–B. In spatial statistical analysis of extant and extinct populations, higher elevation was shown to have a positive effect on the likelihood that populations of Yosemite toads were extant. This is counter to what would be expected if UV–B were the primary cause of decline (C. Davidson, *in litt.*, 2002), as sites at higher elevations would be expected to receive more solar radiation due to the thinner atmosphere. The increase in UV–B at high elevations in the Sierra Nevada has not been more than 5 percent in the past several decades (Jennings 1996). These data indicate that UV–B has probably not contributed significantly to the decline of Yosemite toads and is probably currently a low risk to the species. However, as with acid precipitation, UV–B should still be considered as a risk to the species because of the potential for sublethal effects, synergistic effects with other factors, and the potential for further increases in UV–B radiation in the future.

Finding

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. We reviewed the petition, information available in our files, and other published and unpublished information submitted to us during the public comment period following our 90-day petition finding. We also consulted with recognized Yosemite toad experts and other Federal and State resource agencies. On the basis of the best scientific and commercial information available, we find that proposing to list the Yosemite toad is warranted, but is precluded by higher priority listing actions.

In making this finding, we recognize that there have been declines in the distribution and abundance of Yosemite toads, primarily attributed to habitat degradation, airborne contaminants, and drought.

We conclude that the overall magnitude of threats to the Yosemite toad is moderate, and that the overall immediacy of these threats is non-imminent. Pursuant to our Listing Priority System (48 FR 43098), a species for which threats are moderate and non-imminent is assigned a Listing Priority Number of 11. While we conclude that proposing to list the Yosemite toad is warranted, an immediate proposal to list is precluded by other higher priority listing actions. During fiscal year 2003, we must spend all of our Listing Program funding to comply with court orders and judicially approved settlement agreements, which are now our highest priority actions. The Yosemite toad will be added to the list of candidate species upon publication of this notice of 12-month finding. We will continue to monitor the status of this species and other candidate species. Should an emergency situation develop concerning this species, we will act to provide immediate protection, if warranted.

We intend that any proposed listing action for the Yosemite toad will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding. We are especially interested in further genetic information on the proper taxonomic status of the Yosemite toad and further information on the current range and status of the species, factors contributing to its decline, and conservation efforts.

References Cited

A complete list of all references cited is available on request from the Sacramento Fish and Wildlife Office (*see* **ADDRESSES** section, above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 27, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–30800 Filed 12–9–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 67, No. 237
Tuesday, December 10, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Biologically Engineered Low-Nicotine Tobaccos

AGENCIES: Farm Service Agency.

ACTION: Notice.

SUMMARY: In a notice published in the **Federal Register** on May 15, 2002, the Farm Service Agency (FSA) invited comments from the public about whether the biologically-engineered, low-nicotine Burley Tobacco type 31–V and related tobaccos should be considered quota or non-quota tobacco. The preponderance of public comments supported these tobaccos being considered non-quota for the 2003 and subsequent crop years. This notice announces that there will be no change to the FSA regulations to include these tobaccos among those which are subject to marketing quota regulations.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, FSA, USDA, 1400 Independence Avenue, SW., Room 5750, STOP 0514, Washington, DC 20250–0514, by phone at (202)720–2715, or email at *tob_comments@wdc.fsa.gov*.

SUPPLEMENTARY INFORMATION: Recently, tobacco that was biologically-engineered to have a low nicotine content became available to producers. The regulations of the Agricultural Marketing Service (AMS), which classifies tobacco for inspection purposes but does not determine types for FSA's tobacco marketing quota program, provide that certain tobacco which in its cured state has a nicotine content of not more than eight-tenths of one percent (8/10 of 1%), oven dry weight, be classified as type 31–V, if burley, or type 73, if flue-cured. AMS thus classified, for inspection purposes, the biologically engineered tobacco, which fell at or below that nicotine level, as being either type 31–V (burley) or, if cured in the same manner as flue-cured tobacco, as type 73 (flue-cured).

FSA invited the views of interested persons before making any determination on considering biologically-engineered, low-nicotine tobacco as quota or non-quota tobacco. The majority of comments received, which were considered in formulating FSA's decision, support biologically-engineered, low-nicotine tobaccos being considered non-quota. Therefore, because current FSA marketing quota regulations include type 31 (burley) and types 11–14 (flue-cured) as tobacco subject to quotas, but do not include the biologically-engineered low-nicotine tobaccos type 31–V or type 73, FSA has determined that there will be no change to the marketing quota regulations. All comments are a matter of public record and may be viewed at the address shown above.

Signed in Washington, DC, on November 27, 2002.

Diane Sharp,

Acting Administrator, Farm Service Agency.

[FR Doc. 02–31118 Filed 12–9–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Kootenai (KNF) and Idaho Panhandle National Forests (IPNF); Montana, Idaho and Washington; Extension of Scoping For Revised Land and Resource Management Plans

AGENCY: Forest Service, USDA.

ACTION: Extension of the scoping period in conjunction with revision of the Land and Resource Management Plans (hereafter referred to as Forest Plan or Plans) for the Kootenai and Idaho Panhandle Forests (Kootenai Idaho Panhandle Zone, hereafter referred to as KIPZ) located in Lincoln, Sanders, and Flathead counties in Montana; Bonner, Boundary, Kootenai, Shoshone, Benewah, Latah, and Clearwater counties in Idaho; and Pend Oreille county in Washington.

SUMMARY: The scoping period has been extended for the proposed revised Forest Plans and the Draft Environmental Impact Statement. The original notice of intent was published in the **Federal Register**, Vol. 67, No. 83 on April 30, 2002 as FR Doc. 02–10548.

DATES: Comments concerning the scope of the analysis must be received in writing by March 21, 2003.

ADDRESSES: Send written comments and suggestions to Forest Supervisor, c/o Forest Plan Revision, Kootenai National Forest, 1101 W Hwy 2, Libby, MT 59923.

FOR FURTHER INFORMATION CONTACT: Joe Krueger at (406) 293–6211 or Gary Ford at (208) 765–7478.

SUPPLEMENTARY INFORMATION: The scoping period has been extended to March 21, 2003, to provide additional time for public access to the Analysis of the Management Situation report. Comments received during the scoping period will be used to develop alternatives in the DEIS.

Dated: December 3, 2002.

Bob Casteneda,

Kootenai Forest Supervisor.

Dated: December 3, 2002.

Ranotta K. McNair,

Idaho Panhandle Forest Supervisor, Forest Service-Northern Region.

[FR Doc. 02–31136 Filed 12–9–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–853]

Bulk Aspirin From the People's Republic of China; Extension of Time Limit for the Final Results of Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the administrative review of the antidumping duty order on bulk aspirin from the People's Republic of China. The period of review is July 6, 2000, through June 30, 2001. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

EFFECTIVE DATE: December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Julie Santoboni or Cole Kyle, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; at telephone (202) 482–4194 and 482–1503, respectively.

Statutory Time Limits

Section 751(a)(3)(A) of the Act requires the Department of Commerce ("the Department") to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On August 20, 2001, we published a notice of initiation of the administrative review of bulk acetylsalicylic acid, commonly referred to as bulk aspirin, from the People's Republic of China. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 66 FR 43570 (August 20, 2001). The period of this review is July 6, 2000, through June 30, 2001. On August 7, 2002, we published the preliminary results of our review. In our notice of preliminary results, we stated our intention to issue the final results of this review no later than 120 days after the date of publication of the preliminary results, December 5, 2002.

Extension of Time Limits for Final Results

Due to the complexity of the surrogate value issues raised in the petitioner's case brief, we determine that it is not practicable to complete the final results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the final results until no later than February 3, 2003. This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: December 4, 2002.

Susan Kuhbach,

Acting Deputy Assistant Secretary for AD/CVD Enforcement I.

[FR Doc. 02–31152 Filed 12–9–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–503]

Iron Construction Castings from Canada: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

EFFECTIVE DATE: December 10, 2002.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan or Howard Smith, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4081 and (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2002).

Background

On March 1, 2002, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty order on iron construction castings from Canada covering the period March 1, 2001 through February 28, 2002 (67 FR 9438).

On April 17, 2002, pursuant to a request by Canada Pipe Company, Ltd. (Canada Pipe), the Department initiated an administrative review of the antidumping duty order on iron construction castings from Canada for the period March 1, 2001, through February 28, 2002, (67 FR 20089) (April 24, 2002). On November 25, 2002, Canada Pipe withdrew its request for an administrative review.

Rescission of Review

Section 351.213(d)(1) of the Department's regulations provides that a party that requests an administrative review may withdraw the request within 90 days after the date of publication of the notice of initiation of the requested administrative review. Although Canada Pipe withdrew its request for the review after the 90-day period had expired, the Department is rescinding the administrative review of the order on iron construction castings from Canada for the period March 1, 2001, through February 28, 2002 because no other party requested a review of Canada Pipe and it is otherwise reasonable to rescind the review. This action is consistent with the Department's practice. *See e.g., Frozen Concentrated Orange Juice From Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 40913 (June 14, 2002) where, pursuant to a request filed after the 90 day deadline, the Department rescinded the review with respect to one respondent because the review of that respondent had not progressed beyond a point where it would have been unreasonable to grant the request for rescission.

This notice is in accordance with section 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: November 29, 2002.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–31151 Filed 12–9–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–502]

Notice of Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review: Certain Iron Construction Castings From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 10, 2002.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty administrative review on certain iron construction castings from the People's Republic of China. This review covers the period May 1, 2001, through April 30, 2002. The extension is made pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("the Act").

FOR FURTHER INFORMATION CONTACT: Javier Barrientos or Julio A. Fernandez, AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue, NW., Washington, DC 20230, at (202) 482–2243 or (202) 482–0961, respectively.

Background

The Department of Commerce (the Department) received a request on May 30, 2002, from Powin Corporation, an importer of the subject merchandise, for an administrative review of the antidumping duty order on certain iron construction castings from the People's Republic of China (PRC) produced by Mucun Foundry of Fangzi District (Mucun Foundry). On June 25, 2002, the Department published a notice of initiation of this administrative review for the period of May 1, 2001, through April 30, 2002 (67 FR 42753).

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act, the Department shall issue preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

In light of the complexity of analyzing the factors of production data, including indirect labor and electricity expenses incurred, and the sales data of the associated exporter, it is not practicable to complete this review by the current deadline of January 30, 2003.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results by 120 days, until no later than May 30, 2003. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is issued and published in accordance to sections 751(a)(1) and 777(I)(1) of the Act.

Dated: December 3, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–31153 Filed 12–9–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Extension of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of the review of stainless steel butt-weld pipe fittings from Taiwan. This review covers the period June 1, 2000 through May 31, 2001.

EFFECTIVE DATE: December 10, 2002.

FOR FURTHER INFORMATION CONTACT: James Doyle, Enforcement Group III—Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0159.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2001).

Background

On July 23, 2001, the Department published a notice of initiation of this antidumping duty administrative review for the period of June 1, 2000 through May 31, 2001 (66 FR 38252). We published the preliminary results of review on July 9, 2002 (67 FR 45467). On November 7, 2002, (67 FR 67823) we extended the time limit for this review 30 days.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 120-day period, following the date of publication of the preliminary results, to issue its final results by an additional 60 days. Completion of the final results within the 120-day period is not practicable for the following reasons:

- This review involves certain complex Constructed Export Price ("CEP") adjustments including but not limited to CEP Profit and CEP Offset which were raised by respondent and petitioners after the verification and after the preliminary results of review.
- The review involves a large number of transactions and complex adjustments other than those mentioned above.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review by 11 days until December 17, 2002.

Dated: December 4, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–31156 Filed 12–9–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Stainless Steel Sheet and Strip in Coils from Italy: Extension of Time Limit of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit of the final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limits of the final results of the antidumping duty administrative review of stainless steel sheet and strip in coils ("SSSS") from Italy. This review covers the period July 1, 2000 through June 30, 2001.

EFFECTIVE DATE: December 10, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1102.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. Part 351 (2001).

Background

On July 2, 2001, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on SSSS from Italy. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 66 FR 34910 (July 2, 2001). On July 31, 2001, domestic industry parties from the original investigation ("petitioners"), ThyssenKrupp Acciai Speciali Terni S.p.A. ("TKAST")[1], a producer and exporter of subject merchandise, and ThyssenKrupp AST USA, Inc. ("TKAST USA"), requested that the Department conduct an administrative review of the antidumping duty order. On August 20, 2001, the Department initiated an administrative review of the antidumping duty order on SSSS from Italy with regard to TKAST. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 43570 (August 20, 2001). On March 5, 2002, the Department extended the time limit for the preliminary results of this administrative review by 90 days. *See Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy*, 67 FR 9960 (March 5, 2002). On May 13, 2002, we again extended the preliminary results of administrative review, this time by 25 days. *See Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy*, 67 FR 32015 (May 13, 2002). On July 26, 2002, the Department extended the time limit for the preliminary results in this administrative review another five days. *See Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy*, 67 FR 50421 (August 2, 2002).

On August 7, 2002 we issued our preliminary results of administrative review. *See Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy*, 67 FR 51224 (August 7, 2002). The final results of administrative review are currently due December 5, 2002.

Extension of Time Limit of Final Results

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 120-day period, following the date of publication of the preliminary results, to issue its final results by 60 days. Completion of the final results of this review within the 120-day period is not practicable for the following reasons:

- The review involves a large number of transactions and complex adjustments.
- The review includes complex sales and cost issues which require the Department to analyze a significant amount of information pertaining to sales practices, manufacturing costs and corporate relationships.

Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the final results of review by 40 days until January 14, 2003.

Dated: December 3, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–31157 Filed 12–9–02; 8:45 am]

BILLING CODE 3510–DS–P

[1] On January 18, 2002 Acciai Speciali Terni S.p.A.'s shareholders voted to change the company's name to ThyssenKrupp Acciai Speciali Terni S.p.A. On February 27, 2002, Acciai Speciali Terni USA, Inc. became ThyssenKrupp AST USA, Inc. Throughout most of the responses, the companies refer to themselves as TKAST and TKAST USA, respectively.

DEPARTMENT OF COMMERCE

International Trade Administration

Department of Agriculture—Albany, CA; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–039.

Applicant: U.S. Department of Agriculture, Albany, CA 94710.

Instrument: Automated Robotic Colony Picking and Replicating System, Model QPixII.

Manufacturer: Genetix Limited, United Kingdom.

Intended Use: See notice at 67 FR 58355, September 16, 2002.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a high performance robotic system for automated microbial colony picking and replicating on the basis of various features with additional capabilities of halo recognition and rearraying selected clones from one microplate to another. The National Institutes of Health advised in its memorandum of September 11, 2002, that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–31154 Filed 12–9–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Pennsylvania State University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–040.

Applicant: Pennsylvania State University, University Park, PA 16802.

Instrument: Optical Image Furnace and Accessories, Model SC1–MDH–20020.

Manufacturer: NEC Machinery Corporation, Japan.

Intended Use: See notice at 67 FR 58355, September 16, 2002.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a dual mirror image furnace with a homogeneous temperature gradient around the horizontal plane with a simultaneous steeper temperature gradient along the vertical portion for growth of various crystals. The National Aeronautics and Space Administration advised May 8, 2002, that (1) This capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use (comparable case).

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–31155 Filed 12–9–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120402A]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for scientific research permit (1408) and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application for scientific research from California Department of Water Resources (CDWR) in Sacramento, CA (1408). This permit would affect three Evolutionarily Significant Units (ESUs) of salmonids identified in the **SUPPLEMENTARY INFORMATION** section below. This document serves to notify the public of the availability of the permit application for review and comment.

DATES: Written comments on the permit application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on January 9, 2003.

ADDRESSES: Written comments on this request should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review, by appointment, for permit 1408: Protected Resources Division, NMFS, 650 Capitol Mall, Suite 8–300, Sacramento, CA 95814 (ph: 916–930–3600; fax: 916–930–3629). Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: Rosalie del Rosario at phone number 916–930–3600, or e-mail: *Rosalie.delRosario@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531 1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222 226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to 3 federally listed salmonid ESUs: endangered Sacramento River Winter-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley Spring-run Chinook salmon (*O. tshawytscha*), and threatened Central Valley steelhead (*O. mykiss*).

New Applications Received

CDWR requests a 2–year permit for incidental take of adult endangered Sacramento River Winter-run Chinook salmon, threatened Central Valley Spring-run Chinook salmon and threatened Central Valley steelhead in the mainstem of the Sacramento River. The purpose of the study is to provide information on swimming performance and behavior of white sturgeon to assist the construction and operation of sturgeon passage structures that will be applicable to proposed North Delta Through Delta Facilities.

Dated: December 4, 2002.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–31158 Filed 12–9–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120402B]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of modification to permit 1044 to the Southwest Fisheries Science Center (SWFSC) in Santa Cruz, CA.

SUMMARY: Notice is given that NMFS has issued a modification to permit 1044 to SWFSC that authorizes takes of threatened Endangered Species Act (ESA) listed anadromous fish species for research purposes subject to certain conditions set forth therein.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Protected Resources Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528.

FOR FURTHER INFORMATION CONTACT: For permit 1044: Diana Hines, Protected Resources Division, NMFS, Santa Rosa, CA (707) 575–6057, or e-mail: *diana.hines@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following species and evolutionarily significant units are covered in this notice: Central California Coast steelhead (*Oncorhynchus mykiss*).

Issuance of this permit, as required by the ESA, was based on a finding that such modification was: (1) applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permit; and (3) is consistent with the purposes and policies set forth in section 2 of the

ESA. This permit was issued in accordance with, and is subject to, part 222 of Title 50 CFR, the NMFS regulations governing listed species permits.

Modification to Permit Issued

Notice was published on August 23, 2002, that SWFSC applied for a modification to permit 1044 to take threatened Central California Coast steelhead associated with a life history diversity study and density study in Soquel Creek, CA. Modification 2 to Permit 1044 was issued on November 12, 2002, authorizing takes of juvenile, threatened, Central California Coast steelhead. Modification 2 is valid for the duration of the permit.

Permit 1044M2 expires June 30, 2007.

Dated: December 4, 2002.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–31159 Filed 12–9–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Docket No. 010222048–2293–06

The Health and Life Insurance Cancellation Notices Exception of the Electronic Signatures in Global and National Commerce Act

AGENCY: National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce

ACTION: Notice, Request for Comments

SUMMARY: Section 101 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106–229, *codified at* 15 U.S.C. 7001 *et seq.* ("ESIGN" or "the Act"), preserves the legal effect, validity, and enforceability of signatures and contracts relating to electronic transactions and electronic signatures used in the formation of electronic contracts. 15 U.S.C. 7001(a). Section 103 (a) and (b) of the Act, however, provides that the provisions of section 101 do not apply to contracts and records governed by statutes and regulations regarding court documents; probate and domestic law matters; state commercial law; consumer law covering utility services, residential property foreclosures and defaults, and insurance benefits; product recall notices; and hazardous materials documents. Section 103 of the Act also requires the Secretary of Commerce, through the Assistant Secretary for Communications, to review the operation of these exceptions to evaluate whether they continue to be necessary for consumer protection, and to make recommendations to Congress based on this evaluation. 15 U.S.C. 7003(c)(1). This Notice is intended to solicit comments from interested parties for purposes of this evaluation, specifically on the health and life insurance cancellation notices exception to the ESIGN Act. *See* 15 U.S.C. 7003(b)(2)(C). NTIA will publish separate notices requesting comment on the other exceptions listed in section 103 of the ESIGN Act.[1]

DATES: Written comments and papers are requested to be submitted on or before February 10, 2003.

ADDRESSES: Written comments should be submitted to Josephine Scarlett, National Telecommunications and Information Administration, 14th Street and Constitution Ave., NW., Washington, DC 20230. Paper submissions should include a three and one-half inch computer diskette in HTML, ASCII, Word, or WordPerfect format (please specify version). Diskettes should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. In the alternative, comments may be submitted electronically to the following electronic mail address: *esignstudy__insnot@ntia.doc.gov*. Comments submitted via electronic mail also should be submitted in one or more of the formats specified above.

FOR FURTHER INFORMATION CONTACT: For questions about this request for comment, contact: Josephine Scarlett, Attorney, Office of the Chief Counsel, NTIA, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone (202) 482–1816 or electronic mail: *jscarlett@ntia.doc.gov*. Media inquiries should be directed to the Office of Public Affairs, National Telecommunications and Information Administration, at (202) 482–7002.

SUPPLEMENTARY INFORMATION:

Background: Electronic Signatures in Global and National Commerce Act

Congress enacted the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106–229, 114 Stat. 464 (2000), to facilitate the use of electronic records and signatures in interstate and foreign commerce and to remove uncertainty about the validity of contracts entered into electronically. Section 101 requires, among other things, that electronic signatures, contracts, and records be given legal effect, validity, and enforceability. Sections 103(a) and (b) of the Act provides that the requirements of section 101 will not apply to contracts and records governed by statutes and regulations regarding: probate and domestic law matters; state commercial law; consumer law covering utility services, residential default and foreclosure notices; insurance benefits cancellation notices; product recall notices; and hazardous materials documents.

The statutory language providing for an exception to section 101 of ESIGN for health and life insurance cancellation notices is found in section 103(b)(2)(C) of the Act:

Sec. 103. [15 U.S.C. 7003] Specific Exceptions.

(b) Additional Exceptions.— The provisions of section 101 shall not apply to—

* * * *

(2) any notice of—

* * * *

(C) the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities)—

* * * *

The statutory language requiring the Assistant Secretary for Communications and Information to submit a report to Congress on the results of the evaluation of the section 103 exceptions to the ESIGN Act is found in section 103(c)(1) of the Act as set forth below.

(c) Review of Exceptions.—

(1) Evaluation required.— The Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall review the operation of the exceptions in subsections (a) and (b) to evaluate, over a period of 3 years, whether such exceptions continue to be necessary for the protection of consumers. Within 3 years after the date of enactment of this Act, the Assistant Secretary shall submit a report to Congress on the results of such evaluation.

Health and Life Insurance Cancellation Notices

Information regarding life and health insurance rates and benefits is widely distributed through electronic means, including Internet websites and facsimiles. The ESIGN Act exception for life and health insurance cancellation notices excludes insurance cancellation notices sent to consumers by an

[1] Comments submmitted in response to *Federal Register* notices requesting comment on the other exceptions to ESIGN will be considered as part of the same section 103 evaluation and not as part of a separate review of the Act.

electronic method from the operation of the statute. The rules and regulations governing termination and cancellation notices for life and health insurance benefits are governed, in part by Federal law, but primarily by state law.

The Department of Labor, Pension Welfare Benefits Administration (PWBA), and the Department of Health and Human Services, Centers for Medicaid and Medicare Services (CMS), have Federal regulatory authority for the distribution of information regarding life and health insurance to Federal employees and to Medicare and Medicaid recipients. As early as 1997, before the passage of ESIGN, these agencies proposed rules to allow the release of information regarding health and life insurance benefits in electronic format. *See, e.g.*, 62 FR 16979 (April 8, 1997). Since that time, both agencies have conducted rulemaking proceedings to incorporate standards for the electronic transmission of certain health insurance information. The CMS adopted standards for electronic transactions regarding health plans, health care clearinghouses, and certain health care providers in August 2000. *See* 65 FR 50312 (August 17, 2000). CMS recently proposed an amendment to its rules to improve Medicare and Medicaid programs, and the efficiency and effectiveness of the health care system in general by encouraging the development of a health information system through the establishment of standards and requirements for the electronic transmission of certain health insurance information. *See* 67 FR 38050 (May 31, 2002). The CMS's regulations require health providers and organizations to provide: written notice to Medicare enrollees of the termination of a risk contract; notice by mail to Medicare enrollees of a health maintenance organization (HMO) or covered medical provider's (CMP) intention not to renew a contract; and 60 days' notice of a contract termination initiated by the HMO or CMP. *See* 42 CFR 417.488(a), 417.492(a)(ii), and 417.494(b)(iv)(4).

The Labor Department's PWBA also recently issued regulations governing the disclosure of pension and health plan information through electronic media. *See* 67 FR 17264 (April 9, 2002). Under new rules that became effective on October 9, 2002, the administrator of a group health plan may furnish certain documents to plan enrollees, beneficiaries, and other persons entitled to the information using electronic media. *See* 29 CFR 2520.104b–1(c).

With respect to state laws, some states' regulations require health and life insurance companies to provide written notice to policyholders before the effective date of a policy cancellation or nonrenewal. For example, the Florida statute provides that a health insurance provider must provide the insured written notice at least 45 days prior to cancellation or nonrenewal. Fla.Stat. § 408.909(7) (2002). The South Carolina Code provides that an insurer must give an insured at least 31 days' written notice of nonrenewal of a health insurance policy. S.C. Code Ann. § 38–71–335.

The use of electronic means to transmit health and life insurance cancellation notices, therefore, would represent a departure from Federal and state rules that require companies to transmit information in writing through postal delivery. Approximately forty-three states have used section 102(a)(1) of ESIGN to adopt electronic transactions laws that incorporate or exclude state-exclusive areas from the application of the state's electronic transactions law. *See* National Conference of Commissioners on Uniform State Laws at *http://www.nccusl.org/nccusl/LegislativeByState.pdf*. Of the states that have passed these laws, several have expressly excluded health and life insurance cancellation notices from the operation of the state electronic transactions laws.[2] For example, North Carolina's electronic transaction law provides that the law does not apply to "any notice of the cancellation or termination of health insurance or benefits, or life insurance or benefits, excluding annuities." *See* N.C. Gen. Stat. § 66–313(e)(3) (2000). A large number of the remaining states have passed state uniform electronic transactions laws that do not contain language that expressly excludes health and life insurance cancellation notices. These states' statutes may contain general provisions, however, that makes the substantive insurance law controlling, which requires an examination of the insurance codes in these states to determine whether electronic health and life insurance cancellation notices are legally valid. Information regarding changes in state or Federal law to allow electronic transmission of cancellation notices for life and health insurance would assist in the evaluation of whether consumers would be adequately protected if the life and health insurance cancellation notices exception is eliminated from the ESIGN Act.

[2] The following states have enacted electronic transactions laws that include an exception for health and life insurance cancellation notices: Alabama, California, Colorado, Connecticut, Hawaii, Illinois, Louisiana, Maryland, Minnesota, Mississippi, New Jersey, New Mexico, and North Carolina. *See e.g.*, Md Code Ann., Com. Law § 21-201(B)(4)(III); N.C. Gen. Stat. § 66-313(E)(3) (2001); and National Conference of Commissioners on Uniform State Laws, *availoble ot http://www.nccusl/legislativebystate.pdf.*

The ESIGN Section 103 Evaluation

The ESIGN Act directs the Assistant Secretary of Communications and Information to conduct an evaluation of whether the exceptions set out in section 103 of the Act continue to be necessary for the protection of consumers, and to submit a report to Congress on the results of the evaluation no later than June 30, 2003. The Assistant Secretary for Communications and Information is the chief administrator of NTIA. As the President's principal advisor on telecommunications policies pertaining to the Nation's economic and technological advancement, NTIA is the executive branch agency responsible for developing and articulating domestic and international telecommunications policy.

The ESIGN section 103 evaluation is intended to examine the current status of Federal and state regulations that govern, and practices of companies that issue life and health insurance cancellation notices, in preparation for a report to Congress on whether this exception remains necessary to protect consumers. This evaluation is not a review or analysis of Federal and state regulations and rules relating to life and health insurance cancellation notices for the purpose of recommending changes to those regulations, but to advise Congress of the current state of law, practice, and procedure regarding this issue. Comments filed in response to this Notice should not be considered to have a connection with or impact on ongoing specific Federal and state procedures or rulemaking proceedings concerning life and health insurance cancellation notices.

Invitation to Comment

NTIA requests that interested parties, including members of the bar, courts and consumer representatives, submit written comment on any issue of fact, law, or policy that may assist in the evaluation required by section 103(c). We invite comment from all parties that may be affected by the removal of the life and health insurance cancellation notices exception from the ESIGN Act including, but not limited to, state agencies and organizations, national and state bar associations, consumer advocates, and insurance or benefits law practitioners. The comments will assist NTIA in evaluating the potential impact of the removal of this exception from ESIGN on consumers, insurers, practitioners, and state electronic transactions laws. The following questions are intended to provide guidance as to the specific subject areas to be examined as a part of the evaluation. Commenters are invited to discuss any relevant issue, regardless of whether it is identified below.

1. What methods, if any, are available to protect health and life insurance consumers if the exception for life and health insurance cancellation notices is eliminated from the ESIGN Act? Discuss.

2. Discuss state and municipal health and life insurance regulations, laws, and ordinances that require written notice to consumers for cancellation or termination of insurance benefits.

3. Discuss any state regulations that allow companies to transmit health and life insurance cancellation notices by electronic methods.

4. How would the removal of the insurance cancellation notices exception to ESIGN affect health and life insurance consumers? How would the removal of the exception affect the provision of notice by health and life insurance companies to their customers? Please discuss.

5. What effect would the removal of the exception have on current state and Federal policies concerning cancellations of life and health insurance? Discuss.

6. If the ESIGN Act is amended to eliminate the health and life insurance cancellation notice exception, what other changes, if any, should be made to the Act to maintain consumer protection laws? What changes would be necessary, if any, to maintain current state and Federal policies concerning the content and timing of health and life insurance termination and cancellation notices?

7. What are the benefits for health and life insurance customers, and insurance companies that may result from electronic notice of cancellation of insurance benefits?

8. List any issues regarding delivery, timing, authentication, and privacy for health and life insurance benefits cancellation notices that can and should be resolved prior to removal of the exception from the Act?

9. Discuss current electronic methods that are used to provide life and health insurance information to customers(e.g., executed contracts, quotes provided, benefits statements).

10. Describe any consumer protection mechanisms employed by companies that use electronic methods to transmit health and life insurance information to consumers.

11. Have states and companies developed electronic notification procedures for the transmission of health and life insurance information? If so, discuss:

a. the receipt verification procedures that have been implemented;

b. regulations that have been updated to reflect electronic signature technologies; and

c. current state regulations that require the retention of a separate paper copy.

12. Discuss any other issues (such as privacy and state consumer protection laws) that may be affected if insurance cancellation notices are included under the requirements of section 101 of the ESIGN Act.

Please provide copies of studies, reports, opinions, research or other empirical data referenced in the responses.

Dated: December 4, 2002.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 02–31069 Filed 12–9–02; 8:45 am]

BILLING CODE 3510–60–S

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Draft Mission Environmental Impact Statement (EIS) for Aberdeen Proving Ground (APG), Maryland

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the availability of the APG Draft Mission EIS for public review and comment. The EIS provides APG and its stakeholders an analysis of the environmental impacts resulting from all reasonably foreseeable future mission activities at APG, located in northeastern Maryland.

DATES: The public comment period will end 45 days after the publication of the notice of availability in the **Federal Register** by the Environmental Protection Agency.

ADDRESSES: Anyone wishing to receive a copy of the Draft EIS or the EIS Executive Summary may send a postcard or letter with their name and address to: U.S. Army Garrison Aberdeen Proving Ground, Directorate of Safety, Health and Environment, ATTN: AMSSB–GSH–ER (Buddy Keesee), Aberdeen Proving Ground, MD 21005.

FOR FURTHER INFORMATION CONTACT: Buddy Keesee at (410)–278–6755, or via email at *buddy.keesee@usag.apg.army.mil.*

SUPPLEMENTARY INFORMATION: The Army proposes to provide for the future operation of APG, located in Maryland at the northern end of the Chesapeake Bay. APG is composed of two principal areas separated by the Bush River: the Aberdeen Area situated north of the river and the Edgewood Area to the south. Three alternatives have been identified and assessed for the future operation of APG: (1) Alternative A: future planned activities plus mitigation alternative (proposed action), (2) Alternative B: future planned activities alternative, and (3) Alternative C: no action alternative. The future planned activities plus mitigation alternative (Alternative A) would provide for the Army's future operation of APG through the adoption of a comprehensive environmental baseline assessment of APG mission activities for use in environmental manage-ment decision-making, to include the analysis of cumulative effects, as well as the implementation of a mitigation program to nullify any potential adverse impacts of all reasonable foreseeable future mission activities. Alternative A is distinct from the other alternatives as it represents a comprehensive approach to the management of the APG environment. The future planned activities alternative (Alternative B) would encompass all reasonable foreseeable future mission activities. However, individual actions requiring National Environmental Policy Act documentation would be implemented piecemeal and a means for comprehensive environmental management, including a current environmental baseline, would not be established. The no action alternative (Alternative C) is defined as the continuation of current ongoing mission activities at approximately the same levels, intensities, rates, and conditions as they currently exist (*i.e.*, status quo). Under no action, the baseline established by the 1978 installation-wide EIS would be the only comprehensive point of reference for the analysis of environmental effects, including cumulative effects. Mitigation measures would be implemented on a project-by-project basis.

The analysis in the Draft Mission EIS indicates that no significant adverse impacts that cannot be avoided, minimized, or mitigated are anticipated to occur under the proposed action (Alternative A) or the no action alternative (Alternative C). Although there is an opportunity to mitigate future adverse impacts under the

proposed action and current adverse impacts under the no action alternative, there is a fundamental difference in the approach. Under the proposed action, a means for comprehensive environmental management, including a current environmental baseline, would be established. Mitigation may be applied comprehensively within this context. In the case of the no action alternative, environmental consideration and documentation will be performed on a prpoject-by-project basis with the baseline established by the 1978 installation-wide EIS. A comprehensive mitigation program would not be implemented.

When requesting copies of the EIS, please specify whether you wish to receive only the Executive Summary or the full document including the appendices.

Comments received after the 45-day comment period will be considered to the extent practicable. The Army will use the comments received to help prepare the the APG Final Mission EIS. Public information meetings on the Draft EIS will be held in Harford, Baltimore and Kent Counties in Maryland. The meetings will provide opportunities for information exchange and discussion among members of the Army, APG, and the public. Exact dates and locations will be advertised in the local media at least 15 days prior to the meetings. Additional information on the public meetings can also be obtained from the DPG Public Affairs Office at (410) 278–1147.

Persons and organizations wishing to comment on the Draft EIS may attend the public meetings or may send written comments to: Commander, U.S. Army Garrison Aberdeen Proving Ground, ATTN: AMSSB–GSH–ER (Draft APG EIS), Aberdeen Proving Ground, MD 21005.

The full Draft EIS and EIS Executive Summary will be available at the following public reading rooms: Harford County Library (Aberdeen Branch), 21 Franklin Street, Aberdeen; Harford County Library (Edgewood Branch), 2205 Hanson Road, Edgewood; Kent County Public Library, 408 High Street, Chestertown. Copies at the public reading rooms are for review purposes only and extra copies of the documents will not be available at these locations.

Dated: December 2, 2002.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I&E).

[FR Doc. 02–31137 Filed 12–9–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 8, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 4, 2002.

John Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: National Postsecondary Student Aid Study: 2004.

Frequency: One time.

Affected Public: Individuals or household; business or other for-profit; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 1,204. Burden Hours: 4,125.

Abstract: The 2004 National Postsecondary Student Aid Study is being conducted to meet the continuing need for national-level data about significant financial aid issues for students enrolling in postsecondary education. Information about financial aid policies and postsecondary affordability is critical to policymakers who determine the need analysis formulas for Pell Grants, maximum amounts for student loans and other need-based federal programs, and estimate the continuing and future burden that ensuring federal aid places on the Federal government. For the first time this study will also collect representative data on state aid and tuition policies which have been previously unavailable at the student level. This clearance request covers field test and full-scale activities. This interview will collect information on background, program of study, enrollment status, federal aid amounts, state aid amounts, other types of aid, tuition, school-related expenses, student and parent finances, student employment, credit card usage, and educational expectations.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–31120 Filed 12–9–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 8, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 4, 2002.

John Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: Trends in International Mathematics and Science Study (TIMSS): 2003.

Frequency: One time.

Affected Public: Individuals or household; not-for-profit institutions; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 25,710. Burden Hours: 20,730.

Abstract: The TIMSS 2003 will assess the mathematical and science knowledge of students in over 50 participating countries. This is the third cycle of TIMSS studies. Previous TIMSS were conducted in 1994–1995 and in 1999. TIMSS 2003 will go to fourth and eighth graders in the United States. In addition to the assessments, in each participating country, the selected students and their fourth grade teachers and eighth grade science and math teachers, and administrators of the selected schools will also fill out background questionnaires to learn about curricula, instruction, home context, and school characteristics and policies.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–31119 Filed 12–9–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–27–000]

California Independent System Operator Corporation; Notice of Filing

December 4, 2002.

Take notice that on December 2, 2002, California Independent System Operator Corporation (ISO) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act for authorization for the transfer of Operational Control of certain transmission assets from the cities of Anaheim, California (Anaheim), Azusa, California (Azusa), Banning, California (Banning), and Riverside, California (Riverside) (collectively Southern Cities) to the ISO, to be effective on January 1, 2003.

The ISO states that this filing has been served on the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Agreements under the ISO Tariff, including the Southern Cities.

The ISO is requesting expeditious action by the Commission on this Application so that the transfer of Operational Control discussed herein can be effectuated on January 1, 2003.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: December 20, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31139 Filed 12–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4914]

International Paper Company; Errata Notice

December 4, 2002.

The comment date was omitted from the Notice of Application Tendered for Filing with the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments issued on November 27, 2002 (67 FR

72161, December 4, 2002). The comment date should be January 21, 2003.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–31141 Filed 12–9–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–25–000]

WPS Resources Corporation, Energy Services, Inc.; Notice of Filing

December 4, 2002.

Take notice that on November 27, 2002, WPS Resources Corporation (WPSR) and WPS Energy Services, Inc. (ESI) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 203 of the Federal Power Act and part 33 of the Commission's regulations, a request for authorization to convert certain debt owed to WPSR by Quest Energy, L.L.C. into common equity pursuant to which Quest will become a subsidiary of WPSR.

Copies of the filing were served on the Public Service Commissions of Wisconsin and Michigan.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: December 18, 2002.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–31138 Filed 12–9–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–235–000]

Xcel Energy Services, Inc.; Northern States Power Company; Notice of Filing

December 4, 2002.

Take notice that on November 26, 2002, Xcel Energy Services, Inc. (XES), on behalf of Northern States Power Company (NSP) submitted for filing with the Federal Energy Regulatory Commission (Commission) Amendment # 2 to the Interconnection & Interchange Agreement between NSP and Minnesota Municipal Power Agency.

NSP requests the letter agreements be accepted for filing effective October 17, 2002, and requests waiver of the Commission's notice requirements in order for the Agreements to be accepted for filing on the date requested.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: December 20, 2002.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–31140 Filed 12–9–02; 8:45 am]
BILLING CODE 6717–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee

Information Collection Activities Under OMB Review

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice of information collection extension submitted to OMB for review under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC") has sent to the Office of Management and Budget ("OMB") for review the following information collection.

DATES: Comments on this information collection must be received on or before January 9, 2003.

ADDRESSES: Send comments to Ben Henson, Executive Director, Appraisal Subcommittee, 2000 K Street, NW., Suite 310, Washington, DC 20006; and Joseph F. Lackey, Jr., Clearance Officer, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, General Counsel, Appraisal Subcommittee, 2000 K Street, NW., Suite 310, Washington, DC 20006, from whom copies of the information collection and supporting documents are available.

SUPPLEMENTARY INFORMATION:

Title: 12 CFR Part 1102, Subpart B; Rules of Practice for Proceedings.

Type of Review: Regular submission.

Summary and Need: Procedures for ASC non-recognition and "further action" proceedings against State appraiser regulatory agencies and other persons under § 1118 of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3347).

Form Number: None.

OMB Number: 3139–0005.

Affect Public: State, local or tribal government.

Number of Responses: 2 responses.

Average Hours Per Responses: 60 hours.

Total Annual Burden Hours: 120 hours.

By the Appraisal Subcommittee of the Federal Financial institutions Examination Council.

Dated: December 4, 2002.

Ben Henson,
Executive Director.
[FR Doc. 02–31079 Filed 12–9–02; 8:45 am]
BILLING CODE 6700–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 26, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Wayne W. Whalen and Paula Wolff, River Forest, Illinois; to retain ownership of the outstanding shares of Unionbancorp, Inc., Ottawa, Illinois, and thereby indirectly retain voting shares of Unionbank, Streator, Illinois; Unionbank/Central, Princeton, Illinois; Unionbank/West, Macomb, Illinois, and Unionbank/Northwest, Hanover, Illinois.

2. Dennis J. McDonnell and Kathleen A. McDonnell, Chicago, Illinois; to retain ownership of the outstanding shares of Unionbancorp, Inc., Ottawa, Illinois, and thereby indirectly retain voting shares of Unionbank, Streator, Illinois; Unionbank/Central, Princeton, Illinois; Unionbank/West, Macomb, Illinois, and Unionbank/Northwest, Hanover, Illinois.

B. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Sr. Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Brian and Patricia Wellmon, Crandon, Wisconsin; to acquire voting shares of Northern Wisconsin Bank Holding Company, Laona, Wisconsin, and thereby indirectly acquire voting shares of Laona State Bank, Laona, Wisconsin.

Board of Governors of the Federal Reserve System, December 4, 2002.

Jennifer J. Johnson,
Secretary of the Board.
[FR Doc. 02–31125 Filed 12–9–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 3, 2003.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Sr. Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Olmsted Holding Corporation, Byron, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Olmsted National Bank, Rochester, Minnesota.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First Olathe Bancshares, Inc., Overland Park, Kansas; to acquire an additional 29.26 percent, for a total of 59.56 percent of the voting shares of Bannister Bancshares, Inc., Kansas City, Missouri, and thereby indirectly acquire additional voting shares of Union Bank, Kansas City, Missouri.

Board of Governors of the Federal Reserve System, December 4, 2002.

Jennifer J. Johnson,
Secretary of the Board.
[FR Doc. 02–31124 Filed 12–9–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 011 0242]

National Academy of Arbitrators; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 2, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: L. Barry Costilo, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2024.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade

Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 3, 2002), on the World Wide Web, at *http://www.ftc.gov/os/2002/12/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the documents must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the National Academy of Arbitrators ("NAA"). NAA has its principal place of business in Pittsburgh, Pennsylvania.

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and decide whether it should withdraw from the agreement or make final the agreement's proposed order.

NAA is an honorary association for labor-management arbitrators. Labor-management arbitrators hear and decide disputes between labor unions and employers. The complaint alleges that NAA engages in substantial activities for the economic benefit of its members. The complaint further alleges that NAA has approximately 600 members, many of whom arbitrate labor-management disputes for a fee.

The complaint charges that NAA has violated Section 5 of the Federal Trade Commission Act by acting as a combination of its members and in agreement with some of its members to retrain competition by restricting advertising and solicitation by its members. The complaint alleges that in furtherance of the combination and agreement NAA has adopted and maintained a Code of Professional Responsibility for Arbitrators of Labor-Management Disputes and Formal Advisory Opinions that restrain arbitrators from engaging in truthful, non-deceptive advertising and solicitation, regardless of whether such advertising or solicitation compromises or appears to compromise the impartiality of Arbitrators. The Code of Professional Responsibility states:

An arbitrator must not solicit arbitration assignments. * * * Solicitation, as prohibited by this section, includes the making of requests for arbitration work through personal contacts with individual parties, orally or in writing.

In addition to prohibiting solicitation, the previous version of the Code prohibited virtually all advertising. The advertising restriction was recently amended to restrict only false and misleading advertising. However, NAA's Formal Advisory Opinions, which serve as official interpretations of the Code, often do not draw a distinction between advertising and solicitation and continue to restrict members from distributing truthful information. For example, Opinion 14 deems an arbitrator's unsolicited mailing to both labor and management representatives that contains truthful biographical information to be a violation of NAA's ethics provisions on advertising and solicitation. Opinion 16 concludes that it is unethical solicitation and advertising for an arbitrator to send out announcements of the change of address of his office, which include his resume (including the fact that he is a lawyer) and state his fee schedule. Opinion 18 declares it unethical for an arbitrator to "distribute his business cards, except on request, to potential clients." And Opinion 19 holds that an arbitrator who gives potential clients ball point pens to inform them of his change of address runs afoul of the proscriptions on advertising and solicitation. Given these Formal Advisory Opinions, the narrowing of the advertising restrictions in the Code to false and misleading advertising does not eliminate competitive concerns.

The complaint alleges that the above acts and practices constitute unfair methods of competition which have restrained competition unreasonably. It further alleges that the effects of the acts and practices are to injure consumers by depriving consumers of the services of labor-management arbitrators of the benefits of truthful, non-deceptive information and of free and open competition among arbitrators.

NAA has signed a consent agreement containing the proposed consent order. The proposed consent order would prohibit NAA from maintaining or enforcing any policy, ethics rule, interpretation or guideline that impedes or restricts arbitrators from engaging in advertising truthful information about their services, including the prices, terms and conditions of sale of their services. The proposed consent order would also prohibit NAA from maintaining or enforcing any policy, ethics rule, interpretation or guideline against solicitation of arbitration work. The order permits NAA to adopt and promulgate reasonable ethics guidelines governing the conduct of its members with respect to representations that NAA reasonably believes would be false or deceptive or governing conduct that NAA reasonably believes would compromise or appear to compromise the impartiality of arbitrators.

To ensure and monitor compliance, the consent order provides, among other things, that within certain time frames NAA shall remove the provisions that are inconsistent with the order from NAA's Code of Professional Responsibility for Arbitrators of Labor-Management Disputes, NAA's Advisory Opinions, any NAA policy statement or guideline and NAA's website. The order requires NAA to publish a copy of the order and complaint in its newsletter. It further provides that the order and complaint shall be published on the NAA web site, with a link placed in a prominent position on the web site's home page. The proposed consent order also contains other provisions to monitor compliance.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By director of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–31143 Filed 12–9–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Study of Fathers' Involvement in Permanency Planning and Child Welfare Casework—New—The Office of the Assistant Secretary for Planning and Evaluation proposes a study to assess how four states identify, locate, and involve non-custodial fathers in decision making and permanency planning for children in the child welfare system. *Respondents:* State or local governments—State and Local Administrator Burden Information—*Number of Respondents:* 44; *Average Burden per Response:* 35 minutes; *Total Administrator Burden:* 26 hours—Caseworker Burden Information—*Number of Respondents:* 1,200; *Average Burden per Response:* 55 minutes; *Total Caseworker Burden:* 1,100 hours—Administrative Burden—*Number of Respondents:* 8 *Average Burden per Response:* 90 minutes; *Total Administrative Burden:* 12 hours—*Total Burden:* 1,138 hours.

OMB Desk Officer: Allison Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington DC, 20201. Written comments should be received with 30 days of this notice.

Dated: November 22, 2002.

Kerry Weems,

Deputy Assistant Secretary, Budget.

[FR Doc. 02–31083 Filed 12–9–02; 8:45 am]

BILLING CODE 4154–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Financial Summary of Obligations and Expenditures of Block Grant Funds (45 CFR 96.30)—0990–0236—Extension—Public Law 101–510 amended 31 U.S.C. Chapter 15 to provide that, by the end of the fifth fiscal year after the fiscal year in which the Federal government obligated the funds, the account will be cancelled. If valid charges to a cancelled account are presented after cancellation, they may be honored only by charging them to a current appropriation account, not to exceed an amount equal to one percent of the total appropriations of that account. Because of the need to determine the status of grant accounts to comply with this statutory provision, it is necessary to require an annual report on obligations and/or expenditures from all grantees under the block grant programs. *Respondents:* State, local or Tribal governments; *Number of Respondents:* 620; *Average Burden per Response:* one hour; *Total Annual Burden:* 620 hours.

OMB Desk Officer: Allison Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: November 22, 2002.

Kerry Weems,

Deputy Assistant Secretary, Budget.

[FR Doc. 02–31084 Filed 12–9–02; 8:45 am]

BILLING CODE 4151–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–20]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor , CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Resources and Services Database on CDC National Prevention Information Network (OMB No. 0920–0255)—Reinstatement—National Center for HIV, STD, and TB

Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

Background

CDC, National Center for HIV, STD, and TB Prevention proposes to continue data collection for the Resources and Services Database on CDC National Prevention Information Network (formerly known as the National AIDS Clearinghouse), previously approved under OMB No. 0920–0255. This request is for a 3-year reinstatement of clearance.

NCHSTP has the primary responsibility within the CDC and the U.S. Public Health Service for the prevention and control of HIV infection, sexually transmitted diseases (STDs), and tuberculosis (TB), including community-based HIV prevention activities and syphilis and TB elimination programs. To support NCHSTP's mission and to link Americans to prevention, education, and care services, the CDC National Prevention Information Network (NPIN) serves as the U.S. reference, referral, and distribution service for information on HIV/AIDS, STDs, and TB. NPIN is a critical member of the network of government agencies, community organizations, businesses, health professionals, educators, and human services providers that educate the American public about the grave threat to public health posed by HIV/AIDS, STDs, and TB, and provides services for persons infected with human immunodeficiency virus (HIV).

Established in 1988, the NPIN Resources and Services Database contains entries on approximately 19,000 organizations and is the most comprehensive listing of HIV/AIDS, STD and TB resources and services available throughout the country. This database describes national, state and local organizations that provide services related to HIV/AIDS, STDs, and TB such as counseling and testing, prevention, education and support services. The NPIN reference staff rely on the Resources and Services Database to respond to nearly 63,000 requests each year for information or referral from community based organizations, state and local health departments, and health professionals working in HIV/AIDS, STD and TB prevention. The CDC National AIDS and STD Hotline staff also use the NPIN Resources and Services Database to refer approximately one million callers yearly to local programs for information, services, and treatment. The American public can also access the NPIN Resources and Services database through the NPIN Web site. More than 12 million visits by the public to the Web site are recorded annually.

To accomplish CDC's goal of continuing efforts to maintain an up-to-date, comprehensive database, NPIN plans each year to add 100 newly identified organizations and to verify those organizations currently described in the NPIN Resources and Services Database each year. NPIN staff learn about new organizations through exhibiting at health and professional meetings, searching the Internet, and perusing newsletter announcements and press releases. Once a new organization is identified as providing HIV/AIDS, STD or TB-related services, NPIN staff will mail the Resource Organization Questionnaire along with a cover letter. The purpose of the questionnaire is to gather information about the HIV/AIDS, STD or TB-related services available from the organization, what geographic area the organization serves, and the target audiences for these services. Each organization will also receive a stamped, self-addressed envelope for the return of the questionnaire. Organizations with access to the Internet, will be given the option to complete and submit an electronic version of the questionnaire by visiting the CDC NPIN Web site. If NPIN receives no response to the initial mailing of the questionnaire, a follow-up telephone call will be made to the organization requesting the organization to complete and return the questionnaire.

As part of the verification process for the Resources and Services Database, 40 percent of the organizations will receive a copy of their current database entry by electronic mail, including a cover letter and a list of instructions. The remaining 60 percent will receive a telephone call to review their database record. There is no cost to respondents.

Survey	Number of respondents	Number of responses/respondent	Avg. burden/response (in hours)	Total burden (in hours)
Questionnaire Resource Organization	100	1	30/60	50
Questionnaire Telephone Follow-up	33	1	15/60	8.25
Email Verification	7,600	1	15/60	1900
Telephone verification	11,400	1	10/60	1900
Total				3858

Dated: December 4, 2002.

John Moore,

Acting Deputy Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–31131 Filed 12–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–21]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor , CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Automated Management Information System (MIS) for Diabetes Control Programs—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background

The National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC) has implemented a Management Information System (MIS) and federally sponsored data collection requirement from all CDC funded diabetes control programs. Diabetes is the sixth leading cause of death in the United States contributing to more than 200,000 deaths each year. An estimated 11.1 million people in the United States have been diagnosed with diabetes and an estimated 5.9 million people have undiagnosed diabetes. The Centers for Disease Control and Prevention's Division of Diabetes Translation (DDT) provides funding to health departments of States and territories to develop, implement, and evaluate systems-based Diabetes Control Programs (DCPs). DCPs are population-based, public health programs that design, implement and evaluate public health prevention and control strategies that improve access to and quality of care for all, and reach communities most impacted by the burden of diabetes (e.g., racial/ethnic populations, the elderly, rural dwellers and the economically disadvantaged). Support for these programs is a cornerstone of the DDT's strategy for reducing the burden of diabetes throughout the nation. The Diabetes Control Program is authorized under sections 301 and 317(k) of the Public Health Service Act (42 U.S.C. sections 241 and 247b(k)).

In accordance with the original OMB approval (July 20, 2002), this extension will continue to expand and enhance the technical reporting capacity of the MIS. The MIS is a web-based, password access protected repository/technical reporting system that replaced an archaic paper reporting system. The MIS allows the accurate, uniform, and complete collection of diabetes program progress information using the Internet. The MIS has improved upon the old data collection system by:

- Improving accountability;
- Shortening the information cycle;
- Eliminating non-standard reporting;
- Minimizing unnecessary duplication of data collection and entry;
- Reducing the reporting burden on small state organizations;
- Using plain, coherent, and unambiguous terminology that is understandable to respondents;
- Implementing a consistent system for progress reporting and record-keeping processes;
- Identifying the retention periods for recordkeeping requirements;
- Utilizing modern information technology for data collection and transfer;
- Significantly reducing the amount of paper reports that diabetes control programs are required to submit.

The MIS has allowed CDC to more rapidly respond to outside inquiries concerning a specific diabetes control activity occurring in the state diabetes control programs. The data collection requirement has formalized the format and contents of diabetes data reported from the DCPs and provides an electronic means for efficient collection and transmission to the CDC headquarters.

The MIS has facilitated the staff's ability at CDC to fulfill its obligations under the cooperative agreements; to monitor, evaluate, and compare individual programs; and to assess and report aggregate information regarding the overall effectiveness of the DCP program. It has also supported DDT's broader mission of reducing the burden of diabetes by enabling DDT staff to more effectively identify the strengths and weaknesses of individual DCPs and to disseminate information related to successful public health interventions implemented by these organizations to prevent and control diabetes. Implementation of the MIS has provided for efficient collection of state-level diabetes program data. The cost to respondents is $7,080.

Respondents	Number. of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
State Program Control Officers	59*	1	4	236
Total				236

*Respondents reside in each of the 50 States, 8 Territories, and the District of Columbia and provide progress reporting on an annual frequency.

Dated: December 4, 2002.

John Moore,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–31132 Filed 12–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–06–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Assisted Reproductive Technology (ART) Program Reporting System, (OMB No. 0920–0556)—Extension—National Center for Chronic Disease Prevention

and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). Section 2(a) of Pub. L. 102–493 (known as the Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA), 42 U.S.C. 263a–1(a)) requires that each assisted reproductive technology (ART) program shall annually report to the Secretary through the Centers for Disease Control and Prevention: (1) pregnancy success rates achieved by such ART program, and (2) the identity of each embryo laboratory used by such ART program and whether the laboratory is certified or has applied for such certification under this act.

The Centers for Disease Control and Prevention (CDC) is seeking to extend approval of a reporting system for Assisted Reproductive Technology (ART) Program from the Office of Management and Budget (OMB). This reporting system has been designed in collaboration with the Society for Assisted Reproductive Technology (SART) to comply with the requirements of the FCSRCA. The reporting system includes all ART cycles initiated by any of the approximately 400 ART programs in the United States, and covers the pregnancy outcome of each cycle, as well as a number of data items deemed important to explain variability in success rates across clinics and across individuals. Data is to be collected through computer software developed by SART in consultation with CDC.

In developing the definition of pregnancy success rates and the list of data items to be reported, CDC has consulted with representatives of SART, the American Society for Reproductive Medicine, and RESOLVE, the National Infertility Association (a national, nonprofit consumer organization), as well as a variety of individuals with expertise and interest in this field. The annual burden for this data collection is 63,400 hours.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/ response (in hours)
ART Clinics	400	220	37/60
Data Validation	40	113	23/60

Dated: December 4, 2002.

John Moore,

Acting Deputy Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–31130 Filed 12–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–08–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Human Exposure to Cyanobacterial (blue-green algal) Toxins in Drinking Water: Risk of Exposure to Microcystin from Public Water Systems (OMB. No. 0920–0527)—Revision—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background

Cyanobacteria (blue-green algae) can be found in terrestrial, fresh, brackish, or marine water environments. Some species of cyanobacteria produce toxins that may cause acute or chronic illnesses (including neurotoxicity, hepatotoxicity, and skin irritation) in humans and animals (including other mammals, fish, and birds). A number of human health effects, including gastroenteritis, respiratory effects, skin irritations, allergic responses, and liver damage, are associated with the ingestion of or contact with water containing cyanobacterial blooms. Although the balance of evidence, in conjunction with data from laboratory animal research, suggests that cyanobacterial toxins are responsible for a range of human health effects, however, there have been few epidemiologic studies of this association. We plan to recruit 100 people whose tap water comes from a source with a current cyanobaterial bloom (*i.e., M. aeruginosa*) and who report drinking unfiltered tap water. We also plan to recruit 100 people who report drinking unfiltered tap water but whose tap water source is groundwater that has not been contaminated with cyanobacteria. This population will serve as our referent population for the analysis of microcystins in blood and for the clinical assays. We will administer a questionnaire and collect blood samples from all study participants. Blood samples will be analyzed using a newly developed molecular assay for levels of microcystins—the hepatotoxin produced by Micocystis aeruginosa. We also will analyze blood samples for levels of liver enzymes (a biological marker of hepatotoxicity) and for a number of clinical parameters including hepatitis infection (a potential confounder in our study). We will evaluate whether we can (1) detect low levels of microcystins (<10 ng/ml of blood) in the blood of people who are exposed to very low levels of this toxin in their drinking water, (2) utilize clinical endpoints such as blood liver enzyme levels as biomarkers of exposure and biological effect, and (3) compare the analytical results for the exposed population with the results from the referent population. The total annual burden hours is estimated to be 350.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hrs.)
Telephone contact	300	1	10/60
Survey	200	1	1

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hrs.)
Tap water sample collection	200	1	30/60

Dated: December 4, 2002.

John Moore,

Acting Deputy Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–31133 Filed 12–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Addendum to the Recovery Plan for the Multi-Island Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service), announces the availability of the final Addendum to the Recovery Plan for the Multi-Island Plants. There are 10 plant taxa included in this plan, all of which are listed as endangered. All 10 taxa are endemic to the Maui Nui group of islands in the Hawaiian Islands.

ADDRESSES: Copies of this recovery plan are available by request from the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, Hawaii 96850 (phone 808/541–3441). Recovery Plans may also be obtained from: Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814, 301/429–6403 or 1–800–582–3421. The fee for the plan varies depending on the number of pages of the plan. This recovery plan will be made available on the World Wide Web at *http://www.r1.fws.gov/ecoservices/endangered/recovery/default.htm* or *http://endangered.fws.gov/recovery/recplans/index.htm*.

FOR FURTHER INFORMATION CONTACT: Christa Russell, Plant Conservation Program Coordinator, at the above U.S. Fish and Wildlife Service Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program. A species is considered recovered when the species' ecosystem is restored and/or threats to the species are removed so that self-sustaining and self-regulating populations of the species can be supported as persistent members of native biotic communities. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate the time and cost associated with implementing the measures needed for recovery.

The Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that during recovery plan development, we provide public notice and an opportunity for public review and comment. Information presented during the public comment period has been considered in the preparation of this final addendum, and is summarized in an appendix to the recovery plan. We will forward substantive comments regarding recovery plan implementation to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions.

This Addendum to the Recovery Plan for the Multi-Island Plants covers 10 plant taxa, all of which are listed as endangered. These 10 Hawaiian plant taxa are endemic to the Maui Nui group of islands in the Hawaiian Islands. This group includes Maui, Molokai, Lanai, and Kahoolawe. Five taxa are endemic to the island of Maui, three taxa are endemic to the island of Lanai, one taxon is endemic to Molokai, and one taxon is endemic to the island of Kahoolawe. The listed plants are: *Clermontia samuellii* (oha wai), *Cyanea copelandii* ssp. *haleakalaensis* (haha), *Cyanea glabra* (haha), *Cyanea hamatiflora* ssp. *hamatiflora* (haha), *Dubautia plantaginea* ssp. *humilis* (naenae), *Hedyotis schlechtendahliana* var. *remyi* (kopa), *Kanaloa kahoolawensis* (kohe malama malama o Kanaloa), *Labordia tinifolia* var. *lanaiensis* (kamakahala), *Labordia triflora* (kamakahala), and *Melicope munroi* (alani).

The 10 taxa included in this addendum grow in a variety of vegetation communities (shrublands and forests), elevational zones (coastal to montane), and moisture regimes (dry to wet). These taxa and their habitats have been variously affected or are currently threatened by one or more of the following: competition for space, light, water, and nutrients by introduced vegetation; habitat degradation by wild, feral or domestic animals (pigs, goats, and deer); predation by animals (deer, pigs, goats, rats, slugs, and insects); substrate loss; and collecting for scientific or horticultural purposes. In addition, due to the small number of existing individuals and their very narrow distributions, these taxa and most of their populations are subject to an increased likelihood of extinction and/or reduced reproductive vigor from naturally occurring events such as hurricanes.

The objective of the addendum to the recovery plan is to provide a framework for the recovery of these 10 taxa so that their protection by the Act is no longer necessary. The interim objective is to stabilize all existing populations of these 10 plants. To be considered stable, each taxon would have to be managed to control threats (*e.g.*, fenced) and be represented in an ex situ (such as a nursery or arboretum) collection. In addition, a minimum total of three populations of each taxon should be documented on the islands where they now occur or occurred historically. Each of these populations would have to be naturally reproducing and increasing in number, with a minimum of 25 mature individuals per population for long-lived perennials (*Kanaloa kahoolawensis* and *Melicope munroi*), and a minimum of 50 mature individuals per population for short-lived perennials (*Clermontia samuelii*, *Cyanea copelandii* ssp. *haleakalaensis*, *Cyanea glabra*, *Cyanea hamatiflora* ssp. *hamatiflora*, *Dubautia plantaginea*, *Hedyotis schlechtendahlia* var. *remyi*, *Labordia tinifolia* var. *lanaiensis*, and *Labordia triflora*).

For reclassification to threatened status, a total of five to seven populations of each taxon should be documented on islands where they now occur, or occurred historically. In certain cases, however, a particular taxon could be eligible for reclassification even if all five to seven of the populations are on only one island, provided all of the other recovery criteria have been met, and the populations in question are widely distributed and secure enough that one

might reasonably conclude that the taxon is not in danger of extinction throughout all or a significant part of its range.

Each of these populations would have to be naturally reproducing, stable or increasing in number, and secure from threats, with a minimum of 100 mature individuals per population for long-lived perennials and a minimum of 300 mature individuals per population for short-lived perennials. Each population should persist at this level for a minimum of 5 consecutive years before reclassification is considered. A total of 8 to 10 populations of each taxon should be documented on islands where they now occur or occurred historically. As with reclassification to threatened status, there could be certain cases in which a particular taxon may be eligible for removal from the list even if all 8 to 10 of the populations are on only 1 island, provided all of the other recovery criteria have been met, and the populations in question are widely distributed and secure enough that one might reasonably conclude that the taxon is not in danger of extinction throughout all or a significant part of its range. Each of these populations would have to be naturally reproducing, stable or increasing in number, and secure from threats, with a minimum of 100 mature individuals per population for long-lived perennials and a minimum of 300 mature individuals per population for short-lived perennials. Each population should persist at this level for a minimum of 5 consecutive years.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 19, 2002.

Carolyn A. Bohan,

Acting Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 02–31076 Filed 12–9–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated March 27, 2002, and published in the **Federal Register** on April 10, 2002, (67 FR 17467), Boehringer Ingelheim Chemicals, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of fentanyl (9801), a basic class of controlled substance listed in Schedule II.

The firm plans to bulk manufacture the listed controlled substance for sale to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Boehringer Ingelheim Chemicals, Inc., to manufacture is consistent with the public interest at this time. DEA has investigated Boehringer Ingelheim Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: November 5, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–31070 Filed 12–9–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated October 5, 2001, and published in the **Federal Register** on October 17, 2001 (66 FR 52781), B.I. Chemicals, Inc., which has changed its name to Boehringer Ingelheim Chemicals, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone for the bulk manufacture of amphetamine.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 8923(a) and determined that the registration of Boehringer Ingelheim Chemicals, Inc. to import phenylacetone is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Boehringer Ingelheim Chemicals, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substance Import and Export Act and in accordance with title 21, Code of Federal Regulations, section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: November 5, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–31071 Filed 12–9–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 5, 2001, and published in the **Federal Register** on October 17, 2001, (66 FR 52780), B.I. Chemicals, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substance Import and Export Act and in accordance with title 21, Code of Federal Regulations, section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: November 5, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–31072 Filed 12–9–02; 8:45 am]

BILLING CODE 4410–09–M

Drug	Schedule
Amphetamine (1100)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Levo-alphacetylmethadol (9648)	II

The firms plans to bulk manufacture the listed controlled substances for formulation into finished pharmaceuticals.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Boehringer Ingelheim Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 5, 2002.

Laura M. Nagel,

Deputy Assistont Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–31073 Filed 12–9–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Notice of Application

Pursuant to Section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on June 21, 2002, Noramco, Inc., 1440 Olympic Drive, Athens, Georgia 30601, made Application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Sufentanil (9740), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture the listed controlled substance in bulk for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than 60 days from publication.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–147)]

National Environmental Policy Act; Mars Exploration Rover-2003 Project

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of final environmental impact statement (FEIS) for implementation of the Mars Exploration Rover (MER)–2003 Project.

SUMMARY: Under the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA policy and procedures (14 CFR part 1216 subpart 1216.3), NASA has prepared a FEIS for the MER–2003 project. In the FEIS, NASA addresses the potential environmental impacts associated with continuing the preparations for and implementing the MER–2003 project. The purpose of the MER–2003 project is to explore the surface of Mars.

The proposed action and preferred alternative for implementing the MER–2003 project includes two missions, each involving identical rover spacecraft. NASA proposes to launch the first mission from Cape Canaveral Air Force Station (CCAFS), Florida, in May or June 2003, on a Delta II 7925, and the second mission from CCAFS in June or July 2003, on a Delta II 7925 Heavy. Each rover would include two small radioactive sources for instrument calibration and would use up to 11 radioisotope heater units (RHU) for thermal control.

NASA published a notice of availability (NOA) of the draft EIS (DEIS) for the MER–2003 Project (67 FR 48490, July 24, 2002) and mailed copies to 79 Federal, State and local agencies, organizations, and individuals. In addition, NASA made the DEIS available in electronic format on its website. The U.S. Environmental Protection Agency (EPA) subsequently published its NOA (67 FR 48894, July 26, 2002). Comments received during the 45-day comment period ending September 9, 2002, have been addressed in the FEIS.

DATES: NASA will take no final action on the proposed MER–2003 missions on or before January 9, 2003, or 30 days from the date of publication in the **Federal Register** of the EPA notice of availability of the MER–2003 project FEIS, whichever is later.

ADDRESSES: *See* **SUPPLEMENTARY INFORMATION** section for addresses for reviewing the FEIS and obtaining copies of the record of decision.

FOR FURTHER INFORMATION CONTACT: David Lavery, Office of Space Science, Mail Code SM, NASA Headquarters, Washington, DC 20546–0001, telephone 202–358–4800, or electronic mail *marsnepa@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION: The proposed MER–2003 project is part of NASA's continuing efforts to: (1) Understand the atmosphere, surface, and interior of Mars; (2) determine if life exists or has ever existed on Mars; (3) and develop an understanding of Mars in support of possible future human exploration. The aim of the MER–2003 project is to determine the aqueous, climactic, and geologic history of two high priority sites on Mars. In the FEIS, NASA considered and analyzed the environmental impacts of the proposed action and the no action alternative. The proposed action, which is the preferred alternative, consists of continuing preparations for and implementing the MER–2003 project. The proposed action would include two missions that would continue intensive studies of two Martian sites via identical rover spacecraft. Operation of the rovers and their science instruments would also benefit planning and design of future missions by: (1) Demonstrating the capabilities and technologies for long-range reconnaissance by mobile science platforms; (2) demonstrating complex science operations through the simultaneous use of multiple mobile laboratories; and (3) validating the standards, protocols, and capabilities of the international Mars communications infrastructure.

The first mission (MER–A) would be launched on a Delta II 7925 from CCAFS in May or June 2003. The second mission (MER–B) would be launched on a Delta II 7925 Heavy from CCAFS in June or July 2003. Opportunities to visit Mars occur every 26 months, but not all opportunities are the same from the point of view of launch vehicle capability. The 2003 launch opportunity represents the most favorable opportunity for a surface mission to Mars in decades. Programmatic issues (*e.g.*, changes in NASA priorities or

unforeseen circumstances), however, could necessitate modification to the mission objectives and timing. Such modifications could result in the need to launch one mission in 2003 and a second mission at a later date, or not at all. Depending upon the significance of any new information and whether any changes in the project are substantial, NASA will consider preparing additional environmental documentation in accordance with CEQ and NASA procedures.

For the MER–2003 missions, the potentially affected environment for normal launches includes the area at and in the vicinity of the launch site, CCAFS in Florida. The environmental impacts of normal launches of the two missions for the proposed action would be associated principally with the exhaust emissions from each of the Delta II launch vehicles. These effects would include: (1) Short-term impacts on air quality within the exhaust cloud and near the launch pads and (2) the potential for acidic deposition on the vegetation and surface water bodies at and near the launch complex, particularly if rain occurs shortly after launch.

Potential launch accidents could result in the release of some of the radioactive material on board the rover. Each rover would employ two instruments that use small quantities of cobalt-57 (not exceeding 350 millicuries) and curium-244 (not exceeding 50 millicuries) as instrument sources. Each rover would have up to 11 RHUs that use plutonium dioxide to provide heat to the electronics and batteries on board the rover. The radioisotope inventory of 11 RHUs would total approximately 365 curies of plutonium.

The U.S. Department of Energy (DOE), in cooperation with NASA, has performed a risk assessment of potential accidents for the MER–2003 project. This assessment used a methodology refined through applications to the Galileo, Mars Pathfinder, and Cassini missions and incorporates results of safety tests on the RHUs and an evaluation of the January 17, 1997, Delta II accident at CCAFS. DOE's risk assessment for this project indicates that in the event of a launch accident the expected impacts of released radioactive material at and in the vicinity of the launch area, and on a global basis, would be small.

FEIS Review Copies

The FEIS may be reviewed during normal business hours at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street, SW., Washington, DC 20546.

(b) Spaceport U.S.A., Room 2001, John F. Kennedy Space Center, FL 32899. Please call Lisa Fowler at 321–867–2201 so that arrangements can be made.

(c) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

In addition, the FEIS may be examined at the following NASA Centers by contacting the Freedom of Information Act Office at the respective Center:

(d) NASA, Ames Research Center, Moffett Field, CA 94035 (650–604–1181).

(e) NASA, Dryden Flight Research Center, P.O. Box 273, Edwards, CA 93523 (661–276–2704).

(f) NASA, Glenn Research Center at Lewis Field, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2755).

(g) NASA, Goddard Space Flight Center, Greenbelt Road, Greenbelt, MD 20771 (301–286–0730).

(h) NASA, Johnson Space Center, Houston, TX 77058 (281–483–8612).

(i) NASA, Langley Research Center, Hampton, VA 23681 (757–864–2497).

(j) NASA, Marshall Space Flight Center, Huntsville, AL 35812 (256–544–2030).

(k) NASA, Stennis Space Center, MS 39529 (228–688–2164).

Limited hard copies of the FEIS are available, on a first request basis, by contacting David Lavery, Office of Space Science, Mail Code SM, NASA Headquarters, Washington, DC 20546–0001, telephone 202–358–4800, or electronic mail *marsnepa@hq.nasa.gov*.

Electronic Access

The FEIS is also available in Acrobat® format at *http://spacescience.nasa.gov/admin/pubs/mereis/index.htm*.

Copies of the Record of Decision

Copies of the record of decision, when issued, may be obtained upon written request to David Lavery, Office of Space Science, Mail Code SM, NASA Headquarters, Washington, DC 20546–0001.

Dated: December 5, 2002.

Jeffrey E. Sutton,

Assistant Administrator for Management Systems.

[FR Doc. 02–31127 Filed 12–9–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND PLACE: 9:30 a.m., Tuesday, December 17, 2002.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The two items are Open to the Public.

MATTERS TO BE CONSIDERED:

7454A—Marine Accident Report—Collision Between the U.S. Coast Guard Patrol Boat *CG242513* and the U.S. Small Passenger Vessel *Bayside Blaster*, Biscayne Bay, Miami, Florida, January 12, 2002.

7513—Highway Accident Brief—Motorcoach run-off-the-road, near Canon City, Colorado, on December 21, 1999.

New Media Contact: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, December 13, 2002.

FOR MORE INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: December 6, 2002.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 02–31230 Filed 12–6–02; 2:07 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–318]

Calvert Cliffs Nuclear Power Plant, Inc., Calvert Cliffs Nuclear Power Plant, Unit No. 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) part 50.44, 46 and Appendix K for Facility Operating License No. DPR–69, issued to Calvert Cliffs Nuclear Power Plant, Inc. (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit No. 2 (Calvert Cliffs), located in Calvert County, Maryland. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action, as described in the licensee's application for exemption dated July 12, 2002, would allow the licensee to use up to four lead fuel assemblies (LFAs) with an advanced cladding material, a zirconium-based alloy, that does not meet the definition of Zircaloy or ZIRLO, which are referred to in Title 10 of the Code of Federal Regulations Section 50.46(a)(1)(i). The LFAs are scheduled to be loaded into the Calvert Cliffs Unit 2 reactor core during the upcoming refueling outage and would remain in the core for two (2) cycles.

The Need for the Proposed Action

The proposed exemption from 10 CFR 50.44, 10 CFR 50.46, and Appendix K to 10 CFR part 50 is needed because these regulations specifically refer to light-water reactors containing fuel consisting of uranium oxide pellets enclosed in zircaloy or ZIRLO tubes. A new zirconium-based alloy cladding has been developed, which is not the same chemical composition as zircaloy or ZIRLO. Therefore, the licensee needs an exemption to insert up to four assemblies containing the new fuel cladding material into the Calvert Cliffs reactor core for test during operation.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed exemption will not present an undue risk to the public health and safety. The safety evaluation performed by Westinghouse demonstrates that the predicted chemical, mechanical and material performance of the Advance zirconium-based cladding is within that approved for Zircaloy-4 or ZIRLO under all anticipated operational occurrences and postulated accidents. Furthermore, the LFAs will be placed in non-limiting core locations. In the unlikely event that cladding failures occur in the LFAs, environmental impact would be minimal and is bounded by previous environmental impact statements.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

In regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the Calvert Cliffs Nuclear Power Plant (CCNPP) dated April 1973 or the Final Environmental Impact Statement for licence renewal for the CCNPP dated October 1999.

Agencies and Persons Consulted

On September 5, 2002, the staff consulted with the Maryland State official, Richard McLean of the Maryland Department of the Environment, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 17, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 3rd day of December 2002.

For the Nuclear Regulatory Commission:

Guy S. Vissing,

Acting Chief, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–31167 Filed 12–9–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–17]

Portland General Electric Company Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Proposed Amendment to Materials License No. SNM–2509

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an amendment, pursuant to 10 CFR 72.56, to Special Nuclear Material License No. 2509 (SNM–2509) held by Portland General Electric Company (PGE) for the Trojan Independent Spent Fuel Storage Installation (ISFSI). The requested amendment would revise the ISFSI license (SNM–2509) and the Technical Specifications (TS) of SNM–2509 to increase the Multi-Purpose Canister (MPC) helium backfill upper pressure limit at the Trojan ISFSI.

Environmental Assessment (EA)

Identification of Proposed Action: By letter dated October 18, 2002, PGE requested an amendment to revise the license (SNM–2509) and the TS of SNM–2509 for the Trojan ISFSI. The changes would increase the MPC helium backfill upper pressure limit, make an editorial clarification, and make similar changes to the helium backfill upper pressure limit in the description of the cask loading operations. The current license specifies the MPC is to be backfilled with helium with a pressure between 29.3 psig and 33.3 psig. The amendment requests the upper limit be changed from 33.3 psig to 39.3 psig.

Need for the Proposed Action: The proposed action is necessary to minimize worker exposure during spent fuel loading activities and to maintain spent fuel parameters within required limits. Current helium backfill equipment, to be used during loading operations at the Trojan facility, cannot demonstrate backfill of the MPC free volume with helium accurately enough to satisfy TS requirements. Alternative

equipment that could provide the necessary accuracy would result in protracted helium backfilling operations and increased worker dose. In either case MPC helium backfilling operations using the current equipment and/or alternative equipment would pose undue exposure risk to plant personnel and result in extended fuel loading schedules and subsequent delays in decommissioning of the Trojan site.

Environmental Impacts of the Proposed Action: In 1999 the NRC issued a license to PGE to construct and operate the Trojan ISFSI. Prior to this action the NRC examined the environmental impacts of constructing and operating the Trojan ISFSI and issued an environmental assessment and finding of no significant impact (See 61 FR 64378, December 4, 1996). The NRC has completed its evaluation of the proposed action and concludes that granting the request for amendment to increase the TS MPC helium backfill upper pressure limit from 33.3 psig to 39.3 psig will not increase the probability or consequence of accidents beyond that bounded by previous analysis. No changes are being made in the types of any effluents that may be released offsite. With regard to radiological impacts, the increase in the TS MPC helium backfill upper pressure limit will not yield an increase in neutron and gamma dose rates at the cask surface. Dose rates remain below regulatory limits for occupational exposures and public radiation exposures and continue to comply with the applicable regulatory criteria specified in 10 CFR part 20, and 10 CFR 72.104 and 72.106. As a result, there are no significant radiological environmental impacts associated with the proposed action.

The amendment only affects the requirements associated with MPC helium backfilling operations and does not affect non-radiological plant effluents or any other aspects of the environment. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action: The alternative to the proposed action would be to deny the request for amendment (*i.e.*, the "no-action" alternative). Denial of the proposed action would result in PGE continuing to use current MPC helium backfill limits established in the TS. Without an increase in the MPC helium backfill upper pressure TS limit, decommissioning of the Trojan site could be delayed. The Trojan Nuclear Power Plant has been permanently shut down. Delaying decommissioning of the Trojan site could potentially lead to greater occupational exposure due to the extended time workers would be in the proximity of the spent fuel. The environmental impacts of the alternative action could be greater than the proposed action.

Given that the alternative action of denying the approval for amendment has no lesser environmental impacts associated with it, and considering that the proposed action would result in storage of fuel at the Trojan ISFSI, which has already been approved under a site specific license, the Commission concludes that the preferred alternative is to grant this amendment.

Agencies and Persons Consulted: On November 14, 2002, Mr. Adam Bless of the Oregon Office of Energy, Energy Resource Division, was contacted regarding the proposed action and had no comments.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing Environmental Assessment, the Commission finds that the proposed action of granting an amendment to change the MPC helium backfill upper pressure limit will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this amendment, see the PGE letter dated October 18, 2002. The amendment request was docketed per 10 CFR part 2 under Docket 72–17. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm-adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents listed in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 3rd day of December, 2002.

For the Nuclear Regulatory Commission:

Christopher M. Regan,

Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–31166 Filed 12–9–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY: Nuclear Regulatory Commission.

DATES: Weeks of December 9, 16, 23, 30, 2002, January 6, 13, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 9, 2002

There are no meetings scheduled for the Week of December 9, 2002.

Week of December 16, 2002—Tentative

Tuesday, December 17, 2002

9:30 a.m.—Briefing on Policy Options and Recommendations for Revising the NRC's Process for Handling Discrimination Issues (Public Meeting) (Contact: Ho Nieh, 301–415–1721). This meeting will be webcast live at the Web address *http://www.nrc.gov*.

Wednesday, December 18, 2002

9:30 a.m.—Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360). This meeting will be webcast live at the Web address *http://www.nrc.gov*.

3 p.m.—Discussion of Security Issues (Closed–Ex. 1).

Week of December 23, 2002—Tentative

There are no meetings scheduled for the Week of December 23, 2002.

Week of December 30, 2002—Tentative

There are no meetings scheduled for the Week of December 30, 2002.

Week of January 6, 2003—Tentative

There are no meetings scheduled for the Week of January 6, 2003.

Week of January 13, 2003—Tentative

Tuesday, January 14, 2002

10 a.m.—Briefing on Status of NRR Programs, Performance, and Plans (Public Meeting).

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: R. Michelle Schroll (301) 415–1662.

* * * * *

SUPPLEMENTARY INFORMATION: By a vote of 5–0 on November 27 and December 2, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Security Issues (Closed—Ex. 1)" be held on December 4, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html*.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: December 5, 2002.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

[FR Doc. 02–31214 Filed 12–6–02; 1:35 pm]

BILLING CODE 7990–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Pub. L. 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, November 15, 2002, through November 29, 2002. The last biweekly notice was published on November 26, 2002 (67 FR 70762).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By January 9, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.

nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov*.

Arizona Public Service Company, *et al.*, Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: November 7, 2002.

Description of amendment requests: The amendments would revise Technical Specification (TS) 3.2.4, "Departure From Nucleate Boiling Ratio (DNBR)," TS 3.3.1, "Reactor Protective System (RPS) Instrumentation—Operating," and TS 3.3.3, "Control Element Assembly Calculators (CEACs)." The proposed changes are to Limiting Conditions for Operation (LCOs), LCO Actions, and LCO Surveillance Requirements. The amendments support the replacement of the Core Protection Calculator System (CPCS). The replacement CPCS will perform functionally identical safety-related algorithms as the existing CPCS, although on a newer platform, and the CPCS design function will remain unchanged. Because the replacement CPCS for each unit will be installed in refueling outages for the three units over at least a year, starting with the Unit 2 fall 2003 outage, the licensee has proposed to have the TSs contain both the current requirements and the new requirements with the phrases "(Before CPC Upgrade)" and "(After CPC Upgrade)" on the TSs to show which requirements apply to which case.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Core Protection Calculator System (CPCS) is being replaced due primarily to parts obsolescence. The replacement CPCS will perform functionally identical safety-related algorithms as the existing CPCS, but on a newer platform. The CPCS design function will remain unchanged.

The physical location of the replacement CPCS will be the same as the existing CPCS in the auxiliary protective cabinets. Installation will occur during refueling outages when the system is not required for service. [The] majority of the testing will be performed prior to installation.

The CPCS is not an initiator of any analyzed accident, but is used for mitigation of a large number of anticipated operational occurrences and a small number of accidents. Since the CPCS is not an accident initiator, and the replacement CPCS is functionally unchanged, the CPC replacement will not increase the probability of an accident.

The functionality of the existing CPCS safety related algorithms are replicated in the System Requirements Specification for the Common Q [Common Qualified] Core Protection Calculator System. The basic Common Q CPCS design concept was approved by NRC Safety Evaluation (SE), Acceptance For Referencing Of Topical Report CENPD–396–P, Rev. 01, "Common Qualified Platform" and Appendices 1, 2, 3 and 4, Rev. 01, dated August 11, 2000 (Ref. 2 [listed in the enclosure to the amendment request]), and there have been no significant functional changes to the design as presented. The requirements for response time and accuracy that are assumed in the Palo Verde Nuclear Generating Station (PVNGS) Updated Final Safety Analysis Report (UFSAR) accident analysis will continue to be met. Therefore, since the new [replacement] CPCS will be capable of performing the same safety-related functions within the same response time and accuracy as the existing CPCS, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The CPCS provides a monitoring and detection function and is not an initiator for any accident. The CPCS provides Reactor Protection System (RPS) trips on Low Departure from Nucleate Boiling Ratio (DNBR) and High Local Power Density (LPD) in response to calculations involving several input variables. It also provides a Control Element Assembly Withdrawal Prohibit (CWP) signal to the Plant Protection System (PPS), and provides indication and annunciation. The CPCS performs no other plant functions, and is not used to initiate any ESF [(Engineered Safety Feature)] functions. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The [new] CPCS is a replacement for the existing CPCS. It will retain the same safety-related functionality as the existing CPCS. The equipment will be qualified in accordance with requirements described in the Palo Verde UFSAR.

The replacement CPCS will perform functionally identical safety-related algorithms as the existing CPCS, will trip in response to the same inputs with equivalent accuracy, and will meet the same four channel separation requirements. The only significant area of difference involves the platform. The Common Q platform uses a consistent set of qualified building blocks (Advant Controllers, Flat Panel Displays, Power Supplies, and Communication Systems) that can be used for any safety system application. For Palo Verde purposes, the only application of this platform at this time will be for use as a CPCS. The new platform will include improved human factors and fault tolerance within each CPCS channel.

In summary, the replacement CPCS performs the same function as the existing CPCS, meets the qualification requirements of the existing CPCS, and meets the accuracy standards of the existing CPCS. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, APS [(the licensee)] concludes that the proposed amendment(s) present no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, PO Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Carolina Power & Light Company, Docket No. 50–324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of amendment request: November 7, 2002.

Description of amendment request: The proposed amendment would revise the Minimum Critical Power Ratio (MCPR) Safety Limit contained in Technical Specification 2.1.1.2 from 1.09 to 1.11 for two recirculation loop operation and from 1.10 to 1.13 for single recirculation loop operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

CP&L [Carolina Power and Light Company] has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, "Issuance of amendment," as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The MCPR Safety Limit values are calculated to ensure that greater than 99.9 percent of the fuel rods in the core avoid transition boiling during any plant operation if the safety limit is not violated. The derivation of the MCPR Safety Limit values specified in the Technical Specifications, and their use to determine cycle-specific thermal limits, has been performed using the methodology discussed in "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–14 (*i.e.*, GESTAR–II), and U.S. Supplement, NEDE–24011–P–A–14–US, June 2000, which incorporates Amendment 25. Amendment 25 was approved by the NRC in a March 11, 1999, safety evaluation report. Operational MCPR limits are applied that ensure the MCPR Safety Limit is not exceeded during all modes of operation and anticipated operational occurrences.

The revised MCPR Safety Limit values do not affect the operability of any plant systems nor do these revised values compromise any fuel performance limits; therefore, the probability of fuel damage will not be increased as a result of this change.

The MCPR Safety Limit values do not impact the source term or pathways assumed in accidents previously evaluated, and there are no adverse effects on the factors contributing to offsite or onsite radiological doses. In addition, the revised MCPR Safety Limit values do not affect the performance of any equipment used to mitigate the consequences of a previously evaluated accident and do not affect setpoints that initiate protective or mitigative actions.

Therefore, the proposed Technical Specification change does not involve a significant increase in the probability or consequences of a previously evaluated accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in allowable modes of operation. The proposed revision of the MCPR Safety Limit values does not involve any facility modifications, and plant equipment will not be operated in a different manner. No new initiating events or transients will result from the revised MCPR Safety Limit values. As a result, no new failure modes are being introduced. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is established through the design of the plant structures, systems, and components; through the parameters within which the plant is operated; through the establishment of setpoints for actuation of equipment relied upon to respond to an event; and through margins contained within the safety analyses. The revised MCPR Safety

Limit values will not adversely impact the performance of plant structures, systems, components, and setpoints relied upon to respond to mitigate an accident or transient. The MCPR Safety Limit values are calculated to ensure that greater than 99.9 percent of the fuel rods in the core avoid transition boiling during any plant operation if the safety limit is not violated, thereby ensuring that fuel cladding integrity is maintained. The revised MCPR Safety Limit values have been calculated using NRC approved methods and procedures and preserve the existing margin to transition boiling. Based on the assurance that the fuel design criteria are being met, the revised MCPR Safety Limit values do not involve a reduction in a margin of safety.

Based on the above, CP&L has concluded that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Allen G. Howe.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: November 14, 2002.

Description of amendment request: The proposed amendments would revise the Technical Specification Surveillance Requirement (SR) 3.3.1.3 to add a correlation slope to the formula for imbalance error. The SR is also being changed to require an adjustment of the power range channel output if the absolute value of the imbalance error is ≥2 percent rated thermal power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.91, Duke Power Company (Duke) has made the determination that this amendment request involves a No Significant Hazards Consideration by applying the standards established by the NRC regulations in 10 CFR 50.92. This ensures that operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

No. This change will add a correlation slope (CS) to Imbalance Error that is derived from the Power Imbalance Detector Correlation (PIDC) test performed during the cycle startup testing. The formula currently exists in the technical specification. The CS will add nuclear conservatism to the error calculation.

Since the calculation already exists and the CS adds more conservatism, this proposed change does not involve an increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

No. As stated above, the proposed revision adds a conservative CS to the existing error calculation. This change is bounded by all of the existing accidents and does not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

(3) Involve a significant reduction in a margin of safety.

No. The proposed change does not adversely affect any plant safety limits, set points, or design parameters. The change also does not adversely affect the fuel, fuel cladding, Reactor Coolant System, or containment integrity. Therefore, the proposed change does not involve a significant in a margin of safety.

Duke has concluded, based on the above, that there are no significant hazards considerations involved in this amendment request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: John A. Nakoski.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington.

Date of amendment request: October 22, 2002.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to change TS Section 5.0, "Administrative Controls," to adopt Technical Specification Task Force (TSTF) –258, Revision 4. The proposed changes would: (1) Revise TS Section 5.2.2, "Unit Staff," to delete the details of the staffing requirements and delete the requirements for the Shift Technical Advisor (STA) as a separate position while retaining the function, (2) revise TS Section 5.5.4, "Radioactive Effluent Controls Program," to be consistent with the intent of 10 CFR Part 20, (3) revise TS Section 5.6.4, "Monthly Operating Reports," to delete periodic reporting requirements for main steam safety/relief valve challenges to be consistent with Generic Letter 97–02, "Revised Contents of the Monthly Operating Report," and (4) revise TS Section 5.7, "High Radiation Area," in accordance with 10 CFR 20.1601(c). A new TS Section 5.3.2 would be added to incorporate regulatory definitions for the senior reactor operator (SRO) and reactor operator (RO) positions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change is an administrative clarification of existing TS requirements which clarifies and modifies administrative controls in the areas of operator staffing requirements, working hour limits, STA position, Radioactive Effluent Controls Program, periodic reporting requirements for relief valve openings, and radiological control requirements. These changes do not impact the operation, physical configuration, or function of plant equipment or systems. These TS revisions do not affect analysis inputs or mitigation for analyzed accidents and transients. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. The proposed change does not introduce any new modes of plant operation or make any changes to system setpoints. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change is administrative in nature and does not involve physical changes to plant structures, systems, or components (SSCs), or the manner in which these SSCs are operated, maintained, modified, tested, or inspected. The proposed change does not involve a change to any safety limit, limiting safety system setting, limiting condition for operation, or design parameters for any SSC. The proposed change does not impact any safety analysis assumptions and does not involve a change in initial conditions, system response times, or other parameters affecting any accident analysis.

For these reasons, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: October 22, 2002.

Description of amendment request: The proposed amendment deletes a reference to Section 2.E in Section 2.F of Facility Operating License No. NPF–21. Section 2.E requires the licensee to fully implement and maintain in effect all provisions of the Commission-approved physical security, guard training and qualification, and safeguards contingency plans. Section 2.E is redundant because the reporting requirements and criteria for the Physical Security Programs are specified in 10 CFR 73.71 and Appendix G of 10 CFR part 73.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Operating License amendment request is administrative in nature and merely deletes a duplicative and unnecessary reporting requirement. The proposed amendment deletes a reference to Operating License Section 2.E in Operating License Section 2.F. Operating License Section 2.F presently requires the Columbia Generating Station to report any violations of the requirements contained in Section 2.C (with the exception of 2.C(2)) and 2.E of the License. Operating License Section 2.E requires Columbia Generating Station to fully implement and maintain in effect all provisions of the Commission-approved physical security, guard training and qualification, and safeguards contingency plans. The requirement to report a violation of Section 2.E is redundant and unnecessary because the reporting requirements and criteria for the Physical Security Program are specified in [10 CFR 73.71 and 10 CFR 73] Appendix G. This change to the Operating License has no impact on the manner in which the Columbia Generating Station is operated. No actual plant equipment or accident analyses will be affected by the proposed change. There will be no increase in radiological dose to plant workers or the public. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Operating License amendment request is administrative in nature and merely deletes a duplicative and unnecessary reporting requirement. The proposed amendment deletes a reference to Operating License Section 2.E in Operating License Section 2.F. Operating License Section 2.F presently requires the Columbia Generating Station to report any violations of the requirements contained in Section 2.C (with the exception of 2.C(2)) and 2.E of the License. Operating License Section 2.E requires Columbia Generating Station to fully implement and maintain in effect all provisions of the Commission-approved physical security, guard training and qualification, and safeguards contingency plans. The requirement to report a violation of Section 2.E is redundant and unnecessary because the reporting requirements and criteria for the Physical Security Program are specified in 10 CFR 73.71 and 10 CFR 73 Appendix G. This request is administrative in nature. This change to the Operating License has no impact on the manner in which the Columbia Generating Station is operated. No actual plant equipment or accident analyses will be affected by the proposed change. No failure modes not bounded by previously evaluated accidents will be created. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change will not reduce a margin of safety because it has no direct effect on any safety analyses assumptions, and no adverse effect on the performance of any system, structure, or component relied upon for accident mitigation. The proposed amendment deletes a reference to Operating License Section 2.E in Operating License Section 2.F. Deletion of the reference to Section 2.E eliminates a redundant and unnecessary reporting requirement, because the reporting requirements and criteria for the physical security program are specified in 10 CFR 73.71 and 10 CFR 73 Appendix G. Additionally, there would be no effect on baseline core damage probability. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: September 18, 2002.

Description of amendment request: The proposed change will revise the Technical Specifications (TS) Limiting Conditions for Operation and Administrative sections to correct or clarify certain requirements and information.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes are primarily to correct word omissions, typographical errors, reflect current terminology, and make the TS consistent with other NRC [U.S. Nuclear Regulatory Commission] approved documents. These changes are all of an administrative nature and have no effect on any plant equipment or structures. Therefore, these changes do not increase the probability or consequences of an accident previously evaluated.

The proposed amendment also revises the allowed drywell-to-primary containment differential pressure limit. This limit is intended to ensure that containment conditions are consistent with safety analyses. The proposed smaller negative pressure ensures that the design assumptions for the containment will be met if and when a postulated loss of coolant [accident] (LOCA) should occur. Moving the limit in a conservative direction will not increase the probability or consequences of previously evaluated accidents.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve a physical alteration of the plant. No new or different equipment or modes of operation are being introduced by this proposed change. Thus, the changes do not create the

possibility of a new or different kind of accident from any accident previously evaluated.

The change to the allowed drywell-to-primary containment differential pressure limit does not adversely impact the ability of the containment to perform its intended function. The establishment of a more conservative limit for this parameter ensures that the plant stays within current safety analysis and therefore, can not create the possibility of a new or different kind of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The proposed changes are primarily administrative in nature and can not affect any safety barriers. The proposed change to the allowed drywell-to-primary containment differential pressure limit establishes a more conservative limit for a key parameter for the containment than is currently specified in the TS. The revised differential pressure limit is consistent with current assumptions of the accident analysis. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi; Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana; and Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: November 6, 2002.

Description of amendment request: The proposed change will delete the content of the Appendix B, Environmental Protection Plan (Non-Radiological) (EPP), and the appropriate sections of the Facility Operating License (FOL) referring to the EPP will be modified to delete reference to the EPP.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The EPPs are concerned with monitoring the effect that plant operations have on the environment for the purpose of protecting the environment and has no affect on any accident postulated in the Updated Final Safety Analysis Report (UFSAR). Accident probabilities or consequences are not affected in any way by the environmental monitoring and reporting required by the EPPs. The deletion of Appendix B of the FOL will not impact the design or operation of any plant system or component. The NRC [Nuclear Regulatory Commission] relies on other Federal, State, and local agencies for environmental protection regulation. No environmental protection requirements established by these other agencies are being reduced by this license amendment. The programs and reporting requirements of the EPPs do not affect the initiation or mitigation of any accidents previously analyzed.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This license amendment is administrative in nature. Environmental monitoring and reporting has no affect on accident initiation. The deletion of the EPPs will not produce any changes to the design or operation of the plant. There will be no effect on the types and amounts of any effluent that will be released.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change is administrative in nature. The change in annual reporting requirements has no impact on margin of safety. Environmental Evaluations will still be performed, where necessary, on changes to plant design or operations to assess the effect on environmental protection.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorneys for licensee: (Grand Gulf Nuclear Station, Unit 1, and Waterford Steam Electric Station, Unit 3) Nicholas S. Reynolds, Esq., Winston & Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502; and (River Bend Station, Unit 1) Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: August 16, 2002.

Description of amendment request: The proposed amendment would modify Technical Specification (TS) 3/4.10.A, "Refueling Interlocks" to provide an alternative required action if the refueling interlocks became inoperable during fuel movements in the reactor vessel. The proposed amendment would also modify TS 3/4.10.D, "Multiple Control Rod Removal." The proposed changes would allow fuel movements in the reactor vessel should the refueling equipment interlocks become inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The refueling interlocks function to prevent prompt reactivity excursions during refueling. Criticality and, therefore, subsequent prompt reactivity excursions are prevented during the insertion and during control rod movement provided the other control rods in core cells containing one or more fuel assemblies are fully inserted. The refueling interlocks accomplish this by preventing loading of fuel into the core with any control rod withdrawn, by preventing withdrawal of a rod from the core during fuel loading, or preventing multiple control rod withdrawal. The proposed requirements ensure that these functions can be performed when required. Therefore, the probability of an accident previously evaluated is not significantly increased.

The refueling interlocks addressed by these specifications do not mitigate the consequences of any accident. Therefore, consequences of an accident previously evaluated are not significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident [from] any accident previously evaluated?

Response: No.

The proposed change does not involve a change to the plant design. The refueling interlocks function to prevent prompt reactivity excursions during refueling. The proposed requirements ensure that these functions can be performed when required. As a result, the proposed changes do not affect any of the parameters or conditions that could contribute to the initiation of any new or different kind of accident. Therefore, this proposed [change] does not create the possibility of a new or different kind of accident [from] any accident previously evaluated.

3. Does the change involve a significant reduction in [the] margin of safety?

Response: No.

The refueling interlocks function to prevent prompt reactivity excursions during refueling. Criticality and, therefore, subsequent prompt reactivity excursions are prevented during the insertion of fuel, provided all control rods are fully inserted during the fuel insertion and during control rod movement provided the other control rods in core cells containing one or more fuel assemblies are fully inserted. The refueling interlocks accomplish this by preventing loading of fuel into the core with any control rod withdrawn, by preventing withdrawal of a rod from the core during fuel loading, or preventing multiple control rod withdrawal. The proposed requirements ensure that these functions can be performed when required. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts 02360–5599.

NRC Section Chief: James W. Andersen, Acting.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: August 16, 2002.

Description of amendment request: The proposed amendment would delete Technical Specification (TS) 3.10.D.1.d from TS 3/4.10.D, "Multiple Control Rod Removal," and the associated Surveillance Requirement 4.10.D.1.d. The proposed changes involving the deletion of this requirement would reduce the number of fuel movements or valve manipulations, thereby, increasing safety and reducing worker dose. In addition, the proposed amendment would also make an editorial change to correct a reference to TS 3.3.B.3 instead of TS 3.3.B.4 in TS 3/4.10.D.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Following the deletion of the requirement that all control rods in a 3×3 array centered on each of the control rods being removed be fully inserted and electronically or hydraulically disarmed, or have the surrounding four fuel assemblies removed from the core cell, sufficient barriers will be in place to prevent the possibility of an unacceptable reactivity excursion.

As a backup to licensee procedures and controls to prevent an unacceptable reactivity excursion, the Technical Specifications (TS) will continue to have two layers of controls to ensure that an unacceptable reactivity excursion cannot occur. The first layer of control is on the local reactivity effects of withdrawing the control rod while the second is on any potential core wide effects.

The local reactivity effects of removing the control rod are addressed by the requirement that the four fuel assemblies be removed from the core cell surrounding each control rod or control rod drive mechanism to be removed from the core and/or the reactor vessel. The requirement that the fuel assemblies in the cell controlled by the control rod be removed from the reactor core ensures withdrawal of another control rod cannot result in an unacceptable reactivity excursion.

Any potential core wide effects of removing the control rod will also continue to be controlled by the TS. The TS will continue to require control rods that are not withdrawn in accordance with 3/4.10.D remain fully inserted, the core remain sub-critical with a margin with the highest worth control rod withdrawn, and no more than one control rod can be inadvertently withdrawn. These requirements together ensure an operator error that resulted in the withdrawing of a control rod from a fueled cell would not result in an unacceptable reactivity excursion and the operator cannot withdraw a second control rod in error. Therefore, these requirements ensure that adequate [Shutdown Margin] SDM will be maintained, thereby, preventing unacceptable reactivity excursions during refueling.

In addition to these two barriers preventing an unacceptable reactivity excursion, the TS will continue to require that the source range monitors be operable. This requirement ensures that neutron monitoring information is available to the operators providing them with the information necessary to identify an unacceptable reactivity excursion is occurring and take action to terminate the event.

The control remaining provide sufficient assurance an unacceptable reactivity excursion will not occur during these activities. Therefore, the probability of an accident previously evaluated is not significantly increased.

The control being deleted did not mitigate the consequences of any accident. Therefore, consequences of an accident previously evaluated are not significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident [from] any accident previously evaluated?

Response: No.

The proposed change does not involve a change to the plant design or a new mode of equipment operation. As a result, the proposed change does not affect parameters or conditions that could contribute to the initiation of any new or different kind of accident. Therefore, this proposed [change] does not create the possibility of a new or different kind of accident [from] any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

Following the deletion of the requirement that all control rods in a 3×3 array centered on each of the control rods being removed be fully inserted and electrically or hydraulically disarmed, or have the surrounding four fuel assemblies removed from the core cell, sufficient barriers will be in place to prevent the possibility of an unacceptable reactivity excursion.

The TS will continue to have controls as a backup to licensee procedures and controls to prevent an unacceptable reactivity excursion. The requirement that the fuel assemblies in the cell controlled by the control rod be removed from the reactor core ensures withdrawal of another control rod cannot result in an unacceptable reactivity excursion. Also the TS will ensure that an operator error which results in the withdrawing of a control rod from a fueled cell will not result in an unacceptable reactivity excursion and that the operator cannot withdraw a second control rod in error.

In addition to these two barriers preventing an unacceptable reactivity excursion, the TS will continue to require that the source range monitors be operable. This requirement ensures that neutron monitoring information is available to the operators providing them with the information necessary to identify that an unacceptable reactivity excursion is occurring and take action to terminate the event.

The controls remaining provide sufficient assurance an unacceptable reactivity excursion will not occur during these activities. Therefore, the proposed changes do not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts 02360–5599.

NRC Section Chief: James W. Andersen, Acting.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 24, 2002.

Description of amendment request: The amendment would revise Technical Specifications (TSs) relating to positive reactivity additions while in shutdown modes by clarifying TSs involving the positive reactivity additions. The proposed changes are based on Technical Specification Task Force (TSTF)–286, Revision 2, and allow for small, controlled, safe insertions of positive reactivity while in shutdown modes. In addition, two administrative-type changes are proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed Technical Specification (TS) changes revise actions that either require suspension of operations involving positive reactivity additions or preclude reduction in boron concentration less than the reactor coolant system (RCS). Reactivity excursions are analyzed events. The proposed changes limit positive reactivity additions into the RCS such that the required shutdown margin (SDM) or refueling boron concentration continue to be met. Reactivity changes performed during shutdown modes are currently governed by strict administrative controls. Although the proposed changes will allow procedural flexibility with regards to RCS temperature and boron concentration, these operations will still be under administrative control. The changes proposed by these amendments are within the scope and assumptions of the existing analyses.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS revisions relate to positive reactivity additions while in shutdown modes of operation. Reactivity excursions are analyzed events. The operational flexibility allowed in these proposed license amendments will be performed under strict administrative controls in order to limit the potential for excessive positive reactivity addition. Although the existing procedural controls will need modification, no new or different operational failure modes will be introduced by these changes.

Additionally, implementation of these proposed changes does not require any physical plant modifications, so no new or different hardware-related failure modes are introduced. The changes proposed by these amendments are within the scope and assumptions of the existing analyses.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes conform closely to the industry and NRC approved TSTF–286, Rev[ision] 2, and relate to small, controlled, safe insertions of positive reactivity additions while in shutdown modes. These changes revise actions that either require suspension of operations involving positive reactivity additions, or prohibit RCS boron concentration reduction. The proposed changes provide operational flexibility while controlling positive reactivity additions. The proposed changes provide for continued safe reactor operations and preserve the required SDM or refueling boron concentration.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: October 16, 2002.

Description of amendment request: The proposed amendment would revise the Completion Time for Required Action A.1 of TS 3.8.7, "Inverters—Operating," from the current 24 hours for one instrument bus inverter inoperable to 14 days. The change is being proposed to support on-line maintenance of the instrument bus inverters and will have a negligible impact on plant safety. The current Completion Time for restoration of an inoperable instrument bus inverter is insufficient to support the required maintenance and post-maintenance testing windows.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed action allows continued unit operation, for up to 14 days, with an inoperable instrument bus inverter. An inoperable instrument bus inverter is not considered as an initiator of any analyzed event. Extending the Completion Time for an inoperable instrument bus inverter would not have a significant impact on the frequency of occurrence for any accident previously evaluated. The proposed change will not result in changes to the plant activities associated with instrument bus inverter maintenance, but rather will allow increased flexibility in the scheduling and performance of preventive maintenance. Therefore, this change will not significantly increase the probability of occurrence of any event previously analyzed in the current Byron/Braidwood Stations' Updated Final Safety Analysis Report (UFSAR) safety analyses.

The consequences of a previously analyzed event are dependent on the initial conditions assumed in the analysis, the availability and successful functioning of equipment assumed to operate in response to the analyzed event, and the setpoints at which these actions are initiated. With an instrument bus inverter inoperable, the affected instrument bus is capable of being fed from its dedicated safety-related constant voltage transformer (CVT), which is powered from a 480 VAC Engineered Safety Feature (ESF) bus. In the event of a Loss of Offsite Power (LOOP), the affected instrument bus will experience a momentary loss of power until the associated diesel generator (DG) re-energizes the 480 VAC ESF bus. A LOOP with an inoperable instrument bus inverter (*i.e.*, instrument bus being powered by its CVT) will result in a loss of power to the associated instrument bus until the associated DG re-energizes the 480 VAC ESF bus. All instruments supplied by the instrument bus would be restored with no adverse impact to the units because no other instrument channels in the opposite train would be expected to be inoperable or in a tripped condition during this time, with the exception of routine surveillances. In the event the DG failed (*i.e.*, failed to re-energize the 480 VAC ESF bus), power could still be established to the 4 kV ESF bus by powering the 480 VAC ESF bus from the opposite unit 4 kV ESF bus cross-tie breaker. In the event of a failure to re-energize the 480 VAC ESF bus or of a CVT failure, the most significant impact on the unit is the failure of one train

of ESF equipment to actuate. In this condition, the redundant train of ESF equipment will automatically actuate to mitigate the accident, and the affected unit would remain within the bounds of the accident analyses. Therefore, the request for extending the Completion Time will not significantly increase the consequences of an accident previously evaluated in the Byron/Braidwood Stations' UFSAR.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed action does not involve physical alteration of the station. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There is no change being made to the parameters within which the units are operated. There are no setpoints at which protective or mitigative actions are initiated that are affected by this proposed action. The use of the CVT as an alternate power source for the instrument bus is consistent with the Byron and Braidwood Stations' plant designs. This proposed action will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No alteration in the procedures, which ensure the unit remains within analyzed limits, is proposed, and no change is being made to procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The proposed action does not alter assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Margins of safety are established in the design of components, the configuration of components to meet certain performance parameters, and in the establishment of setpoints to initiate alarms or actions. There is no change in the design of the affected systems, no alteration of the setpoints at which alarms or actions are initiated, and no change in plant configuration from original design. With one of the required instrument buses being powered from the CVT, there is no significant reduction in the margin of safety. Testing of the DGs and associated electrical distribution equipment provides confidence that the DGs will start and provide power to the associated equipment in the unlikely event of a LOOP during the extended 14-day Completion Time.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above evaluation, we have concluded that the proposed change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: October 10, 2002.

Description of amendment request: The proposed amendments would change technical specifications to increase the number of safety valves required to be operable from eight to nine and add surveillance requirements for the ninth safety valve.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specifications (TS) changes require an additional safety valve to be operable. The proposed change also adds the requirement to verify the lift setpoint of this additional safety valve. TS requirements that govern operability or routine testing of plant components are not assumed to be initiators of any analyzed event because these components are intended to prevent, detect, or mitigate accidents. Therefore, these changes will not involve an increase in the probability of an accident previously evaluated.

The proposed changes ensure that the reactor pressure vessel (RPV) steam dome pressure response is maintained within established limits in order to maintain the analyzed response of the RPV steam dome pressure below the safety limit for this parameter during the most severe pressurization transient. This ensures that the reactor coolant system integrity will be maintained during this transient. Thus, the proposed change does not involve an increase in the consequences of an accident previously evaluated.

In summary, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not affect the manner in which plant systems will be operated under normal and abnormal operating conditions. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed changes ensure that the RPV steam dome pressure response is maintained within established limits in order to maintain the analyzed response of the RPV steam dome pressure below the safety limit for this parameter during the most severe pressurization transient. Ensuring the safety limit is met for this transient ensures that RCS integrity will be maintained. Therefore, the proposed changes do not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: October 28, 2002.

Description of amendment request: The proposed amendments would authorize changes to the Updated Final Safety Analysis Report (UFSAR) to address the use of cast iron components in the containment cooling service water and emergency diesel generator cooling water systems. These changes were submitted to the Nuclear Regulatory Commission (NRC) for review and approval in accordance with 10 CFR 50.59(c)(2).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes allow for the use of cast iron materials in the Containment Cooling Service Water (CCSW) and Diesel Generator Cooling Water (DGCW) Systems at Dresden Nuclear Power Station (DNPS). The use of cast iron materials in these systems would be subject to acceptance criteria proposed for incorporation into the DNPS Updated Final Safety Analysis Report (UFSAR).

A failure in the CCSW or DGCW systems is not an initiator of any analyzed accident described in the UFSAR. Therefore, these proposed changes would not involve an increase in the probability of an accident previously evaluated. Additionally, these

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proposed changes would not increase the consequences of an accident previously evaluated because the proposed changes would not adversely impact structures, systems, or components. The proposed UFSAR acceptance criteria establish requirements for cast iron use that ensure the CCSW and DGCW systems would be capable of performing their intended safety-related functions of supplying cooling water to essential plant equipment, even during a design basis earthquake.

In summary, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes allow for the use of cast iron materials in the CCSW and DGCW systems at DNPS by adding acceptance criteria to the UFSAR for such material. No other changes in requirements are being proposed. The added acceptance criteria establish requirements for cast iron that ensure the CCSW and DGCW systems would be capable of performing their safety-related functions of supplying cooling water to essential plant equipment, even during a design basis earthquake. No new failure modes are introduced by the proposed change. No new sources of energy are added. There is no change being made to the parameters within which DNPS is operated, nor do the proposed changes physically alter the plant. The proposed changes do not adversely impact the manner in which the CCSW or DGCW systems will operate under normal and abnormal operating conditions. The plant response to any single failure is not changed. The proposed changes will not alter the function demands on credited equipment. No alteration in the procedures, which ensure DNPS remains within analyzed limits, is proposed, and no change is being made to procedures relied upon to respond to an off-normal event. Therefore, these proposed changes provide an equivalent level of safety and will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The CCSW and DGCW systems are addressed in Technical Specifications (TS) Sections 3.7.1 and 3.7.2. However, the Bases of these TS sections do not discuss the codes to which the systems are designed. Margins of safety are established in the design of components, the configuration of components to meet certain performance parameters, and in the establishment of setpoints to initiate alarms and actions. The proposed cast iron acceptance criteria will ensure that any implied margin of safety is maintained regarding the ability of the CCSW and DGCW systems to perform their safety functions during all design basis conditions. Therefore, it is concluded that the proposed changes do not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: October 24, 2002.

Description of amendment request: The proposed amendments would revise Technical Specification 5.5.13, "Primary Containment Leakage Rate Testing Program," to reflect a one-time deferral of the primary containment Type A test to no later than June 13, 2009, for Unit 1 and no later than December 7, 2008, for Unit 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes will revise LaSalle County Station, Units 1 and 2, Technical Specification (TS) 5.5.13, "Primary Containment Leakage Rate Testing Program" to reflect a one-time deferral of the primary containment Type A test to no later than June 13, 2009, for Unit 1 and no later than December 7, 2008, for Unit 2. The current Type A test interval of ten years, based on past performance, would be extended on a one-time basis to 15 years from the last Type A test.

The function of the primary containment is to isolate and contain fission products released from the reactor Primary Coolant System (PCS) following a design basis Loss-of-Coolant Accident (LOCA) and to confine the postulated release of radioactive material to within limits. The test interval associated Type A testing is not a precursor of any accident previously evaluated. Type A testing does provide assurance that the LaSalle County Station primary containments will not exceed allowable leakage rate values specified in the Technical Specifications and will continue to perform their design function following an accident. The risk assessment of the proposed changes has concluded that there is an insignificant increase in total population dose rate and an insignificant increase in the conditional containment failure probability.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes for a one-time extension of the Type A tests for LaSalle County Station, Units 1 and 2 will not affect the control parameters governing unit operation or the response of plant equipment to transient and accident conditions. The proposed changes do not introduce any new equipment, modes of system operation or failure mechanisms.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

No. LaSalle County Station, Units 1 and 2, are General Electric BWR/5 plants with Mark II primary containments. The Mark II primary containment consists of two compartments, the drywell and the suppression chamber. The drywell has the shape of a truncated cone, and is located above the cylindrically shaped suppression chamber. The drywell floor separates the drywell and the suppression chamber. The primary containment is penetrated by access, piping and electrical penetrations.

The integrity of the primary containment penetrations and isolation valves is verified through Type B and Type C local leak rate tests (LLRT) and the overall leak tight integrity of the primary containment is verified by a Type A integrated leak rate test (ILRT) as required by 10 CFR 50, Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." These tests are performed to verify the essentially leak tight characteristics of the primary containment at the design basis accident pressure. The proposed changes for a one-time extension of the Type A tests do not effect the method for Type A, B or C testing or the test acceptance criteria.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief : Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Beaver County, Pennsylvania

Date of amendment request: June 5, 2002, as supplemented August 19, 2002.

Description of amendment request: The requested amendments would change the plant technical specifications (TSs) to allow plant operation with the associated containment at atmospheric pressure. The plant TSs currently require the containment to be maintained at sub-atmospheric pressures when its associated unit is in operation. Minor editorial, formatting, and pagination changes will also be made as necessary to incorporate the revisions into the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Beaver Valley Power Station (BVPS) containments are designed to withstand the internal pressure and temperature resulting from a loss of coolant accident (LOCA), main steamline break (MSLB), feedwater line break, and a control rod ejection accident (CREA). All of these accidents have been previously analyzed in the Updated Final Safety Analysis Report (UFSAR) except the feedwater line break. This is not analyzed because the MSLB is most limiting. The effect on containment pressure and temperature due to a CREA is bounded by a LOCA, since a CREA is modeled as a small break LOCA. The probability of occurrence for these accidents is independent of the type of containment. Therefore a change from a subatmospheric to an atmospheric containment will not increase the probability of these accidents.

The revised containment integrity analysis demonstrates that the pressures and temperatures associated with the applicable design basis accidents identified above are within the existing containment design limits. From a containment integrity viewpoint, the limiting design basis accidents (DBA) presently are the MSLB for Unit 1 and the LOCA for Unit 2. Following the conversion to an atmospheric containment, the limiting DBA will be the MSLB for both units. The effects of the proposed changes on plant structures, systems and components (SSC) have been evaluated and verify that the capability of the SSCs to perform their design functions will be retained following approval of the proposed changes. The revised radiological analysis reflects a selective application of the Alternative Source Term (AST) of Regulatory Guide 1.183, "Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors," and incorporation of the ARCON96 methodology for on-site atmospheric dispersion factors. The revised radiological analysis concludes that normal operation of the BVPS units with atmospheric containments will not impact either unit's compliance with the operator exposure limits set forth in 10CFR20, or with the public exposure limits set forth by 10CFR50, Appendix I.

For accident conditions, the proposed changes will potentially impact the reported dose consequences of the LOCA, CREA and MSLB for both BVPS units, and the locked rotor accident (LRA) for BVPS Unit 1. The radiological consequences of the remaining design bases accidents are not adversely impacted by the proposed changes.

The revised radiological analysis concludes that site boundary and control room dose consequences of the LOCA and the CREA remain within the regulatory requirements of 10CFR50.67, as supplemented by Regulatory Guide 1.183. It also concludes that the control room doses for the MSLB for both BVPS units, and LRA for BVPS Unit 1 will continue to remain within the regulatory limits provided in SRP 6.4 [NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," section 6.4].

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The design basis accidents, which could be adversely effected by the proposed changes, have been reanalyzed. These analyses demonstrate that all acceptance criteria have been satisfied. The revised containment integrity analysis demonstrates that the containment will not be subjected to temperatures or pressures that are beyond its design limits. Converting to an atmospheric containment will not result in any new or different kind of accidents because no new accident initiators will be introduced.

Changes to instrumentation setpoints, system flow rates, surveillance requirements, and the elimination of certain operability requirements will not have any [effect] that could create the possibility of a new or different type of accident since none of these changes would result in any changes to the manner in which the affected equipment is operated. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety attributed to the containment involves both the pressures and temperatures the containment is subjected to following a DBA, and the on-site and offsite dose consequences associated with normal and post DBA operations.

The revised containment integrity analysis conducted to support the proposed changes demonstrate that the containment peak pressure and temperature following a DBA will not exceed the containments' design limits. Since the containment design limits are not exceeded, the existing margin of safety between these limits and the containment failure limits is not reduced.

The revised radiological analysis concludes that the existing dose consequence margin of safety is not significantly reduced. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Richard J. Laufer.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Beaver County, Pennsylvania

Date of amendment request: October 31, 2002.

Description of amendment request: The proposed amendments would revise the Beaver Valley Technical Specifications (TS) to allow extending the Type A Containment Integrated Leak Rate Test (ILRT) interval from 10 years to 15 years on a one-time basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated.

Response: No.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change allows a one-time extension to the current surveillance interval for the Type A Containment Integrated Leak Rate Test (ILRT). The current test interval of ten years, based on performance history, would be extended on a one-time basis to 15 years from the last Type A test. The proposed change will not result in a significant increase in the risk of plant operation. The risk analysis was performed in accordance with Regulatory Guide 1.174 and shows that the increase in total plant risk due to the extended ILRT interval is 0.005 percent (Unit 1) and 0.02 percent (Unit 2). The delta-large early release frequency (LERF) is 1.91E–9 /yr (Unit 1) and 1.35E–9 /yr (Unit 2) when the test interval is increased from 10 to 15 years. These delta-LERF values meet the Regulatory Guide 1.174 acceptance criterion of less than 1.0E–07 per year for LERF. The proposed extension to Type A testing does not increase the probability of an accident previously

evaluated, since the containment Type A test does not involve any modifications, nor a change in the way that any plant structures, systems or components (SSC) function, and does not involve an activity that could lead to equipment failure or accident initiation. The proposed extension of the test interval does not involve a significant increase in the consequences of an accident, since the study documented in NUREG–1493, has found that generically, very few potential leak paths are not identified with Type B and C tests. NUREG–1493 concluded that an increase in the Type A test interval to twenty years resulted in an imperceptible increase in risk. Containment testing and inspection provide a high degree of assurance that the containment will not degrade in a manner only detectable by Type A testing. Inspections required by the ASME Code and the Maintenance Rule are performed in order to identify indications of containment degradation that could affect leak tightness. Type B and C testing requirements and intervals required by 10 CFR 50 Appendix J are not affected by this proposed extension to the Type A test interval, and will identify any potential openings in containment penetrations that would otherwise require a Type A test. The increase in risk of the proposed change, as measured by the change in LERF is within the acceptance criterion of Regulatory Guide 1.174, therefore there will not be a significant increase in the consequences of any accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not result in operation of the units in a way that would create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed extension to Type A testing does not create a new or different type of accident because no physical modifications are being made, and no compensatory measures are being imposed that could potentially lead to a failure. There are no changes to unit operation that could introduce a new failure mode or create a new or different kind of accident. The proposed change only allows a one-time extension to the current interval for Type A testing and does not change the implementation aspects of the subsequent test.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety.

Response: No.

The proposed change will not result in a significant reduction in a margin of safety. The proposed change is for a one-time extension to the current interval for Type A testing. The current test interval of ten years, based on historical performance, will be extended on a one-time basis to 15 years from the last Type A test. The NUREG–1493 study of the effects of extending the Type A test interval out to 20 years concluded that there is an imperceptible increase in plant risk. Additionally, the extended test interval will have a minimal effect on plant risk, since Type B and C testing detect over 95% of potential leakage paths. The plant specific risk analysis determined results that are consistent with the conclusions of NUREG–1493. The overall increase in the risk contribution due to the proposed change was determined to be 0.005 percent (Unit 1) and 0.02 percent (Unit 2). The delta-LERF is 1.91E–9/yr (Unit 1) and 1.35E–9/yr (Unit 2) when the test interval is increased from 10 to 15 years. The calculated impact on risk is insignificant, and meets the acceptance criterion of Regulatory Guide 1.174.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Richard J. Laufer.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: June 4, 2002.

Description of amendment request: The proposed amendment proposes a revision of pressure/temperature (P/T) limit curves for non-nuclear heatup/cooldown, core critical operation, and pressure testing for reactor coolant systems (RCSs); including an exemption request pursuant to 10 CFR 50.60(b).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed P/T limit curves are based upon the use of an alternate material fracture toughness curve and the use of an NRC-approved methodology for calculation of neutron fluence. The proposed RCS P/T limit curves are valid through 22 Effective Full-Power Years (EFPY) and 32 EFPY.

The American Society of Mechanical Engineers (ASME) Boiler & Pressure Vessel (B&PV) Code Case N–640 permits the use of K_{Ic} as defined in ASME B&PV Code, Section XI, Appendix A, Figure A–4200–1 instead of K_{Ia} as defined in ASME B&PV Code, Section XI, Appendix G, Figure G–2210–1. The use of the K_{Ic} curve in determining the lower bound fracture toughness in the development of P/T limit curves is more technically correct than the K_{Ia} curve. The K_{Ic} curve models the slow heatup and cooldown processes that a Reactor Pressure Vessel (RPV) normally undergoes. These slow heatup and cooldown limits are enforced through the use of the PNPP [Perry Nuclear Power Plant] Technical Specification 3.4.11, "RCS Pressure and Temperature (P/T) Limits." Surveillance Requirement 3.4.11.1 states that heatup and cooldown rates will be ≤100 °F in any one hour period. The use of the K_{Ic} curve is applicable to PNPP and is inconsistent with the ASME B&PV. Therefore, the use of K_{Ic} will provide an adequate margin of safety to protect against potential RPV failure.

NRC [Nuclear Regulatory Commission] regulations require the vessel material transition temperature be adjusted to account for the effects of neutron radiation. Regulatory Guide 1.190, "Calculational and Dosimetry Methods for Determining Pressure Vessel Neutron Fluence," provides a methodology for calculating the neutron fluence, while Regulatory Guide 1.99, "Radiation Embrittlement of Reactor Vessel Materials," provides the guidance for calculating the adjusted transition temperature using the fluence factor. The methodologies satisfy the requirements of 10 CFR [part] 50, Appendices G and H, and General Design Criteria 31, "Fracture Prevention of Reactor Coolant Pressure Boundary." The methodologies used to develop the proposed P/T limit curves satisfy the requirements of the regulations.

The predicted lowest upper shelf energy at 32 EFPY was greater than the minimum of 50 ft-lbs required by 10 CFR [part] 50, Appendix G. The adjusted reference temperature for the limiting material was less than the 200 °F limit required by Regulatory Guide 1.99, Revision 2. Therefore, the integrity of the RCS has been maintained. As such, the proposed curves ensure that adequate reactor vessel safety margins against nonductile failure exist during normal operation, anticipated operational occurrences, and hydrostatic testing. There are no plant modifications associated with these changes. Thus, the proposed changes do not involve a significant increase in the probability of occurrence of an accident previously evaluated.

The proposed changes do not adversely affect the integrity of the reactor vessel. Hence, the function of the reactor vessel to act as a radiological barrier during an accident is not affected. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed P/T limit curves are based upon the use of an alternate material fracture toughness curve and the use of an NRC-approved methodology for calculation of neutron fluence.

The ASME B&PV Code Case N–640 permits the use of the K_{Ic} curve in determining the lower bound fracture toughness in the development of P/T limit curves. The K_{Ic} curve models the slow heatup and cooldown processes that a RPV normally undergoes. These slow heatup and cooldown limits are enforced through the use of the PNPP Technical Specifications. Therefore, the use of K_{Ic} will provide an adequate margin of safety to protect against potential RPV failure.

NRC regulations require the vessel material transition temperature be adjusted to account for the effects of neutron radiation. The methodologies used to develop the proposed P/T limit curves satisfy the requirements of the regulations. The predicted lowest upper shelf energy at 32 EFPY was greater than the minimum of 50 ft-lbs required by 10 CFR [part] 50, Appendix G. The adjusted reference temperature for the limiting material was less than the 200 °F limit required by Regulatory Guide 1.99, Revision 2. Therefore, the integrity of the RCS has been maintained. As such, the proposed curves ensure that adequate reactor vessel safety margins against nonductile failure exist during normal operation, anticipated operational occurrences, and hydrostatic testing.

There are no plant modifications associated with these changes.

The proposed changes to the P/T limit curves do not affect the assumed accident performance of any structure, system, or component previously evaluated. The proposed changes do not introduce any new modes of system operation or failure mechanisms. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change will not involve a significant reduction in the margin of safety.

NRC regulations require that P/T limits provide an adequate margin of safety to the conditions at which brittle fracture may occur. These regulations are set forth in 10 CFR [Part] 50, Appendix A, General Design Criteria (GDC) 31, and 10 CFR [Part] 50, Appendices G and H. Regulatory Guides 1.99 and 1.190 provide guidance for the compliance of GDC 31 and Appendices G and H. The appendices reference the requirements and guidance of ASME B&PV Code, Section XI, Appendix G for the development of P/T limit curves. The methodologies described within the regulatory guides and the ASME Code will provide P/T limit curves with the requisite margin against brittle fracture. The proposed P/T limit curves are based on these methodologies as modified by application of ASME Code Case N–640.

Although the code case proposes a change to a requirement contained in ASME, Section XI, Appendix G, the alternative allowed by Code Case N–640 is based upon industry experience gained since the inception of 10 CFR [Part] 50, Appendix G. The more appropriate assumptions and provisions allowed by the code case maintain a margin of safety that is consistent with the intent of 10 CFR [Part] 50, Appendices G and H. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: October 11, 2002.

Description of amendment request: The proposed amendment would change Technical Specification (TS) 3.4.9.1, "Reactor Coolant System [RCS]—Pressure/Temperature Limits" and TS 3.4.9.3, "Reactor Coolant System—Overpressure Protection Systems" and their associated Bases sections. Specifically, the proposed changes will replace TS Figure 3.4–2, "Reactor Coolant System Heatup Limitations," Figure 3.4–3, "Reactor Coolant System Cooldown Limitations," and Figure 3.4–4, "RCS Cold Overpressure Protection Setpoints," to allow operation to 20 Effective Full Power Years (EFPY). The proposed change to TS 3.4.9.3 will also revise the Cold Overpressure Protection System arming temperature from 329°F to 290°F to reflect the higher allowable low temperature overpressure protection pressure limit afforded by the use of ASME Code Case N–641.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to TS 3.4.9.1 and TS 3.4.9.3 do not result in a condition where the design, material, and construction standards that were applicable prior to the proposed changes are altered. The probability of occurrence of an accident previously evaluated for Seabrook Station is not altered by the proposed amendment to the TSs. The accidents remain the same as currently analyzed in the UFSAR [Updated Final Safety Analysis Report] as a result of changes to the P/T limits as well as those for Cold Overpressure Mitigation System (COMS). The new P/T limits are based on NRC [Nuclear Regulatory Commission] accepted methodology along with [the] American Society of Mechanical Engineers (ASME) Code alternative methodology. An exemption request to allow use of the alternative ASME methodology is included as part of this LAR [License Amendment Request]. The proposed COMS setpoint limit based on the revised P/T limits satisfies the criteria specified in the alternative ASME methodology and 10 CFR part 50 Appendix G closure head/vessel flange region pressure limit criteria. The proposed changes do not impact the integrity of the reactor coolant pressure boundary (RCPB) *i.e.* there is no change to the operating pressure, materials, system loadings, etc., as a result of this change. In addition, there is no increase in the potential for the occurrence of a loss of coolant accident. The probability of any design basis accident is not affected by this change, nor are the consequences of any design basis accident (DBA) affected by this proposed change. The proposed P/T limit curves and the COMS limits are not considered to be an initiator or contributor to any accident currently, evaluated in the Seabrook Station UFSAR. These new limits ensure the long term structural integrity of the RCPB.

Fracture toughness test data are obtained from beltline material specimens contained in surveillance capsules that are periodically withdrawn from the reactor vessel. This data allows determination of time conditions under which the vessel can be operated with adequate safety margins against non-ductile fracture throughout its service life. The second Seabrook Station surveillance capsule was removed from the reactor vessel after completion of Operating Cycle No. 5 in May 1997 and was analyzed to predict the fracture toughness requirements using projected neutron fluence calculations. For each analyzed transient and steady state condition, the allowable pressure is determined as a function of reactor coolant temperature considering postulated flaws in the reactor vessel beltline region material. The predicted radiation induced ΔRT_{NDT} was calculated using the respective reactor vessel beltline materials copper and nickel contents and the neutron fluence predicted for 20 EFPY. The RT_{NDT} and, accordingly, the operating limits for Seabrook Station were adjusted to account for the effects of irradiation on the fracture toughness of the reactor vessel beltline materials. Therefore, new operating limits are established which are represented in the revised operating curves for heatup/cooldown, criticality and inservice hydrostatic testing contained in the technical specifications. The proposed P/T limit curves and COMS setpoint limits are not considered to be an initiator or contributor to any accident currently evaluated in the Seabrook Station UFSAR.

Therefore based on the above discussion, it is concluded that the proposed revisions to TS 3.4.9.1 and TS 3.4.9.3 do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to the P/T and COMS limits will not create a new accident scenario. The requirements to have P/T and COMS protection are part of the licensing basis for Seabrook Station. The proposed technical specification amendment reflects the change in reactor vessel material properties as determined by evaluation of the most recently withdrawn surveillance capsule. Based on the surveillance capsule data, the adjusted RT_{NDT} values for the plate and weld material were within the two standard deviations of Regulatory Guide 1.99, Revision 2 predictions. As all the requisite criteria of Regulatory Guide 1.99, Revision 2 was satisfied, it was concluded that the surveillance data was credible and the beltline material was responding as empirically predicted. The new P/T limits are based on NRC accepted methodology along with American Society of Mechanical Engineers (ASME) Code alternative methodology. An exemption request to allow use of the alternative ASME methodology is included as part of this LAR. The proposed COMS setpoint limit based on the revised P/T limits satisfies the criteria specified in the alternative ASME methodology and 10 CFR part 50 Appendix G closure head/vessel flange region pressure limit criteria. The proposed changes will not alter the way any structure, system or component functions, and will not significantly alter the manner in which the plant is operated. There will be no adverse effect on plant operation or accident mitigation equipment.

Since no new failure modes are created by the proposed revisions to TS 3.4.9.1 and TS 3.4.9.3, this change does not create the possibility of a new or different kind of accident from any that was previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The existing P/T and COMS limit curves in the technical specifications are reaching their expiration for the number of years at effective full power operation. The revision of the P/T limits and COMS will ensure that Seabrook Station continues to operate within the operating limits allowed by 10 CFR 50.60 and the ASME Code. The material properties used in the development of the revised limit curves are based on the evaluation of the most recently withdrawn surveillance capsule. The application of ASME Code Case N–641 presents alternative methods for calculating P/T and COMS temperature and pressure limits in lieu of those established in ASME Section XI, Appendix G–2215. This ASME Code alternative allows analysis features that are less restrictive than those associated with previous methodologies, however these features remain conservative with respect to the requirements delineated ASME Section XI. Therefore it is concluded that the revised P/T and COMS limit curves proposed by this technical specification amendment still provide sufficient margin to preclude non-ductile fracture of the reactor vessel.

Thus, it is concluded that these proposed revisions to TS 3.4.9.1 and TS 3.4.9.3 do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. S. Ross, Florida Power & Light Company, PO Box 14000, Juno Beach, FL 33408–0420.

NRC Section Chief (Acting): James W. Andersen.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: October 11, 2002.

Description of amendment request: The proposed amendment would relocate Technical Specifications (TSs) 3.1.2.1, "Reactivity Control Systems-Borations Systems-Flow Paths-Shutdown;" 3.1.2.2, "Reactivity Control Systems-Boration Systems-Flow Paths-Operating;" 3.1.2.3, "Reactivity Control Systems-Boration Systems-Charging Pumps-Shutdown;" 3.1.2.4, "Reactivity Control Systems-Boration Systems-Charging Pumps-Operating;" 3.1.2.5, "Reactivity Control Systems-Boration Systems-Borated Water Sources-Shutdown;" 3.1.2.6, "Reactivity Control Systems-Boration Systems-Borated Water Sources-Operating;" and 3.4.7, "Reactor Coolant System-Chemistry," to the Seabrook Station Technical Requirements Manual (SSTR) and would revise TS 3.1.2.7, "Reactivity Control Systems-Boration Systems-Isolation of Unborated Water Sources-Shutdown." The proposed amendment would also revise TSs 3.4.1.2, "Reactor Coolant System-Reactor Coolant Loops and Coolant Recirculation-Hot Standby," 3.4.3 "Reactor Coolant System-Pressurizer," 3.4.7, "Reactor Coolant System-Chemistry," and 3.9.2, "Refueling Operations-Instrumentation," to adopt a portion of NUREG–1431, Revision 2, "Standard Technical Specifications, Westinghouse Plants," involving a wording revision to more closely match Standard Technical Specifications. The revision to TS 3/4.9.2 would also involve surveillance changes. The associated Bases would also be modified as a result of the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The TS changes propose the relocation of the boration subsystem and chemistry requirements to a licensee-controlled document. The relocation of these requirements will not cause an accident to occur and will not result in any change in the operation of the associated accident mitigation equipment. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

The TS changes propose the modification of the TS for "Isolation of Unborated Water Sources—Shutdown." Only the demineralizers that are intended to deborate the Reactor Coolant System will need to be isolated in MODE 4, 5, or 6. Administrative controls, currently in use for the operation of the Boron Thermal Regeneration System and replenishment of demineralizer resin in the Chemical Volume and Control System, will be used to minimize the affects of an inadvertent dilution due to operation of the demineralizers. The Seabrook Station Updated Final Safety Analysis currently includes a boron dilution event analysis for each MODE of operation. Use of these administrative controls will ensure that the operation of the BTRS [Boron Thermal Regeneration System] is bounded by the boron dilution analysis. Therefore, the modification of the TS requirement will not increase the probability or consequences of an accident previously evaluated.

The TS changes propose to change the source range flux monitor requirements in MODE 6. The proposed change does not significantly affect the operability of the associated equipment. The source range neutron flux monitors are components not assumed to be initiators of analyzed events. Therefore, the change in the TS requirement for the source range instrumentation in MODE 6 will not increase the probability or consequences of an accident previously evaluated.

The additional proposed changes to the TS that will standardize terminology, relocate information to the Bases, remove extraneous information, modify the requirements to prevent rod withdrawal for operational flexibility, and make minor format changes will not result in any technical changes to the current requirements. Therefore, these additional proposed changes will not increase the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to the TSs do not impact any system or component that could cause an accident, nor will it alter the plant configuration or require any unusual operator actions, nor will it alter the way any structure, system, or component functions. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in [a] margin of safety.

The proposed TS changes associated with the relocation of the boration subsystem and chemistry requirements to a licensee-controlled document will not result in a significant reduction in a margin of safety.

The proposed TS changes associated with the modification of the TS for "Isolation of Unborated Water Sources—Shutdown," are consistent with the requirements contained in the Seabrook Station Updated Final Safety Analysis which currently includes a boron dilution event analysis for each MODE of operation. The changes result in operation within the parameters specified by the analysis. Therefore, the modification of the TS requirement will not result in a significant reduction in a margin of safety.

The proposed TS changes associated with the source range flux monitor do not significantly affect the operability of the associated equipment. Therefore, the change in the TS requirement for the source range instrumentation will not result in a significant reduction in a margin of safety.

The additional proposed changes to the TSs that will standardize terminology, relocate information to the Bases, remove extraneous information, modify requirements to prevent rod withdrawal for operational flexibility, and make minor format changes will not result in any technical changes to the current requirements. Therefore, these additional changes will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. M. S. Ross, Florida Power & Light Company, PO Box 14000, Juno Beach, FL 33408–0420.

NRC Section Chief (Acting): James W. Andersen.

Florida Power and Light Company (FPL), *et al.*, Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: October 23, 2002.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) Section 5.6, "Design Features—Fuel Storage," to include the design of a new cask pit spent fuel storage rack for each unit to increase the allowable spent fuel wet storage capacity at both units and include the description of Boral™ as the neutron absorbing material used in the new cask pit storage racks. The proposal also revises the spent fuel pool (SFP) thermal-hydraulic analyses for core offload times of 120 hours after reactor shutdown and for a partial core offload as the normal offload condition. In addition the proposal includes a change in FPL's commitments regarding the Unit 2 spent fuel cooling system design basis described in the Updated Final Safety Analysis Report (UFSAR). A current UFSAR commitment regarding the Unit 2 peak SFP temperature limit during full core offloads with minimum SFP cooling will be replaced with a new design basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would operation of the facility in accordance with the proposed amendments involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes to increase the spent fuel storage capacity with cask pit racks were evaluated for impact on the following previously evaluated events:

a. A fuel handling accident (FHA),
b. A heavy load drop into the cask pit,
c. A loss of SFP cooling,
d. A stored fuel criticality event,
e. A seismic event.

The probability of a fuel handling accident is not significantly increased by the proposed changes, because the same equipment (e.g., the spent fuel handling crane) and procedures will be used to handle fuel assemblies and the frequency of fuel movement will be essentially the same, with or without cask pit racks. The FHA radiological consequences are not significantly increased because the source term of a single fuel assembly will remain unchanged, and the cask pit racks will be installed at the same water depth as the existing SFP racks, with the same iodine decontamination factors assumed in the FHA analysis. The structural consequences of dropping a fuel assembly on a cask pit rack were also found to be no more severe than those in the current FHA analysis.

The probability and consequences of a heavy load drop of the cask pit rack or its platform are bounded by the existing cask drop analyses, because a fuel transfer cask is much heavier than either the empty rack or platform, and cask handling will be a more frequent operation in the future than cask pit rack installation and removal. The cask pit rack will be removed prior to any cask handling operations, such that a cask drop scenario onto a cask pit rack loaded with fuel is not credible. Therefore, the probability and the consequences of a heavy load drop in the cask pit are not significantly increased.

The probability of a loss of SFP cooling is unaffected and its consequences are not significantly increased with cask pit racks installed. With the cask pit rack installed, loss of forced cooling results in a sufficient time-to-boil for the operator to recognize the condition and establish SFP makeup to compensate for water lost due to pool bulk boiling, and thereby maintain a sufficient water blanket over the stored spent fuel.

The probability and consequences of a stored fuel criticality event are not increased by the addition of a cask pit rack. The reactivity analysis for the new racks demonstrates that reactivity remains subcritical (below 0.95) for the worst-case fuel mispositioning event, without credit for soluble boron. The probability of a seismic event is unaffected and its consequences are not significantly increased with cask pit racks installed, because the structural analysis of the new racks demonstrates that the fuel storage function of the rack is unimpaired by loading combinations including seismic motion, and there is no adverse seismic-induced interaction between the rack and adjacent structures.

Based on the above, it is concluded that the proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would operation of the facility in accordance with the proposed amendments create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes to add a cask pit rack to each unit do not alter the operating requirements of the plant or of the equipment credited in the mitigation of design basis accidents, nor do the proposed changes affect any of the important parameters required to ensure the safe storage of spent fuel. A new rack material (Boral™) is introduced into the pool under these changes, but based on its operating history in SFPs, there are no mechanisms that create a new or different kind of accident. The potential for dropping the new rack or its platform during installation or removal is bounded by the existing analysis for dropping a spent fuel transfer cask into the cask pit. The same equipment (e.g., the spent fuel handling crane) and procedures will be used to handle fuel assemblies for the new cask pit racks as are used for existing spent fuel storage. The fuel storage configuration in the new racks will be similar to the configuration in the existing SFP storage racks, and a fuel drop or mispositioning event in the new racks does not represent a new or different kind of accident from fuel handling and mispositioning events previously evaluated. Therefore, the proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Would operation of the facility in accordance with the proposed amendments involve a significant reduction in a margin of safety?

No. The effect of the proposed changes on current margins of safety were evaluated for spent fuel storage functionality and criticality, spent fuel and SFP cooling, and SFP/cask pit structural integrity. The design of the new racks uses proven technology which preserves the proper safety margins for spent fuel storage to provide a coolable and subcritical geometry under both normal and abnormal/accident conditions. The design complies with current regulatory guidelines and the ANSI [American National Standards Institute] standards, including 10 CFR 50 Appendix A GDC [General Design Criterion] 62, NUREG–0800 Section 9.1.2, the OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications,

Regulatory Guide 1.13, and ANSI/ANS [American Nuclear Society] 8.17. Handling the racks and platforms in accordance with the defense-in-depth approach of NUREG–0612 with temporary lift items designed to ANSI N14.6 preserves the proper margin of safety to preclude a heavy load drop in the cask pit.

The proposed SFP cooling system design basis is consistent with the regulatory guidance in NRC Standard Review Plan Section 9.1.3 for SFP temperature limits during normal and abnormal core offload conditions. The rack and SFP thermal hydraulic analyses demonstrate that the proposed SFP cooling system design basis is met, and that no bulk boiling will occur in the new rack or SFP with minimum cooling available. A loss of SFP cooling will allow sufficient time for operators to identify the condition and initiate makeup flow or restore cooling to preserve fuel cooling capability.

The new rack criticality analyses demonstrate that the subcriticality safety margin is maintained below 0.95 under all conditions, without credit for soluble boron. The structural analyses for the new racks and adjacent structures show that the rack and surrounding structures are unimpaired by loading combinations during seismic motion, and there is no adverse seismic-induced interaction between the rack and adjacent structures. Based on these evaluations, operating the facility with the proposed amendments does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Allen G. Howe.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: September 26, 2002.

Description of amendment request: The proposed amendment would revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement would be added to SR $3.0_{.}3$: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714).

The licensee affirmed the applicability of the following NSHC determination in its application dated September 26, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: November 15, 2002.

Description of amendment request: The licensee proposes to revise the reactor coolant system pressure-temperature (P–T) limit curves and associated limit tables specified in Section 3/4.2.2, "Minimum Reactor Vessel Temperature for Pressurization," of the Technical Specifications (TSs). The P–T limit curves and tabular listing of P–T limit values contained in the revised figures and tables are based, in part, on an alternative methodology and will be valid for 28 effective full-power years. The alternative methodology has been endorsed by the American Society of Mechanical Engineers.

The associated licensee-controlled TSs Bases pages would also be changed to reflect the above TS changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the three standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below:

The first standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes, if approved by the Nuclear Regulatory Commission (NRC), will be made in a manner such that conservatism is maintained through compliance with applicable NRC regulations and guidance. No hardware design change is involved with the proposed amendment, thus there will be no adverse effect on the functional performance of any plant structure, system, or component (SSC). All SSCs will continue to perform their design functions with no decrease in their capabilities to mitigate the consequences of postulated accidents. P–T limit curves were not previously factored into the probability of accidents, nor were they factored into scenarios of previously analyzed accidents. Accordingly, the revised P–T limit curves and tabular listing of P–T limit values will lead to no increase in the consequences of an accident previously evaluated, and no increase of the probability of an accident previously evaluated.

The second standard requires that operation of the unit in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment is not the result of a hardware design change, nor does it lead to the need for a hardware design change. There is no change in the methods the unit is operated. As a result, all SSCs will continue to perform as previously analyzed by the licensee, and previously evaluated and accepted by the NRC staff. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

The third standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant reduction in a margin of safety. Since the licensee did not propose to exceed or alter a design basis or safety limit, the proposed amendment will not affect in any way the performance characteristics and intended functions of any SSC. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

Based on the NRC staff's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Richard J. Laufer.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: July 25, 2002, as supplemented October 21, 2002.

Description of amendment request: The amendment would modify Technical Specification (TS) requirements for missed surveillance tests in TS 4.0.3 using the Consolidated Line Item Improvement Program, modify TS 4.0.1 to be consistent with the Standard Technical Specifications (STS), and incorporate a TS Bases Control Program in Section 6.0 in accordance with the STS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Specification 4.0.3

The proposed change relaxes the time allowed to perform a missed Surveillance. The time between Surveillances is not an initiator to any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be OPERABLE and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected.

Specification 4.0.1

The proposed additional requirement equating failure to meet a surveillance with failure to meet the LCO [limiting condition for operation] is consistent with current interpretation of the technical specifications. This change, along with relocation and rewording of existing requirements from Specification 4.0.3, are administrative in nature and do not adversely affect accident initiators, design functions, facility configuration or the manner of operation or control. The ability of structures, systems and components to perform their intended function remains unaffected.

Bases Control Program

The proposed change to adopt a Technical Specification Bases Control Program is also administrative in nature and does not adversely affect accident initiators, design functions, facility configuration or the manner of operation or control. The ability of structures, systems or components to perform their intended function remains unaffected. Future changes to the TS Bases will continue to be administratively controlled in accordance with the requirements of 10 CFR 50.59.

Therefore, these three changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

None of the three proposed changes involves a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

Specification 4.0.3

The relaxed time allowed to perform a missed Surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any Surveillance is verification that the LCO is met. Failure to perform a Surveillance within the prescribed Frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed Surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed Surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed Surveillance, a missed Surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed Surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested.

Specification 4.0.1

The proposed changes to TS 4.0.1, including relocation and rewording of

existing requirements from Specification 4.0.3, are administrative in nature and do not reduce the level of programmatic or procedural controls associated with the Surveillance Requirements. There are no substantive differences in meaning or intent between the existing specifications and the corresponding STS requirements. Further, these changes have no impact on equipment design, configuration, analytical basis, setpoints or operation.

Bases Control Program

The proposed change to adopt a Technical Specification Bases Control Program is also administrative in nature and does not reduce the level of programmatic or procedural controls associated with the Bases. There is no impact on equipment design, configuration, analytical basis, setpoints or operation.

Thus, there is confidence that the equipment can perform its assumed safety function. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, PO Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James Andersen, Acting.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: October 23, 2002.

Description of amendment request: The proposed change updates the reference to 10 CFR 20.203 with the corresponding reference to 10 CFR 20.1601.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect accident initiators or precursors and do not alter the design assumptions, conditions, configuration of the facility, or manner in which the plant is operated. The proposed changes do not alter or prevent the ability of structures, systems, or components to perform their intended safety function to mitigate the consequences of an initiating event within the acceptance limits assumed in the UFSAR [Updated Final Safety Analysis Report]. The proposed changes are administrative in nature. Technical Specification (TS) 6.12 will be updated to include the new 10 CFR 20 (effective 06/20/91) requirements. The proposed changes do not alter the conditions or assumptions in any of the previous accident analyses, and as a result, the radiological consequences associated with these analyses remain unchanged.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the design assumptions, conditions, configuration of the facility, or the manner in which the plant is operated.

The proposed changes are administrative in nature and the relocated procedural details do not change the level of programmatic controls and procedural details. Accordingly, the proposed changes do not create any new failure modes or limiting single failures associated with a plant structure, system, or component important to safety. Also, there will be no change in the types or increase in the amounts of any effluents released offsite.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment would not involve a significant reduction in the margin of safety.

The proposed changes do not impact equipment design or operation, nor do the changes affect any TS safety limits or safety system settings that could adversely affect plant safety. The proposed changes are administrative in nature. Technical Specification (TS) 6.12 will be updated to include the new 10 CFR 20 requirements (effective 06/20/91) and are in conformance with NUREG–1433 [Standard Technical Specifications General Electric Plants, BWR 4]. Furthermore, the proposed changes do not result in a change in the types or an increase in the amounts of any effluents released offsite.

Therefore, it is concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, PO Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James Andersen, Acting.

PSEG Nuclear LLC, Docket No. 50–354, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: September 20, 2002.

Description of amendment request: The proposed amendment will add new limiting conditions for operation for fuel storage pool boron concentration, fuel assembly storage in the spent fuel pool, relocate requirements for spent fuel storage, revise existing Technical Specification (TS) 3/4.9.1 for boron concentration during refueling operations, and revise existing administrative controls associated with the Core Operating Limits Report described in TS 6.9.1.9.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The postulated accidents are basically of three types. The first type of postulated accident is an abnormal location of a fuel assembly, the second type of postulated accident is associated with lateral rack movement, and the third type of postulated accident is a dropped fuel assembly on the top of the rack. The dropped fuel assembly and the lateral rack movement have been previously shown to have negligible reactivity effects (<0.0001 [delta k]). The misplacement of a fuel assembly could have a small positive reactivity effect, however, the negative reactivity effect of a minimum soluble boron concentration of 600 ppm [parts per million] compensates for the increased reactivity caused by any of the postulated accident scenarios.

There is no increase in the probability of the accidental misloading of irradiated fuel assemblies into the spent fuel pool racks when considering the presence of soluble boron in the pool water for criticality control. Fuel assembly placement will continue to be controlled pursuant to approved fuel handling procedures and will be in accordance with the Technical Specification (TS) spent fuel rack storage configuration limitations.

There is no increase in the consequences of the accidental misloading of irradiated fuel assemblies into the spent fuel pool racks because criticality analyses demonstrate that the pool will remain subcritical following an accidental misloading if the pool contains an adequate boron concentration. This has been previously evaluated in the Safety Evaluation by the Office of Nuclear Reactor Regulation related to Amendment Nos[.] 151 and 131 to Facility Operating Licenses DPR–70 and DPR–75 for the Salem Nuclear Generating Station Units 1 and 2, dated May 4, 1994 (Spent Fuel Reracking, TAC [technical assignment control] NOS. M85797 and M85798). The proposed TS limitations will ensure that an adequate spent fuel pool boron concentration will be maintained.

The proposed change will revise the Salem Generating Station (SGS) TS to be consistent with the improved Standard Technical Specifications for Westinghouse plants, NUREG–1431 Revision 2, 4/30/01. The new TS are not an accident initiator. Specifying a minimum boron concentration in a new TS and relocating fuel assembly storage requirements in a new TS are conservative approaches to operational control.

Therefore, this proposed amendment does not involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously analyzed?

Response: No.

Criticality accidents in the spent fuel pool have been analyzed in the previous criticality safety analyses documented in PSEG letter NLR–N93058 dated April 28, 1993 transmitting License Change Request (LCR) 93–02 and Attachment D, The Licensing Report for Spent Fuel Storage Capacity Expansion, Public Service Electric and Gas Company, Salem Generating Stations 1 & 2, USNRC [U.S. Nuclear Regulatory Commission] Docket Nos[.] 50–272 & 50–311, prepared by Holtec International. This is the basis for the present TS. The addition of a Limiting Condition for Operation (LCO) for boron concentration does not alter the assumptions or the results of the existing spent fuel criticality analyses or accident analyses described in the Salem Updated Final Safety Analysis Report. The addition of TS which provide for TS control where previous administrative controls had been in place and relocation of material within existing TS does not alter the results of criticality safety analyses.

Therefore, this proposed amendment does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Does the proposed change involve a significant reduction in [a] margin of safety?

Response: No.

The TS changes proposed and the resulting spent fuel storage operation limits will continue to provide adequate safety margin to ensure that the stored fuel assembly array will remain subcritical. Those limits are based on a plant specific criticality analysis and are unchanged by this application. The addition of TS which provides for TS control where previous administrative controls had been in place and relocation of material within existing TS continue to establish conservative operational control.

Therefore, the proposed change does not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, PO Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James Andersen, Acting.

Tennessee Valley Authority, Docket No. 50–260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of amendment request: October 25, 2002.

Description of amendment request: The proposed amendment would revise the numerical value of the Safety Limit Minimum Critical Power Ratio (SLMCPR) in Technical Specification (TS) 2.1.1.2 to incorporate the results of the cycle-specific core reload analysis for Browns Ferry Unit 2 Cycle 13 operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment establishes a revised SLMCPR value for two recirculation loop operation. The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The proposed SLMCPR preserves the existing margin to transition boiling and the probability of fuel damage is not increased. Since the change does not require any physical plant modifications or physically affect any plant components, no individual precursors of an accident are affected and the probability of an evaluated accident is not increased by revising the SLMCPR value.

The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. The revised SLMCPR has been determined using NRC-approved methods and procedures. The basis of the MCPR Safety Limit is to ensure no mechanistic fuel damage is calculated to occur if the limit is not violated. These calculations do not change the method of operating the plant and have no effect on the consequences of an evaluated accident. Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed license amendment involves a revision of the SLMCPR for two recirculation loop operation based on the results of an analysis of the Cycle 13 core. Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in the allowable methods of operating the facility. This proposed license amendment does not involve any modifications of the plant configuration or changes in the allowable methods of operation. Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety.

Response: No.

The margin of safety as defined in the TS bases will remain the same. The new SLMCPR was calculated using NRC-approved methods and procedures, which are in accordance with the current fuel design and licensing criteria. The SLMCPR remains high enough to ensure that greater than 99.9 percent of all fuel rods in the core are expected to avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity. Therefore, the proposed TS change does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear Plant (SQN), Unit 2, Hamilton County, Tennessee

Date of amendment request: November 15, 2002.

Description of amendment request: The proposed one-time condition would establish special provisions and requirements for safe operation of Unit 2 while heavy load lifts are performed on Unit 1. The provisions for heavy load lifts are described in Topical Report 24370–TR–C–002 that was previously submitted on April 15, 2002, for NRC review and approval. The topical report contains prerequisite actions for heavy load movement, active monitoring during heavy load movement, and compensatory measures in response to the unlikely event of a heavy load drop. This submittal withdraws an amendment request dated July 10, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

No changes in event classification as discussed in SQN Updated Final Safety Analysis Chapter 15 will occur due to the proposed license amendment. The one-time provision ensures that the SQN ERCW [essential raw cooling water] system remains functional for continued safe operation of Unit 2 during heavy load lifts performed on Unit 1 during SGR (steam generator replacement) replacement [sic] activities.

Accordingly, the proposed modification to SQN Unit 2 operating license and the implementation of compensatory measures for a postulated load drop will not significantly increase the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The possibility of a new or different accident scenario occurring as a result of activities conducted during the SQN Unit 1 SGR project are [sic] not created. Three postulated scenarios related to heavy load handling during the SGR project were examined for their potential to represent a new or different kind of accident from those previously evaluated: (1) A breach of the old steam generator (OSG), resulting in the release of contained radioactive material, (2) flooding in the Auxiliary Building caused by the failure of piping in the ERCW tunnel, and (3) loss of ERCW to support safe shutdown of the operating unit.

Failure of an OSG that results in a breach of the primary side of the steam generator (SG) could potentially result in a release of a contained source outside containment. The consequences of this event, both offsite and in the control room, were examined and found to be within the consequences of the failure of other contained sources outside containment at the SQN site (*i.e.*, within the SQN design basis).

With regard to flooding of the Auxiliary Building from a heavy load drop, the protective measure taken prior to the lifting of heavy loads include installation of a wall in the ERCW tunnel near the Auxiliary Building interface. The wall provides protection against a postulated flood of the ERCW tunnel and protects against flooding of the Auxiliary Building beyond those events previously evaluated.

With regard to the potential for a heavy load drop causing the loss of ERCW cooling water to the operating unit (*i.e.*, Unit 2), TVA is implementing provisions to preclude a load drop. A heavy load drop is considered an unlikely accident for the following reasons:

The lifting equipment was specifically designed and chosen for the subject heavy lifts,

—Crane operators will be specially trained in the operation of the lift equipment and in the SQN site conditions,

—Qualifying analyses and administrative controls will be used to protect the lifts from the effects of external events,

The areas over which a load drop could cause loss of ERCW are a small part of the total travel path of the loads.

In addition, protection against the potential for a loss of ERCW is established prior to any heavy load lifts. Compensatory measures ensure the ERCW system is isolated should a pipe break occur, and that ERCW flow is redirected to equipment essential for safe shutdown capability of Unit 2.

Accordingly, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change to the Unit 2 operating license supports safe operation and safe shutdown capabilities of Unit 2 during replacement of the Unit 1 SGs. These measures do not result in changes in the design basis for plant structures, systems, and components (SSCs). Consequently, the proposed change will not affect any margins of safety for plant SSCs.

Accordingly, a significant reduction in the margin of safety is not created by the proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action *see* (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, (301) 415–4737 or by email to *pdr@nrc.gov*.

Carolina Power & Light Company, Docket Nos. 50–324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of amendment request: November 26, 2001, as supplemented January 31, February 5, February 11, and October 8, 2002.

Description of amendment request: The amendment revises the Improved Technical Specification 5.5.12 to allow a one-time interval increase for the Type A Integrated Leakage Rate Test for no more than 2 years, 2 months.

Date of issuance: November 21, 2002.

Effective date: November 21, 2002.

Amendment No.: 250.

Facility Operating License No. DPR–62: The amendment changes the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 8, 2002 (67 FR 926). The January 31 and February 5, 2002, supplements contained clarifying information only, and did not change the initial no significant hazards consideration determination or expand the scope of the initial **Federal Register** notice. The February 11 and October 8, 2002, supplements revised the original requests but the initial no significant hazards determination bounded the revised request.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 2002.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: July 19, 2002, as supplemented September 6, 2002.

Brief description of amendment: The amendment revised Technical Specification (TS) Surveillance Requirement (SR) 4.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of "* * * up to 24 hours" to "* * * up to 24 hours or up to the limit of the specified surveillance interval, whichever is greater." In addition, the following requirement is added to SR 4.0.3: "A risk evaluation shall be performed for any surveillance delayed greater than 24 hours and the risk impact shall be managed." The amendment also made administrative changes to SRs 4.0.1 and 4.0.3 to be consistent with NUREG–1431, Revision 2, "Standard Technical Specifications—Westinghouse Plants."

Date of issuance: November 15, 2002.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 213.

Facility Operating License No. DPR–65: This amendment revised the TSs.

Date of initial notice in ***Federal Register:*** September 4, 2002 (67 FR 56604).

The September 6, 2002, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the amendment beyond the scope of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 15, 2002.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: July 16, 2002, as supplemented by letter dated September 4, 2002.

Brief description of amendment: The amendment changes the technical specifications (TS) to revise the specified minimum emergency diesel generator (DG) steady state output voltage from 3740 volts to 3910 volts.

Date of issuance: November 14, 2002.

Effective date: November 14, 2002, to be implemented within 30 days from the date of issuance.

Amendment No.: 181.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 20, 2002 (67 FR 53985).

The September 4, 2002, supplemental letter provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 14, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: May 30, 2002, as supplemented on September 13 and November 6 and 20, 2002.

Brief description of amendment: The amendment revises the Facility Operating License and the Technical Specifications to increase the licensed core thermal power level to 3067.4 megawatts (MWt), which is a 1.4% increase above the currently authorized power level of 3025 MWt. The power uprate is based on the improvement in the core power uncertainty allowance originally required for the emergency core cooling system (ECCS) evaluations performed in accordance with Appendix K, "ECCS Evaluation Models," to part 50 of Title 10 of the CFR. Specifically, the reduced uncertainty is obtained by using a more accurate measurement of feedwater flow.

Date of issuance: November 26, 2002.

Effective date: November 26, 2002.

Amendment No.: 213.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** July 9, 2002 (67 FR 45565).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 26, 2002.

The September 13, November 6, and November 20, 2002, letters provided clarifying information that did not enlarge the scope of the amendment request or change the initial proposed no significant hazards consideration determination.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York County, Pennsylvania

Date of application for amendment: May 24, 2002, as supplemented by letters dated June 27, September 11, September 24, and October 16, 2002.

Brief description of amendments: The amendments increase the licensed power level by approximately 1.62% from 3458 megawatts thermal (MWt) to 3514 MWt. These changes are based on increased feedwater flow measurement accuracy achieved by utilizing high accuracy ultrasonic flow measurement instrumentation.

Date of issuance: November 22, 2002.

Effective date: For Peach Bottom Atomic Power Station, Unit 2, as of the date of issuance and shall be implemented within 60 days of issuance. For Peach Bottom Atomic Power Station, Unit 3, as of its date of issuance, and shall be implemented upon startup following the Unit 3 14th Refueling Outage, currently scheduled for fall 2003.

Amendment No: 247 and 250.

Facility Operating License Nos. DPR–44 and DPR–56: The amendment revises the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** July 9, 2002 (67 FR 45568).

The June 27, September 11, September 24, and October 16, 2002, supplemental letters provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 22, 2002.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: June 12, 2000, as supplemented by letters dated November 7, 2000, June 19

and August 17, 2001, January 15, June 5, and September 20, 2002.

Brief description of amendments: The amendments replace the current accident source term used in design-basis radiological analyses for control room habitability with an alternative source term (AST) pursuant to Title 10 of the CFR part 50.67, "Accident Source Term." The licensee for D.C. Cook, Units 1 and 2, Indiana Michigan Power Company has requested a selective implementation of the AST limited to control room habitability assessments. The licensee has elected to use the AST and its associated acceptance criteria in preparing a revised control room dose analysis to show compliance with 10 CFR Part 50, Appendix A Criterion 19 "Control Room."

In addition, the proposed amendments revise the technical specifications (TSs) to change the standard by which charcoal used in engineered safeguard features systems is tested. The proposed changes to the TSs are made in accordance with Generic Letter 99–02, "Laboratory Testing of Nuclear-grade Activated Charcoal." The amendments also revise the format of the TS pages to adopt the format of Technical Specification Task Force (TSTF) Document TSTF–287 "Ventilation System Envelope Outage Time."

Date of issuance: November 14, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 271 and 252.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* August 23, 2000 (65 FR 51356).

The supplemental letters provided by the licensee contained clarifying information and did not change the initial no significant hazards consideration and did not expand the scope of the original Federal Register notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 14, 2002.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: January 14, 2002.

Brief description of amendments: The amendments would revise Unit 2 technical specification (TS) 3.4.2, "Safety Valves—Shutdown," and TS 3.4.3, "Safety Valves—Operating," to increase the allowable as-found setpoint tolerance for the Unit 2 pressurizer code safety valves from plus or minus (±) 1 percent (%) to ±3%. In addition, the amendment would add an allowable ±1% as-left setpoint tolerance for the pressurizer code safety valves to Unit 1 and Unit 2 TS 3.4.2 and TS 3.4.3.

Date of issuance: November 26, 2002.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 272 and 253.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* April 2, 2002 (67 FR 15624).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 26, 2002.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 22, 2002.

Brief description of amendment: The amendment removes from Technical Specification (TS) 2.10.4(4)a and b, "Azimuthal Power Tilt (T)," the reference to a specific computer program for monitoring core radial peaking factors when a core power tilt is present. Instead, the functional requirement is specified. This change clarifies the requirements for core tilt monitoring associated with a computer system upgrade and changes in computer programs. Also, a clarification is made in the Bases section for TS 2.10.4 regarding the application of TS 2.10.4(1)(b) when the plant computer incore detector alarms for monitoring core linear heat rate become inoperable.

Date of issuance: October 29, 2002.

Effective date: October 29, 2002, and shall be implemented within 120 days from the date of issuance.

Amendment No.: 211.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* September 3, 2002 (67 FR 56326).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: January 11, 2002.

Brief description of amendments: The amendments revise Technical Specification 3.6.4, "Containment Pressure," to reduce the maximum allowable pressure from 3 pounds per square inch gauge (psig) to 2 psig.

Date of issuance: November 26, 2002.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 206 and 211.

Facility Operating License Nos. DPR–24 and DPR–27: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* March 19, 2002 (67 FR 12605).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 26, 2002.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket No. 50–133, Humboldt Bay Power Plant, Unit 3, Humboldt County, California

Date of application for amendment: December 28, 2000, as supplemented by letters dated March 29, 2001; October 31, 2001; December 21, 2001; and October 18, 2002.

Brief description of amendment: The amendment replaces the current technical specifications with a set of permanently defueled technical specifications (PDTS) to reflect the permanently defueled condition of the plant.

Date of issuance: November 18, 2002.

Effective date: November 18, 2002, and shall be implemented within 60 days of issuance, including the incorporation of the revised Quality Assurance Program description that contains the relocated administrative control requirements as described in the licensee's March 29, October 31, and December 21, 2001 letters.

Amendment No.: 34.

Facility Operating License No. DPR–7: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* December 26, 2001 (66 FR 66471).

The December 21, 2001, and October 18, 2002, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff original no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 18, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of application for amendments: August 20, 2002.

Brief description of amendments: The amendments revised TS Table 3.3.6.1–1, "Primary Containment Isolation Instrumentation," Functional Unit 5.a, Reactor Water Cleanup System Isolation, Main Steam Valve Vault Area Temperature—High, to extend the frequency of the channel calibration surveillance requirement from 122 days to 24 months, and revised applicable Bases.

Date of issuance: November 26, 2002.

Effective date: As of date of issuance and shall be implemented within 60 days from the completion of Browns Ferry Units 2 and 3 refueling outages currently scheduled for early 2003, and the spring of 2004, respectively.

Amendment Nos.: 277 and 236.

Facility Operating License Nos. DPR–52 and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* October 15, 2002 (67 FR 63698).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 26, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: January 14, 2002.

Brief description of amendment: The amendment reduced the steady-state specific activity of the primary coolant. The amendment also changes the allowable value for the main control room air intake radiation monitor made necessary by reducing the specific activity.

Date of issuance: November 18, 2002.

Effective date: As of the date of issuance and shall be implemented within 45 days of issuance.

Amendment No.: 41.

Facility Operating License No. NPF–90: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* April 2, 2002 (67 FR 15629).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 18, 2002.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 2nd day of December 2002.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Deputy Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–30921 Filed 12–9–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

SES Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Teresa Floyd, Office of Human Resources and EEO, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, (202) 606–2309.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and considers recommendations to the appointing authority regarding the performance of the senior executive.

Office of Personnel Management.

Kay Coles James,

Director.

The following have been designated as regular members of the Performance Review Board of the Office of Personnel Management:

Paul T. Conway, Chief of Staff—Chair.
Kathy L. Dillaman, Acting Director, Investigations Service.
William E. Flynn, Senior Policy Advisor to the Director.
John C. Gartland, Director, Office of Congressional Relations.
Doris L. Hausser, Acting Director, Workforce Compensation and Performance Service.
Teresa M. Jenkins, Director, Office of Workforce Relations.
Gail Lovelace, Chief People Officer, General Services Administration.
Mark A. Robbins, General Counsel.

[FR Doc. 02–31085 Filed 12–9–02; 8:45 am]

BILLING CODE 6325–45–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46942; File No. SR–NASD–99–60]

Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 3 and 4 to a Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding Restrictions on the Purchase and Sale of Initial Public Offerings of Equity Securities

December 4, 2002.

On October 15, 1999, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change that would govern trading in "hot equity" offerings. The proposed rule, NASD Rule 2790, would revise and replace NASD IM–2110–1, known as the Free-Riding and Withholding Interpretation. On December 21, 1999, the NASD submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on January 18, 2000.[4] On October 11, 2000, the NASD submitted Amendment No. 2 to the proposal[5] which, among other things, changed the subject of the proposed rule from "hot issues" to "new issues." Amendment No. 2 was published for comment in the **Federal Register** on December 6, 2000.[6] The NASD submitted Amendment No. 3 to the proposal on March 20, 2001,[7] and Amendment No. 4 to the proposal on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Gary L. Goldsholle, NASD, to Katherine A. England, Division of Market Regulation, SEC, dated December 20, 1999 ("Amendment No. 1"). In Amendment No. 1, the NASD made certain technical amendments to the proposed rule change.

[4] Securities Exchange Act Release No. 42325 (January 10, 2000), 65 FR 2656 ("Original Notice").

[5] *See* Letter from Alden S. Adkins, NASD, to Katherine A. England, Division of Market Regulation, SEC, dated October 10, 2000 ("Amendment No. 2").

[6] Securities Exchange Act Release No. 43627 (November 28, 2000), 65 FR 76316 ("Amendment No. 2 Notice").

[7] *See* Letter from Patrice M. Gliniecki, NASD, to Katherine A. England, Division of Market Regulation, SEC, dated March 20, 2001 ("Amendment No. 3").

June 27, 2002.[8] The Commission is publishing this notice of Amendment Nos. 3 and 4 to solicit comments on proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD has proposed to establish new NASD Rule 2790, Restrictions on the Purchase and Sale of Initial Equity Public Offerings, which would replace NASD IM–2110–1, the Free-Riding and Withholding Interpretation. Consolidated changes made to the proposed rule text as a result of Amendment Nos. 3 and 4 are shown below. The base text is that proposed in Amendment No. 2. Text added by Amendment Nos. 3 and 4 is underlined; deleted text is in brackets.

* * * * *

Rule 2790. Restrictions on the Purchase and Sale of Initial Equity Public Offerings

(a) General Prohibitions

(1) A member or a person associated with a member may not sell, or cause to be sold, a new issue to any account in which a restricted person has a beneficial interest, except as otherwise permitted herein.

(2) A member or a person associated with a member may not purchase a new issue in any account in which such member or person associated with a member has a beneficial interest, except as otherwise permitted herein.

(3) A member may not continue to hold new issues acquired by the member as an underwriter, selling group member, or otherwise, except as otherwise permitted herein.

(4) Nothing in this paragraph (a) shall prohibit:

(A) sales or purchases from one member of the selling group to another member of the selling group that are incidental to the distribution of a new issue to a non-restricted person at the public offering price; or

(B) sales or purchases by a broker/dealer of a new issue at the public offering price as part of an accommodation to a non-restricted person customer of the broker/dealer.

(b) Preconditions for Sale

Before selling a new issue to any account, a member must in good faith have obtained within the twelve months prior to such sale, a representation from:

(1) Beneficial Owners

The account holder(s), or a person authorized to represent the beneficial owners of the account, that the account is eligible to purchase new issues in compliance with this rule; *or*

(2) Conduits

A bank, foreign bank, broker/dealer, or investment adviser, or other conduit that all purchases of new issues are in compliance with this rule.

A member may not rely upon any representation that it believes, or has reason to believe, is inaccurate. A member shall maintain a copy of all records and information relating to whether an account is eligible to purchase new issues in its files for at least three years following the member's last sale of a new issue to that account.

(c) General Exemptions

The general prohibitions in paragraph (a) of this rule shall not apply to sales to and purchases by *the following accounts or persons, whether directly or through accounts in which such persons have a beneficial interest:*

(1) An investment company registered under the Investment Company Act of 1940;

(2) A common trust fund or similar fund as described in Section 3(a)(12)(A)(iii) of the Act, provided that:

(A) The fund has investments from 1,000 or more [trust] accounts; and

(B) The fund does not limit beneficial interests in the fund principally to trust accounts of restricted persons;

(3) An insurance company general, separate or investment account, provided that:

(A) The account has investments from 1,000 or more policyholders; and

(B) The insurance company does not limit beneficial interests in the account principally to restricted persons;

(4) An account or joint back office broker/dealer ("JBO") if the beneficial interests of restricted persons do not exceed in the aggregate 10% of such account or JBO [that is beneficially owned in part by restricted persons, provided that such restricted persons in the aggregate own less than 5% of such account, and that:

(A) each such restricted person does not manage or otherwise direct investments in the account; and

(B) on a pro rata basis, each such restricted person who is a natural person receives less than 100 shares of any new issue];

(5) A publicly traded entity (other than a broker/dealer [) that]or *an affiliate of a broker/dealer where such broker/dealer is authorized to engage in the public offering of new issues either as a selling group member or underwriter) that:*

(A) Is listed on a national securities exchange; [or]

(B) Is traded on the Nasdaq National Market; *or*

(C) Is a foreign issuer whose securities meet the quantitative designation criteria for listing on a national securities exchange or trading on the Nasdaq National Market; [, provided that the gains or losses from new issues are passed on directly or indirectly to public shareholders;]

(6) An investment company organized under the laws of a foreign jurisdiction, provided that:

(A) The investment company is listed on a foreign exchange or authorized for sale to the public by a foreign regulatory authority; and

(B) No person owning more than 5% of the shares of the investment company is a restricted person;

(7) An Employee Retirement Income Security Act benefits plan that is qualified under Section 401(a) of the Internal Revenue Code, provided that such plan is not sponsored solely by a broker/dealer;

(8) A state or municipal government benefits plan that is subject to state and/or municipal regulation; [or]

(9) A tax exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code[.]; *or*

(10) A church plan under Section 414(e) of the Internal Revenue Code.

(d) Issuer-Directed Securities

The prohibitions on the purchase and sale of new issues in this rule shall not apply to securities that:

(1) Are specifically directed by the issuer to *persons that are restricted under the rule;* provided, however, that [this exemption shall not apply to] securities directed by [the issuer to]*an issuer may not be sold to or purchased by* an account in which any restricted person specified in subparagraphs [(i)(10)(B) or (i)(10)(C)]*(i)(11)(B) or (i)(11)(C)* of this rule has a beneficial interest, unless such person, or a member of his or her immediate family, is an employee or director of the issuer, the issuer's parent, or a subsidiary of the issuer *or the issuer's parent.* Also, for purposes of this [sub]paragraph (d)(1) only, a parent/subsidiary relationship is established if the parent has the right to vote 50% or more of a class of voting security of the subsidiary, or has the power to sell or direct 50% or more of a class of voting [securities] *security* of the subsidiary;

(2) Are part of a program sponsored by the issuer or an affiliate of the issuer that meets the following criteria:

(a) The opportunity to purchase a new issue under the program is offered to at least 10,000 participants;

(b) Every participant is offered an opportunity to purchase an equivalent number of shares, or will receive a specified number of shares under a predetermined formula applied uniformly across all participants;

(c) If not all participants receive shares under the program, the selection of the participants eligible to purchase shares is based upon a random or other non-discretionary allocation method; *and*

(d) The class of participants does not contain a disproportionate number of restricted persons as compared to the investing public generally; [and

(e) Sales are not made to participants who are managing underwriter(s), the broker/dealer administering the program ("Administering Broker/Dealer"), the officers or directors of the managing underwriter(s) or Administering Broker/Dealer, or any employee of the managing underwriter(s) or Administering Broker/Dealer with access to non-publicly available information about the new issue;] or

(3) Are directed to eligible purchasers *who are otherwise restricted under the rule* as part of a conversion offering in accordance with the standards of the governmental agency or instrumentality having authority to regulate such conversion offering.

(e) Anti-Dilution Provisions

The prohibitions on the purchase and sale of new issues in this rule shall not apply to an account in which a restricted person has a beneficial interest that meets the following conditions:

(1) The [restricted person] *account* has held an equity ownership interest in the issuer, or a company that has been acquired by the issuer in the past year, for a period of one year prior to the effective date of the offering;

(2) The sale of the new issue to the account shall not increase the [restricted person's] *account's* percentage equity ownership in the issuer above the ownership level as of three months prior to the filing of the registration statement in connection with the offering;

(3) The sale of the new issue to the account shall not include any special terms; and

(4) The new issue purchased pursuant to this [sub]paragraph (e) shall not be sold, transferred, assigned, pledged or hypothecated for a period of three months following the effective date of the offering.

(f) Stand-by Purchasers

The prohibitions on the purchase and sale of new issues in this rule shall not apply to the purchase and sale of securities pursuant to a stand-by agreement that meets the following conditions:

(1) The stand-by agreement is disclosed in the prospectus;

(2) The stand-by agreement is the subject of a formal written agreement;

(3) The managing underwriter(s) represents in writing that it was unable to find any other purchasers for the securities; and

(4) The securities sold pursuant to the stand-by agreement shall not be sold, transferred, assigned, pledged or hypothecated for a period of three months following the effective date of the offering.

(g) Under-Subscribed Offerings

Nothing in this rule shall prohibit an underwriter, pursuant to an underwriting agreement, from placing a portion of a public offering in its investment account when it is unable to sell that portion to the public.

(h) Exemptive Relief

Pursuant to the Rule 9600 series, the staff, for good cause shown after taking into consideration all relevant factors, may conditionally or unconditionally exempt any person, security or transaction (or any class or classes of persons, securities or transactions) from this rule to the extent that such exemption is consistent with the purposes of the rule, the protection of investors, and the public interest.

(i) Definitions

(1) "Beneficial interest" means any economic interest, such as the right to share in gains or losses. The receipt of a management or performance based fee for operating a collective investment account, *or other fees for acting in a fiduciary capacity,* shall not be considered a beneficial interest in the account.

(2) "Collective investment account" means any hedge fund, investment partnership, investment corporation, or any other collective investment vehicle *that is engaged primarily in the purchase and/or sale of securities. A "collective investment account" does not include a "family investment vehicle" or an "investment club."*[.]

(3) "Conversion offering" means any offering of securities made as part of a plan by which a savings and loan association, insurance company, or other organization converts from a mutual to a stock form of ownership.

(4) "Family [partnership" means a partnership comprised solely of] *investment vehicle" means a legal entity that is beneficially owned solely* by immediate family members.

(5) "Immediate family member" means a person's parents, mother-in-law or father-in-law, spouse, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, and children, and any other individual to whom the person provides material support.

(6) "Investment club" means a group of friends, neighbors, business associates, or others that pool their money to invest in stock or other securities and are collectively responsible for making investment decisions.

(7) *"Joint Back Office Broker/Dealer" means any domestic or foreign private investment fund that has elected to register as a broker/dealer solely to take advantage of the margin treatment afforded under Section 220.7 of Regulation T of the Federal Reserve. The activities of a joint back office broker/dealer must not require that it register as a broker/dealer under Section 15(a) of the Act.*

(8) "Limited business broker/dealer" means any broker/dealer whose authorization to engage in the securities business is limited solely to the purchase and sale of investment company/variable contracts securities and direct participation program securities.

[(8)](9) "Material support" means directly or indirectly providing more than 25% of a person's income in the [current or] prior calendar year. Members of the immediate family living in the same household are deemed to be providing each other with material support.

[(9)](10) "New issue" means any initial public offering of an equity security as defined in Section 3(a)(11) of the Act, made pursuant to a registration statement or offering circular[, or other securities distributions of any kind whatsoever, including securities that are specifically directed by the issuer on a non-underwritten basis]. New issue shall not include:

(A) Offerings made pursuant to an exemption under Section 4(1), 4(2) or 4(6) of the Securities Act of 1933, or SEC Rule 504 if the securities are "restricted securities" under SEC Rule 144(a)(3), or *Rule 144A* or Rule 505 or Rule 506 adopted thereunder;

(B) Offerings of exempted securities as defined in Section 3(a)(12) of the Act, *and rules promulgated thereunder;*

[8] *See* Letter from Gary L. Goldshalle, NASD, to Katherine A. England, Division of Market Regulation, SEC, dated June 27, 2002 ("Amendment No. 4").

(C) *Offerings of securities of a commodity pool operated by a commodity pool operator as defined under Section 1a(5) of the Commodity Exchange Act;*

(D) Rights offerings, exchange offers, or offerings made pursuant to a merger or acquisition;

[(D)]*(E)* Offerings of investment grade asset-backed securities;

[(E)]*(F)* Offerings of convertible securities;

[(F)]*(G)* Offerings of preferred securities; and

[(G)]*(H)* Offerings of [securities of closed-end companies as defined under Section (5)(a)(2) of] an *investment company registered under* the Investment Company Act of 1940.

[(10)]*(11)* "Restricted person" means:

(A) Members or other broker/dealers;

(B) Broker/Dealer Personnel:

(i) Any officer, director, general partner, associated person, or employee of a member or any other broker/dealer (other than a limited business broker/dealer); [, or any]

(ii) Any agent of a member or any other broker/dealer (other than a limited business broker/dealer) that is engaged in the investment banking or securities business; *or*

[(ii)]*(iii)* An immediate family member of a person specified in subparagraph (B)(i) *or* (ii) if the person specified in subparagraph (B)(i) *or* (ii):

(a) Materially supports, or receives material support from, the immediate family member;

(b) Is employed by or associated with the member, or an affiliate of the member, selling the new issue to the immediate family member; or

(c) Has an ability to control the allocation of the new issue.

(C) Finders and Fiduciaries:

(i) With respect to the security being offered, a finder or any person acting in a fiduciary capacity to the managing underwriter, including, but not limited to, attorneys, accountants and financial consultants; and

(ii) An immediate family member of a person specified in subparagraph (C)(i) if the person specified in subparagraph (C)(i) materially supports, or receives material support from, the immediate family member.

(D) Portfolio Managers:

(i) Any person who has authority to buy or sell securities for a bank, savings and loan institution, insurance company, investment company, investment advisor, or collective investment account[, other than with respect to a beneficial interest in the bank, savings and loan institution, insurance company, investment company, investment advisor, or collective investment account over which such person has investment authority;].

(ii) An immediate family member of a person specified in subparagraph (D)(i) that *materially supports, or receives material support from, such person* [is materially supported by such person, other than with respect to a beneficial interest in the bank, savings and loan institution, insurance company, investment company, investment advisor, or collective investment account over which such person has investment authority.

Provided, however, that the term "restricted person" under this subparagraph (D) shall not include a person solely because he or she is a participant in an investment club or a family partnership].

(E) Persons Owning a Broker/Dealer

(i) Any person listed, or required to be listed, in Schedule A of a Form BD *(other than with respect to a limited business broker/dealer),* except persons [with] *identified by an* ownership [interests] *code* of less than 10%;

(ii) [any] *Any* person listed, or required to be listed, in Schedule B of a Form BD *(other than with respect to a limited business broker/dealer),* except persons whose listing on Schedule B relates to an ownership interest in a person listed on Schedule A [with] *identified by* an ownership [interest] code of less than 10%;

(iii) [any] *Any* person listed, or required to be listed, in Schedule C of a Form BD that meets the criteria of subparagraphs (E)(i) and (E)(ii) above;

(iv) [any] *Any* person that directly or indirectly owns 10% or more of a public reporting company listed [on], *or required to be listed, in* Schedule A of a Form BD (other than a reporting company that is listed on a national securities exchange or is traded on the Nasdaq National Market, [provided that the gains or losses from new issues are passed on directly or indirectly to public shareholders);] *or other than with respect to a limited business broker/dealer);*

(v) Any person that directly or indirectly owns 25% or more of a public reporting company listed [on], *or required to be listed,* in Schedule B of a Form BD (other than a reporting company that is listed on a national securities exchange or is traded on the Nasdaq National Market, [provided that the gains or losses from new issues are passed on directly or indirectly to public shareholders)] *or other than with respect to a limited business broker/dealer).*

(vi) An immediate family member of a person specified in subparagraphs (E)(i)–(v) unless the person owning the broker/dealer:

(a) Does not materially support, or receive material support from, the immediate family member;

(b) Is not an owner of the member, or an affiliate of the member, selling the new issue to the immediate family member; and

(c) Has no ability to control the allocation of the new issue.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Between December 2000 and March 2001, the Commission received 14 comment letters on the proposed rule change.[9] These comment letters offered a number of suggestions to improve the clarity and consistency of the proposed rule change. Some comment letters also sought additional exemptions that are not in NASD IM–2110–1. The NASD reviewed the 14 comment letters and made various revisions to proposed NASD Rule 2790. Interested persons may view Amendment Nos. 3 and 4, which explain these revisions and respond to the comments received, at the following Web site: *http://www.nasdr.com/filings/rf99_60.asp.* Amendment Nos. 3 and 4 are also available at the principal offices of the NASD and at the Commission's Public Reference Room.

2. Statutory Basis

The NASD previously has stated that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act.[10] The NASD believes that the proposal would protect investors and further the public interest by ensuring that NASD members make a *bona fide* public offering of securities at the public offering price; ensuring that members do not withhold securities in a public offering for their own benefit or use such securities to reward certain persons who are in a position to direct future business to the member; and ensuring that industry "insiders," including members and their associated persons, do not take advantage of their "insider" position in the industry to purchase new issues for their own benefit at the expense of public customers.[11] The NASD continues to believe that the amended proposal is consistent with this statement.[12]

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD previously has stated that the proposed rule change would not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[13] The NASD continues to believe that the amended proposal is consistent with this statement.[14]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Amendment Nos. 3 and 4 reflect changes to the proposal made by the NASD in response to the 14 comments received between December 2000 and March 2001.[15]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. The Commission notes that the NASD is continuing to consider the need for additional rule changes relating to IPO allocation practices.[16] For example, the NASD has separately sought comment on a practice referred to as "spinning." The NASD has solicited comment on whether it should adopt rule changes prohibiting NASD members from allocating IPO shares to an executive officer or director of a company on the condition that the officer or director send the company's investment banking business to the member, or as consideration for investment banking services previously rendered.[17] Those proposals are not covered by the present rule change proposals and would be addressed in a future filing.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–60 and should be submitted by December 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31161 Filed 12–9–02; 8:45 am]

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[9] *See* Letter from The Washington Group to Jonathan G. Katz, SEC, dated December 21, 2000; Letter from Fried, Frank, Harris, Shriver & Jacobson to Jonathan G. Katz, SEC, dated December 22, 2000; Letter from Capital International, Inc. to Jonathan G. Katz, SEC, dated December 22, 2000; Letters from Cadwalader, Wickersham & Taft to Jonathan G. Katz, SEC, dated December 22, 2000 and January 4, 2001; Letter from Testa, Hurwitz & Thibeault to Jonathan G. Katz, SEC, dated December 26, 2000; Letter from Managed Funds Association to Jonathan G. Katz, SEC, dated December 26, 2000; Letter from Mayor, Day, Caldwell & Keeton, L.L.P. to Jonathan G. Katz, SEC, dated December 26, 2000; Letter from Sullivan & Cromwell to Jonathan G. Katz, SEC, dated December 29, 2000; Letter from Willkie Farr & Gallagher to Jonathan G. Katz, SEC, dated January 8, 2001; Letter from Securities Industry Association to Margaret H. McFarland, SEC, dated January 10, 2001; Letter from Chicago Board Options Exchange to Jonathan G. Katz, SEC, dated January 12, 2001; Letter from Morgan Stanley Dean Witter to Secretary, SEC, dated January 31, 2001; Letter from The Washington Group to Laura S. Unger, Acting Chair, SEC, dated March 27, 2001. Recently, the Commission has received two additional comment letters that, among other things, advocate the publication of Amendment No. 4 in the **Federal Register**. *See* Letter from Willkie Farr & Gallagher to SEC dated September 24, 2002; Letter from Managed Funds Association to SEC dated October 15, 2002.

[10] 15 U.S.C. 78o–3(b)(6).

[11] *See* Amendment No. 2 Notice, 65 FR at 76328.

[12] Telephone conversation between Gary Goldsholle, NASD, and Michael Gaw, Division of Market Regulation, SEC, on November 25, 2002.

[13] *See* Amendment No. 2 Notice, 65 FR at 76328.

[14] Telephone conversation between Gary Goldsholle, NASD, and Michael Gaw, Division of Market Regulation, SEC, on November 25, 2002.

[15] *Id.*

[16] *See, e.g.,* NASD Notice to Members 02–55 (August 2002).

[17] *See id.*

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46943; File No. SR–NYSE–2002–58]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending the Exchange's Automatic Execution Facility (NYSE Direct+)

December 4, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Exchange Rules governing NYSE Direct+® ("NYSE Direct +"). The rule amendments propose to amend NYSE Rule 1005 to permit entry of limit orders up to 1,099 shares within 30 seconds for an account in which the same person has an interest, provided that the orders are entered from different terminals and that the member or member organization responsible for the entry of the orders to the trading floor ("Floor") has procedures to monitor compliance with the separate terminal requirement. Below is the text of the proposed rule change. Proposed new text is *italicized* and proposed deleted text is [bracketed].

* * * * *

Rule 1005 An auto ex order for any account in which the same person is directly or indirectly interested may

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

only be entered at intervals of no less than 30 seconds between entry of each such order in a stock[.], *unless the orders are entered by means of separate order entry terminals, and the member or member organization responsible for entry of the orders to the Floor has procedures in place to monitor compliance with the separate terminal requirement.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NYSE Direct+ pilot [3] provides for the automatic execution of limit orders of 1099 shares or less (known as an "NX order" or auto ex order) against trading interest reflected in the Exchange's published quotation. It is not mandatory that all limit orders of 1099 shares be entered as NX orders; rather, the member organization entering the order, or its customer if enabled by the member organization, can choose to enter an NX order when such member organization (or customer) believes that the speed and certainty of an execution at the Exchange's published bid or offer price is in its customer's best interest.

An order placed in NYSE Direct+ is executed when the limit price is equal to or better than the published bid or offer. If an order placed in NYSE Direct+ is not executed, it is placed on the specialist's book for representation in the market at its limit price.

NYSE Rule 1005 provides that an NX order for any account in which the same person is directly or indirectly interested may only be entered at intervals of no less than 30 seconds between entry of each such order. The restriction against the same customer entering an order within 30 seconds focuses on the identity of the ultimate beneficial owner of an account. Thus, an order cannot be entered for the same beneficial owner within 30 seconds. The purpose of this restriction is to limit the ability of a trader to circumvent the restriction on order size by breaking a large order into smaller components and repetitively entering them to exhaust liquidity at the published bid or offer price. The restriction in NYSE Rule 1005 applies across an entire firm, even if separate traders are making independent decisions with respect to an account in which the firm has an interest.

The Exchange is proposing to amend NYSE Rule 1005 to permit entry of NX orders within 30 seconds for an account in which the same person has an interest, provided that the orders are entered from different terminals and that the member or member organization responsible for the entry of the orders to the Floor has procedures to monitor compliance with the separate terminal requirement. Such procedures, at a minimum, would require member organization compliance departments to review patterns of order entry from individual terminals on a periodic basis to ensure compliance with the 30 second requirement. The Exchange will include compliance with NYSE Rule 1005 in its examination scope when conducting its periodic examinations of member organizations. This amendment is not inconsistent with the original intent of Rule 1005 to preclude the intentional breaking up of large size orders to circumvent the 1099 NX order size limitation because orders are typically entered by traders who are independent decision makers and who operate from his or her own discrete order entry terminal. Thus, as a practical matter, the Exchange believes that the proposed amendment to NYSE Rule 1005 cannot reasonably be expected to facilitate the ability of any individual trader to break up large orders at less than 30 second intervals to circumvent the 1099 share size limitation for NX orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5),[4] which requires an Exchange to have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange also believes that the proposed rule change is designed to support the principles of section 11A(a)(1) of the Act [5] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market, and provide an opportunity for investors' orders to be executed without the participation of a dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NYSE consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2002–58 and should be submitted by December 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated Authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31162 Filed 12–9–02; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4, 2001) (SR-NYSE–2000–18) (Approving the NYSE Direct + pilot). The one-year pilot was subsequently extended for another year in Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002) (SR-NYSE–2001–50). In addition, we have recently requested another year extension, beginning December 24, 2002. *See* Securities Exchange Act Release No. 46906 (November 25, 2002) (SR–NYSE–2002–47). This proposal, if approved, would be part of the pilot and only run while the pilot runs. Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and Sonia Patton, Special Counsel, Division of Market Regulation, Commission, December 3, 2002.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78k–1(a)(1).

[6] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Modifications to the Disability Determination Procedures; Extension of Testing of Some Disability Redesign Features

AGENCY: Social Security Administration (SSA).

ACTION: Notice of the extension of tests involving modifications to the disability determination procedures.

SUMMARY: We are announcing the extension of tests involving modifications to our disability determination procedures that we are conducting under the authority of current rules codified at 20 CFR 404.906 and 416.1406. These rules provide authority to test several modifications to the disability determination procedures that we normally follow in adjudicating claims for disability insurance benefits under title II of the Social Security Act (the Act) and for supplemental security income payments based on disability under title XVI of the Act. We have decided to extend the testing of two redesign features of the disability prototype for 6 months to enable us to address transition issues.

DATES: We are extending our selection of cases to be included in these tests from December 30, 2002, until no later than June 30, 2003. If we decide to continue selection of cases for these tests beyond this date, we will publish another notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Phil Landis, Disability Process Redesign Staff, Office of Disability Determinations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, 410–965–5388.

SUPPLEMENTARY INFORMATION: Current regulations at 20 CFR 404.906 and 416.1406 authorize us to test, individually, or in any combination, different modifications to the disability determination procedures. We have conducted several tests under the authority of these rules, including a prototype that incorporates a number of modifications to the disability determination procedures that the State agencies use. The prototype included three redesign features, and we previously extended the tests of two of those features: the use of a single decisionmaker, in which a disability examiner may make the initial disability determination in most cases without requiring the signature of a medical consultant; and elimination of the reconsideration level of review. We are now announcing a further extension of the testing of these two features.

We also have conducted another test involving the use of a single decisionmaker who may make the initial disability determination in most cases without requiring the signature of a medical consultant. We are also extending the period during which we will select cases to be included in this test of the single decisionmaker feature.

Extension of Testing of Some Disability Redesign Features

On August 30, 1999, we published in the **Federal Register** a notice announcing a prototype that would test a new disability claims process in 10 States, also called the prototype process (64 FR 47218). On December 23, 1999, we published a notice in the **Federal Register** (65 FR 72134) extending the period during which we would select cases to be included in a separate test of the single decisionmaker feature. In these notices, we stated that selection of cases was expected to be concluded on or about December 31, 2001. We also stated that, if we decided to continue the tests beyond that date, we would publish another notice in the **Federal Register**. We subsequently published notices in the **Federal Register** extending selection of cases for these tests. Most recently, on June 24, 2002, we published a notice extending selection of cases for the tests until no later than December 30, 2002 (67 FR 42594). We also stated that, if we decided to continue selection of cases for these tests beyond that date, we would publish another notice in the **Federal Register**. We have decided to extend selection of cases for two features of the prototype process (single decisionmaker and elimination of the reconsideration step), and the separate test of single decisionmaker beyond December 30, 2002. We expect that our selection of cases for these tests will end on or before June 30, 2003.

This extension also applies to the locations in the State of New York that we added to the prototype test in a notice published in the **Federal Register** on December 26, 2000 (65 FR 81553).

Dated: December 3, 2002.

Martin H. Gerry,

Deputy Commissioner for Disability and Income Security Programs.

[FR Doc. 02–31074 Filed 12–9–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4195]

Overseas Buildings Operations; Industry Advisory Panel: Meeting Notice

Due to scheduling constraints, the Industry Advisory Panel of Overseas Buildings Operations will meet on Thursday, December 19, 2002 from 9:45 until 11:45 a.m. and 1 until 3:30 p.m. Eastern Standard Time. The meeting will be held in conference room 1105 at the Department of State, 2201 C Street, NW. (entrance on 23rd Street), Washington, DC. The purpose of the meeting is to discuss new technologies and successful management practices for design, construction, security, property management, emergency operations, the environment, and planning and development. An agenda will be available prior to the meeting.

The meeting will be open to the public, however, seating is limited. Prior notification and a valid photo ID are mandatory for entry into the building. Members of the public who plan to attend must notify Luigina Pinzino at 703/875–7109 before Friday, December 13, 2002, to provide date of birth, Social Security number, and telephone number.

FOR FURTHER INFORMATION CONTACT: Luigina Pinzino 703/875–7109.

Dated: November 25, 2002.

Charles E. Williams,

Director/Chief Operating Officer, Overseas Buildings Operations, Department of State.

[FR Doc. 02–31147 Filed 12–9–02; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 399X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Jefferson County, NE

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a verified notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon a 10.8-mile line of railroad between milepost 127.83, near Reynolds, and milepost 117.03, near Endicott, in Jefferson County, NE (line). The line traverses United States Postal Service zip codes 68429, 68350, and 68352.

Applicant has certified that: (1) No local traffic has moved over the line for the prior 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government agency acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or any U.S. District Court or has been decided in favor of complainant within the last two years; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 9, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 20, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 30, 2002, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Michael Smith, Esq., Freeborn & Peters, 311 S. Wacker Drive, Suite 3000, Chicago, IL 60606–6677. If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Applicant has filed a separate environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 16, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by December 10, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at *http://www.stb.dot.gov*.

Decided: November 26, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–30803 Filed 12–9–02; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

Reports, Forms, and Record Keeping Requirements: Agency Information Collection Activity under OMB Review; Security Programs for Foreign Air Carriers

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Notice.

SUMMARY: This notice announces that TSA has forwarded the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and clearance of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on August 13, 2002.

DATES: Send your comments by January 9, 2003. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Address your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT–TSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Dan Mullarkey, Office of Security Regulation & Policy, Transportation Security Administration, 400 7th Street, SW., Washington, DC 20590–0001; telephone (202) 385–1236; facsimile (202) 493–1818; e-mail *Dan.Mullarkey@tsa.dot.gov*.

SUPPLEMENTARY INFORMATION:

Transportation Security Administration (TSA)

Title: Security Programs for Foreign Air Carriers.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2110–0006.

Forms(s): 1650–17, 1650–8.

Affected Public: A total of 171 foreign air carriers.

Abstract: The information collected is used to determine compliance of 49 CFR part 1546 and to ensure passenger safety by monitoring foreign air carrier security procedures. These security programs establish procedures that foreign air carriers must carry out to protect persons and property against acts of criminal violence, aircraft piracy, and terrorist activities.

Estimated Annual Burden Hours: An estimated 5,193 hours annually.

TSA is soliciting comments to—

(1) evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimate of the burden;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Issued in Washington, DC, on December 4, 2002.

Susan T. Tracey,

Deputy Chief Administrative Officer.

[FR Doc. 02–31148 Filed 12–9–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Payments to Persons Who Hold Certain Categories of Judgments Against Cuba or Iran

AGENCY: Department of the Treasury; Office of Foreign Assets Control.

ACTION: Notice.

SUMMARY: This notice specifies a widening of the scope of eligibility for payment under Section 2002 of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386 ("Section 2002"), that has resulted from an amendment to Section 2002. Section 2002 directs the Secretary of the Treasury to make payments to persons who hold certain categories of judgments against Cuba or Iran in suits brought under 28 U.S.C. 1605(a)(7).

This notice also provides updated telephone numbers for contact persons at the Department of the Treasury.

DATES: This Notice is effective December 10, 2002.

FOR FURTHER INFORMATION CONTACT: For questions regarding submission of applications, Rochelle E. Stern, Chief, Policy Planning and Program Management Division, Office of Foreign Assets Control, can be reached at 202–622–2500 (not a toll free call). For legal questions, call the Office of the Chief Counsel (Foreign Assets Control) at 202–622–2410 (not a toll free call).

SUPPLEMENTARY INFORMATION: On November 22, 2000, at 65 FR 70382, the Office of Foreign Assets Control, Department of the Treasury, published a **Federal Register** Notice ("November Notice") specifying the procedures necessary for persons to establish their eligibility for payments authorized by Section 2002. The November Notice specified information and documentation that applicants must submit to establish eligibility. Part 2(e) of the November Notice implements Section 2002(a)(2) by providing that an applicant for payment under Section 2002 must meet one of two alternative requirements. To meet the first requirement, Part 2(e)(1) of the November Notice provides that the applicant must establish that he or she had, as of July 20, 2000, a final judgment for a claim brought under 28 U.S.C. 1605(a)(7) against Iran or Cuba. For those applicants who do not satisfy the requirements of Part 2(e)(1), Part 2(e)(2) of the November Notice requires the submission of satisfactory proof of the date on which applicants filed suit against Iran or Cuba under 28 U.S.C. 1605(a)(7), and it lists the five dates upon which applicants must have filed suit in order to be eligible for payment. Such applicants must also establish that they have final judgments in these suits.

On September 30, 2002, Section 2002 was amended by Section 686 of Pub. L. No. 107–228. The amendment of Section 2002(a)(2)(A)(ii) replaced "or July 27, 2000" with "June 6, 2000, July 27, 2000, or January 16, 2002", adding two additional dates for the filing of suits by persons eligible for payment under Section 2002.

Accordingly, Part 2(e)(2) of the November Notice is amended to read as follows:

(2) If an applicant does not satisfy paragraph (1) above, the applicant shall submit satisfactory proof of the date on which the applicant filed a suit against Iran or Cuba under 28 U.S.C. 1605(a)(7). This proof shall be in the form of a docket sheet or other document that has been certified by the clerk of the court in which the suit was filed. Applicants proceeding under this paragraph shall be eligible for payment only if suit was filed on February 17, 1999, December 13, 1999, January 28, 2000, March 15, 2000, June 6, 2000, July 27, 2000, or January 16, 2002. The applicant must also establish that he or she has a final judgment in this suit by submitting the judgment specified in Part 2(b) above, along with all appellate orders on that judgment, if any, and a signed statement demonstrating why further appellate review is unavailable.

Dated: November 7, 2002.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: November 20, 2002.

Kenneth Lawson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 02–31212 Filed 12–6–02; 2:24 pm]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

President' Task Force To Improve Health Care Delivery for Our Nation's Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is scheduled for Wednesday, December 11, 2002, beginning at 8 a.m. and adjourning at 5 p.m. The meeting will be held in the Horizon Ballroom of the Ronald Reagan Building International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC and is open to the general public.

The purpose of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is to:

(a) Identify ways to improve benefits and services for Department of Veterans Affairs (VA) beneficiaries and Department of Defense (DOD) military retirees who are also eligible for benefits from VA, through better coordination of the activities of the two departments;

(b) Identify opportunities to remove barriers that impede VA and DOD coordination, including budgeting processes, timely billing, cost accounting, information technology, and reimbursement; and

(c) Identify opportunities through partnership between VA and DOD, to maximize the use of resources and infrastructure, including buildings, information technology and data sharing systems, procurement of supplies, equipment, and services.

The morning and afternoon sessions will be a discussion of format and issues for the final report to the President.

Interested parties can provide written comments to Mr. Dan Amon, Communications Director, President's Task Force to Improve Health Care Delivery for Our Nation's Veterans, 1401 Wilson Boulevard, 4th Floor, Arlington, Virginia, 22209.

Dated: November 29, 2002.

By Direction of the Secretary.
Nora E. Egan,
Committee Management Officer.
[FR Doc. 02–31122 Filed 12–9–02; 8:45 am]
BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease Development of Property at the Department of Veterans Affairs Medical Center, Hines, IL

AGENCY: Department of Veterans Affairs.
ACTION: Notice of intent to designate.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) is designating a site at the Edward Hines Jr., Veterans Affairs Medical Center, Hines, Illinois, for an enhanced-use lease development. The Department intends to enter into a long-term lease of real property with Catholic Charities, a not-for-profit charitable organization that will finance, design, develop, maintain and manage a transitional living center and low-income senior residence for veterans and non-veterans, at no cost to VA.

FOR FURTHER INFORMATION CONTACT: Jake Gallun, Office of Asset Enterprise Management (004B2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8862.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161 *et seq.*, specifically provides that the Secretary may enter into an enhanced-use lease, if he determines that: At least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property or result in improved services to veterans. This project meets these requirements.

Approved: December 2, 2002.
Anthony J. Principi,
Secretary of Veterans Affairs.
[FR Doc. 02–31123 Filed 12–9–02; 8:45 am]
BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 67, No. 237
Tuesday, December 10, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–124667–02]

RIN 1545–BA78

Disclosure of Relative Values of Optional Forms of Benefit

Correction

In proposed rule document 02–25338 beginning on page 62417 in the issue of Monday, October 7, 2002, make the following correction:

§ 1.417(a)(3)–1 [Corrected]

On page 62425, in § 1.417(a)(3)–1, the table is being republished in its entirety.

AGE 55 COMMENCEMENT

Optional form	Amount of distribution per $1,000 of immediate single life annuity	Relative value
Life Annuity	$1,000 per month	Approximately the same value as the QJSA.
QJSA (joint and 75% survivor annuity)	$956 per month	n/a.
Joint and 100% survivor annuity	$886 per month	Approximately the same value as the QJSA.
Lump sum	$165,959	Approximately the same value as the QJSA.

AGE 60 COMMENCEMENT

Optional form	Amount of distribution per $1,000 of immediate single life annuity	Relative value
Life Annuity	$1,000 per month	Approximately 94% of the value of the QJSA.
QJSA (joint and 75% survivor annuity)	$945 per month	n/a.
Joint and 100% survivor annuity	$859 per month	Approximately 94% of the value of the QJSA.
Lump sum	$151,691	Approximately the same value as the QJSA.

AGE 65 COMMENCEMENT

Optional form	Amount of distribution per $1,000 of immediate single life annuity	Relative value
Life Annuity	$1,000 per month	Approximately 93% of the value of the QJSA.
QJSA (joint and 75% survivor annuity)	$932 per month	n/a.
Joint and 100% survivor annuity	$828 per month	Approximately 93% of the value of the QJSA.
Lump sum	$135,759	Approximately 93% of the value of the QJSA.

[FR Doc. C2–25338 Filed 12–9–02; 8:45 am]
BILLING CODE 1505–01–D

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Federal Register

Tuesday,
December 10, 2002

Part II

Department of Transportation

Federal Highway Administration

23 CFR Parts 627, et al.
Design-Build Contracting; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 627, 635, 636, 637 and 710

[FHWA Docket No. FHWA–2000–7799]

RIN 2125–AE79

Design-Build Contracting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is implementing regulations for design-build contracting as mandated by section 1307(c) of the Transportation Equity Act for the 21st Century (TEA–21), enacted on June 9, 1998. The TEA–21 requires the Secretary of Transportation (Secretary) to issue regulations to allow design-build contracting for selected projects. The regulations list the criteria and procedures that will be used by the FHWA in approving the use of design-build contracting by State Transportation Departments (STDs). The regulation does not require the use of design-build contracting, but allows STDs to use it as an optional technique in addition to traditional contracting methods.

EFFECTIVE DATE: The final rule is effective January 9, 2003.

FOR FURTHER INFORMATION CONTACT: For technical information: Mr. Gerald Yakowenko, Office of Program Administration (HIPA), (202) 366–1562. For legal information: Mr. Harold Aikens, Office of the Chief Counsel (HCC–30), (202) 366–1373, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL) *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions on-line for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's web page at *http://www.access.gpo.gov/nara*.

Background

Section 1307 of the Transportation Equity Act for the 21st Century (TEA–21, Public Law 105–178, 112 Stat. 107 (1998)) amends 23 U.S.C. 112 to allow the design-build contracting method after the FHWA promulgates a regulation prescribing the Secretary's approval criteria and procedures on qualified projects. The TEA–21 defined qualified projects as projects that comply with the criteria in this regulation and whose total costs are estimated to exceed: (1) $5 million for intelligent transportation system projects, and (2) $50 million for any other project. It also provides certain key requirements that the FHWA must address in the development of these regulations. These requirements include, but are not limited to, the following:

- Prior to initiating the rulemaking process, the FHWA must consult with representatives from the American Association of State Highway and Transportation Officials (AASHTO) and representatives from other affected industries;
- The FHWA must complete the rulemaking process within three years of the date of TEA–21 enactment, or by June 9, 2001; and
- The regulation must: (1) Identify the criteria to be used by the Secretary in approving design-build projects, and (2) establish the procedures to be followed by Federal-aid recipients in seeking the FHWA's approval.
- Section 1307(f) of the TEA–21 requires the FHWA to assess the impacts of design-build contracting by June 9, 2003.

The FHWA has been allowing the STDs to evaluate design-build contracting under Special Experimental Project No. 14 (SEP–14). To date, approximately 25 STDs and several local public agencies have evaluated design-build projects under SEP–14.

Notice of Proposed Rulemaking (NPRM)

This final rule is based on the NPRM published at 66 FR 53288 on October 19, 2001. All comments received in response to the NPRM have been considered in adopting this final rule. Comments were received from 42 entities. The commenters include: fourteen STDs, two local public agencies, thirteen interest groups, and thirteen other representatives from government and industry.

Discussion of Rulemaking Text

The following discussion summarizes the comments submitted to the docket by the commenters on the NPRM, notes where and why changes have been made to the rule, and, where relevant, states why particular recommendations or suggestions have not been incorporated into the following regulations. Paragraph references are as designated in the NPRM.

Discussion of Comments and Responses by Section

General

The majority of commenters provided specific comments and/or recommendations for individual sections of the NPRM. In addition, some entities provided general comments on the NPRM as noted below.

Requests for an Extension of Comment Period

The General Machine Corporation requested a 120-day extension and the National Society of Professional Engineers (NSPE) requested a 60-day extension of the comment period to provide additional review time and opportunity for comment. Since a full 60-day comment period was provided and the majority of commenters did not state that an extension was necessary, the FHWA is not extending the comment period.

Request to Withdraw NPRM

The Council on Federal Procurement of Architectural & Engineering Services (COFPAES) opposed the proposed regulation and urged the FHWA to immediately withdraw the NPRM. The COFPAES stated the proposed regulation is inconsistent with Federal law based on the following: (1) The FHWA failed to meet the June 9, 2001, statutory deadline to issue the rule and therefore, the authority to issue the rule has expired; (2) representatives from affected industries were not consulted as required by section 1307 of the TEA–21; and (3) the NPRM violates other provisions of law. It stated that the FHWA does not have the authority to repeal or supersede other provisions of law that require the use of qualifications-based selection procedures for architectural and engineering service contracts (23 U.S.C. 112(b)(2)).

The FHWA recognizes the concern regarding the statutory deadline; however, the lateness of the proposed regulation does not relieve the FHWA of its statutory responsibilities. Section 1307 of the TEA–21 requires the FHWA to issue design-build regulations and the FHWA will comply with this statutory provision even though we did not meet the statutory deadline.

The FHWA also acknowledges, but disagrees with the comment concerning outreach efforts prior to the NPRM. A similar comment from the Missouri DOT expressed a concern that the outreach efforts did not contact the AASHTO Subcommittee on Civil Rights, the Minority Contractor's Association, or the National Association of Women in Construction. On the other hand, other commenters expressed support for the manner in which the FHWA conducted its outreach efforts. The FHWA conducted an extensive outreach program in an effort to fulfill the TEA–21 requirement of consulting with representatives from the AASHTO and affected industries. The FHWA met on numerous occasions with entities that it believed would be affected by the proposed rulemaking. Due to the broad nature of design-build contracting, the FHWA was not able to identify all entities that might potentially be affected by the NPRM. However, several pre-rule coordination events were organized to capture the recommendations and opinions of various entities that might not be represented by the AASHTO or industry associations. These events include a special two-hour pre-rule outreach session related to the design-build rulemaking effort at the national "Design-Build for Transportation Conference" (April 21–23, 1999, Salt Lake City, UT) and a one-day pre-rule workshop (December 16, 1999, Washington, D.C.).

The FHWA also conducted a detailed field review of existing design-build projects in seven States. The FHWA representatives interviewed contractors, consultants, owners and other industry entities to gather information for the NPRM.

The FHWA disagrees with the comment from the COFPAES concerning the NPRM violating other provisions of law. By definition, design-build contracts include both construction and engineering services. Design-build contracts are not contracts strictly for the procurement of architectural or engineering services and, therefore, they are not subject to the requirement to use qualifications-based selection procedures. In many design-build contracts, the engineering or architectural services comprise a relatively small percent of the total contract amount. The FHWA recognizes the importance of architectural and engineering services in reducing the life-cycle cost of projects. However, design-build contracts are not architectural and engineering contracts and the provisions of 23 U.S.C. 112(b)(2) do not apply to design-build contracts.

Compliance With Other Federal Laws

The American Society of Civil Engineers (ASCE) and the NSPE expressed concerns similar to those suggested above. They suggested that the NPRM violates the requirements of the Federal Acquisition Reform Act of 1996 (Public Law 104–106, Div. D, 110 Stat. 642), which mandates the use of the two-phase competitive source selection procedures for federally funded projects.

The FHWA disagrees with these commenters. The Federal Acquisition Reform Act of 1996 does not apply to the Federal-aid highway program. The FHWA is encouraging the use of two-phase selection procedures in 23 CFR 636, Subpart B; however, it is not requiring the use of two-phase selection procedures.

Flexibility

The AASHTO, the Design-Build Institute of America (DBIA), the Transportation Corridors Agencies (TCA) and one private individual suggested that the NPRM is too prescriptive and did not provide enough flexibility to the States who are administering the Federal-aid program. These commenters noted that the provisions in 23 U.S.C. 112(b)(3)(A) provide an indication of congressional intent not to interfere in State and local legislative decisions regarding the appropriate methods for procurement of design-build contracts. They stated that this provision requires the FHWA to allow State and local agencies to use any procurement process permitted by State and local law. These commenters further said that, if not revised, the proposed regulation would require State and local agencies to follow specific requirements that may be inconsistent with their existing enabling authorization. The commenters expressed the belief that, if not changed, the proposed regulation would result in a monumental nationwide effort, requiring each agency to analyze its enabling authorization to determine whether it complies with the FHWA's requirements, and in many cases requiring agencies to seek legislative modifications to enable compliance.

The FHWA disagrees with these commenters. The language in section 1307 of the TEA–21 must be considered in its entirety. While section 1307(a) indicates that STDs "may award a design-build contract for a qualified project described in subparagraph (c) using any procurement process permitted by applicable State and local law," other provisions in section 1307(c) prescribe specific responsibilities for the FHWA in developing a design-build regulation. Section 1307(c)(2) specifies the contents of the design-build regulation. This section states that the regulations shall "(A) identify the criteria to be used by the Secretary in approving the use by a State transportation department or local transportation agency of design-build contracting; and (B) establish the procedures to be followed by a State or local transportation agency for obtaining the Secretary's approval of the use of design-build contracting by the department or agency."

If the Congress intended that the design-build statute be implemented by States using applicable State or local laws (without identifying specific design-build criteria that a State must adhere to in order to receive the FHWA's approval), there would have been no need to add subsection (c) to section 1307. In Section 1307(c) of the TEA–21, the Congress set forth the need for the Secretary to identify specific criteria in approving design-build contracting and establish the procedures to be followed in obtaining the Secretary's approval for a design-build project. In order for section 1307(c) to have any meaning, the FHWA must identify the approval criteria (whether best practice criteria, minimum criteria or some combination of best practice) and establish procedures for contracting agencies to obtain the FHWA's approval. Thus, when read in its entirety, section 1307 requires the FHWA to develop approval criteria and procedures and not simply allow any procedure that meets State or local law.

The FHWA believes that only a few, if any, State and local agencies will need to seek legislative change to comply with the regulation. Generally, this situation would arise where a Federal regulation would prohibit certain procedures and the State or local law would require the same procedure. The FHWA is not aware of any State law that would not be in compliance with the regulation. Although some State laws may allow certain procedures that would not comply with the regulation (such as procedures that would give a preference to local firms in the selection process), these States could not use these procedures on Federal-aid design-build projects. In addition, the use of design-build is not mandatory. It is merely another project delivery technique for qualified projects.

One private individual suggested that the FHWA's decision to use modified Federal Acquisition Regulation (FAR)

terminology and requirements (48 CFR 15) is likely to create numerous problems in practice. This individual noted that even where State law is generally consistent with the procurement approach set forth in the Federal Acquisition Regulation, it is likely that terminology will be different, and that specific requirements will be inconsistent.

The FHWA's decision to adopt a modified version of the Federal Government's competitive negotiation policies (48 CFR part 15) was based on the fact that a large body of case law on this subject already exists. In the long run, the use of these concepts and terminology will promote fairness and minimize the opportunity for lawsuits and challenges on Federal-aid highway projects. Many firms in the industry work with Federal Government agencies and are familiar with the terminology and concepts in competitive negotiation. The adoption of these concepts is appropriate for Federal-aid highway program.

Several commenters indicated that much of the content of the proposed NPRM should be issued as guidance rather than as a regulation.

The TEA–21 clearly requires the development of a regulation and not a set of guidelines. Although some commenters suggested the need for guidelines in lieu of regulations, the FHWA is complying with the intent of the Congress in issuing this regulation. The FHWA acknowledges that there are many design-build issues where guidelines (developed with the assistance of AASHTO and industry) will be helpful. However, the approval criteria and procedures identified in this regulation are necessary for the FHWA to continue its stewardship of the Federal-aid highway program and to comply with the provisions of section 1307.

The TCA suggested that the FHWA approve design-build projects upon receipt of a certification from the contracting agency providing evidence that the project complies with, or will comply with, all applicable requirements. The TCA suggested that the FHWA issue a "statement of no objection" in response to a written request from the contracting agency.

The FHWA disagrees with this comment. The FHWA is accountable for the appropriate expenditure of funds from the highway trust fund. It is important for the FHWA to implement sufficient accountability standards so that it can fulfill its stewardship obligation.

Finally, the AASHTO and the Virginia DOT indicated that additional modifications should be made to ensure that the rule does not limit a State's ability to gain the maximum possible benefit from the design-build delivery method and to ensure that the rule does not restrict the States from using the most effective selection process for each individual project. They expressed support for the flexibility in the NPRM but also encouraged the FHWA to think progressively to provide for other variations of design-build, such as, design-build-warrant, design-build-operate, design-build-operate-maintain and finance-design-build-operate-maintain.

While we agree with these commenters, the FHWA believes the regulation provides sufficient flexibility for Federal-aid recipients while maintaining the FHWA's stewardship responsibilities for the Federal-aid highway program. We believe these requirements are necessary to maintain open, fair, competitive contracting while providing the States with complete flexibility in project selection and great flexibility in choosing the appropriate selection procedures, award criteria, and evaluation factors that fit their needs. With this flexibility, the STDs should have few, if any, requirements that hinder project delivery, innovation or cost savings. Sufficient flexibility has been provided to account for numerous variations of the design-build project delivery system. While not specifically addressed in the NPRM, the regulation applies to all variations of design-build contracts including contracts that would also include financing, warranties, operations, and maintenance functions.

In the final rule, the FHWA removed proposed Subpart F, Notifications and Debriefings, and replaced these requirements with a provision that allows contracting agencies to provide notifications and debriefings in accordance with State law. While notifications and debriefings are a very important part of the overall procurement process, the FHWA believes that the goals of this rulemaking can still be achieved if contracting agencies rely on State approved procedures in this area (*see* the discussion for Subpart F below for additional information).

Applicability of Requirements

One private individual suggested that there should be greater flexibility when Federal funding is a relatively small percentage of the total project funding. This commenter stated that there is a national trend toward smaller projects that are largely funded with other than Federal funds. It was suggested that the FHWA recognize this special condition and allow STDs to proceed in accordance with applicable State laws and Federal requirements such as the National Environmental Policy Act (NEPA) but without some of the restrictions placed on the STD by this rule. It was further suggested that a modified SEP–14 process might be appropriate for such projects.

We disagree with this comment. There is no statutory basis for waiving selected regulatory requirements for certain projects because the overall percentage of Federal funding is relatively small. This would be inconsistent with the FHWA policy in other Federal-aid program areas.

Report to Congress

The Professional Engineers in California Government (PECG) questioned whether the study completed by Florida DOT (Transportation Research Record 1351) is applicable to other contracting agencies. The PECG questioned whether the limited number of projects is representative of the cost or efficiency of design-build projects in other States. This commenter suggested that a broader evaluation of the design-build concept with a detailed study of the costs incurred and the safety impacts on the user of completed projects would be warranted.

The American Council of Engineering Companies (ACEC) provided recommendations on issues that should be addressed in the Report to Congress. These include the following: (1) Design-build is an appropriate delivery method to select if it offers the best value, given the unique opportunities, constraints, risks and demands of a particular project; (2) preliminary design should be advanced to the extent that risks are identified and each properly allocated to the party who is best able to manage it; (3) the design-build regulation should not give preferential treatment to a firm based on its size during the selection process; and (4) there should be flexibility in all procurement policies to allow the situation where a design firm of any size serves as the leader on a design-build team.

The Florida DOT suggested that the FHWA evaluate the reduction in total time (from project authorization to the completion of construction) in comparison with design-bid-build projects and the reduction in STD construction engineering and inspection costs.

The Report to Congress required by section 1307(f) should provide an unbiased evaluation of a broad range of projects. However, to the FHWA's knowledge, the Florida DOT study is the best comprehensive comparison of a limited number of transportation projects that is currently available. The FHWA will consider all of the issues that have been identified in the comment period during the development of the Report to Congress.

Simplification of SEP–14

Several commenters recommended that the SEP–14 be simplified. Others expressed an appreciation for the availability of this technique to proceed with projects that did not meet the statutory definition of a qualified project. Still others felt that it was appropriate for the FHWA to delegate approval authority to the Division Offices as proposed in the NPRM.

We agree with these comments. The NPRM described several proposed methods to simplify the SEP–14 approval process. In addition, given the statutory definition for "qualified projects," it will be necessary to maintain the SEP–14 program and make it available for non-qualified projects and other innovative contracting techniques. See the discussion for § 636.107 for additional details.

Miscellaneous

Two private individuals representing construction companies did not provide specific recommendations but expressed their concern regarding the use of design-build in the Federal-aid highway program. Generally, these commenters indicated the following concerns: (1) Design-build will limit competition and overall prices will increase; (2) the proposal process is too expensive except for the largest of firms; (3) quality and safety will suffer because design-build provides no incentive for either; (4) some contracting agencies might be biased in the evaluation process against firms that have a claim on a previous project; and (5) the benefits of faster project delivery have been improperly addressed by some in the industry. One commenter believed that the actual inconvenience to the public during construction is no shorter for design-build than it is for the traditional design-bid-build delivery system and this should be a primary consideration in selecting a project delivery method.

The TCA provided specific recommendations to revise FHWA policy in 23 CFR 645.109, 23 CFR 645.113, and 23 CFR 645.115 to utilize design-build terminology.

The FHWA recognizes this concern; however, we note that some sections of 23 CFR use terms that relate to the traditional design-bid-build process (*i.e.*, plans, specifications, estimates, bids, etc.) and do not include terms that relate to the design-build process (*i.e.*, Request for Proposal document, proposals, offerors, etc.). We did not propose to revise all sections of 23 CFR with this rulemaking. Such revisions are beyond the scope of this rulemaking action and will be considered in future rulemakings by the appropriate FHWA program office.

Section-by-Section Analysis

Part 627—Value Engineering

Section 627.5 General Principles and Procedures

The ACEC and the Design Professionals Coalition (DPC) were generally in agreement with the proposed value engineering provisions and the flexibility provided in the NPRM.

The AASHTO, the DBIA, the Virginia DOT and the TCA suggested replacing the word "shall" with "may" in § 627.5(e) to allow for additional flexibility.

The Associated General Contractors of America (AGC) and the American Road and Transportation Builders Association (ARTBA) generally supported the proposed value engineering language in the NPRM and recommended against the use of value engineering as part of the design-build proposal process.

While the FHWA agrees with the commenters who suggested clarification of the NPRM language, we disagree with the suggestion that the use of the word "may" in lieu of "shall" would provide sufficient clarification. We agree that the final rule must explain how contracting agencies can meet the value engineering analysis requirement for design-build projects.

Several commenters suggested that the final sentence of § 627.5(e)(2) be deleted as the existing value engineering regulation does not address value engineering change proposals during construction. The FHWA agrees with these commenters. This issue is not addressed in the existing value engineering regulation. Therefore, we have removed that sentence from the regulation.

The AGC believed that including value engineering proposals as part of the proposal process only tends to add more subjective variables to the selection process. The ARTBA took a different viewpoint from the AGC. It suggested that the FHWA should consider the use of alternate technical concepts as a means of allowing the STDs to fulfill the value engineering analysis requirements.

The Washington State DOT indicated that design-build proposers should have the widest possible range of expertise at their disposal when developing a proposal in a competitive environment. It suggested that the FHWA should provide flexibility to allow value engineering proposals developed by a design-build proposer to fulfill the value engineering analysis requirement.

The TCA suggested that it had received a number of significant value engineering proposals under contract provisions and it is inappropriate for the FHWA to discourage such provisions.

The DBIA suggested that while it is possible to request value engineering ideas during the procurement process and post-award, the fruitfulness of this process is highly questionable and very unlikely to yield measurable results. It concurred with the NPRM provisions that stated that "value engineering reviews are generally not recommended as part of the design-build proposal process."

The FHWA recognizes the differing viewpoints concerning the use of value engineering reviews conducted during the procurement process and post award. While such reviews may be useful in meeting a contracting agency's project objectives, they do not necessarily meet the objectives of FHWA's value engineering analysis requirement.

The ARTBA, the TCA, the Colorado DOT and the Texas DOT suggested that the FHWA allow the use of alternate technical concepts during the proposal development process. These entities suggested that the alternate technical proposal process is similar to value engineering and may be even more thorough than any formal value engineering procedure presently required. These commenters stated that the proposed alternative technical proposals are typically well developed since they incorporate both designer and contractor input. Both the proposer and the contracting agency benefit from the use of this procedure as it gives the proposer a potential means of lowering its proposal price and the contracting agency receives 100 percent of the cost saving. The Colorado DOT requested that the FHWA make it clear that alternate technical concepts be allowed in the design-build procurement process.

While the FHWA questions the overall effectiveness of a value engineering requirement during the proposal process or after contract award, several commenters provided convincing testimony that such provisions should not be prohibited. As long as the contracting agency maintains a fair and competitive process in reviewing, evaluating and recognizing

alternate technical concepts, the FHWA has no objection to the use of alternate technical concepts. For this reason, we have modified the language in § 636.209 to allow the use of the alternate technical proposal concept as long as such alternate concepts do not change the assumptions used in the environmental decision making process. However, contracting agencies must not rely solely on an alternate technical concept requirement to fulfill the FHWA's value engineering analysis requirement.

SAVE International, a value engineering society, proposed a revision to this section that would require STDs to perform a value engineering analysis prior to the procurement process and allow other value engineering studies during the procurement process and during the life of the design-build contract at the discretion of the STD. This association stated that the greatest opportunity for savings exists prior to the initiation of the design-build procurement process, and therefore, recommended that the FHWA require a value engineering analysis at this point and allow additional value engineering studies afterwards.

The FHWA agrees with the concept of requiring a value engineering analysis prior to the release of the Request for Proposal (RFP) document. SAVE International suggested two additional value engineering reviews but recommended that these two be discretionary; therefore, we did not feel it was necessary to include these provisions in the regulation.

The AASHTO and the DBIA suggested that value engineering is inherent in the design-build process but also suggested that this section needs further clarification. The AASHTO questioned why the FHWA was modifying the existing value engineering regulation and several STDs (Florida, Utah, New Jersey and Washington) recommended no changes to the existing value engineering regulation. They indicated that the existing regulation applies to any Federal-aid highway project on the National Highway System greater than $25 million, regardless of whether is it a design-build or a design-bid-build project. These commenters suggested that the proposed modifications are not necessary.

Still other commenters suggested several modifications to the NPRM language to clarify requirements. The TCA suggested that contracting agencies should be given the flexibility to determine which project procedures or contract requirements could be used to fulfill the value engineering analysis required by the FHWA.

While the FHWA agrees with the commenters who suggested that value engineering concepts may be inherent in the design-build process, we disagree with the commenters who suggested that all design-build projects would fulfill the FHWA's value engineering analysis requirement. The use of the design-build project delivery method does not fulfill the congressional mandate for a value engineering analysis on National Highway System projects greater than $25 million.

In consideration of all of these comments, the FHWA believes that it is necessary to amend the NPRM language to clarify the minimum requirements for fulfilling the value engineering analysis requirement on design-build projects. For the purpose of clarification, we revised the language to require a value engineering analysis prior to the release of the RFP document. The NPRM provisions of paragraph (e)(2) have been deleted. The final rule clearly states that a value engineering analysis is required prior to the release of the RFP document. This will be the only requirement for fulfilling the value engineering analysis requirement for design-build projects on the National Highway System greater than $25 million. This does not preclude further value engineering reviews or studies at subsequent points in the procurement process or even after contract award. However, subsequent value engineering reviews will not be acceptable for the purposes of fulfilling the value engineering analysis requirement.

Part 630—Preconstruction Procedures

Section 630.203 Applicability

The TCA suggested that this section be modified to provide an exception for design-build projects such that contracting agencies would not be subject to the FHWA's requirements for the preparation, submission and approval of plans, specifications, estimates and supporting documents on Federal-aid projects.

The FHWA disagrees with this comment. The FHWA's requirements for reviewing and approving design-build RFP documents are contained in 23 CFR 635.112. Therefore, it is not necessary to modify § 630.203.

Section 630.1010 Contents of the Agency Procedures

The TCA suggested that a revision be made to the FHWA's policies in Subpart J, Traffic Safety in Highway and Street Work Zones, to accommodate design-build projects. This commenter suggested that the existing regulations be modified to indicate that, for design-build projects, the design-builder would develop the traffic control plan. It was also suggested that the responsible person be an employee of the design-builder or a subcontractor.

The FHWA disagrees with this comment. We did not modify this section and traffic control plans are beyond the scope of this rulemaking action. The FHWA will consider appropriate revisions to its policy in this area in a future rulemaking.

Part 633—Required Contract Provisions

Section 633.102 Applicability

The TCA suggested that this section be modified to allow contracting agencies to strike or modify Section VII of Form FHWA–1273, Required Contract Provisions, that concerns minimum contracting responsibilities of the prime contractor. A similar recommendation was provided for Appendix B, Section VIII(4) for Appalachian projects.

The FHWA disagrees with this comment. Although the FHWA proposed to change the contracting requirements of § 635.116 for design-build contracts in the NPRM, such a change would best be implemented with a modification to Form FHWA 1273, Required Contract Provisions and Attachment A for Appalachia projects. These changes are beyond the scope of this rulemaking.

Part 635—Construction and Maintenance

Section 635.102 Definitions

The ACEC indicated the proposed modifications were acceptable. The TCA suggested that the FHWA add a definition for the term "contracting agency" (or cross-reference the definition in part 636), revise the definition of "design-build project," revise the definition of "incentive/disincentive for early completion," and use the term "contracting agency" instead of "STD" in many sections within part 635. The TCA also suggested that the current definition of "design-build project" might preclude the STD from entering into multiple contracts relating to a single project.

The FHWA agrees with the comment concerning the definition of a design-build project. We have modified the definition to read as follows: "Design-build project means a project to be developed using one or more design-build contracts." The other suggested revisions are either beyond the scope of this rulemaking or are not appropriate.

Section 635.104 Method of Construction

The ACEC indicated the proposed modifications were acceptable. The TCA recommended that the FHWA modify this section to clearly indicate that contracting agencies do not need to justify design-build as being more cost-effective than design-bid-build.

Section 636.106 clearly indicates that a contracting agency may use design-build for any project that the contracting agency believes is appropriate. However, we added a sentence to § 635.104 to indicate that no justification of cost effectiveness is necessary in selecting projects for the design-build delivery method.

Section 635.105 Supervising Agency

The TCA recommended that the FHWA modify this section to clarify the relationships among the FHWA, the STDs and local agencies.

The FHWA disagrees with this comment. This subject is not appropriate for the scope of this rulemaking. Section 635.105(c) describes the responsibilities for STDs and locals when a project is administered by a local public agency. The details of these relationships are defined in the local stewardship agreement between the FHWA Division Office and the STD.

Section 635.107 Participation by Disadvantaged Business Enterprises

The ACEC and the ARTBA found the disadvantaged business enterprises (DBE) provisions in the NPRM to be satisfactory. On the other hand, numerous commenters suggested that the NPRM language in § 635.107(b) was not clear or that it conflicts with the requirements of 49 CFR part 26.

The Missouri DOT and several individuals were concerned with a provision that would allow contractors to furnish specific DBE commitment information after the award of contract. The DBIA and the California DOT suggested that the NPRM was not clear in defining what information, material and/or data should be used to make a fair and reasonable judgment concerning proposer's efforts to meet the DBE goal during the evaluation process.

Several individuals expressed the concern that post-award DBE commitment requirements would make the STD's enforcement efforts problematic since it would be difficult for the STD to be certain that any DBE participation would actually occur once the contract is awarded and underway.

Some individual commenters recommended that, as a minimum, proposers be required to sign and notarize letters of subcontract intent (co-signed by the DBE) confirming that the contractor actually discussed the project with the DBE for specific products/services at specific amounts.

The FHWA appreciates the concerns of the commenters who must administer DBE provisions on design-build projects. We agree with the commenters who suggested that it is not always feasible to require proposers to submit DBE commitments prior to award. The level of design provided in the RFP document is often not sufficient to allow the design-builder to enter into subcontracts. In many cases, the design-builder may not have advanced the design to a sufficient level during the proposal process to serve as a basis for negotiating subcontracts. In many cases, it will be impractical to require design-build proposers to provide DBE subcontract commitments prior to the award of the contract.

The New Jersey DOT commented that many DBEs do not have the capacity to perform significant subcontracts on large design-build projects and that opportunities for DBE engineering firms may be limited by contractors who are used to dealing with DBE construction contractors.

The California DOT suggested that separate goals for the design and construction phases might be appropriate to allow greater opportunities for DBE engineering firms.

We agree with these commenters. In setting project DBE goals, the STDs should consider separate DBE goals for the various elements of a design-build project. At the STD's discretion, separate goals may be used based on the amount and availability of DBEs for certain elements of the project. In some cases it may be appropriate to utilize separate DBE goals for design and construction services (or other services such as right-of-way acquisition, construction inspection, etc.). However, we recognize that the goal setting process is governed by 49 CFR part 26 and STDs are to be guided by interpretations provided for in § 26.9.

The AASHTO commented that the use of DBE commitments as proposal evaluation factors, as described in § 635.107(b)(4) should be left to the State's discretion. On the other hand, the AGC suggested that DBE commitments "above or below" the contractual requirements must not be used as a proposal evaluation factor in determining the successful offeror. The AGC indicated that where the design-builder has demonstrated a good faith effort to achieve contract goals, failure to achieve the goals should not be a determining factor in the selection process.

The FHWA appreciates the differing viewpoints of both contracting agencies and industry participants. At their discretion, contracting agencies may require design-build proposers to submit DBE utilization information or DBE commitments and such information may be used in a determination of responsiveness prior to contract award. However, we kept the NPRM provision that precludes contracting agencies from using proposal evaluation factors that are based on DBE commitments above the contractual requirements. The degree of DBE use in excess of the goal should not be used as an evaluation factor that would provide an additional credit or preference in the selection process.

The AASHTO and three STDs (Florida, South Carolina, and Virginia) suggested that this section was too prescriptive and did not account for all possible measures of ensuring equality. The AASHTO recommended that this section of the regulation merely provide a requirement for the contracting agency's design-build program to comply with the State's approved DBE plan. The Colorado DOT suggested that the regulations give the STDs more flexibility to determine the methodology to implement DBE programs based on the specific requirements of the design-build project. The FHWA agrees with these commenters.

In light of the above, the FHWA believes that the comments provided to the docket concerning this section of the NPRM raised significant DBE/design-build issues and highlighted the fact that NPRM paragraph (b) was not clear. However, few commenters provided suggestions that would provide sufficient clarity for the resolution of these issues in all cases. We have elected to simplify the language in the regulatory section by requiring compliance with 49 CFR part 26 and the STD's approved DBE plan. It will be incumbent upon those States that are using the design-build project delivery method to modify their DBE plans to address these issues. The STDs will have the flexibility to structure their DBE plans to meet individual design-build project goals while complying with the requirements of 49 CFR part 26.

Section 635.109 Standardized Changed Condition Clauses

Several commenters suggested that the FHWA does not have the statutory authority to require the use of the standardized change condition clauses on design-build projects. Title 23, U.S.

Code, section 112(e)(2)(B) specifically exempts design-build contracts from being required to include these clauses. Some of these commenters believed that the terminology used in the existing clauses might be incompatible with the common use of design-build terminology. For example, the standardized "Suspension of Work Ordered by the Engineer" clause uses the term "engineer" to refer to the owner's representative. However, several commenters noted an inconsistency with common design-build terminology where the term "engineer" refers to the design-builder's engineer.

The ARTBA recommended that the FHWA "strongly encourage" STDs to use these clauses instead of mandating the use of standardized clauses. The DPC suggested that the use of these clauses should generally be left to each STD to assess on a project-by-project basis. There could potentially be a situation where risk allocation is unbalanced because of the use of such clauses. The TCA suggested that where the design-builder is given responsibility for tasks, such as, quality assurance or environmental mitigation, the owner may want to have the ability to temporarily stop work, without providing a time extension or declaring a default, so as to enable it to determine whether a problem exists.

Several commenters representing the contracting industry strongly urged the FHWA to require the use of a standard "changed conditions" clause and also supported the use of a "Suspensions of Work Ordered by the Engineer" clause on design-build projects. These commenters believed that the clauses are appropriate for the risk and responsibilities that are shared with the design-builder in creating a fair and equitable contract for all parties. They suggested that inappropriate risk shifting will only increase the overall project cost and may increase the potential for unneeded litigation.

The FHWA believes that flexibility is appropriate for this issue. Section 1307 of the TEA–21 clearly indicates that the standardized change condition clauses may not be applied to design-build projects. In the proposed rule, the FHWA took the position that it would be appropriate to require one of the three clauses—the suspensions of work ordered by the engineer. The FHWA also proposed that the two other standardized clauses be used appropriately where the risk and responsibility are shared with the design-builder.

In traditional design-bid-build projects, risk and responsibility are generally well defined and there is little variation from project to project. The standardized changed condition clauses are very appropriate for these projects. However, for design-build projects, risk sharing and the ability to manage and control risk vary with each project. In light of the comments received, the FHWA has elected to provide flexibility to the contracting agencies who must perform risk analysis and structure contract provisions based on the individual characteristics of each project. Therefore, the final rule strongly encourages but does not mandate the use of "suspensions of work ordered by the engineer" clause. Contracting agencies may also consider "differing site condition" and "significant changes in the character of work" clauses which are appropriate for the risk and responsibilities that are shared with the design-builder.

Section 635.110 Licensing and Qualification of Contractor

Several commenters agreed with the NPRM language that allows STDs to use their own licensing and pre-qualification requirements. However, the ARTBA expressed a concern regarding a provision that would allow proposers to demonstrate their ability to become licensed. Instead it recommended that, if required, proof of licensing and/or prequalification should be demonstrated at the time of submission of the proposal. We disagree and have not made this change to the rule.

The ACEC expressed a concern that by allowing STDs to use their own prequalification and licensing statutes and procedures, design firms may be precluded from leading a design-build team if the State requirements are too stringent.

The DPC agreed with the FHWA's approach in allowing STDs to use their prequalification procedures, but expressed a concern that STDs may rely heavily on existing prequalification practices instead of developing procedures specifically for design-build. This commenter believed that this could limit the formation of joint ventures. The FHWA recognizes this concern but does not believe that it is appropriate to require STDs to modify their existing procedures to use design-build.

The TCA suggested that the NPRM language for this section was confusing and did not appear to be necessary. This commenter was concerned that the NPRM could be interpreted to require local agencies to comply with State prequalification requirements. The FHWA agrees and incorporated minor revisions in § 635.110(f)(2) to clarify that local public agencies are not required to comply with State prequalification requirements.

The AASHTO questioned a perceived discrepancy between the prohibition against geographical preferences in the preamble versus the use of the words "may not" in the regulatory section of 23 CFR 635.110(f)(1). The final rule provides a prohibition for geographic preferences. Such preferences limit competition and may not be used.

In consideration of the above comments, the FHWA made minor changes to this section. As stated in the NPRM, prequalification and licensing procedures may be used, however, such procedures may not limit competition or preclude an otherwise qualified proposer from submitting a proposal. The STDs have the flexibility to develop prequalification procedures appropriate for the specific characteristics of a given design-build project.

Section 635.112 Advertising for Bids and Proposals

The DBIA suggested that the FHWA authorization should be based on the contract award rather than the RFP document. The DBIA and the Orange North-American Trade Rail Access Corridor Authority were concerned that the requirement for the FHWA to approve the RFP document would only lead to extensive time delays. The DBIA believed that the FHWA's approval process would serve to add additional time to what is usually a very time-sensitive project schedule, thereby diminishing any possible time savings advantage. The DBIA further suggested that STDs be allowed to proceed "at risk" with the procurement process, with the recognition that they must comply with the rules in order to obtain the FHWA authorization prior to contract award.

The FHWA disagrees with these comments. Since the release of the RFP document is a key point in the project development process, it is also an appropriate point for the FHWA's project approval.

The TCA suggested that contracting agencies should have the ability to proceed with a project using their own funds and at their own risk, without the FHWA's approval, pending the final NEPA decision. This commenter suggested that the FHWA project authorization is only necessary prior to the commencement of final design or the initiation of construction work. This commenter recommended that the FHWA issue a "statement of no objection" in response to a written request from the contracting agency accompanied by certificates evidencing compliance with applicable requirements.

The FHWA disagrees with this comment. It is not appropriate to make Federal-aid participation decisions after major project decisions have been made and possibly after a contracting agency has incurred costs.

The Colorado DOT recommended that the FHWA clarify the difference between "major" and "minor" addenda. The FHWA does not agree that this clarification is appropriate in the final rule. The FHWA Division Administrator currently has the flexibility to define "major" and "minor" addenda. This flexibility will continue for design-build projects.

Several commenters provided recommendations concerning the delegation of the FHWA's approval authority from Headquarters to the Division Offices. See § 636.107 for details.

In summary, the FHWA is not revising this section. As previously noted, the FHWA is accountable for the appropriate expenditure of funds from the highway trust fund. It is important for the FHWA to implement sufficient review and accountability procedures so that it can fulfill its stewardship obligation. The FHWA Division Administrator's review and approval of the RFP document is an important and timely approval in the FHWA's authorization of a design-build project. The STD and the FHWA Division Office should identify the review and approval procedures that will enable the FHWA to fulfill its stewardship obligations for design-build projects.

Section 635.113 Bid Opening and Bid Tabulations

The Orange North-American Trade Rail Access Corridor Authority was concerned about the requirement to furnish a tabulation of proposal costs. This commenter was concerned with a possible breach in confidentiality procedures and the need to maintain the integrity of the selection process while minimizing chances for protests or disputes over the selection method.

One private individual suggested that the requirement to furnish a tabulation of price information should only be associated with post contract award information.

The TCA recommended that the FHWA revise § 635.113(c)(2) to refer to "price proposal line items" instead of "proposal costs." In addition, this commenter suggested changing references to "STD" to "contracting agency."

In consideration of these comments, the FHWA has incorporated some minor revisions in this section to indicate that the tabulation of proposal prices is to be done after the award of contract. This should address the confidentiality concerns expressed by two commenters. The FHWA does not believe is it necessary to use the term "price proposal line item" as the rule language is sufficiently clear. The FHWA also prefers to use the term "STD" rather than "contracting agency" to maintain consistency throughout this part.

Section 635.114 Award of Contract and Concurrence in Award

Several commenters suggested that paragraph (k) appeared to preclude STDs from entering negotiations following the proposal being submitted but before the contract award. The AASHTO suggested revising this statement to read "Design-build contracts shall be awarded in accordance with the RFP document." The TCA suggested that the reference to Part 636 is inconsistent with the TEA–21 requirement that allows contracting agencies to use any procurement process permitted by applicable State or local law.

We made a minor change to this section to indicate that design-build contracts shall be awarded in accordance with the RFP document. The FHWA did not intend to preclude the use of the part 636 competitive acquisition procedures. The comment regarding inconsistencies was previously addressed in the Background portion of this preamble.

Section 635.116 Subcontracting and Contractor Responsibilities

Peter Kiewit and Sons, Inc. supported the proposed changes while the ARTBA objected to waiving the current 30 percent self-performance requirement. The ARTBA believed that the 30 percent requirement should remain in place for projects under the $50 million threshold that will continue to be approved under SEP–14. The ARTBA suggested that the FHWA should clarify what type of work done by a design-builder would be applicable to a minimum percentage level of work (design work for example). The ARTBA, ACEC and the DPC recommended that the FHWA offer some guidance to the STDs so that self-performance requirements match the actual needs of the project and are not set arbitrarily.

The FHWA appreciates these concerns, however, we do not believe it is appropriate to provide guidance concerning self-performance requirements in the final rule. Contracting agencies will have the flexibility to implement minimum self-performance requirements for a project if they feel that this is appropriate. The FHWA believes that flexibility is appropriate in this area and does not believe that it is appropriate for continued evaluation under SEP–14. While a joint AASHTO/Industry/FHWA guidance paper on this subject may be desirable, that is outside of the scope of this final rule.

The TCA believed the term "design-builder" as used in this section warranted further definition to include any firms which are equity participants in the design-builder, their sister and parent companies, and their wholly owned subsidiaries. The FHWA agrees with this comment. We added a sentence to clarify the definition of a design-builder for this section to include equity participants in the design-build firm, its sister and parent companies, and their wholly owned subsidiaries.

Several commenters expressed opposition to the FHWA's proposal to eliminate the 30 percent requirement. These commenters believed that such requirements are necessary to minimize the potential for fraud that could occur when certain companies are used as pass-through firms to meet DBE requirements.

We disagree with this comment. We do not believe that the elimination of the 30 percent self-performance requirement will lead to an increased potential for fraud. The DBE provisions at 49 CFR part 26 define commercially useful function and provide adequate guidance for the crediting of DBE related work to minimize the potential for fraud.

The Colorado DOT objected to the prohibition regarding subcontract goals. This commenter believed that subcontract goals ensure that the design-build contractor on large projects use all different sizes and levels of subcontractors. This commenter further suggested that provision be reduced to a guideline and a recommendation. We disagree with this comment. The FHWA continues to believe that such requirements could serve as a local contracting preference and thereby create an artificial contractual barrier to the design-builder's ability to manage an efficient contract. Therefore, we did not make any modifications to this paragraph.

Section 635.122 Participation in Progress Payments

Three commenters suggested that this proposed section was satisfactory. One commenter suggested that the term "STD" be revised to "contracting agency." For reasons previously

indicated, the FHWA prefers to use the term STD throughout this section.

Section 635.309 Authorization

The Wisconsin DOT suggested an amendment to the proposed language in § 635.309(p)(2) that would allow a design-build project to continue during a conformity lapse, if the NEPA process was completed as it applies to transportation and the project has not changed significantly in design scope. This commenter recommended that the project be allowed to continue because it has already gone through the air quality analysis and it had been shown not to increase regional emissions. The FHWA agrees with this comment but also recognizes that projects cannot proceed during a conformity lapse unless the FHWA has granted project approval or authorization prior to the conformity lapse. Accordingly, the FHWA has elected to revise the language in § 635.309(p)(2) to allow a design-build project to continue during a conformity lapse if the NEPA process was completed and the FHWA authorized the design-build project, prior to the conformity lapse.

The Florida DOT suggested that contracting agencies should not have to provide any certification of right-of-way prior to release of the RFP document. This commenter suggested that the project assurances required by 49 CFR 24.4 should be adequate to cover all subsequent federally assisted projects. Several commenters suggested a revision to § 635.309(p)(1)(v) since the design-builder's schedule is not known at the time of the release of the RFP document. The suggested revision would allow the STD to certify that all necessary arrangements will be made for the completion of right-of-way, utility, and railroad work and would allow the STD to include such work in the design-build contract if desired.

The TCA suggested the contracting agency should be allowed to certify that arrangements have been made by: (1) Delegating responsibility to the design-builder, or (2) obtaining a commitment from the contracting agency to complete or arrange for the completion of all right-of-way, utility and railroad relocations.

The FHWA agrees with these commenters and has elected to revise the language in § 635.309(p)(1)(v) to allow contracting agencies to certify that sufficient arrangements will be made for the completion of the necessary right-of-way, utility, or railroad relocation work. The FHWA agrees that STDs may base this certification on their use of provisions in the RFP document to accomplish this work or by their own coordination efforts during the contract. The STDs need this flexibility in allocating risk and preparing the appropriate contract documents.

The TCA suggested that there could be numerous problems interpreting § 635.309 paragraphs (a) through (o) unless paragraph (p) supersedes rather than supplements prior paragraphs. We agree in part with this comment. We provided a modification of this section such that the certification requirements of § 635.309 are superseded by paragraph (p).

Several commenters suggested a change to § 635.309(p)(1)(iii) to allow STDs to release the RFP document prior to the conclusion of the NEPA process. The AASHTO recommended that the NEPA process be allowed to continue until contract award, as the amount of time between RFP and contract award can be significant and time savings is one of the primary advantages of the design-build process. The New York State DOT suggested that the design-builder be allowed to perform some work necessary to complete the NEPA document as long as appropriate trigger points were included (*i.e.* stop or control points for final design and construction). The FHWA disagrees with these commenters. The issue of NEPA compliance is discussed in § 636.109 below.

Section 635.411 Material or Product Selection

Several commenters indicated that the NPRM language in this section was acceptable. Several commenters agreed with the NPRM language and expressed a concern regarding the use of proprietary product provisions in the RFP document that may limit DBE participation. These commenters believed that certain DBE firms might lack access to purchasing, distribution or production of certain proprietary materials. The TCA suggested that the intent of this paragraph was to supersede existing paragraphs (a) through (e) of the existing regulation and recommended language to accomplish this. The FHWA does not agree with this comment.

No revisions of this section are provided. It was not the FHWA's intent to supersede paragraphs (a) through (e). The intent of the existing regulation is to ensure open competition in the contracting agency's material or product selection requirements. The intent of the language was to supplement the existing regulation for design-build projects by limiting the requirement to materials, specifications, or processes specifically set forth in the RFP document.

Section 635.413 Warranty Clauses

The ARTBA suggested that the FHWA should not require warranties but that this decision should be at the STD's discretion. However, the ARTBA went on to say that it agreed with the FHWA's proposal to only allow warranties for specific products or construction features on Federal-aid design-build projects. It suggested that if warranties are allowed beyond this, that their coverage be limited to line items related to workmanship and materials. Peter Kiewit and Sons', Inc. recommended that warranty requirements should include specific performance criteria for a specific product or feature.

Several commenters representing STDs and local public agencies suggested that the use of warranties should be left to the discretion of the States and that the limitation of warranties to specific products or construction features is too restrictive. These commenters suggested that "bumper-to-bumper, blanket, or general workmanship-and-material warranties" are appropriate for design-build. The AASHTO and the Virginia DOT cited an agreement with the advocacy for asset management at the Federal level for recommending this. The FHWA appreciates the concern of these commenters. We agree that it is desirable to provide performance criteria in the RFP document for performance warranties but we also believe that contracting agencies should have some flexibility in preparing warranty provisions.

The Texas DOT suggested that there is a significant difference between the use of warranties on a traditional design-bid-build project and a design-build project that must be taken into account. It suggested that a warranty identifying specific pieces of the work may omit a particular component and shift the very risk the contracting agency was hoping to delegate back to the project owner, thereby nullifying one of the critical benefits and innovations of design-build. The Texas DOT went on to describe the successful use of "blanket warranty" clauses on major design-build projects and suggested that such warranties are already an industry standard and are expected, priceable and enforceable. It was suggested that the FHWA allow the use of "blanket warranty" clauses for a limited, but reasonable period of time, in order to give the owner time after the completion of the project to discover defects in the work. The FHWA agrees that limited, general project warranties may be appropriate in some circumstances.

The DBIA suggested that performance warranties are routinely negotiated into design-build contracts. It further suggested that due to the unique and specific performance requirements of each project, STDs need the flexibility to negotiate these warranties with the offerors on each project. The FHWA agrees that some flexibility is appropriate, however, we are concerned with the concept of negotiating warranties into design-build contracts. Contracting agencies must include warranty performance criteria in the RFP document. These conditions should not be "negotiated into the contract" through discussions with the proposers. This is important to keep a level playing field and provide all proposers with the opportunity to provide competitive proposals.

The DPC supported the proposed limitation of warranties to certain features or construction products. This association was concerned with the potential for unbalanced risk allocation, especially as it might apply, directly or indirectly, to the project design. The ACEC expressed concern regarding attempts by STDs to directly or indirectly extend uninsurable warranty provisions to professional engineering services, for example, those that go beyond legal standards of care in the industry. The FHWA appreciates the concern of these commenters, however, we do not believe it is appropriate to address this in the final rule.

The National Association of Surety Bond Producers expressed support for the FHWA's proposed position not to alter the current level of discretion provided STDs on the use of warranties. It suggested that the STDs must have sufficient discretion in developing contracts to provide for the proper allocation of risk. However, this commenter went on to express many concerns regarding the potential negative effects of warranties that extend beyond a reasonable duration or include requirements that are beyond the control of the design-builder.

In light of the above comments, we elected to provide additional flexibility in the final rule. We agree with the STDs who suggested that contracting agency discretion is appropriate in this area. Based on the comments provided, it appears that general project warranties are a valuable asset in preventing and correcting construction defects on design-build projects. Contracting agencies must still incorporate a quality assurance program as a means for accepting the final product; however, the FHWA agrees that short term, general warranties may be beneficial in providing the contracting agency with a method for addressing obvious defects with the work. Several commenters indicated that this is already industry practice for workmanship and material warranties. In addition, the FHWA is aware that certain State laws already require contractors to furnish one-year maintenance bonds on traditional construction contracts to protect against any failure due to defective workmanship or materials. For this reason, we revised this section to allow general project warranties on NHS design-build projects with the conditions that: (1) They are short term (one to two years); (2) they are not the sole means of acceptance; (3) they do not include items of routine maintenance which are not eligible for Federal participation; and (4) they may include the quality of workmanship, materials and other specific tasks identified in the contract.

A provision for performance warranties for specific products or features is also provided. The contracting agency must include detailed performance criteria in the RFP document so that all proposers are competing on a level playing field. The final rule also includes a provision that allows contracting agencies to receive alternate warranty proposals that improve upon the warranty terms in the RFP document. For best value selections, such alternate warranty proposals must be in addition to the base proposal that responds to the RFP requirements.

Also, see the discussion regarding quality assurance programs in Section 637.207.

Part 636—Design-Build Contracting

Section 636.101 What Does This Part Do?

The TCA suggested revisions to this section to indicate that the TEA–21 allows contracting agencies to use any procurement procedure allowed by applicable State and local law. It stated that the Congress did not authorize the FHWA to regulate this area and suggested that the FHWA's role should be limited to providing guidelines on this subject. For the reasons listed in the General section above, the FHWA disagrees and we did not make any changes in this section.

Section 636.102 Does This Part Apply to Me?

One commenter indicated that the language for this section was acceptable. Other commenters did not provide specific comments on this section. Therefore, no revisions are made in the final rule for this section.

Section 636.103 What Are the Definitions of Terms Used in This Part?

The DBIA recommended several revisions to the definitions used in this section. The suggested revisions include the following:

- Delete the term "clarifications" and revise the definition of "communications" to apply to a single-phase selection procedure or both phases of a two-phase procedure. The DBIA suggested that all exchanges between the contracting agency and the offerors prior to establishing a competitive range (and subsequent discussions) or selection without discussions, are for the purpose of correcting non-substantive errors and omissions and addressing issues and ambiguities in order to enhance understanding and facilitate evaluation of the qualification submissions or proposals.

The FHWA disagrees with the recommendation to delete the term "clarifications" and revise the term "communications." These terms have specific meanings based on case law. The use of the commenter's recommended definition would not clarify this issue. However, there is merit in clarifying that the terms "clarifications, communications, and discussions" only apply to information exchanges after the release of the RFP document. We added a new section, 636.401 titled "What types of information exchange may take place prior to the release of the RFP document?" to clarify that such information exchanges (in the first-phase of a two-phase selection procedure) must be consistent with State and/or local procurement integrity requirements. In the final rule, we revised Section 636.401 to Section 636.402 "What types of information exchange may take place after the release of the RFP document?"

- Revise the second sentence of the definition of "fixed price/best design" to read: "Design solutions and other qualitative factors are evaluated and rated, with award going to the firm offering the best qualitative proposal for the established price." This commenter suggested this change to eliminate potentially restrictive and ambiguous language. We agree with this recommendation and have incorporated this in the final rule.
- Revise the definition of "stipend" by inserting the term "unsuccessful offerors" in lieu of the term "most highly qualified unsuccessful offerors." This commenter stated that some

agencies pay stipends to all responsive, unsuccessful offerors; others pay only to those offerors in the competitive range. The commenter suggested a change in the definition to remove a potential ambiguity. We agree with this recommendation and have incorporated this in the final rule. With this revision, contracting agencies will have more discretion in providing stipends.

• Revise the term "technical proposal" to read as follows: "Technical proposal means that portion of a design-build proposal which contains design solutions and other qualitative factors, which may include, without limitation, schedule, quality control/quality assurance (QC/QA), management plans, maintenance of traffic, maintainability and community relations." This commenter suggested that the term could include any relevant information that the contracting agency deems to be important. We partially agree with the recommended revision for the term "technical proposal," however, it would seem more practical to keep the definition as simple as possible. Therefore, we provided the following definition in the final rule: "Technical proposal means that portion of a design-build proposal which contains design solutions and other qualitative factors that are provided in response to the RFP document."

• Revise the definition of "tradeoff" to read as follows: "Tradeoff means an analysis technique involving tradeoffs among price and non-price factors, which can be used by the contracting agency to assist in the comparative assessment of proposals to determine the best value when considering selection of other than the lowest priced proposal." This commenter believed that a tradeoff is not a separate best value selection method, but rather an analysis technique to determine best value. We agree with this recommendation and have incorporated this in the final rule.

• Revise the definition of "discussions" to use the plural versions of the words offeror and proposal to be consistent with the requirement to include all offerors in the competitive range in discussions. We agree with this recommendation and have incorporated this in the final rule.

• Revise the definitions of the "request for qualification" and "short listing" to provide consistent terminology by using the term "most highly qualified offerors" in each. We agree with this recommendation and have incorporated this in the final rule.

A private individual suggested revisions similar to the recommendations above for the terms "discussions," "fixed price/best design," "stipend," "technical proposal," "tradeoff," "request for qualification," and "short listing." In addition, this commenter suggested that FHWA consider the following:

• It would make more sense to include the definitions for "clarifications" and "communications" in the same section as the regulatory text. We disagree with this suggestion.

• Consider deleting the term "modified design-build." This commenter stated that the design-builder's role is not generally limited to completion of the design and construction. It was suggested that there is no need to have a defined term for a level of preliminary design if the FHWA kept this definition. We agree that the level of design should be removed, however, many contracting agencies continue to utilize modified design-build method of contracting and therefore, we believe that it is appropriate to maintain this definition in the final rule.

• The FHWA needs to recognize the difference in meaning between the terms "price" and "cost." The price offered by the design-builder is the owner's cost. From the design-builder's perspective, the price is its cost plus overhead and profit. This commenter suggested that when considering mostly fixed price, lump sum design-build contracts, the FHWA should consider using the term "price" when discussing the consideration and evaluation of proposals (*e.g.*, in the definitions for "best value selection," "single-phase selection," "two-phase selection," and "weighted criteria process," and §§ 636.201, 636.203, and 636.302). We agree with this recommendation and revisions have been made as appropriate in the final rule.

The TCA suggested that the terminology used in part 636 is inconsistent with the terminology contained in legislation in various States allowing agencies to use design-build and further suggested that this would not be an issue if the part 636 requirements were converted to guidance. This entity also suggested revisions to two proposed definitions as follows:

• Revise the definition of "contracting agency" as follows: "Contracting agency means the public agency awarding and administering a design-build contract, which may be the STD or another State or local public agency." This commenter stated that in some cases, projects are developed by an entity which is not the ultimate owner, and which is not acting as an agent for the ultimate owner. We agree with this comment and have incorporated similar language in the final rule.

• Revise the definition of "design-build contract" as follows: "Design-build contract means an agreement that provides for design and construction of improvements by a contractor or private developer. The term encompasses design-build-maintain, design-build-operate, design-build-finance and other contracts that include services in addition to design and construction. Franchise and concession agreements are included in the term if they provide for the franchisee or concessionaire to develop the project that is the subject of the agreement." We agree with this recommendation and have incorporated this revision in the final rule.

The ASCE suggested that the FHWA incorrectly used the term "stipend" but did not provide a recommendation for the proper term to use. We disagree with this comment. Many contracting agencies have used stipends in SEP–14 design-build projects. The definition in § 636.103 reflects the current usage and is appropriate.

Section 636.104 Does This Part Apply to All Federal-Aid Design-Build Projects?

Several commenters recommended different revisions to the first sentence of this section to clarify the applicability of the regulation to Federal-aid projects. We agree with these commenters. The FHWA is revising the first sentence of this section to remove references to highway systems. The final rule applies to all Federal-aid design-build projects within the highway right-of-way or linked to a Federal-aid highway project (*i.e.*, the project would not exist without another Federal-aid highway project). Projects that are not located within the highway right-of-way, and not linked to a Federal-aid highway project may use State-approved procedures. This rule applies to all Federal-aid projects in the highway right-of-way (or linked to a Federal-aid highway project) regardless of whether that project is located on the NHS or non-NHS systems.

The TCA suggested that it would be advisable to divide this section into two subparts—one of which is binding and one of which is advisory. This commenter went on to say that many of the rules should be converted to guidelines, rather than imposing restrictions that reduce the agency's flexibility under applicable State and local procurement law, and which in some cases may conflict with requirements of State and local laws. This entity suggested that the public interest would be best served by allowing applicable State and local law to control the procurement process, including the rules that apply to the source selection decision. We disagree with this comment. The FHWA response to this issue was previously provided in the "Flexibility" section above.

Section 636.105 Is the FHWA Requiring the Use of Design-Build?

Peter Kiewit Sons', Inc. supported the language and indicated that a program that gives the States options is appropriate. The FHWA agrees and did not make any revisions to this section.

Section 636.106 What Type of Projects May Be Used With Design-Build Contracting?

Several commenters supported the flexibility provided by this section; however, one commenter suggested that contracting agencies be required to justify their decision to use design-build. The AGC recommended that STDs be required to submit their rationale for electing to use the design-build contracting method for a specific project rather than using the traditional design-bid-build selection procedure. This association further stated that contracting agencies should be required to specify what they hope to gain in using design-build that could not be achieved by using the traditional process.

On the other hand, Sundt Construction, Inc. suggested that owners should be able to select a contracting method that will provide the greatest opportunity for success based on the project objectives deemed to be most important for that particular project. This commenter stated that project size, type and location are immaterial to the contracting method and should not limit the selection of the appropriate delivery method.

While the FHWA appreciates the differing viewpoints voiced by the construction industry association, we agree with the majority of commenters who agreed with the flexibility provided by this section, and therefore, no changes are provided in the final rule.

Section 636.107 Does the Definition of a Qualified Project Limit the Use of Design-Build Contracting?

The Missouri DOT acknowledged that the definition of a "qualified project" is a statutory requirement that the FWHA cannot change. The Utah DOT recommended that if the definition could be modified, it be revised to include small projects and not list a dollar amount. Several commenters believed the definition of a qualified project is too narrow and suggested that the FHWA expand the definition to include what is currently termed "modified design-build," as well as "quality based selection," where selection is based solely on technical merit and where cost is negotiated at a later date with the selected contractor. While we appreciate the concerns of the contracting agencies concerning the implications of the definition of a "qualified project," the FHWA cannot revise the statutory definition. Furthermore, the FHWA believes that this definition will have little or no impact on a contracting agency's decision to use design-build.

The New Jersey DOT suggested that neither the TEA–21 nor the proposed rule clearly defines a qualifying design-build project. It suggested that if the final rule does not provide a more complete definition, the STDs should have the ability to select design-build projects under the authority of 23 U.S.C. 145. We agree with this commenter. The final rule incorporates the statutory definition of a "qualified project" without further limitation. The FHWA believes that it is important to provide discretion to contracting agencies in the selection of design-build projects.

The Missouri DOT recommended the removal of SEP–14 from existing rules. However, the New York State DOT was pleased that the SEP–14 process would continue so that design-build could continue for projects that did not meet the "qualified projects" definition. This commenter believed the statutory definition of a "qualified project" was too narrow and hoped that future legislation would remedy this. Numerous commenters agreed with the concept of delegating SEP–14 approval authority to the FHWA Division offices. In addition, several commenters suggested that, for those States with an approved design-build program in place, the STD may elect to assume the approval authority for the design-build RFP, any addenda, and for the SEP–14 process.

The TCA recommended specific revisions to this section and suggested the rule also address the use of SEP–14 for innovative contracting approaches for "qualified projects."

The FHWA believes the rule is clear; however, we agree with one of the commenters who suggested that SEP–14 approval might be appropriate for qualified projects that incorporate innovative contracting techniques and might not fully comply with the rule. These types of projects would still need SEP–14 concept approval. Therefore, the last sentence of § 636.107(a) is revised to read as follows: "Projects which do not meet the requirements of this part (either "qualified" or "non-qualified" projects) must be submitted to the FHWA Headquarters for concept approval."

Section 636.108 How Does the Definition of a Qualified Project Apply to ITS Projects?

The AASHTO suggested that there needs to be consistency between the definitions of ITS among the various segments of the Federal government but did not offer a specific recommendation. The ITS definition is taken from section 1307 of the TEA–21. No revisions are made in the final rule.

Section 636.109 How Does the NEPA Review Process Relate to the Design-Build Procurement Process?

As noted in § 635.309 above, several commenters suggested that the FHWA remove the limitation that prohibits the STDs from releasing the RFP document prior to the conclusion of the NEPA process. The AASHTO suggested that this could be accomplished without compromising the intent of NEPA process. It suggested that the procurement process could stretch out over several months, or even years. The AASHTO believed that the FHWA's requirement for a complete NEPA process followed by the release of the RFP document would only lengthen an already lengthy process and negate any potential time saving benefits of the design-build delivery method. We disagree with this commenter for the NEPA policy reasons noted below.

An individual commenter suggested that, without the limitation on the release of the RFP document, offerors could simultaneously be preparing and submitting their proposals for evaluation while the NEPA process is concluding. In addition, contract award, mobilization and continuation of preliminary design by the design-builder could also take place if the contracting agency elected to do so. We disagree with this commenter for the NEPA policy reasons noted below.

The New York State DOT suggested that the design-builder be allowed to perform work necessary to complete the NEPA document as long as appropriate trigger points were included in the contract (*i.e.* stop or control points for final design and construction). Other commenters suggested that the RFP document could be released prior to the completion of the NEPA process, but award of the contract should not be made until the NEPA process is complete. The TCA suggested that a design-build contract award could be made prior to the conclusion of the

NEPA process, as long as there were provisions made to modify or terminate the contract. It indicated that the design-builder could proceed with the contract work as long as it did not include final design or construction. We disagree with these commenters for the NEPA policy reasons stated below. We have made no changes to the rule.

On the other hand, the AGC and the ACEC agreed with the NPRM limitation on the release of the RFP document. The AGC stated that asking for proposals prior to the conclusion of NEPA shifts an unnecessary risk to the proposers. It believed that it is not fair to ask proposers to undertake design and proposal costs on a project that has the potential for not moving forward. The AGC believed that STDs would not be willing to compensate proposers for their development costs should the project be stopped in the NEPA process. The AGC believed that this would limit competition to those firms that are willing to accept certain risks. The ARTBA suggested that it is important to maintain an even playing field with the traditional low-bid system that currently requires the NEPA process to reach conclusion before a project advances. The DPC expressed a concern regarding concurrent NEPA and project delivery processes with a guaranteed completion date that would add significant cost if the project is unexpectedly delayed. We agree with the industry commenters who are concerned about unreasonable risk allocation through an early release of the RFP document. However, we do not believe that modifications are necessary in the final rule.

The New Jersey DOT and Sundt Construction, Inc. seem to be concerned that the proposed rule would require all environmental clearances (permits) to be obtained prior to advertising design-build projects. The AASHTO noted that the subject of environmental permitting was not discussed in the NPRM, but suggested that there be no FHWA restrictions that would prohibit the STDs from delegating the responsibility for obtaining environmental permits to the design-builder.

The FHWA agrees with AASHTO's comment. The rule does not address the subject of environmental permits and provides complete flexibility to contracting agencies regarding the responsibility for obtaining these permits. Contracting agencies may delegate the responsibility for obtaining such permits from other resource agencies (*e.g.*, Corps of Engineers, U.S. Coast Guard, *etc.*) to the design-builder. Therefore, the FHWA made no changes concerning this topic.

The AASHTO and the DBIA noted that there is no requirement in the TEA–21 or the NEPA that limits a contracting agency from issuing the RFP prior to concluding the NEPA process. They suggested the limitation in the rule would unnecessarily extend the time for putting the project under contract and therefore the ultimate timeline for project completion. The FHWA disagrees with this comment. While there may be some delay in the procurement process for certain projects, the overriding NEPA policy concerns noted below are more important from the FHWA's perspective.

The DBIA stated that Congress enacted 23 U.S.C. 112 (b)(3)(B) to resolve disputes between the FHWA and State and local agencies regarding whether the NEPA prohibits local and State agencies from entering into design-build contracts prior to the completion of the NEPA process. This commenter contended that 23 U.S.C. 112(b)(3)(B) resolved this dispute by clarifying that those portions of the design-build process, up to but not including final design, may be initiated prior to the completion of the NEPA process. The FHWA disagrees with this commenter who interprets the TEA–21 provisions to allow the release of the RFP document at any time during the NEPA process. We disagree for the NEPA policy reasons noted below.

Several commenters suggested that case law interpreting the NEPA permits State and local agencies to proceed with projects at their own risk prior to completion of the NEPA process, so long as the agency does not take irretrievable action to develop the project. These commenters believed that STDs should be granted the flexibility to take these actions when warranted on a particular project. We disagree with these commenters and have made no changes in the final rule.

Based on the comments provided to the docket, there is apparently a certain degree of confusion regarding NEPA compliance as it relates to design-build. First, the FHWA disagrees with the commenters who suggested that the provisions of the TEA–21 allow the RFP document to be released at any time during the NEPA process. Title 23, U.S. Code, section 112(b)(3)(B) states the following: "Final design under a design-build contract referred to in subparagraph (A) shall not commence before compliance with section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332)." We believe the congressional intent of this provision was to ensure full compliance with the NEPA for all design-build projects. It was not meant to nullify the independent NEPA decision-making process by allowing STDs to award design-build contracts and proceed with all work except for final design and construction. To ensure a completely unbiased NEPA process, it is imperative that the STDs perform a level of design and environmental review that is adequate to fully evaluate the range of reasonable alternatives chosen to meet project goals and avoid adverse environmental impact. Only after the STD concludes the NEPA independent decision-making process, is it acceptable to release the final RFP document.

Second, the FHWA's NEPA review process was developed to ensure that environmental impact information for any federally funded action is available to public officials and citizens before decisions are made and before actions are taken. The success of the NEPA process is based on the assumption that there will be an objective and unbiased review of all reasonable alternatives that address project needs and are prudent in terms of avoiding potential environmental effects. Moreover, the public perception of the NEPA review process is very important to the FHWA and the States. The perception of an unbiased review process (which includes a no-build alternate) must not be compromised by a decision to release the design-build RFP prior to the conclusion of the NEPA review process. Therefore, the NEPA review process must be complete (an approval received for a Categorical Exclusion, Finding of No Significant Impact, or a Record of Decision as defined in 23 CFR 771.113(a)) prior to releasing the RFP document. The FHWA's environmental regulations in 23 CFR 771 require the evaluation of alternatives, their environmental consequences, and the incorporation of mitigation measures (avoidance, minimization, and compensation) prior to proceeding with an action. Project activities beyond those necessary to answer environmental questions during the NEPA review process (for example: final design, right-of-way acquisition, and construction) are not permitted prior to the conclusion of the NEPA review process.

Third, due to the nature of the design-build process, proposers often expend significant effort preparing technical and price proposals in response to an RFP. Therefore, STDs have a responsibility to: ensure that the RFP scope of work includes the details related to all environmental commitments, and, assure proposers that the scope will not change as a result of the environmental review process. All proposers on design-build projects must be given the opportunity to consider environmental mitigation commitments in their price proposals. This is important for ensuring reasonable risk allocation for environmental commitments and maintaining the integrity of the competitive acquisition process.

Fourth, many of the commenters to the docket may not have been aware that the rule provides some degree of flexibility in this area. Section 636.109 allows contracting agencies to solicit qualifications prior to the conclusion of the NEPA process as long as the solicitation informs proposers of the general status of the NEPA process. Therefore, a contracting agency can request, receive, and evaluate qualifications and develop a short list of the most qualified offerors. In addition, § 636.115 allows contracting agencies to issue draft RFPs and to exchange certain types of information prior to releasing the final RFP document. Draft RFPs may be released prior to the conclusion of the NEPA process as long as the draft RFP informs proposers of the general status of the NEPA process and lists all NEPA alternatives (including the no-build alternative) under consideration by the contracting agency. The draft RFP document, however, must make it clear that the final RFP document will not be released until the conclusion of the NEPA process. Contracting agencies have the discretion to determine how a draft RFP document may be revised to develop and release a final RFP document.

For all of the above reasons, the FHWA is not revising the language for this section. We believe that the limitation concerning the release of the RFP document is appropriate and necessary to maintain an objective and unbiased NEPA review process for design-build projects.

Section 636.110 What Procedures May Be Used for Solicitations and Receipt of Proposals?

Peter Kiewit and Sons", Inc. indicated the proposed rule was acceptable however, they expressed a concern that all contracting agencies might not actually have "procedures" to adequately address a process that involves design-build. It was suggested that the FHWA work with industry to develop guidelines in this area. The FHWA will be glad to work with the AASHTO and industry in developing any guidelines that might be appropriate for design-build contracting. However, we believe the language for this section is satisfactory and we made no revisions to the final rule.

Section 636.111 Can Oral Presentations Be Used During the Procurement Process?

Most comments supported this section, however, the TCA suggested this section should be converted to a guideline. The FHWA believes the language for this section is satisfactory and no revisions are made in the final rule.

Section 636.112 May Stipends Be Used?

Most comments supported this section. The DBIA recommended that all information regarding the proposed use of stipends on a particular procurement must be included in the solicitation documents. The FHWA believes that flexibility is appropriate here. Therefore, contracting agencies may, at their own discretion, include information regarding the use of stipends in solicitation documents.

Peter Kiewit and Sons", Inc. and the DBIA recommended the deletion of the phrase "the most highly ranked" for the reasons noted in the preamble discussion for § 636.103 above. We agree with these commenters. As noted in the definitions section above, the final rule provides a revision to delete the phrase "the most highly ranked" from the definition of a "stipend" in § 636.103 and the regulatory text in § 636.112. Otherwise, the FHWA believes this section is sufficiently clear.

Section 636.113 Is the Stipend Amount Eligible for Federal Participation?

Most comments supported this section. Several commenters suggested that the proposed language could be interpreted to mean that there is a difference between "If provided by State law" and "If not prohibited by State law." These commenters provided differing recommendations to allow flexibility if it is not prohibited by State law.

The FHWA agrees with the recommendation for clarity. The final rule provides a revision for § 636.113(b) to read as follows: "Unless prohibited by State law, you may retain the right to use ideas from unsuccessful offerors if they accept stipends."

Section 636.114 What Factors Should Be Considered in Risk Allocation?

Most comments supported this section. The ACEC suggested that contracting agencies should consider establishing a comment period on proposed terms and conditions prior to requesting qualifications on a project. Additionally, they might consider owner controlled insurance programs as market trends indicate an increasing unavailability of policies for design firms in the design-build market based on severe owner provisions and requirements.

The TCA suggested that this section be converted to guidance. This commenter also suggested adding the phrase "or the impact of a given risk" be added to the second sentence of paragraph (a), as in some cases a party may not be able to control the occurrence of a risk, but does have the ability to manage the impact.

The FHWA appreciates the concerns of the industry representatives regarding risk allocation, and we believe that a minor revision is appropriate in the final rule. The FHWA has incorporated the TCA's recommendation in the second sentence of § 636.114(a) in the final rule.

Section 636.115 May I Meet With Industry To Gather Information Concerning the Appropriate Risk Allocation Strategies?

Several commenters recommended the use of the term "potential offerors" or "other offerors" instead of the word "public" in paragraph (e) so that a public hearing process is not inadvertently invoked. The FHWA agrees that this language needs clarification so the term "all potential offerors" is used instead of the term "the public."

Peter Kiewit Sons", Inc. supported the proposed language and the concept of information exchanges about project risks that have become known as "industry review sessions." This commenter believed that such sessions benefit both offerors and contracting agencies and often result in a less costly project with fewer disputes and claims.

The TCA suggested that this section be converted to guidance and also recommended that a clause be added to the second sentence of paragraph (e) such that it would read as follows: "Information provided to a particular offeror in response to that offeror's request shall not be disclosed if such information was provided in accordance with procedures established in the RFP and if disclosure would reveal the potential offeror's confidential business strategy." This commenter suggested that this revision is necessary to avoid problems that may arise when the procedures for communications set forth in the RFP document are not followed. The FHWA does not believe that the second sentence of paragraph (e) needs additional clarification.

Section 636.116 What Organizational Conflict of Interest Requirements Apply to Design-Build Projects?

The AASHTO, the New York State DOT and the Virginia DOT recommended that paragraph (a)(2)(v) be revised to require all proposers to provide information concerning potential organizational conflicts of interest in their proposals (not prior to award as stated in the proposed rule). These commenters believed that this would avoid unnecessary delays. The FHWA agrees and the final rule provides the following for this section: "(v) Requires offerors to provide information concerning potential organizational conflicts of interest in their proposals."

The Colorado DOT suggested that this section is inconsistent with its State law, which is more specific than the proposed language. This commenter said it is not clear whether its State rules would have to be amended to comply with the proposed rules even though the State rules are more specific. This commenter also questioned the use of the phrase "Involvement with the design-build procurement process" in paragraph (a)(1)(ii). This entity believed that all actions leading up to issuance of the RFP document are part of the design-build process. Finally, this commenter believed that this section be converted to guidance or that the regulation provide that local statutes or policies regarding conflicts of interest are applicable to design-build projects. The FHWA does not agree that this section should be converted to guidance because paragraph (b) indicates this section only provides minimum standards to identify actual or potential conflicts of interest. To the extent State or local standards are more stringent than those in the rule, the State or local standards prevail. We partially agree with this commenter that this section needs clarification (see below).

Two individual commenters suggested that consultants and sub-consultants used by owners in the development or preparation of the RFP document be prohibited from participating on a team proposing on the project. These commenters suggested that as a minimum, contracting agencies should require written disclosure. The commenters suggested that the FHWA's proposed language, which gives the STDs flexibility in this area, is a mistake given the potential for STDs to ignore these conflicts in the interest of contracting expediency. We note the concerns of these commenters and have revised paragraph (a)(1) for clarification (see below).

The TCA recommended a number of revisions to paragraph (a)(1) to clarify that contracting agencies may determine that an organizational conflict of interest does not exist for both consultants and sub-consultants under certain conditions. The recommended revision reads as follows:

(1) Consultants and/or sub-consultants who assist the owner in the preparation of a RFP document will not be allowed to participate as an offeror or join a team submitting a proposal in response to the RFP. However, a contracting agency may determine there is not an organizational conflict of interest for a consultant or sub-consultant where:

(i) The role of the consultant or sub-consultant was limited to provision of preliminary design, reports, or similar "low-level" documents that will be incorporated into the RFP, and did not include assistance in development of instructions to offerors or evaluation criteria, or

(ii) Where all documents and reports delivered to the agency by the consultant or sub-consultant is made available to all offerors.

We agree with this recommendation to clarify paragraph (a)(1) and the final rule incorporates the text recommended by the TCA.

Section 636.117 What Conflict of Interest Standards Apply to Individuals Who Serve as Selection Team Members for the Owner?

The Shamrock Paving Company suggested that the regulations should require that those involved in the selection process sign a certification (under penalty of perjury) that no bias entered into the selection process. The TCA recommended specific revisions to require contracting agencies to adopt a policy rather than imposing Federal Acquisition Requirements.

The FHWA believes the language is appropriate and no revisions are made in the final rule. The rule clearly indicates that the requirements of 48 CFR Part 3, Improper Business Practices and Personal Conflicts of Interest, will only apply in the absence of such State provisions.

Section 636.118 Is Team Switching Allowed After Contract Award?

The AASHTO and the Virginia DOT noted that the proposed language did not address the subject of consultants joining multiple teams. These commenters recommended that the FHWA continue to allow flexibility in this area. The TCA suggested that this section be converted to guidance.

The FHWA's primary concern is that post-award team switches do not result in a reduction in the quality of team members. We did not specifically address the subject of consultants joining multiple teams in the proposed rule. We do not believe it is appropriate to develop a policy in this area as this is a business decision that should be left to the discretion of the industry representatives. No revisions are made in the final rule.

Section 636.119 How Does This Part Apply to a Project Developed Under a Public-Private Partnership?

The ARTBA suggested that the NPRM provisions regarding public-private partnerships were confusing. This commenter questioned the appropriateness of the requirement for a competitive process as a basis for Federal-aid participation. The commenter believed that there may be situations where a public agency followed its own policies, but would not be eligible for Federal-aid because the process was not deemed to be a competitive process by the FHWA. We do not agree with this comment.

The Texas DOT suggested that the language needs to be clarified to describe the eligibility of a process where a contracting agency receives an unsolicited proposal based on a State law that does not require a competitive process. While the language in this section needed some clarification, the FHWA maintains that we are not obligated to participate in a project simply because a contracting agency followed its own procedures. Such procedures may include local preferences, minimal incentives for open competition or other provisions that are unacceptable for Federal-aid participation. Generally speaking, the FHWA does not participate in contracts that are based on unsolicited proposals (or developed under other non-competitive procedures) unless an emergency exists or the contract is shown to be cost effective. Upon receiving an unsolicited proposal, a contracting agency has the option of notifying other potential proposers of the receipt of an unsolicited proposal in the hope of receiving other competitive proposals or developing a new project with a similar scope of work. If a contracting agency wishes to use Federal-aid funding, it should develop procedures that address unsolicited proposals and provide for open and fair competition.

The TCA reiterated its belief that these provisions should be revised to be consistent with the TEA–21 provisions allowing "any procurement process permitted by applicable State and local law." This commenter also suggested that a requirement that private developers comply with Federal procurement procedures is likely to "chill" private interest in public-private agreements and negate potential private sector efficiencies. This entity believed that private developers should be permitted to enter into subcontracts in accordance with the terms of the public-private agreement and any applicable requirements of State and local laws without any Federal requirements that might be tied to Federal funding. This commenter also suggested that contracting agencies be allowed to provide price justifications if the private partner elected not to follow Federal procurement requirements for a project where Federal-aid funding was requested. The price justifications would be used to convince the FHWA that prices are fair and reasonable.

The FHWA disagrees with this commenter. Private developers will need to be aware of FHWA's requirements if the contracting agency anticipates using Federal-aid funds in the project. We disagree with the approach of using price justifications instead of open competition as a basis for Federal-aid participation.

We believe this section is consistent with the FHWA's long-standing policies for competitive contracting and to assure adequate procedures for the stewardship of public funds. The FHWA is merely being consistent with traditional Federal-aid funding and loan assistance programs in setting the policy for this section. Owners must be aware that they will have to comply with the FHWA's policies if they wish to use Federal-aid funding at some point in the project development process.

The final rule includes a provision that requires a competitive process and compliance with State and local laws as a basis for Federal participation in public-private partnerships. In addition, in order for such projects to be eligible for traditional Federal-aid funds, the final rule clarifies the FHWA's eligibility criteria. When the developer is acting as an agent of the owner, it must follow the appropriate Federal-aid procurement requirements (part 172 for engineering service contracts, part 635 for construction contracts and the requirements of this part for design-build contracts) for all prime contracts.

General Comments—Subparts B Through F

Several commenters felt that these sections are more prescriptive than necessary and that Federal preferences should not be stated in a rule. These commenters believed that the procurement mechanism used for a design-build project should be left to each contracting agency's discretion. Several of these commenters suggested that 23 U.S.C. 112(b)(3)(A) provides a clear indication of congressional intent not to interfere in State and local legislative decisions regarding the appropriate methods for procurement of design-build contracts.

The AASHTO and the TCA indicated that if this language is not changed, a monumental nationwide effort would be necessary to revise State and local laws and regulations to comply with the FHWA's requirements. Several of the commenters recommended that Subparts B through F be removed from the regulation and be provided to the industry as guidance. We disagree with these comments. The FHWA has already addressed the issue of congressional intent and disagrees with the recommendation to provide this section as guidance (see the discussion in the Flexibility section above).

The DBIA supported the use of two-phase selection procedures but recommended that all selection procedures have value and that the FWHA should consider allowing qualification-based selection procedures. This commenter suggested that qualification-based selection procedures are already authorized in a number of States and this would be consistent with the congressional intent of section 1307. The FHWA disagrees with this recommendation. We believe that price must be considered in the selection of the design-builder where construction is a major component of the scope of work under the design-build contract. The use of qualifications-based selection procedures or even quality based selection procedures is appropriate when the scope of work primarily consists of engineering or architectural services; however, where construction is the major component of the contract, price must be considered in selecting the design-builder.

A private individual supported the use of an alternate procurement process and suggested that, even when a competitive procurement process is used, the regulations should not preclude the opportunity for negotiations between the selected offeror and the contracting agency prior to award. This commenter believed that it is impossible to award a contract, where the design-builder is to provide financing, without a negotiations phase. The commenter stated that there simply are too many variables to address through a proposal process and suggested that this section be revised to specifically allow negotiations and to permit use of alternative procurement processes. This commenter further suggested that, where a pure qualifications-based selection process is used, or another alternative procurement process is used that does not include price competition, it would be appropriate to require some sort of price justification as a condition for Federal participation.

The FHWA agrees that there is merit in allowing limited negotiations after the selection of the design-builder but prior to the execution of the contract, however, we believe that such negotiations should be restricted to the clarifications that are necessary to prepare the final contract language. In order to be fair to the other proposers, such negotiations must not be used to substantially change the basic concepts that were provided in the successful offeror's proposal. We agree that when the design provided in the RFP documents is very conceptual, limited negotiations may be beneficial and necessary in order for both parties to clearly understand the issues and to ensure the contract clearly reflects this understanding.

Therefore, we have added § 636.513, Are limited negotiations allowed prior to contract execution? This provision allows for limited negotiations to clarify any remaining misunderstanding regarding scope, schedule and financing issues. However, the limited negotiations must not violate the prohibitions of § 636.507. It is not acceptable to use concepts from other proposers in final negotiations prior to contract execution.

The Texas DOT suggested, that when design is in the very conceptual stage (less than 5 percent complete), negotiations prior to award are often beneficial and necessary in order for both parties to ensure that their intent is clearly understood and reflected in the contract documents. This commenter noted that the Federal Transit Administration encourages negotiated design-build contracts. As noted above, we agree with the need for limited negotiations; however, we note that the Federal Transit Administration also requires a competitive acquisition process where price must be considered in the selection process if construction is a major element of the scope of work.

The ACEC recommended that contracting agencies use fully developed, pre-defined point award systems and judging rules that are described in the RFQ and/or RFP documents. This commenter believed that contracting agencies should place significant weight on technical qualifications and not over emphasize price at the expense of other essential criteria. The commenter believed that owners must assign knowledgeable

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people to the selection team and require separate price and technical proposal submissions whereby price proposals are opened only after the technical scoring is completed and published. We agree that a contracting agency's evaluation and selection process need to be clearly defined in the RFQ and RFP documents; however, we believe the final rule provides appropriate flexibility while fostering an open and competitive process.

Section 636.201 What Selection Procedures and Award Criteria May Be Used?

The ASCE and NSPE expressed support for the mandatory use of the two-phase competitive source selection procedures and recommended that the FHWA amend the proposed regulation to require all STDs to use the two-phase competitive source-selection procedures for design-build projects, to the extent that the awarding of a design-build contract is consistent with State law.

On the other hand, the AGC supported the provisions that recommend, but do not require, the use of two-phase selection procedures. Based on its experiences, this commenter suggested that the two-phase selection process works well in most instances, but there may be certain cases where it might be appropriate to use a different selection procedure. This commenter highlighted the fact that the Congress recognized this, when debating the inclusion of design-build language in the TEA–21, it decided to reject a requirement for the use of the two-phase process. This commenter believed that the provisions address both of these concerns.

The FHWA does not believe it is appropriate to mandate the use of two-phase selection procedures in the Federal-aid highway program. While the Federal Government has elected to do so for Federal contracting, we do not believe that this is appropriate for the transportation industry. We strongly encourage contracting agencies to utilize two-phase selection procedures, however, the use of two-phase procedures remains optional.

Sections 636.202, 636.203, 636.204, 636.208 and 636.212

Very few substantive comments were received regarding these sections and, therefore, we are addressing these sections cumulatively. Peter Kiewit Sons', Inc. expressed support for these provisions while the TCA suggested that these provisions be converted to guidance.

We previously addressed the section to convert this rule to guidance. We made a minor revision in the final rule to use the term "price" instead of "cost" when referring to price proposals.

Section 636.205 Can Past Performance Be Used as an Evaluation Criteria?

The AGC suggested that in order for a two-phase selection process to work properly, it is important that contractors have faith in the system and that as much subjectivity as possible be removed from the process. It suggested that the FHWA work with the industry to develop guidance for the fair evaluation of past performance. The AGC indicated that this guidance should provide for a neutral appeals process, a means of ensuring the opinions of a single individual do not control the process, and a means to eliminate or at least mitigate a poor performance evaluation.

The ARTBA opposed the use of past performance as an evaluation criteria since it opens up the process to significant subjectivity. This commenter suggested that, if contracting agencies are allowed to use past performance as a selection criteria, its use should be limited to the short listing process and should not be used in final selection.

While the FHWA appreciates the industry concerns concerning the use of past performance, we believe that contracting agencies should have the ability to consider past performance in the procurement process; therefore, no revisions are made in the final rule. The FHWA concurs with the suggestions that guidance be cooperatively developed with the industry but this is outside the scope of this rulemaking.

Section 636.206 How Do I Evaluate Offerors Who Do Not Have a Record of Relevant Past Performance?

The DBIA and the Colorado DOT suggested that the provisions of this section were problematic and inconsistent with the provision in § 636.205(a) and (b). These commenters suggested that this requirement be deleted in its entirety. The TCA suggested that these provisions be converted to guidelines.

The FHWA utilized the FAR provisions for the language in this section. The intent of this section is to provide an equal footing for those firms who do not have a record of relevant past performance. Federal agencies have used similar requirements for several years and are available as a resource for contracting agencies that may have questions in this area.

Section 636.207 Is There a Limit on Short Listed Firms?

The AASHTO and the Virginia DOT suggested using the word "shall" with "should" in the first sentence and striking the phrase, "and is consistent with the purposes and objectives of two-phase design-build contracting," as this appears to reinforce a preference for a two-phase procurement process. The South Carolina DOT recommended removing any restriction on the maximum number of firms to be short listed.

On the other hand, the DBIA supported the provisions; however, it suggested that there are times when it is appropriate to short list only two offerors and a provision should be made for this in the regulation as well.

The FHWA believes that there is sufficient flexibility in the language of the rule to address most of these concerns. However, it is not appropriate to short list only two firms as one commenter suggested.

Section 636.209 What Items Must Be Included in a Phase-Two Solicitation?

The AASHTO and the DBIA supported the provisions of this section. The TCA suggested that these provisions be converted to guidelines. Peter Kiewit Sons', Inc. suggested that the phase-two solicitation also should include the prime contract, applicable design and construction standards and criteria, procedures for requesting clarifications or changes in the RFP documents, intergovernmental agreements (if applicable), and any other item that offerors reasonably require to develop their proposed price, schedule and technical approach for the project.

The FHWA believes that language in the rule is sufficiently broad and clear. As noted in § 627.5 above, the final rule is also modified to clarify that contracting agencies may allow proposers to submit alternate technical proposals.

Section 636.210 What Requirements Apply to Projects Which Use the Modified Design-Build Procedure?

The New Jersey DOT disagreed with the provision that indicated the modified design-build technique should be limited to projects that are "simple in scope." Based on its experience, this commenter believed that it is possible to use modified design-build on very complex projects. The FWHA agrees and has removed the term "simple in scope" from the final rule. We agree that many projects that have used the modified design-build method are not simple projects.

The AASHTO, the Florida DOT and the Virginia DOT recommended that this section be deleted. Assuming that the STDs would have discretion in choosing the appropriate procurement method for a given project, these commenters believed that the information in this section is unnecessary. The FHWA disagrees and believes that it is important to include a provision that describes this process.

The ASCE and the NSPE recommended that the FHWA delete any reference to the use of the "modified design-build contracting method" included in this section as it believed that this novel low-bid method is not sanctioned by other provisions of law and violates the requirements of the Federal Acquisition Reform Act of 1996. We disagree with these commenters. The Federal Acquisition Reform Act of 1996 does not apply to the Federal-aid highway program.

The Utah DOT noted the benefits of tradeoff techniques and questioned why tradeoffs were not allowed for modified design-build projects. This commenter suggested that the FHWA re-evaluate this decision. We disagree with this suggestion. Since modified design-build projects are awarded to the lowest price responsive proposer, it is not appropriate to consider tradeoffs between price and non-price factors when awarding such projects.

Section 636.211 When and How Should Tradeoffs Be Used?

Several commenters recommended that this section be deleted from the regulation as STDs should have the discretion to develop their own evaluation criteria, award formulas and selection procedures for each project.

The DBIA and Peter Kiewit Sons', Inc. questioned the requirement that cost or price must have a weight of at least 50 percent in the award criteria. These commenters believed that contracting agencies should have more flexibility in developing evaluation criteria and award formulas in order to obtain a best value selection. The DBIA questioned why the procedure of dividing the submitted price by the technical evaluation score would be viewed as complying with the 50 percent requirement. We appreciate the concern regarding the 50 percent price-weight criteria. The FHWA has used this criteria as a rule of thumb in providing guidance for the SEP–14 program. However, we recognize the problems associated with compliance with this requirement. Therefore, we have revised this section and § 636.302 of the final rule to be consistent with the provisions in 48 CFR 15.302 which provides that the solicitation shall state, at a minimum, whether all evaluation factors other than cost or price, when combined, are—(1) Significantly more important than cost or price; (2) Approximately equal to cost or price; or (3) Significantly less important than cost or price.

The DBIA and a private individual suggested that the term "tradeoff process" be replaced with "tradeoff technique" as discussed in the definition discussion above. As noted in § 636.103 above, we agree. We have revised the appropriate sections of this part in the final rule.

The ARTBA suggested that when tradeoff techniques are used, the solicitation should not only include all of the factors that will be evaluated, but also the numeric scale that will be applied to each factor. This commenter believed that many design-build solicitations only list weighted percentages for each factor, which can be easily manipulated after the fact. We disagree with this suggestion and believe contracting agencies need the ability to develop and appropriately weight evaluation criteria.

Section 636.301 How Should Proposal Evaluation Factors Be Selected?

The Illinois DOT suggested that STDs be provided maximum discretion in their decisionmaking process concerning the selection of evaluation factors. This commenter suggested that they be allowed to mirror the prequalification requirements in the request for proposal.

The FHWA believes the provisions were sufficiently broad and flexible. No revisions were made to the final rule.

Section 636.302 Are There Any Limitations on the Selection and Use of Proposal Evaluation Factors?

Two private individuals, the AASHTO, the Virginia DOT and the South Carolina DOT suggested that this section be deleted and rewritten to give the STDs broad discretion in selecting proposal evaluation factors. Peter Kiewit Sons', Inc. and the Washington State DOT questioned the requirement that cost or price must have a weight of at least 50 percent in the award criteria and suggested that contracting agencies be provided more flexibility.

On the other hand, the AGC and the Shamrock Paving Company believed that both the FHWA and the States have a fiduciary responsibility to manage the expenditure of Highway Trust Fund dollars in the most efficient fashion possible. This commenter recommended that price be a significant factor in contractor selection in the design-build process whether using the two-phase selection method or some other method.

As noted in the discussion for § 636.211 above, we are revising the language in this section to remove the 50 percent criteria. The final rule provides the following text in paragraph (a)(1): "You must evaluate price in every source selection where construction is a significant component of the scope of work."

Section 636.303 May Pre-Qualification Standards Be Used as Proposal Evaluation Criteria in the RFP?

Peter Kiewit Sons', Inc. commented that it is unclear whether "proposal evaluation criteria" are the same as "selection criteria." This commenter believed that prequalification standards should be included in the selection criteria because qualifications are part of the value an owner receives. The FHWA believes that the proposed rule was clear in this respect. The term "proposal evaluation criteria" was used to describe the criteria for evaluating proposals.

A private individual suggested that there is always a range in the quality of the short listed offerors and it would be appropriate to further consider these differences in the second phase of a two-phase selection procedure. This commenter recommended that this section be deleted. The FHWA disagrees with this commenter. For most projects utilizing a two-phase selection process, proposers who are prequalified or short listed must be allowed to submit price and technical proposals with the understanding that the contracting agency considers their qualifications to be satisfactory and that they will be afforded equal standing in their preparation of price and technical proposals. However, we acknowledge that there may be certain projects where it is important to consider technical expertise and financial considerations as evaluation factors in the second phase of a two-phase selection process. For this reason, we have included the term "specialized financial qualifications" in paragraph (b)(1).

The TCA believed that it is absolutely critical that contracting agencies have the ability to reconsider the offeror's qualifications during proposal evaluations. This entity believed that this is especially true for revenue-financed projects, where the contractor's financial status and other qualifications are a key factor in making underwriting decisions. As noted above, we agree that a firm's financial qualification is an important criteria which, at the owner's discretion, merits additional consideration as an evaluation factor in

the second phase of a two-phase selection process.

Section 636.304 What Process May Be Used To Rate and Score Proposals?

The AASHTO and the Virginia DOT recommended that this statement be deleted from the rule as it does not add value. They recommended that a reference be made to compliance with each State's procurement laws.

The TCA believed the intent of this section is to reduce subjectivity in the evaluation process. This commenter suggested that, as a practical matter, it will not reduce subjectivity, because the decisions underlying a "best value" determination are, by their nature, subjective. The commenter stated that the best way to assure fairness in the evaluation process is to make sure that the individuals conducting the evaluations are qualified and do not have personal or business interests that would impact their evaluations.

We disagree with the recommendation to delete this section. The intent of this section is to clearly indicate that proposals will be evaluated solely on the factors and subfactors in the solicitation; to clearly indicate rating methods that are acceptable; and to clearly indicate that the relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation must be documented in the contract file. These provisions are necessary to ensure the integrity of the competitive proposal process. No revisions were made in the final rule.

Section 636.305 Can Price Information Be Provided to Analysts Who Are Reviewing Technical Proposals?

Peter Kiewit Sons' Inc. recommended that the FHWA require technical evaluations to be completed before the price proposals are reviewed, so that knowledge of pricing does not affect technical evaluations.

The TCA suggested that some contracting agencies may wish to use qualifications-based selection procedures and may not have a price proposal.

While it is desirable to perform the technical evaluations first so that knowledge of price does not influence technical review team members, the FHWA does not believe that it is appropriate to require this. This section is consistent with the FAR provisions used by the Federal government. No revisions are made in the final rule.

Sections 636.401 and 636.402

Peter Kiewit Sons' Inc. suggested that communications should be controlled to prevent the appearance of positive or negative prejudice towards an offeror.

The DBIA suggested eliminating the term "clarifications" and revising the term "communications" (see the discussion for § 636.103). A private individual suggested revising these sections to eliminate the need for the defined terms "clarifications" and "communications" but this commenter did not provide a recommended revision. The FHWA disagrees with the recommendations to modify the definitions of "clarifications" and "communications" for the reasons previously discussed (*see* § 636.103). Communications, clarifications and discussions are all important aspects of competitive acquisition. Each has a specific meaning based on case law. While the FHWA appreciates the concern of the commenter who suggested that such communications be controlled to prevent the appearance of positive or negative prejudice, we believe that the policies incorporated in this final rule will form the cornerstone of a fair, equitable process.

The TCA and the Colorado DOT recommended § 636.402 be revised to make it clear that proposers may get clarifications of the owner's RFP. That process is necessary to allow owners to clarify any sections of the RFP that are not clear at the time of issuance. The FHWA does not object to the concept of proposers asking the contracting agency for clarifications of the RFP documents. If it is necessary to clarify and revise the RFP document, the contracting agency could issue an addenda for this purpose. The following sentence will be added to § 636.402 for clarity: "You may wish to clarify and revise the RFP document through an addenda process in response to questions from potential offerors."

Sections 636.403, 636.404, 636.405, and 636.406

Peter Kiewit Sons' Inc. objected to the use of the competitive range. This commenter suggested, that if properly used, a two-phase selection process should eliminate the need to establish a competitive range.

The TCA believed that the issues associated with establishment of a competitive range are complex, and are intertwined with the laws applicable to the contracting agency, as well as its policies, and therefore, it is not appropriate for the FHWA to regulate the procurement process used by State and local agencies.

The FHWA disagrees with these commenters. The intent of § 636.403 is to allow contracting agencies to establish a competitive range to minimize the overall impact to industry proposers in a lengthy procurement process. The contracting agency will have the discretion to do this. This section will serve as the FHWA basis for participation in such decisions provided they do not unnecessarily restrict competition. No revisions are made in the final rule.

Sections 636.407 and 636.408

The New York State DOT recommended that these sections be revised to allow "communications" to cure minor proposal deficiencies, such as, inadvertent omissions. The Texas DOT perceived the provisions in § 636.407 as prohibiting the correction of a clerical error, an unclear term or an omission in a proposal. This commenter stated that design-build projects are typically long and costly, the proposals are relatively complex, and the proposal review process is very detailed. This commenter felt that it is reasonable to allow proposers to cure minor omissions.

The FHWA believes the rule language is satisfactory. The table that accompanies § 636.401 clearly indicates that minor or clerical revisions in a proposal are allowable during a clarification. The term "deficiencies" has a specific meaning based on case law (see § 636.103) , and therefore, the language in § 636.407 appropriately prohibits the use of communications to cure proposal deficiencies or material omissions. No revisions are made to the final rule.

Sections 636.501 Through 636.512

The AASHTO recommended that the provision of § 636.512(a) be deleted. It recommended that the evaluation of proposals be based on each State's procurement laws. Peter Kiewit Sons', Inc. strongly objected to the use of bargaining in the selection process as described in § 636.501. This commenter believed that the contracting agency should be limited to identifying sections of a proposal that do not meet RFP requirements, but no assistance or guidance should be given to the offeror regarding how the deficiency should be corrected. However, if all price proposals exceed an advertised budget, this commenter suggested that the contracting agency should have individual discussions with all offerors regarding the factors that may have led to high prices. The contracting agency should then issue a revised RFP document to all offerors.

The FHWA appreciates the viewpoints of this commenter. While we agree that contracting agencies will need to be judicious in their use of bargaining techniques, we also believe that the

provisions of § 636.507 will offset some of these concerns. The FHWA also believes that contracting agencies must have the right to maximize their ability to obtain the best value based on the requirements and evaluation factors set forth in the RFP document.

The Orange North-American Trade Rail Access Corridor Authority suggested that contracting agencies be allowed to negotiate with the apparent winning proposer as they would under a qualifications-based selection procedure. This commenter believed that negotiating with more than one team at a time can often lead to misunderstandings and disputes. As previously noted in the discussion of Subparts B through F, we believe that limited negotiations may be appropriate for clarifying certain contract provision prior to contract execution.

The DBIA, the Texas DOT and a private individual noted the use of the term "final proposal revision" in § 636.511 and suggested that it would be helpful to add the phrase "also called best and final offer (BAFO)" to the end of that sentence. We agree with this suggestion and have revised § 636.511 to incorporate the term "best and final offer" in the final rule.

The AASHTO and the Virginia DOT recommended the provisions of § 636.512(a) be deleted and, if necessary, a reference be provided for compliance with each State's procurement laws. We disagree with this recommendation and believe the rule is sufficiently clear.

Subpart F—Sections 636.601 Through 636.608

The AASHTO and the South Carolina, Virginia, Colorado and Washington State DOTs recommended that § 636.602(a) be replaced with the following sentence: "The STD must follow State procedures and regulations for notification of unsuccessful offerors." These commenters stated that the procurement code in certain States does not allow the inclusion of the issues listed in paragraph (a) to be listed in the contracting agency's written notification to unsuccessful offerors.

These commenters also suggested that §§ 636.605 through 636.608 be deleted as these provisions are too prescriptive and contradict too many existing State procurement laws. The AASHTO recommended that § 636.604 be replaced with the following: "Any offeror may request a debriefing. The STD may provide preaward and postaward debriefings in accordance with the State's procurement process." The Colorado DOT indicated that three days was not sufficient time to provide proposers with the information required by § 636.602.

The FHWA agrees with the commenters that this subpart is prescriptive. While notifications and debriefings are very important in maintaining the integrity of a competitive acquisition process, the FHWA believes that the goals and objectives of this rule can be maintained by allowing contracting agencies to follow State procedures in these areas. Therefore, the proposed rule for Subpart F is removed in its entirety. A new section, § 636.514 How may I provide notifications and debriefings?, has been added to Subpart E to allow contracting agencies to conduct pre-award and post-award notifications and debriefing in accordance with State approved procedures.

Section 637.207 Quality Assurance Program

Similar to the comments made in § 635.413, a number of commenters indicated that the use of warranties should be left to the discretion of the States and that the limitation of warranties to specific products or construction features is too restrictive. The FHWA is providing minor revisions to § 637.207(a)(1)(iv) to reference the revisions made to § 635.413(e). This will provide greater flexibility to STDs in allocating risk and appropriately structuring design-build contracts.

The Florida DOT suggested that contracting agencies be allowed to incorporate all construction engineering and inspection services (including verification testing) under the design-build contract. While this STD would still provide some level of oversight, it expressed a preference for including all construction, engineering and inspection services under one contract to avoid redundant inspection services. This commenter suggested that the FHWA's requirement for independent verification leads to unnecessary duplication, inefficient operations and wasted funding that could be better used elsewhere.

We disagree with this commenter and believe that it is necessary to have a reliable, verifiable program for accepting the completed work. This program must rely on a system of checks and balances, including verification tests that must be done by the owner (or the owner's agent). It is not acceptable to allow the design-builder to perform (or contract with another firm to perform) all of the acceptance tests for the project. While the FHWA's quality assurance policy provides the STDs with the flexibility to structure a broad-based acceptance program (even including the design-builder's quality control test results as part of the acceptance program), it is still absolutely critical that there be an independent, verification check on the design-builder's results by the owner for acceptance purposes.

The TCA suggested revisions to use the term "engineer of record" in lieu of the term "State Engineer". We disagree with this comment. In the case of the materials certification documentation referenced in this section, the term "State Engineer" is a term used to refer to the contracting agency's representative, and if a project was performed by a local public agency, it would refer to that agency's engineer, not the design-builder's engineer. The responsibility for this certification must remain with the contracting agency.

The Washington State DOT recommended that this section be modified to direct STDs not to use warranties for items of routine maintenance. We do not agree with this comment. The reference to § 635.413 should be sufficient for this purpose.

Part 710—Right-of-Way and Real Estate

Section 710.313 Design-Build Projects

The DPC agreed with the flexibility provided in this section, but noted that contracting agencies have powers that the private sector does not have (such as the right of eminent domain) and, therefore, the acquisition of right-of-way should generally rest with the contracting agency. Sundt Construction, Inc. indicated that right-of-way acquisitions should be the responsibility of the party that can best control this risk and that is normally the owner except in very unique circumstances. The FHWA agrees, but there may be certain circumstances, where it is reasonable to assign certain right-of-way related responsibilities to the design-builder. We believe the provisions in this section adequately address these circumstances.

The TCA recommended a specific revision to paragraph (c) to provide additional flexibility to the contracting agency. This commenter believed that in some cases, it may be desirable to allow the design-builder to start construction on parcels for which rights of access have been obtained pursuant to condemnation authority or negotiations, with the formal transfer of title occurring at a later date. We do not agree with this comment and believe that the final rule provides sufficient flexibility.

A private individual suggested that the FHWA perform a complete review for consistency, as there are a variety of references to right-of-way acquisition.

This commenter also suggested that, in general, the FHWA should allow the contracting agencies to advance the projects as long as there is a plan for the acquisition of right-of-way consistent with the schedule, State and Federal law and good business practice. We generally agree with this comment and believe that the final rule provides sufficient flexibility for this purpose.

The Florida DOT provided detailed comments and recommended revisions for several paragraphs as noted below. This commenter:

• Suggested that clarifications be provided for the submittal of right-of-way certifications and right-of-way availability statements. As previously indicated, we revised § 635.309(p)(1)(v) to allow contracting agencies to provide a right-of-way certification at the time of project authorization to certify that either all right-of-way work has been completed or that all necessary arrangements will be made for the completion of the necessary right-of-way related work. This certification is a necessary requirement for the FHWA's authorization of the project. On the other hand, not all STDs use right-of-way availability statements. The STDs must ensure that right-of-way is available prior to the design-builder entering onto the property and the start of physical construction. In the final rule, we have provided a modification to § 710.313(a) to require compliance with the right-of-way certification requirements of § 635.309(p) and a sentence to ensure that right-of-way is available prior to the start of physical construction.

• Disagreed with the provisions of paragraph (d)(1)(i) which require the design-builder to submit written acquisition and relocation procedures for the STD's approval. This commenter believed that this requirement is not necessary and compliance could be achieved through proper oversight of the contract. We agree that a revision is appropriate in this case. We have added a sentence to paragraph (d)(1)(i) that reads as follows: "STD's which have an FHWA approved procedures manual, in accordance with 23 CFR 710.201(c), may comply with this section by requiring the design-builder to execute a certification in its proposals that it has received the approved right-of-way manual and will comply with the procedures."

• Recommended that paragraph (d)(1)(ii) should explicitly reference 49 CFR 24.205 and its requirements. We agree with this comment and an appropriate reference is provided in paragraph (d)(1)(ii). The commenter further suggested that the additional detailed schedule related requirements should be removed as it may be more appropriate to provide for compliance through the contracting agency's oversight of the contract. We disagree with this comment. This language is appropriate and necessary to ensure compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) as many contracting agencies do not have sufficient experience with the design-build contracting method.

• Believed that the requirement of paragraph (d)(2)(i) for a quality control system would be a good management tool. However, this commenter questioned the need for a regulation on this subject. We disagree. Paragraph (d)(2)(ii) provides great latitude to the STDs in complying with the requirement for a quality control system for right-of-way activities. This section is permissive to allow a consultant to perform the activity desired by the STD.

• Questioned the necessity for, and recommended that the deletion of paragraphs (d)(3) through (d)(6). We disagree with this comment. Although not a requirement, the establishment of a hold off zone around occupied properties is encouraged in paragraph (d)(3). While regulations of the U.S. Department of Labor's Occupational Safety and Health Administration may provide policy concerning the safety of construction workers, the FHWA believes that it is important to address this issue specifically for the instance where there are occupied properties adjacent to construction activities. Therefore, no changes were made in the final rule.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, and within the meaning of the U.S. Department of Transportation's regulatory policies and procedures because of the substantial State and industry interest in the design-build contracting technique. The Office of Management and Budget has reviewed this document under E.O. 12866. The FHWA anticipates that the economic impact of this rulemaking would be minimal. However, this rule is considered to be significant because of the substantial State and industry interest in the design-build contracting technique.

None of the commenters provided evidence to indicate that there would be a material or adverse economic impact. The FHWA hereby certifies that the final rule would not adversely affect, in a material way, any sector of the economy.

In addition, this rule will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. This rule allows the STDs to use the design-build contracting technique—a contracting method that has been used only on an experimental basis to date in the Federal-aid highway program. The rule will not affect the total Federal funding available to the STDs under the Federal-aid highway program. Therefore, it is anticipated that an increased use of design-build delivery method will not yield significant economic impacts to the Federal-aid highway program. Consequently, a full regulatory evaluation is not required. The increased usage of the design-build contracting method may result in certain efficiencies in the cost and/or time it normally takes to deliver a transportation project.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities and has determined that the final rule will not have a significant economic impact on a substantial number of small entities.

Several commenters expressed a concern that this rule may have an adverse impact on small disadvantaged business enterprises and other small firms; however, one commenter recommended that the FHWA not give preferential treatment to a firm based on its size during the selection process because such a limitation may limit the ability of engineering firms from leading the design-build team.

By its very nature, design-build contracting is best suited to large transportation projects. However, several STDs such as Pennsylvania, Ohio and Michigan have successfully completed several relatively small design-build contracts (less than $5 million) under SEP–14. Approximately 50 percent of the projects approved under SEP–14 have been less than $5 million. We expect that this trend will continue after the final rule is enacted.

Design-build contracts will present subcontracting opportunities that are similar to or greater than those available under design-bid-build contracts. In many cases, design-build contractors will subcontract for design services. Under the traditional design-bid-build system, owners typically prepare a design with their own staff or will contract with a design consultant for this work. Based on 2001 data provided by the Pennsylvania Department of Transportation (PennDOT), the average subcontracting amount for design-build contracts compares favorably with the average subcontracting amount for design-bid-build projects in the same contract size range. While the number of PennDOT completed design-build projects is small, this data (shown in Table 1) shows that there are comparable subcontracting opportunities for relatively small design-build projects.

TABLE 1

PennDOT projects contract size	Design-build		Design-bid-build	
	No. of projects	Subcontracting percentage	No. of projects	Subcontracting percentage
$0–5 million	3	19	517	18
$5–10 million	2	33	25	29
$10–20 million	0	.....	13	30
> $20 million	0	.....	15	38

Large design-build contracts will present significant subcontracting opportunities for firms of all sizes. Table 2 illustrates the subcontracting opportunities that have been associated with medium to large-sized highway design-build contracts.

TABLE 2

Project	Owner	Contract size (million)	Subcontracting percentages
Eastern Toll Road	Transportation Corridors Agency, CA	$767	39
San Joaquin Hills Toll Road	Transportation Corridors Agency, CA	799.7	41
I–15 Reconstruction	Utah DOT	1,318	54
I–17 Reconstruction	Arizona DOT	79.7	33
E–470 Segments I and II	E–470 Public Highway Authority	323.8	90
Southern Connector	South Carolina DOT	106.4	87
Conway Bypass	South Carolina DOT	386.0	89

Thus, from the data available, the FHWA believes that the subcontracting opportunities for small entities will be similar under both design-build and design-bid-build contracts.

To offset potential adverse impacts on small entities, the final rule eliminates the FHWA's existing requirement for the prime contractor to perform 30 percent of all contract work, less specialty items (see § 635.116). This will provide greater flexibility for STDs in administering design-build contracts. For design-builders, it will remove potential barriers regarding the choice of subcontractors, and most important, it will provide greater subcontracting opportunities for firms of all sizes. For these reasons and because the final rule is directed to the States and directly affects the STDs, which are not considered small entities for the purposes of the Regulatory Flexibility Act, the FHWA certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This final rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C. 1531 *et seq.*). This rulemaking allows STDs to use a contracting method that has only been used in the Federal-aid highway program on an experimental basis to date. There is no requirement for a State to use the design-build contracting technique. It is strictly an optional contracting method.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and the FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a Federal assessment. Nothing in this document directly preempts any State law or regulation or affects the States' ability to discharge traditional State governmental functions. Section 1307 of the TEA–21 directs the FHWA to develop regulations that will: (1) Identify Secretary's approval criteria for design-build contracts, and (2) establish procedures for obtaining the FHWA's approval for design-build contracts. Throughout the final rule there is an effort to give the STDs flexibility in deciding where to appropriately use design-build contracting while keeping administrative burdens to a minimum.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this final rule under Executive Order 13175, dated November 6, 2000, and believes that the final rule will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. The final rule does not address issues that are related to tribal operations. Therefore, a tribal summary impact statement is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway planning and construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on

Federal programs and activities apply to this program.

Executive Order 12988 (Civil Justice Reform)

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The final rule is not economically significant and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This final rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13211 (Energy Effects)

We have analyzed this final rule under Executive Order 13211, Action Concerning Regulation That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because, although it is a significant regulatory action under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, et. seq.), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has reviewed this rule and determined that it does not contain collection of information requirements for the purposes of the PRA.

Since 1990 the FHWA has been allowing the STDs to evaluate design-build contracting on an experimental basis through Special Experimental Project No. 14 (SEP–14). To receive the FHWA's approval, STDs were requested to prepare experimental project work plans and evaluation reports for all design-build projects.

Under the final rule, the STDs will no longer be required to develop work plans or evaluation reports for "qualified projects." However, because of the "qualified project" definition in section 1307 of TEA–21, the FHWA will continue to approve "non-qualified" design-build projects under SEP–14. Therefore, a SEP–14 work plan and evaluation will continue to be necessary for these projects. The evaluation reports will document the lessons learned through design-build contracting and this information will be shared with others in the highway industry. The collection of SEP–14 information does not entail the reporting of information in response to identical questions. The SEP–14 design-build evaluation reports do not involve answering specific questions; they address issues relating to competitive acquisition. Each is a one of a kind document that relates to the lessons learned on a particular project.

National Environmental Policy Act

The agency has analyzed this rule for the purposes of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), and has determined that this rule will not have any effect on the quality of the environment. Design-build projects must comply with NEPA requirements and the final rule includes guidance concerning compliance with NEPA in relation to the release of the Request for Proposals document.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this proposed action with the Unified Agenda.

List of Subjects

23 CFR Part 627

Government procurement, Grant programs-transportation, Highways and roads.

23 CFR Part 635

Grant programs-transportation, Highways and roads, Reporting and recordkeeping requirements.

23 CFR Part 636

Design-build, Grant programs-transportation, Highways and roads.

23 CFR Part 637

Construction inspection and approval; Highways and roads.

23 CFR 710

Grant programs-transportation, Highway and roads, Real property acquisition, Rights-of-way, Reporting and recordkeeping requirements.

Issued on: November 22, 2002.

Mary E. Peters,

Federal Highway Administrator.

For reasons set forth in the preamble, the FHWA amends Chapter I of title 23, Code of Federal Regulations, as set forth below:

PART 627—VALUE ENGINEERING

1. Revise the authority citation for part 627 to read as follows:

Authority: 23 U.S.C. 106(d), 106(f), 112(b), 302, 307, and 315; 49 CFR 18.

2. In part 627 revise all references to "State highway agencies" to read "State transportation departments"; and revise the acronyms "SHA" and "SHAs" to read "STD" and "STDs", respectively.

3. In § 627.5, add paragraph (e) to read as follows:

§ 627.5 General principles and procedures.

* * * * *

(e) In the case of a Federal-aid design-build project meeting the project criteria in 23 CFR 627.1(a), the STDs shall fulfill the value engineering analysis requirement by performing a value engineering analysis prior to the release of the Request for Proposals document.

PART 635—CONSTRUCTION AND MAINTENANCE

4. Revise the authority citation for part 635 to read as follows:

Authority: 23 U.S.C. 101 (note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; Sec. 1041 (a), Pub. L. 102–240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.48(b).

5. In part 635 revise all references to "State highway agencies" to read "State transportation departments"; and revise the acronyms "SHA" and "SHAs" to read "STD" and "STDs", respectively.

6. Amend § 635.102 by removing the definition of "certification acceptance," and by adding the definition of "design-build project" to read as follows:

§ 635.102 Definitions.

* * * * *

Design-build project means a project to be developed using one or more design-build contracts.

* * * * *

7. Amend § 635.104 by adding paragraph (c) to read as follows:

§ 635.104 Method of construction.

* * * * *

(c) In the case of a design-build project, the requirements of 23 CFR part 636 and the appropriate provisions pertaining to design-build contracting in this part will apply. However, no justification of cost effectiveness is necessary in selecting projects for the design-build delivery method.

8. Revise § 635.107 to read as follows:

§ 635.107 Participation by disadvantaged business enterprises.

(a) The STD shall schedule contract lettings in a balanced program providing contracts of such size and character as to assure an opportunity for all sizes of contracting organizations to compete. In accordance with Title VI of the Civil Rights Act of 1964, subsequent Federal-aid Highway Acts, and 49 CFR part 26, the STD shall ensure equal opportunity for disadvantaged business enterprises (DBEs) participating in the Federal-aid highway program.

(b) In the case of a design-build project funded with title 23 funds, the requirements of 49 CFR part 26 and the State's approved DBE plan apply. If DBE goals are set, DBE commitments above the goal must not be used as a proposal evaluation factor in determining the successful offeror.

9. Amend § 635.109 by adding paragraph (c) to read as follows:

§ 635.109 Standardized changed condition clauses.

* * * * *

(c) In the case of a design-build project, STDs are strongly encouraged to use "suspensions of work ordered by the engineer" clauses, and may consider "differing site condition" clauses and "significant changes in the character of work" clauses which are appropriate for the risk and responsibilities that are shared with the design-builder.

10. Amend § 635.110 by adding paragraph (f) to read as follows:

§ 635.110 Licensing and qualification of contractors.

* * * * *

(f) In the case of a design-build project, the STDs may use their own bonding, insurance, licensing, qualification or prequalification procedure for any phase of design-build procurement.

(1) The STDs may not impose statutory or administrative requirements which provide an in-State or local geographical preference in the solicitation, licensing, qualification, pre-qualification, short listing or selection process. The geographic location of a firm's office may not be one of the selection criteria. However, the STDs may require the successful design-builder to establish a local office after the award of contract.

(2) If required by State statute, local statute, or administrative policy, the STDs may require prequalification for construction contractors. The STDs may require offerors to demonstrate the ability of their engineering staff to become licensed in that State as a condition of responsiveness; however, licensing procedures may not serve as a barrier for the consideration of otherwise responsive proposals. The STDs may require compliance with appropriate State or local licensing practices as a condition of contract award.

11. Amend § 635.112 by revising the section heading and by adding paragraph (i) to read as follows:

§ 635.112 Advertising for bids and proposals.

* * * * *

(i) In the case of a design-build project, the following requirements apply:

(1) The FHWA Division Administrator's approval of the Request for Proposals document will constitute the FHWA's project authorization and the FHWA's approval of the STD's request to release the document. This approval will carry the same significance as plan, specification and estimate approval on a design-bid-build Federal-aid project.

(2) The STD may decide the appropriate solicitation schedule for all design-build requests. This includes all project advertising, the release of the Request for Qualifications document, the release of the Request for Proposals document and all deadlines for the receipt of qualification statements and proposals. Typical advertising periods range from six to ten weeks and can be longer for large, complicated projects.

(3) The STD must obtain the approval of the Division Administrator prior to issuing addenda which result in major changes to the Request for Proposals document. Minor addenda need not receive prior approval but may be identified by the STD at the time of or prior to requesting the FHWA's concurrence in award. The STD must provide assurance that all offerors have received all issued addenda

12. Amend § 635.113 by adding paragraph (c) to read as follows:

§ 635.113 Bid opening and bid tabulations.

* * * * *

(c) In the case of a design-build project, the following requirements apply:

(1) All proposals received must be opened and reviewed in accordance with the terms of the solicitation. The STD must use its own procedures for the following:

(i) The process of handling proposals and information;

(ii) The review and evaluation of proposals;

(iii) The submission, modification, revision and withdrawal of proposals; and

(iv) The announcement of the successful offeror.

(2) The STD must submit a post-award tabulation of proposal prices to the FHWA Division Administrator. The tabulation of price proposal information may include detailed pricing information when available or lump sum price information if itemized prices are not used.

13. Amend § 635.114 by adding paragraph (k) to read as follows:

§ 635.114 Award of contract and concurrence in award.

* * * * *

(k) In the case of a design-build project, the following requirements apply: Design-build contracts shall be awarded in accordance with the Request for Proposals document. *See* 23 CFR Part 636, Design-build Contracting, for details.

14. Amend § 635.116 by adding paragraph (d) to read as follows:

§ 635.116 Subcontracting and contractor responsibilities.

* * * * *

(d) In the case of a design-build project, the following requirements apply:

(1) The provisions of paragraph (a) of this section are not applicable to design-build contracts;

(2) At their discretion, the STDs may establish a minimum percentage of work that must be done by the design-builder. For the purpose of this section, the term design-builder may include any firms that are equity participants in the design-builder, their sister and parent companies, and their wholly owned subsidiaries;

(3) No procedure, requirement or preference shall be imposed which prescribes minimum subcontracting requirements or goals (other than those necessary to meet the Disadvantaged Business Enterprise program requirements of 49 CFR part 26).

15. Amend § 635.122 by adding paragraph (c) to read as follows:

§ 635.122 Participation in progress payments.

* * * * *

(c) In the case of a design-build project, the STD must define its procedures for making progress payments on lump sum contracts in the Request for Proposal document.

16. Amend § 635.309 by adding paragraph (p) to read as follows:

§ 635.309 Authorization.

* * * * *

(p) In the case of a design-build project, the following certification requirements apply:

(1) The FHWA's project authorization (authorization to advertise or release the Request for Proposals document) will not be issued until the following conditions have been met:

(i) All projects must conform with the statewide and metropolitan transportation planning requirements (23 CFR part 450).

(ii) All projects in air quality nonattainment and maintenance areas must meet all transportation conformity requirements (40 CFR parts 51 and 93).

(iii) The NEPA review process has been concluded. (*See* 23 CFR 636.109).

(iv) The Request for Proposals document has been approved.

(v) A statement is received from the STD that either all right-of-way, utility, and railroad work has been completed or that all necessary arrangements will be made for the completion of right of way, utility, and railroad work.

(vi) If the STD elects to include right-of-way, utility, and/or railroad services as part of the design-builder's scope of work, then the Request for Proposals document must include:

(A) A statement concerning scope and current status of the required services, and

(B) A statement which requires compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, and 23 CFR part 710.

(2) During a conformity lapse, a design-build project (including right-of-way acquisition activities) may continue if, prior to the conformity lapse, the NEPA process was completed and the project has not changed significantly in design scope, the FHWA authorized the design-build project and the project met transportation conformity requirements (40 CFR parts 51 and 93).

(3) Changes to the design-build project concept and scope may require a modification of the transportation plan and transportation improvement program. The project sponsor must comply with the metropolitan and statewide transportation planning requirements in 23 CFR part 450 and the transportation conformity requirements (40 CFR parts 51 and 93) in air quality nonattainment and maintenance areas, and provide appropriate approval notification to the design-builder for such changes.

17. Amend § 635.411 by adding paragraph (f) to read as follows:

§ 635.411 Material or product selection.

* * * * *

(f) In the case of a design-build project, the following requirements apply: Federal funds shall not participate, directly or indirectly, in payment for any premium or royalty on any patented or proprietary material, specification, or process specifically set forth in the Request for Proposals document unless the conditions of paragraph (a) of this section are applicable.

18. Amend § 635.413 by revising the section heading and adding paragraph (e) to read as follows:

§ 635.413 Guaranty and warranty clauses.

* * * * *

(e) In the case of a design-build project, the following requirements will apply instead of paragraphs (a) through (d) of this section.

(1) General project warranties may be used on NHS projects, provided:

(i) The term of the warranty is short (generally one to two years);

(ii) The warranty is not the sole means of acceptance;

(iii) The warranty must not include items of routine maintenance which are not eligible for Federal participation; and,

(iv) The warranty may include the quality of workmanship, materials and other specific tasks identified in the contract.

(2) Performance warranties for specific products on NHS projects may be used at the STD's discretion. If performance warranties are used, detailed performance criteria must be provided in the Request for Proposal document.

(3) The STD may follow its own procedures regarding the inclusion of warranty provisions on non-NHS Federal-aid design-build contracts.

(4) For best value selections, the STD may allow proposers to submit alternate warranty proposals that improve upon the warranty terms in the RFP document. Such alternate warranty proposals must be in addition to the base proposal that responds to the RFP requirements.

19. Add Part 636 to read as follows:

PART 636—DESIGN-BUILD CONTRACTING

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Authority: Sec. 1307 of Pub. L. 105–178, 112 Stat. 107; 23 U.S.C. 101, 109, 112, 113, 114, 115, 119, 128, and 315; 49 CFR 1.48(b).

Subpart A—General

§ 636.101 What does this part do?

This part describes the FHWA's policies and procedures for approving design-build projects financed under title 23, United States Code (U.S.C.). This part satisfies the requirement of section 1307(c) of the Transportation Equity Act for the 21st Century (TEA–21), enacted on June 9, 1998. The contracting procedures of this part apply to all design-build project funded under title 23, U.S.C.

§ 636.102 Does this part apply to me?

(a) This part uses a plain language format to make the rule easier for the general public and business community to use. The section headings and text, often in the form of questions and answers, must be read together.

(b) Unless otherwise noted, the pronoun "you" means the primary recipient of Federal-aid highway funds, the State Transportation Department (STD). Where the STD has an agreement with a local public agency (or other governmental agency) to administer a Federal-aid design-build project, the term "you" will also apply to that contracting agency.

§ 636.103 What are the definitions of terms used in this part?

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. Also, the following definitions are used:

Adjusted low bid means a form of best value selection in which qualitative aspects are scored on a 0 to 100 scale expressed as a decimal; price is then divided by qualitative score to yield an "adjusted bid" or "price per quality point." Award is made to offeror with the lowest adjusted bid.

Best value selection means any selection process in which proposals contain both price and qualitative components and award is based upon a combination of price and qualitative considerations.

Clarifications means a written or oral exchange of information which takes place after the receipt of proposals when award without discussions is contemplated. The purpose of clarifications is to address minor or clerical revisions in a proposal.

Communications are exchanges, between the contracting agency and offerors, after receipt of proposals, which lead to the establishment of the competitive range.

Competitive acquisition means an acquisition process which is designed to foster an impartial and comprehensive evaluation of offerors' proposals, leading to the selection of the proposal representing the best value to the contracting agency.

Competitive range means a list of the most highly rated proposals based on the initial proposal rankings. It is based on the rating of each proposal against all evaluation criteria.

Contracting agency means the public agency awarding and administering a design-build contract. The contracting agency may be the STD or another State or local public agency.

Deficiency means a material failure of a proposal to meet a contracting agency requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

Design-bid-build means the traditional project delivery method where design and construction are sequential steps in the project development process.

Design-build contract means an agreement that provides for design and construction of improvements by a contractor or private developer. The term encompasses design-build-maintain, design-build-operate, design-build-finance and other contracts that include services in addition to design and construction. Franchise and concession agreements are included in the term if they provide for the franchisee or concessionaire to develop the project which is the subject of the agreement.

Design-builder means the entity contractually responsible for delivering the project design and construction.

Discussions mean written or oral exchanges that take place after the establishment of the competitive range with the intent of allowing the offerors to revise their proposals.

Fixed price/best design means a form of best value selection in which contract price is established by the owner and stated in the Request for Proposals document. Design solutions and other qualitative factors are evaluated and rated, with award going to the firm offering the best qualitative proposal for the established price.

Intelligent Transportation System (ITS) services—means services which provide for the acquisition of technologies or systems of technologies (*e.g.*, computer hardware or software, traffic control devices, communications link, fare payment system, automatic vehicle location system, *etc.*) that provide or contribute to the provision of one or more ITS user services as defined in the National ITS Architecture.

Modified design-build means a variation of design-build in which the

contracting agency furnishes offerors with partially complete plans. The design-builders role is generally limited to the completion of the design and construction of the project.

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Prequalification means the contracting agency's process for determining whether a firm is fundamentally qualified to compete for a certain project or class of projects. The prequalification process may be based on financial, management and other types of qualitative data. Prequalification should be distinguished from short listing.

Price proposal means the price submitted by the offeror to provide the required design and construction services.

Proposal modification means a change made to a proposal before the solicitation closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

Proposal revision means a change to a proposal made after the solicitation closing date, at the request of or as allowed by a contracting officer, as the result of negotiations.

Qualified project means any design-build project with a total estimated cost greater than $50 million or an intelligent transportation system project greater than $5 million (23 U.S.C. 112 (b)(3)(C)).

Request for Proposals (RFP) means the document that describes the procurement process, forms the basis for the final proposals and may potentially become an element in the contract.

Request for Qualification (RFQ) means the document issued by the owner in Phase I of the two-phased selection process. It typically describes the project in enough detail to let potential offerors determine if they wish to compete and forms the basis for requesting qualifications submissions from which the most highly qualified offerors can be identified.

Short listing means the narrowing of the field of offerors through the selection of the most qualified offerors who have responded to an RFQ.

Single-phase selection process means a procurement process where price and/or technical proposals are submitted in response to an RFP. Short listing is not used.

Solicitation means a public notification of an owner's need for information, qualifications, or proposals related to identified services.

Stipend means a monetary amount sometimes paid to unsuccessful offerors.

Technical proposal means that portion of a design-build proposal which contains design solutions and other qualitative factors that are provided in response to the RFP document.

Tradeoff means an analysis technique involving a comparison of price and non-price factors to determine the best value when considering the selection of other than the lowest priced proposal.

Two-phase selection process means a procurement process in which the first phase consists of short listing (based on qualifications submitted in response to an RFQ) and the second phase consists of the submission of price and technical proposals in response to an RFP.

Weakness means a flaw in the proposal that increases the risk of unsuccessful contract performance. A significant weakness in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

Weighted criteria process means a form of best value selection in which maximum point values are pre-established for qualitative and price components, and award is based upon high total points earned by the offerors.

§ 636.104 Does this part apply to all Federal-aid design-build projects?

The provisions of this part apply to all Federal-aid design-build projects within the highway right-of-way or linked to a Federal-aid highway project (*i.e.*, the project would not exist without another Federal-aid highway project). Projects that are not located within the highway right-of-way, and not linked to a Federal-aid highway project may utilize State-approved procedures.

§ 636.105 Is the FHWA requiring the use of design-build?

No, the FHWA is neither requiring nor promoting the use of the design-build contracting method. The design-build contracting technique is optional.

§ 636.106 What type of projects may be used with design-build contracting?

You may use the design-build contracting technique for any qualified or non-qualified project which you deem to be appropriate on the basis of project delivery time, cost, construction schedule and/or quality.

§ 636.107 Does the definition of a qualified project limit the use of design-build contracting?

(a) No, the use of the term "qualified project" does not limit the use of design-build contracting. It merely determines the FHWA's procedures for approval. The FHWA Division Administrator may approve the design-build method for "qualified projects" which meet the requirements of this part.

(b) The FHWA Division Administrator may also approve other design-build projects (which do not meet the "qualified projects" definition) by using Special Experimental Projects No. 14 (SEP–14), "Innovative Contracting Practices," [1] provided the project meets the requirements of this part. Projects which do not meet the requirements of this part (either "qualified or non-qualified" projects) must be submitted to the FHWA Headquarters for concept approval.

§ 636.108 How does the definition of a qualified project apply to ITS projects?

For the purpose of this part, a Federal-aid ITS design-build project meets the criteria of a "qualified project" if:

(a) A majority of the scope of services provides ITS services (at least 50 percent of the scope of work is related to ITS services); and

(b) The estimated contract value exceeds $5 million.

§ 636.109 How does the NEPA review process relate to the design-build procurement process?

In terms of the design-build procurement process:

(a) The RFQ solicitation may be released prior to the conclusion of the NEPA review process as long as the RFQ solicitation informs proposers of the general status of the NEPA process.

(b) The RFP must not be released prior to the conclusion of the NEPA process. The NEPA review process is concluded with either a Categorical Exclusion classification, an approved Finding of No Significant Impact, or an approved Record of Decision as defined in 23 CFR 771.113(a).

(c) The RFP must address how environmental commitments and mitigation measures identified during the NEPA process will be implemented.

[1] Information concerning Special Experimental Project No. 14 (SEP–14), "Innovative Contracting Practices," is available on FHWA's home page: *http://www.fhwa.dot.gov*. Additional information may be obtained from the FHWA Division Administrator in each State.

§ 636.110 What procedures may be used for solicitations and receipt of proposals?

You may use your own procedures for the solicitation and receipt of proposals and information including the following:

(a) Exchanges with industry before receipt of proposals;

(b) RFQ, RFP and contract format;

(c) Solicitation schedules;

(d) Lists of forms, documents, exhibits, and other attachments;

(e) Representations and instructions;

(f) Advertisement and amendments;

(g) Handling proposals and information; and

(h) Submission, modification, revisions and withdrawal of proposals.

§ 636.111 Can oral presentations be used during the procurement process?

(a) Yes, the use of oral presentations as a substitute for portions of a written proposal can be effective in streamlining the source selection process. Oral presentations may occur at any time in the acquisition process, however, you must comply with the appropriate State procurement integrity standards.

(b) Oral presentations may substitute for, or augment, written information. You must maintain a record of oral presentations to document what information you relied upon in making the source selection decision. You may decide the appropriate method and level of detail for the record (*e.g.*, videotaping, audio tape recording, written record, contracting agency notes, copies of offeror briefing slides or presentation notes). A copy of the record should be placed in the contract file and may be provided to offerors upon request.

§ 636.112 May stipends be used?

At your discretion, you may elect to pay a stipend to unsuccessful offerors who have submitted responsive proposals. The decision to do so should be based on your analysis of the estimated proposal development costs and the anticipated degree of competition during the procurement process.

§ 636.113 Is the stipend amount eligible for Federal participation?

(a) Yes, stipends are eligible for Federal-aid participation. Stipends are recommended on large projects where there is substantial opportunity for innovation and the cost of submitting a proposal is significant. On such projects, stipends are used to:

(1) Encourage competition;

(2) Compensate unsuccessful offerors for a portion of their costs (usually one-third to one-half of the estimated proposal development cost); and

(3) Ensure that smaller companies are not put at a competitive disadvantage.

(b) Unless prohibited by State law, you may retain the right to use ideas from unsuccessful offerors if they accept stipends. If stipends are used, the RFP should describe the process for distributing the stipend to qualifying offerors.

§ 636.114 What factors should be considered in risk allocation?

(a) You may consider, identify, and allocate the risks in the RFP document and define these risks in the contract. Risk should be allocated with consideration given to the party who is in the best position to manage and control a given risk or the impact of a given risk.

(b) Risk allocation will vary according to the type of project and location, however, the following factors should be considered:

(1) Governmental risks, including the potential for delays, modifications, withdrawal, scope changes, or additions that result from multi-level Federal, State, and local participation and sponsorship;

(2) Regulatory compliance risks, including environmental and third-party issues, such as permitting, railroad, and utility company risks;

(3) Construction phase risks, including differing site conditions, traffic control, interim drainage, public access, weather issues, and schedule;

(4) Post-construction risks, including public liability and meeting stipulated performance standards; and

(5) Right-of-way risks including acquisition costs, appraisals, relocation delays, condemnation proceedings, including court costs and others.

§ 636.115 May I meet with industry to gather information concerning the appropriate risk allocation strategies?

(a) Yes, information exchange at an early project stage is encouraged if it facilitates your understanding of the capabilities of potential offerors. However, any exchange of information must be consistent with State procurement integrity requirements. Interested parties include potential offerors, end users, acquisition and supporting personnel, and others involved in the conduct or outcome of the acquisition.

(b) The purpose of exchanging information is to improve the understanding of your requirements and industry capabilities, thereby allowing potential offerors to judge whether or how they can satisfy your requirements, and enhancing your ability to obtain quality supplies and services, including construction, at reasonable prices, and increase efficiency in proposal preparation, proposal evaluation, negotiation, and contract award.

(c) An early exchange of information can identify and resolve concerns regarding the acquisition strategy, including proposed contract type, terms and conditions, and acquisition planning schedules. This also includes the feasibility of the requirement, including performance requirements, statements of work, and data requirements; the suitability of the proposal instructions and evaluation criteria, including the approach for assessing past performance information; the availability of reference documents; and any other industry concerns or questions. Some techniques to promote early exchanges of information are as follows:

(1) Industry or small business conferences;

(2) Public hearings;

(3) Market research;

(4) One-on-one meetings with potential offerors (any meetings that are substantially involved with potential contract terms and conditions should include the contracting officer; also see paragraph (e) of this section regarding restrictions on disclosure of information);

(5) Presolicitation notices;

(6) Draft RFPs;

(7) Request for Information (RFI) ;

(8) Presolicitation or preproposal conferences; and

(9) Site visits.

(d) RFIs may be used when you do not intend to award a contract, but want to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to these notices are not offers and cannot be accepted to form a binding contract. There is no required format for an RFI.

(e) When specific information about a proposed acquisition that would be necessary for the preparation of proposals is disclosed to one or more potential offerors, that information shall be made available to all potential offerors as soon as practicable, but no later than the next general release of information, in order to avoid creating an unfair competitive advantage. Information provided to a particular offeror in response to that offeror's request must not be disclosed if doing so would reveal the potential offeror's confidential business strategy. When a presolicitation or preproposal conference is conducted, materials distributed at the conference should be made available to all potential offerors, upon request.

§ 636.116 What organizational conflict of interest requirements apply to design-build projects?

(a) State statutes or policies concerning organizational conflict of interest should be specified or referenced in the design-build RFQ or RFP document as well as any contract for engineering services, inspection or technical support in the administration of the design-build contract. All design-build solicitations should address the following situations as appropriate:

(1) Consultants and/or sub-consultants who assist the owner in the preparation of a RFP document will not be allowed to participate as an offeror or join a team submitting a proposal in response to the RFP. However, a contracting agency may determine there is not an organizational conflict of interest for a consultant or sub-consultant where:

(i) The role of the consultant or sub-consultant was limited to provision of preliminary design, reports, or similar "low-level" documents that will be incorporated into the RFP, and did not include assistance in development of instructions to offerors or evaluation criteria, or

(ii) Where all documents and reports delivered to the agency by the consultant or sub-consultant are made available to all offerors.

(2) All solicitations for design-build contracts, including related contracts for inspection, administration or auditing services, must include a provision which:

(i) Directs offerors attention to this subpart;

(ii) States the nature of the potential conflict as seen by the owner;

(iii) States the nature of the proposed restraint or restrictions (and duration) upon future contracting activities, if appropriate;

(iv) Depending on the nature of the acquisition, states whether or not the terms of any proposed clause and the application of this subpart to the contract are subject to negotiation; and

(v) Requires offerors to provide information concerning potential organizational conflicts of interest in their proposals. The apparent successful offerors must disclose all relevant facts concerning any past, present or currently planned interests which may present an organizational conflict of interest. Such firms must state how their interests, or those of their chief executives, directors, key project personnel, or any proposed consultant, contractor or subcontractor may result, or could be viewed as, an organizational conflict of interest. The information may be in the form of a disclosure statement or a certification.

(3) Based upon a review of the information submitted, the owner should make a written determination of whether the offeror's interests create an actual or potential organizational conflict of interest and identify any actions that must be taken to avoid, neutralize, or mitigate such conflict. The owner should award the contract to the apparent successful offeror unless an organizational conflict of interest is determined to exist that cannot be avoided, neutralized, or mitigated.

(b) The organizational conflict of interest provisions in this subpart provide minimum standards for STDs to identify, mitigate or eliminate apparent or actual organizational conflicts of interest. To the extent that State-developed organizational conflict of interest standards are more stringent than that contained in this subpart, the State standards prevail.

§ 636.117 What conflict of interest standards apply to individuals who serve as selection team members for the owner?

State laws and procedures governing improper business practices and personal conflicts of interest will apply to the owner's selection team members. In the absence of such State provisions, the requirements of 48 CFR Part 3, Improper Business Practices and Personal Conflicts of Interest, will apply to selection team members.

§ 636.118 Is team switching allowed after contract award?

Where the offeror's qualifications are a major factor in the selection of the successful design-builder, team member switching (adding or switching team members) is discouraged after contract award. However, the owner may use its discretion in reviewing team changes or team enhancement requests on a case-by-case basis. Specific project rules related to changes in team members or changes in personnel within teams should be explicitly stated by the STD in all project solicitations.

§ 636.119 How does this part apply to a project developed under a public-private partnership?

(a) In order for a project being developed under a public-private agreement to be eligible for Federal-aid funding (including traditional Federal-aid funds, direct loans, loan guarantees, lines of credit, or some other form of credit assistance), the contracting agency must have awarded the contract to the public-private entity through a competitive process that complies with applicable State and local laws.

(b) If a contracting agency wishes to utilize traditional Federal-aid funds in a project under a public-private agreement, the applicability of Federal-aid procurement procedures will depend on the nature of the public-private agreement.

(1) If the public-private agreement establishes price and an assignment of risk, then all subsequent contracts executed by the developer are considered to be subcontracts and are not subject to Federal-aid procurement requirements.

(2) If the public-private agreement does not establish price and an assignment of risk, the developer is considered to be an agent of the owner, and the developer must follow the appropriate Federal-aid procurement requirements (23 CFR part 172 for engineering service contracts, 23 CFR part 635 for construction contracts and the requirements of this part for design-build contracts) for all prime contracts (not subcontracts).

(c) The STD must ensure such public-private projects comply with all non-procurement requirements of 23 U. S. Code, regardless of the form of the FHWA funding (traditional Federal-aid funding or credit assistance). This includes compliance with all FHWA policies such as environmental and right-of-way requirements and compliance with such construction contracting requirements as Buy America, Davis-Bacon minimum wage rate requirements, for federally funded construction or design-build contracts under the public-private agreement.

Subpart B—Selection Procedures, Award Criteria

§ 636.201 What selection procedures and award criteria may be used?

You should consider using two-phase selection procedures for all design-build projects. However, if you do not believe two-phase selection procedures are appropriate for your project (based on the criteria in § 636.202), you may use a single phase selection procedure or the modified-design-build contracting method. The following procedures are available:

Selection procedure	Criteria for using a selection procedure	Award criteria options
(a) Two-Phase Selection Procedures (RFQ followed by RFP).	§ 636.202	Lowest price, Adjusted low-bid (price per quality point), meets criteria/low bid, weighted criteria process, fixed price/best design, best value.
(b) Single Phase (RFP)	Project not meeting the criteria in § 636.202	All of the award criteria in item (a) of this table.
(c) Modified Design-Build (may be one or two phases).	Any project	Lowest price technically acceptable.

§ 636.202 When are two-phase design-build selection procedures appropriate?

You may consider the following criteria in deciding whether two-phase selection procedures are appropriate. A negative response may indicate that two-phase selection procedures are not appropriate.

(a) Are three or more offers anticipated?

(b) Will offerors be expected to perform substantial design work before developing price proposals?

(c) Will offerors incur a substantial expense in preparing proposals?

(d) Have you identified and analyzed other contributing factors, including:

(1) The extent to which you have defined the project requirements?

(2) The time constraints for delivery of the project?

(3) The capability and experience of potential contractors?

(4) Your capability to manage the two-phase selection process?

(5) Other criteria that you may consider appropriate?

§ 636.203 What are the elements of two-phase selection procedures for competitive proposals?

The first phase consists of short listing based on a RFQ. The second phase consists of the receipt and evaluation of price and technical proposals in response to a RFP.

§ 636.204 What items may be included in a phase-one solicitation?

You may consider including the following items in any phase-one solicitation:

(a) The scope of work;

(b) The phase-one evaluation factors and their relative weights, including:

(1) Technical approach (but not detailed design or technical information);

(2) Technical qualifications, such as—

(i) Specialized experience and technical competence;

(ii) Capability to perform (including key personnel); and

(iii) Past performance of the members of the offeror's team (including the architect-engineer and construction members);

(3) Other appropriate factors (excluding cost or price related factors, which are not permitted in phase-one);

(c) Phase-two evaluation factors; and

(d) A statement of the maximum number of offerors that will be short listed to submit phase-two proposals.

§ 636.205 Can past performance be used as an evaluation criteria?

(a) Yes, past performance information is one indicator of an offeror's ability to perform the contract successfully. Past performance information may be used as an evaluation criteria in either phase-one or phase-two solicitations. If you elect to use past performance criteria, the currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance may be considered.

(b) Describe your approach for evaluating past performance in the solicitation, including your policy for evaluating offerors with no relevant performance history. You should provide offerors an opportunity to identify past or current contracts (including Federal, State, and local government and private) for efforts similar to the current solicitation.

(c) If you elect to request past performance information, the solicitation should also authorize offerors to provide information on problems encountered on the identified contracts and the offeror's corrective actions. You may consider this information, as well as information obtained from any other sources, when evaluating the offeror's past performance. You may use your discretion in determining the relevance of similar past performance information.

(d) The evaluation should take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the current acquisition.

§ 636.206 How do I evaluate offerors who do not have a record of relevant past performance?

In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance.

§ 636.207 Is there a limit on short listed firms?

Normally, three to five firms are short listed, however, the maximum number specified shall not exceed five unless you determine, for that particular solicitation, that a number greater than five is in your interest and is consistent with the purposes and objectives of two-phase design-build contracting.

§ 636.208 May I use my existing prequalification procedures with design-build contracts?

Yes, you may use your existing prequalification procedures for either construction or engineering design firms as a supplement to the procedures in this part.

§ 636.209 What items must be included in a phase-two solicitation?

(a) You must include the requirements for technical proposals and price proposals in the phase-two solicitation. All factors and significant subfactors that will affect contract award and their relative importance must be stated clearly in the solicitation. Use your own procedures for the solicitation as long as it complies the requirements of this part.

(b) At your discretion, you may allow proposers to submit alternate technical concepts in their proposals as long as these alternate concepts do not conflict with criteria agreed upon in the environmental decision making process. Alternate technical concept proposals may supplement, but not substitute for base proposals that respond to the RFP. requirements.

§ 636.210 What requirements apply to projects which use the modified design-build procedure?

(a) Modified design-build selection procedures (lowest price technically

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acceptable source selection process) may be used for any project.

(b) The solicitation must clearly state the following:

(1) The identification of evaluation factors and significant subfactors that establish the requirements of acceptability.

(2) That award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors.

(c) The contracting agency may forgo a short listing process and advertise for the receipt of proposals from all responsible offerors. The contract is then awarded to the lowest responsive bidder.

(d) Tradeoffs are not permitted, however, you may incorporate cost-plus-time bidding procedures (A+B bidding), lane rental, or other cost-based provisions in such contracts.

(e) Proposals are evaluated for acceptability but not ranked using the non-cost/price factors.

(f) Exchanges may occur (see subpart D of this part).

§ 636.211 When and how should tradeoffs be used?

(a) At your discretion, you may consider the tradeoff technique when it is desirable to award to other than the lowest priced offeror or other than the highest technically rated offeror.

(b) If you use a tradeoff technique, the following apply:

(1) All evaluation factors and significant subfactors that will affect contract award and their relative importance must be clearly stated in the solicitation; and

(2) The solicitation must also state, at a minimum, whether all evaluation factors other than cost or price, when combined, are—

(i) Significantly less important than cost or price; or

(ii) Approximately equal to cost or price; or

(iii) Significantly less important than cost or price.

§ 636.212 To what extent must tradeoff decisions be documented?

When tradeoffs are performed, the source selection records must include the following:

(a) An assessment of each offeror's ability to accomplish the technical requirements; and

(b) A summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors.

Subpart C—Proposal Evaluation Factors

§ 636.301 How should proposal evaluation factors be selected?

(a) The proposal evaluation factors and significant subfactors should be tailored to the acquisition.

(b) Evaluation factors and significant subfactors should:

(1) Represent the key areas of importance and emphasis to be considered in the source selection decision; and

(2) Support meaningful comparison and discrimination between and among competing proposals.

§ 636.302 Are there any limitations on the selection and use of proposal evaluation factors?

(a) The selection of the evaluation factors, significant subfactors and their relative importance are within your broad discretion subject to the following requirements:

(1) You must evaluate price in every source selection where construction is a significant component of the scope of work.

(2) You must evaluate the quality of the product or service through consideration of one or more non-price evaluation factors. These factors may include (but are not limited to) such criteria as:

(i) Compliance with solicitation requirements;

(ii) Completion schedule (contractual incentives and disincentives for early completion may be used where appropriate); or

(iii) Technical solutions.

(3) At your discretion, you may evaluate past performance, technical experience and management experience (subject to § 636.303(b)).

(b) All factors and significant subfactors that will affect contract award and their relative importance must be stated clearly in the solicitation.

§ 636.303 May pre-qualification standards be used as proposal evaluation criteria in the RFP?

(a) If you use a prequalification procedure or a two-phase selection procedure to develop a short list of qualified offerors, then pre-qualification criteria should not be included as proposal evaluation criteria.

(b) The proposal evaluation criteria should be limited to the quality, quantity, value and timeliness of the product or service being proposed. However, there may be circumstances where it is appropriate to include prequalification standards as proposal evaluation criteria. Such instances include situations where:

(1) The scope of work involves very specialized technical expertise or specialized financial qualifications; or

(2) Where prequalification procedures or two-phase selection procedures are not used (short listing is not performed).

§ 636.304 What process may be used to rate and score proposals?

(a) Proposal evaluation is an assessment of the offeror's proposal and ability to perform the prospective contract successfully. You must evaluate proposals solely on the factors and subfactors specified in the solicitation.

(b) You may conduct evaluations using any rating method or combination of methods including color or adjectival ratings, numerical weights, and ordinal rankings. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation must be documented in the contract file.

§ 636.305 Can price information be provided to analysts who are reviewing technical proposals?

Normally, technical and price proposals are reviewed independently by separate evaluation teams. However, there may be occasions where the same experts needed to review the technical proposals are also needed in the review of the price proposals. This may occur where a limited amount of technical expertise is available to review proposals. Price information may be provided to such technical experts in accordance with your procedures.

Subpart D—Exchanges

§ 636.401 What types of information exchange may take place prior to the release of the RFP document?

Verbal or written information exchanges (such as in the first-phase of a two-phase selection procedure) must be consistent with State and/or local procurement integrity requirements. See § 636.115(a) for additional details.

§ 636.402 What types of information exchange may take place after the release of the RFP document?

Certain types of information exchange may be desirable at different points after the release of the RFP document. The following table summarizes the types of communications that will be discussed in this subpart. These communication methods are optional.

Type of information exchange	When	Purpose	Parties involved
(a) Clarifications	After receipt of proposals	Used when award without discussions is contemplated. Used to clarify certain aspects of a proposal (resolve minor errors, clerical errors, obtain additional past performance information, etc.).	Any offeror whose proposal is not clear to the contracting agency.
(b) Communications	After receipt of proposals, prior to the establishment of the competitive range.	Used to address issues which might prevent a proposal from being placed in the competitive range.	Only those offerors whose exclusion from, or inclusion in, the competitive range is uncertain. All offerors whose past performance information is the determining factor preventing them from being placed in the competitive range.
(c) Discussions (see Subpart E of this part).	After receipt of proposals and after the determination of the competitive range.	Enhance contracting agency understanding of proposals and offerors understanding of scope of work. Facilitate the evaluation process.	Must be held with all offerors in the competitive range.

§ 636.403 What information may be exchanged with a clarification?

(a) You may wish to clarify any aspect of proposals which would enhance your understanding of an offeror's proposal. This includes such information as an offeror's past performance or information regarding adverse past performance to which the offeror has not previously had an opportunity to respond. Clarification exchanges are discretionary. They do not have to be held with any specific number of offerors and do not have to address specific issues.

(b) You may wish to clarify and revise the RFP document through an addenda process in response to questions from potential offerors.

§ 636.404 Can a competitive range be used to limit competition?

If the solicitation notifies offerors that the competitive range can be limited for purposes of efficiency, you may limit the number of proposals to the greatest number that will permit an efficient competition. However, you must provide written notice to any offeror whose proposal is no longer considered to be included in the competitive range. Offerors excluded or otherwise eliminated from the competitive range may request a debriefing. Debriefings may be conducted in accordance with your procedures as long as you comply with § 636.514.

§ 636.405 After developing a short list, can I still establish a competitive range?

Yes, if you have developed a short list of firms, you may still establish a competitive range. The short list is based on qualifications criteria. The competitive range is based on the rating of technical and price proposals.

§ 636.406 Are communications allowed prior to establishing the competitive range?

Yes, prior to establishing the competitive range, you may conduct communications to:

(a) Enhance your understanding of proposals;

(b) Allow reasonable interpretation of the proposal; or

(c) Facilitate your evaluation process.

§ 636.407 Am I limited in holding communications with certain firms?

Yes, if you establish a competitive range, you must do the following:

(a) Hold communications with offerors whose past performance information is the determining factor preventing them from being placed within the competitive range;

(b) Address adverse past performance information to which an offeror has not had a prior opportunity to respond; and

(c) Hold communications only with those offerors whose exclusion from, or inclusion in, the competitive range is uncertain.

§ 636.408 Can communications be used to cure proposal deficiencies?

(a) No, communications must not be used to:

(1) Cure proposal deficiencies or material omissions;

(2) Materially alter the technical or cost elements of the proposal; and/or

(3) Otherwise revise the proposal.

(b) Communications may be considered in rating proposals for the purpose of establishing the competitive range.

§ 636.409 Can offerors revise their proposals during communications?

(a) No, communications shall not provide an opportunity for an offeror to revise its proposal, but may address the following:

(1) Ambiguities in the proposal or other concerns (*e.g.*, perceived deficiencies, weaknesses, errors, omissions, or mistakes); and

(2) Information relating to relevant past performance.

(b) Communications must address adverse past performance information to which the offeror has not previously had an opportunity to comment.

Subpart E—Discussions, Proposal Revisions and Source Selection

§ 636.501 What issues may be addressed in discussions?

In a competitive acquisition, discussions may include bargaining. The term bargaining may include: persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.

§ 636.502 Why should I use discussions?

You should use discussions to maximize your ability to obtain the best value, based on the requirements and the evaluation factors set forth in the solicitation.

§ 636.503 Must I notify offerors of my intent to use/not use discussions?

Yes, in competitive acquisitions, the solicitation must notify offerors of your intent. You should either:

(a) Notify offerors that discussions may or may not be held depending on the quality of the proposals received (except clarifications may be used as described in § 636.401). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint; or

(b) Notify offerors of your intent to establish a competitive range and hold discussions.

§ 636.504 If the solicitation indicated my intent was to award contract without discussions, but circumstances change, may I still hold discussions?

Yes, you may still elect to hold discussions when circumstances dictate, as long as the rationale for doing so is documented in the contract file. Such circumstances might include situations where all proposals received have deficiencies, when fair and reasonable prices are not offered, or when the cost or price offered is not affordable.

§ 636.505 Must a contracting agency establish a competitive range if it intends to have discussions with offerors?

Yes, if discussions are held, they must be conducted with all offerors in the competitive range. If you wish to hold discussions and do not formally establish a competitive range, then you must hold discussions with all responsive offerors.

§ 636.506 What issues must be covered in discussions?

(a) Discussions should be tailored to each offeror's proposal. Discussions must cover significant weaknesses, deficiencies, and other aspects of a proposal (such as cost or price, technical approach, past performance, and terms and conditions) that could be altered or explained to enhance materially the proposal's potential for award. You may use your judgment in setting limits for the scope and extent of discussions.

(b) In situations where the solicitation stated that evaluation credit would be given for technical solutions exceeding any mandatory minimums, you may hold discussions regarding increased performance beyond any mandatory minimums, and you may suggest to offerors that have exceeded any mandatory minimums (in ways that are not integral to the design), that their proposals would be more competitive if the excesses were removed and the offered price decreased.

§ 636.507 What subjects are prohibited in discussions, communications and clarifications with offerors?

You may not engage in conduct that:

(a) Favors one offeror over another;

(b) Reveals an offeror's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to another offeror;

(c) Reveals an offerors price without that offeror's permission;

(d) Reveals the names of individuals providing reference information about an offeror's past performance; or

(e) Knowingly furnish source selection information which could be in violation of State procurement integrity standards.

§ 636.508 Can price or cost be an issue in discussions?

You may inform an offeror that its price is considered to be too high, or too low, and reveal the results of the analysis supporting that conclusion. At your discretion, you may indicate to all offerors your estimated cost for the project.

§ 636.509 Can offerors revise their proposals as a result of discussions?

(a) Yes, you may request or allow proposal revisions to clarify and document understandings reached during discussions. At the conclusion of discussions, each offeror shall be given an opportunity to submit a final proposal revision.

(b) You must establish a common cut-off date only for receipt of final proposal revisions. Requests for final proposal revisions shall advise offerors that the final proposal revisions shall be in writing and that the contracting agency intends to make award without obtaining further revisions.

§ 636.510 Can the competitive range be further defined once discussions have begun?

Yes, you may further narrow the competitive range if an offeror originally in the competitive range is no longer considered to be among the most highly rated offerors being considered for award. That offeror may be eliminated from the competitive range whether or not all material aspects of the proposal have been discussed, or whether or not the offeror has been afforded an opportunity to submit a proposal revision. You must provide an offeror excluded from the competitive range with a written determination and notice that proposal revisions will not be considered.

§ 636.511 Can there be more than one round of discussions?

Yes, but only at the conclusion of discussions will the offerors be requested to submit a final proposal revision, also called best and final offer (BAFO). Thus, regardless of the length or number of discussions, there will be only one request for a revised proposal (*i.e.*, only one BAFO).

§ 636.512 What is the basis for the source selection decision?

(a) You must base the source selection decision on a comparative assessment of proposals against all selection criteria in the solicitation. While you may use reports and analyses prepared by others, the source selection decision shall represent your independent judgment.

(b) The source selection decision shall be documented, and the documentation shall include the rationale for any business judgments and tradeoffs made or relied on, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision.

§ 636.513 Are limited negotiations allowed prior to contract execution?

Yes, after the source selection but prior to contract execution, you may conduct limited negotiations with the selected design-builder to clarify any remaining issues regarding scope, schedule, financing or any other information provided by that offeror. You must comply with the provisions of § 636.507 in the exchange of this information.

§ 636.514 How may I provide notifications and debriefings?

You may provide pre-award or post-award notifications in accordance with State approved procedures. If an offeror requests a debriefing, you may provide pre-award or post-award debriefings in accordance with State approved procedures.

PART 637—CONSTRUCTION INSPECTION AND APPROVAL

20. The authority citation for part 637 is revised to read as follows:

Authority: Sec. 1307, Pub. L. 105–178, 112 Stat. 107; 23 U.S.C. 109, 114, and 315; 49 CFR 1.48(b).

PART 637—[AMENDED]

21. In part 637 revise all references to "State highway agency's" to read "State transportation department's"; revise the acronyms "SHA" and "SHAs" to read "STD" and "STDs", respectively; and revise the references to "non-SHA" to read "non-STD".

22. Amend § 637.207 by adding paragraph (a)(1)(iv) and paragraph (b) to read as follows:

§ 637.207 Quality assurance program.

(a) * * *

(1) * * *

(iv) In the case of a design-build project on the National Highway System, warranties may be used where appropriate. See 23 CFR 635.413(e) for specific requirements.

* * * * *

(b) In the case of a design-build project funded under title 23, U.S. Code, the STD's quality assurance program should consider the specific contractual needs of the design-build project. All provisions of paragraph (a) of this section are applicable to design-build projects. In addition, the quality assurance program may include the following:

(1) Reliance on a combination of contractual provisions and acceptance methods;

(2) Reliance on quality control sampling and testing as part of the acceptance decision, provided that adequate verification of the design-builder's quality control sampling and testing is performed to ensure that the design-builder is providing the quality of materials and construction required by the contract documents.

(3) Contractual provisions which require the operation of the completed facility for a specific time period.

PART 710—RIGHT-OF-WAY AND REAL ESTATE

23. The authority citation for part 710 is revised to read as follows:

Authority: Sec. 1307, Pub. L. 105–178, 112 Stat. 107; 23 U.S.C. 101(a), 107, 108, 111, 114, 133, 142(f), 156, 204, 210, 308, 315, 317, and 323; 42 U.S.C. 2000d *et seq.*, 4633, 4651–4655; 49 CFR 1.48(b) and (cc), 18.31, and parts 21 and 24; 23 CFR 1.32.

24. Amend part 710 by adding § 710.313 to subpart C to read as follows:

§ 710.313 Design-build projects.

(a) In the case of a design-build project, right-of-way must be acquired and cleared in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and STD right-of-way procedures. The STD shall submit a right-of-way certification in accordance with 23 CFR 635.309(p) when requesting FHWA's authorization. If the right-of-way services are included in the Request for Proposal document, the STD shall ensure that right-of-way is available prior to the start of physical construction on individual properties.

(b) The decision to advance a right-of-way segment to the construction stage shall not impair the safety or in anyway be coercive in the context of 49 CFR 24.102(h) with respect to unacquired or occupied properties on the same or adjacent segments of project right-of-way.

(c) Certain right-of-way acquisition and clearance services may be incorporated into the design-build contract if allowed under State law. The contract may include language that provides that construction will not commence until all property is acquired and relocations have been completed; or, the construction could be phased or segmented to allow right-of-way activities to be completed on individual properties or a group of properties, thereby allowing certification in a manner satisfactory to the STD for each phase or segment.

(d) If the STD elects to include right-of-way services in the design-build contract, the following provisions must be addressed in the request for proposals document:

(1)(i) The design-builder must submit written acquisition and relocation procedures to the STD for approval prior to commencing right-of-way activities. These procedures should contain a prioritized appraisal, acquisition, and relocation strategy as well as check points for STD approval, such as approval of just compensation, replacement housing payment calculations, replacement housing payment and moving cost claims, appraisals, administrative and stipulated settlements that exceed determined thresholds based on a risk management analysis, etc. STD's which have an FHWA approved procedures manual, in accordance with 23 CFR 710.201(c), may comply with this section by requiring the design-builder to execute a certification in its proposal that it has received the approved right-of-way manual and will comply with the procedures.

(ii) The written relocation plan must provide reasonable time frames for the orderly relocation of residents and businesses on the project as provided at 49 CFR 24.205. It should be understood that these time frames will be based on best estimates of the time it will take to acquire the right-of-way and relocate families in accordance with certain legal requirements and time frames which may not be violated. Accordingly, the time frames estimated for right-of-way acquisition will not be compressed in the event other necessary actions preceding right-of-way acquisition miss their assigned due dates.

(2)(i) The design-builder must establish a project tracking system and quality control system. This system must show the appraisal, acquisition and relocation status of all parcels.

(ii) The quality control system may be administered by an independent consultant with the necessary expertise in appraisal, acquisition and relocation policies and procedures, who can make periodic reviews and reports to the design-builder and the STD.

(3) The STD may consider the establishment of a hold off zone around all occupied properties to ensure compliance with right-of-way procedures prior to starting construction activities in affected areas. The limits of this zone should be established by the STD prior to the design-builder entering on the property. There should be no construction related activity within the hold off zone until the property is vacated. The design-builder must have written notification of vacancy from the right-of-way quality control consultant or STD prior to entering the hold off zone.

(4) Adequate access shall be provided to all occupied properties to insure emergency and personal vehicle access.

(5) Utility service must be available to all occupied properties at all times prior to and until relocation is completed.

(6) Open burning should not occur within 305 meters (1,000 feet) of an occupied dwelling.

(7) The STD will provide a right-of-way project manager who will serve as the first point of contact for all right-of-way issues.

(e) If the STD elects to perform all right-of-way services relating to the design-build contract, the provisions in § 710.311 will apply. The STD will notify potential offerors of the status of all right-of-way issues in the request for proposal document.

[FR Doc. 02–30428 Filed 12–9–02; 8:45 am]
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Federal Register

Tuesday,
December 10, 2002

Part III

Department of Transportation

Federal Railroad Administration

49 CFR Part 241

U.S. Locational Requirement for Dispatching of U.S. Rail Operations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 241

[FRA Docket No. FRA–2001–8728, Notice No. 3]

RIN 2130–AB38

U.S. Locational Requirement for Dispatching of U.S. Rail Operations

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: This Final Rule will supplant an interim Final Rule (IFR) that has been in effect since January 10, 2002, while FRA has gathered comments on whether to permit extraterritorial dispatching (the act of dispatching of a railroad operation that occurs on trackage in the United States by a dispatcher located outside of the United States). Through January 10, 2003, the IFR generally bars extraterritorial dispatching with the following three exceptions: extraterritorial dispatching is permitted in the case of emergencies, but only for the duration of the emergency; extraterritorial dispatching that was normally occurring in December of 1999 is allowed to continue ("grandfathering exception"); and very limited additional extraterritorial dispatching from Canada or Mexico of railroad track in the United States immediately adjacent to the borders is authorized ("fringe border exception"). After considering the comments on the IFR, FRA has determined that while special treatment is appropriate for extraterritorial dispatching that was conducted pursuant to the terms of the IFR, such treatment is better handled through a special waiver process discussed below.

Effective January 11, 2003, the Final Rule adds a new regulation that generally requires, in the absence of a waiver, that all dispatching of railroad operations that occur in the United States be performed in the United States, with two minor exceptions.

First, a railroad is allowed to conduct extraterritorial dispatching from Mexico or Canada in emergency situations, but only for the duration of the emergency. A railroad relying on the exception must provide prompt written notification of its action to the FRA Regional Administrator of each FRA region in which the railroad operation occurs; such notification is not required before addressing the emergency situation.

Second, a railroad that was normally conducting extraterritorial dispatching from Canada or Mexico in accordance with the terms of the IFR may continue to so dispatch these operations for a transitional 90-day period to permit the railroad to file a waiver petition. This regulation lists of the four lines of track that meet the terms of the "grandfathering exception" of the IFR; FRA is not aware of any additional operations that have been commenced under the "fringe border exception" of the IFR. If a waiver request is filed within the transitional period, the railroad may continue to conduct the extraterritorial dispatching until FRA acts on the waiver petition.

As mentioned above, existing extraterritorial dispatching, as well as proposed new extraterritorial dispatching from Canada or Mexico of railroad track in the United States in the area immediately adjacent to the borders, will be considered under a special fringe border waiver process. A fringe border waiver request by a railroad will generally be granted if the railroad has taken adequate steps to ensure the security of its dispatch center, the railroad has in place specified safety programs for its extraterritorial dispatchers, a government safety agency in the country where the dispatching will occur has safety jurisdiction over the railroad and the dispatchers and is satisfied with the railroad's safety programs, and the railroad agrees to abide by the operating restrictions specified in the rule. FRA anticipates that both Canadian and Mexican railroads can easily meet these requirements for fringe border dispatching of operations, and that FRA will be able to work out satisfactory arrangements with the railroads and the regulatory agencies in Canada and Mexico concerning the monitoring of the agreed upon safety programs.

Railroads that wish to commence additional extraterritorial dispatching may apply for a waiver from the domestic locational requirement. Such a waiver may be granted if an applicant can demonstrate to the satisfaction of FRA that the waiver can be made without compromising or diminishing rail safety.

FRA will continue to explore areas of bilateral cooperation with the governments of Canada and Mexico on extraterritorial dispatching and other cross-border safety issues. FRA will also continue working with the railroads in those countries on cross-border safety issues.

DATES: This regulation is effective January 11, 2003, except for §§ 241.7(a), (b), and (c); 241.9(c); 241.11(c); 241.13(c) and 241.15, which contain information collection requirements that have not been approved by OMB. FRA will publish a document in the **Federal Register** announcing the effective date.

ADDRESSES: Any petition for reconsideration should reference the FRA docket and notice numbers (Docket No. FRA–2001–8728, Notice No. 3). You may submit your petition and related material by only one of the following methods:

By mail to the Docket Management System, United States Department of Transportation, room PL–401, 400 7th Street, SW., Washington, DC 20590–0001; or

Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*. For instructions on how to submit comments electronically, visit the Docket Management System Web site and click on the "Help" menu.

The Docket Management Facility maintains the public docket for this rulemaking. The docket is available for inspection or copying at room PL–401 on the Plaza Level of the Nassif Building at the same address during regular business hours. You may also obtain access to this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For technical issues related to alcohol and controlled substance matters, Lamar Allen, Alcohol and Drug Program Manager, FRA Office of Safety, RRS–11, 1120 Vermont Avenue, NW., Stop 25, Washington, DC 20590 (telephone 202–493–6313); or for other technical issues,Dennis Yachechak, Railroad Safety Specialist, Office of Safety, RRS–11, FRA 1120 Vermont Avenue, NW., Stop 25, Washington, DC 20590 (telephone 202–493–6260). For legal issues related to alcohol and controlled substance matters, Patricia Sun, Trial Attorney, Office of the Chief Counsel, RCC–11, FRA 1120 Vermont Avenue, NW., Stop 10, Washington, DC 20590 (telephone 202–493–6038); or for other legal issues, John Winkle, Trial Attorney, Office of the Chief Counsel, RCC–12, FRA 1120 Vermont Avenue, NW., Stop 10, Washington, DC 20590 (telephone 202–493–6067).

SUPPLEMENTARY INFORMATION:

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I. Notice Reopening Comment Period on Alcohol and Drug Testing NPRM

Elsewhere in today's **Federal Register**, FRA is publishing a notice soliciting additional comments on its NPRM to amend its alcohol and drug testing rule (49 CFR part 219). 66 FR 64000 (Dec. 11, 2001). (Hereinafter, references to a numbered part are to a part in title 49 of the CFR.) Under the proposed amendments to part 219, employees of a foreign railroad whose primary reporting point is outside the United States who perform train or dispatching service in the United States covered by hours of service laws ("covered service") would become subject to all of the requirements of part 219.

II. Proceedings to Date

On December 11, 2001, (66 FR 63942), FRA published an IFR that prohibited any extraterritorial dispatching for a period of 365 days, but included exceptions for emergency situations, any United States track segment that was regularly extraterritorially dispatched in December of 1999, and fringe border operations, as those operations were defined in the IFR. The IFR went into effect on January 10, 2002, and remains in effect through January 10, 2003.

In the IFR, FRA solicited comments on the benefits and costs of FRA's proposal as well as comments on whether FRA should adopt an alternative regulatory scheme under which extraterritorial dispatching of United States rail operations would be permitted and, if so, under what conditions. The IFR generated ten written comments, which may be found in the docket and which are discussed below.[1]

One of the commenters, CP, requested that FRA delay indefinitely the effective date of the IFR. CP requested the delay because it felt that it was not possible for FRA to resolve all of the issues surrounding the IFR and the related NPRM revising part 219 in such a short period of time. CP felt that it would be better to delay the effective date until written comments could be submitted and FRA's Railroad Safety Advisory Committee consultations could take place. In return for the delay, CP pledged to refrain from expanding any extraterritorial dispatching of United States rail operations.

FRA did not grant the request, however, because CP's operations were not the sole impetus for the IFR. Instead, as explained below, FRA concerns were and still are the recent increase in mergers and acquisitions by and between the larger railroads that has raised the potential for extensive extraterritorial dispatching, the fact that present technology enables any railroad operating in the United States to move its dispatching of United States train operations to any location in the world, and the safety and security problems associated with extraterritorial dispatching of domestic rail operations. In order to preserve the status quo that FRA believed would be jeopardized by delaying the effective date of the IFR, FRA determined that the safest course of action would be to proceed with the IFR and then make a final determination based on the comments received after the IFR had become effective.

In addition to requesting written comments, FRA held a public hearing on the IFR in Washington, DC, on February 12, 2002, at which four parties submitted oral comments. These parties consisted of CP, Canadian National Railway Company (CN), the Brotherhood of Locomotive Engineers (BLE), and the American Train Dispatchers Department of the BLE (ATDD). A transcript of this hearing is available in the public docket of this rulemaking. After reviewing both the written and oral comments, FRA has decided that the safety and security issues presented by extraterritorial dispatching mandate that FRA proceed with this Final Rule.

[1] Canadian Pacific Railway Company (CP) submitted two items to the docket. Shortly after publication of the IFR, CP submitted a request to delay the effective date of the rule. CP then followed up the letter by submitting comments addressing the issues in the IFR. Thus, there were nine commenters, but FRA considered ten submissions in determining a course of action.

III. Concerns Regarding Extraterritorial Dispatching that Led FRA To Adopt the Interim Final Rule

A. The Importance of Safe Dispatching and the Possibility that Railroads May Conduct Widespread Extraterritorial Dispatching

Proper dispatching is essential for safe railroad operations of both freight and passenger trains. Freight trains can be more than a mile in length, typically carry hazardous materials, and require a mile or more to stop. Freight trains sometimes carry arms, ammunition, and implements of war as well as spent nuclear fuel. Shipments of spent nuclear fuel will dramatically increase once the storage site in Nevada's Yucca Mountain opens in 2010. As was explained in detail in the preamble to the IFR, dispatchers are the railroad employees primarily responsible for the safe movement of trains. *See* 66 FR 63492. Dispatchers actually steer the train by remotely aligning switches. They determine whether the train should stop or move, and if so, at what speed, by operating signals and issuing train orders and other forms of movement authority or speed restriction. In addition, dispatchers protect track gangs and other roadway workers from passing trains by issuing authorities for working limits. Train crews on board locomotives carry out the dispatchers' instructions and are responsible for actually moving the train, but dispatchers make it possible to do so safely.

Currently, dispatchers located outside of the United States control only very limited train movements in the United States. Their operations are listed in appendix A to the rule and are as follows: 1.8 miles from Windsor, Ontario, to Detroit, Michigan (dispatched by CP); 3.1 miles from Sarnia, Ontario, to Port Huron, Michigan (dispatched by CN); 43.8 miles of the Sprague Subdivision between Baudette, Minnesota, and International Boundary, Minnesota (dispatched by CN); and 99 miles between Vanceboro, Maine, and Brownville Junction, Maine (dispatched by the Eastern Maine Railway Company).[2]

[2] The listed distances are the distances dispatched from Canada and not necessarily the distance that a Canadian crew operates a train into

Continued

It is commonplace in today's railroad operations for dispatchers to be located at a significant distance from the trackage and operations they control. For example, CSX Transportation, Inc. (CSX) dispatchers in Jacksonville, Florida, control the operations of CSX, Amtrak, and commuter rail lines throughout the Southeast and Mid-Atlantic. In addition, nearly all of the dispatching operations for the Union Pacific Railroad Company (UP), which is the Nation's largest railroad, are conducted from one facility in Omaha, Nebraska. FRA does not believe there are any inherent safety risks in this type of centralized operation, but because current technology allows for such operations, FRA recognizes that this technology allows railroads operating in the United States that now dispatch their trains in the United States to instead dispatch these trains from anywhere in the world.

In addition, FRA is also concerned about the increase in business combinations in the rail industry. Prior to the imposition of a moratorium on railroad mergers by the Surface Transportation Board (STB), there were several high-profile mergers involving both domestic and Canadian railroads. The mergers involving the Canadian railroads resulted in a dramatic increase in the amount of domestic track owned by Canadian railroads. For example, CN acquired the Grand Trunk Western Railroad, Inc. (GTW) (646 miles of track operated by GTW (1998 figures)), the Illinois Central Railroad Company (2,591 miles of track), and the 2,500 route miles of United States Class II and III railroads formerly owned by the Wisconsin Central Transportation Company. In addition, CP acquired the Soo Line Railroad Company (3225 miles of track operated). Now that the STB moratorium has been lifted, it is legally possible that more railroads will combine, resulting in larger multinational railroads and increasing the appeal of cross-border operations.

B. Regulatory Oversight and the Potential for a Regulatory Gap

Any dispatcher, wherever located, who controls rail operations while under the influence of alcohol or drugs, exhausted because of working excessive hours, or not properly trained and tested on railroad operating rules could issue incorrect directions or could fail to issue directions, thereby jeopardizing the safety of railroad employees or causing a train collision or derailment with resulting injuries or death to train crews, passengers, or both, and possible harm to surrounding communities and the environment; the harm could be widespread if the trains are carrying hazardous materials such as spent nuclear fuels. Domestically, there have been accidents resulting from, for example, a dispatcher failing to relay to a train crew that a grade crossing was out of service (*e.g.*, on January 9, 2001, a dispatcher at a CN/Illinois Central Railroad communications facility mistakenly cleared a grade crossing for normal operations, resulting in a collision between a train and a motor vehicle at the crossing); a dispatcher routing a train into the path of another train (*e.g.*, on June 22, 1997, a dispatcher failed to communicate correct track warrant information, causing two freight trains to collide head-on in Devine, Texas, killing four persons); and a dispatcher allowing a train to enter working limits when roadway workers and equipment were present (*e.g.*, on January 29, 1988, an Amtrak passenger train struck maintenance-of-way equipment, resulting in numerous injuries and substantial property damage; the National Transportation Safety Board determined that the accident was caused by a dispatcher who was impaired by drugs).

Because problems such as fatigue, drug and alcohol abuse, and lack of effective job training seriously compromise the safety-critical performance of employees who dispatch trains, the United States has established safety requirements that, together with FRA safety oversight, effectively deal with these problems for railroad dispatchers located in the United States. 49 U.S.C. ch. 51, 201–213; 49 CFR 1.49. Examples of safety rules and laws governing domestic dispatchers include operating rules and efficiency testing (part 217), drug and alcohol testing (part 219), and hours of service restrictions (49 U.S.C. 21105, and part 228). To promote compliance, FRA may conduct inspections and investigations and impose sanctions for violations of its safety standards against both railroads and individuals, including dispatchers, if the individual or railroad is located in the United States. *See, e.g.*, 49 U.S.C. 20107; 49 U.S.C. ch. 213; and part 209, appendix A (a description of FRA's safety enforcement program and policy). However, paragraph (c) of § 219.3 currently exempts employees of a foreign railroad, including dispatchers, whose primary reporting point is located outside of the United States and who perform service in the United States covered by the hours of service laws from subparts E (identification of troubled employees), F (pre-employment testing), and G (random testing). As previously noted, FRA has issued an NPRM that would amend part 219 to require drug and alcohol testing of such an employee. The comment period on the part 219 NPRM has been extended by a notice published elsewhere in the **Federal Register** today.

Besides enforcing the Federal railroad safety laws, FRA may also take other safety-related actions. For example, FRA may conduct investigations of railroad accidents in the United States, including those involving dispatching, and may issue reports on the agency findings, including its determination of probable cause. *See, e.g.*, 49 U.S.C. 20107, 20902; 49 CFR 225.31. In addition, FRA may conduct research and development as necessary for every area of railroad safety, including dispatching. 49 U.S.C. 20108. Moreover, FRA may issue rules and orders, as necessary, for every area of railroad safety, including dispatching. *See* 49 U.S.C. 20103. Such orders may include emergency orders to eliminate or reduce an unsafe condition or practice, identified through testing, inspecting, investigation, or research, that causes an emergency situation involving a hazard of death or injury to persons. *See* 49 U.S.C. 20104. Finally, FRA has recently taken a pro-active approach in its ability to influence non-regulated aspects of dispatching operations through its Safety Assurance and Compliance Program (SACP),[3] through its safety advisories published in the **Federal Register**, and through its visits to dispatching centers to ensure that dispatching is being safely conducted whether or not specific federal standards are being violated (see discussion under section IV B of the supplementary information section of the preamble, below).

With regard to dispatchers located in foreign countries, FRA may be unable to rely on foreign laws and rules governing dispatchers, in themselves, to ensure safety in accordance with FRA requirements. There can be a number of complexities in the ways foreign laws and regulations apply to dispatching. First, although dispatching can be performed from any country in the world, not every country in the world has an entity that regulates rail

the United States. A Canadian crew could operate the train further into the United States than a listed distance but a U.S.-based dispatcher would control the movement beyond the listed distance.

[3] FRA's SACP is an approach to safety that emphasizes the active partnership of FRA, rail labor representatives, and railroad management in identifying current safety problems and jointly developing effective solution to those problems. For more information *see* 66 FR 63946.

transportation safety. Second, even if the host country has established a transportation regulatory entity, that entity may well lack full safety jurisdiction over the railroad operations in the United States that are being dispatched from the host country. In either situation, the rail operations in the United States may not fall completely under the jurisdiction of any rail safety regulatory body, resulting in a regulatory gap that could jeopardize the safety and security of domestic operations.

This potential regulatory gap could significantly interfere with FRA's ability to ensure that extraterritorial dispatching operations are conducted with the same level of regulatory oversight that occurs in the United States and which FRA believes is vital to the safety of those operations. As noted in the preamble to the IFR, FRA is particularly concerned that current regulations and statutes applicable to dispatchers, which govern such areas as hours of service limitations, operational testing, and drug and alcohol programs, most notably random drug testing, are not uniform throughout foreign countries, and may fall below the safety standards established by the United States statutes and regulations. *See* 66 FR 63948. Therefore, even if a foreign country's regulations and statutes applied to and completely covered cross-border dispatching of United States rail operations, the safety of the United States rail operations may not be protected to the same degree as when dispatchers are subject to United States' statutory and regulatory requirements or their equivalents.

C. Security Concerns

In addition to the above-described potential negative implications on rail safety of extraterritorial dispatching, FRA is also concerned about the security of domestic rail operations and how that security would be impacted if FRA permitted increased extraterritorial dispatching. As the terrorist attacks of September 11, 2001, vividly demonstrated, this nation and its citizens are targets of international terrorists, and railroad dispatch centers are logical terrorist targets. While those attacks have resulted in increased railroad security domestically, dispatching centers located in foreign countries would be outside the jurisdiction of domestic security and law enforcement agencies. Thus, if FRA permits extraterritorial dispatching, the United States would increase its exposure to security threats that exist in foreign countries and be forced to rely upon the security apparatus of foreign countries. As noted above, current technology allows dispatching of domestic rail operations from anywhere in the world, including countries that may not offer the same levels of security and security measures that are offered by domestic agencies.

In addition, given the threat that terrorists pose to railroad systems, including their dispatch centers, railroad security measures (*e.g.*, guards that control access to railroad facilities, proximity cards that allow access to dispatching locations, use of railroad police to detect unauthorized persons on railroad property, and background checks on applicants for employment as dispatchers and train crew members) are increasingly important to protect railroad property, railroad cargo, railroad employees, and railroad passengers from violent actions. FRA is working with domestic railroads as they review the adequacy of their security plans and expects that the railroads will voluntarily take whatever steps are needed to safeguard their systems from terrorists. In the event that FRA is not satisfied with the security measures undertaken by a domestic railroad, however, FRA has the authority to require, through regulations and orders, additional security measures that FRA determines are necessary to protect the security of domestic railroad operations against potential terrorist threats.[4] FRA may have limited access to and ability to influence security arrangements at a foreign dispatch center if the security procedures at that center were not sufficient to protect domestic rail operations. Furthermore, law enforcement and security agencies in the United States are not authorized to protect foreign dispatch facilities.

FRA does not know, at this time, whether all foreign railroads employ security measures comparable to those of United States railroads, or whether foreign governments have enforceable security requirements that would effectively protect foreign dispatch facilities. In addition, domestic railroads that locate dispatching facilities in foreign countries may not necessarily employ the same security measures that they use in the United States. As a result, foreign-based facilities, whether owned by a foreign or a domestic railroad, could be more attractive targets than facilities located in the United States and be more susceptible to terrorist infiltration or attack.

There is also a national defense aspect to the security of railroad operations. There are both railroad safety and national defense risks posed by extraterritorial dispatch centers having access to information regarding the shipment of military goods and weapons and hazardous materials (including nuclear materials and nuclear waste), and having the capability to control the movement of these items. The Military Traffic Management Command of the Department of Defense (DOD) and FRA have worked together to identify and designate a Strategic Rail Corridor Network (STRACNET). STRACNET consists of more than 38,000 miles of interconnected network of rail corridors (not actual rail lines) in the United States that the agencies have deemed vital to national defense. In the event of a large-scale military mobilization, it is very important that this network be fully responsive to national defense needs and priorities.

D. Other Safety-Related Concerns

In the preamble to the IFR, FRA also detailed other potential concerns with regard to extraterritorial dispatching. *See* 66 FR 63950–63951. First, it is essential for safe railroad operations that employees involved with directing and effectuating train movements be able to communicate clearly with each other. The railroad personnel most directly involved with train movements are the dispatchers who transmit written and oral instructions to train crews and the train crews who are responsible for carrying out the dispatchers' instructions and for operating trains in accordance with railroad traffic control devices. In addition, dispatchers must also be able to communicate with roadway workers who may control entry onto the stretches of track on which they are working. If it is allowed, extraterritorial dispatching raises the possibility that some of these employees may not be able to communicate with each other because they speak different languages.

FRA's primary safety concern is that one of the parties (either the train crew or the dispatcher) involved in an extraterritorially dispatched operation may not be proficient in the language that is being used to conduct train operations. Thus, there is the potential for miscommunication where one of the parties, unbeknownst to the other, fails to convey necessary safety-critical

[4] Section 20103(a) of title 49, United States Code, gives the Secretary of Transportation plenary authority to address any hazards to life and property that may arise in the context of railroad operations. To date, FRA's exercise of this authority has been fairly limited. For example, FRA has issued rules on Passenger Train Emergency Preparedness (part 239) that require passenger railroads to conduct detailed planning for emergency situations, which are defined to include "security situations" such as bomb threats. (*See* § 239.7 and 49 U.S.C. 20133(a)(4).)

information, inadvertently conveys false or misleading information, or fails to properly understand safety-critical information that has been conveyed. The results of such a miscommunication could be disastrous. Such a lack of understanding would be even more problematic if railroad operations crossed more than one border (*e.g.*, Canada, the United States, and Mexico).

Another problem related to communication that could arise if extraterritorial dispatching is allowed concerns possible differences in railroad terminology between one country and another. The railroad industry in the United States is both a highly technical industry that uses modern terms and an industry that has existed for 170 years and uses terms that have existed since the beginning of the last century. It would be unreasonable to assume that, absent appropriate training, railroad employees in other countries would be familiar with terms used in the United States. Given the immediacy with which problems sometimes develop while trains are on the tracks, it would be dangerous to discover such a miscommunication at a time when lives and property are in the balance. This problem would be compounded if the dispatcher and the train crew were having problems communicating because of language differences.

Second, given the centralized nature of most major railroads' dispatching facilities, FRA is concerned that a disruption of communications at a dispatching facility could cause system-wide problems for a railroad as it scrambles to transfer operations from the centralized location to local dispatch centers. The preamble to the IFR notes the two recent occasions where the CSX dispatch center in Jacksonville, Florida, went off line due to extreme weather conditions. *See* 66 FR 63951. As those examples demonstrated, domestic dispatch centers are not immune to such problems, but FRA is concerned that the effects of such a disruption could be exacerbated if the dispatching facility were located in a foreign country far away from the railroad's infrastructure.

FRA is also concerned about the potential effects that a labor disruption involving an extraterritorial dispatch facility could have on domestic rail operations. Dispatchers are typically unionized employees subject to the Railway Labor Act (45 U.S.C. 151–188) ("RLA"), which prohibits strikes over contract interpretations. Congress has the power to legislate an end to a strike by United States railroad employees, and has done so in 13 rail labor contract disputes. Dispatchers located in a foreign country, however, are not subject to the RLA, and Congress may not legislate an end to a labor dispute in that country despite the fact that such a dispute could severely affect United States rail operations, and possibly jeopardize transportation safety.

The implications of a strike that cannot be readily controlled by government authorities have the potential of being quite severe, especially to the extent that it affects the shifting of rail freight and passenger traffic to crowded highways, the delivery of perishable goods to market, the delivery of coal for energy to parts of the country in need during extreme weather conditions, and transport of defense materials needed to ensure national security. The railroad industry carries nearly 40 percent of United States intercity freight traffic in terms of ton-miles (over 1 trillion ton-miles a year), including huge quantities of hazardous materials of all types, including spent nuclear waste. By comparison, trucks carry about 29 percent of the ton-miles, and pipelines and inland water transport account for the remainder. In addition, railroads provide commuter rail service in and around many of the Nation's large cities; provide the infrastructure Amtrak uses for its intercity passenger operations outside the Northeast Corridor; and provide freight service to military facilities across the country. Other modes would be able to replace only a small portion of the transportation services provided by the railroads in the short term in the event of a disruption of service affecting the national major freight railroads, and diverting hazardous materials from railroads to other modes of transportation, such as trucks and barges, would increase the exposure of both the public and the environment to these hazardous materials and could increase the possibility of accidents.[5] Furthermore, loaded railroad tank cars that cannot be delivered to customers and that are stranded on rail lines pose ready targets for terrorists. A disruption affecting any one of the major railroads could, of course, have a critical impact over time through cascading impacts across the national rail system because of the extensive interchange of rail traffic among the railroads and the impact on other railroads of service disruptions on lines where they enjoy trackage or haulage rights.

Finally, it is also essential for safe railroad operations in the United States that certain railroad communications concerning such operations that relate to measurements of such critical factors as location, distance, and speed, use a common standard of measurement. The two currently used standards of measurement are English units, used predominately in the United States, and the International System of Units ("SI"), which is more commonly known as the "metric system" and is used by most of the rest of the world. Because a kilometer (roughly 3,280.8 feet) is approximately six-tenths the length of a mile (5,280 feet), the potential for confusion is obvious, especially where a measurement of such matters as speed, location, or distance is concerned. If a dispatcher instructs a train and engine crew to travel a specified number of kilometers at a certain speed measured in kilometers per hour and the crew mistakenly thinks that the dispatcher is referring to either or both measurements in miles, the consequences could be at best problematic and, at worst, devastating.[6]

Commenters' responses to FRA's concerns leading to the issuance of the IFR are discussed below.

IV. Discussions of Specific Comments and Conclusions

A. Overview of the Comments and FRA's Conclusions

In the IFR, FRA offered two options with regard to increased extraterritorial dispatching operations. The first option, which was reflected in the IFR, is to bar extraterritorial dispatching with the three minor exceptions explained above (emergencies, grandfather operations in place since December 1999, and fringe border operations that met the terms of the IFR). The second option is to permit extraterritorial dispatching so long as (1) the foreign-based dispatchers are subject to the same safety standards applicable to dispatchers located in the United States (and enforced by FRA or by the host country with supplementary FRA oversight), and (2) the additional safety concerns previously identified, such as security, language differences, possible

[5] Railroad tank cars can typically carry up to four times the volume typically carried by truck cargo tanks, so diverting hazardous material movements to the highways would significantly increase the highway movements of these dangerous commodities. In addition, any transloading of hazardous materials from rail tank cars to truck cargo tanks cars poses additional risks.

[6] FRA recognizes that the Hazardous Materials Regulations require that most measurements regarding the transportation of hazardous materials be given in metric units. Under 49 CFR 171.10, in order to ensure compatibility with international transportation standards, most units of measurement in the hazardous materials regulations are expressed using the SI. This requirement should have no impact on extraterritorial dispatching, however, as SI is currently the standard for domestic railroad operations involving hazardous materials.

labor strikes and other disruptions, are adequately addressed. FRA noted that the second option could be implemented by a more detailed version of the waiver provision (section 241.7) of the IFR. In the preamble to the IFR, FRA solicited comments both on the benefits and costs of the approach advocated by the IFR as well as on the feasibility of adopting the alternate option and allow extraterritorial dispatching provided FRA's safety and security concerns are effectively addressed. FRA indicated that after considering the comments FRA might make the IFR permanent with any substantive changes FRA determines are appropriate.

As noted above, nine parties submitted written comments, and four of those parties offered oral comments, as well. The parties submitting written comments were CN and CP, which, when appropriate, will be referred to jointly as "the Canadian railroads," the Brotherhood of Maintenance of Employes (BMWE), the Northeast Illinois Railroad Company (METRA), the Brotherhood of Railroad Signalmen (BRS), the BLE, the Association of American Railroads (AAR), the ATDD, and the Mexican government.

The Canadian railroads, either individually or collectively, commented on most of the issues raised in the IFR, so FRA's responses will focus primarily on those comments. In general, both railroads objected in principle to the regulation and argued that a better resolution to this issue would be for FRA and Transport Canada, along with the individual railroads, to work out problems on a case-by-case basis, instead of FRA implementing a "one size fits all" regulation for a safety problem that they believe does not currently exist. Both railroads wanted to retain sufficient flexibility to conduct their existing operations and, if FRA promulgates part 241, both were in favor of retaining both the grandfathering provision and the exception for "fringe border operations," although in a slightly modified form. In addition, both expressed concern that the definitions of "dispatch" and "dispatcher" were too broad and could be read to include employees who should not be included.

The comments from the BLE, the BMWE, METRA, and the BRS were all fairly general in nature and supported FRA's implementation of a bar on additional extraterritorial dispatching. The comments from the ATDD were also generally supportive of the IFR but, in addition, offered suggestions on specific provisions of the rule that it believes should be slightly modified. The brief comments from the AAR focused solely on the definitions of "dispatch" and "dispatcher" contained in the IFR. The Canadian government did not submit comments on the IFR, but did comment on the NPRM on part 219. Some of the Canadian government's comments are relevant to FRA's position on the necessity of random testing of dispatchers and will be addressed below. Finally, the comments from the Mexican government supported the banning of extraterritorial dispatching and noted that Mexico has banned extraterritorial dispatching.

Before reviewing the specific comments, FRA notes that all of the negative comments on the IFR related to the safety and security of dispatching United States rail operations from Canada, but did not address extraterritorial dispatching from any other country. Therefore, the safety and security concerns detailed in the IFR and reiterated above remain unchallenged with respect to any country other than Canada. Accordingly, unless otherwise noted, FRA's analysis of the comments is limited to whether the actions taken by the Canadian railroads and Canadian authorities adequately address FRA's concerns.

Based on FRA's analysis of the comments, FRA has decided that the general bar on extraterritorial dispatching, except relief in cases of emergency, should continue. However, FRA has determined that it is appropriate to provide special relief for the four existing extraterritorial dispatching operations (listed in appendix A to the Final Rule), and for limited new extraterritorial dispatching of fringe border areas in the United States designed to facilitate the smooth handoff of dispatching between dispatchers in Canadian and Mexican dispatching centers and those in the United States. Such relief is best granted in the context of waivers rather than blanket approvals of the operations, and a special fringe border waiver process has been established to facilitate that relief. (The fringe border waiver process is briefly discussed below and in more detail in the section-by-section analysis.) The Final Rule provides that existing extraterritorial dispatching can continue for a transitional period 90-days to permit the railroads to file a waiver petition under the new special fringe border waiver provision. If a waiver request is filed within the transitional period, the railroad may continue to conduct the extraterritorial dispatching until FRA acts on the waiver petition.

The fringe border waiver process applies to existing extraterritorial dispatching operations and to new extraterritorial dispatching of operations that do not extend more than five route miles into the United States from the Canadian or Mexican border. A fringe border waiver request by a railroad will generally be granted if (1) the railroad has taken adequate steps to ensure the security of its dispatch center, (2) the railroad has in place specified safety programs for its extraterritorial dispatchers, (3) a government safety agency in the country where the dispatching will occur has safety jurisdiction over the railroad and the dispatchers and is satisfied with the railroad's safety programs, and (4) the railroad agrees to abide by the operating restrictions specified in the rule. Given the limited length of these operations, FRA is willing to permit the operations to be conducted with fewer safety requirements than would be required for longer operations. FRA anticipates that both Canadian and Mexican railroads can easily meet these requirements for cross-border dispatching of operations, and that FRA will be able to work out satisfactory arrangements with the railroads and the regulatory agencies in Canada and Mexico concerning the monitoring of the agreed upon safety programs.

Railroads that wish to commence additional extraterritorial dispatching may apply for a waiver under subpart C of 49 CFR part 211 from the domestic locational requirement set forth in part 241. Such a waiver may be granted if an applicant can demonstrate to the satisfaction of FRA that relief is consistent with safety and in the public interest. As discussed in the section-by-section analysis, an applicant will be expected to discuss how it has adequately addressed the various safety concerns that FRA laid above in section III of the supplementary information section of the preamble.

FRA believes that the approach that it is adopting is necessary to ensure the safety and security of United States railroad operations.

B. Regulatory Oversight

CN was the only commenter that directly addressed regulatory oversight, although CP's comments included many references to the adequacy of the Canadian regulatory system. The main focus of the Canadian railroads' comments was that while the regulatory construct in Canada may be different from that in the United States, there are sufficient protections in place in Canada to ensure that any United States rail

operations dispatched from Canada would be done so safely.

In particular, CN stated that Transport Canada and Human Resources Development Canada combine to regulate any dispatchers located in Canada regardless of the territory they dispatch, even territory located in the United States. In addition, during the public hearing, CN's representative stated that Transport Canada's regulations would cover contractors located in Canada who were conducting dispatching operations for a Canadian railroad. The commenters noted that Transport Canada's Safety Management Systems regulations require the railroads to develop a comprehensive plan covering all aspects of rail safety, and that the Canadian Labour Code, together with the collective bargaining agreements of the railroads, effectively control the number of hours that dispatchers may work. Finally, CN claims it would allow FRA access to CN dispatching facilities located in Canada in order to conduct site inspections and safety assessments.

There are contrasts between the regulatory systems of the United States and Canada. Domestically, Congress and FRA have concentrated on promulgating nationwide safety standards that apply uniformly to all railroads. Congress has established the maximum number of hours that a dispatcher may work, has directed FRA to establish comprehensive drug and alcohol testing for safety-sensitive railroad employees such as dispatchers, including random drug testing, and has given FRA authority to regulate all areas of railroad safety. FRA has established minimum safety standards, and the railroads are required to conduct their own inspections to ensure that these safety standards are being met. FRA leads a cadre of approximately 550 Federal and State safety inspectors and specialists whose role is to monitor the railroad industry and its own inspection forces for compliance with rail safety laws and to work with the railroad industry on resolving safety problems that are not subject to those laws.

FRA's safety oversight has proven effective in identifying and resolving safety problems that are not directly addressed through FRA's regulations. For example, in 1997 FRA conducted extensive audits of the UP's Harriman Dispatch Center which controls operations on approximately 95 percent of UP's territory. These audits revealed ineffective and unsafe practices by supervisors and dispatchers. FRA made specific recommendations that UP accepted, such as creating additional dispatch positions, realigning dispatchers' territories to better balance the workload, hiring new dispatchers, tripling the number of dispatching supervisors, making improvements to the dispatching software, and forming a working group consisting of representatives from FRA, rail labor, and UP management to continually monitor and address dispatching issues that may arise. This is one just one example of the United States' more proactive approach to regulatory oversight, which is intended to ensure that railroad safety does not fall below an acceptable level.

The Canadian regulatory system, on the other hand, tends to rely more heavily on acceptance of railway-submitted rules. Under this approach, railways conduct consultations with government (and often labor organizations) and submit standards and procedures for approval. In some cases the rules apply to individual railways, and in other cases the rules apply in common to the major railways.

Under Transport Canada's Railway Safety Management Systems regulation, railroads are required to identify the following: (1) Their company railroad safety rules and orders, and the procedures they will use in demonstrating compliance with them; (2) systems for accident and incident reporting, investigation, analysis, and corrective action; (3) systems for ensuring that employees have appropriate skills and training and adequate supervision to ensure that they comply with all safety requirements; and (4) procedures for periodic internal safety audits. Railroads are also required to do the following: (1) Maintain accident and incident investigation reports and corrective actions they take for the purpose of assessing its safety records; (2) report yearly to the Minister on their safety management system; and (3) keep readily available all documents mentioned in their safety management system to enable a railway safety inspector to monitor compliance with Transport Canada's safety management system regulation. Transport Canada then monitors the railroads' compliance with their safety programs. The Safety Management System approach is a new element in the Canadian regulatory structure, and initial audits are only now underway.

As will be detailed below in the preamble sections on drug and alcohol testing and hours of service, the safety programs that the Canadian railroads have developed and the Canadian standards and the government oversight in these areas are significantly different from FRA standards. While FRA requires domestic railroads to conduct efficiency testing of their dispatchers to ensure that they understand the necessary operating rules, and issues civil penalties against those railroads for failing to conduct such testing, Transport Canada has no such requirement (apart from the recently adopted Safety Management System process). While Canadian carriers have voluntarily conducted such efficiency testing, they are not assessed monetary fines should they fail to follow their programs. On the other hand, administrative officials from the inspector level to the Minister enjoy broad powers to order changes in operations and address unsafe conditions. Based on available information, it appears that the Canadian Transportation Safety Board has broad accident reporting requirements; however, the means for enforcing those requirements are not immediately evident.

Given the differences in Canadian railway culture, methods of governance, safety standards (including regulations and rules), safety data systems, and mechanisms for enforcement, it is extremely difficult to evaluate the relative equivalence of the two regulatory approaches in terms of overall safety results, let alone at the level of safety of dispatching. Without question, cooperation and understanding between Transport Canada and FRA is maturing at a more rapid pace due to enhanced communication and joint endeavors; and much remains to be learned through appropriate consultation. Cooperation with respect to security presents a new a special challenge, given divisions of responsibility within both governments and evolving policies in both countries. Accordingly, it is appropriate that FRA continue consultations with Transport Canada and develop the necessary factual predicates and institutional arrangements before giving consideration to permitting more extensive dispatching of U.S. operations. Appropriate institutional arrangements might include express mutual undertakings (which do not currently exist) for each government to look out for the safety of operations in territory outside its jurisdiction that are dispatched from anywhere within its jurisdiction.

Mexico also recognized that extraterritorial dispatching poses a safety risk to rail operations and has addressed the issue by requiring, in Article 26 of Title III of the Regulatory Law of Railroad Service (Ley Reglamentaria del Servicio Ferroviario), that railroads depend on dispatching facilities that must be established within Mexico. In addition, Article 96 of Title III of the Railroad Service Regulations (Reglamento del Servicio Ferroviario) reiterates that a railroad's system of train control must guarantee the safe and fluid operation of services and must adhere to what is established by Mexican law. In comments submitted by the Directorate of Technical Operations Regulations of Railroad Transportation, the Mexican government indicated that it believes FRA is acting in the best interests of rail safety by barring extraterritorial dispatching. The comments specifically noted the differences in regulations between countries and the problems that could arise when personnel in foreign countries dispatching Mexican operations are not subject to Mexican law as justifications for a bar on extraterritorial dispatching of Mexican operations.

C. Existing Extraterritorially Dispatched Operations

In the preamble to the IFR, FRA noted that there are several existing extraterritorially dispatched operations, and then gave the specifics of those operations. CP commented on both the safety records of their existing operations as well as the details of those operations offered by FRA in the preamble while CN's comments only offered additional information on the specifics of their cross-border operations. CP's comments noted that they have safely dispatched seven cross-border operations for some time. Along with their comments, the Canadian railroads submitted updated lists of their current cross-border operations and requested clarification on whether those operations would be grandfathered under the applicable provisions of the Final Rule. CN acknowledged the three segments listed in the IFR and added a fourth. CP asserted that it dispatched seven cross-border operations and listed those operations in an appendix to its comments.

After reviewing those submissions and further researching the track segments, FRA has concluded that only the four segments listed in appendix A to the Final Rule are actually dispatched and the other segments are either controlled by another method of operation or no longer in service. Operations on six on the track segments are currently controlled by Rule 105 of the Canadian Rail Operating Rules, which mandates that trains operate at "reduced speed." Reduced speed is defined as a speed no faster than that necessary to stop within one-half the range of vision. No actual permission is required to operate on the track but, any train that does run on those segments must operate in accordance with Rule 105. The final track segment was in operation during December 1999 but has since been abandoned.[7]

In commenting on the IFR, CP also pointed out that neither the Federal Motor Carrier Safety Administration nor the Federal Aviation Administration (FAA) has a locational requirement for dispatchers of trucks and airliners that come into the United States from another country. FRA does not find the absence of such regulations instructive in resolving the question of whether any form of extraterritorial dispatching of railroad operations is consistent with railroad safety and the security of the United States. Nevertheless, it should be recognized that truck dispatchers have virtually no safety role, while railroad train dispatchers are the primary protectors of safe railroad operations. As previously discussed train dispatchers actually steer the train by remotely aligning switches; they determine whether the train should move or stop by operating signals and issuing train orders and other forms of movement authority; and they protect roadway workers from passing trains. Air traffic controllers, as contrasted to truck dispatchers, do perform a safety role although not as comprehensive as train dispatchers. FRA recognizes that the FAA permits limited cross-border dispatching of airlines into the fringe border areas of the United States to facilitate the safe hand-off of air operations to domestic air traffic controllers. The final rule provides for waivers of such fringe border rail operations. Other aircraft operations over/on U.S. soil are handled by U.S. air traffic controllers at U.S.-based control centers. There are of course differences between airline and railroad operations, and each mode of operation presents different safety concerns requiring different regulatory approaches.

As noted above, FRA has decided not to include a grandfathering exception for existing lines in the Final Rule. Given the possibility that railroads could increase extraterritorial dispatching, FRA issued the IFR in order to preserve the status quo until all the issues surrounding extraterritorial dispatching could be fully examined. After reviewing the comments and further examining the issues, FRA has determined that the safety and security risks inherent in extraterritorial dispatching are too serious to allow an operation to continue merely because it was in existence at a certain point in time. FRA acknowledges the comments from CP attesting to the fact that its cross-border operations have been safely conducted for many years, but FRA does not believe that reason alone can justify allowing these operations, especially since the nature of the operations (such as traffic levels in general, and volumes of hazardous materials being handled) can greatly increase in the future, thereby increasing the safety risk to the areas surrounding that track.[8] The North American Free Trade Agreement (NAFTA) has increased trade among the United States, Mexico, and Canada. This in turn has increased the amount of transborder rail traffic in the United States. Incoming train crossing data are collected monthly at border ports by the United States Customs Service. In 1997, there were 7,479 train crossings into the United States from Mexico and 30,337 from Canada. This translates into an average of 104 trains crossing into the United States daily. As transborder traffic continues to increase on existing rail lines, it is likely that train speeds, which currently do not exceed 55 miles per hour at the borders, and train lengths will increase along with the actual number of trains crossing into the United States. This will increase the exposure of trains and other rail vehicles to railroad accidents at or near the borders with Mexico and Canada.[9] As it faces this new operating environment with greater risk, the railroad industry must take precautions

[7] One of the segments listed in CN's submission is still in existence but is now dispatched by CP. That segment is the 1.8 mile stretch of track between Windsor, Ontario, and Detroit, Michigan.

[8] Each of the four existing extraterritorial dispatched lines carries hazardous materials, with the volume on two of the lines being substantial; unsafe dispatching of any of the four operations would jeopardize safety. The loaded hazardous materials carloads carried on the four lines in 2001 were as follows: the CN line from Sarina, Ontario, to Port Huron, Michigan—41,819 carloads; the CN Sprague Subdivision line between Baudette, Minnesota, and International Boundary, Minnesota—25,598 carloads; the CP line from Windsor, Ontario, to Detroit, Michigan—2,831 carloads; and the Eastern Maine Railway Company's line between Vanceboro, Maine, and Brownville Junction, Maine—464 carloads.

[9] Between 1998 and 2001, the value of rail traffic moving between the United States and Canada has grown from $49.65 billion (U.S. dollars) to $60.17 billion, which is a 21.2 percent increase over the period or an annual rate of 4.9 percent. (Since the traffic mix has not changed significantly during this period, "value" can be considered a good proxy for physical units such as tons or carloads.) Traffic attributable to eastern gateways (Customs ports in United States border states of Michigan and eastward) has grown slightly more rapidly: $39.69 billion (U.S. dollars) to $49.07 billion, or 23.6 percent overall, or 5.4 percent per year. It is commonly expected that trade between the United States and Canada will continue to increase in the future. These data are based on USDOT, Bureau of Transportation Statistics, Transborder Surface Freight Data public files.

to avoid an increase in the number of accidents and incidents caused by human error.

FRA has a responsibility to ensure that existing extraterritorial dispatching operations will be conducted in accordance with minimum safety programs for the dispatchers in the areas of efficiency testing, hours of service, and alcohol and drug abuse that are actively monitored by a government regulatory agency, that communication by the foreign-based dispatchers with train crews and maintenance of way workers in this country are understood and that there is no misunderstanding with regard to references to units of measurements such as location, distance, and speed, and that the dispatching operations will be conducted in a dispatch center that has adequate security measures in place. The fringe border waiver provision of the Final Rule is the most effective way for FRA to address these matters. The section-by-section analysis provides a detailed discussion of the fringe border waiver process.

FRA anticipates that the Canadian railroads can easily meet the requirements for approval of fringe border dispatching. FRA is delaying the effective date of the rule with respect to these four existing operations for 90 days to enable the railroads to file a waiver request under the special fringe border waiver process. If a waiver request is filed by April 11, 2003, such operations can continue until the waiver request is acted upon by FRA.

D. Drug and Alcohol Testing

One of FRA's main concerns with regard to extraterritorial dispatching is the potential lack of an effective drug and alcohol testing program in other countries. In the Omnibus Transportation Employee Testing Act of 1991, Pub. L. 102–143 (the Act), Congress recognized the importance of drug and alcohol testing in protecting the safety of domestic transportation systems. As stated in the fifth Congressional finding in that Act, Congress believed that "the most effective deterrent to abuse of alcohol and use of illegal drugs is increased testing, including random testing." Given that the misuse of alcohol and drugs has proven to be a critical factor in transportation accidents, testing is integral to ensuring that domestic transportation systems, including railroads, operate in the safest possible manner. In response to Congress' directives in the Act, FRA expanded the testing requirements in its existing part 219 regulations. *See* 49 U.S.C. 20140.

As was stated in the preamble to the IFR, under FRA's mandatory alcohol and drug testing program, dispatchers working in the United States are now subject to general restrictions on the possession and use of alcohol and drugs, employer policies covering voluntary referral and co-worker reporting of drug and alcohol abuse problems, and random, reasonable suspicion, return-to-duty, follow-up, and post-accident drug and alcohol testing, as well as pre-employment testing for drugs. Post-accident testing is required for a dispatcher who is directly and contemporaneously involved in the circumstances of any train accident meeting FRA thresholds. *See* § 219.203. A dispatcher found to have violated FRA's drug and alcohol rules at §§ 219.101 or 219.102 is required to be removed from covered service and is required to complete a rehabilitation program. *See* § 219.104. A dispatcher who refuses to submit a required sample must be removed from covered service for nine months and must complete a rehabilitation program. *See* §§ 219.104, 219.107, and 219.213. All dispatchers working in the United States who are controlling United States railroad operations are covered by part 219, and FRA believes, with the two exceptions previously noted, that any extraterritorial dispatcher controlling domestic operations must be covered by the same or fully equivalent requirements.[10] To allow any other dispatchers who are not subject to the comprehensive and stringent testing requirements that DOT and FRA believe are necessary for rail safety to control domestic operations would be contrary to FRA's safety efforts.

The Canadian Government, in its comments on part 219 NPRM, and CN and CP in their comments in both the part 219 and part 241 rulemakings argued that the Canadian regulatory system, together with the railroads' voluntary drug and alcohol programs provide a functional equivalent to part 219. They cite to the following as five elements of the Canadian rail safety program: (1) The Canadian railroads' operating Rule G (Canadian Rule G), which prohibits the use of intoxicants or narcotics by employees subject to duty, or their possession or use while on duty; (2) the Canadian railroads' voluntary implementation of comprehensive drug and alcohol programs that provide for pre-employment and pre-placement (or pre-assignment) drug testing to risk-sensitive positions, reasonable cause testing, and return-to-service testing; (3) the Railway Safety Management System Regulations, which require Canadian railroads to implement and maintain safety programs; (4) the Canadian Railway Safety Act, which mandates regular medical examination every three to five years, depending upon the age of the employee, for all persons occupying safety-critical positions (including dispatchers and train crews), and which requires physicians and optometrists to notify the employing railroad's Chief Medical Officer if the employee has a medical condition that could be a threat to safe railroad operations; (5) Transport Canada's role in monitoring compliance with Canadian Rule G and auditing railroad safety programs; and (6) criminal prosecutions—under the Canadian Criminal Code it is an offense to operate railway equipment while impaired by alcohol or a drug, or to have a blood alcohol concentration level greater than .08 percent.[11]

CN indicated that despite the drug and alcohol measures that have been adopted in Canada, it believed that random drug testing is also needed. CN urged FRA to continue to press Transport Canada to adopt a random drug testing requirement. However, both CN and CP expressed concern that, under current Canadian human rights legislation, employees could challenge implementation of part 219's random drug testing requirement to Canadian railroad employees (such as Canadian train crews operating in the United States), and such challenges would lead to significant costs and potential disruption to their rail operations.

FRA commends the Canadian railroads and Canadian Government for their efforts to stem drug and alcohol abuse by Canadian railroad employees. However, FRA believes that the measures that have been implemented to date in Canada are neither

[10] As previously noted, an employee of a foreign railroad whose primary reporting point is located outside of the United States and who performs dispatching service in the United States is exempt from certain part 219 requirements. *See* § 219.3(c). FRA has published an NPRM that would revise part 219 to require drug and alcohol testing of such employees. Elsewhere in today's edition of the **Federal Register**, FRA is publishing a notice extending the comment period on the NPRM.

[11] Under the Canadian criminal code police officers (including railway police officers) are entitled to test for presence of alcohol through approved breathalyser machines on reasonable cause. Penalties for violation of the criminal code include the possibility of fines and imprisonment. CN reported that over the past five years there have been four CN employees charged with this offense, one of which was a member of a train crew; the others were engineering or mechanical employees operating on or off-track equipment. CP reported that, between January 1998 and February 2002, five of its employees were charged with this offense; seven others were investigated but no charges were filed after an arrest, or the individuals were cleared of the charge.

comparable to the requirements of part 219, nor adequate to safeguard United States railroad operations were Canadian dispatching of these operations to become widespread. FRA also notes that since July 1, 1997, Canadian trucking companies with drivers assigned to operate commercial motor vehicles in the United States have had to comply with United States Department of Transportation substance-testing requirements similar to part 219, and that compliance with part 219 (in the case of Canadian train crews that operate in the United States) may not be as troublesome as CN and CP anticipate.

Transport Canada has approved Canadian Rule G, which was developed by the Canadian railroad industry, but Transport Canada has not reviewed and approved individual railroad plans implementing Canadian Rule G.[12] Like other aspects of the Canadian regulatory scheme, Canadian Rule G relies very much on self-regulation and implementation with broad oversight by the Canadian government. Such an approach is in stark contrast to part 219, which mandates very specific requirements that the testing plans of domestic railroads must include.

Canadian Rule G has several significant differences compared to part 219. First, it fails to provide for alcohol and drug testing of railroad employees to detect and deter violations. Prior experience with a Rule G approach in the United States has revealed that such a rule alone, without the random and other tests required by part 219, is not effective in detecting and deterring drug and alcohol abuse among safety sensitive railroad employees. Second, Canadian Rule G does not directly prohibit the off-duty use of drugs and abuse of alcohol by dispatchers, in contrast to FRA's regulations, which prohibit any off-duty use of drugs, and which prohibit use of alcohol within four hours of reporting for covered service or after receiving notice to report for covered service since such usage may ultimately affect an individual's performance on the job. *See* §§ 219.101(a)(3) and 219.102.

Prior to the adoption of part 219 in 1985, railroads in the United States had attempted to deter alcohol and drug use by their employees by their Rule G, which prohibited operating employees from possessing and using alcohol and drugs while on duty, and from consuming alcoholic beverages while subject to being called for duty. The customary sanction for violation of Rule G was dismissal. Unfortunately, accident reports revealed that the United States railroads' Rule G efforts were not effective in curbing alcohol and drug abuse by railroad employees. 47 FR 30726 (1983). Railroads were able to detect only a relatively small number of Rule G violations owing, primarily, to their practice of relying on observations by supervisors and co-workers to enforce the rule. FRA found that there was a "conspiracy of silence" among railroad employees concerning alcohol and drug use. 49 FR 24281 (1984). Despite Rule G, industry participants confirmed that alcohol and drug use occurred on the United States railroads with unacceptable frequency. Available information from all sources "suggest[ed] that the problem includ[ed] 'pockets' of drinking and drug use involving multiple crew members (before and during work), sporadic cases of individuals reporting to work impaired, and repeated drinking and drug use by individual employees who were chemically or psychologically dependent on those substances." *Id.* at 24253–24254. FRA identified multiple accidents, fatalities, injuries and property damage that resulted from the errors of alcohol- and drug-impaired railroad employees. *Id.* at 24254. Some of these accidents involved the release of hazardous material and, in one case, the release required the evacuation of an entire Louisiana community. *Id.* at 24254, 24259. These findings led FRA to promulgate the initial version of part 219 in 1985. The regulations do not restrict a railroad's authority to impose more stringent requirements. 50 FR 31538 (1985).

A review of the Canadian Rule G violations reported by CP indicates that the Canadian Rule G has resulted in the identification of an extremely low number of operating crew violators. CP reported that in the period 1995–2001, when there were between 3,900 to 4,700 operating crew employees per year, there was a total of only 26 Canadian Rule G operating crew violators for the period. It is likely that the true level of drug and alcohol abuse among Canadian operating crew employees was much higher. For example, a 1987 survey commissioned by a Canadian Task Force on the Control of Drug and Alcohol Abuse in the Railway Industry revealed that 20 percent of 1,000 randomly-selected Canadian railway workers admitted that they had come to work feeling the effects of alcohol, and 2.5 percent admitted that they had used illegal drugs during their shift. In addition, CN's drug screening of its employees has shown a significant level of drug abuse among its employees.[13] Furthermore, alcohol and drug testing of safety sensitive railroad employees in the United States found a significantly higher level of substance abuse prior to the introduction of random testing.

FRA's own data, compiled from domestic railroad reports, shows a significantly higher level of substance abuse among safety-sensitive railroad employees in the United States prior to the introduction of random testing. For example, in 1988, the industry positive rates for reasonable cause testing were 4.7 percent for drugs and 4.5 percent for alcohol. After the introduction of random testing in 1989, these rates declined respectively to 2.02 percent and 1.32 percent. While the positive rates for reasonable cause testing have continued to fall, a comparison of the data for post-accident testing reveals an even stronger impact on positive testing rates. In 1988 the positive rate for drugs after qualifying accident events was 5.6 percent. After the commencement of random testing in 1990, this rate fell to 1.1 percent positive. There was a corresponding reduction in post-accident positives from 41 in 1988 to 17 in 1990.

The Canadian Government and CN and CP also rely heavily on the medical assessment that is required for dispatchers under the new Medical Rules for Safety Critical Employees as providing a functional equivalent to random testing. Under these rules, an assessment must be performed every

[12] The Canadian Rule G provides that:

(a) The use of intoxicants or narcotics by employees subject to duty, or their possession or use while on duty, is prohibited.

(b) The use of mood altering agents by employees subject to duty, or their possession or use while on duty, is prohibited except as prescribed by a doctor.

(c) The use of drugs, medication or mood altering agents, including those prescribed by a doctor, which, in any way, will adversely affect their ability to work safely, by employees subject to duty, or on duty is prohibited.

(d) Employees must know and understand the possible effects of drugs, medication or mood altering agents, including those prescribed by a doctor, which, in any way, will adversely affect their ability to work safely.

[13] CN's submission to a Canadian Standing Committee on Transportation noted that CN had utilized pre-employment drug screening of job applicants since 1986, and these tests yielded a positive rate of 12 percent; similar testing of CN employees transferring to safety-sensitive positions ("pre-placement testing"), such as dispatcher positions, also yielded a positive rate of 12 percent. *In the Matter of an Arbitration Between Canadian National Railway Company and National Automobile, Aerospace, Transportation and General Workers Union of Canada (Union) and Canadian Council of Railway Operating Unions (Intervener), Re: the Company's Drug and Alcohol Policy*, decision of Arbitrator Michel G. Picher at 56 (July 18, 2000). CN drug screening results from of all sources (pre-placement, reasonable cause, medical examinations, promotions and transfer, reinstatement, and EAP follow-ups) in 1995, showed a 6.4 percent positive test rate in the Eastern Canada, and a 10 percent positive rate in Western Canada. *Id.* At 59–60.

three to five years, depending on the age of the employee, and include a medical examination. CP notes that the required intervals between assessments result in approximately 25 percent of Canadian employees being examined annually, and it argues that this is approximately the same number of United States rail employees that receive random drug testing per year under part 219.[14]

Throughout the preamble to the IFR, FRA emphasized the importance of random drug and alcohol testing in detecting and deterring substance abuse by railroad employees. The deterrent effect of random testing, which was implemented by FRA in 1988–1989, most certainly influenced the dramatic reduction in post-accident positives between the 41 that were recorded in 1988 to the 17 that were recorded in 1990. FRA does not believe that the periodic medical assessments Canadian railroad employees must undergo are the functional equivalent of random testing. The medical model relies primarily on medical examinations that are scheduled in advance. The employees know well beforehand that they will be undergoing an exam, giving them the opportunity to refrain from any activity that may reveal a substance abuse problem. Experience in similar programs in the United States (*e.g.*, in the aviation and motor carrier industries) indicates that routine medical examinations will seldom be successful in identifying alcohol or drug use problems except perhaps in the most advanced stages of chemical dependancy when an employee's remaining work life is often limited and major damage has been done to vital organs. Even if an employee is forthcoming in offering that he or she is misusing drugs in his or her personal life, this would apparently not be a disqualifying condition absent medical diagnosis of a specific substance abuse disorder; however, one does not have to be chemically dependant to constitute a threat to public safety. Much of the alcohol and drug use that threatens transportation safety has a voluntaristic component, and random testing is appropriate as a deterrent. Further, Transport Canada is in the early stages of implementing this program and has not yet had the opportunity to determine program outcomes. For these reasons, it would not be appropriate for FRA to rely upon this program as a full substitute for key DOT program elements, including a prohibition on non-medical use of controlled substance and random testing.

In CP's written comments, it argued that the lack of random testing is the only component of a testing program that would create part 241 compliance problems for the Canadian railroads. These comments were filed before the issuance of the Canadian Human Rights Commission Policy on Alcohol and Drug Testing (CHR Policy) in June of this year. The CHR Policy indicates that pre-employment drug testing is not acceptable, throwing into doubt CN and CP's voluntary pre-employment drug testing programs; pre-employment drug testing for safety-sensitive positions (such as dispatchers) is required by part 219. *See* § 219.501. The CHR Policy does note that Canadian trucking and bus companies wishing to do business in the United States are required to develop drug and alcohol testing programs that comply with U.S. regulations (which include pre-employment drug testing), and that not being banned from driving in the United States may be *bona fide* occupational requirement.

Aside from the fact that FRA believes that random testing is the most important aspect of any testing program and that pre-employment testing is important, FRA is also concerned about two other significant differences between part 219 and the Canadian railroads' testing programs.

First, the criteria for post-accident testing are much more subjective under the Canadian programs than under part 219. In the United States, post-accident testing is required for a dispatcher who is directly and contemporaneously involved in the circumstances of any qualifying train accident. *See* § 219.203. Under the Canadian programs, however, a dispatcher is not automatically tested when he or she is involved in an accident. Instead, the railroad must have independent evidence of impairment before a dispatcher involved in an accident may be tested. Thus, a dispatcher under the influence of drugs or alcohol may contribute to an accident and yet must not be tested if he or she does not exhibit some physical manifestation of impairment. That dispatcher may continue to work without undergoing additional scrutiny that may reveal a dependency problem that could continue to negatively impact his or her job performance. CN did indicate in its written comments that it plans to revise its policy this year to add mandatory post-accident testing using criteria identical to that in part 219. The CHR Commission Policy Statement endorses the right of Canadian companies to impose such testing for safety-sensitive employees.

Second, a Canadian rail employee may currently decline to be tested and not suffer adverse consequences unless the employer has an independent basis for concluding that the employee is impaired by drugs or alcohol. Under part 219, however, a dispatcher in the United States who refuses a test is immediately suspended for a period of nine months and must follow specified procedures, including return-to-duty and follow-up testing, before being allowed to return to dispatching service. Obviously, the effectiveness of a testing program is severely compromised if an employee is permitted to simply decline to be tested.

E. Hours of Service

Like alcohol or drug impairment, fatigue can cause dispatchers to make mistakes that lead to catastrophic railroad accidents. Both Canadian railroads acknowledged that Transport Canada does not regulate the total hours that dispatchers are allowed to work, but they pointed out that hours of service are covered generally by the Canada Labour Code, and more specifically by collective bargaining agreements between the railroads and their employees. The Labour Code mandates either a 48-hour weekly limit or an 80-hour biweekly limit, although the Code does not mandate a maximum daily limit. With the Code as guidance, both railroads have negotiated similar agreements with their respective labor organizations that limit the number of hours a dispatcher may work per day to 12. Through collective bargaining agreements, dispatchers on both CN and CP may work no more than 48 hours in one week. In addition, on CP, any time worked in excess of 40 hours in one week must be offset by reducing the total hours worked in the next week. Finally, although not included in the comments from either railroad, FRA has learned that Transport Canada is reexamining Canada's hours of service regulations and may introduce comprehensive revisions sometime in the next year.

Despite the apparent flexibility of the hours of service arrangements for Canadian dispatchers, FRA is concerned by the lack of a daily limit for dispatcher's working hours. In contrast, 49 U.S.C. 21105 mandates strict daily limits on the hours that a dispatcher may work in the United States. Dispatchers in the United States may not work more than nine hours during a 24-hour period in a location where two or more shifts are employed, or 12 hours during a 24-hour period where only one shift is employed. As a practical matter, most domestic railroads, including the Class I and commuter railroads, operate 24-hour dispatching facilities where at least two shifts are employed. The only railroads that might employ a one-shift dispatching operation would be very small short line railroads, although most of those railroads use two shifts, as well. In addition, the fact that many of the limits on hours of service for Canadian dispatchers are dictated by collective bargaining agreements is troublesome to FRA as these agreements are fluid and may change. Although FRA is aware that the duration of daily assignments may be less significant in the onset of fatigue than cumulative effects and biological rhythms, this material difference between U.S. and Canadian practice warrants further review before consideration of expanded cross-border dispatching.

F. Operational Testing

Human performance is critically important to railroad safety. Every year, human factors cause about a third of all train accidents and a large portion of railroad employee injuries in the United States. Under part 217, FRA requires railroads operating in the United States to have operating rules, to periodically instruct dispatchers on those rules, to periodically conduct operational tests (or "efficiency tests," as they are widely known), and inspections on dispatchers to determine the extent of their compliance with the rules, and to keep records of the individual tests and inspections for review by FRA. As with most other regulations, FRA may fine railroads for failure to comply with part 217.

Similar to Transport Canada's regulatory approach to hours of service, Transport Canada does not regulate efficiency testing for dispatchers and, in their comments, the Canadian railroads acknowledged as much. Both railroads, however, use extensive voluntary testing programs and then report the results of the testing to Transport Canada. According to CP's comments, its program provides for the testing of more of the Canadian Rail Operating Rules than is common in the United States. For Canadian-based employees, including dispatchers, CN uses an extensive efficiency testing program called Performance Monitoring and Rule Compliance, which is virtually identical to the United States testing requirements that CN uses for United States-based dispatching offices. Once the Canadian railroads have reported test results to Transport Canada, Transport Canada then has the authority to audit all railroad activities and, according to CP, has conducted several in-depth audits of CP, the most recent of which occurred in December 2001. CP's comments also noted that the number of accident precursors, or "near misses," on CP attributable to CP dispatchers is very small and has been declining.

Obviously, FRA's proactive approach to ensuring rail safety is very different from Transport Canada's method of encouraging voluntary self-evaluation by the Canadian railroads. Based on FRA's review of the comments, the Canadian railroads' testing program may very well be adequate if continually and evenly applied, but, unlike in the United States, there are no assurances that Transport Canada will provide the regulatory oversight to ensure continued compliance. FRA does not believe it is prudent to rely upon the voluntary efforts of foreign railroads to protect domestic rail safety. As previously noted, FRA will continue to discuss its safety concerns with Transport Canada in an attempt to reach an arrangement that is satisfactory to both countries.

G. Service Disruptions

As FRA noted above, domestic dispatchers are usually unionized employees subject to the provisions of the Railway Labor Act, which prohibits strikes over contract interpretations. Congress has the power to legislate an end to a strike by United States railroad employees, but not to strikes by foreign-based railroad employees who do not enter the United States. Both Canadian railroads felt that the Canada Labour Code will protect against service disruptions arising from labor disputes in Canada.

Canadian dispatchers are subject to the provisions of the Canada Labour Code. In the event of a strike, if the Canadian Industrial Relations Board determines that a strike or lockout could pose an immediate and serious threat to the safety or health of the public, it may order the continuation of services to prevent the danger. Furthermore, if a strike or lockout occurs while Parliament is not in session, and the Governor in Council determines the strike or lockout would adversely affect national interests, the Council may issue an order deferring the strike or lockout during the period between Parliaments. In addition, CN's comments noted that CN has contingency plans for any labor disruption, including those involving dispatchers. In the event of a disruption, CN is prepared to use supervisory personnel as dispatchers or, in the event of another type of disruption, to move dispatching operations to an alternate location.

While FRA acknowledges that the Canadian Labour Code grants sufficient power to the Canadian government to end labor disruptions in Canada, there is no guarantee that the Code would cover dispatchers controlling track in the United States, even if they were dispatching for a Canadian railroad. The Code clearly gives governing bodies in Canada the authority to take action to protect safety in Canada, but it is not clear that the law covers the safety of United States rail operations or that the Canadian government would take steps to stop labor disputes that disrupt only United States operations. Even if Canadian law authorized the Canadian government to stop labor disputes that disrupt only United States operations, the Canadian government would only exercise that authority as a volunteer, not as a body charged with serving the people of the United States. Neither of the Canadian railroads addressed this critical issue in their comments. As a result, FRA remains concerned that a labor disruption involving extraterritorial dispatchers who control United States territory could cause severe domestic service problems and, as previously discussed, possibly jeopardize transportation safety.

H. Security Concerns

The security of transportation infrastructure has taken on greater significance in the wake of the terrorist attacks of September 11, 2001. As FRA noted in the preamble to the IFR and again in the above discussion, the security of domestic rail operations involves the following two aspects: (1) The security of, and access to, the actual dispatching facilities; and (2) the safety and national security implications involved with allowing foreign dispatch centers to have access to information on movements of military goods and extremely hazardous materials and control over the movement of these items, particularly on the STRACNET.

Both Canadian railroads indicate that they employ security measures that are similar to those employed by domestic railroads. For example, access to dispatching facilities is controlled by multiple levels of security, including card readers and monitored security cameras. Both Canadian railroads are

[14] CP is not entirely correct in making this assertion. Section 219.602 currently sets a minimum random drug testing rate of 25 percent, but this does not mean that 25 percent of covered employees must be tested each year. The requirement is for each railroad to conduct a sufficient number of random drug tests to equal at least 25 percent of it is covered employees. For example, a railroad with 1,000 covered employees must conduct at least 250 random drug tests during the year, but this should not result in 250 employees being tested, since in a truly random program, some employees will be tested more than once while others will not tested at all. In addition, 25 percent is the minimum random drug testing rate required; railroads remain free to conduct random testing at a higher annual rate.

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members of the North American Association of Railroad Chiefs of Police, and both work closely with the Royal Canadian Mounted Police and other North American law enforcement organizations to ensure an effective exchange of information related to security issues. In addition, following the attacks of September 11, both Canadian railroads, along with the domestic railroads, have participated in AAR security working groups and have begun implementing the recommendations made by those groups. CP also noted that they have a fully equipped back-up dispatching facility that can be utilized in the event of an emergency. Neither CN nor CP directly addressed the security issues surrounding the foreign dispatch centers having access to information regarding the shipment of military goods and hazardous materials, including radioactive substances, in the United States and having the ability to control the movement of these items.

FRA recognizes the efforts undertaken by the Canadian railroads to secure their dispatch centers. However, in light of the increased awareness of the need for heightened transportation security following the attacks of September 11, FRA is concerned about allowing foreign dispatch centers to have access to information on movements of military goods and hazardous materials, and to have control over the movements of these items, particularly on the STRACNET.

Furthermore, many of the commodities that railroads transport in large quantities across the United States are extremely dangerous and, if accidentally or intentionally released in urban or environmentally sensitive areas, could cause catastrophic damage. FRA is particularly concerned that these commodities could prove to be tempting targets for terrorist attacks. Moreover, the projected large rail movements of spent nuclear waste will provide even more dangerous targets for terrorists. Finally, given the rapidly changing world-wide terrorism problem confronting the United States, it is of the utmost importance that the domestic railroad network be fully responsive to national defense needs and priorities, including the need to quickly and secretly move military items.

I. International Trade Implications

CP was the only commenter that raised free trade as an issue. CP indicated that part 241 might violate Articles 906 to 911 of Part 3 of NAFTA. These provisions concern Technical Barriers to Trade, and while CP did not make any express statements to that effect, the comments seemed to imply that part 241 could potentially run afoul of NAFTA. In addition, CP noted that, under the NAFTA, the Land Transportation Standards Subcommittee (LTSS) has authority to address regulatory issues related to cross-border rail operations. CP directed FRA's attention to the latest report from the LTSS, which noted current arrangements do not impede the flow of passenger or freight traffic in North America. CP argued that if FRA believes extraterritorial dispatching to be a legitimate safety threat, the LTSS should first examine the issue before FRA takes any other action. CP also proposed as an alternative to part 241 the formal adoption of a "border zone" that would provide a limited distance on both sides of the Canada-United States border where all railway safety regulations of the other country would be recognized as equivalent.

FRA does not believe that part 241 is contrary to NAFTA, which prohibits Parties to NAFTA from creating unnecessary obstacles to trade between each other. NAFTA requires the Parties to strive to establish compatible standards-related measures so as to facilitate trade in a good or service, and to treat technical standards adopted by the other Parties as equivalent to its own where these standards adequately fulfill the importing Party's legitimate objectives. Under Article 904 of NAFTA, however, each Party retains the right to adopt and enforce any safety measure it considers appropriate to address legitimate safety objectives, including prohibiting the provision of service by a service provider of another Party that fails to comply with the safety measure. Furthermore, under Article 2102, each Party has the right to take any actions that it considers necessary for the protection of its essential security interests.

Under Article 2101, a NAFTA Party has the right to bar access to information which it determines to be contrary to its security. A NAFTA Party also has the right to take other actions it considers necessary for the protection of its essential security interests relating to the traffic in arms, ammunition, and implements of war and to such traffic and transactions in other goods, materials, services, and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment. As such, part 241 serves to control access to information the disclosure of which would be contrary to national security. Allowing extraterritorial dispatching would also increase the possibility that train movement of spent nuclear waste and portions of the STRACNET would be controlled by foreign-based dispatchers. Some of the rail lines that make up the STRACNET include lines that aid in routing shipments to and from military bases. Part 241 is clearly permissible under NAFTA.

Finally, FRA notes that Mexico has indicated that extraterritorial dispatching of rail operations in the United States poses a safety risk that justifies the promulgation of a bar to such dispatching. Mexico itself has in place a law requiring that all dispatching of Mexican rail operations occur in Mexico.

In this rulemaking document, FRA has articulated legitimate safety concerns, including security concerns, that would result from extraterritorial dispatching, and that support the issuance of the Final Rule. FRA disagrees with the suggestion that it should have submitted its safety concerns to the LTSS rather than proceeding to resolve these concerns in the manner that it has. The rail working group of the LTSS was set up under NAFTA to evaluate the then existing safety regulations of the three countries to determine if they represented impediments to cross-border rail operations. After a thorough review, the group determined that there were no significant impediments. Once that objective had been met, the group was re-formed as the Rail Safety and Economics group of the Transportation Consultative Group (TCG), a sister group of the LTSS that continues to meet to discuss issues of mutual interest. The TCG, like the LTSS, has no power to mandate any changes to a country's regulations—it is an advisory body only.

NAFTA recognized that the signatories might decide, in the future, to institute changes to their respective regulatory regimes; therefore, the treaty mandates that a country wishing to impose or remove a regulation consult with its partners and offer an opportunity for comment. The United States has met its burden in that regard, through discussions with its NAFTA partners during TCG meetings and other bi-lateral meetings with Transport Canada and Mexican officials, and through the formal notice and comment process followed in the issuance of this Final Rule, where both Mexico and Canada, as well as all other interested parties were specifically given the opportunity to comment on the issue of whether FRA should limit extraterritorial dispatching.

The Final Rule that is being adopted attempts to balance United States' safety standards with the safety standards of its NAFTA partners and their railroads in order to facilitate cross-border railroad operations. FRA has approved a fringe border waiver process that would permit existing extraterritorial dispatching to continue and that would permit new extraterritorial dispatching from Canada and Mexico in the areas in the United States immediately surrounding the Canadian and Mexican borders, without these dispatchers having to fully comply with all of FRA's safety standards for domestic dispatchers. FRA has also provided for a transitional period for existing extraterritorial dispatching to continue while the railroads qualify the operations under the fringe border waiver provision. FRA does not believe that the Canadian commenters have sufficiently made the case that any broader relief is appropriate, or that FRA needed to take any additional steps in promulgating this Final Rule. FRA has pledged its willingness to continue discussing extraterritorial dispatching with its NAFTA partners and their railroads, as well as all other cross-border safety issues; these discussions, together with the safety experience gained under the rule with respect to extraterritorial dispatching, well may lead to future changes to the Final Rule.

J. Economic Impact

CN was the only commenter that questioned the economic analysis and disagreed that the railroads will experience a savings over the next 20 years as a result of part 241 because of the number of unknown factors associated with the ultimate Final Rule. CN argues that until the rule becomes final, costs associated with eliminating the grandfathering and fringe border operations cannot be measured. Even if these provisions are maintained, CN suggests that the costs do not accurately portray the costs of adding FRA programs or of losing flexibility that would follow from the rule. CN also disagrees that the rule will prevent injuries or fatalities and challenges FRA to support that assertion.

FRA has examined the economic impact of the Final Rule and the results of this analysis are set forth in section VI (Regulatory Impact) of the supplementary information below.

K. Language Differences and Units of Measure

Based on the comments submitted by CN and CP, FRA is satisfied that these two railroads have taken steps that address FRA's concerns regarding language differences and designation of units of measurement with respect to dispatching of United States railroad operations from Canada. Eastern Maine Railway Company did not file comments, and FRA is not aware of how it is handling language and unit of measurement issues.

Both CN and CP use English units and not metric units for all units of measurement, including distance, speed, and locations. In addition, both railroads assured FRA that any dispatching of United States track from Canada would be conducted in the English language. According to CN and CP, the only territory where dispatching is conducted in French is in the Quebec province, and both CN and CP use only bilingual dispatchers and train crews in Quebec. Finally, with only a few minor differences, both Canadian railroads use the same terminology as that used by domestic railroads. FRA notes, however, that while the comments from CN and CP may alleviate FRA's concerns with regard to these railroads, they do not address the potential implications of other railroads dispatching from Canada or of railroad dispatching operations in a country other than Canada.

L. Definitions of "Dispatch" and "Dispatcher," and Special Relief for Fringe Border Operations

Both Canadian railroads as well as the AAR raised concerns over the possible interpretation of the definitions of "dispatch" and "dispatcher" in § 241.5. In addition, CN and CP also argued that the "fringe border operations" exception in §§ 241.9, 241.11, and 241.13, while intended by FRA to promote flexibility in allowing minor cross-border operations in the future, actually had just the opposite effect as the language was too narrow to permit many operations that might fall under the exception.[15]

After reviewing the comments, FRA agrees that some of the changes to the definitions of "dispatch" and "dispatcher" suggested by the commenters would improve the rule. As the comments concern specific language in the rule, FRA will fully address them and explain the rationale for the changes in the section-by-section analysis to follow.

CN and CP supported the concept of a fringe border exception but have asked for greater relief than FRA has determined is appropriate to adequately protect railroad safety. As noted above, the Final Rule does not contain a fringe border operations exception per se, but rather contains a special fringe border waiver process that will permit railroads flexibility in dispatching cross-border operations from Canada or Mexico. See the discussion of the fringe border waiver process in the section-by-section analysis to follow.

M. Comments From Labor Organizations

As noted above, three labor organizations—the BLE, BMWE and ATDD—submitted comments on part 241. The comments from the BLE and the BMWE were general in nature and supported the position taken by FRA in proposing to bar any additional extraterritorial dispatching, although the BMWE did offer one specific comment with regard to the grandfathered operations. Both the BLE and BMWE also supported the comments from the ATDD, which also supported FRA's position but included suggestions to change specific provisions in the rule. After reviewing the ATDD's comments, FRA has decided not to make any of the changes suggested by the ATDD.

The ATDD suggested four changes to the IFR. First, with regard to the operations that are grandfathered, the ATDD wanted FRA to require extraterritorial dispatchers controlling those operations to demonstrate, at least semi-annually, familiarity with the operations they are dispatching. Second, the ATDD suggested that the grandfathering exception apply only to current operations and should terminate when ownership of the United States track changes or when operations over that track change. Similarly, the BMWE suggested that any grandfathered track segment that is abandoned and then restarted should lose the exception. Third, the ATDD wanted to eliminate waivers for part 241. Finally, the ATDD argued that a railroad's ability to move dispatching operations to another country should be limited to situations where the railroad can prove that such operations could not be transferred to another location in the United States. In addition, railroads should have plans in place to provide a domestic alternative to a foreign location.

[15] In the IFR, FRA had suggested possible parameters for a fringe border exception. In their comments, both CN and CP suggested modifications that would have expanded the scope of the exception. Both railroads recognized that FRA was trying to promote flexibility but argued that the exactness of the language in the rule had just the opposite effect. CP pointed out that, many times, the only purpose of a cross-border operation is to set off, pick up, or interchange cars, but the language of the rule could be read narrowly in order to prohibit that. CN questioned both the "bridge traffic" and "hend-off" operations and offered suggestions to change those operational parameters to make them more practicable. Specifically, CN noted that existing Canadian-based dispatching operations have not presented problems in the past and are of minimal risk, but under the exception as written, very few additional operations would be permissible and suggested that a more reasonable approach would be to allow hand-offs to proceed to a crew change point or a change in traffic control method (not including yard limits) with an overall limit of 15 miles.

As noted above, FRA is not including the grandfathering exception in the Final Rule. Therefore, the ATDD's comments on the grandfathered operations are no longer relevant. With regard to waivers, FRA believes that waivers are necessary in order to maintain flexibility. If a railroad can address all of the concerns that militate in favor of part 241, FRA will definitely consider a waiver. Likewise, in an emergency situation, railroads should be allowed a maximum amount of flexibility in order to safely conduct their operations. By limiting the duration of the permissible extraterritorial dispatching to the duration of the emergency, FRA is effectively balancing the railroads' need for flexibility with the need to maintain domestic rail safety.

V. Section-by-Section Analysis

This section-by-section analysis will explain the provisions of the Final Rule and the changes made from the IFR. Of course, a number of the issues and provisions involving this rule have been discussed and addressed in detail in the preceding discussions. Accordingly, the preceding discussions should be considered in conjunction with those below and will be referred to as appropriate. Also, as the majority of the rule text introduced in the IFR remains unchanged in this Final Rule and there were no comments on the other portions of the section-by-section analysis, much of the section-by-section analysis included in the IFR is repeated here.

Section 241.1 Purpose and Scope

Paragraph (a) states that the purpose of the rule is to prevent railroad accidents and incidents, and consequent injuries, deaths, and property damage, that would result from improper dispatching of railroad operations in the United States by persons located outside of the United States. As noted earlier in the preamble, dispatchers are responsible for establishing a train's route and ensuring that the train has a clear track in front of it. As such, it is essential that dispatching be conducted as safely as possible in order to avoid incidents such as collisions and derailments that endanger train crews, other railroad employees, and the general public.

Paragraph (b) states that the rule prohibits extraterritorial dispatching of railroad operations, conducting railroad operations that are extraterritorially dispatched, and allowing track to be used for such operations, subject to certain stated exceptions. Because FRA believes that extraterritorial dispatching presents serious safety problems and because proper dispatching is such an integral part of safe railroad operations, FRA is generally prohibiting any extraterritorial dispatching of United States rail operations, except in cases of emergencies. However, FRA has determined that it is appropriate to provide special relief for the four existing extraterritorial dispatching operations (listed in appendix A to the rule), and for limited new extraterritorial dispatching of fringe border areas in the United States designed to facilitate the smooth handoff of dispatching between dispatchers in Canadian and Mexico and those in the United States. Such relief is best granted in the context of waivers rather than blanket approvals of the operations; the special waiver process is discussed below. Of course, railroads subject to this part may adopt and enforce additional or more stringent requirements provided they are not inconsistent with this part.

Section 241.3 Application and Responsibility for Compliance

This section employs what is essentially standardized regulatory language that FRA uses in most of its rules. Paragraphs (a) and (b) mean that railroads whose entire operations are conducted on track within an installation that is outside of the general railroad system of transportation in the United States (in this paragraph, "general system") are not covered by this part. *See* 49 CFR part 209, appendix A for a discussion of "general railroad system of transportation." Tourist, scenic or excursion operations that occur on tracks that are not part of the general railroad system would, therefore, not be subject to this part. The word "installation" is intended to convey the meaning of physical (and not just operational) separateness from the general system. A railroad that operates only within a distinct enclave that is connected to the general system only for the purposes of receiving or offering its own shipments is within an installation. Examples of such installations are chemical and manufacturing plants, most tourist railroads, mining railroads, and military bases. However, a rail operation conducted over the general system in a block of time during which the general system railroad is not operating is not within an installation and, accordingly, not outside of the general system merely because of the operational separation.

Paragraph (c) clarifies FRA's position that the requirements contained in this Final Rule are applicable not only to any "railroad" subject to this part but also to any "person," as defined in § 241.5, that performs any function required by this Final Rule. Although various sections of the Final Rule address the duties of a railroad, FRA intends that any person who performs any action on behalf of a railroad or any person who performs any action covered by the Final Rule is required to perform that action in the same manner as required of a railroad or be subject to FRA enforcement action. For example, contractors that perform duties covered by these regulations would be required to perform those duties in the same manner as required of a railroad.

Section 241.5 Definitions

This section contains a set of definitions intended to clarify the meaning of important terms as they are used in the text of the rule. Several of the definitions involve fundamental concepts that require further discussion.

Dispatch. Based on the comments received from the Canadian railroads and the AAR, FRA is modifying the definitions of both "dispatch" and "dispatcher" in order to avoid confusion about the job categories that could potentially be covered by the definition. FRA intended the definition of "dispatch" to be function-specific, not job-specific, but recognizes that the definitions, as written in the IFR and if not read in conjunction with the preamble, could be misinterpreted to include employees, such as yardmasters, performing tasks that FRA did not intend to be included. The commenters agreed with the preamble language but were troubled by the fact that the language was not included in the rule text.

In the IFR, FRA stated that "dispatch" means to control the movement of a train or other on-track equipment by the issuance of a written or verbal authority. In addition, the definition of "dispatcher" could include, among other specifically mentioned job categories, yardmasters. The Canadian railroads were understandably concerned that a yardmaster performing a duty other than dispatching could fall under the definition merely by virtue of his or her job title. Likewise, the AAR was concerned that a track foreman giving permission to a train to enter working limits would be considered "controlling the movement of a train" by issuance of a track authority to the train and, thus, could fall under the definition. The AAR suggested that the problem could be corrected by eliminating the enumeration of the types of employees who may at times perform dispatching functions and asked that FRA clarify that a track foreman giving authority to a train to proceed is not considered dispatching. CP suggested that the definition of "dispatch," along with the definition of "dispatcher," be revised to more closely parallel the definition used in the hours of service regulations found at part 228.

FRA agrees that the definitions could lead to confusion and has decided to modify both. Therefore, FRA is more explicitly limiting the functions that would fall under the definition of "dispatch" to only those duties that would be performed by a "dispatching service employee" as that term is defined by the hours of service laws at 49 U.S.C. 21101(2), were these functions to be performed in the United States. To that effect, FRA has removed the portion of the definition providing that "'dispatch' means to use a telegraph, telephone, radio, * * *" and "* * * hand delivery," but has retained the provisions for "electrical or mechanical device" as an example of how someone who is dispatching can control train movement. FRA retained this portion of the definition to clarify that the definition is intended to more closely track both the statutory definition of "dispatching service employee" as well as previous agency interpretations on hours or service. Unlike in the IFR where the first sentence of the definition is an abstract statement of the scope of "dispatch," this sentence now sets the limits of what constitutes dispatching and the remainder of the definition is merely clarification language providing examples of the types of activities FRA intends to cover and to not cover under the definition.

Under 49 U.S.C. 21101(2), a "dispatching service employee" is defined as "an operator, train dispatcher, or other train employee who by the use of an electrical or mechanical device dispatches, reports, transmits, receives, or delivers orders related to or affecting train movements." This statutory provision has been interpreted by FRA in a statement of agency policy and interpretation codified at part 228, appendix A. Consistent with that interpretation, both the statutory definition and part 241's definition of "dispatch" are functional, meaning that an individual's job title is irrelevant in determining whether he or she is dispatching. In addition, whether the individual is employed by a railroad is irrelevant. However, unlike the statutory definition of "dispatch," the regulatory definition makes clear that the location of the individual performing the dispatching is irrelevant to the determination of the function the individual is performing. Thus, an individual located in a foreign country who, because of his or her job duties, would be covered by the statutory definition if he or she were located in the United States would be dispatching within the meaning of § 241.5. Finally, as FRA stated in the preamble to the IFR and wants to make perfectly clear in this Final Rule, FRA does not intend that yardmasters as a job category fall within the scope of the definition. Instead, yardmasters are only covered by this part when they are performing dispatching functions.

Subsection (i) of the definition gives specific examples of the types of functions that one who dispatches would perform in order to be considered dispatching. In particular, FRA intends that anyone controlling the "movement of a train," which is defined in another paragraph of this section as a movement of on-track equipment requiring a power brake test under parts 232 or 238, would be considered dispatching and, therefore, would fall within the scope of the rule. Another type of movement that FRA intends to include is the movement of certain other on-track equipment, such as specialized maintenance-of-way equipment, that is not subject to the power brake regulations. FRA still intends to exclude movements of on-track equipment used in the process of sorting and grouping rail cars inside a railroad yard in order to assemble or disassemble a train.

Subsection (i) also explicitly notes two methods of controlling movements that fall within the scope of the definition. The first method that FRA considers dispatching under part 241 is controlling movements by the issuance of a written or verbal authority or permission that affects a railroad operation, such as through movement authorities and speed restrictions, and includes the following:

> Track Warrants, Track Bulletins, Track and Time Authority, Direct Traffic Control Authorities, and any other methods of conveying authority for trains and engines to operate on a main track, controlled siding, or other track controlled by a [dispatcher]. Operating Practices Safety Advisory (OPSA–96–03), reissued as OP–97–34, p. 7.

"Railroad operation" is defined in another paragraph of this section as the movement of a train or other on-track equipment (except as specified earlier) or "the activity that is the subject of an authority issued to a roadway worker for working limits."

The second method that falls within the scope of the definition of "dispatch" is to control a movement "by establishing a route through the use of a signal or train control system but not merely by aligning or realigning a switch." This provision makes clear that the act of aligning or realigning a switch alone is not sufficient to constitute dispatching. In order to constitute dispatching within § 241.5, aligning or realigning a switch must be accompanied by the act of setting a signal authorizing movement over a track segment. This exclusion is consistent with FRA's interpretation in Operating Practices Technical Bulletin (OP–96–04) and Operating Practices Safety Advisory (OPSA–96–03), reissued as OP–97–34 (hereinafter, "OP–97–34").

Subsection (ii) of the definition of "dispatch" clarifies that those railroad employees who issue an authority for either a roadway worker or stationary on-track equipment, or both, to occupy a certain stretch of track while performing repairs, inspections, etc., will also be covered by this rule. FRA included this section to distinguish this activity from that of authorizing movement of trains or other on-track equipment onto track.

Subsection (iii) of the definition of "dispatch" states another function of a dispatcher, which is to issue an authority for working limits to a roadway worker. As defined in another paragraph of this section,

> *[w]orking limits* means a segment of track with definite boundaries established in accordance with part 214 of this chapter upon which trains and engines may move only as authorized by the roadway worker having control over that defined segment of track. Working limits may be established through "exclusive track occupancy," "inaccessible track," "foul time" or "train coordination" as defined in part 214 of this chapter.

Finally, paragraph (2) of the definition of "dispatch" has been rewritten to further clarify that the term excludes several types of activities that might mistakenly be considered to fall within the scope of the definition. Paragraph (2) limits the exclusions, however, to personnel in the field. Subsection (i) specifically excludes from the scope of the definition the carrying out of a written or verbal authority or permission or an authority for working limits. As further clarification, subsection (i) notes two examples of activities that would fall under the exclusion, provided they were carried out by field personnel: Initiating an interlocking timing device and, in response to the AAR's comments, authorizing a train to enter working limits. Subsection (ii) specifically excludes from the scope of the definition the operation by field personnel of a function of a signal system intended to be used by those

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field personnel, such as initiating an interlocking timing device.

Dispatcher. As noted above, in order to make explicitly clear that an individual's job title does not determine whether the functions he or she performs will be considered "dispatching" FRA has revised the definition of "dispatcher" to remove all job categories and instead has made the definition entirely function-specific. Therefore, any individual, regardless of job title, performing any of the functions encompassed by the definition of "dispatch" will be considered a "dispatcher" and will fall within the ambit of part 241.

Emergency. The definition of "emergency" remains unchanged from the IFR. An "emergency" under this part must be unexpected and unforeseeable and must interfere with a railroad's ability to dispatch a United States railroad operation domestically to the extent that if the operation is not dispatched extraterritorially there would be a substantial disruption in rail traffic or a significant safety risk. Planned shortages of domestic dispatchers relating to vacation scheduling or the railroad's failure to maintain an adequate list of extraboard employees and foreseeable train delays due to substandard maintenance and repair of rail equipment are not emergencies.

Typical examples of emergencies are the following: The sudden illness of a domestic dispatcher about to begin working the next duty shift when there is no other domestic employee nearby who could be called to substitute; the delay of a train operating on mainline track in reaching its station when the delay is due to the derailment of another train and the domestic dispatching office was scheduled to close until the next day after the domestic dispatcher completed his or her tour of duty; and unforeseeable system failures resulting in significant train delays when the available pool of domestic relief dispatchers is insufficient to safely handle the increased traffic density. In addition, other situations may constitute part 241 emergencies, depending on all the facts involved. The determination of whether a situation is an emergency must always be made on a case-by-case basis.

Finally, if extraterritorial dispatching service needed to abate an emergency is concluded before the end of a duty tour, the emergency provision does *not* provide license to continue the extraterritorial dispatching if an emergency no longer exists.

Extraterritorial dispatcher. The definition of "extraterritorial dispatcher" remains unchanged from the IFR. An "extraterritorial dispatcher" is an individual who, while performing the function of a dispatcher from a country other than the United States, dispatches a railroad operation that takes place in the United States.

Extraterritorial dispatching. The term has been slightly reworded to mean the act of dispatching a railroad operation that occurs on trackage in the United States by a dispatcher located outside the United States.

Fringe border dispatching. This is a new definition that relates to the new fringe border waiver provision. "Fringe border dispatching" is defined to mean the act of extraterritorial dispatching a railroad operations that occurs on trackage in the United States immediately adjacent to the border by a dispatcher who is a railroad employee located in Canada or Mexico.

Movement of a train. This term remains unchanged from the IFR. FRA intends it to have the same meaning as does the term "train" in 49 CFR 220.5.

Occupancy of a track by a roadway worker or stationary on-track equipment or both. This term remains unchanged from the IFR and refers to the physical presence of a roadway worker or stationary on-track equipment on a track for the purpose of making a repair, an inspection, or another activity not associated with the movement of a train or other on-track equipment. It is intended to cover situations where a stretch of track is being occupied for a certain period of time by roadway workers, with or without on-track equipment, for purposes not related to the movement of a train.

Roadway worker. This term remains unchanged from the IFR and is intended to have the meaning it has in 49 CFR 214.7 and 220.5.

Section 241.7 Waivers

This section sets forth the procedures for seeking waivers of compliance with the prohibitions and requirements of this rule. As noted above in section IV(M) of the supplementary information, above, the ATDD suggested that FRA not allow waivers of compliance with part 241 because the safety implications surrounding part 241 are too important, and because the waiver section has too many loopholes. FRA disagrees with both of those assertions and believes that the waiver provision must remain in order to allow flexibility. If a railroad proves to FRA's satisfaction that it can safely and securely conduct an extraterritorially dispatched operation, FRA may grant a waiver of the requirements of part 241.

The section has been expanded to provide special relief for the limited railroad operation in the United States that are currently being extraterritorially dispatched, and to facilitate further extraterritorial dispatching of fringe border operations. Paragraph (a) provides the general rules governing waiver requests. This paragraph is consistent with the general waiver provisions contained in other Federal regulations issued by FRA. Requests for waivers may be filed by any interested party. Except as provided by paragraph (b), the filing of a waiver petition does not affect that person's responsibility for compliance with the rule while the petition is being considered. In reviewing waiver requests, FRA conducts investigations to determine if a deviation from the general prohibitions and requirements can be made without compromising or diminishing rail safety. FRA recognizes that circumstances may arise when conduct of extraterritorial dispatching that does not fall within one of the exceptions to the prohibition contained in this rule is appropriate and in the public interest. However, FRA will normally expect an applicant to demonstrate that the dispatchers are subject to the same or comparable safety standards as those applicable to dispatchers located in the United States, that those standards will be enforced by FRA or by the host country with supplementary FRA oversight, and that the additional safety concerns previously identified, such as security, language and measurement differences, possible labor strikes and other disruptions, are adequately addressed.

Paragraph (b) is new. It provides special dispensation for existing extraterritorial dispatching. A railroad that files a waiver request seeking to continue extraterritorial dispatch of an operation that it has dispatched pursuant to the terms of the Interim Final Rule, may continue extraterritorial dispatching of that operation until the railroad's waiver request is acted upon by FRA if the petition is filed no later than April 11, 2003. If the waiver request is for an operation not listed in appendix A, the waiver request must describe when the extraterritorial dispatching of the operation commenced and how the dispatching was authorized by the terms of the IFR. FRA will notify the railroad if FRA determines that the operation was not permitted by the terms of the IFR.

Paragraph (c), covering fringe border dispatching, is also new. As previously noted, FRA has determined that it is appropriate to provide special relief for the four existing extraterritorial

dispatching operations (listed in appendix A to the Final Rule, the longest of which is 99 miles), which have been conducted for some time, and for limited new extraterritorial dispatching (limited to 5 route miles from the border) to facilitate hand-offs between foreign and domestic dispatchers. FRA recognizes that it may not always be safe or practical to conduct a hand-off operation exactly at the border, which may be a milepost in the middle of nowhere, and that more appropriate hand-off points may be locations in the United States close to the border. Given the limited length of the operations contemplated under this special waiver process, FRA is willing to permit the operations to be conducted with fewer safety requirements than would be required for longer operations in the United States. FRA is not suggesting that allowing these fringe border operations, even with these restrictions, is completely without risk or as safe as operations that are subject to the full range of safety requirements applicable to domestic dispatchers. However, FRA believes that the fringe border waiver provision strikes the proper balance between the risks of the operations and the necessity of allowing the railroads some flexibility and the need to promote the smooth flow of commerce across the border.

A fringe border waiver request by a railroad will generally be granted if (1) the railroad has taken adequate steps to ensure the security of its dispatch center, (2) the railroad has in place specified safety programs for its extraterritorial dispatchers, (3) a government safety agency in the country where the dispatching will occur has safety jurisdiction over the railroad and the dispatchers and is satisfied with the railroad's safety programs, and (4) the railroad agrees to abide by the operating restrictions specified in the rule. FRA anticipates that both Canadian and Mexican railroads can easily meet these requirements for cross-border dispatching of operations, and that FRA will be able to work out satisfactory arrangements with the railroads and the regulatory agencies in Canada and Mexico concerning the monitoring of the agreed upon safety programs.

An applicant railroad must describe the line proposed to be dispatched and supply the following documents with respect to its safety programs covering the fringe border operation:

(1) A copy of the operating rules of the railroad that would apply to the proposed fringe border dispatching, including hours of service limitations, and the railroad's program for testing the dispatchers in accordance with these operating rules and for ensuring that the dispatchers do not work in excess of the hours of service restrictions. Based on their comments, CP and CN have developed adequate safety programs that address this requirement.

(2) A copy of the railroad's drug and alcohol abuse prevention program that applies to the fringe border dispatchers. The program shall, to the extent permitted by the laws of the country where the dispatching occurs, contain the following: preemployment drug testing; a general prohibition on possession and use of alcohol and drugs while on duty; reasonable cause alcohol and drug testing; a policy dealing with co-worker and self-reporting of alcohol and drug abuse problems; post-accident testing; and random drug testing. FRA is not requiring that a railroad's program track the requirements of part 219. Based on the comments that have been filed, existing CN and CP programs are adequate given the current state of the law in Canada which would seem to bar Canadian railroads from unilaterally conducting random drug testing of their dispatchers. Of course, Canadian law may change in the future.

(3) A verification from a government agency in the country where the dispatching will occur that the agency has safety jurisdiction over the railroad and the proposed dispatching, and that the railroad's safety programs referenced above meet the safety requirements established by the agency or, in the absence of established safety requirements, that the programs are satisfactory to the agency. The purpose of this requirement is to ensure that a government agency with jurisdiction over the railroad and the dispatchers is satisfied with the railroad's safety programs. CN and CP should be able to secure such a statement from Transport Canada. FRA will consult with the relevant government agency to ensure that railroad's safety programs are actually carried out.

(4) An applicant railroad must also detail the steps the railroad has taken to ensure the security of the dispatch center where the fringe border dispatching will take place. CN and CP have indicated in their comments that they believe that their dispatch centers are secure. FRA currently does not have sufficient information to know whether these representations are accurate.

Finally, absent a waiver, the railroad must agree to abide by the following operating requirements, none of which should pose a problem for Canadian or Mexican railroads:

(1) The trackage in the United States being extraterritorially dispatched shall not exceed the following route miles, measured from the point that the trackage crosses the United States border: for operations that were normally operated pursuant to the term of the IFR, the route miles normally operated by the railroad in conducting the operations; or, for all other operations, five route miles.

(2) Except for unforeseen circumstances such as equipment failure, accident, casualty, or incapacitation of a crew member, each extraterritorially dispatched train shall be under the control of the same assigned crew for the entire trip over the extraterritorially dispatched trackage.

(3) The fringe border dispatcher shall communicate instructions to the train crew and maintenance of way employees working on the line in the English language and, when referencing units of measurement, shall use English units of measurement. If the railroad wishes to use some other language it can seek a waiver of this requirement.

(4) The rail line shall be under the exclusive control of a single dispatching district or desk.

(5) The dispatching of the train shall be transferred from the fringe border dispatcher to a dispatcher located in the United States at one of the following locations: interchange point; signal control point; junction of two rail lines; established crew change point; yard or yard limits location; inspection point for U.S. Customs, Immigration and Naturalization Service, Department of Agriculture, or other governmental inspection; or location where there is a change in the method of train operations. In the IFR, FRA required that the portion of the line being extraterritorially dispatched extend no farther into the United States than the first of these locations in order to qualify for an exemption. FRA is no longer insisting on such a requirement. At many of these points, a train would actually be required to stop, which would facilitate the hand-off of dispatching functions. If a railroad that extraterritorially dispatches an operation that passes more than one of those points concludes that it would be safer or more efficient to hand-off an operation at a point other than the first point, that railroad may continue to extraterritorially dispatch that operation to another point provided that point is not beyond the mileage limit specified in the rule.

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Section 241.9 Prohibition Against Extraterritorial Dispatching; Exceptions

Section 241.11 Prohibition Against Conducting a Railroad Operation Dispatched by an Extraterritorial Dispatcher; Exceptions

Section 241.13 Prohibition Against Track Owner's Requiring or Permitting Use of Its Line for a Railroad Operation Dispatched by an Extraterritorial Dispatcher; Exceptions

These sections contain a series of three prohibitions, each containing two exceptions and a provision on liability for violation of the prohibition. Unlike in the IFR, these sections do not contain exceptions for operations that were regularly being extraterritorially dispatched as of December 1999, or for fringe border operations. As was explained above, FRA has decided to provide special relief for existing extraterritorial dispatching and for new dispatching of fringe border operations through the fringe border waiver process discussed above. To promote compliance, each provision imposes a strict liability standard. Actual or constructive knowledge of the facts constituting the violation is not required to establish a violation. For example, it is not necessary for a railroad conducting a railroad operation to know that the operation is being extraterritorially dispatched in order for the railroad to violate § 241.11.

Section 241.9(a) establishes a general rule barring a railroad from requiring or permitting one of its employees or one of its contractors' employees to dispatch a railroad operation that occurs in the United States while the railroad's employee (or railroad contractor's employee) is located outside the United States. A separate violation occurs for each railroad operation so dispatched, and each day the violation continues is a separate offense. "Railroad operation" is defined in § 241.5. A dispatcher working in a foreign country and controlling only railroad operations in that country would not violate § 241.9(a). Likewise, a dispatcher located in the United States and controlling train operations in another country would not violate § 241.9(a), although nothing in this rule authorizes such a practice where it contravenes the domestic law or policy of the country where the railroad operations are conducted.

Section 241.11(a) creates a general prohibition against performing a railroad operation on track in the United States if the railroad operation is dispatched by an individual located outside the United States. A separate violation occurs for each railroad operation performed that was so dispatched; each day the violation continues is a separate offense.

Section 241.13(a) generally forbids a track owner from requiring or permitting a segment of track that it owns to be used for a railroad operation in the United States that is controlled by a dispatcher in another country. A separate violation occurs for each railroad operation so dispatched that was permitted to occur on the owner's track and each day the violation continues is a separate offense.

There are two basic exceptions to each of these three general prohibitions. First, under paragraph (b) of §§ 241.9–241.13, extraterritorial dispatching of railroad operations that was conducted pursuant to the IFR may continue for a 90-day transitional period that ends on April 11, 2003. Second, under paragraph (c) of §§ 241.9–241.13, extraterritorial dispatching is permitted in the event of an emergency. The term "emergency" is defined in § 241.5, which has been discussed earlier. The railroad must notify the FRA Regional Administrator for the region in which the railroad operation occurs, in writing as soon as feasible, either on paper or by electronic mail, that the railroad is conducting such extraterritorial dispatching. If the operation occurs in more than one region, the FRA Regional Administrator for each of the regions in which the operation occurs must be notified. In order to facilitate the notification process, appendix C lists FRA's eight regions and the States that are included in those regions as well as the street and e-mail addresses and fax numbers of the eight regional headquarters where the notification(s) must be sent. Notification need not necessarily be in advance of the performance of the extraterritorial dispatching. The exception is allowed only for the period of time that the emergency exists. If a railroad continues extraterritorial dispatching after the emergency is over, the railroad is in violation of § 241.9(a).

In its comments, the ATDD suggested that FRA limit a railroad's ability to move dispatching operations to another country to situations where the railroad can prove that such operations could not be transferred to another location in the United States. In addition, the ATDD suggested that FRA require that railroads have in place a plan to provide a domestic alternative to a foreign location. As explained in Section III(M), above, FRA rejected the ATDD's suggestions. In an emergency situation, FRA believes that a railroad should be allowed the maximum amount of flexibility in order to safely conduct any operations and should not be bound by restrictions that, while they may seem legitimate in the abstract, could exacerbate an emergency situation if that situation needs to be resolved as quickly as possible. In addition, depending on the circumstances of the emergency, the safest alternative may not necessarily be to dispatch an operation domestically. By limiting the duration of the extraterritorial dispatching to the duration of the emergency, FRA is effectively balancing the need for flexibility with the need to maintain domestic rail safety.

Paragraph (d) of §§ 241.9–241.13 discusses liability for violations of those sections. As provided in § 241.9(d), liability for extraterritorial dispatching of a railroad operation in the United States in violation of § 241.9 is on the entity that employs the individual who performed the extraterritorial dispatching, typically a railroad or a contractor to a railroad (if any), and if the employing entity is a contractor to a railroad, liability is also on the railroad. For example, if an employee of a railroad contractor performs the extraterritorial dispatching, FRA may hold either the contractor or the railroad or both liable for the violation (in addition to the individual employee and any other entity that committed the violation or caused the violation, as provided in § 241.3(c)).

As stated in § 241.11(d), liability for conducting a railroad operation that is extraterritorially dispatched in violation of § 241.11 is on the entity that conducts the operation, typically a railroad or a contractor to a railroad. For example, if employees of a railroad contractor engage in the movement of a train that is extraterritorially dispatched and not within the exceptions of paragraphs (b) or (c), then FRA may hold either the contractor or the railroad or both liable for the violation (in addition to the individual train crewmembers and any other entity that committed the violation or caused the violation, as provided in § 241.3(c)).

Finally, as provided in § 241.13(d), liability for requiring or permitting the conduct of a railroad operation that is so dispatched over a segment of track is on the owner of the track segment. For purposes of § 241.13, the track owner includes the owner of the track segment, a person assigned responsibility for the track segment under § 213.5(c), and a railroad operating the track segment pursuant to a directed service order issued by the STB under 49 U.S.C. 11123, during the time that the directed service order is in effect. FRA may hold the track owner, the assignee, or the railroad operating the track under a directed service order, or some or all of such entities liable for a violation of § 241.13 (in addition to the individuals and any other entity that committed the violation or caused the violation, as provided in § 241.3(c)). For example, if the track owner (Company A) has assigned responsibility for the track under § 213.5(c) to Company B and the track is used by a train that is dispatched by a dispatcher located outside of the United States, not within the exceptions of paragraphs (b) or (c), then FRA may assess a civil penalty for violation of § 241.13 against either Company B or Company A, or both.

In a given instance in which an individual outside the United States dispatches a railroad operation that takes place in the United States (not within the exceptions of paragraphs (b) or (c), three regulatory prohibitions have been violated: §§ 241.9, 241.11, and 241.13. If one single entity dispatches and conducts the railroad operation and owns the track on which the railroad operation occurs, that entity may be assessed a separate civil penalty for each of the three sections violated. On the other hand, if the three functions are performed by a total of three different entities, the entity that performed the function would be assessed a penalty only for the section it violated. As a matter of discretion, in cases where the dispatching railroad fails to notify the FRA Regional Administrator of each region where the track is located of an emergency, FRA may also cite the dispatching railroad for causing the violation of § 241.11(a) by the operating railroad or § 241.13(a) by the track owner.

Section 241.15 Penalties and Other Consequences for Noncompliance

This section identifies three of the sanctions that may be imposed upon a person for violating a requirement of part 241: civil penalties, disqualification, and criminal penalties.

Paragraph (a) on civil penalties parallels the civil penalty provisions included in numerous other safety regulations issued by FRA. Essentially, any person who violates any requirement of this part or causes the violation of any such requirement will be subject to a civil penalty of at least $500 and not more than $11,000 per violation. Civil penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury to persons, or causes death or injury, a penalty not to exceed $22,000 per violation may be assessed. *See* part 209, appendix A. In addition, each day a violation continues will constitute a separate offense. Civil penalties for violation of part 241 are authorized by 49 U.S.C. 21301, 21302, and 21304 and by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321–358, 378, Apr. 26, 1996), which requires agencies to adjust for inflation the maximum civil monetary penalties within the agencies' jurisdiction. Consequently, the resulting $11,000 and $22,000 maximum penalties were determined by applying the criteria set forth in sections 4 and 5 of the statute to the maximum penalties otherwise provided for in the Federal railroad safety laws. In addition to the civil penalty provision at § 241.15(a), this Final Rule includes a schedule of civil penalties for specific violations of part 241 as appendix B to this part.

Paragraph (b) provides that an individual who fails to comply with a provision of this part or causes the violation of a provision of this part may be prohibited from performing safety-sensitive service in accordance with FRA's enforcement procedures found in subpart D, part 209.

Paragraph (c) of § 241.15 provides that a person may be subject to criminal penalties under 49 U.S.C. 21311 for knowingly and willfully falsifying a report required by these regulations, here, a report to the appropriate FRA Regional Administrator(s) concerning extraterritorial dispatching performed under a claim that it was performed to deal with an emergency. Section 21311(a) of title 49, United States Code, reads as follows:

(a) Records and Reports Under Chapter 201.—A person shall be fined under title 18, imprisoned for not more than 2 years, or both, if the person knowingly and willfully—

(1) makes a false entry in a record or report required to be made or preserved under chapter 201 of this title;

(2) destroys, mutilates, changes, or by another means falsifies such a record or report;

(3) does not enter required specified facts and transactions in such a record or report;

(4) makes or preserves such a record or report in violation of a regulation prescribed or order issued under chapter 201 of this title; or

(5) files a false record or report with the Secretary of Transportation.

FRA believes that the inclusion of these provisions for failure to comply with the regulations is important to ensure that compliance is achieved.

Section 241.17 Preemptive Effect

Section 241.17 informs the public of FRA's views regarding what will be the preemptive effect of the Final Rule. While the presence or absence of such a section does not in itself affect the preemptive effect of a Final Rule, it informs the public about the statutory provision that governs the preemptive effect of the rule. Section 20106 of title 49 of the United States Code provides that all regulations prescribed by the Secretary relating to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard which provision is not incompatible with a Federal law, regulation, or order and does not unreasonably burden interstate commerce. With the exception of a provision that is not incompatible with Federal law, not an unreasonable burden on interstate commerce, and directed at an essentially local safety hazard, 49 U.S.C. 20106 will preempt any State regulatory agency rule covering the same subject matter as the regulations in this Final Rule.

Section 241.19 Information Collection

This provision shows which sections of this part have been approved by the Office of Management and Budget (OMB) for compliance with the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* A more detailed discussion of the information collection requirements in this part is provided below.

Appendix A—List of Lines Being Extraterritorially Dispatched in Accordance With the Regulations Contained in 49 CFR Part 241, Revised as of October 1, 2002

Appendix B—Schedule of Civil Penalties

This appendix contains a schedule of civil penalties to be used in connection with this part. Because the penalty schedule is a statement of agency policy, notice and comment are not required prior to its issuance. *See* 5 U.S.C. 553(b)(3)(A).

Appendix C—Geographic Boundaries of FRA's Regions and Addresses of FRA's Regional Headquarters

This appendix contains a list of FRA's eight regions and the States that are included in those regions as well as the addresses and fax numbers of the eight regional headquarters where notification of emergency extraterritorial dispatching of domestic operations must be sent.

VI. Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and determined to be significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of this proposed rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW., 7th Floor, Washington, DC. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590. Access to the docket may also be obtained electronically through the Web site for the Docket Management System at *http://dms.dot.gov*.

As previously noted, currently extraterritorial dispatching of train operations in the United States is very limited. However, there is the prospect of increased use of extraterritorial dispatchers in the absence of regulatory restrictions. FRA has discussed in detail the significant safety concerns associated with extraterritorial dispatching and how the Final Rule carefully resolves these concerns in a manner designed to facilitate cross-border railroad operations.

FRA expects that overall the requirements in the rule would not impose a significant cost on the rail industry over the next twenty years. For some rail operators, the total costs incurred would exceed the total benefits achieved. For others, the benefits would outweigh the costs incurred.

The following table presents estimated twenty-year monetary impacts associated with the locational and emergency notification requirements for dispatching of United States rail operations. These estimates represent scenarios previously considered by railroads as well as those that could arise from future mergers between Canadian and United States railroads; FRA is not aware of any current merger plans or other plans to use additional extraterritorial dispatchers.

Description	Estimated 20-year costs (NPV)
Canada/U.S. labor rate differential	$7,889,471
Additional dispatcher supervisors (higher labor rate)	235,403
Emergency situation notification	3,332
Dismissed employee compensation	(10,076,059)
Total Net Cost (NPV rounded)	(1,947,853)

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed and Final Rules to assess their impact on small entities. FRA has prepared and placed in the docket a Regulatory Flexibility Assessment (RFA), which assesses the small entity impact. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW., 7th Floor, Washington, DC 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590.

Pursuant to Section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FRA has published an interim policy that formally establishes "small entities" as being railroads that meet the line-haulage revenue requirements of a Class III railroad. For other entities, the same dollar limit in revenue governs whether a railroad, contractor, or other respondent is a small entity (62 FR 43024, Aug. 11, 1997).

The RFA concludes that this rule will not have an economic impact on a sizable number of small entities. FRA further certifies that this rule is not expected to have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
241.7—Waivers:					
(a) General	4 railroads	1 waiver pet.	4 hours	4 hours	$157
(b) Special Dispensation—Extraterritorial Dispatching.	4 railroads	4 waiver pet.	4 hours	16 hours	628
(c) Fringe Border Dispatching	4 railroads	2 waiver pet.	4 hours	8 hours	314
241.9—Prohibition against extraterritorial dispatching; exceptions—Notification.	4 railroads	1 notification	8 hours	8 hours	314
241.11—Prohibition against conducting a railroad operation dispatched by an extraterritorial dispatcher, exceptions.	4 railroads	Included under §241.9.	Included under §241.9.	Included under §241.9.	(1)
241.13—Prohibitions against track owner's requiring or permitting use of its line for a railroad operation dispatched by an extraterritorial dispatcher, exceptions.	4 railroads	Included under §241.9.	Included under §241.9.	Included under §241.9.	(1)
241.15—Penalties—False Reports/Records.	$628	None	N/A	N/A	N/A

[1] Included under §241.9.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, 725 17th St., NW., Washington, DC 20503. OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any information collection requirements resulting from this rulemaking action prior to the effective date of this rule. The OMB control number, when assigned, will be announced by a separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, entitled, "Federalism," issued on August 4, 1999, requires that each agency "in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provide[] to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State and local officials have been met * * *."

When issuing the IFR in this proceeding, FRA adhered to Executive Order 13132. Normally, FRA engages in the required Federalism consultation during the early stages of the rulemaking through meetings of the full Railroad Safety Advisory Committee ("RSAC"), on which several representatives of groups representing State and local officials sit. However, when issuing the IFR, FRA determined that, because the possibility existed that railroads could have commenced extensive extraterritorial dispatching at any time, these issues had to be addressed without the benefit of a presentation to the full RSAC. In order to comply with Executive Order 13132, when preparing the IFR, FRA sent a letter soliciting comment on the Federalism implications of this IFR (and the NPRM involving part 219) that FRA simultaneously published to nine groups designated as representatives for various State and local officials. The nine organizations were as follows: the American Association of State Highway and Transportation Officials (AASHTO), the Association of State Rail Safety Managers, the Council of State Governments, the National Association of Counties, the National Association of Towns and Townships, the National Conference of State Legislatures, the National Governors' Association, the National League of Cities, and the U.S. Conference of Mayors.

In addition, FRA representatives had informal discussions with representatives of some of those groups. During one such consultation, a representative of AASHTO expressed confidence that FRA and State interests would closely coincide on these issues. He noted that the September 2000 meeting of AASHTO's Standing Committee on Rail Transportation would include a significant discussion of the pending STB proceeding (involving the proposed consolidation of CN and BNSF), with the implication that FRA's rulemakings may be a current topic at that time. As of the date FRA published the IFR, FRA had not received any indication of concerns about the Federalism implications of this rulemaking from these representatives. In addition, none of the groups submitted comments in response to the IFR. Therefore, FRA does not believe that this Final Rule raises any federalism issues.

E. Environmental Impact

FRA has evaluated this regulation in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28545, 28547, May 26, 1999. Section 4(c)(20) reads as follows:

(c) Actions Categorically Excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. * * * The following classes of FRA actions are categorically excluded:

* * * * *

(20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. The Final Rule would not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry,

advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this Final Rule in accordance with Executive Order 13211. FRA has determined that this Final Rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a "significant energy action" within the meaning of Executive Order 13211.

List of Subjects in 49 CFR Part 241

Communications, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

For the reasons set forth in the preamble, FRA amends chapter II, subtitle B of title 49, Code of Federal Regulations, by adding part 241 to read as follows:

PART 241—UNITED STATES LOCATIONAL REQUIREMENT FOR DISPATCHING OF UNITED STATES RAIL OPERATIONS

Sec.

241.1 Purpose and scope.
241.3 Application and responsibility for compliance.
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Authority: 49 U.S.C. 20103, 20107, 21301, 21304, 21311; 28 U.S.C. 2461, note; 49 CFR 1.49.

§ 241.1 Purpose and scope.

(a) The purpose of this part is to prevent railroad accidents and incidents, and consequent injuries, deaths, and property damage, that would result from improper dispatching of railroad operations in the United States by individuals located outside of the United States.

(b) This part prohibits extraterritorial dispatching of railroad operations, conducting railroad operations that are extraterritorially dispatched, and allowing track to be used for such operations, subject to certain stated exceptions. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

§ 241.3 Application and responsibility for compliance.

(a) Except as provided in paragraph (b) of this section, this part applies to all railroads.

(b) This part does not apply to—

(1) A railroad that operates only on track inside an installation that is not part of the general railroad system of transportation; or

(2) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(c) Although the duties imposed by this part are generally stated in terms of a duty of a railroad, each person, including a contractor for a railroad, who performs a function covered by this part, shall perform that function in accordance with this part.

§ 241.5 Definitions.

As used in this part:

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Dispatch means—

(1) To perform a function that would be classified as a duty of a "dispatching service employee," as that term is defined by the hours of service laws at 49 U.S.C. 21101(2), if the function were to be performed in the United States. For example, to *dispatch* means, by the use of an electrical or mechanical device—

(i) To control the movement of a train or other on-track equipment by the issuance of a written or verbal authority or permission affecting a railroad operation, or by establishing a route through the use of a railroad signal or train control system but not merely by aligning or realigning a switch; or

(ii) To control the occupancy of a track by a roadway worker or stationary on-track equipment, or both; or

(iii) To issue an authority for working limits to a roadway worker.

(2) The term *dispatch* does not include the action of personnel in the field—

(i) Effecting implementation of a written or verbal authority or permission affecting a railroad operation or an authority or permission affecting a railroad operation or an authority for working limits to a roadway worker (*e.g.*, initiating an interlocking timing device, authorizing a train to enter working limits); or

(ii) Operating a function of a signal system designed for use by those personnel.

Dispatcher means any individual who dispatches.

Emergency means an unexpected and unforeseeable event or situation that affects a railroad's ability to use a dispatcher in the United States to dispatch a railroad operation in the United States and that, absent the railroad's use of an extraterritorial dispatcher to dispatch the railroad operation, would either materially disrupt rail service or pose a substantial safety hazard.

Employee means an individual who is engaged or compensated by a railroad or by a contractor to a railroad to perform any of the duties defined in this part.

Extraterritorial dispatcher means a dispatcher who, while located outside of the United States, dispatches a railroad operation that occurs in the United States.

Extraterritorial dispatching means the act of dispatching a railroad operation that occurs on trackage in the United States by a dispatcher located outside of the United States.

Fringe border dispatching means the act of extraterritorial dispatching a railroad operation that occurs on trackage in the United States immediately adjacent to the border between the United States and Canada or the border between the United States and Mexico by a dispatcher who is a railroad employee located in Canada or Mexico.

FRA means the Federal Railroad Administration, United States Department of Transportation.

Movement of a train means the movement of one or more locomotives coupled with or without cars, requiring an air brake test in accordance with part 232 or part 238 of this chapter, except during switching operations or where the operation is that of classifying and assembling rail cars within a railroad yard for the purpose of making or breaking up trains.

Occupancy of a track by a roadway worker or stationary on-track equipment or both refers to the physical presence of a roadway worker or stationary on-track equipment, or both, on a track for the purpose of making an inspection, repair, or another activity not associated with the movement of a train or other on-track equipment.

Person means an entity of a type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; an owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; an independent contractor providing goods or services to a railroad; and an employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Railroad means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways and any person providing such transportation, including—

(1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Railroad contractor means a contractor to a railroad or a subcontractor to a contractor to a railroad.

Railroad operation means the movement of a train or other on-track equipment (other than on-track equipment used in a switching operation or where the operation is that of classifying and assembling rail cars within a railroad yard for the purpose of making or breaking up a train), or the activity that is the subject of an authority issued to a roadway worker for working limits.

Roadway worker means any employee of a railroad, or of a contractor to a railroad, whose duties include inspection, construction, maintenance, or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities, or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen and watchmen/lookouts.

State means a State of the United States of America or the District of Columbia.

United States means all of the States.

Working limits means a segment of track with definite boundaries established in accordance with part 214 of this chapter upon which trains and engines may move only as authorized by the roadway worker having control over that defined segment of track. Working limits may be established through "exclusive track occupancy," "inaccessible track," "foul time," or "train coordination" as defined in part 214 of this chapter.

§ 241.7 Waivers.

(a) *General.* (1) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. Except as provided in paragraph (b) of this section, the filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(2) (i) Each petition for waiver under this section shall be filed in the manner and contain the information required by part 211 of this chapter.

(ii) Petitions seeking approval to conduct fringe border operations shall also comply with the requirements of paragraph (c) of this section.

(iii) Petitioners not filing under paragraph (c) of this section should review the guidelines at 66 FR 63942 (Dec. 11, 2001), and frame their petitions to address the safety and security concerns articulated in the preamble, or contact the Office of the Chief Counsel, RCC–12, FRA, 1120 Vermont Avenue, NW., Stop 10, Washington, DC 20590, for a copy of the guidelines.

(3) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions that the Administrator deems necessary.

(b) *Special dispensation for existing extraterritorial dispatching.* (1) A railroad that files a waiver request seeking to continue extraterritorial dispatch of an operation that it has dispatched from Canada or Mexico pursuant to regulations contained in 49 CFR part 241, revised as of October 1, 2002, may continue extraterritorial dispatching of that operation until the railroad's waiver request is acted upon by FRA if the petition is filed no later than April 11, 2003.

(2) If the waiver request is for an operation not listed in appendix A to this part, the waiver request must describe when the extraterritorial dispatching of the operation commenced and how the dispatching was authorized by regulations contained in 49 CFR part 241, revised as of October 1, 2002. FRA will notify the railroad if FRA determines that the operation was not permitted by the terms of those regulations.

(c) *Fringe border dispatching.* (1) A waiver request to have a railroad employee located in Canada or in Mexico dispatch a railroad operation in the United States immediately adjacent to the border of the country in which the dispatcher conducts the dispatching will generally be approved by FRA, subject to any conditions imposed by FRA, if the waiver request meets all of the terms of paragraphs (c)(2) and (3) of this section. A proponent of a waiver request may seek relief from the terms of paragraphs (c)(2) and (3) of this section.

(2) The railroad proposing to conduct the fringe border dispatching shall supply the following documents as part of the waiver request:

(i) A description, by railroad division, applicable subdivision(s), and mileposts, of the line proposed to be dispatched;

(ii) A copy of the operating rules of the railroad that would apply to the proposed fringe border dispatching, including hours of service limitations, and the railroad's program for testing the dispatchers in accordance with these operating rules and for ensuring that the dispatchers do not work in excess of the hours of service restrictions;

(iii) A copy of the railroad's drug and alcohol abuse prevention program that applies to the fringe border dispatchers. The program shall, to the extent permitted by the laws of the country where the dispatching occurs, contain the following:

(A) Preemployment drug testing;

(B) A general prohibition on possession and use of alcohol and drugs while on duty;

(C) Reasonable cause alcohol and drug testing;

(D) A policy dealing with co-worker and self-reporting of alcohol and drug abuse problems;

(E) Post-accident testing; and

(F) Random drug testing;

(iv) The steps the railroad has taken to ensure the security of the dispatch center where the fringe border dispatching will take place;

(v) The railroad's plans for complying with the requirements of paragraph (c)(3) of this section; and

(vi) A verification from a government agency in the country where the dispatching will occur that the agency has safety jurisdiction over the railroad and the proposed dispatching, and that the railroad's safety programs referenced

in paragraphs (c)(2)(ii) and (iii) of this section meet the safety requirements established by the agency or, in the absence of established safety requirements, that the programs are satisfactory to the agency.

(3) Except as otherwise approved by FRA, fringe border dispatching must comply with the following requirements:

(i) The trackage in the United States being extraterritorially dispatched shall not exceed the following route miles, measured from the point that the trackage crosses the United States border:

(A) For operations conducted pursuant to the regulations contained in 49 CFR part 241, revised as of October 1, 2002, the route miles shall be the miles normally operated by the railroad in conducting the operation; and

(B) For all other operations, the route miles shall not exceed five miles.

(ii) Except for unforeseen circumstances such as equipment failure, accident, casualty, or incapacitation of a crew member, each extraterritorially dispatched train shall be under the control of the same assigned crew for the entire trip over the extraterritorially dispatched trackage.

(iii) The fringe border dispatcher shall communicate instructions to the train crew and maintenance of way employees working on the line in the English language and, when referencing units of measurement, shall use English units of measurement.

(iv) The rail line shall be under the exclusive control of a single dispatching district or desk; and

(v) The dispatching of the train shall be transferred from the fringe border dispatcher to a dispatcher located in the United States at one of the following locations within the mileage limits mandated in paragraph (c)(3)(i) of this section:

(A) Interchange point;

(B) Signal control point;

(C) Junction of two rail lines;

(D) Established crew change point;

(E) Yard or yard limits location;

(F) Inspection point for U.S. Customs, Immigration and Naturalization Service, Department of Agriculture, or other governmental inspection; or

(G) Location where there is a change in the method of train operations.

§ 241.9 Prohibition against extraterritorial dispatching; exceptions.

(a) *General.* Except as provided in § 241.7(d) and paragraphs (b) and (c) of this section, a railroad subject to this part shall not require or permit a dispatcher located outside the United States to dispatch a railroad operation that occurs in the United States if the dispatcher is employed by the railroad or by a contractor to the railroad.

(b) *Transitional period to continue existing extraterritorial dispatching.* A railroad that has normally extraterritorially dispatched railroad track in the United States from Canada or Mexico pursuant to the regulations contained in 49 CFR part 241, revised as of October 1, 2002, may continue extraterritorial dispatching of that railroad track until April 10, 2003, to permit the railroad an opportunity to file a waiver request pursuant to § 241.7.

(c) *Emergencies.* (1) In an emergency situation, a railroad may require or permit one of its dispatchers located outside the United States to dispatch a railroad operation that occurs in the United States, provided that:

(i) The dispatching railroad notifies the FRA Regional Administrator of each FRA region where the railroad operation was conducted, in writing as soon as practicable, of the emergency; and

(ii) The extraterritorial dispatching is limited to the duration of the emergency.

(2) Written notification may be made either on paper or by electronic mail.

(3) A list of the States that make up the FRA regions and the street and e-mail addresses and fax numbers of the FRA Regional Administrators appears in appendix C to this part.

(d) *Liability.* The Administrator may hold either the railroad that employs the dispatcher or the railroad contractor that employs the dispatcher, or both, responsible for compliance with this section and subject to civil penalties under § 241.15.

§ 241.11 Prohibition against conducting a railroad operation dispatched by an extraterritorial dispatcher; exceptions.

(a) *General.* Except as provided in § 241.5(d) or paragraphs (b) and (c) of this section, a railroad subject to this part shall not conduct, or contract for the conduct of, a railroad operation in the United States that is dispatched from a location outside of the United States.

(b) *Transitional period to continue existing extraterritorial dispatching.* A railroad that has normally conducted, or contracted for the conduct of, a railroad operation in the United States that is extraterritorially dispatched pursuant to the regulations contained in 49 CFR part 241, revised as of October 1, 2002, may continue to conduct or contract for the conduct of the operation until April 10, 2003, to permit the railroad an opportunity to file a waiver request pursuant to § 241.7.

(c) *Emergencies.* (1) In an emergency situation, a railroad may conduct, or contract for the conduct of, a railroad operation in the United States that is dispatched from a location outside the United States, provided that:

(i) The dispatching railroad notifies the FRA Regional Administrator of each FRA region where the railroad operation was conducted, in writing as soon as practicable, of the emergency; and

(ii) The extraterritorial dispatching is limited to the duration of the emergency.

(2) Written notification may be made either on paper or by electronic mail.

(3) A list of the States that make up the FRA regions and the street and e-mail addresses and fax numbers of the FRA Regional Administrators appears in appendix C to this part.

(d) *Liability.* The Administrator may hold either the railroad that conducts the railroad operation or the railroad contractor that conducts the operation, or both, responsible for compliance with this section and subject to civil penalties under § 241.15.

§ 241.13 Prohibition against track owner's requiring or permitting use of its line for a railroad operation dispatched by an extraterritorial dispatcher; exceptions.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, an owner of railroad track located in the United States shall not require or permit the track to be used for a railroad operation that is dispatched from outside the United States.

(b) *Transitional period to continue existing extraterritorial dispatching.* An owner of a track segment located in the United States that is extraterritorially dispatched pursuant to the regulations contained in 49 CFR 241, revised as of October 1, 2002, may require or permit the track segment to be continued to be used for a railroad operation that is extraterritorially dispatched until April 10, 2003, to permit the railroad an opportunity to file a waiver request pursuant to § 241.7.

(c) *Emergencies.* In an emergency situation, an owner of railroad track located in the United States may require or permit the track to be used for a railroad operation that is dispatched from outside the United States, provided that:

(1) The dispatching railroad notifies the FRA Regional Administrator of each FRA region where the operation was conducted, in writing as soon as practicable, of the emergency and

(2) The extraterritorial dispatching is limited to the duration of the emergency. Written notification may be made either on paper or by electronic mail.

(d) *Liability.* The Administrator may hold either the track owner or the assignee under § 213.5(c) of this chapter (if any), or both, responsible for compliance with this section and subject to civil penalties under § 241.15. A common carrier by railroad that is directed by the Surface Transportation Board to provide service over the track in the United States of another railroad under 49 U.S.C. 11123 is considered the owner of that track for the purposes of the application of this section during the period that the directed service order remains in effect.

§ 241.15 Penalties and other consequences for noncompliance.

(a) Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

(b) An individual who violates any requirement of this part or causes the violation of any such requirement may be subject to disqualification from safety-sensitive service in accordance with part 209 of this chapter.

(c) A person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

§ 241.17 Preemptive effect.

Under 49 U.S.C. 20106, the regulations in this part preempt any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; is not incompatible with a law, regulation, or order of the United States Government; and does not impose an unreasonable burden on interstate commerce.

§ 241.19 Information collection.

(a) The information collection requirements of this part are being reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

(b) The information collection requirements are found in the following sections: § 241.7(a), (b), (c); 241.9(c); 241.11(c); 241.13(c); and 214.15. When an effective date for these sections is established, FRA will publish notice of that date in the **Federal Register**.

Appendix A to Part 241—List of Lines Being Extraterritorially Dispatched in Accordance With the Regulations Contained in 49 CFR Part 241, Revised as of October 1, 2002

Description of United States track segment being extraterritorially dispatched	Length of United States' track segment	Railroad conducting the dispatching
Maine: Between Vanceboro, Maine and Brownville Junction, Maine.	99 miles	Eastern Maine Ry. Co.
Michigan:		
U.S. trackage between Windsor, Ontario, and Detroit, Michigan.	1.8 miles	Canadian Pacific Railway Company.
U.S. trackage between Sarnia, Ontario, and Port Huron, Michigan.	3.1 miles	Canadian National Railway Company (CN).
Minnesota: Sprague Subdivision, between Baudette, Minnesota, and International Boundary, Minnesota.	43.8 miles	CN.

Appendix B to Part 241—Schedule of Civil Penalties [1]

Section [2]	Violation	Willful violation
241.9(a) Requiring or permitting extraterritorial dispatching of a railroad operation	$7,500	$11,000
(b) Failing to notify FRA about extraterritorial dispatching of a railroad operation in an emergency situation	5,000	7,500
241.11 Conducting a railroad operation that is extraterritorially dispatched:		
(a)(1) Generally	7,500	11,000
(a)(2) In an emergency situation-where dispatching railroad fails to notify FRA of the extraterritorial dispatching	2,500	5,000
241.13 Requiring or permitting track to be used for the conduct of a railroad operation that is extraterritorially dispatched:		
(a)(1) Generally	7,500	11,000
(a)(2) In an emergency situation-where dispatching railroad fails to notify FRA of the extraterritorial dispatching	2,500	5,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $22,000 for any violation where circumstances warrant. See 49 U.S.C. 21301, 21304 and 49 CFR part 209, appendix A.

[2] Further designations for certain provisions, not found in the CFR citation for those provisions, and not found in this Appendix, are FRA Office of Chief Counsel computer codes added as a suffix to the CFR citation and used to expedite imposition of civil penalties for violations. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined designation cited in the civil penalty demand letter.

Appendix C to Part 241—Geographical Boundaries of FRA's Regions and Addresses of FRA's Regional Headquarters

The geographical boundaries of FRA's eight regions and the addresses for the regional headquarters of those regions are as follows:

(1) *Region 1* consists of Maine, Vermont, New Hampshire, New York, Massachusetts, Rhode Island, Connecticut, and New Jersey. The mailing address of the Regional Headquarters is: 55 Broadway, Room 1077, Cambridge, Massachusetts 02142. The fax number is 617–494–2967. The electronic mail (E-mail) address of the Regional Administrator for Region 1 is: *Mark.McKeon@fra.dot.gov*.

(2) *Region 2* consists of Pennsylvania, Delaware, Maryland, Ohio, West Virginia, Virginia, and Washington, DC. The mailing address of the Regional Headquarters is: Two

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International Plaza, Suite 550, Philadelphia, Pennsylvania 19113. The fax number is 610–521–8225. The E-mail address of the Regional Administrator for Region 2 is: *David.Myers@fra.dot.gov*.

(3) *Region 3* consists of Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, and Florida. The mailing address of the Regional Headquarters is: Atlanta Federal Center, 61 Forsythe Street, SW., Suite 16T20, Atlanta, Georgia 30303. The fax number is 404–562–3830. The E-mail address of the Regional Administrator for Region 3 is: *Fred.Dennin@fra.dot.gov*.

(4) *Region 4* consists of Minnesota, Wisconsin, Michigan, Illinois, and Indiana. The mailing address of the Regional Headquarters is: 300 West Adams Street, Rm 310, Chicago, Illinois 60606. The fax number is 312–886–9634. The E-mail address of the Regional Administrator for Region 4 is: *Laurence.Hasvold@fra.dot.gov*.

(5) *Region 5* consists of New Mexico, Oklahoma, Arkansas, Louisiana and Texas. The mailing address of the Regional Headquarters is: 4100 International Plaza, Suite 450, Fort Worth, Texas, 76109–4820. The fax number is 817–284–3804. The E-mail address of the Regional Administrator for Region 5 is: *John.Megary@fra.dot.gov*.

(6) *Region 6* consists of Nebraska, Iowa, Colorado, Kansas, and Missouri. The mailing address of the Regional Headquarters is: 911 Locust Street, Suite 464, Kansas City, Missouri 64106. The fax number is 816–329–3867. The E-mail address of the Regional Administrator for Region 6 is: *Darrell.Tisor@fra.dot.gov*.

(7) *Region 7* consists of California, Nevada, Utah, Arizona, and Hawaii. The mailing address of the Regional Headquarters is: 801 I Street, Suite 466, Sacramento, California 95814. The fax number is 916–498–6546. The E-mail address of the Regional Administrator for Region 7 is: *Alvin.Settje@fra.dot.gov*.

(8) *Region 8* consists of Washington, Idaho, Montana, North Dakota, Oregon, Wyoming, South Dakota, and Alaska. The mailing address of the Regional Headquarters is: Murdock Executive Plaza, 703 Broadway, Suite 650, Vancouver, Washington 98660. The fax number is 360–696–7548. The E-mail address of the Regional Administrator for Region 8 is: *Dick.Clairmont@fra.dot.gov*.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–30527 Filed 12–9–02; 8:45 am]

BILLING CODE 4910–06–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Tuesday,
December 10, 2002

Part IV

Department of Transportation

Federal Railroad Administration

49 CFR Part 219

Control of Alcohol and Drug Use: Notice Inviting Comment on July 2002 Canadian Human Rights Commission Policy on Alcohol and Drug Testing; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. FRA 2001–11068, Notice No. 3]

RIN 2130–AB39

Control of Alcohol and Drug Use: Notice Inviting Comment on July 2002 Canadian Human Rights Commission Policy on Alcohol and Drug Testing

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Proposed rule; extension of comment period until further notice.

SUMMARY: In general, FRA's regulation on the control of alcohol and drug use currently applies to all railroads that operate on the general railroad system of transportation in the United States. In a December 11, 2001, notice of proposed rulemaking (NPRM), FRA proposed to amend the regulation to narrow the scope of its current exemption of certain operations by foreign railroads and small railroads from full application of FRA's requirements. Under the NPRM, an employee of a foreign railroad (a railroad incorporated outside the United States) whose primary reporting point is outside the United States (a foreign railroad foreign-based or "FRFB employee"), who performs train or dispatching service in the United States covered by hours of service laws would no longer be exempt from the pre-employment drug testing, random alcohol and drug testing, and employee assistance program requirements of part 219. FRA held a public hearing on February 14, 2002, and extended the comment period until March 14 to allow interested parties time to supplement the record. (FRFB signal service employees, who are few in number, would continue to be exempt from pre-employment testing, random testing, and employee assistance program requirements.) Elsewhere in today's **Federal Register**, FRA is publishing a Final Rule that, with some amendments, continues in effect an Interim Final Rule requiring all dispatching of railroad operations that occur in the United States to be performed in the United States, with some limited exceptions.

On July 10, 2002, the Canadian Human Rights Commission Policy on Alcohol and Drug Testing (Policy) was published. (A copy of the Policy has been placed in the docket of this rulemaking). In accordance with the North American Free Trade Agreement (NAFTA), FRA is seeking the least-trade-impact solution in furtherance of its national rail safety goals. As part of this process, FRA invites comment on the Policy, which was issued almost four months after the public comment period on the NPRM closed. FRA will keep the comment period open until further notice while it engages in further consultations with the Governments of Canada and Mexico on the safety issues involved in the NPRM.

ADDRESSES: Anyone wishing to file a comment should refer to the FRA docket and notice numbers (FRA Docket No. FRA 2001–11068, Notice No. 3). You may submit your comments and related material by only one of the following methods:

By mail to the Docket Management System, U.S. Department of Transportation, room PL–401, 400 7th Street, SW., Washington, DC 20590–0001; or

Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*. For instructions on how to submit comments electronically, visit the Docket Management System Web site and click on the "Help" menu.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401 on the plaza level of the Nassif Building at the same address during regular business hours. You may also obtain access to this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For technical issues, Lamar Allen, Alcohol and Drug Program Manager, FRA Office of Safety, RRS–11, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone 202–493–6313). For legal issues, Patricia V. Sun, Trial Attorney, Office of the Chief Counsel, RCC–11, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone 202–493–6038).

SUPPLEMENTARY INFORMATION: As briefly summarized above, on December 11, 2001 (66 FR 64000), FRA proposed to amend its regulation on the control of alcohol and drug use (49 CFR part 219) to narrow the scope of exemptions for FRFB employees and for small railroads. The most controversial part of the NPRM was its proposal to make FRFB employees who perform train or dispatching service in the United States subject to part 219's random alcohol and drug testing requirements. The Embassy of Canada has filed a letter that questioned the need for the NPRM, and requested that FRA withdraw the NPRM, and work with Transport Canada to establish a Canada-United States rail safety working group that would explore areas of bilateral cooperation and exchange information on each country's respective regulations, laws and statistics.

FRA is unwilling to withdraw the NPRM, as requested by the Embassy of Canada, but is willing to extend the comment period until further notice to allow for further consultations between FRA and the Governments of Canada and Mexico on the safety issues involved in the rulemaking. FRA will be contacting the Governments of Canada and Mexico to set up these consultations. FRA will provide interested parties an opportunity to comment on the results of the consultations before FRA makes a final decision on the rulemaking. In light of the major Alcohol and Drug Testing Policy issued by the Canadian Human Rights Commission last month, a copy of which has been placed in the docket, FRA invites additional public comment on the Policy's impact on the legal requirements for workplace alcohol and drug testing in Canada.

Issued in Washington, DC, on November 26, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–30528 Filed 12–9–02; 8:45 am]

BILLING CODE 4910–06–P

Federal Register

Tuesday,
December 10, 2002

Part V

Federal Communications Commission

47 CFR Parts 2, 25, and 87

World Radiocommunication Conferences Concerning Frequency Bands Above 28 MHz; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 25 and 87

[ET Docket No. 02–305; FCC 02–261]

World Radiocommunication Conferences Concerning Frequency Bands Above 28 MHz

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Commission proposes to amend our rules in order to implement domestically various allocation decisions from several World Radiocommunication Conferences ("WRCs") concerning the frequency bands between 28 MHz and 36 GHz and to otherwise update our rules in this frequency range. The following proposals are the most significant to non-Federal Government operations: implementing generic mobile-satellite service ("MSS") allocations in the bands 1525–1559 MHz and 1626.5–1660.5 MHz ("L-band"); allocating the band 1164–1189 MHz to the radionavigation-satellite service ("RNSS"); and removing unused and limited fixed-satellite and broadcasting-satellite allocations from the band 2500–2690 MHz. In addition, at the request of the National Telecommunications and Information Administration ("NTIA"), the Commission has proposed various allocation changes for the space science services and the inter-satellite service ("ISS"), most of which involve spectrum primarily used by the Federal Government. These proposals would conform the Commission's rules to previous WRC agreements and are expected to provide significant benefits to the American public.

DATES: Written comments are due February 10, 2003, and reply comments are due March 10, 2003.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 418–2450, TTY (202) 418–2989, e-mail: *tmooring@fcc.gov*.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking*, ET Docket 02–305, FCC 02–261, adopted September 18, 2002, and released October 7, 2002. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before February 10, 2003, and reply comments on or before March 10, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998), 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Summary of Notice of Proposed Rule Making

1. The *Notice of Proposed Rulemaking* (*"NPRM"*) proposes to provide for generic MSS allocations across the bands 1525–1559 MHz and 1626.5–1660.5 MHz. Specifically, we proposed to expand the primary allocation in the bands 1545–1549.5 MHz, 1558.5–1559 MHz, 1646.5–1651 MHz, and 1660–1660.5 MHz from the aeronautical mobile-satellite (route) service ("AMS(R)S") to all services within the MSS while preserving the requirements of AMS(R)S. The effect of our proposal is that the bands 1545–1559 MHz and 1646.5–1660.5 MHz would be made available to all types of MSS communications on a primary basis, rather than segmented for specialized use. This action will permit more efficient use of this radio spectrum and will facilitate the expansion of MSS use globally. In addition, because the bands 1530–1544 MHz and 1626.5–1645.5 MHz are currently allocated to the maritime mobile-satellite service ("MMSS") and the MSS on a co-primary basis, we proposed to remove superfluous MMSS allocations. We are also requesting comment on whether the secondary allocation for aeronautical telemetry should be removed from the band 1525–1535 MHz.

2. The Commission proposes to allocate the band 1164–1189 MHz to the RNSS for space-to-Earth ("downlink") and space-to-space transmissions in order to accommodate a new civil global positioning system ("GPS") signal. This action would permit the addition of a new GPS signal and support the safety-of-life requirements demanded by civil aviation. We also proposed to allocate the bands 1215–1240 MHz and 1559–1610 MHz, which are currently limited to RNSS downlinks, for RNSS space-to-space transmissions as well. This action would allow use of spaceborne RNSS receivers for scientific and commercial applications.

3. The Commission proposes to downgrade the primary flight test and radiolocation allocations to secondary status in the band 2320–2345 MHz

because the Satellite Digital Audio Radio Service ("Satellite DARS") has been brought into operation. We also propose to delete limited allocations for the fixed-satellite service ("FSS") and the broadcasting-satellite service ("BSS") from the band 2500–2690 MHz in order to remove allocations that are not compatible with two-way, point-to-multipoint fixed uses.

4. The Commission proposes to implement domestically various allocation decisions concerning the space science services and the ISS from several WRCs that have not previously been addressed by the Commission. These proposals deal with the following issues:

- Raising secondary allocations for the Earth exploration-satellite service ("EESS") and the space research service ("SRS") to primary status in 1035 megahertz of spectrum in eight frequency bands and to specify that these allocations are to used for active sensor operations ("EESS (active)" and "SRS (active)"): 1215–1240 MHz, 1240–1300 MHz, 5250–5255 MHz, 5255–5350 MHz, 8550–8650 MHz, 9500–9800 MHz, 13.4–13.75 GHz, and 17.2–17.3 GHz.
- Allocating 550 megahertz of additional spectrum to the EESS (active) and SRS (active) on a primary basis in the bands 13.25–13.4 GHz and 35.6–36 GHz. We would also change the primary footnote allocation for active spaceborne sensors in the band 35.5–35.6 GHz to a direct Table listing.
- Allocating 110 megahertz of additional spectrum to the EESS (active) on a primary basis in the band 5350–5460 MHz.
- Upgrading the allocation status of EESS uplinks and meteorological-satellite service ("METSAT") uplinks in the band 401–403 MHz from secondary to primary.
- Allocating the band 410–420 MHz to the SRS on a primary basis for space-to-space transmissions.
- Allocating the band 7750–7850 MHz for METSAT downlinks on a primary basis, limited to non-geostationary satellite systems.
- Allocating the band 8400–8450 MHz for SRS downlinks from deep space on a secondary basis.
- Allocating the band 25.25–27.5 GHz to the ISS on a primary basis.
- Raising the secondary EESS allocation to primary status in the band 25.5–27 GHz and changing its directional indicator from space-to-space to space-to-Earth.

5. In addition, we proposed to: (1) Remove the primary ISS allocation from the band 32–32.3 GHz; (2) remove the secondary allocation for the aeronautical mobile-satellite (route) service ("AMS(R)S") from the band 136–137 MHz; (3) more than double the size of the geographic area in New Mexico and Texas where amateur stations in the band 420–450 MHz would be limited in power and where spread spectrum radiolocation systems in the sub-band 420–435 MHz should not expect to be accommodated; (4) reflect NTIA's recent action, which specified that Federal Government wind profiler radar systems ("wind profilers") will operate in the sub-band 448–450 MHz; (5) permit U.S. flagged ships to use more spectrum-efficient equipment for on-board mobile radiotelephony communications in areas outside the territorial waters of the United States; (6) remove unused allocations for the International Fixed Public Radiocommunication Services from the bands 2.1–2.2 GHz and 10.7–11.7 GHz; and (7) allocate the band 14–14.5 GHz to the mobile-satellite (Earth-to-space) except aeronautical mobile-satellite service on a secondary basis. The Commission also proposes to make numerous ministerial amendments to part 2 of our rules.

Initial Regulatory Flexibility Certification

6. The Regulatory Flexibility Act of 1980, as amended ("RFA"),[1] requires that an initial regulatory analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that the "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.[2] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[3] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[4] A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").[5]

[1] *See* U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[5] 15 U.S.C. 632.

7. The *Notice of Proposed Rule Making* ("NPRM") proposed to amend parts 2, 25, and 87 of the Commission's rules in order to implement domestically various allocation decisions from several World Radiocommunication Conferences concerning the frequency bands between 28 MHz and 36 GHz and to otherwise update our rules in this frequency range. These allocation proposals mainly affect Federal agencies.[6] Those proposals that are most significant to non-Federal Government operations are: (1) Implementing generic L-band MSS allocations; (2) allocating the band 1164–1189 MHz to the RNSS; and (3) removing unused and limited FSS and BSS allocations from the band 2500–2690 MHz. Concerning L-band MSS, currently there is only one U.S. licensee. Concerning the RNSS allocation, only one or at most a few large companies are expected to be able to launch and maintain RNSS systems, which are expensive. The last proposal merely deletes unused allocations, with no direct effect on licensees or regulatees.

8. We have determined that the rules proposed in the *NPRM* will not, if promulgated, have a significant economic impact on a substantial number of small entities. Accordingly, we hereby certify that this NPRM will not have a significant economic impact on a substantial number of small entities. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this NPRM, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.[7]

9. Pursuant to sections 1, 4, 301, 302(a), 303, 307, 309, 316, 332, 334, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 301, 302(a), 303, 307, 309, 316, 332, 334, and 336, the notice of proposed rule making is adopted.

List of Subjects

47 CFR Part 2

Communications equipment, Radio.

47 CFR Part 25

Communications equipment.

47 CFR Part 87

Air transportation, Communications equipment.

[6] *See* paras. 5–6, *supra*.

[7] 5 U.S.C. 605(b).

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 2, 25, and 87 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.1 is revised by adding the following definitions in alphabetic order:

§ 2.1 Terms and definitions.

* * * * *

Differential Global Positioning System (DGPS) Station. A differential RNSS station for specific augmentation of GPS.

Differential Radionavigation Satellite Service (Differential RNSS) Station. A station used for the transmission of differential correction data and related information (such as ionospheric data and RNSS satellite integrity information) as an augmentation to an RNSS system for the purpose of improved navigation accuracy.

* * * * *

3. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. Revise pages 22–75.

b. In the list of International Footnotes under heading II., remove footnotes 591, 599A, 599B, 608A, 608B, 647B, 669, and 792A.

c. In the list of United States (US) Footnotes, revise US7, US48, US110, US217, US244, US246, US262, US276, US277, US278, US310, US316, US320, US328, and US342; remove US10, US54, US228, US269, US318, and US322; and add footnotes USxxx, USyyy, and USzzz.

d. In the list of Non-Federal Government (NG) Footnotes, remove NG23, NG47, NG63, NG101, and NG102; and revise NG41.

e. In the list of Federal Government (G) Footnotes, revise footnote G2 and add footnote G129.

§ 2.106 Table of Frequency Allocations.

The revisions and additions read as follows:

* * * * *

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28-33 MHz (HF/VHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
28-29.7 AMATEUR AMATEUR-SATELLITE			28-29.89	28-29.7 AMATEUR AMATEUR-SATELLITE US340	Amateur (97)
29.7-30.005 FIXED MOBILE				29.7-29.8 LAND MOBILE US340	Private Land Mobile (90)
				29.8-29.89 FIXED US340	
			US340	29.89-29.91 FIXED MOBILE US340	
			US340	29.91-30 FIXED US340	
			US340	30-30.56 FIXED MOBILE	
30.005-30.01 SPACE OPERATION (satellite identification) FIXED MOBILE SPACE RESEARCH			30.56-32	30.56-32 FIXED LAND MOBILE NG124	Private Land Mobile (90)
30.01-37.5 FIXED MOBILE			32-33 FIXED MOBILE	32-33	
			See next page for 33-37.5 MHz		See next page for 33-37.5 MHz

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33-50 MHz (VHF) — Page 23

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 30.01-37.5 MHz			33-34	33-34 FIXED LAND MOBILE NG124	Private Land Mobile (90)
			34-35 FIXED MOBILE	34-35	
			35-36	35-36 FIXED LAND MOBILE	Public Mobile (22) Private Land Mobile (90)
			36-37 FIXED MOBILE US220	36-37 US220	
			37-37.5	37-37.5 LAND MOBILE NG124	Private Land Mobile (90)
37.5-38.25 FIXED MOBILE Radio astronomy 5.149			37.5-38 Radio astronomy US342	37.5-38 LAND MOBILE Radio astronomy US342 NG59 NG124	
			38-38.25 FIXED MOBILE RADIO ASTRONOMY US81 US342	38-38.25 RADIO ASTRONOMY US81 US342	
38.25-39.986 FIXED MOBILE			38.25-39 FIXED MOBILE	38.25-39	
			39-40	39-40 LAND MOBILE NG124	Private Land Mobile (90)
39.986-40.02 FIXED MOBILE Space research			40-42 FIXED MOBILE	40-40.98	ISM Equipment (18) Private Land Mobile (90)

40.02-40.98 FIXED MOBILE 5.150				5.150 US210	
40.98-41.015 FIXED MOBILE Space research 5.160 5.161				40.98-42	
41.015-44 FIXED MOBILE 5.160 5.161			5.150 US210 US220	US220	
			42-46.6	42-43.69 FIXED LAND MOBILE NG124 NG141	Public Mobile (22) Private Land Mobile (90)
				43.69-46.6 LAND MOBILE NG124 NG141	Private Land Mobile (90)
44-47 FIXED MOBILE 5.162 5.162A			46.6-47 FIXED MOBILE	46.6-47	
47-68 BROADCASTING 5.162A 5.163 5.164 5.165 5.169 5.171	47-50 FIXED MOBILE See next page for 50-68 MHz	47-50 FIXED MOBILE BROADCASTING 5.162A	47-49.6 49.6-50 FIXED MOBILE See next page for 50-73 MHz	47-49.6 LAND MOBILE NG124 49.6-50 See next page for 50-72 MHz	Private Land Mobile (90) See next page for 50-72 MHz

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50-123.5875 MHz (VHF) — Page 25

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 47-68 MHz	50-54 AMATEUR 5.162A 5.168 5.167 5.168 5.170		50-73	50-54 AMATEUR	Amateur (97)
	54-68 BROADCASTING Fixed Mobile 5.172	54-68 FIXED MOBILE BROADCASTING 5.162A		54-72 BROADCASTING	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
68-74.8 FIXED MOBILE except aeronautical mobile	68-72 BROADCASTING Fixed Mobile 5.173	68-74.8 FIXED MOBILE		NG128 NG149	
	72-73 FIXED MOBILE			72-73 FIXED MOBILE NG3 NG49 NG56	Public Mobile (22) Aviation (87) Private Land Mobile (90) Personal Radio (95)
	73-74.6 RADIO ASTRONOMY 5.178		73-74.6 RADIO ASTRONOMY US74 US246		
5.149 5.174 5.175 5.177 5.179	74.6-74.8 FIXED MOBILE	5.149 5.176 5.179	74.6-74.8 FIXED MOBILE US273		Aviation (87) Private Land Mobile (90)
74.8-75.2 AERONAUTICAL RADIONAVIGATION 5.180 5.181			74.8-75.2 AERONAUTICAL RADIONAVIGATION 5.180		Aviation (87)
75.2-87.5 FIXED MOBILE except aeronautical mobile	75.2-75.4 FIXED MOBILE 5.179		75.2-75.4 FIXED MOBILE US273		Private Land Mobile (90)

	75.4-76 FIXED MOBILE	75.4-87 FIXED MOBILE	75.4-88	75.4-76 FIXED MOBILE NG3 NG49 NG56	Public Mobile (22) Private Land Mobile (90) Personal Radio (95)
	76-88 BROADCASTING Fixed Mobile 5.185	5.182 5.183 5.188 87-100 FIXED MOBILE BROADCASTING		76-88 BROADCASTING NG128 NG129 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
5.175 5.179 5.184 5.187 87.5-100 BROADCASTING 5.190	88-100 BROADCASTING		88-108	88-108 BROADCASTING US93 NG2 NG128 NG129	Broadcast Radio (FM) (73) Auxiliary Broadcasting (74)
100-108 BROADCASTING 5.192 5.194					
108-117.975 AERONAUTICAL RADIONAVIGATION 5.197			108-117.975 AERONAUTICAL RADIONAVIGATION US93 US343		Aviation (87)
117.975-137 AERONAUTICAL MOBILE (R)			117.975-121.9375 AERONAUTICAL MOBILE (R) 5.111 5.198 5.199 5.200 US26 US28		
			121.9375-123.0875 5.198 US30 US31 US33 US80 US102 US213	121.9375-123.0875 AERONAUTICAL MOBILE 5.198 US30 US31 US33 US80 US102 US213	
			123.0875-123.5875 AERONAUTICAL MOBILE 5.198 5.200 US32 US33 US112		
5.111 5.198 5.199 5.200 5.201 5.202 5.203 5.203A 5.203B			See next page for 123.5875-137 MHz		See next page for 123.5875-137 MHz

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123.5875-148 MHz (VHF) — Page 27

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 117.975-137 MHz			123.5875-128.8125 AERONAUTICAL MOBILE (R) 5.198 US26		Aviation (87)
			128.8125-132.0125 5.198	128.8125-132.0125 AERONAUTICAL MOBILE (R) 5.198	
			132.0125-136.00 AERONAUTICAL MOBILE (R) 5.198 US26		
			136-137 US244	136-137 AERONAUTICAL MOBILE (R) US244	
137-137.025 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.208A 5.209 SPACE RESEARCH (space-to-Earth) Fixed Mobile except aeronautical mobile (R) 5.204 5.205 5.206 5.207 5.208			137-137.025 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) US319 US320 SPACE RESEARCH (space-to-Earth) 5.208		Satellite Communications (25)
137.025-137.175 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) SPACE RESEARCH (space-to-Earth) Fixed Mobile-satellite (space-to-Earth) 5.208A 5.209 Mobile except aeronautical mobile (R) 5.204 5.205 5.206 5.207 5.208			137.025-137.175 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) SPACE RESEARCH (space-to-Earth) Mobile-satellite (space-to-Earth) US319 US320 5.208		
137.175-137.825 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.208A 5.209 SPACE RESEARCH (space-to-Earth) Fixed			137.175-137.825 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) US319 US320 SPACE RESEARCH (space-to-Earth)		

Mobile except aeronautical mobile (R) 5.204 5.205 5.206 5.207 5.208			5.208		
137.825-138 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) SPACE RESEARCH (space-to-Earth) Fixed Mobile-satellite (space-to-Earth) 5.208A 5.209 Mobile except aeronautical mobile (R) 5.204 5.205 5.206 5.207 5.208			137.825-138 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) SPACE RESEARCH (space-to-Earth) Mobile-satellite (space-to-Earth) US319 US320 5.208		
138-143.6 AERONAUTICAL MOBILE (OR) 5.210 5.211 5.212 5.214	138-143.6 FIXED MOBILE RADIOLOCATION Space research (space-to-Earth)	138-143.6 FIXED MOBILE Space research (space-to-Earth) 5.207 5.213	138-144 FIXED MOBILE	138-144	
143.6-143.65 AERONAUTICAL MOBILE (OR) SPACE RESEARCH (space-to-Earth) 5.211 5.212 5.214	143.6-143.65 FIXED MOBILE RADIOLOCATION SPACE RESEARCH (space-to-Earth)	143.6-143.65 FIXED MOBILE SPACE RESEARCH (space-to-Earth) 5.207 5.213			
143.65-144 AERONAUTICAL MOBILE (OR) 5.210 5.211 5.212 5.214	143.65-144 FIXED MOBILE RADIOLOCATION Space research (space-to-Earth)	143.65-144 FIXED MOBILE Space research (space-to-Earth) 5.207 5.213	G30		
144-146 AMATEUR AMATEUR-SATELLITE 5.216			144-148	144-146 AMATEUR AMATEUR-SATELLITE	Amateur (97)
146-148 FIXED MOBILE except aeronautical mobile (R)	146-148 AMATEUR 5.217	146-148 AMATEUR FIXED MOBILE 5.217		146-148 AMATEUR	

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148-162.0125 MHz (VHF) — Page 29

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
148-149.9 FIXED MOBILE except aeronautical mobile (R) MOBILE-SATELLITE (Earth-to-space) 5.209 5.218 5.219 5.221	148-149.9 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.209 5.218 5.219 5.221		148-149.9 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) US319 US320 US323 US325 5.218 5.219 G30	148-149.9 MOBILE-SATELLITE (Earth-to-space) US319 US320 US323 US325 5.218 5.219	Satellite Communications (25)
149.9-150.05 MOBILE-SATELLITE (Earth-to-space) 5.209 5.224A RADIONAVIGATION-SATELLITE 5.224B 5.220 5.222 5.223			149.9-150.05 MOBILE-SATELLITE (Earth-to-space) US319 US320 RADIONAVIGATION-SATELLITE 5.223		
150.05-153 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY 5.149	150.05-156.7625 FIXED MOBILE		150.05-150.8 FIXED MOBILE US218 G30	150.05-150.8 US216	
			150.8-152.855 US216	150.8-152.855 FIXED LAND MOBILE NG112 US216 NG4 NG51 NG124	Public Mobile (22) Private Land Mobile (90) Personal Radio (95)
153-154 FIXED MOBILE except aeronautical mobile (R) Meteorological aids			152.855-154	152.855-154 LAND MOBILE NG4 NG124	Auxiliary Broadcasting (74) Private Land Mobile (90)
154-156.7625 FIXED MOBILE except aeronautical mobile (R) 5.226 5.227			154-156.2475 5.226	154-156.2475 FIXED LAND MOBILE NG112 5.226 NG117 NG124 NG148	Maritime (80) Private Land Mobile (90) Personal Radio (95)
	5.225 5.226 5.227		156.2475-157.0375	156.2475-157.0375 MARITIME MOBILE	Aviation (87)

156.7625-156.8375 MARITIME MOBILE (distress and calling) 5.111 5.226		5.226 5.227 US77 US106 US107 US266	5.226 5.227 US77 US106 US107 US266 NG117	
156.8375-174 FIXED MOBILE except aeronautical mobile	156.8375-174 FIXED MOBILE	157.0375-157.1875 MARITIME MOBILE 5.226 US214 US266 G109	157.0375-157.1875 5.226 US214 US266	Private Land Mobile (90)
		157.1875-157.45 5.226 US223 US266	157.1875-157.45 LAND MOBILE MARITIME MOBILE 5.226 US223 US266 NG111	Maritime (80) Private Land Mobile (90)
		157.45-161.575 5.226 US266	157.45-161.575 FIXED LAND MOBILE 5.226 US266 NG6 NG28 NG70 NG111 NG112 NG124 NG148 NG155	Public Mobile (22) Maritime (80) Private Land Mobile (90)
		161.575-161.625 5.226 US77	161.575-161.625 MARITIME MOBILE 5.226 US77 NG6 NG17	Public Mobile (22) Maritime (80)
		161.625-161.775 5.226	161.625-161.775 LAND MOBILE 5.226 NG6	Public Mobile (22) Auxiliary Broadcasting (74)
		161.775-162.0125 6.226 US266	161.775-162.0125 LAND MOBILE MARITIME MOBILE 5.226 US266 NG6	Public Mobile (22) Maritime (80) Private Land Mobile (90)
5.226 5.229	5.226 5.230 5.231 5.232	See next page for 162.0125-174 MHz		See next page for 162.0125-174 MHz

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162.0125-322 MHz (VHF/UHF) Page 31

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 156.8375-174 MHz			162.0125-173.2 FIXED US13 MOBILE 5.226 US8 US11 US216 US223 US300 US312 G5	162.0125-173.2 5.226 US8 US11 US13 US216 US223 US300 US312	Auxiliary Broadcasting (74) Private Land Mobile (90)
			173.2-173.4	173.2-173.4 FIXED Land mobile	Private Land Mobile (90)
			173.4-174 FIXED MOBILE G5	173.4-174	
174-223 BROADCASTING	174-216 BROADCASTING Fixed Mobile 5.234	174-223 FIXED MOBILE BROADCASTING	174-216	174-216 BROADCASTING NG115 NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
	216-220 FIXED MARITIME MOBILE Radiolocation 5.241 5.242		216-220 Fixed Mobile Radiolocation 5.241 G2 US210 US229	216-220 FIXED MOBILE except aeronautical mobile US210 US229 NG152 NG173	Maritime (80) Private Land Mobile (90) Personal Radio (95) Amateur (97)
	220-225 AMATEUR FIXED MOBILE Radiolocation 5.241		220-222 FIXED LAND MOBILE Radiolocation 5.241 G2 US335	220-222 FIXED LAND MOBILE US335	Private Land Mobile (90)
5.235 5.237 5.243		5.233 5.238 5.240 5.245	222-225 Radiolocation 5.241 G2	222-225 AMATEUR	Amateur (97)

223-230 BROADCASTING Fixed Mobile 5.243 5.246 5.247	225-235 FIXED MOBILE	223-230 FIXED MOBILE BROADCASTING AERONAUTICAL RADIONAVIGATION Radiolocation 5.250	225-235 FIXED MOBILE	225-235	
230-235 FIXED MOBILE 5.247 5.251 5.252		230-235 FIXED MOBILE AERONAUTICAL RADIONAVIGATION 5.250	G27		
235-267 FIXED MOBILE 5.111 5.199 5.252 5.254 5.256			235-267 FIXED MOBILE 5.111 5.199 5.256 G27 G100	235-267 5.111 5.199 5.256	
267-272 FIXED MOBILE Space operation (space-to-Earth) 5.254 5.257			267-322 FIXED MOBILE	267-322	
272-273 SPACE OPERATION (space-to-Earth) FIXED MOBILE 5.254					
273-312 FIXED MOBILE 5.254					
312-315 FIXED MOBILE Mobile-satellite (Earth-to-space) 5.254 5.255					
315-322 FIXED MOBILE 5.254			G27 G100		

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322-410 MHz (UHF) Page 33

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
322-328.6 FIXED MOBILE RADIO ASTRONOMY 5.149			322-328.6 FIXED MOBILE US342 G27	322-328.6 US342	
328.6-335.4 AERONAUTICAL RADIONAVIGATION 5.258 5.259			328.6-335.4 AERONAUTICAL RADIONAVIGATION 5.258		
335.4-387 FIXED MOBILE 5.254			335.4-399.9 FIXED MOBILE G27 G100	335.4-399.9	
387-390 FIXED MOBILE Mobile-satellite (space-to-Earth) 5.208A 5.254 5.255					
390-399.9 FIXED MOBILE 5.254					
399.9-400.05 MOBILE-SATELLITE (Earth-to-space) 5.209 5.224A RADIONAVIGATION-SATELLITE 5.222 5.224B 5.260 5.220			399.9-400.05 MOBILE-SATELLITE (Earth-to-space) US319 US320 RADIONAVIGATION-SATELLITE 5.260		
400.05-400.15 STANDARD FREQUENCY AND TIME SIGNAL-SATELLITE (400.1 MHz) 5.261 5.262			400.05-400.15 STANDARD FREQUENCY AND TIME SIGNAL-SATELLITE (400.1 MHz) 5.261		
400.15-401 METEOROLOGICAL AIDS METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.208A 5.209 SPACE RESEARCH (space-to-Earth) 5.263 Space operation (space-to-Earth)			400.15-401 METEOROLOGICAL AIDS (radiosonde) US70 METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) US319 US320 US324	400.15-401 METEOROLOGICAL AIDS (radiosonde) US70 MOBILE-SATELLITE (space-to-Earth) US319 US320 US324 SPACE RESEARCH (space-to-Earth) 5.263	Satellite Communications (25)

	SPACE RESEARCH (space-to-Earth) 5.263 Space operation (space-to-Earth) 5.264	Space operation (space-to-Earth) 5.264	
401-402 METEOROLOGICAL AIDS SPACE OPERATION (space-to-Earth) EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) Fixed Mobile except aeronautical mobile	401-402 METEOROLOGICAL AIDS (radiosonde) US70 SPACE OPERATION (space-to-Earth) EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) USxxx	401-402 METEOROLOGICAL AIDS (radiosonde) US70 SPACE OPERATION (space-to-Earth) Earth exploration-satellite (Earth-to-space) Meteorological-satellite (Earth-to-space) USxxx	
402-403 METEOROLOGICAL AIDS EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) Fixed Mobile except aeronautical mobile	402-403 METEOROLOGICAL AIDS (radiosonde) US70 EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) US345 USxxx	402-403 METEOROLOGICAL AIDS (radiosonde) US70 Earth exploration-satellite (Earth-to-space) Meteorological-satellite (Earth-to-space) US345 USxxx	Personal Radio (95)
403-406 METEOROLOGICAL AIDS Fixed Mobile except aeronautical mobile	403-406 METEOROLOGICAL AIDS (radiosonde) US70 US345 G6	403-406 METEOROLOGICAL AIDS (radiosonde) US70 US345	
406-406.1 MOBILE-SATELLITE (Earth-to-space) 5.266 5.267	406-406.1 MOBILE-SATELLITE (Earth-to-space) 5.266 5.267		
406.1-410 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY 5.149	406.1-410 FIXED US13 MOBILE RADIO ASTRONOMY US74 US117 G5 G6	406.1-410 RADIO ASTRONOMY US74 US13 US117	

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
410-420 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (space-to-space) 5.268			410-420 FIXED US13 MOBILE SPACE RESEARCH (space-to-space) 5.268 G5	410-420 US13	Private Land Mobile (90)
420-430 FIXED MOBILE except aeronautical mobile Radiolocation 5.269 5.270 5.271			420-450 RADIOLOCATION US217 US228 G2 G129	420-450 Amateur US7 NG135	Private Land Mobile (90) Amateur (97)
430-440 AMATEUR RADIOLOCATION 5.138 5.271 5.272 5.273 5.274 5.275 5.276 5.277 5.280 5.281 5.282 5.283	430-440 RADIOLOCATION Amateur 5.271 5.276 5.277 5.278 5.279 5.281 5.282				
440-450 FIXED MOBILE except aeronautical mobile Radiolocation 5.269 5.270 5.271 5.284 5.285 5.286				5.282 5.286 US87 US217 US228 US230 5.286 US7 US87 US230 G8	
450-455 FIXED MOBILE 5.209 5.271 5.286 5.286A 5.286B 5.286C 5.286D 5.286E			450-454 5.286 US87	450-454 LAND MOBILE 5.286 US87 NG112 NG124	Auxiliary Broadcasting (74) Private Land Mobile (90)
			454-456	454-455 FIXED LAND MOBILE NG12 NG112 NG148	Public Mobile (22) Maritime (80)
455-456 FIXED MOBILE 5.209 5.271 5.286A 5.286B 5.286C 5.286E	455-456 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.286A 5.286B 5.286C 5.209	455-456 FIXED MOBILE 5.209 5.271 5.286A 5.286B 5.286C 5.286E		455-456 LAND MOBILE	Auxiliary Broadcasting (74)

456-459 FIXED MOBILE 5.271 5.287 5.288			456-460	456-460 FIXED LAND MOBILE	Public Mobile (22) Maritime (80) Private Land Mobile (90)
459-460 FIXED MOBILE 5.209 5.271 5.286A 5.286B 5.286C 5.286E	459-460 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.286A 5.286B 5.286C 5.209	459-460 FIXED MOBILE 5.209 5.271 5.286A 5.286B 5.286C 5.286E	5.287 5.288	5.287 5.288 NG112 NG124 NG148	
460-470 FIXED MOBILE Meteorological-satellite (space-to-Earth) 5.287 5.288 5.289 5.290			460-470 Meteorological-satellite (space-to-Earth) 5.287 5.288 5.289 US201 US209 US216	460-462.5375 FIXED LAND MOBILE 5.289 US201 US209 NG124	Private Land Mobile (90)
				462.5375-462.7375 LAND MOBILE 5.289 US201	Personal Radio (95)
				462.7375-467.5375 FIXED LAND MOBILE 5.287 5.289 US201 US209 US216 NG124	Private Land Mobile (90)
				467.5375-467.7375 LAND MOBILE 5.287 5.289 US201	Personal Radio (95)
				467.7375-470 FIXED LAND MOBILE 5.288 5.289 US201 US216 NG124	Private Land Mobile (90)

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
470-790 BROADCASTING	470-512 BROADCASTING Fixed Mobile 5.292 5.293	470-585 FIXED MOBILE BROADCASTING	470-608	470-512 BROADCASTING NG128 NG149 FIXED NG127 LAND MOBILE NG66 NG114	Public Mobile (22) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74) Private Land Mobile (90)
	512-608 BROADCASTING 5.297	5.291 5.298 585-610 FIXED MOBILE BROADCASTING RADIONAVIGATION		512-608 BROADCASTING NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
	608-614 RADIO ASTRONOMY Mobile-satellite except aeronautical mobile-satellite (Earth-to-space)	5.149 5.305 5.306 5.307 610-890 FIXED MOBILE 5.317A BROADCASTING	608-614 RADIO ASTRONOMY US74 LAND MOBILE US350 US246		Personal (95)
	614-806 BROADCASTING Fixed Mobile		614-890	614-698 BROADCASTING NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcast. (74)
				698-746 BROADCASTING NG128 NG159 FIXED MOBILE	Wireless Communications (27) Broadcast Radio (TV) (73) Auxiliary Broadcast. (74)
				746-764 FIXED MOBILE BROADCASTING NG128 NG159	Wireless Communications (27) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74) Private Land Mobile (90)

				764-776 FIXED MOBILE NG128 NG158 NG159	Auxiliary Broadcasting (74) Private Land Mobile (90)
5.149 5.291A 5.294 5.298 5.300 5.302 5.304 5.306 5.311 5.312				776-794 FIXED MOBILE BROADCASTING NG128 NG159	Wireless Communications (27) Broadcast Radio (TV) (73) Auxiliary Broadcast. (74) Private Land Mobile (90)
790-862 FIXED BROADCASTING	5.293 5.309 5.311			794-806 FIXED MOBILE NG128 NG158 NG159	Auxiliary Broadcasting (74) Private Land Mobile (90)
	806-890 FIXED MOBILE BROADCASTING			806-821 FIXED LAND MOBILE NG31	Public Mobile (22) Private Land Mobile (90)
				821-824 LAND MOBILE	Private Land Mobile (90)
5.312 5.314 5.315 5.316 5.319 5.321				824-849 FIXED LAND MOBILE NG151	Public Mobile (22)
See next page for 862-890 MHz	5.317 5.318	5.149 5.305 5.306 5.307 5.311 5.320		See next page for 849-894 MHz	See next page for 866-896 MHz

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849-941 MHz (UHF) — Page 39

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous pages for 470-862 MHz	See previous pages for 614-890 MHz	See previous pages for 585-890 MHz	See previous pages for 614-890 MHz	See previous pages for 614-849 MHz	See previous pages for 614-849 MHz
				849-851 AERONAUTICAL MOBILE	Public Mobile (22)
				851-866 FIXED LAND MOBILE NG31	Public Mobile (22) Private Land Mobile (90)
862-890 FIXED MOBILE except aeronautical mobile BROADCASTING 5.322 5.319 5.323				866-869 LAND MOBILE	Private Land Mobile (90)
				869-894 FIXED LAND MOBILE US116 US268 NG151	Public Mobile (22)
890-942 FIXED MOBILE except aeronautical mobile 5.317A BROADCASTING 5.322 Radiolocation	890-902 FIXED MOBILE except aeronautical mobile 5.317A Radiolocation	890-942 FIXED MOBILE 5.317A BROADCASTING Radiolocation	890-902	894-896 AERONAUTICAL MOBILE US116 US268	
				896-901 FIXED LAND MOBILE US116 US268	Private Land Mobile (90)
				901-902 FIXED MOBILE	Personal Communications (24)
	5.318 5.325		US116 US268 G2	US116 US268	

	902-928 FIXED Amateur Mobile except aeronautical mobile 5.325A Radiolocation 5.150 5.325 5.326		902-928 RADIOLOCATION G59 5.150 US215 US218 US267 US275 G11	902-928 5.150 US215 US218 US267 US275	ISM Equipment (18) Private Land Mobile (90) Amateur (97)
	928-942 FIXED MOBILE except aeronautical mobile 5.317A Radiolocation		928-932	928-929 FIXED US116 US215 US268 NG120	Public Mobile (22) Private Land Mobile (90) Fixed Microwave (101)
				929-930 FIXED LAND MOBILE US116 US215 US268	Private Land Mobile (90)
				930-931 FIXED MOBILE US116 US215 US268	Personal Communications (24)
				931-932 FIXED LAND MOBILE	Public Mobile (22)
			US116 US215 US268 G2	US116 US215 US268	
			932-935 FIXED US215 US268 G2	932-935 FIXED US215 US268 NG120	Public Mobile (22) Fixed Microwave (101)
			935-940 US116 US215 US268 G2	935-940 FIXED LAND MOBILE US116 US215 US268	Private Land Mobile (90)
			940-941 US116 US268 G2	940-941 FIXED MOBILE US116 US268	Personal Communications (24)
5.323	5.325	5.327	See next page for 941-944 MHz		See next page for 941-944 MHz

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 890-942 MHz	See previous page for 928-942 MHz	See previous page for 890-942 MHz	941-944 FIXED	941-944 FIXED	Public Mobile (22) Fixed Microwave (101)
942-960 FIXED MOBILE except aeronautical mobile 5.317A BROADCASTING 5.322	942-960 FIXED MOBILE 5.317A	942-960 FIXED MOBILE 5.317A BROADCASTING	US288 US301 US302 G2	US268 US301 US302 NG120	
5.323		5.320	944-960	944-960 FIXED NG120	Public Mobile (22) Auxiliary Broadcast. (74) Fixed Microwave (101)
960-1215 AERONAUTICAL RADIONAVIGATION 5.328 5.328A			960-1215 AERONAUTICAL RADIONAVIGATION 5.328 US224 USyyy		Aviation (87)
1215-1240 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.329 5.329A SPACE RESEARCH (active) 5.330 5.331 5.332			1215-1240 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G56 RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) SPACE RESEARCH (active) 5.332	1215-1240 Earth exploration-satellite (active) Space research (active)	
1240-1260 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.329 5.329A SPACE RESEARCH (active) Amateur 5.330 5.331 5.332 5.334 5.335			1240-1300 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G56 SPACE RESEARCH (active)	1240-1300 Earth exploration-satellite (active) Space research (active) Amateur	Amateur (97)
1260-1300 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.329 5.329A SPACE RESEARCH (active) Amateur 5.282 5.330 5.331 5.334 5.335 5.335A			5.332 5.334 5.335	5.282 5.334	

1300-1350 AERONAUTICAL RADIONAVIGATION 5.337 RADIOLOCATION RADIONAVIGATION-SATELLITE (Earth-to-space) 5.149 S5337A		1300-1350 AERONAUTICAL RADIO-NAVIGATION 5.337 Radiolocation G2 US342	1300-1350 AERONAUTICAL RADIO-NAVIGATION 5.337 US342	Aviation (87)
1350-1400 FIXED MOBILE RADIOLOCATION	1350-1400 RADIOLOCATION	1350-1390 FIXED MOBILE RADIOLOCATION G2 5.334 5.339 US311 US342 G27 G114	1350-1390 5.334 5.339 US311 US342	
		1390-1395	1390-1392 FIXED MOBILE except aeronautical mobile FIXED-SATELLITE (Earth-to-apace) US368 5.339 US311 US342 US351	Wireless Communications (27)
			1392-1395 FIXED MOBILE except aeronautical mobile	
5.149 5.338 5.339	5.149 5.334 5.339	5.339 US311 US342 US351	5.339 US311 US342 US351	
		1395-1400 LAND MOBILE US350 5.339 US311 US342 US351		Personal (95)
1400-1427 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.341		1400-1427 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.341 US246		

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1427-1610 MHz (UHF)					Page 43
International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
1427-1429 SPACE OPERATION (Earth-to-space) FIXED MOBILE except aeronautical mobile 5.341			1427-1429.5 LAND MOBILE US350 5.341 US352	1427-1429.5 LAND MOBILE Fixed (telemetry) 5.341 US350 US352	Private Land Mobile (90) Personal (95)
1429-1452 FIXED MOBILE except aeronautical mobile 5.341 5.342	1429-1452 FIXED MOBILE 5.343 5.341		1429.5-1432 5.341 US350 US352	1429.5-1430 FIXED (telemetry) LAND MOBILE (telemetry) 5.341 US350 US352 1430-1432 FIXED (telemetry) LAND MOBILE (telemetry) FIXED-SATELLITE (space-to-Earth) US368 5.341 US350 US352	
			1432-1435 5.341 US361	1432-1435 FIXED MOBILE except aeronautical mobile 5.341 US361	Wireless Communications (27)
1452-1492 FIXED MOBILE except aeronautical mobile BROADCASTING 5.345 5.347 BROADCASTING-SATELLITE 5.345 5.347 5.341 5.342	1452-1492 FIXED MOBILE 5.343 BROADCASTING 5.345 5.347 BROADCASTING-SATELLITE 5.345 5.347 5.341 5.344		1435-1525 MOBILE (aeronautical telemetry) 5.341 US78		Aviation (87)
1492-1525 FIXED MOBILE except aeronautical mobile 5.341 5.342	1492-1525 FIXED MOBILE 5.343 MOBILE-SATELLITE (space-to-Earth) 5.348A 5.341 5.344 5.348	1492-1525 FIXED MOBILE 5.341 5.348A			

1525-1530 SPACE OPERATION (space-to-Earth) FIXED MOBILE-SATELLITE (space-to-Earth) 5.351A Earth exploration-satellite Mobile except aeronautical mobile 5.349 5.341 5.342 5.350 5.351 5.352A 5.354	1525-1530 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.351A Earth exploration-satellite Fixed Mobile 5.343 5.341 5.351 5.354	1525-1530 SPACE OPERATION (space-to-Earth) FIXED MOBILE-SATELLITE (space-to-Earth) 5.351A Earth exploration-satellite Mobile 5.349 5.341 5.351 5.352A 5.354	1525-1535 MOBILE-SATELLITE (space-to-Earth) US315 Mobile (aeronautical telemetry) US78 5.341 5.351	Satellite Communications (25) Maritime (80) Aviation (87)
1530-1535 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.351A 5.353A Earth exploration-satellite Fixed Mobile except aeronautical mobile 5.341 5.342 5.351 5.354	1530-1535 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.351A 5.353A Earth exploration-satellite Fixed Mobile 5.343 5.341 5.351 5.354			
1535-1559 MOBILE-SATELLITE (space-to-Earth) 5.351A 5.341 5.351 5.353A 5.354 5.355 5.356 5.357 5.357A 5.359 5.362A			1535-1559 MOBILE-SATELLITE (space-to-Earth) US308 US309 5.341 5.351 5.356	Satellite Communications (25) Maritime (80) Aviation (87)
1559-1610 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.329A 5.341 5.362B 5.362C 5.363			1559-1610 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.341 US208 US260 US343	Aviation (87)

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
1610-1610.6 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION 5.341 5.355 5.359 5.363 5.364 5.368 5.367 5.368 5.369 5.371 5.372	1610-1610.6 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) 5.341 5.364 5.366 5.367 5.368 5.370 5.372	1610-1610.6 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION Radiodetermination-Satellite (Earth-to-space) 5.341 5.355 5.359 5.364 5.366 5.367 5.368 5.369 5.372	1610-1610.6 MOBILE-SATELLITE (Earth-to-space) US319 AERONAUTICAL RADIONAVIGATION US260 RADIODETERMINATION-SATELLITE(Earth-to-space) 5.341 5.364 5.366 5.367 5.368 5.372 US208		Satellite Communications (25) Aviation (87)
1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) 5.351A RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION 5.149 5.341 5.355 5.359 5.363 5.364 5.366 5.367 5.368 5.369 5.371 5.372	1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) 5.351A RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) 6.149 5.341 5.364 5.366 5.367 5.368 5.370 5.372	1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) 5.351A RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION Radiodetermination-satellite (Earth-to-space) 5.149 5.341 5.355 5.359 5.364 5.366 5.367 5.368 5.369 5.372	1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) US319 RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION US260 RADIODETERMINATION-SATELLITE (Earth-to-space) 5.341 5.364 5.366 5.367 5.368 5.372 US208 US342		
1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION Mobile-satellite (space-to-Earth) 5.341 5.355 5.359 5.363 5.364 5.365 5.366 5.367 5.368 5.369 5.371 5.372	1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) Mobile-satellite (space-to-Earth) 5.341 5.364 5.365 5.366 5.367 5.368 5.370 5.372	1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION Mobile-satellite (space-to-Earth) Radiodetermination-satellite (Earth-to-space) 5.341 5.355 5.359 5.364 5.365 5.366 5.367 5.368 5.369 5.372	1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) US319 AERONAUTICAL RADIONAVIGATION US260 RADIODETERMINATION-SATELLITE (Earth-to-space) Mobile-satellite (space-to-Earth) 5.341 5.364 5.365 5.366 5.367 5.368 5.372 US208		

1626.5-1660 MOBILE-SATELLITE (Earth-to-space) 5.351A 5.341 5.351 5.353A 5.354 5.355 5.357A 5.359 5.362A 5.374 5.375 5.376	1626.5-1660 MOBILE-SATELLITE (Earth-to-space) US308 US309 US315 5.341 5.351 5.375	Satellite Communications (25) Maritime (80) Aviation (87)
1660-1660.5 MOBILE-SATELLITE (Earth-to-space) 5.351A RADIO ASTRONOMY 5.149 5.341 5.351 5.354 5.362A 5.376A	1660-1660.5 MOBILE-SATELLITE (Earth-to-space) US308 US309 RADIO ASTRONOMY 5.341 5.351 US342	Satellite Communications (25) Aviation (87)
1660.5-1668.4 RADIO ASTRONOMY SPACE RESEARCH (passive) Fixed Mobile except aeronautical mobile 5.149 5.341 5.379 5.379A	1660.5-1668.4 RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.341 US246	
1668.4-1670 METEOROLOGICAL AIDS FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY 5.149 5.341	1668.4-1670 METEOROLOGICAL AIDS (radiosonde) RADIO ASTRONOMY US74 5.341 US99 US342	

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
1670-1675 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE 5.380 5.341			1670-1675 5.341 US211 US362	1670-1675 FIXED MOBILE except aeronautical mobile 5.341 US211 US362	Wireless Communications (27)
1675-1690 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.341	1675-1690 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE except aeronautical mobile MOBILE-SATELLITE (Earth-to-space) 5.341 5.377	1675-1690 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.341	1675-1700 METEOROLOGICAL AIDS (radiosonde) METEOROLOGICAL-SATELLITE (space-to-Earth)		
1690-1700 METEOROLOGICAL AIDS METEOROLOGICAL-SAT-ELLITE (space-to-Earth) Fixed Mobile except aeronautical mobile 5.289 5.341 5.382	1690-1700 METEOROLOGICAL AIDS METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE-SATELLITE (Earth-to-space) 5.289 5.341 5.377 5.381	1690-1700 METEOROLOGICAL AIDS METEOROLOGICAL-SAT-ELLITE (space-to-Earth) 5.289 5.341 5.381	5.289 5.341 US211		
1700-1710 FIXED METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.289 5.341	1700-1710 FIXED METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE except aeronautical mobile MOBILE-SATELLITE (Earth-to-space) 5.289 5.341 5.377	1700-1710 FIXED METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.289 5.341 5.384	1700-1710 FIXED G118 METEOROLOGICAL-SAT-ELLITE (space-to-Earth) 5.289 5.341	1700-1710 METEOROLOGICAL-SAT-ELLITE (space-to-Earth) Fixed 5.289 5.341	
1710-1930 FIXED MOBILE 5.380 5.384A 5.388A			1710-1755 FIXED MOBILE 5.341 US311	1710-1755 5.341 US311	

			1755-1850 FIXED MOBILE G42	1755-1850	
5.149 5.341 5.385 5.386 5.387 5.388			1850-2025	1850-1990 FIXED MOBILE	RF Devices (15) Personal Communications (24) Fixed Microwave (101)
1930-1970 FIXED MOBILE 5.388A 5.388	1930-1970 FIXED MOBILE 5.388A Mobile-satellite (Earth-to-space) 5.388	1930-1970 FIXED MOBILE 5.388A 5.388			
1970-1980 FIXED MOBILE 5.388A 5.388				1990-2025 MOBILE-SATELLITE (Earth-to-space)	Satellite Communications (25)
1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.351A 5.388 5.389A 5.389B 5.389F					
2010-2025 FIXED MOBILE 5.388A 5.388	2010-2025 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.388 5.389C 5.389D 5.389E 5.390	2010-2025 FIXED MOBILE 5.388A 5.388		NG156	
2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (Earth-to-space) (space-to-space) 5.392			2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) SPACE RESEARCH (Earth-to-space) (space-to-space) 5.391 5.392 US90 US222 US346 US347	2025-2110 FIXED NG118 MOBILE 5.391 5.392 US90 US222 US346 US347	TV Auxiliary Broadcasting (74F) Cable TV Relay (78) Local TV Transmission (101J)

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
2110-2120 FIXED MOBILE 5.388A SPACE RESEARCH (deep space) (Earth-to-space) 5.388			2110-2120 US252	2110-2150 FIXED MOBILE US252 NG153	Public Mobile (22) Fixed Microwave (101)
2120-2160 FIXED MOBILE 5.388A 5.388	2120-2160 FIXED MOBILE 5.388A Mobile-satellite (space-to-Earth) 5.388	2120-2160 FIXED MOBILE 5.388A 5.388	2120-2200	2150-2160 FIXED	Domestic Public Fixed (21) Fixed Microwave (101)
2160-2170 FIXED MOBILE 5.388A 5.388 5.392A	2160-2170 FIXED MOBILE 5.388A MOBILE-SATELLITE (space-to-Earth) 5.388 5.389C 5.389D 5.389E 5.390	2160-2170 FIXED MOBILE 5.388A 5.388		2160-2165 FIXED MOBILE NG153	Domestic Public Fixed (21) Public Mobile (22) Fixed Microwave (101)
2170-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A 5.388 5.389A 5.389F 5.392A				2165-2200 MOBILE-SATELLITE (space-to-Earth) NG168	Satellite Communications (25)
2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space)			2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED (line-of-sight only)	2200-2290	

5.392		MOBILE (line-of-sight only including aeronautical telemetry, but excluding flight testing of manned aircraft) SPACE RESEARCH (space-to-Earth) (space-to-space) 5.392 US303	US303	
2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)		2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)	2290-2300 SPACE RESEARCH (deep space) (space-to-Earth)	
2300-2450 FIXED MOBILE Amateur Radiolocation	2300-2450 FIXED MOBILE RADIOLOCATION Amateur	2300-2305 G123	2300-2305 Amateur	Amateur (97) Note: 2300-2305 MHz became non-Federal Government exclusive spectrum in August 1995
		2305-2310 US338 G123	2305-2310 FIXED MOBILE except aeronautical mobile RADIOLOCATION Amateur US338	Wireless Communications (27) Amateur (97)
		2310-2345 Fixed Mobile US328 US339 Radiolocation G2 G120 US327	2310-2320 FIXED MOBILE US339 RADIOLOCATION BROADCASTING-SATELLITE 5.396 US327 2320-2345 BROADCASTING-SATELLITE 5.396 US327 US328	Wireless Communications (27) Aviation (87) Satellite Communications (25) Aviation (87)
5.150 5.282 5.395	5.150 5.282 5.393 5.394 5.396	See next page for 2345-2450 MHz		See next page for 2345-2450 MHz

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 2300-2450 MHz			2345-2360 Fixed Mobile US339 Radiolocation G2 G120 US327	2345-2360 FIXED MOBILE US339 RADIOLOCATION BROADCASTING-SATELLITE 5.396 US327	Wireless Communications (27) Aviation (87)
			2360-2385 MOBILE US276 RADIOLOCATION G2 G120 Fixed	2360-2385 MOBILE US276	Aviation (87)
			2385-2390 US363	2385-2390 FIXED MOBILE NG174 US383	Wireless Communications (27)
			2390-2400 G122	2390-2400 AMATEUR	RF Devices (15) Amateur (97)
			2400-2402 5.150 G123	2400-2402 Amateur 5.150 5.282	ISM Equipment (18) Amateur (97)
			2402-2417 5.150 G122	2402-2417 AMATEUR 5.150 5.282	RF Devices (15) ISM Equipment (18) Amateur (97)
			2417-2450 Radiolocation G2 5.150 G124	2417-2450 Amateur 5.150 5.282	ISM Equipment (18) Amateur (97)
2450-2483.5 FIXED MOBILE Radiolocation 5.150 5.397	2450-2483.5 FIXED MOBILE RADIOLOCATION 5.150 5.394		2450-2483.5 5.150 US41	2450-2483.5 FIXED MOBILE Radiolocation 5.150 US41	ISM Equipment (18) Private Land Mobile (90) Fixed Microwave (101)

2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A Radiolocation 5.150 5.371 5.397 5.398 5.399 5.400 5.402	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A RADIOLOCATION RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A RADIOLOCATION Radiodetermination-satellite (space-to-Earth) 5.398 5.150 5.400 5.402	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41 NG147	ISM Equipment (18) Satellite Communications (25) Private Land Mobile (90) Fixed Microwave (101)
2500-2520 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (space-to-Earth) 5.403 5.351A 5.405 5.407 5.412 5.414	2500-2520 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (space-to-Earth) 5.403 5.351A 5.404 5.407 5.414 5.415A		2500-2655	2500-2655 FIXED US205 MOBILE except aeronautical mobile	Domestic Public Fixed (21) Auxiliary Broadcasting (74)
2520-2655 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.339 5.403 5.405 5.412 5.418 5.418B 5.418C	2520-2655 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.339 5.403 5.418B 5.418C	2520-2535 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.403 5.415A 2535-2655 FIXED 5.409 5.411 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.339 5.418 5.418A 5.418B 5.418C	5.339 US205 US269	5.339 US269	

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2655-3700 MHz (UHF/SHF) Page 53

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
2655-2670 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A BROADCASTING SATELLITE 5.413 5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.412 5.420	2655-2670 FIXED 5.409 5.411 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.420	2655-2670 FIXED 5.409 5.411 FIXED-SATELLITE (Earth-to-space) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.420	2655-2690 Earth exploration-satellite (passive) Radio astronomy Space research (passive)	2655-2690 FIXED US205 MOBILE except aeronautical mobile Earth exploration-satellite (passive) Radio astronomy Space research (passive)	Domestic Public Fixed (21) Auxiliary Broadcasting (74)
2670-2690 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.419 5.420	2670-2690 FIXED 5.409 5.411 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.419 5.420	2670-2690 FIXED 5.409 5.411 FIXED-SATELLITE (Earth-to-space) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.419 5.420 5.420A	US205 US269	US269	
2690-2700 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.421 5.422			2690-2700 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
2700-2900 AERONAUTICAL RADIONAVIGATION 5.337 Radiolocation 5.423 5.424			2700-2900 AERONAUTICAL RADIO-NAVIGATION 5.337 METEOROLOGICAL AIDS Radiolocation G2 5.423 US18 G15	2700-2900 5.423 US18	

2900-3100 RADIONAVIGATION 5.426 Radiolocation 5.425 5.427			2900-3100 MARITIME RADIONAVIGATION Radiolocation G58 5.427 US44 US316	2900-3100 MARITIME RADIONAVIGATION Radiolocation US44 5.5427 US316	Maritime (80) Private Land Mobile (90)
3100-3300 RADIOLOCATION Earth exploration-satellite (active) Space research (active) 5.149 5.428			3100-3300 RADIOLOCATION G59 Earth exploration-satellite (active) Space research (active) US342	3100-3300 Radiolocation Earth exploration-satellite (active) Space research (active) US342	Private Land Mobile (90)
3300-3400 RADIOLOCATION 5.149 5.429 5.430	3300-3400 RADIOLOCATION Amateur Fixed Mobile 5.149 5.430	3300-3400 RADIOLOCATION Amateur 5.149 5.429	3300-3500 RADIOLOCATION US108 G31 US342	3300-3500 Amateur Radiolocation US108 US342 5.282	Private Land Mobile (90) Amateur (97)
3400-3600 FIXED FIXED-SATELLITE (space-to-Earth) Mobile Radiolocation 5.431	3400-3500 FIXED FIXED-SATELLITE (space-to-Earth) Amateur Mobile Radiolocation 5.433 5.282 5.432				
3600-4200 FIXED FIXED-SATELLITE (space-to-Earth) Mobile	3500-3700 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile Radiolocation 5.433 5.435		3500-3650 RADIOLOCATION G59 AERONAUTICAL RADIONAVIGATION (ground-based) G110 US245 3650-3700 US245 US348 US349	3500-3600 Radiolocation 3600-3650 FIXED-SATELLITE (space-to-Earth) US245 Radiolocation 3650-3700 FIXED FIXED-SATELLITE (space-to-Earth) NG169 MOBILE except aeronautical mobile NG170 US245 US348 US349	Private Land Mobile (90)
	See next page for 3700-4200 MHz		See next page for 3700-4200 MHz	See next page for 3700-4200 MHz	See next page for 3700-4200 MHz

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3700-5650 MHz (SHF) — Page 55

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 3600-4200 MHz	3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile		3700-4200	3700-4200 FIXED NG41 FIXED-SATELLITE (space-to-Earth)	International Fixed (23) Satellite Communications (25) Fixed Microwave (101)
4200-4400 AERONAUTICAL RADIONAVIGATION 5.438 5.437 5.439 5.440			4200-4400 AERONAUTICAL RADIONAVIGATION 5.440 US261		Aviation (87)
4400-4500 FIXED MOBILE			4400-4500 FIXED MOBILE	4400-4500	
4500-4800 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 MOBILE			4500-4800 FIXED MOBILE US245	4500-4800 FIXED-SATELLITE (space-to-Earth) 5.441 US245	
4800-4990 FIXED MOBILE 5.442 Radio astronomy			4800-4940 FIXED MOBILE US203 US342	4800-4940 US203 US342	
			4940-4990	4940-4990 FIXED MOBILE except aeronautical mobile	Private Land Mobile (90) Fixed Microwave (101)
5.149 5.339 5.443			5.339 US311 US342 G122	5.339 US311 US342	
4990-5000 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY Space research (passive) 5.149			4990-5000 RADIO ASTRONOMY US74 Space research (passive) US246		
5000-5150 AERONAUTICAL RADIONAVIGATION 5.367 5.443A 5.443B 5.444 5.444A			5000-5250 AERONAUTICAL RADIO-NAVIGATION US260	5000-5150 AERONAUTICAL RADIO-NAVIGATION US260 5.367 5.444A US211 US344 US370	Satellite Communications (25) Aviation (87)

5150-5250 AERONAUTICAL RADIONAVIGATION FIXED-SATELLITE (Earth-to-space) 5.447A 5.446 5.447 5.447B 5.447C	5.367 US211 US307 US344 US370	5150-5250 AERONAUTICAL RADIO-NAVIGATION US260 FIXED-SATELLITE (Earth-to-space) 5.447A US344 5.447C US211 US307	
5250-5255 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH 5.447D 5.448 5.448A	5250-5255 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH 5.447D	5250-5255 Earth exploration-satellite (active) Radiolocation Space research	
5255-5350 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) 5.448 5.448A	5255-5350 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active)	5255-5350 Earth exploration-satellite (active) Radiolocation Space research (active)	
5350-5460 EARTH EXPLORATION-SATELLITE (active) 5.448B AERONAUTICAL RADIONAVIGATION 5.449 Radiolocation	5350-5460 EARTH EXPLORATION-SATELLITE (active) 5.448B AERONAUTICAL RADIO-NAVIGATION 5.449 RADIOLOCATION G56	5350-5460 AERONAUTICAL RADIO-NAVIGATION 5.449 Earth exploration-satellite (active) Radiolocation	Aviation (87)
5460-5470 RADIONAVIGATION 5.449 Radiolocation	5460-5470 RADIONAVIGATION 5.449 Radiolocation G56 US49 US65	5460-5470 RADIONAVIGATION 5.449 Radiolocation US49 US65	
5470-5650 MARITIME RADIONAVIGATION Radiolocation	5470-5600 MARITIME RADIONAVIGATION Radiolocation G56 US50 US65	5470-5600 MARITIME RADIONAVIGATION Radiolocation US50 US65	Maritime (80)
	5600-5650 MARITIME RADIONAVIGATION METEOROLOGICAL AIDS Radiolocation US51 G56	5600-5650 MARITIME RADIONAVIGATION METEOROLOGICAL AIDS Radiolocation US51	
5.450 5.451 5.452	5.452 US65	5.452 US65	

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5650-7250 MHz (SHF) Page 57

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
5650-5725 RADIOLOCATION Amateur Space research (deep space) 5.282 5.451 5.453 5.454 5.455			5650-5925 RADIOLOCATION G2	5650-5830 Amateur	ISM Equipment (18) Amateur (97)
5725-5830 FIXED-SATELLITE (Earth-to-space) RADIOLOCATION Amateur 5.150 5.451 5.453 5.455 5.456	5725-5830 RADIOLOCATION Amateur 5.150 5.453 5.455			5.150 5.282	
5830-5850 FIXED-SATELLITE (Earth-to-space) RADIOLOCATION Amateur Amateur-satellite (space-to-Earth) 5.150 5.451 5.453 5.455 5.456	5830-5850 RADIOLOCATION Amateur Amateur-satellite (space-to-Earth) 5.150 5.453 5.455			5830-5850 Amateur Amateur-satellite (space-to-Earth) 5.150	
5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE 5.150	5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Amateur Radiolocation 5.150	5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Radiolocation 5.150	5.150 US245	5850-5925 FIXED-SATELLITE (Earth-to-space) US245 MOBILE NG160 Amateur 5.150	ISM Equipment (18) Private Land Mobile (90) Amateur (97)
5925-6700 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE			5925-6425	5925-6425 FIXED NG41 FIXED-SATELLITE (Earth-to-space)	International Fixed (23) Satellite Communications (25) Fixed Microwave (101)
			6425-6525 5.440 5.458	6425-6525 FIXED-SATELLITE (Earth-to-space) MOBILE 5.440 5.458	Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101)

	6525-6700 5.458 US342	6525-6700 FIXED FIXED-SATELLITE (Earth-to-space) 5.458 US342	Satellite Communications (25) Fixed Microwave (101)
5.149 5.440 5.458			
6700-7075 FIXED FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 MOBILE	6700-7125	6700-6875 FIXED FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 5.458 5.458A 5.458B	
		6875-7025 FIXED NG118 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 MOBILE NG171 5.458 5.458A 5.458B	Satellite Communications (25) Auxiliary Broadcasting (74) Cable TV Relay (78)
5.458 5.458A 5.458B 5.458C		7025-7075 FIXED NG118 FIXED-SATELLITE (Earth-to-space) NG172 MOBILE NG171 5.458 5.458A 5.458B	
7075-7250 FIXED MOBILE	5.458	7075-7125 FIXED NG118 MOBILE NG171 5.458	Auxiliary Broadcasting (74) Cable TV Relay (78)
	7125-7190 FIXED 5.458 US252 G116	7125-7190 5.458 US252	
	7190-7235 FIXED SPACE RESEARCH (Earth-to-space) 5.458	7190-7250	
5.458 5.459 5.460	7235-7250 FIXED 5.458	5.458	

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
7250-7300 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE 5.461			7250-7300 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Fixed G117	7250-8025	
7300-7450 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.461			7300-7450 FIXED FIXED-SATELLITE (space-to-Earth) Mobile-satellite (space-to-Earth) G117		
7450-7550 FIXED FIXED-SATELLITE (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.461A			7450-7550 FIXED FIXED-SATELLITE (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) Mobile-satellite (space-to-Earth) G104 G117		
7550-7750 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile			7550-7750 FIXED FIXED-SATELLITE (space-to-Earth) Mobile-satellite (space-to-Earth) G117		
7750-7850 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) 5.461B MOBILE except aeronautical mobile			7750-7850 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) 5.461B		
7850-7900 FIXED MOBILE except aeronautical mobile			7850-7900 FIXED		

7900-8025 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE 5.461	7900-8025 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) Fixed G117		
8025-8175 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) MOBILE 5.463 5.462A	8025-8175 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space) (no airborne transmissions) US258 G117	8025-8215	
8175-8215 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) MOBILE 5.463 5.462A	8175-8215 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space) (no airborne transmissions) US258 G104 G117	US258	

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
8215-8400 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) MOBILE 5.463			8215-8400 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space) (no airborne transmissions)	8215-8400	
5.462A			US258 G117	US258	
8400-8500 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (space-to-Earth) 5.465 5.468			8400-8450 FIXED SPACE RESEARCH (space-to-Earth) (deep space only)	8400-8450 Space research (space-to-Earth) (deep space only)	
5.467			8450-8500 FIXED SPACE RESEARCH (space-to-Earth)	8450-8500 SPACE RESEARCH (space-to-Earth)	
8500-8550 RADIOLOCATION			8500-8550 RADIOLOCATION G59	8500-8550 Radiolocation	
5.468 5.469					
8550-8650 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active)			8550-8650 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active)	8550-8650 Earth exploration-satellite (active) Radiolocation Space research (active)	
5.468 5.469 5.469A					
8650-8750 RADIOLOCATION			8650-9000 RADIOLOCATION G59	8650-9000 Radiolocation	
5.468 5.469					
8750-8850 RADIOLOCATION AERONAUTICAL RADIONAVIGATION 5.470					
5.471					

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	US53	Aviation (87)	
8650-9000 RADIOLOCATION MARITIME RADIONAVIGATION 5.472					
5.473					
9000-9200 AERONAUTICAL RADIONAVIGATION 5.337 Radiolocation			9000-9200 AERONAUTICAL RADIONAVIGATION 5.337 Radiolocation G2	9000-9200 AERONAUTICAL RADIONAVIGATION 5.337 Radiolocation	
5.471			US48 G19	US48	
9200-9300 RADIOLOCATION MARITIME RADIONAVIGATION 5.472			9200-9300 MARITIME RADIONAVIGATION 5.472 Radiolocation US110 G59	9200-9300 MARITIME RADIONAVIGATION 5.472 Radiolocation US110	
5.473 5.474			5.474	5.474	
9300-9500 RADIONAVIGATION 5.476 Radiolocation			9300-9500 RADIONAVIGATION 5.476 US86 Radiolocation US51 G56 Meteorological aids	9300-9500 RADIONAVIGATION 5.476 US86 Radiolocation US51 Meteorological aids	
5.427 5.474 5.475			5.427 5.474 US67 US71	5.427 5.474 US67 US71	
9500-9800 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION SPACE RESEARCH (active)			9500-9800 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active)	9500-9800 Earth exploration-satellite (active) Radiolocation Space research (active)	
5.478A					
9800-10000 RADIOLOCATION Fixed			9800-10000 RADIOLOCATION	9800-10000 Radiolocation	
5.477 5.478 5.479			5.479	5.479	

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
10-10.45 FIXED MOBILE RADIOLOCATION Amateur 5.479	10-10.45 RADIOLOCATION Amateur 5.479 5.480	10-10.45 FIXED MOBILE RADIOLOCATION Amateur 5.479	10-10.45 RADIOLOCATION 5.479 US58 US108 G32	10-10.45 Radiolocation Amateur 5.479 US58 US108 NG42	Private Land Mobile (90) Amateur (97)
10.45-10.5 RADIOLOCATION Amateur Amateur-satellite 5.481			10.45-10.5 RADIOLOCATION US58 US108 G32	10.45-10.5 Radiolocation Amateur Amateur-satellite US58 US108 NG42 NG134	
10.5-10.55 FIXED MOBILE Radiolocation	10.5-10.55 FIXED MOBILE RADIOLOCATION		10.5-10.55 RADIOLOCATION US59		Private Land Mobile (90)
10.55-10.6 FIXED MOBILE except aeronautical mobile Radiolocation			10.55-10.6	10.55-10.6 FIXED	Fixed Microwave (101)
10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) Radiolocation 5.149 5.482			10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) US265 US277	10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED SPACE RESEARCH (passive) US265 US277	
10.68-10.7 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.483			10.68-10.7 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246 US355		

10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A (Earth-to-space) 5.484 MOBILE except aeronautical mobile	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A MOBILE except aeronautical mobile		10.7-11.7 US211	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 US211 NG104 US355	Satellite Communications (25) Fixed Microwave (101)
11.7-12.5 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE	11.7-12.1 FIXED 5.486 FIXED-SATELLITE (space-to-Earth) 5.484A Mobile except aeronautical mobile 5.485 5.488	11.7-12.2 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE	11.7-12.1 5.486	11.7-12.2 FIXED-SATELLITE (space-to-Earth) NG143 NG145 Mobile except aeronautical mobile	
	12.1-12.2 FIXED-SATELLITE (space-to-Earth) 5.484A 5.485 5.488 5.489		12.1-12.2	 5.488 5.488	
5.487 5.487A 5.492	12.2-12.7 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE	12.2-12.5 FIXED MOBILE except aeronautical mobile BROADCASTING 5.484A 5.487 5.491	12.2-12.7	12.2-12.7 FIXED BROADCASTING-SATELLITE	Satellite Communications (25) Fixed Microwave (101)
12.5-12.75 FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space)		12.5-12.75 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A			
5.494 5.495 5.496	5.487A 5.488 5.490 5.492 See next page for 12.7-12.75 GHz	MOBILE except aeronautical mobile BROADCASTING-SATELLITE 5.493	5.490 See next page for 12.7-12.75 GHz	5.487A 5.488 5.490	See next page for 12.7-12.75 GHz

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 12.5-12.75 GHz	12.7-12.75 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE except aeronautical mobile	See previous page for 12.5-12.75 GHz	12.7-12.75	12.7-12.75 FIXED NG118 FIXED-SATELLITE (Earth-to-space) MOBILE NG53	Satellite Communications (25) Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwsve (101)
12.75-13.25 FIXED FIXED-SATELLITE (Earth-to-space) 5.441 MOBILE Space research (deep space) (space-to-Earth)			12.75-13.25 US251	12.75-13.25 FIXED NG118 FIXED-SATELLITE (Earth-to-space) 5.441 NG104 MOBILE US251 NG53	
13.25-13.4 EARTH EXPLORATION-SATELLITE (active) AERONAUTICAL RADIONAVIGATION 5.497 SPACE RESEARCH (active) 5.498A 5.499			13.25-13.4 EARTH EXPLORATION-SATELLITE (active) AERONAUTICAL RADIONAVIGATION 5.497 SPACE RESEARCH (active) 5.498A	13.25-13.4 AERONAUTICAL RADIONAVIGATION 5.497 Earth exploration-satellite (active) Space research (active)	Aviation (87)
13.4-13.75 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH 5.501A Standard frequency and time signal-satellite (Earth-to-space) 5.499 5.500 5.501 5.501B			13.4-13.75 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH 5.501A Standard frequency and time signal-satellite (Earth-to-space) 5.501B	13.4-13.75 Earth exploration-satellite (active) Radiolocation Space research Standard frequency and time signal-satellite (Earth-to-space)	Private Land Mobile (90)
13.75-14 FIXED-SATELLITE (Earth-to-space) 5.484A RADIOLOCATION Standard frequency and time signal-satellite (Earth-to-space) Space research 5.499 5.500 5.501 5.502 5.503 5.503A			13.75-14 RADIOLOCATION G59 Standard frequency and time signal-satellite (Earth-to-space) Space research US337 5.503A US356 US357	13.75-14 FIXED-SATELLITE (Earth-to-space) US337 Radiolocation Standard frequency and time signal-satellite (Earth-to-space) Space research 5.503A US356 US357	Satellite Communications (25) Private Land Mobile (90)

14-14.25 FIXED-SATELLITE (Earth-to-space) 5.484A 5.506 RADIONAVIGATION 5.504 Mobile-satellite (Earth-to-space) except aeronautical mobile-satellite Space research 5.505			14-14.2 RADIONAVIGATION US292 Space research	14-14.2 FIXED-SATELLITE (Earth-to-space) RADIONAVIGATION US292 Mobile-satellite (Earth-to-space) except aeronautical mobile-satellite Space research	Satellite Communications (25) Maritime (80) Aviation (87)
14.25-14.3 FIXED-SATELLITE (Earth-to-space) 5.484A 5.506 RADIONAVIGATION 5.504 Mobile-satellite (Earth-to-space) except aeronautical mobile-satellite Space research 5.505 5.508 5.509			14.2-14.4	14.2-14.4 FIXED-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space) except aeronautical mobile-satellite Mobile except aeronautical mobile	Satellite Communications (25) Fixed Microwave (101)
14.3-14.4 FIXED FIXED-SATELLITE (Earth-to-space) 5.484A 5.506 MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) except aeronautical mobile-satellite Radionavigation-satellite	14.3-14.4 FIXED-SATELLITE (Earth-to-space) 5.484A 5.506 Mobile-satellite (Earth-to-space) except aeronautical mobile-satellite Radionavigation-satellite	14.3-14.4 FIXED FIXED-SATELLITE (Earth-to-space) 5.484A 5.506 MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) except aeronautical mobile-satellite Radionavigation-satellite			
14.4-14.47 FIXED FIXED-SATELLITE (Earth-to-space) 5.484A 5.506 MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) except aeronautical mobile-satellite Space research (space-to-Earth)			14.4-14.47 Fixed Mobile	14.4-14.47 FIXED-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space) except aeronautical mobile-satellite	Satellite Communications (25)
14.47-14.5 FIXED FIXED-SATELLITE (Earth-to-space) 5.484A 5.506 MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) except aeronautical mobile-satellite Radio astronomy 5.149			14.47-14.5 Fixed Mobile US203 US342	14.47-14.5 FIXED-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space) except aeronautical mobile-satellite US203 US342	

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
14.5-14.8 FIXED FIXED-SATELLITE (Earth-to-space) 5.510 MOBILE Space research			14.5-14.7145 FIXED Mobile Space research	14.5-14.7145	
			14.7145-15.1365 MOBILE Fixed Space research US310	14.7145-15.1365 US310	
14.8-15.35 FIXED MOBILE Space research 5.339			15.1365-15.35 FIXED Mobile Space research 5.339 US211	15.1365-15.35 5.339 US211	
15.35-15.4 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.511			15.35-15.4 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
15.4-15.43 AERONAUTICAL RADIONAVIGATION 5.511D			15.4-15.43 AERONAUTICAL RADIONAVIGATION US260 US211		Aviation (87)
15.43-15.63 FIXED SATELLITE (Earth-to-space) 5.511A AERONAUTICAL RADIONAVIGATION 5.511C			15.43-15.63 AERONAUTICAL RADIO-NAVIGATION US260 5.511C US211 US359	15.43-15.63 FIXED SATELLITE (Earth-to-space) AERONAUTICAL RADIO-NAVIGATION US260 5.511C US211 US359	Satellite Communications (25) Aviation (87)
15.63-15.7 AERONAUTICAL RADIONAVIGATION 5.511D			15.63-15.7 AERONAUTICAL RADIONAVIGATION US260 US211		Aviation (87)
15.7-16.6 RADIOLOCATION 5.512 5.513			15.7-16.6 RADIOLOCATION G59	15.7-17.2 Radiolocation	Private Land Mobile (90)

16.6-17.1 RADIOLOCATION Space research (deep space) (Earth-to-space) 5.512 5.513			16.6-17.1 RADIOLOCATION G59 Space research (deep space) (Earth-to-space)		
17.1-17.2 RADIOLOCATION 5.512 5.513			17.1-17.2 RADIOLOCATION G59		
17.2-17.3 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) 5.512 5.513 5.513A			17.2-17.3 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active)	17.2-17.3 Radiolocation Earth exploration-satellite (active) Space research (active)	
17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516 Radiolocation 5.514	17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516 BROADCASTING-SATELLITE Radiolocation 5.514 5.515 5.517	17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516 Radiolocation 5.514	17.3-17.7 Radiolocation US259 G59	17.3-17.7 FIXED-SATELLITE (Earth-to-space) US271 BROADCASTING-SATELLITE NG163 NG167 US259	Satellite Communications (25)
17.7-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE	17.7-17.8 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) 5.516 BROADCASTING-SATELLITE Mobile 5.518 5.515 5.517	17.7-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE	17.7-17.8	17.7-17.8 FIXED FIXED-SATELLITE (Earth-to-space) US271 NG144	Satellite Communications (25) Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101)
	17.8-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE		17.8-18.3 FIXED-SATELLITE (space-to-Earth) G117 5.519 US334	17.8-18.3 FIXED 5.519 US334 NG144	Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101)
18.1-18.4 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.520 MOBILE 5.519 5.521			See next page for 18.3-18.6 GHz	See next page for 18.3-18.58 GHz	See next page for 18.3-18.58 GHz

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 18.1-18.4 GHz			18.3-18.6 FIXED-SATELLITE (space-to-Earth) G117	18.3-18.58 FIXED FIXED-SATELLITE (space-to-Earth) NG164 US334 NG144	Satellite Communications (25) Auxiliary Broadcast. (74) Cable TV Relay (78) Fixed Microwave (101)
18.4-18.6 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A MOBILE			US334	18.58-18.8 FIXED-SATELLITE (space-to-Earth) NG164 US334 NG144	Satellite Communications (25)
18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile Space research (passive) 5.522A 5.522C	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile SPACE RESEARCH (passive) 5.222A	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile Space research (passive) 5.522A 5.522C	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US255 G117 SPACE RESEARCH (passive) US254 US334	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US255 NG164 SPACE RESEARCH (passive) US254 US334 NG144	
18.8-19.3 FIXED FIXED-SATELLITE (space-to-Earth) 5.523A MOBILE			18.8-20.2 FIXED-SATELLITE (space-to-Earth) G117	18.8-19.3 FIXED-SATELLITE (space-to-Earth) NG165 US334 NG144	
19.3-19.7 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-space) 5.523B 5.523C 5.523D 5.523E MOBILE				19.3-19.7 FIXED FIXED-SATELLITE (space-to-Earth) NG166 US334 NG144	Satellite Communications (25) Auxiliary Broadcast. (74) Cable TV Relay (78) Fixed Microwave (101)
19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A Mobile-satellite (space-to-Earth) 5.524	19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A MOBILE-SATELLITE (space-to-Earth) 5.524 5.525 5.526 5.527 5.528 5.529	19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A Mobile-satellite (space-to-Earth) 5.524		19.7-20.1 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.525 5.526 5.527 5.528 5.529 US334	Satellite Communications (25)

20.1-20.2 FIXED-SATELLITE (space-to-Earth) 5.484A MOBILE-SATELLITE (space-to-Earth) 5.524 5.525 5.526 5.527 5.528			US334	20.1-20.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.525 5.526 5.527 5.528 US334	
20.2-21.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Standard frequency and time signal-satellite (space-to-Earth) 5.524			20.2-21.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Standard frequency and time signal-satellite (space-to-Earth) G117	20.2-21.2 Standard frequency and time signal-satellite (space-to-Earth)	
21.2-21.4 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive)			21.2-21.4 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) US263		Fixed Microwave (101)
21.4-22 FIXED MOBILE BROADCASTING-SATELLITE 5.530	21.4-22 FIXED MOBILE	21.4-22 FIXED MOBILE BROADCASTING-SATELLITE 5.530 5.531	21.4-22 FIXED MOBILE		
22-22.21 FIXED MOBILE except aeronautical mobile 5.149			22-22.21 FIXED MOBILE except aeronautical mobile US342		
22.21-22.5 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) 5.149 5.532			22.21-22.5 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) US342 US263		

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
22.5-22.55 FIXED MOBILE			22.5-22.55 FIXED MOBILE US211		Fixed Microwave (101)
22.55-23.55 FIXED INTER-SATELLITE MOBILE 5.149			22.55-23.55 FIXED INTER-SATELLITE US278 MOBILE US342		Satellite Communications (25) Fixed Microwave (101)
23.55-23.6 FIXED MOBILE			23.55-23.6 FIXED MOBILE		Fixed Microwave (101)
23.6-24 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340			23.6-24 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
24-24.05 AMATEUR AMATEUR-SATELLITE 5.150			24-24.05 5.150 US211	24-24.05 AMATEUR AMATEUR-SATELLITE 5.150 US211	ISM Equipment (18) Amateur (97)
24.05-24.25 RADIOLOCATION Amateur Earth exploration-satellite (active) 5.150			24.05-24.25 RADIOLOCATION G59 Earth exploration-satellite (active) 5.150	24.05-24.25 Radiolocation Amateur Earth exploration-satellite (active) 5.150	ISM Equipment (18) Private Land Mobile (90) Amateur (97)
24.25-24.45 FIXED	24.25-24.45 RADIONAVIGATION	24.25-24.45 RADIONAVIGATION FIXED MOBILE	24.25-24.45	24.25-24.45 FIXED	Fixed Microwave (101)

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United States (US) Footnotes

* * * * *

US7 In the band 420–450 MHz and within the following areas, the peak envelope power output of a transmitter employed in the amateur service shall not exceed 50 watts, unless expressly authorized by the Commission after mutual agreement, on a case-by-case basis, between the Federal Communications Commission Engineer in Charge at the applicable district office and the military area frequency coordinator at the applicable military base. For areas (e) through (j), the appropriate military coordinator is located at Peterson AFB, CO.

(a) The entire State of New Mexico and Texas west of longitude 104°00′ West;

(b) The entire State of Florida including the Key West area and the areas enclosed within a 322-kilometer (200-mile) radius of Patrick Air Force Base, Florida (latitude 28°21′ North, longitude 80°43′ West), and within a 322-kilometer (200-mile) radius of Eglin Air Force Base, Florida (latitude 30°30′ North, longitude 86°30′ West);

(c) The entire State of Arizona;

(d) Those portions of California and Nevada south of latitude 37o 10′ North, and the areas enclosed within a 322-kilometer (200-mile) radius of the Pacific Missile Test Center, Point Mugu, California (latitude 34°09′ North, longitude 119°11′ West).

(e) In the State of Massachusetts within a 160-kilometer (100-mile) radius around locations at Otis Air Force Base, Massachusetts (latitude 41°45′ North, longitude 70°32′ West).

(f) In the State of California within a 240-kilometer (150-mile) radius around locations at Beale Air Force Base, California (latitude 39°08′ North, longitude 121°26′ West).

(g) In the State of Alaska within a 160-kilometer (100-mile) radius of Clear, Alaska (latitude 64°17′ North, longitude 149°10′ West).

(h) In the State of North Dakota within a 160-kilometer (100-mile) radius of Concrete, North Dakota (latitude 48°43′ North, longitude 97°54′ West).

(i) In the States of Alabama, Georgia and South Carolina within a 200-kilometer (124-mile) radius of Warner Robins Air Force Base, Georgia (latitude 32°38′ North, longitude 83°35′ West).

(j) In the State of Texas within a 200-kilometer (124-mile) radius of Goodfellow Air Force Base, Texas (latitude 31°25′ North, longitude 100°24′ West).

* * * * *

US48 In the band 9000–9200 MHz, the use of the radiolocation service by non-Federal Government licensees may be authorized on the condition that harmful interference is not caused to the aeronautical radionavigation service or to the Federal Government radiolocation service.

* * * * *

US110 In the band 9200–9300 MHz, the use of the radiolocation service by non-Federal Government licensees may be authorized on the condition that harmful interference is not caused to the maritime radionavigation service or to the Federal Government radiolocation service.

* * * * *

US217 In the band 420–450 MHz, pulse-ranging radiolocation systems may be authorized for Federal and non-Federal Government use along the shorelines of the contiguous 48 States and Alaska. In the sub-band 420–435 MHz, spread spectrum radiolocation systems may be authorized for Federal and non-Federal Government use within the contiguous 48 States and Alaska. All stations operating in accordance with this provision shall be secondary to stations operating in accordance with the Table of Frequency Allocations. Authorizations shall be granted on a case-by-case basis; however, operations proposed to be located within the following geographic areas should not expect to be accommodated:

(a) The entire State of New Mexico and Texas west of longitude 104°00′ West;

(b) The entire State of Florida including the Key West area and the areas enclosed within a 322-kilometer (200-mile) radius of Patrick Air Force Base, Florida (latitude 28°21′ North, longitude 80°43′ West), and within a 322-kilometer (200-mile) radius of Eglin Air Force Base, Florida (latitude 30°30′ North, longitude 86°30′ West);

(c) The entire State of Arizona;

(d) Those portions of California and Nevada south of latitude 37°10′ North, and the areas enclosed within a 322-kilometer (200-mile) radius of the Pacific Missile Test Center, Point Mugu, California (latitude 34°09′ North, longitude 119°11′ West).

(e) In the State of Massachusetts within a 160-kilometer (100-mile) radius around locations at Otis Air Force Base, Massachusetts (latitude 41°45′ North, longitude 70°32′ West).

(f) In the State of California within a 240-kilometer (150-mile) radius around locations at Beale Air Force Base, California (latitude 39°08′ North, longitude 121°26′ West).

(g) In the State of Alaska within a 160-kilometer (100-mile) radius of Clear, Alaska (latitude 64°17′ North, longitude 149°10′ West).

(h) In the State of North Dakota within a 160-kilometer (100-mile) radius of Concrete, North Dakota (latitude 48°43′ North, longitude 97°54′ West).

(i) In the States of Alabama, Georgia and South Carolina within a 200-kilometer (124-mile) radius of Warner Robins Air Force Base, Georgia (latitude 32°38′ North, longitude 83°35′ West).

(j) In the State of Texas within a 200-kilometer (124-mile) radius of Goodfellow Air Force Base, Texas (latitude 31°25′ North, longitude 100°24′ West).

All stations operating in accordance with this provision will be secondary to stations operating in accordance with the Table of Frequency Allocations.

* * * * *

US244 The band 136–137 MHz is allocated to the non-Federal Government aeronautical mobile (R) service on a primary basis, and is subject to pertinent international treaties and agreements. The frequencies 136, 136.025, 136.05, 136.075, 136.1, 136.125, 136.15, 136.175, 136.2, 136.225, 136.25, 136.275, 136.3, 136.325, 136.35, 136.375, 136.4, 136.425, 136.45, and 136.475 MHz are available on a shared basis to the Federal Aviation Administration for air traffic control purposes, such as automatic weather observation stations (AWOS), automatic terminal information services (ATIS), flight information services-broadcast (FIS–B), and airport control tower communications.

* * * * *

US246 No station shall be authorized to transmit in the following bands: 73–74.6 MHz, 608–614 MHz, except for medical telemetry equipment[1], 1400–1427 MHz, 1660.5–1668.4 MHz, 2690–2700 MHz, 4990–5000 MHz, 10.68–10.7 GHz, 15.35–15.4 GHz, 23.6–24 GHz, 31.3–31.8 GHz, 50.2–50.4 GHz, 52.6–54.25 GHz, 86–92 GHz, 100–102 GHz, 105–116 GHz, 164–168 GHz, 182–185 GHz, 217–231 GHz.

* * * * *

US262 The use of the band 31.8–32.3 GHz by the space research service (deep space) (space-to-Earth) and of the band 34.2–34.7 GHz by the space research service (deep space) (Earth-to-space) are limited to Goldstone, California.

* * * * *

US276 Except as otherwise provided for herein, use of the band 2360–2385

[1] Medical telemetry equipment shall not cause harmful interference to radio estronomy operations in the band 608–614 MHz and shall be coordinated under the requirements found in 47 CFR 95.1119.

MHz by the mobile service is limited to aeronautical telemetering and associated telecommand operations for flight testing of manned or unmanned aircraft, missiles or major components thereof. The following three frequencies are shared on a co-equal basis by Government and non-Government stations for telemetering and associated telecommand operations of expendable and reusable launch vehicles whether or not such operations involve flight testing: 2364.5 MHz, 2370.5 MHz, and 2382.5 MHz. All other mobile telemetering uses shall be secondary to the above uses.

US277 The band 10.6–10.68 GHz is also allocated on a primary basis to the radio astronomy service. However, the radio astronomy service shall not receive protection from stations in the fixed service which are licensed to operate in the one hundred most populous urbanized areas as defined by the 1990 U.S. Census.

US278 In the bands 22.55–23.55 GHz and 32.3–33 GHz, non-geostationary inter-satellite links may operate on a secondary basis to geostationary inter-satellite links.

* * * * *

US310 In the band 14.896–15.121 GHz, non-Federal Government space stations in the space research service may be authorized on a secondary basis to transmit to Tracking and Data Relay Satellites subject to such conditions as may be applied on a case-by-case basis. Such transmissions shall not cause harmful interference to authorized Federal Government stations. The power flux-density produced by such non-Federal Government stations at the Earth's surface in any 4 kHz band for all conditions and methods of modulation shall not exceed:

-148 dB(W/m^2) for $0° < * \leq 5°$

$-148 + (* - 5)/2$ dB(W/m^2) for $5° < * \leq 25°$

-138 dB(W/m^2) for $25° < * \leq 90°$

where * is the angle of arrival of the radio-frequency wave (degrees above the horizontal). These limits relate to the power flux-density and angles of arrival which would be obtained under free-space propagation conditions.

* * * * *

US316 The band 2900–3000 MHz is also allocated on a primary basis to the meteorological aids service. Operations in this service are limited to Federal Government Next Generation Weather Radar (NEXRAD) systems where accommodation in the 2700–2900 MHz band is not technically practical and are subject to coordination with existing authorized stations.

* * * * *

US320 The use of the bands 137–138 MHz, 148–150.05 MHz, and 400.15–401 MHz by the mobile-satellite service is limited to non-voice, non-geostationary satellite systems and may include satellite links between land earth stations at fixed locations.

* * * * *

US328 The band 2320–2345 MHz is also available for aeronautical telemetering and associated telecommand operations for flight testing of manned or unmanned aircraft, missiles or major components thereof on a secondary basis to the Satellite Digital Audio Radio Service.

* * * * *

US342 In making assignments to stations of other services to which the bands:

13360–13410 kHz,
37.5–38.25 MHz,
322–328.6 MHz,
1330–1400 MHz,
1610.6–1613.8 MHz,
1660–1660.5 MHz,
1668.4–1670 MHz,
3260–3267 MHz,
3332–3339 MHz,
3345.8–3352.5 MHz,
4825–4835 MHz,
4950–4990 MHz,
6650–6675.2 MHz,
14.47–14.5 GHz,
22.01–22.21 GHz,
22.21–22.5 GHz,
22.81–22.86 GHz,
23.07–23.12 GHz,
31.2–31.3 GHz,
36.43–36.5 GHz,
42.5–43.5 GHz,
48.94–49.04 GHz,
93.07–93.27 GHz,
97.88–98.08 GHz,
140.69–140.98 GHz,
144.68–144.98 GHz,
145.45–145.75 GHz,
146.82–147.12 GHz,
150–151 GHz,
174.42–175.02 GHz,
177–177.4 GHz,
178.2–178.6 GHz,
181–181.46 GHz,
186.2–186.6 GHz,
250–251 GHz,
257.5–258 GHz,
261–265 GHz,
262.24–262.76 GHz,
265–275 GHz

are allocated, all practicable steps shall be taken to protect the radio astronomy service from harmful interference. Emissions from spaceborne or airborne stations can be particularly serious sources of interference to the radio astronomy service (see Nos. 4.5 and 4.6 and Article 29 of the ITU Radio Regulations).

* * * * *

USxxx In the band 401–403 MHz, the non-Federal Government Earth exploration-satellite (Earth-to-space) and meteorological-satellite (Earth-to-space) services are limited to earth stations transmitting to Federal Government space stations.

USyyy The band 1164–1189 MHz is also allocated to the radionavigation-satellite service (space-to-Earth, space-to-space) on a primary basis. In this band, stations in the radionavigation-satellite service shall not cause harmful interference to, nor claim protection from, stations of the aeronautical radionavigation service.

USzzz In designing systems for the inter-satellite service in the band 32.3–33 GHz, for the radionavigation service in the band 32–33 GHz, and for the space research service (deep space) (space-to-Earth) in the band 31.8–32.3 GHz, all necessary measures shall be taken to prevent harmful interference between these services, bearing in mind the safety aspects of the radionavigation service.

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NG41 Frequencies in the bands 3700–4200 MHz and 5925–6425 MHz, may also be assigned to stations in the international fixed public and international control services located in Puerto Rico, the U.S. Virgin Islands, and Navassa Island.

* * * * *

Federal Government (G) Footnotes

* * * * *

G2 In the bands 216–225, 420–450 (except as provided by US217 and G129) 890–902, 928–942, 1300–1400, 2310–2385, 2417–2450, 2700–2900, 5650–5925 and 9000–9200 MHz, the Government radiolocation service is limited to the military services.

* * * * *

G129 Government wind profilers are authorized to operate on a primary basis in the radiolocation service in the frequency band 448–450 MHz with an authorized bandwidth of no more than 2 MHz centered on 449 MHz, subject to the following conditions: (1) Wind profiler locations must be pre-coordinated with the military services to protect fixed military radars; and (2) wind profiler operations shall not cause harmful interference to, nor claim protection from, military mobile radiolocation stations that are engaged in critical national defense operations.

PART 25—SATELLITE COMMUNICATIONS

4. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

5. Section 25.202 is amended by revising paragraph (a)(3) and adding paragraph (a)(4)(iii) to read as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

(a)(1) * * *

* * * * *

(3) The following frequencies are available for use by the non-voice, non-geostationary mobile-satellite service:

137–138 MHz: space-to-Earth
148–150.05 MHz: Earth-to-space
399.9–400.05 MHz: Earth-to-space
400.15–401 MHz: space-to-Earth

(4) * * *

(iii) The following frequencies are available for use by the L-band Mobile-Satellite Service:

1525–1559 MHz: space-to-Earth
1626.5–1660.5 MHz: Earth-to-space

The use of the frequencies 1544–1545 MHz and 1645.5–1646.5 MHz is limited to distress and safety communications.

* * * * *

PART 87—AVIATION SERVICES

6. The authority citation for part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e) unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

7. Section 87.303 is amended by revising paragraph (d)(1) to read as follows:

§ 87.303 Frequencies.

* * * * *

(d)(1) Frequencies in the bands 1435–1525 MHz and 2360–2385 MHz are assigned primarily for telemetry and telecommand operations associated with the flight testing of manned or unmanned aircraft and missiles, or their major components. The bands 1525–1535 MHz and 2310–2360 MHz are also available for these purposes on a secondary basis. Until January 1, 2007, flight test operations in the band 2385–2390 MHz may continue on a primary basis within 160 km of the nine sites listed in 47 CFR 2.106, footnote US363. Permissible uses of these bands include telemetry and telecommand transmissions associated with the launching and reentry into the Earth's atmosphere, as well as any incidental orbiting prior to reentry, of manned or unmanned objects undergoing flight tests. In the band 1435–1530 MHz, the following frequencies are shared with flight telemetry mobile stations: 1444.5, 1453.5, 1501.5, 1515.5, 1524.5, and 1525.5 MHz. In the band 2360–2390 MHz, the following frequencies may be assigned on a co-equal basis for telemetry and associated telecommand operations in fully operational or expendable and re-usable launch vehicles, whether or not such operations involve flight testing: 2364.5, 2370.5 and 2382.5 MHz. In the band 2360–2390 MHz, all other mobile telemetry uses are secondary to the above stated launch vehicle uses.

* * * * *

[FR Doc. 02–30898 Filed 12–9–02; 8:45 am]
BILLING CODE 6712–01–P

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Federal Register

Tuesday,
December 10, 2002

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Deinandra conjugens (Otay tarplant); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH00

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Deinandra conjugens* (Otay tarplant)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for *Deinandra conjugens* [= *Hemizonia conjugens*] (Otay tarplant) pursuant to the Endangered Species Act of 1973, as amended (Act). *Deinandra conjugens* was federally listed as threatened (under the name *Hemizonia conjugens*) throughout its range in southwestern California and northwestern Estado de Baja California, Mexico in 1998. The designation includes approximately 2,560 hectares (ha) (6,330 acres (ac)) in San Diego County, California, as critical habitat for *Deinandra conjugens*.

DATES: The effective date of this rule is January 9, 2003.

ADDRESSES: You may inspect the supporting record for this rule at the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, CA 92009, by appointment during normal business hours.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address; telephone 760/431–9440, facsimile 760/431–5902. Information regarding this designation is available in alternate formats upon request.

SUPPLEMENTARY INFORMATION:

Background

Deinandra conjugens (Otay tarplant) was known as *Hemizonia conjugens* when it was listed on October 13, 1998 (63 FR 54938). Since then, studies analyzing plant and floral morphology and genetic information prompted Baldwin (1999) to revise the Madiinae (tarplants), a tribe in the Asteraceae (sunflower family), and reclassify several taxa into new or different genera. As a result, *Deinandra conjugens* is now the accepted scientific name for *Hemizonia conjugens*. This taxonomic change does not alter the limits or definition of *Deinandra conjugens*. Because this taxonomic change was published and is generally accepted by the scientific community, we are changing the name of *Hemizonia conjugens* to *Deinandra conjugens* in 50 CFR 17.12 (h), and will use *Deinandra conjugens* in this final rule.

Deinandra conjugens was first described by David D. Keck (1958) as *Hemizonia conjugens* based on a specimen collected by L.R. Abrams in 1903 from river bottom land in the Otay Valley area of San Diego County, California. *Deinandra conjugens* is a glandular, aromatic annual plant in the Asteraceae. It has a branching stem that generally ranges from 5 to 25 centimeters (2 to 10 inches) in height with deep green or gray-green leaves covered with soft, shaggy hairs. The yellow flower heads are composed of 8 to 10 ray flowers and 13 to 21 disk flowers with hairless or sparingly downy corollas (fused petals). The phyllaries (small bracts associated with the flower heads) are ridged and have short-stalked glands and large, stalkless, flat glands near the margins. *Deinandra conjugens* occurs within the range of *Deinandra fasciculata* [=*H. fasciculata*] (fasciculated tarplant) and *Deinandra paniculata* [=*H. paniculata*] (San Diego tarplant). *Deinandra conjugens* can be distinguished from other members of the genus by its ridged phyllaries, black anthers (part of flower that produces pollen), and by the number of disk and ray flowers. The disk and ray flowers each produce different types of seeds (heterocarpy), which has been correlated to differential germination responses (Tanowitz *et al.* 1987).

Most known *Deinandra conjugens* occurrences are closely associated with particular soils, vegetation types, and elevation range. The majority of *Deinandra conjugens* occurrences are associated with clay soils and with grasslands, coastal sage scrub, or maritime succulent scrub. Information from herbarium records at the San Diego Natural History Museum (SDNHM) and data from the California Natural Diversity Database (CNDDB 2002) records indicates that *Deinandra conjugens* has a narrow geographic and elevation range.

The distribution of *Deinandra conjugens* is strongly correlated with clayey soils, subsoils, or lenses (isolated area of clay soil) (Bauder *et al.* 2002). Such soils typically support grasslands, but may support some woody vegetation. Much of the area with clay soils and subsoils within the historical range of *Deinandra conjugens* likely was once vegetated with native grassland, open coastal sage scrub and maritime succulent scrub, which provided suitable habitat for *Deinandra conjugens*. Based on Geographic Information Systems (GIS) analysis, most current and historical *Deinandra conjugens* occurrences are found on clay soils or lenses in one of the following soil series: Diablo; Olivenhain; Linne; Salinas; Huerhuero; Auld; Bosanko; Friant; and San Miguel-Exchequer rocky silt loams (Bauder *et al.* 2002).

The occurrence of *Deinandra conjugens* is also strongly associated with particular vegetation types. The species is found in vegetation communities classified as, but not limited to, grasslands, open coastal sage scrub, maritime succulent scrub, and the margins of some disturbed sites and cultivated fields (CNDDB 2002; Keck 1959; Keil 1993; CNPS 2001; David Hogan, San Diego Biodiversity Project, in litt. 1990; Bruce Baldwin, Jepson Herbarium, pers. comm., 2001; Mark Dodero, RECON, pers. comm., 2001; Scott McMillan, McMillan Biological Consulting, pers. comm., 2001). Plant species common to these vegetation communities include Nassella spp. (needlegrass), *Bloomeria crocea* (common goldenstar), *Dichelostemma pulchella* (blue dicks), *Chlorogalum* spp. (soap plant), *Bromus* spp. (brome grass), *Avena* spp. (oats), *Deinandra fasciculata* (fasciculated tarweed), *Lasthenia californica* (common goldfields), *Artemisia californica* (California sagebrush), *Eriogonum fasciculatum* (flat-top buckwheat), Lotus scoparius (deer weed), *Salvia* spp. (sage), *Mimulus aurantiacus* (bush monkeyflower), *Malacothamnus fasciculatum* (bushmallow), *Malosma laurina* (laurel sumac), *Rhus ovata* (sugar bush), *R. integrifolia* (lemonade berry), *Lycium spp.* (boxthorn), *Euphorbia misera* (cliff spurge), *Simmondsia chinensis* (jojoba), *Opuntia* spp. (prickly pear and cholla cactuses), *Ferocactus viridescens* (coastal barrel cactus), *Ambrosia chenopodiifolia* (San Diego bur sage), and *Dudleya spp.* (live-forevers).

Information acquired since the listing indicates that the historical range for *Deinandra conjugens* in San Diego County, California, is extended from the Mexican border north to Spring Valley and Paradise Valley, a distance of about 24 kilometers (km) (15 miles (mi)), and from Interstate 805 east to Otay Lakes Reservoir, a distance of about 13 km (8 mi) (herbarium records at the SDNHM and CNDDB 2002). Further, based on museum specimens and database records, the elevational range for *Deinandra conjugens* appears to be between 25 and 300 meters (m) (80 and 1,000 feet (ft)).

Typically, *Deinandra conjugens* and other tarplants cannot produce viable seeds without cross pollinating with

other individuals (*i.e.*, are essentially self-incompatible) (Keck 1959; Tanowitz 1982; B. Baldwin, in litt. 2001). Gene flow among plant populations through pollination is important for the long-term survival of self-incompatible species (Ellstrand 1992). Gene flow in *Deinandra conjugens* is essentially achieved through pollen movement among occurrences. Because small occurrences of *Deinandra conjugens* may facilitate greater gene flow, conservation of these may be critical to maintaining genetic diversity in *Deinandra conjugens*. Likely pollinators of *Deinandra conjugens* include, but are not limited to, bee flies (Bombyllidae); hover flies (Syrphidae); digger bees (Apidae); carpenter and cuckoo bees (Anthophoridae); leaf mason and leaf cutting bees (Megachilidae); and metallic bees (Halictidae) (Krombein *et al.* 1979; Bauder *et al.* 2002; M. Dodero, pers. comm., 2001). The following bee species have been documented visiting *Deinandra* species: *Nomia melanderi; Colletes angelicus; Nomadopsis helianthi; Ventralis claypolei ausralior; Anthidiellum notatum robertsoni; Heriades occidentalis; Anthocopa hemizoniae; Ashmeadiella californica californica; Svastra sabinensis nubila; Melissodes tessellata; M. moorei; M. personatella; M. robustior; M. semilupina; M. lupina; M. stearnsi; Anthophora urbana urbana*; and *A. curta curta* (Krombein *et al.* 1979).

Deinandra conjugens fruits are each one-seeded and are likely to be dispersed by small to large-sized mammals and birds based on the sticky nature of the remaining flower parts that are attached to the fruits and the discontinuous distribution of other tarplants (B. Baldwin, *in litt.* 2001; M. Dodero, pers. comm., 2001; Elizabeth Friar, Claremont Graduate University, pers. comm., 2001; Gjon Hazard, (Service), pers. comm., 2001). Potential seed/fruit dispersal organisms known to occur in the region include, but are not limited to, mule deer (*Odocoileus hemionus*), gray fox (*Urocyon cinereoargenteus*), coyote (*Canis latrans*), black-tailed jackrabbit (*Lepus californicus bennettii*), bobcat (*Felis rufus*), striped skunk (*Mephitis mephitis*), opossum (*Didelphis virginiana*), racoon (*Procyon lotor*), and various small land birds.

A seed bank (a reserve of dormant seeds, generally found in the soil) is important for year-to-year and long-term survival (Given 1994, Rice 1989). A seed bank includes all of the seeds in a population and generally covers a larger area than the extent of observable plants seen in a given year. The number and location of standing plants in a population varies annually due to a number of factors, including the amount and timing of rainfall, temperature, soil conditions, and the extent and nature of the seed bank. Large annual fluctuations in the number of standing plants in a given population have been documented. Population size has ranged from 1 to over 5,400 standing plants at a site on northwest Otay Mesa (CNDDB 2002; City of San Diego, *in litt.* 1999), from approximately 100 to 50,000 at a site in Rice Canyon (CNDDB 2002), and from approximately 280,000 to 1.9 million at San Miguel Ranch South (CNDDB 2002; Merkel & Associates, *in litt.* 1999). In any given year, the observable plants in a population are only the portion of the individuals from the seed bank that germinated that year. These annual fluctuations make it look as though a population of annual plants "moves" from year to year, when in actuality, a different portion of a population germinates and flowers each year. The spatial distribution of a standing population of annual plants is generally the result of the spatial distribution of the micro-environmental conditions conducive to seed germination and growth of the plants.

Determining the size or magnitude of a given *Deinandra conjugens* population is difficult due to the major fluctuations that have been documented in known populations (CNDDB 2002; Merkel & Associates, in *litt.* 1999). Conditions during some years are better for growth and reproduction of *Deinandra conjugens* in some populations (and even some portions of a population) than during other years. Because the number of standing plants in a given population can vary by orders of magnitude from one year to the next, the number of standing plants observed in a population in any one year does not necessarily indicate the potential magnitude of that population.

Deinandra conjugens has a limited distribution consisting of at least 25 historical populations near Otay Mesa in southern San Diego County and one population in Estado de Baja California, Mexico, near the United States border (CDFG 1994; Roberts 1997; CNDDB 2002; Reiser 1996; herbarium records at the SDNHM; S. Morey, *in litt.* 1994). Three of the 25 historic populations of *Deinandra conjugens* in the United States are considered to be extirpated (CNDDB 2002; D. Hogan, *in litt.* 1990; S. Morey, *in litt.* 1994).

The largest number of *Deinandra conjugens* plants were recorded in 1998 when it was estimated that there were over 2 million individuals for the species as a whole (CNDDB 2002; Merkel & Associates, *in litt.* 1999). However, the number of standing plants from year to year can be highly variable. As testament to this variability, the species was thought to be extinct within its range until its rediscovery in Estado de Baja California, Mexico in 1977 (Tanowitz 1978). Conversely, the largest population (Rancho San Miguel) supported about 1.9 million plants during 1998 when southern California experienced El Nino weather conditions, which resulted in a particularly wet and prolonged growing season (Merkel & Associates, *in litt.* 1999).

By 1998, the five largest populations of *Deinandra conjugens* (Rancho San Miguel, Rice Canyon, Dennery Canyon, Poggi Canyon, and Proctor Valley) were known to support about 98 percent of all reported standing plants (CNDDB 2002; San Diego Gas and Electric 1995; Roberts 1997; Merkel & Associates, *in litt.* 1999; Morey, *in litt.* 1994; City of Chula Vista 1992; Brenda Stone, California Department of Transportation, *in litt.* 1994) with each reportedly containing more than 10,000 standing plants. In 2000, surveys for *Deinandra conjugens* conducted in Johnson Canyon (Helix Environmental Planning, Inc. 2001b) and Rolling Hills Ranch (Helix Environmental Planning, Inc. 2001a), identified new populations estimated to include approximately 480,000 and 28,000 standing plants, respectively. Of the remaining populations, 8 are reported to support from 1,000 to 8,000 plants each; 9 are reported to support fewer than 1,000 plants each; and 3 are considered to be extirpated (CNDDB 2002). All of the above referenced populations occur on Federal, local, and private lands (CNDDB 2002).

Some of the smaller populations of *Deinandra conjugens* are believed to be essential to the survival and conservation of the species because they are strategically located between larger populations and likely facilitate gene flow among them. Gene flow among populations has been demonstrated to reduce local and global extinctions in a number of species (Hanski 1998; Baldwin, *in litt.* 2001). Processes such as mutation, genetic migration, and random genetic drift are known to adversely affect small populations (Barrett and Kohn 1991). Adverse effects from these processes on *Deinandra conjugens* would likely be magnified by its self-incompatibility (Keck 1959; Tanowitz 1982; Baldwin, *in litt.*, 2001). Maintaining gene flow among occurrences and between populations is essential to counter the adverse effects from the processes mentioned above,

and to ensure the long-term survival and conservation of this species.

At the time the species was listed in 1998, we estimated that 70 percent of the suitable habitat for this species within its known range had been lost to development or agriculture (63 FR 54938). Since the listing, additional habitat has been lost to development (*e.g.*, urban, commercial, industrial, residential) and agriculture (*e.g.*, grazing, farming).

Deinandra conjugens appears to tolerate mild levels of disturbance such as light grazing (Hogan, *in litt.* 1990; Tanowitz, *in litt.* 1977). Such mild disturbances may result in habitat conducive to germination (Tanowitz, *in litt.* 1977). However, the species is otherwise threatened by urbanization and related activities, intensive agriculture, and the invasion of non-native species, which may result in significant disturbance to populations (63 FR 54938). Because of these threats, we anticipate that intensive long-term monitoring and management may be needed to protect and conserve this species.

At the time the species was listed in 1998, we estimated that about 11,930 ha (30,310 ac) of land with clay soils or clay subsoils were within the general range of *Deinandra conjugens* in San Diego County, California (63 FR 54938). Also at that time, about 4,200 ha (10,600 ac) (about 37 percent) of this area had been urbanized and about 4,155 ha (10,555 ac) (about 37 percent) had been heavily cultivated and grazed (63 FR 54938). Additional areas have been lost to urbanization since this time. New information from herbarium records at the SDNHM indicates that the historical range of *Deinandra conjugens* extended further to the north and northwest. Most of the habitat in this additional area has already been lost to development. Much of the cultivated and grazed lands in this range could be restored to support *Deinandra conjugens*, which can grow in the margins of cultivated fields (S. McMillan, pers. comm., 2001; M. Dodero, pers. comm., 2001). However, most of these lands will likely be unavailable for the species because of proposed urban and agricultural land use (Carlsbad Fish and Wildlife Office GIS database 2002 which includes coverages from San Diego Association of Governments).

Previous Federal Action

On December 15, 1980, we published a Notice of Review (NOR) of plants which included *Deinandra conjugens* as a category 1 candidate taxon (45 FR 82480). Category 1 taxa were those taxa for which substantial information on biological vulnerability and threats are available to support preparation of listing proposals. On November 28, 1983, we published a supplement to the 1980 NOR that treated *Deinandra conjugens* as category 2 candidate taxa (48 FR 53640). Category 2 candidates were taxa for which data in our possession indicated listing was "possibly appropriate but for which substantial information on biological vulnerability and threats were not known or on file to support preparation of proposed rules" (48 FR 53640).

On December 14, 1990, we received a petition dated December 5, 1990, from Mr. David Hogan of the San Diego Biodiversity Project, to list *Deinandra conjugens* as endangered. The petition also requested designation of critical habitat. Because *Deinandra conjugens* was included in the Smithsonian Institution's Report of 1975, designated as House Document No. 94–51, that had been accepted as a petition, we regarded Mr. Hogan's petition to list this taxon as a second petition. We responded to the petition by publishing a proposed rule to list *Deinandra conjugens* as endangered on August 9, 1995 (60 FR 40549). On October 13, 1998, we published a final rule listing *Deinandra conjugens* as threatened (63 FR 54938). At that time, we indicated that designation of critical habitat was not prudent.

On July 15, 1999, the California Native Plant Society (CNPS) and Southwest Center for Biological Diversity (SWCBD) filed a lawsuit in U.S. District Court for the Southern District of California, in part, challenging our decision not to designate critical habitat for *Deinandra conjugens* (*California Native Plant Society; et al.* v. *Babbitt, et al.*, 99CV1454 L (S.D.Cal.). On December 21, 2000, we entered into a stipulated settlement agreement with the plaintiffs under which we agreed to reevaluate the prudency determination for *Deinandra conjugens* by May 30, 2001. If we determined that critical habitat was prudent, we were to publish a proposed rule to designate critical habitat by June 5, 2000, with a final determination to be completed by May 30, 2002. On June 1, 2001, we determined that designation of critical habitat was prudent, and on June 13, 2001, we published in the **Federal Register** a proposed rule to designate approximately 2,685 ha (6,630 ac) of land as critical habitat for *Deinandra conjugens* (66 FR 32052). We requested a 6-month extension (until November 30, 2002) to complete the final designation to allow us adequate time to complete an economic analysis, obtain public comment on the economic analysis, and complete the final designation. This extension was agreed to by the plaintiffs and approved by the court on June 2, 2002. On July 10, 2002, we published a notice reopening the public comment period on the proposed rule for an additional 30 days and announcing the availability of the draft economic analysis (67 FR 45696). This final critical habitat designation is consistent with the settlement agreement.

Summary of Comments and Recommendations

In the June 13, 2001, proposed critical habitat designation (66 FR 32052), we requested all interested parties to submit comments on the specifics of the proposal including information related to biological justification, policy, economics, and proposed critical habitat boundaries. The initial 60-day comment period closed on August 13, 2001. The comment period was reopened from July 10, 2002, to August 9, 2002 (67 FR 45969), to allow for additional comments on the proposed designation, and comments on the draft economic analysis of the proposed critical habitat.

We contacted all appropriate State and Federal agencies, county governments, elected officials, and other interested parties and invited them to comment. In addition, on June 13, 2001, we invited public comment through the publication of a legal notice in the San Diego Union-Tribune newspaper in southern California. We provided notification of the draft economic analysis to all interested parties. This was accomplished through telephone calls, letters, and news releases faxed and/or mailed to affected elected officials, media outlets, local jurisdictions, and interest groups. We also posted the proposed rule and draft economic analysis and associated material on our Carlsbad Fish and Wildlife Office internet site following their release on June 13, 2001, and July 10, 2002, respectively.

We received a total of 11 comment letters, from 8 separate parties during the two public comment periods. Comments were received from Federal and local agencies, and private organizations and individuals. No response was received from State agencies. Of these 11 comment letters, 4 were in favor of the designation, and 7 against it. We reviewed all comments received for substantive issues and comments, and new information regarding *Deinandra conjugens*. Similar comments were grouped into three general issues relating specifically to the proposed critical habitat determination and draft economic analysis on the proposed determination.

Peer Review

We requested four biologists, who have knowledge of *Deinandra conjugens*, to provide peer review of the proposed designation of critical habitat for *Deinandra conjugens*. Two of the four peer reviewers submitted comments on the proposed designation. Both reviewers strongly endorsed the proposal, citing the importance of genetic diversity to the survival of *Deinandra conjugens*. One reviewer supported our inclusion of living seed banks, in areas where plants are not evident every year, and concurred that we fully considered in the proposal the importance of genetic diversity found in major and minor populations.

Comments were either incorporated directly into the final rule or final addendum to the economic analysis or addressed in the following summary.

Issue 1: Biological Justification and Methodology

Comment 1: One commenter expressed concern over eliminating areas with negative survey results from analysis where there may be primary constituent elements and thereby eliminating them from potential inclusion in critical habitat.

Our Response: The definition of critical habitat in section 3(5)(A) of the Act includes "(i) specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species." The term "conservation," as defined in section 3(3) of the Act, means "to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary" (*i.e.*, the species is recovered and removed from the List of Endangered and Threatened Species).

As we discussed in our proposed critical habitat for the *Deinandra conjugens*, we identified those areas that currently contain populations or provide habitat components essential to the conservation of *Deinandra conjugens*. We excluded some areas where *Deinandra conjugens* has not been observed historically or recently because we cannot document that these areas are essential for the conservation of the species. However, we proposed for designation those areas that we believe to be essential, that possess core populations, and have unique ecological characteristics.

Comment 2: One commenter expressed concern that the most current and therefore, the best scientific data available for the Rolling Hills Ranch project was not used. The commenter further suggests that the proposed rule underestimates the number of *Deinandra conjugens* individuals located on Rolling Hills Ranch, specifically, that 2000 survey data submitted to the Service in April and July of 2001 should be used to redefine the critical habitat boundaries at Rolling Hills Ranch.

Our Response: As discussed in the proposed rule, we did rely on the most recent data from the 2000 survey season at Rolling Hills Ranch to develop the Unit 1 boundaries of proposed critical habitat for *Deinandra conjugens*. The subject 2000 survey data was provided to the Service in April 2001, prior to the proposal. This data for the most part, corroborated decisions made during the development of the proposed critical habitat rule, and identified new areas of occupancy at Rolling Hills Ranch. Some of these areas within the proposed critical habitat, in which *Deinandra conjugens* was documented for the first time in 2000, have not been included in the final designation for reasons discussed in this rulemaking. The occurrence data and supporting documentation used in the rulemaking are available for inspection at the Carlsbad Fish and Wildlife Office by appointment (please *see* **ADDRESSES** section of this rule).

Comment 3: One commenter questioned the biological justification for proposing critical habitat for *Deinandra conjugens* using a landscape-scale approach when they believed that more precise information is available for use by the Service.

Our Response: We recognize that not every parcel of land within the external boundaries of the critical habitat designation will contain the habitat components essential to the conservation of *Deinandra conjugens*. In the absence of more detailed map information during the preparation of the proposed and final designations, we used a 100–m UTM grid and hardline reserve boundaries to delineate critical habitat.

In developing the proposed rule and this final designation, we made an effort to minimize the inclusion of areas that do not contain the primary constituent elements for *Deinandra conjugens*. However, due to our mapping scale, some areas not essential to the conservation of *Deinandra conjugens* are included within the boundaries of proposed and final critical habitat. These areas, such as existing housing developments, roads, or other developed lands do not provide habitat for *Deinandra conjugens*. Because they do not contain one or more of the primary constituent elements for the species, Federal actions limited to those areas will not trigger a section 7 consultation of the Act, unless they affect the species or primary constituent elements in adjacent critical habitat.

Comment 4: One commenter expressed concern that the proposed critical habitat does not encompass all areas needed to provide for genetic exchange between occurrences of *Deinandra conjugens*. For instance, Map Units 2 and 3 result in genetically isolated areas of critical habitat; pollinators and seed dispersers would not be capable of maintaining genetic exchange among these and other critical habitat areas. Also, Unit 2F, 2G, and 2H, and Unit 3A should be one interconnected unit; there is no scientific justification for segregating these areas into separate polygons.

Our Response: In developing the proposed critical habitat, we evaluated those areas essential to the conservation of *Deinandra conjugens* and that are covered by a legally operative Habitat Conservation Plan (HCP). Those areas believed to be biologically essential, but already covered by a legally operative HCP, were excluded from this designation pursuant to section 4(b)(2) of the Act. Consequently, those areas within the subject critical habitat units containing essential *Deinandra conjugens* habitat within the San Diego County Subarea Plan of the San Diego County Multiple Species Conservation Plan (MSCP) are excluded. These exclusions create the appearance of habitat gaps that could limit genetic exchange. Though some of these gap areas do not contain primary constituent elements, most gap areas include lands conserved under existing HCPs. After evaluating the relative locations of populations, and evaluating their genetic exchange potential, we only designated areas determined to be essential that require special management. Because areas conserved in reserves under existing HCPs receive special management pursuant to those plans, they were not included in proposed or final critical habitat.

Issue 2: Policy and Regulations

Comment 5: One commenter suggested that designating critical habitat for *Deinandra conjugens* on San Miguel Ranch project lands that will become part of the San Diego National Wildlife Refuge (SDNWR) is not adequate to provide the necessary and appropriate levels of assurance to San Miguel Ranch. The commenter explained that San Miguel Ranch, as a third party beneficiary to the MSCP Implementing Agreement, is covered by an existing legally operative HCP that addresses *Deinandra conjugens*. Finally, the commenter suggests that, due to the conservation protections and management measures assured for *Deinandra conjugens* through the SDNWR Annexation Agreement, the benefits of excluding San Miguel Ranch outweigh the benefits of including of San Miguel Ranch in the designation.

Our Response: Pursuant to section 4(b)(2) of the Act, we may exclude any area from designated critical habitat if we believe that the benefits of excluding such lands outweigh the benefits of including those lands in critical habitat, providing that the exclusion would not result in the extinction of the species. We have generally excluded from critical habitat areas within legally operative HCPs that "cover" the subject species by protecting, and providing management for, the essential habitat of the species within the plan area. We have used the provisions of section 4(b)(2) of the Act for the exclusion of lands covered by approved HCPs, because we believe that the benefits of excluding them outweigh the benefits of including them.

Prior to annexation by the City of Chula Vista, the San Miguel Ranch project was covered under the County of San Diego's approved and legally operative Subarea HCP. In 2000, that portion of the County of San Diego's incidental take permit that covers San Miguel Ranch was transferred to the City of Chula Vista. Under the County of San Diego Subarea Plan Implementing Agreement, the County and third party beneficiaries, as that term is defined in the Implementing Agreement, are assured that if the critical habitat is designated, they will not be required to provide additional mitigation beyond that imposed on their project in accordance with the Subarea Plan without their consent. Those assurances continue to extend to San Miguel Ranch, to the extent it maintains third party beneficiary status, with the transfer of that portion of the County of San Diego's incidental take permit that covers San Miguel Ranch to the City of Chula Vista in year 2000. The assurance is not affected or diminished by the designation.

Under the Annexation Agreement, Trimark (the project proponent) has limited rights to encroach on certain SDNWR lands and the right to request an encroachment easement on other SDNWR lands. If the Service approves such encroachment, Trimark is required to provide mitigation as described in the Annexation Agreement. The inclusion of SDNWR lands in critical habitat does not conflict with the Annexation Agreement or interfere with any assurances provided to the San Miguel Ranch project under the transferred County permit. While San Miguel Ranch is covered by a legally operative HCP, those lands identified for transfer to the SDNWR under the Annexation Agreement will become federal lands conserved and managed by the Service in accordance with Annexation Agreement and the laws and regulations governing the National Wildlife Refuge System. Therefore the considerations underlying out exclusion of lands within approved HCPs under 4(b)(2) of the Act do not apply here. The Service has not completed a Comprehensive Management Plan and Step-down Refuge Management Plan that adequately addresses management and monitoring of *Deinandra conjugens*. Thus the refuge lands, which we have determined are essential for the conservation of *Deinandra conjugens*, continue to require special management and thus meet the definition of critical habitat under section 3(5)(A) of the Act. Finally, because the SDNWR lands are federal lands, Section 7, which is the primary regulatory benefit of designating lands as critical habitat, will apply to activities carried out on the lands. We are not aware of any facts that indicate that the benefits of excluding the SDNWR lands from critical habitat under section 4(b)(2) of the Act would outweigh the benefits of including them as critical habitat.

Comment 6: Several commenters suggested that the final critical habitat boundary should be consistent with boundaries of the reserves being established under the Chula Vista Subarea Plan of the San Diego County MSCP (*e.g.*, Rolling Hills Ranch and Bella Lago).

Our Response: As previously discussed in this rulemaking, we proposed to designate as critical habitat for *Deinandra conjugens* those lands believed to be essential to the conservation of the species. During the development of the proposal, we took into consideration the most current and best commercial and scientific data available. This information included the conservation management and protections afforded *Deinandra conjugens* under the San Diego County MSCP and the Chula Vista Subarea Plan currently being developed. The boundaries of our proposed critical habitat designation in some areas matched those of the proposed reserve for the Chula Vista Subarea Plan, because in our analysis of the subarea plan, we concluded that these boundaries incorporated areas essential to the conservation of *Deinandra conjugens*. For reasons discussed in the Critical Habitat section of this rulemaking, we reevaluated and ultimately modified the critical habitat boundaries at Rolling Hills Ranch and Bella Lago. The modifications reflect the results of additional analysis of *Deinandra conjugens* habitat within the projects' boundaries and discussions regarding conservation of essential habitat with the project proponents and the outcome of a Section 7 conference opinions on Bella Lago and Rolling Hills Ranch. The reserve boundaries for the Chula Vista subarea plan currently out for review, including Bella Lago and Rolling Hills Ranch, are consistent with this final rule.

Comment 7: One commenter requested that we conduct the analysis necessary to conclude that the City of Chula Vista's proposed MSCP Subarea Plan should be excluded from the critical habitat designation pursuant to section 4(b)(2) of the Act. The commenter asserts that we should withdraw and revise the proposed critical habitat designation to include an analysis and finding that the benefits of excluding the City's plan outweigh the benefits of inclusion.

Our Response: Section 4(b)(2) of the Act allows us to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that in most instances the benefits of excluding legally operative HCPs from critical habitat designations will outweigh the benefits of including them. *Deinandra conjugens* is a covered species in the proposed Chula Vista Subarea Plan; however, the Subarea Plan is not yet approved or legally operative. The plan has been released to the public for review and may be revised as a result of comments received by the public. The Service has not conducted a review of the plan under section 7 or section 10 of the Act to determine whether it meets the criteria for issuance of an incidental take permit. Nor has the Service completed its review of the plan under NEPA. Exclusion of the plan area under section 4(b)(2) of the Act based on a proposed plan that may change and that has not been approved by the Service would be inappropriate.

We anticipate that the Chula Vista Subarea Plan and other future HCPs in the range of *Deinandra conjugens* will include it as a covered species and provide for its long-term conservation. If the Chula Vista Subarea Plan or other HC056that address Deinandra conjugens as a covered species are ultimately approved and legally operative, we may reassess the critical habitat boundaries in light of the approved HCP.

Comment 8: One commenter expressed concern that we did not sufficiently support our decision to reverse our determination that designation of critical habitat for *Deinandra conjugens* is not "prudent." Finally, the commenter requests that we withdraw and reconsider our determination that designation of critical habitat is now prudent.

Our Response: In our final rule listing *Deinandra (= Hemizonia) conjugens* as threatened under the Act (63 FR 549384), we found that designation of critical habitat was not prudent because it occurs primarily on private lands with little or no Federal involvement. As we discuss in the Previous Federal Action section of this final rule, we were challenged on our original "not prudent" finding. On December 21, 2000, we agreed to a stipulated settlement that required us to publish a proposal to withdraw the existing "not prudent" critical habitat determination and make a new prudency determination. In the Prudency Determination section of the proposed rule, we detailed our reasoning for determining that critical habitat is, in fact, prudent for *Deinandra conjugens*. In general, we concluded that there may be some additional benefits to designating critical habitat, including instances where section 7 consultation would be triggered only if critical habitat is designated, educational or informational benefits to designating critical habitat, and significant occurrences of *Deinandra conjugens* that have come under Federal lands jurisdiction since the time of listing. The publication of our June 13, 2001, proposal and this final rule are in compliance with that determination and the stipulated settlement agreement and subsequent court orders.

Comment 9: One commenter suggested that lands covered by the MSCP (or other HCPs) do not provide adequate protection for long-term conservation of *Deinandra conjugens*; as such, the small disjunct critical habitat areas as currently proposed are inadequate to support the long-term survival of *Deinandra conjugens*.

Our Response: Deinaindra conjugens is a covered species under the City and County of San Diego subarea plans of the MSCP. As discussed later in this rule, Section 10(a)(1)(B) of the Act authorizes the Service to issue to non-Federal entities a permit for the take of endangered and threatened animal species incidental to otherwise lawful activities. An incidental take permit must be supported by an HCP that identifies conservation measures that minimize and mitigate the impacts of take of covered animal species to the maximum extent practicable and that we believe necessary to reduce project-related effects to the extent that they do not appreciably reduce the likelihood of the survival and recovery of the species in the wild. Where an HCP includes sufficient conservation measures to preclude jeopardy for listed plant species, we will also include such species on the incidental take permit in recognition of those conservation benefits even though take of listed plant species is not prohibited under Section 9 of the Act.

In the proposed rule we discussed at length the relative benefits of including or excluding from critical habitat lands covered by a legally operative HCP that includes *Deinandra conjugens* as a covered species (*see* 66 FR 32060–61). In particular we noted that the benefits of including HCP lands in critical habitat are normally small to non-existent because approved HCPs are already designed to ensure the long-term survival of covered species. HCPs typically protect essential habitat in reserves that are managed to protect, restore, and enhance their value as habitat for the species. Moreover, before approving an HCP or issuing an incidental take permit, we complete a section 7 of the Act consultation on the proposed permit and must conclude that the permit will not result in jeopardy to any covered species in the plan area.

The reserves established under the approved MSCP subarea plans include essential populations of *Deinandra*. Those areas we are designating as critical habitat include essential habitat for *Deinandra conjugens* within HCPs that are currently under development, but have not yet been approved, and other essential habitat outside of approved HCPs. The critical habitat designation provides connectivity among *Deinandra conjugens* populations protected within reserves established under approved subarea plans.

Comment 10: One commenter concluded that all lands containing the species' primary constituent elements are essential to the conservation of the species.

Our Response: By definition (see sections 3(5)(A) and 3(5)(C) of the Act), essential critical habitat generally describes a subset of the area potentially containing primary constituent elements for a species. As discussed in the methods section of the proposed and this final rule, to determine areas essential for the conservation of *Deinandra conjugens*, we used the best scientific and commercial data available pertaining to known habitat requirements of the species: Areas designated as critical habitat for *Deinandra conjugens* are within the current known range of the species and contain one or more primary constituent elements essential for the conservation of the species. In our proposed and final designation of critical habitat, we selected essential habitat areas based on occurrence data, soils, vegetation, elevation, topography, and current land uses. During this analysis, it was determined that some areas containing one or more primary constituent elements did not represent suitable habitat or were otherwise not essential for the conservation of the species.

Issue 3: Economic Issues

Comment 11: One commenter expressed concern that the deferral of economic and other relevant impacts in preparing the proposed rule violates the requirements of the Act. The commenter acknowledges our position from previous critical habitat designations pursuant to the specific implementing regulations (50 CFR 424.19) that it is not required by law to conduct an economic analysis at the time critical habitat is initially proposed. The commenter asserts, however, that the implementing regulations contradict the Act (16 U.S.C. 1533(b)(2)) (*i.e.*, section 4(b)(2) of the Act), whereas the statute calls for designation of critical habitat after taking into consideration economic impacts of specifying any particular area as critical habitat. The commenter suggests that we ignored economic effects and other related effects until after critical habitat boundaries are established. Conversely, the commenter asks how the proposed rule text can suggest that "the designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of listed species," if an economic analysis has not yet been conducted.

Our Response: Pursuant to section 4(b)(2) of the Act, we designate critical habitat and make revisions thereto on the basis of the best available scientific data and after taking into consideration economic impacts and other relevant impacts associated with the designation. We published our proposed designation in the **Federal Register** on June 13, 2001 (66 FR 32052). At that time, our Division of Economics and their consultants, Industrial Economics, Inc., initiated the draft economic analysis. The draft economic analysis was made available for public comment and review beginning on July 10, 2002 (67 FR 45696). Following a 30-day public comment period on the proposal and draft economic analysis, a final addendum to the economic analysis was completed which takes into consideration public comments. Both the draft economic analysis and the addendum were used in the development of this final designation of critical habitat for *Deinandra conjugens*. Please refer to the Economic Analysis section of this final rule for a more detailed discussion of these documents. Therefore, our designation of critical habitat does take into consideration economic and other impacts considered during the rulemaking process.

As stated earlier in this final rule, Federal agencies already consult with us on activities in areas currently occupied by *Deinandra conjugens*, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the species. Since *Deinandra conjugens* critical habitat is considered occupied by either standing plants or seed bank, and we already consult on other listed species, including the coastal California gnatcatcher (*Polioptila californica californica*) and the Quino checkerspot butterfly (*Euphydryas editha quino*), that have designated critical habitats that overlap with *Deinandra conjugens*, we do not anticipate a significant additional regulatory burden will result from the designation of critical habitat for Deinandra conjugens. We made our anticipatory statement that the designation of critical habitat was not likely to result in a significantly higher regulatory burden based on the information available at the time. The economic analysis has demonstrated that our initial assumption was correct.

Comment 12: One commenter suggested that the Service failed to take into account the cumulative economic impacts of all the existing and proposed critical habitat designations. The commenter believes that the Act and relevant Federal cases (*New Mexico Cattle Growers* v. *U.S. Fish and Wildlife Service*, 248 F.3d 1277, 1281–1285) require this type of analysis and requests that the Service explain the factual and legal basis for its decision that other pending and final critical habitat designations can be considered separately.

Our Response: The commenter appears to be using the term "cumulative impacts" in the context of the National Environmental Policy Act (NEPA), which does not apply to this rulemaking. See the National Environmental Policy Act section of this rule. We are required to consider only the effect of the proposed government action, which in this case is the designation of critical habitat for *Deinandra conjugens*. The appropriate baseline for use in this analysis is the regulatory environment without this regulation. While, consistent with *New Mexico Cattlegrowers* v. *U.S. Fish and Wildlife Service*, we considered the costs and benefits of both the listing of Deinandra conjugens and the designation of critical habitat for this species in establishing an upward estimate of economic effects, and then attempted to identify and measure the additional costs and benefits associated with this designation of critical habitat, when critical habitat for other species has already been designated, it is properly considered part of the baseline for this analysis. Proposed and future critical habitat designations for other species in the area will be part of separate rulemakings, and consequently, their economic effects will be considered separately.

Comment 13: One commenter suggested that the critical habitat designation triggers "No Surprises" regulations due to *Deinandra conjugens*" coverage in the MSCP, and that we should pay all the costs associated with the designation.

Our Response: Permittees and third party beneficiaries, as the term is defined under various MSCP Subarea Plan Implementing Agreements, are assured that in the event critical habitat is designated for a covered species, such as *Deinandra conjugens*, within the boundaries of approved subarea plans, they will not be required to provide additional mitigation consisting of money, land or restrictions on land, beyond the level of mitigation imposed on their projects in accordance with the subarea plans without their consent. The designation of critical habitat for *Deinandra conjugens* does not undermine, compromise or affect that assurance or trigger the No Surprises regulation.

Comment 14: One commenter expressed concern that the critical habitat methodology fails to meet the standards of the Act as held by the 10th Circuit Court [*New Mexico Cattle Growers Ass'n* v. *U.S.F.W.S.*, 248 F.3rd 1277 (10th Cir. 2001)] in that the economic analysis cannot be separated from the action listing the species.

Our Response: In *New Mexico Cattle Growers Ass'n* v. *U.S.F.W.S.*, 248 F.3d 1277 (10th Cir. 2001) the 10th Circuit recently held that the baseline approach to economic analysis of critical habitat designations that was used by the Service for the southwestern willow flycatcher designation was "not in accord with the language or intent of the ESA." In particular, the court was concerned that the Service had failed to analyze any economic impact that would result from the designation, because it took the position in the economic analysis that there was no economic impact from critical habitat that was incremental to, rather than merely co-extensive with, the economic impact of listing the species. The Service had therefore assigned all of the possible impacts of designation to the listing of the species, without acknowledging any uncertainty in this conclusion or considering such potential impacts as transaction costs, reinitiations, or indirect costs. The court rejected the baseline approach incorporated in that designation, concluding that, by obviating the need to perform any analysis of economic impacts, such an approach rendered the economic analysis requirement meaningless.

In this analysis, the Service addresses the 10th Circuit's concern that we give meaning to the ESA's requirement of considering the economic impacts of designation by acknowledging the uncertainty of assigning certain post-designation economic impacts (particularly section 7 consultations) as having resulted from either the listing or the designation. We also understand that the public wants to know more about the kinds of costs consultations impose and frequently believe that designation could require additional project modifications.

Therefore, this analysis incorporates two baselines. One addresses the impacts of critical habitat designation that may be attributable co-extensively to the listing of the species. Because of the potential uncertainty about the benefits and economic costs resulting from critical habitat designations, we believe it is reasonable to estimate the upper bounds of the cost of project modifications based on the benefits and economic costs of project modifications that would be required due to consultation under the jeopardy standard. It is important to note that the inclusion of impacts attributable co-extensively to the listing does not convert the economic analysis into a tool to be considered in the context of a listing decision. As the court reaffirmed in the southwestern willow flycatcher decision, "the ESA clearly bars economic considerations from having a seat at the table when the listing determination is being made."

The other baseline, the lower boundary baseline, will be a more traditional rulemaking baseline. It will attempt to provide the Service's best analysis of which of the effects of future consultations actually result from the regulatory action under review—*i.e.*, the critical habitat designation. These costs will in most cases be the costs of additional consultations, reinitiated consultations, and additional project modifications that would not have been required under the jeopardy standard alone as well as costs resulting from uncertainty and perception impacts on markets. The final addendum to this analysis provides further information concerning the baseline and potential incremental effects of the designation of critical habitat for *Deinandra conjugens*.

Comment 15: One commenter suggested that the economic analysis cannot rely on overlap between Federal laws and State and local regulations. The analysis of State-induced impacts is inappropriate since they are independent of Federal action, and could be nullified by actions of the State legislature or voters.

Our Response: In the case of the MSCP, an analysis of State-induced impacts is appropriate since the NCCP program is directly tied to the HCP through the terms of the MSCP Implementing Agreement. Though economic impacts associated with State and local actions were addressed in the draft economic analysis, the document clearly states that all impacts are assumed to be solely attributable to the Federal listing. Please refer to the draft economic analysis for further discussion of this issue.

Comment 16: One commenter expressed concern that the preface of the economic analysis acknowledges that the public believes that critical habitat designation could require additional project modifications, while the document later suggests in several instances that further modifications are not expected. The commenter suggests that the economic analysis provide further defense of this position and discuss specific regulation and policy in making the case.

Our Response: The statement in the preface of the economic analysis addresses public perception (also see the Stigma Effects section of the economic analysis) that critical habitat designation will present additional regulatory burden. The economic analysis effectively addresses these concerns by addressing the likelihood of an economic effect from the designation above and beyond the listing. The analysis correctly asserts that *Deinandra conjugens* critical habitat is occupied by either standing plants or seed bank, and correctly concludes that no additional project modifications are likely from the designation that would not have already been recommended to address the listed species and its habitat.

Comment 17: One commenter indicated that *Dudleya variegata* (variegated Dudleya) is not a State-listed species, as stated in the draft economic analysis. The commenter suggested that this statement leads to significant adjustments in the cost impacts within the economic analysis that should be corrected.

Our Response: Dudleya variegata is not a State-listed species. The species status has been addressed in the final addendum of the economic analysis. However, in this case, *Dudleya variegata* is a covered species under the MSCP Plan, and as such is treated similarly to both federally and State-listed species under the MSCP Plan. Therefore, adjustments in costs were correctly made to recognize the cost of measures intended to mitigate the effects of covered activities on *Dudleya variegata* under the MSCP Plan.

Comment 18: One commenter suggests that our "additional benefits" and "education/informational benefits" determinations were not substantiated, are arbitrary and capricious, and are based on litigation.

Our Response: In the Prudency Determination section of the proposed rule, we detailed our reasoning for determining that critical habitat is, in fact, prudent for *Deinandra conjugens*. In general, we concluded that there may be some additional benefits to designating critical habitat, including instances where section 7 consultation would be triggered only if critical habitat is designated, educational or informational benefits to designating critical habitat, and significant occurrences of *Deinandra conjugens* on Federal lands recorded since the time of listing.

Although we cannot substantiate in the present something that may occur in the future, critical habitat may provide some educational benefit by formally identifying areas within the range of *Deinandra conjugens* essential for the conservation of the species. The public and the Service would, therefore, benefit from the designation while planning any future recovery efforts for the species. Furthermore, three significant occurrences of *Deinandra conjugens* now occur on Federal lands, which were not known at the time of listing, substantiating the need to designate critical habitat on those lands. The benefit of the designation, in this case, is the added protections afforded by the relatively higher threshold of responsibility required of Federal agencies under section 7 the Act.

While we have acknowledged the potential for society to experience such benefits in our economic analyses for critical habitat rulemakings, our ability to actually measure these benefits in any meaningful way is difficult and imprecise at best. However, we will continue to explore ways that will allow us to provide more quantitative descriptions of the potential benefits associated with a critical habitat designation.

Summary of Changes From the Proposed Rule

In the development of our final designation of critical habitat for *Deinandra conjugens*, we considered new information provided to our office after the proposed designation was published. We made changes from our proposal based on a review of public comments received on the proposed designation and the draft economic analysis on the proposed designation and a re-evaluation of lands proposed as critical habitat. The refinements to the amount of land determined to be essential for *Deinandra conjugens* and incorporated into this final designation resulted in a net reduction of approximately 120 ha (300 ac) of lands. The primary changes for this final designation include the removal of 120 ha (300 ac) of lands from the development areas of the Eastlake Woods, Bella Lago and Rolling Hills Ranch residential developments, Sweetwater County Park Summit Site, and Sweetwater Authority lands, because these lands were determined not to be essential for the conservation of *Deinandra conjugens*.

In our proposed rule we identified certain lands within the proposed development projects of Bella Lago, Eastlake Woods, and Rolling Hills Ranch (all in the City of Chula Vista) that we believed contained primary constituent elements and standing plants or seed bank for *Deinandra conjugens* and included these as proposed critical habitat. Since the time of our proposal, we have reevaluated these areas and conclude that some of

these lands do not contain the primary constituent elements for *Deinandra conjugens* and standing plants or seed bank, and are not essential for the long-term conservation of this species.

At the time of our proposed rule, rare plant surveys had not yet been completed on portions of the Bella Lago project site. Consequently, our boundaries for proposed critical habitat were based on general information concerning soils and vegetation. Surveys have since been completed and we have more current and definitive information relating to the location of *Deinandra conjugens* and the primary constituent elements essential to its conservation on the proposed project site. We have refined the boundaries of critical habitat in the southern portion of the project site to exclude approximately 5 ha (10 ac) that we now know do not contain the plant or its primary constituent elements. The remaining patches of land within the southern portion of the project site that contain occupied habitat and primary constituent elements are considered to be essential to the conservation of the species and are being designated as critical habitat.

Approximately 20 ha (55 ac) of the Eastlake Woods project site have also been deleted from the final critical habitat rule. Following the publication of the proposed rule, we completed a consultation with regard to *Dienandra conjugens* (and a conference with respect its proposed critical habitat) pursuant to section 7 of the Act with the U.S. Army Corps of Engineers (Corps) for the Eastlake Woods project, a residential development (1–6–02–FW–1989.2) in which we closely examined and evaluated the tarplant and its habitat on the project site. Based on the more thorough review of proposed critical habitat under the section 7 consultation for the Eastlake Woods neighborhood project, most of the areas being excluded as critical habitat for *Deinandra conjugens* are not habitat for this species, do not contain any known occurrences for this plant based on two years of surveys during the flowering season, and do not contain the primary constituent elements for this plant because of the extensive history of agricultural use. As a result of the consultation and conference opinion, an area of approximately 5 ha (10 ac) that had been proposed as critical habitat has been preserved, is being restored, and will receive long-term monitoring and management. This area is being retained as critical habitat. As a result of the consultation, 5 ha (10 ac) (an area that contained approximately 2,160 individual *Deinandra conjugens* in 2001) will be preserved onsite. The preserved area has broader conservation value because it adjoins areas conserved under the San Diego MSCP and the proposed Chula Vista Subarea Plan. Within the preservation area, approximately 2 ha (5 ac) will be restored to support approximately 870 plants. The entire area will be preserved and managed in perpetuity. These lands contain the plant and its primary constituent elements, are contiguous with critical habitat designated for the species on adjacent lands, and are considered to be essential to the conservation of the species. In our conference opinion we determined that development of the remaining 20 ha (55 acres) proposed as critical habitat for *Dienandra conjugens* would not result in adverse modification of this critical habitat unit. Approximately 20 ha (55 acres) were determined upon closer analysis not to be occupied by *Dienandra conjugens* nor contain primary constituent elements of its habitat. The inclusion of such areas in the proposed rule resulted from use of the 100-m UTM grid system which, as explained later in the rule, is not a fine enough scale to eliminate all areas that are not occupied or that do not contain primary constituent elements, and therefore do not meet the definition of critical habitat under 3(5)(A). Use of the 100-m grid resulted in the inclusion of lands under agricultural use for many years that were not known to be occupied by this species and that do not contain the primary constituent elements. Through the consultation and conference opinion we were able to identify these lands, and we concluded that development of the lands would not result in the adverse modification of proposed critical habitat. Thus, the areas excluded from critical habitat were not essential for the conservation for the species because the majority of these lands were not habitat for *Deinandra conjugens*, do not contain long-term conservation value, and/or do not contain primary constituent elements. The approximately 1 ha (2 ac) of remaining lands within the Eastlake Woods project did contain *Dienandra conjugens* and primary constituent elements. However, because the distribution of *Dienandra conjugens* in those areas was limited and restricted by active agricultural activity, we concluded they were not necessary for the conservation of this species and development of the lands would not result in adverse modification of proposed critical habitat. Upon the completion of the Section 7 consultation and conference opinions, the project proponent graded the 20 ha (55 acres) described above in preparation for development.

Portions of the Rolling Hills Ranch project site also have been excluded from final critical habitat. In April of 2001, prior to the publication of the proposed critical habitat rule, we were provided with current survey information for the Rolling Hills Ranch development project that indicated the presence of approximately 28,000 standing *Deinandra conjugens* plants scattered throughout the site. Following the publication of the proposed rule, we further evaluated this new occurrence information in the context of: (1) Other known occurrences throughout the range of the species; (2) the consultation on the Rolling Hills Ranch development project; and (3) the protections and conservation measures currently established in the approved San Diego MSCP and those measures proposed in the draft Chula Vista Subarea Plan for *Deinandra conjugens*.

Following this evaluation, we concluded that approximately 85 ha (215 ac) within the Rolling Hills project site are not essential to the conservation of *Deinandra conjugens*. At the time of the proposed rule, we used the 100-m UTM grid to identify critical habitat on portions of Rolling Hills Ranch, which resulted in designation of some areas that are not occupied by the species or that do not contain primary constituent. For the final rule, we have used the approved boundaries specific to the Rolling Hills Ranch project, thereby eliminating some areas that do not contain the plants or primary constituent elements for the species.

Furthermore, approximately 70 percent of the lands on Rolling Hills Ranch that have been deleted from the final rule on Rolling Hills Ranch are not known to contain standing occurrences of *Deinandra conjugens*. These lands may contain primary constituent elements and it is possible that they contain seed bank; however, the excluded areas are not known to support standing occurrences of the species. Without better information that would substantiate the importance of these lands to the species, their conservation value cannot be determined. These lands are, therefore, not considered essential for the conservation of the species, and have been deleted from the final critical habitat rule.

Approximately 30 percent of the lands deleted from the final rule are considered to be occupied. We recently completed a consultation pursuant to section 7 of the Act with the Corps (1–6–01–F–1071.4), following an agreement reached among the Service, the California Department of Fish and Game, and the project proponent to modify the boundaries of proposed development, MSCP reserve, and MSCP Neutral areas on the project site. MSCP Neutral areas are those lands being conserved within the MSCP planning area, in this case by Rolling Hills Ranch, that are not covered lands under the MSCP. Pursuant to that agreement, project lands containing the most important occurrences of *Deinandra conjugens* and its primary constituent elements are designated as MSCP reserve and MSCP Neutral areas and will be protected, monitored, and managed for *Deinandra conjugens*. When identifying the areas set aside for conservation, we focused on conserving those occurrences that we believed to have the greatest chance of persistence within the project area. We concluded in our biological opinion that the loss of approximately 5 ha (10 ac) of occupied habitat would not result in the destruction or adverse modification of proposed critical habitat for the following reasons. First, the areas conserved would receive a higher level of management (*e.g.*, invasive species control, monitoring and adaptive management of populations, etc.) compared to the no-project scenario. Without the project, the site was being used for agriculture and grazing, activities that would not be subject to regulations under the Act because of the absence of a federal nexus. As a result, there was a higher chance that the plant occurrences onsite would be degraded. The higher level of management within the conserved lands would ensure the long-term viability of the population in the area, thereby reducing the extent of land necessary to provide for the conservation of the species onsite. Second, the preserve design for Rolling Hills Ranch compliments regional conservation for *Deinandra conjugens* under the MSCP. As a result of this regional conservation planning, lands essential to the conservation of this species are being conserved and managed or are targeted for conservation and management. Finally, from a regional perspective, protection of all occupied habitat on the Rolling Hills Ranch project is not essential for the conservation of *Deinandra conjugens*; the limited loss of occupied habitat for this species at Rolling Hills Ranch will not preclude the recovery of this plant. We were able to utilize digital map data provided by Rolling Hills Ranch to refine critical habitat on the project site based on the modified boundary agreement. These lands to be protected on site contain the plant and its primary constituent elements, are contiguous with critical habitat designated for the species on adjacent lands, and are essential to the conservation of the species.

In addition, we refined the critical habitat boundaries for the final rule to exclude 5 ha (10 ac) of developed areas within the Sweetwater County Park Summit Site, and 5 ha (10 ac) of developed areas within Sweetwater Authority lands. These lands do not contain primary constituent elements for *Deinandra conjugens*, and are, therefore, not considered essential to the conservation of the species.

Also, the proposed rule indicated that 27,000 standing plants were located on Rolling Hills Ranch in year 2000. This number has been changed to 28,000 to correct a rounding error. Finally, the proposed rule indicated that critical habitat unit 2 encompasses approximately 521 acres, which we rounded to 520 acres for the final rule. No change in actual acreage for unit 2 was made in the final rule.

Finally, minor changes to the definition of primary constituent elements for *Deinandra conjugens* were also made to eliminate redundancy.

Critical Habitat

Critical habitat is defined in section 3 of the Endangered Species Act (Act), as amended, as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of habitat with regard to actions carried out, funded, permitted, or authorized by a Federal agency. Section 7 of the Act also requires conference opinions on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Aside from the added protection that may be provided under section 7, including adverse modification of habitat, the Act does not provide other forms of regulatory protection to lands designated as critical habitat. Further, consultation under section 7 of the Act does apply to activities on private or other non-Federal lands whenever a Federal nexus occurs.

In order to be included in a critical habitat designation, the habitat must be "essential to the conservation of the species." Critical habitat designations identify, to the extent known and using the best scientific and commercial data available, habitat areas that are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species."

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), that provide essential life-cycle needs of the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires us, to the extent consistent with the Act, and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should, at a minimum, be the listing package for the species.

Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, unpublished materials, and expert opinion.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of the designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the applicable prohibitions of section 9 of the Act, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation should not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

In determining areas that are essential to conserve *Deinandra conjugens*, we used the best scientific and commercial data available. We reviewed available information that pertains to the habitat requirements of this species, including data from research and survey observations published in peer-reviewed articles; regional GIS coverages (*e.g.*, soils, known locations, vegetation, land ownership, and HCP boundaries); information from herbarium collections such as those from SDNHM; data from the CNDDB (2002); data collected from project-specific and other miscellaneous reports submitted to us; additional data from the San Diego County Multiple Species Conservation Program (MSCP), such as information from Subarea or draft Subarea HCPs (Subarea Plans) (*e.g.*, City of San Diego, County of San Diego, City of La Mesa, and City of Chula Vista); information in the San Diego Gas and Electric HCP (1995); and a habitat evaluation model for the Otay Mesa Generating Project.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat, we must consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species, and that may require special management considerations or protection. These include, but are not limited to: space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for pollination and germination or seed dispersal; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species. All areas designated as critical habitat for *Deinandra conjugens* are within the currently known range and contain one or more of these physical or biological features (primary constituent elements) essential for the conservation of the species.

The designated critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of *Deinandra conjugens* throughout its range, and provide those habitat components essential for the conservation of the species. Habitat components that are essential for *Deinandra conjugens* are found in vegetation communities classified as, but not limited to, grasslands, coastal sage scrub, or maritime succulent scrub in southwestern San Diego County, California. These habitat components provide for: (1) Individual and population growth, including habitat for germination, pollination, reproduction, pollen and seed dispersal, and seed dormancy; (2) areas that allow gene flow and provide connectivity or linkage between or within larger populations, including open spaces and disturbed areas that in some instances may also contain introduced plant species; (3) areas that provide basic requirements for growth such as water, light, and minerals; and (4) areas that support pollinators and seed dispersal organisms.

The long-term survival and conservation of *Deinandra conjugens* is dependent upon a number of factors, including the protection and management of existing populations, the protection of inter-population occurrences, the maintenance of normal ecological functions within populations, the preservation of the connectivity between populations to allow natural gene flow through pollinator activity and seed dispersal mechanisms, the protection and maintenance of habitat for the survival of pollinators and seed dispersal agents, and the preservation of suitable micro-habitat that could be recolonized and allow a population to survive a catastrophic event. The small, fragmented range of this species, coupled with its breeding system (*i.e.*, its self-incompatibility and annual habit), makes it especially vulnerable to natural and anthropogenic effects including disturbance from human and agricultural activities; spread of non-native species; and nearby use of herbicides, pesticides, and other contaminants (63 FR 54938; B. Baldwin, pers. comm., 2001; S. McMillan, pers. comm., 2001).

Based on our current knowledge of this species, the primary constituent elements of *Deinandra conjugens* critical habitat consist of, but are not limited to, soils with a high clay content (generally greater than 25 percent) (or clay intrusions or lenses) that are associated with grasslands, open coastal sage scrub, or maritime succulent scrub communities between 25 m (80 ft) and 300 m (1000 ft) elevation (Bauder *et al.* 2002, CNDDB 2002). These plant communities contain natural openings that provide habitat for the *Deinandra conjugens* life-cycle, and pollen and seed dispersal agents (M. Elvin, pers. obs., 2001).

Criteria Used To Identify Critical Habitat

In our final delineation of critical habitat for *Deinandra conjugens*, we selected areas essential to the conservation of the species from within its known historical range. We used data from documented occurrences, various GIS layers, and recent aerial photography. These data include *Deinandra conjugens* locations, soils, vegetation, elevation, topography, and current land uses.

We began by using the GIS layers to identify areas of suitable habitat within the geographic distribution of this species. We selected areas with appropriate soils and vegetation that are limited to the elevational range of the species within its known distribution. We then selected soils and plant communities that overlapped known *Deinandra conjugens* occurrences. Areas occupied by *Deinandra conjugens* cannot be determined accurately either by cursory field examination or by the limited data from historical observations. The entire population of an annual plant (which includes all of the seeds in the subterranean seed bank and the observable plants above ground) is not visible at any one time. The entire seed bank does not germinate at once, and the visible population of plants rarely reflects the size or distribution of the seed bank. There may be no standing plants in an area occupied by the species for a year or even a span of several years, until local climatic and other conditions are suitable for seed germination. The size and distribution of the standing plant population may move, shrink, or grow as conditions change, without a similar change in the distribution of the seed bank. Consequently, the results of *Deinandra conjugens* population mapping efforts have been variable, depending both on the scale of the mapping and the year in which the surveys were conducted (documented examples include estimated records of standing plants ranging from one to more than 5,400 plants for one population (CNDDB 2002; City of San Diego, *in litt.* 1999), from about 100 to 50,000 in another (CNDDB 2002), and from 280,000 to 1.9 million plants in another population (CNDDB 2002)). In the case of the related *Holocarpha macradenia* (Santa Cruz tarplant), seemingly unoccupied habitat has been determined to contain a viable seed bank where standing plants have not been seen in over 7 years (Bainbridge, *in litt.* 1999). By overlapping known occurences of *Deinandra conjugens* with appropriate soil types, elevations, and other habitat characteristics, we have included what we believe is the likely distribution of the seed bank around these occurences of *Deinandra conjugens*.

We then eliminated areas that did not contain both appropriate soils and appropriate vegetation such as, but not limited to, currently used agriculture fields, housing developments, and open water. Next, we eliminated all areas above 300 m (1,000 ft) elevation, the upper limit of the known distribution of *Deinandra conjugens*, based on herbarium records. We also compared the remaining areas of suitable *Deinandra conjugens* habitat with recent project information and aerial photography so as not to include areas that have recently been developed.

We conducted this analysis to facilitate delineation of suitable habitat containing the primary constituent elements. The long-term survival and conservation of *Deinandra conjugens* is dependent upon the protection and management of existing essential populations, and the associated seed bank, and the maintenance of ecological functions within and between these populations, including connectivity within and among populations to allow effective pollinator activity and seed dispersal.

The boundaries of designated critical habitat for *Deinandra conjugens*, shown on the attached maps and defined in the legal description, are based on a 100-meter Universal Transverse Mercator (UTM) grid, boundaries that have been legally described for the City of Chula Vista's draft preserve design for their draft MSCP Subarea Plan and the County of San Diego's major and minor amendment areas for their MSCP Subarea Plan, Sweetwater Authority lands (a water district in San Diego County), Otay Water District lands, Federal lands (*e.g.*, Immigration and Naturalization Service (INS), San Diego National Wildlife Refuge lands (SDNWR)), and Trust for Public Lands property. This grid was overlaid on those areas determined to be essential and indicated by the *Deinandra conjugens* habitat analysis where we did not have legal descriptions for boundaries.

As we discuss in detail below (*see* "Relationship To Habitat Conservation Plans and Other Planning Efforts"), lands that are covered by an existing, legally operative, HCP with an operative implementing agreement (IA) in which *Deinandra conjugens* is a covered species were not included in the proposed critical habitat rule because we determined that the benefits of exclusion outweigh the benefits of inclusion pursuant to section 4(b)(2) of the Act. Areas excluded based on this criterion consist of lands within the County of San Diego and City of San Diego subarea plans, with the exception of those lands within the major and minor amendment areas addressed within the subarea plans, where the impacts to and conservation of *Deinandra conjugens* have not been addressed. Apart from the lands with operative HCPs, the majority of the remaining occupied habitat for *Deinandra conjugens* falls within designated or draft preserve areas within the MSCP.

In defining critical habitat boundaries, we made an effort to exclude all developed areas, such as towns or housing developments, and lands unlikely to contain the primary constituent elements essential for conservation of *Deinandra conjugens*. Our 100-m UTM grid minimum mapping unit was designed to minimize the amount of development along the urban edge included in our designation. Lands containing existing features and structures, such as buildings, roads, railroads, urban development, and other similar developed features are not likely to contain primary constituent elements. Federal actions limited to those areas would not trigger a section 7 consultation, unless they affect the species or the primary constituent elements in adjacent critical habitat.

The designated critical habitat units described below constitute our best assessment of areas that are essential for the species' conservation. As anticipated in the proposed rule, based upon the additional information received during the public comment period and field surveys after the proposed rule was published, the boundaries of the mapping units have been refined.

Critical Habitat Designation

The approximate area encompassing the designated critical habitat broken down by land ownership is shown in Table 1. All of the designated critical habitat is in San Diego County, CA.

TABLE 1.—APPROXIMATE DESIGNATED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) LAND OWNERSHIP [1]

Federal [2]	State/local	Private	Total
715 ha (1,765 ac)	580 ha (1,440 ac)	1,265 ha (3,125 ac)	2,560 ha (6,330 ac)

[1] Hectares have been converted to acres (1 ha = 2.47 ac). Based on the level of imprecision of mapping at this scale, hectares and acres have been rounded to the nearest 5.
[2] Federal lands include the Service and INS lands.

Critical habitat includes habitat throughout the species' current range in the United States (San Diego County, California). Lands designated are under Federal, State, local, and private ownership. Federal lands include areas owned or managed by the Service and INS. Lands designated as critical habitat have been divided into three critical habitat units. We have designated critical habitat on lands that are considered essential to the conservation of *Deinandra conjugens*. Each of these critical habitat units is considered to be occupied by either the seed bank or standing plants of *Deinandra conjugens*. A brief description of each unit, and reasons for designating it as critical habitat, are presented below.

Unit 1: Sweetwater/Proctor Valley Unit

The Sweetwater/Proctor Valley Unit encompasses approximately 1,440 ha (3,560 ac) at the northeastern limit of this species' distribution. This unit is south and east of State Route 54, south and west of State Route 94, and north of Upper Otay Reservoir. It includes portions of the Otay/Sweetwater Unit of SDNWR; lands belonging to the Sweetwater Authority around the Sweetwater Reservoir; lands belonging to the Otay Water District; lands that are proposed as preserve under the draft City of Chula Vista Subarea Plan; portions of two project areas within the draft City of Chula Vista Subarea Plan; but outside of the proposed preserve lands; and lands that are within major and minor amendment areas within the County of San Diego Subarea Plan. Two areas in this unit have not been designated as critical habitat, including the alignment for State Route 125 South and the San Diego County Park campground realignment and expansion, because these areas have been analyzed and determined not to be essential to the conservation of *Deinandra conjugens*.

This unit contains several large populations of *Deinandra conjugens*, including a portion of the Rancho San Miguel population estimated to contain approximately 855,000 standing *Deinandra conjugens* plants during the 1995 and 1998 growing seasons (CNDDB 2002; Merkel & Associates, *in litt.* 1999). A portion of the Proctor Valley population not covered under the approved San Diego County MSCP, which had approximately 10,000 standing plants in the 1990 growing season (CNDDB 2002), is also included. This unit also contains an area on the north side of the Sweetwater Reservoir where reports indicate there are approximately 2,000 standing plants (Roberts 1997), and an area on the north portion of the SDNWR that had approximately 2,000 standing plants in 1993 (CNDDB 2002).

As discussed in the Changes From the Proposed Rule section of this final rule, portions of lands containing the approximately 28,000 plants in the Rolling Hills Ranch population (*i.e.*, the MSCP Neutral areas and proposed Chula Vista Subarea Plan reserve within the Rolling Hills Ranch project), and portions of other project lands (*e.g.*, Bella Lago, Eastlake Woods) have been retained in the final rule while other areas were excluded.

This unit contains multiple large *Deinandra conjugens* populations that are capable of producing large numbers of individuals in good years, which is important for this species to survive through a variety of natural and environmental changes, as well as stochastic (random) events. This unit contains populations in the northern and eastern extent of this species' historicaldistribution, which is essential for its conservation. Peripheral populations may have genetic characteristics essential to overall long-term conservation of the species (*i.e.*, they may be genetically different than more central populations) (Lesica and Allendorf 1995). The populations in this unit can likely maintain genetic connectivity within and among themselves, and they may maintain genetic connectivity with the Otay Valley/Big Murphy's Unit. Therefore, the populations in this unit are essential to the conservation of the species.

Unit 2: Chula Vista Unit

The Chula Vista Unit encompasses approximately 210 ha (520 ac) at the western portion of this plant's range. Most of the populations in this unit are found in the remaining habitat patches along canyon edges that were not developed. This unit contains lands that are proposed as preserve under the draft City of Chula Vista Subarea Plan, lands that are in a minor amendment area under the County of San Diego's Subarea Plan, and lands that are in a minor amendment area under the draft City of Chula Vista Subarea Plan.

This unit contains the Rice Canyon population, which had more than 50,000 standing plants in 1994 (CNDDB 2002), and the Poggi Canyon population that had a reported 10,000 standing plants in 1990 (CNDDB 2002). This unit contains populations in the western extent of this species' distribution, which although currently isolated from each other, may contain significant amounts of genetic diversity and are, therefore, essential to the conservation of the species.

Unit 3: Otay Valley/Big Murphy's Unit

The Otay Valley/Big Murphy's Unit encompasses approximately 910 ha (2,250 ac). It is east of Interstate 805, north of the International Boundary between the United States and Mexico on the east side, north of State Route 905 on the west side, west of Otay Mountain, and along the north rim of Otay Valley including Salt Creek and Wolf Canyon. This unit includes lands owned by INS, lands that are proposed as preserve under the draft City of Chula Vista Subarea Plan, and lands that are in major and minor amendment areas in the County of San Diego Subarea Plan. Areas in this unit that are within the alignment for State Route 125 South have not been designated as critical habitat because these areas have been analyzed and determined not to be essential.

This unit contains several large populations of *Deinandra conjugens*, such as the Johnson Canyon population, estimated at approximately 480,000 individuals (Helix Environmental Planning, Inc. 2001), capable of producing large numbers of individuals in good years. These large populations are essential for this plant to survive through a variety of natural and environmental changes as well as stochastic events. The unit also contains the Otay River Valley population, which was reported to have approximately 4,000 standing plants (Roberts 1997), the Wolf Canyon population, which was reported to have approximately 4,000 standing plants (Roberts 1997), the Brown Field population, which had a reported 5,600 individuals in 1998 (U.S. Army Corps of Engineers 2000), and the upper Salt Creek population, which was reported to have over 1,000 standing plants (Roberts 1997).

Unit 3 contains populations in the southern and eastern portions of this species' distribution that are essential to the conservation of the species. One population in this unit is located at the southwestern edge of this species' range in the United States. This population may have connectivity with *Deinandra conjugens* populations in northwestern Baja California, Mexico. Because of its connectivity, this population is essential to the conservation of the species.

Based on the proposed preserve design for the draft City of Chula Vista Subarea Plan, and the designated preserve designs for the City and County of San Diego HCPs, these populations may all retain connectivity among themselves because the habitat mosaic does not have large gaps. The populations in this unit may also provide and receive pollen or seed from

Deinandra conjugens populations in the Sweetwater/Proctor Valley Unit.

This connectivity will facilitate gene flow within this unit and among other units which, in turn, may allow evolutionary processes that affect *Deinandra conjugens* to continue relatively unimpeded. Maintaining the *Deinandra conjugens* populations and their genetic connectivity (both within and among units) is essential to the conservation of this species. A *Deinandra conjugens* population north of Otay Valley and west of Otay Lakes is located within designated critical habitat. This population may provide important genetic connectivity between the Salt Creek and Otay Valley populations.

Because this unit contains a number of large *Deinandra conjugens* populations, these populations will maintain genetic connectivity within and among themselves, they will maintain genetic connectivity with the Sweetwater/Proctor Valley Unit and possibly with plants in Mexico, therefore, the populations in this unit are essential to the conservation of the species.

Effects of Critical Habitat Designation

Section 7 Consultation

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which applies only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat if their actions occur on Federal lands, require Federal authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies, including us, to insure that their actions are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. This requirement is met through section 7 consultation under the Act. Our regulations define "jeopardize the continued existence" as to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02). "Destruction or adverse modification of designated critical habitat" is defined as a direct or indirect alteration that appreciably diminishes the value of the critical habitat for both the survival and recovery of the species (50 CFR 402.02). Such alterations include, but are not limited to, adverse changes to the physical or biological features, *i.e.*, the primary constituent elements, that were the basis for determining the habitat to be critical (50 CFR 402.02).

Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we would also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Fish and Wildlife Service Regional Director believes would avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated, and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat.

Activities on Federal lands that may affect *Deinandra conjugens* or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, from the Federal Highway Administration, Federal Aviation Administration (FAA), or Federal Emergency Management Agency (FEMA)); permits from the Department of Housing and Urban Development (HUD); activities by INS on land under their jurisdiction; activities funded by the U.S. Environmental Protection Agency (EPA), Department of Energy (DOE), or any other Federal agency; regulation of airport improvement activities by FAA; and construction of communication sites licensed by the Federal Communications Commission (FCC) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat, or that may be affected by such designation. Activities that may result in the destruction or adverse modification of critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for the conservation of *Deinandra conjugens* is appreciably reduced. We note that such activities

may also jeopardize the continued existence of the species. Activities that, when carried out, funded or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Removing, thinning, or destroying *Deinandra conjugens* habitat (as defined in the primary constituent elements discussion), whether by burning, mechanical, chemical, or other means (*e.g.*, plowing, grubbing, grading, grazing, woodcutting, construction, road building, mining, herbicide application, etc.);

(2) Activities that appreciably degrade or destroy *Deinandra conjugens* habitat (and its primary constituent elements) that could include, but not limited to, livestock grazing, clearing, discing, farming, residential or commercial development, introducing or encouraging the spread of nonnative species, off-road vehicle use, and heavy recreational use;

(3) Appreciably diminish habitat value or quality through indirect effects (*e.g.*, edge effects, invasion of exotic plants or animals, or fragmentation); and

(4) Activities that alter watershed characteristics in ways that would appreciably alter or reduce the quality or quantity of surface and subsurface flow of water needed to maintain grassland, scrub, and chaparral communities. These activities could include, but are not limited to, altering the natural fire regime either through fire suppression or prescribed fires that are too frequent or poorly-timed; residential and commercial development, including road building and golf course installations; agricultural activities, including row crops and livestock grazing; and vegetation manipulation such as clearing or grubbing in the watershed upslope from *Deinandra conjugens*.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 NE., 11th Ave., Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

Relationship to Habitat Conservation Plans and Other Planning Efforts

Section 10(a)(1)(B) of the Act authorizes the Service to issue to non-Federal entities a permit for the incidental take of endangered and threatened animal species incidental to otherwise lawful activities. An incidental take permit must be supported by an HCP that identifies conservation measures that the permittee agrees to implement to minimize and mitigate the impacts of the permitted take of the species. Although the Act does not prohibit "take" of listed plant species, many HCPs include plant species as "covered species" and provide conservation measures to protect the species and their habitats. We include plant species on the incidental take permit in recognition of the conservation of habitats under the HCP provided we determine that the permit will not appreciably reduce the likelihood of the survival and recovery of the plant species in the wild.

In the proposed rule we discussed the relative benefits of including or excluding from critical habitat lands covered by a legally operative HCP that includes *Deinandra conjugens* as a covered species (*See* 66 FR 32060) under section 4(b)(2) of the Act. In particular we noted that the benefits of including HCP lands in critical habitat are normally small to non-existent because approved HCPs are already designed to ensure the survival of covered species. HCPs typically protect essential habitat in reserves that are managed to protect, restore, and enhance their value as habitat for the species. Moreover, before approving an HCP or issuing an incidental take permit, we complete a section 7 of the Act consultation on the proposed permit and must conclude that the permit will not result in jeopardy to any covered species in the plan area. HCPs protect and manage essential habitat for covered species, and typically provide greater conservation benefit to a species than would result from a section 7 consultation.

In contrast to negligible benefits of including HCP lands in critical habitat, we noted in the proposed rule that the benefits of excluding such lands are typically significant. They include relieving landowners, communities, and counties of any additional regulatory review that might be imposed by critical habitat. We expressed concern that imposing as additional regulatory review after HCP completion could jeopardize conservation efforts and be viewed as a disincentive to those developing HCPs, while excluding approved HCPs would encourage the continued development of partnerships with HCP participants, including States, local governments, conservation organizations, and private landowners. We concluded that the benefits of excluding lands covered by a legally operative HCP would normally outweigh the benefits of including such lands, but that each HCP which includes *Deinandra conjugens* as a covered species must be evaluated individually to determine whether the benefits of excluding lands containing essential habitat within the plan area outweighed the benefits of including such lands.

We identified three approved HCPs in the San Diego County that include *Deinandra conjugens* as a covered species. These HCPs are the San Diego Gas and Electric Company HCP, and two subarea plans under the MSCP, a framework conservation plan that encompasses approximately 236,000 ha (582,000 ac) of land in southwestern San Diego County and multiple jurisdictions. Those subarea plans are the City of San Diego Subarea Plan and the County of San Diego Subarea Plan, with the exception of lands within the County's major and minor amendment areas that do not address or provide protection for *Deinandra conjugens*. Each of the three HCPs protects the essential habitat of *Deinandra conjugens* within their respective plan areas. We also completed section 7 consultations on each of the plans and determined that the approved HCPs would not jeopardize the continued existence of the species in the wild. For the reasons stated in the proposed rule, we did not include in the proposed critical habitat rule lands that encompass essential habitat of *Deinandra conjugens* within the boundaries of the three approved HCPs, with the exception of lands in the major and minor amendment areas under the County of San Diego Subarea Plan. Consequently, those lands are included in this final critical habitat determination.

We recently received a revised draft of the Sweetwater Authority HCP for our review, and are in the process of reviewing the plan's proposed reserve design. The City of Chula Vista is expected to complete their MSCP Subarea planning process in the near future. We have worked closely with the City of Chula Vista on the design of their preserve, specifically in relation to the conservation of *Deinandra conjugens*. The City of Chula Vista's draft Subarea Plan would conserve several large *Deinandra conjugens* populations areas in a configuration that will maintain connectivity within and among these populations. The draft plan also includes criteria for conservation of *Deinandra conjugens* within certain areas that have not yet been surveyed. The majority of the lands proposed for conservation under the Chula Vista Subarea Plan contain clay soils and the appropriate vegetation types for *Deinandra conjugens*. Because the City of Chula Vista and Sweetwater Authority HCPs are not yet completed, the areas within those plans essential for the conservation of *Deinandra conjugens* are included in the designation of critical habitat.

In the event that future HCPs, such as those under development by the City of Chula Vista and Sweetwater Authority, covering *Deinandra conjugens* are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of *Deinandra conjugens* by either directing development and habitat modification to nonessential areas or appropriately modifying activities within essential habitat areas so that such activities will not destroy or adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *Deinandra conjugens*. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We expect that HCPs developed by local jurisdictions (*e.g.*, counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We expect that our analyses of these proposed HCPs and proposed permits under section 7 of the Act will show that covered activities carried out in accordance with the provisions of the HCPs and biological opinions will not result in destruction or adverse modification of critical habitat.

We will provide technical assistance and work closely with applicants with respect to HCPs currently under development and future HCPs to identify lands essential for the long-term conservation of *Deinandra conjugens* and appropriate management for those lands. The minimization and mitigation measures provided under these HCPs are expected to protect the essential habitat lands designated as critical habitat in this rule. If an HCP that address *Deinandra conjugens* as a covered species is ultimately approved, we may reassess the critical habitat boundaries in light of the HCP.

Should additional information become available that changes our analysis of the benefits of excluding any of these (or other) areas compared to the benefits of including them in the critical habitat designation, we may revise this final determination accordingly. Similarly, if new information indicates any of these areas should not be included in the critical habitat designation because they no longer meet the definition of critical habitat, we may revise this final critical habitat designation.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

Following the publication of the proposed critical habitat designation, a draft economic analysis was conducted to estimate the potential economic effect of the proposed designation. The draft analysis was made publically available for review on July 13, 2002. We accepted comments on the draft analysis until August 9, 2002.

Our draft economic analysis evaluated potential future effects associated with the listing of *Deinandra conjugens* as a threatened species under the Act, as well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. To quantify the proportion of total potential economic impacts attributable to the proposed critical habitat designation, the analysis evaluated a "without critical habitat" baseline and compared it to a "with critical habitat" scenario. The "without critical habitat" baseline represented the current and expected economic activity under all modifications prior to the critical habitat designation, including protections afforded the species under Federal and State laws. The difference between the two scenarios measured the net change in economic activity attributable to the designation of critical habitat. The categories of potential costs considered in the analysis included the costs associated with (1) Conducting section 7 consultations associated with the listing or with the critical habitat, including incremental consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) uncertainty and public perceptions resulting from the designation of critical habitat; and (4) potential offsetting beneficial costs associated with critical habitat including educational benefits.

The majority of consultations resulting from the critical habitat designation for *Deinandra conjugens* are likely to address land development, road construction or road expansion activities, and National Wildlife Refuge management activities. As described in the draft economic analysis, *Deinandra conjugens* surveys have been conducted over a broad area, and many occupied areas have been mapped. As a result, all of the parcels where impacts are expected are occupied by *Deinandra conjugens*. As a result, the costs attributable solely to critical habitat are much smaller than the total section 7 costs.

Following the close of the comment period on the draft economic analysis, a final addendum was completed which incorporated public comments on the draft analysis and a re-evaluation of the analysis of potential economic effects of the designation. Based on this new analysis, the cost of consultations to third parties was revised. Subsequently, the addendum concluded that the designation may result in approximately $370,000 to $466,000 per year in potential economic effects due to the total effects of critical habitat, including those effects coextensive with listing. These changes from the draft economic analysis are due to adjustments made to the third party cost estimates. As discussed in the final addendum to the economic analysis, a comment letter from McMillin Land Development suggested that costs associated with "extraordinary design measures" for the Salt Creek sewer line should be considered as part of the economic costs of critical habitat designation as many of these costs are directly attributable to *Deinandra conjugens*. However, project modifications associated with the Salt Creek sewer line were primarily due to substantial avoidance of habitat occupied by the Quino checkerspot butterfly, coastal California gnatcatcher, and least Bell's vireo, along with other species covered under the MSCP in the Salt Creek/Otay River area. Therefore, as one of the covered species, *Deinandra conjugens* played a minor role in the recommended project modifications. Further, because of the linear nature of

the pipeline project, direct impacts to sanding plants were avoided. Nevertheless, specific project modifications (*i.e.*, flagging of additional 200 feet of habitat) would not be required absent critical habitat designation. Therefore, the final addendum to the economic analysis conservatively estimates that all administrative costs of the formal Section 7 consultation, and the costs of the relevant project modifications, are attributable to the critical habitat designation for *Deinandra conjugens*.

A more detailed discussion of our analyses are contained in the July 13, 2002, Draft Economic Analysis of Proposed Critical Habitat Designation for the Otay Tarplant (Industrial Economics, Inc. 2002a) and the Addendum to Economic Analysis of Critical Habitat Designation for the Otay Tarplant (Industrial Economics, Inc. 2002b). Both documents are included in the supporting documentation for this rulemaking and available for inspection at the Carlsbad Fish and Wildlife Office (refer to **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB), as OMB determined that this rule may raise novel legal or policy issues. As required by E.O. 12866, we have provided a copy of the rule, which describes the need for this action and how the designation meets that need, and the economic analysis, which assess the costs and benefits of this critical habitat designation, to OMB for review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. We are hereby certifying that this rule designating critical habitat for *Deinandra conjugens* will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale for this certification.

Small entities include small organizations, such as independent non-profit organizations, small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, *etc.*). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. A "substantial number" of small entities is more than 20 percent of those small entities affected by the regulation, out of the total universe of small entities in the industry or, if appropriate, industry segment. In some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Designation of critical habitat only has the potential to affect activities conducted, funded, or permitted by Federal agencies. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Deinandra conjugens*. Federal agencies must also consult with us if their activities may affect designated critical habitat. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. Activities with Federal involvement that may require consultation regarding *Deinandra conjugens* and its critical habitat include: Regulation of activities affecting waters of the United States by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act; management activities carried out by the Service on National Wildlife Refuge lands; and, road construction, maintenance, and right of way designations that are authorized, funded, or carried out by a Federal agency. As required under section 4(b)(2) of the Act, we conducted an analysis of the potential economic impacts of this critical habitat designation. In the analysis, we found that the future section 7 consultations resulting from the listing of *Deinandra conjugens* and the proposed designation of critical habitat could potentially impose total economic costs for consultations and modifications to projects to range between approximately $2.8 million to $2.9 million over the next 10-year period. Public comment on the draft economic analysis led to a revision of third party cost estimates that would result from section 7 consultations. The changes in cost estimates are discussed and reflected in the Addendum to the Draft Economic Impact Analysis of Critical Habitat Designation for the Otay Tarplant (Industrial Economics, Inc. 2002), where we found that the future section 7 consultations resulting from the listing of *Deinandra conjugens* and the proposed designation of critical habitat could potentially impose total economic costs for consultations and modifications to projects in the range of between approximately $3.2 million to $4.0 million over the next 10-year period.

As stated in the Addendum, income from construction, transportation and public utilities, and real estate in San Diego County for 2000 was about $8.8 billion. Assuming that each of the anticipated section 7 consultations occurs in the same year, as opposed to occurring throughout the 10-year timeframe used in the draft economic analysis, the estimated section 7 costs associated with the listing of *Deinandra conjugens* and proposed designation of critical habitat represent approximately 0.03 percent of the total value of these economic activities annually. Further, the section 7 costs attributable solely to critical habitat represent 0.0 percent of the annual total value of the economic activities.

Based on the past consultation history of *Deinandra conjugens*, the economic analysis anticipated that future section 7 consultations could potentially affect small businesses associated with residential development. To be conservative (*i.e.*, more likely to overstate impacts than understate them), the economic analysis assumed that a unique company will undertake each of the consultations forecasted in a given year, and so the number of businesses affected is equal to the total annual number of consultations projected in the economic analysis. There are approximately 478 residential development companies in San Diego County, 414 of which are small businesses. One developer, McMillin-Rolling Hills Ranch, LLC was identified as having a Federal nexus and having the potential of being affected by section 7 implementation for *Deinandra conjugens*. McMillin-Rolling Hills Ranch, LLC, owner of the Rolling Hills Ranch property, has completed a section 7 consultation with regard to its application to the U.S. Army Corps of Engineers for a permit under section 404 of the Clean Water Act and has experienced costs associated with project modifications. Because it is anticipated that only one developer will be impacted by the *Deinandra conjugens* critical habitat designation, less than one percent of small development companies are potentially affected. Because this is less than the 20 percent threshold that would be considered "substantial," the analysis confirms that this designation will not affect a substantial number of small entities. The draft economic analysis and final addendum contain the factual bases for this certification and contain an analysis of the potential economic effects of this designation. Copies of these documents are in the supporting record for the rulemaking and are available at the Service's Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

In summary, we have considered whether this rule could result in significant economic effects on a substantial number of small entities. We have determined, for the above reasons, that it will not affect a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for *Deinandra conjugens* will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

OMB's Office of Information and Regulatory Affairs has determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. In the economic analysis, we determined whether designation of critical habitat would cause (a) Any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, which applies to regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The primary land uses within designated critical habitat for *Deinandra conjugens* include residential development, road construction activities, and National Wildlife Refuge operations. No significant energy production, supply, and distribution facilities are included within designated critical habitat. Therefore, this action is not a significant action affecting energy production, supply, and distribution facilities, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that Federal agencies funding, permitting, or authorizing other activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated in areas of occupied designated critical habitat.

(b) For the reasons described in the economic analysis and this final rule, this rule will not produce a Federal mandate on State, local, or Tribal governments of $100 million or greater in any year. The designation of critical habitat imposes no obligations on State or local governments. Therefore, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating approximately 2,560 ha (6,330 ac) of land in San Diego County, California, in three units of critical habitat for *Deinandra conjugens*. The takings implications assessment concludes that this rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism Assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated the development of this critical habitat designation with, appropriate State natural resources agencies in California. We will continue to coordinate any future changes in the designation of critical habitat for *Deinandra conjugens* with the appropriate State agencies. The designation of critical habitat for *Deinandra conjugens* imposes few, if any, additional restrictions to those currently in place and therefore has little incremental impact on State and local governments and their activities. The designation may provide some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While this definition and identification

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does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than waiting for case-by-case section 7 consultations to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act, as amended. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs that are essential for the conservation of *Deinandra conjugens*. We have made every effort to ensure that the final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burdens, and is clearly written, such that the risk of litigation is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the OMB under the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. We are not aware of any Tribal lands essential for the conservation of *Deinandra conjugens*. Therefore, the designated critical habitat for *Deinandra conjugens* does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this final rule is available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary authors of this final rule are staff at the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h), remove the entry for *Hemizonia conjugens* and add the following in alphabetical order under "FLOWERING PLANTS" to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
Deinandra (=Hemizonia) conjugens.	Otay tarplant	U.S.A. (CA), Mexico	Asteraceae—Sunflower.	T	649	17.96(a)	NA

3. In § 17.96, amend paragraph (a) by adding an entry for *Deinandra conjugens* (Otay tarplant) in alphabetical order under Asteraceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) Flowering plants.

* * * * *

Family Asteraceae: *Deinandra conjugens* (Otay tarplant)

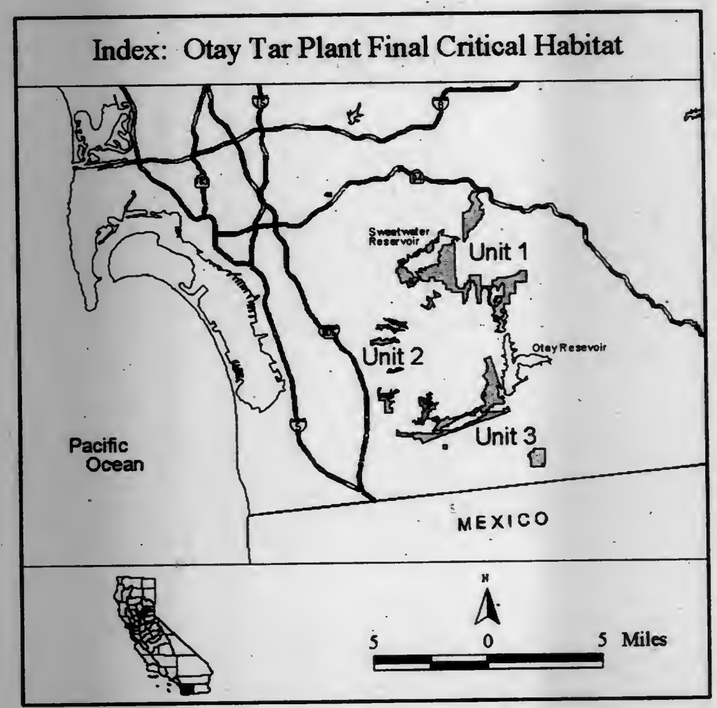
(1) Critical habitat units are depicted for San Diego County, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Deinandra conjugens* are those habitat components that are essential for the primary biological needs of the species. Based on our current knowledge of this species, the primary constituent elements for *Deinandra conjugens* consist of, but are not limited to, soils with a high clay content (generally greater than 25 percent) (or clay intrusions or lenses) that are associated with grasslands, open coastal sage scrub, or maritime succulent scrub communities between 25 m (80 ft) and 300 m (1,000 ft) elevation. These plant communities contain natural openings that provide habitat for *Deinandra conjugens* life-cycle, and pollen and seed dispersal agents.

(3) Critical habitat does not include non-Federal lands covered by a legally operative Habitat Conservation Plan issued under section 10(a)(1)(B) of the Act in which *Deinandra conjugens* is a covered species on or before the publication of this final rule.

(4) Existing features and structures, such as buildings, paved or unpaved roads, and other landscaped areas not containing primary constituent elements, are not likely to contain the primary constituent elements for *Deinandra conjugens*. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they affect the species or primary constituent elements in adjacent critical habitat.

(i) **Note:** Index map follows:



(5) *Unit 1:* Sweetwater/Proctor Valley, San Diego County, California.

(i) *Unit 1a:* From USGS 1:24,000 quadrangle map Jamul Mountains, beginning at the SDNWR boundary at UTM NAD27 x-coordinate 505100; thence south following UTM NAD27 coordinates (E, N): 505100, 3620400; 505000, 3620400; 505000, 3620200; 504900, 3620200; 504900, 3620100; 504800, 3620100; 504800, 3620000; 504700, 3620000; 504700, 3619900; 504600, 3619900; 504600, 3619700; 504500, 3619700; 504500, 3619600; 504400, 3619600; 504400, 3619500; 504300, 3619500; 504300, 3619400; 504100, 3619400; 504100, 3619300; 504000, 3619300; thence south to the SDNWR boundary at UTM x-coordinate 504000; thence south following the SDNWR boundary returning to the point of beginning on the SDNWR boundary at UTM x-coordinate 505100.

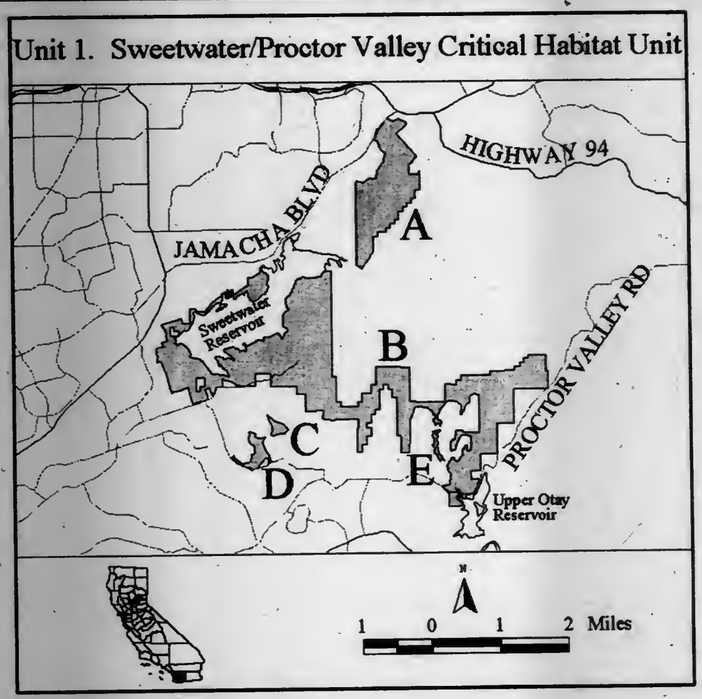
(ii) *Unit 1b:* From USGS 1:24,000 quadrangle maps National City and Jamul Mountains, beginning at the Sweetwater Reservoir at UTM NAD27 y-coordinate 3618500; thence east and following UTM NAD27 coordinates 503000, 3618500; 503000, 3616000; 503100, 3616000; 503100, 3615400; 503200, 3615400; 503200, 3615300; 503600, 3615300; 503600, 3615400; 503700, 3615400; 503700, 3615600; 503900, 3615600; 503900, 3615800; thence east to the Otay Water District (OWD) boundary at UTM NAD27 y-coordinate 3615800; thence north following the OWD boundary to the City of Chula Vista Preserve Design (CCVPD) boundary; thence east following the CCVPD boundary to UTM NAD27 x-coordinate 505900; thence north following UTM NAD27 coordinates 505900, 3615900; 506000, 3615900; 506000, 3616000; 506700, 3616000, 506700, 3616100; thence east to the SDNWR boundary at UTM NAD27 y-coordinate 3616100; thence east following the SDNWR boundary to UTM NAD27 x-coordinate 507200; thence north following UTM NAD27 coordinates 507200, 3616200; 507400, 3616200; 507400, 3616300; 507500, 3616300; 507500, 3616400; 507600, 3616400; thence north to the County of San Diego Major Amendment (CSDMjA) boundary at UTM NAD27 x-coordinate 507600; thence east following the CSDMjA boundary to the SDNWR

boundary; thence south following the SDNWR boundary to the CSDMjA boundary; thence south following the CSDMjA boundary to UTM NAD27 x-coordinate 506100; thence south following UTM NAD27 coordinates 506100, 3613100; 506000, 3613100; thence north to the City of Chula Vista (CCV) boundary at UTM NAD27 x-coordinate 506000; thence northwest following the CCV boundary south to UTM NAD27 x-coordinate 505700; thence north to the CCVPD boundary at UTM x-coordinate 505700: thence northwest along the CCVPD boundary to the City of Chula Vista Major Amendment boundary (CCVMjA); thence north along the CCVMjA boundary to the CCVPD boundary; thence north and east along the CCVPD boundary to the CCVMjA boundary; thence east along the CCVMjA boundary to the CCVPD boundary; thence north and west along the CCVPD boundary to the MSCP Neutral Area boundary (MNA); thence south and back north along the MNA boundary to UTM NAD27 y-coordinate 3614700; thence east along UTM NAD27 y-coordinate to the MNA boundary; thence south along the MNA boundary to the CCVPD boundary; thence following the CCVPD boundary to the MNA boundary; thence south along the MNA boundary to the CCVPD boundary; thence west along the CCVPD boundary to UTM NAD27 y-coordinate 3621500; thence west along UTM y-coordinate to the OWD boundary; thence south following the OWD boundary to UTM NAD27 x-coordinate 504600; thence north following UTM NAD27 coordinates 504600, 3614600; 504500, 3614600; 504500, 3615500; 504400, 3615500; 504400, 3615700; 504300, 3615700; 504300, 3615800; 504200, 3615800; 504200, 3615700; 504100, 3615700; 504100, 3615200; 504000, 3615200; 504000, 3615100; 503900, 3615100; 503900, 3614900; 503800, 3614900; 503800, 3614800; 503900, 3614800; 503900, 3614600; 503800, 3614600; 503800, 3614400; 503700, 3614400; thence south to the OWD boundary at UTM NAD27 x-coordinate 503700; thence west following the OWD boundary to the Multiple Habitat Planning Area (MHPA) boundary; thence west following the MHPA to the SDNWR boundary; thence south following the SDNWR boundary to UTM NAD27 y-coordinate 3616100; thence west following UTM NAD27 coordinates 501200, 3616100; 501200, 3615800; 500800, 3615800; thence north to the Sweetwater Authority Water District (SWAWD) boundary at UTM NAD27 x-coordinate 500800; thence west following the SWAWD boundary to the County of San Diego Minor Amendment (CSDMnA) boundary; thence west following the CSDMnA boundary to the SWAWD boundary; thence west following the SWAWD boundary to approximately UTM NAD27 coordinates 5014000, 3618650 where the SWAWD meets the Sweetwater Reservoir shoreline; thence south following the Sweetwater Reservoir shoreline (SRS) to UTM NAD27 x-coordinate 499400; thence north following UTM NAD27 coordinates 499400, 3617000; 499400, 3617100; 499300, 3617100; 499300, 3617200; 499200, 3617200; 499200, 3617000; thence east to the SRS at UTM NAD27 y-coordinate 3617000; thence south following the SRS back to the point of beginning at UTM NAD27 y-coordinate 3618500; excluding lands bounded by the CCVPD boundary at UTM NAD27 x-coordinate 505800; thence east following the CCVPD boundary to UTM NAD27 x-coordinate 506100; thence north and following UTM NAD27 coordinates 506100, 3614700; 505700, 3614700; 505700, 3615300; 505800, 3615300; thence north returning to the point of beginning on the CCVPD boundary at UTM NAD27 x-coordinate 505800; excluding lands bounded by the following UTM NAD27 coordinates 499800, 3616000; 500000, 3616000; 500000, 3615800; 499900, 3615800; 499900, 3615700; 499800, 3615700; 499800, 3616000; excluding the proposed State Route 125 easement.

(iii) *Unit 1c and d:* From USGS 1:24,000 quadrangle map Jamul Mountains, the lands bounded by the CCVPD boundary at Horseshoe Bend and Gobblers Knob.

(iv) *Unit 1e:* From USGS 1:24,000 quadrangle map Jamul Mountains, the lands bounded by the MNA boundary at Rolling Hills Ranch.

(v) **Note:** Unit 1 map follows:



(6) *Unit 2:* Chula Vista, San Diego County, California.

(i) *Unit 2a:* From USGS 1:24,000 quadrangle maps National City, the lands bounded by the CCVPD boundary in Long Canyon and between UTM NAD27 coordinates 497900 and 499700.

(ii) *Unit 2b and c:* From USGS 1:24,000 quadrangle map National City, the lands bounded by the CCVPD boundary south of Otay Lakes Road and between UTM NAD27 x-coordinates 497300 and 499500.

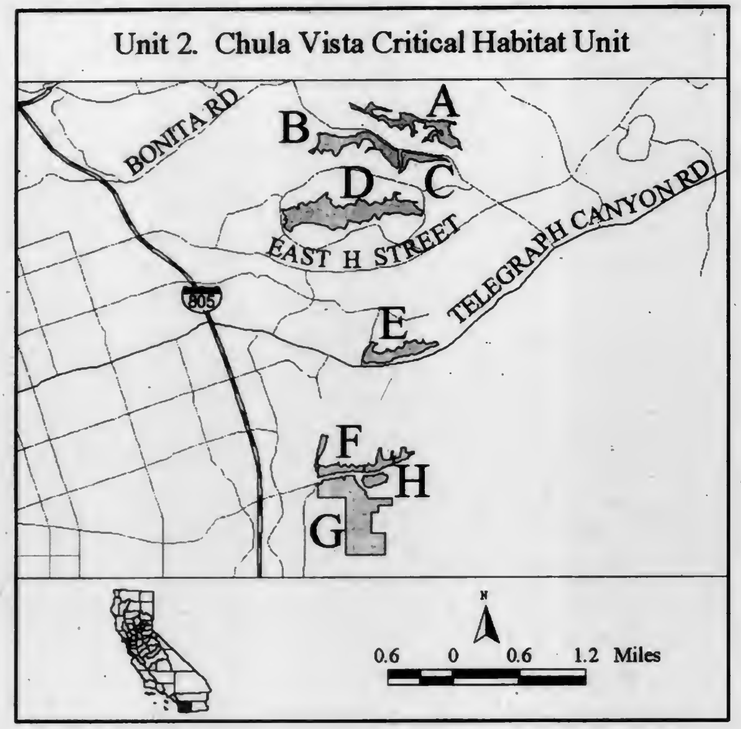
(iii) *Unit 2d:* From USGS 1:24,000 quadrangle map National City, the lands bounded by the CCVPD boundary in Rice Canyon and between UTM NAD27 x-coordinates 496900 and 499100.

(iv) *Unit 2e:* From USGS 1:24,000 quadrangle maps National City and Imperial Beach, the lands bounded by the CCVPD boundary in Telegraph Canyon and between UTM NAD27 x-coordinates 498100 and 499300.

(v) *Unit 2f:* and h: From USGS 1:24,000 quadrangle map Imperial Beach, the lands bounded by the CCVPD boundary in Poggi Canyon and between UTM NAD27 x-coordinates 497400 and 499000.

(vi) *Unit 2g:* From USGS 1:24,000 quadrangle map Imperial Beach, beginning at the CCV boundary at UTM NAD27 x-coordinate 498600; thence south following UTM NAD27 coordinates 498600, 3607300; 498400, 3607300; 498400, 3607200; 498300, 3607200; 498300, 3606900; 498500, 3606900; thence south to the CCV boundary at UTM NAD27 x-coordinate 498500; thence west following the CCV boundary to the CCVPD boundary; thence west following the CCVPD boundary to the CCV boundary; thence east returning to the point of beginning on the CCV boundary at UTM NAD27 x-coordinate 498600.

(vii) **Note:** Unit 2 map follows:



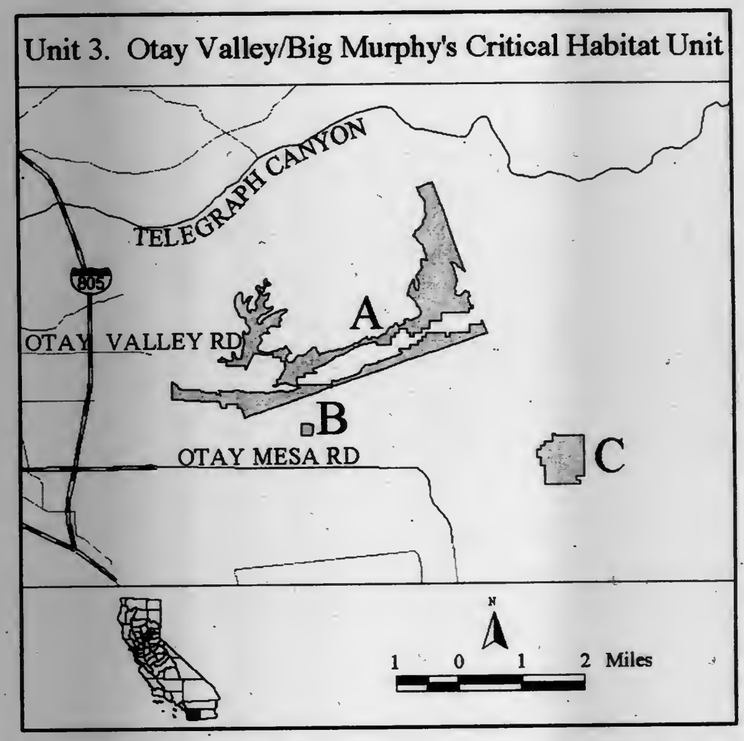
(7) *Unit 3:* Otay Valley/Big Murphy's, San Diego County, California.

(i) *Unit 3a:* From USGS 1:24,000 quadrangle maps Imperial Beach, Otay Mesa, and Jamul Mountains beginning on the CCVPD boundary at UTM NAD27 x-coordinate 499900; thence east following the CCVPD boundary to UTM NAD27 x-coordinate 506400; thence south following the UTM NAD27 coordinates 506400, 3607200; 506300, 3607200; 506300, 3607100; 505600, 3607100; 505600, 3606900; 505300, 3606900; 505300, 3606700; 505100, 3606700; 505100, 3606600; 504900, 3606600; 504900, 3606500; 504800, 3606500; 504800, 3606600; 504700, 3606600; 504700, 3606700; 504500, 3606700; 504500, 3606600; 504400, 3606600; 504400, 3606500; 504300, 3606500; 504300, 3606300; thence west to the CCVPD boundary at UTM y-coordinate 3606300; thence north following the CCVPD boundary to UTM NAD27 x-coordinate 502400; thence south following UTM NAD27 coordinates 502100, 3605600; 502100, 3605500; 501900, 3605500; 501900, 3605300; 502800, 3605300; 502800, 3605400; thence east to the CCVPD boundary at UTM NAD27 y-coordinate 3605400; thence east following the CCVPD boundary to UTM NAD27 x-coordinate 504500; thence north following UTM NAD27 coordinates 504500, 3606200; 504800, 3606200; 504800, 3606300; 505000, 3606300; 505000, 3606400; 505100, 3606400; 505100, 3606500; 505200, 3606500; 505200, 3606600; 505700, 3606600; 505700, 3606500; 505800, 3606500; 505800, 3606600; 506300, 3606600; 506300, 3606800; 506600, 3606800; 506600, 3606900; thence east to the CCVPD boundary at UTM NAD27 y-coordinate 3606900; thence south following the CCVPD boundary to the CCV boundary; thence west following the CCV boundary to the CCVPD boundary; thence north following the CCVPD boundary to the UTM NAD27 y-coordinate 3604700; thence west following UTM NAD27 coordinates 500400, 3604700; 500400, 3604800; 500100, 3604800; 500100, 3604700; thence west to the CCV boundary at UTM NAD27 y-coordinate 3604700; thence north along the CCV boundary to the CCVPD boundary; thence east following the CCVPD boundary to UTM NAD27 x-coordinate 501300; thence north following UTM NAD27 coordinates 501300, 3605300; 501400, 3605300; thence north to the CCVPD boundary at UTM NAD27 x-coordinate 501400; thence north following the CCVPD boundary to UTM NAD27 x-coordinate 501600; thence north following UTM NAD27 coordinates 501600, 3605900; 501500, 3605900; 501500, 3606000; 501300, 3606000; 501300, 3606100; thence north to the CCVPD boundary at UTM NAD27 x-coordinate 501300; thence east following the CCVPD boundary to UTM NAD27 y-coordinate 3605700; thence east following UTM NAD27 coordinates 500600, 3605700; 500600, 3605800; 500100, 3605800; 500100, 3605900; 499900, 3605900; thence north returning to the point of beginning on the CCVPD boundary at UTM NAD27 x-coordinate 499900; excluding the proposed State Route 125 easement.

(ii) *Unit 3b:* From USGS 1:24,000 quadrangle map Otay Mesa, the southern half of the Immigration and Nationalization Service land at Brown Field.

(iii) *Unit 3c:* From USGS 1:24,000 quadrangle map Otay Mesa, beginning on the CSDMjA boundary at UTM NAD27 y-coordinate 3604000; thence south following the CSDMjA boundary to UTM NAD27 x-coordinate 509200; thence south following UTM NAD27 coordinates 509200, 3602900; 509000, 3602900; 509000, 3602800; 509100, 3602800; 509100, 3602700; 508200, 3602700; 508200, 3603200; 508100, 3603200; 508100, 3603400; 508000, 3603400; 508000, 3603600; 508100, 3603600; 508100, 3603700; 508200, 3603700; 508200, 3603800; 508400, 3603800; 508400, 3604000; returning to the point of beginning on the CSDMjA boundary at UTM NAD27 y-coordinate 3604000.

(iv) **Note:** Unit 3 map follows:



* * * * *

Dated: November 29, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–30890 Filed 12–9–02; 8:45 am]

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Federal Register

Tuesday,
December 10, 2002

Part VII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 1020
Electronic Products; Performance Standard for Diagnostic X-Ray Systems and Their Major Components; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1020

[Docket No. 01N–0275]

RIN 0910–AC34

Electronic Products; Performance Standard for Diagnostic X-Ray Systems and Their Major Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the performance standard for diagnostic x-ray systems and their major components. The agency is taking this action to update the standard to account for changes in technology and use of radiographic and fluoroscopic systems as well as to fully utilize the currently accepted metric system of units in the standard. For clarity and ease of understanding, FDA is republishing the complete contents of the affected regulations. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Safe Medical Devices Act of 1990 (SMDA).

DATES: Submit written or electronic comments by April 9, 2003. See section III of this document for the proposed effective date of a final rule based on this document. Submit written comments on the information collection requirements by January 9, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Submit written comments regarding the information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St., NW. rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Thomas B. Shope, Center for Devices and Radiological Health (HFZ–140), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–3314, ext. 132.

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I. Background

The SMDA (Public Law 101–629) transferred the provisions of the Radiation Control for Health and Safety Act of 1968 (RCHSA) (Public Law 90–602) from title III of the Public Health Service Act (PHS Act) (42 U.S.C. 201 *et seq.*) to chapter V of the act (21 U.S.C. 301 *et seq.*). Under the act, FDA administers an electronic product radiation control program to protect the public health and safety. FDA also develops and administers radiation safety performance standards for electronic products.

The purpose of the performance standard and these proposed amendments is to improve the public health by reducing exposure to and the detriment associated with unnecessary ionizing radiation from diagnostic x-ray systems while assuring the clinical utility of the images.

In order for mandatory performance standards to provide the intended public health protection, the standards must be modified when appropriate to reflect changes in technology or product usage. A number of technological developments have been or will soon be implemented for radiographic and fluoroscopic x-ray systems. Such developments, however, are not addressed in the current standard, but have presented problems in the application of the current performance standard.

FDA thus is proposing to amend the performance standard for diagnostic x-ray systems and their major components in §§ 1020.30, 1020.31, 1020.32, and 1020.33(h) (21 CFR 1020.30, 1020.31, 1020.32, and 1020.33(h)).

These proposed amendments will require additional features on newly manufactured x-ray systems that physicians may use to minimize x-ray exposures to patients. Advances in technology have made several of these newly required features possible or feasible at minimal cost.

In the **Federal Register** of August 15, 1972 (37 FR 16461), FDA issued a final rule for the performance standard, which became effective on August 1, 1974. Since then, FDA has made several

amendments to the performance standard to incorporate new technology, to clarify misinterpreted provisions, or to incorporate additional requirements necessary to provide for adequate radiation safety of diagnostic x-ray systems. (See, e.g., amendments published on October 7, 1974 (39 FR 36008); February 25, 1977 (42 FR 10983); September 2, 1977 (42 FR 44230); November 8, 1977 (42 FR 58167); May 22, 1979 (44 FR 29653); August 24, 1979 (44 FR 49667); November 30, 1979 (44 FR 68822); April 25, 1980 (45 FR 27927); August 31, 1984 (49 FR 34698); May 3, 1993 (58 FR 26386); May 19, 1994 (59 FR 26402); and July 2, 1999 (64 FR 35924)).

In the **Federal Register** of December 11, 1997 (62 FR 65235), FDA issued an advance notice of proposed rulemaking requesting comments on the proposed conceptual changes to the performance standard. The agency received 12 comments from State and local radiation control agencies, manufacturers, and a manufacturer organization. FDA considered these comments in developing this proposal. In addition, the concepts embodied in these proposed amendments were discussed on April 8, 1997, during a public meeting of the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC). TEPRSSC is a statutory advisory committee (21 U.S.C. 360kk(f)(1)(A)) that FDA is required to consult before it may prescribe any electronic product performance standard under the act. The proposed amendments themselves were discussed in detail with the TEPRSSC during its meeting on September 23 and 24, 1998. TEPRSSC approved the content of the proposed amendments and concurred with their publication for public comment.

The proposed amendments described in section II of this document may be considered as nine significant amendments to the current standard and several other minor supporting changes, corrections, or clarifications. The nine principal amendments fall into the following three categories:

1. Amendments requiring changes to equipment design and performance;
2. Amendments designed to improve use of fluoroscopic systems by requiring enhanced information to users; and
3. Amendments applying the standard to new features and technologies associated with fluoroscopic systems.

II. Proposed Amendments to the Performance Standard for Diagnostic X-Ray Systems and Their Major Components

A. Change in the Quantity Used to Describe X-Radiation From Exposure to Air Kerma

FDA proposes to change the quantity and the associated unit used to describe the radiation emitted by the x-ray tube or absorbed in air. The radiation quantity "exposure" would be replaced by the quantity "air kerma." The units used to describe these quantities would be changed accordingly throughout the standard, wherever appropriate.

The International System of Units (SI) was named and adopted at the 11th General Conference on Weights and Measures (GCWM) in 1960 as an extension of the earlier metric systems. The SI, also referred to as the metric system, is the approved system of units for use in the United States. The U.S. Department of Commerce published an "Interpretation and Modification of the International System of Units for the United States" in the **Federal Register** on December 10, 1976, which set forth the interpretation of the SI system for the United States. The Omnibus Trade and Competitiveness Act of 1998 amended the Metric Conversion Act of 1975 to require each Federal agency to use the metric SI system in its activities. The FDA policy for use of metric measurements is described in a March 19, 1990, memorandum. This policy calls for use of the metric units followed by a parenthetic "inch-pound" declaration unless there is a cogent reason not to utilize dual metric and "inch-pound" measurements. The policy notes that there should be few such exceptions.

One of the objectives of the International Commission on Radiation Units and Measurements (ICRU) is to develop internationally accepted recommendations regarding quantities and units of radiation and radioactivity. The ICRU recommendations often form the basis of GCWM actions. In 1998, the ICRU published its Report 60, "Fundamental Quantities and Units for Ionizing Radiation," superseding its previous Report 33. Report 60 uses the SI units and special names for some radiation units (Ref. 1). The ICRU had suggested phasing out by 1985 the use of certain special quantities and units that were not part of the SI system, including the special unit of exposure, the roentgen (R).

The current Federal performance standard for diagnostic x-ray equipment uses the special quantity exposure to describe the radiation emitted from an x-ray system. In the **Federal Register** of May 3, 1993 (59 FR 26386), FDA published a final rule which made a partial transition to the SI units by changing the unit for exposure from "roentgen" (R) to "coulomb per kilogram" (C/kg). This change required using an awkward conversion factor of 2.58×10^{-4} C/kg per R.

In view of current trends, scientific practice, the U.S. policy, and FDA directives, FDA proposes that a complete conversion be made to the SI quantities and units by amending the standard to require using the quantity air kerma in place of the quantity exposure. Additionally, the agency proposes that, in making this conversion, the absolute magnitude of the limits on radiation contained in the standard not be changed. This requires that the limits, when expressed in the new quantity air kerma and its unit, the gray, be expressed with numerical values different from the current limits that use the quantity exposure.

In its recent reports, the National Council on Radiation Protection and Measurement (NCRP) adopted the use of the SI quantity kerma, in particular air kerma, to describe the radiation emitted from an x-ray system. This change in the NCRP recommendations was made without significant concern that previous limits in the voluntary recommendations were slightly increased by this change when numerical values for the limits were not changed but were expressed in the new units. This change in the NCRP recommendations resulted in an increase in the limits, compared to previous recommendations, of about 15 percent.

FDA is not proposing such an increase in this proposal. Instead, FDA is proposing that the numerical values for limits in the standard relating to radiation, when expressed in the new quantity, be changed as well so the new limits will be equivalent to the current limits, thereby making no change to the level of radiation protection provided by the standard. FDA has dropped earlier draft proposals to change the numerical values in a manner similar to the changes made to the voluntary recommendations by the NCRP because of several comments that were received. The comments objected to any changes to the level of radiation protection provided by the limits in the current mandatory standard.

This proposed approach to the numerical limits results in numerical values that are not integer numbers or multiples of 5 or 10, as is the case in the current standard, when limits are expressed in the non-SI unit for

exposure, roentgen. For example, the current limit for an exposure rate of 10 R/minute (R/min), 2.58 x 10^{-3} C/kg per min, becomes an air kerma rate (AKR) limit of 88 milligray per minute (mGy/min) under the proposed approach.

FDA is proposing new definitions of the quantities kerma, as used by the ICRU, and air kerma in § 1020.30(b). Because the quantity air kerma is a different quantity from exposure and not numerically equivalent, FDA is proposing in the amended standard to express the limits in terms of air kerma and indicate the equivalent limit in terms of exposure using the word "vice" to indicate this equivalence. Thus, the change described above would be given in the proposed amendments as a limit expressed as "88 mGy/min (vice 10 R/min)" indicating that the new limit of 88 mGy/min air kerma is equivalent to the previous limit 10 R/min exposure.

Current International Electrotechnical Commission (IEC) standards for diagnostic x-ray systems use the quantity air kerma to describe the radiation emitted by the x-ray system. The current limits on maximum fluoroscopic exposure rates in the performance standard were established to be consistent with the recommendation of the NCRP. The proposed amendment maintains agreement between the performance standard and the voluntary standards in terms of the quantities and units used. But in order to maintain the current level of radiation protection and in response to the comments received, the change results in numerical limits for some of the requirements different from those used in the current recommendations of the NCRP.

The term "exposure" is also used with a second meaning in the performance standard that does not refer to a quantity of radiation as defined here. The second meaning of "exposure" refers to the process or condition during which the x-ray tube is activated by a flow of current to the anode and radiation is produced. The second meaning of exposure will continue to be used where appropriate. FDA is proposing to revise the definition of the quantity exposure in § 1020.30(b) to match the current ICRU definition.

FDA also proposes in § 1020.30(b) to amend the definitions of "half-value layer" (HVL) and "x-ray field" to reflect the change from the quantity exposure to air kerma.

B. Clarification of Applicability of Requirements to Account for Technological Developments in Fluoroscopic X-Ray Systems Such as Digital Imaging, Digital Recording, and New Types of Solid-State X-Ray Imaging Devices

When the performance standard was originally developed, the only means for producing a fluoroscopic image was either a screen of fluorescent material or an x-ray image intensifier tube. Thus, the standard was originally written with these two types of image receptors in mind. The advent of new types of image receptors, such as solid-state x-ray imaging (SSXI) devices, and new modes of image recording, such as digital recording to computer memory or other media, has made the application of the current standard to systems incorporating these new technologies cumbersome and awkward. These new aspects of fluoroscopic system design have required a series of interpretations to apply the standard appropriately. With this in mind, FDA proposes to amend the performance standard to recognize these new types of image receptors and modes of image recording and to clarify how the requirements of the standard apply in each case. This amendment would result in replacing the terms "x-ray image intensifier" or "image intensifier" with the more general term "fluoroscopic image receptor" in numerous sections.

Although the basic radiation protection and safety requirements for fluoroscopic equipment in the performance standard are based on the presence of an x-ray image intensifier, these requirements are also appropriate for newer imaging systems that do not use an x-ray image intensifier. The newer imaging systems may incorporate an image receptor consisting of an absorbing material and an array of solid state transducers that intercepts x-ray photons and directly converts the photon energy into a modulated electrical signal. The signal often goes through analog-to-digital conversion as part of the image formation process to perform both fluoroscopy and radiography. FDA proposes to modify the structure and organization of the standard to address this new type of x-ray imaging equipment. The specific changes proposed are described below in section II.C of this document.

For SSXI, new performance considerations are relevant because of the different construction and the use of solid-state materials such as silicon and selenium. These new considerations include: Changes in spatial resolution, as quantified in the modulation transfer function (MTF), dynamic range, and detective quantum efficiency; the introduction of aliasing artifacts; reduced geometrical efficiency (fill factor); and differences in the range of quantum-limited operation when compared to the older vacuum-tube-based fluoroscopic equipment. Because consensus is not available on some aspects of the performance for these new devices, the agency has relied on premarket review and associated guidance documents to provide the necessary radiation safety control for these devices. (See, e.g., the "Guidance for the Submission of 510(k)s for Solid State X-Ray Imaging Devices " (Ref. 2).)

An example of a new performance consideration for the SSXI is the active detector area. Because of the need for electrical separation/insulation between individual detector elements, the detector area has both active and inactive regions, in terms of detecting image information. The relative areas of the active and inactive detector areas are usually described in terms of the fill factor. The fill factor, to a first approximation, is the pixel area (active area in terms of image formation) times the number of pixels divided by the total detector area exposed to the input image flux.

The fill factor and other characteristics can have significant effects on imaging performance. The imaging performance must also be considered when obtaining a complete picture of the effectiveness of these devices. Although FDA is not offering specific proposals for imaging performance at this time, FDA is inviting comment on possible approaches to ensuring radiation protection and safety in the application of these SSXI devices.

C. Changes and Additions to Definitions and Applicability Statements

To address the changes in technology and the new types of image receptors and to allow these items to be appropriately integrated into the standard, FDA proposes the following changes in definitions and applicability sections of the standard. The changes in definitions described here are in addition to those described above in section II.A of this document.

First, in § 1020.30(b), FDA proposes to amend the definition of "fluoroscopic imaging assembly," "image receptor," "spot-film device," and "x-ray table" by removing the reference to an x-ray image intensifier as the descriptor of the image receptor or by replacing image intensifier with the more general term fluoroscopic image receptor.

Second, FDA also proposes in § 1020.30(b) to amend the definition of the term "recording" by removing the word "permanent" and replacing it with the word "retrievable," and to remove the examples of "recording," to clarify the definition of the term "recording" in the context of images stored on recording media other than film.

Third, in § 1020.30(b), FDA proposes to clarify the applicability of the standard or to bring precision to the meaning of specific requirements by adding definitions for the terms solid state x-ray imaging device, fluoroscopy, radiography, non-image intensified fluoroscopy, automatic exposure rate control, isocenter, last image hold (LIH) radiograph, mode of operation, and source-skin distance (SSD).

Last, under § 1020.30(b), FDA proposes to add a definition of "lateral fluoroscope" to clarify the distinction between a lateral fluoroscope and what is commonly referred to as a C-arm fluoroscope. In an August 29, 1977, Compliance Policy Guide, FDA described the geometry for measuring, during a compliance test, the entrance exposure rate for lateral fluoroscopes. The standard does not define a system by the way it is used but allows the manufacturer to specify the use for which the equipment is designed. The design of the system determines whether the system is a C-arm or a lateral fluoroscope. If the system is a C-arm, it is tested using the test geometry for a C-arm system, even if it is used with a lateral beam direction. If the system is a dedicated lateral fluoroscope used with a biplane system, the more restrictive measurement geometry, as described for a lateral fluoroscope in the current § 1020.32(d)(4)(iv) and (e)(3)(iv), will be used. This test geometry is described in proposed § 1020.32(d)(3)(v).

The lateral fluoroscope consists of a support structure holding a tube housing assembly and a fluoroscopic imaging assembly with the x-ray beam in a lateral projection parallel to the plane of the tabletop. Thus, the geometry of the source and image receptor is fixed relative to the patient or x-ray table. The entrance air kerma would be measured with the radiation measurement instrument detector placed 15 centimeters (cm) from the center of the table in the direction toward the x-ray source. (This position is considered to be typical of the entrance skin surface of the patient.) During the measurement, the tube housing assembly is positioned as close to this location as allowed by the system. For C-arm system measurement geometry, the patient is assumed to be as close to the image receptor as possible and, therefore, the detector is placed 30 cm from the entrance surface of the image receptor. In a lateral fluoroscope, the patient cannot be placed against the image receptor, and the measurement point is referenced to the center of the table. The standard does not require that the table have the centerline indicated. Testing is performed relative to the centerline and the center is located by measurement if necessary.

Additionally, FDA proposes to correct two minor typographical errors that were introduced into the definitions of "leakage technique factors" and "spot-film device" in the May 3, 1993, **Federal Register**.

FDA proposes in §§ 1020.31 and 1020.32 to amend the applicability statements by removing the reference to an x-ray image intensifier as the descriptor of the image receptor used to distinguish between radiography and fluoroscopy. FDA proposes to further modify the applicability statements to clearly identify the type of x-ray imaging equipment to which each section applies and to distinguish between radiographic and fluoroscopic imaging.

Additionally, to complete the transition to the use of the terminology "fluoroscopic image receptor," FDA proposes in § 1020.32(a)(1) and (a)(2), to replace the term "image intensifier" with the more inclusive term "fluoroscopic image receptor" to reflect the changes in fluoroscopic image receptor technology and design. This change will, therefore, include SSXI devices, x-ray image intensifiers, and other fluoroscopic image receptors within the transmission limit and measurement criteria of paragraphs (a)(1) and (a)(2).

Similarly, FDA proposes in § 1020.32(g) to remove "image-intensified fluoroscope" and add in its place the generic term "fluoroscope" in the description of the requirement for minimum SSD for systems intended for specific surgical applications.

Finally, in § 1020.32(i), FDA proposes to remove the term "intensified imaging" and add in its place "image receptor incorporating more than a simple fluorescent screen." This removes the reference to a specific type of fluoroscopic image receptor, the image intensifier, and includes all types of receptors other than a simple fluorescent screen as meeting the requirement of § 1020.32(i).

D. Information to be Provided to Users (§ 1020.30(h))

FDA proposes to add two paragraphs to § 1020.30(h). Proposed § 1020.30(h)(5) and (h)(6) would require manufacturers to provide in the instructions for users additional information regarding fluoroscopic x-ray systems.

Recent developments in the technology of fluoroscopic systems have resulted in equipment being increasingly provided with a variety of special modes of operation and methods of recording fluoroscopic images. Some of these modes of operation may significantly increase the entrance AKR to the patient compared to conventional fluoroscopy. There is concern that the operating instructions provided with the fluoroscopic system lack sufficient information concerning the characteristics of these special modes of operation to permit the operator to adequately evaluate the increased radiation output and consequent increased exposure to the patient and operator from these modes of operation. There is typically little information provided to users on the clinical procedure(s) for which each mode was designed, resulting in potential inappropriate application of the mode by a user who is not fully aware of the intended application of the particular mode of operation.

Proposed § 1020.30(h)(5) would require that the information provided to users contain a detailed description of each mode of operation and specific instructions on the manner in which the mode is engaged or disengaged. The manufacturer would also be required to provide information on the specific types of clinical procedures or imaging tasks for which the mode is intended and instructions on how each mode should be used. This information is to be provided in a special section of the user's instruction manual or in a separate manual devoted to this purpose.

Section 1020.30(h)(1)(i) of the performance standard states that the information to users shall contain "Adequate instructions concerning any radiological safety procedures and precautions which may be necessary because of unique features of the equipment * * *." FDA considers any mode of operation that yields an entrance AKR above 88 mGy/min to be a unique feature of the specific fluoroscopic equipment and thus must have a full and complete description in the instructions for its use.

FDA is also of the opinion that, for modes of operation where the entrance

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AKR exceeds 88 mGy/min, the manufacturer should provide detailed information to permit the user to assess the exposure to the patient relative to that delivered in the normal mode of operation. Such information would give operators important radiation safety data with which to make better judgments on the possible hazards involved with a particular procedure. FDA has learned that, because of the multiple number of modes and options available with many of the systems, many users are not aware of when or how such modes are engaged and disengaged or the radiation output consequences of such modes. FDA had originally considered requiring the manufacturer to provide data on the entrance AKRs for each mode of operation of the fluoroscopic system. However, the large number of possible combinations of modes and options for operation available with many of the systems makes this impractical. The proposed amendment described in section II.J of this document would require the manufacturer to provide a display of the AKR and cumulative air kerma. With this information, the user is made aware of the relative changes in the AKR when changing from one mode of operation to another. Awareness of such changes will inform the user of the relative output changes of the system as a function of mode of operation, patient size, and system geometry.

FDA believes that manufacturers are already providing much of the information proposed in this requirement. However, the information may not be displayed in a separate section of the manual where users can readily find it, and the information may not contain enough detailed information on the intended use of the various modes of operation to assure proper use of the system.

Proposed § 1020.30(h)(6) would require manufacturers to provide users with information regarding the new features of fluoroscopic systems described in proposed § 1020.32(k). Proposed § 1020.30(h)(6) would also require manufacturers to provide information regarding the display of values of AKR and cumulative air kerma. This information will include a statement of the maximum deviation of the actual values of AKR and cumulative air kerma from their displayed values, maintenance and instrumentation calibration information, and a description of the spatial coordinates of the reference location for which the displayed values are given.

E. Increase in Minimum Half-Value Layer (§ 1020.30(m)(1))

FDA proposes to modify the requirement for minimum HVL to recognize changes in x-ray tube and x-ray generator technology over the last few decades.

The use of x-ray filtration to increase the quality or homogeneity of an x-ray beam through selective absorption of the low energy photons has been a recommended practice for a long time. A 1968 report published by NCRP (appendix B, table 3, in Ref. 3) provides the beam quality in terms of HVL, as a function of tube potential, that would result from specified values of total x-ray filtration in the x-ray beam. However, the values of HVL in the table would only result if one used the NCRP suggested values of total filtration in diagnostic x-ray equipment of that era (i.e., the 1960s to early 1970s). It should be noted that diagnostic x-ray equipment of that era was characterized by x-ray tubes with a large x-ray target angle and x-ray generators with significant ripple in the high voltage waveform (e.g., an x-ray target angle of 22° and a high voltage ripple of 25 percent).

The requirements on beam quality in the current IEC international standard (Ref. 4) are also expressed in a similar manner as the NCRP Report No. 33 (i.e., a total filtration requirement plus a set of minimum HVL values). The Institute of Physical Sciences in Medicine has recently published a report which can be used to estimate the total filtration from HVL data as a function of x-ray target angle and high voltage ripple (Ref. 5). These data point out the lack of correspondence between a total filtration of 2.5 millimeters (mm) of aluminum and the minimum HVL requirements in the performance standard for state-of-the-art x-ray equipment (e.g., an x-ray target angle of 12° and a high voltage ripple of 10 percent). For these types of equipment, the minimum HVL requirements in the performance standard can be met with about 1.8 mm of total filtration versus the required 2.5 mm of total filtration as specified in the IEC standard (Ref. 4). Only equipment with large x-ray target angles (22°) and a great deal of high voltage ripple (25 percent) need a total filtration of 2.5 mm of aluminum to meet the minimum HVL requirements in the performance standard. In terms of skin-sparing effect, the performance-oriented set of minimum HVL values in the performance standard have not kept up with changes in x-ray equipment when compared to the design-oriented requirement of a total filtration of 2.5 mm of aluminum.

For these reasons, FDA proposes to increase the minimum HVL values for radiographic and fluoroscopic equipment excluding mammography equipment and dental equipment designed for use with intraoral image receptors. The proposed minimum HVL values represent the values obtained with a total filtration of 2.5 mm of aluminum on state-of-the-art diagnostic x-ray equipment (i.e., an x-ray target angle of 12° and a high voltage ripple of 10 percent). FDA used the data in the Institute of Physical Sciences in Medicine report to arrive at the proposed minimum HVL values.

As a separate x-ray filtration issue, there has been a substantial increase over the past 20 years in the use of x-ray fluoroscopy as a visualization tool for a wide range of diagnostic and therapeutic procedures. Because of the long catheter manipulation times and the need, in some cases, for a stationary x-ray field, these procedures have the potential, sometimes realized, for high radiation dose to patients and clinical personnel (Ref. 6). In fact, the agency has been actively involved in promoting recommendations for the avoidance of serious, x-ray-induced, skin injuries to patients during fluoroscopically-guided interventional procedures. As a result, there continues to be an interest in dose reduction techniques for these procedures.

In general, the addition of either beam-hardening or K-edge x-ray filters can provide a significant reduction in the exposure, particularly skin exposure, to the patient. However, this reduction in exposure is accompanied by an attendant increase in tube load (Ref. 7). It should be noted that one of the recommendations of the work group on the technical aspects of fluoroscopy at the 1992 American College of Radiology (ACR)/FDA workshop on fluoroscopy (Ref. 8) was to increase the minimum HVL. Therefore, FDA is also proposing an additional requirement for fluoroscopic x-ray systems incorporating x-ray tubes of high heat-load capacity. Manufacturers of these systems would be required to provide a means, at the user's option, for adding additional x-ray filtration over and above the amount needed to meet the proposed new minimum HVL values. This requirement is based on the assumption that x-ray tubes with high heat-load capacity are typically required or provided on equipment designed for use in interventional procedures due to the imaging task requirements and the extended exposure times associated with interventional procedures. The

method of implementation and the actual values of additional filtration to realize the reduction in skin exposure will be left to the discretion of the manufacturer.

F. Change in the Requirement for Fluoroscopic X-Ray Field Limitation and Alignment (§ 1020.32(b))

FDA proposes to reorganize and add new paragraphs to § 1020.32(b) to require improved x-ray field limitation for fluoroscopic x-ray systems. Section 1020.32(b) would be reorganized to retain the current requirements applicable to systems manufactured before the effective date of these amendments. For systems manufactured after the effective date, new requirements are proposed in § 1020.32(b)(4) and (b)(5) respectively, for systems with inherently circular or rectangular image receptors. These proposed new requirements will result in increased geometric efficiency or more efficient use of radiation as described below.

The proposed reorganization and retention of the existing requirements in § 1020.32(b) will be accomplished in the following manner: Section 1020.32(b)(1)(i) will be redesignated as § 1020.32(b)(3); § 1020.32(b)(1)(ii) and (b)(2)(iii) will be combined and redesignated as § 1020.32(b)(1) with appropriate revisions to paragraph references to reflect the reorganization of § 1020.32(b); § 1020.32(b)(2)(iv) will be redesignated as § 1020.32(b)(2) with a minor clarification; and § 1020.32(b)(3) will be moved and redesignated as new § 1020.32(b)(6). Additionally, § 1020.32(b)(2)(i) and (b)(2)(ii) will be moved to §1020.32(b)(4)(i) as § 1020.32(b)(4)(i)(A) and (b)(4)(i)(B).

New requirements of improved efficiency for systems manufactured after the effective date of the amendments are proposed in § 1020.32(b)(4)(ii) for systems with inherently circular image receptors. Section 1020.32(b)(5) would contain the field limitation requirements for systems with inherently rectangular image receptors. The requirements proposed for systems with rectangular image receptors are the same as those currently applicable to radiographic systems provided with positive beam limitation or to spot-film devices that utilize rectangular image receptors. As such, the proposed tolerances for x-ray field limitation are considered technically feasible.

A reduction in unnecessary patient exposure is the basis for all of the x-ray field limitation and alignment requirements in the performance standard. For example, any radiation falling outside the visible area of the image receptor provides no useful diagnostic or visualization information and, therefore, represents unnecessary patient exposure. Once it is recognized that restricting the size of the x-ray field provides an effective control of unnecessary radiation exposure, the question shifts to what is the tolerance technically achievable by the manufacturer for the matching of the x-ray field and the visible area of the image receptor.

The current performance standard (§ 1020.32(b)(2)(i)), states "neither the length nor the width of the x-ray field in the plane of the image receptor shall exceed that of the visible area of the image receptor by more than 3 percent of the SID. The sum of the excess length and the excess width shall be no greater than 4 percent of the SID." These requirements result in worst-case values of geometrical efficiency enumerated in table 1 of this document for what are typical geometrical and operating conditions on fluoroscopic systems. Geometrical efficiency is defined as the ratio of the visible area divided by the area of the x-ray field. It should be noted that the requirements in the existing IEC international standard with respect to x-ray field limitation are more stringent than in the performance standard (Ref. 4). When the x-ray field is rectangular and the visible area is circular, the IEC standard requires that the length and width of the x-ray field be less than the diameter of the maximum visible area of the image intensifier. Thus, if the x-ray field is centered on the visible area of the image intensifier, the x-ray field would exceed the visible area of the image intensifier only in the corners of a rectangular x-ray field, unlike what could result from following the current performance standard.

TABLE 1.—WORST-CASE GEOMETRICAL EFFICIENCY IN PERCENTAGE FOR A FLUOROSCOPIC SYSTEM[1]

Visible Area (circular, cm^2)	X-Ray Field (worst case, square, cm^2)	Efficiency (%)
113	196	57
177	289	61
415	625	66
707	1,024	69

[1] Worst-Case Geometrical Efficiency in Percentage for a Fluoroscopic System With a Source-Image Receptor Distance (SID) of 100 cm, a Square X-Ray Field Size at the Limits Allowed by § 1020.32(b)(2)(i), and Image Intensifiers With 12-, 15-, 23-, and 30-cm Diameter Visible Areas.

As can be seen from table 1 above, the current performance standard allows the possibility of relatively low geometrical efficiency, particularly in modes of operation corresponding to small visible areas on the image intensifier. It should be noted that many fluoroscopically-guided interventional procedures involve the use of small visible areas on the image intensifier (Ref. 9). These low values of geometrical efficiency are a direct result of using a square collimator for the x-ray field when faced with an inherently circular visible area for the image receptor. The use of a continuously adjustable, circular collimator and/or circular apertures along with adjustable rectangular collimation would increase the geometrical efficiency.

Many currently marketed x-ray systems suitable for fluoroscopically-guided interventional procedures provide continuously adjustable, circular collimators as a basic and/or optional capability (Ref. 10). Thus, a continuously adjustable, circular collimator is technically feasible, albeit at some additional cost to the user community. Fluoroscopic x-ray systems with this feature can provide a substantial increase in geometrical efficiency that is important for all types of radiological procedures but particularly important for interventional procedures resulting in high skin exposure.

It is for these reasons that FDA proposes to require geometrical efficiencies of 80 percent or more for all fluoroscopic x-ray systems. When the visible area of the image receptor is

greater than 34 cm in any direction, a geometrical efficiency of 80 percent is no longer sufficiently stringent. FDA proposes to change the requirement to a sizing tolerance at that point (i.e., the x-ray field measured along the direction of greatest misalignment with the visible area of the image receptor shall not extend beyond the visible area of the image receptor by more than 2 cm). This oversizing tolerance will ensure geometrical efficiencies of better than 80 percent for large image receptors. In those unusual cases where the x-ray field is not uniformly intense over its cross-section, the proposed field limitation and alignment requirement provides for measurement of efficiency in terms of air kerma integrated over the x-ray field incident on the visible area of the image receptor (Ref. 11).

The intent is to promote the incorporation of continuously adjustable, circular collimators into all types of fluoroscopic x-ray systems with circular image receptors. FDA acknowledges that the new requirements could be met through the use of less complex, currently available, rectangular collimation and underframing. For example, the amount of underframing (defined as the difference in the width of the x-ray field versus the diameter of the visible area) of a rectangular x-ray field needed to meet the new requirements is enumerated in table 2 of this document for the same geometrical and operating conditions of fluoroscopic systems described in table 1 of this document. The agency is soliciting comments on the ramifications of this amount of underframing. These proposed requirements for increased x-ray utilization efficiency would appear in proposed § 1020.32(b)(4)(ii) for systems manufactured after the effective date of the amendments.

TABLE 2.—UNDERFRAMING OF A RECTANGULAR X-RAY FIELD[1]

Visible Area Diameter (cm)	X-Ray Field Width (cm)	Underframing (cm)
12	11.9	-0.1
15	14.9	-0.1
23	22.8	-0.2
30	29.7	-0.3

[1] Amount of Underframing of a Rectangular X-Ray Field Needed to Meet the New Field Limitation Requirements for a Fluoroscopic System With an SID of 100 cm and Image Intensifiers With 12-, 15-, 23-, and 30-cm Diameter Visible Areas.

Although the field limitation requirements for fluoroscopic equipment in the performance standard are predicated on the presence of an x-ray image intensifier, the requirements are also appropriate for newer imaging systems that do not use an x-ray image intensifier. As mentioned previously, the newer imaging systems may incorporate an image receptor consisting of an absorbing material backed by an array of solid state transducers that intercepts x-ray photons and converts the photon energy into a modulated electrical signal with eventual analog-to-digital conversion. These image receptors are inherently rectangular. As is the case for image intensifier based systems, magnification modes are available through the use of a "digital zoom" where only a selected portion of the digital array is visible to the operator. FDA is proposing to apply the current requirements of the standard for x-ray field limitation that are used for spot-film devices or radiographic systems equipped with positive beam limitation, and which also use rectangular fields, to this new type of image receptor. These requirements result in worst-case values of geometrical efficiency (defined as the square visible area divided by the area of a square x-ray field) enumerated in table 3 of this document for what are typical geometrical and operating conditions of fluoroscopic systems.

TABLE 3.—WORST-CASE GEOMETRICAL EFFICIENCY IN PERCENTAGE FOR A FLUOROSCOPIC SYSTEM[1]

Visible Area Diameter (square, cm^2)	X-Ray Field (square, cm^2)	Efficiency (%)
144	196	73
225	289	78
529	625	85
900	1,024	88

[1] Worst-Case Geometrical Efficiency in Percentage for a Fluoroscopic System With an SID of 100 cm, a Square X-Ray Field Size at the Limits Allowed by § 1020.32(b)(2)(i), and Solid-State X-Ray Images with 12 cm x 12 cm, 15 cm x 15 cm, 23 cm x 23 cm, and 30 cm x 30 cm Visible Areas.

As can be seen from table 3 above, the current standard provides relatively high geometrical efficiency. In this case, the high values of geometrical efficiency are a direct result of using a rectangular collimator for the x-ray field when faced with an inherently rectangular visible area for the image receptor. Proposed § 1020.32(b)(5) would explicitly state the field limitation requirements for systems with inherently rectangular image receptors.

G. Revisions and Change in the Limits to Maximum Air Kerma Rate (§ 1020.32(d) and (e))

In § 1020.32, FDA proposes to revise and reorganize § 1020.32(d) and (e) to clarify and simplify the requirements on maximum AKR for fluoroscopic x-ray systems. In § 1020.32(d), FDA proposes to incorporate all of the requirements for AKR limits regardless of the date of manufacture of the x-ray system. The revised paragraph would also incorporate the new quantity kerma and the corresponding limits on entrance AKRs. FDA proposes to move the current requirements of § 1020.32(e) that are applicable to equipment manufactured on or after May 19, 1995, to the revised § 1020.32(d). This would consolidate all of the requirements for limits on the maximum AKR in a single section (i.e., revised § 1020.32(d)). Section 1020.32(e) would be reserved.

The requirements applicable to fluoroscopic systems manufactured before May 19, 1995, currently contained in § 1020.32(d)(1) through (d)(3), would be contained in revised § 1020.32(d)(1). No change in the limit on maximum AKR for previously manufactured fluoroscopic systems is introduced by the reorganization and simplification of current § 1020.32(d). This simplification is obtained by describing the exceptions to the maximum AKR only one time in proposed § 1020.32(d)(1)(v) rather than three times as in current § 1020.32(d)(1) through (d)(3).

Proposed § 1020.32(d)(1) also includes § 1020.32(d)(1)(iv) that makes explicit the fact that systems manufactured before May 19, 1995, may be modified to comply with new requirements contained in proposed § 1020.32(d)(2). The rationale for this addition is described in section II.M of this document.

Proposed § 1020.32(d)(2) would include the requirements applicable to fluoroscopic systems manufactured on or after May 19, 1995. Section 1020.32(d)(2)(i) would contain the language currently in § 1020.32(e)(1) that requires systems with the capability for AKR greater than 44 mGy/min to be provided with automatic exposure rate control.

Section 1020.32(d)(2)(ii) would contain the requirements of current § 1020.32(e)(2) that became effective on May 19, 1995, and establish an upper limit on the AKR during high-level control mode of operation. Section 1020.32(d)(2)(iii) would incorporate the exceptions to the maximum AKR limit given in § 1020.32(d)(2)(ii). Section 1020.32(d)(2)(ii)(A) would contain the exception currently found in § 1020.32(e)(2)(i) that addresses the recording of images using a pulsed mode applicable to equipment manufactured prior to the effective date of these amendments. For equipment manufactured after the effective date of these amendments, § 1020.32(d)(2)(ii)(B) would add an additional new exception described below in section II.H of this document. Finally, the exception currently found in § 1020.32(e)(2)(ii) addressing high-level control mode of operation would be moved to § 1020.32(d)(2)(ii)(C).

The conditions under which compliance is determined are currently found in § 1020.32(d)(4) and (e)(3). These conditions would be moved to § 1020.32(d)(3). Section 1020.32(d)(3)(vi) would be added to specifically address the measurement conditions for systems with SIDs less than 45 cm. For these systems, FDA is proposing that compliance be determined by measurement at the minimum SSD.

The exemption for radiation therapy simulation systems currently found in § 1020.32(d)(5) and (e)(4) would be incorporated into a proposed revision of § 1020.32(d)(4).

H. New Modes of Image Recording

New requirements would be established in a § 1020.32(d)(2)(iii)(B) to further limit the conditions under which the limit on the maximum AKR rate would not apply. In May 1994, the agency amended the requirements in the standard pertaining to the limit on entrance exposure rate (EER) during fluoroscopy. (For convenience in discussing the current standard and proposed changes, reference will be made to the limits on EER rather than to entrance AKR which will be the quantity used in the amended standard.)

These 1994 amendments prescribed an exception to the limit on EER during the recording of images "from an x-ray image intensifier tube using photographic film or a video camera when the x-ray source is operated in a pulsed mode." (Pulsed mode is defined as operation of the x-ray system such that the x-ray tube current is pulsed by the x-ray control to produce one or more exposure intervals of duration less than one-half second.) These amendments also prescribed a limit on EER of 20 R/min when an optional high-level control was activated during fluoroscopy.

The basic premise of these amendments was to provide for a set of limits on the maximum EER during fluoroscopy, and for an exception during radiographic modes of operation such as cine-radiography. The defining terms for determining whether the equipment was in fluoroscopy versus radiography mode of operation were "recording of images" and "pulsed mode." In retrospect, these terms were not explicit enough for making a determination of the mode of operation. For example, the current wording would allow adding a recording device such as a video tape recorder to the imaging chain in a pulsed mode of operation. This would, thereby, circumvent the intent of the regulation and allow the limit on maximum EER during fluoroscopy to be exceeded, even though the recorded images are never used in the radiological examination and are used only for archiving purposes, if used at all.

As mentioned in the earlier discussion on new types of image receptors, FDA is proposing new definitions for fluoroscopy and radiography. These definitions are needed to make a clearer distinction between fluoroscopy and radiography, regardless of the type of image receptor being used. A key element in the new definitions is that radiographic images recorded from the fluoroscopic image receptor must be available for viewing after the acquisition of the images and during or after the procedure, whereas fluoroscopic images are viewed in real time, or near-real time during the procedure. Thus, the definitions of the two modes of operation, i.e., radiography and fluoroscopy, are tied to the intended use, and not to an arbitrary interval of time, as under the current "pulsed mode" definition.

In addition to the proposed new definitions, FDA proposes to change the description of the conditions under which exceptions to the limit on maximum AKR are allowed. Section 1020.32(d)(2(iii) would contain two exemptions. The exemption currently in § 1020.32(e)(2)(i) would be moved to § 1020.32(d)(2)(iii)(A) and would apply to fluoroscopic systems manufactured on or after May 19, 1995, but before the effective date of the proposed amendment. A new exception would be added in § 1020.32(d)(2)(iii)(B). This exception would recognize that image receptors other than x-ray image intensifiers tubes are now used in fluoroscopy and would remove the reference to operation in a pulsed mode. Instead, the exception to the limit on maximum AKR would apply to any recording of images from the fluoroscopic image receptor except when the recording of images is accomplished using a video tape recorder or a video disk recorder. This would prevent the simple addition of an analog image-recording device to the fluoroscopic system as a means to overcome the limit on maximum AKR during normal fluoroscopy.

As discussed in the preamble of the proposed 1993 amendments (58 FR 26407, May 3, 1993), the agency is still interested in receiving information on any clinical situations that could require higher AKR than currently permitted. Such situations have been suggested to arise due to the necessity of momentarily viewing the patient or the state of a device in a patient as best as can be done or with the highest image quality obtainable during fluoroscopy

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mode of operation. Some anecdotal evidence seems to argue for an increase in the EER above the current 20 R/min limit under high-level control. The 1994 change in the regulations underwent an extensive review and comment period. The consensus of that review, although not unanimous at the time of issuance of the regulations, was that 20 R/min would be sufficiently high for most clinical fluoroscopy situations. The agency was and is still sensitive to the concern that the limits on EER may in some cases compromise the clinical utility of the fluoroscopic equipment.

Because of these concerns regarding the appropriate upper limit AKR, FDA is encouraging further comment on the topic of limits on AKR under normal and high-level fluoroscopy modes. For example, some members of the radiological community have proposed that fluoroscopic equipment allow a momentary viewing of the state of an intervention at an increased but unspecified AKR. This momentary view would have a maximum duration of 10 to 15 seconds. This proposal was accompanied with the comment that if physicians are not allowed to use such a mode, they will continue the practice of using cineradiography bursts at high AKRs to accomplish the clinical task.

I. Entrance Air Kerma Rate at the Fluoroscopic Image Receptor

Comments received by the agency suggest that an alternative approach in place of or in addition to limits on AKR during fluoroscopy would be more useful and effective in limiting unnecessary radiation and assuring optimum system performance. The suggestion is that the limits on AKR to the patient (represented by a measurement made according to the compliance geometry described in current § 1020.32(e)(3)) be replaced by limits on the entrance AKR at the input surface of the image receptor (EAKIR). Different EAKIR limits could be established for different modes of fluoroscopic imaging, depending on the image performance required for the clinical task.

There is a precedent for this approach in other consensus documents such as the NCRP Report No. 99 and NCRP Report No. 102 (Refs. 12 and 13). For example, the NCRP Report No. 99 states that during fluoroscopy "typical image intensifier entrance exposure should be in the range of 13 to 52 nC/kg/image (50 to 200 μR/image) depending on image intensifier size * * *." (Note that, in the opinion of FDA, there is an error in the NCRP Report No. 99: these numbers reflect exposure per second, not exposure per image.) In the same manner, the NCRP Report No. 102 provides a table with "air kerma rate values to produce acceptable fluoroscopy images" and "air kerma to produce static images equivalent to that produced by a par speed screen-film system." FDA invites comments on the feasibility and desirability of this approach to limit unnecessary radiation from fluoroscopic systems.

J. Requirement for Minimum Source-Skin Distance for Small C-Arm Fluoroscopic Systems (§ 1020.32(g))

FDA proposes in § 1020.32(g) to add § 1020.32(g)(2) to establish a minimum source-skin distance (MSSD) for "C-arm" type x-ray systems having source-to-image-receptor distances of 45 cm or less and intended for imaging extremities. This amendment would incorporate into the performance standard the content of variances from the performance standard granted according to § 1010.4.

FDA has granted variances from the requirement set out in §1020.32(g) for a limit on the MSSD for fluoroscopic x-ray systems that were designed as small portable C-arm systems. These are fluoroscopic systems that were originally designed to be hand-held and were used at sporting events for a quick examination/diagnosis of orthopedic injuries. In fact, some of the early systems used a radioisotope instead of an x-ray tube as the source of the radiation and were, therefore, outside the purview of FDA under the RCHSA (although they are regulated as medical devices). Over time, manufacturers of these devices enlarged the distance or opening between the x-ray source and the image receptor to allow examination of larger extremities. The argument was that some athletes had larger extremities and a larger opening was needed to permit the use of the systems on them. The systems were marketed under a variance from § 1020.32(g) and were labeled for extremity use only. As the size of the opening on systems for which variances have been requested has increased from about 20 cm to 35 cm, and manufacturers have increased the radiation output of these systems, the agency has become concerned about the loss of the skin-dose sparing properties of the MSSD requirement. In addition, because a variance is granted for a finite time period, renewal of the variances and the reviewing of new conditions for use present resource implications for FDA and the manufacturers.

The justification for a variance from § 1020.32(g) used by many manufacturers of these small C-arm systems is geometrical scaling. Manufacturers have stated in their variance applications that the MSSD is proportional to the source-image receptor distance in comparison to full-sized C-arm systems. Although extremities can be considered to scale geometrically in a similar manner compared to the trunk or large body parts, other body parts do not scale in such a manner as to maintain a similar skin dose. For the source-image receptor distances used in these systems, evaluation of this geometrical relationship shows that the factor, by which the entrance AKR to the body part increases over that for thinner parts, increases significantly as the thickness of the body part being imaged reaches over 15 or 16 cm. This increase reaches a factor of two for a thickness of 26 cm and increases rapidly for thicker parts. In their original configuration, these devices had a very small opening and could not accommodate anything other than a limb. The latest configurations can easily accommodate the whole body of a neonate or a pediatric patient.

At some point, these systems no longer represent small C-arms for extremity use alone but are simply slightly smaller versions of conventional C-arms for whole-body, general-purpose examinations. If the system can be used for whole-body examination purposes, it should meet the minimum radiation safety standards applicable to conventional C-arm systems. Through the variance petition process, FDA has limited the small C-arm systems to extremity use only.

To incorporate the protection provided by the conditions imposed by the variances and to incorporate this requirement in the performance standard, FDA proposes to limit the source-skin distance to not less than 19 cm for fluoroscopic systems having source-image receptor distances of 45 cm or less. Provision would be allowed for systems designed for specific surgical applications to be operated with a source-skin distance of not less than 10 cm. Systems subject to this requirement would be required to be labeled for use for imaging extremities only. Manufacturers would be required to include appropriate precautions in the information provided to users under § 1020.30(h).

K. Requirements for Display of Fluoroscopic Irradiation Time, Air Kerma Rate, and Cumulative Air Kerma (§ 1020.32(h) and Proposed (k))

FDA is proposing that newly manufactured fluoroscopic systems display directly to the fluoroscopist information related to three fundamental aspects of patient irradiation—the duration, rate, and amount of x-ray emissions. Generally, fluoroscopic systems do not currently provide such information at all. Irradiation time, AKR, and cumulative air kerma are basic radiological variables important for medical radiation protection. Their values may be applied to the process of optimization (i.e., obtaining radiological images with the least amount of radiation required), to the assessment of radiation detriment as a factor affecting patient-outcome efficacy, and to the development of reference levels representative of normal clinical practice. Optimization, efficacy, and reference levels currently comprise a conceptual vanguard of radiation protection in medicine at the international level (Refs. 14 to 17). When monitored in the clinic, irradiation time, AKR, and cumulative air kerma may be used to indicate risk of acute skin injury arising from potentially prolonged irradiation associated with some interventional procedures (Refs. 18 to 20). Values displayed directly to practitioners as an examination or procedure progresses can feed back to them indices of radiation burden, and practitioners can respond promptly by adjusting protocols and techniques to minimize dose to patients and practitioners as practitioners optimize radiation levels necessary for medical imaging. Moreover, for fluoroscopy and radiography in general, knowledge of irradiation levels at patient skin entrance is an essential starting place for evaluation of absorbed dose to internal tissues (Refs. 9 and 21). Such doses are stochastically linked to cancer morbidity, mortality, and to genetically transmissible defects (Refs. 14 and 22). Estimates of cumulative doses absorbed in tissues foster risk communication between medical staff and patients and, when tracked over time, are effective indicators of practice consistency, variability, or anomaly in the quality assurance activities associated with assuring the safety of clinical procedures.

The need for displays of irradiation variables was recognized at the 1992 national workshop on safety issues in fluoroscopy organized by the ACR and FDA (Ref. 8). In October 1995, the need was also recognized internationally by the workshop on efficacy and radiation safety in interventional radiology, sponsored jointly by the World Health Organization and the Institute of Radiation Hygiene, Radiation Protection Ministry, Federal Republic of Germany (Ref. 23). Recently, requirements for displays of irradiation parameters have been incorporated into an international standard for x-ray systems for interventional radiology (Ref. 24). With the advent of commercially available and relatively inexpensive means to measure and display real-time AKR and cumulative air kerma produced by fluoroscopic systems (Ref. 25), it is feasible as well as desirable to require that this information be directly observable by fluoroscopists at their working positions.

The proposed display requirements would apply to all types of newly manufactured fluoroscopic equipment (i.e., from systems found in cardiac catheterization suites, to equipment used for upper gastrointestinal fluoroscopy, to "mini" C-arms, and also to each fluoroscopic x-ray tube as part of any system). FDA invites comments about whether these requirements would be suitable to all types, or to a limited set of fluoroscopic equipment, namely, to stationary C-arm fluoroscopes that are typically used in interventional procedures.

1. Fluoroscopic Irradiation Time, Display, and Signal

Fluoroscopic irradiation time is profoundly tied to patient dose in a complex way that involves many other factors (e.g., see Ref. 26). FDA believes it advantageous to require that cumulative irradiation-time values be treated in their own right, in addition to the other variables cited in the proposed § 1020.32(k), as radiological parameters whose control would facilitate radiation-protection optimization. Physician members of TEPRSSC pointed out at its September 1998 meeting that irradiation time is the single fundamental variable over which a physician using fluoroscopy has the most direct and easiest control through activating or deactivating x-ray production, typically by means of a pedal switch (Ref. 27).

FDA proposes to add § 1020.32(h)(2) to the regulations to change the current fluoroscopic timer requirement in two ways. First, § 1020.32(h)(2)(i) would require that the values of the cumulative irradiation times associated with each of the fluoroscopic tubes of a system used in an examination or procedure be displayed to the fluoroscopist at his or her working position. The displayed values would be indicated from the beginning, throughout, and after an examination ends, available until the cumulative irradiation timer is reset to zero prior to a new examination. Second, § 1020.32(h)(2)(ii) would require an audible signal cycle different from that of current equipment for each x-ray tube used during an examination or procedure. Contrary to the current provision that allows the timing device to be preset to any interval up until a maximum cumulative irradiation time of 5 minutes, FDA proposes that a signal audible to the fluoroscopist sound at each fixed interval of 5 minutes of irradiation time. Also contrary to the current requirement, instead of sounding until reset, the audible signal would sound (while x-rays are produced) for a minimum of only 1 second, after which the signal could stop until a subsequent 5 minutes of irradiation elapses. The audible signal would not affect the production of x-rays, the display of cumulative irradiation-time values required by § 1020.32(h)(2)(i), or any of the other displays proposed in § 1020.32(k).

Considering advice offered at the 1998 TEPRSSC meeting (Ref. 27), FDA now believes that a fixed, standard (5 minute) period for an alert signal would avoid potential confusion that could ensue with a fluoroscopic timer that is variably preset. For example, such confusion could arise in a busy clinical facility with many different users, where fluoroscopists might not be aware of the need to readjust alert intervals that had been changed previously by other fluoroscopists to accommodate the individual protocol requirements associated with particular patient examinations. Furthermore, FDA believes that an audible signal of short duration would be a more effective and useful alert than a signal that sounds continuously, requires a reset, and therefore, could pose a distraction to users. FDA seeks comments about the audible signal cycle in proposed § 1020.32(h)(2)(ii), particularly in comparison to the suggested alternative below that is not currently in the proposal.

As an alternative approach, the selection of the time period until the alarm sounds could be at the discretion of the fluoroscopist. The timer could be preset to any period (less than, equal to, or greater than 5 minutes), or preset even to not sound at all. Under this approach, before an examination or procedure, the fluoroscopist could select a period beyond which an audible signal would sound until the timer could be reset (or else sound briefly then remain silent until the preset fluoroscopic period elapses again). Presuming clinicians maintain personal cognizance of fluoroscopic timer options and adaptability, such alternatives would offer them flexibility and opportunity to apply standard features of equipment operation to their

own individual clinical protocols and practices.

FDA also seeks comment on whether the display of the cumulative irradiation time should be visible to the fluoroscopist at his or her working position or whether it is sufficient to display the cumulative time at the control console. It has been suggested that this display should be available to the fluoroscopist to permit constant monitoring by the fluoroscopist. Other opinions are that such a display at the working position would only add confusion to an already complex visual environment, and display of the cumulative irradiation time at the x-ray control would make the information available in any case. Display at the fluoroscopist's working position may be slightly more complex or costly than display at the x-ray control.

2. Displays of Air Kerma Rate and Cumulative Air Kerma

FDA believes that a requirement for displays of AKR and cumulative air kerma values would significantly advance the optimization of radiation safety, in consideration of recent developments in clinical practice and technology (Refs. 23, 25, and 26), an evolving consensus for a radiation-protection framework (Refs. 14 to 17), and specific guidance (Refs. 18 to 20). Air kerma and AKR are fundamental radiological quantities of the amount and rate of charged-particle kinetic energy liberated per mass of air traversed by incident x-rays (Ref. 1). For this reason, FDA proposes to add § 1020.32(k) to require that all new fluoroscopic systems be capable of displaying real-time values of the AKR and cumulative air kerma delivered by each x-ray tube at reference locations representative of x-ray beam entry to the patient skin surface. These displays would be directly discernible at the fluoroscopist's working position, and the displayed values would deviate by no more than ±25 percent from actual values. To elucidate these requirements and those of the other proposed amendments, the definitions of the terms "fluoroscopy," "mode of operation," "and radiography" are proposed in § 1020.30(b). The utility of the display requirements could be broadly leveraged among practitioners in a variety of clinical settings through familiarization with relatively standardized display formats. Such standardization is proposed in § 1020.32(k)(1) through (k)(7), where the particular requirements proposed conform generally to those of the recently published IEC standard (Ref. 24).

During fluoroscopy or while recording images during a fluoroscopic procedure, the displayed value of the AKR would represent in real time the magnitude of air kerma per unit time being delivered at any geometrical point within a specified reference locus. The displayed value of the cumulative air kerma would represent a sum of two parts: (1) The fluoroscopic AKR integrated over an interval until update, and (2) all contributions to the air kerma (at any point in the same reference locus) from radiography occurring in that interval. The cumulative air kerma would be updated throughout the examination or procedure, and the integration interval would be the time between the start of an examination or procedure and the end of the most recent episode of either fluoroscopy or radiography during that same examination or procedure.

For each x-ray tube used during fluoroscopy or during recording of fluoroscopy, the value of the AKR will be displayed. After the cessation of fluoroscopy, the cumulative air kerma will be displayed and will remain displayed until the resumption of fluoroscopy or a radiographic mode is activated or the display is reset for a new patient or procedure. Thus, the cumulative air kerma will be displayed after x-ray production ceases from either fluoroscopy or radiography.

Values of the AKR are displayed at times other than those for the cumulative air kerma in order to underscore the distinction between these two variables and also to reduce the potential for overwhelming the fluoroscopist with too much information presented at once. At any particular moment during an examination or procedure, only values of the irradiation time and AKR (or cumulative air kerma) would be on display for each tube used. If, for example, a biplane fluoroscopic system were used in some cardiac catheterization procedure, two separate sets of values—one set for each of the x-ray tubes of the biplane—would be displayed. Under such circumstances of multiple presentations of related information, it is important that the values displayed be distinguishable enough from each other to be easily recognized and associated with the different radiological variables they represent. For this reason, FDA proposes in § 1020.32(h)(2)(i) and (k)(3) to require that the units of measurement be displayed as well as the values per se. FDA also proposes in § 1020.32(k)(1) and (k)(2) to require that the measurement units mGy/min and mGy be displayed respectively alongside the values for AKR and cumulative air kerma. These values would serve as a labeling distinction to preclude potential confusion of the quantities.

As measures of fundamental radiological quantities, the displayed values of AKR and cumulative air kerma would refer to free-in-air irradiation conditions (i.e., their evaluations would be made minus any contributions of scatter radiation, particularly contributions backscattered from a patient (or from a measurement phantom)). Also, the displayed values would refer to irradiation conditions at a reference location (i.e., at any geometrical point contained within a specific reference locus defined according to the type of fluoroscopic system). Each reference location is intended to represent, at least nominally, a place of x-ray beam entry to the patient skin. For fluoroscopes with the x-ray source below or above the table, or of the lateral type, § 1020.32(k)(5)(i) would have skin-entrance reference locations correspond identically and respectively to those specified in § 1020.32(d)(3)(i), (d)(3)(ii), or (d)(3)(v). These locations define the geometry for measuring compliance with the regulatory maxima of the AKR.

For C-arm type fluoroscopes, however, in many cases the locations proposed for measuring compliance with the regulatory maxima of the AKR, given in § 1020.32(d)(3)(iii) and (d)(3)(iv), would not suitably represent where the x-ray field enters the patient skin. This is especially true for oblique angulations and extended distances between the x-ray source and image receptor. Therefore, in § 1020.32(k)(5)(ii), for C-arm systems, FDA is proposing a skin-entrance reference location for display quantities that is different from the location for measuring compliance with regulatory AKR limits. For evaluation of displayed values, the skin-entrance reference location would be either 15 cm from the isocenter toward the x-ray source along the beam axis (irrespective of angulation) or, alternatively, along the beam axis at a point deemed by the manufacturer to represent the intersection of the x-ray beam and the entrance surface of the patient skin. A definition of "isocenter" is proposed in § 1020.30(b). Proposed § 1020.32(k)(5)(ii) would allow manufacturers to choose either the 15-cm locus or specify the alternative. The alternative locus would offer manufacturers flexibility to provide systems that could evaluate AKR and cumulative air kerma in closer proximity to actual places of x-ray beam entry to patients than could systems with reference skin entrance defined

generically at a 15-cm locus from the isocenter. An alternative skin-entrance reference location may be particularly appropriate for mini C-arm fluoroscopes (i.e., those with SID less than 45 cm, for which the 15-cm locus from the isocenter may be physically unrealizable). In any case, new paragraphs § 1020.30(h)(6)(iii) and (h)(6)(iv) would require that manufacturers identify to the user the spatial coordinates of the irradiation location to which displayed values refer and also provide a rationale justifying any reference location identified as an alternative to the 15-cm locus.

In patient examinations or procedures with C-arm systems, one possible result of having reference locations of x-ray beam skin-entry different from the measurement sites for AKR compliance is that displayed values could actually exceed the regulatory maxima even though the system is fully compliant. Such a situation could arise for some irradiation geometry when the reference skin-entrance location is closer to the x-ray source than is the site for measuring compliance. Displayed values of the AKR and cumulative air kerma are intended to inform the fluoroscopist of radiation burden to the patient. Conversely, the AKR regulatory maxima, practicably measured 30 cm from the imaging-assembly input, according to § 1020.32(d)(3)(iii) or at the minimum SSD according to § 1020.32(d)(3)(iv), are intended to impose upper limits on radiation output that are compatible with the levels needed by the imaging chain for adequate fluoroscopic visualization.

Reset of the displays to zero would occur between sessions with successive patients. Before reset, a final value of the cumulative air kerma may serve to reinforce an association between the culmination of a radiological examination or procedure and the radiation burden incurred by the patient. FDA believes that the availability of this value would greatly facilitate the implementation of previously published recommendations (Refs. 18 to 20) on recording information in the patient's medical record to identify the potential for serious x-ray-induced skin injuries in order to avoid them.

L. "Last-Image Hold" Feature on Fluoroscopic Systems (Proposed § 1020.32(j))

FDA proposes to add a paragraph to require that all fluoroscopic x-ray systems be provided with a means to continuously display the last image acquired prior to termination of exposure.

The wide availability of electronic methods for the recording and displaying of video images makes possible the provision of a "last-image hold" or "freeze-frame" capability on fluoroscopic x-ray systems. This feature allows the fluoroscopic x-ray system to continuously present a static image of the last fluoroscopic scene captured or presented at termination of the fluoroscopic exposure. This feature also provides the user with the ability to conveniently view fluoroscopic images without continuously irradiating the patient.

This feature is especially useful in procedures such as fluoroscopically-guided needle placement for biopsy or drainage, catheter or tube placement, and other diagnostic or therapeutic interventional procedures. Systems provided with this feature reduce fluoroscopic exposure times while enabling extended examination and planning during fluoroscopically-guided procedures.

This capability is provided as a basic or optional feature on many currently marketed fluoroscopic systems. Many individuals have expressed the opinion that because of the radiation dose reduction afforded by such a feature, it should be provided on all new fluoroscopic systems. Such a recommendation was strongly endorsed at the workshop on fluoroscopy in 1992 (Ref. 8). In addition, a requirement for this capability is included in the recently published IEC standard for the safety of x-ray equipment for interventional radiology (Ref. 24). Establishing this requirement would assure that all new fluoroscopic systems have this patient radiation dose reduction feature and that it is available when its use is appropriate. Without such a requirement, some systems may for economic reasons continue to be purchased without this feature, thereby denying dose reduction benefits to patients.

Proposed § 1020.32(j) would permit the displayed image to be obtained from the last or a combination of the last few fluoroscopic video frames obtained just prior to termination of fluoroscopic exposure or by an alternative implementation via a radiographic exposure automatically produced at termination of the fluoroscopic exposure. Comments are solicited as to whether these approaches to implementation of last image-hold are appropriate and needed.

M. Modification of Previously Manufactured and Certified Equipment

FDA proposes to add language to § 1020.32(d)(1)(iv) and (h) to make explicit the opportunity under § 1020.30(q) for modifications to be made to existing certified x-ray systems. Modifications are currently permitted as long as the modification does not result in a failure to comply with the requirements of the performance standard. Changes in performance resulting from amendments to the performance standard often result in enhanced radiation safety or features not available on previously manufactured and certified systems.

The existing performance standard requires manufacturers to certify that their products meet the applicable performance requirements in effect at the time of manufacture. Therefore, amendments to the performance standard are generally not retroactive and effective dates implementing the standard are specified in the regulations. Usually, a 1-year effective date is provided in order to allow manufacturers time to adjust manufacturing and assembly of their products under the new or amended regulations. Indeed, it would be unreasonable to require the manufacturer to retrofit or to remanufacture previously produced products because of a change in the standard for equipment that could have a useful life of 20 or more years.

In particular, the performance requirements regarding maximum exposure rate limits (proposed to become maximum AKR limits), established in 1994 (59 FR 26402), and the proposed requirements in § 1020.32(h) for fluoroscopic timers are requirements or performance features that users of older fluoroscopic equipment may wish to implement on their systems. The earlier amendment in 1994 and the current proposal apply to new equipment manufactured after the effective date of the amendment. The language proposed for inclusion in § 1020.32(d) and (h) would provide a mechanism for users of older equipment to obtain the performance required under the proposed amendments. These changes would allow older systems to be modified to meet the maximum AKR limit and fluoroscopic timer performance that will be required under the proposed requirements.

The owner of the fluoroscopic system modified under § 1020.30(q) is responsible for assuring that the modified x-ray system complies with the applicable requirements of the performance standard following the modification. The modification to the system may be accomplished by a third party or by the original equipment manufacturer. The system owner, however, is responsible for assuring,

through contract requirements with the party performing the modification or through testing, that the modified system complies with the standard following the modification.

N. Modification of Warning Label (§ 1020.30(j))

FDA proposes to modify the language of the warning label required by § 1020.30(j). The current statement warns that safe exposure factors and operating instructions must be followed. FDA proposes to modify the warning label statement by adding the phrase "maintenance schedules." This addition incorporates the suggestion of the TEPRSSC and further emphasizes the need for diagnostic x-ray systems to be properly maintained and calibrated. Manufacturers of diagnostic x-ray systems are required under § 1020.30(h)(1)(ii) to provide a schedule of the maintenance necessary to keep the equipment in compliance with the performance standard. The standard places no requirement on owners or users of diagnostic systems to properly maintain these systems. However, the revised wording of the warning label is intended to alert users and facility administrators of the need to properly maintain the systems.

O. Corrections of § 1020.31(f)(3) and (m)

FDA proposes to correct oversights in § 1020.31(f)(3) and (m) that occurred when the July 2, 1999, amendment was published. Section 1020.31(f)(3) addresses the x-ray field limitation requirement for mammographic x-ray systems and § 1020.31(m) addresses the primary barrier required for mammographic x-ray systems. Prior to September 30, 1999 (the effective date of the final rule), the heading to § 1020.31(m) was "Transmission limit for image receptor supporting devices used for mammography."

When an existing radiation safety performance standard is amended, the new or modified requirement applies only to products that are manufactured after the effective date of the amendment. Normally, the requirement that existed prior to the amendment is retained in the Code of Federal Regulations (CFR) to provide a record of the requirements of the standard applicable to products on their date of manufacture. When the final rule amending § 1020.31(f)(3) and (m) was published on July 2, 1999, the provisions describing the requirements for equipment manufactured prior to September were inadvertently omitted. Thus, the CFR (21 CFR part 1020) has no record of the requirements imposed by § 1020.31(f)(3) and (m) for equipment manufactured between the initial effective dates for § 1020.31(f)(3) and (m) and September 30, 1999. To correct this oversight, FDA proposes to reinstate the provisions describing the requirements that apply to equipment manufactured prior to September 30, 1999, under the earlier versions of § 1020.31(f)(3) and (m). This correction will provide a record of the requirements applicable before September 30, 1999, and close the gap that exists as a result of the oversight in the publication of the final rule.

Additionally, further review of this issue revealed that the original publication of § 1020.31(f)(3) in 1977 (42 FR 44230) did not indicate an effective date for this paragraph, which was November 1, 1977. FDA proposes to insert the omitted effective date. The omission was of little consequence because the original requirement reflected the then current designs of mammographic systems. FDA proposes to insert the date to provide an accurate record of the applicable x-ray field limitation requirements as a function of the date of manufacture of mammographic x-ray systems.

No changes in the previously applicable or current requirements are proposed or intended by these corrections to § 1020.31(f)(3) and (m). The corrections are only intended to make explicit the current or previously applicable requirements that existed on the date of manufacture.

FDA proposes to revise § 1020.31(f) by adding § 1020.31(f)(3)(i), the requirement applicable to equipment manufactured on or after November 1, 1977, and before September 30, 1999. The current requirement, applicable to equipment manufactured after September 30, 1999, would be § 1020.31(f)(3)(ii). Section 1020.31(f)(3)(iii) would contain the requirement for permanent markings that are applicable to all equipment manufactured after November 1, 1977.

FDA proposes to amend § 1020.31(m). Section 1020.31(m)(1) would be revised to contain the requirement applicable to systems manufactured on or after September 5, 1978, and before September 30, 1999; such requirement was previously omitted. Section 1020.31(m)(2) would be revised to contain the curre nt requirements applicable to equipment manufactured after September 30, 1999, in § 1020.31(m)(2)(i), (m)(2)(ii), (m)(2)(iii), and (m)(2)(iv). Section 1020.31(m)(3) would be revised to contain the description of the method for measuring compliance; such description is common to both § 1020.31(m)(1) and (m)(2). A minor technical clarification is also proposed in § 1020.31(m)(2)(ii) where the term "x-ray tube" found in current § 1020.31(m)(2) is replaced by the term "x-ray system" to reflect the fact that it is the x-ray system, not the x-ray tube, that controls initiation of x-ray exposure. This change does not change the intent or effect of the requirement.

P. Corrections to Reflect Changes in Organizational Name, Address, and Law (§ 1020.30(c), (d), and (q))

FDA proposes to amend §1020.30(c) to reflect the current organizational title of the Office of Compliance of the Center for Devices and Radiological Health. FDA also proposes in § 1020.30(d) to remove the specific address that is subject to change from time to time. Additionally, FDA proposes to amend paragraph § 1020.30(q) to reflect the transfer of sections 358(a)(5) and 360B(b) of the PHS Act to the act by the SMDA.

Q. Removal of Reference to Special Attachments for Mammography

FDA proposes to remove reference to "special attachments for mammography" in § 1020.31(d) and (e). The Mammography Quality Standards established in part 900 (21 CFR part 900), particularly § 900.12(b)(1), require that only diagnostic x-ray systems designed specifically for mammography be used to perform mammography in the United States. Therefore, the use of special attachments intended for use with general-purpose diagnostic x-ray systems to perform mammography is inappropriate. No such devices may continue to be used, and retaining this reference in the standard would imply that such devices or components were acceptable.

R. Change to the Applicability Statement for § 1020.32

FDA proposes in the applicability statement of § 1020.32 to remove the reference to "fluoroscopy" and replace it with "fluoroscopic imaging" and to remove "recording of images through an image intensifier tube" and replace this reference with "radiographic imaging when the radiographic images are recorded from the fluoroscopic image receptor." This change is necessary to clarify the applicability of this section and to incorporate the proposed requirements addressing the production of radiographic images for the last image hold feature.

S. Republication of §§ 1020.30, 1020.31, and 1020.32

Because of the large number of proposed changes in §§ 1020.30, 1020.31, and 1020.32, FDA is republishing these entire sections, including the proposed amendments, rather than publishing only the proposed individual changes to these sections. Although some of the paragraphs in these sections are not changed by this proposal, republication of the entire sections will result in a more reader-friendly version when the final regulation is published.

III. Proposed Effective Date

FDA proposes that any final rule based on this proposal become effective 1 year after the date of publication of the final rule in the **Federal Register**.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(i) and 25.34(c) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Paperwork Reduction Act of 1995

A. Summary

This proposed rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3502). A description of these provisions is given in the following paragraphs with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

The information collection burden of the current performance standard is covered by an existing information collection clearance, OMB control number 0190–0025. FDA is seeking new information collection clearance for proposed §§ 1020.30(h)(5) and (6), and 1020.32(j)(4).

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Performance Standard for Diagnostic X-Ray Systems and their Major Components (21 CFR 1020.30 and 1020.32 amended)

Description: FDA is proposing to amend the performance standard for diagnostic x-ray systems by establishing, among other things, requirements for several new equipment features on all new fluoroscopic x-ray systems. In the current performance standard, § 1020.30(h) requires that manufacturers provide to purchasers of x-ray equipment, and to others upon request, manuals or instruction sheets that contain technical and safety information. This required information is necessary for all purchasers (users of the equipment) to have in order to safely operate the equipment. Section 1020.30(h) currently describes the information that must be provided.

The proposed rule would add to § 1020.30(h) paragraphs (5) and (6) describing additional information that would need to be included in these manuals or instructions. In addition, proposed § 1020.32(j)(4) would specify additional descriptive information to be included in the user manuals for fluoroscopic x-ray systems required by § 1020.30(h). This additional information would be descriptions of features of the x-ray equipment required by the proposed amendments and information determined to be appropriate and necessary for safe operation of the equipment.

Description of Respondents: Manufacturers of fluoroscopic x-ray systems that introduce fluoroscopic x-ray systems into commerce following the effective date of the proposed amendments. FDA estimates the burden of this collection of information as follows:

TABLE 4.—ESTIMATED AVERAGE ANNUAL REPORTING BURDEN FOR THE FIRST YEAR[1]

21 CFR Section	No. of Respondents	Annual Frequency per Respondent	Total Annual Responses	Hours per Response	Total Hours
1020.30(h)(5) and (h)(6) and 1020.32(j)(4)	20	10	200	180	36,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 5.—ESTIMATED AVERAGE ANNUAL REPORTING BURDEN FOR SECOND AND FOLLOWING YEAR[1]

21 CFR Section	No. of Respondents	Annual Frequency per Respondent	Total Annual Responses	Hours per Response	Total Hours
1020.30(h)(5) and (h)(6) and 1020.32(j)(4)	20	5	100	180	18,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

B. Estimate of Burden.

As described in the assessment of the cost impact of the proposed amendment (Ref. 33), it is estimated that there are about 20 manufacturers of fluoroscopic x-ray systems who market in the United States. Each of these manufacturers is estimated to market about 10 distinct models of fluoroscopic x-ray systems. Immediately following the effective date of the proposed amendments, for each model of fluoroscopic x-ray system that manufacturers continue to market, each manufacturer would have to supplement the user instructions to include the additional information required by the proposed amendments.

Manufacturers already develop, produce, and provide x-ray system user manuals or instructions containing the information necessary to operate the systems, as well as the specific information required to be provided by the existing standard in current § 1020.30(h). Therefore, it is assumed that no significant additional capital,

operating, or maintenance costs will occur to the manufacturers in connection with the provision of the newly required information. The manufacturers already have procedures and methods for developing and producing the user's manuals, and the additional information required by the proposed requirements is expected to only add a few printed pages to these already extensive manuals or documents.

The burden that will occur to manufacturers from the new requirements for information in the user's manuals will be the effort required to develop, draft, review, and approve the new information. The information or data to be contained within the new user instructions will already be available to the manufacturers from their design, testing, validation, or other product-development documents. The burden will consist of gathering the relevant information from these documents and preparing the additional instructions from this information.

It is estimated that about 3 weeks of professional staff time (120 hours) would be required to gather the required information for a single model of an x-ray system. It is estimated that an additional 6 weeks (240 hours) of professional staff time would be required to draft, edit, design, layout, review, and approve the new portions of the user's manual or information required by the proposed amendments. Hence FDA estimates a total of 360 hours to prepare the new user information that would be required for each model.

For a given manufacturer, FDA anticipates that every distinct model of fluoroscopic system will not require a separate development of this additional information. Because it is thought highly likely that several models of fluoroscopic x-ray systems from a given manufacturer will share common design aspects, it is anticipated that similar means for meeting the proposed requirement for display of exposure time, air kerma rate, and cumulative air kerma and the requirement for the last-image-hold feature will exist on multiple models of a single manufacturer's products. Such common design aspects for multiple models will reduce the burden on manufacturers to develop new user information. Hence the average time required to prepare new user information for all of a manufacturer's models will be correspondingly reduced. It is assumed that the applicability of the new user information developed to multiple models will reduce the average burden from the 360 hours to about 180 hours per model under the assumption that each set of user information for a given equipment feature design will be a applicable to at least two different models of a manufacturer's fluoroscopic systems. Under this assumption, the total estimated time for preparing the new user information that would be required is 36,000 hours, as shown in table 4 of this document.

In each succeeding year the burden will be less, as the reporting requirement will apply only to the new models developed and introduced by the manufacturers in that specific year. FDA assumes that every two years each manufacturer will replace each of its models with a newer model requiring new user information. The multiple system applicability of this information is accounted for by also assuming that each new model only requires 180 hours of effort to develop the required information. These assumptions result in an estimated burden of 18,000 hours for each of the years following the initial year of applicability of the proposed amendments, as shown in table 5 of this document.

In compliance with the PRA (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send comments regarding information collection to the Office of Information and Regulatory Affairs, OMB (see **ADDRESSES**).

VI. Analysis of Impacts

A. Introduction

FDA has examined the impacts of this proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) (UMRA). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition the proposed rule is economically significant under Executive Order 12866 and is major under the Congressional Review Act. Therefore the proposal is subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact on small entities. An analysis of available information suggests that costs to small entities are likely to be significant, as described in the following analysis. FDA believes that this proposed regulation will likely have a significant impact on a substantial number of small entities, and it conducted an initial regulatory flexibility analysis (IRFA) to ensure that any such impacts were assessed and to alert any potentially impacted entities of the opportunity to submit comments.

Section 202(a) of the UMRA requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation). The UMRA does not require FDA to prepare a statement of costs and benefits for the proposed rule because the proposed rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is about $110 million.

The agency has conducted preliminary analyses of the proposed rule, including a consideration of alternatives, and has determined that the proposed rule is consistent with the principles set forth in the Executive order and in these statutes. The costs and benefits of the proposed rule have been assessed in two separate preliminary analyses that are described in section VI of this document and that are available at the Dockets Management Branch (see **ADDRESSES**) for review. As reviewed below, these preliminary analyses have an estimated upper limit to the annual cost of $30.8 million during the first 10 years after the effective date of the proposed amendments. The analysis of benefits projects an average annual amortized pecuniary savings in the first 10 years after the effective date of at least $320 million, with an estimated 90 percent confidence interval spanning a range between $88.35 million and $1.160 billion. FDA believes this analysis of impacts complies with Executive Order 12866, and that the proposed rule is a significant regulatory action as defined by the Executive order. Because of the preliminary nature of these cost and benefit analyses and estimates, FDA requests comments on any aspect of their methodologies, assumptions, and projections. Comments may be submitted to the Dockets Management Branch (see **ADDRESSES**).

B. Objective of the Proposed Rule

The primary objective of the proposed rule is to improve the public health by reducing exposure to and detriment associated with unnecessary ionizing radiation from diagnostic x-ray systems, while maintaining the diagnostic quality of the images. The proposed rule would meet this objective by requiring features on newly manufactured x-ray systems that physicians may use to minimize unnecessary or unnecessarily large doses of radiation that could result in adverse health effects to patients and health care personnel. Such adverse effects from x-ray exposure can include acute skin injury and an increased potential for cancer or genetic damage. The secondary objectives of this proposed rule are to bring the performance standard up to date with recent and emerging technological advances in the design of fluoroscopic x-ray systems and to assure appropriate radiation safety for these designs. The proposed amendments would also align the performance standard with performance requirements in current international standards that were developed since the original publication of the performance standard in 1972. In several instances, the international standards contain more stringent requirements on aspects of system performance than the current U.S. performance standard. The proposed changes would ensure that the different safety standards are harmonized to the extent that systems meeting one standard will not be in conflict with the other. Such harmonization of standards lessens the regulatory burdens on manufacturers desiring to market systems in the global market.

The proposed amendments would require particular x-ray equipment features reducing unnecessary radiation exposure and thereby yielding net benefits. The amendments are necessary because the market will not ensure that these equipment features will be adopted without a government mandate for such features. Purchasers in health care organizations have no incentive to demand the more expensive x-ray equipment that would be required by these new amendments because they perceive no institutional economic advantage in doing so as benefits accrue mainly to patients. Furthermore, purchasers are more responsive to physician attention to an immediate need for diagnostic and interventional efficacy from the equipment than to a prospective capability to reduce radiation-associated risk to patients many years in the future. Patients, also focused on their immediate medical needs, will not demand this equipment because they lack information and knowledge about long-term radiation risk and about the highly technical nature of x-ray equipment. Hence these proposed amendments are necessary to realize the net benefits described in the following analysis.

C. Risk Assessment

The risks to health that will be addressed by these amendments are the adverse effects of exposure to ionizing radiation that can result from procedures utilizing diagnostic x-ray equipment. These adverse effects are well known and have been extensively studied and documented. They are generally categorized into two types—"deterministic" and "stochastic." Deterministic effects are those that occur with certainty in days or weeks or months following irradiation whose cumulative dose exceeds a threshold characteristic of the effect. Above the threshold, the severity of the resulting injury increases as the radiation dose increases. Examples of such effects are the development of cataracts in the lens of the eye and skin "burns." Skin is the tissue that often receives the highest dose from external radiation sources such as diagnostic or therapeutic x-ray exposure. Depending on the magnitude of the dose, skin injuries from radiation can range in severity from reddening of the skin and hair loss to more serious burn-like effects including localized tissue death that may require skin grafts for treatment or may result in permanent impairment. Stochastic effects are those that do not occur with certainty, but if they appear, they generally appear as leukemia or cancer one or several decades after the radiation exposure. The probability of the effect occurring is proportional to the magnitude of the radiation dose in the tissue.

The primary risk associated with radiation is the possibility of patients developing cancer years after exposure, and the magnitude of this cancer risk is generally regarded to increase with increasing radiation dose. Consistent with the conservative approach to risk assessment described by the National Council on Radiation Protection and Measurements (Ref. 32), we assume a linear relationship between cancer risk and dose. The slope of this relationship depends on age at exposure and on gender. Our benefits analysis presented in section VI.H is based on linear interpolations of cancer-mortality risk per dose derived from BEIR V table 4–3 (Ref. 22) values reduced by a dose-rate effectiveness factor of 2 for solid cancers (Ref. 30). The values used in our analysis are represented in the following graph in figure 1 of the excess lifetime-probability for death per dose associated with radiation exposure.

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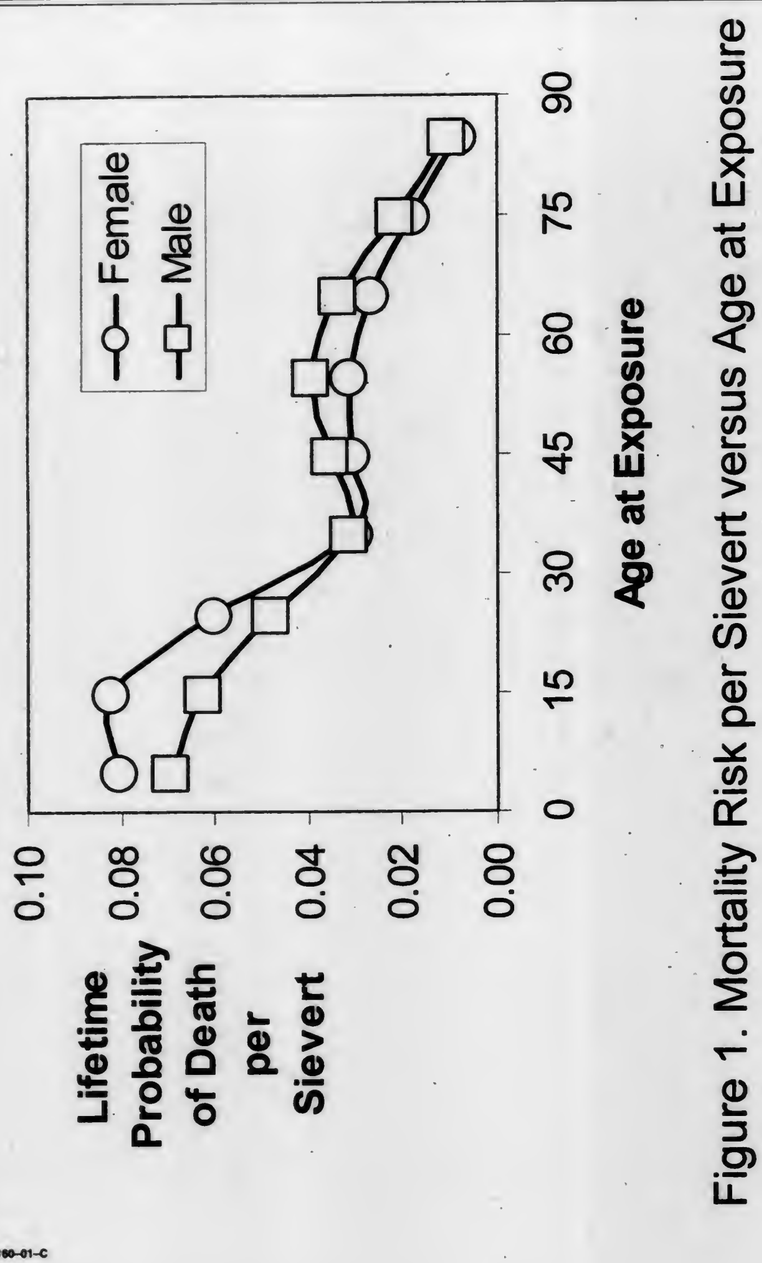


Figure 1. Mortality Risk per Sievert versus Age at Exposure

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FDA underscores the overarching uncertainty in these projections with the following statement adopted from CIRRPC Science Panel Report No. 9 (Ref. 30):

The estimations of radiation-associated cancer deaths were derived from linear extrapolation of nominal risk estimates for lifetime total cancer mortality from doses of 0.1 Sv. Other methods of extrapolation to the low-dose region could yield higher or lower numerical estimates of cancer deaths. At this time studies of human populations exposed at low doses are inadequate to demonstrate the actual level of risk. There is scientific uncertainty about cancer risk in the low-dose region below the range of epidemiologic observation, and the possibility of no risk cannot be excluded.

We project that the equipment features that would be required by three of the proposed amendments will promote the bulk of radiation dose reduction and hence cancer risk reduction: (1) Displays of radiation time, rate, and dose values; (2) more filtration of lower-energy x rays; and (3) improved geometrical efficiency of the x-ray field achieved through tighter collimation. We assume that the display amendment would reduce dose on the order of 16 percent. This assumed value is one-half of a 32 percent dose reduction observed for several x-ray modalities in the United Kingdom (UK) between 1985 and 1995. We assume that one-half of the UK dose reduction was due to technology improvements alone, whereas the other half stemmed from the quality assurance use of reference dose levels and patient dose evaluation. The 16 percent dose reduction that we project for the display amendment thus presumes facility implementation of a quality assurance program making use of the displayed values. This analysis and other assumptions—6 percent dose reduction for the filtration amendment, 1 to 3 percent dose reduction for the collimation amendment—are detailed in Ref. 29. We invite comment on these assumptions.

Until recently, the principle radiation detriment for patients undergoing x-ray procedures was the risk of inducing cancer and, to a lesser extent, heritable genetic malformations. Since 1992, however, approximately 80 reports of serious radiation-induced skin injury associated with fluoroscopically-guided interventional therapeutic procedures have been published in the medical literature or reported to FDA. Many of these injuries involved significant morbidity for the affected patients. FDA's experience with reports of such adverse events leads the agency to believe that the number of these injuries is very likely underreported, given the total number of interventional procedures currently performed. Additionally, there is the lack of any clearly understood requirement or incentive for health care facilities to report such injuries. With the advance of fluoroscopic technology and the proliferating use of interventional procedures by practitioners not traditionally specializing in the field, and therefore not completely familiar with dose-sparing techniques, FDA expects an increasing risk of radiation burns that warrants the changes to the x-ray equipment performance standard through the proposed amendments.

D. Constraints on the Impact Analysis

It is FDA's opinion that the proposed amendments would offer public health benefits that warrant their costs. However, the agency has had difficulty thus far accessing pertinent information from stakeholders to help quantify the impact of the proposal and alternatives. In view of the limited information available with which to develop estimates of the costs and benefits, FDA solicits comments, data, and opinions as to whether the potential health benefits of the proposed amendments would justify their costs. FDA will use all information and comments received to revise the impact assessment in reaching a final determination as to the appropriateness of the proposed amendments.

The principal costs associated with the proposed amendments would be the increased costs to manufacturers to produce equipment that will have the features required by the amendments. FDA has made an estimate of potential cost. The cost estimate is based on a number of assumptions designed to assure that the potential cost is not underestimated. FDA anticipates that the actual costs of these amendments to be significantly less than the upper-limit estimate developed. Manufacturers of diagnostic x-ray systems are urged to provide detailed comments on the anticipated costs of these amendments that will enable refinement of these cost estimates.

The benefits that are expected to result from these amendments are reductions in acute skin injuries and radiation-induced cancers. The proposed amendments would have two types of impact that reduce patient dose and associated radiation detriment without compromising image quality.

The first type of change involves several newly required equipment features that would directly affect the intensity or size of the x-ray field. These are the requirements addressing x-ray beam quality, x-ray field limitation, limits on maximum radiation exposure rate, and MSSD for mini C-arm fluoroscopic systems. Almost all of the changes that directly affect x-ray field size or intensity would bring the performance standard requirements into agreement with existing international voluntary standards. To the extent that these requirements are included in voluntary standards that have a growing influence in the international marketplace, the radiological community has already recognized their benefit and appropriateness. Moreover, harmonization within a single international framework would obviate the expense for manufacturers to produce more than one line of products for a single global marketplace.

The second type of change that would be required by these amendments involves the information to be provided by the manufacturer or directly by the system itself that may be utilized by the operator to more efficiently use the x-ray system and thereby reduce patient dose. There is wide support for and anticipation of these new features by many knowledgeable users of fluoroscopic systems. Similar requirements were recently included in a new international voluntary standard.

E. Baseline Conditions

The cost of the proposed amendments to the x-ray equipment performance standard would be borne primarily by manufacturers of fluoroscopic systems. The cost for one of the nine proposed amendments would also affect manufacturers of radiographic equipment and is discussed in detail in Ref. 28. Therefore, this discussion will focus primarily on fluoroscopy (i.e., the process of obtaining dynamic, real-time images of patient anatomy).

X-ray imaging is used in medicine to obtain diagnostic information on patient anatomy and disease processes or to visualize the delivery of therapeutic interventions. X-ray imaging almost always involves a tradeoff between the quality of the images needed to do the imaging task and the magnitude of the radiation exposure required to produce the image. Difficult imaging tasks may require increased radiation exposure to produce the images unless some significant technological change provides the needed image quality. Therefore, it is important that users of x-ray systems have information regarding the radiation exposures required for the images that are being produced in order to make the appropriate risk-benefit decisions.

Equipment meeting the new standards in the proposed amendments would provide image quality and diagnostic information identical to equipment

meeting current standards. Therefore, the clinical usefulness of the images provided would not change. The amendments would not affect the delivery of x-ray imaging services because the reasons for performing procedures, the number of patients having procedures, and the manner in which procedures are scheduled and conducted would not be changed as a result of the amendments. In addition, nothing in these amendments would adversely affect the clinical information or results obtained from these procedures. These amendments would result in x-ray systems having features that automatically provide for more efficient use of radiation or features that provide the physicians using the equipment with immediate information related to patient dose, thus enabling more informed and efficient use of radiation. These amendments would provide physicians using fluoroscopic equipment with the means to actively monitor patient radiation doses and minimize unnecessary exposure or avoid doses that could result in radiation injury.

Estimates of the annual numbers of certain fluoroscopic procedures performed in the United States during the years 1996 or 1997 were developed, as described in Ref. 29, using data from several sources. These estimates of the annual numbers of specific procedures were used in the estimates of benefit from the proposed amendments. No attempt was made to account for changes in the annual numbers of procedures in future years, due to the large uncertainties in making such projections. FDA also estimates that over 3 million fluoroscopically guided interventional procedures are performed each year in the United States. These procedures are described as "interventional procedures" because they accomplish some form of therapy for patients, often as an alternative to more invasive and risky surgical procedures. Interventional procedures may result in patient radiation doses in some patients that approach or exceed the threshold doses known to cause adverse health effects. The high doses occur because physicians utilize the fluoroscopic images throughout the entire procedure, and such procedures often require exposure times significantly longer than conventional diagnostic procedures to guide the therapy.

FDA records indicate that about 12,000 medical diagnostic x-ray systems are installed in the United States each year. Of these, 4,200 are fluoroscopic system installations. The proposed amendments would apply only to those new systems manufactured after the effective date, therefore affecting the 4,200 new fluoroscopic systems installed annually and a small fraction of radiographic systems that do not currently meet the proposed standard for x-ray beam quality.

In modeling the x-ray equipment market in the United States for the purpose of developing estimates of the cost of these amendments, FDA estimates that there are approximately a total of 40 manufacturers of diagnostic x-ray systems in the United States and half of these (20) market fluoroscopic systems and radiographic systems. It is assumed that manufacturers of radiographic systems typically market 20 models of radiographic systems, while manufacturers of fluoroscopic systems market 10 different models of fluoroscopic systems.

F. The Proposed Amendments

As described in section II of this document, the proposed regulations may be considered as nine significant amendments to the current performance standard for diagnostic x-ray systems and other minor supporting changes to the standard. The nine principal amendments may be grouped into three major impact areas: (1) Amendments requiring changes to equipment design and performance that would facilitate more efficient use of radiation and provide means for reducing patient exposure, (2) amendments improving the use of fluoroscopic systems through enhanced information to users, and (3) amendments facilitating the application of the standard to new features and technologies associated with fluoroscopic systems.

Amendments requiring equipment changes include changes in x-ray beam quality; provision of a means to add additional filtration; changes in the x-ray field limitation requirements; provision of displays of values of irradiation time, AKR, and cumulative air kerma; the display of the last fluoroscopic image acquired (LIH feature); specification of the MSSD for mini C-arm systems; and changes to the requirement concerning maximum limits on entrance AKR. Amendments that would result in improved information for users are those requiring additional information to be provided in user instruction manuals. Amendments facilitating the application of the standard to new technologies include the recognition of SSXI devices, revisions of the applicability sections, and establishment of additional definitions.

G. Benefits of the Proposed Amendments

The proposed amendments would benefit patients by enabling physicians to reduce fluoroscopic radiation doses and associated detriment and, hence, to use the radiation more efficiently to achieve medical objectives. The health benefits of lowering doses are reductions in the potential for radiation-induced cancers and in the numbers of skin burns associated with higher levels of x-ray exposure during fluoroscopically-guided therapeutic procedures. FDA believes that the proposed amendments would not degrade the quality of fluoroscopic images produced while reducing the radiation doses.

There is widespread agreement in the radiological community that radiation doses to patients and staff should be kept "as low as reasonably achievable" (ALARA) as a general principle of radiation protection. In particular, moreover, recent experience has demonstrated that in some few cases of fluoroscopically-guided interventional procedures with especially long irradiation times, the magnitudes of the radiation doses are large enough to cause serious injury to the skin. A growing number of patients that are potentially at risk for acute and long-term radiation injury makes it important to provide fluoroscopic systems with features that will assist in reducing the radiation to patients while continuing to accomplish the medical objectives of the needed procedures.

The proposed amendments would require that fluoroscopic x-ray systems provide equipment features that directly enable the user to reduce radiation doses and maintain them ALARA. Furthermore, the amendments would require provision of information to the user of the equipment in the form of additional information in the user's manual or instructions to enable improved use in a manner that minimizes patient exposures and, by extension, occupational exposures to medical staff.

There is wide agreement that radiation exposures during fluoroscopy are not optimized. For example, data from the 1991 Nationwide Evaluation of X-ray Trends (NEXT) surveys of fluoroscopic x-ray systems used for upper gastrointestinal tract examinations (upper GI exam) indicate that the mean entrance AKR is typically 5 cGy/min for an adult patient (Ref. 28). Properly maintained and adjusted fluoroscopic systems are expected to be able to perform the imaging tasks associated with the upper GI exam with an entrance AKR of 2 cGy/min or less (Ref. 8). The NEXT survey data indicate significant room for improvement in this aspect of fluoroscopic system performance. The total patient dose could be significantly reduced were the entrance AKR lowered to what is currently reasonably achievable, and the features required by the proposed amendments would facilitate this reduction.

The proposed features of LIH and real-time display of entrance AKR and cumulative entrance air kerma values are intended to provide fluoroscopists with means to better limit the patient radiation exposure. The LIH feature would permit decision-making regarding the procedure underway while visualizing the anatomy without continuing to expose the patient. The air kerma- and AKR-value displays would provide real-time feedback to the fluoroscopists and are anticipated to result in improved fluoroscopist performance to limit radiation dose based on the immediate availability of information regarding that dose. Realization of the potential dose-reduction benefits would require fluoroscopists to take advantage of these proposed features and optimize the way they use fluoroscopic systems.

The potential impact of the change in the beam quality requirement, which would apply to most radiographic and all fluoroscopic systems, can be seen from the data on beam quality obtained from the FDA Compliance Testing Program for the current standard. Since January 1, 1996, FDA has conducted 4,832 tests of beam quality, that is, measurement of the HVL of the beam for newly installed x-ray systems. Of these tests, only 15 systems did not meet the current HVL or beam quality requirement. If the requirements for HVL contained in these proposed amendments were used as the criteria for compliance, only 698 systems or 14.4 percent of the systems tested would have been found not to have complied. This result suggests that at a minimum approximately 15 percent of recently installed medical x-ray systems would have their beam quality improved and patient exposures reduced were the new requirement in place and applicable to them.

Numerous examples are available in the literature that illustrate the potential reduction in patient dose, while preserving image quality, that can result from increased x-ray beam filtration. Reference 7 demonstrates that the addition of 1.5 to 2.0 mm of aluminum (Al) as additional filtration, which is the change required to enable systems that just meet the current requirement to meet the proposed HVL requirement, would result in about a 30 percent reduction in entrance air kerma and about a 15 percent reduction in the integral dose for the fluoroscopic examination modeled in the paper at 80 kVp tube potential. Reduction in entrance skin dose (entrance air kerma) is relevant to reducing the risk of deterministic injuries to the skin, while a reduction in the integral dose is directly related to a reduction in the risk of stochastic effects such as cancer induction. Other authors have described dose reductions of a similar magnitude from increasing filtration for radiographic systems.

The requirements proposed in these amendments implement many of the suggestions and recommendations developed by members of the radiological community at the 1992 Workshop on Fluoroscopy sponsored by the American College of Radiology and FDA (Ref. 8). The recommendations from this workshop stressed the need to provide users of fluoroscopy with improved features enabling more informed use of this increasingly complex equipment. In addition, three radiological professional organizations indicated their opinions to FDA that radiologists would use the new features to better manage patient radiation exposure.

H. Estimation of Benefits

Projected benefits are quantified below in terms of: (1) Collective dose savings, (2) numbers of lives spared premature death associated with radiation-induced cancer, (3) collective years of life spared premature death, (4) numbers of reports of fluoroscopic skin burns precluded, and (5) pecuniary estimates associated with the preceding four items. The estimates represent average annual benefits projected to ramp up during a 10-year interval in which new fluoroscopic systems conforming to the proposed rules are phased into use in the United States. (FDA assumes that 10 years after the effective date of the proposed rules all fluoroscopic systems then in use would conform to those rules and that associated recurring benefits would continue to accrue at constant rates.) Annual pecuniary estimates that are averaged over the 10-year ramp-up interval and that are associated with prevention of cancer incidence, preclusion of premature mortality, and obviation of cancer treatment are based on the projected numbers of lives spared premature death. These pecuniary estimates are valued in current dollars using a 7 percent discount rate covering the identical 10-year evaluation period used in the cost analysis (see section VI.I). Based on an economic model of society's willingness to pay a premium for high-risk jobs, we associate a value of $5 million for each statistical death avoided, $25,000 for preclusion of each cancer treatment, and $5,000 for preclusion of cancer's psychological impact. Life benefits would be realized 20 years following exposure (after a period of 10 years of cancer latency followed by a period of 10 years of survival). Details, notes, and references for this analysis are provided in Ref. 29. The low, middle, and high estimates in table 6 of this document correspond respectively to the 5th, median, and 95th percentile points of nominal probability distributions. Estimation of the confidence intervals associated with these distributions is explained in the following paragraphs.

TABLE 6.—PROJECTIONS OF ANNUAL BENEFITS IN UNITED STATES FOR DISPLAY, COLLIMATION, AND FILTRATION RULES APPLIED TO PTCA, CA, AND UGI PROCEDURES[1]

	5th Percentile	Median	95th Percentile
Average Annual Dose and Life Savings in the First 10 Years After Effective Date of Proposed Rules			
Collective dose savings (person-sievert)	3,202	7,231	16,330
Number of lives spared premature death from cancer	62	223	808
Years of life spared premature death from cancer	1,131	4,094	14,818

TABLE 6.—PROJECTIONS OF ANNUAL BENEFITS IN UNITED STATES—Continued
FOR DISPLAY, COLLIMATION, AND FILTRATION RULES APPLIED TO PTCA, CA, AND UGI PROCEDURES[1]

	5th Percentile	Median	95th Percentile
Number of reported skin burns precluded	0.5	1.1	2.4
Average Annual Amortized Pecuniary Savings in the First 10 Years After Effective Date of Proposed Rules			
Prevention of premature death from cancer ($ millions)	78.61	285.03	1,032.75
Obviation of cancer treatment ($ millions)	9.71	35.21	127.56
Obviation of radiation burn treatment and loss ($ millions)	0.03	0.07	0.16
Total ($ millions)	88.35	320.31	1,160.48

[1] PTCA: percutaneous transluminal coronary angioplasty; CA: cardiac catheterization with coronary arteriography or angiography; UGI: upper gastrointestinal fluoroscopy

For the most part, these projections are based on a benefits analysis (Ref. 29, available at http://www.fda.gov/cdrh/radhlth/021501_xray.html) whose domain is intended to be representative but not exhaustive of prospective savings. To keep the analysis finite and manageable, it is limited to the three proposed amendments (sections II.E, II.F, and II.K of this document) that would most reduce radiation dose in several of the most common fluoroscopic procedures. The procedures considered are those of PTCA, CA, and UGI. There are other very highly utilized fluoroscopic procedures, for example, the barium enema examination, whose dose savings might be of comparable magnitude to those of UGI, that are not included at all in this analysis. The three amendments considered would require new fluoroscopic x-ray systems to: (1) Display the rate, time and cumulative total of radiation emission; (2) collimate the x-ray beam more efficiently; and (3) filter out more of the low energy x-ray photons from the x-ray beam. Proposed requirements for the source-skin distance for small c-arm fluoroscopes (section II.J of this document) and for provision of the last-image hold feature on all fluoroscopic systems (section II.L of this document) will also directly reduce dose, but their dose reductions are expected to be much smaller than those associated with the preceding proposed changes. The remaining amendments can be characterized as clarifications of the applicability of the standard, changes in definitions, corrections of errors, and other changes that contribute generally to the effectiveness of implementation of the standard.

Most of the assumptions, rationales, and data sources underlying the benefit projections are explicitly detailed in Ref. 29 and its notes and references. That analysis, however, is incomplete insofar as it refers only to a single set of point estimates. In order to develop a range of projections with a nominally high level of confidence, several additional assumptions are needed. Among the most important of the underpinnings of the analysis are: (1) The projected percentage dose reductions corresponding to the three amendments considered and (2) the dependence on the risk estimates for cancer mortality from the U.S. National Research Council Committee on the Biological Effects of Ionizing Radiation (BEIR V) (Ref. 22). For the former, FDA assumes a relative uncertainty of a factor of 2 (lower or higher) to represent the range in projected dose reductions consistent with a range of confidence of about 90 percent in the findings and assumptions (Ref. 29).

With respect to the dependence on the BEIR V estimates, FDA follows two recommendations of the Office of Science and Technology Policy (OSTP) Committee on Interagency Radiation Research and Policy Coordination (CIRRPC) Science Panel Report No. 9 (Ref. 30) that represent the Federal consensus position for radiation risk-benefit evaluation: First, we apply a value of 2 as the dose-rate effectiveness factor (DREF) in the projections of numbers of solid, non-leukemia cancers. Adopting a DREF value of 2 in the analysis nearly halves the Ref. 29 modal point projections of the numbers of lives and years of life spared premature death from cancer. A DREF value of 2 implies that diagnostic or interventional fluoroscopy is a relatively low dose-rate modality. There are ambiguous assessments of that proposition: Although BEIR V (Ref. 22, pp. 171, 220) considers most medical x-ray exposures to correspond to high-dose rates (for which the DREF is assumed to equal 1 for solid cancers), ICRP Publication 73 (Ref. 16, p. 6) states just as unequivocally that risk factors reduced by a DREF larger than 1 (i.e., for low dose-rate modalities) "are appropriate for all diagnostic doses and to most of the doses in tissues remote from the target tissues in radiotherapy." Recognizing these contrary views of the detrimental biological effectiveness associated with the rates of delivery of fluoroscopic radiation, we assume a factor of 2 uncertainty in the DREF to span a 90 percent range of confidence. The second recommendation that FDA adopts from CIRPPC Panel Report No. 9 (Ref. 30) is the interpretation that a factor of 2 relative uncertainty represents the BEIR V Committee's estimation of the 90 percent confidence interval for mortality risk estimates (Ref. 22). The latter value also agrees with that in the recent review of the United Nations Scientific Committee on the Effects of Atomic Radiation in the "UNSCEAR 2000 Report" (Ref. 31).

All of the contributions of relative uncertainty appropriate for the projections of collective dose savings, lives and years of life spared premature death associated with radiation-induced cancer, numbers of reports of fluoroscopic skin burns precluded, and associated pecuniary estimates are summed in quadrature. For the projected collective dose savings, the root quadrature sum yields an overall relative uncertainty of a factor of 2.3 lower and higher than the modal point estimates and corresponding respectively to the 5th and 95th percentiles of a nominal distribution of confidence; for the projected numbers of lives and years of life spared premature death, the overall relative uncertainty is a factor of 3.6 lower and higher.

I. Costs of Implementing the Proposed Regulations

Costs to manufacturers of fluoroscopic and radiographic systems would increase due to these proposals. FDA would also experience costs for increased compliance activities. Some costs represent one-time expenditures to develop new designs or manufacturing processes to incorporate the regulatory changes. Other costs are the ongoing costs of providing improved equipment performance and features with each installed unit. FDA developed unit cost estimates for each required activity and multiplied the respective unit cost by the relevant variables in the affected industry segment. One-time costs are amortized over the estimated useful life of a fluoroscopy system (10 years) using a 7 percent discount rate. This allows costs to be analyzed as average annualized costs as well as first year expenditures.

FDA developed these cost estimates based on its experience with the industry and its knowledge regarding design and manufacturing practices of the industry. Initially, gross, upper-bound estimates were selected to ensure that expected costs were adequately addressed. The initial assumptions and estimates were posted on FDA's Web site and circulated to the affected industry for comment in July 2000. FDA received no comments on these initial, upper-bound estimates and therefore believes that they were generally in line with industry expectations. Since then, in order to refine the estimates to provide a more accurate representation of the upper-bound costs of the proposed amendments, FDA re-examined its estimating assumptions and reduced some unit cost figures based on the expectation that future economies of scale would reduce the expense of some required features. This section presents a brief discussion of the cost estimates. A detailed description of this analysis is given in Ref. 33.

FDA has no information, indication, or economic presumption that costs estimated to be borne by manufacturers would be passed on to purchasers. The cost analysis therefore is limited to those parties who would be directly affected by the adoption of the proposed amendments, namely, manufacturers and FDA itself. FDA requests any information on the costs that would be imposed by these new requirements that would aid in refining the cost estimates.

1. Costs Associated With Requirements Affecting Equipment Design

The agency estimates that approximately one-half (20) of the manufacturers of x-ray systems will have to make design and manufacturing changes to comply with the revised beam quality requirements. It is estimated that a total of 200 x-ray models would be affected, with a one-time cost of at most $20,000 per model. These numbers result in an estimated first year expenditure of $4.0 million to redesign systems to meet the new beam quality requirement.

It will be necessary for manufacturers of fluoroscopic systems equipped with x-ray tubes with high heat capacity to redesign some systems to provide a means to add additional beam filtration. FDA estimates a design cost of $50,000 per model. A total of 100 models are likely to be affected for a one-time cost of $5.0 million to fluoroscopic system manufacturers. In addition, each system would cost more to manufacture because of the increased costs for components to provide the added feature. The increased cost of this added feature is estimated at $1,000 per fluoroscopic system. A total of 650 fluoroscopic systems are estimated to be installed annually with high heat capacity x-ray tubes, resulting in a total of $0.65 million in increased annual costs.

Modification of x-ray systems to meet the revised requirement for field limitation will entail either changes in installation and adjustment procedures, or redesign of systems. Each fluoroscopic system would need either modification in the adjustment procedure for the collimators (for which new installation and adjustment procedures would be developed at an estimated one-time cost of $20,000 per model) or collimators would need to be redesigned at an estimated cost of $50,000 per model. FDA has assumed that one-half of all flouroscopic x-ray system models (5 models each for 20 manufacturers) would need modifications to meet the new requirement, while the remainder would either meet the new requirement or could meet it through very minor modifications in the collimator adjustment procedure. For those system models not meeting the new requirement, it is assumed that a redesign of the collimator system is required at a cost of about $50,000 per model, leading to an upper-bound estimate of the total redesign cost of $5.0 million (20 manufacturers x 5 models x $50,000). All stationary fluoroscopic systems would most likely need redesigned collimators that would add an additional $2,000 per new system due to increased complexity of the collimator. An annual industry cost increase of $5.0 million accounts for all 2,500 annual installations of systems with these more expensive collimators.

The proposals to modify the requirement limiting the maximum entrance AKR and to remove the exception to the limit during recording of images in analog format using a video recorder will only affect the adjustment of newly installed systems having such recording capability. This requirement is not expected to impose significant costs.

FDA is proposing that all fluoroscopic systems include displays of irradiation time, AKR, and cumulative air kerma to assist operators in keeping track of patient exposures and avoiding overexposures. Each model of fluoroscopic system would need to be redesigned (at a maximum estimated cost of $50,000 per model) for a one-time estimated cost of $10.0 million (200 models x $50,000). Accessory or add-on equipment for existing fluoroscopic systems that provide similar information are currently available for an additional cost of over $10,000 per system. However, FDA expects the average manufacturing cost of including such a feature as an integral feature of a fluoroscopic system to be less than $4,000 per system, due to achievable economies of scale and integration with other system computer capabilities. This assumption results in annual cost increases of $16.8 million (4,200 annual installations x $4,000).

The proposed amendments would require that all newly manufactured fluoroscopic systems be provided with LIH capability. FDA expects that 10 fluoroscopic system manufacturers would need to redesign their systems to include this technology at a maximum cost of $100,000 per manufacturer. Total one-time design costs would equal $1.0 million for the industry (10 manufacturers x $100,000). It is estimated that about half of the new systems installed would already be equipped with this feature. Thus, about half of the newly installed systems that currently do not provide this feature would need it. FDA estimates that the cost would be an additional $2,000 for each system required to have this feature. Thus, annual costs would increase by $4.2 million (2,100 annual systems x $2,000).

The amendment clarifying the requirement for MSSD for small C-arm systems is anticipated to require redesign of several of these systems. As there are only three manufacturers of these systems, and the redesign costs are estimated to be no more than $50,000 per system, the total one-time cost for this change would be $0.2 million. The

average annualized cost of this proposed change would be negligible.

In summary, total industry costs for compliance with the amendments in the area of equipment design include one-time costs of $25.2 million. This total equals an average annualized cost (7 percent discount rate over 10 years) of $3.6 million. In addition, annual recurring costs for new equipment features associated with these proposed provisions are expected to equal $26.7 million.

2. Costs Associated With Additional Information for Users

The proposed amendments would require that additional information be provided in the user instructions regarding fluoroscopic systems. FDA has estimated that each model of fluoroscopic system would need a revised and augmented instruction manual at a cost of less than $5,000 per model. This is equal to a maximum one-time cost of $1.0 million (200 models of fluoroscopic systems x $5,000) and implies maximum average annualized costs of $0.14 million. In addition, each newly installed system would include an improved instruction manual. FDA estimates a cost of $20 per manual for printing and distribution of the required additional information. Each of the 4,200 installed fluoroscopy systems would include a revised manual for an annual cost of approximately $0.1 million.

Related to the requirements for additional information is the proposal to change the quantity used to describe the radiation produced by the x-ray system. Because the change to use of the quantity air kerma does not require any changes or actions on the part of manufacturers or users, there is no significant cost associated with it.

3. Costs Associated With Clarifications and Adaptations to New Technologies

The new definitions and clarifications of applicability proposed for the standard do not pose any significant new or additional costs on manufacturers.

4. FDA Costs Associated With Compliance Activities

FDA costs would increase due to the increased compliance activities that would result from these proposed regulations. In addition, FDA would experience implementation costs in developing and publicizing the new requirements. FDA has estimated that approximately five full-time equivalent employees (FTEs) would be required to implement the proposed regulations and conduct training of field inspectors. Using the current estimate of $117,000 per FTE, the one-time cost of implementation to FDA is approximately $0.6 million. Amortizing this cost over a 10-year evaluation period using a 7 percent discount rate results in average annualized costs of about $0.1 million. Ongoing costs of annual compliance activities are expected to require about three FTEs, or a little more than $0.3 million per year.

5. Total Costs of the Proposed Regulation

The estimated costs of the amendments identified as having any significant cost impact are summarized in table 7 of this document. The costs are identified as non-recurring costs that must be met initially or as annual costs associated with continued production of systems meeting the proposed requirements or additional annual enforcement of the amendments. The total annualized cost of the proposed regulations (averaged over 10 years) equals $30.8 million, of which $30.4 million would be borne by manufacturers. The annualized estimate of $30.8 million represents amortization of first year costs of $53.8 million and expenditures from years 2 through 10 of $27 million annually.

TABLE 7.—SUMMARY OF COSTS OF AMENDMENTS

Amendment Described in Section	Non-recurring Costs to Manufacturers ($ millions)	Non-recurring Costs to FDA ($ millions)	Annual Costs to Manufacturers ($ millions)	Annual Costs to FDA ($ millions)
II.A	none	0.0059	none	none
II.B	none	0.0324	none	none
II.D	1.0	none	0.084	0.0117
II.E	9.0	0.0117	0.650	none
II.F	5.0	0.0468	5.0	none
II.G, II.H, and II.I	none	none	none	none
II.J	0.150	0.0234	none	none
II.K	10.0	0.4680	16.8	0.2340
II.L	1.0	0.0234	4.2	none
Total	26.150	0.6026	26.734	0.2457

Therefore, during the first 10 years after the effective date of the proposed amendments, the average annual cost is estimated to be $30.8 million, compared to a projected average annual benefits of $320 million, within a range estimated between $88 million and $1.2 billion.

J. Small Business Impacts

FDA believes that it is likely that the proposed rule will have a significant impact on a substantial number of small entities and has conducted an IRFA. This analysis is designed to assess the impact of the proposed rule on small entities and alert any impacted entities of the expected impact.

1. Description of Impact

The objective of the proposed regulation is to reduce the likelihood of adverse events due to unnecessary exposure to radiation during diagnostic x-ray procedures, primarily fluoroscopic procedures. The amendments would accomplish this by requiring performance features on all fluoroscopic x-ray systems that would protect patients and health personnel while maintaining image quality.

Manufacturers of diagnostic x-ray systems, including fluoroscopy equipment, are grouped within the North American Industry Classification System (NAICS) industry code 334517 (Irradiation Apparatus Manufacturers)[1]. The Small Business Administration (SBA) classifies as "small" any entity with 500 or fewer employees within this industry. Relatively small numbers of employees typify firms within this NAICS code group. About one-half of the establishments within this industry employ fewer than 20 workers, and companies have an average of 1.2 establishments per company. The manufacturers are relatively specialized, with about 84 percent of company sales coming from within the affected industry. In addition, 97 percent of all shipments of irradiation equipment originate by manufacturers classified within this industry.

The Manufacturing Industry Series report on Irradiation Apparatus Manufacturing for NAICS code 334517 from the 1997 Economic Census indicates 136 companies having 154 establishments for this industry in the United States. This report also indicates that only 15 of these establishments have 250 or more employees, with only 5 establishments having more than 500 employees. Therefore, this industry sector is predominately composed of firms meeting the SBA description of a "small entity." Of the total value of shipments of $3,797,837,000 for this industry, 73 percent are from the 15 establishments with 250 or more employees. Thus, for the purposes of the IRFA, most of the diagnostic x-ray equipment manufacturing firms that will be affected by these proposed amendments are small entities.

The impact of the proposed amendments will be similar on manufacturers of diagnostic x-ray systems, whether or not they are small entities. This impact is the increased costs to design and manufacture x-ray systems that meet the new requirements. For those manufacturers that produce smaller numbers of systems per year, the impact of the cost of system redesign to meet the new requirements will result in a greater per unit cost impact than for manufacturers with a high volume of unit sales over which the development costs may be spread. This may have a disproportionate impact on the very small firms with a low volume of sales.

FDA considered whether there were approaches that could be taken to mitigate this impact on the firms producing the smaller numbers of systems. FDA, however, identified no feasible way to do this and also accomplish the needed public health protection. The proposed radiation-safety-related requirements are appropriate for any x-ray system, independent of the circumstances of the manufacturer. FDA considers it appropriate for any firm producing x-ray systems to provide the level of radiation protection that will be afforded by the revised standard. Patients receiving x-ray examinations or procedures warrant the same degree of radiation safety regardless of the circumstances of the manufacturer of the equipment.

2. Analysis of Alternatives

FDA examined and rejected several alternatives to proposing amendments to the performance standard. One alternative was to take no actions to modify the standard. This option was rejected because it would not permit clarification of the manner in which the standard should be applied to the technological changes occurring with fluoroscopic x-ray system design and function. This option was also rejected as failing to meet the public expectation that the federal performance standard assures adequate radiation safety performance and features for fluoroscopic x-ray systems. The changes that have occurred since the standard was developed in the early 1970s necessitate modification of the standard to reflect current technology and to recognize the increased radiation hazards posed by new fluoroscopic techniques and procedures.

A portion of the concern and the unnecessary radiation exposure resulting from current fluoroscopic practices might be addressed through the establishment of controls and requirements regarding the qualifications and training of physicians permitted or allowed to use fluoroscopic systems. Such requirements could assure that, contrary to the current situation, all physicians using fluoroscopy are adequately trained regarding radiation safety practices, proper fluoroscopic system use, and methods for assuring that patient doses are maintained as low as possible. This alternative was rejected because FDA does not have the authority, under current law, to establish such requirements. To be effective, such a program would have to be established by States or medical professional societies or certification bodies. While recognizing that encouragement of such activities by FDA is worthwhile, reliance on such efforts alone would not result in the needed performance improvement of fluoroscopic x-ray systems. FDA concluded that improved use of fluoroscopy requires the dose reduction features and operator feedback mechanism regarding patient doses that would be provided by the proposed amendments.

Alternatives to the specific amendments proposed were also considered in developing these proposals. These alternatives are described in detail in the assessment report developed and filed as part of the information supporting these amendments (Ref. 33). FDA requests comments on alternatives to these proposed amendments that would accomplish the needed public health protection and, in particular, any alternatives that could mitigate the impact of the proposed amendments on small businesses.

3. Ensuring Small Entity Participation in Rulemaking

FDA believes it is possible that the proposed regulation could have a significant impact on small entities. The impact would occur due to increased design and production costs for fluoroscopy systems. FDA solicits comment on the nature of this impact and whether there are reasonable alternatives that might accomplish the intended public health goals.

The proposed regulation will be available on the Internet at http://www.fda.gov for review by all interested parties, and all comments will be considered prior to final implementation of the regulation. In addition, FDA will communicate the proposed regulation to manufacturer organizations and trade associations as well as parties that have previously indicated an interest in amendments to the diagnostic x-ray equipment performance standard. The proposed amendments will also be brought to the attention of relevant medical professional societies and organizations whose members are likely to use fluoroscopic x-ray systems. FDA will solicit the assistance of the SBA during the comment period to assure that all small manufacturers impacted by the proposed amendments are aware of the opportunity to comment on the proposal, possible alternatives and its impact.

[1]NAICS has replaced the Standard Industrial Classification (SIC) codes. NAICS Industry Group 334517 (Irradiation Apparatus) coincides with SIC Group 3844 (X-Ray Apparatus and Tubing).

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K. Reporting Requirements and Duplicate Rules

FDA has concluded that the proposed rule imposes new reporting and other compliance requirements on small businesses. In addition, FDA has identified no relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule. The cost in the labeling is addressed previously.

L. Conclusion of the Analysis of Impacts

FDA has examined the impacts of the proposed amendments to the performance standard. Based on this evaluation, an upper-bound estimate has been made for average annualized costs amounting to $30.8 million, of which $30.4 million would be borne by the manufacturers of this equipment. FDA believes that the reductions in acute and long-term radiation injuries to patients that would be facilitated by the proposed amendments would appreciably outweigh the upper-bound costs estimated for compliance with the rules. Finally, FDA has concluded that it is likely that this proposal would have a significant impact on a substantial number of small entities.

FDA solicits comment on all aspects of this analysis and all assumptions used.

VII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies that have substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. Submission of Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this proposal. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IX. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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List of Subjects in 21 CFR Part 1020

Electronic products, Medical devices, Radiation protection, Reporting and recordkeeping requirements, Television, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 1020 be amended as follows:

PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

1. The authority citation for 21 CFR part 1020 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360e–360j, 360gg–360ss, 371, 381.

2. Revise §1020.30 to read as follows:

§1020.30 Diagnostic x-ray systems and their major components.

(a) *Applicability*—(1) The provisions of this section are applicable to:

(i) The following components of diagnostic x-ray systems:

(A) Tube housing assemblies, x-ray controls, x-ray high-voltage generators, x-ray tables, cradles, film changers, vertical cassette holders mounted in a fixed location and cassette holders with front panels, and beam-limiting devices manufactured after August 1, 1974.

(B) Fluoroscopic imaging assemblies manufactured after August 1, 1974, and before April 26, 1977.

(C) Spot-film devices and image intensifiers manufactured after April 26, 1977.

(D) Cephalometric devices manufactured after February 25, 1978.

(E) Image receptor support devices for mammographic x-ray systems manufactured after September 5, 1978.

(F) Image receptors which are electrically powered or connected with the x-ray system manufactured on or after [date 1 year after date of publication of the final rule in the **Federal Register**].

(ii) Diagnostic x-ray systems, except computed tomography x-ray systems, incorporating one or more of such components; however, such x-ray systems shall be required to comply only with those provisions of this section and §§ 1020.31 and 1020.32, which relate to the components certified in accordance with paragraph (c) of this section and installed into the systems.

(iii) Computed tomography (CT) x-ray systems manufactured before November 29, 1984.

(iv) CT gantries manufactured after September 3, 1985.

(2) The following provisions of this section and § 1020.33 are applicable to CT x-ray systems manufactured or remanufactured on or after November 29, 1984:

(i) Section 1020.30(a);

(ii) Section 1020.30(b) "Technique factors";

(iii) Section 1020.30(b) "CT," "Dose," "Scan," "Scan time," and "Tomogram";

(iv) Section 1020.30(h)(3)(vi) through (h)(3)(viii);

(v) Section 1020.30(n);

(vi) Section 1020.33(a) and (b);

(vii) Section 1020.33(c)(1) as it affects § 1020.33(c)(2); and

(viii) Section 1020.33(c)(2).

(3) The provisions of this section and § 1020.33 in its entirety, including those provisions in paragraph (a)(2) of this section, are applicable to CT x-ray systems manufactured or remanufactured on or after September 3, 1985. The date of manufacture of the CT system is the date of manufacture of the CT gantry.

(b) *Definitions.* As used in this section and §§1020.31, 1020.32, and 1020.33, the following definitions apply:

Accessible surface means the external surface of the enclosure or housing provided by the manufacturer.

Accessory component means:

(1) A component used with diagnostic x-ray systems, such as a cradle or film changer, that is not necessary for the compliance of the system with applicable provisions of this subchapter but which requires an initial determination of compatibility with the system; or

(2) A component necessary for compliance of the system with applicable provisions of this subchapter but which may be interchanged with similar compatible components without affecting the system's compliance, such as one of a set of interchangeable beam-limiting devices; or

(3) A component compatible with all x-ray systems with which it may be used and that does not require compatibility or installation instructions, such as a tabletop cassette holder.

Air kerma means kerma in air (see kerma).

Aluminum equivalent means the thickness of aluminum (type 1100 alloy)[1] affording the same attenuation, under specified conditions as the material in question.

Articulated joint means a joint between two separate sections of a tabletop which joint provides the capacity for one of the sections to pivot on the line segment along which the sections join.

Assembler means any person engaged in the business of assembling, replacing, or installing one or more components into a diagnostic x-ray system or subsystem. The term includes the owner of an x-ray system or his or her employee or agent who assembles components into an x-ray system that is

[1] The nominal chemical composition of type 1100 aluminum alloy is 99.00 percent minimum aluminum, 0.12 percent copper, as given in "Aluminum Standards and Data" (1969). Copies may be obtained from The Aluminum Association, New York, NY.

subsequently used to provide professional or commercial services.

Attenuation block means a block or stack of type 1100 aluminum alloy or aluminum alloy having equivalent attenuation with dimensions 20 centimeters by 20 centimeters by 3.8 centimeters.

Automatic exposure control (AEC) means a device which automatically controls one or more technique factors in order to obtain at a preselected location(s) a required quantity of radiation.

Automatic exposure rate control (AERC) means a device which automatically controls one or more technique factors in order to obtain at a preselected location(s) a required quantity of radiation per unit time.

Beam axis means a line from the source through the centers of the x-ray fields.

Beam-limiting device means a device which provides a means to restrict the dimensions of the x-ray field.

Cantilevered tabletop means a tabletop designed such that the unsupported portion can be extended at least 100 centimeters beyond the support.

Cassette holder means a device, other than a spot-film device, that supports and/or fixes the position of an x-ray film cassette during an x-ray exposure.

Cephalometric device means a device intended for the radiographic visualization and measurement of the dimensions of the human head.

Coefficient of variation means the ratio of the standard deviation to the mean value of a population of observations. It is estimated using the following equation:

$$C = \frac{s}{\bar{X}} = \frac{1}{\bar{X}}\left[\sum_{i=1}^{n}\frac{(X_i - \bar{X})^2}{n-1}\right]^{1/2}$$

where:

s = Estimated standard deviation of the population.

$\bar{X}$ = Mean value of observations in sample.

X_i = ith observation sampled.

n = Number of observations sampled.

Computed tomography (CT) means the production of a tomogram by the acquisition and computer processing of x-ray transmission data.

Control panel means that part of the x-ray control upon which are mounted the switches, knobs, pushbuttons, and other hardware necessary for manually setting the technique factors.

Cooling curve means the graphical relationship between heat units stored and cooling time.

Cradle means:

(1) A removable device which supports and may restrain a patient above an x-ray table; or

(2) A device;

(i) Whose patient support structure is interposed between the patient and the image receptor during normal use;

(ii) Which is equipped with means for patient restraint; and

(iii) Which is capable of rotation about its long (longitudinal) axis.

CT gantry means tube housing assemblies, beam-limiting devices, detectors, and the supporting structures, frames, and covers which hold and/or enclose these components.

Diagnostic source assembly means the tube housing assembly with a beam-limiting device attached.

Diagnostic x-ray system means an x-ray system designed for irradiation of any part of the human body for the purpose of diagnosis or visualization.

Dose means the absorbed dose as defined by the International Commission on Radiation Units and Measurements. The absorbed dose, D, is the quotient of $d\varepsilon$ by dm, where $d\varepsilon$ is the mean energy imparted to matter of mass dm; thus $D=d\varepsilon/dm$, in units of J/kg, where the special name for the unit of absorbed dose is gray (Gy).

Equipment means x-ray equipment.

Exposure (X) means the quotient of dQ by dm where dQ is the absolute value of the total charge of the ions of one sign produced in air when all the electrons and positrons liberated or created by photons in air of mass dm are completely stopped in air; thus X=dQ/dm, in units of C/kg.

Field emission equipment means equipment which uses an x-ray tube in which electron emission from the cathode is due solely to action of an electric field.

Fluoroscopic imaging assembly means a subsystem in which x-ray photons produce a set of fluoroscopic images or radiographic images recorded from the fluoroscopic image receptor. It includes the image receptor(s), electrical interlocks, if any, and structural material providing linkage between the image receptor and diagnostic source assembly.

Fluoroscopy means a technique for generating x-ray images and presenting them instantaneously and continuously as visible images for the purpose of providing the user with a visual display of dynamic processes.

General purpose radiographic x-ray system means any radiographic x-ray system which, by design, is not limited to radiographic examination of specific anatomical regions.

Half-value layer (HVL) means the thickness of specified material which attenuates the beam of radiation to an extent such that the AKR is reduced to one-half of its original value. In this definition the contribution of all scattered radiation, other than any which might be present initially in the beam concerned, is deemed to be excluded.

Image intensifier means a device, installed in its housing, which instantaneously converts an x-ray pattern into a corresponding light image of higher energy density.

Image receptor means any device, such as a fluorescent screen, radiographic film, x-ray image intensifier tube, solid-state detector, or gaseous detector, which transforms incident x-ray photons either into a visible image or into another form which can be made into a visible image by further transformations. In those cases where means are provided to preselect a portion of the image receptor, the term "image receptor" shall mean the preselected portion of the device.

Image receptor support device means, for mammography x-ray systems, that part of the system designed to support the image receptor during a mammographic examination and to provide a primary protective barrier.

Isocenter means the center of the smallest sphere through which the beam axis passes for a C-arm gantry moving through a full range of rotations about a common center.

Kerma means the quantity as defined by the International Commission on Radiation Units and Measurements. The kerma, K, is the quotient of $d\varepsilon_{tr}$ by dm, where $d\varepsilon_{tr}$ is the sum of the initial kinetic energies of all the charged particles liberated by uncharged particles in a mass dm of material; thus $K=d\varepsilon_{tr}/dm$, in units of J/kg, where the special name for the unit of kerma is gray (Gy). When the material is air, the quantity is referred to as "air kerma."

Last-image hold (LIH) radiograph means an image obtained either by retaining one or more fluoroscopic images, which may be temporally integrated, at the end of a fluoroscopic exposure or by initiating a separate and distinct radiographic exposure automatically and immediately in conjunction with termination of the fluoroscopic exposure.

Lateral fluoroscope means the x-ray tube and image receptor combination in a biplane system dedicated to the lateral projection. It consists of the lateral x-ray tube housing assembly and the lateral image receptor that are fixed in position relative to the table with the x-ray beam axis parallel to the plane of the table.

Leqkage radiation means radiation emanating from the diagnostic source assembly except for:

(1) The useful beam; and

(2) Radiation produced when the exposure switch or timer is not activated.

Leakage technique factors means the technique factors associated with the diagnostic source assembly which are used in measuring leakage radiation. They are defined as follows:

(1) For diagnostic source assemblies intended for capacitor energy storage equipment, the maximum-rated peak tube potential and the maximum-rated number of exposures in an hour for operation at the maximum-rated peak tube potential with the quantity of charge per exposure being 10 millicoulombs (or 10 mAs) or the minimum obtainable from the unit, whichever is larger;

(2) For diagnostic source assemblies intended for field emission equipment rated for pulsed operation, the maximum-rated peak tube potential and the maximum-rated number of x-ray pulses in an hour for operation at the maximum-rated peak tube potential; and

(3) For all other diagnostic source assemblies, the maximum-rated peak tube potential and the maximum-rated continuous tube current for the maximum-rated peak tube potential.

Light field means that area of the intersection of the light beam from the beam-limiting device and one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the illuminance is one-fourth of the maximum in the intersection.

Line-voltage regulation means the difference between the no-load and the load line potentials expressed as a percent of the load line potential; that is,

Percent line-voltage regulation = $100(V_n - V_l)/V_l$

where:

V_n = No-load line potential and

V_l = Load line potential.

Maximum line current means the root mean square current in the supply line of an x-ray machine operating at its maximum rating.

Mode of operation means, for fluoroscopic systems, a distinct method of fluoroscopy or radiography selected with a set of technique factors or other control settings uniquely associated with the mode. Examples of distinct modes of operation include normal fluoroscopy (analog or digital), high-level control fluoroscopy, cineradiography (analog), digital cineradiography, digital subtraction angiography, electronic radiography using the fluoroscopic image receptor, and photospot recording. In a specific mode of operation, certain system variables affecting air kerma, AKR, or image quality, such as image magnification, x-ray field size, pulse rate, pulse duration, number of pulses per exposure series, SID, or optical aperture, may be adjustable or may vary; their variation per se does not comprise a mode of operation different from the one that has been selected.

Movable tabletop means a tabletop which, when assembled for use, is capable of movement with respect to its supporting structure within the plane of the tabletop.

Nonimage-intensified fluoroscopy means fluoroscopy using only a fluorescent screen.

Peak tube potential means the maximum value of the potential difference across the x-ray tube during an exposure.

Primary protective barrier means the material, excluding filters, placed in the useful beam to reduce the radiation exposure for protection purposes.

Pulsed mode means operation of the x-ray system such that the x-ray tube current is pulsed by the x-ray control to produce one or more exposure intervals of duration less than one-half second.

Quick change x-ray tube means an x-ray tube designed for use in its associated tube housing such that:

(1) The tube cannot be inserted in its housing in a manner that would result in noncompliance of the system with the requirements of paragraphs (k) and (m) of this section;

(2) The focal spot position will not cause noncompliance with the provisions of this section or § 1020.31 or § 1020.32;

(3) The shielding within the tube housing cannot be displaced; and

(4) Any removal and subsequent replacement of a beam-limiting device during reloading of the tube in the tube housing will not result in noncompliance of the x-ray system with the applicable field limitation and alignment requirements of §§1020.31 and 1020.32.

Radiation therapy simulation system means a radiographic or fluoroscopic x-ray system intended for localizing the volume to be exposed during radiation therapy and confirming the position and size of the therapeutic irradiation field.

Radiography means a technique for generating and recording an x-ray pattern for the purpose of providing the user with an image(s) after termination of the exposure.

Rated line voltage means the range of potentials, in volts, of the supply line specified by the manufacturer at which the x-ray machine is designed to operate.

Rated output current means the maximum allowable load current of the x-ray high-voltage generator.

Rated output voltage means the allowable peak potential, in volts, at the output terminals of the x-ray high-voltage generator.

Rating means the operating limits specified by the manufacturer.

Recording means producing a retrievable form of an image resulting from x-ray photons.

Scan means the complete process of collecting x-ray transmission data for the production of a tomogram. Data may be collected simultaneously during a single scan for the production of one or more tomograms.

Scan time means the period of time between the beginning and end of x-ray transmission data accumulation for a single scan.

Solid state x-ray imaging device means an assembly, typically in a rectangular panel configuration, consisting of:

(1) A transducer layer that intercepts x-ray photons and through a single or multistage process converts the photon energy into a modulated signal representative of the x-ray image, and

(2) A matrix of integration and switching elements that are coupled to the transducer layer. An electrical signal representing the x-ray image is generated by a charge generation and transfer process within the integration and switching matrix. The electrical signals may undergo analog-to-digital conversion before leaving the panel to provide either a digital radiographic or fluoroscopic image.

Source means the focal spot of the x-ray tube.

Source-image receptor distance (SID) means the distance from the source to the center of the input surface of the image receptor.

Source-skin distance (SSD) means the distance from the source to the center of the entrant x-ray field in the plane tangent to the patient skin surface.

Spot-film device means a device intended to transport and/or position a radiographic image receptor between the x-ray source and fluoroscopic image receptor. It includes a device intended to hold a cassette over the input end of the fluoroscopic image receptor for the purpose of producing a radiograph.

Stationary tabletop means a tabletop which, when assembled for use, is incapable of movement with respect to

its supporting structure within the plane of the tabletop.

Technique factors means the following conditions of operation:

(1) For capacitor energy storage equipment, peak tube potential in kilovolts (kV) and quantity of charge in milliamperes-seconds (mAs);

(2) For field emission equipment rated for pulsed operation, peak tube potential in kV and number of x-ray pulses;

(3) For CT equipment designed for pulsed operation, peak tube potential in kV, scan time in seconds, and either tube current in milliamperes (mA), x-ray pulse width in seconds, and the number of x-ray pulses per scan, or the product of the tube current, x-ray pulse width, and the number of x-ray pulses in mAs;

(4) For CT equipment not designed for pulsed operation, peak tube potential in kV, and either tube current in mA and scan time in seconds, or the product of tube current and exposure time in mAs and the scan time when the scan time and exposure time are equivalent; and

(5) For all other equipment, peak tube potential in kV, and either tube current in mA and exposure time in seconds, or the product of tube current and exposure time in mAs.

Tomogram means the depiction of the x-ray attenuation properties of a section through a body.

Tube means an x-ray tube, unless otherwise specified.

Tube housing assembly means the tube housing with tube installed. It includes high-voltage and/or filament transformers and other appropriate elements when they are contained within the tube housing.

Tube rating chart means the set of curves which specify the rated limits of operation of the tube in terms of the technique factors.

Useful beam means the radiation which passes through the tube housing port and the aperture of the beam-limiting device when the exposure switch or timer is activated.

Variable-aperture beam-limiting device means a beam-limiting device which has the capacity for stepless adjustment of the x-ray field size at a given SID.

Visible area means the portion of the input surface of the image receptor over which incident x-ray photons are producing a visible image.

X-ray control means a device which controls input power to the x-ray high-voltage generator and/or the x-ray tube. It includes equipment such as timers, phototimers, automatic brightness stabilizers, and similar devices, which control the technique factors of an x-ray exposure.

X-ray equipment means an x-ray system, subsystem, or component thereof. Types of x-ray equipment are as follows:

(1) *Mobile x-ray equipment* means x-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled;

(2) *Portable x-ray equipment* means x-ray equipment designed to be hand-carried; and

(3) *Stationary x-ray equipment* means x-ray equipment which is installed in a fixed location.

X-ray field means that area of the intersection of the useful beam and any one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the AKR is one-fourth of the maximum in the intersection.

X-ray high-voltage generator means a device which transforms electrical energy from the potential supplied by the x-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tube(s), high-voltage switches, electrical protective devices, and other appropriate elements.

X-ray system means an assemblage of components for the controlled production of x-rays. It includes minimally an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

X-ray subsystem means any combination of two or more components of an x-ray system for which there are requirements specified in this section and §§ 1020.31 and 1020.32.

X-ray table means a patient support device with its patient support structure (tabletop) interposed between the patient and the image receptor during radiography and/or fluoroscopy. This includes, but is not limited to, any stretcher equipped with a radiolucent panel and any table equipped with a cassette tray (or bucky), cassette tunnel, fluoroscopic image receptor, or spot-film device beneath the tabletop.

X-ray tube means any electron tube which is designed for the conversion of electrical energy into x-ray energy.

(c) *Manufacturers' responsibility.* Manufacturers of products subject to §§ 1020.30 through 1020.33 shall certify that each of their products meet all applicable requirements when installed into a diagnostic x-ray system according to instructions. This certification shall be made under the format specified in § 1010.2 of this chapter. Manufacturers may certify a combination of two or more components if they obtain prior authorization in writing from the Director of the Office of Compliance of the Center for Devices and Radiological Health. Manufacturers shall not be held responsible for noncompliance of their products if that noncompliance is due solely to the improper installation or assembly of that product by another person; however, manufacturers are responsible for providing assembly instructions adequate to assure compliance of their components with the applicable provisions of §§ 1020.30 through 1020.33.

(d) *Assemblers' responsibility.* An assembler who installs one or more components certified as required by paragraph (c) of this section shall install certified components that are of the type required by § 1020.31, § 1020.32, or § 1020.33 and shall assemble, install, adjust, and test the certified components according to the instructions of their respective manufacturers. Assemblers shall not be liable for noncompliance of a certified component if the assembly of that component was according to the component manufacturer's instruction.

(1) *Reports of assembly.* All assemblers who install certified components shall file a report of assembly, except as specified in paragraph (d)(2) of this section. The report will be construed as the assembler's certification and identification under §§ 1010.2 and 1010.3 of this chapter. The assembler shall affirm in the report that the manufacturer's instructions were followed in the assembly or that the certified components as assembled into the system meet all applicable requirements of §§ 1020.30 through 1020.33. All assembler reports must be on a form prescribed by the Director, Center for Devices and Radiological Health. Completed reports must be submitted to the Director, the purchaser, and, where applicable, to the State agency responsible for radiation protection within 15 days following completion of the assembly.

(2) *Exceptions to reporting requirements.* Reports of assembly need not be submitted for any of the following:

(i) Reloaded or replacement tube housing assemblies that are reinstalled in or newly assembled into an existing x-ray system;

(ii) Certified accessory components that have been identified as such to the Center for Devices and Radiological Health in the report required under § 1002.10 of this chapter;

(iii) Repaired components, whether or not removed from the system and reinstalled during the course of repair, provided the original installation into the system was reported; or

(iv)(A) Components installed temporarily in an x-ray system in place of components removed temporarily for repair, provided the temporarily installed component is identified by a tag or label bearing the following information:

Temporarily Installed Component
This certified component has been assembled, installed, adjusted, and tested by me according to the instructions provided by the manufacturer.
Signature
Company Name
Street Address, P.O. Box
City, State, Zip Code
Date of Installation

(B) The replacement of the temporarily installed component by a component other than the component originally removed for repair shall be reported as specified in paragraph (d)(1) of this section.

(e) *Identification of x-ray components.* In addition to the identification requirements specified in § 1010.3 of this chapter, manufacturers of components subject to this section and §§ 1020.31, 1020.32, and 1020.33, except high-voltage generators contained within tube housings and beam-limiting devices that are integral parts of tube housings, shall permanently inscribe or affix thereon the model number and serial number of the product so that they are legible and accessible to view. The word "model" or "type" shall appear as part of the manufacturer's required identification of certified x-ray components. Where the certification of a system or subsystem, consisting of two or more components, has been authorized under paragraph (c) of this section, a single inscription, tag, or label bearing the model number and serial number may be used to identify the product.

(1) *Tube housing assemblies.* In a similar manner, manufacturers of tube housing assemblies shall also inscribe or affix thereon the name of the manufacturer, model number, and serial number of the x-ray tube which the tube housing assembly incorporates.

(2) *Replacement of tubes.* Except as specified in paragraph (e)(3) of this section, the replacement of an x-ray tube in a previously manufactured tube housing assembly certified under paragraph (c) of this section constitutes manufacture of a new tube housing assembly, and the manufacturer is subject to the provisions of paragraph (e)(1) of this section. The manufacturer shall remove, cover, or deface any previously affixed inscriptions, tags, or labels, that are no longer applicable.

(3) *Quick-change x-ray tubes.* The requirements of paragraph (e)(2) of this section shall not apply to tube housing assemblies designed and designated by their original manufacturer to contain quick change x-ray tubes. The manufacturer of quick-change x-ray tubes shall include with each replacement tube a label with the tube manufacturer's name, the model, and serial number of the x-ray tube. The manufacturer of the tube shall instruct the assembler who installs the new tube to attach the label to the tube housing assembly and to remove, cover, or deface the previously affixed inscriptions, tags, or labels that are described by the tube manufacturer as no longer applicable.

(f) [Reserved]

(g) *Information to be provided to assemblers.* Manufacturers of components listed in paragraph (a)(1) of this section shall provide to assemblers subject to paragraph (d) of this section and, upon request, to others at a cost not to exceed the cost of publication and distribution, instructions for assembly, installation, adjustment, and testing of such components adequate to assure that the products will comply with applicable provisions of this section and §§ 1020.31, 1020.32, and 1020.33, when assembled, installed, adjusted, and tested as directed. Such instructions shall include specifications of other components compatible with that to be installed when compliance of the system or subsystem depends on their compatibility. Such specifications may describe pertinent physical characteristics of the components and/or may list by manufacturer model number the components which are compatible. For x-ray controls and generators manufactured after May 3, 1994, manufacturers shall provide:

(1) A statement of the rated line voltage and the range of line-voltage regulation for operation at maximum line current;

(2) A statement of the maximum line current of the x-ray system based on the maximum input voltage and current characteristics of the tube housing assembly compatible with rated output voltage and rated output current characteristics of the x-ray control and associated high-voltage generator. If the rated input voltage and current characteristics of the tube housing assembly are not known by the manufacturer of the x-ray control and associated high-voltage generator, the manufacturer shall provide information necessary to allow the assembler to determine the maximum line current for the particular tube housing assembly(ies);

(3) A statement of the technique factors that constitute the maximum line current condition described in paragraph (g)(2) of this section.

(h) *Information to be provided to users.* Manufacturers of x-ray equipment shall provide to purchasers and, upon request, to others at a cost not to exceed the cost of publication and distribution, manuals or instruction sheets which shall include the following technical and safety information:

(1) *All x-ray equipment.* For x-ray equipment to which this section and §§ 1020.31, 1020.32, and 1020.33 are applicable, there shall be provided:

(i) Adequate instructions concerning any radiological safety procedures and precautions which may be necessary because of unique features of the equipment; and

(ii) A schedule of the maintenance necessary to keep the equipment in compliance with this section and §§ 1020.31, 1020.32, and 1020.33.

(2) *Tube housing assemblies.* For each tube housing assembly, there shall be provided:

(i) Statements of the leakage technique factors for all combinations of tube housing assemblies and beam-limiting devices for which the tube housing assembly manufacturer states compatibility, the minimum filtration permanently in the useful beam expressed as millimeters of aluminum equivalent, and the peak tube potential at which the aluminum equivalent was obtained;

(ii) Cooling curves for the anode and tube housing; and

(iii) *Tube rating charts.* If the tube is designed to operate from different types of x-ray high-voltage generators (such as single-phase self rectified, single-phase half-wave rectified, single-phase full-wave rectified, 3-phase 6-pulse, 3-phase 12-pulse, constant potential, capacitor energy storage) or under modes of operation such as alternate focal spot sizes or speeds of anode rotation which affect its rating, specific identification of the difference in ratings shall be noted.

(3) *X-ray controls and generators.* For the x-ray control and associated x-ray high-voltage generator, there shall be provided:

(i) A statement of the rated line voltage and the range of line-voltage regulation for operation at maximum line current;

(ii) A statement of the maximum line current of the x-ray system based on the maximum input voltage and output current characteristics of the tube housing assembly compatible with rated output voltage and rated current characteristics of the x-ray control and associated high-voltage generator. If the

rated input voltage and current characteristics of the tube housing assembly are not known by the manufacturer of the x-ray control and associated high-voltage generator, the manufacturer shall provide necessary information to allow the purchaser to determine the maximum line current for his particular tube housing assembly(ies);

(iii) A statement of the technique factors that constitute the maximum line current condition described in paragraph (h)(3)(ii) of this section;

(iv) In the case of battery-powered generators, a specification of the minimum state of charge necessary for proper operation;

(v) Generator rating and duty cycle;

(vi) A statement of the maximum deviation from the preindication given by labeled technique factor control settings or indicators during any radiographic or CT exposure where the equipment is connected to a power supply as described in accordance with this paragraph. In the case of fixed technique factors, the maximum deviation from the nominal fixed value of each factor shall be stated;

(vii) A statement of the maximum deviation from the continuous indication of x-ray tube potential and current during any fluoroscopic exposure when the equipment is connected to a power supply as described in accordance with this paragraph; and

(viii) A statement describing the measurement criteria for all technique factors used in paragraphs (h)(3)(iii), (h)(3)(vi), and (h)(3)(vii) of this section; for example, the beginning and endpoints of exposure time measured with respect to a certain percentage of the voltage waveform.

(4) *Beam-limiting device.* For each variable-aperture beam-limiting device, there shall be provided;

(i) Leakage technique factors for all combinations of tube housing assemblies and beam-limiting devices for which the beam-limiting device manufacturer states compatibility; and

(ii) A statement including the minimum aluminum equivalent of that part of the device through which the useful beam passes and including the x-ray tube potential at which the aluminum equivalent was obtained. When two or more filters are provided as part of the device, the statement shall include the aluminum equivalent of each filter.

(5) *Imaging system information.* For x-ray systems manufactured on or after [date 1 year after date of publication of the final rule in the **Federal Register**], that produce images using the fluoroscopic image receptor, the following information shall be provided in a separate, single section of the user's instruction manual or in a separate manual devoted to this information:

(i) For each mode of operation, a description of the mode and detailed instructions on how the mode is engaged and disengaged. This information shall include how the operator can recognize which mode of operation has been selected prior to initiation of x-ray production.

(ii) For each mode of operation, a description of any specific clinical procedure(s) and clinical imaging task(s) for which the mode is recommended or designed and how each mode should be used.

(6) *Displays of values of AKR and cumulative air kerma.* For fluoroscopic x-ray systems manufactured on or after [date 1 year after date of publication of the final rule in the **Federal Register**], the following shall be provided:

(i) A statement of the maximum deviations of the AKR and cumulative air kerma from their respective displayed values;

(ii) Instructions, including schedules, for calibrating and maintaining any instrumentation associated with measurement or evaluation of the AKR and cumulative air kerma;

(iii) Identification of the spatial coordinates of the irradiation location to which displayed values of AKR and cumulative air kerma refer according to § 1020.32(k)(5);

(iv) A rationale for specification of a reference irradiation location alternative to 15 centimeters from the isocenter toward the x-ray source along the beam axis when such alternative specification is made according to § 1020.32(k)(5)(ii).

(j) [Reserved]

(j) *Warning label.* The control panel containing the main power switch shall bear the warning statement, legible and accessible to view:

"Warning: This x-ray unit may be dangerous to patient and operator unless safe exposure factors, operating instructions and maintenance schedules are observed."

(k) *Leakage radiation from the diagnostic source assembly.* The leakage radiation from the diagnostic source assembly measured at a distance of 1 meter in any direction from the source shall not exceed 0.88 milligray (mGy) air kerma (vice 100 milliroentgen (mR) exposure) in 1 hour when the x-ray tube is operated at the leakage technique factors. If the maximum rated peak tube potential of the tube housing assembly is greater than the maximum rated peak tube potential for the diagnostic source assembly, positive means shall be provided to limit the maximum x-ray tube potential to that of the diagnostic source assembly. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters.

(l) *Radiation from components other than the diagnostic source assembly.* The radiation emitted by a component other than the diagnostic source assembly shall not exceed an air kerma of 18 μGy (vice 2 mR exposure) in 1 hour at 5 centimeters from any accessible surface of the component when it is operated in an assembled x-ray system under any conditions for which it was designed. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters.

(m) *Beam quality*—(1) *Half-value layer.* The half-value layer (HVL) of the useful beam for a given x-ray tube potential shall not be less than the appropriate value shown in table 1 of this section under "Specified Dental Systems," for any dental x-ray system designed for use with intraoral image receptors and manufactured after December 1, 1980; under "I—Other X-Ray Systems," for any dental x-ray system designed for use with intraoral image receptors and manufactured before December 1, 1980, and all other x-ray systems subject to this section and manufactured before [date 1 year after date of publication of the final rule in the **Federal Register**]; and under "II—Other X-Ray Systems," for all x-ray systems, except dental x-ray systems designed for use with intraoral image receptors, subject to this section and manufactured on or after [date 1 year after date of publication of the final rule in the **Federal Register**]. If it is necessary to determine such HVL at an x-ray tube potential which is not listed in table 1 of this section, linear interpolation or extrapolation may be made. Positive means[2] shall be provided to insure that at least the minimum filtration needed to achieve the above beam quality requirements is in the useful beam during each exposure. Table 1 follows:

[2]In the case of a system which is to be operated with more than one thickness of filtration, this requirement can be met by a filter interlocked with the kilovoltage selector which will prevent x-ray emissions if the minimum required filtration is not in place.

TABLE 1.

X-Ray Tube Voltage (kilovolt peak)		Minimum HVL (millimeters of aluminum)		
Designed Operating Range	Measured Operating Potential	Specified Dental Systems[1]	I—Other X-Ray Systems[2]	II—Other X-Ray Systems[3]
Below 51	30	1.5	0.3	0.3
	40	1.5	0.4	0.4
	50	1.5	0.5	0.5
51 to 70	51	1.5	1.2	1.3
	60	1.5	1.3	1.5
	70	1.5	1.5	1.8
Above 70	71	2.1	2.1	2.4
	80	2.3	2.3	2.8
	90	2.5	2.5	3.2
	100	2.7	2.7	3.6
	110	3.0	3.0	4.1
	120	3.2	3.2	4.5
	130	3.5	3.5	5.0
	140	3.8	3.8	5.4
	150	4.1	4.1	5.9

[1]Dental x-ray systems designed for use with intraoral image receptors and manufactured after December 1, 1980.

[2]Dental x-ray systems designed for use with intraoral image receptors and manufactured before or on December 1, 1980, and all other x-ray systems subject to this section and manufactured before or on [date 1 year after date of publication of the final rule in the **Federal Register**].

[3]All x-ray systems, except dental x-ray systems designed for use with intraoral image receptors, subject to this section and manufactured after [date 1 year after date of publication of the final rule in the **Federal Register**].

(2) *Optional filtration.* Fluoroscopic systems incorporating an x-ray tube(s) with a continuous output of 1 kilowatt or more and an anode heat storage capacity of 1 million heat units or more shall provide the option of selecting and adding x-ray filtration to the diagnostic source assembly over and above the amount needed to meet the half-value layer provisions of § 1020.30(m)(1). The selection of this additional x-ray filtration shall be at the option of the user.

(3) *Measuring compliance.* For capacitor energy storage equipment, compliance shall be determined with the maximum selectable quantity of charge per exposure.

(n) *Aluminum equivalent of material between patient and image receptor.* Except when used in a CT x-ray system, the aluminum equivalent of each of the items listed in table 2 of this section, which are used between the patient and image receptor, may not exceed the indicated limits. Compliance shall be determined by x-ray measurements made at a potential of 100 kilovolts peak and with an x-ray beam that has a HVL specified in table 1 of this section for the potential. This requirement applies to front panel(s) of cassette holders and film changers provided by the manufacturer for patient support or for prevention of foreign object intrusions. It does not apply to screens and their associated mechanical support panels or grids. Table 2 follows:

TABLE 2.

Item	Aluminum Equivalent (millimeters)
Front panel(s) of cassette holders (total of all)	1.0
Front panel(s) of film changer (total of all)	1.0
Cradle	2.0
Tabletop, stationary, without articulated joints	1.0
Tabletop, movable, without articulated joint(s) (including stationary subtop)	1.5
Tabletop, with radiolucent panel having one articulated joint	1.5
Tabletop, with radiolucent panel having two or more articulated joints	2.0
Tabletop, cantilevered	2.0
Tabletop, radiation therapy simulator	5.0

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(o) *Battery charge indicator.* On battery-powered generators, visual means shall be provided on the control panel to indicate whether the battery is in a state of charge adequate for proper operation.

(p) [Reserved]

(q) *Modification of certified diagnostic x-ray components and systems*—(1) Diagnostic x-ray components and systems certified in accordance with § 1010.2 of this chapter shall not be modified such that the component or system fails to comply with any applicable provision of this chapter unless a variance in accordance with § 1010.4 of this chapter or an exemption under section 534(a)(5) or 538(b) of the Federal Food, Drug, and Cosmetic Act has been granted.

(2) The owner of a diagnostic x-ray system who uses the system in a professional or commercial capacity may modify the system, provided the modification does not result in the failure of the system or component to comply with the applicable requirements of this section or of § 1020.31, § 1020.32, or § 1020.33. The owner who causes such modification need not submit the reports required by subpart B of part 1002 of this chapter, provided the owner records the date and the details of the modification, and provided the modification of the x-ray system does not result in a failure to comply with § 1020.31, § 1020.32, or § 1020.33.

3. Revise § 1020.31 to read as follows:

§ 1020.31 Radiographic equipment.

The provisions of this section apply to equipment for the recording of images, except equipment for fluoroscopic imaging and for radiographic imaging when images are recorded from the fluoroscopic image receptor or computed tomography x-ray systems manufactured on or after November 28, 1984.

(a) *Control and indication of technique factors*—(1) *Visual indication.* The technique factors to be used during an exposure shall be indicated before the exposure begins, except when automatic exposure controls are used, in which case the technique factors which are set prior to the exposure shall be indicated. On equipment having fixed technique factors, this requirement may be met by permanent markings. Indication of technique factors shall be visible from the operator's position except in the case of spot films made by the fluoroscopist.

(2) *Timers.* Means shall be provided to terminate the exposure at a preset time interval, a preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor.

(i) Except during serial radiography, the operator shall be able to terminate the exposure at any time during an exposure of greater than one-half second. Except during panoramic dental radiography, termination of exposure shall cause automatic resetting of the timer to its initial setting or to zero. It shall not be possible to make an exposure when the timer is set to a zero or off position if either position is provided.

(ii) During serial radiography, the operator shall be able to terminate the x-ray exposure(s) at any time, but means may be provided to permit completion of any single exposure of the series in process.

(3) *Automatic exposure controls.* When an automatic exposure control is provided:

(i) Indication shall be made on the control panel when this mode of operation is selected;

(ii) When the x-ray tube potential is equal to or greater than 51 kilovolts peak (kVp), the minimum exposure time for field emission equipment rated for pulsed operation shall be equal to or less than a time interval equivalent to two pulses and the minimum exposure time for all other equipment shall be equal to or less than 1/60 second or a time interval required to deliver 5 milliampere-seconds (mAs), whichever is greater;

(iii) Either the product of peak x-ray tube potential, current, and exposure time shall be limited to not more than 60 kilowatt-seconds (kWs) per exposure or the product of x-ray tube current and exposure time shall be limited to not more than 600 mAs per exposure, except when the x-ray tube potential is less than 51 kVp, in which case the product of x-ray tube current and exposure time shall be limited to not more than 2,000 mAs per exposure; and

(iv) A visible signal shall indicate when an exposure has been terminated at the limits described in paragraph (a)(3)(iii) of this section, and manual resetting shall be required before further automatically timed exposures can be made.

(4) *Accuracy.* Deviation of technique factors from indicated values shall not exceed the limits given in the information provided in accordance with § 1020.30(h)(3);

(b) *Reproducibility.* The following requirements shall apply when the equipment is operated on an adequate power supply as specified by the manufacturer in accordance with the requirements of § 1020.30(h)(3);

(1) *Coefficient of variation.* For any specific combination of selected technique factors, the estimated coefficient of variation of the air kerma shall be no greater than 0.05.

(2) *Measuring compliance.* Determination of compliance shall be based on 10 consecutive measurements taken within a time period of 1 hour. Equipment manufactured after September 5, 1978, shall be subject to the additional requirement that all variable controls for technique factors shall be adjusted to alternate settings and reset to the test setting after each measurement. The percent line-voltage regulation shall be determined for each measurement. All values for percent line-voltage regulation shall be within ±1 of the mean value for all measurements. For equipment having automatic exposure controls, compliance shall be determined with a sufficient thickness of attenuating material in the useful beam such that the technique factors can be adjusted to provide individual exposures of a minimum of 12 pulses on field emission equipment rated for pulsed operation or no less than one-tenth second per exposure on all other equipment.

(c) *Linearity.* The following requirements apply when the equipment is operated on a power supply as specified by the manufacturer in accordance with the requirements of § 1020.30(h)(3) for any fixed x-ray tube potential within the range of 40 percent to 100 percent of the maximum rated.

(1) *Equipment having independent selection of x-ray tube current (mA).* The average ratios of air kerma to the indicated milliampere-seconds product (mGy/mAs) obtained at any two consecutive tube current settings shall not differ by more than 0.10 times their sum. This is: $|X_1 - X_2| \leq 0.10(X_1+X_2)$; where X_1 and X_2 are the average mGy/mAs values obtained at each of two consecutive tube current settings or at two settings differing by no more than a factor of 2 where the tube current selection is continuous.

(2) *Equipment having selection of x-ray tube current-exposure time product (mAs).* For equipment manufactured after May 3, 1994, the average ratios of air kerma to the indicated milliampere-seconds product (mGy/mAs) obtained at any two consecutive mAs selector settings shall not differ by more than 0.10 times their sum. This is: $|X_1-X_2| \leq 0.10(X_1+X_2)$; where X_1 and X_2 are the average mGy/mAs values obtained at each of two consecutive mAs selector settings or at two settings differing by no more than a factor of 2 where the mAs selector provides continuous selection.

(3) *Measuring compliance.* Determination of compliance will be based on 10 exposures, made within 1 hour, at each of the two settings. These two settings may include any two focal spot sizes except where one is equal to or less than 0.45 millimeters and the other is greater than 0.45 millimeters. For purposes of this requirement, focal spot size is the focal spot size specified by the x-ray tube manufacturer. The percent line-voltage regulation shall be determined for each measurement. All values for percent line-voltage regulation at any one combination of technique factors shall be within ±1 of the mean value for all measurements at these technique factors.

(d) *Field limitation and alignment for mobile, portable, and stationary general purpose x-ray systems.* Except when spot-film devices are in service, mobile, portable, and stationary general purpose radiographic x-ray systems shall meet the following requirements:

(1) *Variable x-ray field limitation.* A means for stepless adjustment of the size of the x-ray field shall be provided. Each dimension of the minimum field size at an SID of 100 centimeters shall be equal to or less than 5 centimeters.

(2) *Visual definition.* (i) Means for visually defining the perimeter of the x-ray field shall be provided. The total misalignment of the edges of the visually defined field with the respective edges of the x-ray field along either the length or width of the visually defined field shall not exceed 2 percent of the distance from the source to the center of the visually defined field when the surface upon which it appears is perpendicular to the axis of the x-ray beam.

(ii) When a light localizer is used to define the x-ray field, it shall provide an average illuminance of not less than 160 lux (15 footcandles) at 100 centimeters or at the maximum SID, whichever is less. The average illuminance shall be based upon measurements made in the approximate center of each quadrant of the light field. Radiation therapy simulation systems are exempt from this requirement.

(iii) The edge of the light field at 100 centimeters or at the maximum SID, whichever is less, shall have a contrast ratio, corrected for ambient lighting, of not less than 4 in the case of beam-limiting devices designed for use on stationary equipment, and a contrast ratio of not less than 3 in the case of beam-limiting devices designed for use on mobile and portable equipment. The contrast ratio is defined as I_1/I_2, where I_1 is the illuminance 3 millimeters from the edge of the light field toward the center of the field; and I_2 is the illuminance 3 millimeters from the edge of the light field away from the center of the field. Compliance shall be determined with a measuring aperture of 1 millimeter.

(e) *Field indication and alignment on stationary general purpose x-ray equipment.* Except when spot-film devices are in service, stationary general purpose x-ray systems shall meet the following requirements, in addition to those prescribed in paragraph (d) of this section:

(1) Means shall be provided to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor, to align the center of the x-ray field with respect to the center of the image receptor to within 2 percent of the SID, and to indicate the SID to within 2 percent;

(2) The beam-limiting device shall numerically indicate the field size in the plane of the image receptor to which it is adjusted;

(3) Indication of field size dimensions and SIDs shall be specified in centimeters and/or inches and shall be such that aperture adjustments result in x-ray field dimensions in the plane of the image receptor which correspond to those indicated by the beam-limiting device to within 2 percent of the SID when the beam axis is indicated to be perpendicular to the plane of the image receptor; and

(4) Compliance measurements will be made at discrete SIDs and image receptor dimensions in common clinical use (such as SIDs of 100, 150, and 200 centimeters and/or 36, 40, 48, and 72 inches and nominal image receptor dimensions of 13, 18, 24, 30, 35, 40, and 43 centimeters and/or 5, 7, 8, 9, 10, 11, 12, 14, and 17 inches) or at any other specific dimensions at which the beam-limiting device or its associated diagnostic x-ray system is uniquely designed to operate.

(f) *Field limitation on radiographic x-ray equipment other than general purpose radiographic systems*—(1) *Equipment for use with intraoral image receptors.* Radiographic equipment designed for use with an intraoral image receptor shall be provided with means to limit the x-ray beam such that:

(i) If the minimum source-to-skin distance (SSD) is 18 centimeters or more, the x-ray field at the minimum SSD shall be containable in a circle having a diameter of no more than 7 centimeters; and

(ii) If the minimum SSD is less than 18 centimeters, the x-ray field at the minimum SSD shall be containable in a circle having a diameter of no more than 6 centimeters.

(2) *X-ray systems designed for one image receptor size.* Radiographic equipment designed for only one image receptor size at a fixed SID shall be provided with means to limit the field at the plane of the image receptor to dimensions no greater than those of the image receptor, and to align the center of the x-ray field with the center of the image receptor to within 2 percent of the SID or shall be provided with means to both size and align the x-ray field such that the x-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor.

(3) *Systems designed for mammography*—(i) Radiographic systems designed only for mammography and general purpose radiography systems, when special attachments for mammography are in service, manufactured on or after November 1, 1977, and before September 30, 1999, shall be provided with means to limit the useful beam such that the x-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor at any designated SID except the edge of the image receptor designed to be adjacent to the chest wall where the x-ray field may not extend beyond this edge by more than 2 percent of the SID. This requirement can be met with a system that performs as prescribed in paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(iii) of this section. When the beam-limiting device and image receptor support device are designed to be used to immobilize the breast during a mammographic procedure and the SID may vary, the SID indication specified in paragraphs (f)(4)(ii) and (f)(4)(iii) of this section shall be the maximum SID for which the beam-limiting device or aperture is designed.

(ii) Mammographic beam-limiting devices manufactured on or after September 30, 1999, shall be provided with the means to limit the useful beam such that the x-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor by more than 2 percent of the SID. This requirement can be met with a system that performs as prescribed in paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(iii) of this section. For systems that allow changes in the SID, the SID indication specified in paragraphs (f)(4)(ii) and (f)(4)(iii) of this section shall be the maximum SID for which the beam-limiting device or aperture is designed.

(iii) Each image receptor support device manufactured on or after November 1, 1977, intended for installation on a system designed for mammography shall have clear and

permanent markings to indicate the maximum image receptor size for which it is designed.

(4) *Other x-ray systems.* Radiographic systems not specifically covered in paragraphs (d), (e), (f)(2), (f)(3), and (h) of this section and systems covered in paragraph (f)(1) of this section, which are also designed for use with extraoral image receptors and when used with an extraoral image receptor, shall be provided with means to limit the x-ray field in the plane of the image receptor so that such field does not exceed each dimension of the image receptor by more than 2 percent of the SID, when the axis of the x-ray beam is perpendicular to the plane of the image receptor. In addition, means shall be provided to align the center of the x-ray field with the center of the image receptor to within 2 percent of the SID, or means shall be provided to both size and align the x-ray field such that the x-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor. These requirements may be met with:

(i) A system which performs in accordance with paragraphs (d) and (e) of this section; or when alignment means are also provided, may be met with either;

(ii) An assortment of removable, fixed-aperture, beam-limiting devices sufficient to meet the requirement for each combination of image receptor size and SID for which the unit is designed. Each such device shall have clear and permanent markings to indicate the image receptor size and SID for which it is designed; or

(iii) A beam-limiting device having multiple fixed apertures sufficient to meet the requirement for each combination of image receptor size and SID for which the unit is designed. Permanent, clearly legible markings shall indicate the image receptor size and SID for which each aperture is designed and shall indicate which aperture is in position for use.

(g) *Positive beam limitation (PBL).* The requirements of this paragraph shall apply to radiographic systems which contain PBL.

(1) *Field size.* When a PBL system is provided, it shall prevent x-ray production when:

(i) Either the length or width of the x-ray field in the plane of the image receptor differs from the corresponding image receptor dimension by more than 3 percent of the SID; or

(ii) The sum of the length and width differences as stated in paragraph (g)(1)(i) of this section without regard to sign exceeds 4 percent of the SID.

(iii) The beam limiting device is at an SID for which PBL is not designed for sizing.

(2) *Conditions for PBL.* When provided, the PBL system shall function as described in paragraph (g)(1) of this section whenever all the following conditions are met:

(i) The image receptor is inserted into a permanently mounted cassette holder;

(ii) The image receptor length and width are less than 50 centimeters;

(iii) The x-ray beam axis is within ±3 degrees of vertical and the SID is 90 centimeters to 130 centimeters inclusive; or the x-ray beam axis is within ±3 degrees of horizontal and the SID is 90 centimeters to 205 centimeters inclusive;

(iv) The x-ray beam axis is perpendicular to the plane of the image receptor to within ±3 degrees; and

(v) Neither tomographic nor stereoscopic radiography is being performed.

(3) *Measuring compliance.* Compliance with the requirements of paragraph (g)(1) of this section shall be determined when the equipment indicates that the beam axis is perpendicular to the plane of the image receptor and the provisions of paragraph (g)(2) of this section are met. Compliance shall be determined no sooner than 5 seconds after insertion of the image receptor.

(4) *Operator initiated undersizing.* The PBL system shall be capable of operation such that, at the discretion of the operator, the size of the field may be made smaller than the size of the image receptor through stepless adjustment of the field size. Each dimension of the minimum field size at an SID of 100 centimeters shall be equal to or less than 5 centimeters. Return to PBL function as described in paragraph (g)(1) of this section shall occur automatically upon any change of image receptor size or SID.

(5) *Override of PBL.* A capability may be provided for overriding PBL in case of system failure and for servicing the system. This override may be for all SIDs and image receptor sizes. A key shall be required for any override capability that is accessible to the operator. It shall not be possible to remove the key while PBL is overridden. Each such key switch or key shall be clearly and durably labeled as follows:

For X-ray Field Limitation System Failure

The override capability is considered accessible to the operator if it is referenced in the operator's manual or in other material intended for the operator or if its location is such that the operator would consider it part of the operational controls.

(h) *Field limitation and alignment for spot-film devices.* The following requirements shall apply to spot-film devices, except when the spot-film device is provided for use with a radiation therapy simulation system:

(1) Means shall be provided between the source and the patient for adjustment of the x-ray field size in the plane of the image receptor to the size of that portion of the image receptor which has been selected on the spot-film selector. Such adjustment shall be accomplished automatically when the x-ray field size in the plane of the image receptor is greater than the selected portion of the image receptor. If the x-ray field size is less than the size of the selected portion of the image receptor, the field size shall not open automatically to the size of the selected portion of the image receptor unless the operator has selected that mode of operation.

(2) Neither the length nor the width of the x-ray field in the plane of the image receptor shall differ from the corresponding dimensions of the selected portion of the image receptor by more than 3 percent of the SID when adjusted for full coverage of the selected portion of the image receptor. The sum, without regard to sign, of the length and width differences shall not exceed 4 percent of the SID. On spot-film devices manufactured after February 25, 1978, if the angle between the plane of the image receptor and beam axis is variable, means shall be provided to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor, and compliance shall be determined with the beam axis indicated to be perpendicular to the plane of the image receptor.

(3) The center of the x-ray field in the plane of the image receptor shall be aligned with the center of the selected portion of the image receptor to within 2 percent of the SID.

(4) Means shall be provided to reduce the x-ray field size in the plane of the image receptor to a size smaller than the selected portion of the image receptor such that:

(i) For spot-film devices used on fixed-SID fluoroscopic systems which are not required to, and do not provide stepless adjustment of the x-ray field, the minimum field size, at the greatest SID, does not exceed 125 square centimeters; or

(ii) For spot-film devices used on fluoroscopic systems that have a variable SID and/or stepless adjustment of the field size, the minimum field size, at the greatest SID, shall be containable in a square of 5 centimeters by 5 centimeters.

(5) A capability may be provided for overriding the automatic x-ray field size adjustment in case of system failure. If it is so provided, a signal visible at the fluoroscopist's position shall indicate whenever the automatic x-ray field size adjustment override is engaged. Each such system failure override switch shall be clearly labeled as follows:

For X-ray Field Limitation System Failure

(i) *Source-skin distance*—(1) X-ray systems designed for use with an intraoral image receptor shall be provided with means to limit the source-skin distance to not less than:

(i) Eighteen centimeters if operable above 50 kVp; or

(ii) Ten centimeters if not operable above 50 kVp.

(2) Mobile and portable x-ray systems other than dental shall be provided with means to limit the source-skin distance to not less than 30 centimeters.

(j) *Beam-on indicators.* The x-ray control shall provide visual indication whenever x-rays are produced. In addition, a signal audible to the operator shall indicate that the exposure has terminated.

(k) *Multiple tubes.* Where two or more radiographic tubes are controlled by one exposure switch, the tube or tubes which have been selected shall be clearly indicated before initiation of the exposure. This indication shall be both on the x-ray control and at or near the tube housing assembly which has been selected.

(l) *Radiation from capacitor energy storage equipment.* Radiation emitted from the x-ray tube shall not exceed:

(1) An air kerma of 0.26 mGy (vice 0.03 mR exposure) in 1 minute at 5 centimeters from any accessible surface of the diagnostic source assembly, with the beam-limiting device fully open, the system fully charged, and the exposure switch, timer, or any discharge mechanism not activated. Compliance shall be determined by measurements averaged over an area of 100 square centimeters, with no linear dimension greater than 20 centimeters; and

(2) An air kerma of 0.88 mGy (vice 100 mR exposure) in 1 hour at 100 centimeters from the x-ray source, with the beam-limiting device fully open, when the system is discharged through the x-ray tube either manually or automatically by use of a discharge switch or deactivation of the input power. Compliance shall be determined by measurements of the maximum air kerma per discharge multiplied by the total number of discharges in 1 hour (duty cycle). The measurements shall be averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters.

(m) *Primary protective barrier for mammography x-ray systems*—(1) For x-ray systems manufactured after September 5, 1978, and before September 30, 1999, which are designed only for mammography, the transmission of the primary beam through any image receptor support provided with the system shall be limited such that the air kerma 5 centimeters from any accessible surface beyond the plane of the image receptor supporting device does not exceed 0.88 μGy (vice 0.1 mR exposure) for each activation of the tube.

(2) For mammographic x-ray systems manufactured on or after September 30, 1999:

(i) At any SID where exposures can be made, the image receptor support device shall provide a primary protective barrier that intercepts the cross section of the useful beam along every direction except at the chest wall edge.

(ii) The x-ray system shall not permit exposure unless the appropriate barrier is in place to intercept the useful beam as required in paragraph (m)(2)(i) of this section.

(iii) The transmission of the useful beam through the primary protective barrier shall be limited such that the air kerma 5 centimeters from any accessible surface beyond the plane of the primary protective barrier does not exceed 0.88 μGy (vice 0.1 mR exposure) for each activation of the tube.

(3) Compliance with the requirements of paragraphs (m)(1) and (m)(2)(iii) of this section for transmission shall be determined with the x-ray system operated at the minimum SID for which it is designed, at the maximum rated peak tube potential, at the maximum rated product of x-ray tube current and exposure time (mAs) for the maximum rated peak tube potential, and by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters. The sensitive volume of the radiation measuring instrument shall not be positioned beyond the edge of the primary protective barrier along the chest wall side.

4. Revise § 1020.32 to read as follows:

§ 1020.32 Fluoroscopic equipment.

The provisions of this section apply to equipment for fluoroscopic imaging and for radiographic imaging when images are recorded from the fluoroscopic image receptor except computed tomography x-ray systems manufactured on or after November 29, 1984.

(a) *Primary protective barrier*—(1) *Limitation of useful beam.* The fluoroscopic imaging assembly shall be provided with a primary protective barrier which intercepts the entire cross section of the useful beam at any SID. The x-ray tube used for fluoroscopy shall not produce x-rays unless the barrier is in position to intercept the entire useful beam. The AKR due to transmission through the barrier with the attenuation block in the useful beam combined with radiation from the fluoroscopic image receptor shall not exceed 3.34×10^{-3} percent of the entrance AKR, at a distance of 10 centimeters from any accessible surface of the fluoroscopic imaging assembly beyond the plane of the image receptor. Radiation therapy simulation systems shall be exempt from this requirement provided the systems are intended only for remote control operation and the manufacturer sets forth instructions for assemblers with respect to control location as part of the information required in § 1020.30(g). Additionally, the manufacturer shall provide to users, under § 1020.30(h)(1)(i), precautions concerning the importance of remote control operation.

(2) *Measuring compliance.* The AKR shall be measured in accordance with paragraph (d) of this section. The AKR due to transmission through the primary barrier combined with radiation from the fluoroscopic image receptor shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters. If the source is below the tabletop, the measurement shall be made with the input surface of the fluoroscopic imaging assembly positioned 30 centimeters above the tabletop. If the source is above the tabletop and the SID is variable, the measurement shall be made with the end of the beam-limiting device or spacer as close to the tabletop as it can be placed, provided that it shall not be closer than 30 centimeters. Movable grids and compression devices shall be removed from the useful beam during the measurement. For all measurements, the attenuation block shall be positioned in the useful beam 10 centimeters from the point of measurement of entrance AKR and between this point and the input surface of the fluoroscopic imaging assembly.

(b) *Field limitation*—(1) *Angulation.* For fluoroscopic equipment manufactured after February 25, 1978, when the angle between the image receptor and the beam axis of the x-ray beam is variable, means shall be provided to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor. Compliance with paragraphs (b)(4) and (b)(5) of this section shall be determined with the

beam axis indicated to be perpendicular to the plane of the image receptor.

(2) *Further means for limitation.* Means shall be provided to permit further limitation of the x-ray field to sizes smaller than the limits of paragraphs (b)(4) and (b)(5). Beam-limiting devices manufactured after May 22, 1979, and incorporated in equipment with a variable SID and/or the capability of a visible area of greater than 300 square centimeters shall be provided with means for stepless adjustment of the x-ray field. Equipment with a fixed SID and the capability of a visible area of no greater than 300 square centimeters shall be provided with either stepless adjustment of the x-ray field or with a means to further limit the x-ray field size at the plane of the image receptor to 125 square centimeters or less. Stepless adjustment shall, at the greatest SID, provide continuous field sizes from the maximum obtainable to a field size containable in a square of 5 centimeters by 5 centimeters. This paragraph does not apply to nonimage-intensified fluoroscopy.

(3) *Nonimage-intensified fluoroscopy.* The x-ray field produced by nonimage-intensified fluoroscopic equipment shall not extend beyond the entire visible area of the image receptor. Means shall be provided for stepless adjustment of field size. The minimum field size, at the greatest SID, shall be containable in a square of 5 centimeters by 5 centimeters.

(4) *Fluoroscopy and radiography using the fluoroscopic imaging assembly with inherently circular image receptors.* (i) For fluoroscopic equipment manufactured before [date 1 year after date of publication of the final rule in the **Federal Register**], other than radiation therapy simulation systems, the following applies:

(A) Neither the length nor the width of the x-ray field in the plane of the image receptor shall exceed that of the visible area of the image receptor by more than 3 percent of the SID. The sum of the excess length and the excess width shall be no greater than 4 percent of the SID.

(B) For rectangular x-ray fields used with circular image receptors, the error in alignment shall be determined along the length and width dimensions of the x-ray field which pass through the center of the visible area of the image receptor.

(ii) For fluoroscopic equipment manufactured on or after [date 1 year after date of publication of the final rule in the **Federal Register**], other than radiation therapy simulation systems, the maximum area of the x-ray field in the plane of the image receptor shall conform with one of the following requirements:

(A) When the visible area of the image receptor is less than or equal to 34 cm in any direction: (1) At least 80 percent of the x-ray field overlaps the visible area of the image receptor, or (2) at least 80 percent of the air kerma integrated over the x-ray field is incident on the area of the image receptor.

(B) When the visible area of the image receptor is greater than 34 cm in any direction, the x-ray field measured along the direction of greatest misalignment with the visible area of the image receptor shall not extend beyond the visible area of the image receptor by more than a total of 2 cm.

(5) *Fluoroscopy and radiography using the fluoroscopic imaging assembly with inherently rectangular image receptors.* For x-ray systems manufactured after [date 1 year after date of publication of the final rule in the **Federal Register**]:

(i) Neither the length nor the width of the x-ray field in the plane of the image receptor shall exceed that of the visible area of the image receptor by more than 3 percent of the SID. The sum of the excess length and the excess width shall be no greater than 4 percent of the SID.

(ii) The error in alignment shall be determined along the length and width dimensions of the x-ray field which pass through the center of the visible area of the image receptor.

(6) *Override capability.* If the fluoroscopic x-ray field size is adjusted automatically as the SID or image receptor size is changed, a capability may be provided for overriding the automatic adjustment in case of system failure. If it is so provided, a signal visible at the fluoroscopist's position shall indicate whenever the automatic field adjustment is overridden. Each such system failure override switch shall be clearly labeled as follows:

For X-ray Field Limitation System Failure

(c) *Activation of tube.* X-ray production in the fluoroscopic mode shall be controlled by a device which requires continuous pressure by the operator for the entire time of any exposure. When recording serial fluoroscopic images, the operator shall be able to terminate the x-ray exposure(s) at any time, but means may be provided to permit completion of any single exposure of the series in process.

(d) *Air kerma rates.* For fluoroscopic equipment, the following requirements apply:

(1) *Fluoroscopic equipment manufactured before May 19, 1995*— (i) Equipment provided with automatic exposure rate control (AERC) shall not be operable at any combination of tube potential and current that will result in an AKR in excess of 88 mGy per minute (vice 10 R/min exposure rate) at the measurement point specified in § 1020.32(d)(3), except as specified in § 1020.32(d)(1)(v) of this section.

(ii) Equipment provided without AERC shall not be operable at any combination of tube potential and current that will result in an AKR in excess of 44 mGy per minute (vice 5 R/min exposure rate) at the measurement point specified in § 1020.32(d)(3), except as specified in § 1020.32(d)(1)(v) of this section.

(iii) Equipment provided with both an AERC mode and a manual mode shall not be operable at any combination of tube potential and current that will result in an AKR in excess of 88 mGy per minute (vice 10 R/min exposure rate) in either mode at the measurement point specified in § 1020.32(d)(3), except as specified in § 1020.32(d)(1)(v) of this section.

(iv) Equipment may be modified in accordance with § 1020.30(q) to comply with § 1020.32(d)(2). When the equipment is modified, it shall bear a label indicating the date of the modification and the statement:

"Modified to comply with 21 CFR 1020.32(d)(2)."

(v) Exceptions:

(A) During recording of fluoroscopic images, or

(B) When a mode of operation has an optional high-level control, in which case that mode shall not be operable at any combination of tube potential and current that will result in an AKR in excess of the rates specified in § 1020.32(d)(1)(i), (d)(1)(ii), or (d)(1)(iii) at the measurement point specified in § 1020.32(d)(3), unless the high-level control is activated. Special means of activation of high-level controls shall be required. The high-level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high-level control is being employed.

(2) *Fluoroscopic equipment manufactured on or after May 19, 1995*— (i) Shall be equipped with AERC if operable at any combination of tube potential and current that results in an AKR greater than 44 mGy per minute (vice 5 R/min exposure rate) at the measurement point specified in § 1020.32(d)(3). Provision for manual selection of technique factors may be provided.

(ii) Shall not be operable at any combination of tube potential and current that will result in an AKR in excess of 88 mGy per minute (vice 10 R/min exposure rate) at the measurement point specified in § 1020.32(d)(3), except as specified in § 1020.32(d)(2)(iii) of this section:

(iii) Exceptions:

(A) For equipment manufactured prior to [date 1 year after date of publication of the final rule in the **Federal Register**], during the recording of images from a fluoroscopic image receptor using photographic film or a video camera when the x-ray source is operated in a pulsed mode.

(B) For equipment manufactured on or after [date 1 year after date of publication of the final rule in the **Federal Register**], during the recording of images from the fluoroscopic image receptor for the purpose of providing the user with an image(s) after termination of the exposure. However, the archiving of fluoroscopic or radiographic images through the recording of such images in analog format with a video-tape or video-disc recorder does not qualify as an exception.

(C) When a mode of operation has an optional high-level control and the control is activated, in which case the equipment shall not be operable at any combination of tube potential and current that will result in an AKR in excess of 180 mGy per minute (vice 20 R/min exposure rate) at the measurement point specified in §1020.32(d)(3). Special means of activation of high-level controls shall be required. The high-level control shall be operable only when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high-level control is being employed.

(3) *Measuring compliance.* Compliance with paragraph (d) of this section shall be determined as follows:

(i) If the source is below the x-ray table, the AKR shall be measured at 1 centimeter above the tabletop or cradle.

(ii) If the source is above the x-ray table, the AKR shall be measured at 30 centimeters above the tabletop with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement.

(iii) In a C-arm type of fluoroscope, the AKR shall be measured at 30 centimeters from the input surface of the fluoroscopic imaging assembly, with the source positioned at any available SID, provided that the end of the beam-limiting device or spacer is no closer than 30 centimeters from the input surface of the fluoroscopic imaging assembly.

(iv) In a C-arm type of fluoroscope having an SID less than 45 cm, the AKR shall be measured at the minimum SSD.

(v) In a lateral type of fluoroscope, the air kerma rate shall be measured at a point 15 centimeters from the centerline of the x-ray table and in the direction of the x-ray source with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement. If the tabletop is movable, it shall be positioned as closely as possible to the lateral x-ray source, with the end of the beam-limiting device or spacer no closer than 15 centimeters to the centerline of the x-ray table.

(4) *Exemptions.* Fluoroscopic radiation therapy simulation systems are exempt from the requirements set forth in paragraph (d) of this section.

(e) [Reserved]

(f) *Indication of potential and current.* During fluoroscopy and cinefluorography, x-ray tube potential and current shall be continuously indicated. Deviation of x-ray tube potential and current from the indicated values shall not exceed the maximum deviation as stated by the manufacturer in accordance with § 1020.30(h)(3).

(g) *Source-skin distance.* (1) Means shall be provided to limit the source-skin distance to not less than 38 centimeters on stationary fluoroscopes and to not less than 30 centimeters on mobile and portable fluoroscopes. In addition, for fluoroscopes intended for specific surgical application that would be prohibited at the source-skin distances specified in this paragraph, provisions may be made for operation at shorter source-skin distances but in no case less than 20 centimeters. When provided, the manufacturer must set forth precautions with respect to the optional means of spacing, in addition to other information as required in § 1020.30(h).

(2) For mobile or portable C-arm fluoroscopic systems manufactured on or after [date 1 year after date of publication of the final rule in the **Federal Register**], having a maximum source-image receptor distance of less than 45 centimeters, means shall be provided to limit the source-skin distance to not less than 19 centimeters. Such systems shall be labeled for extremity use only. In addition, for those systems intended for specific surgical application that would be prohibited at the source-skin distances specified in this paragraph, provisions may be made for operation at shorter source-skin distances but in no case less than 10 centimeters. When provided, the manufacturer must set forth precautions with respect to the optional means of spacing, in addition to other information as required in § 1020.30(h).

(h) *Fluoroscopic irradiation time, display, and signal.* (1)(i) Fluoroscopic equipment manufactured before [date 1 year after date of publication of the final rule in the **Federal Register**], shall be provided with means to preset the cumulative on-time of the fluoroscopic tube. The maximum cumulative time of the timing device shall not exceed 5 minutes without resetting. A signal audible to the fluoroscopist shall indicate the completion of any preset cumulative on-time. Such signal shall continue to sound while x-rays are produced until the timing device is reset. Fluoroscopic equipment may be modified in accordance with § 1020.30(q) to comply with the requirements of § 1020.32(h)(2). When the equipment is modified, it shall bear a label indicating the statement:

"Modified to comply with 21 CFR 1020.32(h)(2)."

(ii) As an alternative to the requirements of this paragraph, radiation therapy simulation systems may be provided with a means to indicate the total cumulative exposure time during which x-rays were produced, and which is capable of being reset between x-ray examinations.

(2) For x-ray controls manufactured on or after [date 1 year after date of publication of the final rule in the **Federal Register**], there shall be provided for each fluoroscopic tube:

(i) A display of the value and units of the irradiation time from the beginning of a patient examination or procedure. This display shall be visible at the fluoroscopist's working position throughout the examination or procedure and after it ends. The display shall be able to be reset to zero prior to the commencement of a new examination or procedure, and it shall function independently of the audible signal described in § 1020.32(h)(2)(ii).

(ii) A signal audible to the fluoroscopist shall indicate the passage of irradiation time during an examination or procedure. The signal shall sound for at least one second at each interval of 5-minutes duration of irradiation time.

(i) *Mobile and portable fluoroscopes.* In addition to the other requirements of this section, mobile and portable fluoroscopes shall provide an image receptor incorporating more than a simple fluorescent screen.

(j) *Display of last image hold (LIH).* Fluoroscopic equipment manufactured on or after [date 1 year after date of publication of the final rule in the **Federal Register**], shall be equipped with means to display an LIH radiograph following termination of the fluoroscopic exposure.

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(1) For an LIH radiograph obtained by retaining pretermination fluoroscopic images, if the number of images and method of combining images are selectable by the user, the selection shall be indicated prior to initiation of the fluoroscopic exposure.

(2) For an LIH radiograph obtained by initiating a separate radiographic exposure, if the techniques factors for the radiographic exposure are selectable prior to the exposure, the combination selected must be indicated prior to initiation of the fluoroscopic exposure.

(3) Means shall be provided to clearly indicate to the user whether a displayed image is the LIH radiograph or fluoroscopy. Display of the LIH radiograph shall be replaced by the fluoroscopic image concurrently with reinitiation of fluoroscopic exposure, unless separate displays are provided for the LIH radiograph and fluoroscopic images.

(4) The predetermined or selectable options for producing the LIH radiograph shall be described in the information required by § 1020.30(h). The information shall include a description of any applicable technique factors for the selected option and the impact of the selectable options on image characteristics and radiation dose.

(k) *Displays of values of AKR and cumulative air kerma.* Fluoroscopic equipment manufactured on or after [date 1 year after date of publication of the final rule in the **Federal Register**], shall display at the fluoroscopist's working position values of AKR and cumulative air kerma. The following requirements apply for each x-ray tube used during an examination or procedure:

(1) The value displayed for AKR shall be in units of mGy/min and shall represent the air kerma per unit time during fluoroscopy and while recording during fluoroscopy.

(2) The value displayed for cumulative air kerma shall be in units of mGy; shall include all contributions generated from fluoroscopic and radiographic radiation; shall represent the total air kerma accrued from the commencement of an examination or procedure and shall be updated during the examination or procedure each time that fluoroscopic or radiographic x-ray production is deactivated.

(3) During fluoroscopy and while recording during fluoroscopy, the value and units of the AKR shall be displayed. Following fluoroscopy or radiography, the value and units of the cumulative air kerma shall be displayed.

(4) The display of the value of the AKR shall be clearly distinguishable from the display of the value of the cumulative air kerma.

(5) Values displayed for the AKR and cumulative air kerma shall be determined for conditions of free-in-air irradiation at one of the following reference locations specified according to the type of fluoroscope. The reference location shall be identified and described specifically in information provided to users according to § 1020.30(h)(6)(iii).

(i) For fluoroscopes with x-ray source below the table, x-ray source above the table, or of lateral type, the reference locations shall be the respective locations specified in § 1020.32(d)(3)(i), (d)(3)(ii), or (d)(3)(v) for measuring compliance with air-kerma rate limits.

(ii) For C-arm type fluoroscopes, the reference location shall be 15 centimeters from the isocenter toward the x-ray source along the beam axis. Alternatively, the reference location shall be along the beam axis at a point deemed by the manufacturer to represent the intersection of the x-ray beam entrance surface and the patient skin.

(6) Means shall be provided to reset to zero the values of AKR and cumulative air kerma prior to the commencement of a new examination or procedures.

(7) The AKR and the cumulative air kerma shall not deviate from their respective displayed values by more than ±25 percent.

5. Amend § 1020.33 by revising paragraph (h)(2) to read as follows:

§ 1020.33 Computed tomography (CT) equipment.

* * * * *

(h) * * *

(2) For systems that allow high voltage to be applied to the x-ray tube continuously and that control the emission of x-ray with a shutter, the radiation emitted may not exceed 0.88 milligray (vice 100 milliroentgen exposure) in 1 hour at any point 5 centimeters outside the external surface of the housing of the scanning mechanism when the shutter is closed. Compliance shall be determined by measurements average over an area of 100 square centimeters with no linear dimension greater than 20 centimeters.

* * * * *

Dated: July 25, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–30550 Filed 12–9–02; 8:45 am]

BILLING CODE 4160–01–S

Federal Register

Tuesday,
December 10, 2002

Part VIII

Department of Housing and Urban Development

24 CFR Part 941

Public Housing Total Development Cost; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 941

[Docket No. FR–4489–F–02]

RIN 2577–AC05

Public Housing Total Development Cost

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations governing the Total Development Cost (TDC) limit for the development of public housing. The amendments implement statutory changes made to the TDC limit previously established by statute. Among other changes, this final rule limits the amount of public housing capital assistance that a public housing agency may use to pay for housing construction costs. The rule also provides that demolition and environmental hazard remediation costs are subject to the TDC limit only to the extent that such costs are associated with the replacement of public housing units on the project site. Further, the final rule provides that other extraordinary site costs, as determined by HUD, are not subject to the TDC limit. This rule follows publication of a January 4, 2001, proposed rule and takes into consideration the public comments received on the proposed rule.

DATES: Effective Date: January 9, 2003.

FOR FURTHER INFORMATION CONTACT: William C. Thorson, Director, Office of Capital Improvements, Office of Public and Indian Housing, Room 4134, U.S. Department of Housing and Urban Development, 451 Seventh St., SW., Washington, DC 20410; telephone (202) 708–1640, extension 4999 (this is not a toll-free telephone number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) establishes the statutory framework for HUD's public housing and various other assisted housing programs. The 1937 Act authorizes HUD to assist public housing agencies (PHAs) with the development and operation of public housing projects, and sets forth several requirements regarding public housing development. Two such statutory requirements regarding the development of public housing are found in sections 3(c)(1) and 6(b) of the 1937 Act.

Section 3(c)(1) of the 1937 Act (42 U.S.C. 1437a(c)(1)) defines the terms "development" and "development cost." Specifically, section 3(c)(1) defines "development" to mean any or all undertakings necessary for planning, land acquisition, demolition, construction, or equipment, in connection with a low-income housing project. The term "low-income housing project" includes public housing assisted under the 1937 Act.

(a) Prior to the enactment of the Quality Housing and Work Responsibility Act of 1998 (QHWRA) (Public Law 105–276, approved October 21, 1998), section 3(c)(1) defined the term "development cost" to mean:

The costs incurred by a [PHA] in such [development] undertakings and their necessary financing (including the payment of carrying charges), and in otherwise carrying out the development of such [low income housing] project.

(b) Following the enactment of section 520(a) of QHWRA, the definition of "development cost" was amended to exclude:

The costs associated with the demolition of or remediation of environmental hazards associated with public housing units that will not be replaced on the project site, or other extraordinary site costs as determined by the Secretary.

This final rule amends the Department's public housing development regulations at 24 CFR part 941 to implement section 520(a) of QHWRA. Specifically, HUD has listed the excluded development costs referenced above in a newly defined term called "Additional Project Costs." The rule then provides at § 941.306(b)(3) that Additional Project Costs are not subject to the TDC limit.

(a) Under section 6(b)(1) of the 1937 Act (42 U.S.C. 1437d(b)(1)), loans or other contributions provided under the 1937 Act for the development of public housing may not be used to pay a total "development cost" in excess of the amount calculated under section 6(b)(2), unless otherwise authorized by HUD. This amount determined under section 6(b)(2) is referred to as the total development cost (TDC) limit.

(b) Section 520(b) of QHWRA added a new section 6(b)(3) to the 1937 Act, which states that in calculating the TDC limit, HUD:

Shall consider only capital assistance provided by the Secretary to a public housing agency that are [sic] authorized for use in connection with the development of public housing, and shall exclude all other amounts, including amounts provided under [the HOME or CDBG programs.]

HUD has implemented the above amendment by adding a definition of the term "public housing capital assistance" to distinguish between those funds that are subject to the TDC limit, and other funding sources. HUD has defined the term "public housing capital assistance" to mean assistance provided by HUD under the 1937 Act or the HOPE VI program in connection with the development of public housing under 24 CFR part 941, including Capital Funds provided under section 9(d) of the 1937 Act, public housing development funds under section 5 of the 1937 Act, Operating Fund assistance used for capital purposes under section 9(g)(1) or 9(g)(2) of the 1937 Act, and HOPE VI grant funds.

(c) Section 520(b) of QHWRA added a new section 6(b)(4) to the 1937 Act, which provides that HUD may restrict the amount of capital funds that a PHA may use to pay for housing construction costs, including "the actual hard costs for the construction of units, builders" overhead and profit, utilities from the street, and finish landscaping."

In this final rule, HUD has included definitions of the terms "Housing Construction Cost" (HCC) and "Community Renewal Cost" (CRC) to clarify the relationship between these two separate subcategories of costs that are subject to the TDC limit. The definitions of HCC and CRC should also clarify the relationship between these costs and Additional Project Costs which, as noted earlier, are not subject to the TDC limit. Substantively, the definitions of Housing Construction Cost and Community Renewal Cost are almost identical to those previously subsumed under the definition of "Total Development Cost", as set forth in HUD's January 4, 2001, proposed rule (66 FR 1008).

The Department also has included a definition of the term "Total Development Cost (TDC) limit" rather than "Total Development Cost" as provided in the proposed rule. The TDC limit is defined to mean the maximum amount of public housing capital assistance that can be used to pay for Housing Construction Costs and Community Renewal Costs in connection with the development of a public housing project, as determined under § 941.306(b)(2). The rule also provides that the TDC limit does not apply to Additional Project Costs. These modifications are intended merely to clarify the Department's existing policies with respect to the TDC limit, rather than to establish new policies.

II. This Final Rule

As previously discussed, HUD published a proposed TDC rule on January 4, 2001 (66 FR 1008), that sought to amend the Department's public housing development regulations at 24 CFR part 941 relating to the calculation of TDC limits, in accordance with section 520 of QHWRA. This final rule implements section 520 of QHWRA after giving due consideration to comments received during the 60-day public comment period.

The preamble of the proposed rule summarized the major amendments that would be made to part 941 by this final rule. The most significant changes made by this final rule to the January 4, 2001, proposed rule are discussed above in Section I of this preamble. The Department has also made the following changes in this final rule:

1. *Revision of the definition of Community Renewal Cost (CRC).* This final rule includes on-site street improvements as a Community Renewal Cost, rather than as a Housing Construction Cost (HCC). It was a mistake in the proposed rule because site improvements are in the community renewal part of the TDC limit.

2. *Revision to HCC applicability.* This final rule provides that acquisition with/without rehabilitation of existing homes is not subject to the HCC, although it is subject to the TDC limit. When a unit is acquired it is completely developed. There is no way to breakdown the HCC from the TDC limit.

3. *Revision to example of extraordinary site costs.* This final rule removes construction of extensive street and other public improvements as an example of extraordinary site costs that are not subject to the TDC limit. These costs are included in the Community Renewal part of the TDC limit under site improvements.

4. *Clarification of HUD notification to changes to cost indices.* This final rule also clarifies that any changes HUD makes to the cost indices as listed in § 941.306 will be announced through a notice published in the **Federal Register**.

5. *Exceptions to TDC.* This final rule clarifies that PHAs are eligible to request a TDC exception for public housing and HOPE VI funds awarded to HOPE VI grantees in FY 1996 and prior years. However, there will be no exceptions granted for the HCC component within the TDC limits. Also, HUD will not grant any exceptions to the TDC limits for public housing and HOPE VI funds awarded in FY 1997 and afterwards.

III. Public Comments Generally

The public comment period for the proposed rule closed on March 5, 2001. HUD received five comments. Three of the commenters expressed concern regarding the proposed changes to the TDC limit and that the changes may affect PHAs' ability to meet the supportive service needs of public housing households. All five commenters offered suggestions to further clarify and strengthen the rule in order to better serve the community. Supportive services are not a development cost that would be covered by the TDC in any case. The 15% cap on community and supportive services for the HOPE VI program is mandated by statute, and does not apply to non-HOPE VI programs, *i.e.*, public housing development.

IV. Discussion of Public Comments Received on the January 4, 2001, Proposed Rule

Comment: (a) The TDC cap should only apply to relocation costs associated with a pro-rata share of the units to be developed on site. (b) The rule should define fair housing-related relocation costs as extraordinary costs, subject to exclusion from the TDC under the definition of "Total Development Cost" in the proposed 24 CFR 941.103. The commenter stated that the language of section 3(c)(1) gives considerable discretion to HUD to fashion such a rule. Another commenter stated that such a rule is well within the grant of statutory authority.

HUD Response: Relocation costs are covered under the Community Renewal Cost subcategory. This is not a policy change because relocation costs have always been subject to the TDC limit. However, the statute mandates that HUD use a construction cost guideline based on the average of at least two nationally recognized construction cost indices for publicly bid construction of a good and sound quality. These cost guidelines (which take into account local adjustment factors), are then multiplied by a factor of 1.6 or 1.75 for elevator and non-elevator structures, respectively. The Department believes that these statutory multipliers are adequate to cover relocation costs. Therefore, HUD did not change how relocation costs are treated and these costs remain subject to the TDC limit. HUD also did not change the regulation to include fair housing-related relocation costs as extraordinary site costs and thus exclude them from the TDC limit. Unusual site conditions, such as extensive rock removal, are listed as an Additional Project Cost and, thus, are not subject to the TDC limit.

Comment: (a) Although permitted by statute, HUD has decided to prohibit requests to exceed the TDC limits. HUD is using an arbitrary number, the statutory multipliers, to calculate the Community Renewal Cost. (b) HUD should retain provisions of existing rules that allow exceptions to the TDC limit, and use exception authority to approve a higher TDC limit for extraordinary fair housing-related relocation costs on a case-by-case basis. The commenter stated that HUD must be flexible towards housing authorities that have, for example, extraordinary costs for demolition and site remediation as a result of mandatory conversion, or extraordinary relocation costs. Another commenter suggested to review the current 24 CFR 941.306(a) and retain those provisions that allow exceptions to the TDC limit.

HUD Response: In 1997–1998 HUD had undertaken an intensive process of analysis and consultation with construction industry groups. The participating groups consisted of the National Association of Housing and Redevelopment Officials (NAHRO), Public Housing Authorities Director Association (PHADA), and Council of Large Public Housing Authorities (CLPHA), to establish appropriate cost limits. This TDC limit represents true construction costs and, therefore, does not foresee circumstances under which an exception would be warranted.

The rule does implement section 520 of QHWRA by revising the definition of the TDC limit to exclude the costs of demolition, or of remediation of environmental hazards associated with public housing units that will not be replaced on the project site, or other extraordinary site costs as determined by HUD. For example, if a PHA is demolishing a 300-unit public housing project and putting only 100 new public housing units back on site, only one-third of the costs of demolition and site remediation will be used in calculating whether the development costs of the public housing units are within the TDC limit. Extraordinary site costs, such as removal of extensive underground utility systems, which have been verified by an independent engineer, are not included in the TDC. Also, the rule permits exceptions to be granted by the Secretary for HOPE VI grantees in Fiscal Year 1996 and earlier years. However, exceptions to the HCC limit within the TDC will not be granted.

Comment: HUD should establish mechanisms for vigorous oversight of relocation requirements, including civil rights-related requirements, for all

public housing developments, including HOPE VI and non-HOPE VI development. The commenter wrote that the TDC limit might have important consequences in other contexts related to relocation. The commenter additionally stated that the formula potentially masks the actual costs of relocation, and it may result in a loss of hard units where the actual costs of conversion, including relocation, exceed the cost of keeping the public housing.

HUD Response: The oversight of HUD relocation requirements is not part of this rulemaking. HUD does not believe an adjustment is merited for relocation. As noted, the Department believes that the statutory multipliers are adequate to cover relocation costs and, therefore, relocation costs remain subject to the TDC limit.

Comment: (a) The broad wording of the proposed rule may have the unintended effect of subjecting two (if not more) important sources of supportive services and relocation funds to the TDC limit: grants received by PHAs from the Resident Opportunities and Self Sufficiency (ROSS) program, and Section 8 rental assistance. (b) HUD should amend the definition of "Total Development Cost" to state that the TDC does not include community and supportive services. The commenter noted that both programs use funds provided by HUD under the Act. Further, such a result conflicts with previous HUD practice. Additionally, if Section 8 allocations and ROSS grants were subject to the TDC, the community renewal portion of the cap would be rapidly expended, leaving PHAs with few tools to adequately accomplish relocation or provide supportive services. Another commenter stated that examples of such services should include (a) job training activities, (b) day care, (c) transportation, (d) educational activities, (e) case management, (f) Section 8 counseling, (g) after school programs, and (f) health programs.

HUD Response: HUD agrees with the commenter. The TDC limit, as stated in the proposed rule and in this final rule, does not include community and supportive services. The Department has clarified in this final rule that only public housing capital assistance (as defined at § 941.103) is subject to the TDC limit. HOPE VI funds used for community and supportive services are capped at a percentage or amount as stated in the NOFA of the HOPE VI grant. This is the result of statutory requirements in the HOPE VI program and not this TDC rulemaking. Section 8 allocations and ROSS funds are not subject to the TDC limit.

*Comment: Section 6(b) of the U.S. Housing Act states that, "[i]n calculating the total development cost of a project * * * the Secretary shall consider only capital assistance * * *" 42 U.S.C. 1437d(b)(3). No funds for capital assistance provided by HUD under the Act or the HOPE VI program should be used to pay development costs in excess of the TDC.* The commenter stated that the proposed rule is far broader, stating that any funds provided under the Act may not be expended in excess of the TDC limit. The commenter stated that this provision should be added as an amendment to 24 CFR 941.306(d). The only sources of financial support specifically exempted from the TDC limit involve funds not provided under the Act: Community Development Block Grants (CDBG), HOME funds, low-income housing tax credits, private donations and private funding. *See,* proposed 24 CFR 941.306(d).

HUD Response: HUD agrees with the commenter that section 6(b)(1) of the 1937 Act extends the TDC limit to capital assistance under the Act provided by HUD in connection with the development of public housing. Accordingly, in this final rule, the Department defines the term "public housing capital assistance" to mean assistance provided by HUD under the Act or the HOPE VI program in connection with the development of public housing under this part, including Capital Fund assistance provided under section 9(d) of the 1937 Act, public housing development assistance provided under section 5 of the 1937 Act, Operating Fund assistance used for capital purposes under section 9(g)(1) or 9(g)(2) of the 1937 Act, and HOPE VI grant assistance.

The Department has included all HOPE VI grant funds in the definition of "public housing capital assistance," regardless of whether the funds are authorized and appropriated under the 1937 or under annual appropriations acts. Thus, all HOPE VI funds will be subject to the TDC limit. This position is consistent with HUD's policy that public housing units developed with HOPE VI funds—regardless of whether the funds are authorized and appropriated under the 1937 Act or under annual appropriations acts—must be developed in accordance with the requirements of the 1937 Act.

However, in accordance with section 6(b)(3) of the 1937 Act (as added by section 520(b) of QHWRA), all other funds are excluded from the TDC limit, including funds from CDBG, HOME, low-income tax credits, private donations, and private financing. The Department implements this requirement at § 941.306(b)(4) of this final rule.

Comment: A PHA may use funding sources not subject to the TDC limit to cover project costs that exceed the Housing Construction Cost limit or the TDC limit. A commenter suggested this language as a clarifying revision to the proposed 24 CFR 941.306(d).

HUD Response: HUD agrees with the commenter that a PHA may use funding sources not subject to the TDC limit (such as CDBG funds, HOME funds, low-income tax credits, private donations, and private financing) to cover project costs that exceed the Housing Construction Cost limit or the TDC limit. The rule at § 941.306(b)(4) already states this.

Comment: (a) HUD has not updated the current TDC limits in two years. (b) HUD should update its TDC at least annually based on appropriate cost indexes. The commenter stated that without more frequent updates PHAs are forced to comply with outdated TDC construction indices without the benefit of the previous method of adjusting for inflation by "trending." Another commenter noted that the documents published in the **Federal Register** show figures from 1999 or earlier. The commenter stated that agencies need up-to-date, competitive figures to develop projects with other public or private sectors partners. Another commenter wrote that the Department should also make available by advance notice the construction cost guidelines it will use each year to recalculate the TDC limits.

HUD Response: HUD agrees that the schedule of unit TDC limits should be recalculated annually and it intends to do so based on revisions to the national indices. HUD will issue such updates through PIH notice, or other appropriate means.

In a Senate colloquy before passage of the QHWRA Senator Mack noted that HUD "should interpret (section 6(b)(2) of the 1937 Act) as requiring the use of indices such as the R.S. Means cost index for construction of "average" quality and the Marshall & Swift cost index for construction of "good" quality" (Congressional Record of October 8, 1998, S 11840). The rule specifies that HUD will be using these two indices to calculate the TDC limits. HUD expects to rely on these indices but will notify the public in advance through **Federal Register** notice if it changes the cost indices to other such indices that reflect comparable housing construction quality.

Comment: HUD has not included in its policy a provision for acquisition of units for public housing, with or without rehabilitation. The commenter asked how HUD would fit these activities into its TDC policy, as proposed.

HUD Response: Acquisition of units of public housing is a development method that is covered under this rule (*see* § 941.102) and, accordingly, is subject to the standard TDC limits set forth in this rule. However, as noted earlier, the Department has decided not to extend the Housing Construction Cost limit to such units, since these units have already been developed at the time of acquisition.

Comment: HUD states it will be able to better understand and control the actual costs of the development if the TDC is divided into the Housing Construction Cost limit (HCC) and the Community Renewal Cost (CRC) limit. The commenter wrote that this suggests that HUD will be performing analysis of construction costs in some manner. The commenter further suggested that these studies be made available to housing agencies and other interested parties to ensure that the TDC policy remains a fair and equitable methodology, and that there is an opportunity for input into HUD's decision making.

HUD Response: HUD believes that it will have better control of the actual costs of development by dividing the TDC into two components, i.e., the HCC and the CRC, and that by doing so housing construction costs can be monitored more closely. There is less chance of inflated construction costs if there is a check to limit the construction costs to the average quality of construction. HUD will be able to detect any cost inflation due to extraordinary structure design or amenities. HUD does not plan to do any analysis at this time but if it decides to do so at a later date the results will be made available to PHAs and other interested parties.

Comment: (a) A workable TDC formula must be comprehensive, realistic, and flexible. The TDC must also be constructed to reflect the real context and environment in which capital construction and development occurs. (b) HUD's rule must incorporate the means to respond to the inherent differences and fluctuations that impact construction and development costs. The commenter wrote that in order to accommodate the wide spectrum of activities covered by the rule, the formula has to account for the full range of cost factors that are intrinsic to such activities, whether carried out by PHAs or private development entities. Another commenter wrote that the fluctuations should be considered given the breadth of the rule in terms of the activities covered and the various construction markets it covers.

HUD Response: The TDC limits are developed in accordance with the statute. The statute mandates that HUD use a construction cost guideline based on the average of at least two nationally recognized residential construction cost indices for publicly bid construction of good and sound quality. Then, this construction cost guideline (which already takes into account local market and other adjustment factors) is multiplied by a factor of 1.6 or 1.75 for elevator and non-elevator structures, respectively, to establish the TDC limit. HUD has established 403 market areas nationwide for purposes of calculating the TDC limits. The use of multiple market areas ensures that local market, environment and other adjustment factors are reflected in the TDC limits for the particular area in which the units are to be constructed.

Comment: The TDC calculation must be formulated in a manner that permits PHAs to be fairly compared to other affordable housing producers. The commenter wrote that this factor has been increasingly important, as the criticism of PHA housing costs have escalated over the past several years.

HUD Response: The TDC limit is required by statute to be based on "not less than two nationally recognized residential construction cost indices, for publicly bid construction of a good and sound quality". HUD will use the R. S. Means cost index for construction of "average" quality and the Marshall & Swift cost index for construction of "good" quality to calculate the construction cost guideline. (HUD has the discretion to change the cost indices to other such indices that reflect comparable housing construction quality through **Federal Register** notice.) These indices will permit PHAs to be fairly compared to other affordable housing producers.

Comment: The inclusion of planning costs in TDC is not appropriate. The commenter wrote that generally, owners do not include such predevelopment costs in their development costs pro formas. The commenter further noted that if the intent is to manage the cost of planning activities, which in some cases apparently have become exorbitant, then HUD should address this matter more directly.

HUD Response: The Department disagrees with this comment, since it is inconsistent with the statutory definition of "development" in section 3(c)(1) of the 1937 Act, which expressly includes "* * * all undertakings necessary for planning * * * [the public housing] project." In this final rule, such costs are covered as part of the Community Renewal Cost subcategory. Community Renewal Costs represent the difference between the Housing Construction Cost limit and the TDC limit.

Comment: (a) The TDC formula does not take into consideration several significant and essential costs of capital improvement and/or redevelopment projects. (b) Dividing the TDC into "housing construction costs" and "community renewal costs" would restrict the ability to do development with HUD funding. The commenter wrote that the discussion of the elements included in "housing construction" or "community renewal" costs include design fees, accounting and legal fees, financing fees, or marketing/lease-up costs. Additionally, absent from the list of costs is the reserve generally required due to the appropriation risk of the public housing operating subsidy. Another commenter wrote that its experience has been that the full TDC has not been adequate to cover all of development costs. If only a fraction of the TDC can be used in the future, then new development may not be possible.

HUD Response: The TDC limit is a statutory cap on the amount of public housing capital assistance (as defined in this rule) that can be spent on identified development costs related to a public housing project. It is not intended to address operating costs, reserves, or other line items relating to the management phase of the project. The one exception to this relates to the funding of initial operating deficits incurred while the project is still in the development phase. These costs are considered to be a development cost and, as a result, are subject to the TDC limit (under the CRC subcategory). However, there is no limit on funds such as CDBG, HOME, low-income tax credits, private donations, and private financing to cover project costs that exceed the housing cost cap or the maximum TDC limit, or to fund costs related to the management phase of the project, *e.g.*, funding of operating reserves.

Comment: The language permitting waivers should not be deleted. The commenter wrote that HUD's failure to acknowledge that waivers may be necessary to accommodate the varying facts and circumstances of PHAs is extremely shortsighted.

HUD Response: HUD disagrees with the commenter. HUD will not grant any exceptions to the TDC limits for public housing and HOPE VI funds awarded in FY 1997 and afterwards. By allowing exceptions or waivers, HUD will not

succeed in its mission of providing affordable housing to the maximum number of low-income families. A PHA can (under the circumstances stated in the rule) use non-public housing sources of funding to cover costs that exceed the TDC limit. Further, a PHA will be eligible to request a TDC exception for Public Housing and HOPE VI funds awarded to HOPE VI grantees in Fiscal Year 1996 and prior years. However, no exceptions to the HCC limits within TDC will be granted.

Comment: In the proposed rule, HUD is decreasing the already-insufficient amount of public housing funding that can be used for construction. The commenter wrote that HUD has arbitrarily divided the TDC amount into "housing construction costs" allocation and the "community renewal" allocation. The costs for housing construction cannot exceed the average R.S. Means and Marshall & Swift estimated construction costs. The commenter noted that the community renewal allocation could not be used for construction.

HUD Response: HUD disagrees with the commenter that it has arbitrarily divided the TDC limit into a HCC subcategory and a CRC subcategory. On the contrary, the Housing Construction Cost subcategory limit is derived by multiplying the construction cost guideline (which itself is determined by averaging two nationally recognized residential construction cost indices, as required by section 6(b)(2) of the 1937 Act) by the number of public housing units for each bedroom size and structure type in the project and adding the resulting figures.

The TDC limit is established by multiplying the Housing Construction Cost limit by the applicable multiplier (*i.e.*, 1.6 or 1.75 depending on whether the project is an elevator or non-elevator structure), as mandated by the statute. As previously noted, the CRC limit represents the difference between the HCC limit and the TDC limit. Community renewal allocations can be used for the construction of maintenance or management facilities for the project.

Comment: The proposed rule removes what little flexibility was in the TDC process, by revoking HUD's authority to approve costs 5–10% above the TDC. The commenter noted that under the old regulations HUD allowed trending to adjust the TDC construction indices to compensate for inflation and allowed the TDCs to be exceeded by 5% at the field office level or exceed by up to 10% at the Secretary's level. The commenter further noted that flexibility is needed to adjust TDCs for inflation between the time of TDC publication and the initial fund reservation and the actual start of construction, and to compensate for unforeseen and unavoidable extra costs.

HUD Response: HUD intends to transmit an updated schedule of unit TDC limits every year, thus there is no need for trending adjustments. A PHA is required to use the TDC limits in effect at the time of closing.

Comment: The proposed rule does not clearly address and may prevent future development through direct acquisition of existing homes. One commenter wrote that the "housing construction costs" allocation of the TDC is too low to allow the purchase of existing homes in the Twin Cities housing market. The commenter noted further that even the full TDC is very hard to work with in this market.

HUD Response: HUD agrees with the commenter that the HCC subcategory of the TDC limit should not be applicable to the acquisition of existing homes because items included in the sale of an existing home, like cost of land and other development costs, are included in the CRC subcategory limit. Therefore, HUD has amended the final rule at § 941.306(c)(3) to state that for acquisition with or without rehabilitation of existing homes, only the overall TDC is applicable and not the HCC cost limit.

Comment: The proposed rule would further concentrate low-income housing in impacted areas. The commenter wrote that the low funding levels provided by these TDC regulations would mean that the only vacant sites and existing homes that will be affordable for development would be in lower income census tracts.

HUD Response: HUD disagrees. Based on the Department's experience with the HOPE VI program and other public housing development activity, units have been constructed in mixed-income communities since it first revised the TDC policy in 1999 through a HUD Notice.

Comment: The Housing Construction Cost (HCC) subcategory of the TDC limit includes finish landscaping (trees, grass, fencing, walkways, etc.) in the per-unit cost equation; conversely, the two indices used to derive the HCC (RS Means and Marshall & Swift) exclude finish landscaping from the per unit cost equation. The commenter wrote that there should be categorizations of costs associated with finish landscaping as a Community Renewal Cost.

HUD Response: HUD disagrees with the commenter because national construction cost indices include landscaping around the structure. Additional landscaping is included under the Community Renewal Cost subcategory of the TDC limit.

Comment: The HCC subcategory of the TDC limit includes utilities from the street in the per-unit cost equation; conversely, the two indices used to derive the HCC (RS Means and Marshall & Swift) exclude utility tap fees from the per unit cost equation. The commenter wrote that there should be categorizations of the utility tap fees as a Community Renewal Cost or an extraordinary site cost.

HUD Response: HUD disagrees with the commenter because the Community Renewal Cost subcategory of the TDC limit includes the cost of bringing the utilities from the street to the site, which covers utility tap fees. Therefore, no separate categorization of this item is necessary.

Comment: The two indices used to derive the HCC (RS Means and Marshall & Swift) exclude the cost of on-site streets, driveways, and garages from the per-unit cost equation, yet many local jurisdictions require the provision of off-street parking. The commenter wrote that there should be categorization of any costs associated with the provision of jurisdictional mandated off-street parking as a Community Renewal Cost.

HUD Response: The Community Renewal Cost subcategory of the TDC limit includes site improvements that cover site streets, driveways, curb and gutters, off-street parking and landscaping. Therefore, there is no need for separate categorization of these items as suggested by the commenter.

Comment: The two indices used to derive the HCC (RS Means and Marshall & Swift) exclude any allowances for the extra cost associated with Americans with Disabilities Act (ADA) accessible and ADA adaptable units. The commenter suggested establishing an allowance for the added cost associated with ADA accessible and ADA adaptable units.

HUD Response: Generally, only five percent of public housing units must meet accessibility and adaptable unit standards. Costs to meet these requirements generally fall within the TDC limit. For this reason, the Department has not modified the rule in response to this comment.

Comment: The two indices used to derive the HCC (RS Means and Marshall & Swift) exclude any allowances for energy efficient windows, insulating building materials, and energy efficient mechanical systems. Additionally, the Marshall and Swift moderate climate energy package includes a "weighting of single and double glazing." The use of single glazing and less efficient mechanical systems is in direct opposition to Energy Conservation Measures outlined in 24 CFR 965.301. The commenter suggested including an allowance of between 5–10% of the HCC for the installation of energy efficient glazing, insulating building materials, and high-efficiency mechanical systems.

HUD Response: HUD disagrees with the commenter because the national construction cost indices consider the National Building Codes, Fire and Safety codes, and Energy Codes in their construction cost determination. For this reason, the Department has not modified the rule in response to this comment.

V. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the proposed rule stage. That Finding remains applicable and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule would not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this final rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows:

(1) *A Substantial Number of Small Entities Will Not be Affected.* The final rule is exclusively concerned with public housing agencies that receive capital assistance provided by HUD for the development of public housing. The final rule would update HUD's public housing development regulations at 24 CFR part 941 to incorporate the statutory amendments made by section 520 of the QHWRA. Under the definition of "small governmental jurisdiction" in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few public housing agencies that are part of a political jurisdiction with a population of fewer than 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial.

(2) *No Significant Economic Impact.* The final regulatory amendments will not change the amount of capital funding available to public housing agencies for the development of public housing. Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. This final rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

List of Subjects in 24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR part 941 as follows:

PART 941—PUBLIC HOUSING DEVELOPMENT

1. The authority citation for 24 CFR part 941 continues to read as follows:

Authority: 42 U.S.C. 1437b, 1437c, 1437g, and 3535(d).

2. Revise § 941.102(b)(3) to read as follows:

§ 941.102 Development methods and funding.

* * * * *

(b) * * *

(3) Funds available to it from any other source, consistent with § 941.306(e), or as may be otherwise approved by HUD.

* * * * *

3. In § 941.103, add, in alphabetical order, definitions of the terms *"Additional Project Costs (APC)"*, *"Community Renewal Cost (CRC)"*, *"Housing Construction Cost (HCC)"*, and *"Public housing capital assistance"* and revise the definition of *"Total development cost (TDC)"* to read as follows:

§ 941.103 Definitions.

* * * * *

Additional Project Costs (APC) means the sum of the following HUD-approved costs related to the development of a public housing project, which costs are not subject to the Total Development Cost limit but are included in the maximum project cost, as described in § 941.306:

(1) Demolition of, or remediation of environmental hazards associated with, public housing units that will not be replaced on the site; and

(2) Extraordinary site costs that have been verified by an independent registered engineer (*e.g.*, removal of underground utility systems, and replacement of off-site underground utility systems, extensive rock and/or soil removal and replacement, and amelioration of unusual site conditions such as unusual slopes, terraces, water catchments, lakes, etc.)

* * * * *

Community Renewal Cost (CRC) means the sum of the following HUD-approved costs related to the development of a public housing project: planning (including proposal preparation), administration, site acquisition, relocation, demolition of, and site remediation of environmental hazards associated with, public housing units that will be replaced on the project site, interest and carrying charges, off-site facilities, community buildings and non-dwelling facilities, contingency allowance, insurance premiums, any

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initial operating deficit, on-site streets, on-site utilities, and other costs necessary to develop the project that are not covered under APC or Housing Construction Cost.

* * * * *

Housing Construction Cost (HCC) means the sum of the following HUD-approved costs related to the development of a public housing project: dwelling unit hard costs (including construction and equipment); builder's overhead and profit; the cost of extending utilities from the street to the public housing project; finish landscaping; and the payment of Davis-Bacon wage rates.

* * * * *

Public housing capital assistance. means assistance provided by HUD under the Act or the HOPE VI program in connection with the development of public housing under this part, including: Capital Fund assistance provided under section 9(d) of the Act, public housing development assistance provided under section 5 of the Act, Operating Fund assistance used for capital purposes under section 9(g)(1) or (g)(2) of the Act, and HOPE VI grant assistance.

* * * * *

Total Development Cost (TDC) limit. The maximum amount of public housing capital assistance that can be used to pay for Housing Construction Costs and Community Renewal Costs in connection with the development of a public housing project, as determined under § 941.306(b)(2). The TDC limit does not apply to Additional Project Costs.

4. Revise § 941.306 to read as follows:

§ 941.306 Maximum project cost.

(a) *Calculation of maximum project cost*. The maximum project cost represents the total amount of public housing capital assistance used in connection with the development of a public housing project, and includes: (1) project costs that are subject to the TDC limit (*i.e.*, Housing Construction Costs and Community Renewal Costs); and (2) project costs that are not subject to the TDC limit (*i.e.*, Additional Project Costs). The total project cost to be funded with public housing capital assistance, as set forth in the proposal and as approved by HUD, becomes the maximum project cost stated in the ACC. Upon completion of the project, the actual project cost is determined based upon the amount of public housing capital assistance expended for the project, and this becomes the maximum project cost for purposes of the ACC.

(b) *TDC limit*. (1) Public housing capital assistance may not be used to pay for Housing Construction Costs and Community Renewal Costs in excess of the TDC limit, as determined under paragraph (b)(2) of this section. However, HOPE VI grantees will be eligible to request a TDC exception for public housing and HOPE VI funds awarded in Fiscal Year 1996 and prior years. No exceptions to HCC limits will be granted within the TDC limit.

(2) *Determination of TDC limit*. HUD will determine the TDC for a public housing project as follows:

(i) *Step 1: Unit construction cost guideline*. HUD will first determine the applicable "construction cost guideline" averaging the current construction costs as listed in two nationally recognized residential construction cost indices for publicly bid construction of a good and sound quality for specific bedroom sizes and structure types. The two indices HUD will use for this purpose are the R.S. Means cost index for construction of "average" quality and the Marshal & Swift cost index for construction of "good" quality. HUD has the discretion to change the cost indices to other such indices that reflect comparable housing construction quality through a notice published in the **Federal Register**.

(ii) *Step 2: Bedroom size and structure types*. The construction cost guideline is then multiplied by the number of units for each bedroom size and structure type.

(iii) *Step 3: Elevator and non-elevator type structures*. HUD will then multiply the resulting amounts from step 2 by 1.6 for elevator type structures and by 1.75 for non-elevator type structures.

(iv) *Step 4: TDC limit*. The TDC limit for a project is calculated by adding the resulting amounts from step 3 for all the public housing units in the project.

(3) *Costs not subject to the TDC limit*. Additional Project Costs are not subject to the TDC limit described in paragraph (b)(2) of this section.

(4) *Funds not subject to the TDC limit*. A PHA may use funding sources not subject to the TDC limit (*e.g.*, CDBG funds, HOME funds, low-income tax credits, private donations, private financing, etc.) to cover project costs that exceed the TDC limit or the Housing Construction Cost limit described in paragraph (c) of this section. Such funds, however, may not be used for items that would result in substantially increased operating, maintenance or replacement costs, and must meet the requirements of section 102 of the HUD Reform Act (42 U.S.C. 3545). These funds must be included in the project development cost budget and legally acceptable written commitments for such funds must be provided by the PHA for HUD approval.

(c) *Housing Construction Costs*. (1) *General*. A PHA may not use public housing capital assistance to pay for Housing Construction Costs in excess of the amount determined under paragraph (c)(2) of this section.

(2) *Determination of Housing Construction Cost limit*. HUD will determine the Housing Construction Cost limit as listed in at least two nationally recognized residential construction cost indices for publicly bid construction of a good and sound quality for specific bedroom sizes and structure types. The two indices HUD will use for this purpose are the R.S. Means cost index for construction of "average" quality and the Marshal & Swift cost index for construction of "good" quality. HUD has the discretion to change the cost indices to other such indices that reflect comparable housing construction quality through a notice published in the **Federal Register**. The resulting construction cost guideline is then multiplied by the number of public housing units in the project based upon bedroom size and structure type. The Housing Construction Cost limit for a project is calculated by adding the resulting amounts for all public housing units in the project.

(3) The Housing Construction Cost limit is not applicable to the acquisition of existing housing, whether or not such housing will be rehabilitated. The Total Development Cost limit is applicable to such acquisition.

(d) *Community Renewal Costs*. Public housing capital assistance may be used to pay for Community Renewal Costs in an amount equivalent to the difference between the Housing Construction Costs paid for with public housing capital assistance and the TDC limit.

(e) *Rehabilitation of existing public housing projects*. The HCC limit is not applicable and the TDC limit for modernization of existing public housing is 90% of the TDC limit as determined under § 941.306(b)(2). This limitation does not apply to the rehabilitation of any property acquired pursuant to § 941.102.

Dated: December 3, 2002.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 02–31080 Filed 12–9–02; 8:45 am]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

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H.R. 727/P.L. 107–319
To amend the Consumer Product Safety Act to provide that low-speed electric bicycles are consumer products subject to such Act. (Dec. 4, 2002; 116 Stat. 2776)

H.R. 2595/P.L. 107–320
To direct the Secretary of the Army to convey a parcel of land to Chatham County, Georgia. (Dec. 4, 2002; 116 Stat. 2778)

H.R. 5469/P.L. 107–321
Small Webcaster Settlement Act of 2002 (Dec. 4, 2002; 116 Stat. 2780)

S. 1010/P.L. 107–322
To extend the deadline for commencement of construction of a hydroelectric project in the State of North Carolina. (Dec. 4, 2002; 116 Stat. 2786)

S. 1226/P.L. 107–323
POW/MIA Memorial Flag Act of 2002 (Dec. 4, 2002; 116 Stat. 2787)

S. 1907/P.L. 107–324
To direct the Secretary of the Interior to convey certain land to the city of Haines, Oregon. (Dec. 4, 2002; 116 Stat. 2789)

S. 1946/P.L. 107–325
Old Spanish Trail Recognition Act of 2002 (Dec. 4, 2002; 116 Stat. 2790)

S. 2239/P.L. 107–326
FHA Downpayment Simplification Act of 2002 (Dec. 4, 2002; 116 Stat. 2792)

S. 2712/P.L. 107–327
Afghanistan Freedom Support Act of 2002 (Dec. 4, 2002; 116 Stat. 2797)

S.J. Res. 53/P.L. 107–328

Relative to the convening of the first session of the One Hundred Eighth Congress. (Dec. 4, 2002; 116 Stat. 2814)

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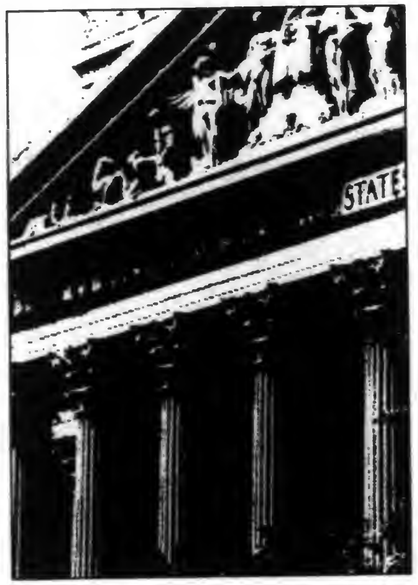
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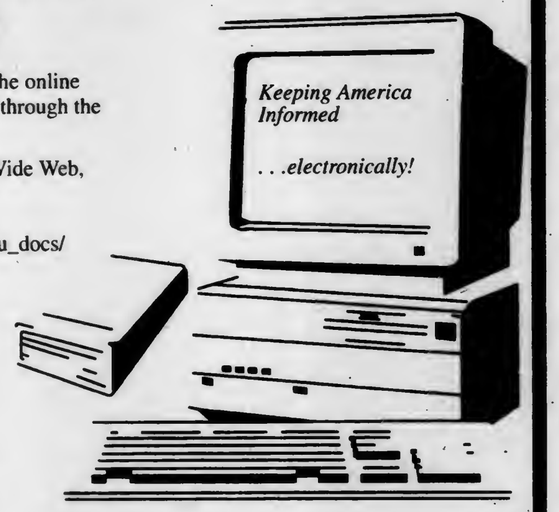
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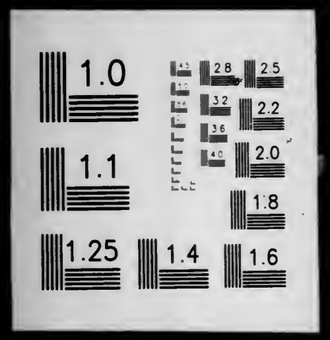
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Wednesday, December 11, 2002

Presidential Documents

Title 3—

The President

Proclamation 7633 of December 6, 2002

National Pearl Harbor Remembrance Day, 2002

By the President of the United States of America

A Proclamation

Early on a quiet Sunday morning on December 7, 1941, aircraft of the Empire of Japan, without provocation or warning, attacked the United States forces at Pearl Harbor, Hawaii. More than 2,400 Americans died that day and another 1,100 were wounded, in what was the start of a long and terrible war against the forces of fascism, tyranny, and imperialism.

Out of that surprise attack grew a steadfast resolve to defend the freedoms on which our Nation was founded. From the ruins of Pearl Harbor, America built the strongest Navy in the world and emerged as a superpower to lead a coalition of allies to victory over evil in World War II. Our Soldiers, Sailors, Airmen, and Marines fought and won many crucial battles, defeating history's most powerful tyranny. Our Nation must always remember the heroism, dedication, and sacrifice of those who served. Their courage in battle continues to inspire us today as our Armed Forces fight against terrorism in Afghanistan and around the world.

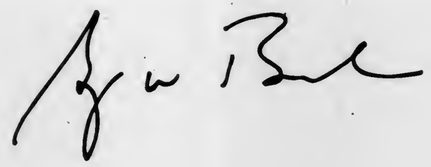
The men and women who fought for America at Pearl Harbor not only protected our Nation, but also helped to shape its character. Nine Americans who fell had Navy ships named after them, and 15 men earned the Medal of Honor for bravery, with 10 of them awarded the Medal posthumously. As we remember the lost on what President Franklin Delano Roosevelt called "a date which will live in infamy," I encourage our veterans to share their experiences with our youth so that new generations can learn about this important moment in our history.

Today, we salute our veterans of Pearl Harbor and World War II, whose sacrifices saved democracy during a dark hour. In their memory, a new generation of our Armed Forces goes forward against new enemies in a new era. Once again, we pledge to defend freedom, secure our homeland, and advance peace around the world. Americans have been tested before, and our Nation will triumph again.

The Congress, by Public Law 103–308, as amended, has designated December 7, 2002, as "National Pearl Harbor Remembrance Day."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim December 7, 2002, as National Pearl Harbor Remembrance Day. I encourage all Americans to observe this solemn occasion with appropriate ceremonies and activities. I urge all Federal agencies, interested organizations, groups, and individuals to fly the flag of the United States at half-staff this and every December 7 in honor of those who died as a result of their service at Pearl Harbor.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of December, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 02–31380
Filed 12–10–02; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 67, No. 238
Wednesday, December 11, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

LOCAL TELEVISION LOAN GUARANTEE BOARD

7 CFR Part 2200

Local Television Loan Guarantee Board; Procedural Rules

AGENCY: Local Television Loan Guarantee Board.

ACTION: Final rule.

SUMMARY: On December 21, 2000, the President signed into law Public Law 106–553, the Federal Funding Act for Fiscal Year 2001. Title X of Pub. L. 106–553, entitled the Launching our Communities' Access to Local Television Act of 2000 ("LOCAL TV Act" or "Act") established the LOCAL Television Loan Guarantee Board ("Board"). The Board is authorized to guarantee loans to facilitate access, on a technologically neutral basis, to signals of local television stations for households located in nonserved or underserved areas. By this action, the Board is publishing its rules of procedure.

EFFECTIVE DATE: December 11, 2002.

FOR FURTHER INFORMATION CONTACT: Jacqueline G. Rosier, Secretary, LOCAL Television Loan Guarantee Board, 1400 Independence Avenue, SW, Stop 1541, Room 2919–S, Washington, DC 20250–1541. Telephone: 202–720–0530; FAX: 202–720–2734; E-Mail: *jrosier@rus.usda.gov.*

SUPPLEMENTARY INFORMATION: On December 21, 2000, the President signed into law Public Law 106–553, the Federal Funding Act for Fiscal Year 2001. Title X of Pub. L. 106–553, the LOCAL TV Act, established the Board. The Board is authorized to guarantee loans to facilitate access, on a technologically neutral basis, to signals of local television stations for households located in nonserved or underserved areas. The Board is comprised of the Chairman of the Board of the Federal Reserve System, and the Secretaries of Commerce, Agriculture, and the Treasury, or their designees. The Act states that an individual may be designated a member of the Board only if the individual is an officer of the United States pursuant to an appointment by the President, by and with the advice and consent of the Senate. Individuals have been designated as Board members for each of the agencies represented on the Board. The LOCAL TV Act does not, however, designate a chair of the Board.

The regulations promulgated by this action establish procedural rules of the Board. The Board adopted these regulations at its first meeting.

These procedural rules have several key components. Because the Act does not designate a chair, these procedures require that, at the first meeting of the Board, a chair be named. This has occurred, with the designee of the Department of the Treasury unanimously named as chair. The procedural rules require that all decisions and determinations of the Board be made by an affirmative vote of not less than three members of the Board. The procedural rules require the Board to appoint a Secretary, who will be responsible for sending notice of all meetings, preparing minutes of all meetings, maintaining a complete record of all votes and actions taken by the Board, and publishing documents in the **Federal Register** upon approval of the Board. Finally, these procedural rules make clear that all communication with the Board by any party or parties interested in any matter pending before the Board shall be conducted through staff. Moreover, these rules provide that any communication between such a parties and a member of the Board will be a matter of public record.

This rule relates to agency organization, procedure, and practices, and therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required. In addition, because no notice of proposed rule making is required pursuant to 5 U.S.C. 553, or any other law, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Further, it has been determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866.

List of Subjects in 7 CFR Part 2200

Loan programs—Communications, Rural areas, Telecommunications, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, chapter XX of title 7 of the Code of Federal Regulations is established to read as follows:

CHAPTER XX—LOCAL TELEVISION LOAN GUARANTEE BOARD

PART 2200—LOCAL TELEVISION LOAN GUARANTEE BOARD PROCEDURES

Sec.

2200.1 Definitions.
2200.2 Purpose and scope.
2200.3 Composition of the Board.
2200.4 Authorities of the Board.
2200.5 Offices.
2200.6 Meetings and actions of the Board.
2200.7 Officer and staff responsibilities.
2200.8 Ex parte communications.
2200.9 Amendments.
2200.10 [Reserved]

Authority: 47 U.S.C. 1101 *et seq.*; Pub. L. 106–553; Pub. L.107–171.

§ 2200.1 Definitions.

(a) *Act* means the Launching Our Communities' Access to Local Television Act of 2000, Title X of Public Law 106–553, 114 Stat. 2762A–128.

(b) *Administrator* means the Administrator of the Rural Utilities Service of the United States Department of Agriculture.

(c) *Board* means the Launching Our Communities' Access to Local (LOCAL) Television Loan Guarantee Board.

§ 2200.2 Purpose and scope.

This part is issued by the Board pursuant to Section 1004 of the Act. This part describes the Board's organizational structure and the means and rules by which the Board takes actions.

§ 2200.3 Composition of the Board.

The Board consists of the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Secretary of Agriculture, and the Secretary of Commerce, or their respective designees. An individual may be designated a member of the Board only if the individual is an officer of the United States pursuant to an appointment by the President, by and with the advice and consent of the Senate.

§ 2200.4 Authority of the Board.

The Board is authorized to guarantee loans in accordance with the provisions of the Act and procedures, rules, and regulations established by the Board; to make the determinations authorized by the Act; and to take such other actions as are necessary to carry out its functions in accordance with the Act.

§ 2200.5 Offices.

The principal offices of the Board are at the U.S. Department of Agriculture, Rural Utilities Service, Room 2919–S, Stop 1541; 1400 Independence Ave., SW.; Washington, DC 20256–1590.

§ 2200.6 Meetings and actions of the Board.

(a) *Chair.* At its initial meeting, the Board shall select a Chair by an affirmative vote of not less than three members of the Board.

(b) *Place and frequency.* The Board meets, on the call of the Chair, in order to consider matters requiring action by the Board. Time and place for any such meeting shall be determined by the members of the Board..

(c) *Quorum and voting.* Three voting members of the Board constitute a quorum for the transaction of business. All decisions and determinations of the Board shall be made by an affirmative vote of not less than three members of the Board. All votes on determinations of the Board required by the Act shall be recorded in the minutes. A Board member may request that any vote be recorded according to individual Board members.

(d) *Agenda of meetings.* To the extent practicable, an agenda for each meeting shall be distributed to members of the Board at least two days in advance of the date of the meeting, together with copies of materials relevant to the agenda items.

(e) *Minutes.* The Secretary shall keep minutes of each Board meeting and of action taken without a meeting, a draft of which is to be distributed to each member of the Board as soon as practicable after each meeting or action. To the extent practicable, the minutes of a Board meeting shall be corrected and approved at the next meeting of the Board.

(f) *Use of conference call communications equipment.* Any member may participate in a meeting of the Board through the use of conference call, telephone or similar communications equipment, by means of which all persons participating in the meeting can simultaneously speak to and hear each other. Any member so participating in a meeting shall be deemed present for all purposes. Actions taken by the Board at meetings conducted through the use of such equipment, including the votes of each member, shall be recorded in the usual manner in the minutes of the meetings of the Board.

(g) *Actions between meetings.* When, in the judgment of the Chair, circumstances occur making it desirable for the Board to consider action when it is not feasible to call a meeting, the relevant information and recommendations for action may be transmitted to the members by the Secretary and the voting members may communicate their votes to the Chair in writing (including an action signed in counterpart by each Board member), electronically, or orally (including telephone communication). Any action taken under this paragraph has the same effect as an action taken at a meeting. Any such action shall be recorded in the minutes.

(h) *Officers and staff of the Board.* The Board shall appoint a Secretary and may appoint such other officers and staff as it deems appropriate, including an Executive Director and a Legal Counsel. An individual may hold more than one officer or staff position.

(i) *Delegations of authority.* The Board may delegate authority, subject to such terms and conditions as the Board deems appropriate, to officers and staff to take certain actions not required by the Act to be taken by the Board. All delegations shall be made pursuant to resolutions of the Board and recorded in writing, whether in the minutes of a meeting or otherwise. Any action taken pursuant to such delegated authority has the effect of an action taken by the Board.

§ 2200.7 Officer and staff responsibilities.

(a) *Executive Director.* The Executive Director advises and assists the Board in carrying out its responsibilities under the Act, provides general direction with respect to the administration of the Board's actions, directs the activities of the staff, and performs such other duties as the Board may require.

(b) *Legal Counsel.* The Legal Counsel provides legal advice relating to the responsibilities of the Board and performs such other duties as the Board may require.

(c) *Secretary.* The Secretary sends notice of all meetings, prepares minutes of all meetings, maintains a complete record of all votes and actions taken by the Board, has custody of all records of the Board, has authority to publish documents in the **Federal Register** upon approval of the Board and performs such other duties as the Board may require.

(d) *Other.* The responsibilities of any other officer or staff shall be defined by the Board at the time of appointment of such position.

§ 2200.8 Ex parte communications.

Communication with the Board shall be conducted through the staff of the Board. Oral or written communication, not on the public record, between the Board, or any member of the Board, and any party or parties interested in any matter pending before the Board concerning the substance of that matter is prohibited.

§ 2200.9 Amendments.

The Board's rules may be adopted or amended, or new rules may be adopted, only by the affirmative vote of not less than three members of the Board. Authority to adopt or amend these rules may not be delegated.

§ 2200.10 [Reserved]

Dated: October 31, 2002.

Jacqueline Rosier,

Secretary, LOCAL Television Loan Guarantee Board.

[FR Doc. 02–31055 Filed 12–10–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–33–AD; Amendment 39–12978; AD 2002–25–03]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Limited BN–2A and BN2A Mk. III Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 97–14–01, which currently applies to all Pilatus Britten-Norman Limited (Pilatus Britten-Norman) BN–2A and BN2A Mk. III series airplanes. AD 97–14–01 requires repetitively inspecting the left-hand rudder bar assembly for cracks, measuring the slider tube unit wall thickness, and modifying the rudder bar assembly by installing a slider tube unit of improved design as a terminating action for the repetitive inspections. AD 97–14–01 resulted from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. Reports of cracks being found on the right-hand rudder bar assembly and the inadvertent omission of requiring inspection of the rudder pedal beams prompted this action. This AD retains the requirements of AD 97–14–01 and requires inspections of the right-hand rudder bar assembly and each rudder pedal beam. The actions specified by this AD are intended to prevent failure of the pilot's and co-pilot's rudder bar assemblies, which could result in loss of control of the airplane during landing operations.

DATES: This AD becomes effective on January 31, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 31, 2003.

ADDRESSES: You may get the service information referenced in this AD from B–N Group Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–33–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA Taken Any Action to This Point?

Reports of failure of the pilot's rudder bar caused FAA to issue AD 97–14–01 on all Pilatus Britten-Norman BN–2A and BN2A Mk. III series airplanes. Fractures of the central pillar/slider tube adjacent to the welded transverse lugs caused the pilot's rudder bar to fail. AD 97–14–01, Amendment 39–10058 (62 FR 35670, July 2, 1997), currently requires the following:

—Repetitively inspecting the left-hand rudder bar assembly for cracks;
—Measuring the slider tube unit wall thickness; and
—Modifying the rudder bar assembly by installing a slider tube unit of improved design as a terminating action for the repetitive inspections.

What Events Have Happened Since AD 97–14–01 To Cause This AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA of the need to change AD 97–14–01. The CAA reports that fractures in the central pillar/slider tube adjacent to the welded transverse lugs have been found on the co-pilot's (or dual) rudder bar assembly. These reports prompted a need to require inspections of the right-hand rudder bar assembly in addition to the left-hand rudder bar assembly. We also realized we inadvertently omitted from AD 97–14–01 repetitive inspections of the rudder pedal beam as specified in Britten-Norman Service Bulletin No. BN–2/SB. 56, Issue 2, dated February 13, 1978.

What Is the Potential Impact if FAA Took No Action?

This condition, if not corrected, could result in failure of the pilot's and co-pilot's rudder bar assemblies. Such failure could result in loss of control of the airplane during landing operations.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Pilatus Britten-Norman BN–2A and BN2A Mk. III series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 18, 2002 (67 FR 58734). The NPRM proposed to supersede AD 97–14–01 with a new AD that would retain the actions of AD 97–14–01 and require inspections of the right-hand (co-pilot's) rudder bar assembly and the rudder pedal beams.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and
—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 113 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
6 workhours × $60 = $360	No parts required	$360	$360 × 113 = $40,680.

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
10 workhours × $60 = $600	$1,300	$600 + $1,300 = $1,900.

Compliance Time of This AD

What Will Be the Compliance Time of This AD?

The compliance time of this AD is based on number of landings rather than hours time-in-service (TIS).

Why Is the Compliance Time Presented in Landings Instead of Hours Time-in-Service?

The reason for this type of compliance is that the area that is showing fatigue is the pilot's and co-pilot's rudder bar assemblies and pillar/slider tube unit. This area of the airplane is used during the landing operation. Furthermore, the stress and fatigue is greater in the thinner gauged metal slider tube unit upon landing. We will use the number of landings as the compliance time for this AD.

Since airplane operators are not required to keep track of landings, we will provide a method of calculating hours TIS into landings.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 97–14–01, Amendment 39–10058 (62 FR 35670, July 2, 1997), and by adding a new AD to read as follows:

2002–25–03 Pilatus Britten-Norman Limited: Amendment 39–12978; Docket No. 2002–CE–33–AD; Supersedes AD 97–14–01, Amendment 39–10058.

(a) *What airplanes are affected by this AD?* This AD affects the Models BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the pilot's and co-pilot's rudder bar assemblies, which could result in loss of control of the airplane during landing operations.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

(1) *Right-hand and left-hand slider tube and vertical pillar of the rudder bar.* Within 500 landings after the last inspection required by AD 97–14–01 or the next 100 landings after January 31, 2003 (the effective date of this AD), whichever occurs later, inspect (visually and using a dye penetrant method) the left-hand and right-hand slider tube and vertical pillar of the rudder bar unit for cracks and measure the slider tube wall to determine thickness. Accomplish this inspection and follow-up actions below in accordance with the instructions specified in B–N Group Ltd. Service Bulletin Number SB 111, Issue 2, dated April 1, 2002 (Part of this accomplishment is the incorporation of Britten-Norman Service Bulletin No. BN–2/SB. 56, Issue 2, dated February 13, 1978; and Britten-Norman Service Bulletin No. BN–2/SB. 111, Issue 1, dated October 25, 1977):

If	Then	When
(i) No cracks are found during the inspection required in paragraph (d)(1) of this AD and the slider tube wall thickness is 0.056-inch (17 s.w.g.):	Repetitively inspect the left-hand and right-hand slider tube and vertical pillar of the rudder bar unit and install Modification NB/M/948, part number (P/N) NB–45–A1–2975 or FAA-approved equivalent part number, on the left-hand and right-hand slider tube and vertical pillar of the rudder bar unit. When this modification is incorporated, the repetitive inspections in that area may be terminated.	Repetitively inspect at intervals not to exceed 500 landings after the initial inspection required in paragraph (d)(1) of this AD. Incorporate the modification upon the accumulation of 5,000 landings after August 18, 1997 (the effective date of AD 97–14–01) or within the next 500 landings after January 31, 2003 (the effective date of this AD), whichever occurs later (unless any crack(s) is/are found during an inspection).
(ii) No cracks are found during the inspection required in paragraph (d)(1) of this AD and the slider tube wall thickness is 0.036-inch (20 s.w.g.):	Repetitively inspect the left-hand and right-hand slider tube and vertical pillar paragraph of the rudder bar unit and install Modification NB/M/948, part number (P/N) NB–45–A1–2975 or FAA-approved equivalent part number, on the left-hand and right-hand slider tube and vertical pillar of the rudder bar unit. When this modification is incorporated, the repetitive inspections in that area may be terminated.	Repetitively inspect at intervals not to exceed 250 landings after the initial inspection. Incorporate the modification upon the accumulation of 2,500 landings after August 18, 1997 (the effective date of AD 97–14–01) or within the next 250 landings after January 31, 2003 (the effective date of this AD), whichever occurs later (unless any crack(s) is/are found during an inspection).

If	Then	When
(iii) If any crack(s) is/are found during any inspection on the left-hand or right-hand slider tube and vertical pillar of the rudder bar unit:	Install Modification NB/M/948, P/N NB–45–A1–2975 or FAA-approved equivalent part number, on the cracked slider tube and vertical pillar of the rudder bar unit. When this modification is incorporated, the repetitive inspections in that area may be terminated.	Prior to further flight after the inspection where the crack(s) is/are found.

(2) As of January 31, 2003 (the effective date of this AD), only install rudder bar assemblies that incorporate Modification NB/M/948.

(3) *Rudder pedal beams.* Accomplish the following on the rudder pedal beams:

Action	Compliance	Procedures
(i) Inspect (visually and using a dye penetrant inspection method) each rudder pedal beam for cracks and replace any cracked beam with a P/N NB–45–C–2153 (Post Mod No. BB/M/341) rudder pedal beam.	Inspect within the next 100 landings after January 31, 2003 (the effective date of this AD) and thereafter at intervals not to exceed 500 landings. Replace prior to further flight after the inspection where any crack(s) is/are found. Continue with repetitive inspection intervals.	In accordance with Britten-Norman Service Bulletin No. BN–2/SB. 56, Issue 2, dated February 13, 1978.
(ii) Only install P/N NB–45–C–2153 (Post Mod No. BB/M/341) rudder pedal beams.	As of January 31, 2003 (the effective date of this AD).	Not Applicable.

Note 1: If operators have not recorded the number of landings, the landings can be calculated by multiplying 3 landings per 1 hour TIS.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office.

(2) Alternative methods of compliance approved in accordance with AD 97–14–01, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with B–N Group Ltd. Service Bulletin Number SB 111, Issue 2, dated April 1, 2002; and Britten-Norman Service Bulletin No. BN–2/SB. 56, Issue 2, dated February 13, 1978. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from B–N Group Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 97–14–01, Amendment 39–10058.

Note 3: The subject of this AD is addressed in B–N Group Ltd. Service Bulletin Number SB 111, Issue 2, dated April 1, 2002. This service bulletin is classified as mandatory by the United Kingdom Civil Aviation Authority (CAA).

(j) *When does this amendment become effective?* This amendment becomes effective on January 31, 2003.

Issued in Kansas City, Missouri, on December 2, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–31128 Filed 12–10–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–50–AD; Amendment 39–12975; AD 2002–22–51]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model MD900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2002–22–51, which was sent previously to all known U.S. owners and operators of MD Helicopters, Inc. (MDHI) Model MD900 helicopters by individual letters. This AD requires, before further flight, certain procedures and inspections of the main rotor support static mast (mast) and the mast threads for any crack or pitting. If any crack or pitting is found, this AD requires removing the mast from service. The actions specified by this AD are intended to detect any crack or pitting in the mast that could result in failure of the mast, separation of the main rotor, and subsequent loss of control of the helicopter.

DATES: Effective December 26, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2002–22–51, issued on October 23, 2002, which

contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before February 10, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–50–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5322, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On October 23, 2002, the FAA issued Emergency AD 2002–22–51 for the specified MDHI model helicopters, which requires, before further flight, removing the main rotor drive shaft to inspect the mast, removing the main rotor hub assembly to inspect the mast threads, and if a flaw is found in the mast threads, magnetic particle inspecting the mast threads for any crack or pitting. If any crack or pitting is found, the AD requires removing the mast from service. The cause of the cracking is under investigation, but preliminary analysis shows that lack of torque in the 12 bolts on the main rotor hub retention nut (nut) results in loss of preload in the mast. Without preload, the mast will incur alternating stresses that can lead to crack initiation. In the four reported cases, cracks were found in the mast less than 1 inch from the top. In at least one case, pitting was also found in this area. All of these cracks penetrated through the wall thickness. This condition, if not detected, can result in failure of the mast, separation of the main rotor, and subsequent loss of control of the helicopter.

The FAA has reviewed MDHI Service Bulletin No. SB900–089R1, dated October 22, 2002, which describes procedures for checking the torque in the 12 bolts of the nut, inspecting the mast for a crack, and removing the mast from service if necessary.

Since the unsafe condition described is likely to exist or develop on other specified helicopters of the same type design, the FAA issued Emergency AD 2002–22–51 to detect any crack or pitting that could result in failure of the mast, separation of the main rotor, and subsequent loss of control of the helicopter. The AD requires, before further flight, for MDHI Model MD900 helicopters, serial numbers 900–00008 through 900–00110, with mast, part number 900F2401021–101, removing the main rotor drive shaft and inspecting the mast for any crack or pitting. The AD also requires removing the main rotor hub assembly and inspecting the mast threads for a crack. If a flaw is found in the thread root area and you cannot determine if it is a crack, the AD also requires a magnetic particle inspection (wet fluorescent) for a crack. If any crack or pitting is found, the AD requires removing the mast from service.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, conducting the specified inspections of the mast and mast threads for any crack or pitting are required, and removing the mast from service if any crack or pitting is found in any of the inspections is required before further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on October 23, 2002, to all known U.S. owners and operators of MDHI Model MD900 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that this AD will affect 32 helicopters of U.S. registry, that it will take approximately 6 work hours to inspect and 8 work hours to replace a mast, and that the average labor rate is $60 per work hour. Required parts will cost approximately $45,000 per helicopter to replace a mast. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $193,440, assuming that the inspections are performed on each helicopter and that the mast is replaced on 4 helicopters.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–50–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–22–51 MD Helicopters, Inc.: Amendment 39–12975. Docket No. 2002–SW–50–AD.

Applicability: MD–900 helicopters, serial numbers 900–00008 through 900–00110, with a main rotor support static mast (mast), part number 900F2401021–101, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required before further flight, unless accomplished previously.

To detect cracks and pitting in the mast that could result in failure of the mast, separation of the main rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove the main rotor drive shaft.

Note 2: MD Helicopters, Inc. Service Bulletin No. SB900–089R1, dated October 22, 2002, pertains to the subject of this AD and has a Figure 1 depicting the inspection areas of the mast.

(b) Remove 1 inch of primer from the top inside diameter of the mast. During paint removal, wipe the area clean. Do not scrub or flush the area. Do not allow paint stripper to run down the inside or outside surfaces of the mast below the work area or enter into the transmission. Inspect the top 1 inch of the inside diameter of the mast for a crack or pitting using a bright light and a 10x or higher magnifying glass. If you find any crack or pitting, remove the mast from service.

(c) Remove the main rotor hub assembly. Clean the threads of the mast thoroughly with solvent. Inspect the mast threads for a crack using a bright light and a 20x or higher magnifying glass. Pay particular attention to the thread root area. If you see a flaw in the thread area and cannot determine if it is a crack, perform a magnetic particle inspection (wet fluorescent) per ASTM E 1444–01 using an electromagnetic yoke or coil. If you find any crack or pitting, remove the mast from service.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(e) Special flight permits will not be issued.

(f) This amendment becomes effective on December 26, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2002–22–51, issued October 23, 2002, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on November 25, 2002.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–31176 Filed 12–10–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–35–AD; Amendment 39–12953; AD 2002–23–09]

RIN 2120–AA64

Airworthiness Directives; MT–Propeller Entwicklung GMBH Models MTV–9–B–C and MTV–3–B–C Propellers; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2002–23–09 applicable to MT–Propeller Entwicklung GMBH Models MTV–9–B–C and MTV–3–B–C propellers that was published in the **Federal Register** on November 25, 2002 (67 FR 70532). The AD number listed in the amendatory language of the regulatory information is incorrect. This document corrects that number. In all other respects, the original document remains the same.

EFFECTIVE DATE: December 30, 2002.

FOR FURTHER INFORMATION CONTACT: Wayne E. Gaulzetti, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7156, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule AD, FR Doc, 02–29354 applicable to MT–Propeller Entwicklung GMBH Models MTV–9–B–C and MTV–3–B–C propellers that was published in the **Federal Register** on November 25, 2002 (67 FR 70532). The following correction is needed:

§ 39.13 [Corrected]

On page 70532, in the third column, in the Amendatory Language, in the fifth paragraph, remove the AD number "2002–2–23–09" and add in its place "2002–23–09".

Issued in Burlington, MA, on December 4, 2002.

Francis A. Favara,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–31174 Filed 12–10–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–13–AD; Amendment 39–12946; AD 2002–23–02]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF34–8C1 Turbofan Engines, Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2002–23–09 applicable to General Electric Company CF34–8C1 turbofan engines that was published in the **Federal Register** on November 20, 2002 (67 FR 70004). Table 801 was incorrectly numbered in three locations in the AD. This document corrects that number. In all other respects, the original document remains the same.

EFFECTIVE DATE: December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA

01803–5299; telephone (781) 238–7744; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule AD, FR Doc. 02–29355 applicable to General Electric Company CF34–8C1 turbofan engines was published in the **Federal Register** on November 20, 2002 (67 FR 70004). The following correction is needed:

§ 39.13 [Corrected]

On page 70005, in the first column, in the Comments Section, in the fourth paragraph, in the eighth and again in the thirteenth lines, "Table 805" is corrected to read "Table 801". Also on page 70005, in the third column in the ninth paragraph, "Table 805" is corrected to read "Table 801".

Dated: Issued in Burlington, MA, on December 4, 2002.

Francis A. Favara,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–31173 Filed 12–10–02; 8:45 am]

BILLING CODE 4910–13–P

BROADCASTING BOARD OF GOVERNORS

22 CFR Part 507

Sunshine Act Meetings

AGENCY: The Broadcasting Board of Governors.

ACTION: Final rule.

SUMMARY: This regulation establishes rules for implementing open meetings under the Sunshine Act for the Broadcasting Board of Governors (BBG or Agency).

EFFECTIVE DATE: December 11, 2002.

FOR FURTHER INFORMATION CONTACT: Carol M. Booker, Legal Counsel, at (202) 401–3736.

SUPPLEMENTARY INFORMATION: Public Law 103–236, the United States Broadcasting Act of 1994, created the BBG within the United States Information Agency (USIA). By law, the bipartisan board consisted of nine members—eight members who were appointed by the President, by and with the advice and consent of the Senate, and the USIA Director.

On October 21, 1998, President Clinton signed Pub. L. 105–277, the Omnibus Consolidated Emergency Supplemental Appropriations Act for Fiscal Year 1999. Contained as Division G of this legislation was the Foreign Affairs Reform and Restructuring Act of 1998, which reorganized the foreign affairs agencies of the U.S. Government. Under this reorganization, the Broadcasting Board of Governors became an independent Federal entity on October 1, 1999. Under the reorganization of the foreign affairs agencies, the responsibilities of the Board remained intact, and the membership of the Board remained the same, except that the USIA Director was replaced by the Secretary of State.

The BBG has responsibility for oversight of all United States sponsored, non-military broadcasting to foreign countries. The BBG oversees the operations of the International Broadcasting Bureau (IBB), which includes the worldwide broadcasting services of the Voice of America (VOA), WORLDNET, the Office of Cuba Broadcasting (OCB), Engineering and Technical Operations. The BBG also oversees two grantee organizations, Radio Free Europe/Radio Liberty (RFE/RL) and Radio Free Asia (RFA). The Board members also serve as the members of the Board of Directors of both RFE/RL and RFA.

The Board's authorities include, among others:

- To review and evaluate the mission and operation of, and assess the quality, effectiveness, and professional integrity of, all such activities within the broad foreign policy objectives of the United States;
- To make and supervise grants for broadcasting and related activities of RFE/RL and RFA;
- To review, evaluate and determine, at least annually, the addition or deletion of language services; and
- To allocate funds appropriated for international broadcasting activities among the various elements of the IBB and grantees, subject to reprogramming notification.

In total, the BBG broadcasting entities transmit more than 2,000 hours of weekly programming in 61 languages to more than 100 million weekly listeners worldwide.

The Sunshine Act (5 U.S.C. 552b) is a Federal Law that requires meetings of Federal Agencies to remain public and in most cases the time, place and subject matter of the meeting should be announced prior to its occurrence.

In accordance with 5 U.S.C. 605(b), the BBG certifies that the rules do not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered significant regulatory action within the meaning of section 3(f) of Executive Order 12866, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Dated: December 3, 2002.

Carol M. Booker,

Legal Counsel, Broadcasting Board of Governors.

List of Subjects in 22 CFR Part 507

Sunshine Act.

Accordingly, for the reasons set out in the preamble, 22 CFR Part 507 is added to read as follows:

PART 507—RULES FOR IMPLEMENTING OPEN MEETINGS UNDER THE SUNSHINE ACT FOR THE BROADCASTING BOARD OF GOVERNORS

Sec.

507.1 General policies.
507.2 Definitions.
507.3 Requirement for open meetings.
507.4 Grounds on which meetings may be closed.
507.5 Procedures for announcing meetings.
507.6 Procedures for closing meetings.
507.7 Reconsideration of opening or closing a meeting.
507.8 Recording keeping of closed meetings.

Authority: Pub. L. 93–129, 87 Stat. 956, 5 U.S.C. 552b.

§ 507.1 General policies.

The Broadcasting Board of Governors will provide the public with the fullest practical information regarding its decision making process while protecting the rights of individuals and its abilities to carry out its responsibilities.

§ 507.2 Definitions.

The following definitions apply:

(a) The term agency includes any establishment in the executive branch of the government headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency. The Broadcasting Board of Governors is a government agency headed by a nine-member board, eight of whom are appointed by the President with the advice and consent of the Senate, and the ninth being the Secretary of State. Therefore, the Broadcasting Board of Governors is an "agency" under these terms.

(b) The term meeting means the deliberation of this Board where such deliberations determine or result in the joint conduct or disposition of official Board business.

(c) The term member means an individual who belongs to the Board who has been appointed by the President and confirmed by the Senate or is the Secretary of State.

§ 507.3 Requirement for open meetings.

Members shall not jointly conduct or dispose of agency business other than in accordance with this part. Except as provided in § 507.4 every portion of every meeting of the agency shall be open to public observation.

§ 507.4 Grounds on which meetings may be closed.

The Board shall open every portion of every meeting of the agency for public observation except where the agency determines that such portion or portions of the meeting or the disclosure of such information is likely to:

(a) Disclose matters that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy, and

(2) In fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practice of the agency;

(c) Disclose matters specifically exempted from disclosure by statute: Provided, that such statute:

(1) Requires that the matters be withheld from the public in such manner as to leave no discretion on the issue, or

(2) Established practical criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(1) Interfere with enforcement proceedings,

(2) Deprive a person of a right to a fair trial on an impartial adjudication,

(3) Constitute an unwarranted invasion of personal privacy,

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential source,

(5) Disclose investigative techniques and procedures, or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. This shall not apply in any instance where the Board has already disclosed to the public the content or the nature of its proposed action, or where the Board is required by law to make such disclosures on its own initiative prior to taking final Board action on such proposal; or

(i) Specifically concern the Board's issuance of a subpoena, or the Board's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition by the Board of a particular case of formal agency adjudication, or otherwise involving a determination on the record after opportunity for a hearing.

§ 507.5 Procedures for announcing meetings.

(a) In the case of each meeting, the Board shall make public, at least one week before the meeting, the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the Board to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the Board determine by a recorded vote that such meeting must be called at an earlier date, in which case the Board shall make public announcement of the time, place, subject matter of such meeting and whether it is open or closed to the public, at the earliest practical time.

(b) Immediately following the public announcement, the Board will publish it in the **Federal Register**.

§ 507.6 Procedures for closing meetings.

(a) The closing of a meeting shall occur only when:

(1) A majority of the membership of the Board votes to take such action. A separate vote of the Board members shall be taken with respect to each Board meeting, a portion or portions of which are proposed to be closed to the public pursuant to § 507.4, or with respect to any information which is proposed to be withheld under § 507.4. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held not more than thirty days after the initial meeting in such series. The vote of each Board member participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interest may be directly affected by a portion of the meeting requests that the Board close such a portion to the public for any of the reasons referred to in § 507.4 (e), (f) or (g), the Board, upon request of any of its Board members, shall take a recorded vote, whether to close such portion of the meeting.

(b) Within one day of any vote taken, the Board shall make publicly available a written copy of such vote reflecting the vote of each member on the question and full written explanation of its action closing the entire or portion of the meeting together with a list of all persons expected to attend the meeting and their affiliation.

(c) The Board shall announce the time, place and subject matter of the meeting at least eight (8) days before the meeting.

(d) For every closed meeting, the Board's Legal Counsel shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Board.

§ 507.7 Reconsideration of opening or closing a meeting.

The time or place of a Board meeting may be changed following the public announcement only if the Board publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the agency to open or close a meeting, or a portion of a meeting, to the public, may be changed following the public announcement only if a majority of the Board members determines by a recorded vote that Board business so requires and that no earlier announcement of the change was possible, and the Board publicly announces such change and the vote of each member upon such change at the earliest practicable time.

§ 507.8 Recording keeping of closed meetings.

(a) The Board shall maintain an electronic recording of the proceedings of each meeting, or portion of a meeting, closed to the public.

(b) The Board, after review by the Chairman, shall make promptly

available to the public in a place easily accessible to the public, a complete transcript or electronic record of the discussion of any item on the agenda, or any item of testimony of any witness received at the Board meeting, except for such item or items of such discussion or testimony as the Board determines to contain information which may be withheld under § 507.4. Copies of such record, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication. The Board shall maintain a complete transcript or electronic copy of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Board proceeding with respect to which the meeting or portion was held, whichever occurs later.

[FR Doc. 02–31168 Filed 12–10–02; 8:45 am]
BILLING CODE 8610–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–027]
RIN 2115–AE47

Drawbridge Operation Regulation; Mississippi River, Clinton, IA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Commander, Eighth Coast Guard District, is temporarily changing the regulation governing the Clinton Railroad Drawbridge, Mile 518.0, Upper Mississippi River. From 7:30 a.m., December 15, 2002, until 7:30 a.m., March 1, 2003, the drawbridge shall open on signal if at least 24 hours advance notice is given. This temporary rule is issued to facilitate annual maintenance and repair on the bridge.

DATES: This temporary rule is effective 7:30 a.m. on December 15, 2002, to 7:30 a.m. on March 1, 2003.

ADDRESSES: Documents referred to in this rule are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (314) 539–3900, extension 2378. Commander, Eighth Coast Guard District (obr) maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION:

Good Cause for Not Publishing an NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This rule is being promulgated without an NPRM due to the short time frame between the submission of the request by the Union Pacific Railroad Company and the date of requested closure. This rule would not become effective in time to begin repair work on the drawbridge if an NPRM were published, thus defeating the purpose of this rule.

Good Cause for Making Rule Effective in Less Than 30 Days

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the short time frame between the submission of the request by the Union Pacific Railroad Company and the date of the requested closure, this rule could not be published more than 30 prior to its effective date. If there were a 30 day delay in its publication, this rule would not become effective in time to begin repair work on the drawbridge which would defeat the purpose of this rule.

Background and Purpose

On September 20, 2002, the Union Pacific Railroad Company requested a temporary change to the operation of the Clinton Railroad Swing Bridge across the Upper Mississippi River, Mile 518.0 at Clinton, Iowa. Union Pacific Railroad Company requested that 24 hours advance notice be required to open the bridge during the maintenance period. The maintenance is necessary to ensure the continued safe operation of the drawbridge. Advance notice may be given by calling the Clinton Yardmaster's office at (319) 244–3204 at anytime; or (319) 244–3269 weekdays between 7 a.m. and 3:30 p.m.; or Mr. Tomaz Gawronski, office (515) 263–4536 or cell phone (515) 229–2793.

The Clinton Railroad Drawbridge navigation span has a vertical clearance of 18.7 feet above normal pool in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. Presently, the draw opens on signal for passage of river traffic. The Union Pacific Railroad Company requested the drawbridge be permitted to remain closed to navigation from 7:30 a.m., December 15, 2002, until 7:30 a.m., March 1, 2003 unless 24 hours advance notice is given to open the drawbridge to allow time to make repairs. The Clinton Railroad Drawbridge, Mile 518.0, Upper Mississippi River, is located upstream from Lock 17. Winter freezing of the Upper Mississippi River coupled with the closure of Army Corps of Engineer's Lock No. 17 (Mile 437.0 UMR) and Lock No. 19 (Mile 364.1 UMR) until 7:30 a.m. March 1, 2002 will reduce any significant navigation demands for the drawspan opening. Performing maintenance on the bridge during the winter when the number of vessels likely to be impacted is minimal is preferred to restricting vessel traffic during the commercial navigation season. This temporary change to the drawbridge's operation has been coordinated with the commercial waterway operators. No objections to the proposed temporary rule were raised.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Because vessel traffic in the area of Clinton, Iowa will be greatly reduced by winter icing of the Upper Mississippi River and the closure of Locks 17 and 19, it is expected that this rule will have minimal economic or budgetary effects on the local community.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The temporary rule will have a negligible impact on vessel traffic. The primary users of the Upper Mississippi River in Clinton, Iowa are commercial towboat operators. With the onset of winter conditions on the Upper Mississippi River coupled with the closure of Army Corps of Engineers' Lock No. 17 (Mile 437.0 UMR) and Lock No. 19 (Mile 364.1 UMR) until March 1, 2003 and Lock No. 24 (Mile 273.4 UMR) until March 15, 2003, there will be few, if any, significant navigation demands for the drawspan opening. In order to obtain a bridge opening, an advance notice of 24-hours is required. This requirement has been coordinated with local fleeting-harbor owners, the railroad, and navigation interests in the area.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Any individual that qualifies or, believes he or she qualifies as a small entity and requires assistance with the provisions of this rule, may contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539–3900, extension 2378.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no new collection-of-information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. Promulgation of changes to drawbridge regulations has been found not to have significant effect on the human environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. Sec. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Public Law 102–587, 106 Stat. 5039.

2. From 7:30 a.m., December 15, 2002, through 7:30 a.m., March 1, 2003, § 117.T408 is added to read as follows:

§ 117.T408 Upper Mississippi River.

Clinton Railroad Drawbridge, Mile 518.0, Upper Mississippi River.

From 7:30 a.m., December 15, 2002 through 7:30 a.m., March 1, 2003, the drawspan requires 24 hours advance notice for bridge operation. Bridge opening requests must be made 24 hours in advance by calling Clinton Yardmaster's office at (319) 244–3204 at anytime; or (319) 244–3269 weekdays between 7 a.m. and 3:30 p.m.; or Mr. Tomaz Gawronski, office (515) 263–4536 or cell phone (515) 229–2793.

Dated: November 22, 2002.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 02–31219 Filed 12–10–02; 8:45 am]
BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–141]

Drawbridge Operation Regulations: Cape Cod Canal, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations that govern the Conrail Railroad Bridge across Cape Cod Canal, mile 0.7, at Bourne, Massachusetts. This temporary deviation will allow the bridge to remain closed at 60 feet above mean high water from 8 a.m. through 5 p.m., on December 10, 11, 18, and 19, 2002. This temporary deviation is necessary to facilitate vital unscheduled mechanical repairs at the bridge.

DATES: This deviation is effective from December 10, 2002 through December 19, 2002.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District Bridge Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District Bridge Branch, (617) 223–8364.

SUPPLEMENTARY INFORMATION: The vertical clearance under the Conrail Railroad Bridge in the open position is 135 feet at mean high water and 139 feet at mean low water. The draw is normally in the fully open position except for the passage of rail traffic. The existing regulations are listed at 33 CFR § 117.589.

The owner of the bridge, the Army Corps of Engineers (ACOE), requested a temporary deviation from the Drawbridge Operation Regulations to facilitate vital unscheduled maintenance, the replacement of the counterweight guide shoes, at the bridge. This work must be performed without delay to ensure continued safe reliable operation of the bridge.

The bridge owner advised the mariners who normally use this waterway about the necessary emergency repairs at the bridge and the temporary closures that will be required in order to facilitate the necessary repairs. No objections were received.

Under this temporary deviation the Conrail Railroad Bridge, mile 0.7, across the Cape Cod Canal, may remain closed at 60 feet above mean high water from 8 a.m. through 5 p.m. on December 10, 11, 18, and 19, 2002.

Thirty days notice to the Coast Guard for approval of this bridge maintenance was not given by the bridge owner and was not required because this work involves vital, unscheduled maintenance that must be performed without undue delay.

This deviation from the operating regulations is authorized under 33 CFR § 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: December 3, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–31220 Filed 12–10–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region II Docket No.VI3–1, FRL–7420–4]

Approval and Promulgation of State Plans for Designated Facilities; Virgin Islands

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a negative declaration submitted by the Government of the United States (US) Virgin Islands. The negative declaration satisfies EPA's promulgated Emission Guidelines (EG) for existing small municipal waste combustion (MWC) units. In accordance with the EG, states are not required to submit a plan to implement and enforce the EG if there are no existing small MWC units in the state and if it submits a negative declaration letter in place of the State Plan.

DATES: This direct final rule is effective on February 10, 2003, without further notice, unless EPA receives adverse comment by January 10, 2003.

If an adverse comment is received, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

A copy of the Virgin Islands submittal is available for inspection at the Region 2 Office in New York City. Those interested in inspecting the submittal must arrange an appointment in advance by calling (212) 637–4249. Alternatively, appointments may be arranged via e-mail by sending a message to Demian P. Ellis at *ellis.demian@epa.gov*. The office address is 290 Broadway, Air Programs Branch, 25th Floor, New York, New York 10007–1866.

A copy of the Virgin Islands submittal is also available for inspection at the following locations:

Virgin Islands Department of Planning and Natural Resources, Division of Environmental Protection, Cyril E. King Airport, Terminal Building, 2nd Floor, St. Thomas, USVI, 00802.

FOR FURTHER INFORMATION CONTACT: Demian P. Ellis, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, Telephone, (212) 637–4249.

SUPPLEMENTARY INFORMATION: The following table of contents describes the format for the **SUPPLEMENTARY INFORMATION** section:

Table of Contents

A. What action is EPA taking today?
B. Why is EPA approving the Virgin Islands' negative declaration?
C. What if an existing small MWC unit is discovered after today's action becomes effective?
D. What is the background for today's action?
E. What are EPA requirements for small MWC units?
F. Who must comply with the requirements?
G. What are EPA's conclusions?
H. Administrative requirements

A. What Action Is EPA Taking Today?

The Environmental Protection Agency (EPA) is approving a negative declaration submitted by the Government of the United States Virgin Islands (Virgin Islands) dated July 17, 2002. This negative declaration finds that there are no existing small municipal waste combustors throughout the Territory of the Virgin Islands. The negative declaration satisfies the federal Emission Guidelines (EG) requirements of EPA's promulgated regulation entitled "Emission Guidelines for Existing Small Municipal Waste Combustion Units" (65 FR 76378, December 6, 2000). The negative declaration officially certifies to EPA that, to the best of the Virgin Islands' knowledge, there are no small MWC units in operation within the Territory.

B. Why Is EPA Approving the Virgin Islands' Negative Declaration?

EPA has evaluated the negative declaration submitted by the Virgin Islands for consistency with the Clean Air Act (Act), EPA guidelines and policy. EPA has determined that the Virgin Islands' negative declaration meets all applicable requirements and, therefore, EPA is approving the Virgin Islands' certification that there are no existing small MWC units in operation throughout the Territory. The Virgin Islands has certified in its negative declaration that there are no small MWC units that meet the EG criteria based on file review, inspections, and a territory-wide search.

EPA's approval of the Virgin Islands' negative declaration is based on the following:

(1) The Virgin Islands has met the requirements of § 60.23(b) in Title 40, part 60, subpart B of the *Code of Federal Regulations* (40 CFR part 60) for submittal of a letter of negative declaration that certifies there are no existing facilities within the Territory. Such certification exempts the Virgin Islands from the requirements to submit a plan.

(2) EPA's own source inventory files indicate there are no existing small MWC units operating within the Territory of the Virgin Islands. Specifically, during October 2001, EPA compiled an inventory of small MWC units as a required element of the small MWC EG and found none in the Virgin Islands.

C. What if an Existing Small MWC Unit Is Discovered in the Virgin Islands After Today's Action Becomes Effective?

Section 60.1530 of 40 CFR part 60, subpart BBBB (page 76386 at 65 FR 76378, December 6, 2000) requires that if, after the effective date of today's action, an existing small MWC unit is found within the Virgin Islands, the Federal Plan implementing the EG would automatically apply to that small MWC unit until a State Plan is approved by EPA.

The Federal Plan was proposed on June 14, 2001 (66 FR 32484) and is expected to be promulgated in the near future. The Federal Plan will apply to small MWCs in states, commonwealths, and territories (1) where the EPA inventory identifies small MWCs and a plan is required and has not been submitted and approved by EPA and (2) where the EPA inventory did not identify any small MWC and a negative declaration has been received and approved by EPA (such as the Virgin Islands) and a small MWC is subsequently identified in the State or territory. If and when a State Plan, or in this case a Territorial Plan, for small MWCs is submitted and approved, the Federal Plan would no longer apply.

D. What Is the Background for Emission Guidelines and State Plans?

Section 111(d) of the Act requires that pollutants controlled under New Source Performance Standards (NSPS) must also be controlled at existing sources in the same source category. Once an NSPS is issued, EPA then publishes an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop State Plans to adopt the EG into their body of regulations.

Under section 129 of the Act, the EG is not federally enforceable. Section 129(b)(2) of the Act requires states to submit State Plans to EPA for approval. State Plans must be at least as protective as the EG, and they become federally enforceable upon EPA approval. The procedures for adopting and submitting State Plans, as well as state requirements for a negative declaration, are in 40 CFR part 60, subpart B.

EPA originally issued the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules (60 FR 65414).

E. Where Can You Find the EG Requirements for Small MWC Units?

On December 6, 2000, under sections 111 and 129 of the Act, EPA issued the NSPS applicable to new MWC units and the EG applicable to existing small MWC units. The NSPS and EG are codified at 40 CFR part 60, subparts AAAA (65 FR 76350) and BBBB (65 FR 76378), respectively.

F. Who Must Comply With the EG Requirements?

A small MWC unit having the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse derived fuel that commenced construction on or before August 30, 1999 ("existing small MWC unit") must comply with these requirements. See § 60.1555 of 40 CFR part 60, subpart BBBB for a list of small MWC units exempt from the federal requirements.

G. What Are EPA's Conclusions?

EPA has determined that the Virgin Islands' negative declaration meets all the requirements and, therefore, EPA is approving the Virgin Islands' certification that no applicable small MWC units are in operation within the Territory of the U.S. Virgin Islands. If any existing small MWC units are discovered in the future, the Federal Plan implementing the EG would automatically apply to that small MWC unit until the State Plan is approved by EPA.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 10, 2003, without further notice unless the Agency receives adverse comments by January 10, 2003.

If the EPA receives adverse comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

H. Administrative Requirements

tive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is

preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

EPA has concluded that this rule may have federalism implications. The only reason why this rule may have federalism implications is if in the future a small MWC unit is found within the Territory of the U.S. Virgin Islands the unit will become subject to the Federal Plan until a State Plan is approved by EPA. However, it will not impose substantial direct compliance costs on state or local governments, nor will it preempt state law. Thus, the requirements of sections 6(b) and 6(c) of the Executive Order do not apply to this rule.

Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because as a negative declaration it is not subject to the small MWC EG requirements. Therefore, because the Federal approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, commonwealth, territorial, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, commonwealth, territorial, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective February 10, 2003, unless EPA receives material adverse written comments by January 10, 2003.

National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 10, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Dated: November 15, 2002.

William J. Muszynski,

Acting Regional Administrator, Region 2.

Part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 62 U.S.C. 7401–7671q.

Subpart CCC—Virgin Islands

2. Part 62 is amended by adding new § 62.13355 and an undesignated heading to subpart CCC to read as follows:

Air Emissions From Existing Small Municipal Waste Combustion Units With the Capacity To Combust at Least 35 Tons per Day but No More Than 250 Tons per Day of Municipal Solid Waste or Refuse Derived Fuel and Constructed on or Before August 30, 1999

§ 62.13355 Identification of plan—negative declaration.

Letter from the Virgin Islands Department of Planning and Natural Resources, submitted July 17, 2002, certifying that there are no existing small municipal waste combustion units in the Territory of the United States Virgin Islands subject to part 60, subpart BBBB of this chapter.

[FR Doc. 02–31237 Filed 12–10–02; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 67, No. 238
Wednesday, December 11, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–187–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and 767–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767–200 and 767–300 series airplanes. This proposal would require modification of the installation of the aft pressure bulkhead-to-floor insulation blankets. This action is necessary to avoid interference with venting during a rapid decompression in the bulk cargo compartment; such interference could result in damage to the floor structure as well as damage to certain control cables leading to the empennage, leading to reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 27, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–187–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–187–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington, 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–187–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–187–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report that, during the structural integrity certification of the Model 767–400ER series airplane, the manufacturer found that the seal created by the insulation blankets in the aft pressure bulkhead-to-floor area did not allow the airplane to meet requirements for decompression. This condition, if not corrected, could interfere with venting during a rapid decompression in the bulk cargo compartment; such interference could result in damage to the floor structure as well as damage to certain control cables leading to the empennage, possibly leading to reduced controllability of the airplane.

As a result of this finding, the configuration of the insulation blankets in the aft pressure bulkhead-to-floor area was changed in production of the Model 767–400ER series airplanes. The same change was also made to the Model 767–200 and 767–300 series airplanes. However, for those airplanes which had already been delivered, the configuration of the insulation blankets in the aft pressure bulkhead-to-floor area may prevent venting during a rapid decompression in the bulk cargo area. This proposed AD would apply to those airplanes.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–25A0300, Revision 1, dated May 2, 2002, which describes procedures for modification of the installation of the aft pressure bulkhead-to-floor insulation blankets. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Clarification of Compliance Time

The service bulletin recommends that the modification be accomplished during the next heavy maintenance check when the aft galleys are removed; such checks are performed approximately every 6 years. This NPRM proposes that the modification be accomplished within 5 years of the effective date of the final rule. Although the compliance time is stated differently in the two documents, the period of time proposed in this NPRM is essentially the same as that in the service bulletin.

Cost Impact

There are approximately 729 airplanes of the affected design in the worldwide fleet. The FAA estimates that 311 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $397 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $179,447, or $577 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–187–AD.

Applicability: Model 767–200 and –300 series airplanes, having line numbers 1 through 757 inclusive, 759 through 768 inclusive, 770 through 772 inclusive, 774 through 780 inclusive, 786, and 788 through 790 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent interference with venting during a rapid decompression in the bulk cargo compartment, which could result in damage to the floor structure as well as damage to certain control cables leading to the empennage, leading to reduced controllability of the airplane, accomplish the following:

Modification

(a) Within 60 months of the effective date of this AD: Modify the installation of the aft pressure bulkhead-to-floor insulation blankets, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–25A0300, Revision 1, dated May 2, 2002.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 4, 2002.

Vi L. Lipski, Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–31179 Filed 12–10–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM01–12–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design

November 26, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Request for comments.

SUMMARY: In the Standard Market Design Notice of Proposed Rulemaking, (67 FR 55452, Aug. 29, 2002), the proposed open access transmission tariff imposes an obligation on an Independent Transmission Provider, if a request for transmission service cannot be accommodated, to use due diligence to expand or modify its transmission system. The Commission invites all interested persons to file comments with respect to whether a merchant transmission provider should have an obligation to expand its merchant transmission facilities.

COMMENTS DUE: Initial comments are due on or before January 10, 2003. Reply comments are due on or before February 17, 2003. (Comments on this issue should be filed in conjunction with any January 10, 2002 comments on transmission planning and pricing, including participant funding).

ADDRESSES: Comments may be filed in paper format or electronically. Address comments to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lodi D. White, (202) 502–6193.

SUPPLEMENTARY INFORMATION: In the Standard Market Design (SMD) Notice of Proposed Rulemaking, the proposed open access transmission tariff imposes an obligation on an Independent Transmission Provider, if a request for transmission service cannot be accommodated, to use due diligence to expand or modify its transmission system.[1] The Commission invites all interested persons to file comments with respect to whether a merchant transmission provider should have an obligation to expand its merchant transmission facilities (MTF).

In the September 6, 2002 NEPOOL Order,[2] the Commission approved a tariff provision (Section 7 of Schedule 18) dealing with the TransEnergie U.S. Ltd. (TransEnergie) Cross Sound Cable (CSC) which states:

> 7. *No obligation to build.* MTF Provider status under the Tariff shall not impose an obligation to build transmission facilities on the MTF Provider [TransEnergie U.S. Ltd.'s CSC MTF]. The offering of MTF Service under the Tariff shall not impose an obligation to build transmission facilities on the Participants [NEPOOL], [New England] Transmission Owners or System Operator [ISO-New England].

The Commission stated in *NEPOOL* that, while it accepted Section 7 as exempting the CSC MTF in NEPOOL from the obligation to build and as not expanding NEPOOL's obligation to build, NEPOOL's tariff will be subject to change, pursuant to section 206 of the Federal Power Act, if the Commission's policy changes in the future. In light of the NEPOOL order, we seek comment on the following issues:

1. For independent merchant transmission companies would there be any concerns regarding comparability or undue discrimination that would merit an expansion obligation for merchant transmission providers?

2. Are there non-competitive structural conditions that apply to independent merchant transmission companies such as barriers to entry or economies of scale which would justify an obligation to expand? For example, could the control of certain rights of way, such as underwater trenches, be a barrier to entry in some circumstances? Could the control of certain equipment, such as strategically placed interconnection facilities, be a barrier to entry? If so, is an obligation to expand the appropriate regulatory requirement?

3. If an expansion obligation is extended to merchant transmission providers, is it appropriate to limit it to an obligation to allow or facilitate other parties to use the critical entry barrier facilities to expand transmission capability?

4. Should merchant transmission providers that acquire land rights through the use of eminent domain be subject to different obligations than those that do not?

5. How would an expansion obligation impact new investment in transmission infrastructure? How would an expansion obligation impact a merchant transmission provider's business strategy and financing needs?

6. Are there bases other than market power that are relevant to extending an expansion obligation to merchant transmission providers?

7. How should merchant transmission projects be treated in the SMD rule? If the Commission retains the obligation to expand in the SMD rule, should it nevertheless exempt already-approved merchant projects? Should such projects be "grandfathered" in order to minimize the financial consequences of regulatory risk?

8. The Commission has approved negotiated rates for merchant transmission facilities based on the premise that the negotiated rates would be capped at the cost of transmission expansion. If there is no obligation to build, should the Commission reconsider whether the negotiated rates remain just and reasonable?

All comments are due no later than January 10, 2003, and reply comments are due on February 17, 2003. Comments on this issue should be filed in conjunction with any January 10, 2002 comments on transmission planning and pricing (including participant funding).

Comments may be filed in paper format or electronically. Those making paper filings should submit the original and 14 copies of their comments to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission strongly encourages electronic filings. Commenters filing their comments via the Internet must prepare their comments in WordPerfect, MS Word, Portable Document Format, or ASCII format (*see http://www.ferc.gov/documents/electronicfilinginitiative/efi/efi.htm*, in particular "User Guide"). To file the document, access the Commission's Web site at *www.ferc.gov* and click on "e-Filing" and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt of comments. User assistance for electronic filing is available at (202) 502–8258 or by E-mail to *efiling@ferc.gov*. Do not submit comments to the E-mail address.

The Commission will place all comments in the Commission's public files and they will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Home page using the FERRIS link.

[1] See Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design, Notice of Proposed Rulemaking, 67 FR 55452 (Aug. 29, 2002), FERC Stats. & Regs. 32563 (2002).

[2] *NEPOOL*, 100 FERC ¶ 61,259 (2002).

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31145 Filed 12–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209500–86, REG–164464–02]

RIN 1545–BA10,1545–BB79

Reductions of Accruals and Allocations because of the Attainment of any Age; Application of Nondiscrimination Cross-Testing Rules to Cash Balance Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would provide rules regarding the requirements that accruals or allocations under certain retirement plans not cease or be reduced because of the attainment of any age. In addition, the proposed regulations would provide rules for the application of certain nondiscrimination rules to cash balance plans. These regulations would affect retirement plan sponsors and administrators, and participants in and beneficiaries of retirement plans. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments, requests to speak and outlines of oral comments to be discussed at the public hearing scheduled for April 10, 2003, at 10 a.m., must be received by March 13, 2003.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–209500–86), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:ITA:RU (REG–209500–86), room 5226, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by submitting comments directly to the IRS Internet site at: *www.irs.gov/regs*. The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Linda S. F. Marshall, (202) 622–6090, or R. Lisa Mojiri-Azad, (202) 622–6030; concerning submissions and the hearing, and/or to be placed on the building access list to attend the hearing, Sonya Cruse, 202–622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 401 and 411 of the Internal Revenue Code of 1986 (Code). Section 411(b)(1)(H), which was added in subtitle C of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86) (100 Stat. 1874), provides that a defined benefit plan fails to comply with section 411(b) if, under the plan, an employee's benefit accrual is ceased, or the rate of an employee's benefit accrual is reduced, because of the attainment of any age. Under section 411(b)(2)(A), added by subtitle C of OBRA '86, a defined contribution plan fails to comply with section 411(b) unless, under the plan, allocations to the employee's account are not ceased, and the rate at which amounts are allocated to the employee's account is not reduced, because of the attainment of any age.

Section 411(b)(1)(H)(iii) provides that any requirement of continued accrual of benefits after normal retirement age is treated as satisfied to the extent benefits are distributed to the participant or the participant's benefits are actuarially increased to reflect the delay in the distribution of benefits after attainment of normal retirement age. Section 411(a) requires a qualified plan to meet certain vesting requirements. In the case of a participant in a defined benefit plan who works after attaining normal retirement age, these vesting requirements are not satisfied unless the plan provides an actuarial increase after normal retirement age for accrued benefits, distributes benefits while the participant is working after normal retirement age, or suspends benefits as described in section 411(a)(3)(B) (and the regulations of the Department of Labor at 29 CFR 2530.203–3). Section 401(a)(9)(C)(iii), added to the Code by the Small Business Job Protection Act of 1996 (110 Stat. 1755) (1996), requires that the accrued benefit of any employee who retires after age 70½ be actuarially increased to take into account the period after age 70½ during which the employee is not receiving benefits.

Section 4(i) of the Age Discrimination in Employment Act (ADEA) and sections 204(b)(1)(H) and 204(b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA) provide requirements comparable to those in sections 411(b)(1)(H) and 411(b)(2) of the Code. Section 4(i)(4) of ADEA provides that compliance with the requirements of section 4(i) with respect to an employee pension benefit plan constitutes compliance with the requirements of section 4 of ADEA relating to benefit accrual under the plan.

Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these regulations for purposes of ERISA, as well as the Code. Therefore, these regulations apply for purposes of the parallel requirements of sections 204(b)(1)(H) and 204(b)(2) of ERISA, as well as for section 411(b) of the Code.

The Equal Employment Opportunity Commission (EEOC) has jurisdiction over section 4 of ADEA. Section 9204(d) of OBRA '86 requires that the regulations and rulings issued by the Department of Labor, the Treasury Department, and the EEOC pursuant to the amendments made by subtitle C of OBRA '86 each be consistent with the others. It further requires the Secretary of Labor, the Secretary of the Treasury, and the EEOC to each consult with the others to the extent necessary to meet the requirements of the preceding sentence. Executive Order 12067 requires all Federal departments and agencies to "advise and offer to consult with the Equal Employment Opportunity Commission during the development of any proposed rules, regulations, policies, procedures or orders concerning equal employment opportunity." The IRS and Treasury have consulted with the Department of Labor and the EEOC prior to the issuance of these proposed regulations under sections 411(b)(1)(H) and 411(b)(2) of the Code.

The EEOC published proposed regulations interpreting section 4(i) of ADEA in the **Federal Register** on November 27, 1987 (52 FR 45360). Proposed regulations REG–209500–86 (formerly EE–184–86) under sections 411(b)(1)(H) and 411(b)(2) were previously published by the IRS and Treasury in the **Federal Register** on April 11, 1988 (53 FR 11876), as part of a package of regulations (the 1988 proposed regulations) that also included proposed regulations under sections 410(a), 411(a)(2), 411(a)(8) and 411(c) (relating to maximum age for participation, vesting, normal retirement age, and actuarial adjustments after normal retirement age). The IRS, Treasury, the Department of Labor, and

the EEOC consulted prior to the issuance of both sets of proposed regulations.

Notice 88–126 (1988–2 CB 538), addressed certain effective date issues for sections 411(b)(1)(H) and 411(b)(2). The EEOC issued a similar notice addressing those effective date issues in the **Federal Register** on January 9, 1989 (54 FR 604). The United States Supreme Court subsequently issued an opinion addressing the effective date of section 411(b)(1)(H) in *Lockheed Corp.* v. *Spink*, 517 U.S. 882 (1996), which is discussed below.

On October 20, 1999, the IRS and Treasury published a solicitation for comments in the **Federal Register** (64 FR 56578) inviting comments regarding potential issues under their jurisdiction with respect to cash balance plans (a type of defined benefit plan under which the normal form of benefit is an immediate payment of a participant's hypothetical account, which is adjusted periodically to reflect pay credits and interest credits), conversions of traditional defined benefit plans to cash balance plans and associated wear-away or benefit plateau effects. Hundreds of comments were received from a wide range of parties with interests in cash balance plans, including employees, employers, and their representatives. The most significant issue raised in the comments relates to the application of section 411(b)(1)(H) to cash balance plans and conversions of traditional defined benefit plans to cash balance plans.

These proposed regulations are being issued after consideration of the comments on the 1988 proposed regulations, as well as more recent comments concerning the application of sections 411(b)(1)(H) and 411(b)(2). These proposed regulations address the application of section 411(b)(1)(H) to cash balance plans, including conversions.

These proposed regulations would also amend the provisions of the regulations under section 401(a)(4) to provide rules for nondiscrimination testing for certain cash balance plans.

Explanation of Provisions

Overview

These proposed regulations provide guidance on the requirements of section 411(b)(1)(H), under which a defined benefit plan fails to be a qualified plan if, under the plan, benefit accruals on behalf of a participant are ceased or the rate of benefit accrual on behalf of a participant is reduced because of the participant's attainment of any age.[1] Similarly, these proposed regulations provide guidance on the requirements of section 411(b)(2), under which a defined contribution plan fails to be a qualified plan if, under the plan, allocations to a participant's account are ceased or the rate of allocations to a participant's account is reduced because of the participant's attainment of any age.

These proposed regulations follow the 1988 proposed regulations in many respects. In particular, these proposed regulations would adopt many of the positions taken under the 1988 proposed regulations for determining whether a plan ceases benefit accruals or allocations because of the attainment of any age or provides for a direct or indirect reduction in the rate of benefit accrual or allocation because of the attainment of any age.

These proposed regulations also provide guidance on how to determine the rate of benefit accrual or rate of allocation. In the case of defined benefit plans, the proposed regulations would provide two basic approaches to determining the rate of benefit accrual: a general approach applicable to all defined benefit plans; and a separate approach applicable to eligible cash balance plans, as defined in these proposed regulations. These proposed regulations also provide guidance on determining the rate of allocation under a defined contribution plan.

Finally, these proposed regulations address other related issues also addressed in the 1988 proposed regulations, including the application of sections 411(b)(1)(H) and 411(b)(2) to optional forms of benefits, ancillary benefits and other rights and features, the coordination of the requirements of sections 411(b)(1)(H) and 411(b)(2) with certain other qualification requirements under the Code, such as sections 401(a)(4), 411(a), and 415, and the effective date of sections 411(b)(1)(H) and 411(b)(2).

Applicability Prior to Normal Retirement Age

Sections 411(b)(1)(H) and 411(b)(2) prohibit cessation of accruals or allocations, and reduction in the rate of benefit accrual or allocation, because of the attainment of any age. Under these sections, attainment of any age means a participant's growing older. Accordingly, these regulations, like the 1988 proposed regulations, would apply regardless of whether the participant is older than, younger than, or at normal retirement age.

Some commentators have suggested that only cessations or reductions after attainment of normal retirement age are prohibited by these sections. This interpretation is not consistent with the language of the statute, which does not specify any minimum age at which the rule applies, and is not adopted under these proposed regulations.

Reduction in Rate of Benefit Accrual Because of Attainment of Any Age

Under these proposed regulations, a defined benefit plan fails to comply with section 411(b)(1)(H) if, either directly or indirectly, a participant's rate of benefit accrual is reduced (which includes a cessation of participation in the plan or other discontinuance of benefit accruals) because of the participant's attainment of any age. A plan provides for a reduction in the rate of benefit accrual that is directly because of the attainment of any age if, during a plan year, under the terms of the plan, any participant's rate of benefit accrual for the plan year would be higher if the participant were younger. Thus, a plan fails to comply with section 411(b)(1)(H) if, under the terms of the plan, the rate of benefit accrual for any individual who is or could be a participant under the plan would be lower solely as a result of such individual being older. Whether there is an actual participant at any particular age is not relevant. Similarly, whether a reduction in the rate of benefit accrual is because of the attainment of any age does not depend on a comparison of a participant's rate of benefit accrual for a year to that participant's rate of benefit accrual in an earlier year. These proposed regulations include a number of examples (at § 1.411(b)–2(b)(3)(iii) of these regulations) which illustrate whether a reduction in the rate of benefit accrual is because of the attainment of any age.

A reduction in the rate of benefit accrual is indirectly because of a participant's attainment of any age if any participant's rate of benefit accrual for the plan year would be higher if the participant were to have a different characteristic that is a proxy for being younger, based on all the relevant facts and circumstances. For example, if a company assigns older workers to one division and younger workers to another even though they perform the same work, then assignment to a division would be a proxy for being older or younger.

[1] While section 4(i) of the ADEA, section 204(b)(1)(H) of ERISA, and section 411(b)(1)(H) of the Code are worded similarly, the words "attainment of any" are not in section 4(i) of the ADEA. The legislative history states that no differences among the provisions is intended (OBRA 86 House Report No. 99–727 at 378–9), and the agencies have concluded that this particular difference in language has no effect.

Like the 1988 proposed regulations, these proposed regulations provide that a reduction in a participant's rate of benefit accrual is not indirectly because of the attainment of any age in violation of section 411(b)(1)(H) solely because of a positive correlation between attainment of any age and a reduction in the rate of benefit accrual. In addition, a defined benefit plan does not fail to satisfy section 411(b)(1)(H) solely because, on a uniform and consistent basis without regard to a participant's age, the plan limits the amount of benefits a participant may accrue under the plan or limits the number of years of service or participation taken into account for purposes of determining the accrual of benefits under the plan, whether the plan reduces or ceases accruals for service in excess of such limit. A limitation that is expressed as a percentage of compensation (whether averaged over a participant's total years of credited service for the employer or over a shorter period) is a permissible limitation on the amount of benefits a participant may accrue under the plan.

Rate of Benefit Accrual

Neither section 411(b)(1)(H) nor the 1988 proposed regulations define the rate of benefit accrual. These proposed regulations would provide two basic approaches to determining the rate of benefit accrual, based on the way the benefit is expressed in the plan. One approach may be used by all defined benefit plans. A second approach may be used only by an eligible cash balance plan, as defined in these proposed regulations.

Under the general rule, the rate of benefit accrual for any plan year that ends before the participant attains normal retirement age is the increase in the participant's accrued normal retirement benefit for the year. Because the rate of benefit accrual is determined by reference to the increase in the accrued benefit during the plan year, any subsidized portion of an early retirement benefit, any qualified disability benefit, or any social security supplement is disregarded.

Section 411(b)(1)(H)(iii)(II) provides that a defined benefit plan does not fail to comply with section 411(b)(1)(H) for a plan year to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age. These proposed regulations implement this rule (*i.e.*, permit a plan to offset any actuarial adjustment during the year against the otherwise required accruals under the plan), by providing that the rate of benefit accrual after normal retirement age is equal to the excess, if any, of the annual benefit to which the participant is entitled at the end of the plan year over the annual benefit to which the participant would have been entitled at the end of the preceding plan year. For this purpose, the annual benefit is determined assuming that payment commences in the normal form of benefit under the plan at the end of the applicable year. For purposes of these proposed regulations, the normal form of benefit is the form under which payments due to the participant are expressed under the plan, prior to adjustment for form of benefit.

The methodology of determining a year-by-year rate of accrual, taking into account any actuarial increases during the plan year, is a departure from the methodology used in the 1988 proposed regulations. As a consequence of the methodology used in these proposed regulations, the plan may not reduce a participant's rate of benefit accrual in a plan year to take into account the fact that, in the preceding plan year, the actuarial increase was greater than the accrual under the plan formula.

While any actuarial adjustment made to the annual benefit to which the participant would have been entitled at the end of the preceding plan year is included in the rate of benefit accrual after normal retirement age, a defined benefit plan must separately comply with the requirements of section 411(a), which are not addressed in these proposed regulations. Thus, for example, a plan that does not provide for suspension of benefits in accordance with section 411(a)(3) must provide for actuarial adjustments of the amount that would otherwise be paid (or distributions of that amount) that are adequate to satisfy section 411(a) and 29 CFR 2530.203–3 of the regulations of the Department of Labor. In addition, the plan must comply with section 401(a)(9)(C)(iii) with respect to actuarial adjustments for participants who retire after attainment of 70½.

Section 411(b)(1)(H)(iii)(I) provides that a defined benefit plan will not fail to satisfy section 411(b)(1)(H) to the extent of the actuarial equivalent of in-service distribution of benefits. Under these proposed regulations, the rate of benefit accrual for a participant who has attained normal retirement age may be reduced by the actuarial value of plan benefit distributions made during the year. This reduction is the equivalent of the provision described above under which a defined benefit plan may offset any actuarial adjustment during the year against the otherwise required accruals for the year. As described immediately below, the manner in which distributions made under the plan are taken into account for a plan year under these regulations is designed so that compliance with section 411(b)(1)(H) is not affected by the optional form in which the distribution is made.

In the plan year during which a distribution is made, distributions are taken into account to the extent the actuarial value of the distribution does not exceed the actuarial value of distributions that would have been made during the plan year had distribution of the participant's full accrued benefit at the beginning of the plan year commenced at the beginning of the plan year (or, if later, at the participant's normal retirement age) in the normal form of benefit. Distributions in excess of the actuarial value of the distribution that would have been made during the plan year had the distribution of the participant's full accrued benefit commenced in the normal form (called accelerated benefit payments) are disregarded for that plan year, but, as described below, are taken into account in subsequent periods. If the participant is receiving a distribution in an optional form of benefit under which the amount payable annually is less than the amount payable under the normal form of benefit (for example, a QJSA under which the annual benefit is less than the amount payable annually under a straight life annuity normal form), the participant may be treated as receiving payments under an actuarially equivalent normal form of benefit.

Any accelerated benefit payments are taken into account in plan years after the plan year in which the distribution was made by converting the accelerated benefit payments to an actuarially equivalent stream of annual benefit payments under the plan's normal form of benefit distributions, commencing at the beginning of the next following plan year. This equivalent stream of annual benefit payments is then deemed to be paid in plan years after the plan year in which the distribution was made, and the calculation of the rate of benefit accrual after normal retirement age is adjusted by adding any of these deemed payments for future plan years to the annual benefit to which the participant is entitled at the end of a plan year. As so adjusted, therefore, the rate of benefit accrual is determined as the excess, if any, of the sum of the annual benefit to which the participant is entitled at the end of the plan year (assuming payment commences in the normal form at the end of the plan year) plus the annuity

equivalent of accelerated benefit payments deemed paid in the next plan year, over the sum of the annual benefit to which the participant would have been entitled at the end of the preceding plan year (assuming that payment commences in the normal form at the later of normal retirement age and the end of the preceding plan year), plus the annuity equivalent of accelerated benefit payments deemed paid during the plan year. The effect of this adjustment, in the case of a single sum distribution, is to put the participant in the same position as if the participant had received the distribution in the normal form.

Eligible Cash Balance Plans

The 1988 proposed regulations did not contain any guidance specific to cash balance plans. A cash balance plan is a type of defined benefit plan that determines benefits by reference to an employee's hypothetical account. Since the 1988 proposed regulations were issued, the number of cash balance plans has increased. The development of cash balance plans has raised the issue of whether this design complies with section 411(b)(1)(H).

Under a cash balance plan, an employee's hypothetical account balance is credited with hypothetical allocations, often referred to as service credits or pay credits, and hypothetical earnings, often referred to as interest credits. Under some cash balance plans, the right to interest credits for future periods accrues at the same time as the pay credit (*i.e.*, the interest credit is not contingent on the performance of services in the future). Under other cash balance plans, all or some portion of the interest credit for future periods is contingent on the performance of services in the future. The benefit under a cash balance plan is expressed in the plan document (and communicated to employees) as the hypothetical account balance, although not all cash balance plans provide a single sum distribution.

Under a cash balance plan, the interest credits for a younger participant will compound over a greater number of years until normal retirement age than for an older participant. This will result in a larger accrual for younger employees, when measured as the increase in the benefit payable at normal retirement age. Accordingly, some commentators have argued that the basic cash balance plan design violates section 411(b)(1)(H). Others have asserted that cash balance plans do not violate section 411(b)(1)(H) if the additions to the hypothetical account are not smaller because of the attainment of any age. They argue that, because pay credits under a cash balance plan are comparable to allocations under a defined contribution plan, these pay credits are an appropriate measure for testing whether a cash balance plan satisfies section 411(b)(1)(H).

These proposed regulations would provide that the rate of benefit accrual under an eligible cash balance plan, as defined in these proposed regulations, is permitted to be determined as the additions to the participant's hypothetical account for the plan year, except that previously accrued interest credits are not included in the rate of benefit accrual. Because the rate of benefit accrual is determined based on how benefits are expressed under the plan, this method of determining the rate of benefit accrual is restricted to eligible cash balance plans, as defined in these proposed regulations.

An eligible cash balance plan is a defined benefit plan that satisfies certain requirements. First, for accruals in the current plan year, the normal form of benefit is an immediate payment of the balance in a hypothetical account. As long as the normal form of benefit is an immediate payment of the balance in a hypothetical account, a plan does not fail to be an eligible cash balance plan merely because a single-sum distribution of that amount is not actually available as a distribution option under the plan.

Second, a plan is an eligible cash balance plan only if the plan provides that, at the same time that the participant accrues an addition to the hypothetical account, the participant accrues the right to future interest credits (without regard to future service) at a reasonable rate of interest that does not decrease because of the attainment of any age. Because the rate of benefit accrual under an eligible cash balance plan is generally determined by reference to additions to the hypothetical account disregarding interest credits, these interest credits must be provided for all future periods, including after normal retirement age, and an eligible cash balance plan cannot treat interest credits after normal retirement age as actuarial increases that are offset against the otherwise required accrual. A participant is not treated as having the right to future interest credits if the plan provides that additions to the hypothetical account under the plan are reduced for the actuarial equivalent of any in-service distributions because, as discussed above, such a reduction is the equivalent of an offset for an actuarial adjustment. Any additional interest credits under an eligible cash balance plan that do not accrue at the same time as the corresponding addition to the hypothetical account are included in determining the rate of benefit accrual in the year in which those additional interest credits are accrued.

In addition, a plan that is converted to a cash balance plan is subject to certain requirements, discussed below.

There are other hybrid designs that would satisfy some, but not all, of the requirements for an eligible cash balance plan. For example, there are some designs under which the normal form of benefit is the immediate payment of an account balance, but which do not provide for reasonable interest credits on that account balance. Under these proposed regulations, the rate of benefit accrual under these plans would be determined under the general rules applicable to traditional defined benefit plans.

Plans With Mixed Formulas

Some defined benefit plans have both a traditional defined benefit formula and a cash balance formula, and these proposed regulations provide rules for plans with such a mixed formula. If a portion of the plan formula under a defined benefit plan would satisfy the requirements for an eligible cash balance plan if that were the only formula under the plan, then that portion of the plan formula is referred to as an eligible cash balance formula in these proposed regulations. Any other portion of the plan formula is referred to as a traditional defined benefit formula.

The portion that is an eligible cash balance formula (or formulas if the plan has multiple eligible cash balance formulas) would be permitted to be tested using the rules for eligible cash balance plans, with the remainder of the plan tested under the rules for a traditional defined benefit formula (regardless of how many traditional defined benefit formulas the plan may have). This rule applies only if each such separately-treated plan would satisfy the maximum age conditions in section 410(a)(2) and the eligible cash balance and traditional defined benefit formulas interact in one of three specific ways for current and future accruals. The three ways are: (1) The plan provides that the participant's benefit is based on the sum of accruals under two different formulas (either sequentially where the cash balance formula goes into effect during the year or simultaneously where the plan provides for a participant to accrue benefits under both a traditional defined benefit formula and a cash balance formula at the same time with the participant to be entitled to the sum of the two); (2) the plan provides a benefit for a participant equal to the greater of the benefit determined under two or more formulas, one of which is an eligible cash balance formula and the other of which is not; or (3) under the plan, some participants are eligible for accruals only under an eligible cash balance formula and the remaining participants are eligible for accruals only under a traditional defined benefit formula or the other 2 specific methods. If the eligible cash balance formula and the traditional defined benefit formula interact in any other manner, the plan is not treated as an eligible cash balance plan for any portion of the plan formula.

Amendments Establishing an Eligible Cash Balance Formula

In many cases, a plan sponsor amends a traditional defined benefit plan to make it a cash balance plan. This process is often referred to as a "conversion." The terms of cash balance conversions vary, but often provide an opening hypothetical account balance for each participant. In some cases, the opening balance may be based on the participant's prior accrued benefit under the traditional defined benefit plan or on the participant's prior service with the plan sponsor. In other cases, the opening balance is set at zero, and each participant is entitled to the sum of the participant's accrued benefit under the traditional defined benefit plan and the cash balance account.

Some commentators have questioned whether certain cash balance conversions that provide for the establishment of an opening account balance satisfy section 411(b)(1)(H). These commentators have noted that, under section 411(d)(6), the participant can never be denied payment of the prior accrued benefit. They note that, if the opening account balance and subsequent interest credits through normal retirement age generate benefits that are not at least as large as the prior accrued benefit, the participant will not accrue net benefits for some period after the conversion. This period, often referred to as a "wear-away" period, will continue until the participant's account balance generates benefits that exceed the prior accrued benefit. These commentators argue that the wear-away period inherently produces a lower rate of accrual for older participants.[2]

Other commentators have argued that a wear-away period does not violate section 411(b)(1)(H) because the length of the wear-away period is determined not by the participant's age but by the size of the participant's prior accrued benefit under the traditional defined benefit plan. Additionally, commentators have pointed out that, because the prior accrued benefit is calculated using an interest rate determined at the time of the amendment but the interest credits under the cash balance plan often fluctuate under a variable index, a participant may move in or out of a wear-away period after a cash balance conversion solely because of future changes in interest rates.

Under these proposed regulations, the mere conversion of a traditional defined benefit plan to a cash balance plan would not cause the plan to fail section 411(b)(1)(H). However, a converted plan that otherwise would be treated as an eligible cash balance plan must satisfy one of two alternative rules. Under the first alternative, the converted plan must determine each participant's benefit as not less than the sum of the participant's benefits accrued under the traditional defined benefit plan and the cash balance account. A plan satisfying this first alternative will not have a wear-away period for benefits accrued under the traditional defined benefit plan.

Under the second alternative, the converted plan must establish each participant's opening account balance as an amount not less than the actuarial present value of the participant's prior accrued benefit, using reasonable actuarial assumptions. For this purpose, an interest rate assumption is not treated as reasonable if it increases, directly or indirectly, because of the participant's attainment of any age (which would result in lower present values for older participants). This alternative does not preclude the possibility of a wear-away period for some or all the participants in the plan, but it ensures that the opening account balance of each participant reflects the actuarial value of the prior accrued benefit, determined by using reasonable assumptions. Any excess in the opening account balance over the present value of a participant's previously accrued benefit is included as part of the participant's rate of benefit accrual for the plan year, and thus is tested under section 411(b)(1)(H) along with other pay credits for the year. Effectively, this alternative provides that a converted plan will not fail to satisfy section 411(b)(1)(H) if the benefit formula before the conversion satisfies section 411(b)(1)(H), the opening account balance is based on actuarial assumptions that are reasonable (and an interest rate that does not increase for older participants), and the benefit formula after the conversion—including any excess in the opening account balance over the present value of a participant's previously accrued benefit—satisfies section 411(b)(1)(H).

Use of Compensation in Calculating Rate of Benefit Accrual

A participant's rate of benefit accrual for a plan year can be determined as a dollar amount. Alternatively, if a plan's formula bases a participant's accruals on current compensation; then a participant's rate of benefit accrual can be determined as a percentage of the participant's current compensation. Likewise, if a plan's formula bases a participant's accruals on average compensation, then a participant's rate of benefit accrual can be determined as a percentage of that measure of the participant's average compensation. In order for the participant's rate of benefit accrual to be determined as a percentage of the participant's current or average compensation, compensation must be determined without regard to attainment of any age. The alternative of using current or average compensation simplifies testing, without changing the result.

Defined Contribution Plans

A defined contribution plan fails to comply with section 411(b)(2) if, either directly or indirectly, because of a participant's attainment of any age, the allocation of employer contributions or forfeitures to the account of the participant is discontinued or the rate at which the allocation of employer contributions or forfeitures is made to the account of the participant is decreased. For determining if there is a cessation or reduction in allocations because of attainment of any age, these proposed regulations would adopt a substantive standard that is similar to the standard that applies under these proposed regulations for defined benefit plans and to the standard that was proposed in the 1988 proposed regulations.

A reduction in the rate of allocation is directly because of a participant's

[2] This type of wear-away differs from a wear-away that results from the fact that certain optional forms of benefit may be subsidized under the traditional defined benefit plan but not under the cash balance plan or that other actuarial factors may produce a larger benefit amount prior to normal retirement age under the traditional defined benefit plan but not under the cash balance plan. This may occur even though the actuarial value of the accrued benefit under the traditional defined benefit plan is included in the participant's opening account balance. Although section 411(d)(6) protects optional forms of benefit under the pre-amendment formula, section 411(b)(1)(H)(iv) specifically provides that a reduction because of the attainment of any age does not occur as a result of the subsidized portion of an early retirement benefit.

attainment of any age for a plan year if under the terms of the plan, any participant's rate of allocation during the plan year would be higher if the participant were younger.

A reduction in the rate of allocation is indirectly because of a participant's attainment of any age if any participant's rate of allocation during the plan year would be higher if the participant were to have any characteristic which is a proxy for being younger, based on applicable facts and circumstances. A cessation or reduction in allocations is not indirectly because of the attainment of any age solely because of a positive correlation between attainment of any age and a reduction in the allocations or rate of allocation. Thus, a defined contribution plan does not provide for cessation or reduction in allocations solely because the plan limits the total amount of employer contributions and forfeitures that may be allocated to a participant's account or limits the total number of years of credited service that may be taken into account for purposes of determining allocations for the plan year.

Target benefit plans (defined contribution plans under which contributions are determined by reference to a targeted benefit described in the plan) are subject to section 411(b)(2) which applies to defined contribution plans. Under these proposed regulations, a target benefit plan would satisfy section 411(b)(2) only if the defined benefit formula used to determine allocations would satisfy section 411(b)(1)(H) without regard to section 411(b)(1)(H)(iii) relating to adjustments for distributions and actuarial increases. A target benefit plan would not fail to satisfy section 411(b)(2) with respect to allocations after normal retirement age merely because the allocation for a plan year is reduced to reflect an older participant's shorter longevity using a reasonable actuarial assumption regarding mortality. These proposed regulations also would authorize the Commissioner to develop additional guidance with respect to the application of section 411(b)(2) to target benefit plans.

Optional Forms of Benefit and Other Rights and Features

These proposed regulations generally retain the requirements applicable to optional forms of benefit that were in the 1988 proposed regulations. Under these rules, with the exceptions noted below, a participant's rate of benefit accrual under a defined benefit plan and a participant's allocations under a defined contribution plan are considered to be reduced because of the participant's attainment of any age if optional forms of benefits, ancillary benefits, or other rights or features otherwise provided to a participant under the plan are not provided, or are provided on a less favorable basis, with respect to benefits or allocations attributable to credited service because of the participant's attainment of any age. In addition, a plan would not fail to satisfy section 411(b)(1)(H) merely due to variance because of the attainment of any age with respect to the subsidized portion of an early retirement benefit (whether provided on a temporary or permanent basis), a qualified disability benefit (as defined in § 1.411(a)–7(c)(3)), or a social security supplement (as defined in § 1.411(a)–7(c)(4)(ii)).[3] These proposed regulations also clarify that a plan would not fail to satisfy section 411(b)(1)(H) merely because the plan makes actuarial adjustments using a reasonable assumption regarding mortality to calculate optional forms of benefit or to calculate the cost of providing a qualified preretirement survivor annuity, as defined in section 417(c).

Coordination With Other Provisions

Sections 411(b)(1)(H)(v) and 411(b)(2)(C) both provide for the coordination of the requirements of each section with other applicable qualification requirements. Under these proposed regulations, a plan will not fail to satisfy section 411(b)(1)(H) or 411(b)(2) because of a limit on accruals or allocations necessary to comply with the limitations of section 415 or to prevent discrimination in favor of highly compensated employees within the meaning of section 401(a)(4). Additionally, these proposed regulations would authorize the Commissioner to provide additional guidance relating to prohibited discrimination in favor of highly compensated employees. These proposed regulations would also provide that no benefit accrual or allocation is required under section 411(b)(1)(H) or 411(b)(2) for a plan year to the extent such allocation or accrual would cause the plan to fail to satisfy the requirements of section 401(l) (relating to permitted disparity) for the plan year, such as if a younger person has a smaller permitted disparity due to having a later social security retirement age. Further, under these proposed regulations, a plan would not fail to satisfy section 411(b)(1)(H) or 411(b)(2) for a plan year merely because of the distribution rights provided under section 411(a)(11), including deferral rights for participants whose benefits are immediately distributable within the meaning of § 1.411(a)–11(c).

Application of Section 401(a)(4) to New Comparability Cash Balance Plans

These proposed regulations also include a proposed amendment to the regulations under section 401(a)(4). This amendment would provide that a defined benefit plan that determines compliance with section 411(b)(1)(H) by using the special definition of rate of accrual for an eligible cash balance plan is not permitted to demonstrate that the benefits provided under the arrangement do not discriminate in favor of highly compensated employees by using an inconsistent method (*i.e.*, an accrual rate based on the normal retirement benefit), unless the plan complies with a modified version of the provisions of the regulations under section 401(a)(4) related to cross-testing by a defined contribution plan. Under these requirements, an eligible cash balance plan under which the additions to the hypothetical account are neither broadly available nor reflect a gradual age and service schedule, as defined under existing regulations relating to cross-tested defined contribution plans, may test on the basis of benefits only if the plan satisfies a minimum allocation gateway.

The minimum allocation gateway generally requires that the hypothetical allocation rate for each nonhighly compensated employee be at least one-third of the hypothetical allocation rate for the highly compensated employee with the highest hypothetical allocation rate. However, the minimum allocation gateway is also satisfied if the hypothetical allocation rate for each nonhighly compensated employee is no less than 5%, provided the highest hypothetical allocation rate for any highly compensated employee is not in excess of 25%. If the highest hypothetical allocation rate is above 25%, the 5% factor is increased, up to as much as 7.5%. This minimum allocation gateway, which is normally applicable to DB/DC plans (*i.e.*, defined benefit plans and defined contribution plans that are combined for nondiscrimination testing), is used for purposes of eligible cash balance plans, rather than the minimum allocation gateway normally applicable to defined contribution plans, because hypothetical allocations under a cash balance plan can be significantly greater than allocations under a defined contribution plan.

[3] The ADEA also includes special rules relating to certain of these benefits. *See* 29 U.S.C. 623(f)(2) and (l).

If the eligible cash balance plan is aggregated with other plans that are not cash balance plans, the regulations would treat the cash balance plan as a defined contribution plan for purposes of applying the rules applicable to aggregated plans. For this purpose, a plan with both an eligible cash balance formula and a traditional defined benefit formula is treated as an aggregation of two plans.

Effective Date of Sections 411(b)(1)(H) and 411(b)(2)

The 1988 proposed regulations included provisions related to the effective date of sections 411(b)(1)(H) and 411(b)(2). The effective date provisions in these proposed regulations differ from the 1988 proposed regulations (and Notice 88–126) in order to reflect the decision in *Lockheed Corp.* v. *Spink*, 517 U.S. 882 (1996).

In general, sections 411(b)(1)(H) and 411(b)(2) are effective for plan years beginning on or after January 1, 1988 with respect to a participant who is credited with at least one hour of service in a plan year beginning on or after January 1, 1988. In the case of a participant who is credited with at least one hour of service in a plan year beginning on or after January 1, 1988, section 411(b)(1)(H) is effective with respect to all years of service completed by the participant, except that, in accordance with *Lockheed Corp.* v. *Spink*, plan years beginning before January 1, 1988 are excluded. For purposes of these proposed regulations, an hour of service includes any hour required to be recognized under the plan by section 410 or 411.

Similarly, section 411(b)(2) does not apply with respect to allocations of employer contributions or forfeitures to the accounts of participants under a defined contribution plan for a plan year beginning before January 1, 1988.

These proposed regulations would also provide a special effective date for a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers, ratified before March 1, 1986. For such plans, sections 411(b)(1)(H) and 411(b)(2) are effective for benefits provided under, and employees covered by, any such agreement with respect to plan years beginning on or after the later of (i) January 1, 1988 or (ii) the earlier of January 1, 1990 or the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension of any such agreement occurring on or after March 1, 1986). The otherwise generally applicable effective date rules would apply to a collectively bargained plan, as of the effective date of section 411(b)(1)(H) or 411(b)(2) applicable to such plan.

Proposed Effective Date

The regulations are proposed to be applicable to plan years beginning after the date final regulations are published in the **Federal Register**. These proposed regulations cannot be relied upon until adopted in final form. However, until these regulations are adopted in final form, the reliance provided on the 1988 proposed regulations continues to be available. In addition, the proposed regulations at §§ 1.410(a)–4A, 1.411(a)–3, 1.411(b)–3 and 1.411(c)–1(f)(2) (relating to maximum age for participation, vesting, normal retirement age, and actuarial adjustments after normal retirement age), which were published in the same notice of proposed rulemaking as the 1988 proposed regulation and which are not republished here, are also expected to be finalized for future plan years.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. Alternatively, taxpayers may submit comments electronically to the IRS Internet site at *www.irs.gov/regs*. All comments will be available for public inspection and copying. The IRS and Treasury request comments on the clarity of the proposed rules and how they may be made easier to understand or to implement. Comments are also requested on the following issues:

- Because these proposed regulations are based on a year-by-year determination of the rate of benefit accrual that does not accommodate averaging over a period of earlier years, one result would be that, if a higher accrual is provided for older workers in one year, the rates cannot be leveled out in subsequent periods in a manner that takes the earlier higher accruals into account. This might occur for a change from a fractional accrual method to a unit credit method for all years of service. Comments are requested on whether rates should be permitted to be averaged and, if so, under what conditions.
- In the case of a conversion of a traditional defined benefit plan to a cash balance plan, these proposed regulations generally provide for any excess of a participant's opening hypothetical account balance over the present value of the participant's prior accrued benefit to be tested for age discrimination. Comments are requested on whether any other portion of the hypothetical account balance should be disregarded in applying section 411(b)(1)(H) under other circumstances, for example, if the opening account balance is a reconstructed cash balance account (*i.e.*, the account balance that each participant would have had at the time of the conversion if the cash balance formula had been in effect for the participant's entire period of service). In addition, comments are requested on the effect of these rules on employers, if any, that may have used the extended wear-away transition rule of § 1.401(a)(4)–13(f)(2)(i).
- Because these proposed regulations provide for the rate of benefit accrual under section 411(b)(1)(H) to be based on the annual increase in the accrued benefit under the plan, the rate of benefit accrual under a floor offset plan, as described in Rev. Rul. 76–259 (1976–2 CB 111), would be determined after taking into account the amount of the offset. Comments are requested on whether the rate of benefit accrual for a floor offset plan should be tested before application of the offset and, if so, under what conditions. For example, should the rate of benefit accrual for a floor offset plan be tested before application of the offset if the plan provides an actuarial increase after normal retirement age or if the annuity purchase rate used to calculate the offset is not less favorable after normal retirement age than the annuity purchase rate applicable at normal retirement age.

A public hearing has been scheduled for April 10, 2003, at 10 a.m. in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. All visitors must present photo identification to enter the

building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts at the Constitution Avenue entrance. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 13, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these proposed regulations are Linda S. F. Marshall and R. Lisa Mojiri-Azad of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding the following citation in numerical order:

Authority: 26 U.S.C. 7805 * * *

Section 1.411(b)–2 is also issued under 26 U.S.C. 411(b)(1)(H) and 411(b)(2). * * *

Par. 2. Section 1.401(a)(4)–3 is revised as follows:

1. A new sentence is added before the last sentence of paragraph (a)(1).

2. Paragraph (g) is added.

The additions and revisions read as follows:

§ 1.401(a)(4)–3 Nondiscrimination in amount of employer-provided benefits under a defined benefit plan.

(a) *Introduction*—(1) *Overview.* * * * Paragraph (g) of this section provides additional rules that apply to a plan that satisfies the requirements of section 411(b)(1)(H) and § 1.411(b)–2 using the rate of benefit accrual determined pursuant to the rules of § 1.411(b)–2(b)(2)(iii) for eligible cash balance plans. * * *

* * * * *

(g) *Additional rules for eligible cash balance plans*—(1) *In general.* Notwithstanding the provisions of paragraphs (a) through (f) of this section, a plan that satisfies the requirements of section 411(b)(1)(H) and § 1.411(b)–2 using the rate of benefit accrual under the plan or a portion of the plan determined pursuant to the rules of § 1.411(b)–2(b)(2)(iii) for eligible cash balance plans is permitted to satisfy the requirements of section 401(a)(4) by satisfying the requirements of this section (relating to nondiscrimination in amount of employer-provided benefits) only if the plan satisfies paragraph (g)(2) or (3) of this section, as applicable.

(2) *Eligible cash balance plans not aggregated with another defined benefit plan.* A plan described in paragraph (g)(1) of this section under which benefits are determined solely in accordance with an eligible cash balance formula (as defined in § 1.411(b)–2(b)(2)(iii)(C)(*1*)) satisfies this paragraph (g)(2) only if the plan meets either of the following conditions—

(i) The plan would satisfy the requirements of § 1.401(a)(4)–8(b)(1)(iii) or (iv) by treating the additions to the hypothetical account that are included in the rate of benefit accrual under the rules of § 1.411(b)–2(b)(2)(iii)(A) as allocations under a defined contribution plan; or

(ii) The plan would satisfy the requirements of § 1.401(a)(4)–9(b)(2)(v)(D) by treating the additions to the hypothetical account that are included in the rate of benefit accrual under the rules of § 1.411(b)–2(b)(2)(iii)(A) as allocations under a defined contribution plan for purposes of determining equivalent normal allocation rates (within the meaning of § 1.401(a)(4)–9(b)(2)(ii)).

(3) *Eligible cash balance plans aggregated with another defined benefit plan.* In the case of a plan described in paragraph (g)(1) of this section that is not described in paragraph (g)(2) of this section (for example, an eligible cash balance plan that is aggregated with another defined benefit plan that is not an eligible cash balance plan or a plan that uses an eligible cash balance formula with a traditional defined benefit plan formula as described in § 1.411(b)–2(b)(2)(iii)(C)), the plan would satisfy the requirements of § 1.401(a)(4)–9(b)(2)(v)(D) by treating the additions to the hypothetical account that are included in the rate of benefit accrual under the rules of § 1.411(b)–2(b)(2)(iii)(A) as allocations under a defined contribution plan.

Par. 3. Section 1.401(a)(4)–9 is amended by:

1. Amending paragraph (b)(2)(v) by removing the language "For plan years" and adding in its place "Except as provided in paragraph (b)(2)(vi) of this section, for plan years".

2. Adding paragraph (b)(2)(vi).

The addition reads as follows:

§ 1.401(a)(4)–9 Plan aggregation and restructuring.

* * * * *

(b) * * *

(2) * * *

(vi) *Special rules for cash balance plans aggregated with defined contribution plans*—(A) *In general.* In the case of a DB/DC plan where the defined benefit plan (or any portion thereof) satisfies the requirements of section 411(b)(1)(H) using the rate of benefit accrual determined pursuant to the rules of § 1.411(b)–2(b)(iii) for eligible cash balance plans, the DB/DC plan is permitted to demonstrate satisfaction of the nondiscrimination in amount requirement of § 1.401(a)(4)–1(b)(2) on the basis of benefits only if—

(*1*) The plan would satisfy the requirements of paragraph (b)(2)(v) of this section if the additions to the hypothetical account that are included in the rate of benefit accrual under the rules of § 1.411(b)–2(b)(2)(iii)(A) are treated as allocations under a defined contribution plan; or

(*2*) The plan is described in paragraph (b)(2)(vi)(B) of this section (regarding eligible cash balance plans aggregated only with defined contribution plans).

(B) *Special rule for cash balance plans aggregated with defined contribution plans that are not aggregated with other defined benefit plans.* A DB/DC plan is described in this paragraph (b)(2)(vi)(B) if the DB/DC plan satisfies the following conditions—

(*1*) All defined benefit plans that are included in the DB/DC plan satisfy the requirements of section 411(b)(1)(H) using the rate of benefit accrual determined pursuant to the rules of § 1.411(b)–2(b)(iii) for eligible cash balance plans; and

(*2*) The DB/DC plan would satisfy the requirements of § 1.401(a)(4)–8(b)(1)(i)(B)(*1*) or (*2*) (regarding broadly available allocation rates or certain age-based allocation rates) if the additions to the hypothetical account that are included in the rate of benefit accrual under the rules of § 1.411(b)–2(b)(2)(iii)(A) are treated as allocations under a defined contribution plan.

Par. 4. Proposed § 1.411(b)–2 published at 53 FR 11876 on April 11, 1988, is revised to read as follows.

§ 1.411(b)–2 Reductions of accruals or allocations because of attainment of any age.

(a) *In general*—(1) *Overview.* Section 411(b)(1)(H) provides that a defined benefit plan does not satisfy the minimum vesting standards of section 411(a) if, under the plan, benefit accruals on behalf of a participant are ceased or the rate of benefit accrual on behalf of a participant is reduced because of the participant's attainment of any age. Section 411(b)(2) provides that a defined contribution plan does not satisfy the minimum vesting standards of section 411(a) if, under the plan, allocations to a participant's account are ceased or the rate of allocation to a participant's account is reduced because of the participant's attainment of any age. Paragraph (b) of this section provides general rules for defined benefit plans. Paragraph (c) of this section provides general rules for defined contribution plans. Paragraph (d) of this section provides rules applying this section to optional forms of benefit, ancillary benefits, and other rights or features under defined benefit and defined contribution plans. Paragraph (e) of this section provides rules coordinating the requirements of this section with certain other qualification requirements. Paragraph (f) of this section contains effective date provisions.

(2) *Attainment of any age.* For purposes of sections 411(b)(1)(H), 411(b)(2), and this section, a participant's attainment of any age means the participant's growing older. Thus, the rules of sections 411(b)(1)(H), 411(b)(2), and this section apply regardless of whether a participant is younger than, at, or older than normal retirement age.

(b) *Defined benefit plans*—(1) *In general*—(i) *Requirement.* A defined benefit plan does not satisfy the requirements of section 411(b)(1)(H) if a participant's rate of benefit accrual is reduced, either directly or indirectly, because of the participant's attainment of any age. A reduction in a participant's rate of benefit accrual includes any discontinuance in the participant's accrual of benefits or cessation of participation in the plan.

(ii) *Definition of normal form.* For purposes of this paragraph (b), the normal form of benefit (also referred to as the normal form) means the form under which payments to the participant under the plan are expressed under the plan formula, prior to adjustment for form of benefit.

(2) *Rate of benefit accrual*—(i) *Rate of benefit accrual before normal retirement age.* For purposes of this paragraph (b), except as provided in paragraph (b)(2)(iii) of this section, a participant's rate of benefit accrual for any plan year that ends before the participant attains normal retirement age is the excess (if any) of—

(A) The participant's accrued normal retirement benefit at the end of the plan year; over

(B) The participant's accrued normal retirement benefit at the end of the preceding plan year.

(ii) *Rate of benefit accrual after normal retirement age.* In the case of a plan for which the rate of benefit accrual before normal retirement age is determined under paragraph (b)(2)(i) of this section, except as provided in paragraph (b)(4)(iii)(C) of this section, a participant's rate of benefit accrual for the plan year in which the participant attains normal retirement age or any later plan year (taking into account the provisions of section 411(b)(1)(H)(iii)(II)) is the excess (if any) of—

(A) The annual benefit to which the participant is entitled at the end of the plan year, determined as if payment commences at the end of the plan year in the normal form (or the straight life annuity that is actuarially equivalent to the normal form if the normal form is not an annual benefit that does not decrease during the lifetime of the participant); over

(B) The annual benefit to which the participant was entitled at the end of the preceding plan year, determined as if payment commences at the later of normal retirement age or the end of the preceding plan year in the normal form (or the straight life annuity that is actuarially equivalent to the normal form if the normal form is not an annual benefit that does not decrease during the lifetime of the participant).

(iii) *Rate of benefit accrual for eligible cash balance plans*—(A) *General rule.* For purposes of this paragraph (b), in the case of an eligible cash balance plan, a participant's rate of benefit accrual for a plan year is permitted to be determined as the addition to the participant's hypothetical account for the plan year, except that interest credits added to the hypothetical account for the plan year are disregarded to the extent the participant had accrued the right to those interest credits as of the close of the preceding plan year as described in paragraph (b)(2)(iii)(B)(*2*) of this section.

(B) *Eligible cash balance plans.* For purposes of this section, a defined benefit plan is an eligible cash balance plan for a plan year if it satisfies each of the following requirements for current accruals under the plan for that plan year—

(*1*) *Plan design.* The normal form of benefit is an immediate payment of the balance in a hypothetical account (without regard to whether such an immediate payment is actually available under the plan).

(*2*) *Right to future interest.* With respect to a participant's hypothetical account balance, the participant has accrued the right to annual (or more frequent) interest credits to be added to the hypothetical account for all future periods without regard to future service at a reasonable rate of interest that is not reduced, either directly or indirectly, because of the participant's attainment of any age. A plan is treated as not satisfying the requirement of this paragraph (b)(2)(iii)(B)(*2*) if it provides for any adjustment for benefit distributions described in paragraph (b)(4) of this section.

(*3*) *Plan amendments adopting cash balance formula.* In the case of a plan amendment that has been amended to adopt a cash balance formula (as described in paragraphs (b)(2)(iii)(B)(*1*) and (*2*) of this section) for a participant, the plan as amended satisfies the requirements of either paragraph (b)(2)(iii)(D) or (E) of this section.

(C) *Plans with mixed benefit formulas*—(*1*) *Eligible cash balance formula.* If a portion of the plan formula under a defined benefit plan would satisfy the requirements to be an eligible cash balance plan if it were the only formula under the plan, then, for purposes of this section, such portion of the plan formula is referred to as an eligible cash balance formula and the other portion of the plan formula is referred to as a traditional defined benefit formula. If the eligible cash balance formula and the traditional defined benefit formula interact in a manner described in paragraph (b)(2)(iii)(C)(*2*), (*3*), or (*4*) of this section for current and future accruals under the plan, then, for purposes of determining whether the plan satisfies section 411(b)(1)(H), the plan is permitted to be treated as two separate plans, one of which is an eligible cash balance plan and the other of which is not, but only if each such plan would satisfy section 410(a)(2). Thus, such a plan satisfies the requirements of section 411(b)(1)(H) if the eligible cash balance formula satisfies the requirements of paragraph (b)(1) of this section with the participant's rate of

benefit accrual determined under paragraph (b)(2)(iii)(A) of this section and the portion of the plan's formula that is a traditional defined benefit formula satisfies the requirements of paragraph (b)(1) of this section with the participant's rate of benefit accrual determined under paragraph (b)(2)(i) or (ii) of this section, as applicable. If the eligible cash balance formula and the traditional defined benefit formula interact in a manner other than as set forth in paragraphs (b)(2)(iii)(C)(*2*), (*3*), or (*4*) of this section, the plan is not treated as an eligible cash balance plan for any portion of the plan formula.

(*2*) *Plans with additive formulas.* A plan is described in this paragraph (b)(2)(iii)(C)(*2*) if the participant's benefit is based on the sum of accruals under two different formulas, one of which is an eligible cash balance formula and the other of which is not.

(*3*) *Plans with greater of formulas.* A plan is described in this paragraph (b)(2)(iii)(C)(*3*) if the plan provides a benefit for a participant equal to the greater of the benefit determined under two or more formulas under the plan for a plan year, one of which is an eligible cash balance formula and another of which is not.

(*4*) *Different formulas for different participants.* A plan is described in this paragraph (b)(2)(iii)(C)(*4*) if some participants are eligible for accruals only under an eligible cash balance formula and the remaining participants are eligible for accruals only under a traditional defined benefit formula or a combination of a traditional defined benefit formula or eligible cash balance formula described in paragraphs (b)(2)(iii)(C)(*2*) and (*3*) of this section.

(D) *Plan amendment adopting eligible cash balance formula using a sum of formula.* A plan satisfies this paragraph (b)(2)(iii)(D) only if for all periods after the amendment becomes effective the plan provides benefits that are not less than the sum of the benefits accrued as of the later of the date the amendment becomes effective or the date the amendment is adopted, plus the benefits provided by the participant's hypothetical account under the eligible cash balance formula.

(E) *Plan amendment adopting eligible cash balance formula using an opening account balance*—(*1*) *Calculation of opening account balance.* A plan satisfies this paragraph (b)(2)(iii)(E) only if the balance in the participant's hypothetical account, determined immediately after the amendment becomes effective, is not less than the actuarial present value of the participant's accrued benefit payable in the normal form of benefit, determined as of the later of the date the amendment becomes effective or the date the amendment is adopted, with such present value determined using reasonable actuarial assumptions. For this purpose, the actuarial assumptions are not reasonable if they include an interest rate that increases, either directly or indirectly, because of a participant's attainment of any age. The actuarial assumptions do not fail to be reasonable merely because pre-retirement mortality is not taken into account.

(*2*) *Bifurcation for purposes of determining rate of benefit accrual.* If a plan satisfies the requirements of paragraph (b)(2)(iii)(E)(*1*), only the portion of the participant's hypothetical account balance in excess of the actuarial present value of the participant's accrued benefit payable in the normal form of benefit is treated as an addition to the participant's hypothetical account balance for the plan year for purposes of determining the participant's rate of benefit accrual under paragraph (b)(2)(i)(A) of this section.

(*3*) *Treatment of employees past normal retirement age.* In addition, a plan does not satisfy this paragraph (b)(2)(iii)(E) if the opening balance for a participant who has attained normal retirement age is less than the balance that would apply if the participant were at his or her normal retirement age.

(iv) *Determination of rate of benefit accrual*—(A) *In general.* A participant's rate of benefit accrual for a plan year can be determined as a dollar amount. Alternatively, if a plan's formula bases a participant's accruals on current compensation, then a participant's rate of benefit accrual can be determined as a percentage of the participant's current compensation. For example, for an accumulation plan (as defined in § 1.401(a)(4)–12), the participant's rate of benefit accrual under paragraph (b)(2)(i) of this section can be determined as the excess of the accrued portion of the participant's normal retirement benefit at the end of the plan year over the accrued portion of the participant's normal retirement benefit at the end of the preceding plan year, divided by compensation taken into account under the plan for the plan year. Likewise, if a plan's formula bases a participant's accruals on average compensation, then a participant's rate of benefit accrual can be determined as a percentage of that measure of the participant's average compensation. For a plan that determines benefits as a percentage of average annual compensation (as defined in § 1.401(a)(4)–3(e)(2)), the rate of benefit accrual under paragraph (b)(2)(i) of this section is determined as the excess of the accrued portion of the participant's normal retirement benefit at the end of the plan year divided by average annual compensation taken into account under the plan at the end of the plan year, over the accrued portion of the participant's normal retirement benefit at the end of the preceding plan year divided by average annual compensation taken into account under the plan at the end of such preceding plan year. A plan is permitted to determine the participant's rate of benefit accrual as a percentage of the participant's current or average compensation only if compensation under the plan is determined without regard to attainment of any age.

(B) *Benefits included in rate of benefit accrual.* For purposes of determining a participant's rate of benefit accrual, only benefits that are included in a participant's accrued benefit are taken into account. Thus, for example, a participant's rate of benefit accrual does not take into account benefits such as the benefits described in paragraph (d)(3) of this section (relating to qualified disability benefits, social security supplements, and early retirement benefits).

(v) *Examples.* The following examples illustrate the application of this paragraph (b)(2). In each of the examples, normal retirement age is 65. The examples are as follows:

Example 1. Plan L is a defined benefit plan under which the normal form of benefit is a monthly straight life annuity commencing at normal retirement age (or the date of actual retirement, if later) equal to $30 times the participant's years of service. For purposes of this section, a participant's rate of benefit accrual for any plan year is $30.

Example 2. (i) Plan M is a defined benefit plan under which the normal form of benefit is an annual straight life annuity commencing at normal retirement age (or the date of actual retirement, if later) equal to 1% of the average of a participant's highest 3 consecutive years of compensation times the participant's years of service.

(ii) For purposes of this section, a participant's rate of benefit accrual for any plan year can be expressed as a dollar amount. Alternatively, a participant's rate of benefit accrual for a plan year can be expressed as 1% of the participant's highest 3 consecutive years of compensation (determined using the same rules applicable to determining compensation under the plan for purposes of computing the normal form of benefit), provided that the definition of compensation used for this purpose is determined without regard to the attainment of any age. A participant's rate of benefit accrual cannot be determined as a percentage of any other measure of compensation or average compensation.

(iii) If Plan M were to provide that compensation earned after the attainment of age 65 is not taken into account in determining average compensation or were otherwise to determine compensation in a manner that depends on a participant's age, then, for purposes of this section, a participant's rate of benefit accrual would have to be expressed as a dollar amount, and could not be expressed as a percentage of any measure of compensation or average compensation.

Example 3. (i) Plan N is a defined benefit plan under which the normal form of benefit is an immediate payment of the balance in a participant's hypothetical account. A compensation credit equal to 6% of each participant's wages for the year is added to the hypothetical account of a participant who is an employee. At the end of each plan year, the hypothetical account is credited with interest based on the applicable interest rate under section 417(e), as provided under the plan. All participants accrue the right to receive interest credits on their hypothetical account in the future regardless of performance of services in the future, including after normal retirement age.

(ii) Under paragraph (b)(2)(iii)(B) of this section, Plan N satisfies the requirements to be an eligible cash balance plan. Participant A's compensation for a plan year is $40,000. The compensation credit for Participant A allocated to A's hypothetical account for that plan year is $2,400. Because Plan N is an eligible cash balance plan, the rate of benefit accrual for Participant A is permitted to be determined as the addition to Participant A's hypothetical account for the plan year, disregarding interest credits. Therefore, Participant A's rate of benefit accrual is equal to $2,400, or 6% of wages.

Example 4. (i) The facts are the same as in *Example 3*, except that the cash balance formula under Plan N is the result of a plan amendment. Under the plan, as amended, the benefits equal the sum of—

(1) 1% of the average of the participant's highest 3 consecutive years of base salary times years of service, but disregarding service and salary after the effective date of the amendment, in a normal form of benefit that is a straight life annuity commencing at normal retirement age (or the date of actual retirement, if later); and

(2) the participant's hypothetical account under the same cash balance formula in *Example 3* that applies after the effective date of the amendment, in a normal form of benefit expressed as an immediate payment of the balance of the participant's hypothetical account.

(ii) Under paragraph (b)(2)(iii)(B)(*3*) of this section, the plan is an eligible cash balance plan if the plan satisfies the requirements of paragraph (b)(2)(iii)(D) or (E) of this section. The plan's formula is described in paragraph (b)(2)(iii)(D) of this section. Accordingly, the portion of the plan formula that provides for compensation credits on a participant's hypothetical account is an eligible cash balance formula under paragraph (b)(2)(iii)(B) of this section. Therefore, a participant's rate of benefit accrual under the eligible cash balance formula is permitted to be determined as the addition to the participant's hypothetical account for the plan year, disregarding interest credits. Participant B's base salary for the year is $50,000. The compensation credit for Participant B credited to B's hypothetical account for the year is $3,000. The rate of benefit accrual under the eligible cash balance formula for Participant B is equal to $3,000, or 6% of base salary.

Example 5. (i) The facts are the same as in *Example 3*, except that Plan N is a defined benefit plan that is converted to a cash balance plan by the adoption of a plan amendment, effective at the beginning of the next plan year, establishing an opening hypothetical account for each participant with an accrued benefit under the plan prior to conversion. Prior to conversion, Plan N provided a benefit equal to 1% of the average of a participant's highest 3 consecutive years of compensation times years of service. Effective as of the date of the conversion, hypothetical accounts are established equal to the present value of a participant's accrued benefit using section 417(e) interest and reasonable mortality assumptions (except no pre-retirement mortality is used). Under the cash balance portion of the formula, compensation and interest credits are made as described in *Example 3*.

(ii) Under paragraph (b)(2)(iii)(B)(*3*) of this section, the plan is an eligible cash balance plan only if the plan satisfies the requirements of paragraph (b)(2)(iii)(D) or (E) of this section. The plan's formula is described in paragraph (b)(2)(iii)(E) of this section. Accordingly, the portion of the plan formula that provides for compensation credits on a participant's hypothetical account is an eligible cash balance formula. The rate of benefit accrual for a participant is therefore permitted to be determined as the addition to the participant's hypothetical account for the plan year, disregarding interest credits. In addition, under paragraph (b)(2)(iii)(E) of this section, because the opening hypothetical account balance is equal to the actuarial present value of the participant's accrued benefit, that balance is not treated as an addition for the plan year. The result would not be different if the opening accounts were established using another interest rate or another mortality assumption if the actuarial assumptions were reasonable. Participant C's wages for the year are $60,000. The compensation credit allocated to C's hypothetical account for the year is $3,600. The rate of accrual under the eligible cash balance formula for C is equal to $3,600, or 6% of compensation.

Example 6. (i) The facts are the same as in *Example 5*, except that Plan N provides for only new participants and participants who are less than age 55 at the time of the conversion to be eligible for benefits under the cash balance formula. Accordingly, participants who are age 55 or older at the time of the conversion are only eligible for the benefit payable under the plan formula in effect before the conversion (1% of the participant's highest 3 consecutive years of compensation times years of service) taking into account compensation and service after the conversion.

(ii) Because Plan N provides benefits based on a mixed formula under paragraph (b)(2)(iii)(C) of this section, Plan N is permitted under paragraph (b)(2)(iii)(C)(*1*) of this section to be treated as two separate plans for purposes of section 411(b)(1)(H), one of which is an eligible cash balance plan and the other of which is not, but only if each plan would satisfy section 410(a)(2). No portion of Plan N can be treated as an eligible cash balance plan because the portion of Plan N that would otherwise be an eligible cash balance plan would fail to satisfy section 410(a)(2) as a result of having a maximum age of 55 for individuals who are participants at the time of the conversion.

Example 7. (i) The facts are the same as in *Example 5*, except that Plan N provides for participants to receive the greater of the benefit payable under the cash balance formula or the benefit payable under the plan formula in effect before the conversion (1% of the participant's highest 3 consecutive years of compensation times years of service) taking into account compensation and service after the conversion.

(ii) Because Plan N provides benefits based on the greater of the amount payable under two different formulas, under paragraph (b)(2)(iii)(C)(*4*) of this section, Plan N is tested for satisfaction of the requirements of section 411(b)(1)(H) and this paragraph (b) by separately testing the eligible cash balance formula using a rate of benefit accrual equal to compensation credits of 6% of compensation and the traditional defined benefit formulas using a rate of benefit accrual equal to 1% of highest 3 consecutive years of compensation.

(*3*) *Reduction that is directly or indirectly because of a participant's attainment of any age*—(i) *Reduction in rate of benefit accrual that is directly because of a participant's attainment of any age.* A plan provides for a reduction in the rate of benefit accrual that is directly because of a participant's attainment of any age for any plan year if, under the terms of the plan, any participant's rate of benefit accrual for the plan year would be higher if the participant were younger. Thus, a plan fails to satisfy section 411(b)(1)(H) and this paragraph (b) if, under the terms of the plan, the rate of benefit accrual for any individual who is or could be a participant under the plan would be lower solely as a result of the individual being older.

(ii) *Reduction in rate of benefit accrual that is indirectly because of a participant's attainment of any age*—(A) *In general.* A plan provides for a reduction in the rate of benefit accrual that is indirectly because of a participant's attainment of any age for any plan year if any participant's rate of benefit accrual for the plan year would be higher if the participant were to have a different characteristic which is a proxy for being younger, based on the all of relevant facts and circumstances. Thus, a plan fails to satisfy section 411(b)(1)(H) and this paragraph (b) if the rate of benefit accrual for any individual who is or could be a participant under

the plan would be lower solely as a result of such individual having a different characteristic which is a proxy for being older, based on all of the relevant facts and circumstances.

(B) *Permissible limitations.* A reduction in a participant's rate of benefit accrual is not indirectly because of the attainment of any age in violation of section 411(b)(1)(H) solely because of a positive correlation between attainment of any age and a reduction in the rate of benefit accrual. In addition, a defined benefit plan does not fail to satisfy section 411(b)(1)(H) and this paragraph (b) solely because, on a uniform and consistent basis without regard to a participant's age, the plan limits the amount of benefits a participant may accrue under the plan, limits the number of years of service or years of participation taken into account for purposes of determining the accrual of benefits under the plan (credited service), or provides for a reduced rate of accrual for credited service in excess of a fixed number of years. For this purpose, a limitation that is expressed as a percentage of compensation (whether averaged over a participant's total years of credited service for the employer or over a shorter period) is treated as a permissible limitation on the amount of benefits a participant may accrue under the plan.

(iii) *Examples.* The provisions of this paragraph (b)(3) may be illustrated by the following examples. In each of the examples, except as specifically indicated, normal retirement age is 65, the plan contains no limitations on the maximum amount of benefits the plan will pay to any participant (other than the limitations imposed by section 415), on the maximum number of years of credited service taken into account under the plan, or on the compensation used for purposes of determining the amount of any participant's accrued benefit (other than the limitation imposed by section 401(a)(17)), and the plan uses the following actuarial assumptions in determining actuarial equivalence: a 7.5% rate of interest and the 83 GAM (male) mortality table. The examples are as follows:

Example 1. (i) Plan M provides an accrued benefit of 1% of a participant's average annual compensation, multiplied by the participant's years of credited service under the plan payable in the normal form of a straight life annuity commencing at normal retirement age or the date of actual retirement if later. Plan M suspends payment of benefits for participants who work past normal retirement age, in accordance with section 411(a)(3)(B) and 29 CFR 2530.203–3 of the regulations of the Department of Labor, and does not provide for an actuarial increase in computing the accrued benefit for participants who commence benefits after normal retirement age.

(ii) The rate of benefit accrual for all participants in Plan M is 1% of average annual compensation. Thus, there could be no participant who would have a rate of benefit accrual that is greater than 1% if the individual were younger. Accordingly, there is no reduction in the rate of benefit accrual because of the individual's attainment of any age under this paragraph (b)(3) and Plan M satisfies the requirements of section 411(b)(1)(H) and this paragraph (b).

Example 2. (i) Assume the same facts as in *Example 1*, except that Plan M provides that not more than 35 years of credited service are taken into account in determining a participant's accrued benefit under the plan. Participant A became a participant in the plan at age 25 and worked continuously in covered service under Plan M until A retires at age 70.

(ii) The rate of benefit accrual under Plan M is 1% of average annual compensation for participants who have up to 35 years of credited service and zero for participants who have more than 35 years of credited service. Because a reduction from a rate of benefit accrual from 1% of average annual compensation to zero is based on service, and would not be affected if any participant were younger (with the same number of years of service), Plan M does not provide for a reduction in the rate of benefit accrual that is directly because of an individual's attainment of any age as provided in paragraph (b)(3)(i) of this section. Under paragraph (b)(3)(ii) of this section, a uniform limit on the number of years of service taken into account for purposes of determining the accrual of benefits under the plan is not considered to be a reduction in the rate of benefit accrual that is indirectly because of a participant's attainment of any age.

(iii) Upon A's retirement at age 70, A will have an accrued benefit under the plan's benefit formula of 35% of A's average annual compensation at age 70 (1% per year of credited service × 35 years of credited service). Plan M will not fail to satisfy the requirements of section 411(b)(1)(H) and this paragraph (b) merely because the plan provides that the final 10 years of A's service under the plan are not taken into account in determining A's accrued benefit. The result would be the same if Plan M provided that no participant could accrue a benefit in excess of 35% of the participant's average annual compensation.

Example 3. Assume the same facts as in *Example 1*, except that Plan M provides that a participant's years of service after attainment of social security retirement age are disregarded for purposes of determining a participant's accrued benefit under the plan. Because a participant who is covered under the plan after social security retirement age would have a higher rate of benefit accrual if he or she were younger (and had not attained social security retirement age), that participant's rate of benefit accrual is reduced directly because of the participant's attainment of any age under paragraph (b)(3)(i) of this section. Consequently, Plan M fails to satisfy the requirements of section 411(b)(1)(H) and this paragraph (b).

Example 4. (i) Assume the same facts as in *Example 1*, except that Plan M provides that a participant's compensation after the attainment of age 62 is not taken into account in determining the participant's accrued benefit under the plan.

(ii) Accordingly, the plan's measure of average compensation cannot be used in determining a participant's rate of benefit accrual because it does not apply to participants in a uniform manner that is independent of age. Because a participant who is or could be covered under Plan M after the attainment of age 62 whose compensation increases after age 62 would have a higher rate of benefit accrual if the participant were younger than age 62, that participant's rate of benefit accrual is reduced directly because of the participant's attainment of any age under paragraph (b)(3)(i) of this section. This reduction occurs whether or not there is any actual participant in Plan M who has attained age 62 or whose average annual compensation has increased after age 62. Consequently, the plan fails to satisfy the requirements of section 411(b)(1)(H) and this paragraph (b).

Example 5. (i) Assume the same facts as in *Example 1*, except that Plan M is amended to cease all benefit accruals for all participants and is subsequently terminated.

(ii) After all benefit accruals have ceased, the rate of benefit accrual of all participants is zero. Thus, there could not be any participant who would have a rate of benefit accrual that is greater than zero if the participant were younger, so that there is no reduction in the rate of benefit accrual that is because of the individual's attainment of any age under paragraph (b)(3) of this section. Accordingly, Plan M satisfies the requirements of section 411(b)(1)(H) and this paragraph (b).

Example 6. (i) Employer Y maintains Plan O, a defined benefit plan that provides an accrued benefit of 1% of a participant's highest 5 consecutive years of compensation, multiplied by the sum of the participant's age and years of service, payable in the normal form of a straight life annuity commencing at normal retirement age or the date of actual retirement if later. Plan O provides that a participant's years of service after the sum of a participant's age and years of service reach a total of 55 are disregarded for purposes of determining the normal retirement benefit. Participant C is 45 years old and has 10 years of credited service as of the beginning of a plan year. Thus, for that plan year, C's rate of benefit accrual is 1% of C's highest 5 consecutive years of compensation.

(ii) If C were younger, for example age 39 (with the same years of service), C would have a rate of benefit accrual of 2% of C's highest 5 consecutive years of compensation. Accordingly, C's rate of benefit accrual is reduced directly because of C's attainment of any age as provided in this paragraph (b)(3)(i). Consequently, Plan O fails to satisfy the requirements of section 411(b)(1)(H) and this paragraph (b).

Example 7. (i) Plan P is a defined benefit plan that provides for a normal retirement benefit of 40% of a participant's average compensation for the participant's highest 3 consecutive years of compensation, payable in the normal form of a straight life annuity commencing at normal retirement age or the date of actual retirement if later. If a participant separates from service prior to normal retirement age, Plan P provides a benefit equal to an amount that bears the same ratio to 40% of such average compensation as the participant's actual number of years of service bears to the number of years of service the participant would have if the participant's service continued to normal retirement age. As of the end of a plan year, participant D is 45 years old and has completed 20 years of service, and participant E is 41 years old and has completed 1 year of credited service. Thus, D's rate of benefit accrual for the plan year may be determined as 1% of compensation for D's highest 3 consecutive years, and E's rate of benefit accrual for the plan year may be determined as 1.6% of compensation for E's highest 3 consecutive years.

(ii) If D were younger than age 45 (with 20 years of service and the same compensation history), D's rate of benefit accrual for the plan year would not be greater than 1% of compensation for D's highest 3 consecutive years. Thus, there is no reduction in the rate of benefit accrual for D that is directly because of the individual's attainment of any age as provided in paragraph (b)(3)(i) of this section. In addition, there are no facts and circumstances indicating that D's rate of benefit accrual is reduced indirectly because of D's attainment of any age as provided in paragraph (b)(3)(ii) of this section. Likewise, if E were younger than age 41 (with 1 year of service and the same compensation history), E's rate of benefit accrual for the plan year would not be greater than 1.6% of compensation for E's highest 3 consecutive years. Thus, there is no reduction in the rate of benefit accrual for E that is directly because of the individual's attainment of any age as provided in paragraph (b)(3)(i) of this section. In addition, there are no facts and circumstances indicating that E's rate of benefit accrual is reduced indirectly because of E's attainment of any age under paragraph (b)(3)(ii) of this section. These same results would apply for any possible participant in Plan P. Accordingly, Plan P satisfies the requirements of section 411(b)(1)(H) and this paragraph (b).

Example 8. (i) Plan A is a defined benefit plan that provides for an accrued benefit of 2% of a participant's average compensation for the participant's highest 3 consecutive years of compensation for the first 20 years of service, plus 1% of such average compensation for years in excess of 20, payable in the normal form of a straight life annuity commencing at normal retirement age or the date of actual retirement if later. However, if a participant separates from service prior to normal retirement age, Plan P provides a benefit equal to an amount that bears the same ratio to the total percentage of such average compensation that the participant would have if service continued to normal retirement age as the participant's actual number of years of service bears to the number of years of service the participant would have if the participant's service continued to normal retirement age. For participants who work past normal retirement age, Plan A provides a benefit equal to 2% per year for years of service not in excess of 20, plus the following rate for years of service in excess of 20: the sum of 40% plus the product of 1% times service in excess of 20 years, with that sum divided by total service to the end of the current plan year. As of the beginning of the plan year beginning January 1, 2008, participant N is 64 years old and has completed 20 years of service, and participant O is 70 years old and has completed 20 years of credited service. Thus, N's rate of benefit accrual for that plan year may be determined as 1.95% of compensation for N's highest 3 consecutive years (2% for 20 years, plus 1% for 1 year, with that sum divided by 21 equals 1.95%), and O's rate of benefit accrual for that plan year also may be determined 1.95% of compensation for O's highest 3 consecutive years (40% for the first 20 years, plus 1% for service to the end of 2008, with that sum divided by 21 equals 1.95%).

(ii) If O were younger than age 70 (with 20 years of service and the same compensation history), O's rate of benefit accrual for the plan year would not be greater than 1.95% of compensation for O's highest 3 consecutive years. The same conclusion applies for any other possible participant. Thus, Plan A satisfies paragraph (b)(3)(ii) of this section.

(iii) However, if Plan A were instead to provide a rate of benefit accrual for service after normal retirement age equal to 2% for years of service not in excess of 20, plus 1% for service in excess of 20, Plan A would fail to satisfy paragraph (b)(3)(ii) of this section. For example, O's rate of benefit accrual would be 1% for 2008, whereas N's rate of benefit accrual would be 1.95% for 2008, even though the only difference between O and N is that N is younger.

Example 9. (i) The facts are similar to *Example 8*, except that the formula is 1% of a participant's average compensation for the participant's highest 3 consecutive years of compensation for the first 20 years, plus 2% of such average compensation for years in excess of 20, payable in the normal form of a straight life annuity commencing at normal retirement age or the date of actual retirement if later. As in *Example 8*, if a participant separates from service prior to normal retirement age, Plan P provides a benefit equal to an amount that bears the same ratio to the total percentage of such average compensation that the participant would have if service continued to normal retirement age as the participant's actual number of years of service bears to the number of years of service the participant would have if the participant's service continued to normal retirement age. Further, similar to the facts in *Example 8*(iii) of this paragraph (b)(3)(iii), for participants who work past normal retirement age, Plan A provides a benefit equal to 1% per year for years of service not in excess of 20, plus 2% per year for years of service in excess of 20. As of the beginning of the plan year beginning January 1, 2008, participant K is 45 years old and has completed 10 years of service, and participant M is 55 years old and has completed 10 years of credited service. Thus, K's rate of benefit accrual for the plan year may be determined as 1.33% of compensation for K's highest 3 consecutive years (1% for 20 years, plus 2% for 10 more years, with the sum divided by 30 equals 1.33%), and M's rate of benefit accrual for the plan year may be determined as 1% of compensation for O's highest 3 consecutive years (1% for 20 years, with that amount divided by 20 equals 1%).

(ii) If M were younger than age 55 (with 10 years of service and the same compensation history), M's rate of benefit accrual for the plan year would be greater than 1% of compensation for M's highest 3 consecutive years. (Plan A also provides for an impermissible reduction in the rate of benefit accrual for a participant whose service continues after normal retirement age in a manner that is comparable to *Example 8*(iii) of this paragraph (b)(3)(iii).) Thus, Plan A fails to satisfy paragraph (b)(3)(ii) of this section.

Example 10. (i) Employer Z maintains Plan Q, a defined benefit plan that provides an accrued benefit of $40 per month multiplied by a participant's years of credited service. Participant F attains normal retirement age of 65 and continues in the full time service of Z. At age 65, F has 30 years of credited service under the plan and could receive a normal retirement benefit of $1,200 per month ($40 X 30 years) if F retires. The plan suspends benefits for participants who work past normal retirement age, in accordance with section 411(a)(3)(B) and 29 CFR 2530.203–3 of the regulations of the Department of Labor, and does not provide for any actuarial increase for employment past normal retirement age. Accordingly, the plan does not pay F's accrued benefit while F remains in the full time service of Z and does not provide for an actuarial adjustment of F's accrued benefit because of delayed payment. For example, if F retires at age 67, after completing 2 additional years of credited service for Z, F will receive a benefit of $1,280 per month ($40 × 32 years) commencing at age 67.

(ii) Under Plan Q, the rate of accrual for all participants is $40 per month. Thus, there could not be any participant who would have a rate of benefit accrual that is greater than $40 per month if the participant were younger, so that there is no reduction in the rate of benefit accrual that is because of the individual's attainment of any age under paragraph (b)(3)(i) of this section. Accordingly, Plan Q satisfies the requirements of section 411(b)(1)(H) and this paragraph (b).

Example 11. (i) Assume the same facts as in *Example 10*, except that the plan provides that the amount of F's benefit at normal retirement age will be actuarially increased for delayed retirement (even though the plan suspends benefits for participants who work past normal retirement age), and this actuarially increased benefit will be paid if it exceeds the plan formula, but no actuarial increase is provided for any amount that is accrued after normal retirement age. The plan takes this actuarial increase into account as part of the rate of benefit accrual in plan years ending after F's attainment of normal retirement age, as provided under paragraph (b)(2)(ii) of this section.

(ii) Under section 411(b)(1)(H) and this paragraph (b), F's employment past normal retirement age cannot cause F's rate of benefit accrual for any year to be less than $40 for the year. Plan Q satisfies this requirement for the first year after normal retirement age because, under the plan, F is entitled to receive, upon retirement at the end of the year when F is age 66, an actuarially increased benefit of $1,344.68 per month, so that the rate of benefit accrual for the year is $144.68 (which is $1,344.68 minus $1,200).

(iii) Further, for the second year past normal retirement age ending when F is age 67, F must be entitled to a rate of benefit accrual of at least $149.50 per month, which is the highest rate of benefit accrual under Plan Q for any younger participant with 32 years of service at the end of the year. (In these facts, all participants have a rate of accrual of $40 until normal retirement age and a participant who is age 66 with 32 years of service at the end of the year would have a rate of benefit accrual of $149.50 due to an actuarial increase on an age 65 benefit of $1,240 per month.) Under the plan, F is entitled to receive, upon retirement at age 67, an actuarially increased benefit of $1,511.39 per month. Plan Q satisfies the requirement that F be entitled to the highest rate of benefit accrual provided to any younger participant because the rate of benefit accrual in that year ($1,511.39 minus $1,344.68 equals $166.71) is not less than what the rate would be for F if F were younger. These same results would apply for any possible participant in Plan Q. Accordingly, Plan Q satisfies the requirements of section 411(b)(1)(H) and this paragraph (b).

Example 12. (i) Employer Z maintains Plan R, a defined benefit plan that provides an accrued benefit of 2% of the average of a participant's high 3 consecutive years of compensation multiplied by the participant's years of credited service under the plan. Participant G, who has attained normal retirement age (age 65) under the plan, continues in the full time service of Z. At normal retirement age, G has average compensation of $40,000 for G's high 3 consecutive years and has 10 years of credited service under the plan. Thus, at normal retirement age, G is entitled to receive an annual normal retirement benefit of $8,000 ($40,000 × .02 × 10 years). Payment of G's retirement benefit is not suspended, and the plan provides that retirement benefits that commence after a participant's normal retirement age are actuarially increased for late retirement. Under the plan provision relating to actuarial increase, the actuarial increase for the plan year is made to the benefit that would have been paid had the participant retired as of the end of the preceding plan year. The plan then provides the greater of this actuarially increased benefit and benefits under the plan formula based on continued service, thereby including the actuarial increase in the rate of benefit accrual in plan years ending after G's attainment of normal retirement age, as provided in paragraph (b)(2)(ii) of this section. The foregoing is illustrated in the following table with respect to certain years of credited service performed by G after attaining normal retirement age 65: (Certain numbers may not total due to rounding.)

Age at start of plan year	Years of service at start of plan year	Average pay for high 3 consecutive years at start of plan year	Plan formula at start of plan year (.02 times column 2 times column 3)	Additional accruals for the plan year under plan formula (column 4 minus column 4 for prior year)	Annual benefit, as actuarially increased (column 8 from prior year actuarially increased)	Actuarial increase on the benefit at prior age (column 6 minus column 8 for prior year)	Annual benefit to which C is entitled at start of year (greater of column 4 and column 6)	Annual benefit as percent of average pay column 8 ÷ column 3) (percent)	Rate of benefit accrual (column 9 less column 9 for prior year) (percent)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
65	10	$40,000	$8,000	n/a	n/a	n/a	$8,000	20	2
66	11	42,000	9,240	$1,240	$8,964	964	9,240	22	2
67	12	58,000	13,920	4,680	10,386	1,142	13,920	24	2
68	13	60,000	15,600	1,680	15,697	1,777	15,697	26.16	2.16
69	14	66,000	18,480	2,880	17,762	2,065	18,480	28.1	2
70	15	68,000	20,400	1,920	20,998	2,509	20,989	30.87	2.87

(ii) In the year G is 69 at the beginning of the year, G's rate of benefit accrual (1.84% of the average high 3 consecutive years of compensation) is lower than the rate of benefit accrual that would apply to a younger participant because a participant who is younger than age 65 with the same number of years of credited service and compensation history would have a rate equal to 2% of average high 3 consecutive years of compensation. Accordingly, Plan R fails to satisfy the requirements of section 411(b)(1)(H) and this paragraph (b).

Example 13. (i) The facts are the same as in Example 10, except that, under the plan provisions relating to retirement after normal retirement age, a participant's benefit is equal to the sum of the benefit that would have been paid had the participant retired as of the end of the preceding plan year and the greater of the actuarial increase for the plan year on that amount or the otherwise applicable accrual for the plan year under the plan formula. The foregoing is illustrated in the following table with respect to certain years of credited service performed by G after attaining normal retirement age 65.

Age at start of plan year	Years of service at start of plan year	Average pay for high 3 consecutive years at start of plan year	Plan formula at start of plan year (.02 times column 2 times column 3)	Additional accruals for the plan year under plan formula (column 4 minus column 4 for prior year)	Annual benefit, as actuarially increased (column 8 from prior year actuarially increased)	Actuarial increase on the benefit at prior age (column 6 minus column 8 for prior year)	Annual benefit to which C is entitled at start of yeare (column 8 at prior age plus the greater of column 5 and column 7)	Annual benefit as percent of average pay column 8 + column 3) (percent)	Rate of benefit accrual (column 9 less column 9 for prior year) (percent)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
65	10	$40,000	$8,000	n/a	n/a	n/a	$8,000	20%	2%
66	11	42,000	9,240	$1,240	$8,964	$964	9,240	22	2
67	12	58,000	13,920	4,680	10,386	1,142	13,920	24	2
68	13	60,000	15,600	1,680	15,697	1,777	15,697	26.16	2.16

Age at start of plan year	Years of service at start of plan year	Average pay for high 3 consecutive years at start of plan year	Plan formula at start of plan year (.02 times column 2 times column 3)	Additional accruals for the plan year under plan formula (column 4 minus column 4 for prior year)	Annual benefit, as actuarially increased (column 8 from prior year actuarially increased)	Actuarial increase on the benefit at prior age (column 6 minus column 8 for prior year)	Annual benefit to which C is entitled at start of yeare (column 8 at prior age plus the greater of column 5 and column 7)	Annual benefit as percent of average pay column 8 + column 3) (percent)	Rate of benefit accrual (column 9 less column 9 for prior year) (percent)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
69	14	66,000	18,480	2,880	17,762	2,065	18,577	28.1	2
70	15	68,000	20,400	1,920	21,098	2,521	21,098	31.03	2.93

(ii) In the year G is 69 at the beginning of the year, G's rate of benefit accrual (2% of the average high 3 consecutive years of compensation) is not lower than the rate that would apply to G if G were younger. For example, if G were age 68 with the same 14 years of credited service and compensation history that G has at age 69, G would have a rate of benefit accrual equal to 2% of average high 3 consecutive years of compensation (in contrast to *Example 12* in which the rate is 1.84% for an employee who is age 69 with 14 years of service, but would be 2% for younger employees with the same service and compensation history). Similar results would apply for any other potential younger participant in Plan R. Accordingly, Plan R satisfies the requirements of section 411(b)(1)(H) and this paragraph (b).

(iii) The decrease in G's rate of benefit accrual from 2.16% to 2% from age 68 to age 69 is not an impermissible reduction because of age. Under paragraph (b)(3) of this section, the determination of whether an impermissible reduction occurs because of age is made by comparing any potential participant's rate of benefit accrual to what the rate would be if the participant were younger (but with the same years of service, compensation history, and any other relevant factors taken into account under the plan), not by comparing a participant's rate in one year to that participant's rate in an earlier year. As indicated in paragraph (ii) of this *Example 13*, the rate of benefit accrual for a participant who is age 69 with 14 years of service at the beginning of the year is compared with the rate for all younger participants with the same service and compensation history. Similarly, the 2.16% rate for a participant who is age 68 with 13 years of service at the beginning of the year is compared with the rate for all younger participants with the same service and compensation history. Thus, for example, if G were age 67 with the same 13 years credited service and high 3 years of compensation equal to $60,000 that G has at age 68, G would have a rate of benefit accrual equal to 2.08% of average high 3 consecutive years of compensation.

(4) *Certain adjustments for benefit distributions*—(i) *In general.* Under section 411(b)(1)(H)(iii)(I), a defined benefit plan may provide that the requirement for continued benefit accrual under section 411(b)(1)(H)(i) and this paragraph (b) for a plan year is treated as satisfied to the extent of the actuarial equivalent of benefits distributed, as provided in this paragraph (b)(4). Distributions made before the participant attains normal retirement age or during a period that is not "section 203(a)(3)(B) service," as defined in 29 CFR 2530.203–3(c) of the regulations of the Department of Labor, may not be taken into account under this paragraph (b)(4).

(ii) *Amount of the adjustment for benefits distributed.* A defined benefit plan does not violate paragraph (b) of this section for a plan year merely because the rate of benefit accrual is reduced (but not below zero) to the extent of the actuarial equivalent of plan benefit distributions made to the participant during the plan year. For this purpose, distributions made during the plan year generally are disregarded for that year to the extent the actuarial value of the distributions exceeds the actuarial value of distributions that would have been made during the plan year had distribution of the participant's accrued benefit commenced at the beginning of the plan year (or, if later, at the participant's normal retirement age) in the normal form of benefit. (But see paragraph (b)(4)(iii) of this section for rules taking this excess into account at the end of the current year and in future years.) In addition, in any case in which the participant's benefits are being distributed in an optional form of benefit under which the amount payable annually is less than the amount payable under the plan's normal form of benefit (for example, a QJSA under which the annual benefit is less than the amount payable annually under a straight life annuity normal form), the plan may treat the participant as receiving payments under an actuarially equivalent normal form of benefit for the plan year and all future plan years.

(iii) *Treatment of accelerated benefit payments*—(A) *Accelerated benefit payments.* This paragraph (b)(4)(iii) applies if the actuarial value of the distributions made to the participant during a plan year exceeds the actuarial value of the distributions that would have been made during the plan year had distributions commenced at the beginning of the plan year (or, if later, at the participant's normal retirement age) in the normal form of benefit. In such a case, the excess payments (referred to as accelerated benefit payments) are converted to an actuarially equivalent stream of annual benefit payments under the plan's normal form of benefit, commencing at the beginning of the next plan year. This conversion must be based on the same actuarial assumptions used under the plan to determine the distributions made to the participant during the plan year. For purposes of this paragraph (b)(4)(iii), the actuarially equivalent stream of annual benefit payments is referred to as the annuity equivalent of accelerated benefit payments.

(B) *Credit for annuity equivalent of accelerated benefit payments.* For purposes of applying paragraphs (b)(4)(ii) and (iii)(C) of this section, the annuity equivalent of accelerated benefit payments is deemed to be paid to the participant in each plan year that begins after the plan year during which any accelerated benefit payment under paragraph (b)(4)(iii)(A) of this section is made.

(C) *Effect of accelerated benefit payments on rate of benefit accrual.* If any accelerated benefit payments under paragraph (b)(4)(iii)(A) of this section have been made to a participant, then, in lieu of determining the participant's rate of benefit accrual under paragraph (b)(2)(ii) of this section, the participant's rate of benefit accrual for a plan year is determined as the excess (if any) of—

(*1*) The sum of the annual benefit to which the participant is entitled at the end of the current plan year, assuming payment commences in the normal form at the end of the current plan year, plus the amount deemed paid in the next

plan year under the annuity equivalent of accelerated benefit payments; over

(*2*) The sum of the annual benefit to which the participant was entitled at the end of the preceding plan year, assuming that payment commences in the normal form at the later of normal retirement age and the end of the preceding plan year, plus the amount deemed paid during the current plan year under the annuity equivalent of accelerated benefit payments.

(iv) *Examples.* The provisions of this paragraph (b)(4) may be illustrated by the following examples. In each of the examples, except as otherwise indicated, normal retirement age is 65 and the birthday of each participant is assumed to be January 1. In addition, except as otherwise indicated, the plan contains no limitations on the maximum amount of benefits the plan will pay to any participant (other than the limitations imposed by section 415), on the maximum number of years of credited service taken into account under the plan, or on the compensation used for purposes of determining the amount of any participant's normal retirement benefit (other than the limitation imposed by section 401(a)(17)) and the plan uses the following actuarial assumptions for purposes of determining the amount of any participant's accrued benefit (other than the limitation imposed by section 401(a)(17)), and the plan uses the following actuarial assumptions in determining actuarial equivalence: a 7.5% rate of interest and the 83 GAM (male) mortality table. The examples are as follows:

Example 1. (i) *Facts relating to the year in which participant attains age 65.* Employer Z maintains Plan Q, a defined benefit plan that provides an accrued benefit of $40 per month multiplied by the participant's years of credited service. Participant F attains normal retirement age of 65 on January 1 and continues in the full time service of Z. At the end of the year in which F attains age 65, F has 30 years of credited service under the plan and could receive an accrued benefit of $1,200 per month ($40 x 30 years) if F retires. Plan Q does not suspend payment of benefits for participants who work past normal retirement age and F commences benefit payments at normal retirement age. (These are the same facts as in *Example 10* of paragraph (b)(3)(iii) of this section, except that the Plan Q does not provide for the suspension of normal retirement benefit payments.) The plan offsets the value of the benefit distributions against benefit accruals in plan years ending after the participant's attainment of normal retirement age, as permitted by paragraph (b)(4)(ii) of this section. Participant F (who remains in the full time service of Y) receives 12 monthly benefit payments after attainment of age 65 and prior to attainment of age 66. The total monthly benefit payments of $14,400 ($1,200 × 12 payments) have an actuarial value at the end of the year in which F turns 65 of $15,118 (reflecting interest and mortality) which would produce a monthly life annuity benefit of $145 commencing at age 66. The rate of benefit accrual otherwise applicable under the plan formula for the year of credited service F completes after attaining normal retirement age is $40 per month.

(ii) *Conclusions relating to the year in which F attains age 65.* Because the actuarial value (determined as a monthly benefit of $145) of the benefit payments made during the first year after F's attainment of normal retirement age exceeds the benefit accrual otherwise applicable for the first year after F's attainment of normal retirement age, the plan is not required to accrue benefits on behalf of F for the one year of credited service after F's attainment of normal retirement age and the plan is not required to increase F's monthly benefit payment of $1,200 during the year in which F attains age 65.

(iii) *Facts relating to the year in which F attains age 66.* Assume F receives 12 additional monthly benefit payments the next year prior to F's retirement at the end of the next year when F attains age 66. The total monthly benefit payments of $14,400 ($1,200 × 12 payments) have an actuarial value at the end of that year of $15,135 (reflecting interest and mortality) which would produce a monthly benefit payment of $149 commencing at age 67. The rate of benefit accrual otherwise applicable under the plan formula for the additional year of credited service F completed that year is $40 per month.

(iv) *Conclusions relating to the year in which F attains age 66.* Because the actuarial value (determined as a monthly benefit of $149) of the benefit payments made during that year exceeds the benefit accrual otherwise applicable for the additional year of credited service, the plan is not required to accrue benefits on behalf of F for the second year of credited service F completed after attaining normal retirement age and the plan is not required to increase F's monthly benefit payment of $1,200.

Example 2. (i) *Facts.* Employer Z maintains Plan R, a defined benefit plan that provides an accrued benefit of 2% of the average of a participant's high 3 consecutive years of compensation multiplied by the participant's years of credited service under the plan. Payment of a participant's retirement benefit is not suspended, and the plan provides that retirement benefits that commence after a participant's normal retirement age are actuarially increased for late retirement. Under the plan provision relating to actuarial increase, the actuarial increase for the plan year is made to the benefit that would have been paid had the participant retired as of the end of the preceding plan year. The plan then provides the greater of this actuarially increased benefit and benefits under the plan formula based on continued service, thereby including the actuarial increase in the rate of benefit accrual in plan years ending after attainment of normal retirement age, as provided in paragraph (b)(2)(ii) of this section. Participant G, who has attained normal retirement age (age 65) under the plan, continues in the full time service of Z. At normal retirement age, G has average compensation of $40,000 for G's high 3 consecutive years and has 10 years of credited service under the plan. Thus, at normal retirement age, G is entitled to receive an annual normal retirement benefit of $8,000 ($40,000 × .02 x 10 years). G continues working after normal retirement age, with G's average compensation increasing to $68,000 at age 70. (The facts in this *Example 2* are the same as *Example 13* of paragraph (b)(3)(ii) of this section, except that the employee does not retire at age 70, but continues in the full time service of Z.) Upon G's attainment of age 70, the plan commences benefit payments to G. The annual benefit paid to G in the first plan year is $21,098. In determining the annual benefit payable to G in each subsequent plan year, the plan offsets the value of benefit distributions made to the participant by the close of the prior plan year against benefit accruals otherwise applicable in plan years during which such distributions were made, as permitted by paragraph (b)(4)(ii)(B) of this section.

(ii) *Conclusion.* Accordingly, for each subsequent plan year, G is entitled under the plan to receive benefit payments based on G's benefit at the close of the prior plan year, plus the excess (if any) of the benefit for the plan year determined under the plan formula otherwise applicable over the value of total benefit distributions made to G during the plan year. The foregoing is illustrated in the following table with respect to certain years of credited service performed by G while benefits were being distributed to G.

Age at start of plan year (1)	Years of service at start of plan year (2)	Average pay for high 3 consecutive years at start of plan year (3)	Plan formula at start of plan year (.02 times column 2 times column 3) (4)	Additional accruals for the plan year under plan formula (column 4 minus column 4 for prior year) (5)	Benefit distributions made during the prior year (6)	Annual benefit that is actuarial equivalent of column 6 (7)	Annual benefit to which G is entitled at end of the year (column 8 for prior year, plus the excess, if any of column 5 for the current year, over column 7 for current year) (8)
70	15	$68,000	$20,400	$1,920	none	none	$21,098
71	16	70,000	22,400	2,000	21,098	2,799	21,098
72	17	90,000	30,600	8,200	21,098	2,891	26,407
73	18	100,000	36,000	5,400	26,407	3,743	28,065

Example 3. (i) *Facts relating to the year in which a participant attains age 65.* Plan X provides an accrued benefit equal to 1% of the average of a participant's highest 3 consecutive years of compensation times the participant's years of service, payable in the normal form of a straight life annuity commencing at normal retirement age or at the date of actual retirement if later. Plan X permits a participant who is an employee to commence distributions after attainment of normal retirement age (age 65) and provides for benefits otherwise accrued after normal retirement age to be offset by the actuarial equivalent of any benefit distributions made to the participant. Plan X provides for a participant who does not commence distributions to receive an actuarial increase for the year from the amount payable at the end of the preceding year (if greater than the amount otherwise accrued for H during the year under X's formula). Participant H attains age 65 on the first day of a plan year when Participant H's average highest 3 consecutive years of compensation is $60,000 and H has 20 years of service. Accordingly, Participant H's accrued benefit at the beginning of the year is equal to a straight life annuity of $1,000 per month (20% times $60,000 divided by 12) commencing at the beginning of the year. Participant H elects to receive a single-sum distribution of $130,389 at the beginning of the year, which is equal to the present value of H's accrued benefit under section 417(e) at that time. Participant H continues to work through the end of the plan year and at the end of the year has average compensation of $60,000 for the year. Plan X uses the actuarial assumptions specified in section 417(e) for purposes of determining actuarial equivalence. For purposes of this *Example 3*, the applicable interest rate under section 417(e) is assumed to be 6%, and the applicable mortality table under section 417(e) is the mortality table in effect on January 1, 2003.

(ii) *Conclusion relating to effect of distributions made in the year H attains age 65.* Under this paragraph (b)(4), H would otherwise accrue an additional monthly benefit of $50 for the additional year of service under the plan's formula (21% times $60,000 minus 20% times $60,000, divided by 12). The plan is permitted under section 411(b)(1)(H)(iii)(I) to offset additional accruals otherwise applicable after normal retirement age by the actuarial value of distributions made during the year. However, under paragraph (b)(4)(ii) of this section, distributions made during a plan year are disregarded to the extent that the actuarial value of the distributions exceeds the actuarial value of distributions that would have been made during the plan year had distribution of the participant's accrued benefit commenced at the beginning of the plan year under the plan's normal form.

(iii) *Conclusion relating to calculations for distribution made in the year H attains age 65.* At the end of the year, the actuarial value of the distribution made to H ($130,389 plus interest and mortality for the year equals $139,812) is greater than the year end actuarial value of distributions that would have been made during the plan year bad distribution of the participant's accrued benefit at the beginning of the plan year commenced in the normal form at the beginning of the plan year (which is $12,470, based on the plan's actuarial assumptions). Accordingly, the $127,342 excess (referred to as an accelerated benefit payment) is disregarded in the current year. (However, as described below, the annuity equivalent of the $127,342 is deemed to be paid to H commencing at the beginning of the first plan year after the plan year during which the accelerated benefit payment is made.)

(iv) *Conclusion relating to rate of benefit accrual for the year H attains age 65.* To determine the rate of benefit accrual for the year in which H attains age 65, the annuity equivalent of accelerated benefit payments is calculated and, under paragraph (b)(4)(iii)(C) of this section, this amount is treated as part of the benefit payable at the end of the year in calculating the rate of benefit accrual for the year. In this *Example 3*, the annuity equivalent of the $127,342 accelerated benefit payment equals a straight life annuity of $1,000 per month commencing at the beginning of the next plan year. Thus, for purposes of applying paragraph (b)(4)(iii) of this section to determine the rate of benefit accrual for the plan year in which H attains age 65, paragraph (b)(4)(iii)(C)(*1*) of this section is an annual straight life annuity commencing at end of the year equal to $1,000 (the sum of the annual benefit to which the H is entitled at the end of the plan year, which is zero in this case, plus the amount deemed paid in the next plan year under the annuity equivalent of accelerated benefit payments, which is $1,000 in this case) and the amount in paragraph (b)(4)(iii)(C)(*2*) of this section is an annual straight life annuity commencing at end of the preceding plan year equal to $1,000. Thus, H's rate of benefit accrual for the year is zero.

(v) *Conclusion relating to whether rate of benefit accrual for year H attains age 65 satisfies section 411(b)(1)(H).* Under paragraph (b)(4)(ii) of this section, a plan may reduce the rate of benefit accrual otherwise applicable to the extent of distributions made during the year. The actuarial equivalent of $12,470 (the actuarial value of the 12 $1,000 monthly payments deemed paid to H during the plan year under paragraph (b)(4)(ii) of this section) is a straight life annuity commencing at the end of the plan year equal to $98 per month. Thus, the otherwise applicable accrual for the year may be reduced (but not below zero) by $98 per month. The highest rate of benefit accrual for any participant with H's service and compensation history who is younger is an annual straight life annuity of $50 per month. Because the permissible reduction of $98 per month is not less than the otherwise applicable accrual of $50 per month, Plan X is not required by this paragraph (b) for the year and section 411(b)(1)(H) to provide H with any additional accruals for the year.

(vi) *Conclusion relating to rate of benefit accrual for year H attains age 65 if no distribution were made.* If Participant H had not elected to receive any distribution during the plan year, then H's accrued benefit at the end of the year would be a straight life annuity of $1,098 per month commencing at the end of the year (which is actuarially equivalent to a straight life annuity of $1,000 per month commencing at the beginning of the year). Thus, H's rate of benefit accrual for that year would be $98 (but no adjustments for any distribution would apply).

(vii) *Facts relating to next year in which H attains age 66.* Participant H works another year and H's average compensation becomes $70,000. Under this paragraph (b)(4), H would otherwise accrue an additional monthly benefit of $233 for the additional year of service under the plan's formula (22% times $70,000, minus 21% times $60,000, divided by 12). However, the plan is permitted under section 411(b)(1)(H)(iii)(I) to

offset additional accruals after normal retirement age by the actuarial value of distributions made during the year. Under paragraph (b)(4)(iii)(B) of this section, the $1,000 annuity equivalent of accelerated benefit payments is deemed to be paid to H during this second year when H attains age 66. These deemed payments are actuarially equivalent to an accrual of $100 per month payable at the end of that year. Accordingly, the plan reduces the otherwise applicable accrual of $233 to the extent of the accrual of $100 per month payable at the end of the year in which H attains age 66. Thus, the $233 accrual during the year in which H becomes 66 is reduced by $100 to $133. Under the plan X, H's accrued benefit at the end of the year is $133 per month.

(viii) *Conclusion relating to rate of benefit accrual for year H attains age 66.* To determine the rate of benefit accrual for the second year when H attains age 66, the annuity equivalent of accelerated benefit payments is calculated and, under paragraph (b)(4)(iii)(C) of this section, this amount is treated as part of the benefit payable at the end of the year in calculating the rate of benefit accrual for the second year. In this *Example 3*, the annuity equivalent of the $127,342 accelerated benefit payment that was made in the year in which H attained age 65 equals a straight life annuity of $1,000 per month commencing at the beginning of the next plan year. Thus, for purposes of applying paragraph (b)(4)(iii) of this section to determine the rate of benefit accrual for the second plan year, the amount in paragraph (b)(4)(iii)(C)(*1*) of this section is an annual straight life annuity commencing at end of the year equal to $1,133 (the sum of the annual benefit to which the H is entitled at the end of the plan year, which is $133 in this case, plus the amount deemed paid in the next plan year under the annuity equivalent of accelerated benefit payments, which is $1,000 in this case) and the amount in paragraph (b)(4)(iii)(C)(*2*) of this section is an annual straight life annuity commencing at end of the preceding plan year equal to $1,000. Thus, H's rate of benefit accrual for the year in which H becomes age 66 is $133.

(ix) *Conclusion relating to whether rate of benefit accrual for year H becomes 66 satisfies section 411(b)(1)(H).* Under paragraph (b)(4))(ii) of this section, a plan may reduce the rate of benefit accrual to the extent of distributions made during the year. The actuarial equivalent of $12,480 (the actuarial value of the 12 $1,000 monthly payments deemed made to H during the plan year) is a straight life annuity commencing at the end of the plan year equal to $100 per month. Thus, the otherwise applicable accrual for the year may be reduced (but not below zero) by $100 per month. The highest rate of benefit accrual for any participant with H's service and compensation history who is younger is an annual straight life annuity of $233 per month. Thus, because the sum of $133 and $100 is not less than the otherwise applicable accrual of $233 per month, Plan X satisfies this paragraph (b) and section 411(b)(1)(H) for the year.

(c) *Defined contribution plans*—(1) *In general.* A defined contribution plan (including a target benefit plan described in § 1.410(a)–4(a)(1)) does not satisfy the requirements of section 411(b)(2) if the rate of allocation made to the account of a participant is reduced, either directly or indirectly, because of the participant's attainment of any age. A reduction in the rate of allocation includes any discontinuance in the allocation of employer contributions or forfeitures to the account of the participant or cessation of participation in the plan.

(2) *Rate of allocation*—(i) *Aggregate allocations.* For purposes of this paragraph (c), a participant's rate of allocation for any plan year is the aggregate allocations taken into account for the plan year under § 1.401(a)(4)–2(c)(2).

(ii) *Determination of rate of allocation.* A participant's rate of allocation for a plan year can be determined as a dollar amount. Alternatively, if a plan's formula bases a participant's allocations solely on compensation for the plan year and compensation is determined without regard to attainment of any age, then a participant's rate of allocation can be determined as a percentage of the participant's compensation for the plan year.

(3) *Reduction that is directly or indirectly because of a participant's attainment of any age*—(i) *Reduction in rate of allocation that is directly because of a participant's attainment of any age.* A plan provides for a reduction in the rate of allocation that is directly because of a participant's attainment of any age for any plan year if, under the terms of the plan, any participant's rate of allocation for the plan year would be higher if the participant were younger. Thus, a plan fails to satisfy section 411(b)(2) and this paragraph (c) if, under the terms of the plan, the rate of allocation for any individual who is or could be a participant under the plan would be lower solely as a result of such individual being older.

(ii) *Reduction in rate of allocation that is indirectly because of a participant's attainment of any age*—(A) *In general.* A plan provides for a reduction in the rate of allocation that is indirectly because of a participant's attainment of any age for any plan year if any participant's rate of allocation for the plan year would be higher if the participant were to have a characteristic that is a proxy for being younger, based on all of the relevant facts and circumstances. Thus, a plan fails to satisfy section 411(b)(2) and this paragraph (c) if the rate of allocation for any individual who is or could be a participant under the plan would be lower solely as a result of such individual having a different characteristic which is a proxy for being older, based on applicable facts and circumstances.

(B) *Treatment of limitations.* A reduction in a participant's rate of allocation is not indirectly because of the attainment of any age in violation of section 411(b)(2) solely because of a positive correlation between attainment of any age and a reduction in the rate of allocation. Thus, a defined contribution plan (including a target benefit plan described in § 1.410(a)–4(a)(1)) does not fail to satisfy the minimum vesting standards of section 411(a) solely because the plan limits the total amount of employer contributions and forfeitures that may be allocated to a participant's account (for a particular plan year or for the participant's total years of credited service under the plan), solely because the plan limits the total number of years of credited service for which a participant's account may receive allocations of employer contributions and forfeitures, or solely because the plan limits the number of years of credited service that may be taken into account for purposes of determining the amount of, or the rate at which, employer contributions and forfeitures are allocated to a participant's account for a particular plan year.

(iii) *Special rule for target benefit plans.* A defined contribution plan that is a target benefit plan, as defined in § 1.410(a)–4(a)(1), satisfies section 411(b)(2) only if the defined benefit formula used to determine allocations would satisfy section 411(b)(1)(H) without regard to section 411(b)(1)(H)(iii). Such a target benefit plan does not fail to satisfy this paragraph (c) with respect to allocations after normal retirement age merely because the allocation for a plan year is reduced to reflect shorter longevity using a reasonable actuarial assumption regarding mortality.

(iv) *Additional rules.* The Commissioner may prescribe additional guidance, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), with respect to the application of section 411(b)(2) and this section to target benefit plans.

(d) *Benefits and forms of benefits subject to requirements*—(1) *General rule.* Except as provided in paragraph (d)(2) or (3) of this section, sections 411(b)(1)(H) and 411(b)(2) and paragraphs (b) and (c) of this section apply to all benefits (and forms of benefits) provided under the plan, including accrued benefits, benefits described in section 411(d)(6), ancillary benefits, and other rights and features provided under the plan. Accordingly, except as provided in paragraph (d)(2) or (3) of this section, a participant's rate of benefit accrual under a defined benefit plan and a participant's allocations under a defined contribution plan are considered to be reduced because of the participant's attainment of any age if optional forms of benefits, ancillary benefits, or other rights or features under the plan provided with respect to benefits or allocations attributable to credited service prior to the attainment of the participant's age are not provided on at least as favorable a basis with respect to benefits or allocations attributable to credited service after attainment of the participant's age. Thus, for example, a plan may not provide a single-sum payment only with respect to benefits attributable to years of credited service before the attainment of a specified age. Similarly, except as provided in paragraph (d)(2) or (3) of this section, if an optional form of benefit is available under the plan at a specified age, the availability of that form of benefit, or the method for determining the manner in which that form of benefit is paid, may not, directly or indirectly, be denied or provided on terms less favorable to participants because of the attainment of any age. Similarly, if the method for determining the amount or the rate of the subsidized portion of a joint and survivor annuity or the subsidized portion of a preretirement survivor annuity is less favorable with respect to participants who have attained a specified age than with respect to participants who have not attained such age, benefit accruals or account allocations under the plan will be considered to be reduced because of the attainment of such age.

(2) *Special rule for actuarial assumptions regarding mortality.* A plan does not fail to satisfy section 411(b)(1)(H) or this paragraph (d) merely because the plan makes actuarial adjustments using a reasonable assumption regarding mortality to calculate optional forms of benefit or to calculate the cost of providing a qualified preretirement survivor annuity, as defined in section 417(c).

(3) *Special rule for certain benefits.* A plan does not fail to satisfy section 411(b)(1)(H) or this paragraph (d) merely because the following benefits, or the manner in which such benefits are provided under the plan, vary because of the attainment of any higher age—

(i) The subsidized portion of an early retirement benefit (whether provided on a temporary or permanent basis);

(ii) A qualified disability benefit (as defined in § 1.411(a)–7(c)(3)); or

(iii) A social security supplement (as defined in § 1.411(a)–7(c)(4)(ii)).

(e) *Coordination with certain provisions.* Notwithstanding section 411(b)(1)(H), section 411(b)(2), and paragraphs (a) through (d) of this section, the following rules apply—

(1) *Section 415 limitations.* No benefit accrual with respect to a participant in a defined benefit plan is required for a plan year by section 411(b)(1)(H)(i) and no allocation to the account of a participant in a defined contribution plan (including a target benefit plan described in § 1.410(a)–4(a)(1)) is required for a plan year by section 411(b)(2) to the extent that the allocation or accrual would cause the plan to exceed the limitations of section 415.

(2) *Prohibited discrimination*—(i) No benefit accrual on behalf of a highly compensated employee in a defined benefit plan is required for a plan year by section 411(b)(1)(H)(i) to the extent such benefit accrual would cause the plan to discriminate in favor of highly compensated employees within the meaning of section 401(a)(4).

(ii) No allocation to the account of a highly compensated employee in a defined contribution plan (including a target benefit plan) is required for a plan year by section 411(b)(2) to the extent the allocation would cause the plan to discriminate in favor of highly compensated employees within the meaning of section 401(a)(4).

(iii) The Commissioner may provide additional guidance, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), relating to prohibited discrimination in favor of highly compensated employees.

(3) *Permitted disparity.* A defined benefit plan does not fail to satisfy section 411(b)(1)(H) for a plan year and a defined contribution plan does not fail to satisfy 411(b)(2) for a plan year merely because accruals or allocations under the plan are reduced to satisfy the uniformity requirements of § 1.401(*l*)–2(c) or 1.401(*l*)–3(c) for the plan year.

(4) *Distribution rights under section 411.* A defined benefit plan does not fail to satisfy section 411(b)(1)(H) for a plan year and a defined contribution plan does not fail to satisfy 411(b)(2) for a plan year merely because of the right to defer distributions provided under section 411(a)(11) or a plan provision consistent with section 411(a)(11).

(f) *Effective dates*—(1) *Effective date of sections 411(b)(1)(H) and 411(b)(2) for noncollectively bargained plans*—(i) *In general.* Except as otherwise provided in paragraph (f)(2) of this section, sections 411(b)(1)(H) and 411(b)(2) are applicable for plan years beginning on or after January 1, 1988, with respect to a participant who is credited with at least 1 hour of service in a plan year beginning on or after January 1, 1988. Neither section 411(b)(1)(H) nor section 411(b)(2) is applicable with respect to a participant who is not credited with at least 1 hour of service in a plan year beginning on or after January 1, 1988.

(ii) *Defined benefit plans.* In the case of a participant who is credited with at least 1 hour of service in a plan year beginning on or after January 1, 1988, section 411(b)(1)(H) is applicable with respect to all years of service completed by the participant other than plan years beginning before January 1, 1988.

(iii) *Defined contribution plans.* Section 411(b)(2) does not apply with respect to allocations of employer contributions or forfeitures to the accounts of participants under a defined contribution plan for a plan year beginning before January 1, 1988.

(iv) *Hour of service.* For purposes of this paragraph (f)(1), 1 hour of service means 1 hour of service recognized under the plan or required to be recognized under the plan by section 410 (relating to minimum participation standards) or section 411 (relating to minimum vesting standards). In the case of a plan that does not determine service on the basis of hours of service, 1 hour of service means any service recognized under the plan or required to be recognized under the plan by section 410 (relating to minimum participation standards) or section 411 (relating to minimum vesting standards).

(2) *Effective date of sections 411(b)(1)(H) and 411(b)(2) for collectively bargained plans*—(i) In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, ratified before March 1, 1986, sections 411(b)(1)(H) and 411(b)(2) are applicable for benefits provided under, and employees covered by, any such agreement with respect to plan years beginning on or after the later of—

(A) January 1, 1988; or

(B) The earlier of January 1, 1990, or the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension of any such agreement occurring on or after March 1, 1986).

(ii) The applicability date provisions of paragraph (f)(1) of this section shall apply in the same manner to plans described in paragraph (f)(2)(i) of this section, except that the applicable date

determined under paragraph (f)(2)(i) of this section shall be substituted for the effective date determined under paragraph (f)(1) of this section.

(iii) In accordance with the provisions of paragraph (f)(2)(i) of this section, a plan described therein may be subject to different applicability dates under sections 411(b)(1)(H) and 411(b)(2) for employees who are covered by a collective bargaining agreement and employees who are not covered by a collective bargaining agreement.

(iv) For purposes of paragraph (f)(2)(i) of this section, the service crediting rules of paragraph (f)(1) of this section shall apply to a plan described in paragraph (f)(2)(i) of this section, except that in applying such rules the applicability date determined under paragraph (f)(2)(i) of this section shall be substituted for the applicability date determined under paragraph (f)(1) of this section. See paragraph (f)(1)(iv) of this section for rules relating to the recognition of an hour of service.

(3) *Regulatory effective date.* Paragraphs (a) through (e) of this section are applicable with respect to plan years beginning on or after the date of publication of final regulations in the **Federal Register**.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 02–31225 Filed 12–10–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Coast Guard

33 CFR Part 52

[OST Docket No. 2002–13439; Notice 2002–1]

RIN–2105–AD19

Coast Guard Board for Correction of Military Records; Procedural Regulation

AGENCY: Office of the Secretary, Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department proposes to revise and reissue its procedural regulations for the Coast Guard Board for Correction of Military Records (Board). This action is taken on the Department's initiative in order to clarify application procedures; to explain applicants' legal rights and burden of proof; to allow applicants to change their requests for relief, to submit evidence after their applications have been docketed, or to request extensions of the time to respond to the advisory opinion of the Coast Guard without filing a new application or waiving their right to a timely decision; to provide for administrative closure of cases without Board action when the Chair determines that an application has been erroneously docketed; to facilitate Board decisions when the advisory opinions of the Coast Guard are not timely received; to increase the time provided for applicants to respond to the advisory opinions; to facilitate the Board's review of privileged, classified, and sensitive information; to clarify the Board's authority to order the Coast Guard to convene medical boards to evaluate applicants pursuant to applications for separations by reason of disability; to clarify actions that may be taken by the delegate of the Secretary; and to notify the public of the Board's reading room.

DATES: Comments must be submitted on or before January 27, 2003.

ADDRESSES: Anyone wishing to file a comment should refer to the OST docket and notice numbers (OST Docket No. OST 2002–13439, Notice No.1). You may submit your comments and related material by only one of the following methods: You may mail your comments to the Docket Management System, U.S. Department of Transportation, Room PL–401, 400 7th Street SW., Washington, DC 20590–0001; or you may submit your comments electronically through the Web site for the Docket Management System at *http://dms.dot.gov*. For instructions on how to submit comments electronically, visit the Docket Management System Web site and click on the "Help" menu.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401 on the plaza level of the Nassif Building at the same address during regular business hours. You may also obtain access to this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dorothy J. Ulmer, Chair, Board for Correction of Military Records of the Coast Guard, C–60, Office of the General Counsel, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590. Telephone: (202) 366–9335.

SUPPLEMENTARY INFORMATION: The Secretary of Transportation, acting through the Department of Transportation Board for Correction of Military Records of the Coast Guard, is authorized by section 1552 of title 10 of the United States Code to correct the military records of active duty, reserve, retired, and discharged Coast Guard military personnel who apply for a correction of an error or injustice in their records.

The Need for Revision

The Board's current rules at 33 CFR part 52 have become disorganized over time by amendments and have several shortcomings that may negatively affect the Board's applicants and the timeliness of the Board's decisions. This proposed revision of 33 CFR part 52 is intended to better organize the rules, notify applicants of their rights and Board procedures, and remove other shortcomings as described below.

The current rules fail to inform the public of the following important matters: The proper format for briefs in support of an application; the need for a family member or legal representative to submit proof of his or her proper interest before applying on behalf of a deceased or incompetent veteran; the requirement that applicants inform the Board of any change in their mailing address prior to final action by the Board; the fact that applicants whose cases are processed under the Whistleblower Protection Act and who are granted a hearing may be entitled to representation by a Coast Guard law specialist in accordance with 10 U.S.C. 1034(f)(3)(A); the presumption of regularity accorded military records and the burden of proof borne by applicants; the possible actions the delegate of the Secretary may take when reviewing a recommended decision of the Board; the possible reduction of monetary awards resulting from record corrections because of setoffs required by law or regulation; and the availability of copies of the Board's final decisions, redacted to protect the privacy of applicants, for review in the Board's reading room and on a Web site. These are matters that should be addressed in the Board's rules.

Furthermore, the current rule allows an applicant only 15 days to respond to the written views of the Coast Guard on his or her application. § 52.82(d). In light of the underway schedules of some of the Board's active duty applicants assigned to sea duty, 15 days is insufficient time for some applicants to respond. No provision addresses applicants' requests for extensions of that time in order to consult counsel or gather more evidence. The current rule requires members who submit evidence after submitting their applications to waive their right to a final decision within ten months and makes no provision for a new deadline. § 52.61(c). Moreover, no provision addresses the consequences of an applicant's decision to change his or her request for relief.

The current rule states that Board action is required before a member can withdraw an application. § 52.26. It also allows the Chair to deny an application, without prejudice and without action by the Board, if he or she believes that the evidence is insufficient or that the application was untimely and lacks merit. § 52.32.

The current rule does not address or facilitate the Board's access to privileged, classified, and sensitive information, such as reports of investigations, which is occasionally necessary for the Board to determine whether an error or injustice has been committed. The current rule also permits applicants to inspect the Board's record of proceedings without expressly providing for the protection of privileged, classified, and sensitive information. § 52.66.

The current rule states that the Board shall consider any written recommendation submitted by the Chief Counsel of the Coast Guard before issuing a decision. § 52.82(e). However, it provides no deadline for the Chief Counsel's submission even though the Board must take final action on each application within ten months. 14 U.S.C. 425. Delayed submissions by the Chief Counsel's office can leave the Board with little or no time to receive the applicant's response, issue a final decision, and have it reviewed by the delegate of the Secretary before the statutory ten-month deadline has expired. The current rule also does not take into account written views submitted by a delegate of the Commandant of the Coast Guard other than the Chief Counsel. In addition, the current rule fails to require the Coast Guard to describe what "significant issue of Coast Guard policy" is at stake when he or she invokes review of a Board decision by the delegate of the Secretary. § 52.64(a)(2).

The current rule permits the Board to specify any correction of a record in its order and to order the Coast Guard to take "any other action deemed necessary to carry out the Board's recommendation," but it does not expressly permit the Board to order the Coast Guard to convene medical boards to determine an applicant's disability rating so that his or her separation can be corrected. § 52.61(e). The current rule also requires the delegate of the Secretary to review cases in which the Board corrects a record to show that a member is entitled to a medal or award contrary to the Coast Guard's recommendation. In addition, the current rule does not address what the Coast Guard should do if it finds that an order of the Board is incomplete because of an oversight.

Section-by-Section Analysis of the Proposed Rule

Subpart A—Purpose and Authority

Section 52.1 Purpose.

This section remains unchanged under the proposal.

Section 52.2 Authority.

This section would be amended to reflect the codification of the Board's ten-month deadline for issuing decisions under 14 U.S.C. 425 and to add a citation (10 U.S.C. 1552(a)(4)) for the finality and conclusiveness of the Board's orders.

Subpart B—Establishment, Function, and Jurisdiction of Board

Section 52.11 Establishment and Composition

Throughout this section and all of the proposed rule, the term Chair would be substituted for the term Chairman to establish gender neutrality. This section would also be amended to remove a citation to 49 U.S.C. 108(a).

Section 52.12 Function

This section would be amended to reflect the fact that the Board considers submissions from the Coast Guard and other Government offices along with applications and military records in reaching its decisions.

Section 52.13 Jurisdiction

No changes are proposed for this section.

Subpart C—General Provisions Regarding Applications

Section 52.21 General Requirements

No changes are proposed for paragraph (a). Paragraph (b) would be amended to inform family members and legal representatives that they must submit proof of their proper interest before applying to the Board for the correction of the military record of a deceased or incompetent veteran. Paragraph (c) would be amended to reflect the fact that applications are not docketed by the Board until they are complete and to reflect the need for substantial evidence or information and all military and medical records before an application is considered complete. Paragraph (d) would be added to advise applicants of the necessity of keeping the Board informed of any changes in mailing address so that they will receive the Board's correspondence. Paragraph (e) would be added to ensure that briefs submitted in support of applications are readable, replicable, and not unduly lengthy.

Section 52.22 Time Limit for Filing Application

This section would be slightly reworded to clarify why an applicant must provide reasons for submitting an application after the three-year statute of limitations has passed.

Section 52.23 Counsel

Paragraph (a) would be added to inform applicants that they may be represented by counsel at their own expense but that applicants whose cases are processed under the Whistleblower Protection Act may be entitled to representation by a law specialist at a hearing convened in accordance with Subpart F. The previous text of this section would appear in paragraph (b) and would be amended by updating two citations and by making the Chair, rather than the Board, responsible for deciding the competence of an applicant's chosen representative.

Section 52.24 Evidence and Burden of Proof

Paragraph (a) would be revised to encourage the timely submission of evidence with the initial application and to direct attention toward the new rule concerning late submissions of evidence in section 52.26. Paragraph (b) would be added to inform applicants of the presumption of regularity accorded military records and of the burden of proof they must meet to be granted relief, which is the preponderance of the evidence.

Section 52.25 Access to Official Records

This section would be amended to consolidate the sentences.

Section 52.26 Right to Timely Decision; Effect of Requests for Extensions, Changes in Requests for Relief, and Late Submissions of Evidence

This new section, which would incorporate the provisions in old sections 52.68 and 52.61(c), would inform applicants of their right to a final decision on their applications within ten months of the completion of their applications. It would also permit applicants to request extensions, submit evidence after their applications have been docketed, and alter their requests for relief without waiving their right to

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a timely decision. It would provide that, if an applicant requests an extension or unreasonably delays responding to a request from the Board, the Board's ten-month deadline would be extended by the duration of the extension or of the unreasonably delay. It would further provide that, if in the determination of the Chair, an applicant has submitted significant new evidence or has significantly altered his or her request for relief after his or her application has been docketed, the application would be considered newly completed and the applicant would have the right to a final decision within ten months of the new date of completion.

Section 52.27 Withdrawal of Application

This section (old § 52.26) would be revised to allow the Chair to permit an applicant to withdraw his or her application without Board action.

Section 52.28 Stay of Proceedings

No changes are proposed for this section (old § 52.33), apart from its renumbering. It should be renumbered because it belongs better under this Subpart C-General Provisions Regarding Applications than where it was under Subpart D-Consideration of Application.

Subpart D—Consideration of Application and Administrative Closure

Section 52.31 Consideration of Application

This section would be amended to show that the Chair's initial review of an application to determine whether it is complete occurs before the application is docketed.

Section 52.32 Administrative Closure

This section would be renamed and expanded to clarify the circumstances under which the Chair may close a case without prejudice and without Board action. Paragraph (a) would permit the Chair to close a case when he or she determines that the application was erroneously documented because it was never completed, the Board lacks authority to grant the requested relief, the applicant failed to exhaust an administrative remedy before applying to the Board, or the Coast Guard has already made the requested corrections. Paragraph (b) addresses how applicants might reapply after their cases have been administratively closed. Paragraph (c) would require the Chair to inform applicants of their right to reapply whenever he or she administratively closes a case.

Old section 52.33 Stay of proceedings. This old section would be renumbered as section 52.28 under the proposed rule.

Subpart E—Submissions by the Coast Guard and Other Offices

This new Subpart E would embody old Subpart I—Miscellaneous Provisions. It would be renamed and repositioned to better reflect its contents and the order of the Board's procedures. Old Subpart E would be included in Subpart F.

Section 52.41 Assistance

No changes are proposed for this section (old § 52.81), apart from its renumbering.

Section 52.42 Views of the Coast Guard

Paragraph (a) (old § 52.82(a)) would be amended to reflect the amendments to sections 52.21 and 52.32. Paragraphs (a) and (b) (old § 52.82(c)) would be amended to reflect the fact that the views of the Coast Guard may be submitted in an advisory opinion by any delegate of the Commandant. Paragraph (c) (old § 52.82(e)) would be amended to require the Board to consider the advisory opinion of the Coast Guard only if it is submitted within 135 days of the date the application is complete but to permit the Board to consider advisory opinions submitted after the 135-day deadline has passed. The proposed rule would facilitate timely decisions when submissions of advisory opinions by the Coast Guard are delayed to the point where little or no time would remain for the Board to receive the applicant's response to the advisory opinion, issue a final decision, and have it reviewed by the delegate of the Secretary before the statutory ten-month deadline has expired. Paragraph (d) (old § 52.82(d)) would increase the time provided for the applicant's response to the advisory opinion from 15 to 30 days and allow the Chair to grant extensions of the time to respond. Paragraph (e), which is new, would require advisory opinions and applicants' briefs in response to advisory opinions to be readable, replicable, and not unduly lengthy.

Section 52.43 Requests for Further Information; Submissions of Classified, Privileged, and Sensitive Information

This section (old § 52.82(b)) would be expanded to address the Board's ability to seek information from applicants and from other Government offices, as well as from the Coast Guard. It addresses how the Board can receive and review classified, privileged, and sensitive information from the Coast Guard or another Government office while providing the applicant with a copy of any part of that information that would be released to him or her if requested by the applicant from the custodian of the information under 49 CFR parts 7 or 10.

Subpart F—Hearings

This subpart would incorporate both old Subpart E—Hearings and old Subpart F—Procedure at Hearings because both concern hearings.

Section 52.51 General provision

No changes other than renumbering and substituting the term Chair for the term Chairman are proposed for this section (old § 52.41).

Section 52.52 Notice of Hearing

No changes other than renumbering, substituting the term Chair for the term Chairman, and adding a comma for stylistic consistency are proposed for this section (old § 52.42).

Section 52.53 Witnesses

This section (old § 52.43) would be renumbered and amended by substituting the term Chair for the term Chairman, adding a comma for stylistic consistency, and clarifying the language to indicate that the applicant is only responsible for ensuring the appearance of his or her own witnesses at a hearing.

Section 52.54 Expenses

This section (old § 52.44) would be renumbered and amended to inform applicants that they may be entitled to representation by a law specialist if they are granted a hearing and their cases are processed under the Whistleblower Protection Act.

Section 52.55 Nonappearance

No change is proposed for this section (old § 52.45), apart from its renumbering.

Section 52.56 Conduct of Hearing

No amendments other than renumbering, substituting the term Chair for the term Chairman, and adding a comma for stylistic consistency are proposed for this section (old § 52.51).

Section 52.57 Record of Hearing

No change is proposed for this section (old § 52.52), apart from its renumbering.

Subpart G—Judgment and Disposition

Section 52.61 Deliberations and Decision

No amendments other than substituting the term Chair for the term Chairman are proposed for paragraphs (a) and (b). Old paragraph (c) would be amended and moved to proposed paragraphs 52.24(a) and 52.26(c). New paragraph (c) (old paragraph (d)) would be amended only by substituting the term Chair for the term Chairman and by capitalizing the letter b in Board for stylistic consistency. Paragraph (d) (old paragraph (e)) would be revised to show that the Board's authority to order the Coast Guard to take "any other action deemed necessary to carry out the Board's recommendation," as previously provided, includes the authority to order the Coast Guard to convene medical boards to help determine an applicant's proper disability rating for a correction of his or her separation. No changes are proposed for paragraph (e) (old paragraph (f)).

Section 52.62 Minority Report

No changes are proposed for this section.

Section 52.63 Record of Proceedings

Paragraph (a) would contain the existing, unamended text of this section. Paragraph (b) would be added to provide for the return of classified, privileged, or sensitive information reviewed by the Board to the custodial Government office and the inclusion of the redacted copy of the information that was provided to the applicant in the Board's permanent record of proceedings after final action is taken.

Section 52.64 Final Action

Paragraph (a)(2) would be amended to require the delegate of the Commandant of the Coast Guard to identify and describe in his or her advisory opinion the significant issue of Coast Guard policy challenged in an application that requires its review by the delegate of the Secretary under paragraph (b) if the Board grants relief contrary to the Coast Guard's advisory opinion or if the Board grants substantially different relief than that recommended by the Coast Guard. Paragraph (a)(2) would also be amended to make the Board's decision on an application to receive a medal or award final unless the Coast Guard describes a significant issue of Coast Guard policy that is challenged in the application. Paragraph (b) would be amended to reflect the range of actions the delegate of the Secretary may take in reviewing a decision of the Board.

Section 52.65 Orders

No changes are proposed for this section.

Section 52.66 Notification

This section would be amended to make only the permanent record of proceedings, as compiled in accordance with section 52.63(b), available for the applicant's inspection.

Section 52.67 Reconsideration

In paragraphs (a), (b), and (e), the term Chair would be substituted for the term Chairman. Paragraph (a)(1) would be amended for clarification. Paragraph (c) would be amended to better explain who can serve on a Board to reconsider a case. Paragraph (d) would be amended to make applications for reconsideration subject to the provisions in section 52.26 for permitting applicants to request extensions, submit evidence late, and alter their requests for relief.

Old Section 52.68 Time Limit for Final Action

This old section would be incorporated in proposed section 52.26.

Subpart H—Payment of Claims and Implementation of Orders

Section 52.71 Authority to Pay

No changes are proposed for this section.

Section 52.72 Implementation of Orders

This section would be renamed for clarity and the words "shall transmit" would be substituted for the word "transmits." Paragraph (b) would be amended to specify that applicants must furnish to the Board or to the Coast Guard information needed to determine the proper parties to a claim. Paragraph (c) would be amended to notify applicants that monetary awards resulting from record corrections may be reduced by setoffs required by law or regulation.

Section 52.73 Interpretation

This section would be amended to provide that the Coast Guard should return a decision to the Board for clarification or technical amendment if it believes that the Board's order is incomplete because of an oversight.

Section 52.74 Report of Settlement

No changes are proposed for this section.

Subpart I—Public Access to Decisions

The old Subpart I—Miscellaneous Provisions would be repositioned and renamed as Subpart E—Submissions by the Coast Guard and Other Offices.

Section 52.81 Reading Room and Index

This new section would inform the public of the availability of copies of its final decisions, redacted to protect the privacy of applicants, for public review in the Board's reading room and on the Web.

Regulatory Analyses and Notices

Executive Order 12866

This proposed rule does not constitute a significant rule under Executive Order 12866 or the Department's Regulatory Policies and Procedures. The costs of these procedural changes would be negligible, their effect on industry would be negligible, and they are not of general policy interest.

Regulatory Flexibility Act and Federalism

Under 5 U.S.C. 604, we certify that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities because it would affect only the procedures followed by the Board, the Coast Guard, and applicants in the submission and processing of applications for correction of individuals' personal military records. There are no Federalism factors to warrant the preparation of a Federalism assessment.

Paperwork Reduction Act

This NPRM does not propose any information collection requirements subject to review under the Paperwork Reduction Act.

Lists of Subjects in 33 CFR Part 52

Military records.

Issued this 26th day of November 2002 at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department proposes to revise 33 CFR Part 52 to read as follows:

PART 52—BOARD FOR CORRECTION OF MILITARY RECORDS OF THE COAST GUARD

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Subpart A—Purpose and Authority

§ 52.1 Purpose.

This part establishes the procedure for application for correction of military records of the Coast Guard, for consideration of applications by the Department of Transportation Board for Correction of Military Records of the Coast Guard (hereinafter "the Board"), and for settling claims or determining monetary benefits.

§ 52.2 Authority.

(a) The Secretary of Transportation, acting through boards of civilians, is authorized to correct any military record of the Coast Guard when the Secretary considers it necessary to correct an error or remove an injustice. 10 U.S.C. 1552. The Secretary shall ensure that final action on a complete application for correction is taken within 10 months of its receipt. 14 U.S.C. 425.

(b) Corrections made under this authority are final and conclusive on all officers of the Government except when procured by fraud. 10 U.S.C. 1552(a)(4).

Subpart B—Establishment, Function, and Jurisdiction of Board

§ 52.11 Establishment and composition.

(a) Pursuant to 10 U.S.C. 1552, the Board for Correction of Military Records of the Coast Guard is established in the Office of the Secretary of Transportation.

(b) The Secretary appoints a panel of civilian officers or employees of the Department of Transportation to serve as members of the Board, and designates one such member to serve as Chair of the Board. The Chair designates members from this panel to serve as the Board for each case requiring consideration by a Board. The Board consists of three members, and two members present constitute a quorum of the Board.

(c) The Deputy Chair of the Board exercises the functions prescribed by these regulations and such other duties as may be assigned by the Chair.

§ 52.12 Function.

The function of the Board is to consider all applications properly before it, together with all pertinent military records and any submission received from the Coast Guard or other Government office under subpart E, to determine:

(a) Whether an error has been made in the applicant's Coast Guard military record, whether the applicant has suffered an error or injustice as the result of an omission or commission in his or her record, or whether the applicant has suffered some manifest injustice in the treatment accorded him or her; and

(b) Whether the Board finds it necessary to change a military record to correct an error or remove an injustice.

§ 52.13 Jurisdiction.

(a) The Board has jurisdiction to review and determine all matters properly brought before it, consistent with existing law and such directives as may be issued by the Secretary.

(b) No application shall be considered by the Board until the applicant has exhausted all effective administrative remedies afforded under existing law or regulations, and such legal remedies as the Board may determine are practical, appropriate, and available to the applicant.

Subpart C—General Provisions Regarding Applications

§ 52.21 General Requirements.

(a) An application for correction of a Coast Guard record shall be submitted on DD Form 149 (Application for Correction of Military or Naval Record) or an exact copy thereof, and shall be addressed to: Chair, Board for Correction of Military Records of the Coast Guard (C–60), United States Department of Transportation, Washington, DC 20590. Forms and explanatory material may be obtained from the Chair of the Board.

(b) The application shall be signed by the person alleging error or injustice in his or her military record, except that an application may be signed by a family member or legal representative with respect to the record of a deceased, incapacitated, or missing person. The family member or legal representative must submit proof of his or her proper interest with the application.

(c) No application shall be docketed or processed until it is complete. An application for relief is complete when all of the following have been received by the Board:

(1) A signed DD Form 149, providing all necessary responses, including a specific allegation of error or injustice, accompanied by substantial evidence or information in support of such allegation;

(2) The military records of the applicant; and

(3) Any applicable military and Department of Veterans Affairs medical records.

(d) It is the applicant's responsibility to include his or her correct mailing address on the DD Form 149 and to inform the Chair in writing of any subsequent change of address until the Board or the Secretary takes final action on the application.

(e) Briefs in support of applications must be assembled in a manner that permits easy reproduction and may not exceed twenty-five double-spaced typewritten pages in a type size with no more than twelve characters per inch. This limitation does not apply to supporting documentary evidence. In complex cases, the Chair may waive this limitation.

§ 52.22 Time limit for filing application.

An application for correction of a record must be filed within three years after the applicant discovered or reasonably should have discovered the alleged error or injustice. If an application is untimely, the applicant shall set forth reasons in the application why it is in the interest of justice for the Board to consider the application. An untimely application shall be denied unless the Board finds that sufficient evidence has been presented to warrant a finding that it would be in the interest of justice to excuse the failure to file timely.

§ 52.23 Counsel.

(a) Applicants may be represented by counsel at their own expense. Applicants whose cases are processed under the Whistleblower Protection Act and who are granted a hearing by the Board may be entitled to representation by a Coast Guard law specialist. 10 U.S.C. 1034(f)(3)(A).

(b) As used in this part, the term "counsel" includes attorneys who are members in good standing of any bar; accredited representatives of veterans' organizations recognized by the Secretary of Veterans Affairs pursuant to 38 U.S.C. 5902; and other persons who, in the opinion of the Chair, are competent to represent the applicant for correction. Whenever the term "applicant" is used in these rules, except in § 52.21(c), the term shall mean an applicant or his or her counsel.

§ 52.24 Evidence and burden of proof.

(a) It is the responsibility of the applicant to procure and submit with his or her application such evidence, including official records, as the applicant desires to present in support of his or her case. All such evidence should be submitted with the applicant's DD Form 149 in accordance with § 52.21(c)(1). Evidence submitted by an applicant after an application has been filed and docketed shall be considered late and its acceptance is subject to the provisions in §§ 52.26(a)(4) and (c).

(b) The Board begins its consideration of each case presuming administrative regularity on the part of Coast Guard and other Government officials. The applicant has the burden of proving the existence of an error or injustice by the preponderance of the evidence.

§ 52.25 Access to official records.

The applicant shall have such access to official records or to any information pertaining to the applicant which is in the custody of the Coast Guard as is provided in 49 CFR parts 7 and 10.

§ 52.26 Right to timely decision; effect of requests for extensions, changes in requests for relief, and late submissions of evidence.

(a) Each applicant has a right to have final action taken on his or her application within 10 months after all the elements of a complete application, as defined in § 52.21(c), have been received by the Board, unless the applicant

(1) Submits a written request, which is granted by the Chair, for an extension of a specific duration to seek counsel or additional evidence;

(2) Submits a written request, which is granted by the Chair, for an extension of the time provided for responding to the views of the Coast Guard in accordance with § 52.42(d);

(3) Submits a signed statement that is determined by the Chair to significantly amend the applicant's request for relief after the application has been docketed;

(4) Submits significant new evidence, as determined by the Chair, after the application has been docketed; or

(5) Is found by the Chair to have unreasonably delayed responding to a request for further information or evidence.

(b) If the applicant requests an extension in accordance with paragraphs (a)(1) or (a)(2) of this section or unreasonably delays responding to a request for further information or evidence in accordance with paragraph (a)(5) of this section, he or she shall have a right to have final action taken on the application for correction within 10 months of the application's completion plus all periods of extension granted to the applicant by the Chair and all periods of unreasonable delay.

(c) If the applicant significantly amends his or her request for relief or submits significant new evidence after the application has been docketed, in accordance with paragraphs (a)(3) or (a)(4) of this section, the application shall be considered newly complete as of the date the amended request for relief or new evidence is received, in which case the applicant shall have a right to have final action taken on the application within 10 months of the date the Board receives the amended request for relief or significant new evidence.

§ 52.27 Withdrawal of application.

The Chair may, at his or her discretion, permit the applicant to withdraw his or her application at any time before final action is taken under § 52.64. Any further consideration by the Board of the issues raised in the withdrawn application shall occur only upon the filing of a new application.

§ 52.28 Stay of proceedings.

An application to the Board for correction of a military record does not operate as a stay of any proceeding or administrative action taken with respect to or affecting the applicant.

Subpart D—Consideration of Application and Administrative Closure

§ 52.31 Consideration of application.

Each application shall be reviewed by the Chair to determine whether it meets the requirements of § 52.21 before it is docketed. The Chair shall decide in appropriate cases whether to grant a hearing or to recommend disposition on the merits without a hearing.

§ 52.32 Administrative closure.

(a) The Chair may administratively close a case after it has been docketed and at any time prior to its consideration by the Board if the Chair determines that:

(1) The application was erroneously docketed because the application did not meet the criteria under § 52.21;

(2) Effective relief cannot be granted by the Board;

(3) The Board does not have jurisdiction to determine the issues presented or the applicant has not exhausted an available administrative remedy, as required under § 52.13(b); or

(4) The Coast Guard has granted effective relief satisfactory to the applicant.

(b) Administrative closure does not constitute a denial of relief. Applicants who believe their cases should not have been administratively closed by the Chair may resubmit their applications with a request for further consideration and a statement explaining why the applicant believes his or her case should be docketed and considered by the Board. A request for further consideration shall be regarded as a new application for the purposes of §§ 52.21 and 52.26.

(c) If the Chair administratively closes a case, the applicant shall be advised of the reason and of the right to resubmit his or her application.

Subpart E—Submissions by the Coast Guard and Other Offices

§ 52.41 Assistance.

The Board may request such advice, opinion, assistance, or use of the facilities of any other bureau, board, or office of the Department of Transportation as the Board deems necessary.

§ 52.42 Views of the Coast Guard.

(a) The Board shall transmit to the Commandant of the Coast Guard or his or her delegate a copy of each application for relief submitted and docketed under subpart C of this part,

together with any briefs, memoranda, and documentary evidence submitted or obtained in the case.

(b) The Commandant of the Coast Guard or his or her delegate may forward to the Board a written advisory opinion presenting the views of the Coast Guard on any case before the Board.

(c) An advisory opinion furnished by the Coast Guard under this section shall not be binding upon the Board, but shall be considered by the Board, along with all other information and material submitted in the particular case, if it is received by the Board within 135 days of the date the application is complete. The Chair may, in his or her discretion, grant the Coast Guard an extension of the time provided for submitting the advisory opinion.

(d) The Board shall promptly send a copy of each submission made by the Coast Guard under this section to the applicant involved, subject to the limitations in §§ 52.42(c) and 52.43(c). Each applicant has 30 days, from the date the Board sends the submission, to submit to the Board a written rebuttal or response to the Coast Guard's advisory opinion or a written request for an extension of the time to respond, subject to the provisions in § 52.26.

(e) Advisory opinions submitted by the Coast Guard and briefs submitted by applicants in response to the advisory opinions of the Coast Guard must be assembled in a manner that permits easy reproduction and may not exceed fifteen double-spaced typewritten pages in a type size with no more than twelve characters per inch. This limitation does not apply to supporting documentary evidence. In complex cases, the Chair may waive this limitation.

§ 52.43 Requests for further information; submissions of classified, privileged, and sensitive information.

(a) The Chair or the Board may ask the applicant to submit additional information not included in the application or response to the advisory opinion.

(b) The Chair or the Board may ask the Coast Guard or other Government office to submit any information, including reports of investigations, that the Chair or the Board deems relevant to an applicant's case.

(c) Whenever the Coast Guard or other Government office submits classified, privileged, or sensitive information to the Board in accordance with paragraph (b) of this section or § 52.42(b), it shall identify such information and also provide the Board with a copy of that part of the information that would be released to the applicant by the Coast Guard or other Government office if he or she requested it under 49 CFR parts 7 and 10. The Board shall forward only this redacted copy to the applicant.

Subpart F—Hearings

§ 52.51 General provision.

In each case in which the Chair determines that a hearing is warranted, the applicant will be entitled to be heard orally in person, by counsel, or in person with counsel.

§ 52.52 Notice of hearing.

(a) If the Chair determines that a hearing is warranted, the Chair shall notify the applicant that a hearing has been granted.

(b) The date of hearing shall be not less than 21 days from the date of this notification. Written notice stating the date, time, and place of the hearing shall be given to the applicant and the Coast Guard.

§ 52.53 Witnesses.

(a) In any case in which the Chair has granted a hearing, the applicant shall have the right to present witnesses.

(b) It is the responsibility of the applicant to notify his or her witnesses and to ensure their appearance at the date, time, and place set for the hearing.

§ 52.54 Expenses.

No expenses of any nature whatsoever incurred by an applicant, his or her counsel, witnesses, or others acting on behalf of the applicant shall be paid by the Government, except that an applicant may be entitled to representation by a Coast Guard law specialist if the case has been processed under the Whistleblower Protection Act. 10 U.S.C. 1034(f)(3)(A).

§ 52.55 Nonappearance.

An applicant who fails without good cause to appear in person or by counsel at the appointed date, time, and place for hearing, is deemed to have waived the right to a hearing. The application is then considered by the Board on the basis of all the material of record.

§ 52.56 Conduct of hearing.

(a) The Chair or the Chair's designee shall conduct a hearing so as to ensure a full and fair presentation of the evidence.

(b) The hearing is not limited by legal rules of evidence, but reasonable standards of competency, relevancy, and materiality are observed for the receipt and consideration of evidence.

(c) All testimony shall be given under oath or affirmation.

§ 52.57 Record of hearing.

A hearing pursuant to this subpart in open session shall be recorded verbatim and, at the discretion of the Board or direction of the Secretary, shall be transcribed.

Subpart G—Judgment and Disposition

§ 52.61 Deliberations and decision.

(a) The Board is convened at the call of the Chair and its meetings are recessed or adjourned by order of the Chair. Only members of the Board and its staff may be present during the deliberations of the Board. The Board's deliberations are conducted in executive session and are not reported.

(b) When the Board finds that the facts have not been fully and fairly disclosed by the records, testimony, and any other evidence before the Board, the Board may request the applicant and/or the Coast Guard to obtain and submit such further evidence as it considers essential to a complete and impartial understanding of the facts and issues.

(c) Following the receipt of all evidence, the Chair shall cause to be prepared and shall submit to the Board for its consideration a draft decision containing proposed findings and conclusions and a proposed order. A majority vote of the members of the Board present at a meeting on any matter relating to a draft decision before the Board shall constitute the action of the Board. If a draft decision is approved by the Board, it shall become a decision of the Board.

(d) The decision of the Board shall specify any change, correction, or modification of records to be made by the Coast Guard, and any other action deemed necessary to provide full and effective relief, which may include directing the Coast Guard to convene medical boards.

(e) If the Board deems it necessary to submit a comment or recommendation to the Secretary as to a matter arising from, but not directly related to, the issues in a case, it does so by separate communication.

§ 52.62 Minority report.

In case of disagreement among Board members, a minority report may be submitted dissenting from or concurring with the decision of the Board.

§ 52.63 Record of proceedings.

(a) The Board shall prepare a complete record of each proceeding. The record shall include the application for relief; the written views of the Coast Guard, if any; any transcript of testimony; affidavits and documents considered by the Board; briefs and written arguments filed in the case; the findings, decisions, and recommendations of the Board; minority reports, if any; and all other materials necessary to reflect a true and complete history of the proceedings.

(b) After final action has been taken on an application in accordance with § 52.64, any classified, privileged, or sensitive information in the record of proceedings that has been provided by the Coast Guard or another Government office in accordance with §§ 52.42 or 52.43 shall be returned by the Board to the office from which it was received. Only a copy of the information provided by the Coast Guard or other Government office for release to the applicant in accordance with § 52.43(c) shall be retained in the permanent record of proceedings after final action is taken.

§ 52.64 Final action.

(a) The Board, provided that it acts unanimously, may take final action on behalf of the Secretary, pursuant to 10 U.S.C. 1552, as follows:

(1) The Board may deny an application for the correction of military records.

(2) Unless the Coast Guard, in submitting its views pursuant to § 52.42(b), identifies and describes a significant issue of Coast Guard policy challenged in the application, the Board may approve an application for the correction of military records in any of the following categories:

(i) An application to correct an enlistment or reenlistment contract or agreement to extend an enlistment for the purpose of effecting or increasing entitlement to a Selective Reenlistment Bonus;

(ii) An application to modify an election to participate in the Survivor Benefit Plan;

(iii) An application to change a reenlistment eligibility code;

(iv) An application to correct the character of, or reason for, a discharge or separation; or

(v) An application to receive a medal or award.

(3) The Board may approve any application for correction of military records not included in one of the categories in paragraph (a)(2) of this section, if the Coast Guard recommends the same or substantially same relief as that requested by the applicant.

(b) Except in cases where the Board takes final action under paragraph (a) of this section, the Board shall forward the record of its proceedings to the Secretary, who may approve, disapprove, or concur in the decision of the Board or the minority report, if any, either in whole or in part, and amend the order of the Board accordingly, or return the case to the Board for additional consideration. After taking final action, the Secretary shall send any such statement and the record of proceedings to the Board for disposition.

§ 52.65 Orders.

(a) The Board shall issue such orders or directives as may be necessary to carry out a final action.

(b) The Board may ask the Coast Guard to submit a written report to the Board specifying the action taken and the date thereof with respect to any final action.

(c) Unless doing so is likely to nullify the relief granted, copies of the final decision shall be placed in the military record of the applicant.

§ 52.66 Notification.

After final action is taken under § 52.64, the Board shall send a copy of the final decision to the applicant. The applicant may inspect the permanent record of proceedings at Board offices.

§ 52.67 Reconsideration.

(a) Reconsideration of an application for correction of a military record shall occur if an applicant requests it and the request meets the requirements set forth in paragraph (a)(1) or (a)(2) of this section.

(1) An applicant presents evidence or information that was not previously considered by the Board and that could result in a determination other than that originally made. Such new evidence or information may only be considered if it could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence; or

(2) An applicant presents evidence or information that the Board, or the Secretary as the case may be, committed legal or factual error in the original determination that could have resulted in a determination other than that originally made.

(b) The Chair shall docket a request for reconsideration of a final decision if it meets the requirements of paragraph (a)(1) or (a)(2) of this section. If neither of these requirements is met, the Chair shall not docket such request.

(c) The Board shall consider each application for reconsideration that has been docketed. None of the Board members who served on the Board that considered an applicant's original application for correction shall serve on the Board that decides the applicant's application upon reconsideration.

(d) Action by the Board on a docketed application for reconsideration is subject to §§ 52.26 and 52.64(b).

(e) An applicant's request for reconsideration must be filed within two years after the issuance of a final decision, except as otherwise required by law. If the Chair dockets an applicant's request for reconsideration, the two-year requirement may be waived if the Board finds that it would be in the interest of justice to consider the request despite its untimeliness.

Subpart H—Payment of Claims and Implementation of Orders

§ 52.71 Authority to pay.

(a) The Coast Guard is authorized to pay the claims of any person as the result of any action heretofore or hereafter taken under 10 U.S.C. 1552.

(b) The Coast Guard is not authorized to pay any claim heretofore compensated by Congress through enactment of private law, or to pay any amount as compensation for any benefit to which the claimant might subsequently become entitled under the laws and regulations administered by the Secretary of Veterans Affairs.

§ 52.72 Implementation of orders.

(a) In each case the Board shall transmit a copy of its decision or the Secretary's decision to the proper Coast Guard authority for determination of monetary benefits due, if any, as a result of the action of the Board and for corrections of the military record ordered by the Board.

(b) Upon request, the claimant is required to furnish to the Board or to the Coast Guard any information necessary to determine the proper parties to the claim for payment under applicable provisions of law.

(c) Appropriate records shall be examined in light of the Board's decision to determine all amounts which may be due. Amounts found due are subject to setoff in the amount of any existing indebtedness to the Government arising from Coast Guard service and to other setoffs required by law or regulation.

(d) At the time of payment, the claimant shall be advised as to the nature and amount of the various benefits represented by the total settlement, and of the fact that acceptance of the settlement constitutes a complete release by the claimant of any claim against the United States on account of the correction of record ordered by the Board.

§ 52.73 Interpretation.

If the intent or import of the final decision is not clear to the Coast Guard, if the Coast Guard believes that executing all or part of the order in the

final decision is beyond the Coast Guard's authority, or if the Coast Guard believes that the order is incomplete because of an oversight, the final decision shall be returned to the Board for clarification or technical amendment.

§ 52.74 Report of settlement.

When payment is made pursuant to the order of the Board, the Board may request the Coast Guard to notify it of the name of any person to whom payment was made and of the amount of the payment.

Subpart I—Public Access to Decisions

§ 52.81 Reading room and index.

After deleting only so much personal information as is necessary to prevent an unwarranted invasion of privacy of the applicant or other persons mentioned in the final decision of the Board, a redacted copy of each final decision shall be indexed by subject and made available for review and copying at a public reading room. Final decisions created on or after November 1, 1996, shall be made available by electronic means. 5 U.S.C. 552.

[FR Doc. 02–30933 Filed 12–10–02; 8:45 am]
BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region II Docket No. VI3–2; FRL–7420–5]

Approval and Promulgation of State Plans for Designated Facilities; Virgin Islands

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a negative declaration submitted by the Government of the United States Virgin Islands. The negative declaration satisfies EPA's promulgated Emission Guidelines (EG) for existing small municipal waste combustion (MWC) units. In accordance with the EG, states are not required to submit a plan to implement and enforce the EG if there are no existing small MWC units in the state and it submits a negative declaration letter in place of the State Plan.

DATES: Written comments must be received on or before January 10, 2003.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

A copy of the Virgin Islands submittal is available for inspection at the Region 2 Office in New York City. Those interested in inspecting the submittal must arrange an appointment in advance by calling (212) 637–4249. Alternatively, appointments may be arranged via e-mail by sending a message to Demian P. Ellis at *Ellis.Demian@epa.gov*. The office address is 290 Broadway, Air Programs Branch, 25th Floor, New York, New York 10007–1866.

A copy of the Virgin Islands submittal is also available for inspection at the following location:

Virgin Islands Department of Planning and Natural Resources, Division of Environmental Protection, Cyril E. King Airport, Terminal Building, 2nd Floor, St. Thomas, USVI 00802.

FOR FURTHER INFORMATION CONTACT: Demian P. Ellis, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, Telephone, (212) 637–4249.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is located in the Rules Section of this **Federal Register**.

The Environmental Protection Agency (EPA) is proposing to approve a negative declaration submitted by the Government of the United States Virgin Islands (Virgin Islands) on July 17, 2002. The negative declaration officially certifies to EPA that, to the best of the Virgin Islands' knowledge, there are no small municipal waste combustion units in operation within the Territory. This negative declaration concerns existing small municipal waste combustion units throughout the Territory of the U.S. Virgin Islands. The negative declaration satisfies the Federal Emission Guidelines (EG) requirements of EPA's promulgated regulation entitled "Emission Guidelines for Existing Small Municipal Waste Combustion Units" (65 FR 76378, December 6, 2000).

Dated: November 15, 2002.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 02–31238 Filed 12–10–02; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE TREASURY

48 CFR Chapter 10

RIN 1505–AA89

Department of the Treasury Acquisition Regulation

AGENCY: Office of the Procurement Executive, Treasury.

ACTION: Proposed rule with request for comments.

SUMMARY: The Department of the Treasury ("Treasury") is proposing to revise the Department of the Treasury Acquisition Regulation (DTAR) in its entirety. Treasury has rewritten the DTAR into plain English. The DTAR includes both policy direction and regulatory guidance. Only regulatory guidance is being published for public comment. Treasury has also updated the DTAR to reflect changes to the Federal Acquisition Regulation (FAR) and to establish and encourage participation in the Treasury Mentor-Protégé Program.

DATES: Written comments must be submitted to the address shown below by January 10, 2003.

ADDRESSES: Mail comments to the Department of the Treasury, Office of the Procurement Executive, ATTN: Angelie Jackson, 1500 Pennsylvania Ave., NW., c/o 1310 G St., NW., Suite 400W, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Angelie Jackson, Department of the Treasury, Office of the Procurement Executive, (202) 622–0245.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Section by Section Analysis.
III. Procedural Requirements.
A. Review under Executive Order 12866.
B. Review under Executive Order 12988.
C. Review under the Regulatory Flexibility Act.
D. Review under the Paperwork Reduction Act.
E. Review under the National Environmental Policy Act.
F. Review under Executive Order 13132.
G. Review under the Unfunded Mandates Reform Act of 1995.
H. Treasury and General Government Appropriation Act, 1999.
IV. Opportunity for Public Comment.

I. Background

Treasury initiated a review and rewrite of the Department of the Treasury Acquisition Regulation (DTAR). The DTAR, as reissued, uses plain English to improve clarity and understanding; eliminates internal operating procedures that do not have a significant effect beyond Treasury; establishes the Treasury Mentor-Protégé Program and, eliminates coverage that is obsolete or duplicates the FAR. Treasury intends the reissued DTAR to be simple for contractors, offerors, and Treasury contracting personnel to use.

II. Section by Section Analysis

Sections 1001.101, 1001.102, 1001.104, 1001.105 and 1001.106 set forth basic policies and general information about the Department of the Treasury Acquisition Regulation system including purpose, guiding principles, applicability, issuance, arrangement, numbering, and dissemination. Section 1002.101 provides definitions for common use words. Section 1003.570 describes 31 U.S.C. 333, which prohibits contractors from using Treasury's name for publicity purposes. Section 1003.901 defines the FAR term "authorized official of an agency." Section 1004.470 identifies investigative requirements for contractors. In section 1011.103, Bureau Chief Procurement Officers may require offerors to make required demonstrations.

Sections 1005.202, 1019.811, 1052.219–18 and 1052.219–72 provide guidance and contract clauses based on the Memorandum of Understanding with the Small Business Administration allowing Treasury to contract directly with 8(a) contractors. Sections 1019.202–70, 1052.219–73, and 1052.219–75 provide for the Treasury Mentor-Protégé Program that assists qualified small businesses to receive developmental assistance from Treasury prime contractors in order to increase the base of small businesses eligible to perform Treasury contracts and subcontracts. Sections 1019.708, 1052.219–70 and 1052.219–71 provide that a provision and a clause be placed in all respective solicitations and contracts requiring a subcontracting plan.

Section 1028.106 designates the contracting officer as the designee of the head of the agency. Section 1028.307 provides for group insurance plans to be provided to the contracting officer. Section 1033.201 defines the General Services Board of Contract Appeals as Treasury's Agency Board. Section 1033.210 encourages the use of Alternate Disputes Resolution procedures.

III. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action was not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866 as supplemented by Executive Order 13132, and is not a major rule under 5 U.S.C. 804.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, Treasury has completed the required review and determined that this proposed regulation meets the relevant standards of Executive Order 12988 as supplemented by Executive Order 13132.

C. Review Under the Regulatory Flexibility Act

This proposed regulation would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, and *et seq.* The analysis requirement of the Act does not apply if the agency certifies that the rule, if promulgated, will not have a significant impact of a substantial number of small entities. The Mentor-Protégé Program does apply to large business and small business firms that receive a form of incentive for assuming the role of mentor to small businesses, other small disadvantaged businesses, qualified HUBZone small businesses, small businesses owned and controlled by service disabled veterans, and small women-owned businesses. It is expected that the protégé entities would directly benefit from the forms of mentoring provided for in this rule.

The other revisions do not add any new requirements, but restate existing requirements in plain English and provide consistency with the FAR.

D. Review Under the Paperwork Reduction Act

This reissued DTAR contains information collection requirements subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) that were approved previously by OMB and assigned the contract numbers shown in DTAR section 1001.106.

E. Review Under the National Environmental Policy Act

Treasury has concluded that this proposed rule would not individually or cumulatively have significant impact on the human environment, as determined by Treasury's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, no environmental impact statement or environmental assessment is required pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132 requires when formulating and implementing regulations, legislation, and any other policy actions that have federalism implications, that agencies must follow prescribed principles and criteria. Treasury has determined that this proposed rule does not contain federalism implications and would not preempt State laws.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a federal mandate with costs to State, local or tribal governments, or to the private sector of $100 million or more. This proposed rule would only affect private sector entities and the impact is less than $100 million.

H. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriation, 1999 (Public Law 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, Treasury concluded that it is not necessary to prepare a Family Policymaking Assessment.

IV. Opportunity for Public Comment

At the beginning of this proposed rule, Treasury provides for a comment period and sets forth the address for submitting written comments. Treasury is not scheduling a public hearing because there are no significant issues of fact or law that would warrant such a hearing.

List of Subjects in 48 CFR Chapter 10

Government acquisition.

Corey M. Rindner,

Director, Office of the Procurement Executive.

Accordingly, the Department of the Treasury revises 48 CFR chapter 10, to read as follows:

CHAPTER 10—DEPARTMENT OF THE TREASURY

SUBCHAPTER A—GENERAL

Part
1001 Department of the Treasury Acquisition Regulation (DTAR) System
1002 Definitions of Words and Terms
1003 Improper Business Practices and Personal Conflicts of Interest
1004 Administrative Matters

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

1005 Publicizing Contract Actions

1011 Describing Agency Needs

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

1019 Small Business Programs

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

1028 Bonds and Insurance
1033 Protests, Disputes, and Appeals

SUBCHAPTER H—CLAUSES AND FORMS

1052 Solicitation Provisions and Contract Clauses

SUBCHAPTER A—GENERAL

PART 1001—DEPARTMENT OF THE TREASURY ACQUISITION REGULATION (DTAR) SYSTEM

Subpart 1001.1—Purpose, Authority, Issuance

Sec.
1001.101 Purpose.
1001.104 Applicability.
1001.105 Issuance.
1001.105–1 Publications and code arrangement.
1001.105–2 Arrangement of regulations.
1001.105–3 Copies.
1001.106 OMB Approval under the Paperwork Reduction Act.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1001.1—Purpose, Authority, Issuance

1001.101 Purpose.

This subpart establishes chapter 10, the Department of the Treasury Acquisition Regulation (DTAR), within title 48 of the Federal Acquisition Regulation (FAR) System. The DTAR contains policies and procedures that supplement FAR coverage and directly affect the contractual relationship between the Department of the Treasury and its business partners (*e.g.*, prospective offerors/bidders and contractors). When FAR coverage is adequate, there will be no corresponding DTAR coverage.

1001.104 Applicability.

The FAR and DTAR apply to all acquisitions of supplies and services, which obligate appropriated funds. For acquisitions made from non-appropriated funds, the Senior Procurement Executive will determine the rules and procedures that will apply. The DTAR does not apply to the acquisitions of the U.S. Mint.

1001.105 Issuance.

1001.105–1 Publication and code arrangement.

The DTAR and its subsequent changes will be published in the **Federal Register** and codified in the Code of Federal Regulations (CFR). The DTAR will be issued as 48 CFR chapter 10.

1001.105–2 Arrangement of regulations.

(a) *References and citations.* The DTAR is divided into the same parts, subparts, sections, subsections, and paragraphs as the FAR except that 10 or 100 will precede the DTAR citation so that there are four numbers to the left of the first decimal. References to DTAR material must be made in a manner similar to that prescribed by FAR 1.105–2(c).

1001.105–3 Copies.

Copies of the DTAR in **Federal Register** or CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402.

1001.106 OMB Approval under the Paperwork Reduction Act.

OMB has assigned the following control numbers that must appear on the upper right-hand corner of the face page of each solicitation, contract, modification and order: OMB Control No. 1505–0081 (Offeror submissions), OMB Control No. 1505–0080 (Contractor submissions), and OMB Control No. 1505–0107 (Protests). OMB regulations and OMB's approval and assignment of control numbers are conditioned upon Treasury bureaus not requiring more than three copies (including the original) of any document of information. OMB has granted a waiver to permit the Department to require up to eight copies of proposal packages, including proprietary data, for solicitations, provided that contractors who submit only an original and two copies will not be placed at a disadvantage.

PART 1002—DEFINITIONS OF WORDS AND TERMS

Subpart 1002.1—Definitions

Sec.
1002.101 Definitions.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1002.1—Definitions

1002.101 Definitions.

Bureau Chief Procurement Officer (BCPO) means the senior acquisition person at each bureau's headquarters. Within the Internal Revenue Service, this may be the Director, Procurement or the Deputy Director, Procurement.

Legal counsel means the Treasury or bureau office providing legal services to the contracting activity.

Senior Procurement Executive (SPE) for the Department of the Treasury is the Director, Office of the Procurement Executive.

PART 1003—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1003.9—Whistleblower Protections for Contractor Employees

1003.901 Definitions.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1003.9—Whistleblower Protections for Contractor Employees

1003.901 Definitions.

Authorized official of an agency means Treasury's SPE.

PART 1004—ADMINISTRATIVE MATTERS

Subpart 1004.4—Safeguarding Classified Information within Industry

Sec.
1004.470 Investigative Requirements for Contractors.
1.1 General.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1004.4—Safeguarding Classified Information within Industry

1004.470 Investigative Requirements for Contractors.

1004.470–1 General.

Contract employees not requiring access to classified information must meet the investigative requirements of chapter II, section 2 of TD P 71–10, Department of the Treasury Security Manual.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 1005—PUBLICIZING CONTRACT ACTIONS

Subpart 1005.2—Synopses of Proposed Contract Actions

Sec.
1005.202 Exceptions.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1005.2—Synopses of Proposed Contract Actions

1005.202 Exceptions.

(b)(1) The Office of Federal Procurement Policy and the Small Business Administration have extended the Pilot Program on Acquisition of Services from Small Businesses. It allows for a waiver of the synopsis requirement for services from competitive small businesses between $25,000 and $100,000. Contracting officers may waive the synopsis requirement after determining the following:

(i) Acquisitions covered by the waiver are for services (excluding those exempted from set-asides under the Small Business Competitiveness Demonstration Program) in amounts over $25,000, but not exceeding the simplified acquisition threshold ($100,000), of which supply items are expected to constitute less than 20 percent of the value of the contract;

(ii) The covered acquisitions will be set-aside for small businesses;

(iii) Quotes or offers for covered acquisitions will be solicited and obtained from a minimum of five small business concerns;

(iv) The Procurement Marketing and Access Network (PRO-Net) will be used to identify and solicit bids from a minimum of five small businesses; and

(v) If practicable, two sources not included in the previous solicitation for the same services will be solicited.

PART 1011—DESCRIBING AGENCY NEEDS

Subpart 1011.1—Selecting and Developing Requirements Documents

Sec.
1011.103 Market acceptance.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1011.1—Selecting and Developing Requirements Documents

1011.103 Market acceptance.

(a) BCPOs can act on behalf of the head of the agency in this subpart only. BCPOs, under appropriate circumstances, require offerors to make the required demonstrations.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1019—SMALL BUSINESS PROGRAMS

Subpart 1019.2—Policies

Sec.
1019.202 Specific policies.
1019.202–70 The Treasury Mentor-Protégé Program.
1019.202–70–3 Non affiliation.
1019.202–70–4 General policy.
1019.202–70–5 Incentives for prime contractor participation.
1019.202–70–7 Mentor firms.
1019.202–70–8 Protégé firms.
1019.202–70–9 Selection of protégé firms.
1019.202–70–10 Application process for mentor firms to participate in the program.
1019.202–70–11 OSBD review and approval process of agreement.
1019.202–70–12 Agreement contents.
1019.202–70–13 Developmental assistance.
1019.202–70–14 Obligation.
1019.202–70–16 Solicitation provisions and contract clauses.

Subpart 1019.7—The Small Business Subcontracting Program

Sec.
1019.708 Contract clauses.
1019.708–70 Solicitation provisions and contract clauses.

Subpart 1019.8—Contracting with the Small Business Administration (The 8(a) Program)

Sec.
1019.811 Preparing the contracts.
1019.811–3 Contract clauses.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1019.2—Policies

1019.202 Specific policies.

1019.202–70 The Treasury Mentor-Protégé Program.

1019.202–70–3 Non-affiliation.

For purposes of the Small Business Act, a protégé firm may not be considered an affiliate of a mentor firm solely on the basis that the protégé firm is receiving developmental assistance referred to in DTAR 1019.202–70–13 from such mentor firm under the Program.

1019.202–70–4 General policy.

(a) Eligible prime contractors, not included on the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs", that are approved as mentors will enter into agreements with eligible protégés. Mentors provide appropriate developmental assistance to enhance the capabilities of protégés to perform as contractors or subcontractors.

(b) A firm's status as a protégé under a Treasury contract must not have an effect on the firm's eligibility to seek other contracts or subcontracts.

1019.202–70–5 Incentives for prime contractor participation.

(a) Under the Small Business Act, 15 U.S.C. 637(d)(4)(E), Treasury is authorized to provide appropriate incentives to encourage subcontracting opportunities consistent with the efficient and economical performance of the contract. Proposed mentor-protégé efforts will be considered during the evaluation of such negotiated, competitive offers. Contracting officers must provide, as an incentive, a bonus score, not to exceed 5% of the relative importance assigned to the technical/management factors.

(b) A mentor's performance will be evaluated against the criteria described in DTAR 1052.219–75.

(c) Before awarding a contract that requires a subcontracting plan, the existence of a mentor-protégé arrangement, and performance (if any) under an existing arrangement, must be considered by the contracting officer in:

(1) Evaluating the quality of a proposed subcontracting plan under FAR 19.705–4; and

(2) Evaluating the contractor compliance with the subcontracting plans submitted in previous contracts as a factor in determining contractor responsibility under FAR 19.705–5(a)(1).

(d) Mentor-protégé arrangements may provide the government with greater assurance that a protégé subcontractor will be able to perform under the contract.

(e) The Office of Small Business Development (OSBD) Mentoring Award is a non-monetary award that will be presented (annually or as often as appropriate) to the mentoring firm providing the most effective developmental support of a protégé. The Mentor-Protégé Program Manager will recommend an award winner to the Director, Office of Small Business Development.

1019.202–70–7 Mentor firms.

A mentor firm may be either a large or small business, eligible for award of a Government contract that can provide developmental assistance to enhance the capabilities of protégés to perform as subcontractors. Mentors will be encouraged to enter into arrangements with protégés in addition to firms with whom they have established business relationships.

1019.202–70–8 Protégé firms.

(a) For selection as a protégé, a firm must be:

(1) A small business, women-owned small business, small disadvantaged business, small business owned and controlled by service disabled veterans, or qualified HUBZone small business:

(2) "Small" in the NAICS for the services or supplies to be provided by the protégé under its subcontract to the mentor; and

(3) Eligible for receipt of Government contracts.

(b) Except for small disadvantaged business, or qualified HUBZone small business firms, a protégé firm may self-certify to a mentor firm that it meets the requirements set forth in paragraph (a) of this section. Mentors may rely in good faith on written representations by potential protégés that they meet the specified eligibility requirements. The small disadvantaged business and hubzone status eligibility and

documentation requirements are determined according to FAR 19.304 and FAR 19.1303, respectively.

(c) Protégés may not have multiple mentors unless approved, in writing, by the Director, Office of Small Business Development (OSBD). Protégés participating in other agency mentor-protégé programs in addition to the Treasury Program should maintain a system for preparing separate reports of mentoring activity for each agency's program.

1019.708–70–9 Selection of protégé firms.

(a) Mentor firms will be solely responsible for selecting protégé firms. The mentor is encouraged to identify and select the types of protégé firms listed in 1019.202–70–7. Mentor firms may have multiple protégés.

(b) The selection of protégé firms by mentor firms may not be protested. Any protest regarding the size or eligibility status of an entity selected by a mentor to be a protégé must be referred solely to Treasury's OSBD for resolution. Treasury, at its discretion, may seek an advisory opinion from the Small Business Administration (SBA).

1019.202–70–10 Application process for mentor firms to participate in the program.

(a) Firms interested in becoming a mentor firm may apply in writing to Treasury's OSBD. The application will be evaluated based upon the description of the nature and extent of technical and managerial support proposed as well as the extent of other developmental assistance in the form of equity investment, loans, joint-venture support, and traditional subcontracting support.

(b) A proposed mentor will submit the information listed in DTAR 1019.202–70–12 for inclusion in a mentor-protégé agreement.

1019.202–70–11 OSBD review and approval process of agreement.

(a) OSBD will review the information specified in DTAR 1019.202–70–12. The OSBD review will be completed no later than 30 calendar days after receipt.

(b) Upon completion of the review, the mentor may implement the developmental assistance program.

(c) An approved agreement will be incorporated into the mentor firm's contract(s) with Treasury.

(d) If the OSBD disapproves the agreement, the mentor may provide additional information for reconsideration. Upon finding deficiencies that the OSBD considers correctable, the OSBD will notify the mentor and provide a list of defects. Any additional information or corrections requested will be provided within 30 calendar days. The review of any supplemental material will be completed within 30 calendar days after receipt by the OSBD. When submission of additional data is required during a proposal evaluation for a new contract award, shorter timeframes for submission, review and re-evaluation for approval may be authorized by the OSBD.

(e) The agreement defines the relationship between the mentor and protégé firms only. The agreement itself does not create any privity of contract between the mentor or protégé and Treasury.

1019.202–70–12 Agreement contents.

The contents of the agreement will contain:

(a) Names and addresses of mentor and protégé firms and a point of contact within both firms who will oversee the agreement;

(b) Procedures for the mentor firm to notify the protégé firm, OSBD and the contracting officer, in writing, at least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the Program;

(c) Procedures for a protégé firm to notify the mentor firm in writing at least 30 days in advance of the protégé firm's intent to voluntarily terminate the mentor-protégé agreement. The mentor must notify the OSBD and the contracting officer immediately upon receipt of such notice from the protégé;

(d) Each proposed mentor-protégé relationship must include information on the mentor's ability to provide developmental assistance to the protégé and how that assistance will potentially increase contracting and subcontracting opportunities for the protégé firm;

(e) A description of the type of developmental Program that will be provided by the mentor firm to the protégé firm, to include a description of the potential subcontract work, and a schedule for providing assistance and criteria for evaluation of the protégés developmental success;

(f) A listing of the types and dollar amounts of subcontracts that may be awarded to the protégé firm;

(g) Program participation term;

(h) Termination procedures;

(i) Plan for accomplishing work should the agreement be terminated; and,

(j) Other terms and conditions, as appropriate.

1019.202–70–13 Developmental assistance.

The forms of developmental assistance a mentor can provide to a protégé include:

(a) Management guidance relating to financial management, organizational management, overall business management/planning, business development, and technical assistance;

(b) Loans;

(c) Rent-free use of facilities and/or equipment;

(d) Property;

(e) Temporary assignment of personnel to protégé for purpose of training; and,

(f) Any other types of mutually beneficial assistance.

1019.202–70–14 Obligation.

(a) Mentor or protégé firms may voluntarily withdraw from the Mentor-Protégé Program. However, such withdrawal will not impact the program mission and contract requirements under the prime contract.

(b) At the conclusion of each year in the Mentor-Protégé Program, the prime contractor and protégé must formally brief the Department of the Treasury team regarding program accomplishments as pertains to the approved agreement. Individual briefings may be conducted, at the request of either party. Treasury will evaluate these reports by considering the following:

(1) Specific actions taken by the mentor, during the evaluation period, to increase the participation of protégés as suppliers to the Federal government and to commercial entities;

(2) Specific actions taken by the mentor, during the evaluation period, to develop the technical and corporate administrative expertise of a protégé as defined in the agreement;

(3) To what extent the protégé has met the developmental objectives in the agreement; and,

(4) To what extent the mentor firm's participation in the Mentor-Protégé Program resulted in the protégé receiving contract(s) and subcontract(s) from private firms and agencies other than the Department of the Treasury.

(c) Mentor and protégé firms must submit an evaluation to the OSBD at the conclusion of the mutually agreed upon program period, the conclusion of the contract, or the voluntary withdrawal by either party from the Mentor-Protégé Program, whichever comes first.

1019.202–70–16 Solicitation provisions and contract clauses.

(a) Insert the provision at DTAR 1052.219–73, Department of the Treasury Mentor-Protégé Program, in all unrestricted solicitations exceeding $500,000 ($1,000,000 for construction) that offer subcontracting possibilities.

(d) Insert the clause at DTAR 1052.219–75, Mentor Requirements and Evaluation, in contracts where the prime contractor is a participant in the Treasury Mentor-Protégé Program.

Subpart 1019.7—The Small Business Subcontracting Program

1019.708 Contract clauses.

1019.708–70 Solicitation provisions and contract clauses.

(a) Insert the clause at DTAR 1052.219–70, SF 294 and SF 295 Reporting, in all solicitations and contracts requiring a subcontracting plan.

(a) Insert the provision at DTAR 1052.219–71, Subcontracting Plan, in all solicitations requiring a subcontracting plan.

Subpart 1019.8—Contracting with the Small Business Administration (The 8(a) Program)

1019.811 Preparing the contracts.

1019.811–3 Contract clauses.

(d)(3) Insert the clause at DTAR 1052.219–18, Notification of Competition Limited to Eligible 8(a) Concerns—Alternate III (Deviation), for paragraph (c) of FAR 52.219–18, Notification of Competition Limited to Eligible 8(a) Concerns, in all solicitations and contracts that exceed $100,000 and are processed under DTAR 1019.8.

(f) Insert the clause at DTAR 1052.219–72, section 8(a) Direct Award, in solicitations and contracts that exceed $100,000 and are processed under DTAR 1019.8 for paragraph (c) of FAR 52.219–11, Special 8(a) Subcontract Conditions; FAR 52.219–12, Special 8(a) Subcontract Conditions; and FAR 52.219–17, section 8(a) Award.

Subchapter E—General Contracting Requirements

PART 1028—BONDS AND INSURANCE

Subpart 1028.1—Bonds

Sec.
1028.106 Administration.
1028.106–6 Furnishing information.

Subpart 1028.3—Insurance

1028.307 Insurance under cost-reimbursement contracts.

1028.307–1 Group insurance plans.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1028.1—Bonds

1028.106 Administration.

1028.106–6 Furnishing information.

(b) COs must furnish certified copies and determine reasonable and appropriate costs, after consultation with legal counsel.

Subpart 1028.3—Insurance

1028.307 Insurance under cost-reimbursement contracts.

1028.307–1 Group insurance plans.

Plans must be submitted to the CO, who must obtain the advice of legal counsel.

PART 1033—PROTESTS, DISPUTES, AND APPEALS

Subpart 1033.2—Disputes and Appeals

Sec.
1033.201 Definitions.
1033.210 Contracting officer's authority.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1033.2—Disputes and Appeals

1033.201 Definitions.

Agency Board of Contract Appeals means the General Services Administration Board of Contract Appeals (GSBCA). The GSBCA is the authorized representative of the Secretary of the Treasury in hearing, considering, and determining all appeals of decisions of CO's filed by contractors pursuant to FAR subpart 33.2. Appeals must be governed by the rules of the GSBCA (48 CFR chapter 61, part 6101).

1033.210 Contracting officer's authority.

It is Treasury's policy to encourage the use of Alternate Disputes Resolution (ADR) procedures. A decision to use ADR procedures requires review and approval by legal counsel.

SUBCHAPTER H—CLAUSES AND FORMS

PART 1052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1052.2—Texts of Provisions and Clauses

Sec.
1052.201–70 Contracting Officer's Technical Representative (COTR) Designation and Authority.
1052.219–18 Notification of Competition Limited to Eligible 8(a) Concerns—Alternate III (Deviation).
1052.219–70 SF 294 and SF 295 Reporting.
1052.219–71 Subcontracting Plan.
1052.219–72 Section 8(a) Direct Awards.
1052.219–73 Department of the Treasury Mentor-Protégé Program.
1052.219–74 [Reserved]
1052.219–75 Mentor Requirements and Evaluation.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1052.2—Texts of Provisions and Clauses

1052.201–70 Contracting Officer's Technical Representative (COTR) Designation and Authority.

Per DTAR 1001.670–3, insert the following clause:

Contracting Officer's Technical Representative (COTR) Designation andAuthority (Mar 2002)

(a) The contracting officer's technical representative is

[insert name, address and telephone number].

(b) Performance of work under this contract is subject to the technical direction of the COTR identified above, or a representative designated in writing. The term "technical direction" includes, without limitation, direction to the contractor that directs or redirects the labor effort, shifts the work between work areas or locations, and/or fills in details and otherwise serves to ensure that tasks outlined in the work statement are accomplished satisfactorily.

(c) Technical direction must be within the scope of the contract specification(s)/work statement. The COTR does not have authority to issue technical direction that:

(1) Constitutes a change of assignment or additional work outside the contract specification(s)/work statement;

(2) Constitutes a change as defined in the clause entitled "Changes";

(3) In any manner causes an increase or decrease in the contract price, or the time required for contract performance;

(4) Changes any of the terms, conditions, or specification(s)/work statement of the contract;

(5) Interferes with the contractor's right to perform under the terms and conditions of the contract; or,

(6) Directs, supervises or otherwise controls the actions of the contractor's employees.

(d) Technical direction may be oral or in writing. The COTR must confirm oral direction in writing within five workdays, with a copy to the contracting officer.

(e) The contractor must proceed promptly with performance resulting from the technical direction issued by the COTR. In the opinion of the contractor, if any direction of the COTR or the designated representative falls within the limitations of (c) above, the contractor must immediately notify the contracting officer no later than the beginning of the next Government work day.

(f) Failure of the contractor and the contracting officer to agree that technical direction is within the scope of the contract will be subject to the terms of the clause entitled "Disputes."

(End of clause)

1052.219–18 Notification of Competition Limited to Eligible 8(a) Concerns—Alternate III (Deviation).

In accordance with DTAR 1019.811–3(d)(3), substitute the following for the following for paragraph (c) in FAR 52.219–18:

(c) Any award resulting from this solicitation will be made directly by the contracting officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

1052.219–70 SF 294 and SF 295 Reporting.

Per DTAR 1019.708–70(a), insert the following clause:

Addressee	Submit SF 294	Submit SF 295
Contracting Officer (Address shown on front of contract)	Original	Original.
Small Business Specialist [Insert Bureau name and address]	Copy	Copy.
Department of the Treasury, Office of Small Business Development (MMD), 1500 Pennsylvania Avenue, NW., c/o 1310 G St., NW., Suite 400W, Washington, DC 20220.	N/A	Copy.

(End of clause)

1052.219–71 Subcontracting Plan.

As prescribed in DTAR 1019.708–70(b), insert the following provision:

Subcontracting Plan (Mar 2002)

As part of its initial proposal, each large business offeror must submit a subcontracting plan, as prescribed in FAR 52.219–9. Use of the subcontracting plan outline contained in section J of this solicitation is optional; however, plans must contain all elements included in the outline.

(End of provision)

1052.219–72 Section 8(a) Direct Awards.

As prescribed in DTAR 1019.811–3(f), insert the following clause:

Section 8(a) Direct Awards

(a) This purchase order or contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to the Memorandum of Understanding between the Small Business Administration (SBA) and the Department of the Treasury. SBA retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and provides counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is: *[To be completed by the contracting officer at the time of award]*

(b) The contracting officer is responsible for administering the purchase order or contract and taking any action on behalf of the Government under the terms and conditions of the purchase order or contract. However, the contracting officer shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the purchase order or contract. The contracting officer shall also coordinate with SBA prior to processing any novation agreement. The contracting officer may assign contract administration functions to a contract administration office.

(c) The contractor agrees:

(1) To notify the contracting officer, simultaneously with its notification to SBA (as required by SBA's 8(a) regulations), when the owner(s) upon whom 8(a) eligibility is based, plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)21), transfer of ownership or control must result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of control; and

(2) To adhere to the requirements of FAR 52.219–14, Limitations on Subcontracting.

(End of clause)

1052.219–73 Department of the Treasury Mentor-Protégé Program.

As described in DTAR 1019.202–70, insert the following provision:

Department of the Treasury Mentor-protégé Program (Jan 2000)

(a) Large and small businesses are encouraged to participate in the Department of the Treasury Mentor-Protégé Program. Mentor firms provide small business Protégés with developmental assistance to enhance their capabilities and ability to obtain federal contracts.

Mentor firms are large prime contractors or eligible small businesses capable of providing developmental assistance. Protégé firms are small businesses as defined in 13 CFR parts 121, 124, and 126.

Developmental assistance is technical, managerial, financial, and other mutually beneficial assistance to aid protégés. Contractors interested in participating in the Program are encouraged to contact the Department of the Treasury OSBD or the Bureau of the OSBD for further information.

(End of provision)

1052.219–74 [Reserved]

1052.219–75 Mentor Requirements and Evaluation.

As prescribed in DTAR 1019.202–70, insert the following clause:

Mentor Requirements and Evaluation (Jan 2000)

(a) Mentor and protégé firms shall submit an evaluation to the Department of the Treasury's OSBD at the conclusion of the mutually agreed upon Program period, or the voluntary withdrawal by either party from the Program, whichever occurs first. At the conclusion of each year in the Mentor-Protégé Program, the prime contractor and protégé will formally brief the Department of the Treasury Mentor-Protégé Program Manager regarding program accomplishments under their mentor-protégé agreements.

(b)A mentor or protégé must notify the OSBD and the contracting officer, in writing, at least 30 calendar days in advance of the effective date of the firm's withdrawal from the Program. A mentor firm must notify the OSBD and the contracting officer upon receipt of a protégé's notice of withdrawal from the Program.

(End of clause)

SF 294 and SF 295 Reporting (Mar 2002)

In accordance with the clause entitled "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan" in section I and the contract schedule, SF 294 and SF 295 reports must be submitted to the following personnel:

[FR Doc. 02–31116 Filed 12–10–02; 8:45 am]

BILLING CODE 4811–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Notice of Availability of the Final Recovery Plan for Gabbro Soil Plants of the Central Sierra Nevada Foothills

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the final Recovery Plan for Gabbro Soil Plants of the Central Sierra Nevada Foothills. This recovery plan covers four plants listed as endangered: Stebbins' morning-glory (*Calystegia stebbinsii*), Pine Hill ceanothus (*Ceanothus roderickii*), Pine Hill flannelbush (*Fremontodendron californicum* ssp. *decumbens*), and El Dorado bedstraw (*Galium californicum* ssp. *sierrae*); one plant listed as threatened, Layne's butterweed (*Senecio layneae*); and one plant species of concern, El Dorado mule-ears (*Wyethia reticulata*).

ADDRESSES: Copies of this recovery plan are available by request from the Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, California 95825. Recovery Plans may also be obtained from: Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814, 301/429–6403 or 1–800–582–3421. The fee for the plan varies depending on the number of pages of the plan. This recovery plan will be made available on the World Wide Web at *http://www.r1.fws.gov/ecoservices/endangered/recovery/default.htm*.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp, Fish and Wildlife Biologist, at the above Sacramento address.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program. A species is considered recovered when the species' ecosystem is restored and/or threats to the species are removed so that self-sustaining and self-regulating populations of the species can be supported as persistent members of native biotic communities. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Endangered Species Act of 1973, as amended in 1988 (Act) (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. Information presented during the public comment period has been considered in the preparation of this final recovery plan, and is summarized in an appendix to the recovery plan. We will forward substantive comments regarding recovery plan implementation to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions.

The six species of plants covered in the final recovery plan are primarily restricted to gabbro soils habitat in the central Sierra Nevada foothills of California. Conversion of habitat to urban uses has extirpated the listed species and species of concern from a significant portion of their historic ranges. The remaining natural communities are highly fragmented, and many are marginal habitats in which these species may not persist during catastrophic events.

Interim goals include stabilizing and protecting populations, conducting research necessary to refine reclassification and recovery criteria, and reclassifying to threatened (*i.e.*, downlisting) Stebbins' morning-glory and Pine Hill ceanothus, species currently federally listed as endangered. The ultimate goals of this recovery plan are: (1) Protect and restore sufficient habitat and numbers of populations; (2) ameliorate both the threats that caused five of the gabbro soil plants to be listed and any other newly identified threats; (3) delist Stebbins' morning-glory, Pine Hill ceanothus, and Layne's butterweed, and downlist Pine Hill flannelbush and El Dorado bedstraw; and (4) ensure the long-term conservation of El Dorado mule-ears.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Steve Thompson,

Manager, California/Nevada Operations Office, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 02–31175 Filed 12–10–02; 8:45 am]

BILLING CODE 4310–55–P

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Notices

Federal Register
Vol. 67, No. 238
Wednesday, December 11, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

USDA-Forest Service/Spalding Land Exchange and Special Use Permit Environmental Impact Statement and Lassen National Forest Plan Amendment, Lassen National Forest, Lassen County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, Lassen National Forest, is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed land exchange between the Spalding Community Services District and the Lassen National Forest, Lassen County, CA. Approval would include the transfer of approximately 57.21 acres of Federal lands encompassing one 52.50 acre parcel and one 4.71 acre parcel, and also includes a non-significant minor amendment to the "Lassen National Forest Land and Resource Management Plan" (LRMP), and authorization of a special use of National Forest System Lands for water and sewer pipeline corridors, and an access road totaling approximately 2.7 acres. The Forest Service invites written comments and suggestions on the scope of the environmental analysis for the EIS from Federal, State, and local agencies, federally recognized Tribes, and other individuals or organizations that may be interested in or affected by the proposed action.

DATES: Submit comments on or before January 27, 2003.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in March 3, 2003. The final EIS is scheduled for completion in August 2003.

ADDRESSES: You may request to be placed on the project mailing list or you may direct questions, comments and suggestions to the Responsible Official: Edward C. Cole, Forest Supervisor, Lassen National Forest, 2550 Riverside Drive, Susanville, CA 96130.

FOR FURTHER INFORMATION CONTACT: Lois Charlton, Forest Lands Officer, Lassen National Forest 2550 Riverside Drive, Susanville, CA 96130. Telephone (530) 257–2151.

SUPPLEMENTARY INFORMATION: The Forest Service (lead agency) is proposing a value for value exchange of federal land with the Spalding Community Services District (SCSD) for third party private lands. If the values are unequal, either party may equalize the values by making a cash payment not the exceed 25 percent of the value of the lands transferred out of Federal ownership. The Forest Service is initiating this action in response to a request by SCSD to acquire lands to accommodate construction and operation of a wastewater collection and treatment facility. The federal lands are from the Lassen National Forest (57.21 acres). The Lands that the SCSD would potentially exchange include up to four parcels listed in order of priority for acquisition (Lassen County Assessor Parcel Numbers 077–303–21, 075–120–14, 075–120–15, 075–130–11 and 077–303–21). Acquisition of these parcels would improve access to National Forest System Lands, eliminate one or more in-holdings, and add wetland habitat to the Lassen National Forest. Approval of the land exchange would also include a non-significant minor amendment to the Lassen LRMP, and authorization of a special use of National Forest System Lands for water and sewer pipeline corridors and an access road totaling approximately 2.7 acres.

Environmental Analysis of alternative locations and designs for the facility was conducted in the "Spalding Community Services District Wastewater Collection and Treatment Facilities Final Environmental Impact Report" (SCSD FEIR) dated April 17, 2000. The SCSD FEIR will be incorporated by reference into the EIS for the land transfer. Lands acquired in the exchange by the Forest Service will be managed in accordance with the Lassen National Forest LRMP (1993).

The Spalding Community Services District conducted extensive public participation in development of the SCSD EIR (ref. SCSD FEIR pages 1–2, 1–3, 1–8, 1–9). Comments received in response to the Draft SCSD EIR (SCSD FEIR page 1–4—1–8) were responded to in the Final EIR and will not be identified in the EIS as new issues. The Lassen National Forest listed the land exchange in the quarterly Schedule of Proposed Actions (SOPA) starting in March of 1999. An initial proposed actions was presented to the Lassen County Board of Supervisors at two regularly scheduled meetings (2/13/01 and 2/20/01). The project was presented at a regularly scheduled meeting of the Lassen County Fish and Game Commission (2/15/01). A direct mailing regarding this proposed action was sent to a list of persons and organizations involved in the SCSD EIR, involved government agencies, or those who had requested notification of projects on the Eagle Lake Ranger District involving recreation, special uses, roads, or other proposed actions. Based on analysis completed to date, it was determined that an EIS is needed. Information and data previously gathered will be carried forward in this EIS. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, all Spalding community landowners and to organizations and citizens who express interest in this proposal.

Preliminary issues identified with this proposal include concerns over proposed mitigation measures designed to protect the Federally Threatened bald eagle. These issues include decreased access for sportsman caused by closure of one non-system road (Fred's Road) and a seasonal road closure of a portion of the Osprey Management Area boundary road (32N27Y), and a potential increase of use on the existing network of nonsystem roads between the Spalding Tract and the Pine Creek Estuary.

At this time the alternatives under consideration include: no action and exchanging lands as identified in the proposed action. The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and NFS lands will be considered. The EIS will

disclose the analysis of site-specific mitigation.

Public participation is important. Comments from the public will continue to be used to:

—Identify, confirm or redefine potential issues.
—Identify, confirm or redefine major issues to be analyzed in depth.
—Eliminate minor issues or those, which have been covered by a previous environmental analysis, such as the Lassen National Forest LRMP, and the SCSD FEIR.
—Identify alternatives to the proposed action.
—Identify, confirm or redefine potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects).
—Determine potential cooperating agencies and task assignments.

To ensure that the full range of issues related to the proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties.

The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the Federal Register. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, tribes, and members of the public for their review and comment. It is important that those interested in the management of the Lassen National Forest participate at that time.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered.

Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address.

The Forest Service believes, at this early state, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 US. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningful consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequency of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: December 2, 2002.

Edward C. Cole,

Forest Supervisor, Lassen National Forest.

[FR Doc. 02–31194 Filed 12–10–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on January 14, 2003, at the North Tahoe Conference Center, 8318 North Lake Blvd, Kings Beach, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held January 14, 2003, beginning at 9 a.m. and ending at 4 p.m.

ADDRESSES: The meeting will be held at the North Tahoe Conference Center, 8318 North Lake Blvd., Kings Beach, CA.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Jeannie Stafford Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committee. Items to be covered on the agenda include: Proposed revision to the Committee's mission, proposed meeting with the Secretary of Agriculture, status report of USFS FY 2002 fire suppression deferrals, Lands Subcommittee update, update of the USFS forest fuels action plan, status report on the TRPA EIP update, status report on Pathway 2007, USACE update on Tahoe programs and projects, NRCS WHIP program, and public comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues maybe brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: December 2, 2002.

Maribeth Gustafson,

Forest Supervisor.

[FR Doc. 02–31171 Filed 12–10–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 01–BXA–21]

Action Affecting Export Privileges; Alexander Zisman

In the Matter of: Alexander Zisman, 2 Flotskaya, #81, Moscow, Russia, 125565, Respondent.

Order

The Bureau of Industry and Security, United States Department of Commerce ("BIS"), having initiated an administrative proceeding against Alexander Zisman, 2 Flotskaya, #81, Moscow, Russia, 125565 ("Zisman"), pursuant to section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. Sections 2401–2420 (2000)) ("ACT"),[1] and the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2002)) ("Regulations"),[2] based on allegations that Zisman violated sections 764.2(b) and 764.2(e) of the Regulations; specifically, that Zisman arranged for the transportation of computers from Germany to the Netherlands, and from the Netherlands to the Russian Federal Nuclear Center, Russian Research Institute of Experimental Physics (Arzamas–16), Russia, without obtaining the necessary license for the shipment and that Zisman knew or had reason to know that no such license was obtained; and

BIS and Zisman having entered into a Settlement Agreement pursuant to section 766.18(b) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me; *It is therefore ordered:*

First, that a civil penalty of $20,000 is assessed against Zisman, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

Second, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Zisman shall be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

Third, that for a period of five years from the date of this Order, Zisman, his successors or assigns, and when acting for or on behalf of Zisman, his officers, representatives, agents or employees ("denied person") may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying or negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Fourth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Fifth, that after notice and opportunity for comment as provided in section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Zisman by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

Sixth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Seventh, that a copy of this Order shall be delivered to the United States Coast Guard ALJ Docketing Center, 40 Gay Street, Baltimore, Maryland 21202–4022, notifying that office that this case is withdrawn from adjudication, as provided by section 766.18 of the Regulations.

Eighth, that the charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 4th day of December, 2002.

Lisa A. Prager,

Acting Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 02–31169 Filed 12–10–02; 8:45 am]

BILLING CODE 3510–DT–M

[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), as extended by the Notice of August 14, 2002 (67 FR 53721 (August 16, 2002)), has continued the Regulations in effect under IEEPA.

[2] The Regulations governing the violations at issue are found in the 1996 and 1997 versions of the Code of Federal Regulations, (15 CFR Parts 768–799 (1996), as amended (61 FR 12714, March 25, 1996) (hereinafter "the former Regulations")), and 15 CFR parts 768–799 (1997)). The March 25, 1996 **Federal Register** publication redesignated, but did not republish, the then-existing Regulations as 15 CFR parts 768A–799A. As an interim measure that was part of the transition to newly restructured and reorganized Regulations, the March 25, 1996 **Federal Register** publication also restructured and reorganized the Regulations, designating them as an interim rule at 15 CFR parts 730–774, effective April 24, 1996. The former Regulations and the Regulations define the various violations that BIS alleges occurred. The Regulations establish the procedures that apply to this matter.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.021202295–2295–01]

Global Ocean Data Assimilation Experiment (GODAE)

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that the National Oceanic and Atmospheric Administration (NOAA), on behalf of the National Oceanographic Partnership Program (NOPP), is entertaining preliminary proposals (Letters of Intent) and subsequently full proposals for implementing the initial, pre-operational U.S. contribution(s) to the Global Ocean Data Assimilation Experiment. These efforts are a Pilot Project under Ocean.US, the National Office for Integrated and Sustained Ocean Observations, intended to lead to sustained operational efforts supported by U.S. agencies such as NOAA and the U.S. Navy. The NOPP was established by 10 U.S.C. 7902 *et seq.* to (1) promote the national goals of assuring national security, advancing economic development, protecting quality of life, and strengthening science education and communication through improved knowledge of the ocean; and (2) coordinate and strengthen oceanographic efforts in support of those goals by identifying and carrying out partnerships among Federal agencies, academia, industry, and other members of the oceanographic scientific community in the areas of data, resources, education, and communication. In FY 2003, NOPP intends to begin a program to demonstrate the value of near-real-time, ocean data assimilation. Contingent on the availability of appropriated funds, this program is expected to continue for three to five years. The level of funding available each year will be dependent on appropriations. It is expected that approximately $1,500,000 will be available for the first year of the project, approximately $2,500,000 for the second year, and up to $4,500,000 for the third year. It is expected that the level of funding for the third year will continue for two additional years, depending on progress. Proposals should be written as three-year efforts with options to continue in years four and five should progress be satisfactory.

DATES: January 10, 2003, 5 pm (EST)—Letter of Intent in electronic, facsimile, or hard copy form due. Letters of Intent are used for assessment purposes only and are not a requirement for proposal submission.

February 24, 2003, 5 pm (EST)—Full proposal in electronic or hard copy form due. The proposal must clearly delineate each partner's efforts and the associated request(s) for NOPP funds as well as any cost-sharing that may be offered. (Cost- or resource-sharing is not required in any response to this announcement.) The same proposal will implement funding of all partners in the proposed effort, if selected, thus, separate budgets within the single proposal will be required if more than one funding action is needed.

Unsuccessful applications will be destroyed.

June 1, 2003 (approximate)—Funds awarded to selected recipients. Program begins.

ADDRESSES: Because of potential delays and/or damage in mailing or shipment of hard copy submissions, electronic submissions of Letters of Intent (LOI) and Proposals are strongly encouraged. Electronic submissions must be in PDF format. Electronic submissions in other than PDF format will not be accepted. Electronic submissions must be directed to the National Oceanographic Partnership Program at *http://www.onr.navy.mil/sci_tech/ocean/GODAE_NOAA.htm*; ATTN: Stephen R. Piotrowicz. Letters of Intent submitted by facsimile must be directed to Ocean.US, ATTN: Stephen R. Piotrowicz at 703–588–0872. Letters of Intent and Proposals submitted in hard copy form must be submitted to: Ocean.US, 2300 Clarendon Blvd., Suite 1350, Arlington, VA 22201; ATTN: Dr. Stephen R. Piotrowicz. Proposals submitted in hard copy form should contain one original plus two copies of the full proposal. If color and/or grayscale graphics are included in the proposal, and offerer feels that color or grayscale graphics would be necessary for the review process, the offerer may submit twelve additional copies of the graphics.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen R. Piotrowicz, telephone: (703) 588–0850; facsimile: (703) 588–0872; internet: *Steve.Piotrowicz@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Program Authority

Authority: 49 U.S.C. 44720 (b); 33 U.S.C. 883d; 15 U.S.C. 2904; 15 U.S.C. 2934, (CFDA No. 11.431)—Climate and Atmospheric Research.

II. Program Description

Background

The Global Ocean Data Assimilation Experiment (GODAE) is a one-time pilot project to demonstrate the feasibility and practicality of near real-time global ocean data assimilation and numerical modeling for: (a) Short range open ocean forecasts; (b) boundary conditions to extend predictability of coastal regimes; (c) initialize climate forecast models; and (d) research during the period 2003 to 2007. GODAE has been in planning for at least five years. Within the international community this has culminated in the preparation of both a Strategic Plan and an Implementation Plan (*http://www.bom.gov.au.GODAE/IP/Plan.htm*). NOPP has provided substantial funding for a number of U.S. GODAE-preparatory and GODAE-related activities, which have established a foundation upon which we now wish to build as GODAE moves into its demonstration phase as a Pilot Project under Ocean.US. Elements of the international community are in the process of organizing GODAE. Demonstrating the utility of near-real-time data assimilation in an operational setting would provide critical feedback needed to justify the continuance of basin-scale ocean observing and prediction/estimation systems over the long term.

SUPPLEMENTARY INFORMATION: Items (a) or (b) or (c) above must be the primary focus of this effort.

Funding Availability

Actual funding levels will depend upon the final budget appropriations. This Program Announcement is for a program to be conducted over a three (nominal) to five (with options) year period, by investigators both inside and outside the Federal Government. It is expected, though not certain, that two or more programs involving multiple investigators will be funded, with possible coalescence or down-selection for the Option years 4 and 5. In accordance with the NOPP, team efforts among academia, industry, and government participants are very strongly encouraged; the degree of inter-sector teaming is a selection criteria. For Federal Government investigators, funding will be provided through intra- or interagency transfers, as appropriate. The funding instrument for extramural awards will be a grant unless it is anticipated that NOAA will be substantially involved in the implementation of the project, in which case the funding instrument could be a cooperative agreement. Examples of substantial NOAA involvement may

include, but are not limited to, proposals for collaboration between NOAA or NOAA scientists and a recipient scientist or technician and/or contemplation by NOAA of detailing Federal personnel to work on proposed projects. NOAA will make decisions regarding the use of a cooperative agreement on a case-by-case basis.

III. Eligibility

Extramural eligibility is not limited. Eligible applicants include institutions of higher education, other non-profits, commercial organizations, international organizations, state, local and Indian tribal governments. Applications from non-Federal and Federal applicants will be competed against each other.

Please Note: Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. The only exception to this is governmental research facilities for awards issued under the authority of 49 U.S.C. 44720. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

IV. Evaluation Criteria

Evaluations of the proposals will use the following selection criteria:

1. Relevance of the proposed program to NOPP objectives, including (30%):
   a. Support of critical research objectives or operational goals that meet NOPP and participating federal agency requirements,
   b. Broad participation within the oceanographic community,
   c. Partners with a long-term commitment to the proposed objectives,
   d. Resources are shared among partners, and
   e. Active involvement of one or more operational centers.
2. Overall technical merits of the proposal (30%), including:
   a. Demonstration of the utility of near-real-time data assimilation in operational settings;
   b. Coordination and/or collaboration with existing operationally oriented efforts;
   c. Feedback mechanisms between assimilation efforts and data set providers;
   d. Collaborative activities with international efforts providing mutual benefits to both.
3. The offeror's capabilities, related experience, and facilities or unique combinations of these that are critical to the program's objectives (10%).
4. The qualifications and experience of the proposed principal investigator(s) and key personnel (10%).
5. The degree of significant partnering among at least two of the following parties, academia, industry or government (10%).
6. Realism and duration of the proposed costs (10%).

The proposed program shall produce substantive results in no more than three years to allow review and decisions on any proposed options for extension to years four and five. Non-productive programs will be considered for termination at the end of three years, regardless of any options.

V. Selection Procedures

The review process will be conducted by the NOPP Program Office on behalf of the NOPP agencies. A description of the NOPP Proposal Review Process can be found at: *http://www.nopp.org/Dev2Go.web?id=236688&rnd=31591*. All proposals, including those submitted by NOAA employees, will be evaluated similarly. The process uses peer reviews solicited by mail and/or a panel. Federal conflict of interest rules are followed. The individuals who provide peer review are scientists drawn from academic, government, and industrial/commercial communities. Mail reviews require a scoring in accordance with the criteria presented in Section IV, Evaluation Criteria, as well as a narrative assessment. If a panel is convened along with soliciting mail reviews, it will take the results of the mail reviews and rate the proposals into three Tiers (1—Strong Proposal, fundable with no significant issues; 2—Strong Proposal, fundable with issues to be resolved; 3—Not Recommended). The ratings will be determined by a vote of the Panel on each proposal individually with the Tier assigned according to the highest number of votes received.

In the event of a tie between two or three tiers, the proposal will be assigned to the highest rated Tier of the Tiers that tied for the highest number of votes. If only a panel is convened, it will both score the proposals numerically in accordance with the criteria in Section IV and rate the proposals into tiers. No consensus advice will be given by the Panel (unless the panel is composed entirely of Federal employees.) The recommendations and evaluations of the panel will be considered by the NOPP Interagency Working Group along with the following program policy factors:

a. Availability of funding;
b. Duplication of on-going Federal support;
c. Duplication with other applications in the solicitation;
d. Geographic diversity;
e. Diversity among the types of institutions receiving awards;
f. Collaboration among multiple jurisdictions; and
g. Subject area diversity within the competition.

The recommendations of the participating funding agencies will be forwarded to the National Ocean Research Leadership Council for final selection(s) based on the program policy factors given above. Any proposal within Tier One or Tier Two may be selected for award. The Program Manager(s) in the agencies will also recommend the total duration of funding and the amount of funding for each partner in the proposal. Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding.

VI. Instruction for Application

What To Submit

Letter of Intent (LOI)

To prevent the expenditure of effort that may not be successful, it is in the best interest of applicants to submit letters of intent, however, it is not a requirement. Letters of Intent (LOI) must be sent by electronic mail. The following information should be included:

(1) The LOI should clearly identify the program area being addressed by starting the project title with "U.S. GODAE:" Principal Investigators and collaborators should be identified by affiliation and contact information. The total amount of Federal funds being requested should be listed for each budget year for each collaborator's institution.

(2) A concise (2-page limit) description of the program including a brief summary of the work to be completed, methodology to be used, approximate costs of the major elements (salaries and benefits, direct costs, and travel). Evaluation will be by NOPP agency program management. Projects deemed suitable during Letters of Intent (LOI) review will be encouraged within 15 days to submit full proposals; projects may also be discouraged from submitting full proposals, but investigators may still do so if they wish.

(3) Resumes (1-page limit each) of the Principal Investigators.

Full Proposal Guidelines

Each full proposal must include the first seven items listed below; the standard forms included as Item 8 will only be required for proposal(s) selected for funding. All pages should be single- or double-spaced, typewritten in at least a 10-point font, and printed on metric A4 (210 mm x 297 mm) or 8½" x 11" paper. Brevity will assist reviewers and program staff in dealing effectively with proposals, therefore, the Program Description may not exceed 15 pages. Tables and visual materials, including figures, charts, graphs, maps, photographs and other pictorial presentations are included in the 15-page limitation; literature citations and letters of support, if any, are not included in the 15-page limitation. Conformance to the 15-page limitation will be strictly enforced. All information needed for review of the proposal should be included in the main text; no appendices, other than support letters, if any, are permitted. Failure to adhere to the above limitations will result in the proposal being rejected without review.

(1) *Signed Title Page*: The title page should be signed by the Principal Investigator(s) and the institutional representative and should clearly identify program by starting the title "U.S. GODAE:" The Principal Investigator and institutional representative should be identified by full name, title, organization, telephone number, and address. The total amount of Federal funds being requested should be listed for each year of the program; the total should include all collaborator's budgets on projects involving multiple institutions, even if one of the collaborators is a Federal institution.

(2) *Abstract:* An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution(s) investigator(s), total proposed cost and budget period.

(3) *Program Description/Work Statement (15-page limit):* The Program Description should include identification of the problem, objectives of the work, relevance to the operational prediction mission, proposed implementation strategy, and proposed methodology. The following elements should be described in detail:

(a) *Approach:* The Project should demonstrate the implications of real-time ocean data assimilation into operational analysis and forecast models, or into analysis and forecast systems that are running in an operational mode. It should facilitate the process of acceptance of such assimilation by one or more operational entities, entraining the operational entity(ies) working on a 24/7 basis. Approaches that propose work independent of operational activities, such that a "hand-off" is proposed at the end of the project will not be deemed responsive to this call.

(b) *Data Management:* It should illustrate how real-time (within 24 hour) delivery of products will be achieved, although longer-delivery times (with, for example, more quality control) may be acceptable in addition but not instead, for some products.

(4) *Budget and Budget Justification:* There should be a separate budget for each year of the project as well as a cumulative annual budget for the entire project. Subcontracts should have a separate budget page. Applicants should provide justification for all budget items in sufficient detail to enable the reviewers to evaluate the appropriateness of the funding requested.

(5) *Current and Pending Support*: Information on the number of person-months per year devoted to this project and ongoing projects regardless source of support (Federal, State, or local government agencies, private foundations, industrial or other commercial organizations) by the Principal Investigator and other senior personnel must be listed. Similar information must be provided for all proposals already submitted or submitted concurrently to other possible sponsors, including those within NOAA.

(6) *Vitae (2 pages maximum per investigator):* Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to all publications in the last three years with up to five other relevant papers.

(7) *Results from prior research:* The results of related projects supported by NOAA and other agencies should be described, including their relation to the currently proposed work. Reference to each prior research award should include the title, agency, award number, Principal Investigators, and total award. The section should be a brief summary and should not exceed two pages total.

(8) *Standard Application Forms:* For proposal(s) selected for funding, the following forms must also be submitted: Standard Forms 424, Application for Federal Assistance, and 424B, Assurances-Non-Construction Programs, (Rev 4–88). Please note that both the Principal Investigator and an administrative contact should be identified in Section 5 of the SF424. For Section 10, for proposals selected for funding by NOAA, applicants should enter "11.431"" for the CFDA Number and "Climate and Atmospheric Research" for the title. The form must contain the original signature(s) of an authorized representative of the applying institution(s).

(DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HIS), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed at the following Internet Web site: *http://www.ed.gov/offices/OCR/99minin.html*.

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation.

Applications under this program are not subject to Executive Order (EO) 12372, "Intergovernmental Review of Federal Programs.

This notice has been determined to be not significant for purposes of E.O. 12866.

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in EO 13132.

Notice and comment are not required under 5 U.S.C. 553(a)(2), or any other law, for notices relating to public property, loans, grants, benefits or contracts. Because notice and comment are not required, a Regulatory Flexibility Analysis, 5 U.S.C. 601 *et seq.*, is not required and has not been prepared for this notice.

This documents contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424 and 424B have been approved by OMB under the respective control numbers 0348–0043 and 0348–0040.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that

collection displays a currently valid OMB Control Number.

Louisa Koch,

Acting Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 02–31195 Filed 12–10–02; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Initial Patent Applications

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the revision of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 10, 2003.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231; by telephone at (703) 308–7400; or by electronic mail at *susan.brown@uspto.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Robert J. Spar, Director, Office of Patent Legal Administration, USPTO, Washington, DC 20231; by telephone at (703) 308–5107; or by electronic mail at *bob.spar@uspto.gov*.

SUPPLEMENTARY INFORMATION

I. Abstract

Article 1, Section 8, Clause 8 of the Constitution provides that Congress shall have the power . . ." [t]o promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." Congress has exercised this grant of power under the Constitution to enact the patent statute, Title 35, U.S.C., and to establish the United States Patent and Trademark Office (USPTO).

The USPTO is required by 35 U.S.C. 131 to examine applications for patents. An applicant must provide sufficient information to allow the USPTO to properly examine the application to determine whether it meets the criteria set forth in the patent statute and regulations to be issued as a patent. The USPTO administers the statute through various rules in 37 CFR 1.16 through 1.84. The patent statute and regulations require that an application for patent (or application package) include the following collections of information:

(1) A specification containing a description of the invention and at least one claim defining the property right sought by the applicant;

(2) a drawing or photograph, where necessary, for an understanding of the invention;

(3) an oath or declaration signed by the applicant; and

(4) a filing fee.

The "American Inventors Protection Act of 1999" brought some changes to the patent application process. This act amended 35 U.S.C. 122 to provide for the publication of patent applications after the expiration of a period of eighteen months from the earliest filing date for which a benefit is sought under Title 35, United States Code. It also amended 35 U.S.C. 119 and 120 to permit applicants to petition the USPTO to accept a delayed priority claim. As a result of this act, the USPTO amended 35 U.S.C. 132 to allow applicants to request (for a fee) the continued examination of an application as an alternative to submitting a continued prosecution application. With the establishment of the request for continued examination practice, the USPTO is eliminating the continued prosecution application practice for all of the applications, with the exception of the design patent applications.

This information collection contains both paper and electronic forms. New utility and provisional applications may be submitted electronically through the Electronic Filing System (EFS). The specification for these applications is created through the authoring tools that can be downloaded free of charge from the USPTO website. Through the Electronic Packaging and Validation Engine (ePAVE) (which applicants can also download from the USPTO Web site), applicants can create the Application Transmittal, the Fee Transmittal, and the Application Data Sheet that are submitted, in addition to the specification, as part of the electronic patent application package. The claims, drawings, oaths, declarations, powers of attorney, and small entity statements are scanned or converted into images and attached to the electronic patent application package. Once the specification and claims are completed, the necessary forms created, and the images attached to the application, the ePAVE software will then bundle, compress, and encrypt the files for submission to the USPTO. The EFS sends the applicant an acknowledgment receipt after the application package has been received, decrypted, and decompressed. The EFS uses public key infrastructure (PKI) technology for secure electronic communications so authorized filers must obtain a customer number and a digital certificate.

The Application Data Sheet can be submitted in paper, in addition to electronic transmission. However, it must be noted that this is a format and not an official paper form. As such, neither the paper nor the electronic versions have form numbers. The Application Data Sheet is only used in the new utility, plant, and design applications.

II. Method of Collection

By mail, facsimile (limited to petitions to accept delayed priority claims and requests for continued prosecution applications), or hand delivery to the USPTO. New utility and provisional applications can also be submitted electronically through the EFS.

III. Data

OMB Number: 0651–0032.

Form Number(s): PTO/SB/01/01A/02A/02B/03/03A/04/05/06/07/13/PCT/16/17/18/19/29/29A/101 through 110.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; not-for-profit institutions; and the Federal Government.

Estimated Number of Respondents: 452,487 responses per year.

Estimated Time Per Response: The USPTO estimates that it takes the public approximately 17 minutes to 10 hours and 45 minutes (0.28 hours to 10.75 hours) to complete this information, depending on the request. This includes time to gather the necessary information, prepare the application, petition, or CD submission, and submit the completed request to the USPTO. The USPTO believes that it takes the same amount of time to gather the necessary information, prepare the new utility or provisional application, and submit it to the USPTO, whether the applicant submits it electronically or in paper form. There are 26 forms in this collection.

Estimated Total Annual Respondent Burden Hours: 4,169,768 hours per year.

Estimated Total Annual Respondent Cost Burden: $1,050,781,314 per year. The USPTO expects that all of the information in this collection, with the exception of the CD submissions of oversized new utility and provisional applications that cannot be submitted electronically through EFS, will be prepared by an attorney. The USPTO expects that the oversized CD submissions will be prepared by paraprofessionals. Using the professional hourly rate of $252 per hour for associate attorneys in private firms, the USPTO estimates that the respondent cost burden for submitting all of the information in this collection, with the exception of the oversized CD submissions, will be $1,050,781,284 per year. Using the paraprofessional hourly rate of $30 per hour, the USPTO estimates that the respondent cost burden for submitting the oversized CD submissions will be $30 per year. The total respondent cost burden is $1,050,781,314 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Original New Utility/Plant/Design Applications and Continuation/Divisional of an International Application—No Application Data Sheet.	10 hours and 45 minutes	275,506	2,961,690
Electronic Original New Utility/Plant/Design Applications—No Application Data Sheet.	10 hours and 45 minutes	3,148	33,841
Original New Utility/Plant/Design Applications—Application Data Sheet	10 hours and 36 minutes	30,612	324,487
Electronic Original New Utility/Plant/Design Applications—Application Data Sheet.	10 hours and 36 minutes	350	3,710
Continuation/Divisional Applications—Utility/Plant/Design	54 minutes	34,707	31,236
Continued Prosecution Applications—Design	24 minutes	263	105
Continuation-in-Part Applications—Utility/Plant/Design	5 hours and 15 minutes	17,364	91,161
Provisional Applications	8 hours	89,789	718,312
Electronic Provisional Applications	8 hours	640	5,120
Petition to Accept Delayed Priority Claim	1 hour	105	105
CD Submissions of Oversized New Utility and Provisional Applications That Cannot be Submitted Electronically via EFS:. *Application Transmittal Form. *Cover Letter.	17 minutes	3	1
Total		452,487	4,169,768

Estimated Total Annual Non-hour Respondent Cost Burden: $262,216,319 per year. There are capital start-up, recordkeeping, and postage costs, as well as filing fees, associated with this information collection. These costs are not applicable to all of the information in this collection, however.

Applicants can submit new utility and provisional applications electronically through the EFS. These applications require attachments that must be in a TIFF format in order to be submitted electronically. If these documents are not in this format, applicants may need a scanner in order to convert their images and documentation into the TIFF format. The USPTO estimates that the average cost of a scanner is $200.

Applicants can use Compact Disk-Read Only Memory (CD–ROM) or Compact Disk-Recordables (CD–R) to submit patent applications containing large computer program listings to the USPTO. New utility or provisional applications that exceed 10 megabytes cannot be submitted electronically through EFS, so applicants have the option to copy these applications onto CD–ROMs or CD–Rs as well. To make these CD–ROM/CD–R copies, applicants must have a CD drive capable of recording onto CD–R media (a "CD burner"), CD recording software, blank CD–R media (CDs), cases and labels for the CDs, and a padded mailing envelope for shipping. The average cost of a CD burner is approximately $200, depending on the speed and type of PC connection. Commercial software for creating CDs, such as Easy CD Creator 5.0, retails for approximately $100, although basic CD recording software is typically included with the CD burner. Blank CD–R media with plastic jewel cases can be purchased for approximately $10 for 10 blank CDs, or about $1 per disc. The average cost of software for labeling CDs, including blank labels and case inserts, is approximately $20. Padded 8.5 x 11-inch mailing envelopes for safely shipping the CDs cost approximately $12 for a package of 12, or about $1 per envelope. In sum, the USPTO estimates the additional costs for the hardware, software, and supplies necessary for CD submissions to be approximately $342 per year. The total capital start-up costs for this collection are $542 per year.

The applications, the petition to accept a delayed priority claim, and the oversized CD submissions may be submitted by mail through the United States Postal Service. The USPTO recommends that applicants file initial patent applications (which also include the continued prosecution, continuation and divisional, continuation-in-part, and provisional applications) by Express Mail to establish the filing date (otherwise the filing date of the application will be the date that it is received at the USPTO). The USPTO estimates that the average cost for sending an initial application by Express Mail will be $17.85, and that customers filing documents associated with these initial applications may choose this option to mail their submissions to the USPTO. Therefore, the USPTO estimates that up to 448,241 submissions per year may be mailed to the USPTO at an average Express Mail rate of $17.85, for a total postage cost of $8,001,102. If the applicant sends the petition for delayed priority claim by first-class mail, the applicant may also include a signed certification of the date of mailing in order to receive credit for timely filing. The USPTO estimates that the average first-class postage cost for a mailed submission will be 49 cents, and that customers filing the petitions for priority claim may choose to mail their submissions to the USPTO. Therefore, the USPTO estimates that up to 105 submissions per year may be mailed to the USPTO at an average first-class postage cost of 49 cents, for a total postage cost of $51 per year. In the case of the oversized CD submissions, the USPTO estimates that the average postage cost for these submissions will be 95 cents, to cover the costs of mailing the CD, the application transmittal form,

and the cover letter. The USPTO estimates that 3 oversized CD submissions will be received per year, for a total postage cost of $3 per year. The total postage cost for this collection is $8,001,156 per year.

There are recordkeeping costs associated with the oversized CD submissions and the electronic filing of new utility and provisional applications. The USPTO advises applicants who submit oversized new utility and provisional application requests on CD to retain a back-up copy of the CD and a printed copy of the application transmittal form for their records. The USPTO estimates that it will take an additional 5 minutes for the applicant to produce this back-up CD copy and 2 minutes to print the copy of the application transmittal form, for a total of 7 minutes (0.12 hours) for each oversized submission. The USPTO estimates that approximately 3 electronic submissions per year will be oversized, for a total of 0.36 hours per year for retaining the back-up CD and printed application transmittal form. The USPTO believes that these back-up copies will be prepared by paraprofessionals with an estimated hourly rate of $30 per hour, for a total recordkeeping cost of $11 per year.

In addition, the USPTO also strongly advises applicants who file their new utility and provisional applications electronically to retain a copy of the file submitted to the USPTO as evidence of authenticity, in addition to keeping the acknowledgment receipt as clear evidence that on the date noted the file was received by the USPTO. The USPTO estimates that it will take 5 seconds (0.001 hours) to print and retain a copy of the new utility and provisional submissions and that approximately 4,138 (3,498 new utility and 640 provisional applications) submissions per year will use this option, for a total of 4 hours per year.

Using the paraprofessional rate of $30 per hour, the USPTO estimates that the recordkeeping cost for retaining this copy will be $120 per year. The total recordkeeping cost for this collection is $131 per year.

There is also annual nonhour cost burden in the way of filing fees associated with this collection. The basic filing fees for the utility, plant, design, and provisional applications are determined by which filing status (other than small entity or small entity) the applicant has selected. The filing fees for the electronically-filed new utility and provisional applications are the same as those for the paper applications. The small entity status does not apply to the petition to accept a delayed priority claim. There are no filing fees associated with the oversized CD submissions.

The total estimated filing costs for this collection of $254,214,490 are calculated in the accompanying chart.

Item	Responses (yr) (a)	Filing fees (b)	Total annual cost (yr) (a) × (b)
Utility Application (including Reissues and all Continuing Applications)—Other Entity	273,137	$740.00	$202,121,380.00
Utility Applications (including Reissues and all Continuing Applications)—Small Entity	68,285	370.00	25,265,450.00
Plant Applications (including Reissues and all Continuing Applications)—Other Entity	768	740.00	568,320.00
Plant Applications (including Reissues and Continuing Applications)—Small Entity	192	370.00	71,040
Design Applications (including Reissues and all Continuing Applications)—Other Entity	15,654	740.00	11,583,960.00
Design Applications (including Reissues and all Continuing Applications)—Small Entity	3,914	370.00	1,448,180.00
Provisional Applications—Other Entity	72,343	160.00	11,574,880.00
Provisional Applications—Small Entity	18,086	80.00	1,446,880.00
Petition To Accept Delayed Priority Claim	105	1,280.00	134,400.00
CD–ROM Submissions of Oversized New Utility and Provisional Applications That Cannot Be Submitted Electronically via EFS: • Application Transmittal Form. • Cover Letter.	3	N/A	0.00
Totals	452,487	.....	254,214,490.00

The USPTO estimates that the total non-hour respondent cost burden for this collection, in the form of capital start-up, operation, recordkeeping, and postage costs, and filing fees, is $262,216,319 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 4, 2002.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 02–31193 Filed 12–10–02; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textiles and Textile Products Produced or Manufactured in Romania

December 6, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 11, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63033, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 6, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on December 11, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
410	111,448 square meters.
435	19,123 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–31206 Filed 12–10–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Removal of Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

December 5, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Effective on January 1, 2003, an export visa will not be required for products in merged Categories 352/652, produced or manufactured in Turkey and exported from Turkey on and after January 1, 2003. The visa requirement is being removed because the quota on this category expires on December 31, 2002, and the existing visa arrangement between the Governments of the United States and Turkey only requires export visas for quota categories.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63037, published on December 4, 2001 and 52 FR 6859, published on March 5, 1987.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 5, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive does not cancel, the directive issued to you on March 2, 1987, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns export visa requirements for certain cotton and man-made fiber textile products, produced or manufactured in Turkey for which the Government of Turkey has not issued an appropriate export visa.

Effective on January 1, 2003, you are directed to no longer require a visa for products in merged Categories 352/652 exported on and after January 1, 2003 because the quota on this category expires on December 31, 2002, and the existing visa arrangement between the Governments of the United States and Turkey only requires export visas for quota categories.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–31207 Filed 12–10–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 10, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type

of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 6, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.

Title: Scholarship Contract & Teaching Verification Form for Title II HEA Scholarship Recipients.

Frequency: On Occasion; Semi-Annually; Annually.

Affected Public: Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 5,450. *Burden Hours:* 5,408.

Abstract: Students receiving scholarships under section 204(3) of the Higher Education Act (HEA) incur a service obligation to teach in a high-need school in a high-need LEA. This information collection consists of: (1) A contract to be executed when funds are first awarded; (2) an addendum to the contract to be signed when subsequent funds are awarded; (3) a teaching verification form to be used by students to document their compliance with the contract's conditions.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–31200 Filed 12–10–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory (NETL), Department of Energy (DOE).

ACTION: Notice of availability of a financial assistance solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT41718 entitled "Large Scale Mercury Control Field Testing Program". The DOE/NETL is seeking applications to conduct long-term (minimum of two-to-four months at optimum process conditions) field testing of advanced mercury control technologies to (1) verify technology performance in terms of total (50–80%+ based on coal type, equipment, etc.) and speciated mercury removal relative to changes in load and coal-mercury concentration for all coal types (including blends) but emphasizing high-elemental, low rank coals, (2) determine realistic process/equipment costs for various levels of mercury removed for a variety of equipment configurations focusing on smaller surface collection area (SCA) electrostatic precipitators (SCA <300 ft^2/thousand actual cubic feet of flue-gas) for bituminous coals, (3) determine mercury removal levels for blends of different rank coals including subbituminous/high-sulfur bituminous; (4) quantify balance-of-plant (BOP) impacts such as Electro-Static Precipitator (ESP) performance, baghouse performance and bag life, byproduct contamination, corrosion, parasitic load, etc.; and (5) measure and assess potential multiple pollutant or co-control associated with mercury control technology.

In addition, several semi-continuous emission monitors (S–CEMS) would be used to monitor variations in mercury content of flue gas and track technology performance while collecting high quality inlet/outlet mercury speciation data with Ontario Hydro measurements at the beginning, middle and end of each test campaign (plus additional measurements as needed to verify S–CEM results). Tests of by-products may be limited to characterization tests (foaming index, etc.) but collection of enough samples would be obtained for other programs to conduct more detailed or extensive tests, and measurement of mercury in all streams (including water) to seek closure on mercury balances.

DATES: The solicitation will be available on the DOE/NETL's Internet address at *http://www.netl.doe.gov/business* and on the "Industry Interactive Procurement System" (IIPS) webpage located at *http://e-center.doe.gov* on or about December 30, 2002.

FOR FURTHER INFORMATION CONTACT: Martin J. Byrnes, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, MS 921–107, Pittsburgh, PA 15236, E-mail Address: *byrnes@netl.doe.gov*, Telephone Number: 412–386–4486.

SUPPLEMENTARY INFORMATION: NETL held two workshops (in June and September 2002) with key stakeholders from the utility industry, government agencies, research organizations, and academia to obtain input on the content and structure of future mercury research and development. A summary of the workshop proceedings can be found at *http://www.netl.doe.gov/coalpower/environment*. The workshop participants identified a number of different configurations and technologies that need further long-term testing.

In response, DOE–NETL is issuing a solicitation focused on four major areas that are expected to be important in developing mercury control strategies for the coal-fired electric utility industry and help ensure the continued availability of low-cost electricity from coal while meeting growing air quality demands. Details concerning the solicitation are described below (with allowable scale of testing described in Table 1). Topic Area 1 would focus on sorbent injection technology, Topic Area 2 would cover technologies aimed at wet flue-gas desulfurization enhancement, Topic Area 3 would seek proposals offering oxidation systems and Topic Area 4 would allow for any technologies ready for long-term field-testing. The solicitation supports the overall goal of the Department of Energy/Office of Fossil Energy's Innovations for Existing Plants (IEP) Program to develop advanced technology and knowledge products that enhance the environmental performance of the existing fleet of coal-fired power plants. The four Areas of Interest for this solicitation are:

Topic 1: Field Testing of Activated Carbon/Sorbents Upstream/Downstream of Existing Utility Particulate Control Devices for Bituminous and Low Rank Coals (Powder River Basin and Lignite).

Topic 2: Field Testing of Effective Mercury Control Technologies Upstream of and Across Wet Flue Gas Desulfurization Systems.

Topic 3: Field Testing of Non-Sorbent Based Concepts for Increasing the Oxidation of Elemental Mercury for Removal in Downstream Air Pollution Control Equipment.

Topic 4: Other Mercury Control Technologies Ready for Long-Term Field-Testing.

TABLE 1.—TOPIC AREA MATRIX

Topic area No.	Topic area	Coal type/existing equipment configuration	Scale of testing
1	Sorbent Injection	Bituminous—SCA <300 CSESP/HSESP Lignite/Sub-bituminous—ESP/FF (or COHPAC) (no SCA limit) Coal Blends—no SCA limit).	1.
2	FGD Enhancement	All coals types or blends with wet FGD.	1.
3	Oxidation Systems	All coals or blends applicable to plants with or without wet FGD	1 or 2.
4	Other	All coals individually or blends and all existing equipment configurations	1 or 2.

1. Full-scale (minimum 100 MWe).
2. Slip-stream (minimum 10 MWe).

Scale of Testing

DOE anticipates allocating $1.5 million or less in cost sharing per test site. DOE recognizes that certain mercury control technologies proposed for full-scale testing may require significant outlays for capital equipment in order to be tested. Given that the funding available for this solicitation is limited and is to be used primarily for testing and evaluation of the performance of the proposed technology and not for the purchase of equipment, DOE is allowing for slip-stream testing of technologies under Topic Areas 3 and 4. However, if the offeror wants to test at full scale, then they would be required to cover the additional costs above DOE threshold of $1.5 million per test site (or 75% cost sharing, whichever is less). DOE anticipates that funds will be approximately allocated as 2/3 to full-scale testing and 1/3 to pilot-scale testing.

It is anticipated that there will be 9–12 Financial Assistance (Cooperative Agreements) awards with performance periods ranging from 12–42 months. The total estimated Award Value for all projects awarded under this solicitation is estimated at $19–$25 million with total federal funding anticipated between $15–$20 million with a required recipient cost sharing of 25% of total cost.

Eligibility for participation in this Program Solicitation is considered to be full and open. All interested parties may apply. The solicitation will contain a complete description of the evaluation factors and the relative importance of each factor. Applications submitted by or on behalf of (1) Another Federal agency; (2) a Federally Funded Research and Development Center sponsored by another Federal agency; or (3) a Department of Energy (DOE) Management Operating (M&O) contractor will not be eligible for award under this solicitation. However, an application that includes performance of a portion of the work by a DOE M&O contractor will be evaluated and may be considered for award subject to the provisions to be set forth in Program Solicitation DE–PS26–03NT41718.

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov*. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Prospective applicants who would like to be notified as soon as the solicitation is available should subscribe to the Business Alert Mailing List at *http://www.netl.doe.gov/business*. Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA November 28, 2002.

Richard D. Rogus,

Acting Director, Acquisition and Assistance Division.

[FR Doc. 02–31202 Filed 12–10–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of the acceptance of claims and the availability of funds for reimbursement in fiscal year (FY) 2003.

SUMMARY: This Notice announces the Department of Energy (DOE) acceptance of claims in FY 2003 for reimbursement under Title X of the Energy Policy Act of 1992. The President's FY 2003 budget request includes $1 million for reimbursement of certain costs of remedial action at eligible active uranium and thorium processing sites pursuant to Title X of the Energy Policy Act of 1992. DOE anticipates on making prorated payments on approved claims received in FY 2002 and prior years' unpaid approved claim amounts by April 30, 2003, subject to the availability of FY 2003 appropriations.

DATES: The closing date for the submission of claims in FY 2003 is May 1, 2003. These claims will be processed for payment by April 30, 2004, based on the availability of funds from congressional appropriations.

ADDRESSES: Claims should be forwarded by certified or registered mail, return receipt requested, to the U.S. Department of Energy, Albuquerque Operations Office, Environmental

Restoration Division, P.O. Box 5400, Albuquerque, NM 87185–5400, or by express mail to the U.S. Department of Energy, Albuquerque Operations Office, Environmental Restoration Division, H and Pennsylvania Streets, Albuquerque, NM 87116. All claims should be addressed to the attention of Mr. Gilbert Maldonado. Two copies of the claim should be included with each submission.

FOR FURTHER INFORMATION CONTACT: Gilbert Maldonado at (505) 845–4035 of the U.S. Department of Energy, Albuquerque Operations Office, Environmental Restoration Division.

SUPPLEMENTARY INFORMATION: DOE published a final rule under 10 CFR part 765 in the **Federal Register** on May 23, 1994, (59 FR 26714) to carry out the requirements of Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Pub. L. 102–486, 42 U.S.C. 2296a *et seq.*) and to establish the procedures for eligible licensees to submit claims for reimbursement. Title X requires DOE to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium processing sites to remediate byproduct material generated as an incident of sales to the United States Government. To be reimbursable, costs of remedial action must be for work which is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a State pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021). Claims for reimbursement must be supported by reasonable documentation as determined by DOE in accordance with 10 CFR part 765. Funds for reimbursement will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund established at the United States Department of the Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

Authority: Section 1001–1004 of Public Law 102–486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*).

Issued in Washington, DC, on this 3rd day of December 2002.

David E. Mathes,

Team Leader, Albuquerque/Nevada Team, Small Sites Closure Office, Office of Site Closure.

[FR Doc. 02–31201 Filed 12–10–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–28–000]

***Town of Wallingford, Connecticut, Department of Public Utilities, Electric Division; and Connecticut Municipal Electric Energy Cooperative; Complainants, v. Connecticut Light and Power Company; Select Energy, Inc.; and Northeast Utilities Service Company; Respondents;* Notice of Complaint**

December 5, 2002.

Take notice that on December 4, 2002, the Town of Wallingford, Connecticut, Department of Public Utilities, Electric Division and the Connecticut Municipal Electric Energy Cooperative (collectively, Complainants) filed with the Federal Energy Regulatory Commission (Commission) a Complaint against the Connecticut Light and Power Company (CL&P), its agent Select Energy, Inc. and the Northeast Utilities Service Company (collectively, Respondents). Complainants are seeking an immediate order from the Commission enforcing the provisions of a FERC-filed power sales agreement by directing CL&P to participate in a contractually mandated arbitration proceeding.

Respondents have been served with a copy of the Complaint.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before December 20, 2002. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31188 Filed 12–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–21–000, et al.]

Pacific Gas and Electric Company, et al.; Electric Rate and Corporate Filings

December 3, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Pacific Gas and Electric Company California Independent System Operator Corporation

[Docket No. EC03–21–000]

Take notice that on November 25, 2002, Pacific Gas and Electric Company and the California Independent System Operator Corporation filed with the Federal Energy Regulatory Commission (Commission) a joint application pursuant to section 203 of the Federal Power Act seeking authorization for PG&E's sale of certain transmission facilities under FERC jurisdiction to Turlock Irrigation District.

Comment Date: December 16, 2002.

2. Idaho Power Company and IDACORP Energy, L.P.

[Docket No. EC03–24–000]

Take notice that on November 27, 2002, Idaho Power Company (Idaho Power) and IDACORP Energy, L.P. (IELP, collectively, Applicants) filed with the Federal Energy Regulatory Commission (Commission) an Application for Commission Approval of Disposition of Jurisdictional Facilities under Section 203 of the Federal Power Act. The jurisdictional facilities that are the subject of the Application are certain wholesale power sales and transmission service transactions (Non-Ops Transactions) between Idaho Power and various counterparties. By their Application, Applicants seek Commission approval for the assignment of the Non-Ops Transactions from Idaho Power to IELP.

Comment Date: December 18, 2002.

3. HC Power Marketing LLC

[Docket Nos. EC03–26–000 and ER02–388–001]

Take notice that on November 27, 2002, HC Power Marketing LLC (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an application for authorization pursuant to section 203 of the Federal Power Act and notice of change in status with respect to the transfer of the upstream ownership of Applicant from Blue Natsource Holding Co., Inc. (Natsource Holding) to Natsource LLC (Natsource).

Comment Date: December 18, 2002.

4. EPCOR Merchant and Capital (US) Inc., EPCOR Power Development, Inc., EPDC, Inc., Frederickson Power L.P.

[ER02–783–001, ER02–852–001, ER02–855–001, ER01–2262–003]

Take notice that on November 27, 2002, EPCOR Merchant and Capital (US) Inc. (EMC), EPCOR Power Development, Inc. (EPCOR Power), EPDC, Inc. (EPDC), and Frederickson Power L.P. (Frederickson Power) (collectively, the Applicants) filed with the Federal Energy Regulatory Commission (Commission) their Notice of Change in Status under their market-based rate tariffs on file with the Commission to address the proposed intracorporate reorganization under a to-be-formed U.S. parent, EPCOR Energy (U.S.) G.P.

Comment Date: December 18, 2002.

5. Central Maine Power Company

[Docket No. ER02–2363–001]

Please take notice that on November 27, 2002, Central Maine Power Company (CMP) submitted the Support Service Agreement between CMP and Maine Yankee Atomic Power Company, corrected as to Order 614 markings, and designated as Original Rate Schedule FERC No. 114, First Revised, with an effective date of January 1, 2002.

Comment Date: December 18, 2002.

6. Southern California Edison Company

[Docket No. ER02–2521–001]

Take notice that on November 29, 2002, Southern California Edison Company (SCE) tenders for filing supplemental information requested by FERC Staff in a letter dated October 29, 2002. In addition, SCE tenders for filing revised rate sheets (Revised Sheets) to the Service Agreements originally filed in this docket on August 30, 2002.

SCE respectfully requests the Commission to assign an effective date of August 10, 2002. Copies of this filing were served upon the Federal Energy Regulatory Commission and those parties listed in the intervention filed by CDWR.

Comment Date: December 20, 2002.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–2541–001]

Take notice that on November 29, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed revisions to its Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No. 1, in compliance with the Commission's Order in Midwest Independent Transmission System Operator Inc., 101 FERC 61,106. The Midwest ISO has requested an effective date of November 4, 2002.

The Midwest ISO seeks waiver of the Commission's regulations, 18 CFR 385.2010 with respect to service on all required parties. The Midwest ISO has electronically served a copy of this filing upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at www.midwestiso.org under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: December 20, 2002.

8. San Diego Gas & Electric Company

[Docket No. ER03–217–000]

Take notice that on November 25, 2002, San Diego Gas & Electric Company (SDG&E) tendered for filing its Service Agreements numbers 17 and 18 to its FERC Electric Tariff, First Revised Volume No. 6, two interconnection agreements. Both agreements relate to the interconnection to SDG&E's transmission system of a new generation plant owned by Termoelectrica de Mexicali, S. de R.L. de C.V (TDM–MX), and interconnected with SDG&E's electrical system via a tieline owned by Termoelectrica U.S., LLC (TDM–US) (collectively referred to as TDM). The plant, with a capacity of 650 megawatts, is being constructed on an expedited basis to meet electricity demand in the Western United States, Baja California, Mexico, and the San Diego Basin. It is located near Mexicali, Mexico, and is expected to begin commercial operation on or about April 7, 2003, although the in-service date for certain Interconnection Facilities is November 23, 2002. Those facilities are needed to provide interconnection services required to accommodate TDM's backfeed power requirements, not being provided by SDG&E, from SDG&E's transmission system, to accommodate generation construction activities.

Service Agreement No. 17 is the Interconnection Facilities Agreement dated November 20, 2002 between SDG&E and TDM, under which SDG&E will construct, operate and maintain the proposed interconnection facilities. Service Agreement No. 18, the Interconnection Agreement between SDG&E and TDM, dated November 20, 2002, establishes interconnection and operating responsibilities and associated communications procedures between the parties.

SDG&E requests that the Commission waive the sixty-day notice requirement and establish an effective date of November 22, 2002 for both agreements.

SDG&E states that copies of the filing have been served on Termoelectrica de Mexicali S. de R.L. de C.V., Termoelectrica U.S., LLC, and on the California Public Utilities Commission.

Comment Date: December 16. 2002.

9. California Independent System Operator Corporation

[Docket No. ER03–218–000]

Take notice that on November 25, 2002, the California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) Amendment No. 47 to the ISO Tariff. The purpose of Amendment No. 47 is to modify the Tariff to be consistent with the provisions of the Transmission Control Agreement (TCA), as amended to accommodate the Cities of Anaheim, Azusa, Banning, and Riverside, California (together Southern Cities), becoming Participating Transmission Owners.

The ISO states that this filing has been served on the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, and all parties, including the signatories to the TCA, with effective Scheduling Coordinator Agreements under the ISO Tariff.

The ISO is requesting waiver of the 60-day notice requirement to allow Amendment No. 47 be made effective January 1, 2003.

Comment Date: December 16, 2002.

10. Southern California Edison Company

[Docket No. ER03–228–000]

Take notice that on November 27, 2002, Southern California Edison Company (SCE) tendered for filing revised rate sheets (Revised Sheets) to the Interconnection Facilities Agreement (Interconnection Agreement) between SCE and Cabazon Wind Partners, LLC (Cabazon), Service Agreement No. 51, under SCE's Wholesale Distribution Access Tariff (WDAT), FERC Electric Tariff Original Volume No. 5.

The Revised Sheets amend the Interconnection Agreement to include the scope and cost of additional work identified by SCE after the Interconnection Agreement was executed and to revise the ITCC factor from 0.34 to 0.27 for payments due on or after July 1, 2002, as a result of changes in the depreciation provisions of the Internal Revenue Code.

SCE respectfully requests the Revised Sheets become effective on November 28, 2002. Copies of this filing were served upon the Public Utilities Commission of the State of California and Cabazon.

Comment Date: December 18, 2002.

11. Bridgeport Energy LLC

[Docket No. ER03–230–000]

Take notice that on November 27, 2002, Bridgeport Energy LLC. (Bridgeport) tendered for filing a Notice of Termination of Service Agreement No. 1 under its FERC Electric Tariff No. 1. The Service Agreement at issue is an Installed Capability Purchase and Sale Agreement (ICAP Agreement) between Bridgeport and Northeast Utilities Service Company (NU), as agent for Holyoke Power and Electric Company (Holyoke), that was executed on July 2, 1998 and accepted for filing on October 8, 1998. Thereafter, the ICAP Agreement was assigned to Select Energy Company (Select). Bridgeport and Select have mutually agreed to terminate the ICAP Agreement, effective November 13, 2002. Copies of the filing have been served upon Select.

Comment Date: December 18, 2002.

12. American Transmission Company LLC

[Docket No. ER03–231–000]

Take notice that on November 27, 2002, American Transmission Company LLC (ATCLLC) tendered for filing a revised Generation-Transmission Interconnection Agreement between ATCLLC and Riverside Energy Center, LLC (Revised Service Agreement No. 234) consisting of a revised Exhibit 11 and otherwise remaining as originally filed and accepted by the Commission by letter order dated June 11,2002. ATCLLC requests retention of the original effective date of April 7, 2002.

Comment Date: December 18, 2002.

13. PJM Interconnection, L.L.C.

[Docket No. ER03–232–000]

Take notice that on November 27, 2002, PJM Interconnection, L.L.C. (PJM), submitted for filing revisions o the PJM Open Access Transmission Tariff (PJM Tariff) and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement) to (a) incorporate Commission-approved changes made to the Fourth Revised Volume 1 of the PJM Tariff and the First Revised Operating Agreement establishing the PJM Economic Load Response Program into the currently effective Fifth Revised Volume 1 of the PJM Tariff and the Second Revised Operating Agreement and (b) to delete language the Commission rejected but that inadvertently was reinserted into the Fifth Revised Volume I of the PJM Tariff.

Consistent with the Commission-approved effective date for the PJM Economic Load Response Program, PJM requests an effective date of June 1, 2002 for the new PJM Economic Load Response Program sheets. Consistent with the effective date of the Fifth Revised Volume 1 of the PJM Tariff, PJM requests an effective date of April 1, 2002 for First Revised Sheet No. 216A which merely deletes language that erroneously was included in the Fifth Revised Volume 1 of the PJM Tariff.

Copies of this filing have been served on all PJM members, and the state electric utility commissions in the PJM region.

Comment Date: December 18, 2002.

14. PJM Interconnection, L.L.C.

[Docket No. ER03–233–000]

Take notice that on November 27, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing sixteen executed interconnection service agreements (ISAs) and interim interconnection service agreements (Interim ISAs) between PJM and E.I. du Pont de Nemours and Company, Exelon Corporation, Mantua Creek Generating Company, LP, PSEG Fossil LLC, Conectiv Delmarva Generation, Inc., Conectiv Mid-Merit, Inc., PPL Brunner Island, L.L.C., Calpine Construction Finance Company, L.P., Constellation Power Source Generation, Inc., Delaware Municipal Electric Corporation, PSEG Power, LLC, Northampton Generating Company, L.P., PEI Power II L.L.C., Lebanon Methane Recovery, Inc., and eight notices of cancellation of certain ISAs and Interim ISAs that have been superseded.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties to the agreements. Copies of this filing were served upon each of the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: December 18, 2002.

15. New England Power Pool

[Docket No. ER03–234–000]

Take notice that on November 29, 2002, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include Great Bay Power Marketing, Inc. (GBPMI). The Participants Committee requests a December 1, 2002 effective date for commencement of participation in NEPOOL by GBPMI.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: December 18, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31186 Filed 12–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–23–000, et al.]

Westar Energy, Inc., et al.; Electric Rate and Corporate Filings

December 2, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Westar Energy, Inc. and Midwest Energy, Inc.

[Docket No. EC03–23–000]

Take notice that on November 25, 2002, Westar Energy, Inc. (Westar Energy) and Midwest Energy, Inc. (Midwest Energy) jointly filed an application with the Federal Energy Regulatory Commission (Commission) pursuant to Section 203 of the Federal Power Act, 16 U.S.C. 824b, and part 33 of the Commission regulations, 18 CFR part 33. Westar Energy and Midwest Energy request authorization and approval of the sale by Westar Energy and the purchase by Midwest Energy of certain jurisdictional transmission assets located in the State of Kansas, and assignment of certain wholesale power sales and transmission contracts.

Comment Date: December 16, 2002.

2. SOWEGA Power LLC, Baconton Power LLC

[Docket No. ER99–3427–002 and ER00–2398–004]

Take notice that on November 25, 2002, Baconton Power LLC and SOWEGA Power LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) a combined three-year updated market analysis related to their existing market-based rate approvals consistent with the Commission's orders in the above referenced dockets.

Comment Date: December 16, 2002.

3. Mt. Carmel Public Utility Co.

[Docket No. ER02–2293–002]

Take notice that on November 25, 2002, Mt. Carmel Public Utility Co. (Mt. Carmel) tendered for filing with the Federal Energy Regulatory Commission (Commission) executed Service and Operating Agreements between Mt. Carmel and Central Illinois Public Service Co. (dba Ameren/CIPS). Mt. Carmel asserts that the purpose of the Agreement is to permit Mt. Carmel to provide transmission service to Ameren/CIPS pursuant to Mt. Carmel's Open Access Transmission Tariff.

Comment Date: December 16, 2002.

4. California Independent System Operator Corporation

[Docket Nos. ER02–2576–003 and ER02–1656–013]

Take notice that on November 25, 2002, the California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing made in compliance with the Commission's October 25, 2002 "Order on Proposed Tariff Revisions and Compliance Filing." The compliance filing revises Section 2.2.13.1 of the ISO's Tariff, in accordance with the October 25 Order.

The ISO states that this filing has been served on all entities that are on the official service list for this docket.

Comment Date: December 16, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31187 Filed 12–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Request for Comment on the Revised Upland Erosion Control, Revegetation and Maintenance Plan and the Wetland and Waterbody Construction and Mitigation Procedures

December 5, 2002.

The Office of Energy Projects (OEP) staff has revised the Upland Erosion Control, Revegetation and Maintenance Plan (Plan) and the Wetland and Waterbody Construction and Mitigation Procedures (Procedures) referred to at 18 CFR 157.206(b)(3)(iv) of the Commission's regulations. The staff is providing one extra opportunity for public comment on the proposed revisions.

The proposed revisions to the Plan and Procedures were advertised by the Commission staff in a Notice issued January 11, 2002. This final draft incorporates comments gathered over the past 8 months from the natural gas pipeline industry and other agencies. The Plan and Procedures were last updated December 2, 1994. Many of the staff's proposed changes better address regional issues by converting some

measures into performance-based standards. Other modifications provide necessary updates to reflect current laws and regulations.

We have posted final draft versions of the revised Plan and Procedures on our Web site showing the changes in a redline and strikeout format. The final drafts are available at *http://www.ferc.gov/gas/environment/guidelines.htm*.

Comments on the proposed revisions should be sent by electronic mail no later than December 20, 2002, to plan.comments@ferc.gov.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31189 Filed 12–10–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7420–2]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods: Designation of a New Equivalent Method for PM_{10}

AGENCY: Environmental Protection Agency.

ACTION: Notice of the designation of a new equivalent method for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, a new equivalent method for measuring concentrations of particulate matter as PM_{10} in the ambient air.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hunike, Human Exposure and Atmospheric Sciences Division (MD–D205–03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541–3737, e-mail: *Hunike.Elizabeth@epa.gov*.

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs) as set forth in 40 CFR part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference methods or equivalent methods (as applicable), thereby permitting their use under 40 CFR part 58 by States and other agencies for determining attainment of the NAAQSs.

The EPA hereby announces the designation of one new equivalent method for measuring concentrations of particulate matter as PM_{10} in ambient air. This designation is made under the provisions of 40 CFR part 53, as amended on July 18, 1997 (62 FR 38764).

The new equivalent method for PM_{10} is an automated method (analyzer) that utilizes a measurement principle based on sample collection by filtration and analysis by beta-ray attenuation. The newly designated equivalent method is identified as follows:

EQPM–1102–150, "Thermo Andersen Series FH 62 C14 Continuous PM10 Ambient Particulate Monitor," operated for 24-hour average measurements, with the specified 10-micron Inlet, Inlet Connector, Sample Tube with heater, Roof Flange Kit, Mass Foil Kit, Pump Kit, Sample Filter Tape; with Operational Settings of 1000 L/h (16.67 L/min) sample flow rate, daily filter change, auto filter change at volumetric flow < 950 L/h, auto filter change at Mass > 1500 micrograms, and factory default calculation mode settings; and with operational calibration and servicing as outlined in the Operator Manual.

An application for an equivalent method determination for this method was received by the EPA on August 5, 2002. The method is available commercially from the applicant, Thermo Anderson, 500 Technology Court, Smyrna, Georgia 30082 (*http://www.ThermoAndersen.com*).

Test analyzers representative of this method have been tested by the applicant in accordance with the applicable test procedures specified in 40 CFR part 53 (as amended on July 18, 1997). After reviewing the results of those tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file, either at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 or in an approved archive storage facility, and will be available for inspection (with advance notice) to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference or equivalent method, this method is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (*e.g.*, configuration or operational settings) specified in the applicable designation method description (see the identification of the method above).

Users of the method should also note that its equivalent method designation applies only to 24-hour average PM_{10} concentration measurements. The Series FH 62 C14 Monitor can also provide average PM_{10} concentration measurements over other, shorter averaging periods, including one-half-hour averages. However, such shorter average concentration measurements may be less precise than the 24-hour measurements and are not required for use in determining attainment under the air quality surveillance requirements of part 58 (although they may be useful for other purposes). Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I," EPA/600/R–94/038a and "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Part 1," EPA–454/R–98–004. Vendor modifications of a designated reference or equivalent method used for purposes of part 58 are permitted only with prior approval of the EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under section 2.8 (Modifications of Methods by Users) of appendix C to 40 CFR part 58.

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded or converted (*e.g.*, by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status. The manufacturer should be consulted to determine the feasibility of such upgrading or conversion.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are specified in 40 CFR 53.9 and are summarized below:

(a) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(b) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(c) The sampler or analyzer must function within the limits of the applicable performance specifications given in 40 CFR parts 50 and 53 for at least one year after delivery when maintained and operated in accordance with the operation or instruction manual.

(d) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated as part of a reference or equivalent method in accordance with part 53 and showing its designated method identification number.

(e) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(f) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(g) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as modified) as part of a reference or equivalent method (although it may be sold without such representation), nor to attach a designation label or sticker to the sampler or analyzer (as modified) under the provisions described above, until the applicant has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified, or until the applicant has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler or analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–E205–01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this new equivalent method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of the method should be directed to the applicant.

Jewell Morris,

Acting Director, National Exposure Research Laboratory.

[FR Doc. 02–31241 Filed 12–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0251; FRL–7283–9]

Diazinon; Availability of Interim Reregistration Eligibility Decision Document for Comment; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; reopening of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of September 25, 2002, announcing the availability and start of a 60–day public comment period on the Interim Reregistration Eligibility Decision (IRED) document for the pesticide active ingredient diazinon. This document is reopening the comment period from November 25, 2002, to January 10, 2003.

DATES: Comments identified by docket ID number OPP–2002–0251 must be received on or before January 10, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the September 25, 2002 **Federal Register** document.

FOR FURTHER INFORMATION CONTACT: Laura Parsons, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5776; e-mail address: parsons.laura@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the September 25, 2002 **Federal Register** Notice, a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2002–0251. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that are available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

C. How and to Whom Do I Submit Comments?

To submit comments, or access the official public docket, please follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the September 25, 2002 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action is EPA Taking?

This document reopens the public comment period established in the **Federal Register** of September 25, 2002 (67 FR 60231) (FRL–7274–4). In that document, EPA announced the availability of the IRED for the pesticide active ingredient diazinon and invited comment on the benefit assessments and risk mitigation in the document. EPA is hereby reopening the comment

period, which ended on November 25, 2002, to January 10, 2003.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 27, 2002.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–31242 Filed 12–10–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0269; FRL–7189–6]

Ethoprop; Availability of Interim Reregistration Eligibility Decision Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces availability of the Interim Reregistration Eligibility Decision (IRED) document for the pesticide active ingredient ethoprop. The IRED represents EPA's formal regulatory assessment of the health and environmental data base of the subject chemical and presents the Agency's interim determination regarding which pesticidal uses are eligible for reregistration.

FOR FURTHER INFORMATION CONTACT: Anthony Britten, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8179; e-mail address: *britten.anthony@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug, and Cosmetic Act (FFDCA); environmental, human health, and agricultural advocates; pesticide users; and members of the public interested in the use of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0269. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall # 2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* To access IRED documents and IRED fact sheets electronically, go directly to the REDs table on the EPA Office of Pesticide Programs Web site, at *http://www.epa.gov/pesticides/reregistration/status.htm.*

An electronic version of the latest public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

II. Background

A. What Action is the Agency Taking?

EPA has assessed the risks posed by the use of the active ingredient ethoprop, and issued an IRED for this organophosphate (OP) pesticide. EPA issues an IRED for a pesticide that is undergoing reregistration, requires a reregistration eligibility decision, and also needs a cumulative assessment under FQPA. The IRED, issued after EPA completes the individual pesticide's aggregate risk assessment, may include taking risk reduction measures; for example, reducing risks to workers or eliminating uses that the registrant no longer wishes to maintain, to gain the benefits of these changes before the final RED can be issued following the Agency's consideration of cumulative risks. Through cumulative risk assessment, EPA will consider whether the risks posed by a group of pesticides that act the same way in the body meet the current safety standard of "reasonable certainty of no harm" as defined by the FQPA.

Provided that risk mitigation measures stipulated in the IRED document are adopted, EPA has made the determination that ethoprop fits into its own "risk cup"-- that is, its individual and aggregate risks are within acceptable levels. Thus, ethoprop products, except for the liquid formulation, are eligible for reregistration, pending consideration of the cumulative risk for all OPs. The Agency will make a reregistration eligibility decision for the liquid formulation of ethoprop at a later time, provided certain conditions are fulfilled.

All registrants of pesticide products containing the active ingredient listed in this document have been sent the IRED document, and must respond to labeling requirements and product specific data requirements (if applicable) within 8 months of its receipt. Products also containing other pesticide active ingredients will not be reregistered until those other active ingredients are determined to be eligible for reregistration.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. EPA worked extensively with affected parties to reach the decisions presented in the IRED document. Numerous opportunities for public comment were offered as the IRED was being developed. The ethoprop IRED document, therefore, is issued in final, without a formal public comment period.

B. What is the Agency's Authority for Taking this Action?

The legal authority for this IRED falls under FIFRA, as amended in 1988 and 1996. Section 4(g)(2)(A) of FIFRA directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product specific data on individual end-use products, and either reregistering products or taking "other appropriate regulatory action."

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: November 22, 2002.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–31163 Filed 12–10–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0323; FRL–7283–1]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 68467–EUP–A from Dow AgroSciences requesting an experimental use permit (EUP) for the plant incorporated-protectant *Bacillus thuringiensis* Cry1F and Cry1Ac. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket ID number OPP–2002–0323, must be received on or before January 10, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are interested in agricultural biotechnology or may be required to conduct testing of chemical substances under the Federal, Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0323. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are

mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0323 The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2002–0323. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001, Attention: Docket ID Number OPP–2002–0323.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2002–0323. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

Dow AgroSciences has submitted an application for an EUP for the plant incorporated-protectant *Bacillus thuringiensis* Cry1F and Cry1Ac in cotton. The requested number of acres for this plant incorporated-protectant is 2,826. The EUP is for the states of Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, Missouri, New Mexico, North Carolina, Puerto Rico, South Carolina, Tennessee, and Texas. Test plants will consist of cotton.

III. What Action is the Agency Taking?

Following the review of the Dow AgroSciences application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

EPA takes this action under 40 CFR part 172.

List of Subjects

Environmental protection, Experimental use permits.

Dated: November 22, 2002.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 02–31165 Filed 12–10–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0285; FRL–7285–4]

Draft Guidance on How to Comply with Data Citation Regulations; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA issued a notice in the**Federal Register** of November 13, 2002, titled "Draft Guidance on How to Comply with Data Citation Regulations." This document is extending the comment period for 30 days, from December 13, 2002, to January 12, 2003.

DATES: Comments, identified by docket ID number OPP–2002–0285 must be received on or before January 12, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the November 13, 2002 **Federal Register** document.

FOR FURTHER INFORMATION CONTACT: Peter Caulkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5447; e-mail address: *caulkins.peter@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the November 13, 2002 **Federal Register** notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0285. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

C. How and to Whom Do I Submit Comments?

To submit comments, or access the official public docket, follow the detailed instructions as provided in Unit I.C. of the**SUPPLEMENTARY INFORMATION** of the November 13, 2002**Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. What Action is EPA Taking?

This document extends the public comment period established in the**Federal Register** of November 13, 2002 (67 FR 68866) (FRL–7278–1). In that document, EPA announcedthe availability of draft guidance on how to comply with the Agency's data citation requirements for registration of new pesticide products under the Federal Insecticide, Fungicide, and Rodenticide Act. The draft quidance will assist applicants in complying with the data citation requirements that ultimately would result in fewer delays in the registration process. EPA is hereby extending the comment period, which was set to end on December 13, 2002, to January 12, 2003.

List of Subjects

Environmental protection, Administrative practice and procedures, Pesticides and pests.

Dated: December 4, 2002.

Peter Caulkins,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–31164 Filed 12–6–02; 10:10 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting, Wednesday, December 11, 2002

December 4, 2002.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on, which is scheduled to commence at in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Wireless Telecommunications.	*Title:* Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services. *Summary:* The Commission will consider a Notice of Inquiry seeking information that can be used to analyze the status of competition in the CMRS industry for purpose of its Eighth Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services.

Item No.	Bureau	Subject
2	Wireless Telecommunications.	*Title:* Facilitating the Provisions of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services. *Summary:* The Commission will consider a Notice of Inquiry that would seek comment on the effectiveness of current regulatory tools in facilitating the delivery of spectrum-based services to rural areas and the extent to which rural telephone companies and other entities seeking to serve rural areas have opportunities to provide spectrum-based services.
3	Wireless Telecommunications.	*Title:* Revisions of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (CC Docket No. 94–102); Amendment of Parts 2 and 25 to Implement the Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding and Arrangements; Petition of the National Telecommunications and Information Administration to Amend Part 25 of the Commission's Rules to Establish Emissions Limits for Mobile and Portable Earth Stations Operating in the 110–1660.5 MHZ Band (IB Docket No. 99–67). *Summary:* The Commission will consider a further Notice of Proposed Rulemaking concerning access to emergency services from services and devices that may not be currently within the scope of the commission's E911 rules.
4	Wireless Telecommunications.	The Wireless Telecommunications Bureau will report on the status of unintentional wireless 911 calls.
5	Office of Engineering and Technology. *Summary:* The Commission will consider a Notice of inquiry concerning the possibility of permitting unlicensed transmitters to operate in additional frequency bands.	*Title:* Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at *Qualexint@aol.com*.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio*. Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, telephone number (703) 834–1470, Ext. 19; fax number (703) 834–0111.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–31381 Filed 12–9–02; 2:48 pm]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 011325–029.

Title: Westbound Transpacific Stabilization Agreement.

Parties: American President Lines, Ltd., APL Co. PTE Ltd., Hapag-Lloyd Container Linie GmbH, P&O Nedlloyd B.V., COSCO Container Lines Company, Limited, Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, P&O Nedlloyd Limited, Yangming Marine Transport Corp., Kawasaki Kisen Kaisha, Ltd., Orient Overseas Container Line Limited, Evergreen Marine Corp. (Taiwan) Ltd., Hanjin Shipping Co., Ltd.

Synopsis: The amendment restates and updates the agreement by deleting references to unused or obsolete provisions, streamlines the parties' authority under the agreement, and adds a new provision authorizing the parties to exchange information with the Ocean Carrier Equipment Management Association.

Agreement No.: 011730–002.

Title: GWF/Dole Space Charter and Sailing Agreement.

Parties: Great White Fleet (US) Ltd., Dole Ocean Cargo Express, Inc.

Synopsis: The proposed amendment removes the December 31, 2002, expiration date from the agreement. The parties request expedited review.

Agreement No.: 011745–005.

Title: Evergreen/Lloyd Triestino/Hatsu Marine Alliance Agreement.

Parties: Evergreen Marine Corp. (Taiwan) Ltd., Lloyd Triestino Di Navegazione S.p.A., Hatsu Marine Limited.

Synopsis: The proposed amendment extends the scope of the agreement to include ports in Europe and amends the service contract provisions to provide, among other things, authority for the parties to discuss guidelines with respect to the terms and conditions of their individual service contracts.

Agreement No.: 201045–005.

Title: Master Contract Assessment Agreement.

Parties: United States Maritime Alliance, Ltd., International Longshoremen's Association, AFL–CIO.

Synopsis: The amendment revises the calculations for the Container Royalty Fund under the agreement.

By Order of the Federal Maritime Commission.

Dated: December 6, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–31221 Filed 12–10–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 16013NF.
Name: Admiral Line, Inc.
Address: 662 Dell Road, Carlstadt, NJ 07072.
Date Revoked: November 7, 2002.
Reason: Failed to maintain valid bonds.

License Number: 17370NF.
Name: Antilles Wholesale Company.
Address: 1759 Bay Road, Miami, FL 33139.
Date Revoked: November 9, 2002.
Reason: Failed to maintain valid bonds.

License Number: 17571N.
Name: Atlantic Cargo Lines, Corporation.
Address: 10101 SW 8th Terrace, Miami, FL 33172.
Date Revoked: November 16, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17466N.
Name: Compass Shipping, Inc.
Address: 525 Empire Blvd., Brooklyn, NY 11225.
Date Revoked: November 1, 2002.
Reason: Failed to maintain a valid bond.

License Number: 3459N.
Name: Cross Ocean International, Inc.
Address: 10101 S. Roberts Road, Suite 200, Palos Hills, IL 60465.
Date Revoked: November 3, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16995N and 16995F.
Name: D.L. Central America, Inc.
Address: 3500 NW 115th Avenue, Miami, FL 33178.
Date Revoked: November 14, 2002 and November 9, 2002.
Reason: Failed to maintain valid bonds.

License Number: 17308N.
Name: Freightsmart.com, Inc. dba Saskia Container Line.
Address: 4615 Post Oak Place, Suite 145, Houston, TX 77027.
Date Revoked: October 27, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16800F.
Name: Global Freight Forwarding, Inc.
Address: 324 East 1st Street, Suite 380, Los Angeles, CA 90012.
Date Revoked: November 9, 2002.
Reason: Failed to maintain a valid bond.

License Number: 3876F.
Name: Hawk International Transportation, Inc.
Address: 120 Eastern Avenue, Suite 204 A, Chelsea, MA 02150.
Date Revoked: October 11, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4306F.
Name: International Transport Services, Inc.
Address: 18747 Sheldon Road, Cleveland, OH 44130.
Date Revoked: November 3, 2002.
Reason: Failed to maintain a valid bond.

License Number: 8097N.
Name: Jacksonville Caribbean Broker Services, Inc.
Address: 8550 Posey Road, Jacksonville, FL 32220.
Date Revoked: November 21, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15688N.
Name: Millennium Logistics Services, Inc.
Address: 6709 NW 84th Avenue, Miami, FL 33166.
Date Revoked: November 10, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16281N.
Name: Pan Asia Line Corporation.
Address: 820 S. Garfield Avenue, #303, Alhambra, CA 91801.
Date Revoked: October 23, 2002.
Reason: Failed to maintain a valid bond.

License Number: 11170N.
Name: Sage Freight Systems Inc. dba Sage Container Lines.
Address: 182–30 150th Road, Suite 108, Jamaica, NY 11413.
Date Revoked: October 16, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4350NF.
Name: Seaborne International, Inc. dba Seaborne Express Line.
Address: 11222 La Cienega Blvd., Suite 470, Inglewood, CA 90304.
Date Revoked: November 9, 2002.
Reason: Failed to maintain valid bonds.

License Number: 17052F.
Name: Sec Sea & Air, Inc.
Address: 520 E. Carson Plaza Court, Suite 212A, Carson, CA 90746.
Date Revoked: November 4, 2002.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–31223 Filed 12–10–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
12918N	Freight Options Unlimited, 14247 East Don Julian Road, City of Industry, CA 91746	April 21, 2002.
3574F	I.T.N. of Miami, Inc., dba International Transportation Network, 7007 NW 30th Street, Miami, FL 33122.	May 25, 2002.
16051N	Trans-Net, Inc., dba Trans-Net, 710 5th Avenue, NW., Issaquah, WA 98027	June 19, 2002.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–31224 Filed 12–10–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Pacheco Express Shipping, Inc., 1570 Webster Avenue, Bronx, NY 10457, Officers: Luis Hernandez, President, (Qualifying Individual), Nieulka D. Rivera, Vice President.

Vizion Logistics, L.L.C., 2275 Huntington Drive, #816, San Marino, CA 91108, Officers: Albert Wei, President, (Qualifying Individual), Benjamin Wei, Vice President.

Willy Express Shipping Inc., 1327 Webster Avenue, Bronx, NY 10456, Officers: Nelson W. Rivera, President, (Qualifying Individual).

City Ocean International, Inc., 17800 Castleton Street, #388, City of Industry, CA 91748, Officers: Rachel Zhu Zhou, Vice President, (Qualifying Individual), Qi Wang, C.F.O.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Action International Movers, Inc., 10004 Belhaven Road, Bethesda, MD 20817, Officer: Bertrand Peltier, President, (Qualifying Individual).

Dated: December 6, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–31222 Filed 12–10–02; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Design for the Evaluation of the Maternal and Child Health Bureau, Bright Futures for Women's Health and Wellness Initiative and Preliminary Evaluation of Initial Products—New

The HRSA Office of Women's Health (OWH) is developing the Bright Futures for Women's Health and Wellness (BFWHW) Initiative to help expand the scope of women's preventive health activities, particularly related to nutrition and physical activity. A pilot test of the BFWHW health promotion tools and materials will be conducted in order to improve the effectiveness of the tools themselves, and to gather feedback on productive strategies for disseminating the tools for appropriate use to training providers and community organizations. Thus, the empirical findings from this pilot test will help shape the final BFWHW tool development. This data collection effort will ensure that the HRSA OWH develops targeted and effective tools for translating health prevention recommendations into nutrition and physical activity messages.

Toward this end, data will be collected from women patients, providers, and representatives of community organizations. Women patients ages 18 and over of various racial and ethnic backgrounds will complete questionnaires at three health centers in different geographic areas of the country. The health care providers at these same sites will also be asked to complete a brief questionnaire. Telephone interviews will be completed with representatives from community organizations located in the service areas of these health centers. The data collection period is estimated to last three weeks.

The estimated response burden is as follows:

Activity	Number of respondents	Responses per respondent	Total responses	Minutes per response	Total burden hours
Women Patient Questionnaire	2,430	1	2,430	5	202.5
Provider Questionnaire	18	1	18	5	1.5
Community Representative Telephone Interview	15	1	15	35	8.75
Total	2,463		2,463		213

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 4, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–31191 Filed 12–10–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by January 10, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Arnold W. Goldschlager, Hillsborough, CA, PRT–065348.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Jaydee H. Swisher, Laredo, TX, PRT–065347.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Robert J. Le Mieux, Burton, MI, PRT–065433.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Columbus Zoo and Aquarium, Powell, OH, PRT–055821.

The applicant requests a permit to purchase in interstate commerce one female Asian elephant (*Elephas maximus*) from Have Trunk Will Travel, Perris, CA, for the purpose of enhancement of the survival of the species through captive propagation.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: David G. Aul, Arlington Heights, IL, PRT–065354.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: November 29, 2002.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–31203 Filed 12–10–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by January 10, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Feld Entertainment, Vienna, VA

The applicant requests permits to export, re-export, and re-import tigers (*Panthera tigris*) and their future progeny if born overseas to and from worldwide locations to enhance the survival of the species through

conservation education. This notification covers activities conducted by the applicant over a three-year period. The tiger names and PRT numbers are as follows: Mohan, 061900; Apollo, 063774; Assam, 063775; Ghandi, 063776; Jaipur, 063777; Tibet, 063778; Tora, 063779; Vanja, 063780; Ares, 063781; Athena, 063782; Marissa, 063783; Shankar, 063784; and Ussuri, 063785.

Applicant: Donald L. Fetterolf, Somerset, PA, PRT–065225

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Julian Weltsch, Phoenix, AZ, PRT–061112

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Robert A. Powell, Texas A & M University, Department of Wildlife and Fisheries Sciences, College Station, TX, PRT–064189

The applicant requests a permit to import biological samples taken from wild specimens of black-capped vireo (*Vireo atricapillus*) for the purpose of scientific research. This notification covers activities conducted by the applicant over a period of 5 years.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: November 22, 2002.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–31205 Filed 12–10–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted for this application is available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

On July 9, 2002, a notice was published in the **Federal Register** (67 FR 45530), that an application had been filed with the Fish and Wildlife Service by Ikande L.V. Larkin, University of Florida to amend a permit (PRT–038448) to conduct scientific research on captive-held and wild Florida manatees (*Trichechus manatus*) to study manatee reproductive physiology and indicators of stress.

Notice is hereby given that on November 26, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), the Fish and Wildlife Service issued the requested amended permit subject to certain conditions set forth therein.

Dated: November 29, 2002.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–31204 Filed 12–10–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Finding Against Federal Acknowledgment of the Schaghticoke Tribal Nation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed finding.

SUMMARY: Pursuant to 25 CFR 83.10(h), notice is hereby given that the Assistant Secretary—Indian Affairs proposes to decline to acknowledge that the Schaghticoke Tribal Nation (STN), c/o Mr. Richard L. Velky, 33 Elizabeth Street, 4th Floor, Derby, Connecticut 06148, exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the petitioner does not satisfy all seven of the criteria set forth in 25 CFR 83.7, specifically criteria (b), and (c), and therefore does not meet the requirements for a government-to-government relationship with the United States.

DATES: As provided by 25 CFR 83.10(i), any individual or organization wishing to comment on the proposed finding may submit arguments and evidence to support or rebut the proposed finding. The time periods and some of the procedures in 25 CFR part 83 for considering the STN petition are modified by a court-approved negotiated agreement in pending litigation. Parties to the litigation have six months from the service of the proposed finding to provide comments, documents and arguments on the proposed finding to the Department. Interested and informed parties who are not also parties to the litigation have 180 days from the date of publication of this notice of the proposed finding to provide comments to the Department. These comment periods are virtually identical. The petitioner and all interested and informed parties commenting on the proposed finding must provide copies of their comments to all parties and *amici curiae* to the litigation at the same time. The names and addresses of commenters on the proposed finding will be available for public review. Commenters wishing to have their name and/or address withheld must state this request prominently at the beginning of their comments. Such a request will be honored to the extent allowable by law.

ADDRESSES: Comments on the proposed finding or requests for a copy of the report which summarizes the evidence, reasoning, and analyses that are the basis for this proposed finding, or a list of parties in the litigation, should be addressed to the Bureau of Indian Affairs, Branch of Acknowledgment and Research, 1849 C Street NW., Mailstop 4660–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Chief, Branch of Acknowledgment and Research, (202) 208–3592.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The STN petition (petition #79) is being considered under a court-approved negotiated agreement in pending litigation which modifies the time periods in 25 CFR part 83 and some of the procedures, superceding the regulatory provisions for these time periods and procedures. This order, entered May 8, 2001, and modified by court order on February 14, 2002, established time lines for submission of materials to the Department and deadlines for submission of comments, issuance of a proposed finding and issuance of a final determination. The agreement does not modify the criteria nor the standards required to demonstrate that the criteria are met.

The petitioner's letter of intent to petition, under the name the "Schaghticoke Indian Tribe," was filed with the Department on December 14, 1981. The petitioning group changed its name to Schaghticoke Tribal Nation of Kent when it amended its governing document at a membership meeting in 1991.

The Schaghticoke have been a state-recognized tribe, with a state reservation, from colonial times until the present. However, the specifics of the State of Connecticut's dealings with state-recognized tribes differed from tribe to tribe in at least one important respect that is relevant to the extent to which state recognition provides additional evidence for the community and political influence criteria in 25 CFR 83.7(b) and 25 CFR 83.7(c). In this instance, there are substantial periods of time, from the early 1800's until 1875 and from 1885 until the late 1960's, when the State did not deal with or identify formal or informal leaders of the Schaghticoke, and did not consult with members concerning issues which concerned the entire group. The State's relationship here thus differs materially from that with the historical Eastern Pequot tribe, where there were recognized leaders with whom the State or state-authorized officials dealt.

While continuous State recognition with a reservation can provide evidence to be weighed in combination with the specific evidence that is present, it is not a substitute for direct evidence concerning community and political processes. In the historical Eastern Pequot case, the continuous state recognition provided evidence which, when added to the specific evidence for community and political processes, provided the basis for criteria 83.7(b) and 83.7(c) to be met for some limited time periods for which the specific evidence itself was insufficient. Because of the narrower quality of the state relationship with the Schaghticoke petitioner, the state relationship provides a more limited amount of additional evidence than it did in the case of the historical Eastern Pequot, especially with regard to demonstrating criterion 83.7(c), consistent with the reasoning in that final determination.

From 1900 onwards, the Schaghticoke petitioner and its antecedents have been regularly identified as an American Indian entity in Federal and State documents, by local historians, by academic scholars, and in newspaper articles. Federal identifications include the special Indian Population schedules for the 1900 and 1910 Federal censuses, the 1934 Tantaquidgeon Report on New England Indians prepared for the U.S. Indian Service, and the 1947 Gilbert report on surviving Eastern Indian groups prepared for the Smithsonian Institution. The State relationship, which has been uninterrupted from 1900 to the present, generated large quantities of documentation in each decade. These documents include legislative acts, legislative appropriations, appointment of overseers, minutes and correspondence of State agencies, and the assignment of a seat on the Connecticut Indian Affairs Council (CIAC) to the Schaghticoke. Identifications by academic scholars during the 20th century begin with a 1903 visit to the Schaghticoke reservation by ethnographer Frank G. Speck, and exist for each decade from the 1960's through the 1990's. Identifications by local historians also appear consistently in the 20th century, with publications from 1903 through the 1990's. Multiple newspaper articles appeared in every decade from 1900 to the present.

There is no question that the many identifications, which fall under multiple categories of the types of evidence that may be used under criterion 83.7(a), pertain to the petitioner and its antecedents. The petitioner meets criterion 83.7(a).

The evidence indicates that the settlement at Schaghticoke developed primarily as an amalgamation of the Weantinock and Potatuck Indian tribes which existed at the time of first sustained contact with non-Indian settlers. Section 83.6(f) of the regulations provides that the criteria in 83.7(a) through (g) shall be interpreted as applying to tribes or groups that have historically combined and functioned as a single autonomous political entity. The combination of Indians from two or more related settlements into a single group under the pressure of non-Indian settlement does not mean that a petitioner fails to meet criterion 83.7(b) or 83.7(c) during the colonial period.

The Colony of Connecticut reserved lands for the Schaghticoke in 1736 and confirmed the reservation in 1752, appointing an overseer in 1757. Throughout the period from 1743 through 1771, the Moravian mission records, which are both descriptive and genealogical, provide sufficient evidence of a Schaghticoke community—more than has existed for the colonial period in some prior decisions. From 1771 through 1801, the evidence for community is less ample, consisting primarily of the continued existence of a distinct residential settlement, the presentation of petitions by the group to the Colony and State, and a detailed external enumeration of all members by name and age in 1789. The majority of the residents during this period descended from the already closely-related Indians who resided at Schaghticoke during the Moravian era. On the basis of precedent, the evidence is sufficient. The petitioner meets criterion 83.7(b) during the colonial and early Federal periods.

For the period from 1800 through 1860, in addition to the data provided by the overseers who were appointed by the State of Connecticut through the Litchfield County Superior Court and the applicable data from the Federal census records, there continued to be a settlement identified and described by outside observers. The existence of a distinct geographical settlement to which off-reservation residents frequently returned and the close kinship relations between the resident and the non-resident members, in combination with the other evidence, provide sufficient evidence of community to meet criterion 83.7(b) from 1801 through 1860.

Throughout the period from 1861 through 1899, the existence of a residential settlement on the Schaghticoke reservation continued to be described by outside observers and identified by the State's overseers, appointed through the Litchfield County Superior Court or after 1883, the Litchfield County Court of Common Pleas. The Schaghticoke who resided off the reservation during this period, as documented through genealogical and census records, had close kin ties to those families that remained on the reservation. The combination of these forms of evidence is sufficient for the petitioner to meet criterion 83.7(b) for the period 1861–1899.

The Schaghticoke group meets criterion 83.7(b) in 1900, based on the existence of the small geographically distinct community (on the reservation),

whose members maintained social relations with each other, and evidence that at that point in time the kinsmen of the residents living nearby in the region were maintaining contact with the reservation residents. The existence of a geographically distinct community is evidence to demonstrate community, when used in combination with other evidence, even where it does not reach the 50 percent of the membership necessary to be sufficient in itself under section 83.7(b)(2)(i).

Supportive evidence for community after 1900, up until 1996, is that the "membership," in the sense of who was involved, came to meetings, was mentioned in interviews and the like, was only a limited portion of the total number of Schaghticoke descendants. At least from the mid-1800's onwards, only certain descendants maintained contact with each other and the reservation. In each generation, only some of a given set of siblings had descendants who appeared on subsequent lists and in descriptions of the Schaghticoke. This selectivity provides evidence of social cohesion among this portion of the descendants of earlier Schaghticokes, and evidence that the Schaghticoke were not a group based on descent alone.

Three family lines had emerged as distinct lines by the beginning of the 20th century, Cogswell, Kilson and Harris. With one important exception, there were no marriages between these lines after the mid 19th century although there were kinship links to each other from intermarriages earlier in the 19th century or in the 18th century.

There is sufficient evidence from 1900 to 1940 to demonstrate that criterion 83.7(b) is met. The primary bases are the reservation community, which encompassed the three main family lines, and the extant kinship ties with others living nearby. Many of these off reservation individuals were former reservation residents whose residence nearby continued the 19th century Schaghticoke pattern where the community was centered on but not limited to the reservation. Additional evidence for community is that the Schaghticoke have not been a descent group up until 1996, but have only included individuals who were maintaining social relations. Although the direct evidence concerning community after 1920 is limited, the continuous state recognition with a reservation provides additional evidence for community, which, when added to the specific evidence in the record, is sufficient to demonstrate that criterion 83.7(b) is met between 1900 and 1940.

The available interview data provides conflicting evidence concerning social community, especially visiting across family lines, from the late 1930's into the 1960's. Some of the data from interviews does not show social relations extending beyond immediate family groups or includes statements which specifically deny contacts across family lines. Evidence from other interview accounts suggests broader contacts, including some social gatherings and visiting of reservation residents across family lines. There was conflicting evidence from interviews concerning the maintenance of broad social contacts after 1940 to 1967. Descriptions of the initial meetings of the Schaghticoke organization created in 1967 indicated that the participants were not well acquainted with each other at that time.

There is not sufficient evidence to demonstrate that criterion 83.7(b) is met between 1940 and 1967. The conflicting data from the 1930's into the 1960's cannot be resolved with the presently available sources and the analysis conducted by the petitioner or by the Department. The present analysis of this data was sufficient to conclude that the petitioner's claims to have demonstrated community in from 1940 to 1967 were not established. The evidence also did not demonstrate that the third party comments that community did not exist in this time period were valid. State recognition does not provide sufficient additional evidence for the period between 1940 and 1967 because of the conflicting nature of the specific evidence for that period.

As evidence to demonstrate community from 1967 to the present-day, the petitioner's reports describe the holding of political meetings, the practice of traditional crafts, the current geographic settlement pattern, work parties on the reservation, and the continued existence of social networks. The formal political meetings do not in themselves show significant social contact or a political relationship because any kind of organization can hold meetings. The petitioner presented only limited evidence to substantiate the present existence of social networks outside of family sublines. The evidence in the record does not show that work parties have been frequent or that they drew broadly from the membership. There was no showing that the practice of crafts represented a distinct cultural tradition or that it involved more than a few individuals. The geographic distribution of the membership is not so broad as to provide evidence against the existence of community, but neither does it provide significant evidence for community.

The Schaghticoke Tribal Nation meets the requirements of criterion 83.7(b) from 1967 to 1996. The primary body of evidence for community is in the data which describe the intense patterns of political conflict in these years, described under criterion 83.7(c). This information demonstrates frequent mobilization of most of the membership, most often along the lines of the major families or their subdivisions. Evidence for criterion 83.7(c) can be used as well for criterion 83.7(b), where that evidence describes circumstances that indicate that social communication is occurring and that social ties exist which influence the patterns of political conflict.

The evidence from political events, membership definition and other sources provides sufficient direct evidence to demonstrate that criterion 83.7(c) is met between 1967 and 1996. Additional, supporting evidence, is the selective nature of the membership of the STN in this period, as well as the preceding decades. State recognition provides additional evidence for community between 1967 and 1996.

The present-day community, as defined by the 2001 STN membership list, does not meet the requirements of criterion 83.7(b). The community so defined differs substantially from the community described for period from 1967 to approximately 1996. Important segments of the group as it existed prior to 1996 have resigned membership in the petitioner or do not appear on the current membership list because they declined, for internal political reasons, to participate in the enrollment process which led to the current STN list. There are approximately 60 such individuals, compared with the present STN membership of 317. The absence of these individuals, who were a part of the social and political relations within the group between 1967 to 1996, means that the current petitioner, as defined by its most recent enrollment, is substantially less than the entire community. In the Department's final determination to acknowledge the Eastern Pequot and the Paucatuck Eastern Pequot petitioners as a single tribe, the historical Eastern Pequot, the Department concluded that it did not have the authority to acknowledge petitioners which were parts of unrecognized tribes.

Criterion 83.7(b) for the present-day community is also not shown because substantial numbers of descendants of one subline of the Kilson family were enrolled for the first time beginning in 1996. There is little evidence of their

association with the rest of the Schaghticoke families, including other Kilsons, after the early 1900's. They constitute 110 of the 317 who are presently enrolled in the STN, more than a third of the total STN membership.

State recognition does not provide sufficient additional evidence for criterion 83.7(b) to be met from 1996 to the present, because of the substantial questions concerning the composition of the community as defined by the current STN membership list.

The evidence available for this finding indicates that the Schaghticoke meet criterion 83.7(c) during the colonial period and during the early Federal period, to 1801. The actions of the local authorities in regard to the tribe were in accordance with the existing Connecticut statutes. On the basis of precedent, governance of an American Indian group by a colony or state does not negate the existence of tribal autonomy within the meaning of the 25 CFR part 83 regulations, which only require autonomy in relation to other Indian entities.

In regard to 18th century political authority, the Schaghticoke settlement developed between the 1720's and 1740's, primarily from the Weantinock and Potatuck tribes that existed at the time of first sustained contact with non-Indian settlers. When the Moravian missionaries first arrived at Schaghticoke (which they called Pachgatgoch) on January 26, 1743, Martin Mack and his wife "were lodg'd by Captain Mawessman * * *." This leader, who was baptized with the name of Gideon later the same year, is generally known as Gideon Mauwee and continued to head the settlement until his death in 1760, when he was succeeded by his son, Josua Job Mauwee, until the latter's death in 1771. Throughout the period from 1743 through 1801, the sequence of Schaghticoke petitions to the colony, with their content focused upon preservation of the land base, and with a substantially stable sequence of signers that changed only gradually over the course of time as the older men died and younger ones became household heads, provides sufficient evidence of the existence of political authority or influence within the group for the colonial and early Federal period.

For the period from 1801 to 1860, there is no evidence in the record pertaining to political authority or influence. There are no leaders named either by outside observers or in internal documents. The State or the overseer did not deal with leaders. The evidence available for the proposed finding does not show that the group submitted any petitions to the State authorities. While a single man served as overseer from 1801 to 1852, thus reducing the number of occasions for petitions, the evidence submitted did not include any data showing that the group expressed its views or was consulted with regard to the 1852 or 1861 overseer appointment. Although, in a certain sense, Eunice Mauwee represented the group to outsiders through the interviews that she granted, there is no evidence that she did so in "matters of consequence," as required under the definition of political influence in the regulations. Although the overseers' records and descriptions by outside observers reflect the existence of a continuing geographical community which maintained continuing ties with non-resident relatives, many of whom received disbursements from the tribal fund when in need, the record provides no data beyond the fact of this continuous existence and descriptions of a few selected members. There is no direct information in regard to political process.

The state relationship by itself does not provide sufficient additional evidence to meet criterion 83.7(c) in the absence of other, specific evidence of political influence. The regulations state at section 83.6.(d) that: "a petitioner may also be denied if there is insufficient evidence that it meets one or more of the criteria." The petitioner does not meet criterion 83.7(c) from 1801 through 1860.

There is very limited evidence for political authority or influence under criterion 83.7(c) in the period from 1861 through 1899 in the form of two petitions, submitted in 1876 and 1884, each of which was signed by more than half of the Schaghticoke's adult members. The evidence does not show that there were petitions submitted in connection with the overseers' appointments of 1865 and 1870 or that the State authorities consulted with the group in making them. By themselves, these two documents within a period of 40 years do not provide sufficient evidence to support a finding that the petitioner meets criterion 83.7(c) for this full period.

The two petitions, in combination with the continuous state relationship since colonial times and the continuous existence of the reservation lands held in trust by the State, with oversight function, show that the Schaghticoke meet criterion 83.7(c) for the period from 1876 through 1884. The state relationship here provides additional evidence because in this period there was a specific political dealing with the group in that the Litchfield County Superior Court and Court of Common Pleas did act in response to the petitions. Additional evidence for criterion 83.7(c) in this period is provided by the demonstration that the Schaghticoke have shown community under § 83.7(b)(1) at more than a minimal level. Under § 83.7(c)(1)(iv), this provides supporting evidence for demonstrating criterion 83.7(c). The evidence does not demonstrate that the Schaghticoke meet criterion 83.7(c) from 1861 to 1875 or from 1885 to 1899. The state relationship does not provide additional evidence for these dates because there is an absence of specific evidence of the exercise of political influence within the group within the meaning of the acknowledgment regulations.

There is almost no specific evidence of Schaghticoke political activity from 1900 to 1949. The evidence available for the proposed finding does not show that the group submitted a petition in connection with the overseers' appointments of 1904–1905, 1914, or 1932, or that State authorities consulted with the group in making these appointments. The several accounts of the Schaghticoke around the turn of the century, including one by ethnographer Frank Speck, do not name anyone as a leader. Though they describe some individuals who were well known to non-Indians for various reasons, the accounts do not identify them as leaders. There was no significant evidence from documents or interviews to support the petitioner's position that James Harris (died 1909) and George Cogswell (died 1923) were leaders. Although they were well known, none of the contemporary descriptions of their activities described roles as leaders of the Schaghticoke or provided substantial evidence that they exercised political influence or carried out activities which meet the definition of political influence in § 83.1 of the regulations.

There is no good evidence to support the petitioner's statements that Howard Nelson Harris was chief from approximately 1920 until 1954, when he was appointed to that position by the Schaghticoke council initiated by Franklin Bearce in 1949. Interview data from the Harris family itself did not provide any significant evidence that he was a leader before 1954, and little specific evidence to demonstrate he exercised political influence from 1954 until his death in 1967. Some Schaghticoke, from a different family line than Harris, specifically denied that he was chief at all, and stated that different individuals, with the title of

Sagamore, were chief from the 1930's until 1967. Evidence of Howard Harris' contacts with the state in the mid-1920's and in 1950 provided no indication that he was considered to be a leader or that he had presented himself to State officials as a leader.

There was little or no evidence to support the petitioner's claims that various other individuals exercised leadership on the reservation between 1900 and the 1950's or that that various individuals listed by the petitioner as being "culture keepers," from 1900 to the present actually functioned as informal leaders who influenced significant numbers of members.

There are no named Schaghticoke leaders with whom the state dealt between 1900 and 1967. One state report, in 1934, said that there were no leaders recognized by the Schaghticoke. This is evidence which specifically indicates that there were no leaders in the period between 1900 and 1949.

Between approximately 1949 and 1959, there was a council with named officers which pursued a claim before the Indian Claims Commission and attempted to deal with the State on the issue of providing more housing on the reservation. This council came about through the efforts of Franklin Bearce, a non-Schaghticoke. There is not good evidence that those holding office in this time period had a following or significant duties for any extended period of time. There is some evidence to indicate that Bearce consulted regularly with various Schaghticoke individuals, including especially Howard Harris, and that his efforts tapped into an existing set of issues and relationships, but the present evidence is insufficient to demonstrate that criterion 83.7(c) is met for this period. It was not shown that the claims issue itself, involving losses that had occurred over a hundred years before, was of importance to the membership in general and thus evidence for criterion 83.7(c) under § 83.7(c)(1)(ii).

There is either no direct evidence to show political influence, or only a small amount of direct evidence, between 1900 and 1967. State recognition in the form it takes in relation to the Schaghticoke does not provide enough additional evidence which, added to the limited specific evidence in the record, demonstrates that criterion 83.7(c) is met for that time period.

From 1967, until approximately 1996, there is substantial evidence of political involvement of much or most of the Schaghticoke membership. There was a continuing series of conflicts that showed consistently broad involvement of members of the group. The several family line groups and sublines have formed a framework for political conflict, as the units which have mobilized for and against certain issues, and in support of or against specific leaders. These conflicts occurred multiple times over a period of more than 30 years, showing involvement in political processes by most of the group's members. They indicate that knowledge of issues and events were being communicated within the membership, evidence described in § 83.7(c)(1)(iii), that there was controversy over valued group goals, evidence described in § 83.7(c)(1)(v), and that most of the membership considered the issues acted upon to be of importance, the form of evidence described in § 83.7(c)(1)(ii). Overall, there is sufficient evidence to demonstrate that the petitioner meets the requirements of criterion 83.7(c) from 1967 to approximately 1996.

The STN does not meet the requirements of criterion 83.7(c) from approximately 1996 to the present. Changes in the STN's membership starting around 1996 and culminating in the 2001 membership list preclude a finding that political processes continued within the group. Former STN members who are not presently members have a strong history of past involvement in Schaghticoke political processes and are clearly part of the same group. The conclusion of this proposed finding is that in the present-day there continues to be a single Schaghticoke political system encompassing the STN and a substantial number of former members who are not presently members of the STN. Consequently, the present petitioner's membership does not substantially encompass the complete political system. The regulations do not permit acknowledgment of only part of a group. The Secretary does not have the authority to acknowledge parts of tribes.

In addition, there is not evidence to show whether the substantial portion of the currently enrolled STN membership who have only been STN members for a few years are maintaining significant social contact or more than a *pro forma* political relationship with each other or with the rest of the present membership. These descendants comprise a third of the present STN membership.

Because the state relationship here lacks a substantial political component, it does not add substantial evidence concerning political processes. In the absence of any specific, direct evidence of political processes and leadership, the state relationship does not in itself provide sufficient evidence for the Schaghticoke to meet criterion 83.7(c) between 1800 and 1876, 1884 and 1949, and 1960 to 1967. The state relationship does not add sufficient additional evidence to the specific evidence in the record for the period from 1949 to 1959 to demonstrate that criterion 83.7(c) is met for that time period.

The Schaghticoke Tribal Nation does not meet the requirements of criterion 83.7(c) from 1800 to 1875, from 1885 to 1967, and in the present-day group. Therefore the petitioner does not meet the requirements of criterion 83.7(c).

The petitioner submitted ample evidence to demonstrate that 100 percent of its membership descends from the historical Schaghticoke tribe. All persons on the petitioner's current membership list, dated August 30, 2001, descend from Indians who were identified as Schaghticoke Indians by the State of Connecticut in the 19th century. The petitioner's continuity of descent has been maintained through three families: Cogswell, Kilson and Harris, who, along with their collateral relatives, were named as Schaghticoke Indians throughout the 19th century overseers' reports. Everyone on the petitioner's current membership list descends from at least one of the Schaghticoke Indians who signed an 1884 petition for a new overseer.

The Federal census records from 1870 to 1910, including the 1900 and 1910 separate Indian Population Schedules, show that the petitioner's direct ancestors lived on the reservation at least during some part of their lives, although some periodically moved off to seek employment elsewhere.

The petitioner has provided a copy of its current membership list, dated August 30, 2001, and certified by its governing body, by a letter dated October 14, 2002, as well as previous membership lists.

The petitioner claims two sources for determining eligibility for membership: (1) Descent from Gideon Mauwee (ca. 1687 to 1760), which is apparently based on long-standing Schaghticoke traditions of the relationships between Gideon's granddaughter Eunice Mauwee (who died in 1860), Parmelia (Mauwee) Kilson, Abigail (Mauwee) Harris, and Truman Bradley a.k.a. Truman Mauwee. However, the records of the late 18th century and early 19th century do not show the exact genealogical connection among these Schaghticoke Indians; or (2) descent from "any person identified on the 1910 U.S. Federal Census as a Schaghticoke Indian." This definition of eligibility contains a slight terminological problem, in that, although the reservation was identified as Schaghticoke in 1910, its residents were identified as "Pequot."

Nonetheless, all of the petitioner's 317 current members, have satisfied the petitioner's own criteria for membership: 202 have a direct ancestor listed on the 1910 census of the Schaghticoke reservation, and the remaining 115 individuals descend from Joseph D. Kilson (110) or from Julia M. Kilson (and her husband Truman Bradley) (5), who descend from the Parmelia (Mauwee) Kilson, and thus by tradition from Gideon Mauwee.

More importantly, the petitioner's descent from Schaghticoke Indians of the early 1800's, as identified by the State records, is well documented. While the exact "blood-line" connections to the previous generations in the 1700's are less sure, there is more than enough evidence to show the reasonable likelihood of the connection as well. Therefore, based on the evidence available at this time, the petitioner has demonstrated that it descends from the historical Schaghticoke tribe as identified by the State in the early 1800's and therefore meets the requirements of criterion 83.7(e).

The petitioner meets the requirements of criterion 83.7(d) because it has submitted a governing document, including a description of its membership criteria, criterion 83.7(f) because its members are not enrolled with federally recognized tribes, and criterion 83.7(g) because the group or its members have not been the subject of congressional legislation which has expressly terminated or forbidden the Federal relationship.

The evidence available for this proposed finding demonstrates that the Schaghticoke Tribal Nation does not meet all seven criteria required for Federal acknowledgment. In accordance with the regulations, failure to meet any one of the seven criteria requires a determination that the group does not exist as an Indian tribe within the meaning of Federal law (83.6(c), 83.10(m)).

A copy of this proposed finding, which summarizes the evidence, reasoning, and analyses that are the basis for decision is available upon written request (83.10(h)).

During the comment period, the Assistant Secretary shall provide technical advice concerning the proposed finding (83.10(j)(i)). Under the court-approved agreement any interested party, including any parties or amici curiae to the litigation, who wishes to request a formal on-the-record technical assistance meeting under 25 CFR 83.10(j)(2), must make their request not later than 30 days after service of the proposed finding. A formal technical assistance meeting will be held within 60 days of the first such request. The proceedings of this meeting shall be on the record. The meeting record shall be available to any participating party and will become part of the record considered by the Assistant Secretary in reaching a final determination (83.10(j)(2)).

Parties to the litigation have six months from the service of the proposed finding to provide comments, documents and arguments on the proposed finding to the Department. Interested and informed parties who are not also parties to the litigation have 180 days from the date of publication of this notice in the **Federal Register** to provide comments to the Department. Comments on the proposed finding should be submitted in writing to the Office of the Assistant Secretary—Indian Affairs, 1849 C Street, NW., Washington, DC 20240, Attention: Branch of Acknowledgment and Research, Mail Stop 4660–MIB. The petitioner and all interested and informed parties commenting on the proposed finding must provide copies of their comments to all parties and amici curiae to the litigation at the same time. The addresses of the petitioners, parties and amici curiae are available from the Department upon request.

The petitioner shall file any reply to these comments with the Department within 30 days of the close of the comment period. After consideration of the written arguments and evidence submitted during the comment period and the petitioner's response to the comments, the AS–IA will make a final determination regarding the petitioner's status within four months of the end of the petitioner's reply period and publish notice of this final determination in the **Federal Register**.

Dated: December 5, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–31229 Filed 12–6–02; 3:18 pm]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ: GP03–0032]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The plat of survey of the following described lands is scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 9 S., R. 13 E., accepted November 15, 2002

A copy of the plat may be obtained from the Oregon State Office, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest.

For further information contact: Bureau of Land Management (333 S.W. 1st Avenue), P.O. Box 2965, Portland, Oregon 97208.

Dated: November 20, 2002.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 02–31192 Filed 12–10–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Alaska OCS Region

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of the draft environmental impact statement (EIS) for proposed oil and gas lease sales in Cook Inlet, Alaska.

SUMMARY: MMS announces the availability of the draft EIS prepared by MMS for proposed OCS Lease Sales 191 and 199 offshore Cook Inlet, Alaska.

DATES: Comments on the draft EIS are due February 11, 2003. Public hearings will be held in Alaska: Anchorage, January 16, 2003; Seldovia, January 21; Homer, January 23; Soldotna/Kenai, January 24; telephone call-in to MMS Anchorage, January 28.

SUPPLEMENTARY INFORMATION: This draft EIS assesses two sales in the Proposed Final 2002–2007 5-Year Oil and Gas Leasing Program for the Cook Inlet OCS Planning Area. Sale 191 is scheduled for 2004 and Sale 199 for 2006. Federal Regulations (40 CFR 1502.4) suggest analyzing similar or like proposals in a single EIS. The proposal analyzed for each sale is to offer 517 whole or partial lease blocks in the Cook Inlet OCS Planning Area, covering about 2.5 million acres (about 1 million hectares). The proposed sale area is seaward of the State of Alaska submerged lands boundary, extending from 3 miles to

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approximately 30 miles offshore and to water depths more than 650 feet. It extends from below Kalgin Island south to approximately Shuyak Island.

EIS availability: Persons interested in reviewing the draft EIS "OCS EIS/EA, MMS 2002–065" (Volumes I and II) can contact the MMS Alaska OCS Regional Office. The documents are available for public inspection between the hours of 7:45 a.m. and 4:30 p.m., Monday through Friday at: Minerals Management Service, Alaska OCS Region, Resource Center, 949 East 36th Avenue, Room 330, Anchorage, Alaska 99508–4363, telephone: (907) 271–6070 or (907) 271–6621 or toll free at 1–800–764–2627. Requests may also be sent to MMS at *akwebmaster@mms.gov*. You may obtain single copies of the draft EIS, the Executive Summary, or a CD/ROM version, from the same address. You may also look at copies of the draft EIS in the following libraries:

Alaska Pacific University, Academic Support Center Library, 4101 University Drive, Anchorage, Alaska;
Alaska Resources Library and Information Service (ARLIS), U.S. Department of the Interior, 3150 C Street, Suite 100, Anchorage, Alaska;
Alaska State Library, Government Publications, State Office Building, 333 Willoughby, Juneau, Alaska;
Anchor Point Public Library, 73405 Milo Fitz Avenue, Anchor Point, Alaska;
Canadian Joint Secretariat Librarian, Inuvikon NT, Canada;
Chiniak Public Library, 42650 Chiniak Highway, Chiniak, Alaska;
Department of Indian and Northern Affairs, Yellowknife, NT, Canada;
Fairbanks North Star Borough, Noel Wien Library, 1215 Cowles Street, Fairbanks, Alaska;
Homer Public Library, 141 West Pioneer Avenue, Homer, Alaska;
Jessie Wakefield Memorial Library, 207 Spruce Drive, Port Lions, Alaska;
Johnson Memorial Library, 319 Lower Mill Bay Road, Kodiak, Alaska;
Juneau Public Library, 292 Marine Way, Juneau, Alaska;
Kachemak Bay Campus Library, 533 Pioneer Avenue, Homer, Alaska;
Kasilof Public Library, Mile 110 Sterling Highway, Kasilof, Alaska;
Kenai Community Library, 163 Main Street Loop, Kenai, Alaska;
Kenai Peninsula College Library, 34820 College Drive, Soldotna, Alaska;
Kodiak College Library, 117 Benny Benson Drive, Kodiak, Alaska;
Ninilchik Community Library, 15850 Sterling Highway, Ninilchik, Alaska;
North Slope Borough School District, Library/Media Center, Barrow, Alaska;
Northern Alaska Environmental Center Library, 218 Driveway, Fairbanks, Alaska;
Old Harbor Library, Three Saints Avenue, Old Harbor, Alaska;
Ouzinkie Tribal Media Center, 110 Third Street, Ouzinkie, Alaska;
Seldovia Public Library, 260 Seldovia Street, Seldovia, Alaska;
Soldotna Public Library, 235 Binkley Street, Soldotna, Alaska;
U.S. Army Corps of Engineers Library, U.S. Department of Defense, Elmendorf Air Force Base, Anchorage, Alaska;
U.S. Environmental Protection Agency, Region 10 Library, 1200 6th Avenue, OMP–104, Seattle, Washington;
U.S. Fish and Wildlife Service Library, 1011 East Tudor Road, Anchorage, Alaska;
University of Alaska Anchorage, Consortium Library, 3211 Providence Drive, Anchorage, Alaska;
University of Alaska Fairbanks, Elmer E. Rasmuson Library, Government Documents, 310 Tanana Drive, Fairbanks, Alaska;
University of Alaska Fairbanks, Geophysical Institute, Government Documents, Fairbanks, Alaska;
University of Alaska Fairbanks, Institute of Arctic Biology, 311 Irving Building, Fairbanks, Alaska;
University of Alaska, Southeast, 11120 Glacier Highway, Juneau, Alaska;
Valdez Consortium Library, 200 Fairbanks Street, Valdez, Alaska;
Z.J. Loussac Library, 3600 Denali Street, Anchorage, Alaska.

Public Hearings: Public hearings will be held to receive comments on the draft EIS. The hearings will provide us with additional information that will help in evaluating the potential effects of the proposed leasing program. Hearings will be held in Anchorage, Seldovia, Homer, and Kenai/Soldotna, and by telephone on the following dates and times:

Anchorage, Alaska—January 16, 2003, Minerals Management Service, Conference Room, 949 East 36th Avenue, 3rd Floor, 4 p.m. to 6:30 p.m.;
Seldovia, Alaska—January 21, 2003, Seldovia Community Center Multi-Purpose Room, 260 Seldovia Street, 7 p.m. to 9 p.m.;
Homer, Alaska—January 23, 2003, Homer City Council Chambers, 491 East Pioneer Way, 7 p.m. to 9 p.m.;
Soldonta/Kenai, Alaska—January 24, 2003, Merit Inn Banquet Room, South Willow Street, 7 p.m. to 9 p.m.
By telephone—January 28, 2003, 4:30 p.m. to 6:30 p.m., toll free 1–800–764–2627.

Village residents who are not able to attend one of the four on-site public meetings are especially encouraged to submit comments by telephone.

If you wish to testify at a hearing, you may register prior to the hearing to schedule a preferred time by contacting the Alaska OCS Region at the above address or Dr. James Lima at (907) 271–6690 or toll free 1–800–764–2627 not later than 5 days prior to the hearing date. Every effort will be made to accommodate individuals who have not pre-registered to testify. Time limitations may make it necessary to limit the length of oral statements to 10 minutes. You may supplement an oral statement with a more complete written statement and submit it to a hearing official at the hearing or by mail until February 11, 2003. Each hearing will recess when all speakers have had an opportunity to testify. If after the recess, no additional speakers appear, we will adjourn the hearing. Written statements submitted at a hearing will be considered part of the hearing record. If you are unable to attend the hearing, or if you prefer, you may submit written statements at the address below.

Written Comments: The MMS requests interested parties to submit their written comments on this draft EIS to the Regional Director, Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska 99509–4663 or by electronic mail to *AKEIS@MMS.GOV*. Our practice is to make comments, including names and home addresses of respondents available for public review. An individual commenter may ask that we withhold their name, home address, or both from the public record, and we will honor such a request to the extent allowable by law. If you submit comments and wish us to withhold such information, you must state so prominently at the beginning of your submission. We will not consider anonymous comments, and we will make available for inspection in their entirety all comments submitted by organizations or businesses or by individuals identifying themselves as representatives or organizations or businesses. The comment period ends on February 11, 2003.

Dated: November 6, 2002.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

Approved: November 12, 2002.

Willie R. Taylor,

Director, Office of Environmental, Policy and Compliance.

[FR Doc. 02–31185 Filed 12–10–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub.L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee (the AMWG), a technical work group (the TWG), a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

Date and Location: The Glen Canyon Dam Technical Work Group will conduct the following conference call:

December 20, 2002. The conference call will begin at 8:00 AM and conclude at 9:00 AM (Mountain time).

Agenda: The purpose of the conference call is to poll the members on two specific motions:

(1) Recommend to the AMWG the specific line item details of the FY 2004 budget, and

(2) Recommend to the AMWG the non-native fish control report prepared by the Non-Native Fish Control Ad Hoc Group.

If there are any members of the public who would like to provide written comments for the TWG to consider, they should provide those to Randall Peterson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1147; telephone (801) 524–3758; faxogram (801) 524–3858; e-mail at *rpeterson@uc.usbr.gov* at least five (5) days prior to the conference call. All comments received will be provided to the TWG members. Copies of the budget and non-native fish documents are available at the following Web site: *http://www.uc.usbr.gov/amp/twg/02dec20/mtgt_3_00.html*.

To register for the conference call, please contact Linda Whetton at (801) 524–3880 at least two (2) days prior to the call. You will be given the phone number and password at that time.

FOR FURTHER INFORMATION CONTACT: Randall Peterson, telephone (801) 524–3758; faxogram (801) 524–3858; or via e-mail at *rpeterson@uc.usbr.gov*.

Dated: November 25, 2002.

Randall V. Peterson,

Manager, Adaptive Management and Environmental Resources Division, Upper Colorado Regional Office.

[FR Doc. 02–31170 Filed 12–10–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of *De Minimis* Consent Decrees Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on November 26, 2002, two proposed *de minimis* consent decrees ("consent decrees") in *United States* v. *Abb, Inc., et al.*, Civil Action No. AMD02CV3858 were lodged with the United States District Court for the District of Maryland. One is a global *de minimis* consent decree for all settlors except Northrup Grumman Corporation ("global *de minimis* consent decree"). The other is the consent decree concluded with Northrup Grumman Corporation.

In this action the United States sought cost recovery for costs incurred in connection with the Spectron, Inc. Superfund Site, located near Elkton, Maryland (the "Site"). Under the terms of the consent decrees, the proposed settling parties, 477 potentially responsible parties and 15 federal agencies, would pay approximately $2.68 million to EPA to cover past and future response costs. All of the settling defendants contributed minor amounts of waste containing hazardous substances to the Site. Each party's payment to EPA consists of its proportional share of EPA's past costs ($1,108,922) and estimated future costs ($16,880,301), with a 100% premium on the estimated future costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* Ev. *Abb, Inc., et al*, Civil Action No. AMD02CV3858, D.J. Ref. 90–11–2–482.

The consent decrees may be examined at the Office of the United States Attorney, 101 West Lombard Street, Baltimore, Maryland 21201, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103–2029. A copy of either consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy of either the global *de minimis* consent decree or the Northrup Grumman consent decree, minus appendices, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to the U.S. Treasury. The appendices to both consent decrees are identical. In requesting the appendices, please enclose a check in the amount of $14.25 (25 cents per page reproduction cost).

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–31245 Filed 12–10–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA")

Under 28 CFR 50.7, the United States hereby give notice that on November 14, 2002, a proposed Consent Decree ("Decree") in *United States of America* v. *Kennecott Holdings Corporation, (formerly Kennecott Corporation) and Kennecott Utah Copper Corporation*, Civil Action No. 2:02–CV–1228 (DAK) was lodged with the United States District Court for the District of Utah, Central Division.

In this action the United States sought to resolve claims against Kennecott under sections 106 and 107 of CERCLA concerning mining-related surface contamination of soils and sediments in three operable units ("OUs") of the "Kennecott South Zone Site" located in the southwest portion of Salt Lake County, Utah. The Decree requires Kennecott to perform certain operation and maintenance activities concerning two of the OUs, and to reimburse EPA $307,545.64.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should

be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Kennecott Holdings Corp. et al.*, D.J. Ref. 90–11–2–07195/1.

The Decree may be examined at the Office of the United States Attorney, 185 South State Street, Suite 400, Salt Lake City, Utah 84111, and at U.S. EPA Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation no. (202) 514–1457. In requesting a complete copy of the decree with exhibits, please enclose a check in the amount of $17.00 (68 pages at 25 cents per page reproduction cost) or for a copy of the decree only, please enclose a check in the amount of $7.00 (28 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–31246 Filed 12–10–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

In accordance with the Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Trident Seafoods Corporation*, Civil Action No. A02–281 CV (RRB), was lodged with the United States District Court for the District of Alaska on November 13, 2002.

This Consent Decree resolves claims brought by the United States against Trident Seafoods Corporation ("Trident") for its unauthorized and illegal discharges of pollutants into Tongass Narrows and Akutan Harbor from its seafood processing facilities in Ketchikan and Akutan, Alaska, in violation of section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. 1311(a), and for violations of certain effluent limitations and other conditions established in a general National Pollutant Discharge Elimination System ("NPDES") permit issued by the EPA under section 402(a) of the CWA, 33 U.S.C. 1342(a).

The proposed Consent Decree requires Trident to (1) remediate its underwater waste piles, which result from Trident's discharges of seafood processing wastes from its Ketchikan Facility and cover more than three acres of the sea floor; (2) eliminate all of its discharges of seafood processing wastes into the Tongass Narrows for a period of three years; (3) implement improved operation and maintenance measures at its Ketchikan Facility to ensure compliance with numerous effluent limitations; (4) pay a civil penalty in the amount of $96,000.00; and (5) conduct a supplemental environmental project ("SEP") involving an economic study evaluating treatment alternatives for its seafood processing wastes.

The Department of Justice will receive written comments on the proposed Consent Decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Trident Seafoods Corporation*, D.J. Ref. 90–5–1–1–2002/1.

The Consent Decree may be examined at the Office of the United States Attorney, District of Alaska, Federal Building & United States Courthouse, 222 West 7th Avenue, Room 253, Anchorage, Alaska, 99513–7567, and at U.S. Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. When requesting a copy, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the "U.S. Treasury" in the amount of $8.25, and please reference *United States* v. *Trident Seafoods Corporation*, D.J. Ref. 90–5–1–1–2002/1.

Robert Maher,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–31244 Filed 12–10–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Minakshi B. Deshmukh, M.D., Revocation of Registration, Denial of Application

On July 11, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Minakshi B. Deshmukh, M.D. (Dr. Deshmukh) of Midland, Michigan, notifying her of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration, BD4361692 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for registration pursuant to 21 U.S.C. 823(f). The Order to Show cause alleged that Dr. Deshmukh was not authorized to handle controlled substances in the States of Michigan (where she has applied for a new DEA registration) or Ohio (the state in which she is currently registered). The Order to Show Cause also notified Dr. Deshmukh that should no request for a hearing be filed within 30 days, her hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Deshmukh at a location in Midland, Michigan, and DEA received a signed receipt indicating that it was received on July 17, 2002. DEA has not received a request for hearing or any other reply from Dr. Deshmukh or anyone purporting to represent her in this matter.

Therefore, the Deputy Administrator, finding that (1) 30 days have passed since receipt of the Order to Show Cause, and (2) no request for a hearing have been received, concludes that Dr. Deshmukh is deemed to have waived her hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Deshmukh currently holds DEA Certificate of Registration BD4361692, as a practitioner. Her current registered location is in Oregon, Ohio and that registration expires on June 30, 2004. Only June 5, 2001, Dr. Deshmukh submitted an application for a new DEA Certificate of Registration as a practitioner at a location in Midland, Michigan.

A review of the investigative file reveals that on June 5, 2001, the Michigan Board of Medicine (Michigan Board) entered an Order of Summary Suspension of Dr. Deshmukh's license to practice medicine in that state. Following the issuance of the above Order, and effective March 20, 2002, Mr. Deshmukh and the Michigan Board entered into a Consent Order. The terms of the Consent Order included the six-month suspension of Dr. Deshmukh's license to practice medicine, and as a condition of reinstatement, her agreement to submit to a psychological and psychiatric examination, as well as a neurological evaluation.

The investigative file also reveals that in response to the Michigan Board's June 2001 Order of Summary Suspension, and effective August 8, 2001, Dr. Deshmukh and the Ohio Medical Board entered into a Consent Agreement. Among the terms agreed to by the parties was the indefinite suspension of Dr. Deshmukh's medical license in that state.

There is no evidence in the record that Dr. Deshmukh's licenses to practice medicine in Michigan and Ohio have been reinstated. Therefore, the Deputy Administrator finds that since Dr. Deshmukh is not currently authorized to practice medicine in either jurisdiction, it is reasonable to infer that she is not authorized to handle controlled substances in those states.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Joseph Thomas Allevi M.D., 67 FR 35581 (2002); Carla Johnson, M.D., 66 FR 52939 (2001); Graham Travers Schuler, M.D., 65 FR 50570 (2000); Dominick A. Ricci, M.D., 58 FR 51104 (1993), Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that Dr. Deshmukh is not licensed to handle controlled substances in Michigan and Ohio, the states in which she seeks registration and is currently registered with DEA, respectively. Therefore, she is not entitled to a DEA registration in those states.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BD4361692, issued to Minakshi B. Deshumukh, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that Dr. Deshmukh's pending application for DEA registration dated June 5, 2001, is denied. This order is effective January 23.

Dated: November 20, 2002.

John B. Brown, III

Deputy Administrator.

[FR Doc. 02–31208 Filed 12–10–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

K-Nine Detectives; Denial of Application

On July 16, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to K-Nine Detectives (Respondent), proposing to deny its application, executed on February 14, 2000, for DEA Certificate of Registration as a researcher. The application was submitted on behalf the Respondent by its owner, Shane Kessler (Mr. Kessler). The Order to Show Cause alleged that granting the Respondent's application would be inconsistent with the public interest as that term is used in 21 U.S.C 823(f).

The Order to Show Cause was delivered by certified mail on July 23, 2001, and the Respondent timely requested a hearing. However, after the matter was docketed before Administrative Law Judge Mary Ellen Bittner, and the Government submitted its prehearing statement, the Respondent withdrew its request for hearing. Accordingly, Judge Bittner terminated all proceedings before her and the matter was subsequently transmitted to the Deputy Administrator for Final Agency Decision.

In light of the withdrawal of its request for hearing, the Deputy Administrator finds that the Respondent has waived its hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Mr. Kessler submitted a DEA registration application seeking to register K-Nine Detectives at his home address in Tigard, Oregon. The Respondent sought authorization to handle controlled substances in Schedules I through V as a researcher. Included among the Schedule I controlled substances the Respondent sought to handle were heroin and marijuana. The Respondent also requested authorization to handle Schedule II controlled substances, cocaine, opium, powdered opium and methamphetamine.

Upon submission of Respondent's application, Mr. Kessler informed the DEA field office in Portland, Oregon that he planned to hire himself and his dogs to perform drug searches as schools, factories, and other private premises. DEA learned that Mr. Kessler had no previous experience with training dogs for purposes of drug detection.

In light of his lack of experience in drug-detection, a DEA diversion investigator urged Mr. Kessler to contact local law enforcement authorities to discuss his planned business activities. The investigator also requested that Mr. Kessler determine whether there was a need for such services in his community as well as in other parts of Oregon. DEA subsequently learned from the Tigard Chief of Police and the Sheriff of Washington County (of which the city of Tigard is a part) that both sought to dissuade Mr. Kessler from his planned business venture because there was adequate coverage by law enforcement canine drug teams in the area.

Mr. Kessler also submitted with his registration application the first of three research protocols. In the original protocol, Mr. Kessler reported that he would have on hand up to five lbs. each of heroin, marijuana, cocaine, opium, methamphetamine, and crack cocaine. In a subsequent revised protocol sent to DEA, Mr. Kessler then reduced the drug quantities to ½ lb. of marijuana and ¼ lb. of the remaining substances. In the third protocol, Mr. Kessler again revised the quantities of controlled substances that he would have on hand. On all three protocols, Mr. Kessler stated that his canines would search for drugs and explosives, even though he previously reported that his dogs were trained to detect only drugs and not explosives. In addition, while the Respondent's DEA registration application sought authorization to handle controlled substances in Schedule I through V, the research protocols provided by the Respondent only made mention of drugs in Schedules I and II.

DEA obtained additional information from the Washington County Sheriff's Department and the Drugs and Vice Division of the Portland Police Bureau (which both handle drug-detecting dogs) regarding the need for certifications for drug detecting dogs. DEA was informed that for purposes of court testimony, the handler of a drug-detecting dog would have to show that the dog had passed, at minimum, an annual certification. However, the Oregon Police Canine Association, the primary certifying organization for drug-detecting dogs, does not provide certifications for non-law enforcement dog handlers. The Deputy Administrator finds that the Respondent is not affiliated with any law enforcement entities.

During a regulatory inspection of its proposed registered location on April 24, 2001, DEA learned that the

Respondent does not have any customers for which it will perform searches with dogs. Mr. Kessler also stated that he had not spoken to any business owners about hiring his company to perform drug-detection services. However, he informed DEA investigations that he had spoken to the principal and vice-principal of Century High School in Hillsboro, Oregon about hiring his company to perform drug searches of lockers and the school's personnel seemed receptive to the proposal. Mr. Kessler further informed DEA investigators that he had also approached the vice-principals of Tigard and Beaverton High School about performing drug detection services at their institutions.

Despite Mr. Kessler's representations, DEA investigators subsequently learned from the principal of Century High that the governing board for the entire Hillsboro school district decided against general searches through any of the district's schools through the use of a drug-detecting dog. The principal stated that if circumstances warranted a search, they would utilize the services of drug dogs trained by the Washington County Sheriff's Department. The principal added that this arrangement would not cost the school any additional funds. DEA investigators also learned that Mr. Kessler had never approached the vice-principal of Century High School regarding the use of drug searching dogs.

The Deputy Administrator finds that a DEA investigator also contacted officials from Tigard and Beaverton High Schools. Both schools reported that they had not been approached by Mr. Kessler regarding the use of drug detection dogs. In addition, both institutions had contingency plans in place for drug detection that relied upon the services of city and county law enforcement authorities.

The Deputy Administrator also finds that a DEA investigator consulted with several law enforcement officers with experience in conducting drug searches with canines. One of the persons interviewed was a detective for the Gresham (Oregon) Police Department who was also a Task Force Officer (TFO) for DEA's Airport Task Force and a former President and "Master Trainer" of the Oregon Police Canine Association. Upon his review of the quantities of controlled substances the Respondent proposed for use in training, the officer found that there was no rationale for possessing more than 50 grams total of any drug for on-going dog training purposes. The officer concluded that the quantities outlined in the Respondent's Research Protocols far exceeded those required to conduct drug-detection training with canines.

The Deputy Administrator also finds that DEA investigators interviewed individuals from the private sector involved in dog training for drug-detection purposes. The general response from those entities was that there is no demand in the private sector for drug-detection services involving schools and businesses.

The Deputy Administrator also finds that DEA investigators also consulted with the Chief Deputy of the Washington County Sheriff's Office regarding the Respondent's proposed registration with DEA. The Chief Deputy expressed concerns about Respondent's plan to possess controlled substances and conduct training at specified locations such as schools and businesses. Among his concerns was that the Respondent's registered location would be within a few hundred yards of a middle school. The Chief Deputy expressed further concern that introduction of controlled substances in close proximity to a school would pose a health and safety threat to schoolchildren. Finally, the Washington County Sheriff's Office further informed DEA of information received that the District Attorney of Washington County would not prosecute any case where controlled substances had been seized as a result of a search conducted by the Respondent.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

It is clear that granting the Respondent's application for DEA Certificate of Registration would be inconsistent with the public interest. The Respondent has requested authorization to handle controlled substances in Schedules I through V although its research protocols only reference drugs in Schedules I and II. The Deputy Administrator finds that the drugs outlined in the protocols are in quantities far in excess of what is required to conduct research involving canines.

The Deputy Administrator finds that the Respondent seeks to engage in an activity that is not needed in the area in which it seeks registration. The Deputy Administrator also finds that the Washington County Sheriff's Department, the Drugs and Vice Division of the Portland Police Bureau, and other local law enforcement entities have narcotics detection canines of sufficient numbers to service the needs of the law enforcement community, businesses and private citizens. DEA has previously found such factor relevant in denying an application for registration as a researcher. See, *e.g.*, Albanoski, Broughton & Associates International, 57 FR 4646 (1992); K–9 Drug Detection Services of Florida, Inc., 56 FR 5238 (1991).

DEA has also found that grounds exist to deny an application for registration as a researcher where, as in this matter, the applicant lacks relevant experience in training canines for drug detection purposes. Angelos Michalatos d/b/a/ Contraband Searches and Investigation, 54 FR 48161 (1989).

No evidence has been submitted on behalf of the applicant. Therefore, the Deputy Administrator concludes that the Respondent has failed to demonstrate a need for, or the ability to perform, the activity for which it sought registration to handle controlled substances. Based on the above, the Deputy Administrator concludes that the Respondent's registration would be inconsistent with the public interest and therefore, its application for registration must be denied.

Accordingly, the deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application for DEA Certificate of Registration as a researcher submitted by Shane Kessler on behalf of K-Nine Detectives be, and it hereby is, denied. This order is effective January 10, 2003.

Dated: November 20, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–31209 Filed 12–10–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Xtreme Enterprises, Inc.: Denial of Request for Registration To Handle List I Chemicals

I. Background

On December 15, 2000, Xtreme Enterprises, Inc., (Respondent) applied to be registered with the Drug Enforcement Administration (DEA) as a distributor of the list I chemical ephedrine. After an investigation by DEA investigators, on April 6, 2001, the Deputy Assistant Administrator, Office of Diversion Control, issued an Order to Show Cause why DEA should not deny Respondent's application. On May 2, 2001, in response to the OSC, Rhonda J. Bryngelson, the owner of Respondent, requested and administrative hearing.

The requested hearing was held in Milwaukee, Wisconsin on November 7, 2001, before Administrative Law Judge Mary Ellen Bittner. At the hearing, each party called witnesses to testify and introduced documentary evidence. After the hearing, each party submitted Proposed Findings of Fact, Conclusions of Law and Argument. On April 3, 2002, the Administrative Law Judge issued her Recommended Rulings, Findings of Fact, Conclusions of Law and Decision, recommending that the Deputy Administrator grant Respondent's application for registration. Neither party filed exceptions to the Administrative Law Judge's Findings.

On May 7, 2002, the Administrative Law Judge certified and transmitted the record to the Deputy Administrator of DEA. The record included the Recommended Rulings, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, the findings of fact and conclusions of law proposed by all parties, all of the exhibits and affidavits, and the transcript of the hearing sessions.

II. Final Order

The Deputy Administrator does not adopt the Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge. The Deputy Administrator has carefully reviewed the entire record in this matter, as defined above, and hereby issues this final rule and final order prescribed by 21 CFR 1316.67 and 21 CFR 1304.46, based upon the following findings of fact and conclusions.

At the hearing, John N. Uncapher, then chief of the Domestic Chemical Control Unit at DEA, credibly testified that the primary objective of his unit is to reduce or curtail the diversion of listed chemicals and other clandestine lab supplies, register applicants if their registration is consistent with the public interest and stop imports of listed chemicals where there is reason to believe that the imports may be diverted to the unlawful manufacture of controlled substances. After the enactment of the Chemical Diversion and Trafficking Act in 1988 (CDTA), the law imposed reporting, record keeping and import/export notification requirements for regulated transactions in controlled chemicals. The law only applied to bulk ephedrine, however. The law excepted single-entity over the counter (OTC) ephedrine products.

Mr. Uncapher also testified that ephedrine has a therapeutic use in both OTC and legend drug products. Ephedrine is lawfully marketed under the Federal Food, Drug and Cosmetic act for OTC use as a bronchodilator used in the treatment of asthma. Ephedrine is also available OTC in combination with other active ingredients. As a legend drug (*i.e.* dispensed pursuant to a physician's order or prescription,) ephedrine is used in injectable form in hospitals as part of an anethesiology kit. Ephedrine has the beneficial effect of increasing low pressure very rapidly in the event of hypotensive crisis.

By the late 1980's traffickers and clandestine lab operators discovered the ease with which ephedrine could be purchased in large quantities and converted to methamphetamine. In 1994, however, the Domestic Chemical Diversion Control Act of 1993 (DCDCA) removed the record keeping and reporting exemption for single entity ephedrine and required registration of distributors, importers and exporters of all ephedrine products and other list I chemicals.

The passage of the DCDCA led to the increased diversion of pseudoephedrine tablets for the illicit production of methamphetamine. This led to the enactment of the Comprehensive Methamphetamine Control Act of 1006 (MCA), which expanded regulatory control of lawfully marketed drug products containing ephedrine, pseudoephedrine, and phenypropanolamine.

Mr. Uncapher also testified that he had reviewed the file concerning Respondent's application. The file revealed that Respondent's owner informed DEA that the Respondent would distribute ephedrine products to entities that are considered part of the "non-traditional market" (*i.e.*, gas stations and convenience stores). Mr. Uncapher also testified that one of Respondent's proposed suppliers of ephedrine is Proactive Labs, Inc., a DEA registered distributor of list I chemicals located in Austell, Georgia. On November 9, 1999 and again on January 24, 2001, Proactive Labs was the recipient of warning letters from DEA informing the company that list I chemicals supplied by the firm had been associated with the illicit production of methamphetamine in various parts of the United States. Mr. Uncapher concluded that Respondent's ephedrine products will likely be diverted to illicit use, and the Respondent would therefore become a major source of listed chemicals for illicit traffickers of methamphetamine.

Guy J. Hargreaves testified by written declaration that he is a Special Agent at DEA and has had considerable experience in the investigation of clandestine methamphetamine laboratories. He routinely conducts nationwide methamphetamine and clandestine laboratory safety presentations to civil groups, anti-drug coalitions, and law enforcement groups on safety awareness, chemical hazards, and the latest intelligence in clandestine laboratory investigations. Mr. Hargreaves testified that until the early 1990's, the methamphetamine trade was fragmented into small organizations dominated by outlaw motorcycle gangs. Afterwards, organized methamphetamine traffickers from Mexico began to monopolize the production and delivery of methamphetamine to make an inexpensive and highly abusable product. An expanded population of methamphetamine abusers quickly realized the potential for easily producing methamphetamine for personal or local use by using the ephedrine/pseudoephedrine reduction technique. As a result, the proliferation of smaller laboratories has reached epidemic proportions, on both the west coast and in several Midwestern states. S/A Hargreaves further testified that most drugs in illicit traffic are products of illicit processing or synthesis. In the methamphetamine trade, chemicals are often accumulated and processed by cooks in small scale production labs or by organized crime groups which operate much larger scale clandestine laboratories.

Mr. Hargreaves also testified that clandestine laboratory operators employ a variety of methods to conceal from law enforcement their purchases of

chemicals and equipment. One common technique is to use unwitting individuals or runners to purchase the chemicals or equipment needed for the laboratory. Mr. Hargreaves also explained the four methods most commonly used in the illicit manufacture of methamphetamine. All four of the techniques utilize 1-ephedrine or d-pseudoephedrine as the precursor chemical. Mr Hargreaves further testified that the number of clandestine laboratory seizures has seen a spiraling increase in recent years. DEA participation in methamphetamine lab seizures has increased from 263 in 1994 to more than 2000 in 1999. He also discussed the hazards to DEA officials in dismantling of clandestine laboratories and great expense to DEA in disposing of the hazardous materials often found there. Interviews that Mr. Hargreaves has conducted with numerous narcotics officers across the nation indicate that the vast majority of these laboratories utilized pseudoephedrine and/or ephedrine from tablets and pills, not bulk powder sources.

Douglas A. Snyder, Drug Science officer within the Drug and Chemical Evaluation Section at DEA, credibly testified by declaration that there are 35 chemicals that are regulated under the Controlled Substance Act's chemical control provisions. The major part of DEA's regulatory concern is with the listed chemicals ephedrine, psuedoephedrine and phenylpropanolamine. All three have therapeutic uses in both over the counter and legend drug products. Methamphetamine also has therapeutic uses, but it also has a high abuse potential. Dr. Snyder further testified that the production of methamphetamine from ephedrine or pseudoephedrine tablets can be accomplished via a simple one step reaction and can be accomplished with little or no chemistry expertise. The controlled substances produced from these chemicals, methamphetamine and amphetamine, have a high abuse potential. The public health consequences of the manufacture, trafficking and abuse of these substances are well know and documented.

Nancy Coffey, a staff coordinator in DEA's Office of Diversion Control, credibly testified by declaration that recent studies show that illicit manufacturers of methamphetamine have returned to the use of ephedrine in the manufacturing process. This probably has occurred as a result of DEA's concentration on the diversion of pseudoephedrine. DEA enforcement efforts are designed to combat the distribution by non-traditional establishments of list I chemical products, commonly referred to as "gray market" products. The distribution chain for the gray market products most commonly consists of small retail establishments, including, but not limited to, liquor stores, head shops, mini-marts, beauty parlors, convenience stores and video rental stores that purchase and sell ephedrine and pseudoephedrine over-the-counter products in quantities that far exceed what would be necessary to meet legitimate demand. Ms. Coffey concluded that such products will likely be diverted to illicit use, and Respondent could therefore become a major source of listed chemicals for illicit traffickers of methamphetamine.

Mark J. Rubbins testified by declaration that he is a Staff Coordinator in the Domestic Control Unit of DEA. He explained that DEA distinguishes the distribution practices of what is referred to as the "traditional" market versus the "non-traditional" market. Traditional outlets are typically large chain grocery stores such as Giant, Safeway and Food Lion, or nationally recognized pharmacy chains like Rite Aid, Eckerts and CVS. The traditional products are also sold in larger convenience stores such as 7–11 and Dairy Mart, as well as large retail outlets such as Walmart and K-Mart. Mr. Rubbins further testified that in response to DEA enforcement efforts, more and more traditional firms have discontinued their marketing of 60 mg. pseudoephedrine and similar OTC medications in bottle sizes with a single-active ingredient. The traditional manufacturers have also begun packaging their OTC products in small quantities (*i.e.*, blister packs,) and have maintained a 30 milligram strength for pseudoephedrine products. While even smaller blister packs are increasingly diverted to illicit uses, they are not as attractive to traffickers as OTC products packaged in large bottle sizes, with a single active ingredient. Mr. Rubbins also testified that Respondent would be part of what DEA considers the non-traditional market, in that it is a retail distributor that specializes in the sale of sundry items, not OTC pharmaceutical products. Based upon his review of Respondent's file, it appears that some of Respondent's customers have already requested that the firm carry 25 milligram tablets in 60 count bottles. Mr. Rubbins found this factor significant in that the customers at issue requested the larger packaging that is not normally seen in traditional retail establishments. This led Mr. Rubbins to the conclusion that Respondent plans to market its products to the non-traditional market, and would therefore become a major source of listed chemicals for illicit traffickers of methamphetamine.

Rhonda Bryngelson, Respondent's owner, testified credibly on behalf of the Respondent. She is high school educated, and has not taken any business courses. She has no prior experience handling list I chemicals. Mrs. Bryngelson testified further that she is the sole owner of the Respondent and has been in business since January 2001. Her business is primarily engaged in the sale of various novelty items. She previously worked for her brother-in-law's company Quality Snacks, where she delivered beef jerky for the company. Quality Snacks did not sell ephedrine products. While working for her brother-in-law, Mrs. Bryngelson also made deliveries for Quality Snack's wholesaler, Mid-America. Although she made deliveries of ephedrine products on behalf of Mid-America, she did not know whether Mid-America or her brother-in-law were licensed to sell these products. Mrs. Bryngelson testified that when she made the above deliveries of listed chemicals, they were usually in 50-count boxes, in packets of six. She also delivered, however, "a blue or green" 60-count bottle, but she was unaware of the product names.

The government also called James Barbe as a witness. At the time of his testimony, Mr. Barbe was a Diversion Investigator with DEA's Milwaukee office. Mr. Barbe credibly testified that Mrs. Bryngelson submitted on behalf of her company an application for DEA registration as a distributor of the list I chemical ephedrine.[1] The Respondent's listed address on the application was in Merton, Wisconsin. The application was received by the Milwaukee Resident Office. D/I Barbe further testified that he was assigned to investigate the Respondent's application. The Respondent's proposed registered address is located in a residential location owned by Mrs. Bryngelson's sister, Theresa, and her husband Bruce Johnson. Mrs. Bryngelson stores her novelty products in a basement at that location. The residence is located in a rural community, and Mrs. Bryngelson does not reside at that location.

In an interview conducted of Mrs. Bryngelson by D/I Barbe, Mrs. Bryngelson stated that:

- She had no experience with over the counter medications or listed chemicals.

[1] At the hearing, Mrs. Bryngelson stated that she believed that she had applied for registration to sell both ephedrine and pseudoephedrine.

- Some of her customers had requested that the Respondent supply listed chemical products in addition to her normal product line, because they wanted her to be their sole source.
- When asked which listed chemical products she wished to distribute, she replied that she wanted to sell those in "the green and blue bottle" and "Green E" from Proactive Labs.
- She estimated that Respondent's percentage of sales of listed chemicals would be five percent of its total sales.
- In response to questions regarding the security for Respondent's proposed location, she said that she would use a locked door.
- She informed D/I Barbe that the proposed location is in a secluded 360 acres in the middle of a cornfield, and that the location never had break-ins or the like.

After a visit to Respondents location, D/I Barbe testified that he did not recall seeing a bolt lock on the door leading to the basement area. Mrs. Bryngelson testified that no alarm system or any electronic security system had been set up at the proposed registered location. She also testified that she was willing to have as much security installed as DEA required.

D/I Barbe also testified that he reviewed "suspicious order" procedures with Mrs. Bryngelson. He also discussed matters involving background checks on customers. D/I Barbe testified that Mrs. Bryngelson was unaware at that time of how to address suspicious orders. Mrs. Bryngelson also testified that some of her accounts had threatened to discontinue their business with Respondent unless she was able to supply listed chemical products. However, she was only able to identify three of the twenty-customers disclosed to DEA that had actually threatened such action. She also testified that she had recently added 80 additional customers, and that only "a couple" had been interested in obtaining ephedrine.

D/I Barbe also testified that he had asked Mrs. Bryngelson how many bottles she planned on selling, and she replied that it would be approximately twelve bottles per week Mrs. Bryngelson testified at the hearing, however, that this estimate was "a wild guess."

D/I Barbe further testified that he had obtained a list of Respondent's customers, and he verified the identity of these customers through telephone calls and visits. He found that most of Respondent's accounts were gas stations. D/I Barbe further testified that Respondent's customers were part of what DEA considers the non-traditional market, in that they were retail distributors that specialized in the sale of sundry items, not OTC pharmaceutical products. The customers were comprised primarily of gas stations and convenience stores. D/I Barbe also testified that some of Respondent's customers had already requested that Respondent carry 25 milligram tablets in 60 count bottles of ephedrine. D/I Barbe explained that these requests were significant in that the customers at issue had already begun requesting list I chemicals from the Respondent, a specific type of product, in packaging that is not normally seen in traditional retail establishments.

The Government also presented the transcribed testimony of Jonathan Robbin, of Ricercar, Incorporated, in Bethesda, Maryland. Mr. Robbin is a consultant in marketing information systems, databases and in the building of analytical models to assist businesses in decision making. Mr. Robbin provided the transcribed testimony on behalf of the Government in a previous DEA proceeding involving Branex, Incorporated. He was offered as an expert in statistical analysis, specifically in multi-varient statistics and the processing of population and economic census data. Mr. Robbin was also offered as an expert in quantitative marketing research specifically with respect to retail marketing and targeting. Mr. Robbin testified that according to the economic census, the normal or traditional place where consumers would purchase non-prescription drugs would be in drug stores, supermarkets and discount merchandise houses. Mr. Robbin testified that the expected sale of these products at convenience stores and convenience stores attached to gas stations were not significant enough to warrant inclusion in the most recent census data form for cold, sinus and allergy products. Mr. Robbin continued that such products represented "a very small part of [the] total line of goods" for convenience stores, whether or not they sell gasoline.

Based upon the above, the Deputy Administrator will now consider the factors used by DEA to determine the public interest. Under 21 U.S.C. 823(h), the Attorney General shall register an applicant to distribute a list I chemical unless the Attorney General determines that the registration of the applicant is inconsistent the public interest.[2] In considering the public interest, the Deputy Administrator shall consider:

1. Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;
2. Compliance by the applicant with applicable Federal, State, and local laws;
3. Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;
4. Any past experience of the applicant in the manufacture and distribution of chemicals and
5. Such other factors as are relevant to and consistent with the public health and safety.

Consideration of the first factor weighs against Respondent. Although Mrs. Bryngelson agreed to provide increased security at the residence where list I chemicals will be stored, she appears to have only a rudimentary knowledge of what would constitute a suspicious order.

With regard to the second factor, there was no evidence that the Respondent has failed to comply with Federal, State or local law. As for the third factor, there is no evidence that Mr. Bryngelson has any prior convictions related to controlled substances or chemicals. Accordingly, the second and third factors weigh in Respondent's favor. Addressing the fourth factor, Mrs. Bryngelson has no experience in the manufacture or distribution of chemicals, which weighs against Respondent.

With regard to the fifth factor, many considerations weigh heavily against registering Respondent as a distributor of list I chemicals. Virtually all of Respondent's's customers, consisting of gas stations and convenience stores, are considered part of the gray market, in which large amounts of listed chemicals are diverted to the illicit manufacture of amphetamine and methamphetamine. Some of these customers have already requested 60 count bottles of ephedrine, the favored packaging of illicit methamphetamine manufacturers. Mrs. Bryngelson also appears to have little idea of the extent of her market for listed chemicals. She testified that she expected to sell approximately 12 bottles of ephedrine each week, but she admitted that this was a "wild guess."

The Deputy Administrator finds that Mrs. Bryngelson's lack of a criminal record, compliance with the law and willingness to upgrade her security system are far outweighed by her lack of experience with selling list I chemicals and the fact that she intends to sell ephedrine almost exclusively in the gray market. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the

[2] This function has been redelegated to the Deputy Administrator of DEA.

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authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100 and 0.104, hereby finds that registration of Respondent as a distributor of list I chemicals is not in the public interest. The Deputy Administrator hereby orders that the application for a DEA certificate of registration and any requests for renewal or modification submitted by Respondent Xtreme Enterprises be, and hereby are, denied.

Dated: December 2, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–31210 Filed 12–10–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; ERISA Summary Annual Report

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments on the proposed extension of the ERISA Summary Annual Report requirement.

A copy of the information collection request (ICR) can be obtained by contacting the individual shown in the Addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before February 10, 2003.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Section 104(b)(3) of ERISA and regulations published at 29 CFR 2520.104b-10 require, with certain exceptions, that administrators of employee benefit plans furnish participants and beneficiaries annually with material that fairly summarizes the information included in the plan's latest annual report. The regulation prescribes the format for the summary annual report (SAR), and requires that the SAR be provided within nine months after the close of the plan year.

The SAR is required to be provided to plan participants and beneficiaries to ensure that they are informed concerning the financial operation and condition of their plans. These disclosures to plan participants also assist the Department in its enforcement responsibilities by providing participants with sufficient information to exercise their rights under ERISA.

II. Review Focus

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Office of Management and Budget's (OMB) approval of this ICR will expire on February 28, 2003. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Title: ERISA Summary Annual Report.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0040.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 815,114.

Responses: 304,196,000.

Estimated Total Burden Hours: 325,240.

Estimated Total Burden Cost (Operating and Maintenance): $142,448,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 4, 2002.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 02–31217 Filed 12–10–02; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation; Crystal River Unit 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) part 55, section 55.59(c) for Facility Operating License No. DPR–72, issued to Florida Power Corporation (the licensee), for operation of Crystal River Unit 3 (CR–3), located in Citrus County, Florida. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would constitute a one-time exemption to allow the licensed operator requalification examinations for CR–3 to be rescheduled. The requested exemption would extend the completion date for the examinations from December 31, 2002, to February 28, 2003.

The proposed action is in accordance with the licensee's application for exemption dated November 18, 2002.

The Need for the Proposed Action

The proposed action would extend the current CR–3 requalification program from December 31, 2002, to February 28, 2003. The proposed action is needed to allow for minimal interruption of the licensed personnel operating the plant during a potential labor action. Specifically, should such a labor action occur, the licensee has stated that CR–3 will be operated by personnel with current NRC licenses not affected by the labor action. The licensee deems it prudent to allow the licensed personnel operating the plant to remain fully available to stand watch on operating crews and not be distracted by completing the licensed operator requalification program by December 31, 2002.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there are no significant environmental impacts associated with the extension of the operator requalification examinations from December 31, 2002, to February 28, 2002.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for CR–3.

Agencies and Persons Consulted

On November 22, 2002, the staff consulted with the Florida State official, William Passetti of the Florida Department of Health Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 18, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 4th day of December 2002.

For the Nuclear Regulatory Commission.

Allen G. Howe,

Chief, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–31215 Filed 12–10–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 139th meeting on December 17–19, 2002, at 11545 Rockville Pike, Rockville, Maryland, Room T–2B3.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, December 17, 2002

A. *10:30–10:40 a.m.: Opening Statement* (Open)—The Chairman will open the meeting with brief opening remarks, outline the topics to be discussed, and indicate several items of interest.

B. *10:40–12:15 p.m.: Staff Analyses for Understanding Repository Performance* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff on its analyses development on the use of risk information for the proposed Yucca Mountain repository.

C. *1:30–3:30 p.m.: Preparation of ACNW Reports* (Open)—The Committee will discuss proposed reports on the following topics:

- Staff Analyses for Understanding Repository Performance
- Conclusions Regarding the Safety of Spent Nuclear Fuel Transportation
- Trip Report: October Visit to Swedish Waste Management Facilities andParticipation in Berlin Quadripartite Meeting

D. *3:45–6 p.m.: Preparation for Meeting with the NRC Commissioners* (Open)—The next meeting with the NRC Commissioners is scheduled to be held at 9:30 a.m. in the Commissioners' Conference Room, One White Flint North on December 18, 2002. The Committee will review its proposed presentations.

Wednesday, December 18, 2002

E. *8:30–8:35 a.m.: Opening Remarks by the ACNW Chairman* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

F. *8:35–9:10 a.m.: Discussion of Topics for Meeting with the NRC Commissioners* (Open)—The Committee will discuss topics scheduled for the ACNW meeting with the NRC Commissioners at 9:30 a.m.

G. *9:30–11:30 a.m.: Meeting with the NRC Commissioners* (Open)—The Committee will meet with the NRC Commissioners in the Commissioners' Conference Room, One White Flint North to discuss the following:

- HLW Program Risk Insights Initiative
- Yucca Mountain Review Plan
- Spent Fuel Transportation
- Igneous Activity at Yucca Mountain
- Container Life and Source Term KTI

H. *1–3:30 p.m.: NRC Nuclear Waste Safety Research and Technical Assistance Programs* (Open)—The

Committee will hear from representatives of the NRC staff and the Center for Nuclear Waste Regulatory Analyses on the NRC's Waste Safety Technical Assistance and Research programs.

I. *3:45–6 p.m.: Preparation of ACNW Reports* (Open)—The Committee will discuss proposed reports listed under Item C.

Thursday, December 19, 2002

J. *8–8:05 a.m.: Opening Remarks by the ACNW Chairman* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

K. *8:05–10:45 a.m.: ACNW Action Plan* (Open)—The Committee members will discuss the ACNW 2002/2003 Action Plan and outline plans for sessions to assess Committee performance and update its priorities.

L. *10:45–11 a.m.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 11, 2002 (67 FR 63459). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 8 a.m. and 4 p.m. EST, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW meeting schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. EST at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

The ACNW meeting dates for Calendar Year 2003 are provided below:

ACNW meeting No.	Meeting dates
	January 2003—no meeting.
140	February 18–20, 2003.
141	March 25–27, 2003.
142	April 22–24, 2003.
143	May 28–30, 2003.
144	June 24–26, 2003.
145	July 29–31, 2003.
	August 2003—no meeting.
146	September 16–18, 2003 (Nevada).
147	October 21–23, 2003.
148	November 18–20, 2003.
	December 2003—no meeting.

Dated: December 5, 2002.

J. Samuel Walker,

Acting Secretary of the Commission.

[FR Doc. 02–31213 Filed 12–10–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46946; File No. SR–NASD–2002–172]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Delay the Imposition of Distributor Fees for SuperMontage View Suite Data Feeds Under NASD Rule 7010(q)

December 4, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 29, 2002, the National Association of Securities Dealers, Inc. ("NASD") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to delay charging the distributor fees for any SuperMontage View Suite data feeds under NASD Rule 7010(q) until January 1, 2003.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq believes that the new SuperMontage data feeds approved by the Commission vastly expand the ability of market participants to see and show trading interest.[3] Those data feeds are about to be complete: SuperMontage was launched on October 14, 2002, with five stocks, and by December 2, 2002, all Nasdaq stocks will be traded on SuperMontage.

Under Nasdaq's recently approved NASD Rule 7010(q),[4] Nasdaq planned to begin charging both distributors and subscribers as of the day all stocks will be traded—December 2, 2002. Nasdaq represents, however, that its distributors, particularly its small distributors, have recently advised Nasdaq that they need more time to educate and sign up a sufficient number of subscribers to support the fixed fee distributors pay. Nasdaq believes that it should promote informed decision making by investors; thus, Nasdaq supports the distributors request for more time.

Nasdaq proposes to delay charging any of the distributor fees in NASD Rule 7010(q) until January 1, 2003. This proposed "fee holiday" would relieve all persons subject to the distributor fee from payment until January 1, 2003. Nasdaq believes that this one-month delay should provide its distributors and Nasdaq the opportunity to better inform subscribers about the data packages available through the View Suite products. During this time, Nasdaq expects subscribers to indicate their interest by signing up for the data packages and paying the subscriber charge. Nasdaq expects that by the end of the fee holiday, the necessary subscriber base will exist for distributors to be confident they can incur the fixed distributor fee.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[6] including Section 15A(b)(6) of the Act,[7] which requires, among other things, that a registered national securities association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Nasdaq believes that the proposed rule change protects investors and the public interest in that it allows investors to become more informed regarding the new data feeds and allows distributors a brief necessary period to build a stable subscriber base.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b-4(f)(6)[6] thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such short time as designated by the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the five-day pre-filing notice and the 30-day operative delay. The Commission believes that waiving the five-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the implementation of Nasdaq's fee holiday proposal would help distributors and Nasdaq to focus immediately on educating investors and potential subscribers. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–172 and should be submitted by January 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31198 Filed 12–10–02; 8:45 am]

BILLING CODE 8010–01–P

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) and Securities Exchange Act Release No. 45790 (April 19, 2002), 67 FR 21007 (April 29, 2002).

[4] *See* Securities Exchange Act Release No. 46843 (November 18, 2002), 67 FR 70471 (November 22, 2002).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

[6] 15 U.S.C. 78o–3

[7] 15 U.S.C. 78o–3(6).

[7] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46949; File Nos. SR–NASD–2002–161; SR–NYSE–2002–60]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. and Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Establishing Effective Dates for Certain Provisions of NASD Rule 2711, Research Analysts and Research Reports and Certain Provisions of NYSE Rule 472, Communications With the Public

December 4, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 5, 2002, the National Association of Securities Dealers, Inc. ("NASD"), and on November 8, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), filed with the Securities and Exchange Commission ("SEC" or "Commission") proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the respective self-regulatory organizations ("SROs"). On November 26, 2002, NASD filed amendment No. 1 to the proposed rule change.[3] The SROs have designated the proposed rule changes as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule series under paragraph (f)(1) of Rule 19b–4 under the Act,[4] which renders the proposals effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule changes, as amended, from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Change

A. NASD

NASD is filing with the Commission a proposed rule change to establish May 5, 2003 as the effective date for NASD Rules 2711(b) and (c) for members that over the previous three years, on average, have participated in 10 or fewer investment banking transactions as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions. NASD Rules 2711(b) and (c), when effective, will prohibit a research analyst from being subject to the supervision or control of any employee of a member's investment banking department, and will further require legal or compliance personnel to intermediate certain communications between the research department and either the investment banking department or the company that is the subject of a research report or recommendation ("subject company").

B. NYSE

The NYSE is filing with the SEC a proposed rule change that would change the effective date for certain provisions of Rule 472 ("Communications with the Public") for certain members and member organizations.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In their filings with the Commission, NASD and the NYSE included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. NASD and the NYSE have prepared summaries, set forth in Sections A, B, and C below.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. NASD's Purpose

NASD is filing the proposed rule change to establish May 5, 2003 as the effective date for NASD Rules 2711(b) and (c) for members that over the previous three years, on average per year, have participated in 10 or fewer investment banking transactions as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions. Pursuant to the SEC's approval of SR–NASD–2002–87,[5] NASD Rules 2711(b) and (c) as applied to this class of members otherwise would go into effect on November 6, 2002. NASD seeks to delay implementation of these provisions for this limited set of members to allow NASD to continue to explore with the SEC the appropriate treatment of small firms under NASD Rule 2711 and the recently-enacted Sarbanes-Oxley law ("Sarbanes-Oxley"). Smaller members often are the sole or primary source of underwriting and research coverage for some smaller companies; therefore, NASD continues to consider ways to preserve this important role served by these firms, to the extent consistent with the requirements and objectives of Sarbanes-Oxley and NASD Rule 2711.

On May 10, 2002, the Commission approved new NASD Rule 2711, which governs conflicts of interest when research analysts recommend equity securities in research reports and during public appearances.[6] The Commission approved a staggered implementation period for the rule. Most provisions of the rule became effective on July 9, 2002, including those that restrict supervision and control of research analysts by the investment banking department. The "gatekeeper" provisions, described below, became effective September 9, 2002. The remaining provisions of the Rule become effective on November 6, 2002, including two provisions that were delayed pursuant to approval of SR–NASD–2002–87: (1) Provisions that require disclosure of investment banking compensation received by foreign affiliates and (2) prohibitions against trading against a member's recommendation for those members that have instituted a ban on ownership of securities covered by an analyst and that have instituted a specific, periodic divestiture schedule.

NASD Rule 2711(b) contains provisions that generally restrict the relationship between the research and investment banking departments, including "gatekeeper" provisions that require a legal or compliance person to intermediate certain communications between the research and investment banking departments. NASD Rule 2711(b)(1) prohibits a research analyst from being under the control or supervision of any employee of the investment banking department. NASD Rule 2711(b)(2) prohibits employees in the investment banking department from reviewing or approving any research reports prior to publication. NASD Rule 2711(b)(3) creates an exception to (b)(2) to allow investment banking personnel to review a research report prior to publication to verify the factual information contained therein and to screen for potential conflicts of interest. Any permissible written communications must be made through an authorized legal or compliance official or copied to such official. Oral communications must be made through, or in the presence of, an authorized legal or compliance official and must be documented.

Similarly, NASD Rule 2711(c) restricts communications between a member and the subject company of a research report, except that a member may submit sections of the research report to the company to verify factual accuracy and may notify the subject company of a ratings change after the "close of trading" on the business day preceding the announcement of the ratings change. Submissions to the subject company may not include the research summary, the rating or the price target, and a complete draft of the report must be provided beforehand to legal or compliance personnel. Finally, any change to a rating or price target after review by the subject company must first receive written authorization from legal or compliance.

As the Commission noted in its approval order of NASD Rule 2711, several commenters argued that the gatekeeper provisions would impose significant costs, especially for smaller firms that would have to hire additional personnel. Commenters also noted that personnel often wear multiple hats in smaller firms, thereby causing a greater burden to comply with the restriction on supervision and control by investment banking personnel over research analysts. These comments raised the prospect that the rules might force some firms out of business or reduce important sources of capital and research coverage for smaller companies and companies of regional or local interest.

NASD shares the concern raised by these commenters. To that end, NASD has been exploring with the SEC possible exemptions or accommodations that can be made while preserving the purposes of the rule. In SR–NASD–2002–87, NASD sought comment on whether the parameters set forth above to be eligible for delayed implementation of Rules 2711(b) and (c) should be made permanent or whether another approach should be considered. Moreover, in July 2002, NASD issued *Notice to Members* 02–44, which similarly sought comment on whether certain members should be exempted from certain provisions of the Rule and what criteria should be employed to fashion such an exemption. NASD received 10 comments in response to the *Notice to Members*.[7] Generally, the comments emphasized the financial and administrative burdens imposed by NASD Rule 2711 to implement the gatekeeper provisions and to structure firms so that research personnel are not subject to supervision by investment banking personnel. Commenters argued that the conflicts addressed by NASD Rule 2711 are less pronounced with respect to smaller firms and that the burdens of compliance could force firms to discontinue their research business.

According to NASD, the enactment of Sarbanes-Oxley has further complicated the picture with respect to small firms. NASD believes that, while the provisions of Sarbanes-Oxley related to analyst conflicts closely parallel NASD Rule 2711 in many respects, they also require the SEC or self-regulatory organizations, such as NASD and NYSE, to promulgate additional—and sometimes more burdensome—rules on firms to further limit the influence of investment banking on research and increase analyst accountability. Notably, Sarbanes-Oxley makes no explicit exception for small firms. NASD is currently assessing, with the SEC and NYSE, the implications of Sarbanes-Oxley generally and its impact on small firms, specifically.

Meanwhile, compliance with NASD Rules 2711(b) and (c) continues to pose financial and administrative challenges for certain smaller firms. As such, NASD believes it appropriate to extend the effective date of those provisions for the limited class of members cited above, so that NASD may fully explore with the SEC the treatment of small firms that is consistent with the mandates of Sarbanes-Oxley, the purposes of NASD Rule 2711 and the best interests of the markets and the investing public. Therefore, NASD proposes to delay the effective date of NASD Rules 2711(b) and (c) until May 5, 2003 for those members that over the previous three years, on average per year, have participated in 10 or fewer investment banking transactions or underwritings as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions.

As a further condition for the delayed implementation date, those firms that meet the eligibility requirements outlined above would be required to maintain records of communications that would otherwise be subject to the gatekeeper provisions of Rules 2711(b) and (c).

2. NASD's Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that this proposed rule change would reduce or expose conflicts of interest and thereby significantly curtail the potential for fraudulent and manipulative acts. NASD further believes that the proposed rule change will provide investors with better and more reliable information with which to make investment decisions.

3. NYSE's Purpose

The Exchange is filing the proposed rule change to establish May 5, 2003, as the effective date for: NYSE Rules 472(b)(1), (2) and (3), subject to certain conditions, for members and member organizations that over the previous three years, on average, have participated in ten or fewer underwritings as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions.

On May 10, 2002, the Commission approved amendments to NYSE Rules 351 ("Reporting Requirements") and 472, which place prohibitions and/or restrictions on Investment Banking Department, Research Department and Subject Company relationships and communications and impose new disclosure requirements on members and member organizations and their associated persons.[9] At the same time, the Commission also approved a

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Philip Shaikun, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated November 26, 2002 ("Amendment No. 1"). In Amendment No. 1, NASD established a further condition for delaying the implementation of NASD Rules 2711(b) and (c) until May 5, 2003 for members that over the previous three years, on average per year, have participated in 10 or fewer investment banking transactions or underwritings as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions. Amendment No. 1 requires that those firms that meet the eligibility requirements outlined above must maintain records of communications that would otherwise be subject to the gatekeeper provisions of Rules 2711(b) and (c). In Amendment No. 1, NASD also corrected a technical error that appeared in its original filing.

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Securities Exchange Act Release No. 46165 (July 3, 2002), 67 FR 46555 (July 15, 2002).

[6] *See* Securities Exchange Act Release No. 45908, 67 FR 34968 (May 16, 2002).

[7] Letter from David Amster, CRT Capital Group, dated August 19, 2002; Letter from Peter V.B. Unger, Fulbright & Jaworski, LLP, dated August 30, 2002; Letter from First Analysis Securities Corp., dated August 30, 2002; Letter from Scott Cleland and John Eade, Investorside Research Association, dated August 29, 2002; Letter from W. Gray Medlin, The Carson Medlin Co., dated August 29, 2002; Letter from Cathryn Streeter, BioScience Securities, Inc., dated August 28, 2002; E-mail from James Nelson, Minnesota Valley Investments, dated July 31, 2002; E-mail from Joe B. Kercheville, Kercheville & Company, dated August 28, 2002; E-mail from Ray Chin, DBS Vickers Securities (USA) inc., dated July 29, 2002; Letter from Stuart J. Kaswell, Securities Industry Association, dated August 30, 2002.

[8] 15 U.S.C. 78o–3(b)(6).

[9] *See* Securities Exchange Act Release No. 45908, 67 FR 34968 (May 16, 2002).

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staggered implementation period for the Rules. Most provisions of the Rules became effective on July 9, 2002, including those that restrict supervision and control of associated persons by the investment banking department and those that require disclosure of investment banking compensation received from a subject company. The "gatekeeper" provisions, described below, became effective September 9, 2002.

On July 9, 2002, the Exchange filed, for immediate effectiveness, SR–NYSE–2002–23 [10] that extended the effective date of September 9, 2002 for certain provisions of NYSE Rule 472. Specifically, November 6, 2002 was established as the effective date for NYSE Rules 472(b)(1), (2) and (3) ("Gatekeeper Provisions") for members or member organizations that over the previous three years, on average, have participated in 10 or fewer investment banking transactions as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions.

Small Firm Relief

NYSE Rule 472 contains provisions that generally restrict the relationship between the research and investment banking departments, including "gatekeeper" provisions that require a legal or compliance person to intermediate certain communications between the research and investment banking departments. NYSE Rule 472(b)(1) prohibits an associated person (also referred to throughout this filing as a "research analyst") from being under the control or supervision of any employee of the investment banking department.

NYSE Rule 472(b)(1) also prohibits the investment banking department from reviewing or approving any research reports prior to distribution. NYSE Rule 472(b)(2) creates an exception to the prohibition of (b)(1) to allow investment banking personnel to review a research report prior to publication to verify the factual information contained therein and to screen for potential conflicts of interest. Any permissible written communications must be made through an authorized legal or compliance official or copied to such official. Oral communications must be made through, or in the presence of, an authorized legal or compliance official and must be documented.

Similarly, NYSE Rule 472(b)(3) restricts communications between a member or member organization and the subject company of a research report, except that a member or member organization may submit sections of the research report to the subject company to verify factual accuracy and may notify the subject company of a ratings change after the "close of trading" on the business day preceding the announcement of the ratings change. Submissions to the subject company may not include the research summary, the rating or the price target, and a complete draft of the research report must be provided beforehand to legal or compliance personnel. Finally, any change to a rating or price target after review by the subject company must first receive written authorization from a legal or compliance official.

As the Commission noted in its approval order,[11] several commenters argued that the "gatekeeper" provisions would impose significant costs, especially for smaller firms that may have to hire additional personnel to comply with the requirements. Commenters also noted that personnel often wear multiple hats in smaller firms, thereby causing a greater burden to comply with the restriction on supervision and control by investment banking personnel over research analysts. These comments raised the prospect that the Rules might force some firms out of the investment banking or research business and/or reduce important sources of capital and research coverage for smaller companies.

In order to provide time to review those issues, the Exchange is proposing to delay implementation of NYSE Rules 472(b)(1), (2), and (3) until May 5, 2003 for members and member organizations that over the previous three years, on average, have participated in 10 or fewer underwritings as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions.

Those members or member organizations that meet the eligibility requirements outlined above for the delayed implementation date, would be required to disclose in research reports that they are delaying implementation of this Rule provision until May 5, 2003. Further, they would also be required to maintain records of communications that would otherwise be subject to the gatekeeper provisions of NYSE Rules 472(b)(2)(i) and (ii).

The Exchange believes it appropriate to extend until May 5, 2003, the effectiveness of this provision for small firms that meet the requirements described above. The Exchange believes that for these members and member organizations, provided they comply with the conditions described, the temporary relief from these provisions will not adversely impact the spirit or intent of the Rule initiative.

4. NYSE's Statutory Basis

The Exchange believes that the statutory basis for the proposed rule change is Section 6(b)(5) of the Exchange Act [12] which requires, among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and in general to protect investors and the public interests.

B. Self-Regulatory Organizations' Statement on Burden on Competition

NASD and the NYSE do not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule

NASD and the NYSE have neither solicited nor received written comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule changes have been filed by NASD and NYSE as stated policies, practices, or interpretations with respect to the meaning, administration, or enforcement of an existing rule series under Rule 19b–4(f)(1) under the Act.[13] Consequently, they have become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(1) thereunder.

At any time within 60 days of this filing, the Commission may summarily abrogate these proposals if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[10] *See* Securities Exchange Act Release No. 46182 (July 11, 2002), 67 FR 47013 (July 17, 2002).

[11] *See* Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 240.19b–4(f)(1).

[14] For SR–NASD–2002–161, the 60-day period would run from the date of filing of Amendment No. 1.

including whether the proposed rule changes, as amended, are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal offices of the NASD and NYSE. All submissions should refer to the file numbers SR–NASD–2002–161 and SR–NYSE–2002–60 and should be submitted by January 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31199 Filed 12–10–02; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9T42]

State of New Jersey (and Contiguous Counties in New York)

Bergen County and the contiguous counties of Essex, Hudson and Passaic in the State of New Jersey; and Bronx, New York, Rockland and Westchester Counties in the State of New York constitute an economic injury disaster loan area as a result of a fire that occurred on October 1, 2002 in Fair Lawn, New Jersey. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on September 4, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South 3rd Floor, Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 3.5 percent.

[15] 17 CFR 200.30–3(a)(12).

The numbers assigned for economic injury for this disaster are 9T4200 for New Jersey; and 9T4300 for New York.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: December 4, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–31190 Filed 12–10–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub-No. 398X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—In San Bernardino County, CA

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1.92-mile line of railroad between milepost 9.48 and milepost 11.40 in Redlands, San Bernardino County, CA. The line traverses United States Postal Service Zip Codes 92373 and 92374.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 11, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 20, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 2, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 17, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by December 12, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "*http://WWW.STB.DOT.GOV.*"

Decided: December 4, 2002.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–31197 Filed 12–10–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 198X)]

Union Pacific Railroad Company—Abandonment Exemption—in Alameda County, CA

On November 22; 2002, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 1.40-mile line of railroad, known as the Ninth Street Electric Industrial Lead, from milepost 0.00 (south of Powell Street) in Emeryville to milepost 1.40 at the end of the line (north of Heinz Avenue) in Berkeley, Alameda County, CA. The line traverses U.S. Postal Service Zip Codes 94608 and 94710, and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 12, 2003.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than January 2, 2003. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 198X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Mack H. Shumate, Jr., 101 North Wacker Drive, Room 1920, Chicago, IL 60606. Replies to UP's petition are due on or before January 2, 2003.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [Federal Information Relay Service (FIRS) for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at "*http://WWW.STB.DOT.GOV.*"

Decided: December 4, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–31196 Filed 12–10–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Interim Guidance Concerning New Statutory Disclosure and Mandatory Availability Requirements of the Terrorism Risk Insurance Act of 2002

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice.

SUMMARY: This notice provides interim guidance to insurers concerning certain statutory disclosure and mandatory availability requirements contained in the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297). In addition, this notice provides interim guidance to insurers concerning the types of commercial property and casualty insurance covered by the Act and concerning the term "direct earned premium" as used in the Act.

DATES: This notice is effective immediately and will remain in effect until superceded by regulations or by subsequent notice.

FOR FURTHER INFORMATION CONTACT: Mario Ugoletti, Deputy Director, Office of Financial Institutions and GSE Policy 202–622–2730; Martha Ellett, Attorney-Advisor, Office of Assistant General Counsel (Banking and Finance) 202–622–0480.

SUPPLEMENTARY INFORMATION: This notice provides interim guidance to assist insurers in meeting certain requirements of the Terrorism Risk Insurance Act of 2002 pending the issuance of regulations by the Department of the Treasury. The interim guidance contained in this notice may be relied upon by insurers in complying with these statutory requirements prior to the issuance of regulations, but is not the exclusive means of compliance. This interim guidance remains in effect until superceded by regulations or subsequent notice.

I. Background

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (the Act). The Act became effective immediately. It establishes a temporary federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism, as defined in the Act. The Terrorism Risk Insurance Program is administered and implemented by the Department of the Treasury (Treasury) and will sunset on December 31, 2005.

II. Interim Guidance

Treasury will be issuing regulations to administer and implement the Program. This notice is issued to assist insurers in complying with certain statutory requirements prior to the issuance of regulations. This notice contains interim guidance on disclosures required by sections 103 and 105 of the Act and concerning compliance with the mandatory availability requirements in section 103(c) of the Act. In addition, this notice provides interim guidance concerning commercial lines of property and casualty insurance covered by section 102(12) and concerning the statutory term "direct earned premium." Treasury also may issue additional interim guidance as necessary prior to the issuance of regulations.

A. Disclosures to Policyholders

What Disclosures Are Required by the Act in Section 103(b)(2)?

The Act requires that disclosures be made to policyholders as part of the conditions for Federal payments under the Terrorism Risk Insurance Program. Section 103(b)(2) requires an insurer to provide clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Terrorism Risk Insurance Program and the Federal share of compensation for insured losses under the Program.

- For existing (in-force) policies issued before the date of enactment (November 26, 2002), the Act requires that disclosure to the policyholder be made not later than 90 days after November 26, 2002;
- For policies issued within 90 days of November 26, 2002, the Act requires the disclosure to the policyholder be made at the time of offer, purchase and renewal of the policy; and
- For policies issued more than 90 days after November 26, 2002, the Act requires disclosure on a separate line item in the policy at the time of offer, purchase and renewal of the policy.

What Disclosures (or Statements) Are Required by the Reinstatement Provisions in Section 105(c) of the Act?

Section 105(c) of the Act allows an insurer to reinstate preexisting exclusions of coverage for an act of terrorism in a contract for property and casualty insurance that is in force on the date of enactment, notwithstanding the general nullification and general preemption of terrorism exclusions in force on the date of enactment of the Act in section 105(a) and (b), but only if (1) the insurer has received a written statement from the insured that affirmatively authorizes such reinstatement or (2) if (A) the insured fails to pay any increased premium charged by the insurer for providing such terrorism coverage and (B) the insurer provided notice, at least 30 days before any such reinstatement of (i) the increased premium for such terrorism coverage and (ii) the rights of the insured with respect to such coverage, including the date upon which the exclusion would be reinstated if no payment is received.

How May an Insurer Comply With the Disclosure Requirements of Section 103(b) (2)(A) if There Is No Change in the Premium?

Prior to the issuance of regulations or further guidance by Treasury, any insurer that uses the Model Form No. 2 attached to the model bulletin on Terrorism Risk Insurance dated November 26, 2002, of the National Association of Insurance Commissioners (NAIC), and posted on the NAIC Web site at *http://www.naic.org/pressroom/releases/disclose_two_final.pdf*, as a policyholder disclosure form for in-force policies, if the insurer makes no change in the existing premium, will be deemed by Treasury to be in compliance with section 103(b)(2)(A).

How May an Insurer Comply With the Disclosure Requirements of Section 103(b)(2)(B) for Policies Issued Within 90 Days of Enactment?

Either NAIC Model Disclosure Form No. 1 which is posted on the NAIC Web site at *http://www.naic.org/pressroom/releases/disclose_one_final.pdf*, or NAIC Model Disclosure Form No. 2 which is posted on the NAIC Web site at *http://www.naic.org/pressroom/releases/disclose_two_final.pdf*, may be modified as appropriate by insurers for the particular policy and used for policies issued within 90 days of enactment. Prior to the issuance of regulations or further guidance by Treasury, any insurer that modifies as appropriate and uses either of these model disclosure forms as its disclosure for policies issued within 90 days of enactment of the Act will be deemed by Treasury to be in compliance with the section 103(b)(2)(B) disclosure requirements.

May an Insurer Use the Same Form To Comply With the Reinstatement Requirements of Section 105(c) and the Disclosure Requirements of Section 103(b)(2)(A) if Applicable?

Yes. Prior to the issuance of regulations or further guidance by Treasury, if applicable to an existing policyholder, *e.g.* for in-force policies where there is a change of premium, Treasury will deem disclosure by an insurer to an existing policyholder using NAIC Model Disclosure Form 1, posted on the NAIC Web site at *http://www.naic.org/pressroom/releases/disclose_one_final.pdf*, to comply with the disclosure requirements of section 105(c) of the Act, as well as with the requirements of section 103(b)(2)(A).

Is This Interim Guidance the Exclusive Means by Which an Insurer May Comply With Disclosure or Reinstatement Requirements of the Act?

No. This interim guidance concerning certain disclosures as specified above may be relied upon by insurers as a safe harbor in complying with these requirements of the Act until regulations or further guidance is issued by Treasury, but it is not the exclusive means by which an insurer may comply with these requirements of the Act.

How May an Insurer Comply With the "Separate Line Item" Requirement in Section 103(b)(2)(C) for Policies Issued More Than 90 Days After the Date of Enactment?

Treasury will be issuing additional interim guidance as appropriate, and will be issuing regulations concerning other disclosure requirements, such as the separate line item disclosure requirement.

May an Insurer Comply With the Disclosure Requirements of the Act Through a Broker or Other Agent?

Yes. In many situations, commercial property and casualty insurance is procured for policyholders through an insurance broker or other intermediary acting as agent for the insurer. Prior to the issuance of regulations or further guidance by Treasury, if the normal form of communication between an insurer and the policyholder is through an insurance broker (or other intermediary acting as agent for the insurer), an insurer may provide the Act's required disclosures through such agents. While this interim guidance permits an insurer to provide disclosures to its policyholders through an insurance broker or other agent, the responsibility for ensuring that such disclosures are provided to policyholders still rests with the insurer.

B. Mandatory Availability

What Does "Make Available" Mean?

From enactment through the end of Program Year 2 (December 31, 2004), section 103(c)(1) of the Act requires that an insurer:

(A) Shall make available, in all of its property and casualty insurance policies, coverage for insured losses; and

(B) Shall make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

Until Treasury issues regulations or provides further guidance on the requirements of section 103(c), "make available" means an insurer is required to offer coverage to a policyholder for acts of terrorism (as defined in the Act) that does not differ materially from the terms, amounts, and other coverage limitations offered to the policyholder for losses from events other than acts of terrorism. For example, compliance with "make available" means that insurers offer coverage for acts of

terrorism (as defined in the Act) at deductibles and limits that do not differ materially from the coverage provided for other perils.

For the purposes of this interim guidance, the "make available" requirement does not mean that insurers must make available coverage for all types of risks. For example, if an insurer does not cover all types of risks, either because the insurer is outside of direct State regulatory oversight or a State permits exclusions for certain types of losses (*e.g.*, nuclear, biological, or chemical events) an insurer would not be required to make such coverage available.

This interim guidance is consistent with the Act's stated purpose of ensuring widespread availability of terrorism risk insurance while preserving State insurance regulation. During the course of implementing the Program, Treasury will be monitoring the pricing and availability of terrorism risk insurance coverage as part of the Act's requirements that Treasury study the effectiveness of the Program (section 108(d)(1)) and compile information on the premium rates of insurers (section 104(f)).

How May Insurers Comply With the "Make Available" Provision?

For purposes of this interim guidance, an insurer that makes a formal offer of coverage to a policyholder that does not differ materially from the terms (other than price), amounts and other coverage limitations offered to the policyholder will be deemed in compliance with the "make available" requirement.

May an Insurer Offer Coverage for Acts of Terrorism (as Defined in the Act) That Differs Materially From the Terms, Amounts, and Other Coverage Limitations for Losses Arising From Events Other Than Acts of Terrorism?

For the purposes of this interim guidance, an insurer may offer coverage that is on different terms, amounts, or coverage limitations as long as the insurer satisfies the "make available" requirements (as described in the previous question and answer) and as long as such offers do not violate any State laws or regulations. For example, in a State that requires the provision of full coverage without any exclusion, the Act would not preempt that State's preexisting requirements. In contrast, if a State permits certain exclusions or allows for other limitations, or if an insurance policy is not directly governed by State requirements, then after first satisfying the "make available" requirement (as described in the previous question and answer), an insurer could offer limited coverage or coverage with exclusions.

C. Property and Casualty Insurance and Direct Earned Premium

What Types of Property and Casualty Insurance Are Covered by the Program?

Section 102(12) of the Act defines property and casualty insurance to mean commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, and surety insurance.

As interim guidance prior to the issuance of regulations, Treasury deems the following lines of insurance from the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14) to be included in the Program: Line 1—Fire; Line 2.1—Allied Lines; Line 3—Farmowners Multiple Peril; Line 5.1—Commercial Multiple Peril (non-liability portion); Line 5.2—Commercial Multiple Peril (liability portion); Line 8—Ocean Marine; Line 9—Inland Marine; Line 16—Workers' Compensation; Line 17—Other Liability; Line 18—Products Liability; Line 19.3—Commercial Auto No-Fault (personal injury protection); Line 19.4—Other Commercial Auto Liability; Line 21.2—Commercial Auto Physical Damage; Line 22—Aircraft (all perils); Line 24—Surety; Line 26—Burglary and Theft; and Line 27—Boiler and Machinery.

Section 102(12) (B) of the Act lists types of insurance coverage that are excluded from the Program. These are private mortgage or title insurance; financial guaranty insurance issued by monoline financial guaranty insurance corporations; insurance for medical malpractice; health or life insurance, including group life insurance; flood insurance provided under the National Flood Insurance Act of 1968; and reinsurance or retrocessional reinsurance.

In addition, the Act excludes, "Federal crop insurance issued or reinsured under the Federal Crop Insurance Act, or any other type of crop or livestock insurance that is privately issued or reinsured." As interim guidance to facilitate implementation, Treasury deems the phrase "any other type of crop or livestock insurance that is privately issued or reinsured" to mean Multiple Peril Crop insurance reported on Line 2.2 of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14).

How Is Direct Earned Premium Measured?

The Act contains the term "direct earned premium." The Act specifies an insurer's direct earned premiums over a given calendar year as the deductible base for purposes of calculating an "insurer deductible" as defined in section 102(7) of the Act. For purposes of interim guidance to enable insurers that report to the NAIC to calculate their "insurer deductible" and to facilitate immediate implementation of the Program, the term "direct earned premium" means the direct premiums earned as reported to the NAIC in the Annual Statement in column 2 of the Exhibit of Premiums and Losses (commonly known as Statutory Page 14). Treasury will be issuing additional guidance for entities covered under the Program that do not report to the NAIC.

Dated: December 3, 2002.

Peter R. Fisher,

Under Secretary of the Treasury.

[FR Doc. 02–31256 Filed 12–10–02; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Study of the Impact of Threat of Terrorism on Availability of Group Life Insurance

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice; request for comments.

SUMMARY: Recently enacted terrorism insurance legislation requires the Secretary of the Treasury (Treasury) to study, on an expedited basis, whether adequate and affordable catastrophe reinsurance for acts of terrorism is available to life insurers in the United States that issue group life insurance, and the extent to which the threat of terrorism is reducing the availability of group life insurance for consumers in the United States. To assist in this study, the Treasury is soliciting comments on the questions listed below.

DATES: Comments must be in writing and received by January 10, 2003.

ADDRESSES: Send comments by e-mail to *grouplifestudy@do.treas.gov*. Please include your name, affiliation, address, e-mail address, and telephone number. All submissions should be captioned "Comments on Group Life Insurance Study".

FOR FURTHER INFORMATION CONTACT: Lucy Huffman, Project Manager, Office of Microeconomic Analysis, 202–622–0198; John Worth, Acting Director, Office of Microeconomic Analysis, 202–622–2683; U.S. Treasury Department.

SUPPLEMENTARY INFORMATION: Section 103(h) of the Terrorism Risk Insurance Act of 2002 (Public Law No. 107–297)

(Act) requires the Treasury to study, on an expedited basis, whether adequate and affordable catastrophe reinsurance for acts of terrorism is available to life insurers in the United States that offer group life insurance, and the extent to which the threat of terrorism is reducing the availability of group life insurance coverage for consumers in the United States. To the extent that the Treasury determines that such coverage is not or will not be reasonably available to both such insurers and consumers, the Treasury is directed to apply, in consultation with the National Association of Insurance Commissioners, the provisions of the Act, as appropriate, to group life insurers; and provide such restrictions, limitations, or conditions with respect to any financial assistance provided that Treasury deems appropriate, based on this study.

The purpose of the Act is to establish a temporary Federal program that provides for a transparent system of shared public and private compensation for insured losses resulting from acts of terrorism, in order to protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property and casualty insurance for terrorism risk; and to allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses, while preserving state insurance regulation and consumer protections.

Treasury is soliciting comment in response to the following questions, including empirical data in support of such comments where appropriate and available.

I. The Impact of Terrorism Risk on Group Life Insurers

1.1 Who are the suppliers of the group life insurance in the U.S.; who are the buyers; and how are sellers and buyer brought together?

1.2 What is the corporate status of group life insurers? Are they generally stand-alone companies, or affiliates of other corporations? If the latter, what are the major business interests of the other corporations?

1.3 What characterizes group life insurance offerings? Please describe typical terms of coverage, offer and renewal procedures, and other relevant information.

1.4 How is group life insurance regulated in the U.S.? Are there significant differences in group life regulation among the states and, if so, what are these differences?

1.5 What are the risk exposures of customers and how are they concentrated—by locality, by type of employer, other? What is the annual premium structure for these different exposures?

1.6 What amounts of loss exposure are typically reinsured? Please describe the structure of typical reinsurance contracts, including the period of coverage and typical renewal process.

1.7 What was the amount of group life insurance losses in the terrorist attack of September 11, 2001; and how was it distributed—losses to insurers versus losses to reinsurers? How was it distributed within each group?

1.8 What was the availability and price of reinsurance in the period before and following September 11, 2001, for group life insurance? What is it today? Please be specific by type and amount of coverage available, deductible, sublimit, renewability, and other relevant characteristics.

1.9 What is the current capacity of group life insurers in the U.S. to bear terrorism risk, individually and as affiliates of other companies, taking into consideration their reinsurance situation? Please provide empirical support for responses as available and appropriate.

1.10 Are there other sources of protection for terrorism risks in group life insurance, *e.g.*, through capital markets? To what extent are these sources used currently? What are the issues associated with expanded use of these sources?

1.11 Please address and provide empirical support for whether group life insurers have reasonable access to adequate and affordable catastrophe reinsurance, and, if not, why inclusion in the Act would correct this situation. In so doing, please compare the magnitude and scope of the situation of group life insurers to the situation previous to the passage of the Act of those property and casualty insurers that are included in the Act.

II. The Impact of Terrorism Risk on Group Life Insurance Markets

2.1 Please describe in detail, current group life insurance market conditions, including availability and pricing, by type and location of employers and other purchasers.

2.2 What is the impact of terrorism risk on group life insurance availability for employees and other consumers? Please describe in as much detail as possible which employees and other consumers have been significantly affected, including availability and pricing, by type and location of employer or other purchaser of group life coverage.

2.3 What is the cost and availability of alternative sources of life insurance coverage for those employees and other consumers affected by the reduced availability and affordability of group life insurance?

2.4 Please explain and provide empirical support concerning the extent to which the threat of terrorism is reducing reasonable availability of group life insurance coverage for employees and other consumers in the U.S., and whether it would continue to be reduced if group life insurers continue to be excluded from the Program. Please compare the magnitude and scope of the impact on consumers of not including group life insurance to the impact on consumers previous to the passage of the Act of those property and casualty insurance lines covered under the Act. Please explain how inclusion would correct this situation.

III. The Potential for Inclusion in the Federal Program

3.1 Treasury presumes that, if it would be appropriate to include group life insurance under the Act, Treasury would apply the current provisions of the Act to group life insurers. If this is not the case, please discuss and provide a detailed explanation of the changes that would need to be made to implement the Program for group life insurers. Please include discussion of any operational difficulties with applying the current provisions in the Act to group life insurers, any other characteristics of group life insurance that should be considered with respect to any financial assistance if group life insurers were included under the Act, and the benefits and costs, including administrative costs, of any proposed changes to the provisions for group life insurers.

Dated: December 3, 2002.

Mark Warshawsky,

Deputy Assistant Secretary for Economic Policy, Microeconomic Analysis.

[FR Doc. 02–31211 Filed 12–10–02; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, March 25, 2003.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227, or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, March 25, 2003 from 1 pm EST to 3 pm EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11021, or post comments to the Web site: *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 27, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 02–31226 Filed 12–10–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, February 25, 2003.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227, or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, February 25, 2003 from 1 pm EST to 3 pm EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11021, or post comments to the Web site: *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 27, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 02–31227 Filed 12–10–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application For Payment of United States Savings Bonds/Notes and/or Related Checks in an Amount Not Exceeding $1,000 By The Survivor of a Deceased Owner Whose Estate is Not Being Administered.

DATES: Written comments should be received on or before February 11, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@pbd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Application For Payment of United States Savings Bonds/Notes and/or Related Checks in an Amount Not Exceeding $1,000 By The Survivor Of A Deceased Owner Whose Estate Is Not Being Administered.

OMB Number: 1535–0035.

Form Number: PD F 4881.

Abstract: The information is requested from the survivors of deceased bond owners to apply for proceeds from bonds, or related checks.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 3,965.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 991.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 4, 2002.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 02–31180 Filed 12–10–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application by Voluntary Guardian of Incapacitated Owner of United States Savings Bonds/Notes.

DATES: Written comments should be received on or before February 11, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@pbd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Application by Voluntary Guardian of Incapacitated Owner of United States Savings Bonds/Notes.

OMB Number: 1535–0036.

Form Number: PD F 2513.

Abstract: The information is requested to establish the right of a voluntary guardian to act on behalf of an incompetent bond owner.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 7,650.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 2,600.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 4, 2002.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 02–31181 Filed 12–10–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Description of United States Savings Bonds/Notes and Description of United States Savings Bonds Series HH/H.

DATES: Written comments should be received on or before February 11, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or Vicki.Thorpe@pbd.treas.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Titles: Description of United States Savings Bonds/Notes and Description of United States Savings Bonds Series HH/H.

OMB Number: 1535–0064.

Form Numbers: PD F 1980 and PD F 2490.

Abstract: The information is requested to establish the owner of savings bonds.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 19,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 1,900.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 4, 2002.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 02–31182 Filed 12–10–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

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SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application for Relief on Account of Loss, Theft, or Destruction of United States Savings and Retirement Securities and Supplemental Statement Concerning United States Securities.

DATES: Written comments should be received on or before February 11, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@pbd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Titles: Application For Relief on Account of Loss, Theft or Destruction of United States Savings and Retirement Securities and Supplemental Statement Concerning United States Securities.

OMB Number: 1535–0013.

Form Numbers: PD F 1048 and PD F 2243.

Abstract: The information is requested to issue owners substitute securities or payment in lieu of lost, stolen or destroyed securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 80,000.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 26,400.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 4, 2002.

Vicki S. Thorpe,

Manager, Graphics, Printing, and Records Branch.

[FR Doc. 02–31183 Filed 12–10–02; 8:45 am]

BILLING CODE 4810–39–P



Federal Register

Wednesday,
December 11, 2002

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1915

Fire Protection in Shipyard Employment; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

[Docket S–051]

RIN 1218–AB51

Fire Protection in Shipyard Employment

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Proposed rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is proposing fire protection standards for shipyard employment that were developed through a negotiated rulemaking process. This proposed standard is based on the recommendations of the Fire Protection in Shipyard Employment Negotiated Rulemaking Advisory Committee and is a comprehensive standard for the protection of shipyard employment workers from the hazards of fire on land side and on board vessels. The proposed standard reflects new technologies and current national consensus standards. The proposal collects all fire-related safety practices into a single subpart, which will make them more accessible and more easily understood by employers and employees. The standard will provide increased protection of shipyard employment workers from fire hazards.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or sent) by March 11, 2003.

Facsimile and electronic transmission: Your comments must be sent by March 11, 2003. (Please see the **SUPPLEMENTARY INFORMATION** provided below for additional information on submitting comments.)

ADDRESSES: Regular mail, express delivery, hand-delivery, and messenger service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. H–011G, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC, 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., e.s.t.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this notice, Docket No. H–011G, in your comments.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov*.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact Ms. Bonnie Friedman, OSHA, Office of Information and Consumer Affairs, N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999. For additional copies of this **Federal Register** notice, contact OSHA, Office of Publications, U.S. Department of Labor, Room N–3101, 200 Constitution Avenue, NW., Washington, DC, 20210; telephone (202) 693–1888. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's web page on the Internet at *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION:

Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this notice by (1) hard copy, or (2) FAX transmission (facsimile), or (3) electronically through the OSHA Webpage. Please note that you cannot attach materials, such as studies or journal articles, to electronic comments. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202)–693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service. All comments and submissions will be available for inspection and copying at the OSHA Docket Office at the address above. Comments and submissions posted on OSHA's Webpage are available at *http://www.osha.gov*. OSHA cautions you about submitting personal information such as social security numbers and birth dates. Contact the OSHA Docket Office at (202)–693–2350 for information about materials not available through the OSHA Webpage and for assistance in using the Webpage to locate docket submissions.

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I. Background

Employees in shipyard employment are subject to a high risk of injury and death from fires and explosions during ship repair, shipbuilding, shipbreaking, and related work activities as well as firefighting activities. Many of the basic tasks involved in shipyard employment (also referred to as just "shipyards" hereafter), such as welding, grinding, and cutting metal with torches, provide an ignition source for fires. There are also many combustible sources on vessels and in shipyards, including flammable fuels and cargo on vessels, wood structures, building materials, and litter. When cutting torches are used in enclosed or confined spaces, accidental oxygen-enriched atmospheres can cause normally fire resistant-materials to readily burn. When fires do occur, employees are often working in confined or enclosed spaces that may make escape difficult or impossible, and result in atmospheres of combustible gases, toxic fumes, or oxygen-depleted air.

Shipyard employees are therefore at risk from fires that can result in burns, death, explosions, toxic gases and fumes, and asphyxiation from a lack of oxygen. Based on data collected by the Bureau of Labor Statistics, there is an annual average of one fatality, 110 lost-workday "heat/burn" injuries, and more than three times that many total injuries (Ex. 15).

In addition, employees are also at special risk when fighting fires in shipyards. Fighting fires at shoreside facilities in shipyards can be similar to structural firefighting at typical industrial manufacturing facilities. The usual firefighting hazards encountered include compressed gas cylinders, flammable liquid processes and storage, high-voltage electric switches and transformers, and high-density combustible materials storage.

Structures at shipyards can range from single-story office buildings to warehouses to massive fabrication shops. Fires can also be encountered in tunnel sections, rail cars, vessel components, and similar units under construction, repair, or demolition at the shipyard site.

However, firefighting on board vessels can be considerably different from structural firefighting. When traditional structural firefighting techniques are used on vessel fires, the result can be catastrophic. The potential is much greater for serious injury to firefighting personnel when tactics do not reflect the unique nature of ship firefighting. For example, there may be little or no ability to ventilate the heat, smoke, and gases produced by a fire. Typically, in structural firefighting, immediate steps are taken to open up the structure, vertically and horizontally, to remove smoke and heat. Hose lines are then used to attack the fire. When fighting a ship fire, one of the first steps that may be taken is to shut down ventilation systems to close off the fire's progression and starve it of oxygen. Hose lines are used to cool down surrounding metal decks and bulkheads. A defensive fire-fighting option for large or intense structural fires is to "surround and drown"; that is, position hose lines outside the structure and apply voluminous amounts of water until the fire goes out. Strategic options for vessel fires are very limited and nearly always require an aggressive interior attack. Small shipyards have outside fire responders. These municipal or other fire departments may not have much experience in fighting fires in shipyards or, especially, on vessels. Proper coordination, familiarization, and training is necessary to ensure the safety of outside firefighters who respond to shipyard fires.

Vessel fires are also more complicated because, in most cases, outside firefighters seldom have the opportunity to learn the layout of the vessel. Vessels under construction or modification have constantly changing structures. Firefighters, operating under adverse conditions caused by heat and smoke, can easily become disoriented or confused. Access to the vessel may be restricted by its location, such as within a dry dock, meaning that firefighters boarding the ship will have to converge on one or two access locations. This can lead to congestion of personnel and delays in locating and extinguishing the fire. Access can also be restricted by equipment, tools, vessel components, and structures. Staging platforms, scaffolding or rigging, cranes, and even mooring lines can hamper deploying hose lines and positioning apparatus, again causing delays and confusion. Even with unrestricted access to the vessel, deploying hose lines can be time-consuming and labor intensive. To attack a fire deep within a ship, firefighting hoses may have to be stretched hundreds of feet, a task that requires time and a lot of people.

Maintaining an adequate supply of air is another tactical problem for firefighting operations on ships. Firefighters will usually be equipped with self-contained breathing apparatus (SCBA) that optimally provide a 30-minute supply, after which the compressed air bottle will have to be refilled or replaced. Ship fire-fighting operations can last many hours; firefighters have to be rotated frequently to resupply their SCBA and counteract fatigue.

Ships' fires also present a problem firefighters do not often have to think about—introducing a large amount of water into the vessel, so much so that the vessel can become unstable and possibly capsize or sink. This potential problem requires consultation with experts (such as naval architects or U.S. Coast Guard engineers) to assure vessel stability.

Radio communication is another complicating factor common to fighting ship fires. Steel bulkheads and many compartments in ships effectively block and limit radio signal transmissions. To compensate, firefighters have to relay messages from within the ship by stationing personnel with radios close enough that transmissions can be sent and received. Other alternatives include using runners or deploying hard-wire communications systems. All possible solutions to this problem involve additional personnel, delays in establishing command and control, and increase the potential for mishaps.

Fires in shipyard employment present significant, serious hazards to those who work to control them. These hazards can be found in shipbuilding, as well as in shipbreaking and ship repair. Because firefighters must function on both land side and on board vessels, they need a single set of standards and training to do so safely. Likewise, other shipyard employees move from ship to shore frequently and need a single standard and training on alarms, evacuation, and the many other response actions.

OSHA's general industry standards for fire protection are in subpart L, CFR 1910.155 through 1910.165. The application of subpart L, CFR 1910.155(b), exempts maritime employments from coverage. Subpart L addresses typical land-side fire prevention and firefighting conditions (fire extinguishers, fixed extinguishing systems, *etc.*). OSHA compliance policy, set out in OSHA Instruction STD.2 addresses typical land-side fire hazards in shipyards. Since the Agency has no specific standards that address the risks of fire on board vessels and vessel sections, OSHA has used the General Duty Clause section 5 (a)(1) of the Occupational Safety and Health Act to cite fire safety hazards on both land-side facilities and on board vessels and vessel sections (also referred to as just "vessels" hereafter). To enforce the General Duty Clause, OSHA must show the existence of a hazard, that the hazard is recognized, that the hazard is causing, or is likely to cause serious physical harm to employees, and that a feasible means exists to abate the hazard. To demonstrate industry recognition and feasible abatement measures, OSHA has relied upon standards published by the Coast Guard and other branches of the Federal Government to identify hazards and abatement steps as well as guidelines developed by professional associations such as the National Fire Protection Association and the Marine Chemists Association.

The lack of a clear OSHA standard for fire protection on vessels, and the multiplicity of guidelines and standards from other sources that potentially apply to shipyards can result in uncertainty about, and gaps in, the safety requirements for employers in the shipyard industry. The Agency has preliminarily concluded that codifying relevant issues for fire protection in shipyards into a single subpart in CFR part 1915 will substantially clarify an employer's responsibilities in protecting shipyard employees from fire hazards. The Agency believes that this, in turn, will lead to better protection for these employees.

Simply extending application of the current general industry standards to shipyards would not be appropriate. First, most of the provisions in the general industry standards have been in effect since 1980. They would need revision to take into account technological advances that could improve fire protection in shipyard employment. These advances are recognized in the proposed new subpart P. Secondly, shipyard employment encompasses many tasks and worksites that are unique to the maritime industry. Employers, labor representatives and professional and trade associations have repeatedly asked OSHA to allow all shipyard employment to be covered by a single set of standards. They point out that the

work situations found within shipyard employment have more in common with each other than with those in general industry, and that the hazards and methods of controlling the hazards are similar throughout the shipyard. Finally, they point out that the work on land and aboard the vessels is located within the same area and performed by the same workforce. Fire protection services are usually provided by the same in-yard plant or out-of-yard fire crews to all areas of shipyard employment. OSHA's Negotiated Rulemaking Advisory Committee for subpart P (hereafter "the Committee") concluded that when fire response crews find shipyard employment sites following the same standard, the crews are more effective in their fire response activities. OSHA agrees and has preliminarily concluded that a single new standard addressing fire hazards for all shipyard employment, on land and on board vessels, is reasonably necessary and appropriate to protect shipyard employees.

The Agency has also preliminarily concluded that there is a significant risk to employees of material impairment from fires, explosions, and fire-related accidents causing death, burns, and injuries related to fire and fighting fires. OSHA further concludes that the proposal's requirements for inspections before beginning hot work, fire watches, fire planning, training, and other provisions will help save lives and prevent injuries. Proposed subpart P will substantially reduce this risk of fire by recognizing and, in some cases, requiring new technology.

OSHA established the Shipyard Employment Standards Advisory Committee (SESAC) in 1990. SESAC was formed to guide OSHA in revising, consolidating, and modernizing the varying sets of rules that were being applied in the shipyard employment industry into what would ultimately become a single comprehensive set of standards for all shipyard employment. The new shipyard employment standards would apply to all shipyard employment, regardless of geographic location. In 1991 SESAC began work on standards on fire protection for all shipyard employment. The SESAC Subcommittee on Fire Protection, after reviewing pertinent federal regulations and guidelines issued by professional associations, drafted a shipyard employment fire protection standard (SESAC, Ex. 9). However, not all of its provisions were written in regulatory language and the provisions did not address all of the issues that need to be considered in an OSHA rulemaking.

The shipyard employment workgroup of the Maritime Advisory Committee on Occupational Safety and Health (MACOSH) briefly discussed fire protection and negotiated rulemaking at its September 1995 meeting in New Orleans, Louisiana. Members urged OSHA to proceed with a fire protection standard, although some members suggested the MACOSH shipyard employment workgroup take up the fire protection issues if OSHA was unable to do a fire protection negotiated rulemaking.

On June 6, 1996, OSHA announced its intent to establish a Fire Protection in Shipyard Employment Negotiated Rulemaking Advisory Committee under the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA)(61 FR 28824). The Committee would negotiate issues associated with developing a notice of proposed rulemaking to regulate fire hazards in shipyard employment. The Committee would be made up of representatives of the parties interested in, or affected by, the outcome of the proposed rule. OSHA asked interested parties to submit their nominations for membership or request representation on the Committee. The Agency planned public meetings for the Committee along the United States coastlines in an effort to provide small employers with the access they needed to participate in this rulemaking effort.

II. The Fire Protection in Shipyard Employment Negotiated Rulemaking Advisory Committee

Negotiated rulemaking is a process by which a proposed rule is developed through negotiation among a committee composed of representatives of all the interests that will be significantly affected by the rule. Negotiation allows interested parties to discuss possible approaches to various issues and arrive at jointly agreed or acceptable provisions for a standard. The negotiation process involves a mutual education of the parties on the reasons for different positions on the issues as well as on the concerns about the practical impact of various approaches.

The process is started by the Agency's identification of all interests potentially affected by the rulemaking under consideration. To help in this identification process, the Agency publishes a notice in the **Federal Register**, called "an intent to negotiate," which identifies a preliminary list of interests and requests public comment. Also included in this notice is a statement that the Agency intends to negotiate and develop a proposed rule; a description of the subject and scope of the rule to be developed and the issues to be considered; a proposed agenda and schedule for completing the work of the committee; and even a possible list of persons who may be nominated.

After receiving comment, the Agency chooses an advisory committee of those nominated to represent these various interests. Representation on the committee may be direct, that is, each member represents a specific interest, or indirect, through coalitions of parties formed for this purpose. An Agency representative is a member of the committee, representing the Federal government's own set of interests. The negotiated rulemaking advisory committee is chaired by a mediator, who facilitates the negotiation process.

Once a negotiated rulemaking committee reaches consensus on the provisions of a proposed rule, the Agency, consistent with its legal obligations, uses this as the basis of its proposed standard, which is published in the **Federal Register**. This provides the required public notice and allows for a public comment period. Other participants and other interested parties retain their rights to comment, participate in an informal hearing (if requested), and seek judicial review. OSHA anticipates, however, that the pre-proposal consensus reached by the Committee will effectively narrow the number of controversial issues in the subsequent rulemaking.

The Negotiated Rulemaking Act of 1990 (5 U.S.C. 561 *et seq.*) (NRA) allows OSHA to establish a negotiated rulemaking committee if it is determined that using the negotiated rulemaking procedure is in the public interest. As noted above, OSHA has made this determination for this rulemaking activity. Each committee member participates in resolving the interests and concerns of other members instead of leaving it up to OSHA to bridge different points of view. A key principle of negotiated rulemaking is that agreement is reached by consensus of all the interests. The NRA defines consensus as unanimous concurrence among the interests represented on a negotiated rulemaking committee, unless the committee itself unanimously agrees to use a different definition of consensus.

The Agency determined that the selection criteria listed in the NRA were met, and that there was a need to issue fire protection requirements that would apply to all shipyard employment. Finally, parties representing significant interests requested that OSHA use the negotiated rulemaking process on subpart P and acknowledged the need for a new standard.

The members of the Committee are: Chris Myskowski, U.S. Coast Guard; Paul Jensen, NIOSH; Joseph V. Daddura, Office of Maritime Standards, Occupational Safety and Health Administration; G. F. Hurley, Norfolk Naval Shipyard; Richard Duffy, International Association of Firefighters (AFL–CIO, CLC); E.P. Kaiser , South Tidewater Association of Ship Repairs, Inc.; Guy Colonna, National Fire Protection Association; Russ Sill, Portland Fire Bureau; Alton Glass, United Steel Workers of America (AFL–CIO, CLC), who was later replaced by John Molovich; George Broussard, Bollinger's Shipbuilding and Ship Repair, who was later replaced by Mark Duley, Walker Boat Yard, Inc.; Glenn Harris, Ingalls Shipbuilding; Donald Mozick, Atlantic Marine, who was later replaced by Terry Guidry, Bollinger's Shipbuilding and Ship Repair; Michael Buchet, United Brotherhood of Carpenters and Joiners of America, who was later replaced by Joseph Durst; J.D. Paulson, National Steel & Shipbuilding Co., Peter Schmidt, Office of Specialty Compliance Programs, Washington State Department of Labor and Industry.

The first meeting of the Committee was held in Portland, Oregon, on October 15, 16, and 17, 1996, and was open to the public, as were all subsequent meetings. (All minutes and documents from the Committee meetings can be found in Exs. 5–1 through 5–. Minutes were recorded by OSHA staff for the Committee.) During this organizational meeting, the members were charged with their duties and procedural matters were addressed. The members adopted ground rules for the Committee and set forth substantive issues that needed to be resolved. The rulemaking process was explained in depth to the Committee members, so that they would understand their role in the process. SESAC's proposal on fire protection in shipyards was given to the Committee.

Several examples of firefighting were given by members of the Committee and discussions were held after each example, including how small businesses contact outside fire departments for assistance with firefighting. Workgroups were established for the following areas: Fire Watch, Safe Work Practices, Fire Response, and Fire Protection. These workgroups were charged with producing a draft regulatory text and rationale for their parts of the safety standard. These drafts were to include definitions and several options in areas where the members of the workgroup did not agree. The Committee agreed to include sea trials in the scope of this regulation. Also at this meeting, an overview and history of the SESAC Draft Proposed Standard for Fire Protection was presented by a member of SESAC's workgroup. The draft, text, and rationale of SESAC's recommendations were reviewed. As was to become routine at meetings, the Committee and other participants toured nearby shipyards. They were MarCom Inc., Vancouver, Washington (small shipyard); Diversified Marine Incorporated, Portland, Oregon (small shipyard); and Cascade General, Portland, Oregon (large shipyard).

The second Committee meeting was held in Jacksonville, Florida on February 4, 5, and 6, 1997. The Committee discussed several key issues: Should subpart P—Fire Protection for Shipyard Employment—apply to all shipyard employment? How will the standard affect out-of-yard/plant firefighters such as those employed by a municipal fire department? What controls and work practices will provide adequate protection for workers? Should OSHA require hot work permits? Should OSHA require training for all firefighters? Should OSHA incorporate U.S. Coast Guard regulations in this standard? Is there any difference in controls and work practices on land-side verses on board vessels and vessel sections? Should OSHA require the employer to secure (deactivate) all firefighting systems on board vessels when they arrive in the yard? Should OSHA require each shipyard to have an in-yard/plant fire brigade? Should OSHA require written fire plans for land side and on board vessels? If so, what provisions need to be included in the plans? Should OSHA include a requirement for de-watering (removal of firefighting water from the vessel) of vessels when fighting a fire on board a vessel? What advances in fire technology have occurred since OSHA's general industry standards were published that should be incorporated into the shipyard employment standard? Should OSHA include technical information in an appendix or appendices? If so, should appendices be mandatory?

The Committee had a lengthy discussion about OSHA's jurisdiction. OSHA has no jurisdiction over municipal firefighters, but states and territories with OSHA-approved State Plans are required to have standards for state, county, and local government entities that are at least as protective as Federal OSHA's.

Small employer representatives included: T.L. James & Company, Houma, Louisiana; Halter Marine, New Orleans, Louisiana; and Alabama Shipyard/Atlantic Marine, Mobile Alabama. A Chicago municipal firefighter also attended. Committee members and the public participants at this meeting took a tour of Atlantic Marine (small shipyard).

A Fire Watch section workgroup met at Charleston, South Carolina, on March 18, 1997. The workgroup was tasked with developing proposals to be presented to the full Committee. Discussions included the Navy's NAVSEA 00907 Fire Prevention and Housekeeping standard of September 13, 1996. The workgroup agreed that NAVSEA 00907 was not applicable to the safety of workers because its focus was on the protection of property. The workgroup also agreed on two proposals to present to the full Committee: That an employee performing hot work should never be his or her own fire watch, and that training requirements should be performance oriented. For example, for training employers could use stand-up tool-box safety meetings or written training documents as a basis for appropriate training sessions. Suggestions for identifying a fire watch included: Stickers on hats, arm bands, and vests. The topic of live-fire training was raised as an issue for the full Committee to consider.

The third public meeting of the Committee was held in Lockport, Louisiana, on April 8, 9, and 10, 1997 (Ex. 5–3). The Committee's workgroups continued working on the issues of scope and application, controls and work practices, fire brigades, written fire plans, technological advances in fire protection, costs of fire protection, and appendices. There were discussions about small employer difficulties and on Coast Guard jurisdiction over vessels during sea trials. Preliminary drafts of proposed changes and preamble language were circulated among committee members for review and comment. At this meeting the Committee decided that issues upon which general agreement could not be reached would be raised for public comment in the proposal's preamble. By doing so, an issue, such as live fire training, would be considered by the public and OSHA and could become part of a final rule. Small employer representatives in attendance were: Walker Boat Yard; Halter Marine; Leevac Shipyard; Boland Marine; and Bollinger Shipyard. The Committee members and other participants toured the Bollinger Lockport facility and two other Bollinger facilities in the area (small shipyards).

The fourth public meeting of the Committee was held in Baltimore, Maryland on July 15, 16, and 17, 1997

(Ex. 5–6). During this meeting the Committee broke out into its workgroups and continued to develop proposed preamble and regulatory text on the issues that were identified in previous meetings. OSHA staff explained the economic feasibility issues that are brought into rulemaking and gave a briefing on "plain language." Carryover discussion items from the previous meeting were OSHA's lack of jurisdiction over civilian guests on board vessels during sea trials, municipal fire departments, and volunteers. The discussions produced several examples of current practices from members of the Committee.

There was a discussion about the hazards of fixed extinguishing systems and members gave examples of current practices. A large West Coast shipyard disconnects the vessel's system because they do not want it to be accidentally activated. A representative from small shipyard on the inland waterways noted that he prefers not to deactivate a vessel's fixed extinguishing system, especially for a short-term repair job. For this type of short-term repair job, the Committee agreed that there are two options: Disconnect the entire system or train employees. Some members indicated that on some manned Navy vessels, deactivating the fixed extinguishing system is not an option. It was also noted that, on U.S. flag vessels the U.S. Coast Guard requires a time delay on fixed systems to allow employees to evacuate before the extinguishing agent is released or automatic locking doors are activated. There was an incident in Spain where a small fire on board a vessel was under control locally when another employee pulled the fixed fire system, causing fatalities. A presentation was given on a fire aboard the *Melvin H. Baker II*, which occurred during a hot work operation and caused a fatality.

There was also a discussion of how a fire watch can alert others before he or she exits the dangerous areas, which fire watch duties should be included in safe work practices, and the important role of the fire watch in preventing fires and loss of life. A workgroup was established to work on the definitions section of the standard. Small employers were represented by: Bollingers Shipyard, Lockport, Louisiana, and the National Shipbuilders Association, Arlington, Virginia.

The fifth meeting of the Committee was held in Paducah, Kentucky, on October 7, 8, and 9, 1997 (Ex. 5–4). At the request of the Shipbuilders Council of America (SCA), OSHA staff held a preliminary meeting on October 6. This meeting was open to the public and SCA invited small employers to be present. OSHA staff made presentations on the negotiated rulemaking process, OSHA's standards writing process, and the intent of the proposed Fire Protection standard. The OSHA Project Attorney reviewed the ground rules for negotiated rulemaking procedures, and answered more specific questions that the Committee had raised, such as regulating small businesses. Some workgroups presented their draft documents for discussion and approval by the full Committee. Those documents that were approved by the Committee were delivered to OSHA for further action. Some of the other topics of discussion were: Sliding/rolling fire doors, inadvertent activation of a ship's CO_2 system, and live fire training. Small employer representatives in attendance were: Bollinger's Shipyard, Lockport, Louisiana; James Marine, Inc., Paducah, Kentucky; Cascade General, Inc., Portland, Oregon; Newpark Shipbuilding & Repair, Houston, Texas; Missouri Dry Dock, Cape Girardeau, Missouri; Mid South Towing, Metropolis, Illinois; Sea River Maritime; and American Commercial Marine Service Co. Unions representatives were present from Firefighter Local 168, Paducah, Kentucky and IBEW Local 733, Pascagoula, Mississippi. Committee members and the public participants toured two small shipyards, Walker Boatyard and James Marine, Inc., Paducah, Kentucky.

The sixth public meeting of the Committee was held in San Diego, California, on February 24, 25, and 26, 1998 (Ex. 5–5). Discussions at this meeting included the Small Business Regulatory Enforcement Fairness Act (SBREFA), the general industry (29 CFR part 1910) regulations that apply to landside operations, and live fire training for fire watches. During this meeting, the Committee approved the regulatory text on hot work. Small employer representatives at this meeting included: Bollinger's Shipyard, Louisiana; Walker Boat Yard, Kentucky; Sea River Maritime; and South Tidewater Association of Ship Repairers (STASR), Hampton Roads, Virginia. The Committee member representing STASR noted that the negotiated rulemaking issues and products are shared by the member with 121 STASR members, who are mostly small employers. Committee members and the public participants at this meeting took a tour of the NASSCO and the NAVAL shipyards.

The seventh meeting of the Committee was held in Linthicum, Maryland on June 15, 16, and 17, 1998 (Ex. 5–9). The Committee decided that since MACOSH has supported the Committee and intends to review its products, the Committee's recommendation for a proposed standard will be made available to them. A lengthy discussion was held on shipboard fixed fire protection systems, during which the Committee members learned that only CO_2 systems have caused fatalities. This led to further discussion about whether or not an employer would rely on a vessel's fixed system as the primary source of fire protection., and prompted a page-by-page review of the fire response section. Topics discussed included the term "qualified instructor," personal protective equipment, hose testing, and how long records must be kept.

During the second day of this meeting, the Acting Director of OSHA's Office of Regulatory Analysis presented an overview of what requirements OSHA's economic analysis must meet. A representative from the Small Business Administration (SBA), Office of Advocacy also answered questions from the Committee and public on issues related to small businesses. After a review, the Committee voted to accept the preamble of shipboard fixed systems. The Committee further agreed to not bring sections of 29 CFR part 1910 over into 29 CFR part 1915 for land-side fixed systems, because members prefer that fire extinguishers, stand pipes, or sprinklers conform to NFPA 10, Standard for Portable fire Extinguishers, 1998 Edition (Ex. 20–1) rather than the older OSHA general industry standards for this type of equipment.

The issue of records retention was reviewed. It was agreed that the proposal will state that records must be kept and made available for one year; however, an issue will be raised on one year versus three years retention. Large shipyards typically keep their records indefinitely, but in the opinion of several of their representatives, they would rather not be told how long records must be kept.

Small employer representatives at this meeting included: Bollinger's Shipyard, Louisiana; Walker Boat Yard, Kentucky; and South Tidewater Association of Ship Repairers, Hampton Roads, Virginia. A representative from National Shipbuilders Association, Arlington, Virginia, also attended.

The eighth meeting of the Committee was held in Biloxi, Mississippi, on September 9, 10, and 11, 1998 (Ex. 5–7). Topics of discussion included the progress that the definitions workgroup was making and the outreach programs previously completed. The public was polled about their expectations from this negotiated rulemaking on fire protection. Other discussions were held on what to do with burning torches, what the extent of the standard was, where fire watches are not needed, and how to ensure that the 29 CFR part 1910 requirements are updated and that they cover the same work as subpart P.

The following list of issues was distributed and discussed by the Committee: Can a fire response count as a drill? Is the inspection required in the proposal's section 504(a) and (b) already covered in 1915.14, or does the proposal mandate that all areas—other than those that require a Marine Chemist or Shipyard Competent Person's inspection—be inspected before hot work? In section 505, Fire Response, should OSHA require proximity firefighting protective clothing for all yards and fire departments? Should an employee have the right to stop work if the employee felt he or she was placed in a dangerous situation? Does the committee want to require the employer to instruct on-site contractors on their fire plans? What is an "authorized area?" Is a welding shop, sheet metal shop, fabricating shop, or subassembly area to be considered an authorized area? If so, does the Committee want the employer to post signs to notify employees? How does the employer determine the authorized area? Is it the Committee's understanding that the employer is to survey his shipyard to determine and label all working areas? How is the issue of municipal fire departments' response to shipyard fires to be explained in the preamble? How can the Committee ensure that the public understands that this standard does not apply to state, county, or municipal fire departments?

Other issues discussed included: Proximity suits; a model training program for fire watches; employee participation; fire watch training; the requirements of subpart B, Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment, that could apply in the hot work section; training requirements for all shipyard employees versus training only fire watches; liaisons between shipyards and outside fire responders; and the proposed requirement that all fire hoses used by the employer being labeled, tested, and maintained in accordance with NFPA 1962–1998 Standard for the Care, Use, and Service Testing of Fire Hose Including Couplings and Nozzles, 1998 Edition (Ex. 20–2). The Committee agreed on the regulatory text of proposed §§ 1915.505 and 1915.506.

A small shipyard representative requested that OSHA have an extended compliance date for employers with 250 or fewer employees. Shipyards with more than 250 employees typically have a full-time designated safety and health professional, based on the experience of the National Shipbuilders Association. A labor representative opposed the request for a delay in implementation for small employers. It was suggested that OSHA review the issue for its proposal.

Small employers were represented at this meeting by Bollinger Machine Shop & Shipyard, Inc., Louisiana; Walker Boat Yard, Kentucky, South Tidewater Association of Ship Repairers, Hampton Roads, Virginia; National Shipbuilders Association, Arlington, Virginia; First Wave Marine, Houston, Texas; Bender Shipbuilding, Mobile, AL; and Omega Shipyard, Moss Point, Mississippi.

The ninth meeting of the Committee was held in Houston, Texas, on February 5–7, 2002 (Ex. 5–8). OSHA staff incorporated the agreed upon changes made during this meeting into the Committee's working document. A motion was made for a full Committee vote on the document. The Committee unanimously approved, agreeing on all the issues and topics. A reworked package of the regulatory text including section number changes with training in its own section was mailed to the Committee March 2002.

Small employers were represented at this meeting by Bollinger Machine Shop & Shipyard, Inc., Louisiana and Texas; Walker Boat Yard, Kentucky; South Tidewater Association of Ship Repairers, Hampton Roads, Virginia; National Shipbuilders Council, Washington, D.C.; First Wave Marine, Houston, Texas; Trinity Marine Products; Moon Engineering, Co., Portsmouth, Virginia; and Atlantic Marine/Alabama Shipyard.

Informal meeting minutes were provided by OSHA staff for all meetings. These minutes were approved by the Committee and included in OSHA's Docket S–051 (Ex. 5). The Agency has taken the Committee's recommendations for a proposal for fire protection in shipyard employment and editorially revised them into the proposed standard that follows this preamble.

III. Pertinent Legal Authority

The purpose of the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.* ("the Act") is to "assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources' (29 U.S.C. 651(b)). To achieve this goal, Congress authorized the Secretary of Labor to issue and enforce occupational safety and health standards. (*See* 29 U.S.C. 655(a) (authorizing summary adoption of existing consensus and federal standards within two years of the Act's enactment), 655(b) (authorizing promulgation of standards pursuant to notice and comment), 654(b) (requiring employers to comply with OSHA standards).) A safety or health standard is a standard "which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment or places of employment." 29 U.S.C. 652(8).

A standard is reasonably necessary or appropriate within the meaning of section 652(8) if it substantially reduces or eliminates significant risk; is economically feasible; technologically feasible; cost effective; is consistent with prior Agency action or is a justified departure; is supported by substantial evidence; and is better able to effectuate the Act's purposes than any national consensus standard it supersedes. See 58 FR 16612–16616 (March 30, 1993).

A standard is technologically feasible if the protective measures it requires already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be expected to be developed. *American Textile Mfrs. Institute* v. *OSHA* 452 U.S. 490, 513 (1981) ("ATMI"), *American Iron and Steel Institute* v. *OSHA*, 939 F.2d 975, 980 (D.C. Cir 1991) ("AISI").

A standard is economically feasible if industry can absorb or pass on the cost of compliance without threatening its long term profitability or competitive structure. *See ATMI*, 452 U.S. at 530 n. 55; *AISI*, 939 F.2d at 980. A standard is cost effective if the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection. *ATMI*, 453 U.S. at 514 n. 32; *International Union, UAW* v. *OSHA*, 37 F.3d 665, 668 (D.C. Cir. 1994) ("LOTO II").

Section 6(b)(7) authorizes OSHA to include among a standard's requirements labeling, monitoring, medical testing and other information gathering and transmittal provisions. 29 U.S.C. 655(b)(7).

All standards must be highly protective. *See* 58 FR 16614–16615; LOTO II, 37 F.3d at 668. Finally, whenever practical, standards shall "be expressed in terms of objective criteria and of the performance desired." Id.

IV. Summary and Explanation of Proposal Rule

Section 1915.501 General Provisions

In paragraph (a), OSHA states that the purpose of this standard is to require employers to protect all employees from fire hazards in shipyard employment, including employees engaged in fire response activities.

Paragraph (b) describes the scope of the proposal, which is all shipyard employment work, including work on vessels and vessel sections and land-side operations, regardless of geographic location. The scope of this subpart is consistent with that in the maritime standards' subpart B Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment and subpart I Personal Protective Equipment for Shipyard Employment. Fire response provided by the employer's workers, whether they be part of a fire brigade, shipyard fire department, or simply designated by the employer, is within the scope of this standard. There are several reasons for including all shipyard employment in the scope of this standard: (1) The requirements are tailored to the unique risks in shipyard employment; (2) subpart P will provide a single source of standards for fire protection that will be easier for training and to understand than multiple sources or sets of rules; (3) a comprehensive standard, referencing part 1910 where necessary, will be applicable throughout shipyard employment addressing hazards associated with fire watch situations, ship fire suppression systems, fire response procedures and landside fire operations.

OSHA has preliminarily concluded, and the Committee agrees, that a comprehensive standard applying to all shipyard employment operations will be highly protective of shipyard employment workers working on vessels, vessel sections, or landside operations and offer the best protection against fire hazards.

Shipyard employment can consist of shipbuilding, ship conversion, ship repairing or shipbreaking, and related employments. Shipyards may be dedicated to one type of work, such as new ship construction, or a shipyard may perform any or all types of shipyard work. The construction of a new vessel may be a single project or may involve separate fabrication of key components which are then joined together. Vessel sections may be fabricated on land within the shipyard, or may be built in specialty facilities inland of the shipyard and then transported to the yard. The scope must have broad coverage because shipyard employers increasingly engage in non-traditional shipyard employment such as steel fabrication of products not directly related to ships. This could include work such as construction of railroad cars, bridges, tunnel sections, smoke stacks, and boilers. It could also include operations performed during the final outfitting of vessels under construction or repair. Examples of such operations include technical support from the providers of shipboard electronic equipment as well as suppliers of internal furnishings. It does not include shoreside support services, such as those provided by vending equipment and mail delivery companies. The Agency is also proposing that any fire brigade, shipyard fire department, contracted outside fire response organization, or federal fire response organization be covered by this subpart if the responder is located at or responds to shipyard employment facilities. OSHA recognizes that a number of small employers perform vessel repair in non-traditional shipyards and intends to cover them.

Ship repair work could involve replacing damaged hull sections, outdated systems or components, or modifying a vessel to increase its capacity or change its designed purpose.

Shipbreaking could consist of the partial removal of vessel components or it could be the complete dismantling of a vessel (also known as "scrapping") for the salvage value of its parts.

Shipyard employment can also consist of support operations necessary for vessel construction and repair. Metal fabrication, machine shops, electrical and paint shops are typical facilities that can be found within a shipyard. Many vessel sections and vessel components are built in these shops more easily than they can be built on board a vessel. The materials are the same and often the hazards encountered are similar.

Shipyard employment also occurs on vessels and vessel sections within the navigable waters of the United States. The provisions of the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 901 *et seq.*, only applied to shipyards. Under the OSH Act, jurisdiction was extended to include workers wherever they were working.[1]

OSHA has included the phrase "regardless of geographic location" in the scope so that protection is afforded employees wherever they work: On vessels, vessel sections, land side, or any other location they are sent to by their employers. This has been Agency policy on shipyard employment and is in the scope of both subparts B and I.

The Committee also urged OSHA to cover work in the traditional shipyard and dock as well as on vessels during sea trials or at anchor. At the Portland, Oregon, meeting, the Committee noted that most ships on sea trials are still under construction with shipyard workers on board. At the Baltimore, Maryland, meeting, Committee members reviewed OSHA Instruction CPL 2–1.20, "OSHA/U.S. Coast Guard Authority Over Vessels," dated November 8, 1996. Particular attention was given to paragraph I which delineated geographical considerations for enforcement over all vessels. The CPL states that "OSHA only has authority over vessels when they are operating within the limits of State territorial waters." It goes on to define those waters as extending three nautical miles seaward from the coast line of coastal States, "except for the Gulf Coast of Florida, Texas and Puerto Rico where the territorial waters extend for 3 marine leagues (approximately 9 nautical miles)."

The Committee concluded that the fire hazard exposure to workers is significant, whether a vessel or part is being constructed, repaired, or broken up and whether it is in the shipyard or dockside, at anchor, or underway for testing. Therefore, the requirements proposed in this subpart would apply broadly, including vessels underway within OSHA's jurisdictional boundaries, or at anchor, dockside, in dry dock, or on land.

In paragraph (c) of § 1915.501, OSHA seeks to encourage employee participation in shipyard safety and health program activities. OSHA proposes that the employer must provide ways for employees and employee representatives to participate in developing and periodically reviewing programs and policies adopted to comply with this standard. At the September 10, 1998, meeting held in Biloxi, Mississippi, the Committee recommended regulatory text regarding employee participation and involvement. The Committee saw this as a crucial component of the

[1] *See* 29 CFR 1910.11(b). The LHWCA limitations on coverage that appear in the maritime standards were not adopted under section 6(a) of the OSH Act, 29 U.S.C. 655(a). *See also* the preamble for the rulemaking in which the shipyard employment standards were consolidated, 47 FR 16986 (April 20, 1982). This OSHA policy was accepted by the Occupational Safety and Health Review Commission in *Dravo Corporation*, 10 BNA OSHC 1655 (No. 14818, 1982.) *Contra Dravo Corporation v. OSHRC & Marshall*, 613 F.2d 1227 (3rd Cir. 1980).

proposed standard and OSHA agrees. This proposal is consistent with the Department of Labor's policy to involve employees in decision-making processes affecting safety and health at their worksites.

Paragraph (d) of the proposed fire protection rule sets minimum requirements for exchanging information and coordinating responsibilities for fire protection among host and contract employers. These requirements are fundamental to any effective fire safety program on a multi-employer worksite.

A multi-employer workplace is defined for the purposes of this rule as a workplace where there is a host employer and at least one contract employer. This proposed requirement is necessary because the existence of additional employers and their employees at a workplace makes addressing safety and health conditions at the workplace more complex. For example, at a multi-employer worksite, one employer may introduce hazards into the workplace that employees of other employers may not know about. All employers need information about hazards present at the worksite to enable them to fulfill their obligations to protect workers. For these reasons, communication and coordination among employers are essential.

Failure to communicate about hazards between employers and their employees can be tragic. For example, the 1989 explosion at a Phillips 66 chemical complex in Houston, which killed 23 people and injured more than 100 workers, resulted largely from the failure to coordinate safety and health activities on a multi-employer worksite. A Department of Labor/OSHA 1990 report to the President concerning this catastrophe concluded:

> The catastrophe at the Phillips Complex not only emphasized the need for effective implementation of good safety management systems in the petrochemical industry but also raised questions about diffused responsibility for employee safety at worksites where one or more contractors are engaged in work for a company. OSHA had addressed this issue at construction sites, but not at petrochemical plants like the Phillips Complex, where a contractor was regularly employed to perform key maintenance operations and was directly involved in the October 1989 disaster (Ex. 10–5).

Events like the Phillips explosion and the increased reliance on using contractors throughout the shipyard industry have led OSHA to conclude that responsibility for fire safety must be specifically assigned to all employers, who must then be held accountable for discharging those responsibilities.

The need for and benefits of coordinating activities and exchanging information on multi-employer worksites are widely recognized, and requirements such as those being proposed here have been implemented in many workplaces throughout general industry, construction, and maritime industries. For example, the Chemical Manufacturers Association (now the American Chemistry Council) and the American Petroleum Institute state that improved occupational safety and health performance is one benefit that occurs when owners and contractors work together to enhance the management of contractor-related safety and health programs. Similarly, the National Safety Council has observed that "a strong partnership between [host and contract employers] can reduce or eliminate risks, injury, and illnesses; help control health and insurance costs; and improve employee production and morale." In the shipyard industry it is common practice to hire contractors for nonroutine or specialized work situations. For example, painters, joiners, carpenters and scaffolding contractors are routinely used in shipyard employment.

The requirement for host and contract employer coordination and for the exchange of information about safety and health conditions on multi-employer worksites is consistent with Congress' desire that employees be informed of the hazards to which they are exposed. (Sections 6(b)(7) and 8(c)(1) of the OSH Act.) Employees can only be informed of the hazards to which they are exposed if information about such hazards is communicated among employers on multi-employer worksites. Such an exchange of information is also necessary to make sure that all hazards in the workplace are identified and that the responsibility for controlling them and protecting employees can be appropriately allocated among all employers on the site.

Under the proposal host employers must inform all employers at the work site about the contents of the host's fire safety plan—including hazards, controls, and emergency procedures—and assign any appropriate responsibilities for fire safety to other employers. The Committee is in agreement with this approach to multi-employer worksites (Ex. 5–8). The employer representatives on the Committee felt that the shipyard should not be responsible for training contractors.

In § 1915.509 Definitions, the host employer is defined as an employer who is in charge of coordinating work or hiring other employers to perform work at a multi-employer worksite. Proposed § 1915.501(d)(1) establishes the responsibilities of host employers. First, host employers must make sure that information about fire hazards, controls, safety and health rules, and emergency procedures is given to all the contract employers. The information includes whatever a contract employer must have to carry out his or her own duties as an employer under this rule. Contract employers need to inform employees of the fire hazards to which they are exposed at that worksite, the controls in place to reduce or eliminate those fire hazards, the safety and health procedures to be followed, and the steps to be taken in a fire emergency. Second, host employers must ensure appropriate fire safety and health responsibilities are assigned to contract employers at the worksite.

Contract employers must know about other hazards related to fire their employees may encounter at the workplace. Such knowledge allows contract employers to effectively plan and safely carry out their work and understand procedures, such as what to do when a fire alarm is sounded to evacuate a vessel. This information lessens the likelihood that accidents will occur. A host employer's workplace may have fire hazards of many kinds: toxic chemical, flammable or combustible liquids or dusts, electrical hazards, fall hazards, pressurized systems, confined spaces, and many more. Under this standard host employers must inform contract employers of the hazards related to fire they are likely to encounter to enable them, in turn, to protect their employees.

The Committee recognized that in the event of a fire emergency, contract employers must be able to take appropriate actions to protect their employees. Therefore, OSHA requires the host employer to make sure that all appropriate information about fire safety and evacuation procedures is conveyed to all contract employers working in shipyard employment.

OSHA is also requiring in paragraph (d)(1)(ii) that the host employer make sure that fire protection responsibilities are specifically assigned to the various employers working at a multi-employer worksite. The host employer must make sure that fire safety and health responsibilities are assigned as appropriate to other employers at the worksite. Some of these responsibilities include fire hazard abatement, informing employees of fire hazards before exposure, and stopping work because of an imminent danger

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situation. A host employer might assign a contract employer the responsibility of preventing employees (other than the contract employer's employees) from being exposed to a hazard generated by the contract employer. For example, the host employer might require the contract employer to control the area around a painter to ensure that hot work is not permitted while painting is in progress. More generally, the host employer must, in conjunction with the contract employers, decide who is to train employees and control which hazards. The need to coordinate across organizational lines on a multi-employer worksite makes the clear assignment of responsibilities across those lines essential to achieve the overall goal of reducing employee exposure to potential fire hazards.

The proposed definition of "contract employer" in § 1915.509 Definitions is an employer who performs work under contract for a host employer or to another employer under contract to the host employer at the worksite. This definition specifically excludes employers who provide incidental services that do not influence shipyard employment (such as mail delivery or office supply services). The Agency recognizes that many vendors who work under contract to host employers do not engage in work that exposes their employees to the job-related hazards present at the site and do not themselves introduce new hazards to the site. This definition also makes sure, however, that contract employees engaged in work operations that do place them at risk, such as temporary labor (e.g. tank cleaners), blasting, and paint contractors are protected by the proposed provisions regarding multi-employer worksites.

As noted in this discussion, OSHA has provided additional definitions of "host employer" and "contractor employer" in order to help clarify multi-employer worksite provisions. In other places, the term "employer," which is already defined in 29 CFR part 1915, is used to describe duties that are generally the host employer's as the employer with control of the overall worksite. We believe the intent of this approach is clear. The host employer has overall responsibility for fire protection at the worksite. However, in order to have effective fire protection, all employees on the site need to be aware of the hazards and the procedures established to deal with fires, regardless of who employs them. And all of the hazards on the site need to be identified and controlled, regardless of which employer has introduced the hazard to the workplace. Thus the provisions of the standard anticipate that an exchange of information will be required to ensure that fire protection is handled in a comprehensive and effective manner, and any necessary coordination of activities will occur. The Agency invites input on these terms and the way they are used in the proposed rule. Is it clear which employer is responsible in all of the proposed provisions? Is there another way to define or clarify which employer has responsibility for implementing the requirements?

The Agency is considering dropping the phrase "safety and health rules," in paragraph (d)(i) that refers to the contents of the fire safety plan and dropping the phrase "safety and health" in reference to contract employers' responsibilities for fire protection activities in paragraph (d)(ii). The Agency has concluded that the reference to "health" or "safety and health" rules or responsibilities is confusing and vague in the fire safety proposal and that the scope of issues should be confined to fire safety.

Paragraph (d)(2) of § 1915.501, sets forth the proposed responsibilities for contract employer's. The contract employer must inform the host employer of any fire hazards that could be created by the work being performed by his or her employees, and what steps the contract employer must take to address those hazards. In addition, OSHA proposes that any hazards that were not identified by the host employer, but were identified by the contract employer, must be shared with the host employer.

Proposed paragraph (d)(2)(i) requires contract employers to make sure that the host employer is aware of the fire related hazards presented by the contract employer's work and how the contract employer is addressing them. The work performed by contract employers is commonly beyond the knowledge and expertise of the host employer and typically is not a part of the host employer's routine work. Contract employers are often hired precisely because they have special expertise. They offer a wide range of services, such as equipment repair and maintenance, blasting, painting, atmospheric testing of spaces, tank cleaning, and selected scaffold erection. Consequently, their work can present a set of hazards that are unfamiliar to the host employer. For these reasons, OSHA believes that the proposed rule must include minimum requirements for contract employers on multi-employer workplaces to report fire hazards to host employers. Proposed paragraph (d)(2)(ii) requires that contract employers advise host employers of any fire hazards unidentified by the host employer. In the course of his or her work, the contract employer may create or uncover fire hazards. The host employer must be made aware of all of the hazards, regardless of who created them, to enable him or her to coordinate the management of safety and health at a given multi-employer worksite.

Section 1915.502 Fire Sofety Plan

The requirements for fire safety plans contained in this section were developed by the Committee based upon their combined professional experience and current industry practices. OSHA concurs with these recommendations. OSHA does not have any requirements for fire safety plans in its current standards.

The Committee recommended a program that would establish the location, type, and capacity of firefighting equipment such as extinguishers, fire hose and stand pipes, smoke detectors, automatic sprinklers, and other fixed firefighting systems in accordance with applicable fire codes. The plan must provide for the routine inspection, maintenance, and replacement of this equipment and mandate training for new workers and refresher training for all shipyard employment workers. Routine fire prevention inspections would be conducted by knowledgeable personnel with authority to correct deficiencies. The program would establish: Effective fire prevention measures for control of flammable and non-flammable compressed gases; identification and the control of ignition sources; the control of combustible materials; welding and hot work procedures and designated locations covering all operations (in addition to locations where hot work is authorized); and designated emergency evacuation routes and procedures.

The Committee felt that such a plan must be written. A written plan would enable employers and employees to see how the employer intends to protect workers; enable employers to readily exchange information; provide continuity of procedures; and would provide a practical means of communication to fire response organizations. Updating the plan to reflect changing fire control technology or changing the plan to reflect different fire hazards in different work situations is readily accomplished with a written plan. The Committee rejected the notion of verbal exchange as the equivalent of an established written fire safety plan.

In paragraph (a) of § 1915.502, OSHA proposes that the employer develop and implement a written fire safety plan that covers all the actions that employers and employees must take to ensure employee safety in the event of a fire. OSHA is also proposing to include a note to the paragraph referring readers to a model fire safety plan that is included as Appendix A, a non-mandatory appendix to this subpart.

Appendix A contains a suggested outline for a model fire safety plan that employers could follow. Members of the small business community who participated in Committee negotiations strongly recommended that OSHA offer guidance for developing a fire safety plan. The purpose of the proposed appendix is to give guidance to any employers who may not have the expertise available to develop their own plan. If an employer chooses to use the model plan for a specific worksite, following the outline and addressing particular conditions at his or her specific worksite would meet the minimum requirements of this section.

In paragraph (b) of § 1915.502, OSHA sets forth the elements that the employer must include in the fire safety plan. They are: The identification of significant potential fire risks; procedures for recognizing and reporting unsafe conditions; alarm procedures; procedures for notifying employees of a fire emergency; procedures for notifying fire response organizations of a fire emergency; procedures for evacuation; procedures to account for all employees after an evacuation; and the names, job titles, or departments for individuals who can be contacted for further information about the plan. The Committee identified these elements as essential components that every effective plan must have. The Committee was particularly anxious for the alarm procedures to address the distinctive signaling devices and how they will be used to alert employers of fire and evacuation in a particular shipyard. The Committee and OSHA recognized that each shipyard may have its own unique alarm systems (e.g., steam whistles, intercom, bells).

In paragraph (c) of § 1915.502, OSHA proposes that the employer must review the fire safety plan with each affected employee within 90 days of the effective date of this standard for employees who are currently working; upon initial assignment for new employees; and whenever the actions the employee must take under the plan change because of a change in duties or a change in the plan.

Paragraph (d) of § 1915.502 reflects the recommendations of the Committee. Consistent with that, OSHA proposes that the employer must also keep the plan readily accessible for review by employees, their representatives, and OSHA; review and update the plan whenever necessary but at least annually; certify in writing that each affected employee has been informed of the plan; and give a copy of the plan to any outside fire response organization that the employer expects to respond to fires at a worksite, regardless of geographic location. These requirements are necessary in order for the plan to be effective in protecting employees.

In paragraph (e) of § 1915.502, OSHA proposes as additional responsibilities for contract employers, compliance with the host employer's fire safety program. At any given time, because of the nature of the work, there may be many employers within one particular shipyard. The additional employers and employees cause an increase in safety and health hazards in the worksite. OSHA's intent with this paragraph is that all employers take responsible actions to reduce these hazards when possible, and to alert other employers when hazards exists. Recognition of hazards and response to emergencies in a safe manner requires all employers on the site to follow the host employer's fire safety plan.

Section 1915.503 Precautions for Hot Work

The purpose of this section is to reduce the potential of fire hazards and to reduce the frequency and severity of any fires resulting from hot work. Three elements are normally present for a fire to occur: an ignition source, oxygen, and a fuel source. If one element is removed, then a fire will not occur. The proposed requirements in this paragraph are intended to prevent the combination of these three elements from occurring at the same time.

The Committee's proposal focused on reducing the hazards associated with both the fuel sources as well as the ignition sources for fires. The Committee advocated removing any fuel source from the area where hot work was to be performed. If that is not possible, then isolating the fuels, using protection (shielding), or posting a fire watch can be used to comply with the provision. These requirements reflect current industry practices and the requirements associated with § 1915.14 for flammable and combustible materials within confined and enclosed spaces and other dangerous atmospheres. The Committee also identified other materials that may be present that have properties that may increase the hazards associated with a fire, such as oxidizers and water reactive chemicals. The Committee's proposal would require the employer to perform a hazard assessment as part of the decision-making process in authorizing hot work. The Committee concluded that fires resulting from hot work can be prevented through an authorization procedure and proper inspection of the worksite before hot work. This would involve identifying fire hazards and implementing appropriate control measures that include removing hazards, inerting spaces, shielding combustibles, or posting fire watches. The Committee believed this would be an innovative approach that protects shipyard workers from fire hazards while reflecting the best practices of the industry.

Following the Committee's recommendations, OSHA proposes that the requirements of this standard apply to all hot work operations in shipyard employment except those covered in subpart B of this part. The purpose of OSHA's proposed requirement is to make sure that the employer identifies all fire hazards in a hot work area. This section is also based upon requirements adapted from the existing § 1915.52 Fire Prevention, § 1910.252 Welding, Cutting and Brazing, and from an industry consensus standard, NFPA 51B–1998, Standard for Fire Prevention in Use of Cutting and Welding Processes (Ex. 20–3).

In paragraph (a)(1) of § 1915.503, OSHA is proposing that the employer, in designating areas for hot work, must determine that such areas do not contain potential fire hazards. The Committee recognized that there are areas within the shipyard that may not require an inspection before each hot work operation. These areas may, in fact, be designed for hot work. They include fabricating shops, sub-assembly areas, and welding and burning areas within shops, such as pipe, boiler, and sheet metal shops. These areas are examples of what the Committee considered to be "Designated Areas" along with certain areas on board vessels and vessel sections. In "designated areas" the hot work operations are regular and continuous as opposed to incidental operations occurring throughout the yard. Nonetheless, such areas must be initially inspected to establish them as "designated areas" and then maintained as such, as proposed in paragraph (b)(1) of this section.

The requirement for authorization of hot work in nondesignated areas is addressed in paragraph (a)(2) of this section. In paragraph (a)(2)(i) of § 1915.503, OSHA proposes that before authorizing hot work in non-designated area, the employer must visually inspect the area where hot work is to be performed, including adjacent spaces, to

identify potential fire hazards, unless a Marine Chemist's certificate or shipyard Competent Person's log is used for the authorization. The Committee recommended that this section include any area not covered by subpart B of this part. As mentioned earlier, OSHA is not addressing hot work in areas covered by subpart B Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment. This subpart already covers the hazards of performing hot work in these areas. Addressing them again in this subpart would be duplicative. OSHA believes that by requiring authorization before hot work in the non-designated areas, the employer will pre-plan the operation and thereby identify and control the hazards associated with hot work.

OSHA notes that although Marine Chemists and Shipyard Competent Persons have specific functions to perform under subpart B, this paragraph recognizes that the employer may also use them to assess and inspect both designated and nondesignated hot-work areas for potential fire hazards.

The Committee considered whether the authorization of hot work issued by the employer should be in a written form or whether a verbal authorization would give equivalent safety. Currently all shipyards handling repair or overhaul-type U.S. Navy contracts have written authorization procedures because Navy work requires authorization (hot work permits) as a standard item. On the other hand, shipyards that do not handle Navy contracts allow employees to perform hot work following either verbal or written authorizations. The Committee decided that shipyard employers should have the flexibility to decide what type of authorization is best suited for their hot-work operations. For example, in many cases associated with new construction, hot work is done with an authorization specifying that no special precautions are required and no written authorization (permit) is issued. The intent here is to enable the employer to perform the steps and to assess the hazard each time before authorizing the hot work, but not necessarily introduce the specification that requires a formal written permit. Therefore, in this paragraph OSHA does not specify what form of authorization must be issued.

In paragraph (a)(2)(ii) of § 1915.503, OSHA proposes that the employer be allowed to authorize employees to do hot work only in areas that have been visually inspected and found to be free of fire hazards or in inspected areas where fire hazards are controlled by physical isolation, fire watches, or other positive means such as inerting.

In developing the proposed language above, the Committee discussed under what circumstances the employer may authorize hot work on board vessels and vessel sections. Everyone on the Committee agreed that decisions about authorizing hot work on board vessels and vessel sections must be based on the inspection. When the inspection shows that there are no uncontrolled combustible or flammable materials in the area, then authorization for hot work is appropriate. The Committee also recognized that most of the mid-to large-size yards pre-outfit ship sections with electrical cables and fixtures, insulation, and other combustible materials requiring the employer to decide for each section what type of fire protection should be provided when hot work is to be done.

The likelihood of the hot work areas containing combustible materials during ship repair is greater than in shipbuilding. During ship repair, as in other work the employer must control the fire hazards prior to authorizing the hot work. Control, as required in paragraph (a)(2)(ii), can be by physical isolation, posting fire watches, or other positive means. For example, an employer can achieve physical isolation of combustibles by simply moving them to an area at least 35 feet away from the hot work (*see* definition of "physical isolation"). The Committee discussed the 35-foot vertical and horizontal distance and found it to be consistent with current industry practice. Where combustibles can not be moved or otherwise physically isolated, the employer can post a fire watch to control the fire hazard. Additionally, when flammable atmospheres are found adjacent to the hot work area, the employer can control the fire hazard by inerting the adjacent space with a non-reactive substance that will not support combustion. For further information on controlling spaces (flammable atmospheres) adjacent to where hot work is being performed, *see* subpart B of this part.

Members of the public and shipyard representatives on the Committee commented during negotiations that the individual performing the hot work is usually expected to conduct his or her own final visual survey of the hot work area to make sure that conditions are safe for hot work. This is a common practice whether identified on a written permit or as part of the verbal authorization/assignment to the work. If the survey discovers unsafe conditions (*e.g.*, appreciable combustibles in an area, leaking lines of combustible liquids—hydraulic fluid, oil), then the worker will not initiate the work and will contact the individual authorizing the work for further instruction. It is also expected that work would not start until the situation was corrected. As explained by a Committee member, the employer is ultimately responsible for making sure that areas are inspected before hot work and that safe conditions are maintained throughout the hot work area. This may be done by requiring frequent inspection, training, or warning signs even when the employer has delegated the responsibilities for the inspections. OSHA has not proposed to require the hot worker to conduct a survey as the Agency believes the employer has the responsibility for determining if the area is safe. An employer may, of course, have such a survey as part of his or her work practices.

While subpart B has a requirement that a record be prepared by the Marine Chemist, Coast Guard Authorized Person, or Shipyard Competent Person allowing the hot work to be authorized as defined by § 1915.14, not all hot work areas need to be certified by a Marine Chemist or inspected by a Coast Guard Authorized Person or Shipyard Competent Person before the employer's authorization for hot work to begin. The employer may assign the authorization responsibility to other individuals who are knowledgeable in the hazards associated with hot work.

In paragraph (b) of § 1915.503, OSHA is proposing that the employer keep all hot work areas free of hazards that may cause or contribute to the spread of fire. This proposed paragraph summarizes the Committee's belief that fires cannot occur if the hazards contributing to them are controlled. This requirement is to prevent the introduction of combustible or flammable materials during the performance of hot work. Often, safe conditions exist at the start of the hot work process; however, over the duration of the work, these materials may be brought to the site thereby creating a fire hazard. For example, one worker may be performing hot work at the same time another worker from another job introduces combustible or flammable materials within 35 feet of the hot work operation. The worker's safety can be further compromised by the fact that the worker doing the hot work is wearing a face shield that obstructs vision, preventing that worker from seeing the entrance of the second worker. It is the intent of this requirement that hazard assessment be a continual process and not a singular, one-time event. Therefore any measures

used by the employer to control fire hazards must be maintained.

Fuel gas and oxygen burning lines and torches are typically used in shipyard employment as follows. A burner (an employee engaged in burning or brazing) is trained and becomes qualified in the safe operation and testing of his equipment; namely the burning torch, gauges, care and use of the fuel gas and oxygen hose lines and proper connection to the supply manifold. Only qualified employees are issued this equipment from the tool room. After being issued his equipment, a burner working on a vessel will proceed to the manifold on the fantail of the vessel. Assigned to work in the lower level of the machinery space (enclosed space) 200 feet from the manifold, he will connect four 50 foot sections of hose together and to his torch. Next, he will connect this assembly to the gauges that he, in turn, attaches to the supply manifold. He then charges the entire burning rig by opening the oxygen and fuel supply lines. He then tests the torch and lines for compression integrity using his gauges first having turned off the supply valves. If the gauges indicate compromised integrity, the burner will then re-tighten all of the connections and test again. Once the integrity of the burning rig is established, he then proceeds to roll out the lines on the deck to his assigned worksite. Upon reaching his worksite, he then returns to the supply manifold, energizes the system, and proceeds to secure his hose lines elevated and out of walkways to eliminate tripping hazards. Finally, he returns to his worksite and begins burning.

In paragraph (b)(2)(i) OSHA proposes that the employer must make sure that no unattended fuel gas and oxygen hose lines or torches are left in confined spaces. The proposed language in this paragraph has been adapted from 29 CFR 1910.252; § 1915.52; and NFPA 312–2000, Standard for Protection of Vessels During Construction, Repair, and Lay-up (Ex. 20–4). The Committee and participants from the public attending the Committee's meetings agreed with the proposed requirement in paragraph (b)(2)(i). This requirement reflects the current practice in the industry.

The potential danger associated with unattended fuel gas and oxygen hoses or torches in confined spaces is apparent and universally accepted. Leaking fuel gas and oxygen from unattended hoses or torches can accumulate rapidly in confined spaces leading to several hazardous conditions such as increased fire hazards, oxygen-enriched atmospheres, explosive atmospheres, and similar conditions. This proposed paragraph seeks to eliminate the hazards associated with unattended fuel gas and oxygen hoses or torches in confined spaces.

In paragraph (b)(2)(ii) of § 1915.503, OSHA is proposing that employers must not allow unattended charged fuel gas and oxygen hose lines or torches in enclosed spaces for more than 15 minutes. The proposed language in this paragraph has also been adapted from 29 CFR 1910.252; § 1915.52; and NFPA 312–2000, Standard for Protection of Vessels During Construction, Repair, and Lay-up (Ex. 20–4). The Committee agreed with this proposed requirement following extensive discussion and analysis. They felt that the potential for fire or explosion caused by unattended charged lines in enclosed spaces far outweighs the burden of pulling to open air or disconnecting.

In paragraph (b)(2)(iii) of § 1915.503, OSHA is proposing that the employer must disconnect all fuel gas and oxygen hoses at the supply manifold at the end of each shift. The fact that paragraph (b)(2)(iii) does not propose a hose removal requirement needs to be further discussed in rulemaking. The Agency seeks comment on this subject. Some shipyard employers indicated that at shift change fuel gas and oxygen hoses are rolled back to the manifold and disconnected at the supply end, while other shipyard employers found this to be impractical. They noted that at a large shipyard work can be done on a vessel as long as 800 feet with as many as seven decks. For this work, employees need to connect burning rigs on the fantail supply manifold and string 700 feet of fuel gas and oxygen hose lines through a number of enclosed spaces to reach a worksite. Adding more lines to this supply manifold with additional manifolds also located on the fantail creates the problem of unstringing and rolling back literally miles of hose lines to disconnect them. The potential for confusion exists when these lines are disconnected and then need to be reconnected. The Committee agreed that the hoses should be removed from the confined spaces, but there remained a question about whether this was necessary for enclosed spaces.

The concern is not necessarily about leaking hoses and their potential for creating a hazardous space. Rather, the bigger concern seems to be with the possibility of hooking up, at the supply manifold, a different (wrong) hose whose torch end was left hanging in an enclosed space. Because it is the wrong hose, it may now be dispensing gas (oxygen and fuel gas) into an space without anyone knowing, a space that is not involved in the intended work. The contaminated space may not be discovered until much later, thus creating a fire/explosion hazard. Additionally, leaking fuel gas and oxygen may create a flammable or oxygen-enriched atmosphere that may reach an ignition source.

OSHA deals with these hazards in proposed paragraphs (b)(2)(iii)(A) and (B) of § 1915.503. When fuel gas and oxygen lines are to be disconnected, the employer has two options. One is to completely roll the lines back to the supply manifold (open air) and then disconnect the torch. The other is, where a positive means of identification on the fuel gas and oxygen hose lines has been given before rolling out or extending the line, the employee can leave the lines extended, disconnect them at the supply manifold, and then disconnect the torch. This would assure that, not only would the proper extended lines be disconnected, but also that the proper lines will be reconnected, thus eliminating the hazards discussed above. Also, because the torch must be removed from the enclosed space after disconnecting the extended line from the supply manifold, the potential for the build-up of a hazardous atmosphere is greatly reduced.

Selecting the positive means of identification for the fuel gas and oxygen hose lines is left, by this performance type requirement, to the discretion of the employer. Examples of the positive means of identification include stenciling both ends of the line, color coding, stamped brass tags, and so forth. It is clear however, that the lines must be identified at both ends regardless of how many sections are joined, creating the run.

The Committee felt that extended lines could be reconnected safely provided that certain measures were followed: positively identifying hose line ends and maintaining the integrity of the complete burning rig. The former has already been discussed. The Committee recognized that maintaining the integrity of the burning rig can be accomplished in a number of ways. The preferred way is the drop test using gauges which has already been discussed. Another way is the use of a lockout device (Ex. 16b). Still another is testing a pressurized system, using soapy water at all connections. The Committee concluded—and OSHA agrees— that using such performance language as an alternative to specifications will help to nurture developing technology in these areas.

Section 1915.504 Fire Watches

The requirements of this section, as recommended by the Committee, apply to fire watch activity designated by the employer in shipyard employment. The requirements are proposed in three parts: (a) the employer's written policy on fire watches, (b) the posting of a fire watch, and (c) fire watch assignments.

The existing subpart in § 1915.52 Fire Prevention in Welding, Cutting and Heating is a 35-year-old standard. It was identified by SESAC in 1992 as needing updating and extension of its scope to cover all the situations in shipyard employment regardless of geographic location. The Committee has recommended, and OSHA agrees, that the existing requirements in § 1915 that address fire protection be replaced by the proposed requirements of this subpart.

Paragraph (a) of § 1915.504 requires employers to create and keep current a written policy on fire watches specifying the requirements for the training, duties, equipment, and PPE necessary for fire watches in the workplace. The PPE that fire watches will need is specified in to 29 CFR subpart I Personal Protective Equipment. No specific format is proposed for the written policy. The Committee determined the employer was in the best position to determine how the requirement can be met, and OSHA agreed. OSHA recognizes that the employer needs the discretion to tailor the plan to his or her workplace.

Paragraph (b) of § 1915.504 proposes that the employer must determine the need for and post a fire watch if during hot work: (1) Slag, weld splatter, or sparks might pass through an opening and cause a fire; (2) fire-resistant guards or curtains are not used to prevent ignition of combustible materials during work on or near decks, bulkheads, partitions, or overheads; (3) combustible material closer than 35 ft. (10.7m) horizontally and vertically cannot be removed, protected with flame-proof covers, or otherwise shielded with metal or fire-resistant guards or curtains, so that the material will not be ignited by the hot work; (4) on or near insulation, combustible coatings, or sandwich-type construction on either side cannot be shielded, cut back, or the materials removed. In the latter case, if removal is impracticable, the space affected by the hot work must be inerted; if that cannot be done, then a fire watch must be posted. A fire watch must also be posted when: (5) Combustible materials adjacent to the opposite sides of bulkheads, decks, overheads, metal partitions, or of sandwich-type construction may be ignited by heat conduction or radiation; (6) hot work on pipes or other metal is close enough to cause ignition through heat radiation or conduction if contact is made with insulation, combustible coatings, or combustible decks, bulkheads, partitions, or overheads; (7) hot work is close enough to unprotected combustible pipe or cable runs to cause ignition from exposure to the hot work; or (8) a watch is required by a Marine Chemist, a Coast Guard authorized person, or a shipyard Competent Person. The Committee identified these eight probable cases where a fire watch is needed for any size shipyard employment. OSHA's proposed requirements for this paragraph are based on their recommendations.

Paragraph (b)(1) of § 1915.504 proposes controlling ignition sources for work processes that generate slag, weld splatter, or sparks that might pass through an opening and cause a fire. It has been adapted from NFPA 51B–1999, Standard for Fire Prevention in Use of Cutting and Welding Processes (Ex. 19–3) and 1910.252(a)(2)(iii)(A)(3). During the meetings, the Committee discussed the size of the openings. The Committee considered whether the size needs to be specified. The provision's intent as proposed is to leave the requirement performance oriented. If a spark can get through an opening and cause a fire, then the area should be protected. The Committee preferred to not be specific, but to leave it to the employer to determine which openings need to be protected.

Paragraph (b)(2) of § 1915.504 proposes to recognize that ignition sources can be controlled through the use of fire-resistant guards or curtains. Where the combustible materials cannot be protected from a possible ignition source, the employer must post a fire watch. The Committee recognized that combustible materials can be protected through the use of fire-resistant guards or curtains. For example, a sandwich-type bulkhead could be safely protected from ignition of the combustible materials during hot work by using a fire-resistant guard or curtain.

Paragraph (b)(3) of § 1915.504 reflects the 35 ft. requirement (minimum distance of combustible materials from hot work) from the 1910.252(a)(2)(vii), subpart Q Welding, Cutting and Brazing and NFPA 51B–1999, Standard for Fire Prevention in Use of Cutting and Welding Processes (Ex. 19–3). In this paragraph OSHA proposes to require that an employer post a fire watch unless combustible materials are relocated to at least 35 feet beyond the hot work area or are protected by shielding. The Committee discussed the 35-foot distance at length during the course of the meetings and agreed that if the possibility exists that hot work materials could make contact with the combustible material in any way, a fire watch must be posted. No specific reasons or evidence to change the distance was suggested by any of the members or representatives from the public. The Committee's proposal kept the 35-foot distance. The Committee believes that the distance has been in regulatory requirements and national consensus standards for many years and reflects the current industry practice. The Agency concurs that such protection is reasonable and necessary.

Paragraph (b)(4) of § 1915.504 addresses the hazards associated with combustible coatings, sandwich-type construction, or other insulating materials. Besides shielding, cutting back, removing the materials and posting a fire watch, an industry practice for the acoustic foams that are commonly found in inaccessible voids is to inert the areas to make them safe for hot work. Industry practice, in these situation, has been to also provide charged fire hoses or portable extinguishers as fire protection measures for fire watches. Polyurethane and other organic foams are increasingly used on vessels because of their excellent insulating and lightweight properties. When properly installed and protected against fire, organic foams present no more fire hazard than other combustible materials. However, when organic foams (including those described as self-extinguishing, non-burning, fire resistant, flame resistant, and by similar terms) are exposed to fire or heat, they may ignite and burn with rapid flame spread, high temperatures, toxic gases, and voluminous quantities of smoke.

Paragraph (b)(5) of § 1915.504 addresses the potential hazards of adjacent spaces. This paragraph is adapted from § 1915.52(a)(3). It is an important part of the hazard assessment "since direct penetration of sparks or heat transfer may introduce a fire hazard to an adjacent compartment, the same precautions shall be taken on the opposite side as are taken on the side on which the welding is performed." During hot work on or near insulation, combustible coatings, or sandwich-type construction on either side, if the employer cannot cut back or remove the materials or inert the space, a fire watch must also be posted on the opposite side of the hot work. This requirement is intended to address the increased fire hazard potential (noted in the explanation above for paragraph (b)(4)) that results from hot work conducted in areas with or adjacent to polyurethane or other organic foams.

In cases where hot material from hot work could involve more than one level, as in trunks and machinery spaces, a fire watch must be stationed at each affected level unless positive means are available to prevent the spread or fall of hot material. Positive means could be accomplished by placing barriers or by physically isolating an area. The same is true for adjacent spaces; a fire watch must be stationed at each affected work area.

Paragraph (b)(6) of § 1915.504 requires a fire watch during hot work when performed on pipes or other metal in contact with insulation, combustible coatings or combustible materials on or near decks, bulkheads, partitions, or overheads if the work is close enough to cause ignition by radiation or conduction. The fire watch workgroup discussed at length the term "bulkhead and deck." Because the scope of subpart P is for shipyard employment, the subgroup discussed the fact that bulkheads and decks refer to vessels and vessel sections and although these terms could be used for structures and buildings, that is not the norm. Normally on landside structures the terms "walls and floors" are commonly used. Would use of "bulkhead and deck" in this provision cause confusion as to the applicability throughout shipyard employment, both on land side and aboard vessels? The Agency invites comment on this issue.

Paragraph (b)(7) of § 1915.504 requires a fire watch if hot work is conducted close enough to combustible pipe or cable runs to cause ignition (unless the pipe or cable runs are protected from exposure to the hot work). This provision takes into account the large amount of cable runs through vessel compartments. Although these cables must be tested to low flame spread and smoke production rates, they are still combustible and have been responsible for the spread of fire in many cases. Also, the use of combustible piping is increasing, and although required to meet strict flame spread and smoke production criteria, the potential for fire spread through pipe runs is the same as through cable runs and should therefore be safeguarded.

Paragraph (b)(8) of § 1915.504 proposes to add a provision for posting a fire watch when required by a Marine Chemist, a Coast Guard authorized person, or a shipyard Competent Person. These individuals are trained to know when a fire hazard requiring a fire watch exists even in circumstances not set forth in paragraphs (b)(2) through (b)(7) above. In one of the areas of biggest concern-where flammable and combustible liquids are present, for example, in vessel construction— the regulations already require a competent individual to determine where a fire watch will be required. An employer is already required to designate a shipyard Competent Person in accordance with applicable requirements of 29 CFR 1915.7. These requirements, coupled with the time-tested recommendations of NFPA 51B–1999 and 29 CFR 1915 subpart B, were considered adequate by the Committee.

Paragraph (c) of § 1915.504 outlines the assignment of fire watch duty. Originally, the Committee's Fire Watch Workgroup had recommended language for this paragraph that specifically states that the employer is responsible for a worker's assignment to fire watch duty. However, the Committee felt that this should be understood throughout the regulations that the employer is ultimately responsible for workplace fire safety, and thus it does not need to be repeated. OSHA agrees.

Paragraph (c)(1) of § 1915.504 states that an employee must not be assigned other duties when designated as fire watch by the employer. The Committee wanted to be very clear on this requirement, because although fire watch as an exclusive assignment is recognized as industry practice, the fire watch posting is crucial to maintaining safe working areas. For example, welders with their shields down rely totally on the fire watch's observations. This watch should not be distracted by having other duties assigned at the same time.

The provision in paragraph (c)(2)(i) requires that a fire watch must have a clear view of all areas assigned. This requirement effectively precludes a worker acting as his or her own fire watch. The workgroup told the Committee that if hot work workers, *i.e.*, welders and burners, were, in fact, acting as their own fire watch, the requirement for a clear view of those areas affected could not be met. They noted that when a welder's shield is down, the immediate area where the arc hits is the only area the welder is concentrating on, and the welder is oblivious to the surrounding work area affected. The Committee agreed and wanted to note specially that a worker performing hot work, such as a welder, cannot be his or her own fire watch under any circumstances.

The Committee was concerned that a fire watch be able to do his or her job. This means that a fire watch must be physically capable of accessing the necessary area and wearing the appropriate PPE. For example, a fire watch may have to climb ladders to access tanks or other structures, carry fire extinguishers, pull hoses, see the assigned area, pull alarm stations, and communicate the alarm verbally. Although there was much discussion, the Committee did not include a requirement stating that the employer must make sure that personnel who are expected to stand fire watch will perform and are capable of carrying out the duties of fire watch. The logic, after discussions, was that the employer would be the best judge of physical capability and mental alertness of the fire watch.

Paragraph (c)(2)(ii) of § 1915.504 proposes that employees assigned to fire watch duty must be able to communicate with workers exposed to hot work. As addressed later in the preamble for paragraph (c)(2)(x) of § 1915.508 Training, there was considerable discussion within the workgroup about current industry practices for the fire watch's contact with other workers. The Committee decided that communication is important because a fire watch may not be able to see a hot worker when, for example, the fire watch is on the other side of a compartment from the hot worker. The Committee did not want to limit the means of communication. For example, in the case of a fire watch on the other side of the bulkhead from the employee doing hot work, the means may be as simple as tapping on the bulkhead to signal whether the hot worker can continue or must stop, or it could be a more electronic communication system such as radio communication.

Paragraph (c)(2)(iii) of § 1915.504 specifies that the fire watch must remain in the hot work area at least 30 minutes after hot work is completed. A provision has been added that permits the fire watch to be relieved sooner if the employer or the employer's representative surveys the exposed areas, conducts a post-work hazard assessment, and determines that no further fire hazard exists. Obviously, this determination can only be made after a hazard assessment is completed. The fire watch workgroup carried forth this requirement from SESAC's recommendation that the NFPA and industry-accepted practice be used as the rationale for the 30 minute requirement unless the employer surveys the affected work area(s) and determines that there is no further fire hazard. The workgroup recommended to the Committee that when the work area was protected before the hot work was done, the employer or the

employer's representative could resurvey the affected area and determine the area was safe from fire hazards without the need for a fire watch for 30 minutes after completion of the hot work. The Committee agreed. The intent of this provision is to encourage employers or their representative to use the hazard assessment process throughout the work—beginning, middle (to see if conditions change), and at the end (to determine how long the fire watch may be needed).

OSHA invites comment on whether the fire watch remaining in the hot work area for at least 30 minutes after completion of the hot work is the equivalent to the employer's immediate survey of the exposed area to making a determination that there is no further fire hazard.

Paragraph (c)(2)(iv) of § 1915.504 proposes that the employer must ensure that employees assigned to fire watch duty are trained to detect fires that occur in areas exposed to the hot work. (For a further explanation, *see* the Training section at § 1915.508.)

Paragraph (c)(2)(v) of § 1915.504 requires that the fire watch must attempt to extinguish any incipient stage fires in the assigned work area that are within the available equipment's capacity and within the fire watch's training qualifications as defined in 1915.508 Training. The term "incipient stage fire" is defined in the General Industry Fire Protection Standard § 1910.155(c)(26): Incipient stage fire means a fire which is in the initial or beginning stage and which can be controlled or extinguished by portable fire extinguishers, class II standpipe or small hose systems without the need for protective clothing or breathing apparatus. Although the maritime industry asked for a single standard, this definition is an example where the general industry standard is referenced to reduce regulatory duplication. OSHA seeks comment on whether the definition needs to be included in this standard.

Paragraph (c)(2)(vi) of § 1915.504 proposes the requirement that the fire watch alert employees of any fire that goes beyond the incipient stage. The method the fire watch uses to alert other employees is not specified. The fire watch can alert in the way most suited to the worksite and conditions. Whether this is accomplished by shouting, waving of arms, or hand signals is left up to the employer to instruct the fire watch. In a noisy working environment, it might be most appropriate to tap hot workers on the shoulder and then motion to them to follow or exit the area. In a smokey situation, vocal communication would be more appropriate.

Paragraph (c)(2)(vii) of § 1915.504 provides that if fire watches are unable to extinguish fire in the areas exposed to the hot work, they must activate the alarm and start the evacuation procedure as trained according to § 1915.508(c)(2)(xi) and the employer's fire safety plan, § 1915.502.

Section 1915.505 Fire Response

In this section OSHA proposes specific requirements for fire response in shipyard employment. At present, OSHA does not have any specific requirements for fire response in shipyard employment.

Responders to shipyard fires encounter a complex set of fire hazards involving buildings, vessels in dry-dock or on ways, afloat, or alongside a quay. Fire responders need to be prepared to suppress a wide range of fire scenarios from a flammable liquid storage room in a shipyard building to oil-soaked rags in an engine room on a ship. Types of fires could include ordinary combustible materials (such as wood, paper or cloth), flammable or combustible liquids (such as oil, fuels, paints or chemicals), insulation and other materials that give off toxic gases and smoke, electrical fires (involving energized motors, circuit controls, transformers or wiring) or even a rare combustible metal fire (such as magnesium or titanium).

Shipyard firefighting as defined in section 1915.509 Definitions may be provided by:

1. Members of a fire brigade established by the shipyard, consisting of employees who have primary duties other than firefighting;
2. Workers of the shipyard employed as full-time firefighters; or
3. Public, private, governmental, or military units providing rescue, firefighting, and other related services.

As expressed by one Committee member, when firefighters respond to a shipyard fire, the safety of the shipyard workers rests with those firefighters; therefore, that member noted, the safety of all firefighters should be addressed by this standard and these rules should apply to them as well. In fact, the Committee expressed concern that whoever provides fire response to shipyard employment must meet certain minimum standards. The Committee's consensus was that designated workers (whether employed by the shipyard or by another employer) must be trained and equipped to fight fires in shipyard employment as safely as possible to reduce worker deaths or injuries related to these fires.

To ensure that this happens when firefighters are not shipyard workers, the Committee decided to require a liaison be established between the shipyard employer and the outside organization providing response services. Consistent with the recommendations of the Committee, OSHA is proposing that the shipyard liaison's communication with an outside fire response organization must include addressing facility and layout familiarization and coordination protocols. Public fire departments in those states with approved section 18b State Plans that respond to shipyard facilities will be covered by similar requirements through their respective states. Federal OSHA does *not* have jurisdiction over state and municipal fire departments or volunteers. Federal firefighters are covered under Executive Order No. 12291. OSHA believes that the safety of all firefighters is a major concern and intends the broadest coverage possible under the Act regardless of the shipyard employer's fire response arrangements. The Committee was in full agreement that anyone responding to a shipyard employment fire to actually extinguish a fire should be covered by this proposed rule to the extent possible. The proposed coverage of this standard, for fire responders has to exclude state and municipal fire departments and volunteers even though they will benefit from the requirement to establish a liaison with them.

Shipyard fire responders do not include support personnel responding at or near fires who have only limited support functions to perform. The Committee agreed that the shipyard employment workers who might respond to provide support services but are not exposed to the hazards of the fire, should not be covered. Such support services include electricians, utility workers, and facility management representatives. As explained by one Committee member, the requirements of this proposal are not intended to apply to employees responding to a shipyard employment fire to open or close valves, turn off electric service, or disconnect gas supplies. "Support personnel," as the Committee called them, are designated persons not put into harm's way but performing such tasks as shutting down or isolating gas lines and disconnecting electrical service. They are not fire response personnel since they are not exposed to the hazards of firefighting. Members of the public, including Vincent Galattli from Bender Shipbuilding and Michael Davis from Halter Marine, noted that some shipyard

employment workers join community fire departments as volunteers. These volunteers are sometimes used in shipyard employment to pull hoses but do not fight fires. Committee member Buck Hurley from the Norfolk Naval Shipyard noted that crane operators could be used to provide supplies, water, or chemicals, but not perform actual firefighting.

This proposed section consolidates the requirements of 29 CFR 1910.156 Fire Brigades with some of the provisions in NFPA 1500–2002, Fire Department Occupational Safety and Health Program (Ex. 20–5), creating a standard that specifically addressees shipyard fire response.

A Committee workgroup consisting of representatives of the fire service, government, labor, and employers developed the initial proposed language for this section. In addition to using the SESAC recommended proposal and current industry practice, the workgroup relied heavily on NFPA 1500–2002. The workgroup also discussed and reviewed NFPA 600–2000, Standard on Industrial Fire Brigades (Ex. 20–6).

NFPA completely revised NFPA 600 in 2000 to be consistent with OSHA's Fire Brigade Standard. In 2000, NFPA further revised the document to include industrial fire departments that were previously covered in NFPA 1500.

The workgroup chose to rely more heavily on NFPA 1500–2002 rather than NFPA 600–2000 because of the need to make sure that response from outside the yard would be compatible with response from inside the yard. In many communities, particularly where there are small employers, the shipyard must rely on and coordinate fire response with the local fire authority. Through this section, OSHA intends to assure the coordination between the yard and the outside fire response organization so that they can work together safely.

There is one general distinction that OSHA wants to make clear with respect to fire response in shipyard employment. As recommended to OSHA by the Committee, shipyard support personnel are not considered members of the shipyard fire brigade or fire department when they respond to fires on board vessels or vessel sections. The Committee agreed that additional shipyard personnel, usually yard maintenance or temporary service employees, can and do react to fire alarms on board vessels and vessel sections. However, when these employees respond to the fire location, they do so with the understanding that they will not put themselves at risk by attempting to fight fires. Rather, their only responsibility is to offer skilled support to fire brigade or fire department responders by securing certain utilities (*i.e.*, electrical, ventilation, compressed air, and oxy-fuel lines suppling the vessel or vessel section) when necessary during fire suppression activities. Because they have detailed knowledge of the vessel's or vessel section's layout of temporary services and the locations within the yard for controlling these services, they can also serve as an information resource for firefighters responding to the fire.

For example: A large cargo ship is tied up at a pier. Manifolds provide fuel gas and oxygen for hot work located on the main deck of the vessel. The manifolds are fed from the pier. A fire is discovered below decks and the fire alarm sounds throughout the vessel. The employees leave their work stations and proceed off the vessel to a waiting area. The yard's fire brigade arrives and boards the vessel. The outside or municipal fire department is alerted and initiates its response plan. As part of the yard's fire safety plan, the temporary service and yard maintenance departments respond to the pier alongside the vessel. Representatives of the yard's fire brigade meet with the temporary service employees and they communicate with the firefighters on board the vessel to identify the location of the fire. Based upon the information received from the firefighters on board the vessel, the temporary service employees will begin to secure utilities that provide service to the fire area. Once the utilities have been secured to prevent hazards to the firefighters, the temporary service employees will return to the staging area and await further requests from the yard's fire brigade.

In this scenario, the temporary service employees did not enter the vessel's compartments with the intent to fight the fire. They responded to give skilled, technical support to the responding fire departments. OSHA wants to make it clear that in shipyard employment, the shipyard support personnel, such as temporary service employees, are not considered part of the shipyard's fire brigade or fire response department. Shipyard fire response department or brigade employees who participate in the actual role of fire suppression and control are the only employees covered by this section. These employees must be trained for the duties and functions they are expected to perform. The shipyard employees who are not part of the shipyard's fire brigade or fire department, including skilled support employees, are not covered by this section. Their protection is provided by other standards in this part.

In paragraph (a)(1) of § 1915.505, the shipyard employer is required to determine who will perform fire response in the shipyard and what type of response will be provided. The Committee recommended this approach based on the diverse fire response capabilities it found throughout the industry. Some shipyard employers, those with very large facilities, employ full-time shipyard firefighters and provide them with response apparatus and equipment. At the other end of the spectrum are the employers at small shipyards who must rely totally on public fire protection. One Committee member indicated that his shipyard fire response personnel constitute the superior fire protection expertise in his community. This is with regard not only to shipyard fires but also to the fire response operations of the local public fire department to which he offers support and back-up. Yet, at another meeting, a public fire official indicated his department provides all of the fire protection for the shipyards located in his district. The Committee consensus is that the deciding factors are so many and so varied that each shipyard employer must take responsibility for determining who will provide fire response services and what those services will be.

OSHA proposes in paragraph (a)(2) of § 1915.505 that the employer must create and maintain an updated written statement or policy that describes the internal and outside fire response organizations that the employer will use. In complete agreement with the Committee, OSHA is promoting the idea of pre-planning throughout this proposed fire response section.

Paragraph (a)(3) of § 1915.505 proposes that the employer create, maintain, and update a written statement or policy that defines what evacuation procedures employees must follow if the employer chooses to require a total or partial evacuation of the worksite at the time of a fire.

The Committee stated strongly that once the shipyard employer decides how to protect employees from the hazards of fire, the methods of protection must be pre-planned and documented regardless of the type of response the employer chooses. Accordingly, in paragraph (b) of § 1915.505, OSHA proposes the information that must be included in the written policy statement required by this section. These written policy statements should set forth the basis for operating a fire response service. A key point is to set out clearly the specific

functions the fire response service is authorized and expected to perform. Employers must assert their authority to set the specific functions and the limits of the functions the fire response service will provide. The employer also must furnish the necessary resources for delivering the designated services. Such services might include structural fire response, emergency medical services, hazardous materials response, high-angle rescue, heavy rescue, and others.

OSHA proposes in paragraph (b)(1) of § 1915.505 that, if the employer chooses to provide internal fire response, then the employer must create, maintain, and update a written statement or policy that defines the fire response to be provided. The information would include the organizational structure of the fire response service; the number of trained fire response employees; the minimum number of fire response employees necessary, the number and types of apparatus, and a description of the fire suppression operations established by written standard operating procedures for each type of fire response at the employer's facility; training requirements; expected functions that may need to be carried out; and procedures for use of protective clothing and equipment. Spelling out the specific parameters of services to be provided allows the fire response service to plan, staff, equip, train, and deploy members to perform these duties.

Similarly, OSHA proposes in paragraph (b)(2) of § 1915.505 that if the employer chooses to use an outside fire response organization, then the employer must include specific information in the employer's policy statement. The policy statement should include the following: (1) The types of fire suppression incidents to which the fire response organization is expected to respond at the employer's facility or worksite; (2) the liaison which would presumably be by individual name or job title, between the employer and the outside fire response organization; (3) a plan for fire response functions that discusses using or getting help from other organizations, and familiarizes the external fire response organization with the layout of the employer's facility or worksite, including access routes to controlled areas, and site-specific operations, occupancies, vessels or vessel sections, and hazards; and how hose and coupling connection threads are to be made compatible and where the adapter couplings are kept; or have a statement saying that they will not allow the use of incompatible hose connections.

OSHA further proposes in paragraph (b)(3) of § 1915.505 that if the employer chooses to use a combination of an internal and an outside fire response organization, then the employer must define the fire response services in addition to the requirements in (b)(1) and (2) above, that will be provided by each fire response organization. Specifically, the following information must be included: The basic organizational structure of the combined fire response; the number of combined trained fire responders; the fire response functions that need to be carried out; the minimum number of fire response employees necessary, the number and types of apparatus, and a description of the fire suppression operations established by written standard operating procedures for each particular type of fire response at the worksite; and the type, amount, and frequency of joint training that must be given to fire response employees.

As an alternative to providing active fire response, the Committee recognized in paragraph (b)(4) of § 1915.505, OSHA's longstanding policy that employers may also ensure employee safety in case of fire through the means of evacuation. Accordingly, paragraph (b)(4) of § 1915.505 would require that the employer's evacuation policy statement include the following: Emergency escape procedures; procedures to be followed by employees who may remain longer in the worksite to perform critical shipyard operations before they evacuate; procedures to account for all employees after emergency evacuation is completed; the preferred means of reporting fires and other emergencies; and names or job titles of the employees or departments who may be contacted for further information or explanation of duties. These requirements are based on similar requirements found in employee emergency plans and fire prevention plans (29 CFR 1910.38).

Emergency escape procedures in shipyard employment can vary greatly depending upon whether the worksite is located on a vessel or vessel section or in a landside facility. For example, on a vessel at anchorage, escape routes from the vessel may be more difficult to identify than those found in a landside machine shop, carpenter's shop, welding shop, cafeteria, employment office, or similar worksite. This paragraph also requires procedures to protect employees who must remain behind to perform critical shipyard operations before they evacuate. Critical shipyard operations may include shutting down a vessel's power plant, securing utilities to the fire area, or similar activities. Additionally, accountability procedures for all employees following emergency evacuation must be established. For example, employees could be directed to report to a specific location after evacuation. Another important element of the evacuation policy is the preferred means of reporting fires or other emergencies. Examples include telephone or radio communications, fire alarms, steam whistles, verbal communication, or other tactile, visual, or audible means of communication at the employer's discretion. Finally, as a means to administer the evacuation policy effectively, the statement must indicate the key individuals by name, job title, or department to be contacted for further information or explanation of duties under the policy.

In paragraph (b)(5) OSHA is proposing a requirement that the employer must include a description of the emergency rescue procedures and names or job titles of the employees who are assigned to perform rescue and emergency response. The Committee recommended this requirement and OSHA agrees.

In paragraph (c) of § 1915.505, OSHA, following the recommendation of the Committee, proposes the physical and medical qualifications shipyard employees must meet to be a part of the fire response. In paragraph (c)(1) of § 1915.505, OSHA requires that all fire response employees receive medical examinations to assure that they are physically and medically fit for the duties they are expected to perform. This approach is consistent with NFPA 600–2000, NFPA 1500–2002, and other OSHA standards, such as in 29 CFR 1910.156 and 29 CFR 1910.120. OSHA recognizes that firefighting is one of the most hazardous occupations and that those who perform fire response activities must be able to perform them properly without jeopardizing the safety and health of themselves and other firefighters. Of particular concern to OSHA are such conditions as emphysema, heart disease, and epilepsy. While these conditions do not preclude participation in fire response, they may preclude participation in certain fire response activities. For that reason, OSHA proposes to require the employee's physical and mental fitness be in accord with the duties the employee will perform.

In paragraph (c)(2) of § 1915.505, OSHA is proposing that fire response employees who are required to wear respirators while performing their duties must meet the medical requirements of 29 CFR 1915.154 Respiratory protection. This requirement is consistent with the language of 29 CFR 1910.134 (c)(1) that requires employers whose employees use respirators to develop and implement a respiratory protection program. One of the elements of a respiratory protection program is implementing medical evaluation for employees who use respirators. Paragraphs (g)(3) and (g)(4) of 29 CFR 1910.134 require firefighters who perform interior structural firefighting or who enter atmospheres that are immediately dangerous to life and health (IDLH atmospheres) to wear self-contained breathing apparatus.

In paragraph (c)(3) of § 1915.505, OSHA proposes to require that the employer make sure that all fire response employees have an annual medical examination. Further, in paragraph (c)(4), medical records of fire response employees must be kept according to 29 CFR 1915.1020 Access to Employee Exposures and Medical records. These proposed requirements are consistent with existing regulations found in 29 CFR 1910.156 and 29 CFR 1910.134.

In paragraph (d) of § 1915.505, OSHA addresses the procedures the employer would have to follow for organizing internal fire response functions. Paragraph (d)(1) proposes that the employer must organize the employer's fire response functions to make sure that there are enough resources to safely conduct emergency operations at the site. This language is consistent with the goals and language of paragraph 4.1.1 of NFPA 1500–2002 addressing the fire department's organizational statement. The Committee believes organization of the internal fire response functions is critical to its success in a fire emergency.

In paragraph (d)(2) of § 1915.505, OSHA proposes that the employer must set up written administrative regulations, standard operating procedures, and departmental orders for fire response functions. This proposed language is also consistent with the language of Chapter 4 in NFPA 1500–2002 addressing the organization of fire response providers.

In paragraph (d)(3) of § 1915.505, OSHA proposes that the employer must set up an Incident Management System (IMS) to coordinate and direct fire response functions. It is proposed that this system must include specific fire emergency responsibilities; how the employer will account for all fire response employees during an emergency operation; and what resources would be offered by outside organizations. This proposal is consistent with the goals and language found in paragraph 8.1 of NFPA 1500–2002. The IMS is an improved fire department management and control system, based on actual experience with the Incident Command System (ICS) recognized in other OSHA standards such as 29 CFR 1910.156 Fire Brigades and 29 CFR 1910.120 Hazardous Waste Operations and Emergency Response. Incident command is now a subset of incident management. The new system recognizes that command at an incident is only part of the overall management necessary to safely respond to emergency situations.

In paragraph (d)(4) of § 1915.505, OSHA proposes that employers provide this information (of paragraph (d)) the outside fire response organization to be used. The Committee believes that providing this information will improve coordination and ease pre-planning efforts to ensure a safe overall fire response. These proposed provisions are consistent with existing OSHA requirements (29 CFR 1910.156 Fire brigades and 29 CFR 1910.120 Hazardous Waste Operations and Emergency Response).

Paragraph (e)(1) of § 1915.505, addresses the personal protective equipment of fire response employees. OSHA proposes the employer must provide hazard specific personal protective clothing and equipment, at no cost, to fire response employees. It is also proposed that the employer must make sure that each employee wears the personal protective clothing and equipment that offers protection from the hazards to which that employee is likely to be exposed. This general requirement was recommended by the Committee and is consistent with the language found in chapter 7 of NFPA 1500–2002. It is specifically consistent with existing OSHA standards and with paragraph 7.1.2 of NFPA 1500–2002.

In paragraph (e)(2) of § 1915.505, OSHA proposes the requirements for protective clothing's thermal stability and flame resistance. It is proposed in paragraph (e)(2)(i) that the employer would have to make sure that each fire response employee exposed to the hazards of flame does not wear clothing that, when exposed to flames, could increase the extent of injury that the fire response employee would sustain. Proposed paragraph (e)(2)(ii) specifically prohibits wearing clothing made from acetate, nylon, or polyester, either alone or in blends, unless it could be shown that the fabric can withstand the flammability hazard that could be encountered, or that the clothing is worn in such a way to eliminate the flammability hazard that may be encountered. This language is consistent with the language in existing OSHA standards and in paragraph 7.1.6 of NFPA 1500–2002.

In paragraph (e)(3) of § 1915.505, OSHA proposes the requirements for respiratory protection for shipyard fire response employees. The proposed requirements in paragraph (e)(3) are consistent with current industry practice as discussed by the Committee.

In paragraph (e)(3)(i) of § 1915.505, OSHA proposes that the employer provide self-contained breathing apparatus (SCBA) to all shipyard fire response employees who are involved in emergency operations in an atmosphere that is immediately dangerous to life or health (IDLH), may become IDLH, or is unknown. This language is consistent with existing OSHA standards and paragraph 7.8.7 of NFPA 1500–2002.

In paragraph (e)(3)(ii) of § 1915.505, OSHA proposes that the employer provide SCBA to fire response employees performing emergency operations during hazardous chemical emergencies that will expose them to known chemicals in vapor form or to unknown chemicals. OSHA recognizes that there may be a potential for employee exposure to hazardous chemicals during fire response emergencies due to the nature of shipyard employment. As proposed, this requirement would limit employers to the use of SCBAs for this type of chemical exposure.

In paragraph (e)(3)(iii) of § 1915.505, it is proposed that the employer must provide either SCBA or respiratory protective devices. The SCBA or respiratory device must be certified by NIOSH under 42 CFR part 84 as suitable for the specific chemical environment, to fire response employees who perform or support emergency operations that will expose them to chemicals in liquid form. In this proposal, OSHA recognizes that the hazard to employees because of liquid chemical exposure is such that respirators other than SCBAs, such as cartridge respirators, may provide appropriate protection and be less costly to provide and maintain.

In paragraph (e)(3)(iv) of § 1915.505, OSHA also proposes that the employer must ensure that additional outside air supplies used in conjunction with SCBA be positive pressure systems and certified by NIOSH under 42 CFR part 84. Again, this proposal is consistent with existing OSHA standards and paragraph 7.10.1.1 of NFPA 1500–2002.

In paragraph (e)(3)(v) of § 1915.505, OSHA proposes that the employer must provide only SCBA that meets the requirements of NFPA 1981–1997, Standard on Open-Circuit Self-

Contained Breathing Apparatus for Firefighters (Ex. 20–7). The fire response members of the committee, stated that this has been a long standing recommendation and has become standard equipment for all fire response organizations throughout the country.

In paragraph (e)(3)(vi) of § 1915.505, OSHA proposes that the employer establish a respiratory protection program and use respiratory protective equipment according to 29 CFR 1915.154 Respiratory Protection. The Committee based this proposal on the language found in 29 CFR 1910.156, and 29 CFR 1910.134(g).

In paragraph (e)(4) of § 1915.505, OSHA proposes that the employer must supply at no cost to all fire response employees who are exposed to the hazards of interior structural firefighting within shipyard employment, either protective coats and trousers, or protective coveralls; helmets; gloves; footwear; and protective hoods that meet the applicable requirements of NFPA 1971–2000, Standard on Protective Clothing Ensemble for Structural Firefighting (Ex. 20–8). This proposal is based upon chapter 7 of NFPA 1500–2002.

In paragraph (e)(5) of § 1915.505, OSHA proposes that the employer must supply, at no cost to all fire response employees who are exposed to the hazards of proximity firefighting, the appropriate protective proximity clothing that would have to meet the applicable requirements of NFPA 1976–2000, Standard on Protective Clothing for Proximity Firefighting (Ex. 20–9).

It is the intent of this section to require that only the shipyard employees who will be engaged in operations that will expose them to the intense radiant heat of a proximity firefighting incident (the proximity hot zone) be equipped with specialized proximity firefighting protective clothing.

Employee protection from the hazards of proximity firefighting situations should be viewed in a similar manner to hazardous materials operations. That is, employees must be fully encapsulated to protect them from the unique hazards associated with both situations. The employer should know the locations where such potential exposure to high radiant heat hazards exists, such as bulk flammable liquid or bulk flammable gas facilities. By determining what operations employees could undertake and what the potential exposure will be for those employees conducting fire response operations, the employer will know which employees need proximity firefighting clothing.

At an incident, the employer must establish the boundaries of the proximity hot zone for that incident and require all who must operate within those boundaries to be protected from the intense radiant heat. Intense radiant heat may cause injury to the employees or damage or destroy their structural firefighting protective clothing. The employer could make the decision to evacuate the area and protect employees from such exposures. Then the employer can summon mutual aid that is equipped with the appropriate equipment and proximity protective clothing to handle the proximity hot zone of the incident. The employer could also use fixed protection systems available at the facility to apply extinguishing agents (master streams, water deluge, foam, *etc.*) into the proximity hot zone. Alternatively, the employer could train and equip his or her own response employees to be able to fully deal with these incidents.

Not every employee needs to be included in the proximity hot zone operations unless the employer's written statement or policy requires these resources. For example, the employer may plan fire response operations that would contain and control the fire without the need for employees' operating within the proximity hot zone. Therefore, the employer would not need to provide proximity firefighting protective clothing. Using other protective strategies (including but not limited to physical shields or barriers, or large volume water stream applications that are sustained over the entire duration of the incident) could protect employees who otherwise would need proximity firefighting protective clothing. This language is consistent with the language in paragraph 7.3 of NFPA 1500–2002.

In paragraph (e)(6) of § 1915.505, OSHA proposes that the employer provide a Personal Alert Safety System (PASS) device to each fire response employee involved in firefighting operations. The PASS devices must meet the requirements of NFPA 1982–1998, Standard on Personal Alert Safety Systems (PASS) for Firefighters (Ex. 19–10). This language is consistent with the language in paragraph 7.13.1 of NFPA 1500–2002.

A PASS is a device that is attached to or is an integral part of self-contained breathing apparatus (SCBA). It automatically sounds a distinctive alarm (some units also display a flashing strobe light) if a fire response employee becomes immobile for a pre-determined period of time (usually 30–40 seconds). For example, the device would be activated in the event a fire responder becomes incapacitated from structural collapse or runs out of breathing air. It can also be activated manually by the fire response employee. Fire response employees who might become trapped or lost, but are not unconscious, can also activate the device to help searchers locate them. The shrill alarm allows rescuers to locate the wearer quickly in dark or heavy smoke conditions. The alerting sound of a PASS can easily be distinguished from a low air supply alarm emitted by a SCBA. The Committee agreed that it is every fire fighter's nightmare to be in a fire situation and hear both alarms coming from a comrade's position. This means the comrade has run out of air and is motionless. All incidental fire response activities will immediately stop until the disabled fire fighter is located and pulled to safety. PASS devices are now considered standard issue and are recommended by NFPA Standard No. 1982–1998. It is also industry practice.

Section 1915.505(e)(7) addresses life safety ropes, body harnesses, and hardware. The workgroup, based on their experience, proposed this requirement to the Committee. Their recommendation is consistent with current practice in the fire service. The committee accepted the workgroups recommendations.

In paragraph (e)(7)(i) of § 1915.505, OSHA proposes that all life safety ropes, body harnesses, and hardware used by fire response employees for emergency operations must meet the applicable requirements of NFPA 1983–2001, Standard on Fire Service Life Safety Rope, Harnesses, and Hardware (Ex. 19–11). This is consistent with subpart I of this part and paragraph 7.14.1 of NFPA 1500–2002.

In paragraph (e)(7)(ii) of § 1915.505, OSHA proposes that only class I body harnesses may be used to attach fire response employees to ladders and aerial devices. This is consistent with NFPA 1983–2001.

In paragraph (e)(7)(iii) of § 1915.505, OSHA proposes that only class II and class III body harnesses may be used by fire response employees for fall arrest and repelling operations. This is consistent with NFPA 1983–2001.

In paragraph (f) of § 1915.505, OSHA addresses equipment maintenance.

In paragraph (f)(1) of § 1915.505, OSHA proposes that the employer must inspect and maintain personal protective equipment used to protect fire response employees to make sure that it provides the intended protection. Such inspection and maintenance is consistent with OSHA's personal protective equipment standards.

In paragraph (f)(2) of § 1915.505, OSHA addresses the maintenance of fire response equipment. The requirements for testing and maintaining fire response equipment are consistent with sound safety practices and the requirements for tools and equipment found in chapter 7 of NFPA 1500–2002.

In paragraph (f)(2)(i) of § 1915.505, the employer is required to keep fire response equipment in a state of readiness.

In paragraph (f)(2)(ii) of § 1915.505, OSHA proposes that the employer must make sure that all fire hose coupling and connection threads are standardized throughout the facility and on vessels and vessel sections by providing the same type of hose coupling and connection threads for hoses of the same or similar diameter. It is important to stress the need for standardized or compatible threads in couplings and connections. The Committee heard testimony from fire department personnel stressing the need for compatibility and standardization. Those fire department representatives indicated for example, that many 1½-inch hoses have threads that look very similar but cannot be connected.

In paragraph (f)(2)(iii) of § 1915.505, OSHA proposes that if the employer uses an outside fire organization for fire response and the employer expects them to use the employer's facility's or vessel's or vessel section's fire response equipment, then the employer must make sure that either all the facility's or vessel's or vessel section's hose and coupling connection threads are the same as those used by the outside fire authority or that suitable adapter couplings are supplied. This language is consistent with the language found in paragraph 9.3 of NFPA 14–2000 (Ex. 20–12).

Section 1915.506 Hazards of Fixed Extinguishing Systems on Board Vessels and Vessel Sections

This section addresses the hazards associated with fixed extinguishing systems on board vessels and vessel sections that could create a hazardous atmosphere when activated in shipyard employment, regardless of geographic location. Of particular concern is the incorrect or inadvertent activation of these systems. Fixed fire extinguishing systems found on land side are covered by the next section of this proposed subpart, § 1915.507 Land side Fire Protection Systems.

The hazards associated with the use of fixed extinguishing systems on board vessels and vessel sections have long been recognized by the United States Coast Guard (USCG) as evidenced by Coast Guard Commandant Notices and Instructions that date to 1978. The International Maritime Organization [2] (IMO) has also addressed this issue by issuing regulations that are part of the International Convention for the Safety of Life at Sea (SOLAS).

Testing these ships' fixed extinguishing systems has led to several fatalities. In October, 1996, aboard the Italian flag liquid natural gas (LNG) carrier SNAM PORTVENERE, an American Bureau of Shipping (ABS) surveyor and five shipyard technicians were killed when carbon dioxide (CO_2) was released accidently from a fixed fire extinguishing system that was being tested. On May 3, 1993, aboard the M/V CAPE DIAMOND, while a contractor was testing a low pressure CO_2 system that protected the ship's engine room, CO_2 was discharged accidently, causing the deaths of a Coast Guard marine inspector and a shipyard contractor. Additionally, an intentional activation of a manual CO_2 extinguishing system aboard the Australian naval vessel HMS APPLELEAF, caused the death of four persons. These incidents were attributed to human error in which the discharge of CO_2 extinguishing systems protecting spaces aboard vessels was allowed to occur while employees were working inside.

The Committee recognized and OSHA agrees that although the casualty history reveals problems with only CO_2 systems, the potential exists for the use of new extinguishing agents and application methods to produce hazards similar to CO_2. Therefore, the proposed employer's responsibilities in paragraph (a) of § 1915.506 apply to all fixed extinguishing systems aboard vessels and vessel sections, regardless of geographic location, that may result in a hazardous atmosphere if discharged. It is very likely that the only systems that may be affected by this regulation will be those that employ gaseous or two-phase (gaseous/liquid) extinguishing agents. However, by including all systems that may create a hazardous atmosphere when activated, the Committee believes that the regulation will be broad enough to cover future systems and/or extinguishing agents that are currently unforeseen. Examples of future possibilities include systems employing dry chemical extinguishing agents (these systems currently exist but are not typically installed on vessels), combination dual water/dry chemical systems, or systems using Halon alternative agents.

While developing this proposal, the Committee discussed whether to include requirements for other systems that do not cause hazardous atmospheres when activated, such as foam and automatic water sprinkler systems. After extensive discussion, the Committee decided that a standard for these systems was not necessary because they are not typically relied upon on board vessels and vessel sections, and they do not pose a significant safety and health threat to employees.

In proposed paragraph (b) of § 1915.506, the Committee agreed to require that systems, whether designed to be activated automatically or manually, be physically isolated or be provided with other positive means to prevent discharge of the systems before any work is done in a space equipped with fixed extinguishing systems. The Committee recognized the increased hazard posed by systems that are activated by either pneumatic, electronic, or other means, with no human action necessary to set them into operation. However, even if a system also has a manual means of activation, it would have to be physically isolated or provided with other positive means to prevent discharge. Examples of other positive means can be found in paragraph (c) of this section. Systems that are activated automatically are normally located in typically unoccupied spaces such as paint lockers and storage lockers, but can also be found in normally occupied spaces such as engine rooms and pump rooms.

In paragraphs (b), (d), and (e) of § 1915.506, the term physically isolated refers to physically preventing the extinguishing agent from entering the work area. This is typically done by installing a blank (a flat piece of metal between two flanges) in the supply line of the extinguishing system so that the extinguishing agent can not possibly be released into the protected area.

Paragraph (b) of § 1915.506 sets forth the provisions that must be completed before any work is done in a space equipped with such fixed fire extinguishing systems. In paragraph (b)(1) of § 1915.508, OSHA proposes that systems must be physically isolated or have other positive means to prevent discharge.

Proposed paragraph (b)(2) of § 1915.506 requires employee training to ensure recognition of systems discharge and evacuation alarms, and recognition of the appropriate escape routes. This training consists of making sure that employees recognize the discharge and

[2] The International Maritime Organization is the United Nations' specialized agency responsible for improving maritime safety and preventing pollution from ships.

evacuation alarms and escape routes in accordance with § 1915.508 of this subpart.

Proposed paragraph (b)(3) of § 1915.506 was included as a result of Coast Guard information about a casualty at sea. The United States Coast Guard recognized the need to ensure adequate means of escape from spaces protected by CO_2 systems. In this incident, the chief engineer inadvertently discharged CO_2 into a space with an inward opening door. Members of the crew were unable to open the door until pressure in the space subsided. During that time some crew members were asphyxiated. As a result of this incident the Coast Guard recommended that during inspections, CO_2 storage provisions and means of escape should be evaluated. The Coast Guard stated further that protective measures should be provided, such as making sure that doors open outward, that there are kick-out panels in doors or bulkheads, that doors are blocked open when the space is occupied, or that there are sufficient vent openings to the atmosphere. These recommendations are also recognized in COMDTINST 16000.7, MSM, Vol. II (Ex. 17) and SOLAS 74/78 (Ex. 18) which require outward opening access doors in CO2 protected spaces aboard vessels.

Proposed § 1915.506(b)(4) addresses the Committee's concern with inward opening doors, hatches, scuttles, and other potential barriers that may close off escape routes as a result of system activation. The Committee recognized that fully opening or removing doors may cause unacceptable exposures of equipment or employees to the elements (*e.g.* freezing, precipitation, etc.) and, therefore, proposed that this concern may be satisfied by placing a blocking device between the door and door frame to make sure that in the event of system discharge escape routes will not be impaired.

OSHA recognizes that placing a blocking device in a fire door is normally an unacceptable practice. However, in this case, because of the hazard of asphyxiation, OSHA would allow the doors to be blocked open, as long as the blocks are removed before the system is relied upon to provide fire protection.

Proposed paragraph (b)(5) of § 1915.506 requires employee training in the hazards associated with extinguishing systems, such as how to avoid disturbing system components and equipment that are located within spaces. Such components and equipment include piping, cables, linkages, detection devices, activation devices, and alarm devices. Typically in shipyard employment, employees rig materials and equipment in and out of vessel and vessel sections, using chain falls and come-alongs. Employees untrained about the dangers of disturbing system components could accidently activate the system while in the process of rigging.

The Committee recognized that the majority of current CO_2 systems are not equipped with components and instrumentation that would allow a simple method for physically isolating the system. Therefore, the Committee proposed paragraph (c) of 1915.506 to allow work in a space protected by a system activated solely by manual means without the need to physically isolate. Although the safest method is to physically isolate the system, OSHA believes that the requirements included in paragraphs (b)(1) through (5) of § 1915.506 provide an acceptable level of safety. One reason for these options is the impracticality of physically isolating the system for routine and short-duration maintenance and repairs. The Committee wanted to encourage manufacturers, standards writing agencies, and end users to work to develop a simple and practical means for physically isolating existing and future systems.

Proposed paragraph (c) of § 1915.506 is intended to minimize the risk of intentional or accidental activation of a manual system during sea trials by requiring that all activation stations, whether remote or local, must be secured under lock and key or an attendant posted. The intent is to prevent unauthorized persons access to the activation controls of a manual system.

Proposed paragraphs (d) and (e) of § 1915.506 address system testing and system maintenance operations. These have been demonstrated to be the most likely causes of accidental system activation. The Coast Guard currently requires fixed fire extinguishing systems to be disconnected when undergoing any testing or maintenance. The need for these requirements is demonstrated clearly by the fatalities that occurred while testing the fixed system on the M/V CAPE DIAMOND mentioned above. As a result of this incident the Coast Guard recommended that personnel in spaces protected by CO_2 systems be evacuated during testing, unless suitable safeguards are instituted, such as isolating the CO_2 supply from the protected space or providing personnel with self-contained breathing apparatus (SCBA).

The Committee considered the Coast Guard recommendation for employees doing testing to have the option of using SCBAs or using emergency escape breathing devices (EEBD). But the Committee concluded that, because the potential for accidental discharge is so great during testing and maintenance of the system, it is necessary to physically isolate the system during testing and maintenance. The Committee further proposed requiring evacuation of the space by all personnel not directly involved in testing. The reason for proposing both to physically isolate the system and to evacuate non-essential personnel during testing is that testing of the system typically results in alarm activation and discharge of extinguishing agent. Therefore all indications of a test gone awry may be ignored as a false or nuisance alarm by non-essential employees until it is too late to evacuate the space safety. OSHA agreed that the proposal to evacuate all personnel not involved in testing the system best protects the safety of shipyard employees.

Several members of the Committee noted that during sea trials, the employer may expect employees to rely on the on board fixed extinguishing system in the event of a fire. In proposed paragraph (f) of § 1915.506, OSHA addresses the hazards associated with using fixed fire extinguishing systems by proposing that employees be trained and designated as necessary to operate and activate the system properly. Further, OSHA proposes that all employees be evacuated from protected spaces, affected areas, and accounted for before the discharge of the system.

Two serious incidents resulting in ten fatalities were caused by intentional activation of a manual CO_2 extinguishing system protecting an engine room while personnel were trapped inside. One incident occurred on the SNAM PORTOVENERE. Lloyd's Register reported on November 7, 1996, that "an autopsy on the victims revealed that carbon dioxide was the cause of death, rather than the fire or smoke from the blaze which had been reported in the engine room. Sources said the fire was small and was being put out with hand extinguishers when the carbon dioxide plant was activated, saturating about 85% of the engine room within 2 minutes, according to one of the technicians who survived the incident." (Ex. 10–1). OSHA therefore proposes in paragraph (f)(1) of § 1915.506 to require that employees be trained and designated to operate fixed manual systems when the employer expects these systems to be relied on in the event of a fire.

As reported in the London Guardian, the second incident occurred aboard the

HMS APPLELEAF, when, "an Australian naval captain ordered that the engine room be sealed off and the compartment flooded with carbon dioxide—with four crew members inside." (Ex. 10–2). Although the report was not clear as to whether or not the cause of the deaths in this case was from asphyxiation by the carbon dioxide or from fire and smoke exposure, the incident illustrates the hazards associated with discharging a lethal concentration of an extinguishing agent into an occupied, enclosed space. The Committee strongly recommended and OSHA agreed to propose in paragraph (f)(2) of § 1915.506 to require that the protected space and affected areas must be evacuated completely and all employees accounted for before discharge of the fixed manual extinguishing system.

Section 1915.507 Land Side Fire Protection Systems

While developing these provisions, the Committee examined existing OSHA regulations for fire protection. Currently there are several OSHA requirements for land side portable and fixed fire protection systems in part 1915. For flammable liquids, § 1915.36(a)(6) requires "Suitable fire extinguishing equipment shall be immediately available in the work area and shall be maintained in a state of readiness for instant use." For welding, cutting and heating operations, § 1915.52(a)(2) requires, "If the object to be welded, cut or heated cannot be moved and if all the fire hazards including combustible cargoes cannot be removed, positive means shall be taken to confine the heat, sparks, and slag, and to protect the immovable fire hazards from them." For all hot work § 1915.52(b)(2) requires "Suitable fire extinguishing equipment shall be immediately available in the work area and shall be maintained in a state of readiness for instant use." For all hot work § 1915.52(b)(4) requires that "Vaporizing liquid extinguishers shall not be used in enclosed spaces."

Additionally, for ship breaking operations only, § 1915.52(c) requires "In all cases, suitable fire extinguishing equipment shall be immediately available in the work area and shall be maintained in a state of readiness for instant use. Personnel assigned to contain fires within controllable limits shall be instructed as to the specific anticipated fire hazards and how the firefighting equipment provided is to be used." For general working conditions, § 1915.91(d) requires, "Free access shall be maintained at all times to all exits and to all fire alarm boxes or fire extinguishing equipment." While these standards apply specifically to fire protection in shipyard employment, the Committee recognized that there are also additional standards in the part 1910 General Industry Standards that are currently used as guidelines in shipyard employment and are accepted industry practice. The Committee has recommended, and OSHA agrees, that the existing requirements in § 1915 that address fire protection will be replaced by the requirements of this subpart.

Subpart L of part 1910 contains the general industry standards for portable and fixed fire suppression systems. The specific types of equipment and systems regulated include portable fire extinguishers, standpipe and hose systems, automatic sprinkler systems, and fixed extinguishing systems using liquid, solid, or gaseous extinguishing agents. There are also requirements for fire detection and fire alarm systems. The current standards in subpart L were developed in 1980 (45 FR 60710) as a major revision to the original 6(a) standards adopted in May, 1971. While subpart L of part 1910 does not apply to the maritime industry (29 CFR 1910.155), many of these standards are used voluntarily as guidelines to control hazards to shipyard employees working in shipyard employment.

In addition to reviewing current OSHA standards, the Committee also considered applicable national consensus standards and codes developed by NFPA. The NFPA codes and standards are the recommendations of the NFPA consumers, property owners, fire authorities, federal agencies, insurance companies, and other persons interested in providing fire safety to life and property. The NFPA codes and standards are purely advisory documents so far as the NFPA is concerned. They become an influential force for the public when adopted by governmental authority. Many of the NFPA standards were adopted under the section 6 (a) of Occupational Safety and Health Act of 1970.

The Occupational Safety and Health Administration, through its standards, uses NFPA codes and standards in two ways: In most cases, the codes or standards are incorporated by reference, citing a particular edition. This may not be the latest edition published by the Association. In other cases, the OSHA standards actually extract some or all of the text from NFPA codes and standards and include it in the regulatory text of the OSHA rule.

With respect to this section (land side fire protection systems) of the proposal, the Committee recommended that OSHA incorporate by reference, the most current edition of an NFPA code or standard rather than extract the NFPA text and publish it as the OSHA rule. OSHA proposes, in this section, to follow the Committee's recommendation and incorporate by reference the necessary NFPA codes and standards. The standards proposed in this notice are based upon the current and applicable OSHA and NFPA codes and standards reviewed by the Committee.

In paragraph (a) of § 1915.507, OSHA proposes to establish the employer's responsibilities under the section. Under the proposed rule, the employer would be responsible for ensuring that all fixed and portable fire protection systems installed to meet a particular OSHA standard comply with the appropriate proposed requirements of this section. The proposed rules in this section do not apply to fixed or portable fire protection systems the employer has installed to meet requirements other than OSHA's.

This proposal is consistent with the philosophy adopted in part 1910 for regulating fixed and portable fire extinguishing systems. OSHA found during the development of the general industry requirements for fixed and portable fire protection systems that some employers may opt to take property protection systems out of service rather than upgrade them to meet OSHA standards, an action that is contrary to basic fire prevention policy and property protection concepts. Therefore, rather than risk the loss of property, and the associated economic impact of such losses, OSHA decided in 1980 to regulate only those systems it requires. (*See* 45 FR 60710.) Fire protection systems installed to meet other codes or standards would not be regulated by OSHA.

In paragraph (b) of § 1915.507, OSHA proposes to regulate the use of portable fire extinguishers and hose systems. By proposing to incorporate by reference NFPA 10–1998, Standard for Portable Fire Extinguishers (Ex. 20–1) in paragraph (b) of this section, the employer may replace up to one-half of the required complement of fire extinguishers by uniformly spaced 1½-inch (3.8 cm) hose stations. If the employer chooses to use hose systems, then the employer would have to meet the requirements of NFPA 14–2000, Standard for the Installation of Standpipe Systems (Ex. 20–12). This is consistent with current OSHA practice under 29 CFR 1910.157 and 1910.158. The incorporation by reference here, in paragraph (b)(1) of § 1915.507, should impose no greater burden on employers. Rather, it will permit some flexibility in

offering protection for incipient stage fires.

In paragraph (b)(2) of this section, OSHA is proposing that the employer may use hose lines attached to class II or class III standpipe systems in place of portable fire extinguishers if those hose systems meet the applicable selection, installation, inspection, maintenance, and testing requirements of NFPA 14–2000 (Ex. 19–12), Standard for the Installation of Standpipe and Hose Systems.

OSHA proposes in paragraph (c) of § 1915.507 to address the general requirements of fixed extinguishing systems the employer must install to meet a particular OSHA standard. In paragraph (c)(1) OSHA requires that all fixed extinguishing systems required by OSHA must be approved for their use by a National Recognized Testing Laboratory (NRTL). This is consistent with OSHA's current practice of requiring that all fire protection equipment and systems be approved for their purpose and design by a NRTL.

In paragraph (c)(2) of § 1915.507, OSHA proposes, as the Committee recommended, that employers must notify employees and take the necessary precautions to protect employees when a fire extinguishing system becomes inoperable.

In paragraph (c)(3) of § 1915.507, OSHA also requires that any inoperable system be repaired by a qualified technician or mechanic. This proposal is consistent with and taken from current, fire protection standards (29 CFR 1910.160 and NFPA 12–2000).

OSHA proposes in paragraph (c)(4) of § 1915.507 that when an area remains hazardous to employee safety or health as a result of the discharge of an extinguishing agent, personal protective equipment must be provided to employees who enter the discharge area or effective safeguards must be provided to warn employees not to enter the discharge area. This proposal is consistent with the requirements in § 1910.160(c).

This paragraph is necessary because some systems must be designed to discharge extinguishing agents in concentrations greater than what is safe for humans. These systems, with the potential for creating a hazard to employees, need special consideration and control. OSHA proposes to carry the current requirement in § 1910.160(c) over to the proposal, recognizing that the hazards of such systems need to be identified and controlled in shipyard employment. This is particularly true of systems using carbon dioxide and some of the newer Halon replacement agents. OSHA is also proposing a note to this paragraph directing the reader to § 1915.12, Precautions and the order of testing before entering confined and enclosed spaces and other dangerous atmospheres, for additional requirements for entry into dangerous atmospheres that may be created by the discharge of certain extinguishing agents.

In paragraph (c)(5) of § 1915.507, OSHA proposes to require the employer to post hazard warning or caution signs at both the entrance to and inside of areas protected by fixed systems that could discharge extinguishing agents in concentrations that are known to be hazardous to employee safety or health. This proposal is consistent with paragraph (b)(5) of 29 CFR 1910.160.

In paragraph (c)(6) of § 1915.507, OSHA proposes, as recommended by the Committee, that the employer must select, install, inspect, maintain, and test all automatic fire detection systems and emergency alarms according to the NFPA 72–1999, National Fire Alarm Code (Ex. 19–13). Presently, OSHA requires only that those fire detection systems and emergency alarms required to meet a specific OSHA standard meet the requirements of 29 CFR 1910.164 and 1910.165. OSHA's current standards in §§ 1910.164 and 1910.165 were based upon existing standards and technology available in the 1970s when OSHA developed the standard. Since that time, several technological advancements have occurred in both fire detection and fire alarm technology.

As a result, the NFPA consensus committee responsible for developing fire detection and alarm standards and codes made extensive changes to NFPA 72. The most recent edition of their consensus standard, the 1999 edition, recognizes many changes that have taken place in the detection and alarm industry, such as those required by the Americans with Disabilities Act, software testing, fire modeling, and communication technology. OSHA believes, as the Committee recommended, that incorporating by reference, NFPA 72–1999 as the OSHA standard for designing and installing all fire detection and alarm systems will provide employees with protections consistent with protections provided by other codes and standards used by local authorities having jurisdiction.

OSHA, in paragraph (d) of this section, addresses the selection, installation, maintenance, inspection, and testing requirements for specific types of fixed fire extinguishing systems the employer uses to meet a particular OSHA standard. In paragraph (d)(1) OSHA proposes, as recommended by the Committee, that standpipe and hose systems in land side facilities follow NFPA 14–2000.

In paragraph (d)(2) of § 1915.507, OSHA proposes to incorporate by reference, NFPA 13–1999, Standard for the Installation of Automatic Sprinkler Systems (Ex. 19–14); NFPA 750–2000, Standard on Water Mist Extinguishing Systems (Ex. 19–15); and NFPA 25–2002, Standard for the Inspection, Testing, and Maintenance of Water-based Fire Protection Systems (Ex. 19–16), as the OSHA standard for installing OSHA-required automatic sprinkler systems in land side facilities. As above, this standard is being incorporated by reference at the recommendation of the Committee. OSHA does not believe that there is any increased burden placed upon employers by incorporating by reference this newer edition of the standard OSHA used in developing 29 CFR 1910.159. One of OSHA's goals with this proposal is to update outdated standards used as source standards in previous OSHA rules.

OSHA is also proposing a new standard in paragraph (d)(2) that would address installing fixed extinguishing systems that use water mist as the extinguishing agent. OSHA proposes to incorporate by reference NFPA 750–2000, Standard on Water Mist Extinguishing Systems (Ex. 19–15), as the OSHA standard for installing this type of system. The systems are found land side in places such as flammable liquid storage facilities and electrical equipment spaces.

In paragraph (d)(3) of § 1915.507, OSHA proposes to incorporate by reference several NFPA standards for fixed extinguishing systems that use water spray or foam for the extinguishing agent. OSHA proposes to incorporate by reference: the NFPA 11–2000, Standard for Low-Expansion Foam (Ex. 19–17); the NFPA 11A–1999, Standard for Medium- and High-Expansion Foam (Ex. 19–18); and NFPA 15–2002, Standard for Water Spray Fixed Systems for Fire Protection (Ex. 19–19) as the OSHA standards for installing fixed foam extinguishing systems. The provisions of this proposed incorporation by reference differentiate between the various expansion densities of foam discharges.

Current OSHA standards in part 1910 address foam extinguishing systems in general rather than specific terms. As stated above, one of OSHA's goals is to incorporate current standards in this proposal. Therefore, OSHA is proposing to incorporate by reference both NFPA 11–2000 and NFPA 11A–1999 to recognize current technologies and the possible use of low-, medium-, and high-expansion foam systems in shipyard employment. OSHA believes this incorporation by reference will offer greater guidance and flexibility to those employers who choose to use fixed foam extinguishing systems to meet OSHA's standards.

In paragraph (d)(4) of § 1915.507, OSHA proposes to incorporate by reference the current edition of NFPA 17–1998, Standard for Dry Chemical Extinguishing Systems (Ex. 20–20), as the OSHA standard for installing fixed extinguishing systems using dry chemical extinguishing agents. Again, this proposed paragraph would apply only to those fixed dry chemical extinguishing systems the employer chooses to install to meet a particular OSHA standard. OSHA's proposal is based upon the Committee's recommendation.

In paragraph (d)(5) of § 1915.507, OSHA proposes to incorporate by reference the current edition of NFPA standards that address fixed extinguishing systems using gas as the extinguishing agent. Specifically, for standards for designing and installing fixed extinguishing systems, OSHA references NFPA 12–2000, Standard on Carbon Dioxide Extinguishing Systems (Ex. 20–21); NFPA 12A–1997, Standard on Halon 1301 Extinguishing Systems (Ex. 20–22); and NFPA 2001–2000, Standard on Clean Agent Fire Extinguishing Systems (Ex. 20–23).

OSHA recognizes that the fire extinguishing agent Halon 1301 is being phased out because of environmental concerns. However, for economic reasons, existing Halon 1301 systems may remain in service until such time as they are replaced by an alternative agent. Recognizing that existing Halon 1301 systems that remain in service, OSHA proposes to continue regulating their design and installation to ensure employee safety. For the systems that will replace Halon, OSHA is proposing for the first time that the employer meet NFPA 2001–2000 for their design and installation. This new proposal is based upon the Committee's recommendation that OSHA incorporate by reference the most recent edition of applicable NFPA standards to protect employees from hazards in the workplace.

Section 1915.508 Training

The Committee unanimously recognized the importance of employee training in combating the hazards of fire throughout shipyard employment. Specific emphasis is placed on hazard recognition, fire watch, and fire response. This is consistent with OSHA's long held philosophy that an adequately trained employee is a safe employee. OSHA is proposing the Committee's full recommendations regarding training. Also, OSHA's proposal extends the training requirement beyond ship breaking operations to include all activities in shipyard employment regardless of geographic location. This would include operations involving shipbuilding and ship repair activities as well as other activities engaged in by shipyard workers.

Under paragraph (a) of § 1915.508, the employer must train employees expected to perform incipient stage firefighting on board vessels, in vessel sections, and in land side facilities. Such training must be conducted initially upon employment and when necessary to keep them proficient in the following: (1) The general principles of using fire extinguishers or hose lines, the hazards involved with incipient firefighting, and the procedures used to reduce these hazards; (2) the hazards associated with fixed and portable fire protection systems that they may use or to which they may be exposed during discharge of those systems; (3) the activation and operations of fixed and portable fire protection systems provided for their use in the workplace; (4) the emergency alarm signals, including system discharge and employee evacuation alarms; and (5) the primary and secondary evacuation routes they must use in the event of a fire in the workplace.

At the Houston meeting held in February, 2002, the Committee agreed to add a note to paragraph (a) of § 1915.508 stating that while all vessels and vessel sections have a primary evacuation route, not all will have a secondary evacuation route. This language was added as clarification to paragraph (a)(5) because although this fire protection standard applies to all of shipyard employment, the uniqueness of vessels and vessel sections in comparison to buildings or structures should be noted.

OSHA's proposal is consistent with the current training requirements found in part 1915 for ship breaking activities and in part 1910 for other shipyard activities. The requirement to train and retrain selected employees is based upon the current requirements found in 29 CFR 1910.157.

In paragraph (b) of § 1915.508, OSHA addresses training requirements for fire response employees and the training requirement found in existing paragraph (c) of § 1915.52. That paragraph requires that, only for ship breaking operations, all personnel assigned to contain fires within controllable limits must be instructed about the specific anticipated fire hazards and how the firefighting equipment provided is to be used.

In paragraph (b)(1) of § 1915.508, OSHA proposes that the employer must have a written training policy, as part of the Fire Safety Plan (§ 1915.502) of this part, stating that fire response employees are to be trained and capable of carrying out their duties and responsibilities at all times. This is consistent with the requirements found in 29 CFR 1910.156 and NFPA 1500–2002.

In paragraph (b)(2), OSHA proposes that the employer keep written standard operating procedures (SOPs) that address anticipated emergency operations and update these procedures as necessary. The Committee concluded, and OSHA agrees, that written standard operating procedures are standard training tools that represent the best practice in the industry. This is consistent with the language in paragraphs 3–1.5 and 3–1.8 of NFPA 1500–2001.

In paragraph (b)(3) of § 1915.508, OSHA proposes that the employer review, in advance, all training programs and hands-on sessions to make sure that fire response employees are protected from training accidents. This proposal is based on a recommendation from the workgroup with full Committee approval and not from any established standard. The proposal requires a review of all training programs to make sure that the procedure will not expose trainees and their instructors to hazardous training conditions. The proposal should prevent the occurrence of accidents resulting from unexpected events such as flare-ups, collapses, entrapments, and stress-induced injuries during training evolutions.

In paragraph (b)(4) of § 1915.508, OSHA proposes that all fire response employees receive adequate training for carrying out their duties and responsibilities under the employer's standard operating procedures. This training program must make sure that these employees remain competent to respond to a fire. For example, the employee must know how to respond to a fire on board a vessel, where the pier hook-ups are located, how to gain access to the vessel, the location of the fire within the vessel, and the type of fire.

In paragraph (b)(5) of § 1915.508, OSHA proposes that the employer make sure that new fire response service employees are trained before they engage in emergency duties so that they can work safely and effectively at a fire scene. This language is consistent with the language in paragraph 3–1.3 of NFPA 1500–2002. The purpose of this proposal is to make sure that employees are trained to perform the duties

expected of them. If they have not been trained in a particular skill, they would not be permitted to perform any duty involving that skill. However, they may respond and perform duties for which they have been trained even if they have not received the entire training module for their position.

In paragraph (b)(6) of § 1915.508, OSHA proposes that the employer provide training for firefighters at least quarterly, according to the employer's written operational procedures. The Committee recommended that quarterly training is for actual firefighters, not necessarily for other fire response personnel who usually have just one function, such as connecting hoses to fire mains, starting fire pumps, or directing traffic. This language is consistent with the current requirement in 29 CFR 1910.156(c)(2) which requires annual training for all fire brigade members and quarterly training for those fire brigade members who may perform interior structural firefighting operations. The workgroup believed that the quarterly training requirement was appropriate because most fire response operations in shipyard employment, whether on the vessel or in land side facilities, would be beyond the incipient stage and most likely involve an interior attack.

In paragraph (b)(7) of § 1915.508, OSHA proposes that all fire response operations training must be conducted by qualified instructors. The Committee recognized, as does OSHA, the importance of using qualified instructors in all training provisions required by this section. This language is consistent with the language in paragraph 5.2.11 of NFPA 1500–2002.

In paragraph (b)(8) of § 1915.508, OSHA proposes that any training the employer does that involves live fire-fighting exercises would have to be done according to NFPA 1403–2002, Standard on Live Fire Training Evolutions (Ex. 19–24). This language is consistent with paragraphs 4.9.4 and 5.2.10 of NFPA 1500–2001.

In paragraph (b)(9) of § 1915.508, OSHA proposes that the employer must provide semiannual drills that cover site-specific operations, occupancies, buildings, vessels and vessel sections, and hazards, according to the employer's written operational procedures. The semiannual requirement for drills is consistent with the recommended frequency found in paragraph 5.3 of NFPA 1500–2002.

The Committee had some concerns about the requirement for the shipyard employment's fire department to perform two training drills within a one-year period. Some members of the Committee requested that OSHA count a fire response as one training drill. Most of the members did not want to count a fire response as a training drill citing that the drill is to be used for assessing and improving operational or deployment procedures. When an alarm is sounded and the shipyard fire department responds, the on-scene command is coordinating the scene and cannot simultaneously evaluate the response. The commander's primary responsibility is to ensure that their employees respond safely. The Committee understands that at the end of the response, the fire department's employees evaluate their deployment tactics, site-specific approach (buildings, shops, vessels and vessel sections), and hazards. This is usual and customary throughout the country and is not to be considered a training drill. Drills are used for the sole purpose of training, and fire response is for saving lives and property. OSHA agrees that fire responses are not to be considered drills for the purposes of this paragraph.

In paragraph (b)(10) of § 1915.508, OSHA proposes that the employer must not use smoke generating devices that could create a hazardous atmosphere in training exercises. This includes training done on vessels and vessels sections as well as in buildings and other structures. This language is consistent with paragraph 8.3.2 of NFPA 1500–2002. According to the NFPA Committee that developed NFPA 1500–2002, several accidents have occurred where smoke bombs or other smoke-generating devices that produce a toxic atmosphere have been used for training exercises. Where the employer must simulate emergency conditions, smoke-generating devices that do not create a hazard must be used.

Paragraph (c) of § 1915.503 sets forth the training requirements for fire watch duty. The Committee recommended that OSHA propose specific language stating when a shipyard employer should train workers as fire watches.

In paragraph (c)(1) of § 1915.508, OSHA proposes that the employer make sure the worker has been trained: (i) Before beginning the fire watch; (ii) when there is a change in operations that presents a hazard for which the worker has not been previously trained; or (iii) when the employer determines that the fire watch employee needs to be trained.

The Committee urged OSHA to include in the requirements for fire watch training a basic understanding of fire behavior that covers such elements as awareness, anticipation of different classes of fire in combination with different physical work areas, and extinguishing agents and their uses. The Committee recognizes that the fire watch's role is important in protecting lives and preventing fires within shipyard employment. To be able to evaluate a work area and to consider both the physical conditions and possible adverse effects of a fire in that area are also important skills that a fire watch needs to have. The Committee did not want to specify a particular course that must be used to train fire watches. OSHA has followed the recommendation by proposing these requirements in a performance-oriented manner to allow the employer to train workers in the most efficient and feasible manner for his or her shipyard employment environment. The hazards associated with each type of cargo must be taken into consideration. For example, repairing chemical barges has been concentrated in the Gulf and the inland waters of the Gulf. Therefore, fire watches in the Gulf area would likely be trained to deal with fires involving chemicals that are shipped by barge. Another consideration is the regional difference in temperatures that could affect the ignition and spread of fire. OSHA agrees with the Committee that individual employers are best suited to develop their fire watch training geared to specific shipyard employment operations.

In paragraph (c)(1)(iv) of § 1915.508, based on the Committee's recommendation, the Agency proposes that the employer must retrain fire watches annually. The Committee recognized fire watches as the first line of defense against the spread of fire, as discussed above under paragraph (c)(1) of § 1915.504. Annual training is an industry practice. In addition, according to the Committee, annual training is required on Navy contracts throughout the country, and it is not viewed as an additional requirement burden.

In paragraph (c)(2) of § 1915.508, the Agency proposes that each employee who stands a fire watch duty be trained. The training would include how to anticipate and be aware of the hazards that may be faced while performing fire watch duties. Such hazards may include limited egress or possible changes in atmospheric conditions. For the training requirement for fire watches to recognize the adverse health effects that may be caused by the exposure to fire, the Committee noted that workers have to be familiar with the OSHA standard for Hazard Communication, 29 CFR 1910.1200, and its requirements related to the products the workers are using in their work and the Material Safety Data Sheets (MSDSs) for those products, and where appropriate, for the last three

products carried in this space or the coatings that were applied to the steel before hot work. It was explained to the committee that workers exposed to hazardous chemicals are already covered by the OSHA Hazard Communication standard. The Committee noted that the workers need to be knowledgeable about fire prevention practices so they can correctly react to changes in the hot work area environment that introduce hazards not identified at the start of hot work. Examples are deterioration of housekeeping or introduction of combustible or flammable materials.

Paragraph (c)(2)(i) of § 1915.508 requires the employer to train a fire watch on the basics of fire behavior, the classes of fires, extinguishing agents and stages of fire, and methods of extinguishment. The basics of fire behavior usually include the definition of the fire triangle and tetrahedron as set forth by NFPA 1001–1997—Standard for Fire Fighter Professional Qualification (Ex. 19–25). Extinguishing agents commonly used in shipyard employment are dry chemical, water, and CO_2. Methods of extinguishing require removing one or more of the following: heat (ignition), oxygen, fuel, or chemical chain reactions. Members of the Committee suggested that the selection of a fire extinguisher used on certain materials may, in fact, present a hazard in itself. Even though the worker is trained to be able to identify, select, and use the appropriate extinguishing agent, such training does not relieve the employer from the responsibility to assess the hot work area hazards and make the correct extinguishing agents available. The Committee noted that particular extinguishing agents may vary and that in some yards, according to one employer, workers are forbidden to use CO_2 extinguishers in confined spaces.

The Committee raised a number of issues when reviewing paragraph (c)(2)(ii) of § 915.508 Training Requirements For Fire Watch Duty. One issue discussed was whether the employer should require live fire training for all fire watches. The Committee found that there were different requirements and restrictions across the country. Some members thought that how fire watch personnel are trained should be left up to the yard and not this Committee. Others stated that the only way a fire watch can learn the proper procedure is for that individual to have hands-on training on attacking a fire. One member stated that classroom training is the only way he could train employees because of his state's strict emissions standards. Another member stated that although the State of California has a ban on open-burning, the Department of Air Quality for the State of California does issue an annual permit for open fire burning for this type of training. Some members stated that the only way to train employees on how to properly use a fire extinguisher or fire hose is to put the trainees in a realistic situation. The training exercise would be a controlled burn and would teach the trainee the proper way to approach the fire. Initially, the Committee could not reach a full consensus on the issue of live versus classroom (lecture/video) training. During deliberations, one committee member from a large shipyard located on the Gulf Coast had not considered live-fire training but was persuaded by the discussion and is currently building a facility within the shipyard to perform this training. The Committee noted that there are various apparatuses available for live fire training that are either fabricated within the shipyard or commercially available. After lengthy discussions, a recommendation was unanimously agreed upon by the Committee and added by OSHA as proposed § 1915.508(c)(2)(ii). In this paragraph, the employer must ensure that each fire watch is trained using live fire scenarios whenever allowed by law.

Paragraphs (c)(2)(iii), (iv), and (v) propose, respectively, that employees who stand fire watch duty must be able to recognize the adverse health effects that may be caused by exposure to fire; be familiar with the physical characteristics of the hot work area; and be able to anticipate and understand the hazards associated with fire watch duties.

Paragraphs (c)(2) (vi) and (vii) of § 1915.508 require training on personal protective equipment (PPE), including what PPE is appropriate in a particular situation, as well as how to use it. The Committee noted that a fire watch may need the same or different items of PPE, and even PPE providing a different level of protection, from that used by a hot worker. The Committee further pointed out that the fire watch(es) could be assigned to an isolated or confined space and, therefore, would need the additional protection that is required under other sections of part 1915.

Paragraph (c)(2)(viii) of § 1915.508 proposes that an employee who stands fire watch duty must be trained to be able to select and operate fire extinguishers and fire hoses likely to be used. As in the case of fire extinguishers, whenever a fire watch may be expected to use a fire hose, the fire watch must be trained in its use. The Committee noted that fire hoses 1½-inches in diameter are used by fire watches in some yards but not in others. For example, a Marine Chemist's instructions on a certificate may specify that a fire watch be placed inside a tank with a charged 1½-inch fire hose. A fire watch who has been trained with a fire extinguisher does not necessarily understand how to use a 1½ inch fire hose. The Committee strongly recommended, and OSHA agrees, that fire watches need particular training if they must deal with this equipment within their shipyard employment.

The Agency proposes that a fire watch be trained to select and operate the different types of fire extinguishers and 1½-inch fire hoses likely to be used by fire watches in the area. In paragraphs (g)(1) and (g)(2) of 29 CFR 1910.157, OSHA requires the employer to train any employee who has been designated to use portable fire extinguishers or, as proposed in paragraph (c)(2)(viii) of this section, fire hose, and to be familiar with the general principles of fire extinguisher use and the hazards of fighting incipient stage fires. Again, OSHA does not believe that adopting this training requirement from part 1910 imposes any new burden on shipyard employers than what currently exists.

Paragraph (c)(2)(ix) of § 1915.508 states that fire watch personnel be trained to be aware of the location and use of barriers that are part of the employer's fire protection program. Throughout the maritime industry, where partial cleaning has been performed, barriers are placed to ensure that product is not returned to the hot work area. Barriers are also used to contain molten metal or sparks from traveling to unclean areas. However, the Committee recognized that barriers can create hazards by blocking an employee's egress or by suppressing ventilation to the point where fumes or vapors can accumulate. A worker who stands fire watch must understand how barriers are used. OSHA is recommending that this provision be included in the training of fire watch personnel.

In paragraph (c)(2)(x) of § 1915.508, OSHA proposes to require that the fire watch be trained in the means of communicating with each worker performing hot work. There was considerable discussion within the Committee workgroup about current industry practices for the fire watch's contact with other workers. One member suggested OSHA incorporate NAVSEA's 009–07 Fire Prevention and Housekeeping (September 13, 1996). However, other workgroup members pointed out that this Navy Standard

Item was written primarily to protect property and that only the parts that addressed the safety of workers would be appropriate for the OSHA proposal. Therefore, the workgroup committee took only certain provisions relating to the safety of workers, including the requirement that the fire watches have a clear view and immediate access to the areas they are watching, from NAVSEA 009–07. However, the workgroup decided that requiring a clear view and access would not adequately protect workers, without also requiring a means of communication between the fire watch and the hot worker. As one member pointed out, communication is important because a fire watch may not be able to see a hot worker when, for example, the fire watch is on the other side of a compartment from the hot worker. In this case, the means may be as simple as tapping on the bulkhead to signal whether the hot worker can continue or must stop, or an electronic communication system such as a two-way radio. The phrase, "with a clear view and immediate access to the area(s) affected by the hot work," was eventually dropped from the training requirements, but substantively added to the duty requirement in paragraph (c)(2)(i) of 1915.504 Fire Watches.

In paragraphs (c)(2)(xi) and (xii) of § 1915.508, OSHA proposes to require that fire watches be trained to know when and how to initiate fire alarm procedures and to be familiar with the shipyard's evacuation plan. OSHA recognizes that fire watch work assignments may change from vessel or vessel sections to a land side facility and that each may have different alarm systems, evacuation plans, and exit routes. For example, the alarm/evacuation systems found in vessels vary significantly among vessels types. The alarm system installed and procedures established on an oiler are far more sophisticated from those found on a VLCC (very large crude carrier). Evacuation procedures and alarm systems will be different in a land side paint facility or machine shop where flammable coatings or cutting oils pose a hazard. However, the Committee concluded that regardless of the system, a primary responsibility of a fire watch must be to recognize when to initiate a fire alarm procedure and begin evacuation. A fire watch needs to know when a fire has progressed beyond the incipient stage, when a fire alarm should be activated, and when evacuation should be initiated. The Committee decided and OSHA agrees not to specify a particular type of alarm system. Both noted that the employers are in the best position to develop their own alarm systems but that fire watches need to be familiar with what the employer has developed or what is already in place in the case of a ship or barge. For example, a yard in the southern area of California could have a Navy vessel, a cruise liner, and a tug under repair at the same time, all with different alarm systems. OSHA believes that the employer must make sure that fire watches are familiar with the type of alarm systems being used on the vessel where they are working. Obviously, if assigned to all three vessels, the fire watch must be familiar with each particular alarm and evacuation scenario.

Paragraph (c)(3) of § 1915.508 continues with fire watch personnel training, specifically, the employer must ensure that each fire watch is trained to alert others to exit the work area whenever: (i) The fire watch perceives an unsafe condition associated with hot work; (ii) the fire watch perceives that a hot worker is in danger; (iii) evacuation is ordered by the employer or designated representative; or (iv) an evacuation signal such as an alarm is activated. A labor union committee member requested that language be added as item (i) to address a situation where an employee perceives an unsafe condition either before beginning work when originally surveying the work area or perhaps when changes in conditions occur during work. The employee should be trained to report the unsafe conditions. The Committee agreed to recommend this requirement.

In shipyard employment, some employers hire contract workers as needed for the sole purpose of fire watch. The employer is ultimately responsible for ensuring that these fire watches are appropriately trained as proposed in § 1915.508(c). One way to do this is for the employer to have a written evaluation of the contractor's training program that the employer could review and thereby ensure compliance with the OSHA standard. Again, OSHA wants to make clear that it is the employer's responsibility to make sure that all fire watches are properly trained.

In paragraph (d) of § 1915.508, OSHA proposes that the employer document that the training required by paragraphs (a), (b), and (c) has been accomplished.

In paragraph (d)(1) of § 1915.508, OSHA proposes to require that the employer document the worker's training by keeping a record of the worker's name, the name of the trainer, the type of training, and the date(s) of the training.

In addition, OSHA proposes in paragraph (d)(2) of § 1915.508 that the employer keep the documentation for at least one year, and, consistent with other OSHA standards, the record must be available for inspection and copying by OSHA personnel on request.

These requirements were fully supported by the members of this Committee. Representatives of management, labor, government, and professional organizations agreed that a training record, because it represents assurance that the worker standing fire watch has been trained, is essential to the safety of the fire watch, the worker doing hot work, and other personnel in the area. Despite the trend toward less recordkeeping, employer representatives believed that making and keeping the training record would not be burdensome and that any resources needed to comply with the recordkeeping would be well spent. Several members noted that fire watch was a very important duty that must be performed by trained personnel. A written record was necessary so that the employer and the workers would be able to find out that the fire watch had been trained and when the training occurred.

The record that must be kept is minimal and need contain only the worker's name, the name of the trainer, the type of training, and the date(s) of the training. It can be kept as part of the worker's personnel file, in a master file of training, or in any other format the employer chooses. A record in an electronic file or database is sufficient. However, regardless of how the record is kept, it must be available for inspection by the persons authorized to see it. To be available means that it can be easily found, so the employer must first decide how the record is to be kept, and then make certain there is access to it, possibly requiring a note or index pointing the searcher toward the information.

The record must be kept until it is replaced by the worker's new training record or for one year from when the record was made in the case of a worker who leaves the workplace or whose duties no longer include fire watch. Representatives of shipyard employers stated that there was no reason to keep records longer. The only important information in the record was that the training had occurred within the required time frame, the type of training, when the training was carried out, and who had given it. For the worker who is separated from the shipyard, OSHA is proposing to require the employer to keep the record for one year from the time it was made. Even after a worker is no longer a fire watch, the information may be relevant to determining whether the employer's fire watch training program was adequate and for research on the effectiveness of the standard. In addition, the employee or worker representative may need this time to access the records.

OSHA seeks comment on whether the requirement for training record retention should be one or three years.

Section 1915.509 Definitions

OSHA proposes in § 1915.509 to define the terms that OSHA uses in this proposed subpart. Words that OSHA uses only in this subpart that require a definition are included. Terms that OSHA uses in other subparts of part 1915 Occupational Safety and Health Standards for Shipyard Employment, are also included in this section until a new definition section for all of part 1915 is established. At that time, all of the definitions in part 1915 will be combined into one section. The Committee believed that it was necessary to propose these definitions at this time so that readers would understand the proposed regulations clearly.

The Committee formed a work group to develop the definitions for the terms they believed needed to be defined. The work group first met during the July 1997, meeting in Baltimore, MD. The discussion that follows explains the key definitions the work group developed. Not all of the definitions that OSHA proposes in this subpart are discussed. OSHA believes some of the terms have been long understood by employees and employers. However, OSHA encourages the public to comment on any of the definitions.

The Committee agreed that the following terms used in this subpart have definitions that are the same or similar to the definitions found in either parts 1915 or 1910. Therefore, OSHA is not discussing them at this time. These terms are: "confined space'; "dangerous atmosphere" (see 29 CFR 1915.11); "flammable liquid" (29 CFR 1910.106); "incipient stage fire" (29 CFR 1910.155 (c)(26)); and "hot work" (29 CFR 1915.11).

The Committee proposed to define the term "designated areas" as an area established for hot work after an assessment of fire hazard potential of facilities, vessels, or vessel sections. The Committee discussed and came to agreement on this definition during the meeting held in Houston, Texas, in February 2002.

OSHA proposes to define the term "contract employer" as an employer who performs work for a host employer at the host employer's workplace. The Committee discussed and agreed that this definition is not intended to include employers who provide incidental services that do not directly influence shipyard employment (*e.g.*, mail delivery or office supply services). There are several employee populations that may visit the shipyard for brief periods of time and who have only incidental levels of exposure to hazards that other contract employees may have. The Committee did not want to regulate these populations.

The Committee developed the definition for "fire response employee" based upon the definitions used by NFPA in NFPA 1500–2002 and by OSHA in 29 CFR 1910.156, Fire Brigades. OSHA proposes to define the term "fire response employee" as a shipyard employee who carries out duties and responsibilities of shipyard firefighting in accordance with the fire safety plan. A fire response employee may be a full-time employee, may occupy any position or rank within the shipyard, and may engage in fire emergency operations.

The Committee adapted the definition for "fixed extinguishing system" from the current definition in 29 CFR 1910.155. The Committee discussed and changed the definition because they believed it did not adequately define systems used both in land side facilities and aboard vessels and vessel sections where components may be remotely located from the space where the system will discharge. OSHA is proposing to change the definition to encompass all parts of a fixed extinguishing system regardless of location.

The Committee adapted the definition for "physically isolated" from three sources: A proposed change to NFPA 12–2000, Carbon Dioxide Extinguishing Systems (Ex. 20–21); from Coast Guard guidance published in COMDTINST 16000.7, Marine Safety Manual, Volume II, Material Inspection; and from Coast Guard recommendations published in the March/April, 1996, NFPA Journal. (Ex. 20–26). In discussing and developing this definition, the Committee considered the different types of fixed extinguishing systems, including two-phase gaseous/liquid type high pressure systems where the extinguishing agent is stored in cylinders, and low-pressure systems where the agents are refrigerated and stored in large pressure vessels.

OSHA believes that all of the other definitions proposed in this section are "terms of the industry" that are universally recognized by shipyard employees and employers. OSHA welcomes comment or questions submitted to the record about definitions for these terms.

V. Summary of the Preliminary Economic and Initial Regulatory Flexibility Screening Analyses

Introduction

OSHA has determined that this proposal is a not economically significant regulatory action under E.O. 12866 and not a major rule under the Congressional Review provisions of the Small Business Regulatory Enforcement Fairness Act. Because this rule has been listed as significant for other reasons in the Regulatory Agenda, OSHA has provided the Office of Information and Regulatory Affairs with an assessment of the costs, benefits and alternatives, as required by section 6(a)(3)(C) of E.O. 12866, which is summarized below.

Executive Order (EO) 12866 requires regulatory agencies to conduct an economic analysis for rules that meet certain criteria. The most frequently used criterion under EO 12866 is that the rule will impose annual costs on the economy of $100 million or more. Neither the benefits nor the costs of this rule exceed $100 million.

The Regulatory Flexibility Act of 1980, as amended in 1996, requires OSHA to determine whether the Agency's regulatory actions will have a significant impact on a substantial number of small entities. Making such a determination for this proposal required OSHA to perform a screening analysis to identify any such impacts. OSHA's screening analysis indicated that the proposed rule will not have significant impacts on a substantial number of small entities.

OSHA's Preliminary Economic Analysis (PEA) and initial regulatory flexibility screening analysis include: A description of the industries potentially affected by the standard; an evaluation of the risks addressed; an assessment of the benefits attributable to the proposed standard; a determination of the technological feasibility of the requirements of the standard; an estimate of the costs employers will incur to comply with the standard; a determination of the economic feasibility of compliance with the standard; and an analysis of the economic and other impacts associated with this rulemaking, including those on small businesses. The PEA has been provided to the docket as (Ex. 15) This section of the preamble summarizes the results of that analysis.

Affected Industries

The proposed Fire Protection in Shipyard Employment standard will

affect all establishments in the ship building, ship breaking and repair industry. These include large shipyards, government shipyards and shipyards operated under Navy contracts, operations owning a dock or drydock, and the vast majority of small firms that perform shipbuilding and repair work, such as metal fabricators, painters, asbestos removal, etc., who do not own or rent docks. For purposes of this analysis OSHA has defined small firms as: (1) Firms with fewer than 1,000 employees (the SBA definition of small businesses in this sector); (2) firms with fewer than 250 employees (the definition of small business recommended by the negotiated rulemaking committee); and (3) firms with fewer than 20 employees. OSHA has based its estimates of number of firms, establishments, employment and wages on general BLS and Department of Commerce data for the standard industrial classification (SIC) codes for ship building 3731 and ship breaking 4499. OSHA has based its estimates concerning revenues of firms on SBA data, and concerning profit rates on Robert Morris Associates data. Table V–1 shows the total number of establishments, number of firms, employment, and revenues and profits per firm affected by the rule. As the table shows there are 717 establishments owned by 669 firms in the industries. The industries employ 97,822 workers, of whom 70 percent are production employees.

TABLE V–1.—INDUSTRIAL PROFILE OF EMPLOYEES AND ESTABLISHMENTS

Industry characteristic	1–19 Employees	1–250 Employees	1–1,000 Employees	>1,000 Employees	Entire affected industry
Total Establishments	412	621	697	20	717
Total Firms	412	607	660	9	669
Employees	2,305	14,774	39,063	58,759	97,822
Revenues Per Firm ($1,000's)	$653	$2,353	$5,907	$718,166	$15,540
Profits Per Firm ($1,000)	$24	$85	$213	$25,854	$559

Source: Office of Regulatory Analysis, OSHA.

Evaluation of Risk and Potential Benefits

For this Preliminary Economic Analysis, OSHA developed a profile of the risks facing workers in shipyards that might be affected by the standard. OSHA's risk profile for exposure to fire based risks in shipyards is based on data from the Bureau of Labor Statistics' National Census of Fatal Occupational Injuries, data from the Bureau's Survey of Occupational Injuries and Illnesses, and an analysis of OSHA fatality/catastrophe inspection data obtained from the Agency's Integrated Management Information System.

OSHA anticipates that the proposed standard will significantly reduce the number of fire and explosion related incidents and resulting injuries and fatalities currently reported in the shipyard industry. OSHA believes that the proposed standard's requirements for inspection prior to hot work, fire watches, planning and training will help to save lives and prevent injuries in the shipyard workforce. OSHA estimates that approximately 1 fatality, 110 injuries involving days away from work and 204 injuries not involving days away from work occur annually among shipyard workers due to fire and explosions; this is the current industry risk baseline used in this analysis. OSHA projects that full compliance with the proposed standard would annually prevent 0.88 fatalities, 102 of these injuries involving days away from work, and 190 of the injuries not involving days away from work.

In addition to saving lives and improving overall safety in shipyards, OSHA believes that full compliance with the proposed standard would yield substantial cost savings to parties within and connected with the industry and ultimately to society as a whole. These monetized benefits take the form of reductions in employer and insurer accident-related costs in several areas: Value of lost output associated with temporary total disabilities and permanent partial disabilities, an income-based measure derived from estimates of workers' compensation indemnity payments; reductions in accident-related medical costs; administrative expenses incurred by workers' compensation insurers; and indirect costs related to productivity losses, work stoppages, and accident investigations and reports. Applying data from the construction and insurance industries on the direct costs of accidents and data from the literature on the indirect costs of accidents and other administrative-related costs to OSHA's preliminary estimate of avoided injuries, the Agency monetized the value of the cost savings employers and society will accrue by avoiding these injuries. OSHA estimates that annual costs savings of $6.2 million will result from compliance with the proposed rule. These savings are those associated with injuries due to fires. OSHA did not attempt to quantify the cost savings resulting from reduced fire damage to property and reduced need to respond to fires.

Thus, OSHA estimates that the proposed standard will prevent 292 injuries and one death per year. As a result of prevention of the injuries, OSHA estimates that there will be direct cost savings of $6.2 million per year, excluding savings associated with reduced property damage and reduced fire response costs.

Only some of these direct cost savings accrue directly to employers in the form of reduced workers' compensation payments and administrative cost. Other cost savings represent increased income to employees and greater tax collections by the government. Even the portion of direct cost savings that accrue directly to employers may not be a saving to the employer of the injured employee because of the risk spreading effects of workers' compensation insurance. The issue of the extent to which the direct cost savings are an economic motivation for employers is discussed in detail in the final chapter of the Preliminary Economic and Initial Regulatory Flexibility Screening Analysis.

Technological Feasibility and Compliance Costs

Consistent with the legal framework established by the OSH Act, Executive Order 12866 and court decisions, OSHA has assessed the technological feasibility of the proposed fire protection in shipyards standard. The standard does not require any practices not already undertaken in many shipyards today. Moreover, the proposed standard is based on a consensus draft recommended to the Agency by a negotiated rulemaking committee consisting of representatives from labor, government, industry in particular divergent industry interests, including small employers, who would be affected by any changes to the maritime regulations. The committee reached consensus on the language of the draft, thereby implicitly acknowledging the feasibility of the proposed revisions to the standard. Therefore, based on the fact that many firms in the industry are already implementing the controls and practices required by the proposed standard and that the negotiated rulemaking committee reached consensus on the draft underlying the proposed revisions, OSHA has preliminarily determined that the proposed fire protection in shipyards standard is technologically feasible.

OSHA developed estimates of the costs of compliance for shipyard employers subject to the proposed standard. To develop these estimates OSHA first examined the extent to which shipyard employers were already in compliance with the requirements of the standard as a result of existing OSHA requirements, compliance with rules of other parties (such as the U.S. Navy in some shipyards) and compliance with voluntary codes and good practices. Eliminating provisions for which there is already substantial compliance, OSHA arrived at the list of activities for which shipyard employers would incur costs shown in Table V–2. Table V–2 shows that the annualized costs of the proposed standard are $4.3 million per year. Ninety-one percent of the costs are associated with fire watch-related provisions; most of these costs are for posting additional fire watch personnel in situations in which fire watches are not currently being posted.

TABLE V–2. TOTAL ANNUALIZED COMPLIANCE COST PER REQUIREMENT FOR THE PROPOSED STANDARD

Requirement	Annualized cost
Posting Fire Watches	$3,789,057
Safe Work Practices	245,839
Fire Watch Written Program	36,546
Fire Response Policy	11,630
Fire Safety Plan	36,546
Fire Watch Training	95,204
Fire Safety Plan Review/ General Training	37,327
Fire Protection Systems Training	9,642
Fire Response Training	49,430
Total	4,261,222

Numbers do not total due to rounding.
Source: Office of Regulatory Analysis, OSHA.

Economic Impacts

OSHA analyzed the impacts of these compliance costs on firms in the shipbuilding sector. In order to do this, OSHA determined costs as a percentage of revenues and costs as a percentage of profits. These two measures (in percent) correspond to two assumptions used by economists to bound the range of possible impacts: the assumption of no-cost pass-through, *i.e.*, that employers will be unable to pass any of the costs of compliance forward to their customers (compliance costs as a percentage of profits), and the assumption of full-cost pass-through (compliance costs as a percentage of revenues), *i.e.*, that employers will be able to pass all of the costs of compliance forward to their customers. As summarized in Table V–3, below, OSHA estimates that, if affected firms in the ship building sector were forced to absorb these compliance costs entirely from profits (a highly unlikely scenario), profits would be reduced by an average of 1.14 percent. If, at the other extreme, affected firms were able to pass all of these compliance costs forward to their customers, OSHA projects that the price (revenue) increase required to pay for these costs would be less than 0.1 percent (0.04 percent). Given the minimal impact on both prices and profits, OSHA preliminarily concludes that the regulation is economically feasible.

TABLE V–3. ECONOMIC IMPACTS FOR THE PROPOSED STANDARD

Firm size	Compliance costs as a percentage of revenues	Compliance costs as a percentage of profits
All Firms	0.04	1.14
1–19 Employees	0.11	3.09
1–250 employees	0 07	1.83
1–1000 Employees (SBA Definition)	0.06	1.61

Source: Office of Regulatory Analysis, OSHA.

Regulatory Flexibility Screening Analysis

The Regulatory Flexibility Act of 1980 (RFA), as amended in 1996 (5 U.S.C. 601 *et seq.*), requires regulatory agencies to determine whether regulatory actions will adversely affect small entities. The Small Business Administration (SBA) defines small entities, or "concerns," in terms of number of employees or annual receipts. For employers in SIC 3731, small firms are defined by SBA as those with less than 1,000 employees. As shown in Table VI–3, for firms with less than 1,000 employees, costs are 1.61 percent of profits and 0.06 percent of revenues. OSHA also examined costs as a percentage of profits and revenues for firms with less than 250 employees, as recommended by the negotiated rulemaking committee, and for firms with less than 20 employees to see whether there might be significant impacts on the very smallest firms. For firms with less than 250 employees, costs were 1.83 percent of profits and 0.07 percent of revenues. For firms with less than 20 employees, costs were 3.09 percent of profits and 0.11 percent of revenues.

A major source of these disparate impacts is lower levels of baseline compliance by small firms. Although the economic impacts on the smallest size class of employers are low, they are somewhat higher than for larger employers. The Agency is interested in hearing from smaller employers about disparate impacts on small employers. Do small employers believe there will be a greater impact on them than on larger employers? Is there a way to reduce these impacts?

OSHA has set the criteria that if costs exceed one percent of revenues or five percent of profits, then the impact on small entities is considered significant for purposes of complying with the RFA. For all of the classes of affected small firms in the shipbuilding and repair and shipbreaking sectors, costs were less than one percent of revenues and five percent of profits. OSHA therefore certifies that this regulation will not have an economically significant impact on a substantial number of small entities.

VI. OMB Review Under the Paperwork Reduction Act of 1995

The proposed rule for Fire Protection in Shipyard Employment contains several collections of information (paperwork) requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA–95), 44 U.S.C. 3501 *et seq.*, and its regulation at 5 CFR 1320. OMB is currently reviewing OSHA's request for approval of the proposed collections. OSHA solicits comments on the collection of information requirements and the estimated burden hours associated with these collections, including comment on the following:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;

• The quality, utility, and clarity of the information collected; and

• Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

OSHA estimates the total burden hours associated with all of the collection of information requirements at 5,625 burden hours in the first year and 5,241 burden hours in the second and subsequent years. A collection of information is defined in PRA–95 to mean, "the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency regardless of form or format." (44 U.S.C. 3502(3)(A)). Each of the collections is summarized below.

• *1915.501—General Provisions*

Paragraph (d)(1)(i) of this section requires the host employer on multi-employer worksites to inform all employers (contract employers) at the worksite about the content of the host employer's fire safety plan.

Paragraph (d)(2)(i) of this section requires that contract employers make sure the host employer is aware of fire hazards associated with the contract work and how the contract employer will address those hazards. In addition, paragraph (d)(2)(ii) requires the contract employer to identify hazards that arise during the course of work that were not identified as part of the information transfer required by paragraph (d)(2)(i) described above.

• *1915.502—Fire Safety Plan*

Paragraph (a) of this section requires the employer to develop a written fire safety program covering the elements listed in paragraph (b), including the following information:

(1) The identification of the significant potential fire risks;

(2) Procedures for recognizing and reporting unsafe conditions;

(3) Alarm procedures;

(4) Procedures for notifying employees of a fire emergency;

(5) Procedures for notifying fire response organizations of a fire emergency;

(6) Procedures for evacuation;

(7) Procedures to account for all employees after an evacuation; and

(8) Names, job titles, or department for individuals who can be contacted for further information about the plan.

Paragraph (c) requires the employer to review the fire safety plan with each affected employee at the following times:

(1) Within 90 days of the effective date of the standard;

(2) Upon initial assignment for new employees; and

(3) When there is a change in the plan or a change of the employee's duties.

Paragraph (d) specifies the following:

(1) The plan be kept accessible to employees, employer representatives, and to OSHA;

(2) The plan be updated when necessary, but no less than annually;

(3) The employer certify in writing that each employee was informed about the plan; and

(4) A copy of the plan be given to outside fire response organizations who may be expected to respond to fires at the employer's worksite.

• *1915.504—Fire Watches*

Paragraph (a) requires the employer to prepare and keep current, a written policy specifying the following information:

(1) The training employees must be given;

(2) The duties employees are to perform;

(3) The equipment employees must be given; and

(4) The personal protective equipment (PPE) employees must be given as required in 29 CFR part 1915, subpart I, Personal Protective Equipment.

• *1915.505—Fire Response*

Paragraph (a)(2) requires employers to create, maintain, and update a written statement or policy that describes the internal and outside fire response organizations that the employer will use.

Paragraph (b)(1) lists the information to be included in the statement or policy if internal fire response is to be used. The information includes the following:

(1) The basic structure of the fire response organization;

(2) The number of trained fire response employees;

(3) The fire response functions that may need to be carried out;

(4) The minimum number of fire response employees necessary, the number and types of apparatus, and a description of the fire suppression operations established by written standard operating procedures for each type of fire response at the employer's facility;

(5) The type, amount, and frequency of training that must be given to fire response employees; and

(6) The procedure for use of protective clothing and equipment.

Paragraph (b)(2) lists the information to be included in the statement or policy if outside fire response is to be used. The information includes the following:

(1) The types of fire suppression incidents to which the fire response organization is expected to respond at the employer's facility or worksite;

(2) The liaisons between the employer and the outside fire response organization; and

(3) A plan for fire response functions that:

(A) Addresses procedures for obtaining assistance from other fire response organizations;

(B) Familiarizes the outside fire response organization with the layout of the employer's facility or worksite, including access routes to controlled areas, and site-specific operations, occupancies, vessels or vessel sections, and hazards;

(C) Sets forth how hose and coupling connection threads are to be made compatible and includes where the adapter couplings are kept; or

(D) States that the employer will not allow the use of incompatible hose connections.

Paragraph (b)(3) lists the information to be included in the statement or policy where a combination of internal and outside fire response is to be used. The information includes all the information from paragraphs (b)(1) and (b)(2) as listed above and the following information:

(1) The basic organizational structure of the combined fire response;

(2) The number of combined trained fire responders;

(3) The fire response functions that need to be carried out;

(4) The minimum number of fire response employees necessary, the number and types of apparatus, and a description of the fire suppression operations established by written standard operating procedures for each particular type of fire response at the worksite; and,

(5) The type, amount, and frequency of joint training that must be given to fire response employees.

Paragraph (a)(3) requires employers to create, maintain, and update a written statement or policy that defines the evacuation procedures employees must follow, if the employer chooses to require a total or partial evacuation of the worksite at the time of a fire. Paragraph (b)(4) prescribes the employee evacuation information that must be included in the employer's policy statement required by (a)(3). That information includes the following:

(1) Emergency escape procedures;

(2) Procedures to be followed by employees who may remain longer at the worksite to perform critical shipyard employment operations during the evacuation;

(3) Procedures to account for all employees after emergency evacuation is completed;

(4) The preferred means of reporting fires and other emergencies; and

(5) Names or job titles of the employees or departments to be contacted for further information or explanation of duties.

Paragraph (b)(5) prescribes the rescue and emergency response information that must also be included in the employer's policy statement required in paragraph (a)(3). That information includes the following:

(1) A description of the emergency rescue procedures; and

(2) Names or job titles of the employees who are assigned to perform them.

Paragraph (c)(2) requires that fire response employees who are required to wear respirators meet the medical requirements of the Respiratory Protection Program Standard in 1915.154. The paperwork burden for the respiratory protection requirements has been approved under OMB Control Number 1218–0099.

Paragraph (c)(3) requires annual medical exams for all fire response employees. There is no burden or cost for these medical exams because all employees affected, as a usual and customary practice, are now receiving the medical exams.

Paragraph (c)(5) requires that the medical records of fire response employees be kept as required in 1915.1020. The paperwork burden for access to medical records is approved under OMB Control Number 1218–0065.

Paragraph (d)(2) requires the employer to set up written:

(1) Administrative regulations;

(2) Operating procedures; and

(3) Departmental orders for fire response functions

Paragraph (d)(3) requires the employer to set up an incident management system (IMS) to coordinate and direct fire response functions, including the following:

(1) Specific fire emergency responsibilities;

(2) Accountability for all fire response employees participating in an emergency operation; and,

(3) Resources offered by outside organizations.

Paragraph (d)(4) requires the employer to provide the information [required by (d)(2) and (d)(3)] to the outside fire response organization to be used.

• *1915.506—Hazards of Fixed Extinguishing Systems on Board Vessels and Vessel Sections*

Paragraph (b)(2) requires certain employers (those who have employees exposed to fixed extinguishing systems that could create a hazardous atmosphere when activated aboard vessels and vessel sections) to ensure that employees are trained to recognize systems discharge and evacuation alarms and to recognize the appropriate escape routes.

• *1915.507—Landside Fire Protection Systems*

Paragraph (c)(2) requires employers to notify employees and take the necessary precautions to make sure employees are safe from fire if for any reason a fire extinguishing system stops working, until the system is working again.

Paragraph (c)(5) requires the employer to post hazard warning or caution signs at both the entrances to and inside of areas protected by fixed extinguishing systems that use extinguishing agents in concentrations known to be hazardous to employee safety or health.

• *1915.508—Training*

Paragraph (a) of this section requires the employer to train affected employees when they first start working and also when necessary to maintain proficiency in the five specific areas listed in paragraph (a)(1) to (a)(5).

Paragraph (b) of this section specifies the training requirements for employees designated to perform fire response activities.

Paragraph (b)(1) requires the employer to have a written training policy stating that fire response employees are to be trained and capable of carrying out their duties and responsibilities at all times. Because OSHA specifies the wording for the training policy, there is no burden associated with this collection of information requirement.

Paragraph (b)(2) requires the employer to keep written standard operating procedures that address anticipated emergency operations and to update these procedures as necessary. Note that operating procedures are also required in 1915.505(d)(2).

Paragraph (b)(4) requires the employer to provide training for fire response employees that ensures they are capable of carrying out their duties and responsibilities under the employer's standard operating procedures (see (b)(2) above).

Paragraph (b)(5) requires employers to train new fire response employees before they engage in emergency operations and paragraph (b)(6) requires employers to train fire response employees who are expected to fight fires according to the written operating procedures (see (b)(2) above) at least quarterly.

Paragraphs (b)(7) to (b)(10) specifies criteria for the instructors and the training methods.

Paragraph (c) specifies requirements related to the training of employees assigned to fire watch duty. Paragraph (c)(1)(i) to (iv) specify the intervals of training, including:

(1) Before being assigned to fire watch duty;

(2) Whenever there is a change in operation that presents a new or different hazards;

(3) Whenever the employer has reason to believe that the fire watch's knowledge or understanding of the training previously provided is inadequate; and,

(4) Re-training annually.

Paragraph (c)(2) specifies 12 areas on which the fire watch must be trained.

Paragraph (c)(3) specifies 4 additional areas on which the fire watch must be trained.

Paragraph (d) requires that employers keep records that demonstrate that employees have been trained as required by paragraphs (a), (b), and (c). The records must include the following information:

(1) The employee's name;

(2) The trainer's name;

(3) The types of training, and

(4) The date(s) on which the training took place.

Paragraph (d)(2) requires the employer to keep each training record for one year from the time it was made or until it is replaced, whichever is shorter, and to make it available for inspection and copying by OSHA personnel on request.

OSHA will use the records developed in response to this Standard to determine compliance with the safety and health provisions of the Standard. The employer's failure to generate and disclose the information required in this Standard will affect significantly OSHA's effort to control and reduce injuries and fatalities related to fires in shipyard employment.

Interested persons may submit comments regarding the burden estimates or other aspects of this collection of information to the OSHA Docket Office, Docket No. S–051, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 (Attn: OSHA Desk Officer (RIN 1218–AB51)).

The complete Information Collection Request (ICR), including the supporting

rationale is available for inspection and copying in the OSHA Docket Office or the ICR can be mailed to persons who request a copy by telephoning Todd Owen at (202) 693–1941 or Theda Kenney at (202) 693–2044.

VII. Public Participation

Interested persons are requested to submit written data, views, and arguments concerning this proposal. These comments must be received by March 11, 2003, and submitted in triplicate to the Docket Office; Docket No. S–051, Room N2624, U.S. Department of Labor, Occupational Safety and Health Administration; 200 Constitution Ave., NW., Washington, DC 20210.

All written comments received within the specified comment period will be made a part of the record and will be available for public inspection and copying at the above Docket Office address.

Additionally, under section 6(b)(3) of the OSH Act and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in triplicate to the Docket office at the above address and must comply with the following conditions:

1. The objection must include the name and address of the objector;

2. The objections must be received by March 11, 2003;

3. The objections must specify with particularity grounds upon which the objection is based;

4. Each objection must be separately numbered; and

5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may, of course, make those objections and their recommendations in their comments and OSHA will fully consider them. There is only need to file formal "objections" separately if the interested person requests a public hearing.

OSHA recognizes that there may be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information that may be available, in order that the record of this rulemaking will present a complete picture of the public response on the issues involved.

VIII. State Plan Standards

This **Federal Register** document issues a proposal for new and revised rules addressing fire protection in shipyard employment regulated in 29 CFR 1915. The rules when final will be codified into the applicable section of the Code of Federal Regulations.

The 26 states or U.S. Territories with their own OSHA approved occupational safety and health plans must develop a comparable standard applicable to both the private and public (state and local government employees) sectors within six months of the publication date of a permanent final Federal rule or show OSHA why there is no need for action, *e.g.* because an existing state standard covering this area is already "at least as effective as" the new Federal standard. Three states and territories cover only the public sector (Connecticut, New York, and New Jersey).

Currently five states (California, Minnesota, Oregon, Vermont and Washington) with their own state plans cover private sector onshore maritime activities. Federal OSHA enforces maritime standards offshore in all states and provides onshore coverage of maritime activities in Federal OSHA states and in the following State Plan states: Alaska, Arizona, Connecticut (plan covers only state and local government employees), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Jersey (plan covers only state and local government employees), New Mexico, New York (plan covers only state and local government employees), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in those States.

IX. Federalism

The standard has been reviewed in accordance with Executive order 13132 (64 FR 43255; August 10, 1999) regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States before taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act), expresses Congress' clear intent to preempt State laws relating to issues with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act a State can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards.

The Federal standards on shipyard employment operations address hazards which are not unique to any one state or region of the country. Nonetheless, those States that have elected to participate under section 18 of the OSH Act would not be preempted by this final regulation and would be able to deal with special, local conditions within the framework provided by this performance-oriented standard while, ensuring that their standards are at least as effective as the Federal standard.

X. Unfunded Mandates

For the purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, this rule does not include any federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million.

List of Subjects in 29 CFR 1915

Hazardous substances, Longshore and harbor workers, Occupational safety and health, Reporting and recordkeeping requirements, and Vessels.

XI. Authority and Signature

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The proposed sections 4, 6, and 8 of the Ocupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No 3–2000 (65 FR 50017); and 29 CFR part 1915.

Signed in Washington, DC, this 25th day of November 2002.

John L. Henshaw,

Assistant Secretary of Labor.

For the reasons set forth in the preamble, OSHA proposes to amend 29 CFR chapter XVII as follows:

PART 1915—[AMENDED]

Subpart D—[Amended]

1. The authority citation for part 1915 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 3–2000 (65 FR 50017) as applicable.

§ 1915.52 [Removed]

§ 1915.55 [Amended]

2. Subpart D—Welding, Cutting and Heating of part 1915 is amended by removing § 1915.52, and by removing and reserving § 1915.55(d),(f), and (g).

3. Part 1915 is amended by adding a new subpart, subpart P to read as follows:

Subpart P—Fire Protection in Shipyard Employment.

Sec.

1915.501 General provisions.
1915.502 Fire safety plan.
1915.503 Precautions for hot work.
1915.504 Fire watches.
1915.505 Fire response.
1915.506 Hazards of fixed extinguishing systems on board vessels and vessel sections.
1915.507 Land side fire protection systems.
1915.508 Training.
1915.509 Definitions applicable to this subpart.

§ 1915.501 General provisions.

(a) *Purpose.* The purpose of the standard in this subpart is to require employers to protect all employees from fire hazards in shipyard employment, including employees engaged in fire response activities.

(b) *Scope.* This subpart covers employers with employees engaged in shipyard employment aboard vessels, vessel sections, or on land side operations regardless of geographic location.

(c) *Employee participation.* The employer must provide ways for employees and employee representatives to participate in developing and periodically reviewing programs and policies adopted to comply with this subpart.

(d) *Multi-employer worksites.* (1) *Host employer responsibilities.* The host employer's responsibilities are to:

(i) Inform all employers at the worksite about the content of the fire safety plan including hazards, controls, fire safety and health rules, emergency procedures; and

(ii) Make sure the safety and health responsibilities for fire protection are assigned as appropriate to other employers at the worksite.

(2) *Contract employer responsibilities.* The contract employer's responsibilities are to:

(i) Make sure that the host employer knows about the fire related hazards associated with the contract employer's work and what the contract employer is doing to address them; and

(ii) Advise the host employer of any previously unidentified fire related hazards that the contract employer identifies at the worksite.

§ 1915.502 Fire safety plan.

(a) *Employer responsibilities.* The employer must develop and implement a written fire safety plan that covers all the actions that employers and employees must take to ensure employee safety in the event of a fire.

Note to paragraph (a): See appendix A to this subpart for a Model Fire Safety Plan.

(b) *Plan elements.* The employer must include the following information in the Fire Safety Plan:

(1) Identification of the significant potential fire risks;

(2) Procedures for recognizing and reporting unsafe conditions;

(3) Alarm procedures;

(4) Procedures for notifying employees of a fire emergency;

(5) Procedures for notifying fire response organizations of a fire emergency;

(6) Procedures for evacuation;

(7) Procedures to account for all employees after an evacuation; and

(8) Names, job titles, or departments for individuals who can be contacted for further information about the plan.

(c) *Reviewing the plan with employees.* The employer must review the plan with each affected employee at the following times:

(1) Within 90 days of the effective date of this subpart for employees who are currently working;

(2) Upon initial assignment for new employees; and

(3) When the actions the employee must take under the plan change because of a change in duties or a change in the plan.

(d) *Additional employer requirements.* The employer also must:

(1) Keep the plan accessible to employees, employee representatives, and OSHA;

(2) Review and update the plan whenever necessary, but at least annually;

(3) Certify in writing that each affected employee has been informed about the plan as required by paragraph (c) of this section; and

(4) Give a copy of the plan to any outside fire response organization that the employer expects to respond to fires at the employer's worksite, regardless of geographic location of that worksite.

(e) *Contract employers.* Contract employers in shipyard employment must have a fire safety plan for their employees, and this plan must comply with the host employer's fire safety plan.

§ 1915.503 Precautions for hot work.

(a) *General requirements*—(1) *Designated Areas.* The employer may only designate areas for hot work in sites such as vessels and vessel section area, fabricating shops, and subassembly areas that do not contain potential fire hazards.

(2) *Non-designated Areas*—(i) Before authorizing hot work, the employer must visually inspect the area where hot work is to be performed, including adjacent spaces, to identify potential fire hazards, unless a Marine Chemist's certificate or shipyard Competent Person's log is used for the authorization.

(ii) The employer shall authorize employees to perform hot work only in areas that are free of fire hazards, or that have been controlled by physical isolation, fire watches, or other positive means.

Note to paragraph (a)(2): The requirements of this standard apply to all hot work operations in shipyard employment except those covered in subpart B of this part.

(b) *Specific requirements*—(1) *Maintaining fire hazard-free conditions.* The employer must keep all hot work areas free of hazards that may cause or contribute to the spread of fire.

Note to paragraph (b)(1): Unexpected energizing and energy release are covered by 29 CFR 1915.181, subpart L. Exposure to toxic and hazardous substances is covered in 29 CFR 1915.1000–1915.1450, subpart Z.

(2) *Fuel gas and oxygen supply lines and torches.* The employer must make sure that:

(i) No unattended fuel gas and oxygen hose lines or torches are in confined spaces;

(ii) No unattended charged fuel gas and oxygen hose lines or torches are in enclosed spaces for more than 15 minutes;

(iii) All fuel gas and oxygen hose lines are disconnected at the supply manifold at the end of each shift; and

(A) All disconnected fuel gas and oxygen hose lines are rolled back to the supply manifold or to open air to disconnect the torch; or

(B) Extended fuel gas and oxygen hose lines are not reconnected at the supply

manifold unless the lines are given a positive means of identification when they were first connected and a drop test is done using gauges or other positive means to ensure the integrity of fuel gas and oxygen burning system.

§ 1915.504 Fire watches.

(a) Written fire watch policy. The employer must create and keep current a written policy that specifies the following requirements for employees performing fire watch in the workplace:

(1) The training employees must be given;

(2) The duties employees are to perform;

(3) The equipment employees must be given; and

(4) The personal protective equipment (PPE) employees must be given as required in 29 CFR Part 1915, subpart I.

(b) *Posting fire watches.* The employer must post a fire watch if during hot work:

(1) Slag, weld splatter, or sparks might pass through an opening and cause a fire;

(2) Fire-resistant guards or curtains are not used to prevent ignition of combustible materials on or near decks, bulkheads, partitions, or overheads;

(3) Combustible material closer than 35 ft. (10.7m) to the hot work in either the horizontal or vertical direction cannot be removed, protected with flame-proof covers, or otherwise shielded with metal or fire-resistant guards or curtains, so that the material will not be ignited by the hot work;

(4) On or near insulation, combustible coatings or sandwich-type construction on either side cannot be shielded, cut back or removed, or the space inerted;

(5) Combustible materials adjacent to the opposite sides of bulkheads, decks, overheads, metal partitions, or of sandwich-type construction may be ignited by conduction or radiation;

(6) The hot work is close enough to cause ignition through heat radiation or conduction on the following:

(i) Insulated pipes, bulkheads, decks, partitions, or overheads; or

(ii) Combustible materials and/or coatings.

(7) The work is close enough to unprotected combustible pipe or cable runs to cause ignition; or

(8) A Marine Chemist, a Coast Guard-authorized person, or a shipyard Competent Person, as defined in 29 CFR part 1915, subpart B, requires that a fire watch be posted.

(c) *Assigning employees to fire watch duty.* (1) The employer must not assign other duties to an employee assigned to fire watch;

(2) Employers must ensure that employees assigned to fire watch duty:

(i) Have a clear view of and immediate access to all areas included in the fire watch;

(ii) Are able to communicate with workers exposed to hot work, if necessary;

(iii) Remain in the hot work area for at least 30 minutes after completion of the hot work, unless the employer or his or her representative surveys the exposed area and makes a determination that there is no further fire hazard;

(iv) Are trained to detect fires that occur in areas exposed to the hot work;

(v) Attempt to extinguish any incipient stage fires in the hot work area that are within the capability of available equipment and within the fire watch's training qualifications, as defined in § 1915.508 of this Part;

(vi) Alert employees of any fire beyond the incipient stage; and

(vii) If unable to extinguish fire in the areas exposed to the hot work, activate the alarm to start the evacuation procedure in accordance with the employer's fire prevention plan.

§ 1915.505 Fire response.

(a) *Employer responsibilities.* The employer must:

(1) Decide what type of response will be provided and who will provide it;

(2) Create, maintain, and update a written statement or policy that describes the internal and outside fire response organizations that the employer will use; and

(3) Create, maintain, and update a written statement or policy that defines what evacuation procedures employees must follow, if the employer chooses to require a total or partial evacuation of the worksite at the time of a fire.

(b) *Required written policy statement information.* (1) *Internal fire response.* If an internal fire response is to be used, the following information must be included in the employer's policy statement:

(i) The basic structure of the fire response organization;

(ii) The number of trained fire response employees;

(iii) The fire response functions that may need to be carried out;

(iv) The minimum number of fire response employees necessary, the number and types of apparatus, and a description of the fire suppression operations established by written standard operating procedures for each type of fire response at the employer's facility;

(v) The type, amount, and frequency of training that must be given to fire response employees; and

(vi) The procedure for use of protective clothing and equipment.

(2) *Outside fire response.* If an outside fire response organization is used, the following information must be included in the employer's policy statement:

(i) The types of fire suppression incidents to which the fire response organization is expected to respond at the employer's facility or worksite;

(ii) The liaisons between the employer and the outside fire response organizations;

(iii) A plan for fire response functions that:

(A) Addresses procedures for obtaining assistance from other fire response organizations;

(B) Familiarizes the outside fire response organization with the layout of the employer's facility or worksite, including access routes to controlled areas, and site-specific operations, occupancies, vessels or vessel sections, and hazards; and

(C) Sets forth how hose and coupling connection threads are to be made compatible and includes where the adapter couplings are kept; or

(D) States that the employer will not allow the use of incompatible hose connections.

(3) *A combination of internal and outside fire response.* If a combination of internal and outside fire response is to be used, the following information, in addition to the requirements in paragraphs (b)(1) and (2) of this section, must be included in the employer's policy statement:

(i) The basic organizational structure of the combined fire response;

(ii) The number of combined trained fire responders;

(iii) The fire response functions that need to be carried out;

(iv) The minimum number of fire response employees necessary, the number and types of apparatus, and a description of the fire suppression operations established by written standard operating procedures for each particular type of fire response at the worksite;

(v) The type, amount, and frequency of joint training that must be given to fire response employees;

(4) *Employee evacuation.* The employer must include the following information in the employer's policy statement:

(i) Emergency escape procedures;

(ii) Procedures to be followed by employees who may remain longer at the worksite to perform critical shipyard employment operations during the evacuation;

(iii) Procedures to account for all employees after emergency evacuation is completed;

(iv) The preferred means of reporting fires and other emergencies; and

(v) Names or job titles of the employees or departments to be contacted for further information or explanation of duties.

(5) *Rescue and emergency response.* The employer must include the following information in the employer's policy statement:

(i) A description of the emergency rescue procedures; and

(ii) Names or job titles of the employees who are assigned to perform them.

(c) *Medical requirements for shipyard fire response employees.* The employer must make sure that:

(1) All fire response employees receive medical examinations to assure that they are physically and medically fit for the duties they are expected to perform;

(2) Fire response employees who are required to wear respirators in performing their duties meet the medical requirements of 29 CFR 1915.154;

(3) Each fire response employee has an annual medical examination;

(4) The medical records of fire response employees are kept in accordance with 29 CFR 1915.1020.

(d) *Organization of internal fire response functions.* The employer must:

(1) Organize fire response functions to ensure enough resources to conduct emergency operations safely;

(2) Set up written administrative regulations, standard operating procedures, and departmental orders for fire response functions; and

(3) Set up an incident management system (IMS) to coordinate and direct fire response functions, including:

(i) Specific fire emergency responsibilities;

(ii) Accountability for all fire response employees participating in an emergency operation; and

(iii) Resources offered by outside organizations.

(4) Provide this information to the outside fire response organization to be used.

(e) *Personal protective clothing and equipment for fire response employees.*—(1) *General requirements.* The employer must:

(i) Supply to all fire response employees, at no cost, the appropriate personal protective clothing and equipment they may need to perform expected duties; and

(ii) Make sure that fire response employees wear the appropriate personal protective clothing and use the equipment when necessary, to protect them from hazardous exposures.

(2) *Thermal stability and flame resistance.* The employer must:

(i) Make sure that each fire response employee exposed to the hazards of flame does not wear clothing that could increase the extent of injury that could be sustained; and

(ii) Prohibit wearing clothing made from acetate, nylon, or polyester, either alone or in blends, unless it can be shown:

(A) That the fabric will withstand the flammability hazard that may be encountered; or

(B) That the clothing will be worn in such a way to eliminate the flammability hazard that may be encountered.

(3) *Respiratory protection.* The employer must:

(i) Provide self-contained breathing apparatus (SCBA) to all fire response employees involved in an emergency operation in an atmosphere that is immediately dangerous to life or health (IDLH), potentially IDLH, or unknown:

(ii) Provide self-contained breathing apparatus (SCBA) to fire response employees performing emergency operations during hazardous chemical emergencies that will expose them to known chemicals in vapor form or to unknown chemicals;

(iii) Provide fire response employees who perform or support emergency operations that will expose them to chemicals in liquid form, either:

(A) Self-contained breathing apparatus (SCBA), or

(B) Respiratory protective devices certified by NIOSH under 42 CFR part 84 as suitable for the specific chemical environment.

(iv) Ensure that additional outside air supplies used in conjunction with SCBA result in positive pressure systems that are certified by NIOSH under 42 CFR part 84;

(v) Provide only SCBA that meet the requirements of NFPA 1981–1997, *Standard on Open-Circuit Self-Contained Breathing Apparatus for Firefighters* (incorporated by reference in § 1915.5); [1] and

(vi) Ensure that the respiratory protection program and all respiratory protection equipment comply with 29 CFR 1915.154.

(4) *Interior structural firefighting operations.* The employer must:

(i) Supply at no cost to all fire response employees exposed to the hazards of shipyard fire response, a protective coat and trousers or a protective coverall along with a helmet, gloves, footwear, and protective hoods; and

(ii) Ensure that this equipment meets the applicable requirements of NFPA 1971–2000, *Standard on Protective Clothing Ensemble for Structural Firefighting* (incorporated by reference in § 1915.5).

(5) *Proximity firefighting operations.* The employer must: Provide, at no cost, to all fire response employees who are exposed to the hazards of proximity firefighting, appropriate protective proximity clothing meets the applicable requirements of NFPA 1976–2000, *Standard on Protective Clothing for Proximity Firefighting* (incorporated by reference in § 1915.5).

(6) *Personal Alert Safety System (PASS) devices.* The employer must:

(i) Provide each fire response employee involved in firefighting operations with a PASS device; and

(ii) Ensure that each PASS device meets the requirements of NFPA 1982–1998, *Standard on Personal Alert Safety Systems (PASS) for Firefighters* (incorporated by reference in § 1915.5).

(7) *Life safety ropes, body harnesses, and hardware.* The employer must ensure:

(i) That all life safety ropes, body harnesses, and hardware used by fire response employees for emergency operations meet the applicable requirements of NFPA 1983–2001, *Standard on Fire Service Life Safety Rope, Harnesses, and Hardware* (incorporated by reference in § 1915.5);

(ii) That fire response employees use only class I body harnesses to attach to ladders and aerial devices; and

(iii) That fire response employees use only class II and class III body harnesses for fall arrest and repelling operations.

(f) *Equipment maintenance.* (1) *Personal protective equipment.* The employer must inspect and maintain personal protective equipment used to protect fire response employees to ensure that it provides the intended protection.

(2) *Fire response equipment.* The employer must:

(i) Keep fire response equipment in a state of readiness;

(ii) Standardize all fire hose coupling and connection threads throughout the facility and on vessels and vessel sections by providing the same type of hose coupling and connection threads for hoses of the same or similar diameter; and

(iii) Ensure that either all fire hoses and coupling connection threads are the same within a facility or vessel or vessel section as those used by the outside fire response organization, or supply suitable adapter couplings if such an organization is expected to use the fire

[1] In the final rule, OSHA will amend § 1915.5 to reflect the incorporation by reference of the NFPA standards referenced in this subpart.

response equipment within a facility or vessel or vessel section.

§ 1915.506 Hazards of fixed extinguishing systems on board vessels and vessel sections.

(a) *Employer responsibilities.* The employer must comply with the provisions of this section whenever employees are exposed to fixed extinguishing systems that could create a hazardous atmosphere when activated aboard vessels and vessel sections, regardless of geographic location.

(b) *Requirements for automatic and manual systems.* Before any work is done in a space equipped with fixed extinguishing systems:

(1) The employer must either physically isolate the systems or have other positive means to prevent the systems' discharge; or

(2) Ensure employees are trained to recognize systems discharge and evacuation alarms, and to recognize the appropriate escape routes;

(3) Protective measures must be taken to ensure that all doors, hatches, scuttles, and other exit openings remain working and accessible for escape in the event the systems are activated; and

(4) If systems activation could result in a positive pressure in the protected spaces, all inward opening doors, hatches, scuttles, and other potential barriers to safe exit must be removed, locked open, braced, or otherwise secured so that they remain open and accessible for escape; and

(5) Employees must be trained to recognize hazards associated with the extinguishing systems and agents including the dangers of disturbing system components and equipment such as, piping, cables, linkages, detection devices, activation devices, and alarm devices.

(c) *Additional Requirement for manual systems.* Before any work is done in a space equipped with fixed extinguishing systems that are activated only manually, the employer must ensure that during trials all pull stations and other activation stations, whether remote or local, must be secured either under lock and key or by posting an attendant, so that they cannot be accessed by unauthorized persons.

(d) *Testing the system.* The employer must make sure that the system is physically isolated and that all employees not directly involved in testing it are evacuated from the protected spaces and affected areas on board any vessel or vessel sections, before testing any fixed extinguishing system.

(e) *Conducting system maintenonce.* Before conducting maintenance on a fixed extinguishing system the employer must make sure that the system is physically isolated.

(f) *Using fixed manual extinguishing systems for fire protection.* If fixed manual extinguishing systems are used to provide fire protection for protected spaces, the employer must ensure that:

(1) Employees are trained and designated to operate and activate the systems; and

(2) All employees are evacuated from the protected spaces and affected areas and accounted for, before the fixed manual extinguishing system is activated.

§ 1915.507 Land side fire protection systems.

(a) *Employer responsibilities.* All fixed and portable fire protection systems the employer installs to meet an OSHA standard for employee life safety or employee protection from fire hazards in land side facilities, including, but not limited to, buildings, structures, and equipment must meet the requirements of this section.

(b) *Portable fire extinguishers and hose systems.* (1) The employer must select, install, inspect, maintain, and test all portable fire extinguishers according to NFPA 10–2002, *Standard for Portable Extinguishers* (incorporated by reference in § 1915.5).

(2) The employer shall be permitted to use class II or class III hose systems, in accordance with NFPA 10–2002, as portable fire extinguishers if the employer selects, installs, inspects, maintains, and tests those systems according to the specific requirements in NFPA 14–2000, *Standard for the Installation of Standpipe and Hose Systems* (incorporated by reference in § 1915.5).

(c) *General requirements for fixed extinguishing systems.* The employer must:

(1) Ensure that any fixed extinguishing system component or extinguishing agent be approved by an OSHA Nationally Recognized Testing Laboratory (NRTL), meeting the requirements of 29 CFR 1910.7, for use on the specific hazards the employer expects it to control or extinguish;

(2) Notify employees and take the necessary precautions to make sure employees are safe from fire if for any reason a fire extinguishing system stops working, until the system is working again;

(3) Make sure that all repairs to fire extinguishing systems and equipment are done by a qualified technician or mechanic;

(4) When the atmosphere remains hazardous to employee safety or health, provide proper personal protective equipment when employees enter discharge areas or provide safeguards to prevent employees from entering those areas.

Note to paragraph (c)(4): *See* § 1915.12 for additional requirements applicable to safe entry into spaces containing dangerous atmospheres.

(5) Post hazard warning or caution signs at both the entrance to and inside of areas protected by fixed extinguishing systems that use extinguishing agents in concentrations known to be hazardous to employee safety or health; and

(6) Select, install, inspect, maintain, and test all automatic fire detection systems and emergency alarms according to NFPA 72–1999, *National Fire Alarm Code* (incorporated by reference in § 1915.5).

(d) *Fixed extinguishing systems.* The employer must select, install, maintain, inspect, and test all fixed systems required by OSHA as follows:

(1) Standpipe and hose systems according to NFPA 14–2000, *Standard for the Installation of Standpipe Systems* (incorporated by reference in § 1915.5);

(2) Automatic sprinkler systems according to NFPA 13–1999, *Standard for the Installation of Automatic Sprinkler Systems* or NFPA 750–2000, *Standard on Water Mist Extinguishing Systems*, and NFPA 25–2002 *Standard for the Inspection, Testing, and Maintenance of Water-based Fire Protection Systems* (incorporated by reference in § 1915.5);

(3) Fixed extinguishing systems that use water or foam as the extinguishing agent according to NFPA 15–2001, *Standard for Water Spray Fixed Systems for Fire Protection*, NFPA 11–2000, *Standard for Low-Expansion Foam*, and NFPA 11A–1999, *Standard for Medium- and High-Expansion Foam Systems* (incorporated by reference in § 1915.5);

(4) Fixed extinguishing systems using dry chemical as the extinguishing agent, according to NFPA 17–1998, *Standard for Dry Chemical Extinguishing Systems* (incorporated by reference in § 1915.5); and

(5) Fixed extinguishing systems using gas as the extinguishing agent, according to NFPA 12–2000, *Standard on Carbon Dioxide Extinguishing Systems*, NFPA 12A–1997, *Standard on Halon 1301 Fire Extinguishing Systems*, and NFPA 2001–2000, *Standard on Clean Agent Fire Extinguishing Systems* (incorporated by reference in § 1915.5).

§ 1915.508 Training

(a) *Employee training.* The employer must train affected employees when

they first start working and also when necessary to maintain proficiency in the following:

(1) The general principles of using fire extinguishers or hose lines, the hazards involved with incipient firefighting, and the procedures used to reduce these hazards;

(2) The hazards associated with fixed and portable fire protection systems that employees may use or to which they may be exposed during discharge of those systems;

(3) The activation and operation of fixed and portable fire protection systems that the employer expects employees to use in the workplace;

(4) The emergency alarm signals including system discharge and employee evacuation alarms; and

(5) The primary and secondary evacuation routes that employees must use in the event of a fire in the workplace.

Note to paragraph (a)(5): While all vessels and vessel sections have a primary evacuation route, not all will have a secondary evacuation route.

(b) *Training requirements for shipyard employees designated for fire response.* The employer must:

(1) Have a written training policy stating that fire response employees are to be trained and capable of carrying out their duties and responsibilities at all times;

(2) Keep written standard operating procedures that address anticipated emergency operations and update these procedures as necessary;

(3) Review fire response employee training programs and hands-on sessions before they are used in fire response training to make sure that fire response employees are protected from hazards associated with fire response training;

(4) Provide training for fire response employees that ensures they are capable of carrying out their duties and responsibilities under the employer's standard operating procedures;

(5) Train new fire response employees before they engage in emergency operations;

(6) At least quarterly, provide training on the written operating procedures to fire response employees who are expected to fight fires;

(7) Use qualified instructors to conduct the training;

(8) Conduct any training that involves live fire response exercises in accordance with NFPA 1403–2002, *Standard on Live Fire Training Evolutions* (incorporated by reference in § 1915.5) (Ex. 19–24);

(9) Conduct semi-annual drills for fire response employees that cover site-specific operations, occupancies, buildings, vessels and vessel sections, and hazards according to the employer's written procedures; and

(10) Not use smoke generating devices that create a hazardous atmosphere in training exercises.

(c) *Training requirements for fire watch duty.* (1) The employer must ensure that each fire watch is trained as follows:

(i) Before being assigned to fire watch duty;

(ii) Whenever there is a change in operations that presents a new or different hazard;

(iii) Whenever the employer has reason to believe that the fire watch's knowledge or understanding of the training previously provided is inadequate; and

(iv) Receives annual retraining.

(2) The employer must ensure that each employee who stands fire watch duty is trained in:

(i) The basics of fire behavior, the different classes of fire and of extinguishing agents, the stages of fire, and methods for extinguishing fires;

(ii) Extinguishing live fire scenarios whenever allowed by local and federal law;

(iii) The recognition of the adverse health effects that may be caused by exposure to fire;

(iv) The physical characteristics of the hot work area;

(v) The hazards associated with fire watch duties;

(vi) The personal protective equipment (PPE) needed to perform fire watch duties safely;

(vii) How to use the PPE;

(viii) How to select and use any fire extinguishers and fire hoses likely to be used by a fire watch in the work area;

(ix) The location and use of barriers;

(x) The means of communication designated by the employer for fire watches;

(xi) When and how to start fire alarm procedures; and

(xii) The employer's evacuation plan.

(3) The employer must ensure that each fire watch is trained to alert others to exit the space whenever:

(i) The fire watch perceives an unsafe condition;

(ii) The fire watch perceives that a worker performing hot work is in danger;

(iii) The employer or a representative of the employer orders an evacuation; or

(iv) An evacuation signal, such as an alarm, is activated.

(d) *Records.* The employer must keep records that demonstrate that employees have been trained as required by paragraphs (a), (b), and (c) of this section.

(1) The records must include:

(i) The employee's name;

(ii) The trainer's name;

(iii) The type of training; and

(iv) The date(s) on which the training took place.

(2) The employer must keep each training record for one year from the time it was made or until it is replaced with a new training record, whichever is shorter, and make it available for inspection and copying by OSHA personnel on request.

§ 1915.509 Definitions applicable to this subpart.

Affected employee—an employee whose job requires him or her to perform hot work or to work in an area or space exposed to hazards associated with the hot work that is being performed.

Alarm—a signal or message from a person or device that indicates that there is a fire, medical emergency, or other situation that requires emergency response or evacuation. This may be called an "incident" or a "call for service."

Alarm system—a system that warns all employees at the worksite of danger.

Body harness—straps that may be secured about the employee in a manner that will distribute the fall arrest forces over at least the thighs, shoulders, chest, and pelvis, with means for attaching it to other components of a personal fall arrest system.

Contract employer—an employer, such as a painter, joiner, carpenter, or scaffolding sub-contractor, who performs work under contract to the host employer or to another employer under contract to the host employer at the host employer's worksite. Excludes employers who provide incidental services that do not influence shipyard employment (such as mail delivery or office supply services).

Dangerous atmosphere—an atmosphere that may expose employees to the risk of death, incapacitation, injury, acute illness, or impairment of ability to self-rescue (*i.e.*, escape unaided from a confined or enclosed space).

Designated area—an area established for hot work after an assessment of fire hazard potential of facilities, vessels, or vessel sections such as a fabrication shop.

Emergency operations—activities performed by a fire response organization that are related to:

(1) Rescue;

(2) Fire suppression;

(3) Emergency medical care; and

(4) Special operations such as hazardous materials response

(HAZMAT), HAZMAT release mitigation, standby for flight operations where needed, protection of structures exposed to nearby, off-site fires, mutual-aid at other workplaces, *etc.* These activities include responding to the scene of an incident, and all activities performed at that scene.

Fire hazard—a condition or material that may start or contribute to the spread of fire.

Fire protection—methods of providing fire prevention, response, detection, control, extinguishment, and engineering.

Fire response—the activity taken by the employer at the time of an emergency incident involving a fire at the worksite, including fire suppression activities carried out by internal or external resources or a combination of both, or total or partial employee evacuation of the area exposed to the fire.

Fire response employee—a shipyard employee who performs shipyard employment firefighting.

Fire response organization—an organized group knowledgeable, trained, and skilled in shipyard firefighting operations who respond to shipyard fire emergencies, including:

(1) Fire brigades;
(2) Shipyard fire departments;
(3) Private or contractual fire departments; and
(4) Municipal fire departments.

Fire suppression—the activities involved in controlling and extinguishing fires. Fire suppression includes all activities performed at the scene of a fire incident or training exercise that expose fire response employees to the following dangers:

(1) Heat;
(2) Flame;
(3) Smoke;
(4) Other products of combustion;
(5) Explosion;
(6) Structural collapse; or
(7) Hazardous materials.

Fire watch—the activity of observing and responding to the fire hazards associated with hot work in shipyard employment, and the employees designated to do so.

Fixed extinguishing system—a permanently installed fire protection system that either extinguishes or controls fire occurring in the space it protects.

Flammable liquid—any liquid having a flashpoint below 100°F. (37.8°C.), except any mixture having components with flashpoints of 100°F. (37.8°C.) or higher, the total of which make up 99 percent or more of the total volume of the mixture.

Hazardous atmosphere—an atmosphere that may expose employees to the risk of death, incapacitation, injury, acute illness, or impairment of ability to self-rescue (that is, escape unaided from a permit space), from one or more of the following causes:

(1) Flammable gas, vapor, or mist in excess of 10 percent of its lower flammable limit (LFL);
(2) Airborne combustible dust at a concentration that meets or exceeds its LFL;
(3) Atmospheric oxygen concentration below 19.5 percent or above 22.5 percent;
(4) Atmospheric concentration of any substance for which a dose or a permissible exposure limit is published in 29 CFR 1910, subpart G, *Occupational Health and Environmental Control*, or in 29 CFR 1915, subpart Z, *Toxic and Hazardous Substances* of this part, and that could result in employee exposure in excess of its dose or permissible exposure limit;
(5) Any other atmospheric condition that is immediately dangerous to life or health (IDLH). *Hazardous substance*—a substance likely to cause injury by reason of being explosive, flammable, poisonous, corrosive, oxidizing, an irritant, or otherwise harmful.

Hose systems—fire protection systems consisting of a water supply, approved fire hose, and a means to control the flow of water at the output end of the hose.

Host employer—an employer who is in charge of coordinating work or hiring other employers to perform work at a multi-employer workplace.

Hot work—any activity involving riveting, welding, burning, using explosive actuated power tools, or similar fire-producing operations. Grinding, drilling, abrasive blasting, or similar spark-producing operations also are considered hot work, except when these operations are physically removed from any atmosphere containing more than 10 percent of the lower explosive limit of a flammable or combustible substance.

Incident management system—an organized system of roles, responsibilities, and standard operating procedures used to manage emergency operations. Such systems are often called "Incident Command Systems" (ICS).

Inerting—the displacement of the atmosphere in a permit space by noncombustible gas (such as nitrogen) to such an extent that the resulting atmosphere is noncombustible. This procedure produces an IDLH oxygen-deficient atmosphere.

Interior Structural Firefighting Operations—the physical activity of fire response, rescue, or both, inside of buildings, enclosed structures, vessels, and vessel sections that are involved in a fire beyond the incipient stage.

Multi-employer workplace—a workplace where there is a host employer and at least one contract employer.

Personal Alert Safety System (PASS)—a device that sounds a loud signal if the wearer becomes immobilized or is motionless for 30 seconds or more.

Physical isolation—the elimination of a fire hazard by removing the hazard from the work area (at least 35 feet for combustibles), by covering or shielding the hazard with a fire-resistant material, or physically preventing the hazard from entering the work area.

Physically isolated—positive isolation of the supply from the distribution piping of a fixed extinguishing system. Examples of ways of physically isolating include: Removing a spool piece and installing a blank flange; providing a double block and bleed valve system; or completely disconnecting valves and piping from all cylinders or other pressure vessels containing extinguishing agents.

Protected space—any compartment where a fixed extinguishing system discharges.

Proximity firefighting—specialized fire-fighting operations that require specialized thermal protection and may include the activities of rescue, fire suppression, and property conservation at incidents involving fires producing very high levels of conductive, convective, and radiant heat such as aircraft fires, bulk flammable gas fires, and bulk flammable liquid fires. Proximity firefighting operations usually are exterior operations but may be combined with structural firefighting operations. Proximity firefighting is not entry firefighting.

Qualified instructor—a person with specific knowledge, training, and experience in fire response organizations, operations, and deployment.

Rescue—locating endangered persons at an emergency incident, removing those persons from danger, treating the injured, and transporting the injured to an appropriate health care facility.

Shipyard employment—ship repairing, shipbuilding, shipbreaking, and related employments, including vessels, vessel sections, and on land-side operations regardless of geographic location.

Shipyard firefighting—the activity of rescue, fire suppression, and property conservation involving buildings, enclosed structures, vehicles, vessels, aircraft, or similar properties involved in a fire or emergency situation. Shipyard firefighting includes any fire that requires a fire attack hose line of 1-½ inch diameter or larger to fight, and self-contained breathing apparatus by responders.

Standpipe—a fixed fire protection system consisting of piping and hose connections used to supply water to approved hose lines or sprinkler systems. The hose may or may not be connected to the system.

Appendix A to Subpart P—Model Fire Safety Plan

Model Fire Safety Plan

Table of Contents

I. Purpose.
II. Work site fire hazards and how to properly control them.
III. The preferred way to report fires and other emergencies.
IV. How to evacuate in different emergency situations.
V. Rescue and medical duties for those employees who perform them.
VI. Employee awareness.

I. Purpose

The purpose of this fire safety plan is to inform our employees of how we will control and reduce the possibility of fire in the workplace and to specify what equipment employees may use in case of fire.

II. Work Site Fire Hazards and How To Properly Control Them

A. Measures to contain fires.
B. Teaching selected employees how to use fire protection equipment.
C. What to do if you discover a fire.
D. Potential ignition sources for fires and how to control them.
E. Types of fire protection equipment and systems that can control a fire.
F. The level of firefighting capability present in the facility.
G. Description of the personnel responsible for maintaining equipment, alarms and systems that are installed to prevent or control fire ignition sources, and to control fuel source hazards.

III. The Preferred Way To Report Fires and Other Emergencies

A. A demonstration of alarm procedures, if more than one type exists.
B. The work site emergency alarm system.
C. Immediately notifying fire or police departments.

IV. How To Evacuate in Different Emergency Situations

A. Emergency escape procedures and route assignments.
B. Procedures to account for all employees after completing an emergency evacuation.
C. What type of evacuation is needed and what the employee's role is in carrying out the plan.
D. How to identify and recognize fire exits.
E. Helping physically impaired employees.

V. Rescue and Medical Duties for Those Employees Who Perform Them

A. Regular and after-hours work conditions.

VI. Employee Awareness

Names, job titles, or departments of individuals who can be contacted for further information about this plan.

[FR Doc. 02–30405 Filed 12–10–02; 8:45 am]
BILLING CODE 4510–26–P

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Federal Register

Wednesday,
December 11, 2002

Part III

Department of Justice

Immigration and Naturalization Service

8 CFR Parts 103, 214, 248 and 274a
Retention and Reporting of Information for F, J, and M Nonimmigrants; Student and Exchange Visitor Information System (SEVIS); Final Rule

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 214, 248 and 274a

[INS No. 2185–02]

RIN 1115–AF55

Retention and Reporting of Information for F, J, and M Nonimmigrants; Student and Exchange Visitor Information System (SEVIS)

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations governing the retention and reporting of information regarding F, J, and M nonimmigrants (foreign nationals having a residence in a foreign country which they have no intention of abandoning, and who are seeking temporary admission to the United States). This rule also implements the Student and Exchange Visitor Information System (SEVIS), establishes a process for electronic reporting by designated school officials (DSO) of information required to be reported to the Service, and provides clear standards governing the maintenance, extension and reinstatement of student status. This rule is necessary to improve and streamline the reporting and recordkeeping of F, J, and M nonimmigrants.

DATES: This final rule is effective January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Maura Deadrick, Assistant Director, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Room 3040, Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION:

Background

Who Are F, J, and M Nonimmigrants?

The Immigration and Nationality Act (Act) provides for the admission of various classes of nonimmigrants, including F, J, and M nonimmigrants, who are foreign nationals having a residence in a foreign country which they have no intention of abandoning, and who are seeking temporary admission to the United States. The purpose of the nonimmigrant's intended stay in the United States determines his or her proper nonimmigrant classification.

F–1 nonimmigrants, as defined in section 101(a)(15)(F) of the Act, are foreign students pursuing a full course of study in Service-approved colleges, universities, seminaries, conservatories, academic high schools, private elementary schools, other academic institutions, and in language training programs in the United States. For the purposes of this rule, the term "school" refers to all of these types of Service-approved institutions. An F–2 nonimmigrant is a foreign national who is the spouse or qualifying child of an F–1 nonimmigrant. J–1 nonimmigrants, as defined in section 101(a)(15)(J) of the Act, are foreign nationals who have been selected by a sponsor designated by the United States Department of State (formerly the United States Information Agency (USIA) to participate in an exchange visitor program in the United States. The J–1 classification includes aliens who are participating in programs under which they will receive graduate medical education or training. A J–2 nonimmigrant is a foreign national who is the spouse or qualifying child of a J–1 exchange visitor.

M–1 nonimmigrants, as defined in section 101(a)(15)(M) of the Act, are foreign nationals pursuing a full course of study at a Service-approved vocational or other recognized nonacademic institution (other than in language training programs) in the United States. The term "school" also encompasses those institutions attended by M–1 students for the purposes of this final rule. An M–2 nonimmigrant is a foreign national who is the spouse or qualifying child of an M–1 student.

Congress recently amended the Act to create new F–3 and M–3 nonimmigrant classifications for certain aliens who are citizens of Canada or Mexico who continue to reside in their home country while commuting to the United States to attend an approved F or M school. Public Law 107–274 (Nov. 2, 2002). Such border commuter students are not subject to the existing requirement for F–1 and M–1 students to be pursuing a full course of study, and are specifically permitted to engage in either full-time or part-time studies. However, F–3 and M–3 border commuter students will not be eligible to obtain F–2 or M–2 status for their dependents. The Service recently adopted regulations relating to border commuter students, 67 FR 54941 (August 27, 2002) (codified at 8 CFR 214.2(f)(18) and (m)(19)), and will be amending those regulations in the future to make the necessary conforming amendments in response to the recent legislation. In this rule, the Service merely notes that, except for a reduction in course load, the new F–3 and M–3 students will be subject to the same reporting requirements and SEVIS processes as for F–1 and M–1 students.

The Service wishes to clarify that compliance with SEVIS reporting requirements does not exempt F, M or J nonimmigrants from requirements or restrictions associated with other applicable statutes and regulations. Nonimmigrant students or exchange visitors subject to such regulations or statutes may be required to seek government approval, and may be denied such approval, for initial enrollment in a program and for actions that a school or program official may otherwise authorize for a nonimmigrant in SEVIS, such as transfers, extensions and changes to course of study. For example, among the kinds of schools approved for attendance by M nonimmigrants are flight training schools. The Service notes that section 113 of the Aviation and Transportation Security Act, Public Law 107–71 (Nov. 19, 2001), imposes new restrictions on providing flight training to aliens and requires prior notification to the Attorney General before such training can begin. The requirements of that law are separate from, and in addition to, the law and regulations governing F, M and J nonimmigrants. The Department of Justice has already published public notices and regulations pertaining to section 113 at 67 FR 2238 (Jan. 16, 2002), 67 FR 6051 (Feb. 8, 2002), 67 FR 41140 (June 14, 2002), and 67 FR 41147 (June 14, 2002). As another example, Title II of the Public Health Security and Bioterrorism Preparedness and Response Act, Public Law 107–188 (June 12, 2002), imposes restrictions on access to dangerous select bio-agents and toxins.

Response to Public Comments on the Proposed Rule

On May 16, 2002, the Service published a proposed rule in the **Federal Register** at 64 FR 34862, to implement the electronic collection and reporting process mandated under section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, 8 U.S.C. 1372. Specifically, the regulation sought to improve the collection of information on nonimmigrant students by establishing real time updates of student information. The proposed rule also amended the current regulations to establish additional reporting requirements based upon the USA PATRIOT Act (Public Law 107–56) and section 501 of the Enhanced Border Security Act (Public Law 107–173). Comments were due to the Service on or before June 17, 2002.

The following discussion will address only those provisions about which comments were received. Many commenters addressed identical issues in their comments, and as a result, the number of comments exceeds the number of issues discussed. In general, commenters expressed their overall support for SEVIS and the improvements to be made by electronic reporting as well as stressing the importance of foreign students on the economy and culture of the United States.

I. Mandatory Compliance Date

The majority of comments opposed the January 30, 2003, mandatory compliance date. Most commenters suggested that the compliance date be established by the Service in a separate rulemaking after SEVIS becomes fully operational. Other commenters suggested that the compliance deadline be moved 9 to 12 months after the release of SEVIS.

The reason most often given by commenters for their belief that the January 30, 2003 date was not feasible for schools was the technological changes required for compliance. Commenters indicated that they have not had sufficient time to assess the system changes necessary to implement SEVIS at their school and expressed concern over the short time frame to change existing business processes to meet the new SEVIS requirements. Commenters stated that to bring schools into compliance requires time and scarce resources to purchase software and training from third party vendors. Several commenters stated that being forced to comply prematurely would result in an investment in technology that becomes obsolete once SEVIS is fully operational. These commenters also indicated that SEVIS should be placed into full operation only after the technology had been developed and tested and the Service was confident the system would work.

Further, many commenters indicated that they did not want to allocate significant investments toward the real time interactive portion of SEVIS and would instead choose to wait for the batch reporting capability. As the batch process will not be available until later in 2002, commenters stated they need time to install and test the software interface with SEVIS to determine any incompatibility and that such installation and testing would necessitate an implementation date after January 30, 2003. Commenters indicated that their schools must weigh using an outside vendor against the creation of a unique system within the school to comply with SEVIS. The commenters argued that the deliberation necessary to determine which path to follow would take time, especially when the schools need authse authorization from the president or board of directors once all options have been weighed. Many commenters point out that there was no vendor software then available that meets the SEVIS requirements, although some vendors were in the final stages of development. The commenters stated that the absence of final specifications for batch processing had hampered the schools' efforts to begin implementation. Those institutions that do not purchase a product available in the market and who instead choose to build their own batch system may take even more time. One commenter estimated that it would take 4,000–5,000 hours of information technology (IT) effort to develop the school's system. The fact that international student and scholar data is located in various university offices within one school was another reason cited by commenters as a reason that it would take schools beyond January 30, 2003, to implement new systems and processes to comply with SEVIS.

Many commenters cited cost as another prohibitive factor in being able to be ready in time for the mandatory compliance date. The Service was given monetary figures ranging from $15,000 to $500,000 as the cost per school to implement SEVIS. These costs include paying contract programming rates, buying servers, software licenses, and software from a vendor, receiving training in new XML technology, and additional positions for staff.

Finally, commenters stated that January 30, 2003, is not reasonable in light of the fact that the Department of State (DOS) has not yet published corresponding regulations with the new SEVIS requirements for program sponsors with the new SEVIS requirements. Commenters discussed the need for the Service regulations and the DOS regulations to be consistent in order to reduce the burden on schools. Several commenters expressed concern over the fact that the Service and the DOS were publishing separate rules and felt that they will be forced to duplicate efforts if the rules are not consistent.

While the Service is aware of the concerns that the education community has in meeting the January 30, 2003 compliance date, the Service believes the date can be met at little to no cost to the schools. Other than personnel costs for data entry, there is virtually no cost to schools as real time interactive capability only requires that the school have Internet access and a free browser. There is no other software necessary to use the real time interactive capability and there are no recurring access fees. Additionally, as will be discussed in the following section, January 30, 2003, is the date by which all schools must use SEVIS in order to issue a new Form I–20. Although schools may choose to do so, the Service does not intend January 30, 2003 to be the date by which schools must enter all students into SEVIS. Moreover, a Form I–20 issued prior to January 30, 2003, will be accepted for visa issuance, admission, or change of status prior to August 1, 2003.

The Service has been working under several statutory mandates for the implementation of SEVIS and must balance national security concerns against the concerns of the education community. The Service has been working within the tight timeframes required by statutory mandate since the inception of the Coordinated Interagency Partnership Regulating International Students (CIPRIS) pilot program in 1997. In 2001 Congress passed two separate laws to strengthen national security that focused directly on the Service's foreign student program. In addition, the Service has been involved with working groups on student issues as directed by the President in Presidential Directive Number 2. These working groups, led by the Office of Science and Technology Policy (OSTP) and Office of Homeland Security (OHS), included representatives from the National Institute of Standards and Technology (NIST), National Science Foundation (NSF), National Institute of Health (NIH), and other federal agencies. Several open meetings hosted by National Academy of Science (NAS) included representatives from NAFSA-Association of International Educators, American Council on Education (ACE), and universities such as MIT and UCLA. The January 30, 2003 compliance date evolved from the security concerns of Congress and the Administration. It was not a date chosen at random, but was a date chosen as the most reasonable balance between national security concerns and the education community's ability to comply. The sooner that all schools and students are in the SEVIS database, the sooner the Service will have the ability to more fully monitor them.

Furthermore, the Service and the DOS have been working collaboratively since the inception of SEVIS to ensure that similar requirements were being proposed in areas as appropriate. From the beginning of the CIPRIS pilot program, the DOS has committed a full-time staff person to SEVIS to develop

the SEVIS requirements with the Service and to incorporate such requirements in the DOS regulations. On numerous occasions both agencies have come together to discuss SEVIS requirements with the education community. The fact that two separate rules are being promulgated setting out SEVIS requirements is a matter of the federal rulemaking process, and does not indicate that the two agencies are not working together.

Although the Attorney General has the primary responsibility for implementing SEVIS, the DOS must promulgate a rule setting forth SEVIS requirements that specifically pertain to J–1 program sponsors. Furthermore, in areas where the Service has responsibility over J–1 nonimmigrants (*e.g.*, admission and duration of status), the Service has addressed those areas in this rule. The DOS has addressed in their separate rule those areas in which the Service does not have responsibility over the J–1 exchange visitor (*e.g.*, eligibility for employment, change of category, transfer, or reinstatement). For more information on SEVIS as it relates to DOS authority over program sponsors and J exchange visitors, see the DOS rule. By the time the SEVIS mandatory compliance date is reached, the batch SEVIS technical requirements will have been available for approximately 18 months. It was the intent of the Service to provide schools and programs access to such technical requirements as early as possible in order to assist in the transition to SEVIS especially under the narrow timeframe as mandated by Congress. The Service began notification and publication of the batch technical specifications of the F, M and J data requirements in August 2001. The Service also published an announcement in the Commerce Business Daily and sponsored multiple vendor conferences specifically to release the SEVIS technical specifications for batch-interface. Nine vendor conferences were held on the east and west coasts during the months of August and September 2001. The technical specifications for the Service and the DOS were posted on the Internet at that time and were subsequently updated with a revised draft version on November 21, 2001. In response to a number of requests from the education community, the Service sponsored an additional technical conference in the Washington, DC metropolitan area on June 13, 2002, to continue to discuss XML technical specifications and to begin release of a finalized version of the Interface Control Document. The final Interface Control Document was published on the Service's Web site on August 14, 2002.

Finally, while the Service understands the time and monetary concerns expressed by those schools interested in utilizing the batch capability of SEVIS, the Service notes that the real time interactive capability of SEVIS remains available to such schools. The use of batch processing is a choice to be made voluntarily by each individual school. Therefore, the fact that a school may not be technologically or financially ready to use batch processing does not mean that the school is not able to comply with the new SEVIS reporting requirements and processes on January 30, 2003, by utilizing the real time interactive capability of SEVIS. The real time interactive portion of SEVIS is currently available to enrolled schools. The additional benefit to schools using real time interactive capability is that these schools may begin use of SEVIS through real time interactive now and enter students on a phased-in basis. By doing so, the school would essentially have all students already entered in SEVIS and could then switch over to batch processing at the first registration after the mandatory compliance date. By entering these students over time, schools will be able to gain system familiarity and requirement familiarity while still meeting the mandatory date.

II. Form I–20, Certificate of Eligibility for Nonimmigrant (F–1)/(M–1) Student Status—For Academic and Language Students/Vocational Students

Many comments were received regarding the SEVIS Form I–20. The majority of commenters requested that the Service clarify the responsibilities of those schools that begin using SEVIS prior to the mandatory compliance date. Commenters urged the Service to allow schools sufficient time to enter all current students in SEVIS and suggested several alternative dates by which all current students should be entered in SEVIS.

While the proposed rule indicated that all schools were required to report the registration of all current students by the next academic term after mandatory compliance, the Service believes the final rule should impose one date upon all schools by which all current students must be entered in SEVIS. The Service agrees with the commenters that many schools with large student populations would be forced to input all current students in SEVIS in a very short time frame in order to meet the terms of the proposed rule. In response to the commenters and the Service's desire to allow schools sufficient time to ensure that the information entered in SEVIS is accurate, the Service believes that a specific date is an equitable solution that leads to less confusion among schools as to when all of their current students must be entered into SEVIS. As such, the Service has determined August 1, 2003, to be the date upon which all current or continuing students must be entered into SEVIS.

To clarify, schools that begin using SEVIS prior to the mandatory compliance date must issue a SEVIS Form I–20 to any new student. Additionally, these schools must issue a SEVIS Form I–20 to any current student requiring a new Form I–20 because of a reportable action (*e.g.*, extension of status, practical training, or employment authorization, or for a new F–1, F–3, M–1, M–3 nonimmigrant visa). A current student with a previously issued non-SEVIS Form I–20 and a current nonimmigrant F or M visa will not be required to obtain a SEVIS Form I–20 for travel purposes and may use his or her current non-SEVIS Form I–20 with proper annotation for reentry until the date that all students must be entered in SEVIS. In order to comport with the required update events of § 214.2(f) and § 214.2(m) and the reporting requirements of § 214.3, including registration, schools need only update SEVIS as to those students whose information has been entered into SEVIS. These schools are not required to enter any of their current students into SEVIS or report on these students in SEVIS prior to the mandatory compliance date except for those current students who need a new Form I–20 for a reportable action or other reason.

After the mandatory compliance date is reached, schools must issue SEVIS Forms I–20 to all new students and all provisions and processes related to non-SEVIS schools will become void. At that time, schools must issue SEVIS Forms I–20 to current students requiring a reportable event. For students whose records have not been entered into SEVIS, schools are still required to comply with the recordkeeping and reporting requirements contained in section 214.3(g)(1) and (2). Lastly, schools must enter the record of all F or M students that are currently enrolled as of August 1, 2003, in SEVIS and report the enrollment for such nonimmigrants by August 1, 2003.

On a related topic, many commenters requested that the Service continue to accept, for a reasonable period of time, Forms I–20A-B, Certificate of Eligibility For Nonimmigrant (F–1) Student Status, For Academic and Language Students, Forms I–20M-N, Certificate of Eligibility for Nonimmigrant (M–1) Student Status, For Vocational Students, and Form DS–2019, Certificate of Eligibility for Exchange Visitor (J–1) Status, that were issued prior to the mandatory compliance date. In response to this request, the Service has added provisions in § 214.2(f), (j) and (m) of this rule to allow F, J, and M nonimmigrants who were issued such documents prior to the mandatory SEVIS compliance date, to continue to be admitted to the United States using these documents for a limited period of time. As of August 1, 2003, however, all non-SEVIS Forms I–20 and DS–2019 will no longer be acceptable, and F, J, and M nonimmigrants must be in possession of a SEVIS Form I–20 or DS–2019.

Additionally, commenters stated that the proposed rule did not address the process by which the dependents of F–1 or M–1 students are to be issued the SEVIS Form I–20. The Service notes that section IV of the supplementary information in the proposed rule contains a discussion of this process. However, the Service agrees that the process as described in the proposed rule should be codified in the pertinent provisions of § 214.2 (f) and (m) and § 214.3(k).

Additionally, prior to August 1, 2003, if exigent circumstances can be demonstrated, the Service will allow the dependents of F–1, J–1, and M–1 nonimmigrants in possession of a SEVIS document to enter with a copy of the principal's SEVIS document.

The Service notes that passage of the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107–173 (Border Security Act), necessitates changes to the disposition of the SEVIS Form I–20 at ports-of-entry. The Border Security Act requires the Service to notify approved schools and exchange programs that the F or M nonimmigrant has been admitted to the United States. By on, or about January 1, 2003, the Service anticipates that it will accomplish this notification to schools electronically through SEVIS.

However, for a short period of time, the Service will accomplish this notification to schools and exchange programs using a paper process. Upon the initial admission of the F or M student, the inspector at a port-of-entry will take the SEVIS Form I–20 from the student. The SEVIS Form I–20 will be returned to the school within approximately 10 days of the student's arrival. The school will be responsible for returning the SEVIS Form I–20 to the student or notifying the Service that the student has failed to register. In the case of a non-SEVIS Form I–20, the student's copy and the school's copy will be appropriately annotated with the admission information. The student's copy will be returned to the student at the port-of-entry and the school copy will be forwarded to the Service's data processing center to be forwarded to the school listed on the Form I–20.

In the case of a SEVIS Form DS–2019, SEVIS will generate an original SEVIS Form DS–2019 and a watermark version of the Form DS–2019. Upon the initial admission of the J–1 exchange visitor, the inspector at the port-of-entry will properly annotate both the original SEVIS Form DS–2019 and the watermark draft copy. The inspector will return the original SEVIS Form DS–2019 to the exchange visitor and the watermark version will be forwarded by the inspector to the Service's data processing center. The watermark version will be returned to the program sponsor within approximately 10 days of the exchange visitor's arrival. The program sponsor will be responsible for notifying the Service and DOS that the exchange visitor has failed to commence program participation by updating the record in SEVIS within 30 days of the program commencement date. Upon the initial admission of a J–1 nonimmigrant, the Service will continue to process the non-SEVIS Form DS–2019 as it has done in the past.

While this paper-based process remains in effect, the Service's data processing center will attach a cover letter to all Forms I–20 and SEVIS Forms I–20 forwarded to schools, indicating that the student has entered the United States using the school's form. Such notification by the Service allows schools to be able to comply with the requirement that they report to the Service any students who fail to register. SEVIS schools must report such "no shows" in SEVIS. Non-SEVIS schools are required to report these "no shows" through the Service's National Customer Service Center at 1–800–892–4829. In accordance with the DOS regulations, program sponsors are also required to report in SEVIS if an exchange visitor has failed to commence participation in his or her program. A "no-show" is a student or exchange visitor who has been issued a Form I–20 or Form DS–2019 by an approved school or designated program, and has been admitted to the United States, but who fails to register at his or her school or commence participation in his or her program within 30 days of the institution's registration deadline. Comments were also received requesting the Service to clarify whether changes could be made in SEVIS to a student's Form I–20 information prior to the student's registration at the school. Although this is not specifically addressed in the regulations, the DSO may update all Form I–20 information in SEVIS prior to registration, with the exception of major for a student with M nonimmigrant status who is not authorized to change educational objective.

However, once the Service fully implements a data share with the Department of State's consular systems, the DSO will no longer be permitted to update biographic information after visa issuance until after the school has indicated the student has registered. Additionally, after a student has entered the country, the DSO will no longer be permitted to change a student's program start date. Schools will be permitted, however, to update SEVIS to indicate that a Form I–20 has been terminated at any time.

III. Roles and Responsibilities of School Officials

The Service received many comments on the creation of the two new categories of designated school official, the principal designated school official (PDSO) and the administrative school official (ASO). While some commenters expressed the opinion that the creation of the ASO was helpful, others indicated that the three-tiered proposal imposes another layer of personnel, thereby limiting accountability. Several commenters were also opposed to the requirement that PDSOs and DSOs be United States citizens or lawful permanent residents. A primary source of concern for the majority of these commenters was the limitation on the number of DSOs per school or campus, citing the need for more personnel resources to input data in SEVIS. Commenters viewed the Service's limitation as arbitrary and suggested that schools should be left to determine the number of DSOs necessary to carry out their responsibilities. Others suggested that the number of DSOs be based upon the number of F–1, M–1, and J–1 nonimmigrants at a particular school.

The primary purpose of SEVIS is to provide access to current, accurate information to schools and the Service on all F, J, and M nonimmigrants. The information maintained in the system is only as reliable as those who are entering it. The Service's ability to control access is a customary and critical means of ensuring the integrity of the system. In order to maintain the integrity of the data in SEVIS, the Service has determined, in accordance with applicable Department of Justice

policies governing access to Departmental systems, that PDSOs and DSOs must be either a citizen or lawful permanent resident of the United States.

In response to the comments received, the Service will not adopt the three-tiered category PDSO, DSO and ASO as proposed. The Service finds merit in the commenters' arguments that this is an unnecessary layer that would not improve accountability. As such, once the necessary programming changes have been made to SEVIS, the Service will remove the ASO category. The category of PDSO will remain.

The Service will maintain numeric limits on the number of DSOs per school or campus in order to control access to SEVIS. Under this rule, each school or campus will be allotted one position for the PDSO and up to nine positions for DSOs. However, the Service does find merit in the comments suggesting that the number of DSOs be proportional to the number of nonimmigrant students. Once SEVIS is fully operational and schools have entered all current students in the system, the Service may reconsider the numerical limits on the number of DSOs.

On a related issue, in response to the Service's request, many comments discussed the feasibility of a DSO certification program. A certification process for DSOs was supported by most commenters as a way to strengthen the reliability of the data retained in SEVIS. However, several commenters urged the Service to hold off on establishing a certification program until after SEVIS was fully implemented in order to enable DSOs to focus fully on adjustment to SEVIS. Other commenters stated they did not want the Service to institute another mandatory program and that the Service should leave such training up to schools on a voluntary basis. The Service appreciates the responses received and will review and consider all comments again before making a decision whether to establish a DSO certification program. If a certification program is pursued, the Service may revisit the DSO limitations based on immigration status once such a certification process (including background checks) is in place.

One commenter suggested that the Service make clear that institutions have a right to seek legal counsel in establishing appropriate SEVIS compliance systems. The commenter contended that the Service's use of the PDSO as the point of contact for SEVIS serves to contravene the Agency Practice Act, 5 U.S.C. 500(b). The Service has no intention of denying a school's right to be represented by legal counsel. In fact, for many years there have been institutions that have designated a legal advisor as a designated school official. This rule does not prohibit a school from choosing to place counsel in the PDSO or DSO position or from conferring with counsel regarding the implementation of SEVIS requirements.

IV. Reduction in a Student's Course Load

Many comments were submitted regarding the proposed rule's treatment of a reduction in a student's course load. Some commenters suggested that the Service remove the word "prior" in the sentence, "A student who drops below a full course of study without the prior approval of the DSO will be considered out of status." Additionally, commenters asserted that the Service should not consider a student to be out of status due to a reduced course load until the end of the semester or until the DSO is notified.

The Service cannot adopt these suggestions. With the implementation of SEVIS, the Service expects to have accurate, real time, information on all students. To allow a student to act, without first receiving approval from the DSO, undermines the most basic concept of SEVIS. As it is the responsibility of the student to maintain a full course of study in order to remain in compliance with his or her nonimmigrant status, it is reasonable to expect a student to understand this responsibility. Accordingly, the student should consult with, and receive the necessary permission from the designated school official prior to performing an act that affects status.

The Service understands that there may be situations in which a student is unable to maintain a full course load and has made allowances for such situations, provided the student receives permission first. The Service also understands there may be some situations in which a student's incapacitation may render it impossible for the student to request permission from the DSO prior to reducing his or her course load (*e.g.*, a student who is hospitalized for an extended period of time as the result of an accident). In such cases, the student will not be considered out of status.

Many commenters stated that the Service did not clearly indicate in the proposed rule whether DSOs could authorize a nonimmigrant student to drop below a full course of study more than once during his or her course of study. To clarify, during the course of study within one program level, an F–1 nonimmigrant can only be authorized on one occasion to reduce his or her course load due to academic difficulties, and must resume a full course at the start of the next available term or session, excluding a summer session. An F–1 student taking a reduced course load for academic reasons must still be taking at least one class or half the clock hours required for a full course of study. A DSO may not authorize an M–1 student to reduce his or her course load based on academic difficulties.

Commenters also argued that the Service's requirement allowing an F–1 student to drop below a full course of study only where he or she faces "initial" difficulties should be expanded to include other legitimate reasons as determined by the DSO. The Service does not adopt this suggestion to permit the DSO to make a determination based on personal or academic reasons. Such a determination is extremely vague and is open to abuse.

Several commenters also suggest that the Service allow a DSO to authorize a reduced course load if students are unprepared or in jeopardy of failing a course. The Service notes that the current regulations already provide for this situation. For example, a student may be authorized to drop below full time study due to improper course level placement.

In the case of an illness or medical condition, an F–1 student may be authorized to reduce course load for a period not to exceed 12 months in aggregate. The DSO may also authorize a student to refrain from taking any courses due to medical condition or illness if the severity of the condition warrants such authorization. Although a student may be authorized for up to 12 total months of a reduced course load in this case, a school official must re-authorize the reduction each term or session, and must update this authorization in SEVIS. The 12 month limit on authorization to reduce course load for illness or medical condition is applied per each particular program level. If the student completes one program, and advances to a different program level, the student will be allowed a second aggregate 12-month period in which he or she may be authorized to reduce course load.

An F–1 nonimmigrant who has already received authorization to reduce course load for academic difficulties remains eligible for the aggregate 12-month period to reduce his or her course load due to illness or medical condition.

A student who is unable to resume a full course of study within the time limits previously specified will either have to leave the U.S. and reapply when

he or she is able to resume a full course of study, or change to a more appropriate nonimmigrant classification to continue medical treatment in the U.S.

The Service recognizes that there may be cases in which an F–1 student may need authorization to reduce his or her course load for more than 12 months while pursuing a single program level (for example, while studying for an undergraduate college degree). However, to allow a student to pursue less than full time study for an extended period of time with no limits opens the student program to a greater possibility for abuse. Furthermore, such extended authorization would run counter to the definition of a student as set forth in section 101(a)(15)(F) of the Act which requires that a student pursue full-time study.

As specified in the proposed rule, an M–1 student may only be authorized to reduce course load for a reason of illness or medical condition, and such authorization may not exceed an aggregate of 5 months. A school official must verify the continuation of the authorization at each term or session by updating the authorization in SEVIS. However, as previously noted, the Service cannot permit an institution to authorize a student to pursue less than full-time study for an extended period of time.

On a related topic, many commenters suggested that the documentation required to support authorization to drop below a full course of study for illness or medical condition be expanded to include documentation submitted by counselors, psychologists, and other alternative medical practitioners. The Service adopts this suggestion and will allow DSOs to accept medical documentation provided by licensed medical doctors, doctors of osteopathy, or licensed clinical psychologists to substantiate a student's reason for dropping below a full course of study for illness or medical condition.

Some comments contended that students with long-term medical conditions, chronic illnesses, or learning disabilities may require a longer-term reduction in course load. The Service cannot, however, permit an unlimited reduction in course load, as this would undermine the premise of the F–1 and M–1 nonimmigrant student program. The Service believes that the existing minimum requirements for defining a "full course of study" are broad enough to accommodate students that may not be able to take a rigorous course load.

Finally, one commenter suggested that the Service include a specific provision in § 214.2(f)(6)(iii) to allow a DSO to authorize a reduced course load for graduate students enrolled in less than full time coursework. The Service does not believe that such a provision is necessary. The current regulation at § 214.2(f)(6)(i)(A) allows the DSO to make the determination of whether the graduate student is pursuing a full course of study. The determination is left to the DSO in this case because even though graduate students may not be enrolled in full-time classes, the school may still consider them to be a full-time student while they conduct research or work on their dissertation, for instance. As long as the student is pursuing what the institution considers to be a full time graduate program, the student is maintaining a full course of study. If the student is not pursuing full time study as determined by the DSO, then the student would not be maintaining lawful student status unless the DSO has authorized a reduced course load in accordance with the provisions of § 214.2(f)(6)(iii).

V. Transfers

Several commenters suggested that the Service permit F–1 students to transfer schools during the 60-day grace period following completion of studies or after completion of optional practical training. Although not explicitly authorized in previous regulations, the Service has accommodated school transfers within the 60-day period and has designed SEVIS to continue this practice. The final rule explicitly permits the transfer of student records in SEVIS during this 60-day period in § 214.2(f)(5)(iv). However, to clarify, the DSO must indicate the school to which the student intends to transfer in SEVIS. Therefore, the initiation of a student record transfer in SEVIS can only be carried out after the student has completed the application and acceptance process and has determined the school to which he or she is transferring.

The Service is also limiting the length of time a student may remain in the U.S. while transferring between schools. The student may not remain in the U.S. between programs if the student will not resume classes within 5 months of transferring out of the current school, or within 5 months of the program completion date as indicated on the Form I–20 issued by the current school, whichever date is earlier. In the case of a student authorized to engage in post-completion optional practical training (OPT), the student must be able to resume classes within 5 months of transferring out of the current school that recommended OPT or the date the OPT authorization ends, whichever is earlier. For example, in instances where a DSO initiates a transfer within the 60-day period following completion of studies, in order to remain in the United States between transfer of programs or schools, the 5 month period begins tolling on the date the program was completed, not the date the DSO initiated the transfer. The initiation of a transfer out date occurs when the DSO enters a date for the release of the student's record to the transfer school. While the DSO may enter any date reasonable and appropriate for a student's circumstances, in most instances, the DSO will want to enter the release date as the date the student completes the last day of the academic term at the current school.

The Service also received many comments stating that SEVIS should not prevent transferring F–1 students from applying to more than one school. In response to these comments, the Service wishes to clarify that this final rule does not place any limit on the number of schools to which a transferring F or M student may apply. The transferring student may apply to and be accepted by any number of schools. However, the rule restricts the number of SEVIS Forms I–20 that may be issued to a transferring student. For purposes of fraud prevention, as well as privacy and paperwork reduction concerns, SEVIS will allow a student's record to be available only to one school at a time. Once the student decides which school he or she intends to transfer, the DSO of his or her current school will update SEVIS to reflect this choice and will enter the release date for the student. The student's name will then appear in SEVIS at the transfer school as an "alert" containing the student's name and release date. When the release date is reached, the transfer school will be able to issue the transferring student a new SEVIS Form I–20. In most cases, schools will be not be sending the acceptance letter and the SEVIS Form I–20 at the same time. If the student changes his or her mind prior to the release date, the DSO at the current school may cancel the transfer request. If the transfer request is cancelled the student may continue studies at the current school or make a new request to be transferred to another school. However, once the release date has been reached, the DSO at the current school may no longer access the student's record in SEVIS. Therefore, a student who changes his or her mind after the release date must work with the DSO of

the transfer school to accomplish a second transfer to another Service-approved school. In such cases, the DSO of the transfer school must complete the transfer process for the student in SEVIS and then initiate any subsequent transfer that the student may request.

The transfer process for M students differs from that of F students, in that M students must apply directly to the Service in order to transfer schools. In order to ensure that the M transfer student may continue in his or her studies without significant interruption, the M nonimmigrant transfer process allows the M transfer school to issue a SEVIS Form I–20 prior to the transfer student's release date. The initiation of the SEVIS student transfer process still requires that the current school enter the name of the M transfer school, and it is only the transfer school indicated in the system that can issue the SEVIS Form I–20 prior to the release date. The M student may then apply to the Service for a transfer without having to wait for the release date, which will most likely be at the end of the academic term. However, the transfer school will not have complete access to the student's SEVIS record until the release date is reached.

The M student may begin attending the transfer school pending the adjudication of his or her transfer request. However, if the transfer request is denied by the Service after the student has begun his/her program at the transfer school, the SEVIS student record will be automatically terminated and the student will be considered out of status. Therefore, students are strongly encouraged to file their applications for transfer approval with the Service Center as soon as they are able. As stated above, the initial SEVIS Form I–20 from the transfer school can be issued as soon as the current school indicates in SEVIS that the student intends to transfer to that school. The student will be notified by mail of the Service's decision. The DSO will be notified of the Service's decision on an M transfer via a system alert. Additionally, the DSO may view the status of any transfer request by either accessing the student's record or by viewing the list provided of pending/adjudicated applications in SEVIS. The process for a SEVIS transfer for both F and M students allows the students to apply to multiple schools but places the burden on the students to weigh their options and decide on one particular school before the issuance of a new SEVIS Form I–20 by the transfer school.

Several commenters stated that the limited time frame imposed by the SEVIS transfer process will adversely affect current business practices at some schools. Commenters indicated that, because a transfer school can only issue a new SEVIS Form I–20 on the student's release date, there will not be enough time for the transfer school to issue a SEVIS Form I–20 prior to the start of the new semester, especially in instances where the transfer student is returning home for a vacation.

In response, the Service notes that a transfer student who is traveling abroad for a vacation and who plans to attend a different school upon his or her return must make arrangements with the transfer school to ensure that all necessary documentation is received in a timely manner. For example, the student may obtain his or her SEVIS Form I–20 prior to departure, or request that the transfer school forward the SEVIS Form I–20 to his or her address abroad (just as the schools now do for newly-applying students).

Some commenters suggested that the Service allow the student's SEVIS record to be accessible by both the current and transfer schools until the transfer is complete.

The Service cannot adopt this suggestion. In its outreach efforts, the Service found that privacy was of the utmost concern to the education community. Schools did not want other schools to have access to any of their students' school information. The SEVIS transfer process was designed with such concerns in mind. To allow students' records to be open to both schools would allow one school to have access to another school's data. One commenter noted that the reporting time frames for transfer for non-SEVIS schools were different from those for SEVIS schools and suggested that the Service use a standard 30-day reporting time period. For the sake of consistency in the transfer process, the Service adopts this suggestion in the final rule and allows non-SEVIS schools to send notification of transfer to the Service data processing center within 30 days.

Finally, commenters suggested that the Service use consistent terminology in its description of schools. The Service agrees with the comment and in the final rule adopts the terms "current school" and "transfer school."

VI. Thirty-day Advance Admission

Many commenters stated that the 30-day limit prior to the program start date is unreasonable. Commenters cited a student's need to find adequate housing, attend orientation, and begin research projects as reasons why a student might need additional time prior to the program start date.

The Service, however, does not agree with the commenters. The DSO is already able to take account of a student's obligations pertaining to orientation, research projects, etc., prior to the start of classes. Form I–20 states, "The student is expected to report to the school not later than (date) and complete studies not later than (date)." A DSO may enter a date that would accommodate the beginning of research projects or allow a student to attend an orientation session. The DSO is permitted to set a program start date that accommodates the need for students to be in attendance at the school for such required activities.

Information pertaining to student housing is readily available to prospective students and in many cases housing is arranged by the school. Although the Service recognizes that students need some time to find suitable housing, the Service does not believe that the advance admission period needs to be extended beyond 30 days for this reason. A period of 30 days prior to the time the student is expected to be in attendance at the school, as provided by this rule, should be adequate for students to make arrangements for housing.

Finally, the Service is considering a change to the SEVIS Form I–20 to capture two distinct dates: (1) the date by which the student is expected to enter the country (*e.g.*, to begin research or on-campus employment, attend orientation), and (2) the date that classes will commence.

VII. Grace Periods

Many comments were received on the proposed rule's effect on students who fail to maintain status by withdrawing from classes. Commenters suggested that the Service consider reasons other than medical conditions as a legitimate basis for withdrawing from classes, thereby entitling students to a reasonable grace period.

The Service agrees with these comments, in part, but must distinguish between instances where a student notifies the DSO and receives authorization to withdraw versus those where a student never attends or stops attending classes without DSO authorization. In instances such as a death in the family, unforeseen financial hardship, or a determination that the educational program is not appropriate for the student, a DSO may authorize the student to withdraw from classes. In such cases, the student will be afforded a 15-day grace period in which he or she may make and complete arrangements for travel and departure. In instances where the student has never registered at the school or withdraws without DSO authorization, the student may not be afforded the 15-day grace period.

The importance of notifying the DSO and obtaining permission for withdrawal from classes cannot be overemphasized. A solid relationship and line of communication must be established between the student and the DSO to avoid adverse consequences to a student affecting his or her nonimmigrant status.

VIII. Concurrent Enrollment

Several commenters requested that the Service clarify the language for concurrent enrollment. The commenters indicated that it was common for a student to be enrolled in an English language program as well as a university program. In such instances, the requirements for maintaining a full course of study vary. For English language programs, the Service definition requires clock hours, while for university programs the requirement is for credit hours. The commenters requested the Service allow the DSO to make the determination as to what constitutes a full course of study in such cases. The Service agrees with the commenters and has added clarifying language to the rule allowing the DSO to make these determinations.

IX. On-line and Distance Education Courses

Some commenters suggested that the Service's proposed restriction of one class or three credits per semester of on-line or distance education courses is a restriction that should be made by schools, not by the Service. Other commenters stated that eliminating any distance education or on-line courses for English language programs or elementary and secondary students is too restrictive. Additional commenters stated that the Service's intended restriction will have a negative impact on their programs as more programs add on-line courses.

Service finds merit in the argument against prohibiting distance education and on-line courses for elementary and secondary students. Accordingly, the Service has removed the restriction and will allow elementary and secondary students to count distance education and on-line courses in their determination of a full course of study.

The Service does not agree with the commenters that this rule restricts schools from enrolling any student they wish in an on-line or distance education course. The rule does restrict a student in the United States in an F–1 nonimmigrant status from being able to consider more than one distance education or on-line class or three credits per semester towards his or her full course of study requirements. Furthermore, the rule restricts vocational students and English language students from being able to consider any on-line or distance education courses toward the full course of study requirements. Such restrictions do not prohibit international students from completing programs that are offered on-line, as the students can enroll in the course without being admitted to the United States.

To clarify, the restriction that this rule places upon distance education or on-line courses is that no more than one course or three credits can be counted toward the full course of study requirements. A student currently pursuing a full course of study may add as many distance education or on-line courses as he or she wishes in addition to the courses counting toward the full course of study. In the case of M–1 students and English language students, although these courses cannot be counted toward the full course of study requirement, these students are not prohibited from taking additional courses on-line or through distance education.

X. Practical Training

Several commenters requested that the Service change the language in the optional practical training provision from "9 consecutive months" to "one full academic year." The commenters stated that many schools do not operate on a 9-month calendar and, therefore, the Service's 9-month requirement does not adequately address their needs. The Service agrees with the commenters and notes that the term "one full academic year" is already used in other parts of the Service regulations pertaining to practical training. The final rule will, therefore, incorporate the term "one full academic year" throughout the appropriate sections of § 214.2(f) and § 274a.12.

Although commenters were generally supportive of the Service allowing students involved in a study abroad program to use that time toward the 9-month requirement (now "one full academic year") for practical training, the Service must make one point of clarification to the rule. For a student to use the time spent studying abroad toward the one full academic year requirement, the student must have spent at least one full academic term in a full course of study in the United States prior to going abroad to study.

Some commenters requested that the Service broaden the provision even further to allow graduate students conducting research abroad the same benefit. The Service cannot adopt this suggestion at this time. In the case of students involved in a study abroad program, there is a defined curriculum with courses that must be taken. However, the Service is not satisfied that the same is true for graduate students conducting research abroad. The Service may consider this in a future rulemaking.

Several commenters pointed out that the proposed rule eliminated § 214.2(f)(10)(ii)(A) (*3*) and (*4*). The Service notes that this was an unintentional error. This final rule combines those two clauses and revises the language for clarity.

Many commenters suggested that the Service allow students to apply for practical training prior to fulfilling the 9-month limit (now one "full academic year") but not be allowed to commence practical training prior to that time. The commenters indicated that such a provision is necessary for those students who want to participate in practical training in the summer following their first academic year but whose requests for practical training cannot be adjudicated in time for the students to begin in the summer. Other commenters made similar suggestions for students enrolled in one-year programs who, due to the new limitation that optional practical training be applied for prior to the completion of studies, would be unable to apply.

Although the Service believes that changing the term "9 months" to "one full academic year" will resolve most of the problems cited by the commenters, the Service will allow F students requesting optional practical training to submit their application up to 90 days prior to completing "one full academic year." In such cases, the DSO must indicate on the Form I–20 and/or update SEVIS to show that the "from date" in which the DSO is certifying is the date that the student completes a full academic year of enrollment. While the Service may adjudicate the request prior to the student's completion of one full academic year, employment authorization will only be granted from the date that the student actually completes a full academic year. The student may not begin working until the date specified on the employment authorization document. The Service, therefore, does not adopt the commenters' suggestion that the Service allow DSOs to approve optional practical training or give a type of interim employment authorization until the student completes one full academic year of enrollment.

Several commenters also requested that the Service clarify whether students, other than F–1 nonimmigrants, who have been lawfully enrolled in a Service-approved school for one full academic year, could also be eligible for optional practical training. However, while the Service agrees that this issue needs clarification, this was not an issue addressed in the proposed rule and the Service needs more time to consider these issues. The Service may consider such clarification in a future rulemaking.

One commenter requested that the Service clarify the responsibility of a DSO with regard to a student to whom the DSO has issued a Form I–20 and certified for optional practical training following completion of studies. The Service appreciates the opportunity to clarify these responsibilities in the final rule. Section 214.2(f)(10)(ii)(E) provides that a DSO who recommends a student for optional practical training remains responsible for maintaining the student's records in SEVIS during the time that training is authorized. During the period in which a student is authorized by the Service to engage in optional practical training following completion of studies, a student must notify the DSO if his or her name or address changes, or if the student wishes to discontinue training. Similar to the provision in current regulations that a student engaged in optional practical training have a Form I–20 endorsed within the last 6 months by the DSO for reentry, the DSO is responsible for updating the SEVIS record of any student participating in post-completion practical training. The DSO and student must continue to communicate in order to ensure that the student does not take any action that would adversely affect his or her nonimmigrant status. For example, if the student indicates that he or she has changed address or terminated employment for any reason prior to the period authorized by the employment authorization document and does not intend to resume employment, the DSO must notify the Service by updating SEVIS.

Finally, one commenter requested that the Service allow students to use a school's address for purposes of receiving employment authorization documents. While this practice will not be authorized by this final rule, the Service is considering incorporating this practice into the operating procedures of the Service centers.

XI. Employment

Commenters also noted that the Service did not include a description of the process for endorsing employment in SEVIS other than practical training. In response, the Service has added language to the final rule incorporating procedures for the endorsement in SEVIS of employment authorization based upon severe economic hardship and internships with an international organization. At this time there are no such update requirements for on-campus employment.

Another commenter requested that the Service clarify when an F–1 student may begin working on-campus incident to status prior to the beginning of classes. The commenter suggested that the Service distinguish between work associated with being a Teacher's Assistant or Resident Assistant and, for example, working in the campus bookstore.

The Service agrees that this provision needs clarification. The Service will permit an F–1 student to begin on-campus employment prior to the start of classes. While it is the responsibility of the DSO to indicate a program start date that accommodates the student's particular needs for employment, the DSO is not permitted to indicate a program start date more than 30 days prior to the start of classes for the purpose of on campus employment. However, the Service does not impose any limitation on the type of on-campus employment in which a student may engage prior to the start of classes.

For off-campus employment based on severe economic hardship, the current rules require that the student apply to the Service based on a favorable recommendation of the DSO. Some commenters requested that the Service allow DSOs to grant F–1 students permission to work based on severe economic hardship without any review by the Service. That suggestion is beyond the scope of the proposed rule, and the Service is not prepared to change existing processes at this time to allow a DSO to grant such a benefit. However, the Service may consider this suggestion when it reviews student employment issues at a future date.

Finally, this final rule makes conforming amendments to § 214.2(f)(9) and § 274a.12 to remove the reference to filing a wage and labor attestation for off-campus employment. As indicated in the proposed rule, the requirement for a wage and labor attestation was part of a pilot program that has sunset. The final rule also amends references in § 274a.12 to include the current DOS Certificate of Eligibility, Form DS–2019 and to cite to current exchange visitor program designation regulations.

XII. Extensions

Several commenters requested that the Service amend the language of § 214.2(f)(7)(i) to remove the reference to a student being "unable to complete a full course of study in a timely manner," indicating that this phrase implies that a student has done something wrong. Commenters cited illness and family emergencies as possible reasons why a student may take longer to complete his or her program, but should still be considered to be pursuing his or her program in a timely way. The Service has no objection to the removal of this language and has included a more neutral description in the final rule.

XIII. Reinstatement

Many commenters contended that the provisions in the proposed rule for reinstatement were unnecessarily strict. Commenters urged the Service to provide relief for students who are adversely affected by "technical or computer errors" in SEVIS, and suggest that the Service adopt provisions similar to the provisions in DOS regulations that allow for a correction of "minor or technical infractions." Commenters stressed that DSOs will make mistakes occasionally, especially when dealing with a new computer system. Other commenters stated that to punish students for mistakes on the part of the DSO is overly punitive.

The Service agrees that there may be a possibility that errors on the part of SEVIS or other technological failures may cause a student to fall out of status. Therefore, the Service has added § 214.3(g)(4) to allow for a student's record to be administratively corrected in situations where the error in question resulted from technological errors or errors on the part of SEVIS. To administratively correct a student's record in instances of SEVIS error or technological failure, the DSO must contact the SEVIS system administrator to explain the circumstances that caused the correction to be requested, with documentation if necessary, as provided in § 214.3(g)(4). An administrative correction by the system administrator will be completed without fee.

However, while the Service recognizes that a DSO may make a mistake in a student's record that causes the student to fall out of status, the Service does not believe that such errors merit an administrative correction. Ultimately, it is the student's responsibility to ensure that he or she remains in status and is in compliance with the regulations at all times. That is not to say that the student will not be afforded a remedy in these situations. On the contrary, in instances where the DSO was neglectful or inadvertently failed to update or extend a student's status, the student is permitted to file for reinstatement and establish that the actions on the part of the DSO were beyond his or her control. Where the Service finds that a DSO has repeated violations of Service regulations or finds malfeasance on the part of a DSO, the Service may withdraw the approval of the designated school official.

Other commenters stated that the Service should abandon the proposed 5-month period as the demarcation of the outer limit for reinstatement and instead consider the overall record of the student. While the Service believes that 5 months is generally sufficient time for a student who has fallen out of status, unintentionally or otherwise, to become cognizant of this fact and to attempt to remedy the situation, the Service also recognizes that there may be legitimate situations in which this is not possible. In fairness to these students, the Service has created a provision in the final rule for a rebuttable presumption that a student who has been out of status for more than 5 months is ineligible for reinstatement unless the student can provide a substantial reason for the delay and an explanation of how the student filed the request for reinstatement as promptly as possible under the circumstances. If the student provides sufficient documentation, the presumption of ineligibility may be rebutted. Such a provision strikes a balance between the Service's desire to establish a limit on reinstatement requests while still accommodating those students with extenuating circumstances.

XIV. Reporting Current Name and Address

Several commenters requested that the Service consider allowing students who live on-campus to list a mailing address in place of a physical address. Commenters noted that many students living on-campus, including boarding students in secondary schools, may only be able to receive mail via a mailing address. The Service agrees with the commenters, and has made a provision permitting students who physically reside on campus, but cannot receive their mail at a campus address, to list a mailing address that they use at the school rather than a physical address, provided that the school maintains a record of and, upon request, provides the exact location of the alien's residence. Likewise, in order to accommodate limited situations where similar circumstances might exist for students living off-campus, or for exchange visitors, a student's or exchange visitor's mailing address may be listed. The school or exchange visitor program, however, must maintain a record of and, upon request, provide the exact location of the alien's residence. The Service intends to modify SEVIS to accept both a mailing address and physical address. Once SEVIS is modified, in cases where the mailing and physical address are not the same, the school will be required to report both the current mailing and current physical address in SEVIS.

Additionally, commenters stated that requiring students to report changes of address to their DSO rather than directly to the Service on Form AR–11 may result in the DSO being accused of failing to update a student's SEVIS record when, in fact, the student failed to report his or her address change to the DSO. The commenters suggested that students be required to report address changes directly to the Service.

The Service, however, cannot adopt this suggestion. To do so would undermine the primary purpose of SEVIS; namely, to maintain current, accurate information on all F and M nonimmigrants. Currently, all nonimmigrants are required to report a change of address to the Service by submitting Form AR–11. The notification of the change of address is submitted by the nonimmigrant through the mail. The Service is not stipulating what interaction must take place between the student and the DSO to document notification of address change by the student. To avoid the type of situation cited by the commenters, schools may establish business processes to document when a student reports a change of address. For example, a school may require students to submit a completed Form AR–11 to be kept on file in the international office, in addition to the school updating SEVIS as required.

Finally, the Service wishes to clarify that, while the timely reporting and update of a student's address in SEVIS satisfies the alien student's requirement to notify the Service of a change of address as specified in 8 CFR 265.1, such notification does not necessarily exempt the student from reporting a change of address as required by other applicable regulations, statutes or programs. Specifically, a nonimmigrant student required to report under the National Security Entry-Exit Registration System (NSEERS), 8 CFR 264.1(f), must report a change of address as mandated by that program, in addition to complying with SEVIS reporting requirements.

XV. Relating to Reporting Requirements of § 214.3(g)(3)

One commenter requested that the requirement in section § 214.3(g)(3) for schools to report, "any other notification request made by SEVIS to the DSO with respect to the current status of the student," be removed based on the assertion that the requirement is overly broad.

The Service does not adopt this suggestion. The primary purpose of SEVIS is to maintain complete and up-to-date information on all foreign students. For this reason, the DSO needs to respond in a timely fashion to requests from the Service relating to the current status of any particular student.

Another commenter associated with independent, secondary schools asked the Service to consider allowing such schools to report on students only one time per year. The commenter stated that it is time-consuming to update student records each term because students at such schools register only once a year.

The Service does not adopt this suggestion. The requirement in question applies only to academic terms that run longer than 6 months. The DSO for such schools will be sent an electronic message from SEVIS requesting the DSO to verify that the students are still enrolled. To allow the DSO in such schools to update student records only at the time of initial registration would undermine the effectiveness of SEVIS.

Another commenter stated that the requirement of § 214.3(g)(3)(iii)(C), which requires schools to report the start date of the student's next term, is burdensome and inherently impossible because it requires the DSO to know the student's intent. The Service does not agree with this commenter. The Border Security Act requires that all schools to report in SEVIS each academic term as to whether a student has registered or not registered. This requirement is one of the most essential requirements in SEVIS because it enables SEVIS to identify those students who have failed to return to school following a term or vacation.

Finally, one commenter questioned the effect, if any, that the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g (FERPA) has on the information collected and reported in SEVIS. Although FERPA restricts the ability of an educational agency or institution that accepts certain Federal funding to disclose personal information contained in a student's educational record, this final rule makes clear that FERPA does not relieve any approved school or designated exchange

program of the duty to comply with the SEVIS reporting requirements.

Section 641 of IIRIRA requires approved schools and designated exchange visitor programs to collect the information specified in section 641(c). Section 641(d) makes it clear that schools may not enroll F or M nonimmigrant students and that exchange visitor programs may not accept J nonimmigrants unless the school or exchange program collects the information and reports it to SEVIS as required.

The general rule is that two statutes that relate to the same issue must be read so as to give effect to both. Thus, section 641 of IIRIRA can properly be considered an exception to FERPA, such that an educational agency or institution does not violate FERPA by disclosing only so much as section 641 of IIRIRA requires the agency or institution to disclose. Section 641(c)(2) of IIRIRA expressly provides that FERPA does not apply to F, J, or M nonimmigrants, to the extent that the Attorney General determines that waiving FERPA is necessary to implement SEVIS. The Commissioner has authority to make this determination on the Attorney General's behalf. That the Commissioner has made this determination was implicit in the proposed rule since the proposed rule required approved schools and designated exchange programs to provide the information, or risk the loss of ability to enroll or accept F, J, or M nonimmigrants. The final rule includes new language in 8 CFR 214.1 to make this determination explicit. This new provision is stated in § 214.1, rather than § 214.3 to make clear that the FERPA waiver applies to J nonimmigrants as well as to F and M nonimmigrants.

XVI. Dependents of F–1 and M–1 Nonimmigrants

Many commenters stated that F–2, J–2, and M–2 nonimmigrants should be allowed to enroll in full-time study, without being required to change status. The Service does not adopt this suggestion. The need to monitor nonimmigrants being educated and trained in the United States is of vital importance to the national security of the United States. The value of SEVIS would be undermined if the Service were to adopt the commenters' suggestion.

Other commenters suggested that the Service remove the language "avocational or recreational" from the types of study that may be permitted by F–2 and M–2 dependents as DSOs may have difficultly determining what study is avocational or recreational and what is not. While the Service will not remove such language from the rule, the Service provides the following clarification. If a student engages in study to pursue a hobby or if the study is that of an occasional, casual, or recreational nature, such study may be considered as avocational or recreational. The concept of avocational or recreational is not new, but is a long-standing policy applied by both the DOS and the Service for the interpretation of the B–1/B–2 nonimmigrant visa.

It should be noted that this regulation permits F–2 and M–2 nonimmigrants to attend elementary, middle and high school on a full-time basis. Furthermore, if a dependent of an F–1 or M–1 wishes to pursue his or her education full time, beyond what is avocational or recreational, or at the elementary, middle, or high school level, he or she has the option to change status to that of an F–1 or M–1 nonimmigrant.

One commenter requested that the Service clarify the status of those F–2 or M–2 dependents enrolled in a school in a full course of study prior to the effective date of this final rule. In response, the Service will allow an F–2 or M–2 dependent enrolled in a full course of study prior to January 1, 2003, to continue studies provided they apply for a change of status on or before March 11, 2003.

Finally, many commenters stated that the Service should allow F–2 and M–2 nonimmigrants to be authorized for employment. The existing regulations, § 214.2(f)(15) and (m)(13), prohibit employment for F–2 and M–2 dependents. The Service did not propose any change relating to employment authorization for dependents in the proposed rule and, therefore, this suggestion is beyond the scope of this rulemaking proceeding. The Service will not incorporate any changes relating to this issue in the final rule.

XVII. Electronic Filing Issues

The Service incorporates many processes electronically into SEVIS and that are addressed in this final rule. For example, the requirement to complete and submit a paper Form I–538 attached to paper copies of the Form I–20 for updates has been completely eliminated. Furthermore, the Form I–17 is filed electronically in SEVIS and fee payment is made through Pay.gov on the Internet.

While SEVIS is a significant step forward in the transformation to e-Gov, there remain certain processes related to nonimmigrant students that are not incorporated into SEVIS, primarily because such processes are in regard to a broader range of nonimmigrants, not specific to F, M, or J visa classifications. As noted in this final rule, the Form I–765, Application for Employment Authorization, utilized for application for Optional Practical Training and other work authorization by a nonimmigrant student, is a hybrid process that includes SEVIS, but also the Service's benefit application process. Likewise, the Form I–539, Application to Extend/Change Nonimmigrant Status, is utilized for the M–1 transfer, M–1 extension, and the reinstatement processes. These are also hybrid processes that are used not merely in connection with SEVIS, but also for other Service processes.

The Service is currently in the process of establishing and implementing a new enterprise architecture to its information technology systems and business processes Service-wide. In order to further adjust business processes and fully take advantage of e-Gov systems and efficiencies, the Service will promote the electronic filing of applications. The Service wishes to take advantage of e-Gov and the Internet, while remaining flexible in order to best utilize emerging and future technologies to better serve the public. Accordingly, the Service hopes to be able to offer e-filing of the Form I–765 in fiscal year 2003, and e-filing of the Form I–539 by fiscal year 2005.

Currently the Form I–17 is filed electronically, but in accordance with the Service's full certification rule for SEVIS (67 FR 60107) there are certain supporting documents and signatures physically collected during an on-site visit to the school. The Service is looking at the potential to enhance SEVIS to accommodate electronic attachments of supporting documentation to the electronic Form I–17. In addition, the Service will be examining the issue of electronic signatures.

The Service also wishes to note that SEVIS addresses more than just the collection of data for monitoring and tracking of foreign students. In addition to providing efficiency to the Service's processes for the review and adjudication of items such as Form I–17 educational institution application and reinstatement, the system also provides value-added features that should prove useful to the school user. For example, SEVIS provides "ticklers" and system alerts to the school, such as when a foreign student is issued a visa (once data share with DOS Consular Affairs is in effect), or when a nonimmigrant student enters through a port-of-entry (once data share with entry data is in effect). There are also system alerts for when a student is coming to the end of their program, as well as a selection of numerous reports available to the school user. Furthermore, the system provides a search engine functionality to enable direct queries based upon the SEVIS ID# from the Form I–20 issued by the school, as well as enhanced search capability to search by multiple parameters and data elements.

Good Cause Exception

This rule is effective on January 1, 2003. The Service finds that good cause exists, under 5 U.S.C 553(d), for making this rule effective with less than the usual 30-day effective date. The USA PATRIOT Act, Public Law 107–56, mandates that SEVIS be fully implemented and expanded prior to January 1, 2003. Because of vital national security concerns that underpin the USA PATRIOT Act, and the Enhanced Border Security Act, Public Law 107–173, promulgation of this rule with a 30-day delayed effective date would be contrary to the public interest. This final rule does not vary greatly from the proposed rule published on May 16, 2002. Many of the changes in this final rule were made at the request of the affected community. As such the final rule provides more flexibility and imposes less of a burden upon the affected community. While the Service will not give the entire 30-day period prior to the effective date of this rule, the difference in the amount of time between the date of publication of this rule and the effective date of this rule still affords the affected community with sufficient notice for compliance.

Regulatory Flexibility Act

The Commissioner, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although some schools may be considered small entities, the use of SEVIS as a means for recordkeeping and reporting will streamline the processes currently in existence.

SEVIS uses technology already in place at most schools, and has been designed for use over the Internet. Institutions need only have access to a web-browser to gain access to the Internet and will not require any software to download. The Service will not charge a subscriber or user fee in order to use SEVIS. However, while there is no charge for access to SEVIS, there might be undetermined, individual, organizational costs to upgrade vendor software or campus information technology systems to use the batch-method interface with SEVIS.

The Service has taken this cost into account and has developed SEVIS to utilize common standards. As previously discussed in the supplementary information, schools using SEVIS will no longer have to print out, file, and mail as many paper forms. Indeed, there should be little to no additional cost for schools that do not choose to use the optional batch processing capability. In fact, these schools may experience some savings as a result of the efficiencies that SEVIS will provide. Moreover, while the initial monetary impact on schools that choose to use batch capability may be greater, those schools might experience long-term savings because the automated process of maintaining student records for purposes of SEVIS would likely reduce future personnel costs. These decisions as to cost/benefit tradeoffs will be up to the discretion of each school. Accordingly, this rule will not have a significant economic impact on a substantial number of small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely effect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget (OMB) for review.

1. Purpose for Regulation

For close to twenty years, Service regulations have required the use of the Form I–20 and have required schools to maintain records on nonimmigrant students enrolled at their institution. These regulations also have required schools to furnish such information to the Service upon request. Schools have been required to maintain records and updates on student information such as the student's name, date and place of birth, country of citizenship, address, status, date of commencement of studies, and a photocopy of the student's Form I–20. This final rule incorporates similar collection and reporting requirements, with some additional information collection and reporting procedures that are mandated by IIRIRA, the USA PATRIOT Act, and the Enhanced Border Security Act. This rule is necessary to improve and streamline the reporting and recordkeeping of F, J, and M nonimmigrants by establishing a process for the electronic reporting DSOs of information required to be reported to the Service, and providing clear standards governing the maintenance, extension and reinstatement of student status.

Schools will be required to report some additional information that they were not required to maintain in the past, and there are changes to reporting requirements as a result of the above statutory authority and this final rule. However, the implementation of SEVIS (an electronic and e-Gov system) mitigates the new elements and frequency of reporting. In order to create or update any student or exchange visitor related form (e.g., Form I–20, Form DS–2019), the school or sponsor will now access SEVIS and enter the information electronically. Thus, the data is instantly collected in a central database before the form is ever printed. Because the information will be collected electronically, there will no longer be a need for multiple copies of forms. Neither the Service nor the DOS will need a separate paper copy for data entry because both agencies can access SEVIS in real time. Likewise, schools and sponsors will no longer be required to maintain their own paper copy of the record, because it will be accessible through SEVIS.

2. Assessment of Costs

a. *One-time transition costs associated with continuing students and exchange visitors.*

The Service has set January 30, 2003, as the date by which all schools must use SEVIS in order to issue a new Form

I–20. However, in order to allow schools sufficient time to enter all current students in SEVIS, the Service has determined August 1, 2003, to be the date upon which all current or continuing students must be entered into SEVIS, unless such students require a new Form I–20 because of a reportable action such as new visa issuance.

While some percentage of current or continuing students may graduate or complete their programs prior to August 1, 2003, those students that are continuing a course of study as of August 1, 2003, must be entered into SEVIS by that date and issued a SEVIS Form I–20. This requirement for schools to input all current or continuing students will be a one-time event in the first year for transition to SEVIS.

The following estimate is based upon the amount of time it would take to complete a Form I–20 in order to enter a continuing student in SEVIS.

Continuing student reporting burden	
a. Number of Continuing Students	625,000
b. Number of Continuing Exchange Visitors	275,000
c. Number of Responses per Respondent	1
d. Hours per Response	.52
e. Total One-time Reporting Burden	468,000
f. Total Public Cost	$4,680,000

The following estimate is based upon the amount of time it would take to complete a SEVIS Form I–20. This one-time reporting burden for continuing students and exchange visitors is based upon a standard requirement and process for each response. As such, the school or exchange program should not require much time to familiarize or refresh themselves on the relevant regulatory provision and process. The projected hours per response were derived by breaking the process into two basic components:

	Minutes
Learning about the Law and the Program	1
Data Collection and Input	30
Total Hours per Response	[1] 31

[1] .52 hours.

The total one-time reporting burden was derived by multiplying the number of applicant respondents (estimated continuing student plus estimated continuing exchange visitors = 900,000) × frequency of response (1) × average response time of 31 minutes (.52 hours) per response. The estimated one-time public cost estimation is based on the number of respondents (900,000) × 31 minutes (.52 hours) per response × $10 (average hourly rate).

The number of applicant respondents, 625,000 students, is the Service's best estimate based upon experience, statistics, and industry sources such as the 2001 Open Doors Report on International Educational Exchange produced by the Institute of International Education. The number of applicant respondents, 275,000 exchange visitors, is the best estimate provided by the Department of State, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs.

b. *Operational costs.*

The Service has worked closely with the Department of State as well as the American Council on Education (ACE), NAFSA-Association of International Educators, and others to obtain their views on the availability of data, frequency of collection, clarity of instructions, disclosure and the data elements to be reported. In addition, the educational community has attended several working group sessions and high-level policy discussions. As a result of these consultations, the Service has incorporated many suggestions in the SEVIS requirements.

The following estimate is based upon the amount of time it would take to complete a SEVIS Form I–20. As the information being collected by SEVIS will differ for each individual depending on the event being updated, the data required for entry into SEVIS cannot be determined on a consistent basis. As such, the Service is using the SEVIS Form I–20 as the standard, and averaging the amount of data entry in SEVIS per response across initial SEVIS Form I–20 entry and subsequent update response.

Annual reporting burden	
Number of Students	625,000
Number of Exchange Visitors	275,000
Number of Responses per Respondent	5
Hours per Response	.333
Total Annual Reporting Burden	1,498,500
Total Public Cost	$14,985,000

The projected hours per response for this collection of information were derived by first breaking the process into three basic components:

	Minutes
Learning about the Law and the Program	10
Data Collection and Updates	5
Adjudication, notification, reports	5
Total Hours per Response	20

The Service anticipates that the initial data entry may require 30 minutes. However, once the records are uploaded into SEVIS, the updates and maintenance of the information will require considerably less time. Included in this estimate is time associated with each response for the school or exchange program to familiarize or refresh themselves as to the relevant regulatory provision and process. Unlike section (a) above, updates and other processes beyond the initial data entry of a Form I–20 (or Form DS–2019) may be varied, and as such may require a small amount of time to learn about the law. We estimate approximately 10 minutes for the update of these records. In calculating the hours per response, we considered both the initial data entry of the Form I–20 and the update of information and estimated an average of 20 minutes per response. The Services estimates 5 responses per year for each respondent based upon a generalization that each student will require an initial Form I–20, the school will likely need to report registration of the student twice a year, and there may be one or two further responses such as a change of address, change of major, or request for employment.

The total annual reporting burden hours was derived by multiplying the number of applicant respondents (900,000) × frequency of response (5) × average response time of 20 minutes (.333 hours) per response. The estimated annual public cost estimation is based on the number of respondents (900,000) × 20 minutes (.333 hours) per response × $10 (average hourly rate).

c. *SEVIS Batch functionality.*

The use of SEVIS batch processing is a choice to be made voluntarily by each individual school. Therefore, any school cost to create, purchase, or upgrade technology to use batch processing is a business decision to be made by each school in context with their business processes, infrastructure, and cost/benefit assessment. Batch functionality is an optional method made available to schools and is not a requirement for SEVIS compliance.

Other than personnel costs to input and update student records in SEVIS, there is virtually no cost to schools as real time interactive capability only requires that the school have Internet access and a free browser. There is no other software necessary to use the real time interactive capability and there are no recurring access fees. Therefore, for real-time interactive, there is no programming costs, server costs, and no software required to download or provide via CD–ROM, since SEVIS is accessed through the Internet similar to many commonly used Web sites.

In addition, those schools that do elect to incur any costs to create or purchase software to take advantage of SEVIS batch functionality would likely then not incur personnel costs and burden as described in section (a) above. Batch functionality entails school technology systems uploading larger amounts of data directly to SEVIS. As such, the cost of the one-time requirement of entering all continuing students in SEVIS may be substantially reduced since existing electronic records would be entered into SEVIS via a batch system-to-system upload. Furthermore, any start-up and maintenance costs incurred by schools using the SEVIS batch functionality might be highly cost effective in the longer term because, once the electronic interface is complete, the process of maintaining student records for purposes of SEVIS would be highly automated, thereby likely reducing the future personnel costs.

d. *Estimation of Total Cost*

The Service estimates that the total cost to implement and operate SEVIS the first year will be approximately $20 million. After the initial implementation costs are incurred, the Service estimates that the schools will incur yearly costs of less than $15 million to fulfill their ongoing SEVIS requirements. As schools become more adept at fulfilling these requirements, the Service expects that these costs may drop.

3. Assessment of Benefits

SEVIS implements IIRIRA, which requires the INS to collect current information, on an ongoing basis, from schools and exchange programs relating to nonimmigrant foreign students and exchange visitors during the course of their stay in the United States. Furthermore, the President issued Homeland Security Directive No. 2 (HS PDD–02) that, in part, directs an end to the abuse of international student status. In addition, the USA PATRIOT Act amended IIRIRA to require full implementation and expansion of SEVIS prior to January 1, 2003. Furthermore, the Enhanced Border Security Act adds to and clarifies the collection of information and specifically requires an educational institution to report any failure of an alien to enroll not later than 30 days after registration deadline.

SEVIS enables schools and exchange program sponsors to transmit electronic information and event notifications, via the Internet, to the Service and DOS throughout a student or exchange visitor's stay in the United States. SEVIS will be informed of status events for students and exchange visitors including, but not limited to, entry/exit data, changes of address, program extensions, employment notifications, and changes in program of study. SEVIS will also provide system alerts, event notifications, and reports to the schools and exchange programs, as well as for Service and DOS offices.

Implementation of SEVIS will revise and enhance the process by which foreign students and exchange visitors gain admission to the United States. SEVIS will increase the Service's ability to track and monitor foreign students and exchange visitors in order to ensure that they arrive in the United States, show up and register at the school or exchange program, and properly maintain their status during their stay as valued guests in this country. SEVIS provides a proper balance between openness to international students and exchange visitors and the security obtained by enforcing the law.

SEVIS addresses more than the collection of data for monitoring and tracking of foreign students. In addition to providing efficiency to Service processes for the review and adjudication of items such as Form I–17 educational institution application and reinstatement, the system also provides value-added features that are useful to the school. For example, SEVIS provides "ticklers" and system alerts to the school, such as when a foreign student is issued a visa (once data share with DOS Consular Affairs is in effect), or when a nonimmigrant student enters through a port-of-entry (once data share with entry data is in effect). There are also system alerts for when a student is coming to the end of their program, as well as a selection of numerous reports available to the school user. Furthermore, the system provides a search engine functionality to enable direct queries based upon the SEVIS ID# from the Form I–20 issued by the school, as well as enhanced search capability to search by multiple parameters and data elements. SEVIS itself includes many self-help features for the end-user. Elements include an online tutorial, frequently asked questions, and system help and index.

This rule also increases the number of DSOs that a school is authorized from five to ten per school or campus. This increase in the number of SEVIS authorized DSOs is intended to provide schools with greater flexibility to address needs for personnel in the short or longer term for managing their international student programs and for properly reporting and updating records in SEVIS.

Another benefit and a Paperwork Reduction Act element is that SEVIS will eliminate the need for and use of the Form I–538 that formerly was used by schools to notify the Service in cases of the approval of an F–1 for extension or curricular practical training. The former process required a school to mail the Form I–538 to a Service contractor in London, KY for data entry. With SEVIS this notification can be made in real-time, through the update of the student's record in SEVIS. Ultimately, it is the intent of the Service and DOS to phase out the paper submission of all student and exchange visitor related forms in favor of completely electronic submissions, updates, and reporting.

4. Conclusion

The Service believes that the benefits of this rule far outweigh its costs. SEVIS will benefit both the approved schools and the Service by implementing an effective e-Gov system to replace what is currently a poorly performing paper-based reporting system. This rule improves and streamlines the reporting and recordkeeping of F, J, and M nonimmigrants and provides clear standards governing the maintenance, extension and reinstatement of student status. SEVIS also will be used as a tool for ensuring that F, J, and M nonimmigrant students are complying with their applicable regulatory requirements. This rule will provide the Service a means of determining whether nonimmigrant students and exchange visitors are currently enrolled in an approved course of study or exchange visitor program. Thus, SEVIS will serve as means of protecting both the public and national security. Therefore, the benefits of this rule outweigh any economic costs that will be incurred during its implementation and operation.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The Service is adding new electronic reporting requirements using SEVIS, which is considered an information collection under the Paperwork Reduction Act. Accordingly, this information collection requirement has been approved by the Office of Management and Budget. The OMB control number for this information collection is 1115–0252.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Reporting and recordkeeping requirements, Students.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS: AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

§ 103.7 [Amended]

2. Section 103.7(b)(1) is amended by removing the entry for "Form I–538" from the listing of fees.

PART 214—NONIMMIGRANT CLASSES

3. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931 note, respectively; 8 CFR part 2.

4. Section 214.1 is amended by adding a new paragraph (h) to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(h) *Education privacy and F, J, and M nonimmigrants.* As authorized by section 641(c)(2) of Division C of Pub. L. 104–208, 8 U.S.C. 1372, and § 2.1(a) of this chapter, the Service has determined that, with respect to F and M nonimmigrant students and J nonimmigrant exchange visitors, waiving the provisions of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, is necessary for the proper implementation of 8 U.S.C. 1372. An educational agency or institution may not refuse to report information concerning an F or M nonimmigrant student or a J nonimmigrant exchange visitor that the educational agency or institution is required to report under 8 U.S.C. 1372 and § 214.3(g) (or any corresponding Department of State regulation concerning J nonimmigrants) on the basis of FERPA and any regulation implementing FERPA. The waiver of FERPA under this paragraph authorizes and requires an educational agency or institution to report information concerning an F, J or M nonimmigrant that would ordinarily be protected by FERPA, but only to the extent that 8 U.S.C. 1372 and § 214.3(g) (or any corresponding Department of State regulation concerning J nonimmigrants) requires the educational agency or institution to report information.

5. Section 214.2 is amended by:

a. Revising paragraph (f)(1)(i);
b. Adding new paragraphs (f)(1)(iii);
c. Revising paragraph (f)(3);
d. Revising paragraphs (f)(4)(i) and (ii);
e. Revising paragraph (f)(5)(i);
f. Revising paragraph (f)(5)(iv);
g. Revising paragraph (f)(6)(i) introductory text and paragraph (f)(6)(i)(E);
h. Adding paragraphs (f)(6)(i)(G) and (f)(6)(i)(H);
i. Revising paragraph (f)(6)(iii), and by adding a new paragraph (f)(6)(iv);
j. Revising paragraph (f)(7);
k. Revising paragraph (f)(8)(i) and adding paragraphs (f)(8)(ii)(A), (B), (C), and (D);
l. Adding two sentences to the end of paragraph (f)(9)(i);
m. Removing and reserving paragraphs (f)(9)(ii)(B) and (E);
n. Revising paragraphs (f)(9)(ii)(D), (f)(9)(ii)(F)(1), and (f)(9)(iii);
o. Revising paragraph (f)(10) introductory text;
p. Revising paragraph (f)(10)(i);
q. Revising paragraphs (f)(10)(ii)(A) and (B);
r. Revising the paragraph heading for paragraph (f)(10)(ii)(D);
s. Adding a new paragraph (f)(10)(ii)(E);
t. Revising paragraph (f)(11)(ii);
u. Revising paragraph (f)(12);
v. Revising paragraphs (f)(15) and (f)(16); and by
w. Adding a new paragraph (f)(17).

The additions and revisions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(f) * * *

(1) * * *

(i) *Eligibility for admission.* A nonimmigrant student may be admitted into the United States in nonimmigrant status under section 101(a)(15)(F) of the Act, if:

(A) The student presents a SEVIS Form I–20 issued in his or her own name by a school approved by the Service for attendance by F–1 foreign students. (In the alternative, for a student seeking admission prior to August 1, 2003, the student may present a currently-valid Form I–20A–B/I–20ID, if that form was issued by the school prior to January 30, 2003);

(B) The student has documentary evidence of financial support in the amount indicated on the SEVIS Form I–20 (or the Form I–20A–B/I–20ID);

(C) For students seeking initial admission only, the student intends to attend the school specified in the student's visa (or, where the student is exempt from the requirement for a visa, the school indicated on the SEVIS Form I–20 (or the Form I–20A–B/I–20ID)); and

(D) In the case of a student who intends to study at a public secondary school, the student has demonstrated that he or she has reimbursed the local educational agency that administers the school for the full, unsubsidized per capita cost of providing education at the school for the period of the student's attendance.

* * * * *

(iii) *Use of SEVIS.* On January 30, 2003, the use of the Student and Exchange Visitor Information System (SEVIS) will become mandatory for the issuance of any new Form I–20. A student or dependent who presents a non-SEVIS Form I–20 issued on or after January 30, 2003, will not be accepted for admission to the United States. Non-SEVIS Forms I–20 issued prior to January 30, 2003, will continue to be acceptable until August 1, 2003. However, schools must issue a SEVIS Form I–20 to any current student requiring a reportable action (*e.g.*, extension of status, practical training, and requests for employment authorization) or a new Form I–20, or for any aliens who must obtain a new nonimmigrant student visa. As of August 1, 2003, the records of all current or continuing students must be entered in SEVIS.

* * * * *

(3) *Admission of the spouse and minor children of an F–1 student.* The spouse and minor children accompanying an F–1 student are eligible for admission in F–2 status if the student is admitted in F–1 status. The spouse and minor children following-to-join an F–1 student are eligible for admission to the United States in F–2 status if they are able to demonstrate that the F–1 student has been admitted and is, or will be within 30 days, enrolled in a full course of study, or engaged in approved practical training following completion of studies. In either case, at the time they seek admission, the eligible spouse and minor children of an F–1 student with a SEVIS Form I–20 must individually present an original SEVIS Form I–20 issued in the name of each F–2 dependent issued by a school authorized by the Service for attendance by F–1 foreign students. Prior to August 1, 2003, if exigent circumstances are demonstrated, the Service will allow the dependent of an F–1 student in possession of a SEVIS Form I–20 to enter the United States using a copy of the F–1 student's SEVIS Form I–20. (In the alternative, for dependents seeking admission to the United States prior to August 1, 2003, a copy of the F–1 student's current Form I–20ID issued prior to January 30, 2003, with proper endorsement by the DSO will satisfy this requirement.) A new SEVIS Form I–20 (or Form I–20A–B) is required for a dependent where there has been any substantive change in the F–1 student's current information.

(4) * * *

(i) A current SEVIS Form I–20 (or, for readmission prior to August 1, 2003, a current Form I–20ID which was issued prior to January 30, 2003), properly endorsed by the DSO for reentry if there has been no substantive change to the most recent Form I–20 information; or

(ii) A new SEVIS Form I–20 (or, for readmission prior to August 1, 2003, a new Form I–20ID which was issued prior to January 30, 2003), if there has been a substantive change in the information on the student's most recent Form I–20 information, such as in the case of a student who has changed the major area of study, who intends to transfer to another Service approved institution or who has advanced to a higher level of study.

(5) * * *

(i) *General.* Except for border commuter students covered by the provisions of paragraph (f)(18) of this section, an F–1 student is admitted for duration of status. Duration of status is defined as the time during which an F–1 student is pursuing a full course of study at an educational institution approved by the Service for attendance by foreign students, or engaging in authorized practical training following completion of studies, except that an F–1 student who is admitted to attend a public high school is restricted to an aggregate of 12 months of study at any public high school(s). An F–1 student may be admitted for a period up to 30 days before the indicated report date or program start date listed on Form I–20. The student is considered to be maintaining status if he or she is making normal progress toward completing a course of study.

* * * * *

(iv) *Preparation for departure.* An F–1 student who has completed a course of study and any authorized practical training following completion of studies will be allowed an additional 60-day period to prepare for departure from the United States or to transfer in accordance with paragraph (f)(8) of this section. An F–1 student authorized by the DSO to withdraw from classes will be allowed a 15-day period for departure from the United States. However, an F–1 student who fails to maintain a full course of study without the approval of the DSO or otherwise fails to maintain status is not eligible for an additional period for departure.

* * * * *

(6) * * *

(i) *General.* Successful completion of the full course of study must lead to the attainment of a specific educational or professional objective. A course of study at an institution not approved for attendance by foreign students as provided in § 214.3(a)(3) does not satisfy this requirement. A "full course of study" as required by section 101(a)(15)(F)(i) of the Act means:

* * * * *

(E) Study in a curriculum at an approved private elementary or middle school or public or private academic high school which is certified by a designated school official to consist of class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress toward graduation.

* * * * *

(G) For F–1 students enrolled in classes for credit or classroom hours, no more than the equivalent of one class or three credits per session, term, semester, trimester, or quarter may be counted toward the full course of study requirement if the class is taken on-line or through distance education and does not require the student's physical attendance for classes, examination or other purposes integral to completion of the class. An on-line or distance education course is a course that is offered principally through the use of television, audio, or computer transmission including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, or computer conferencing. If the F–1 student's course of study is in a language study program, no on-line or distance education classes may be considered to count toward a student's full course of study requirement.

(H) On-campus employment pursuant to the terms of a scholarship, fellowship, or assistantship is deemed to be part of the academic program of a student otherwise taking a full course of study.

* * * * *

(iii) *Reduced course load.* The designated school official may allow an F–1 student to engage in less than a full course of study as provided in this paragraph (f)(6)(iii). Except as otherwise noted, a reduced course load must consist of at least six semester or quarter hours, or half the clock hours required for a full course of study. A student who drops below a full course of study without the prior approval of the DSO will be considered out of status. On-campus employment pursuant to the terms of a scholarship, fellowship, or assistantship is deemed to be part of the academic program of a student otherwise taking a full course of study.

(A) *Academic difficulties.* The DSO may authorize a reduced course load on account of a student's initial difficulty with the English language or reading requirements, unfamiliarity with U.S. teaching methods, or improper course level placement. The student must resume a full course of study at the next available term, session, or semester, excluding a summer session, in order to maintain student status. A student previously authorized to drop below a full course of study due to academic difficulties is not eligible for a second authorization by the DSO due to academic difficulties while pursuing a

course of study at that program level. A student authorized to drop below a full course of study for academic difficulties while pursuing a course of study at a particular program level may still be authorized for a reduced course load due to an illness medical condition as provided for in paragraph (B) of this section.

(B) *Medical conditions.* The DSO may authorize a reduced course load (or, if necessary, no course load) due to a student's temporary illness or medical condition for a period of time not to exceed an aggregate of 12 months while the student is pursuing a course of study at a particular program level. In order to authorize a reduced course load based upon a medical condition, the student must provide medical documentation from a licensed medical doctor, doctor of osteopathy, or licensed clinical psychologist, to the DSO to substantiate the illness or medical condition. The student must provide current medical documentation and the DSO must reauthorize the drop below full course of study each new term, session, or semester. A student previously authorized to drop below a full course of study due to illness or medical condition for an aggregate of 12 months may not be authorized by a DSO to reduce his or her course load on subsequent occasions while pursuing a course of study at the same program level. A student may be authorized to reduce course load for a reason of illness or medical condition on more than one occasion while pursuing a course of study, so long as the aggregate period of that authorization does not exceed 12 months.

(C) *Completion of course of study.* The DSO may authorize a reduced course load in the student's final term, semester, or session if fewer courses are needed to complete the course of study. If the student is not required to take any additional courses to satisfy the requirements for completion, but continues to be enrolled for administrative purposes, the student is considered to have completed the course of study and must take action to maintain status. Such action may include application for change of status or departure from the U.S.

(D) *Reporting requirements for non-SEVIS schools.* A DSO must report to the Service any student who is authorized to reduce his or her course load. Within 21 days of the authorization, the DSO must send a photocopy of the student's current Form I–20ID along with Form I–538 to Service's data processing center indicating the date and reason that the student was authorized to drop below full time status. Similarly, the DSO will report to the Service no more than 21 days after the student has resumed a full course of study by submitting a current copy of the students' Form I–20ID to the Service's data processing center indicating the date a full course of study was resumed and the new program end date with Form I–538, if applicable.

(E) *SEVIS reporting requirements.* In order for a student to be authorized to drop below a full course of study, the DSO must update SEVIS prior to the student reducing his or her course load. The DSO must update SEVIS with the date, reason for authorization, and the start date of the next term or session. The DSO must also notify SEVIS within 21 days of the student's commencement of a full course of study. If an extension of the program end date is required due to the drop below a full course of study, the DSO must update SEVIS by completing a new SEVIS Form I–20 with the new program end date in accordance with paragraph (f)(7) of this section.

(iv) *Concurrent enrollment.* An F–1 student may be enrolled in two different Service-approved schools at one time as long as the combined enrollment amounts to a full time course of study. In cases where a student is concurrently enrolled, the school from which the student will earn his or her degree or certification should issue the Form I–20, and conduct subsequent certifications and updates to the Form I–20. The DSO from this school is also responsible for all of the reporting requirements to the Service. In instances where a student is enrolled in programs with different full course of study requirements (*e.g.*, clock hours vs. credit hours), the DSO is permitted to determine what constitutes a full time course of study.

(7) *Extension of stay.*—

(i) *General.* An F–1 student who is admitted for duration of status is not required to apply for extension of stay as long as the student is maintaining status and making normal progress toward completion of his or her educational objective. An F–1 student who is currently maintaining status and making normal progress toward completing his or her educational objective, but who is unable to complete his or her course of study by the program end date on the Form I–20, must apply prior to the program end date for a program extension pursuant to paragraph (f)(7)(iii) of this section.

(ii) *Report date and program completion date on Form I–20.* When determining the report date on the Form I–20, the DSO may choose a reasonable date to accommodate a student's need to be in attendance for required activities at the school prior to the actual start of classes. Such required activities may include, but are not limited to, research projects and orientation sessions. However, for purposes of employment, the DSO may not indicate a report date more than 30 days prior to the start of classes. When determining the program completion date on Form I–20, the DSO should make a reasonable estimate based upon the time an average student would need to complete a similar program in the same discipline.

(iii) *Program extension for students in lawful status.* An F–1 student who is unable to meet the program completion date on the Form I–20 may be granted an extension by the DSO if the DSO certifies that the student has continually maintained status and that the delays are caused by compelling academic or medical reasons, such as changes of major or research topics, unexpected research problems, or documented illnesses. Delays caused by academic probation or suspension are not acceptable reasons for program extensions. A DSO may not grant an extension if the student did not apply for an extension until after the program end date noted on the Form I–20. An F–1 student who is unable to complete the educational program within the time listed on Form I–20 and who is ineligible for program extension pursuant to this paragraph (f)(7) is considered out of status. If eligible, the student may apply for reinstatement under the provisions of paragraph (f)(16) of this section.

(iv) *Notification.* Upon granting a program extension, a DSO at a non-SEVIS school must immediately submit notification to the Service's data processing center using Form I–538 and the top page of Form I–20A–B showing the new program completion date. For a school enrolled in SEVIS, a DSO may grant a program extension only by updating SEVIS and issuing a new Form I–20 reflecting the current program end date. A DSO may grant an extension any time prior to the program end date listed on the student's original Form I–20.

(8) * * *

(i) A student who is maintaining status may transfer to another Service approved school by following the notification procedure prescribed in paragraph (f)(8)(ii) of this section. However, an F–1 student is not permitted to remain in the United States when transferring between schools or programs unless the student will begin classes at the transfer school or program within 5 months of transferring out of the current school or within 5 months of the program completion date on his or her current Form I–20, whichever is earlier. In the case of an F–1 student authorized to engage in post-completion optional practical training (OPT), the student must be able resume classes within 5 months of transferring out of the school that recommended OPT or the date the OPT authorization ends, whichever is earlier. An F–1 student who was not pursuing a full course of study at the school he or she was last authorized to attend is ineligible for school transfer and must apply for reinstatement under the provisions of paragraph (f)(16) of this section, or, in the alternative, may depart the country and return as an initial entry in a new F–1 nonimmigrant status.

(ii) * * *

(A) *Non-SEVIS School to Non-SEVIS school.* To transfer from one non-SEVIS school to a different non-SEVIS school, the student must first notify the school he or she is attending of the intent to transfer, then obtain a Form I–20 issued in accordance with the provisions of 8 CFR 214.3(k) from the school to which he or she intends to transfer. Prior to issuance of any Form I–20, the DSO at the transfer school is responsible for determining that the student has been maintaining status at his or her current school and is eligible for transfer to the new school. The transfer will be effected only if the student completes the Student Certification portion of the Form I–20 and returns the form to a DSO of the transfer school within 15 days of the program start date listed on Form I–20. Upon receipt of the student's Form I–20 the DSO must note "transfer completed on (date)" in the space provided for the DSO's remarks, thereby acknowledging the student's attendance at the transfer school; return the Form I–20 to the student; submit the School copy of the Form I–20 to Service's Data Processing Center within 30 days of receipt from the student; and forward a photocopy of the school copy to the school from which the student transferred.

(B) *Non-SEVIS school to SEVIS school.* To transfer from a non-SEVIS school to a SEVIS school, the student must first notify the school he or she is attending of the intent to transfer, then obtain a SEVIS Form I–20 issued in accordance with the provisions of 8 CFR 214.3(k) from the school to which he or she intends to transfer. Prior to issuance of any Form I–20, the DSO at the transfer school is responsible for determining that the student has been maintaining status at his or her current school and is eligible for transfer to the new school. Once the transfer school has issued the SEVIS Form I–20 to the student indicating a transfer, the transfer school becomes responsible for updating and maintaining the student's record in SEVIS. The student is then required to notify the DSO at the transfer school within 15 days of the program start date listed on SEVIS Form I–20. Upon notification that the student is enrolled in classes, the DSO of the transfer school must update SEVIS to reflect the student's registration and current address, thereby acknowledging that the student has completed the transfer process. In the remarks section of the student's SEVIS Form I–20, the DSO must note that the transfer has been completed, including the date, and return the form to the student. The transfer is effected when the transfer school updates SEVIS indicating that the student has registered in classes within the 30 days required by § 214.3(g)(3)(iii).

(C) *SEVIS school to SEVIS school.* To transfer from a SEVIS school to a SEVIS school the student must first notify his or her current school of the intent to transfer and must indicate the school to which he or she intends to transfer. Upon notification by the student, the current school will update the student's record in SEVIS as a "transfer out" and indicate the school to which the student intends to transfer, and a release date. The release date will be the current semester or session completion date, or the date of expected transfer if earlier than the established academic cycle. The current school will retain control over the student's record in SEVIS until the student completes the current term or reaches the release date. At the request of the student, the DSO of the current school may cancel the transfer request at any time prior to the release date. As of the release date specified by the current DSO, the transfer school will be granted full access to the student's SEVIS record and then becomes responsible for that student. The current school conveys authority and responsibility over that student to the transfer school, and will no longer have full SEVIS access to that student's record. As such, a transfer request may not be cancelled by the current DSO after the release date has been reached. After the release date, the transfer DSO must complete the transfer of the student's record in SEVIS and may issue a SEVIS Form I–20. The student is then required to contact the DSO at the transfer school within 15 days of the program start date listed on the SEVIS Form I–20. Upon notification that the student is enrolled in classes, the DSO of the transfer school must update SEVIS to reflect the student's registration and current address, thereby acknowledging that the student has completed the transfer process. In the remarks section of the student's SEVIS Form I–20, the DSO must note that the transfer has been completed, including the date, and return the form to the student. The transfer is effected when the transfer school notifies SEVIS that the student has enrolled in classes in accordance with the 30 days required by § 214.3(g)(3)(iii).

(D) *SEVIS school to non-SEVIS school.* To transfer from a SEVIS school to a non-SEVIS school, the student must first notify his or her current school of the intent to transfer and must indicate the school to which he or she intends to transfer. Upon notification by the student, the current school will update the student's status in SEVIS as "a transfer out", enter a "release" or expected transfer date, and update the transfer school as "non-SEVIS." The student must then notify the school to which the he or she intends to transfer of his or her intent to enroll. After the student has completed his or her current term or session, or has reached the expected transfer date, the DSO at the current school will no longer have full access to the student's SEVIS record. At this point, if the student has notified the transfer school of his or her intent to transfer, and the transfer school has determined that the student has been maintaining status at his or her current school, the transfer school may issue the student a Form I–20. The transfer will be effected only if the student completes the Student Certification portion of the Form I–20 and returns the form to a designated school official of the transfer school within 15 days of the program start date listed on Form I–20. Upon receipt of the student's Form I–20 the DSO must do as follows: note "transfer completed on (date)" in the space provided for the DSO's remarks, thereby acknowledging the student's attendance; return the Form I–20 to the student; submit the school copy of the Form I–20 to the Service's data processing center within 30 days of receipt from the student; and forward a photocopy of the school copy to the school from which the student transferred.

* * * * *

(9) * * *

(i) * * * In the case of a transfer in SEVIS, the student may only engage in on-campus employment at the school having jurisdiction over the student's SEVIS record. Upon initial entry to begin a new course of study, an F–1 student may not begin on-campus employment more than 30 days prior to the actual start of classes.

(ii) * * *

(B) Reserved.

* * * * *

(D) *Procedure for off-campus employment authorization due to severe economic hardship.* The student must request a recommendation from the DSO for off-campus employment. The DSO at a non-SEVIS school must make such a certification on Form I–538, Certification by Designated School Official. The DSO of a SEVIS school must complete such certification in SEVIS. The DSO may recommend the student for work off-campus for one year intervals by certifying that:

(*1*) The student has been in F–1 status for one full academic year;

(*2*) The student is in good standing as a student and is carrying a full course of study as defined in paragraph (f)(6) of this section;

(*3*) The student has demonstrated that acceptance of employment will not interfere with the student's carrying a full course of study; and

(*4*) The student has demonstrated that the employment is necessary to avoid severe economic hardship due to unforeseen circumstances beyond the student's control pursuant to paragraph (f)(9)(ii)(C) of this section and has demonstrated that employment under paragraph (f)(9)(i) of this section is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances.

(E) Reserved.

(F) * * *

(*1*) The applicant should submit the economic hardship application for employment authorization on Form I–765, with the fee required by 8 CFR 103.7(b)(1), to the service center having jurisdiction over his or her place of residence. Applicants at a non-SEVIS school should submit Form I–20, Form I–538, and any other supporting materials such as affidavits which further detail the unforeseen circumstances that require the student to seek employment authorization and the unavailability or insufficiency of employment under paragraph (f)(9)(i) of this section. Students enrolled in a SEVIS school should submit the SEVIS Form I–20 with the employment page demonstrating the DSO's comments and certification.

* * * * *

(iii) *Internship with an international organization.* A bona fide F–1 student who has been offered employment by a recognized international organization within the meaning of the International Organization Immunities Act (59 Stat. 669) must apply for employment authorization to the service center having jurisdiction over his or her place of residence. A student seeking employment authorization under this provision is required to present a written certification from the international organization that the proposed employment is within the scope of the organization's sponsorship, Form I–20 ID or SEVIS Form I–20 with employment page completed by DSO certifying eligibility for employment, and a completed Form I–765, with required fee as contained in § 103.7(b)(1) of this chapter.

(10) *Practical training.* Practical training may be authorized to an F–1 student who has been lawfully enrolled on a full time basis, in a Service-approved college, university, conservatory, or seminary for one full academic year. This provision also includes students who, during their course of study, were enrolled in a study abroad program, if the student had spent at least one full academic term enrolled in a full course of study in the United States prior to studying abroad. A student may be authorized 12 months of practical training, and becomes eligible for another 12 months of practical training when he or she changes to a higher educational level. Students in English language training programs are ineligible for practical training. An eligible student may request employment authorization for practical training in a position that is directly related to his or her major area of study. There are two types of practical training available:

(i) *Curricular practical training.* An F–1 student may be authorized by the DSO to participate in a curricular practical training program that is an integral part of an established curriculum. Curricular practical training is defined to be alternative work/study, internship, cooperative education, or any other type of required internship or practicum that is offered by sponsoring employers through cooperative agreements with the school. Students who have received one year or more of full time curricular practical training are ineligible for post-completion academic training. Exceptions to the one academic year requirement are provided for students enrolled in graduate studies that require immediate participation in curricular practical training. A request for authorization for curricular practical training must be made to the DSO. A student may begin curricular practical training only after receiving his or her Form I–20 with the DSO endorsement.

(A) *Non-SEVIS process.* A student must request authorization for curricular practical training using Form I–538. Upon approving the request for authorization, the DSO shall: certify Form I–538 and send the form to the Service's data processing center; endorse the student's Form I–20 ID with "full-time (or part-time) curricular practical training authorized for (employer) at (location) from (date) to (date)"; and sign and date the Form I–20ID before returning it to the student.

(B) *SEVIS process.* To grant authorization for a student to engage in curricular practical training, a DSO at a SEVIS school will update the student's record in SEVIS as being authorized for curricular practical training that is directly related to the student's major area of study. The DSO will indicate whether the training is full-time or part-time, the employer and location, and the employment start and end date. The DSO will then print a copy of the employment page of the SEVIS Form I–20 indicating that curricular practical training has been approved. The DSO must sign, date, and return the SEVIS Form I–20 to the student prior to the student's commencement of employment.

(ii) * * *

(A) *General.* A student may apply to the Service for authorization for temporary employment for optional practical training directly related to the student's major area of study. The student may not begin optional practical training until the date indicated on his or her employment authorization document, Form I–766 or Form 688B. A student may submit an application for authorization to engage in optional practical training up to 90 days prior to being enrolled for one full academic year, provided that the period of employment will not begin until after the completion of the full academic year as indicated by the DSO. A student may be granted authorization to engage in temporary employment for optional practical training:

(*1*) During the student's annual vacation and at other times when school is not in session, if the student is currently enrolled, and is eligible for registration and intends to register for the next term or session;

(*2*) While school is in session, provided that practical training does not exceed 20 hours a week while school is in session; or

(*3*) After completion of the course of study, or, for a student in a bachelor's, master's, or doctoral degree program, after completion of all course requirements for the degree (excluding thesis or equivalent). Continued enrollment, for the school's administrative purposes, after all requirements for the degree have been met does not preclude eligibility for optional practical training. However, optional practical training must be requested prior to the completion of all course requirements for the degree or prior to the completion of the course of study. A student must complete all practical training within a 14-month period following the completion of study.

(B) *Termination of practical training.* Authorization to engage in optional practical training employment is automatically terminated when the student transfers to another school or begins study at another educational level.

* * * * *

(D) *Action of the DSO-Non SEVIS schools.* * * *

(E) *SEVIS process.* In making a recommendation for optional practical training under SEVIS, the DSO will update the student's record in SEVIS as having been recommended for optional practical training. A DSO who recommends a student for optional practical training is responsible for maintaining the record of the student for the duration of the time that training is authorized. The DSO will indicate in SEVIS whether the employment is to be full-time or part-time, and note in SEVIS the start and end date of employment. The DSO will then print the employment page of the student's SEVIS Form I–20, and sign and date the form to indicate that optional practical training has been recommended. The student must file with the service center for an Employment Authorization Document, on Form I–765, with fee and the SEVIS Form I–20 employment page indicating that optional practical training has been recommended by the DSO.

(11) * * *

(ii) A DSO's recommendation for optional practical training on Form I–20ID, or, for a SEVIS school, on an updated SEVIS Form I–20.

(12) *Decision on application for employment authorization.* The Service shall adjudicate the Form I–765 and issue an EAD on the basis of the DSO's recommendation unless the student is found otherwise ineligible. The Service shall notify the applicant of the decision and, if the application is denied, of the reason or reasons for the denial. The applicant may not appeal the decision. An F–1 student authorized by the Service to engage in practical training is required to report any change of name or address, or interruption of such employment to the DSO for the duration of the authorized training. A DSO who recommends a student for optional practical training is responsible for updating the student's record to reflect these reported changes for the duration of the time that training is authorized.

* * * * *

(15) *Spouse and children of F–1 student.* The F–2 spouse and minor children of an F–1 student shall each be issued an individual SEVIS Form I–20 in accordance with the provisions of § 214.3(k).

(i) *Employment.* The F–2 spouse and children of an F–1 student may not accept employment.

(ii) *Study.* (A) The F–2 spouse of an F–1 student may not engage in full time study, and the F–2 child may only engage in full time study if the study is in an elementary or secondary school (kindergarten through twelfth grade). The F–2 spouse and child may engage in study that is avocational or recreational in nature.

(B) An F–2 spouse or F–2 child desiring to engage in full time study, other than that allowed for a child in paragraph (f)(15)(ii)(A) of this section, must apply for and obtain a change of nonimmigrant classification to F–1, J–1, or M–1 status. An F–2 spouse or child who was enrolled on a full time basis prior to January 1, 2003, will be allowed to continue study but must file for a change of nonimmigrant classification to F–1, J–1, or M–1 status on or before March 11, 2003.

(C) An F–2 spouse or F–2 child violates his or her nonimmigrant status by engaging in full time study except as provided in paragraph (f)(15)(ii)(A) or (B) of this section.

(16) *Reinstatement to student status.*—

(i) *General.* The district director may consider reinstating a student who makes a request for reinstatement on Form I–539, Application to Extend/Change Nonimmigrant Status, accompanied by a properly completed SEVIS Form I–20 indicating the DSO's recommendation for reinstatement (or a properly completed Form I–20A-B issued prior to January 30, 2003, from the school the student is attending or intends to attend prior to August 1, 2003). The district director may consider granting the request if the student:

(A) Has not been out of status for more than 5 months at the time of filing the request for reinstatement (or demonstrates that the failure to file within the 5 month period was the result of exceptional circumstances and that the student filed the request for reinstatement as promptly as possible under these exceptional circumstances);

(B) Does not have a record of repeated or willful violations of Service regulations;

(C) Is currently pursuing, or intending to pursue, a full course of study in the immediate future at the school which issued the Form I–20;

(D) Has not engaged in unauthorized employment;

(E) Is not deportable on any ground other than section 237(a)(1)(B) or (C)(i) of the Act; and

(F) Establishes to the satisfaction of the Service, by a detailed showing, either that:

(*1*) The violation of status resulted from circumstances beyond the student's control. Such circumstances might include serious injury or illness, closure of the institution, a natural disaster, or inadvertence, oversight, or neglect on the part of the DSO, but do not include instances where a pattern of repeated violations or where a willful failure on the part of the student resulted in the need for reinstatement; or

(*2*) The violation relates to a reduction in the student's course load that would have been within a DSO's power to authorize, and that failure to approve reinstatement would result in extreme hardship to the student.

(ii) *Decision.* If the Service reinstates the student, the Service shall endorse the student's copy of Form I–20 to indicate the student has been reinstated and return the form to the student. If the Form I–20 is from a non-SEVIS school, the school copy will be forwarded to the school. If the Form I–20 is from a SEVIS school, the adjudicating officer will update SEVIS to reflect the Service's decision. In either case, if the Service does not reinstate the student, the student may not appeal that decision.

(17) *Current name and address.* A student must inform the DSO and the Service of any legal changes to his or her name or of any change of address, within 10 days of the change, in a manner prescribed by the school. A student enrolled at a SEVIS school can satisfy the requirement in 8 CFR 265.1 of notifying the Service by providing a notice of a change of address within 10 days to the DSO, who in turn shall enter the information in SEVIS within 21 days of notification by the student. A student enrolled at a non-SEVIS school must submit a notice of change of address to the Service, as provided in 8 CFR 265.1, within 10 days of the change. Except in the case of a student who cannot receive mail where he or she resides, the address provided by the student must be the actual physical location where the student resides rather than a mailing address. In cases where a student provides a mailing address, the school must maintain a record of, and must provide upon request from the Service,

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the actual physical location where the student resides.

* * * * *

§ 214.2 [Amended]

5. Section 214.2 is further amended by revising the term "IAP–66" to read "DS–2019" wherever that term appears in the following paragraphs:

Paragraph (j)(1)(iv)
Paragraph (j)(2)
Paragraph (j)(3)
Paragraph (j)(4)(i).

6. Section 214.2 is further amended by revising paragraphs (j)(1)(i) and (ii), and by adding new paragraphs (j)(1)(vii) and (j)(1)(viii) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(j) * * *

(1) *General*—(i) *Eligibility for admission.* A nonimmigrant exchange visitor and his or her accompanying spouse and minor children may be admitted into the United States in J–1 and J–2 classifications under section 101(a)(15)(J) of the Act, if the exchange visitor and his or her accompanying spouse and children each presents a SEVIS Form DS–2019 issued in his or her own name by a program approved by the Department of State for participation by J–1 exchange visitors. Prior to August 1, 2003, if exigent circumstances are demonstrated, the Service will allow the dependent of an exchange visitor possessing a SEVIS Form DS–2019 to enter the United States using a copy of the exchange visitor's SEVIS Form DS–2019. However, where the exchange visitor presents a properly completed Form DS–2019, Certificate of Eligibility for Exchange Visitor (J–1) Status, which was issued to the J–1 exchange visitor by a program approved by the Department of State for participation by exchange visitors and which remains valid for the admission of the exchange visitor, the accompanying spouse and children may be admitted on the basis of the J–1's non-SEVIS Form DS–2019.

(ii) *Admission period.* An exchange alien, and J–2 spouse and children, may be admitted for a period up to 30 days before the report date or start of the approved program listed on Form DS–2019. The initial admission of an exchange visitor, spouse and children may not exceed the period specified on Form DS–2019, plus a period of 30 days for the purposes of travel or for the period designated by the Commissioner as provided in paragraph (j)(1)(vi) of this section. Regulations of the Department of State published at 22 CFR part 62 give general limitations on the stay of the various classes of exchange visitors. A spouse or child may not be admitted for longer than the principal exchange visitor.

* * * * *

(vii) *Use of SEVIS.* At a date to be established by the Department of State, the use of the Student and Exchange Visitor Information System (SEVIS) will become mandatory for designated program sponsors. After that date, which will be announced by publication in the **Federal Register**, all designated program sponsors must begin issuance of the SEVIS Form DS–2019.

(viii) *Current name and address.* A J–1 exchange visitor must inform the Service and the responsible officer of the exchange visitor program of any legal changes to his or her name or of any change of address, within 10 days of the change, in a manner prescribed by the program sponsor. A J–1 exchange visitor enrolled in a SEVIS program can satisfy the requirement in 8 CFR 265.1 of notifying the Service by providing a notice of a change of address within 10 days to the responsible officer, who in turn shall enter the information in SEVIS within 21 days of notification by the exchange visitor. A J–1 exchange visitor enrolled at a non-SEVIS program must submit a change of address to the Service, as provided in 8 CFR 265.1, within 10 days of the change. Except in the case of an exchange visitor who cannot receive mail where he or she resides, the address provided by the exchange visitor must be the actual physical location where the exchange visitor resides rather than a mailing address. In cases where an exchange visitor provides a mailing address, the exchange visitor program must maintain a record of, and must provide upon request from the Service, the actual physical location where the exchange visitor resides.

* * * * *

7. Section 214.2 is further amended by:

a. Revising paragraph (m)(1)(i);
b. Adding new paragraphs (m)(1)(iii);
c. Revising the paragraph heading and the introductory text in paragraph (m)(3);
d. Revising paragraph (m)(5);
e. Removing and reserving paragraphs (m)(6), (m)(7), and (m)(8);
f. Adding new paragraphs (m)(9)(v) and (vi);
g. Revising paragraphs (m)(10), (m)(11)(ii), (m)(13), and (m)(14)(ii) introductory text;
h. Adding a new paragraph (m)(14)(vi);
i. Revising paragraph (m)(16);
j. Revising paragraph (m)(17); and by
k. Adding new paragraph (m)(18).

The additions and revisions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(m) * * *

(1) *Admission of student.* (i) *Eligibility for admission.* A nonimmigrant student may be admitted into the United States in nonimmigrant status under section 101(a)(15)(M) of the Act, if:

(A) The student presents a SEVIS Form I–20 issued in his or her own name by a school approved by the Service for attendance by M–1 foreign students. (In the alternative, for a student seeking admission prior to August 1, 2003, the student may present a currently-valid Form I–20M–N/I–20ID, if that form was issued by the school prior to January 30, 2003);

(B) The student has documentary evidence of financial support in the amount indicated on the SEVIS Form I–20 (or the Form I–20M–N/I–20ID); and

(C) For students seeking initial admission only, the student intends to attend the school specified in the student's visa (or, where the student is exempt from the requirement for a visa, the school indicated on the SEVIS Form I–20 (or the Form I–20M–N/I–20ID)).

* * * * *

(iii) *Use of SEVIS.* On January 30, 2003, the use of the Student and Exchange Visitor Information System (SEVIS) will become mandatory for the issuance of any new Form I–20. A student or dependent who presents a non-SEVIS Form I–20 issued on or after January 30, 2003, will not be accepted for admission to the United States. Non-SEVIS Forms I–20 issued prior to January 30, 2003, will continue to be accepted for admission to the United States until August 1, 2003. However, schools must issue a SEVIS Form I–20 to any current student requiring a reportable action (*e.g.*, extension of status, practical training, and requests for employment authorization) or a new Form I–20, or for any aliens who must obtain a new nonimmigrant student visa. As of August 1, 2003, the records of all current or continuing students must be entered in SEVIS.

* * * * *

(3) *Admission of the spouse and minor children of an M–1 student.* The spouse and minor children accompanying an M–1 student are eligible for admission in M–2 status if the student is admitted in M–1 status. The spouse and minor children following-to-join an M–1 student are

eligible for admission to the United States in M–2 status if they are able to demonstrate that the M–1 student has been admitted and is, or will be within 30 days, enrolled in a full course of study, or engaged in approved practical training following completion of studies. In either case, at the time they seek admission, the eligible spouse and minor children of an M–1 student with a SEVIS Form I–20 must individually present an original SEVIS Form I–20 issued in the name of each M–2 dependent issued by a school authorized by the Service for attendance by M–1 foreign students. Prior to August 1, 2003, if exigent circumstances are demonstrated, the Service will allow the dependent of an M–1 student in possession of a SEVIS Form I–20 to enter the United States using a copy of the M–1 student's SEVIS Form I–20. (In the alternative, for dependents seeking admission to the United States prior to August 1, 2003, a copy of the M–1 student's current Form I–20ID issued prior to January 30, 2003, with proper endorsement by the DSO will satisfy this requirement.) A new SEVIS Form I–20 (or Form I–20M–N) is required for a dependent where there has been any substantive change in the M–1 student's current information.

* * * * *

(5) *Period of stay.* A student in M nonimmigrant status is admitted for a fixed time period, which is the period necessary to complete the course of study indicated on the Form I–20, plus practical training following completion of the course of study, plus an additional 30 days to depart the United States, but not to exceed a total period of one year. An M–1 student may be admitted for a period up to 30 days before the report date or start date of the course of study listed on the Form I–20. An M–1 student who fails to maintain a full course of study or otherwise fails to maintain status is not eligible for the additional 30-day period of stay.

(6) [Reserved]
(7) [Reserved]
(8) [Reserved]
(9) * * *

(v) *On-line courses/distance education programs.* No on-line or distance education classes may be considered to count toward an M–1 student's full course of study requirement if such classes do not require the student's physical attendance for classes, examination or other purposes integral to completion of the class. An on-line or distance education course is a course that is offered principally through the use of television, audio, or computer transmission including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, or computer conferencing.

(vi) *Reduced course load.* The designated school official may authorize an M–1 student to engage in less than a full course of study only where the student has been compelled by illness or a medical condition that has been documented by a licensed medical doctor, doctor of osteopathy, or licensed clinical psychologist, to interrupt or reduce his or her course of study. A DSO may not authorize a reduced course load for more than an aggregate of 5 months per course of study. An M–1 student previously authorized to drop below a full course of study due to illness or medical condition for an aggregate of 5 months, may not be authorized by the DSO to reduce his or her course load on subsequent occasions during his or her particular course of study.

(A) *Non-SEVIS schools.* A DSO must report any student who has been authorized by the DSO to carry a reduced course load. Within 21 days of the authorization, the DSO must send a photocopy of the student's Form I–20 to the Service's data processing center indicating the date that authorization was granted. The DSO must also report to the Service's data processing center when the student has resumed a full course of study, no more than 21 days from the date the student resumed a full course of study. In this case, the DSO must submit a photocopy of the student's Form I–20 indicating the date that a full course of study was resumed, with a new program end date.

(B) *SEVIS reporting.* In order for a student to be authorized to drop below a full course of study, the DSO must update SEVIS prior to the student reducing his or her course load. The DSO must update SEVIS with the date, reason for authorization, and the start date of the next term or session. The DSO must also notify SEVIS within 21 days of the student's commencement of a full course of study.

(10) *Extension of stay.*

(i) *Eligibility.* The cumulative time of extensions that can be granted to an M–1 student is limited to a period of 3 years from the M–1 student's original start date, plus 30 days. No extension can be granted to an M–1 student if the M–1 student is unable to complete the course of study within 3 years of the original program start date. This limit includes extensions that have been granted due to a drop below full course of study, a transfer of schools, or reinstatement. An M–1 student may be granted an extension of stay if it is established that:

(A) He or she is a bona fide nonimmigrant currently maintaining student status;

(B) Compelling educational or medical reasons have resulted in a delay to his or her course of study. Delays caused by academic probation or suspension are not acceptable reasons for program extension; and

(C) He or she is able to, and in good faith intends to, continue to maintain that status for the period for which the extension is granted.

(ii) *Application.* A student must apply to the Service for an extension on Form I–539, Application to Extend/Change Nonimmigrant Status. A student's M–2 spouse and children seeking an extension of stay must be included in the application. The student must submit the application to the service center having jurisdiction over the school the student is currently authorized to attend, at least 15 days but not more than 60 days before the program end date on the student's Form I–20. The application must also be accompanied by the student's Form I–20 and the Forms I–94 of the student's spouse and children, if applicable.

(iii) *Period of stay.* If an application for extension is granted, the student and the student's spouse and children, if applicable, are to be given an extension of stay for the period of time necessary to complete the course of study, plus 30 days within which to depart from the United States, or for a total period of one year, whichever is less. A student's M–2 spouse and children are not eligible for an extension unless the M–1 student is granted an extension of stay, or for a longer period than is granted to the M–1 student.

(iv) *SEVIS update.* A DSO must update SEVIS to recommend that a student be approved for an extension of stay. The SEVIS Form I–20 must be printed with the recommendation and new program end date for submission by mail to the service center, with Form I–539, and Forms I–94 if applicable.

(11) * * *

(ii) *Procedure.* A student must apply to the Service on Form I–539 for permission to transfer between schools. Upon application for school transfer, a student may effect the transfer subject to approval of the application. A student who transfers without complying with this requirement or whose application is denied after transfer pursuant to this regulation is considered to be out of status. If the application is approved, the approval of the transfer will be determined to be the program start date listed on the Form I–20, and the student

will be granted an extension of stay for the period of time necessary to complete the new course of study plus 30 days, or for a total period of one year, whichever is less.

(A) *Non-SEVIS school.* The application must be accompanied by the Form I–20ID copy and the Form I–94 of the student's spouse and children, if applicable. The Form I–539 must also be accompanied by Form I–20M–N properly and completely filled out by the student and by the designated official of the school which the student wishes to attend. The student must submit the application for school transfer to the service center having jurisdiction over the school the student is currently authorized to attend. Upon approval, the adjudicating officer will endorse the name of the school to which the transfer is authorized on the student's Form I–20ID copy and return it to the student. The officer will also endorse Form I–20M–N to indicate that a school transfer has been authorized and forward it to the Service's processing center for updating. The processing center will forward Form I–20M–N to the school to which the transfer has been authorized to notify the school of the action taken.

(B) *SEVIS school.* The student must first notify his or her current school of the intent to transfer and indicate the school to which the student intends to transfer. Upon notification by the student, the current school must update SEVIS to show the student as a "transfer out" and input the "release date" for transfer. Once updated as a "transfer out" the transfer school is permitted to generate a SEVIS Form I–20 for transfer but will not gain access to the student's SEVIS record until the release date is reached. Upon receipt of the SEVIS Form I–20 from the transfer school, the student must submit Form I–539 in accordance with § 214.2(m)(11) to the service center with jurisdiction over the current school. The student may enroll in the transfer school at the next available term or session and is required to notify the DSO of the transfer school immediately upon beginning attendance. The transfer school must update the student's registration record in SEVIS in accordance with § 214.3(g)(3). Upon approval of the transfer application, the Service officer will endorse the name of the school to which the transfer is authorized on the student's SEVIS Form I–20 and return it to the student.

(C) *Transition process.* Once SEVIS is fully operational and interfaced with the service center benefit processing system, the Service officer will transmit the approval of the transfer to SEVIS and endorse the name of the school to which transfer is authorized on the student's SEVIS Form I–20 and return it to the student. As part of a transitional process until that time, the student is required to notify the DSO at the transfer school of the decision of the Service within 15 days of the receipt of the adjudication by the Service. Upon notification by the student of the approval of the Service, the DSO must immediately update SEVIS to show that approval of the transfer has been granted. The DSO must then print an updated SEVIS Form I–20 for the student indicating that the transfer has been completed. If the application for transfer is denied, the student is out of status and the DSO must terminate the student's record in SEVIS.

* * * * *

(13) *Employment.* Except as provided in paragraph (m)(14) of this section, a student may not accept employment.

(14) * * *

(ii) *Application.* A M–1 student must apply for permission to accept employment for practical training on Form I–765, with fee as contained in 8 CFR 103.7(b)(1), accompanied by a Form I–20 that has been endorsed for practical training by the designated school official. The application must be submitted prior to the program end date listed on the student's Form I–20 but not more than 90 days before the program end date. The designated school official must certify on Form I–538 that—

* * * * *

(vi) *SEVIS process.* The DSO must update the student's record in SEVIS to recommend that the Service approve the student for practical training, and print SEVIS Form I–20 with the recommendation, for the student to submit to the Service with Form I–765 as provided in this paragraph (m)(14).

* * * * *

(16) *Reinstatement to student status.*

(i) *General.* A district director may consider reinstating a student who makes a request for reinstatement on Form I–539, Application to Extend/Change Nonimmigrant Status, accompanied by a properly completed SEVIS Form I–20 indicating the DSO's recommendation for reinstatement (or a properly completed Form I–20M–N issued prior to January 30, 2003, from the school the student is attending or intends to attend prior to August 1, 2003). The district director may consider granting the request only if the student:

(A) Has not been out of status for more than 5 months at the time of filing the request for reinstatement (or demonstrates that the failure to file within the 5 month period was the result of exceptional circumstances and that the student filed the request for reinstatement as promptly as possible under these exceptional circumstances);

(B) Does not have a record of repeated or willful violations of the Service regulations;

(C) Is currently pursuing, or intends to pursue, a full course of study at the school which issued the Form I–20M–N or SEVIS Form I–20;

(D) Has not engaged in unlawful employment;

(E) Is not deportable on any ground other than section 237(a)(1)(B) or (C)(i) of the Act; and

(F) Establishes to the satisfaction of the Service, by a detailed showing, either that:

(*1*) The violation of status resulted from circumstances beyond the student's control. Such circumstances might include serious injury or illness, closure of the institution, a natural disaster, or inadvertence, oversight or neglect on the part of the DSO, but do not include instances where a pattern of repeated violations or where a willful failure on the part of the student resulted in the need for reinstatement; or

(*2*) The violation relates to a reduction in the student's course load that would have been within a DSO's power to authorize, and that failure to approve reinstatement would result in extreme hardship to the student.

(ii) *Decision.* If the Service reinstates the student, the Service shall endorse the student's copy of Form I–20 to indicate that the student has been reinstated and return the form to the student. If the Form I–20 is from a non-SEVIS school, the school copy will be forwarded to the school. If the Form I–20 is from a SEVIS school, the adjudicating officer will update SEVIS to reflect the Service's decision. In either case, if the Service does not reinstate the student, the student may not appeal the decision. The district director will send notification to the school of the decision.

(17) *Spouse and children of M–1 student.* The M–2 spouse and minor children of an M–1 student shall each be issued an individual SEVIS Form I–20 in accordance with the provisions of § 214.3(k).

(i) *Employment.* The M–2 spouse and children may not accept employment.

(ii) *Study.* (A) The M–2 spouse may not engage in full time study, and the M–2 child may only engage in full time study if the study is in an elementary or secondary school (kindergarten through twelfth grade). The M–2 spouse and child may engage in study that is avocational or recreational in nature.

(B) An M–2 spouse or M–2 child desiring to engage in full time study, other than that allowed for a child in paragraph (m)(17)(ii) of this section, must apply for and obtain a change of nonimmigrant classification to F–1, J–1, or M–1 status. An M–2 spouse or child who was enrolled on a full time basis prior to January 1, 2003, will be allowed to continue study but must file for a change of nonimmigrant classification to F–1, J–1, or M–1 status on or before March 11, 2003.

(C) An M–2 spouse or M–2 child violates his or her nonimmigrant status by engaging in full time study except as provided in paragraph (m)(17)(i) and (ii) of this section.

(18) *Current name and address.* A student must inform the Service and the DSO of any legal changes to his or her name or of any change of address, within 10 days of the change, in a manner prescribed by the school. A student enrolled at a SEVIS school can satisfy the requirement in 8 CFR 265.1 of notifying the Service by providing a notice of a change of address within 10 days to the DSO, and the DSO in turn shall enter the information in SEVIS within 21 days of notification by the student. A nonimmigrant student enrolled at a non-SEVIS institution must submit a notice of change of address to the Service, as provided in 8 CFR 265.1, within 10 days of the change. Except in the case of a student who cannot receive mail where he or she resides, the address provided by the student must be the actual physical location where the student resides rather than a mailing address. In cases where a student provides a mailing address, the school must maintain a record of, and must provide upon request from the Service, the actual physical location where the student resides.

* * * * *

8. Section 214.3 is amended by:

a. Revising paragraph (a)(2)(i)(F);

b. Adding a new paragraph (a)(2)(v);

c. Adding a new paragraph (e)(3);

d. Revising paragraphs (g)(1)(iv) and (g)(1)(v);

e. Revising the paragraph heading and by adding two new sentences at the end of paragraph (g)(2);

f. Adding new paragraphs (g)(3) and (g)(4);

g. Revising paragraph (k) introductory text; and by

h. Revising paragraph (l).

The additions and revisions read as follows:

§ 214.3 Petitions for approval of schools.

(a) * * *

(2) * * *

(i) * * *

(F) A private elementary school.

* * * * *

(v) The following may not be approved for attendance by foreign students:

(A) A home school,

(B) A public elementary school, or

(C) An adult education program, as defined by section 203(l) of the Adult Education and Family Literacy Act, Public Law 105–220, as amended, 20 U.S.C. 9202(l), if the adult education program is funded in whole or in part by a grant under the Adult Education and Family Literacy Act, or by any other Federal, State, county or municipal funding.

* * * * *

(e) * * *

(3) *SEVIS reporting.* Upon approval of a petition, the district director shall update SEVIS to reflect approval of the petition. An e-mail notification will be sent to the principal DSO by SEVIS. An approved school that has been enrolled in SEVIS must immediately update SEVIS to reflect any material changes to its name, address or curriculum for a determination of continued eligibility for approval.

* * * * *

(g) * * *

(1) * * *

(iv) Current address where the student and his or her dependents physically reside. In the event the student or his or her dependents reside on or off campus and cannot receive mail at that location, the school may provide a mailing address. The school, however, must maintain a record of the physical location of residence of the student and his or her dependents and provide such information to the Service upon request. Once SEVIS is modified, in cases where the mailing and physical address are not the same, the school will be required to report both the student's current mailing and current physical address in SEVIS.

(v) The student's current academic status.

* * * * *

(2) *Reporting requirements for non-SEVIS students.* * * * In the case of a student that does not have an electronic record in SEVIS, the Service will notify the school if the student enters the U.S. to attend their institution. No later than 30 days following the deadline for registering for classes, the school is then required to contact the Service if that student fails to register.

(3) *SEVIS reporting requirements.*

(i) Within 21 days of a change in any of the information contained in paragraph (e)(3) of this section, schools must update SEVIS with the current information.

(ii) Schools are also required to report within 21 days of the occurrence the following events:

(A) Any student who has failed to maintain status or complete his or her program;

(B) A change of the student's or dependent's legal name or U.S. address;

(C) Any student who has graduated early or prior to the program end date listed on SEVIS Form I–20;

(D) Any disciplinary action taken by the school against the student as a result of the student being convicted of a crime; and

(E) Any other notification request made by SEVIS with respect to the current status of the student.

(iii) Each term or session and no later than 30 days after the deadline for registering for classes, schools are required to report the following registration information:

(A) Whether the student has enrolled at the school, dropped below a full course of study without prior authorization by the DSO, or failed to enroll;

(B) The current address of each enrolled student; and

(C) The start date of the student's next session, term, semester, trimester, or quarter.

(4) *Administrative correction of a student's record.* In instances where technological or computer problems on the part of SEVIS cause an error in the student's record, the DSO may request the SEVIS system administrator, without fee, to administratively correct the student's record.

* * * * *

(k) *Issuance of Certificate of Eligibility.* A designated school official (DSO) of a school approved by the Service to enroll nonimmigrant students must sign any completed Form I–20 issued for either a prospective or continuing student or a dependent. A Form I–20 issued by an approved school system must state which school within the system the student will attend. The form must only be issued from within the United States. Only a designated official of a Service approved school shall issue a Certificate of Eligibility, Form I–20, to a prospective student and his or her dependents, and only after the following conditions are met:

* * * * *

(l) *Designated official—*

(1) Meaning of term *Designated Official.* As used in §§ 214.1(b), 214.2(b), 214.2(f), 214.2(m), and 214.4, a *Designated Official, Designated School Official (DSO),* or *Principal Designated*

School Official (PDSO), means a regularly employed member of the school administration whose office is located at the school and whose compensation does not come from commissions for recruitment of foreign students. An individual whose principal obligation to the school is to recruit foreign students for compensation does not qualify as a designated official. The PDSO and any other DSO must be named by the president, owner, or head of a school or school system. The PDSO and DSO may not delegate this designation to any other person.

(i) A PDSO and DSO must be either a citizen or lawful permanent resident of the United States.

(ii) Each campus must have one PDSO. The PDSO is responsible for updating SEVIS to reflect the addition or deletion of all designated officials on his or her associated campus. The Service will also use the PDSO as the point of contact on any issues that relate to the school's compliance with the regulations as well as any system alerts generated by SEVIS. In all other respects the PDSO and DSO will share the same responsibilities.

(iii) Each school may have up to 10 designated officials at any one time, including the PDSO. In a multi-campus school, each campus may have up to 10 designated officials at any one time including a required PDSO. In a private elementary or public or private secondary school system, however, the entire school system is limited to 10 designated officials at any one time including the PDSO.

(2) *Name, title, and sample signature.* Petitions for school approval must include the names, titles, and sample signatures of designated officials. An approved school must update SEVIS upon any changes to the persons who are principal or designated officials, and furnish the name and title of the new official within 21 days of the change. Any changes to the PDSO or DSO must be made by the PDSO. In its discretion, the Service may reject the submission of any individual as a DSO or withdraw a previous submission by a school of an individual.

(3) *Statement of designated officials.* A petition for school approval must include a statement by each designated official certifying that the official is familiar with the Service regulations relating to the requirements for admission and maintenance of status of nonimmigrant students, change of nonimmigrant status under part 248 of this chapter, and school approval under §§ 214.3 and 214.4, and affirming the official's intent to comply with these regulations. At the time a new designated official is added, the designated official must make the same certification.

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

9. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

10. Section 248.3 is amended by revising paragraph (e)(2) to read as follows:

§ 248.3 Application.

* * * * *

(e) * * *

(2) An alien classified under sections 101(a)(15)(A) or 101(a)(15)(G) of the Act as a member of the immediate family of a principal alien classified under the same section, or an alien classified under sections 101(a)(15)(E), (H), (I), (J), (L), or (Q)(ii) of the Act as the spouse or child who accompanied or followed-to-join a principal alien who is classified under the same section, may attend school in the United States, provided that the principal alien or spouse or child maintain their nonimmigrant status.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

11. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

12. Section 274a.12 is amended by:

a. Removing and reserving paragraph (b)(6)(ii);

b Revising paragraph (b)(6)(iii);

c. Revising paragraph (b)(11);

d. Revising the last sentence of paragraph (c)(3)(ii); and by

e. Revising paragraph (c)(3)(iii).

The revisions read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(b) * * *

(6) * * *

(ii) [Reserved]

(iii) Curricular practical training (internships, cooperative training programs, or work-study programs which are part of an established curriculum) after having been enrolled full-time in a Service approved institution for one full academic year. Curricular practical training (part-time or full-time) is authorized by the Designated School Official on the student's Form I–20. No Service endorsement is necessary.

* * * * *

(11) An exchange visitor (J–1), pursuant to § 214.2(j) of this chapter and 22 CFR part 62. An alien in this status may be employed only by the exchange visitor program sponsor or appropriate designee and within the guidelines of the program approved by the Department of State as set forth in the Form DS–2019, Certificate of Eligibility, issued by the program sponsor;

* * * * *

(c) * * *

(3) * * *

(ii) * * * The F–1 student must also present a Form I–20 ID or SEVIS Form I–20 with employment page completed by DSO certifying eligibility for employment; or

(iii) Is seeking employment because of severe economic hardship pursuant to 8 CFR 214.2(f)(9)(ii)(C) and has filed the Form I–20 ID and Form I–538 (for non-SEVIS schools), or SEVIS Form I–20 with employment page completed by the DSO certifying eligibility, and any other supporting materials such as affidavits which further detail the unforeseen economic circumstances that require the student to seek employment authorization.

Dated: December 5, 2002.

Michael J. Garcia,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–31184 Filed 12–6–02; 1:45 pm]

BILLING CODE 4410–10–P

Federal Register

Wednesday,
December 11, 2002

Part IV

Environmental Protection Agency

Sustainable Futures — Voluntary Pilot Project Under the TSCA New Chemicals Program; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0011; FRL–7198–6]

RIN 2070–AD60

Sustainable Futures — Voluntary Pilot Project Under the TSCA New Chemicals Program; Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces a voluntary pilot project by EPA, entitled Sustainable Futures, to encourage the application of pollution prevention principles during the development of new chemicals submitted as premanufacture notices (PMNs) under section 5 of the Toxic Substances Control Act (TSCA). Certain expedited review under section 5 of TSCA is proposed as an incentive to PMN submitters. The goal of this pilot project is to encourage pollution prevention and the development of inherently low hazard chemicals. Furthermore, the Agency seeks to gain additional data and experience regarding the pollution prevention, risk reduction, and source reduction benefits of use of hazard, exposure, and risk screening methodologies such as EPA's Pollution Prevention Framework in new product development efforts.

DATES: Comments are solicited on or before June 9, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: For New Chemicals Program regulatory information: Kenneth T. Moss, Chemical Control Division (7405M), Office Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; e-mail address: moss.kennett@epa.gov. For information about P2 Framework and Training or Workshops: Bill Waugh or Maggie Wilson, Risk Assessment Division (7403M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone numbers: (202) 564–7657 or 564–8924; e-mail addresses: waugh.bill@epa.gov or wilson.maggie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are or may in the future be a submitter of a PMN under TSCA. Potentially affected entities may include, but are not limited to:

- Chemical manufacturers or importers (NAICS 325, 32411, 28, 2911). Anyone who plans to manufacture or import a new chemical substance (as defined in TSCA section 3) for a non-exempt commercial purpose is required to provide the EPA with a PMN at least 90 days prior to the activity. Any TSCA Chemical substance that is not on the TSCA Inventory is classified as a new chemical.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0011. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2002–0011. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to oppt.ncic@epa.gov, Attention: Docket ID Number OPPT–2002–0011. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2002–0011. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

Under section 5(a) of TSCA, persons must notify EPA at least 90 days before manufacturing or importing a new chemical substance for non-exempt purposes. A new chemical substance, as defined in section 3(9) of TSCA, is any chemical substance (as defined in section 3(2) of TSCA) that is not included on the Inventory compiled under section 8(b) of TSCA. EPA requires that submissions be made on EPA Form 7710–25– Premanufacture

Notice (PMN). The Agency encourages chemical manufacturers to incorporate health and environmental issues into product decisionmaking during the development of new chemical substances. EPA has several ongoing initiatives intended to help stakeholders better assess risk issues during the early stages of chemical development efforts. Examples include the Design for Environment Program, the Green Chemistry Program, and the Pollution Prevention Framework (P2 Framework), among other programs. Of specific relevance to today's notice is the P2 Framework as utilized in the development of safer new chemicals submitted as PMNs under section 5 of TSCA.

A. What Action is the Agency Taking?

The Agency seeks to gain additional data and experience regarding the pollution prevention, safer chemicals, risk reduction, and source reduction benefits of use of hazard, exposure, and risk screening methodologies such as the P2 Framework in new product development efforts. To help build this knowledge base the Agency has established this pilot project, entitled Sustainable Futures, to encourage application of pollution prevention principles during the development of new chemicals under TSCA, known hereafter as the "pilot project." While EPA's major goal is development of safer new chemicals, for purposes of the pilot it will also consider low-moderate hazard chemicals for which exposure assessment indicates potentially low risk. This pilot project is entirely voluntary and will enable the Agency to develop information to support a possible future exemption under section 5(h)(4) of TSCA based on experience gained in Sustainable Futures. Under this initiative, pilot project participants would be encouraged to become proficient with and to apply the Pollution Prevention Framework (P2 Framework) or other scientifically acceptable hazard, exposure, and risk screening methods in new chemical development efforts. To encourage industry participation in this voluntary pilot project, the Agency will consider providing certain expedited review to participants in the pilot project. This notice provides additional detail relating to the expedited review available under this pilot project and discusses criteria or factors EPA will consider to determine eligibility for the pilot project and associated expedited review.

B. What is the Agency's Authority for Taking this Action?

This pilot project is entirely voluntary and will enable the Agency to develop information to support a possible future exemption to the PMN reporting requirements of section 5 of TSCA, under section 5(h)(4) of TSCA and based on experience gained in Sustainable Futures. See below for a further explanation of these requirements and general information on the New Chemicals Program.

C. Overview of the PMN Process

Under section 5(a) of TSCA, persons must notify EPA at least 90 days before manufacturing or importing a new chemical substance for non-exempt purposes. EPA requires that submissions be made on EPA Form 7710–25 – Premanufacture Notice (PMN). Along with the PMN submitters must send in all available data on chemical identity, production volume, byproducts, use, environmental release, disposal practices, and human exposure. In addition, submitters must send in all existing health and environmental data in the possession of the submitter, parent company, or affiliates. All of this information is considered by Agency risk assessors to determine whether manufacture, processing, distribution in commerce, use, or disposal of such substance, or any combination of such activities, presents an unreasonable risk of injury to health or the environment. In some cases, EPA can require submission of any additional data, including development of data through testing, when the information included with the PMN, coupled with that available to its risk reviewers from internal archives is not adequate to allow EPA to make this determination. The Instruction Manual for Premanufacture Notification of New Chemical Substances explains all reporting requirements.

EPA has limited or no reporting requirements for new chemical substances in the following cases:

- Low Volume Exemption (LVE) — 10,000 kilograms or less of the substance will be manufactured or imported each year under the requirements at (40 CFR 723.50). Notification required, using EPA Form 7710–25 (the PMN Form).
- Research and Development (R&D) — the substance is manufactured in small quantities for research and development, and special procedural and recordkeeping requirements are met (40 CFR 720.36 and 720.78). Notification not required.
- Low Releases and Low Exposures (LoREX) Exemptions — the substance is expected to have low release and exposure under the requirements at 40 CFR 723.50. Notification required, using the PMN Form.
- Test Marketing Exemption (TME) — the substance is being manufactured or imported for TME, under the requirements at 40 CFR 720.38. Notification required, using the PMN Form.
- Polymer Exemption — the substance is a polymer that meets certain specified criteria where the substance is not considered chemically active or bioavailable under the requirements at 40 CFR 723.250. Annual report to the Agency is required for those exempt polymers commenced for the first time in the preceding calendar year.

Section 5 of TSCA gives EPA 90 days to review a PMN (also referred to as a "section 5 notice"). The PMN program has evolved into an efficient mechanism to identify new chemicals which are of greatest concern during the early stages of the 90-day review process and focus detailed analysis on these cases with the ultimate goal of identifying and controlling unreasonable risks. EPA utilizes an integrated approach that draws on knowledge and experience across scientific and organizational lines to identify and evaluate concerns regarding health and environmental effects, exposure and release and economic impacts. PMNs and exemption notices share the early stages of the 90-day PMN review process; LVE and LoREX applications conclude review by day 30 and TME applications by day 45.

A large majority of PMN submissions are reviewed, evaluated and dropped from further consideration during the early stages, i.e., first 30 days, of the PMN review period. The early stages of the PMN review period include:

1. The Chemical Review and Search Strategy Meeting;
2. The Structure Activity Team Meeting;
3. Development of the Exposure and Release Profile; and
4. The Focus Meeting.

The Chemical Review and Search Strategy (CRSS) meeting (day 8–12) examines chemical identity; structure/chemical nomenclature; structural analogs/TSCA Inventory Status; synthesis (including byproducts and impurities); use/TSCA jurisdiction as provided by the PMN submitter, open literature, or as identified by EPA for similar chemical substances; physical/chemical properties (physical state, molecular weight, melting and boiling point, vapor pressure, solubility, octanol water partition co-efficient, pH); and pollution prevention aspects, using information provided by the PMN submitter. EPA also may make suggestions for alternate synthetic pathways. Decisions at this meeting include notice completeness, validity, reportability, eligibility for exemption, candidacy for exposure-based review (PMN has potential for substantial production volume and substantial or significant human exposure or substantial environmental release), and whether the notice meets certain CRSS drop criteria.

The Structure Activity Team meeting (day 9–13) is an interdisciplinary meeting of scientists, including chemists, biologists, toxicologists, and information specialists, which evaluates potential environmental fate, health effects and environmental hazard through the use of structure activity relationships (SAR), test data on the new chemical substance, data on structural analogs, and expert judgment.

The Initial Exposure and Release Assessments are developed by Day 10–19 and examine occupational exposure, environmental releases, and environmental, general population and consumer exposures.

The Focus meeting (Day 15–20) is the earliest risk management meeting in the section 5 notice review period; representatives from all PMN technical disciplines are involved in this assessment. Initial decisions are developed at this meeting. For Exemption notices, the initial decisions are to grant or deny the notice, with or without certain conditions of use specified in the notice, to which the submitter is legally bound. Focus meeting decisions for PMNs can range from identifying the need to consider a ban or section 5(e) of TSCA regulation of the new chemical to a "drop" from further Agency review. A PMN can also continue on to a more detailed review which occupies much of the remainder of the 90-day period. Regardless of whether the Agency drops a PMN submission during the early stages of review at the Focus meeting or near the end of the statutorily mandated 90-day PMN review period, the PMN submitter is nonetheless not allowed to commence manufacture before day 90 of the review period.

The review period can be extended under section 5(c) of TSCA for good cause; it may also be suspended voluntarily by the mutual consent of EPA and the PMN submitter. During the review period for PMNs, EPA may take action under section 5(e) or (f) of TSCA to prohibit or limit the production, processing, distribution in commerce, use, and disposal of new chemical substances that raise health or environmental concerns. If EPA has not taken action under section 5(e) or (f) of TSCA, the PMN submitter may manufacture or import the new chemical substance when the review period expires (i.e., day 90) and need merely notify the agency of commencement of manufacture or import. Similarly, during the review period for PMN exemption notices, EPA may take action to prohibit or limit the production, processing, distribution in commerce, use, and disposal of new chemical substances that raise health or environmental concerns. If EPA has not taken action to deny the exemption application, under section 5(h)(1) for TMEs or section 5(h)(4) of TSCA for LVE and LoREX notices, the notice submitter may manufacture or import the new chemical substance when the respective review period for those notices expires (i.e., day 45 for TME or day 30 LVE and LoREX).

No later than 30 days after the PMN submitter initiates manufacture or import of the PMN substance, it must provide EPA with a notice of commencement of manufacture or import (NOC). Section 8(b) of TSCA provides that, upon receipt of such a notice, EPA must add the substance to the TSCA Inventory. Thereafter, other manufacturers and importers may engage in activities involving the new substance without submitting a PMN, unless the Agency has used its Significant New Use Rule (SNUR) authority under section 5(a)(2) of TSCA to designate a use of a chemical substance as a "significant new use." Section 5(a)(1)(B) of TSCA would then require persons to submit a Significant New Use Notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the substance for the use designated as significant. The required SNUN provides EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs.

D. History

EPA has over 20 years experience in reviewing PMNs and exemption notices under TSCA on a wide variety of classes or categories of chemicals. During this period the Agency has reviewed over 38,000 PMNs and section 5 of TSCA exemption notices.

Historically, it has been EPA's policy to not allow simultaneous submission of section 5 exemption notices and PMNs for the same substance. For LVEs, EPA restricts submission of a PMN until nine months after the date on which a LVE is approved by EPA (i.e., 90 days before termination of the one year low volume period) and restricts a LVE when a pending PMN estimates a production volume greater than 10,000 kilograms per year. This policy, in interpreting the intent of the rule, places emphasis on the rule's use of the words 10,000 kilograms "per year," rather than per any lesser time period. Accordingly, EPA has denied a LVE because a PMN simultaneously submitted by the same company on the same chemical estimated the production volume to be over 10,000 kilograms per year.

Test Market Exemption (TME) applications have been allowed in combination with Premanufacture Notices (PMNs) only if the submitter's description clearly distinguishes the test marketing activity from full-scale commercial production or research and development. EPA's New Chemical Information Bulletin Exemptions for Research and Development and Test Marketing (USEPA, 1986, see Unit XV.1.) describes how the Agency, in order to discourage the use of simultaneous submissions to simply obtain PMN review of a chemical substance in 45 days, closely examines such submissions to determine if genuine test marketing activity is involved; if it is not, the application has been denied. The suggested mechanism for such a combination submission has been that, following the submission of a TME application, the same company may not submit a PMN for the same chemical until 90 days before the end of the test marketing period specified by the company in its TME application pursuant to 40 CFR 720.38(b)(5).

III. What is the P2 Framework?

The P2 Framework (USEPA, 2000, see Unit XV.2.) is a set of computer models that predict hazards and exposures of chemicals using structure activity relationships (SARs), exposure assessment models and databases, and standard (default) scenarios. These models have been developed over a 20-year period by EPA's Office of Pollution Prevention and Toxics, and others in the scientific and technical community, to screen new chemicals in the presence of limited data. Annually, EPA evaluates over 2,000 new chemicals submitted under section 5 of TSCA. TSCA requires that EPA evaluate the chemicals within 90 days. Although the law does not generally require that the submitter conduct laboratory tests to evaluate potential hazards of the chemicals, PMN submissions must include all available existing information on exposure and environmental release on new chemicals and the Agency will use this information or, in absence of supplied information, professional judgment to

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evaluated exposures and releases. Operating under this time limitation, and often a lack of data, EPA developed methods to quickly screen chemicals to assess human and environmental hazards, physical/chemical properties, environmental fate, human and environmental exposures, and risks.

The P2 Framework models listed in the table in this unit, capture the expertise of multiple EPA scientists, grantees, support contractors, and others in the scientific community working for over 20 years screening chemicals in the presence of limited data. The P2 Framework project presents these models to industry with the hope that the models will be useful in identifying potential problem chemicals and processes early in the research and development process. EPA believes that application of hazard screening methodologies early in new chemicals research and development will lead to commercialization of safer new chemical substances. In other instances where chemicals are projected to present a low-moderate hazard concern, exposure and risk screening methodologies can be used early in the research and development process to identify lower risk chemical alternatives. The table also provides information regarding the availability of the models.

P2 FRAMEWORK MODELS

Model	Endpoints addressed	Inputs needed	Availability
Models to Estimate Physical-Chemical Properties			
EPI Suite™	Melting and Boiling Points, Vapor Pressure; Octanol/water partition coefficient (Kow); Water solubility from log Kow; Soil organic carbon partition coefficient (Koc); Henry's law constant: vapor pressure/water solubility; Fish bioconcentration factor	Chemical Abstract Service Registry Number (CAS RN), if in Smilecas database – CAS database of Simplified Molecular Input Line Entry System (SMILES) – or Chemical Structure in SMILES notation	Download at no cost from http://www.epa.gov/oppt/exposure/docs/episuitedl.htm
Models to Estimate Environmental Fate			
EPI Suite™	Atmospheric oxidation potential; Biodegradation rate; Hydrolysis rate; Percent removal in POTW (Publicly Owned Treatment Works)	Chemical Abstract Service Registry Number (CAS RN), if in Smilecas database – CAS database of Simplified Molecular Input Line Entry System (SMILES) – or Chemical Structure in SMILES notation	Download at no cost from http://www.epa.gov/oppt/exposure/docs/episuitedl.htm
Models to Estimate Human Health and Environmental Hazards			
OncoLogic	Cancer hazard potential	Chemical structure	Developed by USEPA, OPPT and LogiChem under a cooperative agreement. Information http://logichem.com/
ECOSAR™	Acute and chronic toxicity to fish, invertebrates, algae	CAS RN (if in Smilecas db) or Chemical Structure in SMILES notation	Download at no cost from http://www.epa.gov/oppt/newchems/21ecosar.htm
Models to Estimate Exposure			
E-FAST	Surface water ingestion, fish ingestion, ground water ingestion, ambient air inhalation, indoor air inhalation, dermal exposure, aquatic environment exposure/risk	Physical/chem properties, fate properties, release amounts, release medium, release location, aquatic concentration of concern, National Pollutant Discharge Elimination System (NPDES) number.	Download at no cost from http://www.epa.gov/oppt/exposure/docs/efast.htm
ReachScan	Impact of surface water discharges on drinking water facilities, chemical concentration downstream at drinking water intake point	Facility location (NPDES), release data	EPA is updating ReachScan and will make information available on its use in this and other programs at http://www.epa.gov/oppt/exposure/docs/reachscan.htm
ChemSTEER	Occupational inhalation and dermal exposure during industrial and commercial manufacturing, processing, and use operations; industrial & commercial manufacturing, & processing releases to air, water, and land	Molecular weight, vapor pressure, density; production or use volume, fractions devoted to multiple uses; weight fractions, physical state. Numbers of sites & workers, batch amounts & times, release sources, worker activities; workplace concentrations, release amounts & media.	Download at no cost from http://www.epa.gov/oppt/exposure/docs/chemsteer.htm

IV. How Has the Agency Worked to Educate Industry About the P2 Framework?

Over the last several years the Agency has gained considerable experience in working with stakeholders (e.g., chemical manufacturers, formulators, users, consulting firms, etc.) in the application of the P2 Framework during new product development. EPA has conducted detailed P2 Framework workshops and training exercises, including workshops in California, Texas, Illinois, New Hampshire, and Virginia. These workshops were designed to introduce stakeholders to the P2 Framework and to help stakeholders develop experience in the use, interpretation, limitations and applicability of the P2 Framework methodologies in chemical hazard and exposure screening. The workshops also discussed use of the P2 Framework outputs in risk screening analyses. Approximately 100 companies, among other stakeholders, have participated in the P2 Framework workshops and training. In addition to providing workshops and training sessions, the Agency has worked with individual companies, and other stakeholders, regarding opportunities to apply the P2 Framework in the development of environmentally preferable new chemical products and other activities designed to identify and implement pollution prevention opportunities.

V. What Is the Potential Benefit Derived from Use of the P2 Framework?

Companies that develop new chemical substances often have alternative chemical structures that could become the subject of a PMN. Chemical manufacturers and users often lack hazard- and exposure-related information on new chemical alternatives and, as a result, sometimes choose among new chemical product alternatives without an understanding of the potential hazard and risk trade-offs of product alternatives under consideration. Many companies that have used the P2 Framework indicate that the P2 Framework generates screening-level information about human and environmental hazards and exposures, and that this information helps further differentiate among product alternatives, leading to identification of alternatives which are potentially safer or present lower potential risks or, in other cases, the development of environmentally preferable products and processes and other pollution prevention outcomes. It is hoped that the P2 Framework will enable PMN submitters to design safer products and conduct an analysis similar to that done by EPA for each new chemical submitted, and to identify and develop products and processes that can be sustained both environmentally and economically.

Chemical companies, consultants, research and development laboratories, etc. which have applied the P2 Framework during new chemical and product development activities have indicated that the P2 Framework:

1. Generates chemical specific hazard and exposure related information previously unavailable;
2. Helps compare new chemical product alternatives based on hazard, exposure, and risk considerations early in the product development process, when change is most cost effective;
3. Helps identify environmentally preferable new products and processes;
4. Reduces the generation of hazardous waste that typically occurs during product development; and
5. Results in potentially significant financial and business benefits, among other benefits (Tellus Institute, 1999, see Unit XV.3; Eastman Kodak, 1996, see Unit XV.4).

VI. What Is the Regulatory Incentive for Chemical Manufacturers under this Sustainable Futures Pilot Project?

For purposes of this voluntary pilot project, EPA will implement a program leading to the opportunity for simultaneous submissions of TME applications and PMNs on chemical substances for which the submitter demonstrates the application and use of the P2 Framework or other scientifically acceptable hazard and exposure screening methodologies. While EPA's major goal is the development of safer chemicals, it will also consider, for the purposes of this pilot, low-moderate hazard chemicals for which exposure assessment indicates potentially low risk. Thus, under the pilot, the submitter, following approval of the TME by the Agency, can begin manufacture of the chemical substance for test marketing purposes, in accordance with the TME after 45 days. They must continue to meet the exemption requirements for an additional 45 days, at which time the 90-day PMN review may be satisfactorily completed and they may then submit the NOC and begin manufacture for PMN purposes.

Under the voluntary pilot project, qualifying simultaneous PMN/TME submitters may begin manufacture of those chemical substances at 45 days in accordance with the TME. As described in Unit II.A., most decisions on PMNs or TMEs are made before day 30 of their review periods, which in the case of simultaneous submissions would run concurrently. Chemicals qualifying for this option will be restricted to those PMN/TME chemical substances that the Agency, in the case of a PMN, drops from review and, in the case of a TME, grants by the Focus meeting which occurs by day 30 of the 90- or 45-day review period, respectively, and which satisfy certain criteria described below (see Unit IX.). In granting a TME, the chemical substance (and its associated uses and exposures) must be judged by EPA to meet the requirement that it "will not present an unreasonable risk of injury to human health and the environment," after which the submitter can commence TME activities at 45 days. EPA will also review the simultaneously submitted PMN and, provided the TME is granted and the PMN is dropped during the first 30 days of the 90-day review period, the submitter may then commence full commercialization on or after day 90 of PMN review and file the NOC. All TME requirements must, however, be met until such time as commencement of manufacture occurs and the NOC is filed, at which point the substance becomes an existing chemical and is placed on the TSCA Inventory. If EPA grants the TME, but does not drop the PMN during the first 30 days of review, the submitter will be notified that the submitter must choose, by letter within 15 days of being notified of the Agency's decision, to continue only one of the two notification procedures (i.e., withdraw the TME and continue with the PMN, or continue with the TME and withdraw the PMN).

VII. How Could EPA Decide to Approve a TME but Identify Concerns with a PMN on the Same Chemical?

As mentioned in Unit II.B., a TME submitter's description must clearly distinguish the test marketing activity from full-scale commercial production or research and development. When EPA approves the TME, it has determined that test marketing the new chemical substance, under terms and conditions set out in the TME application and any additional controls stipulated in an accompanying **Federal Register** notice announcing Agency approval of the TME, will not present an unreasonable risk of injury to health or the environment. Such specific conditions of approval include the test market time period, production volume, number of customers, and use. Upon review of the same chemical when submitted as a PMN, the Agency could determine that a higher production volume or distribution and use of the

chemical without the limitations imposed under the TME may present an unreasonable risk to human health or the environment, and therefore take regulatory action under section 5(e) of TSCA. The Agency also reserves the right to rescind approval or modify the conditions and restrictions of a TME during the TME period should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to human health or the environment.

VIII. How Will Accepting Simultaneous PMN/TME Submissions for P2 Screened Chemicals Benefit the Agency and the Public?

This voluntary pilot project to accept simultaneous PMN/TME submissions will enable the Agency to develop information to support a possible future exemption under section 5(h)(4) of TSCA based on experience gained in Sustainable Futures. This would include information on the adequacy and effectiveness of companies' use of Agency tools and models to improve the environmental health and safety attributes of the new chemicals notified to EPA under section 5 of TSCA. It is hoped that this modification in the Agency's policy under section 5 of TSCA ultimately results in fewer section 5 notices requiring extensive Agency review or negotiation of necessary risk controls with submitters, and in safer chemicals being introduced to market.

IX. What Are EPA's Suggested Approach and Criteria for Participation in the Voluntary Sustainable Futures Pilot Project?

The Agency solicits participation on the part of chemical companies, and other stakeholders, in this voluntary pilot project. In order to qualify for this pilot project, and associated expedited review, companies subject to section 5 of TSCA reporting requirements must demonstrate experience and competence with the P2 Framework or other scientifically acceptable approaches to chemical risk screening. Typically, EPA expects that the following will be necessary:

A. Training

Companies interested in participating in this pilot project must demonstrate an understanding of the scope, applicability, interpretation, and limitations of pollution prevention and chemical hazard and exposure screening tools, such as the P2 Framework, that can be used to conduct screening level assessments of chemicals based on an analysis of chemical structure or other considerations. EPA will offer P2 Framework risk screening software to participating companies and other interested stakeholders. The Agency will also offer detailed training workshops to those interested in learning more about the P2 Framework models. EPA conducts workshops and presentations that provide an overview of the P2 Framework models to industry and other stakeholders (see Unit IV.). P2 Framework workshops are 2–3 days in length, involve hands-on training in the use, interpretation, and limitations of P2 Framework methodologies. Attendees of the P2 Framework workshops are encouraged to bring to the workshop the CAS Registry Numbers or structures of the types of chemicals of specific interest to them so that the attendee may use these as examples when that attendee runs the models during the workshop. Attendees should not bring any CBI chemicals to the workshops. P2 Framework workshops are particularly well suited for participants with a strong background in chemistry and familiarity with issues associated with human health and environmental hazard, exposure, and risk assessment. Those interested in learning about dates and times for upcoming training, whether given by EPA or other qualified individuals, should contact the persons listed under **FOR FURTHER INFORMATION CONTACT** or check the New Chemicals Program web site www.epa.gov/oppt/newchems/.

B. Apply Hazard and Exposure Screening Tools

Companies must apply hazard and exposure screening tools to gain hazard-, exposure-, and risk-related information on chemical alternatives under consideration in the R&D and product development stages and demonstrate to EPA that this information has been used to inform decisionmaking to select safer new chemical alternatives to submit as the subject of a new chemical notification, and, where appropriate, to identify opportunities to eliminate or control exposures through process controls.

The Agency is interested in learning if, how, and when hazard and exposure screening tools are of value to participants in the pilot as they choose among chemical alternatives that may become the subject of a PMN notice. This type of information will be considered in the development, if deemed appropriate, of a new exemption under section 5(h)(4) of TSCA based on experience gained in Sustainable Futures. In order to help determine if a new exemption is appropriate, participants in this pilot project may be asked to provide either summary or detailed information to EPA, described below, that demonstrates that the submitter has used information gained using the hazard and exposure screening tools to inform their decisionmaking to select safer new chemical alternatives that became the subject of the submission. Pilot project participants should provide this information on or as an attachment to page 11 ("Optional Pollution Prevention Information") of the PMN form. Submitters should be aware that EPA may request additional information where warranted in support of the goal of this pilot project. The goal of this project is to encourage pollution prevention and the development of inherently low hazard chemicals. The Agency solicits comments on the type of information to submit to EPA that (a) captures an increase in proficiency in a company's use of these assessment tools or (b) discusses hazard or risk reduction in PMNs ultimately submitted to the Agency, in contrast to those chemicals not submitted because of concerns raised through the use of the tools.

Summary level information should include:

1. The number of chemical alternatives (if more than one) evaluated,
2. The screening models used,
3. Factors on which decisions were based, such as vapor pressure, PBT characteristics, aquatic toxicity, potential human exposure, etc., and
4. The submitter's perspective on the extent to which the P2 Framework, or similar methodologies, helped in the understanding of hazard-, exposure-, and risk-related issues of the PMN chemical. In addition, information is solicited regarding the extent to which the methodologies helped the submitter compare or contrast product or process alternatives based on hazard-, exposure-, and risk-related information.

Three different examples of summary level information are provided below:

- Due to a number of factors, only one chemical substance was identified as having necessary product performance characteristics. As a result, there were no product alternatives to evaluate. Our company used the P2 Framework models on the single chemical meeting product performance characteristics. This analysis indicated low hazard potential for both human health and ecological effects. In addition, the material showed low persistence and low bioconcentration potential. As a result, we concluded the material presents low hazard/low risk.
- Five alternatives were evaluated for environmental fate and persistence, bioconcentration potential, aquatic toxicity, and health effects using XYZ methodologies (e.g., the P2 Framework). While the aquatic toxicity and human health hazard profiles of all five were equivalent (i.e., low), two compounds were seen as persistent and with bioconcentration potential much higher than the other three alternatives. The PMN substance was selected from among these three alternatives having lower persistence and bioconcentration potential. In addition, application of exposure models indicated that exposure controls on specific areas, e.g., environmental release, occupational etc., were warranted. These controls have been identified and their effectiveness has been sufficiently described in the PMN submission.
- The results of the P2 Framework model runs helped to differentiate among product alternatives based on hazard and exposure issues. It helped our company identify a product that is the most environmentally preferable based on its hazard (e.g., low aquatic toxicity and low concern for adverse effects to human health) and exposure (e.g., less persistent) properties. The P2 Framework software package helped us think about chemical design options and exposure issues, including manufacturing controls to choose among product alternatives. These controls have been identified and their effectiveness has been sufficiently described in the PMN submission.

More detailed information may also be provided, for example, the actual outputs from the methodologies used, or screening level hazard assessments for low hazard chemicals and, for low-moderate hazard chemicals, submission of a screening-level exposure and risk assessment. EPA's P2 Framework, as well as other hazard, exposure, and risk screening methods, can be used to assist in many, although not all, components of such an assessment. This screening level assessment could include:

1. Physical/chemical properties, potential environmental transport, and environmental fate;
2. Human health effects such as cancer hazard potential, organ toxicity, reproductive and/or developmental toxicity, neurotoxicity or other health endpoints of potential concern;
3. Toxicity to the aquatic environment, i.e., aquatic vertebrates, invertebrates and plants;
4. As appropriate, environmental releases, exposure to the general population, consumer exposure, occupational exposure, and environmental exposure;
5. Descriptions of exposure and release mitigation steps, such as personal protective equipment and engineering controls information; and
6. Summary conclusions regarding the hazards, exposure, and risks of product alternatives including a determination if alternatives under consideration exceed EPA new chemicals program criteria for PBT (Persistent, Bioaccumulative and Toxic) chemical substances (64 FR 60194, November 4, 1999), or ecotoxicity concern levels described in the P2 Framework Manual (see http://www.epa.gov/pbt/P2_Manual_6-00.pdf – "ECOSAR to Estimate Aquatic Toxicity").

Assessments need not include every factor listed in this unit, depending on the specific chemical submitted, intended uses, etc. For example, toxicity to aquatic organisms would not need to be evaluated if no environmental releases are anticipated under expected conditions of manufacture, processing, and use of the new chemical. Additional guidance regarding preparation of screening-level assessments, including examples of screening-level assessments, and other technical assistance, will be provided during P2 Framework training workshops, discussed above.

C. Submit 5-10 Successful PMNs or PMN Exemption Notices

Companies will need to submit 5-10 successful (i.e., not regulated by EPA) PMNs or PMN exemption notices which have been developed using chemical hazard and exposure screening tools, and which had, as part of the submission, documentation (summary or detailed) of chemicals evaluated, models used, endpoints on which decisions were based, and the submitter's perspectives on the extent to which the screening tools provided useful information to compare alternatives and select safer chemicals.

Pilot project participants' PMN submissions will be evaluated by EPA consistent with the normal PMN review process. Participants will typically be eligible for the expedited review described in Unit VI. of this notice after 5–10 new chemical cases (PMNs or PMN exemption notices) have been successfully screened by the company, as described above, submitted to EPA, and determined to be low hazard and/or low risk by EPA. The Agency will, at its discretion, consider requests for expedited review before completion of this 5–10 case experience base. Participants requesting relief before completion of the 5–10 case experience base will need to demonstrate that their approach to hazard, exposure, and risk screening is the functional equivalent of a 5–10 case experience base. The Agency may also make an exception with regards to the definition of "successful" for PMNs regulated only under TSCA section 5 exposure-based authority.

The Agency considered several factors when determining the number of successful new chemical cases needed to qualify for expedited review under this pilot project. Some stakeholders submit relatively few PMNs or exemption notices, e.g., some stakeholders submit one PMN every two to three years. Setting the number of successful new chemical cases at a level greater than 5–10 would mean that infrequent submittters of PMNs might take many years to reach the 5–10 PMN or exemption notice experience base. Some stakeholders submit many PMNs annually, e.g. 20 PMNs per year or more. In this case of a stakeholder submitting 20 PMNs or exemption notices per year, the experience base could be achieved in approximately six months. The Agency believes that 5–10 successful PMNs or exemption notices, or the functional equivalent, is a reasonable experience base to qualify for expedited review under this pilot project. The Agency will use its discretion when determining if and when a company has sufficient experience. For example, for a company whose PMN submissions have historically been limited in scope, e.g., PMNs submissions only for surfactants, 5 successful PMN submissions might be considered adequate for the Agency to judge that the submitter has effectively used the screening methodologies. On the other hand, a company with PMNs covering a wide spectrum of industrial chemistry might need to submit 10 successful PMNs to qualify. The Agency solicits comment on this issue.

If a pilot project participant's PMN or exemption submission is determined by EPA to be low hazard or low risk (meaning the submission is dropped from further review during the early stages of the PMN review process, i.e., first 30 days), and the participant submits descriptive information to demonstrate that chemical hazard and exposure screening models contributed to their decisions regarding the new chemical substance, this will likely be judged sufficient to demonstrate an ability (for that particular PMN or exemption submission) to effectively use the screening methodologies. All such decisions under the pilot are within the sole discretion of the Agency and no rights are extended by this pilot.

X. How Can Chemical Manufacturers Demonstrate Their Proficiency in Effective Use of Hazard and Exposure Screening Tools and Thereby Qualify for Expedited Review Under Section 5 of TSCA?

As mentioned in the previous section, in order to demonstrate proficiency in the use of the P2 Framework or other comparable hazard and exposure screening tools, companies would, following formal training, submit 5–10 PMNs, or functional equivalent, which were developed via application of these tools, and that EPA determines to be low hazard and/or low risk. This number of PMN cases are considered a sufficient sample to judge the adequacy and effectiveness of a company's use of the P2 Framework in the evaluation of PMNs prior to their submission to the Agency. Companies submitting PMNs under this pilot project (either as part of the initial qualifying process or in conjunction with TMEs upon successful completion of that process) may be asked to supplement their submissions, using page 11 ("Optional Pollution Prevention Information") of the PMN form, with additional information which demonstrates the application of the P2 Framework and provide a basis for EPA to judge the application of the P2 Framework. See Unit IX. for more details on training and "additional information."

A chemical manufacturer, formulator, or import who has submitted 5–10 successful (i.e., not regulated by EPA) PMNs that EPA determines to be low hazard and/or low risk, or the functional equivalent and who is interested in participating in the pilot project should approach the Agency to request the expedited review under section 5 of TSCA described in Unit VI. This should be done by submitting in writing to the Director of the Chemical Control Division (address below), documentation of the following:

- The date of training completed in accordance with Unit IX.A.,
- A list of the PMNs which were submitted and the outcome of Agency review, i.e., the chemicals were not regulated,
- A summary table presenting the hazard and exposure screening tools used to evaluate each PMN substance, including identification of methods and models/tools used in the assessment, and
- An overall qualitative or quantitative assessment of the value of the use of hazard and exposure screening tools to evaluate these PMN substances (see Unit IX.B.).

Submitters are encouraged to submit nonconfidential reports to the extent possible. If necessary, check http://www.epa.gov/oppt/newchems/cbi.html for information on properly transmitting CBI material to EPA. A non-CBI or sanitized version of the information described above should be submitted to: Charles M. Auer, Acting Director, Chemical Control Division (7405M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001.

Upon review of this information, EPA will respond in writing to notify candidates of their eligibility for expedited review (i.e., being allowed to submit simultaneous TMEs and PMNs). Following EPA review of the PMNs submitted under the pilot during an approximately 2 year period starting from the date of this notice, the Agency can at its discretion extend the time period of this pilot project to gain additional experience, or conclude the pilot. EPA solicits comments on this overall approach.

XI. Will EPA Allow the Use of Other Hazard and Risk Screening Tools Besides the P2 Framework?

EPA understands that the P2 Framework is just one example of pollution prevention and chemical hazard, exposure, and risk screening tools that could be used to evaluate chemicals, in general and under this pilot project in particular. Although the Agency is aware that other assessment methodologies are widely available and that use of these other methods may be of value in identifying less risky or environmentally preferable alternatives, the Agency lacks experience with their use. The Agency will consider the applicability of other pollution prevention and chemical hazard, exposure, and risk screening tools, but PMN submissions for consideration under this pilot project should describe the alternate methodology used and the results obtained. To assist and improve EPA's understanding of other tools, the Agency may ask, where evaluations resulting from the P2 Framework and alternative methodologies differ in conclusions, that additional detail on the basis and underlying assumptions for these conclusions be provided.

XII. How Will the Agency Incorporate Other Information on Risk Reduction, Such as Control Technology, into this Pilot Project?

Although the Agency's primary goal in this pilot project is encouraging the use of chemical hazard identification and risk screening methods at R&D and the development of inherently low hazard chemicals, it is expected that for low-moderate hazard chemicals the information generated through use of the P2 Framework, and other methods, can also contribute to identification of exposure and risk reduction steps, through use of control technologies or other measures that can mitigate potential risks. Pilot project participants could apply the hazard and exposure screening tools and demonstrate the ability to use the information generated by the P2 Framework to identify opportunities to eliminate or control exposures through process controls, recycling, or reuse. Companies are encouraged under the pilot project to identify and apply control technology or other mitigation steps which results in low risk outcomes and to include discussion of this aspect in their PMN submissions.

XIII. What is the Relationship of Sustainable Futures to Project XL?

On September 14, 2000, the Agency signed Final Project Agreements (FPAs) with Eastman Kodak (Kodak, 2000; see Unit XV.5.) and PPG Industries (PPG 2000; see Unit XV.6.) under the Agency's XL Program, based on application of hazard and exposure screening tools in new product development. Project XL, which stands for "eXcellence and Leadership," is a national program that allows state and local governments, businesses and federal facilities to develop with EPA innovative strategies to test better or more cost-effective ways of achieving environmental and public health protection. Under the FPAs, the Agency allows Kodak and PPG to simultaneously submit a TME and a PMN on a new chemical substance, thus enabling each company to begin manufacture of that new chemical substance in accordance with the TME after 45 days, provided the TME is granted and the PMN is dropped from further review during the first 30 days of the review period. Under both FPAs the companies propose to take other actions that go beyond compliance. See the Kodak or PPG FPAs at the Project XL web site for additional details: http://www.epa.gov/projectxl/. The Agency has worked very closely with both Kodak and PPG regarding use and interpretation of the P2 Framework in new product development. Both Kodak and PPG have participated in P2 Framework workshops, seminars and other training and outreach efforts. Both Kodak and PPG have used the P2 Framework to evaluate product alternatives and to inform their judgement regarding commercialization of environmentally preferable products.

Both PPG and Kodak have submitted well over 10 PMNs or PMN exemption notices that were developed using the P2 Framework. The Agency has dropped these PMNs because they either present a low inherent human health and environmental hazard, or in those cases where potential risks were identified, the companies were able to develop mitigation strategies which adequately reduced those potential risks. Because of these companies' demonstrated experience in the use of the P2 Framework in new product development, and their contribution to advancing excellence in environmental protection, as evidenced by their project XL proposals, Kodak and PPG will not need to submit the minimum ten PMNs (see Unit IX.) for review under the pilot project. Kodak and PPG have been eligible for the requested expedited review with the first complying new chemical submission received after signature of their respective FPAs.

XIV. What's Next After Completion of this Pilot Program?

As mentioned in Unit II., EPA will use the data and experience gained though this Sustainable Futures pilot project, and through related Project XL initiatives, to improve Agency understanding of how early hazard, exposure, and risk screening can lead to development of environmentally preferable products and processes, among other pollution prevention outcomes. Based on this experience, EPA may develop an exemption under section 5(h)(4) of TSCA to provide expedited review for low hazard/low risk PMNs that have been the subject of early hazard, exposure, and risk screening. Section 5(h)(4) of TSCA authorizes EPA, upon application and by rule to exempt the manufacturer or importer of new chemical substance from some or all of the provisions of section 5 of TSCA, if the Agency determines that the manufacture, processing, distribution in commerce, use, or disposal of the substance will not present an unreasonable risk of injury to health or the environment. As described in Unit II., EPA has implemented other exemptions under section 5(h)(4) of TSCA and these may provide a model for any such future exemption.

XV. References

1. USEPA. 1986. New Chemical Information Bulletin: Exemptions for Research and Development and Test Marketing. Office of Toxic Substances, U.S. Environmental Protection Agency. (November, 1986) and at http://www.epa.gov/oppt/newchems/tmeranddbulletin.pdf.

2. USEPA. 2000. Pollution Prevention (P2) Framework. Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency (EPA-748-B-00-001; June, 2000) and at http://www.epa.gov/opptintr/p2framework/

3. Tellus Institute. 1999. Design for Competitive Advantage: The Business Benefits of the EPA Pollution Prevention Assessment Framework in New Product Development, by Thomas J. Votta and Allen L. White, Ph.D. Boston, MA; http://www.tellus.org (September 28, 1999).

4. Eastman Kodak Company. 1996. EPA-Developed Methodologies for Assessing the Fate and Hazards of Industrial Chemicals: A Summary of Eastman Kodak Company's Experience with Their Use and Applicability in Risk Assessment. Kodak Technology Transfer Team, Health and Environment Laboratories, Rochester, NY. (May 13, 1996).

5. Eastman Kodak Company. 2000. Kodak Pollution Prevention Framework Final Project Agreement (Draft, July, 2000) http://www.epa.gov/ProjectXL/kodak/fpakd7-21.pdf (http://www.epa.gov/ProjectXL/groupfrn.pdf for **Federal Register** notice of September 14, 2000 signing).

6. PPG Industries, Inc. 2000. PPG Industries, Inc. Pollution Prevention Framework Final Project Agreement, Project XL, September 14, 2000 http://www.epa.gov/ProjectXL/ppg/913fpa.pdf (http://www.epa.gov/ProjectXL/groupfrn.pdf for **Federal Register** notice of September 14, 2000 signing).

XVI. Statutory and Executive Order Reviews

This notice announces a voluntary pilot project to encourage the application of Pollution Prevention principles during the development of new chemicals under TSCA. Since this voluntary project does not include a regulation or otherwise require notice and comment and does not impose any new binding requirements, it is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), or Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). For the same reason, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501*et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, an information collection request as defined by the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

This document does not contain any new information collection requirements that would require additional OMB review and approval under the PRA. The information collection activities related to the submission of information pursuant to TSCA section 5 are already approved by OMB under OMB control number 2070-0012 (EPA ICR No. 574). The hours for respondent reporting burden for a full PMN submission is estimated to range between 95 and 114 hours, with an average respondent burden of 105 hours. This burden applies also to the submission of SNUN, LVE, and LoREX submissions since each of these notices requires the submission of a complete PMN form. The respondent burden for submission of a test market exemption is estimated to average 98 hours.

As defined by the PRA and 5 CFR 1320.3(b), "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

This action will not have substantial direct effects on State or tribal governments, on the relationship between the Federal government and States or Indian tribes, or on the distribution of power and responsibilities between the Federal government and States or Indian tribes. As a result, no action is required under Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999), or under Executive Order 13175,

entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Nor does it impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Nor does it require special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

List of Subjects

Environmental protection, Chemical substances, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 27, 2002.

Stephen L. Johnson,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 02–31243 Filed 12–10–02; 8:45 am]

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Federal Register

12–12–02 Thursday
Vol. 67 No. 239 Dec. 12, 2002

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Federal Register

12–12–02 Thursday
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Pages 76293–76670

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Rules and Regulations

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506, 550, and 551

[No. 2002–57]

RIN 1550–AB49

Recordkeeping and Confirmation Requirements for Securities Transactions; Fiduciary Powers of Savings Associations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is issuing a final rule specifying the recordkeeping and confirmation requirements for savings associations that effect securities transactions. Under a rule issued by the Securities and Exchange Commission (SEC), savings associations may perform certain broker-dealer activities without registering with the SEC. Today's final rule affords savings association customers the same protections and disclosures provided to bank customers; ensures that examiners will be able to evaluate a savings association's compliance with securities laws and to assess whether savings associations effect securities transactions safely and soundly; and provides savings associations with formal guidance for effecting securities transactions. It does not modify savings associations' authority to effect these transactions.

OTS also is amending its regulations governing the fiduciary powers of Federal savings associations. The final rule codifies a series of OTS legal opinions regarding fiduciary powers. The final rule also streamlines application procedures, clarifies when a Federal savings association may act in a fiduciary capacity without obtaining fiduciary powers from OTS, clarifies the scope of Federal preemption of state law in the fiduciary area, and makes other minor or technical changes to OTS's fiduciary powers regulations.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Judith McCormick, Trust Specialist, (202) 906–5636, Supervision Policy Division, Office of Supervision; or Timothy P. Leary, Counsel (Banking & Finance), (202) 906–7170, Regulations and Legislation Division, or Kevin Corcoran, Assistant Chief Counsel, (202) 906–6962, Business Transactions Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

On June 11, 2002, OTS published a notice of proposed rulemaking seeking comment on regulations setting out recordkeeping and confirmation requirements for savings associations that effect securities transactions and on amendments to OTS's regulations governing the fiduciary powers of Federal savings associations. 67 FR 39886 (June 11, 2002). Four commenters, two trade groups and two Federal savings associations that conduct fiduciary activities, responded to the proposal. The commenters generally supported the proposal. Unless specifically discussed below, the proposed rules are adopted without change.

A. Recordkeeping and Confirmation Requirements for Securities Transactions

Until recently, savings associations could not effect securities transactions for customers directly unless they registered with the SEC as a broker-dealer. Under an interim final rule issued by the SEC, savings associations are now treated as banks under the definitions of "broker" and "dealer" in sections 3(a)(4) and (a)(5) of the Securities Exchange Act of 1934 (Exchange Act). 66 FR 27760 (May 18, 2001).[1] As a result, a savings association may now perform certain broker-dealer activities without registering with the SEC as broker-dealers.

The OCC, Federal Deposit Insurance Corporation (FDIC), and Federal Reserve Board (FRB) regulations include recordkeeping and confirmation requirements for securities transactions effected by banks. The proposed OTS rule was intended to afford savings association customers the same protections and disclosures provided to bank customers; to ensure that examiners will be able to evaluate a savings association's compliance with securities laws and to assess whether savings associations effect securities transactions safely and soundly; and to provide savings associations with formal guidance for effecting securities transactions.

Two commenters made specific suggestions regarding the proposed recordkeeping and confirmation requirements for securities transactions. We discuss those comments below.

1. Need for Regulations

Before passage of the the Gramm-Leach-Bliley Act (GLBA), the terms "broker" and "dealer" in the Securities Exchange Act of 1934 did not include a bank. As a result, banks could engage in securities transactions without registering as a broker or a dealer with the SEC. In Title II of GLBA, Congress replaced this general exception with eleven functional exceptions covering specified bank securities activities. Pending issuance of a final rule implementing the Title II exceptions, the SEC has extended banks a blanket exception from the definitions of "broker" and "dealer." The SEC has stated it will treat savings associations as banks for purposes of the eleven exceptions, and has included savings associations in the extended blanket exception.

One commenter, a Federal savings association, questioned the need for recordkeeping and confirmation requirements. Once the SEC issues a

[1] The SEC extended until May 12, 2003 the savings association exception from the definition of "broker" under the Exchange Act, and extended until February 10, 2003 the savings association exception from the definition of "dealer" under the Exchange Act. SEC Release Nos. 34–46751 (October 30, 2002) and 34–45897 (May 8, 2002); *see also* SEC Release No. 34–44570 (July 18, 2001). On October 31, 2002, the SEC issued a proposed rule exempting banks from the definition of "dealer" when performing certain *de minimis* riskless principal transactions, defining certain terms used in the bank exceptions to dealer registration, and exempting banks from the definitions of "broker" and "dealer" when engaging in securities lending transactions with a qualified investor. 67 FR 64495 (November 5, 2002). Because savings associations are treated as banks they are covered by this proposed rule as well.

final rule, the commenter notes, the eleven GLBA exceptions will be much narrower in scope than the pre-GLBA blanket exception. Accordingly, the commenter predicts that the vast majority of bank and thrift securities transactions will no longer be excepted.

As a result, the commenter believes that banks and thrifts will have to register as a broker or dealer (which is not practical given the capital requirements to do so) or contract with a registered broker or dealer in order to continue to engage or participate in most current security transactions. Since these security transactions would be subject to SEC recordkeeping and confirmation requirements, rather than banking agency rules, the commenter argued that the new OTS recordkeeping and confirmation rules will have a very limited application, and urged OTS not to issue a final rule.

OTS believes that many, if not all, of the securities transactions that savings associations currently conduct will continue to fit within the Title II exceptions. For instance, savings associations already effect securities transactions as fiduciaries, effect safekeeping and custody transactions, conduct sweep activities, and enter into networking arrangements. *See* 15 U.S.C. 78c(a)(4)(B)(i), (ii), (v), and (viii). Given this, OTS believes that recordkeeping and confirmation requirements are necessary to afford savings association customers the same protections and disclosures provided to bank customers, to ensure that examiners will be able to evaluate a savings association's compliance with securities laws and assess whether savings associations effect securities transactions safely and soundly, and to provide savings associations with formal guidance for effecting securities transactions.[2]

2. Section 551.140—Securities Trading Policies and Procedures

Proposed § 551.140 required a savings association that effects securities transactions to maintain and follow written policies and procedures addressing several areas of operation.[3] One commenter, a trade association, questioned the need for significant new policies and procedures in the absence of an SEC final rule implementing the Title II exceptions. Until the SEC acts, this commenter argued, it is unclear whether the Federal banking agencies will have to revise applicable banking and savings association regulations, including the proposed recordkeeping and confirmation requirements for savings associations. The commenter asked that OTS be mindful of requiring savings associations to put in place significant policies and procedures that shortly might have to be substantially revised.

While we appreciate the commenter's concern, the creation and implementation of written securities trading policies and procedures is critical, especially during the period until the SEC promulgates its final rules implementing all of the Title II exceptions.[4] Absent such a requirement, a savings association, alone among financial institutions, could act as a broker-dealer without having written trading policies and procedures in place. In our view, this state of affairs is untenable. Accordingly, the final rule requires savings associations to develop and maintain written policies and procedures for securities trading.

B. Fiduciary Activities of Federal Savings Associations

OTS also proposed amendments to 12 CFR part 550, which governs the fiduciary activities of Federal savings associations. The proposal codified a series of OTS legal opinions regarding the fiduciary powers of Federal savings associations and was consistent with the Office of the Comptroller's (OCC) recent codification of a similar series of legal opinions regarding the fiduciary powers of national banks.[5] The proposal also streamlined application procedures, clarified when a Federal savings association may act in a fiduciary capacity without obtaining fiduciary powers from OTS, and made other minor or technical changes.

1. Section 550.60—What Other Definitions Apply to This Part?

OTS proposed amending § 550.60 to include a definition of the term "activities ancillary to your fiduciary business." The proposal codified OTS legal opinions that concluded that a Federal savings association is not "located" in a state for purposes of section 5(n) of the Home Owners' Loan Act (HOLA)[6] when the association conducts in that state activities that are ancillary to the association's fiduciary business.

The proposal defined "activities ancillary to your fiduciary business" to include advertising, marketing, or soliciting fiduciary business, contacting existing or potential customers, answering questions and providing information to customers related to their accounts, acting as liaison between you and your customer (for example, forwarding requests for distribution, changes in investment objectives, forms, or funds received from the customer), and inspecting or maintaining custody of fiduciary assets or holding title to real property. One commenter suggested adding the phrase "* * * or services similar in nature to those listed above" at the end of the definition to provide Federal savings associations more flexibility.

The OCC's corresponding definition includes language indicating that the list of ancillary activities in the definition is illustrative and not comprehensive. 12 CFR 9.2 (definition of "trust representative office"). The OCC definition further notes that "[o]ther activities may also be 'ancillary activities' for purposes of this definition." To provide flexibility, we have added language similar to that found in the OCC definition.[7]

2. Section 550.70—Must I Obtain OTS Approval or File a Notice Before I Exercise Fiduciary Powers?

Proposed § 550.70 required a Federal savings association to obtain prior approval from OTS before conducting fiduciary activities that are "materially different" from the activities that OTS has previously approved for the association. The final rule clarifies that a Federal savings association engages in "materially different" activities when, among other things, it acts under fiduciary powers that it has held but not exercised for five or more years.

The purpose of the "materially different" standard was to identify those situations where a complete OTS review is necessary to ensure that proposed operations are consistent with the association's experience, resources, and expertise. If a Federal savings association wishes to commence fiduciary activities under powers it has held but not exercised for more than five years, its ability to conduct fiduciary operations could have changed since that time. Accordingly, under § 550.70, the association must submit a new trust application to allow OTS to review its current expertise and resources.

We have also revised § 550.70 to make clear that OTS must approve the exercise of fiduciary powers by a Federal savings association. If, for instance, a Federal thrift without fiduciary powers merges with a state institution with fiduciary powers, a resulting Federal savings association would have to obtain OTS approval before exercising fiduciary powers.

3. Section 550.135(b)—What State Laws Apply to My Operations?

Proposed § 550.135(b) provided that, except for those state laws specifically mentioned in section 5(n) of the HOLA, "[s]tate laws that purport to regulate any other aspect of your fiduciary activities do not apply to your fiduciary operations." One commenter has asked that we clarify what types of state laws "purport to regulate" a Federal thrift's fiduciary operations. As one example, the commenter asks whether state securities laws requiring investment adviser licensing of a Federal savings association or its employees are applicable state laws.

To clarify OTS's views on preemption of state law in the context of fiduciary activities, OTS has included language similar to that found in the lending and deposit-taking regulations that discuss preemption. *See* 12 CFR 557.11–.13 and 560.2. Fiduciary activities, like lending and deposit-taking, are authorized by section 5 of the HOLA. Section 5 authorizes OTS, "under such regulations as [it] may prescribe * * * to provide for the * * * operation and regulation of * * * Federal savings associations * * * giving primary consideration of the best practices of thrift institutions in the United States." 12 U.S.C. 1464(a) (2001).

OTS intends that, except with regard to those specific state laws identified in section 5(n) of the HOLA (scope of fiduciary powers, investment in state trust companies, access to examination reports regarding trust activities, deposit of securities, oaths and affidavits, and capital), a determination whether Federal law preempts state law will follow the same analysis set out in the lending and deposit-taking regulations.

OTS has moved proposed § 550.135(b) into a separate section, § 550.136, entitled "To what extent do State laws apply to my fiduciary operations?" Proposed § 550.135(a) is now § 550.135 of the final rule, with the new title "How do I determine which State's laws apply to my fiduciary operations?"

Section 550.136 of the final rule tracks § 560.2 of the lending regulations. Section 550.136(a) includes a general statement regarding Federal preemption of state law under HOLA. Paragraph (a) makes clear that, to enhance safety and soundness and to enable Federal savings associations to conduct their fiduciary activities in accordance with the best practices of thrift institutions in the United States (by efficiently delivering fiduciary services to the public free from undue regulatory duplication and burden), OTS occupies the field of the regulation of the fiduciary activities of Federal savings associations.

In so doing, OTS intends to give Federal savings associations maximum flexibility to exercise their fiduciary powers in accordance with a uniform scheme of Federal regulation. Federal savings associations may exercise fiduciary powers as authorized under HOLA and OTS regulations, without regard to state laws that purport to regulate or otherwise affect their fiduciary activities, except to the extent provided in 12 U.S.C. 1464(n) (state laws regarding scope of fiduciary powers, investments in state trust companies, access to examination reports regarding trust activities, deposits of securities, oaths and affidavits, and capital) or as provided in paragraph (c), discussed below. Paragraph (a) also clarifies that for purposes of § 550.136, "state law" includes any state statute, regulation, ruling, order, or judicial decision.

Paragraph (b) then lists illustrative examples of the types of state laws that are preempted. That list includes state registration and licensing laws, state recordkeeping requirements, state advertising and marketing laws, state laws affecting the ability of a Federal savings association acting in a fiduciary capacity to maintain an action or proceeding in state court, and state laws regarding fiduciary-related fees. These examples are drawn from prior OTS opinion letters and inquiries that OTS has received from thrifts that conduct fiduciary activities.[8]

Finally, paragraph (c) specifies that certain state laws generally are not preempted.[9] The list of those laws is the same as in § 560.2(c) (contract and commercial law, real property law, tort law, and criminal law), with the addition of state probate law.[10] Generally, Federal law will not preempt these laws to the extent the state law only incidentally affects the fiduciary operations of Federal savings associations or is otherwise consistent with the purposes of the preemption regulation. The final rule provides that OTS may decline to preempt state laws other than those listed in the above categories if the law furthers a vital state interest and either has only an incidental effect on the association's fiduciary operations or is not otherwise contrary to the purposes of the preemption regulation.

When confronted with interpretive questions under § 550.136, we anticipate that courts will, in accordance with well established principles of regulatory construction, look to the regulatory history of § 550.136 for guidance. The purpose of paragraph (c) is to preserve the traditional infrastructure of basic state laws that undergird commercial transactions, not to open the door to state regulation of a Federal savings association's fiduciary activities.

When analyzing the status of state laws under § 550.136, the first step will be to determine whether the type of law in question is listed in paragraph (b). If so, the analysis will end there; the law is preempted. If the law is not covered by paragraph (b), the next question is whether the law affects fiduciary activities. If it does, then, in accordance with paragraph (a), the presumption

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[2] At the request of OTS trust examiners, many Federal savings associations with trust departments have been keeping records similar to those required by the final recordkeeping and confirmation rules.

[3] Under the proposed rule, the association's policies and procedures must assign responsibility for the supervision of officers and employees engaged in various aspects of the trading process; provide for the fair and equitable allocation of securities and prices to accounts when the savings association receives orders for the same security at approximately the same time and it places orders individually or in combination; provide for the crossing of buy and sell orders on a fair and equitable basis; and require certain officers and employees to make quarterly reports containing specific information on personal securities transactions.

[4] As noted, the SEC has just issued a proposed rule implementing certain limited bank exceptions from the definition of "dealer." 67 FR 64495 (November 5, 2002).

[5] *See* 66 FR 34792 (July 2, 2001).

[6] 12 U.S.C. 1464(n) (2001). Under that section, OTS may authorize a Federal savings association:

[T]o act as trustee, executor, administrator, guardian, or in any other fiduciary capacity in which State banks, trust companies, or other corporations that compete with Federal savings associations are permitted to act *under the laws of the State in which the Federal savings association is located.* (emphasis added). Thus, under HOLA, the scope of a Federal savings association's fiduciary powers is expressly tied to the laws of the state in which the Federal savings association is "located."

[7] Distinguishing between key fiduciary activities and ancillary activities in § 550.60 assists in determining where the Federal savings association is acting in a fiduciary capacity for purposes of section 5(n) of the HOLA. The classification as ancillary does not affect the importance of those activities or change in any way an association's fiduciary duty with respect to those activities. *See* 66 FR 34792, 34793, n.2.

[8] *See, e.g.*, OTS Op. Chief Counsel (January 3, 2001) (preempting state restriction on out-of-state Federal savings association conducting fiduciary activities in an agency office); OTS Op. Chief Counsel (July 1, 1998) (preempting state restrictions on who may act as trustee of a pre-need funeral trust); OTS Op. Chief Counsel (August 8, 1996) (preempting state marketing restrictions); OTS Op. Chief Counsel (June 21, 1996) (preempting state marketing restrictions); OTS Op. Chief Counsel (March 28, 1996) (preempting state licensing requirement); OTS Op. Acting Chief Counsel (June 13, 1994) (preempting state licensing requirement).

[9] In clarifying the scope of Federal preemption of state law in the fiduciary area, OTS does not intend to supplant areas in which state law has long governed the duties of a fiduciary, such as state principal and income laws and state "prudent man" or "prudent investor" laws.

[10] Acting as an executor is a classic fiduciary activity. 12 CFR 550.30(b). Moreover, institutions acting as executors have always been subject to state laws governing the administration of estates. OTS has no intention of changing this in the final rule.

arises that the law is preempted. This presumption can by reversed only if the law can clearly be shown to fit within the confines of paragraph (c). For these purposes, paragraph (c) is intended to be interpreted narrowly. Any doubt should be resolved in favor of preemption.

For example, under this approach Federal law would not preempt a provision in a state corporation code requiring an out-of-state corporation doing business in that state to appoint a state resident or official as the corporation's agent for service of process purposes. The law is not included in the list of illustrative examples in paragraph (b). The law does, however, affect a thrift's fiduciary activities, so a presumption of preemption arises. This presumption can by reversed if the law fits within the confines of paragraph (c).

In our view, a service of process statute falls within the exception in subparagraph (c)(1) for commercial laws. Moreover, a requirement that an out-of-state thrift appoint a resident or official for purposes of service of process would only incidentally impact the fiduciary activities of a Federal savings association. Furthermore, finding such a state law applicable to a Federal savings association is consistent with the purposes of the preemption regulation. The preemption regulation is intended to allow Federal savings associations to exercise fiduciary powers in accordance with a uniform Federal scheme. Appointing a state resident or official to receive service of process is largely ministerial and should not affect a Federal savings association's ability to offer fiduciary services free of overlapping, varying state regulation. Accordingly, the state law would not be preempted.

As questions arise, OTS will issue interpretive guidance consistent with the foregoing. While recognizing that no regulation can anticipate and expressly resolve all questions, we believe § 550.136 provides thrifts with substantially more guidance than was previously available. This should enable thrifts to plan and operate their fiduciary activities more efficiently. From time to time, OTS will review, update, and modify § 550.136 to ensure that it reflects new developments and promotes "best practices" and safety and soundness.

II. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires Federal agencies to prepare a final regulatory flexibility analysis with a final rule that was subject to notice and comment unless the agency certifies that the rule will not have a significant impact on a substantial number on small entities.

Most of the changes to part 550 merely codify existing OTS regulatory interpretations regarding the scope of fiduciary powers, multi-state operations, and the impact of Federal law. To the extent that the final rule modifies existing requirements of part 550, the final rule will reduce burden by eliminating application requirements under certain circumstances, by substituting notices for applications in other circumstances, by providing greater flexibility regarding the collateralization of deposits of fiduciary funds, and by clarifying the scope of Federal preemption of state laws in the fiduciary area. The final rule also clarifies the scope of activities that are exempt from part 550 under section 5(l) of the HOLA. While the final rule eliminates § 550.580(c), which exempts Federal savings associations that act as trustees of fiduciary accounts that involve no active fiduciary duties, OTS is not aware of any small Federal savings associations that rely on that provision. Accordingly, OTS certifies to the Chief Counsel of Advocacy of the Small Business Administration that the final changes to part 550 will not have a significant economic impact on a substantial number of small entities.

In the proposal, OTS published an initial regulatory flexibility analysis for part 551. OTS includes here a final regulatory flexibility analysis for part 551.

Because the recordkeeping and confirmation requirements are new for savings associations, OTS cannot determine whether the addition of part 551 will have a significant impact on a substantial number of small entities. However, we have consulted supporting statements filed by the OCC for substantially identical requirements in connection with a 1999 submission under the Paperwork Reduction Act. Because savings associations are now considered "banks" for purposes of the broker-dealer registration requirements and because OTS has modeled the final rule on the OCC's recordkeeping and confirmation rules, OTS believes that the OCC's estimated annual paperwork cost of complying with the regulations provides a reasonable starting point for OTS's analysis of the cost to small business entities to comply with the proposed rule. These estimates are discussed under section B—Requirements of the proposed rule.

A description of the reasons why OTS is issuing this final rule, and a statement of the objectives of, and legal basis for, proposed part 551 are included in the supplementary material above. OTS did not receive any comments on its initial regulatory flexibility analysis for part 551.

A. Small Entities to Which the Proposed Rule Would Apply

Part 551 applies to savings associations that effect securities transactions for customers. OTS calculates that as of October 21, 2002, it regulates approximately 982 savings associations. Of these savings associations approximately 529 savings associations hold assets under $150 million. Small depository institutions are generally defined, for RFA purposes, as those with assets under $150 million.

In all likelihood, however, this number substantially overstates the number of small savings associations that will be effected by the final rule. No savings associations are currently registered with the SEC as broker-dealers, although some provide such services to their customers through arrangements with a third party broker-dealer. Because the new SEC rule permitting savings associations to perform broker-dealer activities without registering is so recent, OTS has no information concerning how many of its savings associations, large or small, have commenced or are contemplating commencing these operations.

B. Requirements of the Final Rule

As set out in detail in the regulatory text, the final rule requires savings associations to retain records of securities transactions, send confirmation of the transactions to customers, settle securities transactions within certain timeframes, and establish and maintain specific written policies and procedures regarding securities transactions.

Subpart A of the final rule establishes the minimum recordkeeping requirements for savings associations concerning securities transactions with their customers. This provision requires that the savings association maintain essential records necessary to track securities transactions. This type of recordkeeping is a usual and customary process for a savings association. Consequently, most savings associations should be partially or fully prepared to meet the recordkeeping requirements. While we believe that this requirement should not impose significant burdens, savings associations may incur additional personnel (managerial, computer, and support staff), data storage, and other costs to the extent that existing resources are insufficient.

Subpart B establishes requirements for confirmation notices and subpart C addresses the timing of settlement for securities transactions. To the extent that existing practices and available resources are insufficient, savings associations may need the assistance of legal and securities professionals and other personnel (managerial, computer, and support staff) to ensure that notices meet the content requirements and are provided within the time frames set forth in the regulation, and to ensure that securities transactions close within the times specified in the rule.

Finally, subpart D requires the savings association to establish and follow various policies and procedures to govern securities transactions. Savings associations commonly develop and implement policies and procedures in many of the areas addressed by the final rule (for example, the assignment of responsibility for the oversight of personnel). Accordingly, most savings associations should be partially prepared to meet these requirements. However, the development of policies and procedures on matters specific to securities transactions may require the assistance of legal and securities professionals. Compliance with these policies and procedures may require additional personnel, training, and other costs.

Based on OCC estimates, OTS calculates that this rule will impose at least $264 in additional costs on small savings associations that begin to effect securities transactions on behalf of customers.[11] The development of policies and procedures, however, may require the assistance of legal or securities professionals that were not included in the OCC's estimate. Accordingly, OTS has included additional costs of $305 to $403 to reflect the efforts of these professionals.[12] Accordingly, OTS estimates that the total cost of complying with this rule will be $569 to $667 per small institution. OTS notes that these costs will drop in subsequent years because thrifts will not be required to develop, and will only be required to update, policies and procedures on effecting securities transactions.

C. Significant Alternatives

Section 604(a)(5) requires OTS to describe the steps it has taken to minimize the significant economic impact on small entities consistent with the objectives of the statute and regulations. OTS solicited comment on other alternatives that would minimize the burden on small savings associations that effect securities transactions, including whether any modifications or exemptions from the rules for small savings associations would be appropriate. OTS received no comments.

As noted in the proposal, OTS considered recommending, rather than requiring, recordkeeping and confirmation provisions regarding securities transactions conducted by savings associations, but decided that such an approach was inappropriate. The SEC and the other Federal banking regulators have created a regulatory scheme designed to protect investors through adequate disclosure of information and to discourage and detect fraudulent securities practices through prudent recordkeeping requirements. OTS believes that similar provisions are necessary to bring the savings association industry into conformity with the standards of the securities and banking industries for effecting securities transactions.

OTS, however, has attempted to minimize the economic impact of the final rule on savings associations, including small savings associations, while still achieving the overall objectives of the regulation. OTS has included several exemptions to the rule that may be available to small savings associations. For example, § 551.20(b)(1) exempts savings associations from certain recordkeeping and policy and procedure requirements if the institution conducts fewer than 500 securities transactions for customers (excluding transactions in government securities). Similarly, § 551.20(b)(2) exempts savings associations who conduct fewer than 500 government securities transactions from certain recordkeeping requirements. OTS believes that many small associations will take advantage of these exemptions.

Moreover, OTS continues to have the ability under 12 CFR 500.30(a) to waive any recordkeeping or confirmation requirements upon a finding of good cause. This provision permits OTS to minimize any significant economic impact of a provision on a specific institution on a case-by-case basis.

Finally, OTS has included a substantial amount of flexibility in the final rule. For example, a savings association may maintain required records in any manner, form, or format that it deems appropriate. Further, the rules would specifically permit the use of electronic storage media and the provision of notices through electronic means. *See* §§ 551.60 and 551.110. In addition, several provisions permit a savings association, through the agreement with the customer, to modify the requirements of the part.

D. Other Matters

There are no Federal rules or statutes that duplicate, overlap, or conflict with the proposed rule. However, as noted above, the SEC and the other banking regulators have adopted substantially similar recordkeeping and confirmation requirements for broker-dealers and other depository institutions.

III. Paperwork Reduction Act

OTS in the proposal solicited specific comment on the paperwork collection requirements in the proposed rule. No commenters included any comments or suggestions regarding paperwork.

The information collection requirements contained in the final rule are virtually identical to those included in the proposed rule on theses subjects published in June 2002. The burden on respondents remains unchanged from those in the proposal, which OMB approved in July 2002. *See* OMB Nos. 1550–0109 (July 15, 2002; expires July 31, 2005) and 1550–0037 (July 22, 2002; expires July 31, 2005). Respondents/recordkeepers are not required to respond to any collection of information unless it displays a currently valid OMB control number.

IV. Unfunded Mandates Act

OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act.

V. Effective Date

Under the Administrative Procedure Act, an agency must publish a rule at least 30 days before its effective date. 5 U.S.C. 553(d). The agency may, however, waive this 30-day delayed publication requirement if the rule relieves a restriction (5 U.S.C. 553(d)(1)) or for good cause (5 U.S.C. 553(d)(3)).

OTS waives the 30-day requirement for the amendments to its fiduciary powers regulations because the rule imposes no new burden and relieves a

[11] OCC estimated that banks would incur 11 hours of additional burden in their first year and an additional 4 hours thereafter. It further estimated that 80 percent of the burden would be clerical at a cost of $20 per hour and that 20 percent of the burden would be managerial at $40 per hour. Thus, the average annual cost of each hour is $24.

[12] The average billing rate for a partner in a United States law firm with less than nine lawyers is $183 per hour. The average billing rate for an associate in such a firm is $139 per hour. 1999 Survey of Law Firm Economics, Altman Weil Pensa Publications, Inc., reported at *www.lawyers.com*. Using OCC's estimate that the rule imposes a maximum of 2.2 managerial burden hours, OTS estimates that these costs will be between $305 and $403.

restriction, specifically the restriction against a Federal savings association exercising fiduciary powers in a new state without OTS's approval.

With regard to the recordkeeping and confirmation rules, OTS waives the 30-day delayed effective provision for good cause. OTS finds good cause for making the recordkeeping and confirmation rules effective at the beginning of the next quarter because the new rules will fill a current gap in the rules applicable to securities transactions of securities transactions.

Moreover, as noted in section I(A)(1), n. 2, above, at the request of OTS trust examiners, many Federal savings associations with trust departments have been keeping records similar to those required by the final recordkeeping and confirmation rules. For those securities transactions conducted by a savings association outside the trust department, keeping records and sending confirmations are standard industry practice in the securities business, so a savings association should already be following these, or similar, requirements simply as a matter of sound business practices. Accordingly, savings associations should not need the benefit of the full 30-day delayed effective date in order to have enough time to comply with the rule. As a result, the final rule will be effective January 1, 2003.

VI. Executive Order 12866

OTS has determined that the final rule does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

VII. Federalism

Executive Order 13132 imposes certain requirements on an agency when formulating and implementing policies that may have federalism implications or taking action that preempts state law. In accordance with those requirements, OTS has consulted with the Conference of State Bank Supervisors, the National Association of Attorneys General, and the American Council of State Savings Supervisors.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 550

Accounting, Reporting and recordkeeping requirements, Savings associations, Trusts and trustees.

12 CFR Part 551

Reporting and recordkeeping requirements, Savings associations, Securities, Trusts and trustees.

Accordingly, OTS amends chapter V, title 12, Code of Federal Regulations as set forth below:

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 506 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Amend § 506.1(b) by adding in numerical order, the following entry to read as follows:

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control No.
. . . . .	
Part 551	1550–0109
. . . . .	

PART 550—[AMENDED]

3. The authority citation for part 550 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464.

4. Section 550.20 is revised to read as follows:

§ 550.20 What are fiduciary powers?

Fiduciary powers are the authority that OTS permits you to exercise under 12 U.S.C. 1464(n).

5. Section 550.60 is amended by adding definitions of the phrases "activities ancillary to your fiduciary business" and "fiduciary activities" in alphabetical order, to read as follows:

§ 550.60 What other definitions apply to this part?

Activities ancillary to your fiduciary business include advertising, marketing, or soliciting fiduciary business, contacting existing or potential customers, answering questions and providing information to customers related to their accounts, acting as liaison between you and your customer (for example, forwarding requests for distribution, changes in investment objectives, forms, or funds received from the customer), and inspecting or maintaining custody of fiduciary assets or holding title to real property. This list is illustrative and not comprehensive. Other activities may also be "ancillary activities" for purposes of this definition.

* * * * *

Fiduciary activities include accepting a fiduciary appointment, executing fiduciary-related documents, providing investment advice for a fee regarding fiduciary assets, or making discretionary decisions regarding investment or distribution of assets.

6. Section 550.70 is revised to read as follows:

§ 550.70 Must I obtain OTS approval or file a notice before I exercise fiduciary powers?

You should refer to the following chart to determine if you must obtain OTS approval or file a notice with OTS before you exercise fiduciary powers. This chart does not apply to activities that are exempt under subpart E of this part.

If you will conduct . . .	Then . . .
(a) Fiduciary activities for the first time and OTS has not previously approved an application that you submitted under this part.	You must obtain prior approval from OTS under §§ 550.80 through 550.120 before you conduct the activities
(b) Fiduciary activities that are materially different from the activities that OTS has previously approved for you, including fiduciary activities that OTS has previously approved for you have not exercised for at least five years.	You must obtain prior approval from OTS under §§ 550.80 through 550.120 before you conduct the activities.
(c) Fiduciary activities that are not materially different from the activities that OTS has previously approved for you.	You must file a written notice described at § 550.125 if you commence the activities in a new State. You do not need to file a written notice if you commence the activities at a new location in a State where you already conduct these activities.
(d) Activities that are ancillary to your fiduciary business	You do not have to obtain prior OTS approval or file a that are notice with OTS.

7. Section 550.125 is added to subpart A to read as follows:

§ 550.125 How do I file the notice under § 550.70(c)?

(a) If you are required to file a notice under § 550.70(c), within ten days after you commence the fiduciary activities in a new State, you must file a written notice that identifies each new State in which you conduct or will conduct fiduciary activities, describe the fiduciary activities that you conduct or will conduct in each new State, and provide sufficient information supporting a conclusion that the activities are permissible in the State.

(b) You must file the notice with the appropriate OTS Regional Office at the address in § 516.40(a) of this chapter.

8. Section 550.130 is revised to read as follows:

§ 550.130 How may I conduct multi-state operations?

(a) *Conducting fiduciary activities in more than one State.* You may conduct fiduciary activities in any State, subject to the application and notice requirements in subpart A of this part.

(b) *Serving customers in more than one State.* When you conduct fiduciary activities in a State:

(1) You may market your fiduciary services to, and act as a fiduciary for, customers located in any State, may act as a fiduciary for relationships that include property located in other States, and may act as a testamentary trustee for a testator located in other States.

(2) You may establish or utilize an office in any State to perform activities that are ancillary to your fiduciary business.

9. Section 550.135 is added to read as follows:

§ 550.135 How do I determine which State's laws apply to my operations?

(a) The State laws that apply to you by virtue of 12 U.S.C. 1464(n) are the laws of the States in which you conduct fiduciary activities. For each individual State, you may conduct fiduciary activities in the capacity of trustee, executor, administrator, guardian, or in any other fiduciary capacity the State permits for its State banks, trust companies, or other corporations that compete with Federal savings associations in the State.

(b) For each fiduciary relationship, the State referred to in 12 U.S.C. 1464(n) is the State in which you conduct fiduciary activities for that relationship.

10. Section 550.136 is added to read as follows:

§ 550.136 To what extent do State laws apply to my fiduciary operations?

(a) *Occupation of field.* To enhance safety and soundness and to enable Federal savings associations to conduct their fiduciary activities in accordance with the best practices of thrift institutions in the United States (by efficiently delivering fiduciary services to the public free from undue regulatory duplication and burden), OTS occupies the field of the regulation of the fiduciary activities of Federal savings associations. In so doing, OTS intends to give Federal savings associations maximum flexibility to exercise their fiduciary powers in accordance with a uniform scheme of Federal regulation. Accordingly, Federal savings associations may exercise fiduciary powers as authorized under Federal law, including this part, without regard to State laws that purport to regulate or otherwise affect their fiduciary activities, except to the extent provided in 12 U.S.C. 1464(n) (State laws regarding scope of fiduciary powers, investments in state trust companies, access to examination reports regarding trust activities, deposits of securities, oaths and affidavits, and capital) or in paragraph (c) of this section. For purposes of this section, "State law" includes any State statute, regulation, ruling, order, or judicial decision.

(b) *Illustrative examples.* Examples of State laws that are preempted by the HOLA and this section include those regarding:

(1) Registration and licensing;
(2) Recordkeeping;
(3) Advertising and marketing;
(4) The ability of a federal savings association conducting fiduciary activities to maintain an action or proceeding in State court; and
(5) Fiduciary-related fees.

(c) *State laws that are not preempted.* State laws of the following types are not preempted to the extent that they only incidentally affect the fiduciary operations of Federal savings associations or are otherwise consistent with the purposes of paragraph (a) of this section:

(1) Contract and commercial law;
(2) Real property law;
(3) Tort law;
(4) Criminal law;
(5) Probate law; and
(6) Any other law that OTS, upon review, finds:

(i) Furthers a vital State interest; and

(ii) Either has only an incidental effect on fiduciary operations or is not otherwise contrary to the purposes expressed in paragraph (a) of this section.

11. Section 550.310 is amended by removng the first sentence and adding two new sentences in its place to read as follows:

§ 550.310 What if the FDIC does not insure the deposits?

If the FDIC does not insure the entire amount of a self deposit, you must set aside collateral as security. If the FDIC does not insure the entire amount of an affiliate deposit, you or your affiliate must set aside collateral as security.

* * *

12. Section 550.580is amended by revising the section heading and the introductory text and by removing paragraph (c) to read as follows:

§ 550.580 When may I conduct fiduciary activities without obtaining OTS approval?

Subject to the requirements of this subpart E, you do not need OTS approval under subpart B if you conduct fiduciary activities in the following fiduciary capacities:

* * * * *

13. The section heading and introductory text of § 550.600 are revised to read as follows:

§ 550.600 How may funds be invested when I act in an exempt fiduciary capacity?

If you act in an exempt fiduciary capacity under § 550.580, the funds of the fiduciary account may be invested only in the following:

* * * * *

14. A new part 551 is added as follows:

PART 551—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

Sec.

551.10 What does this part do?
551.20 Must I comply with this part?
551.30 What requirements apply to all transactions?
551.40 What definitions apply to this part?

Subpart A—Recordkeeping Requirements

551.50 What records must I maintain for securities transactions?
551.60 How must I maintain my records?

Subpart B—Content and Timing of Notice

551.70 What type of notice must I provide when I effect a securities transaction for a customer?
551.80 How do I provide a registered broker-dealer confirmation?
551.90 How do I provide a written notice?
551.100 What are the alternate notice requirements?
551.110 May I provide a notice electronically?
551.120 May I charge a fee for a notice?

Subpart C—Settlement of Securities Transactions

551.130 When must I settle a securities transaction?

Subpart D—Securities Trading Policies and Procedures

551.140 What policies and procedures must I maintain and follow for securities transactions?

551.150 How do my officers and employees file reports of personal securities trading transactions?

Authority: 12 U.S.C. 1462a, 1463, 1464.

§ 551.10 What does this part do?

This part establishes recordkeeping and confirmation requirements that apply when a savings association ("you") effects certain securities transactions for customers.

§ 551.20 Must I comply with this part?

(a) *General.* Except as provided under paragraph (b) of this section, you must comply with this part when:

(1) You effect a securities transaction for a customer.

(2) You effect a transaction in government securities.

(3) You effect a transaction in municipal securities and are not registered as a municipal securities dealer with the SEC.

(4) You effect a securities transaction as fiduciary. If you are a Federal savings association, you also must comply with 12 CFR part 550 when you effect such a transaction. If you are a State savings association, you must comply with applicable law when you effect such a transaction.

(b) *Exceptions*—(1) *Small number of transactions.* You are not required to comply with § 551.50(b) through (d) (recordkeeping) and § 551.140(a) through (c) (policies and procedures), if you effected an average of fewer than 500 securities transactions per year for customers over the three prior calendar years. You may exclude transactions in government securities when you calculate this average.

(2) *Government securities.* If you effect fewer than 500 government securities brokerage transactions per year, you are not required to comply with § 551.50 (recordkeeping) for those transactions. This exception does not apply to government securities dealer transactions. *See* 17 CFR 404.4(a).

(3) *Municipal securities.* If you are registered with the SEC as a "municipal securities dealer," as defined in 15 U.S.C. 78c(a)(30) (see 15 U.S.C. 78o-4), you are not required to comply with this part when you conduct municipal securities transactions.

(4) *Foreign branches.* You are not required to comply with this part when you conduct a transaction at your foreign branch.

(5) *Transactions by registered broker-dealers.* You are not required to comply with this part for securities transactions effected by a registered broker-dealer, if the registered broker-dealer directly provides the customer with a confirmation. These transactions include a transaction effected by your employee who also acts as an employee of a registered broker-dealer ("dual employee").

§ 551.30 What requirements apply to all transactions?

You must effect all transactions, including transactions excepted under § 551.20, in a safe and sound manner. You must maintain effective systems of records and controls regarding your customers' securities transactions. These systems must clearly and accurately reflect all appropriate information and provide an adequate basis for an audit.

§ 551.40 What definitions apply to this part?

Asset-backed security means a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period. *Asset-backed security* includes any rights or other assets designed to ensure the servicing or timely distribution of proceeds to the security holders.

Common or collective investment fund means any fund established under 12 CFR 550.260(b) or 12 CFR 9.18.

Completion of the transaction means:

(1) If the customer purchases a security through or from you, except as provided in paragraph (2) of this definition, the time the customer pays you any part of the purchase price. If payment is made by a bookkeeping entry, the time you make the bookkeeping entry for any part of the purchase price.

(2) If the customer purchases a security through or from you and pays for the security before you request payment or notify the customer that payment is due, the time you deliver the security to or into the account of the customer.

(3) If the customer sells a security through or to you, except as provided in paragraph (4) of this definition, the time the customer delivers the security to you. If you have custody of the security at the time of sale, the time you transfer the security from the customer's account.

(4) If the customer sells a security through or to you and delivers the security to you before you request delivery or notify the customer that delivery is due, the time you pay the customer or pay into the customer's account.

Customer means a person or account, including an agency, trust, estate, guardianship, or other fiduciary account for which you effect a securities transaction. *Customer* does not include a broker or dealer, or you when you: act as a broker or dealer; act as a fiduciary with investment discretion over an account; are a trustee that acts as the shareholder of record for the purchase or sale of securities; or are the issuer of securities that are the subject of the transaction.

Debt security means any security, such as a bond, debenture, note, or any other similar instrument that evidences a liability of the issuer (including any security of this type that is convertible into stock or a similar security). *Debt security* also includes a fractional or participation interest in these debt securities. *Debt security* does not include securities issued by an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1, *et seq.*

Government security means:

(1) A security that is a direct obligation of, or an obligation that is guaranteed as to principal and interest by, the United States;

(2) A security that is issued or guaranteed by a corporation in which the United States has a direct or indirect interest if the Secretary of the Treasury has designated the security for exemption as necessary or appropriate in the public interest or for the protection of investors;

(3) A security issued or guaranteed as to principal and interest by a corporation if a statute specifically designates, by name, the corporation's securities as exempt securities within the meaning of the laws administered by the SEC; or

(4) Any put, call, straddle, option, or privilege on a government security described in this definition, other than a put, call, straddle, option, or privilege:

(i) That is traded on one or more national securities exchanges; or

(ii) For which quotations are disseminated through an automated quotation system operated by a registered securities association.

Investment discretion means the same as under 12 CFR 550.40(a).

Investment company plan means any plan under which:

(1) A customer purchases securities issued by an open-end investment company or unit investment trust registered under the Investment Company Act of 1940, making the payments directly to, or made payable to, the registered investment company, or the principal underwriter, custodian, trustee, or other designated agent of the registered investment company; or

(2) A customer sells securities issued by an open-end investment company or unit investment trust registered under the Investment Company Act of 1940 under:

(i) An individual retirement or individual pension plan qualified under the Internal Revenue Code; or

(ii) A contractual or systematic agreement under which the customer purchases at the applicable public offering price, or redeems at the applicable redemption price, securities in specified amounts (calculated in security units or dollars) at specified time intervals, and stating the commissions or charges (or the means of calculating them) that the customer will pay in connection with the purchase.

Municipal security means:

(1) A security that is a direct obligation of, or an obligation guaranteed as to principal or interest by, a State or any political subdivision, or any agency or instrumentality of a State or any political subdivision.

(2) A security that is a direct obligation of, or an obligation guaranteed as to principal or interest by, any municipal corporate instrumentality of one or more States; or

(3) A security that is an industrial development bond, the interest on which is excludable from gross income under section 103(a) of the Code (26 U.S.C. 103(a)).

Periodic plan means a written document that authorizes you to act as agent to purchase or sell for a customer a specific security or securities (other than securities issued by an open end investment company or unit investment trust registered under the Investment Company Act of 1940). The written document must authorize you to purchase or sell in specific amounts (calculated in security units or dollars) or to the extent of dividends and funds available, at specific time intervals, and must set forth the commission or charges to be paid by the customer or the manner of calculating them.

SEC means the Securities and Exchange Commission.

Security means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, and any put, call, straddle, option, or privilege on any security or group or index of securities (including any interest therein or based on the value thereof), or, in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing. *Security* does not include currency; any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of less than nine months, exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited; a deposit or share account in a Federal or State chartered depository institution; a loan participation; a letter of credit or other form of bank indebtedness incurred in the ordinary course of business; units of a collective investment fund; interests in a variable amount (master) note of a borrower of prime credit; U.S. Savings Bonds; or any other instrument OTS determines does not constitute a security for purposes of this part.

Sweep account means any prearranged, automatic transfer or sweep of funds above a certain dollar level from a deposit account to purchase a security or securities, or any prearranged, automatic redemption or sale of a security or securities when a deposit account drops below a certain level with the proceeds being transferred into a deposit account.

Subpart A—Recordkeeping Requirements

§ 551.50 What records must I maintain for securities transactions?

If you effect securities transactions for customers, you must maintain all of the following records for at least three years:

(a) *Chronological records.* You must maintain an itemized daily record of each purchase and sale of securities in chronological order, including:

(1) The account or customer name for which you effected each transaction;

(2) The name and amount of the securities;

(3) The unit and aggregate purchase or sale price;

(4) The trade date; and

(5) The name or other designation of the registered broker-dealer or other person from whom you purchased the securities or to whom you sold the securities.

(b) *Account records.* You must maintain account records for each customer reflecting:

(1) Purchases and sales of securities;

(2) Receipts and deliveries of securities;

(3) Receipts and disbursements of cash; and

(4) Other debits and credits pertaining to transactions in securities.

(c) *Memorandum (order ticket).* You must make and keep current a memorandum (order ticket) of each order or any other instruction given or received for the purchase or sale of securities (whether executed or not), including:

(1) The account or customer name for which you effected each transaction;

(2) Whether the transaction was a market order, limit order, or subject to special instructions;

(3) The time the trader received the order;

(4) The time the trader placed the order with the registered broker-dealer, or if there was no registered broker-dealer, the time the trader executed or cancelled the order;

(5) The price at which the trader executed the order;

(6) The name of the registered broker-dealer you used.

(d) *Record of registered broker-dealers.* You must maintain a record of all registered broker-dealers that you selected to effect securities transactions and the amount of commissions that you paid or allocated to each registered broker-dealer during each calendar year.

(e) *Notices.* You must maintain a copy of the written notice required under subpart B of this part.

§ 551.60 How must I maintain my records?

(a) You may maintain the records required under § 551.50 in any manner, form, or format that you deem appropriate. However, your records must clearly and accurately reflect the required information and provide an adequate basis for an audit of the information.

(b) You, or the person that maintains and preserves records on your behalf, must:

(1) Arrange and index the records in a way that permits easy location, access, and retrieval of a particular record;

(2) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section;

(3) Provide promptly any of the following that OTS examiners or your directors may request:

(i) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(ii) A legible, true, and complete printout of the record; and

(iii) Means to access, view, and print the records.

(4) In the case of records on electronic storage media, you, or the person that

maintains and preserves records for you, must establish procedures:

(i) To maintain, preserve, and reasonably safeguard the records from loss, alteration, or destruction;

(ii) To limit access to the records to properly authorized personnel, your directors, and OTS examiners; and

(iii) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(c) You may contract with third party service providers to maintain the records.

Subpart B—Content and Timing of Notice

§ 551.70 What type of notice must I provide when I effect a securities transaction for a customer?

If you effect a securities transaction for a customer, you must give or send the customer the registered broker-dealer confirmation described at § 551.80, or the written notice described at § 551.90. For certain types of transactions, you may elect to provide the alternate notices described in § 551.100.

§ 551.80 How do I provide a registered broker-dealer confirmation?

(a) If you elect to satisfy § 551.70 by providing the customer with a registered broker-dealer confirmation, you must provide the confirmation by having the registered broker-dealer send the confirmation directly to the customer or by sending a copy of the registered broker-dealer's confirmation to the customer within one business day after you receive it.

(b) If you have received or will receive remuneration from any source, including the customer, in connection with the transaction, you must provide a statement of the source and amount of the remuneration in addition to the registered broker-dealer confirmation described in paragraph (a) of this section.

§ 551.90 How do I provide a written notice?

If you elect to satisfy § 551.70 by providing the customer a written notice, you must give or send the written notice at or before the completion of the securities transaction. You must include all of the following information in a written notice:

(a)Your name and the customer's name.

(b)The capacity in which you acted (for example, as agent).

(c) The date and time of execution of the securities transaction (or a statement that you will furnish this information within a reasonable time after the customer's written request), and the identity, price, and number of shares or units (or principal amount in the case of debt securities) of the security the customer purchased or sold.

(d) The name of the person from whom you purchased or to whom you sold the security, or a statement that you will furnish this information within a reasonable time after the customer's written request.

(e) The amount of any remuneration that you have received or will receive from the customer in connection with the transaction unless the remuneration paid by the customer is determined under a written agreement, other than on a transaction basis.

(f) The source and amount of any other remuneration you have received or will receive in connection with the transaction. If, in the case of a purchase, you were not participating in a distribution, or in the case of a sale, were not participating in a tender offer, the written notice may state whether you have or will receive any other remuneration and state that you will furnish the source and amount of the other remuneration within a reasonable time after the customer's written request.

(g) That you are not a member of the Securities Investor Protection Corporation, if that is the case. This does not apply to a transaction in shares of a registered open-end investment company or unit investment trust if the customer sends funds or securities directly to, or receives funds or securities directly from, the registered open-end investment company or unit investment trust, its transfer agent, its custodian, or a designated broker or dealer who sends the customer either a confirmation or the written notice in this section.

(h) Additional disclosures. You must provide all of the additional disclosures described in the following chart for transactions involving certain debt securities:

If you effect a transaction involving . . .	You must provide the following additional information in your written notice . . .
(1) A debt security subject to redemption before maturity.	A statement that the issuer may redeem the debt security in whole or in part before maturity, that the redemption could affect the represented yield, and that additional redemption information is available upon request.
(2) A debt security that you effected exclusively on the basis of a dollar price.	(i) The dollar price at which you effected the transaction; and (ii) The yield to maturity calculated from the dollar price. You do not have to disclose the yield to maturity if: (A) The issuer may extend the maturity date of the security with a variable interest rate; or (B) The security is an asset-backed security that represents an interest in, or is secured by, a pool of receivables or other financial assets that are subject continuously to prepayment.
(3) A debt security that you effected on basis of yield.	(i) The yield at which the transaction, including the percentage amount and its characterization (e.g., current yield, yield to maturity, or yield to call). If you effected the transaction at yield to call, you must indicate the type of call, the call date, and the call price; (ii) The dollar price calculated from that yield; and (iii) The yield to maturity and the represented yield, if you effected the transaction on a basis other than yield to maturity and the yield to maturity is lower than the represented yield. You are not required to disclose this information if: (A) The issuer may extend the maturity date of the security with a variable interest rate; or (B) The security is an asset-backed security that represents an interest in, or is secured by, a pool of receivables or other financial assets that are subject continuously to prepayment.
(4) A debt security that is an asset-backed security that represents an interest in, or is secured by, a pool of receivables or other financial assets that are subject continuously to prepayment.	(i) A statement that the actual yield of the asset-backed security may vary according to the rate at which the underlying receivables or other financial assets are prepaid; and (ii) A statement that you will furnish information concerning the factors that affect yield (including at a minimum estimated yield, weighted average life, and the prepayment assumptions underlying yield) upon the customer's written request.

If you effect a transaction involving . . .	You must provide the following additional information in your written notice . . .
(5) A debt security, other than a government security.	A statement that the security is unrated by a nationally recognized statistical rating organization, if that is the case.

§ 551.100 What are the alternate notice requirements?

You may elect to satisfy § 551.70 by providing the alternate notices described in the following chart for certain types of transactions.

If you effect a securities transaction . . .	Then you may elect to . . .
(a) For or with the account of a customer under a periodic plan, sweep account, or investment company plan.	Give or send to the customer within five business days after the end of each quarterly period a written statement disclosing: (1) Each purchase and redemption that you effected for or with, and each dividend or distribution that you credited to or reinvested for, the customer's account during the period; (2) The date of each transaction; (3) The identity, number, and price of any securities that the customer purchased or redeemed in each transaction; (4) The total number of shares of the securities in the customer's account; (5) Any remuneration that you received or will receive in connection with the transaction; and (6) That you will give or send the registered broker-dealer confirmation described in § 551.80 or the written notice described in § 551.90 within a reasonable time after the customer's written request.
(b) For or with the account of a customer in shares of an open-ended management company registered under the Investment Company Act of 1940 that holds itself out as a money market fund and attempts to maintain a stable net asset value per share.	Give or send to the customer the written statement described at paragraph (a) of this section on a monthly basis. You may not use the alternate notice, however, if you deduct sales loads upon the purchase or redemption of shares in the money market fund.
(c) For an account for which you do not exercise investment discretion, and for which you and the customer have agreed in writing to an arrangement concerning the time and content of the written notice.	Give or send to the customer a written notice at the agreed-upon time and with the agreed-upon content, and include a statement that you will furnish the registered broker-dealer confirmation described in § 551.80 or the written notice described in § 551.90 within a reasonable time after the customer's written request.
(d) For an account for which you exercise investment discretion other than in an agency capacity, excluding common or collective investment funds.	Give or send the registered broker-dealer confirmation described in § 551.80 or the written notice described in § 551.90 within a reasonable time after a written request by the person with the power to terminate the account or, if there is no such person, any person holding a vested beneficial interest in the account.
(e) For an account in which you exercise investment discretion in an agency capacity.	Give or send each customer a written itemized statement specifying the funds and securities in your custody or possession and all debits, credits, and transactions in the customer's account. You must provide this information to the customer not less than once every three months. You must give or send the registered broker-dealer confirmation described in § 551.80 or the written notice described in § 551.90 within a reasonable time after a customer's written request.
(f) For a common or collective investment fund	(1) Give or send to a customer who invests in the fund a copy of the annual financial report of the fund, or (2) Notify the customer that a copy of the report is available and that you will furnish the report within a reasonable time after a written request by a person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account.

§ 551.110 May I provide a notice electronically?

You may provide any written notice required under this subpart B electronically. If a customer has a facsimile machine, you may send the notice by facsimile transmission. You may use other electronic communications if:

(a) The parties agree to use electronic instead of hard copy notices;

(b) The parties are able to print or download the notice;

(c) Your electronic communications system cannot automatically delete the electronic notice; and

(d) Both parties are able to receive electronic messages.

§ 551.120 May I charge a fee for a notice?

You may not charge a fee for providing a notice required under this subpart B, except that you may charge a reasonable fee for the notices provided under §§ 551.100(a), (d), and (e).

Subpart C—Settlement of Securities Transactions

§ 551.130 When must I settle a securities transaction?

(a) You may not effect or enter into a contract for the purchase or sale of a security that provides for payment of funds and delivery of securities later than the latest of:

(1) The third business day after the date of the contract. This deadline is no later than the fourth business day after

the contract for contracts involving the sale for cash of securities that are priced after 4:30 p.m. Eastern Standard Time on the date the securities are priced and are sold by an issuer to an underwriter under a firm commitment underwritten offering registered under the Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, or are sold by you to an initial purchaser participating in the offering;

(2) Such other time as the SEC specifies by rule (*see* SEC Rule 15c6–1, 17 CFR 240.15c6–1); or

(3) Such time as the parties expressly agree at the time of the transaction. The parties to a contract are deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities under a firm commitment offering, if the managing underwriter and the issuer have agreed to the date for all securities sold under the offering and the parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.

(b) The deadlines in paragraph (a) of this section do not apply to the purchase or sale of limited partnership interests that are not listed on an exchange or for which quotations are not disseminated through an automated quotation system of a registered securities association.

Subpart D—Securities Trading Policies and Procedures

§ 551.140 What policies and procedures must I maintain and follow for securities transactions?

If you effect securities transactions for customers, you must maintain and follow policies and procedures that meet all of the following requirements:

(a) Your policies and procedures must assign responsibility for the supervision of all officers or employees who:

(1) Transmit orders to, or place orders with, registered broker-dealers;

(2) Execute transactions in securities for customers; or

(3) Process orders for notice or settlement purposes, or perform other back office functions for securities transactions that you effect for customers. Policies and procedures for personnel described in this paragraph (a)(3) must provide supervision and reporting lines that are separate from supervision and reporting lines for personnel described in paragraphs (a)(1) and (2) of this section.

(b) Your policies and procedures must provide for the fair and equitable allocation of securities and prices to accounts when you receive orders for the same security at approximately the same time and you place the orders for execution either individually or in combination.

(c) Your policies and procedures must provide for securities transactions in which you act as agent for the buyer and seller (crossing of buy and sell orders) on a fair and equitable basis to the parties to the transaction, where permissible under applicable law.

(d) Your policies and procedures must require your officers and employees to file the personal securities trading reports described at § 551.150, if the officer or employee:

(1) Makes investment recommendations or decisions for the accounts of customers;

(2) Participates in the determination of these recommendations or decisions; or

(3) In connection with their duties, obtains information concerning which securities you intend to purchase, sell, or recommend for purchase or sale.

§ 551.150 How do my officers and employees file reports of personal securities trading transactions?

An officer or employee described in § 551.140(d) must report all personal transactions in securities made by or on behalf of the officer or employee if he or she has a beneficial interest in the security.

(a) *Contents and filing of report.* The officer or employee must file the report with you within ten business days after the end of each calendar quarter. The report must include the following information:

(1) The date of each transaction, the title and number of shares, the interest rate and maturity date (if applicable), and the principal amount of each security involved.

(2) The nature of each transaction (*i.e.*, purchase, sale, or other type of acquisition or disposition).

(3) The price at which each transaction was effected.

(4) The name of the broker, dealer, or other intermediary effecting the transaction.

(5) The date the officer or employee submitted the report.

(b) *Report not required for certain transactions.* Your officer or employee is not required to report a transaction if:

(1) He or she has no direct or indirect influence or control over the account for which the transaction was effected or over the securities held in that account;

(2) The transaction was in shares issued by an open-end investment company registered under the Investment Company Act of 1940;

(3) The transaction was in direct obligations of the government of the United States;

(4) The transaction was in bankers' acceptances, bank certificates of deposit, commercial paper or high quality short term debt instruments, including repurchase agreements; or

(5) The officer or employee had an aggregate amount of purchases and sales of $10,000 or less during the calendar quarter.

(c) *Alternate report.* When you act as an investment adviser to an investment company registered under the Investment Company Act of 1940, an officer or employee that is an "access person" may fulfill his or her reporting requirements under this section by filing with you the "access person" personal securities trading report required by SEC Rule 17j–1(d), 17 CFR 270.17j–1(d).

Dated: December 2, 2002.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 02–31005 Filed 12–11–02; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 560, 590 and 591

[No. 2002–59]

RIN 1550–AB51

Alternative Mortgage Transaction Parity Act; Preemption Delay of Effective Date

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule; delay of effective date.

SUMMARY: The Alternative Mortgage Transaction Parity Act (AMTPA) authorizes state chartered housing creditors to make, purchase, and enforce alternative mortgage transactions without regard to any state constitution, law, or regulation. To rely on AMTPA, certain state chartered housing creditors must comply with regulations issued by the Office of Thrift Supervision (OTS). OTS recently revised its rule identifying the OTS regulations that apply under AMTPA. This document delays the effective date of that revised rule.

EFFECTIVE DATE: This amendment modifies the effective date of the final rule published September 26, 2002 at 67 FR 60542. The effective date of the revision to 12 CFR 560.220 is delayed until July 1, 2003. The effective date of amendments to 12 CFR 590.4 and 591.2 remains January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Theresa Stark, Senior Project Manager, Compliance Policy, (202) 906–7054; Karen Osterloh, Special Counsel, (202) 906–6639, Regulations and Legislation Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

AMTPA authorizes state chartered housing creditors to make, purchase, and enforce alternative mortgage transactions without regard to any state constitution, law, or regulation. To rely on AMTPA, however, certain state chartered housing creditors must comply with designated OTS regulations on alternative mortgage transactions. On September 26, 2002, OTS published a final rule revising 12 CFR 560.220, which identifies the OTS regulations that apply to state housing creditors making alternative mortgage transactions under AMTPA.[1] Under the final rule, OTS will no longer identify its regulations on prepayments and late charges as applicable to state housing creditors. As a result, alternative mortgage transactions made by state chartered housing creditors under AMTPA will become subject to state and local laws on these subjects. The rule was to become effective on January 1, 2003.

In late November and early December 2002, several representatives of financial service trade associations (petitioners) filed written requests for extensions of the January 1, 2003 effective date. The petitioners argued that the three-month delayed effective date did not provide a sufficient time for the industry to address implementation issues.

II. Discussion

A. Implementation Issues

Upon reconsideration, OTS believes that an extension is warranted to provide state housing creditors with additional time to adapt to newly applicable state and local requirements.[2] Specifically, OTS believes that a delay is necessary to permit state housing creditors to: (1) Determine applicable legal requirements; (2) reprogram systems and rewrite documents; and (3) conduct training.

Under the revised OTS rule, state housing creditors that engage in alternative mortgage transactions under AMTPA will become subject to state laws on prepayment penalties and late charges. During the last six years, state housing creditors have been able to rely on AMTPA to avoid these state limitations. As a result, many will have little recent experience with applicable state laws on prepayment penalties and late charges. Because state prepayment penalty and late charge restrictions for alternative mortgage transactions frequently differ substantially from restrictions on fixed-rate products, any experience that a state housing creditor may have with applicable restrictions on fixed-rate mortgages may be irrelevant.

Thus, as a result of the final rule, state housing creditors will be required to conduct an in-depth review of applicable state laws to ensure that their alternative mortgage transactions will not violate these laws—a significant endeavor for state housing creditors that operate nationwide or in multiple jurisdictions.

In addition to ascertaining the scope of applicable restrictions on prepayment penalties and late charges, state housing creditors will be required to undertake the following significant modifications to systems and documents to ensure compliance with state law: (1) Rewrite promissory notes and loan agreements; (2) prepare and program newly required disclosures, including disclosures to be delivered at or prior to origination and disclosures required during loan servicing; (3) modify loan origination systems to accurately reflect legal requirements and applicable codes; (4) modify servicing systems; and (5) develop audit and quality control programs.

Finally, state housing creditors will have to retrain their employees and agents on the new legal requirements for their various loan products and on the use of the updated systems and documents. Such activities may require the production of appropriate training materials and conducting training sessions for employees.

B. New Effective Date

In determining the effective date for new regulations that impose additional requirements on insured depository institutions, OTS must consider, consistent with the principles of safety and soundness and the public interest, any administrative burdens that the regulation would place on depository institutions and customers of depository institutions, and the benefits of the regulation.[3]

Based on the administrative burdens described by petitioners, OTS believes that the original January 1, 2003 effective date was inadequate to permit state housing creditors, including insured depository institutions, to perform all of the tasks necessary to respond to the new regulatory environment in a coherent manner.[4] OTS is reluctant to place state housing creditors in a position where they are unable to comply or are forced to put unready or untested systems into operation. Such an action could result in borrowers receiving loans that do not meet the requirements under state law. This may harm consumers to the extent that they are charged prepayment penalties that are prohibited under state law, or are precluded from electing a lower rate in return for a prepayment penalty where such penalties are permitted. In addition, such an action could result in lawsuits, which could undermine consumer confidence in the mortgage industry. Accordingly, OTS will extend the effective date of the AMTPA rule.

Almost three months have passed since the issuance of the September 26, 2002 final rule. By now, OTS anticipates that most state housing creditors have researched and analyzed the applicable law and are beginning to update their operating systems and documents and take other steps toward compliance with the revised regulatory environment. OTS believes that a delay of an additional six months, as requested by several petitioners, will be sufficient for state housing creditors, including companies with regional or national operations, to complete good faith efforts to implement the remaining changes required by the revised rule. OTS notes that this extended date is more than nine months after the publication of the final rule on September 26, 2002.

OTS also considered whether to extend the effective date to January 1, 2004, as requested by some petitioners. However, OTS believes that this effective date raises other issues, including new implementation issues. As one commenter observed, changes required by the end of a calendar year are particularly problematic because so many functions must be performed at the year-end that sufficient staff is often

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[1] 67 FR 60542 (Sept. 26, 2002).

[2] The September 26, 2002 final rule also made unrelated revisions to 12 CFR part 590 (Preemption of State Usury Laws) and 12 CFR part 591 (Preemption of State Due-on-Sale Laws). OTS is not revising the effective date of these other rule changes. Therefore, the changes to parts 590 and 591 will be effective on January 1, 2003.

[3] 12 U.S.C. 4802.

[4] While commenters on the proposed rule addressed various compliance burdens, the effective date of the rule was not identified as a significant issue in the comments or discussed at any length.

not available to make the changes, test the changes, and train other employees. OTS believes that this factor weighs against an effective date of January 1, 2004. Moreover, a January 1, 2004 effective date will unreasonably delay, and thus deny, consumers the protections accorded under state law with regard to prepayment penalties and late charges on loans made by state housing creditors. In the final rule, OTS examined the AMTPA rule's impact on predatory lending and concluded that the widespread use of prepayment penalties may deter consumers from seeking to refinance high cost loans with burdensome provisions and may have other adverse consequences for sub-prime borrowers. OTS further concluded that state laws on prepayment penalties and late charges are a key component in states' regulation of predatory lending; and that its current AMTPA rules may frustrate these state efforts. OTS is disinclined to thwart these efforts to combat predatory lending by unnecessarily extending the implementation period.

In light of these factors, OTS will extend the effective date of the revised AMTPA rule for six additional months until July 1, 2003.[5]

III. Regulatory Analyses

To the extent that this extension of the effective date is deemed to be a rule under the Administrative Procedure Act (APA), OTS makes the following regulatory findings.

A. Administrative Procedure Act

Under the APA, an agency may suspend general notice-and-comment rulemaking procedures if the agency "for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B). OTS finds that it has good cause to delay the effective date without first soliciting comment concerning this action. Because the effective date of the final rule (January 1, 2003) is fast approaching, it is impracticable to seek further public comment before issuing this amendment delaying the effective date of those rules. In addition, such a delay is in the public interest for the reasons explained above. For similar reasons, OTS also finds that this action delaying the effective date of the final rule must take effect on January 1, 2003, which is less than 30 days after publication of this amendment to the final rules.

B. Regulatory Flexibility Act

Under section 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 604), a final regulatory flexibility analysis is required only for notice-and-comment rulemakings conducted under section 553 of the APA. Since OTS has found that there is "good cause" under the APA for not proceeding with notice-and-comment rulemaking for this amendment to the effective date for the final rules, the RFA does not require that a final regulatory flexibility analysis be provided for this amendment. Moreover, OTS provided a regulatory flexibility analysis in the preamble to the final rule published on September 26, 2002 (67 FR 60551–60554). In that regulatory flexibility analysis, OTS considered the likely impact of the final rule on small entities.

C. Executive Order 12866

The OTS determination that the final rule does not constitute a "significant regulatory action" (67 FR 60551) applies to the rule, as amended by this effective date revision.

D. Unfunded Mandates Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMA) applies only when an agency is required to issue a general notice of proposed rulemaking or a final rule for which a general notice of proposed rulemaking was published. 2 U.S.C. 1532. As noted above, OTS has determined, for good cause, that this amendment to the final rule may be issued without prior notice and comment. Accordingly, OTS has concluded that the UMA does not require an unfunded mandates analysis of this amendment to the final rules. Moreover, OTS provided an UMA analysis in connection with the final rule. 67 FR 60551.

E. Executive Order 13132—Federalism

As described in the preamble to the final rule (67 FR 60554), Executive Order 13132 imposes certain requirements on an agency when it formulates and implements policies that have federalism implementations. In accordance with those requirements, OTS consulted with the Conference of Bank Supervisors and the National Association of Attorneys General concerning this amendment to delay the effective date of the rule.

Dated: December 6, 2002.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 02–31228 Filed 12–11–02; 8:45 am]

BILLING CODE 6720–01–P

[5] Thus, loans consummated on or after July 1, 2003 will be governed by revised § 560.220. However, if a loan is made pursuant to a legally binding loan commitment made before July 1, 2003, the loan will be governed by the prior OTS rule. Where a prospective borrower pays no fee for a commitment, state housing creditors should closely review the loan commitment to determine if a legally binding commitment exists. These agreements typically contain broad provisions permitting the lenders to decline to fund the loan on subjective grounds that effectively render the commitment unenforceable and therefore not legally binding.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13819; Airspace Docket No. 02–AGL–10]

Establishment of Class E Airspace; Milbank, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Milbank, SD. An area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 31 has been developed for Milbank Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action establishes controlled airspace for Milbank Municipal Airport.

EFFECTIVE DATE: 0901 UTC, January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, August 16, 2002, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Milbank, SD (67 FR 53533). The proposal was to establish controlled airspace extending upward from 700 feet or more above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace area extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Milbank, SD, to accommodate aircraft executing instrument flight procedures into and out of Milbank, SD, to accommodate aircraft executing instrument flight procedures into and out of Milbank Municipal Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant rule" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air). Adoption of the Amendment.

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for past 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL SD E5 Milbank, SD [New].

Milbank Municipal Airport, SD,
(Lat. 45° 13′ 50″ N., long. 96° 33′ 57″ W.).
Watertown VORTAC,
Lat. 44° 58′ 47″ N., long. 97° 08′ 30″ W.).

That airspace extending upward from 700 feet or more above the surface within a 6.4-mile radius of the Milbank Municipal Airport, and that airspace extending upward from 1200 feet above the surface within an area bounded on the north by lat. 45° 34′ 00″ N., on the west by long. 97° 30′ 00″ W., on the south by lat. 44° 38′ 00″ N., and on the east by the South Dakota/Minnesota border excluding that airspace within the Watertown, SD, Class E airspace area, that airspace within the Ortonville, MN, Class E airspace area, and that airspace area within the state of Minnesota.

* * * * *

Issued in Des Plaines, Illinois on November 13, 2002.

Richard K. Petersen,

Assistant Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–31342 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice 4214]

RIN 1405–AB45

Exchange Visitor Program: SEVIS Regulations

AGENCY: Department of State.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes regulations and procedures for designated Exchange Visitor Program sponsors to gain access to the Student and Exchange Visitor Program (SEVP) database through the Student and Exchange Visitor Information System (SEVIS) for the reporting of information essential to the administration of their exchange visitor program in an electronic environment. It also provides a means for organizations interested in being considered for designation to apply for authorization. The purpose of this rule is to provide immediate access to SEVIS to enable the Attorney General to meet the legislative mandate established in section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) (Pub. L. 104–208), which requires the Attorney General, in consultation with the Secretary of State and the Secretary of Education, to develop an electronic system to collect information on aliens who have, or are applying for nonimmigrant status under subparagraph (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act (Act).

Although the Attorney General has the primary responsibility for implementing SEVIS, the Department is promulgating this rule to set forth the SEVIS requirements that specifically pertain to exchange visitor program sponsors. INS will specifically address those areas over which they have responsibility for exchange visitors (*e.g.*, admission, change of status, and duration of status) in a separate rule.

DATES: *Effective Date:* This rule is effective December 12, 2002.

Comment Dates: Written comments regarding this rule must be submitted on or before January 13, 2003.

Comments on proposed information collections must be submitted on or before 60 days from December 12, 2002.

ADDRESSES: Comments regarding this rule must be presented in duplicate and addressed as follows: U.S. Department of State, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, 301 4th Street, SW., Room 734, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Acting Director, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, 301 4th Street, SW., Room 734, Washington, DC 20547; 202–401–9810; fax: 202–401–9809.

SUPPLEMENTARY INFORMATION:

I. Introduction

What Is the Student and Exchange Visitor Program (SEVP)?

The SEVP is a statutorily mandated information system designed to electronically track and record the entry and presence in the United States of student and exchange visitor non-immigrants. The SEVP is the responsibility of the Immigration and Naturalization Service (INS) who has developed the enterprise architecture necessary to implement the electronic tracking of student and exchange visitors. The Department of State (Department) is promulgating this rule in order to advise future applicants for Exchange Visitor Program designation of certain procedures now necessary for

the administration and oversight of exchange programs in light of the INS implementation of SEVIS. In September 1996, Pub. L. 104–208 (Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)) was enacted. IIRIRA directed the Attorney General to develop, in consultation with the Department of Education and the Department of State, an electronic information collection system that would track the entry and presence in the United States of non-immigrants in F, M and J visa status. The INS developed the program known as the Student and Exchange Visitor Program (SEVP) to meet this mandate. The electronic system that implements SEVP is known as the Student and Exchange Visitor Information System (SEVIS). SEVIS creates a means for information collection and reporting via the Internet and a reduction in data latency, and paper record maintenance.

On October 26, 2001, Section 416 of the USA PATRIOT Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism), Public Law 107–56 subsequently amended IIRIRA. It mandated that SEVIS be fully implemented and expanded prior to January 1, 2003 and collect the date and port of entry of an exchange visitor or student. It also expanded the data collection specified in IIRIRA to include "other approved educational institutions" and identified these to be any [air] flight school, language training school, or vocational schools approved under subparagraph (F), (J) of (M) of section 101(a)(15) of the Immigration and Nationality Act (INA).

IIRIRA was once again amended on May 14, 2002. The Enhanced Border Security and Visa Reform Act of 2002, Pub. L. 107–173, Title V, strengthened requirements for the implementation and monitoring of the SEVIS program by requiring schools, sponsors, the INS and the Department to share data on foreign students and participants of exchange programs (e.g., the issuance of documentation of acceptance; the issuance of a visa to a foreign student or exchange visitor; the admission of the foreign student or exchange visitor into the United States; the registration and enrollment or the participation of an exchange visitor in their program; and, any other relevant act by the foreign student or exchange visitor, including changing schools or sponsors and any termination of studies or participation in an exchange program). Sponsors must report to SEVIS the failure of any exchange visitor to begin his or her program participation as scheduled. Sponsors shall report this failure not later than 30 calendar days following the scheduled commencement date.

What Is the Purpose of This Rule?

The Department of State, in coordination with the INS, has established January 30, 2003, as the date on which use of SEVIS for the issuance of all future DS–2019 will be mandatory. In order to facilitate transition to SEVIS, the Department is issuing this interim final rule. This rule creates a new subpart F to specifically address the requirements of SEVIS and provides additional instructions to existing sponsors on getting immediate access to SEVIS. This rulemaking does not change the existing regulations governing the Exchange Visitor Program (22 CFR Part 62) even though, in practicality, these requirements will be affected. The Department will finalize this rule in the near future by incorporating this new Subpart into the rest of the regulations. The Department will issue future rulemakings as additional SEVIS capabilities become available.

What Impact Will SEVIS Have on the Exchange Visitor Program?

Under the existing regulations and procedures, in order to sponsor a non-immigrant as an exchange visitor, a sponsor must complete and send a multi-copy paper, Certificate of Eligibility for Exchange Visitor (j–1) Status (the non-SEVIS Form DS–2019, formerly known as Form IAP–66) to the potential exchange visitor. The sponsor maintains a copy of the non-SEVIS Form DS–2019; a copy is provided to the non-immigrant; a copy is provided to the INS for their records; and, a copy is routed to the Department for data-entry purposes, which is not accessible for use by the sponsor. The current process is entirely manual and paper-based.

At this time, SEVIS creates a means for sponsors to comply with some of the information collection and reporting requirements of the existing Exchange Visitor Program via the Internet, reducing data latency and paper record maintenance and routing. SEVIS will provide sponsors with the ability to create a one-page Form DS–2019 (with one page of instructions for the non-immigrant and a watermarked version of the DS–2019 for use by INS at entry points) by entering information electronically into the database, thus instantly collecting the data in a central database before the Form is ever printed. As the information is centrally located and instantly collected, the need for multiple copies can be phased out. The sponsor can access the data by logging into SEVIS, and the Department will no longer be required to collect the information contained on the Form through a data-entry contract. Over the next several months the Department will phase-in the use of SEVIS to implement other regulatory requirements of the Exchange Visitor Program regulations (22 CFR part 62). (See "IV. Anticipated Improvements", below.)

How Will Sponsors Be Notified of the Arrival of Exchange Visitors in the United States?

Title V of the Enhanced Border Security and Entry Reform Act of 2002 (Pub. L. 107–173) directs the INS to notify schools and programs sponsors when a student or exchange visitor has been admitted to the United States. The Department is advised that this notification process will be available electronically through SEVIS, on or about January 1, 2003.

Prior to the availability of this function in SEVIS, SEVIS will generate an original SEVIS Form DS–2019 and a watermarked version of the Form when the Form is issued to a potential exchange visitor to begin a new program. (The watermarked version of the SEVIS Form DS–2019 will not contain a barcode and is easily identified by the words, "Data Entry Purposes" printed across the face.) Upon initial admission of the exchange visitor at the port-of-entry, the INS inspector will properly annotate both the original SEVIS Form DS–2019 and the watermarked version. The INS inspector will return the original SEVIS Form DS–2019 to the exchange visitor and the watermarked version will be forwarded by the inspector to the INS' data processing center. The watermarked version will be returned to the sponsor within approximately 10 days of the exchange visitor's arrival. The sponsor will be responsible for notifying the INS and the Department that the exchange visitor has failed to commence program participation by updating the record in SEVIS. Non-SEVIS generated Forms DS–2019 will continue to be processed by INS in the same manner as it has done in the past.

What Is the SEVIS Timeline for Exchange Visitor Program?

Pursuant to statute, the Department of State, in coordination with the INS, has established January 30, 2003, as the date after which all sponsors must use SEVIS. Accordingly, all designated exchange visitor program sponsors are required to be enrolled in SEVIS by this date in order to continue sponsoring non-immigrants as exchange visitors.

After January 30, 2003, only SEVIS-generated Forms DS–2019 can be used for change of non-immigrant classification, reinstatement, transfers, extensions, change of category or any other immigration benefit. During a transition period, previously issued paper Forms DS–2019 will be accepted for visa issuance and admission, so long as the exchange visitor's Form was issued by a sponsor prior to January 30, 2003.

In order to ensure that all current sponsors have access to SEVIS by January 30, any sponsor that wishes to continue administering an exchange visitor program must complete and submit an SEVIS Form DS–3036 (Exchange Visitor Program Application) through SEVIS to the Department no later than December 16, 2002. (See "How does a current sponsor enroll to participate in SEVIS?" below.) The Department will need this time to undertake the administrative actions necessary to authorize sponsor access to SEVIS.

By August 1, 2003, sponsors will also be required to enter information on all exchange visitors continuing to participate in their program after that date, including those that entered the country on a non-SEVIS Form DS–2019, IAP–66 or IAP–66P. Exchange visitors who end their participation in the sponsor's exchange visitor program before this date need not be entered. Accordingly, sponsors must enter the required information for all exchange visitor program participants (including accompanying spouse and/or dependent children) who continue in exchange visitor status after August 1. It is important to note that a separate, SEVIS-generated Form DS–2019 must be prepared for the accompanying spouse and each dependent child.

Sponsors are not required to enter any of their current or continuing exchange visitors into SEVIS prior to August 1, 2003, except for those current or continuing exchange visitors who need a new Form DS–2019 due to a reportable action (*i.e.*, extensions, reinstatements, transfers, changes of category, changes of status, replace a lost form, amendments, corrections or visa issuance).

What Is the Relationship Between SEVIS and NSEERS?

SEVIS requires the timely reporting and updating of a change in actual and current U.S. address of an exchange visitor. This reporting, however, does not satisfy certain address reporting requirements that are imposed by other regulations or statutes. Specifically, the National Security Entry-Exit Registration System (NSEERS) imposes a separate address-reporting requirement. Address reporting through SEVIS does not satisfy the NSEERS reporting requirement.

What Is the Relationship Between ISEAS and SEVIS?

ISEAS (Interim Student and Exchange Authentication System) is a web-based system that allows consular officers to verify the acceptance of foreign students and exchange visitors who apply to enter the United States in student (F or M) and exchange visitors (J) nonimmigrant visa categories based on information the schools or exchange visitor program sponsors enter directly into the system. ISEAS was intended to be an interim mechanism to collect information on foreign students and exchange visitors pending SEVIS development and is not a comprehensive solution to better track these non-immigrants. Because ISEAS is an interim system designed solely to meet the requirement of section 501(c) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173), the data in ISEAS will not be shared with SEVIS. This is significant because until SEVIS is fully implemented, schools and program sponsors will have to electronically register visa applicants into two separate databases (ISEAS and SEVIS). ISEAS will sunset when SEVIS is fully implemented.

Must a Sponsor Continue To Use ISEAS Once Enrolled in SEVIS?

Until SEVIS is fully implemented, sponsors will be required to enter exchange visitors into both ISEAS and SEVIS. While the Department recognizes that this is a significant duplication of burden on the sponsors, it is a necessary transitional measure to ensure that consular officials issuing visas have access to the appropriate information.

II. Implementation

How Will Sponsors Enter Data Into SEVIS?

Data can be entered into SEVIS through an interactive mode or through batch processing. The interactive mode is the web-based interaction between the sponsor (responsible officer/alternate responsible officer) and SEVIS. Using a user ID and password to gain access to SEVIS, the sponsor will enter data directly into the database. A completed SEVIS Form DS–2019 will print through the sponsor's computer to the sponsor's printer. The Department anticipates virtually no cost to using the interactive mode. This capability only requires Internet access and a browser, most of which are commonly available at no charge. No other software is necessary, and there are no recurring fees for access to SEVIS.

Batch processing is an electronic data exchange that takes place between the sponsor's database system and SEVIS. Technical requirements for the development of sponsor specific batch processing software are posted on the INS SEVIS website. It is anticipated that SEVIS will be able to accept batch submission by December 2002. The use of batch processing is a choice to be made voluntarily by each sponsor. Given the tremendous variation in the size of programs designated by the Department, we anticipate that some sponsors will prefer to develop batch-processing capabilities while others will have no need to pursue this choice.

How Does a Sponsor Enroll to Participate in SEVIS?

Currently designated sponsors must complete the SEVIS Form DS–3036 in order to enroll in SEVIS. A temporary user ID and password is required in order to access, create, retrieve and submit an electronic SEVIS Form DS–3036 (see "How to register for a SEVIS temporary user ID" below). Only one application (the SEVIS Form DS–3036) can be created using this temporary user ID. The temporary ID remains valid for 30 calendar days; if the SEVIS Form DS–3036 is not submitted within 30 calendar days, the temporary ID is deactivated. No changes can be made to the SEVIS Form DS–3036 once it is submitted. However, after the SEVIS Form DS–3036 has been submitted, the temporary user ID remains active for viewing and printing purposes until the application has either been approved or denied. Upon either approval or denial of the application, the temporary ID will be deactivated and will no longer provide the user with access to SEVIS.

Sponsors completing the SEVIS Form DS–3036 in order to enroll their currently designated program in SEVIS need not submit any documentation and/or fee normally associated with the paper Form DS–3036 to the Department. Sponsors will complete the SEVIS Form DS–3036 using the information contained in their most recent letter of designation or redesignation. Enter the name of the sponsor as it is stated in the letter of designation/redesignation; select "currently designated sponsor" as the type of application; and, enter the program number as assigned by the Department. Enter only the exchange visitor categories authorized by the Department at time of SEVIS enrollment

(amendments to the categories authorized can take place electronically after the program is enrolled in SEVIS). Once the application has been submitted, no further changes can be made. The person submitting the SEVIS Form DS–3036 will receive an email advising that the application was successfully received. The applicant is not required to print out the completed SEVIS Form DS–3036.

The Department will review the electronic submission and compare the information entered into SEVIS with the sponsor's program file. When the information has been verified, the Department will approve access to SEVIS. At that time, SEVIS will generate permanent user IDs for the responsible officer and alternate responsible officer(s) identified on the SEVIS Form DS-3036 and will email them to each person, along with instructions for acquiring passwords to the system.

When enrollment authorization has been granted, the sponsor must return all unused non-SEVIS Forms DS–2019 on hand, with a reconciliation of form usage. Once enrolled in SEVIS, a sponsor is prohibited from issuing non-SEVIS Forms DS–2019 for any purpose.

How Does a New Organization Apply for Designation to Conduct an Exchange Visitor Program?

An organization wishing to apply for designation to conduct an Exchange Visitor Program must submit an Exchange Visitor Program Application (DS–3036) to the Department, including the SEVIS Form DS–3036 and the documentation and fees currently associated with the Form DS–3036. In order to access the SEVIS Form DS–3036, a temporary user ID and password is required (see "How to register for a SEVIS temporary user ID" below).

Only one SEVIS Form DS–3036 can be created using this temporary user ID. The temporary ID remains valid for 30 calendar days; if you do not submit the application within 30 calendar days, the temporary ID is deactivated. No changes can be made to the SEVIS Form DS–3036 once it is submitted. Upon either approval or denial of the application, the temporary ID will be deactivated and will no longer provide the user with access to SEVIS.

When completing the SEVIS Form DS–3036, be certain to choose "new" as the type of application if this is the first time applying for designation as an exchange visitor program; do *not* choose "currently designated sponsor" as this option is only for sponsors who are currently designated to conduct an exchange program.

Once the SEVIS Form DS–3036 has been completed, the applicant must print-out, sign and notarize the SEVIS Form DS–3036 and mail it with the non-reimbursable fee and required supporting documentation (*see* 22 CFR 62.5(b), (c) and (d)) to the Department within 30 days of the electronic submission.

At the time of receipt, the Department will note in SEVIS that the complete application package has been received, and SEVIS will send the applicant an email advising that the application and required fee has been received and that the application is pending review. If the application submitted to the Department does not include the required fee or supporting documentation, the Department will make a note in SEVIS, and SEVIS will email the applicant. The email will advise that either the fee or supporting documentation must be submitted to the Department in order for the process to continue. When the Department receives the subsequent submission (i.e., required fee or supporting documentation), the Department will record it in SEVIS, and SEVIS will email the applicant advising of the receipt of the subsequent mailing and the process will continue.

If the Department does not record in SEVIS that the complete application (SEVIS Form DS–3036, fee and supporting documentation), or any part thereof, has been received prior to the expiration of the 30-calendar day submission period, SEVIS will automatically cancel the application request. If an application request is cancelled by SEVIS, all fees submitted will be forfeited. During the review process should the Department determine that additional information is required to render a decision, the Department will note this fact in SEVIS and send the applicant a written letter (outside of SEVIS) outlining the information required in order to continue the review. SEVIS will notify the applicant by email, advising of the need for additional information and the forthcoming written letter. The review process is suspended pending receipt of the additional information requested by the Department. On receipt of the requested information, the Department again records this in SEVIS, the applicant is notified by email, and the review process continues.

Upon approval of the application, the Department will update SEVIS. SEVIS will notify the applicant by email, as well as the individuals identified in the application as the responsible officer and alternate responsible officer(s). In addition, the responsible officer and alternate responsible officer(s) will receive emails providing them with their own unique user IDs and instructions on how to set up passwords. The Department will continue to issue a formal letter of designation to the applicant outside of SEVIS. If the request for designation is denied, the Department will record it in SEVIS accordingly; however, the Department will notify the applicant of the decision in writing by letter outside of the SEVIS system.

Upon implementation of this rule, all new applicants for Exchange Visitor Program designation must use SEVIS to generate and submit the SEVIS DS–3036 to the Department in addition to the existing requirements of the paper Form DS–3036.

How Do I Register for a SEVIS Temporary User ID?

The SEVIS Log in Page (*http://www.ins.usdoj.gov/sevis*) includes a link used to obtain a temporary user ID and a password for creating and submitting the electronic Exchange Visitor Program Application (SEVIS Form DS–3036). Once this site is accessed, a user should click the "Register for New Account" link at the bottom of the screen and the System will display a "Register for a New SEVIS Account" screen. At a minimum, a user must complete all fields preceded by a red asterisk (*). When authorization is granted by the Department the temporary user will receive two e-mail messages, one containing the temporary ID and a second e-mail containing instructions on how to access SEVIS for the first time.

To facilitate the initial use of SEVIS, the System has been developed to provide the user with features such as user manuals, tutorials and a "Help" feature. A new user to the System should review these tools before attempting to complete the SEVIS Form DS–3036. If a user should forget his or her password, contact the SEVIS Help Desk at 1–800–892–4829. The current temporary account will be disabled and a new one will be created.

What Happens If a Sponsor Does Not Provide Information to SEVIS?

Pursuant to the provisions of section 641(d)(2) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208), a designated exchange visitor program failing to provide the information specified, is subject to program revocation.

III. Effect on Existing Exchange Visitor Program Regulations

Existing Exchange Visitor Program regulations are not amended by this rule. SEVIS will, however, be utilized to submit information electronically. The Department has identified the following regulations for which the information required therein will be submitted or transmitted in SEVIS:

Subpart A—General Provisions

Section 62.5 Application Procedure

This section of the Exchange Visitor Program regulations remains unchanged. However, SEVIS provides for the electronic submission of the Exchange Visitor Program Application (Form DS–3036) (see "Submission of New Applications for Designation (Form DS–3036)"). The required fee and supporting documentation will continue to be submitted in paper format. The submission of fees and supporting documentation will be, at some point in the future, accomplished electronically as the INS further develops the SEVIS enterprise architecture.

Section 62.6 Designation

In addition to the Department's formal letter of designation, SEVIS will provide applicants with an email notifying of a favorable determination.

Section 62.7 Redesignation

Sponsors continue to be required to apply for redesignation. SEVIS, however, produces an alert prior to the end of the designation cycle to assist sponsors in filing the redesignation request in a timely manner.

Section 62.9 General Obligations of Sponsors

Requirements of this section remain unchanged. Section 62.9(g)(3) permits the Department to limit the number of alternate responsible officers appointed by the sponsor. SEVIS limits the sponsor from appointing more than ten (10).

Section 62.10 Program Administration

The regulatory provisions of this section remain unchanged. Sponsors shall ensure that only the responsible officer and/or alternate responsible officer(s) issue the SEVIS-generated Form DS–2019. Sponsors shall continue to retain all records relating to their exchange program and exchange visitors for a minimum of three years. However, SEVIS-generated records will no longer be subject to this requirement as they have been provided electronically.

The sponsors' obligation to monitor the exchange participants in their program continues unchanged. However, sponsors will now report the actual and current U.S. address of all sponsored participants to SEVIS. Sponsors must update the actual and current U.S. address information for participants within 21 days of being notified by a participant of a change in his or her address. A sponsor's failure to update the actual and current U.S. address information within 21 days of receipt may be grounds for revocation of their Exchange Visitor Program status.

Sponsors shall report a U.S. mailing address, i.e., P.O. box address, in those limited circumstances where mail cannot be delivered to the current and actual U.S. address. In those limited circumstances where a mailing address is reported, sponsors will continue to be required to maintain the actual and current U.S. address, e.g., dorm, building and room number, of the participant.

Section 62.11 Duties of Responsible Officers

These regulatory provisions remain unchanged. However, as SEVIS will generate Form DS–2019 by the use of a user ID and password, the responsible officer and alternate responsible officer(s) are prohibited from dispensing and/or sharing their ID and password with others.

Section 62.12 Control of Forms DS–2019

While the regulatory provisions of this section remain unchanged, access, completion and printing of SEVIS-generated, Forms DS–2019 is restricted to facilities that house the responsible officer and/or alternate responsible officers located within the United States or its U.S. territories. All SEVIS-generated Forms DS–2019 must printed and signed in blue ink by the responsible officer or alternate responsible officer(s) so that the original Forms DS–2019 can be easily distinguished from any photocopies that may be made of the Form. At no time is the sponsor permitted to forward, via facsimile or other electronic means, unsigned SEVIS Forms DS–2019 to exchange visitors, either directly or via an employee, officer or agent of the sponsor, or to an individual designated by the exchange visitor. Sponsors are also prohibited from scanning the Form DS–2019 to create an electronic image of the Form.

In addition, while sponsors are able to generate and cancel a SEVIS Form DS–2019, sponsors are required to destroy damaged and unusable Forms on the sponsor's premises (e.g., Forms with errors or Forms damaged by the printer); and, are required to continue to request exchange visitors and prospective exchange visitors to return any unused SEVIS Form DS–2019 to the sponsor for destruction by the sponsor.

Further, sponsors will submit requests for SEVIS Form DS–2019 allotments electronically. As SEVIS electronically generates the Form DS–2019, safeguarding the Forms and information will now be accomplished by electronic storage. SEVIS will also automatically record the sponsor's allotment of Forms DS–2019, as well as their issuance.

Section 62.13 Notification Requirements

While the requirements of this section remain unchanged, SEVIS enables sponsors to electronically report these events. SEVIS enables sponsors to update its SEVIS record to indicate a change in address, telephone or facsimile number. It also enables sponsors to update the program status of exchange visitors who have completed their programs or who have otherwise been terminated from his or her program. A sponsor who is no longer interested in conducting an exchange program, or whose financial circumstances render the sponsor unable to comply with its obligations (as set forth in section 62.9), can electronically notify the Department through SEVIS of this decision.

Sponsors will continue to promptly notify the Department directly by telephone (confirming in writing) or facsimile of any serious problem or controversy that could be expected to bring the Department of State or the sponsor's exchange visitor program into notoriety or disrepute. Sponsor will also notify the Department, outside of SEVIS, of a change in composition of the sponsoring organization affecting its U.S. citizenship (as defined in section 62.2); a major change in control of the sponsor's organization; loss of licensure or accreditation; and/or, litigation related to the sponsor's exchange visitor program where the sponsor is a party.

Sponsors must report within 30 calendar days that an exchange visitor has begun his or her program participation as scheduled. Sponsors must also report, to SEVIS, not later than 30 calendar days after the program start date on the Form DS–2019, the failure of any non-immigrant to begin his or her program as scheduled.

Section 62.15 Annual reports.

Sponsors continue to be required to submit annual reports to the Department. SEVIS assists sponsors in the completion of the report by electronically producing the report form and automatically identifying and

populating the categories of participants authorized by the Department. In order to meet the regulatory certification requirements of section 62.14, sponsors must complete the narrative sections, print, sign and mail the annual report to the Department. SEVIS provides sponsors with an alert in advance of the deadline for filing the annual report. However, due to the transition period whereby sponsors convert from the use of the paper Form DS–2019 to the SEVIS-generated Form DS–2019, sponsors will be required to report to the Department their use of both the paper Form DS–2019 and the SEVIS-generated Form DS–2019. Sponsors will submit the existing, non-SEVIS annual report form currently utilized by sponsors to provide a numerical count, by category, of all exchange visitors participating in the sponsors program for the reporting year. Sponsors will also generate a report in SEVIS that must be printed, signed, and sent to the Department, accounting for those forms issued through SEVIS to exchange visitor participants. This dual reporting will only be required until such time as the sponsor's annual report cycle falls completely within the period of time in which SEVIS-generated Forms DS–2019 are issued.

Subpart B—Specific Program Provisions

Sponsors must utilize SEVIS to complete the Form DS–2019 issued to all non-immigrants (and accompanying spouse and dependent children) selected to participate in their programs. Sponsors issuing a Form DS–2019 to an alien physician to enable them to participate in their program for the purposes of observation, consultation, teaching or research shall continue to sign and append a certification to the SEVIS-generated Form DS–2019 as specified in section 62.27(c)(1)(i) or (ii). Placement reports used by the Department for monitoring and oversight of the summer work/travel and camp counselor program will continue to be submitted as required by existing regulations as will the management audit required of au pair program sponsors. The requirements for the authorization of student employment and academic training will now be documented in SEVIS (*see* 22 CFR 62.73 and 62.74), and thus program sponsors will no longer be required to retain or produce paper documents for these two functions.

Also, SEVIS will now automatically record the matriculation level of students (e.g., secondary, associate, bachelors, masters, doctorate and non-degree) and whether a trainee is engaged in specialty or non-specialty training.

Subpart C—Status of Exchange Visitors

The regulatory requirements of subpart C are not changed. However, SEVIS assists sponsors in the administration of their programs by electronically capturing and submitting data on requested actions and sending the Department an advance notification of an impending request. Requests for changes of category, extensions beyond the maximum duration of participation and reinstatement to valid program status will be filed electronically. Paper documentation requirements remain in place until infrastructure software necessary for the submission of such documentation electronically is in place. Review of these requests may not be completed until supporting documentation and the required fee is received. SEVIS will be utilized to transmit approvals.

As discussed above, mandatory compliance with SEVIS is January 30, 2003. For the period of time between the promulgation of this rule and the mandatory compliance date, some exchange visitor program sponsors will be utilizing SEVIS procedures while others are not. The on-line SEVIS user manual sets forth the procedures that will facilitate the transfer of an exchange participant to or from a non-SEVIS and SEVIS participating sponsor. These procedures will become redundant on January 30, 2003. Also discussed in the SEVIS user manual are the procedures for submitting requests for an extension of program, change of category and reinstatement to valid program status of exchange participants.

Subpart D—Sanctions

The regulatory provisions of this Subpart remain unchanged.

Subpart E—Termination and Revocation of Programs

The regulatory provisions of this Subpart remain unchanged.

Subpart H—Fees

The regulatory provisions of this Subpart remain unchanged.

Subpart G—Summer Work/Travel

The regulatory provisions of this Subpart remain unchanged.

How Does SEVIS Affect the J–2?

SEVIS requires the issuance of a separate SEVIS Form DS–2019 to the J–2 accompanying spouse and each dependent child, coming with or following to join, an exchange visitor.

If sought, a request for employment authorization for the J–2 accompanying spouse and dependent children must be submitted to and authorized by the INS outside of SEVIS. INS has determined that monitoring of non-immigrants being educated and trained in the United States is of vital importance to the national security of the United States. Accordingly, any J–2 spouse or dependent child wishing to pursue full-time study in the United States (other than avocational or recreational) is required to petition the INS for a change of status to that of an F–1, J–1 or M–1 non-immigrant.

IV. Anticipated Improvements

The Department anticipates a series of future expansions and improvements of the SEVIS enterprise architecture. These expansions will focus on automating the existing Exchange Visitor Program processes, including: collecting all data required by statute and regulations (e.g., the electronic reporting of academic training, student employment and notification of visa issuance and port of entry, etc.); accepting electronic signatures and documents in lieu of paper signatures and notarizations; and accepting electronic fee transfers. As these capabilities become available, the Department will revise the Exchange Visitor Program regulations as appropriate.

In December 2002, SEVIS will enable sponsors to submit multiple SEVIS Forms DS–2019 simultaneously through a batch-processing mode. The Department anticipates that this will save a sponsor significant time by not having to use the interactive mode to enter one record at a time and will allow sponsors to update SEVIS directly from their own information systems. Information on the batch processing mode is available at: *http://www.ins.gov/graphics/services/tempbenefits/sevp.htm.*

In the longer term, the Department is working actively to convert the Exchange Visitor Program from exchanges of paper to electronic submission and review. As part of this conversion, the Department is reviewing its entire business process to determine the most productive use of SEVIS and other information technology, including opportunities to streamline existing processes and improve collaboration. These changes may result in future rulemakings.

V. Request for Comments

This rulemaking, while not changing the majority of the Exchange Visitor Program regulations, will have a major effect on the ways in which sponsors comply with these regulations. The Department seeks comments on the new subpart F, its relationship to SEVIS, and its relationship with the existing 22 CFR part 62.

Looking forward to the eventual acceptance of electronic documents in SEVIS, the Department would like comments on the availability of required documentation in electronic formats.

The Department would also like to solicit comments from the exchange community and the general public on how the Department can streamline and/or strengthen the Exchange Visitor Program and the sponsors' exchange visitor programs. The Department particularly welcomes ideas on the use of information technology to gain greater efficiencies. The most useful comments will address the Department's obligations to the exchange community and to Homeland Security, in the context of the program's limited resources.

Implementation Schedule

All requirements set forth in subpart F are effective on December 12, 2002.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department is publishing this rule as an interim final rule, with a 30-day provision for post-promulgation public comments, based on the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3).

Good Cause Exception

This rule is effective on publication in the **Federal Register**. The Department finds that good cause exists both for adopting this rule without prior notice and comment period ordinarily required by 5 U.S.C. 553, and for making this rule immediately effective, rather than having it enter into force 30 days after publication. The USA Patriot Act, Public Law 107–56, mandates that SEVIS be fully implemented and expanded prior to January 1, 2003. Because of vital national security concerns that underpin the USA Patriot Act, and the Border Security Act, promulgation of this rule as a proposed rule would be contrary to the public interest.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule is not expected to have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, Section 1(b), Principles of Regulation. The Department of State has determined that this rule is a "significant regulatory action" under Executive Order 12866, Section 3(f), Regulatory Planning and Review and, accordingly, this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor an information collection if it does not display a currently approved OMB Control Number. Notwithstanding other provisions of law, no person may be penalized for failing to comply with an information collection that does not display a currently OMB Control Number. Information collections include reporting requirements, record keeping requirements, and any requirement that provides for the disclosure of information to other persons or the public.

This rulemaking imposes new information collection requirements on exchange visitor program sponsors. These include:

- Requirement for current sponsors to register for SEVIS using the SEVIS Form DS–3036.
- Requirement for new applicants to use SEVIS to complete the SEVIS Form DS–3036.
- Requirement for sponsors to complete the SEVIS DS–2019.
- Requirement for some existing written notification requirements to be reported through SEVIS.
- Requirement for sponsors to gather and report exchange visitor change of address information.
- Requirement for sponsors to report employment and training data for students that is currently maintained as a record.

These information collections, and all information collections conducted through SEVIS, have been approved under OMB Control Number 1115–0252, expiration date: 12/31/2002. For additional information on these information collections or copies of the INS request to OMB, contact Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536.

The Department has also identified information collection provisions of 22 CFR part 62 that require OMB approval. These include all record keeping and information collection requirements in part 62 related to the selection, screening, orientation, placement or monitoring of exchange participants or the administrative oversight of organizations facilitating these activities. OMB has granted emergency approval to these requirements under OMB Control Number 1405–0147, expiration date: 5/31/2003.

The Department is preparing to request a three-year approval for these collections. As part of that process, the Department requests comments on these information collections for 60 days. Comments are encouraged and will be accepted until February 10, 2003. The Department requests written comments and suggestions from the public and affected agencies concerning this collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

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whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

Copies of the Department request to OMB are available at: *http://exchanges.state.gov/education/jexchanges*. The Department will, at its earliest opportunity, make also available a more complete description of all of the information collections included in this request, including a burden estimate for each. Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Stanley Colvin, Acting Director, SA–44, 301 4th Street, SW., Room 734, U.S. Department of State, Washington, DC 20547, who may be reached by fax on (202) 401–9809.

In addition, the following related information collections currently approved under the following OMB Control Numbers:

Certificate of Eligibility for Exchange Visitor (J–1) Status (non-SEVIS Form DS–2019) is approved under OMB Control Number 1405–0119, expiration date: 2/28/2005. Exchange Visitor Program Application (non-SEVIS Form DS–3036) and Update (non-SEVIS Form DS–3037) are approved under OMB Control Number 1405–0120, expiration date: 9/30/2005.

List of Subjects in 22 CFR Part 62

Cultural Exchange Programs.

Accordingly, 22 CFR part 62 is amended as follows:

PART 62—EXCHANGE VISITOR PROGRAM

1. The authority citation for part 62 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451–2460; Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105–277, 112 Stat. 2681 *et seq.*; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168.

2. A new Subpart F is added to read as follows:

Subpart F—Student and Exchange Visitor Information System (SEVIS)

Sec.

62.70 SEVIS reporting requirements.
62.71 Control and production of the electronic Form DS–2019.
62.72 Staffing and support services.
62.73 Academic training.
62.74 Student employment.
62.75 Extension of program participation.
62.76 Transfer procedures.
62.77 Reinstatement.
62.78 Termination.
62.79 Sanctions.

Subpart F—Student and Exchange Visitor Information System (SEVIS)

§ 62.70 SEVIS reporting requirements.

(a) *Enrollment and initial use of SEVIS.* Sponsors shall apply for enrollment in SEVIS no later than December 16, 2002. Upon notification that they have been successfully enrolled in SEVIS, sponsors shall:

(1) Create a SEVIS record for any program participant seeking visa issuance or for whom an extension, transfer, change of category, or reinstatement request is sought;

(2) Create a SEVIS record to replace a previously issued but lost or stolen copy of a participant's Form IAP–66 or Form DS–2019;

(3) Create a SEVIS record if an amendment or change is made in the start or end date of a program participant's program;

(4) Create a SEVIS record for a program participant's accompanying spouse and all accompanying dependent children if a SEVIS record has been created for the participant;

(5) Utilize SEVIS to up-date information on any participant, spouse, or dependent child for whom a SEVIS record has been created; and

(6) No later than August 1, 2003, create a separate SEVIS record for each participant, accompanying spouse and dependent child that will continue to have Exchange Visitor Program participant status after August 1, 2003.

(b) *Current U.S. address.* Sponsors shall ensure that the actual and current U.S. address of all sponsored participants is reported to SEVIS. Sponsors shall update the actual and current U.S. address information for participants within 21 days of being notified by a participant of a change in his or her address. A sponsor's failure to update the actual and current U.S. address information within 21 days of receipt may be grounds for revocation of their Exchange Visitor Program status. Sponsors shall report a U.S. mailing address, *i.e.*, P.O. box address, in those limited circumstances where mail cannot be delivered to the current and actual U.S. address. If a U.S. mailing address is reported to SEVIS, sponsors shall also maintain a record of the actual and current U.S. address, *e.g.*, dorm, building and room number, for that exchange visitor.

(c) *Notification to program participants.* Sponsors shall notify all participants in their exchange visitor program and accompanying spouse and dependent children that any change in the U.S. address must be reported to the sponsor within 10 days of such change. Sponsors may direct the participant to provide the notification of change in address in a format acceptable to the sponsor.

(d) *Validation of program participation.* Sponsors shall within 30 calendar days of a program participant's start date verify that the participant has in fact begun their program participation. Sponsors shall update the participant's SEVIS record and current U.S. address.

§ 62.71 Control and production of the electronic Form DS–2019.

(a) SEVIS generated Forms DS–2019 shall only be completed, printed and signed by a responsible officer and/or alternate responsible officer(s) who are physically present in the United States or a U.S. territory at the time of the Form's production.

(b) Responsible officers and alternate responsible officers shall secure their SEVIS logon IDs and passwords at all times.

(1) At no time and under no circumstances are SEVIS logon IDs and passwords to be shared with anyone, either on a transitory or permanent basis.

(2) Sponsors for whom the responsible officer or alternate responsible officers have been found to have willfully or negligently violated the requirements of this section will be subject to sanctions as set forth in § 62.50(a)(2).

§ 62.72 Staffing and support services.

(a) Sponsors shall appoint a responsible officer and may appoint up to ten (10) alternate responsible officers to adequately administer their exchange visitor program to fulfill the duties set forth in § 62.11.

(1) The Department may limit the number of alternate responsible officers appointed by the sponsor at its discretion.

(2) The Department reserves the right to withdraw the appointment of a responsible or alternate responsible officer at its discretion.

(b) [Reserved]

§ 62.73 Academic training.

(a) Students meeting the definition listed in § 62.4(a)(1)(ii) and (iii) may, if approved by the academic dean or advisor and approved by the responsible officer or alternate responsible officer, engage in academic training pursuant to § 62.23(f).

(b) The responsible officer or alternate responsible shall update the exchange visitor's SEVIS record to reflect the details of any academic training pursuant to § 62.23(f)(5)(i). An update of the SEVIS record constitutes compliance with § 62.23(f)(5)(ii).

§ 62.74 Student employment.

(a) Students meeting the definition listed in § 62.4(a)(1)(ii) and (iii) may engage in student employment pursuant to § 62.23(g).

(b) The responsible officer or alternate responsible officer shall update the exchange visitor's SEVIS record to reflect the details of such employment pursuant to § 62.23(g)(1). An update of the SEVIS record constitutes compliance with § 62.23(g)(2)(iv):

§ 62.75 Extension of program participation.

(a) A sponsor may extend an exchange visitor's participation in the Exchange Visitor Program up to the limit of the permissible period of participation authorized for the specified program category by entering a new end program date and an optional comment—all other information collected on a DS–2019 will be automatically completed by SEVIS.

(1) A sponsor extending the program of an exchange visitor who is not currently listed in the SEVIS database is required to create a record for the exchange participant (and the accompanying spouse and any dependents as a "continuing exchange visitor". In creating the exchange visitor's SEVIS record, the sponsor shall issue the exchange visitor (and the accompanying spouse and any dependent children) a duly executed Form DS–2019 reflecting such extension.

(2) When creating a SEVIS record for a "continuing exchange visitor," the initial program start date and Form number taken from the non-SEVIS Form IAP–66 or DS–2019 issued to begin new program must be entered in the exchange visitor's SEVIS record.

(b) A responsible officer or alternate responsible officer seeking an extension of program status on behalf of an exchange visitor in excess of the duration of program participation authorized for the specific category shall:

(1) Submit an electronic request to the Department through the real-time interactive mode in SEVIS.

(2) Create a record for the exchange participant (and the accompanying spouse and any dependent children) as a "continuing exchange visitor" listing the initial program start date and Form number taken from the non-SEVIS Form IAP–66 or DS–2019 issued to begin new program.

(3) Submit written supporting documentation and the required non-reimbursable fee to the Department within 30 calendar days of the SEVIS submission date.

§ 62.76 Transfer procedures.

(a) Program sponsors may, pursuant to the provisions set forth in § 62.42, permit an exchange visitor to transfer from one designated program to another designated program. Transfers will not extend the maximum duration of participation for the category in which the exchange visitor is currently participating.

(b) Current sponsor and transfer sponsor shall communicate appropriately to ensure an uninterrupted transfer, continuous status of the exchange visitor and proper change of address reporting and shall utilize the provisions of this section to effect such transfer.

(1) SEVIS-to-SEVIS transfer. When both the transfer and current sponsors are enrolled in SEVIS, a transfer is enacted as follows:

(i) The nonimmigrant shall notify the current sponsor of the intention to transfer.

(ii) Upon verification of the current status and eligibility to transfer by the transfer sponsor, the current sponsor shall update the exchange visitor's record by processing a "transfer out" in SEVIS. The current sponsor must enter the name and program number of the transfer sponsor and the effective date of transfer. The "transfer out" process gives the transfer sponsor access to the SEVIS record of the exchange visitor (and accompanying spouse and any dependent children).

(iii) The transfer sponsor shall initiate a "transfer in," issue a Form DS–2019 for the exchange visitor (an accompanying spouse and any dependent children), and advise the exchange visitor of the effective date of transfer.

(iv) The exchange visitor shall report to the transfer sponsor in a manner and at a time specified by the transfer sponsor, and shall provide updated U.S. address information.

(v) The transfer sponsor shall validate the exchange visitor's participation in its program within 30 calendar days of the effective date of transfer and update the exchange visitor's current U.S. address.

(2) Non-SEVIS to SEVIS transfer: When the transfer sponsor is enrolled in SEVIS but the current sponsor is not, the transfer is enacted as follows:

(i) The nonimmigrant shall notify the current sponsor of the intention to transfer.

(ii) Upon verification of current status and eligibility to transfer, the transfer sponsor shall create a Form DS–2019 to enact a transfer and will send the Form to the current sponsor to acquire the written release of the exchange visitor by obtaining a signature in Section 8.

(iii) Upon receipt of the Form DS–2019 with signature, the transfer sponsor shall record the effective date of transfer; the date, name and title of person who signed the release; the name and program number of the current sponsor. The transfer sponsor shall print a Form DS–2019 for the exchange visitor, and advise the exchange visitor of the effective date of transfer.

(iv) The exchange visitor shall report to the transfer sponsor in a manner and at a time specified by the transfer sponsor and shall provide updated U.S. address information.

(v) The transfer sponsor shall validate the exchange visitor's participation in its program within 30 calendar days of the effective date of transfer and update the exchange visitor's current U.S. address.

(3) SEVIS to Non-SEVIS transfer. When the transfer sponsor is not enrolled in SEVIS and the current sponsor is a SEVIS-enrolled sponsor, a transfer is enacted as follows:

(i) The exchange visitor shall notify the current sponsor of the intention to transfer.

(ii) Upon verification of current status and eligibility to transfer, the transfer sponsor shall create a non-SEVIS Form DS–2019 and submit it to the transfer sponsor for the release of the exchange visitor by acquiring a signature in Section 8 of the Form.

(iii) The transfer is required to update the exchange visitor's SEVIS record by recording the effective date of transfer; name and program number of the transfer sponsor; and, name of the responsible officer/alternate responsible officer of the transfer (non-SEVIS) sponsor requesting the transfer as noted on the four-color, four-page paper Form DS–2019.

(4) The transfer sponsor will provide the exchange visitor with the pink copy of the Form DS–2019 and submit the yellow copy of the form to the Department.

§ 62.77 Reinstatement.

(a) Reinstatements will continue to be handled in accordance with the

procedures established in § 62.45. A SEVIS reinstatement is processed as follows:

(1) The responsible officer must submit an electronic request for reinstatement to the Department through SEVIS.

(2) The responsible officer must print a copy of the reinstatement request (draft copy of the Form DS–2019) from the SEVIS system.

(3) The responsible officer must submit the official request along with the required supporting documentation justifying the reinstatement and the required, non-reimbursable fee (refer to § 62.90-Fee) to the Department within 30 calendar days of the SEVIS submission date.

(4) The Department will review the request. If approved, the Department will enter the approval in SEVIS, thereby opening the file so that the responsible officer may print a Form DS–2019. How is the sponsor going to know they received an answer to their request? The Department's approval is required before a Form DS–2019 can be printed. What happens if the request is denied?

(b) An exchange visitor (and the accompanying spouse and any dependent children) who failed to submit a change of current U.S. address as required under § 62.63 is in violation of the Exchange Visitor Program regulations and is not eligible for reinstatement. The Department will deny any such application for reinstatement.

(c) An exchange visitor (and accompanying spouse and any dependent children) who is ineligible for reinstatement or whose request for reinstatement has been denied is no longer an Exchange Visitor Program participant. He or she cannot remain in the United States unless another lawful immigration status is obtained.

§ 62.78 Termination.

An exchange visitor who willfully or negligently fails to comply with the requirements established in Public Law 104–208, as amended, shall be terminated from the Exchange Visitor Program by the sponsor.

§ 62.79 Sanctions.

(a) The Department of State shall impose sanctions against a sponsor that has:

(1) Willfully or negligently failed to comply with the reporting requirements established in Public Law 104–208, as amended; or,

(2) Produced SEVIS Forms DS–2019 outside the United States or a United States territory; or,

(3) Whose authorized representatives fail to secure their SEVIS logon ID and password.

(b) [Reserved]

Dated: December 6, 2002.

Patricia S. Harrison,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–31367 Filed 12–11–02; 8:45 am]

BILLING CODE 4710–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–059–200306(a); FRL–7419–9]

Approval and Promulgation of Implementation Plans: Revisions to the Alabama Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the Alabama Department of Environmental Management's nitrogen oxides budget and allowance trading program submitted on September 13, 2002, by the State of Alabama. These revisions are designed to provide greater flexibility to reward sources that achieve quantifiable reductions ahead of the compliance deadline by allowing sources to request credit for early reductions obtained during the 2001 control period.

DATES: This direct final rule is effective February 10, 2003 without further notice, unless EPA receives adverse comment by January 13, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Sean Lakeman; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW; Atlanta, Georgia 30303–8960

Copies of documents relative to this action are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960

Alabama Department of Environmental Management, 400 Coliseum Boulevard, Montgomery, Alabama 36110–2059

FOR FURTHER INFORMATION CONTACT: Sean Lakeman; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW; Atlanta, Georgia 30303–8960. Mr. Lakeman can also be reached by phone at (404) 562–9043 or by electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Analysis of State's Submittal

On September 13, 2002, the State of Alabama through Alabama Department of Environmental Management submitted revisions to Chapter 335–3–8 regarding early reduction credits. The revisions to Chapter 335–3–8–.10—NO_x Allowance Tracking System would provide greater flexibility to reward sources that achieve quantifiable reductions ahead of the compliance deadline May 1, 2004, by allowing sources to qualify for early reduction credit in the form of nitrogen oxides allowances from a compliance supplement pool for the 2001 control period. This is being accomplished by expanding the early reduction credit program from 2002 through 2003 to 2001 through 2003.

II. Final Action

EPA is approving the aforementioned change to the State of Alabama's SIP because it is consistent with the CAA and EPA policy. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 10, 2003 without further notice unless the Agency receives adverse comments by January 13, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 10, 2003 and no further action will be taken on the proposed rule.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 10, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 26, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40 of the *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart B–Alabama

2. Section 52.50(c) is amended by revising the entry for "Section 335–3–8.10" to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED ALABAMA REGULATIONS

State citation	Title subject	Adoption date	EPA approval date	Federal Register notice
•	•	•	•	•
Section 335–3–8.10	NO_x Allowance Tracking System.	August 27, 2002	December 12, 2002	[Insert FR page citation from publication date]
•	•	•	•	•

* * * * *

[FR Doc. 02–31235 Filed 12–11–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1776, MM Docket No. 00–121, RM–9674]

Digital Television Broadcast Service; Kingston, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, by this document, denies a Petition for Reconsideration and Motion for Stay filed by WKOB Communications, Inc. of the Report and Order, which substituted DTV channel 48 for station WRNN–DT's assigned DTV channel 21 at Kingston, New York. *See* 67 FR 5070, February 4, 2002. With is action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 00–121, adopted July 23, 2002, and released July 29, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–31384 Filed 12–11–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011109274–1301–02; I.D. 120602A]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota transfer; commercial fishery reopening.

SUMMARY: NMFS announces that the State of North Carolina is transferring 20,000 lb (9,072 kg) of commercial summer flounder quota to Connecticut from its 2002 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved. NMFS also announces that the summer flounder commercial fishery in the exclusive economic zone for Connecticut is reopened, effective December 6, 2002. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may land summer flounder in Connecticut for the remainder of calendar year 2002, unless Connecticut harvests its commercial quota before the end of the calendar year. Regulations governing the summer flounder fishery require the publication of this notification to advise Connecticut that the fishery has reopened and to advise vessel permit holders and dealer permit holders that commercial quota is available for landing summer flounder in Connecticut.

DATES: Effective December 6, 2002, through December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Jason Blackburn, Fishery Management Specialist, (978) 281–9326.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

After taking into account any overages of state quotas that occurred in 2001, the total commercial quota for summer flounder for the 2002 calendar year was set equal to 14,456,636 lb (6,557,420 kg), with a quota of 329,044 lb (149,252 kg) for Connecticut and a quota of 4,001,133 lb (1,814,883 kg) for North Carolina (66 FR 66350; December 26, 2001).

The final rule implementing Amendment 5 to the FMP that was published on December 17, 1993 (58 FR 65936), provided the mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS, (Regional Administrator) can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 20,000 lb (9,072 kg) of its 2002 commercial quota to Connecticut. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised quotas for calendar year 2002 are: Connecticut, 349,044 lb (158,324 kg); and North Carolina, 3,981,133 lb (1,805,812 kg).

NMFS issued a notification in the **Federal Register** on November 25, 2002 (67 FR 70556), announcing that the summer flounder commercial quota available to Connecticut had been harvested. The Regional Administrator has determined, based upon dealer reports and upon other available information, that North Carolina will not attain its quota for 2002 and, based on the 20,000–lb (9,072–kg) transfer of commercial summer flounder quota to Connecticut, that the Connecticut commercial summer flounder fishery in the exclusive economic zone will reopen effective 0001 hours, December 6, 2002 through December 31, 2002. Therefore, vessels issued a commercial Federal fisheries permit for the summer flounder fishery may land summer flounder in Connecticut for the remainder of calendar year 2002, unless closed due to Connecticut harvesting its commercial quota before the end of the calendar year. Such closure would be announced through notification in the **Federal Register**. Effective December 6, 2002 through December 31, 2002, federally permitted dealers are also advised that they may purchase summer flounder from federally permitted vessels that land in Connecticut for the remainder of the calendar year.

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 6, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–31252 Filed 12–6–02; 4:16 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 239
Thursday, December 12, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. FAA–2002–13971; Airspace Docket No. 02–AAL–8]

Proposed Establishment of Class E Airspace; Marshall, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Marshall, AK. Two new Standard Instrument Approach Procedures (SIAP) are being published for the Marshall Airport. In addition, a new departure procedure has been developed. There is no existing Class E airspace at Marshall. Class E airspace sufficient to contain aircraft executing the new and revised instrument procedures needs to be established. Adoption of this proposal would result in the addition of 700 ft. Class E airspace at Marshall, AK.

DATES: Comments must be received on or before January 27, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13971/Airspace Docket No. 02–AAL–8, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: *Derril.CTR.Bergt@faa.gov*. Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2202–13971/Airspace Docket No. 02–AAL–8." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA proposes to amend 14 CFR part 71 by establishing Class E airspace at Marshall, AK. The intended effect of this proposal is to establish new Class E controlled airspace upward from 700 feet above the surface to enable IFR operations at Marshall, AK to be contained within controlled airspace.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Marshall Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS)–A, original; and (2) RNAV (GPS) Runway 7, original. Coincident with the new SIAPs, a departure procedure is being established. New Class E controlled airspace extending upward from 700 feet above the surface within a 6.3 mile radius of the Marshall Airport would be created by this action. This airspace is sufficient to contain aircraft executing the new instrument procedures for the Marshall Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Marshall, AK [New]

Marshall Airport, AK
(Lat. 61°51′53″ N., long. 162°01′28″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Marshall Airport.

* * * * *

Issued in Anchorage, AK, on November 29, 2002.

Stephen P. Creamer,
Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–31347 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM01–12–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design

December 4, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of technical conference agenda.

SUMMARY: Commission staff convened a technical conference on December 6, 2002, to discuss the cyber-security provisions described in section M and Appendix G of the Notice of Proposed Rulemaking issued in this docket on July 31, 2002. *See* 67 FR 55452 (August 29, 2002). This notice provides further organizational details and the conference agenda.

DATES: The conference took place on December 6, 2002.

ADDRESSES: The conference took place at: Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8004.

SUPPLEMENTARY INFORMATION:

Notice of Technical Conference Agenda

1. As announced in the Notice of Technical Conference issued on November 20, 2002, Commission staff will convene a technical conference on December 6, 2002 to discuss and analyze proposed rules for cyber-security. This notice provides further organizational details and the conference agenda.

2. The conference will begin at 9:30 a.m. and will adjourn at about 3 p.m. It is scheduled to take place the Commission's offices, 888 First Street, NE., Washington, DC, in the Commission Meeting Room on the second floor. The agenda is appended to this notice as Attachment A.

3. The conference is open for the public to attend, and registration is not required; however, in-person attendees are asked to notify the Commission of their intent to attend by sending an 3-mail message to *conference@ferc.gov*.

4. Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646), for a fee. They will be available for the public on the Commission's FERRIS system two weeks after the conference. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reninger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on "FERC."

5. Questions about the conference program should be directed to: Sarah McKinley, Manager of State Outreach, Office of External Affairs, Federal Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8368, *sarah.mckinley@ferc.gov*.

Linwood A. Watson, Jr.,
Deputy Secretary.

Appendix A

Schedule

9:30 a.m.
Introduction.
Review of FERC's SMD Cyber-Security Proposed Standard, Alison Silverstein.

10 a.m.
Presentation of the North American Electric Reliability Council's (NERC's) Recommended Cyber-Security Standard, Chuck Noble, ISO New England, NERC Critical Infrastructure Protection Advisory Group.

10:30 a.m.
Comments from Public and Panel Discussion.

- Scope of Proposal
- Specific Measures
- Compliance and Timing
- Other

Federal Cyber-Security Panel:
Tom Cable, Critical Infrastructure Protection Board.
Lawrence C. Hale, Office of Information Assurance and Critical Infrastructure Protection, Federal Technology Service, General Services Administration.
Tom Harper, Office of Counter Intelligence, Department of Energy.
Landis D. Kannberg, Pacific Northwest National Laboratory, Department of Energy.

Marianne Swanson, Computer Security Division, National Institute of Standards and Technology.
12 p.m.
Lunch.
1 p.m.
Continuing Discussion and Review of NERC's Recommended Standard.
3 p.m.
Adjourn.

[FR Doc. 02–31144 Filed 12–11–02; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK77

Additional Disability or Death Due to Hospital Care, Medical or Surgical Treatment, Examination, Training and Rehabilitation Services, or Compensated Work Therapy Program

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations concerning awards of compensation or dependency and indemnity compensation for additional disability or death caused by VA hospital care, medical or surgical treatment, examination, training and rehabilitation services, or compensated work therapy (CWT) program.

The proposed amendment provides that benefits will be payable for additional disability or death caused by VA hospital care, medical or surgical treatment, or examination only if VA fault or "an event not reasonably foreseeable" proximately caused the disability or death. It further provides that benefits will be payable for additional disability or death proximately caused by VA's provision of training and rehabilitation services or CWT program. This amendment reflects amendments to 38 U.S.C. 1151, the statutory authority for such benefits.

DATES: Comments must be received on or before February 10, 2003.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Room 1154, 810 Vermont Ave., NW., Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AK77." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Beth McCoy, Consultant, Regulations Staff, Compensation and Pension Service (211A), Veterans Benefits Administration, Department of Veterans Affairs, 111 W. Huron St., Buffalo, NY 14202, (716) 551–4842.

SUPPLEMENTARY INFORMATION: Section 1151 of 38 U.S.C. previously authorized the award of compensation or dependency and indemnity compensation for any additional disability or death of a veteran which did not result from the veteran's own willful misconduct but which did result from an injury or aggravation of an injury suffered as the result of hospitalization, medical or surgical treatment, or the pursuit of a course of vocational rehabilitation awarded under any of the laws administered by VA or as a result of having submitted to an examination under any such law. 38 CFR 3.358 and 3.800 contain the regulatory provisions implementing those statutory provisions.

Effective for claims filed on or after October 1, 1997, section 422(a) of Public Law 104–204, 110 Stat. 2874, 2926 (1996), amended 38 U.S.C. 1151 to authorize an award of compensation or dependency and indemnity compensation for a veteran's "qualifying additional disability" or "qualifying death." Under 38 U.S.C. 1151, as amended, an additional disability or death qualifies for compensation or dependency and indemnity compensation if it (1) was not the result of the veteran's willful misconduct; (2) was caused by hospital care, medical or surgical treatment, or examination furnished the veteran under any law administered by VA, either by a VA employee or in a VA facility; and (3) was proximately caused by carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault on VA's part in furnishing the care, treatment, or examination, or by an event not reasonably foreseeable. An additional disability or death also qualifies for benefits if it was not the result of the veteran's willful misconduct and was proximately caused by VA's provision of training and rehabilitation services as part of an approved rehabilitation program under 38 U.S.C. chapter 31.

Section 303 of Public Law 106–419, 114 Stat. 1853, effective November 1, 2000, amended 38 U.S.C. 1151(a)(2) to further expand the circumstances under which benefits are payable. For claims received on or after November 1, 2000, additional disability or death qualifies for entitlement to compensation and DIC if it was not the result of the veteran's willful misconduct and was proximately caused by participation in a compensated work therapy (CWT) program under 38 U.S.C. 1718.

We propose to revise § 3.358(b)(2) to provide that compensation may be paid under § 3.358 for the continuance or natural progress of a preexisting disease or injury if VA failed to exercise reasonable skill and care in the diagnosis or treatment of the condition and VA's failure to do so resulted in additional disability or death that probably would have been prevented by proper diagnosis and treatment. This provision would apply only where VA renders medical services, such as hospitalization, examination, or medical and surgical treatment. It would not apply in the context of vocational rehabilitation training, which does not involve medical services provided by VA. Currently, § 3.358(b)(2) prohibits compensation for the continuance or natural progress of a preexisting disease or injury under all circumstances. This change implements the conclusion of the VA General Counsel in VAOPGCPREC 5–2001. In that opinion, the General Counsel noted that a showing of VA fault or failure to exercise reasonable skill and care is ordinarily not an element of entitlement to benefits under § 3.358. However, the General Counsel further noted that the continuance or natural progress of a preexisting disease or injury could not have been caused by VA hospitalization, treatment, or examination, unless it is shown that the continuance or natural progress probably would have been prevented by proper diagnosis and treatment.

We propose new 38 CFR 3.361 to implement 38 U.S.C. 1151 as amended, new 38 CFR 3.362 to codify rules concerning the offset of benefits awarded under 38 U.S.C. 1151 if the beneficiary has also recovered damages under the Federal Tort Claims Act, and new 38 CFR 3.363 to consolidate regulatory provisions now contained in §§ 3.358 and 3.800.

In accordance with section 422(b)(2) of Public Law 104–204, 110 Stat. 2874, 2927, we propose to apply new §§ 3.361 through 3.363 only to claims received by VA on or after October 1, 1997, and to continue to apply §§ 3.358 and 3.800 to claims received by VA before October 1, 1997. These applicability rules are reflected in proposed §§ 3.358(a), 3.361(a), 3.362(a), 3.363(a), and 3.800(a). The controlling factor is the date VA receives the claim. If a decision pursuant to §§ 3.358 and 3.800 becomes final on a claim received before October 1, 1997, and the claimant later reopens the claim on or after October 1, 1997, then the stricter standards of §§ 3.361 through 3.363 will apply to the reopened claim.

Proposed § 3.361(b), concerning additional disability, is derived from current § 3.358(b)(1) with appropriate changes made to reflect the amendments made by section 422 of Public Law 104–204, section 303 of Public Law 106–419, and editorial changes made to improve clarity. Similarly, proposed § 3.361(c), concerning cause, is derived from current § 3.358(b)(2) and (c)(1).

As amended by section 422 of Public Law 104–204, 38 U.S.C. 1151(a)(1) requires for entitlement that a veteran's additional disability or death be proximately caused either by "an event not reasonably foreseeable" or by "carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault" on VA's part in furnishing the hospital care, medical or surgical treatment, or examination that caused the additional disability or death. We believe that Congress, by listing several synonymous terms relating to negligence, intended not to provide alternative standards of liability, but rather to establish a single standard which would trigger entitlement to 38 U.S.C. 1151 benefits if not met in VA's furnishing of hospital care, medical or surgical treatment, or examination. We further believe that the single standard Congress intended to establish is tort-variety negligence. We recognize that there is not a single standard of liability governing tort claims under the Federal Tort Claims Act, but rather that the standard applied may vary from state to state. However, we also believe that Congress did not intend entitlement to a veterans' benefit to depend on a claimant's state of residence. Accordingly, we intend to apply a uniform standard in the adjudication of claims under 38 U.S.C. 1151.

In tort cases, the phrase "error in judgment" is sometimes used to refer to non-negligent mistakes, such as a diagnosis which was reasonable and was based on the exercise of due skill and care, but which later proves to be incorrect. At other times, however, the phrase "error in judgment" is used to refer to negligent mistakes involving the failure to use due skill and care in making decisions regarding diagnosis and treatment. Because the legislative history of Public Law 104–204 reflects that Congress intended to authorize benefits only where disability or death is due to VA negligence, we conclude that the phrase "error in judgment", as used in 38 U.S.C. 1151, refers to errors involving negligence and does not encompass reasonable decisions regarding diagnosis and treatment merely because they later prove to have been incorrect. The remaining terms in 38 U.S.C. 1151, *i.e.*, "carelessness", "negligence", "lack of proper skill", and "similar instances of fault", all unambiguously refer to circumstances where VA medical providers have failed to exercise due care in providing medical services. Therefore, in proposed § 3.361(d)(1)(i), we interpret 38 U.S.C. 1151 as providing entitlement to benefits if VA, in furnishing hospital care, medical or surgical treatment, or examination, fails to exercise the degree of care that would be expected of a reasonable health care provider in furnishing hospital care, medical or surgical treatment, or examination.

Proposed § 3.361(d)(1)(ii), concerning consent to care, treatment, or examination, is derived from current § 3.358(c)(3). However, we propose to include a requirement that consent be informed, in accordance with 38 CFR 17.32. As reflected in proposed § 3.361(d)(2), we propose to leave to the factfinder in each claim the determination as to whether the proximate cause of a veteran's additional disability or death was an event not reasonably foreseeable, and for the factfinder, in making that determination, to apply the standard of what a reasonable health care provider would have foreseen. Proposed § 3.361(d)(3), concerning proximate cause by the provision of rehabilitation and training services and, for claims received on or after November 1, 2000, by participation in a CWT program, is derived from current § 3.358(c)(5) with appropriate changes made to reflect the amendments made by section 422 of Public Law 104–204, section 303 of Public Law 106–419, and editorial changes made to improve clarity.

The definition of "Department employee" in proposed § 3.361(e)(1) is derived from 5 U.S.C. 2105(a), which defines "employee" for title 5 (Government Organization and Employees) purposes, modified to refer only to VA employees who are engaged in the furnishing of health care services. The definition of "Department facility" in proposed § 3.361(e)(2) reflects a provision of 38 U.S.C. 1151(a) as amended by section 422 of Public Law 104–204. 38 U.S.C. 1151(a)(1) refers to "a Department facility as defined in section 1701(3)(A)" of title 38, United States Code. Section 1701(3)(A) defines "facilities of the Department" as facilities over which the Secretary has direct jurisdiction. We therefore propose to define "Department facility" in the same way.

Proposed § 3.361(f)(1) excludes hospital care or medical services furnished pursuant to a contract made under 38 U.S.C. 1703 because, under section 1703's terms, such care or services are furnished in a non-Department facility, and the day-to-day operations of such a facility's employees are not subject to the Secretary's supervision. The exclusion in proposed § 3.361(f)(2) of nursing home care furnished under 38 U.S.C. 1720 is derived from current § 3.358(c)(6). Proposed § 3.361(f)(3) excludes hospital care or medical services provided under 38 U.S.C. 8153 in a facility over which the Secretary does not have direct jurisdiction because care or services under section 8153 are not provided by VA employees but may or may not be furnished in a VA facility. Proposed § 3.361(f)(3) would exclude only such care and services in fact not provided in a VA facility. Proposed § 3.361(g) is derived from current § 3.800(b).

Proposed § 3.362(b), concerning the amount of a tort recovery to be offset from a veteran's compensation awarded under 38 U.S.C. 1151(a), is derived from current § 3.800(a)(2). Proposed § 3.362(c), concerning the amount of a tort recovery to be offset from a survivor's dependency and indemnity compensation (DIC) awarded under 38 U.S.C. 1151(a), is derived from § 3.800(a)(2) and the Office of the General Counsel precedent opinion (VAOPGCPREC) 79–90. That opinion held that the amount to be offset from a DIC award under 38 U.S.C. 1151 depends on the nature of the damages recovered by the claimant under the Federal Tort Claims Act. Amounts recovered by a claimant as damages under a typical "wrongful-death statute" may be offset from a DIC award under 38 U.S.C. 1151, even if the damages are paid to a nominal party as trustee for the veteran's survivors. Each survivor receiving such damages is subject to offset of DIC under 38 U.S.C. 1151 to the extent of sums included in the tort claim's judgment, settlement, or compromise to compensate for harm suffered by that survivor. On the other hand, amounts recovered by a claimant, acting as personal representative of a decedent veteran's estate, as damages under a "survival statute" may not be offset from a DIC award under 38 U.S.C. 1151.

Proposed § 3.362(d), concerning offset of structured settlements, is derived from the principles espoused in VAOPGCPREC 79–90. Structured settlements are settlements or compromises in which the Government,

rather than simply paying to a plaintiff a sum, in settlement or compromise of a claim under the Federal Tort Claims Act, buys an annuity or otherwise funds payments, which may differ in total amount from the amount expended by the Government, to be made to the plaintiff at some future time. We propose to offset from a DIC award only the veteran's or survivor's proportional share of the Government's cost of such a settlement, including the veteran's or survivor's proportional share of attorney fees. Furthermore, the offset is to begin as soon as compensation or DIC payments would be made after the settlement becomes final, not when the settlement payments are actually made to the beneficiary.

The requirement in paragraphs (b), (c), and (d)(1) of proposed § 3.362 that offset of benefits under section 1151 include the claimant's proportional share of attorney fees is derived from the Office of General Counsel precedent opinion 7–94. That opinion held that, when an individual is awarded a judgment or enters into a compromise of a tort claim for a disability or death covered by section 1151, future benefits under section 1151 must be offset by the entire amount of the judgment or settlement proceeds, including the amount of attorney fees paid out of such proceeds.

Proposed § 3.363, concerning a bar to benefits due to alternative recoveries before December 1, 1962, is derived from current § 3.800(a)(3).

We propose to revise 38 CFR 3.154, which identifies the types of communications that may be accepted as a claim for benefits under 38 U.S.C. 1151. The revised § 3.154 would clarify that the requirements of that rule apply to claims under either 38 CFR 3.358 or proposed 38 CFR 3.361. The revised § 3.154 would also more clearly state the requirements under current § 3.154 and 38 CFR 3.1(p) that a communication must be in writing and must indicate an intent to claim benefits under 38 U.S.C. 1151 in order to be accepted as a claim for such benefits. Additionally in § 3.154, we propose to clarify that the format or the way in which a claimant files for benefits under §§ 3.358 or 3.361 is not critical; rather, the controlling factor is some showing that the claimant is seeking disability or death benefits from the Veterans Benefits Administration.

We are also proposing to revise several cross references to 38 U.S.C. 1151, § 3.358 and/or § 3.800 to be consistent with the proposed changes. These cross references are paragraph (i) of § 3.400, paragraph (a)(4) of § 3.708, and paragraph (c) of § 3.807.

Executive Order 12866

This proposed regulatory action has been reviewed by the Office of Management and Budget under Executive Order 12866.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: October 7, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, we propose to amend 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A–Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for Part 3 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.154 and the Cross References at the end of the section are revised to read as follows:

§ 3.154 Injury due to hospital treatment, etc.

VA may accept as a claim any communication in writing indicating an intent to file a claim with the Veterans Benefits Administration for disability or for death benefits under § 3.358 (due to hospitalization, medical or surgical treatment, examination, or vocational rehabilitation training) or under § 3.361 (due to hospital care, medical or surgical treatment, examination, training and rehabilitation services, or compensated work therapy program) whether such communication is contained in a formal claim for pension, compensation, dependency and indemnity compensation or in any other document.

(Authority: 38 U.S.C. 1151)

Cross References: Effective dates. See § 3.400(i). Disability or death due to hospitalization *etc.* See §§ 3.358, 3.361 and 3.800.

3. In § 3.358, the authority citation at the end of the paragraph (a) is removed and paragraphs (a) and (b)(2) are revised to read as follows:

§ 3.358 Compensation for disability or death from hospitalization, medical or surgical treatment, examination, or vocational rehabilitation training (§ 3.800).

(a) *General.* This section applies to claims received by VA before October 1, 1997. If it is determined that there is additional disability resulting from a disease or injury or aggravation of an existing disease or injury suffered as a result of hospitalization, medical or surgical treatment, examination, or vocational rehabilitation training, compensation will be payable for such additional disability. For claims received by VA on or after October 1, 1997, see § 3.361.

(b) * * *

(2) Compensation will not be payable under this section for the continuance or natural progress of a disease or injury for which the hospitalization, medical or surgical treatment or examination was furnished, unless VA's failure to exercise reasonable skill and care in the diagnosis or treatment of the disease or injury caused additional disability or death that probably would have been prevented by proper diagnosis or treatment. Compensation will not be payable under this section for the continuance or natural progress of a disease or injury for which vocational rehabilitation training was provided.

* * * * *

4. Section 3.361 is added to read as follows:

§ 3.361 Benefits under 38 U.S.C. 1151(a) for additional disability or death due to hospital care, medical or surgical treatment, examination, training and rehabilitation services, or compensated work therapy program.

(a) *Claims subject to this section.* This section applies to claims received by VA on or after October 1, 1997. This includes original claims and claims to reopen or otherwise readjudicate a previous claim for benefits under 38 U.S.C. 1151 or its predecessors. The effective date of benefits is subject to the provisions of § 3.400(i). For claims received by VA before October 1, 1997, see § 3.358.

(b) *Determining whether a veteran has an additional disability.* To determine whether a veteran has an additional disability, VA compares the veteran's condition immediately before the beginning of the hospital care, medical or surgical treatment, examination, training and rehabilitation services, or compensated work therapy (CWT) program upon which the claim is based to the veteran's condition after such care, treatment, examination, services, or program has stopped. VA considers each involved body part or system separately.

(c) *Establishing the cause of additional disability or death.* Claims based on additional disability or death due to hospital care, medical or surgical treatment, or examination must meet the causation requirements of this paragraph and paragraph (d)(1) or (d)(2) of this section. Claims based on additional disability or death due to training and rehabilitation services or compensated work therapy program must meet the causation requirements of paragraph (d)(3) of this section.

(1) *Actual causation required.* To establish causation, the evidence must show that the hospital care, medical or surgical treatment, or examination resulted in the veteran's additional disability or death. Merely showing that a veteran received care, treatment, or examination and that the veteran has an additional disability or died does not establish cause.

(2) *Continuance or natural progress of a disease or injury.* Hospital care, medical or surgical treatment, or examination cannot cause the continuance or natural progress of a disease or injury for which the care, treatment, or examination was furnished unless VA's failure to timely diagnose and properly treat the disease or injury proximately caused the continuance or natural progress. The provision of training and rehabilitation services or CWT program cannot cause the continuance or natural progress of a disease or injury for which the services were provided.

(3) *Veteran's failure to follow medical instructions.* Additional disability or death caused by a veteran's failure to follow properly given medical instructions is not caused by hospital care, medical or surgical treatment, or examination.

(d) *Establishing the proximate cause of additional disability or death.* The proximate cause of disability or death is the action or event that directly caused the disability or death, as distinguished from a remote contributing cause.

(1) *Care, treatment, or examination.* To establish that carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault on VA's part in furnishing hospital care, medical or surgical treatment, or examination proximately caused a veteran's additional disability or death, it must be shown that the hospital care, medical or surgical treatment, or examination caused the veteran's additional disability or death (as explained in paragraph (c) of this section); and

(i) VA failed to exercise the degree of care that would be expected of a reasonable health care provider; or

(ii) VA furnished the hospital care, medical or surgical treatment, or examination without the veteran's or, in appropriate cases, the veteran's representative's informed consent. To determine whether there was informed consent, VA will consider whether the health care providers substantially complied with the requirements of § 17.32 of this chapter. Minor deviations from the requirements of § 17.32 of this chapter that are immaterial under the circumstances of a case will not defeat a finding of informed consent. Consent may be expressed (*i.e.*, given orally or in writing) or implied under the circumstances specified in § 17.32(b), as in emergency situations.

(2) *Events not reasonably foreseeable.* Whether the proximate cause of a veteran's additional disability or death was an event not reasonably foreseeable is in each claim to be determined based on what a reasonable health care provider would have foreseen.

(3) *Training and rehabilitation services or compensated work therapy program.* To establish that the provision of training and rehabilitation services or a CWT program proximately caused a veteran's additional disability or death, it must be shown that the veteran's participation in an essential activity or function of the training, services, or CWT program provided or authorized by VA proximately caused the disability or death. The veteran must have been participating in such training, services, or CWT program provided or authorized by VA as part of an approved rehabilitation program under 38 U.S.C. chapter 31 or, for claims received on or after November 1, 2000, as part of a CWT program under 38 U.S.C. 1718. It need not be shown that VA approved that specific activity or function, as long as the activity or function is generally accepted as being a necessary component of the training, services, or CWT program that VA provided or authorized.

(e) *Department employees and facilities.* (1) A *Department employee* is an individual—

(i) Who is appointed by the Department in the civil service under title 38, United States Code, or title 5, United States Code, as an employee as defined in 5 U.S.C. 2105;

(ii) Who is engaged in furnishing hospital care, medical or surgical treatment, or examinations under authority of law; and

(iii) Whose day-to-day activities are subject to supervision by the Secretary of Veterans Affairs.

(2) A *Department facility* is a facility over which the Secretary of Veterans Affairs has direct jurisdiction.

(f) *Activities that are not hospital care, medical or surgical treatment, or examination furnished by a Department employee or in a Department facility.* The following are not hospital care, medical or surgical treatment, or examination furnished by a Department employee or in a Department facility within the meaning of 38 U.S.C. 1151(a):

(1) Hospital care or medical services furnished under a contract made under 38 U.S.C. 1703.

(2) Nursing home care furnished under 38 U.S.C. 1720.

(3) Hospital care or medical services, including examination, provided under 38 U.S.C. 8153 in a facility over which the Secretary does not have direct jurisdiction.

(g) *Benefits payable under 38 U.S.C. 1151 for a veteran's death*—(1) *Death before January 1, 1957.* The benefit payable under 38 U.S.C. 1151(a) to an eligible survivor for a veteran's death occurring before January 1, 1957, is death compensation. See §§ 3.5(b)(2) and 3.702 for the right to elect dependency and indemnity compensation.

(2) *Death after December 31, 1956.* The benefit payable under 38 U.S.C. 1151(a) to an eligible survivor for a veteran's death occurring after December 31, 1956, is dependency and indemnity compensation.

(Authority: 38 U.S.C. 1151)

5. Section 3.362 is added to read as follows:

§ 3.362 Offsets under 38 U.S.C. 1151(b) of benefits awarded under 38 U.S.C. 1151(a).

(a) *Claims subject to this section.* This section applies to claims received by VA on or after October 1, 1997. This includes original claims and claims to reopen or otherwise readjudicate a previous claim for benefits under 38 U.S.C. 1151 or its predecessors.

(b) *Offset of veterans' awards of compensation.* If a veteran's disability is the basis of a judgment under 28 U.S.C. 1346(b) awarded, or a settlement or compromise under 28 U.S.C. 2672 or 2677 entered, on or after December 1, 1962, the amount to be offset under 38 U.S.C. 1151(b) from any compensation awarded under 38 U.S.C. 1151(a) is the entire amount of the veteran's share of the judgment, settlement, or compromise, including the veteran's proportional share of attorney fees.

(c) *Offset of survivors' awards of dependency and indemnity compensation.* If a veteran's death is the basis of a judgment under 28 U.S.C. 1346(b) awarded, or a settlement or compromise under 28 U.S.C. 2672 or 2677 entered, on or after December 1, 1962, the amount to be offset under 38 U.S.C. 1151(b) from any dependency and indemnity compensation awarded under 38 U.S.C. 1151(a) to a survivor is only the amount of the judgment, settlement, or compromise representing damages for the veteran's death the survivor receives in an individual capacity or as distribution from the decedent veteran's estate of sums included in the judgment, settlement, or compromise to compensate for harm suffered by the survivor, plus the survivor's proportional share of attorney fees.

(d) *Offset of structured settlements.* This paragraph applies if a veteran's disability or death is the basis of a structured settlement or structured compromise under 28 U.S.C. 2672 or 2677 entered on or after December 1, 1962.

(1) *The amount to be offset.* The amount to be offset under 38 U.S.C. 1151(b) from benefits awarded under 38 U.S.C. 1151(a) is the veteran's or survivor's proportional share of the cost to the United States of the settlement or compromise, including the veteran's or survivor's proportional share of attorney fees.

(2) *When the offset begins.* The offset of benefits awarded under 38 U.S.C. 1151(a) begins the first month after the structured settlement or structured compromise has become final that such benefits would otherwise be paid.

(Authority: 38 U.S.C. 1151)

6. Section 3.363 is added to read as follows:

§ 3.363 Bar to benefits under 38 U.S.C. 1151.

(a) *Claims subject to this section.* This section applies to claims received by VA on or after October 1, 1997. This includes original claims and claims to reopen or otherwise readjudicate a previous claim for benefits under 38 U.S.C. 1151 or its predecessors.

(b) *Administrative award, compromises, or settlements, or judgments that bar benefits under 38 U.S.C. 1151.* If a veteran's disability or death was the basis of an administrative award under 28 U.S.C. 1346(b) made, or a settlement or compromise under 28 U.S.C. 2672 or 2677 finalized, before December 1, 1962, VA may not award benefits under 38 U.S.C. 1151 for any period after such award, settlement, or compromise was made or became final. If a veteran's disability or death was the basis of a judgment that became final before December 1, 1962, VA may award benefits under 38 U.S.C. 1151 for the disability or death unless the terms of the judgment provide otherwise.

(Authority: 38 U.S.C. 1151)

7. In § 3.400, the section heading of paragraph (i) is revised to read as follows:

§ 3.400 General.

* * * * *

(i) *Disability or death due to hospitalization, etc.* (38 U.S.C. 5110(c), (d); Public Law 87–825; §§ 3.358, 3.361, and 3.800).* * *

§ 3.708 [Amended]

8. Section 3.708, paragraph (a)(4) is amended by removing "or training." and adding, in its place, "or hospital care, training, or compensated work therapy program. See §§ 3.358 and 3.361."

9. Section 3.800 is amended by adding introductory text to read as follows:

§ 3.800 Disability or death due to hospitalization, etc.

This section applies to claims received by VA before October 1, 1997. For claims received by VA on or after October 1, 1997, see §§ 3.362 and 3.363.

* * * * *

10. In § 3.807, the last sentence of paragraph (c) is amended by removing "§ 3.800" and adding, in its place, "§§ 3.358, 3.361".

* * * * *

[FR Doc. 02–31250 Filed 12–11–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–059–200206(b); FRL–7420–1]

Approval and Promulgation of Implementation Plans: Revisions to the Alabama Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to approve revisions to the Alabama Department of Environmental Management's nitrogen oxides budget and allowance trading program submitted on September 13, 2002, by the State of Alabama. These revisions are designed to provide greater flexibility to reward sources that achieve quantifiable reductions ahead of the compliance deadline by allowing sources to request credit for early reductions obtained during the 2001 control period.

In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before January 13, 2003.

ADDRESSES: Written comments should be addressed to Sean Lakeman, at the EPA Regional Office listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, Air, Pesticides, and Toxics Management Division, 61 Forsyth Street, Atlanta, Georgia 30303–8960.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW.; Atlanta, Georgia 30303–8960. Mr. Lakeman can also be reached by phone at (404) 562–9043 or by electronic mail at *lakeman.sean@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Final Rules Section of this **Federal Register**.

Dated: November 26, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–31236 Filed 12–11–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 23

[Docket No. OST–2002–13977; Notice No. 1]

RIN 2105–AD21

Participation by Disadvantaged Business Enterprises in Airport Concessions

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Currently, the size standard for most types of businesses seeking to participate as disadvantaged business enterprises (DBEs) in airport concessions is $30 million in annual gross receipts. This NPRM seeks comment on a suggestion that the Department has received to adjust this size standard to take into account the varying amounts of concession fees that different types of businesses typically pay to airports.

DATES: Comments should be received by January 27, 2003. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Attn: Docket No. OST–2002–13977, Department of Transportation, 400 7th Street, SW., Room PL401, Washington DC, 20590. Persons wishing their comments to be acknowledged should enclose a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the sender. Comments may be reviewed at the above address from 9 a.m. through 5:30 p.m. Monday through Friday. Commenters may also submit their comments electronically. Instructions for electronic submission may be found at the following web address: *http://dms.dot.gov/submit/*. The public may also review docketed comments electronically. The following web address provides instructions and access to the DOT electronic docket: *http://dms.dot.gov/search/*.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC 20590, phone numbers (202) 366–9310 (voice), (202) 366–9313 (fax), (202) 755–7687 (TDD), *bob.ashby@ost.dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The small business size standard for businesses seeking to participate as DBE airport concessionaires is generally $30 million in annual gross receipts, averaged over three years ($40 million for car rental companies).[1] The Department has received correspondence from an airport advertising firm and its legal representative requesting a change in this size standard. The Department is treating this correspondence as a petition for rulemaking under 49 CFR § 5.11. We are granting the petition by presenting for public comment a proposal based on the petitioners' submissions.

The case petitioners make for adjusting the size standard is essentially that different types of concession businesses typically pay widely different concession fees to airports. For example, according to data selected from a 2000–2001 survey by the American Association of Airport Executives (AAAE) of charges made by large U.S. airports, food and beverage concessionaires paid an average of 15.2 percent of their gross revenues in fees, compared to 20.4 percent for retail stores, 10 percent for on-airport car rental companies, 7.6 percent for off-airport car rental companies, and 56.3 percent for airport advertising companies.

As a result, the submission suggests, airport advertisers are hampered in their ability to grow, or to retain DBE status, compared to other types of businesses. That is, applying the $30 million size standard across the board results in an airport advertiser that wants to retain DBE status being confined to considerably lower revenues, net of airport concession fees, than a restaurant or retail store. This disparity raises some concerns about the equity of an across-the-board gross receipts-based standard.

Another way of stating the issue is that the submission from the advertising firm and its legal representative raises the question about whether a gross receipts-based size standard is a fair approach to determining a size standard for concessionaires at all. Arguably, it might be fairer to base all size standards in the concessions area on receipts net of airport concession fees paid to airports.

The Department has authority to set its own DBE size standards in the airport concessions area. In this respect, the concessions DBE program differs from the DBE program for Federally-assisted contracting, which by statute is tied to the Small Business Administration's gross receipts-based standards. All airport concessionaires pay some variety of lease or concession fee to airports, which suggests that it could be reasonable to establish a size standard that takes the variation in these fees into account.

Consequently, the Department is seeking comment on a proposal to change the basis for its concessionaire size standards. Under this proposal, the Department would establish a baseline that would be the same for all types of concession businesses. The size standard would then be set at a level of gross receipts that would permit each type of concession to retain that baseline amount, after lease or concession fees typical for its type of business had been deducted.

For example, suppose the baseline amount were $30 million ($40 million in the case of car rental companies), paralleling the current gross receipts size standards. To retain $30 million or $40 million, as applicable, after deducting average concession fees, certain types of concession businesses would have to have the following gross receipt size standards:

[1] There are also two size standards that are not based on gross receipts at all: banks ($100 million in total assets), and pay telephone providers (1500 employees). This NPRM does not propose or seek comments on these two size standards.

Option 1	Average % of receipts in fees	Gross receipts size standard
Food and Beverage	15.2	$35,377,358
Retail Stores	20.4	37,688,442
Car Rental (on-airport)	10	44,444,444
Car rental (off-airport)	7.6	43,290,043
Advertising	56.3	68,649,885

Using $30 or $40 million as the baseline amount has the effect of increasing the size standards in all categories. The Department seeks comment on whether doing so is advisable.

A second way of establishing the baseline, based in part on ideas in the petitioners' submissions, would use the average percentage of receipts paid by all categories of concessions to reduce the baseline amount. The average percentage of gross receipts paid to airports as concession fees across the five business categories fees is 21.9 percent. If we reduced the existing baselines by 21.9 percent, the baseline figure would be $232.43 million for most concessions and $31.24 million for car rental companies. An average type of concession business with gross receipts of $30 million or $40 million, respectively, would retain this amount after concession fees were deducted.

We would then calculate the amount of gross receipts each type of business would need in order to retain $23.43 million or $31.24 million after paying the concession fees typical for its category. The following table displays the adjusted size standards that result from this calculation:

Option 2	Average % of receipts in fees	Gross receipts size standard
Food and Beverage	15.2	$27,629,716
Retail Stores	20.4	29,434,673
Car Rental (on-airport)	10	34,911,111
Car rental (off-airport)	7.6	41,105,263
Advertising	56.3	53,615,560

This approach, while equalizing the position of the five categories of businesses with respect to receipts net of concession fees, reduces the size standards in three of the five categories. The Department seeks comment on whether, if this approach is taken, there should be a "grandfather" provision that would result in no reduction in the actual size standard for any business category (*e.g.*, the standard for food and beverage and retail concessions would remain at $30 million).

Of the types of concessions currently listed in Appendix A to Part 23, four appear to fit in the food and beverage category and nine in the retail store category. Advertising and car rental companies each have their own category. Thirteen appear to fit into a category that might be called "services" (*e.g.*, insurance, shoe shine and barber/beauty shops, parking, hotels, vending machines). The data from the AAAE survey provided by the petitioner do not appear to include data on businesses of this type, and the Department seeks information, from AAAE or other sources, about the concession fees that these types of concessions typically pay. The Department also seeks information on the number of airports that have advertising concessions and the relative sizes of these concessionaires.

While the Department is willing to consider changing its DBE concession size standards, the Department has not yet decided whether to proceed with a final rule along these lines. The Department seeks comment on whether we should alter the size standards and, if so, whether the data and reasoning underlying the proposal are sound. The Department also seeks comments suggesting other alternatives.

We would also point out that the Department is working to finalize a pending Supplemental Notice of Proposed Rulemaking (SNPRM) to revise the entire DOT regulation (49 CFR part 23) concerning the airport concessions DBE program (65 FR 54454, September 8, 2000). In the context of considering this SNPRM and comments to it, the Department is reviewing the issue of whether a company in the business of placing advertising in an airport terminal on behalf of others, without offices on the airport, should be considered a concession for purposes of the DBE program. The decision on this issue will be made as part of the final rule resulting from the SNPRM. In seeking comments on the size standards issue in today's notice, the Department is not presupposing an answer to the question of whether advertising businesses of this kind ultimately will be included in the DBE concessions program. The Department anticipates responding to comments on today's NPRM in the final rule document for overall revision to part 23.

Regulatory Analyses and Notices

Executive Order 12866

This rule is not a significant rule under Executive Order 12866. Nor is it significant under the Department's Rulemaking Policies and Procedures, because it proposes relatively modest adjustments to the size standards for firms participating in an existing program.

Regulatory Flexibility Act

The DBE program is aimed at improving contracting opportunities for small businesses owned and controlled by socially and economically disadvantaged individuals in airport concessions. Virtually all the businesses it affects are small entities. There is no doubt that a DBE rule always affects a substantial number of small entities.

Nevertheless, the Department certifies that, if adopted, this proposed rule would not have a significant economic effect on a substantial number of these entities. By making the size standards for concessionaires more equitable, from the perspective of receipts net of concession fees, it is intended to make eligibility standards fairer. To the extent that it increases or decreases size standards for certain firms, it may affect the potential eligibility of certain individual firms. However, we do not believe that these changes will affect a large number of firms or overall DBE participation in airport concessions.

Paperwork Reduction Act

This NPRM does not contain information collection requirements subject to the Paperwork Reduction Act.

Federalism

The rule does not have sufficient Federalism impacts to warrant the preparation of a Federalism assessment. While the rule concerns the activities of state and local governments in DOT financial assistance programs, the rule does not significantly alter the role of state and local governments vis-a-vis DOT from the present part 23.

List of Subjects in 49 CFR Part 23

Administrative practice and procedure, Airports, Civil rights, Concessions, Government Contracts, Grant programs—transportation, Minority business, Reporting and recordkeeping requirements.

Issued this 26th day of November 2002, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 02–31338 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 020424095–2095–01, I.D. 032801B]

RIN 0648–AP25

Fishing Capacity Reduction Program for the Crab Species Covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: The National Marine Fisheries Service (NMFS) proposes regulations for a fishing capacity reduction program in the fishery for the crab species managed under the Bering Sea/Aleutian Islands King and Tanner Crabs Fishery Management Plan. This proposed rule would establish a program to reduce excess capacity and promote economic efficiency in the crab fishery. It is put forth under both special legislation and existing NMFS regulations governing fishing capacity reduction programs. The program's objectives include: increasing harvesting productivity for post-reduction fishermen (i.e., those harvesters remaining in the fishery after capacity is reduced), helping conserve and manage fishery resources, and encouraging rationalization of harvesting effort. Participation in the program would be voluntary; and payments would be made for withdrawing vessels from fishing, revoking fishing licenses, and surrendering fishing histories. NMFS would finance the program's $100 million cost with a 30–year loan to be repaid by post-reduction fishermen.

DATES: NMFS must receive comments by January 27, 2003.

ADDRESSES: Mail or fax written comments about this proposed rule to Michael L. Grable. The mailing address is: Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282. The fax number is (301) 713–1306. NMFS will not accept e-mail or internet comments.

If a comment involves any aspect of the proposed rule's collection of information requirements, send the comment both to Michael L. Grable and to the National Oceanic and Atmospheric Administration Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Anyone may obtain, from Michael L. Grable, the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis for this proposed rule.

Anyone wishing to contact the Restricted Access Management Program (which issues crab species fishing licenses) may do so at this address: Restricted Access Management Program, National Marine Fisheries Service, P.O. Box 21668, Juneau Alaska 99802–1668. The fax number is (907) 586–7354.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable,(301)713–2390.

SUPPLEMENTARY INFORMATION:

Statutory and Regulatory Background

The Consolidated Appropriations Act 2001 (Pub. L. 106–554, section 144) directed the Secretary of Commerce to establish a $100 million fishing capacity reduction program (crab program) in the Bering Sea/Aleutian Islands king and Tanner crab fishery. Subsequently, that law was amended twice (Pub. L. 107–20, section 2201; and Pub. L. 107–117, section 205) to further clarify the pool of vessels eligible to participate in the crab fishery, and change the crab program's funding from a $50 million appropriation and a $50 million loan to a $100 million loan (reduction loan). NMFS authority to make this loan resides in sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g)(MMA)(Title XI).

The Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (crab FMP) was developed by the North Pacific Fishery Management Council and approved and implemented by NMFS under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*)(MSA). The Council also developed Amendment 10 to the crab FMP which further defined the eligibility criteria for crab license limitation program (LLP) licenses. Regulations implementing the crab FMP govern management of this fishery.

Fishing capacity reduction programs, generally, are governed by subpart L to 50 CFR part 600, a framework rule promulgated pursuant to section 312 of the MSA (16 U.S.C. 1861a(b)-(e)). NMFS proposes this rule as a new § 600.1018 appearing immediately after the framework rule's last existing section.

Primary Statutory Objective

Section 144 established the crab program's primary objective as reducing "the fishing capacity in the BSAI crab fisheries by permanently reducing the number of license limitation program crab licenses . . . ."

Key Steps

The proposed crab program is complicated and the following listing of key steps is intended to facilitate understanding by the public. NMFS would:

(a) Propose the regulations;
(b) Publish final regulations;
(c) Invite crab program bids;
(d) Receive and tally the bids;
(e) Accept the bids;
(f) Conduct a referendum on the results of the bidding;
(g) Notify referendum voters and accepted bidders of the referendum results;
(h) Make reduction payments under reduction contracts; and
(i) Collect reduction loan repayment fees.

Note: Any time the word "we" is used in this document, it refers to NMFS.

I. Crab Program Overview

$100 million would be available to pay crab license holders to relinquish their crab fishing capacity. NMFS would issue an invitation to bid for reduction payments totaling up to $100 million. Qualifying crab license holders who wanted to relinquish their crab fishing capacity would choose the dollar amounts for which they were willing to do so. They would then bid in a reverse auction by offering to relinquish their crab fishing capacity in return for reduction payments equal to their bid amounts.

NMFS would express each bid amount as a percentage of the value of each bidder's crab harvests during a certain period. NMFS would use this percentage to determine which bids to accept. NMFS would first accept the bid with the lowest percentage, and then successively accept each bid with the next lowest percentage until the entire $100 million had been paid out or there were no further bids to accept. Bid acceptances would create irrevocable reduction contracts between the United States and the accepted bidders, subject only to a referendum approving a post-reduction crab landing fee for repaying the reduction loan.

After determining how much of the prospective reduction loan each of the crab area/species endorsement fisheries would have to repay, NMFS would hold a referendum in which qualifying crab license holders vote to approve or disapprove the landing fee. If at least two thirds of the votes cast were in favor of the fee, the referendum would be successful, and the fee would be approved.

After a successful referendum, NMFS would make the reduction payments to the accepted bidders and finalize the relinquishment of their crab fishing capacity. Post-reduction harvesters would pay a fee up to 5% of the value of their future crab landings. Persons who must, under the State of Alaska's reporting requirements, complete and file fish tickets for harvested crab would collect the fee and forward all fee revenue to NMFS. The fee revenue is applied to repaying the 30–year reduction loan.

The reduction loan's original principal amount would be the total of all reduction payments. The reduction loan's interest rate would be 2 percent higher than the rate at which NMFS would pay interest on the money it borrowed from the U.S. Treasury to make reduction payments. The reduction loan's interest rate would be fixed, and its term would be 30 years. There would be no prepayment penalty.

II. Program Specifics

A. Reduction Component Requirements

Each crab program bidder would offer to relinquish these reduction components:

1. A non-interim crab LLP license issued under 50 CFR 679.4(k)(5) (crab reduction permit);
2. The fishing history that gave rise to the crab license (crab reduction history);
3. Any non-crab fishing license or permit derived from the reduction vessel's fishing history (non-crab reduction permit);
4. The fishing history that gave rise to the non-crab reduction permit (non-crab reduction history);
5. Every other worldwide fishing privilege (reduction vessel privilege) of the crab fishing vessel whose fishing history gave rise to the crab reduction permit (reduction vessel); and
6. Every other claim associated with the reduction components that could qualify anyone for any present or future limited access system fishing license or permit in any U.S. fishery (reduction claim). The reduction claim would include any harvesting privilege or quota allocation under any present or future individual fishing quota system.

Crab Reduction Permit Requirements

The crab reduction permit that each bid offers would have to be a crab license that is non-interim at the time of bidding. The crab reduction permit would have to be endorsed for one or more of the six crab area/species endorsements other than the area/species endorsement for Norton Sound red king and blue king crab (Norton Sound fishery). A permit endorsement allows fishing for a specific species of king or Tanner crab in specific geographical areas in the crab fishery. Although the reduction permit may be endorsed for the Norton Sound fishery, reduction permits endorsed solely for the Norton Sound fishery may not be included in a bid because only the six reduction endorsement fisheries constitute the reduction fishery.

With two exceptions, the crab reduction permit must have been derived from the fishing history accrued on the reduction vessel during the general qualification period (GQP), endorsement qualification period (EQP), and recent participation period (RPP). The GQP, EQP, and RPP are the time periods used under the license limitation program to determine license eligibility on the basis of catch history. The existing NMFS regulations implementing Amendment 10 to the crab FMP require that the crab fishing history giving rise to a crab license be earned on a single crab fishing vessel.

The first exception provided in (50 CFR 679.4(k)(5)(iii)(B)(*3*)) applies to persons whose vessel was used to meet the GQP and EQP crab harvest requirement but could not be used to meet the RPP crab harvest requirement because the vessel had been lost or destroyed and was unavailable during the RPP. In this case, persons may meet the RPP requirement by making a documented harvest of crab at any time during the period after a vessel was lost or destroyed through January 1, 2000.

Anyone making such a documented crab harvest could have used either a vessel salvaged and returned to service after the RPP, or a different vessel. If the documented harvest was made from a salvaged vessel, (1) the salvaged vessel would be the reduction vessel and (2) the crab reduction history would be the salvaged vessel's documented harvest of crab. If made from a different vessel, however, (1) the reduction vessel would be the different vessel and (2) the crab reduction history would be the total of the lost or destroyed vessel's documented harvest of crab through the date of the vessel's loss or destruction plus the different vessel's documented harvest of crab after that date.

The second exception provided for in (50 CFR 679.4(k)(5)(iv)) applies to persons (1) whose vessel made a documented harvest of crab during the RPP period (January 1, 1996, through February 7, 1998), and (2) who obtained a different vessel's crab fishing history which met the GQP and EQP documented crab harvest requirements or—by 8:36 A.M., Pacific standard time, on October 10, 1998—entered into a contract to do so.

In this case, (1) the reduction vessel would be the vessel from which the documented crab harvest was made during the RPP and (2) the crab reduction history would be the total of that vessel's documented harvest of crab after December 31, 1994 (i.e., the date on which the EQP ended), plus the acquired documented harvest of crab through December 31, 1994.

Crab Reduction History Requirements

The crab reduction history would have to be the complete crab fishing history of the reduction vessel, including the crab fishing history during the GQP, EQP, and RPP that gave rise to the crab reduction permit.

Non-Crab Reduction Permit Requirements

The non-crab reduction permit offered would be any fishing license or permit for any species other than crab (1) that was derived from the fishing history of the bidder's reduction vessel, and (2) held on the date that this rule is effective.

Non-crab Reduction History Requirements

The non-crab reduction history offered would be the complete fishing history of the reduction vessel that gave rise to any non-crab reduction permit.

Reduction Vessel Privilege Requirements

The reduction vessel privilege offered would have to include:

1. The reduction vessel's fisheries trade endorsement under the Merchant Marine Act, 1936 (46 U.S.C.A. 12108);
2. The reduction vessel's qualification for any present or future U.S. Government approval under section (9)(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)) for placement under foreign registry or operation under the authority of a foreign country; and
3. Any other privilege to ever use the reduction vessel to fish anywhere in the world.

The reduction vessel in each bid would have to be in existence at the time of bidding.

B. Qualifying Bidders and Co-Bidders

The persons qualified to bid for reduction payments (qualifying bidders) would be the holders of record of the crab reduction permits.

NMFS regulations do not, however, require crab license holders either to own the crab fishing vessels used with their crab licenses or to retain the vessels' crab fishing histories. Theoretically the licenses, vessels, and histories can be conveyed independently of each other; and different persons may own, hold, or retain them. Consequently, it is possible that some bidders may not own the reduction vessels, hold the non-crab reduction permits, or retain either the crab or non-crab reduction histories that this proposed action would require bids to offer. By making provision for co-bidders who own or hold some of the required reduction components, this proposed rule would accommodate these circumstances.

If the qualifying bidder owned, held, or retained at the time of bidding each of the reduction components, the qualifying bidder would bid alone (i.e., there would be no co-bidder).

If, however, a person other than the qualifying bidder owned or held at the time of bidding either the required reduction vessel or the required non-crab reduction permit, that person could be a co-bidder. In this case, the qualifying bidder and the co-bidder would bid together.

The proposed rule would not, however, allow a co-bidder for the crab reduction permit or for the crab or non-crab reduction histories.

In summary:

1. A qualifying bidder bidding alone would have to own, hold, or retain all of the bid's reduction components;
2. A co-bidder bidding together with a qualifying bidder could own or hold only the bid's reduction vessel or non-crab reduction permit; and
3. A qualifying bidder bidding together with a co-bidder would still have to hold or retain the bid's crab reduction permit and the bid's crab and non-crab reduction histories.

C. Qualifying Referendum Voters

The persons qualified to vote in the crab program fee referendum (qualifying voters) would be the holders of record at the time of voting of either interim or non-interim crab licenses endorsed for one or more of the reduction endorsement fisheries. The crab licenses could also be endorsed for the Norton Sound fishery, but no person whose license was endorsed solely for the Norton Sound fishery could be a qualifying voter.

D. Summary of How Crab Licenses Qualify Bidders and Voters

Each person who is the record holder of a non-interim crab license endorsed for one or more reduction endorsement fisheries would be both a qualifying bidder and a qualifying voter. Each such person could bid and vote. For bidding purposes, however, the person's crab license would also have to meet the reduction crab permit requirements.

Each person who is the record holder of an interim crab license endorsed for one or more reduction endorsement fisheries would be a qualifying voter but not a qualifying bidder. Each such person could vote but not bid.

Each person who is the record holder of a crab license endorsed solely for the Norton Sound fishery would be neither a qualifying bidder nor a qualifying voter and could neither bid nor vote.

Qualifying bidders must be the record holder of their crab reduction permits at the time of bidding, and qualifying voters must be the record holders of their crab licenses at the time of voting.

III. Reduction Process Overview

If NMFS adopted this proposed rule, we would begin the reduction process by publishing a notification in the **Federal Register** listing the crab license holders who, on the notification's date, appear to be qualifying bidders, qualifying voters, or both.

By publishing in the **Federal Register** an invitation to bid and mailing the invitation to bid to each qualifying bidder, we would next invite the qualifying bidders to submit bids. Qualifying bidders could then bid by irrevocably offering to the United States their reduction components, in the manner that this proposed rule would require, in return for reduction payments from the United States in amounts that the bidders would have determined. We would score the bid offers, rank them in a reverse auction, and accept the bid offers with the lowest scores until either the maximum reduction cost ($100 million) were committed or there were no additional acceptable bids. Our acceptance of bid offers would create binding reduction contracts between the accepted bidders and the United States.

Bid acceptance would establish the amount of capacity that the accepted bids would reduce, the cost of reducing that capacity, and the reduction loan sub-amounts that each reduction endorsement fishery would have to repay. Based on these data, NMFS would next hold a referendum to determine whether qualifying voters would approve the post-reduction landing fee necessary to repay the reduction loan.

An unsuccessful referendum would excuse the performance of all reduction contracts, and the crab program would cease, unless NMFS decided to later issue another invitation to bid and hold another referendum. A successful referendum, however, would be followed by publishing a notification in the **Federal Register**, after which NMFS would tender reduction payments, effect relinquishment of the reduction components, and disburse the reduction payments. With the exception of post-reduction license holders subsequently repaying the reduction loan, reduction payment tender and disbursement would conclude the crab program.

Upon reduction payment tender, NMFS would permanently revoke the surrendered crab reduction permits and non-crab reduction permits. The Secretary of Transportation would permanently revoke the reduction vessels' fisheries endorsements and make the reduction vessels ineligible to transfer to foreign flags. The reduction vessels would be permanently ineligible to participate in any fishery worldwide, and the bidders would have contractually agreed to permanently operate the reduction vessels only under the U.S. flag. NMFS would ensure that the bidders and the reduction vessels

forever relinquish any claim based on the reduction components that might otherwise qualify any person or the reduction vessels for any future limited access system fishing permits in U.S. fisheries. This would include any fishing privilege or quota allocation under any present or future quota allocation system.

IV. Process Specifics

A. Notification to Crab License Holders

If any person held multiple crab licenses, we would list that person once for each crab license. NMFS would also list the name and business mailing address of record of each of these crab license holders. NMFS would not list persons who then held crab licenses that were endorsed solely for the Norton Sound fishery. We would use the crab license database of our Restricted Access Management (RAM) Program as the basis of these notification lists.

In addition to the **Federal Register** notification, NMFS would also mail the notification to each crab license holder of record at the holder's business mailing address of record, as well as post the notification at NMFS' headquarters and Alaska Region web sites.

The public would have 30 days to comment about any notification aspect, including: persons we listed, but should not have listed, as license holders (and vice-versa); licenses we listed as non-interim but should have listed as interim (and vice-versa); and incorrect license holder names and/or business mailing addresses.

Any person on this list who is not prospectively a qualifying bidder because the person's crab license is then interim may, nevertheless, subsequently become a prospectively qualifying bidder by changing the person's crab license status from interim to non-interim before submitting a bid. Although NMFS would appropriately update the qualifying bidder list, we would not republish the notification. NMFS would update the list of prospectively qualifying bidders immediately before mailing the invitation to bid and update the list of prospectively qualifying voters immediately before mailing the referendum ballots.

Inclusion on the notification list as a prospectively qualifying bidder would not mean that a bid from that bidder would be one that we could accept. NMFS could not at the time we publish the notification determine whether a later bid from a prospectively qualifying bidder would meet all the crab program's bidding requirements. NMFS could make this determination only after we receive and analyze bids.

B. Correcting the RAM Program's License Records

NMFS would use the RAM Program's license records for all notification and other crab program purposes, including business mailing addresses for all crab program communications. Accordingly, we recommend that any person needing to correct or update the RAM Program's license records consider doing so as soon as possible.

C. Invitation to Bid and Bids

The crab program invitation to bid would specify the exact contractual terms and conditions under which qualifying bidders may make, and NMFS may accept, bid offers. Each bid would have to specify the dollar amount of the reduction payment in return for which the bidder would offer the reduction components in the manner that this proposed rule would require and otherwise fully comply with all the crab program's bidding requirements.

NMFS would publish the bid invitation in the **Federal Register**. We would concurrently mail the bid invitation and a bidding package (including a bidding form) to the address of record of each person on the prospectively qualifying bidder list.

The bid invitation would, among other things, specify:

1. The first date on which bidders could submit bids;
2. The exact manner in which they would have to do so;
3. The last date by which NMFS would have to receive bids; and
4. The bid expiration date upon which each bid would automatically expire if NMFS had not accepted the bid before that date.

The bid invitation would contain the reduction contract's entire terms and conditions. Each qualifying bidder who responded by submitting a bid would make an irrevocable reduction offer under the bid invitation's terms and conditions. These terms and conditions would be neither negotiable nor subject to modification.

Although bidders could not revoke their bid offers, any bid offers that NMFS did not accept before the bid expiration date would automatically expire on that date.

All potential bidders should note that NMFS would, among other things, require each bid to include a copy of each reduction vessel's official document (which the National Vessel Documentation Center issues for Federally documented vessels) and a copy of each crab and non-crab reduction permit (which, with the exception of reduction permits issued for non-Alaskan fisheries, the RAM Program issues). NMFS recommends that all potential bidders arrange to have on hand, well before NMFS would issue the invitation to bid, an exact copy of these documents and otherwise be fully prepared to provide all other required bidding information.

Each bidder responding to the bid invitation would have to offer the reduction components in the manner that this proposed rule would require. This would include permanently:

1. Surrendering and revoking the crab reduction permit;
2. Relinquishing the crab reduction history;
3. Surrendering and revoking the non-crab reduction permit;
4. Relinquishing the non-crab reduction history;
5. Revoking the reduction vessel privilege;
6. Agreeing, in the reduction contract, that the owner of the reduction vessel would operate it under U.S. flag or else scrap it; and
7. Relinquishing the reduction claim.

This proposed rule would not require the surrender and revocation of any non-crab licenses or permits (or the fishing histories upon which they were based) that accepted bidders did not hold on the effective date of a final crab program rule. Similarly, accepted bidders would not have to surrender any licenses or permits they might hold that were based on the fishing histories of vessels other than the reduction vessels.

Regardless of its ownership, no reduction vessel could ever again fish for any species anywhere in the world under any conditions. As long as the owner of any Federally-documented reduction vessel abided by the crab program restrictions, NMFS would not require scrapping the reduction vessel. Each post-reduction vessel owner could continue using its reduction vessel for any legal purpose except fishing and could transfer the vessel, subject to all the crab program restrictions, to a new owner. These restrictions would run with the reduction vessel's title and apply to whomever might own the reduction vessel. Any reduction vessel that was not Federally documented would, however, have to be scrapped.

D. Non-crab Reduction Permits Limited

Section 144(d)(1)(B) is ambiguous about which non-crab licenses or permits the crab program must revoke. One interpretation is that the crab program must revoke each non-crab license or permit that may ever have been issued based on a reduction vessel's fishing history even though a bidder may no longer hold the license or permit. An alternative interpretation is that the crab program need revoke only those non-crab licenses and permits that a bidder still holds at the time we implement the crab program.

This proposed rule adheres to the latter interpretation. Consequently, the reduction components would include only those non-crab reduction permits that were based on reduction vessels' fishing histories and which the bidders still held on the effective date that NMFS adopts a final rule implementing the crab program. This would be equally true for all non-crab reduction histories.

E. Reverse Auction

To obtain the maximum capacity reduction at the least cost, NMFS would use a reverse auction to determine which bid offers we would accept. NMFS would calculate a bid score for each bid and then accept the bid offer with the lowest bid score, followed by each successive bid offer with the next lowest bid score until either there were no more acceptable bids or acceptance of the bid with the next lowest bid score would cause the reduction cost to exceed $100 million.

F. Bid Scoring

NMFS would calculate each bid score by dividing the value of each reduction vessel's documented crab harvest for crab program purposes (bid crab) by each bid amount.

The bid amount for each bid would be the dollar amount for which each bidder offers the reduction components under the bid invitation's contractual terms and conditions.

The bid crab for each bid would be each reduction vessel's documented harvest of crab during the most recent 5 years of a 10–year period beginning on January 1, 1990, and ending on December 31, 1999, during which each of the reduction endorsement fisheries and the Norton Sound fishery were open, for any length of time, for directed crab fishing. If, for example, a reduction vessel did not fish for crab in one of the reduction endorsement fisheries during one of the most recent 5 years of this period in which that fishery was open for directed crab fishing, the reduction vessel's documented crab harvest value for that year in that reduction endorsement fishery would be zero.

NMFS would determine bid crab value by multiplying each pound of each reduction vessel's bid crab by the average annual price per pound for each crab species from each of the reduction endorsement fisheries and from the Norton Sound fishery during each year applicable to the reduction vessel's bid crab. We would use the fish ticket poundage data that the State of Alaska maintains and the average ex-vessel crab prices that the State of Alaska annually publishes.

NMFS would exclude several categories of crab from bid crab, for example:

1. Triangle tanner crab, grooved tanner crab, and other commercially insignificant crab species not named in the various crab license area/species endorsement categories;
2. Discarded crab;
3. Crab caught for personal use;
4. Unspecified crab; and
5. Any other crab to which, for whatever reason, NMFS could not assign a poundage or dollar value.

Here is a bid scoring example. If a bid amount were $0.75 million and the bid crab value were $4.5 million, the bid score would be 0.1667 (i.e., $0.75 million divided by $4.5 million). This means that the bid amount would be 16.67 percent of the reduction vessel's bid crab value.

NMFS would accept bid offers with bid scores lower than the 0.1667 in this example before we accepted a bid offer with the 0.1667 bid score. NMFS would accept bid offers with bid scores higher than the 0.1667 in this example after we accepted a bid offer with the 0.1667 bid score.

Bid crab value and bid amount are the only two variables in each bid score. If two or more bid amounts were identical, NMFS would accept the bid with the higher bid crab value because the bid amount would in that bid be a lower percentage of the bid crab value. Persons whose reduction vessels have lower bid crab values should recognize that a combination of higher bid amounts and lower bid crab values could make their bids noncompetitive.

For example, a reduction vessel with a $2.5 million bid crab value would require a bid amount no higher than $499,999.99 (i.e., a bid score of 0.19999) in order to have a better chance of bid acceptance than a reduction vessel with a $5 million bid crab value and a bid amount of $1 million (i.e., a bid score of 0.2).

If two or more bid scores were identical, NMFS would first accept the bid that we first received.

G. Confidentiality of Fish Ticket Data

The State of Alaska's fish ticket data are confidential. Our data-sharing agreement with Alaska requires NMFS to maintain Alaska's data confidentiality requirements. With certain exceptions, Alaska law allows divulging these data only to, or upon the authority of, the harvesting individuals who signed the fish tickets.

Those who sign fish tickets on behalf of the harvesters are sometimes neither crab license holders nor crab vessel owners. Consequently, NMFS could not divulge bid crab poundage to any bidders who did not sign the fish tickets on which those data were based. Instead, NMFS could only divulge the bid crab values and the bid scores. Potential bidders who wish to confirm their bid crab poundage during the bid scoring period would have to make their own arrangements with the State of Alaska (or with the persons who signed the fish tickets on behalf of the harvesting parties).

H. Bid Rejection

NMFS would reject any bid that:

1. Attempted to negotiate or modify any of the bid invitation's terms and conditions or otherwise did not conform to those conditions;
2. Included any crab or non-crab reduction permit holder or reduction vessel owner that was an entity legally different from the permit's holder of record or the vessel's owner of record at the time of bidding;
3. Included any crab or non-crab reduction history that NMFS would have reason to believe a person other than the bidder retained;
4. Included any reduction component that NMFS would have reason to believe was different from those that the crab program would require; or
5. Did not otherwise meet all of the crab program's bidding and other requirements.

NMFS would use the RAM Program's crab license records to determine crab license holders of record (except for permits or licenses that any of our other Regional Offices may have issued) and to determine whether crab licenses qualify as crab reduction permits. NMFS would use the records of the U.S. Coast Guard's National Vessel Documentation Center to determine reduction vessel owners of record. Anyone with a potential crab program interest who needs to correct any of these records in any of these respects should consider doing so as soon as possible.

NMFS would mail a bid rejection notification to each bidder whose bid we rejected but not to any bidder whose bid offer we neither rejected nor accepted. NMFS bid rejection determinations would constitute final agency action.

I. Bid Acceptance

NMFS bid acceptances would, like bid offers, be subject to the bid

invitation's exact contractual terms and conditions.

After accepting bid offers with the lowest bid scores, NMFS would mail acceptance notifications to the accepted bidders and conduct the post-bidding fee referendum.

NMFS bid acceptance determinations would constitute final agency action.

All bid offers that NMFS had neither accepted nor rejected would automatically expire on the bid expiration date.

The RAM Program would not process the transfer of any crab or non-crab reduction permits included in the bids that NMFS had accepted unless and until the Chief of our Financial Services Division advised the RAM Program that the resulting reduction contracts were no longer in effect because a referendum failed to approve the reduction loan repayment fee.

J. Reduction Contracts

NMFS acceptance of bid offers would create binding reduction contracts between the United States and the accepted bidders. Nevertheless, reduction contract performance would be conditioned on a post-bidding referendum approving the reduction loan repayment fee. Each reduction contract would, otherwise, be unconditional at the time NMFS accepted each bid offer.

A post-bidding referendum's approval or disapproval of the reduction loan repayment fee would be an event that neither the accepted bidders nor NMFS could control. A referendum's disapproval of the fee would fully excuse the United States and all accepted bidders from reduction contract performance and would fully discharge all reduction contract rights, privileges, duties, and obligations. This excuse from performance would not apply to any new reduction contracts that might subsequently result from issuing another invitation to bid and accepting other bids.

The period between inviting bids and conducting a referendum would be as short as possible. Accepted bidders could, however, continue fishing as they normally would have fished until NMFS tendered the reduction payments to the accepted bidders. All fishing would have to cease when NMFS tendered the reduction payments, except that accepted bidders could continue fishing in any crab area/species endorsement fishery that was open when NMFS tendered the reduction payments until that fishery first closed after NMFS tendered the reduction payments.

Money damages not being an adequate substitute for actual reduction contract performance, NMFS would pursue any remedy, including the specific performance of reduction contracts, available to us for any attempt to breach a reduction contract. If an accepted bidder breached or attempted to breach a reduction contract, NMFS would nevertheless abide by the reduction contract's terms by making reduction payment and permanently:

1. Revoking the crab and non-crab reduction permits;
2. Effecting relinquishment of the crab and non-crab reduction histories;
3. Revoking the reduction vessel's fisheries trade endorsement;
4. Making the reduction vessel ineligible for placement under foreign registry or operation under a foreign country's authority;
5. Otherwise restricting the reduction vessel in accordance with the crab program's requirements; and
6. Effecting relinquishment of the reduction claim.

NMFS might also seize the reduction vessel and scrap it at the accepted bidder's expense.

K. Referendum

Each referendum voter would have one vote for each qualifying crab license that the voter held. NMFS would mail a referendum ballot and full referendum instructions to each person on our prospectively qualifying voter list. Each voter would get a separate ballot in a separate mailing for each qualifying crab license the voter held. The referendum instructions would include, among other things, the required manner of voting and the last date by which NMFS must receive responsive ballots for them to qualify as referendum votes.

NMFS would also include with each referendum ballot:

1. The total gross revenue during the bid scoring period of the crab reduction permits and reduction vessels that the crab program would prospectively remove from each reduction endorsement fishery;
2. The reduction loan sub-amounts for each reduction endorsement fishery's prospective repayment; and
3. The number of the reduction vessel privileges and the crab and non-crab reduction permits that the crab program would prospectively restrict or revoke.

Because of the need to keep the period between bidding and referendum as short as possible, NMFS would not issue any form of referendum notification other than mailing ballots and voting instructions to persons on the prospectively qualifying voter list. NMFS would, however, post bid acceptance and referendum ballot mailing advices on our headquarters and Alaska Region web sites.

NMFS would neither accept nor count ballots completed or submitted in a manner inconsistent with the referendum instructions. NMFS would be the sole referendum judge, and our referendum determinations would constitute final agency action.

After tallying referendum votes, NMFS would mail the referendum results to all persons who received ballots. The results would include:

1. The number of prospectively qualifying voters;
2. The number of qualifying voters who returned ballots;
3. The number of returned ballots that qualified to be counted as referendum votes;
4. The number of qualified votes for and against the reduction loan repayment fee; and
5. Whether the referendum was successful and approved the reduction loan repayment fee or was unsuccessful and disapproved the fee.

If the referendum were successful, this mailing would also notify accepted bidders that the binding reduction contracts between them and the United States would then be final, unconditional, and subject to full and specific performance.

If the referendum were unsuccessful, NMFS would decide whether to issue a new invitation to bid, whose bidding results would require another referendum. The objective of any new invitation to bid would be bidding results that reduce more capacity for less cost than the previous bidding results, thus increasing the likelihood of a subsequent referendum approving the necessary loan repayment fee. If NMFS decided to issue another invitation to bid, we would repeat the previous bid invitation and referendum process.

Referendum approval of the fee would require at least two-thirds of the votes actually cast in the referendum to have been cast in favor of the fee. If, for example, only three qualifying voters actually cast referendum votes and two of them cast their votes in favor of the fee, the referendum would have been successful and the fee would have been approved.

L. Reduction Payment Tender

NMFS would not tender reduction payments following a successful referendum until at least 30 days after we had published a reduction payment tender notification in the **Federal Register**. This notification's purpose would be to allow the public to identify, for our subsequent resolution, any issue about: any aspect of any accepted bidder's eligibility to bid, any accepted bidder's legal authority to have offered any of the reduction components in its bid, or any other aspect of any reduction contract.

Registries exist for reduction vessels, and the holders of crab and non-crab reduction permits are known to NMFS. There are, however, no registries for crab and non-crab reduction histories, and the persons who retain these histories are not known to NMFS. No one records the conveyance of these histories. Disputes could, consequently, exist about the ownership of these histories. Moreover, creditors may have secured or other interests in reduction vessels or reduction permits.

This notification would, consequently, inform the public about:

1. The ownership, holding, or retaining representations upon which accepted bidders based their bid offers; and
2. NMFS' intention to tender reduction payments in return for the surrender and revocation of the crab and non-crab reduction permits, the restriction of the reduction vessel privileges, and the relinquishment of the crab and non-crab reduction histories.

If NMFS received any notice of a claim or other dispute about any ownership, holding, or retention claims that conflict with any accepted bidder's representations, we might not tender reduction payment under that reduction contract until the claim or dispute was successfully resolved.

Creditors or other parties with secured or other interests in reduction vessels or in the crab or non-crab reduction permits are responsible for making their own arrangements with accepted bidders. NMFS would disburse reduction payments to accepted bidders without regard to creditors or other interested parties, unless accepted bidders, in their responses to NMFS reduction payment tenders, choose to provide us with explicit written payment instructions that accommodated creditors' or other persons' interests and authorized NMFS to disburse reduction payments in accordance with those instructions.

As soon as practicable after the 30–day reduction payment tender notice, NMFS would tender reduction payments to accepted bidders by requesting from them specific, written payment instructions. As soon as NMFS receives these payment instructions, we would immediately disburse reduction payments in accordance with the reduction contracts and the payment instructions.

Upon NMFS' tender of each reduction payment, we would:

1. Revoke the crab and non-crab reduction permits (subject to the one previously noted exception about continuing to fish in any reduction endorsement fishery that was open at the time of reduction payment tender);
2. Effect the relinquishment of the crab and non-crab reduction histories by noting in the RAM Program's records (or such other records as may be appropriate for reduction permits issued elsewhere) that these histories have been relinquished and would never again be available to anyone for any fisheries purpose;
3. Notify the U.S. Coast Guard's National Vessel Documentation Center so that it could revoke reduction vessels' fisheries trade endorsements;
4. Notify the U.S. Maritime Administration so that it could make reduction vessels ineligible for the approval of requests to place them under foreign registry or operate them under a foreign country's authority; and
5. Effect all other crab program requirements.

The U.S. Maritime Administration has already issued a final rule (66 FR 55595, December 3, 2001) that makes reduction vessels ineligible for the approval of requests to place them under foreign registry or operate them under a foreign country's authority. That rule amends 46 CFR 221.15.

With the one previously noted exception, each reduction vessel would, concurrently with reduction payment tender, have to permanently cease all further fishing anywhere in the world for any species. Each reduction vessel would, however, have to immediately retrieve all its fixed fishing gear that might remain deployed in any fishery other than the excepted one.

For each accepted bid that involves a co-bidder, NMFS would tender reduction payment jointly to the qualifying bidder and each co-bidder. NMFS would not specify a reduction payment sub-amount for either the qualifying bidder or any co-bidder. This would be a matter of private contract between each qualifying bidder and any co-bidder; and these parties should, before bidding, have written contracts between them that specify the amount of the reduction payment to which each of them would be entitled.

M. Reduction Loan Terms

The reduction loan's original principal amount could not exceed $100 million, but would be less if the reduction cost were less.

The loan's repayment term would be 30 years.

The loan's interest rate would be the U.S. Treasury's cost of borrowing equivalent maturity funds plus two percent. We would determine the loan's initial interest rate when we borrowed from the U.S. Treasury the funds with which to disburse reduction payments. The initial interest rate would change to a final interest rate at the end of the Federal fiscal year in which NMFS borrowed the funds from the U.S. Treasury. The final interest rate would be two percent plus a weighted average, throughout that fiscal year, of the U.S. Treasury's cost of borrowing equivalent maturity funds. The final interest rate would be fixed, and would not vary over the rest of the loan's 30–year term. There would be no pre-payment penalty.

N. Apportioning Reduction Loan Sub-Amounts to Each Reduction Endorsement Fishery

The reduction endorsement fisheries are these six crab area/species endorsements, each of which is further specified in § 679.4(k)(5)(ii)(A)-(F) of this chapter:

1. Aleutian Islands brown king crab;
2. Aleutian Islands red king crab;
3. Bristol Bay red king crab;
4. Bering Sea and Aleutian Islands Area *Chionocetes opilio* and *C. bairdi* crab;
5. Pribilof red king and blue king crab; and
6. St. Matthew blue king crab.

The Norton Sound fishery is not a reduction endorsement fishery.

The formula for determining the reduction loan sub-amount for each reduction endorsement fishery's repayment would be:

1. The bid crab value for all reduction vessels in each reduction endorsement fishery;
2. Divided by the bid crab value for all reduction vessels in all reduction endorsement fisheries;
3. Equals the total bid crab value in each reduction endorsement fishery as a percentage of the total dollar value of bid crab in all reduction endorsement fisheries; and
4. Each of these percentages applied to the total reduction loan amount equals the reduction loan subamount apportioned to each reduction endorsement fishery to which each percentage relates. We would not apportion any of the reduction loan amount to the Norton Sound fishery because that fishery would not be part of the reduction fishery.

O. Reduction Loan Repayment Fee

Revenues from the post-reduction crab landings fee in each reduction

endorsement fishery would repay the reduction loan sub-amount apportioned to each reduction endorsement fishery. Post-reduction crab landings in the Norton Sound fishery would not be subject to the fee.

Although the fee would be up to 5 percent of the ex-vessel value of all post-reduction crab landings in each reduction endorsement fishery, the fee in any reduction endorsement fishery would be less than 5 percent if we projected that a lesser rate could amortize that fishery's reduction loan sub-amount over the reduction loan's 30–year term.

Some reduction endorsement fisheries may not open during some years. Consequently, those reduction endorsement fisheries would not during those years produce fee revenue with which to service the reduction loan sub-amounts apportioned to those reduction endorsement fisheries. However, interest would continue to accrue on the sub-amount principal balances. When this happens, if these reduction endorsement fisheries' fee rates are not already at the maximum 5 percent, NMFS generally would increase the fisheries' fee rates to the maximum 5 percent, apply all subsequent fee revenue first to the payment of accrued interest, and continue the maximum fee rates until all principal and interest payments were current. Once all principal and interest payments were current, NMFS would generally make a determination about adjusting these fee rates.

P. Fee Payment, Collection, and Reporting

There would be three categories of fish sellers and fish buyers who would have to pay the fee, collect the fee, or both pay and collect the fee.

The first category is fish sellers who would have to pay the fee. Any person who harvests any post-reduction crab in any reduction endorsement fishery, but whom the State of Alaska's fisheries reporting requirements do not require to record and submit an Alaska Department of Fish and Game fish ticket for that crab, would be a fish seller for the purpose of paying any fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart.

The second category is fish buyers who would have to collect the fee. Any person whom the State of Alaska's fisheries reporting requirements require to record and submit an Alaska Department of Fish and Game fish ticket for any crab that another person harvested would be a fish buyer for the purpose of collecting the fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart.

The third category is persons who would be both fish sellers and fish buyers and who would both have to pay and collect the fee. Any person who harvests any crab, and whom the State of Alaska's fisheries reporting requirements require to also record and submit an Alaska Department of Fish and Game fish ticket for that crab, would be both a fish seller and a fish buyer for the purpose of paying and collecting the fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart.

Fish buyers would have to collect the fee by deducting it from the gross ex-vessel proceeds of all post-reduction crab landings before the fish buyers pay the proceeds' remainder to fish sellers.

No less frequently than at the end of each business week, fish buyers would have to deposit collected fee receipts in a segregated account at a Federally insured financial institution. On the last business day of each month, fish buyers would have to disburse all deposited fee receipts to a depository that NMFS would have specified.

Fish buyers could retain all interest, if any, earned on deposited fee collections during the time between depositing collected fees and disbursing them to our depository.

In addition to the collected fee deposit and disbursement requirements (further specified in this subpart's § 600.1014), fish buyers would also be subject to certain records maintenance and annual reporting requirements (also specified in this subpart's § 600.1014). All activities associated with fee collection would be subject to our audit.

We would notify all fish sellers and fish buyers, of whom we have knowledge, in each reduction endorsement fishery:

1. When fee payment and collection commence and at what rate;
2. When fee rates change, either up or down; and
3. When fee payment and collection cease.

Fee rates could vary from time-to-time and from one reduction endorsement fishery to another. NMFS would set the fee rate for each reduction endorsement fishery at the level, not to exceed 5 percent of the gross ex-vessel value of post-reduction crab landings, that we from time-to-time projected was required to repay the principal and interest of each reduction loan sub-amount within 30 years.

If any reduction loan sub-amount were not fully repaid at the end of 30 years, the fee would continue in the fishery for as many additional years as were required to fully repay that reduction loan sub-amount.

Q. Penalties for Prohibited Activities

There would be substantial penalties for (among other things):

1. Any bidder whose bid offered a reduction component that the bidder was not legally entitled to offer in the manner that the bid invitation and this proposed rule would require. These penalties would be in addition to bid rejection, and might also apply to other actions that interfered with or hindered the bidding process;
2. Any bidder who submitted a non-performable bid offer or took any post-bid action (including, but not limited to, any post-bidding conveyance of any reduction component) that prevented or otherwise hindered the specific performance of any reduction contract;
3. Any referendum voter who submitted a false or unauthorized referendum ballot or any person who otherwise interfered with, hindered, or otherwise unduly or unlawfully influenced the referendum process; and
4. Any fish seller who failed properly to pay the fee and any fish buyer who failed properly to collect, deposit, and disburse the fee as well as to maintain the records and submit the reports that this proposed rule would require.

All persons who might be subject to any of these penalties if NMFS adopted this proposed rule should inform themselves fully about the penalties. For further details about the penalties, see this subpart's § 600.1017 and this proposed § 600.1018(u).

R. Administering Offices

The Financial Services Division in our Silver Spring, MD, central office (see **ADDRESSES**) would be responsible for implementing and administering the crab program. The Financial Services Division would:

1. Issue all notifications and mailings that the proposed rule requires;
2. Prepare and issue the invitation to bid;
3. Receive bids;
4. Reject bids;
5. Score bids;
6. Accept bids;
7. Prepare and issue referendum ballots;
8. Receive referendum ballots;
9. Tally referendum ballots;
10. Determine referendum success or failure;
11. Tender and disburse reduction payments;
12. Administer reduction contracts;
13. Administer fees and reduction loan repayment; and
14. Discharge all other crab program management and administration functions.

Upon the Financial Services Division's advice, the RAM Program in our Alaska Regional Office (see **ADDRESSES**) would, for fishing licenses under the jurisdiction of the Alaska Regional Office (and such other of our offices as may be appropriate for other fishing licenses or permits), revoke the crab and non-crab reduction permits and effect the relinquishment of the crab and non-crab reduction histories.

The Financial Services Division would advise the U.S. Coast Guard's National Vessel Documentation Center, the U.S. Maritime Administration, such other agency or agencies as may be involved, or all of them to revoke reduction vessels' fisheries trade endorsements and otherwise restrict reduction vessels in accordance with this proposed rule. Those agencies would be responsible for acting on this advice.

V. Guidance

A. Reading the Proposed Rule in Conjunction with the Framework Rule

This proposed rule would establish which framework rule provisions (this subpart's § 600.1000 through § 600.6017) would not apply to the crab program. Consequently, a comprehensive understanding requires reading the proposed rule in conjunction with the remaining framework rule provisions that would continue to apply to the crab program. NMFS recommends that all interested persons carefully read the former in close conjunction with the latter.

B. Summary of Crab Program Notices and Mailings

This table summarizes, in chronological order, key crab program actions that would involve our providing notice to affected persons:

Action	Method		
	FEDERAL REGISTER	Mailing	Website
Final rule	X		X
Bidder and voter notice	X	X	X
Invitation to bid	X	X	X
Bid rejection and acceptance		X	
Referendum ballots		X	X
Referendum results		X	X
Reduction contracts unconditional		X	
Reduction payment tender notice	X		
Reduction payment tender		X	
Fee payment and collection		X	X

This is what we would mail in each notice and to whom we would mail it:

Action	NMFS would mail:
Bidder and voter notice	A notice to each crab license holder who is prospectively a qualifying bidder, voter, or both.
Invitation to bid	An invitation to bid to each crab license holder who is on our prospectively qualifying bidder list.
Bid rejection and acceptance	Our rejection to each bidder whose bid we reject and our acceptance to each bidder whose bid we accept.
Referendum ballots	A referendum ballot and instructions to each crab license holder who is on our prospectively qualifying voter list.
Referendum results	The results of the referendum to each crab license holder.
Reduction Contracts Unconditional	Advice, to each accepted bidder, that a successful referendum has fulfilled the one condition to performance of the reduction contracts.
Reduction payment tender	After a successful referendum and a reduction payment tender notice, a tender of reduction payment to each accepted bidder.
Fee payment and collection notice	A notice to each fish seller and each fish buyer of the initial fee payment and collection requirement and each subsequent change in this requirement.

All website postings would be solely for the public's convenience and our failure or inability to post anything on a website would not affect the rights, privileges, duties, or obligations of any person involved.

Classification

The Assistant Administrator for Fisheries, National Marine Fisheries Service, determined that this proposed rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

In compliance with the National Environmental Policy Act, we prepared an environmental assessment for this proposed rule. The assessment discusses the impact of this proposed rule on the natural and human environment and integrates a Regulatory Impact Review and an Initial Regulatory Flexibility Analysis. NMFS will send the assessment, the review and analysis to anyone who requests us to do so (see **ADDRESSES**).

We determined that this proposed rule is significant for purposes of Executive Order 12866.

In compliance with the Regulatory Flexibility Act, NMFS prepared an analysis that describes the economic impact this proposed rule, if adopted, would have on small entities. In this proposed rule's preamble, we described

the proposed rule, why we are proposing it, and its legal basis. NMFS intends the analysis to aid us in considering all reasonable regulatory alternatives that could minimize the economic impact on affected small entities.

This proposed rule's effect on post-reduction crab harvesters would depend on the crab program's nature and size. Our assessment, review, and analysis considered:

1. The effect of three alternatives:
a. The status quo,
b. Uniform reduction loan repayment fees, and
c. Weighted reduction loan repayment fees; and
2. Based on five potential magnitudes of revoked crab licenses and vessels:
a. 30,
b. 45,
c. 60,
d. 75, and
e. 90.

The preferred alternative, weighted reduction loan repayment fees, provides the most equitable method for allocating reduction loan repayment, and this is the reduction loan repayment method that section 144 requires.

The proposed rule's impact would be positive for both bidders whose bid offers NMFS accepts and post-reduction harvesters whose landing fees repay the reduction loan because the bidders and harvesters would have voluntarily assumed the impact:

1. Bidders would have volunteered to make bid offers at bid amounts of their own choice. Presumably, no bidder would volunteer to make a bid offer with a bid amount that is inconsistent with the bidder's interest; and

2. Reduction loan repayment landing fees would be authorized, and we could complete the crab program, only if at least two-thirds of crab license holders voting in a post-bidding fee referendum voted in favor of the fee. Presumably, crab license holders who are not accepted bidders would not vote in favor of the fee unless they concluded that the crab program's prospective capacity reduction was sufficient to enable them to increase their post-reduction revenues enough to justify the fee.

NMFS believes that this proposed action would affect neither authorized crab harvest levels nor crab harvesting practices.

This proposed rule contains information collection requirements subject to the Paperwork Reduction Act (PRA). The Office of Management and Budget (OMB) approved this information collection under OMB control number 0648–0376. NMFS estimates that the public reporting burden for this information collection would average 4 hours for bidding and 4 hours for voting in a referendum. Persons affected by this proposed rule would also be subject to other collection-of-information requirements referred to in the proposed rule and also approved under OMB control number 0648–0376. These requirements and their associated response times are: completing and filing a fish ticket (10 minutes), submitting monthly fish buyer reports (2 hours), submitting annual fish buyer reports (4 hours), and fish buyer/fish seller reports when a person fails either to pay or to collect the loan repayment fee (2 hours).

This proposed rule also contains a new collection-of-information requirement that NMFS has submitted to OMB for approval (under the same OMB control number). The provision allows the public 30 days to advise us of any license or permit holder or vessel owner claims that conflict with accepted bidders' representations about holding, owning, or retaining any of the crab or non-crab reduction permits, the reduction vessels, or the crab or non-crab reduction histories. Responses are voluntary, but we estimate the public reporting burden for this collection of information would be 1 hour per response.

These response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Interested persons may send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to both NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, and no person is subject to a penalty for failure to comply with, an information collection subject to the PRA requirements unless that information collection displays a currently valid OMB control number.

In addition to public comment about the proposed rule's substance, NMFS also seeks public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule.

This action would not result in any adverse effects on endangered species or marine mammals.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing capacity reduction, Fishing permits, Fishing vessels, Intergovernmental relations, Loan programs—business, Reporting and recordkeeping requirements.

Dated: December 4, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons in the preamble, the National Marine Fisheries Service proposes to amend 50 CFR part 600 as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 is revised to read as follows:

Authority: 5 U.S.C. 561, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1861a(b) through (e), 46 App. U.S.C. 1279f and 1279g, section 144(d) of Division B of Pub. L. 106–554, section 2201 of Pub. L. 107–20, and section 205 of Pub. L. 107–117.

2. Section 600.1018 is added to subpart L to read as follows:

§ 600.1018 Crab species program.

(a) *Purpose.* This section's purpose is to implement the program that Section 144(d) of Division B of Pub. L. 106–554, as amended by section 2201 of Pub. L. 107–20 and section 205 of Pub. L. 107–117, enacted for crab species.

(b) *Terms.* Unless otherwise defined in this section, the terms defined in § 600.1000 expressly apply to the program for crab. Likewise, the terms defined in § 679.2 of this chapter also apply to terms not otherwise defined in either § 600.1000 or this section. The following terms used in this section have the following meanings for the purpose of this section:

Acceptance means NMFS' acceptance, on behalf of the United States, of a bid.

Bid means a bidder's irrevocable offer, in response to an invitation to bid under this section, to surrender, to have revoked, to have restricted, to relinquish; to have withdrawn, or to have extinguished by other means, in the manner that this section requires, the bidder's reduction fishing interest.

Bid amount means the dollar amount of each bidder's bid.

Bid crab means the crab that NMFS determines each bidder's reduction vessel harvested, according to the State of Alaska's records of the documented harvest of crab, from each reduction endorsement fishery and from the Norton Sound fishery during the most recent 5 calendar years in which each reduction endorsement fishery was for any length of time open for directed crab fishing during a 10–calendar-year period beginning on January 1, 1990, and ending on December 31, 1999.

Bidder means either a qualifying bidder bidding alone or a qualifying bidder and a co-bidder bidding together who at the time of bidding holds the reduction fishing interests specified at § 600.1018(e).

Bid score means the criterion by which NMFS decides in what order to accept bids in the reverse auction specified in this section.

Co-bidder means a person who is not a qualifying bidder but who at the time of bidding owns the reduction vessel, holds the non-crab reduction permit, or both owns the reduction vessel and holds the non-crab reduction permit that this section requires to be included in a bid and who is bidding together with a qualifying bidder.

Crab means the crab species covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs pursuant to § 679.2 of this chapter.

Crab license means a License Limitation Program license for crab issued pursuant to § 679.4(k)(5) of this chapter.

Crab reduction permit means a non-interim crab license endorsed for one or more reduction endorsement fisheries, regardless of whether it is also endorsed for the Norton Sound fishery.

FSD means NMFS' Financial Services Division, located in NMFS' Silver Spring, MD, headquarters office.

Norton Sound fishery means the non-reduction fishery defined in § 679.2 of this chapter as the area/species endorsement for Norton Sound red king and Norton Sound blue king crab.

NVDC means the U.S. Coast Guard's National Vessel Documentation Center located in Falling Waters, WV.

Qualifying bidder means a person who at the time of bidding is the license holder of record of a crab reduction permit.

Qualifying voter means a person who at the time of voting in a referendum is the license holder of record either of an interim or a non-interim crab license, except a crab license whose sole area/species endorsement is for the Norton Sound fishery.

RAM Program means NMFS' Restricted Access Management Program located in NMFS' Juneau, AK, regional office.

Reduction fishing interest means, for each bid, the bidder's:
(1) Reduction vessel fishing privilege;
(2) Crab reduction permit;
(3) Non-crab reduction permit;
(4) Reduction vessel fishing history; and
(5) Any other claim that could in any way qualify the owner, holder, or retainer of any of the reduction components, or any person claiming under such owner, holder, or retainer, for any present or future limited access system fishing license or permit in any United States fishery (including, but not limited to, any harvesting privilege or quota allocation under any present or future individual fishing quota system).

Reduction endorsement fishery means any of the seven fisheries that § 679.2 of this chapter defines as area/species endorsements except the area/species endorsement for the Norton Sound fishery.

Reduction fishery means the fishery for all crab covered by the Bering Sea/Aleutian Islands King and Tanner Crabs Fishery Management Plan under all area/species endorsements that section 679.2 of the chapter defines, except the area/species endorsement for the Norton Sound fishery.

Reduction loan sub-amount means the portion of the original principal amount of this program's reduction loan that each reduction endorsement fishery must repay with interest.

Reduction vessel fishing history means, for each bid, the reduction vessel's complete history of documented harvest upon any part of which NMFS based issuance of the bidder's crab reduction permit and non-crab reduction permit.

Referendum means a referendum under this section to determine whether voters approve the fee required to repay this program's reduction loan.

(c) *Relationship to this subpart*—(1) *Provisions that apply.* The provisions of § 600.1000 through § 600.1017 of this subpart apply to this program except as paragraph (c)(2) of this section provides; and

(2) Provisions that do not apply. The following sections, or portions of them, of this subpart do not apply to this program:
(i) All of:
(A) Section 600.1001,
(B) Section 600.1002,
(C) Section 600.1003,
(D) Section 600.1004,
(E) Section 600.1005,
(F) Section 600.1006, and
(G) Section 600.1007,
(ii) The portions of § 600.1008:
(A) Pertaining to an implementation plan,
(B) Pertaining to a 60–day comment period for a proposed implementation regulation,
(C) Pertaining to public hearings in each State that the this program affects,
(D) Pertaining to basing the implementation regulation on a business plan,
(E) Within paragraphs (d)(1)(ii) through (viii),
(F) Within paragraph (d)(2)(ii),
(G) Within paragraph (e), and
(H) Within paragraph (f) and pertaining to fishing capacity reduction specifications and a subsidized program,
(iii) The portions of § 600.1009:
(A) Pertaining to fishing capacity reduction specifications,
(B) Within paragraph (a)(4),
(C) Pertaining to a reduction amendment,
(D) Within paragraph (a)(5)(ii), to the extent that the paragraph is inconsistent with the requirements of this section,
(E) Within paragraph (b)(i), and
(F) Pertaining to an implementation plan,
(iv) The portions of § 600.1010:
(A) Within paragraph (b),
(B) Pertaining to fishing capacity reduction specifications,
(C) Within paragraph (d)(1), and
(D) Within paragraphs (d)(4))(iv) through (vii),
(v) The portions of § 600.1011:
(A) That comprise the last sentence of paragraph (a),
(B) Within paragraph (d), and
(C) Within paragraph (e)(2),
(vi) The portions of § 600.1012:
(A) Within paragraph (b)(3) following the word "subpart", and
(B) Within paragraph (b)(3), and
(vii) The last sentence of § 600.1014(f).

(d) *Reduction cost financing.* NMFS will use the proceeds of a reduction loan, authorized for this purpose, to finance 100 percent of the reduction cost. The original principal amount of the reduction loan will be the total of all reduction payments that NMFS makes under reduction contracts. This amount shall not exceed $100 million.

(e) *Who constitutes a bidder.* A person or persons who hold all of the following three reduction components constitutes a bidder:

(1) License or permit holder of record and person otherwise fully and legally entitled to offer, in the manner that this section requires, the bid's crab reduction permit and the bid's non-crab reduction permit;

(2) Reduction vessel owner, title holder of record, and person otherwise fully and legally entitled to offer, in the manner that this section requires, the bid's reduction vessel fishing privilege; and

(3) Retainer and person otherwise fully and legally entitled to offer, in the manner that this section requires, the bid's reduction vessel fishing history.

(f) *How crab licenses determine qualifying bidders and qualifying voters*—(1) *Non-interim crab licenses.* Each person who is the record holder of

a non-interim crab license endorsed for one or more reduction endorsement fisheries is both a qualifying bidder and a qualifying voter and can both bid and vote;

(2) *Interim crab licenses.* Each person who is the record holder of an interim crab license endorsed for one or more reduction endorsement fisheries is a qualifying voter but not a qualifying bidder and can vote but not bid;

(3) *Crab licenses endorsed solely for the Norton Sound Fishery.* Each person who is the record holder of any crab license endorsed solely for the Norton Sound fishery is neither a qualifying bidder nor a qualifying voter and can neither bid nor vote; and

(4) *Time at which qualifying bidders and voters must hold required crab licenses.* A qualifying bidder must be the record holder of the required crab license at the time the qualifying bidder submits its bid. A qualifying voter must be the record holder of the required crab license at the time the qualifying voter submits its referendum ballot.

(g) *Qualifying bidders and co-bidders*—(1) *Qualifying bidders bidding alone.* There is no co-bidder when a qualifying bidder owns, holds, or retains all the required components of the reduction fishing interest;

(2) *Qualifying bidders bidding together with co-bidders.* When a qualifying bidder does not own the reduction vessel or does not hold the non-crab reduction permit, the person who does own the reduction vessel or does hold the non-crab reduction permit may be the qualifying bidder's co-bidder; and

(3) *Minimum reduction components that qualifying bidders must hold or retain when bidding with co-bidders.* At a minimum, a qualifying bidder must hold the crab reduction permit and retain the reduction vessel fishing history. The reduction vessel may be owned and the non-crab reduction permit may be held, however, by another person who is a co-bidder.

(h) *Reduction fishing interest*—(1) *General requirements.* Each bidder must:

(i) In its bid, offer to surrender, to have revoked, to have restricted, to relinquish, to have withdrawn, or to have extinguished by other means, in the manner that this section requires, the reduction fishing interest,

(ii) At the time of bidding, hold, own, or retain the reduction fishing interest and be fully and legally entitled to offer, in the manner that this section requires, the reduction fishing interest, and

(iii) Continuously thereafter hold, own, or retain the reduction fishing interest and remain fully and legally entitled to offer, in the manner that this section requires, the reduction fishing interest until:

(A) The bid expires without NMFS first having accepted the bid,

(B) NMFS notifies the bidder that NMFS rejects the bid,

(C) NMFS notifies the bidder that a reduction contract between the bidder and the United States no longer exists, or

(D) NMFS tenders reduction payment to the bidder;

(2) *Reduction vessel requirements.* Except as otherwise provided in paragraph (h) of this section, the reduction vessel in each bid must:

(i) Be the same vessel upon whose documented harvest of crab during the GQP, EQP, and RPP NMFS issued the crab reduction permit that the bidder includes in its bid, and

(ii) Be neither lost nor destroyed at the time of bidding;

(3) *Reduction vessel fishing privilege requirements.* The reduction vessel fishing privilege in each bid must be the reduction vessel's:

(i) Fisheries trade endorsement under the Merchant Marine Act, 1936 (46 U.S.C.A. 12108),

(ii) Qualification for any present or future U.S. Government approval under section (9)(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)) for placement under foreign registry or operation under the authority of a foreign country, and

(iii) Any other privilege to fish anywhere in the world;

(4) *Crab reduction permit requirements.* (i) Except as otherwise provided in paragraph (h) of this section, the crab reduction permit must in each bid:

(A) Be the crab license that NMFS issued on the basis of the documented harvest of crab during the GQP, EQP, and RPP of the same reduction vessel that the bidder includes in its bid,

(B) Be non-interim at the time each bidder submits its bid, and

(C) Include an area/species endorsement for any one or more reduction endorsement fisheries,

(ii) Although the Norton Sound fishery is not a reduction endorsement fishery, an area/species endorsement for the Norton Sound fishery occurring on a crab reduction permit must be surrendered and revoked (and all fishing history involving it relinquished) in the same manner as all other reduction endorsement fisheries occurring on the crab reduction permit; and

(5) *Non-crab reduction permit requirements.* The non-crab reduction permit must in each bid be every license, permit, or other harvesting privilege that:

(i) NMFS issued on the basis of the reduction vessel fishing history of the same reduction vessel that the bidder includes in its bid, and

(ii) For which the bidder was the license holder of record on the effective date of this section; and

(6) *Reduction vessel fishing history requirements.* Except as otherwise provided in paragraph (h) of this section, the reduction vessel fishing history in each bid must be the whole of the reduction vessel fishing history upon any part of which NMFS based issuance of the crab reduction permit and the non-crab reduction permit that the bidder includes in its bid.

(i) *Exceptions to the reduction fishing interest requirements*—(1) *Lost or destroyed vessel salvaged.* When a bidder has salvaged a lost or destroyed vessel and has made from the salvaged vessel the documented harvest of crab that § 679.4(k)(5)(iii)(B)(*3*) of this chapter requires:

(i) The reduction vessel is the salvaged vessel, and

(ii) The crab portion of the reduction vessel fishing history is the salvaged vessel's documented harvest of crab; and

(2) *Lost or destroyed vessel not salvaged.* When a bidder has not salvaged the lost or destroyed vessel but has made from an alternative vessel the documented harvest of crab that § 679.4(k)(5)(iii)(B)(3) of this chapter requires:

(i) The reduction vessel is the alternative vessel,

(ii) The crab portion of the reduction vessel fishing history is the total of the lost or destroyed vessel's documented harvest of crab through the date of such vessel's loss or destruction plus the alternative vessel's documented harvest of crab after such date, and

(iii) For the purposes of this program, the lost or destroyed vessel's documented harvest of crab merges with, and becomes a part of, the alternative vessel's documented harvest of crab; and

(3) *Acquired crab fishing history.* When a bidder, in the manner that § 679.4(k)(5)(iv) of this chapter requires, has made a documented harvest of crab from one vessel and has acquired another vessel's documented harvest of crab:

(i) The reduction vessel is the vessel from which the bidder made the documented harvest of crab that § 679.4(k)(5)(iv) of this chapter requires,

(ii) The crab portion of the reduction vessel fishing history is the total of the acquired documented harvest of crab through December 31, 1994, plus the documented harvest of crab after December 31, 1994, of the vessel from which the bidder made the documented crab harvest that § 679.4(k)(5)(iv) of this chapter requires, and

(iii) For the purposes of this program, the acquired documented harvest of crab merges with, and becomes a part of, the non-acquired documented harvest of crab.

(j) *Determining value of reduction vessels' bid crab*—(1) *In each fishery.* NMFS will determine the dollar value of each reduction vessel's bid crab in each reduction endorsement fishery and in the Norton Sound Fishery by multiplying each reduction vessel's number of pounds of each species of bid crab by the average ex-vessel price per pound that the State of Alaska annually publishes for each crab species in the bid crab; and

(2) *In all fisheries.* NMFS will determine the dollar value of each reduction vessel's bid crab in all reduction endorsement fisheries and in the Norton Sound fishery by adding each of the products of the multiplications in paragraph (i)(1) of this section; and

(3) *Crab excluded from bid crab.* A reduction vessel's bid crab may not include, to the extent that NMFS has knowledge:

(i) Triangle tanner crab, grooved tanner crab, and any other crab not involved in the various area/species endorsements,

(ii) Discarded crab,

(iii) Crab caught for personal use,

(iv) Unspecified crab, and

(v) Any other crab whose dollar value NMFS cannot, for whatever reason, determine.

(k) *Determining bid score.* NMFS will determine each bid score by dividing each bid amount by the sum in paragraph (i)(2) of this section.

(l) *Determining reduction loan sub-amount*—(1) *Value of all bid crab in each fishery.* NMFS will add the dollar value of bid crab of all accepted bidders' reduction vessels in each reduction endorsement fishery;

(2) *Value of all bid crab in all fisheries.* NMFS will add the dollar value of bid crab of all accepted bidders' reduction vessels in all reduction endorsement fisheries plus the Norton Sound fishery;

(3) *Each fishery as a percentage of all fisheries.* NMFS will divide each of the sums in paragraph (k)(1) of this section by the sum in paragraph (k)(2) of this section. The result of this calculation will be the dollar value of all bid crab in each reduction endorsement fishery as a percentage of the dollar value of all bid crab in all reduction endorsement fisheries plus the Norton Sound fishery;

(4) *Applying percentages to loan amount.* NMFS will multiply the reduction loan's full original principal amount by each of the yields in paragraph (k)(3) of this section; and

(5) *Loan sub-amount.* Each of the amounts resulting from the calculation in paragraph (k)(4) of this section will be the reduction loan sub-amount that a reduction endorsement fishery must repay.

(m) *Prospectively qualifying bidder and voter notification*—(1) *General.* At the appropriate point before issuing an invitation to bid, NMFS will publish a notification in the **Federal Register** listing all persons who at the time of publishing the notification prospectively are qualifying bidders and qualifying voters;

(2) *Qualifying bidder list.* The prospectively qualifying bidder list will include the names and addresses of record of each license holder of record for all non-interim crab licenses except only crab licenses whose sole area/species endorsement is for the Norton Sound fishery;

(3) *Qualifying voter list.* The prospectively qualifying voter list will include the names and addresses of record of each license holder of record for all non-interim and interim crab licenses except only crab licenses whose sole area/species endorsement is for the Norton Sound fishery;

(4) *Basis of lists.* NMFS will base both the lists on the RAM Program's license holder records for crab licenses meeting the requirements of § 679.4(k)(5) of this chapter as well as the requirements of this section;

(5) *Purpose.* The purpose of the notification is to provide the public notice of:

(i) The prospectively qualifying bidders from whom NMFS, by mailing to them the invitation to bid, will invite bids if the bidders otherwise meet this section's requirements, and

(ii) The prospectively qualifying voters to whom NMFS will mail referendum ballots if the voters otherwise meet this section's requirements; and

(6) *Public comment.* Any person who wants to comment about the notification has 30 days from the notification's publication date to do so. Persons should send their comments to both FSD and the RAM Program (at addresses that the notification will specify). Comments may address:

(i) Persons who appear on one or more lists but should not,

(ii) Persons who do not appear on one or more lists but should, and

(iii) Persons who believe their names and/or business mailing addresses appearing on one or more lists are incorrect.

(n) *Invitation to bid*—(1) *Notification.* At the appropriate point after issuing the notification in paragraph (l) of this section, NMFS will publish the invitation to bid in the **Federal Register** notification further specified in § 600.1009(c) of this subpart. No person may, however, bid at this stage;

(2) Notification contents. The invitation to bid notification will state all applicable bid submission requirements and procedures (including, but not limited to, those included in this section). In particular, the invitation to bid notification will, among other things:

(i) State the date on which NMFS will invite bids by mailing an invitation to bid to each person on the prospectively qualifying bidder list,

(ii) State a bid opening date, before which a bidder may not bid, and a bid closing date, after which a bidder may not bid,

(iii) State a bid expiration date after which each bidder's bid expires unless NMFS, before that date, accepts the bid by mailing a written acceptance notice to the bidder at the bidder's address of record,

(iv) State the manner of bid submission and the information each bidder must submit for NMFS to deem a bid responsive,

(v) State any other information required for bid submission, and

(vi) Include a facsimile of the invitation to bid, containing the entire terms and conditions of the reduction contract under which each bidder who bids must bid and under which NMFS must accept each bid that NMFS accepts; and

(3) *Mailing.* On the date specified in this notification, NMFS will invite bids by mailing the invitation to bid and a bidding package, including a bidding form and full bidding instructions, to each person then on the prospectively qualifying bidder list. NMFS will not mail the invitation to bid to any potential co-bidder because NMFS will not then know which bids may include a co-bidder. Each qualifying bidder is solely responsible to have any required co-bidder properly complete the bid. No person may bid before receiving the invitation to bid and the bidding package that NMFS mailed to that person.

(o) *Bids*—(1) *Content.* Each invitation to bid that NMFS mails to a qualifying bidder will have a bid form that requires each bid to:

(i) Identify, by name, regular mail address, telephone number, and (if available) electronic mail address, the qualifying bidder and each co-bidder,

(ii) State the bid amount in U.S. dollars,

(iii) Identify, by crab license number, the qualifying bidder's crab reduction permit and include an exact copy of this crab license (which the RAM Program issued),

(iv) Identify, by vessel name and official number, the bidder's reduction vessel, and include an exact copy of this vessel's official document (which NVDC issued),

(v) Identify, by license or permit number, each of the bidder's non-crab reduction permits; and include an exact copy of each of these licenses or permits (which the RAM Program issued for licenses or permits involving species under the jurisdiction of NMFS' Alaska Region and which other NMFS offices issued for licenses or permits involving species under those offices' jurisdiction),

(vi) Identify, separately for crab and for each other species:

(A) The qualifying bidder's reduction vessel fishing history,

(B) The dates that each portion of this reduction vessel fishing history encompasses, and

(C) If the qualifying bidder acquired any reduction vessel fishing history from another person, the name of the person from which the qualifying bidder acquired this reduction vessel fishing history and the date on which the qualifying bidder did so,

(vii) State, declare, and affirm that the qualifying bidder holds the crab reduction permit and retains the complete reduction vessel fishing history, and is fully and legally entitled to offer both in the manner that this section requires,

(viii) State, declare, and affirm that either the qualifying bidder or the co-bidder owns the reduction vessel and holds the non-crab reduction permit and is fully and legally entitled to offer both in the manner that this section requires, and

(ix) Provide any other information or materials that NMFS believes is necessary and appropriate; and

(2) *Rejection.* NMFS, regardless of bid scores, will reject any bid that NMFS believes is unresponsive to the invitation to bid. All bid rejections will constitute final agency action as of the date of rejection. Before rejection, NMFS may, however, contact any bidder to attempt to correct a bid deficiency if NMFS, in its discretion, believes the attempt warranted.

(p) *Acceptance*—(1) *Reverse auction.* NMFS will determine which responsive bids NMFS accepts by using a reverse auction in which NMFS first accepts the responsive bid with the lowest bid score and successively accepts each additional responsive bid with the next lowest bid score until either there are no more responsive bids to accept or acceptance of the last responsive bid with the next lowest bid score would cause the reduction cost to exceed $100 million. If two or more responsive bid scores are exactly the same, NMFS will first accept the bid that NMFS first received;

(2) *Notification.* NMFS will, in the manner that § 600.1009(e)(3) of this subpart requires, notify bidders whose bids NMFS accepted; and

(3) *Post-acceptance reduction permit transfer.* After NMFS has accepted bids, neither the RAM Program (nor any other NMFS office) will transfer to other persons any reduction permits that accepted bidders included in the accepted bids unless and until FSD advises the RAM Program (or some other NMFS office) that the resulting reduction contracts are no longer in effect because a referendum failed to approve the fee that this section requires to repay this program's reduction loan.

(q) *Reduction contracts subject to successful post-bidding referendum condition.* Although this program involves no fishing capacity reduction specifications under this subpart, each bid, each acceptance, and each reduction contract is nevertheless subject to the successful post-bidding referendum condition that § 600.1009(a)(3) of this subpart specifies for bidding results that do not conform to the fishing capacity reduction specifications.

(r) *Post-bidding referendum*—(1) *Purpose.* NMFS will conduct a post-bidding referendum whose sole purpose is to determine whether, based on the bidding results, qualifying voters who cast referendum ballots in the manner that this section requires authorize the fee required to repay this program's reduction loan;

(2) *Manner of conducting.* NMFS will mail a referendum ballot to each person then on the prospectively qualifying voter list for each crab license that the person holds and otherwise conduct the referendum as specified in § 600.1010 of this subpart;

(3) *One vote per crab license.* Each qualifying voter may cast only one vote for each crab license that each qualifying voter holds;

(4) *Crab License Numbers on Ballots.* Each referendum ballot that NMFS mails will contain the license number of the prospectively qualifying voter's crab license to which the ballot relates;

(5) *Potential reduction results stated.* Each referendum ballot that NMFS mails will state the aggregate potential reduction results of all the bids that NMFS accepted, including:

(i) The amount of reduction that all accepted bids potentially effect, including:

(A) The number of crab reduction permits, together with each area/species endorsement for which each of these licenses is endorsed,

(B) The number of reduction vessels, and

(C) The aggregate and average dollar value of bid crab (together with the number of pounds of bid crab upon which NMFS based the dollar value), in each reduction endorsement fishery and in the reduction fishery, for all reduction vessels during the period for which NMFS calculates the dollar value of bid crab,

(ii) The reduction loan sub-amount that each reduction endorsement fishery must repay if a referendum approves the fee, and

(iii) Whatever other useful information (if any) NMFS may then have about the potential sub-fee rate initially necessary in each reduction endorsement fishery to repay each reduction loan sub-amount; and

(6) *Notice that condition fulfilled.* If the referendum is successful, NMFS will notify accepted bidders, in the manner that § 600.1010(d)(6)(iii) of this subpart specifies, that a successful referendum has fulfilled the reduction contracts' successful post-bidding referendum condition specified in paragraph (p) of this section.

(s) *Reduction method.* In return for each reduction payment, NMFS will permanently:

(1) Revoke each crab reduction permit;

(2) Revoke each non-crab reduction permit;

(3) Revoke each reduction vessel fishing privilege (which revocation will run with the reduction vessel's title in the manner that § 600.1009(a)(5)(ii)(A) of this subpart requires and in accordance with 46 U.S.C. 12108(d));

(4) Effect relinquishment of each reduction vessel fishing history for the purposes specified in this section by noting in the RAM Program records (or such other records as may be appropriate for reduction permits issued elsewhere) that the reduction vessel fishing history has been relinquished under this section and will never again be available to anyone for any fisheries purpose; and

(5) Otherwise restrict in accordance with this subpart each reduction vessel and fully effect the surrender, revocation, restriction, relinquishment, withdrawal, or extinguishment by other means of all components of each reduction fishing interest.

(t) *Reduction payment tender and disbursement*—(1) *Fishing continues until tender.* Each accepted bidder may continue fishing as it otherwise would have absent the program until NMFS, after a successful referendum, tenders reduction payment to the accepted bidder;

(2) *Notification to the public.* Immediately after a successful referendum and before tendering reduction payment, NMFS will publish a notification in the **Federal Register** listing all proposed reduction payments and putting the public on notice:

(i) Of the crab reduction permits, the reduction vessels, the reduction vessel fishing histories, and the non-crab reduction permits upon whose holding, owning, retaining, or other legal authority representations accepted bidders based their bids and NMFS based its acceptances, and

(ii) That NMFS intends, in accordance with the reduction contracts, to tender reduction payments in return for the actions specified in paragraph (r) of this section;

(3) *Public response.* The public has 30 days after the date on which NMFS publishes the reduction payment tender notification to advise NMFS in writing of any holding, owning, or retaining claims that conflict with the representations upon which the accepted bidders based their bids and on which NMFS based its acceptances;

(4) *Tender and disbursement parties.* NMFS will tender reduction payments only to accepted bidders. Unless accepted bidders responding to NMFS' reduction payment tenders provide NMFS with explicit written payment instructions and authorizations to the contrary, NMFS will also disburse reduction payments only to accepted bidders (including, in the instance of co-bidders, joint disbursement to qualifying bidders and their co-bidders). Creditors or other parties with secured or other interests in reduction vessels or reduction permits are responsible to make their own arrangements with accepted bidders;

(5) *Time of tender.* At the end of the reduction payment tender notification period, NMFS will tender reduction payments to accepted bidders, unless NMFS then knows of a material dispute about an accepted bidder's authority to enter into the reduction contract with respect to any one or more components of the reduction fishing interest that warrants, in NMFS' discretion, an alternative course of action;

(6) *Method of tender and disbursement.* NMFS will tender reduction payment by requesting from each accepted bidder specific, written instructions for paying the reduction payments. Upon receipt of these payment instructions, NMFS will immediately disburse reduction payments in accordance with the payment instructions; and

(7) *Effect of tender.* Concurrently with NMFS' tender of reduction payment to each accepted bidder:

(i) All fishing activity for any species anywhere in the world in any way associated with each accepted bidder's reduction fishing interest must forever cease--with the sole exception that each reduction vessel may continue fishing in any reduction endorsement fishery, for which the accepted bidder's crab reduction permit is endorsed, that is still open for directed crab fishing at the time of reduction payment tender until such fishery thereafter first closes,

(ii) Each accepted bidder must retrieve all fixed fishing gear for whose deployment the accepted bidder's reduction vessel was responsible, and

(iii) NMFS will fully exercise its reduction contract rights with respect to the reduction fishing interest by taking the actions specified in paragraph (r) of this section.

(u) *Fee payment and collection*—(1) *Fish sellers who pay the fee.* Any person who harvests any crab, but whom ADF&G's fisheries reporting requirements do not require to record and submit an ADF&G fish ticket for that crab, is a fish seller for the purpose of paying any fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart;

(2) *Fish buyers who collect the fee.* Any person whom ADF&G's fisheries reporting requirements require to record and submit an ADF&G fish ticket for any crab that another person harvested is a fish buyer for the purpose of collecting the fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart; and

(3) *Persons who are both fish sellers and fish buyers and both pay and collect the fee.* Any person who harvests any crab, and whom ADF&G's fisheries reporting requirements require to record and submit an ADF&G fish ticket for that crab, is both a fish seller and a fish buyer for the purpose of paying and collecting the fee on that crab and otherwise complying with the requirements of § 600.1013 of this subpart.

(v) *Fishing prohibition and penalties*—(1) *General.* Fishing, for the purpose of this section, includes the full range of activities defined in the term "fishing" in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801),

(2) *Prohibitions.* Concurrently with NMFS' tender of each reduction payment, and with the sole exception in paragraph (s)(7)(i) of this section, no person whatsoever may, and it is unlawful for any person to:

(i) Fish with or attempt to fish with, or allow others to fish with or attempt to fish with, the reduction vessel anywhere in the world for any species under any conditions and regardless of the reduction vessel's ownership or registry for so long as the reduction vessel exists. This prohibition includes, but is not limited to, fishing on the high seas or in the jurisdiction of any foreign country while operating under U.S. flag,

(ii) Place or attempt to place, or allow others to place or attempt to place, the reduction vessel under foreign flag or registry,

(iii) Operate or attempt to operate, or allow others to operate or attempt to operate, the reduction vessel under the authority of a foreign country,

(iv) Otherwise avoid or attempt to avoid, or allow others to avoid or attempt to avoid, the revocation of the reduction vessel fishing privilege with respect to any reduction vessel, and

(v) Make any claim or attempt to make any claim, or allow others to claim or attempt to make any claim, for any present or future limited access fishing license or permit in any U.S. fishery (including, but not limited to, any quota allocation under any present or future individual quota allocation system) based in any way on any portion of a reduction fishing interest surrendered, revoked, restricted, relinquished, withdrawn, or extinguished by other means under this section; and

(3) *Penalties.* The activities that this paragraph prohibits are subject to the full penalties provided in § 600.1017 of this subpart, and immediate cause for NMFS to take action to, among other things:

(i) At the reduction vessel owner's expense, seize and scrap the reduction vessel, and

(ii) Pursue such other remedies and enforce such other penalties as may be applicable.

(w) *Program administration*—(1) *FSD responsibilities.* FSD is responsible for implementing and administering this program. FSD will:

(i) Issue all notifications and mailings that this section requires,

(ii) Prepare and issue the invitation to bid,
(iii) Receive bids,
(iv) Reject bids,
(v) Score bids,
(vi) Make acceptances,
(vii) Prepare and issue referendum ballots,
(viii) Receive referendum ballots,
(ix) Tally referendum ballots,
(x) Determine referendum success or failure,
(xi) Tender and disburse reduction payments,
(xii) Administer reduction contracts,
(xiii) Administer fees and reduction loan repayment, and
(xiv) Discharge all other management and administration functions that this section requires;

(2) *RAM Program responsibilities.* Upon FSD's advice, the RAM Program (for fishing licenses under the jurisdiction of NMFS's Alaska Region) and any other appropriate NMFS authority (for fishing licenses under the jurisdiction of any other NMFS office) will revoke reduction permits and effect the surrender of fishing histories in accordance with this section; and

(3) *NVDC and U.S. Maritime Administration responsibilities.* FSD will advise NVDC, the U.S. Maritime Administration, such other agency or agencies as may be involved, or all of them to revoke reduction vessels' fisheries trade endorsements and otherwise restrict reduction vessels in accordance with this section.

(x) *Reduction loan and reduction loan sub-amounts.* [Reserved]

[FR Doc. 02–31218 Filed 12–11–02; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–2286–01; I.D. 110602B]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Proposed 2003 Harvest Specifications for Groundfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 2003 initial harvest specifications for groundfish and associated management measures; request for comments.

SUMMARY: NMFS proposes 2003 initial harvest specifications for groundfish, reserves and apportionment thereof, Pacific halibut prohibited species catch (PSC) limits, and associated management measures for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits and associated management measures for groundfish during the 2003 fishing year. The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and to provide an opportunity for public participation in the annual specification process.

DATES: Comments must be received by January 13, 2003.

ADDRESSES: Comments must be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments also may be sent via facsimile (fax) to 907–586–7557. Comments will not be accepted if submitted via e-mail or Internet.

Copies of the final 2001 Stock Assessment and Fishery Evaluation (SAFE) reports, dated November 2001, are available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK 99510 or from its homepage at *http://www.fakr.noaa.gov/npfmc*. Copies of the draft Environmental Assessment/Initial Regulatory Flexibility Analysis (EA/IRFA) prepared for this action are available from NMFS (see **ADDRESSES**) and comments must be received by December 20, 2002.

FOR FURTHER INFORMATION CONTACT: Tom Pearson, Sustainable Fisheries Division, Alaska Region, 907–481–1780 or e-mail at tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan (FMP) for the Groundfish Fishery of the GOA. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

The FMP and implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and for the "other species" category, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) (§ 679.20(a)(1)(ii). Regulations at § 679.20(c)(1) further require NMFS to publish annually, and solicit public comment on, proposed annual TACs, halibut PSC amounts, seasonal allowances of pollock, and inshore/offshore Pacific cod. The proposed specifications set forth in Tables 1 to 9 of this document satisfy these requirements. For 2003, the sum of the proposed TAC amounts is 233,166 mt. Under § 679.20(c)(3), NMFS will publish the final specifications for 2003 after (1) considering comments received within the comment period (see DATES), (2) consulting with the Council at its December 2002 meeting, and (3) considering new information presented in the EA, the final 2002 SAFE reports, and in the section 7 consultation prepared for the 2003 groundfish fisheries.

Regulations that will be effective with the final rule to implement major provisions of the American Fisheries Act (AFA) at § 679.20(c)(2)(i) provide that one-fourth of each proposed TAC and apportionment thereof (not including the reserves and the first seasonal allowances of pollock and Pacific cod), one-fourth of the proposed halibut PSC amounts, and the proposed first seasonal allowances of pollock and Pacific cod will become effective 0001 hours, Alaska local time (A.l.t.) January 1, 2003, on an interim basis and remain in effect until superseded by the final harvest specifications, which will be published in the **Federal Register**. Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open on that date, which would result in unnecessary closures and disruption within the fishery industry.

By separate rulemaking, NMFS intends to publish in the **Federal Register** prior to January 1, 2003, the interim TAC specifications and apportionments thereof for the 2003 fishing year. These interim specifications would become effective 0001 hours, A.l.t., January 1, 2003, and would remain in effect until superseded by the final 2003 harvest specifications.

NMFS also intends to publish a final rule implementing regulatory provisions of the AFA in the **Federal Register** that would be effective for 2003. In order to minimize confusion, the proposed specifications also identify sideboard amounts for the AFA fisheries that will be available under the final rule. Also, NMFS has initiated rulemaking to permanently implement the Steller sea

lion protection measures for 2003 and beyond. To minimize confusion and provide clarity to the 2003 specification process, we have included in the proposed 2003 harvest specifications pollock and Pacific cod seasonal allowances that are consistent with the existing protection measures.

Proposed Acceptable Biological Catch (ABC) and TAC Specifications

The proposed ABC and TAC for each species or species group are based on the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised methods used to calculate stock biomass. The Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC) reviewed the most current biological information about the condition of GOA groundfish stocks at their meetings in October 2002. This information was initially compiled by the Council's GOA Plan Team and was presented in the final 2001 SAFE report for the GOA groundfish fisheries, dated November 2001. The Plan Team annually produces such a document as the first step in the process of specifying TACs. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of the groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species category. The 2001 SAFE report will be updated to include new information collected during 2002. Revised stock assessments will be made available by the Plan Team in November 2002 and will be included in the final 2002 SAFE report, which will be available the end of November 2002.

Until updated information becomes available at its December 2002 meeting and based on the recommendations from the SSC for overfishing levels (OFLs) and from the SSC and AP for ABCs, the Council recommended that the OFLs and ABCs for stocks in tiers 3 and above, except for pollock, be based upon biomass projections as set forth in the 2001 SAFE report and estimates of groundfish harvests through the 2002 fishing year. The Council recommended that OFL and ABC levels for those stocks in tiers 4 and below, for which projections cannot be made, be unchanged from 2002 levels (Table 1).

The SSC adopted the OFL and ABC recommendations from the Plan Team for all groundfish species categories except pollock. In the 2001 SAFE report, the ABC projection for 2003 is 75,995 mt for the combined Western, Central, and West Yakutat (W/C/WYK) GOA stock of pollock. The Plan Team did not endorse the ABC projection due to the low spawning biomass observed during the 2002 Shelikof survey and because it represents a substantial increase from the 2002 ABC. The Plan Team recommended an ABC of 43,390 mt for the W/C/WYK pollock stock based on the ratio of the 2002 hydroacoustic survey estimate of spawning biomass to the 2003 forecast Shelikof spawning biomass. Because of the results of the Shelikof Survey, the SSC did not support the use of the 2001 SAFE report projection for ABC. However, the SSC concurred with the pollock assessment recommendation that OFL and ABC levels be unchanged from 2002 levels until a formal stock assessment can be completed. The SSC determined that the Plan Team did not provide adequate written justification for the Plan Team's recommended ABC and that the uncertainties in the preliminary pollock data were so large that using the current method for recommending proposed ABC (either rollovers or 2001 SAFE report projections) is required.

As in 2002, the SSC's, AP's and Council's recommendation for the method of apportioning the sablefish ABC among management areas includes commercial fishery catch data as well as survey data. NMFS stock assessment scientists believe that the use of unbiased commercial fishery data reflecting catch-per-unit effort provides a desirable input for stock distribution assessments. The use of commercial fishery data is evaluated annually to assure that unbiased information is included in stock distribution models. The Council's recommendation for sablefish area apportionments also takes into account the prohibition on the use of trawl gear in the Southeast Outside (SEO) District of the Eastern GOA and makes available 5 percent of the combined Eastern GOA ABCs to trawl gear for use as incidental catch in other directed groundfish fisheries in the West Yakutat District.

The AP and Council recommended that the ABC for Pacific cod in the GOA be apportioned among regulatory areas based on the three most recent NMFS summer trawl surveys. As in previous years, the Plan Team, SSC, and Council recommended that total removals of Pacific cod from the GOA not exceed ABC recommendations. Accordingly, the Council recommended that the TACs be adjusted downward from the ABCs by amounts equal to the 2003 guideline harvest levels (GHL) established for Pacific cod by the State of Alaska (State) for the state managed fishery in the GOA. The effect of the State's GHL on the Pacific cod TAC is discussed in greater detail below.

For 2003, the Council recommended and NMFS proposed the ABCs listed in Table 1. These amounts reflect harvest amounts that are less than the specified overfishing amounts. The sum of the proposed 2003 ABCs for all assessed groundfish is 382,790 mt, which is lower than the 2002 ABC total of 394,780 mt.

Specification and Apportionment of TAC Amounts

The Council adopted the AP's proposals for the 2003 GOA TAC amounts. The Council recommended TACs that are equal to ABCs for pollock, deep-water flatfish, rex sole, sablefish, shortraker and rougheye rockfish, northern rockfish, Pacific Ocean perch, pelagic shelf rockfish, thornyhead rockfish, demersal shelf rockfish, and Atka mackerel. The Council-recommended TACs are less than the recommended ABCs for Pacific cod, flathead sole, shallow-water flatfish, arrowtooth flounder, and other rockfish.

The apportionment of the annual pollock TAC among the Western and Central Regulatory Areas of the GOA reflects the seasonal biomass distribution and is discussed in greater detail below. The annual pollock TAC in the Western and Central Regulatory Areas of the GOA is divided into four equal seasonal apportionments. Twenty-five percent of the annual TAC in the Western and Central Regulatory Areas of the GOA will be apportioned among Statistical Areas 610, 620, and 630 to each season: the A season (January 20 through February 25), the B season (March 10 through May 31), the C season (August 25 through September 15), and the D season (October 1 through November 1)(§ 679.23(d)(3)(i) through (iv) and § 679.20(a)(5)(ii)(C)).

The 2003 Pacific cod TAC is affected by the State's developing fishery for Pacific cod in State waters in the Central and Western Regulatory Areas of the GOA, as well as Prince William Sound. The SSC, AP, and Council recommended that the sum of all State and Federal water Pacific cod removals should not exceed the ABC. Accordingly, the Council recommended that the Pacific cod TACs be reduced from ABC levels to account for State GHLs in each regulatory area of the GOA so that the TAC for (1) the Eastern GOA be lower than the ABC by 758 mt, (2) the Central GOA be lower than the ABC by 6,043 mt, and (3) the Western GOA be lower than the ABC by 4,926 mt. These amounts reflect the sum of

the State's 2003 GHLs in these areas which are 25 percent, 21.75 percent, and 25 percent of the Eastern, Central, and Western GOA ABCs, respectively. These percentages are unchanged from 2002.

NMFS is also establishing seasonal apportionments of the annual Pacific cod TAC in the Western and Central Regulatory Areas. Sixty percent of the annual TAC is apportioned to the A season for hook-and-line, pot and jig gear from January 1 through June 10, and for trawl gear from January 20 through June 10. Forty percent of the annual TAC is apportioned to the B season for hook-and-line, pot and jig gear from September 1 through December 31 and for trawl gear from September 1 through November 1 (§§ 679.23(d)(4) and 679.20(a)(11)). These seasonal apportionments of the annual Pacific cod TAC are discussed in greater detail below.

The FMP specifies that the amount for the "other species" category is calculated as 5 percent of the combined TAC amounts for target species. The proposed 2003 GOA-wide "other species" TAC is 11,103 mt, which is 5 percent of the sum of the combined proposed TAC amounts (226,322 mt) of the other groundfish species for which the TAC is specified. The sum of the proposed TACs for all GOA groundfish is 233,166 mt, which is within the OY range specified by the FMP. The sum of the 2003 proposed TACs is lower than the 2002 TAC sum of 237,890 mt.

NMFS finds that the Council's recommendations for proposed OFL, ABC, and TAC amounts are consistent with the biological condition of groundfish stocks as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required OY range of 116,000 to 800,000 mt. The proposed 2003 ABCs, TACs, and OFLs are shown in Table 1.

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Table 1 - Proposed 2003 ABCs, TACs, and Overfishing Levels of Groundfish for the Western/Central/West Yakutat (W/C/WYK), Western (W), Central (C), Eastern (E) Regulatory Areas, and in the West Yakutat (WYK), Southeast Outside (SEO), and Gulf-Wide (GW) Districts of the Gulf of Alaska. [Values are in metric tons]

Species	Area[1]	ABC	TAC	Overfishing
Pollock[2]				
Shumagin	(610)	17,730	17,730	
Chirikof	(620)	23,045	23,045	
Kodiak	(630)	9,850	9,850	
WYK	(640)	1,165	1,165	
Subtotal	W/C/WYK	51,790	51,790	75,480
SEO	(650)	6,460	6,460	8,610
Total		58,250	58,250	84,090
Pacific cod[3]				
	W	19,703	14,777	
	C	27,786	21,743	
	E	3,031	2,273	
Total		50,520	38,793	67,820
Flatfish[4] (deep-water)	W	180	180	
	C	2,220	2,220	
	WYK	1,330	1,330	
	SEO	1,150	1,150	
Total		4,880	4,880	6,430
Rex sole	W	1,280	1,280	
	C	5,540	5,540	
	WYK	1,600	1,600	
	SEO	1,050	1,050	
Total		9,470	9,470	12,320
Flathead sole	W	9,000	2,000	
	C	11,410	5,000	
	WYK	1,590	1,590	
	SEO	690	690	
Total		22,690	9,280	29,530
Flatfish[5] (shallow-water)	W	23,550	4,500	
	C	23,080	13,000	
	WYK	1,180	1,180	
	SEO	1,740	1,740	
Total		49,550	20,420	61,810

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Table 1. (continued)

Species	Area[1]	ABC	TAC	Overfishing
Arrowtooth flounder	W	16,300	8,000	
	C	102,390	25,000	
	WYK	16,470	2,500	
	SEO	5,250	2,500	
Total		140,410	38,000	164,360
Sablefish[6]	W	2,430	2,430	
	C	5,900	5,900	
	WYK	2,110	2,110	
	SEO	3,490	3,490	
Subtotal	E	5,600	5,600	
Total		13,930	13,930	21,060
Pacific[7] ocean perch	W	2,630	2,630	3,140
	C	8,290	8,290	9,840
	WYK	780	780	
	SEO	1,600	1,600	
Subtotal	E			2,820
Total		13,300	13,300	15,800
Short raker/ rougheye[8]	W	220	220	
	C	840	840	
	E	560	560	
Total		1,620	1,620	2,340
Other rockfish [9,10]	W	90	90	
	C	550	550	
	WYK	260	150	
	SEO	4,140	200	
Total		5,040	990	6,610
Northern Rockfish[10,12,15]	W	760	760	
	C	3,940	3,940	
	E	N/A	N/A	
Total		4,700	4,700	5,580
Pelagic shelf rockfish[13]	W	510	510	
	C	3,480	3,480	
	WYK	640	640	
	SEO	860	860	
Total		5,490	5,490	8,220
Thornyhead rockfish	W	360	360	
	C	840	840	
	E	790	790	
Total		1,990	1,990	2,330

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Table 1. (continued)

Species	Area[1]	ABC	TAC	Overfishing
Demersal shelf rockfish[11]	SEO	350	350	480
Atka mackerel	GW	600	600	6,200
Other[14] species	GW	N/A	11,103	N/A
TOTAL[16]		382,790	233,166	494,980

[1] Regulatory areas and districts are defined at § 679.2.
[2] Pollock is apportioned in the Western/Central Regulatory areas among three statistical areas. During the A and B seasons, the apportionment is based on the relative distribution of pollock biomass at 23 percent, 68 percent, and 9 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, pollock is apportioned based on the relative distribution of pollock biomass at 47 percent, 23 percent, and 30 percent in Statistical Areas 610, 620, and 630, respectively. These seasonal apportionments are shown in Table 3. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.
[3] The annual Pacific cod TAC is apportioned 60 percent to an A season and 40 percent to a B season in the Western and Central Regulatory Areas of the GOA. Pacific cod is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Seasonal apportionments and component allocations of TAC are shown in Table 4.
[4] "Deep water flatfish" means Dover sole, Greenland turbot, and deepsea sole.
[5] "Shallow water flatfish" means flatfish not including "deep water flatfish," flathead sole, rex sole, and arrowtooth flounder.
[6] Sablefish is allocated to trawl and hook-and-line gears (Table 2).
[7] "Pacific ocean perch" means Sebastes alutus.
[8] "Shortraker/rougheye rockfish" means Sebastes borealis (shortraker) and S. aleutianus (rougheye).
[9] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category "other rockfish" in the Southeast Outside District means slope rockfish.
[10] "Slope rockfish" means Sebastes aurora (aurora), S. melanostomus (blackgill), S. paucispinis (bocaccio), S. goodei (chilipepper), S. crameri (darkblotch), S. elongatus (greenstriped), S. variegatus (harlequin), S. wilsoni (pygmy), S. babcocki (redbanded), S. proriger (redstripe), S. zacentrus (sharpchin), S. jordani (shortbelly), S. brevispinis (silvergrey), S. diploproa (splitnose), S. saxicola (stripetail), S. miniatus (vermilion), and S. reedi (yellowmouth). In the Eastern GOA only, "slope rockfish" also includes northern rockfish, S. polyspinous.
[11] "Demersal shelf rockfish" means Sebastes pinniger (canary), S. nebulosus (china), S. caurinus (copper), S. maliger (quillback), S. helvomaculatus (rosethorn), S. nigrocinctus (tiger), and S. ruberrimus (yelloweye).
[12] "Northern rockfish" means Sebastes polyspinis.
[13] "Pelagic shelf rockfish" means Sebastes ciliatus (dusky), S. entomelas (widow), and S. flavidus (yellowtail).
[14] "Other species" means sculpins, sharks, skates, squid, and octopus. The TAC for "other species" equals 5 percent of the TACs of assessed target species.
[15] N/A means not applicable.
[16] The total ABC is the sum of the ABCs for assessed target species.

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Proposed Apportionment of Reserves

Regulations implementing the FMP require 20 percent of each TAC for pollock, Pacific cod, flatfish, and the "other species" category be set aside in reserves for possible apportionment at a later date (§ 679.20(b)(2)). In 2002, NMFS reapportioned all of the reserves in the final harvest specifications. Between 1997 and 2000, NMFS retained the Pacific cod reserve to provide for a management buffer to account for excessive fishing effort and incomplete or late catch reporting. NMFS believes that the retention of reserve amounts no longer is necessary because estimates of catch and incidental catch needs in other directed fisheries have improved in recent years. For 2003, NMFS proposes reapportionment of all of the reserve for pollock, Pacific cod, flatfish, and "other species". Specifications of TAC shown in Table 1 reflect proposed reapportionment of reserve amounts for these species and species groups.

Proposed Apportionments of the Sablefish TAC Amounts to Vessels Using Hook-and-Line and Trawl Gear

Under § 679.20(a)(4)(i) and (ii), sablefish TACs for each of the regulatory areas and districts of the GOA are allocated to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to hook-and-line gear and 20 percent of each TAC is allocated to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is allocated to hook-and-line gear and 5 percent is allocated to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used to support incidental catch of sablefish in directed fisheries for other target species. In recognition of the trawl ban in the SEO District of the Eastern Regulatory Area, the Council recommended and NMFS proposes that 5 percent of the combined Eastern GOA sablefish TAC be allocated to trawl gear in the WYK District and the remainder to vessels using hook-and-line gear. In the SEO District, 100 percent of the sablefish TAC is allocated to vessels using hook-and-line gear. This recommendation results in a proposed allocation of 280 mt to trawl gear and 1,830 mt to hook-and-line gear in the WYK District and 3,490 mt to hook-and-line gear in the SEO District. Table 2 shows the allocations of the proposed 2003 sablefish TACs between hook-and-line gear and trawl gear.

Table 2 - Proposed 2003 Sablefish TAC Specifications in the Gulf of Alaska and Allocations Thereof to Hook-and-Line and Trawl Gear. (Values are in metric tons)

Area/District	TAC	Hook-and-line apportionment	Trawl apportionment
Western	2,430	1,944	486
Central	5,900	4,720	1,180
West Yakutat	2,110	1,830	280
Southeast Outside	3,490	3,490	0
TOTAL	13,930	11,984	1,946

Proposed Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components

In the GOA, pollock is apportioned by season and area, and is further allocated for processing by inshore and offshore components. Under regulations at § 679.20(a)(5)(ii)(C), the annual pollock TAC specified for the Western and Central Regulatory Areas of the GOA is apportioned into four equal seasonal allowances of 25 percent. As established by § 679.23(d)(3), the A, B, C, and D season allowances are available from January 20 through February 25, from March 10 through May 31, from August 25 through September 15, and from October 1 through November 1, respectively.

Pollock TACs in the Western and Central Regulatory Areas of the GOA in the A and B seasons are apportioned among statistical areas 610, 620, and 630 in proportion to the distribution of pollock biomass as determined by a composite of NMFS winter surveys, and in the C and D seasons in proportion to the distribution of pollock biomass as determined by the four most recent NMFS summer surveys. Within any fishing year, underage or overage of a seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Regional Administrator, Alaska Region, NMFS, provided that the sum of a revised seasonal allowance does not exceed 30 percent of the annual TAC apportionment for the Central and Western Regulatory Areas in the GOA (§ 679.20(a)(5)(ii)(B)). For 2003, 30 percent of the proposed annual TAC for the Central and Western Regulatory Areas would be 15,187 mt. The WYK and SEO District pollock TACs of 1,165 mt and 6,460 mt, respectively, are not allocated seasonally.

Regulations at § 679.20(a)(6)(ii) require that 100 percent of the pollock TAC in all regulatory areas and all seasonal allowances thereof be allocated to vessels catching pollock for processing by the inshore component after subtraction of amounts that are projected by the Regional Administrator to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. The amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is that amount actually taken as incidental catch during directed fishing for groundfish species other than pollock, up to the maximum retainable amounts allowed under regulations at § 679.20(e) and (f). At this time, these incidental catch amounts are unknown and will be determined during the fishing year.

The proposed seasonal biomass distribution of pollock in the Western and Central GOA, area apportionments, and seasonal apportionments for the A, B, C, and D seasons are summarized in Table 3, except that amounts of pollock for processing by the inshore and offshore component are not shown.

Table 3. Proposed Distribution of Pollock in the Central and Western Regulatory Areas of the Gulf of Alaska; Seasonal Biomass Distribution, Area Apportionments; and Seasonal Allowances of Annual TAC in 2003. (Values are in metric tons)

	Area			
Season	Shumagin (Area 610) (biomass distribution)	Chirikof (Area 620) (biomass distribution)	Kodiak (Area 630) (biomass distribution)	Total (biomass distribution)
A	2,916 (23%)	8,618 (68%)	1,122 (9%)	12,656 (100%)
B	2,916 (23%)	8,618 (68%)	1,122 (9%)	12,656 (100%)
C	5,949 (47%)	2,905 (23%)	3,803 (30%)	12,657 (100%)
D	5,949 (47%)	2,904 (23%)	3,803 (30%)	12,656 (100%)
Annual Total	17,730	23,045	9,850	50,625

Proposed Seasonal Apportionments of Pacific Cod TAC and Allocations for Processing of Pacific Cod TAC Between Inshore and Offshore Components

Pacific cod fishing is divided into two seasons in the Western and Central Regulatory Areas of the GOA. For hook-and-line, pot and jig gear, the A season begins on January 1 and ends on June 10, and the B season begins on September 1 and ends on December 31. For trawl gear, the A season begins on January 20 and ends on June 10, and the B season begins on September 1 and ends on November 1, (§ 679.23(d)(4)). After subtraction of incidental catch, 60 percent and 40 percent of the annual TAC will be available for harvest during the A and B seasons, respectively, and will be apportioned between the inshore and offshore processing components as provided in 50 CFR 679.20(a)(6)(iii). Between the A and the B seasons, directed fishing for Pacific cod is closed and fishermen participating in other directed fisheries may retain Pacific cod up to the maximum retainable amounts allowed under regulations at § 679.20(e) and (f). For purposes of clarification, NMFS points out that the A season and the B season Pacific cod fishery dates differ from those of the A, B, C, and D seasons for the pollock fisheries. In accordance with § 679.20(a)(11)(ii), any overage or underage of Pacific cod harvest from the A season shall be subtracted from or added to the subsequent B season.

Regulations at § 679.20(a)(6)(iii) require that the TAC apportionment of Pacific cod in all regulatory areas be allocated to vessels catching Pacific cod for processing by the inshore and offshore components. Ninety percent of the Pacific cod TAC in each regulatory area is allocated to vessels catching Pacific cod for processing by the inshore component. The remaining 10 percent of the TAC is allocated to vessels catching Pacific cod for processing by the offshore component. These seasonal apportionments and allocations of the proposed Pacific cod TAC for 2003 are shown in Table 4.

Table 4 - Proposed 2003 Seasonal Apportionments and Allocation of Pacific cod TAC Amounts in the Gulf of Alaska; Allocations for Processing by the Inshore and Offshore Components. (Values are in mt)

Regulatory area	TAC	Component Allocation	
		Inshore (90%)	Offshore (10%)
Western	14,777	13,299	1,478
A Season (60%)	8,866	7,979	887
B Season (40%)	5,911	5,320	591
Central	21,743	19,569	2,174
A Season (60%)	13,046	11,741	1,305
B Season (40%)	8,697	7,828	869
Eastern	2,273	2,046	227
TOTAL:	38,793	34,914	3,879

Proposed Pacific Halibut PSC Mortality Limits

Under § 679.21(d), annual Pacific halibut PSC limits are established and apportioned to trawl and hook-and-line gear and may be established for pot gear. In October 2002, the Council recommended, and NMFS proposes, to re-establish the 2002 halibut PSC limits of 2,000 mt for the trawl fisheries and 300 mt for the hook-and-line fisheries, with 10 mt of the hook-and-line limit allocated to the demersal shelf rockfish (DSR) fishery in the SEO District and the remainder to the remaining hook-and-line fisheries. The DSR fishery is defined at § 679.21(d)(4)(iii)(A) and historically has been apportioned this amount in recognition of its small scale harvests. Although observer data are not available to verify actual bycatch amounts given most vessels are less than 60 ft (18.3 m) length overall (LOA) and are exempt from observer coverage, halibut bycatch in the DSR fishery is assumed to be low because of the short soak times for the gear and the short duration of the DSR fishery. Also, the DSR fishery occurs in the winter when there is less of an overlap in the distribution of DSR and halibut.

Regulations at § 679.21(d)(4) authorize exemption of specified nontrawl fisheries from the halibut PSC limit. The Council recommended and NMFS proposes that pot gear, jig gear, and the hook-and-line sablefish fishery be exempted from the nontrawl halibut limit for 2003. The Council recommended and NMFS proposes these exemptions because of the low halibut bycatch mortality experienced in the pot gear fisheries (4 mt in 2001 and 2 mt in 2002) and because of the 1995 implementation of the sablefish and halibut Individual Fishing Quota (IFQ) program, which regulates the retention of legal-sized halibut in the sablefish fishery by persons holding IFQ permits for halibut. Halibut mortality for the jig gear fleet cannot be estimated because these vessels do not carry observers. However, halibut mortality is assumed to be very low given the small amount of groundfish harvested by jig gear (336 mt in 2001 and 277 mt in 2002) and the assumed high survival rate of any halibut that are incidentally taken by jig gear and released.

Under § 679.21(d)(5), NMFS seasonally apportions the halibut PSC limits based on recommendations from the Council. The FMP and regulations require that the following information be considered by the Council and NMFS in seasonally apportioning halibut PSC limits: (1) Seasonal distribution of halibut, (2) seasonal distribution of target groundfish species relative to halibut distribution, (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catch of target groundfish species, (4) expected bycatch rates on a seasonal basis, (5) expected changes in directed groundfish fishing seasons, (6) expected actual start of fishing effort, and (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

The emergency rule establishing the final 2002 groundfish and PSC specifications (66 FR 956, January 8, 2002) summarizes Council and NMFS findings with respect to each of the FMP considerations set forth here. At this time, the Council's and NMFS' findings are unchanged from those set forth in 2002. Proposed Pacific halibut PSC limits, and apportionments thereof, are presented in Table 5. Regulations at § 679.21(d)(5)(iii) and (iv) specify that any overages or shortfalls in a seasonal apportionment of a PSC limit will be deducted from or added to the next respective seasonal apportionment within the 2003 fishing year.

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Table 5 Proposed 2003 Pacific halibut PSC limits, allowances, and apportionments. The Pacific halibut PSC limit for hook-and-line gear is allocated to the demersal shelf rockfish (DSR) fishery and fisheries other than DSR. The hook-and-line sablefish fishery is exempt from halibut PSC limits. (Values are in metric tons)

Trawl gear			Hook-and-line gear			
			Other than DSR		DSR	
Dates	Amount		Dates	Amount	Dates	Amount
Jan 1-Apr 1	550	(27.5%)	Jan 1- June 10	250 (86%)	Jan 1- Dec 31	10 (100%)
Apr 1- Jul 1	400	(20%)	June 10- Sept 1	5 (2%)		
Jul 1- Sept 1	600	(30%)	Sept 1- Dec 31	35 (12%)		
Sept 1- Oct 1	150	(7.5%)				
Oct 1- Dec 31	300	(15%)		290 (100%)		10 (100%)
Total:	2,000	(100%)				

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Regulations at § 679.21(d)(3)(ii), authorize the trawl halibut PSC limit to be further apportioned to trawl fishery categories, based on each category's proportional share of the anticipated halibut bycatch mortality during a fishing year and the need to optimize the amount of total groundfish harvest under the halibut PSC limit. The fishery categories for the trawl halibut PSC limits are: a deep-water species complex, comprised of sablefish, rockfish, deep-water flatfish, rex sole and arrowtooth flounder; and a shallow-water species complex, comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species" (§ 679.21(d)(3)(iii)). The proposed apportionment for these two fishery complexes is presented in Table 6.

Table 6 - Proposed 2003 apportionment of Pacific halibut PSC trawl limits between the trawl gear deep-water species complex and the shallow-water species complex. (Values are in metric tons)

Season	Shallow-water	Deep-water	Total
Jan. 20-Apr. 1	450	100	550
Apr. 1-June 30	100	300	400
June 30-Sept. 1	200	400	600
Sept. 1-Oct. 1	150	Any Remainder	150
Subtotal Jan. 20-Oct. 1	900	800	1,700
Oct. 1-Dec. 31	---	---	300
Total	---	---	2,000

No apportionment between shallow-water and deep-water fishery complexes during the 5th season (Oct. 1 - Dec. 31)

Based on public comment and information contained in the final 2002 SAFE report, which will be available in December 2002, the Council may recommend, or NMFS may make, some changes in the seasonal, gear-type, and fishing-complex apportionments of halibut PSC limits for the final 2003 harvest specifications. NMFS will consider the following types of information in setting final halibut PSC limits.

(A) Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is data collected by observers during 2002. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gear through October 5, 2002, is 1,810 mt, 206 mt, and 2 mt, respectively, for a total halibut mortality of 2,018 mt.

Halibut bycatch restrictions seasonally constrained trawl gear fisheries during the 2002 fishing year. Trawling during the second season closed for the shallow-water complex on May 15 (67 FR 35448, May 20, 2002) and for the deep-water fishery complex on May 24 (67 FR 37726, May 30, 2002). Trawling during the third season closed for the shallow-water complex on August 5 (67 FR 51499, August 8, 2002) and for the deep-water fishery complex on August 2 (67 FR 51129, August 7, 2002). Trawling during the fourth season closed for both the shallow-water complex and the deep-water fishery complex on September 1 (67 FR 55730, August 30, 2002, and 67 FR 56320, September 3, 2002). All trawling in the GOA closed (with the exception of pelagic trawl gear targeting pollock) for the remainder of the year on October 13 (67 FR 64066, October 17, 2002).

(B) Expected Changes in Groundfish Stocks

Proposed 2003 ABCs for sablefish and Pacific ocean perch are higher than those established for 2002. Proposed 2003 ABCs for Pacific cod, arrowtooth flounder, and northern rockfish are lower than those established for 2002. Proposed 2003 ABC levels for the remaining target species are unchanged from 2002. More information on these changes is included in the 2001 SAFE report (November 2001) and in the Council and SSC October 2002 meeting minutes.

(C) Expected Changes in Groundfish Catch

The total of the proposed 2003 TACs for the GOA is 233,166 mt, a decrease of 2 percent from the 2002 TAC total of 237,638 mt. Those fisheries for which the 2003 TACs are lower than in 2002 are Pacific cod (decreased to 38,793 mt from 44,230 mt), northern rockfish (decreased to 4,700 mt from 4,980 mt), and other species (decreased to 11,103 mt from 11,330 mt). Those species for which the 2003 TACs are higher than in 2002 are sablefish (increased to 13,930 mt from 12,820 mt) and Pacific ocean perch (increased to 13,300 mt from 13,190 mt).

(D) Current Estimates of Halibut Biomass and Stock Condition

The most recent halibut stock assessment was conducted by the International Pacific Halibut Commission (IPHC) in December 2001.

The halibut resource is considered to be healthy, with total catch near record levels. The current exploitable halibut biomass for 2002 is estimated to be 273,950 mt. This is an increase from the estimate of 249,007 mt in 2001.

The exploitable biomass of the Pacific halibut stock apparently peaked at 326,520 mt in 1988. According to the IPHC, the long-term average reproductive biomass for the Pacific halibut resource is estimated at 118,000 mt. Long-term average yield is estimated at 26,980 mt, round weight. The species is fully utilized. Recent average catches (1994–96) were 33,580 mt for the U.S. and 6,410 mt for Canada, for a combined total of 39,990 mt for the entire Pacific halibut resource. This catch is 48 percent higher than long-term potential yield, which reflects the good condition of the Pacific halibut resource. In January 2002 the IPHC recommended commercial catch limits totaling 36,812 mt (round weight equivalents) for Alaska in 2002, down slightly from 37,120 mt in 2001. Through October 11, 2002, commercial hook-and-line harvests of halibut in Alaska total 33,312 mt (round weight equivalents).

The major changes in the 2001 assessment results were: a separate treatment of Areas 2A and 2B in the assessment, whereas they had been previously combined; the incorporation of additional survey information in Areas 2C and 3A; and a revision in the estimate of halibut habitat in all areas. The separation of Areas 2A and 2B and some computational changes resulted in increased estimates of exploitable biomass in both areas. Exploitable biomass was estimated to be slightly lower in Area 2C and slightly higher in Area 3A as a result of these changes. Revisions of halibut habitat based on bottom areas were completed for all regulatory areas but the effect was minor, except in Area 4B, where the change resulted in an approximate 30 percent decrease in habitat.

The outlook for the stock biomass over the near future is for a slow decline from the record high levels of recent years due to lower recruitment associated with unfavorable environmental conditions for halibut recruitment. However, the halibut biomass is still above the long-term average level and is expected to remain above this level for the next several years.

Additional information on the Pacific halibut stock assessment may be found in the final 2001 SAFE report (November 2001) and in the IPHC's 2001 Pacific halibut stock assessment (December 2001). The 2002 Pacific halibut stock assessment for 2003 will be considered by the IPHC at its January 2003 annual meeting in setting the 2003 commercial halibut fishery quotas.

(E) Other Factors

The allowable commercial catch of halibut will be adjusted to account for the overall halibut PSC mortality limit established for the groundfish fisheries. The 2003 GOA groundfish fisheries are expected to use the entire proposed halibut PSC limit of 2,300 mt. The allowable directed commercial catch is determined by accounting for the recreational and subsistence catch, waste, and bycatch mortality and then providing the remainder to the directed fishery. Groundfish fishing is not expected to adversely affect the halibut stocks.

Methods available for reducing halibut bycatch include:

(1) reducing halibut bycatch rates through the Vessel Incentive Program; (2) modifications to gear; (3) changes in groundfish fishing seasons; (4) individual transferable quota programs; and (5) time/area closures.

Reductions in groundfish TAC amounts provide no incentive for fishermen to reduce bycatch rates. Costs that would be imposed on fishermen as a result of reducing TAC amounts depend on the species and amounts of groundfish foregone.

Trawl vessels carrying observers for purposes of complying with observer coverage requirements (§ 679.50) are subject to the Vessel Incentive Program. This program encourages trawl fishermen to avoid high halibut bycatch rates while conducting groundfish fisheries by specifying bycatch rate standards for various target fisheries.

Current regulations (under § 679.2, Definitions, Authorized fishing gear number (12)) specify requirements for biodegradable panels and tunnel openings for groundfish pots to reduce halibut bycatch. As a result, low bycatch and mortality rates of halibut in pot fisheries have justified exempting pot gear from PSC limits.

The regulations also define pelagic trawl gear in a manner intended to reduce bycatch of halibut by displacing fishing effort off the bottom of the sea floor when certain halibut bycatch levels are reached during the fishing year. The definition provides standards for physical conformation (§ 679.2, see Authorized fishing gear number (11)) and performance of the trawl gear in terms of crab bycatch (§ 679.7(a)(14)). Furthermore, all hook-and-line vessel operators are required to employ careful release measures when handling halibut bycatch (§ 679.7(a)(13)). These measures are intended to reduce handling mortality, thereby possibly lowering overall halibut bycatch mortality in groundfish fisheries, and to increase the amount of groundfish harvested under the available halibut mortality bycatch limits.

The sablefish/halibut IFQ program (implemented in 1995) was intended, in part, to reduce the halibut discard mortality in the sablefish fishery.

Consistent with the goals and objectives of the FMP to reduce halibut bycatch while providing an opportunity to harvest the groundfish OY, NMFS proposes the assignments of 2,000 mt and 300 mt of halibut PSC limits to trawl and hook-and-line gear, respectively. While these limits would reduce the harvest quota for commercial halibut fishermen, NMFS has determined that they would not result in unfair allocation to any particular user group as these PSCs establish an upper limit on the impact of the groundfish fisheries on the commercial halibut fishery in the GOA. NMFS recognizes that some halibut bycatch will occur in the groundfish fishery, but the Vessel Incentive Program, required modifications to gear, and implementation of the halibut/sablefish IFQ program are intended to reduce adverse impacts on halibut fishermen while promoting the opportunity to achieve the OY from the groundfish fishery. NMFS and the Council will review the methods available for reducing halibut bycatch listed here to determine their effectiveness, and will initiate changes, as necessary, in response to this review or to public testimony and comment.

Halibut Discard Mortality Rates

The Council recommended, and NMFS proposes, that the halibut discard mortality rates (DMRs) recommended by the staff of the IPHC for the 2002 GOA groundfish fisheries be used to monitor halibut bycatch mortality limits established for the 2003 GOA groundfish fisheries. The IPHC recommended use of long-term average DMRs for the 2001–2003 groundfish fisheries. The IPHC recommendation also includes a provision that DMRs could be revised should analysis indicate that a fishery's annual DMR diverges substantially (up or down) from the long-term average. Most of the DMRs were based on an average of mortality rates determined from NMFS observer data collected between 1990 and 1999. DMRs were lacking for some fisheries, so rates from the most recent years were used. For the "other species" fishery, where insufficient mortality data are available, the mortality rate of halibut caught in the Pacific cod fishery

for that gear type was recommended as a default rate. The DMRs proposed for 2003 are unchanged from those used in 2002 in the GOA. The proposed DMRs for hook-and-line targeted fisheries range from 8 to 24 percent. The proposed DMRs for trawl targeted fisheries range from 58 to 72 percent. The proposed DMRs for all pot targeted fisheries is 14 percent. The proposed 2003 DMRs are listed in Table 7.

Table 7 - Proposed 2003 Pacific Halibut Discard Mortality Rates for Vessels Fishing in the Gulf of Alaska (Listed values are percent of halibut bycatch assumed to be dead)

Gear and Target	Discard Mortality Rate
HOOK-AND-LINE	
Pacific cod	14
Rockfish	8
Other species	14
Sablefish	24
TRAWL	
Midwater pollock	72
Rockfish	69
Shallow-water flatfish	69
Pacific cod	61
Deep-water flatfish	60
Flathead sole	58
Rex sole	61
Bottom pollock	61
Arrowtooth Flounder	62
Atka mackerel	70
Sablefish	66
Other species	61
POT	
Pacific cod	14
Other species	14

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Non-exempt AFA Catcher Vessel Groundfish Harvest and PSC Limitations

Regulations that will be effective with the final rule to implement major provisions of the AFA in the GOA would place groundfish harvesting and processing limitations, also called sideboards, on AFA catcher/processors and catcher vessels in the GOA. These limitations are necessary to protect the interests of fishermen and processors who have not directly benefitted from the AFA from fishermen and processors who have received exclusive harvesting and processing privileges under the AFA. Under the AFA regulations, unrestricted AFA catcher/processors (§ 679.4(l)(2)(i)) are prohibited from fishing for any species of fish (§ 679.7(k)(1)(ii)) and from processing any groundfish harvested in Statistical Area 630 of the GOA (§ 679.7(k)(1)(iv)). The Council recommended that certain AFA catcher vessels in the GOA be exempt from groundfish harvest limitations. The AFA regulations would exempt AFA catcher vessels in the GOA less than 125 ft (38.1 m) LOA whose annual BSAI pollock landings totaled less than 5,100 mt and that made 40 or more GOA groundfish landings from 1995 through 1997 (§ 679.63(b)(1)(i)(B)).

For non-exempt AFA catcher vessels in the GOA, harvest limitations are based upon their traditional harvest levels of TAC in groundfish fisheries covered by the GOA FMP. The AFA regulations would base the groundfish harvest limits in the GOA on the retained catch of non-exempt AFA catcher vessels of each sideboard species from 1995 through 1997 divided by the TAC for that species over the same period (§ 679.63(b)(1)(ii)(C)). These amounts are listed in Table 8. All harvests of sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or incidental catch, would be deducted from the sideboard limits in Table 8.

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Table 8 - Proposed 2003 GOA Non-Exempt AFA Catcher Vessel (CV) Groundfish Harvest Limitations (Sideboards). (Values are in mt)

Species	Apportionments and Allocations by Area/Season/processor/Gear	Ratio of 1995-1997 Non-Exempt AFA CV Catch to 1995-1997 TAC	2003 TAC	2003 Non-Exempt AFA Catcher Vessel Sideboard
Pollock	A Season (W/C areas only)			
	January 20 - February 25	0.6112	2,916	1,782
	Shumagin (610)	0.1427		1,230
	Chirikof (620)	0.2438	8,618	274
	Kodiak (630)		1,122	
	B Season (W/C areas only)	0.6112		1,782
	March 10 - June 1	0.1427		1,230
	Shumagin (610)	0.2438	2,916	274
	Chirikof (620)		8,618	
	Kodiak (630)		1,122	
	C Season (W/C areas only)	0.6112		3,636
	August 25 - September 15	0.1427		414
	Shumagin (610)	0.2438	5,949	927
	Chirikof (620)	0.6112	2,905	3,636
	Kodiak (630)	0.1427	3,803	414
		0.2438		927
	D Season (W/C areas only)		5,949	
	October 1 - November 1	0.3499	2,904	408
	Shumagin (610)	0.3499	3,803	2,260
	Chirikof (620)			
	Kodiak (630)		1,165	
			6,460	
	Annual			
	WYK (640)			
	SEO (650)			

Pacific cod	A Season[1]			
	January 1 - June 10			
	W inshore	0.1423	7,979	1,135
	offshore	0.1026		91
	C inshore	0.0722	887	848
	offshore	0.0721	11,741	94
			1,305	
	B Season[2]			
	September 1 - December 31			
	W inshore	0.1423		757
	offshore	0.1026	5,320	61
	C inshore	0.0722	591	565
	offshore	0.0721	7,828	63
			869	
	Annual			
	E inshore	0.0079		16
	offshore	0.0078		2
			2,046	
			227	
Flatfish deep-water	W	0.0000	180	0
	C	0.0670	2,220	149
	E	0.0171	2,480	42
Rex sole	W	0.0010	1,280	1
	C	0.0402	5,540	223
	E	0.0153	2,650	41
Flathead sole	W	0.0036	2,000	7
	C	0.0261	5,000	130
	E	0.0048	2,280	11
Flatfish shallow-water	W	0.0156	4,500	70
	C	0.0598	13,000	777
	E	0.0126	2,920	37
Arrowtooth flounder	W	0.0021	8,000	17
	C	0.0309	25,000	772
	E	0.0020	5,000	10
Sablefish	W trawl gear	0.0000	446	0
	C trawl gear	0.0720	1,180	85
	WYK trawl gear	0.0488	280	14
Pacific Ocean perch	W	0.0623	2,630	164
	C	0.0866	8,290	718
	E	0.0466	2,380	111

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Shortraker / Rougheye	W C E	0.0000 0.0237 0.0124	220 840 560	0 20 7
Other rockfish	W C E	0.0034 0.2065 0.0000	90 550 350	0 114 0
Northern rockfish	W C	0.0003 0.0336	760 3,940	0 132
Pelagic shelf rockfish	W C E	0.0001 0.0000 0.0067	510 3,480 1,500	0 0 10
Thornyhead rockfish	W C E	0.0308 0.0308 0.0308	360 840 790	11 26 24
Demersal shelf rockfish	SEO	0.0020	350	1
Atka mackerel	Gulf wide	0.0309	600	19
Other species	Gulf wide	0.0090	11,103	100

[1]The Pacific cod A season for trawl gear does not open until January 20.
[2]The Pacific cod B season for trawl gear closes November 1.

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Regulations that will be effective with the final rule to implement major provisions of the AFA provide that PSC bycatch limits for non-exempt AFA catcher vessels in the GOA are based upon the ratio of aggregate retained groundfish catch by non-exempt AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997 (§ 679.63(b)(1)(iii)). These amounts are shown in Table 9.

Table 9 - Proposed 2003 Non-Exempt AFA Catcher Vessel Prohibited Species Catch Limits for the GOA. (Values are in mt)

PSC Species	Target Fishery and Season	Ratio of 1995-1997 Non-Exempt AFA CV Retained Catch to Total Retained Catch	2003 PSC Limit	2003 Non-Exempt AFA Catcher Vessel PSC Limit
Halibut (mortality in mt)	Trawl 1st Seasonal Allowance January 20 - April 1			
	shallow water targets	0.340	450	153
	deep water targets	0.070	100	7
	Trawl 2nd Seasonal Allowance April 1- June 30			
	shallow water targets	0.340	100	34
	deep water targets	0.070	300	21
	Trawl 3rd Seasonal Allowance June 30 - Sept 1			
	shallow water targets	0.340	200	68
	deep water targets	0.070	400	28
	Trawl 4th Seasonal Allowance Sept 1 - October 1			
	shallow water targets	0.340	150	51
	deep water targets	0.070	0	0
	Trawl 5th Seasonal Allowance October 1 - December 31 all targets	0.205	300	62

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Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

Pursuant to section 7 of the Endangered Species Act (ESA), NMFS has initiated consultation on the effects of the 2003 harvest specifications on listed species, including the Steller sea lion, and designated critical habitat. This consultation will be completed in December 2002 before the start of the 2003 groundfish fishery. This consultation cannot be completed until new fishery information is available in late November.

NMFS prepared a draft EA that describes the impacts on the human environment that would result from implementation of the proposed harvest specifications. A final EA that describes the impacts on the human environment that will result from implementation of the final 2003 harvest specifications will be prepared after the public comment period and after the December 2002 Council meeting. The final EA will also incorporate the findings of the section 7 consultations under the ESA on the 2003 harvest specifications.

NMFS prepared an IRFA for this action in accordance with the provisions of the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 603(b)). This IRFA evaluated the effects of the proposed specifications on regulated small entities. The reasons for the action, a statement of the objectives of the action, and the legal basis for the proposed rule, are discussed earlier in the preamble.

The small entities affected by this action are those that harvest fish under the terms of the specifications in the GOA. The IRFA identified 1,264 small catcher vessels and 16 small catcher/processors. Data on operating costs for these entities does not exist, so it is impossible to make estimates of net returns or cash flow. Changes in

estimated first wholesale gross revenues between the proposed 2003 specifications and estimated 2002 gross revenues (used as a baseline) were used as an index of adverse impact on small entities. The preferred alternative was found to have estimated aggregate gross revenues very similar to those in 2002. Therefore, this alternative was not found to have an adverse impact.

No projected additional reporting, recordkeeping and other compliance requirements exist in the proposed rule. No relevant Federal rules exist that may duplicate, overlap or conflict with the proposed rule.

The preferred alternative was compared to the four other alternatives usually evaluated during the specifications process. These alternatives are defined by the use of different harvest rates (F values). The other alternatives are, (a) Set F equal to maxFABC , (b) Set F equal to 50 percent of maxFABC, (c) Set F equal to the most recent five year average actual F, and (d) Set F equal to zero. The preferred alternative was associated with gross revenues very similar to those of alternative (a). The model was unable to discern a meaningful difference. The preferred alternative was found to generate gross revenues larger than those for alternatives (b), (c), and (d). Three of the alternatives examined, therefore, were found to have an adverse impact. The fourth was found, like the proposed specifications, to have no adverse impact.

Authority: 16 U.S.C. 773 *et seq.* 16 U.S.C. 1801 *et seq.*, and 3631 *et seq.*

Dated: December 6, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–31368 Filed 12–11–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122285–2285–01; I.D. 110602C]

Fisheries of the Exclusive Economic Zone off Alaska; Bering Sea and Aleutian Islands; Proposed 2003 Harvest Specifications for Groundfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 2003 initial specifications for groundfish and associated management measures; apportionment of reserves; request for comments.

SUMMARY: NMFS proposes 2003 initial harvest specifications, prohibited species bycatch allowances, and associated management measures for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits and associated management measures for groundfish during the 2003 fishing year and to accomplish the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the BSAI and to provide an opportunity for public participation in the annual groundfish specification process as conducted by the North Pacific Fishery Management Council (Council).

DATES: Comments must be received by January 13, 2003.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments also may be sent via facsimile (fax) to 907–586–7557. Comments will not be accepted if submitted via e-mail or Internet.

Copies of the draft Environmental Assessment/Initial Regulatory Flexibility Analysis (EA/IRFA) prepared for this action are available from NMFS (see **ADDRESSES**) and comments must be received by December 20, 2002. Copies of the final 2001 Stock Assessment and Fishery Evaluation (SAFE) report, dated November 2001, are available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK 99510–2252 (907–271–2809).

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228 or e-mail at *mary.furuness@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background for the 2003 Proposed Harvest Specifications

Groundfish fisheries in the BSAI are governed by Federal regulations at 50 CFR part 679 that implement the FMP. The Council prepared the FMP and NMFS approved it under the Magnuson-Stevens Fishery Conservation and Management Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and the "other species" category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt) (§ 679.20(a)(1)(i)). Regulations under § 679.20(c)(1) further require NMFS to solicit public comment on proposed annual TACs, apportionments thereof, and prohibited species catch (PSC) allowances, and to publish proposed specifications in the **Federal Register**. The proposed specifications set forth in Tables 1 through 13 of this action satisfy these requirements. For 2003, the proposed sum of TACs is 1,998,540 mt.

Under § 679.20(c)(3), NMFS will publish the final annual specifications for 2003 after (1) considering comments received within the comment period (see **DATES**), (2) consulting with the Council at its next meeting beginning December 2, 2002, and (3) considering new information presented in the EA, the final 2002 SAFE reports, and in the section 7 consultation prepared for the 2003 groundfish fisheries.

With some exceptions, regulations at § 679.20(c)(2)(ii) require that one-fourth of each proposed initial TAC (ITAC) amount and apportionment thereof, one-fourth of each Community Development Quota (CDQ) reserve established under § 679.20(b)(1)(iii), and one-fourth of each proposed PSC allowance established under § 679.21, become available at 0001 hours Alaska local time (A.l.t.), January 1, on an interim basis and remain in effect until superseded by the final specifications. Regulations that will be effective with the final rule to implement the Steller sea lion protection measures provide that the proposed first seasonal allowance for pollock, Pacific cod and Atka mackerel becomes available at 0001 hours, A.l.t., January 1 on an interim basis and remains in effect until superseded by the final specifications. Regulations at § 679.20(c)(2)(ii) do not provide for an interim specification for either the hook-and-line and pot gear sablefish CDQ reserve or for sablefish managed under the Individual Fishing Quota (IFQ) program. Interim TAC specifications and apportionments thereof for the 2003 fishing year will be published in a separate **Federal Register** notice.

Other Rules Affecting the 2003 Specifications

At its October 2002 meeting, the Council recommended the extension of the closure of the Aleutian Islands pollock fishery through 2003 as a precautionary component of the Steller sea lion protection measures implemented under separate rulemaking. The Council also indicated that they may consider apportionment of the TAC of several rockfish species in the Aleutian Islands subarea among the Eastern, Central and Western Aleutian districts. A final rule implementing regulatory provisions of the American Fisheries Act (AFA) will be published in the **Federal Register** and effective for 2003. In order to minimize confusion, the proposed specifications also identify sideboard amounts for the AFA fisheries that will be available under the final rule. Also, NMFS has initiated rulemaking to permanently implement the Steller sea lion protection measures for 2003 and beyond. To minimize confusion and provide clarity to the 2003 specification process, we have included in the proposed 2003 harvest specifications pollock, Pacific cod and Atka mackerel seasonal allowances that are consistent with the existing protection measures.

Proposed Acceptable Biological Catch (ABC) and TAC Specifications

The proposed ABC levels are based on the best available scientific information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. In general, the development of ABCs and overfishing levels (OFLs) involves sophisticated statistical analyses of fish populations and is based on a successive series of six levels, or tiers, of reliable information available to fishery scientists.

The best information currently available is set forth in appendix A of the final SAFE report for the 2001 BSAI groundfish fisheries dated November 2001 (see **ADDRESSES**). Information on the status of stocks will be updated with the 2002 survey results and reconsidered by the Plan Team at its November 2002 meeting.

At their October 2002 meeting, the Scientific and Statistical Committee (SSC), Advisory Panel (AP), and Council reviewed the Plan Team's preliminary recommendations to project 2003 biomass amounts as identified in the 2001 SAFE for the proposed 2003 ABC, OFL, and TAC amounts. The SSC concurred with the Plan Team's recommendations, which included a new approach for updating the ABCs and OFLs by using an estimate of 2002 catch with the November 2001 SAFE report model projections of 2003 ABCs for groundfish stocks managed at tiers 1–3. This procedure results in closer approximations to the final 2003 specifications and therefore provides the Council and the public with better information. The Council adopted the OFL and ABC amounts recommended by the SSC (Table 1). The Council also adopted the AP's recommendations for the 2003 proposed TACs to be set equal to the 2002 TACs, except for yellowfin sole, northern rockfish and Atka mackerel. Recognizing anticipated changes in the ABCs for these species, the AP recommended and the Council adopted a decrease in the TACs for yellowfin sole and northern rockfish and an increase in the Atka mackerel TAC. The Council adopted the AP's recommendation to use the 2002 PSC allowances for 2003. They will reconsider these amounts at the December 2002 Council meeting after new status of stocks information is incorporated by the Plan Team into a final SAFE report for the 2003 BSAI groundfish fishery. None of the Council's TAC recommendations for 2003 exceed the recommended ABC for any species category. Therefore, NMFS finds that the Council's recommendations for proposed 2003 OFLs, ABCs, and TACs are consistent with the best available information on the biological condition of the groundfish stocks.

Table 1 lists the proposed 2003 OFLs, ABC amounts, and TAC amounts for groundfish in the BSAI. The proposed apportionment of TAC amounts among fisheries and seasons is discussed below.

TABLE 1.—PROPOSED 2003 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), CDQ RESERVE ALLOCATION, AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA (BSAI)[1]

[All amounts are in mt]

Species	Area	Overfishing level	ABC	TAC	ITAC[2]	CDQ reserve[3]
Pollock[4]	Bering Sea (BS)[2]	2,594,000	2,088,880	1,485,000	1,283,040	148,500
	Aleutian Islands (AI)[2]	31,700	23,800	1,000	900	100
	Bogoslof District	46,400	4,310	100	90	10
Pacific cod	BSAI	292,680	252,020	200,000	170,000	15,000
Sablefish[5]	BS	3,150	2,100	1,930	821	265
	AI	4,190	2,770	2,550	541	431
Atka mackerel	BSAI	100,115	59,600	59,600	50,660	4,470
	Western AI		23,960	23,960	20,366	1,797
	Central AI		28,950	28,950	24,607	2,171
	Eastern AI/BS		6,690	6,690	5,687	502
Yellowfin sole	BSAI	135,630	114,370	76,000	64,600	5,700
Rock sole	BSAI	242,585	203,870	54,000	45,900	4,050
Greenland turbot	BSAI	33,370	27,590	8,000	6,800	600
	BS		18,485	5,360	4,556	402
	AI		9,105	2,640	2,244	198
Arrowtooth flounder	BSAI	120,010	99,285	16,000	13,600	1,200
Flathead sole	BSAI	90,850	74,440	25,000	21,250	1,875
Other flatfish[6]	BSAI	21,800	18,100	3,000	2,550	225
Alaska plaice	BSAI	170,915	142,070	12,000	10,200	900

TABLE 1.—PROPOSED 2003 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), CDQ RESERVE ALLOCATION, AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA (BSAI)[1]—Continued

[All amounts are in mt]

Species	Area	Overfishing level	ABC	TAC	ITAC[2]	CDQ reserve[3]
Pacific ocean perch	BSAI	17,850	15,060	14,800	12,580	1,110
	BS		2,666	2,620	2,227	197
	Western AI		5,759	5,660	4,811	425
	Central AI		3,114	3,060	2,601	230
	Eastern AI		3,521	3,460	2,941	260
Northern rockfish	BSAI	5,580	4,700			
	BS			13	11	1
	AI			4,687	3,984	352
Shortraker/rougheye	BSAI	1,369	1,028			
	BS			116	99	9
	AI			912	775	68
Other rockfish[7]	BS	482	361	361	307	27
	AI	901	676	676	575	51
Squid	BSAI	2,620	1,970	1,970	1,675	
Other species[8]	BSAI	78,900	39,100	30,825	26,201	2,312
TOTAL		3,995,097	3,176,100	1,998,540	1,770,618	187,225

[1] These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these specifications, the Bering Sea (BS) subarea includes the Bogoslof District.

[2] Except for pollock and the portion of the sablefish TAC allocated to hook-and-line and pot gear, 15 percent of each TAC is put into a reserve. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves. The Aleutian Islands (AI) subarea and the Bogoslof District are closed to directed fishing for pollock. The amounts specified are for incidental catch amounts only, and are not apportioned by season, sector or put into a reserve.

[3] Except for pollock and the hook-and-line or pot gear allocation of sablefish, one half of the amount of the TACs placed in reserve, or 7.5 percent of the TACs, is designated as a CDQ reserve for use by CDQ participants (see §§ 679.20(b)(1)(iii) and 679.31).

[4] The AFA requires that 10 percent of the annual pollock TAC be allocated as a directed fishing allowance for the CDQ sector. NMFS then subtracts 4 percent of the remainder as an incidental catch allowance for pollock, which is not apportioned by season or area. The remainder of the TAC is further allocated by sector as follows: inshore, 50 percent; catcher/processor, 40 percent; and motherships, 10 percent.

[5] Regulations at § 679.20(b)(1) do not provide for the establishment of an ITAC for the hook-and-line and pot gear allocation for sablefish. The ITAC for sablefish reflected in Table 1 is for trawl gear only. Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear is reserved for use by CDQ participants (see § 679.20(b)(1)(iii)).

[6] "Other flatfish" includes all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder and Alaska plaice.

[7] "Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

[8] "Other species" includes sculpins, sharks, skates and octopus. Forage fish, as defined at § 679.2, are not included in the "other species" category.

Reserves and the Incidental Catch Allowance (ICA) for Pollock

Regulations at § 679.20(b)(1)(i) require that 15 percent of the TAC for each target species or species group, except for the hook-and-line and pot gear allocation of sablefish, be placed in a non-specified reserve. The AFA supersedes this provision for pollock by requiring that the proposed 2003 TAC for this species be fully allocated among the CDQ program, the ICA, and inshore, catcher/processor, and mothership directed fishery allowances.

Regulations at § 679.20(b)(1)(iii) require that one half of each TAC amount placed in the non-specified reserve, with the exception of squid, be allocated to the groundfish CDQ reserve and that 20 percent of the hook-and-line and pot gear allocation of sablefish be allocated to the fixed gear sablefish CDQ reserve. Section 206(a) of the AFA requires that 10 percent of the pollock TAC be allocated to the pollock CDQ reserve. With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the CDQ reserves are not further apportioned by gear. Regulations at § 679.21(e)(1)(i) also require that 7.5 percent of each PSC limit, with the exception of herring, be withheld as a prohibited species quota (PSQ) reserve for the CDQ fisheries. Regulations governing the management of the CDQ and PSQ reserves are set forth at §§ 679.30 and 679.31.

Under section 206(b) of the AFA, NMFS allocates a pollock ICA of 4 percent of the pollock TAC after subtraction of the 10 percent CDQ reserve. This allowance is based on an examination of the incidental catch of pollock in non-pollock target fisheries from 1997 through 2001. During this 4-year period, the incidental catch of pollock ranged from a low of 3 percent in 1998, to a high of about 6 percent in 1997, with a 4-year average of 4 percent. Because these incidental percentages are contingent on the relative amounts of other groundfish TACs, NMFS will be better able to assess the ICA amount when the Council makes final ABC and TAC amount recommendations in December. Under regulations at § 679.24(b)(4), the use of nonpelagic trawl gear is prohibited in the directed fishery for non-CDQ pollock in the BSAI.

The remainder of the non-specified reserve is not designated by species or species group, and any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, providing that such reapportionments do not result in overfishing.

Pollock Allocations Under the AFA

Section 206(a) of the AFA requires that 10 percent of the BSAI pollock TAC be allocated as a directed fishing allowance to the CDQ program. The remainder of the BSAI pollock TAC, after the subtraction of an allowance for the incidental catch of pollock by vessels, including CDQ vessels, harvesting other groundfish species, is allocated as follows; 50 percent to catcher vessels harvesting pollock for processing by the inshore component, 40 percent to catcher/processors and catcher vessels harvesting pollock for processing by catcher/processors in the offshore component, and 10 percent to catcher vessels harvesting pollock for processing by motherships in the offshore component. These amounts are listed in Table 2.

The AFA also contains several specific requirements concerning pollock and pollock allocations. First, paragraph 210(c) of the AFA requires that not less than 8.5 percent of the pollock allocated to vessels for processing by offshore catcher/processors be available for harvest by offshore catcher vessels, listed in section 208(b), harvesting pollock for processing by offshore catcher/processors listed in section 208(e). Second, catcher/processors eligible to fish for pollock, as specified under paragraph 208(e)(21) of the AFA, are prohibited from harvesting in the aggregate a total of more than one-half of one percent (0.5 percent) of the pollock allocated to vessels for processing by offshore catcher/processors. Table 2 lists theproposed 2003 allocations of pollock TAC as described by the AFA. Other provisions of the AFA, including inshore pollock cooperative allocations and unrestricted catcher processor and catcher vessel harvest limitations, are found in Tables 8 through 13.

Table 2 also lists seasonal apportionments of pollock and harvest limits within the Steller Sea Lion Conservation Area (SCA). The harvest within the SCA, as defined at § 679.22(a)(11)(vii), is limited to 28 percent of the annual directed fishing allowance (DFA) until April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of the SCA before April 1 or inside the SCA after April 1. If the 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1. The A season pollock SCA harvest limit will be apportioned to each industry sector in proportion to each sector's allocated percentage of the DFA as set forth in the AFA. These proposed amounts, by sector, are listed in Table 2.

TABLE 2.—PROPOSED ALLOCATIONS OF THE POLLOCK TAC AND DIRECTED FISHING ALLOWANCE (DFA) TO THE INSHORE, CATCHER/PROCESSOR, MOTHERSHIP, AND CDQ COMPONENTS[1]

[All amounts are in mt]

Area and sector	2002 DFA	A/B Season[1]		C/D Season[1]
		A/B DFA (40% of annual DFA)	A SCA limit[2]	C/D DFA (60% of annual DFA)
Bering Sea subarea	1,485,000			
CDQ	148,500	59,400	41,580	89,100
ICA[3]	53,460			
AFA Inshore	641,520	256,608	179,626	384,912
AFA Catcher Processors[4]	513,216	205,286	143,700	307,930
Catch by C/Ps	469,593	187,837		281,756
Catch by CVs[4]	43,623	17,449		26,174
Restricted C/P cap[5]	2,566	1,026		1,540
AFA Motherships	128,304	51,322	35,925	76,982
Excessive shares cap[6]	224,532			
Aleutian Islands: ICA[7]	900			
Bogoslof District: ICA[7]	90			

[1] After subtraction for the CDQ reserve and the ICA, the pollock TAC is allocated as a DFA as follows: inshore component—50 percent, catcher/processor component—40 percent, and mothership component—10 percent. Under paragraph 206(a) of the AFA, the CDQ reserve for pollock is 10 percent. NMFS, under regulations at § 679.24(b)(4), prohibits nonpelagic trawl gear to engage in directed fishing for non-CDQ pollock in the BSAI. The A/B season, January 20—June 10, is allocated 40 percent of the DFA and the C/D season, June 10—November 1 is allocated 60 percent of the DFA.

[2] No more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

[3] The pollock ICA for the BS subarea is 4 percent of the TAC after subtraction of the CDQ reserve.

[4] Subsection 210(c) of the AFA requires that not less than 8.5 percent of the directed fishing allowance allocated to listed catcher/processors (C/Ps) shall be available for harvest only by eligible catcher vessels (CVs) delivering to listed catcher/processors.

[5] The AFA requires that vessels described in section 208(e)(21) be prohibited from exceeding a harvest amount of one-half of one percent of the directed fishing allowance allocated to vessels for processing by AFA catcher/processors.

[6] Paragraph 210(e)(1) of the AFA specifies that "No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery."

[7] The Aleutian Islands subarea and the Bogoslof District are closed to directed fishing for pollock. The amounts specified are for incidental catch amounts only, and are not apportioned by season or sector.

Allocation of the Atka Mackerel TAC

Regulations implementing Steller sea lion protection measures at § 679.20(a)(8)(ii) apportion the Atka mackerel ITAC into two equal seasonal allowances. After subtraction of the jig gear allocation, the first allowance is made available for directed fishing from January 1 to April 15 ("A" season), and the second seasonal allowance is made available from September 1 to November 1 ("B" season)(Table 3). Under § 679.20(a)(8)(ii)(C)(*1*), the Regional Administrator will establish a harvest limit area (HLA) limit of no more than 60 percent of the seasonal TAC for the Western and Central Aleutian Districts. Pacific cod harvest by trawl gear in the Aleutian Islands HLA in the Western and Central Aleutian Districts west of 178 degrees W long. is prohibited during the Atka mackerel HLA directed fisheries. Atka mackerel fishing is prohibited in critical habitat east of 178 degrees W. long. to provide maximum protection to Steller sea lions and because Atka mackerel is readily available in waters outside of critical habitat.

Under § 679.20(a)(8)(i), up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea Atka mackerel ITAC may be allocated to the jig gear fleet. The amount of this allocation is determined annually by the Council based on several criteria,

including the anticipated harvest capacity of the jig gear fleet. The Council recommended and NMFS proposes that 1 percent of the Atka mackerel ITAC in the Eastern Aleutian District and the Bering Sea subarea be allocated to the jig gear fleet in 2003. Based on an ITAC of 15,170 mt, the jig gear allocation would be 152 mt.

A lottery system is used for the HLA Atka mackerel directed fisheries to reduce the amount of daily catch in the HLA by about half and to disperse the fishery over two areas (§ 679.20(a)(8)(iii)).

TABLE 3.—PROPOSED 2003 SEASONAL AND SPATIAL APPORTIONMENTS, GEAR SHARES, AND CDQ RESERVE OF THE BSAI ATKA MACKEREL TAC[1,2]

Subarea & component	TAC	CDQ reserve	ITAC	Seasonal apportionment[3]			
				A Season[4]		B Season[5]	
				Total	HLA Limit[6]	Total	HLA Limit[6]
Western Aleutian District	23,960	1,797	20,366	10,183	6,110	10,183	6,110
Central Aleutian District	28,950	2,171	24,607	12,304	7,382	12,304	7,382
Eastern AI/BS subarea[7]	6,690	502	5,687				
Jig (1%)[8]			57				
Other gear (99%)			5,630	2,815		2,815	
Total	59,600	4,470	50,660	25,302		25,302	

[1] Amounts are in mt.
[2] Regulations at §§ 679.20(a)(8)(ii) and 679.22(a)(8) establish temporal and spatial limitations for the Atka mackerel fishery.
[3] The seasonal apportionment of Atka mackerel is 50 percent in the A season and 50 percent in the B season.
[4] The A season is January 1 through April 15.
[5] The B season is September 1 through November 1.
[6] HLA limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (§ 679.2). In 2003, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central AI. Pacific cod harvest by trawl gear in the Aleutian Islands HLA, west of 178 degrees W. long. is prohibited during the Atka mackerel HLA directed fisheries.
[7] Eastern Aleutian District and the Bering Sea subarea.
[8] Regulations at § 679.20 (a)(8) require that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea ITAC be allocated to the jig gear fleet. The proposed amount of this allocation is 1 percent. The jig gear allocation is not apportioned by season.

Allocation of the Pacific Cod TAC

Under § 679.20(a)(7)(i)(A), 2 percent of the Pacific cod ITAC is allocated to vessels using jig gear, 51 percent to vessels using hook-and-line or pot gear, and 47 percent to vessels using trawl gear. Under regulations at § 679.20(a)(7)(i)(B), the portion of the Pacific cod TAC allocated to trawl gear is further allocated 50 percent to catcher vessels and 50 percent to catcher/processors. Under regulations at § 679.20(a)(7)(i)(C)(*1*), a portion of the Pacific cod allocated to hook-and-line or pot gear is set aside as an ICA of Pacific cod in directed fisheries for groundfish using these gear types. Based on anticipated incidental catch in these fisheries, NMFS proposes an ICA of 500 mt. The remainder of Pacific cod is further allocated to vessels using hook-and-line or pot gear as the following directed fishing allowances: 80 percent to hook-and-line catcher processors, 0.3 percent to hook-and-line catcher vessels, 18.3 percent to pot gear vessels, and 1.4 percent to catcher vessels under 60 feet (18.3 m) length overall (LOA) using hook-and-line or pot gear.

Due to concerns about the potential impact of the Pacific cod fishery on Steller sea lions and their critical habitat, the Pacific cod fisheries are temporally dispersed by the apportionment of the ITAC into two seasonal allowances (§§ 679.23(e)(6) and 679.20(a)(7)). For most non-trawl gear the first allowance, 60 percent of the ITAC, is made available for directed fishing from January 1 to June 10, and the second seasonal allowance, 40 percent of the ITAC, is made available from June 10 to December 31. No seasonal harvest constraints are imposed for the Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. For trawl gear, the first season is January 20 to April 1 and is allocated 60 percent of the ITAC. The second season, April 1 to June 10, and the third season, June 10 to November 1, are each allocated 20 percent of the ITAC. The trawl catcher vessel allocation is further allocated as 70 percent in the first season, 10 percent in the second season and 20 percent in the third season. The trawl catcher/processor allocation is allocated 50 percent in the first season, 30 percent in the second season, and 20 percent in the third season. Table 4 lists the proposed 2003 allocations and seasonal apportionments of the Pacific cod ITAC. NMFS and the Council propose that any unused portion of a seasonal Pacific cod allowance will become available at the beginning of the next seasonal allowance.

TABLE 4.—2003 GEAR SHARES AND SEASONAL APPORTIONMENTS OF THE BSAI PACIFIC COD TAC

Gear sector	Percent	Share of gear sector total (mnt)	Subtotal percentages for gear sectors	Share of gear sector total (mt)	Seasonal apportionment[1]	
					Date	Amount (mt)
Total hook-and-line and pot gear allocation of Pacific cod TAC.	51	86,700				
Incidental Catch Allowance ..				500		
Processor and Vessel subtotal.		86,200				
Hook-and-line Catcher Processors.			80	68,960	Jan 1–Jun 10	41,376
					Jun 10–Dec. 31	27,584
Hook-and-Line Catcher Vessels.			0.3	259	Jan 1–Jun 10	155
					Jun 10–Dec 31	104
Pot Gear Vessels			18.3	15,775	Jan 1–Jun 10	9,465
					Sept 1–Dec 31	6,310
Catcher Vessels <60 feet LOA using Hook-and-line or Pot gear.			1.4	1,207		
Trawl gear Total	47	79,900				
Trawl Catcher Vessel			50	39,950	Jan 20–Apr 1	27,965
					Apr 1–Jun 10	3,995
					Jun 10–Nov 1	7,990
Trawl Catcher Processor			50	39,950	Jan 20–Apr 1	19,975
					Apr 1–Jun 10	11,985
					Jun 10–Nov 1	7,990
Jig	2	3,400			Jan 1–Jun 10	2,040
					Jun 10–Dec 31	1,360
Total	100	170,000				

[1] For non-trawl gear the first season is allocated 60 percent of the TAC and the second season is allocated 40 percent of the TAC. No seasonal harvest constraints are imposed for the Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. For trawl gear, the first season is allocated 60 percent of the TAC and the second and third seasons are each allocated 20 percent of the TAC. The trawl catcher vessels' allocation is further allocated as 70 percent in the first season, 10 percent in the second season and 20 percent in the third season. The trawl catcher/processors' allocation is allocated 50 percent in the first season, 30 percent in the second season and 20 percent in the third season. Any unused portion of a seasonal Pacific cod allowance will be reapportioned to the next seasonal allowance.

Allocation of the Shortraker and Rougheye Rockfish TAC

Under § 679.20(a)(9), the ITAC of shortraker rockfish and rougheye rockfish specified for the Aleutian Islands subarea is allocated 30 percent to vessels using non-trawl gear and 70 percent to vessels using trawl gear. Based on a proposed 2003 ITAC of 775 mt, the trawl allocation would be 543 mt and the non-trawl allocation would be 232 mt.

Sablefish Gear Allocation

Regulations at § 679.20(a)(4)(iii) and (iv) require that sablefish TACs for the BS and AI subareas be allocated between trawl and hook-and-line or pot gear types. Gear allocations of the TACs for the Bering Sea subarea are 50 percent for trawl gear and 50 percent for hook-and-line or pot gear, and for the Aleutian Islands subarea are 25 percent for trawl gear and 75 percent for hook-and-line or pot gear. Regulations at § 679.20(b)(1)(iii)(B) require that 20 percent of the hook-and-line and pot gear allocation of sablefish be reserved as sablefish CDQ. Additionally, regulations at § 679.20(b)(1)(iii)(A) require that 7.5 percent of the trawl gear allocation of sablefish (one half of the reserve) be reserved as groundfish CDQ. Proposed 2003 gear allocations of the sablefish TAC and CDQ reserve amounts are specified in Table 5.

TABLE 5.—PROPOSED 2003 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

Subarea & Gear	Percent of TAC	Share of TAC (mt)	ITAC (mt)[1]	CDQ Reserve
Bering Sea:				
Trawl[2]	50	965	821	72
Hook-&-line/pot gear[3]	50	965	N/A	193
Total	100	1,930	821	265
Aleutian Islands:				
Trawl[2]	25	637	541	48
Hook-&-line/pot gear[3]	75	1,913	N/A	383
Total	100	2,550	541	431

[1] Except for the sablefish hook-and-line and pot gear allocation, 15 percent of TAC is apportioned to the reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.
[2] For the portion of the sablefish TAC allocated to vessels using trawl gear, one half of the reserve (7.5 percent of the specified TAC) is reserved for the CDQ program.
[3] For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. Regulations in § 679.20(b)(1) do not provide for the establishment of an ITAC for sablefish allocated to hook-and-line or pot gear.

Allocation of Prohibited Species Catch Limits for Halibut, Crab, Salmon, and Herring

Due to the lack of new information concerning PSC limits and apportionments, the Council at its October 2002 meeting recommended using the halibut, crab and herring 2002 PSC amounts for the proposed 2003 amounts. The Council will reconsider these amounts in December based on recommendations by the Plan Team and the SSC. Regulations at § 679.21(e)(1)(vii) specify a scheduled reduction of chinook salmon PSC limits until the final limit is reached in 2004. For 2003, the chinook salmon PSC limit for the pollock fishery is 33,000 fish.

PSC limits for halibut are set in regulations at § 679.21(e). For the BSAI trawl fisheries, the limit is 3,675 mt of mortality of Pacific halibut and for non-trawl fisheries, the limit is 900 mt mortality. PSC limits for crab and herring are specified annually based on abundance and spawning biomass.

For 2003, the proposed PSC limit of red king crab in Zone 1 for trawl vessels is 97,000 animals. Based on the criteria set out at § 679.21(e)(1)(ii), the number of mature female red king crab was estimated in 2002 to be above 8.4 million animals, and the effective spawning biomass is estimated to be 14.5 million pounds (6,577 mt), which is less than the 55 million pound (24,948 mt).

Regulations at § 679.21(e)(3)(ii)(B) establish criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS). The regulations limit the RKCSS to up to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/"other flatfish" fishery category and must be based on the need to optimize the groundfish harvest relative to red king crab bycatch. The Council recommended and NMFS proposes a red king crab bycatch limit equal to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/"other flatfish" fishery category within the RKCSS.

Based on 2001 survey data, *C. bairdi* abundance is estimated to be 624 million crab. Given the criteria set out at § 679.21(e)(1)(iii) and the 2001 survey data, the proposed 2003 *C. bairdi* PSC limit for trawl gear is 980,000 animals in Zone 1 and 2,970,000 animals in Zone 2 as a result of the *C. bairdi* abundance estimate exceeding 400 million animals.

Under § 679.21(e)(1)(iv), the PSC limit for *C. opilio* is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* PSC limit is set at 0.1133 percent of the Bering Sea abundance index. Based on the 2001 survey estimate of 3.86 billion animals, the calculated limit would be 4,373,380 animals. Because this limit is less than 4.5 million animals, under § 679.21(e)(1)(iv)(B) the proposed 2003 *C. opilio* PSC limit is 4,350,000 animals.

Under § 679.21(e)(1)(vi), the proposed PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass. NMFS's best estimate of 2002 herring biomass is 152,574 mt. This amount was derived using 2001 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game (ADF&G). Therefore, the proposed herring PSC limit for 2003 is 1,526 mt.

Under § 679.21(e)(1)(i), 7.5 percent of each PSC limit specified for crab and halibut is reserved as a PSQ reserve for use by the groundfish CDQ program. Regulations at § 679.21(e)(3) require the apportionment of each trawl PSC limit into PSC bycatch allowances for seven specified fishery categories. Regulations at § 679.21(e)(4)(ii) authorize the apportionment of the non-trawl halibut PSC limit among five fishery categories. The proposed fishery bycatch allowances for the trawl and non-trawl fisheries are listed in Table 6.

Regulations at § 679.21(e)(4)(ii) authorize exemption of specified non-trawl fisheries from the halibut PSC limit. As in past years, NMFS after consultation with the Council, is proposing to exempt pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from halibut bycatch restrictions because these fisheries use selective gear types that take comparatively few halibut. In 2002, total groundfish catch for the pot gear fishery in the BSAI was approximately 13,989 mt with an associated halibut bycatch mortality of about 7 mt. The 2002 groundfish jig gear fishery harvested about 172 mt of groundfish. Most vessels in the jig gear fleet are less than 60 ft (18.3 m) LOA and are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. However, a negligible amount of halibut bycatch mortality is assumed because of the selective nature of this gear type and the likelihood that halibut caught with jig gear have a high survival rate when released.

As in past years, the Council recommended that the sablefish IFQ fishery be exempt from halibut bycatch restrictions because of the sablefish and halibut IFQ program (subpart D of 50 CFR part 679). The IFQ program requires legal-sized halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder is aboard and is holding unused halibut IFQ. This action results in less halibut discard in the sablefish fishery. In 1995, about 36 mt of halibut discard mortality was estimated for the sablefish IFQ fishery. A similar estimate for 1996 through 2002 has not been calculated, but NMFS has no information indicating that it would be significantly different.

Regulations at § 679.21(e)(5) authorize NMFS, after consultation with the Council, to establish seasonal apportionments of PSC allowances. At its October 2002 meeting, the Council proposed no seasonal apportionments, except for the trawl bycatch allowance for halibut bycatch specified for the rockfish trawl fishery. The intent of this proposal was to reduce halibut bycatch during the first quarter when it is the highest. NMFS anticipates that the Council will recommend additional seasonal apportionments during its December 2002 meeting.

TABLE 6.—PROPOSED 2003 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES

Trawl fisheries	Prohibited species and Zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab (animals) Zone 1 [1]	C. opilio (animals) COBLZ [2]	C. bairdi (animals) Zone 1 [1]	C. bairdi (animals) Zone 2 [1]
Yellowfin sole	886	139	16,664	2,776,981	340,844	1,788,459
Rock sole/other flat/flathead sole [3]	779	20	59,782	969,130	365,320	596,154
RKCSS [3]			20,924			
Turbot/arrowtooth/sablefish [4]		9		40,238		
Rockfish: July 1—December 31	69	7		40,237		10,988
Pacific cod	1,434	20	11,664	124,736	183,112	324,176
Midwater trawl pollock		1,184				
Pollock/Atka mackerel/other [5]	232	46	1,615	72,428	17,224	27,473
Total Trawl PSC	3,400	1,526	89,725	4,023,750	906,500	2,747,250
Non-Trawl Fisheries						
Pacific cod—Total	775					
Other non-trawl—Total	58					
Groundfish pot & jig exempt	[7]					
Sablefish hook-&-line exempt	[7]					
Total Non-Trawl	833					
PSQ Reserve [6]	342		7,275	326,250	73,500	222,750
Grand Total	4,575	1,526	97,000	4,350,000	980,000	2,970,000

[1] Refer to § 679.2 for definitions of areas.
[2] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at 50 CFR part 679, Figure 13.
[3] The Council at its October 2002 meeting proposed that red king crab bycatch for trawl fisheries within the RKCSS be limited to 35 percent of the total allocation to the rock sole, flathead sole, and other flatfish fishery category (§ 679.21(e)(3)(ii)(B)). "Other flatfish" for PSC monitoring includes all flatfish species, except for Pacific halibut (a prohibited species), greenland turbot, rock sole, yellowfin sole and arrowtooth flounder.
[4] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[5] Pollock other than pelagic trawl pollock, Atka mackerel, and "other species" fishery category.
[6] With the exception of herring, 7.5 percent of each PSC limit is allocated to the CDQ program as PSQ reserve. The PSQ reserve is not allocated by fishery, gear or season.
[7] Exempt.

To monitor halibut bycatch mortality allowances and apportionments, the Administrator, Alaska Region, NMFS (Regional Administrator), will use observed halibut bycatch rates, assumed mortality rates, and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The Regional Administrator monitors a fishery's halibut bycatch mortality allowances using assumed mortality rates that are based on the best information available, including information contained in the annual SAFE report.

The Council recommended and NMFS proposes that the Preseason Assumed halibut discard mortality rates (DMRs) developed by staff of the International Pacific Halibut Commission (IPHC) for the 2002 BSAI groundfish fisheries be used for purposes of monitoring halibut bycatch allowances established for 2003 (Table 7). Results from analysis of halibut release condition data for 2000 showed continued stability in halibut DMRs for many fisheries. Plots of annual DMRs against the 10-year mean indicated little change since 1990 for some fisheries, particularly the major trawl fisheries. DMRs were more variable for the smaller fisheries which typically take minor amounts of halibut bycatch. For 2002, Preseason Assumed DMRs were used, which included use of the long-term mean DMR for a 3-year period before revisions are proposed, except for the BSAI hook-and-line Pacific cod fishery and CDQ fisheries, for which annual DMRs were used. The IPHC will continue to conduct annual analyses of observer data and recommend changes to the DMRs where a fishery DMR shows large variation from the mean and for the CDQ fisheries. For 2002, the BSAI hook-and-line Pacific cod fishery DMR did not change; but the CDQ fishery DMRs were adjusted. The justification for these mortality rates is discussed in the final SAFE report dated November 2001. The proposed mortality rates listed in Table 7 are subject to change pending the results of an updated analysis on halibut mortality rates in the groundfish fisheries that IPHC staff is scheduled to present to the Council at its December 2002 meeting.

TABLE 7.—PROPOSED 2003 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR THE BSAI FISHERIES

Fishery	Preseason assumed mortality (percent)
Hook-and-line gear fisheries:	
Rockfish	25
Pacific cod	12
Greenland turbot	18
Sablefish	22
Other Species	12
Trawl gear fisheries:	
Midwater pollock	84
Nonpelagic pollock	76
Yellowfin sole	81
Rock sole	76
Flathead sole	67
Other flatfish	71
Rockfish	69
Pacific cod	67
Atka mackerel	75
Greenland turbot	70
Sablefish	50
Other species	67
Pot gear fisheries:	
Pacific cod	8
Other species	8
CDQ Trawl fisheries:	
Atka mackerel	89
Flathead sole	83
Midwater pollock	88
Nonpelagic pollock	90

TABLE 7.—PROPOSED 2003 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR THE BSAI FISHERIES—Continued

Fishery	Preseason assumed mortality (percent)
Rockfish	89
Yellowfin sole	77
CDQ Hook-and-line fisheries:	
Pacific cod	13
Greenland turbot	14
CDQ Pot fisheries:	
Pacific cod	7
Sablefish	38

Bering Sea Subarea Inshore Pollock Allocations

The final rule to implement major provisions of the AFA at § 679.4, will set forth procedures for AFA inshore catcher vessel pollock cooperatives to apply for and receive cooperative fishing permits and inshore pollock allocations. NMFS received applications from seven inshore catcher vessel cooperatives. Table 8 lists the proposed pollock allocations to the seven inshore catcher vessel pollock cooperatives based on 2002 cooperative allocations and NMFS' assumption, at this date, that the cooperatives membership will remain unchanged in 2003. Allocations for cooperatives and vessels not participating in cooperatives are not made for the AI subarea because the AI subarea has been closed to directed fishing for pollock. These allocations may be revised pending adjustments to cooperatives' membership prior to 2003.

TABLE 8.—PROPOSED 2003 BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS

Cooperative name and member vessels	Sum of member vessel's official catch histories [1]	Percentage of inshore sector allocation (percent)	Annual co-op allocation
Akutan Catcher Vessel Association: Aldebaran, Arctic Explorer, Arcturus, Blue Fox, Cape Kiwanda, Columbia, Dominator, Exodus, Flying Cloud, Golden Dawn, Golden Pisces, Hazel Lorraine, Intrepid Explorer, Leslie Lee, Lisa Melinda, Majesty, Marcy J, Margaret Lyn, Nordic Explorer, Northern Patriot, Northwest Explorer, Pacific Ram, Pacific Viking, Pegasus, Peggy Jo, Perseverance, Predator, Raven, Royal American, Seeker, Sovereignty, Traveler, Viking Explorer	245,527	28.085	180,169
Arctic Enterprise Association: Bristol Explorer, Ocean Explorer, Pacific Explorer	36,807	4.210	27,009
Northern Victor Fleet Cooperative: Anita J, Collier Brothers, Commodore, Excalibur II, Goldrush, Half Moon Bay, Miss Berdie, Nordic Fury, Pacific Fury, Poseidon, Royal Atlantic, Sunset Bay, Storm Petrel	73,656	8.425	54,049
Peter Pan Fleet Cooperative: Amber Dawn, American Beauty, Elizabeth F, Morning Star, Ocean Leader, Oceanic, Providian, Topaz, Walter N	18,693	2.138	13,717
Unalaska Cooperative: Alaska Rose, Bering Rose, Destination, Great Pacific, Messiah, Morning Star, Ms Amy, Progress, Sea Wolf, Vanguard, Western Dawn	106,737	12.209	78,324
UniSea Fleet Cooperative: Alsea, American Eagle, Argosy, Auriga, Aurora, Defender, Gun-Mar, Nordic Star, Pacific Monarch, Seadawn, Starfish, Starlite	201,566	23.056	147,910
Westward Fleet Cooperative: A.J., Alaskan Command, Alyeska, Arctic Wind, Caitlin Ann, Chelsea K, Dona Martita, Fierce Allegiance, Hickory Wind, Ocean Hope 3, Pacific Knight, Pacific Prince, Starward, Viking, Westward I	189,544	21.681	139,089
Open access AFA vessels	1,707	0.195	1,252
Total inshore allocation	874,238	100	641,520

[1] According to regulations that will be effective with the final rule to implement major provisions of the AFA at 679.62(e)(1) the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.

When the final rule to implement major provisions of the AFA at § 679.20(a)(5)(i)(A) is published, NMFS intends to subdivide the inshore allocation into allocations for cooperatives and vessels not fishing in a cooperative (*i.e.*, the open access sector). In addition, under § 679.22(a)(11)(vii), NMFS intends to establish harvest limits inside the Steller sea lion conservation area (SCA) and provide a set-aside so that catcher vessels less than or equal to 99 ft (30.2 m) LOA have the opportunity to operate entirely within the SCA during the A season. Accordingly, Table 9 lists the proposed apportionment of the Bering Sea subarea inshore pollock allocation into allocations for vessels fishing in a cooperative and for vessels not participating in a cooperative and establishes a cooperative-sector SCA set-aside for AFA catcher vessels less than or equal to 99 ft (30.2 m) LOA. The SCA set-aside for sector catcher vessels less than or equal to 99 ft (30.2 m) LOA that are not participating in a cooperative will be established inseason based on actual participation levels and is not included in Table 9. These proposed allocations may be revised pending final review and approval of 2003 cooperative agreements.

TABLE 9.—PROPOSED 2003 BERING SEA SUBAREA POLLOCK ALLOCATIONS TO THE COOPERATIVE AND OPEN ACCESS SECTORS OF THE INSHORE POLLOCK FISHERY.

[Amounts are expressed in MT]

	A/B season TAC	A season SCA [1]	C/D season TAC
Cooperative sector:			
Vessels > 99 ft	n/a	154,025	n/a
Vessels < 99 ft	n/a	25,250	n/a
Total	256,107	179,275	384,161
Open access sector	501	[2] 351	751
Total inshore	256,608	179,626	384,912

[1] Steller sea lion conservation area established at § 679.22(a)(11)(vii).

[2] SCA limitations for vessels less than or equal to 99 ft LOA that are not participating in a cooperative will be established on an inseason basis in accordance with § 679.22(a)(11)(vii)(C)(2) which specifies that "the Regional Administrator will prohibit directed fishing for pollock by vessels catching pollock for processing by the inshore component greater than 99 ft (30.2 m) LOA before reaching the inshore SCA harvest limit during the A season to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA for the duration of the inshore seasonal opening."

Unrestricted AFA Catcher/Processor Sideboards

In 2003, the formula for setting AFA catcher/processor sideboard limits for non-pollock groundfish will change from calculations made for sideboards in 2000 through 2002. The Council made a distinction between retained and total catch for the purpose of calculating sideboard limits and felt that AFA vessels should not receive sideboard credit for groundfish that was discarded and not utilized. The catcher/processor sideboard limits for BSAI groundfish other than Atka mackerel will be based on the 1995 through 1997 retained catch of such groundfish species by the 20 listed AFA catcher/processors listed in paragraphs 208(e)(1) through (20) of the AFA and the nine ineligible catcher/processors listed in section 209 of the AFA, except for Pacific cod which will be based on 1997 retained catch only and Pacific ocean perch in the Aleutian Islands subarea which will be based on 1996 and 1997 retained catch only. The AFA catcher/processor sideboard limit for Atka mackerel is zero percent of the Bering Sea subarea and Eastern Aleutians district's annual TAC, 11.5 percent of the Central Aleutian district's annual TAC, and 20 percent of the Western Aleutian district's annual TAC.

The basis for these sideboard limits is described in detail in the Proposed Rule for Amendments 61/61/13/8 to Implement Major Provisions of the AFA (66 FR 65028, December 17, 2001). The proposed 2003 catcher/processor sideboard limits are set out in Table 10 below.

All non-pollock groundfish that is harvested by unrestricted AFA catcher/processors, whether as targeted catch or incidental catch, will be deducted from the proposed sideboard limits in Table 10. However, non-pollock groundfish that is delivered to listed catcher/processors by catcher vessels will not be deducted from the proposed 2003 sideboard limits for the listed catcher/processors.

TABLE 10.—PROPOSED 2003 UNRESTRICTED BSAI AFA CATCHER/PROCESSOR GROUNDFISH SIDEBOARD LIMITS

[Amounts are Expressed in MT]

Target species	Area	1995–1997 Retained catch	1995–1997 Available TAC	1995–1997 Ratio	Proposed 2003 ITAC available to trawl C/Ps	Proposed 2003 C/P sideboard limit
Pacific cod trawl	BSAI	12,424	51,450	0.241	39,950	9,628
Sablefish trawl	BS	8	1,736	0.005	821	4
	AI	0	1,135	0.000	541	0
Atka mackerel	Western AI:					
	A season [1]	n/a	n/1	0.200	10,183	2,037
	HLA limit [1]					1,222
	B season	n/a	n/a	0.200	10,183	2,037
	HLA Limit[2]					1,222
	Central AI:					
	A season [1]	n/a	n/a	0.115	12,304	1,415
	HLA limit					849
	B season	n/a	n/a	0.115	12,304	1,415
	HLA limit					849
Yellowfin sole	BSAI	100,192	527,000	0.190	64,600	12,274
Rock sole	BSAI	6,317	202,107	0.031	45,900	1,423
Greenland turbot	BS	121	16,911	0.007	4,556	32
	AI	23	6,839	0.003	2,244	7
Arrowtooth flounder	BSAI	76	36,873	0.002	13,600	27
Flathead sole	BSAI	1,925	87,975	0.022	21,250	468
Alaska plaice	BSAI	3,243	0.035	10,200	357	
Other flatfish	BSAI	3,243	92,428	0.035	2,550	89
Pacific ocean perch	BS	12	5,760	0.002	2,227	4

TABLE 10.—PROPOSED 2003 UNRESTRICTED BSAI AFA CATCHER/PROCESSOR GROUNDFISH SIDEBOARD LIMITS—Continued

[Amounts are Expressed in MT]

Target species	Area	1995–1997			Proposed 2003 ITAC available to trawl C/Ps	Proposed 2003 C/P sideboard limit
		Retained catch	Available TAC	Ratio		
	Western AI	54	12,440	0.004	4,811	19
	Central AI	3	6,195	0.000	2,601	0
	Eastern AI	125	6,265	0.020	2,941	59
Northern rockfish	BS	8		0.008	11	0
	AI	83	13,254	0.006	3,984	24
Shortraker/rougheye	BS	8		0.008	99	1
	AI	42	2,827	0.015	775	12
Other rockfish	BS	18	1,026	0.018	307	6
	AI	22	1,924	0.011	575	6
Squid	BSAI	73	3,670	0.020	1,675	34
Other species	BSAI	553	65,925	0.008	26,201	210

[1] The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Unrestricted AFA catcher/processors are limited to harvesting no more than zero in the Eastern Aleutian district and Bering Sea subarea, 20 percent of the available TAC in the Western Aleutian district, and 11.5 percent of the available TAC in the Central Aleutian district.

[2] HLA limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (§ 679.2). In 2003, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian districts. Pacific cod harvest by trawl gear in the Aleutian Islands HLA, west of 178 degrees W. long. is prohibited during the Atka mackerel HLA directed fisheries.

The final rule to implement major provisions of the AFA at § 679.63(a)(2) will establish a formula for PSC sideboard limits for unrestricted AFA catcher/processors. These amounts are expected to be equivalent to the percentage of prohibited species bycatch limits harvested in the non-pollock groundfish fisheries by the AFA catcher/processors listed in subsection 208(e) and section 209 of the AFA from 1995 through 1997. Prohibited species amounts harvested by these catcher/processors in BSAI non-pollock groundfish fisheries from 1995 through 1997 are shown in Table 11. These data were used to calculate the relative amount of prohibited species catch limits harvested by pollock catcher/processors, which were then used to determine the prohibited species sideboard limits for unrestricted AFA catcher/processors in the 2003 non-pollock groundfish fisheries.

PSC that is caught by unrestricted AFA catcher/processors participating in any non-pollock groundfish fishery listed in Table 11 would accrue against the proposed 2003 PSC limits for the listed catcher/processors. Regulations that will be effective with the final rule to implement major provisions of the AFA at § 679.21(e)(3)(v) provide NMFS with the authority to close directed fishing for non-pollock groundfish for unrestricted AFA catcher/processors once a proposed 2003 PSC limitation listed in Table 11 is reached.

Crab or halibut PSC that is caught by unrestricted AFA catcher/processors while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/other species fishery categories under the final rule to implement major provisions of the AFA at § 679.21(e).

TABLE 11.—PROPOSED 2003 UNRESTRICTED BSAI AFA CATCHER/PROCESSOR PROHIBITED SPECIES SIDEBOARD AMOUNTS[1]

PSC species	1995–1997			Proposed 2003 PSC available to trawl vessels	Proposed 2003 C/P limit
	PSC catch	Total PSC	Ratio		
Halibut mortality	955	11,325	0.084	3,400	286
Red king crab	3,098	473,750	0.007	89,725	628
C. opilio	2,323,731	15,139,178	0.153	4,023,750	615,634
C. bairdi:					
Zone 1	385,978	2,750,000	0.140	906,500	126,910
Zone 2	406,860	8,100,000	0.050	2,747,250	137,363

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

AFA Catcher Vessel Sideboards

The final rule to implement major provisions of the AFA at § 679.63(b) will establish formulas for setting AFA catcher vessel groundfish and PSC sideboard limits for the BSAI. The basis for these sideboard limits is described in detail in the Proposed Rule for Amendments 61/61/13/8 to Implement Major Provisions of the AFA (66 FR 65028, December 17, 2001). For 2002, NMFS revised the ratio 2001 of 1995 to 1997 AFA catcher vessel retained catch to the 1995 to 1997 TAC. These revisions are based on ADF&G editing of fish tickets and NMFS editing of observer catch data and weekly production reports. The proposed 2003 AFA catcher vessel sideboard limits are shown in Tables 12 and 13.

All harvests of groundfish sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or incidental catch, will be deducted from the proposed sideboard limits listed in Table 12.

TABLE 12.—PROPOSED 2003 BSAI AFA CATCHER VESSEL SIDEBOARDS.

[Amounts Are Expressed in MT]

Species and fishery by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	Proposed 2003 Initial TAC	Proposed 2003 catcher vessel sideboard limits
Pacific cod:			
BSAI:			
jig gear	0.0000	3,400	0
Hook-and-line CV:			
Jan 1–Jun 10	0.0006	155	0
Jun 10–Dec 31	0.0006	103	0
Pot gear:			
Jan 1—Jun 10	0.0006	9,465	6
Sept 1–Dec 31	0.0006	6,310	4
CV < 60 feet LOA	0.0006	1,207	0
Using hook-and-line or Pot gear			
Trawl gear			
Catcher vessel:			
Jan 20—Apr 1	0.8609	27,965	24,075
Apr 1–Jun 10	0.8609	3,995	3,439
Jun 10–Nov 1	0.8609	7,990	6,879
Sablefish:			
BS trawl gear	0.0906	821	74
AI trawl gear	0.0645	541	35
Atka mackerel:			
Eastern AI/BS: jig gear	0.0031	57	0
Other gear:			
Jan 1–Apr 15	0.0032	2,815	9
Sept 1–Nov 1	0.0032	2,815	9
Central AI:			
Jan–Apr 15	0.0001	12,304	1
HLA limit	0.0001	7,382	1
Sept 1–Nov 1	0.0001	12,304	1
HLA limit	0.0001	7,382	1
Western AI:			
Jan–Apr 15	0.0000	10,183	0
HLA limit	0.0000	6,110	0
Sept 1–Nov 1	0.0000	10,183	0
HLA limit	0.0000	6,110	0
Yellowfin sole:.			
BSAI	0.0647	64,600	4,180
Rock sole:.			
BSAI	0.0341	45,900	1,565
Greenland Turbot:			
BS	0.0645	4,556	294
AI	0.0205	2,244	46
Arrowtooth flounder:.			
BSAI	0.0690	13,600	938
Alaska plaice:.			
BSAI	0.0441	10,200	450
Other flatfish:.			
BSAI	0.0441	2,550	112
Pacific ocean perch:			
BS	0.1000	2,620	262
Eastern AI	0.0077	2,941	23
Central AI	0.0025	2,601	7
Western AI	0.0000	4,811	0
Northern rockfish:			
BS	0.0280	11	0
AI	0.0089	3,984	35
Shortraker/Rougheye:			
BS	0.0048	99	0
AI	0.0035	775	3
Other rockfish:			
BS	0.0048	307	1
AI	0.0095	575	5
Squid:.			
BSAI	0.3827	1,675	641
Other species:.			

TABLE 12.—PROPOSED 2003 BSAI AFA CATCHER VESSEL SIDEBOARDS.—Continued

[Amounts Are Expressed in MT]

Species and fishery by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	Proposed 2003 Initial TAC	Proposed 2003 catcher vessel sideboard limits
BSAI	0.0541	26,201	1,417
Flathead Sole:.			
BS trawl gear	0.0505	21,250	1,073

The final rule to implement major provisions of the AFA at § 679.63(b) will establish a formula for PSC sideboard limits for AFA catcher vessels. The AFA catcher vessel PSC bycatch limit for halibut in the BSAI and GOA, and each crab species in the BSAI for which a trawl bycatch limit has been established will be a portion of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997. These proposed PSC sideboard limits are listed in Table 13.

Halibut and crab PSC that is caught by AFA catcher vessels participating in any non-pollock groundfish fishery listed in Table 13 will accrue against the proposed 2003 PSC limits for the AFA catcher vessels. The final rule to implement major provisions of the AFA at § 679.21(d)(8) and (e)(3)(v) will provide authority to close directed fishing for non-pollock groundfish for AFA catcher vessels once a proposed 2003 PSC limitation listed in Table 13 for the BSAI is reached. PSC that is caught by AFA catcher vessels while fishing for pollock in the BSAI will accrue against either the midwater pollock or the pollock/Atka mackerel/other species fishery categories.

TABLE 13.—PROPOSED 2003 AFA CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI[1]

PSC species and target fishery category[2]	Ratio of 1995–1997 AFA CV retained catch to total retained catch	Proposed 2003 PSC Limit	Proposed 2003 AFA catcher vessel PSC sideboard limit
Halibut:			
Pacific cod trawl	0.6183	1,434	887
Pacific cod hook-and-line or pot	0.0022	775	2
Yellowfin sole	0.1144	886	101
Rock sole/flat. sole/other flatfish[5]	0.2841	779	221
Turbot/Arrowtooth/Sablefish	0.2327	0	0
Rockfish	0.0245	69	2
Pollock/Atka mackerel/Other sp.	0.0227	232	5
Red King Crab Zone 1:[4]			
Pacific cod	0.6183	11,664	7,212
Yellowfin sole	0.1144	16,664	1,906
Rock sole/flat. sole/other flatfish[5]	0.2841	59,782	16,984
Pollock/Atka mackerel/Other sp.	0.0227	1,615	37
C. opilio—COBLZ:[3]			
Pacific cod	0.6183	124,736	77,124
Yellowfin sole	0.1144	2,776,981	317,687
Rock sole/flat. sole/other flatfish[5]	0.2841	969,130	275,330
Pollock/Atka mackerel/Other sp.	0.0227	72,428	1,644
Rockfish	0.0245	40,237	986
Turbot/Arrowtooth/Sablefish	0.2327	40,238	9,363
C. bairdi—Zone 1:			
Pacific cod	0.6183	183,112	113,218
Yellowfin sole	0.1144	340,844	38,993
Rock sole/flat. sole/other flatfish[5]	0.2841	365,320	103,787
Pollock/Atka mackerel/Other sp.	0.0227	17,224	391
C. bairdi—Zone 2:			
Pacific cod	0.6183	324,176	200,438
Yellowfin sole	0.1144	1,788,459	204,600
Rock sole/flat. sole/other flatfish[5]	0.2841	596,154	169,367
Pollock/Atka mackerel/Other sp.	0.0227	27,473	624
Rockfish	0.0245	10,988	269

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.
[2] Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).
[3] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at Figure 13 of 50 CFR part 679.
[4] The Council at its October 2002 meeting recommended that red king crab bycatch for trawl fisheries within the RKCSS be limited to 35 percent of the total allocation to the rock sole/flathead sole/"other flatfish" fishery category (§ 679.21(e)(3)(ii)(B)).
[5] "Other flatfish" for PSC monitoring includes all flatfish species, except for Pacific halibut (a prohibited species), Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder.

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

Pursuant to section 7 of the Endangered Species Act (ESA), NMFS has initiated consultation on the effects of the 2003 harvest specifications on listed species, including the Steller sea lion, and designated critical habitat. This consultation will be completed in December 2002 before the start of the 2003 groundfish fishery. This consultation cannot be completed until new fishery information is available in late November.

NMFS prepared a draft EA that describes the impacts on the human environment that would result from implementation of the proposed harvest specifications. A final EA that describes the impacts on the human environment that will result from implementation of the final 2003 harvest specifications will be prepared after the public comment period and after the December 2002 Council meeting. The final EA will also incorporate the findings of the section 7 consultations under the ESA on the 2003 harvest specifications.

NMFS prepared an IRFA for this action in accordance with the provisions of the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 603(b)). This IRFA evaluated the effects of the proposed specifications on regulated small entities. The reasons for the action, a statement of the objectives of the action, and the legal basis for the proposed rule, are discussed earlier in the preamble.

The small entities affected by this action are those that harvest fish under the terms of the specifications in the BSAI. The IRFA identified 193 small catcher vessels, 31 small catcher/processors, and six small CDQ groups.

Data on operating costs for these entities does not exist, so it is impossible to make estimates of net returns or cash flow. Changes in estimated first wholesale gross revenues between the proposed 2003 specifications and estimated 2002 gross revenues (used as a baseline) were used as an index of adverse impact on small entities. The preferred alternative was found to have estimated aggregate gross revenues very similar to those in 2002. Therefore, this alternative was not found to have an adverse impact.

No projected additional reporting, record keeping and other compliance requirements exist in the proposed rule. No relevant Federal rules exist that may duplicate, overlap or conflict with the proposed rule.

The preferred alternative was compared to the four other alternatives usually evaluated during the specifications process. These alternatives are defined by the use of different harvest rates (F values). The other alternatives are, (a) Set F equal to $\max F_{ABC}$, (b) Set F equal to 50% of $\max F_{ABC}$, (C) Set F equal to the most recent five year average actual F, and (d) Set F equal to zero. The preferred alternative was associated with gross revenues very similar to those of alternative (a). The model was unable to discern a meaningful difference. The preferred alternative was found to generate gross revenues larger than those for alternatives (b), (c), and (d). Three of the alternatives examined, therefore, were found to have an adverse impact. The fourth was found, like the proposed specifications, to have no adverse impact.

Authority: 16 U.S.C. 773 *et seq.* 16 U.S.C. 1801 *et seq.*, and 3631 *et seq.*

Dated: December 6, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–31369 Filed 12–11–02; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 67, No. 239
Thursday, December 12, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–060–2]

Availability of an Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the control of rush skeletonweed (*Chondrilla juncea*). The environmental assessment considers the effects of, and alternatives to, the release of a nonindigenous organism, Chondrilla root moth (*Bradyrrhoa gilveolella*), into the environment for use as a biological control agent to reduce the severity of rush skeletonweed infestations. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Robert V. Flanders, Branch Chief, Pest Permit Evaluation, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1228; (301) 734–5930.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) is considering an application from the University of Montana for a permit to release a nonindigenous organism, Chondrilla root moth (*Bradyrrhoa gilveolella*), to reduce the severity of rush skeletonweed (*Chondrilla juncea*) in the continental United States.

Native to Eurasia, rush skeletonweed has become established in the District of Columbia and several States including California, Delaware, Georgia, Idaho, Indiana, Maryland, Michigan, Montana, New Jersey, New York, Oregon, Pennsylvania, Virginia, Washington, and West Virginia. This invasive weed infests roadsides, railways, rangelands, pastures, grain fields, coastal sand dunes, and shaley hillsides in mountainous regions. Rush skeletonweed causes losses in infested grain fields, reduces rangeland forage production, and reduces plant and animal diversity.

On July 25, 2002, we published in the **Federal Register** (67 FR 48610–48611, Docket No. 02–060–1) a notice in which we announced the availability, for public review and comment, of an environmental assessment (EA) that examined the potential effects of the release of the Chondrilla root moth into the environment for use as a biological control agent to reduce the severity of rush skeletonweed infestations. Chondrilla root moth larvae feed on the roots of rush skeletonweed, causing the plant to die or increasing its susceptibility to pathogenic fungi.

We solicited comments on the EA for 30 days ending on August 26, 2002. We received one comment by that date. The commenter supported the proposed action.

In this document, we are advising the public of APHIS' record of decision and finding of no significant impact (FONSI) regarding the proposed field release of the Chondrilla root moth into the environment for use as a biological control agent to reduce the severity of rush skeletonweed infestations. The decision, which is based on the analysis found in the EA, reflects our determination that release of the organism will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact may be viewed on the Internet at *http://www.aphis.usda.gov/ppq* by following the link for "Documents/Forms Retrieval System" then clicking on the triangle beside "6—Permits—Environmental Assessments," and selecting document number 0037. You may request paper copies of the environmental assessment and finding of no significant impact by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the environmental assessment when requesting copies. The environmental assessment and finding of no significant impact are also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC this 6th day of December 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–31308 Filed 12–11–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by February 10, 2003.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250–1522. Telephone: (202)720–9550. FAX: (202)720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for reinstatement.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202)720–4120.

Title: RUS Specification for Quality Control and Inspection of Timber Products.

OMB Control Number: 0572–0076.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: 7 CFR 1728.202 and RUS Bulletin 1728H–702 describe the responsibilities and procedures pertaining to the quality control by producers and pertaining to inspection of timber products produced in accordance with RUS specifications. In order to ensure the security of loan funds, adequate quality control of timber products is vital to loan security on electric power systems where hundreds of thousands of wood poles and crossarms are used. Since RUS and its borrowers do not have the expertise or manpower to quickly determine imperfections in the wood products or their preservatives treatments, they must obtain services of an inspection agency to insure that the specifications for wood poles and crossarms are being met.

Estimate of Burden: This collection of information is estimated to average 1 hour per response.

Respondents: Not-for-profit institutions; business or other for profit.

Estimated Number of Respondents: 700.

Estimated Number of Responses per Respondent: 58.

Estimated Total Annual Burden on Respondents: 40,763 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202)690–1078. FAX: (202)720–4120

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 6, 2002.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–31363 Filed 12–11–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Proposed Information Collection; Comment Request; Postsecondary Internship Program Intern Evaluation Survey

ACTION: Notice.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 10, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Forms Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Carin Otero, Postsecondary Internship Program Officer, Room 6022, 1401 Constitution Avenue, NW., Washington, DC 20230, (202) 482–1445. In addition, written comments may be sent via the Internet at *COtero1@doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Office of Executive Assistance Management (OEBAM) manages the U.S. Department of Commerce (DOC) Postsecondary Internship Program. The program is competitively awarded and funded by cooperative agreements with the purpose of providing experiential training opportunities for postsecondary students at DOC and other Federal agencies. The program is administered through a partnership between DOC and non-profit and/or educational institutions. This information collection would allow DOC management to evaluate and analyze the performance of the Postsecondary Internship Program and our diversity efforts to reach out to under-represented ethnic and racial communities. The information will be used for program management, strategic planning, allocation of resources and performance measures. The survey is part of DOC's efforts to implement objectives of the National Performance Review, Government Performance and Results Act and the President's Management Agenda.

II. Method of collection

The survey is conducted in paper form.

III. Data

OMB Number: 0690–0021.

Form Numbers: CD 577.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 110.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Respondent Burden Hours: 55.

Estimated Total Annual Cost to the Public: None.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the

agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 6, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–31263 Filed 12–11–02; 8:45 am]

BILLING CODE 3510–BV–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for emergency clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Survey of Occupants, First Responders, and Families of Victims of World Trade Center 1, 2, and 7.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Emergency.

Burden Hours: 3,100.

Number of Respondents: 2,300.

Average Hours Per Response: 1 hour for the questionnaire; and 2 hours for interview participation.

Needs and Uses: NIST will be conducting the Investigation as requested under the WTC Report issued by Congress on February 8, 2002. The objectives of the NIST World Trade Center Investigation are to: (1) Determine technically, why and how the buildings, WTC 1, 2, and 7, collapsed following the initial impact of the aircraft; (2) determine why the injuries and fatalities were so high or low depending on location, including all technical aspects of fire protection, response, evacuation, and occupant behavior and emergency response; (3) determine the procedures and practices that were used in the design, construction, operation, and maintenance of the World Trade Center Buildings; and (4) identify, as specifically as possible, building and fire codes, standards, and practices that warrant revision and are still in use. The proposed information collection will consist of questionnaire and interview segments. This information will be used to develop or refute investigatory hypotheses, support modeling results, and record events inside the buildings which cannot otherwise be determined. This information must be conducted in a timely manner in order to facilitate dissemination to other aspects of the Investigation, including structural analysis, emergency personnel response, thermal environment and interior tenability, and egress and human behavior analysis.

Affected Public: Individuals and households (present at the World Trade Center Complex on the morning of September 11, 2001).

Frequency: One-time.

Respondent Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 66625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent by December 20, 2002 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: December 6, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–31264 Filed 12–11–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[A(27F)–48–02]

Foreign-Trade Zone 15—Kansas City, MO Redesignation of Foreign-Trade Subzone 15D

Based on a request by the Greater Kansas City Foreign-Trade Zone, Inc., grantee of FTZ 15, for a minor modification of the grant of authority for FTZ Subzone 15D at the Bayer Corporation facilities (Board Order 440, 54 FR 38413, 9/18/89, as expanded by Board Order 1061, 64 FR 63786, 11/22/99), Subzone 15D, Sites 2 and 3, are designated as Subzone 17B. Subzone 15D, comprised of only Site 1, will be operated by Bayer Corporation's Bayer CropScience group. New Subzone 17B, comprised of Sites 2 and 3 from SZ 15D, will be operated by Bayer Corporation's Bayer Health Care group. The authority for the sites, now designated as Subzone 17B, will continue to be based on the FTZ Board's authorization in Board Order 440 and 1061.

Dated: December 4, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–31377 Filed 12–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[A(27F)–50–02]

Foreign-Trade Zone 122—Corpus Christi, TX Redesignation of Foreign-Trade Subzone 122A

Based on a request by the Port of Corpus Christi Authority, grantee of FTZ 122, for a minor modification of the grant of authority for FTZ Subzone 122A, at the former Coastal refinery, in Nueces County, Texas, Subzone 122A is redesignated as Site 2 and Site 3 of Subzone 122J, Valero Refining Company (Valero). Valero has leased the refinery from Coastal and will operate the facilities under one subzone operating system. The authority for both subzones has most recently been amended by Board Order 1116 (65 FR 52696, 8/30/00), and the authority for Subzone 122J will continue to be based on the authority in Board Order 1116, including its conditions and restrictions.

Dated: December 4, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–31378 Filed 12–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Fresh Atlantic Salmon From Chile: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests by certain producers/exporters of subject merchandise and by L.R. Enterprises, Inc., a domestic producer of subject merchandise, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on fresh Atlantic salmon from Chile for the period of review July 1, 2001, through June 30, 2002. We are now rescinding this review with respect to 72 companies for which L.R. Enterprises, Inc., withdrew its request for an administrative review.

EFFECTIVE DATE: December 12, 2002.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Carol Henninger, at (202) 482–0631 or (202) 482–3003, respectively; AD/CVD Enforcement, Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (2002).

Background

On July 1, 2002, the Department issued a notice of opportunity to request the fourth administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 44172 (July 1, 2002). On July 31, 2002, in accordance with 19 CFR 351.213(b), L.R. Enterprises, Inc., requested a review of 90 producers/exporters of fresh Atlantic salmon. Also, on July 31, 2002, Cultivos Marinos Chiloe Ltda. (Cultivos Marinos), Pesquera Eicosal Ltda. (Eicosal), Cultivadora de Salmones Linao Ltda. (Linao), Salmones Tecmar S.A. (Tecmar), Fiordo Blanco S.A. (Fiordo Blanco), Salmones Friosur S.A. (Friosur), Salmones Mainstream S.A. (Mainstream), Marine Harvest Chile S.A. (Marine Harvest), Salmones Multiexport Ltda. (Multiexport), Salmones Pacifico Sur S.A. (Pacifico Sur), Pesca Chile S.A. (Pesca Chile), and Salmones Pacific Star Ltda. (Pacific Star) each requested its own review. L.R. Enterprises had requested a review of each of these companies.

On August 27, 2002, the Department published the notice of initiation of this antidumping duty administrative review, covering the period July 1, 2001, through June 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (August 27, 2002).

On September 5, 2002, L. R. Enterprises, Inc., withdrew its review request for all companies except: (1) Asesoria Acuicola S.A.; (2) Best Salmon/Skyring Salmon S.A.; (3) Cultivos Marinos; (4) Cultivos Yadran S.A.; (5) Eicosal; (6) Friosur/Pesquera Friosur; (7) Invertec Pesquera Mar de Chiloe Ltda. (Invertec); (8) Linao/Salmoamerica; (9) Mainstream; (10) Marine Harvest; (11) Multiexport; (12) Ocean Horizons; (13) Pacific Star; (14) Pacifico Sur/Aquachile S.A.; (15) Pesca Chile; (16) Pesquera Los Fiordos Ltda. (Los Fiordos); (17) Robinson Crusoe Y Cia. Ltda. (Robinson Crusoe); and (18) Tecmar/Fjord Seafood Chile.

Subsequently, on September 25, October 18, 22, and November 25, 2002, L.R. Enterprises, Inc., withdrew its request that the Department conduct an administrative review of Pacific Star, Robinson Crusoe, Asesoria Acuicola S.A., Marine Harvest, and Los Fiordos respectively. Fiordo Blanco, Pacific Star, and Marine Harvest, which had each requested its own review on July 31, 2002, subsequently withdrew their requests on September 6, 27, and October 24, 2002, respectively.

Partial Rescission of Antidumping Duty Administrative Review

By its letters of September 5, 25, October 18, 22, and November 25, 2002, L.R. Enterprises, Inc., withdrew its request for an administrative review of the following companies:

Acuicultura de Aquas Australes
Agromar Ltda.
Aguas Claras S.A.
Antarfish S.A.
Aquasur Fisheries Ltda.
Asesoria Acuicola S.A.
Australis S.A.
Centulmavique
Centro de Cultivo de Moluscos
Cerro Farrellon Ltda.
Chile Cultivos S.A.
Chisal S.A.
Comercializadora Smoltech Ltda.
Complejo Piscicola Coyhaique
Cultivos San Juan
Empresa Nichiro Chile Ltda.
Fiordo Blanco S.A.
Fisher Farms
Fitz Roy S.A.
Friosur S.A.
Ganadera Del Mar
Gentec S.A.
Granja Maria Torna Galeones S.A.
Hiuto Salmones S.A.
Huitosal Mares Australes Salmo Pac.
Instituto Tecnologico Del Salmon S.A.
Inversiones Pacific Star Ltda.
Los Fiordos Ltda.
Manao Bay Fishery S.A.
Mardim Ltda.
Marine Harvest Chile S.A.
Pacific Mariculture
Patagonia Fish Farming S.A.
Patagonia Salmon Farming S.A.
Pesquera Antares S.A.
Pesquera Chiloe S.A.
Pesquera Los Fiordos Ltda.
Pesquera Mares de Chile S.A.
Pesquera Pacific Star
Pesquera Quellon Ltda.
Pesquera Y Comercial Rio Peulla S.A.
Piscicola Entre Rios S.A.
Piscicultura Iculpe
Piscicultura La Cascada
Piscultura Santa Margarita
Productos Del Mar Ventisqueros S.A.
Prosmolt S.A.
Quetro S.A.
River Salmon S.A.
Robinson Crusoe Y Cia. Ltda.
Salmones Andes S.A.
Salmones Antarctica S.A.
Salmones Aucar Ltda.
Salmones Caicaen S.A.
Salmones Calbuco S.A.
Salmones Chiloe S.A.
Salmones Huillinco S.A.
Salmones Ice Val Ltda.
Salmones Llanquihue
Salmones Pacific Star Ltda.
Salmones Quellon
Salmones Ranco Sur Ltda.
Salmones Tierra Del Fuego Ltda.
Salmones Unimarc S.A.
Salmosan
Seafine Salmon S.A.
Soc. Agricola Chillehue Ltda.
Soc. Alimentos Maritimos Avalon Ltda.
Soc. Aquacultivos Ltda.
Truchas Aguas Blancas Ltda.
Trusal S.A.
Ventisqueros S.A.

We note that L.R. Enterprises originally requested a review of Salmones Friosur, Pesquera Friosur and Friosur S.A. On September 5, 2002, when L.R. Enterprises withdrew its request for review of a number of companies, "Salmones Friosur" was on the list of companies which L.R. Enterprises wished to remain in the review. We are rescinding the review with respect to Friosur S.A. Salmones Friosur and its affiliate Pesquera Friosur continue to be covered by this review. Information on the record indicates that neither Salmones Friosur nor Pesquera Friosur produce subject merchandise under the name Friosur S.A.

Pursuant to 19 CFR 315.213(d)(1), we are rescinding the administrative review

with respect to each of the above listed companies. With the exception of Marine Harvest, which is currently involved in litigation,[1] the Department will issue appropriate assessment instructions to the U.S. Customs Service within 15 days of publication of this notice.

This notice is issued and published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: December 6, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–31376 Filed 12–11–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-549–812]

Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol from Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 7, 2002, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on furfuryl alcohol from Thailand. This review covers one producer/exporter of the subject merchandise, Indorama Chemicals (Thailand) Limited (Indorama). The period of review (POR) is July 1, 2000, through June 30, 2001. Based on comments received, including the identification of certain ministerial errors, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin is listed below in the section entitled Final Results of Review.

EFFECTIVE DATE: December 12, 2002.

FOR FURTHER INFORMATION CONTACT: Tisha Loeper-Viti or Charles Riggle, Office 5, Group II, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–7425 or (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

[1] See *Marine Harvest (Chile) S.A.* v. *United States*, Court No. 01–00808, November 21, 2002.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department regulations are references to the provisions codified at 19 CFR Part 351 (2001).

Background

On August 7, 2002, the Department published in the Federal Register the preliminary results of the administrative review of the antidumping duty order on furfuryl alcohol from Thailand. *See Furfuryl Alcohol from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 51191 (Aug. 7, 2002). In response to the Department's invitation to comment on the preliminary results of this review, Indorama submitted comments on September 6, 2002. No other comments were submitted, nor was a hearing requested.

Scope of Review

The merchandise covered by this review is furfuryl alcohol ($C_4H_3OCH_2OH$). Furfuryl alcohol is a primary alcohol, and is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes.

The product subject to this order is classifiable under subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Comment Received

The sole issue raised in Indorama's case brief is addressed in the Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review: Furfuryl Alcohol from Thailand, from Bernard T. Carreau, Deputy Assistant Secretary for Group II, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated December 5, 2002, (Decision Memorandum) which is hereby adopted by this notice. The issue raised pertains to alleged sales outside the ordinary course of trade and not sold in usual commercial quantities. Parties can find a complete discussion of this issue and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099 of the main Commerce building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at http://ia.ita.doc.gov/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

As a result of our review, we determine that the following weighted-average percentage margin exists for the period July 1, 2000, through June 30, 2001:

Manufacturer/exporter	Margin (percent)
Indorama Chemicals (Thailand) Ltd. (Indorama)	0.43

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. Where the importer-specific assessment rate is above *de minimis* we will instruct the Customs Service to assess antidumping duties on that importer's entries of subject merchandise. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) for Indorama, because the margin is *de minimis*, no cash deposit will be required, (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent segment of the proceeding in which that manufacturer participated; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 7.82 percent, the all-others rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

December 5, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–31375 Filed 12–12–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-357–810]

Oil Country Tubular Goods, Other Than Drill Pipe, from Argentina: Notice of Extension of Time Limit of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit of Final Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: December 12, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Baker at (202) 482–2924 or Robert James at (202) 482–0649; Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 11, 1995, the Department of Commerce (the Department) published the antidumping duty order on oil country tubular goods from Argentina (60 FR 41055). On August 1, 2001, the Department published an opportunity to request an administrative review of the order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 66 FR 39729 (August 1, 2001). On August 31, 2001, North Star Steel Ohio, a division of North Star Steel Company, requested that the Department conduct an administrative review of sales of the subject merchandise made by Siderca S.A.I.C. Also on August 31, 2001, United States Steel LLC, requested that the Department conduct an administrative review of sales of the subject merchandise made by Acindar Industria de Aceros S.A. (United States Steel LLC changed its name to United States Steel Corporation effective January 1, 2002. *See* petitioner's submission of January 4, 2002.)

On October 1, 2001, the Department initiated the administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 49924 (October 1, 2001). On February 13, 2002, the Department extended the due date for the preliminary results of this review. *See Notice of Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review: Oil Country Tubular Goods, Other Than Drill Pipe, From Argentina*, 67 FR 6681 (February 13, 2002). On September 9, 2002, the Department published the preliminary results of this review. *See Notice of Preliminary Results of Antidumping Duty Administrative Review; Oil Country Tubular Goods from Argentina*, 67 FR 57215 (September 9, 2002). On October 11, 2002 United States Steel Corporation requested an extension of the due date for the rebuttal briefs and the hearing date. On October 15, 2002 the Department extended the rebuttal brief deadline to October 17, 2002. The current deadline for the final results is January 7, 2003.

Extension of Time Limit for Final Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the Department may extend the deadline for completion of the final results of an administrative review if it determines that it is not practicable to complete the final results within the statutory time limit of 120 days from the date on which the preliminary results were published. The Department has determined that it is not practicable to complete the final results of this review within the statutory time limit. During the course of this review, petitioners have submitted evidence that one of the parties who claims to be a no-shipper may have had shipments. Due to the need to investigate this issue thoroughly, it is not practicable to complete the final results within the time limit mandated by section 751(a)(3)(A) of the Tariff Act and section 19 CFR 351.213(h)(1) of the Department's regulations.

Therefore, the Department is extending the time limit for the final results by an additional 60 days (180 days from the date of publication of the preliminary results pursuant to section 19 CFR 351.213(h)(2)), until no later than March 10, 2003 (the calculated due date is March 8, 2003; however, since March 8, falls on a weekend, the due date will fall on the next business day, March 10).

This notice is published in accordance with section 751(1)(3)(A) of the Tariff Act and section 19 CFR 351.213(h)(2) of the Department's regulations.

Dated: December 4, 2002.

Joseph Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–31371 Filed 12–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475–822]

Amended Final Results of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils from Italy

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review of Stainless Steel Plate in Coils from Italy.

EFFECTIVE DATE: December 12, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey, AD/CVD Enforcement Group III, Office 9, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1102.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. Part 351 (2001).

SCOPE OF REVIEW

For purposes of this administrative review, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this petition are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of these orders. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after this cold reduction process.

The merchandise subject to this review is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219110030, 7219110060, 7219120005, 7219120020, 7219120025, 7219120050, 7219120055, 7219120065, 7219120070, 7219120080, 7219310010, 7219900010, 7219900020, 7219900025, 7219900060, 7219900080, 7220110000, 7220201010, 7220201015, 7220201060, 7220201080, 7220206005, 7220206010, 7220206015, 7220206060, 7220206080, 7220900010, 7220900015, 7220900060, and 7220900080. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

AMENDMENT OF FINAL RESULTS

On October 15, 2002, the Department of Commerce ("the Department") published its final results for the administrative review of the antidumping duty order on stainless steel plate in coils from Italy for the period May 1, 2000, through April 30, 2001. *See Notice of Final Results of Antidumping Administrative Review: Stainless Steel Plate in Coils from Italy*, 67 FR 63618 (October 15, 2002) ("*Final Results*").

Interested parties did not file any ministerial error comments on these *Final Results*. However, the Department discovered that it unintentionally stated in the *Final Results* that the "all others" rate was 48.80 percent, rather than the correct all others rate of 39.69 percent as determined in the original less-than-fair value ("LTFV") investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Italy*, 64 FR 15458 (March 31, 1999) ("*Final Determination LTFV*"). Thus, the correct all others rate is the "all others" rate established in the *Final Determination LTFV*.

The Department's regulations define a ministerial error as an "error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial" (19 CFR 351.224(f)). Therefore, the Department is now correcting this ministerial error. The correct "all others" rate is 39.69 percent, in accordance with the *Final Determination LTFV*.

Therefore, we are amending the final results of the antidumping duty administrative review of stainless steel plate in coils from Italy to reflect the correction of this ministerial error.

No other changes have been made to the cash deposit requirements as provided in the *Final Results*.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: December 5, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–31374 Filed 12–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427–814]

Stainless Steel Sheet and Strip in Coils from France: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of the review of stainless steel sheet and strip in coils from France. This review covers the period July 1, 2000, through June 30, 2001.

DATES: EFFECTIVE DATE: December 12, 2002.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva at (202) 482–3208; Office of AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department of Commerce ("the Department") to issue the final results of an antidumping duty investigation within 120 days of the date on which the preliminary results are published.

However, if the Department concludes that it is not practicable to issue the results by the original deadline, it may extend the 120-day period to 180 days.

Background

On October 1, 2001, the Department published a notice of initiation of the administrative review of stainless steel sheet and strip in coils from France, covering the period July 1, 2000 through June 30, 2001 (64 FR 49924). *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 64 FR 49924 (October 1, 2001). The preliminary results were published in the Federal Register on August 7, 2002. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France* ("*Preliminary Results*"), 67 FR 51210 (August 7, 2002). The current due date for the final results is December 5, 2002.

Extension of Time Limits for the Final Results

Due to the complexity of issues, such as home-market affiliated downstream sales, U.S. further manufacturing sales and complicated cost accounting issues present in this administrative review, it is not practicable to complete this review within the original time limit. Therefore, the Department has postponed the deadline for issuing the final results until December 18, 2002, which is 133 days after publication of the *Preliminary Results*.

Dated: December 4, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–31372 Filed 12–11–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–114–000, et al.]

Notice of Gas Research Institute Filings

December 6, 2002.

In the matter of: RP03–114–000, RP03–140–000, RP03–137–000, RP03–130–000, RP03–170–000, RP03–171–000, RP03–113–000, RP03–169–000, RP03–139–000, RP03–133–000, RP03–185–000, RP03–158–000, RP03–132–000, RP03–131–000, RP03–128–000, RP03–155–000, RP03–124–000, RP03–126–000, RP03–109–000, RP03–127–000.Algonquin Gas Transmission Company, ANR Pipeline Company, CenterPoint Energy—Mississippi River Transmission, CMS Trunkline Gas Company, LLC, Columbia Gas Transmission Corporation, Columbia Gulf Transmission Corporation, East Tennessee Natural Gas Company, Granite State Gas Transmission, Great Lakes Gas Transmission Limited Partnership, Iroquois Gas Transmission System, Midwestern Gas Transmission Company, National Fuel Gas Supply Corporation, Natural Gas Pipeline Company of America, Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, Questar Pipeline Company, Southern Natural Gas Company, Tennessee Gas Pipeline Company, Texas Eastern Transmission, LP, Viking Gas Transmission Company.

Take notice that the above referenced pipelines have tendered for filing tariff sheets in compliance with the Gas Research Institute (GRI) requirement.

The pipelines state that the purpose of their filings is to revise the GRI surcharges to be effective January 1, 2003, in compliance with the January 21, 1998,

Stipulation and Agreement Concerning GRI Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶ 61, 331 (1998).

The pipelines state that their filings comply with the surcharges set forth in Appendix A to the Stipulation and Agreement as follows: (1) a demand/reservation surcharge of 5.0 cents per Dth per Month for "high load factor customers" (2) a demand/reservation surcharge of 3.1 cents per Dth per Month for "low load factor customers" (3) a volumetric commodity/usage surcharge of 0.4 cents; and (4) a special "small customer" surcharge of 0.6 cents per Dth.

Any person desiring to become a party in a proceeding, must file a separate motion to intervene or protest in each docket.

Any person desiring to be heard or to protest any one of the above-captioned filings should file in the relevant individual docket a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 13, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31326 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–445–003]

Alliance Pipeline L.P.; Notice of Negotiated Rates

December 6, 2002.

Take notice that on November 27, 2002, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, proposed to become effective January 1, 2003:

Second Revised Sheet No. 11
Second Revised Sheet No. 12
Second Revised Sheet No. 13
Second Revised Sheet No. 14

Alliance states that it provides firm service under Rate Schedule FT–1 for its existing shippers, all of whom have agreed to pay negotiated rates. The negotiated rate agreements provide that changes in Alliance's costs will be reflected in its negotiated rates from time to time. Alliance states that the tariff sheets listed above set forth the essential elements of its Rate Schedule FT–1 negotiated rate transactions, including the rates thereunder, and that it is filing the listed tariff sheets to reflect changes made to the rates charged under its negotiated rate agreements as a result of changes in its costs. Alliance states that its filing is made pursuant to the authorization set forth in its negotiated rate agreements and Section 39 of the General Terms and Conditions of its FERC Gas Tariff.

Alliance states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number

field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31319 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–568–001]

Black Marlin Pipeline Company; Notice of Filing

December 6, 2002.

Take notice that on November 14, 2002, Black Marlin Pipeline Company (Black Marlin) tendered for filing in its FERC Gas Tariff Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 2002:

Substitute Original Sheet No. 223
Substitute Original Sheet No. 224

Black Marlin states that the filing is being made in compliance with the letter order issued by the Commission on October 30, 2002.

Black Marlin states that the purpose of the revised tariff filing is to : (1) adopt a high/low weekly average price index for calculating the cash-out prices for imbalances and (2) incorporate interest on any refund balances of cash-out revenues.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 12, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31325 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–161–000]

Chandeleur Pipe Line Company; Notice of Filing

December 4, 2002.

Take notice that on November 29, 2002, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, workpapers supporting the adjustment, effective January 1, 2003 of its currently effective Fuel and Line Loss Allowance to 0.03%.

Chandeleur asserts that this filing is tendered in order to comply with the annual calculation requirements of its tariff as referenced above.

Chandeleur states that the purpose of this filing is to account for changes in amounts retained for Fuel and Line Loss Allowance pursuant to the provisions of 18 CFR 154.403(d)(3) and in accordance with Section 21.0 of the General Terms and Conditions of Chandeleur Pipe Line Company's (Chandeleur) FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 11, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31274 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–325–007]

Colorado Interstate Gas Company; Notice of Compliance Filing

December 4, 2002.

Take notice that on November 27, 2002, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 2003:

Eighth Revised Sheet No. 279
Seventh Revised Sheet No. 279A

CIG states that it is also filing its one-year report of segmentation activity in accordance with the Commission's May 31, 2001 order issued in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31265 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP02–532–001 and RP02–534–001]

Guardian Pipeline, L.L.C.; Notice of Compliance Filing

December 6, 2002.

Take notice that on November 26, 2002, Guardian Pipeline, L.L.C. (Guardian) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets as listed in Appendix A attached to the filing, to be effective December 1, 2002.

Guardian states that the purpose of this filing is to comply with directives made by the Commission in its October 31, 2002 Order in the above-captioned dockets.

Guardian states that copies of this tariff filing are being served on its shippers and the Wisconsin and Illinois public service commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31324 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–178–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes to FERC Gas Tariff

December 6, 2002.

Take notice that on December 2, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet 3708, to become effective January 2, 2003.

Gulf South states that this filing is submitted to revise Gulf South's tariff by removing from the right of first refusal (ROFR) provisions the five-year matching cap.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31327 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–184–000]

Gulf South Pipeline Company, LP; Notice of Tariff Filing

December 6, 2002.

Take notice that on December 2, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing pursuant to the Commission's October 31, 2002, Order on Remand in Docket No. RM98–10–011, a letter addressing the implementation of the Commission's forwardhaul/backhaul policy on Gulf South's system.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–31328 Filed 12–11–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–26–001]

Gulfstream Natural Gas System, L.L.C.; Notice of Compliance Filing

December 6, 2002.

Take notice that on November 27, 2002, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of November 16, 2002:

Sub First Revised Sheet No. 190
Sub Original Sheet No. 190A

Gulfstream states that the purpose of this filing is to comply with the letter order issued by the Commission on November 15, 2002 in Docket No. RP03–26–000 (November 15 Order). Gulfstream states that on October 16, 2002, it filed revised tariff sheets with proposed changes to the capacity release provisions of the General Terms and Conditions of its tariff. Gulfstream states that the Commission's November 15 Order accepted the proposed changes subject to Gulfstream making certain further revisions to the tariff sheets within 15 days of the November 15 Order. Gulfstream states that the tariff sheets included herewith include the required revisions in compliance with the November 15 Order.

Gulfstream states that copies of its filing have been mailed to all affected customers, interested state commissions, and all parties listed on the Official Service List compiled by the Secretary of the Commission in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–31329 Filed 12–11–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–411–004]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

December 6, 2002.

Take notice that on December 2, 2002, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets proposed to become effective November 1, 2002:

Fifth Revised Sheet No. 41
Seventh Revised Sheet No. 46
Ninth Revised Sheet No. 47
Seventh Revised Sheet No. 92

Iroquois states that these sheets were submitted in compliance with the Commission's November 26, 2002 Letter Order issued in Docket No. RP00–411–002.

Iroquois states that copies of its filing and have been mailed to all firm customers, interruptible customers, state regulatory commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–31318 Filed 12–11–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–14–013]

Midwestern Gas Transmission Company; Notice of Negotiated Rates

December 6, 2002.

Take notice that on November 26, 2002, Midwestern Gas Transmission Company (Midwestern) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet No. 7 and Fourth Revised Sheet No. 273, effective December 1, 2002.

Midwestern states that it is also filing an unexecuted firm gas transportation service agreement pursuant to Midwestern's Rate Schedule FT–A. The filing also contains attachments of Contract No. FA0053, a letter agreement that reflects a non-conforming contract entered into between Midwestern and Dynegy Marketing and Trade (Dynegy) requiring a monthly prepayment, and a letter agreement reflecting a discounted transportation rate.

Midwestern states that copies of this filing have been sent to all of Midwestern's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–31332 Filed 12–11–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–157–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 4, 2002.

Take notice that on November 29, 2002, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Twenty First Revised Sheet No. 8, with a proposed effective date of January 1, 2003.

National states that the proposed tariff sheet reflects an adjustment to recover through National's EFT rate the costs associated with the Transportation and Storage Cost Adjustment (TSCA) provision set forth in Section 23 of the General Terms and Conditions of National's FERC Gas Tariff.

National further states that copies of this compliance filing were served upon the Company's jurisdictional customers and the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–31272 Filed 12–11–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–159–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

December 4, 2002.

Take notice that on November 29, 2002, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed in its filing.

National Fuel states that this filing is being made in compliance with the Commission's Order on Remand issued on October 31, 2002, in Docket No. RM98–10–011. The Order directed pipelines that offer segmentation on their systems to file revised tariff sheets permitting segmented transactions consisting of forwardhauls and backhauls up to contract demand to the same point at the same time.

National Fuel states that copies of this filing were served upon its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–31273 Filed 12–11–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–7–000]

Natural Gas Pipeline Company of America; Notice of Extension of Time

December 6, 2002.

On December 4, 2002, Natural Gas Pipeline Company of America (Natural) filed a motion for an extension of time within which to submit its data responses as required by the request from Commission Staff issued November 21, 2002, in the above-docketed proceeding. The data request requires a response to be filed by December 4, 2002. In its motion, Natural states that due to the Thanksgiving holiday and the press of other business, a brief extension of time is necessary to complete and file its data responses.

Upon consideration, notice is hereby given that an extension of time for Natural to file its data responses, as directed by the Commission Staff's November 21, 2002 request, is granted to and including December 6, 2002, as requested by Natural.

Magalie R. Salas,
Secretary.
[FR Doc. 02–31330 Filed 12–11–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–072]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

December 6, 2002.

Take notice that on November 27, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Original Sheet Nos. 26W.24 through 26W.26, to be effective December 1, 2002.

Natural states that the purpose of this filing is to implement two (2) new negotiated rate transactions entered into by Natural and Dynegy Marketing and Trade under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–31333 Filed 12–11–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–073]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

December 6, 2002.

Take notice that on December 2, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Fourth Revised Sheet No. 26A and Second Revised Sheet No. 26A.05, to be effective December 1, 2002.

Natural states that the purpose of this filing is to implement a permanent release of a portion of firm transportation service capacity under an existing negotiated rate transaction with Aquila Merchant Services, Inc. (Aquila) under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of this filing are being mailed to all parties set out on the official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–31334 Filed 12–11–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–38–003]

Northern Natural Gas Company; Notice of Compliance Filing

December 6, 2002.

Take notice that on November 22, 2002, pursuant to the technical conference held in the above-referenced proceeding on November 12, 2002, Northern Natural Gas Company (Northern) filed additional information and made certain clarifications and/or modifications to its proposed tariff provisions regarding creditworthiness and capacity release.

Northern further states that copies of the filing have been mailed to the Service List in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document.

For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–31315 Filed 12–11–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–152–000]

Overthrust Pipeline Company; Notice of Tariff Filing

December 4, 2002.

Take notice that on November 29, 2002, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheets, to be effective January 1, 2003:

Sixth Revised Sheet No. 54
Fifth Revised Sheet No. 55
First Revised Sheet No. 78K
Alternate First Revised Sheet No. 78K

Overthrust states that the filing is being made in compliance with the Commission's Order on Remand dated October 31, 2002, in Docket No. RM98–10–011.

Overthrust states that on October 31, 2002, the Commission issued an Order on Remand (October 31 Order) requiring all pipelines, that provide segmentation on their systems, to file revised tariff provisions to expressly permit segmented transactions consisting of forwardhauls, up to contract demand, and backhauls, up to contract demand, to the same point at the same time. In addition, Overthrust indicates that the October 31 Order also removed the five-year right of first refusal term matching cap when shippers exercise their right of first refusal. Overthrust notes that this filing is being tendered in compliance with the Commission's October 31 Order.

Overthrust states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–31268 Filed 12–11–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–033]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rates

December 6, 2002.

Take notice that on December 2, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1-A, Second Revised Sheet No. 15 and First Revised Sheet No. 19, with an effective date of December 1, 2002.

GTN states that these sheets are being filed to reflect the implementation of one negotiated rate agreement and the removal of one negotiated rate agreement.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–31335 Filed 12–11–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–243–001]

Pine Needle LNG Company, LLC; Notice of Compliance Filing

December 6, 2002.

Take notice that on November 26, 2002, Pine Needle LNG Company, LLC (Pine Needle), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets listed on Appendix A to the filing, which tariff sheets are proposed to have an effective date of January 1, 2003.

Pine Needle states that the instant filing is submitted to implement its new internet based business system, 1Linesm and to comply with certain of the Commission's regulations for which it has sought and received extensions of time to comply.

Any person desiring to protest said filing should file a protest with the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31322 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–153–000]

Questar Pipeline Company; Notice of Tariff Filing

December 4, 2002.

Take notice that on November 29, 2002, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to be effective January 1, 2003:

First Revised Volume No. 1
Twenty-Seventh Revised Sheet No. 5
Original Volume No. 3
Thirty Fifth Revised Sheet No. 8

Questar states that the tendered tariff sheets revise Questar's Fuel Gas Reimbursement Percentage (FGRP) from the currently effective 1.6% to 1.4%.

Questar states that the FGRP is filed pursuant to Section 12.15 of the General Terms and Conditions of part 1 of Questar's tariff, First Revised Volume No. 1.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31269 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–154–000]

Questar Pipeline Company; Notice of Tariff Filing

December 4, 2002.

Take notice that on November 29, 2002, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective January 1, 2003:

Seventh Revised Sheet No. 67
Seventh Revised Sheet No. 68
Third Revised Sheet No. 99J
First Revised Sheet No. 99K

Questar states that the filing is being made in compliance with the Commission's Order on Remand dated October 31, 2002, in Docket No. RM98–10–011, (October 31 Order).

Questar states that, by the Commission's October 31 Order, pipeline companies were directed to modify their FERC Gas Tariffs to (1) remove the five-year term matching cap when shippers exercise their right of first refusal (ROFR) and (2) allow backhaul and forwardhaul segmentation, up to a shipper's contract demand level, to the same point. This filing was tendered in compliance with the Commission's October 31 order.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31270 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–156–000]

Questar Southern Trails Pipeline Company; Notice of Tariff Filing

December 4, 2002.

Take notice that on November 29, 2002, Questar Southern Trails Pipeline Company (Southern Trails) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 65; and First Revised Sheet No. 66, to be effective January 1, 2003.

Southern Trails states that the filing is being made in compliance with the Commission's Order on Remand dated October 31, 2002, in Docket No. RM98–10–011.

Southern Trails states that on October 31, 2002, the Commission issued an Order on Remand (October 31 Order) requiring all pipelines that provide segmentation on their systems to file revised tariff provisions to expressly permit segmented transactions consisting of forwardhauls, up to contract demand, and backhauls, up to contract demand, to the same point at the same time. At this time, Southern Trails has stated that it is not operationally feasible to provide segmentation on its system. Southern Trails indicates that the October 31 Order also removed the five-year right of first refusal term matching cap when shippers exercise their right of first refusal. Southern Trails notes that this filing is being tendered in compliance with the Commission's October 31 Order.

Southern Trails states that a copy of this filing has been served upon its customers and the Public Service Commissions of Utah, New Mexico, Arizona and California.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31271 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–151–000]

Sabine Pipe Line LLC; Notice of Tariff Filing

December 4, 2002.

Take notice that on November 27, 2002, Sabine Pipe Line LLC (Sabine) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective December 27, 2002:

Second Revised Sheet No. 101
First Revised Sheet No. 101A

Sabine asserts that the purpose of this filing is to comply with Commission's Order on Remand, issued October 31, 2002, in Docket No. RM98–10–011.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31267 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–432–002]

Southern LNG Inc.; Notice of Compliance Filing

December 6, 2002.

Take notice that on November 26, 2002, Southern LNG Inc. (SLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of October 1, 2002:

Substitute First Revised Sheet No. 62
Substitute Original Sheet No. 62A

SLNG states that the purpose of this filing is to implement certain modifications to its tariff sheets in compliance with the Commission's Order issued on November 15, 2002, in the captioned proceeding to include North American Energy Standards Board Wholesale Gas Quadrant (NAESB–WCQ) Standards 1.3.2(iii) and (iv) relating to intra-day nomination cycles to be effective October 1, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding

the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31323 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–17–003 and CP02–45–003]

Texas Eastern Transmission, LP; Notice of Compliance Filing

December 6, 2002.

Take notice that on November 12, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to be effective November 1, 2002.

Sub Original Sheet No. 51B
Sub Original Sheet No. 297A
Sub Original Sheet No. 297B
Sub First Revised Original Sheet No. 503

Texas Eastern states that the purpose of this filing is to comply with the letter order issued by the Federal Energy Regulatory Commission ("Commission") on October 31, 2002 in Docket Nos. CP02–17–002 and CP02–45–002 ("October 31 Order"). Specifically, Texas Eastern states that the October 31 Order directs Texas Eastern to revise Sheet No. 51B to (i) remove specific customer names and associated volumes for service under Rate Schedule MLS–1 and (ii) reflect the correct GRI surcharge. In addition, Texas Eastern notes that the October 312 Order requires that Texas Eastern remove the definition of the term "Maximum Hourly Quantity" from the General Terms and Conditions of Texas Eastern's FERC Gas Tariff and instead include that definition in Rate Schedule MLS–1. Texas Eastern indicates that the October 31 Order also directs it to file the negotiated rate agreement with New Jersey Natural Gas Company for MLS–1 service on the Freehold Lateral. In sum, Texas Eastern states that the instant filing is being made to comply with these directives.

Texas Eastern states that copies of its filing have been mailed to all affected customers of Texas Eastern, interested state commissions, and all parties listed on the Official Service List compiled by the Secretary of the Commission in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before December 12, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31314 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–162–000]

Trailblazer Pipeline Company; Notice of Tariff Filing

December 4, 2002.

Take notice that on November 27, 2002, Trailblazer Pipeline Company (Trailblazer) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective January 1, 2003.

Trailblazer states that the purpose of this filing is to fulfill its obligation under Article III of the Docket No. RP97–408 rate case settlement in which Trailblazer must file a general rate proceeding to be effective no later than January 1, 2003. In the case of a rate decrease, as proposed herein, the filing was to occur no later than December 1, 2002. In addition, the filing also includes proposed modifications to the terms and conditions of Trailblazer's services in the following areas: capacity award procedures and award evaluation procedures (including capacity release); credit; right of first refusal, balancing charges; and minor administrative changes.

Trailblazer states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31275 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–056]

TransColorado Gas Transmission Company; Notice of Compliance Filing

December 4, 2002.

Take notice that on November 29, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fifty-Fifth Revised Sheet No. 21 and Twenty-Eighth Revised Sheet No. 22A , to be effective December 1, 2002.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets propose to revise TransColorado's Tariff to reflect two amended negotiated-rate contracts with National Fuel Marketing Company and Williams Energy Marketing & Trading Company and the deletion of an expired contract with United Energy Trading, LLC.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31276 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–490–002]

Transwestern Pipeline Company; Notice of Compliance Filing

December 6, 2002.

Take notice that on November 14, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Sheet No. 92D of Second Revised Volume No. 1, to become effective January 1, 2003.

Transwestern states that Fifth Revised Sheet No. 92D, while listed and described in its November 12, 2002 filing in Docket No. RP00–490–002, was inadvertently omitted from the tariff sheets and diskette included in the November 12 filing. Transwestern states that the instant filing is to correct this omission by filing Fifth Revised Sheet No. 92D herein.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 12, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31321 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–472–003 and RP01–31–003]

USG Pipeline Company; Notice of Compliance Filing

December 6, 2002.

Take notice that on November 26, 2002, USG Pipeline Company (USGPC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Substitute First Revised Sheet No. 51 and Second Substitute Original Sheet No. 51A, to be effective October 1, 2002.

USGPC states that the filing is being made pursuant to the Commission's November 21, 2002, letter order in the above-captioned proceeding the following tariff sheets, proposed to become effective as of October 1, 2002, revised in compliance with the November 21 letter order and Order Nos. 637, 587–G, and 587–L.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31320 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–132–005]

Viking Gas Transmission Company; Notice of Compliance Filing

December 4, 2002.

Take notice that on November 27, 2002, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective January 1, 2003:

Fourth Revised Sheet No. 5
Second Revised Sheet No. 5A
Second Revised Sheet No. 5B
Second Revised Sheet No. 5C
Second Revised Sheet No. 5D
Second Revised Sheet No. 5E
Second Revised Sheet No. 5F
Second Revised Sheet No. 5G
Second Revised Sheet No. 5H
First Revised Sheet No. 5I

Viking states that the purpose of this filing is to comply with the Offer of Settlement and Stipulation and Agreement (Settlement) filed by Viking on September 13, 2002 in the above-referenced docket and approved by the Commission by order issued November 8, 2002. Specifically, Viking states that it is filing to place the Stage 1 Settlement Rates into effect in accordance with the terms and conditions of the Settlement.

Viking states that copies of this filing have been served on all parties designated on the official service list in this proceeding, on all of Viking's jurisdictional customers and to affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31266 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–136–018]

Williams Gas Pipelines Central, Inc.; Notice of Refund Report

December 6, 2002.

Take notice that on November 26, 2002, Williams Gas Pipelines Central, Inc. (Central) tendered for filing its interruptible excess refund report for the twelve-month period ended September 2002.

Pursuant to Article V, Section A of the November 27, 1996, Stipulation and Agreement in the above named docket, approved by order of the Commission dated March 7, 1997, Central is not required to refund any ITS revenue until Central has recovered $3.5 million of fixed costs allocated to ITS. Central only recovered $2.29 million of fixed costs; therefore, a refund is not required. Also, there will not be a refund required for ISS because there was no ISS revenue for the twelve-month period ended September 2002.

Central states that a copy of its filing was served on all of participants listed on the service list maintained by the Commission in the docket referenced above and on all of Central's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 11, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31331 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–24–000, et al.]

Global Common Greenport LLC, et al.; Electric Rate and Corporate Filings

December 6, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Global Common Greenport LLC

[Docket No. EG03–24–000]

Take notice that on November 27, 2002, Global Common GreenportLLC (Applicant), having its principal place of business at 1285Avenue of the Americans, 35th Floor, New York, New York 10019 filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: December 27, 2002.

2. PSEG Power Connecticut LLC

[Docket No. EG03–25–000]

Take notice that on December 4, 2002, PSEG Power ConnecticutLLC (Applicant), having its principal place of business at 80 ParkPlaza, T–16, Newark, NJ 07102, filed with the Federal EnergyRegulatory Commission (FERC or the Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant is a limited liability company formed under the laws of the State of Delaware. The Applicant states it will be exclusively engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding CompanyAct of 1935 (PUHCA), in owning or owning and operating eligible electric facilities in Connecticut and participating in certain other activities incidental to such eligible electric facilities as authorized under PUHCA.

Comment Date: December 27, 2002.

3. Consolidated Hydro Southeast, Inc.

[Docket No. EG03–26–000]

Take notice that on December 5, 2002, Consolidated HydroSoutheast, Inc. (CHISE) filed with the Federal Energy RegulatoryCommission (Commission) an Application for Determination of ExemptWholesale Generator Status pursuant to part 365 of the Commission's regulations and Section 32 of the Public Utility Holding Company Act of 1935.

CHISE operates an eligible facility with a capacity of 80 megawatts, powered by two (2) hydroelectric turbine generators, which is located in Nicholas County, West Virginia.

Comment Date: December 27, 2002.

4. Gauley River Power Partners, L.P.

[Docket No. EG03–27–000]

Take notice that on December 5, 2002, Gauley River PowerPartners, L.P. (GRPP) filed with the Federal Energy RegulatoryCommission (Commission) an Application for Determination of ExemptWholesale Generator Status pursuant to part 365 of the Commission's regulations and section 32 of the Public Utility Holding Company Act of 1935.

GRPP owns an eligible facility with a capacity of 80 megawatts, powered by two (2) hydroelectric turbine generators, which is located in Nicholas County, West Virginia.

5. Reliant Energy Hunterstown, LLC

[Docket No. ER01–3036–002]

Take notice that on December 4, 2002 Reliant Energy Hunterstown,LLC (Hunterstown) filed an amendment to its FERC Electric Tariff with the Federal Energy Regulatory Commission. The proposed amendment changes the effective date of the tariff.

Comment Date: December 26, 2002.

6. ISO New England Inc.

[Docket No. ER01–3086–003]

Take notice that on December 2, 2002, ISO New England Inc. submitted a compliance report on its Demand Response Program and the addition of new generation in New England in the above Docket.

Comment Date: December 23, 2002.

7. Keystone Energy Group, Inc.

[Docket No. ER02–2605–001]

Take note that on December 2, 2002, Keystone Energy Group, Inc.(Keystone) tendered for filing an amendment to an application filed on September 23, 2002 for acceptance of Keystone Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market based rates; and waiver of certain Commission regulations.

Keystone intends to engage in wholesale electric power and energy purchases and sales as a marketer. Keystone is not in the business of generating or transmitting electric power.

Comment Date: December 23, 2002.

8. Reliant Energy Solutions West, LLC

[Docket No. ER03–81–001]

Take notice that on December 3, 2002 Reliant Energy SolutionsWest, LLC (RESW) filed an Amended FERC Electric Rate Schedule No. 1 in this docket. The Amended Rate Schedule deletes references to certain non-jurisdictional activities.

Comment Date: December 24, 2002.

9. Peaker LLC

[Docket No. ER03–191–000]

Take notice that on December 4, 2002, Peaker LLC submitted an amendment to its petition for order accepting market-based rate schedule for filing and granting waivers and blanket approvals.

Comment Date: December 26, 2002.

10. PJM Interconnection, L.L.C.

[Docket No. ER03–232–001]

Take notice that on December 3, 2002, PJM Interconnection,L.L.C. (PJM), amended its November 27, 2002 filing in the above-captioned proceeding to correct the page numbers on the amended sheets of the Amended and Restated Operating Agreement of PJMInterconnection, L.L.C. (Operating Agreement) that it filed on November 27, 2002 to incorporate Commission-approved PJM Economic Load Response Program into the Second Revised Operating Agreement. The Operating Agreement sheet preceding these sheets also was included to correct its page designation.

PJM requests an effective date of June 1, 2002, for the amended Operating Agreement sheets incorporating the PJM Economic Load Response Program into the Second Revised Operating Agreement. In addition, PJM states that no substantive changes were made to the Operating Agreement sheet preceding the PJM Economic Load ResponseProgram sheets, and therefore, PJM requests an effective date of April 1, 2002, for the corrected sheet. PJM states that this is the current effective date of the original sheet.

Copies of this filing have been served on all PJM members and each state electric utility commission in the PJM region.

Comment Date: December 24, 2002.

11. South Carolina Electric & Gas Company

[Docket No. ER03–237–000]

Take notice that on December 2, 2002, South Carolina Electric &Gas Company (SCE&G) submitted for filing supplemental agreements between SCE&G and the Southeastern Power Administration (SEPA).

SCE&G requests an effective date of November 1, 2002 and, accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon SEPA and the South Carolina Public Service Commission.

Comment Date: December 23, 2002.

12. New York Independent System Operator, Inc.

[Docket No. ER03–238–000]

Take notice that on December 2, 2002, the New York IndependentSystem Operator, Inc. (NYISO) filed revisions to its MarketAdministration and Control Area Services Tariff to clarify the calculation of Day-Ahead Market balancing payments.

The NYISO has requested an effective date of January 31, 2003, for the proposed clarification. The NYISO has served a copy of this filing upon all parties that have executed Service Agreements under the NYISO Services Tariff or Open-Access Transmission Tariff and to the New York State Public Service Commission.

Comment Date: December 23, 2002.

13. Western Systems Power Pool, Inc.

[Docket No. ER03–239–000]

Take notice that on December 3, 2002, the Western Systems PowerPool, Inc. (WSPP) submitted changes to the WSPP Agreement intended to update or clarify certain commercial provisions of the Agreement. The WSPP seeks an effective date of February 1, 2003, for these changes.

Copies of the transmittal letter have been served on all state commissions within the United States. This filing also has been posted on the WSPP homepage (*www.wspp.org*) thereby providing notice to all WSPP members.

Comment Date: December 24, 2002.

14. Wisconsin Public Service Corporation

[Docket No. ER03–240–000]

Take notice that on December 3, 2002, Wisconsin Public Service Corporation

(WPSC) tendered for filing an amendment to its February 22, 1993 Agreement with the City of Marshfield concerning the ownership and operation of combustion turbine generation. The amendment implements a revision to the capacity rating of the WestMarinette Unit.

Wisconsin Public Service Requests waiver of the Commission's regulations to permit the amendment to become effective on January 1, 2003.

Comment Date: December 24, 2002.

15. Xcel Energy Services, Inc.

[Docket No. ER03–241–000]

Take notice that on December 3, 2002, Xcel Energy Services, Inc.(XES), on behalf of Southwestern Public Service Company (SPS), submitted for filing an Experimental Sales Rider between SPS and LeaCounty Electric Cooperative, Inc.; a First Amendment to ExperimentalSales Rider between SPS and New Corp Resources, Inc.; and a FirstAmendment to Experimental Sales Rider between SPS and RooseveltElectric Cooperative, Inc.

XES requests that these agreements become effective on October 1, 2002.

Comment Date: December 24, 2002.

16. American Electric Power Service Corporation

[Docket No. ER03–242–000]

Take notice that American Electric Power Service Corporation(AEPSC), on behalf of Appalachian Power Company, Columbus SouthernPower Company, Indiana Michigan Power Company, Kentucky PowerCompany, Kingsport Power Company, Ohio Power Company and WheelingPower Company (collectively AEP) on December 3, 2002, tendered for filing proposed changes to transmission service rates.

AEPSC requests that the proposed rates become effective in two steps, with effective dates no earlier than February 1, 2003 and May 1, 2003, respectively.

Copies of the filing were served upon the Indiana Utility Regulatory Commission, Kentucky Public Service Commission, Michigan Public Service Commission, Public Utilities Commission of Ohio, Public Service Commission of West Virginia, Tennessee Regulatory Authority, and Virginia State Corporation Commission. A copy of this transmittal letter was served upon AEP's transmission customers. AEP also has posted this filing on its Web site at *http://oasis.buyaep.com/OASIS/AEP/Tariff.cfm*, (under Open AccessTransmission Tariff Supplemental Information). AEP's transmission customers and the public may obtain a complete copy of this filing from AEP's website. In addition, AEP will provide a complete copy of this filing, on paper or CD, to any customer that requests a copy.

Comment Date: December 24, 2002.

17. PJM Interconnection, L.L.C.

[Docket No. ER03–243–000]

Take notice that on December 3, 2002, PJM Interconnection,L.L.C. (PJM), submitted amendments to Schedule 2 of the PJM OpenAccess Transmission Tariff to include the annual and monthly revenue requirements for Reactive Supply and Voltage Control from GenerationSources Service for Sunbury Generation, L.L.C. (Sunbury) andCommonwealth Chesapeake Company, L.L.C. (Commonwealth Chesapeake) accepted by the Commission in Docket Nos. ER02–2362–000 and 001, andER02–2520–000, respectively.

PJM requests an effective date of September 1, 2002 for the Third Revised Sheet No. 112A of the PJM Tariff which incorporatesSunbury's revenue requirement, and November 1, 2002 for the FourthRevised Sheet No. 112A which incorporates Commonwealth Chesapeake's revenue requirement.

Copies of this filing have been served on all PJM members, including Sunbury and Commonwealth Chesapeake, and each state electric utility regulatory commission in the PJM region.

Comment Date: December 24, 2002.

18. Midwest Energy, Inc.

[Docket No. ES03–15–000]

Take notice that on December 3, 2002, Midwest Energy, Inc. submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue up to and including $37,714,286 of long-term debt securities from the National Rural UtilitiesCooperative Finance Corporation.

Midwest Energy, Inc. also requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: December 27, 2002.

19. Entergy Services, Inc.

[Docket Nos. OA96–158–005 and OA 97–657–002]

Take notice that on December 2, 2002, Entergy Services, Inc.(Entergy) on behalf of the Entergy Operating Companies, tendered for filing with the Federal Energy Regulatory Commission (Commission) revisions to Entergy's FERC Electric Tariff, Second Revised Volume No. 3 in compliance with Entergy Services, Inc., 101 FERC ¶61,141 (2002). Entergy states that, in this order, the Federal Energy Regulatory Commission (Commission) accepted for filing, as modified, Entergy's May 1, 2000 compliance filing to a Commission order requesting certain public utilities to file status reports regarding their various open access dockets. Entergy notes that the Commission also ordered Entergy to correct certain misstatements found in Schedule No. 1 of Entergy's Open Access Transmission Tariff (OATT). Entergy states that this filing submits these accepted (and modified) revisions in Order No. 614 format.

Comment Date: January 2, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street,NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contactFERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31387 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for New License

December 6, 2002.

a. *Type of filing*: Notice of Intent to File Application for a New License.

b. *Project No.*: 2107.

c. *Submitted by*: (1) Pacific Gas and Electric Company, filed July 2, 2002;

(2) City of Fremont, California, filed July 2, 2002;

(3) County of Butte, California, filed July 8, 2002; and

(4) Northern California Power Agency, filed July 10, 2002.

d. *Date filed*: *see* c, above

e. *Name of Project:* Poe Hydroelectric Project.

f. *Location:* On the North Fork Feather River in Butte County, near Pulga, California. The project includes 144 acres of lands of the Plumas National Forest.

g. *Filed Pursuant to*: 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of current license*: October 1, 1953.

i. *Expiration date of current license*: September 30, 2003.

j. *The project consists of*: (1) The 400-foot-long, 60-foot-tall Poe Diversion Dam, including four 50-foot-wide by 41-foot-high radial flood gates, a 20-foot-wide by 7-foot-high small radial gate, and a small skimmer gate that is no longer used; (2) the 53-acre Poe Reservoir; (3) a concrete intake structure located on the shore of Poe Reservoir; (4) a pressure tunnel about 19 feet in diameter with a total length of about 33,000 feet; (5) a differential surge chamber located near the downstream end of the tunnel; (6) a steel underground penstock about 1,000 feet in length and about 14 feet in diameter; (7) a reinforced concrete powerhouse, 175-feet-long by 114-feet-wide, with two vertical-shaft Francis-type turbines rated at 76,000 horsepower connected to vertical-shaft synchronous generators rated at 79,350 kVA with a total installed capacity of 143 MW and an average annual generation of 584 gigawatt hours; (8) the 370-foot-long, 61-foot tall, concrete gravity Big Bend Dam; (9) the 42-acre Poe Afterbay Reservoir; and (10) appurtenant facilities.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Pacific Gas and Electric Company, Power Generation, 245 Market Street, Room 1103, San Francisco, California, 94105. Contact Mr. John Gourley by mail at the above address or by phone at (415) 972–5772 to make an appointment to review the information.

l. *FERC contact*: John Mudre, (202) 502–8902 or *john.mudre@ferc.gov*.

m. Each application for a new license must be filed with the Commission within 18 months of the date on which it filed its Notice of Intent.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31316 Filed 12–11–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM00–12–000]

Electronic Filing of Documents; Notice of New Release and Additional Qualified Documents for Electronic Filing

December 6, 2002.

1. Take notice that on Saturday, December 7, 2002, the Commission will upgrade its electronic filing system to Release 4.0 and begin accepting additional types of documents for filing via the Internet in lieu of paper copies. Release 4.0 also contains several notable system enhancements.

2. New Qualified Documents in Release 4.0: Order No. 619,[1] authorized the Secretary of the Commission to issue and amend a list of qualified documents that, at the filer's option, may be submitted via the Internet without also filing paper copies.[2] In Release 4.0 of the electronic filing system, the following additional documents are "qualified documents" for the purposes of electronic filing:

a. *General Filings in Docketed Proceedings:*

i. Briefs.

ii. Interlocutory Appeals: Motions and Answer/Responses.

iii. Request for Change in Service List

iv. Withdrawal of Application.

b. *Filings Specific to the Electric Industry:*

i. Accounting Filing or Request.

ii. Annual Charges Report.

iii. Complaint.

iv. Qualifying Facility Notice of Self-Certification.

v. Qualifying Facility Notice of Self-Recertification.

c. *Filings Specific to the Natural Gas Industry:*

i. Accounting Filing or Request.

ii. Complaint.

iii. Peak Day Capacity Report.

iv. Semi-Annual Storage Report Under part 157.

v. Semi-Annual Storage Report Under part 284.

d. *Filings Specific to the Oil Pipeline Industry:*

i. Accounting Filing or Request.

ii. Complaint.

e. *Filings Specific to Hydropower projects:*

i. Annual Conveyance Report.

ii. Annual Generation Report.

iii. Complaint.

iv. Progress Report.

3. Attachment A to this notice contains a complete list of all qualified documents and a description of each filing type.

4. Qualified documents may be combined and submitted in the same document. For example, a motion to intervene may also include comments and/or a protest in the same document and be eligible for filing via the Internet.

5. Non-qualified documents may not be included in an electronic submission with other qualified documents. For example, an Electric Rate Compliance Filing may not be electronically filed together with or under the filing type "Compliance Electric Refund Report".

6. Release 4.0 Enhancements: Release 4.0 of the Electronic Filing System contains the following enhancements:

f. *Multiple file submission*: Filers may now select and submit up to five unzipped files with a maximum file size of 10 Mb per file. The files may also be submitted in .zip file format, provided that the total number of unzipped files does not exceed five files. The File Upload screen allows the filer to select, review, and attach up to five files per submission. The screens also provides for deleting and replacing files, as well as ordering them in the proper sequence for filing.

For multiple file submissions, the first (text) file should include a list of the additional files to be submitted with a brief description of the contents of each file.

g. *Filings Requiring a New Docket or Subdocket Number(s):* Certain of the new "qualified documents" for e-filing require a new docket number. The filer will not *see* the Docket Entry screen for these filings. The FERC Dockets Staff will assign the new docket number and initiate a service list. The new docket number will appear in the Notice of Acceptance e-mail that is sent to the filer after Dockets reviews the submission. As with previous releases, the Dockets staff will assign a new subdocket number to your submission if one is required.

h. *Additional file formats*: The multiple file submission feature will

[1] III FERC Stats. & Regs., Regulations Preambles ¶31,107.

[2] 18 CFR 385.2003(c)(2). 65 FR 57088.

enable filers to include one or more attachments to the Microsoft Word (.doc), Corel WordPerfect (.wpd), Adobe Portable Document Format (.pdf), ASCII (.txt), or Rich Text Format (.rtf) text file, in one or more of the following formats:

i. Microsoft Excel (.xls, .xlb).
ii. Lotus (.wk1, .wk3, .wk4).
iii. Microsoft PowerPoint (.ppt, .pps).
iv. Zipped files, provided that the total number of unzipped files does not exceed five files and each unzipped file does not exceed 5 Mb (.zip).
v. Graphic Interchange Format (.gif).
vi. Joint Photographic Experts Group (.jpg).
vii. Moving Picture Experts Group (.mpg).

i. *Filing Type Selection:* The menu for selecting the filing type has been revised and is arranged according to filings common to all program areas and those that are specific to the electric, natural gas, oil, or hydropower programs.

7. We are revising the User Guide to reflect the additions to the qualified documents list. The guide contains the instructions for electronic submission and provides more detail on the system enhancements. The User Guide is accessible via the eFiling link at *www.ferc.gov*.

8. If you have questions about this notice or the new release for electronic filing, please contact Brooks Carter at (202) 502–8145or by e-mail at *brooks.carter@ferc.gov*.

Magalie R. Salas,
Secretary.

Attachment A—Complete List of Qualified Documents for Electronic Filing (Effective December 4, 2002)

For multiple file submissions, the first (text) file should include a list of the additional files to be submitted with a brief description of the contents of each file. There is a maximum of five unzipped files per submission.

1. Filings Common to Docketed Proceedings in All or Most Program Areas:

Answer/Response to a Pleading/Motion: An answer (18 CFR 385.202) may be made to any pleading (18 CFR 385.213) except a protest, answer, motion for oral argument, or request for rehearing. Select Response to Complaint if you are responding to a complaint or show cause order.

Briefs/Statement of Position: Any brief filed before (Rule 706) or after (Rule 711) an initial decision (18 CFR 385.706 and 385.711).

Comment on Filing: Comments on Filing is a document filed in response to a FERC public notice or order in a specific FERC docketed proceeding (any docket prefix except RM). It may include a protest. This filing type does not add contact names to the service list. You must select Motion/Notice of Intervention (or Motion to Intervene Out-of-Time) to be included on the service list for a docket. Comment on Filing includes:

a. Comments on applications and other filings.
b. Comments on technical conferences
c. Comments filed in connection with environmental documents (Notices, Environmental Assessments, and Environmental Impact Statements) (18 CFR 380.10(a))
d. Protests [3] and responses to certain protests [4].
e. Reply comments.
f. Mandatory and recommended terms and conditions or prescriptions on a hydropower application for exemption or license.

Interlocutory Appeal—Motion: Motions to the presiding officer in a proceeding to permit appeal of a ruling by the presiding officer (18 CFR 385.715(b)) or an appeal of a presiding officer's denial of a motion to permit appeal (18 CFR 385.715(c)).

Interlocutory Appeal—Response: Responses to a Motion to Permit Interlocutory Appeal (18 CFR 385.213(a)(2) and (a)(3).

Motion to Compel Production: A motion to compel production is a petition or request for an order directing another party in a proceeding to produce documents and records in discovery (18 CFR 385.410(b)).

Motion to Intervene Out of Time: Motion to intervene out of time is a pleading filed with the Commission by a party requesting permission for intervenor status after the deadline for filing has passed (18 CFR 385.214(b)(3)).

Motion/Notice of Intervention: Motion/notice of intervention is a pleading filed with the Commission by a party requesting intervenor status (legal basis to participate in proceeding). The motion or notice may also include comments, a protest, or other pleading.[5]

Objection to Motion to Compel Production: An objection to a motion to compel production is a pleading by the respondent named in a motion to compel production stating the basis for objection to producing the requested documents and records (18 CFR 385.410).

Procedural Motion: A procedural motion is a pleading by any party to a proceeding before an Administrative Law Judge or the Commission concerning the scope, procedures, or schedule established by the presiding judge or by FERC's rules of procedure (18 CFR 385.212).

Production of Document: This is a transmittal letter advising the Commission that documents or records have been provided to the requesting party, or as directed by the presiding officer, in the discovery phase of a proceeding (18 CFR 385.406).

Request for Change in Service List: A request to make a change to the service list for specific dockets. The change may be to revise a contact or information about a contact.

Request for Hearing: A request for hearing is a motion to the Commission that a matter within the jurisdiction of the Commission be set for hearing.

Request for Rehearing or Appeal: A request of rehearing or appeal is a pleading by any party to a proceeding before the Commission petitioning the Commission to reconsider an order in that proceeding; includes Motions for Clarification (18 CFR 385.713 and 18 CFR 385.715). There are statutory deadlines for filing requests for rehearing. Be advised that the Commission cannot waive these deadlines.

Response to Complaint: Any respondent to a complaint or order to show cause must make an answer, unless the Commission directs otherwise (18 CFR 385.206(f) and 385.213(a)).

Rulemaking Comment: Rulemaking comment is a document filed in response to a Notice of Inquiry or Notice of Proposed Rulemaking issued by the Commission (RM docket prefix only; 18 CFR 385.1903 and 18 CFR 380.10(b)).

Settlement Comment: Settlement comment is a document prepared by any party to a proceeding before the Commission that sets forth the views and position of the party on a proposed agreement or settlement to resolve any of the issues in dispute (18 CFR 385.602(f)).

Withdrawal of Application: A request to withdraw an application or other pleading previously filed with the Commission.

Withdrawal of Intervention: Withdrawal of intervention is a request by a party to a proceeding (one who has been granted intervenor status) to withdraw from that proceeding (18 CFR 385.216).

2. Filings Specific to Electric Program Area:

Accounting Filing or Request: Any request for approval of accounting procedures or a filing related to accounting issues.

Annual Charges Report: FERC Reporting Requirement No. 582: The report due annually by April 30 that must be filed by a public utility, as defined in § 382.102(b), on transmission of electric energy in interstate commerce, for the purpose of computing annual charges (18 CFR 382.201(c)).

Complaint: Any complaint under Rule 206 that does not include privileged (non-public) information (18 CFR 385.206). Answers to complaints should also be filed under this category within 20 days of date the complaint is filed (18 CFR 385.206(f).

Electric Quarterly Report: The Electric Quarterly Report is filed by all jurisdictional utilities, listing all contracts in effect and all power sales made during the previous quarter, as required by Order 2001.

Electric Refund Report (Compliance Only): A report of refund of any increased rates or charges either found by the Commission not to be justified, or approved for refund by the Commission as part of a settlement.

Qualifying Facility Notice of Self-Certification: Notice of self certification as a qualifying facility filed by a small power production facility or cogeneration facility that meets the requirements of 18 CFR 292.203 [18 CFR 292.207 and 131.80 (Form 556)].

Qualifying Facility Notice of Self-Recertification: A subsequent notice of self-recertification as a qualifying facility filed by a small power production facility or cogeneration facility (18 CFR 292.207).

3. Natural Gas Program Area Filings:

Accounting Filing or Request: Any request for approval of accounting procedures or a filing related to accounting issues.

Complaint: Any complaint under Rule 206 that does not include privileged (non-public) information (18 CFR 385.206). Answers to complaints should also be filed under this category within 20 days of date the complaint is filed (18 CFR 385.206(f).

Peak Day Capacity Report: A report of available capacity filed by an interstate pipeline by March 1 each year, showing the estimated peak day capacity of the pipeline's system, and the estimated storage capacity and maximum daily delivery capability of storage facilities and the assignment of that capacity to the various firm services provided by the pipeline (18 CFR 284.13(d)).

Semi-Annual Storage Report Under part 157: Reports of storage activity filed by interstate pipelines for facilities under a blanket certificate or a certificate of public convenience and necessity (18 CFR 157.214; docket number known)

Semi-Annual Storage Report Under part 284: Reports of storage activity by interstate pipelines (18 CFR 284.13) and intrastate pipelines (18 CFR 284.126) filed at the end of each complete storage injection and withdrawal season (no docket number).

4. Oil Pipeline Program Area Filings:

Accounting Filing or Request: Any request for approval of accounting procedures or a filing related to accounting issues.

Complaint: Any complaint under Rule 206 that does not include privileged (non-public) information (18 CFR 385.206). Answers to complaints should also be filed under this category within 20 days of date the complaint is filed (18 CFR 385.206(f).

5. Hydropower Program Area Filings:

Annual Conveyance Report: A report filed by the licensee of a hydropower project, if required by its license, of conveyances of easements or rights-of-way across, or leases of, project lands that occurred in the previous year (18 CFR 141.15).

Annual Generation Report: A report filed by licensees of hydropower projects of more than 1.5 megawatts of installed capacity to enable the Commission to determine annual charges (18 CFR 11.1(c)(4)).

Complaint: Any complaint under Rule 206 that does not include privileged (non-public) information (18 CFR 385.206). Answers to complaints should also be filed under this category within 20 days of date the complaint is filed (18 CFR 385.206(f)).

Progress Report: Progress reports filed by a hydropower project licensee or preliminary permit holder in accordance with a license or preliminary permit requirement (file under 000 sub-docket for the project).

Request for Extension of Time (Hydro: Post-Licensing Only, Excluding Dam Safety-Related Extension Requests): Requests for extension of time to comply with filing schedules defined in the terms and conditions of a license or exemption and (*e.g.*, requests to extend due dates in license articles and settlement agreements incorporated into a license) and requests to extend due dates specified in postlicensing Commission and delegated orders.

Surrender of Exemption: Application filed requesting surrender of a conduit exemption (18 CFR 4.95) or for a 5MW exemption (18 CFR 4.102).

Surrender of License: Application filed requesting surrender of a license (18 CFR 6.1).

Surrender of Preliminary Permit: Petition requesting surrender of a preliminary permit (18 CFR 4.84).

[3] 18 CFR 385.211 and 18 CFR 343.3 (*see* also 18 CFR 4.5, 4.13, 4.23, 35.8(a), 154.210(a), 157.10, and 157.205(e)).

[4] 18 CFR 343.3(b).

[5] 18 CFR 385.214, 385.1306 (*See* also 18 CFR 35.8(a), 154.210(a) and (b), 157.210, 157.106, 343.2(a), and 380.10).

[FR Doc. 02–31317 Filed 12–11–02; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7420–7]

Agency Information Collection Activities: Continuing Collection; Comment Request; Registration of Fuels and Fuel Additives—Health-Effects Research Requirements for Manufacturers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Registration of Fuels and Fuel Additives—Health-effects Research Requirements for Manufacturers (40 CFR part 79, subpart F) (EPA ICR Number 1696.04, OMB Control Number 2060–0297, expiration date: 5–31–03). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 10, 2003.

ADDRESSES: Transportation and Regional Programs Division, Office of Transportation and Air Quality, Office of Air and Radiation, Mail Code 6406J, U.S. Environmental Protection Agency, Washington, DC 20460–0001. A paper or electronic copy of the ICR may be obtained without charge by contacting the person listed below.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, (202) 564–9303, fax: (202) 565–2085, *caldwell.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which manufacture or import gasoline or diesel fuel, or manufacture or import an additive for gasoline or diesel fuel.

Title: Registration of Fuels and Fuel Additives—Health-effects Research Requirements for Manufacturers (40 CFR part 79, subpart F), OMB Control Number 2060–0297, EPA ICR Number 1696.04, Expiring: 5–31–03.

Abstract: In accordance with the regulations at 40 CFR part 79, subparts

A, B, C, and D, Registration of Fuels and Fuel Additives, manufacturers (including importers) of gasoline and diesel fuel, and manufacturers (including importers) of additives for gasoline or diesel fuel, are required to have their products registered by EPA prior to their introduction into commerce. Registration involves providing a chemical description of the fuel or additive, and certain technical, marketing, and health-effects information. The development of health-effects data, as required by 40 CFR part 79, subpart F, is the subject of this ICR. The information collection requirements for subparts A through D, and the supplemental notification requirement of subpart F (indicating how the manufacturer will satisfy the research requirements) are covered by a separate ICR (EPA ICR Number 309.10, OMB Control Number 2060–1050). The health-effects information will be used to determine if there are any products whose evaporative or combustion emissions pose an unreasonable risk to public health, thus meriting further investigation and potential regulation. This information is required for specific groups of fuels and additives as defined in the regulations. For example, all gasolines and gasoline additives which consist of only carbon, hydrogen, oxygen, nitrogen, and/or sulphur, and which involve a gasoline oxygen content of less than 1.5 weight percent, fall into a "baseline" group. Oxygenates, such as ethanol and methyl tertiary butyl ether (MTBE), when used in gasoline at oxygen levels of at least 1.5 weight percent, define separate "nonbaseline" groups for each oxygenate. Additives which contain elements other than carbon, hydrogen, oxygen, nitrogen, and/or sulphur fall into separate "atypical" groups. There are similar grouping requirements for diesel fuels and additives.

Manufacturers may perform the research independently or may join with other manufacturers to share in the costs for each applicable group. Several research consortiums (groups of manufacturers) have been formed. The largest consortium, organized by the American Petroleum Institute (API), represents most of the manufacturers of baseline and nonbaseline gasolines, diesel fuels, and additives. The research is structured into three tiers of requirements for each group. Tier 1 requires an emissions characterization and a literature search for information on the health effects of those emissions. Voluminous Tier 1 data were submitted by API and others in 1997. Tier 1 data were submitted for biodiesel and a water/diesel fuel emulsion in 1998 and 2000, respectively. Tier 2 requires short-term inhalation exposures of laboratory animals to emissions to screen for adverse health effects. Alternative Tier 2 testing can be required in lieu of the standard Tier 2 if EPA concludes that such testing would be more appropriate. The EPA reached that conclusion with respect to gasoline and gasoline-oxygenate blends, and alternative requirements have been established for the API consortium for baseline gasoline and six gasoline-oxygenate blends. A similar situation exists with the Ethyl Corporation and its manganese additive MMT, and alternative requirements have been established. The API submitted Tier 2 data for diesel in 1997. Tier 2 data were submitted for biodiesel and a water/diesel fuel emulsion in 2000 and 2002, respectively. Tier 3 provides for follow-up research, if necessary. No Tier 3 requirements have been established, and it is unlikely that any will be during the next three years. Thus, Tier 3 is not addressed in this ICR. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: There are approximately 150 fuel manufacturers, 650 additive manufacturers, 600 registered fuels, and 5700 registered additives. Due to the costs, it is likely that only limited additional Tier 1 research will be done. Future fuels and additives will almost exclusively be those that can group with existing Tier 1 data, and likely will come from manufacturers that have already paid for the Tier 1 research. It is estimated that new Tier 1 research will cost $0.35 million per product, and that there will be only one Tier 1 submission per year over the next three years. Standard Tier 2 activity also will be very limited. The EPA has concluded that existing data cover standard Tier 2 for baseline diesel. Baseline gasoline, the six major nonbaseline gasoline oxygenates, and the atypical gasoline additive MMT, are subject to alternative Tier 2 requirements. It is estimated that new standard Tier 2 research will cost $1.5 million per product, and that there will be only one standard Tier 2 submission per year over the next three years. It is estimated that the alternative Tier 2 testing for gasoline and oxygenates will cost $15 million over five years. It is estimated that the alternative Tier 2 testing for MMT will cost $10 million over five years. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: December 4, 2002.

Deborah K. Wood,

Acting Director, Transportation and Regional Programs Division.

[FR Doc. 02–31360 Filed 12–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7421–5]

Agency Information Collection Activities: Proposed Collection Extension; Comment Request; Industry Detailed Questionnaire: Phase III Cooling Water Intake Structures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the U.S. Environmental Protection Agency (EPA or the "Agency") is planning to submit a request for a three-year extension of the following Information Collection Request (ICR) to the Office of Management and Budget (OMB): Industry Detailed Questionnaire: Phase II Cooling Water Intake Structures, EPA ICR No. 1838.01, OMB # 2040–0213 expiration December 31, 2002. Before submitting the request for extension to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 10, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Deborah Nagle at EPA by phone at (202) 566–1063, by Email at *nagle.deborah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Affected Entities

Entities potentially affected by this action are those existing facilities that use cooling water intake structures to withdraw water from waters of the U.S. for cooling purposes and that have or are required to have a National Pollutant Discharge Elimination System (NPDES) permit issued under section 402 of the Clean Water Act (CWA). In addition to the entities identified in the new facility rule, see 66 FR 65256 and 65257, this action may affect existing and new Offshore and Coastal Oil and Gas Extraction Facilities, and existing and new Offshore Seafood Processors because EPA did not survey these industry categories during the original information collection effort. In addition, EPA may contact approximately 25 Phase III facilities (Traditional Steam Electric Utilities, Nonutility Power Producers, Paper and Allied Products; Chemical and Allied Products; Petroleum and Coal Products; Primary Metals) because they did not fully answer the survey questions or because their responses were unclear and require additional inquiry.

B. How Can I Get Copies of the ICR Supporting Statement and Other Related Information?

Electronic Access. You may access this Federal Register document electronically through the EPA Internet under the "Federal Register" listings at *http://www.epa.gov/fedrgstr/*. You may download a copy of the ICR extension request at *http://www.epa.gov/icr* and refer to EPA ICR No. 1838.01, OMB # 2040–0213. You may obtain a copy of the Detailed Industry Questionnaire at *http://www.epa.gov/waterscience/316b* under the section, "Questionnaires for Existing Facilities."

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments in formulating a final decision. However, late comments may be considered if time permits.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *rule.316b@epa.gov*, Attention EPA ICR No. 1838.01. EPA's e-mail system is not an "anonymous access" system; EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

ii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified below. These electronic submissions will be accepted in WordPerfect. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send three copies of your comments to: Ms. Deborah G. Nagle, U.S. EPA, Engineering and Analysis Division (4303T), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention EPA ICR No. 1838.01.

3. *By Hand Delivery or Courier.* Deliver your comments to: Ms. Deborah G. Nagle, U.S. EPA, Engineering and Analysis Division (Room 6233N), 1301 Constitution Ave., NW., Washington, DC, 20004, Attention EPA ICR No. 1838.01. Such deliveries are only accepted during the normal hours of operation from 9 a.m. to 5 p.m..

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

E. What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collection of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, *e.g.*, permitting electronic submission of responses.

II. Title

Industry Detailed Questionnaire: Phase II Cooling Water Intake Structures (OMB # 2040–0213; EPA ICR No. 1838.01, expiring December 31, 2002). This is a request for extension which would increase the scope and burden of the original ICR.

III. Abstract

EPA is developing regulations implementing section 316(b) of the CWA, 33 U.S.C. 1326(b) pursuant to a Consent Decree in *Riverkeeper* v. *Whitman* [93 civ.0314 (AGS)] entered on October 10, 1995, which was subsequently amended on November 22, 2002, and again on November 25, 2002. Under the first amended consent decree, EPA proposed "Phase I" regulations for cooling water intake structures at certain new industrial facilities on July 20, 2000, took final action on the Phase I regulations on November 9, 2001, and proposed "Phase II" regulations for approximately 550 existing electric power generating plants on February 28, 2002. Under the terms of the second amended consent decree, must take final action on the Phase II regulations by no later than February 16, 2004. Under the Second Amended Consent Decree, EPA must also propose "Phase III" regulations by November 1, 2004 and take final action on these regulations by June 1, 2006. The Phase III regulations must, at a minimum, address existing utility and non-utility power producers not covered by the Phase II Regulations; and other industrial facilities that employ cooling water intake structures.

In accordance with the Paperwork Reduction Act ("PRA") (44 U.S.C. 3501, *et seq.*), this notice announces that the U.S. Environmental Protection Agency (EPA or the "Agency") plans to submit a request for a three-year extension of the Information Collection Request (ICR) entitled, "Industry Detailed Questionnaire: Phase III Cooling Water Intake Structures (EPA ICR No. 1838.01, OMB # 2040–0213)" to the Office of Management and Budget (OMB) for review and approval. Note that the Agency is substituting the term "Phase III" for "Phase II" to correspond to the structure of the rulemaking. EPA plans to request OMB approval to extend the survey for facilities potentially subject to Phase III of the cooling water intake structure rulemaking effort. The offshore and coastal oil and gas extraction facilities and offshore seafood processing facilities would be most likely affected by extension of the data collection effort because EPA did not survey these industries during the original information collection request effort. EPA did not survey these industries because, at the time, EPA was not aware that these facilities used cooling water in volumes potentially subject to regulation under section 316(b) of the CWA. Information provided in public comments on EPA's "Phase I" regulatory proposal for new power plants and industrial facilities made EPA aware of the use of cooling water by these facilities and prompted EPA to defer consideration of these categories until the Phase III rule.

The Offshore and Coastal Oil and Gas Extraction category contains a large number of facilities and it presents unique engineering, cost, and economic issues associated with drilling rigs, ships, and platforms. EPA has acquired current industry surveys and commercial databases that identify offshore and coastal oil and gas extraction facilities in the Gulf of Alaska, California, and the Gulf of Mexico. Preliminary information indicates that there are about 200 offshore oil and gas platforms and mobile drilling units that are potentially subject to the Phase III regulation. Approximately 100 businesses own these platforms and mobile drilling units. Through these sources, EPA has obtained sufficient current technical data on offshore and coastal oil and gas extraction facilities and does not intend to collect additional technical data through the Detailed Industry Survey. However, EPA does not have current economic and financial data on these facilities and intends to send selected sections of the detailed questionnaire that cover scope and economic data to offshore and coastal oil and gas extraction firms.

The offshore seafood processing industry also proposes some unique regulatory issues. EPA has begun to collect publicly available information on seafood processing vessels to identify uses and volumes of cooling water, numbers of facilities, where they are located, and how many of them are small businesses. Data collected to date confirm that seafood processing plants (floating vessels or on-board factory trawlers) use cooling water mainly for cooling of diesel engines and generators and equipment during desalinization processes (condensation of steam). Data also indicate that these vessels withdraw volumes of cooling water that may make them potentially subject to regulation under section 316(b). EPA does not have sufficient current technical data on the offshore seafood processing industry to determine the impact the Phase III rule would have on the industry. Therefore, EPA proposes to collect additional technical, economic and financial data on seafood processing plants (floating vessels or on-board factory trawlers). First, EPA intends to send the Industry Short Technical Questionnaire to all the known offshore seafood processing facilities to determine which ones would potentially be affected by the Phase III rule. To reduce burden, EPA proposes to delete some of the questions in section 3 (Design and Operational Data for cooling Water Intake Structures and Cooling Water Systems) that do not apply to this industry. EPA then intends to send the Detailed Industry Questionnaire to a subset of potentially affected facilities. To reduce burden, EPA proposes to delete most of the questions in part 2 (Technical Data). Deleted questions are identified in the revised ICR supporting document.

EPA plans to use the information collected from the detailed questionnaire to assess the potential economic impacts of Phase III regulations on potentially affected facilities. The survey would also collect economic data on facility ownership, major production activities, markets and finances. The Agency will use this information to assess facility-level and firm-level impacts of complying with the proposed Phase III cooling water intake structure regulations as appropriate under CWA section 316(b). The economic data will also enable EPA to carry out required analyses, including a Regulatory Impact Analysis (RIA), a cost/benefit analysis, and a small business analysis.

EPA's authority to collect this information is fully discussed in the ICR supporting document. In summary, section 308 of the CWA authorizes EPA to collect technical, biological and financial data to support the rulemaking process. The ICR for the Industry Detailed Questionnaire: Phase III Cooling Water Intake Structures matches the purpose authorized under section 308, therefore responses to the detailed questionnaire are mandatory. In accordance with 40 CFR part 2, subpart B, § 2.203, the survey will inform respondents of their right to claim information as confidential. The survey provides instructions on the procedures for making Confidential Business Information (CBI) claims, and the respondents also will be informed of the terms and rules governing protection of CBI obtained under the CWA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The Federal Register document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 26, 1998 (63 FR 3738); 363 comments were received. Based on these comments and the pretest results, EPA significantly modified the questionnaire.

IV. Burden Statement

The annual public reporting and recordkeeping burden for the detailed questionnaire is estimated to be about 45 hours per response for offshore oil and gas extraction facilities. The public reporting and recordkeeping burden for offshore seafood processing facilities would be 8 hours per response on the Industry Short Technical Questionnaire, and 56 hours per response on the Detailed Industry Questionnaire. These estimates are based upon estimates in the OMB approved ICR, taking into account the reduced burden from deleted questions. The respondent burden in the original approved ICR was 128,736 hours and the non-labor cost was $13,635. The total burden associated with this extension is articulated below and reflects the changes in applicable respondents described in section III of this notice:

Estimated Number of Respondents for Detailed Questionnaire: 250 (100 Offshore and Coastal Oil and Gas Extraction firms and 150 Offshore Seafood Processors).

Estimated Number of Respondents for Short Technical Questionnaire: 800.

Frequency of Response: one-time submission.

Estimated Burden: 19,300 hours.

Estimated Cost (non-labor costs): $3,950.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: December 9, 2002.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 02–31362 Filed 12–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7420–6]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree which was lodged with the United States District Court for the District of Columbia by the United States Environmental Protection Agency on November 14, 2002, to address two lawsuits filed by the New York Public Interest Research Group, Inc. and the Sierra Club and Georgia ForestWatch. The lawsuits were filed pursuant to section 304(a) of the Act, 42 U.S.C. 7604(a), and allege that the Administrator failed to meet a mandatory sixty day deadline under section 505(b)(2) of the Act, 42 U.S.C. 7661d(b)(2), for granting or denying petitions seeking the Agency's objection to eleven Clean Air Act Title V operating permits issued by the New York State Department of Environmental Conservation and eight Title V operating permits issued by the Georgia Environmental Protection Division. The lawsuits have been consolidated and both are addressed by the proposed consent decree, which establishes a schedule for the Administrator to respond to the outstanding petitions that are subject to the lawsuits.

DATES: Written comments on the proposed consent decree must be received by January 13, 2003.

ADDRESSES: Written comments should be sent to Padmini Singh (on the New York petition deadlines) or Kerry E. Rodgers (on the Georgia petition deadlines), Air and Radiation Law Office (MC 2344A), Office of General Counsel, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Copies of the proposed consent decree are available from Phyllis J. Cochran, (202) 564–7606. A copy of the proposed consent decree was lodged with the Clerk of the United States District Court for the District of Columbia on November 14, 2002.

SUPPLEMENTARY INFORMATION: New York Public Interest Research Group, Inc. ("NYPIRG") alleges that the United States Environmental Protection Agency ("EPA") Administrator failed to meet a mandatory sixty day deadline under section 505(b)(2) of the Act, 42 U.S.C. 7661d(b)(2), for granting or denying petitions seeking EPA's objection to eleven Title V operating permits issued by the New York State Department of Environmental Conservation. Sierra Club and Georgia Forest Watch allege that the Administrator failed to meet the same deadline under section 505(b)(2) for granting or denying petitions seeking EPA's objection to eight Title V operating permits issued by the Georgia Environmental Protection Division.

Prior to negotiating the proposed consent decree, the Administrator signed orders responding to three petitions for New York facilities and three petitions for Georgia facilities that are subject to the lawsuits. The proposed consent decree establishes a schedule for EPA's responses to the remaining petitions that are subject to the lawsuits. Specifically, the proposed consent decree requires EPA to sign orders responding to the plaintiffs' petitions for the following facilities (listed with the states in which they are located) no later than the dates specified:

(a) King Finishing (GA)—October 15, 2002;

(b) Monroe Power (GA)—October 15, 2002;

(c) Shaw Industries, Plant No. 80 (GA)—November 15, 2002;
(d) Shaw Industries, Plant No. 2 (GA)—November 15, 2002;
(e) Oglethorpe Power Wansley Combined Cycle Energy Facility (GA)—November 15, 2002;
(f) Columbia University (NY)—December 15, 2002;
(g) Elmhurst Hospital (NY)—December 15, 2002;
(h) Starrett City (NY)—December 15, 2002;
(i) Bergen Point Sewage Treatment Plant (NY)—December 15, 2002;
(j) Maimonides Medical Center (NY)—December 15, 2002;
(k) Lovett Generating Station (NY)—January 30, 2003;
(l) Danskammer Generating Station (NY)—January 30, 2003;
(m) Con Edison 74th Street Station (NY)—January 30, 2003.

The proposed consent decree also requires EPA to provide the plaintiffs with notice of signature of each order within five business days following signature. In addition, the proposed consent decree requires EPA to deliver a notice of each order to the Office of Federal Register for prompt publication no later than thirty days following signature and to not take any steps to delay publication of such notice. After EPA has fulfilled all of its obligations under the proposed consent decree, the proposed consent decree will terminate and the lawsuits will be dismissed with prejudice.

For a period of thirty days following the date of publication of this notice, EPA will receive written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the lawsuits in question. EPA or the United States Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the United States Department of Justice determines, following the comment period, that consent is inappropriate, the final consent decree will be entered with the court and will establish deadlines for the Administrator's responses to the remaining petitions that are subject to the lawsuits in question.

Dated: December 4, 2002.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.

[FR Doc. 02–31359 Filed 12–11–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7419–8]

Clean Water Act Section 303(d): Availability of List Decisions

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of EPA decisions identifying water quality limited segments and associated pollutants in Arizona and Nevada to be listed pursuant to Clean Water Act Section 303(d)(2), and requests public comment. Section 303(d)(2) requires that states submit and EPA approve or disapprove lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

On December 5, 2002, EPA partially approved and partially disapproved Arizona's submittal. Specifically, EPA approved Arizona's listing of 32 waters, associated pollutants, and associated priority rankings. EPA disapproved Arizona's decisions not to list 19 water quality limited segments and associated pollutants, and additional pollutants for 3 water bodies already listed by the State. EPA identified these additional water bodies and pollutants along with priority rankings for inclusion on the 2002 Section 303(d) list.

On November 20, 2002, EPA partially approved and partially disapproved Nevada's submittal. Specifically, EPA approved Nevada's listing of 84 waters, associated pollutants, and associated priority rankings. EPA disapproved Nevada's decisions not to list 15 water quality limited segments and associated pollutants, and additional pollutants for 38 water bodies already listed by the State. EPA identified these additional water bodies and pollutants along with priority rankings for inclusion on the 2002 Section 303(d) list.

EPA is providing the public the opportunity to review its decisions to add waters and pollutants to Arizona and Nevada's 2002 Section 303(d) lists, as required by EPA's Public Participation regulations [40 CFR part 25]. EPA will consider public comments in reaching its final decisions on the additional water bodies and pollutants identified for inclusion on Arizona and Nevada's final lists.

DATES: Comments must be submitted to EPA on or before January 13, 2003.

ADDRESSES: Comments on the proposed decisions should be sent to David Smith, TMDL Team Leader, Water Division, U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 972–3416, facsimile (415) 947–3537, e-mail *smith.davidw@epa.gov*. Oral comments will not be considered. Copies of the proposed decisions concerning Arizona and Nevada which explain the rationale for EPA's decisions can be obtained at EPA Region 9's Web site at *http://www.epa.gov/region09/water/TMDL* by writing or calling Mr. Smith at the above address. Underlying documentation comprising the record for these decisions are available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: David Smith at (415) 972–3416 or *smith.davidw@epa.gov*.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish TMDLs according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of Section 303(d) of the CWA [40 CFR 130.7]. The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The lists of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years [40 CFR 130.7]. On March 31, 2000, EPA promulgated a revision to this regulation that waived the requirement for states to submit Section 303(d) lists in 2000 except in cases where a court order, consent decree, or settlement agreement required EPA to take action on a list in 2000 [65 FR 17170].

Consistent with EPA's regulations, Arizona submitted to EPA its listing decisions under Section 303(d)(2) on October 17, 2002. On December 5, 2002, EPA approved Arizona's listing of 32 waters and associated priority rankings. EPA disapproved Arizona's decisions not to list 19 water quality limited segments and associated pollutants, and additional pollutants for 3 water bodies already listed by the State. EPA identified these additional waters and pollutants along with priority rankings for inclusion on the 2002 Section 303(d) list. EPA solicits public comment on its identification of 19 additional waters and associated pollutants, and additional pollutants for 3 waters already listed by the State, for inclusion on Arizona's 2002 Section 303(d) list.

Consistent with EPA's regulations, Nevada submitted to EPA its listing decisions under Section 303(d)(2) on October 1, 2002. On November 20, 2002, EPA approved Nevada's listing of 84 waters and associated priority rankings. EPA disapproved Nevada's decisions not to list 15 water quality limited segments and associated pollutants, and additional pollutants for 38 water bodies already listed by the State. EPA identified these additional waters and pollutants along with priority rankings for inclusion on the 2002 Section 303(d) list. EPA solicits public comment on its identification of 15 additional waters and associated pollutants, and additional pollutants for 38 waters already listed by the State, for inclusion on Nevada's 2002 Section 303(d) list.

Dated: November 27, 2002.

Catherine Kuhlman,

Acting Director, Water Division, EPA Region IX.

[FR Doc. 02–31239 Filed 12–11–02; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting; Sunshine Act

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the January 9, 2003 regular meeting of the Farm Credit Administration Board (Board) will not be held. The FCA Board will hold a special meeting at 9 a.m. on Tuesday, January 7, 2003. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Acting Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: December 9, 2002.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 02–31407 Filed 12–9–02; 5:04 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

November 27, 2002.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 13, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1002.

Title: Cable Horizontal and Vertical Ownership Information Collection.

Form Number: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 146.

Estimated Time per Response: 30 mins. (0.5 hrs.).

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 162 hours.

Total Annual Costs: None.

Needs and Uses: Under Section 613(f) of the Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992, the FCC is directed to establish reasonable limits on the number of subscribers that may be reached through cable operators' owned or affiliated cable systems and on the number of channels that can be occupied by cable operators' owned or affiliated programming networks. This information collection will assist the Commission in its rulemaking proceeding revising these rules consistent with a court remand and reversal of previous rules.

OMB Control Number: 3060–0863.

Title: Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act (SHVA).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities.

Number of Respondents: 848.

Estimated Time per Response: 30 minutes (0.5 hrs.).

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 125,000 hours.

Total Annual Costs: None.

Needs and Uses: In February 1999, the FCC released a *Report and Order* (R&O), FCC 99–14, that described a method for measuring the Grade B signal strength at a household so that the satellite and broadcast industries and consumers would have a uniform method for calibrating actual household signal strength and thereby determine which consumers are "unserved" by over-the-air network signals. The written records of test results are made after testing and predicting the strength of a television station's signal. The R&O also endorsed a computer model to predict whether a household is likely to be able to receive a signal of the required strength. In May 2000, the FCC released a First Report and Order (First R&O), FCC 00–185, that prescribed an improved point-to-point predictive model (Individual Location Longley-Rice (ILLR)), which provides a reliable and presumptive means for determining whether the over-the-air signal of a network affiliated television station can be received at an individual location. The model can be refined when

additional data become available. Furthermore, the ILLR model significantly reduces the number of measurements conducted at individual households, thereby slowly negating the need for the rules mentioned in OMB's Terms of Clearance. In prescribing the ILLR model, the Commission is complying with new statutory requirements set forth in the Satellite Home Viewer Improvement Act of 1999 (SHVIA).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–31311 Filed 12–11–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2586]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

December 3, 2002.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, DC (202) 863–2893. Oppositions to these petitions must be filed by December 25, 2002. See section 1.4(b)(1) of the commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of the Telecommunications Act of 1996:

Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information (CC Docket No. 96–115).

Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended (CC Docket No. 96–149).

In the Matter of 2000 Biennial Regulatory Review—Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers (CC Docket No. 00–257).

Number of Petitions Filed: 4.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–31385 Filed 12–11–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, December 17, 2002, to consider the following matters:

Summary Agenda: No substantive discussion of the following item is anticipated. This matter will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Memorandum and resolution re: Delegations of Authority relating to FDIC Part 362—Investments in Equity Securities.

Discussion Agenda: Memorandum and resolution re: Notice of Proposed Rulemaking—12 CFR Part 308, Subpart U—Removal, Suspension and Debarment of Accountants from Performing Audit Services.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Ms. Valerie J. Best, Assistant Executive Secretary of the Corporation, at (202) 898–3742.

Dated: December 10, 2002.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 02–31544 Filed 12–10–02; 3:48 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Notices; Meeting

DATE AND TIME: Thursday, December 18, 2002, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and approval of minutes.

Election of officers.

Interim rules and explanation and justification for BCRA's Millionaire's Amendment.

Administrative matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer. Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–31520 Filed 12–10–02; 2:47 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10 a.m.—December 17, 2002

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Docket No. 98–14—Shipping Restrictions, Requirements and Practices of the People's Republic of China
2. Petition No. P2–02—Petition of the South Florida NVOCC–NAOCC Association, Inc. for an Investigation of the Service Contracting and Rating Practices of the Caribbean Shipowners Association
3. Docket No. 02–02—Canaveral Port Authority—Possible Violations of Section 10(b) (10), Unreasonable Refusal to Deal or Negotiate

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–31403 Filed 12–9–02; 8:59 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisition by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standard enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 7, 2003.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. *Healthcare Bancorp, Inc.*, Broken Arrow, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Federal BankCentre, Broken Arrow, Oklahoma.

Board of Governors of the Federal Reserve System, December 6, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–31262 Filed 12–11–02; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–10]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Geo-Analysis of HIV Prevention Services Provided by CDC Directly and Indirectly Funded Community-Based Organizations (CBOs) OMB No. 0920–0507—Extension—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

CDC proposes to continue the Geo-Analysis of HIV Prevention Services Provided by CDC Directly and Indirectly Funded Community-Based Organizations data collection, previously approved OMB No. 0920-0507. This request is for a 3-year extension of clearance. There are no revisions to the report forms, data definitions, or reporting instructions.

The purposes of this project are: (1) To contribute to a national database of HIV prevention activities that was constructed using geo-codes that identify, locate and map all CBOs directly and indirectly funded by CDC in the U.S. and its territories, and (2) to evaluate the comprehensiveness of HIV prevention services in geographic areas across the United States of America and territories through the use of Geographic Information Systems (GIS) technology as the primary analytical tool.

This database is housed in the Program Evaluation Research Branch (PERB), Division of HIV/AIDS Prevention, in the National Center for STD, TB and HIV, at the Centers for Disease Control and Prevention, and will interface with other databases to complement PERB's evaluation efforts. By using GIS to identify gaps in service provision within a given geographic area, program changes can be recommended to those health departments and CBOs participating in the project. These recommended changes may include adjusting services provided or target populations in an effort to close identified gaps. Collaboration between government agencies and CBOs with access to a particular group at risk has been a traditional approach in public health in the United States. CDC promotes the collaboration and coordination of HIV prevention efforts between CBOs and of CBOs with State health departments, affiliates of National and Regional Minority Organizations (NRMOs), HIV prevention service agencies, and other public agencies including substance abuse programs, educational institutions and the criminal justice system. CDC promotes collaboration as a strategy for: (1) Improving access to and for at risk populations and communities; (2) improving the direct delivery of services; (3) improving referral of clients to services; and (4) creating comprehensive HIV services in designated geographical jurisdictions. The use of GIS will enhance the accomplishment of these three goals by providing information to funders and other shareholders to enhance CBOs in their efforts to provide interventions and client referrals and services that are accessible to the populations in need of them. This data will assist the CDC to determine the effectiveness of federal funding, whether the funding is affecting the designated high risk or infected groups such as disproportionately affected minorities where they live, or whether or not there are available programs to link with for more comprehensive services.

The project will use appropriate technology to minimize respondent burden. A self-report questionnaire, three pages in length, will be mailed. Attached, will be two maps of the geographical area (city and surrounding metropolitan area) where each CBO is located. The use of maps eliminates the need to locate maps to respond to questions concerning location and distance. This project will not be requesting information of a sensitive nature. The project deals with the types of interventions offered to high risk or HIV positive individuals, location and access. The CDC anticipates one person per CBO (total # of approximately 2000) to complete the data collection form once during the 2000 for approximately 30 minutes.

Therefore, the total response burden is estimated at 1,000 hours (2000 × .5 × 1). The total cost to respondents is estimated at $17,000 assuming a working wage for assigned CBO personnel of $17.00 per hour. There are no costs to respondents for participation in the study other than the time (.5 hours) it takes to complete the questionnaire. There is no cost to respondents.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)	Total burden (in hours)
GIS Questionnaire for Directly and Indirectly Funded	2,000	1	30/60	1,000
Total				1,000

Dated: December 6, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–31388 Filed 12–11–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Title IV–E Foster Care Eligibility Reviews, Child and Family Services Reviews

OMB No. 0970–0214

Description: ACF is requesting authority to renew an existing information collection that is expiring April 4, 2003. The initial information collection was contained in the final rule transmitting the Department's monitoring protocols for assessing title IV–E eligibility and payment accuracy, the child and family services reviews (CFSR), enforcement of the title IV–E anti-discrimination requirements, and certain provisions of the Adoption and Safe Families Act of 1997. Five information collections are associated with this information collection.

The collection of information for review of Federal payments to States for foster care maintenance payments (section 1356.71(i)) is authorized by title IV–E of the Social Security Act (the Act), section 474 [42 U.S.C. 674]. The collection of information for review of State child and family services programs (section 1355.33(b), 1355.33(c), and 1355.33(a)) to determine whether such programs are in substantial conformity with State plan requirements under parts B and E of the Act is authorized by section 1123(a) [42 U.S.C. 1320a–1a] of the Act.

Section 474(d) of the Act [42 U.S.C. 674] deploys enforcement provisions (sections 1355.38(b) and (c)) for the requirements at section 471(a)(18) [42 U.S.C. 671] which prohibit the delay or denial of foster and adoptive placements based on the race, color, or national origin of any of the individuals involved. The enforcement provisions include the execution and completion of corrective action plans when a State is in violation of section 471(a)(18).

The information collection is needed (1) To conduct Federal onsite eligibility reviews of title IV–E of the Act, "Federal Payments for foster care and adoption assistance"; and (2) to monitor State plan requirements under titles IV–B and IV–E of the Act, as required by Federal statute and (3) to enforce the title IV–E anti-discrimination requirements through State corrective action plans. The resultant information will allow us to determine if States are in compliance with State plan requirements and are achieving desired outcomes for children and families, as well as assure eligibility for Federally-assisted foster care expenditures. These reviews not only address compliance with eligibility requirements, but also assist States in enhancing their capacities to serve children and families. In doing the OMB information collection, we based the annual burden estimates for the child and family service review instruments on the pilot reviews. We are therefore soliciting comments on the annual burden estimates from more accurate estimates of the annual burden. We would like to know the number of person-hours for State and local child welfare agency employees who completed the statewide assessment instrument, completed the onsite review instrument and completed a program improvement plan.

Respondents: State Agencies.

ANNUAL BURDEN ESTIMATES

Instruments	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
1355.33(b) State agency statewide assessment	17	1	240	4,080
1355.33(c) On-site review	17	1	900	15,300
1355.35(a) Program improvement plan	17	1	80	1,360
1355.38(b) and (c) Corrective action plan	5	1	80	400
1356.71(i) Program improvement plan	17	1	63	1,071
Estimated Total Annual Burden Hours:				22,211

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 4, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–31258 Filed 12–11–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Head Start Impact Study.

OMB No.: New Collection.

Description: The Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) of the Department of Health and Human Services (DHHS) is requesting comments on plans to conduct the Head Start Impact Study. This study is being conducted under contract with Westat, Inc. (with the Urban Institute, American Institutes for Research, and Decision Information Resources as their subcontractors) (#282–00–0022) to collect information for determining, on a national basis, how Head Start affects the school readiness of children participating in the program as compared to children not enrolled in Head Start and to determine under which conditions Head Start works best and for which children.

The Head Start Impact Study is a longitudinal study that will involve approximately 5,000–6,000 first time enrolled three- and four-year old preschool children across an estimated 75 nationally representative grantee/delegate agencies (in communities where there are more eligible children and families than can be served by the program). The participating children will be randomly assigned to either a Head Start group (that receives Head Start program services) or a comparison group (that does not receive Head Start services but may enroll in other available services selected by their parents or be cared for at home). Data collection for the study began in fall 2002 and extends through spring 2006 with child assessments, conducted in the fall and spring of the Head Start years and in the spring of the kindergarten and first grade years and parent interviews conducted in the fall and spring of each year. Interviews with teachers, care providers, and staff (setting interview), and quality of care assessments will be conducted each year. This schedule of data collection is necessitated by the mandate in Head Start's 1998 reauthorization (Coats Human Services Amendments of 1998, Pub. L. 05–285) that DHHS conduct research to determine, on a national level, the impact of Head Start on the children it serves.

A field test of instruments and procedures was conducted during fall 2001 and spring 2002. The field test involved approximately 450 first time enrolled three- and four-year old preschool children across eight grantee/delegate agencies representing different community contexts.

Respondents: Individuals or households, Head Start Agencies, School Districts, and other child care providers.

Annual Burden Estimates: Estimated Response Burden for Respondents to the Head Start Impact Study—Fall 2002, Spring 2003, Fall 2003, Spring 2004, Fall 2004, Spring 2005, Fall 2005, and Spring 2006.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Year 1 (Fall 2002):				
Parent interviews	5,111	1	1.00	5,111
Child Assessments	5,111	1	0.9166	4,685
Year 1 (Sprint 2003):				
Parent interviews	4,599	1	1.00	4,599
Father questionnaire	4,599	1	0.50	2,300
Child assessments	4,599	1	0.9166	4,216
Teacher provider ratings	966	5	0.0833	403
Center Directors/Principals Staff	368	1	0.25	92
Classroom teachers	736	1	0.50	368
Other care providers	230	1	0.50	115
Year 2 (Fall 2003):				
Parent interviews	4,139	1	1.00	4,139
Child assessments	2,287	1	0.9166	2,096
Year 2 (Spring 2004):				
Parent interviews	3,910	1	1.00	3,910
Child assessments	3,910	1	0.9166	3,584
Teach provider ratings	803	5	0.0833	335
Center directors/Principals/Staff	349	1	0.25	87
Classroom teachers	700	1	0.50	350
Other care providers	103	1	0.50	52
Year 3 (Fall 2004):				
Parent interviews	3,519	1	1.00	3,519
Year 3 (Spring 2005):				
Parent interviews	3,519	1	1.00	3,519
Child assessments	3,519	1	0.9166	3,226
Teacher ratings	704	5	0.0833	293
Principals/Staff	352	1	0.25	88
Classroom teachers	704	1	0.50	352
Year 4 (Fall 2005):				
Parent interviews	1,667	1	1.00	1,667

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Year (Spring 2006):				
Parent interviews	1,667	1	1.00	1,667
Child assessments	1,667	1	0.9166	1,528
Teacher ratings	333	5	0.0833	139
Principals/Staff	167	1	0.25	42
Classroom teachers	333	1	0.50	167
Annualized Totals:				
Year 1				21,889
Year 2				14,553
Year 3				10,997
Year 4				5,210
Estimated Total Annual Burden Hours				13,162

Note: The 13,745 Total Annual Burden Hours is based on an average of 2002–03, 2003–04, 2004–05, 2005–06 estimated burden hours.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 4, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–31260 Filed 12–11–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Court Improvement Program.

OMB No.: New.

Description: The Court Improvement Program provides grants to State court systems to conduct assessments of their foster care and adoption laws and judicial processes, and to develop and implement a plan for system improvement. This Program Instruction (1) describes the requirements for states under the reauthorization of the Court Improvement Program; (2) outlines the programmatic and fiscal provisions and reporting requirements of the program; (3) specifies the application submittal and approval procedures for the program for Fiscal Years 2003 through 2006; and (4) identifies technical resources for use by State courts during the course of the program. This Program Instruction contains information collection requirements that are found in Public Law 103–66, as amended by Public Law 105–89 and Public Law 107–133, and pursuant to receiving a grant award. The information received will be used by the agency to ensure compliance with the statute and provide training and technical assistance to the grantees.

Respondents: State Courts.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	52	1	40	2,080
Annual Program Report	52	1	36	1,872
Estimated Total Annual Burden Hours				3,952

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503. Attn: Desk Officer for ACF.

Dated: December 4, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–31259 Filed 12–11–02; 8:45 am]

BILLING CODE 41184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Indian Health Service Medical Staff Credentials and Privileges Files

AGENCY: Indian Health Service, HHS.

ACTION: Request for public comment: 30-day proposed collection: Indian Health Service medical staff credentials and privileges files.

SUMMARY: The Indian Health Service (IHS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. As required by section 3507(a)(1)(D) of the Act, the proposed information collection has been submitted to the Office of Management and Budget (OMB) for review and approval.

The IHS received comments in response to the 60-day **Federal Register** notice (67 FR 50892) published on August 6, 2002. The public comments received in response to the notice and the agency responses are summarized and addressed below.

Comment: One comment questioned the accuracy of the public burden estimate for this collection of information by indicating the burden estimate seemed to be too low.

Agency response: The burden estimate was checked by having additional clinical staff review and complete the application formats. This consultation was conducted within the Department of Health and Human Services with the Federal Credentialing Program, and with several Department of Defense (DoD) hospital medical staff members. They confirmed the accuracy of the burden hour estimates for formats used in this information collection activity and the burden for the Application to Medical staff was increased accordingly. They made no specific recommendations to change any of the application formats or process.

Comments: One comment suggested we consider the time burden spent by agency staff on this activity.

Agency response: The time spent by agency staff to handle and process this data collection is not considered in the "public" burden estimate. However, the agency is examining methods to reduce the time it takes agency staff to process this required data.

Comment: One comment suggested IHS centralize or regionalize the credentialing process and make it a web-based format.

Agency response: Agency staff responsible for oversight of the medical staff credentials and privileges application process are currently collaborating with the Veterans Health Administration and DoD health program staff to make cost-appropriate advances and improvements in the credentials process and to automated appropriate portions of the credentials and privileges process. At present, automation of this process and use of a data repository like the Federal Credentialing Program or other complex relational databases is prohibitively expensive for the IHS. It is hoped that the collaboration will result in the automation and/or centralization/regionalization of some aspects of the agency's credentialing process and thereby reduce the public burden to provide the data and the agency staff time needed to process the data.

Comment: One comment suggested IHS implement a nationwide corporate credentialing service with staff trained in the credentialing process.

Agency response: The collaboration discussed above will address this suggestion.

Comment: One comment suggested the credentialing process include a "criminal background check".

Agency response: The criminal background check is not a part of the IHS credentialing process. However, Public Law 101–630, the Indian Child Protection and Family Violence Protection Act, requires that all IHS employees, including the medical staff, with potential direct or unobserved contact with kids be checked for any history of criminal acts against children. In addition, the Division of Commissioned Personnel, United States Public Health Service, conducts a criminal background check as part of its Childcare National Agency Check with Written Inquiries (CNACI) system on all new appointees.

The purpose of this notice is to allow an additional 30 days for public comment to be submitted directly to OMB.

Proposed Collection

Title: 09–17–0009, "Indian Health Service Medical Staff Credentials and Privileges Files." Type of Information Collection Request: Extension of a currently approved information collection, 09–17–0009, "Indian Health Service Medical Staff Credentials and Privileges Files." Form Number: Instructions and information collection formats are contained in IHS Circular No. 95–16, "Credentials and Privileges Review Process for the Medical Staff." Need and Use of Information Collection: The IHS operates health care facilitates that provide health care services to American Indians and Alaska Natives. To provide these services, the IHS employs (directly and under contract) several categories of health care providers including: physicians (M.D. and D.O.), dentists, psychologists, optometrists, podiatrists, audiologists, physician assistants, certified registered nurse anesthetists, nurse practitioners, and certified nurse midwives. IHS policy specifically requires physicians and dentists to be members of the health care facility medical staff where they practice. Health care providers become medical staff members, depending on the local health care facility's capabilities and medical staff bylaws. There are three types of IHS medical staff applicants: (1) Health care providers applying for direct employment with IHS (2) contract health care providers who will not seek to become IHS employees; and (3) employed IHS health care providers who seek to transfer between IHS health care facilities.

National health care standards developed by the Health Care Financing Administration and by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) require health care facilities to review, evaluate and verify the credentials, training and experience of medical staff applicants prior to granting medical staff privileges. To meet these standards, IHS health care facilities require each medical staff applicant to provide information concerning their education, training, licensure, and work experience and any adverse disciplinary actions taken against them. This information is then verified with references supplied by the applicant and may include: former employers, educational institutions, licensure and certification boards, the American Medical Association, the Federation of State

Medical Boards, the National Practitioner Data Bank, and the applicants themselves.

In addition to the initial granting of medical staff membership and clinical privileges, JCAHO standards require that a review of the medical staff be conducted not less than every two years. This review evaluates the current competence of the medical staff and verifies whether they are maintaining their licensure and the certification requirements of their specialty.

The medical staff credentials and privileges records are maintained at the health care facility where the health care provider is a medical staff member. The establishment of these records at IHS health care facilities is not optional; such records must be established and maintained at all health care facilities in the United States that are accredited by JCAHO. This information collection activity is used to evaluate individual health care providers applying for medical staff privileges at Indian Health Service (IHS) health care facilities.

Affected Public: Individuals, Businesses or other for-profit, Not-for-profit institutions and State, local or Tribal Government.

Type of Respondents: Health care providers requesting medical staff privileges at IHS health facilities.

The table below provides the following: Types of data collection instruments, estimated number of respondents, number of responses per respondent, annual number of responses, average burden hour per response, and total annual burden hour.

Data collection instrument	Estimated number of respondents	Responses per respondent	Annual number of responses	Average burden hour per response*	Total annual burden hours
Application to Medical Staff	600	1	600	1.00 (60 mins)	600.0
Reference letter	1,800	1	1,800	0.33 (20 mins)	600.0
Reappointment request	644	1	644	1.00 (60 mins)	644.0
Medical Privileges	387	1	387	1.00 (60 mins)	387.0
Ob-Gyn Privileges	25	1	25	1.00 (60 mins)	25.0
Surgical Privileges	23	1	23	1.00 (60 mins)	23.0
Psychiatric Privileges	18	1	18	1.00 (60 mins)	18.0
Anesthesia Privileges	16	1	16	1.00 (60 mins)	16.0
Dental Privileges	128	1	128	0.33 (20 mins)	42.2
Optometric Privileges	21	1	21	0.33 (20 mins)	6.9
Psychology Privileges	23	1	23	0.17 (10 mins)	4.0
Audiology Privileges	6	1	6	0.08 (5 mins)	0.5
Podiatric Privileges	6	1	6	0.08 (5 mins)	0.5
Radiology Privileges	9	1	9	0.33 (20 mins)	3.0
Pathology Privileges	3	1	3	0.33 (20 mins)	1.0
Total	3,709				2,371.0

*For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Cost, Operating Costs and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Send your written comments and suggestion regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time, to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, *Attention:* Allison Eydt, Desk Officer for IHS.

Send requests for more information on the proposed collection or to obtain a copy of the data collection instrument(s) and instructions to: Mr. Lace Hadohkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852, 1601, call non-toll free (301) 443–1116, send via facsimile to (301) 443–2316, or send your E-mail requests, comments, and return address to: *1hodahkw@hqe.ihs.gov.*

FOR FURTHER INFORMATION CONTACT: Directly pertaining to the proposed data collection instruments and/or the process, please contact Katherine Ciacco Palatianos, MD, 801 Thompson Avenue, Suite 320, Rockville, Md 20852–1627, Telephone (303) 443–1479.

Comment Due Date: Your comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: December 3, 2002.

Robert G. McSwain,

Acting Interim Director.

[FR Doc. 02–31251 Filed 12–11–02; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Proposed Information Collection

AGENCY: Office of the Secretary, Interior.

ACTION: Notice and request for comments.

SUMMARY: The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms may be obtained by contacting the Office's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Office of Management and Budget.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by January 13, 2003, in order to be assured of consideration.

ADDRESSES: Office Information and Regulatory Affairs, Office of Management and Budget, Attention, Department of the Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John Moresko, Department of the Interior, 1849 C Street NW., MS–5512, Washington, DC 20240 or electronically to *john_moresko@ios.doi.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related forms, contact John Moresko at (202) 208–5704, or electronically to *john_moresko@ios.doi.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection activity that the Office of the Secretary will be submitting to OMB for extension or re-approval.

Form DI–381 and Form DI–382 were created because of the amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Act) made by the Uniform Relocation Act Amendments of 1987, Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Public Law 100–17.

The Office of the Secretary will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany the Office of the Secretary's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Titles: Claim For Relocation Payments-Residential, Claim for Relocation Payments-Nonresidential.

OMB Approval Number: 1084–0010.

Summary: The information on the application will be used to determine the amount of money, if any, owed to persons or businesses displaced by Federal acquisition of their real property.

Bureau Form Number(s): DI–381, DI–382.

Frequency of Collection: On occasion.

Description of Respondents: Individuals and businesses who are displaced because of Federal acquisition of their real property.

Total Annual Responses: 200.

Total Annual Burden Hours: 88.

Dated: December 9, 2002.

Debra Sonderman,

Director, Office of Acquisition and Property Management.

[FR Doc. 02–31307 Filed 12–11–02; 8:45 am]

BILLING CODE 4310–RF–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection for Part 13, Tribal Reassumption of Jurisdiction Over Child Custody Proceedings

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of renewal and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 this notice announces that the Bureau of Indian Affairs is seeking to extend clearance for an information collection request. The information collection, Tribal Reassumption of Jurisdiction over Child Custody Proceedings, is cleared under OMB Control Number 1076–0112. Interested parties are invited to comment on this collection.

DATES: Submit comments on or before February 10, 2003.

ADDRESSES: Written comments should be sent directly to Larry Blair, Bureau of Indian Affairs, Branch of Tribal Government, Division of Social Services, 1849 C Street NW., (MS–4660–MIB), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain copies of the information collection requests without charge by contacting Mr. Larry Blair, (202) 208–2479, Facsimile number (202) 208–5113.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department has issued regulations prescribing procedures by which an Indian tribe may reassume jurisdiction over Indian child proceedings when a state asserts any jurisdiction. Tribes have the right to pursue this alternative because this action is authorized by the Indian Child Welfare Act, Pub. L. 95–608, 92 Stat. 3069, 25 U.S.C. 1918.

II. Request for Comments

The Department invites comments on:

(1) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility;

(2) The accuracy of the Bureau's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and,

(4) Ways to minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other collection techniques or forms of information technology.

Please note, any comments, names and addresses concerning this submission are available for public review during regular business hours (8 a.m. to 4:30 p.m). If you wish your name and address withheld you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

III. Data

Title of the Information Collection: Tribal Reassumption of Jurisdiction Over Child Custody Proceedings.

Summary of Collection of Information: The collection of information will ensure that the provisions of Pub. L. 95–608 are met.

Affected Entities: Federally recognized tribes who submit tribal reassumption petitions for review and approval by the Secretary of the Interior.

Frequency of Response: Annually.

Estimated Number of Annual Responses: 2.

Estimated Time Per Application: 8 hours.

Estimated Total Annual Burden Hours: 16 hours.

Dated: December 4, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–31312 Filed 12–11–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–02–1232–EB–AZ11; 8371]

Notice of Proposed Supplementary Rules on Public Lands Within all Arizona and California Long-Term Visitor Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Publication of supplementary rules for Long-Term Visitor Areas managed by the California Desert District office, California, and the Yuma Field Office, Arizona.

SUMMARY: The Bureau of Land Management (BLM) Yuma Field Office, Palm Springs Field Office, and El Centro Field Office are proposing revised supplementary rules applying to the Long-Term Visitor Area (LTVA) Program. The program, which was instituted in 1983, established designated LTVAs and identified an annual long-term use season from September 15 to April 15. During the long-term season, visitors who wish to camp on public lands in one location for extended periods must stay in the designated LTVAs and purchase an LTVA permit. The revised supplementary rules are necessary to allow safe accommodation by BLM of increasing demand for long-term winter visitation and provide for protection of natural resources through improved management.

DATES: Comments on the supplementary rules must be received or postmarked by January 13, 2003 to be assured consideration. In developing final supplementary rules, BLM may not consider comments postmarked or received in person or by electronic mail after this date.

ADDRESSES: Internet e-mail: *Mark_Lowans@blm.gov*. Mail, personal, or messenger delivery: Yuma Field Office, 2555 East Gila Ridge Road, Yuma, Arizona 85365 (Attention: Mark Lowans); Palm Springs Field Office, 690 West Garnet Avenue, North Palm Springs, California 92258 (Attention: Anna Atkinson); or El Centro Field Office, 1661 South Fourth Street, El Centro, California 92243 (Attention: Bob Haggerty).

FOR FURTHER INFORMATION CONTACT: Mark Lowans, Outdoor Recreation Planner, telephone (928) 317–3210; or Anna Atkinson, Outdoor Recreation Planner, telephone (760) 251–4800; or Bob Haggerty, Outdoor Recreation Planner, telephone (760) 337–4400; or by e-mail: *Mark_Lowans@blm.gov*.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Please submit your comments on issues related to the proposed supplementary rules, in writing, according to the **ADDRESSES** section above. Comments on the supplementary rules should be specific, should be confined to issues pertinent to the supplementary rules, and should explain the reason for any recommended change. When possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

BLM may not necessarily consider or include in the Administrative Record for the final supplementary rules, comments that BLM receives after the close of the comment period or comments delivered to an address other than those listed above.

BLM will make your comments, including your name and address, available for public review at the Yuma Field Office, BLM located at 2555 Gila Ridge Road, Yuma, Arizona, 85365 during regular business hours (7:45 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays). Under certain conditions, BLM can keep your personal information confidential. You must prominently state your request for confidentiality at the beginning of your comment. You may include reasons for your request. BLM will consider withholding your name, street address, and other identifying information on a case-by-case basis to the extent allowed by law. BLM will make available to the public all submissions from organizations and businesses and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Discussion of the Supplementary Rules

These supplementary rules will apply to all lands within designated Long-Term Visitor Areas in Arizona and California. The BLM has determined these supplementary rules are necessary to protect the natural resources and to provide for safe public recreation and public health, to reduce the potential for damage to the environment, and to enhance the safety of visitors. The purpose of the LTVA program is to provide areas for long-term winter camping use. The sites designated as LTVAs are, in most cases, the traditional use areas of long-term visitors. Designated sites were selected using criteria developed during the land management planning process, and BLM wrote environmental assessments for each site location.

The program was established for safe and proper accommodation of the increasing demand for long-term winter visitation and for natural resource protection through improved management of this use. The designation of LTVAs ensures that specific locations are available for long-term use year after year, and that inappropriate areas are not used for extended periods.

Visitors may camp without an LTVA permit outside LTVAs, for up to 14 days in any 28-day period, on public lands not otherwise posted or closed to camping.

The authority for the designation of LTVAs is contained in 43 CFR 8372.0–3 and 8372.0–5(g). The authority for the establishment of an LTVA program is contained in 43 CFR 8372.1. The authority for the payment of fees is contained in 36 CFR subpart 71. The authority for establishing supplementary rules is contained in 43 CFR 8365.1–6. The LTVA supplementary rules have been developed to meet the goals of individual resource management plans. These rules will be available in each local office having jurisdiction over the lands, sites, or facilities affected, and will be posted near and/or within the lands, sites, or facilities affected. Violations of supplementary rules are punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

III. Procedural Information

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of $100 million or more on the economy. They are directed at the effective management of developed Long-Term Visitor Areas. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the supplementary rules clearly stated?

(2) Do the supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity.

(4) Would the supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the supplementary rules? How could this description be more helpful in making the supplementary rules easier to understand?

Please send any comments you have on the clarity of the supplementary rules to the addresses specified in the **ADDRESSES** section.

National Environmental Policy Act

BLM has prepared environmental assessment documents including the Yuma Resource Management Plan and Environmental Impact Statement dated 1988; La Posa Interdisciplinary Management Plan and Environmental Assessment dated July 1997; California Desert Conservation Area Plan as amended and final Environmental Impact Statement and Proposed Plan dated 1980 and has found that the supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The supplementary rules will enable effective BLM management of its Long-Term Visitor Areas for the public. BLM has placed the Environmental Assessment (EA) and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. BLM invites the public to review these documents and suggests that anyone wishing to submit comments in response to the EA and FONSI do so to the addresses in the **ADDRESSES** section above.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, (RFA) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact either detrimental or beneficial, on a substantial number of small entities. The supplementary rules do not pertain specifically to commercial or governmental entities of any size, but contain rules to protect the health and safety of individuals, property, and resources on the public lands. Therefore, BLM has determined under the RFA that these supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a "major rule" as defined in SBREFA at 5 U.S.C. 804(2). Again, the supplementary rules pertain only to individuals who wish to camp on public lands. In this respect, the regulation of such use is necessary to protect the public lands, facilities, and those, including small business concessioners, who use them. The supplementary rules have no effect on business, commercial, or industrial use of the public lands.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor do these supplementary rules have a significant or unique effect on state, local, or tribal government or the private sector. The supplementary rules do not require anything of state, local, or tribal governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules do not address property rights in any form and do not cause the impairment of anyone's property rights. Therefore, the Department of the Interior has determined that the supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The supplementary rules will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The supplementary rules apply in Arizona and California, and do not address jurisdictional issues involving the State governments. Therefore, in accordance with Executive Order 13132, BLM has determined that these supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with E.O. 13175, we have found that this final rule would not include policies that have tribal implications. The rule would not affect lands held for the benefit of Indians, Aleuts, and Eskimos. The rule would apply only to persons engaged in long-term camping on certain designated public lands in Arizona and California.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a significant energy action. It will not have an adverse effect on energy supplies. It will have no discernible effect on the production or sale of energy minerals, and any effect on the consumption of such minerals, either in manufacturing camping and mobile home or trailer equipment or traveling to LTVA areas, will be imperceptible, since the provision should not have a measurable effect on either activity.

Paperwork Reduction Act

The supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of these supplementary rules is Mervin G. Boyd of the Yuma, Arizona, Field Office, assisted by Ted Hudson of the Regulatory Affairs Group, Washington Office, BLM.

For the reasons stated in the Preamble, and under the authority of 43

CFR 8365.1–6, the Bureau of Land Management proposes supplementary rules for public lands in Arizona and California, to read as follows:

Dated: July 19, 2002.

Carl Rountree,

State Director, Arizona.

James Wesley Abbott,

Acting State Director, California.

Supplementary Rules on Use of Long-Term Visitor Areas in Arizona and California

The following are the supplemental rules for the designated Long Term Visitor Areas (LTVAs) and are in addition to rules of conduct set forth in 43 CFR subpart 8365. The supplemental rules apply year-long to all public land users who enter the LTVAs.

Sec. 1 Permit Requirements and Fees

You must have a permit to camp in a designated LTVA between September 15 and April 15. The permit authorizes you to camp within any designated LTVA using those camping or dwelling unit(s) indicated on the permit between the period from September 15 to April 15. There are two types of permits: Long-term and Short-visit. The long-term permit fee is $125.00, U.S. funds only, for the entire season and any part of the season. The short-term permit is $25.00, U.S. funds only, for 14 consecutive days. The short-visit permit may be renewed an unlimited number of times for the cost of $25.00 for 14 consecutive days. BLM will not refund permit fees.

Sec. 2 Displaying the Permit

To make it valid, at the time of purchase, you must affix your short-visit permit decal or long-term permit decal, using the adhesive backing, to the bottom right-hand corner of the windshield of all transportation vehicles and in a clearly visible location on all camping units. You may use no more than 2 secondary vehicles within the LTVA.

Sec. 3 Permit Transfers

You may not reassign or transfer your permit.

Sec. 4 Permit Revocation

An authorized BLM officer may revoke, without reimbursement, your LTVA permit if you violate any BLM rule or regulation, or if your conduct or that of your family or guest is inconsistent with the goal of BLM's LTVA Program. Failure to return any LTVA permit to an authorized BLM officer upon demand is a violation of these supplementary rules. If BLM revokes your permit, you must remove all of your property and leave the LTVA system within 12 hours of notice, and you may not enter any other LTVA in Arizona or California for the remainder of the LTVA season.

Sec. 5 Unoccupied Camping Units

Do not leave your LTVA camping unit or campsite unoccupied for a period of greater than 5 days unless an authorized BLM officer approves in advance.

Sec. 6 Parking

For your safety and privacy, you must maintain a minimum of 15 feet of space between dwelling units.

Sec. 7 Removal of Wheels and Campers

Campers, trailers, and other dwelling units must remain mobile. Wheels must remain on all wheeled vehicles. You may set trailers and pickup campers on jacks manufactured for that purpose.

Sec. 8 Quiet Hours

Quiet hours are from 10 p.m. to 6 a.m. under applicable state time zone standards, or as otherwise posted.

Sec. 9 Noise

Do not operate audio devices or motorized equipment, including generators, in a manner that makes unreasonable noise as determined by the authorized BLM officer. Outdoor amplified music is allowed only within La Posa and Imperial Dam LTVAs and only in locations designated by BLM and when approved in advance by an authorized BLM officer.

Sec. 10 Access

Do not block roads or trails commonly in public use with your parked vehicles, stones, wooden barricades, or by any other means.

Sec. 11 Structures and Landscaping

a. Fixed fences, dog runs, storage units, windbreaks, and other such structures are prohibited. Temporary structures of these types must conform to posted policies.

b. Do not alter the natural landscape by painting rocks or defacing or damaging any natural or archaeological feature.

Sec. 12 Livestock

Do not board or keep livestock (horses, cattle, sheep, goats, etc.) within LTVA boundaries, unless an authorized BLM officer approves in advance.

Sec. 13 Pets

Pets must be kept on a leash at all times. Keep an eye on your pets. Unattended and unwatched pets may fall prey to coyotes or other desert predators. You are responsible for clean-up and sanitary disposal of your pet's waste.

Sec. 14 Cultural Resources

Do not disturb any archaeological or historical values, including, but not limited to, petroglyphs, ruins, historic buildings, and artifacts that may occur on public lands.

Sec. 15 Trash

You must place all trash in designated receptacles. Public trash facilities are shown in the LTVA brochure. Do not deposit trash or holding-tank sewage in vault toilets. An LTVA permit is required for trash disposal within all LTVA campgrounds. You may not change motor oil, vehicular fluids, or dispose of or possess these used substances within an LTVA.

Sec. 16 Dumping

Do not dump sewage, gray water, or garbage on the ground. This includes motor oil and any other waste products. Federal, state, and county sanitation laws and county ordinance specifically prohibit these practices. Sanitary dump station locations are shown in the LTVA brochure. You must have an LTVA permit for dumping within all LTVA campgrounds.

Sec. 17 Self-Contained Vehicles

a. In Pilot Knob, Midland, Tamarisk, and Hot Springs LTVAs, you may camp only in self-contained camping units. The La Posa, Imperial Dam, and Mule Mountain LTVAs are restricted to self-contained camping units, except within 500 feet of a vault or rest room.

b. Self-contained camping units must have a permanent, affixed waste water holding tank of 10-gallon minimum capacity. BLM does not consider port-a-potty systems, or systems that utilize portable holding tanks or permanent holding tanks of less than 10-gallon capacity, to be self-contained.

Sec. 18 Campfires

You may have campfires in LTVAs, subject to all local, state, and Federal regulations. You must comply with posted rules.

Sec. 19 Wood Collection

Do not collect wood within LTVAs. You may not possess native firewood (*i.e.*, mesquite, ironwood, palo verde) within LTVAs. Please contact the nearest BLM office for current regulations concerning wood collection.

Sec. 20 Speed Limit

The speed limit in LTVAs is 15 miles per hour or as otherwise posted.

Sec. 21 Off-Highway Vehicle Use

Motorized vehicles must remain on existing roads, trails, and washes.

Sec. 22 Vehicle Use

Do not operate any vehicle in violation of state or local laws and regulations relating to use, standards, registration, operation, and inspection.

Sec. 23 Firearms

Do not discharge or otherwise use firearms or weapons inside or within ½ mile of LTVAs.

Sec. 24 Vending Permits

You must have a vending permit to carry on any commercial activity. Please contact the nearest BLM office for information on vending or concession permits.

Sec. 25 Aircraft Use

Do not land or take off in aircraft, including ultralights and hot air balloons, in LTVAs.

Sec. 26 Perimeter Camping

Do not camp within 1 mile outside the boundaries of Hot Springs, Tamarisk, and Pilot Knob LTVAs and within 2 miles outside the boundary of Midland LTVA.

Sec. 27 Hot Springs Spa and Day Use Area

Do not consume, possess, or use food, beverages, glass containers, soap, pets, or motorized vehicles within the fenced-in area at the Hot Springs Spa. Day use hours are 5 a.m. to midnight.

Sec. 28 Mule Mountain LTVA

You may camp only at designated sites within Wiley's Well and Coon Hollow campgrounds. You may have only one (1) camping or dwelling unit per site.

Sec. 29 Imperial Dam and La Posa LTVAs

Do not camp overnight in desert washes in Imperial Dam and La Posa LTVAs.

Sec. 30 La Posa LTVA

You may enter La Posa LTVA only by legal access roads along U.S. Highway 95. Do not create or use any other access points. Do not remove or modify barricades, such as fences, ditches, and berms.

Sec. 31 Posted Rules

You must observe and obey all posted rules. Individual LTVAs may have additional specific rules in addition to these supplementary rules. If posted rules differ from these supplementary rules, the posted rules take precedence.

Sec. 32 Other Laws

If you hold an LTVA permit, you must observe and obey all Federal, state, and local laws and regulations applicable to the LTVA.

Sec. 33 Campsite Maintenance

You must keep the LTVA and, specifically, your campsite, in a neat, orderly, and sanitary condition.

Sec. 34 Length of Stay

Between April 16 and September 14, you may stay in an LTVA only 14 days in any 28-day period. After your 14th day of occupation at an LTVA, you must move outside of a 25-mile radius of that LTVA.

Sec. 35 Penalties

Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), if you knowingly and willfully violate or fail to comply with any of the supplementary rules provided in this notice, BLM may revoke your LTVA permit, and you may be subject to a fine under 18 U.S.C. 3571 or other penalties in accordance with 43 U.S.C. 1733.

[FR Doc. 02–30991 Filed 12–11–02; 8:45 am]

BILLING CODE 4310–32–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–475]

Certain Electronic Educational Devices and Components Thereof; Notice of Commission Decision Not To Review an Initial Determination Granting Complainant Franklin Electronic Publishers, Inc.'s Motion for Leave To Withdraw the Complaint and for Termination of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") issued by the presiding administrative law judge (ALJ) in the above-captioned investigation granting complainant Franklin Electronic Publisher, Inc.'s motion for leave to withdraw its amended complaint and for termination of investigation as to all respondents.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3115. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 9, 2002, based on a complaint filed by Franklin Electronic Publishers, Inc. of Burlington, New Jersey ("Franklin"), against LeapFrog Enterprises, Inc. of Emeryville, California, and Jetta Company Ltd. of Fanling, N.T., Hong Kong. 67 FR 51686 (Aug. 2002). The complaint alleges violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain electronic educational devices and components thereof by reason of infringement of claims 1–4 of U.S. Patent No. 5,203,705. On November 5, 2002, Franklin filed an unopposed motion for leave to withdraw its complaint and terminate the investigation. On November 12, 2002, the Commission investigative attorney filed a response in support of Franklin's motion.

On November 14, 2002, ALJ issued an ID granting Franklin's motion. No party filed a petition for review of the ALJ's ID. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's rules of practice and procedure (19 CFR 210.42).

Issued: December 6, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–31309 Filed 12–11–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Applicant Survey; Form G–942.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until February 10, 2003.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Applicant Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–942. Human Resources Branch, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and Households. This form is required to ensure compliance with Federal laws and regulations which mandate equal opportunity in the recruitment of applicants for Federal employment.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 75,000 responses at 4 minutes (.066) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,950 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: December 6, 2002.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–31253 Filed 12–11–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Contacts Concerning INS Practitioner Fraud Pilot Program; Form G–1046.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until February 10, 2003.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a current information collection.

(2) *Title of the Form/Collection:* Contacts Concerning INS Practitioner Fraud Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–1046. Office of Policy and Planning, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form provides a standardized way of recording the number of individuals contacting the Community Based Organizations concerning the practitioner fraud pilot program. The INS will use the information collected on the form to determine how many persons are served by the program and if its public outreach efforts are successful.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 60,000 responses at 52 minutes (0.866) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 51,960 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: December 6, 2002.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–31254 Filed 12–11–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,337]

Corning Cable Systems; Telecommunication Cable Plant, Hickory, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 1, 2002 in response to a worker petition, which was filed on behalf of workers at Corning Cable Systems, Telecommunication Cable Plant, Hickory, North Carolina.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 27th day of November, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31288 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,122]

FCI USA, Inc., Communications, Data, and Consumer Division (CDC) Fiber Optics Group, a Member of the Areva Group, Etters, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 19, 2002 in response to a worker petition filed on behalf of workers at FCI USA, Inc., Communications, Data, and Consumer Division (CDC), Fiber Optics Group, a member of the Areva Group, Etters, Pennsylvania.

The Department issued negative determinations applicable to the petitioning group of workers on September 20, 2002 (TA–W–41,571). No new information or change in circumstances is evident which would result in a reversal of the Department's previous determinations. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 25th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31290 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,117]

Flextronics International USA, Inc., Longmont, CO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 19, 2002, in response to a worker petition filed on behalf of workers at Flextronics International USA, Inc., Longmont, Colorado.

The Department issued negative determinations applicable to the petitioning group of workers on August 28, 2002 (TA–W–41,700). No new information or change in circumstances is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31289 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,304]

The Virkler Company, Charlotte, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 28, 2002, in response to a worker petition which was filed by a company official on behalf of workers at The Virkler Company, Charlotte, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31287 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6613]

State of Alaska Commercial Fisheries Entry Commission Permit # 65631U Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 65631U, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would

serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31277 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6614]

State of Alaska Commerical Fisheries Entry Commission Permit #61392C Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61392C, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31278 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6616]

State of Alaska Commercial Fisheries Entry Commission Permit #65917F Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as mended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #65917F, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31279 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6615]

State of Alaska Commercial Fisheries Entry Commission Permit #61393U Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as mended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61393U, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31280 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6617]

State of Alaska Commercial Fisheries Entry Commission Permit #58144S, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #58144S, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31281 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6618]

State of Alaska Commercial Fisheries Entry Commission Permit #57752K, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57752K, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31282 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6620]

State of Alaska Commercial Fisheries Entry Commission Permit #62266S, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #62266S, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31283 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6621]

State of Alaska Commercial Fisheries Entry Commission Permit #58572M, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #58572M, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31284 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6622]

State of Alaska Commercial Fisheries Entry Commission Permit #57496U, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57496U, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31285 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6624]

State of Alaska Commercial Fisheries Entry Commission Permit #61408K, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61408K, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31286 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6583]

State of Alaska Commercial Fisheries Entry Commission Permit #65470B, Dillingham, AL; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #65470B, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31292 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7230]

State of Alaska Commercial Fisheries Entries Commission Permit #60644C, Iliamna, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #60644C, Iliamna, Alaska.

The workers stopped fishing in 2000, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 18th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31293 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7446]

State of Alaska Commercial Fisheries Entries Commission Permit #55165N, South Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #55165N, South Naknek, Alaska.

The workers stopped fishing on July 10, 2001, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 18th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31294 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7448]

State of Alaska Commercial Fisheries Entries Commission Permit #58963S, South Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #58963S, South Naknek, Alaska.

The workers stopped fishing in July of 2001, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 18th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31295 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6598]

State of Alaska Commercial Fisheries Entry Commission Permit #61326M, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61326M, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31297 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6599]

State of Alaska Commercial Fisheries Entry Commission Permit #60231P, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #60231P, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31298 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6601]

State of Alaska Commercial Fisheries Entry Commission Permit #56890B, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56890B, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31299 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6602]

State of Alaska Commercial Fisheries Entry Commission Permit #61819K, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61819K, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31300 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6603]

State of Alaska Commercial Fisheries Entry Commission Permit #66951P, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #66951P, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31301 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6604]

State of Alaska Commercial Fisheries Entry Commission Permit #57451Q, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57451Q, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31302 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6605]

State of Alaska Commercial Fisheries Entry Commission Permit #66925Q, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #66925Q, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC. this 22nd day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31303 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6606]

State of Alaska Commercial Fisheries Entry Commission Permit #68192C Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #68192C, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31304 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6607]

State of Alaska Commercial Fisheries Entry Commission Permit #60844R, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #60844R, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31305 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6608]

State of Alaska Commercial Fisheries Entry Commission Permit #57260F, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57260F, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31306 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—7651]

J.C. Apparel, Sebastopol, Mississippi; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA, and in accordance with section 250(a), Subchapter 2, Title II, of the Trade Act of 1974, an investigation was initiated on November 1, 2002, in response to a petition dated October 25, 2002, filed by a company official on behalf of workers at J.C. Apparel, Inc., Sebastopol, Mississippi.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 20th day of November 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31296 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–006531]

Venice T-Shirt and Medical Corporation, Venice, CA; Notice of Termination

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–1) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on August 30, 2002, in response to a petition filed on behalf of workers at Venice T-Shirt and Medical Corporation, Venice, California. Workers produced knit t-shirts.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 18th day of November, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31291 Filed 12–11–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Number: D–10934]

Amendment to Prohibited Transaction Exemption 97–11 (PTE 97–11) for the Receipt of Certain Investment Services by Individuals for Whose Benefit Individual Retirement Accounts or Retirement Plans for Self-Employed Individuals Have Been Established or Maintained

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Adoption of amendment to PTE 97–11.

SUMMARY: This document amends PTE 97–11, a class exemption that permits the receipt of services at reduced or no cost by an individual for whose benefit an individual retirement account (IRA) [1] or, if self-employed, a Keogh Plan, is established or maintained, or by members of his or her family, from a broker-dealer, provided that the conditions of the exemption are met. The amendment affects individuals with beneficial interests in such plans who receive such services as well as the broker-dealers who provide such services.

FOR FURTHER INFORMATION CONTACT: Ms. Allison Padams Lavigne or Mr. Christopher Motta, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 693–8540, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On June 18, 2002, the Department proposed an amendment to PTE 97–11 (67 FR 41504) [2] PTE 97–11 provides relief from the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA and the sanctions resulting from the application of sections 4975(a) and (b), 4975(c)(3) and 408(e)(2) of the Code by reason of section 4975(c)(1)(D), (E) and (F) of the Code.[3] The amendment to PTE 97–11 was requested in an exemption application dated September 26, 2000, filed on behalf of American Funds Distributors, Inc. (AFD), a broker-dealer registered under the Securities Exchange Act of 1934.

The notice of pendency gave interested persons an opportunity to comment on the proposed amendment. Two comments were received pursuant to the provisions of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B. No requests for a public hearing were received.

For the sake of convenience, the entire text of PTE 97–11, as amended, has been reprinted.

[1] In Advisory Opinion 98–03A (March 6, 1998), the Department stated that a Roth IRA which satisfies the definition of an individual retirement plan contained in section 7701(a)(37)(A) of the Internal Revenue Code of 1986 (the Code) is an "individual retirement account" described in section 408(a) of the Code. Therefore, a Roth IRA which is not an employee benefit plan covered by Title I of ERISA (except for certain Simplified Employee Pensions and Simple Retirement Accounts described in section 408(k) and 408(p) of the Code, respectively) would be covered by the relief provided in PTE 97–11, if all conditions therein are met. In this regard, the Department wishes to clarify that this proposed modification of section III(b) of PTE 97–11 would include Roth individual retirement annuities described in section 7701(a)(37)(B) of the Code.

[2] PTE 97–11 was granted on February 7, 1997 (62 FR 5855) and amended on March 8, 1999 (64 FR 11042). Any references to PTE 97–11 include the 1999 amendment.

[3] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978 (5 U.S.C. App. 1 (1996)) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

1. Description of the Exemption

PTE 97–11 permits the receipt of services at reduced or no cost by an individual for whose benefit an IRA or Keogh Plan is established or maintained or by members of his or her family, from a broker-dealer registered under the Securities Exchange Act of 1934 pursuant to an arrangement in which the account value of, or the fees incurred for services provided to, the IRA or Keogh Plan is/are taken into account for purposes of determining eligibility to receive such services, provided that certain conditions are met.

Relief under PTE 97–11, as originally amended, was limited to transactions involving IRAs, as defined in section III(b) of the class exemption. In this regard, section III(b) defined the term "IRA" as "an individual retirement account described in Code section 408(a) or an education individual retirement account described in section 530 of the Code." The exemption stated further that "(f)or purposes of the exemption, the term IRA shall not include an IRA which is an employee benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code or a Simple Retirement Account described in section 408(p) of the Code which provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions."

AFD requested that PTE 97–11 be amended to expand the definition of IRA contained in section III(b) of PTE 97–11 to include Individual Retirement Annuities, as such term is defined in section 408(b) of the Code.

2. Discussion of the Comments Received

The Department received two comments on the proposed amendment to PTE 97–11. One of the commenters, the American Council of Life Insurers (ACLI), supported the amendment. The second commenter sought clarification with respect to the reduction of commissions in connection with the aggregation of variable annuity contracts and mutual funds that are offered and/or managed by unaffiliated entities. Specifically, the commenter asked the Department whether the amendment to PTE 97–11 is applicable to situations where the distributor of the annuity contract, the investment manager of the variable annuity separate account and mutual funds, and the provider of the annuity contracts are not affiliated.

As stated above, PTE 97–11 permits a broker-dealer to offer reduced or no cost services to individuals for whose benefit an IRA or Keogh Plan is established or maintained, provided that the conditions of the exemption have been met. The Department notes that the exemption does not limit relief to those services that are offered pursuant to an arrangement involving only affiliated entities.

Accordingly, a broker-dealer offering reduced commissions to an individual in connection with the purchase of a variable annuity contract under circumstances where the broker-dealer, the investment manager of the variable annuity separate account and mutual funds, and the provider of the annuity contracts are unaffiliated would be covered by the class exemption are met. In particular, the Department notes that PTE 97–11 requires, among other things, that the services offered under the relationship brokerage arrangement must be of the type that the broker-dealer itself could offer consistent with all applicable federal and state laws regulating broker-dealers. Additionally, the services offered under the arrangement must be provided by the broker-dealer or its affiliate in the ordinary course of the broker-dealer's business to customers who qualify for reduced or no cost services, but do not maintain IRAs or Keogh Plans with the broker-dealer.

General Information

The attention of interested persons is directed to the following:

(1) The Department finds that the amendment is administratively feasible, in the interest of the IRAs and Keogh Plans and their participants and beneficiaries and protective of the rights of the participants and beneficiaries of such plans.

(2) The amendment is supplemental to, and not in derogation of, any other provisions of ERISA and the Code including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The amendment is applicable to a transaction only if the conditions specified in the class exemption are met.

Exemption

Accordingly, PTE 97–11 is amended under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 CFR 32836, August 10, 1990).

Section I: Covered Transactions

Effective January 1, 1998, the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code, including the loss of exemption of an IRA pursuant to section 408(e)(2)(A) of the Code, by reason of the section 4975(c)(1)(D), (E) and (F) of the Code, shall not apply to the receipt of services at reduced or no cost by an individual for whose benefit an IRA or, if self-employed, a Keogh Plan, is established or maintained, or by members of his or her family, from a broker-dealer registered under the Securities Exchange Act of 1934 pursuant to an arrangement in which the account value of, or the fees incurred for services provided to, the IRA or Keogh Plan is taken into account for purposes of determining eligibility to receive such services, provided that each condition of Section II of this exemption is satisfied.

Section II: Conditions

(a) The IRA or Keogh Plan whose account value or whose fees are taken into account for purposes of determining eligibility to receive services under the arrangement is established and maintained for the exclusive benefit of the participant covered under the IRA or Keogh Plan, his or her spouse or their beneficiaries.

(b) The services offered under the relationship brokerage arrangement must be of type that the broker-dealer itself could offer consistent with all applicable federal and state laws regulating broker-dealers.

(c) The services offered under the arrangement are provided by the broker-dealer (or an affiliate of the broker-dealer) in the ordinary course of the broker-dealer's business to customers who qualify for reduced or no cost services, but do not maintain IRAs or Keogh Plans with the broker-dealer.

(c) For the purpose of determining eligibility to receive services, the arrangement satisfies one of the following:

(i) Eligibility requirements based on the account value of the IRA or Keogh Plan are as favorable as any such requirements based on the value of any other type of account which the broker-dealer includes to determine eligibility; or

(ii) Eligibility requirements based on the amount of fees incurred by the IRA or Keogh Plan are as favorable as any requirements based on the amount of fees incurred by any other type of account which the broker-dealer includes to determine eligibility.

(e) The combined total of all fees for the provision of services to the IRA or Keogh Plan is not in excess of reasonable compensation within the meaning of section 4975(d)(2) of the Code.

(f) The investment performance of the IRA or Keogh Plan investment is no less favorable than the investment performance of an identical investment(s) that could have been made at the same time by a customer of the broker-dealer who is not eligible for (or who does not receive) reduced or no cost services.

(g) The services offered under the arrangement to the IRA or Keogh Plan customer must be the same as are offered to non-IRA or non-Keogh Plan customers with account values of the same amount or the same amount of fees generated.

Section III: Definitions

The following definitions apply to this exemption:

(a) The term "broker-dealer" means a broker-dealer registered under the Securities Exchange Act of 1934.

(b) The term "IRA" means an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b) or an education individual retirement account described in section 530 of the Code. For purposes of this exemption, the term IRA shall not include an IRA which is an employee benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code or a Simple Retirement Account described in section 408(p) of the Code which provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions.

(c) The term "Keogh Plan" means a pension, profit-sharing, or stock bonus plan qualified under Code section 401(a) and exempt from taxation under Code section 501(a) under which some or all of the participants are employees described in section 401(c) of the Code. For purposes of this exemption, the term Keogh Plan shall not include a Keogh Plan which is an employee benefit plan covered by Title I of ERISA.

(d) The term "account value" means investments in cash or securities held in the account for which market quotations are readily available. For purposes of this exemption, the term cash shall include savings accounts that are insured by a federal deposit insurance agency that constitute deposits as that term is defined in section 29 CFR 2550.408b–4(c)(3). The term account value shall not include investments in securities that are offered by the broker-dealer (or its affiliate) exclusively to IRAs and Keogh Plans.

(e) An affiliate or a broker-dealer includes any person directly or indirectly controlling, controlled by, or under common control with the broker-dealer. The term control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term "members of his or her family" refers to beneficiaries of the individual for whose benefit the IRA or Keogh Plan is established or maintained, who would be members of the family as that term is defined in Code section 4975(e)(6), or a brother, a sister, or a spouse of a brother or sister.

(g) The term "service" includes incidental products of a de minimis value which are directly related to the provision of services covered by the exemption.

(h) The term "fees" means commissions and other fees received by the broker-dealer from the IRA or Keogh Plan for the provision of services, including, but not limited to, brokerage commissions, investments management fees, custodial fees, and administrative fees.

Dated: Signed at Washington, DC, this 9th day of December, 2002.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–31366 Filed 12–11–02; 8:45 am]

BILLING CODE 4520–29–M

NATIONAL COUNCIL ON DISABILITY

Youth Advisory Committee Meeting (Teleconference)

Time and Date: 12 p.m., EST, January 24, 2003.

Place: National Council on Disability, 1331 F Street, NW, Suite 850, Washington, DC.

AGENCY: National Council on Disability (NCD).

Status: All parts of this meeting will be open to the public. Those interested in participating in the meeting (teleconference) call should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for the conference call.

Agenda: Roll call, announcements, reports, new business, adjournment.

FOR FURTHER INFORMATION CONTACT: Geraldine Drake Hawkins, Ph.D., Program Specialist, National Council on Disability, 1331 F Street NW, Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov* (e-mail).

Youth Advisory Committee Mission: The purpose of NCD's Youth Advisory Committee is to provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

Dated: December 6, 2002.

Ethel D. Briggs,

Executive Director.

[FR Doc. 02–31379 Filed 12–11–02; 8:45 am]

BILLING CODE 6820–MA–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting Notice

AGENCY HOLDING MEETING: National Science Foundation, National Science Board, Task Force on National Workforce Policies for Science & Engineering.

DATE AND TIME: December 17, 2002, 1:30 p.m.–2:30 p.m. Open Session.

PLACE: The National Science Foundation, Stafford One Building, 4201 Wilson Boulevard, Room 120, Arlington, VA 22230.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Tuesday, December 17, 2002.

Open Session (1:30 p.m. to 2:30 p.m.)—Discussion of comments on the draft report of the NSB/EHR Task Force on National Workforce Policies for S&E.

FOR FURTHER INFORMATION CONTACT: Gerald Glaser, Executive Officer, NSB, (703) 292–7000, *http://www.nsf.gov/nsb.*

Gerard Glaser,

Executive Officer.

[FR Doc. 02–31428 Filed 12–10–02; 10:55 am]

BILLING CODE 7555–01–M

OFFICE OF MANAGEMENT AND BUDGET

Budget Analysis Branch; Final Sequestration Report

AGENCY: Office of Management and Budget, Budget Analysis Branch.

ACTION: Notice of transmittal of the Final Sequestration Report to the President and Congress for Fiscal Year 2003.

SUMMARY: Pursuant to Section 254(b) of the Balanced Budget and Emergency Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted the Final Sequestration Report for Fiscal Year 2003 to the President, the Speaker of the House of Representatives, and the President of the Senate.

FOR FURTHER INFORMATION CONTACT: Sarah Lee, Budget Analysis Branch—202/395–3674.

Dated: December 6, 2002.

Richard P. Emery, Jr.,

Assistant Director for Budget Review.

[FR Doc. 02–31357 Filed 12–11–02; 8:45 am]

BILLING CODE 4810–25–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27611]

Filings Under the Public Utility Holding Company Act of 1935, As Amended ("Act")

December 6, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 31, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 31, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

System Energy Resources, Inc. et al. (70–7561)

Entergy Corporation ("Entergy"), a registered holding company, 639 Loyola Avenue, New Orleans, Louisiana 70113;

Entergy's nonutility subsidiary, System Energy Resources, Inc. ("System Energy"), Echelon One, 1340 Echelon Parkway, Jackson, Mississippi 39213; and Entergy's utility subsidiaries ("System Operating Companies"): Entergy Arkansas, Inc. ("EAI"), 425 West Capitol, 40th Floor, Little Rock, Arkansas 72201; Entergy Louisiana, Inc. ("ELI"), 4809 Jefferson Highway, Jefferson, Louisiana 70121; Entergy Mississippi, Inc. ("EMI"), 308 East Pearl Street, Jackson, Mississippi 39201; Entergy New Orleans, Inc. ("ENOI"), 1600 Perdido Building, New Orleans, LA 70112; (together, "Applicants"), have filed a post-effective amendment under sections 6, 7 and 12(b) of the Act and rules 45, 53, and 54 under the Act to a previously filed application-declaration with the Commission.

By order dated December 23, 1998 (HCAR No. 24791), System Energy was authorized to enter into two separate but identical arrangements for the sale and leaseback of undivided portions of its interest in Unit No. 1 of the Grand Gulf Steam Electric Generating Station ("Unit No. 1"). In connection with the equity funding of the arrangements, financial support in the form of letters of credit ("LOCs") was required to be maintained to secure the payment to the equity investors of certain amounts that may be payable by System Energy under the respective leases from time to time.

Applicants state that initial LOCs in an aggregate principal amount of $128,126,450 were issued in 1988 and through additional orders, the Commission authorized issuances of replacement LOCs in this file in 1991, 1993, 1996, and 1999.[1] Applicants state that the LOCs issued in 1999 in the amount of approximately $193 million are scheduled to expire on March 20, 2003.

By order dated November 6, 1996 (HCAR No. 26601), during the basic terms of the leases, (a) System Energy was authorized to extend, increase the amount of and/or change the pricing terms of subsequent LOCs within the parameters set forth in the Commission's previous orders; (b) System Energy was authorized to enter into new reimbursement agreements or further amendments to the then existing reimbursement agreement; (c) System Energy and the System Operating Companies were authorized to enter into one or more additional assignments of the availability agreement ("Availability Agreement");[2] and (d) System Energy and Entergy were authorized to enter into one or more additional assignments of the capital funds agreement ("Capital Funds Agreement"),[3] in each case, to provide further security for System Energy's reimbursement obligations to the entity which will issue the replacement LOCs ("LOC Entity") the administrating bank and, the participating banks.

Applicants now request authority to enter into a transaction, which will result in pre-funded LOCs.[4] Applicants state that the proposed transaction would require the creation of a financing entity ("Financing Entity"), currently anticipated to be a Delaware business trust. Applicants state that neither System Energy, Entergy, nor any associate company of either corporation would form the Financing Entity or hold an equity stake in the Financing Entity. Applicants further state that the Financing Entity would issue pass-through certificates ("Pass-Through Certificates") to investors in a private placement. The Pass-Through Certificates would evidence an undivided ownership interest in all of the Financing Entity's assets and contemplate a fixed or floating return on the investment. The amount of the proceeds of the sale of the Pass-Through Certificates would equal the amount of the replacement LOCs to be issued which amount will not exceed $200 million.

Applicants state that the Financing Entity would invest the proceeds of the sale of the Pass-Through Certificates in permitted investments, currently anticipated to include and primarily consist of a guaranteed investment contract ("GIC") issued by an insurance company or other investments. The GIC or other investments would bear interest at a specified rate, would mature as to principal at the same time as the Pass-Through Certificates and be redeemable, at the option of its holder, in the same amounts and at the same time as drawings on the LOCs.

System Energy, the entity which will issue the replacement LOCs ("LOC Entity"), and the Financing Entity propose to enter into a reimbursement agreement ("New Reimbursement Agreement") providing for the issuance of the replacement LOCs that System Energy would be required to reimburse in the case of draws on the LOCs. Applicants state that, in the event of unreimbursed drawings on the LOCs, the LOC Entity would be permitted to cause the Financing Entity's investments to be liquidated and utilized to reimburse the LOC Entity for the drawings. System Energy would be obligated to reimburse the Financing Entity for the amount of the drawing. Applicants assert that the LOC Entity, currently anticipated to be a bank, may be the Financing Entity described above.

Applicants state that annualized fees, not to exceed five percent per annum, payable by System Energy under the New Reimbursement Agreement to the Financing Entity would, together with the return on the Financing Entity's permitted investments, equal the return to be paid on the Pass-Through Certificates. Applicants further state that unreimbursed drawings on the LOCs would bear interest at the same rate and be payable at the same time as the principal and interest are payable on the Pass-Through Certificates.

To support System Energy's obligations under the New Reimbursement Agreement to the LOC Entity and the Financing Entity, the Applicants may be required to enter into one or more supplementary agreements and assignments of the Capital Funds Agreement and one or more assignments of the Availability Agreement evidencing support to or for the benefit of the other parties to the New Reimbursement Agreement. The Applicants hereby request authority for (a) Entergy and System Energy to enter into one or more supplementary agreements and assignments of the Capital Funds Agreement and (b) the System Operating Companies and System Energy to enter into one or more assignments of the Availability Agreement, in each case to or for the benefit of other parties to the New Reimbursement Agreement. Additionally, to evidence or secure System Energy's obligations under the New Reimbursement Agreement to LOC Entity and the Financing Entity, System Energy may be required to issue its first mortgage bonds or other secured or unsecured debt securities ("Bonds") to or for the benefit of, other parties to the New Reimbursement Agreement. The Bonds would be issued in an amount equal to the maximum amount of up to $200 million of the replacement LOCs, have the same term as the replacement LOCs, and bear interest at the same rates as will be borne by the Pass-Through Certificates. The interest rate on the Pass-Through Certificates would not exceed at the time of issuance the greater of (a) 500 basis points over U.S. Treasury securities having a remaining term comparable to the term of such certificates, if issued at a fixed rate, or 500 basis points over LIBOR for the relevant interest rate period, if issued at a floating rate and (b) a spread over U.S. Treasury securities or LIBOR, as the case may be, that is consistent with similar securities of comparable credit quality and maturities issued in similar transactions with other companies.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31336 Filed 12–11–02; 8:45 am]

BILLING CODE 8010–01–P

[1] *See* HCAR No. 25241 (January 11, 1991), HCAR No. 25944 (December 10, 1993), HCAR No. 26601 (November 6, 1996), and HCAR No. 27157 (March 23, 2000).

[2] The System Operating Companies entered into an Availability Agreement in 1974 to pay System Energy each month, in return for the right to receive capacity and energy from Unit No. 1, amounts adequate (together with other funds received by System Energy) to cover a certain proportion of System Energy's operating expenses and interest charges. System Energy's benefits and rights under the Availability Agreement have been assigned to various creditors of System Energy since 1977.

[3] Under the Capital Funds Agreement dated as of June 21, 1974, Entergy agreed to furnish System Energy capital sufficient to enable System Energy to (a) maintain a minimum 35% equity ratio; (b) pay certain indebtedness when due; and (c) continue the commercial operation of Unit No. 1. Since 1977, System Energy has entered into supplementary agreements and assignments to secure System Energy's creditor group. These assignments extend terms comparable to the Capital Funds Agreement to each specific creditor group.

[4] System Energy states that, due to changes in the credit markets since the issuance of the 1999 replacement LOCs, it has become increasingly difficult and expensive to obtain these replacement LOCs. System Energy asserts that the purpose in proposing pre-funded LOCs is that the proposed transaction could result in replacement LOCs with terms that could extend through the remainder of the basic term of the leases (July 15, 2015) at a cost comparable to that which may be required to periodically renew, replace, or extend the LOCs in the commercial bank market through the basic term of the leases.

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW, Washington, DC 20503, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Bldg., 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *State Partnership Initiative (SPI) Cooperative Agreements—0960–0610. Executive Order 13078 dated March 13, 1998, Increasing Employment of Adults with Disabilities.* This action orders that a National Task Force be established to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate that is as close as possible to that of the general adult population. E.O. 13078 specifies that the Task Force "evaluate and, where appropriate, coordinate and collaborate on, research and demonstration priorities of Task Force member agencies related to employment of adults with disabilities." To comply with the EO, SSA released cooperative agreement announcements in 1998 to approximately 650 State agencies nationwide to conduct demonstration projects that assist States in developing service delivery models that increase the rates of gainful employment of people with disabilities. Eighteen State agencies have been selected to participate in the demonstration projects. SSA has employed a monitoring and technical assistance contractor to collect information from the State awardees' databases on behalf of SA. The Contractor will use the information to evaluate whether and to what extent the service delivery models achieve the overall goals of the demonstration projects and will report project results to SSA. SSA will use the results to conduct a net outcome evaluation to determine the long-term effectiveness of the interventions. Following is a table that outlines the public reporting burden of the 18 State agencies for this project:

Type of Request: Revision of an OMB-approved Information Collection(s).

Title of collection	Number of annual responses	Frequency of response	Average burden per response	Estimated annual burden
Demonstration Site Form	16 (electronic)	One Time	1 minute	1 hour.
	2 (manual)	One Time	1 minute	1 hour.
Participant Demographic Data Form	3,080 (electronic)	One Time	15 minutes	770 hours.
	300 (manual)	One Time	20 minutes	100 hours.
Participant Employment Data Form	3,080 (electronic)	One Time	5 minutes	257 hours.
	300 (manual)	One Time	7 minutes	35 hours.
Participant Update Form	12,320 (electronic)	Quarterly	4 minutes	821 hours.
	1,200 (manual)	Quarterly	5 minutes	100 hours.
Change in Employment Status	1,540 (electronic)	Completed only if	3 minutes	77 hours.
	150 (manual).	employment changes	4 minutes.	10 hours.
State Quarterly & State Semiannual & Annual Report.	72	Quarterly	15	18 Hours.
	36	Semiannual	minutes	9 Hours.
	18	Annual	for each report	4 Hours.
Stakeholder Interviews	50	Varies per Stakeholder.	10 minutes	8 hours.

Title of collection	Number of annual responses	Frequency of response	Average burden per response	Estimated annual burden
Total	12,024			2,211 Hours.

2. *Claimant's Recent Medical Treatment—0960–0292.* The information collected on Form HA–4631 is used to provide an updated medical history for a disability claimant who requests a hearing and to afford claimants their statutory right to a hearing and decision under the Social Security Act. This information is necessary to assure that the Social Security Administration has the most recent medical information before making a final determination on a claim. The respondents are claimants requesting hearings on entitlement to benefits based on disability under title II (Old-Age, Survivors and Disability Insurance) and/or title XVI (Supplemental Security Income) of the Social Security Act.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 309,490.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 51,582 hours.

3. *Report to U.S. SSA by Person Receiving Benefits for a Child or Adult Unable to Handle Funds; & Report to U.S. SSA–0960–0049.* SSA needs the information on Forms SSA–7161–OCR–SM and SSA–7162–OCR–SM to determine continuing entitlement to Social Security benefits and correct benefit amounts for beneficiaries outside the U.S., as well as to monitor the performance of representative payees outside the U.S. The respondents are individuals outside the U.S. who are receiving benefits on their own behalf (or for someone else) under title II of the Social Security Act.

Type of Request: Extension of an OMB-approved information collection(s):

	SSA–7161–OCR–SM	SAA–7162–OCR–SM
Number of Respondents	30,000	205,000
Frequency of Response	1	1
Average Burden Per Response (minutes)	15	5
Estimated Annual Burden (hours)	7,500	17,083

4. *Partnership Questionnaire—0960–0025—20 CFR, Subpart K, 404.1080–.1082.* Form SSA–7104 is used to establish several aspects of eligibility for benefits, including accuracy of reported partnership earnings, the veracity of a retirement, and lag earnings where they are needed for insured status. The respondents are applicants for Old Age, Survivors and Disability Insurance Benefits.

Type of Request: Extension of an OMB-approved information collection(s):

Number of Respondents: 12,350.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes .

Estimated Annual Burden: 6,175 hours.

5. *SSI-Quality Review Case analysis-0960–0133.*

The form SSA–8508 is used in a personal interview with a sample of Supplemental Security Income (SSI) recipients and covers all elements of SSI eligibility. The information is used to assess the effectiveness of SSI policies and procedures and to determine payment accuracy rates. The respondents are SSI recipients.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 12,000.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 12,000.

6. *SSI Wage Reporting Pilot—0960–NEW.* SSA regulations at 20 CFR 416.701–732 require that recipients of Supplemental Security Income (SSI) report changes, such as change in income, resources and living arrangements, that could affect the receipt and amount of payments. Currently, SSI recipients report changes on form SSA–8150, Reporting Events—SSI, or to a SSA teleservice representative through SSA's toll-free telephone number or they visit their local Social Security Office. SSA is proposing to conduct a 6-month SSI wage reporting pilot to test a different method of collecting the information. During the pilot, a sample of individuals who need to report a change in earned income would call an SSA toll-free telephone number which will allow them to either speak their report (voice recognition technology) or key in the information using the telephone key pad. At the conclusion of the pilot, SSA will evaluate whether this is an effective method of reporting the information.

Number of Respondents: 4,000.

Frequency of Response: 6.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 2000 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Statement of Marital Relationship (by One of the Parties)—20 CFR, Subpart H 404.726—0960–0038.* SSA uses the information collected on Form SSA–754 to determine whether the conditions for establishing a common-law marriage under state law are met. The respondents are applicants for spouse's benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 15,000 hours.

2. *Marital Relationship Questionnaire—20 CFR, Subpart R, 416.1826—0960–0460.* The information collected on Form SSA–4178 is needed by SSA to determine whether unrelated individuals of the opposite sex who are living together, and present themselves to the public as husband and wife, should be paid as a couple or two eligible individuals. The information is used to determine whether correct payment is being made to Supplemental Security Income (SSI) couples and individuals. The respondents are applicants for and recipients of SSI who are living together in a questionable relationship.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 5,100.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 425 hours.

3. *Statement of Living Arrangements, In-Kind Support and Maintenance—20 CFR, Subpart K, 416.1130–.1148—0960–0174.* Form SSA–8006 provides a national uniform vehicle for collecting information from SSI applicants and recipients about whether they receive income from in-kind support and maintenance. Responses are used to determine eligibility for SSI benefits. The respondents are individuals applying for SSI or whose eligibility is being reevaluated.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 438,400.

Frequency of Response: 1.

Average Burden Per Response: 7 minutes.

Estimated Annual Burden: 51,147 hours.

4. *Application for Widow's or Widower's Insurance Benefits—20 CFR, Subpart D, 404.335—.338—0960–0004.* SSA uses the information collected on the Form SSA–10–BK to determine if the applicant meets the statutory and regulatory conditions for entitlement to widow(er)'s benefits. The respondents are applicants for Widow(er)'s benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 288,580.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 72,145 hours.

5. *Student Reporting Form—20 CFR, Subpart B, 404, and 20 CFR, Subparts D & E 422—0960–0088.* Form SSA–1383 is used by Social Security student beneficiaries to report events or changes that may affect continuing entitlement to these benefits. The respondents are Social Security Student Beneficiaries.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 75,000.

Frequency of Response: 1.

Average Burden Per Response: 6 minutes.

Estimated Annual Burden: 7,500 hours.

6. *Voluntary Customer Surveys in Accordance with E.O. 12862 within the Social Security Administration—0960–0526.* These voluntary customer surveys will be used to ascertain customer satisfaction with the Social Security Administration in terms of timeliness, appropriateness, access, and other measures of quality service. Surveys will involve individuals that are the direct or indirect beneficiaries of SSA services. The average burden per response for these activities is estimated to range from 5 minutes for a simple comment card, to 2 hours for participation in a focus group.

Type of Request: Extension of an OMB-approved information collection.

FY 2003:

Number of Respondents: 1,526,892.

Frequency of Response: 1.

Average Burden Per Response: Varies (5 minutes to 2 hours).

Estimated Annual Burden: 136,013 hours.

FY 2004:

Number of Respondents: 1,527,732.

Frequency of Response: 1.

Average Burden Per Response: Varies (5 minutes to 2 hours).

Estimated Annual Burden: 136,028 hours.

FY 2005:

Number of Respondents: 1,169,592.

Frequency of Response: 1.

Average Burden Per Response: Varies (5 minutes to 2 hours).

Estimated Annual Burden: 136,013 hours.

7. *Application for Supplemental Security Income—20 CFR, Subpart C, 416.301–.360—0960–0444.* The information collected on Form SSA–8001–F5 is used to determine eligibility for Supplemental Security Income (SSI) and the amount of benefits payable. The respondents are applicants for SSI benefits.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 872,956.

Frequency of Response: 1.

Average Burden Per Response: 18 minutes.

Estimated Annual Burden: 261,887 hours.

8. *Application for Supplemental Security Income—20 CFR, Subpart C, 416.305–.335—0960–0229.* The information collected using Form SSA–8000–BK is needed and used to determine eligibility for Supplemental Security Income (SSI) and the amount of benefits payable. The respondents are applicants for SSI payments.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 1,249,933.

Frequency of Response: 1.

Average Burden Per Response: 40 minutes.

Estimated Annual Burden: 833,289 hours.

9. *Application for Wife's or Husband's Insurance Benefits—20 CFR, Subpart D, 404.330–.333; Subpart G, 404.603—0960–0008.* SSA needs and uses the information collected on Form SSA–2–F6 to determine if an applicant (including a divorced applicant) can be entitled to benefits as the spouse of the worker and the amount of the spouse's benefits. The respondents are applicants for wife's or husband's benefits, including those who are divorced.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 700,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 175,000 hours.

10. *Supplemental Security Income Claim Information Notice—20 CFR, Subpart B, 416.210—0960–0324.* Form SSA–L8050 is used by SSA to ensure that all sources of potential income, which can be used to provide for the support and maintenance of an individual receiving SSI, are utilized. SSI is intended to supplement other income available to an individual. The respondents are applicants/recipients of SSI who may be eligible for benefits from public or private programs.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 7,500.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 1,250 hours.

Dated: December 6, 2002.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 02–31313 Filed 12–11–02; 8:45 am]

BILLING CODE 4191–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning Proposed United States-Australia Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of intent to initiate negotiations on a free trade agreement between the United States and Australia, request for comments, and notice of public hearing.

SUMMARY: The United States intends to initiate negotiations with Australia on a free trade agreement. The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seek public comment to assist the United States Trade Representative (USTR) in amplifying and clarifying negotiating objectives for the proposed agreement and to provide advice on how specific goods and services and other matters should be treated under the proposed agreement.

DATES: Persons wishing to testify orally at the hearing must provide written notification of their intention, as well as their testimony, by January 3, 2003. A

hearing will be held in Washington, DC, beginning on January 15, 2003 and will continue as necessary on subsequent days. Written comments are due by noon, January 21, 2003.

ADDRESSES: *Submissions by electronic mail:*

FR0058@ustr.gov (notice of intent to testify and written testimony);

FR0059@ustr.gov (written comments).

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–3475. All other questions should be directed to Barbara Weisel, Deputy Assistant U.S. Trade Representative, Southeast Asia and the Pacific at (202) 395–6813.

SUPPLEMENTARY INFORMATION:

1. Background

Under section 2104 of the Bipartisan Trade Promotion Authority Act of 2002 (TPA Act) (19 U.S.C. 3804), for agreements that will be approved and implemented through TPA procedures, the President must provide the Congress with at least 90 days written notice of his intent to enter into negotiations and must identify the specific objectives for the negotiations. Before and after the submission of this notice, the President must consult with appropriate Congressional committees and the Congressional Oversight Group regarding the negotiations. Under the Trade Act of 1974, as amended, the President must (i) afford interested persons an opportunity to present their views regarding any matter relevant to any proposed agreement, (ii) designate an agency or inter-agency committee to hold a public hearing regarding any proposed agreement, and (iii) seek the advice of the U.S. International Trade Commission (ITC) regarding the probable economic effects on U.S. industries and consumers of the removal of tariffs and nontariff barriers on imports pursuant to any proposed agreement.

On November 13, 2002, after consulting with relevant Congressional committees and the Congressional Oversight Group, the USTR notified the Congress that the President intends to initiate free trade agreement negotiations with Australia and identified specific objectives for the negotiations. In addition, the USTR has requested the ITC's probable economic effects advice. The ITC intends to provide this advice no later than June 3, 2003. This notice solicits views from the public on these negotiations and provides information on a hearing which will be conducted pursuant to the requirements of the Trade Act of 1974.

2. Public Comments and Testimony

To assist the Administration as it continues to develop its negotiating objectives for the proposed agreement, the Chairman of the TPSC invites written comments and/or oral testimony of interested persons at a public hearing. Comments and testimony may address the reduction or elimination of tariffs or non-tariff barriers on any articles provided for in the harmonized Tariff Schedule of the United States (HTSUS) that are products of Australia, any concession which should be sought by the United States, or any other matter relevant to the proposed agreement. The TPSC invites comments and testimony on all of these matters and, in particular, seeks comments and testimony addressed to:

(a) General and commodity-specific negotiating objectives for the proposed agreement.

(b) Economic costs and benefits to U.S. producers and consumers of removal of tariffs and non-tariff barriers to U.S.-Australian trade.

(c) Treatment of specific goods (described by Harmonized System tariff numbers) under the proposed agreement, including comments on (1) Product-specific import or export interests or barriers, (2) experience with particular measures that should be addressed in the negotiations, and (3) in the case of articles for which immediate elimination of tariffs is not appropriate, a recommended staging schedule for such elimination.

(d) Adequacy of existing customs measures to ensure Australian origin of imported goods, and appropriate rules of origin for goods entering the United States under the proposed agreement.

(e) Existing Australian sanitary and phytosanitary measures and technical barriers to trade.

(f) Existing barriers to trade in services between the United States and Australia that should be addressed in the negotiations.

(g) Relevant trade-related intellectual property rights issues that should be addressed in the negotiations.

(h) Relevant investment issues that should be addressed in the negotiations.

(i) Relevant government procurement issues that should be addressed in the negotiations.

(j) Relevant environmental and labor issues that should be addressed in the negotiations. Comments identifying as present or potential trade barriers laws or regulations that are not primarily trade-related should address the economic, political and social objectives of such regulations and the degree to which they discriminate against producers of the other country.

At a later date, the USTR, through the TPSC, will publish notice of reviews regarding (a) the possible environmental effects of the proposed agreement and the scope of the U.S. environmental review of the proposed agreement, and (b) the impact of the proposed agreement on U.S. employment and labor markets.

A hearing will be held on January 15, 2003, in Rooms 1 and 2, 1724 F Street, NW., Washington, DC. If necessary, the hearing will continue on subsequent days. Persons wishing to testify at the hearing must provide written notification of their intention by January 3, 2003. The notification should include: (1) The name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraph) summary of the presentation, including the subject matter and, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects (such as investment, intellectual property and/or government procurement) to be discussed. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC. Persons with mobility impairments who will need special assistance in gaining access to the hearing should contact the TPSC Executive Secretary.

Interested persons, including persons who participate in the hearing, may submit written comments by noon January 21, 2003. Written comments may include rebuttal points demonstrating errors of fact or analysis not pointed out in the hearing. All written comments must state clearly the position taken, describe with particularly the supporting rationale, and be in English. The first page of written comments must specify the subject matter, including, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects (such as investment, intellectual property and/or government procurement).

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, the Office of the United States Trade Representative strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: "United States-Australia Free Trade Agreement" followed by (as appropriate) "Notice of Intent to Testify," "Testimony," or "Written Comments." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments, notice of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*www.ustr.gov*).

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 02–31364 Filed 12–11–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Record of Decision (ROD) and a Written Reevaluation for the Evaluation of New Information Regarding the National Aeronautics and Space Administration (NASA) Land Release at Cleveland Hopkins International Airport, Cleveland, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of a ROD and a written reevaluation for the evaluation of new information regarding the NASA land release at Cleveland Hopkins International Airport, Cleveland, Ohio.

SUMMARY: The Federal Aviation Administration (FAA) is making available a ROD and a Written Evaluation for new information concerning the NASA land release at Cleveland Hopkins International Airport, Cleveland, Ohio.

POINT OF CONTACT: Mr. Ernest Gubry, Environmental Protection Specialist, FAA Great Lakes Region, Detroit Airports District Office, Willow Run Airport, 8820 Beck Road, Belleville, MI 4811 (734) 487–7280.

SUPPLEMENTARY INFORMATION: The FAA is making available a ROD and a Written Reevaluation of new information regarding the NASA land release at Cleveland Hopkins International Airport, Cleveland, Ohio. The purpose of the ROD and Written Reevaluation was to evaluate the temporary impacts arising from NASA's need to remain in the South 40 area after the opening of Stage One of Runway 6L/24R in December 2002. These documents will be available during normal business hours at the following locations: FAA Detroit Airports District Office, 8820 Beck Rd., Belleville, MI 48111; FAA Airports Division Office, 2300 East Devon Ave., Des Plaines, IL 60018; Cleveland Hopkins International Airport, 5300 Riverside Drive, Cleveland, OH 44135. Due to current security requirements, arrangements must be made with the point of contact prior to visiting these offices.

Issued in Detroit, Michigan, December 4, 2002.

Irene R. Porter,

Manager, Detroit Airport District Office FAA, Great Lakes Region.

[FR Doc. 02–31343 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Request To Release Airport Property at the Salt Lake City Airport Number 2, Salt Lake City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Salt Lake City Municipal Airport Number 2 under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before January 17, 2003.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Alan Wiechmann, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Steve Domino, Director of Planning, Salt Lake City Department of Airports, AMF Box 22084, Salt Lake City, Utah 84122.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia Romero, Project Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Pueblo Memorial Airport under the provisions of the AIR 21.

On November 15, 2003, the FAA determined that the request to release property at the Salt Lake City Municipal Airport Number 2 submitted by the Salt Lake City Department of Airports met the procedural requirements of the Federal Aviation Regulations, Part 155.

The FAA may approve the request, in whole or in part, no later than February 28, 2003.

The following is a brief overview of the request: The Salt Lake City Municipal Airport Number 2 requests the release of 18.35 acres of non-aeronautical airport property to the Salt Lake City Department of Airports, Utah. The purpose of this release is to allow the Salt Lake City Department of Airports to sell the subject land that has been severed from other airport property by recently constructed roadways. The sale of this parcel will provide funds for airport improvements.

Any person may inspect the request by appointment at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, inspect the application, notice and other documents germane to the application in person at Salt Lake City Department of Airports, Salt Lake City International Airport, 776 North Terminal Drive, Terminal One, Room 250, Salt Lake City, UT 84116.

Issued in Denver, Colorado on November 26, 2002.

Alan Wiechmann,

Manager, Seattle Airports District Office.

[FR Doc. 02–31349 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review Philadelphia International Airport, Philadelphia, PA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Philadelphia for Philadelphia International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Philadelphia International Airport under part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before May 20, 2003.

DATES: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is November 21, 2002. The public comment period ends January 30, 2003.

FOR FURTHER INFORMATION CONTACT: James Byers, Federal Aviation Administration, Harrisburg Airports District Office, 3905 Hartzdale Drive, Camp Hill, PA 17011. Telephone 717–730–2833. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Philadelphia International Airport are in compliance with applicable requirements of part 150, effective November 21, 2002. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 20, 2003. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The City of Philadelphia submitted to the FAA on June 28, 2001 and November 20, 2002, noise exposures maps, descriptions and other documentation which were produced during the Philadelphia International Airport part 150 Noise Compatibility Study Update conducted between August 2000 and June 2002. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Philadelphia. The specific maps under consideration are "2001 Noise Exposure Map" (NEM1) and "2006 Noise Exposure Map"(NEM2) with "Recommended Noise Compatibility Program" (NCP) in the submission. The documentation that constitutes the "Noise Exposure Maps" as defined in section 150.7 of Part 150 includes: NEM1 and NEM2 contain current and forecast condition graphics such as depiction of the airport and its boundaries and runway configurations; land uses such as hospitals, libraries, churches, historical points, schools, nursing homes, commercial and industrial areas, community service areas, and residential areas; and the areas within the DNL 65, 70 and 75. Estimates of the number of people residing within the DNL 65, 70 and 75 are found in Table 3–2. The locations of noise monitoring sites are found in Exhibit B–1. Flight tracks for the existing condition and the five-year forecasted timeframes are found in Exhibits C–6 and C–7. The type and frequency of aircraft operations (including nighttime operations) are found in Tables C–2, C–3, C–4, and C–5.

Comparability of Conditions: Federal Part 150 regulations require the preparation of noise exposure contours based on forecast aircraft operations at the airport for five years from the date of submission and that reasonable assumptions concerning fleet mix, flight patterns, and planned airport developments be incorporated. The initial schedule of the Philadelphia International Airport's Part 150 Study indicated that the Noise Exposure Maps would be submitted near the end of 2001. Therefore, 2006 operating levels were used for the Future NEM/NCP. The Part 150 Study was not submitted until 2002, due in part to the events of September 11. A comparison of the 2006 and 2007 forecasts was completed and found that there would be less than 1 percent difference between the two conditions (2006 = 556,625 and 2007 = 560,140). In addition, there is nothing to indicate that there would be significant changes in flight patterns, runway use, or fleet mix between 2006 and 2007. Therefore, the 2006 Future NEM/NCP noise contours are representative of 2007 conditions as well. The FAA has determined that these maps for Philadelphia International Airport are in compliance with applicable requirements. This determination is effective on November 21, 2002. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposures contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Philadelphia International Airport, also effective on November 21, 2002. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 20, 2003.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, created an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examinations at the following locations: Philadelphia International Airport Terminal E, Philadelphia; Pennsylvania, 19153 and Federal Aviation Administration, Harrisburg Airports District Office, 3905 Hartzdale Drive, Camp Hill, PA 17011.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Camp Hill, Pennsylvania, November 21, 2002.

Sharon A. Daboin,

Manager, Harrisburg Airports District Office.

[FR Doc. 02–31345 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Impact Statement: Sitka Rocky Gutierrez Airport, Sitka AK

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Aviation Administration announces that it will prepare an Environmental Impact Statement (EIS) for implementation of projects proposed at the Sitka Rocky Gutierrez Airport.

FOR FURTHER INFORMATION CONTACT: Patricia A. Sullivan, Environmental Specialist, Federal Aviation Administration, Alaskan Region, Airports Division, 222 W. 7th Avenue, #14, Anchorage, AK 99513–7587; Telephone (907) 271–5454.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration will prepare an EIS for implementation of proposed projects at the Sitka Airport. Major projects proposed to be assessed in the EIS include Runway Safety Area; Parallel Taxiway; Seaplane Pullout; improvements to the Airport's Seawall; and Obstruction Removal. These projects, along with other projects proposed to improve safety and efficiency and accommodate growing aviation demand, were identified in the Sitka Airport Master Plan. The State of Alaska Department of Transportation and Public Facilities published the Airport Master Plan April 1999. The City and Borough of Sitka passed a resolution supporting the Airport Master Plan on May 25, 1999. The FAA approved the Airport Layout Plan based on the Master Plan on August 8, 2000.

To ensure that the full range of issues related to the proposed projects are addressed and that all significant issues are identified, FAA intends to consult and coordinate with Federal, State and local agencies that have jurisdiction by law or have specific expertise with respect to any environmental impacts associated with the proposed projects. The scoping meeting will be scheduled at a later date. Notification of the scoping meeting will be published in the Juneau Empire, the Daily Sitka Sentinel and the **Federal Register**. In addition to providing input at the public scoping meeting, the public may submit written comments to the address **FOR FURTHER INFORMATION CONTACT.** Comments should be submitted within 30 days of the publication of this Notice.

Issued in Anchorage, Alaska on November 26, 2002.

Byron K. Huffman,

Manager, Airports Division, AAL–600. Alaskan Region.

[FR Doc. 02–31348 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–65]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 2, 2003.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–200X–XXXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Denise Emrick or Sandy Buchanan-Sumter, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–5174.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 3, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–13323.
Petitioner: Eagle Jet Charter, Inc.
Section of 14 CFR Affected: 14 CFR § 121.313(j).
Description of Relief Sought: To permit Eagle Jet to operate its fleet of five Fokker F–27 aircraft without having a door installed between each passenger compartment and pilot compartment that resists forcible intrusion by unauthorized individuals and penetration by small arms fire and fragmentation devices.

Docket No.: FAA–2002–13224.
Petitioner: Petersen Aviation.
Section of 14 CFR Affected: 14 CFR 135.269(b)(5).
Description of Relief Sought: To permit Petersen Aviation to operate on-demand charter flights of more than 10 hours but less than 12 hours without meeting the requirement to have adequate sleeping facilities on the aircraft for the relief pilot.

Docket No.: FAA–2002–11565.
Petitioner: Fresh Water Adventures.
Section of 14 CFR Affected: 14 CFR 135.267(f).
Description of Relief Sought: To permit Fresh Water Adventures to provide each flight crewmember at least 13 rest periods of at least 24 consecutive hours each in each 3-month period beginning in February instead of in each calendar quarter.

[FR Doc. 02–31352 Filed 12–11–02; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–66]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 2, 2003.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13656–1 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Carol Greb (816–329–4136), Small Airplane Directorate ACE–111), Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Dated: Issued in Washington, DC, on December 9, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–13656–1.
Petitioner: Ente nazionale per l'Aviazione Civile (ENAC).
Section of 14 CFR Affected: 14 CFR 23.562.
Description of Relief Sought: Iniziative Industriali Italiane (3I) seeks exemption from 14 CFR 23.562 for the Sky Arrow 650 TCS/TCNS models. The Sky Arrow 650 TCS/TCNS models meet the criteria for JAR–VLA class aircraft. Each model has a maximum gross weight equal to 1432 pounds (650kg) and a flap down stall speed equal to 41 knots. The exemption will permit the Sky Arrow 650bTCNS to receive a part 23 normal category type certification as required for night VFR operations and the Sky Arrow 650 TCS to receive a part 23 normal category type certification as required for VFR day operations but with an increased level of safety. The Sky Arrow 650 TCS/TCNS are equipped with compensating design features that provide suitable occupant protection in an emergency dynamic landing condition. The exemption will permit the Sky Arrow 650 TCNS to receive a part 23 normal category type certification as required for night VFR operations and the Sky Arrow 650 TCS to receive a part 23 normal category type certification as required for VFR day operations but with an increased level of safety. The Sky Arrow 650 TCS/TCNS Models are equipped with compensating design features that provide suitable occupants protection in an emergency dynamic landing condition.

[FR Doc. 02–31353 Filed 12–11–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–67]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 2, 2003.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13603–1 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Orr (816–329–4151), Small Airplane Directorate (ACE–111), Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–8029.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 9, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–13603–1.
Petitioner: Cessna Aircraft Company.
Section of 14 CFR Affected: 14 CFR part 23, § 23.3(d).
Description of Relief Sought: To allow Cessna Aircraft Company to obtain an exemption from 14 CFR part 23, § 23.3(d) to permit Type Certificate Data Sheet A1WI to include the Cessna Model 525B under the commuter category. Section 23.3(d) limits commuter category to propeller-driven multiengine airplanes. The Cessna Model 525B is a turbofan powered business jet, a derivative of the Models 525/525A, which is certified under 14 CFR part 23 normal category. The Cessna Model 525B will have a takeoff weight that has been increased to 13,870 pounds, which exceeds the part 23 normal category maximum certification takeoff weight of 12,500 pounds or less.

[FR Doc. 02–31354 Filed 12–11–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–68]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Vanessa Wilkins, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–8029.

This notice is published pursuant to 14 CFR §§ 11.85 and 11.91.

Issued in Washington, DC, on December 9, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–9331.
Petitioner: Pratt & Whitney.
Section of 14 CFR Affected: 14 CFR 21.325(b)(3).
Description of Relief Sought/Disposition: To allow Pratt & Whitney organizational designated airworthiness representatives to issue export airworthiness approvals for Class II and Class III products manufactured and located at Pratt & Whitney suppliers located in Germany, Italy, Japan, and Sweden.
Grant, 11/04/2002, Exemption No. 7915.

Docket No.: FAA–2000–8421.
Petitioner: Commodore Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 21.325(b)(3).
Description of Relief Sought/Disposition: To permit Commodore to issue export airworthiness approvals for Class II products manufactured in Tel Aviv, Israel, by Israel Aircraft Industries, Bedek Aviation Group, as an approved supplier to Commodore under Commodore's parts manufacturing authority.
Grant, 10/07/2002, Exemption No. 6861B.

Docket No.: FAA–2002–13187.
Petitioner: The Soaring Society of America, Inc.
Section of 14 CFR Affected: 14 CFR 45.11(a) and (d).
Description of Relief Sought/Disposition: To permit owners, operators, and manufacturers of gliders to forgo the requirement to secure an identification plate or display the model and serial number on the exterior of the aircraft at specified locations.
Grant, 10/25/2002, Exemption No. 4988F.

Docket No.: FAA–2001–8684.
Petitioner: Northwest Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 121.709(b)(3).
Description of Relief Sought/Disposition: To allow Northwest to use electronic signatures generated by its SCEPTRE electronic recordkeeping system in place of physical signatures to satisfy the airworthiness release or aircraft log entry signature requirements.
Grant, 11/15/2002, Exemption No. 6575C.

[FR Doc. 02–31355 Filed 12–11–02; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–06–U–00–PNS To Use the Revenue From a Passenger Facility Charge (PFC) at Pensacola Regional Airport, Pensacola, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Pensacola Regional Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 13, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, Suite 400, 5950 Hazeltine National Drive, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Frank Miller, Airport Director of the City of Pensacola at the following address: Pensacola Regional Airport, 2430 Airport Blvd., Suite 225, Pensacola, Florida 32504.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Pensacola under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Farris, Program Manager, Orlando Airports District Office, Suite 400, 5950 Hazeltime National Drive, Orlando, Florida 32822, (407) 812–6331 Ext. 25. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Pensacola Regional Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 5, 2002, the FAA determined that the application to use the revenue from a PFC submitted by City of Pensacola was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 20, 2003.

The following is a brief overview of the application.

Proposed charge effective date: December 1, 2002.

Proposed charge expiration date: September 1, 2007.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $12,300,000.

Brief description of proposed project(s): Runway 8/26 Extension.

Level of the proposed PFC: $4.50.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi/commercial operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southern Headquarters/ASO–600, 1701 Columbia Ave., College Park, Georgia 30337.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Pensacola.

Issued in Orlando, Florida, on December 5, 2002.

W. Dean Stringer,

Manager, Airports Division, Southern Region.

[FR Doc. 02–31344 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Policy Statement on Standardization of Application Regarding Hazardous Misleading Heading Information for Attitude-Heading Reference Systems (AHRS); PS–ACE100–2002–003

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy statement; request for comments.

SUMMARY: This notice announces the availability of, and request for comments for, a proposed policy statement on the standardization of application of 14 CFR part 23, § 23.1309 regarding hazardous misleading heading information for attitude-heading reference systems (AHRS); PS–ACE100–2002–003.

DATES: Comments sent must be received by February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Erv Dvorak, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; facsimile: (816) 329–4123.

SUPPLEMENTARY INFORMATION:

Discussion

You may download a copy from the FAA Web site at *<http://www.faa.gov/certification/ aircraft/small_airplane_directorate_news_proposed.htm>*, or request a copy by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.**

This proposed policy's purpose is to clarify Federal Aviation Administration (FAA) certification policy on the application of Advisory Circular (AC) 23.1309–1C, Equipment, Systems, and Installations in Part 23 Airplanes, regarding hazardous misleading heading information.

The issue in question is specifically about the application of AC 23.1309–1C for an airplane with the certification basis under amendments 23–41 or later. This clarification is limited to installations approved for operation in Instrument Meteorological Conditions (IMC) under Instrument Flight Rules (IFR).

Issued in Kansas City, Missouri on November 18, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30052 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–02–115–15]

Certification of Passenger Seat Armrests

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of final policy that clarifies current FAA policy with respect to certification of passenger seat armrests.

DATES: The final policy was issued by the Transport Airplane Directorate on November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Jayson Claar, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, ANM–115, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2194; fax (425) 227–1320; e-mail: *jayson.claar@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion of Comments

A notice of proposed policy was published in **Federal Register** on August 16, 2002 (67 FR 53641). Two (2) commenters responded to the request for comments.

Background

The policy provides additional guidance with respect to compliance with § 25.785(d), Amendment, 25–88, for transport category airplane passenger seat armrests, and is specifically aimed at documenting an alternative to current policy and guidance for demonstrating compliance with that section for seat armrests which may be struck by persons seated behind them.

The final policy as well as the disposition of public comments is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/finalpaper.cfm.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, on November 25, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Driectorate, Aircraft Certification Service.

[FR Doc. 02–31346 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2002–13411]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the vision standard; request for comments.

SUMMARY: This notice publishes the FMCSA's receipt of applications from 33 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before January 13, 2003.

ADDRESSES: You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments at *http://dms.dot.gov.* Please include the docket number that appears in the heading of this document. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. The 33 individuals listed in this notice have recently requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety.

Qualifications of Applicants

1. Michael D. Archibald

Mr. Archibald, age 57, lost his right eye in 1967 due to trauma. The visual acuity in his left eye is 20/15 corrected. His optometrist examined him in 2002 and stated, "It is my opinion, and I will certify that the ocular health and visual condition of Michael D. Archibald, Sr. are stable and that he has demonstrated the visual competency required to perform the driving tasks of a commercial vehicle." Mr. Archibald reported that he has 5 years and 7,000 miles of experience in operating straight trucks, and 14 years and 1.2 million miles of experience in operating tractor-trailer combinations. He holds a Class A commercial driver's license (CDL) from the State of Washington, and his driving record for the last 3 years shows no accidents or convictions for traffic violations in a CMV.

2. Howard K. Bradley

Mr. Bradley, 38, has optic nerve atrophy in his right eye due to an accident in 1983. His visual acuity is 20/400 in the right eye and 20/20 in the left. An ophthalmologist who examined him in 2002 certified, "In my medical opinion, this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Bradley submitted that he has operated tractor-trailer combinations for 19 years, accumulating 1.7 million miles. He holds a Class AM CDL from Virginia. His driving record shows he has had one accident and no convictions for traffic violations in a CMV during the last 3 years. According to the police report, a driver following Mr. Bradley rear-ended his vehicle. The other driver was charged with "Reckless Driving'; Mr. Bradley was not cited.

3. Kirk G. Braegger

Mr. Braegger, 52, has amblyopia in his left eye. His best-corrected visual acuity is 20/30 in the right eye and 20/80 in the left. An ophthalmologist examined him in 2002 and stated, "I certify that he does have sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Braegger reported that he has driven tractor-trailer combinations for 20 years, accumulating 2.4 million miles. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

4. Daniel L. Butler

Mr. Butler, 60, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/200 in the left. An ophthalmologist examined him in 2002 and stated, "In my professional opinion, this person has sufficient vision to continue to perform the driving tasks required to operate a commercial vehicle." Mr. Butler reported that he has driven straight trucks for 18 years, accumulating 1.0 million miles, and tractor-trailer combinations for 20 years, accumulating 1.2 million miles. He holds a Class A CDL from South Carolina. His driving record for the last 3 years shows one accident and no convictions for moving violations in a CMV. According to the police report, the driver of another vehicle ran over the curb of the median. The driver stated that she was forced to move toward the median when Mr. Butler changed into her lane. Mr. Butler stated that he observed the other vehicle

to be approximately a truck-length behind him when he started to change lanes. Neither driver was cited.

5. Ambrosio E. Calles

Mr. Calles, 55, has amblyopia in his right eye. His best-corrected visual acuity is 20/200 in the right eye and 20/20 in the left. Following an examination in 2002 his optometrist stated, "I certify that in my medical opinion Mr. Calles has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Calles submitted that he has driven straight trucks for 2 years, accumulating 82,000 miles, and tractor-trailer combinations for 3 years, accumulating 123,000 miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

6. Sandy Clark

Mr. Clark, 67, incurred damage to the macula area of his right eye due to injury 40 years ago. His visual acuity is 20/200 in the right eye and 20/20 in the left. An optometrist examined him in 2002 and certified, "Due to his past driving record and good vision when using both eyes, I feel his vision is adequate to safely operate a commercial motor vehicle." Mr. Clark reported that he has driven straight trucks for 22 years, accumulating 143,000 miles, and tractor-trailer combinations for 9 years, accumulating 270,000 miles. He holds a Class A CDL from Louisiana. His driving record for the last 3 years shows one accident and no convictions for moving violations in a CMV. According to the police report, another driver entered the roadway from a private driveway and struck Mr. Clark's vehicle on the side as Mr. Clark swerved to avoid the collision. The other driver was charged with "Failure to Yield"; Mr. Clark was not cited.

7. Jose G. Cruz

Mr. Cruz, 32, lost his left eye due to trauma 23 years ago. The uncorrected visual acuity in his right eye is 20/20. Following an examination in 2002, his ophthalmologist certified, "Mr. Cruz in all regards is able to operate a commercial vehicle as safely as possible with his current vision such as he has been doing in the past." Mr. Cruz submitted that he has driven tractor-trailer combinations for 4 years, accumulating 336,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

8. Everett A. Doty

Mr. Doty, 39, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/15 and in the left, 20/80. An optometrist examined him in 2002 and stated, "In my medical opinion, Everett Allen Doty has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Doty submitted that he has driven straight trucks for 22 years, accumulating 220,000 miles. He holds a Class A driver's license from Arizona. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

9. Donald K. Driscoll

Mr. Driscoll, 35, has amblyopia in his right eye. His visual acuity is 20/70 in the right eye and 20/20 in the left. Following an examination in 2002, his ophthalmologist certified, "In my opinion, Mr. Driscoll has vision sufficient and adequate for the performance of the driving tasks required to operate a commercial vehicle." Mr. Driscoll reported that he has driven straight trucks for 6 years, accumulating 84,000 miles. He holds a Class A CDL from Massachusetts, and there are no accidents or convictions for moving violations on his driving record for the last 3 years.

10. Donald J. Goretski

Mr. Goretski, 57, has had retinal scarring in his left eye since 1996. His best-corrected visual acuity is 20/20 in the right eye and 20/200+ in the left. Following an examination in 2002 his optometrist stated, "It is my opinion that Mr. Goretski has adequate visual acuity and peripheral vision to safely operate a commercial motor vehicle." Mr. Goretski reported that he has driven straight trucks for 2 years, accumulating 120,000 miles, and tractor-trailer combinations for 32 years, accumulating 3.2 million miles. He holds a Class ABCD CDL from Wisconsin. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

11. Alf M. Gronstedt

Mr. Gronstedt, 56, has amblyopia in his right eye. His best-corrected visual acuity is 20/200 in the right eye and 20/25 in the left. Following an examination in 2002, his optometrist certified, "In my medical opinion, Alf M. Gronstedt should be able to perform the driving tasks required to operate a commercial vehicle." Mr. Gronstedt reported that he has driven tractor-trailer combinations for 35 years, accumulating 2.8 million miles. He holds a Class A CDL from Texas, and his driving record shows that he has had no accidents or convictions for traffic violations in a CMV during the last 3 years.

12. David R. Gross

Mr. Gross, 63, has had retinal scarring in his left eye for 35 years. His best-corrected visual acuity is 20/20–1 in the right eye and 20/200 in the left. Following an examination in 2002, his optometrist stated, "I believe that Mr. Gross has the visual ability to perform the driving tasks required to operate a commercial vehicle." Mr. Gross submitted that he has driven straight trucks for 20 years, accumulating 1.6 million miles. He holds a Class A CDL from Pennsylvania. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

13. Thomas L. Hall

Mr. Hall, 47, has amblyopia in his right eye. His best-corrected visual acuity is 20/200 in the right eye and 20/40 in the left. An ophthalmologist examined him in 2002 and certified, "Based upon my examination of Mr. Thomas Hall, it is my medical opinion that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Hall submitted that he has driven straight trucks for 16 years, accumulating 560,000 miles, and tractor-trailer combinations for 11 years, accumulating 330,000 miles. He holds a Class AM CDL from New York. His driving record for the past 3 years shows one accident and no convictions for moving violations in a CMV. According to the police report, Mr. Hall was proceeding through an intersection on a green light when another driver attempting to make a right turn on red struck his vehicle. Neither driver was cited.

14. Raymond G. Hayden

Mr. Hayden, 60, lost all but light perception in his left eye in 1988 after failure of a retinal detachment procedure. The best-corrected visual acuity in his right eye is 20/20. An ophthalmologist examined him in 2002 and certified, "In my opinion he has sufficient vision to perform the driving tasks required to operate a commercial vehicle provided he meets all the other requirements of the visual exemption program." Mr. Hayden reported that he has driven tractor-trailer combinations for 35 years, accumulating 3.5 million miles. He holds a Class A CDL from Louisiana. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

15. Harry P. Henning

Mr. Henning, 38, lost his right eye due to injury at the age of 8. His uncorrected visual acuity in the left eye is 20/15. An optometrist examined him in 2002 and certified, "Although Harry's visual function is slightly less than a binocular patient, I believe he has sufficient vision to drive a commercial vehicle as long as he is careful in using his mirrors and judgment." Mr. Henning reported that he has driven straight trucks for 15 years, accumulating 225,000 miles, and tractor-trailer combinations for 15 years, accumulating 300,000 miles. He holds a Class A CDL from Pennsylvania. His driving record shows one accident and no convictions for moving violations in a CMV during the last 3 years. According to the accident report, an oncoming vehicle crossed the centerline and struck the vehicle that Mr. Henning was driving. The other driver was cited for "Roadways Laned for Traffic"; Mr. Henning was not cited.

16. Bruce G. Horner

Mr. Horner, 51, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/200 in the left. An optometrist examined him in 2002 and certified, "I believe that in my medical opinion, Bruce has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Horner submitted that he has driven tractor-trailer combinations for 16 years, accumulating 2.1 million miles. He holds a Class A CDL from the State of Washington. His driving record shows no accidents or convictions for moving violations during the last 3 years.

17. Jeffery S. Lathrop

Mr. Lathrop, 42, has amblyopia in his left eye. His best-corrected vision in the right eye is 20/20 and in the left, 20/400. An optometrist examined him in 2002 and certified, "In my opinion, Jeff has sufficient vision to operate a commercial vehicle." Mr. Lathrop submitted that he has driven straight trucks for 3 years, accumulating 39,000 miles, and tractor-trailer combinations for 11 years, accumulating 352,000 miles. He holds a Class A CDL from North Carolina, and there are no accidents or convictions for moving violations in a CMV on his driving record for the last 3 years.

18. Tommy R. Masterson

Mr. Masterson, 48, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/100 in the left. Following an examination in 2002, his optometrist commented, "It is my opinion that Mr. Masterson has the vision to perform the driving tasks required to operate a commercial vehicle." Mr. Masterson submitted that he has driven straight trucks for 25 years, accumulating 1.0 million miles, and tractor-trailer combinations for 20 years, accumulating 850,000 miles. He holds a Class A CDL from Oregon, and his driving record shows he has had no accidents or convictions for moving violations in a CMV during the last 3 years.

19. Daniel A. McKeon

Mr. McKeon, 60, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/70. Following an examination in 2002, his optometrist commented, "In my opinion, Mr. McKeon's visual condition, refractive amblyopia—left eye, does not prevent him from safely performing the driving tasks required to operate a car or truck." Mr. McKeon reported that he has driven straight trucks for 6 years, accumulating 300,000 miles, and tractor-trailer combinations for 15 years, accumulating 1.9 million miles. He holds a Class A CDL from Minnesota. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

20. Ralph J. Miles

Mr. Miles, 38, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/200 in the left. Following an examination in 2002 his ophthalmologist certified, "My medical opinion is that Mr. Miles has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Miles submitted that he has driven straight trucks for 6 years, accumulating 240,000 miles. He holds a Class C driver's license from Oregon. His driving record shows no accidents or convictions for moving violations in a CMV for the last 3 years.

21. William R. New

Mr. New, 54, has amblyopia in his left eye. His best-corrected visual acuity is 20/15 in the right eye and 20/70 in the left. An ophthalmologist examined him in 2002 and certified, "It is my medical opinion that Mr. New's vision is sufficient to perform his job as a commercial truck driver." Mr. New submitted that he has driven straight trucks for 14 years, accumulating 840,000 miles, and tractor-trailer combinations for 10 years, accumulating 600,000 miles. He holds a Class A CDL from Arkansas. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

22. Kirby G. Oathout

Mr. Oathout, 51, has amblyopia in his left eye. His best-corrected visual acuity is 20/20–1 in the right eye and 20/80–1 in the left. Following an examination in 2002, his optometrist commented, "Because of the excellent vision in the right eye and the normal peripheral vision in both eyes as well as the fact that he has had his entire life to adapt to this condition, I believe Mr. Oathout has sufficient vision to perform driving tasks related to driving a commercial vehicle." Mr. Oathout submitted that he has driven straight trucks for 5 years, accumulating 275,000 miles. He holds a Class ABCDM CDL from Wisconsin. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

23. Ronald F. Prezzia

Mr. Prezzia, 47, has amblyopia in his right eye. His best-corrected visual acuity is 20/60 in the right eye and 20/30 in the left. An ophthalmologist examined him in 2002 and certified, "In my medical opinion, Mr. Prezzia has sufficient vision to perform the driving tasks that are required to operate a commercial vehicle." Mr. Prezzia reported that he has driven straight trucks for 1½ years, accumulating 40,000 miles, and tractor-trailer combinations for 23 years, accumulating 1.1 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

24. Joseph J. Rettenmeier

Mr. Rettenmeier, 38, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/50 in the left. An optometrist examined him in 2002 and certified, "My medical opinion is that Joe Rettenmeier has sufficient vision to perform all the driving tasks required to operate a commercial vehicle." Mr. Rettenmeier reported that he has driven straight trucks for 8 years, accumulating 520,000 miles, and tractor-trailer combinations for 10 years, accumulating 1.0 million miles. He holds a Class A CDL from Iowa. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

25. Thomas C. Rylee

Mr. Rylee, 55, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/400 in the left. Following an examination in 2002, his optometrist certified, "Mr. Rylee has sufficient vision to perform the driving tasks required to operate a

commercial vehicle." In his application, Mr. Rylee indicated he has driven tractor-trailer combinations for 26 years, accumulating 1.1 million miles, and buses for 3 years, accumulating 4,000 miles. He holds a Class A CDL from Georgia, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

26. Stanley B. Salkowski III

Mr. Salkowski, 40, has amblyopia in his right eye. His visual acuity is 20/60-in the right eye and 20/20 in the left. Following an examination in 2002, his optometrist certified, "His condition is stable and it is my impression that his vision is sufficient to perform all the driving tasks required to drive a commercial vehicle." Mr. Salkowski submitted that he has driven straight trucks for 11 years, accumulating 297,000 miles, and tractor-trailer combinations for 10 years, accumulating 680,000 miles. He holds a Class A CDL from Pennsylvania, and his driving record shows he has had no accidents or convictions for moving violations in a CMV in the last 3 years.

27. Wolfgang V. Spekis

Mr. Spekis, 47, has amblyopia in his left eye. His visual acuity is 20/25 in the right eye and 20/400 in the left. Following an examination in 2002, his ophthalmologist stated, "Given what he has told me, I do believe that his visual acuity is sufficient to permit him to drive a commercial vehicle accurately and that his diabetic retinopathy is not at present leading to any visual deficiency." Mr. Spekis submitted that he has driven straight trucks for 12 years, accumulating 720,000 miles. He has a Maryland Class B CDL, and there are no accidents or convictions for moving violations on his driving record for the last 3 years.

28. James A. Stoudt

Mr. Stoudt, 50, has amblyopia in his left eye. His best-corrected vision in the right eye is 20/20–2 and in the left, 20/100+. Following an examination in 2002, his ophthalmologist stated, "I feel that he can compensate fairly well visually, and he is able to continue his career as a truck driver from my standpoint." Mr. Stoudt submitted that he has 14 years and 1.0 million miles of experience in driving tractor-trailer combinations. He holds a Class A CDL from Pennsylvania, and his driving record for the last 3 years contains no accidents or convictions for moving violations in a CMV.

29. Michael G. Thomas

Mr. Thomas, 31, has amblyopia in his left eye. His visual acuity in the right eye is 20/20 and in the left, 20/200. An optometrist examined him in 2002 and stated, "I certify that in my professional opinion, Michael G. Thomas has sufficient vision to perform the driving tasks required to operate a commercial vehicle." In his application, Mr. Thomas indicated he has 9 years and 148,000 miles of experience in driving straight trucks. He holds a Class C driver's license from Maryland, and his driving record shows no accidents or moving violations in a CMV during the last 3 years.

30. Brian S. Thompson

Mr. Thompson, 38, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/50. An optometrist examined him in 2002 and stated, "Brian has sufficient visual function to perform his duties as a driver of commercial vehicles." Mr. Thompson submitted that he has driven straight trucks for 18 years, accumulating 201,000 miles. He holds a Class B CDL from Ohio. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

31. William H. Twardus

Mr. Twardus, age 56, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/100 in the left. Following an examination in 2002, his optometrist certified, "It is my opinion that with the visual field and the visual acuity of Mr. William Twardus that he has adequate vision to perform the driving tasks that are required to operate a commercial vehicle." Mr. Twardus reported that he has driven straight trucks for 24 years, accumulating 624,000 miles. He holds a Class A CDL from Delaware. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

32. Ronald J. Watt

Mr. Watt, 71, lost his right eye in 1996 due to trauma. His best-corrected visual acuity is 20/20 in the left eye. An optometrist examined him in 2002 and certified, "In my opinion, Mr. Watt has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Watt reported that he has driven straight trucks for 40 years, accumulating 1.2 million miles, and tractor-trailer combinations for 24 years, accumulating 2.5 million miles. He holds a Class A CDL from North Dakota. His driving record shows no accidents or convictions for moving violations in a CMV for the last 3 years.

33. Dale R. Wheeler

Mr. Wheeler, 49, has had a macular scar in his right eye since birth. His best-corrected visual acuity is 20/260 in the right eye and 20/20 in the left. An optometrist examined him in 2002 and stated, "In my opinion, Dale Wheeler has sufficient vision to operate a commercial vehicle." Mr. Wheeler reported that he has driven straight trucks for 1 year, accumulating 20,000 miles, and tractor-trailer combinations for 6 years, accumulating 600,000 miles. He holds a Class A CDL from North Dakota. His driving record for the last 3 years shows no accidents and one conviction for a moving violation—Speeding—in a CMV. He exceeded the speed limit by 15 mph.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: December 5, 2002.

Brian M. McLaughlin,

Associate Administrator, Policy and Program Development.

[FR Doc. 02–31356 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on October 9, 2002 (67 FR 63010).

DATES: Comments must be submitted on or before January 13, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On October 9, 2002, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 67 FR 63010. FRA received no comments after issuing the 60-day notice referenced earlier. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); see also 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Inspection and Maintenance Standards For Steam Locomotives.

OMB Control Number: 2130–0505.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Abstract: The Locomotive Boiler Inspection Act (LBIA) OF 1911 requires each railroad subject to the Act to file copies of its rules and instructions for the inspection of locomotives. The original LBIA was expanded to cover the entire steam locomotive and tender and all its parts and appurtenances. This Act then requires carriers to make inspections and to repair defects to ensure the safe operation of steam locomotives. The collection of information is used by tourist or historic railroads and by locomotive owners/operators to provide a record for each day a steam locomotive is placed in service, as well as a record that the required steam locomotive inspections are completed. Additionally, the collection of information is used by FRA Federal inspectors to verify that necessary safety inspections and tests have been completed, and to ensure that steam locomotives are indeed "safe and suitable" for service and are properly operated and maintained.

Annual Estimated Burden Hours: 314 hours.

Title: Railroad Rehabilitation and Improvement Financing Program.

OMB Control Number: 2130–0548.

Type of Request: Extension of a currently approved collection.

Affected Public: State and local governments, government sponsored authorities and corporations, railroads (including Amtrak), and joint ventures that include at least one railroad.

Abstract: Prior to the enactment of the Transportation Equity Act of the 21st Century ("TEA 21"), Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (the "Act"), 45 U.S.C. 821 *et seq.*, authorized FRA to provide railroad financial assistance through the purchase of preference shares (45 U.S.C. 825), and the issuance of loan guarantees (45 U.S.C. 831). The FRA regulations implementing the preference share program were eliminated on February 9, 1996, due to the fact that the authorization for the program expired (28 FR 4937). The FRA regulations implementing the loan guarantee provisions of Title V of the Act are contained in 49 CFR part 260. Section 7203 of TEA 21, Public Law 105–178 (June 9, 1998), replaces the existing Title V financing programs. The collection of information is used by FRA staff to determine the financial eligibility of applicants for a loan or loan guarantee regarding eligible projects for the improvement/rehabilitation of rail equipment or facilities, the refinancing of outstanding debt for these purposes, or the development of new intermodal or railroad facilities. The aggregate unpaid principal amounts of obligations can not exceed $3.5 billion at any one time and not less than $1 billion is to be available solely for projects benefitting freight railroads other than Class I carriers.

Annual Estimated Burden Hours: 5,881 hours.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW, Washington, DC, 20503, Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on December 9, 2002.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 02–31340 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–02–13481 (PDA–29(R))]

Massachusetts Regulations on the Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waste

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: Interested parties are invited to submit comments on an application by the Medical Waste Institute for an administrative determination whether

Federal hazardous materials transportation law preempts requirements of the Commonwealth of Massachusetts concerning regulations on the storage and disposal of infectious or physically dangerous medical or biological waste.

DATES: Comments received on or before January 27, 2003, and rebuttal comments received on or before March 12, 2003, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and all comments received may be reviewed in the Dockets Office, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The application and all comments are also available on-line through the home page of DOT's Docket Management System, at "*http://dms.dot.gov.*"

Comments must refer to Docket No. RSPA–02–13481 and may be submitted to the docket either in writing or electronically. Send three copies of each written comment to the Dockets Office at the above address. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. To submit comments electronically, log onto the Docket Management System Web site at *http://dms.dot.gov,* and click on "Help" to obtain instructions. You may also sign up on the DOT's DMS "List Serve" at this Web site. This service will automatically notify you when certain documents are put into a docket that is of interest to you.

A copy of each comment must also be sent to (1) Alice P. Jacobsohn, Esq., Director, Public Affairs and Industry Research, Medical Waste Institute, 4301 Connecticut Avenue, NW., Suite 300, Washington, DC 20008, and (2) Howard S. Wensley, M.S., C.H.O., Director, Commonwealth of Massachusetts, Executive Office of Health and Human Services, Department of Public Health, Division of Community Sanitation, 305 South Street, Jamaica Plain, MA 02130–3597. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: "I certify that copies of this comment have been sent to Ms. Jacobsohn and Mr. Wensley at the addresses specified in the **Federal Register**.")

A list and subject matter index of hazardous materials preemption cases, including all inconsistency rulings and preemption determinations issued, are available through the home page of RSPA's Office of the Chief Counsel, at "*http://rapa-atty.dot.gov.*" A paper copy of this list and index will be provided at no cost upon request to Mr. Hilder, at the address and telephone number set forth in **FOR FURTHER INFORMATION CONTACT** below.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration (Tel. No. 202–366–4400), U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

The Medical Waste Institute (the "Institute") has applied for a determination that Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, preempts requirements contained in Title 105 of the Code of Massachusetts Regulations (CMR) Section 480.000 *et seq.* applicable to the storage and disposal of "infectious or physically dangerous medical or biological waste." In its application, the Institute challenges packaging, labeling, and manifesting requirements for this waste that it states are not substantially the same as requirements in the HMR. The test of the Institute's application is set forth in Addendum A to this notice.

Packaging. The Institute asserts that Massachusetts' storage requirements in 105 CMR 480.100 provide that storage containers must be "rodent-proof" and "fly-tight" without defining these standards, which are not contained in the HMR, and which could be shown only by additional, different testing. The Institute also states that, with one exception, Massachusetts' requirements do not distinguish between materials stored purely for on-site treatment and those stored in preparation for transport and disposal off-site: certain wastes must be stored in "a non-permeable three mil or greater polyethylene bag (or equivalent which is securely sealed to prevent leaks" but that, under 105 CMR 480.200, wastes must be "placed in a second three mil bag if they are to be transported off-site for disposal."

Labeling. The Institute alleges that, unlike the HMR, 105 CMR 480.300 requires (1) a special label to be used on containers of "sharp wastes," and (2) a label with the name, address, and telephone number of the generator on "every container or bag of waste that has not been rendered infectious and which will be transported off the premises of the waste generator." The Institute asserts that these differences may confuse emergency responders and users of packaging, and that interstate shipments may be frustrated if a transporter must stop at the State border and re-label packages.

Manifest. The Institute asserts that Massachusetts requires a specific manifest form which is not required in the HMR. The Institute states that the manifest requirements in 105 CMR 480.500 cover items that fall outside the HMR's definition of hazardous waste, including blood and blood products, pathological waste, cultures and stocks of infectious agents and associated biologicals, sharps, biotechnological by-product effluents, and contaminated animal carcasses, body parts, and bedding. It refers to PD–23(FR), Morrisville, PA Requirements for Transportation of "Dangerous Waste," 66 RR 37260 (July 17, 2001), decision on petition for reconsideration, 67 FR 2948 (Jan. 22, 2002), where RSPA explained that regulated medical waste is not a "hazardous waste" regulated by the Environmental Protection Agency (EPA) under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.* In PD–23(RF), RSPA concluded that a local requirement to carry a hazardous waste manifest on a truck transporting medical waste is not "substantively the same as" requirements in the HMR "because the HMR does not require the use of any specific form for shipments of regulated medical wastes (or other hazardous materials that are not hazardous wastes)." 66 FR at 37265.

The Institute also notes that definitions in 105 CMR 480.010 may not be consistent with revised provisions in the HMR that become effective on February 14, 2003, as issued in the final rule in Docket No. RSPA–98–3971 (HM–226), Hazardous Materials: Revisions to Standards for Infectious Substances, 67 FR 53118 (Aug. 14, 2002), corrections, 67 FR 54967 (Aug. 27, 2003), 67 FR 57635 (Sept. 11, 2002).

II. Federal Preemption

Section 5125 of Title 49 U.S.C. contains several preemption provisions that are relevant to the Institute's application. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if

(1) Complying with a requirement of the State, political subdivision or tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or

(2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to the accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

These two paragraphs set forth the "dual compliance" and "obstacle" criteria which RSPA had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Public Law 93–633 section 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz,* 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.,* 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects, that is not "substantively the same as" a provision of Federal hazardous material transportation law or a regulation prescribed under that law, is preempted unless it is authorized by another Federal law or DOT grants a wavier of preemption:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

To be "substantively the same," the non-Federal requirement must "conform in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted." 49 CFR 107.202(d)

These preemption provisions in 49 U.S.C. 5125 carry out Congress's view that a single body of uniform Federal regulations promotes safety in the transportation of hazardous materials. In considering the HMTA, the Senate Commerce Committee "endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it amended the HMTA in 1990, Congress specifically found that:

(3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in law and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Public Law 101–614 § 2, 104 Stat. 3244. A Federal Court of Appeals has found that uniformity was the "linchpin" in the design of the HMTA, including the 1990 amendments that expanded the original preemption provisions. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991). (In 1994, Congress revised, codified and enacted the HMTA "without substantive change," at 49 U.S.C. Chapter 51. Public Law 103–272, 108 Stat. 745.)

III. Preemption Determinations

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted. The Secretary of Transportation has delegated authority to RSPA to make determinations of preemption, except for those that concern highway routing, which have been delegated to the Federal Motor Carrier Safety Administration. 49 CFR 1.53(b).

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the **Federal Register**. Following the receipt and consideration of written comments, RSPA will publish its determination in the **Federal Register**. *See* 49 CFR 107.209(d). A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 107.211. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized to another Federal law or whether a fee is fair. A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon,* above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principals and policies set forth in Executive Order No. 13132, entitled "Federalism." 64 FR 43255 (Aug. 10, 1999). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence that Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA has implemented through its regulations.

IV. Public Comments

All comments should be limited to whether 49 U.S.C. 5125 preempts the Massachusetts requirements challenged by the Institute. Comments should specifically address the preemption criteria detailed in Part II, above, and set forth in detail the manner in which these requirements are applied and enforced, including but not limited to:

(1) What are the differences between Massachusetts' packaging requirements and the HMR packaging requirements?

(2) What do the requirements for a "rodent proof" and "fly-tight" container mean?

(3) Are Massachusetts' packaging, labeling, and manifesting requirements "substantively the same as" the requirements in the HMR?

(4) Do Massachusetts' packaging, labeling, and manifesting requirements "present an obstacle" to accomplishing and carrying out Federal hazmat law and the HMR?

(5) Are any of Massachusetts' requirements "authorized by another Federal law"?

Issued in Washington, DC on December 6, 2002.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

Addendum A

National Solid Wastes Management Association
4301 Connecticut Avenue, NW., Suite 300,
Washington, DC 20008, 800–424–2869

Application of the Medical Waste Institute for a Preemption Determination as to

Massachusetts' Regulations on the Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waste

In accordance with Title 49 of the Code of Federal Regulations (CFR), Part 107, Subsection C, the Medical Waste Institute (Institute) is submitting this application for a preemption determination requesting that certain sections of the Massachusetts Code be found in violation of federal transportation law.

Anyone with questions about this application, may contact Alice Jacobsohn at 202–364–3724 (phone), 202–364–3792 (fax), or alicej@envasns.org (e-mail).

Submitted By:

Alice P. Jacobsohn, Esq.
Director, Public Affairs and Industry Research.

August 30, 2002.

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A. List of Massachusetts Requirements for Which the Preemption Determination Applies

Each of the regulations is detailed in full below. The specific text at issue in this application is highlighted by the use of capital letters.

1. Title 105 of the Code of Massachusetts Regulations (CMR) Section 480.010 Definition of *Infectious or Physically Dangerous Medical or Biological Waste*[1]

Waste which because of its characteristics may: cause, or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or pose a substantial present potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

The following types of waste are identified and defined as infectious or physically dangerous medical or biological waste, and shall be subject to the requirements of 105 CMR 480.000:

(a) *Blood and Blood Products:* Discarded bulk human blood and blood products in free draining liquid state; body fluids contaminated with visible blood; and materials saturated/dripping with blood.

(b) *Pathological Waste:* Human anatomical parts, organs, tissues and body fluids removed and discarded during surgery or autopsy, or other medical procedures and specimens of body fluids and their containers.

(c) *Cultures and Stocks of Infectious Agents and Associated Biologicals:* All discarded cultures and stocks of infectious agents and associated biologicals, biotechnological by-product effluents, cultures of specimens from medical and pathological laboratories, cultures and stocks of infectious agents from research laboratories, wastes from the production of biologicals, and discarded live and attenuated vaccines intended for human use.

(d) *Contaminated Animal Carcasses, Body Parts and Bedding:* The contaminated carcasses and body parts and bedding of all research animals known to be exposed to pathogens.

(e) *Sharps:* Discarded medical articles that may cause puncture or cuts, including but not limited to all used and discarded hypodermic needles and syringes, pasteur pipettes, broken medical glassware, scapel blades, disposable razors, and suture needles.

(f) *Biotechnological By-Product Effluents:* Any discarded preparations made from genetically altered living organisms and their products.

2. 105 CMR 480.020 When Waste is Subject to 105 CMR 480.000

(a) Once material becomes waste, as defined in 105 CMR 480.010, such material shall remain waste and shall be subject to the requirements of 105 CMR 480.000 unless and until it has been both labeled in compliance with 105 CMR 480.300 and disposed of in compliance with 105 CMR 480.200 as applicable.

(b) The requirements of 105 CMR 480.000 shall not apply to waste which is contained in a mixture which, due to the presence of other materials, is subject to regulation as a hazardous or radioactive waste.

3. 105 CMR 480.100 Storage

(a) WASTE GENERATIONS SHALL CONTAIN AND STORE MEDICAL WASTE AT ALL TIMES IN LEAK PROOF, RODENT PROOF, FLY-TIGHT CONTAINERS WHICH ENSURE THAT NO DISCHARGE OR RELEASE OF SUCH WASTE OCCURS AND THAT NO ODOR OR OTHER NUISANCE IS CREATED.

(b) All onsite storage of containers of waste shall be held in an area away from general traffic flow patterns, preferably in a room identified for this purpose. The manner of storage shall restrict access or contact with such waste to authorized persons only. SHARPS SHALL BE SEGREGATED FROM OTHER WASTES AND AGGREGATED IN LEAK PROOF, RIGID, PUNCTURE-RESISTANT, SHATTERPROOF CONTAINERS IMMEDIATELY AFTER USE.

(c) WASTES OTHER THAN FREE DRAINING BLOOD AND BLOOD PRODUCTS, SHARPS AND BIOTECHNOLOGY BY-PRODUCT EFFLUENTS SHALL BE PLACED IN A NON-PERMEABLE THREE MIL OR GREATER POLYETHYLENE BAG (OR EQUIVALENT) WHICH IS SECURELY SEALED TO ELIMINATE LEAKS. FREE DRAINING BLOOD AND BLOOD PRODUCTS AND BIOTECHNOLOGY BY-PRODUCT EFFLUENTS SHALL BE STORED AT ALL TIMES IN LEAK PROOF CONTAINERS THAT ARE SECURELY SEALED.

4. 105 CMR 480.200 *Disposal*

(C) *Blood Saturated Materials, Cultures, and Stocks of Infectious Agents and Associated Biologicals, Dialysis Waste and Laboratory Waste*

(2) Disposed of on-site at an approved incinerator facility, OR PLACED IN A SECOND 3 MIL BAG FOR TRANSPORT TO AN APPROVED INCINERATION FACILITY OFF-SITE.

(E) Pathological waste and contaminated animal carcasses shall be disposed of at an approved incineration facility or by interment, provided however, that liquid pathological waste may also be disposed in accordance with 105 CMR 480.200(A) and discarded teeth and tissue may also be disposed of in accordance with 105 CMR 480.200(C)(1). THESE WASTES SHALL BE PLACED IN A SECOND THREE MIL BAG IF THEY ARE TO BE TRANSPORTED OFF-SITE FOR DISPOSAL.

5. 105 CMR 480.300 *LABELING*

(A) EVERY CONTAINER OR BAG OF WASTE WHICH HAS NOT BEEN RENDERED NONINFECTIOUS SHALL:

(2) IN THE CASE OF SHARP WASTES, BE DISTINCTIVELY LABELED TO INDICATE THAT IT CONTAINS SHARP WASTE CAPABLE OF INFLICTING PUNCTURES OR CUTS.

(B) EVERY CONTAINER OR BAG OF WASTE WHICH HAS NOT BEEN RENDERED NONINFECTIOUS AND WHICH WILL BE TRANSPORTED OFF THE PREMISES OF THE WASTE GENERATOR SHALL IN ADDITION TO THE REQUIREMENTS OF 105 CMR 480.300(A):

BEAR A LABEL WHICH STATES THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE GENERATOR. THE LABEL SHALL BE AFFIXED IN A MANNER WHICH ENSURES THAT IT CANNOT BE EASILY REMOVED.

6. 105 CMR 480.500 *MANIFESTS*

(A) GENERATORS SHALL PREPARE MANIFESTS BEFORE SHIPPING WASTE WHICH HAS NOT BEEN RENDERED NONINFECTIOUS OFF-SITE. THE MANIFEST IS A TRACKING DOCUMENT DESIGNED TO RECORD THE MOVEMENT OF WASTE FROM THE GENERATOR THROUGH ITS TRIP WITH A TRANSPORTER TO AN APPROVED DISPOSAL FACILITY AND FINAL DISPOSAL. THE GENERATOR SHALL APPOINT A DESIGNEE TO PREPARE, SIGN AND MAINTAIN SUCH MANIFESTS.

(B) THE MANIFEST MUST INCLUDE THE FOLLOWING INFORMATION:

(1) DESCRIPTION OF WASTE TO BE SHIPPED;

(2) TOTAL QUANTITY OF WASTE; AND

(3) TYPE OF CONTAINER IN WHICH WASTE IS TRANSPORTED.

(C) A GENERATOR SHALL DESIGNATE ON THE MANIFEST THE ADDRESS OF THE SITE TO WHICH THE WASTE IS TO BE DELIVERED AND SIGN IT. THE TRANSPORTER OF THE WASTE OR AN AGENT OF THE TRANSPORTER SHALL SIGN THE MANIFEST TO INDICATE THAT THE TRANSPORTER HAS RECEIVED THE WASTE AND WILL COMPLY WITH THE GENERATOR'S TRANSPORTATION INSTRUCTIONS. WHEN THE WASTE ARRIVES AT THE APPROVED OFF-SITE DISPOSAL FACILITY, AND HAS BEEN DISPOSED OF, THE DISPOSAL FACILITY OWNER OR AGENT SHALL SIGN THE MANIFEST AND RETURN THE ORIGINAL TO THE GENERATOR.

(D) IF THE GENERATOR DOES NOT RECEIVE THE MANIFEST FROM THE DISPOSAL FACILITY WITHIN 30 DAYS AFTER SHIPMENT OF WASTE BY THE GENERATOR, THE GENERATOR SHALL REPORT THIS FACT TO THE DEPARTMENT OF PUBLIC HEALTH.

(E) THE GENERATOR SHALL MAINTAIN A COPY OF THE MANIFEST BOTH AS INITIALLY SENT OUT AND AS RETURNED BY THE DISPOSAL FACILITY FOR A PERIOD OF THREE YEARS.

(F) IN THE ABSENCE OF ANY RESTRICTION CONCERNING INDIVIDUALS WHO ARE AUTHORIZED TO TRANSPORT WASTE, INCLUDING BUT NOT LIMITED TO THOSE IMPOSED BY BOARDS OR THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, GENERATORS WHO TRANSPORT THEIR OWN WASTE SHALL FOLLOW THE MANIFEST REQUIREMENTS SET FORTH IN 105 CMR 480.500.

B. Each Requirement of the HMR for Which the State Regulations Are Being Compared

Under 49 CFR § 107.202(a), a state regulation that is not substantively the same as any provision of federal hazardous material transportation law concerning the following subjects is preempted:

1. Designation, description, and classification of hazardous material;

2. Packing, repacking, handling, labeling, marking, and placarding of hazardous material; and

3. Preparation, execution, and use of shipping documents pertaining to hazardous material and requirements related to the number, content, and placement of those documents.

In addition, under 49 CFR § 107.202(b), a state regulation is preempted if, as applied or enforced, it is an obstacle to accomplishing and carrying out the federal hazardous material transportation law or regulation.

The Institute asserts that Massachusetts' requirements are in conflict with the federal hazardous material transportation rules found in:

- 49 CFR §§ 172.200 et seq. Shipping papers
- 49 CFR §§ 172.300 et seq. Marking
- 49 CFR §§ 172.400 et seq. Labeling
- 49 CFR § 173.24 General requirements for packagings and packages
- 49 CFR § 173.24a Additional general requirements for non-bulk packagings and packages
- 49 CFR § 173.134 Class 6, Division 6.2—Definitions, exceptions and packing group assignments
- 49 CFR §§ 178.600 et seq. Testing of non-bulk packagings and packages

C. Explanation of Why the State Regulations Should Be Preempted

1. Packaging Requirements

When Congress enacted the Hazardous Materials Transportation Act, it intended to create one system of commerce for the transport of hazardous materials throughout the United States. Congress found that preemption was necessary to avoid the potential for unreasonable hazards created by multiple and conflicting requirements in other jurisdictions. Shippers and carriers should not be confused by the rules regardless of where they are conducting business nor should they be required to stop at every town and state border to repackage, re-label, and prepare new shipping documents. See Pub. L. 101–615 §§ 2(3) and 2(4), 104 Stat. 3244 (Nov. 16, 1990) (preemption provisions found in 49 U.S.C. § 5125(c)).

In 105 CMR 480.100, Massachusetts established several packaging requirements that are not substantively the same as the U.S. Department of Transportation's (DOT) Hazardous Materials Regulations (HMR) found in 49 CFR. As applicable to storage incidental to transportation, the packaging requirements in 105 CMR 480.100(b) include requirements that the HMR do not. For example, the CMR requires that containers be rodent proof and fly-tight. The HMR does not require testing or other proof to ensure that a container is rodent proof and fly-tight. A laboratory or self-tester of the performance tests required by the HMR cannot use those tests to certify that the containers will meet Massachusetts' requirements. Different tests would be required. We can speculate that a container tested to HMR standards for infectious substances may also be rodent and fly proof, but this is not certain and the performance tests in 49 CFR § 178.600 et seq. were not designed for that purpose.

The Massachusetts' storage requirements do not distinguish between materials stored purely for on-site treatment and disposal and those stored in preparation for transport and disposal off-site. In fact, interpretation letters from the commonwealth do not make this distinction (see Appendix A) and provisions in 105 CMR 480.200 that reference to off-site treatment require a "second * * * bag" before transport, implying a first packaging found in the storage provisions.

In addition, both 105 CMR 480.100 and 480.200 require the use of three mil or greater polyethylene (or equivalent) bags. The HMR does not require this type of packaging. The requirements in 49 CFR §§ 173.24, 173.24a, 173.196, and 173.197 include significant detail on packaging requirements, none of which refers to three mil or greater polyethylene (or equivalent) bags. Instead, the HMR allows for a variety of packaging materials as long as the user can show that the packaging complies with the performance tests or requirements in the exceptions to the rules.

2. Labeling Requirements

Massachusetts' labeling requirements in 105 CMR 480.300 are not substantially the same as the labeling and marking requirements found in HMR—49 CFR §§ 172.400, 172.301, 172.332, and 172.336. The HMR does not require a special label to be used on sharps containers nor does it require a label to indicate information about the generator. The Institute does not take issue in this application with the intent of Massachusetts regulations. The problem occurs when states or localities require their own and different labeling requirements. This confuses users of packaging and emergency responders. To comply with Massachusetts regulations, transporters would have to stop at state borders and re-label each package or hope that federal and other state enforcement officers would look the other way when they see a Massachusetts label on a package. The conflict is an obstruction to commerce, the very problem Congress aimed to resolve in the Hazardous Materials Transportation Act.

3. Manifesting

The manifesting requirements in 105 CMR 480.500 conflict with the HMR's shipping paper requirements in 49 CFR § 172.200. Manifesting in the HMR is required for hazardous waste not hazardous materials and is part of the HMR because of the relationship between the U.S. Environmental Protection Agency's (EPA) regulations under the Resource Conservation and Recovery Act and transportation requirements under the HMR.

The DOT already concluded in its Notice of administrative determination of preemption—Morrisville, PA Requirements for Transportation of "Dangerous Waste" (PD–23) (July 17, 2001; 66 FR 37260, at 37265)[2] that manifesting by state and local governments for other than hazardous waste is in conflict with the HMR. The CMR manifesting requirements apply to blood and blood products; pathological waste; cultures and stocks of infectious agents and associated biologicals; contaminated animal carcasses, body parts, and bedding; sharps; and biotechnological by-product effluents. Setting aside differences in definitions for these terms between the CMR and HMR, none of these items fall within the definition of hazardous waste under the HMR or any other federal agency, i.e., EPA.

D. Explanation of How the Applicant Is Affected by the Commonwealth's Regulations

The Institute, a policy-making group within the National Solid Wastes Management Association, represents companies that transport regulated medical waste and infectious substances, assist shippers in complying with hazardous material packaging requirements, and manufacture and distribute packaging used to transport regulated medical waste and infectious substances. When state transportation requirements are in conflict with federal transportation laws, Institute members are placed in a difficult position. They are subject to enforcement actions where they cannot show compliance. This, in

[1] The Institute believes that Massachusetts regulations found in 105 CMR 480.010 that include definitions for terms used in the Commonwealth's medical waste provisions may now be in violation of the HMR under the revised rules published on August 14, 2002 (67 Fed. Reg. 53117; HM–226). We do not take issue with those terms in this application for preemption because the federal rules are new. However, we hope that the commonwealth will review these provisions soon and make appropriate adjustments.

[2] This determination was appealed on the grounds that the DOT did not have jurisdiction to make a determination; however, the DOT did not change its opinion in the final decision and further discussion on manifesting was not provided. The detailed discussion found in DOT's determination is not repeated in this application.

turn, jeopardizes their relationship with existing and potential customers. In addition, many state permit requirements include a company's compliance record; thus, an untenable position on compliance may prevent a company from conducting business.

E. Conclusion

Congress passed a law to avoid the precise problems created by the CMR. For purposes of intra and interstate transportation, Congress mandated a national system whereby generators, shippers, transporters, emergency responders, enforcement officers, and the public would all follow the same protective rules.

The Commonwealth of Massachusetts has the same opportunity as the Institute and all other living in the United States to file a petition for rulemaking with the DOT to make changes to the HMR. In fact, Massachusetts could have filed comments on the advanced notice of proposed rulemaking and notice of proposed rulemaking that led to the revised infectious substance rule published on August 14, 2002.

The Institute continues to offer its services to states to ensure appropriate rules for the management of medical waste. We make the same offer to Massachusetts in revising the CMR to reflect federal requirements.

Appendix A

The Commonwealth of Massachusetts

February 28, 2000

Paul Hartman,
Stericycle, Inc., 369 Park East Drive, Woonsocket, RI 02895

Dear Mr. Hartman: It has come to my attention that my letter to you relative to acceptable equivalency to the required 3.0 mil red plastic bags did not contain sufficient information. The following equivalency statement should eliminate any questions.

The equivalency to the 3.0 mil is a bag meeting ASTM D 1709–85 and ASTM D 959–80 standards. 1709–85 is the Dart Impact Resistance—165 grams and the 959–80 is the load drop test, requiring a 125 pound load to be dropped from a four foot height, five times without rupturing.

Sincerely,

Howard S. Wensley, M.S., C.H.O.,
Director.

[FR Doc. 02–31339 Filed 12–11–02; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 558 (Sub-No. 6)]

Railroad Cost of Capital—2002

AGENCY: Surface Transportation Board.

ACTION: Notice of decision instituting a proceeding to determine the railroads' 2002 cost of capital.

SUMMARY: The Board is instituting a proceeding to determine the railroad industry's cost of capital for 2002. The decision solicits comments on: (1) The railroads' 2002 current cost of debt capital; (2) the railroads' 2002 current cost of preferred stock equity capital; (3) the railroads' 2002 cost of common stock equity capital; and (4) the 2002 capital structure mix of the railroad industry on a market value basis.

DATES: Notices of intent to participate are due no later than January 13, 2003. Statements of the railroads are due by March 28, 2003. Statements of other interested persons are due by April 21, 2003. Rebuttal statements by the railroads are due by May 12, 2003.

ADDRESSES: Send an original and 10 copies of statements and a copy of the statement on a 3.5 inch disk in WordPerfect 9.0, and an original and 1 copy of the notice of intent to participate to: Surface Transportation Board, Case Control Branch, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 565–1529. (Federal Information Relay Service (FIRS) for the hearing impaired: 1 (800) 877–8339.)

SUPPLEMENTARY INFORMATION: The Board's decision is posted on the Board's Web site, *www.stb.dot.gov*. In addition, copies of the decision may be purchased from Da-2-Da Legal Copy Service by calling 202–293–7776 (assistance for the hearing impaired is available through FIRS at 1–800–877–8339) or visiting Suite 405, 1925 K Street, NW., Washington, DC 20006.

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10704(a).

Decided: December 6, 2002.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams,
Secretary.

[FR Doc. 02–31337 Filed 12–11–02; 8:45 am]
BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Electronic Transfer Account (ETA) Financial Agency Agreement

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning form FMS 111, "Electronic Transfer Account (ETA) Financial Agency Agreement."

DATES: Written comments should be received on or before February 10, 2003.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Staff, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Birdie M. McKay, Director, Program Compliance Division, 401 14th Street, SW., Washington, DC 20227, (202) 874–6630.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Electronic Transfer Account (ETA) Financial Agency Agreement.

OMB Number: 1510–0073.

Form Number: FMS 111.

Abstract: Any financial institution that offers the ETA must do so subject to the terms and conditions of the agreement. The agreement incorporates the final features of the account and other account criteria, such as standards for opening and closing accounts.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Federally insured financial institutions.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 40.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: December 6, 2002.

Bettsy H. Lane,
Assistant Commissioner, Federal Finance.

[FR Doc. 02–31249 Filed 12–11–02; 8:45 am]
BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Citizens Insurance Company of America

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 3 to the Treasury Department Circular 570; 2002 Revision, published July 1, 2002, at 67 FR 44294.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6765.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2002 Revision, on page 44303 to reflect this addition:

Citizens Insurance Company of America

Business Address: 645 West Grand River Avenue, Howell, MI 48843.

Phone: (517) 546–2160. Underwriting Limitation b/: $48,293,000.

Surety Licenses c/: AL, IL, IN, KS, MA, MI, MO, NH, NJ, NY, NC, OH, PA, RI, SC, VT, VA. Incorporated in: Michigan.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html*. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: December 2, 2002.

Wanda Rogers,
Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 02–31248 Filed 12–11–02; 8:45 am]
BILLING CODE 4810–35–M

Corrections

Federal Register
Vol. 67, No. 239
Thursday, December 12, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

Correction

In notice document 02–28106 beginning on page 67605 in the issue of Wednesday, November 6, 2002, make the following correction:

On page 67605, in the third column, under the heading **SUMMARY**, in the first paragraph, in the second and third lines, the date "January 20–30" should read, "January 29–30."

[FR Doc. C2–28106 Filed 12–11–02; 8:45 am]
BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[MA–075–7209a; A–1–FRL–7374–7]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Approval of PM10 State Implementation Plan (SIP) Revisions and Designation of Areas for Air Quality Planning Purposes

Correction

In rule document 02–25154 beginning on page 62184 in the issue of Friday, October 4, 2002, make the following corrections:

§ 81.322 [Corrected]

1. On page 62188, in § 81.322, in the table, in the first column, under the heading "Designated area", in the fourth entry, "Gratton" should read, "Grafton".

2. On page 62189, in the same section, in the same table, in the same column, under the same heading, in the sixth entry, "Stonehamd" should read, "Stoneham".

[FR Doc. C2–25154 Filed 12–11–02; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Thursday,
December 12, 2002

Part II

Department of Housing and Urban Development

Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for Section 42 of the Internal Revenue Code of 1986; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4799–N–01]

Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for Section 42 of the Internal Revenue Code of 1986

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This document designates "Difficult Development Areas" and "Qualified Census Tracts" (QCTs) for purposes of the Low-Income Housing Tax Credit (LIHTC) under section 42 of the Internal Revenue Code of 1986 (Code). The United States Department of Housing and Urban Development makes new Difficult Development Area designations annually and makes Qualified Census Tract Designations at this time due to the recent release of relevant data from the 2000 Census.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions: Steven Ehrlich, Economist, Division of Economic Development and Public Finance, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0426, e-mail *Steven_R._Ehrlich@hud.gov*. For specific legal questions pertaining to section 42: Office of the Associate Chief Counsel, Passthroughs & Special Industries, Internal Revenue Service, 1111 Constitution Avenue, NW.; Washington, DC 20224, telephone (202) 622–3000, fax (202) 622–4524. For questions about the HUBZones program: Michael P. McHale, Assistant Administrator for Procurement Policy, Office of Government Contracting, Suite 8800, Small Business Administration, 409 Third Street, SW., Washington, DC 20416, telephone (202) 205–6731, fax (202) 205–7324, e-mail *michael.mchale@sba.gov*. A text telephone is available for persons with hearing or speech impairments at (202) 708–9300. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUD User at (800) 245–2691 for a small fee to cover duplication and mailing costs.

Copies Available Electronically: This notice and additional information about Difficult Development Areas and QCTs are available electronically on the Internet (World Wide Web) at *http://www.huduser.org/datasets/qct.html*.

SUPPLEMENTARY INFORMATION:

This Document

The designations of Difficult Development Areas in this notice are based on Fiscal Year (FY) 2002 Fair Market Rents (FMRs), FY 2002 income limits and 2000 Census population counts as explained below. This notice designates Difficult Development Areas for each of the fifty States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands. The designations of QCTs in this Notice are based on 2000 Census data. This notice designates QCTs for each of the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. The QCT designations for American Samoa, Guam, and the Northern Mariana Islands are unchanged and remain based on 1990 census data as 2000 census data necessary for the designation of QCTs has not been released for these areas. The QCT designations for these areas are repeated in this notice for convenience.

2000 Census

Data from the 2000 Census on total population of metropolitan areas and nonmetropolitan counties are used in the designation of Difficult Development Areas. The Census Bureau has recently released most of the data from the 2000 Census necessary to make Qualified Census Tract designations. The Census Bureau has released the data needed for updated Qualified Census Tract designations for each of the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. The Census Bureau has not yet released the data needed to update Qualified Census Tract designations for American Samoa, Guam, and the Northern Mariana Islands. Thus the 2003 QCTs for American Samoa, Guam, and the Northern Mariana Islands, are unchanged from the 2002 QCTs.

Background

The U.S. Treasury Department and the Internal Revenue Service, thereof, are authorized to interpret and enforce the provisions of the Code, including the LIHTC found at section 42 of the Code (26 U.S.C. 42) as amended. The Secretary of HUD is required to designate Difficult Development Areas and QCTs by section 42(d)(5)(C) of the Code.

In order to assist in understanding HUD's mandated designation of Difficult Development Areas and QCTs for use in administering section 42 of the Code, a summary of section 42 is provided. The following summary does not purport to bind the Treasury or the IRS in any way, nor does it purport to bind HUD, as HUD has no authority to interpret or administer the Code, except in those instances where it has a specific delegation.

Summary of Low-Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low-income housing. Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (credit ceiling) is limited by population. Each state is allocated credit based on a statutory formula indicated at section 42(h)(3). States may carry forward unused or returned credit derived from the credit ceiling for one year; if not used by then, credit goes into a national pool to be allocated to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit. Besides section 42 credits derived from the credit ceiling, states may also provide section 42 credits to owners of buildings based upon the percentage of certain building costs financed by tax-exempt bond proceeds. Credits provided under the tax-exempt bond "volume cap" do not reduce the credit available from the credit ceiling.

The credit allocated to a building is based on the cost of units placed in service as low-income units under certain minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC: either 20 percent of units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the Area Median Gross Income (AMGI), or 40 percent of units must be rent-restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. The term "rent-restricted" means that gross rent, including an allowance for utilities, cannot exceed 30 percent of the tenant's imputed income limitation (*i.e.*, 50 percent or 60 percent of AMGI). The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low-income character of the building for at least an additional 15 years.

The LIHTC reduces income tax liability dollar for dollar. It is taken annually for a term of ten years and is intended to yield a present value of either (1) 70 percent of the "qualified basis" for new construction or

substantial rehabilitation expenditures that are not federally subsidized (*i.e.*, financed with tax-exempt bonds or below-market federal loans), or (2) 30 percent of the qualified basis for the cost of acquiring certain existing projects or projects that are federally subsidized. The actual credit rates are adjusted monthly for projects placed in service after 1987 under procedures specified in section 42. Individuals can use the credit up to a deduction equivalent of $25,000. This equals $9,650 at the 38.6 percent maximum marginal tax rate. Individuals cannot use the credit against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credit against ordinary income tax. They cannot use the credit against the alternative minimum tax. These corporations can also deduct the losses from the project.

The qualified basis represents the product of the "applicable fraction" of the building and the "eligible basis" of the building. The applicable fraction is based on the number of low-income units in the building as a percentage of the total number of units, or based on the floor space of low-income units as a percentage of the total floor space of residential units in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to capital account incurred prior to the end of the first taxable year in which the qualified low-income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated QCTs or designated Difficult Development Areas, eligible basis can be increased up to 130 percent of what it would otherwise be. This means that the available credit also can be increased by up to 30 percent. For example, if the 70 percent credit is available, it effectively could be increased up to 91 percent.

Section 42 of the Code defines a Difficult Development Area as any area designated by the Secretary of HUD as an area that has high construction, land, and utility costs relative to the AMGI. All designated Difficult Development Areas in MSAs (Metropolitan Statistical Areas)/PMSAs (Primary Metropolitan Statistical Areas) may not contain more than 20 percent of the aggregate population of all MSAs/PMSAs, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all non-metropolitan counties.

Under section 42(d)(5)(C) of the Code, a Qualified Census Tract (QCTs) is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income less than 60 percent of the AMGI or, where the poverty rate is at least 25 percent. There is a limit on the number of QCTs in any MSA or PMSA that may be designated to receive an increase in eligible basis: all of the designated census tracts within a given MSA/PMSA may not together contain more than 20 percent of the total population of the MSA/PMSA. For purposes of HUD designations of QCT, all non-metropolitan areas in a state are treated as if they constituted a single metropolitan area.

Explanation of HUD Designation Methodology

A. Qualified Census Tracts

In developing this list of LIHTC QCTs, HUD used 2000 Census data and the MSA/PMSA definitions established by the Office of Management and Budget (OMB) in OMB Bulletin No. 99–04 on June 30, 1999. The LIHTC QCTs were determined as follows:

1. A census tract must have 50 percent of its households with incomes below 60 percent of the AMGI or have a poverty rate of 25 percent or more to be "eligible." In metropolitan areas, HUD calculates 60 percent of AMGI by multiplying the MSA/PMSA median family income for 1999 as reported by the 2000 Census by a factor of 0.6. Outside of metropolitan areas, HUD calculates 60 percent of AMGI by multiplying the state-specific, non-metro balance median family income by a factor of 0.6.

2. For each census tract, the percentage of households below the 60 percent income standard (income criterion) was determined by (a) calculating the average household size of the census tract, (b) applying the income standard after adjusting it to match the average household size, and (c) calculating the number of households with incomes below the income standard.

3. For each census tract, the poverty rate was determined by dividing the population with incomes below poverty by the population for whom poverty status has been determined.

4. QCTs are those in which 50 percent or more of the households meet the income criterion, or 25 percent or more of the population is in poverty, such that the population of all census tracts that satisfy either one or both of these criteria does not exceed 20 percent of the total population of the respective area.

5. In areas where more than 20 percent of the population resides in eligible census tracts, census tracts are designated as QCTs in accordance with the following procedure:

a. Eligible tracts are placed in one of two groups. The first group includes tracts that satisfy both the income and poverty criteria. The second group includes tracts that satisfy either the income criterion or the poverty criterion, but not both.

b. Tracts in the first group are ranked from lowest to highest on the income criterion. Then tracts in the first group are ranked from lowest to highest on the poverty criterion. The two ranks are averaged to yield a combined rank. The tracts are then sorted on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In cases of tied combined ranks, more populous tracts are ranked above less populous ones.

c. Tracts in the second group are ranked from lowest to highest on the income criterion. Then tracts in the second group are ranked from lowest to highest on the poverty criterion. The two ranks are then averaged to yield a combined rank. The tracts are then sorted on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In cases of tied combined ranks, more populous tracts are ranked above less populous ones.

d. The ranked first group is stacked on top of the ranked second group to yield a single, concatenated, ranked list of eligible census tracts.

e. Working down the single, concatenated, ranked list of eligible tracts, census tracts are designated until the designation of an additional tract would cause the 20 percent limit to be exceeded. If a census tract is not designated because doing so would raise the percentage above 20 percent, then subsequent census tracts are considered to determine if one or more census tract(s) with smaller population(s) could be designated without exceeding the 20 percent limit.

B. Difficult Development Areas

In developing the list of Difficult Development Areas, HUD compared incomes with housing costs. HUD used 2000 Census population data and the MSA/PMSA definitions as published by the Office of Management and Budget in OMB Bulletin No. 99–04 on June 30, 1999, with the exceptions described in section D. below. The basis for these comparisons was the FY 2002 HUD FMRs and the FY 2002 HUD income

limits for Very Low-Income households (or Very Low-Income Limits, "VLILs") used for the housing Choice Voucher program. The procedure used in making the Difficult Development Area calculations follows:

1. For each MSA/PMSA and each non-metropolitan county, a ratio was calculated. This calculation used the FY 2002 two-bedroom FMR and the FY 2002 four-person VLIL.

a. The numerator of the ratio was the area's FY 2002 FMR. In general the FMR is based on the 40th percentile rent paid by recent movers for a two-bedroom apartment. In metropolitan areas granted a FMR based on the 50th percentile rent for purposes of improving the administration of HUD's Housing Choice Voucher program (see 66 FR 162), the 40th percentile rent is used for nationwide consistency of comparisons.

b. The denominator of the ratio was the monthly LIHTC income-based rent limit calculated as 1/12 of 30 percent of 120 percent of the area's VLIL (where 120 percent of the VLIL was rounded to the nearest $50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent of AMGI base).

2. The ratios of the FMR to the LIHTC income-based rent limit were arrayed in descending order, separately, for MSAs/PMSAs and for non-metropolitan counties.

3. The Difficult Development Areas are those with the highest ratios cumulative to 20 percent of the 2000 population of all metropolitan areas and of all non-metropolitan counties.

C. Application of Population Caps to Difficult Development Area Determinations

In identifying Difficult Development Areas and QCTs, HUD applied various caps, or limitations, as noted above. The cumulative population of metropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all metropolitan areas and the cumulative population of non-metropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all non-metropolitan counties.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains the procedure. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio, as described above, was identical (to four decimal places) to the last area selected, *and* its inclusion resulted in only a minor overrun of the cap. Thus for both the designated metropolitan and non-metropolitan Difficult Development Areas there may be a minimal overrun of the cap. HUD believes the designation of these additional areas is consistent with the intent of the legislation. Some latitude is justifiable because it is impossible to determine whether the 20 percent cap has been exceeded, as long as the apparent excess is small, due to measurement error. Despite the care and effort involved in a decennial census, it is recognized by the Census Bureau, and all users of the data, that the population counts for a given area and for the entire country are not precise. The extent of the measurement error is unknown. Thus, there can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting *small* variances above the 20 percent limit.

D. Exceptions to OMB Definitions of MSAs/PMSAs and Other Geographic Matters

As stated in OMB Bulletin 99–04 defining metropolitan areas:

> OMB establishes and maintains the definitions of the [Metropolitan Areas] solely for statistical purposes * * * OMB does not take into account or attempt to anticipate any nonstatistical uses that may be made of the definitions * * * We recognize that some legislation specifies the use of metropolitan areas for programmatic purposes, including allocating Federal funds.

HUD makes exceptions to OMB definitions in calculating FMRs by deleting counties from metropolitan areas whose OMB definitions are determined by HUD to be larger than their housing market areas.

The following counties are assigned their own FMRs and VLILs and evaluated as if they were separate metropolitan areas for purposes of designating Difficult Development Areas.

Metropolitan Area and Counties Deleted

Chicago, IL: DeKalb, Grundy, and Kendall Counties
Cincinnati-Hamilton, OH–KY–IN: Brown County, Ohio; Gallatin, Grant, and Pendleton Counties, Kentucky; and Ohio County, Indiana
Dallas, TX: Henderson County
Flagstaff, AZ–UT: Kane County, Utah
New Orleans, LA: St. James Parish
Washington, DC–MD–VA–WV: Clarke, Culpeper, King George, and Warren Counties, Virginia; and Berkeley and Jefferson Counties, West Virginia

Affected MSAs/PMSAs are assigned the indicator "(part)" in the list of Metropolitan Difficult Development Areas. Any of the excluded counties designated as difficult development areas separately from their metropolitan areas are designated by the county name.

In the New England States (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont) OMB defines MSAs/PMSAs according to county subdivisions or Minor Civil Divisions (MCDs) rather than county boundaries. Thus, when a New England county is designated as a non-metropolitan Difficult Development Area, only that part of the county (the group of MCDs) not included in any MSA/PMSA is the non-metropolitan Difficult Development Area. Affected counties are assigned the indicator "(part)" in the list of non-metropolitan Difficult Development Areas. Also in the New England States, census tracts may be cut by MSA/PMSA boundaries. Only those LIHTC projects located in the part of the tract in the listed MSA/PMSA or non-metropolitan area may be allowed the increase in basis. Affected tracts are marked with an asterisk (*) in the list of QCTs.

For the convenience of readers of this notice, the geographic definitions of designated Metropolitan Difficult Development Areas and the MCDs included in non-metropolitan Difficult Development Areas in the New England States are included in the list of Difficult Development Areas.

Certain non-metropolitan county equivalent areas in Alaska, for which FMRs and VLILs are calculated and thus form the basis of Difficult Development Area designations, are no longer recognized as geographic entities by the Census Bureau. Therefore, no 2000 Census population counts are produced for these areas. HUD estimates the 2000 population of these areas as follows:

1. The 2000 Population of Denali Borough (1,893) was allocated entirely to the Yukon-Koyukuk Census Area. The part of Denali Borough created from the Southeast Fairbanks Census Area was deemed uninhabited after examination of Census Block data for, and maps of, the area of Denali Borough formerly in the Southeast Fairbanks Census Area.

2. The population of Yakutat City and Borough (808) was allocated to the former Skagway-Yakutat-Angoon Census Area (680) and the Valdez-Cordova Census Area (128). The populations of Yakutat City and Borough Census Blocks located east of 141° longitude were allocated to the Skagway-Yakutat-Angoon Census Area. The populations of Yakutat City and Borough Census Blocks located west of 141° longitude were allocated to the Valdez-Cordova Census Area.

Future Designations

Difficult Development Areas are designated annually as updated income and FMR data become available. QCTs are updated periodically to reflect changes in OMB's designations of metropolitan areas.

Effective Date

The list of Difficult Development Areas and the list of QCTs is effective for allocations of credit made after December 31, 2002. In the case of a building described in section 42(h)(4)(B) of the Code, the list is effective if the bonds are issued and the building is placed in service after December 31, 2002.

Interpretive Examples for Effective Date

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose Difficult Development Area status with respect to projects described in section 42(h)(4)(B) of the Code. The examples are equally applicable to Qualified Census Tract designations.

(Case A) Project A is located in a newly-designated 2003 Difficult Development Area. Bonds are issued for Project A on November 1, 2002, and Project A is placed in service March 1, 2003. Project A is not eligible for the increase in basis otherwise accorded a project in this location because the bonds were issued before January 1, 2003.

(Case B) Project B is located in a newly-designated 2003 Difficult Development Area. Project B is placed in service November 15, 2002. The bonds which will support the permanent financing of Project B are issued January 15, 2003. Project B is not eligible for the increase in basis otherwise accorded a project in this location because the project was placed in service before January 1, 2003.

(Case C) Project C is located in an area which is a Difficult Development Area in 2002, but is not a Difficult Development Area in 2003. Bonds are issued for Project C on October 30, 2002, but Project C is not placed in service until March 30, 2003. Project C is eligible for the increase in basis available to projects located in 2002 Difficult Development Areas because the first of the two events necessary for triggering the effective date for buildings described in section 42(h)(4)(B) of the Code (the two events being bonds issued and buildings placed in service) took place on October 30, 2002, a time when project C was located in a Difficult Development Area.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the CEQ regulations and 24 CFR 50.19(c)(6) of the HUD regulations, the policies and procedures contained in this notice provide for the establishment of fiscal requirements or procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites and therefore, are categorically excluded from the requirements of the National Environmental Policy Act, except for extraordinary circumstances, and no Finding of No Significant Impact is required.

Regulatory Flexibility Act

In accordance with 5 U.S.C. section 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities. The notice involves the designation of Difficult Development Areas and QCTs as required by section 42 of the Code, as amended, for use by political subdivisions of the states in allocating the Low-Income Housing Tax Credit. This notice places no new requirements on the States, their political subdivisions, or the applicants for the credit. This notice also details the technical methodology used in making such designations.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have any substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the order. The notice merely designates Difficult Development Areas and QCTs as required under section 42 of the Internal Revenue Code, as amended, for the use by political subdivisions of the states in allocating the Low-Income Housing Tax Credit. The notice also details the technical methodology used in making such designations.

Dated: December 12, 2002.

Mel Martinez,

Secretary.

BILLING CODE 4210–62–P

2003 Internal Revenue Code Section 42(d)(5)(C) Metropolitan Difficult Development Areas

STATE	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components
AZ	FLAGSTAFF, AZ Coconino County, AZ Kane County, UT	YUMA, AZ Yuma County		
CA	CHICO-PARADISE, CA Butte County	LOS ANGELES-LONG BEACH, CA Los Angeles County	MERCED, CA Merced County	OAKLAND, CA Alameda County Contra Costa County
	SALINAS, CA Monterey County	SAN DIEGO, CA San Diego County	SAN FRANCISCO, CA San Francisco County Marin County San Mateo County	SAN JOSE, CA Santa Clara County
	SAN LUIS OBISPO-ATASCADERO-PASO ROBLES, CA San Luis Obispo County	SANTA BARBARA-SANTA MARIA-LOMPOC, CA Santa Barbara County	SANTA CRUZ-WATSONVILLE, CA Santa Cruz County	SANTA ROSA, CA Sonoma County
	STOCKTON-LODI, CA	VALLEJO-FAIRFIELD-NAPA, CA Napa County Solano County		
CO	GREELEY, CO Weld County			
FL	MIAMI, FL Dade County	PUNTA GORDA, FL Charlotte County		
LA	NEW ORLEANS, LA Jefferson Parish Plaquemines Parish Orleans Parish St. Bernard Parish	St. Charles Parish St. John the Baptist Parish St. James Parish St. Tammany Parish		
ME	PORTLAND, ME Buxton town Cumberland town Cape Elizabeth town Falmouth town Casco town Freeport town	Gorham town Limington town Gray town Long Island town Hollis town North Yarmouth town	Old Orchard Beach town Scarborough town Portland city South Portland city Raymond town	Standish town Windham town Westbrook city Yarmouth town
MA	BARNSTABLE-YARMOUTH, MA Barnstable city Harwich town Brewster town Mashpee town Chatham town Orleans town Dennis town Sandwich town Eastham town Yarmouth town	BOSTON, MA-NH Berkley town Rowley town Dighton town Salem city Mansfield town Salisbury town Norton town Saugus town Taunton city Swampscott town Amesbury town Topsfield town Beverly city Wenham town Danvers town Acton town Essex town Arlington town Gloucester city Ashland town Hamilton town Ayer town Ipswich town Belmont town Lynn city Boxborough town Lynnfield town Burlington town Manchester-by-the-Sea Cambridge city Marblehead town Carlisle town Middleton town Concord town Nahant town Everett city Newbury town Framingham town Newburyport city Holliston town Peabody city Hopkinton town Rockport town	Hudson town Waltham city Lexington town Watertown city Lincoln town Wayland town Littleton town Weston town Malden city Wilmington town Marlborough city Winchester town Maynard town Woburn city Medford city Bellingham town Melrose city Braintree town Natick town Brookline town Newton city Canton town North Reading town Cohasset town Reading town Dedham town Sherborn town Dover town Shirley town Foxborough town Somerville city Franklin city Stoneham town Holbrook town Stow town Medfield town Sudbury town Medway town Townsend town Millis town Wakefield town Milton town	Needham town Plymouth town Norfolk town Rockland town Norwood town Scituate town Plainville town Wareham town Quincy city Boston city Randolph town Chelsea city Sharon town Revere city Stoughton town Winthrop town Walpole town Berlin town Westwood town Blackstone town Weymouth town Bolton town Wrentham town Harvard town Carver town Hopedale town Duxbury town Lancaster town Hanover town Mendon town Hingham town Milford town Hull town Millville town Kingston town Southborough town Marshfield town Upton town Norwell town Seabrook town, NH Pembroke town South Hampton town, NH

2003 Internal Revenue Code Section 42(d)(5)(C) Metropolitan Difficult Development Areas

STATE	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components
NJ	ATLANTIC-CAPE MAY, NJ Atlantic County Cape May County	VINELAND-MILLVILLE-BRIDGETON, NJ Cumberland County	JERSEY CITY, NJ Hudson County	
NY	NASSAU-SUFFOLK, NY Nassau County Suffolk County	NEW YORK, NY Bronx County New York County Kings County Putnam County	Queens County Rockland County Richmond County Westchester County	
OR	EUGENE-SPRINGFIELD, OR Lane County	MEDFORD-ASHLAND, OR Jackson County		
PA	STATE COLLEGE, PA Centre County			
PR	AGUADILLA, PR Aguada Municipio Aguadilla Municipio Moca Municipio	CAGUAS, PR Caguas Municipio Gurabo Municipio Cayey Municipio San Lorenzo Mun. Cidra Municipio	MAYAGUEZ, PR Anasco Municipio Mayaguez Municipio Cabo Rojo Mun. Sabana Grande Mu Hormigueros Mun. San German Mun.	SAN JUAN-BAYAMON, PR Aguas Buenas Mu Corozal Municipio Barceloneta Mun. Dorado Municipio Bayamon Mun Fajardo Municipio Canovanas Mun. Florida Municipio Carolina Municipio Guaynabo Municipio San Juan Mun Humacao Municipio Toa Alta Municipio Juncos Municipio Toa Baja Mun. Las Piedras Mun. Trujillo Alto Mun Loiza Municipio Vega Alta Mun. Luquillo Municipio Vega Baja Mun Manati Municipio Yabucoa Municipio Morovis Municipio Cateno Municipio Naguabo Municipio Ceiba Municipio Naranjito Municipio Comerio Municipio Rio Grande Municipio
TX	EL PASO, TX El Paso County			
VT	BURLINGTON, VT Burlington city Essex town Charlotte town Fairfax town Colchester town Georgia town	Grand Isle town Milton town Hinesburg town Richmond town Jericho town Shelburne town	South Burlington city St. Albans city South Hero town St. Albans town	St. George town Williston town Swanton town Winooski city

2003 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT
AK	BETHEL CENSUS AREA	FAIRBANKS NORTH STAR BOROUGH	HAINES BOROUGH
	JUNEAU BOROUGH	KETCHIKAN GATEWAY BOROUGH	KODIAK ISLAND BOROUGH
	LAKE AND PENINSULA BOROUGH	NOME CENSUS AREA	NORTH SLOPE BOROUGH
	NORTHWEST ARCTIC BOROUGH	PRINCE OF WALES-OUTER KETCHIKAN CENSUS AREA	SITKA BOROUGH
	SOUTHEAST FAIRBANKS CENSUS AREA	VALDEZ-CORDOVA CENSUS AREA	WADE HAMPTON CENSUS AREA
	WRANGELL-PETERSBURG CENSUS AREA	YUKON-KOYUKUK CENSUS AREA	
AZ	APACHE COUNTY	COCHISE COUNTY	GILA COUNTY
	GRAHAM COUNTY	LA PAZ COUNTY	NAVAJO COUNTY
	YAVAPAI COUNTY	YUMA COUNTY	
AR	BAXTER COUNTY	DREW COUNTY	
CA	AMADOR COUNTY	CALAVERAS COUNTY	COLUSA COUNTY
	DEL NORTE COUNTY	GLENN COUNTY	HUMBOLDT COUNTY
	IMPERIAL COUNTY	INYO COUNTY	KINGS COUNTY
	LAKE COUNTY	LASSEN COUNTY	MENDOCINO COUNTY
	MODOC COUNTY	MONO COUNTY	MARIPOSA COUNTY
	NEVADA COUNTY	PLUMAS COUNTY	SAN BENITO COUNTY
	SIERRA COUNTY	SISKIYOU COUNTY	TEHAMA COUNTY
	TRINITY COUNTY	TUOLUMNE COUNTY	
CO	ARCHULETA COUNTY	GARFIELD COUNTY	LA PLATA COUNTY
	PITKIN COUNTY	SAN MIGUEL COUNTY	
CT	LITCHFIELD COUNTY (part): Canaan town, Cornwall town, Goshen town, Kent town, Litchfield town, Morris town, Norfolk town, North Canaan town, Salisbury town, Sharon town, Torrington town, Warren town	MIDDLESEX COUNTY (part): Chester town, Deep River town, Essex town, Westbrook town	NEW LONDON COUNTY (part): Lyme town, Voluntown town
DE	SUSSEX COUNTY		
FL	CITRUS COUNTY	DESOTO COUNTY	DIXIE COUNTY
	GILCHRIST COUNTY	GLADES COUNTY	GULF COUNTY
	HENDRY COUNTY	HIGHLANDS COUNTY	HOLMES COUNTY
	JACKSON COUNTY	LAFAYETTE COUNTY	LEVY COUNTY
	MONROE COUNTY	OKEECHOBEE COUNTY	PUTNAM COUNTY
	TAYLOR COUNTY	WASHINGTON COUNTY	
HI	KAUAI COUNTY	MAUI COUNTY	
ID	BONNER COUNTY	KOOTENAI COUNTY	
KY	KNOX COUNTY	LAUREL COUNTY	
LA	ALLEN PARISH	AVOYELLES PARISH	CALDWELL PARISH
	CATAHOULA PARISH	CLAIBORNE PARISH	CONCORDIA PARISH
	DE SOTO PARISH	EAST CARROLL PARISH	EVANGELINE PARISH
	FRANKLIN PARISH	JEFFERSON DAVIS PARISH	MADISON PARISH
	MOREHOUSE PARISH	NATCHITOCHES PARISH	POINTE COUPEE PARISH
	RED RIVER PARISH	RICHLAND PARISH	SABINE PARISH
	ST. HELENA PARISH	TENSAS PARISH	VERNON PARISH
	WEST CARROLL PARISH	WEST FELICIANA PARISH	WASHINGTON PARISH

2003 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT
ME	ANDROSCOGGIN COUNTY (part): Durham town, Leeds town, Livermore Falls town, Livermore town, Minot town	CUMBERLAND COUNTY (part): Baldwin town, Bridgton town, Brunswick town, Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town	FRANKLIN COUNTY
	HANCOCK COUNTY	KENNEBEC COUNTY	KNOX COUNTY
	LINCOLN COUNTY	OXFORD COUNTY	PENOBSCOT COUNTY (part): Alton town, Argyle township, Bradley town, Burlington town, Carmel town, Carroll plantation, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Eastbrook town, Edinburg town, Enfield town, Etna town, Exeter town, Garland town, Glenburn town, Greenfield town, Hampden town, Hermon town, Hudson town, Kingsbury unorg, Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town, North Penobscot unorg, Newport town, Passadumkeag town, Patten town, Plymouth town, Prentiss plantation, Saboes plantation, Springfield town, Stacyville town, Stetson town, Twombly unorg, Webster plantation, Whitney unorg, Winn town, Woodville town
	PISCATAQUIS COUNTY	SAGADAHOC COUNTY	SOMERSET COUNTY
	WALDO COUNTY (part): Belfast city, Belmont town, Brooks town, Burnham town, Franklin town, Freedom town, Hope town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town, Northport town, Palermo town, Prospect town, Searsmont town, Searsport town, Stockton Springs town, Swanville town, Thorndike town, Troy town, Unity town, Waldo town	YORK COUNTY (part): Acton town, Alfred town, Arundel town, Biddeford city, Buxton town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town
MA	DUKES COUNTY	BARNSTABLE COUNTY (part): Barnstable town, Bourne town, Falmouth town, Mashpee town, Provincetown town, Sandwich town, Truro town, Wellfleet town, Yarmouth town	FRANKLIN COUNTY (part): Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town
	HAMPDEN COUNTY (part): Blandford town, Brimfield town, Chester town, Granville town, Holland town, Tolland town, Wales town	HAMPSHIRE COUNTY (part): Chesterfield town, Cummington town, Goshen town, Middlefield town, Pelham town, Plainfield town, Westhampton town, Worthington town	NANTUCKET COUNTY
	WORCESTER COUNTY (part): Athol town, Hubbardston town, Petersham town, New Braintree town, Phillipston town, Royalston town, Warren town		
MS	ISSAQUENA COUNTY	WASHINGTON COUNTY	
MT	BEAVERHEAD COUNTY	BLAINE COUNTY	CARBON COUNTY
	CARTER COUNTY	CHOUTEAU COUNTY	CUSTER COUNTY
	DEER LODGE COUNTY	DANIELS COUNTY	FERGUS COUNTY
	GLACIER COUNTY	GALLATIN COUNTY	GARFIELD COUNTY
	LAKE COUNTY	GOLDEN VALLEY COUNTY	GRANITE COUNTY
	MEAGHER COUNTY	JUDITH BASIN COUNTY	LINCOLN COUNTY
	MINERAL COUNTY	MADISON COUNTY	MCCONE COUNTY
	PETROLEUM COUNTY	MUSSELSHELL COUNTY	PARK COUNTY
	POWELL COUNTY	PONDERA COUNTY	POWDER RIVER COUNTY
	ROOSEVELT COUNTY	PRAIRIE COUNTY	RAVALLI COUNTY
	TREASURE COUNTY	SANDERS COUNTY	RICHLAND COUNTY
	VALLEY COUNTY	SHERIDAN COUNTY	TETON COUNTY
		WHEATLAND COUNTY	WIBAUX COUNTY

2003 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT
ME	ANDROSCOGGIN COUNTY (part): Durham town, Leeds town, Livermore Falls town, Livermore town, Minot town	CUMBERLAND COUNTY (part): Baldwin town, Bridgton town, Brunswick town, Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town	FRANKLIN COUNTY
	HANCOCK COUNTY	KENNEBEC COUNTY	KNOX COUNTY
	LINCOLN COUNTY	OXFORD COUNTY	PENOBSCOT COUNTY (part): Alton town, Argyle township, Bradley town, Burlington town, Carmel town, Carroll plantation, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Eastbrook town, Edinburg town, Enfield town, Etna town, Exeter town, Garland town, Glenburn town, Greenfield town, Hampden town, Hermon town, Hudson town, Kingsbury unorg, Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town, North Penobscot unorg, Newport town, Passadumkeag town, Patten town, Plymouth town, Prentiss plantation, Saboes plantation, Springfield town, Stacyville town, Stetson town, Twombly unorg, Webster plantation, Whitney unorg, Winn town, Woodville town
	PISCATAQUIS COUNTY	SAGADAHOC COUNTY	SOMERSET COUNTY
	WALDO COUNTY (part): Belfast city, Belmont town, Brooks town, Burnham town, Franklin town, Freedom town, Hope town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town, Northport town, Palermo town, Prospect town, Searsmont town, Searsport town, Stockton Springs town, Swanville town, Thorndike town, Troy town, Unity town, Waldo town	YORK COUNTY (part): Acton town, Alfred town, Arundel town, Biddeford city, Buxton town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town
MA	DUKES COUNTY	BARNSTABLE COUNTY (part): Barnstable town, Bourne town, Falmouth town, Mashpee town, Provincetown town, Sandwich town, Truro town, Wellfleet town, Yarmouth town	FRANKLIN COUNTY (part): Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town
	HAMPDEN COUNTY (part): Blandford town, Brimfield town, Chester town, Granville town, Holland town, Tolland town, Wales town	HAMPSHIRE COUNTY (part): Chesterfield town, Cummington town, Goshen town, Middlefield town, Pelham town, Plainfield town, Westhampton town, Worthington town	NANTUCKET COUNTY
	WORCESTER COUNTY (part): Athol town, Hubbardston town, Petersham town, New Braintree town, Phillipston town, Royalston town, Warren town		
MS	ISSAQUENA COUNTY	WASHINGTON COUNTY	
MT	BEAVERHEAD COUNTY	BLAINE COUNTY	CARBON COUNTY
	CARTER COUNTY	CHOUTEAU COUNTY	CUSTER COUNTY
	DEER LODGE COUNTY	DANIELS COUNTY	FERGUS COUNTY
	GLACIER COUNTY	GALLATIN COUNTY	GARFIELD COUNTY
	LAKE COUNTY	GOLDEN VALLEY COUNTY	GRANITE COUNTY
	MEAGHER COUNTY	JUDITH BASIN COUNTY	LINCOLN COUNTY
	MINERAL COUNTY	MADISON COUNTY	MCCONE COUNTY
	PETROLEUM COUNTY	MUSSELSHELL COUNTY	PARK COUNTY
	POWELL COUNTY	PONDERA COUNTY	POWDER RIVER COUNTY
	ROOSEVELT COUNTY	PRAIRIE COUNTY	RAVALLI COUNTY
	TREASURE COUNTY	SANDERS COUNTY	RICHLAND COUNTY
	VALLEY COUNTY	SHERIDAN COUNTY	TETON COUNTY
		WHEATLAND COUNTY	WIBAUX COUNTY

2003 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT		COUNTY OR COUNTY EQUIVALENT	
	CARROLL COUNTY	CHESHIRE COUNTY		GRAFTON COUNTY	
NH	MERRIMACK COUNTY (part)			ROCKINGHAM COUNTY (part)	
	Andover town	Hopkinton town	Pittsfield town	Deerfield town	Nottingham town
	Boscawen town	Loudon town	Salisbury town	Northwood town	
	Bow town	Newbury town	Sutton town		
	Bradford town	New London town	Warner town		
	Canterbury town	Northfield town	Webster town		
	Chichester town	Pembroke town	Wilmot town		
	Concord city				
NM	CATRON COUNTY	DEBACA COUNTY		GRANT COUNTY	
	GUADALUPE COUNTY	LINCOLN COUNTY		LUNA COUNTY	
	MCKINLEY COUNTY	QUAY COUNTY		RIO ARRIBA COUNTY	
	ROOSEVELT COUNTY	SAN MIGUEL COUNTY		SIERRA COUNTY	
	TAOS COUNTY	UNION COUNTY			
NY	COLUMBIA COUNTY	GREENE COUNTY		JEFFERSON COUNTY	
	SULLIVAN COUNTY	ULSTER COUNTY			
NC	WATAUGA COUNTY				
OK	PAYNE COUNTY				
OR	BAKER COUNTY	COOS COUNTY		CROOK COUNTY	
	CURRY COUNTY	DOUGLAS COUNTY		GILLIAM COUNTY	
	GRANT COUNTY	HOOD RIVER COUNTY		JEFFERSON COUNTY	
	JOSEPHINE COUNTY	LAKE COUNTY		LINCOLN COUNTY	
	LINN COUNTY	MORROW COUNTY		SHERMAN COUNTY	
	TILLAMOOK COUNTY	WALLOWA COUNTY		WASCO COUNTY	
	WHEELER COUNTY				
PA	MONROE COUNTY	WAYNE COUNTY			
RI	NEWPORT COUNTY (part)				
	Middletown town	Portsmouth town			
	Newport city				
SD	BUTTE COUNTY	MEADE COUNTY			
TX	ARANSAS COUNTY	CAMP COUNTY		HUDSPETH COUNTY	
	KIMBLE COUNTY	RAINS COUNTY		REAGAN COUNTY	
	VAL VERDE COUNTY				
UT	DAGGETT COUNTY	TOOELE COUNTY		WASHINGTON COUNTY	
VT	ADDISON COUNTY	CALEDONIA COUNTY		ESSEX COUNTY	
	CHITTENDEN COUNTY (part)			GRAND ISLE COUNTY (part)	
	Bolton town	Underhill town		Alburg town	North Hero town
	Buels gore	Highgate town	Richford town	Isle La Motte town	
	Huntington town	Montgomery town	Sheldon town		
	Westford town	Essex town			
	ORANGE COUNTY	RUTLAND COUNTY		WASHINGTON COUNTY	
	WINDHAM COUNTY				
	WINDSOR COUNTY				
VA	CAROLINE COUNTY				

2003 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT
WA	ADAMS COUNTY	CHELAN COUNTY	CLALLAM COUNTY
	COLUMBIA COUNTY	FERRY COUNTY	GARFIELD COUNTY
	GRANT COUNTY	JEFFERSON COUNTY	KITTITAS COUNTY
	KLICKITAT COUNTY	LINCOLN COUNTY	MASON COUNTY
	OKANOGAN COUNTY	PEND OREILLE COUNTY	SAN JUAN COUNTY
	SKAGIT COUNTY	SKAMANIA COUNTY	STEVENS COUNTY
WV	RALEIGH COUNTY	WAHKIAKUM COUNTY	
PI	PACIFIC ISLANDS		
PR	ALL NONMETRO PUERTO RICO		
VI	ST. CROIX	ST. JOHN/ST. THOMAS	

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Abilene, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Taylor County	101.00	102.00	103.00	104.00	108.00	110.00	117.00	119.00	121.00			

METROPOLITAN AREA: Aguadilla, PR MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Aguada Municipio	4304.02	4305.02										
Aguadilla Municipio	4006.00	4008.00	4009.00	4010.00	4011.00							
Moca Municipio	4203.01											

METROPOLITAN AREA: Akron, OH PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Portage County	6015.01	6015.02	6015.03									
Summit County	5011.00	5012.00	5013.01	5013.02	5017.00	5018.00	5019.00	5021.01	5024.00	5025.00	5032.00	5034.00
	5038.00	5041.00	5042.00	5044.00	5046.00	5051.00	5053.00	5056.00	5063.04	5065.00	5066.00	5067.00
	5068.00	5069.00	5074.00	5075.00	5101.00	5103.01						

METROPOLITAN AREA: Albany, GA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Dougherty County	2.00	8.00	12.00	13.00	14.01	14.02	15.00	103.02	106.01			

METROPOLITAN AREA: Albany-Schenectady-Troy, NY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Albany County	1.00	2.00	4.04	5.01	6.00	7.00	8.00	11.00	15.00	21.00	23.00	25.00
	26.00	129.00	132.00									
Montgomery County	702.00	703.00	706.00	708.00	709.00							
Rensselaer County	404.00	405.00	406.00	407.00	408.00							
Schenectady County	201.02	202.00	203.00	208.00	209.00	210.01	210.02	211.02	214.00	215.00	217.00	

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Albuquerque, NM MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bernalillo County	6.03	6.04	9.01	9.03	12.00	13.00	14.00	15.00	16.00	17.00	18.00	20.00
	21.00	25.00	26.00	29.00	37.33	43.00	45.01	45.02	47.14	48.00	9403.00	9459.00
Sandoval County	101.02	102.00	103.02	9402.00	9409.00	9433.00						
Valencia County	9401.00	9703.01										

METROPOLITAN AREA: Alexandria, LA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Rapides Parish	105.00	110.00	111.00	117.00	119.00	120.00	127.00	129.00				

METROPOLITAN AREA: Allentown-Bethlehem-Easton, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lehigh County	4.00	5.00	7.00	8.00	9.00	10.00	11.00	12.00	13.00	18.00	19.00	
Northampton County	105.00	110.00	112.00	113.00	144.00							

METROPOLITAN AREA: Altoona, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Blair County	1007.00	1008.00	1016.00	1019.00								

METROPOLITAN AREA: Amarillo, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Potter County	103.00	106.00	120.00	122.00	128.00	130.00	139.00	146.00	148.00	153.00		

METROPOLITAN AREA: Anchorage, AK MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Anchorage Borough	5.00	6.00	10.00	11.00								

METROPOLITAN AREA: Ann Arbor, MI PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lenawee County	613.01	613.02	616.00									
Washtenaw County	4001.00	4002.00	4003.00	4005.00	4008.00	4022.00	4042.00	4101.00	4105.00	4106.00	4107.00	4108.00
	4110.00	4111.00	4112.00	4140.00	4143.00							

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Anniston, AL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Calhoun County	1.00	3.00	4.00	5.00	8.00	21.01	23.00					

METROPOLITAN AREA: Appleton-Oshkosh-Neenah, WI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Winnebago County	5.00	7.00										

METROPOLITAN AREA: Arecibo, PR PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Arecibo Municipio	3004.00	3005.00	3012.00	3013.00	3019.00	3021.00						
Camuy Municipio	3205.00											
Hatillo Municipio	3105.00											

METROPOLITAN AREA: Asheville, NC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Buncombe County	1.00	2.00	3.00	9.00	10.00							

METROPOLITAN AREA: Athens, GA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Clarke County	1.00	4.00	6.00	9.00	19.00	302.00	1504.00	1505.00				

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Atlanta, GA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Carroll County	9901.01	9905.02										
Clayton County	401.00	403.01	403.03									
Cobb County	307.00	308.00	310.02									
DeKalb County	205.00	206.00	207.00	212.04	221.00	235.01	236.01	237.00	238.02			
Fulton County	6.00	8.00	10.00	17.00	18.00	19.00	21.00	22.00	23.00	24.00	25.00	26.00
	27.00	28.00	29.00	31.00	33.00	35.00	36.00	37.00	38.00	39.00	40.00	41.00
	42.00	43.00	44.00	46.00	48.00	55.01	55.02	56.00	57.00	58.00	60.00	61.00
	62.00	63.00	64.00	66.01	66.02	67.00	68.02	69.00	70.01	70.02	71.00	72.00
	73.00	74.00	75.00	76.01	77.02	78.07	78.08	80.00	81.02	82.02	83.01	83.02
	84.00	85.00	86.01	86.02	87.01	87.02	88.00	106.01	106.03	106.04	107.00	109.00
	110.00	112.01	112.02	113.04								
Newton County	1007.00											
Spalding County	1603.00	1604.00	1608.00	1609.00								

METROPOLITAN AREA: Atlantic-Cape May, NJ PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Atlantic County	11.00	14.00	15.00	24.00	25.00	104.02						
Cape May County	214.00	215.00										

METROPOLITAN AREA: Auburn-Opelika, AL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lee County	403.00	406.01	406.02	407.00	408.00	416.00						

METROPOLITAN AREA: Augusta-Aiken, GA-SC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
McDuffie County, GA	9502.00											
Richmond County, GA	2.00	3.00	4.00	6.00	7.00	8.00	9.00	10.00	14.00	15.00	103.00	104.00
	105.04	106.00										
Aiken County, SC	204.00	214.00										

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Austin-San Marcos, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Caldwell County	9602.00	9607.00										
Hays County	102.00	103.01	103.02	105.00	107.00							
Travis County	2.03	3.02	4.01	4.02	5.00	6.01	6.03	6.04	7.00	8.02	8.03	8.04
	9.01	9.02	10.00	18.04	18.05	18.06	18.11	18.12	21.05	21.07	21.09	21.10
	21.11	21.12	22.02	23.04	23.07	23.08	23.10	23.11	23.12	23.14	23.15	23.16
	24.13											
Williamson County	210.00	214.02										

METROPOLITAN AREA: Bakersfield, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Kern County	4.00	6.00	11.03	12.01	12.02	13.00	14.00	15.00	16.00	19.02	20.00	21.00
	22.00	23.02	25.00	41.02	44.02	47.00	48.00	49.01	59.00	63.01	63.02	64.02

METROPOLITAN AREA: Baltimore, MD PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Anne Arundel County	7028.00	7401.05										
Baltimore County	4016.01	4016.02	4084.00	4209.00	4210.00	4213.00	4505.01	4505.04	4508.00	4906.05	4918.00	
Harford County	3029.01											
Baltimore city	301.00	401.00	402.00	501.00	601.00	602.00	603.00	604.00	605.00	701.00	702.00	703.00
	704.00	801.02	802.00	803.01	803.02	804.00	805.00	806.00	807.00	808.00	904.00	905.00
	906.00	907.00	908.00	909.00	1001.00	1002.00	1004.00	1102.00	1202.00	1203.00	1204.00	1205.00
	1206.00	1207.00	1301.00	1302.00	1303.00	1304.00	1308.04	1401.00	1402.00	1403.00	1501.00	1502.00
	1503.00	1504.00	1505.00	1506.00	1508.00	1510.00	1512.00	1513.00	1601.00	1602.00	1603.00	1604.00
	1605.00	1606.00	1607.00	1608.02	1701.00	1702.00	1703.00	1801.00	1802.00	1803.00	1901.00	1902.00
	1903.00	2001.00	2002.00	2003.00	2004.00	2005.00	2006.00	2007.01	2008.00	2101.00	2102.00	2301.00
	2502.03	2502.04	2502.07	2503.01	2503.02	2503.03	2504.02	2505.00	2602.01	2602.02	2603.03	2604.01
	2604.02	2605.01	2606.04	2607.00	2608.00	2610.00	2707.01	2710.01	2716.00	2717.00	2718.01	2718.02
	2720.01	2803.01	2803.02	2804.04								

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Bangor, ME MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Penobscot County	2.00	9.00	10.00	61.00	63.00							

METROPOLITAN AREA: Barnstable-Yarmouth, MA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Barnstable County	123.00	124.00										

METROPOLITAN AREA: Baton Rouge, LA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Ascension Parish	309.00											
East Baton Rouge Parish	1.00	2.00	3.00	4.00	5.00	6.01	6.02	7.01	8.00	9.00	10.00	11.02
	11.04	12.00	13.00	15.00	21.00	22.00	24.00	25.00	28.00	30.00	31.01	31.02
	33.00	34.00	36.04	40.07								
West Baton Rouge Parish	202.00											

METROPOLITAN AREA: Beaumont-Port Arthur, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Jefferson County	1.03	6.00	7.00	9.00	10.00	12.00	16.00	19.00	20.00	22.00	23.00	24.00
	25.00	26.00	51.00	53.00	54.00	59.00	61.00	62.00	63.00	64.00	66.00	70.01
	101.00											
Orange County	202.00											

METROPOLITAN AREA: Bellingham, WA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Whatcom County	5.00	6.00	10.00	12.00								

METROPOLITAN AREA: Benton Harbor, MI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Berrien County	3.00	4.00	5.00	6.00	21.00	22.00	23.00	205.00				

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2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Bergen-Passaic, NJ PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bergen County	154.00	181.00										
Passaic County	1251.00	1752.00	1753.00	1754.00	1755.00	1758.00	1759.00	1802.00	1803.00	1804.00	1805.00	1806.00
	1807.00	1808.00	1809.00	1810.00	1811.00	1812.00	1813.00	1814.00	1815.00	1817.02	1818.00	1820.00
	1821.00	1822.00	1823.00	1824.00	1827.00	1828.00	1829.00	1830.00	1831.00	1832.00	2239.00	

METROPOLITAN AREA: Billings, MT MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Yellowstone County	2.00	3.00										

METROPOLITAN AREA: Biloxi-Gulfport-Pascagoula, MS MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Harrison County	3.00	4.00	18.00	20.00	21.00	24.00	26.00					
Jackson County	412.00	421.00	422.00									

METROPOLITAN AREA: Binghamton, NY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Broome County	1.00	3.00	4.00	5.00	6.00	11.00	12.00	13.00	14.00	135.00	139.00	140.00

METROPOLITAN AREA: Birmingham, AL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Jefferson County	3.00	4.00	5.00	7.00	8.00	12.00	14.00	15.00	16.00	19.02	20.00	23.03
	24.00	27.00	29.00	30.01	30.02	32.00	33.00	34.00	35.00	37.00	38.03	39.00
	40.00	42.00	45.00	49.00	51.01	55.00	101.00	102.00	103.01	103.02	106.02	112.10
	119.03	130.02	131.00	133.00	136.01	138.01						

METROPOLITAN AREA: Bloomington, IN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Monroe County	1.00	2.01	2.02	9.01	16.00							

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Bloomington-Normal, IL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
McLean County	1.04	2.00	4.00	5.01	15.00	16.00	17.00					

METROPOLITAN AREA: Boise City, ID MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Ada County	1.00											
Canyon County	201.00	202.00	213.00									

METROPOLITAN AREA: Boston, MA-NH PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bristol County, MA	6138.00	6140.00										
Essex County, MA	2043.00	2058.00	2060.00	2061.00	2062.00	2063.00	2068.00	2069.00	2070.00	2071.00	2072.00	2108.00
	2215.00											
Middlesex County, MA	3022.00	3522.00	3524.00	3527.00	3539.00	3549.00	3831.00					
Norfolk County, MA	4178.02											
Suffolk County, MA	4.01	6.02	7.01	7.02	8.01	8.02	101.02	102.01	102.02	103.00	104.01	104.02
	105.00	402.00	408.00	501.00	502.00	503.00	504.00	505.00	506.00	507.00	509.00	510.00
	512.00	607.00	610.00	611.00	701.00	702.00	704.00	709.00	711.00	712.00	801.00	803.00
	804.00	805.00	806.00	808.00	809.00	810.00	811.00	812.00	813.00	815.00	817.00	818.00
	820.00	821.00	901.00	902.00	903.00	904.00	906.00	909.00	913.00	914.00	915.00	916.00
	917.00	918.00	919.00	923.00	924.00	1001.00	1002.00	1003.00	1005.00	1011.01	1011.02	1102.00
	1401.04	1501.00	1601.00	1602.00	1604.00	1605.00	1606.00	1707.00				

METROPOLITAN AREA: Boulder-Longmont, CO PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Boulder County	122.02	122.05	123.00	124.01	126.05	126.06	134.01					

METROPOLITAN AREA: Brazoria, TX PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Brazoria County	6643.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Bremerton, WA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Kitsap County	805.00	808.00	810.00									

METROPOLITAN AREA: Bridgeport, CT PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Fairfield County	702.00	703.00	704.00	705.00	706.00	709.00	710.00	711.00	712.00	713.00	714.00	716.00
	717.00	719.00	732.00	735.00	736.00	737.00	738.00	739.00	740.00	743.00	744.00	

METROPOLITAN AREA: Brockton, MA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Plymouth County	5103.00	5104.00	5105.02	5108.00	5109.00	5110.00	5114.00					

METROPOLITAN AREA: Brownsville-Harlingen-San Benito, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cameron County	109.00	119.03	123.03	124.03	126.09	126.10	131.06	132.03	132.06	132.07	133.07	134.01
	134.02	137.00	138.01	138.02	139.01	139.02	139.03	140.01	140.02			

METROPOLITAN AREA: Bryan-College Station, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Brazos County	9.00	13.01	14.00	15.00	16.03	17.00						

METROPOLITAN AREA: Buffalo-Niagara Falls, NY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Erie County	3.00	4.00	5.00	12.00	13.02	14.01	14.02	15.00	16.00	17.00	18.00	20.00
	21.00	23.00	24.00	25.01	25.02	26.00	27.01	27.02	28.00	29.00	30.00	31.00
	32.01	32.02	33.01	33.02	34.00	35.00	36.00	37.00	39.01	40.01	40.02	44.02
	47.00	52.02	53.00	55.00	56.00	57.00	59.00	60.00	61.00	62.02	64.00	65.01
	66.01	67.01	67.02	68.00	69.00	70.00	71.01	71.02	72.01	83.00	119.01	121.00
	122.00	9400.00										
Niagara County	202.00	204.00	205.00	206.00	209.00	211.00	212.00	213.00	214.00	217.00	237.00	

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Burlington, VT MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Chittenden County	3.00	4.00	5.00	6.00	10.00							

METROPOLITAN AREA: Caguas, PR PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Caguas Municipio	2009.00	2010.00	2012.00	2014.00	2016.00	2017.00	2019.00	2027.01				
Cayey Municipio	2602.02	2606.00	2607.00									
Cidra Municipio	2402.01	2402.02										
Gurabo Municipio	2103.00											
San Lorenzo Municipio	2202.00	2203.00	2206.00	2207.00								

METROPOLITAN AREA: Canton-Massillon, OH MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Stark County	7001.00	7015.00	7017.00	7018.00	7021.00	7023.00	7102.00	7104.00	7105.00	7138.00	7142.00	

METROPOLITAN AREA: Casper, WY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Natrona County	2.00											

METROPOLITAN AREA: Cedar Rapids, IA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Linn County	19.00	27.00										

METROPOLITAN AREA: Champaign-Urbana, IL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Champaign County	1.00	2.00	3.00	4.00	51.00	52.00	53.00	58.00	59.00	60.00		

METROPOLITAN AREA: Charleston-North Charleston, SC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Berkeley County	201.00	202.00										
Charleston County	4.00	5.00	6.00	7.00	8.00	9.00	10.00	11.00	12.00	13.00	14.00	23.00
	27.01	31.04	31.13	33.00	34.00	37.00	38.00	40.00	41.00	42.00	43.00	44.00
	45.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Charleston, WV MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Kanawha County	1.00	7.00	9.00	12.00	129.00	138.00						

METROPOLITAN AREA: Charlotte-Gastonia-Rock Hill, NC-SC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Gaston County, NC	315.00	318.00	319.00	320.00	330.00	331.00						
Mecklenburg County, NC	1.00	3.00	4.00	6.00	7.00	8.00	9.00	14.00	23.00	26.00	36.00	37.00
	39.01	39.02	41.00	45.00	46.00	47.00	48.00	49.00	50.00	51.00	52.00	53.04
	56.04											
Rowan County, NC	501.00	502.02	504.00	508.00								
York County, SC	604.01	604.02	605.01									

METROPOLITAN AREA: Charlottesville, VA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Albemarle County	109.02	109.03										
Charlottesville city	2.01	2.02	4.01	6.00								

METROPOLITAN AREA: Chattanooga, TN-GA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hamilton County, TN	2.00	3.00	4.00	8.00	10.00	11.00	12.00	13.00	14.00	15.00	16.00	19.00
	20.00	25.00	26.00	31.00	115.00							

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Chicago, IL PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cook County	101.00	105.00	108.00	306.00	312.00	313.00	315.00	316.00	514.00	607.00	707.00	804.00
	805.00	808.00	819.00	1401.00	1402.00	1407.00	2005.00	2006.00	2102.00	2105.00	2106.00	2207.00
	2209.00	2210.00	2211.00	2213.00	2214.00	2215.00	2223.00	2224.00	2226.00	2227.00	2228.00	2229.00
	2301.00	2302.00	2303.00	2304.00	2305.00	2306.00	2307.00	2308.00	2309.00	2310.00	2311.00	2312.00
	2313.00	2315.00	2316.00	2317.00	2318.00	2401.00	2406.00	2407.00	2408.00	2409.00	2410.00	2411.00
	2420.00	2425.00	2426.00	2427.00	2501.00	2510.00	2511.00	2513.00	2514.00	2515.00	2516.00	2517.00
	2518.00	2519.00	2520.00	2521.00	2522.00	2523.00	2601.00	2602.00	2603.00	2604.00	2605.00	2606.00
	2607.00	2608.00	2609.00	2610.00	2701.00	2702.00	2703.00	2704.00	2705.00	2706.00	2707.00	2708.00
	2709.00	2710.00	2711.00	2712.00	2713.00	2714.00	2716.00	2717.00	2718.00	2719.00	2804.00	2805.00
	2806.00	2807.00	2808.00	2809.00	2810.00	2811.00	2813.00	2814.00	2815.00	2816.00	2817.00	2818.00
	2822.00	2824.00	2826.00	2827.00	2830.00	2831.00	2832.00	2835.00	2836.00	2838.00	2839.00	2840.00
	2841.00	2842.00	2902.00	2903.00	2904.00	2905.00	2906.00	2907.00	2908.00	2909.00	2910.00	2911.00
	2912.00	2913.00	2914.00	2915.00	2916.00	2917.00	2918.00	2919.00	2920.00	2921.00	2922.00	2923.00
	2924.00	2925.00	2926.00	3001.00	3002.00	3003.00	3004.00	3006.00	3007.00	3008.00	3009.00	3010.00
	3011.00	3012.00	3013.00	3014.00	3015.00	3016.00	3017.00	3104.00	3105.00	3106.00	3107.00	3108.00
	3109.00	3110.00	3111.00	3112.00	3113.00	3114.00	3206.00	3302.00	3303.00	3401.00	3402.00	3404.00
	3405.00	3406.00	3502.00	3504.00	3506.00	3507.00	3511.00	3512.00	3514.00	3515.00	3601.00	3602.00
	3603.00	3604.00	3605.00	3701.00	3702.00	3703.00	3704.00	3801.00	3802.00	3803.00	3804.00	3805.00
	3806.00	3807.00	3808.00	3809.00	3810.00	3812.00	3813.00	3814.00	3815.00	3816.00	3817.00	3818.00
	3819.00	3820.00	3902.00	3903.00	3904.00	4001.00	4002.00	4003.00	4004.00	4005.00	4006.00	4007.00
	4008.00	4106.00	4113.00	4201.00	4202.00	4203.00	4204.00	4205.00	4206.00	4207.00	4208.00	4209.00
	4210.00	4211.00	4212.00	4302.00	4303.00	4304.00	4305.00	4307.00	4309.00	4310.00	4313.00	4314.00
	4401.00	4408.00	4409.00	4601.00	4602.00	4603.00	4605.00	4606.00	4607.00	4608.00	4609.00	4610.00
	4701.00	4902.00	4910.00	4912.00	4913.00	4914.00	5002.00	5003.00	5105.00	5202.00	5301.00	5302.00
	5306.00	5401.00	5602.00	5802.00	5803.00	5807.00	5907.00	6001.00	6002.00	6003.00	6009.00	6014.00
	6102.00	6103.00	6104.00	6105.00	6109.00	6110.00	6111.00	6112.00	6113.00	6114.00	6115.00	6116.00
	6117.00	6118.00	6119.00	6120.00	6121.00	6122.00	6301.00	6302.00	6304.00	6305.00	6308.00	6601.00
	6606.00	6607.00	6608.00	6609.00	6701.00	6702.00	6703.00	6704.00	6705.00	6706.00	6707.00	6708.00
	6709.00	6710.00	6711.00	6712.00	6713.00	6714.00	6715.00	6716.00	6717.00	6718.00	6719.00	6720.00
	6801.00	6802.00	6803.00	6804.00	6805.00	6806.00	6807.00	6808.00	6809.00	6810.00	6811.00	6812.00
	6813.00	6814.00	6901.00	6902.00	6903.00	6904.00	6905.00	6907.00	6908.00	6909.00	6911.00	6912.00
	6915.00	7101.00	7102.00	7103.00	7106.00	7107.00	7109.00	7609.00	8087.02	8093.00	8133.00	8138.00

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Chicago, IL PMSA (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cook County (Continued)	8141.00	8142.00	8175.00	8215.00	8236.03	8243.00	8260.00	8268.00	8269.01	8269.02	8272.00	8273.00
	8274.00	8290.00	8291.00	8293.02	8294.01	8297.00						
DeKalb County	10.00	11.00	12.00									
Kane County	8509.00	8515.00	8536.00	8537.00								
Lake County	8623.00	8624.01	8624.02	8626.05	8627.00	8628.00	8629.02					
Will County	8813.00	8819.00	8820.00	8821.00	8824.00	8825.00						

METROPOLITAN AREA: Chico-Paradise, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Butte County	5.02	6.03	6.04	10.00	11.00	12.00	25.00	28.00	30.00			

METROPOLITAN AREA: Cincinnati, OH-KY-IN PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Campbell County, KY	501.00	502.00	505.00	506.00	512.00							
Kenton County, KY	603.00	607.00	610.00	651.00	671.00							
Hamilton County, OH	1.00	2.00	3.01	3.02	4.00	7.00	8.00	9.00	10.00	11.00	14.00	15.00
	16.00	17.00	19.00	21.00	22.00	23.00	25.00	26.00	28.00	29.00	30.00	32.00
	33.00	34.00	35.00	36.00	37.00	38.00	39.00	47.02	63.00	66.00	67.00	68.00
	69.00	74.00	77.00	80.00	85.02	86.01	87.00	88.00	89.00	91.00	92.00	93.00
	94.00	95.00	100.02	227.00								

METROPOLITAN AREA: Clarksville-Hopkinsville, TN-KY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Christian County, KY	2001.00	2002.00	2003.00	2004.00	2008.00							
Montgomery County, TN	1001.00	1004.00	1008.00									

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Cleveland-Lorain-Elyria, OH PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Ashtabula County	7.01	7.03										
Cuyahoga County	1011.01	1012.00	1013.00	1015.00	1017.00	1018.00	1019.00	1024.02	1025.00	1026.00	1027.00	1028.00
	1029.00	1032.00	1033.00	1034.00	1035.00	1037.00	1038.00	1039.00	1041.00	1043.00	1044.00	1045.00
	1046.00	1047.01	1047.02	1048.00	1049.00	1051.00	1052.00	1056.01	1056.02	1072.00	1073.00	1075.00
	1077.00	1078.00	1079.00	1082.00	1083.00	1084.00	1085.00	1086.00	1087.00	1088.00	1089.00	1093.00
	1096.00	1097.00	1098.00	1104.00	1105.00	1106.00	1108.00	1109.00	1111.00	1112.00	1113.00	1114.01
	1114.02	1115.00	1116.00	1117.00	1118.00	1119.02	1121.00	1122.00	1123.00	1124.00	1126.00	1127.00
	1128.00	1129.00	1131.00	1132.00	1133.00	1134.00	1135.00	1136.00	1137.00	1138.00	1139.00	1141.00
	1142.00	1143.00	1144.00	1145.00	1146.00	1147.00	1148.00	1149.00	1151.00	1152.00	1153.00	1154.00
	1155.00	1161.00	1162.00	1164.00	1165.00	1166.00	1167.00	1168.00	1169.00	1171.02	1172.01	1173.00
	1175.00	1178.00	1179.00	1181.00	1182.00	1184.00	1185.00	1186.01	1186.02	1187.00	1188.00	1189.00
	1191.00	1192.01	1192.02	1193.00	1194.02	1195.02	1196.00	1197.02	1198.00	1199.00	1201.00	1202.00
	1204.00	1205.00	1206.00	1207.01	1211.00	1212.00	1213.00	1214.01	1216.00	1233.00	1238.00	1244.00
	1275.00	1501.00	1503.00	1504.00	1511.00	1512.00	1513.00	1514.00	1515.00	1516.00	1517.00	1518.00
	1527.01	1618.00	1915.00									
Lorain County	223.00	228.00	229.00	231.00	238.00	708.00	709.01					

METROPOLITAN AREA: Colorado Springs, CO MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
El Paso County	17.00	22.00	23.00	29.00	61.00							

METROPOLITAN AREA: Columbia, MO MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Boone County	1.00	2.00	3.00	4.01	4.02	5.00	8.00	9.00	11.01			

METROPOLITAN AREA: Columbia, SC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lexington County	203.00	205.05										
Richland County	1.00	2.00	3.00	5.00	6.00	7.00	9.00	10.00	13.00	14.00	15.00	18.00
	19.00	20.01	20.02	28.00	105.02	106.00	107.01	108.02	109.00			

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Columbus, GA-AL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Russell County, AL	302.00	308.00	311.00									
Muscogee County, GA	1.00	3.00	5.00	13.00	14.00	15.00	16.00	18.00	22.00	24.00	25.00	27.00
	28.00	29.02	30.00	32.00	34.00	110.00						

METROPOLITAN AREA: Columbus, OH MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Fairfield County	317.00											
Franklin County	7.20	7.30	9.10	9.20	10.00	11.10	11.20	12.00	13.00	14.00	15.00	16.00
	17.00	18.10	22.00	23.00	25.20	26.00	27.10	28.00	29.00	30.00	36.00	37.00
	40.00	42.00	47.00	48.20	50.00	51.00	53.00	54.10	54.20	55.00	56.10	60.00
	61.00	68.30	74.10	75.11	75.20	75.32	75.34	75.40	78.20	82.30	82.41	83.50
	87.20	87.30	93.31									
Licking County	7501.00	7504.00	7525.00									
Pickaway County	201.00	204.00										

METROPOLITAN AREA: Corpus Christi, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Nueces County	3.00	4.00	5.00	7.00	8.00	9.00	10.00	11.00	12.00	13.00	15.00	16.01
	16.02	17.00	50.00	56.02	59.00							
San Patricio County	113.00											

METROPOLITAN AREA: Corvallis, OR MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Benton County	7.00	8.02	11.01	11.02								

METROPOLITAN AREA: Cumberland, MD-WV MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Allegany County, MD	7.00	18.00										
Mineral County, WV	107.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Dallas, TX PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Collin County	309.00	319.00										
Dallas County	4.01	4.03	4.05	6.01	9.00	12.04	14.00	15.02	15.03	15.04	16.00	20.00
	21.00	22.00	24.00	25.00	27.01	27.02	29.00	32.01	33.00	34.00	35.00	37.00
	38.00	39.01	39.02	40.00	41.00	43.00	46.00	47.00	48.00	49.00	50.00	52.00
	55.00	56.00	57.00	59.02	60.01	60.02	64.00	67.00	69.00	72.01	72.02	78.15
	78.18	78.19	84.00	86.03	86.04	87.01	87.03	87.04	87.05	88.01	88.02	89.00
	90.00	91.03	91.05	92.02	93.01	93.03	93.04	96.10	98.02	98.04	99.00	100.00
	101.01	101.02	102.00	104.00	105.00	106.01	106.02	107.01	107.04	108.01	108.02	109.02
	111.05	114.01	114.02	115.00	118.00	120.00	122.08	122.10	122.11	123.02	146.02	149.01
	155.00	159.00	161.00	166.05	169.01	182.04	190.13	192.09				
Denton County	206.01	207.00	208.00	209.00	210.00	211.00	212.00					
Ellis County	604.00											
Henderson County	9510.00	9512.00										
Hunt County	9605.00	9606.00	9608.00	9609.00								
Kaufman County	505.00											

METROPOLITAN AREA: Danbury, CT PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Fairfield County	2101.00	2107.00										
Litchfield County	2536.00											

METROPOLITAN AREA: Danville, VA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Danville city	3.00	4.00	5.00	6.00	10.00							

METROPOLITAN AREA: Davenport-Moline-Rock Island, IA-IL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Rock Island County, IL	206.00	223.00	226.00	227.00	235.00	236.00	244.00					
Scott County, IA	106.00	107.00	108.00	109.00	114.00							

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Dayton-Springfield, OH MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Clark County	1.00	2.00	3.00	7.00	9.01	12.00						
Greene County	2001.02											
Montgomery County	3.00	7.00	9.00	10.00	12.00	13.00	14.00	15.00	17.00	18.00	19.00	20.00
	21.00	22.00	23.00	34.00	35.00	36.00	37.00	38.00	39.00	40.00	41.00	42.00
	43.00	44.00	45.00	602.00	702.01	702.02	703.00	805.00				

METROPOLITAN AREA: Daytona Beach, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Volusia County	812.00	815.00	817.00	819.00	820.00	821.00	823.02	905.00	906.00	907.02		

METROPOLITAN AREA: Decatur, AL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Morgan County	1.00	4.00	6.00	7.00								

METROPOLITAN AREA: Decatur, IL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Macon County	1.00	3.00	5.00	6.00	7.00	8.00	9.00					

METROPOLITAN AREA: Denver, CO PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Adams County	78.00	79.00	81.00	83.08	87.03	87.06	89.01	89.52	93.19			
Arapahoe County	65.01	72.02	73.00									
Denver County	2.02	4.02	6.00	7.01	7.02	8.00	9.04	9.05	10.00	11.01	11.02	14.01
	15.00	16.00	18.00	19.00	20.00	23.00	24.02	24.03	26.01	26.02	27.01	31.02
	35.00	36.01	36.02	41.01	44.04	45.01	45.02	83.13				
Jefferson County	100.00	104.02	104.05									

METROPOLITAN AREA: Des Moines, IA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Polk County	11.00	12.00	17.00	26.00	27.00	42.00	48.00	49.00	50.00	51.00	52.00	

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Detroit, MI PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Macomb County	2313.00	2450.00	2470.00	2471.00	2605.00							
Monroe County	8318.00											
Oakland County	1412.00	1416.00	1417.00	1421.00	1422.00	1423.00	1424.00	1425.00	1427.00	1716.00	1724.00	1725.00
	1981.00											
St. Clair County	6200.00	6230.00	6240.00	6250.00								
Wayne County	5003.00	5004.00	5005.00	5006.00	5017.00	5020.00	5032.00	5033.00	5034.00	5035.00	5036.00	5037.00
	5039.00	5040.00	5041.00	5042.00	5043.00	5044.00	5045.00	5046.00	5047.00	5048.00	5050.00	5051.00
	5052.00	5053.00	5063.00	5064.00	5065.00	5070.00	5072.00	5073.00	5074.00	5075.00	5076.00	5077.00
	5078.00	5079.00	5080.00	5102.00	5103.00	5104.00	5105.00	5106.00	5107.00	5108.00	5109.00	5112.00
	5115.00	5116.00	5117.00	5121.00	5122.00	5123.00	5124.00	5126.00	5129.00	5132.00	5134.00	5135.00
	5136.00	5139.00	5140.00	5141.00	5143.00	5145.00	5146.00	5147.00	5148.00	5149.00	5150.00	5151.00
	5152.00	5153.00	5156.00	5157.00	5161.00	5162.00	5163.00	5164.00	5166.00	5168.00	5169.00	5174.00
	5175.00	5176.00	5177.00	5178.00	5180.00	5181.00	5184.00	5185.00	5186.00	5188.00	5201.00	5202.00
	5203.00	5204.00	5205.00	5206.00	5207.00	5211.00	5213.00	5214.00	5215.00	5218.00	5219.00	5220.00
	5221.00	5222.00	5223.00	5224.00	5231.00	5232.00	5233.00	5234.00	5235.00	5236.00	5237.00	5238.00
	5240.00	5241.00	5242.00	5243.00	5245.00	5247.00	5251.00	5252.00	5253.00	5254.00	5255.00	5256.00
	5257.00	5258.00	5260.00	5261.00	5262.00	5263.00	5264.00	5265.00	5302.00	5303.00	5304.00	5307.00
	5308.00	5310.00	5311.00	5313.00	5314.00	5315.00	5316.00	5317.00	5318.00	5319.00	5322.00	5324.00
	5325.00	5326.00	5327.00	5330.00	5331.00	5332.00	5333.00	5334.00	5335.00	5336.00	5337.00	5341.00
	5342.00	5343.00	5344.00	5345.00	5346.00	5350.00	5351.00	5352.00	5354.00	5357.00	5361.00	5363.00
	5364.00	5365.00	5366.00	5367.00	5370.00	5371.00	5372.00	5373.00	5377.00	5378.00	5383.00	5391.00
	5402.00	5404.00	5410.00	5411.00	5412.00	5427.00	5435.00	5436.00	5437.00	5438.00	5439.00	5442.00
	5451.00	5452.00	5453.00	5454.00	5455.00	5456.00	5460.00	5464.00	5468.00	5521.00	5522.00	5523.00
	5524.00	5526.00	5530.00	5531.00	5532.00	5533.00	5534.00	5536.00	5538.00	5706.00	5708.00	5733.00
	5735.00	5736.00	5738.00	5739.00	5740.00	5791.00	5792.00	5793.00	5795.00	5796.00	5797.00	5798.00
	5848.00	5860.00										

METROPOLITAN AREA: Dothan, AL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Dale County	205.00	207.00	210.00									
Houston County	406.00	412.00	414.00	415.00								

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Dubuque, IA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Dubuque County	1.00											

METROPOLITAN AREA: Duluth-Superior, MN-WI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
St. Louis County, MN	12.00	13.00	14.00	16.00	17.00	18.00	19.00	25.00	28.00	32.00	39.00	130.00
Douglas County, WI	201.00	202.00										

METROPOLITAN AREA: Dutchess County, NY PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Dutchess County	2201.00	2202.00	2203.00	2204.00	2205.00	2206.00	2207.00	6200.00				

METROPOLITAN AREA: Eau Claire, WI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Eau Claire County	11.01	11.02	12.00									

METROPOLITAN AREA: El Paso, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
El Paso County	2.05	3.01	4.04	8.00	12.03	14.00	16.00	17.00	18.00	19.00	20.00	21.00
	22.01	22.02	28.00	29.00	30.00	31.00	32.00	35.02	36.02	37.02	39.01	39.02
	39.03	41.03	104.03	105.01	105.02	105.03	105.04					

METROPOLITAN AREA: Elkhart-Goshen, IN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Elkhart County	26.00	28.00										

METROPOLITAN AREA: Elmira, NY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Chemung County	1.00	6.00	7.00	8.00	10.00							

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Enid, OK MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Garfield County	7.00											

METROPOLITAN AREA: Erie, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Erie County	1.00	3.00	4.00	6.00	7.00	8.00	9.00	12.00	13.00	14.00	15.00	17.00
	18.00	19.00	122.02									

METROPOLITAN AREA: Eugene-Springfield, OR MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lane County	31.02	37.00	38.00	39.00	42.00	48.00						

METROPOLITAN AREA: Evansville-Henderson, IN-KY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Vanderburgh County, IN	12.00	13.00	14.00	17.00	18.00	19.00	20.00	21.00	25.00	26.00		
Henderson County, KY	202.00	203.00	204.00									

METROPOLITAN AREA: Fargo-Moorhead, ND-MN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Clay County, MN	203.00	204.00										
Cass County, ND	7.00											

METROPOLITAN AREA: Fayetteville, NC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cumberland County	1.00	2.00	4.00	10.00	12.00	13.00	35.00					

METROPOLITAN AREA: Fayetteville-Springdale-Rogers, AR MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Washington County	107.01	108.00	109.00	111.01								

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Fitchburg-Leominster, MA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Worcester County	7105.00	7107.00										

METROPOLITAN AREA: Flagstaff, AZ-UT MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Coconino County, AZ	8.00	10.00	18.00	9411.00	9422.00	9445.00						

METROPOLITAN AREA: Flint, MI PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Genesee County	2.00	4.00	5.00	6.00	7.00	8.00	9.00	10.00	11.00	14.00	15.00	17.00
	18.00	19.00	20.00	21.00	22.00	23.00	25.00	26.00	28.00	32.00	34.00	38.00
	103.04	122.02										

METROPOLITAN AREA: Florence, AL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Colbert County	203.00											
Lauderdale County	101.00	102.00	103.00	106.00	107.00							

METROPOLITAN AREA: Florence, SC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Florence County	7.00	8.00	9.00	10.00	22.01							

METROPOLITAN AREA: Fort Collins-Loveland, CO MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Larimer County	1.00	2.00	5.02	6.00	13.04							

METROPOLITAN AREA: Fort Lauderdale, FL PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Broward County	103.04	107.02	303.01	304.01	304.02	305.00	306.00	308.01	408.01	408.02	409.01	409.02
	410.00	411.00	412.00	414.00	415.00	416.00	417.00	425.00	503.03	503.06	503.07	503.08
	507.01	602.07	603.02	603.03	603.04	604.03	705.02	805.00	1004.00	1005.00	1007.00	1008.02
	1103.14											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Fort Myers-Cape Coral, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lee County	1.00	3.01	3.02	4.01	5.02	5.04	6.0[illegible]	11.00				

METROPOLITAN AREA: Fort Pierce-Port St. Lucie, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Martin County	8.00	18.00										
St. Lucie County	1.00	2.00	3.00	4.00	5.00	14.02						

METROPOLITAN AREA: Fort Smith, AR-OK MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Sebastian County, AR	1.00	2.00	3.00	4.00	8.00							

METROPOLITAN AREA: Fort Walton Beach, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Okaloosa County	226.00											

METROPOLITAN AREA: Fort Wayne, IN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Allen County	6.00	12.00	13.00	14.00	15.00	16.00	17.00	18.00	20.00	23.00	27.00	28.00
	29.00	35.00	42.00	113.03								

METROPOLITAN AREA: Fort Worth-Arlington, TX PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Johnson County	1308.00	1309.00										
Tarrant County	1002.02	1003.00	1005.01	1009.00	1010.00	1011.00	1014.0[illegible]	1014.03	1016.00	1017.00	1018.00	1020.00
	1025.00	1029.00	1030.00	1031.00	1033.00	1034.00	1035.00	1036.01	1036.02	1037.01	1037.02	1038.00
	1039.00	1040.00	1045.02	1045.03	1045.05	1046.01	1046.0[illegible]	1046.03	1046.04	1047.00	1048.02	1052.05
	1058.00	1059.00	1061.02	1062.01	1062.02	1063.00	1065.1[illegible]	1217.03	1219.02	1222.00	1223.00	1224.00
	1228.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Fresno, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Fresno County	1.00	2.00	3.00	4.00	5.00	6.00	8.00	9.00	10.00	11.00	12.01	12.02
	13.02	14.05	15.00	20.00	24.00	25.01	25.02	26.01	27.02	28.00	29.02	47.04
	52.02	54.03	65.00	68.01	83.01	83.02						
Madera County	6.01	6.02	8.00	9.00								

METROPOLITAN AREA: Gadsden, AL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Etowah County	2.00	3.00	7.00	8.00	10.00	13.00	14.00	15.00				

METROPOLITAN AREA: Gainesville, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Alachua County	2.00	6.00	8.00	9.01	9.02	15.02	15.03	15.05	19.02			

METROPOLITAN AREA: Galveston-Texas City, TX PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Galveston County	7222.00	7224.00	7240.00	7243.00	7244.00	7245.00	7246.00	7247.00	7251.00	7252.00	7254.00	

METROPOLITAN AREA: Gary, IN PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lake County	102.02	102.03	103.01	103.02	105.00	106.00	107.00	108.00	109.00	110.00	111.00	113.00
	114.00	116.00	117.00	119.00	120.00	121.00	122.00	123.00	127.00	206.00	207.00	218.00
	301.00	302.00	303.00	304.00	310.00							

METROPOLITAN AREA: Goldsboro, NC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Wayne County	14.00	15.00	17.00	18.00								

METROPOLITAN AREA: Grand Forks, ND-MN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Polk County, MN	202.00											
Grand Forks County, ND	103.00	106.00										

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Grand Junction, CO MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Mesa County	2.00	5.00										

METROPOLITAN AREA: Grand Rapids-Muskegon-Holland, MI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Kent County	13.00	14.00	15.00	20.00	21.00	25.00	26.00	28.00	31.00	32.00	36.00	37.00
	38.00	39.00										
Muskegon County	1.00	2.00	3.00	5.00	6.02	11.00	12.00	13.00	14.01	14.02		

METROPOLITAN AREA: Great Falls, MT MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cascade County	5.00	6.00	7.00	8.00								

METROPOLITAN AREA: Greeley, CO PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Weld County	1.00	2.00	5.00	6.00	8.00	10.02						

METROPOLITAN AREA: Green Bay, WI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Brown County	8.00	9.00	10.00	12.00	211.00							

METROPOLITAN AREA: Greensboro--Winston-Salem--High Point, NC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Alamance County	201.01	210.00										
Davidson County	614.00											
Forsyth County	1.00	2.00	3.01	3.02	4.00	5.00	6.00	7.00	8.01	8.02	9.00	15.00
	16.02	17.00	19.01									
Guilford County	106.02	108.01	110.00	111.01	112.00	114.00	127.06	127.07	138.00	139.00	142.00	143.00
	144.08	146.00										
Randolph County	303.02											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Greenville, NC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Pitt County	1.00	2.00	7.01	7.02	8.00							

METROPOLITAN AREA: Greenville-Spartanburg-Anderson, SC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Anderson County	1.00	4.00	6.00	7.00	8.00							
Greenville County	2.00	4.00	5.00	7.00	8.00	9.00	10.00	13.01	21.04	21.05	21.08	22.01
	23.03	23.04	34.00	35.00								
Pickens County	111.02	112.01										
Spartanburg County	203.01	204.00	205.00	208.00	210.01	217.00						

METROPOLITAN AREA: Hagerstown, MD PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Washington County	4.00	7.00	9.00									

METROPOLITAN AREA: Hamilton-Middletown, OH PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Butler County	3.00	4.00	6.00	7.01	7.02	8.00	101.01	101.03	101.04	128.00	129.00	130.00
	131.00	140.00										

METROPOLITAN AREA: Harrisburg-Lebanon-Carlisle, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cumberland County	122.00	123.00	131.02	132.00								
Dauphin County	203.00	206.00	207.00	212.00	213.00	214.00						
Lebanon County	3.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Hartford, CT MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hartford County	4061.00	4153.00	4156.00	4159.00	4161.00	4162.00	4163.00	4166.00	4171.00	4173.00	5001.00	5002.00
	5003.00	5004.00	5005.00	5009.00	5010.00	5011.00	5012.00	5013.00	5014.00	5015.00	5017.00	5018.00
	5021.00	5024.00	5025.00	5026.00	5027.00	5028.00	5029.00	5030.00	5031.00	5033.00	5034.00	5035.00
	5037.00	5038.00	5041.00	5042.00	5043.00	5044.00	5045.00	5046.00	5047.00	5049.00	5104.00	5106.00
Middlesex County	5415.00	5416.00	5417.00	5418.00								
Tolland County	8812.00	8813.00										
Windham County	8003.00	8006.00										

METROPOLITAN AREA: Hattiesburg, MS MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Forrest County	1.00	4.00	5.00	6.00	9.00	10.00						

METROPOLITAN AREA: Honolulu, HI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Honolulu County	11.00	18.01	36.02	39.00	42.00	51.00	52.00	53.00	54.00	55.00	57.00	58.00
	62.02	63.02	68.03	68.04	75.04	80.01	81.00	86.10	93.00	94.00	95.01	95.05
	97.01	98.01	108.01									

METROPOLITAN AREA: Houma, LA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lafourche Parish	204.00											
Terrebonne Parish	7.00	9.00	13.00	16.00								

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Houston, TX PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Fort Bend County	6749.00	6750.00										
Harris County	1000.00	2102.00	2103.00	2104.00	2105.00	2107.00	2108.00	2109.00	2110.00	2111.00	2112.00	2113.00
	2114.00	2115.00	2116.00	2117.00	2118.00	2119.00	2120.00	2201.00	2202.00	2203.00	2204.00	2205.00
	2206.00	2207.00	2208.00	2209.00	2210.00	2213.00	2214.00	2215.00	2218.00	2219.00	2220.00	2221.00
	2225.00	2226.00	2227.00	2230.00	2301.00	2302.00	2303.00	2304.00	2305.00	2306.00	2307.00	2308.00
	2309.00	2310.00	2311.00	2312.00	2313.00	2315.00	2317.00	2319.00	2327.00	2331.00	2336.00	2337.00
	2401.00	2405.00	2406.00	2545.00	3101.00	3102.00	3104.00	3105.00	3106.00	3107.00	3108.00	3109.00
	3110.00	3111.00	3112.00	3114.00	3115.00	3116.00	3117.00	3118.00	3119.00	3120.00	3122.00	3123.00
	3124.00	3125.00	3127.00	3128.00	3129.00	3130.00	3133.00	3134.00	3135.00	3136.00	3137.00	3138.00
	3202.00	3203.00	3206.00	3215.00	3220.00	3221.00	3223.00	3225.00	3230.00	3231.00	3235.00	3239.00
	3311.00	3312.00	3313.00	3314.00	3316.00	3317.00	3318.00	3319.00	3320.00	3321.00	3322.00	3323.00
	3328.00	3329.00	3334.00	4101.00	4201.00	4205.00	4212.00	4213.00	4214.00	4215.00	4216.00	4222.00
	4231.00	4327.00	4328.00	4330.00	4331.00	4335.00	4526.00	4531.00	5101.00	5102.00	5105.00	5106.00
	5109.00	5206.00	5211.00	5212.00	5214.00	5216.00	5301.00	5303.00	5304.00	5305.00	5306.00	5307.00
	5308.00	5318.00	5319.00	5320.00	5332.00	5333.00	5334.00	5501.00				
Liberty County	7002.00	7006.00										
Montgomery County	6931.00	6934.00										
Waller County	6804.00											

METROPOLITAN AREA: Huntington-Ashland, WV-KY-OH MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Boyd County, KY	302.00	303.00	304.00	308.00								
Carter County, KY	9601.00	9604.00										
Lawrence County, OH	503.00	504.00	506.00									
Cabell County, WV	2.00	4.00	5.00	6.00	7.00	8.00	9.00	10.00	11.00	14.00	15.00	16.00
	18.00											
Wayne County, WV	208.00	209.00	210.00									

METROPOLITAN AREA: Huntsville, AL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Limestone County	205.00	206.00	207.00	210.00								
Madison County	2.01	7.02	8.00	11.00	12.00	16.00	21.00	22.00	24.00	25.01	25.02	

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Indianapolis, IN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Madison County	3.00	5.00	8.00	9.00	10.00	120.00						
Marion County	3226.00	3308.01	3412.00	3416.00	3426.00	3501.00	3503.00	3504.00	3505.00	3507.00	3508.00	3509.00
	3510.00	3511.00	3512.00	3515.00	3516.00	3517.00	3521.00	3523.00	3527.00	3528.00	3531.00	3532.00
	3533.00	3535.00	3536.00	3539.00	3542.00	3544.00	3545.00	3547.00	3548.00	3550.00	3551.00	3556.00
	3557.00	3559.00	3564.00	3569.00	3571.00	3572.00	3573.00	3574.00	3581.00	3601.01	3601.02	3603.02

METROPOLITAN AREA: Iowa City, IA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Johnson County	6.00	11.00	16.00	21.00								

METROPOLITAN AREA: Jackson, MI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Jackson County	2.00	6.00	7.00	10.00	11.00							

METROPOLITAN AREA: Jackson, MS MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hinds County	7.00	8.00	9.00	10.00	11.00	12.00	16.00	17.00	18.00	19.00	20.00	21.00
	22.00	23.00	24.00	25.00	26.00	27.00	30.00	31.00	32.00	34.00	35.00	38.00
	102.01	108.01	109.02									
Madison County	305.00	307.00										

METROPOLITAN AREA: Jackson, TN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Madison County	5.00	8.00	9.00	10.00	11.00							

METROPOLITAN AREA: Jacksonville, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Duval County	2.00	3.00	4.00	5.00	10.00	11.00	12.00	13.00	15.00	16.00	17.00	18.00
	19.00	26.00	27.01	27.02	28.01	28.02	29.01	29.02	115.00	116.00	163.00	
St. Johns County	203.00	204.00	210.02									

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Jacksonville, NC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Onslow County	19.00	20.00										

METROPOLITAN AREA: Jamestown, NY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Chautauqua County	303.00	305.00	354.00	359.02	9400.00							

METROPOLITAN AREA: Janesville-Beloit, WI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Rock County	1.00	15.00										

METROPOLITAN AREA: Jersey City, NJ PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hudson County	17.00	18.00	27.00	30.00	31.00	32.00	33.00	41.02	44.00	46.00	47.00	51.00
	55.00	58.01	159.00	165.00	169.00	170.00	175.00	190.00				

METROPOLITAN AREA: Johnson City-Kingsport-Bristol, TN-VA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Carter County, TN	703.00											
Sullivan County, TN	402.00	405.00	406.00									
Washington County, TN	601.00	607.00	609.00									

METROPOLITAN AREA: Johnstown, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cambria County	1.00	2.00	3.00	8.00	10.00	11.00	13.00	14.00				

METROPOLITAN AREA: Jonesboro, AR MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Craighead County	6.01	6.02										

METROPOLITAN AREA: Joplin, MO MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Jasper County	110.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Kalamazoo-Battle Creek, MI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Calhoun County	3.00	4.00	5.00	6.00	38.00							
Kalamazoo County	1.00	2.01	2.02	3.00	5.00	6.00	9.00	15.04	15.07	29.03		
Van Buren County	106.00											

METROPOLITAN AREA: Kankakee, IL PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Kankakee County	110.00	114.00	115.00	116.00	123.00							

METROPOLITAN AREA: Kansas City, MO-KS MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Leavenworth County, KS	701.00											
Wyandotte County, KS	402.00	403.00	404.00	407.00	408.00	409.00	410.00	411.00	412.00	415.00	417.00	418.00
	419.00	420.01	420.02	421.00	422.00	423.00	424.00	426.00	427.00	428.00	430.00	439.05
	441.04	443.01	451.00									
Clay County, MO	200.00											
Jackson County, MO	3.00	4.00	5.02	7.00	8.00	9.00	10.00	13.00	14.00	15.00	16.00	17.00
	18.00	19.00	20.00	21.00	22.00	23.00	24.00	26.00	27.00	28.02	29.00	30.00
	32.00	33.00	34.00	35.01	35.02	36.02	37.00	38.00	39.00	40.00	41.00	42.00
	45.00	47.00	48.00	50.00	52.00	53.00	54.00	55.00	56.01	56.02	58.01	59.01
	60.00	61.00	62.00	63.00	64.00	65.00	67.00	68.00	76.00	77.00	78.01	78.02
	79.00	80.00	81.00	87.00	88.00	89.00	95.00	96.00	102.01	109.01	109.02	114.05
	116.00	134.05										

METROPOLITAN AREA: Kenosha, WI PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Kenosha County	10.00	11.00										

METROPOLITAN AREA: Killeen-Temple, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bell County	207.01	207.02	208.00	209.00	216.02	235.00						

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Knoxville, TN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Anderson County	205.00	207.00										
Knox County	1.00	2.00	3.00	4.00	5.00	6.00	7.00	8.00	9.00	10.00	11.00	12.00
	13.00	14.00	19.00	20.00	21.00	24.00	26.00	28.00	29.00	37.00		
Union County	402.01											

METROPOLITAN AREA: Kokomo, IN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Howard County	2.00	12.00										

METROPOLITAN AREA: La Crosse, WI-MN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
La Crosse County, WI	2.00	3.00	4.00	5.00	9.00							

METROPOLITAN AREA: Lafayette, LA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Acadia Parish	9601.00	9607.00	9609.00									
Lafayette Parish	1.00	2.00	4.00	7.00	8.00	9.00	11.00	13.00				
St. Landry Parish	9601.00	9609.00	9613.00	9614.00	9615.00	9616.00						
St. Martin Parish	209.00											

METROPOLITAN AREA: Lafayette, IN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Tippecanoe County	4.00	6.00	53.00	54.00	55.00	103.00	105.00					

METROPOLITAN AREA: Lake Charles, LA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Calcasieu Parish	1.00	2.00	3.00	4.00	6.00	7.00	12.02	14.00				

METROPOLITAN AREA: Lakeland-Winter Haven, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Polk County	101.00	102.00	109.00	110.00	111.00	112.01	112.02	126.01	131.03	132.00	133.00	136.00
	137.01	143.01	145.01	145.02								

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Lancaster, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lancaster County	1.00	4.00	8.00	9.00	14.00	15.00	16.00					

METROPOLITAN AREA: Lansing-East Lansing, MI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Ingham County	2.00	3.00	5.00	6.00	7.00	12.00	13.00	14.00	15.00	19.00	20.00	21.00
	38.02	39.02	41.00	42.00	43.01	43.02	44.02	44.03	44.05			

METROPOLITAN AREA: Laredo, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Webb County	3.00	4.00	6.00	7.00	9.02	12.00	13.00	18.05				

METROPOLITAN AREA: Las Cruces, NM MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Dona Ana County	9.00	10.00	14.00	17.02	17.04	18.03						

METROPOLITAN AREA: Las Vegas, NV-AZ MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Mohave County, AZ	9404.00	9501.00	9504.00	9505.00								
Clark County, NV	3.01	3.02	4.00	5.03	5.04	5.11	5.14	6.00	7.00	8.00	9.00	11.00
	22.01	22.04	24.04	24.05	26.01	34.25	38.00	43.00	44.00	46.00	47.03	47.07
	47.08	47.09	47.10	47.13								

METROPOLITAN AREA: Lawrence, KS MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Douglas County	3.00	4.00	5.02									

METROPOLITAN AREA: Lawrence, MA-NH PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Essex County, MA	2501.00	2502.00	2503.00	2504.00	2505.00	2506.00	2507.00	2509.00	2510.00	2511.00	2512.00	2513.00
	2514.00	2515.00	2516.00	2517.00	2524.00	2601.00	2602.00					

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2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Lawton, OK MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Comanche County	8.00	11.00	12.00	13.00	15.00	16.00	17.00	19.02				

METROPOLITAN AREA: Lewiston-Auburn, ME MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Androscoggin County	101.00	201.00	203.00	204.00								

METROPOLITAN AREA: Lexington, KY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Fayette County	1.00	2.00	3.00	4.00	7.00	8.01	8.02	9.00	10.00	11.00	12.00	13.00
	18.00	19.00										
Madison County	102.00	103.00	104.00	105.00								

METROPOLITAN AREA: Lima, OH MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Allen County	125.00	127.00	128.00	133.00	134.00	136.00	137.00	138.00				

METROPOLITAN AREA: Lincoln, NE MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lancaster County	4.00	5.00	6.00	7.00	8.00	17.00	18.00	19.00	20.00	35.00		

METROPOLITAN AREA: Little Rock-North Little Rock, AR MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Faulkner County	304.03	307.00	309.00									
Pulaski County	1.00	2.00	3.00	4.00	5.00	7.00	8.00	10.00	11.00	12.00	13.00	17.00
	18.00	19.00	25.00	26.00	28.00	29.00	30.00	36.06	40.01			

METROPOLITAN AREA: Longview-Marshall, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Gregg County	11.00	12.00	13.00	14.00	15.00							
Harrison County	204.01	204.02										

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Los Angeles-Long Beach, CA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Los Angeles County	1047.01	1153.02	1174.05	1174.06	1175.10	1175.20	1193.40	1200.30	1201.01	1201.02	1224.10	1232.03
	1232.04	1232.05	1232.06	1234.10	1234.20	1272.20	1275.20	1282.10	1283.03	1343.05	1835.20	1838.10
	1838.20	1864.01	1902.00	1904.00	1905.10	1905.20	1907.00	1908.00	1909.01	1909.02	1911.10	1911.20
	1912.01	1912.03	1912.04	1913.00	1914.10	1914.20	1915.00	1916.10	1916.20	1917.10	1917.20	1918.10
	1918.20	1925.20	1926.10	1926.20	1927.00	1956.00	1957.10	1957.20	1958.02	1971.10	1976.00	1977.00
	1990.00	1991.20	1992.01	1994.00	1997.00	1998.00	1999.00	2012.00	2031.00	2032.00	2033.00	2035.00
	2036.00	2037.10	2037.20	2038.00	2041.20	2042.00	2043.00	2044.10	2044.20	2046.00	2047.00	2049.10
	2051.10	2051.20	2060.10	2060.30	2060.40	2060.50	2062.00	2063.00	2071.00	2073.00	2074.00	2077.10
	2079.00	2080.00	2083.00	2084.00	2085.00	2087.20	2088.00	2089.02	2089.03	2089.04	2091.01	2091.02
	2092.00	2093.00	2094.01	2094.02	2094.03	2095.10	2095.20	2098.10	2098.20	2100.10	2112.00	2113.10
	2113.20	2114.10	2118.02	2119.10	2119.20	2121.00	2122.02	2122.03	2122.04	2123.03	2123.04	2123.05
	2123.06	2124.10	2124.20	2125.00	2126.10	2129.00	2132.01	2132.02	2133.10	2133.20	2134.01	2134.02
	2181.10	2181.20	2182.10	2184.00	2188.00	2189.00	2193.00	2199.00	2211.10	2211.20	2212.20	2213.01
	2213.02	2214.00	2215.00	2218.00	2217.10	2218.10	2218.20	2219.00	2221.00	2222.00	2225.00	2226.00
	2227.00	2240.10	2240.20	2242.00	2243.10	2243.20	2244.10	2244.20	2246.00	2247.00	2260.00	2264.10
	2264.20	2267.00	2270.10	2270.20	2281.00	2282.10	2282.20	2283.10	2283.20	2284.10	2284.20	2285.00
	2286.00	2287.10	2287.20	2288.00	2289.00	2291.00	2292.00	2293.00	2294.10	2294.20	2311.00	2312.10
	2312.20	2313.00	2316.00	2317.10	2317.20	2318.00	2319.00	2321.10	2321.20	2322.00	2324.00	2325.00
	2326.00	2327.00	2328.00	2349.00	2352.02	2361.00	2362.01	2362.02	2371.00	2372.00	2375.00	2376.00
	2377.10	2377.20	2383.10	2383.20	2392.00	2393.10	2393.20	2393.30	2395.00	2396.00	2397.00	2398.00
	2400.10	2400.20	2402.00	2403.00	2404.00	2405.00	2406.00	2407.00	2408.00	2409.00	2410.00	2411.10
	2411.20	2412.00	2413.00	2414.00	2420.00	2421.00	2422.00	2423.00	2426.00	2427.00	2430.00	2431.00
	2653.01	2653.03	2653.04	2653.05	2696.00	2755.20	2911.10	2911.20	2932.02	2945.20	2947.00	2948.10
	2948.20	2948.30	2949.00	2961.00	2962.10	2962.20	2966.00	2971.10	2971.20	3022.01	3025.01	4023.02
	4025.01	4027.02	4028.01	4028.02	4088.00	4328.01	4328.02	4332.00	4333.01	4333.02	4334.01	4334.02
	4334.03	4335.01	4335.02	4339.01	4619.00	4620.00	4823.03	4823.04	4825.03	5041.02	5303.01	5304.00
	5305.00	5309.01	5311.01	5312.01	5312.02	5313.01	5313.02	5315.01	5315.02	5316.02	5316.04	5317.02
	5326.05	5326.06	5327.00	5328.00	5329.00	5330.00	5331.03	5331.04	5331.05	5331.06	5332.01	5335.01
	5335.02	5335.03	5336.01	5340.01	5341.02	5343.01	5344.04	5344.05	5349.00	5350.00	5351.01	5351.02
	5352.00	5353.00	5354.00	5355.01	5356.05	5358.04	5400.00	5402.01	5402.02	5402.03	5404.00	5405.02
	5406.00	5407.00	5414.00	5415.00	5416.03	5416.04	5416.05	5416.06	5421.02	5425.01	5425.02	5426.01
	5426.02	5538.01	5541.01	5702.04	5704.01	5706.01	5706.03	5716.00	5725.00	5728.00	5729.00	5730.01

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Los Angeles-Long Beach, CA PMSA (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Los Angeles County (Continued)	5730.02	5732.01	5732.02	5733.00	5746.01	5751.01	5751.02	5751.03	5752.01	5752.02	5753.00	5754.01
	5754.02	5755.00	5758.01	5758.02	5758.03	5759.01	5759.02	5762.00	5763.00	5764.01	5764.02	5764.03
	5765.01	5765.02	5765.03	5769.01	6001.00	6002.01	6002.02	6003.01	6006.02	6011.00	6012.11	6015.01
	6015.02	6017.00	6018.02	6019.00	7011.00	9006.02	9007.04	9008.06	9104.02	9104.03	9105.01	9105.02

METROPOLITAN AREA: Louisville, KY-IN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Floyd County, IN	705.00	708.01										
Jefferson County, KY	2.00	3.00	4.00	6.00	10.00	11.00	14.00	15.00	17.00	18.00	21.00	23.00
	24.00	27.00	28.00	30.00	35.00	37.00	41.00	43.01	43.02	49.00	50.00	51.00
	53.00	56.00	59.00	62.00	65.00	66.00	128.02					

METROPOLITAN AREA: Lowell, MA-NH PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Middlesex County, MA	3101.00	3104.00	3107.00	3108.00	3110.00	3111.00	3112.00	3118.00	3119.00	3120.00	3124.00	

METROPOLITAN AREA: Lubbock, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lubbock County	2.02	3.01	3.02	6.03	6.05	6.07	7.00	9.00	10.00	12.00	13.00	17.03
	25.00	104.02										

METROPOLITAN AREA: Lynchburg, VA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Amherst County	105.02											
Lynchburg city	2.03	4.00	5.00	6.00	7.00	14.00						

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Macon, GA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bibb County	101.00	103.00	104.00	105.00	106.00	107.00	111.00	112.00	113.00	114.00	115.00	122.00
	123.00	124.00	125.00	127.00	128.00	129.00	130.00					
Houston County	204.00	207.00										
Peach County	402.00	403.02	404.00									

METROPOLITAN AREA: Madison, WI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Dane County	6.00	11.00	12.00	14.01	16.01	16.02	17.01	32.00				

METROPOLITAN AREA: Manchester, NH PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hillsborough County	4.00	5.00	13.00	14.00	15.00	20.00						

METROPOLITAN AREA: Mansfield, OH MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Richland County	1.00	2.00	3.00	6.00	7.00							

METROPOLITAN AREA: Mayaguez, PR MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cabo Rojo Municipio	8301.00											
Mayaguez Municipio	801.00	802.00	803.00	805.00	806.00	809.00	810.00	811.00	812.00	819.00		
Sabana Grande Municipio	9605.00	9608.00										
San German Municipio	8401.00											

METROPOLITAN AREA: McAllen-Edinburg-Mission, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hidalgo County	205.01	207.23	211.00	213.03	219.01	222.02	225.01	226.00	231.01	237.00	241.01	241.02
	241.03	241.04	242.01	245.00								

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Medford-Ashland, OR MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Jackson County	1.00	2.02	2.03	19.00								

METROPOLITAN AREA: Melbourne-Titusville-Palm Bay, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Brevard County	607.00	608.00	623.00	626.00	648.00	649.02						

METROPOLITAN AREA: Memphis, TN-AR-MS MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Crittenden County, AR	301.01	301.02	303.02	304.01	304.02	305.01	305.02	306.00	310.00	311.00		
Shelby County, TN	2.00	3.00	4.00	5.00	6.00	7.00	8.00	9.00	10.00	13.00	14.00	15.00
	18.00	19.00	20.00	21.00	22.00	23.00	24.00	28.00	36.00	37.00	38.00	39.00
	40.00	41.00	44.00	45.00	46.00	47.00	48.00	49.00	50.00	51.00	53.00	54.00
	55.00	57.00	58.00	59.00	60.00	61.00	62.00	65.00	67.00	68.00	70.00	73.00
	75.00	78.10	78.21	79.00	81.10	82.00	84.00	90.00	101.10	101.20	103.00	104.10
	104.20	105.00	205.21	220.22	222.20	223.10	224.21	224.22				
Tipton County, TN	407.00											

METROPOLITAN AREA: Merced, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Merced County	10.03	10.05	13.01	13.02	14.01	15.02	15.03	16.01	16.02	18.02	19.01	

METROPOLITAN AREA: Miami, FL PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Miami-Dade County	2.08	2.10	3.06	4.02	4.03	4.07	4.08	5.03	7.03	8.03	9.03	10.02
	10.03	10.04	10.06	12.03	13.01	14.01	14.02	15.01	15.02	16.01	17.01	17.02
	17.03	18.01	18.02	18.03	19.01	19.03	19.04	20.01	20.03	20.04	22.01	22.02
	23.00	24.01	24.02	25.00	26.00	27.02	28.00	29.00	30.01	30.03	30.04	31.00
	34.00	36.01	36.02	37.01	37.02	39.01	39.05	42.02	44.02	48.00	51.00	52.01
	52.02	53.01	53.02	54.01	54.02	64.01	64.02	66.02	72.00	76.03	83.03	89.04
	93.07	102.06	105.00	106.02	107.02	108.00	109.00	110.01	113.00	114.02		

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Middlesex-Somerset-Hunterdon, NJ PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Middlesex County	27.05	40.00	45.00	46.00	47.00	48.00	49.00	50.00	51.00	52.00	53.00	54.00
	55.00	56.00	57.00	58.00	59.00	69.00	82.06					
Somerset County	512.00											

METROPOLITAN AREA: Milwaukee-Waukesha, WI PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Milwaukee County	2.01	3.02	11.00	12.00	14.00	18.00	19.00	20.00	21.00	23.00	24.00	26.00
	28.00	28.00	29.00	40.00	41.00	42.00	44.00	45.00	46.00	47.00	48.00	62.00
	63.00	64.00	65.00	66.00	67.00	68.00	69.00	70.00	78.00	80.00	81.00	82.00
	83.00	84.00	85.00	86.00	87.00	88.00	89.00	90.00	91.00	92.00	96.00	97.00
	98.00	99.00	100.00	101.00	102.00	103.00	104.00	105.00	106.00	107.00	108.00	110.00
	112.00	113.00	115.00	116.00	117.00	118.00	119.00	120.00	121.00	122.00	123.00	132.00
	134.00	135.00	136.00	137.00	138.00	139.00	140.00	141.00	145.00	146.00	147.00	148.00
	149.00	150.00	151.00	154.00	155.00	156.00	157.00	158.00	159.00	163.00	164.00	165.00
	166.00	167.00	168.00	169.00	170.00	174.00	175.00	176.00	177.00	178.00	179.00	187.00
	188.00	905.00										
Waukesha County	2027.00											

METROPOLITAN AREA: Minneapolis-St. Paul, MN-WI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hennepin County, MN	22.00	27.00	33.00	35.01	36.00	59.01	59.02	68.00	73.01	73.02	77.00	78.01
	78.02	79.00	82.00	83.00	84.00	85.00	1002.00	1005.00	1009.00	1013.00	1014.00	1015.00
	1016.00	1018.00	1020.00	1021.00	1023.00	1026.00	1028.00	1029.00	1031.00	1034.00	1037.00	1039.00
	1041.00	1044.00	1047.00	1048.00	1049.00	1054.00	1056.00	1057.00	1060.00	1062.00	1064.00	1069.00
	1070.00	1071.00	1072.00	1086.00	1088.00	1094.00						
Ramsey County, MN	305.00	310.00	312.00	313.00	314.00	315.00	316.00	317.00	319.00	324.00	325.00	326.00
	327.00	328.00	329.00	330.00	331.00	334.00	335.00	336.00	337.00	344.00	359.00	361.00
	376.02	408.02	420.01									

METROPOLITAN AREA: Missoula, MT MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Missoula County	2.01	3.00	5.00	7.00								

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Mobile, AL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Baldwin County	106.00											
Mobile County	2.00	4.01	4.02	5.00	6.00	7.01	7.02	10.01	10.02	11.00	12.00	13.02
	14.00	15.01	15.02	16.00	23.01	24.00	26.00	27.00	32.03	32.05	36.06	38.00
	39.01	39.02	40.00	41.00	42.00	43.00	44.00	45.00	46.00	47.00	48.00	49.00
	71.02											

METROPOLITAN AREA: Modesto, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Stanislaus County	3.01	8.03	16.01	16.03	16.04	17.00	18.00	21.00	22.00	23.01	23.02	24.00
	31.00	33.00	34.00	38.02	38.03	39.06						

METROPOLITAN AREA: Monmouth-Ocean, NJ PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Monmouth County	8017.00	8034.00	8056.00	8058.00	8070.03	8070.04	8071.00	8072.00	8073.00	8075.00	8076.00	8099.03
	8100.02											
Ocean County	7152.00	7153.01	7153.02	7154.02	7156.00	7159.00	7200.00	7201.01	7201.02	7201.03	7202.02	7222.00
	7312.01	7312.04	7312.05	7312.06								

METROPOLITAN AREA: Monroe, LA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Ouachita Parish	3.00	6.00	7.00	8.00	9.00	11.00	14.00	15.00	56.00	57.00	106.01	107.00

METROPOLITAN AREA: Montgomery, AL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Montgomery County	1.00	2.00	3.00	4.00	6.00	7.00	10.00	11.00	12.00	15.00	22.01	22.02
	23.00	24.00	30.00	56.03	61.00							

METROPOLITAN AREA: Muncie, IN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Delaware County	1.00	2.00	3.00	4.00	6.00	7.00	9.02	10.00	19.01			

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Myrtle Beach, SC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Horry County	506.00	507.00	704.00									

METROPOLITAN AREA: Naples, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Collier County	7.00	112.04	112.05	113.00	114.00							

METROPOLITAN AREA: Nashua, NH PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hillsborough County	105.00	107.00	108.00									

METROPOLITAN AREA: Nashville, TN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Davidson County	107.02	114.00	118.00	119.00	123.00	124.00	125.00	126.00	136.00	137.00	138.00	139.00
	140.00	142.00	143.00	144.00	145.00	146.00	148.00	159.00	160.00	161.00	162.00	164.00
	165.00	166.00										
Rutherford County	416.00	419.00										
Sumner County	208.00											
Wilson County	307.00											

METROPOLITAN AREA: Nassau-Suffolk, NY PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Nassau County	4067.00	4068.00	4070.00	4072.01	4078.02	4111.00						
Suffolk County	1224.06	1225.01	1233.01	1233.02	1455.00	1456.03	1580.07	1584.06	1585.02	1591.03	1698.00	1701.01
	1904.01											

METROPOLITAN AREA: New Bedford, MA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bristol County	6506.00	6507.00	6508.00	6509.00	6511.00	6512.00	6513.00	6517.00	6518.00	6519.00	6525.00	6526.00
	6527.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: New Haven-Meriden, CT PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
New Haven County	1401.00	1402.00	1403.00	1404.00	1405.00	1406.00	1407.00	1408.00	1413.00	1415.00	1416.00	1417.00
	1421.00	1423.00	1424.00	1425.00	1426.02	1701.00	1702.00	1703.00	1710.00	1803.00		

METROPOLITAN AREA: New London-Norwich, CT-RI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
New London County, CT	6901.00	6905.00	6967.00									

METROPOLITAN AREA: New Orleans, LA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Jefferson Parish	205.05	206.00	207.00	208.00	209.00	237.00	252.01	257.00	261.00	262.00	268.00	269.00
	273.00	275.02	276.02									
Orleans Parish	2.00	3.00	4.00	6.01	6.02	6.03	6.13	7.01	7.02	8.00	9.01	9.02
	9.03	9.04	11.00	12.00	13.01	13.02	13.03	13.04	14.01	14.02	15.00	16.00
	17.03	17.06	17.14	17.22	17.33	17.36	17.42	19.00	20.00	21.00	22.00	27.00
	28.00	29.00	30.00	31.00	33.05	33.06	34.00	35.00	36.00	39.00	40.00	44.01
	44.02	45.00	48.00	49.00	50.00	58.00	59.00	60.00	63.00	65.00	67.00	68.00
	69.00	70.00	71.00	72.00	75.01	75.02	76.05	80.00	81.01	83.00	85.00	86.00
	87.00	88.00	89.00	91.00	92.00	93.01	93.02	94.00	96.00	97.00	100.00	102.00
	103.00	111.00	121.02	130.00	131.00							
St. Bernard Parish	306.03											
St. James Parish	405.00											
St. John the Baptist Parish	708.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: New York, NY PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bronx County	11.00	17.00	20.00	23.00	25.00	27.01	27.02	33.00	35.00	37.00	39.00	41.00
	43.00	44.00	46.00	47.00	48.00	49.00	50.00	52.00	53.02	54.00	56.00	58.00
	59.01	62.00	65.00	67.00	69.00	73.00	75.00	77.00	79.00	85.00	86.00	87.00
	88.00	89.00	91.00	97.00	99.00	102.00	105.00	110.00	115.01	115.02	119.00	121.01
	121.02	123.00	127.01	127.02	129.01	129.02	131.00	133.00	135.00	137.00	139.00	141.00
	143.00	144.00	145.00	147.00	149.00	151.00	153.00	155.00	157.00	161.00	163.00	165.00
	167.00	169.00	171.00	173.00	175.00	177.00	179.00	181.00	189.00	193.00	195.00	197.00
	199.00	201.00	205.00	211.00	213.01	213.02	215.01	215.02	217.01	217.02	219.00	220.00
	221.00	223.00	225.00	227.01	227.02	229.01	229.02	231.00	233.01	235.02	237.01	237.02
	239.00	241.00	243.00	245.00	249.00	251.00	253.00	255.00	258.00	263.00	265.00	271.01
	284.00	317.00	324.00	334.00	338.00	361.00	363.00	365.01	365.02	367.00	369.01	369.02
	371.00	373.00	374.00	375.01	375.02	375.03	377.00	379.00	381.00	383.00	385.00	387.00
	389.00	391.00	393.00	396.00	397.00	399.01	399.02	401.00	403.02	405.00	407.01	419.00
	458.00											
Kings County	20.00	23.00	25.00	29.01	59.00	71.00	85.00	104.00	106.00	112.00	118.00	127.00
	185.01	185.02	216.00	218.00	220.00	221.00	222.00	225.00	226.00	228.00	230.00	232.00
	233.00	234.00	235.00	236.00	237.00	238.00	241.00	243.00	245.00	247.00	251.00	255.00
	259.01	259.02	261.00	263.00	265.00	275.00	277.00	279.00	281.00	283.00	285.02	286.00
	287.00	289.00	293.00	299.00	303.00	307.00	309.00	326.00	328.00	330.00	340.00	342.00
	343.00	347.00	348.02	352.00	357.00	359.00	360.01	360.02	361.00	362.00	363.00	364.00
	365.01	365.02	367.00	369.00	371.00	373.00	375.00	381.00	382.00	385.00	387.00	389.00
	391.00	393.00	395.00	397.00	399.00	401.00	409.00	411.00	413.00	415.00	417.00	419.00
	421.00	423.00	425.00	427.00	429.00	431.00	433.00	435.00	437.00	441.00	447.00	453.00
	455.00	465.00	472.00	480.00	481.00	482.00	489.00	491.00	493.00	505.00	506.00	507.00
	508.00	509.00	510.00	516.00	523.00	525.00	527.00	529.00	531.00	533.00	534.00	535.00
	537.00	539.00	545.00	547.00	572.00	579.00	610.01	874.01	884.00	890.00	892.00	900.00
	902.00	906.00	908.00	910.00	912.00	914.00	916.00	918.00	944.02	962.00	1034.00	1058.00
	1106.00	1110.00	1114.00	1126.00	1128.00	1130.00	1132.00	1134.00	1136.00	1138.00	1140.00	1146.00
	1150.00	1152.00	1154.00	1156.00	1160.00	1166.00	1170.00	1188.00	1190.00	1194.00	1210.00	1214.00
New York County	2.01	6.00	10.02	14.02	16.00	20.00	24.00	25.00	29.00	36.01	41.00	94.00
	117.00	119.00	143.00	156.02	162.00	164.00	168.00	172.01	172.02	178.00	180.00	182.00

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2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: New York, NY PMSA (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
New York County (Continued)	184.00	186.00	188.00	190.00	192.00	194.00	196.00	197.01	201.02	202.00	204.00	209.01
	209.02	213.01	213.02	217.02	218.00	219.00	220.00	221.01	222.00	223.01	223.02	224.00
	226.00	227.02	228.00	229.00	230.00	231.02	232.00	233.00	234.00	235.01	235.02	237.00
	239.00	240.00	243.01	243.02	245.00	249.00	251.00	261.00	267.00	269.00	277.00	285.00
	289.00	291.00	293.00									
Queens County	25.00	27.00	37.00	43.00	87.00	105.00	107.00	212.00	246.00	250.00	252.00	260.00
	266.00	278.00	377.00	545.00	641.02	766.00	871.00	942.02	952.00	972.01	992.00	1010.01
	1010.02	1032.01	1227.02	1319.00	1567.00							
Richmond County	29.00	133.01	185.00	219.00	319.01							
Rockland County	115.03	121.02										
Westchester County	1.03	2.01	5.00	10.00	11.01	12.00	29.00	31.00	93.00	119.01		

METROPOLITAN AREA: Newark, NJ PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Essex County	2.00	3.00	4.00	6.00	7.00	8.00	9.00	10.00	13.00	14.00	15.00	16.00
	17.00	18.00	19.00	20.00	22.01	24.00	25.00	26.00	27.00	28.00	29.00	30.00
	31.00	34.00	35.00	37.00	38.00	39.00	40.00	41.00	42.00	43.00	44.00	45.00
	46.00	48.01	48.02	49.00	50.00	51.00	53.00	54.00	57.00	58.00	62.00	66.00
	67.00	68.00	69.00	74.00	75.01	75.02	77.00	80.00	81.00	82.00	85.00	86.00
	87.00	88.00	89.00	90.00	91.00	92.00	93.00	94.00	95.00	96.00	97.00	98.00
	99.00	103.00	105.00	106.00	107.00	108.00	109.00	111.00	112.00	113.00	116.00	117.00
	118.00	124.00	126.00	131.00	132.00	133.00	178.00	182.00	183.00	184.00	186.00	187.00
	227.00	228.00										
Morris County	456.01											
Union County	302.00	303.00	304.00	305.00	306.00	308.01	310.00	311.00	312.00	313.00	314.00	315.00
	316.00	317.00	319.02	345.00	390.00	393.00						
Warren County	309.00											

METROPOLITAN AREA: Newburgh, NY-PA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Orange County, NY	4.00	5.00	6.00	12.00	14.00	17.00	22.00	150.01	150.02			

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Norfolk-Virginia Beach-Newport News, VA-NC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
York County, VA	505.00											
Chesapeake city, VA	201.00	202.00	203.00	205.01	205.02	207.00						
Hampton city, VA	106.01	113.00	114.00									
Newport News city, VA	301.00	303.00	304.00	305.00	306.00	308.00	309.00					
Norfolk city, VA	14.00	25.00	26.00	27.00	29.00	34.00	35.01	41.00	42.00	43.00	44.00	46.00
	47.00	48.00	50.00	51.00	52.00	53.00	57.01	58.00	65.01	65.02	67.00	
Portsmouth city, VA	2105.00	2111.00	2114.00	2118.00	2119.00	2120.00	2121.00	2126.00				
Suffolk city, VA	651.00	653.00	654.00	655.00								
Virginia Beach city, VA	442.00	458.10										
Williamsburg city, VA	3702.00											

METROPOLITAN AREA: Oakland, CA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Alameda County	4007.00	4008.00	4009.00	4010.00	4011.00	4013.00	4014.00	4015.00	4016.00	4017.00	4018.00	4021.00
	4022.00	4024.00	4025.00	4026.00	4027.00	4028.00	4029.00	4030.00	4031.00	4033.00	4034.00	4054.00
	4057.00	4058.00	4059.00	4060.00	4061.00	4062.01	4062.02	4063.00	4065.00	4066.00	4070.00	4072.00
	4073.00	4074.00	4075.00	4076.00	4084.00	4085.00	4086.00	4087.00	4088.00	4089.00	4090.00	4091.00
	4092.00	4093.00	4094.00	4095.00	4096.00	4097.00	4101.00	4102.00	4103.00	4204.00	4224.00	4225.00
	4226.00	4227.00	4228.00	4229.00	4232.00	4235.00	4236.02	4240.01	4240.02	4340.00	4375.00	4377.00
Contra Costa County	3050.00	3072.02	3100.00	3120.00	3141.04	3160.00	3280.00	3361.02	3650.02	3672.00	3680.00	3690.01
	3730.00	3750.00	3760.00	3770.00	3790.00	3820.00						

METROPOLITAN AREA: Ocala, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Marion County	17.00	18.00	20.02									

METROPOLITAN AREA: Odessa-Midland, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Ector County	3.00	7.00	11.00	12.00	14.00	15.00	18.00	19.00				
Midland County	9.00	14.00	15.00	16.00	17.00							

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Oklahoma City, OK MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Canadian County	3004.00											
Cleveland County	2001.00	2002.00	2005.00	2006.01	2007.00	2012.01	2012.02	2012.03				
Logan County	6002.00											
Oklahoma County	1004.00	1005.00	1007.00	1008.00	1010.00	1011.00	1012.00	1013.00	1014.00	1015.00	1024.00	1025.00
	1026.00	1028.00	1030.00	1031.01	1032.00	1033.00	1034.00	1035.00	1036.01	1036.02	1037.00	1038.00
	1039.00	1041.00	1042.00	1043.00	1044.00	1045.00	1046.00	1047.00	1048.00	1049.00	1052.02	1053.00
	1054.00	1055.00	1056.00	1057.00	1058.00	1063.01	1063.02	1069.12	1069.14	1069.15	1070.01	1070.02
	1072.16	1072.18	1072.23	1073.05	1073.06	1079.00	1080.10	1080.11	1082.07	1082.08	1088.03	
Pottawatomie County	5002.00	5003.02										

METROPOLITAN AREA: Olympia, WA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Thurston County	101.00											

METROPOLITAN AREA: Omaha, NE-IA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Pottawattamie County, IA	307.00	309.00										
Douglas County, NE	3.00	5.00	6.00	7.00	8.00	11.00	12.00	16.00	19.00	20.00	27.00	29.00
	32.00	39.00	40.00	50.00	51.00	52.00	53.00	54.00	59.01	59.02	60.00	61.01
Sarpy County, NE	103.02											

METROPOLITAN AREA: Orange County, CA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Orange County	12.01	13.04	116.01	116.02	117.14	117.20	218.13	423.12	626.14	626.26	626.27	626.46
	636.04	636.05	637.01	740.03	743.00	744.03	744.05	744.06	744.07	745.01	746.01	746.02
	748.01	748.02	748.05	748.06	749.01	749.02	750.02	750.03	750.04	751.00	752.02	865.02
	866.01	869.01	873.00	874.03	874.04	874.05	875.01	875.04	878.03	878.06	879.01	890.04
	891.04	891.05	891.06	992.48	992.49	994.02	995.02	995.09	995.10	998.02	999.04	1105.00
	1106.06											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Orlando, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lake County	305.01	306.02										
Orange County	101.00	104.00	105.00	106.00	114.00	115.00	117.01	117.02	119.01	121.00	145.02	146.01
	159.01	165.06	175.01	176.00								
Seminole County	201.01	202.01	204.01	205.00	209.01							

METROPOLITAN AREA: Owensboro, KY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Daviess County	2.00	3.00	4.00									

METROPOLITAN AREA: Panama City, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bay County	16.00	17.00	18.00	20.00	22.00							

METROPOLITAN AREA: Parkersburg-Marietta, WV-OH MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Wood County, WV	5.00	6.00	7.01									

METROPOLITAN AREA: Pensacola, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Escambia County	1.00	3.00	4.00	6.00	13.00	14.01	15.00	16.00	17.00	18.00	19.00	20.00
	21.00	22.00	40.00									

METROPOLITAN AREA: Peoria-Pekin, IL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Peoria County	1.00	2.00	3.00	5.00	6.00	7.00	8.00	9.00	12.00	13.00	16.00	18.00
	19.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Philadelphia, PA-NJ PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Burlington County, NJ	7020.00	7021.01	7022.04									
Camden County, NJ	6001.00	6002.00	6003.00	6004.00	6005.00	6007.00	6008.00	6009.00	6010.00	6011.01	6011.02	6012.00
	6013.00	6014.00	6015.00	6016.00	6017.00	6018.00	6019.00	6020.00	6025.01	6082.04	6101.00	6102.00
Gloucester County, NJ	5014.02	5014.04										
Salem County, NJ	203.00	219.00	220.00									
Chester County, PA	3026.00	3054.00	3055.00	3056.00	3109.00							
Delaware County, PA	4004.01	4024.00	4025.00	4029.00	4045.00	4047.00	4048.00	4049.00	4050.00	4051.00	4052.00	4053.00
	4054.00	4056.00	4057.00	4058.00	4063.00	4064.02	4066.00					
Montgomery County, PA	2039.01	2039.02	2088.01	2089.04	2090.00							
Philadelphia County, PA	2.00	5.00	9.00	13.00	14.00	19.00	20.00	21.00	22.00	25.00	27.00	28.00
	29.00	30.00	31.00	32.00	33.00	34.00	35.00	36.00	37.01	37.02	39.01	40.01
	41.01	41.02	44.00	46.00	56.00	62.00	63.00	64.00	65.00	66.00	67.00	69.00
	70.00	71.00	72.00	73.00	74.00	77.00	80.00	81.00	82.00	83.01	83.02	84.00
	85.00	86.00	87.00	88.00	89.00	90.00	91.00	92.00	93.00	94.00	95.00	96.00
	101.00	102.00	103.00	104.00	105.00	106.00	107.00	108.00	109.00	110.00	111.00	112.00
	114.00	117.00	119.00	126.00	127.00	131.00	132.00	133.00	137.00	138.00	139.00	140.00
	141.00	144.00	145.00	146.00	147.00	148.00	149.00	150.00	151.00	152.00	153.00	155.00
	156.00	157.00	159.00	160.00	161.00	162.00	163.00	164.00	165.00	166.00	167.00	168.00
	169.01	169.02	170.00	171.00	172.00	173.00	174.00	175.00	176.01	176.02	177.00	178.00
	179.00	181.00	182.00	185.00	186.00	188.00	189.00	190.00	192.00	193.00	194.00	195.00
	196.00	197.00	198.00	199.00	200.00	201.00	202.00	203.00	204.00	205.00	206.00	239.00
	240.00	241.00	242.00	243.00	244.00	245.00	246.00	247.00	249.00	250.00	252.00	273.00
	275.00	277.00	278.00	279.00	280.00	282.00	283.00	284.00	286.00	287.00	288.00	289.00
	293.00	294.00	295.00	297.00	298.00	299.00	300.00	303.00	304.00	321.00	322.00	327.00
	354.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Phoenix-Mesa, AZ MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Maricopa County	202.02	506.03	608.00	614.00	716.00	822.02	926.00	927.04	927.05	927.11	928.00	929.00
	931.04	1033.04	1033.05	1033.06	1045.01	1046.00	1071.02	1072.01	1086.01	1090.00	1091.00	1092.00
	1096.04	1098.01	1101.00	1102.00	1103.00	1107.01	1112.02	1112.03	1114.01	1115.01	1116.02	1121.00
	1122.01	1122.02	1123.01	1123.02	1125.02	1125.07	1126.01	1126.02	1127.00	1128.00	1129.00	1131.00
	1132.01	1132.02	1132.03	1133.00	1134.00	1135.00	1136.01	1136.02	1137.00	1138.00	1139.00	1140.00
	1141.00	1142.00	1143.01	1143.02	1144.01	1144.02	1145.00	1146.00	1147.01	1147.02	1147.03	1148.00
	1149.00	1150.00	1151.00	1152.00	1153.00	1154.00	1155.00	1156.00	1158.01	1158.02	1159.00	1160.00
	1161.00	1162.03	1166.02	3187.00	3191.01	3191.02	3192.00	3200.02	4213.02	4214.00	4216.02	4220.01
	9407.00	9410.00	9411.00									
Pinal County	4.00	10.00	12.00	15.00	19.00	20.00	9406.00	9411.00	9412.00			

METROPOLITAN AREA: Pine Bluff, AR MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Jefferson County	5.02	10.00	13.00	14.01	17.00	19.01						

METROPOLITAN AREA: Pittsburgh, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Allegheny County	103.00	201.00	203.00	305.00	402.00	404.00	405.00	406.00	409.00	501.00	507.00	509.00
	510.00	511.00	603.00	605.00	804.00	902.00	1016.00	1017.00	1113.00	1114.00	1115.00	1201.00
	1203.00	1204.00	1207.00	1208.00	1301.00	1302.00	1303.00	1304.00	1306.00	1504.00	1515.00	1603.00
	1604.00	1606.00	1607.00	1803.00	1809.00	1921.00	2019.00	2108.00	2204.00	2206.00	2304.00	2503.00
	2507.00	2509.00	2609.00	2614.00	2615.00	2620.00	2805.00	2808.00	3101.00	4644.00	4838.00	4867.00
	4869.00	4929.00	5050.00	5100.00	5128.00	5129.00	5138.00	5140.00	5153.00	5509.00	5512.00	5519.00
	5521.00	5523.00	5604.00	5606.00	5610.00	5611.00	5612.00					
Beaver County	6012.00	6015.00	6028.00	6045.00								
Butler County	9023.00	9024.00	9104.00	9105.00								
Fayette County	2607.00	2608.00	2612.00	2618.00	2619.00	2621.00	2623.00	2630.00				
Washington County	7041.00	7546.00	7832.00	7922.00								
Westmoreland County	8001.00	8007.00	8028.00	8054.00								

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Pittsfield, MA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Berkshire County	9001.00											

METROPOLITAN AREA: Pocatello, ID MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bannock County	8.00	9.00	16.01	16.03								

METROPOLITAN AREA: Ponce, PR MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Guayanilla Municipio	7404.00											
Juana Diaz Municipio	7102.00	7107.00										
Ponce Municipio	702.02	703.00	704.00	708.00	709.00	710.00	713.00	716.02	716.00	719.00	721.01	727.04
Yauco Municipio	7501.01	7502.01	7504.00									

METROPOLITAN AREA: Portland, ME MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cumberland County	3.00	5.00	6.00	10.00	12.00							

METROPOLITAN AREA: Portland-Vancouver, OR-WA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Multnomah County, OR	11.01	21.00	22.01	22.02	23.01	33.01	34.01	34.02	40.01	42.00	49.00	51.00
	52.00	53.00	54.00	55.00	56.00	76.00	83.01	98.06	98.01			
Washington County, OR	332.00											
Clark County, WA	410.05	418.00	424.00	427.00								

METROPOLITAN AREA: Portsmouth-Rochester, NH-ME PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Strafford County, NH	802.01	802.02										

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Providence-Fall River-Warwick, RI-MA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bristol County, MA	6402.00	6403.00	6409.00	6410.00	6411.00	6412.00	6413.00	6414.00	6420.00			
Providence County, RI	2.00	3.00	4.00	5.00	6.00	7.00	8.00	9.00	10.00	11.00	12.00	13.00
	14.00	16.00	17.00	18.00	19.00	20.00	22.00	25.00	26.00	27.00	29.00	31.00
	36.01	36.02	37.00	108.00	109.00	110.00	111.00	151.00	152.00	161.00	174.00	176.00
	180.00	181.00	183.00									

METROPOLITAN AREA: Provo-Orem, UT MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Utah County	14.02	16.01	16.02	16.03	17.00	18.01	18.02	19.00	24.00	25.00		

METROPOLITAN AREA: Pueblo, CO MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Pueblo County	3.00	6.00	7.00	8.00	10.00	12.00	13.00	14.00	19.00	21.00	23.00	26.00

METROPOLITAN AREA: Racine, WI PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Racine County	1.00	3.00	4.00	5.00	10.01	22.00						

METROPOLITAN AREA: Raleigh-Durham-Chapel Hill, NC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Durham County	3.01	4.02	5.00	8.01	8.02	9.00	10.01	10.02	11.00	12.01	12.02	13.01
	13.03	13.04	14.00	15.01	15.02	15.03	17.09					
Franklin County	601.00											
Johnston County	403.00	406.00	407.00	414.00								
Orange County	113.00	114.00	116.00	117.00								
Wake County	501.00	506.00	507.00	508.00	509.00	511.00	520.01	522.01	523.01	524.05		

METROPOLITAN AREA: Rapid City, SD MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Pennington County	103.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Reading, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Berks County	1.00	2.00	3.00	10.00	11.00	12.00	13.00	14.00	17.00	19.00	21.00	22.00
	23.00	25.00	26.00	140.00								

METROPOLITAN AREA: Redding, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Shasta County	101.00	109.00	112.00	120.00	121.00							

METROPOLITAN AREA: Reno, NV MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Washoe County	1.00	9.00	18.00	19.01	22.03							

METROPOLITAN AREA: Richland-Kennewick-Pasco, WA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Benton County	112.00											
Franklin County	201.00	202.00	204.00									

METROPOLITAN AREA: Richmond-Petersburg, VA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Chesterfield County	1004.05	1004.06										
Goochland County	4003.00											
Henrico County	2008.04	2008.05										
Hopewell city	8203.00	8207.00										
Petersburg city	8101.00	8102.00	8105.00	8106.00	8107.00	8108.00						
Richmond city	103.00	108.00	109.00	110.00	111.00	201.00	202.00	203.00	204.00	205.00	206.00	207.00
	208.00	209.00	210.00	211.00	301.00	302.00	305.00	402.00	403.00	404.00	413.00	414.00
	601.00	602.00	603.00	604.00	607.00	608.00	609.00					

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Riverside-San Bernardino, CA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Riverside County	303.00	304.00	305.01	305.02	305.03	313.00	402.03	402.04	410.01	411.00	415.00	416.00
	417.04	422.02	422.09	422.10	422.11	425.04	425.05	425.15	425.19	425.20	427.23	428.00
	429.02	429.04	430.01	430.06	433.08	434.01	434.05	435.07	436.00	440.00	441.01	442.00
	443.00	445.07	445.09	445.10	448.06	449.15	452.07	453.01	454.00	455.01	455.02	456.03
	456.04	456.05	457.03	457.04	457.05	457.06	462.00	9401.00				
San Bernardino County	3.01	14.00	15.00	16.00	22.03	28.00	31.00	34.02	37.00	40.00	41.00	42.01
	42.02	47.00	48.00	49.00	50.00	53.00	54.00	55.00	56.00	57.00	58.00	59.00
	62.02	63.02	64.01	64.02	65.00	68.00	69.00	70.00	72.00	74.07	74.08	75.00
	76.01	80.02	94.00	97.10	97.16	98.00	99.01	100.14	100.20	104.11	106.00	107.00
	117.00	9401.00	9405.00									

METROPOLITAN AREA: Roanoke, VA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Roanoke city	7.00	8.00	9.00	10.00	11.00	12.00	13.00					
Salem city	104.00											

METROPOLITAN AREA: Rochester, MN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Olmsted County	1.00	6.00										

METROPOLITAN AREA: Rochester, NY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Genesee County	9401.00											
Livingston County	304.00	305.00										
Monroe County	2.00	7.00	13.00	15.00	22.00	23.00	24.00	27.00	30.00	32.00	33.00	34.00
	38.03	38.04	39.00	40.00	41.00	46.02	47.01	48.00	49.00	50.00	51.00	52.00
	53.00	55.00	56.00	57.00	59.00	64.00	65.00	66.00	69.00	75.00	79.00	80.00
	81.00	84.00	85.00	87.02	92.00	93.01	93.02	94.00	96.01	96.02	96.03	96.04
	131.03											
Ontario County	517.00	518.00										

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Rockford, IL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Winnebago County	10.00	11.00	12.00	20.00	24.00	25.00	26.00	27.00	28.00	29.00	31.00	32.00

METROPOLITAN AREA: Rocky Mount, NC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Edgecombe County	201.00	202.00	204.00									
Nash County	101.00	102.00										

METROPOLITAN AREA: Sacramento, CA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
El Dorado County	301.01											
Sacramento County	5.00	6.00	7.00	10.00	11.00	12.00	18.00	20.00	21.00	22.00	27.00	28.00
	32.01	36.00	37.00	41.00	42.02	42.03	43.00	44.01	44.02	45.00	46.01	46.02
	48.01	49.03	49.05	50.02	51.03	52.01	53.00	55.02	62.01	62.02	63.00	64.00
	65.00	66.00	67.02	68.00	69.00	70.01	74.04	74.13	83.00	88.00	89.11	90.07
	91.10											

METROPOLITAN AREA: Saginaw-Bay City-Midland, MI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bay County	2802.00	2807.00										
Saginaw County	1.00	2.00	4.00	6.00	7.00	8.00	9.00	10.00	11.00	13.00	17.00	18.00

METROPOLITAN AREA: St. Cloud, MN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Stearns County	1.00	2.00	3.02									

METROPOLITAN AREA: St. Joseph, MO MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Buchanan County	10.00	12.00										

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: St. Louis, MO-IL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Madison County, IL	4003.00	4005.00	4006.00	4007.00	4009.01	4013.00	4021.00	4024.00				
St. Clair County, IL	5004.00	5005.00	5006.00	5009.00	5011.00	5013.00	6014.00	5021.00	5022.00	5024.01	5025.00	5026.03
	5027.00	5028.00	5029.00	5042.01	5045.00							
St. Louis County, MO	2121.00	2136.00	2139.00	2141.00	2160.00	2161.00	2169.00	2218.00				
St. Louis city, MO	1015.00	1018.00	1052.00	1053.00	1054.00	1055.00	1061.00	1062.00	1063.00	1064.00	1065.00	1066.00
	1067.00	1071.00	1072.00	1074.00	1075.00	1076.00	1082.00	1084.00	1085.00	1096.00	1097.00	1101.00
	1102.00	1103.00	1104.00	1105.00	1111.00	1112.00	1113.00	1114.00	1115.00	1122.00	1123.00	1152.00
	1155.00	1156.00	1157.00	1163.00	1164.00	1165.00	1172.00	1181.00	1184.00	1185.00	1186.00	1191.00
	1193.00	1201.00	1202.00	1203.00	1211.00	1212.00	1213.00	1214.00	1221.00	1224.00	1231.00	1232.00
	1233.00	1241.00	1242.00	1243.00	1246.00	1255.00	1257.00	1266.00	1267.00			

METROPOLITAN AREA: Salem, OR PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Marion County	2.00	4.00	5.00	7.00	8.00	9.00	10.00	17.01				

METROPOLITAN AREA: Salinas, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Monterey County	5.00	6.00	7.00	9.00	13.00	106.02	113.02	141.01	141.02			

METROPOLITAN AREA: Salt Lake City-Ogden, UT MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Davis County	1256.00											
Salt Lake County	1001.00	1003.02	1007.00	1014.00	1020.00	1021.00	1022.00	1023.00	1024.00	1025.00	1027.00	1029.00
	1115.00											
Weber County	2002.02	2008.00	2009.00	2011.00	2012.00	2013.00	2018.00	2019.00				

METROPOLITAN AREA: San Angelo, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Tom Green County	4.00	5.00	6.00	7.00	9.00							

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: San Antonio, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bexar County	1101.00	1102.00	1103.00	1105.00	1106.00	1107.00	1108.00	1109.00	1110.00	1205.02	1214.04	1301.00
	1302.00	1303.00	1304.00	1305.00	1306.00	1307.00	1308.00	1309.00	1311.00	1312.00	1402.00	1410.00
	1411.00	1501.00	1503.00	1504.00	1505.01	1505.02	1507.00	1508.00	1511.00	1514.00	1519.00	1520.00
	1601.00	1605.00	1606.00	1607.01	1607.02	1609.00	1610.00	1613.01	1615.01	1616.00	1701.01	1701.02
	1702.00	1703.00	1704.01	1704.02	1705.00	1707.00	1708.00	1709.00	1710.00	1711.00	1712.00	1713.00
	1714.00	1715.00	1716.00	1804.00	1805.04	1808.00	1818.06	1901.00	1903.00	1905.02	1910.04	

METROPOLITAN AREA: San Diego, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
San Diego County	9.00	16.00	21.00	22.01	22.02	23.01	23.02	24.01	24.02	25.01	26.01	26.02
	27.07	27.08	27.09	27.10	28.01	28.04	29.04	31.11	33.02	33.03	34.03	34.04
	35.01	35.02	36.01	36.02	36.03	39.01	39.02	40.00	41.00	45.01	45.02	46.00
	47.00	48.00	49.00	50.00	51.00	52.00	53.00	56.00	57.00	58.00	62.00	64.00
	65.00	83.39	83.41	83.43	86.00	100.05	100.09	100.12	100.13	100.15	101.12	114.00
	115.00	116.01	116.02	117.00	118.01	118.02	119.01	120.02	125.00	132.05	139.07	144.00
	157.01	157.03	158.01	158.02	159.01	182.00	184.00	190.02	195.01	195.02	202.02	202.07
	202.12											

METROPOLITAN AREA: San Francisco, CA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Marin County	1122.00											
San Francisco County	107.00	113.00	114.00	115.00	117.00	118.00	120.00	121.00	122.00	123.00	124.00	125.00
	161.00	176.01	178.00	179.02	201.00	230.02	231.01	231.02	231.03	234.00	332.01	603.00
	605.02	607.00										
San Mateo County	6102.02	6102.03	6106.01									

METROPOLITAN AREA: San Jose, CA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Santa Clara County	5008.00	5009.01	5009.02	5010.00	5014.00	5015.01	5015.02	5016.00	5017.00	5019.00	5020.02	5031.05
	5031.10	5031.12	5031.13	5032.13	5032.14	5036.01	5037.06	5037.09	5046.01	5116.06	5116.07	5126.01

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: San Juan-Bayamon, PR PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Aguas Buenas Municipio	2303.00	2304.00	2305.01									
Barceloneta Municipio	5902.00	5903.00										
Bayamon Municipio	307.00	312.01	320.00									
Canovanas Municipio	1001.01	1001.02	1007.00									
Carolina Municipio	505.03	508.41										
Catano Municipio	202.00	203.00	204.02	204.04								
Comerio Municipio	9517.00	9518.00	9519.00	9520.00	9521.00							
Corozal Municipio	5302.00	5303.00	5306.00									
Fajardo Municipio	1503.01											
Florida Municipio	5801.00											
Guaynabo Municipio	401.01											
Humacao Municipio	1806.00											
Juncos Municipio	5001.00	5004.01										
Las Piedras Municipio	1902.01											
Loiza Municipio	1101.01	1101.02	1102.00	1103.01	1103.02	1104.00	1106.00					
Luquillo Municipio	1401.02	1403.00										
Manati Municipio	5703.00	5704.00	5706.00	5707.00								
Morovis Municipio	9553.00	9554.02	9555.00									
Naguabo Municipio	1702.00	1703.00										
Naranjito Municipio	5202.00	5203.00										
San Juan Municipio	6.00	7.00	13.00	28.00	29.00	34.00	35.01	35.02	36.00	37.00	38.00	42.00
	44.00	45.00	46.00	47.00	48.00	49.00	50.00	51.03	54.02	56.02	61.01	62.00
	82.01	82.02	87.00	90.00								
Toa Baja Municipio	1217.00	1218.01	1221.00	1222.00	1224.00							
Vega Alta Municipio	5501.00											
Vega Baja Municipio	5606.00	5609.00										
Yabucoa Municipio	9507.00	9508.00	9512.00									

METROPOLITAN AREA: San Luis Obispo-Atascadero-Paso Robles, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
San Luis Obispo County	109.01	109.02	111.01	112.00	114.00							

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2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Santa Barbara-Santa Maria-Lompoc, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Santa Barbara County	23.04	24.03	24.04	25.00	27.02	29.02	29.03	29.11	29.12			

METROPOLITAN AREA: Santa Cruz-Watsonville, CA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Santa Cruz County	1007.00	1010.00	1101.00	1103.00	1104.00							

METROPOLITAN AREA: Santa Fe, NM MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Santa Fe County	3.00	10.02	12.02									

METROPOLITAN AREA: Santa Rosa, CA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Sonoma County	1520.00											

METROPOLITAN AREA: Sarasota-Bradenton, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Manatee County	1.03	3.05	3.06	7.03	15.02							
Sarasota County	1.02	2.00	3.00									

METROPOLITAN AREA: Savannah, GA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Chatham County	1.00	3.00	6.01	8.00	11.00	12.00	13.00	15.00	18.00	19.00	20.00	21.00
	22.00	23.00	24.00	25.00	28.00	32.00	43.00	44.00	101.01	106.04		

METROPOLITAN AREA: Scranton--Wilkes-Barre--Hazleton, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Columbia County	511.00	512.00										
Lackawanna County	1002.00	1003.00										
Luzerne County	2001.00	2005.00	2008.00	2009.00	2010.00	2132.00	2174.00					

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Seattle-Bellevue-Everett, WA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Island County	9702.00	9707.00	9709.00									
King County	4.01	43.00	52.00	53.01	72.00	73.00	81.00	84.00	85.00	86.00	87.00	90.00
	91.00	92.00	93.00	107.00	112.00	265.00	290.04	305.01				
Snohomish County	402.00	407.00										

METROPOLITAN AREA: Sharon, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Mercer County	301.00	302.00	306.00	307.00	308.00							

METROPOLITAN AREA: Sheboygan, WI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Sheboygan County	5.00	6.00										

METROPOLITAN AREA: Sherman-Denison, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Grayson County	2.00	16.01										

METROPOLITAN AREA: Shreveport-Bossier City, LA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bossier Parish	104.00	113.00										
Caddo Parish	201.00	202.00	204.00	206.00	207.00	208.00	209.00	210.00	211.00	213.00	217.00	218.00
	219.00	221.00	223.00	225.00	232.00	233.00	235.00	236.00	237.00	246.01	246.02	
Webster Parish	317.00	319.00										

METROPOLITAN AREA: Sioux City, IA-NE MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Woodbury County, IA	13.00	15.00	16.00	17.00								

METROPOLITAN AREA: Sioux Falls, SD MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Minnehaha County	7.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: South Bend, IN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
St. Joseph County	1.00	6.00	10.00	17.00	19.00	20.00	21.00	23.00	27.00	28.00	29.00	

METROPOLITAN AREA: Spokane, WA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Spokane County	1.00	16.00	24.00	25.00	26.00	30.00	33.00	35.00	36.00	40.00	140.01	

METROPOLITAN AREA: Springfield, IL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Sangamon County	8.00	9.00	13.00	14.00	15.00	16.00	17.00	24.00				

METROPOLITAN AREA: Springfield, MO MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Greene County	1.00	2.00	5.00	7.00	18.00	33.00	55.00					

METROPOLITAN AREA: Springfield, MA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hampden County	8006.00	8007.00	8008.00	8009.00	8011.01	8011.02	8012.00	8013.00	8014.01	8014.02	8015.02	8018.00
	8019.00	8020.00	8021.00	8022.00	8023.00	8109.01	8114.00	8115.00	8116.00	8117.00	8118.00	8123.00
	8127.02											
Hampshire County	8203.00	8206.00										

METROPOLITAN AREA: Stamford-Norwalk, CT PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Fairfield County	201.00	214.00	215.00	216.02	222.00	223.00	437.00	438.00	440.00	441.00	444.00	445.00

METROPOLITAN AREA: State College, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Centre County	120.00	121.00	122.00	125.00	126.00							

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Steubenville-Weirton, OH-WV MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Jefferson County, OH	2.00	4.00	8.00	9.00								

METROPOLITAN AREA: Stockton-Lodi, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
San Joaquin County	1.00	3.00	4.02	5.00	6.00	7.00	8.00	14.00	16.00	17.00	19.00	20.00
	21.00	22.00	23.00	31.13	33.09	34.04	34.06	34.07	36.03	39.00	44.01	45.00

METROPOLITAN AREA: Sumter, SC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Sumter County	7.00	8.98	11.00	13.00	15.00							

METROPOLITAN AREA: Syracuse, NY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cayuga County	419.00											
Onondaga County	2.00	5.00	6.00	10.00	13.00	14.00	15.00	16.00	21.00	22.00	23.00	24.00
	30.00	32.00	34.00	35.00	36.01	38.00	39.00	40.00	42.00	43.00	44.00	51.00
	52.00	53.00	54.00	55.00	56.02	58.00	59.00	61.01	61.02			
Oswego County	211.02	216.01	216.02									

METROPOLITAN AREA: Tacoma, WA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Pierce County	610.02	613.00	614.00	616.01	616.02	617.00	622.00	626.01	717.03	717.06	718.05	718.06
	720.00											

METROPOLITAN AREA: Tallahassee, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Leon County	3.03	4.00	5.00	6.00	10.01	11.01	12.00	14.00	19.00	20.01	20.02	21.02

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Tampa-St. Petersburg-Clearwater, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hillsborough County	7.00	12.00	18.00	19.00	21.00	29.00	30.00	31.00	32.00	33.00	34.00	35.00
	36.00	37.00	38.00	39.00	40.00	41.00	42.00	43.00	44.00	50.00	51.01	53.00
	108.03	108.05	108.06	108.07	108.08	124.02	124.03	129.00	139.06			
Pasco County	310.06											
Pinellas County	205.00	206.00	207.00	208.00	209.00	210.00	212.00	213.00	214.00	215.00	216.00	218.00
	256.02	262.00	268.08									

METROPOLITAN AREA: Terre Haute, IN MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Vigo County	1.00	2.00	3.00	5.00	6.00	8.00	19.00					

METROPOLITAN AREA: Texarkana, TX-Texarkana, AR MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Miller County, AR	204.00	205.00	206.00									
Bowie County, TX	104.00	105.00	106.00	108.00								

METROPOLITAN AREA: Toledo, OH MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lucas County	8.00	9.00	12.02	13.02	13.04	14.00	15.00	16.00	17.00	18.00	19.00	20.00
	21.00	22.00	23.00	24.02	25.00	26.00	27.00	28.00	29.00	30.00	31.00	32.00
	33.00	34.00	35.00	36.00	37.00	38.00	40.00	41.00	42.00	43.01	47.01	48.00
	51.00	53.00	54.00	68.00	73.03							
Wood County	217.01	217.02	218.00									

METROPOLITAN AREA: Topeka, KS MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Shawnee County	4.00	5.00	6.00	11.00	31.00	40.00						

METROPOLITAN AREA: Trenton, NJ PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Mercer County	1.00	2.00	5.00	8.00	9.00	10.00	11.00	14.01	14.02	15.00	16.00	17.00
	18.00	19.00	20.00	21.00								

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Tucson, AZ MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Pima County	1.00	3.00	4.00	5.00	9.00	10.00	13.01	13.02	14.00	15.00	21.00	22.00
	23.00	24.00	25.03	26.01	27.01	28.01	28.02	31.01	37.01	37.02	38.01	38.02
	39.02	41.04	41.11	43.20	45.09	51.00	9406.00	9407.00	9408.00			

METROPOLITAN AREA: Tulsa, OK MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Creek County	210.00											
Tulsa County	2.00	3.00	4.00	5.00	6.00	7.00	8.00	9.00	10.00	12.00	13.00	21.00
	22.00	23.00	25.00	27.00	46.00	57.00	62.00	67.01	68.01	76.08	79.00	80.01
	91.01	111.00										

METROPOLITAN AREA: Tuscaloosa, AL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Tuscaloosa County	112.00	114.00	116.00	117.01	117.03	118.00	119.00	126.00				

METROPOLITAN AREA: Tyler, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Smith County	1.00	2.01	2.02	3.00	4.00	5.00	7.00					

METROPOLITAN AREA: Utica-Rome, NY MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Herkimer County	111.00											
Oneida County	201.00	203.00	207.01	208.02	208.03	209.00	210.00	211.01	211.02	211.03	212.01	213.01
	213.02	215.00	218.00	220.00	223.00	226.00	229.00					

METROPOLITAN AREA: Vallejo-Fairfield-Napa, CA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Napa County	2009.00											
Solano County	2507.01	2508.00	2509.00	2510.00	2516.00	2518.02	2525.02	2526.06	2526.07			

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2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Ventura, CA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Ventura County	2.00	5.00	8.00	23.00	24.00	32.01	32.02	35.00	38.00	43.01	45.01	45.03
	46.00	47.04	47.06	50.01	50.02							

METROPOLITAN AREA: Victoria, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Victoria County	3.01											

METROPOLITAN AREA: Vineland-Millville-Bridgeton, NJ PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cumberland County	201.00	203.00	205.01	301.00	401.00							

METROPOLITAN AREA: Visalia-Tulare-Porterville, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Tulare County	3.02	5.01	6.00	11.00	16.01	22.02	26.01	28.00	29.01	38.02	40.00	41.01
	42.00	43.00	44.00									

METROPOLITAN AREA: Waco, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
McLennan County	1.00	2.00	3.00	4.00	7.00	10.00	12.00	14.00	15.00	19.00	33.00	

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Washington, DC-MD-VA-WV PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
District of Columbia	2.01	18.03	18.04	20.01	21.01	24.00	25.02	28.01	28.02	29.00	30.00	31.00
	32.00	34.00	35.00	36.00	37.00	46.00	47.00	48.01	48.02	49.01	49.02	50.00
	52.02	57.01	58.00	59.00	60.02	64.00	68.01	68.04	71.00	72.00	73.02	73.04
	73.08	74.01	74.03	74.04	74.06	74.07	74.08	74.09	75.02	75.03	75.04	76.01
	76.03	76.05	77.03	77.07	77.08	77.09	78.03	78.04	78.06	78.07	78.08	78.09
	79.01	84.02	85.00	86.00	87.02	88.02	88.03	88.04	89.03	89.04	90.00	91.02
	92.01	92.03	92.04	95.01	96.01	96.02	96.03	96.04	97.00	98.01	98.02	98.03
	98.04	98.06	98.07	98.08	98.09	99.03	99.04	99.05	99.06	99.07		
Charles County, MD	8509.01											
Frederick County, MD	7501.00	7503.00	7509.00									
Montgomery County, MD	7009.04											
Prince George's County, MD	8017.04	8024.04	8025.02	8032.00	8034.01	8035.08	8035.09	8040.01	8043.00	8048.00	8051.01	8056.01
	8056.02	8067.03	8072.00									
Arlington County, VA	1027.00											
Culpeper County, VA	9903.00											
Fairfax County, VA	4215.00	4219.00										
Prince William County, VA	9009.01	9009.03										
Warren County, VA	204.00	205.00										
Fredericksburg city, VA	2.00	4.00	5.00									
Berkeley County, WV	9713.00	9715.00	9716.00	9717.00								
Jefferson County, WV	9724.00											

METROPOLITAN AREA: Waterbury, CT PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
New Haven County	3501.00	3502.00	3503.00	3504.00	3505.00	3508.00	3512.00	3514.00	3517.00	3522.00		

METROPOLITAN AREA: Waterloo-Cedar Falls, IA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Black Hawk County	1.00	9.00	17.01	23.02								

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Wausau, WI MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Marathon County	1.00											

METROPOLITAN AREA: West Palm Beach-Boca Raton, FL MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Palm Beach County	13.01	13.02	14.03	14.04	17.00	19.02	19.09	21.00	22.00	23.00	24.00	26.00
	29.00	40.13	44.02	49.01	51.00	52.02	59.13	61.00	67.00	68.01	80.01	80.02
	81.01	81.02	82.01	82.02	82.03	83.01	83.02					

METROPOLITAN AREA: Wheeling, WV-OH MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Belmont County, OH	115.00	116.00	121.00									
Ohio County, WV	1.00	4.00	7.00	8.00	24.00							

METROPOLITAN AREA: Wichita, KS MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Sedgwick County	1.00	4.00	6.00	7.00	8.00	9.00	11.00	18.00	24.00	26.00	36.00	37.00
	65.00	68.00	78.00									

METROPOLITAN AREA: Wichita Falls, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Wichita County	101.00	102.00	104.00	111.00	112.00	130.00						

METROPOLITAN AREA: Williamsport, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Lycoming County	4.00	8.00										

METROPOLITAN AREA: Wilmington-Newark, DE-MD PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
New Castle County, DE	6.01	6.02	7.00	8.00	9.00	16.00	17.00	19.00	20.00	21.00	22.00	23.00
	144.03	145.01	145.02									
Cecil County, MD	304.00											

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Wilmington, NC MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
New Hanover County	101.00	103.00	105.01	110.00	111.00	113.00	114.00					

METROPOLITAN AREA: Worcester, MA-CT PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Worcester County, MA	7312.01	7312.02	7313.00	7314.00	7315.00	7316.00	7317.00	7318.00	7319.00	7320.01	7321.00	7324.00
	7325.00	7330.00	7384.00	7421.00	7542.00	7543.00	7572.00	7573.00				

METROPOLITAN AREA: Yakima, WA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Yakima County	1.00	2.00	6.00	15.00	20.01	25.00	27.02					

METROPOLITAN AREA: Yolo, CA PMSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Yolo County	101.01	102.03	105.01	106.02	107.01	107.03						

METROPOLITAN AREA: York, PA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
York County	1.00	2.00	5.00	7.00	9.00	10.00	11.00	12.00	15.00	16.00		

METROPOLITAN AREA: Youngstown-Warren, OH MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Columbiana County	9521.00	9523.00										
Mahoning County	8002.00	8004.00	8005.00	8006.00	8007.00	8009.00	8010.00	8016.00	8017.00	8019.00	8020.00	8021.00
	8022.00	8023.00	8024.00	8025.00	8031.00	8034.00	8035.00	8037.00	8040.00	8041.00	8043.00	8044.00
	8103.00											
Trumbull County	9201.00	9205.00	9206.00	9208.00	9212.00	9324.00						

METROPOLITAN AREA: Yuba City, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Sutter County	501.02	502.02										
Yuba County	401.00	403.00	404.00									

2003 IRS SECTION 42(d)(5)(C) METROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

METROPOLITAN AREA: Yuma, AZ MSA												
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Yuma County	1.00	3.02	4.01	106.00	114.01	115.01	116.00					

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Alabama												
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Barbour County	9502.00	9503.00	9504.00	9506.00	9507.00	9509.00						
Bibb County	101.00											
Bullock County	9521.00	9522.00										
Butler County	9529.00	9531.00	9532.00	9534.00								
Choctaw County	9567.00	9570.00										
Clarke County	9577.00	9578.00										
Coffee County	110.00	113.00										
Conecuh County	9604.00	9605.00	9606.00									
Covington County	9621.00	9627.00	9630.00									
Crenshaw County	9634.00											
Dallas County	9964.00	9965.00	9966.00	9968.00	9969.00	9970.00	9971.00	9972.00	9973.00			
Escambia County	9704.00	9706.00										
Greene County	600.00	601.00	602.00									
Hale County	401.00	403.00	404.00									
Henry County	301.00											
Lowndes County	9810.00	9811.00	9812.00									
Macon County	9816.00	9817.00	9818.00	9819.00	9820.00	9821.00	9822.00	9823.00				
Marengo County	9829.00	9831.00	9832.00									
Monroe County	9856.00	9858.00	9860.00									
Perry County	9870.00	9871.00	9872.00									
Pickens County	501.00	503.00	504.00									
Pike County	9889.00	9891.00	9893.00									
Sumter County	9911.00	9912.00	9913.00	9915.00	9916.00							
Talladega County	106.00	118.00										
Wilcox County	9947.00	9948.00	9949.00	9950.00	9951.00							

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Arkansas												
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Arkansas County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Ashley County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Baxter County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00	9511.00	
Benton County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00	9511.00	9512.00
Boone County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00	9511.00	9512.00
Bradley County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Calhoun County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Carroll County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00	9511.00	9512.00
Chicot County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Clay County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Cleburne County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00	9511.00	9512.00
Cleveland County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Columbia County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Conway County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Craighead County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00	9511.00	9512.00
Crawford County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00	9511.00	9512.00
Crittenden County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Cross County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Dallas County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Desha County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Drew County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Faulkner County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00	9511.00	9512.00
Franklin County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Fulton County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Garland County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00	9511.00	9512.00
Grant County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Greene County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Hempstead County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Hot Spring County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Howard County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Independence County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00	9511.00	9512.00
Izard County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Jackson County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Jefferson County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Johnson County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Lafayette County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Lawrence County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Lee County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Lincoln County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Little River County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Logan County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Lonoke County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00	9511.00	9512.00
Madison County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Marion County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Miller County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Mississippi County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Monroe County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Montgomery County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Nevada County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Newton County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Ouachita County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Perry County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Phillips County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Pike County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Poinsett County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Polk County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Pope County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00	9511.00	9512.00
Prairie County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Pulaski County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00	9511.00	9512.00
Randolph County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Saline County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00	9511.00	9512.00
Scott County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Searcy County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Sebastian County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00	9511.00	9512.00
Sevier County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Sharp County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
St. Francis County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Stone County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Union County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Van Buren County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Washington County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00	9511.00	9512.00
White County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Woodruff County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Yell County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: California												
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Alpine County	9501.00											
Amador County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Butte County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00	9511.00	9512.00
Calaveras County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Colusa County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Del Norte County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
El Dorado County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00	9511.00	9512.00
Glenn County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Humboldt County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Imperial County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Inyo County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Kings County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Lake County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Lassen County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Madera County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Mariposa County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Mendocino County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Merced County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Modoc County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Mono County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Nevada County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Plumas County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
San Benito County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Shasta County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Sierra County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Siskiyou County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Sutter County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Tehama County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Trinity County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Tuolumne County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Yuba County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Colorado												
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Archuleta County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Baca County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Bent County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Chaffee County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Cheyenne County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Clear Creek County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Conejos County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Costilla County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Crowley County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Custer County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Delta County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Dolores County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Eagle County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Elbert County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Fremont County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Garfield County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Gilpin County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Grand County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Gunnison County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Hinsdale County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Huerfano County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Jackson County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Kiowa County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Kit Carson County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Lake County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
La Plata County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Las Animas County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Lincoln County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Logan County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Mesa County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Moffat County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Montezuma County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Montrose County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Morgan County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Otero County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Ouray County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Park County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Phillips County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Prowers County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Pueblo County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Rio Blanco County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Rio Grande County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Routt County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Saguache County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
San Juan County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
San Miguel County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Sedgwick County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Summit County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Teller County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Washington County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			
Yuma County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00			

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Alaska

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bethel Census Area	1.00	3.00										
Dillingham Census Area	1.00											
Kenai Peninsula Borough	1.00											
Nome Census Area	1.00											
Prince of Wales-Outer Ketchikan Census Area	3.00											
Skagway-Hoonah-Angoon Census Area	2.00											
Wade Hampton Census Area	1.00											
Yukon-Koyukuk Census Area	1.00	4.00										

NONMETROPOLITAN PART OF STATE: Arizona

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Apache County	9401.00	9426.00	9427.00	9440.00	9441.00	9442.00	9443.00	9449.00	9451.00			
Cochise County	6.00	8.00	9.00									
Gila County	9402.00	9404.00										
Graham County	9405.00											
Navajo County	9401.00	9403.00	9410.00	9411.00	9423.00	9424.00	9444.00	9445.00	9447.00	9448.00		
Santa Cruz County	9962.00	9964.02										

NONMETROPOLITAN PART OF STATE: Arkansas

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Arkansas County	9804.00											
Bradley County	9501.00	9503.00	9505.00									
Chicot County	9802.00	9803.00	9804.00									
Columbia County	9502.00	9505.00										
Cross County	9501.00	9505.00										
Desha County	9501.00	9502.00	9503.00	9504.00								
Garland County	106.00	107.00	115.00									
Hempstead County	9805.00											
Johnson County	9520.00											
Lafayette County	9702.00											
Lee County	9703.00	9704.00										
Lincoln County	9602.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Arkansas (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Mississippi County	101.00	103.00	110.00									
Monroe County	9501.00	9503.00										
Nevada County	9902.00											
Ouachita County	9506.00											
Phillips County	9801.00	9803.00	9804.00	9805.00	9806.00							
Poinsett County	9903.00	9907.00										
Polk County	9506.00											
Pope County	9514.00											
St. Francis County	9801.00	9804.00	9806.00									
Sevier County	9803.00											
Union County	9509.00	9510.00										
White County	9708.00											
Woodruff County	9901.00	9902.00										

NONMETROPOLITAN PART OF STATE: California

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Del Norte County	1.01											
Humboldt County	1.00	2.00	5.00	10.00	12.00	101.01						
Imperial County	102.00	104.00	107.00	112.02	114.00	115.00	116.00	121.00	123.02	125.00		
Kings County	9.00	11.00	13.00	14.00	15.00	16.01	17.01					
Lake County	7.00	8.00										
Siskiyou County	1.00	7.02										
Trinity County	4.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Colorado

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Alamosa County	9817.00											
Conejos County	9746.00	9748.00										
Costilla County	9826.00	9827.00										
Huerfano County	9806.00											
Las Animas County	1.00											
Logan County	9962.00											
Montezuma County	9410.00											
Otero County	9880.00											

NONMETROPOLITAN PART OF STATE: Connecticut

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Litchfield County	3103.00											

NONMETROPOLITAN PART OF STATE: Florida

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Columbia County	9903.00											
DeSoto County	9803.00											
Hamilton County	9801.00	9802.00	9803.00									
Hardee County	9702.00	9703.00	9704.00									
Hendry County	2.00	3.00	9401.00									
Highlands County	9603.00	9609.00	9612.00	9617.00								
Indian River County	503.02											
Madison County	9903.02											
Okeechobee County	9903.00											
Putnam County	9507.00	9508.00	9514.00									
Taylor County	9503.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Georgia

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bacon County	9702.00											
Baker County	9601.00											
Baldwin County	9705.00											
Ben Hill County	9604.00											
Brooks County	9904.00	9905.00										
Bulloch County	9904.01	9904.02										
Burke County	9502.00	9504.00	9507.00	9508.00								
Calhoun County	9502.00											
Candler County	9501.00											
Clay County	9601.00											
Colquitt County	9703.00											
Crisp County	9801.00	9802.00										
Decatur County	9703.00	9704.00	9708.00									
Early County	9902.00	9904.00										
Echols County	9801.00	9802.00										
Emanuel County	9801.00	9803.00	9804.00	9805.00	9806.00							
Evans County	9702.00	9703.00										
Floyd County	5.00	6.00	11.00	15.00	16.00							
Glynn County	7.00	8.00	9.00									
Grady County	9503.00	9504.00										
Greene County	9504.00											
Hall County	8.00	11.00										
Hancock County	9801.00	9802.00										
Jeff Davis County	9602.00											
Jefferson County	9604.00											
Jenkins County	9601.00											
Johnson County	9802.00											
Laurens County	9503.00	9509.00										
Liberty County	106.00											
Lowndes County	105.00	108.00	109.00	110.00	113.01	113.02						
Macon County	9803.00	9804.00										
Marion County	9802.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Georgia (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Mitchell County	9803.00	9805.00										
Randolph County	9901.00	9902.00										
Screven County	9702.00											
Seminole County	9802.00											
Sumter County	9503.00											
Talbot County	9601.00											
Taylor County	9503.00											
Terrell County	9803.00	9804.00										
Thomas County	9601.00											
Tift County	9906.00	9907.00										
Toombs County	9701.00	9706.00										
Treutlen County	9601.00	9602.00										
Troup County	9608.00											
Turner County	9702.00											
Ware County	9504.00	9507.00	9508.00									
Warren County	9703.00	9704.00										
Washington County	9503.00	9507.00										
Wheeler County	9801.00											
Wilcox County	9904.00											

NONMETROPOLITAN PART OF STATE: Hawaii

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hawaii County	203.00	204.00	205.00	211.00								
Kalawao County	319.00											
Kauai County	410.00											
Maui County	313.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Idaho

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bingham County	9508.00											
Cassia County	9504.00											
Latah County	51.00	54.00										
Lewis County	9503.00											
Madison County	9503.01	9503.02										
Nez Perce County	9903.00											
Owyhee County	9403.00											

NONMETROPOLITAN PART OF STATE: Illinois

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Adams County	4.00	7.00	8.00									
Alexander County	9578.00	9579.00										
Coles County	7.00	8.00										
Jackson County	107.00	108.00	109.00	111.00	112.00	113.00	114.00	115.00				
Jefferson County	509.00	510.00										
Knox County	8.00	9.00										
McDonough County	104.00	105.00	106.00									
Pulaski County	9711.00											
Richland County	9780.00											
Saline County	9555.00											
Vermilion County	1.00	2.00	4.00	8.00	11.00							

NONMETROPOLITAN PART OF STATE: Indiana

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Grant County	2.00											
Henry County	9763.00											
Knox County	9550.00	9553.00	9554.00									
Wayne County	2.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Iowa COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Story County	5.00	7.00	10.00	11.00	13.01							
Wapello County	9605.00											
Webster County	7.00											

NONMETROPOLITAN PART OF STATE: Kansas COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Crawford County	9575.00											
Ellis County	9729.00											
Lyon County	4.00											
Reno County	6.00											
Riley County	3.01	3.02	4.00	5.00	8.01							
Seward County	9660.00											

NONMETROPOLITAN PART OF STATE: Kentucky COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Adair County	9703.00											
Bell County	9601.00	9602.00	9603.00	9604.00	9605.00	9606.00	9608.00	9609.00	9610.00			
Breathitt County	9801.00	9803.00	9804.00	9805.00	9806.00	9807.00						
Calloway County	103.00											
Casey County	9505.00											
Clay County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00						
Clinton County	9702.00											
Crittenden County	9903.00											
Elliott County	9801.00											
Floyd County	9803.00	9804.00	9805.00	9808.00	9809.00	9810.00						
Hardin County	15.00											
Harlan County	9701.00	9702.00	9703.00	9705.00	9706.00	9709.00	9710.00	9711.00	9712.00			
Hopkins County	9704.00											
Jackson County	9601.00	9602.00	9603.00									
Johnson County	9601.00	9605.00										
Knott County	9601.00	9602.00	9603.00	9604.00	9605.00							
Knox County	9901.00	9902.00	9903.00	9904.00	9905.00	9906.00	9907.00					

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Kentucky (Continued) COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Laurel County	9701.00											
Lawrence County	9902.00	9903.00	9904.00	9905.00								
Lee County	9501.00	9502.00	9503.00									
Leslie County	9801.00	9802.00	9803.00									
Letcher County	9501.00	9502.00	9503.00	9505.00								
Lewis County	9902.00	9904.00										
McCracken County	301.00	302.00	303.00	304.00	305.00	306.00						
McCreary County	9601.00	9602.00	9603.00	9604.00								
Magoffin County	9701.00	9702.00	9704.00									
Martin County	9501.00	9502.00	9503.00									
Menifee County	9601.00											
Morgan County	9501.00											
Muhlenberg County	9601.00											
Owsley County	9901.00	9902.00										
Perry County	9701.00	9703.00	9705.00	9707.00	9709.00							
Pike County	9903.00	9909.00	9917.00									
Pulaski County	9910.00											
Rockcastle County	9502.00											
Warren County	101.00	102.00	103.00	104.00								
Wayne County	9802.00	9803.00	9804.00	9805.00	9806.00							
Whitley County	9804.00	9806.00	9807.00	9808.00								
Wolfe County	9902.00	9903.00										

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Louisiana										
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Allen Parish	9503.00									
Assumption Parish	505.00									
Avoyalles Parish	304.00	306.00	309.00							
Bienville Parish	9703.00									
Catahoula Parish	9802.00									
Concordia Parish	9902.00									
De Soto Parish	9505.00	9506.00								
East Carroll Parish	9901.00	9903.00								
Evangeline Parish	9504.00	9505.00	9506.00							
Franklin Parish	9503.00	9506.00								
Grant Parish	203.00									
Iberia Parish	308.00	309.00	310.00							
Iberville Parish	9525.02									
Jackson Parish	9704.00									
Jefferson Davis Parish	9806.00									
Lincoln Parish	9603.00	9604.00	9608.00	9609.00	9610.00					
Madison Parish	9602.00	9603.00	9604.00							
Morehouse Parish	9504.00	9508.00								
Natchitoches Parish	9904.00	9906.00	9907.00							
Pointe Coupee Parish	9520.00									
Red River Parish	9603.00									
Richland Parish	9705.00									
Sabine Parish	9803.00	9805.00								
St. Mary Parish	407.00	411.00	416.00							
Tangipahoa Parish	9533.00	9536.00	9543.00	9544.00						
Tensas Parish	9802.00	9803.00								
Vermilion Parish	9508.00									
Washington Parish	9503.00	9508.00	9509.00							
Winn Parish	9604.00									

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Maine										
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Kennebec County	241.02									
NONMETROPOLITAN PART OF STATE: Maryland										
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Dorchester County	9705.00									
Somerset County	9801.01	9806.00								
Wicomico County	3.00	102.00								
NONMETROPOLITAN PART OF STATE: Massachusetts										
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Berkshire County	9211.00									
Franklin County	413.00									
NONMETROPOLITAN PART OF STATE: Michigan										
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Chippewa County	9703.00									
Clare County	9812.00									
Houghton County	9903.00	9908.00								
Isabella County	9505.00	9511.00	9512.00							
Marquette County	5.00	6.00	8.00	24.00						
Mecosta County	9605.00	9606.00	9611.00							
Ogemaw County	9507.00									
St. Joseph County	402.00	404.00								
NONMETROPOLITAN PART OF STATE: Minnesota										
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Beltrami County	9508.00									
Blue Earth County	9707.00	9711.01								
Cass County	9612.00									
Winona County	9705.00									

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Mississippi										
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Adams County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00				
Alcorn County	9604.00	9605.00	9606.00	9607.00	9608.00	9609.00	9610.00			
Attala County	9703.00	9704.00								
Benton County	9601.00	9602.00	9603.00							
Bolivar County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Calhoun County	9701.00	9702.00	9703.00	9704.00						
Carroll County	9702.00	9703.00	9704.00							
Chickasaw County	9501.00	9502.00	9503.00	9504.00						
Choctaw County	9601.00	9602.00	9603.00							
Claiborne County	9501.00	9502.00	9503.00							
Clarke County	9501.00	9502.00	9503.00	9504.00						
Clay County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00		
Coahoma County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Copiah County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Covington County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
DeSoto County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Forrest County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Franklin County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
George County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Greene County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Grenada County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Hancock County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Harrison County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Hinds County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Holmes County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Humphreys County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Issaquena County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Itawamba County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Jackson County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Jasper County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Jefferson County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Jefferson Davis County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Jones County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Kemper County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Lafayette County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Lamar County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Lauderdale County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Lawrence County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Leake County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Lee County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Leflore County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Lincoln County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Lowndes County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Madison County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Marion County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Marshall County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Monroe County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Montgomery County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Neshoba County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Newton County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Noxubee County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Oktibbeha County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Panola County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Pearl River County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Perry County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Pike County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Pontotoc County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Prentiss County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Quitman County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Rankin County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Scott County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Sharkey County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Simpson County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Smith County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Stone County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Sunflower County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Tallahatchie County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Tate County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Tippah County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Tishomingo County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Tunica County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Union County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Walthall County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Warren County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Washington County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Wayne County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Webster County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Wilkinson County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Winston County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Yalobusha County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Yazoo County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Missouri										
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Adair County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Andrew County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Atchison County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Audrain County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Barry County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Barton County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Bates County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Benton County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Bollinger County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Boone County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Butler County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Caldwell County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Callaway County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Camden County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Cape Girardeau County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Carroll County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Carter County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Cass County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Cedar County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Chariton County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Christian County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Clark County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Clay County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Clinton County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Cole County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Cooper County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Crawford County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Dade County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Dallas County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Daviess County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
DeKalb County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Dent County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Douglas County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Dunklin County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Franklin County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Gasconade County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Gentry County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Greene County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Grundy County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Harrison County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Henry County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Hickory County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Holt County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Howard County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Howell County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Iron County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Jasper County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Johnson County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Knox County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Laclede County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Lafayette County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Lawrence County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Lewis County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Lincoln County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Linn County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Livingston County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Macon County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Madison County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Maries County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Marion County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
McDonald County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Mercer County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Miller County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Mississippi County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Moniteau County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Monroe County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Montgomery County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Morgan County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
New Madrid County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Newton County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Nodaway County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Oregon County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Osage County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Ozark County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Pemiscot County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Perry County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Pettis County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Phelps County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Pike County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Platte County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Polk County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Pulaski County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Putnam County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Ralls County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Randolph County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Ray County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Reynolds County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Ripley County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Saline County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Schuyler County	9501.00	9502.00	9503.00	9504.00	9505.00	9506.00	9507.00	9508.00	9509.00	9510.00
Scotland County	9501.00	9502.00

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2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Mississippi

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Adams County	3.00	4.00	8.00									
Attala County	606.00											
Bolivar County	9501.00	9502.00	9503.00	9504.00	9507.00							
Calhoun County	9502.00											
Claiborne County	9503.00											
Clarke County	9503.00											
Clay County	9503.00											
Coahoma County	9501.00	9503.00	9506.00	9507.00								
Copiah County	9501.00											
Covington County	9502.00											
Grenada County	9503.00											
Holmes County	9501.00	9502.00	9503.00	9504.00	9505.00							
Humphreys County	9502.00	9503.00										
Issaquena County	9501.00											
Jefferson County	9501.00	9502.00										
Jones County	9506.00	9507.00										
Lafayette County	9503.00											
Lauderdale County	1.00	2.00	4.00	5.00	6.00	7.00						
Leake County	402.00											
Leflore County	9502.00	9503.00	9507.00	9508.00	9509.00							
Lincoln County	9505.00											
Lowndes County	6.00	7.00	8.00	11.00								
Marion County	9503.00											
Monroe County	9504.00	9508.00										
Neshoba County	105.00											
Noxubee County	9502.00	9503.00										
Oktibbeha County	9503.00	9504.00										
Panola County	9502.00											
Pike County	9503.00											
Quitman County	9501.00	9503.00										
Sharkey County	9501.00	9502.00										
Sunflower County	9501.00	9503.00	9504.02	9505.00								

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Mississippi (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Tallahatchie County	9502.00	9503.00	9504.00									
Tunica County	9502.00											
Walthall County	9502.00											
Warren County	9503.00											
Washington County	3.00	4.00	6.00	10.00	11.00	12.00	13.00	21.00				
Wayne County	9502.00											
Wilkinson County	9501.00	9502.00										
Yazoo County	9503.00	9505.00										

NONMETROPOLITAN PART OF STATE: Missouri

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Adair County	9503.00	9505.00	9509.00	9510.00								
Butler County	9505.00	9507.00	9508.00									
Cape Girardeau County	9808.00	9809.00	9810.00	9814.00								
Carter County	9601.00	9602.00										
Cole County	101.00	105.00	106.00									
Dunklin County	9601.00	9604.00	9605.00	9606.00	9610.00							
Howell County	9901.00	9907.00										
Johnson County	9604.00											
Lewis County	9702.00											
Mississippi County	9502.00	9504.00										
New Madrid County	9603.00	9606.00										
Pemiscot County	9702.00	9703.00	9704.00	9706.00								
Pettis County	9806.00											
Phelps County	9904.00											
Ripley County	9702.00											
Scott County	9812.00											
Shannon County	9702.00											
Washington County	9603.00											
Wright County	9904.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Montana

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Big Horn County	9403.00	9406.00	9407.00									
Blaine County	9401.00	9402.00										
Chouteau County	9401.00											
Daniels County	9402.00	9403.00										
Gallatin County	6.00	9.00	11.00									
Glacier County	9401.00	9402.00	9403.00									
Golden Valley County	1.00											
Hill County	403.00	9401.00	9402.00									
Lake County	9405.00											
Lewis and Clark County	9.00											
Lincoln County	5.00											
Phillips County	9402.00											
Pondera County	9403.00											
Ravalli County	8.00											
Roosevelt County	9401.00	9402.00	9404.00									
Rosebud County	9404.00											
Sandera County	9401.00											
Sheridan County	9402.00											
Silver Bow County	1.00											
Valley County	9405.00											

NONMETROPOLITAN PART OF STATE: Nebraska

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Buffalo County	9696.00											
Burt County	9401.00											
Keya Paha County	9754.00											
Knox County	9671.00											
Scotts Bluff County	9537.00											
Thurston County	9402.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS
(2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Nevada

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Elko County	9403.00											
Mineral County	9402.00											

NONMETROPOLITAN PART OF STATE: New Mexico

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Chaves County	4.00	5.00	6.00									
Cibola County	9458.00	9459.00	9460.00									
Curry County	1.00	2.02	4.00	5.00								
Grant County	9844.00											
Hidalgo County	9882.00											
Lea County	1.00	2.00	3.00	4.00								
Luna County	2.00	4.00	5.00	6.00								
McKinley County	9402.00	9403.00	9404.00	9434.00	9435.00	9436.00	9437.00	9438.00	9439.00	9453.00	9457.00	9460.00
Otero County	8.00											
Quay County	9586.02											
Rio Arriba County	6.00	9433.00										
Roosevelt County	2.00											
San Juan County	9428.00	9429.00	9430.00	9431.00								
Socorro County	9461.00	9783.02										

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: New York

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cattaraugus County	9402.00											
Clinton County	1012.00	1013.00	1016.00									
Columbia County	9912.00											
Cortland County	9906.00	9908.00	9909.00									
Fulton County	9907.00											
Jefferson County	612.00	621.00										
Otsego County	9909.00	9910.00	9911.00									
St. Lawrence County	9908.00	9909.00	9911.00									
Sullivan County	9509.00	9518.00	9519.00									
Tompkins County	1.00	2.00	3.00	4.00	7.00	11.00						
Ulster County	9535.00											

NONMETROPOLITAN PART OF STATE: North Carolina

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Anson County	9804.00											
Beaufort County	9903.00	9904.00	9908.00									
Bertie County	9602.00	9603.00	9604.00									
Bladen County	9504.00	9506.00										
Cleveland County	9509.00											
Columbus County	9907.00	9909.00	9912.00									
Craven County	9608.00	9609.00										
Duplin County	9903.00											
Graham County	9803.00											
Granville County	9704.00											
Halifax County	9901.00	9906.00	9908.00	9909.00	9911.00							
Harnett County	701.00	702.00										
Henderson County	9912.00											
Iredell County	602.00	604.00										
Jackson County	9506.00											
Lee County	302.00	303.00										
Lenoir County	102.00	103.00	104.00	105.00	107.00							
Martin County	9706.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: North Carolina (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Northampton County	9803.00											
Pasquotank County	9601.00	9603.00										
Perquimans County	9802.00											
Richmond County	9705.00	9706.00	9707.00	9710.00								
Robeson County	9601.00	9603.00	9605.00	9608.00	9611.00							
Rockingham County	402.00											
Scotland County	102.00	103.00										
Surry County	9904.00											
Swain County	9601.00											
Vance County	9605.00	9606.00	9607.00									
Warren County	9504.00											
Washington County	9502.00											
Watauga County	9804.00	9805.00	9806.00									
Wilson County	1.00	2.00	7.00	8.01	8.02							

NONMETROPOLITAN PART OF STATE: North Dakota

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Benson County	9401.00	9402.00										
Dunn County	9401.00											
McKenzie County	9401.00											
McLean County	9403.00											
Mercer County	9403.00											
Mountrail County	9402.00											
Richland County	9403.00											
Rolette County	9517.00	9518.00										
Sioux County	9401.00	9402.00	9403.00									

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Ohio

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Athens County	9726.00	9727.00	9728.00	9729.00	9730.00	9731.01	9731.02	9731.03				
Erie County	408.00											
Gallia County	9537.00											
Guernsey County	9776.00											
Meigs County	9644.00											
Muskingum County	9814.00	9821.00										
Pike County	9527.00											
Scioto County	9932.00	9934.00	9935.00	9936.00								
Wayne County	15.00											

NONMETROPOLITAN PART OF STATE: Oklahoma

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Adair County	9769.00	9770.00										
Bryan County	9962.00	9964.00										
Caddo County	9621.00											
Carter County	9928.00	9931.00										
Cherokee County	9779.00	9780.00	9783.00									
Choctaw County	9969.00	9972.00	9973.00									
Custer County	9606.00											
Delaware County	9761.00											
Grady County	1.00	2.00										
Harmon County	9678.00											
Hughes County	9846.00											
Jackson County	9686.00	9687.00										
Kay County	5.00											
Latimer County	9872.00											
McCurtain County	9982.00	9986.00	9987.00									
McIntosh County	9802.00											
Marshall County	9947.00											
Muskogee County	2.00	3.00	4.00	6.00								
Okfuskee County	9810.00											
Okmulgee County	1.00	2.00										

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Oklahoma (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Ottawa County	9745.00											
Payne County	102.00	103.00	104.00	105.00	107.00							
Pittsburg County	9862.00	9863.00	9864.00									
Pontotoc County	9891.00											
Pushmataha County	9976.00											
Seminole County	9635.00	9636.00	9638.00									
Stephens County	6.00											
Washington County	2.00	3.00	9.00									

NONMETROPOLITAN PART OF STATE: Oregon

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Clatsop County	9503.00											
Jefferson County	9604.00											
Klamath County	9716.00	9717.00	9718.00									
Malheur County	9704.00											
Union County	9707.00											

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2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Pennsylvania

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT
Adams County	315.01			
Clarion County	9906.00			
Clinton County	9706.00	9707.00		
Crawford County	1116.00			
Franklin County	110.00			
Huntingdon County	9509.00			
Indiana County	9602.00	9610.00	9611.01	9611.02
Jefferson County	9507.00			
Lawrence County	3.00	4.00	6.00	9.00
Mc Kean County	4202.00			
Mifflin County	9608.00			
Northumberland County	9616.00	9617.00		
Schuylkill County	6.00			
Venango County	2003.00			

NONMETROPOLITAN PART OF STATE: Rhode Island

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT
Newport County	405.00	412.00

NONMETROPOLITAN PART OF STATE: South Carolina

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT
Allendale County	9702.00	9704.00			
Bamberg County	9601.00	9602.00	9603.00		
Barnwell County	9702.00				
Beaufort County	1.00				
Chesterfield County	9506.00	9508.00			
Clarendon County	9605.00	9608.01			
Colleton County	9701.00	9703.00			
Darlington County	106.00	107.00	114.00	115.00	116.00
Dillon County	9701.00	9704.00			
Georgetown County	9802.00	9806.00			
Greenwood County	9705.00				

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: South Carolina (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hampton County	9801.00	9804.00	9805.00					
Lancaster County	107.00	108.00						
Lee County	9805.00	9806.00						
Marion County	9503.00	9504.00	9506.00					
Marlboro County	9602.00	9605.00						
Newberry County	9505.02							
Orangeburg County	102.00	103.00	104.00	105.00	106.00	111.00	112.00	113.00
Union County	302.00							
Williamsburg County	9701.00	9705.01	9705.02	9708.00				

NONMETROPOLITAN PART OF STATE: South Dakota

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT
Bennett County	9406.00	9408.00	9410.00	9411.00	
Buffalo County	9401.00				
Charles Mix County	9702.00	9703.00			
Clay County	9656.00				
Corson County	9405.00	9406.00	9407.00	9408.00	9409.00
Dewey County	9409.00	9413.00	9414.00	9415.00	9416.00
Hyde County	9401.00				
Jackson County	9401.00	9402.00			
Lyman County	9401.00				
Marshall County	9401.00				
Mellette County	9403.00				
Roberts County	9405.00	9406.00			
Shannon County	9403.00	9404.00	9405.00	9406.00	9407.00
Todd County	9401.00	9402.00			
Ziebach County	9411.00	9412.00	9414.00	9415.00	

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Tennessee

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bradley County	103.00	104.00	107.00	108.00								
Campbell County	9502.00	9503.00	9506.00	9510.00								
Claiborne County	9703.00	9704.00	9709.00									
Cocke County	9802.00											
Coffee County	9709.00											
Cumberland County	9704.00											
Fentress County	9651.00											
Greene County	901.00											
Grundy County	9550.00	9553.00										
Hamblen County	1003.00											
Hancock County	9601.00	9602.00	9603.00									
Hardin County	9804.00											
Henry County	9693.00											
Jackson County	9604.00											
Lauderdale County	505.02											
Lawrence County	9603.00											
Marshall County	9553.00											
Maury County	105.00											
Overton County	9501.00											
Putnam County	7.00	8.00										
Roane County	305.00											
Scott County	9753.00											
Weakley County	9682.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Texas

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Anderson County	9505.00	9507.00										
Angelina County	5.00	6.00										
Aransas County	9504.00											
Atascosa County	9603.00	9605.00										
Bee County	9504.00	9505.00	9506.00									
Brewster County	9504.00											
Brooks County	9502.00											
Brown County	9506.00	9507.00	9508.00									
Camp County	9502.00											
Cherokee County	9504.00	9505.00	9507.00									
Cochran County	9501.00											
Cooke County	9904.00	9905.00										
Crosby County	9502.00	9503.00										
Culberson County	9502.00											
Deaf Smith County	9505.00											
DeWitt County	9702.00											
Dimmit County	9501.00	9502.00	9503.00									
Duval County	9501.00	9503.00	9504.00									
Edwards County	9501.00											
Falls County	9903.00	9904.00										
Floyd County	9506.00											
Frio County	9502.00	9503.00										
Gonzales County	9903.00											
Gray County	9506.00	9507.00	9508.00									
Hale County	9501.00	9502.00										
Hall County	9504.00											
Haskell County	9503.00											
Hill County	9609.00	9610.00										
Hockley County	9504.00											
Houston County	9503.00	9504.00										
Howard County	9503.00	9504.00	9505.00									
Hudspeth County	9501.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Texas (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Hutchinson County	9507.00											
Jasper County	9503.00	9506.00										
Jim Hogg County	9504.00											
Jim Wells County	9502.00	9505.00	9506.00	9507.00								
Karnes County	9703.00	9704.00										
Kleberg County	202.00	203.00										
Knox County	9502.00											
Lamar County	5.00	6.00	8.00									
La Salle County	9501.00	9502.00										
Limestone County	9701.00	9704.00										
Marion County	9503.00	9504.00										
Matagorda County	7301.00	7304.00										
Maverick County	9501.00	9502.01	9502.02	9502.03	9503.00	9504.00	9505.00	9506.01	9506.02			
Menard County	9502.00											
Nacogdoches County	9506.00	9507.00	9508.00	9509.00	9510.00							
Navarro County	9708.00											
Newton County	9503.00											
Nolan County	9503.00	9504.00										
Palo Pinto County	9808.00	9809.00										
Pecos County	9503.00											
Presidio County	9502.00											
Reeves County	9501.00	9502.00	9503.00	9505.00								
Robertson County	9602.00	9605.00										
Runnels County	9502.00											
Starr County	9501.01	9501.02	9501.03	9502.01	9502.02	9504.00	9505.00	9506.00	9507.01	9507.02		
Terrell County	9501.00											
Terry County	9504.00											
Titus County	9506.00											
Uvalde County	9505.00											
Val Verde County	9502.02	9503.00	9504.00	9506.01	9506.02	9507.00						
Walker County	7906.00	7907.00	7908.00									
Washington County	1701.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Texas (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Wharton County	7403.00	7407.00										
Wilbarger County	9505.00											
Willacy County	9503.00	9504.00	9505.00	9507.00								
Zapata County	9502.00	9503.00										
Zavala County	9501.00	9502.00	9503.01	9503.02								

NONMETROPOLITAN PART OF STATE: Utah

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Cache County	6.00	7.02	8.00									
Duchesne County	9401.00											
San Juan County	9420.00	9421.00										
Sanpete County	9724.00											
Uintah County	9401.00	9402.00										
Washington County	2713.00											

NONMETROPOLITAN PART OF STATE: Vermont

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Rutland County	9631.00											

NONMETROPOLITAN PART OF STATE: Virginia

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Accomack County	9904.00											
Buchanan County	9901.00	9902.00	9905.00	9907.00								
Buckingham County	9901.00											
Lee County	9901.00	9903.00	9905.00	9906.00								
Montgomery County	202.00	203.00	204.00	206.00	207.00							
Tazewell County	9905.00											
Wise County	9912.00	9915.00										
Franklin city	902.00											
Harrisonburg city	2.02	3.00										
Martinsville city	2.00	4.00										
Radford city	101.00											

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2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: Washington

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Adams County	9504.00											
Asotin County	9804.00											
Chelan County	9610.00											
Clallam County	9801.00											
Cowlitz County	1.00	3.00	5.02	6.01	10.00	11.00						
Grant County	9808.00											
Grays Harbor County	1.00	10.00										
Jefferson County	9501.00											
Kittitas County	9754.01	9755.00	9756.00									
Lewis County	9709.00											
Mason County	9614.00											
Okanogan County	9702.00	9708.00										
Stevens County	9510.00											
Walla Walla County	9204.00	9205.00										
Whitman County	1.00	5.00	6.00									

NONMETROPOLITAN PART OF STATE: West Virginia

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Barbour County	9656.00											
Boone County	9586.00	9587.00										
Calhoun County	9626.00											
Clay County	9579.00	9580.00	9581.00									
Fayette County	204.00	205.00										
Gilmer County	9678.00											
Greenbrier County	9502.00											
Harrison County	301.00	303.00	316.00	317.00								
Lewis County	9674.00											
Lincoln County	9556.00	9557.00	9558.00									
Logan County	9562.00	9566.00										
McDowell County	9536.00	9537.00	9538.00	9539.00	9540.00	9541.00	9542.00	9543.00	9544.00			
Marion County	201.00	202.00	205.00									
Mercer County	9513.00	9516.00	9519.00	9520.00								

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: West Virginia (Continued)

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Mingo County	9571.00	9572.00	9573.00	9574.00	9575.00	9576.00	9577.00					
Monongalia County	101.00	102.00	103.00	106.00	107.00	109.01						
Nicholas County	9803.00	9805.00										
Raleigh County	102.00											
Roane County	9630.00	9631.00										
Summers County	9505.00	9507.00										
Webster County	9701.00	9702.00	9703.00									
Wyoming County	9529.02	9530.00										

NONMETROPOLITAN PART OF STATE: Wisconsin

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Dunn County	9706.00											
Menominee County	9701.00											
Portage County	9604.00											
Vernon County	9602.00											
Walworth County	5.00											

NONMETROPOLITAN PART OF STATE: Wyoming

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Albany County	9630.00	9634.00	9635.00									
Fremont County	9401.00											

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (2000 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF: Puerto Rico												
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Adjuntas Municipio	9563.00	9564.00	9565.00	9568.00								
Barranquitas Municipio	9524.00											
Ciales Municipio	9559.00											
Coamo Municipio	9543.00											
Guanica Municipio	9609.00	9610.00	9612.00	9613.00	9615.00							
Jayuya Municipio	9561.00											
Lares Municipio	9578.00	9579.00	9581.00	9583.00	9584.00							
Las Marias Municipio	9597.00	9599.00										
Maricao Municipio	9601.00											
Orocovis Municipio	9548.02	9549.01	9549.02									
Patillas Municipio	2901.00											
Salinas Municipio	9527.00											
San Sebastian Municipio	9892.00											
Santa Isabel Municipio	9535.00											
Utuado Municipio	9569.00	9574.00	9575.00									
Vieques Municipio	9501.00	9502.00	9503.00									

NONMETROPOLITAN PART OF: Virgin Islands												
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
St. Croix	9702.00	9703.00	9708.00	9709.00	9711.00	9713.00						

2003 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN QUALIFIED CENSUS TRACTS (1990 DATA, MSA/PMSA DEFINITIONS JUNE 30, 1999)

NONMETROPOLITAN PART OF STATE: American Samoa												
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Eastern District	9501.00	9502.00										
Manu'a District	9517.00	9518.00										
Swains Island	9520.00											
Western District	9511.00											

NONMETROPOLITAN PART OF STATE: Guam												
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Guam	9502.00	9512.00	9513.00	9526.00	9530.00	9539.98	9548.00	9555.00				

NONMETROPOLITAN PART OF STATE: Northern Mariana Islands												
COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Northern Islands Municipality	9501.00											
Saipan Municipality	9504.99	9508.00	9511.00	9514.00	9515.00							
Tinian Municipality	9501.00											

[FR Doc. 02-31081 Filed 12-11-02; 8:45 am]
BILLING CODE 4210-62-C

VOL
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2002
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Federal Register

Thursday,
December 12, 2002

Part III

Federal Reserve System

12 CFR Parts 223 and 250
Transactions Between Member Banks and Their Affiliates; Final Rules and Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 223

[Regulation W; Docket No. R–1103]

Transactions Between Member Banks and Their Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a final rule (Regulation W) to implement comprehensively sections 23A and 23B of the Federal Reserve Act and provide several new exemptions consistent with the purposes of the statute. The final rule combines statutory restrictions on transactions between a member bank and its affiliates with numerous Board interpretations and exemptions in an effort to simplify compliance with sections 23A and 23B.

DATES: The final rule is effective April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Pamela G. Nardolilli, Senior Counsel (202/452–3289), or Mark E. Van Der Weide, Counsel (202/452–2263), Legal Division; or Michael G. Martinson, Associate Director (202/452–3640), or Molly S. Wassom, Associate Director (202/452–2305), Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. For users of Telecommunications Device for the Deaf ("TDD") only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

Introduction

Sections 23A and 23B of the Federal Reserve Act are important statutory provisions designed to protect against a depository institution suffering losses in transactions with affiliates. They also limit the ability of a depository institution to transfer to its affiliates the subsidy arising from the institution's access to the Federal safety net. Sections 23A and 23B apply, by their terms, to banks that are members of the Federal Reserve System ("member banks"). Other Federal law subjects insured nonmember banks and insured thrifts to sections 23A and 23B in the same manner and to the same extent as if they were member banks.

Although sections 23A and 23B each explicitly grant the Board broad authority to issue regulations to administer the section,[1] the Board has never issued a regulation fully implementing either section. Instead, depository institutions seeking guidance on how to comply with the statute have relied on a series of Board interpretations and informal staff guidance. Institutions have increasingly sought guidance from the Board on section 23A issues in recent years as a result of the increasing scope of activities conducted by modern financial holding companies and the growing complexities of the U.S. financial markets.

On May 11, 2001, the Board issued a proposed Regulation W to implement comprehensively sections 23A and 23B.[2] The Board decided to issue such a rule for several reasons. First, the new regulatory framework established by the Gramm-Leach-Bliley Act ("GLB Act")[3] emphasizes the importance of sections 23A and 23B as a means to protect depository institutions from losses in transactions with affiliates. In addition, adoption of a comprehensive rule would simplify the interpretation and application of sections 23A and 23B, ensure that the statute is consistently interpreted and applied, and minimize burden on banking organizations to the extent consistent with the statute's goals. Finally, issuing a comprehensive proposed rule allowed the public an opportunity to comment on Board and staff interpretations of sections 23A and 23B, many of which were adopted without the benefit of public comment.

Among other things, the GLB Act required the Board to adopt final rules, by May 12, 2001, to address under section 23A credit exposure by a member bank to its affiliates on derivative transactions and intraday credit extensions. The Board issued interim final rules to fulfill this statutory mandate on May 11, 2001 (concurrently with proposed Regulation W). The interim final rules became effective January 1, 2002. The Board also sought public comment as part of the Regulation W rulemaking process on how these types of transactions should be treated under section 23A.

The Board received approximately 120 public comments on the proposed Regulation W and the interim final rules on derivative transactions and intraday extensions of credit. Commenters included 3 Members of Congress, 75 banking organizations, 20 trade associations representing the banking or financial services industry, 5 state banking departments or other governmental agencies, 9 law firms or individuals, and several other organizations. Nearly all the commenters supported the Board's decision to issue Regulation W and the interim rules but opposed or raised concerns about one or more aspects of the regulations.

The Board has carefully reviewed and analyzed the issues raised by commenters and has decided to issue a final Regulation W that is substantially similar to the proposed rule. The Board has modified the proposed rule in many important respects, however, to reflect the concerns of commenters and further analysis by the Board. The final rule supersedes any Board interpretations or staff opinions of sections 23A and 23B that are inconsistent with the rule. In a separate rulemaking concurrent with the issuance of final Regulation W, the Board is rescinding its existing interpretations of and exemptions from section 23A contained in part 250 of title 12 of the Code of Federal Regulations because all such interpretations and exemptions are included within Regulation W.

The Board expects each depository institution with affiliates that is subject to sections 23A and 23B to implement policies and procedures to ensure compliance with the final rule.

Background

As noted above, sections 23A and 23B by their terms limit the risks to a member bank from transactions with affiliates and limit the ability of a member bank to transfer its Federal subsidy to affiliates. Section 23A achieves these goals in four major ways. First, it limits a member bank's "covered transactions" with any single "affiliate" to no more than 10 percent of the bank's capital stock and surplus, and transactions with all affiliates combined to no more than 20 percent of the bank's capital stock and surplus. "Covered transactions" include purchases of assets from an affiliate, extensions of credit to an affiliate, investments in securities issued by an affiliate, guarantees on behalf of an affiliate, and certain other transactions that expose the member bank to an affiliate's credit or investment risk. A member bank's "affiliates" include, among other companies, any companies that control the bank, any companies under common control with the bank, and certain investment funds that are advised by the bank or an affiliate of the bank.

Second, the statute requires all transactions between a member bank and its affiliates to be on terms and conditions that are consistent with safe and sound banking practices. Third, the statute prohibits a member bank from purchasing low-quality assets from its affiliates. Finally, section 23A requires that a member bank's extensions of credit to affiliates and guarantees on behalf of affiliates be appropriately secured by a statutorily defined amount of collateral.

Section 23B protects a member bank by requiring that certain transactions between the bank and its affiliates occur on market terms; that is, on terms and under circumstances that are substantially the same, or at least as favorable to the bank, as those prevailing at the time for comparable transactions with unaffiliated companies. Section 23B applies this restriction to any covered transaction (as defined in section 23A) with an affiliate as well as certain other transactions, such as (i) any sale of assets by the member bank to an affiliate; (ii) any payment of money or furnishing of services by the member bank to an affiliate; and (iii) any transaction by the member bank with a third party if an affiliate has a financial interest in the third party or if an affiliate is a participant in the transaction.

Section 23A originally was enacted as part of the Banking Act of 1933, and the restrictions of section 23A applied only to member banks. Since 1933, Congress has amended the statute several times, including a comprehensive revision in 1982.[4] Congress also amended the Federal Deposit Insurance Act ("FDI Act") in 1966 to apply section 23A to insured nonmember banks in the same manner and to the same extent as if they were member banks.[5] In addition, Congress revised the Home Owners' Loan Act ("HOLA") in 1989 to apply section 23A to insured savings associations in the same manner and to the same extent as if they were member banks.[6] Congress enacted section 23B of the Federal Reserve Act as part of the Competitive Equality Banking Act of 1987,[7] and has subsequently expanded its scope to cover the same set of depository institutions as are covered by section 23A. Consequently, sections 23A and 23B now apply to all insured depository institutions and uninsured member banks.

The GLB Act amended the Federal Reserve Act in 1999 so that sections 23A and 23B would apply to transactions between a bank and its "financial subsidiaries." Section 23A, as amended by the GLB Act, defines a financial subsidiary as any subsidiary of a bank that would be a financial subsidiary of a national bank under section 5136A of the Revised Statutes of the United States. Section 5136A of the Revised Statutes generally defines a financial subsidiary as a subsidiary of an insured depository institution that engages in activities that are not permissible for national banks to engage in directly (unless national banks are authorized by the express terms of a Federal statute to own or control the subsidiary).[8] The GLB Act provides that a financial subsidiary of a bank, unlike most other subsidiaries of a bank, is considered an "affiliate" of the bank for purposes of sections 23A and 23B. The GLB Act also establishes certain special rules under section 23A for financial subsidiaries.

Explanation of Final Rule

I. Format of Regulation

Regulation W provides users with a single, comprehensive reference tool for complying with and analyzing issues arising under sections 23A and 23B.[9] The regulation restates the statutory definitions, restrictions, and exemptions, and also includes Board interpretations of the sections. Commenters agreed that including the statutory provisions in the rule would make understanding and using the rule easier.

The regulation first provides, in subpart A, a comprehensive glossary of the terms used in the regulation and the statute. The regulation then sets forth, in subpart B, the principal restrictions and requirements imposed by section 23A. Next, in subpart C, the regulation discusses the appropriate valuation and timing principles for covered transactions. Subpart D discusses the appropriate treatment under section 23A for transactions with financial subsidiaries, bank-affiliate derivative transactions, and certain bank-affiliate merger and acquisition transactions. Subpart E sets forth available exemptions from certain of the requirements of section 23A. Subpart F lays out the operative provisions of section 23B. Subpart G discusses the application of sections 23A and 23B and the rule to U.S. branches and agencies of foreign banks. Subpart H contains the Board's miscellaneous interpretations of the statute.

The regulation also includes examples illustrating how several of the rule's provisions would apply in particular circumstances. The examples included in the rule are considered part of the rule and compliance with an example, to the extent applicable, would constitute compliance with the rule. Each example included in the rule illustrates only the scope and application of the particular topic addressed by the example and does not illustrate any other topic or issue that may arise under the rule.

II. Scope of Regulation

As noted above, although sections 23A and 23B apply by their terms only to member banks, the FDI Act subjects insured nonmember banks to the restrictions of sections 23A and 23B as if they were member banks. In order to clarify how sections 23A and 23B applied to each type of bank, the proposed Regulation W applied by its terms to member banks and insured nonmember banks. The Federal Deposit Insurance Corporation ("FDIC") objected to the scope of the proposed rule and urged the Board to amend the rule so that it would not apply by its terms to insured nonmember banks. The Board has decided to revise the rule to apply by its terms only to member banks. Notwithstanding this restriction of the scope of Regulation W, insured nonmember banks must comply with the rule as if they were member banks.[10]

As noted above, HOLA subjects insured savings associations to sections 23A and 23B as if they were member banks. HOLA also imposes several restrictions on transactions between an insured savings association and certain of its affiliates that are not contained in section 23A[11] and provides the Office of Thrift Supervision ("OTS") with authority to impose additional restrictions on transactions between an insured savings association and its affiliates.[12] In light of the stricter regulatory regime governing transactions between an insured savings association and its affiliates and in light

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[1] 12 U.S.C. 371c(f), 371c–1(e).

[2] 66 FR 24186, May 11, 2001.

[3] Pub. L. 106–102, 113 Stat. 1338 (1999).

[4] Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97–320, § 410, 96 Stat. 1515 (1982) (codified at 12 U.S.C. 371c).

[5] Pub. L. 89–485, § 12(c), 80 Stat. 242 (1966) (codified at 12 U.S.C. 1828(j)).

[6] Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101–73, § 301, 103 Stat. 342 (1989) (codified at 12 U.S.C. 1468(a)).

[7] Pub. L. 100–86, § 102, 101 Stat. 552, 564 (1987) (codified at 12 U.S.C. 371c–1).

[8] *See* 12 U.S.C. 24a(g).

[9] The regulation implements sections 23A and 23B of the Federal Reserve Act. The regulation does not contain or implement statutory or regulatory restrictions on transactions between member banks and their affiliates that may be applicable under other provisions of law, including those that may apply to member banks subject to prompt corrective action under section 38 of the FDI Act (12 U.S.C. 1831o).

[10] Accordingly, an insured nonmember bank also may take advantage of Regulation W's exemptions as if it were a member bank.

[11] HOLA prohibits an insured savings association from (i) making loans or extending credit to any affiliate unless that affiliate is engaged solely in activities that the Board has determined to be permissible under section 4(c) of the Bank Holding Company Act (12 U.S.C. 1843(c)); and (ii) investing in securities issued by any affiliate other than shares issued by a subsidiary. 12 U.S.C. 1468(a)(1).

[12] 12 U.S.C. 1468(a)(4).

of a request by the OTS that Regulation W not specifically cover such institutions, the final rule (like the proposed rule) does not apply by its terms to insured savings associations. The Board notes, however, that because insured savings associations are subject to sections 23A and 23B as if they were member banks, insured savings associations must comply with Regulation W as if they were member banks.[13] Moreover, any parallel regulation adopted by the OTS to govern transactions with affiliates must be at least as strict on insured savings associations as Regulation W is on member banks.

III. Definitions—Subpart A

Subpart A of Regulation W sets forth definitions of the terms used in sections 23A and 23B and the rule. Terms that are defined in the regulation as they are defined in the statute generally are not discussed below. Material terms that the Board proposes to define or clarify for purposes of the regulation are discussed below.

A. Definition of Affiliate (§ 223.2)

1. Investment Funds Advised by the Member Bank or an Affiliate of the Member Bank (§ 223.2(a)(6))

Section 23A includes as an affiliate any company that is sponsored and advised by the member bank or any of its affiliates.[14] Section 23A also includes as an affiliate any investment company for which the member bank or its affiliate serves as an investment advisor, as defined in the Investment Company Act of 1940 ("1940 Act").[15] The proposed regulation included these provisions and also included as an affiliate any investment fund—even if not an investment company for purposes of the 1940 Act—for which the member bank or an affiliate of the bank serves as an investment advisor, if the bank or an affiliate of the bank owns or controls more than 5 percent of any class of voting securities or similar interests of the fund.[16]

A number of commenters expressed opposition to this proposal. According to these commenters, the proposal would violate the careful statutory framework established by Congress for determining which investment funds are affiliates of banks. In addition, these commenters claimed that there is little potential for conflicts of interest, and no evidence of abuse, in transactions between banks and unregistered funds. One commenter urged the Board to deem an unregistered investment fund to be an affiliate of a bank only if the bank or an affiliate controls the fund.

The Board has determined to adopt this proposal. Most investment funds that are advised by a member bank (or an affiliate of a member bank) are affiliates of the bank under section 23A because the funds either are investment companies under the 1940 Act or are sponsored by the member bank (or an affiliate of the member bank). In some instances, however, the member bank or its affiliate may advise but not sponsor an investment fund that is not an investment company under the 1940 Act. Although such a fund would not fit within the statutory definition of affiliate, section 23A also authorizes the Board to determine, by regulation or order, that any company is an affiliate of a member bank if the company has "a relationship with the member bank or any subsidiary or affiliate of the member bank, such that covered transactions by the member bank or its subsidiary with that company may be affected by the relationship to the detriment of the member bank or its subsidiary."[17]

The Board believes that the advisory relationship of a member bank or affiliate with an investment fund presents the same potential for conflicts of interest regardless of whether the fund is an investment company under the 1940 Act.[18] An investment fund typically escapes from the definition of investment company under the 1940 Act because it (i) sells interests only to a limited number of investors or only to sophisticated investors; or (ii) invests primarily in financial instruments that are not securities.[19] The Board does not believe that the private nature or investment strategy of a fund should have a substantial effect on the fund's affiliate status under section 23A because these factors do not alter the conflicts of interest presented in the advisory relationship between the member bank or its affiliate and the fund.[20]

2. Financial Subsidiaries (§§ 223.2(a)(8) and 223.3(p))

Congress amended section 23A in 1982 to provide that subsidiaries of a member bank are not affiliates of the bank under the statute. Congress adopted this approach on the premise that subsidiaries of a member bank generally are consolidated with the bank and engage only in those activities that the bank itself could engage in directly, and hence that such a subsidiary was more like a department of the bank than a separate company. In order to prevent evasions of section 23A, the 1982 amendments gave the Board explicit authority to treat as an affiliate of a member bank any subsidiary if the relationship between the bank and the subsidiary could affect transactions between the companies to the detriment of the bank.[21]

In 1997, in light of the expanding powers of subsidiaries of banks, the Board relied on this statutory authority to issue for comment a proposal to extend section 23A to transactions between a member bank and a subsidiary of the bank engaged in activities not permissible for the bank to engage in directly. The Board took no final action on this proposal in light of Congressional consideration of financial modernization legislation. In 1999, the GLB Act authorized banks to own "financial subsidiaries" that engage in activities not permissible for the parent bank to conduct directly, such as underwriting and dealing in bank-ineligible securities. The GLB Act also amended section 23A to define a financial subsidiary of a bank as an affiliate of the bank and, thus, subjected transactions between the bank and a financial subsidiary to the limitations of sections 23A and 23B.

Section 23A, as amended by the GLB Act, defines a financial subsidiary as a subsidiary of any bank (state or national) that is engaged in an activity

[13] Accordingly, an insured savings association also may take advantage of Regulation W's exemptions as if it were a member bank.

[14] 12 U.S.C. 371c(b)(1)(D)(i).

[15] 12 U.S.C. 371c(b)(1)(D)(ii).

[16] As noted above, proposed Regulation W applied by its terms to "banks," and the final rule applies by its terms only to member banks. Nevertheless, to make comparisons of the proposed and final rules easier for readers, the remainder of this preamble discusses the proposed rule as if it applied only to member banks.

[17] 12 U.S.C. 371c(b)(1)(E).

[18] In fact, a member bank may face greater risk from the conflicts of interest arising from its relationships with an investment fund that is not registered as an investment company under the 1940 Act because the 1940 Act restricts transactions between a registered investment company and entities affiliated with the company's investment advisor. *See* 15 U.S.C. 80a–17.

[19] The term "investment company" in the 1940 Act does not include a company that is owned by qualified persons or by no more than 100 persons, provided that the company does not engage in a public offering of its securities. *See* 15 U.S.C. 80a–3(c)(1), (7). The term also generally does not include investment funds that are engaged primarily in investing in financial instruments other than securities. *See* 15 U.S.C. 80a–3(a)(1).

[20] The Board also believes that investment funds organized outside the United States for which a member bank or affiliate serves as investment advisor are affiliates of the bank for purposes of section 23A. *See* Letter dated July 24, 1990, from J. Virgil Mattingly, Jr., General Counsel of the Board, to Anne B. McMillen. The term "investment company" in the 1940 Act does include investment funds organized under the laws of a non-U.S. jurisdiction.

[21] 12 U.S.C. 371c(b)(2)(A).

that is not permissible for *national* banks (other than a subsidiary that Federal law specifically authorizes national banks to control).[22] Proposed Regulation W defined financial subsidiary by repeating the definition of the term in section 23A. The proposed rule also noted that many state banks have authority to engage in activities that would not be permissible for national banks and sought comment on how to apply the section 23A definition of financial subsidiary to state banks. In addition, the proposal requested comment on whether to exempt from the definition of financial subsidiary any subsidiary of a bank that engages solely in agency activities.

a. *Subsidiaries of state banks.*—Commenters offered a wide variety of alternative ways for the Board to apply the statute's definition of financial subsidiary to state banks. One set of commenters (including the Conference of State Bank Supervisors and the American Bankers Association) asked the Board to define a financial subsidiary of a state bank to include only those subsidiaries that are engaged in activities that the parent *state* bank could not engage in directly. Another set of commenters argued that the Board should define a financial subsidiary of a state bank to include only those subsidiaries subject to section 46 of the FDI Act; that is, those subsidiaries that are engaged in *principal* activities that may only be conducted by a national bank through a financial subsidiary (currently, only subsidiaries engaged in underwriting and dealing in bank-ineligible securities). Other commenters advocated for a complete exemption for all subsidiaries of a state bank. Over 30 commenters—the largest number of commenters on any issue raised by the proposed rule—urged the Board to define financial subsidiary to exclude those subsidiaries of state banks that are engaged in grandfathered securities investment activities under section 24(f) of the FDI Act.[23]

The Board believes that the literal terms of section 23A provide that a subsidiary of a state bank that engages in an activity that is not permissible for *national* banks to conduct directly is a financial subsidiary of the state bank (unless Federal law specifically authorizes *national* banks to control such a subsidiary). This conclusion holds regardless of whether the activity (i) is permissible for the state bank to conduct directly; (ii) is an agency or principal activity; (iii) was approved by the FDIC under section 24 of the FDI Act; or (iv) was conducted by the subsidiary before the enactment of the GLB Act.

The final rule defines financial subsidiary in this manner but also contains exemptions for two classes of subsidiaries of state banks. First, the final rule exempts any subsidiary of a state bank that engages in activities that the parent *state* bank may engage in directly under Federal and state law.[24] In the Board's view, if a state bank has authority under applicable law to conduct an activity directly in the bank, section 23A normally should not apply to transactions between the bank and a subsidiary engaged in the activity. In these circumstances, the bank could conduct the activity directly in the bank and fund the activity free of section 23A. The Board is aware of no material supervisory reason to create a disincentive for the bank to conduct such a bank-permissible activity through a subsidiary if the bank has determined—for tax, liability, or other reasons—that the activity is most safely and efficiently conducted through a subsidiary. This approach is consistent with the spirit of the GLB Act and with the Board's 1997 rulemaking on subsidiaries of member banks.

Second, the final rule exempts any subsidiary of a state bank that engages in activities that the subsidiary was legally conducting before issuance of final Regulation W. Among other things, this exemption would remove from the definition of financial subsidiary those subsidiaries of state banks that are engaged in the limited, grandfathered securities investment activities authorized under section 24(f) of the FDI Act. The Board does not believe that this exemption would apply to a significant number of other material subsidiaries of state banks. The exemption would be appropriate, however, so as not to impose a hardship on the existing business operations and structures of state banks.[25]

As noted above, some commenters argued that the only section 23A financial subsidiaries of state banks are those subsidiaries that are subject to section 46 of the FDI Act. The Board does not believe that this argument is convincing. Although section 46 of the FDI Act specifically notes that sections 23A and 23B apply to transactions between a state bank and a section 46 subsidiary, section 46 does not change the definition of financial subsidiary contained in section 23A or, by its terms, limit the coverage of section 23A's financial subsidiary provisions to only section 46 subsidiaries.

Several commenters also argued that the Board should exempt any subsidiary of a state bank (other than a section 46 subsidiary) approved by the FDIC under section 24 of the FDI Act. Section 24 of the FDI Act prevents a subsidiary of an insured state bank from engaging in any principal activity that is not permissible for a subsidiary of a national bank unless (i) the FDIC has made a determination that the activity would pose no significant risk to the Federal deposit insurance funds; and (ii) the state bank remains in compliance with the capital guidelines of its appropriate Federal banking agency.[26] As noted above, the final rule contains an exemption for any subsidiary of a state bank that engages in activities permissible for the parent state bank to conduct directly. Accordingly, the principal effect of granting an exemption for section 24 subsidiaries would be to exempt from section 23A transactions between a state bank and

[22] Specifically, section 23A defines a "financial subsidiary" as "any company that is a subsidiary of a bank that would be a financial subsidiary of a national bank under section 5136A of the Revised Statutes of the United States." 12 U.S.C. 371c(e)(1). Section 5136A, in turn, defines a financial subsidiary as any company that is controlled by one or more insured depository institutions, *other than* (i) a subsidiary that engages solely in activities that national banks are permitted to engage in directly or (ii) a subsidiary that national banks are specifically authorized to control by the express terms of a Federal statute (other than section 5136A), such as an Edge Act corporation or a SBIC. 12 U.S.C. 24a(g)(3). Section 5136A also generally prohibits a financial subsidiary of a national bank from engaging in insurance underwriting, real estate investment and development, or merchant banking activities. 12 U.S.C. 24a(a)(2).

[23] 12 U.S.C. 1831a(f). Section 24(f) of the FDI Act permits state banks that had lawfully made certain liquid equity investments in 1990–91 to continue to engage in such equity investment activities so long as such equity investments do not exceed an amount equal to the bank's capital.

[24] For purposes of applying this exemption, a state bank may directly engage in an activity under Federal law if Federal law does not prohibit the state bank from directly engaging in the activity. If, on the other hand, Federal law prohibits a state bank from directly engaging in an activity—such as equity investment (see 12 U.S.C. 1831a(c) and (f))—a subsidiary of a state bank that engaged in the activity could not qualify for this exemption.

[25] Neither of these exemptions would be available for any subsidiary of a state bank that engages in principal activities that the GLB Act requires a national bank to conduct in a financial subsidiary, such as underwriting and dealing in bank-ineligible securities. Section 46 of the FDI Act explicitly provides that such subsidiaries of a state bank are to be treated as section 23A affiliates of the bank. 12 U.S.C. 1831w.

The GLB Act authorizes the Board and the Treasury Department to determine jointly, on or after November 12, 2004, that financial subsidiaries may engage in merchant banking activities. GLB Act § 122. If the Board and Treasury were to make such a determination, the merchant banking subsidiaries of banks would be section 23A financial subsidiaries under the final rule.

[26] 12 U.S.C. 1831a(d).

its section 24 subsidiaries engaged in activities the parent bank may not conduct directly. Such subsidiaries would include those engaged in equity investment (which Federal law prohibits insured state banks from engaging in)[27] or real estate investment and development (in those states that do not permit state banks to conduct such activities directly).

Commenters argued that various considerations support granting an exemption for section 24 subsidiaries that conduct activities not permissible for their parent state bank. First, commenters contended that section 24 of the FDI Act and the FDIC's regulations thereunder establish a reasonably comprehensive system for protecting insured state banks that engage, or propose to engage, in principal activities not permissible for national banks. In this regard, the FDIC's section 24 regulations impose restrictions on transactions between a state bank and many types of section 24 subsidiaries (including subsidiaries engaged in real estate investment and development).[28] In addition, the FDIC has approved only a few hundred section 24 subsidiaries since Congress added section 24 to the FDI Act in 1991, and the FDIC has received very few requests under section 24 in the past couple of years. Finally, a large majority of section 24 subsidiaries represent a small part of the capital of their parent state banks, and section 24 subsidiaries have not to date materially affected the safety and soundness of state banks.

The Board believes that there are important reasons, however, not to include in the final rule an exemption for section 24 subsidiaries that engage in activities their parent bank may not conduct directly. First, Congress provided a definition of financial subsidiary in section 23A that, by its terms, covers section 24 subsidiaries.[29] In addition, coverage of section 24 subsidiaries that engage in activities not permissible for their parent bank (and, by definition, activities not permissible for national banks) is consistent with an important purpose of the GLB Act—constraining the ability of a bank to transfer the subsidy arising from the bank's access to the Federal safety net to affiliates engaged in activities that the bank cannot conduct directly.

Furthermore, the activities conducted by many section 24 subsidiaries, including in particular real estate investment and development, increase the risk profile of their parent bank and historically have caused significant losses to the Federal deposit insurance funds.[30] Although section 24 subsidiaries have not to date imperiled their parent banks, banks have been operating in a favorable economic environment since Congress enacted section 24 of the FDI Act. Moreover, the section 24 restrictions imposed by the FDIC are not as comprehensive as those in section 23A[31] and could be removed or relaxed by the FDIC at any time.[32] Furthermore, although the Board could revoke any exemption granted to section 24 subsidiaries if the exemption were to have adverse safety and soundness consequences, such a future revocation may be difficult to effect because it would come at a time when state banks are least able to comply with the requirements of section 23A. For these reasons, the final rule does not contain an exemption for section 24 subsidiaries of a state bank that engage in activities their parent bank may not conduct directly.

b. *Agency subsidiaries of national banks and state banks.*—Section 23A's definition of financial subsidiary does not exclude subsidiaries of banks that are engaged solely in agency activities.[33] As a result, insurance agency subsidiaries of national banks that operate outside a town of 5,000, for example, are financial subsidiaries of their parent banks under the statute.

A large number of commenters urged the Board to exclude subsidiaries engaged in agency activities from the definition of financial subsidiary. The Board has decided to exempt from the definition of financial subsidiary any subsidiary of a national bank or state bank that would be considered a financial subsidiary solely because the subsidiary engages in insurance agency activities that are not permissible for the parent bank. The Federal banking agencies have had significant experience in supervising insurance agency subsidiaries of banks, and such subsidiaries do not pose the kind of threat to bank safety and soundness that section 23A was designed to prevent. In addition, because insurance agency subsidiaries are not capital-intensive, they require little funding from the parent bank and, hence, stand to benefit less from the subsidy implicit in the Federal safety net than would a subsidiary engaged in activities as principal. Under the final rule, therefore, subsidiaries of banks engaged in insurance agency activities or agency activities permissible for the bank to engage in directly are not section 23A financial subsidiaries.

The Board does not believe that it is appropriate at this time to grant an exemption for all subsidiaries engaged exclusively in agency activities because defining what constitutes an agency activity is problematic, and some agency activities involve significant risk. In the unusual circumstance where a subsidiary of a bank conducts a non-insurance agency activity that is not permissible for the bank to conduct directly, the bank may request that the Board grant a specific exemption for the subsidiary.

[27] Federal law generally prohibits insured state banks from making equity investments of a type or in an amount that is not permissible for national banks. *See* 12 U.S.C. 1831a(c) and (f).

[28] *See* 12 CFR 362.4(b)(5) and (d).

[29] Some commenters argued that section 24 subsidiaries engaged in real estate investment and development or equity investment are not section 23A financial subsidiaries because (i) section 23A defines a financial subsidiary as a subsidiary that "would be a financial subsidiary of a national bank under section 5136A of the Revised Statutes" and (ii) section 5136A prohibits financial subsidiaries of national banks from engaging in real estate investment and development and merchant banking. The Board finds this argument unpersuasive. Although section 5136A prohibits financial subsidiaries of national banks from engaging in real estate investment and development or equity investment, a subsidiary engaged in such activities would meet the terms of the financial subsidiary definition in section 23A and section 5136A.

[30] As noted above, Congress expressed specific concern in the GLB Act about real estate investment and development by prohibiting the financial subsidiaries of national banks from engaging in these activities. 12 U.S.C. 24a(a)(2). It is also worth noting that, because the final rule includes an exemption for subsidiaries of a state bank engaged in activities that the parent state bank could engage in directly, the principal beneficiaries of a separate exemption for section 24 subsidiaries would be subsidiaries of a state bank engaged in activities that state or Federal law has determined are too risky to be conducted directly in the bank.

[31] The FDIC's restrictions, among other things, do not (i) include a 10 percent quantitative limit on covered transactions between the bank and any single section 24 subsidiary; (ii) restrict the ability of a bank to finance a third party's purchase of assets from a section 24 subsidiary of the bank; or (iii) treat a purchase of assets from a section 24 subsidiary or the issuance of a guarantee or letter of credit on behalf of a section 24 subsidiary as covered transactions.

[32] In many past cases, the FDIC required state banks to deduct from tier 1 capital the full amount of their equity investments in most section 24 subsidiaries (including real estate investment and development subsidiaries). Consistent with the interagency capital rule on nonfinancial equity investments adopted on January 25, 2002, however, the FDIC now requires that state banks deduct from tier 1 capital between 8 percent and 25 percent of an equity investment in most section 24 subsidiaries. *See* 12 CFR part 325, Appendix A, § II.B.6.ii. The FDIC retains authority under the nonfinancial equity investment capital rule to apply a higher capital charge on these investments, but the FDIC has not chosen to do so at this time.

[33] Some commenters argued that agency subsidiaries of state banks cannot be financial subsidiaries under section 23A because (i) the only section 23A financial subsidiaries of state banks are subsidiaries that qualify as financial subsidiaries under section 46 of the FDI Act and (ii) agency subsidiaries cannot qualify as financial subsidiaries under section 46. For the reasons discussed above, the Board does not believe that this argument is convincing.

The Board notes that it retains discretion under section 23A to determine, by regulation or order, that any subsidiary of a member bank (even a subsidiary that qualifies for a regulatory exemption from the definition of financial subsidiary) is an affiliate of the bank if the relationship between the bank and the subsidiary is such that covered transactions between the bank and the subsidiary may be affected by the relationship to the detriment of the bank.[34]

c. *Subsidiaries of thrifts.*—Although section 23A applies by its terms only to member banks, HOLA subjects every thrift to section 23A "in the same manner and to the same extent as if the [thrift] were a member bank."[35] As noted above, section 23A defines a financial subsidiary as "any company that is a subsidiary of a *bank* that would be a financial subsidiary of a national bank." Because all "member banks" under section 23A are also "banks" under section 23A, and because HOLA subjects every thrift to section 23A as if the thrift were a "member bank," one could read the financial subsidiary definition in section 23A as covering any subsidiary of a thrift that would be a financial subsidiary of a national bank.

On the other hand, the OTS argued that thrifts generally are not "banks" under section 23A and, hence, that thrifts do not have financial subsidiaries under section 23A. The OTS also pointed out that, although the GLB Act contains explicit and detailed provisions (unrelated to section 23A) regarding financial subsidiaries of national banks and state banks, the GLB Act does not contain any explicit reference to financial subsidiaries of thrifts. In addition, HOLA already contains numerous provisions that protect thrifts in their transactions with subsidiaries. For example, HOLA requires thrifts to deduct from their capital all investments in, and extensions of credit to, any subsidiary engaged in activities that are not permissible for national banks.[36] HOLA also prohibits a thrift from investing more than 3 percent of its assets in service corporation subsidiaries.[37] The Board further notes that there is little empirical evidence to date that subsidiaries of thrifts have had a material adverse effect on the safety or soundness of their parent thrifts since becoming subject to heightened Federal regulation in 1989.

In light of the statutory ambiguities, the protections contained in HOLA, and a request by the OTS that the final rule not treat subsidiaries of thrifts as financial subsidiaries, the final rule does not address financial subsidiaries of thrifts.

3. Companies Held Under Merchant Banking or Insurance Company Investment Authority (§ 223.2(a)(9))

The GLB Act amended the Bank Holding Company Act ("BHC Act") to permit bank holding companies ("BHCs") and foreign banks that qualify as financial holding companies ("FHCs") to engage in merchant banking and insurance company investment activities.[38] If a FHC owns or controls more than 25 percent of a class of voting shares of a company under the merchant banking or insurance company investment authority, the company is an affiliate of any member bank controlled by the FHC by operation of the statutory definitions contained in section 23A. The GLB Act also added paragraph (b)(11) to section 23A, which creates a rebuttable presumption that a company is an affiliate of a member bank for purposes of section 23A if the bank is affiliated with a FHC and the FHC owns or controls 15 percent or more of the equity capital of the company pursuant to the FHC's merchant banking or insurance company investment authority.[39]

The regulation includes within the definition of "affiliate" any company subject to this rebuttable presumption. The regulation also provides a definition of equity capital, identifies three situations or "safe harbors" where the statute's presumption would be deemed to be rebutted, and clarifies the application of the presumption to private equity funds. The Regulation W provisions that implement the statutory presumption are substantially identical to those contained in the Board's merchant banking rule.[40]

The statute does not provide a definition of equity capital. The regulation defines equity capital roughly in accordance with the GAAP definition of stockholders' equity. Equity capital includes a company's preferred stock, common stock, capital surplus, retained earnings, and accumulated other comprehensive income, less treasury stock.[41] The definition of equity capital also makes clear that any other account of the company that constitutes equity should be included in the company's equity capital. Accordingly, the Board retains its authority on a case-by-case basis to require a holding company to treat a subordinated debt investment in a company as equity capital of the company for purposes of applying the 15 percent presumption.

The regulation also provides three specific regulatory safe harbors from the 15 percent presumption. These safe harbors apply in situations where the holding company owns or controls more than 15 percent of the total equity of the company under the merchant banking or insurance company investment authority (thereby triggering the statutory presumption) and less than 25 percent of any class of voting securities of the company (thereby not meeting the statutory definition of control). The three situations are substantially identical to those listed in the Board's merchant banking regulation.[42]

The first exemption applies where no director, officer, or employee of the holding company serves as a director (or individual exercising similar functions) of the company. The second exemption applies where an independent third party controls a greater percentage of the equity capital of the company than is controlled by the holding company, and no more than one officer or employee of the holding company serves as a director (or individual exercising similar functions) of the company. The third exemption applies where an independent third party controls more than 50 percent of the voting shares of the company, and officers and employees of the holding company do not constitute a majority of the directors (or individuals exercising similar functions) of the company.[43]

[34] 12 U.S.C. 371c(b)(1)(E) and (b)(2)(A). As discussed below in part III.A.6. of this preamble, § 223.2(a)(12) of the final rule also authorizes the appropriate Federal banking agency for a depository institution to determine by order that a subsidiary of the institution is an affiliate.

[35] 12 U.S.C. 1468(a).

[36] 12 U.S.C. 1464(t)(5); 12 CFR 559.3(j)(2) and part 567.

[37] 12 U.S.C. 1464(c)(4)(B).

[38] GLB Act § 103(a); 12 U.S.C. 1843(k)(4)(H) and (I).

[39] GLB Act § 121(b)(2). As noted above, this rebuttable presumption applies only if the affiliated FHC owns or controls 15 percent or more of the company's equity capital under the new merchant banking or insurance company investment authorities. The Board notes, however, that under existing Board precedents a BHC may not own any shares of a company in reliance on section 4(c)(6) or 4(c)(7) of the BHC Act where the holding company owns or controls, in the aggregate under a combination of authorities, more than 5 percent of any class of voting securities of the company.

[40] *See* 12 CFR 225.176(b).

[41] Although the proposed rule only explicitly included *perpetual* preferred stock in a company's equity capital, the final rule includes all forms of preferred stock. The Board believes that any instrument in the form of equity should be treated as equity capital for purposes of Regulation W.

[42] *See* 12 CFR 225.176(b)(2) and (3).

[43] For purposes of these safe harbors, the rule provides that the term "holding company" includes any subsidiary of the holding company, including any subsidiary bank of the holding company. Accordingly, if a director of a subsidiary bank or

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These safe harbors do not require Board review or approval. Moreover, the safe harbors are not intended to be a complete list of circumstances in which the 15 percent presumption may be rebutted. The regulation also provides, consistent with the GLB Act, that a holding company may rebut the presumption with respect to a portfolio company by presenting information to the Board that demonstrates, to the Board's satisfaction, that the holding company does not control the portfolio company. The Board notes that a company that qualifies as an affiliate under the 15 percent presumption and under another prong of the regulation's definition of affiliate cannot avoid affiliate status through a rebuttal of the 15 percent presumption (either by qualifying for one of the three regulatory safe harbors or by obtaining an ad hoc rebuttal of the presumption from the Board).

A FHC generally is considered to own or control only those shares or other ownership interests that are owned or controlled by itself or by a subsidiary of the holding company. The rule clarifies that, for purposes of applying the presumption of affiliation described above, a FHC that has an investment in a private equity fund (as defined in the Board's merchant banking rule) will not be considered indirectly to own the equity capital of a company in which the fund has invested unless the FHC controls the private equity fund (as described in the Board's merchant banking rule).

4. Partnerships (§ 223.2(a)(4) and (10))

The proposed rule generally deemed partnerships for which the member bank or an affiliate of the bank serves as a general partner to be an affiliate of the bank. Several commenters expressed concern that this interpretation of section 23A would eliminate bank funding of legitimate commercial and community development transactions. This concern of commenters is unwarranted. Although partnerships for which a member bank serves as a general partner are on the section 223.2(a) list of entities that generally are affiliates, such partnerships typically will be excluded from the definition of affiliate in section 223.2(b) as subsidiaries of their parent bank. The Board traditionally has considered the general partner interest in a limited partnership to be a separate class of voting securities of the partnership. Accordingly, a limited partnership would be considered an operating subsidiary of a member bank (that is, a subsidiary of a member bank that is not a section 23A affiliate of the bank) in the typical circumstances where the member bank owns or controls more than 25 percent of the general partner interests in the partnership and the partnership is not a financial subsidiary of the bank.

The final rule amends the proposed rule on general partners in one respect to prevent evasion. The proposed rule defined as an affiliate of a member bank any partnership if the member bank or an affiliate of the bank causes any officer or employee of the bank or affiliate to serve as a general partner of the partnership (unless the partnership is an operating subsidiary of the bank, as discussed above). The final rule expands the proposed rule to provide that a partnership also will be considered an affiliate of the member bank if the bank or an affiliate of the bank causes any *director* of the bank or affiliate to serve as a general partner of the partnership (unless the partnership is an operating subsidiary of the bank).

5. Subsidiaries of Affiliates (§ 223.2(a)(11))

In the proposal, the Board invited public comment on whether to add to the definition of affiliate any company controlled by an investment fund that is an affiliate of the member bank. A few commenters objected to this proposal on the grounds that it would have little section 23A benefit and would require banks to implement complex monitoring and aggregation systems.

The Board has decided to accord affiliate status to any company controlled by an investment fund affiliate of a member bank. The conflicts of interest that exist between a member bank and any investment fund that it or its affiliate advises also would appear to exist between the bank and a portfolio company controlled by the fund. A member bank would have an incentive to provide financial assistance to such a portfolio company in order to enhance the returns of the investment fund affiliate of the bank. As a result, covered transactions between the member bank and such a portfolio company may be affected by the control relationship between the investment fund and the portfolio company to the detriment of the bank.

The Board also has determined, more broadly, to deem an affiliate any company controlled by another affiliate of the member bank. This regulatory position is consistent with the long-standing view of Board staff. Although section 23A by its terms defines as affiliates most subsidiaries of an affiliate of the member bank, there are a few exceptions to the rule. In addition to covering subsidiaries of investment fund affiliates, this action will make clear, for example, that subsidiaries of interlocking directorate affiliates (§ 223.2(a)(4)) and sponsored and advised affiliates (§ 223.2(a)(5)) also are treated as affiliates of the member bank. Again, the control relationship between such statutory affiliates and their subsidiaries may affect covered transactions between the member bank and such subsidiaries to the detriment of the bank.

6. Companies Designated by the Appropriate Federal Banking Agency (§ 223.2(a)(12))

As noted above, section 23A authorizes the Board to determine that any company that has certain relationships with a member bank or an affiliate of the bank is itself an affiliate of the bank. Unlike the proposed rule, final Regulation W provides that these determinations may be made by the Board or by the appropriate Federal banking agency for the relevant depository institution (under authority delegated by the Board). The Board believes that this delegation of authority should enhance the ability of the Federal banking agencies to protect depository institutions in their transactions with associated companies. A depository institution may petition the Board for review of any such affiliate determination made by the institution's appropriate Federal banking agency under the general procedures established by the Board for review of actions taken under delegated authority.[44]

7. Certain Joint Venture Companies (§ 223.2(b)(1)(iii))

As noted above, under the terms of section 23A, subsidiaries of a member bank generally are not treated as affiliates of the bank, even if they would otherwise qualify as affiliates.[45] The statute contains two specific exceptions to this general rule: "Financial subsidiaries" of a member bank and "bank" subsidiaries of a member bank are treated as affiliates of the parent bank. As also noted above, the statute provides that the Board may determine that other subsidiaries of a member bank should be treated as affiliates in appropriate circumstances.[46]

Pursuant to this authority, the Board proposed that two additional classes of subsidiaries of a member bank should be treated as affiliates: (i) Certain joint venture companies; and (ii) employee benefit plans. This section of the preamble discusses joint venture companies; the following section addresses employee benefit plans.

First, the proposed regulation provided that any subsidiary of a member bank in which an affiliate of the bank directly owns or controls 25 percent or more of any class of voting securities would be considered an affiliate of the bank. For example, under the proposed rule, a joint venture company that is 50 percent owned by a BHC directly and 50 percent owned by one of its subsidiary member banks, would be treated as an affiliate of the bank.

One commenter objected to this provision in light of the fact that such joint venture companies and their investors are supervised by the Federal banking agencies. The Board does not believe that supervision of the joint venture company or the affiliated investor is sufficient to protect the member bank. Although such a joint venture company qualifies as a subsidiary of the member bank under section 23A because the bank owns more than 25 percent of the company's voting stock, an affiliate's substantial direct interest in the company creates the potential for conflicts of interest that may endanger the bank. The Board notes that, with the limited exception of sister banks, Congress did not exempt entities from the definition of affiliate under section 23A because of their supervisory status.[47]

The Board has determined to modify the joint venture rule in several respects. The proposed rule only treated a subsidiary of a member bank as an affiliate of the bank if one or more *affiliates* of the bank directly owned or controlled *25 percent or more of any class of voting securities* of the joint venture. The final rule, however, treats a subsidiary of a member bank as an affiliate if one or more affiliates of the bank, *or one or more controlling shareholders of the bank*, directly *control* the joint venture. The Board intends this expansion of the joint venture exclusion to cover situations where an affiliate exercises direct control over the joint venture through a manner other than ownership of voting securities (for example, through majority interlock or ownership of nonvoting securities). This expansion also covers situations where a controlling natural person shareholder or group of controlling natural person shareholders of the member bank (who, as natural persons, are not themselves section 23A affiliates of the bank) exercise direct control over the joint venture company.

This regulatory treatment of certain bank-affiliate joint ventures as affiliates does not apply to joint ventures between a member bank and any affiliated insured depository institutions. For example, if two affiliated member banks each own 50 percent of the voting common stock of a company, the company would continue to qualify as a subsidiary and not an affiliate of each bank (despite the fact that an affiliate of each bank owned more than 25 percent of a class of voting securities of the company). Such a special rule for joint ventures between a member bank and affiliated insured depository institutions is consistent with the purpose behind the sister-bank and affiliated-bank exemptions contained in section 23A. The Board does not believe that transactions between a member bank and a company that is wholly owned by the member bank and its affiliated insured depository institutions generally pose material risks to the safety and soundness of the shareholding institutions or to the Federal deposit insurance funds. The Board would retain authority to treat such joint ventures as affiliates under section 23A on a case-by-case basis.

8. Employee Benefit Plans (§ 223.2(b)(1)(iv))

The second proposed regulatory exception to the general rule that subsidiaries of a member bank are not treated as affiliates of the bank relates to employee benefit plans. Board staff traditionally has taken the position that most employee stock option plans, trusts, or similar entities that exist to benefit shareholders, members, officers, directors, or employees of a member bank or its affiliates ("ESOPs") should be treated as affiliates of the bank for purposes of sections 23A and 23B. In most cases, the ESOP's share ownership or the interlocking management between the ESOP and its associated member bank or BHC exceeds the statutory thresholds for determining that a company is an affiliate. Some institutions have argued, however, that ESOPs should be considered subsidiaries of the member bank and therefore exempt from coverage. The proposed rule provided that the ESOP of a member bank or an affiliate of the bank cannot itself avoid classification as an affiliate of the bank by also qualifying as a subsidiary of the bank.

Although one commenter supported the proposed rule's approach to ESOPs, several commenters objected to the approach. These commenters principally argued that (i) ESOPs are regulated by the Department of Labor and transactions between a bank and an associated ESOP are adequately governed by ERISA; (ii) Congress has expressed support for ESOPs; (iii) regulating bank-ESOP transactions under section 23A would prevent banks from effectively using ESOPs to compensate employees and would put banks at a competitive disadvantage to nonbank firms; and (iv) treating ESOPs as affiliates of their associated bank may prevent some banks from establishing ESOPs because third-party lenders to an ESOP generally require the employer to guarantee the loan and ESOPs often would have no collateral to pledge for the bank guarantee other than unacceptable affiliate-issued securities.

Notwithstanding these considerations, the Board believes that the relationship between a member bank and its or its affiliate's ESOP generally warrants coverage by sections 23A and 23B. In the past, banks have made unsecured loans to their ESOPs or their affiliates' ESOPs or have guaranteed loans to such ESOPs that were made by a third party. These ESOPs, however, generally have no means to repay the loans other than with funds provided by the bank. In addition, the issuance of holding company shares to an ESOP that is funded by a loan from the holding company's subsidiary bank could be used as a vehicle by the bank to provide funds to its parent holding company when the bank is unable to pay dividends or is otherwise restricted in providing funds to its holding company.

9. Securitization Vehicles and Other Special Purpose Entities ("SPEs")

In the proposal, the Board sought comment on whether additional clarification is necessary in the area of securitizations. The Board specifically requested comment on the question of whether securitization SPEs should in any circumstances be deemed to be affiliates of the member bank involved

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nonbank subsidiary of a FHC also serves as a director of a portfolio company, the first safe harbor, for example, would be unavailable.

[44] *See* 12 CFR 265.3.

[45] *See* 12 U.S.C. 371c(b)(1)(A) and (b)(2)(A). Section 23A defines a subsidiary of a specified company as a company that is controlled by the specified company. Under the statute, a company controls another company if the first company owns or controls 25 percent or more of a class of voting securities of the other company, controls the election of a majority of the directors of the other company, or exercises a controlling influence over the policies of the other company. 12 U.S.C. 371c(b)(3) and (4).

[46] 12 U.S.C. 371c(b)(2)(A).

[47] Several other commenters asked that the final rule not exclude joint venture subsidiaries of a bank so long as the bank owns more than 50 percent of the voting securities of the joint venture company. The Board declines to adopt this position because, notwithstanding the bank's controlling voting interest in the subsidiary, the bank's less-than-100 percent interest and the affiliate's substantial direct interest in the company may provide the bank with inappropriate incentives to support the company.

in the securitization. The Board received a significant amount of comment on this issue. Commenters uniformly recommended that the Board not treat SPEs as affiliates of any bank associated with the securitization. Due to the complexities of this issue and the pending proposal by the Financial Accounting Standards Board ("FASB") on the consolidation of SPEs,[48] the Board is deferring at this time any rulemaking with respect to the relationships between member banks and SPEs.

The Board reminds banking organizations that any company sponsored and advised on a contractual basis by a member bank or an affiliate of the bank is an affiliate of the bank under the express terms of section 23A and the final rule. The legislative history of the statute suggests that such "sponsored and advised" companies would include, at a minimum, any company that receives investment advice and administrative services on a contractual basis from a member bank, whose trustees or managers are selected by the bank, and that has a name similar to that of the bank. The Board expects that member banks, at a minimum, would treat companies meeting or substantially meeting these three indicia of sponsorship and advice as affiliates under section 23A.

B. Other Definitions (§ 223.3)

1. Capital Stock and Surplus (§ 223.3(d))

Under section 23A, the quantitative limits on covered transactions are based on the "capital stock and surplus" of the member bank.[49] The proposed regulation included a definition of capital stock and surplus that the Board previously adopted as an interpretation of section 23A.[50] Under this definition, capital stock and surplus is the sum of the member bank's tier 1 capital and tier 2 capital and the balance of the bank's allowance for loan and lease losses not included in its tier 2 capital. This definition employs familiar concepts contained in the Federal banking agencies' capital adequacy guidelines,[51] and is consistent with the lending limits applicable to national banks[52] and the Board's Regulation O, which limits lending to a member bank's insiders.[53]

The final rule, consistent with a discussion in the preamble to the proposed rule, alters the definition of capital stock and surplus in one regard. The National Bank Act requires a national bank, "in determining compliance with applicable capital standards," to deduct from its capital the aggregate amount of any outstanding equity investments, including retained earnings, of the bank in all its financial subsidiaries.[54] The FDI Act imposes the same capital deduction requirement on insured state banks that establish financial subsidiaries.[55] In determining compliance with the quantitative limits of section 23A, a bank is required by statute to include in its covered transactions any equity investments (excluding retained earnings) of the bank in its financial subsidiaries. It would be unfair to compel a bank to include such investments in its covered transaction amount (the numerator of the fraction in section 23A's quantitative limits) but to exclude such investments from capital stock and surplus (the denominator of the fraction). Accordingly, the final rule explicitly permits a member bank with a financial subsidiary to add back to its section 23A capital stock and surplus the amount of any investment in a financial subsidiary that counts as a covered transaction and is required to be deducted from the bank's capital for regulatory capital purposes.

2. Control (§ 223.3(g))

Section 23A provides that a company or shareholder shall be deemed to have control over another company if, among other things, such company or shareholder controls in any manner the election of a majority of the "directors or trustees" of the other company.[56] Regulation W expands this prong of the control definition to conform it to the control definition contained in the Board's Regulation Y by adding that control also exists when a company or shareholder controls the election of a majority of the "general partners (or individuals exercising similar functions)" of another company. This expansion of the control definition is intended to ensure that banking organizations understand that a company or shareholder would be deemed to control another company (including a partnership, limited liability company, or other similar organization) under section 23A if the company or shareholder controls the election of a majority of the principal policymakers of such other company.

The regulation also includes two additional presumptions of control that are similar to presumptions contained in Regulation Y. First, a company will be deemed to control securities, assets, or other ownership interests controlled by any subsidiary of the company.[57] Second, a company that controls instruments (including options and warrants) that are convertible or exercisable, at the option of the holder or owner, into securities, will be deemed to control the securities.[58]

One commenter asked the Board to clarify that a company or person may rebut the convertibility presumption of control. The Board agrees with this position and has amended the final rule to provide that, as under Regulation Y, this presumption is rebuttable. Commenters also suggested that the convertibility presumption should apply only to convertible instruments that are *immediately* convertible, or convertible within a short time frame, into the underlying securities. Consistent with the Board's interpretations of the parallel Regulation Y provision, the Board declines to adopt this approach. Establishment of any kind of regulatory safe harbor for warrants, options, and other convertible instruments that cannot be exercised or converted for some short period of time is likely to facilitate evasion of the presumption. A company or person that wishes to rebut this presumption based on the specific features of a convertible instrument should present their arguments to the Board for a case-by-case decision.

The final rule supplements the control presumptions contained in proposed Regulation W with one additional rebuttable presumption. The final rule provides that a company or shareholder that owns or controls 25 percent or more of the equity capital of another company controls the other company unless the company or shareholder demonstrates otherwise to the Board based on the facts and circumstances of the particular case. This rebuttable presumption is similar to a presumption applied by the Board under the control provisions of the BHC Act.[59] Such a presumption of control is particularly appropriate in the section

[48] FASB Proposed Interpretation, *Consolidation of Certain Special-Purpose Entities, an Interpretation of ARB No. 51* (June 28, 2002).

[49] 12 U.S.C. 371c(a)(1).

[50] *See* 61 FR 19805, May 3, 1996.

[51] *See, e.g.*, 12 CFR part 225, appendix A.

[52] 12 CFR 32.2(b).

[53] 12 CFR 215.2(i).

[54] 12 U.S.C. 24a(c)(1).

[55] 12 U.S.C. 1831w(a)(2).

[56] 12 U.S.C. 371c(b)(3)(A)(ii).

[57] *See* 12 CFR 225.2(e)(2)(i).

[58] *See* 12 CFR 225.31(d)(1)(i). The proposed rule referred to "securities" (rather than "instruments") that are convertible into other securities. The final rule refers more generically to convertible "instruments" to clarify that the convertibility presumption applies regardless of whether the right to convert resides in a financial instrument that technically qualifies as a "security" under section 23A or the Federal securities laws.

[59] *See, e.g.*, 12 CFR 225.143 (Board Policy Statement on Nonvoting Equity Investments).

23A context because a BHC, for example, may have incentives to divert the resources of a subsidiary bank to any company in which the holding company has a substantial financial interest, regardless of whether the holding company owns any voting securities of the company.

3. Covered Transaction (§ 223.3(h))

The restrictions of section 23A do not apply to every transaction between a member bank and its affiliates. The section only applies to "covered transactions" between a member bank and its affiliates. The statute defines a covered transaction as (i) an extension of credit to an affiliate; (ii) a purchase of or investment in securities issued by an affiliate; (iii) a purchase of assets from an affiliate; (iv) the acceptance of securities issued by an affiliate as collateral for an extension of credit to any person; and (v) the issuance of a guarantee, acceptance, or letter of credit on behalf of an affiliate.[60] Among the transactions that generally are not subject to section 23A are dividends paid by a member bank to its holding company, sales of assets by a member bank to an affiliate, an affiliate's purchase of securities issued by a member bank, and many service contracts between a member bank and an affiliate. This section of the preamble discusses whether certain classes of transactions between a member bank and an affiliate are covered transactions for purposes of section 23A.

a. *Confirmation of a letter of credit issued by an affiliate (§ 223.3(h)(5)).*—As noted, section 23A includes as a covered transaction the issuance by a member bank of a letter of credit on behalf of an affiliate. The proposed regulation provided that a member bank's confirmation of a letter of credit issued by an affiliate is also a covered transaction.

One commenter noted staff's traditional position that certain confirmations of a *documentary* letter of credit issued by an affiliate are not covered transactions and asked the Board to clarify that such confirmations would not be treated as covered transactions under Regulation W.[61] The Board has decided to reverse the staff position on this issue and to treat all confirmations of a letter of credit issued by an affiliate as a covered transaction. Under the current law applicable to letters of credit, when a bank confirms a letter of credit, it assumes the risk of the underlying transaction to the same extent as if it had issued the letter of credit.[62] Accordingly, the rule treats confirmations of a letter of credit issued by an affiliate in the same fashion as issuances of a letter of credit on behalf of an affiliate.

b. *Credit enhancements supporting a securities underwriting.*—The Board has confirmed previously and hereby reconfirms that section 23A's definition of guarantee would not include a member bank's issuance of a guarantee in support of securities issued by a third party and underwritten by a securities affiliate of the bank.[63] Such a credit enhancement would not be issued "on behalf of" the affiliate. In addition, although the guarantee does provide some benefit to the affiliate (by facilitating the underwriting), this benefit is indirect. Accordingly, the proceeds of the guarantee would not be transferred to the affiliate for purposes of the attribution rule of section 23A.[64] Of course, section 23B would apply to the transaction and, where an affiliate was issuer as well as underwriter, the transaction would be covered by section 23A because the credit enhancement would be on behalf of the affiliate.

c. *Cross-guarantee agreements and cross-affiliate netting arrangements (§ 223.3(h)(5)).*—Board staff has confirmed previously that a cross-guarantee agreement among a member bank, an affiliate, and a nonaffiliate in which the nonaffiliate may use the bank's assets to satisfy the obligations of a defaulting affiliate is a guarantee for purposes of section 23A.[65] The Board believes that such cross-guarantee arrangements among member banks and their affiliates should be subject to the quantitative limits and collateral requirements of section 23A.

Similarly, the Board understands that some member banks have entered into or are contemplating entering into cross-affiliate netting arrangements ("CANAs"). These include arrangements among a member bank, one or more affiliates of the bank, and one or more nonaffiliates of the bank, where a nonaffiliate is permitted to deduct obligations of an affiliate of the bank to the nonaffiliate when settling the nonaffiliate's obligations to the bank. These arrangements also would include agreements where a member bank is required or permitted to add the obligations of an affiliate of the bank to a nonaffiliate when determining the bank's obligations to the nonaffiliate.

These types of CANAs expose a member bank to the credit risk of its affiliates because the bank may become liable for the obligations of its affiliates. Because the exposure of a member bank to an affiliate in such an arrangement resembles closely the exposure of a member bank when it issues a guarantee on behalf of an affiliate, the final rule explicitly includes such arrangements in the definition of covered transaction. Accordingly, the quantitative limits of section 23A would prohibit a member bank from entering into such a CANA to the extent that the netting arrangement does not cap the potential exposure of the bank to the participating affiliate(s).

Several commenters urged the Board to withhold judgment on CANAs until standardized documentation is developed by the industry. These commenters advised that CANAs are of many types and, therefore, that the Board should not adopt a fixed rule for all CANAs. One commenter encouraged the Board to clarify in particular that CANAs that do not make the bank liable for the obligations of its affiliates or otherwise cause any detriment to the bank are not covered transactions. By only addressing the CANAs described above, the rule only treats CANAs as covered transactions in situations where the member bank may become liable for the obligations of its affiliates. The Board intends to monitor industry developments in this area and will revisit this aspect of Regulation W or issue further interpretive guidance on CANAs as warranted.

d. *Keepwell agreements.*—Banking organizations have asked for guidance on the question of whether a "keepwell" agreement should be considered a guarantee for purposes of section 23A. In a keepwell agreement between a member bank and an affiliate, the bank typically commits to maintain the capital levels or solvency of the affiliate. The credit risk incurred by the member bank in entering into such a keepwell agreement is similar to the credit risk incurred by a member bank in connection with issuing a guarantee on behalf of an affiliate. As a consequence, keepwell agreements generally should be treated as guarantees for purposes of section 23A and, if unlimited in amount, would be prohibited by the quantitative limits of section 23A.

4. Extension of Credit (§ 223.3(o))

Although section 23A includes a "loan or extension of credit" to an affiliate as a covered transaction, the statute does not define these terms. The

[60] 12 U.S.C. 371c(b)(7).

[61] *See* Letter dated May 5, 1981, from Robert E. Mannion, Deputy General Counsel of the Board, to Andrew T. Moore, Jr.; *see also* Letter dated July 17, 1980, from Robert E. Mannion, Deputy General Counsel of the Board, to Baldwin B. Tuttle.

[62] *See* U.C.C. 5–107(2).

[63] *See* 62 FR 45295, Aug. 27, 1997.

[64] *See* 12 U.S.C. 371c(a)(2).

[65] *See* Letter dated Aug. 6, 1993, from J. Virgil Mattingly, Jr., General Counsel of the Board, to Richard Lasner.

regulation defines "extension of credit" to an affiliate to mean the making or renewal of a loan to an affiliate, the granting of a line of credit to an affiliate, or the extending of credit to an affiliate in any manner whatsoever, including on an intraday basis. The regulation also provides a nonexhaustive list of transactions that the Board deems to be extensions of credit to an affiliate, including an advance to an affiliate by means of an overdraft, cash item, or otherwise; a lease that is the functional equivalent of an extension of credit to an affiliate;[66] an acquisition of a note or other obligation of an affiliate, including commercial paper or other debt securities issued by an affiliate; and any increase in the amount of, extension of the maturity of, or adjustment in the interest rate term or other material term of an extension of credit to an affiliate.[67] The final rule also includes a sale of Federal funds to an affiliate on the list of examples. This position reflects the long-standing view of the Board about the nature of Federal funds transactions.[68]

In addition to these examples, the final rule specifies that other similar transactions that result in an affiliate owing money to a member bank are extensions of credit by the member bank to the affiliate. This aspect of the definition of extension of credit is consistent with the definition of the same term in Regulation O and would cover, among other things, situations where an affiliate fails to pay on a timely basis for services rendered to the affiliate by the member bank.

As noted, the regulation provides that a member bank's purchase of a debt security issued by an affiliate is an extension of credit by the bank to the affiliate for purposes of section 23A.[69] Several commenters objected to this interpretation of the statute and argued that a purchase of an affiliate's debt securities is a "purchase of or investment in securities issued by an affiliate" for purposes of section 23A, and that such a purchase cannot also then be an "extension of credit" for purposes of section 23A. Other commenters criticized this position on the grounds that (i) it often would not be feasible (due to negative pledge covenants) for the bank to obtain collateral for the security after the terms of the security are fixed at inception; and (ii) requiring collateral for purchases of debt securities but not for purchases of equity securities is perverse.

The Board does not find any of these objections persuasive. Although the Board is aware that section 23A's definition of covered transaction separately includes a member bank's purchase of securities issued by an affiliate and a member bank's loan to an affiliate, the fact that a holder of debt securities expects repayment of principal upon maturity makes debt securities closely resemble loans for purposes of section 23A and the statute's objective of protecting the member bank. There is nothing in the text or legislative history of section 23A that indicates that a particular transaction may be slotted only into one category of covered transaction.

Although the Board recognizes the incongruities of requiring collateral for debt investments by a member bank in an affiliate but not equity investments by a member bank in an affiliate, this is an unalterable aspect of the statutory framework. The prevalence of these incongruities, moreover, is constrained by the limited ability of member banks to make equity investments. Importantly, the Board's action on this matter removes an incongruity more likely to occur—treating differently under section 23A two transaction forms (loans and debt securities) that are substantially equivalent from a credit risk perspective.

For all these reasons, therefore, Regulation W provides that a member bank that buys debt securities issued by an affiliate has made an extension of credit to an affiliate under section 23A and must collateralize the transaction in accordance with section 23A's collateral requirements. As discussed below, the final rule provides an exemption from the collateral requirements in situations where a member bank purchases an affiliate's debt securities from a third party in a bona fide secondary market transaction.[70]

5. Low-Quality Asset (§ 223.3(v))

Two provisions of section 23A restrict a member bank's ability to engage in transactions with affiliates that involve low-quality assets. First, the statute prohibits a member bank from purchasing a low-quality asset from an affiliate unless the bank performs an independent credit evaluation and commits to purchase the asset before the affiliate acquires the asset.[71] Second, the statute prohibits a member bank from counting a low-quality asset toward section 23A's collateral requirements for credit transactions with an affiliate.[72]

Section 23A defines a low-quality asset to include (i) an asset classified as "substandard," "doubtful," or "loss," or treated as "other loans especially mentioned," in the most recent report of examination or inspection by a Federal or State supervisory agency (a "classified asset"); (ii) an asset in nonaccrual status; (iii) an asset on which payments are more than thirty days past due; or (iv) an asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor.[73] The Board notes that any asset meeting one of the above four criteria, including securities and real property, is a low-quality asset.[74]

The regulation broadens the definition of low-quality asset in three ways. First, the regulation provides that an asset identified by examiners as an "other transfer risk problem" ("OTRP") is a low-quality asset.[75] Such assets represent credits to countries that are not complying with their external debt-service obligations, but are taking positive steps to restore debt service through economic adjustment measures, generally as part of an International Monetary Fund program. Although OTRP assets are not considered classified assets, examiners are instructed to consider these assets in their assessment of a bank's asset quality and capital adequacy.[76]

Second, the regulation reflects the increasing use by financial institutions of their own internal asset classification systems. A 1998 Board study of the 50 largest U.S. banks demonstrated that all use internal loan classifications, and a substantial proportion of such

[66] The Board would consider a full-payout, net lease permissible for a national bank under 12 U.S.C. 24(Seventh) and 12 CFR part 23 to be the functional equivalent of an extension of credit.

[67] A floating-rate loan does not become a new covered transaction whenever there is a change in the relevant index (for example, LIBOR or the member bank's prime rate) from which the loan's interest rate is calculated. If the member bank and the borrower, however, amend the loan agreement to change the interest rate term from "LIBOR plus 100 basis points" to "LIBOR plus 150 basis points," the parties have engaged in a new covered transaction.

[68] *See* 12 CFR 250.160.

[69] This position is consistent with the Board's long-standing view. See 37 Federal Reserve Bulletin 960 (1951).

[70] *See* part IV.B.5. of this preamble.

[71] 12 U.S.C. 371c(e)(3).

[72] 12 U.S.C. 371c(c)(3).

[73] 12 U.S.C. 371c(b)(10).

[74] The Federal banking agencies generally consider non-investment grade securities to be classified assets. *See, e.g.*, "Uniform Agreement on the Classification of Assets and Appraisal of Securities Held by Banks' (May 7, 1979); *Federal Reserve Commercial Bank Examination Manual* § 2020.1. Assets identified by examiners through the Shared National Credit and International Country Exposure Review Committee processes also should be considered classified assets for purposes of section 23A.

[75] No commenter objected to this provision of the proposed rule.

[76] *See Federal Reserve Commercial Bank Examination Manual* § 7040.1.

institutions have relatively advanced internal rating systems.[77] There is considerable variance in how large banks rate performing assets; however, banks are required to use the same categories employed by the Federal banking agencies for rating classified assets.

Because examinations may be twelve months apart—eighteen months for smaller banks—these internal classification systems may cause a bank to regrade an asset long before its next examination. Accordingly, the rule includes within the definition of low-quality asset not only assets classified during the last examination but also assets classified or treated as special mention under the institution's internal classification system (or assets that received an internal rating that is substantially equivalent to classified or special mention in such an internal system).

Several commenters objected to this aspect of the proposed rule. They argued that the statute provides a highly articulated definition of low-quality asset that should not be supplemented by the Board. They also cautioned that the rule would penalize banks with careful internal classification systems and would create perverse incentives for banks to avoid internally classifying bad assets. The Board acknowledges these concerns but believes that the rule is consistent with the text and intent of section 23A and that the supervisory benefits of the rule would outweigh any adverse effects. The purchase by a depository institution from an affiliate of assets that have been internally classified raises potentially significant safety and soundness concerns.

The Board shares the concern of commenters that this provision of the rule may induce companies to avoid or defer reclassification of an asset in order to allow its sale to an affiliated depository institution, but believes that such evasions can be addressed through the examination process. The Board expects companies with internal rating systems to use the systems consistently over time and over similar classes of assets and will view as an evasion of section 23A any company's deferral or alteration of an asset's rating to facilitate sale of the asset to an affiliated institution.

Finally, the proposed rule defined low-quality asset to include foreclosed property designated "other real estate owned" ("OREO"), until it is reviewed by an examiner and receives a favorable classification. One commenter criticized this interpretation and represented that OREO is often good collateral collected from a bad borrower. This commenter further advised that a bank should be allowed to purchase OREO from an affiliate if the bank uses the OREO as premises.

The final rule contains an expanded version of the proposed rule's OREO provision. The final rule defines as a low-quality asset any asset (not just real estate) that is acquired in satisfaction of a debt previously contracted (not just through foreclosure) if the asset has not yet been reviewed in an examination or inspection. In the Board's experience, property acquired from a borrower in default is often of such poor quality that its ownership poses the same risk to the bank as a classified loan. In response to the concerns expressed by the commenter, the Board notes that, under the rule, if a particular asset is good collateral taken from a bad borrower, the asset should cease to be a low-quality asset upon examination.

6. Member Bank (§ 223.3(w))

As discussed above, although proposed Regulation W applied by its terms to all "banks," the final rule applies by its terms to all "member banks." Consistent with section 1 of the Federal Reserve Act, the final rule defines "member bank" to mean "any national bank, State bank, banking association, or trust company that is a member of the Federal Reserve System."

The definition of member bank in the regulation also states that most subsidiaries of a member bank are to be treated as part of the member bank itself for purposes of sections 23A and 23B. The only subsidiaries of a member bank that are excluded from this treatment are financial subsidiaries, insured depository institution subsidiaries, certain joint venture subsidiaries, and ESOPs—companies that are deemed affiliates of the member bank under the regulation. This treatment of subsidiaries reflects the fact that the statute typically does not distinguish between a member bank and its subsidiaries, and all the significant restrictions of the statute apply to actions taken by a member bank "and its subsidiaries." Defining the term "member bank" as described above and using the term "member bank" wherever the statute says "member bank and its subsidiaries" makes the regulation shorter and easier to understand. The definition also should help to remind member banks that certain subsidiaries should not be treated as part of the member bank for purposes of the statute.

7. Obligations of, or Fully Guaranteed as to Principal and Interest by, the United States or Its Agencies (§ 223.3(z))

Section 23A accords special treatment to extensions of credit secured by "obligations of the United States or its agencies" or "obligations fully guaranteed by the United States or its agencies as to principal and interest" (collectively, "U.S. government obligations"). First, the statute imposes the lowest collateral requirement, 100 percent of the loan amount, on extensions of credit secured by U.S. government obligations.[78] Second, the statute provides an exemption for extensions of credit fully secured by U.S. government obligations.[79]

The proposed rule did not provide guidance as to what financial instruments qualify as U.S. government obligations. Several commenters asked the Board to clarify that U.S. government obligations for section 23A purposes would include, at a minimum, all the obligations identified in the Board's Regulation A as eligible to serve as collateral for advances by Federal Reserve Banks to member banks under section 13(8) of the Federal Reserve Act.[80] The final rule provides this clarification, which is consistent with staff's long-standing position under section 23A. The final rule also indicates that U.S. government obligations do not include mortgage loans insured by the Federal Housing Administration or the Veterans Administration because the backing of the U.S. government for these loans is not a full and unconditional guarantee of the principal and interest of the underlying mortgage loans. This exclusion also is consistent with staff's traditional interpretation of section 23A.

8. Purchase of Assets (§ 223.3(dd))

The proposed rule defined a purchase of an asset as the acquisition of an asset in exchange for cash or any other consideration, including an assumption of liabilities. The preamble to the proposed rule indicated the Board's view that merging an affiliate with and into a member bank generally would constitute a purchase of assets by the bank from the affiliate. Consistent with

[77] William F. Treacy & Mark S. Carey, *Credit Risk Rating at Large U.S. Banks*, 84 Federal Reserve Bulletin 897 (1998).

[78] 12 U.S.C. 371c(c)(1)(A)(i) and (ii).

[79] 12 U.S.C. 371c(d)(4)(A) and (B).

[80] *See* 12 CFR 201.108(b). Section 13(8) of the Federal Reserve Act authorizes Federal Reserve Banks to make advances to member banks secured by, among other things, U.S. government obligations eligible for purchase by a Federal Reserve Bank under section 14(b) of the Federal Reserve Act. 12 U.S.C. 347. The description of U.S. government obligations in section 14(b) of the Federal Reserve Act is virtually identical to the description of U.S. government obligations in section 23A. *See* 12 U.S.C. 355.

the preamble to the proposed rule, the final rule also provides that the merger of an affiliate into a member bank is a purchase of assets by the bank from the affiliate if the bank assumes any liabilities of an affiliate or pays any other form of consideration in the transaction.

9. Securities (§ 223.3(ff))

Section 23A defines "securities" to mean "stocks, bonds, debentures, notes, or other similar obligations."[81] Because of the ambiguous nature of this definition, the Board generally has looked to the Federal securities laws for guidance in determining which financial instruments should be considered securities for purposes of section 23A. In light of the similarities between commercial paper and debentures and notes and the countervailing fact that the Securities Exchange Act of 1934 excludes some forms of commercial paper from its definition of security,[82] the regulation clarifies that commercial paper is a security for purposes of section 23A.[83]

One commenter on the proposed rule asked the Board to indicate whether annuities are securities for purposes of section 23A. The Board would consider annuities that are securities for purposes of the Federal securities laws to be securities for purposes of Regulation W.

10. Voting Securities (§ 223.3(jj))

Section 23A uses both the terms "voting shares" and "voting securities." To remove ambiguity and enhance regulatory consistency, Regulation W replaces all statutory uses of the term "voting shares" with the term "voting securities" and defines "voting securities" to have the same meaning as "voting securities" in Regulation Y.[84]

IV. General Provisions of Section 23A—Subpart B

Subpart B of the regulation sets forth the principal restrictions of section 23A, including the quantitative limits, the safety and soundness requirement, the collateral requirement, and the prohibition on the purchase of low-quality assets. This subpart also includes section 23A's attribution rule, which provides that any transaction with a nonaffiliate will be considered a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that affiliate. In addition, subpart B incorporates previous Board and staff interpretations of these provisions, and a few new interpretations of these provisions. These interpretations of the statute are discussed below.

A. Quantitative Limits (§§ 223.11 and 223.12)

Section 23A(a)(1) provides that a member bank may engage in a covered transaction with an affiliate only if, upon consummation of the proposed transaction, the aggregate amount of the bank's covered transactions (i) with any single affiliate would not exceed 10 percent of the bank's capital stock and surplus and (ii) with all affiliates would not exceed 20 percent of the bank's capital stock and surplus.[85] Sections 223.11 and 223.12 of the regulation set forth these quantitative limits. The quantitative limits of Regulation W (consistent with section 23A) only prohibit a member bank from engaging in a *new* covered transaction if the bank would be in excess of the 10 or 20 percent threshold after consummation of the new transaction. The regulation (consistent with section 23A) generally does not require a member bank to unwind existing covered transactions if the bank exceeds the 10 or 20 percent limit because its capital declined or a preexisting covered transaction increased in value.

Section 23A(a)(1)(A) states that a member bank "may engage in a covered transaction with an affiliate only if * * * in the case of any affiliate," the aggregate amount of covered transactions of the bank would not exceed 10 percent of the capital stock and surplus of the bank. The proposed rule interpreted this limitation to prevent a member bank from engaging in a new covered transaction with an affiliate if the aggregate amount of covered transactions between the bank and *any* affiliate (not only the particular affiliate with which the bank proposes to engage in the new covered transaction) would be in excess of 10 percent of the bank's capital stock and surplus after consummation of the new transaction. Several commenters argued that this reading of the 10 percent limit is inconsistent with the statutory language of section 23A and existing bank practices. These commenters urged the Board to interpret the 10 percent limit to prohibit a bank from engaging in a covered transaction with an affiliate only when the aggregate amount of covered transactions between the bank and that affiliate would exceed 10 percent of the bank's capital.

The Board believes that both the interpretation of the 10 percent limit set forth in the proposed rule and the interpretation advocated by commenters are consistent with the statutory language. In light of the numerous other existing safeguards in sections 23A and 23B, including in particular the 20 percent quantitative limit and the collateral requirements, and the other supervisory tools available to the Federal banking agencies, the Board has determined to adopt the interpretation advocated by commenters in the final Regulation W. Notwithstanding this more liberal interpretation of the 10 percent limit, the Board strongly encourages member banks with covered transactions in excess of the 10 percent threshold with any affiliate to reduce those transactions before expanding the scope or extent of the bank's relationships with other affiliates.

Another commenter asked the Board to clarify in section 223.11 that transactions between a bank and a financial subsidiary of the bank are not subject to the 10 percent limit of section 23A. Although proposed Regulation W made this point in the section of the rule relating to financial subsidiaries, the Board agrees that clarity would be enhanced if the final rule also made this point in the section of the rule that sets forth the 10 percent limit. Accordingly, section 223.11 of the final rule states that transactions between a member bank and its financial subsidiary are not subject to the 10 percent limit.

B. Collateral Requirements (§ 223.14)

Section 223.14 of the regulation sets forth the collateral requirements established by section 23A(c) for loans and extensions of credit to an affiliate, and guarantees, acceptances, and letters of credit issued on behalf of an affiliate (collectively, "credit transactions"). As a general matter, section 23A requires any credit transaction by a member bank with an affiliate to be secured with a statutorily prescribed amount of collateral. The required collateral varies from 100 percent of the value of the credit extended (when the collateral is a deposit account or U.S. government obligations) to 130 percent of the credit extended (when the collateral is stock, leases, or certain other "real or personal property").[86]

1. Deposit Account Collateral (§ 223.14(b)(1)(i)(D))

Under section 23A, a member bank may satisfy the collateral requirements

[81] 12 U.S.C. 371c(b)(9).

[82] *See* 15 U.S.C. 78c(a)(10).

[83] As noted above in part III.B.4. of this preamble, the Board considers a member bank's investment in commercial paper issued by an affiliate to be both an investment in securities issued by an affiliate and an extension of credit to an affiliate.

[84] *See* 12 CFR 225.2(q).

[85] 12 U.S.C. 371c(a)(1).

[86] 12 U.S.C. 371c(c)(1).

of the statute by securing a credit transaction with an affiliate with a "segregated, earmarked deposit account" maintained with the bank in an amount equal to 100 percent of the credit extended.[87] The proposed regulation clarified that, to satisfy the statute's "segregated, earmarked" requirement, the account must exist for the sole purpose of securing the credit extended and be so identified.

Numerous commenters asked the Board to remove this regulatory gloss and explicitly state that banks may satisfy the collateral requirements of section 23A by (i) using a single deposit account to collateralize one or more covered transactions with one or more affiliates or (ii) entering into a cross-collateralization agreement with one or more affiliates under which all of such affiliates' deposit accounts are pledged as collateral for all of such affiliates' credit transactions with the bank. According to these commenters, such collateral arrangements are a common, safe, and efficient means of satisfying the letter and spirit of the collateral requirements of section 23A.

The Board has analyzed the claims of these commenters and has decided not to require a member bank accepting deposit account collateral to establish a separate segregated, earmarked deposit account to secure each covered transaction with an affiliate. The Board recognizes that such a strict reading of the "segregated, earmarked" requirement is not required by the statute and would impose a substantial compliance burden on member banks that engage in a significant number of covered transactions with affiliates. Moreover, in some circumstances, using an omnibus deposit account for multiple affiliates and multiple covered transactions may have prudential advantages for the member bank as compared to using separate deposit accounts for each outstanding covered transaction.

Although the final rule does not include the proposed regulatory gloss, the Board expects that member banks that secure covered transactions with omnibus deposit accounts will take steps to ensure that such accounts fully secure the relevant covered transactions. Such steps might include substantial overcollateralization or the use of subaccounts or other recordkeeping devices to match deposits with covered transactions. In addition, as required by the final rule, to obtain full credit for any deposit accounts taken as section 23A collateral, member banks must ensure that they have a perfected, first priority security interest in the accounts.

Several commenters asked the Board to replace the "segregated, earmarked" requirement for deposit accounts with a requirement that banks have a perfected, first priority security interest in the accounts. These commenters explained that, although the "segregated, earmarked" requirement made sense before the adoption of revised Article 9 of the Uniform Commercial Code, the revised Article 9 has rendered segregation and earmarking of a deposit account legally irrelevant to ensuring that a bank has a perfected, first priority security interest in the account. Despite the revisions to Article 9, the final rule maintains the "segregated, earmarked" requirement because it is required by the plain language of section 23A and because segregating and earmarking deposit account collateral is a prudent practice even under revised Article 9.

2. Ineligible Collateral (§ 223.14(c))

The purpose of section 23A's collateral requirements is to ensure that member banks that engage in credit transactions with affiliates have legal recourse, in the event of affiliate default, to tangible assets with a value at least equal to the amount of the credit extended. The statute recognizes that certain types of assets are not appropriate to serve as collateral for credit transactions with an affiliate. In particular, the statute provides that low-quality assets and securities issued by an affiliate are not eligible collateral for such covered transactions.[88]

The proposed rule provided that intangible assets (as defined by generally accepted accounting principles ("GAAP")), including servicing assets, are not acceptable collateral to secure credit transactions with an affiliate. Several commenters supported the proposed rule's categorical exclusion of intangible assets. A larger number of commenters argued, however, that banks should be permitted to use certain intangible assets as section 23A collateral, in particular assets, such as servicing assets and purchased credit card relationships, that count as capital under the Board's capital adequacy guidelines.

The final rule retains the categorical exclusion of intangible assets.[89] In the Board's view, intangible assets are particularly hard to value, and a member bank may have significant difficulty in collecting and selling such assets in a reasonable period of time. The Board believes that these reasons justify the exclusion of intangible assets from the types of collateral eligible to satisfy the requirements of section 23A. The Board notes that the identifiable intangible assets that are not deducted from capital under the capital adequacy guidelines (namely, servicing assets and purchased credit card relationships) are limited quantitatively in the extent to which they count as capital.[90] The Board is willing to consider requests, on a case-by-case basis, to permit particular types of intangible assets to serve as section 23A collateral, and has amended the proposed rule to allow for such *ad hoc* exceptions to the categorical exclusion.

In addition, the proposed rule provided that guarantees and letters of credit are not eligible collateral for section 23A purposes. Several commenters argued that the rule should permit banks to satisfy the collateral requirements of section 23A with letters of credit. These commenters stated that letters of credit are less likely to fluctuate in value than many other types of eligible section 23A collateral, represent senior claims on banks, are not subject to an automatic stay in bankruptcy, involve lower administrative costs than most other types of collateral, convey an immediate right to cash rather than a possibly illiquid piece of collateral, and are recognized under the net capital rule of the Securities and Exchange Commission ("SEC"). Other commenters argued that banks should be allowed to use guarantees to comply with section 23A's collateral requirements. These commenters noted that the Board's capital adequacy guidelines recognize the value of guarantees as a credit risk mitigation device.

The final rule continues to provide that guarantees and letters of credit are not acceptable section 23A collateral.[91] Letters of credit and guarantees are not balance sheet assets under GAAP and, accordingly, would not constitute "real or personal property" under section

[87] 12 U.S.C. 371c(c)(1)(A)(iv).

[88] 12 U.S.C. 371c(c)(3).and (4)

[89] The final rule, however, does not define intangible assets by reference to GAAP. Upon further review, the Board has determined that the GAAP definition of intangible asset may be underinclusive for section 23A purposes. If a member bank has doubts as to whether a particular asset is an intangible asset, the bank should consult with Board staff.

[90] *See* 12 CFR part 225, appendix A, § II.B.1.d–e.

[91] The final rule also provides that instruments "similar" to guarantees and letters of credit are ineligible collateral. For example, in the Board's view, a member bank cannot satisfy section 23A's collateral requirements by purchasing credit protection in the form of a credit default swap referencing the affiliate's obligation.

23A. Moreover, section 23A(c) requires that credit transactions with an affiliate be "secured" by collateral. A credit transaction between a member bank and an affiliate supported only by a guarantee or letter of credit from a third party would not appear to meet the statutory requirement that the credit transaction be secured by collateral. Of course, the Board could grant an exemption that would permit guarantees or letters of credit to count as collateral or to serve as a replacement for collateral. The Board has decided not to do so at this time because guarantees and letters of credit often are subject to material adverse change clauses and other covenants that allow the issuer of the guarantee or letter of credit to deny coverage. Moreover, in the Board's view, there is a particularly significant risk, highlighted by recent events, that a member bank may have difficulty collecting on a guarantee or letter of credit provided by a nonaffiliate on behalf of an affiliate of the bank.

As noted above, section 23A prohibits a member bank from accepting securities issued by an affiliate as collateral for an extension of credit to an affiliate. The proposed rule clarified that securities issued by the member bank itself also are not eligible collateral to secure a credit transaction with an affiliate. Most commenters supported the exclusion of bank-issued equity securities but urged the Board to permit banks to take their own debt securities as section 23A collateral. These commenters pointed out that bank deposits (another form of bank liability) count as a preferred form of collateral under section 23A and that selling or retiring bank-issued debt securities would provide real benefit to the bank upon foreclosure.

The Board has determined to modify the proposed rule to address these comments. Under the final rule, equity securities issued by the lending member bank, and debt securities issued by the lending member bank that count as regulatory capital of the bank, are not eligible collateral under section 23A. If a member bank were forced to foreclose on a credit transaction with an affiliate secured by such securities, the bank may be unwilling to liquidate the collateral promptly to recover on the credit transaction because the sale might depress the price of the bank's outstanding securities or result in a change in control of the bank. In addition, to the extent that a member bank is unable or unwilling to sell such securities acquired through foreclosure, the transaction would likely result in a reduction in the bank's capital, thereby offsetting any potential benefit provided by the collateral.

3. Perfection and Priority (§ 223.14(d))

To ensure that a member bank has good access to the assets serving as collateral for its credit transactions with affiliates, the final regulation provides (as did the proposed rule) that a member bank's security interest in any collateral required by section 23A must be perfected in accordance with applicable law. This requirement is consistent with court decisions on the issue[92] and ensures that the member bank has the legal right to realize on the collateral in case of default, including a default resulting from the affiliate's insolvency or liquidation. Commenters supported this provision.

For similar reasons, the final rule requires (as did the proposed rule) that a member bank either obtain a first priority security interest in the required collateral or deduct from the amount of collateral obtained by the bank the lesser of (i) the amount of any security interests in the collateral that are senior to that obtained by the bank or (ii) the amount of any credits secured by the collateral that are senior to that of the bank. For example, if a member bank lends $100 to an affiliate and takes as collateral a second lien on a parcel of real estate worth $200, the arrangement would only satisfy the collateral requirements of section 23A if the affiliate owed the holder of the first lien $70 or less (a credit transaction secured by real estate must be secured at 130 percent of the amount of the transaction). Commenters also supported this provision. At the request of a commenter, the final rule includes an example of how to compute the section 23A collateral value of a junior lien.

4. Unused Portion of an Extension of Credit (§ 223.14(f)(2))

Section 23A requires that the "amount" of an extension of credit be secured by the statutorily prescribed levels of collateral. Board staff traditionally has advised that a member bank that provides a line of credit to an affiliate must secure the full amount of the line of credit throughout the life of the credit. That is, staff has not viewed section 23A as permitting a member bank to satisfy the collateral requirements of the statute by securing only the portion of a credit line that has been drawn down by the affiliate. In an acknowledgment that this treatment may be too strict for some lines of credit, the proposed rule provided that the collateral requirements of section 23A would not apply to the unused portion of an extension of credit to an affiliate so long as the member bank does not have any legal obligation to advance additional funds under the credit facility until the affiliate has posted the amount of collateral required by the statute with respect to the entire used portion of the extension of credit.[93] In such credit arrangements, securing the unused portion of the credit line is unnecessary from a safety and soundness perspective because the affiliate cannot require the member bank to advance additional funds without posting the additional collateral required by section 23A.

Numerous commenters endorsed this provision of the proposed rule, and the final rule maintains the provision.[94] The Board notes that, if a member bank voluntarily advances additional funds under such a credit arrangement without obtaining the additional collateral required under section 23A to secure the entire used amount (despite its lack of legal obligation to make such an advance), the Board would view this action as a violation of the collateral requirements of the statute.

5. Purchasing Affiliate Debt Securities in the Secondary Market (§ 223.14(f)(3))

As described above, the rule treats a member bank's investment in the debt securities of an affiliate as an extension of credit by the bank to the affiliate that is subject to section 23A's collateral requirements: In the preamble to the proposed rule, the Board sought comment on whether the rule should permit member banks in certain circumstances to purchase debt securities issued by an affiliate without satisfying the collateral requirements of section 23A. In particular, the Board invited comment on whether it should require section 23A collateralization in circumstances where a member bank purchases an affiliate's debt securities (i) from a third party in a *bona fide* secondary market transaction or (ii) pursuant to a registered public offering document or a private placement memorandum in an offering in which the affiliate receives significant participation from third parties. A large number of commenters expressed

[92] *See Fitzpatrick* v. *FDIC*, 765 F.2d 569 (6th Cir. 1985).

[93] This proposed treatment would not apply to guarantees, acceptances, and letters of credit issued on behalf of an affiliate, which must be fully collateralized at inception.

[94] The final rule uses the terms "used" and "unused" in place of the proposed rule's "drawn" and "undrawn" to conform to more standard regulatory usage. *See, e.g.*, Schedule RC–L to the bank Call Report.

support for the first of the proposed exemptions; only a few commenters advocated for (and one commenter criticized) the second proposed exemption.

The Board has decided to adopt the first of the two exemptions described above. When a member bank buys an affiliate's debt securities in a bona fide secondary market transaction, the risk that the purchase is designed to shore up an ailing affiliate is reduced. Moreover, any purchase of affiliate debt securities that qualifies for this exemption would remain subject to the quantitative limits of section 23A and the market terms requirement of section 23B. In analyzing a member bank's good faith under this exemption, the Board would expect examiners to look at the time elapsed between the original issuance of the affiliate's debt securities and the bank's purchase, the existence of any relevant agreements or relationships between the bank and the third party seller of the affiliate's debt securities, any history of bank financing of the affiliate, and any other relevant information.

C. Prohibition on the Purchase of Low-Quality Assets (§ 223.15)

Section 223.15 of the regulation restates the statute's general prohibition on the purchase by a member bank of low-quality assets from an affiliate.[95] Several commenters on the proposed rule argued that the Board should exempt a bank's purchase of low-quality assets from an insured sister bank. These commenters stated that the cross-guarantee provisions in section 5(e) of the FDI Act eradicate any concern about low-quality asset transactions between sister banks.[96]

The Board has consulted with the other Federal banking agencies on this matter and has determined not to grant the requested exemption for several reasons. First, when Congress added the sister-bank exemption to section 23A in 1982, it specifically and affirmatively left sister banks subject to the prohibition on the purchase of low-quality assets.[97] When Congress added the cross-guarantee provisions to the FDI Act in 1989, it did not amend the sister-bank exemption in section 23A to permit a member bank to buy low-quality assets from a sister bank. In light of such evidence of Congressional intent, the Board should not exempt a member bank's purchase of low-quality assets from a sister bank in the absence of compelling evidence that the exemption would be in the public interest.

The Board does not believe that such compelling evidence exists. Importantly, the FDI Act's cross-guarantee provisions would only assist the FDIC to recoup losses in the event of the failure of a sister bank, and would not ensure that sister banks continue to operate in a safe and sound manner as going concerns. Moreover, the FDI Act's cross-guarantee provisions would not apply to all sets of section 23A sister banks. For example, the cross-guarantee provisions would not apply to section 23A sister banks if the sister banks were not subsidiaries of a BHC or a thrift holding company.[98] Finally, the cross-guarantee provisions would not prevent sister banks from using the requested exemption to transfer low-quality assets back and forth among themselves to escape examination.

The proposed rule provided an exception, based on a long-standing staff interpretation, to the general prohibition on purchasing low-quality assets from an affiliate.[99] The exception allowed a member bank that purchased a loan participation from an affiliate to renew its participation in the loan, or provide additional funding under the existing participation, even if the underlying loan had become a low-quality asset, so long as certain criteria were met. The proposed rule provided this exception because these renewals or additional credit extensions may enable both the affiliate and the participating member bank to avoid or minimize potential losses. It would be inconsistent with the purposes of section 23A to bar a member bank from using sound banking judgment to take the necessary steps (consistent with the criteria established in the rule) to protect itself from harm in such a situation.

Under the proposed rule, the exception was available only if the underlying loan was not a low-quality asset at the time the member bank purchased its participation and the proposed transaction would not increase the member bank's proportional share of the credit facility. The member bank also had to obtain the prior approval of its board of directors for the transaction and provide its appropriate Federal banking agency with 20 days' prior notice of the transaction.

Commenters expressed support for preserving this exemption in Regulation W but asked the Board to soften three of the conditions to the exemption. Several commenters argued for the removal of the "no increase in the bank's share" requirement on the ground that lead banks involved in a credit restructuring often are required to repurchase participations previously sold to smaller banks, thereby increasing their proportionate share of the problem credit. Another commenter recommended that banks be allowed to increase their share of a problem credit by 5–10 percent.

Commenters also criticized the board of directors' approval requirement on the grounds that it is time consuming and that renewals of problem credits are not sufficiently important to require board-level attention in most cases. Commenters offered several alternatives, including approval by an executive committee of the bank's board of directors, approval by senior bank management, approval under the bank's normal approval process for restructuring problem credits, and approval by bank management under policies adopted by the bank's board of directors.

Moreover, commenters expressed significant opposition to the 20 days' prior notice requirement. They asked the Board to remove the requirement or replace it with an after-the-fact notice requirement. According to these commenters, speed is often of the essence in workout situations, and there is no evidence that this exemption has been abused by banks in the nearly twenty years that it has been available.

Under proposed Regulation W, this restructuring exemption only applied when a member bank renewed a participation in a loan originated by an affiliated *depository institution*. Some commenters expressed a view that the exemption should be expanded to permit a bank to renew a participation in a loan originated by any affiliate (not just an affiliated depository institution). According to these commenters, such an expansion of the exemption would enhance a bank's ability to protect itself from troubled borrowers by restructuring loans.

In response to these comments, the Board has decided to revise the rule in several respects. First, the final rule contains a 20 days' post-consummation notice requirement in replacement of the proposed rule's 20 days' prior notice requirement. Second, the final rule permits a member bank to increase its proportionate share in a restructured loan by 5 percent (or by a higher percentage with the prior approval of

[95] 12 U.S.C. 371c(a)(3). Section 23A does not prohibit an affiliate from donating a low-quality asset to a member bank, so long as the bank provides no consideration for the asset.

[96] *See* 12 U.S.C. 1815(e).

[97] See 12 U.S.C. 371c(d)(1).

[98] *See* 12 U.S.C. 1813(w), 1815(e)(1) and (9), and 1841(c)(2).

[99] See Letter dated Aug. 10, 1984, from Michael Bradfield, General Counsel of the Board, to Margie Goris.

the bank's appropriate Federal banking agency). Third, the final rule expands the scope of the exemption to include renewals of participations in loans originated by any affiliate of the member bank (not just affiliated depository institutions). Fourth, the final rule softens the board of directors' prior approval requirement as follows. For renewals of loans originated by a nondepository affiliate of the member bank, the renewals must be approved, consistent with current practice, by the entire board of directors of the bank. For renewals of loans originated by depository institution affiliates of the member bank, however, the rule provides several different ways to comply with the requirement. The member bank may obtain the prior approval of the entire board of directors, of an executive committee of the board of directors, or of selected senior management officials (so long as, in the case of approvals by management officials, the board of directors of the member bank establishes policies and procedures for such renewals, any approvals by bank management are consistent with such policies and procedures, and the board of directors periodically reviews the policies and procedures and any approvals by management). The Board believes that the conditions to the exemption contained in the final rule should be sufficient to ensure that any exempted problem loan restructurings do not pose a safety and soundness risk to the member bank.

D. Attribution Rule (§ 223.16)

Section 23A provides that any transaction between a member bank and any person is deemed to be a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that affiliate.[100] For example, a member bank's loan to a customer for the purpose of purchasing securities from the inventory of a broker-dealer affiliate of the bank would be a covered transaction under section 23A. This "attribution rule" was included in section 23A to prevent a member bank from evading the restrictions in the section by using intermediaries and to limit the exposure that a member bank has to customers of affiliates of the bank. The proposed regulation restated this provision and provided several exemptions from the attribution rule.

1. In General

Commenters offered a few general suggestions on the scope of section 23A's attribution rule. Several commenters recommended that the Board include a "bona fide, ordinary course transactions" exemption to the attribution rule, similar to the exemption that the Board adopted in Regulation O.[101] In addition, a number of commenters contended that the attribution rule should not apply to transactions where the bank does not know, or have reason to know, that the proceeds are transferred to or used for the benefit of an affiliate. Some of these commenters argued that the purpose of the attribution rule is to prevent sham transactions, not to prevent an affiliate from receiving unintended or accidental benefits from bank action. A few commenters even asked the Board to remove all the particular exemptions from the attribution rule included in Regulation W because, in the view of these commenters, the exemptions create the negative implication that all other transactions with third parties in which money flows to an affiliate are covered.

The Board has decided not to include any such general exemptions from the scope of the attribution rule in final Regulation W. The Board considers an exemption for transactions where the member bank does not know, or have reason to know, that the proceeds will flow to an affiliate as too broad in light of the important place of section 23A in the bank regulatory framework. The Board is not willing to make the applicability of the attribution rule contingent in all cases on subjective factors such as a member bank's knowledge of the purpose of a transaction or on such ambiguous, though objective, factors such as a member bank's reason to know of the purpose of a transaction.

The Board also does not believe that a Regulation O-like exemption, for transactions by a member bank with a third party the proceeds of which are used by the third party in a bona fide transaction to acquire goods or services from an affiliate of the member bank, would be appropriate in the context of section 23A. Regulation O's exemption meshes well into that rule's underlying statutory scheme because sections 22(g) and 22(h) of the Federal Reserve Act do not generally cover asset purchases from an insider; section 23A, on the other hand, generally does restrict asset purchases from an affiliate. Moreover, Regulation O's exemption reflects an underlying policy concern not to discourage qualified business owners from serving as management officials of banks. This sort of concern is not present in the section 23A context.

2. Agency and Riskless Principal Transactions (§ 223.16(b) and (c)(1–2))

Concurrently with proposed Regulation W, the Board issued a final interpretation that exempted from section 23A a loan from a member bank to a nonaffiliate who uses the loan proceeds to purchase securities from a broker-dealer affiliate of the bank acting exclusively as a riskless principal.[102] Proposed Regulation W also included this exemption and sought additional public comment on its terms. Numerous commenters recommended extending the riskless principal exemption to include assets other than securities and selling affiliates other than broker-dealers. These commenters did not provide specific information to the Board about other asset classes that are routinely purchased and sold on a riskless principal basis. In light of this absence of evidence, the Board declines at this time to expand the riskless principal exemption to include other assets or other affiliates.

Unlike the final interpretation and proposed Regulation W, final Regulation W contains a definition of "acting exclusively as a riskless principal." The definition generally tracks language in Regulation Y and provides that, for purposes of Regulation W, a company acts exclusively as a riskless principal if the company, after receiving an order to buy (or sell) a security from a customer, purchases (or sells) the security in a secondary market transaction for its own account to offset a contemporaneous sale to (or purchase from) the customer.[103]

Several commenters stated that Regulation W should clarify that a loan from a bank to a nonaffiliate who uses the loan proceeds to purchase assets through an affiliate of the bank acting solely as an agent is not subject to the attribution rule. Concurrently with the issuance of proposed Regulation W, the Board issued a final interpretation of section 23A confirming, with some conditions, this view.[104] The Board has decided to include this interpretation within the text of Regulation W to advance the goal of making the regulation a single, comprehensive source for the Board's views on sections 23A and 23B.

The final rule clarifies one of the conditions to both the agency and riskless principal exemptions. Under the final interpretations adopted in May 2001, neither of these exemptions was available to a member bank if the asset purchased by the nonaffiliate was sold "out of the inventory of" any affiliate of the bank. The Board is concerned that users of the regulation may read the "out of the inventory" language so narrowly as to allow a member bank to use these exemptions in situations where the asset purchased by the nonaffiliate was sold as principal by an affiliate of the bank that did not have an inventory of the sold asset. Whether the selling affiliate has accumulated an inventory of the asset sold to the nonaffiliate is not important from section 23A's perspective; what matters is whether the asset purchased by the nonaffiliate was sold as principal by an affiliate of the member bank. The final rule replaces the "out of the inventory" standard with an "as principal" standard to remove this ambiguity. Accordingly, under the final rule, these two exemptions are not available if the asset purchased by the nonaffiliate was sold as principal (other than as riskless principal) by an affiliate of the member bank.

3. Preexisting Lines of Credit (§ 223.16(c)(3))

Concurrently with proposed Regulation W, the Board issued a final interpretation that exempted from section 23A an extension of credit by a member bank to a nonaffiliate who uses the credit to purchase securities underwritten by or otherwise sold as principal by a broker-dealer affiliate of the bank, if the extension of credit is made pursuant to a preexisting line of credit not entered into in contemplation of transactions with an affiliate of the bank.[105] Proposed Regulation W also included this exemption and sought additional public comment on its terms. Commenters requested that the Board expand the exemption to cover purchases of any asset from any affiliate. In the view of these commenters, an extension of credit pursuant to a general purpose, preexisting line of credit should be exempt from the attribution rule regardless of the type of asset being purchased by the customer. Final Regulation W's version of this exemption is substantially identical to the one contained in the May 2001 final interpretation (and proposed Regulation W). The Board may expand the exemption in the future, however, after it acquires additional supervisory experience with its use.

4. General Purpose Credit Cards (§ 223.16(c)(4))

a. *Proposed rule and public comments.*—Section 23A's attribution rule, by its terms, covers an extension of credit by a member bank to an individual who uses the proceeds to purchase a product or service from an affiliate of the bank. Proposed Regulation W exempted from the attribution rule an extension of credit by a member bank to a nonaffiliate pursuant to a general purpose credit card in such a situation. The proposed rule defined a general purpose credit card as a credit card issued by a member bank that is widely accepted by merchants that are not affiliates of the bank (such as a Visa card or Mastercard) if less than 25 percent of the aggregate amount of purchases with the card are purchases from an affiliate of the bank.[106] Under the proposed rule, extensions of credit to unaffiliated borrowers pursuant to special purpose credit cards (that is, credit cards that may only be used or are substantially used to buy goods from an affiliate of the member bank) remained subject to the attribution rule.[107]

The Board proposed this exemption because the funding benefit received by the member bank's affiliate from the use of general purpose credit cards by unaffiliated borrowers is likely to be minimal, and a member bank's decision to issue a general purpose credit card (and make loans pursuant to such a credit card) to an unaffiliated borrower likely would be based on independent credit standards unrelated to any possible affiliate transaction.

Commenters strongly supported inclusion of an exemption for extensions of credit to nonaffiliates pursuant to a general purpose credit card, but a large number of commenters criticized the rule's definition of general purpose credit card.[108] These commenters contended that the 25 percent limit in the definition of general purpose credit card would impose substantial monitoring and recordkeeping burden on banks. Some of these commenters also alleged that the limit is not needed for safety and soundness given that the card must be widely accepted by merchants and given the virtual impossibility of a bank using credit card transactions to assist a troubled affiliate. These commenters argued that the possibility that customers may use a widely accepted credit card to buy goods from a nonaffiliate should ensure that credit is granted on market terms, and pointed out that credit card transactions expose the bank to the credit risk of thousands or millions of individual unaffiliated credit card customers and do not directly expose the bank to the credit risk of any affiliate.

Several commenters made suggestions about how the Board should modify, or clarify the application of, the quantitative limit in the definition of general purpose credit card. A couple of commenters believed that the rule should raise the 25 percent limit to 50 percent. In addition, several commenters asked the Board to provide banks with a cure period if they exceed the limit and requested that the Board provide guidance as to whether banks must do continuous or only periodic compliance checks with the limit.

b. *Final Rule.*—The Board continues to believe that the definition of general purpose credit card should include the 25 percent limit. If more than 25 percent of the purchases effected through a credit card are purchases of products and services from affiliates of the card-issuing bank, the bank has significant incentives to relax its credit underwriting standards to facilitate the sale of goods and services by its affiliates. The Board believes that a limit should be placed on the ability of a bank to use the Federal safety net to subsidize the financing of the sales activities of affiliates of the bank.

The final rule contains several adjustments to ease the burden of complying with the general purpose credit card exemption. First, the final rule provides several different methods for a member bank to demonstrate that its credit card meets the 25 percent test. For a member bank that has no commercial affiliates (other than those permitted for a FHC under section 4 of the BHC Act), the bank would be deemed to satisfy the 25 percent test if the bank has no reason to believe that it would fail the test.[109] Such a member

[100] 12 U.S.C. 371c(a)(2).

[101] *See* 12 CFR 215.3(f).

[102] 66 FR 24226, May 11, 2001.

[103] *See* 12 CFR 225.28(b)(7)(ii).

[104] 66 FR 24226, May 11, 2001.

[105] 66 FR 24226, May 11, 2001.

[106] The proposed rule also required that a general purpose credit card be eligible for use to purchase products or services from nonaffiliates of the card-issuing bank. The Board has deleted this requirement from the final rule because of its redundance on the "widely accepted" condition.

[107] As noted above, most special purpose credit card banks comply with section 23A by selling their receivables or establishing a segregated, earmarked deposit account to collateralize their receivables at the end of each day.

[108] Many commenters urged the Board to expand the exemption for general purpose credit cards to cover other forms of general revolving consumer debt, including home equity lines of credit, overdraft lines on checking accounts, and margin loans.

[109] A member bank could use this method of complying with the 25 percent test even if, for example, the bank's FHC controls, under section 4(a)(2), 4(c)(2), or 4(k)(4)(H) of the BHC Act, several companies engaged in nonfinancial activities.

bank would not be obligated to establish systems to verify strict, ongoing compliance with the 25 percent test. For a member bank that has commercial affiliates (beyond those permitted for a FHC under section 4 of the BHC Act), the bank would be deemed to satisfy the 25 percent test if (i) the bank establishes systems to verify compliance with the 25 percent test on an ongoing basis and periodically validates its compliance with the test; or (ii) the bank presents information to the Board demonstrating that its card would comply with the 25 percent test.[110]

The final rule adopts a stricter compliance standard for member banks with commercial affiliates because banks with commercial affiliates typically are the banks whose credit cards are used substantially to purchase goods or services from affiliates. The Board believes that the stricter standard for member banks with commercial affiliates will help constrain the mixing of banking and commerce by limiting the ability of such banks to use the Federal safety net to subsidize the commercial activities of their affiliates.

Second, the final rule provides member banks that fall out of compliance with the 25 percent test a three-month grace period to return to compliance before extensions of credit under the card become covered transactions. Third, the final rule gives member banks that are required to validate their ongoing compliance with the 25 percent test a fixed method, time frames, and examples for computing compliance.

The Board does not expect that member banks whose cards fail to meet the terms of the general purpose credit card exemption would be compelled to discontinue the cards. Most banks that issue special purpose credit cards historically have complied with section 23A by selling their credit card receivables to an affiliate at the end of each day.[111] Under such arrangements, which also would be permissible under final Regulation W, the bank does not provide continuous financing for its commercial affiliates; rather, it obtains funding from outside sources on a daily basis for its affiliate-related credits. Member banks that issue VISA cards and Mastercards that fail to satisfy the 25 percent test would be able to use the same mechanisms to comply with section 23A as do banks that currently issue special purpose credit cards.

V. Valuation and Timing Principles Under Section 23A—Subpart C

Subpart C of the regulation sets forth the rules that member banks must use to calculate the value of covered transactions for purposes of determining compliance with the quantitative limits and collateral requirements of section 23A. This subpart also sets forth several rules that member banks must employ to determine when a transaction becomes or ceases to be a covered transaction.

A. Credit Transactions With an Affiliate (§ 223.21)

1. Valuation (§ 223.21(a))

The proposed regulation provided generally that a credit transaction between a member bank and an affiliate initially must be valued at the amount of funds provided by the member bank to, or on behalf of, the affiliate plus any additional amount that the bank could be required to provide to, or on behalf of, the affiliate. The final rule supplements the proposed rule by providing that the section 23A value of a credit transaction between a member bank and an affiliate is the *greater* of (i) the principal amount of the credit transaction; (ii) the amount owed by the affiliate to the member bank under the credit transaction; or (iii) the result produced by application of the formula set forth in the proposed rule.

The first prong of the final rule's valuation formula for credit transactions ("the principal amount of the credit transaction") likely would determine the valuation of a transaction in which a member bank purchased a zero-coupon note issued by an affiliate. The Board believes that a member bank should value such an extension of credit at the principal, or face, amount of the note (that is, the amount that the affiliate ultimately must pay to the bank) rather than the amount of funds initially advanced by the bank. For example, assume a member bank purchased from an affiliate for $50 a 10-year zero-coupon note issued by the affiliate with a face amount of $100. The proposed rule's valuation formula permitted the member bank to value this transaction at $50—the amount provided to the affiliate by the bank in the transaction. The final rule requires the member bank to value this transaction at $100.

The second prong of the final rule's valuation formula for credit transactions ("the amount owed by the affiliate") likely would determine the valuation of a transaction in which an affiliate fails to pay a member bank when due a fee for services rendered by the bank to the affiliate. This prong of the valuation formula is not intended to include within section 23A's quantitative limits, however, items such as accrued interest not yet due on a member bank's loan to an affiliate or credit exposure of a member bank to an affiliate on a derivative transaction that is not the functional equivalent of a credit transaction (unless and until the affiliate defaults in making a required payment to the bank on a settlement date).

Member banks will be able to determine the section 23A value for most credit transactions under the third prong of the rule's valuation formula. Under this prong, for example, a $100 term loan is a $100 covered transaction, a $300 revolving credit facility is a $300 covered transaction (regardless of how much of the facility the affiliate has drawn down), and a guarantee backstopping a $500 debt issuance of the affiliate is a $500 covered transaction.[112] Several commenters contended that the unused portion of a line of credit should not count toward the quantitative limits of section 23A, especially not if the bank is only conditionally obligated to advance additional funds. In the Board's view, the entire amount (both the used and unused portions) of a line of credit or other loan commitment counts toward a member bank's quantitative limits under section 23A regardless of whether the line of credit contains a "material adverse change" clause or any other provision that is intended to relieve the bank of its funding obligation under certain conditions. This position is consistent with the treatment of commitments under the Board's capital adequacy guidelines and is particularly appropriate in the section 23A context because of the risk that a member bank may not use every contractual escape hatch available to avoid funding a troubled affiliate.[113]

Under section 23A and the regulation, a member bank has made an extension of credit to an affiliate if the bank purchases from a third party a loan previously made to an affiliate of the bank. The rule provides a different valuation formula for these indirect credit transactions. For these credit transactions, the member bank must value the transaction at the price paid by the bank for the loan plus any additional amount that the bank could be required to provide to, or on behalf of, the affiliate under the terms of the credit agreement.

For example, if a member bank pays a third party $90 for a $100 term loan that the third party previously made to an affiliate of the bank (because, for example, the loan was at a fixed rate and has declined in value due to a rise in the general level of interest rates), the covered transaction amount is $90 rather than $100.[114] The lower covered transaction amount reflects the fact that the member bank's maximum loss on the transaction is $90 rather than the original principal amount of the loan. For another example, if a member bank pays a third party $70 for a $100 line of credit to an affiliate of which $70 had been drawn down by the affiliate, the covered transaction amount would be $100 (the $70 purchase price paid by the bank for the credit plus the remaining $30 that the bank could be required to lend under the credit line).

Although a member bank's purchase of, or investment in, a debt security issued by an affiliate is considered an extension of credit to an affiliate under the regulation, these transactions are not valued like other extensions of credit. The valuation rules for purchases of, and investments in, the debt securities of an affiliate are set forth in section 223.23 of the rule, which is discussed below in part IV.C. of this preamble.

2. Timing (§ 223.21(b)(1))

The proposed regulation also made clear that a member bank has entered into a credit transaction with an affiliate at the time *during the day* that the bank becomes legally obligated to make the extension of credit to, or issue the guarantee, acceptance, or letter of credit on behalf of, the affiliate. This timing rule represented a departure from the industry practice of complying with section 23A only with respect to overnight positions. This timing rule also clarified that a covered transaction occurs at the moment that the member bank executes a legally valid, binding, and enforceable credit agreement or guarantee, and does not occur only when a member bank funds a credit facility or makes payment on a guarantee.

Many commenters objected that forcing banks to keep track of extensions of credit to an affiliate on an intraday basis would present serious compliance burdens for banks. These commenters believed that banks would have little trouble ensuring that credit transactions satisfy the collateral requirements of section 23A or the market terms requirement of section 23B at the intraday time of the transactions. According to these commenters, however, banks currently record loans and measure loan exposures at the end of each business day, and requiring intraday loan amount tracking would impose a significant cost on banks.

The Board has decided to retain proposed Regulation W's general timing rule for credit transactions. The burden of the timing rule should be significantly mitigated, however, by the exemption for intraday extensions of credit in section 223.42(l) of the regulation.[115] The Board further notes that the burden of the timing rule should be lessened by the fact that Regulation W, consistent with section 23A, only requires a member bank to compute compliance with its quantitative limits when the bank is about to engage in a new covered transaction. Accordingly, Regulation W does not require a member bank to compute compliance with the rule's quantitative limits on a continuous basis.

3. Credit Transactions With Nonaffiliates That Become Affiliates (§ 223.21(b)(2))

Banks sometimes lend money to, or issue guarantees on behalf of, unaffiliated companies that later become affiliates of the bank. The proposed regulation provided that credit transactions with a nonaffiliate become covered transactions at the time that the nonaffiliate becomes an affiliate of the member bank. Specifically, the proposed rule required that a member bank (i) ensure that any such credit transaction satisfies the collateral requirements of section 23A promptly after the nonaffiliate becomes an affiliate; and (ii) include the amount of any such transaction in the aggregate amount of the bank's covered transactions for purposes of determining whether any *future* covered transactions would comply with the quantitative limits of section 23A. The proposal did not require a member bank to reduce the amount of its covered transactions with any affiliate at the time the nonaffiliate becomes an affiliate.[116]

Many commenters criticized this approach. They contended that loans to a nonaffiliate that later becomes an affiliate should be eternally exempt from the quantitative limits and collateral requirements of section 23A because the loans were made on arm's-length terms at inception and the terms of the loans would not change when the nonaffiliate becomes an affiliate. Several of these commenters argued that the proposed rule's approach to these loans is highly burdensome, especially for banking organizations that have a significant equity investment business (where new companies are constantly becoming, and ceasing to be, 15 percent-owned portfolio company affiliates). According to these commenters, banks currently treat these loans as grandfathered, and the proposed rule's approach would put banks and their merchant banking affiliates at a serious disadvantage to nonregulated lenders and their venture firm affiliates. Other commenters contended that the "prompt" collateral requirement would be burdensome because it may be difficult to obtain collateral if the new affiliate is less than wholly owned or has other debt outstanding with negative pledge covenants.

The Board continues to subscribe to the general approach of the proposed rule in these situations. Although commenters may be correct in asserting that transactions with a nonaffiliate would be on market terms and would stay on market terms after the nonaffiliate becomes an affiliate, section 23A requires more than that covered transactions with affiliates be on market terms. Section 23A supplements the market terms requirement of section 23B with, among other things, quantitative limits and collateral requirements. If the Board did not treat credit transactions with a nonaffiliate as covered transactions at the time that the nonaffiliate becomes an affiliate, a member bank could incur uncollateralized exposure to affiliates well beyond the 20 percent aggregate quantitative limit in section 23A.[117]

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[110] One way that a member bank could demonstrate that its card would comply with the 25 percent test would be to show that the total sales of the bank's affiliates are less than 25 percent of the total purchases by cardholders.

[111] As discussed below, the Board has not historically treated intraday credit extensions as covered transactions under section 23A. Section 223.42(l) of the final Regulation W provides a fairly comprehensive exemption for intraday extensions of credit.

[112] These examples are included in the text of the final rule.

[113] *See* 12 CFR part 225, appendix A, § III.D.2.

[114] The final rule includes this example of the valuation of indirect credit transactions.

[115] As discussed in more detail below in part VII.L. of this preamble, however, the intraday credit exemption generally applies only to extensions of credit that a member bank expects to be repaid, sold, or terminated by the end of its U.S. business day. Hence, the final rule generally requires a member bank to ensure its intraday compliance with section 23A when making a loan to an affiliate during the day that the bank expects to remain outstanding and on its books overnight.

[116] The proposed rule also set forth a stricter set of compliance rules, which are discussed below, for situations in which a member bank entered into a credit transaction with a nonaffiliate "in contemplation of" the nonaffiliate becoming an affiliate.

[117] Although the lending limits applicable to national and State member banks would apply to these credit transactions at inception, these lending limits permit loans to a single corporate group in amounts up to 50 percent of the bank's capital stock and surplus. 12 CFR 32.5(d). The lending limits also would cease to apply to these credit transactions

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The Board agrees, however, that relief from the collateral requirements of section 23A would be appropriate in certain circumstances. Accordingly, the final rule exempts credit transactions from the collateral requirement in situations where the member bank entered into the transaction with the nonaffiliate at least one year before the nonaffiliate became an affiliate of the bank. In such circumstances, it is unlikely that the member bank engaged in the transaction with the nonaffiliate in anticipation of the nonaffiliate becoming an affiliate of the bank. The Board advises member banks, however, that such transactions must comply with the market terms requirement of section 23B.

As noted above, in cases where the member bank entered into the credit transaction with the nonaffiliate "in contemplation of" the nonaffiliate becoming an affiliate of the bank, the proposed rule imposed a more strict set of requirements. In these cases, the proposed rule required the member bank, at or before the time the nonaffiliate becomes an affiliate, (i) to ensure compliance with the collateral requirements of section 23A and (ii) to reduce the aggregate amount of its covered transactions with affiliates if necessary so as not to exceed the quantitative limits of section 23A.

Although commenters did not object to the proposed rule's stricter approach to "in contemplation" transactions, some commenters argued that the "in contemplation" standard in the rule is too vague. Several of these commenters believed the "in contemplation" standard should be replaced with a more objective standard that focuses on whether the nonaffiliate has entered into a binding agreement under the terms of which the nonaffiliate would become an affiliate or whether there has been a publicly announced transaction in which the nonaffiliate would become an affiliate. Other commenters contended that the Board should clarify that a transaction will be deemed "in contemplation of" a nonaffiliate becoming an affiliate only if the bank personnel involved in approving the transaction were aware of negotiations concerning the nonaffiliate's future affiliation with the bank. According to these commenters, any other formulation would require a banking organization to disseminate broadly throughout the firm prospective merger information (in contravention of good securities law compliance policies).

The Board does not believe that the above-described circumstances constitute a complete set of the situations in which a member bank might make a loan to a nonaffiliate "in contemplation of" the nonaffiliate becoming an affiliate of the bank. To provide some clarity to banking organizations, however, the final rule specifies that a transaction between a member bank and a nonaffiliate is presumed to be "in contemplation of" the nonaffiliate becoming an affiliate if the bank enters into the transaction with the nonaffiliate after the execution of, or commencement of negotiations designed to result in, an agreement under the terms of which the nonaffiliate would become an affiliate.

The exemption from the collateral requirements discussed above does not apply to "in contemplation" transactions. If a member bank engages in a credit transaction with a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the bank, the bank must ensure that the transaction complies with the collateral requirements of the rule at the time the nonaffiliate becomes an affiliate (regardless of whether a year elapsed between the inception of the credit transaction and the nonaffiliate becoming an affiliate).

B. Asset Purchases From an Affiliate (§ 223.22)

Regulation W provides that a purchase of assets by a member bank from an affiliate initially must be valued at the total amount of consideration given by the bank in exchange for the asset. This consideration can take any form, and the regulation makes clear that it would include an assumption of liabilities by the member bank. The regulation also indicates that an asset purchase remains a covered transaction for a member bank for as long as the bank holds the asset, and that the value of the covered transaction after the purchase may be reduced to reflect amortization or depreciation of the asset, to the extent that such reductions are consistent with GAAP and are reflected on the bank's financial statements.

The final rule, like the proposed rule, also clarifies that certain asset purchases by a member bank from an affiliate are not valued in accordance with the general asset purchase valuation formula. First, if the member bank buys from one affiliate a loan to a second affiliate, the bank must value the transaction as a credit transaction with the second affiliate under section 223.21 of the final rule.[118] Second, if the member bank buys from one affiliate a security issued by a second affiliate, the bank must value the transaction as an investment in securities issued by the second affiliate under section 223.23 of the final rule.[119] Third, if the member bank engages in a constructive asset purchase described in section 223.31 of the final rule, the bank must value the transaction under that section.[120]

The final rule (*unlike* the proposed rule) also sets forth a special valuation rule for a member bank's purchase of a line of credit or loan commitment from an affiliate. A member bank initially must value such asset purchases at the purchase price paid by the bank for the asset plus any additional amounts that the bank is obligated to provide under the credit facility.[121] The Board has crafted this special valuation rule to ensure that there are limits on the amount of risk a company can shift to an affiliated bank. Without the rule, a company would be able to transfer substantial amounts of unfunded obligations to an affiliated bank in a manner that barely affected the bank's quantitative limits under section 23A.

Under the regulation, in contrast with credit transactions, an asset purchase from a nonaffiliate that later becomes an affiliate generally does not become a covered transaction for the purchasing member bank. If a member bank purchases assets from a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the bank, however, the asset purchase becomes a covered transaction at the time the nonaffiliate becomes an affiliate. In addition, the member bank must ensure that the aggregate amount of the bank's covered transactions (including any such asset purchase from the nonaffiliate) would not exceed the quantitative limits of section 23A at the time the nonaffiliate becomes an affiliate.

The regulation provides several examples designed to assist member banks in valuing purchases of assets from an affiliate.

after the nonaffiliate becomes an affiliate. 12 CFR 32.1(c)(1).

[118] The valuation rule for credit transactions is discussed above in part V.A. of this preamble.

[119] The purchase by a member bank of a security issued by an affiliate is discussed below in part V.C. of this preamble.

[120] These transactions are discussed below in part VI.A. of this preamble.

[121] A member bank would not be required to include unfunded, but committed, amounts in the value of the covered transaction if (i) the credit facility being transferred from the affiliate to the bank is unconditionally cancelable (without cause) at any time by the bank; and (ii) the bank makes a separate credit decision before each drawing under the facility.

Several commenters requested confirmation that if a bank receives an encumbered asset from an affiliate, it is not forever a covered transaction in the amount of the encumbrance. The Board has modified an example in the regulation to clarify that a member bank's receipt of an encumbered asset from an affiliate ceases to be a covered transaction when, for example, the bank sells the asset.

C. Purchases of and Investments in Securities Issued by an Affiliate (§ 223.23)

Section 23A includes as a covered transaction a member bank's purchase of, or investment in, securities issued by an affiliate. Proposed Regulation W required a member bank to value a purchase of, or investment in, securities issued by an affiliate (other than a financial subsidiary of the bank)[122] at the *greater* of the bank's purchase price or carrying value of the securities.[123] Under the rule, a member bank that paid no consideration in exchange for affiliate securities would nevertheless have to value the covered transaction at no less than the bank's carrying value of the securities.[124] In addition, under the rule, if the member bank's carrying value of the affiliate securities increased or decreased after the bank's initial investment (due to profits or losses at the affiliate), the amount of the bank's covered transaction would increase or decrease to reflect the bank's changing financial exposure to the affiliate, but could not decline below the amount paid by the bank for the securities.

A number of commenters objected to this valuation formula and offered alternatives. Several commenters argued that investments in an affiliate's securities should be valued at the *lower* of purchase price or carrying value. Under this formula, a contribution of affiliate securities to a bank would be valued at zero, and the bank would be permitted without limit to reduce the covered transaction amount for a purchase of affiliate securities as the value of the securities declined. These commenters justified their formula's treatment of bank investments in a declining affiliate by pointing out that a bank's capital would be reduced to reflect the decline in value of the affiliate's securities and by noting that their approach more accurately reflects the bank's actual remaining financial exposure to the affiliate.

Under the commenters' proposed formula, a bank's section 23A value for an investment in affiliate securities also would *not* increase as the value of the securities increased. These commenters argued that an increase in the value of an investment does not create additional risk of loss for the investor and that there is no justification for restricting section 23A lending as an affiliate increases in financial strength. One of these commenters contended that the proposed regulation's valuation rule is inconsistent in increasing the section 23A value of an investment as the affiliate prospers but not decreasing the section 23A value of the investment as the affiliate declines.

Other commenters argued that investments in an affiliate's securities always should be valued at the purchase price or, at a minimum, that a contribution of affiliate securities initially should be valued at zero.

The Board has determined to adopt the valuation rule contained in the proposed regulation. The Board continues to believe that several important considerations support the general carrying value approach of this valuation rule. First, the approach is consistent with GAAP, which would require a bank to reflect its investment in securities issued by an affiliate at carrying value throughout the life of the investment, even if the bank paid no consideration for the securities. Second, the approach is supported by the terms of the statute, which defines both a "purchase of" *and* an "investment in" securities issued by an affiliate as a covered transaction. The statute's "investment in" language indicates that Congress was concerned with a member bank's continuing exposure to an affiliate through an ongoing investment in the affiliate's securities.

Third, amendments to section 23A made by the GLB Act support the approach. The GLB Act defines a financial subsidiary of a bank as an affiliate of the bank, but specifically provides that the section 23A value of a bank's investment in securities issued by a financial subsidiary does *not* include retained earnings of the subsidiary. The negative implication from this provision is that the section 23A value of a bank's investment in *other* affiliates *includes* the affiliates' retained earnings, which would be reflected in the bank's carrying value of the investment under the rule.

Finally, the carrying value approach is consistent with the purposes of section 23A—limiting the financial exposure of banks to their affiliates and promoting safety and soundness. The valuation rule requires a member bank to revalue upwards the amount of an investment in affiliate securities only when the bank's exposure to the affiliate increases (as reflected on the bank's financial statements) and the bank's capital increases to reflect the higher value of the investment. In these circumstances, the valuation rule merely reflects the member bank's greater financial exposure to the affiliate and enhances safety and soundness by reducing the bank's ability to engage in additional transactions with an affiliate as the bank's exposure to that affiliate increases.

As noted above, this valuation rule also provides that the covered transaction amount of a member bank's investment in affiliate securities can be no less than the purchase price paid by the bank for the securities, even if the carrying value of the securities declines below the purchase price. Although this aspect of the valuation rule is not consistent with GAAP, using the member bank's purchase price for the securities as a floor for valuing the covered transaction is appropriate for several reasons. First, it ensures that the amount of the covered transaction never falls below the amount of funds actually transferred by the member bank to the affiliate in connection with the investment. In addition, the purchase price floor limits the ability of a member bank to provide additional funding to an affiliate as the affiliate approaches insolvency. If the regulation were to value investments in securities issued by an affiliate strictly at carrying value, then the member bank could lend more funds to the affiliate as the affiliate's financial condition worsened. As the affiliate declined, the member bank's carrying value of the affiliate's securities would decline, the section 23A value of the bank's investment likely would decline, and, consequently, the bank would be able to provide additional funding to the affiliate under section 23A. This type of increasing support for an affiliate in distress is precisely what section 23A was intended to restrict.

The regulation provides several examples designed to assist member banks in valuing purchases of and investments in securities issued by an affiliate.

[122] The valuation rule for investments in securities issued by a financial subsidiary is discussed below in part VI.B.2. of this preamble.

[123] Staff traditionally advised member banks to value a purchase of securities issued by an affiliate at the purchase price paid by the bank for the securities.

[124] Carrying value refers to the amount at which the securities are carried on the GAAP financial statements of the member bank.

D. Posting Securities Issued by an Affiliate as Collateral (§ 223.24)

1. General Valuation Rule (§ 223.24(a) and (b))

Section 23A defines as a covered transaction a member bank's acceptance of securities issued by an affiliate as collateral for a loan or extension of credit to any person or company.[125] This type of covered transaction has two classes: one in which the only collateral for the loan is affiliate securities; and another in which the loan is secured by a combination of affiliate securities and other collateral. Section 23A does not explain how these different types of covered transactions should be valued for purposes of determining compliance with the quantitative limits of the statute.

As a general rule, Regulation W values covered transactions of the first class, where the credit extension is secured exclusively by affiliate securities, at the full amount of the extension of credit. This approach reflects the difficulty of measuring the actual value of typically untraded and illiquid affiliate securities, and conservatively assumes that the value of the securities is equal to the full value of the loan that the securities collateralize. This position also reflects the traditional advice given by Board staff on this issue. Regulation W contains an exception to the general rule where the affiliate securities held as collateral have a ready market. In that case, the transaction may be valued at the fair market value of the affiliate securities. The exception grants relief from staff's traditional position in those circumstances where the value of the affiliate securities is independently verifiable by reference to transactions occurring in a liquid market.[126]

Regulation W values covered transactions of the second class, where the credit extension is secured by affiliate securities and other collateral, at the *lesser* of (i) the total value of the extension of credit minus the fair market value of the other collateral or (ii) the fair market value of the affiliate securities (if the securities have a ready market). Until 1999, staff advised member banks to value this class of covered transactions at the total amount of the extension of credit. In January 1999, the staff modified its position on mixed collateral loans to permit member banks to value these transactions in a manner similar to the rule.[127]

The Board believes that where a loan is secured by securities of an affiliate and other collateral, it is reasonable to reflect the fair market value of the other collateral in determining whether, and to what extent, the loan should count toward the member bank's section 23A quantitative limits. Under the rule's method of calculation for mixed-collateral loans, if a loan is fully secured by nonaffiliate collateral with a fair market value that equals or exceeds the loan amount, then the loan would not be included in the member bank's quantitative limits for purposes of section 23A.[128] If the loan is not fully secured by other collateral, then the maximum amount that the member bank must count against its quantitative limits is the difference between the full amount of the loan and the fair market value of the nonaffiliate collateral.

The approach taken in Regulation W, however, is different from that of the 1999 interpretation in two respects. First, although the 1999 interpretation allowed member banks to use the fair market value of the affiliate securities as an upper limit on the value of the transaction regardless of the liquidity of the affiliate securities, the regulation only allows member banks to use the value of the affiliate securities as an upper limit if the affiliate securities have a ready market. The Board is concerned that a member bank could understate the market value of affiliate securities that do not have a ready market in order to shrink the size of the covered transaction. Second, the regulation's ready market requirement replaces an implicit condition of the 1999 interpretation that only a small amount of the total collateral could be affiliate securities. The valuation rule in Regulation W applies regardless of the amount of affiliate collateral.[129]

Commenters did not criticize the proposed rule's general valuation formulas for these covered transactions, and the general formulas contained in the final rule are substantially identical to those in the proposal. Commenters did, however, suggest several new exemptions for this type of covered transaction: (i) Transactions in which the affiliate securities serving as collateral meet the (d)(6) exemption and (ii) transactions in which the affiliate securities serving as collateral represent less than 50 percent of the total collateral. The final rule does not include either of these suggested exemptions. In the Board's view, a loan by a member bank that is secured by affiliate securities could be used to provide indirect financing to an affiliate and exposes the bank (albeit secondarily) to the credit risk of an affiliate regardless of whether the affiliate securities are traded in a liquid market or constitute a minority of the total collateral for the loan.

2. Exemption for Shares Issued by an Affiliated Mutual Fund (§ 223.24(c))

In connection with the proposed rule, the Board specifically sought comment on whether to exempt from section 23A loans to third parties secured by affiliate-issued mutual fund shares. A large number of commenters advocated granting this exemption and offered the following principal arguments in support of their position: (i) The bank is not funding an affiliate in these transactions; (ii) although section 23A includes as a covered transaction a loan to a third party collateralized by affiliate securities, the purpose of including this covered transaction was to prevent evasion, and evasion is implausible when the collateral taken by the bank is affiliate-issued mutual funds; (iii) tracking these loans can be very burdensome as many of the loans are small and the value of the mutual fund collateral changes daily; (iv) the assets of an affiliated mutual fund generally are shares of nonaffiliates, which could otherwise serve as collateral for the loan without creating a covered transaction under section 23A; and (v) mutual funds are highly regulated, their shares are highly liquid and can only be purchased at their daily net asset value, and mutual funds are required by law to have boards of directors that are largely independent of the bank and its affiliates.

In the proposal, the Board asked for comment on five potential conditions to the availability of this exemption: (i) The borrower does not use the proceeds of the loan to purchase shares of the affiliated mutual fund; (ii) the borrower is not an executive officer of the member bank or its affiliates; (iii) the price of the mutual fund shares is quoted routinely in a widely disseminated news source; (iv) the shares of the mutual fund are widely held by the public; and (v) the member bank and its affiliates do not own in the aggregate more than 5 percent of the shares of the mutual fund. A few commenters recommended that the Board drop all five of these conditions. Other commenters specifically endorsed or specifically objected to particular conditions.

One commenter supported the use of proceeds condition, but other commenters objected to the condition because the use of loan proceeds is hard to monitor and control. Several commenters expressed opposition to the executive officer condition. Many of them noted that Regulation O already comprehensively regulates bank lending to executive officers. A number of other commenters expressed a willingness to support the condition if it were modified to cover only executive officers that are subject to Regulation O restrictions.

A few commenters supported the pricing mechanism condition. One commenter opposed the condition on the grounds that major newspapers only report on large mutual funds, and even small mutual funds are liquid (and must redeem shares upon request at all times) and have prices quoted on internet sites and in other news sources. Several commenters asked the Board to widen this condition to explicitly permit mutual fund price quotes to be obtained from Morningstar, Lipper, Bloomberg, fund supermarket websites, or any other unaffiliated, real-time, electronic pricing system.

Some commenters expressly supported the widely held condition. Several other commenters criticized the condition. These commenters noted that the daily redemption requirement to which mutual funds are subject should satisfy any liquidity concerns that the Board may have. They advised that concentrated ownership of a fund would not adversely impact the fund's liquidity or the reliability of pricing information.

One commenter supported the 5 percent ownership limit condition. Many commenters opposed the condition, largely because of its purported redundance on the widely held condition. Some of these commenters asked the Board to replace the 5 percent condition with a "no control" condition.

The Board has decided to include in the final rule an exemption for extensions of credit by a member bank that are secured by shares of an affiliated mutual fund. To qualify for the exemption, the transaction must meet several conditions. First, to ensure that the affiliate collateral is liquid and trades at a fair price, the affiliated mutual fund must be an open-end investment company that is registered with the SEC under the 1940 Act. Second, to ensure that the member bank can easily establish and monitor the value of the affiliate collateral, the affiliated mutual fund's shares serving as collateral for the extension of credit must have a publicly available market price. Third, to reduce the member bank's incentives to use these extensions of credit as a mechanism to support the affiliated mutual fund, the member bank and its affiliates must not own more than 5 percent of the fund's shares (excluding certain shares held in a fiduciary capacity). Finally, the proceeds of the extension of credit must not be used to purchase the affiliated mutual fund's shares serving as collateral or otherwise used to benefit an affiliate. In such circumstances, the member bank's extension of credit would be covered by section 23A's attribution rule.

Instead of creating a separate exemption for these transactions in subpart E of the rule, the Board has decided to effect this exemption by adjusting the valuation rule for extensions of credit secured by affiliate-issued securities. Inserting the exemption into the valuation rule for this type of covered transaction will enable users of the regulation to determine more easily the non-exempt covered transaction amount for loans secured in part by affiliate-issued securities and in part by other collateral. The final rule effects the exemption by providing that an affiliated mutual fund's shares that meet the above-mentioned criteria do not count as affiliate-issued securities for purposes of the valuation rule for extensions of credit secured by affiliate-issued securities.

VI. Other Requirements Under Section 23A—Subpart D

Subpart D of the rule provides guidance to banking organizations on three issues under section 23A: (i) Merger and acquisition transactions between a member bank and an affiliate; (ii) financial subsidiaries of a member bank; and (iii) derivative transactions between a member bank and an affiliate.

A. Merger and Acquisition Transactions Between a Member Bank and an Affiliate (§ 223.31)

1. The General Rule (§ 223.31(a–c))

As noted above, section 23A includes a member bank's purchase of assets from an affiliate and a member bank's purchase of, or investment in, securities issued by an affiliate within the definition of covered transaction. In the past, the Board has been required to apply these provisions to transactions where a member bank directly or indirectly acquires an affiliate. There are three principal methods by which a member bank acquires an affiliate. The first method is where a member bank directly purchases or otherwise acquires the affiliate's assets and assumes the affiliate's liabilities. In this case, the transaction is treated as a purchase of assets, and the covered transaction amount is equal to the amount of any separate consideration paid by the member bank for the affiliate's assets (if any) plus the amount of any liabilities assumed by the bank in the transaction.

The second method is where a member bank acquires an affiliate by merger. Because a merger with an affiliate generally results in the member bank acquiring all the assets of the affiliate and assuming all the liabilities of the affiliate, this transaction is effectively equivalent to the purchase and assumption transaction described in the previous pafagraph. Accordingly, the merger transaction also is treated as a purchase of assets, and the covered transaction amount is again equal to the amount of any separate consideration paid by the member bank for the affiliate's assets (if any) plus the amount of any liabilities assumed by the bank in the transaction.[130]

The third method involves the contribution or sale of a controlling block of an affiliate's shares to a member bank. The Board previously has treated these transactions as a purchase of assets covered by section 23A if the member bank paid consideration for the shares or the affiliate whose shares were

[125] 12 U.S.C. 371c(b)(7)(D). This covered transaction only arises when the member bank's loan is to a nonaffiliate. Under section 23A, the securities issued by an affiliate are not acceptable collateral for a loan or extension of credit to any affiliate. *See* 12 U.S.C. 371c(c)(4). Moreover, if the proceeds of a loan that is secured by an affiliate's securities are transferred to an affiliate by the unaffiliated borrower (for example, to purchase assets or securities from the inventory of an affiliate), the loan should be treated as a loan to the affiliate. The loan must then be secured with collateral in an amount and of a type that meets the requirements of section 23A for loans by a member bank to an affiliate.

[126] In either case, the transaction must comply with section 23B; that is, the member bank must obtain the same amount of affiliate securities as collateral on the credit extension that the bank would obtain if the collateral were not affiliate securities.

[127] *See* Letter dated January 21, 1999, from J. Virgil Mattingly, Jr., General Counsel of the Board, to Bruce Moland. This letter set forth an opinion of Board staff that, for purposes of applying the quantitative limits in section 23A, such mixed-collateral loans should be valued at the lesser of (i) the total amount of the loan less the fair market value of nonaffiliate collateral (if any) or (ii) the fair market value of the affiliate's securities that are used as collateral.

[128] The Board notes, however, that section 23A requires a loan by a member bank that is secured with any amount of an affiliate's securities to be consistent with safe and sound banking practices. 12 U.S.C. 371c(a)(4).

[129] One commenter asked for clarification that a member bank may use the higher of the two valuation options for these transactions if, for example, the bank does not have the procedures and systems in place to verify the fair market value of affiliate securities. The Board has adjusted the language of the rule to clarify that a member bank may choose to use the higher valuation option.

[130] As noted above, section 223.3(dd) of the final rule makes explicit the Board's view that these merger transactions generally involve the purchase of assets by a member bank from an affiliate.

contributed to the member bank had liabilities to any affiliate of the bank.[131]

The proposed rule did not alter the treatment of the first two types of transaction described above. The proposed rule did set forth, however, a new treatment for the third type of transaction. The proposed rule provided that the acquisition by a member bank of securities issued by a company that was an affiliate of the bank before the acquisition is treated as a purchase of assets from an affiliate if (i) as a result of the transaction, the company becomes an operating subsidiary of the bank; and (ii) the company has liabilities, or the bank gives cash or any other consideration in exchange for the securities. The proposed rule also provided that these transactions must be valued initially at the sum of (i) the total amount of consideration given by the member bank in exchange for the securities; and (ii) the total liabilities of the company whose securities have been acquired by the member bank. In effect, the proposed rule required member banks to treat such share donations and purchases in the same manner as if the member bank had purchased the assets of the transferred company at a purchase price equal to the liabilities of the transferred company (plus any separate consideration paid by the bank for the shares).

A number of commenters objected to this approach. Many of them complained that the approach would prevent banks from efficiently reorganizing their operations and, therefore, would put BHCs at a competitive disadvantage to other less regulated companies. These commenters also contended that the approach ignores the reality of the corporate limited liability shield.

Some of these commenters simply asserted that the rule should not treat a donation of shares as a covered transaction because the bank is obtaining an asset (shares) at no cost. Other commenters offered a variety of alternative formulas for valuing these transactions. The principal alternatives offered were to value these covered transactions at (i) the purchase price paid by the bank for the shares plus any liabilities of the transferred company minus the value of the assets of the transferred company (as verified by an independent third party); (ii) the purchase price paid by the bank for the shares; (iii) the GAAP net worth of the transferred company; or (iv) the purchase price paid by the bank for the shares plus any liabilities owed by the transferred company to affiliates of the bank (staff's traditional approach).

For the following reasons, the Board is adopting a valuation rule for these transactions that is substantially identical to the formula set forth in the proposed rule.[132] Regulation W's treatment of these transactions is consistent with the approach that section 23A takes on subsidiaries of member banks and with economic and marketplace realities. Section 23A treats member banks and their operating subsidiaries as a single unit. Transactions between a member bank and its operating subsidiaries are not treated as covered transactions between a member bank and an affiliate under section 23A; rather, they are treated as transactions entirely inside the member bank. Similarly, a transaction between a member bank's operating subsidiary and an affiliate of the member bank is treated as a covered transaction between the member bank itself and an affiliate under section 23A. Ignoring the separate corporate form of operating subsidiaries of member banks and treating the assets and liabilities of operating subsidiaries of member banks as assets and liabilities of the member bank itself is, therefore, consistent with the structure of section 23A. Accordingly, under section 23A, these share transfers in which an affiliate of a member bank becomes an operating subsidiary of the bank are properly viewed as a purchase of an affiliate's assets and an assumption of an affiliate's liabilities by the bank.[133]

Regulation W's treatment of affiliate share transfers is also consistent with the Board's supervisory experience. The Board has found that banks often operate their consolidated organizations—because of capital requirements, financial reporting requirements, and reputational risk concerns—as if the assets and liabilities of subsidiaries were assets and liabilities of the bank itself. Banks often attempt to shore up their subsidiaries in times of financial stress, despite the limited liability inhering in the corporate form. Accordingly, the rule treats the assets and liabilities of an operating subsidiary of a member bank as assets and liabilities of the bank itself for purposes of section 23A.[134]

The rule only imposes asset purchase treatment on affiliate share transfers where the company whose shares are being transferred to the member bank was an affiliate of the bank before the transfer. If the transferred company were not an affiliate before the transfer, it would not be appropriate to treat the share transfer as a purchase of assets *from an affiliate*. Similarly, the rule only requires asset purchase treatment for affiliate share transfers where the transferred company becomes a subsidiary and not an affiliate of the member bank through the transfer. If the transferred company were not a subsidiary of the member bank after the transfer (because, for example, the bank acquired less than 25 percent of a class of voting securities of the company) or if the company were an affiliate of the member bank after the transfer (because, for example, the bank's holding company continued to own 25 percent or more of a class of voting securities of the company or because the company became a financial subsidiary of the bank after the transfer), the Board does not believe it would be appropriate to treat the liabilities of the company as the liabilities of the bank for purposes of section 23A. In those circumstances, section 23A would not treat the member bank and the transferred company as a single unit.

[131] *See, e.g.*, Letter dated June 11, 1999, from Robert deV. Frierson, Associate Secretary of the Board, to Mr. Robert L. Anderson. The Board adopted this view of these internal reorganizations principally because the transactions often were motivated by funding problems at the transferred affiliate or the member bank's parent holding company and by a desire to use the bank's resources to alleviate those funding needs. Soon after consummating such reorganizations, bank funds typically were used to pay down liabilities that the transferred company had to the parent holding company of the member bank.

[132] The final rule differs from the proposed rule in one small respect. The final rule explicitly addresses situations in which the assets of the transferred company include securities issued by an affiliate, extensions of credit to an affiliate, or other covered transactions. In these situations, the final rule clarifies that a member bank initially must value these transactions at the greater of (i) the purchase price paid by the bank for the shares of the transferred company plus the total liabilities of the transferred company; or (ii) the total value of all covered transactions acquired by the bank as a result of the transaction. For example, assume the transferred company has $100 of assets ($25 of which are loans to an affiliate) and $40 of liabilities. Upon donation of the company's shares to the member bank, the bank would have a $40 covered transaction. If $45 of the transferred company's assets are loans to an affiliate, however, the member bank would have a $45 covered transaction upon donation of the company's shares to the bank.

[133] One commenter contended that the rule's approach to these reorganization transactions unfairly counts 100 percent of the liabilities of the transferred company even if only 25 percent of the shares of the company are transferred. As noted above, this outcome is consistent with the structure of section 23A, which treats 25-percent-owned operating subsidiaries as part of the member bank itself.

[134] Because a member bank usually can merge a subsidiary into itself, transferring all the shares of an affiliate to a member bank often is functionally equivalent to a transaction in which the bank directly acquires the assets and assumes the liabilities of the affiliate. As noted above, in a direct acquisition of assets and assumption of liabilities, the covered transaction amount would be equal to the total amount of liabilities assumed by the member bank.

One commenter speculated that this approach to affiliate share transfers would create an eternal covered transaction. Under the rule, affiliate share transfers are deemed to be an asset purchase by the member bank from an affiliate and would diminish over time in the same manner as any other asset purchase. That is, the amount of the covered transaction would decline over time as the assets of the transferred company were sold or amortized. The amount of the covered transaction would not decline over time, however, as the member bank paid off the liabilities of the transferred company. A valuation example in the final rule will help to explain how the covered transaction amount of these affiliate share transfers winds down over time.

Another commenter asked the Board to clarify that a BHC could reduce the covered transaction amount for an affiliate share transfer by making a cash contribution to the transferee bank in the amount of the liabilities of the transferred company. The Board agrees that an affiliate share transfer would not be a covered transaction if, in addition to receiving the affiliate shares, the transferee member bank received a cash contribution equal to the amount of the liabilities of the transferred company. In this situation, the member bank should not be deemed to have "purchased" the assets of the transferred company.

The Board notes that a member bank that proposes to purchase assets from an affiliate as part of an internal corporate reorganization of a banking organization (including in a transaction that is treated as a purchase of assets under section 223.31 of the rule) may qualify for a regulatory or case-by-case exemption from section 23A. Section 223.41(d) of the final rule sets forth a general regulatory exemption for these covered transactions, and part VII.C. of this preamble discusses both the general regulatory exemption and the Board's practice of granting case-by-case exemptions for these covered transactions. In addition, section 223.31(d) of the final rule, which is discussed in the following section of the preamble, provides an exemption for certain step transactions that are treated as asset purchases under section 223.31(a) of the rule.

2. Step Transaction Exemption (§ 223.31(d–e))

The proposed regulation also contained a regulatory exemption for certain merger and acquisition transactions that result in the transfer of an affiliate to a member bank. Section 223.31(d) of the proposed rule provided an exemption from the requirements of section 23A (other than the safety and soundness requirement) for transactions in which, for example, a BHC acquires the stock of an unaffiliated company and, immediately after consummation of the acquisition, transfers the shares of the acquired company to the holding company's subsidiary member bank. Although these transactions technically would be treated as an asset purchase by a member bank from an affiliate—and the member bank would be required to value the covered transaction at the total amount of the liabilities of the acquired company (plus any separate consideration paid by the bank for the company)—the Board believed that it would be inappropriate to require a member bank to count these transactions toward its section 23A quantitative limits. If the member bank had acquired the target company directly, there would have been no covered transaction, and the mere fact that the bank's holding company owned the target company for a moment in time does not change the fundamental nature of the transaction.

Consequently, the proposed regulation exempted these "step" transactions under certain conditions. First, the member bank had to acquire the target company immediately after the company became an affiliate (by being acquired by the bank's holding company, for example). Second, the member bank had to acquire the entire ownership position in the target company that its holding company acquired. Finally, the entire transaction had to comply with the market terms requirement of section 23B.

Many commenters objected to the immediate transfer requirement, mostly on the basis that a BHC may want to hold the target company at the holding company level for some time for tax, business line integration, or regulatory approval reasons. Some commenters advised that the immediate transfer requirement could be replaced with a requirement that the target company be acquired by the BHC "in contemplation of" being put under the bank. Other commenters recommended that the immediate transfer requirement be replaced with a 3-month, 6-month, or 1-year requirement.

As noted in the preamble to the proposed rule, to the extent that the member bank acquires the target company some time after the company becomes an affiliate, the transaction looks less like a single transaction in which the bank acquires the target company and more like two separate transactions, the latter of which involves the bank acquiring assets from an affiliate. Nevertheless, in order to provide banking organizations with a reasonable amount of time to address legal, tax, and business issues relating to an acquisition, the Board has decided to permit member banks to avail themselves of the step transaction exemption if they acquire the target company within three months after the target company becomes an affiliate (so long as the appropriate Federal banking agency for the bank has approved the longer time period). To protect the transferee member bank from a decline in the financial condition or asset quality of the target company during the time that the acquired company is an affiliate of the bank, the final rule adds two conditions to the applicability of the step transaction exemption. First, a member bank must notify its appropriate Federal banking agency and the Board, at or before the time that the target company becomes an affiliate of the bank, of its intent ultimately to acquire the target company. Second, there must be no material change in the business or financial condition of the target company during the time between when the company becomes an affiliate of the member bank and the bank's receipt of the company.

Several commenters also objected to the "bank must acquire all of the target company" requirement. These commenters alleged that there are legitimate business, regulatory, and tax reasons to distribute a target company's assets and subsidiaries to various bank and nonbank subsidiaries of the holding company. Some of these commenters advocated replacing the 100 percent requirement with a 25–50 percent requirement. The Board has decided to keep the 100 percent requirement in order to prevent a holding company from keeping the good subsidiaries of the target company and transferring the bad subsidiaries of the target company to the holding company's subsidiary member bank.

Of course, if a banking organization fails to meet the terms of the step transaction exemption, the organization may be able to satisfy the conditions of Regulation W's internal corporate reorganization exemption or may be able to obtain a case-by-case exemption from the Board.

B. Financial Subsidiaries (§ 223.32)

As noted above, the GLB Act amended section 23A to treat a financial subsidiary of a bank as an affiliate of the bank and to establish several special rules that apply to transactions with financial subsidiaries. The regulation combines all of the special rules that apply to transactions with financial subsidiaries in a single section.

1. Applicability of the 10 Percent Quantitative Limit to Transactions With a Financial Subsidiary (§ 223.32(a))

First, consistent with the GLB Act, the regulation provides that the 10 percent quantitative limit in section 23A does not apply with respect to covered transactions between a member bank and any individual financial subsidiary of the bank. Accordingly, a member bank's aggregate amount of covered transactions with any individual financial subsidiary of the bank may exceed 10 percent of the bank's capital stock and surplus.[135] A member bank's covered transactions with its financial subsidiaries, however, are subject to the 20 percent quantitative limit in section 23A. Thus, a member bank may not engage in a covered transaction with any affiliate (including a financial subsidiary) if the bank's aggregate amount of covered transactions with all affiliates (including financial subsidiaries) would exceed 20 percent of the bank's capital stock and surplus.

The Board notes that the exemption from the 10 percent limit for investments by a member bank in its *own* financial subsidiary does not apply to investments by a member bank in the financial subsidiary of an affiliated depository institution. Although the financial subsidiary of an affiliated depository institution is an affiliate of the member bank for purposes of sections 23A and 23B, the GLB Act states that only "covered transactions between a bank and any individual financial subsidiary *of the bank*" are not subject to the 10 percent limit in section 23A.[136] Accordingly, a member bank may not engage in a covered transaction with the financial subsidiary of an affiliated depository institution if the aggregate amount of the member bank's covered transactions with that financial subsidiary would exceed 10 percent of the bank's capital stock and surplus.

2. Valuation of Investments in Securities Issued by a Financial Subsidiary (§ 223.32(b))

Because financial subsidiaries of a member bank are considered affiliates of the bank for purposes of section 23A, a member bank's purchases of and investments in the securities of its financial subsidiary are covered transactions under the statute. The GLB Act further provides that a member bank's investment in its own financial subsidiary, for purposes of section 23A, shall not include the retained earnings of the financial subsidiary.[137] In light of this statutory provision, the regulation contains a special valuation rule for investments by a member bank in the securities of its own financial subsidiary.[138] Such investments must be valued at the greater of (i) the price paid by the member bank for the securities; or (ii) the carrying value of the securities on the financial statements of the member bank (determined in accordance with GAAP but without reflecting the bank's pro rata share of any earnings retained or losses incurred by the financial subsidiary after the bank's acquisition of the securities).[139]

This valuation rule differs from the general valuation rule for investments in securities issued by an affiliate only in that the financial subsidiary rule requires, consistent with the GLB Act, that the carrying value of the investment be computed without consideration of the retained earnings or losses of the financial subsidiary since the time of the member bank's investment. As a result of this rule, the covered transaction amount for a member bank's investment in securities issued by its financial subsidiary generally would not increase after it was made except in the event that the member bank made an additional capital contribution to the subsidiary or purchased additional securities of the subsidiary.

The regulation provides several examples designed to assist member banks in valuing investments in securities issued by a financial subsidiary.

One commenter criticized this valuation rule and asserted that a donation of shares of a financial subsidiary to a bank should never have a section 23A value. For the reasons discussed above in part V.C. of this preamble, the Board does not believe that such an approach to valuation would be consistent with the purposes and structure of section 23A.

3. Anti-Evasion Rules (§ 223.32(c))

Section 23A generally applies only to transactions between a member bank and an affiliate of the bank and transactions between a member bank and a third party where some benefit of the transaction accrues to an affiliate of the bank. The statute generally does not apply to transactions between two affiliates. The GLB Act establishes two special anti-evasion rules, however, that govern transactions between a financial subsidiary of a member bank and another affiliate of the bank.[140] First, the GLB Act provides that any purchase of, or investment in, securities issued by a member bank's financial subsidiary by an affiliate of the bank will be deemed to be a purchase of, or investment in, such securities by the bank itself. Second, the GLB Act authorizes the Board to deem an extension of credit made by a member bank's affiliate to any financial subsidiary of the bank to be an extension of credit by the bank to the financial subsidiary, if the Board determines that such action is necessary or appropriate to prevent evasions of the Federal Reserve Act or the GLB Act. The regulation incorporates both of these provisions.

In the proposed regulation, the Board exercised its authority under the second anti-evasion rule by stating that an extension of credit to a financial subsidiary of a member bank by an affiliate of the bank would be treated as an extension of credit by the bank itself to the financial subsidiary if the extension of credit is treated as regulatory capital of the financial subsidiary. An example of the kind of credit extension covered by this provision would be a subordinated loan to a financial subsidiary that is a securities broker-dealer where the loan is treated as capital of the subsidiary under the SEC's net capital rules. Although several commenters opposed this provision of the proposed rule, and argued that it would impede a BHC's ability to serve as a source of strength for a subsidiary bank, the Board has decided to retain this provision in the final rule. The Board believes that treating such an extension of credit as a covered transaction is appropriate because the extension of credit by the affiliate has a similar effect on the subsidiary's regulatory capital as an equity investment by the affiliate, which is treated as a covered transaction by the terms of the GLB Act (as described above). The Board notes that the final rule generally does not prevent a BHC or other affiliate of a member bank from providing financial support to a financial subsidiary of the bank in the form of a senior or secured loan.

One commenter asked the Board to determine that loans from an affiliate to a financial subsidiary of a member bank that count as regulatory capital of the financial subsidiary are treated as investments in the equity securities of an affiliate rather than loans to an affiliate, or to otherwise exempt such transactions from the collateral requirements of section 23A. According to this commenter, such a determination would be consistent with the reason for extending the GLB Act's anti-evasion principle to cover these loans—that the loans are equivalent to equity investments. The Board disagrees with this comment and believes that such loans by an affiliate to a member bank's financial subsidiary should be treated, consistent with the GLB Act's anti-evasion provisions, as if they were made by the member bank itself. If the member bank itself had made a subordinated loan counting as regulatory capital to its financial subsidiary, the loan would be subject to the quantitative limits and collateral requirements of section 23A as an extension of credit. Accordingly, under the final rule, such a loan by an affiliate of the member bank to the financial subsidiary also would be subject to the quantitative limits and collateral requirements of section 23A as an extension of credit.

In addition, the proposed regulation provided an exception to the anti-evasion rules for transactions between a member bank's financial subsidiary and another affiliate if the other affiliate were itself a depository institution subject to section 23A. The exception would have avoided treating certain transactions as covered transactions both for the parent member bank of the financial subsidiary and for the other affiliated depository institution. After further analysis, the Board has decided to remove this proposed exception to the anti-evasion rule because the exception also would have allowed the financial subsidiary of a member bank to obtain funding from the entire banking organization in amounts that exceeded 20 percent of the parent bank's capital and surplus. Congress designed the anti-evasion rules to prevent a bank from funding its financial subsidiaries by paying dividends to its parent and having its parent, directly or indirectly, reinvest the funds into the financial subsidiary of the bank. The potential for such "round-tripping" exists whether or not the parent routes such funding flows to a subsidiary bank's financial subsidiary through a sister depository institution of the bank.

The Board may find certain other extensions of credit by an affiliate to a financial subsidiary to be covered transactions under section 23A on a case-by-case basis.

C. Derivative Transactions (§ 223.33)

1. Background

Derivative transactions between a bank and its affiliates generally arise either from the risk management needs of the bank or the affiliate. Transactions arising from the bank's needs typically arise when a bank enters into a swap or other derivative contract with a customer but chooses not to hedge directly the market risk generated by the derivative contract or is unable to hedge the risk directly because the bank is not authorized to hold the hedging asset. In order to manage the market risk, the bank may have an affiliate acquire the hedging asset. The bank would then do a "bridging" derivative transaction between itself and the affiliate maintaining the hedge.

Other derivative transactions between a bank and its affiliate are affiliate-driven. A bank's affiliate may enter into an interest-rate or foreign-exchange derivative with the bank in order to accomplish the asset-liability management goals of the affiliate. For example, a BHC may hold a substantial amount of floating-rate assets but issue fixed-rate debt securities to obtain cheaper funding. The BHC may then enter into a fixed-to-floating interest-rate swap with its subsidiary bank to reduce the holding company's interest-rate risk.

Banks and their affiliates that seek to enter into derivative transactions for hedging (or risk-taking) purposes could enter into the desired derivatives with unaffiliated companies. Banks and their affiliates often choose to use each other as their derivative counterparties, however, in order to maximize the profits of and manage risks within the consolidated financial group.

2. Actions Already Taken by the Board

As noted above, the GLB Act required the Board to adopt, by May 12, 2001, a final rule to address as covered transactions under section 23A the credit exposure arising from derivative transactions between member banks and their affiliates ("bank-affiliate derivatives").[141] Determining the appropriate treatment for bank-affiliate derivatives under section 23A is a complex and important endeavor. In light of the complexities of the subject matter and in light of the statutory deadline in the GLB Act, the Board took the following two steps on May 11, 2001, to address under section 23A the credit exposure arising from bank-affiliate derivatives.

First, the Board published an interim final rule (concurrently with proposed Regulation W) that subjected bank-affiliate derivatives to the market terms requirement of section 23B. Accordingly, the interim rule required each member bank to (i) have in place credit limits on its derivatives exposure to affiliates that are at least as strict as the credit limits the bank imposes on unaffiliated companies that are engaged in similar businesses and are substantially equivalent in size and credit quality; (ii) monitor derivatives exposure to affiliates in a manner that is at least as rigorous as it uses to monitor derivatives exposure to comparable unaffiliated companies; and (iii) price, and require collateral in, derivative transactions with affiliates in a way that is at least as favorable to the bank as the way the bank prices, or requires collateral in, derivatives with comparable unaffiliated companies.

The interim rule also required, under section 23A, that a member bank establish and maintain policies and procedures reasonably designed to manage the credit exposure arising from the bank's derivative transactions with affiliates. The policies and procedures, at a minimum, had to provide for monitoring and controlling the credit exposure arising from the member bank's derivative transactions with affiliates and ensuring that the bank's derivative transactions with affiliates complied with section 23B. The interim final rule had a delayed effective date of January 1, 2002.

The second step that the Board took to address credit exposure on bank-affiliate derivatives under section 23A was to ask for public comment in the preamble to proposed Regulation W on a set of questions regarding the appropriate treatment of these transactions under section 23A, including whether to subject the transactions to the quantitative limits and collateral requirements of the statute. The preamble made clear that the Board would not take additional steps to address bank-affiliate

[135] As noted above, in response to the request of a commenter, section 223.11 of the final rule also indicates that covered transactions between a member bank and its financial subsidiary are exempt from the 10 percent limit.

[136] 12 U.S.C. 371c(e)(3)(A) (emphasis added).

[137] GLB Act § 121(b)(1) (codified at 12 U.S.C. 371c(e)(3)(B)).

[138] Consistent with the GLB Act, the special valuation formula in Regulation W for investments by a member bank in its own financial subsidiary does not apply to investments by a member bank in a financial subsidiary of an affiliated depository institution. Such investments must be valued using the general valuation formula set forth in section 223.23 of the final rule for investments in securities issued by an affiliate and, further, may trigger the anti-evasion rule contained in section 223.32(c)(1) of the rule.

[139] The regulation also makes clear that if a financial subsidiary is consolidated with its parent member bank under GAAP, the carrying value of the bank's investment in the financial subsidiary shall be determined based on parent-only financial statements of the bank.

[140] GLB Act § 121(b)(1) (codified at 12 U.S.C. 371c(e)(4)).

[141] At the time of enactment of the GLB Act, the Board had not ruled on whether derivatives between a member bank and an affiliate were covered transactions under section 23A or subject to the market terms requirement of section 23B. Although industry practice generally treated bank-affiliate derivatives as subject to section 23B, industry practice did not treat bank-affiliate derivatives as subject to section 23A.

derivatives without seeking further public comment on a concrete proposal.

3. Public Comments

About 16 commenters wrote in support of the interim rule approach to bank-affiliate derivatives. One commenter argued, however, that the interim rule was ineffective and insufficiently detailed to satisfy the GLB Act requirement that the Board issue a final rule addressing bank-affiliate derivatives as covered transactions. Another commenter objected to the interim rule on a different ground, arguing that, as long as a BHC manages derivatives credit risk effectively, each subsidiary bank of the BHC should not be required to have separate policies and procedures on bank-affiliate derivatives.

Commenters uniformly argued against subjecting bank-affiliate derivatives to the quantitative limits and collateral requirements of section 23A. The principal arguments advanced by commenters were that (i) derivatives do not fit within any of the five categories of covered transaction in section 23A; (ii) section 23B and the well-developed risk management practices in the institutional derivatives market are sufficient protection to banks; (iii) derivatives generally are not entered into for funding purposes; and (iv) covering derivatives under section 23A would be burdensome and may reduce the ability of a banking organization to centralize its risk management in the unit(s) best able to bear the risk.

4. Current Actions

The Board is not prepared at this time to subject credit exposure arising from bank-affiliate derivatives to all the requirements of section 23A. The Board continues to collect information regarding the derivatives practices of banks and believes that more time is needed to determine whether the general approach of the interim rule on bank-affiliate derivatives will suffice to prevent banks from incurring problematic levels of credit exposure to affiliates in these transactions.

Federal Reserve examiners recently conducted a limited survey of a number of large banking organizations to ascertain their compliance with the Board's interim rule on bank-affiliate derivatives.[142] The survey suggested that reliance on bank-designed policies and procedures, section 23B, and active examiner supervision to regulate bank-affiliate derivatives is appropriate and should be continued. The Board expects member banks to comply strictly with section 23B in their derivative transactions with affiliates. In this regard, the Board reminds member banks that section 23B requires a member bank to treat an affiliate no better than a *similarly situated* nonaffiliate. Section 23B generally does not allow a member bank to use with an affiliate the terms and conditions it uses with its most creditworthy unaffiliated customer (unless the bank can demonstrate that the affiliate is of comparable creditworthiness as the bank's most creditworthy unaffiliated customer). Instead, section 23B requires that an affiliate be treated comparably (with respect to terms, conditions, and credit limits) to the majority of third-party customers engaged in the same business, and having comparable credit quality and size, as the affiliate. Because a bank generally has the strongest credit rating within a holding company, the Board generally would not expect an affiliate to obtain better terms and conditions from a member bank than the member bank receives from its major unaffiliated counterparties. In addition, the Board notes that market terms for derivatives among major financial institutions generally include daily marks to market and two-way collateralization above a relatively small exposure threshold.

The Board also is taking two additional regulatory steps at this time to address bank-affiliate derivatives.

a. *Covering derivatives that are the functional equivalent of a guarantee.* First, the Board is incorporating into Regulation W the Board's previously expressed view that credit derivatives between a member bank and a nonaffiliate in which the bank protects the nonaffiliate from a default on, or decline in value of, an obligation of an affiliate of the bank are covered transactions under section 23A. In the preamble to proposed Regulation W, the Board stated that such derivative transactions are guarantees by a member bank on behalf of an affiliate (and, hence, covered transactions) under section 23A.

A number of commenters discussed the appropriate treatment of these derivatives under section 23A. A few commenters supported treating these derivatives as a guarantee on behalf of an affiliate under section 23A. Several other commenters argued that the Board should not treat these derivatives as section 23A guarantees if the bank has hedged its exposure to the affiliate with a third party. Some commenters also expressed the view that the rule should not treat these derivatives as section 23A guarantees if the affiliate's obligations represent a small portion of the reference assets for the credit derivative.

The final Regulation W provides that these credit derivatives are covered transactions under section 23A and gives several examples.[143] Consistent with the Board's traditional views on hedging under section 23A, the rule does not allow a member bank to reduce its covered transaction amount for these derivatives to reflect hedging positions established by the bank with third parties. In addition, the Board does not agree with commenters that an exception to the rule should be created for a credit derivative in which affiliate obligations represent a small portion of the reference assets underlying the credit derivative. The Board intends to interpret this provision of the rule, however, so as to treat such a credit derivative as a covered transaction only to the extent that the derivative provides credit protection with respect to obligations of an affiliate of the member bank.

b. *Including the interim rule in Regulation W.* Second, in order to consolidate all the Board's views on sections 23A and 23B into one place, the Board is incorporating the provisions of the separate interim final rule on bank-affiliate derivatives into Regulation W. Under Regulation W, therefore, each member bank that engages in bank-affiliate derivatives must (i) have policies and procedures to monitor and control the bank's credit exposure to affiliates in derivative transactions (including by imposing appropriate credit limits, mark-to-market requirements, and collateral requirements); and (ii) ensure that its derivative transactions with affiliates comply with section 23B.

5. Future Actions

The Board expects to issue, in the near future, a proposed rule that would invite public comment on how to treat as covered transactions under section 23A certain derivatives that are the functional equivalent of a loan by a member bank to an affiliate or the functional equivalent of an asset purchase by a member bank from an affiliate. Although the Board has not yet adopted a rule that explicitly addresses these types of derivatives under section 23A, the Board will treat as a covered transaction, as appropriate on a case-by-case basis, any derivative between a member bank and an affiliate that is entered into for the purpose of evading the requirements of section 23A.

[142] Federal Reserve examiners also surveyed these same banking organizations to assess their compliance with the Board's interim rule on intraday credit. The results of this survey are discussed below in part VII.L. of this preamble.

[143] In most instances, the covered transaction amount for such a credit derivative would be the notional principal amount of the derivative.

VII. Exemptions—Subpart E

Section 23A exempts several types of transactions from the statute's quantitative and collateral requirements and other types of transactions from the statute's quantitative, collateral, and low-quality asset requirements.[144] The regulation sets forth the statutory exemptions, clarifies certain of these exemptions, and exempts a number of additional types of transactions. The clarifications and additional exemptions are discussed below.

The Board reserves the right to revoke or modify any additional exemption granted by the Board in Regulation W if the Board finds that the exemption is resulting in unsafe or unsound banking practices. The Board also reserves the right to terminate the eligibility of a particular member bank to use any such exemption if the bank's use of the exemption is resulting in unsafe or unsound banking practices.

A. Sister-Bank Exemption (§ 223.41(a) and (b))

Section 23A(d)(1) exempts any transaction between a member bank and a "bank" if the member bank controls 80 percent or more of the voting securities of the bank, the bank controls 80 percent or more of the voting securities of the member bank, or a company controls 80 percent or more of the voting securities of both the member bank and the bank.[145] Section 23A states that the term "bank" includes "any State bank, national bank, banking association, and trust company," and other Federal law provides that an insured savings association should be treated as a "bank" for purposes of the sister-bank exemption.[146] Section 23A also provides the Board with authority to issue definitions consistent with the section as may be necessary to carry out the purposes of the section and to prevent evasions thereof.[147] In addition, the statute provides that covered transactions between sister banks must be consistent with safe and sound banking practices.[148]

The proposed rule clarified that the sister-bank exemption generally applies only to transactions between insured depository institutions. Although one commenter wrote in support of this restriction of the sister-bank exemption, many other commenters objected to this action. The protestants argued that restricting the sister-bank exemption to insured depository institutions is inconsistent with the statutory language and the primary purpose behind the exemption, which focused not on the insured status of the sister depository institutions but on the regulated status of the institutions. In addition, several of these commenters expressed the view that the Board does not have rulemaking authority to restrict the sister-bank exemption to insured depository institutions.

The final rule continues to restrict the availability of the sister-bank exemption to insured depository institutions.[149] In the view of the Board, this restriction is consistent with the legislative intent behind the exemption, which was to permit the flow of funds from one insured depository institution to another insured depository institution. In this regard, the Board notes that, under the cross-guarantee provisions of the FDI Act, an insured depository institution is generally liable for any loss incurred by the FDIC in connection with the default of a commonly controlled insured depository institution.[150] Moreover, without such an interpretation of the sister-bank exemption, a member bank would be able to engage in unlimited covered transactions with certain uninsured depository affiliates. Permitting a member bank to provide an unlimited amount of funding to an uninsured depository affiliate would facilitate an unsafe and unsound banking practice and would contravene one of the principal purposes of the statute—protecting the deposit insurance funds from loss.[151]

A number of commenters contended that, if the final rule restricts the availability of the sister-bank exemption to insured depository institutions, the rule also should confirm that an uninsured depository institution subsidiary of a member bank would be considered an operating subsidiary (and not an affiliate) of the bank. According to these commenters, there is no compelling reason under section 23A to treat an uninsured depository institution subsidiary of a member bank any differently than other uninsured subsidiaries (for example, mortgage lending or investment advisory subsidiaries) of the bank. The Board agrees with this position and has revised the rule's definition of affiliate generally to exclude uninsured depository institution subsidiaries of a member bank. Accordingly, under the final rule, covered transactions between a member bank and a parent uninsured depository institution or a commonly controlled uninsured depository institution generally would be subject to section 23A whereas covered transactions between a member bank and a subsidiary uninsured depository institution would not be subject to section 23A.

B. Purchases of Loans on a Nonrecourse Basis (§ 223.41(c))

Under section 23A(d)(6), a member bank may purchase loans on a nonrecourse basis from an affiliated "bank" exempt from section 23A, even if the transaction does not qualify for the sister-bank exemption.[152] The rule clarifies that the scope of this exemption parallels that of the sister-bank exemption by stating that this exemption applies only to a member bank's purchase of a loan from an affiliated *insured* depository institution.

Section 23A(d)(6) also exempts the purchase from an affiliate of assets that have a readily identifiable market quotation. This exemption is set forth separately in the regulation for purposes of clarity and is discussed in detail below in part VII.F. of this preamble.

C. Internal Corporate Reorganizations (§ 223.41(d))

The Board has granted numerous section 23A exemptions, on a case-by-case basis, for asset purchases by a bank from an affiliate that are part of a one-time internal corporate reorganization of a banking organization.[153] The Board typically has approved such exemptions only if certain conditions are met, including (i) the bank's parent holding

[144] 12 U.S.C. 371c(d).

[145] The sister-bank exemption in section 23A does not allow a member bank to avoid any restrictions on sister-bank transactions that may apply to the bank under the prompt corrective action framework set forth in section 38 of the FDI Act (12 U.S.C. 1831o) and regulations adopted thereunder by the bank's appropriate Federal banking agency.

[146] 12 U.S.C. 371c(b)(5), 1468(a)(2).

[147] 12 U.S.C. 371c(f)(1).

[148] 12 U.S.C. 371c(a)(4).

[149] For reasons of verbal economy, the final rule uses the term "depository institution" rather than "insured depository institution" to signify the set of institutions eligible for the sister-bank exemption (and for certain other purposes). The final rule defines "depository institution," however, to mean an "insured depository institution" as defined in the FDI Act.

[150] See 12 U.S.C. 1815(e).

[151] As noted above, a member bank and its operating subsidiaries are considered a single unit for purposes of section 23A. Accordingly, under the statute and the regulation, transactions between a member bank (or its operating subsidiary) and the operating subsidiary of a sister insured depository institution generally qualify for the sister-bank exemption. A few commenters suggested that the proposed rule was ambiguous on this point. The Board has amended the final rule's definition of "depository institution" to eliminate any such ambiguity.

[152] 12 U.S.C. 371c(d)(6).

[153] See, e.g., *Travelers Group Inc. and Citicorp*, 84 Federal Reserve Bulletin 985, 1013–14 (1998) and Letter dated November 14, 1996, from William W. Wiles, Secretary of the Board, to John Byam.

company provides certain assurances concerning the quality of the transferred assets; (ii) the disinterested directors of the bank approve the transaction in advance; (iii) the transfer does not include any low-quality assets; and (iv) the bank's appropriate Federal banking agency and the FDIC inform the Board that they have no objection to the transaction.

Several commenters requested that the Board include such an exemption in the final rule, and the Board has done so. Under this exemption, a member bank would be permitted to purchase assets (other than low-quality assets) from an affiliate (including in connection with an affiliate share transfer that section 223.31 of the rule treats as a purchase of assets) exempt from the quantitative limits of section 23A if the following conditions are met.

First, the asset purchase must be part of an internal corporate reorganization of a holding company that involves the transfer of all or substantially all of the shares or assets of an affiliate or of a division or department of an affiliate. Stated another way, the asset purchase must not be part of a series of periodic, ordinary course asset transfers from an affiliate to a member bank. Second, the member bank's holding company must provide the Board with contemporaneous notice of the transaction and must commit to the Board to make the bank whole, for a period of two years, for any transferred assets that become low-quality assets.[154] Third, a majority of the member bank's directors must review and approve the transaction before consummation. Fourth, the section 23A value of the covered transaction must be less than 10 percent of the member bank's capital stock and surplus (or up to 25 percent of the bank's capital stock and surplus with the prior approval of the bank's appropriate Federal banking agency). Fifth, the member bank's holding company and all its subsidiary depository institutions must be well capitalized and well managed and must remain well capitalized upon consummation of the transaction.

Although these criteria are stricter than what the Board traditionally has applied in connection with its case-by-case exemptions for asset purchases, the heightened strictness is appropriate in exchange for the flexibility that the regulatory exemption grants member banks. Although the regulatory exemption would limit the Board's opportunity to block certain internal reorganizations of a banking company based on an ad hoc analysis of the condition of the bank or the nature or quality of the assets being transferred to the bank, the Board believes that the well-capitalized and well-managed requirements, the two-year buyback commitment, and the quantitative limit in the rule should prevent banking companies from abusing their banking units in reorganization transactions.

D. Correspondent Banking (§ 223.42(a))

Section 23A exempts from its quantitative limits and collateral requirements any deposit by a member bank in an affiliated bank or affiliated foreign bank that is made in the ordinary course of correspondent business, subject to any restrictions that the Board may impose.[155] The final rule (like the proposed rule) further provides that such deposits must represent ongoing, working balances maintained by the member bank in the ordinary course of conducting the correspondent business. Although one commenter argued that the Board should eliminate this regulatory "ongoing, working balances" requirement, in the Board's view, an occasional deposit in an affiliated institution would not be in the ordinary course of correspondent business. Failure to impose this restriction on the correspondent banking exemption could enable member banks to abuse the exemption to provide one-off funding to an affiliated bank or foreign bank.[156]

Although not required by section 23A or HOLA, the final rule also provides that correspondent deposits in an affiliated insured savings association are exempt if they otherwise meet the requirements of the exemption.

E. Secured Credit Transactions (§ 223.42(c))

Section 23A exempts any credit transaction by a member bank with an affiliate that is "fully secured" by U.S. government obligations or by a "segregated, earmarked" deposit account.[157] The rule clarifies that a deposit account meets the "segregated, earmarked" requirement only if the account exists for the sole purpose of securing credit transactions between the member bank and its affiliates and is so identified. This requirement would parallel the provision in section 223.14(b)(1)(i)(D) of the rule relating to which deposits count toward the collateral requirements of section 23A.

A few commenters requested confirmation that a credit transaction partially secured by U.S. government obligations or deposit accounts would be exempt under this section to the extent of such collateral. As noted above, under section 23A, if U.S. government obligations or deposit accounts are sufficient to *fully* secure a credit transaction, then the transaction is completely exempt. Under the statute, however, if the U.S. government obligations or deposit accounts represent less than full security for the credit transaction, then the amount of U.S. government obligations or deposits counts toward the collateral requirements of section 23A, but no part of the transaction is exempt from the statute's quantitative limits.

In response to the request of commenters, the Board has decided to grant an additional exemption consistent with the spirit of the (d)(4) exemption in section 23A. Under this expanded form of the (d)(4) exemption, a credit transaction with an affiliate will be exempt "to the extent that the transaction is and remains secured" by appropriate (d)(4) collateral. This exemption is consistent with the Board's treatment of similar transactions under Regulation O and the OCC's interpretations of the national bank lending limits.[158]

Accordingly, under the final rule, if a member bank makes a $100 non-amortizing term loan to an affiliate that is secured by $50 of U.S. Treasury securities and $75 of real estate, the value of the covered transaction will be $50. If the market value of the U.S. Treasury securities falls to $45 during the life of the loan, the value of the covered transaction would increase to $55. The Board expects member banks that use this expanded (d)(4) exemption to review the market value of their U.S. government obligations collateral regularly to ensure compliance with the exemption.

F. Purchases of Assets With Readily Identifiable Market Quotes (§ 223.42(e))

Section 23A(d)(6) exempts the purchase of assets by a member bank from an affiliate if the assets have a "readily identifiable and publicly available market quotation" and are purchased at their current market quotation.[159] The Board generally has limited the availability of this exemption (the "(d)(6) exemption") to purchases of assets with market prices that are recorded in widely disseminated publications that are readily available to the general public, such as newspapers with a national circulation. Because as a general matter only exchange-traded assets are recorded in such publications, the test has ensured that the qualifying assets are traded actively enough to have a true "market quotation" and that examiners can verify that the assets are purchased at their current market quotation. Regulation W codifies this Board interpretation of the (d)(6) exemption and clarifies that the exemption applies to a member bank's purchase from an affiliate of an asset that has a readily identifiable and publicly available market quotation if the asset is purchased at *or below* the asset's current market quotation.[160]

A number of commenters requested that the Board clarify that certain assets would be eligible for purchase by a member bank under the statutory (d)(6) exemption. These assets included (i) assets whose prices are quoted on an internet web site that is generally available to the public (with or without a subscription fee) and that provides actual prices of securities traded on at least a daily basis; (ii) securities issued by an affiliate or at least affiliate-issued securities that are fully guaranteed by the U.S. government or its agencies; and (iii) OTC securities, loans, and derivative contracts.

With respect to the first asset class, commenters have failed to demonstrate that an asset whose price is quoted on an internet web site but is not otherwise recorded in a widely disseminated publication is traded in a sufficiently liquid market to ensure that a member bank's purchase of that asset from its affiliate would be at a fair market price.

With respect to the second asset class, the Board has decided to remove the provision of the proposed rule that rendered the (d)(6) exemption unavailable for purchases of affiliate-issued securities. As discussed in more detail in part X of this preamble (and subpart H of the final rule), however, if a member bank purchases from one affiliate securities issued by another affiliate, the bank has engaged in two types of covered transaction. Under the final rule, although the (d)(6) exemption may exempt the one-time asset purchase from the first affiliate, it would not exempt the ongoing investment in securities issued by the second affiliate.

With respect to the third asset class, the Board confirms that the (d)(6) exemption may apply to a purchase of assets that are not traded on an exchange. In particular, purchases of gold and silver, and purchases of OTC securities, loans, and derivative contracts whose prices are recorded in widely disseminated publications, may qualify for the (d)(6) exemption.

G. Purchases of Securities With a Ready Market From a Securities Affiliate (§ 223.42(f))

Concurrently with the issuance of proposed Regulation W, the Board adopted a final rule that provided an additional exemption from section 23A for certain purchases of securities by a member bank from an affiliate (the "Final (d)(6) Rule").[161] The Final (d)(6) Rule expanded the statutory (d)(6) exemption to allow a member bank to purchase securities from an affiliate based on price quotes obtained from certain electronic screens so long as, among other things, the selling affiliate is a broker-dealer registered with the SEC; the securities are traded in a ready market and eligible for purchase by State member banks; the securities are not purchased within 30 days of an underwriting (if an affiliate of the bank is an underwriter of the securities); and the securities are not issued by an affiliate. Proposed Regulation W also contained this exemption, and the Board sought further comment on the scope and conditions of the exemption. Commenters expressed general support for the new exemption but criticized many of the particular conditions to the exemption.

1. Broker-Dealer Requirement

Some commenters believed that the new (d)(6) exemption should not contain a U.S. registered broker-dealer requirement. Several other commenters urged the Board, in light of the increasing globalization of fixed-income markets and the rigorous supervisory frameworks for securities firms in many foreign jurisdictions, to allow banks to purchase securities from a registered foreign broker-dealer under the new (d)(6) exemption.

The Board has decided to retain the U.S. registered broker-dealer requirement. Broker-dealers that are registered with the SEC are subject to supervision and examination by the SEC and are required by SEC regulations to keep and maintain detailed records concerning each securities transaction conducted by the broker-dealer. In addition, SEC-registered broker-dealers have experience in determining whether a security has a "ready market" under SEC regulations. The Board believes that these factors will help ensure that member banks satisfy the requirements of the expanded exemption and will assist the Federal banking agencies in monitoring such compliance.

The Board does not believe it is appropriate at this time to expand the exemption to include securities purchases from foreign broker-dealers because such entities may be subject to different levels of supervision and regulation and because of the increased difficulties associated with monitoring compliance by foreign entities. The final rule explicitly provides, however, that a member bank may request that the Board exempt securities purchases from a particular foreign broker-dealer, and the Board would consider these requests on a case-by-case basis in light of all the facts and circumstances. In any event, the Board expects to evaluate the continued need for this requirement as banks and the Board gain experience with this expanded exemption.

2. Securities Eligible for Purchase by a State Member Bank

A number of commenters asked the Board to eliminate the requirement in the new (d)(6) exemption that the securities be eligible for purchase by a State member bank. These commenters noted that certain depository institutions (notably State nonmember banks) and certain overseas (for example, Edge corporation) and domestic subsidiaries of banks have broader investment powers, including equity investment powers, than State member banks. Moreover, according to these commenters, this requirement would impose a high recordkeeping and compliance burden on State nonmember banks that are not subject to the State member bank investment rules but are already subject to a host of State and Federal investment regulations.

The Board believes that the statutory and other restrictions placed on a State member bank's ownership of securities also are appropriate limits on the securities eligible for the new (d)(6) exemption. Although this requirement may impose some additional burden on certain State nonmember banks, the

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[154] The notice also must describe the primary business activities of the affiliate whose shares or assets are being transferred to the member bank and must indicate the anticipated date of the reorganization.

[155] 12 U.S.C. 371c(d)(2).

[156] Unlike the sister-bank exemption, the exemption for correspondent banking deposits would apply to deposits placed by a member bank in an *uninsured* depository institution or foreign bank. Because the statutory exemption by its terms covers deposits made in a foreign bank, Congress must not have intended to restrict this exemption to deposits made in an insured depository institution.

[157] 12 U.S.C. 371c(d)(4).

[158] *See* 58 FR 26507–26508, May 4, 1993; 12 CFR 32.3(i).

[159] 12 U.S.C. 371c(d)(6).

[160] The proposed rule provided that all U.S. government obligations were eligible (d)(6) assets. The final rule provides that a U.S. government obligation is an eligible (d)(6) asset only if the obligation's price is quoted routinely in a widely disseminated publication that is readily available to the general public. The Board has tightened the rule in this regard because, although all U.S. government obligations have low credit risk, not all U.S. government obligations trade in liquid markets at publicly available market quotations.

[161] 66 FR 24220, May 11, 2001.

Board believes that it is important to provide a level section 23A playing field and to prevent the new (d)(6) exemption from being used to move volatile assets from an affiliate's balance sheet to that of the bank.

In addition, one commenter requested clarification that this requirement would not prevent a bank from using the new (d)(6) exemption to purchase securities permissible for a State member bank to purchase and hold as a hedge (even if not otherwise permissible under a State member bank's general investment powers). For example, the OCC recently determined that a national bank, subject to certain conditions and OCC review and approval, may acquire equity securities solely for the purpose of hedging the bank's exposure arising from customer-driven equity derivative transactions lawfully entered into by the bank.[162] The Federal Reserve also recently determined that it would not prohibit a State member bank from acquiring equity securities to hedge the bank's customer-driven equity derivative transactions, subject to the same conditions and restrictions applicable to national banks.[163] In light of the hedging purpose of these securities purchases, and the remaining conditions to the availability of the new (d)(6) exemption, the Board agrees that a member bank may purchase equity securities from an affiliate under the new (d)(6) exemption if the purchase is made to hedge the bank's permissible customer-driven equity derivative transaction (and the purchase meets all the other requirements of the exemption).

3. No Purchases Within 30 Days of the Underwriting

The Final (d)(6) Rule generally prohibited a member bank from using the new (d)(6) exemption to purchase securities within 30 days of their underwriting if an affiliate of the bank is an underwriter of the securities. One commenter argued that the new (d)(6) exemption should allow banks to purchase debt securities within 30 days of the underwriting because the market price of *debt* securities is easily verifiable during this time period. A few commenters argued that the new (d)(6) exemption should allow banks to purchase securities within 30 days of the underwriting if the purchase is pre-approved by the bank's board of directors and does not amount to more than 50 percent of the total offering.

[162] *See* OCC Interpretive Ltr. No. 892 (Sept. 13, 2000).

[163] *See* Board press release dated Feb. 21, 2002.

The Board has maintained the underwriting period restriction in the final Regulation W because of the uncertain and volatile market values of securities during and shortly after an underwriting period and because of the conflicts of interest that may arise during and after an underwriting period, especially if an affiliate has difficulty selling its allotment. Commenters did not provide any evidence as to the reliability of pricing data on debt securities during an underwriting period, and the Board is not convinced that capping at 50 percent of the total offering the amount of securities a member bank may purchase would materially ameliorate the conflicts of interest inherent in the underwriting process.

One commenter requested clarification, in light of the fact that an argument can be made that mutual funds are continuously underwritten, as to whether the new (d)(6) exemption could apply to the purchase of mutual fund shares distributed by an affiliate of the purchasing member bank. The price uncertainty and conflicts of interest concerns that motivated the underwriting period restriction in the new (d)(6) exemption do not apply in the context of mutual fund distribution. The 1940 Act and SEC rules thereunder require mutual funds to sell shares at a public net asset value computed each day,[164] and distributors of mutual funds do not bear the same sorts of market risks that underwriters of corporate debt and equity securities typically bear. In view of the special nature of mutual funds, the Board does not believe that the underwriting period restriction in the new (d)(6) exemption should be read to prevent a member bank from purchasing shares of a mutual fund distributed by an affiliate of the bank.[165]

4. No Securities Issued by an Affiliate

Commenters generally supported limiting the availability of the new (d)(6) exemption to purchases of securities that are not issued by an affiliate. Several commenters argued, however, that the new (d)(6) exemption should allow banks to purchase affiliate-issued asset-backed securities because of the liquidity of the market for asset-backed securities. One commenter contended, on the other hand, that the new (d)(6) exemption is not the right vehicle for allowing banks to buy affiliate-issued asset-backed securities because most of these securities do not have a listed market price.

A number of commenters argued that the new (d)(6) exemption should allow banks to purchase affiliate-issued mutual fund shares, especially if the mutual fund is an affiliate simply because the bank or an affiliate is the advisor to the fund. These commenters noted that mutual funds have public prices, the SEC regulates mutual funds and mutual fund pricing, and expanding the ability of banks to purchase mutual funds would enhance the ability of banks to diversify their investment portfolios.

Similar to the final rule's approach to the statutory (d)(6) exemption, the Board has decided to remove from the new (d)(6) exemption the requirement that the asset purchased not be a security issued by an affiliate. The Board notes, however, that if a member bank purchases from one affiliate securities issued by another affiliate, although the new (d)(6) exemption may exempt the asset purchase from the first affiliate, it would not exempt the investment in securities issued by the second affiliate.

5. Price Verification Methods

The new (d)(6) exemption, as set forth in the Final (d)(6) Rule, applied only in situations where the member bank is able to obtain price quotes on the purchased securities from an unaffiliated electronic, real-time pricing service. Many commenters expressed a view that the new (d)(6) exemption should allow banks to purchase securities based on price quotes from two independent dealers. These commenters made the following principal arguments: (i) Independent dealers have no incentive to quote an artificial price; (ii) the Board has determined that two dealer bids are an acceptable pricing mechanism for exempt purchases of municipal securities; (iii) the SEC allows mutual funds to purchase securities from an affiliate at the lowest offer price from a disinterested third party after a reasonable inquiry by the mutual fund; (iv) NASD rules require the use of dealer quotes to price certain securities where multiple quotes from an interdealer quotation system are not available; (v) dealer quotes are routinely used by securities traders because some seasoned corporate and mortgage-backed securities are traded infrequently; and (vi) dealer quotes are used to establish the value of securities for close-out and netting purposes in ISDA derivatives master agreements.

[164] 15 U.S.C. 80a–22(c); 17 CFR 270.22c–1.

[165] The Board notes that neither the old nor the new (d)(6) exemption exempts a member bank's purchase of mutual fund securities that are not only underwritten by an affiliate of the bank but also are *issued by* a mutual fund affiliate of the bank. *See* part X of this preamble and § 223.71 of the final rule.

Notwithstanding these comments, the Board reaffirms its previous conclusion that it would not be appropriate to use independent dealer quotations to establish a market price for a security under the new (d)(6) exemption. The Board is concerned that a security that is not quoted routinely in a widely disseminated news source or a third-party electronic financial network may not trade in a sufficiently liquid market to justify allowing a member bank to purchase unlimited amounts of the security from an affiliate. In the absence of recent, actual, publicly reported transactions, the risks of price manipulations and sham or reciprocal quotation arrangements are too high.

6. Record Retention

One commenter suggested that the final rule expressly include the 2-year record retention requirement set forth in the preamble to the Final (d)(6) Rule. The Board has supplemented Regulation W to include this recordkeeping requirement.

H. Purchasing Municipal Securities (§ 223.42(g))

Regulation W exempts a member bank's purchase of municipal securities from an affiliate if the purchase meets a streamlined version of the requirements applicable to the new (d)(6) exemption.[166] First, as in the new (d)(6) exemption, the member bank must purchase the municipal securities from a broker-dealer affiliate that is registered with the SEC. Second, also as in the new (d)(6) exemption, the municipal securities must be eligible for purchase by a State member bank, and the member bank must report the transaction as a securities purchase in its Call Report. Third, the municipal securities must either be rated by a nationally recognized statistical rating organization or must be part of an issue of securities that does not exceed $25 million in size. Finally, the price for the securities purchased must be (i) quoted routinely on an unaffiliated electronic service that provides indicative data from real-time financial networks; (ii) verified by reference to two or more actual independent dealer quotes on the securities to be purchased or securities that are comparable to the securities to be purchased; or (iii) in the case of securities purchased during the underwriting period, verified by reference to the price indicated in the syndicate manager's written summary of the underwriting.[167] Under any of the three pricing options, the member bank must purchase the municipal securities at or below the quoted or verified price.

The Board believes that the streamlined set of requirements for purchases of municipal securities is appropriate because municipal obligations generally have comparatively low default risks. In addition, these relaxed requirements are consistent with the expressed desire of Congress to support local communities' use of municipal securities to help meet their financing needs.

I. Purchases of Assets by Newly Formed Banks (§ 223.42(i))

The rule exempts a purchase of assets by a newly chartered member bank from an affiliate if the appropriate Federal banking agency for the bank has approved the purchase. This exemption would allow companies to charter a new bank and transfer assets to the bank free of the quantitative limits and low-quality asset prohibition of section 23A. Currently, if a company (usually a BHC) establishes a new subsidiary bank, the newly chartered institution cannot acquire a critical mass of assets from its parent company because of the quantitative limits of section 23A. Commenters generally agreed that applying the restrictions of section 23A to a newly formed bank is unnecessary because the chartering authority for the new bank (and, in the case of a new bank formed under a BHC, the Board) reviews the transaction to ensure that the asset transfer does not result in any safety or soundness problems.

J. Transactions Approved Under the Bank Merger Act (§ 223.42(j))

Before issuing proposed Regulation W, the Board had provided a regulatory exemption from section 23A for any transaction between affiliated insured depository institutions if the transaction had been approved by the responsible Federal banking agency under the Bank Merger Act.[168] The Board had provided this regulatory exemption because the Bank Merger Act required the primary Federal supervisor of the resulting insured depository institution to review these transactions using safety and soundness and public interest standards similar to those that the Board would apply in reviewing a section 23A exemption request. Proposed Regulation W included this exemption.

Several commenters argued that the Board should expand the Bank Merger Act exemption to include mergers between a national bank and a nonbank subsidiary or affiliate of the bank, which are reviewed by the OCC under the National Bank Consolidation and Merger Act ("NBCM Act").[169] The Board notes that a member bank should not need a special exemption from section 23A to merge with a nonbank subsidiary (other than a financial subsidiary and certain other nonbank subsidiaries) because such transactions generally will be deemed to be within the bank for purposes of section 23A.

The Board has determined not to grant a regulatory exemption for merger transactions between a national bank and its nonbank affiliate for a number of reasons. First, the legislative history of section 23A and Board experience indicate that merger transactions between banks and their *nonbank* affiliates have a greater potential for risk of loss to the bank than would similar transactions between sister banks and thus are appropriately subject to greater regulatory scrutiny. In addition, such transactions between banks and their nonbank affiliates have a greater potential for risk of loss to the Federal deposit insurance funds because the cross-guarantee provisions of the FDI Act apply only between affiliated insured depository institutions.[170] Finally, although the NBCM Act provides for OCC review of such transactions, the statute does not establish criteria that a national bank must satisfy to obtain OCC approval, and the OCC has not yet issued implementing regulations for the statute. The Board may consider including in Regulation W an exemption for NBCM Act transactions after reviewing any future implementing regulations adopted by the OCC. The Board notes that any member bank merging or consolidating with a nonbank affiliate may be able to take advantage of the regulatory exemption for internal reorganization transactions contained in section 223.41(d) of the final rule.

A few other commenters urged the Board to expand the Bank Merger Act exemption to include Bank Merger Act

[166] The regulation defines municipal securities by reference to section 3(a)(29) of the Securities Exchange Act, which defines municipal securities as direct obligations of, or obligations guaranteed as to principal or interest by, a State or egency, instrumentality, or political subdivision thereof, and certain tax-exempt industrial development bonds. *See* 17 U.S.C. 78c(a)(29).

[167] Under the Municipal Securities Rulemaking Board's Rule G–11, the syndicate manager for a municipal bond underwriting is required to send a written summary to all members of the syndicate. The summary discloses the aggregate per values and prices of bonds sold from the syndicate account.

[168] *See* 57 FR 41643, Sept. 11, 1992.

[169] Section 1206(a) of the American Homeownership and Economic Opportunity Act of 2000 amended the NBCM Act to provide that a national bank may merge with one or more of its nonbank subsidiaries or affiliates with the approval of the OCC. *See* 12 U.S.C. 215a–3.

[170] *See* 12 U.S.C. 1815(e).

transactions with any affiliate (not just an insured depository institution affiliate) and any other transactions with affiliates that are subject to approval by the bank's primary Federal supervisor. For the reasons discussed in the previous paragraph, the Board is not willing to grant a regulatory exemption to any transaction between a member bank and an affiliate that is subject to approval by the bank's primary Federal supervisor.

In light of the comments, however, the final rule does include a partial expansion of the traditional Bank Merger Act exemption. As noted above, the traditional Bank Merger Act exemption only applied to transactions between a member bank and an insured depository institution affiliate. Although the Board does not believe that expanding the Bank Merger Act exemption to include transactions with any affiliate would be consistent with the purposes of section 23A, the final rule makes the Bank Merger Act exemption available for merger and other related transactions between a member bank and a U.S. branch or agency of an affiliated foreign bank. The Bank Merger Act approval process, combined with the ongoing regulation and supervision of U.S. branches and agencies of foreign banks by the Federal banking agencies, should help ensure that such transactions do not pose significant risks to the member bank.

K. Purchases of Extensions of Credit (§ 223.42(k))

In 1974, the Board issued a formal interpretation of section 23A (codified at 12 CFR 250.250) that exempted a member bank's purchase of a loan from an affiliate if (i) the bank made an independent evaluation of the creditworthiness of the borrower before the affiliate made the loan and (ii) the bank committed to purchase the loan before the affiliate made the loan (the "250.250 exemption").[171] Although the 1974 interpretation did not impose a strict dollar limit on the amount of an affiliate's loans that a member bank could purchase under the exemption, the interpretation cautioned that the purpose of the exemption was to allow a member bank to take advantage of an investment opportunity and not to alleviate the working capital needs of an affiliate.

By 1995, some BHCs were using the 250.250 exemption extensively to fund their nonbank lending affiliates. In these cases, banks were providing all or nearly all of such affiliates' funding. In response, staff indicated in an interpretive letter that the 250.250 exemption was not available if the dollar amount of the bank's purchases from the affiliate represented more than 50 percent of the total dollar amount of loans made by the affiliate.[172] Staff reasoned that, in these circumstances, the asset purchases looked less like the bank taking advantage of an investment opportunity brought to it by the affiliate and more like the bank providing the principal ongoing funding mechanism for the affiliate. Staff intended that this restriction would require the affiliate to have alternative funding sources and would reduce the pressure on the bank to purchase the affiliate's extensions of credit.

Proposed Regulation W included the 250.250 exemption. The proposed rule also included staff's 50 percent test as a condition to the availability of the exemption and solicited comment on whether to supplement the bright-line 50 percent test with a requirement that the member bank not use the exemption to provide "substantial, ongoing funding" to the affiliate.

1. The Traditional 50 Percent Test

Several commenters explicitly supported the Board's retention of a 50 percent limit on the amount of loans a bank may purchase from an affiliate under the 250.250 exemption. Other commenters requested that the Board remove the 50 percent test because, in the view of these commenters, it is unnecessary and burdensome and most of these bank-affiliate arrangements are designed to benefit the bank. A few commenters asked the Board to modify the 50 percent test. One of these commenters stated that, if the rule retains the 50 percent limit, the limit should be revised to be 50 percent of the total assets of the affiliate (not just the credit portfolio of the affiliate). Another commenter asked that the 50 percent per affiliate limit be revised to be 50 percent of the loan portfolio of *all* lending affiliates in the aggregate (to reduce the burden of monitoring each affiliate's compliance with the 50 percent test).

The Board has decided to retain the 50 percent test. The Board continues to believe that if a member bank purchases more than half of the extensions of credit originated by an affiliate, the purchases represent the principal ongoing funding mechanism for the affiliate. The member bank's status as the predominant source of financing for the affiliate calls into question the availability of alternative funding sources for the affiliate, places significant pressure on the bank to continue to support the affiliate through asset purchases, and reduces the bank's ability to make independent credit decisions with respect to the asset purchases. The final rule does not expand the denominator of the 50 percent test to include all the assets of the affiliate or all the credit portfolios of all the lending affiliates of the member bank. In the Board's view, the member bank's underwriting integrity may be compromised if any single affiliate becomes dependent on the bank for financing, even if that single affiliate is a diversified company that becomes dependent on the bank for financing of only one portion of its business.

2. The "Substantial, Ongoing Funding" Test

One commenter supported the rule's inclusion of the "substantial, ongoing funding" test. A large number of commenters (including most of the banking industry trade associations) urged the Board to remove the "substantial, ongoing funding" test. These commenters contended that the test is too vague and subjective, may disrupt many existing operations, would prevent banks and their affiliates from accomplishing rational business planning, and is unnecessary in light of the lack of evidence that the existing 50 percent test has failed to check abuse.

A "substantial, ongoing funding" test would provide examiners with the flexibility to stop arrangements in which a bank provides a significant amount of funding to an affiliated lending company but does not provide a majority of the affiliate's working capital. On the other hand, such a subjective standard would create legal uncertainty for banks that purchase a substantial amount of assets from their lending affiliates. In addition, use of a "substantial, ongoing funding" standard could result in inconsistent application of the 250.250 exemption by the different Federal banking agencies and by different examiners within an agency.

The final rule does not include such a supplemental standard in the 250.250 exemption. The final rule, however, does allow the appropriate Federal banking agency for a member bank to reduce the 50 percent threshold prospectively, on a case-by-case basis, in those situations where the agency believes that the bank's asset purchases from an affiliate under the exemption may cause harm to the bank. Although this agency discretion to tighten the 50 percent threshold may result in some inconsistency in application of the exemption, the supervisory benefits of the flexibility should outweigh its potential adverse effects.

3. Test Based on Size of Bank

The proposed rule also sought comment on whether to limit the amount of assets that a member bank may purchase from an affiliate pursuant to the 250.250 exemption to some percentage of the *bank's* total assets. Many commenters objected to placing a limit on the percentage of a bank's assets that represent assets purchased from an affiliate under the 250.250 exemption. These commenters argued that case-by-case review is a better approach to addressing situations where a large portion of a bank's assets are loans purchased from an affiliate. These commenters believed that the remaining conditions of the exemption should suffice to prevent abuse of the bank. One commenter, on the other hand, recommended that the rule include a 50 percent limit based on the assets of the bank.

In light of the comments and the fact that the Board did not suggest a specific limit based on the bank's size in proposed Regulation W, the Board has determined to issue a further proposed rule (concurrently with final Regulation W) that would seek public comment on whether to deny the 250.250 exemption to any member bank if assets purchased by the bank from an affiliate under the 250.250 exemption represent more than 100 percent of the bank's capital stock and surplus. A more detailed explanation of the Board's reasons for issuing the further proposed rule is set forth in the preamble to the proposed rule.

4. Independent Credit Review by the Bank

To qualify for the 250.250 exemption, a member bank must independently review the creditworthiness of each obligor before committing to purchase each loan.[173] Several commenters requested that the Board interpret the "independent evaluation" requirement so as not to require an actual evaluation of each credit by the bank if the affiliate uses the same credit underwriting system as the bank. According to these commenters, such an interpretation would recognize appropriately that banks and affiliates often use the same underwriting standards and would encourage banks and affiliates to share effective underwriting practices with each other and to work toward harmonization of underwriting practices within a single organization. These commenters indicated that, as currently interpreted, the 250.250 exemption interferes with efficient, centralized, formula-based credit underwriting processes. In addition, several commenters contended that the Board should interpret the "independent evaluation" requirement so as not to require an actual evaluation of each credit by the bank if the affiliate uses the underwriting standards of Fannie Mae, Freddie Mac, or Ginnie Mae.

The Board does not believe that a member bank can satisfy the "independent evaluation" requirement of the 250.250 exemption by simply having its lending affiliates use the bank's underwriting standards or the underwriting standards of Fannie Mae or any other government agency or government-sponsored enterprise. Under established Federal Reserve guidance, a State member bank is required to have clearly defined policies and procedures to ensure that it performs its own due diligence in analyzing the credit and other risks inherent in a proposed transaction.[174] This function is not delegable to any third party, including affiliates of the member bank or government-sponsored enterprises. Accordingly, to qualify for this exemption, the member bank, independently and using its own credit policies and procedures, must itself review and approve each extension of credit before giving a purchase commitment to its affiliate.

5. Miscellaneous

One commenter asked the Board to clarify whether the 250.250 exemption could be used in connection with a bank's purchase of loans from an affiliate if the affiliate retained recourse on the loans. Consistent with the fact pattern underlying the original 250.250 exemption and staff's traditional interpretation of the exemption, the final rule specifies that the exemption does not apply in situations where the affiliate retains recourse on the loans purchased by the member bank. In such a circumstance, the member bank has ongoing credit exposure to the affiliate. If the Board were not to adopt this position, a member bank arguably could incur unlimited credit exposure to an affiliate through exempt loan purchases under the 250.250 exemption.

The final rule also specifies, consistent with the fact pattern underlying the original 250.250 exemption and staff's traditional interpretation of the exemption, that the 250.250 exemption only applies in situations where the member bank purchases loans from an affiliate that were originated by the affiliate. The exemption cannot be used by a member bank to purchase loans from an affiliate that the affiliate purchased from another lender. The exemption is designed to facilitate a member bank using its affiliate as an origination agent, not to permit a member bank to take off an affiliate's books loans that the affiliate purchased from a third party. Among other concerns, a contrary determination would increase the likelihood that a member bank could acquire low-quality assets from an affiliate through the exemption.

L. Intraday Extensions of Credit (§ 223.42(l))

As noted above, the GLB Act required the Board to adopt, by May 12, 2001, a final rule to address as covered transactions under section 23A the credit exposure arising from intraday extensions of credit by member banks to their affiliates.[175] The Board took a two-step approach, similar to the Board's approach to bank-affiliate derivatives, to fulfill this statutory mandate. First, the Board published an interim final rule on May 11, 2001, that (i) required, under section 23A, that a member bank establish and maintain policies and procedures reasonably designed to manage the credit exposure arising from the bank's intraday extensions of credit to affiliates; and (ii) clarified that intraday extensions of credit by a member bank to an affiliate are subject to the market terms requirement of section 23B. The policies and procedures, at a minimum, had to provide for monitoring and controlling the member bank's intraday credit exposure to affiliates and ensuring that the bank's intraday credit extensions to affiliates comply with section 23B. The interim final rule had a delayed effective date of January 1, 2002.

Second, the Board requested comment on a more detailed and more restrictive proposed rule on intraday credit extensions by member banks to affiliates

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[171] *See* 39 FR 28975, Aug. 13, 1974.

[172] Letter dated April 24, 1995, from J. Virgil Mattingly, Jr., General Counsel of the Board, to William F. Kroener, III, Federal Deposit Insurance Corporation; *see also* Letter dated January 21, 1987, from Michael Bradfield, General Counsel of the Board, to Jeffrey C. Gerrish.

[173] Consistent with the Board's 1974 interpretation, the member bank also must not make a legally enforceable blanket advance commitment to purchase a stipulated amount of loans from the affiliate.

[174] *See, e.g.*, Federal Reserve SR Letter No. 97–21 (SUP) (July 11, 1997).

[175] The text of section 23A does not indicate that an extension of credit must extend overnight to qualify as a covered transaction. Nevertheless, at the time of enactment of the GLB Act, the Board had not ruled on whether intraday credit extensions by a member bank to an affiliate were covered transactions under section 23A or subject to the market terms requirement of section 23B. Industry practice did not treat intraday credit extensions as subject to section 23A or 23B.

in Regulation W. Proposed Regulation W treated all such intraday credit extensions as covered transactions but exempted those intraday credits that arose in connection with the performance by a member bank, in the ordinary course of business, of securities clearing and settlement transactions or payment transactions on behalf of an affiliate. The more limited Regulation W exemption for intraday credit was available only if the member bank (i) had no reason to believe that the affiliate would have difficulty repaying the extension of credit; (ii) established limits on the net amount of intraday credit that the bank may extend to affiliates; and (iii) maintained policies and procedures for monitoring each affiliate's compliance with the limits. Under the Regulation W proposal, intraday extensions of credit by a member bank to an affiliate that did not meet these conditions were subject to the quantitative, collateral, and other requirements of section 23A. Importantly, under the proposed rule, an intentional intraday loan by a member bank to an affiliate outside of the clearing context (for example, a loan to allow an affiliate to meet a debt obligation coming due during the day) became fully subject to section 23A at the time during the day that the bank made the loan.

Most commenters on the intraday credit issue expressed support for either the interim rule or proposed Regulation W approach to intraday credit, although the interim rule approach garnered more support. A few commenters rejected both approaches, however, and urged the Board to treat intraday credit as not subject to section 23A.

Commenters generally advocated an exemption for intraday credit by banks to affiliates because, in the view of commenters, (i) banks do not use intraday credit to fund affiliates; (ii) intraday credit becomes covered by section 23A at the end of the day and, therefore, banks have incentives to monitor intraday overdrafts by affiliates; (iii) banks do not have the systems to monitor intraday credit transactions with all accounts of all affiliates in real time; and (iv) banks have not suffered losses on intraday credit extensions to affiliates. According to these commenters, the minimal benefits of the Regulation W approach would not outweigh the substantial costs.

Many commenters urged the Board to grant an exemption for intraday credit arising from special purpose credit card transactions if the Board were to decide to treat intraday credit extensions as covered transactions under section 23A. These commenters explained that special purpose credit card banks make thousands of credit extensions each day that are deemed to be credit extensions to affiliates under section 23A's attribution rule. These banks currently comply with section 23A by either selling their credit card receivables at the end of each day or fully securing them at the end of each day with segregated, earmarked deposit accounts. According to commenters, the Regulation W approach to intraday credit would significantly disrupt the existing practices of special purpose credit card banks and would create substantial inefficiencies for these banks (requiring thousands of sales of receivables each day instead of one sale at the end of each day). These commenters emphasized that third-party customers, not the affiliated merchants, are liable for repayment to the bank on these transactions, and that the intraday risk to the bank on these transactions is similar to the risk on payment or settlement transactions.

In the Board's view, existing business practices indicate that the potential risk reduction benefits afforded by full application of the requirements of section 23A to intraday credit exposures to affiliates would not justify the costs to banking organizations of implementing these requirements at this time. Intraday overdrafts and other forms of intraday credit generally are not used as a means of funding or otherwise providing financial support for an affiliate. Rather, these credit extensions typically facilitate the settlement of transactions between an affiliate and its customers when there are mismatches between the timing of funds sent and received during the business day. Although some risk exists that such intraday credit extensions could turn into overnight funding of an affiliate, this risk is sufficiently remote that application of the strict collateral and other requirements of section 23A would not be warranted for the intraday credit exposure. Moreover, mandating that banks collateralize intraday exposures would require banks not only to measure exposures across multiple accounts, offices, and systems on a global basis but also to adjust collateral holdings in real time throughout the day. The Board is concerned that few banks currently have these capabilities and that they would be very costly to implement. Furthermore, there is no evidence that banks, including special purpose credit card banks, have suffered losses from intraday extensions of credit to affiliates.

Federal Reserve examiners have reviewed the policies and procedures that a number of large banks adopted to comply with the Board's interim final rule on intraday credit to affiliates. This review confirmed that requiring banks to adopt policies and procedures for managing the credit exposure arising from intraday credit extensions to affiliates and subjecting such transactions to section 23B is the most workable solution for addressing intraday credit exposure of banks to affiliates. For the most part, the surveyed banks treated intraday credit to affiliates in the same manner as they treated intraday credit to third parties.

In light of these considerations, the Board is adopting an approach to intraday credit that is a combination of the approaches contained in the interim rule and proposed Regulation W. Final Regulation W provides that intraday credit extensions by a member bank to an affiliate are section 23A covered transactions but exempts all such intraday credit extensions from the quantitative and collateral requirements of section 23A if the member bank (i) maintains policies and procedures for the management of intraday credit exposure and (ii) has no reason to believe that any affiliate receiving intraday credit would have difficulty repaying the credit in accordance with its terms.

The approach of the final rule should impose substantially less burden on banking organizations than the proposed Regulation W approach. Most significantly, whereas the proposed rule exempted only intraday credit extensions relating to clearing and settlement, the final rule exempts all types of intraday credit. In light of the limited scope for, and limited history of, abuse of intraday credit to affiliates and the significant burden of verifying and documenting the use of each intraday credit extension to an affiliate, the Board does not believe that the regulatory benefits of this aspect of the proposed rule would have outweighed its regulatory burden. Unlike the proposed rule, the global exemptive approach of the final rule also should avoid interrupting the existing, unproblematic intraday business practices of banks that issue special purpose credit cards. In addition, the approach of the final rule imposes more discipline on banks than the interim rule approach in that the final rule requires a member bank to make intraday assessments of the credit quality of each affiliated borrower and restricts a member bank's intraday credit extensions to an affiliate if the bank has any doubt as to the affiliate's ability to repay the credit in accordance with its terms.

The proposed rule did not include a definition of an intraday extension of credit. The final rule, however, defines an intraday extension of credit as an extension of credit by a member bank to an affiliate that the member bank expects to be repaid, sold, or terminated, or to qualify for a complete exemption under the rule, by the end of its business day in the United States. An intraday extension of credit would include, for example, a loan by a member bank to an affiliate that (i) by its terms must be repaid before the end of the bank's U.S. business day; (ii) the bank expects to sell at the end of the bank's U.S. business day; or (iii) the bank intends to fully secure with a segregated, earmarked deposit account at the end of the bank's U.S. business day. On the other hand, if a member bank makes a 30-day loan to an affiliate at 2 p.m. on a particular day and does not expect to sell the loan or to qualify the loan for an exemption under the rule by the end of its U.S. business day, the intraday credit exemption would not exempt the loan from 2 p.m. until the end of the bank's U.S. business day. Rather, the member bank must ensure that the loan complies with the requirements of Regulation W as of 2 p.m. on that day (unless the loan qualifies for another exemption in the rule at such time).

M. Riskless Principal Transactions (§ 223.42(m))

The final rule contains an additional exemption that was not part of the proposed rule. Section 223.42(m) of the final rule exempts the purchase by a member bank of a security from a securities affiliate of the bank if (i) the bank or the securities affiliate is acting exclusively as a riskless principal in the transaction; and (ii) the security purchased is not issued or underwritten, or sold as principal (other than as riskless principal), by any affiliate of the bank.[176] These riskless principal securities transactions between a member bank and an affiliate are covered transactions under section 23A because the member bank, acting as a principal, has purchased an asset from an affiliate, acting as a principal. The Board does not believe that there is any regulatory benefit to subjecting these transactions to section 23A, however, because riskless principal securities transactions closely resemble securities brokerage transactions.

The riskless principal in a riskless principal securities transaction buys and sells the same security contemporaneously. Accordingly, if a member bank acts as a riskless principal in purchasing a security from a securities affiliate, the asset risk passes promptly from the affiliate through the bank on to the bank's customer. If the securities affiliate acts as a riskless principal in selling a security to the member bank, the asset risk passes promptly from a third party through the affiliate to the bank. In neither case would the securities affiliate be able to transfer pre-existing asset risk from its books to the books of the member bank. Although the final rule exempts these riskless principal transactions from section 23A, such transactions would remain subject to section 23B.

N. Additional Exemption Requests

Approximately 16 commenters asked the Board to establish formal filing and processing guidelines for section 23A exemption requests. These commenters offered a wide variety of suggested time frames for Board action on such requests, but most of them asked that the Board commit to acting within 30 to 60 days of receiving a request. In light of the policy importance and factual intricacy of most section 23A exemption requests, the Board has decided not to adopt regulatory deadlines for processing section 23A exemption requests. The Board has indicated in the final rule, however, that exemption requests should describe in detail the transaction or relationship for which the member bank seeks exemption, explain why the Board should exempt the transaction or relationship, and explain how the exemption would be in the public interest and consistent with the purposes of section 23A.

As noted above, although sections 23A and 23B apply by their terms only to member banks, other Federal law subjects insured nonmember banks and insured thrifts to the sections as if they were member banks. Accordingly, insured nonmember banks and insured thrifts must apply to the Board (rather than their appropriate Federal banking agency) for any additional exemptions from section 23A or 23B.

VIII. General Provisions of Section 23B—Subpart F

Subpart F of the regulation sets forth the principal restrictions of section 23B. These include (i) a requirement that most transactions between a member bank and its affiliates be on terms and circumstances that are substantially the same as those prevailing at the time for comparable transactions with nonaffiliates; (ii) a restriction on a member bank's purchase as fiduciary of assets from an affiliate; (iii) a restriction on a member bank's purchase, during the existence of an underwriting syndicate, of any security if a principal underwriter of the security is an affiliate; and (iv) a prohibition on publishing an advertisement or entering into an agreement stating that a member bank will be responsible for the obligations of its affiliates. For the most part, subpart F restates the operative provisions of section 23B, and these provisions are not discussed below. The remainder of this section of the preamble highlights four areas in which Regulation W provides additional guidance on section 23B.

A. Transactions Exempt From Section 23B (§ 223.52(a)(1))

The market terms requirement of section 23B applies to, among other transactions, any "covered transaction" between a member bank and an affiliate.[177] Section 23B(d)(3) makes clear that the term "covered transaction" in section 23B has the same meaning as the term "covered transaction" in section 23A, but does not include any transaction that is exempt under section 23A(d)—for example, transactions between sister banks, transactions fully secured by a deposit account or U.S. government obligations, and purchases of assets from an affiliate at a readily identifiable and publicly available market quotation.[178] Consistent with the statute, the regulation exempts from section 23B any transaction that is exempt under section 23A(d).

Regulation W also excludes from section 23B any covered transaction that is exempt from section 23A under section 223.42(i) or (j) of the regulation (that is, asset purchases by a newly formed member bank and transactions approved under the Bank Merger Act). The Board is excluding from section 23B this additional set of transactions because, in each case, the appropriate Federal banking agency for the member bank involved in the transaction should ensure that the terms of the transaction are not unfavorable to the bank.

B. Purchases of Securities for Which an Affiliate Is the Principal Underwriter (§ 223.53(b))

The GLB Act amended section 23B in one respect. Since its passage in 1987, section 23B(b)(1)(B) has prohibited a member bank, whether acting as principal or fiduciary, from purchasing securities during the existence of an underwriting or selling syndicate if a

[176] This exemption parallels the exemption from the attribution rule provided in section 223.16(c)(1) of the final rule.

[177] 12 U.S.C. 371c–1(e)(2)(A).

[178] 12 U.S.C. 371c–1(d)(3).

principal underwriter of the securities is an affiliate of the bank.[179] Before the GLB Act, a member bank could escape this prohibition only if a majority of the *outside* directors of the bank approved the bank's securities purchase before the securities were initially offered to the public.[180] The GLB Act amended section 23B, however, to permit a member bank to purchase securities during an underwriting conducted by an affiliate if the following two conditions are met. First, a majority of the directors of the member bank (with no distinction drawn between inside and outside directors) must approve the securities purchase before the securities are initially offered to the public. Second, such approval must be based on a determination that the purchase would be a sound investment for the member bank regardless of the fact that an affiliate of the bank is a principal underwriter of the securities.[181] The regulation incorporates this new standard and clarifies that if a member bank proposes to make such a securities purchase in a fiduciary capacity, then the directors of the bank must base their approval on a determination that the purchase is a sound investment for the person on whose behalf the bank is acting as fiduciary.

Obviously, a member bank may satisfy this director approval requirement by obtaining specific prior director approval of each securities acquisition otherwise prohibited by section 23B(b)(1)(B). The regulation clarifies, however, that a member bank also satisfies this director approval requirement if a majority of the directors of the bank approves appropriate standards for the bank's acquisition of securities otherwise prohibited by section 23B(b)(1)(B) and each such acquisition meets the standards adopted by the directors. In addition, a majority of the member bank's directors must periodically review such acquisitions to ensure that they meet the standards and must periodically review the standards to ensure they meet the "sound investment" criterion of section 23B(b)(2). The appropriate period of time between reviews would vary depending on the scope and nature of the member bank's program, but such reviews should be conducted by the directors at least annually. Before the passage of the GLB Act, Board staff informally allowed member banks, based on the legislative history of section 23B, to meet the director approval requirement in this fashion, and there is no indication that Congress in the GLB Act intended to alter the procedures that a member bank could use to obtain the requisite director approval.[182]

For these reasons, the regulation codifies staff's preexisting approach to the director approval requirement.[183]

C. The Definition of Affiliate Under Section 23B (§ 223.2(c))

Section 23B states that the term "affiliate" under section 23B has the meaning given to such term in section 23A except that the term "affiliate" under section 23B does not include a "bank," as defined in section 23A.[184] Other Federal law provides that an insured savings association should be treated as a "bank" for purposes of section 23B.[185] As in the case of the sister-bank exemption, proposed Regulation W clarified that the only companies that qualify for the "bank" exception to section 23B's definition of affiliate are *insured* depository institutions.

One commenter objected to this aspect of the proposed rule. Without such an interpretation, however, a member bank would be able to engage in transactions with certain uninsured depository affiliates on terms and conditions that were highly unfavorable to the bank. Entering into these kinds of transactions would not be consistent with bank safety and soundness and would contravene one of the goals of section 23B—protecting the Federal deposit insurance funds. Accordingly, the final rule continues to restrict the "bank" exception from section 23B's definition of affiliate to insured depository institutions.

D. The Advertising restriction (§ 223.54)

Section 23B(c), the "advertising restriction," prohibits a member bank from publishing any advertisement or entering into any agreement stating or suggesting that the bank shall in any way be responsible for the obligations of its affiliates.[186] Read literally, this provision appears to prohibit a member bank from issuing a guarantee, acceptance, or letter of credit on behalf of an affiliate. Because section 23A includes as a permissible (though limited) covered transaction the issuance by a member bank of a guarantee, acceptance, or letter of credit on behalf of its affiliates, Board staff traditionally has read the advertising restriction of section 23B in light of section 23A. That is, Board staff has not read section 23B(c) to prohibit a member bank from issuing a guarantee, acceptance, or letter of credit on behalf of an affiliate to the extent permitted under section 23A. The regulation contains this clarification.[187] In response to comments from several banking organizations, the final rule also clarifies that section 23B(c) does not prohibit a member bank from making reference to such a guarantee, acceptance, or letter of credit in a prospectus or other disclosure document, for example, if otherwise required by law.

IX. Application of Sections 23A and 23B to U.S. Branches and Agencies of Foreign Banks—Subpart G

Subpart G discusses the application of sections 23A and 23B to U.S. branches and agencies of foreign banks. As noted above, sections 23A and 23B apply by their terms only to member banks of the Federal Reserve System, and other Federal banking laws have made insured nonmember banks and insured savings associations subject to the sections. Federal banking law generally does not subject the U.S. branches and agencies of foreign banks to sections 23A and 23B.

Section 114(b)(4) of the GLB Act explicitly authorizes the Board, however, to impose restrictions or requirements on relationships or transactions between a branch, agency, or commercial lending company of a foreign bank in the United States and any affiliate in the United States of such foreign bank. The Board may impose such prudential limits if it finds that the limits are appropriate to prevent an evasion of certain Federal banking laws, avoid a significant risk to the safety and soundness of depository institutions or any Federal deposit insurance fund, or avoid other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

In order to ensure competitive equity, the Board has for years imposed certain of the requirements of sections 23A and 23B on transactions between a U.S. branch or agency of a foreign bank and its U.S. affiliates engaged in underwriting and dealing in bank-ineligible securities ("section 20 affiliates").[188] The Board also recently applied sections 23A and 23B to transactions between a U.S. branch or agency of a foreign bank and affiliates conducting merchant banking activities under the GLB Act and portfolio companies held under that authority.[189]

With one material exception, the regulation applies sections 23A and 23B to a U.S. branch or agency of a foreign bank as if the branch or agency were a member bank. The material exception is that the only companies that are deemed affiliates of such branch or agency of a foreign bank are affiliates of the foreign bank that are *directly* engaged in the United States in the following GLB Act financial activities: (i) Insurance underwriting pursuant to section 4(k)(4)(B) of the BHC Act; (ii) securities underwriting and dealing pursuant to section 4(k)(4)(E) of the BHC Act; (iii) merchant banking activities pursuant to section 4(k)(4)(H) of the BHC Act; [190] or (iv) insurance company investment activities pursuant to section 4(k)(4)(I) of the BHC Act.[191]

The regulation also treats as a section 23A affiliate of a U.S. branch or agency any subsidiary of an affiliate of the foreign bank directly engaged in the four activities set forth above (regardless of whether the subsidiary itself engages in any of the four activities).[192] In addition, the rule treats as a section 23A affiliate of a U.S. branch or agency any portfolio company controlled by the foreign bank under the GLB Act's merchant banking or insurance company investment authorities (and any subsidiary of such a portfolio company). The regulation does not treat as a section 23A affiliate of a U.S. branch or agency any other type of affiliate of the foreign bank (for example, foreign affiliates or U.S. affiliates engaged in nonbanking activities under section 4(c)(8) of the BHC Act), and does not treat a foreign bank's non-U.S. offices as member banks subject to section 23A.[193]

Applying the restrictions of sections 23A and 23B to transactions between the U.S. branches and agencies of foreign banks and the specified U.S. affiliates will help to ensure maintenance of a competitive playing field between U.S. banks and foreign banks operating in the United States. The issue of competitive equity arises most strongly in connection with those activities that a U.S. bank cannot engage in directly or through an operating subsidiary. A U.S. bank may affiliate itself with a company engaged in the financial activities specified above only if the company is a holding company affiliate of the bank or, in some cases, a financial subsidiary of the bank. In either case, covered transactions between the U.S. bank and the company would be subject to sections 23A and 23B. Without Regulation W's extension of the scope of these statutory provisions, a foreign bank's U.S. branch or agency could fund and engage in transactions with these types of affiliates more freely than could a U.S. bank. To the extent that a foreign bank's U.S. branches and agencies are able to fund these types of U.S. affiliates outside of the restrictions of sections 23A and 23B, the affiliates are able to compete for business in the United States with a potential advantage not available to the analogous affiliates of U.S. banks.

The Board does not believe that it is appropriate or necessary at this time to impose the requirements of sections 23A and 23B on transactions between a foreign bank's U.S. branch or agency and its U.S. affiliates that are engaged only in activities that were permissible for BHCs before the passage of the GLB Act (other than section 20 affiliates). The Board recognizes the hardship this might impose on foreign banks conducting such activities in the United States under previous law. Moreover, most of these activities may be conducted by a U.S. bank directly (or in an operating subsidiary) and, hence, may be funded by a U.S. bank in a manner that is not subject to sections 23A and 23B.[194]

The potential scope, nature, and risks of transactions and relationships between U.S. branches and agencies of foreign banks and their affiliates engaged in the United States in insurance underwriting, full-scope securities underwriting and dealing, merchant banking, and insurance company investment are unclear at this time. At least until the Board acquires more information and supervisory experience regarding these transactions

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[179] 12 U.S.C. 371c–1(b)(1)(B).

[180] Many smaller banking organizations had difficulty meeting this standard because most or all of their banks' directors were officers or employees of the banks or affiliates of the banks.

[181] GLB Act § 738 (codified at 12 U.S.C. 371c–1(b)(2)).

[182] The Conference Report accompanying the Competitive Equality Banking Act of 1987 stated that the prior approval requirement of section 23B(b) could be met "by the establishment in advance of specific standards by the outside directors for such acquisitions, if the outside directors establish such standards, they must regularly review acquisitions to assure that the standards have been followed, and they must periodically review the standards to assure that they continue to be appropriate in light of market and other conditions." *See* H.R. Conf. Rep. No. 100–261, at 133 (1987).

[183] The rule also provides, consistent with existing Board interpretations, that a U.S. branch, agency, or commercial lending company of a foreign bank may comply with this requirement by obtaining the required approvals and reviews from either a majority of the directors or a majority of the senior executive officers of the foreign bank.

[184] 12 U.S.C. 371c–1(d)(1).

[185] 12 U.S.C. 1468(a)(2)(B).

[186] 12 U.S.C. 371c–1(c).

[187] The Board also believes that if a member bank and its affiliate enter into a joint undertaking with a third party, the contract among the parties should make clear that the bank is only responsible for its own obligations under the contract.

[188] The Board's Operating Standards for section 20 affiliates require (i) any intraday extensions of credit by a U.S. branch or agency of a foreign bank to its section 20 affiliates to comply with the market terms requirement of section 23B; (ii) any extensions of credit by a U.S. branch or agency of a foreign bank to its section 20 affiliates and any purchase by such branch or agency of securities for which a section 20 affiliate is the principal underwriter to comply with sections 23A and 23B; and (iii) a U.S. branch or agency of a foreign bank to refrain from advertising or suggesting that it is responsible for the obligations of a section 20 affiliate, consistent with section 23B(c). *See* 12 CFR 225.200; 62 FR 45295, Aug. 27, 1997. Prior to the adoption of the Operating Standards, all U.S. branches and agencies of a foreign bank (like all member banks) were prohibited from extending credit to, or purchasing assets from, a section 20 affiliate. Consequently, the Board's 1997 decision partially to apply sections 23A and 23B to such branches and agencies represented a liberalization of the regulatory framework.

[189] *See* 12 CFR 225.176(b)(6); 66 FR 8466, Jan. 21, 2001.

[190] Regulation W, consistent with the merchant banking rule, imposes sections 23A and 23B on a covered transaction between a U.S. branch or agency of a foreign bank and its U.S. merchant banking affiliate only to the extent the proceeds of the covered transaction are used for the purpose of funding the affiliate's merchant banking activities.

[191] *See* 12 U.S.C. 1843(k)(4)(B), (E), (H), and (I).

[192] The regulation covers subsidiaries of affiliates directly engaged in the specified activities in order to prevent evasion. If these subsidiaries were not covered, the U.S. branch or agency of a foreign bank arguably could fund the foreign bank's U.S. insurance underwriter outside the scope of sections 23A and 23B by, for example, lending money to a subsidiary of the underwriter and having the subsidiary dividend or on-lend the loan proceeds to the underwriter.

[193] The text and structure of the final rule on U.S. branches and agencies of foreign banks are somewhat different from that of the proposed rule. The proposed rule provided that section 23A applied to transactions *between* a U.S. branch or agency of a foreign bank, on the one hand, and certain U.S. affiliates of the foreign bank, on the other hand. The Board has revised the proposed rule to ensure that foreign banks treat certain indirect affiliate transactions as covered transactions under Regulation W. For example, an argument could be made that when a U.S. branch of a foreign bank accepts securities issued by a U.S. insurance company affiliate of the foreign bank as collateral for a loan to a nonaffiliate, there has been no transaction *between* the branch and the insurance affiliate. These transactions are, however, covered transactions under section 23A. The text and structure of the final rule make clear that such indirect affiliate transactions by a U.S. branch or agency of a foreign bank are subject to the rule.

[194] One U.S. bank commenter contended that Regulation W should be expanded to apply sections 23A and 23B to transactions between a foreign bank's U.S. branch or agency and a U.S. affiliate of the foreign bank engaged in any activities permissible under section 4(c)(8) of the BHC Act but not permissible for U.S. banks or their operating subsidiaries (for example, real estate leasing). The Board has determined not to add such activities to the rule's foreign bank activity list at this time because of the hardship this would impose on foreign banks and because the Board has substantial supervisory experience with such activities and has not observed any adverse competitive effects in the relevant markets. The Board does not intend to add such activities to the list in the future unless adverse competitive effects develop in the relevant markets that could be remedied by an expansion of the scope of sections 23A and 23B to the U.S. operations of foreign banks.

and relationships, applying sections 23A and 23B will help ensure competitive equity between foreign banks and U.S. banking organizations in the funding of certain of their U.S. nonbank operations. The Board will regularly review this section of Regulation W, consistent with the requirements of section 114(b)(3) of the GLB Act, to determine whether there is a continuing need for its restrictions and will modify or eliminate any restrictions that are no longer required to mitigate potential or actual adverse effects.

The regulation also provides that the Board may add to the list of affiliates of a foreign bank that are subject to the restrictions of sections 23A and 23B. The Board intends generally to use this reserved authority to ensure competitive equity between foreign banks and U.S. banks with respect to affiliates engaged in the United States in new activities that the Board may authorize for FHCs.

The Board also has considered the issue of how to calculate the capital stock and surplus of a foreign bank's U.S. branch or agency for purposes of section 23A. In light of the fact that foreign banks do not separately capitalize their U.S. branches or agencies, the regulation defines the capital stock and surplus of such branches and agencies by reference to the capital of the foreign bank as calculated under its home country capital standards. This definition is consistent with the approach adopted by the Board in its merchant banking rule,[195] and represents a relaxation from the Board's current position with respect to foreign banks that operate section 20 affiliates in the United States.[196]

A number of commenters strongly objected to the foreign bank provisions of the proposed rule, including the Canadian Department of Finance, the Institute of International Bankers, the Canadian Bankers Association, and the Swiss Bankers Association. Several of these commenters challenged the Board's authority under section 114 of the GLB Act to apply section 23A to the U.S. branches and agencies of foreign banks. According to these commenters, the Board's action fails to meet the first requirement of section 114 (consistency with Federal banking law) because Federal banking law does not generally subject U.S. branches and agencies of foreign banks to section 23A. In commenters' view, the Board's action also fails to meet the second prong of section 114 (intention to prevent adverse effects) because the Board has not presented specific evidence of actual abuse and is admittedly acting to fight *possible* future abuse.

The Board believes that its partial application of sections 23A and 23B to the U.S. branches and agencies of foreign banks is consistent with Federal banking law. The Board is aware of, and commenters cited, no Federal banking laws that contradict or otherwise conflict with the provisions of subpart G of Regulation W. Moreover, the Board disagrees with the implication of commenters' views of section 114, which would render section 114 useless by preventing the Board from imposing safeguards under the section unless such safeguards were already present in Federal banking law. Commenters also have failed to present evidence to support their claim that the Board may only use section 114 to combat adverse effects for which the Board has made specific findings. Nothing in the text or legislative history of the GLB Act supports this position. The Board does not believe that section 114 requires the Board to wait, observe, and document damage to U.S. financial institutions or markets before it may take action under the section to impose prudential safeguards.

Some commenters argued that the competitive equity justification for the Board's partial application of sections 23A and 23B to the U.S. branches and agencies of foreign banks does not fit within the "unfair competition" rationale in section 114 of the GLB Act. According to these commenters, the Board previously acknowledged that the "unfair competition" prong of section 4(j) of the BHC Act did not authorize the Board to consider disparities based on the structure of the banking industry.[197] Again, the Board is not aware of, and commenters have not presented, evidence that the phrase "unfair competition" in section 114(b)(4)(B) of the GLB Act cannot or should not be read to include competitive advantages based on regulatory environment. Importantly, the Board is not bound by its former interpretations of the BHC Act when interpreting provisions of the GLB Act. The Board notes that its former interpretation of section 4(j) of the BHC Act explicitly depended on the specific legislative history of section 4(j) and other sections of the BHC Act. The legislative history of the GLB Act does not similarly constrain the Board's interpretation of section 114. Indeed, the Congressional intent behind the GLB Act strongly supports the Board's position on this matter. The GLB Act authorized an expanded set of permissible activities for banking organizations, but required such activities to be conducted in section 23A affiliates of a bank (not directly in the bank) in order to reduce risks to the bank and to constrain the spread of the government subsidy enjoyed by banks. This Congressional concern to limit the transference of the bank subsidy into markets for other financial services is the same competitive concern that has motivated the Board to apply sections 23A and 23B to some portion of the U.S. operations of foreign banks.[198]

Several commenters on the foreign bank provisions of the proposed rule advanced the proposition that foreign banks do not enjoy a subsidy in the United States and do not have a competitive advantage over U.S. banking organizations. In fact, according to these commenters, U.S. banking firms have a competitive "home field" advantage in the United States.[199] The Board's partial application of sections 23A and 23B to the U.S. branches and agencies of foreign banks does not depend for its justification on whether foreign banks operating in the United States *generally* have a competitive advantage over U.S. banking firms. Rather, as noted above, the Board has chosen to extend the scope of sections 23A and 23B to address a specific potential competitive imbalance: the funding advantages enjoyed by the specified types of affiliates of foreign banks as compared to the same types of affiliates of U.S. banks. Foreign banks are able to raise low-cost deposits abroad and to use this low-cost funding to finance, including through their U.S. branches and agencies, the activities of the specified U.S. affiliates without having to comply with sections 23A and 23B. U.S. banks are limited by sections 23A and 23B in the extent to which they are able to finance the operations of the specified affiliates.

Commenters also pointed out alleged inconsistencies in the Board's treatment of the U.S. branches and agencies of foreign banks under subpart G. First, several commenters stated that it is inconsistent and unfair to subject the U.S. branches and agencies of foreign banks to section 23A but then to deny them the benefits of the sister-bank exemption. Regulation W does not, as a general matter, apply section 23A to transactions between a U.S. branch or agency and a sister U.S. branch, agency, or depository institution. The rule only applies section 23A to transactions between the U.S. branch or agency and a U.S. affiliate of the foreign bank engaged in the United States in insurance underwriting, securities underwriting and dealing, merchant banking, or insurance company investment. Because these activities generally are not permissible activities for a U.S. branch, agency, or subsidiary depository institution of a foreign bank, subpart G of the rule generally does not apply section 23A to transactions between the U.S. branch or agency of a foreign bank and any sister banks of the branch or agency.

Second, commenters claimed that it is inconsistent to permit a U.S. bank to fund its non-U.S. subsidiaries through a non-U.S. branch without complying with section 23A, but to force a non-U.S. bank to fund its U.S. subsidiaries through a U.S. branch in compliance with section 23A. As explained above, the Board is adopting subpart G of Regulation W in order to mitigate potential competitive inequities in certain nonbanking markets in the United States. Non-U.S. financial regulators are free to address any similar inequities that exist in their nonbanking markets due to disparate regulatory treatment. The Board notes that section 23A generally would apply to transactions between a U.S. bank and a foreign affiliate of the U.S. bank engaged in the four specified activities (other than an Edge subsidiary of the U.S. bank engaged in securities underwriting and dealing or certain limited investment activities).

X. Miscellaneous Interpretations—Subpart H

The Board has decided to include a subpart H in final Regulation W to house Board interpretations of sections 23A and 23B that do not fit neatly elsewhere in the regulation. Although subpart H of the final rule contains only a single section, the Board intends to place future Board miscellaneous interpretations of the statute into this subpart.

Section 223.71 of the final rule explains how sections 23A and 23B apply to transactions in which a member bank purchases from one affiliate an asset relating to another affiliate. In some situations in which a member bank purchases an asset from an affiliate, the asset purchase qualifies for an exemption under Regulation W, but the member bank's resulting ownership of the purchased asset also represents another covered transaction (which may or may not qualify for an exemption under the rule). In these situations, the transaction engaged in by the member bank would qualify as two different types of covered transaction. Although an asset purchase exemption may suffice to exempt the member bank's asset purchase from the first affiliate, the asset purchase exemption does not exempt the bank's resulting covered transaction with the second affiliate.

For example, assume a member bank purchases from one affiliate securities issued by another affiliate in a purchase that qualifies for the (d)(6) exemption in section 23A. The member bank's asset purchase from the first affiliate would be exempt under § 223.42(e) of the rule; but the bank also would have acquired an investment in securities issued by the second affiliate, which would be a covered transaction between the bank and the second affiliate that does not qualify for the (d)(6) exemption. The (d)(6) exemption, by its terms, only exempts asset purchases by a member bank from an affiliate; hence, the (d)(6) exemption cannot exempt a member bank's investment in securities issued by an affiliate (even if the securities would qualify for the (d)(6) exemption).

Section 223.71 sets forth this general interpretation and includes several examples to flesh out the interpretation (including the example given in the previous paragraph).[200]

XI. Effective Date; Transition Rule

Many commenters urged the Board to provide either a transition period for banks to come into compliance with Regulation W or a grandfather for existing transactions that do not comply with the rule. According to these commenters, banks need such relief because of the many ways in which the rule is inconsistent with existing bank practices or existing staff interpretations of section 23A. Although most commenters did not propose a specific time period, one commenter advocated a transition period of 2 to 3 years.

The Board recognizes that Regulation W tightens a number of traditional Board and staff interpretations of sections 23A and 23B. The Board also believes that the changes effected by the final rule are of substantial regulatory importance, and that the burden on member banks of full and prompt compliance with the final rule will be minimal in most cases. Accordingly, the Board has decided to delay the effective date of the rule only for the minimum period of time required by law and to provide member banks with only a limited transition period and grandfather authority for preexisting transactions.

The Board has decided to make Regulation W effective as of April 1, 2003. Accordingly, transactions entered into on or after April 1, 2003, will be immediately subject to the rule. Transactions entered into after December 12, 2002, but before April 1, 2003, will become subject to the rule on April 1, 2003.

The Board also has determined to adopt a limited transition rule for transactions that consummate on or before the date of publication of final Regulation W in the **Federal Register**. As a general matter, any transaction engaged in by a member bank on or before December 12, 2002 that would become subject to section 23A or 23B solely as a result of this rule, or whose treatment under section 23A or 23B would change solely as a result of this rule, will not become subject to this rule until July 1, 2003. The Board may, in its discretion, extend this deadline in circumstances where a member bank has demonstrated to the Board's satisfaction that compliance with the deadline would impose regulatory burden on the member bank that outweighs the regulatory benefit of early compliance.

For purposes of the transition rule, a transaction is subject to section 23A or 23B solely as a result of Regulation W if the transaction is subject to section 23A or 23B under the rule but was not

[195] *See* 66 FR 8466, 8482, Jan. 31, 2001.

[196] The Board's position on section 20 affiliates requires U.S. branches and agencies of foreign banks whose home country supervisor has not adopted capital standards consistent with the Basle Accord to calculate their section 23A capital stock and surplus by reference to the capital of the foreign bank parent as calculated under standards applicable to U.S. banking organizations. *See* 62 FR 45304, Aug. 27, 1997.

[197] *See BankAmerica Corporation*, 69 Federal Reserve Bulletin 105, 111 (1983).

[198] The Board also notes that the "adverse effects" clause in section 114 of the GLB Act is broader than the "adverse effects" clause in section 4(j) of the BHC Act. Significantly, section 114, unlike section 4(j), explicitly authorizes the Board to consider risks to the safety and soundness of U.S. depository institutions. In the Board's view, the safety and soundness of U.S. depository institutions could be put at risk if certain of their affiliates are forced to compete with the affiliates of foreign banks at a significant regulatory disadvantage.

[199] In support of their position, many of these commenters referred to a study conducted by the Federal Reserve System that concluded that section 20 affiliates of U.S. BHCs have outperformed section 20 affiliates of foreign banks. In light of the fact that the Board has imposed many of the restrictions of sections 23A and 23B on transactions between the U.S. branches and agencies of foreign banks and their section 20 affiliates, this study does not provide much evidence as to whether foreign bank-owned securities underwriters and dealers would enjoy a competitive advantage over U.S. BHC-owned securities underwriters and dealers in the absence of an extension of sections 23A and 23B to cover foreign banks.

[200] In light of the inclusion of section 223.71 in the final rule, the Board has removed certain conditions to the (d)(6)-related exemptions in section 223.42(e) and (f) of the rule.

subject to section 23A or 23B under the terms of the sections or any written interpretations of the sections by the Board or its staff that predated December 12, 2002. In addition, a transaction's treatment under section 23A or 23B changes solely as a result of Regulation W if the treatment of the transaction under the rule differs from the treatment of the transaction under the terms of sections 23A and 23B or any written interpretations of the sections by the Board or its staff that predated December 12, 2002.

The transition rule has several exceptions. First, any transaction that qualifies for the transition rule but is renewed, extended, or materially altered on or after April 1, 2003, will be immediately subject to the rule at the time of such renewal, extension, or material alteration. In addition, any transaction that qualifies for the transition rule but is a purchase of assets by a member bank from an affiliate that consummated on or before December 12, 2002 will not be subject to this rule.

The following examples are designed to assist member banks in understanding the transition rule. The first example involves an extension of credit that predates December 12, 2002. Suppose that on February 18, 2002, a member bank makes a loan to an unregistered investment fund advised (but not sponsored) by the bank. The member bank does not control the fund, but the bank's holding company owns 10 percent of the total equity of the fund. The fund is not an affiliate of the member bank under sections 23A and 23B and written interpretations of such sections by the Board and its staff at the time the loan is made. The fund would become an affiliate of the member bank under Regulation W, and the loan would become a covered transaction, as of July 1, 2003.[201] If the member bank renews the loan on May 14, 2003, however, the loan would become a covered transaction as of May 14, 2003.

The second example involves an asset purchase that predates December 12, 2002. Suppose that on August 9, 2002, a member bank purchases assets from an uninsured depository institution affiliate in a transaction that qualifies for the sister-bank exemption in section 23A(d)(4). Although Regulation W renders the sister-bank exemption unavailable for transactions with uninsured depository institution affiliates as of April 1, 2003, the asset purchase would permanently qualify for the sister-bank exemption.

The Board also has determined to allow member banks to apply certain provisions of Regulation W that relieve regulatory burden before the rule's effective date.[202] In particular, notwithstanding the effective date and transition rule provisions discussed above, a member bank may choose to apply any of the following provisions of the rule beginning on December 12, 2002: (i) section 223.16(c)(4); (ii) section 223.24(a), (b), or (c); (iii) section 223.31(d); (iv) section 223.41(d); or (v) section 223.42(c), (f), (g), (i), (j), or (k).

Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 604(a)), the Board must publish a final regulatory flexibility analysis with this rulemaking. Sections 23A and 23B of the Federal Reserve Act limit transactions between a depository institution and its affiliates and authorize the Board to issue regulations as necessary to administer and carry out the purposes of the sections.[203] Sections 23A and 23B are two of the most important statutory protections against a depository institution suffering losses from its transactions with affiliates and, correspondingly, are two of the most effective means of limiting the ability of a depository institution to transfer to its affiliates the subsidy arising from its access to the Federal safety net. Although sections 23A and 23B each grant the Board authority to issue regulations, the Board has never issued a regulation fully implementing either section. Instead, depository institutions seeking guidance on how to comply with sections 23A and 23B have relied on a series of Board interpretations and informal staff opinions. Banking organizations have increasingly sought guidance from the Board on section 23A issues in recent years as a result of the increasing scope of activities conducted by modern FHCs and the growing complexities of the U.S. financial markets.

As noted above, the Board believes that adoption of a comprehensive regulation implementing sections 23A and 23B is appropriate for several reasons. First, the new regulatory framework established by the GLB Act emphasizes the importance of sections 23A and 23B as a means to protect depository institutions from losses in transactions with affiliates. Moreover, adoption of a comprehensive regulation will simplify the interpretation and application of sections 23A and 23B, ensure that the statute is consistently interpreted and applied, and minimize burden to the extent consistent with the statute's goals.

The Board received approximately 120 public comments in response to the Board's proposed section 23A rulemakings. As discussed above, nearly all commenters supported the Board's decision to issue Regulation W, but raised specific concerns on certain aspects of the regulation. The preamble provides a detailed discussion of the public comments. The Board considered the alternatives proposed by the comments, and the preamble describes the numerous changes that the Board made to the proposed rule as a result of the comments.

Regulation W provides users with a single, comprehensive reference tool for complying with and analyzing issues arising under sections 23A and 23B. Accordingly, the regulation incorporates Board and staff interpretations and also restates the statutory definitions, restrictions, and exemptions in order to make understanding and using the regulation easier.

The regulation first sets forth, in subpart A, a comprehensive glossary of the terms used in the regulation. Subpart B then describes the principal restrictions and requirements imposed by section 23A. Next, in subpart C, the regulation discusses the appropriate valuation and timing principles for covered transactions. Subpart D discusses the appropriate treatment under section 23A for transactions with financial subsidiaries, derivative transactions with affiliates, and certain merger and acquisition transactions with affiliates. Subpart E sets forth available exemptions from certain of the requirements of section 23A. Subpart F lays out the operative provisions of section 23B. Subpart G discusses the application of the rule to U.S. branches and agencies of foreign banks. Subpart H contains an additional interpretation of the statute. Regulation W also includes examples illustrating how several of the rule's provisions apply in particular circumstances.

Regulation W applies, by its terms, to all member banks regardless of their size. The regulation affects all insured depository institutions, however, because other Federal law subjects insured nonmember banks and insured thrifts to sections 23A and 23B as if they were member banks. The rule also applies indirectly to the "affiliates" of insured depository institutions. A depository institution's affiliates include, among other companies, any company that controls the institution, any company under common control with the institution, and certain investment funds that are advised by the institution or an affiliate of the institution. The number of small entities affected by Regulation W is estimated to be a little over 6,500, including *3,292* depository institutions. For purposes of this regulatory flexibility analysis, the Board defines small entity as any depository institution or other company with less than $150 million in total assets. The Board does not collect data on all affiliates of depository institutions at this time. Accordingly, the exact number of small entities affected by the rule would require additional surveys or reports, which would increase the burden on the public and are not necessary for implementation of the rule.

The vast majority of depository institutions that are currently in compliance with sections 23A and 23B will also be in compliance with the rule. The rule does not impose any new compliance requirements and mainly codifies existing practice and grants new exemptions. The rule includes several exemptions that will be available to a depository institution only if it notifies its primary Federal supervisor. This notification, however, allows the institution to engage in a transaction that is otherwise prohibited by law and replaces the current requirement of a more time-consuming case-by-case exemption request to the Board. The primary Federal supervisor of an institution also may require additional documentation to ensure compliance with the regulation. Moreover, the Board has delegated authority to the primary Federal supervisors of depository institutions to make certain determinations as to the permissibility of certain transactions.

The rule does not result in significant additional burden to the institutions that must comply with its terms. The provisions of Regulation W, in fact, may be less burdensome than existing law because of the increased number of exemptions. One alternative to adopting this rule is to maintain the current collection of formal and informal Board and staff interpretations. Most public commenters believed, however, that the adoption of Regulation W would reduce burden by placing sections 23A and 23B and the Board's interpretations thereof in a single, comprehensive, public document.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, an information collection unless the Federal Reserve displays a currently valid OMB control number. The Federal Reserve will assign an OMB control number.

The collection of information requirements in this final rulemaking are found in 12 CFR 223.15(b)(4), 223.31(d)(4), 223.41(d)(2), and 223.43(b). This information is required to evidence compliance with sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1). The respondents are all insured depository institutions and uninsured member banks.

The notice requirement cited in 12 CFR 223.15(b)(4) is a condition to an exemption for renewals of loan participations involving problem loans. The participating depository institution must provide its appropriate Federal banking agency with written notice of the renewal or extension of additional credit not later than 20 days after consummation. There will be no reporting form associated with this information collection. The Board estimates that approximately 10 depository institutions will file this notice annually and that it will take approximately 2 hours to prepare the notice.

The notice requirement cited in 12 CFR 223.31(d)(4) is a condition to an exemption for a depository institution's acquisition of an affiliate that becomes an operating subsidiary of the institution after the acquisition. The institution must provide its appropriate Federal banking agency and the Board with written notice of its intention to acquire the company at or before the time that the company becomes an affiliate of the institution. There will be no reporting form associated with this information collection. The Board estimates that approximately 10 depository institutions will file this notice annually and that it will take approximately 6 hours to prepare the notice.

The notice requirement cited in 12 CFR 223.41(d)(2) is a condition to an exemption for internal corporate reorganization transactions. The depository institution must provide its appropriate Federal banking agency and the Board with written notice of the transaction before consummation. The notice must describe the primary business activities of the affiliate and indicate the proposed date of the reorganization. There will be no reporting form associated with this information collection. The Board estimates that approximately 20 depository institutions will file this notice annually and that it will take approximately 6 hours to prepare a notice.

The notice requirement cited in 12 CFR 223.43(b) provides procedures for requesting additional exemptions from the requirements of section 23A. The depository institution must submit a written request to the General Counsel of the Board. The request must describe in detail the transaction or relationship for which the institution seeks exemption; explain why the Board should exempt the transaction or relationship; and explain how the exemption would be in the public interest and consistent with the purposes of section 23A. There will be no reporting form associated with this information collection. The Board estimates that approximately 5 depository institutions will file these requests annually and that it will take approximately 10 hours to prepare a request.

The total estimated annual burden for the depository institutions that must comply with the above-mentioned requirements is 250 hours. Based on a rate of $50 per hour, the total annual cost to the public for these collections of information is estimated to be $12,500.

In addition, there are existing reports (such as the Bank Holding Company Report of Insured Depository Institutions' Section 23A Transactions with Affiliates (FR Y–8; OMB No. 7100–0126)) that will be modified to reflect the adoption of this rule. The Board expects to publish a separate notice describing the changes to these reports. The burden associated with these collections of information will be addressed at that time.

Comments are invited on (i) whether the proposed notifications are necessary for the proper performance of the Board's functions, including whether the information contained in the notifications would have practical utility; (ii) the accuracy of the Board's estimate of the burden of the proposed information collections, including the cost of compliance; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) ways to minimize the burden of information collections on respondents, including through the use of automated

[201] The Board would expect member banks to treat such a transaction, as of July 1, 2003, in accordance with the timing rules set forth in section 223.21(b)(2) of Regulation W for a credit transaction with a nonaffiliate that becomes an affiliate.

[202] Permitting member banks to comply with provisions of the final rule that relieve burden prior to the rule's effective date is consistent with applicable Federal law. *See* 5 U.S.C 553 and 12 U.S.C. 4802.

[203] 12 U.S.C. 371c(f) and 371c–1(e).

collection techniques or other forms of information technology.

Comments regarding any aspect of these information collections, including suggestions for reducing the burden, must be submitted on or before February 10, 2003, and may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-[to be assigned]), Washington, DC 20503.

Solicitation of Comments Regarding Use of "Plain Language"

Section 722 of the GLB Act requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invited comments about how to make the proposed rule easier to understand and, in doing so, posed the following questions:

(1) Has the Board organized the material in an effective manner? If not, how could the material be better organized?

(2) Are the terms of the rule clearly stated? If not, how could the terms be more clearly stated?

(3) Does the rule contain technical language or jargon that is unclear? If so, which language requires clarification?

(4) Would a different format (with respect to grouping and order of sections and use of headings) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

(5) Would increasing the number of sections (and making each section shorter) clarify the rule? If so, which portions of the rule should be changed in this respect?

(6) What additional changes would make the rule easier to understand?

The Board also provided examples in the proposed rule to illustrate how several of the rule's provisions would apply in particular circumstances, and solicited comment on what kinds of additional examples should be added to the rule.

Commenters generally expressed support for the format of the regulation and believed that the rule conveyed the Board's interpretations of section 23A in plain language. Several commenters did recommend, however, that the Board move the definitional sections of the rule to the front. In response to these comments, the Board has placed the rule's definitions in the first subpart of the rule.

Several commenters also recommended clarification of several examples contained in the proposed rule and inclusion of additional examples, particularly in the valuation subpart of the rule. The final rule modifies several of the proposed rule's examples to enhance their illustrative power and includes a number of new examples to increase the ability of users of the regulation to understand the valuation formulas of the rule.

List of Subjects in 12 CFR Part 223

Banks, Banking; Federal Reserve System.

For the reasons set out in the preamble, title 12 of the Code of Federal Regulations is amended by adding a new part 223 to read as follows:

PART 223—TRANSACTIONS BETWEEN MEMBER BANKS AND THEIR AFFILIATES (REGULATION W)

Subpart A—Introduction and Definitions

Sec.
223.1 Authority, purpose, and scope.
223.2 What is an "affiliate" for purposes of sections 23A and 23B and this part?
223.3 What are the meanings of the other terms used in sections 23A and 23B and this part?

Subpart B—General Provisions of Section 23A

223.11 What is the maximum amount of covered transactions that a member bank may enter into with any single affiliate?
223.12 What is the maximum amount of covered transactions that a member bank may enter into with all affiliates?
223.13 What safety and soundness requirement applies to covered transactions?
223.14 What are the collateral requirements for a credit transaction with an affiliate?
223.15 May a member bank purchase a low-quality asset from an affiliate?
223.16 What transactions by a member bank with any person are treated as transactions with an affiliate?

Subpart C—Valuation and Timing Principles Under Section 23A

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Authority: 12 U.S.C. 371c(b)(1)(E), (b)(2)(A), and (f), 371c–1(e), 1828(j), and 1468(a).

Subpart A—Introduction and Definitions

§ 223.1 Authority, purpose, and scope.

(a) *Authority.* The Board of Governors of the Federal Reserve System (Board) has issued this part (Regulation W) under the authority of sections 23A(f) and 23B(e) of the Federal Reserve Act (12 U.S.C. 371c(f), 371c–1(e)).

(b) *Purpose.* Sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c–1) establish certain quantitative limits and other prudential requirements for loans, purchases of assets, and certain other transactions between a member bank and its affiliates. This regulation implements sections 23A and 23B by defining terms used in the statute, explaining the statute's requirements, and exempting certain transactions.

(c) *Scope.* Sections 23A and 23B and this regulation apply by their terms to "member banks"—that is, any national bank, State bank, trust company, or other institution that is a member of the Federal Reserve System. In addition, the Federal Deposit Insurance Act (12 U.S.C. 1828(j)) applies sections 23A and 23B to insured State nonmember banks in the same manner and to the same extent as if they were member banks. The Home Owners' Loan Act (12 U.S.C. 1468(a)) also applies sections 23A and 23B to insured savings associations in the same manner and to the same extent as if they were member banks (and imposes two additional restrictions).

§ 223.2 What is an "affiliate" for purposes of sections 23A and 23B and this part?

(a) For purposes of this part and except as provided in paragraphs (b) and (c) of this section, "affiliate" with respect to a member bank means:

(1) *Parent companies.* Any company that controls the member bank;

(2) *Companies under common control by a parent company.* Any company, including any subsidiary of the member bank, that is controlled by a company that controls the member bank;

(3) *Companies under other common control.* Any company, including any subsidiary of the member bank, that is controlled, directly or indirectly, by trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by trust or otherwise, the member bank or any company that controls the member bank;

(4) *Companies with interlocking directorates.* Any company in which a majority of its directors, trustees, or general partners (or individuals exercising similar functions) constitute a majority of the persons holding any such office with the member bank or any company that controls the member bank;

(5) *Sponsored and advised companies.* Any company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the member bank or an affiliate of the member bank;

(6) *Investment companies.* (i) Any investment company for which the member bank or any affiliate of the member bank serves as an investment adviser, as defined in section 2(a)(20) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(20)); and

(ii) Any other investment fund for which the member bank or any affiliate of the member bank serves as an investment advisor, if the member bank and its affiliates own or control in the aggregate more than 5 percent of any class of voting securities or of the equity capital of the fund;

(7) *Depository institution subsidiaries.* A depository institution that is a subsidiary of the member bank;

(8) *Financial subsidiaries.* A financial subsidiary of the member bank;

(9) *Companies held under merchant banking or insurance company investment authority*—(i) *In general.* Any company in which a holding company of the member bank owns or controls, directly or indirectly, or acting through one or more other persons, 15 percent or more of the equity capital pursuant to section 4(k)(4)(H) or (I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) or (I)).

(ii) *General exemption.* A company will not be an affiliate under paragraph (a)(9)(i) of this section if the holding company presents information to the Board that demonstrates, to the Board's satisfaction, that the holding company does not control the company.

(iii) *Specific exemptions.* A company also will not be an affiliate under paragraph (a)(9)(i) of this section if:

(A) No director, officer, or employee of the holding company serves as a director, trustee, or general partner (or individual exercising similar functions) of the company;

(B) A person that is not affiliated or associated with the holding company owns or controls a greater percentage of the equity capital of the company than is owned or controlled by the holding company, and no more than one officer or employee of the holding company serves as a director or trustee (or individual exercising similar functions) of the company; or

(C) A person that is not affiliated or associated with the holding company owns or controls more than 50 percent of the voting shares of the company, and officers and employees of the holding company do not constitute a majority of the directors or trustees (or individuals exercising similar functions) of the company.

(iv) *Application of rule to private equity funds.* A holding company will not be deemed to own or control the equity capital of a company for purposes of paragraph (a)(9)(i) of this section solely by virtue of an investment made by the holding company in a private equity fund (as defined in the merchant banking subpart of the Board's Regulation Y (12 CFR 225.173(a))) that owns or controls the equity capital of the company unless the holding company controls the private equity fund under 12 CFR 225.173(d)(4).

(v) *Definition.* For purposes of this paragraph (a)(9), "*holding company*" with respect to a member bank means a company that controls the member bank, or a company that is controlled by shareholders that control the member bank, and all subsidiaries of the company (including any depository institution that is a subsidiary of the company).

(10) *Partnerships associated with the member bank or an affiliate.* Any partnership for which the member bank or any affiliate of the member bank serves as a general partner or for which the member bank or any affiliate of the member bank causes any director, officer, or employee of the member bank or affiliate to serve as a general partner;

(11) *Subsidiaries of affiliates.* Any subsidiary of a company described in paragraphs (a)(1) through (10) of this section; and

(12) *Other companies.* Any company that the Board determines by regulation or order, or that the appropriate Federal banking agency for the member bank determines by order, to have a relationship with the member bank, or any affiliate of the member bank, such that covered transactions by the member bank with that company may be affected by the relationship to the detriment of the member bank.

(b) "*Affiliate*" with respect to a member bank does *not* include:

(1) *Subsidiaries.* Any company that is a subsidiary of the member bank, unless the company is:

(i) A depository institution;

(ii) A financial subsidiary;

(iii) Directly controlled by:

(A) One or more affiliates (other than depository institution affiliates) of the member bank; or

(B) A shareholder that controls the member bank or a group of shareholders that together control the member bank;

(iv) An employee stock option plan, trust, or similar organization that exists for the benefit of the shareholders, partners, members, or employees of the member bank or any of its affiliates; or

(v) Any other company determined to be an affiliate under paragraph (a)(12) of this section;

(2) *Bank premises.* Any company engaged solely in holding the premises of the member bank;

(3) *Safe deposit.* Any company engaged solely in conducting a safe deposit business;

(4) *Government securities.* Any company engaged solely in holding obligations of the United States or its agencies or obligations fully guaranteed by the United States or its agencies as to principal and interest; and

(5) *Companies held DPC.* Any company where control results from the exercise of rights arising out of a bona fide debt previously contracted. This exclusion from the definition of "affiliate" applies only for the period of time specifically authorized under applicable State or Federal law or regulation or, in the absence of such law

or regulation, for a period of two years from the date of the exercise of such rights. The Board may authorize, upon application and for good cause shown, extensions of time for not more than one year at a time, but such extensions in the aggregate will not exceed three years.

(c) For purposes of subpart F (implementing section 23B), "affiliate" with respect to a member bank also does *not* include any depository institution.

§ 223.3 What are the meanings of the other terms used in sections 23A and 23B and this part?

For purposes of this part:

(a) *Aggregate amount of covered transactions* means the amount of the covered transaction about to be engaged in added to the current amount of all outstanding covered transactions.

(b) *Appropriate Federal banking agency* with respect to a member bank or other depository institution has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(c) "*Bank holding company*" has the same meaning as in 12 CFR 225.2.

(d) "*Capital stock and surplus*" means the sum of:

(1) A member bank's tier 1 and tier 2 capital under the risk-based capital guidelines of the appropriate Federal banking agency, based on the member bank's most recent consolidated Report of Condition and Income filed under 12 U.S.C. 1817(a)(3);

(2) The balance of a member bank's allowance for loan and lease losses not included in its tier 2 capital under the risk-based capital guidelines of the appropriate Federal banking agency, based on the member bank's most recent consolidated Report of Condition and Income filed under 12 U.S.C. 1817(a)(3); and

(3) The amount of any investment by a member bank in a financial subsidiary that counts as a covered transaction and is required to be deducted from the member bank's capital for regulatory capital purposes.

(e) *Carrying value* with respect to a security means (unless otherwise provided) the value of the security on the financial statements of the member bank, determined in accordance with GAAP.

(f) *Company* means a corporation, partnership, limited liability company, business trust, association, or similar organization and, unless specifically excluded, includes a member bank and a depository institution.

(g) *Control.* (1) *In general.* "*Control*" by a company or shareholder over another company means that:

(i) The company or shareholder, directly or indirectly, or acting through one or more other persons, owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company;

(ii) The company or shareholder controls in any manner the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the other company; or

(iii) The Board determines, after notice and opportunity for hearing, that the company or shareholder, directly or indirectly, exercises a controlling influence over the management or policies of the other company.

(2) *Ownership or control of shares as fiduciary.* Notwithstanding any other provision of this regulation, no company will be deemed to control another company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraph (a)(3) of § 223.2 or if the company owning or controlling the shares is a business trust.

(3) *Ownership or control of securities by subsidiary.* A company controls securities, assets, or other ownership interests owned or controlled, directly or indirectly, by any subsidiary (including a subsidiary depository institution) of the company.

(4) *Ownership or control of convertible instruments.* A company or shareholder that owns or controls instruments (including options or warrants) that are convertible or exercisable, at the option of the holder or owner, into securities, controls the securities, unless the company or shareholder presents information to the Board that demonstrates, to the Board's satisfaction, that the company or shareholder should not be deemed to control the securities.

(5) *Ownership or control of nonvoting securities.* A company or shareholder that owns or controls 25 percent or more of the equity capital of another company controls the other company, unless the company or shareholder presents information to the Board that demonstrates, to the Board's satisfaction, that the company or shareholder does not control the other company.

(h) *Covered transaction* with respect to an affiliate means:

(1) An extension of credit to the affiliate;

(2) A purchase of, or an investment in, a security issued by the affiliate;

(3) A purchase of an asset from the affiliate, including an asset subject to recourse or an agreement to repurchase, except such purchases of real and personal property as may be specifically exempted by the Board by order or regulation;

(4) The acceptance of a security issued by the affiliate as collateral for an extension of credit to any person or company; and

(5) The issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of the affiliate, a confirmation of a letter of credit issued by the affiliate, and a cross-affiliate netting arrangement.

(i) *Credit transaction* with an affiliate means:

(1) An extension of credit to the affiliate;

(2) An issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, on behalf of the affiliate and a confirmation of a letter of credit issued by the affiliate; and

(3) A cross-affiliate netting arrangement.

(j) *Cross-affiliate netting arrangement* means an arrangement among a member bank, one or more affiliates of the member bank, and one or more nonaffiliates of the member bank in which:

(1) A nonaffiliate is permitted to deduct any obligations of an affiliate of the member bank to the nonaffiliate when settling the nonaffiliate's obligations to the member bank; or

(2) The member bank is permitted or required to add any obligations of its affiliate to a nonaffiliate when determining the member bank's obligations to the nonaffiliate.

(k) "*Depository institution*" means, unless otherwise noted, an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), but does not include any branch of a foreign bank. For purposes of this definition, an operating subsidiary of a depository institution is treated as part of the depository institution.

(l) "*Derivative transaction*" means any derivative contract listed in sections III.E.1.a. through d. of Appendix A to 12 CFR part 225 and any similar derivative contract, including a credit derivative contract.

(m) "*Eligible affiliated mutual fund securities*" has the meaning specified in paragraph (c)(2) of § 223.24.

(n) "*Equity capital*" means:

(1) With respect to a corporation, preferred stock, common stock, capital surplus, retained earnings, and accumulated other comprehensive income, less treasury stock, plus any other account that constitutes equity of the corporation; and

(2) With respect to a partnership, limited liability company, or other company, equity accounts similar to those described in paragraph (n)(1) of this section.

(o) "*Extension of credit*" to an affiliate means the making or renewal of a loan, the granting of a line of credit, or the extending of credit in any manner whatsoever, including on an intraday basis, to an affiliate. An extension of credit to an affiliate includes, without limitation:

(1) An advance to an affiliate by means of an overdraft, cash item, or otherwise;

(2) A sale of Federal funds to an affiliate;

(3) A lease that is the functional equivalent of an extension of credit to an affiliate;

(4) An acquisition by purchase, discount, exchange, or otherwise of a note or other obligation, including commercial paper or other debt securities, of an affiliate;

(5) Any increase in the amount of, extension of the maturity of, or adjustment to the interest rate term or other material term of, an extension of credit to an affiliate; and

(6) Any other similar transaction as a result of which an affiliate becomes obligated to pay money (or its equivalent).

(p) "*Financial subsidiary*"

(1) *In general.* Except as provided in paragraph (p)(2) of this section, the term "*financial subsidiary*" means any subsidiary of a member bank that:

(i) Engages, directly or indirectly, in any activity that national banks are not permitted to engage in directly or that is conducted under terms and conditions that differ from those that govern the conduct of such activity by national banks; and

(ii) Is not a subsidiary that a national bank is specifically authorized to own or control by the express terms of a Federal statute (other than 12 U.S.C. 24a), and not by implication or interpretation.

(2) *Exceptions.* "*Financial subsidiary*" does not include:

(i) A subsidiary of a member bank that is considered a financial subsidiary under paragraph (p)(1) of this section solely because the subsidiary engages in the sale of insurance as agent or broker in a manner that is not permitted for national banks; and

(ii) A subsidiary of a State bank (other than a subsidiary described in section 46(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831w(a))) that is considered a financial subsidiary under paragraph (p)(1) of this section solely because the subsidiary engages in one or more of the following activities:

(A) An activity that the State bank may engage in directly under applicable Federal and State law and that is conducted under the same terms and conditions that govern the conduct of the activity by the State bank; and

(B) An activity that the subsidiary was authorized by applicable Federal and State law to engage in prior to December 12, 2002, and that was lawfully engaged in by the subsidiary on that date.

(3) *Subsidiaries of financial subsidiaries.* If a company is a financial subsidiary under paragraphs (p)(1) and (p)(2) of this section, any subsidiary of such a company is also a financial subsidiary.

(q) "*Foreign bank*" and an "*agency,*" "*branch,*" or "*commercial lending company*" of a foreign bank have the same meanings as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(r) "*GAAP*" means U.S. generally accepted accounting principles.

(s) "*General purpose credit card*" has the meaning specified in paragraph (c)(4)(ii) of § 223.16.

(t) *In contemplation.* A transaction between a member bank and a nonaffiliate is presumed to be "*in contemplation*" of the nonaffiliate becoming an affiliate of the member bank if the member bank enters into the transaction with the nonaffiliate after the execution of, or commencement of negotiations designed to result in, an agreement under the terms of which the nonaffiliate would become an affiliate.

(u) "*Intraday extension of credit*" has the meaning specified in paragraph (l)(2) of § 223.42.

(v) "*Low-quality asset*" means:

(1) An asset (including a security) classified as "substandard," "doubtful," or "loss," or treated as "special mention" or "other transfer risk problems," either in the most recent report of examination or inspection of an affiliate prepared by either a Federal or State supervisory agency or in any internal classification system used by the member bank or the affiliate (including an asset that receives a rating that is substantially equivalent to "classified" or "special mention" in the internal system of the member bank or affiliate);

(2) An asset in a nonaccrual status;

(3) An asset on which principal or interest payments are more than thirty days past due;

(4) An asset whose terms have been renegotiated or compromised due to the deteriorating financial condition of the obligor; and

(5) An asset acquired through foreclosure, repossession, or otherwise in satisfaction of a debt previously contracted, if the asset has not yet been reviewed in an examination or inspection.

(w) "*Member bank*" means any national bank, State bank, banking association, or trust company that is a member of the Federal Reserve System. For purposes of this definition, an operating subsidiary of a member bank is treated as part of the member bank.

(x) "*Municipal securities*" has the same meaning as in section 3(a)(29) of the Securities Exchange Act of 1934 (17 U.S.C. 78c(a)(29)).

(y) "*Nonaffiliate*" with respect to a member bank means any person that is not an affiliate of the member bank.

(z) "*Obligations of, or fully guaranteed as to principal and interest by, the United States or its agencies*" includes those obligations listed in 12 CFR 201.108(b) and any additional obligations as determined by the Board. The term does not include Federal Housing Administration or Veterans Administration loans.

(aa) "*Operating subsidiary*" with respect to a member bank or other depository institution means any subsidiary of the member bank or depository institution other than a subsidiary described in paragraphs (b)(1)(i) through (v) of § 223.2.

(bb) "*Person*" means an individual, company, trust, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

(cc) "*Principal underwriter*" has the meaning specified in paragraph (c)(1) of § 223.53.

(dd) "*Purchase of an asset*" by a member bank from an affiliate means the acquisition by a member bank of an asset from an affiliate in exchange for cash or any other consideration, including an assumption of liabilities. The merger of an affiliate into a member bank is a purchase of assets by the member bank from an affiliate if the member bank assumes any liabilities of the affiliate or pays any other form of consideration in the transaction.

(ee) *Riskless principal.* A company is "*acting exclusively as a riskless principal*" if, after receiving an order to buy (or sell) a security from a customer, the company purchases (or sells) the security in the secondary market for its own account to offset a contemporaneous sale to (or purchase from) the customer.

(ff) "*Securities*" means stocks, bonds, debentures, notes, or similar obligations (including commercial paper).

(gg) "*Securities affiliate*" with respect to a member bank means:

(1) An affiliate of the member bank that is registered with the Securities and Exchange Commission as a broker or dealer; or

(2) Any other securities broker or dealer affiliate of a member bank that is approved by the Board.

(hh) "*State bank*" has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(ii) "*Subsidiary*" with respect to a specified company means a company that is controlled by the specified company.

(jj) "*Voting securities*" has the same meaning as in 12 CFR 225.2.

(kk) "*Well capitalized*" has the same meaning as in 12 CFR 225.2 and, in the case of any holding company that is not a bank holding company, "*well capitalized*" means that the holding company has and maintains at least the capital levels required for a bank holding company to be well capitalized under 12 CFR 225.2.

(ll) "*Well managed*" has the same meaning as in 12 CFR 225.2.

Subpart B'General Provisions of Section 23A

§ 223.11 What is the maximum amount of covered transactions that a member bank may enter into with any single affiliate?

A member bank may not engage in a covered transaction with an affiliate (other than a financial subsidiary of the member bank) if the aggregate amount of the member bank's covered transactions with such affiliate would exceed 10 percent of the capital stock and surplus of the member bank.

§ 223.12 What is the maximum amount of covered transactions that a member bank may enter into with all affiliates?

A member bank may not engage in a covered transaction with any affiliate if the aggregate amount of the member bank's covered transactions with all affiliates would exceed 20 percent of the capital stock and surplus of the member bank.

§ 223.13 What safety and soundness requirement applies to covered transactions?

A member bank may not engage in any covered transaction, including any transaction exempt under this regulation, unless the transaction is on terms and conditions that are consistent with safe and sound banking practices.

§ 223.14 What are the collateral requirements for a credit transaction with an affiliate?

(a) *Collateral required for extensions of credit and certain other covered transactions.* A member bank must ensure that each of its credit transactions with an affiliate is secured by the amount of collateral required by paragraph (b) of this section at the time of the transaction.

(b) *Amount of collateral required.* (1) *The rule.* A credit transaction described in paragraph (a) of this section must be secured by collateral having a market value equal to at least:

(i) 100 percent of the amount of the transaction, if the collateral is:

(A) Obligations of the United States or its agencies;

(B) Obligations fully guaranteed by the United States or its agencies as to principal and interest;

(C) Notes, drafts, bills of exchange, or bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank; or

(D) A segregated, earmarked deposit account with the member bank that is for the sole purpose of securing credit transactions between the member bank and its affiliates and is identified as such;

(ii) 110 percent of the amount of the transaction, if the collateral is obligations of any State or political subdivision of any State;

(iii) 120 percent of the amount of the transaction, if the collateral is other debt instruments, including loans and other receivables; or

(iv) 130 percent of the amount of the transaction, if the collateral is stock, leases, or other real or personal property.

(2) *Example.* A member bank makes a $1,000 loan to an affiliate. The affiliate posts as collateral for the loan $500 in U.S. Treasury securities, $480 in corporate debt securities, and $130 in real estate. The loan satisfies the collateral requirements of this section because $500 of the loan is 100 percent secured by obligations of the United States, $400 of the loan is 120 percent secured by debt instruments, and $100 of the loan is 130 percent secured by real estate.

(c) *Ineligible collateral.* The following items are not eligible collateral for purposes of this section:

(1) Low-quality assets;

(2) Securities issued by any affiliate;

(3) Equity securities issued by the member bank, and debt securities issued by the member bank that represent regulatory capital of the member bank;

(4) Intangible assets (including servicing assets), unless specifically approved by the Board; and

(5) Guarantees, letters of credit, and other similar instruments.

(d) *Perfection and priority requirements for collateral.* (1) *Perfection.* A member bank must maintain a security interest in collateral required by this section that is perfected and enforceable under applicable law, including in the event of default resulting from bankruptcy, insolvency, liquidation, or similar circumstances.

(2) *Priority.* A member bank either must obtain a first priority security interest in collateral required by this section or must deduct from the value of collateral obtained by the member bank the lesser of:

(i) The amount of any security interest in the collateral that is senior to that of the member bank; or

(ii) The amount of any credit secured by the collateral that is senior to that of the member bank.

(3) *Example.* A member bank makes a $2,000 loan to an affiliate. The affiliate grants the member bank a second priority security interest in a piece of real estate valued at $3,000. Another institution that previously lent $1,000 to the affiliate has a first priority security interest in the entire parcel of real estate. This transaction is not in compliance with the collateral requirements of this section. Due to the existence of the prior third-party lien on the real estate, the effective value of the real estate collateral for the member bank for purposes of this section is only $2,000—$600 less than the amount of real estate collateral required by this section for the transaction ($2,000 × 130 percent = $2,600).

(e) *Replacement requirement for retired or amortized collateral.* A member bank must ensure that any required collateral that subsequently is retired or amortized is replaced with additional eligible collateral as needed to keep the percentage of the collateral value relative to the amount of the outstanding credit transaction equal to the minimum percentage required at the inception of the transaction.

(f) *Inapplicability of the collateral requirements to certain transactions.* The collateral requirements of this section do not apply to the following transactions.

(1) *Acceptances.* An acceptance that already is fully secured either by attached documents or by other property that is involved in the transaction and has an ascertainable market value.

(2) *The unused portion of certain extensions of credit.* The unused portion of an extension of credit to an affiliate as long as the member bank does not have any legal obligation to advance additional funds under the extension of credit until the affiliate provides the amount of collateral required by paragraph (b) of this section with respect to the entire used portion (including the amount of the requested advance) of the extension of credit.

(3) *Purchases of affiliate debt securities in the secondary market.* The purchase of a debt security issued by an affiliate as long as the member bank purchases the debt security from a nonaffiliate in a bona fide secondary market transaction.

§ 223.15 May a member bank purchase a low-quality asset from an affiliate?

(a) *In general.* A member bank may not purchase a low-quality asset from an affiliate unless, pursuant to an independent credit evaluation, the member bank had committed itself to purchase the asset before the time the asset was acquired by the affiliate.

(b) *Exemption for renewals of loan participations involving problem loans.* The prohibition contained in paragraph (a) of this section does not apply to the renewal of, or extension of additional credit with respect to, a member bank's participation in a loan to a nonaffiliate that was originated by an affiliate if:

(1) The loan was not a low-quality asset at the time the member bank purchased its participation;

(2) The renewal or extension of additional credit is approved, as necessary to protect the participating member bank's investment by enhancing the ultimate collection of the original indebtedness, by the board of directors of the participating member bank or, if the originating affiliate is a depository institution, by:

(i) An executive committee of the board of directors of the participating member bank; or

(ii) One or more senior management officials of the participating member bank, if:

(A) The board of directors of the member bank approves standards for the member bank's renewals or extensions of additional credit described in this paragraph (b), based on the determination set forth in paragraph (b)(2) of this section;

(B) Each renewal or extension of additional credit described in this paragraph (b) meets the standards; and

(C) The board of directors of the member bank periodically reviews renewals and extensions of additional credit described in this paragraph (b) to ensure that they meet the standards and periodically reviews the standards to ensure that they continue to meet the criterion set forth in paragraph (b)(2) of this section;

(3) The participating member bank's share of the renewal or extension of additional credit does not exceed its proportional share of the original transaction by more than 5 percent, unless the member bank obtains the prior written approval of its appropriate Federal banking agency; and

(4) The participating member bank provides its appropriate Federal banking agency with written notice of the renewal or extension of additional credit not later than 20 days after consummation.

§ 223.16 What transactions by a member bank with any person are treated as transactions with an affiliate?

(a) *In general.* A member bank must treat any of its transactions with any person as a transaction with an affiliate to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, an affiliate.

(b) *Certain agency transactions.* (1) Except to the extent described in paragraph (b)(2) of this section, an extension of credit by a member bank to a nonaffiliate is not treated as an extension of credit to an affiliate under paragraph (a) of this section if:

(i) The proceeds of the extension of credit are used to purchase an asset through an affiliate of the member bank, and the affiliate is acting exclusively as an agent or broker in the transaction; and

(ii) The asset purchased by the nonaffiliate is not issued, underwritten, or sold as principal by any affiliate of the member bank.

(2) The interpretation set forth in paragraph (b)(1) of this section does not apply to the extent of any agency fee, brokerage commission, or other compensation received by an affiliate from the proceeds of the extension of credit. The receipt of such compensation may qualify, however, for the exemption contained in paragraph (c)(2) of this section.

(c) *Exemptions.* Notwithstanding paragraph (a) of this section, the following transactions are not subject to the quantitative limits of §§ 223.11 and 223.12 or the collateral requirements of § 223.14. The transactions are, however, subject to the safety and soundness requirement of § 223.13 and the market terms requirement and other provisions of subpart F (implementing section 23B).

(1) *Certain riskless principal transactions.* An extension of credit by a member bank to a nonaffiliate, if:

(i) The proceeds of the extension of credit are used to purchase a security through a securities affiliate of the member bank, and the securities affiliate is acting exclusively as a riskless principal in the transaction;

(ii) The security purchased by the nonaffiliate is not issued, underwritten, or sold as principal (other than as riskless principal) by any affiliate of the member bank; and

(iii) Any riskless principal mark-up or other compensation received by the securities affiliate from the proceeds of the extension of credit meets the market terms standard set forth in paragraph (c)(2) of this section.

(2) *Brokerage commissions, agency fees, and riskless principal mark-ups.* An affiliate's retention of a portion of the proceeds of an extension of credit described in paragraph (b) or (c)(1) of this section as a brokerage commission, agency fee, or riskless principal mark-up, if that commission, fee, or mark-up is substantially the same as, or lower than, those prevailing at the same time for comparable transactions with or involving other nonaffiliates, in accordance with the market terms requirement of § 223.51.

(3) *Preexisting lines of credit.* An extension of credit by a member bank to a nonaffiliate, if:

(i) The proceeds of the extension of credit are used to purchase a security from or through a securities affiliate of the member bank; and

(ii) The extension of credit is made pursuant to, and consistent with any conditions imposed in, a preexisting line of credit that was not established in contemplation of the purchase of securities from or through an affiliate of the member bank.

(4) *General purpose credit card transactions.*

(i) *In general.* An extension of credit by a member bank to a nonaffiliate, if:

(A) The proceeds of the extension of credit are used by the nonaffiliate to purchase a product or service from an affiliate of the member bank; and

(B) The extension of credit is made pursuant to, and consistent with any conditions imposed in, a general purpose credit card issued by the member bank to the nonaffiliate.

(ii) *Definition.* "*General purpose credit card*" means a credit card issued by a member bank that is widely accepted by merchants that are not affiliates of the member bank for the purchase of products or services, if:

(A) Less than 25 percent of the total value of products and services purchased with the card by all cardholders are purchases of products and services from one or more affiliates of the member bank;

(B) All affiliates of the member bank would be permissible for a financial holding company (as defined in 12 U.S.C. 1841) under section 4 of the Bank Holding Company Act (12 U.S.C. 1843), and the member bank has no reason to believe that 25 percent or more of the

total value of products and services purchased with the card by all cardholders are or would be purchases of products and services from one or more affiliates of the member bank; or

(C) The member bank presents information to the Board that demonstrates, to the Board's satisfaction, that less than 25 percent of the total value of products and services purchased with the card by all cardholders are and would be purchases of products and services from one or more affiliates of the member bank.

(iii) *Calculating compliance.* To determine whether a credit card qualifies as a general purpose credit card under the standard set forth in paragraph (c)(4)(ii)(A) of this section, a member bank must compute compliance on a monthly basis, based on cardholder purchases that were financed by the credit card during the preceding 12 calendar months. If a credit card has qualified as a general purpose credit card for 3 consecutive months but then ceases to qualify in the following month, the member bank may continue to treat the credit card as a general purpose credit card for such month and three additional months (or such longer period as may be permitted by the Board).

(iv) *Example of calculating compliance with the 25 percent test.* A member bank seeks to qualify a credit card as a general purpose credit card under paragraph (c)(4)(ii)(A) of this section. The member bank assesses its compliance under paragraph (c)(4)(iii) of this section on the 15th day of every month (for the preceding 12 calendar months). The credit card qualifies as a general purpose credit card for at least three consecutive months. On June 15, 2005, however, the member bank determines that, for the 12-calendar-month period from June 1, 2004, through May 31, 2005, 27 percent of the total value of products and services purchased with the card by all cardholders were purchases of products and services from an affiliate of the member bank. Unless the credit card returns to compliance with the 25 percent limit by the 12-calendar-month period ending August 31, 2005, the card will cease to qualify as a general purpose credit card as of September 1, 2005. Any outstanding extensions of credit under the credit card that were used to purchase products or services from an affiliate of the member bank would become covered transactions at such time.

Subpart C—Valuation and Timing Principles Under Section 23A

§ 223.21 What valuation and timing principles apply to credit transactions?

(a) *Valuation.* (1) *Initial valuation.* Except as provided in paragraph (a)(2) or (3) of this section, a credit transaction with an affiliate initially must be valued at the greater of:

(i) The principal amount of the transaction;

(ii) The amount owed by the affiliate to the member bank under the transaction; or

(iii) The sum of:

(A) The amount provided to, or on behalf of, the affiliate in the transaction; and

(B) Any additional amount that the member bank could be required to provide to, or on behalf of, the affiliate under the terms of the transaction.

(2) *Initial valuation of certain acquisitions of a credit transaction.* If a member bank acquires from a nonaffiliate a credit transaction with an affiliate, the covered transaction initially must be valued at the sum of:

(i) The total amount of consideration given (including liabilities assumed) by the member bank in exchange for the credit transaction; and

(ii) Any additional amount that the member bank could be required to provide to, or on behalf of, the affiliate under the terms of the transaction.

(3) *Debt securities.* The valuation principles of paragraphs (a)(1) and (2) of this section do not apply to a member bank's purchase of or investment in a debt security issued by an affiliate, which is governed by § 223.23.

(4) *Examples.* The following are examples of how to value a member bank's credit transactions with an affiliate.

(i) *Term loan.* A member bank makes a loan to an affiliate that has a principal amount of $100. The affiliate pays $2 in up-front fees to the member bank, and the affiliate receives net loan proceeds of $98. The member bank must initially value the covered transaction at $100.

(ii) *Revolving credit.* A member bank establishes a $300 revolving credit facility for an affiliate. The affiliate has drawn down $100 under the facility. The member bank must value the covered transaction at $300 throughout the life of the facility.

(iii) *Guarantee.* A member bank has issued a guarantee to a nonaffiliate on behalf of an affiliate under which the member bank would be obligated to pay the nonaffiliate $500 if the affiliate defaults on an issuance of debt securities. The member bank must value the guarantee at $500 throughout the life of the guarantee.

(iv) *Acquisition of a loan to an affiliate.* A member bank purchases from a nonaffiliate a fixed-rate loan to an affiliate. The loan has an outstanding principal amount of $100 but, due to movements in the general level of interest rates since the time of the loan's origination, the member bank is able to purchase the loan for $90. The member bank initially must value the credit transaction at $90 (and must ensure that the credit transaction complies with the collateral requirements of § 223.14 at the time of its acquisition of the loan).

(b) *Timing.* (1) *In general.* A member bank engages in a credit transaction with an affiliate at the time during the day that:

(i) The member bank becomes legally obligated to make an extension of credit to, issue a guarantee, acceptance, or letter of credit on behalf of, or confirm a letter of credit issued by, an affiliate;

(ii) The member bank enters into a cross-affiliate netting arrangement; or

(iii) The member bank acquires an extension of credit to, or guarantee, acceptance, or letter of credit issued on behalf of, an affiliate.

(2) *Credit transactions by a member bank with a nonaffiliate that becomes an affiliate of the member bank.*

(i) *In general.* A credit transaction with a nonaffiliate becomes a covered transaction at the time that the nonaffiliate becomes an affiliate of the member bank. The member bank must treat the amount of any such credit transaction as part of the aggregate amount of the member bank's covered transactions for purposes of determining compliance with the quantitative limits of §§ 223.11 and 223.12 in connection with any future covered transactions. Except as described in paragraph (b)(2)(ii) of this section, the member bank is not required to reduce the amount of its covered transactions with any affiliate because the nonaffiliate has become an affiliate. If the nonaffiliate becomes an affiliate less than one year after the member bank enters into the credit transaction with the nonaffiliate, the member bank also must ensure that the credit transaction complies with the collateral requirements of § 223.14 promptly after the nonaffiliate becomes an affiliate.

(ii) *Credit transactions by a member bank with a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the member bank.* Notwithstanding the provisions of paragraph (b)(2)(i) of this section, if a member bank engages in a credit transaction with a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the member bank, the member bank must ensure that:

(A) The aggregate amount of the member bank's covered transactions (including any such credit transaction with the nonaffiliate) would not exceed the quantitative limits of § 223.11 or 223.12 at the time the nonaffiliate becomes an affiliate; and

(B) The credit transaction complies with the collateral requirements of § 223.14 at the time the nonaffiliate becomes an affiliate.

(iii) *Example.* A member bank with capital stock and surplus of $1,000 and no outstanding covered transactions makes a $120 unsecured loan to a nonaffiliate. The member bank does not make the loan in contemplation of the nonaffiliate becoming an affiliate. Nine months later, the member bank's holding company purchases all the stock of the nonaffiliate, thereby making the nonaffiliate an affiliate of the member bank. The member bank is not in violation of the quantitative limits of § 223.11 or 223.12 at the time of the stock acquisition. The member bank is, however, prohibited from engaging in any additional covered transactions with the new affiliate at least until such time as the value of the loan transaction falls below 10 percent of the member bank's capital stock and surplus. In addition, the member bank must bring the loan into compliance with the collateral requirements of § 223.14 promptly after the stock acquisition.

§ 223.22 What valuation and timing principles apply to asset purchases?

(a) *Valuation.* (1) *In general.* Except as provided in paragraph (a)(2) of this section, a purchase of an asset by a member bank from an affiliate must be valued initially at the total amount of consideration given (including liabilities assumed) by the member bank in exchange for the asset. The value of the covered transaction after the purchase may be reduced to reflect amortization or depreciation of the asset, to the extent that such reductions are consistent with GAAP.

(2) *Exceptions.* (i) *Purchase of an extension of credit to an affiliate.* A purchase from an affiliate of an extension of credit to an affiliate must be valued in accordance with § 223.21, unless the note or obligation evidencing the extension of credit is a security issued by an affiliate (in which case the transaction must be valued in accordance with § 223.23).

(ii) *Purchase of a security issued by an affiliate.* A purchase from an affiliate of a security issued by an affiliate must be valued in accordance with § 223.23.

(iii) *Transfer of a subsidiary.* A transfer to a member bank of securities issued by an affiliate that is treated as a purchase of assets from an affiliate under § 223.31 must be valued in accordance with paragraph (b) of § 223.31.

(iv) *Purchase of a line of credit.* A purchase from an affiliate of a line of credit, revolving credit facility, or other similar credit arrangement for a nonaffiliate must be valued initially at the total amount of consideration given by the member bank in exchange for the asset plus any additional amount that the member bank could be required to provide to the borrower under the terms of the credit arrangement.

(b) *Timing.* (1) *In general.* A purchase of an asset from an affiliate remains a covered transaction for a member bank for as long as the member bank holds the asset.

(2) *Asset purchases by a member bank from a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the member bank.* If a member bank purchases an asset from a nonaffiliate in contemplation of the nonaffiliate becoming an affiliate of the member bank, the asset purchase becomes a covered transaction at the time that the nonaffiliate becomes an affiliate of the member bank. In addition, the member bank must ensure that the aggregate amount of the member bank's covered transactions (including any such transaction with the nonaffiliate) would not exceed the quantitative limits of § 223.11 or 223.12 at the time the nonaffiliate becomes an affiliate.

(c) *Examples.* The following are examples of how to value a member bank's purchase of an asset from an affiliate.

(1) *Cash purchase of assets.* A member bank purchases a pool of loans from an affiliate for $10 million. The member bank initially must value the covered transaction at $10 million. Going forward, if the borrowers repay $6 million of the principal amount of the loans, the member bank may value the covered transaction at $4 million.

(2) *Purchase of assets through an assumption of liabilities.* An affiliate of a member bank contributes real property with a fair market value of $200,000 to the member bank. The member bank pays the affiliate no cash for the property, but assumes a $50,000 mortgage on the property. The member bank has engaged in a covered transaction with the affiliate and initially must value the transaction at $50,000. Going forward, if the member bank retains the real property but pays off the mortgage, the member bank must continue to value the covered transaction at $50,000. If the member bank, however, sells the real property, the transaction ceases to be a covered transaction at the time of the sale (regardless of the status of the mortgage).

§ 223.23 What valuation and timing principles apply to purchases of and investments in securities issued by an affiliate?

(a) *Valuation.* (1) *In general.* Except as provided in paragraph (b) of § 223.32 with respect to financial subsidiaries, a member bank's purchase of or investment in a security issued by an affiliate must be valued at the greater of:

(i) The total amount of consideration given (including liabilities assumed) by the member bank in exchange for the security, reduced to reflect amortization of the security to the extent consistent with GAAP; or

(ii) The carrying value of the security.

(2) *Examples.* The following are examples of how to value a member bank's purchase of or investment in securities issued by an affiliate (other than a financial subsidiary of the member bank).

(i) *Purchase of the debt securities of an affiliate.* The parent holding company of a member bank owns 100 percent of the shares of a mortgage company. The member bank purchases debt securities issued by the mortgage company for $600. The initial carrying value of the securities is $600. The member bank initially must value the investment at $600.

(ii) *Purchase of the shares of an affiliate.* The parent holding company of a member bank owns 51 percent of the shares of a mortgage company. The member bank purchases an additional 30 percent of the shares of the mortgage company from a third party for $100. The initial carrying value of the shares is $100. The member bank initially must value the investment at $100. Going forward, if the member bank's carrying value of the shares declines to $40, the member bank must continue to value the investment at $100.

(iii) *Contribution of the shares of an affiliate.* The parent holding company of a member bank owns 100 percent of the shares of a mortgage company and contributes 30 percent of the shares to the member bank. The member bank gives no consideration in exchange for the shares. If the initial carrying value of the shares is $300, then the member bank initially must value the investment at $300. Going forward, if the member bank's carrying value of the shares increases to $500, the member bank must value the investment at $500.

(b) *Timing.* (1) *In general.* A purchase of or investment in a security issued by an affiliate remains a covered transaction for a member bank for as long as the member bank holds the security.

(2) *A member bank's purchase of or investment in a security issued by a nonaffiliate that becomes an affiliate of the member bank.* A member bank's purchase of or investment in a security issued by a nonaffiliate that becomes an affiliate of the member bank must be treated according to the same transition rules that apply to credit transactions described in paragraph (b)(2) of § 223.21.

§ 223.24 What valuation principles apply to extensions of credit secured by affiliate securities?

(a) *Valuation of extensions of credit secured exclusively by affiliate securities.* An extension of credit by a member bank to a nonaffiliate secured exclusively by securities issued by an affiliate of the member bank must be valued at the lesser of:

(1) The total value of the extension of credit; or

(2) The fair market value of the securities issued by an affiliate that are pledged as collateral, if the member bank verifies that such securities meet the market quotation standard contained in paragraph (e) of § 223.42 or the standards set forth in paragraphs (f)(1) and (5) of § 223.42.

(b) *Valuation of extensions of credit secured by affiliate securities and other collateral.* An extension of credit by a member bank to a nonaffiliate secured in part by securities issued by an affiliate of the member bank and in part by nonaffiliate collateral must be valued at the lesser of:

(1) The total value of the extension of credit less the fair market value of the nonaffiliate collateral; or

(2) The fair market value of the securities issued by an affiliate that are pledged as collateral, if the member bank verifies that such securities meet the market quotation standard contained in paragraph (e) of § 223.42 or the standards set forth in paragraphs (f)(1) and (5) of § 223.42.

(c) *Exclusion of eligible affiliated mutual fund securities.* (1) *The exclusion.* Eligible affiliated mutual fund securities are not considered to be securities issued by an affiliate, and are instead considered to be nonaffiliate collateral, for purposes of paragraphs (a) and (b) of this section, unless the member bank knows or has reason to know that the proceeds of the extension of credit will be used to purchase the eligible affiliated mutual fund securities collateral or will otherwise be used for the benefit of or transferred to an affiliate of the member bank.

(2) *Definition. "Eligible affiliated mutual fund securities"* with respect to a member bank are securities issued by an affiliate of the member bank that is an open-end investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), if:

(i) The securities issued by the investment company:

(A) Meet the market quotation standard contained in paragraph (e) of § 223.42;

(B) Meet the standards set forth in paragraphs (f)(1) and (5) of § 223.42; or

(C) Have closing prices that are made public through a mutual fund "supermarket" website maintained by an unaffiliated securities broker-dealer or mutual fund distributor; and

(ii) The member bank and its affiliates do not own or control in the aggregate more than 5 percent of any class of voting securities or of the equity capital of the investment company (excluding securities held by the member bank or an affiliate in good faith in a fiduciary capacity, unless the member bank or affiliate holds the securities for the benefit of the member bank or affiliate, or the shareholders, employees, or subsidiaries of the member bank or affiliate).

(3) *Example.* A member bank proposes to lend $100 to a nonaffiliate secured exclusively by eligible affiliated mutual fund securities. The member bank knows that the nonaffiliate intends to use all the loan proceeds to purchase the eligible affiliated mutual fund securities that would serve as collateral for the loan. Under the attribution rule in § 223.16, the member bank must treat the loan to the nonaffiliate as a loan to an affiliate, and, because securities issued by an affiliate are ineligible collateral under § 223.14, the loan would not be in compliance with § 223.14.

Subpart D—Other Requirements Under Section 23A

§ 223.31 How does section 23A apply to a member bank's acquisition of an affiliate that becomes an operating subsidiary of the member bank after the acquisition?

(a) *Certain acquisitions by a member bank of securities issued by an affiliate are treated as a purchase of assets from an affiliate.* A member bank's acquisition of a security issued by a company that was an affiliate of the member bank before the acquisition is treated as a purchase of assets from an affiliate, if:

(1) As a result of the transaction, the company becomes an operating subsidiary of the member bank; and

(2) The company has liabilities, or the member bank gives cash or any other consideration in exchange for the security.

(b) *Valuation.* (1) *Initial valuation.* A transaction described in paragraph (a) of this section must be valued initially at the greater of:

(i) The sum of:

(A) The total amount of consideration given by the member bank in exchange for the security; and

(B) The total liabilities of the company whose security has been acquired by the member bank, as of the time of the acquisition; or

(ii) The total value of all covered transactions (as computed under this part) acquired by the member bank as a result of the security acquisition.

(2) *Ongoing valuation.* The value of a transaction described in paragraph (a) of this section may be reduced after the initial transfer to reflect:

(i) Amortization or depreciation of the assets of the transferred company, to the extent that such reductions are consistent with GAAP; and

(ii) Sales of the assets of the transferred company.

(c) *Valuation example.* The parent holding company of a member bank contributes between 25 and 100 percent of the voting shares of a mortgage company to the member bank. The parent holding company retains no shares of the mortgage company. The member bank gives no consideration in exchange for the transferred shares. The mortgage company has total assets of $300,000 and total liabilities of $100,000. The mortgage company's assets do not include any loans to an affiliate of the member bank or any other asset that would represent a separate covered transaction for the member bank upon consummation of the share transfer. As a result of the transaction, the mortgage company becomes an operating subsidiary of the member bank. The transaction is treated as a purchase of the assets of the mortgage company by the member bank from an affiliate under paragraph (a) of this section. The member bank initially must value the transaction at $100,000, the total amount of the liabilities of the mortgage company. Going forward, if the member bank pays off the liabilities, the member bank must continue to value the covered transaction at $100,000. If the member bank, however, sells $15,000 of the transferred assets of the mortgage company or if $15,000 of the transferred assets amortize, the member bank may value the covered transaction at $85,000.

(d) *Exemption for step transactions.* A transaction described in paragraph (a) of this section is exempt from the requirements of this regulation (other than the safety and soundness requirement of § 223.13 and the market terms requirement of § 223.51) if:

(1) The member bank acquires the securities issued by the transferred company within one business day (or such longer period, up to three months, as may be permitted by the member bank's appropriate Federal banking agency) after the company becomes an affiliate of the member bank;

(2) The member bank acquires all the securities of the transferred company that were transferred in connection with the transaction that made the company an affiliate of the member bank;

(3) The business and financial condition (including the asset quality and liabilities) of the transferred company does not materially change from the time the company becomes an affiliate of the member bank and the time the member bank acquires the securities issued by the company; and

(4) At or before the time that the transferred company becomes an affiliate of the member bank, the member bank notifies its appropriate Federal banking agency and the Board of the member bank's intent to acquire the company.

(e) *Example of step transaction.* A bank holding company acquires 100 percent of the shares of an unaffiliated leasing company. At that time, the subsidiary member bank of the holding company notifies its appropriate Federal banking agency and the Board of its intent to acquire the leasing company from its holding company. On the day after consummation of the acquisition, the holding company transfers all of the shares of the leasing company to the member bank. No material change in the business or financial condition of the leasing company occurs between the time of the holding company's acquisition and the member bank's acquisition. The leasing company has liabilities. The leasing company becomes an operating subsidiary of the member bank at the time of the transfer. This transfer by the holding company to the member bank, although deemed an asset purchase by the member bank from an affiliate under paragraph (a) of this section, would qualify for the exemption in paragraph (d) of this section.

§ 223.32 What rules apply to financial subsidiaries of a member bank?

(a) *Exemption from the 10 percent limit for covered transactions between a member bank and a single financial subsidiary.* The 10 percent quantitative limit contained in § 223.11 does not apply with respect to covered transactions between a member bank and a financial subsidiary of the member bank. The 20 percent quantitative limit contained in § 223.12 does apply to such transactions.

(b) *Valuation of purchases of or investments in the securities of a financial subsidiary.* (1) *General rule.* A member bank's purchase of or investment in a security issued by a financial subsidiary of the member bank must be valued at the greater of:

(i) The total amount of consideration given (including liabilities assumed) by the member bank in exchange for the security, reduced to reflect amortization of the security to the extent consistent with GAAP; and

(ii) The carrying value of the security (adjusted so as not to reflect the member bank's pro rata portion of any earnings retained or losses incurred by the financial subsidiary after the member bank's acquisition of the security).

(2) *Carrying value of an investment in a consolidated financial subsidiary.* If a financial subsidiary is consolidated with its parent member bank under GAAP, the carrying value of the member bank's investment in securities issued by the financial subsidiary shall be equal to the carrying value of the securities on parent-only financial statements of the member bank, determined in accordance with GAAP (adjusted so as not to reflect the member bank's pro rata portion of any earnings retained or losses incurred by the financial subsidiary after the member bank's acquisition of the securities).

(3) *Examples of the valuation of purchases of and investments in the securities of a financial subsidiary.* The following are examples of how a member bank must value its purchase of or investment in securities issued by a financial subsidiary of the member bank. Each example involves a securities underwriter that becomes a financial subsidiary of the member bank after the transactions described below.

(i) *Initial valuation.* (A) *Direct acquisition by a member bank.* A member bank pays $500 to acquire 100 percent of the shares of a securities underwriter. The initial carrying value of the shares on the member bank's parent-only GAAP financial statements is $500. The member bank initially must value the investment at $500.

(B) *Contribution of a financial subsidiary to a member bank.* The parent holding company of a member bank acquires 100 percent of the shares of a securities underwriter in a transaction valued at $500, and immediately contributes the shares to the member bank. The member bank gives no consideration in exchange for the shares. The member bank initially must value the investment at the carrying value of the shares on the member bank's parent-only GAAP financial statements. Under GAAP, the member bank's initial carrying value of the shares would be $500.

(ii) *Carrying value not adjusted for earnings and losses of the financial subsidiary.* A member bank and its parent holding company engage in the transaction described in paragraph (b)(3)(i)(B) of this section, and the member bank initially values the investment at $500. In the following year, the securities underwriter earns $25 in profit, which is added to its retained earnings. The member bank's carrying value of the shares of the underwriter is not adjusted for purposes of this part, and the member bank must continue to value the investment at $500. If, however, the member bank contributes $100 of additional capital to the securities underwriter, the member bank must value the aggregate investment at $600.

(c) *Treatment of an affiliate's investments in, and extensions of credit to, a financial subsidiary of a member bank.* (1) *Investments.* Any purchase of, or investment in, the securities of a financial subsidiary of a member bank by an affiliate of the member bank is treated as a purchase of or investment in such securities by the member bank.

(2) *Extensions of credit that are treated as regulatory capital of the financial subsidiary.* Any extension of credit to a financial subsidiary of a member bank by an affiliate of the member bank is treated as an extension of credit by the member bank to the financial subsidiary if the extension of credit is treated as capital of the financial subsidiary under any Federal or State law, regulation, or interpretation applicable to the subsidiary.

(3) *Other extensions of credit.* Any other extension of credit to a financial subsidiary of a member bank by an affiliate of the member bank will be treated as an extension of credit by the member bank to the financial subsidiary, if the Board determines, by regulation or order, that such treatment is necessary or appropriate to prevent evasions of the Federal Reserve Act or the Gramm-Leach-Bliley Act.

§ 223.33 What rules apply to derivative transactions?

(a) *Market terms requirement.* Derivative transactions between a member bank and its affiliates (other than depository institutions) are subject to the market terms requirement of § 223.51.

(b) *Policies and procedures.* A member bank must establish and maintain policies and procedures reasonably designed to manage the credit exposure arising from its derivative transactions with affiliates in a safe and sound manner. The policies and procedures must at a minimum provide for:

(1) Monitoring and controlling the credit exposure arising at any one time from the member bank's derivative transactions with each affiliate and all affiliates in the aggregate (through, among other things, imposing appropriate credit limits, mark-to-market requirements, and collateral requirements); and

(2) Ensuring that the member bank's derivative transactions with affiliates comply with the market terms requirement of § 223.51.

(c) *Credit derivatives.* A credit derivative between a member bank and a nonaffiliate in which the member bank provides credit protection to the nonaffiliate with respect to an obligation of an affiliate of the member bank is a guarantee by a member bank on behalf of an affiliate for purposes of this regulation. Such derivatives would include:

(1) An agreement under which the member bank, in exchange for a fee, agrees to compensate the nonaffiliate for any default of the underlying obligation of the affiliate; and

(2) An agreement under which the member bank, in exchange for payments based on the total return of the underlying obligation of the affiliate, agrees to pay the nonaffiliate a spread over funding costs plus any depreciation in the value of the underlying obligation of the affiliate.

Subpart E—Exemptions from the Provisions of Section 23A

§ 223.41 What covered transactions are exempt from the quantitative limits and collateral requirements?

The following transactions are not subject to the quantitative limits of §§ 223.11 and 223.12 or the collateral requirements of § 223.14. The transactions are, however, subject to the safety and soundness requirement of § 223.13 and the prohibition on the purchase of a low-quality asset of § 223.15.

(a) *Parent institution/subsidiary institution transactions.* Transactions with a depository institution if the member bank controls 80 percent or more of the voting securities of the depository institution or the depository institution controls 80 percent or more of the voting securities of the member bank.

(b) *Transactions between a member bank and a depository institution owned by the same holding company.* Transactions with a depository institution if the same company controls 80 percent or more of the voting securities of the member bank and the depository institution.

(c) *Certain loan purchases from an affiliated depository institution.* Purchasing a loan on a nonrecourse basis from an affiliated depository institution.

(d) *Internal corporate reorganization transactions.* Purchasing assets from an affiliate (including in connection with a transfer of securities issued by an affiliate to a member bank described in paragraph (a) of § 223.31), if:

(1) The asset purchase is part of an internal corporate reorganization of a holding company and involves the transfer of all or substantially all of the shares or assets of an affiliate or of a division or department of an affiliate;

(2) The member bank provides its appropriate Federal banking agency and the Board with written notice of the transaction before consummation, including a description of the primary business activities of the affiliate and an indication of the proposed date of the asset purchase;

(3) The member bank's top-tier holding company commits to its appropriate Federal banking agency and the Board before consummation either:

(i) To make quarterly cash contributions to the member bank, for a two-year period following the member bank's purchase, equal to the book value plus any write-downs taken by the member bank, of any transferred assets that have become low-quality assets during the quarter; or

(ii) To repurchase, on a quarterly basis for a two-year period following the member bank's purchase, at a price equal to the book value plus any write-downs taken by the member bank, any transferred assets that have become low-quality assets during the quarter;

(4) The member bank's top-tier holding company complies with the commitment made under paragraph (d)(3) of this section;

(5) A majority of the member bank's directors reviews and approves the transaction before consummation;

(6) The value of the covered transaction (as computed under this part), when aggregated with the value of any other covered transactions (as computed under this part) engaged in by the member bank under this exemption during the preceding 12 calendar months, represents less than 10 percent of the member bank's capital stock and surplus (or such higher amount, up to 25 percent of the member bank's capital stock and surplus, as may be permitted by the member bank's appropriate Federal banking agency after conducting a review of the member bank's financial condition and the quality of the assets transferred to the member bank); and

(7) The holding company and all its subsidiary member banks and other subsidiary depository institutions are well capitalized and well managed and would remain well capitalized upon consummation of the transaction.

§ 223.42 What covered transactions are exempt from the quantitative limits, collateral requirements, and low-quality asset prohibition?

The following transactions are not subject to the quantitative limits of §§ 223.11 and 223.12, the collateral requirements of § 223.14, or the prohibition on the purchase of a low-quality asset of § 223.15. The transactions are, however, subject to the safety and soundness requirement of § 223.13.

(a) *Making correspondent banking deposits.* Making a deposit in an affiliated depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) or affiliated foreign bank that represents an ongoing, working balance maintained in the ordinary course of correspondent business.

(b) *Giving credit for uncollected items.* Giving immediate credit to an affiliate for uncollected items received in the ordinary course of business.

(c) *Transactions secured by cash or U.S. government securities.*

(1) *In general.* Engaging in a credit transaction with an affiliate to the extent that the transaction is and remains secured by:

(i) Obligations of the United States or its agencies;

(ii) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(iii) A segregated, earmarked deposit account with the member bank that is for the sole purpose of securing credit transactions between the member bank and its affiliates and is identified as such.

(2) *Example.* A member bank makes a $100 non-amortizing term loan to an affiliate secured by U.S. Treasury securities with a market value of $50 and real estate with a market value of $75. The value of the covered transaction is $50. If the market value of the U.S. Treasury securities falls to $45 during the life of the loan, the value of the covered transaction would increase to $55.

(d) *Purchasing securities of a servicing affiliate.* Purchasing a security issued by any company engaged solely in providing services described in section 4(c)(1) of the Bank Holding Company Act (12 U.S.C. 1843(c)(1)).

(e) *Purchasing certain liquid assets.* Purchasing an asset having a readily identifiable and publicly available market quotation and purchased at or below the asset's current market quotation. An asset has a readily identifiable and publicly available market quotation if the asset's price is quoted routinely in a widely disseminated publication that is readily available to the general public.

(f) *Purchasing certain marketable securities.* Purchasing a security from a securities affiliate, if:

(1) The security has a "ready market," as defined in 17 CFR 240.15c3–1(c)(11)(i);

(2) The security is eligible for a State member bank to purchase directly, subject to the same terms and conditions that govern the investment activities of a State member bank, and the member bank records the transaction as a purchase of a security for purposes of its Call Report, consistent with the requirements for a State member bank;

(3) The security is not a low-quality asset;

(4) The member bank does not purchase the security during an underwriting, or within 30 days of an underwriting, if an affiliate is an underwriter of the security, unless the security is purchased as part of an issue of obligations of, or obligations fully guaranteed as to principal and interest by, the United States or its agencies;

(5) The security's price is quoted routinely on an unaffiliated electronic service that provides indicative data from real-time financial networks, provided that:

(i) The price paid by the member bank is at or below the current market quotation for the security; and

(ii) The size of the transaction executed by the member bank does not cast material doubt on the appropriateness of relying on the current market quotation for the security; and

(6) The member bank maintains, for a period of two years, records and supporting information that are sufficient to enable the appropriate Federal banking agency to ensure the member bank's compliance with the terms of this exemption.

(g) *Purchasing municipal securities.* Purchasing a municipal security from a securities affiliate if:

(1) The security is rated by a nationally recognized statistical rating organization or is part of an issue of securities that does not exceed $25 million;

(2) The security is eligible for purchase by a State member bank, subject to the same terms and conditions that govern the investment activities of a State member bank, and the member bank records the transaction as a purchase of a security for purposes of its Call Report, consistent with the requirements for a State member bank; and

(3)(i) The security's price is quoted routinely on an unaffiliated electronic service that provides indicative data from real-time financial networks, provided that:

(A) The price paid by the member bank is at or below the current market quotation for the security; and

(B) The size of the transaction executed by the member bank does not cast material doubt on the appropriateness of relying on the current market quotation for the security; or

(ii) The price paid for the security can be verified by reference to two or more actual, current price quotes from unaffiliated broker-dealers on the exact security to be purchased or a security comparable to the security to be purchased, where:

(A) The price quotes obtained from the unaffiliated broker-dealers are based on a transaction similar in size to the transaction that is actually executed; and

(B) The price paid is no higher than the average of the price quotes; or

(iii) The price paid for the security can be verified by reference to the written summary provided by the syndicate manager to syndicate members that discloses the aggregate par values and prices of all bonds sold from the syndicate account, if the member bank:

(A) Purchases the municipal security during the underwriting period at a price that is at or below that indicated in the summary; and

(B) Obtains a copy of the summary from its securities affiliate and retains the summary for three years.

(h) *Purchasing an extension of credit subject to a repurchase agreement.* Purchasing from an affiliate an extension of credit that was originated by the member bank and sold to the affiliate subject to a repurchase agreement or with recourse.

(i) *Asset purchases by a newly formed member bank.* The purchase of an asset from an affiliate by a newly formed member bank, if the appropriate Federal banking agency for the member bank has approved the asset purchase in writing in connection with its review of the formation of the member bank.

(j) *Transactions approved under the Bank Merger Act.* Any merger or consolidation between a member bank and an affiliated depository institution or U.S. branch or agency of a foreign bank, or any acquisition of assets or assumption of deposit liabilities by a member bank from an affiliated depository institution or U.S. branch or agency of a foreign bank, if the transaction has been approved by the responsible Federal banking agency pursuant to the Bank Merger Act (12 U.S.C. 1828(c)).

(k) *Purchasing an extension of credit from an affiliate.* Purchasing from an affiliate, on a nonrecourse basis, an extension of credit, if:

(1) The extension of credit was originated by the affiliate;

(2) The member bank makes an independent evaluation of the creditworthiness of the borrower before the affiliate makes or commits to make the extension of credit;

(3) The member bank commits to purchase the extension of credit before the affiliate makes or commits to make the extension of credit;

(4) The member bank does not make a blanket advance commitment to purchase extensions of credit from the affiliate; and

(5) The dollar amount of the extension of credit, when aggregated with the dollar amount of all other extensions of credit purchased from the affiliate during the preceding 12 calendar months by the member bank and its depository institution affiliates, does not represent more than 50 percent (or such lower percent as is imposed by the member bank's appropriate Federal banking agency) of the dollar amount of extensions of credit originated by the affiliate during the preceding 12 calendar months.

(l) *Intraday extensions of credit.*

(1) *In general.* An intraday extension of credit to an affiliate, if the member bank:

(i) Has established and maintains policies and procedures reasonably designed to manage the credit exposure arising from the member bank's intraday extensions of credit to affiliates in a safe

and sound manner, including policies and procedures for:

(A) Monitoring and controlling the credit exposure arising at any one time from the member bank's intraday extensions of credit to each affiliate and all affiliates in the aggregate; and

(B) Ensuring that any intraday extension of credit by the member bank to an affiliate complies with the market terms requirement of § 223.51;

(ii) Has no reason to believe that the affiliate will have difficulty repaying the extension of credit in accordance with its terms; and

(iii) Ceases to treat any such extension of credit (regardless of jurisdiction) as an intraday extension of credit at the end of the member bank's business day in the United States.

(2) *Definition. Intraday extension of credit* by a member bank to an affiliate means an extension of credit by a member bank to an affiliate that the member bank expects to be repaid, sold, or terminated, or to qualify for a complete exemption under this regulation, by the end of its business day in the United States.

(m) *Riskless principal transactions.* Purchasing a security from a securities affiliate of the member bank if:

(1) The member bank or the securities affiliate is acting exclusively as a riskless principal in the transaction; and

(2) The security purchased is not issued, underwritten, or sold as principal (other than as riskless principal) by any affiliate of the member bank.

§ 223.43 What are the standards under which the Board may grant additional exemptions from the requirements of section 23A?

(a) *The standards.* The Board may, at its discretion, by regulation or order, exempt transactions or relationships from the requirements of section 23A and subparts B, C, and D of this part if it finds such exemptions to be in the public interest and consistent with the purposes of section 23A.

(b) *Procedure.* A member bank may request an exemption from the requirements of section 23A and subparts B, C, and D of this part by submitting a written request to the General Counsel of the Board. Such a request must:

(1) Describe in detail the transaction or relationship for which the member bank seeks exemption;

(2) Explain why the Board should exempt the transaction or relationship; and

(3) Explain how the exemption would be in the public interest and consistent with the purposes of section 23A.

Subpart F—General Provisions of Section 23B

§ 223.51 What is the market terms requirement of section 23B?

A member bank may not engage in a transaction described in § 223.52 unless the transaction is:

(a) On terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to the member bank, as those prevailing at the time for comparable transactions with or involving nonaffiliates; or

(b) In the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good faith would be offered to, or would apply to, nonaffiliates.

§ 223.52 What transactions with affiliates or others must comply with section 23B's market terms requirement?

(a) The market terms requirement of § 223.51 applies to the following transactions:

(1) Any covered transaction with an affiliate, unless the transaction is exempt under paragraphs (a) through (c) of § 223.41 or paragraphs (a) through (e) or (h) through (j) of § 223.42;

(2) The sale of a security or other asset to an affiliate, including an asset subject to an agreement to repurchase;

(3) The payment of money or the furnishing of a service to an affiliate under contract, lease, or otherwise;

(4) Any transaction in which an affiliate acts as an agent or broker or receives a fee for its services to the member bank or to any other person; and

(5) Any transaction or series of transactions with a nonaffiliate, if an affiliate:

(i) Has a financial interest in the nonaffiliate; or

(ii) Is a participant in the transaction or series of transactions.

(b) For the purpose of this section, any transaction by a member bank with any person will be deemed to be a transaction with an affiliate of the member bank if any of the proceeds of the transaction are used for the benefit of, or transferred to, the affiliate.

§ 223.53 What asset purchases are prohibited by section 23B?

(a) *Fiduciary purchases of assets from an affiliate.* A member bank may not purchase as fiduciary any security or other asset from any affiliate unless the purchase is permitted:

(1) Under the instrument creating the fiduciary relationship;

(2) By court order; or

(3) By law of the jurisdiction governing the fiduciary relationship.

(b) *Purchase of a security underwritten by an affiliate.* (1) A member bank, whether acting as principal or fiduciary, may not knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security if a principal underwriter of that security is an affiliate of the member bank.

(2) Paragraph (b)(1) of this section does not apply if the purchase or acquisition of the security has been approved, before the security is initially offered for sale to the public, by a majority of the directors of the member bank based on a determination that the purchase is a sound investment for the member bank, or for the person on whose behalf the member bank is acting as fiduciary, as the case may be, irrespective of the fact that an affiliate of the member bank is a principal underwriter of the security.

(3) The approval requirement of paragraph (b)(2) of this section may be met if:

(i) A majority of the directors of the member bank approves standards for the member bank's acquisitions of securities described in paragraph (b)(1) of this section, based on the determination set forth in paragraph (b)(2) of this section;

(ii) Each acquisition described in paragraph (b)(1) of this section meets the standards; and

(iii) A majority of the directors of the member bank periodically reviews acquisitions described in paragraph (b)(1) of this section to ensure that they meet the standards and periodically reviews the standards to ensure that they continue to meet the criterion set forth in paragraph (b)(2) of this section.

(4) A U.S. branch, agency, or commercial lending company of a foreign bank may comply with paragraphs (b)(2) and (b)(3) of this section by obtaining the approvals and reviews required by paragraphs (b)(2) and (b)(3) from either:

(i) A majority of the directors of the foreign bank; or

(ii) A majority of the senior executive officers of the foreign bank.

(c) *Special definitions.* For purposes of this section:

(1) *"Principal underwriter"* means any underwriter who, in connection with a primary distribution of securities:

(i) Is in privity of contract with the issuer or an affiliated person of the issuer;

(ii) Acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or

(iii) Is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

(2) *"Security"* has the same meaning as in section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)).

§ 223.54 What advertisements and statements are prohibited by section 23B?

(a) *In general.* A member bank and its affiliates may not publish any advertisement or enter into any agreement stating or suggesting that the member bank will in any way be responsible for the obligations of its affiliates.

(b) *Guarantees, acceptances, letters of credit, and cross-affiliate netting arrangements subject to section 23A.* Paragraph (a) of this section does not prohibit a member bank from:

(1) Issuing a guarantee, acceptance, or letter of credit on behalf of an affiliate, confirming a letter of credit issued by an affiliate, or entering into a cross-affiliate netting arrangement, to the extent such transaction satisfies the quantitative limits of §§ 223.11 and 223.12 and the collateral requirements of § 223.14, and is otherwise permitted under this regulation; or

(2) Making reference to such a guarantee, acceptance, letter of credit, or cross-affiliate netting arrangement if otherwise required by law.

§ 223.55 What are the standards under which the Board may grant exemptions from the requirements of section 23B?

The Board may prescribe regulations to exempt transactions or relationships from the requirements of section 23B and subpart F of this part if it finds such exemptions to be in the public interest and consistent with the purposes of section 23B.

Subpart G—Application of Sections 23A and 23B to U.S. Branches and Agencies of Foreign Banks

§ 223.61 How do sections 23A and 23B apply to U.S. branches and agencies of foreign banks?

(a) *Applicability of sections 23A and 23B to foreign banks engaged in underwriting insurance, underwriting or dealing in securities, merchant banking, or insurance company investment in the United States.* Except as provided in this subpart, sections 23A and 23B of the Federal Reserve Act and the provisions of this regulation apply to each U.S. branch, agency, or commercial lending company of a foreign bank in the same manner and to the same extent as if the branch, agency, or commercial lending company were a member bank.

(b) *Affiliate defined.* For purposes of this subpart, any company that would be an affiliate of a U.S. branch, agency, or commercial lending company of a foreign bank if such branch, agency, or commercial lending company were a member bank is an affiliate of the branch, agency, or commercial lending company if the company also is:

(1) Directly engaged in the United States in any of the following activities:

(i) Insurance underwriting pursuant to section 4(k)(4)(B) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(B));

(ii) Securities underwriting, dealing, or market making pursuant to section 4(k)(4)(E) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(E));

(iii) Merchant banking activities pursuant to section 4(k)(4)(H) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H)) (but only to the extent that the proceeds of the transaction are used for the purpose of funding the affiliate's merchant banking activities);

(iv) Insurance company investment activities pursuant to section 4(k)(4)(I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(I)); or

(v) Any other activity designated by the Board;

(2) A portfolio company (as defined in the merchant banking subpart of Regulation Y (12 CFR 225.177(c))) controlled by the foreign bank or an affiliate of the foreign bank or a company that would be an affiliate of the branch, agency, or commercial lending company of the foreign bank under paragraph (a)(9) of § 223.2 if such branch, agency, or commercial lending company were a member bank; or

(3) A subsidiary of an affiliate described in paragraph (b)(1) or (2) of this section.

(c) *Capital stock and surplus.* For purposes of this subpart, the *"capital stock and surplus"* of a U.S. branch, agency, or commercial lending company of a foreign bank will be determined by reference to the capital of the foreign bank as calculated under its home country capital standards.

Subpart H—Miscellaneous Interpretations

§ 223.71 How do sections 23A and 23B apply to transactions in which a member bank purchases from one affiliate an asset relating to another affiliate?

(a) *In general.* In some situations in which a member bank purchases an asset from an affiliate, the asset purchase qualifies for an exemption under this regulation, but the member bank's resulting ownership of the purchased asset also represents a covered transaction (which may or may not qualify for an exemption under this part). In these situations, the transaction engaged in by the member bank would qualify as two different types of covered transaction. Although an asset purchase exemption may suffice to exempt the member bank's asset purchase from the first affiliate, the asset purchase exemption does not exempt the member bank's resulting covered transaction with the second affiliate. The exemptions subject to this interpretation include §§ 223.31(e), 223.41(a) through (d), and 223.42(e), (f), (i), (j), (k), and (m).

(b) *Examples.* (1) *The (d)(6) exemption.* A member bank purchases from Affiliate A securities issued by Affiliate B in a purchase that qualifies for the (d)(6) exemption in section 23A. The member bank's asset purchase from Affiliate A would be an exempt covered transaction under § 223.42(e); but the member bank also would have acquired an investment in securities issued by Affiliate B, which would be a covered transaction between the member bank and Affiliate B under § 223.3(b)(2) that does not qualify for the (d)(6) exemption. The (d)(6) exemption, by its terms, only exempts asset purchases by a member bank from an affiliate; hence, the (d)(6) exemption cannot exempt a member bank's investment in securities issued by an affiliate (even if the securities would qualify for the (d)(6) exemption).

(2) *The sister-bank exemption.* A member bank purchases from Sister-Bank Affiliate A a loan to Affiliate B in a purchase that qualifies for the sister-bank exemption in section 23A. The member bank's asset purchase from Sister-Bank Affiliate A would be an exempt covered transaction under § 223.41(b); but the member bank also would have acquired an extension of credit to Affiliate B, which would be a covered transaction between the member bank and Affiliate B under § 223.3(h)(1) that does not qualify for the sister-bank exemption. The sister-bank exemption, by its terms, only exempts transactions by a member bank with a sister-bank affiliate; hence, the sister-bank exemption cannot exempt a member bank's extension of credit to an affiliate that is not a sister bank (even if the extension of credit was purchased from a sister bank).

By order of the Board of Governors of the Federal Reserve System, November 27, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–30634 Filed 12–11–02; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 223

[Regulation W; Docket No. R–1135]

Transactions Between Member Banks and Their Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board of Governors of the Federal Reserve System proposes to amend an exemption in Regulation W that permits a member bank to exclude the purchase of an extension of credit from an affiliate from the quantitative limits imposed by section 23A of the Federal Reserve Act if certain criteria are met. The proposed amendment would limit a member bank's ability to buy an extension of credit from an affiliate under the exemption to 100 percent of the capital stock and surplus of the member bank.

DATES: Submit comments on or before January 13, 2003.

ADDRESSES: Comments should refer to docket number R–1135 and should be sent to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 or mailed electronically to *regs.comments@federalreserve.gov*. Comments addressed to Ms. Johnson also may be delivered between 8:45 a.m. and 5:15 p.m. to the Board's mail facility in the west courtyard of the Eccles Building, located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in accordance with the Board's Rules Regarding the Availability of Information (12 CFR part 261) in Room MP–500 of the Martin Building on weekdays between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Pamela G. Nardolilli, Senior Counsel (202/452–3289), or Mark E. Van Der Weide, Counsel (202/452–2263), Legal Division; for users of Telecommunications Device for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

Background

Section 23A is designed to protect banks from misuse in financial transactions with their affiliates. Section 23A attempts to accomplish this goal by imposing safeguards on all "covered transactions" between a bank and its affiliates; this includes limiting all covered transactions by a bank with any single affiliate to no more than 10 percent of the bank's capital stock and surplus, and limiting a bank's covered transactions with all affiliates to 20 percent of the bank's capital stock and surplus.

In 1974, the Board issued a formal interpretation that exempted from section 23A a bank's purchase, on a nonrecourse basis, of a mortgage note or participation therein from a mortgage banking affiliate, provided that the bank's commitment to purchase was (i) obtained by the affiliate within the context of each proposed loan, (ii) obtained prior to the affiliate's commitment to make each loan, and (iii) based upon the bank's independent evaluation of the creditworthiness of each mortgagor (the "Purchase Exemption").[1] Although this interpretation did not impose a strict dollar limit on the amount of an affiliate's mortgage loans that a bank could purchase under the exemption, the interpretation cautioned that the purpose of the exemption was to allow a bank to take advantage of an investment opportunity and not to provide all the working capital needed by an affiliate.

By 1995, some bank holding companies were using the Purchase Exemption extensively to fund their nonbank lending affiliates. In those cases, banks were providing all or nearly all of such affiliates' funding. In response, staff indicated in an interpretive letter that the Purchase Exemption was not available if the dollar amount of the bank's loan purchases from the affiliate represented more than 50 percent of the total dollar amount of loans originated by the affiliate. Staff reasoned that, in these circumstances, the asset purchases look less like the bank taking advantage of an investment opportunity brought to it by the affiliate and more like the bank providing an ongoing funding mechanism for the affiliate. Staff intended that this restriction would require the affiliate to have alternative funding sources and would reduce the pressure on the bank to purchase the affiliate's extensions of credit.

In 2001, the Board reviewed a proposal where a leasing company proposed to charter a bank for the primary purpose of purchasing loans or leases from the leasing company.[2] The Board was concerned that, under the proposal, the new bank's credit underwriting process could be compromised as result of the complete dependence of the bank on the affiliate for asset growth. The Board conditioned its approval of the proposal on the bank limiting its purchases of leases or loans from an affiliate to no more than 50 percent of the bank's credit portfolio.

Concurrently with the issuance of this proposed rule, the Board is adopting final Regulation W, which incorporates the Purchase Exemption at 12 CFR 223.42(k) and formally expands the exemption to cover the purchase of any of type of extension of credit from an affiliate.

The Purchase Exemption in Regulation W also retains the limitation previously imposed by staff that prevents a bank from using the Purchase Exemption to purchase more than 50 percent of the loans originated by any affiliate. When the Board proposed Regulation W, the preamble of the regulation asked for comment on whether the rule should include a quantitative condition to the Purchase Exemption based on the size of the purchasing bank.[3] The Board, however, did not propose a specific bank-based limit at that time. Eleven commenters objected to such a condition and argued that case-by-case review is a better approach to handling situations where loans purchased from an affiliate represent a large portion of a bank's assets. These commenters believed that the remaining conditions of the Purchase Exemption should suffice to prevent abuse of the bank. One commenter, on the other hand, recommended that the rule include a 50 percent limit based on the assets of the bank.

In light of the comments and the fact that the Board did not set forth a specific limit based on the bank's size in proposed Regulation W, the Board now proposes to amend Regulation W to impose a limitation on the Purchase Exemption based on the capital stock and surplus of the bank. Specifically, the Board is requesting comment on a condition that would limit the amount of extensions of credit that a bank could purchase from an affiliate under the Purchase Exemption to 100 percent of the bank's capital stock and surplus. All other restrictions imposed by the Purchase Exemption would still apply. Although those restrictions include a requirement that the bank conduct an independent credit review prior to purchasing assets under the Purchase Exemption, sections 23A and 23B were enacted in recognition that the bank might relax its independent judgment when making credit decisions involving an affiliate. The Board believes that the 100 percent limit will guard against a bank acquiring an excessive concentration of assets under the Purchase Exemption, but still will provide the bank with the flexibility to purchase assets from an affiliate, within prudential limitations, in an amount well in excess of the statute's 10 and 20 percent quantitative limits.

[1] This exemption was codified at 12 CFR 250.250 (2002).

[2] *Amplicon Inc.*, 87 Federal Reserve Bulletin 421 (2001).

[3] 66 FR 24186, 24199–00, May 11, 2001.

Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)) the Board must publish an initial regulatory flexibility analysis with this proposed regulation. As discussed above, the purpose of the rule is to limit the concentration of assets held by a bank that are originated by an affiliate and to reduce pressure on the bank to make inappropriate credit decisions. The Board does not collect data on the number of institutions that take advantage of the current exemption. There are approximately 3,300 banks below $100 million in assets, but the Board does not believe that a significant number of these institutions engage in Purchase Exemption transactions because most banks of that size do not have affiliates engaged in credit-extending activities. The requirements of the proposed rule would be the same for all depository institutions regardless of their size. The Board knows of no other regulations that overlap, conflict with, or duplicate the proposed rule. The Board solicits comment on the likely impact the proposed rule would have on depository institutions, including small depository institutions. The proposed rule contains no reporting requirement.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 appendix A.1), the Board has reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. The proposed rule contains no new collections of information and proposes no substantive changes to existing collections of information pursuant to the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 223

Banks, Banking, Affiliates, Federal Reserve System.

For the reasons stated in the preamble, the Board proposes to amend 12 CFR part 223 as set forth below:

PART 223—TRANSACTIONS BETWEEN MEMBER BANKS AND THEIR AFFILIATES (REGULATION W)

1. The authority citation for part 223 continues to read as follows:

Authority: 12 U.S.C. 371c(b)(1)(E), (b)(2)(A), and (f), 371c–1(e), 1828(j), and 1468(a).

2. Section 223.42 would be amended by adding a new paragraph (k)(6) to read as follows:

§ 223.42 What covered transactions are exempt from the quantitative limits, collateral requirements, and low-quality asset prohibition?

* * * * *

(k) *Purchasing an extension of credit from an affiliate.* * * *

(6) The dollar amount of the extension of credit, when aggregated with the dollar amount of all other extensions of credit purchased by the member bank from affiliates under this exemption and currently owned by the member bank, does not represent more than 100 percent (or such lower percent as is imposed by the member bank's appropriate Federal banking agency) of the capital stock and surplus of the member bank.

By order of the Board of Governors of the Federal Reserve System, November 27, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–30635 Filed 12–11–02; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 250

[Miscellaneous Interpretations]

Transactions Between Member Banks and Their Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Sections 23A and 23B of the Federal Reserve Act restrict the ability of a member bank to engage in certain transactions with an affiliate. Since its initial passage in 1933, the Board and its staff have issued numerous formal and informal interpretations of section 23A. On October 31, 2002, the Board adopted a new Regulation W, which implements sections 23A and 23B and incorporates most of these interpretations. Accordingly, the Board is rescinding most of its formal interpretations of section 23A and removing these interpretations, as well as most staff opinions relating to section 23A, from the Federal Reserve Regulatory Service. With the adoption of Regulation W, most of the Board's previous section 23A interpretations are outdated or unnecessary, and the Board believes that reliance on the new Regulation W will eliminate confusion and simplify compliance with sections 23A and 23B.

EFFECTIVE DATE: April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Pamela G. Nardolilli, Senior Counsel (202/452–3289), or Mark E. Van Der Weide, Counsel (202/452–2263), Legal Division; Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Sections 23A and 23B of the Federal Reserve Act are two of the most important statutory protections against a bank suffering losses because of its transactions with affiliates and, correspondingly, are two of the most effective means of limiting the ability of a bank to transfer to its affiliates the subsidy arising from the bank's access to the Federal safety net. Although sections 23A and 23B each explicitly grant the Board broad authority to issue regulations to administer these sections,[1] the Board never issued a regulation fully implementing either section. Instead, banks seeking guidance on how to comply with sections 23A and 23B have relied on a series of Board interpretations and informal staff guidance. Some of these Board interpretations are codified in part 250 of title 12 of the Code of Federal Regulations. Many of the staff interpretations are publicly available, and the summaries of the interpretations can be found in the Board's loose-leaf service, the Federal Reserve Regulatory Service.

On October 31, 2002, the Board adopted Regulation W, which comprehensively implements sections 23A and 23B. In order to avoid confusion and simplify compliance with sections 23A and 23B, the Board is deleting the section 23A interpretations that are codified in part 250 of title 12 of the Code of Federal Regulations. In addition, the Board is deleting most of the summaries of staff interpretations of section 23A that are published in the Federal Reserve Regulatory Service.

Below is a chart of the interpretations of sections 23A and 23B found in the Federal Reserve Regulatory Service along with an indication of whether each summary will be retained in the Federal Reserve Regulatory Service or removed. For those summaries that will be removed, the chart identifies the provision of Regulation W or an appropriate statute that renders the summary unnecessary or inconsistent with current law. The Board believes that a few existing interpretations of section 23A would provide helpful guidance to banking organizations, but are too fact-specific to include in Regulation W; the summaries of these interpretations will remain in the Federal Reserve Regulatory Service. All new Board interpretations of sections 23A and 23B will be codified under part 223 instead of the Miscellaneous Interpretations found in part 250, and will be available on the Board's public Web site, *http://www.federalreserve.gov*. Persons desiring older written interpretations will be able to obtain them by filing a request pursuant to the Freedom of Information Act.

DELETIONS FROM THE FEDERAL RESERVE REGULATORY SERVICE

[Board Interpretations]

FRRS No.	Subject	12 CFR reference
3–1118, 12 CFR 250.242	Definition of Capital Stock and Surplus	§ 223.3(d).
3–1120, 1934 Fed. Res. Bull. 391	Collateral—Paper Eligible for Rediscount or Purchase by Federal Reserve Banks.	§ 223.14(b)(1).
3–1121, 1935 Fed. Res. Bull. 395	Collateral—Stock	§ 223.14(b)(1)(iv).
3–1125, 1936 Fed. Res. Bull. 324	Exemptions—Indebtedness for Unpaid Balances Due on Purchased Assets.	No exemption available.
3–1126, S–285, 10/24/41	Exemptions—Relationships Arising Out of Bona Fide Debt Previously Contracted.	§ 223.2(b)(5).
3–1127, 12 CFR 250.240	Exemptions—Loan to Bank Operations Subsidiary	§§ 223.2(b) & (2).
3–1128, 12 CFR 250.241	Exemptions—Transactions Subject to Review Under the Bank Merger Act.	§ 223.42(j).
3–1128.1, 12 CFR 250.245	Exemptions—Loans and Extensions of Credit by Member Bank to Third Party.	§ 223.16(c)(3).
3–1128.2, 12 CFR 250.246	Exemptions—Purchase of Security by Insured Depository Institution from an Affiliate.	§ 223.42(f).
3–1130, 1934 Fed. Res. Bull. 391	Extension of Credit—Loan on Note Bearing Endorsement by Affiliate	Retained.
3–1131, 1951 Fed. Res. Bull. 960	Extension of Credit—Purchase of Affiliate's Notes	§ 223.3(o)(4).
3–1132, 12 CFR 250.160(b)	Extension of Credit—Federal Funds Transaction	§ 223.3(o).
3–1133, 12 CFR 250.250	Extension of Credit—Purchase of Mortgage Note or Participation from Nonbank Affiliates.	§ 223.42(k).
3–1135, 1933 Fed. Res. Bull. 501	Loans & Investments Made Before June 16, 1933	See Preamble For Grandfathering.
3–1136, 1934 Fed. Res. Bull. 391	Limitations on Amount—Loans Secured by Paper Eligible for Rediscount by Federal Reserve Bank.	§ 223.14(b)(1)(C).
3–1137, 12 CFR 250.247	Market Terms Requirement—Derivatives	§ 223.33.

[1] 12 U.S.C. 371c(f), 371c–1(e).

DELETIONS FROM THE FEDERAL RESERVE REGULATORY SERVICE—Continued

[Board Interpretations]

FRRS No.	Subject	12 CFR reference
3–1137.1, 12 CFR 250.248	Market Terms Requirement—Intraday Extensions of Credit by Insured Depository Institutions to Their Affiliates.	§ 223.42(l).
3–1140	Affiliates to Which Applicable—Cotrustee or Coexecutor of Corporation.	§ 223.2(b).
3–1141	Affiliates to Which Applicable	Retained.
3–1142	Affiliates to Which Applicable—Small Business Subsidiary of Bank Holding Company.	§ 223.2(a)(2).
3–1143	Affiliate to Which Applicable—Joint Venture in Which Subsidiary Has 50% Interest.	§ 223.2(b)(1)(iii).
3–1144	Affiliates to Which Applicable—Corporation with Stock Held as Collateral.	§ 223.3(p)(1)(ii).
3–1145	Affiliates to Which Applicable—Corporation Owned by Affiliate Edge Corporation.	§ 223.3(p)(1)(ii).
3–1146	Affiliates to Which Applicable—Trust	Retained.
3–1146.1	Affiliates to Which Applicable—Foreign Affiliate of Domestic Bank Holding Company.	§ 223.2(a)(2).
3–1146.2	Affiliates to Which Applicable—Less Than 25 Percent Control	§ 223.2(a)(3).
3–1146.3	Affiliates to Which Applicable—Agricultural Credit Corporation	§ 223.2(b)(1)(iii).
3–1146.4	Affiliates to Which Applicable—Bank Subsidiaries of Bank Holding Company.	§ 223.2(b)(1).
3–1146.5	Affiliates to Which Applicable—Purchaser of Subsidiary Banks	§ 223.16.
3–1146.6	Affiliates to Which Applicable—Common Shareholders	Retained.
3–1146.61	Affiliates to Which Applicable—Partnership & Association	Retained.
3–1146.7	Affiliates to Which Applicable—Foreign Exchange Fund	Retained.
3–1150	Bank—Savings Loan	12 U.S.C. 1468.
3–1151	Bank—Bank Whose Deposits Are Insured by the FDIC	12 U.S.C. 1828(j).
3–1152	Bank—Foreign Bank	12 U.S.C. 371c(b)(5) & § 223.18.
3–1152.1	Bank—Domestic Branch of a Foreign Bank	12 U.S.C.371c(b)(5) & § 223.3(k).
3–1152.2	Bank—National Bank Subsidiary	12 U.S.C. 371c(b)(5).
3–1155	Collateral—Automobile Rental Contracts	§ 223.14(b)(1)(iv).
3–1156	Collateral—Stock	§ 223.24.
3–1157	Collateral—"Secured by"	§ 223.14.
3–1158	Collateral—Stock in Wholly Owned Subsidiary	§ 223.14.
3–1160	Collateral—FHA Mortgages	§ 223.3(y).
3–1161	Collateral—U.S. Government Securities	§ 223.14.
3–1162	Collateral—Stock Valuation	Retained
3–1163	Collateral—Stock Valuation	Retained.
3–1164	Collateral—Stock Valuation	Retained.
3–1164.1	Collateral—Stock of a Subsidiary Bank	§ 223.14(c)(2).
3–1164.2	Collateral—Real Estate	§ 223.14(b)(l)(iv).
3–1164.3	Collateral—Mortgage Servicing Rights	§ 223.14(c)(4).
3–1167	Covered Transactions—Purchase of Affiliate's Securities	§ 223.3(h)(2).
3–1167.1	Covered Transactions—Purchase of Assets	Retained.
3–1167.2	Covered Transactions—Purchase of Assets	§ 223.42(k).
3–1167.3	Covered Transactions—Acceptance of Securities	Retained.
3–1167.4	Covered Transactions—Issuance of Guarantee	Retained.
3–1167.5	Covered Transactions—Purchase of Leases	§ 223.42(k) & Subpart F.
3–1170	Exemptions—Indebtedness for Unpaid Balances Due on Purchased Assets.	§ 223.3(h).
3–1171	Exemptions—Corporation Holding Premises of Bank	§ 223.2(b)(2).
3–1172	Exemptions—Investment in Agricultural Credit Corporation	§ 223.2.
3–1173	Exemptions—Sale of Assets on Credit	§ 223.3(h)(1).
3–1174	Exemptions—Trust	§ 223.2.
3–1175	Exemptions—Loans to Subsidiary Bank Premises	§ 223.2(b)(2).
3–1176	Exemptions—Corporation Holding Premises of Bank	§ 223.2(b)(2).
3–1177	Exemptions—Bank Operations Subsidiary	§ 223.2(b)(1).
3–1177.1	Exemptions—Bank Controlled by Same Company	§§ 223.41(b) & 223.3(k) & (v).
3–1177.2	Exemptions—Bank Premises Subsidiary	§ 223.2(a)(3) & (b)(2).
3–1177.3	Exemptions—Privately Issued Collateralized Mortgage Obligations	Retained.
3–1177.4	Exemptions—Bank Controlled by Same Company That Is Not Bank Holding Company.	§ 223.41(b).
3–1180	Extension of Credit—Nonrecourse Acquisition of Promissory Note	§ 223.3(o)(4).
3–1181	Extension of Credit—Transaction with Bank Holding Company	§§ 223.3(o) & 223.42(h).
3–1182	Extension of Credit—Guaranteed Debt of Holding Company	§ 225.3(o).
3–1183	Extension of Credit—Participation in Assets Pool	Deleted.
3–1184	Extension of Credit—Purchase of Mortgage Note or Participation from Nonbank Affiliate.	§ 223.42(k).
3–1185	Extension of Credit—GNMA Certificate of Guarantee	Retained.
3–1186	Extension of Credit—Paid Letter of Credit	§ 223.3(o).
3–1187	Extension of Credit—Equipment Lease Agreement	Retained.
3–1188	Extension of Credit—Participation in Mortgage Loan Pool	§ 223.42(k).

DELETIONS FROM THE FEDERAL RESERVE REGULATORY SERVICE—Continued

[Board Interpretations]

FRRS No.	Subject	12 CFR reference
3–1189	Extension of Credit—Finance Company Loan Participation	§ 223.42(k).
3–1189.1	Extension of Credit—Transactions Involving Funding, Letters of Credit & Bankers Acceptance.	§§ 223.3(h)(1) & 223.3(h)(5).
3–1189.2	Extension of Credit—Contingency, Negotiating or Accepting Letters of Credit.	§ 223.3(h).
3–1195	Limitations on Amount—Loans & Investments Made Before June 16, 1933.	See Preamble Grandfathering.
3–1196	Limitations on Amount—Loan Secured by Paper Eligible for Rediscount or Purchase by Federal Reserve Bank.	§ 223.14(b)(i)(C).
3–1197	Limitations on Amount—Capital Stock	§ 223.3(h)(2).
3–1198	Limitations on Amount—Stockholder Ownership & Capital Expenditures.	§§ 223.3(h) & 223.7(c)
3–1199	Limitations on Amount—Valuation of Transactions	§ 223.24(b).
3–1199.5	Low-Quality Asset—Open-End Credit Card Account	Retained.
3–1199.51	Low-Quality Assets—Renewal of a Loan	§ 223.15(b).

Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Board is not required to publish a regulatory flexibility analysis with this rulemaking.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, the Board is issuing this deletion of the Board and staff's existing section 23A interpretations as a final rule. Most of the interpretations in question are staff opinions, which were not subject to public comment pursuant to 5 U.S.C. 553(b)(2)(A). The deletion of the Board interpretations from the Code of Federal Regulations is part of the implementation of Regulation W, which the Board issued for public notice and comment on May 11, 2001, and thus further public comment on the deletions is unnecessary. A review of the public comments on Regulation W can be found in the preamble to Regulation W, 67 FR (2002).

Paperwork Reduction Act

The Board has determined that the removal of the interpretations from the Code of Federal Regulations will not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR part 250

Federal Reserve System.

For reasons set out in the preamble, the Board amends 12 CFR part 250 as follows:

PART 250—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 continues to read as follows:

Authority: 12 U.S.C. 78, 248(i), 371c(f) and 371c–1(e).

§ 250.160 [Amended]

2. In § 250.160, remove paragraph (b).

§§ 250.240, 250.248 and § 250.250 [Removed]

3. Sections 250.240, 250.241, 250.242, 250.243, 250.244, 250.245, 250.246, 250.247, 250.248, and 250.250 are removed.

By order of the Board of Governors of the Federal Reserve System, November 27, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–30636 Filed 12–11–02; 8:45 am]

BILLING CODE 6210–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Thursday,
December 12, 2002

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91, et al.

Prohibition on the Transportation of Devices Designed as Chemical Oxygen Generators as Cargo in Aircraft; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 119, 121, 125, and 135

[Docket No. FAA–98–4458]

RIN 2120–AG35

Prohibition on the Transportation of Devices Designed as Chemical Oxygen Generators as Cargo in Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); withdrawal.

SUMMARY: The FAA is withdrawing proposed amendments regarding the transportation of devices designed as chemical oxygen generators, including ones that have been discharged and ones that are newly manufactured but not yet charged. Since the NPRM was issued, the FAA has determined that regulations adopted by the Research and Special Programs Administration (RSPA) alleviate the FAA's specific concerns that gave rise to the NPRM. In addition, the FAA is withdrawing a proposed amendment to require that unexpired chemical oxygen generators be placed in a central location in an accessible compartment and separated from other cargo in all-cargo operations. This proposed amendment is being withdrawn because the FAA and RSPA are evaluating the need for improved packaging for chemical oxygen generators, which would be proposed in an NPRM by RSPA and would satisfy the intent of the FAA's NPRM.

FOR FURTHER INFORMATION CONTACT: David L. Catey, Flight Standards Service, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION:

Background

After the May 11, 1996 crash of ValuJet Flight 592, the National Transportation Safety Board (NTSB) issued Recommendation A–96–29 on May 31, 1996, which stated that the Research and Special Programs Administration (RSPA) should, "in cooperation with the Federal Aviation Administration, permanently prohibit the transportation of chemical oxygen generators as cargo on board any passenger or cargo aircraft when the generators have passed their expiration dates, and the chemical core has not been depleted" and "prohibit the transportation of oxidizers and oxidizing materials * * * in cargo compartments that do not have fire or smoke detection systems."

Since that recommendation was issued, both RSPA and FAA have published several final rules that address the concerns raised by the NTSB. First, RSPA has prohibited the transportation of chemical oxygen generators as cargo on board passenger-carrying aircraft (61 FR 68952; Dec. 30, 1996). Second, in 1997, RSPA adopted a more specific shipping description for chemical oxygen generators to make it easier for air carriers to identify them and specified additional packaging requirements (62 FR 30767, June 5, 1997). RSPA's Hazardous Materials Regulations define a chemical oxygen generator as, "a device containing chemicals that upon activation release oxygen as a product of chemical reaction." In that rulemaking, RSPA also aligned its hazardous materials regulations with the provisions of the International Civil Aviation Organization's Technical Instructions on the Safe Transport of Dangerous Goods. Finally, in 1998, the FAA issued a final rule that upgraded the fire safety standards for Class D cargo compartments for certain transport-category aircraft (63 FR 8033; Feb. 17, 1998).

On August 27, 1998, the FAA issued an NPRM entitled "Prohibition on the Transportation of Devices Designed as Chemical Oxygen Generators as Cargo in Aircraft" (63 FR 45912; Aug. 27, 1998), which was intended to supplement RSPA's rules and help eliminate human error. That NPRM proposed to amend 14 CFR parts 91, 119, 121, 125, and 135 to ban the transportation of devices designed to chemically generate oxygen. In the NPRM, the FAA proposed to create a definition for the terms "devices designed as chemical oxygen generators" and "chemical oxygen generator." The term "devices designed as chemical oxygen generators" would have been defined to include all chemical oxygen generators carried as cargo, even those that had been discharged, those past their expiration dates and newly manufactured devices designed as chemical oxygen generators but not yet charged with chemicals. The NPRM would not have applied to chemical oxygen generators that are installed to meet aircraft certification requirements or other FAA regulations. The proposal also contained another definition for the term "chemical oxygen generator" that would have been different from the term used in RSPA's hazardous materials regulations.

The FAA's NPRM also would have prohibited devices designed as chemical oxygen generators from being carried as cargo on passenger carrying operations. The carriage of devices designed as chemical oxygen generators would have been permitted on aircraft engaged in all-cargo operations only if they were located in an accessible cargo compartment that was equipped with a fire and smoke detection system, the cargo was separated from other cargo, and was shipped in compliance with RSPA's hazardous materials regulations.

In 1999, RSPA addressed several of the FAA's concerns identified in its 1998 NPRM by publishing a final rule (64 FR 45388; Aug. 19, 1999) that prohibited the following on aircraft:

- Chemical oxidizers in inaccessible cargo compartments without fire or smoke detection and fire suppression systems;
- Personal-use chemical oxygen generators on passenger-carrying aircraft; and
- Spent chemical oxygen generators on passenger and cargo aircraft.

In addition to the August 1999 final rule, RSPA informed NTSB by letter (included in the public docket for this rulemaking) that its June 5, 1997 final rule prohibited the transportation of chemical oxygen generators as cargo on passenger-carrying aircraft, regardless of whether they have passed their expiration dates.

RSPA's final rule did not prohibit the transportation of newly manufactured devices not yet charged for the generation of oxygen. The FAA's 1998 NPRM, on the other hand, did contain such a proposal. The FAA, however, has decided not to adopt that prohibition because, as discussed below, it has determined that the proposed amendment is not necessary.

Discussion of Comments

The FAA received 14 comments. One comment was from the National Transportation Safety Board, and one from a group of individuals outside the aviation industry. Commenters from the aviation-related organizations included the following—

Regional Airline Association (RAA)
Air Transport Association (ATA)
Conference on Safe Transportation of Hazardous Articles, Inc., (COSTHA)
Air Line Pilots Association, International (ALPA)
International Air Transport Association (IATA)
British Airways
Drager Aerospace North America
Aviosupport, Inc.
Teamsters Airline Division
American Trans Air, Inc.
Boeing
Independent Pilots Association (IPA)

The comment from the group of non-industry individuals supported the proposal. Other commenters, however, either wanted the proposal withdrawn completely or turned over to RSPA for action, or they objected to various details of the NPRM. Several of these objections concerned matters that have since been disposed of by RSPA in its final regulation. Major points are discussed below.

Comment: ATA, Aviosupport, Inc., Boeing, and RAA stated that newly manufactured, never-been-charged containers are not hazardous materials and therefore should not be regulated. Aviosupport also stated that, to their knowledge, manufacturers charge oxygen generators as part of the assembly process and do not ship them empty.

FAA Response: After discussing the issue with RSPA, the FAA agrees that it is not necessary to regulate newly manufactured, never-been-charged devices. RSPA agrees with the Aviosupport comment that generators are not shipped empty to be charged elsewhere, and the FAA did not receive any rebuttal comments indicating otherwise and does not have any information to the contrary. Although the FAA's original goal was to reduce the risk of human error in a situation in which charged generators were improperly offered as never-been-filled, the FAA is satisfied that newly manufactured, never-been-charged devices will not be transported by aircraft. The FAA is therefore withdrawing the proposal.

Comment: ATA, RAA, ALPA, American Trans Air, Inc., COSTHA, and IATA wanted the NPRM to be withdrawn or referred to RSPA for action because it would overlap RSPA's regulations and go against the provisions in Executive Order 12866 regarding duplicative regulations.

FAA Response: The FAA agrees. RSPA addressed many of the FAA's concerns in its August 19, 1999, final rule, and the FAA has decided that it is not necessary to regulate newly manufactured, never-been-charged devices (as discussed in the response above). The FAA remains concerned about the possibility that chemical oxygen generators could fuel a fire that started in a cargo compartment. However, FAA believes that this issue can be resolved through improved packaging for these devices and is working with RSPA to address this concern.

Comment: IATA and Teamsters do not believe that the FAA defined "separation" of chemical oxygen generators from other cargo adequately.

FAA Response: The FAA agrees that its use of the term "separation" was not well defined. The FAA's proposed use of the term "separation" was not consistent with RSPA's use of the word. Given that RSPA already uses the term and specifies how to separate the material, the FAA recognizes that its separation proposal was confusing. The FAA's separation proposal was designed to preclude, as much as possible, the placement of chemical oxygen generators (and devices designed as chemical oxygen generators) close to other cargo. The proposal was intended to prevent those devices from being enveloped in a fire generated in other cargo and, upon ignition of the chemical reaction for producing oxygen, feeding an uncontrollable fire.

Since the NPRM was published, the FAA has reconsidered the proposed amendment. The FAA still believes that separating all chemical oxygen generators, as currently packaged, from potential sources of ignition is critical to reducing the risk of a catastrophic fire on an aircraft. The FAA has determined, however, that this separation is not necessary if chemical oxygen generators are placed in outer packaging that satisfies the FAA's testing criteria for materials to meet flame penetration resistance and thermal protection standards. RSPA is currently working with the FAA to develop a proposed rule that would require this kind of packaging, so the FAA's proposed rule that would require separation is not needed at this time.

Comment: ALPA and Aviosupport, Inc. point out that in the justification of the NPRM, the FAA cited safety concerns arising from improperly shipped chemical oxygen generators, and that better training in hazardous materials recognition is the better solution.

FAA Response: The FAA recognizes that training is an important aspect to reducing the amount of improperly shipped hazardous materials. The FAA currently is developing a separate NPRM that would improve training standards for air carriers, repair stations, and their contract employees.

Comment: ALPA points out that the FAA used a different definition of "chemical oxygen generator" than RSPA's definition.

FAA Response: The FAA agrees. Since there is no longer a need for a different definition, the FAA is withdrawing this proposal.

Comment: ALPA and Teamsters state that one member of a two-person crew on an all-cargo operation is not likely to leave the flight deck to enter a cargo compartment to put out a fire alone.

FAA Response: The FAA did not intend to require that members of two-person cargo crews fight fires. Rather, the operator's procedures would indicate whether fighting fires is within the scope of crewmembers' duties.

Conclusion

The FAA has determined that regulatory action is no longer necessary and, therefore, withdraws the NPRM entitled "Prohibition on the Transportation of Devices Designed as Chemical Oxygen Generators as Cargo in Aircraft" published on August 27, 1998 (63 FR 45912; Aug. 27, 1998).

Withdrawal of this NPRM does not preclude the FAA from issuing another notice on the subject in the future or from committing to any future action.

Issued in Washington, DC on December 5, 2002.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

[FR Doc. 02–31255 Filed 12–11–02; 8:45 am]

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Federal Register

Thursday,
December 12, 2002

Part V

Federal Communications Commission

47 CFR Part 1

Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[OMD Docket No. 02–339; FCC 02–299]

Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to amend its rules to implement the Debt Collection Improvement Act of 1996 (DCIA). The proposed amendments largely follow the implementing rules promulgated by the Department of Treasury. The Commission also proposes to adopt a rule whereby applications or other requests for benefits would be dismissed upon discovery that the entity applying for or seeking the benefit is delinquent in any debt to the Commission, and that entity fails to resolve the delinquency.

DATES: Comments are due February 10, 2003; reply comments are due March 12, 2003.

FOR FURTHER INFORMATION CONTACT: Regina W. Dorsey, Special Assistant to the Chief Financial Officer, at 1–202–418–1993, or by e-mail at <*rdorsey@fcc.gov*>, or Laurence H. Schecker, Office of General Counsel, Administrative Law Division, at 1–202–418–1720, or by e-mail at <*lschecke@fcc.gov*>.

SUPPLEMENTARY INFORMATION: In this document, the Commission proposes to amend its rules governing the collection of claims owed the United States, 47 CFR Part 1 Subpart O, to implement the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321, 1358 (1996) (DCIA). The Commission also proposes to adopt a rule withholding action on applications and other requests for benefits upon discovery that the entity applying for or seeking benefits is delinquent in its non-tax debts owed to the Commission, and mandating dismissal of such applications or requests if the delinquent debt is not resolved.

I. Debt Collection Rules

The Commission's rules governing claims owed the United States were adopted in 1988 to implement the Debt Collection Act of 1982, Public Law 97–365, 96 Stat. 1749 (1982) (DCA), and the Deficit Reduction Act, Public Law 98–369, 98 Stat. 1153 (1984). The Commission's rules paralleled the implementing regulations issued in 1984 by the Department of Justice and the General Accounting Office known as the Federal Claims Collection Standards (FCCS). In 1996, faced with "a rising tide of delinquent debts," 142 Cong. Rec. H4087 (Apr. 25, 1996) (remarks of Congressman Horn), Congress enacted the DCIA, revising federal debt collection procedures. Because our debt collection rules parallel the FCCS, we awaited revision of the FCCS before proposing to amend our rules. The Departments of Justice and Treasury have now issued final amendments to the FCCS. *Federal Claims Collection Standards*, 65 FR 70390, November 22, 2000 (FCCS), *codified at* 31 CFR. Chapter IX and Parts 900–904.

Based on the revised FCCS, we propose to amend our debt collection rules presently found at 47 CFR Part 1 Subpart O. Our proposal also incorporates the Federal salary offset procedures, governed by 5 U.S.C. 5514 and Office of Personnel Management (OPM) regulations. *See* 5 CFR 550.1104. The proposed revisions to our DCIA rules include numerous changes and amendments. Major changes contained in our proposed revisions are discussed below. In addition, many adjustments have been made to take into account debts arising under our auction rules. Other provisions have been redrafted for clarity but do not substantively change debt collection procedures, and are not discussed here.

The following major changes to the Commission's debt collection rules are proposed. The proposed rules reflect the increase in the principal claim amount from $20,000 to $100,000 or such amount as the Attorney General deems appropriate, that agencies are authorized to compromise or to suspend or terminate collection activity thereon without the concurrence of the Department of Justice. In addition, the minimum amount of a claim that may be referred to the Department of Justice is increased from $600 to $2,500. The proposed rules also reflect several new debt collection procedures under the DCIA, including but not limited to (a) transfer or referral of delinquent debt to the Department of the Treasury or Treasury-designated debt collection centers for collection (known as cross-servicing); (b) mandatory, centralized administrative offset by disbursing officials; (c) mandatory credit bureau reporting; and (d) mandatory prohibition against extending Federal assistance in the form of loan or loan guarantee to delinquent debtors. The proposed rules conform the Commission's definitions with those used by the Departments of Justice and Treasury in their regulations on the DCIA. Finally, we have added a new § 1.1935 adopting the new Treasury regulations adopting the DCIA administrative wage garnishment requirements. *See Administrative Wage Garnishment*, 63 FR 25136, May 6, 1996 (permitting agencies to garnish up to 15 percent of the disposable pay of a debtor to satisfy delinquent non-tax debt owed), *adopting* 31 CFR 285.11. We invite comment on all aspects of the proposed revisions to our debt collection rules.

II. Delinquent Debtors

Introduction. We have previously explained that the Commission is required to manage and collect substantial sums of money, including annual regulatory fees, application fees, civil monetary penalties, and auction payments, and oversees Universal Service Fund (USF) contributions. We envisioned a multi-step process to improve the management of the agency's accounts. The Commission established a Revenue Accounting and Management Information System (RAMIS) to support the agency's accounts receivable and to enable us to perform fee and debt sufficiency checks. We recently adopted the requirement that persons and entities doing business with the Commission obtain a unique identifying number called the FCC Registration Number (FRN), and supply it when doing business with the Commission. The Commission also established the Commission Registration System (CORES) to assign the FRN. Through these mechanisms, we are able to better track money owed to the Commission.

The "Red Light" Rule. This Notice proposes to extend and clarify policies already in place in our rules. Our regulatory and application fee rules already permit us as a matter of discretion to dismiss applications for failure to pay appropriate fees. 47 U.S.C. 158(c)(2), 159(c)(2). *See* 47 CFR 1.1109(c), 1.1109(d)(1); 1.1112(a)(1)(i); 1.1112(a)(2)(ii); 1.1157(a)(2); 1.1161(a)(1)(i); 1.1161(a)(2)(ii); 1.1164(e); and 1.1166(c). Our auctions rules provide that an applicant must certify that it "is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency," 47 CFR 1.2105(a)(2)(x); *see also* 47 CFR 1.2105(a)(2)(xi), or its application will be dismissed. 47 CFR 1.2105(b). (These rules are not affected by the proposed red light rule.) The next step in the improvement of the management of the Commission's accounts is our proposal that anyone delinquent in any non-tax debts owed to the Commission will be ineligible for or barred from receiving a license or other benefit until the delinquency has been resolved by payment in full or by the completion of satisfactory arrangements for payment. We propose to revise our regulatory and application fee rules to make it clear that we will withhold action on applications or other requests for benefits by delinquent debtors and ultimately dismiss those applications or other requests if payment of the delinquent debt is not made or other satisfactory arrangement for payment is not made. In addition, we propose to add a generally applicable rule (with some necessary exceptions, as discussed below) to be added as proposed rule 1.1910 as set forth further to withhold action on applications or other requests for benefits by debtors delinquent in debts other than application or regulatory fees, and to dismiss those applications or other requests if the delinquent debt is not paid or satisfactory arrangement for payment is not made. We invite public comment on all aspects of the proposed "red light rule" as set forth further. We specifically seek comment on whether receipt of support from the universal service support mechanisms should be considered other benefits for these purposes, particularly in light the mandatory service obligations imposed by section 254(h).

Under the proposed rule changes, the Commission will not approve any applications or other authorizations until they determine that all delinquent debt to the Commission by entities using the same taxpayer identifying number (TIN) is paid or satisfactory arrangements are made for payment. Applications include requests to waive, defer, or reduce application fees or regulatory fees under 47 CFR 1.1117 and 1.1166, and petitions or applications for review under 47 CFR 1.1117, 1.1159, and 1.1167 related to applications or other requests requiring the filing of an FRN. *See also* 31 U.S.C. 7701(c)(2) (DCIA definition of doing business with the federal government); 47 CFR 1.8002(a) (indicating anyone doing business with the Commission must obtain an FRN).

An applicant's FRN will be used to determine all delinquent debt owed attributable to all entities using the same TIN. Entities may acquire multiple FRNs. However, only delinquent debt attributable to the same TIN will trigger our proposed red light rule. By delinquent debt we mean a claim or debt which has not been paid by the date specified in the initial written demand for payment, applicable agreement, instrument, or Commission rule or rules, unless other satisfactory payment arrangements have been made by that date, or, at any time thereafter, the debtor has failed to satisfy an obligation under a payment agreement or instrument with the agency, or pursuant to a Commission rule. *See* proposed 47 CFR 1.1901(j). *See also* 31 CFR 900.2(b) ("a debt is "delinquent" if it has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including post-delinquency payment agreement), unless other satisfactory payment arrangements have been made."). We note that pursuant to section 504(c) of the Communications Act, as amended, 47 U.S.C. 504(c), we do not treat monetary forfeitures imposed after issuance of a notice of apparent liability as debts owed to the United States until the forfeiture had been partially paid or a court of competent jurisdiction has ordered payment of the forfeiture and such order is final. We propose that if a timely challenge has been filed either to the existence of or the amount of a debt, that debt will not be considered delinquent for purposes of the red light rule. *Cf.* 47 CFR 285.13(d)(2)(iii) (a debt is not delinquent for purposes of the denial of financial assistance to delinquent debtors under 31 U.S.C. 3720B if it is subject to time-filed administrative or judicial challenge). For purposes of Part 1, Subpart O only, an installment payment under 47 CFR 1.2110(g) will not be considered delinquent until the expiration of all applicable grace periods and any other applicable periods under Commission rules to make the payment due. The rules set forth in this subpart in no way affect the Commission's rules on default or automatic license cancellation as may be amended. All Commission electronic systems will be linked with RAMIS, which will check the FRN provided on the filing for eligibility-based fee sufficiency and the existence of any non-tax delinquent debt. All FRNs provided with a filing will be checked for delinquent debt, and the delinquency of any entity covered by the same TIN will trigger this proposed rule.

We propose to withhold action on applications or other requests for benefits until delinquent debts have been resolved. The delinquent debtor will be notified that a fee and delinquent debt check revealed either a fee insufficiency or delinquent debt that must be resolved within 30 days of the notification. This resolution period is not intended to restrict our exercise of any right to recover or collect amounts due to the Commission. In no case would an application or other request for benefit be granted until the delinquent debt issue has been resolved. If the delinquency has not been resolved within 30 days of the date of the notification letter, we propose that the application or request for authorization will be dismissed.

Exceptions to the "Red Light" Rule. Several unique situations may require exceptions to the general rule. We invite comment on the exceptions proposed and whether there are any other special circumstances requiring departure from our general proposed rule.

We previously made exceptions for providing the FRN in the case of emergency authorizations and emergency special temporary authorities (STAs). We believe a similar adjustment is necessary here. Thus, we propose that emergency authorizations and STA applications involving safety of life or property, including national security emergencies, will not be subject to the red-light rule. Such applications should include the FRN. We propose that we will, however, examine any subsequent applications for regular authority in place of the emergency authorization or STA to determine if the applicant is a delinquent debtor, and will not grant such applications until such delinquencies are resolved.

Certain sections of the Communications Act contain congressionally mandated deadlines. *See* 47 U.S.C. 271(d)(3) (Bell operating company interLATA applications must be decided within 90 days); 47 U.S.C. 252(e)(5) (if a state commission fails to act on an interconnection agreement, the Commission shall issue an order preempting the state commission's jurisdiction within 90 days of notice of failure of the state to act); 47 U.S.C. 405(b)(1) (Commission must act on petition for reconsideration of an order concluding a hearing under section 204(a) or 208(b)); 47 U.S.C. 208(b)(1) (Commission must issue an order concluding an investigation of lawfulness of a charge, classification, regulation, or practice within 5 months after filing of complaint); 47 U.S.C. 614(h)(C)(iv) (Commission must decide cable must carry complaints within 120 days). Other sections of the Communications Act provide that if the Commission fails to act by a set date, the Commission is deemed to have approved the action sought. *See* 47 U.S.C. 160(c) (Commission must act on petition for forbearance within one year, extendable by an additional 90 days, or petition deemed granted). In addition,

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certain sections of the Commission's rules provide that uncontested applications are granted automatically once a given period of time has passed. *See, e.g.*, 47 CFR 63.03 (a), which allows an applicant to transfer control of the domestic lines or authorization to operate on the 31st day after the date of public notice listing a domestic section 214 transfer of control application as accepted for filing as a streamline application. In these circumstances, if the applicant is found to be a delinquent debtor at the statutory or Commission imposed deadline, the application will be dismissed, consistent with the general rule. We think this result is unlikely, as we expect that most applicants will diligently check to determine whether they are delinquent in any debts owed to the Commission and resolve any such delinquencies in a timely manner. Nonetheless, dismissal of such applications for delinquencies is possible. We could alternatively adopt an exception to the general rule that would provide relief from the rule for applications involving statutory or Commission imposed deadlines. While we are not inclined to make such an exception, we seek comment on the handling of such situations. We seek comment on how we might reconcile our rule with these sections of the Communications Act or our own rules.

The proposed red light rule permits delinquent debtors to resolve the delinquency within 30 days. We propose that the 30-day resolution period would not apply to applications or requests for benefits where more restrictive rules govern treatment of delinquent debtors. For example, under existing rules auction participants must already certify that they are not delinquent in non-tax debt or their short form application will be dismissed and they will be ineligible to participate in an auction. *See* 47 CFR 1.2105(a)(2)(x) and (xi). We note, however, that the proposed red light rule would apply to subsequent applications filed by winning bidders, *e.g.*, the long-form application.

The Bankruptcy Code may require an exception to the red light rule. Section 208 of the Bankruptcy Code permits the trustee in bankruptcy to fulfill an obligation within 60 days, *see* 11 U.S.C. 108(b)(2), whereas we have proposed a 30-day period for delinquent debtors to resolve the delinquency before we will dismiss an application or other request for benefit. We seek comment on how we can reconcile the proposed rule and section 208 of the Bankruptcy Code. We also note that if we may have to examine whether section 525 of the Bankruptcy Code, 11 U.S.C. 525(a) prevents application of the red light rule when the applicant has filed for bankruptcy. In addition, we seek comment on whether any other sections of the Bankruptcy Code require modification of our proposed red light rule.

In some instances, such as tariffs, filings with the Commission go into effect immediately (or within one day), thus precluding a check to determine if the filer is a delinquent debtor before the request goes into effect. *See* 47 U.S.C. 203, 206. In the tariff situation, we have the ability to take appropriate action against a tariff after its effective date for noncompliance with any of our rules. *See* 47 U.S.C. 205. We propose to use that approach for tariffs that go into effect immediately on filing and where it is later discovered that the filer is a delinquent debtor. We propose not to apply this rule to multi-party tariffs where one party is discovered to be a delinquent debtor, as we do not wish to penalize the other parties to the tariff.

Finally, we previously noted that Freedom of Information Act (FOIA) and due diligence requests required unique treatment. FOIA requesters and due diligence requesters will not be pre-screened for delinquent debt under the proposed procedures. Our FOIA rules already address situations where FOIA requesters previously failed to pay FOIA fees. *See* 47 CFR 0.469(a)(2).

Effective Date of Red Light Rule. We propose that if we adopt the red light rule, it would apply to any applications or requests for benefits pending at the time the rule goes into effect. As noted, pending applications or requests for benefits are subject to a check for debt delinquency at any time before the request is granted. This approach is consistent with the general rule of applying regulations in effect at the time of the decision. We seek comment on the proposed application of the effective date.

As previously noted, the FRN is the key to checking for delinquent debt. The FRN became mandatory on December 3, 2001. Prior to that date, we encouraged entities doing business with the Commission to obtain and include the FRN in their filings with the Commission. While many applicants included the FRN prior to December 3, 2001, many did not. We propose that applications still pending if we ultimately adopt the red light rule that were filed prior to December 3, 2001 without an FRN will not be subject to the rule due to the administrative difficulties in checking for delinquent debt on those applications. Alternatively, we propose that parties will have 30 days from the effective date of the rule to amend those applications to include FRNs. We seek comment on whether any other exceptions to this proposed application of the rule are necessary.

Authority. We believe that ample authority exists for this proposed action under the Communications Act of 1934, as amended. *See* 47 U.S.C. 158(c)(2) and 159(c)(2) ("the Commission may dismiss any application or other filing for failure to pay in a timely manner any * * * fee or penalty under this section"); *see also* 47 U.S.C. 154(i) and 303(r). While the DCIA does not specifically prohibit the issuance of licenses or authorizations to delinquent debtors, it strongly counsels that debtors who are delinquent in payments to the government should not receive benefits from the federal government while the delinquency is outstanding. *Cf.* 31 U.S.C. 3720B (those delinquent in non-tax debt are ineligible for federal assistance in the form of a loan or loan insurance); 31 CFR 285.13(c)(1) (a person owing delinquent nontax debt is not eligible for Federal financial assistance). The FCCS rules implementing the DCIA direct the Commission to "aggressively collect all debts arising out of [our] activities," and encourage agencies to "consider suspension or revocation of licenses, permits, or other privileges for any inexcusable or willful failure of a debtor to pay such a debt in accordance with the agency's regulations or governing procedures." 31 CFR 901.6(b). Withholding action upon an application or request for authorization until delinquencies have been resolved is consistent with the intent of the DCIA and in furtherance of the Commission's implementing rules.

III. Procedural Matters and Ordering Clauses

Initial Regulatory Flexibility Certification. We hereby certify, and tentatively conclude we will be able to so certify if we adopt these rules in final form, that the rules proposed in this Notice will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The proposed amendment of our Part 1 Subpart O rules to conform to the DCIA streamline our debt collection rules reflecting the statutory language contained in the DCIA, and therefore a regulatory flexibility analysis is not required. *See* FCCS Rules, 65 FR 70395 (certifying under section 605(b) that the FCCS rules did not require a regulatory flexibility analysis). The proposed rule amendments requiring payment of delinquent debts before final action is taken on an application or other request for a federal benefit will not affect a significant number of small entities. We estimate that there are approximately 3600 debtors currently delinquent in their debt to the Commission out of approximately 406,000 entities that hold an FRN. This means that potentially only one percent of entities doing business with the Commission could be affected by this rule. Of the 3600 delinquent debtors, it is impossible to determine how many are small entities, but we can reasonably posit that less than all 3600 are small entities. Consequently, less than one percent of entities subject to this rule are small entities. Therefore, we propose to certify pursuant to 5 U.S.C. 605(b) that the "red light rule" does not require a regulatory flexibility analysis. We invite comments on our initial regulation flexibility certification.

Ex Parte Matters. This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under 1.1206(b) of the rules. 47 CFR 1.1206(b), as revised. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b)

Comment Filing. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before February 10, 2003, and reply comments on or before March 12, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. Comments and reply comments will be available for public inspection during regular business hours in the Reference Information Center (Room CY–A257) of the Federal Communications Commission, The Portals, 445—12th Street, SW., Washington, DC 20554. Copies of comments and reply comments will also be available through the Commission's duplicating contractor.

Pursuant to Sections 4(i), 8(c)(2), 9(c)(2), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 158(c)(2), 159(c)(2), and 303(r), and 5 U.S.C. 5514, this Notice of Proposed Rulemaking is hereby *adopted*.

The Commission's Consumer & Government Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Lists of Subjects in 47 CFR Part 1

Practice and procedures.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Proposed Rule Changes

Part 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The Authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309, and 325(e).

2. Section 1.1112 is amended by revising paragraph (a) introductory text and paragraph (c) to read as follows:

§ 1.1112 Conditionality of Commission or staff authorizations.

(a) Any instrument of authorization granted by the Commission, or by its staff under delegated authority, will be conditioned upon final payment of the applicable fee or delinquent fees and timely payment of bills issued by the Commission. As applied to checks, bank drafts and money orders, final payment shall mean receipt by the Treasury of funds cleared by the financial institution on which the check, bank draft or money order is drawn.

* * * * *

(c) Where an applicant is found to be delinquent in the payment of application fees, the Commission will withhold action on the application or filing made by a person or organization.

(1) Before taking such action, the staff will make a written request for the delinquent fee, together with any penalties that may be due under this subpart. Such request shall inform the applicant/filer that failure to pay or make satisfactory payment arrangements will result in the Commission's withholding action on any other application or request filed by the applicant. The staff shall also inform the applicant of the procedures for seeking Commission review of the staff's fee determination.

(2) If, after final determination that the fee is due or is delinquent, and payment is not made in a timely manner, the staff will withhold action on the application or filing until payment or other satisfactory arrangement is made. If payment or satisfactory arrangement is not made within 30 days, the application will be dismissed.

3. Section 1.1116 is amended by revising paragraph (a) introductory text,

paragraph (b) and by adding paragraph (d) to read as follows:

§ 1.1116 Penalty for late or insufficient payments.

(a) Filings subject to fees and accompanied by defective fee submissions will be dismissed under § 1.1108 (b) of this subpart where the defect is discovered by the Commission's staff within 30 calendar days from the receipt of the application or filing by the Commission. Filings by delinquent debtors will also be dismissed if the delinquent debt is not paid or satisfactory arrangements made. See 47 CFR 1.1910.

* * * * *

(b) Applications or filings accompanied by insufficient fees or no fees, or where such applications or filings are made by persons or organizations that are delinquent in fees owed to the Commission, that are inadvertently forwarded to Commission staff for substantive review will be billed for the amount due if the discrepancy is not discovered until after 30 calendar days from the receipt of the application or filing by the Commission. Applications or filings that are accompanied by insufficient fees or no fees will have a penalty charge equaling 25 percent of the amount due added to each bill. Any Commission action taken prior to timely payment of these charges is contingent and subject to recission.

* * * * *

(d) Failure to submit fees, following notice to the applicant of failure to submit the required fee, is subject to collection of the fee, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to the provisions of the Debt Collection Act, 31 U.S.C. 3717 and 3720A. See 47 CFR 1.1901 through 1.1952. The debt collection processes described above may proceed concurrently with any other sanction in this paragraph.

4. Section 1.1118 is amended by revising paragraph (a) to read as follows:

§ 1.1118 Error claims.

(a) Applicants who wish to challenge a staff determination of an insufficient fee or delinquent debt may do so in writing. These claims should be addressed to the same location as the original submission marked "Attention Financial Operations."

* * * * *

5. Section 1.1161 is amended by revising introductory text of paragraph (a) and revising paragraph (c) to read as follows:

§ 1.1161 Conditional license grants and delegated authorizations.

(a) Grant of any application or an instrument of authorization or other filing for which a regulatory fee is required to accompany the application or filing, will be conditioned upon final payment of the current or delinquent regulatory fees. Final payment shall mean receipt by the U.S. Treasury of funds cleared by the financial institution on which the check, bank draft, money order, credit card, wire or electronic payment is drawn.

* * * * *

(c) Where an applicant is found to be delinquent in the payment of regulatory fees, the Commission will withhold action on the application or filing made by a person or organization.

(1) Before taking such action, the staff will make a written request for the fee, together with any penalties that may be rendered under this subpart. Such request shall inform the regulatee that failure to pay may result in the Commission withholding action on any application or request filed by the applicant. The staff shall also inform the regulatee of the procedures for seeking Commission review of the staff's determination.

(2) If, after final determination that the fee is due, payment is not made in a timely manner, the staff will withhold action on the application or filing until payment or other satisfactory arrangement is made. If payment or satisfactory arrangement is not made within 30 days, the application will be dismissed.

6. Section 1.1164 is amended by adding paragrapn (f)(5) as follows:

§ 1.1164 Penalties for late or insufficient regulatory fee payments.

* * * * *

(f) * * *

(5) An application or filing by a regulatee that is delinquent in its debt to the Commission is also subject to dismissal under 47 CFR 1.1910.

7. Section 1.1167 is amended by revising paragraph (a) to read as follows:

§ 1.1167 Error claims related to regulatory fees.

(a) Challenges to determinations or an insufficient regulatory fee payment or delinquent fees should be made in writing. Challenges submitted with a fee payment must be submitted to the same location as the original fee payment, marked "Attention: Fee Supervisor". Challenges not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

* * * * *

8. Subpart O of Part 1 is revised to read as follows:

Subpart O—Collection of Claims Owed the United States

General Provisions

1.1901 Definitions and construction.
1.1902 Exceptions.
1.1903 Use of procedures.
1.1904 Conformance to law and regulations.
1.1905 Other procedures; collection of forfeiture penalties.
1.1906 Informal action.
1.1907 Return of property or collateral.
1.1908 Omissions not a defense.
1.1909 [Reserved]
1.1910 Effect of insufficient fee payments or delinquent debts, or debarment.

Administrative Offset—Consumer Reporting Agencies—Contracting for Collection

1.1911 Demand for payment.
1.1912 Collection by administrative offset.
1.1913 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.
1.1914 Collection in installments.
1.1915 Exploration of compromise.
1.1916 Suspending or terminating collection action.
1.1917 Referrals to the Department of Justice.
1.1918 Use of consumer reporting agencies.
1.1919 Contracting for collection services.
1.1920–1.1924 [Reserved]

Salary Offset—Individual Debt

1.1925 Purpose.
1.1926 Scope.
1.1927 Notification.
1.1928 Hearing.
1.1929 Deduction from employee's pay.
1.1930 Liquidation from final check or recovery from other payment.
1.1931 Non-waiver of rights by payments.
1.1932 Refunds.
1.1933 Interest, penalties and administrative costs.
1.1934 Recovery when paying agency is not creditor agency.
1.1935 Obtaining the services of a hearing official.
1.1936 Administrative Wage Garnishment.
1.1937–1.1939 [Reserved]

Interest, Penalties, Administrative Costs and Other Sanctions

1.1940 Assessment.
1.1941 Exemptions.
1.1942 Other sanctions.
1.1943–1.1949 [Reserved]

Cooperation With the Internal Revenue Service

1.1950 Reporting discharged debts to the Internal Revenue Service.
1.1951 Offset against tax refunds.
1.1952 Use and disclosure of mailing addresses.

General Provisions Concerning Interagency Requests

1.1953 Interagency requests.

The authority citation for Subpart O continues to read:

Authority: 31 U.S.C. 3701; 31 U.S.C. 3711 *et seq.*; 5 U.S.C. 5514; sec. 8(1) of E.O. 11609; redesignated in sec. 2–1 of E.O. 12107; 31 CFR Parts 901–904; 5 CFR Part 550.

§ 1.1901 Definitions and construction.

For purposes of this subpart:

(a) The term *administrative offset* means withholding money payable by the United States Government to, or held by the Government for, a person, organization, or entity to satisfy a debt the person, organization, or entity owes the Government.

(b) The term *agency* means the Federal Communications Commission (Commission) (including the Universal Service Fund) or any other agency of the U.S. Government as defined by section 105 of title 5 U.S.C., the U.S. Postal Service, the U.S. Postal Rate Commission, a military department as defined by section 102 of title 5 U.S.C., an agency or court of the judicial branch, or and an agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives.

(c) The term *agency head* means the Chairman of the Federal Communications Commission.

(d) The term *application* includes in addition to petitions and applications elsewhere defined in the Commission's rules, any request, as for assistance, relief, declaratory ruling, or decision, by the Commission or on delegated authority.

(e) The terms *appropriate agency official* or "designee" means the Managing Director of the Commission or such other official as may be designated by the Managing Director to act in his behalf on this matter.

(f) The terms *claim* and *debt* are deemed synonymous and interchangeable. They refer to an amount of money, funds, or property that has been determined by an agency official to be due to the United States from any person, organization, or entity, except another federal agency. For purposes of administrative offset under 31 U.S.C. 3716, the terms "claim" and "debt" include an amount of money, funds, or property owed by a person to a State, the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico. "Claim" and "debt" include amounts owing to the United States on account of extension of credit or loans made by, insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, taxes, and forfeitures issues after notice of apparent liability that have been partially paid or for which a court of competent jurisdiction has order payment and such order is final (except those arising under the Uniform Code of Military Justice), and other similar sources.

(g) The term *creditor agency* means the agency to which the debt is owed.

(h) The term *debt collection center* means an agency of a unit or subagency within an agency that has been designated by the Secretary of the Treasury to collect debt owed to the United States. The Financial Management Service (FMS), Fiscal Service, United States Treasury, is a debt collection center.

(i) The term *demand letter* includes written letters, orders, judgments, and memoranda from the Commission or on delegated authority.

(j) The term *delinquent* means a claim or debt which has not been paid by the date specified by the agency unless other satisfactory payment arrangements have been made by that date, or, at any time thereafter, the debtor has failed to satisfy an obligation under a payment agreement or instrument with the agency, or pursuant to a Commission rule. For purposes of this subpart only, an installment payment under 47 CFR 1.2110(g) will not be considered delinquent until the expiration of all applicable grace periods and any other applicable periods under Commission rules to make the payment due. The rules set forth in this subpart in no way affect the Commission rules on default or automatic cancellation as may be amended (see 47 CFR 1.1902(f)).

(k) The term *disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. Agencies must exclude deductions described in 5 CFR 581.105(b) through (f) to determine disposable pay subject to salary offset.

(l) The term *employee* means a current employee of the Commission or of another agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserve).

(m) The term *entity* includes natural persons, legal associations, applicants, licensees, and regulatees.

(n) The term *FCCS* means the Federal Claims Collection Standards jointly issued by the Secretary of the Treasury and the Attorney General of the United States at 31 CFR Parts 900–904.

(o) The term *paying agency* means the agency employing the individual and authorizing the payment of his or her current pay.

(p) The term *referral for litigation* means referral to the Department of Justice for appropriate legal proceedings except where the Commission has the statutory authority to handle the litigation itself.

(q) The term *salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(r) The term *waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt or fee, including, but not limited to, a debt due to the United States, by an entity or an employee to an agency and as the waiver is permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 31 U.S.C. 3711, or 32 U.S.C 710, 5 U.S.C. 8346(b), or any other law.

(s) Words in the plural form shall include the singular, and vice-versa, and words signifying the masculine gender shall include the feminine, and vice-versa. The terms *includes* and *including* do not exclude matters not listed but do include matters of the same general class.

§ 1.1902 Exceptions.

(a) Claims arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 shall be determined, collected, compromised, terminated or settled in accordance with regulations published under the authority of 31 U.S.C. 3726 (*see* 41 CFR Part 101–41).

(b) Claims arising out of acquisition contracts subject to the Federal Acquisition Regulations (FAR) shall be determined, collected, compromised, terminated, or settled in accordance with those regulations. (*See* 48 CFR Part 32). If not otherwise provided for in the FAR, contract claims that have been the subject of a contracting officer's final decision in accordance with section 6(a) of the Contract Disputes Act of 1978 (41 U.S.C. 605(a)), may be determined, collected, compromised, terminated or settled under the provisions of this regulation, except that no additional review of the debt shall be granted beyond that provided by the contracting officer in accordance with the provisions of section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605), and the amount of any interest, administrative charge, or penalty charge shall be subject to the limitations, if any,

contained in the contract out of which the claim arose.

(c) Claims based in whole or in part on conduct in violation of the antitrust laws, or in regard to which there is an indication of fraud, the presentation of a false claim, or a misrepresentation on the part of the debtor or any other party having an interest in the claim, shall be referred to the Department of Justice (DOJ) as only the DOJ has authority to compromise, suspend, or terminate collection action on such claims. The standards in the FCCS relating to the administrative collection of claims do apply, but only to the extent authorized by the Department of Justice in a particular case. Upon identification of a claim based in whole or in part on conduct in violation of the antitrust laws or any claim involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, the Commission shall promptly refer the case to the Department of Justice for action. At its discretion, the Department of Justice may return the claim to the forwarding agency for further handling in accordance with the standards in the FCCS.

(d) Tax claims are excluded from the coverage of this regulation.

(e) The Commission will attempt to resolve interagency claims by negotiation in accordance with Executive Order 12146 (3 CFR, 1980 Comp., pp. 409–412).

(f) Nothing in this subpart shall supercede or invalidate other Commission rules, such as the Part 1 general competitive bidding rules (47 CFR Part 1, Subpart Q) or the service specific competitive bidding rules, as may be amended, regarding the Commission's rights, including but not limited to the Commission's right to cancel a license or authorization, obtain judgment, or collect interest, penalties, and administrative costs.

§ 1.1903 Use of procedures.

Procedures authorized by this regulation (including, but not limited to, disclosure to a consumer reporting agency, contracting for collection services, administrative offset and salary offset) may be used singly or in combination, so long as the requirements of applicable law and regulation are satisfied.

§ 1.1904 Conformance to law and regulations.

The requirements of applicable law (31 U.S.C. 3701–3719, as amended by Public Law 97–365, 96 Stat. 1749 and Public Law 104–134, 110 Stat. 1321, 1358) have been implemented in governmentwide standards which include the Regulations of the Office of Personnel Management (5 CFR Part 550) and the Federal Claims Collection Standards issued jointly by the Secretary of the Treasury and the Attorney General of the United States (31 CFR Parts 900–904). Not every item in the above-described standards has been incorporated or referenced in this regulation. To the extent, however, that circumstances arise which are not covered by the terms stated in these regulations, the Commission will proceed in any actions taken in accordance with applicable requirements found in the standards referred to in this section.

§ 1.1905 Other procedures; collection of forfeitures.

Nothing contained in these regulations is intended to require the Commission to duplicate administrative or other proceedings required by contract or other laws or regulations, nor do these regulations supercede procedures permitted or required by other statutes or regulations. In particular, the assessment and collection of monetary forfeitures imposed by the Commission will be governed initially by the procedures prescribed by 47 U.S.C. 503, 504 and 47 CFR 1.80. After compliance with those procedures, the Commission may determine that the collection of a monetary forfeiture under the collection alternatives prescribed by this subpart is appropriate but need not duplicate administrative or other proceedings. Fees and penalties prescribed by law, *e.g.*, 47 U.S.C. 158 and 159, and promulgated under the authority of 47 U.S.C. 309(j) (*e.g.*, 47 CFR Part 1, Subpart Q) may be collected as permitted by applicable law. Nothing contained herein is intended to restrict the Commission from exercising any other right to recover or collect amounts owed to it.

§ 1.1906 Informal action.

Nothing contained in these regulations is intended to preclude utilization of informal administrative actions or remedies which may be available (including, *e.g.*, Alternative Dispute Resolution), and/or for the Commission to exercise rights as agreed to among the parties in written agreements, including notes and security agreements.

§ 1.1907 Return of property or collateral.

Nothing contained in this regulation is intended to deter the Commission from exercising any other right under law or regulation or by agreement it may have or possess, or to exercise its authority and right as a regulator under the Communications Act of 1934, as amended, and the Commission's rules, and demanding the return of specific property or from demanding, as a non-exclusive alternative, either the return of property or the payment of its value or the amount due the United States under any agreement or Commission rule.

§ 1.1908 Omissions not a defense.

The failure or omission of the Commission to comply with any provision in this regulation shall not serve as a defense to any debtor.

§ 1.1909 [Reserved]

§ 1.1910 Effect of insufficient fee payments, delinquent debts, or debarment.

(a)(1) An application (including a petition for reconsideration or any application for review of a fee determination) or request for authorization subject to the FCC Registration Number (FRN) requirement set forth in subpart W of this chapter will be examined to determine if the applicant has paid the appropriate fee, appropriate regulatory fees, is delinquent in its debts owed the Commission, or is debarred from receiving Federal benefits (see, *e.g.*, 31 CFR 285.13; 47 CFR Part 1, Subpart P).

(2) Fee payments, delinquent debt, and debarment will be examined based on the entity's taxpayer identifying number (TIN), supplied when the entity acquired or was assigned an FRN. See 47 CFR 1.8002(b)(1).

(b)(1) Applications by any entity found not to have paid the proper application or regulatory fee will be handled pursuant to the rules set forth in 47 CFR Part 1, Subpart G.

(2) Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission (see paragraph 1.1901(g)), unless otherwise provided for in this regulation, *e.g.*, 47 CFR 1.1928 (employee petition for a hearing). The entity will be informed that action will be withheld on the application until full payment or arrangement to pay any non-tax delinquent debt owed to the Commission is made. Any Commission action taken prior to the payment of delinquent non-tax debt owed to the Commission is contingent and subject to recission. Failure to make payment on any delinquent debt is subject to collection of the debt, including interest thereon, any associated penalties, and

the full cost of collection to the Federal government pursuant to the provisions of the Debt Collection Improvement Act, 31 U.S.C. 3717.

(3) If a delinquency has not been resolved within 30 days of the date of the notice provided pursuant to paragraph (b)(2) of this section, the application or request for authorization will be dismissed.

(4) The provisions of paragraphs (b)(2) and (b)(3) of this section will not apply if the applicant has timely filed a challenge through an adminstrative appeal or a contested judicial proceeding either to the existence or amount of the non-tax delinquent debt owed to the Commission.

(5) The provisions of paragraphs (b)(2) and (b)(3) of this section will not apply where more restrictive rules govern treatment of delinquent debtors, such as 47 CFR 1.2105(a)(2)(x) and (xi).

(c) Applications, emergency applications or special temporary authority involving safety of life or property (including national security emergencies), will not be subject to the provisions of paragraphs (a) and (b) of this section. However, paragraphs (a) and (b) will be applied to permanent authorizations for these services.

§ 1.1911 Demand for payment.

(a) Written demand as described in paragraph (b) of this section, and which may be in the form of a letter, order, memorandum, or other form of written communication, will be made promptly upon a debtor of the United States in terms that inform the debtor of the consequences of failing to cooperate to resolve the debt. The specific content, timing, and number of demand letters depend upon the type and amount of the debt, including, *e.g.*, any notes and the terms of agreements of the parties, and the debtor's response, if any, to the Commission's letters or telephone calls. Generally, one demand letter should suffice. In determining the timing of the demand letter(s), the Commission will give due regard to the need to refer debts promptly to the Department of Justice for litigation, in accordance with the FCCS. When necessary to protect the Government's interest (for example, to prevent the running of a statute of limitations), written demand may be preceded by other appropriate actions under the FCCS, including immediate referral for litigation. Nothing contained herein is intended to limit the Commission's authority or discretion as may otherwise be permitted to collect debts owed.

(b) Demand letters will inform the debtor of:

(1) The basis for the indebtedness and the rights, if any, of the debtor to request review within the Commission;

(2) The applicable standards for assessing any interest, penalties, and administrative costs (§§ 1.1940 and 1.1941);

(3) The date by which payment is to be made to avoid late charges and enforced collection, which normally will not be more than 30 days from the date that the initial demand letter was mailed or hand-delivered; and

(4) The name, address, and phone number of a contact person or office within the Commission.

(c) The Commission will expend all reasonable effort to ensure that demand letters are mailed or hand-delivered on the same day that they are dated. Exigent circumstances may necessitate other forms of delivery, including, *e.g.*, facsimile telecopier or electronic mail. There is no prescribed format for demand letters. The Commission utilizes demand letters and procedures that will lead to the earliest practicable determination of whether the debt can be resolved administratively or must be referred for litigation.

(d) The Commission may, as circumstances and the nature of the debt permit, include in demand letters such items as the Commission's willingness to discuss alternative methods of payment; its policies with respect to the use of credit bureaus, debt collection centers, and collection agencies; the Commission's remedies to enforce payment of the debt (including assessment of interest, administrative costs and penalties, administrative garnishment, the use of collection agencies, Federal salary offset, tax refund offset, administrative offset, and litigation); the requirement that any debt delinquent for more than 180 days be transferred to the Department of the Treasury for collection; and, depending on applicable statutory authority, the debtor's entitlement to consideration of a waiver.

(e) The Commission will respond promptly to communications from the debtor, within 30 days whenever feasible, and will advise debtors who dispute the debt that they must furnish available evidence to support their contentions.

(f) If, either prior to the initiation of, at any time during, or after completion of the demand cycle, the Commission determines to pursue administrative offset, then the procedures specified in §§ 1.1912 and 1.1913, as applicable, will be followed. The availability of funds for offset and the Commission's determination to pursue that remedy, release the Commission from the necessity of further compliance with paragraphs (a), (b), (c) and (d) of this section.

(g) Prior to the initiation of the demand process or at any time during or after completion of the demand process, if the Commission determines to pursue, or is required to pursue, offset, the procedures applicable to offset in §§ 1.1912 and 1.1913, as applicable, will be followed. The availability of funds or money for debt satisfaction by offset and the Commission's determination to pursue collection by offset shall release the Commission from the necessity of further compliance with paragraphs (a), (b), (c), and (d) of this section.

(h) Prior to referring a debt for litigation, the Commission will advise each person determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification will follow the requirements of Executive Order 12988 (3 CFR, 1996 Comp., pp. 157–163) and may be given as part of a demand letter under paragraph (b) of this section or in a separate document. Litigation counsel for the Government will be advised that this notice has been given.

(i) When the Commission learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the Commission may immediately seek legal advice from its counsel concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless the Commission determines that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor should stop immediately.

(1) After seeking legal advice, a proof of claim will be filed in most cases with the bankruptcy court or the Trustee. The Commission will refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If the Commission is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(3) Offset is stayed in most cases by the automatic stay. However, the Commission will determine from its counsel whether it's payments to the debtor and payments of other agencies available for offset may be frozen by the Commission until relief from the automatic stay can be obtained from the bankruptcy court. The Commission will

also determine from its counsel whether recoupment is available.

§ 1.1912 Collection by administrative offset.

(a) *Scope.* (1) The term *administrative offset* has the meaning provided in § 1.1901.

(2) This section does not apply to:

(i) Debts arising under the Social Security Act, except as provided in 42 U.S.C. 404;

(ii) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c) (see 31 CFR 285.4, Federal Benefit Offset);

(iii) Debts arising under, or payments made under, the Internal Revenue Code (see 31 CFR 285.2, Tax Refund Offset) or the tariff laws of the United States;

(iv) Offsets against Federal salaries to the extent these standards are inconsistent with regulations published to implement such offsets under 5 U.S.C. 5514 and 31 U.S.C. 3716 (see 5 CFR part 550, subpart K, and 31 CFR 285.7, Federal Salary Offset);

(v) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;

(vi) Offsets or recoupments under common law, State law, or Federal statutes specifically prohibiting offsets or recoupments of particular types of debts; or

(vii) Offsets in the course of judicial proceedings, including bankruptcy.

(3) Unless otherwise provided for by contract or law, debts or payments that are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

(4) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be conducted more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. This limitation does not apply to debts reduced to a judgment.

(5) In bankruptcy cases, the Commission will seek legal advice from its counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362, and 553, on pending or contemplated collections by offset.

(b) *Mandatory centralized administrative offset.* (1) The Commission is required to refer past due, legally enforceable nontax debts which are over 180 days delinquent to the Treasury for collection by centralized administrative offset. Debts which are less than 180 days delinquent also may be referred to the Treasury for this purpose. *See* FCCS for debt certification requirements.

(2) The names and taxpayer identifying numbers (TINs) of debtors who owe debts referred to the Treasury as described in paragraph (b)(1) of this section shall be compared to the names and TINs on payments to be made by Federal disbursing officials. Federal disbursing officials include disbursing officials of Treasury, the Department of Defense, the United States Postal Service, other Government corporations, and disbursing officials of the United States designated by the Treasury. When the name and TIN of a debtor match the name and TIN of a payee and all other requirements for offset have been met, the payment will be offset to satisfy the debt.

(3) Federal disbursing officials will notify the debtor/payee in writing that an offset has occurred to satisfy, in part or in full, a past due, legally enforceable delinquent debt. The notice shall include a description of the type and amount of the payment from which the offset was taken, the amount of offset that was taken, the identity of the creditor agency requesting the offset, and a contact point within the creditor agency who will respond to questions regarding the offset.

(4)(i) Before referring a delinquent debt to the Treasury for administrative offset, and subject to any agreement and/or waiver to the contrary by the debtor, the Commission shall ensure that offsets are initiated only after the debtor:

(A) Has been sent written notice of the type and amount of the debt, the intention of the Commission to use administrative offset to collect the debt, and an explanation of the debtor's rights under 31 U.S.C. 3716; and

(B) The debtor has been given:

(1) The opportunity, unless otherwise waived by the debtor, to inspect and copy Commission records related to the debt;

(2) The opportunity, unless otherwise waived by the debtor, for a review within the Commission of the determination of indebtedness; and

(3) The opportunity to make a written agreement to repay the debt.

(ii) The Commission may omit the procedures set forth in paragraph (a)(4)(i) of this section when:

(A) The offset is in the nature of a recoupment;

(B) The debt arises under a contract as set forth in *Cecile Industries, Inc.* v. *Cheney*, 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act); or

(C) In the case of non-centralized administrative offsets conducted under paragraph (c) of this section, the Commission first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, the Commission shall give the debtor such notice and an opportunity for review as soon as practicable and shall promptly refund any money ultimately found not to have been owed to the Government.

(iii) When the Commission previously has given a debtor any of the required notice and review opportunities with respect to a particular debt (see 31 CFR 901.2), the Commission need not duplicate such notice and review opportunities before administrative offset may be initiated.

(5) Before the Commission refers delinquent debts to the Treasury, OMD must certify, in a form acceptable to the Treasury, that:

(i) The debt(s) is (are) past due and legally enforceable; and

(ii) The Commission has complied with all due process requirements under 31 U.S.C. 3716(a) and its regulations.

(6) Payments that are prohibited by law from being offset are exempt from centralized administrative offset. The Treasury shall exempt payments under means-tested programs from centralized administrative offset when requested in writing by the head of the payment certifying or authorizing agency. Also, the Treasury may exempt other classes of payments from centralized offset upon the written request of the head of the payment certifying or authorizing agency.

(7) Benefit payments made under the Social Security Act (42 U.S.C. 301 *et seq.*), part B of the Black Lung Benefits Act (30 U.S.C. 921 *et seq.*), and any law administered by the Railroad Retirement Board (other than tier 2 benefits), may be offset only in accordance with Treasury regulations, issued in consultation with the Social Security Administration, the Railroad Retirement Board, and the Office of Management and Budget. See 31 CFR 285.4.

(8) In accordance with 31 U.S.C. 3716(f), the Treasury may waive the provisions of the Computer Matching and Privacy Protection Act of 1988 concerning matching agreements and post-match notification and verification (5 U.S.C. 552a(o) and (p)) for centralized administrative offset upon receipt of a certification from a creditor agency that the due process requirements enumerated in 31 U.S.C. 3716(a) have been met. The certification of a debt in accordance with paragraph (b)(5) of this section will satisfy this requirement. If such a waiver is granted, only the Data Integrity Board of the Department of the Treasury is required to oversee any matching activities, in accordance with 31 U.S.C. 3716(g). This waiver authority does not apply to offsets conducted under paragraphs (c) and (d) of this section.

(c) *Non-centralized administrative offset.* (1) Generally, non-centralized administrative offsets are ad hoc case-by-case offsets that the Commission conducts, at the Commission's discretion, internally or in cooperation with the agency certifying or authorizing payments to the debtor. Unless otherwise prohibited by law, when centralized administrative offset is not available or appropriate, past due, legally enforceable nontax delinquent debts may be collected through non-centralized administrative offset. In these cases, a creditor agency may make a request directly to a payment-authorizing agency to offset a payment due a debtor to collect a delinquent debt. For example, it may be appropriate for a creditor agency to request that the Office of Personnel Management (OPM) offset a Federal employee's lump-sum payment upon leaving Government service to satisfy an unpaid advance.

(2) The Commission will make reasonable effort to ensure that such offsets may occur only after:

(i) The debtor has been provided due process as set forth in paragraph (b)(4) of this section (subject to any waiver by the debtor); and

(ii) The payment authorizing agency has received written certification from the Commission that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that the creditor agency has fully complied with its regulations concerning administrative offset.

(3) Payment authorizing agencies shall comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to the program of the payment authorizing agency, or would otherwise be contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset.

(4)When collecting multiple debts by non-centralized administrative offset, agencies should apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

§ 1.1913 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

Upon providing OPM written certification that a debtor has been afforded the procedures provided in § 1.1912(b)(4), the Commission may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801–831.1808. Upon receipt of such a request, OPM will identify and "flag" a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in paragraph 1.1914(a)(4).

§ 1.1914 Collection in installments.

(a) Whenever feasible, the Commission shall collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, the Commission may accept payment in regular installments. The Commission will obtain financial statements from debtors who represent that they are unable to pay in one lump sum and independently verify such representations whenever possible (see 31 CFR 902.2(g)). The Commission will require and obtain a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement and that contains a provision accelerating the debt in the event of default.

(b) The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments will be sufficient in size and frequency to liquidate the debt in three years or less.

(c) Security for deferred payments will be obtained in appropriate cases. The Commission may accept installment payments notwithstanding the refusal of the debtor to execute a written agreement or to give security, at the Commission's option.

(d) The Commission may deny the extension of credit to any debtor who fails to provide the records requested or fails to show an ability to pay the debt.

§ 1.1915 Exploration of compromise.

The Commission may attempt to effect compromise, preferably during the course of personal interviews, in accordance with the standards set forth in Part 902 of the Federal Claims Collection Standards (31 CFR Part 902). The Commission will also consider a request submitted by the debtor to compromise the debt. Such requests should be submitted in writing with full justification of the offer and addressing the bases for compromise at 31 CFR 902.2. Debtors will provide full financial information to support any request for compromise based on the debtor's inability to pay the debt. Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds $100,000 or any higher amount authorized by the Attorney General, the authority to accept the compromise rests with the Department of Justice. The Commission will evaluate an offer, using the factors set forth in 31 CFR 902.2 and, as appropriate, refer the offer with the appropriate financial information to the Department of Justice. Department of Justice approval is not required if the Commission rejects a compromise offer.

§ 1.1916 Suspending or terminating collection action.

The suspension or termination of collection action shall be made in accordance with the standards set forth in Part 903 of the Federal Claims Collection Standards (31 CFR Part 903).

§ 1.1917 Referrals to the Department of Justice and transfer of delinquent debt to the Secretary of Treasury.

(a) Referrals to the Department of Justice shall be made in accordance with the standards set forth in Part 904 of the Federal Claims Collection Standards (31 CFR Part 904).

(b) The DCIA includes separate provisions governing the requirements that the Commission transfer delinquent debts to Treasury for general collection purposes (cross-servicing) in accordance with 31 U.S.C. 3711(g)(1) and (2), and notify Treasury of delinquent debts for the purpose of administrative offset in accordance with 31 U.S.C. 3716(c)(6). Title 31, United States Code Section 3711(g)(1) requires the Commission to transfer to Treasury all collection activity for a given debt. Under section 3711(g), Treasury will use all appropriate debt collection tools to collect the debt, including referral to a designated debt collection center or private collection agency, and

administrative offset. Once a debt has been transferred to Treasury pursuant to the procedures at 31 CFR 285.12, the Commission will cease all collection activity related to that debt.

(c) All non-tax debts of claims owed to the Commission that have been delinquent for a period of 180 days shall be transferred to the Secretary of the Treasury; and, upon such transfer the Secretary of the Treasury shall take appropriate action to collect or terminate collection actions on the debt or claim. A debt is considered delinquent for purposes of this section it is 180 days past due and is legally enforceable. A debt is past-due if it has not been paid by the date specified in the Commission's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made.

§ 1.1918 Use of consumer reporting agencies.

(a) The term *individual* means a natural person, and the term "consumer reporting agency" has the meaning provided in the Federal Claims Collection Act, as amended, 31 U.S.C. 3701(a)(3) or the Fair Credit Reporting Act, 15 U.S.C. 168a(f).

(b) The Commission may disclose to a consumer reporting agency, or provide information to the Treasury who may disclose to a consumer reporting agency from a system of records, information that an individual is responsible for a claim. System information includes, for example, name, taxpayer identification number, business and home address, business and home telephone numbers, the amount of the debt, the amount of unpaid principle, the late period, and the payment history. Before the Commission reports the information, it will;

(1) Provide notice required by section 5 U.S.C. 552a(e)(4) that information in the system may be disclosed to a consumer reporting agency;

(2) Review the claim to determine that it is valid and overdue;

(3) Make reasonable efforts using information provided by the debtor in Commission files to notify the debtor, unless otherwise specified under the terms of a contract or agreement—

(i) That payment of the claim is overdue;

(ii) That, within not less than 60 days from the date of the notice, the Commission intends to disclose to a consumer reporting agency that the individual is responsible for that claim;

(iii) That information in the system of records may be disclosed to the consumer reporting agency; and

(iv) That unless otherwise specified and agreed to in an agreement, contract, or by the terms of a note and/or security agreement, or that the debt arises from the nonpayment of a Commission fee, penalty, or other statutory or regulatory obligations, the individual will be provided with an explanation of the claim, and, as appropriate, procedures to dispute information in the records of the agency about the claim, and to administrative appeal or review of the claim; and

(4) Review Commission records to determine that the individual has not—

(i) Repaid or agreed to repay the claim under a written repayment plan agreed to and signed by both the individual and the Commission's representative; or, if eligible,

(ii) Filed for review of the claim under paragraph (g) of this section;

(c) The Commission shall: (1) Disclose to each consumer reporting agency to which the original disclosure was made a substantial change in the condition or amount of the claim;

(2) Verify or correct promptly information about the claim, on request of a consumer reporting agency for verification of any or all information so disclosed; and

(3) Obtain assurances from each consumer reporting agency that they are complying with all laws of the United States relating to providing consumer credit information.

(d) The Commission shall ensure that information disclosed to the consumer reporting agency is limited to—

(1) Information necessary to establish the identity of the individual, including name, address, and taxpayer identification number;

(2) The amount, status, and history of the claim; and

(3) The agency or program under which the claim arose.

(e) All accounts in excess of $100 that have been delinquent more than 31 days will normally be referred to a consumer reporting agency.

(f) Under the same provisions as described above, the Commission may disclose to a credit reporting agency, information relating to a debtor other than a natural person. Such commercial debt accounts are not covered by the Privacy Act. Moreover, commercial debt accounts are subject to the Commission's rules concerning debt obligation, including Part 1 rules related to auction debt, and the agreements of the parties.

§ 1.1919 Contracting for collection services.

(a) Subject to the provisions of paragraph (b) of this section, the Commission may contract with private collection contractors, as defined in 31 U.S.C. 3701(f), to recover delinquent debts. In that regard, the Commission:

(1) Retains the authority to resolve disputes, compromise debts, suspend or terminate collection activity, and refer debts for litigation;

(2) Restricts the private collection contractor from offering, as an incentive for payment, the opportunity to pay the debt less the private collection contractor's fee unless the Commission has granted such authority prior to the offer;

(3) Specifically requires, as a term of its contract with the private collection contractor, that the private collection contractor is subject to the Privacy Act of 1974 to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and state laws and regulations pertaining to debt collection practices, including but not limited to the Fair Debt Collection Practices Act, 15 U.S.C. 1692; and

(4) The private collection contractor is required to account for all amounts collected.

(b) Although the Commission will use government-wide debt collection contracts to obtain debt collection services provided by private collection contractors, the Commission may refer debts to private collection contractors pursuant to a contract between the Commission and the private collection contractor in those situations where the Commission is not required to transfer debt to the Secretary of the Treasury for debt collection.

(c) Agencies may fund private collection contractor in accordance with 31 U.S.C. 3718(d), or as otherwise permitted by law.

(d) The Commission may enter into contracts for locating and recovering assets of the United States, such as unclaimed assets, but it will first establish procedures that are acceptable to Treasury before entering into contracts to recover assets of the United States held by a state government or a financial institution.

(e) The Commission may enter into contracts for debtor asset and income search reports. In accordance with 31 U.S.C. 3718(d), such contracts may provide that the fee a contractor charges the Commission for such services may be payable from the amounts recovered, unless otherwise prohibited by statute. In that regard, fees for those services will be added to the amount collected and are part of the administrative collection costs passed on to the debtor. See § 1.1940.

§§ 1.1920 through 1.1924 [Reserved]

§ 1.1925 Purpose.

This section applies to individuals who are employees of the Commission and provides the standards to be followed by the Commission in implementing 5 U.S.C. 5514; sec. 8(1) of E.O. 11609; redesignated in sec. 2–1 of E.O. 12107 to recover a debt from the pay account of a Commission employee. It also establishes procedural guidelines to recover debts when the employee's creditor and paying agencies are not the same.

§ 1.1926 Scope.

(a) *Coverage.* This section applies to the Commission and employees as defined by § 1.1901.

(b) *Applicability.* This section and 5 U.S.C. 5514 apply in recovering certain debts by offset, except where the employee consents to the recovery, from the current pay account of that employee. Because it is an administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and these regulations should be consistent with the provisions of the Federal Claims Collection Standards (31 CFR Parts 900–904).

(1) *Excluded debts or claims.* The procedures contained in this section do not apply to debts or claims arising under the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*) or the tariff laws of the United States, or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.* travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(2) This section does not preclude an employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt, in the manner prescribed by the Commissioner. Similarly, this subpart does not preclude an employee from requesting waiver of the collection of a debt under any other applicable statutory authority.

(c) *Time limit.* Under 31 CFR 901.3(a)(4) offset may not be initiated more than 10 years after the Government's right to collect the debt first accrued, unless an exception applies as stated in § 901.3(a)(4).

§ 1.1927 Notification.

(a) Salary offset deductions will not be made unless the Managing Director of the Commission, or the Managing Director's designee, provides to the employee at least 30 days before any deduction, written notice stating at a minimum:

(1) The Commission's determination that a debt is owed, including the origin, nature, and amount of the debt;

(2) The Commission's intention to collect the debt by means of deduction from the employee's current disposable pay account;

(3) The frequency and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay) and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

(4) An explanation of the Commission's policy concerning interest, penalties, and administrative costs (§§ 1.1940 and 1.1941 of this regulation), a statement that such assessments must be made unless excused in accordance with the FCCS;

(5) The employee's right to inspect and copy Government records relating to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records.

(6) If not previously provided, the opportunity (under terms agreeable to the Commission) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the Managing Director (or designee) of the Commission and documented in Commission files (see the FCCS).

(7) The employee's right to a hearing conducted by an official arranged by the Commission (an administrative law judge, or alternatively, a hearing official not under the control of the head of the Commission) if a petition is filed as prescribed by this subpart.

(8) The method and time period for petitioning for a hearing;

(9) That the timely filing of a petition for hearing will stay the commencement of collection proceedings;

(10) That the final decision in the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) That any knowingly false, misleading, or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under Chapter 75 of Title 5, United States Code, Part 752 of Title 5, Code of Federal Regulations, or any other applicable statutes or regulations.

(ii) Penalties under the False Claims Act sections 3729–3731 of Title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of Title 18, United States Code, or any other applicable statutory authority.

(12) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(b) Notifications under this section shall be hand delivered with a record made of the date of delivery, or shall be mailed by certified mail, return receipt requested.

(c) No notification, hearing, written responses or final decisions under this regulation are required by the Commission for:

(1) Any adjustment to pay arising out of an employee's election of coverage, or change in coverage, under a Federal benefit program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine intra-Commission adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

§ 1.1928 Hearing.

(a) *Petition for hearing.* (1) An employee may request a hearing by filing a written petition with the Managing Director of the Commission, or designated official stating why the employee believes the determination of the Commission concerning the

existence or the amount of the debt is in error.

(2) The employee's petition must be executed under penalty of perjury by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes support his or her position.

(3) The petition must be filed no later than fifteen (15) calendar days from the date that the notification was hand delivered or the date of delivery by certified mail, return receipt requested.

(4) If a petition is received after the fifteenth (15) calendar day deadline referred to paragraph (a) (3) of this section, the Commission will nevertheless accept the petition if the employee can show, in writing, that the delay was due to circumstances beyond his or her control, or because of failure to receive notice of the time limit (unless otherwise aware of it).

(5) If a petition is not filed within the time limit specified in paragraph (a) (3) of this section, and is not accepted pursuant to paragraph (a)(4) of this section, the employee's right to hearing will be considered waived, and salary offset will be implemented by the Commission.

(b) *Type of hearing.* (1) The form and content of the hearing will be determined by the hearing official who shall be a person outside the control or authority of the Commission except that nothing herein shall be construed to prohibit the appointment of an administrative law judge by the Commission. In determining the type of hearing, the hearing officer will consider the nature and complexity of the transaction giving rise to the debt. The hearing may be conducted as an informal conference or interview, in which the Commission and employee will be given a full opportunity to present their respective positions, or as a more formal proceeding involving the presentation of evidence, arguments and written submissions.

(2) The employee may represent him or herself, or may be represented by an attorney.

(3) The hearing official shall maintain a summary record of the hearing.

(4) The decision of the hearing officer shall be in writing, and shall state:

(i) The facts purported to evidence the nature and origin of the alleged debt;

(ii) The hearing official's analysis, findings, and conclusions, in the light of the hearing, as to—

(A) The employee's and/or agency's grounds,

(B) The amount and validity of the alleged debt, and,

(C) The repayment schedule, if applicable.

(5) The decision of the hearing official shall constitute the final administrative decision of the Commission.

§ 1.1929 Deduction from employee's pay.

(a) Deduction by salary offset, from an employee's current disposable pay, shall be subject to the following conditions:

(1) Ordinarily, debts to the United States will be collected in full, in one lump sum. This will be done when funds are available for payment in one lump sum. However, if the employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments.

(2) The size of the installment deductions will bear a reasonable relationship to the size of the debt and the employee's ability to pay (*see* the FCCS). However, the installments will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount.

(3) Deduction will generally commence with the next full pay interval (ordinarily the next biweekly pay period) following the date: of the employee's written consent to salary offset, the waiver of hearing, or the decision issued by the hearing officer.

(4) Installment deductions will be prorated for a period not greater than the anticipated period of employment except as provided in § 1.1930.

§ 1.1930 Liquidation from final check or recovery from other payment.

(a) If the employee retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed, offset of the entire remaining balance of the debt may be made from a final payment of any nature, including, but not limited to a final salary payment or lump-sum leave due the employee as of the date of separation, to such extent as is necessary to liquidate the debt.

(b) If the debt cannot be liquidated by offset from a final payment, offset may be made from later payments of any kind due from the United States, including, but not limited to, the Civil Service Retirement and Disability Fund, pursuant to § 1.1913.

§ 1.1931 Non-waiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless statutory or contractual provisions provide to the contrary.

§ 1.1932 Refunds.

(a) Refunds shall promptly be made when—(1) A debt is waived or otherwise found not owing to the United States (unless expressly prohibited by statute or regulation); or

(2) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(b) Refunds do not bear interest unless required or permitted by law or contract.

§ 1.1933 Interest, penalties and administrative costs.

The assessment of interest, penalties and administrative costs shall be in accordance with §§ 1.1940 and 1.1941.

§ 1.1934 Recovery when the Commission is not creditor agency.

(a) *Responsibilities of creditor agency.* Upon completion of the procedures established under 5 U.S.C. 5514, the creditor agency must do the following:

(1) The creditor agency must certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date of the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM.

(2) If the collection must be made in installments, the creditor agency also must advise the Commission of the number of installments to be collected, the amount of each installment, and the commencement date of the first installment (if a date other than the next officially established pay period is required).

(3) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures, and the written consent or statement is forwarded to the Commission, the creditor agency also must advise the Commission of the action(s) taken under 5 U.S.C. 5514(b) and give the date(s) the action(s) was taken.

(4) Except as otherwise provided in this paragraph, the creditor agency must submit a debt claim containing the information specified in paragraphs (a)(1) through (a)(3) of this section and an installment agreement (or other instruction on the payment schedule), if applicable to the Commission.

(5) If the employee is in the process of separating, the creditor agency must

submit its claim to the Commission for collection pursuant to § 1.1930. The Commission will certify the total amount of its collection and provide copies to the creditor agency and the employee as stated in paragraph (c)(1) of this section. If the Commission is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that there has been full compliance with the provisions of this section. However, the creditor agency must submit a properly certified claim to the agency responsible for making such payments before collection can be made.

(6) If the employee is already separated and all payments from the Commission have been paid, the creditor agency may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 *et seq.*), or other similar funds, be administratively offset to collect the debt. (31 U.S.C. 3716 and 4 CFR 102.4)

(b) *Responsibilities of the Commission*—(1) *Complete claim.* When the Commission receives a properly certified debt claim from a creditor agency, deductions should be scheduled to begin prospectively at the next official established pay interval. The Commission will notify the employee that the Commission has received a certified debt claim from the creditor agency (including the amount) and written notice of the date deductions from salary will commence and of the amount of such deductions.

(2) *Incomplete claim.* When the Commission receives an incomplete debt claim from a creditor agency, the Commission will return the debt claim with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided, and a properly certified debt claim received, before action will be taken to collect from the employee's current pay account.

(3) *Review.* The Commission will not review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(c) Employees who transfer from one paying agency to another.

(1) If, after the creditor agency has submitted the debt claim to the Commission, the employee transfers to a position served by a different paying agency before the debt is collected in full, the Commission must certify the total amount of the collection made on the debt. One copy of the certification must be furnished to the employee, another to the creditor agency along with notice of employee's transfer. However, the creditor agency must submit a properly certified claim to the new paying agency before collection can be resumed.

(2) When an employee transfers to another paying agency, the creditor agency need not repeat the due process procedures described by 5 U.S.C. 5514 and this subpart to resume the collection. However, the creditor agency is responsible for reviewing the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

§ 1.1935 Obtaining the services of a hearing official.

(a) When the debtor does not work for the creditor agency and the creditor agency cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement, the creditor agency may contact an agent of the Commission designated in Appendix A of 5 CFR part 581 for a hearing official, and the Commission will then cooperate as provided by the FCCS and provide a hearing official.

(b) When the debtor works for the creditor agency, the creditor agency may contact any agent (of another agency) designated in Appendix A of 5 CFR part 581 to arrange for a hearing official. Agencies must then cooperate as required by the FCCS and provide a hearing official.

(c) The determination of a hearing official designated under this section is considered to be an official certification regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514. A creditor agency may make a certification to the Secretary of the Treasury under 31 CFR 550.1108 or a paying agency under 31 CFR 550.1109 regarding the existence and amount of the debt based on the certification of a hearing official. If a hearing official determines that a debt may not be collected via salary offset, but the creditor agency finds that the debt is still valid, the creditor agency may still seek collection of the debt through other means, such as offset of other Federal payments, litigation, etc.

§ 1.1936 Administrative wage garnishment.

(a) *Purpose.* This section provides procedures for the Commission to collect money from a debtor's disposable pay by means of administrative wage garnishment to satisfy delinquent non-tax debt owed to the United States.

(b) *Scope.* (1) This section applies to Commission-administered programs that give rise to a delinquent nontax debt owed to the United States and to the Commission's pursuit of recovery of such debt.

(2) This section shall apply notwithstanding any provision of State law.

(3) Nothing in this section precludes the compromise of a debt or the suspension or termination of collection action in accordance with applicable law. See, for example, the Federal Claims Collection Standards (FCCS), 31 CFR parts 900 through 904.

(4) The receipt of payments pursuant to this section does not preclude the Commission from pursuing other debt collection remedies, including the offset of Federal payments to satisfy delinquent nontax debt owed to the United States. The Commission may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(5) This section does not apply to the collection of delinquent nontax debt owed to the Commission from the wages of Federal employees from their Federal employment. Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514, §§ 1.1925 through 1.1935, and other applicable laws.

(6) Nothing in this section requires the Commission to duplicate notices or administrative proceedings required by contract or other laws or regulations.

(c) *Definitions.* In addition to the definitions set forth in § 1.1901 as used in this section, the following definitions shall apply:

(1) *Business day means Monday through Friday.* For purposes of computation, the last day of the period will be included unless it is a Federal legal holiday.

(2) *Certificate of service* means a certificate signed by a Commission official indicating the nature of the document to which it pertains, the date of mailing of the document, and to whom the document is being sent.

(3) *Day means calendar day.* For purposes of computation, the last day of the period will be included unless it is a Saturday, a Sunday, or a Federal legal holiday.

(4) *Disposable pay* means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction

of health insurance premiums and any amounts required by law to be withheld.

(5) *Amounts required by law to be withheld* include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

(6) *Employer* means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government.

(7) *Garnishment* means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

(8) *Withholding order* means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this section, the terms "wage garnishment order" and "garnishment order" have the same meaning as "withholding order."

(d) *General rule.* Whenever the Commission determines that a delinquent debt is owed by an individual, the Commission may initiate proceedings administratively to garnish the wages of the delinquent debtor as governed by procedures prescribed by 31 CFR 285. Wage garnishment will usually be performed for the Commission by the Treasury as part of the debt collection processes for Commission debts referred to Treasury for further collection action.

(e) *Notice requirements.* (1) At least 30 days before the initiation of garnishment proceedings, the Commission shall mail, by first class mail, to the debtor's last known address a written notice informing the debtor of:

(i) The nature and amount of the debt;

(ii) The intention of the Commission to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties and administrative costs are paid in full; and

(iii) An explanation of the debtor's rights, including those set forth in paragraph (e)(2) of this section, and the time frame within which the debtor may exercise his or her rights.

(2) The debtor shall be afforded the opportunity:

(i) To inspect and copy agency records related to the debt;

(ii) To enter into a written repayment agreement with the Commission under terms agreeable to the Commission; and

(iii) For a hearing in accordance with paragraph (f) of this section concerning the existence or the amount of the debt or the terms of the proposed repayment schedule under the garnishment order. However, the debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement under paragraph (e)(2)(ii) of this section.

(3) The Commission will keep a copy of a certificate of service indicating the date of mailing of the notice. The certificate of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

(f) *Hearing.* Pursuant to 31 CFR 285.11(f)(1), the Commission hereby adopts by reference the hearing procedures of 31 CFR 285.11(f).

(g) *Wage garnishment order.* (1) Unless the Commission receives information that the Commission believes justifies a delay or cancellation of the withholding order, the Commission will send, by first class mail, a withholding order to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing (*i.e.*, within 15 business days after the mailing of the notice described in paragraph (e)(1) of this section), or, if a timely request for a hearing is made by the debtor, within 30 days after a final decision is made by the Commission to proceed with garnishment, or as soon as reasonably possible thereafter.

(2) The withholding order sent to the employer under paragraph (g)(1) of this section shall be in a form prescribed by the Secretary of the Treasury on the Commission's letterhead and signed by the head of the Commission or his/her delegate. The order shall contain only the information necessary for the employer to comply with the withholding order, including the debtor's name, address, and social security number, as well as instructions for withholding and information as to where payments should be sent.

(3) The Commission will keep a copy of a certificate of service indicating the date of mailing of the order. The certificate of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

(h) *Certification by employer.* Along with the withholding order, the Commission shall send to the employer a certification in a form prescribed by the Secretary of the Treasury. The employer shall complete and return the certification to the Commission within the time frame prescribed in the instructions to the form addressing matters such as information about the debtor's employment status and disposable pay available for withholding.

(i) *Amounts withheld.* (1) After receipt of the garnishment order issued under this section, the employer shall deduct from all disposable pay paid to the applicable debtor during each pay period the amount of garnishment described in paragraph (i)(2) of this section.

(2) Subject to the provisions of paragraphs (i)(3) and (i)(4) of this section, the amount of garnishment shall be the lesser of:

(i) The amount indicated on the garnishment order up to 15% of the debtor's disposable pay; or

(ii) The amount set forth in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment). The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which a debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. *See* 29 CFR 870.10.

(3) When a debtor's pay is subject to withholding orders with priority the following shall apply:

(i) Unless otherwise provided by Federal law, withholding orders issued under this section shall be paid in the amounts set forth under paragraph (i)(2) of this section and shall have priority over other withholding orders which are served later in time. Notwithstanding the foregoing, withholding orders for family support shall have priority over withholding orders issued under this section.

(ii) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this section, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to the withholding order issued under this section shall be the lesser of:

(A) The amount calculated under paragraph (i)(2) of this section, or

(B) An amount equal to 25% of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(iii) If a debtor owes more than one debt to the Commission, the Commission may issue multiple withholding orders provided that the total amount garnished from the debtor's pay for such orders does not exceed the amount set forth in paragraph (i)(2) of this section. For purposes of this paragraph (i)(3)(iii), the term *agency* refers to the Commission that is owed the debt.

(4) An amount greater than that set forth in paragraphs (i)(2) and (i)(3) of this section may be withheld upon the written consent of debtor.

(5) The employer shall promptly pay to the Commission all amounts withheld in accordance with the withholding order issued pursuant to this section.

(6) An employer shall not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(7) Any assignment or allotment by an employee of his earnings shall be void to the extent it interferes with or prohibits execution of the withholding order issued under this section, except for any assignment or allotment made pursuant to a family support judgment or order.

(8) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the Commission to discontinue wage withholding. The garnishment order shall indicate a reasonable period of time within which the employer is required to commence wage withholding.

(j) *Exclusions from garnishment.* The Commission may not garnish the wages of a debtor who it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months. The debtor has the burden of informing the Commission of the circumstances surrounding an involuntary separation from employment.

(k) *Financial hardship.* (1) A debtor whose wages are subject to a wage withholding order under this section, may, at any time, request a review by the Commission of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in demonstrated financial hardship.

(2) A debtor requesting a review under paragraph (k)(1) of this section shall submit the basis for claiming that the current amount of garnishment results in demonstarted financial hardship to the debtor, along with supporting documentation. The Commission will consider any information submitted; however, demonstrated financial hardship must be based on financial records that include Federal and state tax returns, affidavits executed under the pain and penalty of perjury, and, in the case of business-related financial hardship (*e.g.*, the debtor is a partner or member of a business-agency relationship) full financial statements (audited and/or submitted under oath) in accordance with procedures and standards established by the Commission.

(3) If a financial hardship is found, the Commission will downwardly adjust, by an amount and for a period of time agreeable to the Commission, the amount garnished to reflect the debtor's financial condition. The Commission will notify the employer of any adjustments to the amounts to be withheld.

(l) *Ending garnishment.* (1) Once the Commission has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the FCCS, the Commission will send the debtor's employer notification to discontinue wage withholding.

(2) At least annually, the Commission shall review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

(m) *Actions prohibited by the employer.* An employer may not discharge, refuse to employ, or take disciplinary action against the debtor due to the issuance of a withholding order under this section.

(n) *Refunds.* (1) If a hearing official, at a hearing held pursuant to paragraph (f)(3) of this section, determines that a debt is not legally due and owing to the United States, the Commission shall promptly refund any amount collected by means of administrative wage garnishment.

(2) Unless required by Federal law or contract, refunds under this section shall not bear interest.

(o) *Right of action.* The Commission may sue any employer for any amount that the employer fails to withhold from wages owed and payable to an employee in accordance with paragraphs (g) and (i) of this section. However, a suit may not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, "termination of the collection action" occurs when the Commission has terminated collection action in accordance with the FCCS or other applicable standards. In any event, termination of the collection action will have been deemed to occur if the Commission has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in whole or in part, for a period of one (1) year.

§§ 1.1937 through 1.1939 [Reserved]

§ 1.1940 Assessment.

(a) Except as provided in paragraphs (g), (h), and (i) of this section or § 1.1941, the Commission shall charge interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717. The Commission will mail, hand-deliver, or use other forms of transmission, including facsimile telecopier service, a written notice to the debtor, at the debtor's most recent address available to the Commission, explaining the Commission's requirements concerning these charges except where these requirements are included in a contractual or repayment agreement, or otherwise provided in the Commission's rules, as may be amended from time to time. These charges shall continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges. This provision is not intended to modify to limit the terms of any contract, note, or security agreement from the debtor, or to modify or limit the Commission's rights under its rules with regard to the notice or the parties' agreement to waive notice.

(b) The Commission shall charge interest on debts owed the United States as follows:

(1) Interest shall accrue from the date of delinquency, or as otherwise provided by the terms of any contact, note, or security agreement, regulation, or law.

(2) Unless otherwise established in a contract, repayment agreement, or by statute, the rate of interest charged shall be the rate established annually by the Treasury in accordance with 31 U.S.C. 3717. Pursuant to 31 U.S.C. 3717, an agency may charge a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the rights of the United States. The agency should document the reason(s) for its determination that the higher rate is necessary.

(3) The rate of interest, as initially charged, shall remain fixed for the duration of the indebtedness. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, the agency may require payment of interest at a new rate that reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest shall not be compounded, that is, interest shall not be charged on interest, penalties, or administrative costs required by this section. If, however, a debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement shall be added to the principal under the new repayment agreement.

(c) The Commission shall assess administrative costs incurred for processing and handling delinquent

debts. The calculation of administrative costs may be based on actual costs incurred or upon estimated costs as determined by the Commission. Commission administrative costs include the personnel and service costs (e.g., telephone, copier, and overhead) to notify and collect the debt, without regard to the success of such efforts by the Commission.

(d) Unless otherwise established in a contract, repayment agreement, or by statute, the Commission will charge a penalty, pursuant to 31 U.S.C. 3717(e)(2), currently not to exceed six percent (6%) a year on the amount due on a debt that is delinquent for more than 90 days. This charge shall accrue from the date of delinquency. If the rate permitted under 31 U.S.C. 3717 is changed, the Commission will apply that rate.

(e) The Commission may increase an "administrative debt" by the cost of living adjustment in lieu of charging interest and penalties under this section. "Administrative debt" includes, but is not limited to, a debt based on fines, penalties, and overpayments, but does not include a debt based on the extension of Government credit, such as those arising from loans and loan guaranties. The cost of living adjustment is the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the debt was determined or last adjusted. Increases to administrative debts shall be computed annually. Agencies should use this alternative only when there is a legitimate reason to do so, such as when calculating interest and penalties on a debt would be extremely difficult because of the age of the debt.

(f) When a debt is paid in partial or installment payments, amounts received by the agency shall be applied first to outstanding penalties and administrative cost charges, second to accrued interest, and third to the outstanding principal.

(g) The Commission will waive the collection of interest and administrative charges imposed pursuant to this section on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. The Commission will not extend this 30-day period except for good cause shown of extraordinary and compelling circumstances, completely documented and supported in writing, submitted and received before the expiration of the first 30-day period. The Commission may, on good cause shown of extraordinary and compelling circumstances, completely documented and supported in writing, waive interest, penalties, and administrative costs charged under this section, in whole or in part, without regard to the amount of the debt, either under the criteria set forth in these standards for the compromise of debts, or if the agency determines that collection of these charges is against equity and good conscience or is not in the best interest of the United States.

(h) The Commission retains the common law right to impose interest and related charges on debts not subject to 31 U.S.C. 3717.

§ 1.1941 Exemptions.

(a) The preceding sections of this part, to the extent they reflect remedies or procedures prescribed by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, such as administrative offset, use of credit bureaus, contracting for collection agencies, and interest and related charges, do not apply to debts arising under, or payments made under, the Internal Revenue Code of 1986, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*), except to the extent provided under 42 U.S.C. 404 and 31 U.S.C. 3716(c); or the tariff laws of the United States. These remedies and procedures, however, may be authorized with respect to debts that are exempt from the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, to the extent that they are authorized under some other statute or the common law.

(b) This section should not be construed as prohibiting the use of these authorities or requirements when collecting debts owed by persons employed by agencies administering the laws cited in paragraph (a) of this section unless the debt arose under those laws. However, the Commission is authorized to assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

§ 1.1942 Other sanctions.

The remedies and sanctions available to the Commission in this subpart are not exclusive. The Commission may impose other sanctions, where permitted by law, for any inexcusable, prolonged, or repeated failure of a debtor to pay such a claim. In such cases, the Commission will provide notice, as required by law, to the debtor prior to imposition of any such sanction.

§§ 1.1943 through 1.1949 [Reserved]

§ 1.1950 Reporting discharged debts to the Internal Revenue Service.

When the Commission discharges a debt for less than the full value of the indebtedness, it will report the outstanding balance discharged, not including interest, to the Internal Revenue Service, using IRS Form 1099–C or any other form prescribed by the Service as directed by the current instructions issued by the IRS for Form 1099–C. The Treasury will prepare the Form 1099–C for those debts transferred to Treasury for collection and deemed uncollectible.

§ 1.1951 Offset against tax refunds.

The Commission will take action to effect administrative offset against tax refunds due to debtors under 26 U.S.C. 6402, in accordance with the provisions of 31 U.S.C. 3720A and Treasury Department regulations.

§ 1.1952 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt under this subpart or other authority, the Commission may send a request to the Secretary of the Treasury (or designee) to obtain a debtor's mailing address from the records of the Internal Revenue Service.

(b) The Commission is authorized to use mailing addresses obtained under paragraph (a) of this section to enforce collection of a delinquent debt and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

§ 1.1953 Interagency requests.

(a) Requests to the Commission by other Federal agencies for administrative or salary offset shall be in writing and forwarded to the Financial Operations Center, FCC, 445 12th Street, SW., Washington, DC 20554.

(b) Requests by the Commission to other Federal agencies holding funds payable to the debtor will be in writing and forwarded, certified return receipt, as specified by that agency in its regulations. If the agency's rules governing this matter are not readily available or identifiable, the request will be submitted to that agency's office of legal counsel with a request that it be processed in accordance with their internal procedures.

(c) Requests to and from the Commission shall be accompanied by a certification that the debtor owes the debt (including the amount) and that the procedures for administrative or salary offset contained in this subpart, or comparable procedures prescribed by the requesting agency, have been fully complied with. The Commission will cooperate with other agencies in effecting collection.

(d) Requests to and from the Commission shall be processed within 30 calendar days of receipt. If such processing is impractical or not feasible, notice to extend the time period for another 30 calendar days will be forwarded 10 calendar days prior to the expiration of the first 30-day period.

[FR Doc. 02–30900 Filed 12–11–02; 8:45 am]
BILLING CODE 6712–01–P

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Federal Register

Thursday,
December 12, 2002

Part VI

Department of Housing and Urban Development

Notice of Public Interest (NOPI) for the Partnership for Advancing Technology in Housing (PATH); Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4772–N–01]

Notice of Public Interest (NOPI) for the Partnership for Advancing Technology in Housing (PATH)

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of public interest.

SUMMARY: The purpose of this notice is to inform potential applicants that the Office of Policy Development and Research (PD&R) of the Department of Housing and Urban Development is interested in receiving ideas for cooperative agreements for research and activities in support of the Partnership for Advancing Technology in Housing (PATH) program. PATH is working to foster the development and use of advanced housing technologies, through partnerships between U.S. businesses and the federal government. These efforts, which improve the quality, affordability, durability, energy efficiency, and environmental performance of a home, help everyone—industry, consumers, and the environment. PATH encourages developing and adopting innovative housing components and systems, designs, and production methods as well as reducing the amount of time needed to move technologies to the market place.

ADDRESSES: Interested persons are invited to submit Summary Proposal Letters to the Department of Housing and Urban Development, Office of Policy Development and Research, 451 Seventh Street, SW., Room 8230, Washington, DC 20410, ATTENTIQN: Unsolicited Proposal (PATH)

FOR FURTHER INFORMATION CONTACT: Please submit any technical questions to: Mr. Dana Bres, P.E., Affordable Housing Research and Technology Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–4370, ext. 5919, e-mail *dana_b._bres@hud.gov*. Administrative questions should be directed to Mr. Patrick Tewey, Director, Budget, Contracts, and Program Control Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1796, ext. 4098, email *patrick_j._tewey@hud.gov*. (These numbers are not toll-free.) For hearing- and speech-impaired persons, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION

I. Background

The PATH program is led by PD&R within the Department of Housing and Urban Development (*http://www.pathnet.org*). The PATH program is seeking interest in cost-shared, industry-led research projects and other projects in support of the PATH program goals.

A. The PATH program goals are:

- Develop new housing technologies (including processes)—this includes conducting basic and applied research, development of housing technology, development of evaluation measures for housing technology, evaluation of technologies on the marketplace, and long term analysis of housing technology;
- Disseminate new and existing technological information—this includes supporting regulatory acceptance of technologies, dissemination of information on promising but underutilized technologies, demonstrations of underutilized technologies, and provision of a clearinghouse for information on housing technology; and
- Study and establish mechanisms for sustained housing technology development—this includes forecasting of research needs, identification of research, and strategic planning and operations.

To focus program efforts, PATH sponsored roadmapping sessions to identify the advances critical to furthering the use of new technologies in the residential homebuilding industry. The initial roadmapping sessions were focused on: Reducing Energy Use In Existing Buildings; Information Technology to Accelerate and Streamline the Homebuilding Process; Advanced Panelized Systems; and, Whole House Building Process Redesign. Information on these roadmaps is available on the ToolBase Web sites at *http://www.toolbase.org/roadmaps*. PATH is sponsoring a manufactured housing roadmapping process at this time. In addition, the 2001 National Academy of Sciences report on the PATH program is available at: *http://www.nap.edu/catalog/10066.html*.

B. PD&R is interested in research and dissemination projects which:

- Conduct cooperative information gathering and dissemination in the U.S. residential construction industry. The work is targeted at improving the quality of and access to advanced technological information for the U.S. residential construction industry in a non-commercial manner by identifying the most reliable sources of technical information, assessing their accuracy and bias, and providing this information in an accessible and timely manner. (highest preference)
- Specifically implement the roadmaps (including manufactured housing) through research or demonstration projects that address PATH objectives. (highest preference)
- Address the subjects of roadmaps but not specific activities identified in roadmaps. (lesser preference)
- Address all other activities that support PATH objectives as defined above. (lowest preference)

Housing technology development and research efforts identified should be related to the final stages of the Research and Development life cycle, with results that can be implemented into a new or refined product within 18 to 36 months.

C. The funding will vary as a result of available funds and other program requirements. In the past several years, an average of six cooperative agreements have been made each year with most awards in the $100,000 to $300,000 range.

II. Eligibility

PATH cooperative efforts are open for participation by all (for-profit, not-for-profit, or non-profit) housing industry or industry related organizations (or teams of organizations). PD&R encourages small businesses, minority owned firms, HUB-Zone firms, and other similar organizations to participate in this program.

Unsolicited proposals funded under this program require a minimum 25 percent match.

III. Summary Proposal Letter Submission

In order to facilitate PD&R review and to minimize preparation time and costs for the submitter, a full-fledged proposal should not be sent to PD&R initially. Instead, two copies of a brief (up to three pages) Summary Proposal Letter should be submitted. The letter should contain the following:

- The name, address, and classification (academic, private for-profit, private non-profit, governmental, etc.) of the sponsoring organization or individual;
- A brief one or two-line title;
- The specific objective of the research;
- The problems/issues being addressed;
- The relationship of the research to the PATH program goals and priorities;
- Methodology to be employed in conducting the research;
- Products to be prepared (reports, etc.) and the specific audience(s) to whom these products are directed;
- If the proposed project involves research using human subjects (other than voluntary surveys or public observation) and there is any potential for physical, social, psychological, or financial harm to the subjects, a certification must be included that an Independent Review Board has approved the research design. Provide a description of procedures and membership of the Independent Review Board and show that it conforms to or has been registered under 24 CFR part 60;
- The approximate duration of the research in calendar months;
- An estimate of the staff months of professional services required, the total project cost and the percent to be provided by the offeror (cost sharing is required, other federal funds are not eligible for cost sharing);
- Brief statement justifying how the offeror is the unique source from which the work can be obtained or, if the content and nature of the proposal is the private, sole possession of the offeror, is of direct and immediate value to the government, and cannot be obtained from alternative, nonexclusive sources.
- The name, title, and telephone number of the project manager and each senior researcher; and
- A separate one-page resume for each person named in the Summary Proposal Letter that concisely outlines his or her qualifications for performing the research and commitment to the project.

Types of projects that are not eligible for funding include:

1. Proposals having little or no research demonstration content.
2. Work not directly related to the PATH program's role and mission.
3. Proposals for operating funds, working capital, plants, information technology, or other investment.
4. Proposals that solely or principally relate to or benefit a particular individual, local group, or community (*i.e.*, proposals that do not have a primary expectation of national application or replication of results).
5. Demonstration proposals that would require major statutory changes in order for the results to be applied.
6. Proposals for support of the development of consumer, business, or proprietary products, systems, or concepts that are later to be offered for sale at a profit. (In special instances, unmet needs of high national priority—*e.g.*, energy-conservation systems for housing—may be funded, but only on a solicited, competitive, public Request for Proposals basis).
7. Proposals that duplicate or overlap current or previous work.
8. Awards of cooperative agreements may not be made in response to an Unsolicited Proposal unless the offeror is the unique source from which the work may be obtained (not just a well-qualified, or even best-qualified, source), or the content and nature of the proposal is the private, sole possession of the offeror, is of direct and immediate value to the government, and cannot be obtained from alternative, nonexclusive sources. Even if HUD is interested in funding the proposal, a market search may be conducted to determine whether there are capable, alternative sources or means by which the government may obtain the proposed product or services (care being taken not to disclose the elements of the proposal asserted to be unique).
9. Proposals that require a disproportionate share of HUD's research funds.
10. Proposals that do not meet the 25 percent cost sharing requirement.
11. Proposals that are of generally the same subject matter as a current PD&R competitive Request for Proposals (RFP) or an invitation for assistance agreement (grant or cooperative agreement) applications. The period of ineligibility will generally be from the date of the first solicitation notice in *FedBizOpps* or the **Federal Register** until ninety (90) calendar days after competitive selection and award.

Summary Proposal Letters should be addressed to: Department of Housing and Urban Development, Office of Policy Development and Research, 451 7th Street, SW, Room 8230, Washington, DC 20410, ATTENTION: Unsolicited Proposal (PATH).

IV. Policy Development and Research Review

Upon receipt the Summary Proposal Letter will be screened, using the criteria above to determine eligibility for further review. Government-wide regulations may require a market search for alternative sources. The offeror will be informed by letter of the results of this initial screening.

Those Summary Proposal Letters that pass the initial screening will be given a proposal number and assigned to the appropriate reviewer. If interest exists, the offeror may be invited to prepare a detailed proposal, the requirements of which will be spelled out in the decision letter. Receipt of an invitation from PD&R to submit a more detailed proposal does not imply that an award of a cooperative agreement for the proposed work is expected. The invitation is only an indication that the proposal is of sufficient merit to have passed preliminary review and to justify preparation by the offeror of a detailed proposal.

Dated: December 3, 2002.

Harold L. Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 02–31365 Filed 12–11–02; 8:45 am]

BILLING CODE 4210–62–P

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Federal Register

Thursday,
December 12, 2002

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Airspeed Indicating System Requirements for Transport Category Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2001–9636; Amendment No. 25–109]

RIN 2120–AH26

Airspeed Indicating System Requirements for Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the airworthiness standards for transport category airplanes concerning the airspeed indicating system. It adds airspeed indication requirements for speeds greater than and less than the speed range for which airspeed indication accuracy requirements currently apply; a requirement that airspeed indications not cause the pilot undue difficulty between the initiation of rotation and the achievement of a steady climbing condition during takeoff; and a requirement to limit the effects of airspeed lag. This amendment eliminates regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

DATES: Effective January 13, 2003.

FOR FURTHER INFORMATION CONTACT: Don Stimson, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone 425–227–1129; facsimile 425–227–1320, e-mail *don.stimson@faa.gov*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this document. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/nprm.cfm?nav=nprm* or the **Federal Register**'s Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, *http://www.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail us at *9–AWA–SBREFA@faa.gov*.

Background

What Are the Relevant Airworthiness Standards in the United States?

In the United States, Title 14, Code of Federal Regulations (CFR) part 25 contains the airworthiness standards for type certification of transport category airplanes. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the appropriate part 25 standards. These standards apply to:

- Airplanes manufactured within the U.S. for use by U.S.-registered operators; and
- Airplanes manufactured in other countries and imported to the U.S. under a bilateral airworthiness agreement.

What Are the Relevant Airworthiness Standards in Europe?

In Europe, Joint Aviation Requirements (JAR)–25 contains the airworthiness standards for type certification of transport category airplanes. The Joint Aviation Authorities (JAA) of Europe developed these standards, which are based on part 25, to provide a common set of airworthiness standards within the European aviation community. Twenty-three European countries accept airplanes type certificated to the JAR–25 standards, including airplanes manufactured in the U.S. that are type certificated to JAR–25 standards for export to Europe.

What Is "Harmonization" and How Did It Start?

Although part 25 and JAR–25 are similar, they are not identical in every respect. When airplanes are type certificated to both sets of standards, the differences between part 25 and JAR–25 can result in substantial added costs to manufacturers and operators. These added costs, however, often do not bring about an increase in safety. In many cases, part 25 and JAR–25 may contain different requirements to accomplish the same safety intent. Consequently, manufacturers are usually burdened with meeting the requirements of both sets of standards, without a corresponding increase in the level of safety.

Recognizing that a common set of standards would not only benefit the aviation industry economically, but also preserve the necessary high level of safety, the FAA and the JAA began an effort in 1988 to "harmonize" their respective aviation standards. The goal of the harmonization effort is to ensure that:

- Where possible, standards do not require domestic and foreign parties to manufacture or operate to different standards for each country involved; and
- The standards adopted are mutually acceptable to the FAA and the foreign aviation authorities.

The FAA and JAA have identified many significant regulatory differences (SRD) between the wording of part 25 and JAR–25. Both the FAA and the JAA consider "harmonization" of the two sets of standards a high priority.

What Is ARAC and What Role Does It Play in Harmonization?

After beginning the first steps towards harmonization, the FAA and JAA soon realized that traditional methods of rulemaking and accommodating different administrative procedures was neither sufficient nor adequate to make noticeable progress towards fulfilling the harmonization goal. The FAA then identified the Aviation Rulemaking Advisory Committee (ARAC) as an ideal vehicle for helping to resolve harmonization issues, and, in 1992, the FAA tasked ARAC to undertake the entire harmonization effort.

The FAA had formally established ARAC in 1991 (56 FR 2190, January 22, 1991), to provide advice and recommendations on the full range of the FAA's safety-related rulemaking activity. The FAA sought this advice to develop better rules in less overall time and using fewer FAA resources than previously needed. The committee provides the FAA firsthand information and insight from interested parties on potential new rules or revisions of existing rules.

There are 74 member organizations on the committee representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC sets up working groups to develop recommendations for resolving specific airworthiness issues. Tasks assigned to working groups are published in the **Federal Register**. Although working group meetings are not generally open to the public, the FAA invites participation in working groups from interested members of the public who have knowledge or experience in the task areas. Working groups report directly to the ARAC, and the ARAC must accept a working group proposal before ARAC presents the proposal to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures; nor is the FAA limited to the rule language "recommended" by ARAC. If the FAA accepts an ARAC recommendation, the agency continues with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package is fully disclosed in the public docket.

What Did the FAA Propose?

In Notice No. 01–05, the FAA proposed to revise § 25.1323 to add the additional airspeed system indication requirements of JAR 25.1323(c)(2), (3) and (4) (66 FR 26948, May 15, 2001).

JAR 25.1323(c)(2) and (c)(3), which the FAA proposed to adopt as a new §§ 25.1323(d) and (e), respectively, require the indicated airspeed to change perceptibly and in the same sense in certain speed regimes. The speed regimes where this requirement applies are the low speed regime from the stall warning speed to 1.3 V_S, and in the high speed regime from V_{MO} to V_{MO} + 2/3(V_{DF} − V_{MO}). At speeds below the stall warning speed and speeds above V_{MO} + 2/3(V_{DF} − V_{MO}), the indicated airspeed must not change in an incorrect sense. In other words, the indicated airspeed must not show a decrease in airspeed when the calibrated airspeed is increasing.

JAR 25.1322(c)(4), which the FAA proposed to adopt as a new § 25.1323(f), states that between the initiation of rotation and the achievement of a steady climbing condition during takeoff, there must not be an airspeed indication that would cause the pilot undue difficulty. The FAA considers an airspeed indication that would affect the average pilot's ability to maintain the intended takeoff flight path and takeoff speed profile as an airspeed indication that would cause undue difficulty. An example of such an airspeed indication would be a significant pause or variation in the rate of change in airspeed caused by the diminishing effect of the ground on the airflow pattern around the airplane as the airplane climbs away after takeoff.

In addition, a new requirement was proposed concerning airspeed lag. With the advent of electronic instruments in the cockpit, the pneumatic signals from the pitot and static sources are processed and digitized in the Air Data Computer (ADC) and then filtered and transported to the cockpit display. Data processing and filtering cause a time lag in displaying the airspeed on the cockpit display. This can be an important consideration in the airspeed indicating system calibration during ground acceleration. As stated in § 25.1323(b), the calibration for an accelerated takeoff ground run must determine the "system error," which is the relation between indicated and calibrated airspeeds. The system error is the sum of the pneumatic lag in the pressure lines, airspeed lag due to time lags in processing the data, and static source position error.

Airspeed lag, which results in airspeed indication errors when the airspeed is changing, can be a safety issue during takeoff, because the airspeed is changing rapidly. Airspeed lag may result in the pilot rotating the airplane for takeoff at a speed higher than the scheduled rotation speed, resulting in an increased takeoff distance. For an aborted takeoff, airspeed lag may result in the pilot initiating the abort at a speed higher than that used in determining the accelerate-stop distance. A new § 25.1323(g) was proposed to ensure that the effect of airspeed indicating system lag would not introduce significant indicated airspeed bias during takeoff or significant errors in takeoff or accelerate-stop distances. In general, an airspeed indication error of 3 knots or an error of 100 feet in the takeoff or accelerate-stop distances would be considered significant under § 25.1323(g).

The FAA considers adding these requirements to part 25 necessary to harmonize part 25 with JAR–25 to ensure correct indication of changes in airspeed, and to codify current FAA policy. The JAA intends to revise JAR–25 in accordance with the harmonization goal. The JAA distributed Notice of Proposed Amendment (NPA) 25F–324, "Airspeed Indicating System," for comment on January 1, 2002. The NPA proposals are expected to be included in Change 16 to JAR–25, anticipated to be published on March 1, 2003.

Adoption of this amendment is intended to benefit the public interest by standardizing the requirements, concepts, and procedures contained in the U.S. and European airworthiness standards without reducing, but potentially enhancing, the current level of safety.

What Is the Effect of the Revised Standard Relative to the Current Regulations?

The revised standard increases the level of safety relative to 14 CFR part 25 by incorporating the additional JAR requirements. The additional requirement regarding airspeed lag codifies current FAA policy.

What Is the Effect of the Revised Standard Relative to Current Industry Practice?

Since industry practice is to comply with both the FAR and the JAR, the revised standard neither adds any new or different objective to the current regulations, nor does it change the way that any current certification practice is applied. Instead, the intent of the new paragraphs is to clarify and codify the way that the FAA and JAA have traditionally applied the related rules.

What Other Options Were Considered and Why Were They Not Selected?

Various options regarding the split between rule and advisory material were discussed. The FAA considers the option chosen to best achieve the safety objective while ensuring flexibility in the means of compliance. The other options that were discussed are described below, along with the reasons for not selecting them.

The ARAC working group considered incorporating the JAR Advisory Material-Joint (ACJ) 25.1323(c)(2) and (c)(3) for the proposed speed requirements into the rule. The working group decided that adopting the JAR ACJ as the regulatory standard would be too prescriptive and would preclude the use of other means of compliance that could be found acceptable. The FAA

agrees with the working group's determination.

Another consideration was to include quantitative limits on the allowable level of airspeed bias and takeoff/accelerate-stop distance errors in the proposed airspeed lag requirement. The ARAC working group concluded, and the FAA agrees, that the "one size fits all" approach would not be appropriate because a specified speed bias may be a significant safety issue for one airplane type and not for another. Also, the FAA's ability to evaluate and approve alternative compliance approaches may be more difficult to consider if the standard consists of prescriptive, quantitative values.

Finally, the ARAC working group considered retaining the airspeed lag policy as policy only and not including it as a regulatory standard. The working group determined that this means of compliance did not have a specific regulatory standard against which it was applied. The FAA agrees with the working group's determination that a regulatory standard is necessary to assure that future certifications continue to consider airspeed lag issues.

Adopting this rule eliminates an identified SRD between the wording of part 25 and JAR–25, without affecting currently accepted industry design practices. The FAA expects more consistent interpretations of the rules and improved relations between regulatory authorities by eliminating this SRD.

Is Existing FAA Advisory Material Adequate?

The FAA plans to revise Advisory Circular (AC) 25–7A, "Flight Test Guide for Certification of Transport Category Airplanes," to identify an acceptable means of compliance with the JAR requirements that have been added to § 25.1323(c). The revision will add the means of compliance currently accepted by the JAA as one acceptable means of showing compliance with these requirements. The FAA plans to incorporate the changes in the next update of AC 25–7A.

AC 25–7A already contains adequate advisory material concerning the airspeed lag issue. Accordingly, no revision is required to the AC to address the airspeed lag issue.

What Comments Were Received in Response to the Proposal?

Two commenters responded to the request for comments in Notice No. 01–05. Both agree not only with the proposal, but also with the goal of harmonization to reduce the differences between part 25 and JAR–25. One of the commenters provided additional specific comments, as discussed below.

The commenter notes that the proposed rule harmonizes § 25.1323 at JAR–25 Change 14, Orange Paper 96/1, and states that in order for harmonization to be fully achieved, the rule should have been harmonized with Change 15.

The FAA agrees. As noted in the preamble of Notice No. 01–05, harmonization with JAR–25 Change 15 depended on separate FAA rulemaking that was underway at that time. The other rulemaking has now been completed, having been adopted as Amendment 108 to part 25. Therefore, the term "1.3 V_S" in § 25.1323(d) has been changed to "1.23 V_{SR}" in this final rule to conform to the reference stall speed basis adopted by Amendment 108. Similar speed references in § 25.1323(c) were revised accordingly by Amendment 108.

The commenter also points out that the preamble to Notice No. 01–05 contains an incorrect reference to a speed of "2/3 ($V_{DF} - V_{MO}$); this should be "$V_{MO} + 2/3 (V_{DF} - V_{MO})$." The FAA concurs and the comment is duly noted.

What Regulatory Analyses and Assessments Has the FAA Conducted?

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify its costs. Our assessment of this amendment indicates that its economic impact is minimal. Since its costs and benefits do not make it a "significant regulatory action" as defined in the Order, we have not prepared a "regulatory impact analysis." Similarly, we have not prepared a "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemaking proposals under the DOT Regulatory and Policies and Procedures. We do not need to do the latter analysis where the economic impact of a proposal is minimal.

Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Agreements Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined that this rule:

- Has benefits that do justify its costs, is not a "significant regulatory action" as defined in the Executive Order, and is not "significant" as defined in DOT's Regulatory Policies and Procedures;
- Will not have a significant impact on a substantial number of small entities;
- Reduces barriers to international trade; and
- Does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

The DOT Order 2100.5, "Regulatory Policies and Procedures," prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the rule does not warrant a full evaluation, a statement to that effect and the basis for it is included in the regulation. We provide the basis for this minimal impact determination below. We received no comments that conflicted with the economic assessment of minimal impact published in the notice of proposed rulemaking for this action. Given the reasons presented below, and the fact that no comments were received to the contrary, we have determined that the expected impact of this rule is so minimal that the final rule does not warrant a full evaluation.

Currently, airplane manufacturers must satisfy both the 14 CFR and the European JAR standards to certificate transport category airplanes in both the United States and Europe. Meeting two sets of certification requirements raises the cost of developing a new transport category airplane, often with no increase in safety. In the interest of fostering international trade, lowering the cost of airplane development, and making the certification process more efficient, the FAA, JAA, and airplane manufacturers have been working to create, to the maximum possible extent, a single set of certification requirements accepted in both the United States and Europe. This final rule results from the FAA's acceptance of an ARAC harmonization working group's recommendation, including the group's determination that the requirements of this rule will not impose additional costs to U.S. manufacturers of part 25 airplanes.

Specifically, this rule revises the airspeed indicating requirements of § 25.1323 to: (1) Add airspeed indication requirements for speeds greater than and less than the speed range for which airspeed indication accuracy requirements currently apply; (2) require that airspeed indications not cause the pilot undue difficulty between the initiation of rotation and the achievement of a steady climbing condition during takeoff; and (3) codify current FAA policy concerning airspeed lag. We consider that this rule will neither reduce nor increase the requirements beyond those that are already met by U.S. manufacturers to satisfy European airworthiness standards.

As this rule neither increases nor decreases certification requirements beyond those already in existence, we have determined there will be no additional cost associated with this rule to part 25 manufacturers. We have not tried to quantify the benefits of this amendment beyond identifying the expected harmonization benefit. This amendment eliminates an identified SRD between the wording of part 25 and JAR–25. The elimination of the SRD will provide for a more consistent interpretation of the rules and, thus, is an element of the potentially large cost savings of harmonization.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, directs the FAA to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. We are required to determine whether a proposed or final action will have a "significant economic impact on a substantial number of small entities" as defined in the Act.

If we find that the action will have a significant impact, we must do a "regulatory flexibility analysis." If we find, however, that the action will not have a significant economic impact on a substantial number of small entities, we are not required to do the analysis. In this case, the Act requires that we include a statement that provides the factual basis for our determination.

We have determined that this amendment will not have a significant economic impact on a substantial number of small entities for two reasons:

First, the net effect of the proposed rule is minimum regulatory cost relief. The amendment requires that new transport category aircraft manufacturers meet just the "more stringent" European certification requirement, rather than both the United States and European standards. Airplane manufacturers already meet or expect to meet this standard, as well as the existing part 25 requirement.

Second, all United States manufacturers of transport category airplanes exceed the Small Business Administration small entity criteria of 1,500 employees for aircraft manufacturers. Those U.S. manufacturers include:

- The Boeing Company,
- Cessna Aircraft Company,
- Gulfstream Aerospace,
- Learjet (owned by Bombardier Aerospace),
- Lockheed Martin Corporation,
- McDonnell Douglas (a wholly-owned subsidiary of The Boeing Company),
- Raytheon Aircraft, and
- Sabreliner Corporation.

No comments were received that differed with the assessment given in this section. Since this final rule is minimally cost-relieving and there are no small entity manufacturers of part 25 airplanes, the FAA Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979, 19 U.S.C. *et seq.*, prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

In accordance with that statute, we have assessed the potential effect of this final rule and have determined that it is consistent with the statute's requirements by using European international standards as the basis for U.S. standards.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), 2 U.S.C. 1531–1538, 1571, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is considered to be a "significant regulatory action."

This final rule does not contain such a mandate; therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

What Other Assessments Has the FAA Conducted?

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. We therefore determined that this final rule does not have federalism implications.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have determined there are no new requirements for information collection associated with this final rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. We have determined there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this

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rulemaking action qualifies for a categorical exclusion.

Energy Impact

The FAA has assessed the energy impact of this final rule in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362), and FAA Order 1053.1. We have determined that this final rule is not a major regulatory action under the provisions of the EPCA.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this final rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could affect intrastate aviation in Alaska. Because no comments were received regarding this regulation affecting intrastate aviation in Alaska, we will apply the rule in the same way that it is being applied nationally.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the use of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires Federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov*.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, and 44704.

2. Amend § 25.1323 by redesignating paragraphs (d) through (f) as paragraphs (h) through (j), and adding new paragraphs (d) through (g) to read as follows:

§ 25.1323 Airspeed indicating system.

* * * * *

(d) From 1.23 V_{SR} to the speed at which stall warning begins, the IAS must change perceptibly with CAS and in the same sense, and at speeds below stall warning speed the IAS must not change in an incorrect sense.

(e) From V_{MO} to V_{MO} + 2/3 (V_{DF} – V_{MO}), the IAS must change perceptibly with CAS and in the same sense, and at higher speeds up to V_{DF} the IAS must not change in an incorrect sense.

(f) There must be no indication of airspeed that would cause undue difficulty to the pilot during the takeoff between the initiation of rotation and the achievement of a steady climbing condition.

(g) The effects of airspeed indicating system lag may not introduce significant takeoff indicated airspeed bias, or significant errors in takeoff or accelerate-stop distances.

(h) Each system must be arranged, so far as practicable, to prevent malfunction or serious error due to the entry of moisture, dirt, or other substances.

(i) Each system must have a heated pitot tube or an equivalent means of preventing malfunction due to icing.

(j) Where duplicate airspeed indicators are required, their respective pitot tubes must be far enough apart to avoid damage to both tubes in a collision with a bird.

Issued in Renton, Washington, on December 3, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–31341 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Thursday,
December 12, 2002

Part VIII

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 48 and 75

Emergency Evacuations; Emergency Temporary Standard; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 48 and 75

RIN 1219 AB33

Emergency Evacuations; Emergency Temporary Standard

AGENCY: Mine Safety and Health Administration.

ACTION: Emergency temporary standard for underground coal mines.

SUMMARY: The Mine Safety and Health Administration (MSHA) is issuing an emergency temporary standard (ETS) under section 101(b) of the Federal Mine Safety and Health Act of 1977 (Mine Act) in response to the grave danger which miners are exposed to during mine fire, explosion, and gas or water inundation emergencies. The recent deaths of 14 miners at two underground coal mines confirm that miners working underground are exposed to grave danger during mine emergencies and demonstrate the need for MSHA to address proper training and mine emergency evacuation procedures in an ETS.

This ETS requires operators of underground coal mines to designate, for each shift that miners are working underground, a responsible person in attendance at the mine to take charge during mine fire, explosion, and gas or water inundation emergencies. In order to make an informed decision regarding an evacuation, this ETS also requires that the designated responsible person have current knowledge of various mine systems that protect the safety and health of miners.

In addition, this ETS requires the responsible person to initiate and conduct an immediate mine evacuation when there is a mine emergency which presents an imminent danger to miners due to fire, explosion, or gas or water inundation. This ETS further provides that only properly trained and equipped persons essential to respond to the mine emergency may remain underground.

This ETS also broadens the existing requirements for a program of instruction for firefighting and evacuation to address fire, explosion, and gas or water inundation emergencies. Under this ETS, operators must adopt a program of instruction which incorporates mine fire, explosion, and gas or water inundation emergencies into existing approved firefighting and evacuation plans and must train miners in those procedures. Finally, this ETS revises the part 48 training requirements to reflect that annual refresher training includes a review of mine fire, explosion, and gas or water inundation emergency evacuation and firefighting plans in effect at the mine.

DATES: This ETS is effective on December 12, 2002. Submit comments on this ETS on or before January 13, 2003. Public hearings will be held at 9 a.m. on February 4, 6, 11, and 13, 2003. The post-hearing comment period will close on February 28, 2003.

ADDRESSES: Comments must be clearly identified as such and transmitted either electronically to *comments@msha.gov*, by facsimile to (202) 693–9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939. You may contact MSHA with any format questions. Comments are posted for public viewing at *http://www.msha.gov/currentcomments.htm*.

Information Collection Requirements: Send written comments on the information collection requirements to both the Office of Management and Budget (OMB) and MSHA as follows:

(1) *To OMB:* If under 10 pages, by facsimile (202) 395–6974 to Attn: Desk Officer for MSHA. All comments may by sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for MSHA; and

(2) *To MSHA:* Comments must be clearly identified as comments on the information collection requirements and transmitted either electronically to *comments@msha.gov*, by facsimile to (202) 693–9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939.

Hearings: (1) The hearing on Tuesday, February 4, 2003, will be held at the Holiday Inn Lexington—North, 1950 Newton Pike, Lexington, Kentucky, 40511 (phone: 859–233–0512).

(2) The hearing on Thursday, February 6, 2003, will be held at the Holiday Inn Grand Junction, 755 Horizon Drive, Grand Junction, Colorado, 81506 (phone: 970–243–6790).

(3) The hearing on Tuesday, February 11, 2003, will be held at the India Center, 800 Green Road South, Charleston, West Virginia, 25309 (phone: 304–744–0021).

(4) The hearing on Thursday, February 13, 2003, will be held at the Hyatt Regency, Pittsburgh International Airport, 1111 Airport Blvd. 15231 (phone: 724–899–1234).

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Director; Office of Standards, Regulations, and Variances, MSHA; phone: (202) 693–9440; facsimile: (202) 693–9441; E-mail: *nichols-marvin@msha.gov*. You can view comments filed on this rulemaking at *http://www.msha.gov/currentcomments.htm*.

SUPPLEMENTARY INFORMATION: This ETS is issued in accordance with section 101(b) of the Mine Act, 30 U.S.C. 811. This ETS is effective immediately. The ETS establishes two new standards in subpart P, section 75.1501 Emergency Evacuations, and section 75.1502 Mine Emergency Evacuation and Firefighting Program of Instruction. Subpart P is renamed "Subpart P—Mine Emergencies." In addition, existing part 48, subpart A, section 48.8 is revised.

In accordance with section 101(b)(3) of the Mine Act, this ETS will also serve as the Agency's proposed rule. The preamble discusses specific provisions that may be included in the final rule and MSHA solicits comments on these provisions.

New section 75.1501 establishes that an operator must designate a responsible person to take charge in the event of a mine emergency which presents an imminent danger to miners involving a fire, explosion, or gas or water inundation. Section 75.1501 also requires that miners need to be trained about the requirements of this section.

New section 75.1502 revises redesignated section 75.1101–23 by including all mine emergencies created as a result of a fire, an explosion, or a gas or water inundation, requires revisions to existing firefighting and evacuation plans to address these emergencies, requires training of miners regarding the mine emergency evacuation and firefighting plan, and requires that mine operators train miners in any revisions to the plan after its submission to MSHA for approval.

I. Basis for the Emergency Temporary Standard

A. Regulatory Authority

Section 101(b) of the Mine Act provides that:

(1) The Secretary shall provide, without regard to the requirements of chapter 5, title 5, United States Code, for an emergency temporary mandatory health or safety standard to take immediate effect upon publication in the **Federal Register** if [s]he determines (A) that miners are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful, or to other hazards, and (B) that such emergency standard is necessary to protect miners from such danger.

(2) A temporary mandatory health or safety standard shall be effective until superseded by a mandatory standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

(3) Upon publication of such standard in the **Federal Register**, the Secretary shall commence a proceeding in accordance with section 101(a), and the standards as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a mandatory health or safety standard under this paragraph no later than nine months after publication of the emergency temporary standard as provided in paragraph (2).

Issuance of an ETS is an extraordinary measure provided for by the Mine Act to enable MSHA to "react quickly to grave dangers which threaten miners before those dangers manifest themselves in serious or fatal injuries or illnesses." S. Rept. 181, 95th Cong., 1st Sess. 23 (1977). The language authorizing the issuance of a temporary mandatory standard for these purposes indicates that it is appropriate to address miner exposure to "other hazards," as well as toxic substances or harmful agents. This broad scope is further indicated in the legislative history, which states that "[t]o exclude any kind of grave danger would contradict the basic purpose of emergency temporary standards—protecting miners from grave dangers." *Id.* The suggestion that a temporary mandatory standard is limited to new dangers in the mining industry is also dispelled in the legislative history which explains: "That a danger has gone unremedied should not be a bar to issuing an emergency standard. Indeed, if such is the case, the need for prompt action is that much more pressing." *Id.* In addition, the legislative history emphasizes that a record of fatalities or serious injuries is not necessary before an ETS can be issued because "[d]isasters, fatalities, and disabilities are the very thing this provision is designed to prevent." "Waiting until those dangers manifest themselves as fatalities or disabling injuries or illnesses, frustrates the purpose of this [ETS] provision." *Id.* at 23–24.

B. Grave Danger

In response to the recent accidents of September 2001 at the Jim Walter Resources No. 5 Mine and of July 2000 at the Willow Creek Mine described elsewhere in this preamble, MSHA has determined that new safety standards are necessary to further protect miners when a mine emergency presenting an imminent danger to miners due to fire, explosion, or gas or water inundation occurs which requires an evacuation of miners. Miners and mine operators must be able to rapidly and safely respond to emergency situations created by fire, explosion, or gas or water inundation hazards, and initiate an immediate mine evacuation when necessary to protect miners from the grave dangers of remaining underground or re-entering affected areas when hazards and conditions arise that endanger safety. A rapid and planned evacuation of all miners, who are knowledgeable about the mine's plan for mine emergencies, is essential to survival, and is one of the last safeguards that would allow miners to exit from the mine under extremely adverse conditions. The current lack of such knowledge and demonstrated inability to quickly initiate and properly conduct a mine evacuation, presents a grave danger to miners who work in underground coal mines when a mine fire, explosion, or gas or water inundation emergency occurs.

Miners who are not directed to leave the scene of a mine emergency and who do not have knowledge about the mine's emergency evacuation and firefighting plan face serious physical injury or death from the hazards detailed below.

Underground coal mines are dynamic work environments where the working conditions can change rapidly. Diligent compliance with safety and health standards and safety conscious work habits provide a substantial measure of protection against the occurrence of fire and explosions and resultant mine emergencies underground. In the high hazard work environment of underground coal mines, however, the danger of a deadly fire, explosion, or gas or water inundation hazard which can develop into a mine emergency is always present. For example, electricity or other sources of power can ignite methane gas or coal dust resulting in an explosion. Mining equipment can also be the source of a deadly fire that may involve fuel, lubricants and the surrounding coal. Caved, mined out areas which contain coal and accumulated gas can be the locations for explosions caused by rock falls, and in some instances, fires are started by spontaneous combustion. Moreover, when active mines are connected into previously mined-out areas, there is also the risk of exposure to an oxygen deficient atmosphere that can cause asphyxiation. Finally, when mining near other mined out areas, there may be a risk of water inundation.

MSHA standards are designed to prevent these types of hazards, but mine emergencies can and do occur after these hazards develop. The existence and development of mine emergencies is unpredictable. Underground coal mine emergencies can quickly expand from hazards presented in one isolated mining section to involve the entire coal mine.

The Secretary has therefore determined that miners are exposed to grave danger when they remain underground or re-enter affected mine areas at the time of a mine emergency which presents an imminent danger to miners due to fire, explosion, or gas or water inundation, without a responsible person at the mine initiating and conducting a mine evacuation. In addition, without timely knowledge, information and training about a mine's emergency evacuation and firefighting program of instruction specifically developed to cover mine fire, explosion, or gas or water inundation emergencies, miners are exposed to a grave danger because they are not prepared to take immediate action to evacuate the mine in the event of such a mine emergency.

II. Discussion of the Emergency Temporary Standards

A. Background

During the past three years, at least 14 miners have died in two accidents as a result of faulty mine evacuations.

Explosions at the Jim Walter Resources, Inc. No. 5 Mine on September 23, 2001, resulted in 13 fatalities. An initial roof fall and explosion occurred at 5:20 p.m. and resulted in injuries to four miners. One of the four miners was severely injured and could not be moved. Miners from other parts of the mine responded in an uncoordinated effort. In addition, the CO Room operator (monitoring the carbon monoxide monitoring system at the mine) after being notified about the explosion, attempted to locate the afternoon shift haulage foreman who he believed was working at the mine. This foreman was not working that shift. There was also some confusion about where the first explosion occurred.

By the time the second explosion occurred at 6:15 p.m., 12 additional miners headed towards the accident site and eight of those miners entered the affected area without gas detection equipment. Seven additional miners were directed to travel to the emergency area. The 6:15 p.m. explosion occurred before those seven additional miners arrived in the area affected by the second explosion. It is uncertain whether the miner immobilized by the first explosion died as a result of the first or second explosion. It is certain, however, that 12 miners died when the second explosion occurred as they were attempting to reach the injured miner.

MSHA's accident investigation report determined that in addition to not

following proper evacuation procedures after the initial explosion, there was never a mine wide evacuation initiated at the mine, even after an explosion damaged critical ventilation controls. MSHA's accident investigation team found that gas detection equipment was not found on any of the miners or during the underground investigation in the affected section where the explosion occurred. Gas detection equipment is essential to determine the composition of the mine atmosphere and secure the safety of those entering unknown atmospheres especially when ventilation controls are damaged. MSHA's accident investigation report concluded that the lack of training and the failure to conduct fire and emergency drills relative to proper evacuation procedures "affected the miners' response" to the emergency situation of September 2001.

After careful review of this accident, MSHA has determined that had a designated responsible person knowledgeable about the mine safety systems taken charge of the evacuation and rescue effort, fewer miners would have been permitted to remain underground or re-enter the affected mine area during the mine emergency.

Under this ETS, all 32 miners underground at the mine who were not essential to an immediate response to the explosion would have been immediately evacuated from the mine. In addition, the designated person would have assured that the miners attempting a rescue were equipped with gas detection equipment. Moreover, miners would have understood from mine emergency evacuation and firefighting training that an evacuation was necessary and that they were not to re-enter the emergency areas without instruction and appropriate safety equipment.

On July 31, 2000, four explosions occurred at the Willow Creek mine. The initial explosion and subsequent fire occurred approximately seven minutes before the later explosions which killed two miners. Although firefighting activities began almost immediately after the first explosion, evacuation procedures did not begin immediately and conditions worsened before the fatal explosions occurred. After careful review of the accident, MSHA has determined that had the decision to evacuate been made sooner, *i.e.*, after it became evident that the fire was not controllable, and had the individuals present at the affected mine section been more aware of the urgent need for evacuation under emergency conditions, the fatalities might not have occurred. Some miners at the mine were equipped with personal emergency devices (PEDs) which are capable of carrying text messages to underground personnel. Many miners had evacuated the mine but these devices alerted the remaining miners to evacuate the mine. The message to evacuate, however, was not transmitted until after the third of four explosions occurred.

MSHA is also aware of two water inundations and one gas inundation where miners died. In 1968 in Hominey Falls, West Virginia, four miners died from a water inundation involving old workings and 21 miners were rescued. In Tower City, Pennsylvania in 1977 at Porter Tunnel, water from old workings injured one miner, entrapped one miner and resulted in nine fatalities. Finally, in 1978 at Moss #3 Mine in Duty, West Virginia, blackdamp (atmosphere depleted of oxygen) from old workings resulted in 5 fatalities.

B. Section-by-Section Discussion

Section 75.1501 Emergency Evacuations

Section 75.1501 is a new section which addresses mine emergency evacuations. Paragraph (a) provides that for each shift that miners work underground the mine operator shall designate a responsible person in attendance at the mine to take charge during mine fire, explosion, or gas or water inundation emergencies which present an imminent danger to miners. Paragraph (a) further provides that the designated responsible person shall have current knowledge of the assigned location and expected movements of miners underground, the operation of the mine ventilation system, the location of the mine escapeways, the mine communications system, any mine monitoring system if used, and the mine emergency evacuation and firefighting program of instruction. The purpose of these requirements is to ensure that during mine emergencies an informed decision is made by one responsible person regarding responses to mine emergencies, and that mine evacuations be conducted rapidly, efficiently, and safely. The accidents described in the background section to this preamble demonstrate the need for a designated person to take charge during mine emergencies.

In taking charge during an emergency, the designated person directs resources that may be required during the emergency and assures that all nonessential miners are evacuated safely. In addition, requiring that the designated responsible person be at the mine site during all shifts when miners are underground assures that no delays result from off-site telephone calls requesting instructions.

Furthermore, requiring that the designated responsible person have current knowledge of the aforementioned elements assures that informed decisions are made during a mine emergency. For example, having knowledge of the work areas and the assigned locations of miners and their movement during the work shift allows miners working in remote locations where electronic communication may not be readily available to be notified of an evacuation as soon as possible. The designated responsible person will be aware of their presence and location underground. Formal procedures may be needed to assure that the responsible person can quickly locate all underground miners.

Paragraph (b) of new section 75.1501 requires that the designated responsible person initiate and conduct an immediate mine evacuation when there is a mine emergency which presents an imminent danger to miners due to fire, explosion, or gas or water inundation. Paragraph (b) further provides that only properly trained and equipped persons essential to respond to the mine emergency may remain underground.

Although the MSHA standards have been successful in addressing hazards and reducing risks created by fires, explosions, and gas or water inundations, MSHA has determined that this ETS is necessary. Miners are exposed to grave danger when they remain underground or re-enter affected mine areas during mine emergencies which present an imminent danger to miners. In addition, MSHA understands that not every mine fire, explosion, or gas or water inundation hazard listed above may result in a mine emergency. For example, only unplanned mine fires not extinguished within 30 minutes of discovery are reportable to MSHA under 30 CFR part 50. Such fires may not endanger miners and therefore may not constitute a mine emergency. It is when the hazards listed above present an imminent danger to miners that MSHA expects that an immediate mine evacuation be initiated.

MSHA notes that the term "imminent danger" is defined in the Mine Act, Section 3(j). It means, "the existence of any condition or practice in a coal or other mine which can be expected to cause death or serious physical harm before such condition or practice can be abated." This definition is well known and provides readily understandable criteria for the responsible person to decide to initiate a mine evacuation. To protect miners from the grave danger of remaining underground at that time, a designated responsible person must be present to initiate and conduct an immediate evacuation and must assure that only persons who are properly trained and equipped and essential to respond to the mine emergency remain underground.

Paragraph (c) of new section 75.1501 requires the operator to instruct all miners about the requirements of this section and the identity of the responsible person designated by the operator for their workshift within 7 days of publication of this ETS. Paragraph (c) further provides that the mine operator must instruct miners of any change in the identity of the responsible person before the start of their workshift. MSHA has determined that this provision is necessary because, in order for a mine evacuation to be conducted without exposing miners to grave danger, miners need up-to-date information concerning mine emergency evacuations and the identity of the person or persons in charge of initiating and conducting such evacuations. The tragic accident at the Jim Walter No. 5 Mine shows that at least one miner with access to mine wide communications did not know which foreman was working the shift when the accident occurred and valuable time may have been lost while trying to locate that foreman.

Paragraph (d) of new section 75.1501 provides that the ability of any person to warn of an imminent danger which warrants an evacuation is not restricted by the provisions of section 75.1501. This provision is intended to recognize that there will be circumstances of imminent danger warranting a warning by someone other than the designated responsible person under section 75.1501(b). For example, at the Quecreek Mine inundation accident which occurred July 24, 2002, miners from the affected section rapidly warned miners in the other working section of a water inundation, enabling them to escape the mine unharmed. These actions are consistent with the approach of this paragraph (d) which recognizes that any person may warn others of an imminent danger. Had any delays occurred at Quecreek in warning the miners, tragic results might have ensued.

MSHA is soliciting comments on broadening the coverage of this section to include outbursts, massive roof falls, or other occurrences, for example the failure of a mine system designed to protect miner safety and health such as the ventilation control system, roof control system, or the mine communication system.

Section 75.1502—Mine Emergency Evacuation and Firefighting Program of Instruction

New Section 75.1502(a) requires that each operator of an underground coal mine adopt a mine emergency evacuation and firefighting program and begin training in those procedures as soon as possible but in no event not to exceed 30 days from the date of publication of this ETS. In addition, the program must be submitted to the District Manager of the Coal Mine Health and Safety District in which the mine is located for approval. Before any revision to the program is implemented, persons affected by the revision must be instructed on the revised provision.

The existing standard regarding evacuation procedures, section 75.1101–23, is located in subpart L. MSHA has determined that existing section 75.1101–23 should be redesignated as new section 75.1502 in subpart P and revised. New section 75.1502 focuses attention on safe evacuation procedures to be followed in the event of a fire, explosion, or gas or water inundation emergency.

Paragraph (a) of new section 75.1502 of this ETS revises and replaces redesignated section 75.1101–23(a). Under new paragraph (a), MSHA has expanded the existing program of instruction to include the proper evacuation procedures in the event of a mine emergency. This change reflects MSHA's determination that under the existing standards, miners are exposed to a grave danger caused by a mine emergency due to fire, explosion, or gas or water inundation. In addition, paragraph (a) of new section 75.1502 retains the requirements of existing section 75.1101–23(a) that the program of instruction include procedures to be followed regarding the location and use of firefighting equipment, location of escapeways, exits, and routes of travel to the surface.

Like existing section 75.1101–23, new section 75.1502 of this ETS provides a requirement for training of all miners in the proper evacuation procedures to be followed in the event of a mine emergency, the location and use of firefighting equipment, the location of escapeways, exits, and routes of travel to the surface. The training under section 75.1502 must begin as soon as possible but in no event later than 30 days from the date of publication of this ETS. Training is necessary to acquaint all miners with the emergency evacuation procedures for all mine emergencies which endanger miners due to fires, explosions, or gas or water inundations. The decision to require training reflects the Agency's evaluation of the existing training programs at underground coal mines and the results of an investigation of a mining accident where victims were unfamiliar with evacuation procedures and did not know not to re-enter the affected areas of the mine during a mine emergency.

Based on Agency experience, MSHA estimates that there are approximately 45,000 workers affected by this ETS. Because effective training related to evacuation procedures for the specified mine emergencies is essential to the safety and health of miners, MSHA has determined that there is a need for training of miners to acquaint all miners with the emergency response and evacuation procedures for all mine emergencies. In addition, in the event that any revisions are made to the mine emergency evacuation and firefighting program of instruction as a result of its submission to MSHA for approval, miners would need to be trained in those revisions.

Moreover, as part of this ETS, MSHA's existing training regulation in 30 CFR part 48 is being revised to specifically include annual refresher training of miners regarding mine emergency evacuation and firefighting plans. The training of new miners and experienced miner training under part 48 does not need to be revised, however, because existing section 48.5(b)(5) provides for training regarding emergency evacuation and firefighting plans for new miners and existing section 48.6(b)(5) provides for training regarding emergency evacuation and firefighting plans for experienced miners. Further discussion of the annual refresher training of miners regarding the mine emergency evacuation and firefighting plan is located elsewhere in this preamble.

Furthermore, unlike existing section 75.1101–23(a)(2), new section 75.1502(a) does not include an explicit provision that the approved program of instruction be given to all miners annually or newly employed miners within six months after the date of employment. Rather, as discussed above, section 75.1502(a) provides for the training of miners to acquaint all miners with the mine emergency evacuation procedures for the specified mine emergencies as soon as possible but not more than 30 days after the date of publication of this ETS.

In addition, new miner and experienced miner training is covered under existing sections 48.5 and 48.6, and annual refresher training of miners regarding mine emergency evacuation and firefighting plans are now covered under the revised part 48 training

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regulations. Accordingly, inclusion of those training provisions within new section 75.1502 would be duplicative. Therefore, under this ETS, the level of safety afforded miners will be maintained or increased from the level of safety afforded under existing section 75.1101–23 because this ETS provides for the training of all miners for mine emergencies including explosions and gas or water inundations, not just mine fires, and continues to provide annual refresher training of miners while eliminating duplicate provisions and consolidating the training requirements under part 48. This modification of the training requirements under existing section 75.1101–23 does not represent a reduction in safety to miners because the training requirements of existing section 75.1101–23 are incorporated in new section 75.1502 and the revised and existing sections of part 48.

Paragraph (a) of new section 75.1502, like existing section 75.1101–23(a), requires that the program of instruction be submitted for approval to MSHA. The Agency has determined that in view of the emergency nature of this standard, operators must submit a mine emergency evacuation and firefighting program of instruction to MSHA within 30 days of the publication of this ETS. Paragraph (a) of new section 75.1502 further provides that all miners will be trained on any revisions made to the program of instruction after it has been approved by MSHA to ensure that miners are kept aware of any changes made to the mine emergency evacuation and firefighting plan after they have received initial training.

Because MSHA has determined that miners are exposed to grave danger under the specified mine emergencies which require evacuation, paragraphs(a)(1) through (a)(4) of new section 75.1502 broaden the scope of the approved program of instruction under existing section 75.1101–23(a)(1) through (3). Under new section 75.1502(a)(1), the approved program of instruction must include a specific plan to acquaint miners on all shifts with procedures for mine emergency evacuation for mine emergencies which endanger miners due to fire, explosion, or gas or water inundation. New paragraph (a)(2) also expands the existing requirements to include procedures for the evacuation of all miners not required for a mine emergency response. In addition, under new paragraph (a)(3), the procedures for the rapid assembly and transportation of necessary miners, fire suppression equipment, and rescue apparatus to the scene of the mine fire is broadened to include the scene of the mine emergency. Finally, new paragraph (a)(4) retains the same requirements for procedures for the operation of fire suppression equipment.

Existing MSHA-approved plans already discuss in detail the use, location of firefighting equipment, and location of escapeways and exit routes, and other procedures. These topics should be expanded to cover mine explosion and gas and water inundation emergencies in addition to fire emergencies. MSHA believes that an effective plan consists of at least the following elements: Procedures to rapidly notify each underground miner in the event of an emergency; and assignments of personnel in preparation for an evacuation including procedures to assemble and account for all miners during an evacuation, procedures to direct underground water supplies, and procedures to deenergize electrical power as may be appropriate during an evacuation. Mine operators should also include within the plans the location and availability of communication systems underground, assignments of underground and surface personnel to coordinate the evacuation, and the design and layout of the mine ventilation system as it might affect miners in an evacuation.

In addition, any mine using an atmospheric monitoring system should integrate the alert and alarm response procedure into the firefighting and evacuation plan. The plan should be designed to assure that all miners are familiar with the escape routes and escape facilities from their work area, and are familiar with the operation and proper donning procedures of self-contained self-rescuers under emergency scenarios. The plan should also address the requirements of new section 75.1501, and make it clear to miners that they are required to evacuate unless they are essential for emergency response activities and they are properly equipped and trained.

MSHA is soliciting comments on the specific elements of the mine emergency evacuation and firefighting plan to be included in the final rule.

Finally, as required by the last sentence in section 75.1501(b), only properly trained and equipped persons essential to respond to the mine emergency may remain underground. Therefore, plans should address proper training and equipment to be used under various emergency scenarios. For example, the plan might state that miners must be equipped with gas detectors and qualified to use them when entering an area affected by a gas inundation.

Paragraph (b) of new section 75.1502, concerning firefighting, retains the same requirements as existing section 75.1101–23(b).

Paragraph (c) of new section 75.1502 essentially retains the same requirements as existing section 75.1101–23(c) with the exception that mine emergency evacuation drills are now required to ensure that miners are familiar with and are able to accomplish a mine evacuation in the event of a mine fire, explosion, or gas or water inundation emergency.

Revisions to Part 48—Annual Refresher Training of Miners

MSHA has determined to unify the training approach for mine emergency evacuation and for firefighting plans. The rule includes the initial immediate training requirement in section 75.1501 of this ETS. The rule also revises part 48 for annual refresher training of miners regarding mine emergency evacuation and firefighting plans specifically for underground coal mines.

Subpart A of 30 CFR part 48 prescribes requirements for submitting and obtaining MSHA approval of operator-administered programs for training and retraining underground miners. Each mine must have an approved training program for training new miners and newly-employed experienced miners, as well as training miners for new tasks, and providing annual refresher training.

The existing training requirements for new miners under § 48.5, and newly-employed experienced miners under § 48.6, do not need to be revised because emergency evacuation and firefighting training are provided under those existing sections. Annual refresher training under existing § 48.8, however, does not cover emergency evacuation or firefighting training. Therefore, § 48.8 is revised by this ETS to include a requirement that the annual refresher training include the mine emergency evacuation and firefighting plan. This training will acquaint all underground coal miners with the mine emergency evacuation procedures for mine emergencies involving fire, explosion, or gas or water inundations. MSHA specifically solicits comments on whether any conforming amendments should be made in the final rule to sections 48.5 and 48.6. Those conforming amendments would state that mine emergency evacuation and firefighting plans would be topics included. MSHA further solicits comments on whether the training provision should be included in part 48 or in new section 75.1502.

C. Feasibility

We have concluded that the requirements of the final rule are both technologically and economically feasible.

1. Technological Feasibility

MSHA believes that the ETS would be technologically feasible for the mining industry. An agency must show that modern technology has at least conceived some industrial strategies or devices that are likely to be capable of meeting the standard, and which industry is generally capable of adopting. *American Iron and Steel Institute* v. *OSHA*, (AISI–II) 939 F.2d 975, 980 (D.C. Cir. 1991); *American Iron and Steel Institute* v. *OSHA*, (AISI–I) 577 F.2d 825 (3d Cir. 1978) at 832–835; and *Industrial Union Dept., AFL–CIO* v. *Hodgson*, 499 F.2d 467,478 (D.C. Cir. 1974).

This ETS addresses revisions of mine emergency evacuation plans and associated training. This ETS neither requires underground coal mines to procure any additional equipment nor use any new technology. This is not a technology-forcing standard and does not involve activities on the frontiers of science. We conclude, therefore, that this ETS is technologically feasible.

2. Economic Feasibility

Underground coal mines would incur costs of approximately $0.26 million yearly to comply with this ETS. That these compliance costs represent well under 1 percent (about 0.004 percent) of annual revenues is sufficient evidence, MSHA believe, to conclude that this ETS is economically feasible for underground coal mines.

III. Executive Order 12291 and the Regulatory Flexibility Act

Based on its analysis, MSHA has preliminarily determined that this ETS would not have a significant economic impact on a substantial number of small entities. MSHA has so certified this finding to the SBA. The factual basis for this certification is discussed in chapter V of the Preliminary Regulatory Economic Analysis (PREA).

IV. Paperwork Reduction Act

The ETS contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA95). The ETS has first year burden hours (those that occur only in the first year) and, annual burden hours which occur in the first year and every year thereafter.

In the First Year of the ETS

In the first year the ETS is in effect, there would be an increase of 5,010 burden hours and a related cost increase of $250,041. Table VII–1 in the PREA supporting this ETS shows that, with respect to first year-only burden hours and costs, there would be an increase of 4,304 burden hours and related costs of $211,565. Table VII–2 in the PREA shows that, with respect to every year that the ETS is in effect (including the first year), there would be an increase of 706 burden hours and related costs of $38,476.

In the Second Year of the ETS

After the first year of the ETS, those burden hours and related costs occurring only in the first year would no longer occur, and what remains are only the annual burden hours and related costs. Therefore, in the second year of the ETS, and for every year thereafter, there would be an increase of 706 burden hours and related costs of $38,476.

Under section 101(b)(3) of the Mine Act, an ETS as published serves as a proposed rule. As a proposed rule, we invite public comments and are particularly interested in comments which:

1. Evaluate whether the collection of information (presented here and in the PREA for the ETS) is necessary for the proper performance of the functions of MSHA, including whether the information would have practical utility;

2. Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

We have submitted a copy of this ETS to OMB for its review and approval of these information collections. Interested persons are requested to send comments regarding this information collection, including suggestions for reducing this burden, if under 10 pages, by facsimile (202) 395–6974 to Attn: Desk Officer for MSHA. All comments may be sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for MSHA. Please send a copy of your comments to MSHA at the addresses listed in the **ADDRESSES** section of the preamble. Submit written comments on the information collection not later than February 10, 2003.

Our paperwork submission summarized above is explained in detail in the PREA that accompanies the ETS. The PREA includes the estimated costs and assumptions for each paperwork requirement related to the ETS. A copy of the PREA is available on our website at *http://www.msha.gov/REGSINFO.HTM* and can also be obtained in hardcopy from us. These paperwork requirements have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1995. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. Comments may be sent to the addresses listed in the **ADDRESSES** section of the preamble.

V. Executive Order 12866

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of intended standards and regulations. We have fulfilled this requirement for this ETS and determined that it would not have an annual effect of $100 million or more on the economy. Therefore, we do not consider this ETS to be economically significant under section 3(f)(1) of Executive Order 12866.

In the PREA, MSHA has developed estimates of the safety benefits of this ETS, which ensures that operators and miners have a clear understanding of actions and procedures to be followed in the event of a mine emergency. MSHA has concluded that the two fatalities at the Willow Creek Mine and nine of the 13 fatalities at the Jim Walter No. 5 Mine might have been prevented had this ETS been in place. The Agency has reviewed its coal accident investigation database and has not identified any other fatalities during the past 10 years that might have been prevented by this ETS. In summary, based on its experience over the past ten years, MSHA believes it is reasonable to estimate that this ETS could prevent 11 miners' lives from being lost every ten years, or an average benefit of the ETS of 1.1 miners' lives saved every year. The actual number of mine fatalities prevented could be much larger.

VI. The Unfunded Mandates Reform Act of 1995 and Other Regulatory Considerations

A. Unfunded Mandates Reform Act

MSHA has determined that, for purposes of section 202 of the Unfunded Mandates Reform Act of 1995, this ETS does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. Moreover, the Agency has determined that for purposes of section 203 of that Act, this ETS would not significantly or uniquely affect small governments.

Background

The Unfunded Mandates Reform Act was enacted in 1995. While much of the Act is designed to assist the Congress in determining whether its actions will impose costly new mandates on State, local, and tribal governments, the Act also includes requirements to assist Federal Agencies to make this same determination with respect to regulatory actions.

Analysis

Based on the analysis in this PREA, compliance with this ETS by coal mine operators and contractors covered by this rulemaking would result in a compliance cost of approximately $0.26 million per year. Accordingly, there is no need for further analysis under section 202 of the Unfunded Mandates Reform Act.

We have concluded that small governmental entities would not be significantly or uniquely impacted by the ETS. The ETS would cover 664 underground coal mining operations.

B. Executive Order 13132: Federalism

We have reviewed this ETS in accordance with Executive Order 13132 regarding federalism and have determined that it does not have "federalism implications." This ETS does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

C. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

In accordance with Executive Order 13045, we have evaluated the environmental health and safety effects of the ETS on children. The Agency has determined that the ETS would have no adverse effect on children.

D. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

We certify that the ETS would not impose substantial direct compliance cost on Indian tribal governments. Under section 101(b)(3) of the Mine Act, an ETS as published serves as a proposed rule. As a proposed rule, we will provide the public, including Indian tribal governments that operate mines, the opportunity to comment on the requirements of the ETS.

E. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This ETS is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

F. Executive Order 12988: Civil Justice Reform

We have reviewed Executive Order 12988 and determined that this ETS would not unduly burden the Federal court system. We drafted the ETS to provide a clear legal standard for affected conduct. Since the ETS serves as a proposed rule, we have asked for public comment to eliminate ambiguities or drafting errors.

G. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, we have reviewed the ETS for its energy impacts. The ETS would have no effect on the distribution or use of energy. The only impacts of the ETS on the supply of energy would be through its effect on the price of coal.

The estimated yearly cost of the ETS for the coal mining industry would be about $0.26 million.[1] The annual revenues of the coal mining industry in 2000 were approximately 17.7 billion.[2] The cost of the ETS for the coal mining industry would therefore be 0.001% of revenues. Even if we were to suppose that the increased cost caused by the ETS would be fully reflected in coal prices, the impact would be negligible.

Accordingly, we have determined that the ETS would have no significant adverse effect on the supply, distribution, or use of energy.

H. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the ETS to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed in chapter V of the PREA, MSHA has determined that the ETS would not have a significant economic impact on a substantial number of small entities.

VII. Conduct of Public Hearings

As stated above, in accordance with section 101(b)(3) of the Mine Act, this ETS will also serve as the Agency's proposed rule. MSHA will hold hearings on the proposed rule at the locations and dates listed in the **ADDRESSES** section of the preamble. The hearings will be conducted in an informal manner. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearing and may exclude irrelevant or unduly repetitious material and questions. The hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. The hearing panel may ask questions of speakers. At the discretion of the presiding official, the time allocated to speakers for their presentation may be limited. The hearings will begin at 9 a.m. and end after the last scheduled speaker appears; and in any event, not later than 5 p.m. A verbatim transcript of the proceedings will be prepared and made a part of the rulemaking record. Copies of the transcript will be available to the public.

The transcript will also be available on MSHA's Web page at *http://www.msha.gov*, under Statutory and Regulatory Information.

MSHA will accept post-hearing written comments and other appropriate data for the record from any interested party, including those not presenting oral statements. Written comments will be included in the rulemaking record.

VIII. Close of Post-hearing Comment Period

The post-hearing comment period will close on February 28, 2003.

[1] Estimate obtained from Table IV–1 of the PREA.

[2] Data for revenues derived from: U.S. Department of Labor, Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, based on 2000 PEIR data and U.S. Department of Energy, Energy Information Administration, *Coal Industry Annual 2000*, January 2002, p. 206.

List of Subjects

30 CFR Part 48

Education, Mine safety and health, Reporting and recordkeeping requirements.

30 CFR Part 75

Coal mines, Underground coal mining, Mine safety and health, Emergency medical services, Fire prevention, reporting and recordkeeping requirements.

Dated: December 9, 2002.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

Chapter I of title 30, parts 48 and 75, of the Code of Federal Regulations is amended as follows:

PART 48—[AMENDED]

1. The authority citation for part 48 continues to read as follows:

Authority: 30 U.S.C. 811, 825.

2. Section 48.8 is amended by revising paragraph (b)(4) to read as follows:

§ 48.8 Annual refresher training of miners; minimum courses of instruction; hours of instruction.

* * * * *

(b) * * *

(4) *Roof or ground control, ventilation, emergency evacuation and firefighting plans.* The course shall include a review of roof or ground control plans in effect at the mine and the procedures for maintaining and controlling ventilation. In addition, for underground coal mines the course shall include a review of the emergency evacuation and firefighting plans in effect at the mine.

* * * * *

PART 75—[AMENDED]

3. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

4. Subpart P is amended by revising the heading and by adding § 75.1501 to read as follows:

Subpart P—Mine Emergencies

* * * * *

§ 75.1501 Emergency evacuations.

(a) For each shift that miners work underground, there shall be in attendance a responsible person designated by the mine operator to take charge during mine emergencies involving a fire, explosion or gas or water inundations. The responsible person shall have current knowledge of the assigned location and expected movements of miners underground, the operation of the mine ventilation system, the location of the mine escapeways, the mine communications system, any mine monitoring system if used, and the mine emergency evacuation and firefighting program of instruction.

(b) The responsible person shall initiate and conduct an immediate mine evacuation when there is a mine emergency which presents an imminent danger to miners due to fire or explosion or gas or water inundation. Only properly trained and equipped persons essential to respond to the mine emergency may remain underground.

(c) By December 19, 2002, the mine operator shall instruct all miners about the requirements of this section and the identity of the responsible person(s) designated by the operator for their workshift. The mine operator shall instruct miners of any change in the identity of the responsible person(s) before the start of their workshift.

(d) Nothing in this section shall be construed to restrict the ability of other persons in the mine to warn of an imminent danger which warrants evacuation.

§ 75.1101–23 [Redesignated as § 75.1502]

5. Section 75.1101–23 is redesignated as 75.1502 and revised to read as follows:

§ 75.1502 Mine emergency evacuation and firefighting program of instruction.

(a) Each operator of an underground coal mine shall adopt a program for the instruction of all miners in the proper evacuation procedures to be followed in the event of a mine emergency, the location and use of firefighting equipment, location of escapeways, exits, and routes of travel to the surface, and shall begin training in those procedures as soon as possible but no later than January 13, 2003. In addition, such program shall be submitted for approval to the District Manager of the Coal Mine Health and Safety District in which the mine is located no later than January 13, 2003. Before implementing any revision to the mine emergency evacuation and firefighting program of instruction persons affected by the revision shall be instructed by the operator in its provisions. The approved program of instruction shall include a specific plan designed to acquaint miners on all shifts with procedures for:

(1) Mine emergency evacuation for mine emergencies that endanger miners due to fire, explosion, or gas or water inundation;

(2) Evacuation of all miners not required for a mine emergency response;

(3) Rapid assembly and transportation of necessary miners, fire suppression equipment, and rescue apparatus to the scene of the mine emergency; and,

(4) Operation of the fire suppression equipment available in the mine.

(b) In addition to the approved program of instruction required by paragraph (a) of this section, each operator of an underground coal mine shall ensure that:

(1) At least two miners in each working section on each production shift are proficient in the use of all fire suppression equipment available on such working section, and know the location of such fire suppression equipment;

(2) Each operator of attended equipment specified in § 75.1107–1(c)(1), and each miner assigned to perform job duties at the job site in the direct line of sight of attended equipment as described in § 75.1107–1(c)(2), is proficient in the use of fire suppression devices installed on such attended equipment; and,

(3) The shift foreman and at least one miner for every five miners working underground on a maintenance shift are proficient in the use of fire suppression equipment available in the mine, and know the location of such fire suppression equipment.

(c) Each operator of an underground coal mine shall require all miners to participate in mine emergency evacuation drills, which shall be held at periods of time so as to ensure that all miners participate in such evacuations at intervals of not more than 90 days.

(1) The operator shall certify by signature and date that the mine emergency evacuation drills were held in accordance with the requirements of this section. Certifications shall be kept at the mine and made available on request to an authorized representative of the Secretary.

(2) For purposes of this paragraph (c), a mine emergency evacuation drill shall consist of a simulation of the actions required by the approved mine emergency evacuation and firefighting plan described in paragraph (a)(1) of this section.

[FR Doc. 02–31358 Filed 12–11–02; 8:45 am]
BILLING CODE 4510–43–P

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Part IX

The President

Proclamation 7634—Human Rights Day, Bill of Rights Day, and Human Rights Week, 2002

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Presidential Documents

Title 3—

The President

Proclamation 7634 of December 9, 2002

Human Rights Day, Bill of Rights Day, and Human Rights Week, 2002

By the President of the United States of America

A Proclamation

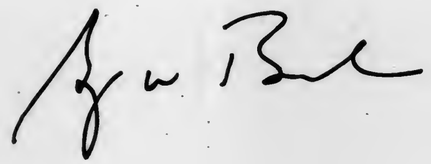
America's commitment to individual freedom and democracy provides the foundation for our society. As a Nation, we cherish the values of free speech, equal justice, and religious tolerance, and we steadfastly oppose the forces of cruelty, injustice, and tyranny. Since the founding of our country, the Bill of Rights has served to guide our people and our Government to ensure basic human rights and liberties. The United States is a country where all citizens have the opportunity to voice their opinions, practice their faith, and enjoy the blessings of freedom.

Today, countless people around the world cannot exercise their basic human rights. America has pledged to support all individuals who seek to secure their unalienable rights. Across the globe, we will continue to stand with those who fight for fundamental freedoms, whether they be democracy activists in Cuba, university faculty and students in Iran, opposition leaders in Zimbabwe, journalists in Belarus, or the people of North Korea who have never known freedom. We are leading a coalition of more than 90 nations to defeat terror and to secure liberty and opportunity for people throughout the world. Our fight against oppression demonstrates our Nation's dedication to a future of hope and understanding for all people. One year after the liberation of Afghanistan from the clutches of terror and tyranny, we are helping the Afghan people build institutions of democracy and tolerance that are essential to the country's future stability, security, and prosperity. And I hope the brave people of Iraq will soon realize their own dreams of peace and freedom.

In commemorating Human Rights Day, Bill of Rights Day, and Human Rights Week, we renew our pledge to uphold the vital principles of freedom, equality, and opportunity that have made our Nation strong. By working together to advance the rights of all people, we help to build mutual trust and peace for all individuals across this land and around the world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 10, 2002, as Human Rights Day; December 15, 2002, as Bill of Rights Day; and the week beginning December 10, 2002, as Human Rights Week. I call upon the people of the United States to honor the legacy of human rights passed down to us from previous generations and to resolve that such liberties will prevail in our Nation and throughout the world.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of December, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 02-31559
Filed 12-11-02; 9:05 am]
Billing code 3195-01-P

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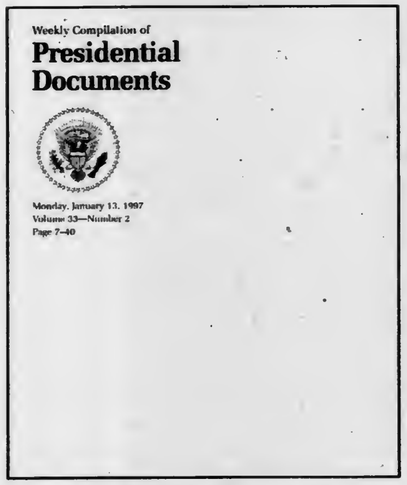
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Federal Register

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Federal Register

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Title 3—

The President

Executive Order 13278 of December 11, 2002

President's Commission on the United States Postal Service

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to ensure the efficient operation of the United States Postal Service while minimizing the financial exposure of the American taxpayers, it is hereby ordered as follows:

Section 1. *Establishment.* There is established the President's Commission on the United States Postal Service (Commission).

Sec. 2. *Membership.* Commission shall be composed of nine members appointed by the President. The President shall designate two members of the Commission to serve as Co-Chairs.

Sec. 3. *Mission.* (a) The mission of the Commission shall be to examine the state of the United States Postal Service, and to prepare and submit to the President a report articulating a proposed vision for the future of the United States Postal Service and recommending the legislative and administrative reforms needed to ensure the viability of postal services.

(b) In fulfilling its mission, the Commission shall consider the following issues and such other issues relating to the Postal Service as the Commission determines appropriate:

(i) the role of the Postal Service in the 21st century and beyond;

(ii) the flexibility that the Postal Service should have to change prices, control costs, and adjust service in response to financial, competitive, or market pressures;

(iii) the rigidities in cost or service that limit the efficiency of the postal system;

(iv) the ability of the Postal Service, over the long term, to maintain universal mail delivery at affordable rates and cover its unfunded liabilities with minimum exposure to the American taxpayers;

(v) the extent to which postal monopoly restrictions continue to advance the public interest under evolving market conditions, and the extent to which the Postal Service competes with private sector services; and

(vi) the most appropriate governance and oversight structure for the Postal Service.

Sec. 4. *Administration.* (a) The Department of the Treasury or any organizational entity subject to the direction of the Secretary of the Treasury shall, to the extent permitted by law, provide administrative support and funding for the Commission. The Commission is established within the Department of the Treasury for administrative purposes only.

(b) Members of the Commission shall serve without any compensation for their work on the Commission. Members appointed from among private citizens of the United States, however, while engaged in the work of the Commission, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701–5707), to the extent funds are available.

(c) The Commission shall have a staff headed by an Executive Director.

(d) The Commission, with the concurrence of the Secretary of the Treasury, may establish subcommittees, consisting of Commission members, as appropriate, to aid in its work.

(e) Consistent with such guidance as the President or, on the President's behalf, the Secretary of the Treasury, may provide, the Commission shall exchange information with and obtain advice from Members of Congress; Federal, State, local, and tribal officials; commercial, nonprofit, and residential users of the United States Postal Service; and others, as appropriate, including through public hearings.

(f) Insofar as the Federal Advisory Committee Act, as amended, may apply to the Commission, any functions of the President under that Act, except for those in section 6 of that Act, shall be performed by the Secretary of the Treasury, in accordance with the guidelines that have been issued by the Administrator of General Services.

(g) Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

Sec. 5. *Report.* The Commission shall submit its report, consistent with its mission set forth in section 3 of this order, to the President, through the Secretary of the Treasury, not later than July 31, 2003.

Sec. 6. *General Provisions.* (a) This order is intended only to improve the internal management of the Federal Government and it is not intended to, and does not create, any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

(b) The Commission shall terminate 30 days after submitting its report and in no event later than August 30, 2003.

THE WHITE HOUSE,
December 11, 2002.

[FR Doc. 02–31624
Filed 12–12–02; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 67, No. 240
Friday, December 13, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–16–AD; Amendment 39–12952; AD 2002–23–08]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc. RB211–535 Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments; correction

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2002–23–08, applicable to Rolls-Royce plc. (RR) models RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines. AD 2002–23–08 was published in the **Federal Register** on November 29, 2002 (67 FR 71094). In the **DATES** section of the preamble, two dates are incorrect. This document corrects those dates. In all other respects, the original document remains the same.

EFFECTIVE DATE: December 16, 2002.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule; request for comments airworthiness directive FR Doc. 02–29001, applicable to models RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines, was published in the **Federal Register** on November 29, 2002 (67 FR 71094). The following correction is needed:

On page 71094, in the second column, second paragraph, in the **DATES** section, first line, remove the phrase "Effective December 30, 2002." and add in its place "Effective December 16, 2002." Also, in the fifth line, remove the phrase "as of December 30, 2002." and add in its place "as of December 16, 2002."

Issued in Burlington, MA, on December 5, 2002.

Francis A. Favara,
Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–31395 Filed 12–12–02; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–287–AD; Amendment 39–12979; AD 2002–25–04]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes, that requires a one-time visual inspection of circuit breakers to determine the manufacturer of the circuit breakers, and corrective action, if necessary. The actions specified by this AD are intended to prevent internal overheating and arcing of circuit breakers and airplane wiring due to long-term use and breakdown of internal components of the circuit breakers, which could result in smoke and fire in the flight compartment and main cabin. This action is intended to address the identified unsafe condition.

DATES: Effective January 17, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; and C–9 (military) airplanes was published in the **Federal Register** on June 5, 2001 (66 FR 30101). That action proposed to require a one-time visual inspection of circuit breakers to determine the manufacturer of the circuit breakers, and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter expresses concern that, although the applicability in the proposed AD only specifies Model DC–9 and MD–80 series airplanes, the referenced circuit breakers (manufactured by Wood Electric Corporation or Wood Electric Division of Potter Brumfield Corporation), may be fitted to other FAA type-certificated products or aircraft. The commenter asks for confirmation that this is or is not the case.

We agree that the subject circuit breakers can be installed on other FAA type-certificated products. We previously issued other rulemaking actions that address the commenter's concern. AD 2001–08–16, amendment 39–12193, was issued on April 17, 2001

(66 FR 20914, April 26, 2001). That AD is applicable to certain McDonnell Douglas Model DC–8 series airplanes and requires a one-time inspection to determine the manufacturer of the circuit breakers, and corrective action, if necessary. AD 2000–09–07, amendment 39–11716, was issued on May 3, 2000 (65 FR 30534, May 12, 2000). That AD is applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, –30F, and –40 series airplanes, and KC–10A (military) airplanes. That AD requires a one-time general visual inspection of circuit breakers to determine the manufacturer of the circuit breakers, and corrective action, if necessary. Therefore, no change to the final rule is necessary.

Explanation of Editorial Change

We have changed the service bulletin citation throughout this final rule to exclude the Evaluation Form. (The form is intended to be completed by operators and submitted to the manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.)

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 830 Model DC–9 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 540 airplanes of U.S. registry will be affected by this AD, that it will take approximately 80 work hours per airplane to accomplish the inspection of the circuit breakers (over 700 installed on each airplane), and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,592,000, or $4,800 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–25–04 McDonnell Douglas: Amendment 39–12979. Docket 99–NM–287–AD.

Applicability: Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; DC–9–21 airplanes; DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B) airplanes; DC–9–41 airplanes; and DC–9–51 airplanes; as listed in McDonnell Douglas Alert Service Bulletin DC9–24A171, Revision 01, dated September 21, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent internal overheating and arcing of circuit breakers and airplane wiring due to long-term use and breakdown of internal components of the circuit breakers, which could result in smoke and fire in the flight compartment and main cabin, accomplish the following:

Inspection and Replacement, if Necessary

(a) Within 18 months after the effective date of this AD: Perform a one-time general visual inspection of circuit breakers to determine the manufacturer of the circuit breaker, in accordance with McDonnell Douglas Alert Service Bulletin DC9–24A171, Revision 01, dated September 21, 1999, excluding Evaluation Form.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no Wood Electric Corporation or Wood Electric Division of Potter Brumfield Corporation circuit breaker is found, no further action is required by this AD.

(2) If any Wood Electric Corporation or Wood Electric Division of Potter Brumfield Corporation circuit breaker is found, prior to further flight, replace the circuit breaker with a new circuit breaker in accordance with the service bulletin.

Spares

(b) As of the effective date of this AD, no person shall install, on any airplane, a circuit breaker having a part number listed in paragraph 1.A.2., "Spares Affected," of McDonnell Douglas Alert Service Bulletin DC9–24A171, Revision 01, dated September 21, 1999, excluding Evaluation Form.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC9–24A171, Revision 01, dated September 21, 1999, excluding Evaluation Form. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on January 17, 2003.

Issued in Renton, Washington, on December 5, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–31178 Filed 12–12–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30344; Amdt. No. 3036]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective December 13, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 13, 2002.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S.

Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on December 6, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DEM, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows: (Effective upon publication)

FDC date	State	City	Airport	FDC No.	Subject
11/14/02	NY	Albany	Albany Intl	2/1944	ILS RWY 1, AMDT 9B.
11/14/02	NY	Albany	Albany Intl	2/1946	GPS RWY 19, ORIG–A.
11/14/02	NY	Albany	Albany Intl	2/1947	GPS RWY 1, ORIG–A.
11/14/02	NY	Albany	Albany Intl	2/1948	ILS RWY 19, AMDT 21A.
11/14/02	NY	Albany	Albany Intl	2/1949	VOR RWY 28, ORIG–A.
11/14/02	NY	Albany	Albany Intl	2/1950	GPS RWY 28, ORIG–A.
11/15/02	CA	Oakland	Metropolitan Oakland Intl	2/1990	NBD RWY 27R, AMDT 5A.
11/15/02	TX	Laredo	Laredo Intl	2/1996	LOC BC RWY 35L, AMDT 1A.
11/18/02	MN	St. Cloud	St. Cloud Regional	2/2033	VOR/DME RWY 13, AMDT 8B.
11/20/02	TX	Houston	George Bush Intercontinental	2/2066	RNAV (GPS) RWY 27, ORIG–B.
11/20/02	TX	Houston	George Bush Intercontinental	2/2067	RNAV (GPS) RWY 33R, ORIG–B.
11/21/02	IL	Belleville	Scott AFB/Midamerica	2/2098	NDB RWY 32R, ORIG–B.
11/21/02	FL	Panama City	Panama City-Bay County Intl	2/2111	RNAV (GPS) RWY 5, ORIG.
11/21/02	FL	Panama City	Panama City-Bay County Intl	2/2112	RNAV (GPS) RWY 32, ORIG.
11/22/02	OH	Jackson	James A. Rhodes	2/2146	VOR/DME–A, AMDT 1.
11/22/02	OH	Jackson	James A. Rhodes	2/2147	RNAV (GPS) RWY 1, ORIG.
11/22/02	OH	Jackson	James A. Rhodes	2/2148	RNAV (GPS) RWY 19, ORIG.
11/25/02	NJ	Teterboro	Teterboro	2/2203	ILS RWY 6, AMDT 29A.
11/25/02	NJ	Teterboro	Teterboro	2/2204	VOR/DME RWY 6, ORIG–B.
11/25/02	NJ	Teterboro	Teterboro	2/2205	COPTER ILS RWY 6, AMDT 1B.
11/25/02					
11/25/02	OR	Corvallis	Corvallis Muni	2/2212	NDB RWY 17, AMDT 1.
11/26/02	TX	Dallas	Dallas-Love Field	2/2225	ILS RWY 13R, AMDT 4B.
11/26/02	TX	Houston	George Bush Intercontinental	2/2244	RNAV (GPS) RWY 8, ORIG–B.
11/28/02	VA	Emporia	Emporia-Greensville Regional	2/2246	RNAV (GPS) RWY 33, ORIG.
11/28/02	VA	Emporia	Emporia-Greensville Regional	2/2247	NDB RWY 33, ORIG.
11/28/02	VA	Emporia	Emporia-Greensville Regional	2/2278	LOC RWY 33, ORIG.
11/28/02	TX	Waco	TSTC Waco	2/2258	NDB RWY 17L, AMDT 9A.
11/28/02	TX	Waco	TSTC Waco	2/2259	ILS RWY 17L, AMDT 11B.
11/28/02	TX	Waco	TSTC Waco	2/2267	GPS RWY 17L, ORIG–A.
11/28/02	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	2/2269	CONVERGING ILS RWY 13R, AMDT 5.
11/28/02	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	2/2270	CONVERGING ILS RWY 17C, AMDT 4D.
11/28/02	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	2/2271	CONVERGING ILS Y RWY 36L, ORIG.
11/28/02	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	2/2272	ILS RWY 35L, AMDT 3.
11/28/02	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	2/2273	ILS RWY 17C, AMDT 7C.
11/28/02	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	2/2274	ILS RWY 13R, AMDT 6A.
11/28/02	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	2/2275	ILS RWY 17L, AMDT 2.
11/28/02	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	2/2276	ILS RWY 35R, AMDT 2.

FDC date	State	City	Airport	FDC No:	Subject
11/28/02	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	2/2277	ILS Y RWY 36L, ORIG.
11/28/02	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	2/2281	CONVERGING ILS RWY 35L, AMDT2.
11/28/02	NJ	Teterboro	Teterboro	2/2313	RNAV (GPS) RWY 6, ORIG.
11/28/02	NJ	Teterboro	Teterboro	2/2314	VOR/DME–A, AMDT 2A.
11/28/02	NJ	Teterboro	Teterboro	2/2315	VOR/DME–B, AMDT 2B.
11/28/02	PA	Philadelphia	Wings Field	2/2328	RNAV (GPS) RWY 6, ORIG.
11/28/02	PA	Philadelphia	Wings Field	2/2329	RNAV (GPS) RWY 24, ORIG.
11/28/02	WA	Bellingham	Bellingham Intl	2/2344	MLS RWY 34, ORIG–A.
11/28/02	CO	Denver	Denver Intl	2/2340	ILS RWY 34, AMDT 1 (CAT I, II, III).
11/28/02	CO	Denver	Denver Intl	2/2339	ILS RWY 16, AMDT 2.
11/28/02	CO	Denver	Denver Intl	2/2338	RNAV (GPS) RWY 34, ORIG.
11/28/02	CO	Denver	Denver Intl	2/2336	RNAV (GPS) RWY 16, ORIG.
11/28/02	CO	Denver	Denver Intl	2/2309	ILS RWY 35R, AMDT 1 (CAT I, II, III).
11/28/02	CO	Denver	Denver Intl	2/2308	ILS RWY 35L, AMDT 3 (CAT I, II, III).
11/28/02	CO	Denver	Denver Intl	2/2307	ILS RWY 17R, AMDT 2.
11/28/02	CO	Denver	Denver Intl	2/2306	ILS RWY 17L, AMDT 2.

[FR Doc. 02–31351 Filed 12–12–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30343; Amdt. No. 3035]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective December 13, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 13, 2002.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures

(TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedures before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on December 6, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: §97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; §97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; §97.27 NDB, NDB/DME; §97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; §97.31 RADAR SIAPs; §97.33 RNAV SIAPs; and §97.35 COPTER SIAPs, identified as follows:

* * * *Effective January 23, 2003*

Kodiak, AK, Kodiak, VOR OR TACAN Y RWY 25, Orig
Kodiak, AK, Kodiak, NDB RWY 25, Orig
Kodiak, AK, Kodiak, ILS Y RWY 25, Orig
Kodiak, AK, Kodiak, RNAV (GPS) RWY 25, Orig
Kodiak, AK, Kodiak, VOR OR TACAN–1 RWY 25, Amdt 5, CANCELLED
Kodiak, AK, Kodiak, NDB–1 RWY 25, Amdt 3, CANCELLED
Kodiak, AK, Kodiak, ILS/DME–1 RWY 25, Amdt 3, CANCELLED
Kodiak, AK, Kodiak, GPS RWY 25, Orig–A, CANCELLED
Calipatria, CA Cliff Hatfield Memorial, RNAV (GPS) RWY 8, Orig
Daggett, CA, Barstow-Daggett, VOR OR TACAN RWY 22, Amdt 8A
Daggett, CA, Barstow-Daggett, RNAV (GPS) RWY 22, Orig
Daggett, CA, Barstow-Daggett, RMAV (GPS) RWY 26, Orig
Palm Springs, CA Desert Resorts Regional, VOR/DME RWY 30, Amdt 1
Palm Springs, CA Desert Resorts Regional, RNAV (GPS) RWY 30, Orig
Palm Springs, CA Desert Resorts Regional, RNAV (GPS) RWY 35 Orig
La Junta, CO, La Junta Muni, NDB OR GPS RWY 8, Amdt 5A, CANCELLED
Orlando, FL, Orlando Intl, VOR/DME RWY 36R, Amdt 10
St. Augustine, FL, St. Augustine, ILS RWY 31, Orig
Ankeny, IA, Ankeny Regional, RNAV (GPS) RWY 18, Orig
Ankeny, IA, Ankeny Regional, RNAV (GPS) RWY 22, Orig
Sioux City, IA, Sioux Gateway/Col Bud Day Field, NDB RWY 17, Amdt 1
Crisfield, MD, Crisfield Muni, VOR–A, Orig
Crisfield, MD, Crisfield Muni, RNAV (GPS) RWY 32, Orig
Provincetown, MA, Provincetown Muni, NDB RWY 7, Amdt 1
Provincetown, MA, Provincetown Muni, NDB RWY 25, Amdt 2
Provincetown, MA, Provincetown Muni, ILS RWY 7, Amdt 8
Provincetown, MA, Provincetown Muni, RNAV (GPS) RWY 7, Orig
Provincetown, MA, Provincetown Muni, RNAV (GPS) RWY 25, Orig
Pottstown, PA, Pottstown-Limerick, NDB RWY 28, Amdt 1A, CANCELLED
Richfield, UT, Richfield Muni, RNAV (GPS) RWY 19, Orig
Martinsville, VA, Blue Ridge, RNAV (GPS) RWY 12, Orig
Martinsville, VA, Blue Ridge, RNAV (GPS) RWY 30, Orig
Martinsville, VA, Blue Ridge, GPS RWY 12, Orig-A, CANCELLED
Martinsville, VA, Blue Ridge, GPS RWY 30, Orig-A, CANCELLED

The FAA published the following procedures in Docket No. 30332; Amdt No. 30332; Amdt No. 3025 to Part 97 of the Federal Aviation Regulations (Vol. 67, FR No. 195, Page 62639; dated Tuesday, October 08, 2002) under section 97.29 effective November 28, 2002 which are hereby rescinded:

Chicago, IL, Chicago Midway, ILS RWY 13C, Amdt 41
Chicago, IL, Chicago Midway, ILS RWY 31C, Amdt 6

Refer to FDC NOTAM 2/2295 and (General Notice) GENOT 2/59 for further information.

The FAA published the following procedures in Doctket No. 30341; Amdt No. 3033 to Part 97 of the Federal Aviation Regulations (Vol. 67, FR No. 232, Page 71818; dated Tuesday, December 3, 2002) under section 97.29 effective January 23, 2003 which are hereby rescinded:

Farmington, NW, Four Corners Regional, VOR RWY 23, Orig
Farmington, NW, Four Corners Regional, VOR RWY 25, Amdt 10
Farmington, NW, Four Corners Regional, VOR/DME RWY 5, Orig
Farmington, NW, Four Corners Regional, RNAV (GPS) RWY 5, Orig
Farmington, NW, Four Corners Regional, RNAV (GPS) RWY 7, Amdt 1
Farmington, NW, Four Corners Regional, RNAV (GPS) RWY 23, Orig

[FR Doc. 02–31350 Filed 12–12–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 868

[Docket No. 01N–0576]

Medical Devices; Reclassification of the Cutaneous Carbon Dioxide and the Cutaneous Oxygen Monitor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reclassifying the cutaneous carbon dioxide ($PcCO_2$) monitor from class II (performance standards) into class II (special controls). FDA is also reclassifying the cutaneous oxygen (PcO_2) monitor for an infant patient who is not under gas anesthesia from class II (performance standards) into class II (special controls) and is reclassifying the cutaneous oxygen (PcO_2) monitor for all other uses from class III (premarket approval) into class II (special controls). Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance document entitled "Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Guidance for Industry and FDA" that will serve as the special control for the devices. These reclassifications are taken on the agency's own initiative based on new information. These actions are being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), the Food and Drug Administration Modernization Act of 1997 (FDAMA), and the Medical Device User Fee and Modernization Act.

DATES: This rule is effective January 13, 2003.

FOR FURTHER INFORMATION CONTACT: William A. Noe, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609, ext. 174.

SUPPLEMENTARY INFORMATION:

I. Background

The act (21 U.S.C. 301 *et. seq.*), as amended by the 1976 amendments (Public Law 94–295), the SMDA (Public Law 101–629), and FDAMA (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under the 1976 amendments, class II devices were defined as those devices for which there is insufficient information to show that general controls themselves will assure safety and effectiveness, but for which there is sufficient information to establish performance standards to provide such assurance. The SMDA broadened the definition of class II devices to mean those devices for which there is insufficient information to show that general controls themselves will assure safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and any other appropriate actions the agency deems necessary (section 513(a)(1)(B) of the act).

It is the agency's position that it is not necessary to obtain a new classification recommendation from a panel that had recommended classification into class II prior to the SMDA. If a panel recommended that a device be classified into class II under the 1976 definition of class II, which included only performance standards as a class II control, clearly the Panel's recommendation for class II status would not change if controls, in addition to performance standards, could be added.

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with section 513(f)(2) of the act, as amended by FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807).

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Reclassification of classified preamendments devices is governed by section 513(e) of the act. This section provides that FDA may, by rulemaking, reclassify a device (in a proceeding that parallels the initial classification proceeding) based upon "new information." The reclassification can be initiated by FDA or by the petition of an interested person. The term "new information," as used in section 513(e) of the act, includes information developed as a result of a reevaluation of the data before the agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of newly available regulatory authority (see *Bell* v. *Goddard*, supra, 366 F.2d at 181; *Ethicon, Inc.* v. *FDA*, 762 F. Supp. 382, 389–91 (D.D.C. 1991)), or in light of changes in "medical science." (See *Upjohn* v. *Finch*, supra, 422 F.2d at 951.) Regardless of whether data before the agency are past or new data, the "new information" on which any reclassification is based is required to consist of "valid scientific evidence," as defined in section 513(a)(3) of the act and 21 CFR 860.7(c)(2). (See, e.g., *General Medical Co.* v. *FDA*, 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Assoc.* v. *FDA*, 766 F.2d 592 (D.C. Cir.), cert. denied, 474 U.S. 1062 (1985). FDA relies upon "valid scientific evidence" in the classification process to determine the level of regulation for devices. For the purpose of reclassification, the valid scientific evidence upon which the agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of a pending premarket approval application (PMA). (See section 520(c) of the act (21 U.S.C. 360j(c).)

In accordance with section 513(e) of the act and 21 CFR 860.130(b)(1), based on new information with respect to the device, FDA, on its own initiative, is reclassifying the $PcCO_2$ monitor from class II (performance standards) into class II (special controls). FDA is also reclassifying the PcO_2 monitor for an infant patient who is not under gas anesthesia from class II (performance standards) into class II (special controls) and the PcO_2 monitor for all other uses from class III (premarket approval) into class II (special controls).

FDAMA added a new section 510(m) to the act. Section 510(m) of the act provides that a class II device may be

exempted from the premarket notification requirements under section 510(k), if the agency determines that premarket notification is not necessary to assure the safety and effectiveness of the device. FDA has determined that premarket notification is necessary to assure the safety and effectiveness of the $PcCO_2$ monitor and the PcO_2 monitor.

II. Regulatory History of the Device

In the **Federal Register** of February 12, 2002 (67 FR 6444), FDA published a proposed rule reclassifying the $PcCO_2$ monitor from class II (performance standards) into class II (special controls), the PcO_2 monitor for an infant patient who is not under gas anesthesia from class II (performance standards) into class II (special controls), and the PcO_2 monitor for all other uses from class III (premarket approval) into class II (special controls), on the agency's own initiative based on new information.

FDA also identified the document "Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Guidance for Industry and FDA" as the special control applicable to these devices.

Interested persons were invited to comment on the proposed rule by April 15, 2002, and on the draft special control guidance document by May 13, 2002. FDA received no comments on the proposed rule. FDA received two comments on the draft guidance document and they are discussed in the notice of availability for the guidance published elsewhere in this issue of the **Federal Register**.

Based on a review of the available information, FDA concludes that the guidance document "Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Guidance for Industry and FDA," in conjunction with general controls, provides reasonable assurance of the safety and effectiveness of these devices. Following the effective date of this final rule, any firm submitting a 510(k) premarket notification for the $PcCO_2$ monitor or the PcO_2 monitor will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance document.

III. Summary of Final Rule

FDA is adopting the assessment of the risks to public health stated in the proposed rule published on February 12, 2002. Furthermore, FDA is issuing a final rule that revises §§ 868.2480 and 868.2500, thereby reclassifying the generic type of device, $PcCO_2$ monitor, from class II (performance standards) into class II (special controls) and the generic type of device, PcO_2 monitor, for an infant patient who is not under gas anesthesia from class II (performance standards) into class II (special controls), and for all other uses, from class III (premarket approval) into class II (special controls). The special control capable of providing reasonable assurance of safety and effectiveness for these devices is a guidance document entitled "Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Guidance for Industry and FDA." This guidance document describes a means by which $PcCO_2$ and PcO_2 monitor devices may comply with the requirement of special controls for class II devices. Following the effective date of this final rule, any firm submitting a premarket notification (510(k)) for a $PcCO_2$ monitor or PcO_2 monitor will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

For the convenience of the reader, FDA is adding new § 868.1(e) to inform the reader where to find guidance documents referenced in 21 CFR part 868.

IV. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that these classification actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et. seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of the cutaneous oxygen monitor from class III will relieve all manufacturers of these devices of the cost of complying with the premarket approval requirements in section 515 of the act. Furthermore, this rule may permit small potential competitors to enter the marketplace by lowering their costs.

Compliance with special controls for the cutaneous oxygen monitor and the cutaneous carbon dioxide monitor will not impose significant new costs on affected manufacturers because most of these devices already comply with the special controls. Based upon its review of the information submitted in premarket notifications for these devices, FDA believes that manufacturers presently marketing these devices are in conformance with the guidance document. The guidance document assures that, in the future, these generic types of devices will be at least as safe and effective as the presently marketed devices. These devices are already subject to premarket notification and labeling requirements. The guidance document advises manufacturers on appropriate means of complying with these requirements.

The agency, therefore, certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Paperwork Reduction Act of 1995

The final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (the PRA) is not required.

The information collections addressed in the special control guidance document identified by this rule have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB in accordance with the PRA under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 868

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 868 is amended as follows:

PART 868—ANESTHESIOLOGY DEVICES

1. The authority citation for 21 CFR part 868 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 868.1 is amended by adding paragraph (e) to read as follows:

§ 868.1 Scope.

* * * * *

(e) Guidance documents referenced in this part are available on the Internet at http://www.fda.gov/cdrh/guidance.html.

3. Section 868.2480 is amended by revising paragraph (b) to read as follows:

§ 868.2480 Cutaneous carbon dioxide ($PcCO_2$) monitor.

* * * * *

(b) *Classification.* Class II (special controls). The special control for this device is FDA's "Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Guidance for Industry and FDA." See § 868.1(e) for the availability of this guidance document.

4. Section 868.2500 and the section heading is revised to read as follows:

§ 868.2500 Cutaneous oxygen (PcO_2) monitor.

(a) *Identification.* A cutaneous oxygen (PcO_2) monitor is a noninvasive, heated sensor (e.g., a Clark-type polargraphic electrode) placed on the patient's skin that is intended to monitor relative changes in the cutaneous oxygen tension.

(b) *Classification.* Class II (special controls). The special control for this device is FDA's "Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Guidance for Industry and FDA." See § 868.1(e) for the availability of this guidance document.

Dated: December 2, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–31442 Filed 12–12–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 45

[Public Notice 4216]

Visas: Documentation of Immigrants Under Section 124 of Public Law 101–649

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule removes the Department's regulations concerning the documentation of immigrants under section 124 of Immigration Act of 1990 (IMMACT 90). This section provided immigrant status for certain aliens who were resident and employed in Hong Kong. Qualifying aliens could be granted immigrant status during fiscal years 1991 and 1993 and could be granted extended immigrant visa validity up to January 1, 2002. Since this category of visas no longer exists, the Department is removing the regulations.

EFFECTIVE DATE: December 13, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20522–0113.

SUPPLEMENTARY INFORMATION:

Section 124 of the Immigration Act of 1990 (IMMACT 90) created a special immigrant visa classification for residents of Hong Kong employed by either U.S. owned or operated businesses or by the American Consulate General in Hong Kong. Visas for business employees were to have been issued during fiscal years 1991 and 1993. Section 154 of IMMACT 90 also provided for an extension of validity of these visas through January 1, 2002. Visas for Consulate General employees were to have been issued by January 1, 2001. Since these visas are no longer being issued and since the extended validity period has now expired, the Department is removing the regulations pertaining to this class of immigrants.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as a final rule, since it is merely removing regulations that governed a class of immigrants which no longer exists.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The

Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 45

Aliens, Immigrants, Passports and Visas.

Accordingly, under the authority 8 U.S.C. 1153, the Department is removing part 45.

Dated: November 22, 2002.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 02–31483 Filed 12–12–02; 8:45 am]

BILLING CODE 4710–06–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in January 2003. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to part 4022).

Accordingly, this amendment (1) adds to Appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during January 2003, (2) adds to Appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during January 2003, and (3) adds to Appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during January 2003.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 5.30 percent for the first 20 years following the valuation date and 5.25 percent thereafter. These interest assumptions (in comparison with those in effect for December 2002) reflect a 5-year decrease in the period during which the initial rate applies (from a period of 25 years following the valuation date to a period of 20 years following the valuation date). The initial rate, in effect during the 20-year period, is unchanged from the initial rate in effect for December 2002. The ultimate rate, in effect thereafter, represents an increase (from the ultimate rate in effect for December 2002) of 1.00 percent.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 4.00 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for December 2002.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during January 2003, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. *See* 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 111, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date: On or after	Before	Immediate annuity rate (percent)	Deferred annuities (percent): i_1	i_2	i_3	n_1	n_2
111	1–1–03	2–1–03	4.00	4.00	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 111, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date: On or after	Before	Immediate annuity rate (percent)	Deferred annuities (percent): i_1	i_2	i_3	n_1	n_2
111	1–1–03	2–1–03	4.00	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are: i_t	for t =	i_t	for t =	i_t	for t =
January 2003	.0530	1–20	.0525	>20	N/A	N/A

Issued in Washington, DC, on this 6th day of December 2002.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 02–31434 Filed 12–12–02; 8:45 am]

BILLING CODE 7708–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7420–3]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of partial deletion of the West Virginia Ordnance Works Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region III announces the partial deletion of portions of the West Virginia Ordnance Works (WVOW) site from the National Priorities List (NPL). The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended. EPA and the State of West Virginia have determined that all appropriate responses under CERCLA have been implemented at the portions of the site being deleted from the NPL and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of West Virginia have determined that response actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: December 13, 2002.

ADDRESSES: Comprehensive information on this release is available for viewing at the site information repositories at the following locations:

Mason County Public Library, 508 Viand Street, Point Pleasant, WV 25550, (304) 675–0894; *Hours of Operation:* Monday through Saturday, 10 a.m.–5 p.m.

U.S. EPA Region III Library, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–5254; *Hours of Operation:* Monday through Friday, 8 a.m.–5p.m.

U.S. Army Corps of Engineers, Huntington District, 502 8th Street, Huntington, WV 25701, (800) 822–8413 or (304) 529–5388; *Hours of Operation:* Monday through Friday, 8 a.m.–4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Potosnak, PE, Remedial Project Manager, U.S. EPA Region III (3HS13), 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–3362.

SUPPLEMENTARY INFORMATION: The portions of the site to be deleted from the NPL are the OU–11 Sellite Plant, the OU–12 North and South Powerhouses and Vicinity, the ENV–6 Wetlands Mitigation area, ESI–3 Tract 21, the ESI–5 Refueling Depot, and the ESI–9 Main and Outgoing Classification Yards.

A Notice of Intent to Delete for this site was published October 22, 2002 (67 FR 64846). The closing date for comments on the Notice of Intent to Delete was November 21, 2002. EPA received no comments.

EPA identifies releases which appear to present a significant risk to public health, welfare, or the environment, and it maintains the NPL as the list of those releases. Releases on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund. Any release deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Reporting and recordkeeping requirements, Superfund.

Dated: December 2, 2002.

Donald S. Welsh,

Regional Administrator, U.S. Environmental Protection Agency, Region III.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Table 2 of appendix B to part 300 is amended by revising the entry for WV, Ordnance Works (USARMY), Point Pleasant to read as follows:

Appendix B to Part 300—National Priorities List

St	Site name	City/County	Notes [a]
WV	West Virginia Ordnance (USARMY)	Point Pleasant	P

[a] P=Sites with partial deletion(s).

[FR Doc. 02–31240 Filed 12–12–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Medicare & Medicaid Services

42 CFR Part 405

[CMS–1908–IFC]

RIN 0938–AJ97

Medicare Program; Application of Inherent Reasonableness to All Medicare Part B Services (Other Than Physician Services)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule.

SUMMARY: This interim final rule sets forth the process for establishing a realistic and equitable payment amount for all Medicare Part B services (other than physician services) when the existing payment amounts are inherently unreasonable because they are either grossly excessive or deficient. We also do not intend to apply this rule to services paid under a prospective payment system, such as outpatient hospital or home health. This rule describes the factors we (or our carrier) will consider and the procedures we will follow in establishing realistic and equitable payment amounts. This rule also responds to the public comments we received on the interim final rule with comment period that described the factors we will follow in establishing realistic and equitable payment amounts. In addition, the rule responds to a General Accounting Office report (as required by section 223 of the Balanced Budget Refinement Act of 1999), and it implements sections 1842(b)(8) and (b)(9) of the Social Security Act as revised by section 4316 of the Balanced Budget Act of 1997.

DATES: *Effective date:* These regulations are effective on February 11, 2003.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 11, 2003.

ADDRESSES: In commenting, please refer to file code CMS–1908–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission or e-mail. Mail written comments (one original and three copies) to the following address only:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1908–IFC, P.O. Box 8017, Baltimore, MD 21244–8017.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses:

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: William Long, (410) 786–5655.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received,

generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, call telephone number: (410) 786–7195.

I. Background

Title XVIII of the Social Security Act (the Act) contains various methodologies for making payment under Part B of the Medicare program. These payment methodologies vary among the different categories of items and services covered under Part B.

Section 4316 of the Balanced Budget Act of 1997 (BBA), Pub. L. 105–33, enacted on August 5, 1997, however, permits the Secretary to deviate from the payment methodologies prescribed in title XVIII of the Act if their application results in a payment amount that, because it is determined to be grossly excessive or deficient, is not inherently reasonable. Section 4316 of the BBA also requires the Secretary to describe the factors to be considered in determining an amount that is realistic and equitable.

The inherent reasonableness concept is not new to the statute. The Secretary has always taken the position that the authority to regulate unreasonable payment amounts is inherent in his authority to determine reasonable charges according to section 1842 of the Act. Moreover, effective September 10, 1986, section 9304(a) of the Consolidated Omnibus Budget Reconciliation Act (COBRA) (Pub. L. 99–272) of 1985 added section 1842(b)(8) and (b)(9) of the Act. These provisions expressly authorize the Secretary to deviate from the payment methodologies prescribed in the Act if their application results in a payment amount for a particular service or group of services, that is determined to be grossly excessive or deficient and is therefore, not inherently reasonable. The statute requires the Secretary to describe in regulations the factors to be considered in determining an amount that is realistic and equitable.

Regulations implementing this provision are contained in 42 CFR 405.502(g) and (h) and were published on August 11, 1986 in the **Federal Register** (51 FR 28710). These regulations describe the factors to be used in determining if the application of the reasonable charge methodology results in a charge that is grossly excessive or grossly deficient. The regulations also describe the factors to be considered in establishing a reasonable charge that is realistic and equitable.

As implemented by the current regulations, section 1842(b)(8) of the Act applies not only to our authority to establish national reasonable charge limits, but also to our carriers' authority to establish carrier-level reasonable charge limits on grossly excessive or deficient charges.

Section 4316 of the BBA amends section 1842(b)(8) of the Act and includes the following key differences:

- It excludes physician services from application of inherent reasonableness.
- It extends the authority to establish special payment limits to Medicare carriers regardless of the methodology used for determining payment and simplifies the inherent reasonableness process for adjustments to payment amounts that are 15 percent or less.

On January 7, 1998 we published in the **Federal Register** (63 FR 687) an interim final rule implementing section 4316 of the BBA.

II. Provisions of the 1998 Interim Final Rule

In the January 7, 1998 interim final rule, we revised § 405.502(g) and (h) by excluding references to physician services. We also deleted specific references to the reasonable charge payment methodology. We deleted these references because the inherent reasonableness provisions apply to all Part B services, except physician services, irrespective of the payment methodology. However, we do not intend to apply this rule to services paid under a prospective payment system, such as outpatient hospital or home health services. We also reflected the change in the statute that permitted us to simplify the process for making adjustments to payment amounts for a category of items or services when the increase or decrease in the payment amount is no more than 15 percent per year. (For purposes of § 405.502(g) and (h), a "category of items or services" may consist of a single item or service or any number of items or services.)

Although the BBA gives the Secretary discretion to reduce the number of factors that are used to make inherent reasonableness determinations, we retained all but one of the factors that appear in § 405.502(g)(1), because they remain as appropriate examples of factors that may result in deficient or excessive payment amounts. We removed the factor related to the use of new technology for which an extensive charge history does not exist because there was already in place an alternative process for establishing payment amounts for new items or services for which an extensive charge history does not exist. (We reinserted this example in the final regulation; however, due to comments we received requesting that this example not be deleted.)

When we implemented section 9304(a) of COBRA of 1985, we interpreted the statute as codifying both our authority and a carrier's authority to establish realistic and equitable payment amounts. We interpreted the provisions of section 4316 of the BBA in the same way. Thus, the final regulations describe the circumstances and factors our carriers and we would use in setting realistic and equitable payment amounts if the existing payment amounts are grossly excessive or deficient.

Section 4316 of the BBA amends section 1842(b)(8), adding provisions that apply if a reduction or increase would vary the payment amount by 15 percent or less "during any year." (Other provisions apply to larger increases and decreases.) Under this authority, we (or a carrier) may determine that more than a 15-percent adjustment is warranted, but we may choose to apply only a 15-percent adjustment in any given year and use the "15 percent" methodology. For example, we (or a carrier) may determine that a 25-percent reduction is warranted. However, the adjustment could be accomplished over 2 years—15 percent applied the first year, and 10 percent applied the following year.

Other than these BBA changes and some minor modifications, the revised 1998 interim final regulations were the same as the final regulations that were published in the **Federal Register** (53 FR 26067) on July 11, 1988.

While amended section 1842(b)(8)(C) of the Act does not specifically require that we include all the factors for making inherent reasonableness determinations for a category of items or services currently contained in § 405.502(g), it permits the Secretary to consider any additional factors determined to be appropriate. The additional pre-BBA factors we may consider, in accordance with current § 405.502(g)(1), include the following:

- The market place is not competitive.
- The payment amounts in a particular locality grossly exceed amounts paid in other localities for the category of items or services.
- The payment amounts grossly exceed acquisition or production costs for the category of items or services.
- There have been increases in payment amounts that cannot be explained by inflation or technology,

III. Balanced Budget Refinement Act of 1999

Section 223 of the Balanced Budget Refinement Act (BBRA) of 1999, Pub. L. 106–113, enacted on November 29, 1999, prohibits the use of the inherent reasonableness authority until the following events have occurred:

Step 1: The Comptroller General releases a report regarding the impact of the Secretary's fiscal intermediaries' and carriers' use of the authority.

This report entitled "Medicare Payments-Use of Revised 'Inherent Reasonableness' Generally Appropriate (GAO/HEHS-OO–79)" was released by the General Accounting Office (GAO) in July 2000. A discussion of this report and our response to its recommendations is contained in section IV of this regulation.

Step 2: The Secretary has published a notice of final rulemaking in the **Federal Register** that relates to the authority and that responds to the report and to comments received in response to the Secretary's interim final regulation relating to the authority that was published on January 7, 1998.

This regulation constitutes a notice of final rulemaking relating to inherent reasonableness authority. In addition to responding to the GAO Report, this regulation also responds to the comments received regarding the interim final regulation that was published January 7, 1998. Section V of this regulation includes our responses to these comments. However, we are issuing this regulation as an interim final rule so that the public will have an additional opportunity to comment. We are particularly interested in receiving comments on two provisions that contain further specificity than found in the 1998 interim final rule. These two provisions are the definitions of "grossly excessive" and "grossly deficient" in § 405.502(g)(1)(ii) and the criteria for using valid and reliable data in § 405.502(g)(4). Comments on the 1998 interim final rule are addressed in section V of this interim final rule.

Step 3: In publishing the final regulation, the Secretary will reevaluate the appropriateness of the criteria included in the interim final regulation for identifying payments that are excessive or deficient.

The criteria set forth in the interim final rule were never intended to include every set of circumstances where inherent reasonableness would be considered appropriate. We have reviewed the criteria that were included in the interim final rule. These same criteria were also included in the 1986 final regulation and are, therefore, not new but have been in effect for over 10 years. These criteria were originally established by the Congress. We believe the criteria remain as appropriate today as they were when the Congress established them, and we would need compelling reasons for determining that any of the criteria are inappropriate. A more detailed discussion of the criteria is contained in section V of this preamble. Once again, we would point out that these criteria are furnished as examples of situations of possible grossly excessive or deficient payment amounts and we believe they are realistic and continue to be relevant. In addition, the criteria were never intended to include every set of circumstances for which inherent reasonableness would be considered appropriate.

Step 4: Take appropriate steps to ensure the use of valid and reliable data when exercising the authority.

The regulation has been revised to include a new section that provides a methodology taken from the GAO report to ensure the use of valid and reliable data (§ 405.502(g)(4)). The criteria include doing the following:

- Develop written guidelines for data collection and analysis;
- Ensure consistency in any survey to collect and analyze pricing data.
- Develop a consistent set of survey questions to use when requesting retail prices.
- Ensure that sampled prices fully represent the range of prices nationally.
- Consider the geographic distribution of Medicare beneficiaries.
- Consider relative prices in the various localities to ensure that an appropriate mix of areas with high, medium, and low consumer prices was included.
- Consider criteria to define populous State, less populous State, urban area, and rural area.
- Consider a consistent approach in selecting retail outlets within selected cities.
- Consider whether the distribution of sampled prices from localities surveyed is fully representative of the distribution of the U.S. population.
- Consider the products generally used by beneficiaries and collect prices of these products.
- When using wholesale costs, consider the cost of the services necessary to furnish a product to beneficiaries.

IV. Response to GAO Report

In July 2000, the GAO released a report entitled "Medicare Payments—Use of Revised 'Inherent Reasonableness' Generally Appropriate (GAO/HEHS–00–79)." This interim final regulation responds to the GAO report and, in section V, responds to the comments received regarding the January 7, 1998 interim final regulation. In its report, the GAO found that CMS's use of the revised inherent reasonableness process was generally appropriate. Also, the GAO made four specific recommendations that are discussed below.

Recommendation: In publishing the final rule on the inherent reasonableness process, CMS should define with sufficient clarity the terms "grossly excessive" and "grossly deficient."

Response: We concur with this recommendation. The GAO indicated that the definition of these terms is needed so that it is clear to the medical equipment industry precisely what constitutes grossly excessive or grossly deficient. In its report, the GAO states that "clearly an adjustment of under 15 percent could qualify [as grossly excessive or grossly deficient], because the inherent reasonableness authority extends to situations in which the difference between a current and proposed payment amount is under 15 percent."

In addition, the statute provides two different processes once a determination is made that a payment amount is grossly excessive or deficient. That is, the statute specifies a process for adjustments of 15 percent or more in a given year and a simplified process for adjustments of less than 15 percent in a given year. However, the statute does not define what constitutes a grossly excessive or deficient payment amount. Nevertheless, the statute places significant importance on a 15 percent criterion. For this reason, we believe that differences between current and proposed payment amounts of less than 15 percent should not be considered grossly excessive or grossly deficient and therefore do not provide a sufficient basis for using Inherent Reasonableness authority. This definition does not preclude adjustments of less than 15 percent in a given year once it is determined that an overall adjustment of 15 percent or more is justified.

Recommendation: For future inherent reasonableness reviews based on survey data, CMS or the carriers should develop and implement a more structured survey design, including sample selection, survey instrumentation, and data collection methods, and ensure that the design is consistently used by all entities conducting the survey.

Response: In September of 1998, the carriers proposed reducing payment amounts for blood glucose test strips, lancets, intermittent urinary catheters, basic enteral formula, albuterol sulfate (an inhalation solution), and eyeglass frames. The basis for these payment reductions was their determination that the current fees were grossly excessive. The carriers based this determination on a comparison of the current fees with the retail prices charged by suppliers. The retail data were gathered from telephone inquiries and on-site visits to retailers. Each DMERC obtained retail prices from four States in their region (three populous States and one less populous State). Thus, the carriers obtained prices from a total of 16 States across the country (12 populous States and 4 less populous States). Within each State, the carriers obtained prices from three urban areas and two rural areas. Within each urban area, the carriers obtained prices from four large stores and one small store. Within each rural area, the carriers selected one store. At least 200 observations were made for each of the six items with over 1,000 observations being made for blood glucose test strips.

The following are the GAO's main criticisms of this retail price survey as stated in the report and our responses:

- The carriers' sampling plan was developed without fully considering the geographic distribution of Medicare beneficiaries.

Based on this criticism from the GAO, in the future we will ensure that greater consideration is given to survey design including the geographic distribution of Medicare beneficiaries for the purpose of conducting retail price surveys.

- The carriers did not consider relative prices in the localities from which they sampled, which would have helped ensure that an appropriate mix of areas with high, medium, and low consumer prices was included.

The carriers surveyed both large and small States, urban and rural areas, and independent and chain stores for this purpose. In the future, we will take steps to ensure that consideration is given to including areas with high, medium, and low consumer prices.

- The carriers did not establish criteria to define populous State, less populous State, urban area, rural area, and, consequently, each carrier used different criteria in selecting locations.
- We will adopt more standard definitions of what constitutes populous States, less populous States, urban areas, and rural areas and will ensure that the carriers use these definitions.
- The carriers were not consistent in how they chose retail outlets within selected cities.

While the carriers surveyed both independent and chain stores, we will instruct the carriers to be more consistent in the methodology they use to make these selections.

- The carriers did not use consistent methods to collect and analyze the pricing data and did not develop written guidelines for data collection and analysis.

The carriers did use written spreadsheets to contain the basic information that they were looking for when they contacted each retail store. The method that was used was a simple example of price shopping, namely, pricing data were collected by contacting retail stores to find out how much they charge for a certain list of items. The carriers followed general guidelines that were provided by CMS. We will issue more detailed guidelines to the carriers to ensure that a more standardized method is used when obtaining pricing information in the future.

Also, based on these GAO criticisms of the carriers price survey, the carriers will not finalize their September 1998 proposed adjustments since the methodology used by the carriers' for making the proposed adjustments does not reflect the revised regulatory criteria recommended by GAO for making inherent reasonableness determinations. Likewise, the CMS inherent reasonableness proposals that were published in August 1999 will not be finalized since the methodology used for making the proposed adjustments also do not reflect the revised criteria recommended by GAO and adapted in this final regulation.

Recommendation: CMS and the carriers should collect and analyze additional information to more precisely estimate any payment reductions for glucose test strips, albuterol sulfate, and enteral formulas, as well as for additional payment reductions in subsequent years for lancets, eyeglass frames, latex Foley catheters, and catheter insertion trays without drainage bags.

Response: See response to previous recommendation.

Recommendation: CMS should monitor indicators that could signal potential problems with patient access to the product groups for which it is reducing maximum payments and act quickly to rectify any problems that arise.

Response: As stated in our comments on the draft report, we will monitor patient access to items for which payment amounts are adjusted using the inherent reasonableness process by periodically checking the rate at which suppliers are accepting assignment for these items and by monitoring any beneficiary complaints regarding access.

V. Comments and Responses

A. General

The January 7, 1998 interim final rule invited comments. The specific comments and our responses to these comments follow:

Comment: Only the Congress should be permitted to revise payment rates.

Response: The inherent reasonableness authority was first expressly granted to the Secretary by the Congress in section 9304 of COBRA of 1985. The inherent reasonableness process was specifically established by the Congress for the Secretary to use in adjusting unreasonable payment amounts. In section 4316 of the BBA, the Congress further modified the inherent reasonableness authority which allows the Secretary to revise payment rates. Therefore, the Congress clearly granted the Secretary the authority to revise payment rates using the inherent reasonableness process.

Comment: The statute limits inherent reasonableness adjustments to particular items, not categories of items.

Response: The regulations have always referred to inherent reasonableness as applying to categories of services. While the statute makes reference to particular items or services, we do not believe that this precludes our applying inherent reasonableness to categories of particular items or services that are similar in function and technology, for example, durable medical equipment grouped together under the same code in the Health Care Common Procedure Coding System (HCPCS). It would be impractical to make separate inherent reasonableness adjustments for each unique item or service. For example, it would not be practical to make inherent reasonableness determinations for every different manufacturer, brand name, or model of a specific type of wheelchair described by a particular HCPCS code. Moreover, if a category of items is so similar that payment is made based on the same code and same payment determination, it seems to us completely logical to apply the same limitation to the whole category.

Comment: The inherent reasonableness provision should not be applied to hospital outpatient services.

Response: The statute applies inherent reasonableness to all Part B items and services other than physicians' services as defined and paid for under section 1848 of the Act. By statute, hospital outpatient services,

therefore, are not excluded from the inherent reasonableness process. However, we do not intend to apply this rule to services paid under a prospective payment system, such as outpatient hospital or home health services.

Comment: The inherent reasonableness provision should not be applied to drugs administered in physicians' offices.

Response: The statute applies inherent reasonableness to all Part B items and services other than physicians' services as defined and paid for under section 1848 of the Act. Drugs are paid under section 1842(o) of the Act and not section 1848 of the Act. The inherent reasonableness authority can and should be used in cases for which the standard rules for determining payment amounts for drugs result in grossly deficient or excessive payment amounts. However, we do not intend to apply this rule to services paid under a prospective payment system, such as outpatient hospital or home health services. Further, no item or service will be subjected to a change in payment under the inherent reasonable authority until it is published by either CMS in the **Federal Register** or its carriers in their own publication and consideration of comments received in response to the proposed notice. (CMS notices are published in the **Federal Register**.)

Comment: It would be inappropriate for CMS to change laboratory payments while the Institute of Medicine is conducting a study on Part B payments.

Response: Before applying inherent reasonableness to laboratory services, we will consider the results of the study conducted by the Institute of Medicine. As we noted above, the inherent reasonableness authority can and should be used in cases where the standard rules for determining payment amounts for laboratory services result in grossly deficient or excessive payment amounts. Moreover, no item or service will be subjected to a change in payment under the inherent reasonableness authority until it is published by either CMS in the **Federal Register** or its carriers in their own publication and consideration of comments received in response to the proposed notice.

Comment: CMS should not ignore grossly deficient situations. CMS should include the mechanisms for increasing deficient payments.

Response: We will monitor all complaints from beneficiaries, suppliers, providers, and others regarding patient access to items and services for which payment amounts may be adjusted using the inherent reasonableness process. If we determine that a payment amount is grossly deficient, then we will propose that the payment amount be adjusted using the inherent reasonableness process.

Comment: CMS should increase payment allowances for items used by ostomy patients.

Response: The inherent reasonableness authority was suspended by the BBRA (see section III of this final rule for a discussion of the BBRA). Before that statute, we were reviewing the payment amounts for several ostomy items to determine if inherent reasonableness adjustments were necessary. We intend to continue reviewing payment for these items once the inherent reasonableness authority is restored.

Comment: If CMS or a carrier decides to reduce excessive payment allowances by more than 15 percent spread out over 2 or more years, it should repeat the review process each year; otherwise, this provision contravenes congressional intent.

Response: As recommended in the GAO report, when adjustments of more than 15 percent are spread out over multiple years, we will review market prices in the years subsequent to the year that the initial 15 percent reduction is effective. The purpose of this review is to ensure that further reductions continue to be appropriate. However, the GAO does not recommend that a new proposed notice be published for each year in which reductions are implemented in addition to the initial 15 percent reduction, and we agree that it is not necessary to publish another notice.

Comment: Arbitrary adjustments to payment rates will affect patient access, assignment rates, beneficiary liability, and quality of care.

Response: The purpose of the inherent reasonableness process is to establish realistic and equitable payment amounts when it is determined that the current payment methods result in amounts that are grossly excessive or grossly deficient. If payment amounts are proposed using the inherent reasonableness process that are not realistic and equitable, then the public has an opportunity to address this during the comment period. Information we or our carriers receive during the comment period or at any other time that demonstrates that inherent reasonableness adjustments will affect patient access, assignment rates, beneficiary liability, or quality of care would result in our appropriately adjusting the payment amount.

Whether attempting to adjust payments centrally through a **Federal Register** notice or through the Medicare carriers, we believe that payment adjustments can only be effective if they follow a defensible process for doing so and are based on accurate information. As described in § 405.502(g)(1) through (g)(4) of this regulation, a carrier proposing to establish a special payment limit for a category of items or services must inform the affected suppliers and Medicaid agencies of the proposed payment amounts and the factors considered in proposing the particular limit. As part of its analysis, all carriers must also consider the following elements:

- The effects on the Medicare program, including costs, savings, assignment rates, beneficiary liability, and quality of care.
- What entities would be affected such as classes of providers or suppliers and beneficiaries.
- How significantly would these entities be affected.
- How would the adjustment affect beneficiary access to items or services.

The intent of these requirements is to assure that carriers collect sufficient information on market prices and potential effects on suppliers and beneficiaries before taking action.

Comment: Inherent reasonableness adjustments could cause other payers to subsidize the Medicare program.

Response: The goal of the inherent reasonableness process is to establish payment amounts that are realistic and equitable. When Medicare has realistic and equitable payment amounts, this should not result in other payers subsidizing the Medicare program, or conversely, Medicare subsidizing other payers.

Comment: CMS needs to establish an inherent reasonableness appeals procedure.

Response: The statute does not provide for an appeals process in the case of inherent reasonableness adjustments to payment amounts. Thus, the Congress obviously did not intend for a special appeal process to be available. However, issues or concerns identified during the public comment period on proposed inherent reasonableness adjustments are given full consideration and a final determination is published before the actual adjustments in payment are made. The comment period, therefore, provides a mechanism for commenters to raise issues and concerns regarding inherent reasonableness adjustments before they are put in place. In addition, after an adjustment is made, we will continue to monitor issues relating to patient access and take corrective action if necessary.

B. Factors Used in Making an Inherent Reasonableness Determination

Comment: CMS should consider all the factors that may result in grossly deficient or excessive payment and not limit consideration to just one or two of the factors.

Response: The examples listed in § 405.502(g)(1)(vii) are just examples, and the regulation explicitly states that the list of examples is not all-inclusive. When making an inherent reasonableness determination, we can use one or more of the examples listed in the regulation or an example that is not listed in the regulation. This approach allows us to adapt the methodology we use to address the various specific issues that may pertain to any particular case regarding the use and availability of data as well as other factors relevant to making an inherent reasonableness determination in that case.

Comment: The regulation should include greater specificity and guidance on the criteria and data that will be used to make payment adjustments. It should define grossly deficient or excessive. It should also define "windfall profit."

Response: Both § 405.502(g)(1)(vii) and section 1842(b)(8)(C) of the statute give examples of factors that can result in payment amounts that are grossly excessive or grossly deficient. The Act and regulation also give examples of methods that can be used in order to establish reasonable payment amounts. It is not necessary or practical to make these lists of examples all-inclusive. Moreover, having general criteria allows us flexibility in adapting inherent reasonableness applications to the wide array of items and services encompassed within Medicare Part B, different marketing conditions, and the availability of data. We define the terms "grossly excessive" and "grossly deficient" in this rule in section IV dealing with the GAO report and its recommendations. In this rule, we removed the term "windfall" and we replaced it with the term "excessive" because for purposes of this regulation they both have the same meaning. We define the term excessive in § 405.502(g)(1)(ii).

Comment: The factors to be considered should be rephrased to ensure that they apply to deficient payment allowances as well as excessive payment allowances.

Response: The factors in § 405.502(g)(1)(vii) apply to both excessive and deficient payment amounts.

Comment: CMS should specify that national inherent reasonableness determinations are made by CMS, and carrier determinations are made by carriers/intermediaries or groups of carriers/intermediaries without regard to whether the determination applies in every carrier area or to a particular geographic area.

Response: We agree with this comment, and we are revising § 405.502(g)(3) of the regulation to provide further clarification on the terms we use to distinguish between inherent reasonableness conducted by CMS and inherent reasonableness conducted by the carriers.

Comment: CMS should use caution when comparing Medicare payment amounts to other purchasers' payment amounts. Some suppliers may take a loss on a small portion of business.

Response: We recognize that some suppliers' charges may reflect marketing strategies and business practices independent of Medicare. For example, some businesses may sell an item for less than cost in order to increase customer traffic. Also, some suppliers may charge excessive amounts for products in order to subsidize other products. However, the purpose of inherent reasonableness is not to accommodate marketing strategies, but to ensure that the Medicare payment amounts for items or categories of items are realistic and equitable. In addition, in identifying prices, we check a variety of suppliers and types of suppliers. This levels out the effect of these marketing strategies.

Comment: In comparing Medicare's allowances with other purchasers' allowances, CMS should take into account volume commitments to suppliers by other purchasers. It would be inappropriate to compare laboratory prices charged to physicians and other large purchasers to prices charged to Medicare because physicians and other purchasers can guarantee the laboratory a certain volume of patients and need only bill once per month. Billing Medicare for each patient is more expensive.

Response: While the statute generally does not give CMS the authority to negotiate volume discounts with suppliers, it also does not permit CMS to subsidize the discounts that suppliers grant to other purchasers. CMS's charge is to calculate a fair and equitable payment amount, not to underwrite suppliers' profitability. Medicare is the largest volume purchaser for many items and services. As a payer, Medicare expenditures represent 17.6 percent of total national health expenditures by all payers. Expenditures for Part B, excluding physician services, are approximately $60 billion per year. Although Medicare does not give specific volume guarantees to suppliers and does not ask for volume discounts, there is a predictable volume of Medicare business, and suppliers have the opportunity to profit from this. To suggest that Medicare's payments be higher than other purchasers' payments in light of the large Medicare volume is unwarranted. Logically, it does not follow that a large purchaser such as Medicare should be expected to pay more than other smaller purchasers.

Comment: CMS should not use the Veterans Administration's (VA) prices for comparison as the VA program is vastly different than Medicare.

Response: Section 1842(b)(8) of the Act provides that comparing Medicare payments with payments made by other purchasers is an appropriate way to determine whether or not Medicare payment amounts are reasonable. The VA is a major purchaser of medical supplies and devices. The VA payment amounts in some cases, such as for oxygen equipment, are retail prices and can be compared with Medicare's payment amount without adding a mark-up factor. In other cases, the VA purchases items directly from manufacturers and supplies them to the VA patients. In addition, the VA may directly provide certain services that would otherwise be provided by suppliers under the Medicare program. Therefore, in many cases, the VA payments represent wholesale prices, and, thus, we have imputed a markup before comparing these amounts to Medicare payment amounts. Using wholesale prices with a markup has long been recognized in regulations at § 405.502(g)(2) as an appropriate method for determining reasonable payment amounts under the inherent reasonableness authority. When we publish a proposed inherent reasonableness notice, we will explain the criteria we used to establish an appropriate markup.

Comment: In determining if the marketplace is not competitive, CMS should consider if the lack of competition is a result of Medicare's deficient payment allowances.

Response: The examples in § 405.502(g)(1)(vii) are situations for which adjustments in payment may be required, such as the one referred to in this comment, may or may not result in excessive or deficient payment amounts. That is, the number of suppliers for a particular item does not in itself indicate whether or not our payment amount is excessive or deficient. While the number of suppliers may in certain cases be relevant and be considered, it would have to be considered along with

other factors to determine if an inherent reasonableness adjustment is warranted. We believe the language used in the regulation is consistent with this interpretation.

Comment: In determining if the payment allowance in a locality is different than the amount paid in other localities, CMS should consider differences in costs in the other localities.

Response: For purposes of inherent reasonableness, it is not always necessary to consider local variations in payment amounts which is consistent with the Congress limiting the degree of local variation by eliminating the reasonable charge payment methodology for most items and services. In the past, the reasonable charge methodology in some instances resulted in variations among areas as high as 300 percent. In place of the reasonable charge payment methodology, the Congress has established fee schedule payment methodologies with national payment limits or caps for most items and services previously paid on a reasonable charge basis. In the case of durable medical equipment (DME) and prosthetics and orthotics, the Congress established a fee schedule methodology with national floors and ceilings that allow maximum variations only up to 15 percent for DME and 30 percent for prosthetics and orthotics. (According to regulations at §§ 442.220 and 442.228, for DME, the ceiling is equal to the weighted average of local payment amounts; the floor is equal to 85 percent of the weighted average. For prosthetics and orthotics, the ceiling is equal to 120 percent of the national average purchase price; the floor is equal to 90 percent of the national average.) Also, we note that for some items covered by Medicare, items are available for an established price on a national basis through catalogues or the internet. For this reason, the regulatory provision pertaining to local variations in costs will probably have limited applicability. However, when it is used, we will take into account the relative costs of furnishing a category of items or services in different locations as described in the regulation.

Comment: In determining whether the payment allowances are grossly in excess of acquisition or production costs, CMS should consider other types of relevant costs, for example, rent. CMS should consider all direct and indirect costs, including any service component, in making an inherent reasonableness determination.

Response: In some instances, it may be appropriate to use cost rather than retail or wholesale prices in determining whether a payment amount is grossly excessive or deficient. In those instances in which we use cost data, we will consider both direct and indirect costs of the supplier as well as any service component.

Comment: In determining if increases in payment amounts cannot be explained by inflation or technology, CMS should also examine other factors such as malpractice or product liability risks.

Response: If we determine that increases in payment amounts cannot be explained by inflation or technology but can be explained by other factors, we will consider these other factors when making an inherent reasonableness determination.

Comment: By removing the example relating to increases in payment amounts that cannot be explained by inflation or technology, in the interim final rule with comment, CMS would never again consider making an inherent reasonableness adjustment based on new technology.

Response: As indicated previously, the factors listed in § 405.502(g)(1)(vii) are merely examples. There is no requirement that any specific example must be used or that only the specific examples listed in the regulation can be used. However, because this is a good example, we are putting it back into the regulation.

Comment: CMS should consider improvements in technology in making an inherent reasonableness determination.

Response: As indicated in § 405.502(g)(1)(vii)(C) of this final rule, improvements in technology are listed as a factor that we may consider when making inherent reasonableness determinations.

Comment: CMS's gap-filling methodology does not result in adequate payment levels for medical equipment and supplies, especially for new technology.

Response: Section 1834 of the Act stipulates that the fee schedule payment amounts for DME and prosthetics and orthotics be calculated based on the average reasonable charge for the item from a base period, for example, 1986 and 1987. These base fee schedule amounts are updated on an annual basis by a factor legislated by the Congress. When the reasonable charge data from the base period do not exist, for example, when an item was not on the market at that time, the Medicare carriers establish the base fee schedule amounts using a "gap-filling" methodology. This methodology is used to approximate historic reasonable charges, from the base period. For example, Medicare carriers may use fee schedule amounts for comparable items or supplier price lists with prices for comparable items.

When base year data are not available and more current prices are used, the carriers decrease the more current prices by a "deflation" factor in order to approximate the base year price for gap-filling purposes. The deflation factors are based on the percentage change in the consumer price index for all urban consumers (CPI–U) from the mid-point of the fee schedule base period to the mid-point of the year that the price is in effect. The gap-filling process is only used when the base year data required by the statute for use in calculating the fee schedules do not exist. We believe that this methodology does result in adequate payment amounts by taking into account comparable prices, retail prices, and inflationary factors. However, we can adjust gap-filled fee schedule amounts that we determine are grossly excessive or grossly deficient using the inherent reasonableness process.

Comment: For laboratory services, competitive pricing or changing technology are not relevant to pricing under inherent reasonableness since laboratory services are paid on a fee schedule basis.

Response: Fee schedules as payment methodologies do not preclude the use of inherent reasonableness. The inherent reasonableness process is the process that the Congress has established to address fee schedule amounts or other payment amounts that are not reasonable for various reasons. As indicated by previous GAO and the Office of Inspector General (OIG) reports, fee schedule payment amounts may not always be realistic and equitable. Inherent reasonableness, as authorized by the statute, allows us to look at other factors such as competitive pricing and changes in technology in order to determine whether the fee schedule amounts are excessive or deficient.

Comment: The methodology for making inherent reasonableness determinations should include valid statistical techniques.

Response: As mentioned previously, section 223(b) of the BBRA requires that, in publishing this regulation, the Secretary will take appropriate steps to ensure the use of valid and reliable data when exercising inherent reasonableness authority. We have added a provision in § 405.502(g)(4) of the final regulation that defines the steps we will take to ensure the use of valid and reliable data. See our response

regarding this topic in section III of this regulation.

Comment: CMS does not have the authority under inherent reasonableness to require that it receive the "best price."

Response: The commenter is referring to a methodology that we may use in determining whether payment amounts are grossly excessive or grossly deficient. As described in § 405.502(g)(1)(vii)(D), one methodology that may be used to make an inherent reasonableness determination is whether the payment amount for an item or service is substantially higher or lower than the payments made for the item or service by other purchasers in the same locality. If we identify a price and there are indications that the item or service is readily available at that price, then, we believe, this price would be a realistic and equitable payment amount. As the GAO observed in its report on inherent reasonableness, "retail prices represent the prices generally available to individual beneficiaries, include a share of the costs of maintaining retail space as well as other services, and are generally higher than what a prudent large-volume purchaser would pay." Therefore, using the best retail price available on the open market for an item or service would be appropriate as long as beneficiary access to the item or service is not significantly affected.

Comment: CMS needs to find a "pattern" of excessive charges before it can use its inherent reasonableness authority.

Response: We disagree with this comment. We do not believe that identifying patterns of excessive charges is necessary to determine that Medicare is paying a grossly excessive or deficient payment amount. For example, even though multiple payers may be paying an excessive amount for an item or service, a single payer may be paying significantly less than the other payers. This may be the result of the single payer using a more innovative payment methodology, such as competitive bidding or negotiated rate setting. We do not believe we should be precluded from comparing, in this case, Medicare's excessive payment amount with another entity's significantly lower amount that was a result of a more innovative payment methodology.

C. Factors Used in Establishing a Special Payment Amount

Comment: A payment amount should not be established based on bulk purchasing.

Response: In an open market system, bulk purchasing ordinarily results in a discounted price. Medicare pays for items on an individual claim-by-claim basis and does not enter into contracts to purchase a predetermined number of items. Nevertheless, a large volume of claims is paid by Medicare and the total Medicare dollars that are paid out for Part B items and services (other than physician services) (approximately $60 billion dollars in fiscal year 2001) are significant. Because Medicare may account for a significant part of the market, we believe that Medicare should not be precluded from taking into consideration discounts available to other payers when determining what constitutes a reasonable payment amount for an item or service.

Comment: A payment amount should permit the small supplier to continue to have reasonable revenues and profit margins. For example, mail order catalogs should not be used for establishing a payment amount because small dealers are unable to take advantage of discounted pricing.

Response: The purpose of inherent reasonableness is to replace grossly excessive and grossly deficient payment amounts with realistic and equitable payment amounts. We recognize that small suppliers may be necessary to provide service to beneficiaries and to ensure appropriate access to items and services. However, there are instances in which catalog prices are useful in determining whether adjustments in payments are warranted. For example, in 1995, catalog prices were used to reduce the Medicare payment amounts for home blood glucose monitors and, since then, we have not received any complaints that beneficiaries are having trouble obtaining home blood glucose monitors. Other items, such as blood glucose test strips, are ordinarily purchased by Medicare beneficiaries through catalogs.

Comment: A payment amount should reflect the "added" costs of doing business with Medicare.

Response: In considering retail prices, we recognize that businesses, in setting these prices, take into account the costs of providing their customers with appropriate services. For example, retail stores take into account the costs of processing VISA and MasterCard claims, including the user fees that suppliers must pay to accept credit cards and the costs of submitting bills to credit card companies. Businesses generally do not charge VISA and MasterCard customers more than other customers. Also, it should be noted that there are distinct costs to service cash customers, such as necessary security systems and the deposit of funds in banks. Ordinarily, purchasers, whether they use coupons, obtain an American Association of Retired Persons (AARP) discount, use a credit card, write a check, or use private or public insurance, do not expect to pay more than the retail price; nor does a customer needing help in selecting a particular item expect to pay more than the retail price. Thus, retail prices take into account these costs of doing business. However, if we do not consider retail prices, but instead use wholesale prices as a basis for calculating inherent reasonableness, we will include a markup to make these prices comparable to retail prices.

Comment: CMS should establish single national payment amounts and should not recognize any geographic variation.

Response: There are instances in which it is appropriate to establish a single national payment amount (for example, home blood glucose monitors). There may be other items that are available at the same price on a national basis. However, in other instances, when there is a significant labor or service component, it may not be appropriate to establish a single national payment amount for an item or service. The Congress seemed to recognize, to a limited extent, the need for variation in payment amounts for some items and services. For example, the Congress mandated both upper and lower limits for the fee schedule amounts for DME, with a range in payment of 15 percent.

Comment: Reductions should not exceed 7 percent in 1 year and should be limited to a total of 20 percent over 3 years.

Response: The statute provides us the authority to adjust payments by as much as necessary in order to correct a grossly excessive or grossly deficient payment amount. It would be inappropriate for Medicare to spend excessive amounts for items and services, once it had determined that the payment amount was grossly excessive or deficient.

D. Carrier Procedures

Comment: Inherent reasonableness decisions should not be made by carriers but should be made through the formal rulemaking process or at least published in the **Federal Register**. Carriers should not be permitted to reprice items without national policy or greater CMS scrutiny. The carriers are making de facto national policy under this rule.

Response: Before the BBA, CMS requested an amendment to the inherent reasonableness statutory requirements to allow carriers to make inherent reasonableness adjustments so that we could respond timely to frequent price

changes in the marketplace. We had specifically asked the Congress to drop the requirement that all inherent reasonableness determinations had to be made through publishing in the **Federal Register** so that carriers could make their own inherent reasonableness determinations without pursuing the cumbersome and lengthy **Federal Register** process. The BBA gives us that latitude.

As authorized by section 1842(a) of the Act, carriers, under our direction, have historically been used to make determinations regarding payment amounts, coverage determinations, in the absence of a national coverage determination, and utilization safeguards. Also, section 1842(b) of the Act specifies that inherent reasonableness adjustments of more than 15 percent a year must be published in the **Federal Register**. This clearly demonstrates that it was the intent of the Congress that adjustments of 15 percent or less in a given year can be made without publishing in the **Federal Register**. The regulations specifically provide for inherent reasonableness adjustments to be made by the Secretary or our carriers and includes specific instructions for carrier use of inherent reasonableness. Specifically, carriers are able to make inherent reasonableness determinations efficiently and respond quickly to price changes in the market place. Before the BBA, we completed only one inherent reasonableness adjustment because of the cumbersome statutory requirements. Because of the cumbersome inherent reasonableness process, we were not able to use inherent reasonableness to address the numerous OIG, GAO, and newspaper reports that Medicare's payments were excessive. The effect of the BBA was to facilitate the implementation of inherent reasonableness determinations by allowing carriers to make payment adjustments. The GAO concurs that the use of carriers to make inherent reasonableness adjustments is appropriate. The GAO states in its report on inherent reasonableness that:

> CMS acted within its authority in delegating the revised inherent reasonableness process to the carriers. The BBA was important in removing the barriers that prevented the carriers from conducting inherent reasonableness reviews. * * * Moreover, delegation is proper because pricing Medicare goods and services is already a responsibility of the carriers and the statute does not specifically preclude delegation of this authority to the carriers.

Comment: CMS needs to ensure against arbitrary and capricious decisions and carrier abuse of inherent reasonableness authority. Carriers should seek CMS's review and approval of all inherent reasonableness adjustments.

Response: The regulation requires that no payment adjustments may take place without informing suppliers of the proposed payment amounts, the factors considered in proposing the limit, and soliciting comments from suppliers. After considering the comments received, the regulation also requires the carriers to inform CMS of any inherent reasonableness limitations it plans to establish. No limitations can take affect until we have informed the carriers that we have received the carrier's notification. This allows us the opportunity to review the carrier's determination and ensure that arbitrary and capricious limitations are not implemented. In cases where one or more of our carriers undertake an adjustment using this inherent reasonableness authority that either has an impact of $100 million or more in any one year, or has a significant effect on a substantial number of small entities, the carrier or carriers will notify providers of the planned adjustment and the analysis on which it is based. In this way, affected parties would be able to comment on the planned adjustment.

Comment: Carriers may abuse their inherent reasonableness authority by reducing payment allowances by more than 15 percent over more than a 1-year period without the procedural protection of rulemaking, that is, compliance with the Administrative Procedure Act (APA).

Response: The statute allows the carriers to make inherent reasonableness adjustments of more than 15 percent over 2 or more years as long as the adjustments do not exceed 15 percent in a single year. This was confirmed in the GAO report on inherent reasonableness. In addition, before implementing inherent reasonableness limits, the carriers are required by the regulation to inform affected suppliers of the factors it used in establishing the limit and to provide the opportunity for suppliers to comment.

Comment: Allowing carriers to make independent payment decisions will result in payment disparities between carriers.

Response: Inherent reasonableness is the authority for establishing realistic and equitable payment amounts. In some cases, applying inherent reasonableness may result in payment amounts that vary by geographic area. In other cases, it may be justifiable to eliminate payment disparities by establishing a single national payment amount. In certain situations, the Congress has recognized the need for variation in payment amounts.

Comment: Carriers should only be permitted to make inherent reasonableness adjustments once every 5 years or be limited in the number of items subject to inherent reasonableness.

Response: The statute does not limit the number of times that this authority may be used, nor does it limit the number of items that can be reviewed using this authority. In some cases, it may be necessary to make more frequent adjustments than every 5 years to take into account changes in technology or economics.

Comment: Section 4554 of the BBA requires that any advisory committee established by a carrier for coverage and administrative policies under Part B will include an individual to represent the independent clinical laboratories.

Response: Section 4554 of the BBA, by its own terms, provides only for laboratory representatives to be on carrier advisory committees for coverage and administrative policies. This section does not implicate Medicare payment policies, nor is there any implication that an advisory committee would be part of an inherent reasonableness review of payment levels by the carrier.

Comment: This rule should apply to intermediaries as well as carriers.

Response: The inherent reasonableness authority applies to all Part B items and services except physician services. Therefore, this rule applies to both carriers and intermediaries who process Medicare Part B claims. However, we do not intend to apply this rule to services paid under a prospective payment system, such as outpatient hospital or home health services.

Comment: A process should be put into place to allow suppliers to formally petition carriers for inherent reasonableness reviews. The petitions would be required to meet specific standards to be considered for inherent reasonableness.

Response: Anyone has the opportunity to submit a request to CMS or a Medicare carrier for an inherent reasonableness adjustment. The regulations provide guidance on the criteria that will be used in determining whether an adjustment in the Medicare payment amount(s) is warranted. We do not believe that there would be an added benefit to creating a formal process; we believe that it is best to keep the process flexible so that we and the carriers can respond to the various situations that could arise. For example,

the type and quantity of data needed in order to conduct an inherent reasonableness review cannot be determined ahead of time and may vary significantly depending on the item or service at issue.

Comment: Will carriers take into account suppliers' administrative and service costs in making inherent reasonableness determinations?

Response: In those cases for which actual cost data are used as a basis for an inherent reasonableness determination, administrative and service costs would be taken into account. Conversely, when we or a carrier use retail prices or data on payments made by other payers as a basis for an inherent reasonableness determination, administrative and service costs are typically included as part of the retail prices or third party payer amounts.

Comment: Who at the DMERC has inherent reasonableness authority?

Response: Each carrier determines which of its staff or components are best qualified to conduct inherent reasonableness reviews, as they do in the case of other pricing issues.

Comment: Carriers should be required to provide affected parties with the data and all relevant information they use to make inherent reasonableness determinations.

Response: The carriers will publish the data and all relevant information they use to make inherent reasonableness determinations in the proposed notice to suppliers. Any additional background data used by the carriers in making inherent reasonableness determinations that are not published in the proposed notice will be made available.

Comment: Carriers need more guidance to ensure that they contact all relevant parties when publishing an inherent reasonableness adjustment.

Response: Carriers will be required to notify all suppliers and/or organizations representing suppliers of any proposed inherent reasonableness adjustments. Therefore, those parties that are directly affected by the changes in payment will be notified of the proposed adjustments and may respond to these proposed changes before they take effect (*see* § 405.502(g)(3)(ii)).

Comment: Carriers should provide a written response to comments on inherent reasonableness adjustments.

Response: In the final notice of inherent reasonableness that is sent to suppliers and/or organizations representing suppliers, the carriers will be required to provide written responses to the comments they received on the proposed notice of inherent reasonableness.

Comment: The sequence of steps a carrier will follow in making an inherent reasonableness determination should be made clearer.

Response: We concur with this comment. We have revised § 405.502(g)(3)(ii) to clarify the procedures a carrier must follow.

Comment: Interested parties should have the ability to comment on decisions when the adjustment is less than 15 percent.

Response: All proposed inherent reasonableness adjustments will be published and a comment period will be provided for all adjustments regardless of the percentage change in payment; some will be published on a carrier-wide basis, while those made by CMS will be published in the **Federal Register**.

E. Impact

Comment: In compliance with the APA, the inherent reasonableness rule should be withdrawn and published as a notice of proposed rulemaking with a public comment period. This would give the industry the opportunity to comment before implementation. Suppliers no longer have the procedural safeguards that have been in place since 1986. "Good cause" does not exist to waive the proposed rulemaking process.

Response: Section 223 of the BBRA prohibits us from using the inherent reasonableness authority until we respond to the GAO report and publish a notice of final rulemaking that responds to comments received on the January 7, 1998, interim final regulation on inherent reasonableness. We are meeting the mandate of section 223 of the BBRA by publishing this interim final rule and are therefore in compliance with the statute. Moreover, consistent with both section 223 of the BBRA and the APA, the 1998 interim final rule served the same purpose as a notice of proposed rulemaking since this regulation invited public comment. This interim final rule responds to the comments we received on the 1998 interim final regulation.

Also, we note that the GAO report addressed this issue and concluded that a notice of proposed rulemaking was not necessary. Specifically, the GAO report states that "going through the notice of proposed rulemaking to issue inherent reasonableness regulations would have serious financial implications for Medicare and its beneficiaries." In addition, the GAO states that "CMS's reliance on the good cause exception to bypass formal notice and comment rulemaking procedures seems reasonable."

Comment: The rule does not comply with the Regulatory Flexibility Act and will have a significant economic impact on a substantial number of small entities. In addition, CMS indicates in the regulatory impact statement that it has insufficient data to predict exactly the nature of the impact of this rule; yet CMS certifies that the rule will not have a significant impact on a substantial number of small entities.

Response: Because this rule does not include any actual proposed or final inherent reasonableness determinations, it will have no impact on Medicare's payment amounts. However, we believe that the rule, by allowing us to conduct inherent reasonableness in the future, has the potential to significantly impact small businesses. This belief is based on a June 2002 OIG report indicating that Medicare may be overpaying between $130 million and $958 million per year for 16 items of medical equipment. In addition, in 2002, the GAO indicated that Medicare may be overpaying for medical equipment by more than 20 percent. However, we are unable to predict the specific dollar impact based on the future application of inherent reasonableness. Since we recognize the potential for future payment adjustments, either upward or downward, we will publish in the **Federal Register** impact statements that will comply with Executive Order 12866 whenever CMS proposed national limits and the dollar impact of inherent reasonableness determinations exceeds $100 million in any one year, and will address impact on small entities in accordance with the Regulatory Flexibility Act. However, we believe that, if inherent reasonableness adjustments are applied, then they will eliminate grossly excessive or deficient payment amounts. If a payment amount is adjusted upward because it is deficient, it will benefit suppliers and beneficiaries. A more generous payment amount may result in greater availability of items and services to Medicare beneficiaries. The converse may not be true if the payment amount is adjusted downward. A lower payment amount should not necessarily result in a lack of availability of items and services since the revised payment amount would be realistic and equitable. We believe that a realistic and equitable payment amount would ensure continued availability of items and services. Thus, we believe that the application of an adjustment will merely serve as a vehicle for eliminating excessive profits. This adjustment will benefit the Medicare program by

reducing costs and benefit beneficiaries by reducing coinsurance payments.

Comment: The rule does not comply with the Contract With America Advancement Act of 1996, which requires that a major rule must be submitted to the Congress before that rule can become effective.

Response: Since this rule has been determined to be a major rule, it is being submitted to the Congress consistent with the Contract With American Advancement Act.

Comment: In making inherent reasonableness determinations, CMS should have to consider the impact on quality of care, access issues, and the financial viability of suppliers in the marketplace.

Response: We will consider the impact of future inherent reasonableness adjustments, and as stated above, whenever CMS proposed national limits and the dollar impact of inherent reasonableness determinations exceed $100 million in any one year, we will analyze the impact on quality of care, access issues, and the financial viability of suppliers in the marketplace. However, we do not believe that using the inherent reasonableness authority will have a negative impact because the purpose of the authority is to ensure that Medicare makes payments that are realistic and equitable, and better reflect market prices.

F. Effective Date

Comment: The effective date should be 6 months following publication of payment reductions.

Response: The effective date for payment adjustments will be determined on a case-by-case basis, but in no case will the effective date be sooner than 60 days after publication of the final notice of inherent reasonableness. We believe that in most cases it would not be in the best interest of the Medicare program to delay implementation of inherent reasonableness adjustments more than 60 days as this would result in the continuation of payment amounts that are either grossly excessive or deficient.

Comment: All inherent reasonableness decisions should be made at the same time so that suppliers can offset payment reductions with payment increases.

Response: The purpose of inherent reasonableness is not to be budget neutral or to make an equal number of increases and decreases in payment. The purpose is to address situations in which the standard payment rules result in grossly excessive or deficient amounts. It would be unreasonable for us to delay making an increase in payment because we have not yet identified an item or service that warranted a decrease in payment. The converse is also true. We note that historically the GAO and OIG have conducted studies that indicate that Medicare's payment amounts are generally excessive.

Comment: Carriers should have to provide for a 60-day comment period and a 60-day notification period before the effective date of an inherent reasonableness determination.

Response: We concur with the commenter. We will inform carriers to provide for a 60-day comment period and that any final carrier inherent reasonableness determination may not be effective until 60 days following public notice.

VI. Provisions of This Interim Final Regulation

In response to comments on the January 7, 1998 interim final rule, we made the following changes in this interim final rule:

- Clarified § 405.502(g)(1)(ii) by stating that a payment amount will not be considered grossly excessive or grossly deficient if the overall payment adjustment is less than 15 percent.
- Amended § 405.502(g)(1)(iii) by clarifying the difference between a national determination and a carrier determination.
- Added § 405.502(g)(2)(vii)(H) to include an example of new technology that exists and is not reflected in the existing payment allowance.
- Amended § 405.502(g)(3)(ii) by adding "proposed payment amounts and the" to the first sentence to provide suppliers the opportunity to comment on the carrier's proposed payment allowances as well as the factors the carrier considered; and adding a requirement that a carrier notify us in writing of any final limits it plans to establish.
- Added § 405.502(g)(4) to include the criteria for using valid and reliable data.
- Added § 405.502(g)(5) to provide that when payment adjustments of more than 15 percent are spread out over multiple years, subsequent adjustments will be reviewed for their appropriateness.

However, because we are interested in receiving comments on this rule, particularly the two provisions that contain further specificity than found in the 1998 interim final rule, we are publishing this rule as an interim final rule and are soliciting comments. These two provisions are the definitions of "grossly excessive" and "grossly deficient" in § 405.502(g)(1)(ii) and the criteria for using valid and reliable data in § 405.502(g)(4). We already received comments on the other provisions when we published the interim final rule in January 1998. These comments are addressed in section V of this interim final rule.

VII. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it does not need to be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VIII. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 16, 1980 Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This regulation has no immediate economic effect on current Medicare payments. However, it establishes a process that could be used in the future to establish reasonable and equitable payment amounts. Because this rule does not include any actual inherent reasonableness determinations, it has no immediate impact on Medicare's payment amounts. However, we do believe that the future use of inherent reasonableness has the potential to have significant impact; therefore it is a major rule. This belief is based on a June 2002 OIG report indicating that Medicare may be overpaying between $130 million and $958 million per year for 16 items of medical equipment. In addition, the GAO recently indicated that Medicare may be overpaying for medical equipment by more than 20 percent. However, these reports were not done to the specifications we are establishing in this rule and, therefore, they may not be an accurate estimate of the specific dollar impact that could result from the future application of inherent reasonableness under these requirements. Since we recognize the potential for future payment adjustments, either upward or downward, when CMS makes adjustments we will publish in the **Federal Register** regulatory impact statements that will comply with Executive Order 12866 and the Regulatory Flexibility Act whenever the dollar impact of inherent reasonableness determinations exceed $100 million in any one year. At this time, we lack sufficient data to conduct a quantitative analysis of the impact of this rule.

We lack such data because until we publish this rule, and we are able to conduct an inherent reasonableness study using the criteria described in this rule, we are unable to determine whether Medicare is overpaying or underpaying for items or services and to what degree. We do not know if, or when, or for which services, we would make payment adjustments, or the percentage adjustment we would make, or even the particular industry that would be affected. Also, we do not know if these adjustments would increase or decrease Medicare payment amounts. As a result, we cannot anticipate the specific dollar effect or impact on suppliers and beneficiaries.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $26 million or less in any 1 year (see 65 FR 69432 for details). For purposes of the RFA, all suppliers of Medicare Part B services are considered to be small entities. Individuals and States are not included in the definition of a small entity. Since this rule does not include any actual inherent reasonableness determinations, it will not have an impact on small businesses. However, it establishes a process that could be used in the future to establish reasonable and equitable payment amounts.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This regulation does not mandate expenditures by State, local, or tribal governments, or by the private sector. Therefore, the requirements of section 202 do not apply.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

We do not expect suppliers of Part B services to be immediately affected by this rule since the rule will have no immediate impact on Medicare's payment amounts. However, we do believe that use of inherent reasonableness has the potential to significantly impact small businesses in the future. This belief is based on a June 2002 OIG report indicating that Medicare may be overpaying between $130 million and $958 million per year for 16 items of medical equipment. In addition, the GAO recently indicated that Medicare may be overpaying for medical equipment by more than 20 percent. However, we are still unable to predict the specific dollar impact on the future application of inherent reasonableness. Since we recognize the potential for future payment adjustments, either upward or downward, when CMS makes adjustments we will publish in the **Federal Register** impact statements that will comply with Executive Order 12866 and the Regulatory Flexibility Act whenever the dollar impact of inherent reasonableness determinations exceed $100 million in any one year, or when the adjustments will have a significant impact on a substantial number of small entities. We do not have sufficient data to predict exactly the nature of the future impact of this rule or the magnitude of the impact. Below, we discuss likely outcomes. Should the provisions of these regulations be applied, the resultant payment amounts will no longer be grossly excessive or deficient. If a payment amount is adjusted upward because it is deficient, it will benefit suppliers and beneficiaries. A more generous payment amount may result in greater availability of items and services to Medicare beneficiaries. The converse may not be true if the payment amount is adjusted downward. A lower payment amount should not necessarily result in a lack of availability of items and services since the revised payment amount would be realistic and equitable, and would better reflect market prices for the given item or service. We believe that a realistic and equitable payment amount would ensure continued availability of items and services. This adjustment will benefit the Medicare program by reducing costs, thereby protecting the Medicare trust fund, and benefit beneficiaries by reducing coinsurance payments. In addition, this regulation only specifies the criteria and methodology for determining when a service or item is inherently unreasonable and does not result in any adjustments.

After publication of this regulation, if CMS initiates an inherent reasonableness determination that results in payment adjustments in excess of $100 million in any one year, CMS will publish in the **Federal Register** an analysis in compliance with Executive Order 12866. If the CMS adjustment will have a significant impact on a substantial number of small entities, we will also conduct an analysis in accordance with the Regulatory Flexibility Act. In cases where one or more of our carriers undertake an adjustment using this inherent reasonableness authority that either has an impact of $100 million or more in any one year, or has a significant effect on a substantial number of small entities, the carrier or carriers will notify providers of the planned adjustment and the analysis on which it is based. In this way, affected parties would be able to comment on the planned adjustment.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons set forth in the preamble, 42 CFR chapter IV, part 405 is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart E—Criteria for Determining Reasonable Charges

1. The authority citation for part 405, subpart E, continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 405.502, paragraphs (g) and (h) are revised to read as follows:

§ 405.502 Criteria for determining reasonable charges.

* * * * *

(g) *Determination of payment amounts in special circumstances*—(1) *General.* (i) For purposes of this paragraph, a "category of items or services" may consist of a single item or service or any number of items or services.

(ii) CMS or a carrier may determine that the standard rules for calculating payment amounts set forth in this subpart for a category of items or services identified in section 1861(s) of the Act (other than physician services paid under section 1848 of the Act and those items and services for which payment is made under a prospective payment system, such as outpatient hospital or home health) will result in grossly deficient or excessive amounts. A payment amount will not be considered grossly excessive or deficient if it is determined that an overall payment adjustment of less than 15 percent is necessary to produce a realistic and equitable payment amount. For CMS initiated adjustments, CMS will publish in the **Federal Register** an analysis of payment adjustments that exceed $100 million per year in compliance with Executive Order 12866. If CMS makes adjustments that have a significant effect on a substantial number of small entities, it will publish an analysis in compliance with the Regulatory Flexibility Act.

(iii) If CMS or the carrier determines that the standard rules for calculating payment amounts for a category of items or services will result in grossly deficient or excessive amounts, CMS, or the carrier, may establish special payment limits that are realistic and equitable for a category of items or services. If CMS makes a determination, it is considered a national determination. A carrier determination is one made by a carrier/intermediary or groups of carriers/intermediaries even if the determination applies to all State fees.

(iv) The limit on the payment amount is either an upper limit to correct a grossly excessive payment amount or a lower limit to correct a grossly deficient payment amount.

(v) The limit is either a specific dollar amount or is based on a special method to be used in determining the payment amount.

(vi) Except as provided in paragraph (h) of this section, a payment limit for a given year may not vary by more than 15 percent from the payment amount established for the preceding year.

(vii) *Examples of excessive or deficient payment amounts.* Examples of the factors that may result in grossly deficient or excessive payment amounts include, but are not limited to, the following:

(A) The marketplace is not competitive. This includes circumstances in which the marketplace for a category of items or services is not truly competitive because a limited number of suppliers furnish the item or service.

(B) Medicare and Medicaid are the sole or primary sources of payment for a category of items or services.

(C) The payment amounts for a category of items or services do not reflect changing technology, increased facility with that technology, or changes in acquisition, production, or supplier costs.

(D) The payment amounts for a category of items or services in a particular locality are grossly higher or lower than payment amounts in other comparable localities for the category of items or services, taking into account the relative costs of furnishing the category of items or services in the different localities.

(E) Payment amounts for a category of items or services are grossly higher or lower than acquisition or production costs for the category of items or services.

(F) There have been increases in payment amounts for a category of items or services that cannot be explained by inflation or technology.

(G) The payment amounts for a category of items or services are grossly higher or lower than the payments made for the same category of items or services by other purchasers in the same locality.

(H) A new technology exists which is not reflected in the existing payment allowances.

(2) *Establishing a limit.* In establishing a payment limit for a category of items or services, CMS or a carrier considers the available information that is relevant to the category of items or services and establishes a payment amount that is realistic and equitable. The factors CMS or a carrier consider in establishing a specific dollar amount or special payment method for a category of items or services may include, but are not limited to, the following:

(i) *Price markup.* This is the relationship between the retail and wholesale prices or manufacturer's costs of a category of items or services. If information on a particular category of items or services is not available, CMS or a carrier may consider the markup on a similar category of items or services and information on general industry pricing trends.

(ii) *Differences in charges.* CMS or a carrier may consider the differences in charges for a category of items or services made to non-Medicare and Medicare patients or to institutions and other large volume purchasers.

(iii) *Costs.* CMS or a carrier may consider resources (for example, overhead, time, acquisition costs, production costs, and complexity) required to produce a category of items or services.

(iv) *Use.* CMS or a carrier may impute a reasonable rate of use for a category of items or services and consider unit costs based on efficient use.

(v) *Payment amounts in other localities.* CMS or a carrier may consider payment amounts for a category of items or services furnished in another locality.

(3) *Notification of limits*—(i) *National limits.* CMS publishes in the **Federal Register** proposed and final notices announcing a special payment limit described in paragraph (g) of this section before it adopts the limit. The notices set forth the criteria and circumstances, if any, under which a carrier may grant an exception to a payment limit for a category of items or services.

(ii)(A) *Carrier-level limits.* A carrier proposing to establish a special payment limit for a category of items or services must inform the affected suppliers and Medicaid agencies of the proposed payment amounts, the factors it considered in proposing the particular limit, as described in paragraphs (g)(1) through (g)(4) of this section, and solicit comments. The notice must also consider the following:

(*1*) The effects on the Medicare program, including costs, savings, assignment rates, beneficiary liability, and quality of care.

(*2*) What entities would be affected such as classes of providers or suppliers and beneficiaries.

(*3*) How significantly would these entities be affected.

(*4*) How would the adjustment affect beneficiary access to items or services.

(B) The carrier must evaluate the comments it receives. The carrier must notify CMS in writing of any final limits it plans to establish. CMS will acknowledge in writing to the carrier that it received the carrier's notification. After the carrier has received CMS's acknowledgement, the carrier must inform the affected suppliers and State Medicaid agencies of any final limits it establishes. The effective date for a final payment limit may apply to services furnished at least 60 days after the date that the carrier notifies affected suppliers and State Medicaid agencies of the final limit.

(4) *Use of valid and reliable data.* In determining whether a payment amount is excessive or deficient and in establishing an appropriate payment amount, valid and reliable data will be used. To ensure the use of valid and reliable data, CMS or the carrier must meet the following criteria to the extent applicable:

(i) Develop written guidelines for data collection and analysis;

(ii) Ensure consistency in any survey to collect and analyze pricing data.

(iii) Develop a consistent set of survey questions to use when requesting retail prices.

(iv) Ensure that sampled prices fully represent the range of prices nationally.

(v) Consider the geographic distribution of Medicare beneficiaries.

(vi) Consider relative prices in the various localities to ensure that an appropriate mix of areas with high, medium, and low consumer prices was included.

(vii) Consider criteria to define populous State, less populous State, urban area, and rural area.

(viii) Consider a consistent approach in selecting retail outlets within selected cities.

(ix) Consider whether the distribution of sampled prices from localities surveyed is fully representative of the distribution of the U.S. population.

(x) Consider the products generally used by beneficiaries and collect prices of these products.

(xi) When using wholesale costs, consider the cost of the services necessary to furnish a product to beneficiaries.

(5) If CMS or a carrier makes a payment adjustment of more than 15 percent spread over multiple years, CMS or the carrier will review market prices in the years subsequent to the year that the initial reduction is effective in order to ensure that further reductions continue to be appropriate.

(h) *Special payment limit adjustments greater than 15 percent of the payment amount.* In addition to applying the general rules under paragraphs (g)(1) through (g)(4) of this section, CMS applies the following rules in establishing a payment adjustment greater than 15 percent of the payment amount for a category of items or services within a year:

(1) *Potential impact of special limit.* CMS considers the potential impact on quality, access, beneficiary liability, assignment rates, and participation of suppliers.

(2) *Supplier consultation.* Before making a determination that a payment amount for a category of items or services is not inherently reasonable by reason of its grossly excessive or deficient amount, CMS consults with representatives of the supplier industry likely to be affected by the change in the payment amount.

(3) *Publication of national limits.* If CMS determines under paragraph (h) of this section to establish a special payment limit for a category of items or services, it publishes in the **Federal Register** the proposed and final notices of a special payment limit before it adopts the limit. The notices set forth the criteria and circumstances, if any, under which a carrier may grant an exception to the limit for the category of items or services.

(i) *Proposed notice.* The proposed notice—

(A) Explains the factors and data that CMS considered in determining that the payment amount for a category of items or services is grossly excessive or deficient;

(B) Specifies the proposed payment amount or methodology to be established for a category of items or services;

(C) Explains the factors and data that CMS considered in determining the payment amount or methodology, including the economic justification for a uniform fee or payment limit if it is proposed;

(D) Explains the potential impacts of a limit on a category of items or services as described in paragraph (h)(1) of this section; and

(E) Allows no less than 60 days for public comment on the proposed payment limit for the category of items or services.

(ii) *Final notice.* The final notice—

(A) Explains the factors and data that CMS considered, including the economic justification for any uniform fee or payment limit established; and

(B) Responds to the public comments.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: February 2, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: July 22, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–31126 Filed 12–12–02; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 96–86; FCC 02–216]

The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In view of the Federal Communications Commission's commitment to ultimately require equipment operating in the 764–776 MHz and 794–806 MHz band ("700 MHz public safety band") General Use and State License channels to meet a spectrum efficiency requirement of one voice channel per 6.25 kHz, the Commission in this item adopted a phased-in implementation of (*i.e.*, a "single migration path" to) this spectrum efficiency requirement. The rules adopted are based on the record developed in response to the *Fifth Notice of Proposed Rule Making* in the above-captioned proceeding. These rules are intended to promote the efficient, effective, and maximum use of 700 MHz public safety band General Use and State License channels without hindering development and deployment of public safety equipment. In addition, in order to comport with current international agreements, a Commission rule was revised, which had incorrectly implied that Canadian television signals are entitled to interference protection within the United States.

DATES: Effective January 13, 2003.

FOR FURTHER INFORMATION CONTACT: Roberto Mussenden, Esq., 202/418–0680, *rmussend@fcc.gov*, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Report and Order, FCC 02–216, adopted on July 16, 2002, and released on August 2, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC.20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting

Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. In this *Fifth Report and Order*, we adopt a migration path to a 6.25 kHz voice efficiency requirement for the 764–776 MHz and 794–806 MHz band General Use and State License channels. The actions we take today are based on the record developed in response to the *Fifth Notice of Proposed Rule Making* in the above-captioned proceeding. In addition to the adoption of a specific migration path for the General Use and State License channels, we clarify the rule relating to cross-border interference with Canada to comport with current international agreements.

2. In keeping with the Commission's safe harbor guidelines to facilitate use of the 764–776 MHz and 794–806 MHz band, we are mindful that the migration path we adopt today must not hinder the development and deployment of public safety equipment nor delay the planning and construction of pubic safety systems in this band. Specifically, we adopt the following measures to ensure efficient, effective and maximized use of the narrowband General Use and State License channels of the 700 MHz public safety band:

- Allow the marketing, manufacture and importation of 12.5 kHz equipment until December 31, 2006.
- Accept applications for filing to use 12.5 kHz equipment that are filed on or before December 31, 2006.
- Accept applications for filing for new systems to use 6.25 kHz equipment that are filed after December 31, 2006.
- Permit legacy licensees to continue using 12.5 kHz based systems until December 31, 2016.
- Permit legacy licensees to purchase dual mode equipment (operates in 12.5 or 6.25 kHz mode) for system expansion or maintenance and operate it in the 12.5 kHz mode until December 31, 2016.
- Ban the marketing, manufacture and importation of equipment that is exclusively 12.5 kHz effective after December 31, 2006.
- Cease type certifying equipment that is exclusively 12.5 kHz after December 31, 2006.
- Require use of 6.25 kHz equipment exclusively effective after December 31, 2016.

I. Procedural Matters

A. Regulatory Flexibility Act

3. Appendix B contains a Final Regulatory Flexibility Analysis (FRFA) with respect to the *Fifth Report and Order*. As required by the Regulatory Flexibility Act, the Commission has prepared the analysis of the possible impact on small entities of the rules and proposed rules set forth in this document. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this *Fifth Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the Regulatory Flexibility Act.

II. Final Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), An Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Fourth Report and Order and Fifth Notice of Proposed Rule Making (Fifth NPRM)*, 66 FR 10,632, February 16, 2001, of this proceeding. The Commission sought written public comment on the proposals in the *Fifth NPRM*, including comment on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Fifth Report and Order

5. The need is to resolve outstanding migration issues regarding a migration path for the General Use and State License channels located within the 700 MHz public safety band. Resolution entails requiring a 6.25 kHz requirement for the General Use and State License channels. Our objective is to promote the efficient, effective, and maximum use of 700 MHz public safety band and not hinder development and deployment of public safety equipment. Specifically, the rules adopted herein will: Require licensees in the narrowband General Use and State License channels, whose applications are filed after December 31, 2006, to operate only in voice mode using a voice efficiency standard of at least one voice path per 6.25 kHz of spectrum bandwidth; allow licensees in the narrowband General Use and State License channels, whose applications are filed on or before December 31, 2006 ("legacy licensees"), to operate in voice mode using a voice efficiency standard of at least one voice path per 12.5 kHz of spectrum bandwidth until December 31, 2016; allow legacy licensees to buy dual mode equipment (*i.e.*, equipment that operates in 12.5 kHz or 6.25 kHz mode) for system expansion or maintenance; ban the manufacture, importation, and marketing of equipment that only operates on a voice efficiency standard of at least one voice channel per 12.5 kHz of spectrum bandwidth after December 31, 2006; and prevent acceptance of applications for certification of equipment that operates exclusively on a voice efficiency standard of at least one voice channel per 12.5 kHz of spectrum bandwidth or that lacks the ability to operate on a voice efficiency standard of one voice channel per 6.25 kHz of spectrum bandwidth after December 31, 2006.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

6. No comments were submitted in response to the IRFA. Comments were submitted in response to the *Fifth NPRM* regarding whether different migration paths would be appropriate for public safety entities in rural urban areas based on their different needs.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operations; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

8. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities.

9. *Public Safety Radio Pool Licensees.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services that draw from a common pool of spectrum. Spectrum in the 700 MHz public safety band is governed by 47 U.S.C. 337. Non-Federal governmental entities as well as private businesses are licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.

10. *Radio and Television Equipment Manufacturers.* We anticipate that at least six radio equipment manufacturers will be affected by our decisions in this proceeding. According to the SBA's regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities. We do not have information that indicates how many of the six radio equipment manufacturers associated with this proceeding are among these 778 firms. However, Motorola and Ericsson, two of the six manufacturers, are major, nationwide radio equipment manufacturers, and, thus, we conclude that these manufacturers would not qualify as small businesses because, in all likelihood, they have more than 750 employees.

11. *Television Stations.* This proceeding will affect full service TV station licensees (Channels 60–69), TV translator facilities, and low power TV (LPTV) stations. The SBA defines a TV broadcasting station that has no more than $12 million in annual receipts as a small business. TV broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by TV to the public, except cable and other pay TV services. Included in this industry are commercial, religious, educational, and other TV stations. Establishments primarily engaged in TV broadcasting and which produce taped TV program materials are also included in this industry. Separate establishments primarily engaged in producing taped TV program materials are classified under another NAICS Code, and are defined as small if annual receipts do not exceed $6 million.

12. There were 1,509 TV stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,551 operating TV broadcasting stations in the nation as of February 28, 1997. For 1992 the number of TV stations that produced less than $10.0 million in revenue was 1,155 establishments, or approximately 77 percent of the 1,509 establishments. There are currently 95 full service analog TV stations, either operating or with approved construction permits on channels 60–69. In the DTV Proceeding, we adopted a DTV Table that provides only 15 allotments for DTV stations on channels 60–69 in the continental United States. There are seven DTV allotments in channels 60–69 outside the continental United States. Thus, the rules will affect approximately 117 TV stations; approximately 90 of those stations may be considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-TV affiliated companies. We recognize that the rules may also impact minority-owned and women-owned stations, some of which may be small entities. In 2000, minorities owned and controlled 23 (1.9 percent) of 1,288 full power commercial TV stations in the United States. According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9 percent) of 1,342 commercial and non-commercial TV stations in the United States.

13. There are currently 4,977 TV translator stations and 1,952 LPTV stations. Approximately 1,309 low power TV and TV translator stations are on channels 60–69 which could be affected by policies in this proceeding. The Commission does not collect financial information of any broadcast facility and the Department of Commerce does not collect financial information on these broadcast facilities. We will assume for present purposes, however, that most of these broadcast facilities, including LPTV stations, could be classified as small businesses. As indicated earlier, approximately 77 percent of TV stations are designated under this analysis as potentially small businesses. Given this, LPTV and TV translator stations would not likely have revenues that exceed the SBA maximum to be designated as small businesses.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

14. The *Fifth Report and Order* does not adopt rules that entail recordkeeping, and/or third-party consultation. However, it does adopt rules that entail certain reporting and compliance requirements. The rules allow legacy licensees (as described in the *Fifth Report and Order*) to operate their systems at a 12.5 kHz voice efficiency standard until December 31, 2016, when these systems must convert to a 6.25 kHz voice efficiency standard on the General Use and State License channels. These legacy licensees must file, through ULS, no later than January 31, 2017, a declaration that they have completed the requisite conversion.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

15. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

16. The rules adopted in the *Fifth Report and Order* are essentially designed to achieve standardization of technology at points in time in the distant future. Therefore, we do not believe that the impact of these rules will be different for smaller entities in the long run. In formulating the rules in the *Fifth Report and Order*, we reduced economic burdens wherever possible for all entities, large and small. The regulatory burdens that we have adopted are necessary to ensure that the public receives the public safety benefits of innovative new services in a prompt and efficient manner. For example, we have adopted technical and operational rules that will promote competition in the equipment market. We believe that the rules must be as competitively and technologically neutral as possible, in order to allow for competing equipment designs and to avoid hindering future innovative technological developments.

17. We note that tighter technical specifications generally allow more intense spectrum use, but may result in higher equipment costs. Conversely, although wider tolerances may allow manufacturers to use less costly component parts in transmitting equipment, they also may result in less efficient spectrum use. Because the Commission is statutorily required to consider the safety of life and property in its consideration of spectrum management issues, we believe that the technical regulations we adopt herein provide a reasonably balanced approach in meeting the Commission's mandate.

18. As for radio equipment for use on the 700 MHz public safety band, we believe that the rules we adopt today will foster competition in the market for radio equipment for use in the 700 MHz public safety band, and thereby increase the opportunity for small entities to enter this market. As for smaller public safety entities, the rules we adopt today are designed to allow them (and all public safety entities) a full 10-year life cycle for equipment they may purchase between now and December 31, 2006. We do not believe there are feasible alternatives to these rules, in that they are the narrowly tailored to allow both early access to the 700 MHz public safety band, and give early entrants into that spectrum a full life span for the equipment they use. Although we considered whether to permit smaller entities, specifically those operating in rural areas, to operate indefinitely using a 12.5 kHz voice efficiency standard, we rejected this approach because we wanted to ensure certainty and consistency of operations by all licensees as described in the *Fifth Report and Order* and to avoid sustaining a viable market for spectrally inefficient equipment.

19. *Report to Congress:* The Commission will send a copy of the *Fifth Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). Also, the Commission will send a copy of the *Fifth Report and Order* to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *Fifth Report and Order* and FRFA (or summaries thereof) will be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

III. Ordering Clauses

20. Authority for the issuance of this Fifth Report and Order is contained in Sections 4(i), 4(j), 7(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 157(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), 332(c).

21. Part 90 of the Commission's Rules, 47 CFR Part 90 is amended as specified in rule changes.

22. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Fifth Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

2. Section 90.201 is revised to read as follows.

§ 90.201 Scope.

This subpart sets forth the general technical requirements for use of frequencies and equipment in the radio services governed by this part. Such requirements include standards for acceptability of equipment, frequency tolerance, modulation, emissions, power, and bandwidths. Special additional technical standards applicable to certain frequency bands and certain specialized uses are set forth in subparts J, K, N, and R.

3. Section 90.203 is amended by adding paragraphs (m) and (n) to read as follows.

§ 90.203 Certification required.

* * * * *

(m) Applications for part 90 certification received after December 31, 2006 will not be granted to transmitters designed to operate in the voice mode on channels designated in §§ 90.531(b)(5) or 90.531(b)(6) that do not provide at least one voice path per 6.25 kHz of spectrum bandwidth.

(n) Transmitters designed to operate in the voice mode on channels designated in §§ 90.531(b)(5) or 90.531(b)(6) that do not provide at least one voice path per 6.25 kHz of spectrum bandwidth shall not be manufactured in, or imported into the United States after December 31, 2006. Marketing of these transmitters shall not be permitted after December 31, 2006.

4. Section 90.531 is amended by revising paragraphs (b)(5) and (6) and paragraph (d)(1) to read as follows.

§ 90.531 Band Plan.

* * * * *

(b) * * *

(5) *Narrowband state channels.* The following narrowband channels are designated for direct licensing to each state (including U.S. territories, districts, and possessions): 25–36, 65–76, 105–116, 145–156, 185–196, 225–236, 265–276, 305–316, 645–656, 685–696, 725–736, 765–776, 805–816, 845–856, 885–896, 925–936, 985–996, 1025–1036, 1065–1076, 1105–1116, 1145–1156, 1185–1196, 1225–1236, 1265–1276, 1605–1616, 1645–1656, 1685–1696, 1725–1736, 1765–1776, 1805–1816, 1845–1856, 1885–1896. Voice operations on these channels are subject to compliance with the spectrum usage efficiency requirements set forth in § 90.535(d).

(6) *Narrowband general use channels.* All narrowband channels established in paragraph (b) of this section, other than those listed in paragraphs (b)(1), (b)(2), (b)(4) and (b)(5) of this section are designated to public safety eligibles subject to Commission approved regional planning committee regional plans. Voice operations on these channels are subject to compliance with the spectrum usage efficiency requirements set forth in § 90.535(d).

* * * * *

(d) * * *

(1) *Narrowband.* Subject to compliance with the spectrum usage efficiency requirements set forth in § 90.535, two or four contiguous narrowband (6.25 kHz) channels may be used in combination as 12.5 kHz or 25 kHz channels, respectively. The lower (in frequency) channel for two channel combinations must be an odd (*i.e.*, 1, 3, 5 * * *) numbered channel. The lowest (in frequency) channel for four channel combinations must be a channel whose number is equal to 1+(4xn), where n = any integer between 0 and 479, inclusive (*e.g.*, channel number 1, 5, * * * 1917). Channel combinations are designated by the lowest and highest channel numbers separated by a hyphen, *e.g.*, "1–2" for a two channel combination and "1–4" for a four channel combination.

* * * * *

5. Section 90.533 is amended by revising paragraph (a) to read as follows:

§ 90.533 Transmitting sites near the U.S./Canada or U.S./Mexico border.

* * * * *

(a) Public safety transmitters operating in the 764–776 MHz and 794–806 MHz bands must conform to the limitations on interference to Canadian television stations contained in

agreement(s) between the United States and Canada for use of television channels in the border area.

* * * * *

6. Section 90.535 is amended by revising paragraphs (b) and (c) and by adding paragraph (d) to read as follows.

§ 90.535 Modulation and spectrum usage efficiency requirements.

* * * * *

(b) Transmitters designed to operate in the narrowband segment using digital modulation must be capable of maintaining a minimum data (non-voice) rate of 4.8 kbps per 6.25 kHz of bandwidth.

(c) Transmitters designed to operate in the wideband segment using digital modulation must be capable of maintaining a minimum data (non-voice) rate of 384 kbps per 150 kHz of bandwidth.

(d) The following provisions apply to licensees operating in the channels designated in §§ 90.531(b)(5) or 90.531(b)(6).

(1) With the exception of licensees designated in paragraph (d) (2) of this section, after December 31, 2006, licensees may only operate in voice mode in these channels at a voice efficiency of at least one voice path per 6.25 kHz of spectrum bandwidth.

(2) Licensees authorized to operate systems in the voice mode on these channels from applications filed on or before December 31, 2006, may continue operating in the voice mode on these channels (including modification applications of such licensees granted after December 31, 2006, for expansion or maintenance of such systems) at a voice efficiency of at least one voice path per 12.5 kHz of spectrum bandwidth until December 31, 2016.

(3) The licensees designated in paragraph (d)(2) of this section must, no later than January 31, 2017, file a declaration through the Universal Licensing System that they are operating these channels at a voice efficiency of at least one voice path per 6.25 kHz of spectrum bandwidth.

[FR Doc. 02–31383 Filed 12–12–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011005244–2011–02; I.D. 120902F]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Reopening of Directed Fishery for Loligo Squid

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Directed fishery reopening.

SUMMARY: NMFS announces that commercial quota is available to allow the directed fishery for Loligo squid to remain open. Vessels issued a Federal moratorium permit to harvest Loligo squid in excess of the incidental catch allowance may continue landing Loligo squid after 0001 hours, December 12, 2002. The intent of this action is to allow for the full utilization of the commercial quota allocated to the Loligo squid directed fishery.

DATES: Effective 0001 hours, December 12, 2002, through December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail paul.h.jones@noaa.gov.

SUPPLEMENTARY INFORMATION: Section 648.22 of part 50 CFR requires NMFS to close the directed *Loligo* squid fishery in the EEZ for the remainder of the year when 95 percent of the total annual domestic annual harvest (DAH) has been harvested. The Administrator, Northeast Region, NMFS, based on dealer reports and other available information, determined that 95 percent of the total DAH for Loligo squid would be harvested by November 2, 2002 (67 FR 66072, October 30, 2002). Therefore, effective 0001 hours, November 2, 2002, the directed fishery for *Loligo* squid was closed. However, the closure threshold level of *Loligo* harvest was not attained, and NMFS reopened the directed *Loligo* squid fishery from 0001 hours, December 2, 2002, through 0001 hours, December 12, 2002 (67 FR 70556, November 25, 2002). Due to recent bad weather, new projections indicate the closure threshold level of *Loligo* harvest may not be attained. Therefore, NMFS announces that the directed *Loligo* squid fishery will remain open. Vessels issued a Federal moratorium permit to harvest *Loligo* squid in excess of the incidental catch allowance may continue fishing for, retaining and landing *Loligo* squid in excess of the incidental catch allowance after 0001 hours, December 12, 2002, through December 31, 2002.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 10, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–31444 Filed 12–10–02; 2:41 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 240
Friday, December 13, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–50–AD]

RIN 2120–AA64

Airworthiness Directives; Textron Lycoming Fuel Injected Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), 98–18–12, applicable to certain Textron Lycoming reciprocating engines with certain Crane/Lear Romec "AN" rotary fuel pumps installed. That AD currently requires initial and follow-up torque check inspections of pump relief valve attaching screws. This proposal would require the same initial and follow-up torque check inspections of relief valve attaching screws, and add as a terminating action, replacement of the affected fuel pump at or before the overhaul interval, with a fuel pump having a new design valve housing. This proposal is prompted by the introduction of a new design pump relief valve housing and associated parts that provide enhanced resistance to fuel leakage, and the need for clarification of the requirements of the current AD. The actions specified by the proposed AD are intended to prevent rotary fuel pump leaks, which could result in an engine failure, engine fire, and damage to or loss of aircraft.

DATES: Comments must be received by February 11, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–50–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Lycoming, 652 Oliver St., Williamsport, PA 17701; telephone; (717) 327–7080, fax; (717) 327–7100. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth Street, 3rd floor, Valley Stream, NY 11581–1200; telephone (516) 256–7537; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–50–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–50–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On September 1, 1998, the FAA issued AD 98–18–12, Amendment 39–10728 (63 FR 48571, September 11, 1998), applicable to certain Textron Lycoming reciprocating engines with Crane/Lear Romec "AN" rotary fuel pump series RG9080, RG9570, and RG17980 installed. That AD requires initial and follow-up torque check inspections of pump relief valve attaching hardware screws, to prevent fuel leakage. That condition, if not corrected, could result in an engine failure, engine fire, and damage to or loss of aircraft.

Since AD 98–18–12 was issued, the manufacturer of the fuel pump has introduced a new design pump relief valve housing and associated parts, that provides enhanced resistance to fuel leakage on Crane/Lear Romec "AN" rotary fuel pumps, series RG9080, RG9570, and RG17980. The proposed AD would also address two concerns with the current AD:

- Initial and follow-up torque checks of affected pumps used as replacement pumps; and
- Compliance time for follow-up torque checks.

The current AD does not address installing affected pumps as replacement pumps. The proposed AD would allow installation of replacement pumps not modified with a newly designed valve, and require the same initial and follow-up torque checks to be performed to all replacement pumps until a pump with a "/M" after the part number is installed.

Additionally, the current AD does not specify an exact time by when follow-up torque checks must be performed. The current AD requires, and the proposal would require, that operators perform those follow-up torque checks after waiting a minimum time, either 50 hours TIS or 6 months, in order to allow the gasket to seat. Follow-up torque checks performed too soon after the initial torque is set, would not reveal potential loosening that could lead to the fuel leaks. The FAA expected that operators would perform follow-up checks at the next opportunity after that minimum period had elapsed to ensure that the gasket had fully seated and that fuel leaks were no longer likely to develop. Therefore, this proposal would require follow-up torque checks at periodic intervals, and when no retorquing is required, visual inspections at periodic intervals.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Lycoming Service Bulletin (SB) No. 529B, dated June 10, 2002, that describes procedures for initial and follow-up torque check inspections of affected pump relief valve attaching screws.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Textron Lycoming reciprocating engines with Crane/Lear Romec "AN" rotary fuel pump series RG9080, RG9570, and RG17980 installed, the proposed AD would supersede AD 98–18–12, maintaining the same requirement for initial and follow-up torque check inspections of relief valve attaching screws, and add as a terminating action, replacement of the fuel pump with one having a newly designed valve housing. The actions must be done in accordance with the service bulletin described previously.

Economic Analysis

There are about 16,000 engines with Crane/Lear Romec "AN" rotary fuel pumps of the affected design in the worldwide fleet. The FAA estimates that 9,600 pumps installed on aircraft of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 3 work hours per pump to perform the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $300 per pump. Based on these figures, the total cost of the proposed AD on U.S. operators is estimated to be $4,608,000.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10728 (63 FR 48571, September 11, 1998), and by adding a new airworthiness directive, to read as follows:

Textron Lycoming: Docket No. 97–ANE–50. Supersedes AD 98–18–12, Amendment 39–10728.

Applicability

This airworthiness directive (AD) is applicable to Textron Lycoming IO–320, LIO–320, IO–360, HIO–360, TIO–360, LTIO–360, GO–435, GO–480, IGO–480–A1B6, IO–540, IGO–540, AEIO–540, HIO–540, TIO–540, LTIO–540, TIGO–541, IO–720, and TIO–720 reciprocating engines, with Crane/Lear Romec RG9080, RG9570, and RG17980 series "AN" rotary fuel pumps listed in Table 1 installed. Table 1 follows:

TABLE 1.—APPLICABLE PUMP CROSS REFERENCE LIST

Lear/Romec series	Textron Lycoming part number (P/N)
RG9080F2	68262, 68262–85
RG9080J4A	LW–13909, LW–13909–85
RG9080J6A	LW–14444, LW–14444–85
RG9080J7A	LW–13920, LW–13920–85
RG9080J8A	LW–15740, LW–15740–85
RG9570K1	62E22288
RG9570P/P1	LW–19012
RG17980	74547, 74547–85
RG17980A	76188, 76188–85
RG17980D	76486, 76486–85
RG17980E	77443, 77443–85
RG17980J	78993, 78993–85
RG17980K	LW–11166, LW–11166–85
RG17980P	LW–12534, LW–12534–85
RG17980U	62D21153, 62D21

These engines are installed on, but not limited to fuel injected, reciprocating engine-powered aircraft manufactured by Cessna, The New Piper, Inc., Mooney, Raytheon (Beech), Bellanca, Champion, Partenavia, Rockwell, Schweizer, Enstrom, Aerospatiale (SOCATA), Maule, Aero Commander, Helio, Hiller, and Pacific Aerospace Corp.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area

subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Required as indicated, unless already done.

To prevent rotary fuel pump leaks, which could result in an engine failure, engine fire, and damage to or loss of the aircraft, accomplish the following:

(a) If the Lear/Romec part number (P/N) on rotary fuel pumps, series RG9080, RG9570, or RG17980 has an "/M" suffix, the pump has been modified, and no further action is required.

(b) If the P/N does not have an "/M" suffix, perform initial and follow-up torque check inspections of pump relief valve attaching screws in accordance with the Accomplishment Instructions of Lycoming Service Bulletin (SB) No. 529B, dated June 10, 2002, as follows:

(1) Within 10 hours time-in-service (TIS), or 30 days after the effective date of this AD, whichever occurs first, perform the initial torque check inspection. If the torque does not meet the specifications in Lycoming SB No. 529B, dated June 10, 2002, tighten screws to the required torque in accordance with that SB.

(2) Perform follow-up torque check inspections at 50 hour intervals TIS, or 6 months since the previous torque check inspection, whichever occurs first. If the torque does not meet the specification in Lycoming SB No. 529B, dated June 10, 2002, during this follow-up inspection, tighten screws to the required torque in accordance with that SB.

(3) Continue the follow-up torque check inspections required by paragraph (a)(2) of this AD until:

(i) The accumulation of 100 hours TIS since the inspection with the torque remaining within the SB specification; or

(ii) The torque meets the SB specification during the initial inspection and a subsequent inspection taking place after accumulating an additional 50 hours TIS also meets the SB specification.

(4) After the accumulation of 100 hours TIS since the inspection with the torque remaining within the SB specification; visually inspect the pump at 50-hour intervals until the pump is replaced with a modified pump (with the "/M" after the part number).

(c) Replacement of a rotary fuel pump series RG9080, RG9570, or RG17980, with an unmodified pump (without the "/M" after the part number) requires repeating the initial and follow-up inspections in accordance with paragraph (b) of this AD.

Optional Terminating Action

(d) Replacement of a rotary fuel pump series RG9080, RG9570, or RG17980, with a modified pump (with the "/M" after the part number) constitutes terminating action for the inspection requirements specified in paragraphs (b)(1) through (b)(4) of this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be done.

Issued in Burlington, Massachusetts, on December 5, 2002.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–31396 Filed 12–12–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–73–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–500 Series Airplanes, and Model ATR72–102, –202, –212, and –212A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–500 series airplanes, and Model ATR72–102, –202, –212, and –212A series airplanes. This proposal would require replacement of insulation blankets constructed of metallized polyethyleneteraphthalate (MPET) located from sections 11 through 16 of the fuselage with new insulation blankets constructed of Terul 18™. This proposal is prompted by reports of in-flight and ground fires on certain airplanes manufactured with insulation blankets constructed of MPET, which may contribute to the spread of a fire when ignition occurs from small ignition sources such as electrical arcing or sparking. The action specified by the proposed AD is intended to ensure that insulation blankets constructed of MPET are removed from the fuselage. Such insulation blankets could propagate a small fire that is the result of an otherwise harmless electrical arc and could lead to a much larger fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 13, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–73–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 2002–NM–73–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–73–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–73–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42–500 series airplanes, and Model ATR72–102, –202, –212, and –212A series airplanes. The DGAC advises that it has received reports of fires initiated by an electrical short circuit behind a sidewall, in which the flammability characteristics of thermal/acoustical insulation material constructed of metallized polyethyleneteraphthalate (MPET) may have been a contributing factor. Although reported incidents have not occured on ATR airplane models, the DGAC has issued French airworthiness directives 2001–635–061(B) and 2001–636–088(B), both dated December 26, 2001, in order to assure the continued airworthiness of Aerospatiale Model ATR42–500 series airplanes, and Model ATR72–102, –202, –212, and –212A series airplanes in France.

Insulation blankets constructed of MPET that are installed in the fuselage, if not removed, could propagate a small fire that is the result of an otherwise harmless electrical arc and could lead to a much larger fire.

Explanation of Relevant Service Information

The manufacturer has issued Avions de Transport Regional Service Bulletin ATR42–25–0134 (for Model ATR42–500 series airplanes); and ATR72–25–1074 (for Model ATR72–102, –202, –212, –212A series airplanes); both dated January 24, 2002. These service bulletins describe procedures for replacing the existing insulation blankets constructed of MPET located from sections 11 through 16 of the fuselage with new, improved insulation blankets constructed of Terul 18™. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the applicable service bulletin described previously.

Differences Between Proposed Rule and Foreign Airworthiness Directives

The proposed AD would differ from the parallel French airworthiness directives in that it would require accomplishment of the replacement within 5 years after the effective date of this AD. The parallel French airworthiness directives require accomplishment of the replacement during the next "eight-year calendar check and before May 31, 2009." In developing an appropriate compliance time for this proposed AD, the FAA considered not only the DGAC's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the compliance time mandated in previously issued ADs concerning insulation blankets constructed of MPET installed on other transport category airplanes, and the average utilization of the affected fleet.

The FAA's intent is that the replacement be conducted during a regularly scheduled maintenance visit for the majority of the affected fleet, when the airplanes would be located at a base where special equipment and trained personnel would be readily available, if necessary. In order to meet the deadline, the FAA expects early planning and anticipates that operators will have to take advantage of every heavy maintenance opportunity. In light of these factors, the FAA finds a 5-year compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety. The difference in compliance time has been coordinated with and acknowledged by the DGAC.

Cost Impact

The FAA estimates that 2 Aerospatiale Model ATR42–500 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 500 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately $50,000 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators of Model ATR42–500 series airplanes is estimated to be $160,000 or $80,000 per airplane.

The FAA estimates that 19 Aerospatiale Model ATR72–102, –202, –212, and –212A series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 500 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately $60,000 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators of Model ATR72–102, –202, –212, and –212A series airplanes is

estimated to be $1,710,000 or $90,000 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 2002–NM–73–AD.

Applicability: Model ATR42–500 series airplanes, and Model ATR72–102, –202, –212, and –212A series airplanes, certificated in any category; except those airplanes on which ATR Modification 5117 or 5322 (reference Avions de Transport Regional Service Bulletin ATR 42–25–0134, dated January 24, 2002, or Avions de Transport Regional Service Bulletin ATR 72–25–1074, dated January 24, 2002; as applicable) has been installed.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that insulation blankets constructed of metallized polyethyleneteraphthalate (MPET) are removed from the fuselage, to prevent propagation of a fire that is the result of an otherwise harmless electrical arc and could lead to a much larger fire, accomplish the following:

Insulation Blanket Replacement

(a) Within 5 years after the effective date of this AD, replace insulation blankets located from sections 11 through 16 inclusive of the fuselage with new, improved insulation blankets constructed of Terul 18™, in accordance with the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR42–25–0134 (for Model ATR42–500 series airplanes); or ATR72–25–1074 (for Model ATR72–102, –202, –212, –212A series airplanes); both dated January 24, 2002; as applicable.

Note 2: Although paragraph (a) of this AD allows up to 5 years for the required replacement, the FAA encourages operators to review their airplanes to assess their individual needs for materials and plan accordingly. The FAA anticipates that operators will accomplish the requirements of this AD at the earliest practicable maintenance opportunity to lessen the burden toward the end of the compliance time.

Part Installation

(b) As of the effective date of this AD, no person shall install an insulation blanket constructed of MPET on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directives 2001–635–061(B) and 2001–636–088(B), both dated December 26, 2001.

Issued in Renton, Washington, on December 6, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–31471 Filed 12–12–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. 94N–0418 and 96P–0276]

Medical Devices: Cardiovascular Devices: Reclassification of the Arrhythmia Detector and Alarm

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify the arrhythmia detector and alarm from class III (premarket approval) to class II (special controls) based on new information regarding the device. FDA is also proposing to revise the identification of the arrhythmia detector and alarm to separate the automated external defibrillator (AED) from the identification of the arrhythmia detector and alarm. FDA intends to propose the reclassification of the AED at a later time. FDA is taking this action in response to petitions submitted under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) and the Safe Medical Devices Act of 1990 (the SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Submit written or electronic comments by March 13, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to: http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Carole C. Carey, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609.

SUPPLEMENTARY INFORMATION:

I. Regulatory Authorities

The act, as amended by the 1976 amendments (Public Law 94–295), the SMDA (Public Law 101–629), and FDAMA (Public Law 105–115), establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendment devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification (510(k)) procedures, without submission of a premarket approval application until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

The SMDA added section 515(i) to the act. This section requires FDA to issue an order to manufacturers of preamendment class III devices and substantially equivalent postamendments devices for which no final regulation requiring the submission of premarket approval applications (PMAs) has been issued. This order requires such manufacturers to submit to the agency a summary of, and a citation to, any information known or otherwise available to them respecting such devices, including adverse safety and effectiveness information that has not been submitted under section 519 of the act (21 U.S.C. 360i). Section 519 of the act requires manufacturers, importers, distributors, and device user facilities to submit adverse event reports of certain device-related events and reports of certain corrective actions taken. Section 515(i) of the act also directs FDA to either revise the classification of the device into class I or class II or require the device to remain in class III and establish a schedule for the promulgation of a rule requiring the submission of PMAs for those devices remaining in class III.

In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA announced the availability of a document setting forth its strategy for implementing the provisions of the SMDA that require FDA to review the classification of preamendments class III devices. Under this plan, the agency divided preamendment class III devices into the following three groups: (1) Group 1 devices are devices that FDA believes raise significant questions of safety and/or effectiveness, but are no longer used or are in very limited use; (2) group 2 devices are devices that FDA believes have a high potential for being reclassified into class II; and group 3 devices are devices that FDA believes are currently in commercial distribution and are not likely candidates for reclassification. FDA also announced its intention to call for submission of PMAs for the 15 highest priority devices in group 3, and for all group 1 devices. The agency also announced its intention to issue an order under section 515(i) of the act for the remaining group 3 devices and for all of the group 2 devices.

In the **Federal Register** of August 14, 1995 (60 FR 41984 and 60 FR 41986), FDA published two orders for certain class III devices requiring the submission of safety and effectiveness information in accordance with the preamendments class III strategy for implementing section 515(i) of the act. FDA published two updated orders in the **Federal Register** of June 13, 1997 (62 FR 32352 and 32355). The orders describe in detail the format for submitting the type of information required by section 515(i) of the act so that the information submitted would clearly support either reclassification or indicate that a device should be retained in class III. The orders also scheduled the required submissions in groups, at 6-month intervals, beginning with August 14, 1996. The device proposed in this regulation for reclassification was included in group 3.

Reclassification of classified preamendments devices is governed by section 513(e) of the act. This section provides that FDA may, by rulemaking, reclassify a device based upon "new information." The reclassification can be initiated by FDA or by the petition of an interested person.

The term "new information," as used in section 513(e) of the act, includes information developed as a result of a reevaluation of the data before the agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); and *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of changes in "medical science."

(See *Upjohn* v. *Finch*, supra, 422 F.2d at 951), or in light of newly available regulatory controls (cf. *Ethicon, Inc.*, v. *FDA*, 762 F. Supp. 382, 388–389 (D.D.C. 1991)), such as special controls or design controls. However, regardless of whether data before the agency are past or new data, the "new information" on which any reclassification is based is required to consist of "valid scientific evidence" as defined in section 513(a)(3) of the act and 21 CFR

860.7(c)(2). FDA relies upon "valid scientific evidence" in the classification process to determine the level of regulation for devices.

II. Regulatory History of the Device

The arrhythmia detector and alarm subject to this proposal was classified in part 870 (21 CFR part 870) by a final rule published in the **Federal Register** of February 5, 1980 (45 FR 7907) at § 870.1025. In the proposed rule upon which the final rule was based (March 9, 1979 (44 FR 13284)), FDA considered the recommendations of the Cardiovascular Device Classification Panel. Subsequently, FDA classified the arrhythmia detector and alarm into class III, because there was insufficient information to determine that class I or class II controls could provide reasonable assurance of the safety and effectiveness of the device.

FDA is addressing three petitions to reclassify arrhythmia detectors and alarms from the Health Industry Manufacturers Association (HIMA) (now known as Advamed); Quinton Instrument Co.; and Zymed Medical Instrumentation (Refs. 1 through 3) and safety and effectiveness information ("515(i) submissions") submitted by Datascope Corp.; Hogan and Harton L.L.P.; Life Sensing Instrument Co.; Inc.; Medical Data Electronics; Mennen Medical Ltd.; Mortara Instrument; and, Olsson, Frank and Weeda, P.C. (Refs. 4 through 10).

FDA is not addressing at this time the petitions submitted by HIMA (Advamed) to reclassify automated external defibrillators (AEDs) from class III to class II. This device is primarily designed for a different intended use than the arrhythmia detector and alarm. An AED has a shock advisory algorithm, automatically detects a shockable cardiac rhythm, and automatically delivers an electric shock (fully automated device) or delivers a shock when activated by the operator (semi-automated device). Defibrillators are preamendment class II devices under § 870.5300. Arrhythmia detectors and alarms are preamendment class III devices under § 870.1025. AEDs are devices found substantially equivalent to the class III arrhythmia detector and alarm (§ 870.1025) in response to a 510(k) because they are a combination of the class II defibrillator and the class III arrhythmia detector and alarm. FDA, therefore, found them equivalent to the higher class of the combined devices. In a future issue of the **Federal Register**, FDA will publish a notice of a panel meeting that will discuss the possible reclassification of AEDs.

III. Proposed Addition of Identification for AEDs

FDA is proposing to add a new identification of the AEDs to read as follows:

> An automated external defibrillator is a low-energy device with a rhythm recognition detection system that delivers into a 50 ohm test load an electrical shock of a maximum of 360 joules of energy used for defibrillating (restoring normal heart rhythm) the atria or ventricles of the heart. The device analyzes the patient's electrocardiogram, interprets the cardiac rhythm and automatically delivers an electrical shock (fully automated AED), or advises the user to deliver the shock (semi-automated or shock advisory AED) to treat ventricular fibrillation or pulseless ventricular tachycardia.

The name of the classification regulation, arrhythmia detector and alarm and the identification of these devices will remain unchanged.

IV. Proposed Reclassification

FDA is proposing that the arrhythmia detector and alarm be reclassified from class III to class II. FDA believes that the guidance document identified in section VIII of this document as the special control would provide reasonable assurance of the safety and effectiveness of the device. Therefore, in accordance with sections 513(e) and 515(i) of the act and 21 CFR 860.130, based on new information with respect to the device, FDA is proposing to reclassify the arrhythmia detector and alarm preamendment class III device into class II.

The agency does not intend to exempt this proposed class II device from premarket notification (510(k)) submissions as permitted by section 510(m) of the act.

FDA believes that it needs to review the information to address the risks identified in the guidance document in order to assure that a new device is at least as safe and effective as legally marketed devices.

V. Risks to Health

After considering the information discussed by the panel during the original classification proceedings, as well as published literature, medical device reports (MDR), and section 515(i) of the act submissions of safety and effectiveness information, FDA has evaluated the risks associated with the arrhythmia detector and alarm. FDA now believes that the following are the risks to health associated with the use of the arrhythmia detector and alarm:

A. Misdiagnosis

Inaccurate electrocardiogram (ECG) waveform measurement and analysis can lead to misdiagnosis and could result in failure-to-alarm in the case of life threatening arrhythmias or cause false alarms to be activated. Conditions exist under which an algorithm may misclassify portions of the ECG waveform. Inadequate design and poor signal processing techniques in the presence of artifact or noise can also result in miscounting of heart rate and misclassification of arrhythmias. Noise degrades signal quality and is affected by patient motion, electromagnetic interference, and improper electrode placement. It may distort the signal to the point the data are invalid or cannot be analyzed.

Although the algorithm in most commercially available devices today has improved accuracy in both beat detection and beat classification with enhanced noise reduction techniques, it is extremely difficult to design a system that accurately analyzes 100 percent of all arrhythmias. Algorithm accuracy is a potential safety and effectiveness issue; however, it is not frequently reported as an adverse event. Approximately 6 percent of the MDR and complaint data are attributed to algorithm accuracy (Ref. 1). The ability of ST-segment measurement algorithm performance to predict clinical conditions has not been completely validated. Literature indicates that this capability is helpful for patients who have the potential of experiencing ischemic episodes and some clinicians believe changes in the ST segment can be indicative of myocardial ischemia (Refs. 11 through 15).

The performance of an automated, computerized, arrhythmia monitor system is dependent on the accuracy of the arrhythmia detection and identification algorithm. If inaccurate diagnostic data are used in managing the patient, the physician may prescribe a course of treatment that places the patient at risk.

B. Incorrect Pacemaker Pulse Detection

Many patients on ECG monitoring systems also have pacemakers. This condition poses a particular problem as the detection of pacemaker pulse artifact during "loss of capture" (heart does not respond to the pacing pulse stimulus), may inappropriately be interpreted as a normal beat. Failure of a heart rate alarm to occur during loss of capture compromises the patient's condition and may result in death. In the early 1990s, Emergency Care Research Institute (ECRI) investigated the difficulties in monitoring pacemaker patients (Ref. 16). Their initial testing of the patient monitors demonstrated the devices' limited ability to reliably reject simulated pacemaker signals. A subsequent 1994 publication reported concerns about the ability of telemetry arrhythmia monitoring systems to accurately and reliably identify pacemaker pulses (Ref. 17). Another type of problem encountered when monitoring patients with pacemakers is a false alarm due to a "no detect" time window (a brief period when the device is not sensing the patient's ECG) that occurs when the monitor sees the pacemaker spike, but fails to see the patient's own ECG signal. Although the potential risk associated with pacemakers is high, the incidence of incorrect pacemaker pulse detection is low based on the relatively small number of reports. A review of manufacturers' MDRs between 1984 and 1995 showed that approximately 14 percent of MDRs were attributed to pace pulse detection capability (Ref. 1).

C. Delayed Response to Life Threatening Arrhythmias Due to User Error, Improper Training, and Unattended Monitors

The level of training and quality of user training greatly affect the safe and effective operation of arrhythmia monitoring systems. An unattended monitor, or use by untrained or improperly trained clinical staff, can adversely affect system performance. In a system where excessive false alarms occur (from causes described in previous paragraphs), this may result in user failure to respond promptly to critical alarms. Furthermore, caregivers could develop a negative attitude from the false alarms, eroding user confidence in the device and resulting in deactivation of the alarm or failure to reset the alarm. HIMA (Advamed) indicated that approximately 15 percent (9 of 59) of the MDRs from 1984 to 1995 were attributed to alarm functionality (i.e., alarms turned off by the staff) (Ref. 1). Other device performance concerns are difficulty in using the device and the device taking too much time to use (i.e., setting up the patient and ensuring that the algorithm has learned the appropriate rhythms) (Ref. 18).

D. Loss of Alarm at Central Station or Bedside

Loss of alarm at central station or bedside may occur due to software crash, hardware failure preventing communication, and/or the inability of central station to receive data/alarms from the bedside monitor.

E. Excessive Patient Leakage Current

Excessive patient leakage current may result in electrically induced cardiac arrhythmias.

VI. Summary of the Reasons for Reclassification

After considering the data and information contained in the petitions, 515(i) submissions of safety and effectiveness information, published literature, and over 20 years of device experience in the clinical environment, FDA believes that the arrhythmia detector and alarm can be reclassified into class II. Special controls, in addition to general controls, can address the risks described above and provide reasonable assurance of the safety and effectiveness of the device. FDA believes there is sufficient information to establish special controls to provide such assurance.

VII. Summary of Data Upon Which the Reclassification is Based

In addition to the potential risks of the arrhythmia detector and alarm described in section V of this document, there is reasonable knowledge of the benefits of the device. Specifically, arrhythmia detector and alarm monitoring systems allow cardiac monitoring of patients who are at significant risk of immediate life-threatening arrhythmias, such as patients suspected of having acute myocardial infarction, patients who have been recently resuscitated from cardiac arrest, and patients with unstable angina (Ref. 19). When monitoring for evidence of cardiac ischemia, the ST-segment monitoring feature in the arrhythmia detector and alarm devices allows timely notification of ST- segment changes. The integrated alarm system alerts caregivers to any life threatening arrhythmias that require their immediate attention and assessment of the patient's condition before treatment intervention. In addition to patient cardiac monitoring in critical areas, it is also frequently used in noncritical settings to improve patient care management and serve as a labor saving device. The computerized documentation or trending of arrhythmia events is far more efficient than piecing together pages of ECG strips.

Based on the available information, FDA believes that the special controls discussed in section VII of thus document are capable of providing reasonable assurance of the safety and effectiveness of the arrhythmia detector and alarm with regard to the identified risks to health of this device.

VIII. Proposed Special Controls

FDA believes that the special control guidance document entitled "Class II Special Controls Guidance Document: Arrhythmia Detector and Alarm; Draft Guidance for Industry and FDA," in addition to general controls, can address the risks to health described in section V of this document. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of this guidance document. FDA is also revising § 870.1 to inform the reader as to the availability of the guidance document.

If adopted, following the effective date of a final rule classifying the device, any firm submitting a 510(k) premarket notification for the device would need to address the issues covered in the special control guidance. However, the firm would need to show only that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

The guidance document contains specific recommendations with regard to the information and testing in the premarket notification application. Particular sections of the guidance document address the following topics:

- Safety testing (software validation, electrical safety and environmental handling testing, electromagnetic compatibility),
- Performance testing, and
- Labeling.

A. Safety Testing

Safety testing as described in the guidance document includes software validation, electrical safety and environmental handling testing, and electromagnetic compatibility. The in vitro safety testing can help control the risks of incorrect pacemaker pulse detection and other risks associated with the use of the device, such as loss of alarm at central station or bedside monitor, excessive patient leakage current, injury to patient's skin, and electrical shock to the operator. Proper design can improve the paced patient algorithm performance. For example, the pace pulse detection should be implemented on the unfiltered ECG signal prior to processing of the waveform by the QRS beat detector. Most of the other concerns addressed in this section of the guidance are well known and are generic to microprocessor-controlled, software-driven, electromedical devices. This section of the guidance makes recommendations on the qualification testing to evaluate the device electrical safety requirements, its ability to function after exposure to environmental hazards, electromagnetic compatibility in the intended environment of use, and software validation based on the use of relevant

consensus standards and/or other FDA guidance documents.

B. Performance Testing

The section on performance testing of the guidance document can help control the risks of misdiagnosis from inaccurate ECG signal measurement and misclassified waveforms. The availability of annotated arrhythmia databases has allowed detection algorithms to be tested on the same data. It is recommended that manufacturers properly test the accuracy of the automated arrhythmia detection and ST-segment measurement algorithms, and disclose the results of those tests. This section of the guidance document also emphasizes testing to demonstrate conformance to relevant ECG standards, testing alarm accuracy within a few seconds of the onset of critical life threatening arrhythmias, and testing other alarms functions including those related to system tasks. The guidance also recommends comparative testing to a legally marketed predicate device. If the device incorporates significant new features, additional testing may be necessary. These tests may be conducted in the laboratory and/or clinical settings.

C. Labeling

As described in the guidance, labeling can help control the delayed responses to life threatening arrhythmias due to user error, improper training, and unattended monitors. In addition to conformance to the labeling regulations at 21 CFR part 801, the user (operator) manual should contain detailed operating instructions designed to reduce risks from user error with the device. Furthermore, the device should be operated only by persons with specific training in the use of the device.

IX. FDA's Tentative Findings

FDA believes that the arrhythmia detector and alarm can be reclassified into class II because special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

X. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this proposed classification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform act of 1995 (Public Law 104–4). Executive order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages, distributive impacts, and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of this device from class III to class II will relieve all manufacturers of the device of the cost of complying with the premarket approval requirements in section 515 of the act. Manufacturers of class III arrhythmia detectors and alarms currently are required to submit premarket notifications. The guidance document reflects existing FDA practice in the review of these premarket notifications. FDA expects that manufacturers of cleared arrhythmia detectors and alarms will not have to take any additional action in response to this rule, if FDA finalizes this rule. This rule will help expedite the review process for any new manufacturers of these devices. Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this proposed rule, if issued, will not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule will not impose costs of $100 million or more on either the private sector or state, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

XII. Submission of Comments and Proposed Dates

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written comments regarding this proposal by (see **DATES**). Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA proposes that any find regulation based on this proposed rule become effective 30 days after its date of publication in the **Federal Register**.

XIII. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. HIMA (Health Industry Manufacturers Association), reclassification petition, Docket No. 94N–0418, vol. 1–7, Washington, DC, August 14, 1996.
2. Quinton Instrument Co., reclassification petition, Docket No. 94N–0418, vol. 1, WA, August 14, 1996.
3. Zymed Medical Instrumentation, reclassification petition, Docket No. 96P–0276/CCP 1, vol. 1, CA, August 7, 1996.
4. Datascope Corp., submission of safety and effectiveness information, Docket No. 94N–0418, vol. 1, NJ, October 2, 1996.
5. Hogan and Hartson L. L. P. for Cardiac Telecom Corp., submission of safety and effectiveness information, Docket No. 94N–0418, vol. 1, Washington, DC, August 14, 1996.
6. Life Sensing Instrument Co., Inc., submission of safety and effectiveness information, Docket No. 94N–0418, vol. 1, TN, July 15, 1996.
7. Medical Data Electronics, Inc., submission of safety and effectiveness information, Docket No. 94N–0418, vol. 1, CA, August 14, 1996.
8. Mennen Medical Ltd., submission of safety and effectiveness information, Docket No. 94N–0418, vol. 1, October 25, 1996.
9. Mortara Instrument, Inc., submission of safety and effectiveness information, Docket No. 94N–0418, vol. 1, WI, August 14, 1996.
10. Olsson, Frank and Weeda, P. C. for QMED, Inc., submission of safety and effectiveness information, Docket No. 94N–0418, vol. 1, Washington, DC, August 15, 1996.
11. Ellis, J. et al., "Comparison of Two Automated ST-Segment Analysis Systems, EKG (Including T Wave Inversion Analysis), and Transesophageal Echocardiography for the Diagnosis of Intraoperative Myocardial Ischemia," abstract (included in Ref. 1).
12. Gottlieb, S. et al., "Silent Ischemia on Holter Monitoring Predicts Mortality in High-Risk Postinfarction Patients," *Journal of the American Medical Association*, vol. 259, pp. 1030–1035, 1988 (included in Ref. 1).
13. Krucoff, M., "Identification of High Risk Patients with Silent Myocardial Ischemia After Percutaneous Transluminal Coronary Angioplasty by Multilead Monitoring," *American Journal of Cardiology*, vol. 61, pp. 29F–24F, 1988 (included in Ref. 1).
14. Muller, J. and Barash, P., "Automated ST-Segment Monitoring," *International Anesthesioogy Clinics*, vol. 31, pp. 45–55, 1993 (included in Ref. 1).
15. Nademanee, K. et al., "Characteristics and Clinical Significance of Silent Myocardial Ischemia in Unstable Angina," *American Journal of Cardiology*, vol. 58, pp. 26B–33B, 1986 (included in Ref. 1).
16. ECRI, "Physiologic Patient Monitors," update, *Health Devices*, vol. 21, Nos. 3–4, pp. 123–128, March-April 1992.
17. ECRI, "Ambulatory Telemetry Arrhythmia Monitoring Systems (including Guidance Section: Implementation and Effective Use of Telemetry Arrhythmia Monitoring Systems," *Health Devices*, vol. 23, No. 7, pp. 267–305, July 1994.
18. Badura, F., "Nurse Acceptance of a Computerized Arrhythmia Monitoring System," *Instrumentation for Critical Care*, vol. 9, pp. 1044–48, 1980 (included in Ref. 1).
19. Emergency Cardiac Care Committee of the American College of Cardiology, "Recommended Guidelines for In-Hospital Cardiac Monitoring of Adults for Detection of Arrhythmias," *Journal Americon of College Cardiology*, vol. 18, pp. 1431–1433, 1991 (included in Refs. 1 and 8).

List of Subjects in 21 CFR Part 870

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 870 be amended follows:

PART 870—CARDIOVASCULAR DEVICES

1. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 870.1 is amended by adding paragraph (e) to read as follows:

§ 870.1 Scope.

* * * * *

(e) Guidance documents referenced in this part are available on the Internet at http://www.fda.gov/cdrh/guidance.html.

2. Section 870.1025 is revised to read as follows:

§ 870.1025 Arrhythmia detector and alarm.

(a) Arrhythmia detector and alarm (including ST-segment measurement and alarm)—(1) *Identification.* An arrhythmia detector and alarm is system that monitors the electrocardiogram and is designed to produce a visible or audible signal or alarm when an atrial or ventricular arrhythmia, such as a premature contraction or ventricular fibrillation, exists.

(2) *Classification.* Class II (special controls). The special control for this device is the FDA guidance document entitled "Class II Special Controls Guidance Document: Arrhythmia Detector and Alarm; Guidance for Industry and FDA." See § 870.1 for the availability of this guidance document.

(b) *Automated external defibrillator*—(1) *Identification.* An automated external defibrillator is a low-energy device with a rhythm recognition detection system that delivers into a 50 ohm test load an electrical shock of a maximum of 360 joules of energy used for defibrillating (restoring normal heart rhythm) the atria or ventricles of the heart. The device analyzes the patient's electrocardiogram, interprets the cardiac rhythm and automatically delivers an electrical shock (fully automated AED), or advises the user to deliver the shock (semi-automated or shock advisory AED) to treat ventricular fibrillation or pulseless ventricular tachycardia.

(2) *Classification.* Class III (premarket approval).

(3) *Date PMA or notice of PDP is required.* No effective date has been established of the requirement for premarket approval.

Dated: October 23, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–31440 Filed 12–12–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 4215]

Documentation of Nonimmigrants Under the Immigration and Nationality Act, As Amended—Elimination of Crew List Visas

AGENCY: Department of State.

ACTION: Proposed rule with request for comments.

SUMMARY: Under current regulations, crewmen working on vessels and aircraft bound for the United States are able to obtain crew list visas without submitting individual application forms or undergoing background checks that would apply to many if they applied for individual visas. In light of the security concerns resulting from the events of September 11, 2001, the Department can no longer justify issuance of a visa without the full application process. This rule proposes to amend the regulations to eliminate the crew list visa.

DATES: Written comments must be received on or before February 11, 2003.

ADDRESSES: Written comments may be submitted to the Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, by fax to 202–663–3898 or by e-mail to *VisaRegs@state.gov*.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, 202–663–1206 or e-mail *chavezpr@state.gov*.

SUPPLEMENTARY INFORMATION:

What Is a Crew List Visa?

The Department's current regulation at 22 CFR 41.42(a) defines crew list visa as follows: "A crew list visa is a nonimmigrant visa issued on a manifest of crewmen of a vessel or aircraft and includes all aliens listed in the manifest unless otherwise stated. It constitutes a valid nonimmigrant visa within the meaning of INA 212(a)(7)(B)(i)(II)."

What Are the Statutory Authorities Pertaining to the Crew List Visa?

Authority for the issuance of a crew list visa is derived from sections 101(a)(15)(D) and 221(f) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(D) and 1201(f), respectively. Section 101(a)(15)(D) exempts aliens serving in good faith as crewmen on board a vessel (other than a fishing vessel having its home port or an operating base in the United States, unless temporarily landing in Guam), or aircraft from being deemed immigrants. Section 221(f) permits an alien to enter the United States on the basis of a crew manifest that has been visaed by a consular officer. However, the latter section does not require a consular officer to visa a crew manifest and in those cases where the consular officer does agree to do so, it authorizes the officer to deny admission to any alien from the crew list visa. Further, the use of the visaed crew list appears to have been intended principally as a temporary or emergency measure to be used only until such time as it becomes practicable to issue individual documents to each member of a vessel's or aircraft's crew.

What Are the Requirements for Obtaining a Crew List Visa?

To obtain a crew list visa, the representative or agent of a foreign vessel or aircraft must submit a master list of all crewmen employed on the

vessel or aircraft along with whatever other information the consular officer finds necessary to determine eligibility.

Applicants applying for crew list visas are not required to complete the Forms DS–156, Nonimmigrant Visa Application, or DS–157, Supplemental Nonimmigrant Visa Application or submit a passport, nor are they required to undergo an interview.

Are Such Crewmen Subject to Background Checks?

While consular officers are required to conduct background checks, including a check of the computerized name check system, for applicants for crew list visas, background checks are not as reliable for crew list applicants since it is not possible to verify with certainty that the names submitted on the crew list are spelled correctly. In addition, since crew list visa applicants ordinarily are not interviewed, consular officers have no opportunity to question them regarding such things as employment history or knowledge of their trade.

Why Does the Department Want To Amend Its Regulations?

The Enhanced Border Security and Visa Entry Reform Act of 2002 (Pub. L. 107–173) requires that all visas issued after October 26, 2004 have a biometric indicator. This means crew list visas would necessarily be eliminated by that date. Additionally, since September 11, the Department has been amending its regulations to ensure that every effort is made to screen out undesirable aliens. The Department is, therefore, amending its regulations to eliminate crew list visas and ensure that each crewmember entering the United States will complete the nonimmigrant visa application forms, submit a valid passport and undergo an interview and background checks.

What Will Be the Economic Impact and the Impact on Manning of Vessels and Aircraft if This Rule Goes Into Effect?

In terms of the actual cost of a visa, per crewman, in general the cost of an individual visa will be no more than it is, per crewman, on a crew list visa, and in most cases over a period of years will average out to be less. For crew list visas each crewman already pays an individual processing, *i.e.*, machine-readable visa (MRV) fee of $100.00. Although reciprocity fees are waived for individuals on a crew list visa and are not for individual visas, that cost should be more than offset in most cases by the fact that the crewman will be receiving (depending upon reciprocity for each individual's country of nationality) a multiple entry, long term visa instead of the one entry, 6 month crew list visa.

Nevertheless, in preliminary discussions with representatives of the shipping industry, most comments about the economic impact of this proposed rule have been associated with the difficulties and costs that will be presented to the industry should issuance of individual visas result in long and expensive delays waiting in port for visas to be issued. These representatives say that tight and sometimes erratic scheduling, and a constant shifting of crew members are features of the industry that need to be taken into consideration in implementing a requirement for individual visas. Therefore, the Department invites all interested parties to comment specifically on the economic and manning impacts of this rule, as proposed, and to suggest measures the Department might consider when implementing the rule that would minimize any negative impacts of this type.

How Does the Department Propose To Amend Its Regulations?

This rule proposes to remove the Department's regulations at 22 CFR 41.42 that establish the crew list visa. By doing so, all crewmembers entering the United States would be required to apply for individual crew visas.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department is publishing this rule as a proposed rule with a 60-day provision for post-promulgation public comments.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State considers this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Therefore, it has been submitted for review by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports, Visas.

In view of the foregoing, 22 CFR Part 41 is amended as follows:

PART 41—[AMENDED]

1. The authority citation for Part 41 continues to read:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681–795 through 2681–801.

§ 41.42 [Removed and Reserved]

Remove and reserve section 41.42.

Dated: December 2, 2002.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 02–31482 Filed 12–12–02; 8:45 am]

BILLING CODE 4710–06–P

Notices

Federal Register
Vol. 67, No. 240
Friday, December 13, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Senior Executive Service (SES) Performance Review Board: Updating

AGENCY: Agency for International Development, Office of the Inspector General.

ACTION: Notice.

SUMMARY: This notice is hereby given of the appointment of members of the updated USAID OIG SES Performance Review Board.

EFFECTIVE DATE: November 26, 2002.

FOR FURTHER INFORMATION CONTACT: Michael G. Carroll, Assistant Inspector General for Management, Office of Inspector General, U.S. Agency for International Development, 1300 Pennsylvania Avenue, NW, Room 8.08–029, Washington, DC 20523–8700; telephone 202–712–0010; fax 202–216–3392; Internet e-mail address: *mcarroll@usaid.gov* (for e-mail messages, the subject line should include the following reference—USAID OIG SES Performance Review Board).

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(b)(c) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management at 5 CFR part 430, subpart C and § 430.307 thereof in particular, one or more Senior Executive Service performance review boards. In order to ensure an adequate level of staffing and to avoid a constant series of recusals, these newly designated members of USAID's OIG SES Performance Review Board are being drawn, as in the past, primarily from the SES ranks of other agencies because USAID OIG only has five SES members. The board shall review and evaluate the initial appraisal of each USAID OIG senior executive's performance by his or her supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive. This notice updates the membership of the USAID OIG's SES Performance Review Board as it was last published.

Approved: November 26, 2002.

The following have been selected as regular members of the SES Performance Review Board of the U.S. Agency for International Development, Office of Inspector General:

James R. Ebbitt, Deputy Inspector General.

Adrienne Rish, Assistant Inspector General for Investigations.

Michael G. Carroll, Assistant Inspector General for Management.

Robert S. Perkins, Legal Counsel.

Bruce Crandlemire, Assistant Inspector General for Audit.

Aletha Brown, Inspector General, Equal Employment Opportunity Commission.

Melissa Heist, Assistant Inspector General for Audit, Environmental Protection Agency.

Edward Blansitt, Deputy Inspector General, Department of Commerce.

Michael Speedling, Assistant Inspector General for Investigations, Environmental Protection Agency.

Kwai Chan, Assistant Inspector General for Program Evaluation, Environmental Protection Agency.

Everett L. Mosley,

Inspector General, Agency for International Development.

[FR Doc. 02–31475 Filed 12–12–02; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Plan Amendment for Travel Management of the Road and Trail System on the Gallatin National Forest, Montana; Gallatin National Forest; Sweet Grass, Park, Carbon, Gallatin, Madison, and Meagher Counties, Montana

AGENCY: Forest Service USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the environmental effects of a proposed amendment to the Gallatin National Forest Land and Resource Management Plan (Forest Plan) that will establish direction for public recreational use and access using the Forest's road and trail system. For each road and trail the Amendment will specify the types of uses that are appropriate including pleasure driving, high clearance and off-road vehicle use, motorcycle use, biking, horseback riding, snowmobiling, hiking, skiing and snowshoeing. The amendment will also establish travel management goals, objectives and standards for sub-areas within the Gallatin National Forest.

The Gallatin National Forest Land and Resource Management Plan (Forest Plan) provides overall guidance for land management activities that occur on the Forest. Forest plans are developed, revised, and amended in compliance with the National Forest Management Act of 1976 (NFMA); and the regulations for National Forest Land and Resource Management Planning at 36 CFR part 219. This amendment would remove some existing Forest Plan provisions pertaining to travel management and replace them with an overall travel management plan specific to roads and trails. A range of 4 to 6 alternatives are targeted for consideration in the travel planning process.

DATES: Alternatives are expected to be ready for public review and comment by February or March, 2003. Requests to receive information and notification of opportunities to provide comments should be received prior to that time.

ADDRESSES: Requests to be placed on the travel planning mailing list should be sent to Pam Bentley, Gallatin National Forest Supervisors Office, P.O. Box 130, Bozeman, Montana, 59771–0130.

FOR FURTHER INFORMATION CONTACT: Steve Christiansen, Travel Planning Interdisciplinary Team Leader, Gallatin National Forest Supervisors Office, (406) 587–6750.

SUPPLEMENTARY INFORMATION: The Gallatin National Forest includes approximately 1.9 million acres of public land adjacent to the northern and western boundaries of Yellowstone National Park. It lies within all or portions of Sweet Grass, Park, Carbon, Meagher, Gallatin, and Madison Counties, Montana. Local communities include Bozeman, Big Sky, West Yellowstone, Livingston, Big Timber, Gardiner, and Cooke City, Montana. There are over 1300 miles of road and

2300 miles of trail accessing the Forest that facilitate a variety of management activities and provide opportunities for public recreation use. In general, the road and trail system and recreation use of the Forest has evolved incrementally over many decades based on site-specific demands and capabilities. There has never been a comprehensive evaluation on whether it is the best way to provide for these demands in conjunction with other resources uses and land stewardship needs. Due to changing and increasing trends in recreation use, recent acquisitions of over 150,000 acres of land into public ownership, and other resource and environmental issues, the Forest Service believes that it is timely to establish a forest-wide travel management plan and incorporate it into the Forest Plan.

The purpose for a Gallatin National Forest Travel Management Plan and Amendment are to: (1) Provide for public access and recreational demand of the road and trail system on the Forest considering both the quantity and quality of opportunity to be provided. (2) Bring road and trail use into compliance with laws, regulations, and other higher level management direction. (3) Correct unacceptable resource damage that may be occurring due to the use of or condition of Forest roads and trails. (4) Provide for public understanding of the types of use and season of use allowed for each road and trail. (5) Identify administrative access routes to facilitate management of a variety of resources on the Gallatin National Forest. (6) Replace outdated, ineffective, and/or unclear Forest Plan standards and other direction applicable to road and trail management.

As a beginning to the travel planning process the Forest Service has prepared a "benchmark" travel management plan alternative. The benchmark is not considered an agency proposal or preferred alternative because it does not have the benefit of public input or preliminary environmental analysis. It has been developed as a conceptual travel management plan to focus interested citizen and user group participation and initial environmental analysis from Forest Service specialists. Based on early public comment and analysis the benchmark will be used to develop a range of 4 to 6 alternatives that represent various interests and respond to environmental issues. The alternatives will represent "proposed options" for a travel management plan and will be made available for review, comment, and modification during the late winter/early spring of 2003. The benchmark can be viewed on the Gallatin National Forest Web site at *http://www.fs.fed.us/rl/gallatin/travel_planning*. A copy can also be obtained on CD by calling or writing the contact persons identified above.

Comments on the alternatives from the public and other agencies will be used in preparation of a Draft Environmental Impact Statement (DEIS). More specifically, comments will be used to modify and refine the alternatives and identify potential resource issues (environmental effects) that should be considered in analysis.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review on January of 2004. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 90 days from the date the EPA's notice of availability appears in the **Federal Register**. The Final EIS is scheduled for completion in the spring of 2004.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).

Because of these court rulings, it is very important that those interested in this proposed action participate during comment periods provided so that substantive comments and objections are made available to the Forest Service at a time when they can meaningfully consider them. To assist the Forest Service in identifying and considering issues, comments should be specific to concerns associated with the management of roads and trails on the Gallatin National Forest. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in structuring comments.

I am the responsible official for this Environmental Impact Statement and the ultimate decision for a Gallatin National Forest Travel Management Plan and Forest Plan Amendment. My address is Forest Supervisor, Gallatin National Forest, P.O. Box 130, Federal Building, Bozeman, MT 59771.

Dated: December 4, 2002.

Rebecca Heath,

Forest Supervisor.

[FR Doc. 02–31397 Filed 12–12–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lincoln Ranger District, Helena National Forest, Lewis & Clark County, Montana Copper Creek Road Improvements

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement (EIS) on a proposal to improve the Copper Creek Road, which includes repaving existing pavement, paving existing gravel, upgrading dirt surface to gravel, and widening a single-lane bridge to a two lane-bridge on an existing two-lane road. This project includes 14.2 miles of Copper Creek Road from the junction at State Highway 200 passing through Forest Service, State, and private land.

The Copper Creek Road provides access to Snowbank Lake, Copper Creek Campground, and the Indian Meadow Trailhead for accessing the Scapegoat Wilderness.

DATES: Comments concerning the proposal and scope of the analysis must be received in writing by January 17, 2003. The draft EIS is expected to be completed in summer of 2003 with the final EIS slated for fall/winter of 2003.

ADDRESSES: Send written comments to Martie Schramm, Acting District Ranger, Helena National Forest, Lincoln Ranger District, 7269 Highway 200, Lincoln, MT 59644. Phone: (406) 362–3425. Martie Schramm is also the responsible official for this project.

FOR FURTHER INFORMATION, CONTACT: Charlie McKenna, Forest Engineer, Helena National Forest, 2880 Skyway Drive, Helena, MT 59601. Phone (406) 449–5201.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Lincoln Ranger District of the Helena National Forest has identified the need for reduced sedimentation produced from erosion of the Copper Creek Road and for improved traffic safety for recreation and management uses to the areas accessed by this road system.

Concerns for fish occupying this drainage include sediment running off the aggregate surface of the road and adjacent road cuts as-well-as several locations of the drainage that are cutting towards the roadbed, and fish passage barriers existing at two locations cutting off potential fish habitat.

In addition, Copper Creek Road in its current configuration has several traffic hazards including a one-lane bridge that constricts traffic flow and has approaches with poor visibility, roadbed alignment with several narrow curves where driver vision is limited, and the aggregate-surface segment of the road frequently develops washboards and large potholes creating unsafe conditions for drivers.

Proposed Action

The Lincoln Ranger District, Helena National Forest, proposes to make improvements to 14.2 mi of Copper Creek Road, located in the Lincoln Ranger District, in Lewis and Clark County, Montana. The project would include re-paving the existing 2.6 mi of paved road, paving an additional 5.9 mi of the existing aggregate-surface (gravel) road, improving the 5.7 mi of single-lane native-surface road above Copper Creek Campground, replacing a one-lane bridge with a two-lane bridge, replacing culverts to reestablish fish passage and to withstand 100-year flood events, and realigning some segments away from Copper Creek. These realignments may require construction of retaining walls for some road cuts and where space is limited, engineered structures may be installed between the active stream channel and the road fill to minimize further encroachment.

The segment from the junction with State Highway 200 to Copper Creek Campground would meet the minimum standards necessary to support the intended uses and improve user safety, while protecting affected resources. The Lincoln Ranger District proposes to reconstruct the road to an American Association of State Highway and Transportation Officials design standard corresponding to "Rural Recreational and Scenic Roads." This design standard includes an overall width (including shoulders) of 20 ft (6 m). The proposed design speed would be low (0 to 45 mph).

The project includes mitigation measures to reduce impacts to riparian areas, wildlife habitat and other resources. These measures would include but not limited to:

a. Revegetating all disturbed areas with approved native vegetation.

b. Controlling sediment movement by use of temporary structures such as fabric fences and straw bales during construction.

c. Reducing impacts to streams by minimizing activities within the active stream channel, and temporarily diverting the stream when activities within the active stream channel can not be avoided.

d. Avoiding or minimizing removal of desirable woody debris and disturbance to existing vegetation adjacent to streams to maintain filter strips

e. Timing all construction activities to minimize disturbance to wildlife.

f. Halting construction and stabilizing the activity area prior to winter to minimize sediment yield at peak flows during spring thaw, as required by the Forest Plan.

Preliminary Issues

Copper Creek provides critical spawning habitat for upper Blackfoot River fluvial bull trout, a species listed as threatened under the Endangered Species Act. Bull trout spawning occurs both upstream and downstream of Snowbank Lake. Westslope cutthroat trout (a sensitive species) are also found in Copper Creek.

Possible Alternatives

Alternatives being considered at this time are this proposal and the no action (proceed with current maintenance).

Scoping Process

The Forest Service is seeking information and comments from Federal, State and local agencies as well as individuals and organizations that may be interested in, or affected by, the proposed action. Preparation of the Draft Environmental Impact Statement will use information from responses received from this NOI, a public meeting this December in Lincoln, MT, and through a mailing informing the public of this proposal. The Forest Service invites written comments and suggestions related to and within the scope of this proposal.

Permits or Licenses Required

In order to proceed, this proposal may require the following permits from the State of Montana:

- Application for Short-Term Water Quality Standard for Turbidity Related to Construction Activity (318 Authorization).
- Stream Protection Act 124 Permit.
- Clean Water Act Section 401 Water Quality Certification.

Comment Requested

The comment period on the draft environmental impact statement will be a minimum of 45-days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points (*http://www.epa.gov/epahome/cfr40.htm*).

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, section 21).

Implementation

The Lincoln Ranger District anticipates beginning construction on the project in late summer 2004, stopping construction during the winter months, and resuming construction the following year. The project is expected to take 12 months to complete, including winter shutdown.

No change to travel restrictions associated with this road or other roads and trails accessed by this road would occur, as part of this action.

Nature of Decision To Be Made

The decision framework refers to the scope of the decision that will be issued at the conclusion of this analysis by the responsible official. The decision will be based on information disclosed in the environmental document, contained in the Project Analysis File, and comments submitted during the scoping of the proposed action and the comment period.

The Responsible Official may decide whether or not to:

- Select the Proposed Action,
- Select an alternative to the Proposed Action, or
- Select portions from the developed range of alternatives and combine them in a logical package.

In selecting one of the above options, the terms and conditions of the selection will be fully displayed and understood. Within the parameters of this decision space, it will also be determined if a Helena Land and Resource Management Plan amendment would be necessary. The decision maker will take into consideration relationships of alternatives to the identified significant issues.

Dated: December 9, 2002.

Dwight Chambers,

Acting Forest Supervisor.

[FR Doc. 02–31414 Filed 12–12–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Manti-La Sal National Forest; State of Utah; State Institutional Trust Lands Administration Access Routes on East Mountain, Emery County, UT; Revision of Notice of Intent to Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Revision of notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service (FS) issued a notice of intent (NOI) published in the **Federal Register** on May 3, 2002, on pages 22392–22393. The NOI discussed that the Forest Service (FS) would prepare an Environmental Impact Statement (EIS) to disclose the impacts of authorizing adequate access across National Forest System lands to the State of Utah School & Institutional Trust Lands Administration (SITLA) lands within the Manti-La Sal National Forest, Emery County, Utah.

This NOI amends the original NOI of May 3, 2002, by adding two additional projects and opening a new round of public scoping.

DATES: Comments concerning issues, alternatives and the scope of the analysis must be received within 30 days from the date of publication of this revision of notice of intent in the **Federal Register**. The Draft Environmental Impact Statement is expected by April 2003, and a Final Environmental Impact Statement (FEIS) is expected by August 2003.

ADDRESSES: Send written comments to Elaine J. Zieroth, Forest Supervisor, Manti-La Sal National Forest, 599 West Price River Drive, Price, Utah 84501, ATTN: Leland Matheson.

FOR FURTHER INFORMATION CONTACT: Aaron Howe, Mineral and Lands Staff Officer, Manti-La Sal National Forest, 599 West Price River Drive, Price, Utah 84501.

SUPPLEMENTARY INFORMATION: The previous NOI stated that the FS was going to prepare an EIS to "decide whether to authorize SITLA to construct a new road and reconstruct existing roads", so that SITLA could have access to their land which is surrounded by the Manti-La Sal National Forest. This revised NOI is outlining expanded activities associated with SITLA (timber harvest to the North and a natural gas well to the South) and Prima Oil Company natural gas well in the same East Mountain area of the National Forest.

SITLA

The Forest Service will prepare an EIS to disclose effects and provide the basis for deciding whether to authorize SITLA to construct a new road and reconstruct existing Forest Service roads across National Forest System Lands, for access to their inholdings on East Mountain for project activities. A segment of the new access route and a portion of the existing roads to be reconstructed traverse portions of the East Mountain Inventoried Roadless Area. SITLA inholdings addressed in this revision consist of one section: Section 36, Township 16 South (T16S), Range 6 East (R6E), Salt Lake Median (SLM) about 640 acres. Provisions of the Alaska National Interest Lands Conservation Act (ANILCA) of 1980, section 1323(a) (16 U.S.C. 3210) provides that the owners of non-Federal land within the National Forest shall be provided adequate access to their land. Regulations implementing section 1323(a) are set forth in title 36, Code of Federal Regulations, part 251, subpart D—Access to Non-Federal Lands. The Forest Service Policy is further explained in the Forest Service Manual (FSM) 5400 and 2700. Access must comply with other laws and regulations such as the Threatened and Endangered Species Act, Clean Water Act, Historic Preservation Act, and the National Environmental Protection Act.

Prima Oil & Gas

Prima Oil and Gas Company has proposed to drill a natural gas exploration well on National Forest System Lands southwest of the Inventoried Roadless Area adjacent to an existing Forest Service Road. The proposed well site is located as follows: NE ¼, Section 23 Township 16 South, Range 6 East, SLM, Emery County, Utah.

Purpose and Need for Action

The purpose and need for this action is three fold, SITLA, Prima Oil & Gas and the Forest Service. SITLA's purpose and need is to have an adequate access route across National Forest System Lands to SITLA inholdings for resource management activities on these lands.

Prima Oil & Gas Company's purpose and need is to explore for and produce any economic reserves of natural gas within their lease agreement. The responsible agencies must provide reasonable opportunities to accomplish this consistent with the rights granted by the Leases consistent with Forest Plan direction.

The Forest Service purpose and need is to evaluate the requests from SITLA and Prima Oil & Gas and then to determine whether to authorize permits for access, consistent with applicable laws, regulations, and Forest Service Policy.

Proposed Action

SITLA

The FS is proposing to authorize SITLA to construct a private road and reconstruct Forest Service Roads 50145 (Flat Canyon Road) and 50244 (Big East Road). The Flat Canyon Road will be reconstructed from Forest Service Road 50040 to the SITLA inholdings at Section 36, T16S, R6E, SLM. Forest Service Road 50244 will be reconstructed from the intersection of Forest Service Road 50145. To its termini near the center of Section 11, T16S R6E. A private road will be constructed from Section 11 Northward to SITLA inholdings, in Section 36, T15S R6E. The private road construction will continue through the SITLA land in Section 2, T16S R6E and cross the National Forest in Section 35 T15S R6E, SLM for the purpose of connecting to SITLA land located at Section 36 T15S R6E, SLM.

Prima Oil & Gas Company

The Forest Service also proposes to allow Prima Oil & Gas Company access to their lease via Forest Service Roads and use of National Forest System Lands to construct an oil and gas drill pad consistent with the conditions of Primas lease and the Manti La Sal Land Management and Resource Plan. The drill pad is proposed to be located at the intersection of Forest Service Roads 50244 and 50145.

Responsible Official

The Responsible Official for the Record of Decision is Elaine J. Zieroth, Forest Supervisor, Manti-LaSal National Forest, 599 West Price River Drive, Price, Utah 84501.

Scoping Process

This revised notice of intent initiates a new scoping process which guides the development of the EIS. Scoping will be by newspaper legal notice, mailings to interested parties and quarterly schedule of proposed actions. No public meetings are planned.

Preliminary Issues

Preliminary issues have been identified. They include the effects to the undeveloped character of the East Mountain Inventoried Roadless Area, land stability and effects to wildlife.

Comment Requested

If you choose to participate, your comments should be in writing and as specific as possible. All comments will be considered. Please note: comments submitted, as well as the names and addresses of those who comment, are considered part of the public record and will be released if requested under the Freedom of Information Act. If you provide a comment, you will remain on our mailing list for this project. If you do not comment but want to remain on the mailing list, please notify us. Those who do not comment or otherwise notify us will be dropped from the mailing list for this project. The estimated dates for filing the draft EIS is April 2003 and the FEIS is August 2003.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A DEIS will be prepared for comment. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the FEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, section 21 and 21.2.

Dated: December 5, 2002.

Elaine J. Zieroth,

Forest Supervisor, MantiLaSal National Forest.

[FR Doc. 02–31413 Filed 12–12–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Sunshine Act Meeting

AGENCY: Rural Telephone Bank, USDA.

ACTION: Privatization discussion meeting.

TIME AND DATE: 10 a.m., Friday, December 20, 2002.

PLACE: Room 4062, South Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: The business advisor will report on the status of current privatization projects. A teleconference will be arranged for out-of-town Board members' participation.

FOR FURTHER INFORMATION CONTACT: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: December 11, 2002.

Hilda Gay Legg,

Governor, Rural Telephone Bank.

[FR Doc. 02–31632 Filed 12–11–02; 3:53 pm]

BILLING CODE 3410–15–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 12, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl Kennerly (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 11 and October 18, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 63376 and 64351) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions

on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Custodial and Refuse Removal Services/Fort Johnson Military Family Housing, Southport, NC.

NPA: Coastal Enterprises of Jacksonville, Inc, Jacksonville, NC.

Contract Activity: 597th U.S. Army Transportation Terminal Group, Southport, NC.

Service Type/Location: Custodial and Refuse Removal Services/U.S. Army Military Ocean Terminal (Sunny Point (MOTSU)), NC.

NPA: Coastal Enterprises of Jacksonville, Inc, Jacksonville, NC.

Contract Activity: 597th U.S. Army Transportation Terminal Group, Southport, NC.

Service Type/Location: Switchboard Operation/Shaw Air Force Base, Shaw AFB, SC.

NPA: Goodwill Industries of Lower SC, Inc., North Charleston, SC.

Contract Activity: 20th Contracting Squadron/LGCA, Shaw AFB, SC.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–31476 Filed 12–12–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-549–813]

Notice of Final Results of Antidumping Duty Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Revoke Order in Part: Canned Pineapple Fruit from Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 7, 2002, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on canned pineapple fruit (CPF) from Thailand. This review covers eight producers/exporters of the subject merchandise. The period of review (POR) is July 1, 2000, through June 30, 2001. Based on our analysis of the comments received, these final results differ from the preliminary results. The final results are listed below in the *Final Results of Review* section. Furthermore, the preliminary results for one exporter/producer, Siam Food Products Public Co. Ltd. (SFP), are adopted in our final results of this administrative review; therefore, we will revoke the antidumping duty order with respect to SFP, based on three consecutive review periods of sales at not less than normal value. *See Revocation of the Order (in Part)* section of this notice. Consistent with the preliminary results, we are rescinding the review with respect to one exporter/producer, Prachuab Fruit Canning Company (Praft) based on our determination that this company had no shipments of subject merchandise to the United States during the POR.

EFFECTIVE DATE: December 13, 2002.

FOR FURTHER INFORMATION CONTACT: David Layton or Charles Riggle, Office 5, Group II, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0371 and (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department regulations are references to the provisions codified at 19 CFR Part 351 (2001).

Background

This review covers the following producers/exporters of merchandise subject to the antidumping duty order on canned pineapple fruit from Thailand: Vita Food Factory (1989) Co., Ltd. (Vita), Kuiburi Fruit Canning Co., Ltd. (Kuiburi), Malee Sampran Public Co., Ltd. (Malee), Siam Food Products Public Co., Ltd. (SFP), The Thai Pineapple Public Co., Ltd. (TIPCO), Thai Pineapple Canning Industry Corp., Ltd. (TPC), Dole Food Company, Inc., Dole Packaged Foods Company, and Dole Thailand, Ltd. (collectively, Dole), and Siam Fruit Canning (1988) Co., Ltd. (SIFCO).

On August 7, 2002, the Department published the preliminary results of this review and invited interested parties to comment on those results. *See Notice of Preliminary Results, Partial Rescission of Antidumping Duty Administrative Review and Preliminary Determination to Revoke Order in Part: Canned Pineapple Fruit From Thailand*, 67 FR 51171 (*Preliminary Results*). On September 6, 2002, we received case briefs from Dole, TPC, and the petitioners.[1] On September 13, 2002, we received rebuttal briefs from Dole, Malee, and the petitioners. TIPCO also submitted a rebuttal brief on September 25, 2002, but it was rejected by the Department as an untimely submission.[2]

On September 6, 2002, Malee and SFP requested a public hearing, but withdrew their requests on September 19, 2002. As a result, no public hearing was held.

Scope of the Order

The product covered by this order is CPF, defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.*, juice-packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, the written description of the scope is dispositive.

[1] The petitioners in this case are Maui Pineapple Company and the International Longshoremen's and Warehousemen's Union.

[2] See Letter to Anurat Tiamtan from Gary Taverman, Director, Office 5, Import Administration (September 30, 2002)

Rescission

On September 17, 2001, in response to the Department's questionnaire, Praft stated that it made no shipments of subject merchandise to the United States during the POR. We received no comments regarding our preliminary decision to rescind the review with respect to Praft and, consistent with the preliminary results, we are rescinding the review with respect to Praft.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the "Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Canned Pineapple Fruit from Thailand" from Bernard T. Carreau, Deputy Assistant Secretary for Group II, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated December 5, 2002 (Decision Memorandum), which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded, all of which are addressed in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit (CRU), room B-099 of the main Commerce building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at http://ia.ita.doc.gov/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Fair Value Comparisons

Except for the calculations for Dole and Malee, we calculated export price and normal value based on the same methodology used in the preliminary results. Changes to the export price calculation for Dole and the indirect selling expenses for Malee are detailed in their respective analysis memoranda.

Cost of Production

Except for Malee, we calculated the cost of production (COP) for the merchandise based on the same methodology used in the preliminary results. Changes to the general and administrative expense ratio for Malee are detailed in the Decision Memorandum.

Revocation of the Order (in Part)

On July 31, 2001, SFP requested that the Department revoke the antidumping order in part as regards SFP based on the absence of dumping pursuant to 19 CFR 351.222(b)(2). SFP submitted, along with its revocation request, a certification stating that: (1) the company sold subject merchandise at not less than normal value during the POR, and that in the future it would not sell such merchandise at less than normal value (*see* 19 CFR 351.222 (e)(1)(i)); (2) the company has sold the subject merchandise to the United States in commercial quantities during each of the past three years (*see* 19 CFR 351.222(e)(1)(ii)); and (3) the company agreed to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than normal value. *See* 19 CFR 351.222(b)(2)(i)(B), and as referenced at 19 CFR 351.222(e)(1)(iii). No comments were filed by any party on our preliminary decision to revoke the order with respect to SFP.

Based on the final results of this review and the final results of the two preceding reviews (*see Notice of Final Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part: Canned Pineapple Fruit From Thailand*, 65 FR 77851 (December 13, 2000) and *Notice of Final Results of Antidumping Duty Administrative Review and Recission of Administrative Review in Part: Canned Pineapple Fruit from Thailand*, 66 FR 52744, (October 17, 2001), SFP has demonstrated three consecutive years of sales at not less than normal value.

Furthermore, the Department has found that SFP's aggregate sales to the United States have been made in commercial quantities during the last three segments of this proceeding. See Memorandum to Bernard Carreau, Deputy Assistant Secretary for Group II, Import Administration from David Layton, Import Compliance Specialist, Office 5, Import Administration: "Preliminary Determination to Revoke in Part the Antidumping Duty Order on Canned Pineapple Fruit from Thailand" dated July 31, 2002, on file in the CRU.

Based on the above facts, the Department determines that the continued application of the antidumping duty order is not necessary to offset dumping by SFP. SFP has also agreed in writing to its immediate reinstatement in the order, as long as any producer or exporter is subject to the order, should the Department conclude that SFP, subsequent to the revocation, sold the subject merchandise at less than normal value. Therefore, we will revoke the order with respect to merchandise produced and exported by SFP. In accordance with 19 CFR 351.222(f), we will terminate the suspension of liquidation for any such merchandise entered, or withdrawn from warehouse, for consumption on or after July 1, 2001. The Department will further instruct the Customs Service to refund with interest any cash deposit on entries made after June 30, 2001.

Final Results of Review

As a result of our review, we determine that the following weighted-average percentage margins exist for the period July 1, 2000, through June 30, 2001:

Manufacturer/exporter	Margin (percent)
Dole Food Company, Inc. (Dole)	0.27
The Thai Pineapple Public Company, Ltd. (TIPCO)	0.44
Kuiburi Fruit Canning Co. Ltd. (Kuiburi)	0.39
Thai Pineapple Canning Industry (TPC)	2.43
Siam Fruit Canning (1988) Co. Ltd. (SIFCO)	0.64
Vita Food Factory (1989) Co. Ltd. (Vita)	1.94
Malee Sampran Public Co., Ltd. (Malee)	0.74
Siam Food Products Public Co., Ltd. (SFP)	0.09

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. Where the importer-specific assessment rate is above *de minimis* we will instruct the Customs Service to assess antidumping duties on that importer's entries of subject merchandise. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) for the

companies named above (with the exception of SFP, for whom we are revoking the order), the cash deposit rate will be the rate listed above, except where the margins are zero or *de minimis* no cash deposit will be required, (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent segment of the proceeding in which that manufacturer participated; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 24.64 percent, the all-others rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 5, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX

List of Comments in the Issues and Decision Memorandum

I. ISSUES SPECIFIC TO DOLE
Comment 1: Royalty Payments
Comment 2: Indirect Selling Expenses
Comment 3: Surrogate Canadian-dollar Interest Rate
Comment 4: Clerical Error Allegation
II. ISSUES SPECIFIC TO MALEE
Comment 5: Indirect Selling Expense Ratio
Comment 6: Net Realizable Value Calculation
Comment 7: General and Administrative Expenses
III. ISSUES SPECIFIC TO TIPCO
Comment 8: Calculation of G & A Expenses
Comment 9: Income Offsets
Comment 10: Packing Overhead
IV. JOINT ISSUE: DOLE, MALEE, & TIPCO
Comment 11: Fruit Cost Allocation
V. ISSUE SPECIFIC TO TPC
Comment 12: Affiliation

[FR Doc. 02–31479 Filed 12–12–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–831]

Fresh Garlic From the People's Republic of China: Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the administrative review of the antidumping duty order on fresh garlic from the People's Republic of China until no later than January 21, 2003. The period of review is November 1, 2000, through October 31, 2001. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: December 13, 2002.

FOR FURTHER INFORMATION CONTACT: Edythe Artman, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3931.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2002, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on fresh garlic from the People's Republic of China. See *Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review, and Intent to Rescind Administrative Review in Part*, 67 FR 51822 (August 9, 2002) (*Preliminary Results*). We invited parties to comment on our *Preliminary Results*. We received comments from the petitioner and three of the respondents, Clipper Manufacturing Ltd., Taian Fook Huat Tong Kee Foods Co., Ltd., and Golden Light Trading Co., Ltd. The final results for this review are currently due on December 9, 2002.

Extension of Time Limit for Final Results of Administrative Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), provides that the Department will issue the final results of an administrative review within 120 days after the date on which the preliminary results were published. It further provides that, if it is not practicable to complete the review within the 120-day period, the Department may extend the period by 60 days.

The Department has determined that it is not practicable to complete the administrative review within the 120-day period because the comments received from the parties with regard to the preliminary results present a number of complex factual and legal questions about the assignment of antidumping duty margins and, in particular, the application of facts available. Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) (2002), the Department is extending the time limit for completion of the final results by 43 days. The final results of review will be due no later than January 21, 2003.

Dated: December 9, 2002.

Susan Kuhbach,

Acting Deputy Assistant Secretary for AD/CVD Enforcement I.

[FR Doc. 02–31478 Filed 12–12–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475–703]

Granular Polytetrafluoroethylene Resin from Italy: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

EFFECTIVE DATE: December 13, 2002.

SUMMARY: On September 25, 2002, the Department of Commerce (the Department) published in the **Federal Register** (67 FR 60211) a notice announcing the initiation of an administrative review of the antidumping duty order on granular polytetrafluoroethylene resin from Italy, covering the period August 1, 2001, through July 31, 2002. The review was requested by both E.I. DuPont de Nemours & Company (DuPont), a U.S. producer of the domestic like product and Ausimont SPA and Ausimont USA, Inc., collectively Ausimont, an Italian producer of the subject merchandise under review and its United States subsidiary. We are now rescinding this review as a result of both DuPont's and Ausimont's withdrawal of their requests for an administrative review.

FOR FURTHER INFORMATION CONTACT: Vicki Schepker or Keith Nickerson, at (202) 482–1756 or (202) 482–3813, respectively, AD/CVD Enforcement Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (April 2002).

Background

In accordance with 19 CFR 351.213(b), on August 27 and August 30, 2002, respectively DuPont and Ausimont requested an administrative review of the antidumping duty order on granular polytetrafluoroethylene resin from Italy. On September 25, 2002, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of this order for the period August 1, 2001, through July 31, 2002 (67 FR 60211). DuPont and Ausimont withdrew their requests for this review on October 18 and 28, 2002, respectively.

Rescission of Review

The Department's regulations at 19 CFR 351.213(d)(1) provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws its request at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. Both DuPont and Ausimont withdrew their requests within the 90-day period. Accordingly, we are rescinding this review. The Department will issue appropriate assessment instructions to the U.S. Customs Service within 15 days of publication of this notice. This notice is issued and published in accordance with section 751 of the Act (19 U.S.C. 1675) and 19 CFR 351.213(d)(4).

Dated: December 9, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary, Group II Import Administration

[FR Doc. 02–31480 Filed 12–12–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A-583–831

Stainless Steel Sheet and Strip in Coils From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results and partial rescission of antidumping duty administrative review of stainless steel sheet and strip in coils from Taiwan.

SUMMARY: SUMMARY: On July 9, 2002, the Department of Commerce ("the Department") published in the Federal Register the preliminary results and partial rescission of its administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Taiwan. *See Stainless Steel Sheet and Strip in Coils From Taiwan: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 45742 (July 9, 2002) ("*Preliminary Results*"). This review covers imports of subject merchandise from Tung Mung Development Co. Ltd. ("Tung Mung"), Ta Chen Stainless Pipe Co. Ltd. ("Ta Chen"), Chia Far Industrial Factory Co. Ltd. ("Chia Far"), and Yieh United Steel Company ("YUSCO"). The period of review ("POR") is July 1, 2000 through June 30, 2001.

Based on our analysis of the comments received, we have made changes in the margin calculations for Chia Far. Therefore, the final results differ from the *Preliminary Results*. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of the Review." In addition, we are rescinding the review with respect to Ta Chen.

EFFECTIVE DATE: December 13, 2002.

FOR FURTHER INFORMATION CONTACT: FOR FURTHER INFORMATION CONTACT: Laurel LaCivita (Ta Chen) (YUSCO); Cheryl Werner (Chia Far); Marlene Hewitt (Tung Mung); or Bob Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4243, (202) 482–2667, (202) 482–1385 or (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2001).

Background

On July 9, 20021, the Department published the *Preliminary Results*. As we stated in that notice, we preliminarily rescinded this review with respect to Ta Chen, pursuant to its claim of no shipments of the subject merchandise during the POR. We are now rescinding this review with respect to Ta Chen, since no information on the record indicates that Ta Chen made any shipments during the POR.

We invited parties to comment on the *Preliminary Results*. We received written comments on September 4,

2002, from petitioners[1] on YUSCO, Tung Mung, Ta Chen, and Chia Far. Also, on September 4, 2002, we received written comments from Chia Far. On September 16, 2002, we received rebuttal comments from YUSCO and Chia Far on petitioners' comments. Also on September 16, 2002, we received rebuttal comments from petitioners on Chia Far's comments. On September 18, 2002, we received a submission from petitioners concerning Chia Far, alleging new information. On September 25, 2002, the Department rejected petitioners' September 18, 2002, submission finding that the second portion of the letter included new factual information that was untimely filed for this review. *See* Department's Letter to Petitioners dated September 25, 2002. On September 27, 2002, petitioners resubmitted, pursuant to instructions received from the Department on September 25, 2002, the letter of September 18, 2002, with the requested modifications. On October 8, 2002, the Department rejected petitioners' request to remove from the record certain passages contained in Chia Far's rebuttal brief. The Department determined that Chia Far's rebuttal brief contained only information already on the written record of review, and was therefore, not rejecting any passages contained in Chia Far's rebuttal brief. The Department found that Chia Far submitted its rebuttal brief in accordance with 19 CFR 351.309(d).

On October 7, 2002, the Department informed petitioners that it was rejecting its case brief with respect to YUSCO, filed on September 18, 2002, which contained new and untimely-filed information. On October 9, 2002, petitioners submitted a revised case brief concerning YUSCO, which excluded certain new factual information.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. On October 8, 2002, the Department extended the time limit for the final results to December 6, 2002. *See Stainless Steel Sheet and Strip in Coils from Taiwan: Extension of Final Results of Review*, 67 FR 62697 (October 8, 2002). We have now completed the administrative review in accordance with section 751 of the Act.

[1] Allegheny Ludlum, AK Steel Corporation (formerly Armco, Inc.), J&L Specialty Steel, Inc., North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL-CIO/CLC.

Scope of the Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is classified in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81[2], 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this review are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this review. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this review. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this review. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[3]

Certain electrical resistance alloy steel is also excluded from the scope of this review. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials ("ASTM") specification B344 and containing, by weight, 36-percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[4]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this review. This high-strength, ductile stainless steel product is designated under the Unified Numbering System ("UNS") as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[5]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this review. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[6] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[7]

[2] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

[3] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[4] "Gilphy 36" is a trademark of Imphy, S.A.

[5] "Durphynox 17" is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

[7] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

Rescission of Review

In the *Preliminary Results*, we stated that Ta Chen reported, and the Department confirmed through independent U.S. Customs Service data, that it had no shipments of subject merchandise during the POR. *See* memorandum from Laurel LaCivita to the file dated October 9, 2002. Since Ta Chen did not report any shipments during the POR, we had no basis for determining a margin. Consequently, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we preliminarily rescinded our review with respect to Ta Chen. Because we have received no information since the *Preliminary Results* that contradicts the decision made in the *Preliminary Results*, we are rescinding the review with respect to Ta Chen. Since Ta Chen did not participate in the original investigation, its cash deposit rate will remain at 12.12 percent, which is the all others rate established in the less than fair value ("LTFV") investigation.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" ("*Decision Memorandum*") from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated December 6, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B-099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov/. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Total Adverse Facts Available

In our *Preliminary Results*, we explained that Tung Mung did not participate in this review and therefore, we applied an adverse facts available ("AFA") rate of 21.10 percent to all sales and entries of Tung Mung's subject merchandise during the POR. Since the *Preliminary Results*, we have received no information on the record that contradicts our finding in the *Preliminary Results*. As a result, we will

make no changes to Tung Mung's margin of 21.10 percent for the final results.

Sales Below Cost

We disregarded sales below cost for both YUSCO and Chia Far during the course of the review.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations for Chia Far. The changes to the margin calculations are listed below:

1. We included all of the depreciation expense incurred in the common service department at Pu-Shin and allocated it to the rolling department in the calculation of the cost of production.
2. We used Chia Far's 2001 financial statements to calculate the net interest expense ratio and G&A expense ratio. We also included miscellaneous losses in the G&A expense ratio.
3. We used Chia Far's reported inventory carrying costs incurred in Taiwan.

Final Results of Review

We determine that the following percentage margin exists for the period July 1, 2000 through June 30, 2001:

STAINLESS STEEL SHEET AND STRIP IN COILS FROM TAIWAN

Manufacturer/exporter/reseller	Margin (percent)
YUSCO	0.0
Chia Far	1.11
Tung Mung	21.10

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review. We will direct the Customs Service to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's/customer's entries during the review period. For duty-assessment purposes, we will calculate importer-specific assessment rates by dividing the dumping margins calculated for each importer by the total entered value of sales for each importer during the period of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of stainless steel sheet and strip in coils from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for YUSCO, Chia Far and Tung Mung will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be the "all others" rate, which is 12.12 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties or countervailing duties occurred and the subsequent assessment of double antidumping duties or countervailing duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(i) of the Act.

Dated: December 6, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX 1 -- ISSUES IN THE DECISION MEMORANDUM

Issues with Respect to Tung Mung and Ta Chen

Comment 1: Total Adverse Facts Available ("AFA") for Tung Mung and Ta Chen
Comment 2: Whether Ta Chen Should Be Granted a Partial Recision of Review

Issues with Respect to YUSCO

Comment 3: Sales to Affiliated Parties in the United States
Comment 4: Affiliation With China Steel
Comment 5: Classification of Home Market Sales
Comment 6: The Use of AFA

Issues with Respect to Chia Far

Comment 7: Total AFA
Comment 8: Affiliated-Party Purchases
Comment 9: General and Administrative ("G&A") Expenses
Comment 10: Appropriate Period for G&A and Interest Expense Ratios
Comment 11: Inventory Carrying Costs Incurred in Taiwan for U.S. Sales
Comment 12: Constructed Export Price ("CEP") Transactions

[FR Doc. 02–31481 Filed 12–12–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120902C]

Proposed Information Collection; Comment Request; Gulf of Mexico Shrimp Economic Data Collection

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 11, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Michael Travis, Department of Commerce, NOAA, National Marine Fisheries Service, 9721 Executive Center Drive North, St, Petersburg, FL 33702–2439, (727)570–5335.

SUPPLEMENTARY INFORMATION:

I. Abstract

NMFS proposes to collect information on fishing vessel expenses and earnings on a voluntary and continuous basis in the Gulf of Mexico offshore shrimp fishery in order to conduct socioeconomic analyses that will: improve fishery management making in that fishery; satisfy NMFS' legal mandates under Executive Order 12866, the Magnuson-Stevens Fishery Conservation and Management Act (U.S.C. 1801 et. seq.), the Regulatory Flexibility Act, the Endangered Species Act, and the National Environmental Policy Act; and quantify achievement of the performances measures in the NMFS Strategic Operating Plans. Used in conjunction with catch and effort data already being collected in this fishery as part of its dealer reporting program, as well as Coast Guard and fishing permit data on vessel characteristics, this data will be used to assess how fishermen will be impacted by and respond to any regulation likely to be considered by fishery managers. In addition, this data will be used to determine how fishing communities will be impacted by proposed fishing regulations. In the program's first year, the program will only cover vessels that primarily port in the state of Texas, with vessels from the other Gulf States being included in the second year.

II. Method of Collection

Data will be collected using personal interviews and a formal survey instrument. Compared to phone interviews and mail surveys, personal interviews have been shown to generally produce higher response rates and higher quality data. Interviews will be conducted once each year in regards to the previous year's activities. Vessel owners will be asked questions pertaining to the variable costs of their fishing operations, such as price and amount of fuel used, price and amount of ice used, groceries, processing/selling fees, and labor costs. Vessel owners will also be asked questions regarding their vessel's annual or fixed costs, such as expenditures for vessel repair and maintenance, gear repair and maintenance, fishing licenses and permits, insurance, dock fees, repayment on boat and business loans, office expenses and so forth. Vessel owners will also be asked questions pertaining to the capital investment in their vessels, such as purchase price, cost of subsequent investments in the vessel and its fishing technology, and current market or replacement value. Finally, vessel owners will be asked questions regarding their socio-demographic status, such as household size, income, dependence on fishing, alternative employment opportunities, level of fishing experience, age, education level, ethnicity/race, marital status, and so forth. In instances where vessels are not operated by the owner, socio-demographic data will be solicited from both the owner and captain. Though unknown at this time, it is assumed that nearly 50 percent of these vessels are operated by hired captains.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations (vessel owners and captains).
Estimated Number of Respondents: 185.
Estimated Time Per Response: 20 minutes for variable cost and price questions; 30 minutes for annual/fixed cost and capital investment questions; and 10 minutes for socio-demographic questions.
Estimated Total Annual Burden Hours: 135.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 6, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–31448 Filed 12–12–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120902D]

Proposed Information Collection; Comment Request; Pacific Billfish Angler Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 11, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to David Holts, Southwest Fishery Science Center, 8604 La Jolla Shores Drive, P.O. Box 271, La Jolla, CA 92038–0271 (phone 858–546–7186).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Oceanic and Atmospheric Administrations's Southwest Fishery Science Center operates a billfish resource and

assessment program. As part of this program, billfish anglers in the Pacific and Indian Oceans are asked to respond to a voluntary annual post card survey to list the number of days spent fishing for billfish, where they fished, and what they caught. This information is used to help determine changes in areas of local abundance of Pacific billfish and is useful in the management of billfish resources.

II. Method of Collection

A paper form the size of a postcard is used.

III. Data

OMB Number: 0648–0020.

Form Number: NOAA Form 88–10.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 750.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 63.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 6, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–31449 Filed 12–12–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120902E]

Proposed Information Collection; Comment Request; Hurricane Forecast Economic Valuation Study

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 11, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed Dr. Rodney Weiher, U.S. Dept. of Commerce/NOAA/PSP, Room 6117, 14th and Constitution Ave NW, Washington DC, 20234. (or via Internet at *Rodney.F.Weiher@noaa.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this data collection is to provide information on the value of current and improved hurricane forecasts to specific segments of the U.S. population. The study will measure total economic values for current hurricane forecasts and improved hurricane forecasts. This effort is designed to provide information on the uses and values of hurricane forecasts in order to improve product design and delivery systems as well as information for managers on the value of undertaking programs to improve hurricane forecasting capabilities.

This effort will involve development of extensive knowledge about how hurricane forecasts are perceived, understanding the implications of alternative forecast improvement actions, designing original survey instruments, interviewing of a large number of respondents (1200–1500), and conducting formal statistical analysis of the data. A regionally-oriented survey will be conducted using stated-preferences methods. Cognitive interviews will be used in survey development to examine individuals' understanding of hurricane forecasts and the words and meanings they may use to discuss hurricanes. The interviews will be used to examine the relative importance of hurricane forecast attributes, to assess the presentation of information on hurricane forecasts, and developing approaches for eliciting economic values for improvements in hurricane forecasting.

II. Method of Collection

Up to 96 one-on-one cognitive interviews will be conducted. In addition, one pretest of the full survey instrument will be tested for a response of up to 100 usable observations. The final survey instrument will be administered to a sample of up to 1500 people.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,696.

Estimated Time Per Response: 2 hours for an interview; 45 minutes for a pretest; and 45 minutes for a final survey.

Estimated Total Annual Burden Hours: 1,392.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 6, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–31450 Filed 12–12–02; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112602C]

Endangered Species; File No. 1377

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Ms. Tracey Mueller, Mote Marine Laboratory, Sea Turtle Conservation and Research Program, Sarasota, FL has been issued a permit to take threatened and endangered green turtles (*Chelonia mydas*), endangered hawksbill turtles (*Eretmochelys imbricata*), endangered Kemp's ridley turtles (*Lepidochelys kempii*), and threatened loggerhead turtles (*Caretta caretta*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; andSoutheast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Dr. Tammy Adams or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On April 19, 2002, notice was published in the **Federal Register** (67 FR 19416) that a request for a scientific research permit to take green, loggerhead, Kemp's ridley, and hawksbill turtles had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The permit authorizes annual takes of 150 juvenile and subadult green turtles, 100 juvenile and sub-adult loggerhead, 150 juvenile and sub-adult Kemp's ridley, and 5 juvenile and sub-adult hawksbill turtles by capture, tagging, blood and tissue sampling for a five year population assessment of the juvenile sea turtles inhabiting Charlotte Harbor on the west coast of Florida. Up to 10 green, 10 Kemp's ridley, 10 loggerhead, and 5 hawksbill turtles will also be collected annually incidental to the Center for Shark Research gill netting for sharks in the areas of Pine Island Sound and the Gulf waters near Crystal River, FL. These turtles will be measured, flipper tagged and released. In the second through fifth years of the permit, up to 5 green and/or Kemp's ridley turtles will also have satellite tags attached.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 4, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–31446 Filed 12–12–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111802C]

Marine Mammals; File No. 995–1608

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Mr. Thomas F. Norris, Science Applications International Corp., 3990 Old Town Avenue, Suite 105A, San Diego, California 92110 has been issued an amendment to scientific research Permit No. 995–1608.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018; and

Protected Species Coordinator, Pacific Area Office, NMFS, 1601 Kapiolani Blvd., Rm, 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941.FOR FURTHER INFORMATION CONTACT: Dr. Tammy Adams or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On December 21, 2000, notice was published in the **Federal Register** (65 FR 80420) that a request for a scientific research permit to take gray (*Eschrichtius robustus*), minke (*Balaenoptera acutorostrata*), Bryde's (*Balaenoptera edeni*), blue (*Balaenoptera musculus*), fin (*Balaenoptera physalus*), and humpback (*Megaptera novaengliae*) whales had been submitted by the above-named individual. Permit No. 995–1608 was issued on May 4, 2001 (66 FR 23884, May 10, 2001) for takes of gray, minke, and Bryde's whales by attachment of scientific instruments, photo-identification, behavioral observation, and incidental harasment. Authorization to take endangered blue, fin and humpback whales was deferred pending receipt of additional information and consultation required under Section 7 of the Endangered Species Act. The amendment to include takes of these endangered species has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The amended permit authorizes takes of up to 11 each of blue, fin, and humpback whales per year by attachment of scientific instruments, photo-identification, and behavioral observation and up to 20 whales of each species by harassment incidental to these activities.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this

permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

December 4, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–31445 Filed 12–12–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120302B]

Marine Mammals; File No.782–1676–00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that National Marine Mammal Laboratory, 7600 Sand Point Way N.E., BIN C15700, Seattle, WA, 98115 has been issued a permit to take Alaskan harbor seals and spotted seals for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s): Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On July 12, 2002, notice was published in the **Federal Register** (67 FR 46179) that a request for a scientific research permit to take Alaskan harbor seals (*Phoca vitulina*) and spotted seals (Phoca largha) had been submitted by the National Marine Mammal Laboratory. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and, the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 782–1676–00 authorizes aerial surveys and live captures of harbor seals and spotted seals in Alaskan waters. Annually, 1000 seals of each species may be captured, sampled, and released. Sampling includes measuring, weighing, flipper punch and tag, pulling vibrissae, and blood sampling. All seals will have a VHF tag applied either as a separate unit or, where possible, embedded in another type of tag. Subsets of the captured animals will also receive time-depth-recorders (TDR), satellite-linked TDRs, blubber/muscle biopsies, and/or still/video packages. The permit also authorizes the incidental harassment of an additional 3500 seals in association with capturing operations and scat collection. Over the course of the 5 year permit, 50 seals may be inadvertently captured a second time. Maximum accidental injury or mortality is three animals per species per year.

Dated: December 9, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–31451 Filed 12–12–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 13, 2003.

Title, Form, and OMB Number: Signature and Tally Record; DD Form 1907; OMB Number 0702–0027.

Type of Request: Reinstatement.

Number of Respondents: 130.

Responses per Respondent: 577.

Annual Responses: 75,000.

Average Burden per Response: 3 minutes.

Annual Burden Hours: 3,750.

Needs and Uses: Signature and Tally Record (STR) is an integral part of the Defense Transportation System and is used for commercial movements of all sensitive and classified material. The STR provides continuous responsibility for the custody of shipments in transit and requires each person responsible for the proper handling of the cargo to sign their name at the time they assume responsibility for the shipment, from point of origin, and at specified stages until delivery at destination. A copy of the STR, along with other transportation documentation, if forwarded by the carrier to the appropriate finance center for payment.

Affected Public: Business or Other For-Profit.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–31389 Filed 12–12–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on Seabasing will meet in closed session on December 11–12, 2002; January 27–28, 2003; February 25–26, 2003; and March 25–26, 2003, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will assess how seabasing of expeditionary forces can best serve the nation's defense needs through at least the first half of the 21st century.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will examine the broadest range of alternatives for seabasing of expeditionary forces and be guided by: The expected naval environment for the next 20–50 years; the role of naval forces in enabling access for joint forces through the world's littorals; assets and technologies needed to establish a robust and capable Enhanced Networked Seabase; the timing of the acquisition of the technologies, platforms and systems which replace the legacy systems; and the function of new hardware and opportunities to reallocate functionality to improve effectiveness, or efficiency, or economy.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Due to critical mission requirements, there is insufficient time to provide timely notice required by Section 10(a)(2) of the Federal Advisory Committee Act and Subsection 101–6.1015(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR Part 101–6, which further requires publication at least 15 calendar days prior to the first meeting of the Task Force on Seabasing scheduled for December 11–12, 2002.

Dated: December 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–31390 Filed 12–12–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting data change.

SUMMARY: On Friday, November 29, 2002 (67 FR 71144), the Department of Defense announced closed meetings of the Defense Science Board Task Force on Joint Experimentation. The meeting scheduled for December 18, 2002, has been rescheduled for January 9–10, 2003; it will be held at Strategic Analysis Inc., 3601 Wilson Boulevard, Suite 600, Arlington, VA.

Dated: December 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–31391 Filed 12–12–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of Army

Availability for Non-Exclusive, Exclusive, or partially Exclusive Licensing of U.S. Patent Application Concerning Teledentistry Consult Management System and Method

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 10/159,984 entitled "Teledentistry Consult Management System and Method," filed June 3, 2002. Foreign rights are also available (PCT/US02/17197). The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 6196664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention relates generally to the field of telemedicine and, more particularly, to systems, methods and articles of manufacture for facilitating consultation/communication between referring and consulting providers in the field of dentistry.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–31455 Filed 12–12–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army, DoD

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

(a) The members of the Performance Review Board for the U.S. Army Chief of Staff are:

1. MG Lawrence R. Adair, Assistant G–1.
2. MG Dorian Anderson, Commander, Total Army Personnel Command.
3. BG Harry Axson, Director, Military Personnel Policy.
4. Mr. Brian Barr, Technical Director.
5. Ms. Jean M. Bennett, Director, Resources and Infrastructure.
6. Mr. Vernon Bettencourt, Director, Analysis and Chief, Information Office.
7. Mr. Joseph R. Billman, Director of Program Development.
8. MG Robert W. Chesnut, Assistant Deputy Chief of Staff, G–3 (Mobilization).
9. MG Peter Chiarelli, Director, Operations, Readiness, and Mobilization.
10. MG Claude V. Christianson, Assistant Deputy Chief of Staff, G–4.
11. Dr. Craig E. College, Assistant Deputy Chief of Staff for Programs.
12. Mr. William F. Crain, Technical Director.
13. BG Bruce Davis, Deputy Director, Operations, Readiness, and Mobilization.
14. Mr. Thomas Dillon, Director, Counterintelligence, Foreign Disclosure, and Security.
15. MG B. Sue Dueitt, Director, Personnel Transformation.
16. Mr. Terrance M. Ford, Assistant Deputy Chief of Staff, G–2.
17. MG James J. Grazioplene, Director, FD.
18. LTG Benjamin S. Griffin, G–8.
19. Mr. James Gunlicks, Deputy Director, Training.
20. BG Dennis Hardy, Director, Force Management.
21. MG David Huntoon, Director, Strategy, Plans and Policy.
22. BG Kenneth W. Hunzeker, Deputy Director, PAE.
23. BG Jerome Johnson, Director of Plans, Operations and Readiness.
24. LTG John M. Le Moyne, Deputy Chief of Staff, G–1.
25. Mr. Mark R. Lewis, Director of Plans, Resources & Operations.

26. Ms. Maureen T. Lischke, PEO for Information Systems & Chief Information Officer.
27. MG James Lovelace, Assistant Deputy Chief of Staff, G3.
28. Mr. Wendell Lunceford, Director, Army Model and Simulation Office.
29. LTG Charles S. Mahan, Jr., Deputy Chief of Staff, G–4.
30. BG Jesus A. Mangual, Director of Force Projection and Distribution.
31. Mr. John W. Matthews, Director, Army Records Management and Declassification Activity.
32. MG David F. Melcher, Director, PAE.
33. Mr. William P. Neal, Associate Director of Force Projection and Distribution.
34. LTG Robert W. Noonan, Jr., Deputy Chief of Staff for Intelligence.
35. Mr. Mark J. O'Konski, Director of Logistics Integration Agency.
36. Mr. Eric A. Orsini, Special Assistant to the DCS, G–4.
37. BG(P) Elbertt N. Perkins, Director, DOI.
38. BG Steve Schook, Director, Human Resource and Policy.
39. Ms. Donna L. Shands, Associate Director for Sustainment.
40. Dr. Zita Simutis, Director, Manpower & Personnel Research Laboratory & Associate Director, ARI.
41. Mr. David L. Snyder, Deputy Asst Sec of the Army (Civ Personnel Policy).
42. Mr. John C. Speedy, III, Deputy Director, Strategy, Plans and Policy.
43. Mr. Lewis S. Steenrod, Director of Modernization.
44. Mr. James J. Streilein, Director, Army Evaluation Center.
45. Ms. Elizabeth B. Throckmorton, Assistant Deputy Asst Sec of the Army (Civilian Personnel Policy).
46. MG James Thurman, Director, Training.
47. Mr. Donald C. Tison, Deputy Director, Program Analysis and Evaluation.
48. Mr. Edgar B. Vandiver, III, Director, Center for Army Analysis.
49. BG Lloyd T. Waterman, Director of Sustainment.
50. Mr. Daniel F. Wiener, II, Chief Information Officer.

(b) The members of the Performance Review Board for the U.S. Army, Office of the Secretary of the Army are:

1. Dr. Benson D. Adams, Special Assistant to the ASA(IE) for Policy and Economic Analysis.
2. Dr. A. Michael Andrews, II Deputy Asst Secretary for Research & Technology/Chief Scientist.
3. Mr. William A. Armburuster, DASA for Privatization and Partnership.
4. Ms. Diane J. Armstrong, Director, Resource Integration.
5. MG William L. Bond, Deputy for Systems Management.
6. Mr. David Borland, Deputy CIO/G–6.
7. MG Stephen W. Boutelle, Director, IONS.
8. Mr. Fredrick R. Budd, Director, Single Agency Manager for Pentagon Information Technology Services.
9. Mr. Delbert F. Bunch, Deputy Program Manager for Chemical Demilitarization Operations.
10. Ms. Kathryn A. Condon, Interagency Coordinator of Military Support to Civil Authorities.
11. Mr. James C. Cooke, Special Assistant for Systems.
12. LTG Peter M. Cuviello, CIO/G–6.
13. Mr. Donald L. Damstetter, Jr., DASA (Plans, Programs & Resources).
14. Mr. Daniel B. Denning, PDASA (M&RA) & DASA (TR&M).
15. Mr. Thomas Druzgal, Deputy Auditor General, Acquisition and Material Management.
16. Mr. George S. Dunlop, Deputy ASA (Legislation).
17. Mr. Raymond J. Fatz, Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health.
18. Mr. Patrick J. Fitzgerald, Deputy Auditor General, Policy and Operations Management.
19. MG Warren L. Freeman, Director, DC National Guard.
20. Mr. Ernest J. Gregory, Principal DASA (Financial Mgt & Comptroller).
21. Ms. Judity A. Guenther, Director of Investments.
22. MG Lynn Hartsell, Director, Operations & Support.
23. Mr. Jack E. Hobbs, Project Dir, Army Workload & Performance Systems.
24. Mr. Walter W. Hollis, Deputy Under Secretary of the Army (Operations Research).
25. Mr. Joel B. Hudson, Administrative Assistant to the Secretary of the Army.
26. Mr. Craig D. Hunter, DASA (Defense Exports and Cooperation).
27. Dr. Daphne K. Kamely. Special Assistant to the Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health.
28. Mr. Stephen E. Keefer, Deputy Auditor General, Installations Management.
29. Mr. John A. Kelley, Special Assistant to ASA(IE) for Asset Management.
30. Mr. Thomas E. Kelley, III, Special Assistant to the Secretary of the Army for Science & Technology.
31. Mr. John R. Kohler, Director of Business & Investments.
32. Mr. Charles A. Krohn, Principal Deputy to the Chief of Public Affairs (Media Relations),
33. Ms. Joann H. Langston, Competition Advocate of the Army.
34. Mr. John W. McDonald, Deputy Under Secretary of the Army.
35. Mr. John P. McLaurin, III, DASA (Military Personnel Mgt. & EO Policy).
36. Mr. John L. Miller, Director for Business Resources.
37. Ms. Joyce E. Morrow, Deputy Auditor General, Forces and Financial Management.
38. Mr. Levator Norsworthy, Jr., Deputy General Counsel (Acquisition).
39. Mr. Eric A Orsini, Deputy ASA (Logistics).
40. Ms. Tracey L. Pinson, Director of Small & Disadvantage Business Utilization.
41. Mr. Geoffrey G. Prosch, Principal DASA (Installation & Environment).
42. Mr. Francis E. Reardon, Auditor General.
43. Mr. Matt Reres, Deputy General Counsel (Ethics and Fiscal).
44. BG Velma L. Richardson, Deputy CG NETCOM (FWD).
45. Ms. Sandra R. Riley, Deputy Administrative Assistant/Executive Director, Headquarters Services—Washington.
46. BG Lewis S. Roach, Deputy for Services & Operations & US Army Services & Operations Agency.
47. Mr. Nels Running, DUSA (IA/ Commemoration of 50th Ann Korean War).
48. Mr. Luther L. Santiful, Director of Equal Employment Opportunity/Civil Works.
49. Mr. Richard G, Sayre, Special Assistant for Systems.
50. Mr. Karl F. Schneider, DASA (Army Review Boards Agency).
51. MG John L. Scott, Chief Integration Officer.
52. Mr. C Russell H. Shearer, Special Assistant to ASA (IE).
53. MG Jerry L. Sinn, Deputy ASA (Budget).
54. Mr. Douglas Sizelove, Assistant Deputy Under Secretary of the Army (Operations Research).
55. Mr. James J. Smyth, Deputy ASA (Project Planning and Review).
56. Mr. David L. Snyder, Deputy ASA (Civilian Personnel Policy).
57. Dr. Barbara J. Sotirin, Acting Director, Research & Laboratory Management.
58. Mr. Earl H. Stockdale, Jr., Deputy General Counsel (Civil Works and Environment).
59. Dr. Larry B Stotts, Director for Technology.
60. Mr. Thomas W. Taylor, Senior Deputy General Counsel.

61. Ms. Elizabeth B. Throckmorton, Assistant DASA (Civilian Personnel Policy).
62. Ms. Claudia L. Tornblom, Deputy ASA (Management and Budget).
63. Mr. Michael L. Vajda, Director, Civilian Personnel Operations Center Management Agency.
64. Mr. Patrick J. Wakefield, DASA (Chemical Demilitarization) (Advisory).
65. Mr. C. Richard Whiston, Special Assistant to Secretary of the Army for Business Transformation.
66. Mr. Joseph W. Whitaker, Jr., DASA (Installations & Housing) (Advisory).
67. Miss Sarah F. White, DASA (Force Mgt, Manpower & Reserve Affairs).
68. Mr. Avon N. Williams, Principal Deputy General Counsel.
69. Mr. Robert J. Winchester, Assistant for Intelligence Liaison.
70. Mr. Robert W. Young, Deputy for Cost Analysis.

(c) The members of the Performance Review Board for the U.S. Army, Office of the Surgeon General are:

1. MG Kenneth L. Farmer, Deputy Surgeon General.
2. Dr. Charles N. Davidson, Director, US Army Nuclear & Chemical Agency.
3. Dr. James J. Streilein, Director, Army Evaluation Center.

(d) The members of the Performance Review Board for the U.S. Mission to the North Atlantic Treaty Organization are:

1. Mr. Alfred G. Volkman, Director, International Cooperation, OUSD, AT&L.
2. Mr. Barry Pavel, Director for Strategy, OSD.
3. Mr. Bernd McConnell, Director of the Office of Foreign Disaster Assistance, USAID.
4. Ms. Pamela Frazier, Foreign Policy Advisor to Chief of Staff, AF/ Department of State.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–31454 Filed 12–12–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Notice of Proposed Solicitation for Cooperative Agreement Applications

AGENCY: Defense Logistics Agency, DOD.

ACTION: Proposed solicitation for cost sharing cooperative agreement applications.

SUMMARY: On March 17, 1999, the Defense Logistics Agency (DLA) issued a solicitation for cooperative agreement applications (SCAA) to assist state and local governments and other nonprofit eligible entities in establishing or maintaining procurement technical assistance centers (PTACs) pursuant to chapter 142, title 10, United States Code. These centers help business firms market their goods and service to the Department of Defense (DoD), other federal agencies, and state and/or local government agencies. Cooperative agreement awards made as a result of applications submitted in response to this solicitation contained provisions for the award of additional option awards through 2002. DLA now intends to issue another solicitation as a follow-on action to the March 17, 1999, SCAA in order to maintain continuity of the Procurement Technical Assistance Program. This solicitation, when issued, will govern the submission of applications for calendar years 2003 through 2007, inclusive. This proposed SCAA is available for review on the Internet Web site: *http://www.dla.mil/db/scaa2003.pdf*. Printed copies are not available for distribution.

You are invited to submit written comments concerning this proposed SCAA to: Headquarters, Defense Logistics Agency, Office of Small and Disadvantaged Business Utilization, 8727 John J. Kingman Road, Suite 1127, Ft. Belvoir, VA 22060–6221. Attn: Grants Officer.

All comments must be received by January 31, 2003, in order for them to be considered. DLA intends to post the proposed SCAA, when finalized, on the Internet in early March 2003. A future notice to be published in the **Federal Register** will announce this posting and the website address to be utilized in accessing the final SCAA and to submit applications.

FOR FURTHER INFORMATION CONTACT: Ms. Diana Maykowskyj at (703) 767–1656.

Anthony J. Kuders,

Program Manager, DoD Procurement Technical Assistance Program.

[FR Doc. 02–31412 Filed 12–12–02; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Joint Environmental Impact Statement and Environmental Impact Report for the Sacramento and San Joaquin River Basins Comprehensive Study, Hamilton City Flood Damage Reduction and Ecosystem Restoration, Glenn County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: A combined Feasibility Report and joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) will be prepared to satisfy the requirements of the National Environmental Policy Act and the California Environmental Quality Act. The U.S. Army Corps of Engineers (Corps), Sacramental District, will serve as the Federal lead agency for the EIS with The Reclamation Board of the State of California (the Board), the non-federal sponsor, serving as the State lead agency for the EIR. The combined Feasibility Report and joint EIS/EIR will evaluate the environmental effects of a potential flood damage reduction and ecosystem restoration project at Hamilton City. The Hamilton City Flood Damage Reduction and Ecosystem Restoration is the first site-specific evaluation to be initiated as a result of the Sacramento and San Joaquin River Basins Comprehensive Study conducted by the Corps and the Board. Concurrently with the release of this notice of intent (NOI), the Board is issuing a notice of preparation (NOP) to initiate the CEQA process.

Scoping and public involvement activities were conducted under the original NOI issued for the Comprehensive Study. A series of scoping and outreach meetings were held in February through May 1998, November through December 1998, February 1999, June 1999, October through November 2001, and August through September 2002. Development of the EIS/EIR for the Comprehensive Study was at a programmatic level with the preliminary site-specific evaluation for Hamilton City Flood Damage Reduction and Ecosystem Restoration packaged as an attachment to the main programmatic document. The Comprehensive Study has since discontinued the environmental documentation effort and therefore this NOI is being submitted to establish that the Feasibility Report and EIS/EIR for Hamilton City Flood Damage Reduction

and Ecosystem Restoration will continue as a separate and complete document.

FOR FURTHER INFORMATION CONTACT: Questions about the combined Feasibility Report and joint EIS/EIR can be answered by Erin Taylor at (916) 557–6862 or by mail at U.S. Army Corps of Engineers, Planning Division, ATTN: Erin Taylor, 1325 J Street, Sacramento, CA 95814–2922, or e-mail: *Erin.A.Taylor@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The combined Feasibility Report and joint EIS/EIR will evaluate ways to reduce the risk of flooding and restore the Sacramento River's connection with its flood plain, natural flood plain processes, and riparian and associated flood plain habitat.

2. Alternatives

Alternatives include the no-action, reinforcing the existing levee, several setback levee alignments at some distance from the river, and flood-proofing or relocating structures at risk of flooding, with different habitat configurations and methods of establishment. Maximum area of potential effect is estimated to be 2,600 acres currently held by a combination of private, State, and Federal agencies. Fee title and/or conservation and flood easements would likely be required to implement any project. The Corps will conduct site-specific hydrologic, hydraulic and geotechnical analyses, to determine the most suitable potential levee alignments and the feasibility of repairing the existing levee in place. The Feasibility Study will focus on the economic feasibility and will run a risk analysis of the alternatives. Ecosystem restoration would consist of either planting native habitat or allowing native habitats to establish naturally in the area between any new levee and the river. Selection of a preferred alternative will depend on the result of these studies and the desires of the local community.

3. Scoping Process

a. This notice re-initiates the scoping process whereby the Corps and the Board will identify the scope of issues to be addressed in the EIS/EIR and identify the significant environmental issues related to the flood damage reduction and ecosystem restoration at Hamilton City. The Corps and the Board have initiated a process of involving Federal, State, and local agencies, and concerned individuals under the Comprehensive Study.

b. Significant issues to be analyzed in depth include; agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazardous, toxic, and radioactive materials, hydrology and water quality, and land use.

4. Public Meeting Scoping

Community meeting will be held during scoping, after the release of the draft EIS/EIR, and after release of the final EIS/EIR. A public scoping meeting will be held the week of January 6, 2003. The purpose of the meeting is to explain the NOI/NOP, and to solicit suggestions, recommendations, and comments to help refine the issues, measures, and alternatives to be addressed in the EIS/EIR. The public is asked to submit any issues (points of concern, dispute or disagreement) regarding potential effects of the proposed action or alternatives by mail to Corps (see **FOR FURTHER INFORMATION CONTACT** above for address).

5. Availability

The draft EIS/EIR is scheduled to be available for public review and comment in August 2003. The comment period on the draft EIS/EIR will be 45 days from the date the notice of availability is published in the **Federal Register** by the Environmental Protection Agency. All interested parties should respond to this notice and provide a current address if they wish to be notified of the draft EIS/EIR circulation and future scoping meeting dates.

Dated: November 26, 2002.

Michael J. Conrad, Jr.,

Col, EN, Commanding.

[FR Doc. 02–31456 Filed 12–12–02; 8:45 am]

BILLING CODE 3710–EZ–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Programmatic Environmental Impact Statement for the Upper Mississippi and Illinois Rivers Comprehensive Plan

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is preparing a Draft Programmatic Environmental Impact Statement (EIS) for the Upper Mississippi River Comprehensive Plan to identify problems, opportunities, and potential measures to reduce flood damages in the floodplains of the Upper Mississippi and Illinois Rivers. A Programmatic EIS will be prepared to address potential effects of any recommendations for further action resulting from this study effort, and to provide a broad review of general issues for incorporation by reference in subsequent National Environmental Policy Act (NEPA) documents, if future actions are undertaken as a result of recommendations in the Comprehensive Plan.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft Programmatic EIS can be answered by: David R. Gates, U.S. Army Corps of Engineers, St. Louis District (CEMVS–PM–F), 1222 Spruce Street, St. Louis, MO 63103, telephone (314) 331–8478, or by Charlene Carmack, U.S. Army Corps of Engineeers, Rock Island District (CEMVR–PM–A), Clock Tower Building, P.O. Box 2004, Rock Island, IL 61204–2004, telephone (309) 794–5570.

SUPPLEMENTARY INFORMATION: 1. Section 459 of the Water Resources Development Act of 1999 directed the Secretary of the Army to develop a plan to address water resource and related land resource problems in the study area in the interest of systemic flood damage reduction. Section 459 also directed the Secretary to submit a report to Congress detailing the results of this planning effort and addressing recommendations for authorization of further Federal actions or follow-on studies concerning systemic flood control.

The Comprehensive Plan will be developed as a collaborative effort among three Corps Districts (St. Paul, Rock Island, and St. Louis); other Federal agencies (including the Federal Emergency Management Agency [FEMA], the U.S. Fish and Wildlife Service [USFWS], the Natural Resources Conservation Service (NRCS), the U.S. Environmental Protection Agency [USEPA], the U.S. Geological Survey [USGS], and the U.S. Department of Agriculture [USDA]); the States of Illinois, Iowa, Minnesota, Missouri, and Wisconsin; and appropriate non-Federal organizations. The plan will identify future management actions and make recommendations for systemic improvements that provide flood damage reduction and associated environmental benefits.

The Comprehensive Plan will include recommendations addressing: (1) Construction of a systemic multipurpose water resources and flood management/damage reduction project; (2) floodplain management alternatives; and (3) follow-on design and construction requirements. This plan will include overall systemic recommendations, not optimized recommendations for specific sites. Follow-on implementation studies, including NEPA documentation, would be necessary at specific sites where additional analysis is required to develop the National Economic Development (NED) plan. Site-specific NEPA documentation would be tiered from the Programmatic EIS currently in preparation and would be developed in association with follow-on implementation studies, preconstruction engineering and design (PED).

2. Alternatives, including both structural and nonstructural measures, will be identified and investigated for their potential to accomplish systemic flood damage reduction. It is anticipated that between three to five systemic flood damage reduction alternatives will be formated and evaluated for their potential to contribute to National Ecosystem Development.

3. *Scoping:* This notice solicits input and assistance from the interested public and invites participation by affected Federal and State agencies having special jurisdiction and/or expertise.

An initial set of public meetings (open house format) was held September 9–12 in St. Louis, MO; Quincy, IL; Peoria, IL; and Dubuque, IA. These meetings were announced in mailed newsletters (also posted on the study Web site *http://www.mvr.usace.army.mil/UMRCP/*) as scoping meetings intended to help fulfill the scoping requirements of the NEPA, as well as overall study scoping requirements.

4. The scoping process is expected to continue through December 2002 to facilitate early input to the NEPA process and identify significant issues to be evaluated in depth in the Programmatic EIS.

5. Based on current study schedules, the Draft Programmatic EIS is anticipated to be available for public review late in the first quarter of Calendar Year 2004.

Dated: October 25, 2002.

William J. Bayles,

Colonel, EN, Commanding.

[FR Doc. 02–31452 Filed 12–12–02; 8:45 am]

BILLING CODE 3710–HV–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 11, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 9, 2002.

John D. Tressler,

Leader, Regulatory Monagement Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Annual Performance Reporting Form for Office of Indian Education (OIE) Local Grantees.

Frequency: Annually.

Affected Public: State, local or Tribel Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,272.

Burden Hours: 17,808.

Abstract: Application for funding for Indian Education discretionary programs of Demonstration Grants for Indian Children and Professional Development. The information is used to determine applicant eligibility and amount of awards for projects selected for funding.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–31405 Filed 12–12–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 11, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision,

extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 10, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.
Title: Consolidated State Performance Report.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden: Responses: 52. *Burden Hours:* 134,768.
Abstract: This information collection package contains the Consolidated State Performance Report (CSPR). The Elementary and Secondary Education Act (ESEA), in general, and its provision for submission of consolidated plans, in particular (see section 14301 of the ESEA), emphasize the importance of cross-program coordination and intergration of federal programs into educational activities carried out with State and local funds. States would use the instrument for reporting on activities that occur during the 2001–2002 school year. The proposed CSPR requests some of the same information as in 2000–2001, with a few modifications to eliminate certain sections. The Department is working actively to revise the content of these documents and develop an integrated information collection system that responds to No Child Left Behind (NCLB), uses new technologies, and better reflects how federal programs help to promote State and local reform efforts.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–31429 Filed 12–12–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 13, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren.Whittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 9, 2002.

John Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: TRIO Dissemination Partnership Program (84.344).
Frequency: Once every three years.
Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 50.
Burden Hours: 500.
Abstract: The application form is needed to conduct a national competition for the TRIO Dissemination Partnership Program for program year 2003–04. The program provides Federal financial assistance in the form of grants to institutions of higher education and organizations funded before October 7, 1998 for one of the Federal TRIO programs. The program provides discretionary grants for the purpose of replicating successful practices of TRIO projects to other institutions and organizations that are serving TRIO-eligible students, but that do not have TRIO grants.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov*. Requests may also be faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–31406 Filed 12–12–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

DOE Request for a 45-Day Extension To Respond To Recommendation 2002–2 of the Defense Nuclear Facilities Safety Board, Weapons Laboratory Support of the Defense Nuclear Complex

AGENCY: Department of Energy, DOE.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board Recommendation 2002–2, concerning weapons Laboratory support of the DOE nuclear complex at Department of Energy Defense Nuclear Facilities was published in the **Federal Register** on October 10, 2002 (67 FR 63081). In accordance with section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the Secretary transmitted the following response to the Defense Nuclear Facilities Safety Board on November 21, 2002.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before January 6, 2003.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Ms. Karen L. Boardman, Director, Office of Complex Readiness, Albuquerque Operations Office, Pennsylvania & H Street, Kirtland Air Force Base, Albuquerque, NM 87116.

Issued in Washington, DC, on December 6, 2002.

Mark B. Whitaker, Jr.,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

BILLING CODE 6450–01–P

The Secretary of Energy
Washington, DC 20585

November 21, 2002

The Honorable John T. Conway
Chairman
Defense Nuclear Facilities Safety Board
625 Indiana Avenue, NW, Suite 700
Washington, D.C. 20004

Dear Mr. Chairman:

On October 3, 2002, the Defense Nuclear Facilities Safety Board issued recommendation 2002-2, *Weapons Laboratory Support of the Defense Nuclear Complex*. The Department agrees that providing the defense nuclear complex with appropriate support is an essential priority. The Department will require additional time to evaluate your recommended changes.

In accordance with 42 U.S.C. § 2286d(b)(1), the Department requests an additional 45 days to respond to this recommendation. If the extension is granted, I will provide my response no later than January 8, 2003.

Sincerely,

Spencer Abraham

Spencer Abraham

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[FR Doc. 02–31432 Filed 12–12–02; 8:45 am]
BILLING CODE 6450–01–C

DEPARTMENT OF ENERGY

DOE Response to Recommendation 2002–1 of the Defense Nuclear Facilities Safety Board, Quality Assurance for Safety-Related Software

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board Recommendation 2002–1, concerning quality assurance for safety-related software at Department of Energy Defense Nuclear Facilities was published in the **Federal Register** on October 9, 2002 (67 FR 62960). In accordance with section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the Secretary transmitted the following response to the Defense Nuclear Facilities Safety Board on November 21, 2002.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before January 6, 2003.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond J. Hardwick, Jr., Associate Deputy Assistant Secretary for Operations, Office of Corporate Safety Assurance, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Issued in Washington, DC, on December 6, 2002.

Mark B. Whitaker, Jr.,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

BILLING CODE 6450–01–P

The Secretary of Energy
Washington, DC 20585

November 21, 2002

The Honorable John T. Conway
Chairman
Defense Nuclear Facilities Safety Board
625 Indiana Avenue, NW, Suite 700
Washington, D.C. 20004

Dear Mr. Chairman:

The Department acknowledges receipt of the Defense Nuclear Facilities Safety Board's (Board) recommendation 2002-1, *Quality Assurance for Safety-Related Software,* issued on September 23, 2002, and published in the *Federal Register* on October 9, 2002. The Department accepts recommendation 2002-1 and will develop an implementation plan that results in the following:

- Clear assignment of organizational roles, responsibility, and authority for safety-related software.
- Creation of infrastructure necessary to ensure an effective software quality assurance program, including personnel with the appropriate skill and expertise.
- Implementation of processes to identify safety analyses and design codes and ensure that they are subject to verification and validation appropriate for the application.
- Establishment of requirements and guidance for a rigorous software quality assurance process, which will include the use of industry standards where practicable.
- Creation of a process that will track continuous improvements and initiatives in software technology. This information will be used as a basis for maintaining safety-related software and will be shared across the complex.

The Department has initiated activities to improve the implementation of quality management systems at its defense nuclear facilities. Many of these activities resulted from the deficiencies documented in the Board's Technical Report DNFSB/TECH-25, *Quality Assurance for Safety-Related Software at Department*

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of Energy Defense Nuclear Facilities, and discussed at several of your public meetings on quality assurance. The Department considers its efforts to improve software quality assurance as a key element in the overall improvement of our quality management system, and the implementation plan will include and build on the actions that were previously undertaken as part of this initiative.

Ms. Beverly Cook, Assistant Secretary for Environment, Safety and Health, is the Department of Energy official responsible for safety-related quality assurance and for ensuring the successful completion of the implementation plan we will develop in response to your recommendation. Mr. Ray Hardwick, Office of Environment, Safety and Health, (301) 903-4244, is the responsible manager for the preparation of the Department's implementation plan.

Please feel free to contact either of them with any questions you may have as the Department moves forward with development of the implementation plan.

Sincerely,

Spencer Abraham

Spencer Abraham

[FR Doc. 02–31431 Filed 12–12–02; 8:45 am]
BILLING CODE 6450–01–C

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6635–7]

Environmental Impact Statments; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements filed December 2, 2002, through December 6, 2002.

Pursuant to 40 CFR 1506.9.

EIS No. 020498, Draft EIS, SFW, WA, Daybreak Mine Expansion and Habitat Enhancement Project, Habitat Conservation Plan, Issuance of a Multiple Species Permit for Incidental Take, Implementation, Clark County, WA , Comment Period Ends: February 21, 2003. Contact: Tim Romanski (360) 753–4371.

EIS No. 020499, Final EIS, BLM, OR, Coos County Natural Gas Transmission Pipeline, Construction, Operation and Maintenance, Proposed Natural Gas Pipeline from Roseburg to Coos Bay, Right-of-Way Grant, Coos Bay District, Coos County, OR , Wait Period Ends: January 13, 2003, Contact: Bob Gunther (541) 751–4295.

EIS No. 020500, Draft EIS, AFS, CA, Giant Sequoia National Monument Management Plan, Implementation, To Establish Management Direction for the Land and Resources, Sequoia National Forest, Fresno, Kern and Tulare Counties, CA , Comment Period Ends: March 13, 2003, Contact: Jim Whitfield (559) 784–1500.

EIS No. 020501, Final EIS, FHW, KS, U.S. 59 Highway Construction Improvements, Lawrence to Ottawa, Funding, NPDES Permit Issuance and Possible US Army COE Permit Issuance, Douglas and Franklin Counties, KS, Wait Period Ends: January 24, 2003, Contact: J. Michael Bowen (785) 267–7287.

EIS No. 020502, Draft EIS, MMS, AK, Cook Inlet Planning Area Oil and Gas Lease Sales 191 and 199, Outer Continental Shelf, Offshore Marine Environment, Cook Inlet, AK, Comment Period Ends: January 27, 2003, Contact: George Valiulis (703) 787–1662.

EIS No. 020503, Draft EIS, STB, TX, Bayport Loop New Rail Line, Construction and Operation, Finance Docket No. 34079, Houston, Harris County, TX , Comment Period Ends: January 27, 2003, Contact: Dana White (202) 565–1552. This document is available on the Internet at: *http://www.stb.dot.gov.*

EIS No. 020504, Draft EIS, AFS, ID, Gaylord North Timber Sale Project, Harvesting Timber, Council Ranger District, Payette National Forest, Adam County, ID, Comment Period Ends: January 27, 2003, Contact: Michael Hutchins (208) 253–0100.

EIS No. 020505, FINAL EIS, NAS, 00, Programmatic—Mars Exploration Rover-2003 (MER–2003) Project, Continuing the Long-Term Exploration of Mars, Implementation, Wait Period Ends: January 13, 2003, Contact: David Lavery (202) 358–4800.

EIS No. 020506, Final EIS, NRC, VA, Generic EIS—Surry Power Station, Unit 1 and 2, Supplement 6 to NUREG–1437, License Renewal of Nuclear Plants, COE Section 404 Permit and NPDES Permit, James River, VA, Wait Period Ends: January 13, 2003, Contact: Andrew Kugler (301) 415–2828.

EIS No. 020507, Final EIS, NRC, VA, Generic EIS—North Anna Power Station, Units 1 and 2, Supplement 7 to NUREG–1437, License Renewal, VA, Wait Period Ends: January 13, 2003, Contact: Andrew Kugler (301) 415–2828.

EIS No. 020508, Final EIS, DOE, KY, Kentucky Pioneer Integrated Gasification Combined Cycle Demonstration Project, Constructing and Operating a 540 megawatt-electric Plant, Clean Coal Technology Program, Clark County, KY, Wait Period Ends: January 13, 2003, Contact: Roy Spears (304) 285–5460.

Amended Notices

EIS No. 020421, Draft EIS, FHW, OR, Newberg-Dundee Transportation Improvement Project (TEA 21 Prog. #37), Proposal to Relieve Congestion on Ore. 99W through the Cities of Newberg and Dundee, Bypass Element Location (Tier 1), Yamhill County, OR , Comment Period Ends: December 16, 2002, Contact: Jim Cox (503) 986–3013. Revision of FR notice published on October 18, 2002: CEQ Comment Period Ending December 2, 2002 has been extended to December 16, 2002.

Dated: December 10, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–31462 Filed 12–12–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6635–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments; Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended

Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–FHW–E40796–NC Rating EC2, U.S. 64 Corridor Project, Transportation Improvements in the vicinity of the City of Asheboro and Access Improvements to the NC Zoological Park, Funding and U.S. Army COE section 404 Permit Issuance, Randolph County, NC.

Summary: EPA expressed environmental concerns regarding primary impacts as a result of project implementation. These include a large number of residential relocations, with many residences experiencing excessive noise increases and the loss of deciduous forest and surface water habitat. EPA requested that deletion of one or two proposed interchanges be evaluated.

ERP No. D–FHW–F40409–IN Rating LO, IN–25 Transportation Corridor Improvements from I–65 Interchange to U.S. 24, Funding, Right-of-Way and U.S. Army COE section 404 Permit Issuance, Hoosier Heartland Highway, Tippecanoe, Carroll and Cass Counties, IN.

Summary: EPA believes that the proposed project will result in minimum adverse impacts to the environment with the appropriate mitigation. No additional analyses are required.

ERP No. D–FHW–K40253–CA Rating 3, Riverside County Integrated Project, Winchester to Temecula Corridor Construction of a New Multi-Modal Transportation Facility, Route Location and Right-of-Way Preservation, Riverside County, CA.

Summary: EPA found that the DEIS was inadequate to satisfy the requirements of NEPA and lead to the selection of a preferred alignment containing the least environmentally damaging practicable alternative to satisfy section 404 of the Clean Water Act. The DEIS evaluated the two CETAP corridors in isolation of one another and of other major pending highway projects, did not adequately analyze a No Build alternative, and lacked adequate assessment of indirect and cumulative impacts on aquatic and biological resources as well as water and air quality. EPA recommends that these concerns be addressed in a revised DEIS.

ERP No. D–FHW–K40254–CA Rating 3, Riverside County Integrated Project, Hemet to Corona/Lake Elsinore Corridor a New Multi-Modal Transportation Facility, Route Location and Right-of-Way Preservation, Riverside County, CA.

Summary: EPA found that the DEIS was inadequate to satisfy the requirements of NEPA and lead to the selection of a preferred alignment containing the least environmentally damaging practicable alternative to satisfy section 404 of the Clean Water Act. The DEIS evaluated the two CETAP corridors in isolation of one another and of other major pending highway projects, did not adequately analyze a No Build alternative, and lacked adequate assessment of indirect and cumulative impacts on aquatic and biological resources as well as water and air quality. EPA recommends that these concerns be addressed in a revised DEIS.

Final EISs

ERP No. F–BLM–K67054–NV, Phoenix Project, Current Mining Operations and Processing Activities Expansion, Battle Mountain, Plan of Operations Approval, Lander County, NV.

Summary: The final EIS does not address EPA's concern that the long-term post-closure mitigation will not be adequately funded. The environmental acceptability of the project depends on adequate funding of the mitigation plan to prevent degradation of water quality and impacts to biological resources. The final EIS continues to be inadequate since it does not include an itemized cost estimate for the mitigation or assurance that funds will be available in perpetuity to perform the project startup.

ERP No. F–COE–C30011–NJ, New Jersey Shore Protection Study to Determine a Feasible Hurricane and Storm Damage Reduction Plan from Manasquan Inlet to Barnegat Inlet, Boroughs of Point Pleasant Beach, Bay Head, Mantoloking, Lavallette, Seaside Heights and Seaside Park, and Townships of Buck, Dover and Berkeley, NJ.

Summary: EPA continues to have environmental concerns and requests an opportunity to review a complete cumulative impacts and analysis and General Conformity Determination prior to the signing of the Record of Decision for the project.

ERP No. F–FHW–J40149–CO, Colorado Forest Highway 80, Guanella Pass Road (also known as Park County Road 62/Clear Creek County Road 381/Forest Development Road 118) from U.S. 285 in Grant to Georgetown, Improvements, Funding and U.S. Army COE Section 404, NPDES and Special Use Permits Issuance, Park and Clear Creek Counties, CO.

Summary: EPA expressed environmental concerns about wetland impacts and mitigation implementation.

ERP No. F–FHW–K40244–CA, CA–120 Oakdale Expressway Project, Construction and Operation, Post Mile 3.0 to Post Mile R12.9 near Oakdale, Funding, U.S. Army COE Section 404 and NPDES Permits Issuance, Stanislaus County, CA.

Summary: EPA expressed environmental concerns and recommended that FHWA request and obtain EPA's written concurrence on the least environmentally damaging practicable alternative and conceptual mitigation plan prior to the signing of the record of decision (ROD) in accordance with the NEPA/404 Memorandum of Understanding. EPA believes that the FEIS lacks sufficient information on indirect and cumulative impacts and a qualitative PM–10 analysis. In addition, the conceptual mitigation plan presented in the FEIS does not clearly show how it will adequately offset the project's wetland impacts.

ERP No. FS–AFS–E65036–00, Vegetation Management in the Coastal Plain/Piedmont, Proposal to Clarify Direction for Conducting Project-Level Inventories for Biological Evaluations (BEs), U.S. Forest Service Southern Region, AL, GA, FL, SC, NC, LA, MS and TX.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–AFS–E65037–00, Vegetation Management in the Appalachian Mountains, Proposal to Clarify Direction for Conducting Project-Level Inventories for Biological Evaluations (BEs), AL, GA, KY, NC, SC, TN, VA and WV.

Summary: No formal comment letter was sent to the preparing agency.

Dated: December 10, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–31463 Filed 12–12–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7421–6]

Office of Research and Development, Board of Scientific Counselors, Executive Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App.2) notification is hereby given that the Environmental Protection Agency, Office of Research and Development (ORD), Board of Scientific Counselors (BOSC), will hold an Executive Committee meeting.

DATES: The meeting will be held on January 9–10, 2003. On Thursday, January 9th, the meeting will begin at 1 p.m., and will recess at 5:30 p.m. On Friday, January 10th, the meeting will reconvene at 9 a.m. and will adjourn at approximately 4 p.m. All times noted are eastern time.

ADDRESSES: The meeting will be held at the Lowe's L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024.

SUPPLEMENTARY INFORMATION: Agenda items to include, but not be limited to: Consultation on ORD's Homeland Security Research Strategy, Briefing on EPA's Report on the Environment, Discussion of BOSC Future Issues and Plans, and BOSC Communications Ad-Hoc Committee Report Update.

Anyone desiring a draft BOSC agenda may fax their request to Shirley R. Hamilton (202) 565–2444. The meeting is open to the public. Any member of the public wishing to make a presentation at the meeting should contact Shirley Hamilton, Designated Federal Officer, Office of Research and Development (8701R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or by telephone at (202) 564–6853. In general, each individual making an oral presentation will be limited to a total of three minutes.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, National Center for Environmental Research (MC 8701R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–6853.

Dated: December 5, 2002.

Peter W. Preuss,

Director, National Center for Environmental Research.

[FR Doc. 02–31466 Filed 12–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7422–2]

New Hanover County Burn Pit Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into an Administrative Order on Consent pursuant to section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended regarding the New Hanover County Burn Pit Superfund Site located in Wilmington, New Hanover County, North Carolina. This agreement is made and entered into by EPA and by Axel Johnson, Inc., Sprague Energy Corporation, and Unocal Corporation ("Settling Parties"). EPA will consider public comments on the proposed settlement for 30 days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4, Sam Nunn Atlanta Federal Center, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303. (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: November 26, 2002.

Anita L. Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–31464 Filed 12–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7421–7; CWA–HQ–2002–6001; EPCRA–HQ–2002–6001; CAA–HQ–2002–6001; RCRA–HQ–2002–6001]

Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity To Comment Regarding NEXTEL Communications, Inc., et al. and NII Holdings, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On October 30, 2002, EPA published in the **Federal Register** information concerning a proposed settlement with NEXTEL Communications Inc., et al. and NII Holdings, Inc. The purpose of this correction is to provide additional information about this settlement. EPA has entered into a consent agreement with NEXTEL Communications, Inc., and its subsidiaries, and NII Holdings, Inc., collectively referred to as "NEXTEL", to resolve violations of the Clean Water Act ("CWA"), the Clean Air Act ("CAA"), the Resource Conservation and Recovery Act ("RCRA"), and the Emergency Planning and Community Right-to-Know Act ("EPCRA") and their implementing regulations.

The Administrator is hereby providing public notice of this consent agreement and final order and providing an opportunity for interested parties to comment on the CWA portions, as required by CWA section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C).

NEXTEL failed to prepare Spill Prevention Control and Countermeasure ("SPCC") plans for forty-eight facilities where they stored diesel oil in above ground tanks. EPA, as authorized by CWA section 311(b)(6), 33 U.S.C. 1321(b)(6), has assessed a civil penalty for these violations. NEXTEL failed to obtain the appropriate operating permits or exemptions at eight facilities in violation of CAA section 110, 42 U.S.C. 7410, and various state implementation plan ("SIP") requirements for emergency generators. EPA, as authorized by CAA section 113(d)(1), 42 U.S.C. 7413(d)(1), has assessed a civil penalty for these violations. NEXTEL failed to file an emergency planning notification with the State Emergency Response Commission ("SERC") and to provide the name of an emergency contact to the Local Emergency Planning Committee ("LEPC"). NEXTEL failed to submit Material Safety Data Sheets ("MSDS") or a list of chemicals to the LEPC, the SERC, and the fire department with jurisdiction over each facility for seventy-five facilities in violation of EPCRA section 311, 42 U.S.C. 11021. At sixty-six facilities, NEXTEL failed to submit an Emergency and Hazardous Chemical Inventory form to the LEPC, the SERC, and the fire department with jurisdiction over each facility in violation of EPCRA section 312, 42 U.S.C. 11022. EPA, as authorized by EPCRA section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations. NEXTEL failed to make a hazardous waste determination and improperly disposed of hazardous waste at one facility in violation of 9 VAC 20–60–261(A), (40 CFR 261.5(g)(1) and (g)(3)). NEXTEL violated RCRA section 9003(d), 42 U.S.C. 6991b(d) and 30 TAC sections 334 and 37.801, when the insurance policy for underground storage tanks failed to use the terms "corrective action" or "sudden, non-sudden or accidental release" to describe coverage for four facilities. At one facility NEXTEL failed to notify the State or local agency or department of the existence of an underground storage tank in violation of RCRA section 9002(a), 42 U.S.C. 6991(a)(1). NEXTEL failed to follow all of the relevant underground storage tank regulations in violation of RCRA section 9003, 42. U.S.C, 6991b at one facility.

DATES: Comments are due on or before January 13, 2003.

ADDRESSES: Send written comments to the Docket Office, Enforcement and Compliance Docket and Information Center (2201T), Docket Number EC–2002–021, U.S. Environmental Protection Agency, EPA West, 1200 Pennsylvania Avenue NW., Room B133, Washington, DC 20460 (in triplicate if possible.)

Please use a font size no smaller than 12. Comments may also be sent electronically to *docket.oeca@epa.gov* or faxed to (202) 566–1511. Attach electronic comments as a text file and try to avoid the use of special characters and any forms of encryption. Please be sure to include the Docket Number EC–2002–021 on your document.

In person, deliver comments to U.S. Environmental Protection Agency, EPA West, 1301 Constitution Avenue, NW., Room B133, Washington, DC 20460. Parties interested in reviewing docket information may do so by calling (202) 566–1512 or (202) 566–1513. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Beth Cavalier, Multimedia Enforcement Division (2248–A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–3271; fax: (202) 564–9001; e-mail: *cavalier.beth@epa.gov.*

SUPPLEMENTARY INFORMATION: *Electronic Copies:* Electronic copies of this document are available from the EPA Home Page under the link "Laws and Regulations" at the **Federal Register**—Environmental Documents entry (*http://www.epa.gov/fedrgstr*).

I. Background

NEXTEL Communications, Inc., its subsidiaries, and NII Holdings, Inc., collectively referred to as "NEXTEL", are telecommunications companies incorporated in the States of Delaware, Georgia, and Texas. NEXTEL is located at 2001 Edmond Halley Drive, Reston, Virginia, 20191 and NII Holdings, Inc. is located at 10700 Parkridge Boulevard, Suite 600, Reston, Virginia, 20191. NEXTEL disclosed, pursuant to the EPA "Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations" ("Audit Policy"), 65 FR 19618 (April 11, 2000), that they failed to prepare SPCC plans for forty-eight facilities where they stored diesel oil in above ground storage tanks, in violation of the CWA section 311(b)(3) and 40 CFR part 112. NEXTEL disclosed that for eight facilities they had failed to obtain operating permits or exemptions in violation of CAA section 110, 42 U.S.C. 7410, and various SIP requirements for emergency generators. NEXTEL disclosed that at seventy-two facilities they had failed to file emergency planning notifications with the SERC and failed to provide the name of an emergency contact to the LEPC, in violation of EPCRA sections 302 and 303, 42 U.S.C. 11002 and 11003. NEXTEL further disclosed that at seventy-five facilities they had failed to submit MSDS or a list of chemicals to the LEPC, SERC, and the fire departments with jurisdiction over the facilities, in violation of EPCRA section 311, 42 U.S.C. 11021; and that at sixty-six facilities had failed to submit an Emergency and Hazardous Chemical Inventory to the LEPC, SERC, and fire departments with jurisdiction over the facilities, in violation of EPCRA section 312, 42 U.S.C. 11022. At four facilities NEXTEL failed to ensure that the language in their financial assurance insurance policies for underground storage tanks was exactly as required by regulation, in violation of 30 TAC sections 334 and 37.801 and RCRA section 9003(d), 42 U.S.C. 6991b(d). NEXTEL violated RCRA section 9002(a)(1), 42 U.S.C. 6991(a)(1) when it failed to notify the state of the existence of an underground storage tank at one facility; and NEXTEL violated RCRA section 9003, 42 U.S.C. section 6991b and all of the relevant underground storage tank regulations at one facility. NEXTEL failed to make a hazardous waste determination and improperly disposed of hazardous waste at one facility in violation of 9–VAC 20–60–261(A).

Pursuant to 40 CFR 22.45(b)(2)(iii), the following is a list of facilities at which NEXTEL self-disclosed violations of CWA section 311(b)(3): 3719 East LaSalle St., Phoenix, AZ; 984 Walsh Ave., Santa Clara, CA; 475 14th Street, Oakland, CA; 11423 Sunrise Gold Circle, Rancho Cordova, CA; 17275 Derian Ave., Irvine, CA; 5996 Gleason Drive, Dublin, CA; 11175 Inland Ave., Mira Loma, CA; 9800 East Easter Ave., Englewood, CO; 10002 Park Meadows Drive, Lone Tree, CO; 4643 South Ulster Street, Denver, CO; 333 Inverness Drive South, Englewood, CO; 1370 Park Central Blvd., Pompano Beach, FL; 200 Avenue B, NW., Winter Haven, FL; 1101 N. Keller Road, Orlando, FL; 1150 Emma Oaks Trail, Lake Mary, FL; 400 Embassy Row, Atlanta, GA; 5952 Peachtree Industrial Blvd., Norcross, GA; 5295 Brookhollow Parkway, Norcross, GA; 2975 Breakinridge Blvd., Duluth, GA; 4150 Shackleford Rd., Norcross, GA; 880 Ashbury Drive, Buffalo Grove, IL; 40 Hartwell Ave., Lexington, MA; 135 Forbes Blvd., Mansfield MA; 11900 Bournefield Way, Silver Spring, MD; 7249 National Drive, Hanover, MD; 39200 Schoolcraft Rd., Livonia, MI; 6435 Hix Road, Westland, MI; 11322 Lackland Road, St. Louis, MO; 610 Industrial Ave., Greensboro, NC; 2 Industrial Road, Fairfield, NJ; One South Street, Garden City, NY; 175 Clearbrook Road, Elmsford, NY; 400 Bursca Drive, Building 400, Bridgeville, PA; 401 North Broad Street, Philadelphia, PA; 901 Jefferson Blvd., Norristown, PA; 4740 Perrin Creek, San Antonio, TX; 4407 Alphá Road, Farmers Branch, TX; 1600 Eberhardt Road, Temple, TX; 1412 East North Belt, Houston, TX; 1766 Old Meadow Road, McLean, VA; 421 Butler Farm Road, Hampton, VA; 400 Butler Farm Road, Hampton, VA; 593 Herndon Parkway, Herndon, VA; 2001–2003 Edmund Halley Drive, Reston, VA; 1505 Farm Credit Drive, McLean, VA; 11710 118th Avenue, NE., Kirkland, WA; 1400 NE McWilliams Road, Bremerton, WA. These facilities are not required to obtain water permits for these requirements.

In addition, violations of EPCRA sections 302, 303, 311 and/or 312 were reported at facilities in the following states: Arizona, California, Colorado, Florida, Georgia, Illinois, Kansas, Massachusetts, Maryland, Michigan, Minnesota, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Texas, Utah, Virginia and Washington. Violations of CAA section 110 were reported at facilities in Arizona, California, Kansas, New Jersey and Pennsylvania. Violations of RCRA section 9003(d) were reported in California and Illinois, and violations of RCRA section 9003(d) and 30 TAC sections 334 and 37.801 were reported in Texas. A violation of RCRA section 9002(a)(1) was reported in Pennsylvania. In Virginia, NEXTEL reported a violation of 9 VAC 20–6—261(A).

EPA determined that NEXTEL met the criteria set out in the Audit Policy for a 100% waiver of the gravity component of the penalty. As a result, EPA proposes to waive the gravity based penalty ($1,994,810) and proposes a settlement penalty amount of thirty-five thousand and four dollars ($35,004). This is the amount of the economic benefit gained by NEXTEL, attributable to their delayed compliance with the CWA, CAA, RCRA, and EPCRA regulations. NEXTEL Communications, Inc. has agreed to pay this amount. EPA and NEXTEL negotiated and signed an administrative consent agreement, following the Consolidated Rules of Practice, 40 CFR 22.13(b), on October 18, 2002 (*In Re: NEXTEL Communications, Inc. et. al. and NII Holdings, Inc.*, Docket Nos. CWA–HQ–2002–6001, EPCRA–HQ–2002–6001, CAA–HQ–2002–6001, and RCRA–HQ–2002–6001). This consent agreement is subject to public notice and comment under CWA section 311(b)(6), 33 U.S.C. 1321(b)(6).

Under CWA section 311(b)(6)(A), 33 U.S.C. 1321 (b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of the CWA section 311(b)(3), 33 U.S.C. 1321(b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA section 311(j), 33 U.S.C. 1321(j), may be assessed an administrative civil penalty of up to $137,500 by EPA. Class II proceedings under CWA section 311(b)(6) are conducted in accordance with 40 CFR part 22.

Under CAA section 113(d), the Administrator may issue an administrative order assessing a civil penalty against any person who has violated an applicable implementation plan or any other requirement of the Act, including any rule, order, waiver, permit or plan. Proceedings under CAA

section 113(d) are conducted in accordance with 40 CFR part 22.

Under EPCRA section 325, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable emergency planning or right to know requirements, or any other requirement of the Act. Proceedings under EPCRA section 325 are conducted in accordance with 40 CFR part 22.

Under RCRA section 3008, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable hazardous waste requirements, or any other requirement of the Act. Proceedings under RCRA section 3008 are conducted in accordance with 40 CFR part 22.

Under RCRA section 9006, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable underground storage tank requirements, or any other requirement of the Act. Proceedings under RCRA section 9006 are conducted in accordance with 40 CFR part 22.

The procedures by which the public may comment on a proposed Class II penalty order, or participate in a Clean Water Act Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is January 13, 2003. All comments will be transferred to the Environmental Appeals Board ("EAB") of EPA for consideration. The powers and duties of the EAB are outlined in 40 CFR 22.4(a).

Pursuant to CWA section 311(b)(6)(C), EPA will not issue an order in this proceeding prior to the close of the public comment period.

Dated: December 2, 2002.

Rosemarie A. Kelley,

Acting Director, Multimedia Enforcement Division, Office of Enforcement and Compliance Assurance.

[FR Doc. 02–31467 Filed 12–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7421–8; CWA–HQ–2002–6000; EPCRA–HQ–2002–6000; CAA–HQ–2002–6000]

Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity To Comment Regarding ADT Security Services, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has entered into a consent agreement with ADT Security Services, Inc. ("ADT") to resolve violations of the Clean Water Act ("CWA"), the Clean Air Act ("CAA"), and the Emergency Planning and Community Right-to-Know Act ("EPCRA") and their implementing regulations.

The Administrator is hereby providing public notice of this consent agreement and final order and providing an opportunity for interested persons to comment on the CWA portions, as required by CWA section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C).

ADT failed to prepare Spill Prevention Control and Countermeasure ("SPCC") plans for eight facilities where they stored diesel oil in above ground tanks. EPA, as authorized by CWA section 311(b)(6), 33 U.S.C. 1321(b)(6), has assessed a civil penalty for these violations. ADT failed to obtain the appropriate operating permits or exemptions at seven facilities in violation of CAA section 110, 42 U.S.C. 7410, and various state implementation plan ("SIP") requirements for emergency generators. EPA, as authorized by CAA section 113(d)(1), 42 U.S.C. 7413(d)(1), has assessed a civil penalty for these violations. ADT failed to file an emergency planning notification with the State Emergency Response Commission ("SERC") and to provide the name of an emergency contact to the Local Emergency Planning Committee ("LEPC"). ADT failed to submit Material Safety Data Sheets ("MSDS") or a list of chemicals to the LEPC, the SERC, and the fire department with jurisdiction over each facility for ninety-two facilities in violation of EPCRA section 311, 42 U.S.C. 11021. At ninety-two facilities, ADT failed to submit an Emergency and Hazardous Chemical Inventory form to the LEPC, the SERC, and the fire department with jurisdiction over each facility in violation of EPCRA section 312, 42 U.S.C. 11022. EPA, as authorized by EPCRA section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations.

DATES: Comments are due on or before January 13, 2003.

ADDRESSES: Send written comments to the Docket Office, Enforcement and Compliance Docket and Information Center (2201T), Docket Number EC–2002–020, U.S. Environmental Protection Agency, EPA West, 1200 Pennsylvania Avenue NW., Room B133, Washington, DC 20460 (in triplicate if possible.)

Please use a font size no smaller than 12. Comments may also be sent electronically to *docket.oeca@epa.gov* or faxed to (202) 566–1511. Attach electronic comments as a text file and try to avoid the use of special characters and any forms of encryption. Please be sure to include the Docket Number EC–2002–020 on your document.

In person, deliver comments to U.S. Environmental Protection Agency, EPA West, 1301 Constitution Avenue, NW., Room B133, Washington, DC 20460. Parties interested in reviewing docket information may do so by calling (202) 566–1512 or (202) 566–1513. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Beth Cavalier, Multimedia Enforcement Division (2248–A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–3271; fax: (202) 564–9001; e-mail: *cavalier.beth@epa.gov*.

SUPPLEMENTARY INFORMATION: *Electronic Copies:* Electronic copies of this document are available from the EPA Home Page under the link "Laws and Regulations" at the Federal Register—Environmental Documents entry (*http://www.epa.gov/fedrgstr*).

I. Background

ADT Security Services, Inc. a security services company incorporated in the State of Delaware and located at One Town Center Road, Boca Raton, Florida 33064, disclosed, pursuant to the EPA "Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations" ("Audit Policy"), 65 FR 19618 (April 11, 2000), that they failed to prepare SPCC plans for eight facilities where they stored diesel oil in above ground storage tanks, in violation of the CWA section 311(b)(3) and 40 CFR part 112. ADT disclosed that for seven facilities they had failed to obtain operating permits or exemptions in violation of CAA section 110, 42 U.S.C. 7410, and various SIP requirements for emergency generators. ADT disclosed that at sixty-eight facilities they had failed to file emergency planning notifications with the SERC and failed to provide the name of an emergency contact to the LEPC, in violation of EPCRA section 302, 42 U.S.C. 11002. ADT further disclosed that at ninety-two facilities they had failed to submit MSDS' or a list of chemicals to the LEPC, SERC, and the fire departments with jurisdiction over the facilities, in violation of EPCRA section 311, 42 U.S.C. 11021; and that at ninety-two facilities had failed to submit an Emergency and Hazardous Chemical Inventory to the LEPC, SERC, and fire departments with jurisdiction over the facilities, in violation of EPCRA section 312, 42 U.S.C. 11022.

Pursuant to 40 CFR 22.45(b)(2)(iii), the following is a list of facilities at which ADT self-disclosed violations of CWA section 311(b)(3): 5400 West Rosecrans Avenue, Hawthorne, California; 14200 Exposition Avenue, Aurora, Colorado; 9000 Town Center Parkway, Bradenton, Florida; 1052 South Powerline Road, Deerfield, Florida; 9512 Sunbeam Center Drive, Jacksonville, Florida; 7805 NW 97th Terrace, Kansas City, Missouri; 502 Fortune Drive, Papillion, Nebraska; and 285 Thruway Park Drive, West Henrietta, New York. These facilities are not required to obtain water permits for the requirements relating to the SPCC violations disclosed.

In addition, ADT self-disclosed violations of EPCRA sections 302 and/or sections 311 and 312 at facilities located in the following states: Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Missouri, North Carolina, Nebraska, New Hampshire, New Jersey, New York, Nevada, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Washington, and the District of Columbia. ADT self-disclosed violations of CAA section 110 at facilities located in California.

EPA determined that ADT met the criteria set out in the Audit Policy for a 100% waiver of the gravity component of the penalty. As a result, EPA proposes to waive the gravity based penalty ($1,914,965) and proposes a settlement penalty amount of thirty-one thousand, seven hundred and forty-one dollars ($31,741). This is the amount of the economic benefit gained by ADT, attributable to their delayed compliance with the SPCC, CAA and EPCRA regulations. ADT Security Services, Inc. has agreed to pay this amount. EPA and ADT negotiated and signed an administrative consent agreement, following the Consolidated Rules of Practice, 40 CFR 22.13(b), on October 18, 2002 (*In Re: ADT Security Services, Inc.*, Docket Nos. CWA–HQ–2002–6000, EPCRA–HQ–2002–6000, CAA–HQ–2002–6000). This consent agreement is subject to public notice and comment under CWA section 311(b)(6), 33 U.S.C. 1321(b)(6).

Under CWA section 311(b)(6)(A), 33 U.S.C. 1321 (b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of the CWA section 311 (b)(3), 33 U.S.C. 1321 (b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA section 311 (j), 33 U.S.C. 1321(j), may be assessed an administrative civil penalty of up to $137,500 by EPA. Class II proceedings under CWA section 311(b)(6) are conducted in accordance with 40 CFR part 22.

Under CAA section 113(d), the Administrator may issue an administrative order assessing a civil penalty against any person who has violated an applicable implementation plan or any other requirement of the Act, including any rule, order, waiver, permit or plan. Proceedings under CAA section 113(d) are conducted in accordance with 40 CFR part 22.

Under EPCRA section 325, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable emergency planning or right to know requirements, or any other requirement of the Act. Proceedings under EPCRA section 325 are conducted in accordance with 40 CFR part 22.

The procedures by which the public may comment on a proposed Class II penalty order, or participate in a Clean Water Act Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is January 13, 2003. All comments will be transferred to the Environmental Appeals Board ("EAB") of EPA for consideration. The powers and duties of the EAB are outlined in 40 CFR 22.4(a).

Pursuant to CWA section 311(b)(6)(C), EPA will not issue an order in this proceeding prior to the close of the public comment period.

Dated: December 4, 2002.

Rosemarie A. Kelley,

Acting Director, Multimedia Enforcement Division, Office of Enforcement and Compliance Assurance.

[FR Doc. 02–31468 Filed 12–12–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Certification of Compliance with Mandatory Bars to Employment."

DATES: Comments must be submitted on or before February 11, 2003.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Consumer and Compliance Unit), (202) 898–7453, Legal Division, Room MB–3109, Attention: Comments/Legal, Federal Deposit Insurance Corporation. 550 17th Street, NW., Washington, DC 20429. All comments should refer to "Certification of Compliance with Mandatory Bars to Employment." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (Internet address: *comments@ fdic.gov*). Comments may also be submitted to the OMB desk officer for the FDIC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Certification of Compliance with Mandatory Bars to Employment.

OMB Number: 3064–0121.

Frequency of Response: On occasion.

Affected Public: Persons interested in being employed or providing services to the FDIC.

Estimated Number of Respondents: 248.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden: 41.34 hours.

General Description of Collection: Prior to an offer of employment, job applicants to the FDIC must sign a certification that they have not been convicted of a felony or been in other circumstances that prohibit persons from becoming employed by or providing services to the FDIC.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of

the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be

Larry W. Coffey, Lincoln, Nebraska; to acquire voting shares of Hastings Bancorp, Inc., Hastings, Nebraska, and thereby indirectly acquire voting shares of Hastings State Bank, Hastings, Nebraska.

Board of Governors of the Federal Reserve System, December 9, 2002.

voting shares of Mauriceville National Bank, Mauriceville, Texas.

Board of Governors of the Federal Reserve System, December 9, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–31393 Filed 12–12–02; 8:45 am]

BILLING CODE 6210–01–M

comments received were numerous and very technical in nature. They will require extensive research and evaluation before implementation and have been referred to a workgroup for that purpose. As a result, we are seeking and extension on the use of the existing collection with no change at this time.

information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New

demonstrated proficiency in the International Labour Office (ILO) radiographic classification system.

Competence in the ILO system is demonstrated by physicians who have completed a NIOSH approved educational seminar (A Reader) or have passed the NIOSH B Reader certification

the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval.

Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated in Washington, DC, this 4th day of December, 2002.

Federal Deposit Insurance Corporation.

Leneta G. Gregorie,

Counsel and Special Assistant.

[FR Doc. 02–31411 Filed 12–12–02; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 30, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Connie f. Rose, individually and as trustee of the Jon F. Rose Revocable Trust, Hastings, Nebraska; Paul H. and Faye E. Powers, Hastings, Nebraska; and Larry W. Coffey, Lincoln, Nebraska; to acquire voting shares of Hastings Bancorp, Inc., Hastings, Nebraska, and thereby indirectly acquire voting shares of Hastings State Bank, Hastings, Nebraska.

Board of Governors of the Federal Reserve System, December 9, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–31392 Filed 12–12–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownerships of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http//www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 10, 2003.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President), 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. OSB Financial Services, Inc., Orange, Texas, and OSB Delaware Financial Services, Inc., Dover, Delaware; to acquire 100 percent of the voting shares of Mauriceville National Bank, Mauriceville, Texas.

Board of Governors of the Federal Reserve System, December 9, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–31393 Filed 12–12–02; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Submission for OMB Review; Comment Request; State Program Report for Title III of the Older Americans Act

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by January 13, 2003.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Allison Herron Eydt, Desk Officer for AoA.

FOR FURTHER INFORMATION CONTACT: Saadia Greenberg, Office of Evaluation, Administration on Aging, Room 5607, Washington, DC 20201, (202) 357–3554.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance.

State Program Reports provide state totals of the number of persons served for each type of service under the Older Americans Act Title III and Title VII programs as well as the number units of services provided and some characteristics of the clients. Information is also reported on expenditures for each type of service, staffing levels of state and area agencies on aging.

AoA estimates the burden of this collection of information as approximately 1 hour per state agency.

In the **Federal Register** of December 21, 2001 (Vol. 66, No. 246), the agency requested comments on the proposed collection of information. The comments received were numerous and very technical in nature. They will require extensive research and evaluation before implementation and have been referred to a workgroup for that purpose. As a result, we are seeking and extension on the use of the existing collection with no change at this time.

Dated: November 13, 2002.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 02–31477 Filed 12–12–02; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–12–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: A and B Reader Surveys—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). Since 1970, under the U.S. Code of Federal Regulations (42 CFR part 37), screening chest radiographic examinations have been provided to underground miners at approximate five-year intervals. As part of the mandated Coal Workers' X-ray Surveillance Program (CWXSP), the NIOSH B Reader Program requires x-ray classification by physicians who have demonstrated proficiency in the International Labour Office (ILO) radiographic classification system.

Competence in the ILO system is demonstrated by physicians who have completed a NIOSH approved educational seminar (A Reader) or have passed the NIOSH B Reader certification examination (B Reader). The ILO has recently completed a revision of its radiographic classification system (ILO 2000) that will soon be published. As a result, modifications of the B Reader examinations and related training activities and materials will be needed. These revisions provide an opportunity to evaluate the current B Reader Program by surveying A and B Readers. The survey responses from these physicians will be used to develop a workshop agenda and contract specifications to improve the B Reader Program. The annual burden for this data collection is 617 hours.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)
Physicians/B Reader	531	1	10/60
Physicians/Former B Reader	333	1	10/60
Physicians/A Reader	2834	1	10/60

Dated: December 9, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, , Centers for Disease Control and Prevention.

[FR Doc. 02–31417 Filed 12–12–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–10–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: State Influenza Coordinators Survey—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC). Influenza epidemics in the United States are associated with approximately 20,000 deaths and 114,000 hospitalizations each year; influenza pandemics are responsible for dramatic increases in morbidity and mortality worldwide. In order to detect "novel" viruses, changes in circulating strains, and the clinical impact of circulating strains, surveillance systems must present a broad picture of influenza activity. Data on morbidity and mortality are essential and must be reported in a timely manner.

Influenza Surveillance at CDC consists of four components: U.S. Sentinel Physician Network, State and Territorial Epidemiologist Reports, 122 Cities Mortality Report, and the WHO/NRVESS Laboratory Reports. Each of the 50 states as well as the District of Columbia participate in at least one of the CDC's four surveillance components, however, additional surveillance activities within the states are currently unclear. In order to develop or enhance current Influenza surveillance activities at CDC and prepare for the future, including possible pandemics, it is crucial that we are aware of any existing surveillance systems at the state level. We are proposing a survey of state health departments, specifically each state's Influenza Surveillance Coordinator in order to ascertain the nature of flu surveillance in his/her state as well as how prepared the state is for things to come. The data collected will be used to improve and/or enhance national surveillance efforts.

The questionnaire that will be used focuses on state surveillance systems as well as pandemic preparedness. Questions will be asked regarding current surveillance including: Sentinel Physicians Systems, Nursing home surveillance, and School Absenteeism. The annual burden hours are estimated to be 27.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)
State health departments	53	1	30/60

Dated: December 9, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–31418 Filed 12–12–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee (MSHRAC): Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Mine Safety and Health Research Advisory Committee, National Institute for Occupational Safety and Health, of the Department of Health and Human Services, has been renewed for a 2-year period extending through November 30, 2004.

For further information, contact Lewis V. Wade, Ph.D., Executive Secretary, Mine Safety and Health Research Advisory Committee, Centers for Disease Control and Prevention, of the Department of Health and Human Services, HHH Building, 200 Independence Avenue, SW., Room 715–H, M/S P–12, Washington, DC 20201. Telephone 202/401–2192, fax 202/260–4464, e-mail *lhg9@cdc.gov*.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 8, 2002.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–31472 Filed 12–12–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 8, 2003, from 8 a.m. to 5 p.m., and on January 9, 2003, from 9 a.m. to 5 p.m.

Location: Marriott Washingtonian Center, Grand Ballroom, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact Person: Tara P. Turner, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: TurnerT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 8, 2003, the committee will discuss new drug application (NDA) 21–144, KETEK (telithromycin), Aventis Pharmaceuticals, Inc., proposed for treatment of community-acquired pneumonia, acute exacerbation of chronic bronchitis, and acute maxillary sinusitis. On January 9, 2003, the committee will discuss issues pertaining to the contents in the document entitled "Ranking of Antimicrobial Drugs According to Their Importance in Human Medicine (Appendix A of the "Draft Guidance for Industry: Evaluating the Safety of Antimicrobial New Animal Drugs With Regard to Their Microbiological Effects on Bacteria of Human Health Concern") (see the FDA Internet site at: http://www.fda.gov/cvm/guidance/dguide152.doc) as it relates to the process for evaluating antimicrobial resistance concerns for the Center for Veterinary Medicine's preapproval safety evaluation of a new animal drug.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 31, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 1:30 p.m. on January 8, 2003, and between approximately 1 p.m. and 2 p.m. on January 9, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 31, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Tara P. Turner at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 4, 2002.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 02–31443 Filed 12–12–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0421]

Medical Devices; Class II Special Controls Guidance Document: Arrhythmia Detector and Alarm; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Class II Special Controls Guidance Document: Arrhythmia Detector and Alarm; Draft Guidance for Industry and FDA." Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to reclassify the arrhythmia detector and alarm from class III (premarket approval) to class II (special controls). If the device is reclassified, FDA intends that this guidance document will serve as the special control. This guidance is neither final nor is it in effect at this time.

DATES: Submit written or electronic comments concerning this guidance by March 13, 2003.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the draft guidance document entitled "Class II Special Controls Guidance Document: Arrhythmia Detector and Alarm; Draft Guidance for Industry and FDA," to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Carole C. Carey, Center for Devices and Radiological Health (HFZ- 450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to reclassify the arrhythmia detector and alarm from class III (premarket approval) to class II (special controls). This draft guidance document describes a means by which arrhythmia detector and alarm (including ST-segment measurement and alarm) devices may comply with the requirement of special controls for class II devices. Designation of this guidance document as a special control means that manufacturers attempting to establish that their device is substantially equivalent to a predicate arrhythmia detector and alarm (including ST-segment measurement and alarm) device should demonstrate that the proposed device complies with either the specific recommendations of this guidance or some alternate control that provides equivalent assurances of safety and effectiveness.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on special controls for the arrhythmia detector and alarm. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

In order to receive "Class II Special Controls Guidance Document: Arrhythmia Detector and Alarm; Draft Guidance for Industry and FDA" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1363) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

You may obtain a copy of the draft guidance from the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that you may download to a personal computer. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. You may access the CDRH home page at http://www.fda.gov/cdrh. You may search for all CDRH guidance documents at http://www.fda.gov/cdrh/guidance.html. Guidance documents are also available on the Dockets Management Brach Internet site at http:/ /fda/gov/ohrms/dockets.

IV. Comments

Interested persons may submit to Dockets Management Branch (see **ADDRESSES**) written or electronic comments on this draft guidance by (see **DATES**). Two copies of any comment are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 23, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–31439 Filed 12–12–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0577]

Medical Devices; Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide and Oxygen Monitors; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Guidance for Industry and FDA." This guidance document describes a means by which $PcCO_2$ monitors and the PcO_2 monitor may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule reclassifying the $PcCO_2$ monitor from class II (performance standards) into class II (special controls), the PcO_2 monitor for an infant

patient who is not under gas anesthesia from class II (performance standards) into class II (special controls), and the PcO_2 monitor for all other uses from class III (premarket approval) into class II (special controls).

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidances are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the guidance document entitled "Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide (PcCO2) and Oxygen (PcO2) Monitors; Guidance for Industry and FDA" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: William A. Noe, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609, ext. 174.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 12, 2002 (67 FR 6444), FDA published a proposed rule to reclassify the $PcCO_2$ monitor from class II (performance standards) into class II (special controls), the PcO_2 monitor for an infant patient who is not under gas anesthesia from class II (performance standards) into class II (special controls), and the PcO_2 monitor for all other uses from class III (premarket approval) into class II (special controls).

In the **Federal Register** of February 12, 2002 (67 FR 6544), FDA also identified the document "Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Draft Guidance for Industry and FDA" as the special control capable of providing reasonable assurance of safety and effectiveness for these devices. This guidance document describes a means by which $PcCO_2$ and PcO_2 monitors may comply with the requirement of special controls for class II devices. Designation of this guidance document as a special control means that a manufacturer attempting to establish that its device is substantially equivalent to a predicate class II monitor must demonstrate that the proposed device complies with either the specific recommendations of this guidance or some alternate control that provides equivalent assurances of safety and effectiveness.

Interested persons were invited to comment on the draft guidance by May 13, 2002. FDA received two comments on the draft guidance document. The comments, from manufacturers, suggested that the draft guidance does not cite current voluntary consensus standards applicable to the devices subject to this guidance. FDA considered the comments and revised the guidance where we believe appropriate. FDA also clarified the description of the risks to health, in order to relate the risks more directly to the recommended mitigation measures.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on "Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Guidance for Industry and FDA." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

In order to receive "Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide ($PcCO_2$) and Oxygen (PcO_2) Monitors; Guidance for Industry and FDA," via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1335) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. A search capability for all CDRH guidance documents is available at http://www.fda.gov/cdrh/guidance.html. Guidance documents are also available on the Dockets Management Branch Internet site at http://www.fda.gov/ohrms/dockets.

IV. Paperwork Reduction Act of 1995

The premarket notification information collections addressed in the guidance have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) under OMB control number 0910–0120. The labeling provisions addressed in the guidance have been approved by OMB under the PRA under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 2, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–31441 Filed 12–12–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–50]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Shirley Kramer, Division of Property Management, Program Support Center, HHS, room 58–41, 5600 fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Army: Ms. Julie Jones-Conte, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–MD, Room 1E677, 600 Army Pentagon, Washington, DC 20310–600; (703) 692–9223; DOT: Mr. Rugene Spruill, Principal, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW, Room 2310, Washington, DC 20590; (202) 366–4266; Energy: Mr. Tom Knox, Department of Energy, Office of Engineering & Construction Management, CR–80, Washington, DC 20585; (202) 586–8715; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; Navy: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: December 6, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Title V. Federal Surplus Property Program Federal Register Report for 12/13/02

Suitable/Available Properties

Buildings (by State)

Missouri

Old Custom House/P.O.
815 Olive Street
St. Louis Co: MO 63101–
Landholding Agency: GSA
Property Number: 54200240016
Status: Surplus
Comment: 6-story office building, restrictive use due to Historical Landmark status
GSA Number: 7–G–MO–074

Pennsylvania

Bldg. 00634
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–
Landholding Agency: Army
Property Number: 21200240089
Status: Unutilized
Comment: 113 sq. ft., presence of asbestos, most recent use—plant/utility bldg., off-site use only

California

Bldgs. 18017, 18018
SATCOM
Paso Robles Co: San Luis Obispo CA 93451–
Landholding Agency: Army
Property Number: 212002240081
Status Unutilized
Comment: 1440 sq. ft., most recent use—storage, off-site use only

Bldg. 18300
SATCOM
Paso Robles Co: San Luis Obispo CA 93451–
Landholding Agency: Army
Property Number: 212002240082
Status: Unutilized
Comment: 864 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Georgia

Bldg. T–920
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 212002240083
Status: Excess
Comment: 13,337 sq. ft., most recent use—office, off-site use only

North Carolina

Bldgs. A2245, A2345
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–

Landholding Agency: Army
Property Number: 21200240084
Status: Excess
Comment: 3444 sq. ft. each, possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only

Bldg. A2544
Fort Bragg
Ft. Bragg Co: Cumberland NC–
Landholding Agency: Army
Property Number: 21200240085
Status: Excess
Comment: 4000 sq. ft., possible asbestos/lead paint, most recent use—admin. facility, off-site use only

Bldg. D2826
Fort Bragg
Ft. Bragg Co: Cumberland NC–28310–
Landholding Agency: Army
Property Number: 21200240086
Status: Excess
Comment: 41,520 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. N4116
Fort Bragg
Ft. Bragg Co: Cumberland NC–28310–
Landholding Agency: Army
Property Number: 21200240087
Status: Excess
Comment: 3944 sq. ft., possible asbestos/lead paint, most recent use—community facility, off-site use only

103 Bldgs.
Fort Bragg
Ft. Bragg Co: Cumberland NC–28310–5000
Location: WS001–WS02A, PE001–PE031, 002F1–02F36, 00651, 1101, DT001–DT035, DT052–DT056, 09051
Landholding Agency: Army
Property Number: 21200240088
Status: Excess
Comment: Multi-use structures, various sq ft., possible asbestos/lead paint, off-site use only

Virginia

Bldgs. T0107–T0111
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 2120024090
Status: Unutilized
Comment: 9017 sq. ft., poor condition, presence of asbestos, most recent use—warehouse, off-site use only

Washington

Bldg. 04180
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21200240091
Status: Unutilized
Comment: 72 sq. ft., most recent use—guard shack, off-site use only

Bldg. 05904
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21200240092
Status: Excess
Comment: 82 sq. ft., most recent use—guard shack, off-site use only

Bldgs. 9003, 9517
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21200240093
Status: Excess
Comment: 80 and 82 sq. ft., most recent use—guard shack, off-site use only

Unsuitable properties

Buildings (by State)

Hawaii

Bldg. 329
NCTAMS PAC
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77200240058
Status: Excess
Reason: Secured Area

Mississippi

Bldgs. 239, 240
Naval Air Station
Meridian Co: Lauderdale MS 39309–
Landholding Agency: Navy
Property Number: 77200240060
Status: Unutilized
Reason: Secured Area

Bldg. 248
Naval Air Station
Meridian Co: Lauderdale MS 39309–
Landholding Agency: Navy
Property Number: 77200240061
Status: Unutilized
Reason: Secured Area

Bldg. 412
Naval Air Station
Meridian Co: Lauderdale MS 39309–
Landholding Agency: Navy
Property Number: 77200240062
Status: Unutilized
Reason: Secured Area

New Jersey

4 Bldgs.
Naval Air Engineering Station 26, 75, 126, 303
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77200240059
Status: Unutilized
Reason: Extensive deterioration

Sheds OV1, OV2, OV3
U.S. Coast Guard
Shark River
Avon by the Sea Co: Monmouth NJ 13640–
Landholding Agency: DOT
Property Number: 87200240001
Status: Unutilized
Reason: Secured Area

Unit 13
USCG Station Barnegat Light
Station Barnegat Co: Ocean NJ
Landholding Agency: DOT
Property Number: 87200240002
Status: Unutilized
Reason: Secured Area

Units 9–12
USCG Station Barnegat Light
Station Barnegat Co: Ocean NJ
Landholding Agency: DOT
Property Number: 87200240003
Status: Unutilized
Reason: Secured Area

New Mexico

Bldg. 805
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 41200240001
Status: Unutilized
Reason: Secured Area

Bldg. 8898
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 41200240002
Status: Unutilized
Reason: Secured Area

8 Bldgs., TA–16
Los Alamos National Lab
195, 220–226
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200240003
Status: Unutilized
Reason: Secured Area

Bldg. 2, TA–11
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200240004
Status: Unutilized
Reason: Secured Area

Bldg. 4, TA–41
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200240005
Status: Unutilized
Reason: Secured Area

Bldg. 16, TA–41
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200240006
Status: Unutilized
Reason: Secured Area

Bldg. 30, TA–41
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200240007
Status: Unutilized
Reason: Secured Area

Bldg. 53, TA–41
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200240008
Status: Unutilized
Reason: Secured Area

North Carolina

Frying Pan Schoals Light
USCG
Cape Fear Co: NC
Landholding Agency: DOT
Property Number: 87200240004
Status: Unutilized
Reason: Secured Area

Diamond Schoals Light
USCG
Cape Hatteras Co: NC
Landholding Agency: DOT
Property Number: 87200240005
Status: Unutilized
Reason: Secured Area

Unsuitable Properties

Land (by State)

Washington

Hanford Training Site #2
Horn Rapids Road
Benton Co: Benton WA
Landholding Agency: GSA
Property Number: 54200240017
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material GSA Number: 9–B–WA–1198B

[FR Doc. 02–31257 Filed 12–12–02; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

John H. Chafee Blackstone River Valley National Heritage Corridor Commission; Notice of Meeting

Notice is hereby given in accordance with section 552b of title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, November 21, 2002.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7 p.m. at Leicester Town Hall located at 3 Washburn Square in Leicester, MA for the following reasons:

1. Approval of Minutes.
2. Chairman's Report.
3. Executive Director's Report.
4. Financial Budget.
5. Public Input.

It is anticipated that about twenty-five people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Michael Creasey, Executive Director, John H. Chafee Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895. Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from Michael Creasey, Executive Director of the Commission at the aforementioned address.

Michael Creasey,
Executive Director BRVNHCC.
[FR Doc. 02–31573 Filed 12–12–02; 8:45 am]
BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Information Collection Under the Paperwork Reduction Act; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) invites comments on two information collection requests which will be renewed. The two collections are: Class III Gaming Procedures, 1076–0149, and Tribal Revenue Allocation Plans, 1076–0150.

DATES: Submit your comments and suggestions on or before February 11, 2003, to be assured of consideration.

ADDRESSES: Comments should be sent to: George Skibine, Bureau of Indian Affairs, Office of Indian Gaming Management, Mail Stop 4543–MIB, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested persons may get copies of the information collection requests without charge by contacting George Skibine at 202–219–4066 or facsimile number 202–273–3153.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 provides an opportunity for interested parties to comment on proposed information collection requests. The Bureau of Indian Affairs, Office of Indian Gaming Management is proceeding with this public comment period as the first step in getting a normal information collection clearance from the Office of Management and Budget (OMB). Each request contains (1) type of review, (2) title, (3) summary of the collection, (4) respondents, (5) frequency of collection, (6) reporting and recordkeeping requirements.

Please note that we will not sponsor nor conduct, and you need not respond to, a request for information unless we display the OMB control number and the expiration date.

Class III Gaming Procedures

Type of review: Extension of a currently-approved collection.

Title: Class III Gaming Procedures, 25 CFR part 291.

Summary: The collection of information will ensure that the provisions of IGRA, the relevant provisions of State laws, Federal law and the trust obligations of the United States are met when federally recognized tribes submit Class III procedures for review and approval by the Secretary of the Interior. Sections 291.4, 291.10, 291.12 and 291.15 of 25 CFR part 291, Class III Gaming Procedures, specifies the information collection requirement. An Indian tribe must ask the Secretary to issue Class III gaming procedures. The information to be collected includes: name of Tribe and State; tribal documents, State documents, regulatory schemes, the proposed procedures and other documents deemed necessary. Collection of this information is currently authorized under an approval by OMB (OMB Control Number 1076–0149). All information is collected when the tribe makes a request for Class III gaming procedures. Annual reporting and recordkeeping burden for this collection of information is estimated to occur one time on an annual basis. The estimated number of annual requests is 12 tribes seeking Class III gaming procedures. The estimated time to review instructions and complete each application is 320 hours. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 3,840 hours.

Frequency of Collection: Annually.

Description of Respondents: Federally recognized tribes.

Total Respondents: 12.

Response Hours per Application: 320.

Total Annual Burden Hours: 3,840 hours.

Tribal Revenue Allocation Plans

Type of review: Extension of a currently-approved collection.

Title: Tribal Revenue Allocation Plans, 25 CFR part 290.

Summary: In order for Indian tribes to distribute net gaming revenues in the form of per capita payments, information is needed by the BIA to ensure that Tribal Revenue Allocation Plans include assurances that certain statutory requirements are met, a breakdown of the specific uses to which net gaming revenues will be allocated, eligibility requirements for participation, tax liability notification and the assurance of the protection and preservation of the per capita share of

minors and legal incompetents. Sections 290.12, 290.17, 290.24 and 290.26 of 25 CFR part 290, Tribal Revenue Allocation Plans, specifies the information collection requirement. An Indian tribe must ask the Secretary to approve a Tribal Revenue Allocation Plan. The information to be collected includes: name of Tribe, tribal documents, the allocation plan and other documents deemed necessary. Collection of this information is currently authorized under an approval by OMB (OMB Control Number 1076–0152). All information is collected when the tribe submits a Tribal Revenue Allocation Plan. Annual reporting and recordkeeping burden for this collection of information is estimated to average between 75–100 hours for approximately 50 respondents, including the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 3,750–5,000 hours. We are using the higher estimate for purposes of estimating the public burden.

Frequency of Collection: Annually.

Description of Respondents: Federally recognized tribes.

Total Respondents: 50.

Total Annual Responses: 50.

Total Annual Burden Hours: 5,000 hours.

Request for Comments

The Bureau of Indian Affairs solicits comments in order to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

(2) Evaluate the bureau's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond.

Any public comments received will be addressed in the Bureau of Indian Affairs' submission of the information collect request to the Office of Management and Budget.

All comments will be available for public review during regular business hours. There may be an instance when we decide to withhold information, but if you wish us to withhold your name and address, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowed by law. We will not consider anonymous comments, and we will make public all comments from businesses and from individuals who represent businesses.

Dated: December 3, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–31474 Filed 12–12–02; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–080–1430–BG]

Closure of Public Lands: Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary Emergency Closure of Public Land in Uintah County, Utah.

SUMMARY: Notice is hereby given that the Vernal Field Office is re-issuing a temporary emergency closure of public land in Uintah County, Utah, effective January 1, 2003. This order temporarily closes 1,320 acres of public land to public land to public use and entry. This temporary closure area encompasses the following public land:

Salt Lake Meridian, Utah

T.10 S., R. 24 E.,
Sec. 22, E½, E½NW¼, SW¼NW¼, SW¼;
Sec. 23, W½;
Sec. 26, NW¼, NW¾;
Sec. 27, NE¼, E½NW¾, NE¼SW¼, N½SE¼.

The authorized officer has determined that the underground methane generation occurring at the abandoned White River Oil Shale Mine is a safety hazard making the facility and surrounding area unsafe for human occupation of activity. The closure area effects the above described public land presently encumbered by the abandoned White River Oil Shale Mine, ancillary support facilities, and associated ventilation shafts. The closure prohibits all use, entry, or access onto the affected public lands; however, the access restriction may be waived under extraordinary circumstances where limited, short term, emergency access is warranted and appropriate clearances and authorization are obtained from the authorized officer.

If BLM authorizes emergency access, it will be conditioned on the following provisions:

All persons entering and leaving the closure area must be accompanied by personnel from the BLM's Vernal Field Office and only after BLM has determined that the area is safe for a site visit.

All persons allowed emergency access into the closure area must waive and release all direct and indirect claims that my occur against the United States for liability for any loss, damage, personal injury, or death that may occur as a result of their access to the closure area and will indemnify and hold harmless the United States. All such incidents shall immediately be reported to the BLM Vernal Field Office.

The purpose of this closure is to protect human life, ensure public safety, and prevent human contact with a known hazardous situation. A map of the area affected by this closure is on file and may be viewed at the BLM Vernal Field Office.

EFFECTIVE DATE: The closure order is effective from January 1, 2003, through December 31, 2004, unless it is rescinded or modified by the authorized officer before that date.

SUPPLEMENTARY INFORMATION: This closure is done under the authority of 43 CFR 8364.1. Persons violating this closure shall be subject to the penalties provided in 43 CFR 8360.0–7, including a fine not to exceed $1,000.00 and/or imprisonment not to exceed one year.

FOR FURTHER INFORMATION CONTACT: The BLM Vernal Field office, 170 South 500 East, Vernal, Utah 84078, (435) 781–4400.

Dated: October 2, 2002.

David E. Howell,

Field Manager.

[FR Doc. 02–31404 Filed 12–12–02; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–01–134–1610–241A]

Colorado Canyons National Conservation Area Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meetings.

SUMMARY: The Colorado Canyons National Conservation Area (CCNCA) Advisory Council will hold its first monthly meeting of 2003 on January 9, 2003. The meeting will begin at 3 p.m. and will be held at the Mesa County Administration Building; 544 Rood Avenue, Grand Junction, CO; in the main floor Multipurpose Room. Throughout the remainder of calendar year 2003, the CCNCA Advisory Council meetings will be held the first Thursday of each month in the same location and at the same time. The CCNCA was established on October 24, 2000, when the Colorado Canyons National Conservation Area and Black Ridge Wilderness Act of 2000 (the Act) was signed by the President. The Act required that the CCNCA Advisory Council be established to provide advice in the preparation and implementation of the CCNCA resource management plan and environmental impact statement.

DATES: January 9, 2002.

ADDRESSES: For further information or to provide written comments, please contact Greg Gnesios, Bureau of Land Management (BLM), 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3049; e-mail *Gregory_Gnesios@co.blm.gov.*

SUPPLEMENTARY INFORMATION: The CCNCA Advisory Council will meet on Thursday, January 9, 2003, at the Mesa County Administration Building; 544 Rood Avenue, Grand Junction, CO; in the main floor Multipurpose Room, Grand Junction, Colorado, beginning at 3 p.m. The agenda topics for this meeting are:

(1) The re-election of council officials.

(2) Recommendations from working groups.

(3) Land health recommendations.

(4) Public comment period.

(5) Agenda for next meeting.

Beginning February 2003 the CCNCA Advisory Council meetings will be held monthly on the first Thursday of each month at the same time and location. The dates for these meetings are February 6, 2003; March 6, 2003; April 3, 2003; May 1, 2003; June 5, 2003; July 3, 2003; August 7, 2003; September 4, 2003; October 2, 2003; November 6, 2003; and December 4, 2003.

Topics of discussion for future meetings will include recommendations on management alternatives, including the preferred management alternative, potential environmental consequences of all identified alternatives, completion of the draft resource management plan, partnerships, interpretation, adaptive management, socioeconomics, and other issues as appropriate.

All meetings will be open to the public and will include a time set aside for public comment. Interested persons may make oral statements at the meetings or submit written statements at any meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of all Council meetings will be maintained at the Bureau of Land Management Office in Grand Junction, Colorado. They are available for public inspection and reproduction during regular business hours within 30 days of the meeting. In addition, minutes and other information concerning the CCNCA Advisory Council can be obtained from the CCNCA website at: *http://www.co.blm.gov/cocanplan* which will be updated following each Advisory Council meeting.

Dated: December 6, 2002.

Greg Gnesios,

Manager, Colorado Canyons National Conservation Area.

[FR Doc. 02–31415 Filed 12–12–02; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–03–1220–DU–064B]

Notice of Proposed Amendment to the California Desert Conservation Area Plan and Effective Date for Off-Road Vehicle Trail (Route of Travel) Designations in the Western Colorado Desert (WECO) Portion of Imperial County, CA

AGENCY: Department of Interior, Bureau of Land Management, California Desert District.

ACTION: Notice of amendment to the California Desert Conservation Area (CDCA) Plan and effective date for off-road vehicle trail (route of travel) designations in the Western Colorado Desert (WECO) portion of Imperial County, California.

DATES: Written protests on the Proposed Plan Amendment will be accepted if received by January 13, 2003. Instructions for filing protests are contained below under **SUPPLEMENTARY INFORMATION.**

SUMMARY: The Proposed Plan Amendment establishes or revises off-road vehicle designations of areas and trails (routes of travel) in accordance with part 43 Code of Federal Regulations subpart 8342. Trails (routes of travel) for inclusion in the State of California's Discovery Trail System and a segment of the Juan Bautista de Anza National Historic Trail are identified and authorized. The proposed designations pertain to public lands addressed by the California Desert Conservation Area Plan in the Western Colorado Desert (WECO) portion of Imperial County that lie west of the Imperial Sand Dunes Recreation Management Area.

ADDRESSES: The proposed amendment and environmental assessment are available for review on line at *http://www.ca.blm.gov/elcentro* and at the following address and telephone number: Bureau of Land Management, El Centro Field Office, 1661 South 4th Street, El Centro, CA 92243, (760) 337–4400.

FOR FURTHER INFORMATION CONTACT: Arnold Schoeck, Bureau of Land Management, 1661 South 4th Street, El Centro, CA 92243; (760) 337–4441.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management published in the **Federal Register** on March 25, 2002, the Notice of Intent to prepare an Environmental Assessment and Plan Amendment to the California Desert Conservation Area Plan by making off-road vehicle trail (route of travel) designations in the Western Colorado Desert portion of Imperial County. The public scoping period for the project began March 25, 2002 and the **Federal Register** on May 23, 2002 extended the comment period until May 31, 2002. On October 18, 2002, in the **Federal Register**, the Notice of Availability for the Environmental Assessment and the plan amendment was published in the **Federal Register** on October 18, 2002. The **Federal Register** Notice started a 30-day public comment period that ended on November 18, 2002.

Any person who has participated in the plan amendment process and has an interest that is or may be adversely affected by the proposed amendment may protest such approval or amendment. A protest may raise only those issues that were submitted for the record during the planning process. Protests must be filed in writing with the BLM Director in accordance with 43 CFR 1610.5–2:

(i) The name, mailing address, telephone number and interest of the person filing the protest;

(ii) A statement of the issue or issues being protested;

(iii) A statement of the part or parts of the plan or amendment being protested;

(iv) A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and

(v) A concise statement explaining why the State Director's decision is believed to be wrong. The decision of the Director on any protest shall be the final decision for the Department of the Interior.

Mailing address for filing a protest: *Regular mail:* Director (210), Attn: Brenda Williams, P.O. Box 66538, Washington, DC 20035.

Overnight mail: U.S. Department of the Interior, Director, Bureau of Land Management, Protest Coordinator (WO–

210), 1620 "L" Street, NW., Rm 1075, Washington, DC 20036.

Greg Thomsen,

Field Manager, El Centro Field Office.

[FR Doc. 02–31517 Filed 12–12–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Closure Order Establishing Prohibitions On Shell Road Through Peoria Wildlife Area, New Melones Lake Project, Tuolumne County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of temporary closure to motorized vehicles.

SUMMARY: The Bureau of Reclamation's (Reclamation) New Melones Resource Office will temporarily close a portion of Shell Road to public vehicle traffic beginning December 15, 2002, and continuing through approximately April 15, 2003. The exact re-opening date will depend upon weather and resource conditions. The portion of Shell Road to be closed passes through Section 20, R14E, T1N, and continues through Section 19, R14E, T1N, MD Meridian, on property owned and managed by Reclamation. This section of the road passes through the Peoria Wildlife Mitigation Area, as defined in the Final Report, New Melones Lake Fish and Wildlife Resources Report, October 1991, page 16. The entire 2,500-acre Peoria Wildlife Mitigation Area will now be off-limits to public vehicular access—with the exception of authorized parking areas and turnarounds located outside new gates to be established at the closure points on both ends of Shell Road on Reclamation property.

EFFECTIVE DATES: The closure will be effective December 15, 2002, through approximately April 15, 2003. Exact re-opening date will be dependant upon weather and resource conditions.

ADDRESSES: A map is available for inspection at Reclamation's New Melones Lake Visitor Center, located at 6850 Studhorse Flat Road, Sonora, California 95370. The map may be viewed between the hours of 10 a.m. and 4 p.m. daily. To have a map mailed to your address, send your request to the above address, Attention: Shell Road Temporary Closure Map Request.

FOR FURTHER INFORMATION CONTACT: Reclamation, Mid-Pacific Region Public Affairs Office, at 916–978–5100 or Reclamation, New Melones Resource Office, 209–536–9094. Written comments will be accepted regarding this temporary closure now through December 15, 2002. Please send written comments to: Bureau of Reclamation, Attn: Jeff Laird, 6850 Studhorse Flat Road, Sonora, California 95370; Fax: 209–536–9652; E-mail: *jlaird@mp.usbr.gov.*

SUPPLEMENTARY INFORMATION: This action is being taken under 43 CFR Part 423 to protect public safety and prevent additional resource degradation. Reclamation will prohibit public vehicle traffic on Shell Road and off-road throughout the Peoria Wildlife Area during the winter months in an effort to protect sensitive resources and preserve the existing roadway, which has become severely eroded and unsafe. Significant maintenance will be required to return the road to a safe condition for public vehicles. Vegetation damage, habitat destruction, erosion and sedimentation, and related resource impacts are increasing in this area. Natural resources continue to be damaged and public safety compromised by illegal actions including target shooting, poaching, off-road driving, fires, littering, dumping of large debris and hazardous materials, poaching, vandalism, and illegal camping.

Planning for a draft Shell Road Corridor Management Plan to address these and other issues is currently in progress. By closing Shell Road temporarily this winter, further damage can be avoided while plans for improvements are devised and needed maintenance is performed.

Public access by foot, horseback, and bicycle will not be impeded. The area will remain open to authorized public recreational activities including but not limited to legal hunting, hiking, rock climbing, horseback riding, bicycling, wildlife viewing, and sightseeing. Parking and turnaround areas will be located outside new gates to be established at the closure points on both ends of Shell Road on Reclamation property. Signage will be installed to notify the public of the closure.

Exceptions to the vehicle closure will include Reclamation Operations and Maintenance personnel, law enforcement and fire department officers, and other agencies, entities, and individuals who have received express written authorization from Reclamation to enter the closure areas.

This order is posted in accordance with 43 CFR part 423.3(b). Violation of this prohibition or any prohibition listed in 43 CFR part 423 is punishable by fine or imprisonment for not more than six months or both.

Dated: November 14, 2002.

Thomas J. Aiken,

Area Manager, Central California Area Office.

[FR Doc. 02–31416 Filed 12–12–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 2003 is 5.875 percent. Discounting is to be used to convert future monetary values to present values.

DATES: This discount rate is to be used for the period October 1, 2002, through and including September 30, 2003.

FOR FURTHER INFORMATION CONTACT: James R. Handlon, Economist, Office of Policy, Washington DC 20240; telephone: (202) 513–0603.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 5.875 percent for fiscal year 2003.

This rate has been computed in accordance with Section 80(a), Pub. L. 93–251 (88.Stat. 34) and 18 CFR 704.39, which: (1) Specify that the rate shall be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate shall not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average to be 5.477 percent. Rounding this average yield to the nearest one-eighth percent is 5.500 percent, which exceeds the permissible one-quarter of 1 percent change from fiscal year 2002 to 2003. Therefore, the change is limited to one-quarter of 1 percent.

The rate of 5.875 percent shall be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common time basis.

Dated: November 8, 2002.

Elizabeth Cordova-Harrison,

Deputy Director, Office of Policy.

[FR Doc. 02–31419 Filed 12–12–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 22, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or e-mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: Experience Rating Report.

OMB Number: 1205–0164.

Affected Public: State, Local, or Tribal Government.

Type of Response: Reporting.

Frequency: Annually.

Number of Respondents: 53.

Annual Responses: 53.

Average Response Time: 15 minutes (.25 hours).

Total Annual Burden Hours: 13.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The ETA–204, Experience Rating Report, provides ETA with the data needed to measure variations in assigned contribution rates that result from different experience rating systems. The data are used to provide an indication of whether solvency problems exist in State Trust Fund accounts and for analyzing factors that give rise to solvency problems. Section 303(a)(6) of the Social Security Act authorizes ETA to collect this information.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–31485 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 4, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on (202) 693–4129 or e-mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Office of Disability Employment Policy, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Office of Disability Employment Policy (ODEP).

Type of Review: New collection.

Title: Employment Assistance Referral Network (EARN) Employer and Provider Enrollment Forms, Employer Job Posting Form, and Employer and Provider Surveys.

OMB Number: 1230–ONEW.

Frequency: On occasion and Annually.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; Farms; Federal Government; and State, Local, or Tribal Government.

Number of Respondents: 7,500

Form	Number of responses	Average response time (hours)	Annual burden hours
Provider enrollment form (EARN–1)	6,000	.33 (20 min.)	1,980
Employer enrollment form (EARN–2)	7,500	.33 (20 min.)	2,475
Employer survey	300	.33 (20 min.)	100
Provider Survey	300	.33 (20 min.)	100
Total	14,100		4,655

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Description: EARN is a referral service that links employers with service providers who refer appropriate candidates with disabilities. This information collection will enable ODEP to implement its responsibilities under Pub. L. 106–554 and Executive Order 13187 by providing necessary information for referrals as well as provide data on the effectiveness of the program.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–31486 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–CX–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

AGENCY: Employment and Training Administration, DOL.

ACTION: Notice.

SUMMARY: The U.S. Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95 (44 U.S.C. 35069(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Interagency Federal Agency Team from the Departments of Labor, Education, Health and Human Services, Agriculture, and Housing and Urban Development is soliciting comments concerning the proposed reinstatement of the Workforce Investment Act: Final Unified State Planning Guidance (OMB Control No. 1205–0407), should states desire to submit a modification to their current plan. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below.

FOR FURTHER INFORMATION CONTACT: Maria Flynn, Office of One-Stop Operations/ATTN: Dolores Hall-Beran, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210: (202) 693–3045 (phone) (this is not a toll-free number); e-mail at *dberan@doleta.gov*; fax at: (202) 693–3015, call TTD at: 1–800–326–2577. Information may also be found at the Web site—*http://www.doleta.gov/usworkforce/*

SUPPLEMENTARY INFORMATION:

I. Background

Section 501 of the Workforce Investment Act (Public Law 105–220) provides the Governor of the state the option to submit a strategic Unified State Plan for two or more of the activities or programs listed in section 501(b)(2) of the Act, which include secondary vocational education programs authorized under the Carl D. Perkins Vocational and Applied Technology Education Act, programs authorized under the title I of the Rehabilitation Act of 1973, other programs administered by Federal agencies other than the Department of Labor (DOL) as well as title I of WIA and other programs administered by DOL. The Unified Planning process provides an opportunity for states to maximize joint planning and coordination among a variety of programs and activities. States have the option of submitting a single plan for up to 16 Federal education and training programs. The Unified Plan outlines a 5-year strategy for the statewide workforce investment system of the State.

Acting on behalf of the Secretaries from each agency whose program is included in the Plan, senior managers from these respective agencies, complete a comprehensive coordinated review of the Unified State Plan modification submitted by the Governor. Based upon this review, the appropriate Secretaries of the federal agencies listed above, make a determination of whether the Plan or its modification is consistent with each program or activities' governing legislation. If no outstanding issues are noted, the Unified Plan modification is approved; if deficiencies are noted, the Governor is advised that the state must submit clarification or additional information. Modifications to the Unified Plan during the 5-year period undergo a comparable review and determination followed by a letter indicating approval or the need for additional information or clarification.

II. WIA Reauthorization

Reauthorization of the Workforce Investment Act is scheduled for 2003. The Administration is in the process of developing a reauthorization proposal which may impact the Unified Planning Process.

Note: Since the original publication date, several of the Interagency Federal staff contact information listed in Section C (Programs and Activities) of the Unified Planning Guidance has changed. Should State staff require information on the programs and activities listed WIA section 501(b)(2), please note the following new contact information:

U.S. Department of Education, Office Vocational and Adult Education (OVAE)

—Secondary Vocational Education Programs (Perkins III/Secondary);

—Postsecondary Vocational Education (Perkins II/Postsecondary;

—Tech-Prep Education (Title II of Perkins III); and

—Activities authorized under Title II of WIA (Adult Education and Family Literacy Programs):

Contact: Daniel Bonner, Director of Policy Analysis: 202–260–2517 (phone); 202–260–9183 (fax); (e-mail: *Daniel.Bonner@ed.gov).*

U.S. Department of Labor, Employment and Training Administration (ETA)

—Activities authorized under Title I (Workforce Investment Activities for Adults, Dislocated Workers and Youth or WIA Title I):

Contact: Maria Flynn, Office of Workforce Investment, Division of One-Stop Operations/ATTN: Dolores Hall-Beran: 202–693–3045 (phone); 202–693–6336 (fax); (e-mail: *mflynn@doleta.gov* or *dberan@doleta.gov).*

—Activities authorized under chapter 2 of title II of the Trade Act of 1974 as amended (Trade Act Programs):

Contact: Edward Tomchick: 202–693–3577 (phone); 202–693–3584); (e-mail: *etomchick@doleta.gov).*

—Programs authorized under the Wagner-Peyser Act (Employment Service):

Contact: Stephanie Cabell: 202–693–3171 (phone); 202–693–3015 (fax); (e-mail: *scabell@doleta.gov.*

—Programs authorized under State unemployment compensation laws (Unemployment Insurance):

Contact: William Coyne: 202–693–3202 (phone); 202–693–3975 (fax); (e-mail: *wcoyne@doleta.gov).*

—Programs authorized under title V of the Older Americans Act of 1965 (Senior Community Service Employment Program, or SCSEP):

Contact: Robert Lunz: 202–693–3762 (phone); 202–693–3817 (fax); (e-mail: *rlunz@doleta.gov).*

U.S. Department of Labor, Veterans' Employment and Training Service (VETS)

—Programs authorized under chapters 41 and 42 of Title 38, U.S.C., and 20 CFR parts 1001 and 1005 (Veterans Programs, including Veterans Employment, Disabled Veterans' Outreach Program and Local Veterans' Employment Representative Programs):

Contact: Miguel Hernandez: 202–693–4708 (phone); 202–693–4755 (fax); (e-mail: *Hernandez-miguel@dol.gov.*)

U.S. Department of Housing and Urban Development (HUD)

—Training activities funded by HUD under the Community Development Block Grants (CDBG) and Public Housing Programs:

Contact: Jeffery Lubell: 202–708–1537 ext. 5915 (phone); (e-mail: *Jeffery_m._lubell@hud.gov.*)

U.S. Department of Health and Human Services (HHS)

—Programs authorized under the Community Services Block Grant Act (Community Services Block Grant, or CSBG):

Contact: Brandy RayNor-Hill: 202–205–5926 (phone); 202–401–5718 (fax); (e-mail: *braynor@acf.hhs.gov).*

III. Current Actions

Section 501 of the Workforce Investment Act (Public Law 105–220) provides the Governor of the state the option to submit a strategic Unified State Plan for two or more of the activities or programs listed in section 501(b)(2) of the Act. The Unified State Planning Guidance Instructions outlines a strategy for the submission of a unified plan for the statewide workforce investment system that meets the requirements of Title V of the Act. This reinstatement is needed in order for state governments to submit modifications to their Unified State Plan. These modifications may be needed in order to keep the Plan a viable, living document over its five-year life. The Act gives states the authority to modify WIA Plans at any time and the recently issued Training and Employment Guidance Letter No. 4–02 encourages states to use the unified planning guidance to move from stand-alone planning to a unified planning process. This reinstatement is needed in order for state governments to have available the document used during their initial submission of State Plans, should the state need to submit a modification to its existing Plan.

IV. Review Focus

The Department of Labor is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarify the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information, (*e.g,* electronic submissions of responses via e-mail submission, faxes, *etc.*).

Type of Review: Reinstatement.

Agency: Employment and Training Administration.

Title: State Unified Plan Planning Guidance (for State Unified Plans Submitted under section 501 of the Workforce Investment Act of 1998).

OMB Number: 1205–0407.

Total Respondents: 57.

Frequency: As Needed.

Total Responses Received: 23.

Average Time per Response: 25 hours.

Estimated Total Burden Hours: 734.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for the Office of Management and Budget's approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC this 10th day of December, 2002.

Grace A. Kilbane,

Administrator, Office of Workforce Investment, Employment and Training Administration.

[FR Doc. 02–31560 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6548]

State of Alaska Commercial Fisheries Entry Commission Permit #57327S, Aleknagik, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57327S, Aleknagik, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31487 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6547]

State of Alaska Commercial Fisheries Entry Commission Permit #56585O, Aleknagik, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 56585O, Aleknagik, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31488 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6545]

State of Alaska Commercial Fisheries Entry Commission Permit #60381N, Aleknagik, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #60381N, Aleknagik, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31489 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6544]

State of Alaska Commercial Fisheries Entry Commission Permit #58534G, Aleknagik, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #58534G, Aleknagik, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31490 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6542]

State of Alaska Commercial Fisheries Entry Commission Permit #56175H, Aleknagik, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56175H, Aleknagik, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31491 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6539]

State of Alaska Commercial Fisheries Entry Commission Permit #56739M, Aleknagik, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56739M, Aleknagik, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31492 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6538]

State of Alaska Commercial Fisheries Entry Commission Permit #59511H, Aleknagik, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59511H, Aleknagik, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31493 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7097]

State of Alaska Commercial Fisheries Entries Commission Permit #64708K, Clarks Point, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #64708K, Clarks Point, Alaska.

The workers stopped fishing in July of 2001, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 26th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31494 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7074]

State of Alaska Commercial Fisheries Entry Commission Permit #55914X, Twin Hills, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of State of Alaska Commercial Fisheries Entry Commission Permit #55914X, Twin Hills, Alaska.

The workers stopped fishing in July of 2001, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 26th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31495 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6760]

State of Alaska Commercial Fisheries Entry Commission Permit #58675X, Goodnews Bay, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #58675X, Goodnews Bay, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 26th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31496 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6580]

State of Alaska Commercial Fisheries Entry Commission Permit #56790R, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56790R, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31497 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6579]

State of Alaska Commercial Fisheries Entry Commission Permit #68167V, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #68167V, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31498 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6577]

State of Alaska Commercial Fisheries Entry Commission Permit #55153C, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #55153C, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31500 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6572]

State of Alaska Commercial Fisheries Entry Commission Permit #59194H, Dillingham, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 59194H, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31501 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6574]

State of Alaska Commercial Fisheries Entry Commission Permit #66280G, Dillingham, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #66280G, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31502 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6573]

State of Alaska Commercial Fisheries Entry Commission Permit #65811Q, Dillingham, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #65811Q, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31503 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6571]

State of Alaska Commercial Fisheries Entry Commission Permit #57803W, Dillingham, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 57803W, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31504 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6575]

State of Alaska Commercial Fisheries Entry Commission Permit #55724E, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #55724E, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31505 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6582]

State of Alaska Commercial Fisheries Entry Commission Permit #55022I, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #55022I, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31506 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6759]

State of Alaska Commercial Fisheries Entry Commission Permit #57464Q, Ekwok, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57464Q, Ekwok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington DC, this 26th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31507 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6757]

State of Alaska Commercial Fisheries Entry Commission Permit #55836U, Ekwok, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #55836U, Ekwok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 26th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31508 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6756]

State of Alaska Commercial Fisheries Entry Commission Permit #67876N, Egegik, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #67876N, Egegik, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 26th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31509 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6712]

State of Alaska Commercial Fisheries Entry Commission Permit #59609H, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59609H, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 26th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31510 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6644]

State of Alaska Commercial Fisheries Entry Commission Permit #64514S, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #64514S, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 26th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31511 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6643]

State of Alaska Commercial Fisheries Entry Commission Permit #55694F, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #55694F, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 26th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31512 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6642]

State of Alaska Commercial Fisheries Entry Commission Permit #59541A, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59541A, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 26th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31513 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6641]

State of Alaska Commercial Fisheries Entry Commission Permit #61907L, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61907L, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 26th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31514 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6640]

State of Alaska Commercial Fisheries Entry Commission Permit #58284V, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 58284V, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 26th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31515 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6639]

State of Alaska Commercial Fisheries Entry Commission Permit #61292S, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61292S, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 26th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31516 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in

accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to the impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

Florida
- FL020015 (Mar. 1, 2002)
- FL020016 (Mar. 1, 2002)
- FL020034 (Mar. 1, 2002)
- FL020076 (Mar. 1, 2002)
- FL020100 (Mar. 1, 2002)

Volume IV

Illinois
- IL020019 (Mar. 1, 2002)

Ohio
- OH020002 (Mar. 1, 2002)
- OH020008 (Mar. 1, 2002)
- OH020013 (Mar. 1, 2002)
- OH020020 (Mar. 1, 2002)
- OH020023 (Mar. 1, 2002)
- OH020027 (Mar. 1, 2002)
- OH020029 (Mar. 1, 2002)

Volume V

Iowa
- IA020001 (Mar. 1, 2002)

Kansas
- KS020002 (Mar. 1, 2002)
- KS020006 (Mar. 1, 2002)
- KS020009 (Mar. 1, 2002)
- KS020010 (Mar. 1, 2002)
- KS020011 (Mar. 1, 2002)
- KS020013 (Mar. 1, 2002)
- KS020015 (Mar. 1, 2002)
- KS020017 (Mar. 1, 2002)
- KS020018 (Mar. 1, 2002)
- KS020020 (Mar. 1, 2002)
- KS020025 (Mar. 1, 2002)
- KS020029 (Mar. 1, 2002)
- KS020061 (Mar. 1, 2002)
- KS020063 (Mar. 1, 2002)

New Mexico
- NM020001 (Mar. 1, 2002)
- NM020011 (Mar. 1, 2002)

Oklahoma
- OK020013 (Mar. 1, 2002)
- OK020014 (Mar. 1, 2002)
- OK020016 (Mar. 1, 2002)
- OK020034 (Mar. 1, 2002)
- OK020035 (Mar. 1, 2002)
- OK020036 (Mar. 1, 2002)
- OK020037 (Mar. 1, 2002)
- OK020038 (Mar. 1, 2002)

Texas
- TX020003 (Mar. 1, 2002)
- TX020009 (Mar. 1, 2002)
- TX020063 (Mar. 1, 2002)
- TX020064 (Mar. 1, 2002)

Volume VI

Colorado
- CO020001 (Mar. 1, 2002)
- CO020002 (Mar. 1, 2002)
- CO020003 (Mar. 1, 2002)
- CO020004 (Mar. 1, 2002)
- CO020005 (Mar. 1, 2002)
- CO020007 (Mar. 1, 2002)
- CO020008 (Mar. 1, 2002)
- CO020010 (Mar. 1, 2002)
- CO020011 (Mar. 1, 2002)
- CO020012 (Mar. 1, 2002)
- CO020013 (Mar. 1, 2002)
- CO020014 (Mar. 1, 2002)

Idaho
- ID020001 (Mar. 1, 2002)
- ID020002 (Mar. 1, 2002)

Oregon
- OR020001 (Mar. 1, 2002)
- OR020004 (Mar. 1, 2002)
- OR020007 (Mar. 1, 2002)
- OR020017 (Mar. 1, 2002)

VOLUME VII

Arizona
- AZ020001 (Mar. 1, 2002)
- AZ020002 (Mar. 1, 2002)
- AZ020003 (Mar. 1, 2002)
- AZ020004 (Mar. 1, 2002)
- AZ020005 (Mar. 1, 2002)
- AZ020007 (Mar. 1, 2002)
- AZ020010 (Mar. 1, 2002)
- AZ020011 (Mar. 1, 2002)
- AZ020012 (Mar. 1, 2002)
- AZ000013 (Mar. 1, 2002)
- AZ020014 (Mar. 1, 2002)
- AZ020015 (Mar. 1, 2002)
- AZ020016 (Mar. 1, 2002)
- AZ020017 (Mar. 1, 2002)
- AZ020018 (Mar. 1, 2002)

California
- CA020001 (Mar. 1, 2002)
- CA020002 (Mar. 1, 2002)
- CA020004 (Mar. 1, 2002)
- CA020009 (Mar. 1, 2002)
- CA020013 (Mar. 1, 2002)
- CA020019 (Mar. 1, 2002)
- CA020023 (Mar. 1, 2002)
- CA020025 (Mar. 1, 2002)
- CA020028 (Mar. 1, 2002)
- CA020029 (Mar. 1, 2002)
- CA020030 (Mar. 1, 2002)
- CA020031 (Mar. 1, 2002)
- CA020032 (Mar. 1, 2002)
- CA020033 (Mar. 1, 2002)
- CA020035 (Mar. 1, 2002)
- CA020036 (Mar. 1, 2002)
- CA020037 (Mar. 1, 2002)

Nevada
- NV020001 (Mar. 1, 2002)
- NV020002 (Mar. 1, 2002)
- NV020004 (Mar. 1, 2002)
- NV020005 (Mar. 1, 2002)
- NV020009 (Mar. 1, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed in Washington, DC this 4th day of December, 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–31216 Filed 12–12–02; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50–528]

Arizona Public Service Co.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Arizona Public Service Company (the licensee) to withdraw its application dated September 26, 2002, and its supplement dated October 23, 2002, for proposed amendment to Facility Operating License No. NPF–41 for the Palo Verde Nuclear Generating Station, Unit No. 1, located in Maricopa County, Arizona.

The proposed amendment would have revised the definition of steam generator tube inspection in Section 5.5.9, "Steam Generator (SG) Tube Surveillance Program," of the Technical Specifications.

The Commission had previously issued Notices of Consideration of Issuance of Amendment published in the **Federal Register** on October 3, 2002 (67 FR 62079) and on November 26, 2002 (67 FR 70763). The initial notice stated that the amendment had been submitted under exigent circumstances, to be issued on or about October 25, 2002, with the public comment period being less than the normal 30-day period. The basis for the exigent circumstances was provided in the notice. However, on October 25, 2002, the NRC staff issued a letter to the licensee stating that the proposed amendment was not needed on an exigent basis prior to plant restart. Therefore, the second notice was published to provide the normal 30-day public comment period for the amendment. By letter dated November 19, 2002, the licensee requested to withdraw the proposed amendment request, and by letter dated November 22, 2002, the NRC staff stated that it did not object to the licensee's withdrawal of the application. Therefore, the proposed change effectively has been withdrawn.

For further details with respect to this action, see the application for amendment dated September 26, 2002, and its supplement dated October 23, 2002; the licensee's letter dated November 19, 2002; and the staff's letter of November 22, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 4th day of December, 2002.

For the Nuclear Regulatory Commission.

Jack Donohew,

Senior Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–31437 Filed 12–12–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Co., North Anna Power Station, Units 1 and 2; Notice of Availability of the Final Supplement 7 to the Generic Environmental Impact Statement Regarding License Renewal for the North Anna Power Station, Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has published a final plant-specific Supplement 7 to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating licenses NPF–4 and NPF–7 for the North Anna Power Station, Units 1 and 2, for an additional 20 years of operation. The North Anna Power Station units are operated by Virginia Electric and Power Company (VEPCo). North Anna Power Station is located on the southern shore of Lake Anna, Louisa County, Virginia. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative methods of power generation.

In Section 9.3 of the report:

Based on (1) the analysis and findings in the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, NUREG–1437; (2) the Environmental Report submitted by VEPCo; (3) consultation with Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of public comments, the recommendation of the staff is that the Commission determine that the adverse environmental impacts of license renewal for North Anna Power Station, Units 1 and 2, are not so great that preserving the option of license renewal for energy planning decision-makers would be unreasonable.

The final Supplement 7 to the GEIS is available electronically for public inspection in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION, CONTACT: Mr. Andrew J. Kugler, License Renewal and

Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Kugler may be contacted at 301–415–2828 or by writing to: Andrew J. Kugler, U.S. Nuclear Regulatory Commission, MS O–12D1, Washington, DC 20555.

Dated at Rockville, Maryland, this 4th day of December, 2002.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–31435 Filed 12–12–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Co., Surry Power Station, Units 1 and 2; Notice of Availability of the Final Supplement 6 to the Generic Environmental Impact Statement Regarding License Renewal for the Surry Power Station, Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has published a final plant-specific Supplement 6 to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating licenses DPR–32 and DPR–37 for the Surry Power Station, Units 1 and 2, for an additional 20 years of operation. The Surry Power Station units are operated by Virginia Electric and Power Company (VEPCo). Surry Power Station is located on the Gravel Neck Peninsula in Surry County, Virginia. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative methods of power generation.

As discussed in Section 9.3 of the report:

Based on (1) the analysis and findings in the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, NUREG–1437; (2) the Environmental Report submitted by VEPCo; (3) consultation with Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of public comments, the recommendation of the staff is that the Commission determine that the adverse environmental impacts of license renewal for Surry Power Station, Units 1 and 2, are not so great that preserving the option of license renewal for energy planning decision-makers would be unreasonable.

The final Supplement 6 to the GEIS is available electronically for public inspection in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's Agency wide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION, CONTACT: Mr. Andrew J. Kugler, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Kugler may be contacted at 301–415–2828 or by writing to: Andrew J. Kugler, U.S. Nuclear Regulatory Commission, MS O–12D1, Washington, DC 20555.

Dated at Rockville, Maryland, this 4th day of December, 2002.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–31436 Filed 12–12–02; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in December 2002. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in January 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. The required interest rate is the "applicable percentage" (currently 100 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.)

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in December 2002 is 4.96 percent.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between January 2002 and December 2002.

For premium payment years beginning in:	The required interest rate is:
January 2002	5.48
February 2002	5.45
March 2002	5.40
April 2002	5.71
May 2002	5.68
June 2002	5.65
July 2002	5.52
August 2002	5.39
September 2002	5.08
October 2002	4.76
November 2002	4.93
December 2002	4.96

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in January 2003 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC on this 6th day of December, 2002.

Joseph H. Grant,

Deputy Executive Director and Chief Operating, Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 02–31433 Filed 12–12–02; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copy available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Form N–54A, SEC File No. 270–182, OMB Control No. 3235–0237; Form N–54C, SEC File No. 270–184, OMB Control No. 3235–0236; Form N–6F, SEC File No. 270–185, OMB Control No. 3235–0238.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (the "Act"), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

- *Form N–54A under the Investment Company Act of 1940; Notification of Election to be Subject to Sections 55 through 65 of the Investment Company Act of 1940 Filed Pursuant to Section 54(a) of the Act.*

Form N–54A (17 CFR 274.53) is a notification of election to the Commission to be regulated as a business development company. A company making such an election only has to file a form N–54A once.

It is estimated that approximately four respondents per year file with the Commission a form N–54A. Form N–54A requires approximately 0.5 burden hours per response resulting from creating and filing the information required by the form. The total burden hours for form N–54A would be 2.0 hours per year in the aggregate. The estimated annual burden of 2.0 hours represents an increase of 1.0 hour over the prior estimate of 1.0 hour. The increase in burden hours is attributable to an increase in the number of respondents from three to four.

- *Form N–54C under the Investment Company Act of 1940, Notification of Withdrawal of Election to be Subject to Sections 55 through 65 of the Investment Company Act of 1940 Filed Pursuant to Section 54(c) of the Investment Company Act of 1940.*

Form N–54C (17 CFR 274.54) is a notification to the Commission that a company withdraws its election to be regulated as a business development company. Such a company only has to file a form N–54C once.

It is estimated that approximately eight respondents per year file with the Commission a form N–54C. Form N–54C requires approximately 1 burden hour per response resulting from creating and filing the information required by the form. The total burden hours for form N–54C would be 8 hours per year in the aggregate. The estimated annual burden of 8 hours represents a decrease of 4 hours over the prior estimate of 12 hours. The decrease in burden hours is attributable to a decrease in the number of respondents from 12 to eight.

- *Form N–6F under the Investment Company Act of 1940, Notice of Intent to Elect to be Subject to Sections 55 through 65 of the Investment Company Act of 1940.*

Certain companies may have to make a filing with the Commission before they are ready to elect on form N–54A to be regulated as a business development company.[1] A company that is excluded from the definition of "investment company" by section 3(c)(1) of the Investment Company Act of 1940 because it has fewer than one hundred shareholders and is not making a public offering of its securities may lose such an exclusion solely because it proposes to make a public offering of securities as a business development company. Such a company, under certain conditions, would not lose its exclusion if it notifies the Commission on form N–6F (17 CFR 274.15) of its intent to make an election to be regulated as a business development company. The company only has to file a form N–6F once.

It is estimated that zero respondents per year file with the Commission a form N–6F. Form N–6F requires approximately 0.5 burden hours per response resulting from creating and filing the information required by the form. The total burden hours for form N–6F would be 0 hours per year in the aggregate but we are requesting one hour for administrative purposes. The estimated annual burden of 1.0 hour represents no change from the prior estimate of 1.0 hour.

The estimates of average burden hours for forms N–54A, N54–C and N–6F are made solely for the purposes of the Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: December 4, 2002.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–31398 Filed 12–12–02; 8:45 am]

BILLING CODE 8010–01–P

[1] A company might not be prepared to elect to be subject to sections 55 through 65 of the Investment Company Act of 1940 because its capital structure or management compensation plan is not yet in compliance with the requirements of those sections.

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration on the American Stock Exchange LLC (Drivetime Automotive Group, Inc. (Formerly Known as Ugly Duckling Corporation) 12% Subordinated Debentures (Due 2003) and 11% Subordinated Debentures (Due 2007)) File No. 1–14759

December 6, 2002.

Drivetime Automotive Group, Inc. (formerly known as Ugly Duckling Corporation), a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and rule 12d2–2(d) thereunder,[2] to withdraw its 12% Subordinated Debentures (due 2003) and 11% Subordinated Debentures (due 2007) ("Securities"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex rule 18 by complying with all applicable laws in State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors ("Board") of the Issuer unanimously approved a resolution on November 13, 2002, to withdraw the Issuer's Securities from listing on the Amex. The Board of the Issuer took such action based on the limited trading volume in the Securities and the costs associated with listing its Securities on the Amex. In addition, the Issuer states pursuant to the indentures under which the Securities were issued, it is not required to maintain the listing of its Securities on the Amex.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and shall not affect its obligation to be registered under section 12(g) of the Act.[3]

Any interested person may, on or before December 30, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–31399 Filed 12–12–02; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(g).
[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Pacific Exchange, Inc. (Telesoft Corp., Common Stock, No Par Value) File No. 1–13830

December 6, 2002.

Telesolf Corp., an Arizona corporation, ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, no par value ("Security"), from listing and registration on the Pacific Exchange, Inc. ("PCX" or "Exchange").

The Board of Directors ("Board") of the Issuer approved a resolution on November 4, 2002, to withdraw its Security from listing on the Exchange. In making the decision to withdraw its Security from the PCX, the Board considered the following: (i) The number of stockholders of record (54 holders of record as of October 14, 2002), (ii) the limited trading volume in the Security; and (iii) the cost associated with maintaining a listing on the Exchange. The Issuer's Security has traded on the OTC Bulletin Board since October 24, 2002.

The Issuer stated in its application that it has met the requirements of PCX rule 5.4(b) by complying with all applicable laws in effect in the State of Arizona, in which it is incorporated, and with the PCX's rules that govern the removal of securities from listing and registration on the Exchange. The Issuer's application relates solely to the withdrawal of the Security from listing on the PCX and shall not affect its obligation to be registered under section 12(g) of the Act.[3]

Any interested person may, on or before December 30, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–31400 Filed 12–12–02; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(g).
[4] 17 CFR 200.30–3(a)(1)..

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46951; File No. SR–NASD–2002–121]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify Application of Additional Circuit/SDP Charge Under Rule 7010(f) to Non-NASD Members

December 6, 2002.

On September 12, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market. Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify application of Additional Circuit/SDP Charge under NASD Rule 7010(f) to Non-NASD Members.[3] Specifically, Nasdaq proposes to impose the Additional Circuit/SDP Charge under NASD Rule 7010(f) on those subscribers who do not utilize existing T1 capacity efficiently by placing 18 service delivery platforms ("SDPs") on each T1 circuit.[4]

The proposed rule change was published for comment in the **Federal Register** on October 28, 2002.[5] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[6] The Commission finds specifically that the proposed rule change promotes the objectives of Section 15A(b)(6) of the Act,[7] which requires, among other things, that the rules of the association be designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, because the increased efficiency of Nasdaq's T1 circuits, which will expand the available capacity of Nasdaq's Enterprise Wide Network II ("EWN II") should enhance Nasdaq's ability to keep pace with future growth in trading volumes.

In addition, the Commission finds that the proposed rule change is consistent with Section 15A(b)(5) of the Act[8] which requires that the rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

The Commission notes that this fee applies to members and non-members equally.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–NASD–2002–121) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–31402 Filed 12–12–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] Nasdaq also submitted a proposed rule change to modify the conditions under which members pay the Additional Circuit/SDP Charge. *See* Securities Exchange Act Release No. 46695 (October 21, 2002), 67 FR 65819 (October 28, 2002) (SR–NASD–2002–120).
[4] Currently, the Additional Circuit/SDP Charge only applies if a subscriber does not place 6 SDPs on each T1 circuit.
[5] *See* Securities Exchange Act Release No. 46696 (October 21, 2002), 67 FR 65821 (October 28, 2002) (SR–NASD–2002–121).
[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).
[7] 15 U.S.C. 78*o*–3(b)(6).
[8] 15 U.S.C. 78*o*–3(b)(5).
[9] *See supra* note 3.
[10] 15 U.S.C. 78s(b)(2).
[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46947; File No. SR–PCX–2002–55]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Regarding Market Maker Quoting Obligations

December 4, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on August 7, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. On November 8, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt PCX rules 6.37(a)(5) and 6.37(c)(4), and amend commentary .05 to PCX rule 6.37 to require options market makers to vocalize a legal-width, two-sided market for a minimum of 10 contracts whenever a floor broker enters a trading crowd and calls for a market in an option series that is one of the 120 most actively traded equity options.[4]

The text of the proposed rule change appears below. New text is in italics.

* * * * *

Text of the Proposed Rule Change

Pacific Exchange, Inc.; Rules of the Board of Governors

¶4935 Obligations of Market Makers

Rule 6.37(a)—No change.

(b) Appointment as a Primary Market Maker.—No change.

(1)–(4)—No change.

(5) Whenever a Floor Broker enters a trading crowd and calls for a market in a particular option series, each Market Maker present at the trading post will be obligated to vocalize a two-sided, legal-width market (pursuant to rule 6.37(b)(1)) for a minimum of 10 contracts. This obligation only applies to:

(A) Market Makers who have executed a transaction in the issue, but not those who have been assigned contracts by the Order Book Official pursuant to Commentary .05, on the day of the Floor Broker's call for a market or on the previous business day;

(B) Option issues that are ranked in the 120 most actively traded equity options based on the total number of contracts traded nationally as reported by the Options Clearing Corporation. For each current month, the Exchange's determination of whether an equity option ranks in the top 120 most active issues will be based on volume statistics for the one month of trading activity that occurred two months prior to the current month;

(C) Non-broker-dealer orders; and

(D) Series not designated as LEAPS (pursuant to rule 6.4).

(c) In Classes of Option Contracts Other Than Those to Which Appointed.—No change.

(1)–(3)—No change.

(4) Whenever a Floor Broker enters a trading crowd and calls for a market in a particular option series, each Market Maker present at the trading post will be obligated to vocalize a two-sided, legal-width market (pursuant to rule 6.37(b)(1)) for a minimum of 10 contracts. This obligation only applies to:

(A) Market Makers who have executed a transaction in the issue, but not those who have been assigned contracts by the Order Book Official pursuant to Commentary .05, on the day of the Floor Broker's call for a market or on the previous business day;

(B) Option issues that are ranked in the 120 most actively traded equity options based on the total number of contracts traded nationally for a specified month based on volume as reported by the Options Clearing Corporation. For each current month, the Exchange's determination of whether an equity option ranks in the top 120 most active issues will be based on volume statistics for the one month of trading activity that occurred two months prior to the current month;

(C) Non-broker-dealer orders; and

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] *See* letter from Steven B. Matlin, Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 7, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended the proposed rule change by: (i) Changing the quotation minimum from 20 contracts to 10 contracts; (ii) adding an exception for market makers where a transaction occurs as a result of being assigned contracts by the order book official; (iii) making technical corrections to the rule text; and (iv) offering a basis for requesting accelerated effectiveness for the proposal.
[4] Subject to the conditions set forth in proposed PCX rule 6.37(b)(5)(A)–(D).

(D) Series not designated as LEAPS (pursuant to rule 6.4).

(d)–(f)—No Change.

Commentary .01–.04—No Change.

Commentary .05—Whenever a Floor Broker enters a trading crowd and calls for a market in any class and series at that post, each Market Maker present at the post where the option is traded is obligated, at a minimum, to make a market for one contract *except as provided for in rule 6.37(b)(5) and rule 6.37(c)(4)*, at the established price. In addition, the Options Floor Trading Committee may determine that Market Makers in trading crowds shall increase the depth of their markets as set forth in Options Floor Procedure Advice B–12. In the event a Floor Broker is unable to satisfy his order from bids and offers given in the crowd, the Order Book Official may assign one contract to every Market Maker present within the primary zone to assist the Floor Broker in satisfying his order. If a Market Maker at the post either bids lower or offers higher than the established market, such Market Maker shall be obligated to trade one contract at the price quoted by the Market Maker.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify PCX rule 6.37 to provide that, subject to certain conditions, whenever a floor broker enters a trading crowd and calls for a market, certain market makers present at the trading post will be obligated to vocalize a two-sided, legal-width market for a minimum of 10 contracts. This obligation would apply to: (a) Market makers who have executed a transaction in the issue, but not those who have been assigned contracts by the Order Book Official pursuant to PCX rule 6.37, commentary .05, on either the day of the floor broker's call for a market or on the previous business day;[5] (b) option issues that are ranked in the top 120 most actively traded equity options; (c) non-broker dealer orders; and (d) series not designated as LEAPS.[6] The proposed rule change would apply to market makers regardless of whether the issue is included in their primary appointment zones.

The Exchange would determine whether an equity option ranks in the top 120 most active, nationally-traded issues, based on volume statistics reported by the Options Clearing Corporation.[7] The list of designated issues will be based on volume statistics for trading activity that occurred two months prior to the current month. For example, February's list of top 120 issues will be based on December's volume, March's list of top 120 issues will be based on January's volume, and so forth. Thereafter, the Exchange will continue to designate the top 120 issues based on a two-month lag time. The Exchange intends to notify its Members of the issues that are designated to be in the top 120 via a regulatory bulletin that will be published at the beginning of each month.

The Exchange represents that the proposed rule change is intended to enhance the quoting obligations of Exchange market makers. Currently, when floor brokers enter a trading crowd and request a market, market makers are only required to make a market for one contract.[8] The Exchange believes that the proposed rule change will also provide greater depth and liquidity to the marketplace, and will therefore benefit the public.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[9] in general, and furthers the objectives of section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest.

[5] *See* Amendment No. 1.

[6] *See* PCX rule 6.4.

[7] The Exchange notes that it intends to use the same procedure for designating the top 120 activity traded issues that it currently uses in designating such issues for purposes of its "shortfall fee." *See* Securities Exchange Act Release No. 45351 (January 29, 2002), 67 FR 5631 (February 6, 2002) (SR–PCX–2001–51).

[8] *See* PCX rule 6.37, commentary .05.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

PCX does not believe that the proposed rule change, as amended, would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change, as amended, were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Specifically, the Commission solicits comments on whether the proposal would have a detrimental effect on competition and liquidity on the Exchange. The Commission notes that the proposal to increase the quote size obligations for Top 120 options would apply to all market makers that have executed a trade on the same or previous day that a floor broker requests a market in a particular Top 120 option. The Commission understands that PCX market makers have continuous market making obligations in those options for which they have a primary appointment.[11] In addition, the Commission understands that PCX market makers are permitted to make markets in option issues that are outside of their primary appointment.[12] Accordingly, the Commission questions whether the proposal to increase market makers' quote size obligations would discourage some market makers from executing transactions in option issues that are outside of their primary appointment.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–PCX–2002–55 and should be submitted by January 3, 2003.

[11] *See* PCX rule 6.37(b). *See also* PCX rule 6.35.

[12] *See* PCX rule 6.37(c).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–31401 Filed 12–12–02; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–279 (Sub-No. 4X)]

Canadian National Railway Company—Discontinuance of Trackage Rights Exemption—In Niagara County, NY

Canadian National Railway Company (CN) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to discontinue trackage rights over a 0.15-mile portion of trackage owned by Canada Southern Railway Company (CSR) from a point on the international railway bridge at Niagara Falls, milepost 0.15, to a point where the trackage joins the CSX Transportation, Inc. trackage, milepost 0.0, in Niagara County, NY.[1] The line traverses United States Postal Service Zip Code 14305.

CN has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any potential overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 14, 2003, unless stayed pending reconsideration. Petitions to stay and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] must be filed by December 23, 2002. Petitions to reopen[3] must be filed by January 2, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to CN's representative: Michael J. Barron, Jr., Counsel for Canadian National Railway Company, Canadian National/Illinois Central, 455 North Cityfront Plaza Drive, Chicago, IL 60611–5317.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

[1] CN notes that the 0.15-mile trackage rights sought to be discontinued are overhead rights over trackage owned by CSR, for which CSR is seeking abandonment authority in *Canada Southern Railway Company—Abandonment Exemption—in Niagara County, NY*, STB Docket No. AB–584 (Sub-No. 1X) (STB served Oct. 22, 2002).

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

[3] Because this is a discontinuance proceeding, trail use/rail banking and public use conditions are not appropriate. This proceeding is exempt from environmental and historic reporting requirements. CN only intends to discontinue service over the line. Because CN's discontinuance of trackage rights will merely result in the cessation of service over the line, and CN has not sought abandonment authority, this proceeding is exempt from the reporting requirements listed above and no environmental documentation will be prepared. *See* 49 CFR 1105.6(c)(6) and 1105.6(a) and (b). Because CSR is seeking abandonment authority with respect to this line in STB Docket No. AB–584 (Sub-No. 1X), *see supra* note 1, environmental issues related to abandonment will be addressed in that proceeding.

Decided: December 5, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–31459 Filed 12–12–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34266]

Martin Marietta Materials, Inc.—Continuance in Control Exemption—Alamo North Texas Railroad Corporation

Martin Marietta Materials, Inc. (MMM), a noncarrier, has filed a verified notice of exemption to continue in control of Alamo North Texas Railroad Corporation (Alamo North) upon Alamo North's becoming a Class III railroad.[1]

The transaction was scheduled to be consummated on or after November 20, 2002, the effective date of the exemption (7 days after the notice was filed).

At the time this notice was filed, MMM indirectly controlled two railroads, Fredonia Valley Railroad, Inc., operating in Kentucky, and Alamo Gulf Coast Railroad Co., operating in Texas.

MMM states that: (i) The railroads do not connect with each other or any railroad in their corporate family; (ii) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval of requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for the labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of

[1] *See Alamo North Texas Railroad Corporation—Construction and Operation Exemption—Wise County, TX*, STB Finance Docket No. 34002 (STB served Sept. 3, 2002 and Nov. 16, 2001).

a petition to revoke will not automatically stay the transaction.

An original and ten copies of all pleadings referring to STB Finance Docket No. 34266, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, P.C., 1920 N Street, NW., 8th Floor, Washington, DC 20036–1601.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 6, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–31460 Filed 12–12–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34213]

Puget Sound & Pacific Railroad—Lease and Operation Exemption—Union Pacific Railroad Company

Puget Sound & Pacific Railroad (PSPR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate approximately 1.85 miles of rail line from Union Pacific Railroad Company extending between milepost 2.41 at Blakeslee Junction, WA, and milepost 4.26 at Raisch, WA.

Because PSPR's projected annual revenues will exceed $5 million, PSPR certified to the Board on November 8, 2002, that, on October 2, 2002, it had posted the required notice of intent to undertake the proposed transaction at the workplace of the employees on the affected line and had served a copy of the notice of intent on the national offices of all labor unions with employees on the rail line. *See* 49 CFR 1150.42(e). PSPR stated in its verified notice that the transaction was scheduled to be consummated on or after December 1, 2002.[1]

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34213, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Gary A. Laakso, Vice President Regulatory Counsel, Puget Sound & Pacific Railroad, 5300 Broken Sound Boulevard NW., Boca Raton, FL 33487 and Louis E. Gitomer, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 9, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–31457 Filed 12–12–02; 8:45 am]

BILLING CODE 4915–00–P

[1] Due to the timing of PSPR's certification to the Board, consummation under these circumstances would have had to be delayed until January 7, 2003 (60 days after PSPR's certification to the Board that it had complied with the requirements of 49 CFR 1150.42(e)). In a decision in this proceeding served on December 6, 2002, however, the Board granted the request by PSPR for waiver of the remainder of the 60-day notice period to allow consummation to occur as early as December 6, 2002.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–845X]

CHS Holdings, Inc.—Abandonment Exemption—in Pembina County, ND

On November 25, 2002, CHS Holdings, Inc. (CHS) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon its entire line of railroad extending from milepost 177.44 to the end of the line at milepost 179.55, a distance of 2.11 miles, in Pembina County, ND. The line traverses U.S. Postal Service Zip Code 58271 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in CHS's possession will be made available promptly to those requesting it.

In this proceeding, CHS is proposing to abandon a line that constitutes its entire rail system. CHS seeks to extinguish its common carrier obligation and, following abandonment of the line, to operate it as a private carrier. When issuing abandonment authority for a railroad line that constitutes the carrier's entire system, the Board does not impose labor protection, except in specifically enumerated circumstances. *See Northampton and Bath R. Co.—Abandonment,* 354 I.C.C. 784, 785–86 (1978) (*Northampton*). Therefore, if the Board grants the petition for exemption, in the absence of a showing that one or more of the exceptions articulated in *Northampton* are present, no labor protective conditions will be imposed.

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 14, 2003.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than January 2, 2003. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–845X and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Fritz R. Kahn, 1920 N Street, NW., 8th Floor, Washington, DC 20036–1601. Replies to the CHS petition are due on or before January 2, 2003.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *"http://www.stb.dot.gov."*

Decided: December 5, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–31458 Filed 12–12–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 4, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 13, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1505.
Form Number: IRS Form 8820.
Type of Review: Extension.
Title: Orphan Drug Credit.
Description: Filers use this form to elect to claim the orphan drug credit, which is 50% of the qualified clinical testing expenses paid or incurred with respect to low or unprofitable drugs for rare diseases and conditions, as designated under section 526 of the Federal Food, Drug, and Cosmetic Act.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 100.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	7 hr., 10 min.
Learning about the law or the form.	1 hr.
Preparing and sending the form to the IRS.	1 hr., 9 min.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 932 hours.
Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 02–31461 Filed 12–12–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms is soliciting comments concerning the Labeling and Advertising Requirements Under the Federal Alcohol Administration Act.

DATES: Written comments should be received on or before February 11, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226; (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Edward A. Reisman, Alcohol Labeling and Formulation Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226; (202) 927–8485.

SUPPLEMENTARY INFORMATION:

Title: Labeling and Advertising Requirements Under the Federal Alcohol Administration Act.
OMB Number: 1512–0482.
Reporting Requirement ID Number: 5100/1.
Abstract: The Federal Alcohol Administration Act specifically requires the Secretary of the Treasury to issue regulations controlling labeling and advertising of alcohol beverages. Bottlers and importers of alcohol beverages must adhere to numerous performance standards for statements made on labels and in advertisements of alcohol beverages. These performance standards include minimum mandatory labeling and advertising statements. In addition, the Act prohibits labeling and advertising statements which deceive or mislead the consumer. Under this prohibition, performance standards are necessary for all labeling and advertising statements, including optional statements.
Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.
Type of Review: Extension.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 6,060.
Estimated Total Annual Burden Hours: 1.
Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 9, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–31438 Filed 12–12–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Privacy of Consumer Financial Information

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before February 11, 2003.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Elizabeth C. Baltierra, Program Analyst (Compliance), Compliance Policy, (202) 906–6540, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Privacy of Consumer Financial Information.

OMB Number: 1550–0103.

Form Number: N/A.

Regulation requirement: N/A.

Description: This information collection is needed to evidence compliance with Title V of the Gramm-Leach-Bliley Act.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 1,104.

Estimated Frequency of Response: Annually.

Estimated Burden Hours Per Response: 45 hours.

Estimated Total Burden: 49,680 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Dated: December 9, 2002.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 02–31518 Filed 12–12–02; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Loan Application Register (HMDA)

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before February 11, 2003.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Sheila Reid, Program Analyst (Compliance), Compliance Policy, (202) 906–6315, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is

soliciting comments concerning the following information collection.

Title of Proposal: Loan Application Register (HMDA).

OMB Number: 1550–0021.

Form Number: N/A.

Regulation requirement: N/A.

Description: Reporting is required by statute to assist OTS in monitoring compliance with fair lending laws.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 753.

Estimated Frequency of Response: Annually.

Estimated Burden Hours Per Response: .03 hours.

Estimated Total Burden: 90,000 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Dated: December 9, 2002.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 02–31519 Filed 12–12–02; 8:45 am]

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Federal Register

Friday,
December 13, 2002

Part II

Securities and Exchange Commission

17 CFR Parts 210, 240, 249, and 274
Strengthening the Commission's Requirements Regarding Auditor Independence; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 240, 249 and 274

[Release No. 33–8154; 34–46934; 35–27610; IC–25838; IA–2088, FR–64, File No. S7–49–02]

RIN 3235–AI73

Strengthening the Commission's Requirements Regarding Auditor Independence

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("SEC" or "Commission") is proposing amendments to its existing requirements regarding auditor independence to enhance the independence of accountants that audit and review financial statements and prepare attestation reports filed with the Commission. The proposed rules recognize the critical role played by audit committees in the financial reporting process and the unique position of audit committees in assuring auditor independence. As directed by section 208(a) of the Sarbanes-Oxley Act of 2002, we are proposing rules to: Revise the Commission's regulations related to the non-audit services that, if provided to an audit client, would impair an accounting firm's independence; define the circumstances whereby an issuer's audit committee can and should pre-approve all audit and allowable non-audit services provided to the issuer by the auditor of an issuer's financial statements; prohibit partners on the audit engagement team from providing audit services to the issuer for more than five consecutive years; prohibit an accounting firm from auditing an issuer's financial statements if certain members of management of that issuer had been members of the accounting firm's audit engagement team within the one-year period preceding the commencement of audit procedures; and require that the auditor of an issuer's financial statements report certain matters to the issuer's audit committee, including "critical" accounting policies used by the issuer.

In addition to the provisions required by the Act, we also are proposing rules defining an accountant as not being independent from an audit client if any partner, principal or shareholder of the accounting firm who is a member of the engagement team received compensation based on any service provided or sold to that client other than audit, review and attest services. Further, we proposed to amend and require additional disclosures to investors of information related to the audit and non-audit services provided by, and fees paid by the issuer to, the auditor of the issuer's financial statements.

DATES: Comments should be received on or before January 13, 2003.

ADDRESSES: You should send three copies of your comments to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549–0609. You also may submit your comments electronically to the following address: *rule-comments@sec.gov*. To help us process and review your comments more efficiently, comments should be submitted by one method only. All comment letters should refer to File No. S7–49–02; this file number should be included in the subject line if you use electronic mail. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. We will post electronically-submitted comment letters on the Commission's Internet Web site (*http://www.sec.gov*). We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Samuel L. Burke, Associate Chief Accountant, or Robert E. Burns, Chief Counsel, at (202) 942–4400, Office of the Chief Accountant, or, with respect to questions about investment companies, Brian D. Bullard, Chief Accountant, at (202) 942–0590, Division of Investment Management, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing to add rule 2–07 to Regulation S–X [1] and to amend rule 2–01 of Regulation S–X,[2] to amend item 9 of Regulation S–K,[3] to amend forms 10–K, 10–KSB, 20–F and 40–F [4] and to amend proposed form N–CSR.[5]

I. Introduction and Background

On July 30, 2002, the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act" or "the Act") was enacted.[6] Title II of the Sarbanes-Oxley Act, entitled "Auditor Independence," requires the Commission to adopt, by January 26, 2003, final rules, under which certain non-audit services will be prohibited, conflict of interest standards will be strengthened, auditor partner rotation and second partner review requirements will be strengthened, and the relationship between the independent auditor and the audit committee will be clarified and enhanced.

As directed by the Sarbanes-Oxley Act, the proposed rules focus on key aspects of auditor independence:[7] the provision of certain non-audit services and the unique ability of the audit committee to insulate the auditor from the pressures that may be exerted by management, the potential conflict of interest that can be created when a former member of the audit engagement team accepts a key management position with the audit client, and the need for effective communications between the auditor and audit committee. The proposed rules also address the possibility of any partner, principal or shareholder who is a member of the audit engagement team being unduly influenced by financial incentives to sell non-audit services to the audit client.

Title II of the Sarbanes-Oxley Act adds new subsections (g) through (l) to section 10A of the Securities Exchange Act of 1934 as follows:

- Section 201 adds subsection (g), which specifies that a number of non-audit services are prohibited. Many of these services were previously prohibited by the Commission's independence standards adopted in November 2000 (with some exceptions and qualifications).[8] These proposed rules amend the Commission's existing rules on auditor independence and clarify the meaning and scope of the prohibited services under the Sarbanes-Oxley Act.
- Section 201 also adds subsection (h) and requires that non-audit services that are not prohibited under the Sarbanes-Oxley Act and the Commission's rules be subject to pre-approval by the registrant's audit committee. These proposed rules specify the requirements for obtaining such pre-approval from the registrant's audit committee.
- Section 202 adds subsection (i), which requires an audit committee to pre-approve allowable non-audit services and specifies certain exceptions to the requirement to obtain pre-approval. These proposed rules specify the requirements of the registrant's audit committee for pre-approving non-audit services by the auditor of the registrant's financial statements.
- Section 203 adds subsection (j), which establishes mandatory rotation of the engagement partner, and the reviewing (or "concurring") partner every five years. These proposed rules expand the number of engagement personnel covered by the rotation requirement and clarify the "time out" period.
- Section 204 adds subsection (k), which requires that the auditor report on a timely basis certain information to the audit committee. In particular, the Sarbanes-Oxley Act requires that the auditor report to the audit committee on a timely basis (a) all critical accounting policies used by the registrant, (b) alternative accounting treatments that have been discussed with management along with the potential ramifications of using those alternatives, and (c) other written communications provided by the auditor to management, including a schedule of unadjusted audit differences.[9] These proposed rules strengthen the relationship between the audit committee and the auditor.
- Section 206 adds subsection (l) addressing certain conflict of interest provisions. The Sarbanes-Oxley Act prohibits an accounting firm from performing audit services for a registrant if certain key members of management have recently been employed in an audit capacity by the audit firm. These proposed rules clarify which members of management are covered by these conflict of interest rules.

In addition to the mandate under title II of the Act, these proposed rules address situations where partners, principals, or shareholders of the firm who work on the audit of a company are compensated for selling non-audit services to the same audit client.

As noted above, the proposed rules establish and clarify the important roles and responsibilities of registrant audit committees as well as the registrant's independent accountant.[10]

We have proposed a separate rule under Exchange Act section 10A (240.10A–2) to implement section 3(b)(1) of the Sarbanes-Oxley Act and clarify that our rules implementing title II of Sarbanes-Oxley not only define conduct that impairs independence but also constitute separate violations under the Exchange Act. We have otherwise drafted the proposed rules (except for the proxy disclosure changes) as part of Regulation S–X, and propose to place them among the current auditor independence provisions. These provisions are generally based on whether an accountant is "independent" in the conduct of the audit. We are considering changing the format from rules defining actions that impair the auditor's independence to rules prohibiting such actions and placing them with other Exchange Act rules. The Act supplemented section 10A of the Exchange Act and gave us express authority to adopt rules to implement these new statutory provisions. Among the reasons to move these rules under that provision is to: (1) Organize the related statutory and regulatory provisions more logically, and (2) make explicit that violations would be punishable as Exchange Act violations, as contemplated by sections 3(b)(1) and 208 of the Sarbanes-Oxley Act, with all the remedies available for Exchange Act violations, including penalties. Even if we were to move the rules out of Regulation S–X, we would intend for these provisions also to remain professional standards of independence. If we move them to be Exchange Act rules, we are considering a new provision in Regulation S–X that would state that a violation of these rules would also render the auditor not independent under Regulation S–X. Violations of these provisions could therefore also result in professional discipline in the event of a violation and cause the issuer's financial statement to fail to conform to Regulation S–X.

We seek comment on this alternative approach. We recognize that auditors have traditionally looked to Regulation S–X as the place where rules relating to audits are placed, and we do not intend to make reference to and compliance with the rules more difficult. We seek comment on whether any conforming changes in other parts of the securities laws would be necessary if we adopted these rules and made them Exchange Act rules. We also seek comment on whether any of the current auditor independence rules or definitions under Regulation S–X, the substance of which we do not propose to change in light of the Sarbanes-Oxley Act, should also be made into Exchange Act rules, or conversely, whether any of the particular proposed or existing rules relating to audits should stay in Regulation S–X even if all or most of the remaining proposed rules are adopted as Exchange Act rules.

II. Discussion of Proposed Rules

A. Conflicts of Interest Resulting From Employment Relationships

The Commission's existing rules deem a firm to not be independent with respect to an audit client if a former partner, principal, shareholder, or professional employee of an accounting firm [11] accepts employment with a client if he or she has a continuing financial interest in the accounting firm or is in a position to influence the firm's operations or financial policies. These proposed rules renumber, but do not otherwise change, that existing requirement.[12]

Consistent with section 206 of the Sarbanes-Oxley Act, we propose adding a restriction on employment with audit clients by former employees of the accounting firm. The Act specifies that an accounting firm cannot perform an audit for a registrant:

> * * * [i]f a chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for the issuer, was employed by that registered independent public accounting firm and *participated in any capacity in the audit* of that issuer during the 1-year period preceding the date of the initiation of the audit.[13] (Emphasis added.)

Consistent with that directive, we propose that the employment of audit engagement team [14] members of an accounting firm in a financial reporting oversight role at an audit client within one year prior to the commencement of procedures for the current audit engagement would cause the accounting firm not to be independent with respect to that registrant. The rules that we are proposing would apply to employment relationships entered into between audit engagement team members and their audit clients.[15]

As discussed later in this release, the term "financial reporting oversight role" refers to any individual who has direct responsibility for oversight over those

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[1] 17 CFR 210.2–07.

[2] 17 CFR 210.2–01.

[3] 17 CFR 240.14a–101.

[4] 17 CFR 249.310; 17 CFR 249.310b; 17 CFR 249.220f; 17 CFR 249.240f.

[5] 17 CFR 249.331; 17 CFR 274.128.

[6] Pub. L. 107–204, 116 Stat. 745 (2002).

[7] Consistent with the Commission's existing independence rules, these proposals would apply to foreign audit firms as well as firms domiciled in the United States. Additionally, these proposals coupled with the Commission's existing independence rules are proposed with the Principles of Auditor Independence and the Role of Corporate Governance in Monitoring an Auditor's Independence issued by the International Organization of Securities Commissions (IOSCO) in October 2002 in mind.

[8] The Commission adopted a comprehensive set of rules governing auditor independence on November 21, 2000. *See* Release No. 33–7919 (Nov. 21, 2000); 65 FR 76008 (Dec. 5, 2000) (hereinafter "November 2000 release").

[9] Statement on Auditing Standards No. 89, "Audit Adjustments," (Dec. 1999).

[10] The Commission's proposals respond not only to the provisions of the Sarbanes-Oxley Act but also the rulemaking petitions filed by the AFL–CIO on December 11, 2001, and The Honorable H. Carl McCall on January 21, 2002. Both petitions are available on the Commission's Web site (*http://www.sec.gov*).

[11] The terms accounting firm and accountant are used interchangeably in this proposing release. The term "accountant" is defined in 210.2–01(f) below.

[12] 17 CFR 210.2–01(c)(2)(iii)(A).

[13] *See* section 206 of the Sarbanes-Oxley Act.

[14] 17 CFR 210.2–01(f)(7).

[15] 17 CFR 210.2–01(f)(6).

who prepare the registrant's financial statements and related information (e.g., management's discussion and analysis) that are included in filings with the Commission.

The concept of a "cooling-off" period before an auditor can take a position at the audit client was previously considered by the Independence Standards Board.[16] In considering a cooling-off period, the Independence Standards Board noted that a mandated cooling-off period for partners and professional staff might create a greater appearance of independence between the accounting firm and the registrant.[17] Ultimately, however, the Independence Standards Board provided for an alternative to a strict cooling-off period. The Independence Standards Board concluded that:

> An audit firm's independence is impaired with respect to an audit client that employs a former firm professional who could, by reason of his or her knowledge of and relationships with the audit firm, adversely influence the quality or effectiveness of the audit, unless the firm has taken steps that effectively eliminate such risk.[18]

Independence Standards Board's Standard No. 3 specifically notes that additional caution is warranted when it has been less than one year since the professional disassociated him or herself from the firm.[19] The provisions of the Sarbanes-Oxley Act reflect the view that the passage of time is the only appropriate safeguard to reduce the perceived loss of independence for the audit firm caused by the acceptance of employment by a member of the engagement team with an audit client.

The Act specifies that the cooling off period must be one year. Under our proposed rules, the prohibition would commence one year prior to the earlier of either when the accountant began the current fiscal year's audit or when the accountant began review procedures necessary to conduct a timely review of the registrant's quarterly financial information associated with the current fiscal year. The measurement period is based upon the year the former employee commenced initial employment. For example, if audit engagement team member A last worked on the audit engagement on January 31, 2002 (audit report filed with the Commission on February 19, 2002), and joined audit client B on September 1, 2003, and the review procedures for B commenced on February 20, 2003, the accounting firm would not lose its independence with respect to the audit client since audit engagement team member A did not participate as an audit engagement team member subsequent to February 19, 2002. With respect to determining commencement dates, generally accepted auditing standards require that an audit engagement be properly planned. As such, procedures associated with the planning of the engagement constitute the commencement of an audit.[20] Additionally, SAS No. 71 establishes the procedures necessary to conduct a timely review of interim information.[21]

The Commission is also considering whether it should provide an exemption from these requirements for companies meeting certain criteria, in order to address the practical difficulties that some companies to hire qualified personnel. The criteria might include the available pool of candidates for a position, the size of the company, and the audit committee's role in ensuring the independence of the auditor.

- Is the one-year cooling-off period sufficiently long to achieve an appearance of independence by the accounting firm? If not, what period would be appropriate?
- Is the term audit engagement team sufficiently clear? If not, what changes would improve the description to describe the group of accountants who would be covered?
- Is the phrase commencement of the audit sufficiently clear? If not, what changes would improve the description? Is that the appropriate time to mark the commencement of the period? Is there a better mark?
- Is the phrase commencement of review procedures sufficiently clear? If not, what changes would improve the description?
- Is it appropriate that the cooling-off period provisions apply to employment relationships involving audit engagement team members and their audit clients? Should the requirements be limited to audit clients who are issuers as defined in section 205 of the Act?
- Are the appropriate officers covered by the proposed rule? If not, which additional individuals should be subject to the cooling-off period provision? For example, should national office personnel who would be excluded under the proposal be included?
- Should the proposed rules apply equally to large firms/companies as small firms/companies? Would the proposed rules impose a cost on smaller issuers that is disproportionate to the benefits that would be achieved? Why or why not? Should there be an exemption to this requirement for smaller businesses?
- The "cooling off" period applies to all entities in the investment company complex. Is this too broad? Why or why not?
- Should the Commission include exceptions subject to certain criteria? If so, what should these criteria be?

B. Services Outside the Scope of the Practice of Auditors

Section 201(a) of the Sarbanes-Oxley Act adds new section 10A(g) to the Securities Exchange Act of 1934. This section states that it shall be unlawful for a registered public accounting firm that performs an audit of an issuer's financial statements (and any person associated with such a firm) to provide to that issuer, contemporaneously with the audit, any non-audit service, including nine services set forth in the Act. There is an exception, however, for "any non-audit service, including tax services, that is not described" as a prohibited service "only if" the service has been pre-approved by the issuer's audit committee. The nine prohibited non-audit services included in the Act are:

- Bookkeeping or other services related to the accounting records or financial statements of the audit client;
- Financial information systems design and implementation;
- Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
- Actuarial services;
- Internal audit outsourcing services;
- Management functions or human resources;
- Broker or dealer, investment adviser, or investment banking services;
- Legal services and expert services unrelated to the audit; and
- Any other service that the Board [22] determines, by regulation, is impermissible.

Many of these services are already the subject of our rules. As explained more fully below, we interpret the legislative history as indicating (1) Congress did not intend the rules to contain broad categorical exceptions and (2) the scope of the prohibited services should be judged against three basic principles. Those three broad principles are that an auditor cannot (1) audit his or her own work, (2) perform management functions, or (3) act as an advocate for the client. To do so would impair the auditor's independence.

Under section 201(b) of the Act, the Board,[23] on a case-by-case basis, may exempt any issuer, accounting firm or transaction from the prohibition on the provision of services under section 10A(g) to the extent that the exemption is "necessary or appropriate in the public interest and is consistent with the protection of investors, and subject to review by the Commission."

The Senate Report on the bill that was the primary foundation for the Act,[24] states, in part:

> The intention of this provision is to draw a clear line around a limited list of non-audit services that accounting firms may not provide to public company audit clients because their doing so creates a fundamental conflict of interest for the accounting firms. The list is based on simple principles. An accounting firm, in order to be independent of its audit client, should not audit its own work, which would be involved in providing bookkeeping services, financial information systems design, appraisal or valuation services, actuarial services, and internal audit outsourcing services to an audit client. The accounting firm should not function as part of management or as an employee of the audit client, which would be required if the accounting firm provides human resources services such as recruiting, hiring, and designing compensation packages for the officers, directors, and managers of an audit client. The accounting firm should not act as an advocate of the audit client, which would be involved in providing legal and expert services to an audit client in legal, administrative, or regulatory proceedings, or serving as a broker-dealer, investment adviser, or investment banker to an audit client, which places the auditor in the role of promoting a client's stock or other interests.[25]

In statements made on the floor of the Senate on July 25, 2002, the day the Senate passed the final bill, Senator Sarbanes discussed the auditor independence provisions in the bill and stated, in part:

> What has happened in recent years is that the fees earned from the consulting work have dwarfed the fees earned from the auditors, which inevitably leads to concerns that punches be pulled on the audit to accommodate the significant and remunerative involvement on the consulting side. Certain enumerated consulting practices are therefore not allowed, with the exception that a case-by-case exemption can be obtained from the oversight board that this legislation establishes.* * *
>
> Senator Gramm has suggested that the conference report should be changed to give the SEC or the Oversight Board authority to grant broad categorical exemptions from the list of non-audit services that section 201 of the bill prohibits registered public accounting firms to provide to public company audit clients. Such a change, in my view, would weaken one of the fundamental objectives of the conference report: to draw a bright line around a limited list of non-audit services that accounting firms may not provide to public company audit clients because their doing so creates a fundamental conflict of interest for the accounting firms.
>
> This list is based on a set of simple principles:
>
> A public company auditor, in order to be independent, *should not audit its own work* (as it would if it provided internal audit outsourcing services, financial information systems design, appraisal or valuation services, actuarial services, or bookkeeping services to an audit client).
>
> A public company auditor *should not function as part of management or as an employee of the audit client* (as it would if it provided human resources services such as recruiting, hiring, and designing compensation packages for the officers, directors, and managers of an audit client).
>
> A public company auditor, to be independent, *should not act as an advocate of its audit client* (as it would if it provided legal and expert services to an audit client in judicial or regulatory proceedings).
>
> A public company auditor *should not be a promoter of the company's stock or other financial interests* (as it would be if it served as a broker-dealer, investment adviser, or investment banker for the company).
>
> The exemptive authority provided to the Board is intentionally narrow to apply to individual cases where the application of the statutory requirement would impose some extraordinary hardship or circumstance that would merit an exemption consistent with the protection of the public interest and the protection of investors. But the fundamental presumption of the provision is that these non-audit services, by their very nature, present a conflict of interest for an accounting firm if provided to a public company audit client.* * *
>
> The conference report chose not to follow the approach of imposing a complete prohibition on the provision of non-audit services to audit clients. Instead it chose the approach of identifying the non-audit services which by their very nature pose a conflict of interest and should be prohibited.* * *
>
> In my view granting broad exemption authority to the Oversight Board or the SEC to permit these non-audit services would undermine the separation the conference report is intended to establish.[26]
>
> (Emphasis added.)

The Commission last amended its auditor independence rules in November 2000. In so doing, the Commission identified many of the same services included in the Act that would impair an auditor's independence. In doing so, after public comment, the Commission included certain exceptions and qualifications to these services in those rules. As part of that rulemaking, the Commission utilized concepts similar to those expressed in the Senate Report in evaluating independence matters. Rule 2–01 of Regulation S–X [27] contains a preliminary note that is comprised of concepts that are similar to those outlined in the legislative history to the Sarbanes-Oxley Act. The preliminary note is used to evaluate independence matters that arise but that are not specifically addressed in rule 2–01. The proposals that we are considering are based on the same factors that have been utilized by the staff in evaluating independence matters.

The Commission had proposed more restrictive independence rules in June 2000.[28] In the period between

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[16] The Independence Standards Board was a private sector body that, from 1997 to 2001, was charged with the responsibility to set auditor independence standards for auditors of the financial statements of SEC registrants. *See* Financial Reporting Release Nos. 50 (February 18, 1998) and 50A (July 17, 2001).

[17] Independence Standards Board, "Employment with Audit Clients," *Discussion Memorandum 99–1* (March 12, 1999).

[18] Independence Standards Board, "Employment with Audit Clients," *Standard No. 3* (July 2000).

[19] Id., ¶2(b)(iii).

[20] Considerations necessary to plan an audit engagement are discussed in SAS Nos. 22, "Planning and Supervision" (AU § 311), 47, "Audit Risk and Materiality in Conducting an Audit" (AU§ 312), 48, "The Effects of Computer Processing on the Audit of Financial Statements" (AU §§ 311, 326), 54, "Illegal Acts by Clients" (AU § 317), 55, "Consideration of Internal Control in a Financial Statement Audit" (AU § 319), 56, "Analytical Procedures" (AU § 329), 65, "The Auditor's Consideration of the Internal Audit Function in an Audit of Financial Statements" (AU § 322), 70, "Service Organizations" (AU § 324), 73, "Using the Work of a Specialist" (AU § 336), 78, "Consideration of Internal Control in a Financial Statement Audit" (AU § 319), 82, "Consideration of Fraud in a Financial Statement Audit" (AU § 312), 83, "Establishing an Understanding With the Client" (AU § 310), 84, "Communications Between Predecessor and Successor Auditors" (AU § 315), 89, "Audit Adjustments" (AU § 310), and 94, "The Effect of Information Technology on the Auditor's Consideration of Internal Control in a Financial Statement Audit" (AU § 319) as well as amendments to these documents.

[21] SAS No. 71, "Interim Financial Information" (AU § 722). In November 2002, the Auditing Standards Board issued SAS No. 100, "Interim Financial Information." SAS No. 100 supercedes SAS No. 71 and is effective for interim periods within fiscal years beginning after December 15, 2002.

[22] As used in this section of the Act, the term Board refers to the Public Company Accounting Oversight Board.

[23] *Id.*

[24] Report of the Senate Comm. on Banking, Housing, and Urban Affairs to Accompany S. 2673, Public Company Accounting Reform and Investor Protection Act of 2002, S. Report 107–205, 107th Cong., 2d Sess. (July 3, 2002).

[25] Id. at 18.

[26] 148 Cong. Rec. S7351 and S7364 (July 25, 2002).

[27] *See* Release No. 33–7870 (June 30, 2000), proposed rules 2–01(b)(1)–(4), and preliminary note to rule 2–01 of Regulation S-X, 17 CFR 210.2–01. As stated in the preliminary note, in making independence determinations "the Commission looks in the first instance to whether a relationship or the provision of a service: (a) Creates a mutual or conflicting interest between the accountant and the audit client; (b) places the accountant in the position of auditing his or her own work; (c) results in the accountant acting as management or an employee of the audit client; or (d) places the accountant in the position of being an advocate for the audit client."

[28] Release No. 33–7870 (June 30, 2000); 65 FR 43148 (July 12, 2000).

publication of the proposed rules and the adoption of the final rules, the Commission conducted public hearings at which over 100 persons testified, a congressional hearing was held, and over 3,000 comment letters were received.

It seems clear that Congress did not intend to codify unchanged the current auditor independence rules, as the Commission adopted them in November 2000. In Senator Sarbanes' statements, quoted above, he notes the debate with Senator Gramm about the use of "categorical exemptions" from the prohibitions in the Act and states that the Act was not intended to give the Commission "broad exemption authority." We assume, therefore, that Congress intended the Commission to revise its existing rules, at a minimum, to eliminate categorical exceptions and exemptions.

We note that the terms used by Congress could be construed very broadly. We nevertheless believe that Congress did not intend to ban any service that could conceivably fall within one of the prohibited categories of services. Both the language in the Act and the legislative history argue against such a broad construction. Each service as properly interpreted would be banned; however, proper interpretation must be made in light of the three basic principles. For example, the statute prohibits "expert" services. A broad interpretation of this prohibition could lead one to conclude that almost all services provided by a certified public accountant (CPA) could be considered to be "expert" services. For example, tax services would seem to be among the services that are provided by an "expert." However, it is clear that Congress did not wish to ban all expert services because the Act specifically provided for an auditor to be able to perform certain services, including tax services, if the audit committee approves them in advance.

Both the Senate Report and Senator Sarbanes' statements on the Senate floor describe each service as fulfilling one of the enumerated "simple principles." In the Senate Report, these principles are that an accounting firm should not (1) audit its own work, (2) function as a part of management or as an employee of the audit client, or (3) act as an advocate of the audit client. In his July 25th floor statement, Senator Sarbanes added a fourth principle, the notion that an accounting firm should not be a promoter of the issuer's stock or other financial interests.[29]

[29] These principles are similar to those that the Commission proposed in June 2000 as part of the auditor independence rules and subsequently adopted as a preliminary note to those rules. *See* Release No. 33–7870 (June 30, 2000), proposed rules 2–01(b)(1)–(4), and preliminary note to rule 2–01 of Regulation S–X, 17 CFR 210.2–01. As stated in the preliminary note, in making independence determinations "the Commission looks in the first instance to whether a relationship or the provision of a service: (a) Creates a mutual or conflicting interest between the accountant and the audit client; (b) places the accountant in the position of auditing his or her own work; (c) results in the accountant acting as management or an employee of the audit client; or (d) places the accountant in the position of being an advocate for the audit client."

We therefore propose to amend the auditor independence rules to remove categorical exemptions and to define each term in the list of prohibitions in section 201(a) of the Act in relation to the "simple principle" that is at the foundation of that prohibition. In doing so, we intend to prohibit any service or scenario that reasonably could create one or more of the conflicts identified in the principles.

The proposed rules, like our current independence requirements, govern non-audit services provided by an accountant to an audit client during the audit and professional engagement period.[30] They do not govern non-audit services when provided to non-audit clients.

The proposed rule does not provide an all-inclusive list of the services that are incompatible with proposed rule 2–01(b). Whether the provision of a non-audit service not specified in the proposed rule impairs an accountant's independence will be measured against the four general principles set forth in the preliminary note to rule 2–01 and the "simple principles" in the legislative history noted above.

- Are there other non-audit services that are incompatible with rule 2–01(b) or that raise independence concerns? If so, what are they, and why do they raise independence concerns?
- Is the meaning of the general principles sufficiently clear?

1. Bookkeeping or Other Services Related to the Audit Client's Accounting Records or Financial Statements of the Audit Client

Currently, an auditor's independence is impaired if the auditor provides bookkeeping services to an audit client except in limited situations, such as in an emergency or where the services are provided in a foreign jurisdiction and certain conditions are met.[31] Proposed rule 2–01(c)(4)(i) continues the prohibition on bookkeeping, but we propose to eliminate the limited situations where bookkeeping services may be provided under the current rules. As noted earlier, the proposed rules are predicated on three basic principles. One of those principles is that an auditor cannot audit his or her own work and maintain his or her independence. When an auditor performs bookkeeping services for a client, he or she is placed in a situation of auditing his or her own work. Accordingly, we are proposing that all bookkeeping services would cause the auditor to lack independence.

The proposed rules utilize the existing definition of bookkeeping or other services, which focuses on the provision of services involving: (1) Maintaining or preparing the audit client's accounting records, (2) preparing financial statements that are filed with the Commission or the information which forms the basis of financial statements filed with the Commission, (3) preparing or originating source data underlying the audit client's financial statements.

When an accounting firm provides bookkeeping services for an audit client, the firm may be put in the position of later auditing the accounting firm's work. If, during an audit, an auditor must audit the bookkeeping work performed by his or her accounting firm, it is questionable that the auditor could, or that a reasonable investor would believe that the auditor could, remain objective and impartial. If the auditor found an error in the bookkeeping, the auditor could well be under pressure not to raise the issue with the client if raising the issue could jeopardize the firm's contract with the client for bookkeeping services or result in heightened litigation risk for the firm. In addition, keeping the books is a management function, the performance of which leads to an inappropriate mutuality of interests between the auditor and the audit client.[32]

We understand that auditors are sometimes asked to prepare statutory financial statements for foreign companies, and these are not filed with us. Consistent with the Commission's existing rules, an accountant's independence would be impaired where the accountant prepared the statutory financial statements if those statements form the basis of the financial statements that are filed with us. Under these circumstances, an auditor or accounting firm who has prepared the statutory financial statements of an audit client is put in the position of auditing its own work when auditing the resultant U.S. GAAP converted financial statements.

- Should the definition of bookkeeping be further clarified? If so, how?
- Does the definition cover all the bookkeeping services that would impair an accountant's independence?
- Should an auditor be permitted to provide bookkeeping services to an audit client if it is not reasonably likely that the results of those services will be subject to audit procedures during the audit of the client's financial statements? Why or why not?
- Is the standard of reasonably likely sufficiently clear? If not, should we use some other standard? If so, what standard should we use?
- Is the phrase "preparing statutory statements which form the basis of U.S. GAAP statements" sufficiently clear? If not, how might the phrase be revised?

2. Financial Information Systems Design and Implementation

Currently, paragraph (c)(4)(ii) identifies certain information technology services that, if provided to an audit client, impair the accountant's independence. The proposed rules identify the information technology services that would impair the auditor's independence. Under paragraph (c)(4)(ii)(A) of the proposed rule, an accountant is not independent if the accountant directly or indirectly operates or supervises the operation of the audit client's information system or manages the audit client's local area network or information system. Further, paragraph (c)(4)(ii)(B) of the proposed rule provides that an accountant is *not* deemed independent if the accountant designs or implements a hardware or software system that aggregates source data underlying the financial statements or generates information that is significant to the audit client's financial statements taken as a whole. These services impair an accountant's independence under existing Commission rules.[33] However, consistent with the Commission's existing rules, the proposed rules do not preclude an audit firm from working on hardware or software systems that are unrelated to the audit client's financial statements or accounting records as long as those services are pre-approved by the audit committee.

By "significant" to the financial statements taken as a whole, we refer to information that is reasonably likely to be material to the financial statements of the audit client. Since materiality determinations may not be complete before financial statements are generated, the audit client and accounting firm by necessity will need to evaluate the general nature of the information rather than only system output during the period of the audit engagement. An accountant, for example, would not be independent of an audit client for which it designed an integrated Enterprise Resource Planning ("ERP") system.

Operating, designing or implementing systems affecting the financial statements may place the auditor in a management role, or result in the accountant auditing his or her own work or attesting to the effectiveness of internal control systems designed or implemented by that accountant.[34] For example, if an auditor designs and installs a computer system that generates the financial records, and that system generates incorrect data, the accountant is placed in a position of having to report on his or her firms' own work. Investors may perceive that the accountant would be unwilling to challenge the integrity and efficacy of the client's financial or accounting information collection systems that the accountant designed or installed.

- Is an auditor's independence impaired when the auditor helps select or test computer software and hardware systems that generate financial data used in or underlying the financial statements? Why or why not?
- Whether a system is used to generate information that is "significant" to the audit client's financial statements may depend on the size of the engagement. Does the magnitude as a percentage of either audit fees or total fees of the fees for such services make a difference on whether performance of the service impairs independence?

3. Appraisal or Valuation Services, Fairness Opinions, or Contribution-in-Kind Reports

Under the Commission's current independence rules, an accountant is deemed to lack independence when providing appraisal or valuations services, fairness opinions, or contribution-in-kind reports for audit clients. However, the current rules contain certain exemptions that we propose to eliminate.[35] These proposals would provide that the auditor is not independent if the auditor provides appraisal or valuation services, or contribution-in-kind reports,[36] where there is a reasonable likelihood that the results of the service will be subject to audit procedures by the auditor because the auditor is in a position of auditing his or her own work. Additionally, an auditor is not independent under the proposal if he or she provides a fairness opinion because to do so requires the auditor to function as a part of management and may require the auditor to audit the results of his or her own work.

Appraisal and valuation services include any process of valuing assets, both tangible and intangible, or liabilities. They include valuing, among other things, in-process research and development, financial instruments, assets and liabilities acquired in a merger, and real estate. Fairness opinions and contribution-in-kind reports are opinions and reports in which the firm provides its opinion on the adequacy of consideration in a transaction.

Providing these services to audit clients raises several auditor independence concerns. When it is time to audit the financial statements, the accountant could likely end up reviewing his or her own work, including key assumptions or variables that underlie an entry in the financial statements. Also, where the appraisal methodology involves projection of future results of operations and cash flows, some believe that the accountant that prepares the projection could have a mutuality of interest with the client in attaining forecast results.[37] The auditor may feel constrained by the valuation and appraisal issued by the firm, and as a result, the auditor may be unable to evaluate skeptically and without bias

[30] Audit client is a term defined generally in § 2–01(f)(6) of Regulation S–X, as the entity whose financial statements or other information is being audited and any affiliates of the audit client. Affiliates of the audit client, as defined in § 2–01(f)(4), are entities that have control relationships or other significant influence relationships with the audit client, which in the case of registered investment companies includes all entities in the investment company complex, as defined under § 2–01(f)(14).

[31] 17 CFR 210.2–01(c)(4)(i).

[32] Letter of Samuel L. Burke, Associate Chief Accountant, SEC, to Florida Institute of Certified Public Accountants re: bookkeeping (March 4, 2002).

[33] 17 CFR 210.2–01(c)(4)(ii).

[34] *See* Section 404(b) of the Sarbanes-Oxley Act.

[35] Current exemptions include: (1) Firm's valuation expert can review the work of a client's specialist; (2) firm's actuaries can value a client's pension or other post-retirement benefit obligation provided that the client assumes responsibility for significant assumptions; (3) valuations performed for planning and implementing tax-planning strategies; and (4) valuations for non-financial purposes which do not affect the financial statements.

[36] Contribution-in-kind reports in certain foreign countries require the auditor to express an opinion on the fairness of the transaction, the value of a security, or the adequacy of consideration to shareholders.

[37] As discussed in the preliminary note to rule 2–01, the Commission considers the impact on the auditor's independence of situations where the auditor has a mutuality of interest with its auditor client. This concept was not included in the legislation.

the accuracy of that valuation or appraisal.

Our proposals do not prohibit an accounting firm from providing such services for non-financial reporting (*e.g.*, transfer pricing studies, cost segregation studies) purposes.

The proposed rule does not limit an accounting firm from utilizing its own valuation specialist to review the work done by the audit client itself or an independent, third-party specialist employed by the audit client, provided the audit client or the client's specialist (and not the specialist used by the accounting firm) provides the technical expertise that the client uses in determining the required amounts recorded in the client financial statements. In those instances, because a third party or the audit client is the source of the financial information subject to the review or audit, the accountant will not be reviewing or auditing his or her own work. Additionally, the quality of the audit may be improved where specialists are utilized in such situations.

- Does providing valuation or appraisal services that are unrelated to the financial statements, such as for certain regulatory purposes, impair an accountant's independence?
- Does providing valuation or appraisal services for tax purposes impair an accountant's independence?
- Are there certain types of appraisal or valuation services, or certain instances in which they are provided, that do not raise auditor independence concerns? Are there circumstances in which an accounting firm may be required by law or regulation to provide such services, either in the United States or abroad?
- Should we provide an exemption for such services provided to a foreign private issuer by its accountant where local law requires such services (*e.g.* contribution in-kind reports)?
- The Commission staff, when providing interpretations of the application of the auditor independence rules to contribution in-kind reports, has worked with foreign jurisdictions to accommodate the statutory requirements in those jurisdictions.[38] Should the Commission's rules provide that similar practices or arrangements be permitted where contribution in-kind reports are required by foreign statute?

4. Actuarial Services

The current rules generally bar auditors only from providing actuarial services related to insurance company policy reserves and related accounts. Consistent with our approach to implementing the Act, we are proposing to broaden this prohibition by providing that the accountant is not independent if the auditor provides any advisory service involving the amounts recorded in the financial statements and related accounts for the audit client where it is reasonably likely that the results of these services will be subject to audit procedures during an audit of the audit client's financial statements because providing these services may cause an accountant later to audit his or her own work. Additionally, accountants providing these services assume a key management task. Stated differently, to perform these services would violate two of the three basic principles espoused in the legislative history of the Act. In addition, actuarially oriented advisory services may affect amounts reflected in some company's financial statements, such as an insurance company's financial statements. The proposed rules provide that the accountant may utilize his or her own actuaries to assist in conducting the audit provided the audit client uses its own actuaries or third-party actuaries to provide management with the primary actuarial capabilities.

- Are there certain circumstances under which an accountant can provide actuarial services to an audit client without impairing independence?
- Have we appropriately described the actuarial services prohibited by the Act?

5. Internal Audit Outsourcing

Our current rules allow a company to outsource part of its internal audit function to the independent audit firm subject to certain exemptions. For example, smaller businesses are exempted from the internal audit outsourcing prohibition because there have been concerns about the potentially disproportionate impact on such companies. The line between performing management functions and performing an audit is not always clear. Some companies "outsource" internal audit functions by contracting with an outside source to perform, among other things, all or part of their audits of internal controls. As emphasized by the Committee of Sponsoring Organizations ("COSO"), internal auditors play an important role in evaluating and monitoring a company's internal control system.[39] As a result, some argue that internal auditors are, in effect, part of a company's system of internal accounting control.[40]

Since the external auditor generally will rely, at least to some extent, on the internal control system when conducting the audit of the financial statements,[41] the auditor may be relying on his or her firm's own work, which was performed as part of the internal controls and internal audit function. In essence, by outsourcing the internal audit function, the auditor assumes a management responsibility and becomes part of the company's control system.

Proposed rule 2–01(c)(4)(v) provides that an auditor is not independent when the auditor performs internal audit services related to the internal accounting controls, financial systems, or financial statements, for an audit client. This does not include nonrecurring evaluations of discrete items or programs that are not in substance the outsourcing of the internal audit function. It also does not include operational internal audits unrelated to the internal accounting controls, financial systems, or financial statements.

We are concerned about the effect of the proposed rule on small businesses that have no internal audit department or staff. Smaller firms may not have sufficient need for full-time internal auditors but nonetheless, may need some services that internal auditors typically provide, which they obtain from their external auditors. We understand that, unless these companies can turn to their external auditors, the work may not be done at all or only at a significant cost to the company because the company would have to engage a separate accounting firm to provide these services.[42] Existing Commission independence rules contain an exception for small businesses identified as those with assets totaling less than $200 million.[43] However, our proposed rules contain no such exception because, regardless of the entity's size, the Act appears to view the auditor as being in a position of auditing his or her own work.

- Is the definition of the "internal audit function" sufficiently clear?
- We solicit comment on whether an exception should be provided for small businesses. If so, what criteria should we consider in providing such an exception?
- Does it impair an auditor's independence if the auditor does not provide to the client outsourcing services related to the internal audit function of the audit client, but rather performs individual audit projects for the client?
- Are there safeguards that can be established by the auditor that would allow the audit client to outsource the internal audit function to the auditor without impairing its independence?
- Would it impair the auditor's independence if the auditor performs only operational audits that are unrelated to the internal controls, financial systems, or financial statements?
- Is additional guidance necessary to distinguish the services that would be prohibited under this proposed rule from those services that would be permitted as operational audits?

6. Management Functions

We are not proposing any significant change to our current rule on management functions. Proposed rule 2–01(c)(4)(vi) provides that an accountant's independence is impaired with respect to an audit client for which the accountant acts, temporarily or permanently, as a director, officer, or employee of an audit client, or performs any decision-making, supervisory, or ongoing monitoring functions for the audit client. This provision is consistent with the provisions of existing rule 2–01(c)(4)(vi).[44]

We believe, however, that provided the auditor does not act as an employee or perform management functions, services in connection with the assessment of internal accounting and risk management controls as well as providing recommendations for improvements do not impair an auditor's independence. Accountants must gain an understanding of their audit clients' systems of internal accounting controls when conducting an audit in accordance with generally accepted auditing standards.[45] With this insight, auditors often become involved in diagnosing, assessing, and recommending to audit committees and management, ways in which their audit client's internal controls can be improved or strengthened.[46] These services can be extremely valuable to companies, and they may also facilitate the performance of a high quality audit. For these reasons, we are proposing to continue to allow auditors to assess the effectiveness of internal controls and to recommend improvements in the design and implementation of internal controls and risk management controls.

At the same time, we recognize that when an auditor designs and implements its audit client's internal accounting and risk management control systems, some believe that the auditor will lack objectivity if called upon to audit financial statements that are derived, at least in part, from data from those systems or when reporting on those controls or on management's assessment of those controls. As such, we believe that design and implementation of internal accounting and risk management controls are fundamentally different from obtaining an understanding of the controls and testing the operation of the controls which is an integral part of any audit of the financial statements of a company. Likewise, design and implementation of these controls is different from recommending improvements in the internal accounting and risk management controls of an audit client.

Because of this fundamental difference, we believe that designing and implementing internal accounting and risk management controls impairs the auditor's independence because it places the auditor in the role of management. Conversely, obtaining an understanding of, assessing effectiveness of, and recommending improvements to the internal accounting and risk management controls is fundamental to the audit process and does not impair the auditor's independence.

- Do services related to designing or implementing internal accounting controls and risk management controls result in the auditor auditing his or her own work? Would such services impair an auditor's independence when the auditor is required to issue an opinion on the effectiveness of the control systems that he or she designed or implemented?
- Do services related to assessing or recommending improvements to internal accounting controls and risk management controls result in the auditor auditing his or her own work? Would such services impair an auditor's independence when the auditor is required to issue an attestation report on the effectiveness of the control systems that he or she has assessed or evaluated for effectiveness?
- We request comment on whether there are circumstances under which an accounting firm can perform or assume management functions or responsibilities for an audit client without impairing independence?

7. Human Resources

Our current rules deem an auditor to lack independence when performing certain human resources functions, and we do not propose any significant change to those rules. Consistent with our current rules, proposed rule 2–01(c)(4)(vii) provides that an auditor's independence is impaired with respect to an audit client when the auditor searches for or seeks out prospective candidates for managerial, executive or director positions; acts as negotiator on the audit client's behalf, such as determining position, status, compensation, fringe benefits, or other conditions of employment; or undertakes reference checks of prospective candidates. Under the proposed rule, an auditor's independence also is impaired when the auditor advises an audit client about the design of its management or organizational structure, when it engages in psychological testing, or other formal testing or evaluation programs, or recommends or advises the audit client to hire a specific candidate for a specific job.

Assisting management in human resource selection or development places the auditor in the position of having an interest in the success of the employees that the auditor has selected, tested, or evaluated. Accordingly, observers may perceive that an auditor would be reluctant to suggest the possibility that those employees failed to perform their jobs appropriately, or at least reasonable investors might perceive the auditor to be reluctant, because doing so would require the auditor to acknowledge shortcomings in its human resource service. The auditor also would have other incentives not to report such employees' ineffectiveness, including that the auditor would identify and be identified with the recruited employees.

- Are there additional types of human resource and employee benefit services that impair an auditor's independence?
- Would an auditor's independence be impaired if the auditor provided personnel hiring assistance for only non-executive or non-financial personnel?

[38] Letter of Lynn Turner, Chief Accountant, SEC, to Commissione Nazionale per la Societa Sonieta e la Borsa re: statutory procedures (August 24, 2000).

[39] *See* Committee of Sponsoring Organizations of the Treadway Commission (COSO), *Internal Control—Integrated Framework*, at 7 (1992) (the "COSO Report").

[40] *See* SAS No. 65, "The Auditor's Consideration of the Internal Audit Function in an Audit of Financial Statements." AU§ 322.

[41] AICPA SAS No. 55, AU § 319 (effective for audits on or after January 1, 1990).

[42] *See* Release No. 33–7919.

[43] 17 CFR 2–01(c)(4)(v) currently includes a $200 million threshold.

[44] 17 CFR 210.2–01(c)(4)(vi).

[45] AU 319, "Consideration of Internal Control in a Financial Statement Audit." In addition, section 404(b) of the Act requires a company's audit to attest to the internal control report provided annually by management.

[46] AU 325, "Communication of Internal Control Related Matters Noted in an Audit," requires the auditor to communicate reportable conditions and material weaknesses in internal control to the company's audit committee or equivalent.

• Does it impair an auditor's independence if the auditor provides consultation with respect to the compensation arrangements of the company's executives?

8. Broker-Dealer, Investment Adviser Or Investment Banking Services

Our current rules deem an auditor to lack independence when performing brokerage or investment advising services for an audit client.[47] We are proposing to add serving as an unregistered broker-dealer[48] to our rules that prohibit serving as a promoter or underwriter, making investment decisions on behalf of the audit client or otherwise having discretionary authority over an audit client's investments, or executing a transaction to buy or sell an audit client's investment, or having custody of assets of the audit client. The proposed rule is substantially the same as the Commission's existing rule related to the provision of these types of services to audit clients.[49] We are including unregistered broker-dealers within the proposed rules because the nature of the threat to independence is unchanged whether the entity is or is not a registered broker-dealer.

Selling—directly or indirectly—an audit client's securities is incompatible with the auditor's responsibility of assuring the public that the company's financial condition is fairly and accurately presented. When an accountant, in any capacity, recommends to anyone (including non-audit clients) that they buy or sell the securities of an audit client or an affiliate of the audit client, the accountant has an interest in whether those recommendations were correct. That interest could affect the audit of the client whose securities, or whose affiliate's securities, were recommended. These concepts are echoed in the "simple principles" included in the legislative history to the Sarbanes-Oxley Act.[50] For example, if an auditor uncovers an accounting error in a client's financialstatements, and the auditor, in an investment adviser capacity, had recommended that client's securities to investment clients, the auditor performing the audit may be reluctant to recommend changes to the client's financial statements if the changes could negatively affect the value of the securities recommended by the auditor to its investment adviser clients.

Broker-dealers[51] often give advice and recommendations on investments and investment strategies. The value of that advice is measured principally by the performance of a customer's securities portfolio. When the customer is an audit client, the accountant has an interest in the value of the audit client's securities portfolio, even as the accountant values the portfolio as part of an audit. Thus, the auditor would be placed in a position of auditing his or her own work. Furthermore, the auditor is placed in a position of acting as an advocate on behalf of the client.

• We solicit comment on the scope of the proposal. Are there other securities professional services that the rule should expressly identify as impairing independence?

• Would an auditor's independence be impaired if the auditor acted as a securities analyst covering the sector or industry of an audit client?

• Should we adopt rules that would clarify when the auditor is acting as an unregistered broker-dealer? If so, what should those rules be?

9. Legal Services

Our current rule states that an auditor is deemed to lack independence when he or she provides legal services to an audit client. The proposed rule provides that an accountant is not independent of an audit client if the accountant provides any service to the audit client that, under circumstances in which the service is provided, could be provided only by someone licensed, admitted or otherwise qualified to practice law in the jurisdiction in which the service is provided. The proposed rules would apply to foreign and U.S. accounting firms equally, minimizing the instances where legal services are provided by the auditor to the audit client.

A lawyer's core professional obligation is to advance clients' interests. Rules of professional conduct require the lawyer to "represent a client zealously and diligently within the bounds of the law."[52] The lawyer must "take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. * * * In the exercise of professional judgment, a lawyer should always act in a manner consistent with the best interests of the client."[53] Unlike an auditor, a lawyer takes basic direction from the client. We have long maintained that an individual cannot be both a zealous legal advocate for management or the client company, and maintain the objectivity and impartiality that are necessary for an audit.[54] The Supreme Court has agreed with our view. In *Arthur Young*, the Supreme Court emphasized, "If investors were to view the auditor as an advocate for the corporate client, the value of the audit function itself might well be lost."[55]

We recognize that there may be implications for some foreign registrants from this proposal. For example, we understand that in some jurisdictions it is mandatory that someone licensed to practice law perform tax work, and that an accounting firm providing such services, therefore, would be deemed to be providing legal services. Accordingly, we are interested in understanding the implications of this proposal on foreign private issuers.

• Are there any particular legal services that should be exempted from the rule?

• Would making the rule's application depend upon the jurisdiction in which the service is provided leave the rule subject to any significant uncertainty, or pose the prospect of any significant complexity or unfairness?

• Should there be any exception for legal services provided in foreign jurisdictions? For example, in some countries only a law firm may provide tax services. Should a foreign accounting firm be permitted to provide, through an affiliated law firm, tax or other services that a U.S. accounting firm could provide to a U.S. audit client without impairing the firm's independence? Why or why not?

• Should there be an exception for legal services provided to issuers in foreign jurisdictions? Should any such exception be tailored to avoid undermining the purpose of the restriction? For example, could fees for legal services be limited to a small percentage (*e.g.*, 5% or 10%) of the amount of fees for audit services? Could partners providing audit services be prohibited from being involved in the provision of legal services or from receiving compensation based on such services?

• Should any such exception have a "sunset" provision that would both allow foreign private issuers a transition period and allow the Commission to review the situation regarding legal services?

10. Expert Services

Our current rules do not provide that an auditor is deemed to lack independence when providing expert services to an audit client. The Act, however, includes expert services in the list of prohibited services. As discussed earlier, the legislative history, particularly related to expert services, is focused on the auditor's role when serving in an advocacy capacity. Our proposed rules interpret the legislative prohibition in light of the three basic principles of independence discussed previously.

During the Senate Floor debate, Senator Sarbanes stated, "A public company auditor, to be independent, should not act as an advocate of its audit client (as it would if it provided legal and expert services to an audit client in judicial or regulatory proceedings)."[56] The proposed rule, therefore, states that an accountant's independence is impaired as to an audit client if the accountant provides expert opinions for an audit client in connection with legal, administrative, or regulatory proceedings or acts as an advocate for an audit client in such proceedings.

Clients retain experts to lend authority to their contentions in various proceedings by virtue of the expert's specialized knowledge and experience. The provision of expert services by the accountant may create the appearance that the accountant is acting as the client's advocate in pursuit of the client's interests. The appearance of advocacy (and the corresponding appearance of mutual interest) created by providing expert services is sufficient to deem the accountant's independence impaired.

Our prohibition on the provision of expert services would include providing consultation and other services to an audit client's legal counsel in connection with litigation, administrative or regulatory proceedings. As discussed above in the context of the provision of legal services, legal counsel have an ethical duty to "represent a client zealously and diligently within the bounds of the law" and to "take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor."[57] An auditor who takes on such duties, either directly or by being engaged by the audit client's legal counsel, takes on a role as an advocate for the client.

The prohibition on providing "expert" services included in this rule proposal covers services that result in the accounting firm's specialized knowledge, experience and expertise being used to support the contentions of the audit client in various adversarial proceedings. Therefore, under our proposed rule, an auditor's independence would be impaired if the auditor were engaged by the audit client's legal counsel to provide expert witness or other services, including accounting advice, opinions, or forensic accounting services, in connection with the client's participation in a legal, administrative, or regulatory proceeding. For example, an auditor could not provide forensic accounting services to the audit client's legal representative in connection with an investigation by the Commission's Division of Enforcement. Nor could an accounting firm appear as an expert witness in a utility rate setting proceeding in support of an audit client's request for an increase in fees.

Our proposals, however, would not prohibit an auditor from assisting the audit committee in fulfilling its responsibilities in connection with the financial reporting process.[58] Although under our proposals, an auditor's independence would be impaired if it were engaged by the audit client's counsel to provide advice or forensic accounting services in connection with a legal, administrative or regulatory proceeding,[59] the auditor's independence would not be impaired if it were assisting the audit committee in fulfilling its responsibility to conduct its own investigation of a potential accounting impropriety, so long as the auditor did not take on the role of an advocate in such an investigation.[60] For example, an audit committee may engage the auditor to render forensic services, and should the audit committee choose to engage counsel, the work product of the auditor may be provided to the audit committee's counsel without impairing the auditor's independence. We believe it is important that auditors be allowed to assist the audit committee in their capacity as investors' representatives.

In this regard, our proposals also would not prohibit an auditor from testifying as a fact witness to its audit work for a particular audit client. In those instances, the auditor is merely

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[47] These proposed rules are not meant to change the Commission's current position that an audit firm's broker-dealer division can cover an industry which includes an audit client when performing analyst functions. However, analysis of a specific audit client's stock places the auditor in the position of acting as an advocate for the client and would cause the auditor to lack independence.

[48] Accountants and the companies that retain them should recognize that the key determination required here is a functional one (*i.e.*, is the accounting firm or its employee acting as a broker-dealer?). The failure to register as a broker-dealer does not necessarily mean that the accounting firm is not a broker-dealer. In relevant part, the statutory definition of "broker" captures persons "engaged in the business of effecting transactions in securities for the account of others." Securities Exchange Act of 1934 § 3(a)(4). Unregistered persons who provide services related to mergers and acquisitions or other securities-related transactions should limit their activities so they remain outside of that statutory definition. A person may "effect transactions," among other ways, by assisting an issuer to structure prospective securities transactions, by helping an issuer to identify potential purchasers of securities, or by soliciting securities transactions. A person may be "engaged in the business," among other ways, by receiving transaction-related compensation or by holding itself out as a broker-dealer. Involvement of accounting personnel as unregistered broker-dealers not only can impair auditor independence, but also would violate section 15(a) of the Exchange Act.

[49] 17 CFR 210.2–01(c)(4)(viii) and Release No. 33–7919, at Section D.

[50] Floor Statement of Senator Sarbanes, 148 Cong. Rec. S7364 (July 25, 2002) ". * * * A public company auditor should not be a promoter of the company's stock or other financial interest (as it would be if it served as broker-dealer, investment adviser, or investment banker for the company)."

[51] In the past, some have expressed concern that terms such as "securities professional" and "analyst" are not defined in the securities laws and use of the terms could cause confusion. Because of that concern, we have not used those terms in these proposed rules. We note, however, that broker-dealers provide an array of services that may include certain analyst activities.

[52] *See, e.g.*, D.C. Rules of Professional Conduct, rule 1.3(a).

[53] *Id.* at rule 1.5.

[54] In the Matter of Charles Falk, AAER No. 1134 (May 19, 1999) (formally disciplining an attorney/accountant who gave legal advice to an audit client of another partner in his accounting firm).

[55] *United States* v. *Arthur Young*, 465 U.S 805 (1984) at 819–20 n.15.

[56] *See* Floor Statement of Senator Sarbanes, 148 Cong. Rec. S7364 (July 25, 2002).

[57] *See, e.g.*, D.C. Rules of Professional Conduct, rule 1.3(a) and 1.5.

[58] For example, section 301 of the Act stipulates that each audit committee shall have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.

[59] In October 2001, we set forth some of the criteria that we considered important to assessing whether to credit self-policing, self-reporting, remediation and cooperation in SEC enforcement investigations. One of the criteria we identified related to whether the company had undertaken a thorough review of the conduct at issue:

10. Did the company commit to learn the truth, fully and expeditiously? Did it do a thorough review of the nature, extent, origins and consequences of the conduct and related behavior? Did management, the Board or committees consisting solely of outside directors oversee the review? Did company employees or outside persons perform the review? If outside persons, had they done other work for the company? Where the review was conducted by outside counsel, had management previously engaged such counsel? Were scope limitations placed on the review? If so, what were they?

Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions, Accounting and Auditing Enforcement Release ("AAER") No. 1470 (Oct. 23, 2001).

Depending on the conduct at issue, it may be necessary for a company to engage an accountant to conduct a forensic accounting review or audit. While our proposal does not set forth independence requirements for forensic consultants, consistent with the principles we set forth in October 2001, we will consider the objectivity of the forensic accountant as to the issues being investigated in assessing whether to credit the forensic work.

[60] An auditor's independence would, however, be impaired if its assistance to the audit committee included defending, or helping to defend, the audit committee or the company generally in a shareholder class action or derivative lawsuit, other than as a fact witness.

providing a factual account of what he or she observed and the judgments he or she made. An accounting firm that, after receiving appropriate authorization from an audit client's audit committee, had prepared an audit client's tax returns, also could appear as a fact witness in tax court to explain how the returns were prepared.

- Are there circumstances in which providing audit clients with expert services in legal, administrative, or regulatory filings or proceedings should not be deemed to impair independence?
- Should an auditor be permitted to serve as a non-testifying expert for an audit client in connection with a proceeding?
- Is the definition of prohibited expert services appropriate? Why or why not?
- Is the distinction between advocacy and providing appropriate assistance to an audit committee sufficiently clear?

11. Tax Services

Section 201 of the Sarbanes-Oxley Act identifies specific categories of non-audit services that are prohibited for accounting firms to provide for their audit clients. Additionally, the Act specifies that the audit committee must pre-approve all non-prohibited non-audit services. In particular, the Act states that:

> A registered public accounting firm may engage in any non-audit service, *including tax services*, that is not described in any of paragraphs (1) through (9) of subsection (g) for an audit client, only if the activity is approved in advance by the audit committee of the issuer.[61] (Emphasis added.)

Nothing in these proposed rules is intended to prohibit an accounting firm from providing tax services to its audit clients when those services have been pre-approved by the client's audit committee. As discussed in our previously proposed rules[62] on independence, tax services are unique, not only because there are detailed tax laws that must be consistently applied, but also because the Internal Revenue Service has discretion to audit any tax return.[63] In addition, the Congressional intent behind the above quoted reference to "tax services" would appear to be that auditor independence is not impaired by an accountant providing traditional tax preparation services to an audit client or an affiliate of an audit client.

While we do not define "tax services," we understand that tax services can include a range of activities including the preparation of tax returns, tax compliance, tax planning, tax recovery, and other tax-related services. In addition, many engagements will require that an auditor review the tax accrual that is included in the financial statements. Reviewing tax accruals is part of audit services and is not, in and of itself, deemed to be a tax compliance service.

Classifying a service as a "tax service" however, does not mean that the service may not be within one of the categories of prohibited services or may not result in an impairment of independence under rule 2–01(b). The accounting firm and the registrant's audit committee should consider, for example, whether the proposed non-audit service is an allowable tax service or constitutes a prohibited legal service or expert service. As part of this process, the accounting firm and the audit committee should be mindful of the three basic principles which cause an auditor to lack independence with respect to an audit client: (1) The auditor cannot audit his or her own work, (2) the auditor cannot function as a part of management, and (3) the auditor cannot serve in an advocacy role for the client.[64] For example, where an accountant provides representation before a tax court the accountant serves as an advocate for his or her client and the accountant's independence would be impaired. Another example would be the formulation of tax strategies (*e.g.* tax shelters) designed to minimize a company's tax obligations.[65] The provision of these types of services may require the accountant to audit his or her own work, to become an advocate for the client's position on novel tax issues, or to assume a management function.

We also are considering whether special considerations apply when the auditor provides a tax opinion for the use of a third party in connection with a business transaction between the audit client and the third party. The tax opinion may be vital in the audit client's efforts to induce the third party to enter into the transaction, particularly when the transaction is tax-driven. Under those circumstances, the auditor may be acting as an advocate for the audit client by actively promoting the client's interests.

- We request comment on whether providing tax opinions, including tax opinions for tax shelters, to an audit client or an affiliate of an audit client under the circumstances described above would impair, or would appear to reasonable investors to impair, an auditor's independence.
- Are there tax services that should be prohibited by the Commission's independence rules?
- Is it meaningful to categorize tax services into permitted and disallowed activities? If so, what categories and related definitions would make the demarcation meaningful?

C. Partner Rotation

Section 301 of the Sarbanes-Oxley Act specifies that the audit committee has the responsibility for appointment, compensation, and oversight of the work of the company's audit firm. In that capacity, the audit committee has the responsibility for evaluating and determining that the audit engagement team has the competence necessary to conduct the audit engagement in accordance with GAAS.

The Sarbanes-Oxley Act also requires rotation of certain audit partners on a five-year basis in order to continue to provide audit services for a registrant. Section 203 of the Sarbanes-Oxley Act of 2002 specifies that:

> It shall be unlawful for a registered public accounting firm to provide audit services to an issuer if the lead (or coordinating) audit partner (having primary responsibility for the audit), or the audit partner responsible for reviewing the audit, has performed audit services for that issuer in each of the 5 previous fiscal years of that issuer.

The concept of audit partner[66] rotation is not new. Indeed, accounting firms that audit registrants are currently subject to audit partner rotation requirements. The current requirements of the AICPA's SEC Practice Section ("SECPS") call for the engagement partner to rotate off the engagement after seven years to remain off the engagement for two years.[67]

[61] Sarbanes-Oxley Act of 2002, section 201.

[62] Release Nos. 33–7870, "Revision of the Commission's Auditor Independence Requirements," (June 30, 2000) (65 FR 43148).

[63] *Id.*

[64] These principles are similar to the four governing principles included in the preliminary note to the Commission's current independence rules. The four governing principles are whether the accountant: (1) Has a mutual or conflicting interest with the audit client, (2) audits his or her firm's own work, (3) functions as management or an employee of the audit client, or (4) acts as an advocate for the audit client.

[65] *U.S.* v *KPMG LLP* (July 9, 2002) and *U.S.* v *BDO Seidman* (July 9, 2002).

[66] For purposes of this portion of the release, the term partner refers to an individual who is a proprietor, partner, principal, or shareholder of the accounting firm.

[67] American Institute of Certified Public Accountants (AICPA), SEC Practice Section, Requirements of Members, at item e. The membership requirements are available online at *http://www.aicpa.org/members/div/secps/require.htm*. Audit firms which are members of the SEC Practice Section must comply with its rules (*e.g.*, partner rotation) and undergo periodic peer review to ensure that the firms' audit practice is consistent with both the rules of the AICPA and those of the Commission.

The Sarbanes-Oxley Act clearly specifies that the lead audit partner and reviewing partner should serve on the engagement in that capacity for no more than five consecutive years. The Commission is proposing rules to clarify the five-year rotation requirement specified in the Sarbanes-Oxley Act.

As noted above, existing SECPS membership requirements stipulate that a rotated partner may not serve on the audit engagement for two consecutive years following rotation.[68] In addition to covering more partners,[69] the proposed rules expand this requirement and require that, following rotation, a partner may not provide such services for a period of five consecutive years. We believe that partners should not return to the engagement for five-years in order to ensure investors that there will be a periodic fresh look at the accounting and auditing issues confronting the company. If a shorter "time-out" provision is used, investors might believe that partners merely would be placed in secondary role for a year or two, only to resume the same roles that they previously occupied and to return to the prior engagement team's approach to the accounting and auditing issues. If a partner is removed from an engagement for five-years, it would appear more likely that the partner will be placed on a different engagement and not held in abeyance only to return to the previous engagement. While we anticipate that accounting firms, when possible, would stagger the rotation of partners to provide a continuity of knowledge about the company, we believe the five-year period in the proposed rule would assure a complete turnover of personnel every five years.

With respect to determining which partners, principals and shareholders should be included, the proposed rules would go beyond the minimum specified by the Act. As noted above, the Act requires that the lead or coordinating audit partner and the audit partner responsible for reviewing the audit rotate every five years. Clearly, the lead partner as well as the concurring review partner perform critical functions that affect the conduct and effectiveness of the engagement. However, in many larger engagements, the engagement team will include more than just the lead partner and the concurring review partner. Obviously, the larger the registrant and the more diversified the registrant's activities, the more likely that the engagement team will include multiple partners, principals or shareholders.

While under this proposal, firms would be required to rotate multiple partners in these situations, nothing in this proposal is intended to imply that all partners would need to be rotated at the same time. Indeed, we would expect that firms would stagger the rotation of partners to ensure that the engagement team continues to have appropriate expertise to allow the audit engagement to be conducted in accordance with GAAS.

Partners, principals or shareholders who are members of the audit engagement team[70] make significant decisions that can affect the conduct and effectiveness of the audit. As a result, the proposed rules would require rotation not just of the lead and reviewing partner,[71] but of partners who perform audit services for the issuer.[72] This rotation requirement would include the lead partner, the concurring review partner, the client service partner, and other "line" partners directly involved in the performance of the audit. The proposed rules ensure that professionals do not "grow-up" or spend their entire career on one engagement.

Since most registrants are taxable entities, an assessment of the registrant's tax provision accounted for in accordance with GAAP[73] is a necessary part of the audit engagement. As a consequence, there may be "tax" partners who perform significant services related to the audit engagement. To the extent that such services are a necessary part of the accounting firm's ability to complete the audit, partners providing those services would be subject to these rotation requirements. However, the accounting firm may also perform tax services for the registrant. These services can include tax compliance services as well as certain tax planning services.[74] Such services are not, in and of themselves, deemed to be part of the audit or other attest engagement.[75] Thus, a partner who only provides tax services for the registrant would not be subject to the rotation requirements. However, since the financial statements typically include the amount currently payable or refundable, the accounting firm must carefully evaluate whether "tax" partners are performing exclusively tax services or whether their services play a role in the audit engagement.

In many cases, registrants have complex business transactions and other situations which may require that the engagement team consult with the accounting firm's national office or others on technical issues. Partners assigned to "national office" duties (which can include both technical accounting and centralized quality control functions) who may be consulted on specific accounting issues related to a client are not considered members of the audit engagement team even though they may consult on client matters regularly.[76] While these partners play an important role in the audit process, they serve, primarily, as a technical resource for members of the audit team. Because these partners are not involved in the audit *per se* and do not routinely interact or develop relationships with the audit client, we do not believe that it is necessary to rotate the involvement of these personnel.

In addition to the audit, registrants are required to have their quarterly financial information subjected to a timely review by the accounting firm. Such review is typically conducted according to the provisions required by generally accepted auditing standards.[77] Furthermore, section 404 of the Sarbanes-Oxley Act, as well as the Commission's proposed rules,[78] would require the accounting firm to attest to management's report on the registrant's internal controls. Both a timely review engagement and an attestation engagement require the accounting firm to be independent with respect to the registrant. Accordingly, the Commission's proposed rules for partner rotation extend to partners who serve on the engagement team that conducts the timely review of the registrant's interim financial

[68] *Id.*

[69] The current SECPS membership requirements stipulate that the audit engagement partner be rotated every seven years except that firms with less five SEC audit clients and less than ten partners are exempted. The existing SECPS membership requirements also do not require that the concurring partner be rotated.

[70] 17 CFR 210.2–01(f)(7).

[71] For purposes of this requirement, references to partner include principals, shareholders and other positions with equivalent responsibility.

[72] Under these proposals, we believe that those partners who are involved on a continuous basis in the audit of material balances in the financial statements would be subject to the rotation requirements of this proposal. For example, an actuarial specialist who assists in auditing the loss reserves for an insurance company would be subject to the rotation requirement.

[73] Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes" (Feb 1992).

[74] These services would, of course, be subject to the audit committee pre-approval requirements specified in section 202 of the Sarbanes-Oxley Act and the accompanying rules proposed in this release.

[75] *See* the discussion in part B.11 of this release, *supra*.

[76] 17 CFR 210.2–01(f)(7).

[77] *See* Codification of Statements on Auditing Standards AU§ 722.

[78] Release No. 33–8138 (Oct. 22, 2002) (67 FR 66208).

information as well as the engagement team that conducts the attest engagement on management's report on the registrant's internal controls.

Under the proposed rules, a partner performing audit, review or attest services to an investment company could only do so if they had not performed such services for any entity within the investment company complex, as defined in rule 2–01(f)(14) of Regulation S–X during the previous five consecutive years. For example, the proposed rule would prohibit a partner from rotating between two separate investment company issuers within an investment company complex. The proposed rule also would prohibit a partner from rotating between an investment company issuer and any other entity within the investment company complex.

While we are proposing that all partners on the engagement team who perform a continuing audit function be subject to the partner rotation requirements, we are interested in understanding the implications of this proposed requirement on audit firms. For example, it has been suggested by some that the need for the audit firm to rotate its audit partners might be obviated by having a second audit firm periodically perform a forensic audit to evaluate the work of the existing auditor, the condition of the company's internal controls, the company's accounting and reporting practices, and other matters. Forensic audits are typically conducted by specialized accountants and are designed to go beyond the scope of a financial statement audit. Indeed, forensic audits are typically conducted when there is already reason to suspect wrongdoing or fraud. Some believe that having a separate set of examiners conduct periodic forensic audits would encourage financial statement auditors to take greater responsibility for the detection of fraud and illegal acts when auditing financial statements due to the fact that another set of auditors would be critically evaluating their role. Additionally, forensic audits conceivably could give the audit committees a tool to better evaluate the quality of the financial statement auditors.

A possible consequence of the auditor rotation requirement is that some firms may be unable staff the audit engagement team with sufficient partners who are qualified to understand some of the difficult issues that the audit client faces. This may be particularly true in industries where there are specialized transactions, regulatory processes, or accounting principles. Nonetheless, the auditor is required to conduct the audit in accordance with generally accepted auditing standards. In particular, the third general standard requires that the auditor exercise due professional care in the conduct of the audit (*see* AU 150.02). In order to exercise due professional care, it would be necessary to ensure that the engagement was properly staffed with individuals competent to understand the unique issues relevant to that audit. Additionally, the quality control standards require that the firm have processes in place to ensure that appropriate personnel are assigned to each audit engagement (*see* QC 20.13).

- Should the Commission adopt rules requiring that issuers engage forensic auditors periodically to evaluate the work of the financial statement auditors? If so, how often should the forensic auditors be engaged? What should be the scope of the forensic auditors' work? Would doing so obviate the need to require partner rotation for the audit firm? Alternatively, could the company obtain the necessary expertise by engaging other outside consultants? If so, what type of consultants should it engage?
- Would the establishment of rules requiring companies to engage forensic auditors periodically provide an opportunity to other firms to enter the market to provide these services?
- Should the Commission establish requirements for firms conducting forensic audits? If so, what should those requirements be?
- Should issuers be given a choice between engaging forensic auditors periodically and having the audit partners on their engagement team be subject to the rotation requirements? Why or why not?
- What are the costs and benefits of engaging forensic auditors to evaluate the work of the financial statement audit firm?
- This proposed rule would apply to the audits of the financial statements of "issuers." Should the Commission consider applying this rule to a broader population such as audits of the financial statements of "audit clients" as defined in 2–01(f)(6) of Regulation S–X? Why or why not?
- For organizations other than investment companies, the rotation requirements would apply to significant subsidiaries of issuers. Should a different approach be considered? Is so, what approach would be appropriate?
- Should the rotation requirements apply to all partners on the audit engagement team? If not, which partners should be subject to the requirements?
- Is the proposed guidance sufficiently clear as to which audit engagement team partners would be covered by the rule? Is the proposed approach appropriate? If not, how can it be improved?
- Is the exclusion of certain "national office partner" personnel from the rotation requirements appropriate?
- Is the guidance on national office partners who are exempted from the rotation requirements sufficiently clear?
- Is the distinction between a member of the engagement team and a national office partner who consults regularly (or even continually) on client matters sufficiently clear?
- Should certain partners performing non-audit services for the client in connection with the audit engagement be excluded from the rotation requirements?
- Should additional personnel (such as senior managers) be included within the mandatory rotation requirements?
- Is it appropriate to provide transitional relief where the proposed rules are more restrictive that the provisions of the Sarbanes-Oxley Act?
- Are there situations in foreign jurisdictions that extended partner rotation could be modified with additional safeguards or limitations that would recognize the jurisdictional requirements as well as logistical limitations that may exist?
- Should the rotation requirements be different for small firms? What changes would be appropriate and why? If so, how should small firms be defined?
- Would the proposed rules impose a cost on smaller firms that is disproportionate to the benefits that would be achieved?
- Is the five-year "time out" period necessary or appropriate? Would some shorter time period be sufficient, such as two, three or four years? Should there be different "time out" periods based on a partner's role in the audit process?
- If a partner rotates off an engagement after fewer than five years, should the "time out" period also be reduced? Why or why not? If so, how much should the reduction in the time out period be?
- Are the partner rotation requirements, as proposed, for investment company issuer's or other entities in the investment company complex too broad? Should we only prohibit a partner from rotating between investment company issuers within the same investment company complex? Why or why not?
- The proposed rules would not require all partners on the audit engagement team to rotate at the same time. Should it? Why or why not?

D. Audit Committee Administration of the Engagement

The proposed rules recognize the critical role played by audit committees in the financial reporting process and the unique position of audit committees in assuring auditor independence. An effective audit committee may enhance the auditor's independence by, among other things, providing a forum apart from management where the auditors may discuss their concerns. It may facilitate communications among the board of directors, management, internal auditors and independent accountants. An audit committee also may enhance auditor independence from management by appointing, compensating and overseeing the work of the independent auditors.

The audit committee should approve the engagement of the independent accountant to audit the issuer and its subsidiary's financial statements and have ongoing communications with the accountant. The proposals would require that the audit committee pre-approve all permissible non-audit services and all audit, review or attest engagements required under the securities laws. The proposals require that either:

- Before the accountant is engaged by the audit client to provide services other than audit, review or attest services, the audit client's audit committee expressly approve the particular engagement; or
- Any such engagement be entered into pursuant to detailed pre-approval policies and procedures established by the audit committee and the audit committee is informed on a timely basis of each service.

As provided in the Sarbanes-Oxley Act, the proposed rules recognize audit services to be broader than those services required to perform an audit pursuant to generally accepted auditing standards. For example, the Act identifies services related to the issuance of comfort letters and services related to statutory audits required for insurance companies for purposes of state law as audit services.[79] We recognize that domestically and internationally there are various requirements for statutory audits. These proposals contemplate this fact; accordingly, such engagements are viewed as audit services in the context of these proposals. These rules require that the audit committee pre-approve all such services. These proposals do anticipate that the audit committee may approve broadly the provision of audit, review and attest services by the auditor to the issuer and its subsidiaries.

The audit committee also would have the sole authority to pre-approve the engagement of the company's independent accountant to expressly perform particular non-audit services. The audit committee also could establish policies and procedures provided they are detailed as to the particular service and designed to safeguard the continued independence of the auditor. Additionally, the Sarbanes-Oxley Act allows for one audit committee member to pre-approve the service.

Unlike other issuers, the investment adviser to the investment company issuer will generally engage the issuer's accountant to perform non-auditing services that might impact the accountant's independence. The proposed rule would require pre-approval not only of the non-auditing services provided to the investment company issuer, but also require pre-approval by the investment company issuer's audit committee of the non-auditing services provided to the investment adviser of an investment company issuer and any entity controlling, controlled by, or under common control with the investment adviser that provides services to the investment company. The proposed rule would not, however, require the audit committee of an investment company to approve the auditing or non-auditing services provided: (i) To another investment company registrant within an investment company complex as defined in rule 2–01(f)(14); (ii) to a sub-adviser that primarily provides portfolio management services and is under the direction of another investment adviser; and (iii) to other entities within the investment company complex that do not provide services to the fund.

Under the proposed rule, the investment company's audit committee would be able to establish policies and procedures for pre-approving non-auditing services provided not only to the investment company issuer, but also its investment adviser and related entities that provide services to the fund. The proposed rule would permit, for purposes of determining whether a non-auditing service meets the *de minimis* exception, the investment company's audit committee to aggregate the total amount of revenues paid to the investment company's accountant by the investment company, its investment adviser and any entity controlling, controlled by, or under common control with the investment adviser that provides services to the investment company.

Also, as discussed later in this release, these provisions are supplemented as a result of the proposed proxy disclosure requirements. We believe that disclosure of the procedures the audit committee uses to pre-approve audit services will provide investors valuable information that may be used to evaluate the relationships that exist between the auditor and the audit client.

- Should the Commission create other exceptions (beyond the *de minimis* exception) that would allow an audit committee to adopt a policy that contracts that are recurring (*e.g.*, due diligence engagements in connection with a series of insignificant acquisitions) and less than a stated dollar amount (such as $25,000) or less than a stated percentage of annual revenues (such as 1% or 5%) could be entered into by management and would be reviewed by the audit committee at its next periodic meeting?
- Is allowing the audit committee to engage an auditor to perform non-audit services by policies and procedures, rather than a separate vote for each service, appropriate? If so, how do we ensure that audit committees have rigorous, detailed procedures and do not, in essence, delegate that authority to management?
- Should more or fewer aspects be left to the discretion of the audit committee?
- Are there specific matters that should be communicated to or considered by the audit committee prior to its engaging the auditor?
- What, if any, audit committee policies and procedures should be mandated to enhance auditor independence, interaction between auditors and the audit committee, and communications between and among audit committee members, internal audit staff, senior management and the outside auditor?
- Our proposed rules do not contain exemptions for foreign filers. Are there legal or regulatory impediments which may make it difficult for certain foreign filers to comply? If so, what safeguards can these foreign filers employ to ensure that they comply with the proposed rules?
- Our proposed rules requiring the audit committee to pre-approve non-audit services to be provided by the company's auditor do not contain an exemption for foreign filers. Are there legal or regulatory impediments which may make it difficult for certain foreign filers to comply? If so, what safeguards can these foreign filers employ to ensure that there is an authorization process to

[79] Section 202 of the Sarbanes-Oxley Act; 15 U.S.C 78j–1(i)(1)(A).

pre-approve such services that is separate from management?

• In addition to legal or regulatory impediments, are there practical impediments which would make it difficult for certain foreign filers to comply with the pre-approval requirements? If so, what are these impediments? What safeguards can such an entity establish to better implement the proposed rules (which is to separate the decision to engage the auditor for non-audit services from management)?

• Should the Commission provide additional specific guidance to assist audit committees when deliberating auditor independence issues? What topics would be helpful?

• Our proposed rules would require the audit committee of an investment company to pre-approve the non-auditing services provided by the accountant of the investment company to the investment company's investment adviser and any entity controlling, controlled by, or under common control with the investment adviser that provides services to the investment company. Should the audit committee of an investment company registrant be required to approve any non-auditing services provided to the investment adviser and any entity controlled, controlled by, or under common control with the investment adviser that provides services to the fund? Should the scope of the pre-approval requirement be expanded or narrowed? Why or why not?

• Under the proposed rules, the pre-approval of non-auditing services would permit, for purposes of determining whether a non-auditing service meets the *de minimis* exception, the investment company's audit committee to aggregate total revenues paid to the investment company's accountant by the investment company, its investment adviser and any entity controlled, controlled by, or under common control with the investment adviser that provides services to the fund. Should the *de minimis* exception be determined separately based on the total revenues paid to the investment company's accountant by each entity?

• This proposed rule would apply to "issuers." Should the Commission consider applying this rule to a broader population such as "audit clients" as defined in 2–01(f)(6) of Regulation S–X? Why or why not?

• In addition to the requirement that a majority of the directors who are not interested persons of the registered investment company appoint the independent accountant of a registered investment company under the Investment Company Act of 1940, the proposed rules would also require the audit committee of an investment company to separately approve the accountant. For registered investment companies, who should approve the selection of the accountant, *i.e.* independent directors, the audit committee, or both? If both, should the audit committee nominate the independent accountant with the independent directors making the selection?

E. Compensation

We propose to amend the auditor independence rules to address the practice of auditors being compensated by their firms for selling non-audit services to their audit clients. The new rule would provide that an accountant is not independent if, at any point during the audit and professional engagement period,[80] any partner, principal or shareholder of the accounting firm who is a member of the audit engagement team earns or receives compensation based on the performance of, or procuring of, engagements with that audit client, to provide any services, other than audit, review, or attest services.

Some accounting firms offer their professionals cash bonuses and other financial incentives to sell products or services, other than audit, review, or attest services to audit clients. We view such incentive programs as inconsistent with the independence and objectivity of external auditors that is necessary for them to maintain, both in fact and in appearance. The Commission believes that any partner, principal or shareholder who is a member of the audit engagement team could be influenced adversely as a result of the economic benefits that may be derived by promoting the firm's non-audit services to audit clients. We are concerned that an auditor might be viewed as compromising accounting judgments in order not to jeopardize the potential for increased income from sales of non-audit services.

"Compensation," as used in the proposed rule, would include any form of income or monetary benefit distributed to the partner, principal or shareholder. Compensation would be based on the performance or sale of non-audit services if the partner, principal, or shareholder were financially rewarded in any way for the performance or sale of such services. For example, this provision would result in accounting firms removing the sale of non-audit services to a partner's audit clients from the criteria used to allocate partnership "units" to that partner. It also would apply to any other vehicle used in determining compensation for any partner, principal or shareholder who is a member of the engagement team. This provision also reinforces the position that accountants at the partner level should be viewed as skilled professionals and not as conduits for the sale of non-audit services. This proposal recognizes and focuses on the need for independence of the most senior members of the engagement team as well as the accounting firm.

• We seek comments on all aspects of incentive compensation for audit partners, principals and shareholders and on the following:

• What economic impact will our proposal have on the current system of partnership compensation in accounting firms?

• Are there other approaches that should be considered with respect to compensation packages that pose a concern about auditor independence? If so, what are they?

• Would the proposed rule change be difficult to put into practice? If so, why? How could it be changed to be more effectively applied?

• Should managers, supervisors or staff accountants who are members of the audit engagement team also be covered by this proposal?

• Does this proposal cover the appropriate time period or should a measure other than the audit and professional engagement period be considered?

• Does the proposed rule cover the entire component of an audit partner's compensation that gives rise to independence concerns?

• Will this compensation limitation disproportionately affect some firms because of their size or compensation structure? If so, how may we accomplish our goal while taking these differences into account?

• Our proposal references compensation based on the performance or sale of non-audit services. Is there a better test that permits partners to participate in the overall success of the firm while addressing the influence that such services might have on a particular auditor-client relationship?

[80] "Audit and professional engagement period" includes both the period covered by the financial statements being audited or reviewed and the period of engagement to audit or review the client's financial statements or to prepare a report filed with the Commission. The period of engagement begins when the auditor signs an initial engagement letter or begins audit, review or attest procedures, and ends when the client or the auditor notifies the Commission that the client is no longer the auditor's audit client. *See* rule 2–01(f)(5) of Regulation S–X, 17 CFR 210.2–01(f)(5).

F. Definitions

1. Accountant

The term "accountant" currently is defined under the rules of the Commission as a "certified public accountant or public accountant performing services in connection with an engagement for which independence is required."[81] The proposed rules add to the definition the phrase a "registered public accounting firm." Under the provisions of the Sarbanes-Oxley Act, public accounting firms must register with the Public Company Accounting Oversight Board (the "Board") in order to prepare or issue, or to participate in the preparation or issuance of any audit report with respect to any issuer.[82] Thus, the term "registered public accounting firm" refers to a firm that has registered in accordance with the requirements of the Sarbanes-Oxley Act. Accordingly, the proposals would include registered public accounting firms within the definition of accountants.

2. Accounting Role

Under the existing rules of the Commission, accounting role and financial reporting oversight role were included as a single definition. However, because the proposed rules that require a cooling-off period relate only to those performing a financial reporting oversight role, the Commission proposes to define separately "accounting role" and "financial reporting oversight role." As proposed, the term "accounting role" refers to a role where a person can or does exercise more than minimal influence over the contents of the accounting records or over any person who prepares the accounting records. All persons in a "financial reporting oversight role" (defined below) are also in an "accounting role." However, persons in an accounting role include individuals in clerical positions responsible for accounting records (*e.g.*, payroll, accounts payable, accounts receivable, purchasing, sales) as well as those who report to individuals in financial reporting oversight roles (*e.g.*, assistant controller, assistant treasurer, manager of internal audit, manager of financial reporting).

• Is this proposed definition sufficiently clear? If not, what changes would make the definition clearer and more operational?

3. Financial Reporting Oversight Role

The term "financial reporting oversight role" refers to a role in which an individual has direct responsibility or oversight of those who prepare the registrant's financial statements and related information (*e.g.*, management discussion and analysis), which will be included in a registrant's document filed with the Commission. As noted above, "accounting role and financial reporting oversight role" previously was one definition. In order to subject the appropriate individuals to certain portions of the proposed rules, we are proposing to bifurcate the definitions.

• Is this proposed definition sufficiently clear? If not, what changes would make the definition clearer and more operational?

4. Audit Committee

Section 205 of the Sarbanes-Oxley Act defines an audit committee as:

> A committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer.

The Act further stipulates that if no such committee exists, then the audit committee is the entire board of directors. The Commission proposes to adopt the same meaning for audit committee as used in the Act.

The audit committee serves as an important body, serving the interests of investors, to help ensure that the registrant and its auditors fulfill their responsibilities under the securities laws. Because the definition of an audit committee includes the entire board of directors if no such committee of the board exists, these rules do not require registrants to establish audit committees.

Some companies do not have boards of directors and therefore do not have audit committees. For example, some limited liability companies and limited partnerships that do not have a corporate general partner may not have an oversight body that is the equivalent of an audit committee. We do not propose to exempt these entities from the proposed requirements. Rather, such issuers should look through each general partner of the limited partnerships acting as general partner until a corporate general partner or an individual general partner is reached. With respect to a corporate general partner, the registrant should look to the audit committee of the corporate general partner or to the full board of directors as fulfilling the role of the audit committee. With respect to an individual general partner, the registrant should look to the individual as fulfilling the role of the audit committee.

We do, however, propose to exempt asset-backed issuers[83] and unit investment trusts[84] from this proposed requirement. Because of the nature of these entities, such issuers are subject to substantially different reporting requirements. Most significantly, asset-backed issuers are not required to file financial statements like other companies. Similarly, unit investment trusts are not required to provide shareholder reports containing audited financial statements. Also, such entities typically are passively managed pools of assets. Therefore, we do not propose to apply the requirements related to audit committees in this release to such entities.

• Some registrants may not have designated boards of directors or audit committees (*e.g.* benefit plans required to file form 11–K). Does the definition of audit committee sufficiently describe who should serve in this capacity where such situations exist? If not, what additional guidance would be appropriate?

• Our proposed rules exempt unit investment trusts and asset-backed issuers from the rule requiring the audit committee to approve auditing and non-auditing services. Should unit investment trusts and asset-backed issuers be subject to these requirements? If so, given that unit investment trusts and asset-backed issuers are not actively managed, who should be responsible for approving the auditing and non-auditing services? Are there other, similar entities that should be exempt from the pre-approval requirements?

• Are the existing definitions in Regulation S–X and rule 2–01 of Regulation S–X of audit client, issuer, and subsidiary sufficiently clear?

G. Communication With Audit Committees

Section 204 of the Sarbanes-Oxley Act directs the Commission to issue rules requiring timely reporting of specific information by auditors to audit committees. We are proposing to amend Regulation S–X to require each public accounting firm registered with the Public Company Accounting Oversight Board that audits an issuer's financial statements to report, prior to the filing of such report with the Commission, to the issuer or registered investment

[81] 17 CFR 2–01(f)(1).

[82] *See* section 102(a) of the Sarbanes-Oxley Act.

[83] As defined in 17 CFR 240.13a–14(g) and 240.15d–14(g).

[84] As defined by section 4(2) of the Investment Company Act (15 U.S.C. 80a–4(2)).

company's audit committee: (1) All critical accounting policies and practices used by the issuer or registered investment company, (2) all alternative accounting treatments of financial information within generally accepted accounting principles ("GAAP") that have been discussed with management, including the ramifications of the use of such alternative treatments and disclosures and the treatment preferred by the accounting firm, and (3) other material written communications between the accounting firm and management of the issuer or registered investment company.

We believe that this section of the Sarbanes-Oxley Act and these proposed rules largely codify current requirements under Generally Accepted Auditing Standards ("GAAS") for auditors of public companies to discuss matters with management and audit committees. We further believe that specifying the timing of these communications will facilitate more open dialogue between auditors and audit committees.

Certain specific oral or written communications with audit committees are currently required by GAAS, including:

(1) Methods used to account for significant unusual transactions,

(2) Effects of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus,

(3) Process used by management in formulating particularly sensitive accounting estimates and the basis for the auditor's conclusions regarding the reasonableness of those estimates,

(4) Material audit adjustments proposed and immaterial adjustments not recorded by management,

(5) Auditor's judgments about the quality of the company's accounting principles, and

(6) Disagreements with management over the application of accounting principles, the basis for management's accounting estimates, and the disclosures in the financial statements.[85]

Auditors are required under GAAS to provide these communications in a timely manner but not necessarily before the issuance of the audit report.[86] Auditors also may communicate with audit committees on matters in addition to those specifically required by AU § 380, including auditing issues, engagement letters, management representation letters, internal controls, auditor independence, and others.

- In light of the requirements for the CEO and CFO to certify information in the company's periodic filings,[87] should the auditor be required to communicate information on critical accounting policies and practices and alternative accounting treatments to management as well as to the audit committee?

1. Critical Accounting Policies and Practices

We are proposing rules requiring communication by auditors to audit committees of all critical accounting policies and practices. This communication can be oral or written. In December 2001, we issued cautionary advice regarding each issuer disclosing in the Management's Discussion and Analysis[88] Section of its annual report those accounting policies that management believes are most critical to the preparation of the issuer's financial statements.[89] The cautionary advice indicated that "critical" accounting policies are those that are both most important to the portrayal of the company's financial condition and results and require management's most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain.[90] As part of that cautionary advice, we stated:

> Prior to finalizing and filing annual reports, audit committees should review the selection, application and disclosure of critical accounting policies. Consistent with auditing standards, audit committees should be apprised of the evaluative criteria used by management in their selection of the accounting principles and methods. Proactive discussions between the audit committee and the company's senior management and auditor about critical accounting policies are appropriate.[91]

In May 2002, the Commission proposed rules to require disclosures that would enhance investors' understanding of the application of companies' critical accounting policies.[92] The May 2002 proposed rules cover (1) accounting estimates a company makes in applying its accounting policies and (2) the initial adoption by a company of an accounting policy that has a material impact on its financial presentation. Under the first part of those proposed rules, a "critical accounting estimate" is defined as an accounting estimate recognized in the financial statements (1) that requires the registrant to make assumptions about matters that are highly uncertain at the time the accounting estimate is made and (2) for which different estimates that the company reasonably could have used in the current period, or changes in the accounting estimate that are reasonably likely to occur from period to period, would have a material impact on the presentation of the registrant's financial condition, changes in financial condition or results of operations. The May 2002 proposed rules outline certain disclosures that a company would be required to make about its critical accounting estimates. In addition, under the second part of the May 2002 proposed rules, a company would be required to make certain disclosures about its initial adoption of accounting policies, including the choices the company had among accounting principles.

Auditors may want to read and refer to the December 2001 Cautionary Guidance as well as the May 2002 proposed rules as a guide to determining the types of matters that should be communicated to the audit committee under this proposed rule. We do not propose to require that those discussions follow a specific form or manner, but we expect, at a minimum, that the discussion of critical accounting estimates and the selection of initial accounting policies will include the reasons why certain estimates or policies are or are not considered critical and how current and anticipated future events impact those determinations. In addition, we anticipate that the communications regarding critical accounting policies will include an assessment of management's disclosures along with any significant proposed modifications by the auditors that were not included.

- Should the auditor be required to provide additional information to the audit committee regarding the company's critical accounting policies?
- When should the communication take place?
- Should the auditor be required to provide the communication in writing?
- Is it appropriate that investment companies would be subject to the rules regarding critical accounting policies?

[85] *See* Codification of Statement on Auditing Standards AU § 380, "Communication with Audit Committees."

[86] *Id.*

[87] *See* Release No. 33–8124, "Certification of Disclosure in Companies' Quarterly and Annual Reports," (Aug. 29, 2002).

[88] Item 303 of Regulation S–K, (17 CFR 229.303), which requires disclosure about, among other things, trends, events or uncertainties known to management that would have a material impact on reported financial information.

[89] Release No. 33–8040 (Dec. 12, 2001) (66 FR 65013].

[90] *Id.*

[91] *Id.* (footnotes omitted).

[92] Release No. 33–8090 (May 10, 2002) (67 FR 35620).

2. Alternative Accounting Treatments

We recognize that the complexity of financial transactions results in accounting answers that are often the subject of significant debate between management and the auditors. We believe that these discussions of accounting alternatives that occur between management and the auditors should be shared with the audit committee in their oversight role. The report by the Senate Committee on Banking, Housing, and Urban Affairs on the bill that later became the foundation for the Sarbanes-Oxley Act, in addressing section 204, stated, in part:

> The Committee believes that it is important for the audit committee to be aware of key assumptions underlying a company's financial statements and of disagreements that the auditor has with management. The audit committee should be informed in a timely manner of such disagreements, so that it can independently review them and intervene if it chooses to do so in order to assure the integrity of the audit.[93]

Therefore, we are proposing rules requiring communication, either orally or in writing, by auditors to audit committees of alternative accounting treatments of financial information within GAAP that have been discussed with management, including the ramifications of the use of such alternative treatments and disclosures and the treatment preferred by the accounting firm. This proposed rule is intended to cover recognition, measurement, and disclosure considerations related to the accounting for specific transactions as well as general accounting policies.

We believe that communications regarding specific transactions should identify, at a minimum, the underlying facts, financial statement accounts impacted, and applicability of existing corporate accounting policies to the transaction. In addition, if the accounting treatment proposed does not comply with existing corporate accounting policies, or if an existing corporate accounting policy is not applicable, then an explanation of why the existing policy was not appropriate or applicable and the basis for the selection of the alternative policy should be discussed. Regardless of whether the accounting policy selected preexists or is new, the entire range of alternatives available under GAAP that were discussed by management and the auditors would be communicated along with the reasons for not selecting those alternatives. If the accounting treatment selected is not the preferred method in the auditor's opinion, we would expect that the reasons why the auditor's preferred method was not selected by management also would be discussed.

Communications regarding general accounting policies would focus on the initial selection of and changes in significant accounting policies, as required by AU § 380, and would include the impact of management's judgments and accounting estimates, as well as the auditor's judgments about the quality of the entity's accounting principles. The discussion of general accounting policies would include the range of alternatives available under GAAP that were discussed by management and the auditors along with the reasons for selecting the chosen policy. If an existing accounting policy is being modified, then the reasons for the change would also be communicated. If the accounting policy selected is not the auditor's preferred policy, then we would expect the discussions to include the reasons why the auditor considered one policy to be preferred but that policy was not selected by management.

The separate discussion of critical accounting policies and estimates is not considered a substitute for communications regarding general accounting policies, since the discussion about critical accounting policies and estimates might not encompass any new or changed general accounting policies and estimates. Likewise, this discussion of general accounting policies and estimates is not intended to dilute the communications related to critical accounting policies and estimates, since the issues affecting critical accounting policies and estimates, such as sensitivities of assumptions and others, may be tailored specifically to events in the current year, and the selection of general accounting policies and estimates should consider a broad range of transactions over time.

- Is the discussion of which accounting policies require communication with the audit committee sufficiently clear?
- Should additional matters be required to be communicated to the audit committee? If so, which matters?
- Is it appropriate that investment companies would be subject to the proposed rules regarding alternative accounting treatments?

3. Other Material Written Communications

We understand written communications between auditors and management range from formal documents, such as engagement letters, to informal correspondence, such as administrative items. We also acknowledge that not all forms of written communications provided to management also are provided to the audit committee. The decision whether to provide written communications to the audit committee is subjective and is influenced by auditing standards. Our proposed rule is intended to clarify the substance of information that would be provided by auditors to audit committees to facilitate auditor and management oversight by those committees. We anticipate that the proposed rule would result in auditors and audit committees having more robust discussions of accounting and auditing matters.

The Sarbanes-Oxley Act specifically cites the management letter and schedules of unadjusted differences as examples of material written communications to be provided to audit committees. Examples of additional written communications that we expect would be considered material to an issuer include:

- Management representation letter;[94]
- Reports on observations and recommendations on internal controls;[95]
- Schedule of material adjustments and reclassifications proposed, and a listing of adjustments and reclassifications not recorded, if any;[96]
- Engagement letter;[97] and
- Independence letter.[98]

These examples are not exhaustive, and auditors are encouraged to critically consider what additional written communications should be provided to audit committees.

4. Timing of Communications

The Act requires that the aforementioned communications should be timely reported to the audit committee. For purposes of the requirements of this provision, the proposed rule specifies that the proposed communications between the

[93] Report of the Senate Committee on Banking, Housing, and Urban Affairs, "Public Company Accounting Reform and Investor Protection Act of 2002," Senate Report 107–205, 107th Cong., 2d Sess., at 21 (July 3, 2002).

[94] *See* SAS 85 AU§ 333, "Management Representations."

[95] *See* SAS 60 AU § Communication of Internal Control Related Matters Noted in an Audit."

[96] *See* SAS 89, AU§ 333, "Audit Adjustments,'

[97] *See* SAS 83 AU§ 310, "Establishing an Understanding With the Client."

[98] *See* SQCS 2 QC§ 20, "System of Quality Control for a CPA Firm's Accounting and Auditing Practice."

auditor and the audit committee occur prior to the filing of the audit report with the Commission pursuant to applicable securities laws. As a result, these discussions will occur, at a minimum, during the annual audit, but we expect that they could occur as frequently as quarterly or more often on a real-time basis.

The timing of these communications is intended to occur before any audit report is filed with the Commission pursuant to the securities laws. We believe that this proposed rule will ensure that these communications occur prior to filing of annual reports and proxy statements, as well as prior to filing registration statements and other periodic or current reports when audit reports are included.

- Should the timing of these communications be required to occur before any audit report is filed with the Commission or at some other time?
- Should these communications regarding critical accounting policies be required to be in writing? If so, why?
- Should we include specific instructions within the proposed rule regarding the nature of communications of critical accounting policies? If so, what instructions should be provided and why?
- Do these required communications fulfill existing GAAS requirements? If not, why?
- Should these communications regarding alternative accounting treatments be required to be in writing? If so, why?
- Do these required communications fulfill the statutory requirements? If not, why?
- Should the minimum requirements for discussion of alternative accounting treatments be expanded or reduced? If so, how?
- Should the list of recommended other communications be expanded or reduced? If so, what specific items should be added and why?
- Should the list of recommended other communications be required to be communicated to the audit committee? Why or why not?
- Are the appropriate entities included under the term "issuer" appropriate? If not, what entities should be included or excluded?
- Is it appropriate that investment companies are required to make these communications to their audit committees? Why or why not?
- This proposed rule would apply to "issuers." Should the Commission consider applying this rule to a broader population such as "audit clients" as defined in 2–01(f)(6) of Regulation S–X? Why or why not?

H. Expanded Disclosure

1. Principal Accountants' Fees

To allow investors to be better able to evaluate the independence of the auditor of a company's financial statements in which they invest, the proxy disclosure rules currently require that a registrant disclose the professional fees it paid to its principal independent accountant in the most recent fiscal year. We propose to change both the types of fees that must be detailed and the years of service that are covered by the disclosure.[99] The proposed rules would increase the disclosed categories of professional fees paid for audit and non-audit services from three to four. The categories of reportable fees would be: (1) Audit Fees, (2) Audit-Related Fees, (3) Tax Fees, and (4) All Other Fees.[100] The new disclosure would show fees for each of the two most recent fiscal years, rather than just the most recent fiscal year. In addition, registrants will be required to describe in subcategories the nature of the services provided that are categorized as audit-related fees and all other fees. We are also proposing disclosure requirements related to audit committee pre-approval policies and procedures for audit and non-audit services provided by an independent public accountant as well as the percentage of fees that were pre-approved.

We are proposing these changes partly in response to public comment on this disclosure since we adopted the requirement in 2000. For example, the definition of "Audit Fees" restricts the fees reportable in that category to the services necessary only to complete the basic audit, sign the audit opinion and perform the required quarterly reviews. This category was intended to include fees for only those services specifically required under GAAS.[101] Some have suggested that the categories are not as clear as they can be and some commentators have questioned the usefulness of the current fee disclosures.

We recognize that there are certain accounting, audit, assurance and related services that accountants, in effect, must perform for their audit clients. Presently, registrants are required to combine fees for those services with fees paid for consulting and present the aggregate in the "All Other Fees" category. We recognize that this framework may make it difficult for shareholders to distinguish between fees for services traditionally performed by the accounting firm's auditors and fees for services performed by the accounting firm's consulting division. Some reporting companies have sought to add clarity by including further subcategories under "All Other Fees" to provide greater detail.

While the proposed rules continue to require issuers to disclose fees paid to the principal accountant for audit services, we are expanding the types of fees that should be included in this category. In addition to including fees for services necessary to perform an audit or review in accordance with GAAS,[102] this category also may include services that generally only the independent accountant can reasonably provide, such as comfort letters, statutory audits, attest services, consents and assistance with and review of documents filed with the Commission.

We believe that the addition of a new category, "Audit-Related Fees," will enable registrants to present the audit fee relationship with the principal accountant in a more transparent fashion. In general, Audit-Related Fees are assurance and related services that are traditionally performed by the independent accountant. More specifically, these services would include, among others: employee benefit plan audits, due diligence related to mergers and acquisitions, accounting assistance and audits in connection with proposed or consummated acquisitions, internal control reviews, consultation concerning financial accounting and reporting standards.

We also believe it is appropriate to add transparency regarding a second category of fees: "Tax Fees." Tax services traditionally have been viewed as closely related to audit services and as not being in conflict with an auditor's independence. However, such services would be subject to pre-approval by the audit committee. The review of a registrant's tax accruals and reserves is a task that requires extensive knowledge about the audit client—knowledge that has already been assimilated by the audit and tax professionals. In many public companies, the fee for tax services is substantial in relation to other services. Investors may benefit from being able to consider those fees separately from the "All Other Fees" category. The "Tax Fees" category would capture all services performed by professional staff in the independent accountant's tax division. Typically, it would include fees for tax compliance, consultation and planning. Tax compliance generally involves preparation of original and amended tax returns, claims for refund and tax payment-planning services. Tax consultation and tax planning encompass a diverse range of services, including assistance and representation in connection with tax audits and appeals, tax advice related to mergers and acquisitions, employee benefit plans and requests for rulings or technical advice from taxing authorities.

The category of "All Other Fees" would remain unchanged from the existing rule, except that to the extent that financial information systems implementation and design exist they would be disclosed as a component of "All Other Fees."

Thus, this proposal would add two new categories to the disclosures: (1) Audit-related fees and (2) tax fees. This proposal also would eliminate one of the current categories: financial information technology consulting fees. This category would be eliminated under this proposal because under the section of the proposal addressing nonaudit services, auditors would no longer be permitted to provide most of these consulting services to audit clients. Thus, the Commission believes that this disclosure of fees paid in this category would no longer be necessary.

For comparison purposes, two dollar amounts would be shown under each one of the four categories—one for each of the two most recent fiscal years. Each amount reported would represent the aggregate of all fees billed by the principal independent accountant that is appropriate to that category in one of those two years. As we note in the proposed Item, registrants also are required to describe each subcategory of services comprising the fees included in the "audit related" and "all other fees" categories.

The disclosures of the percentage of audit services that are not provided by permanent, full-time employees of the independent public accounting firm remain unchanged from previous rules.

2. Audit Committee Actions

We propose to require that registrants filing proxy statements disclose any policies and procedures developed by the audit committee of the board of directors concerning pre-approval of the independent accountant to perform both audit and non-audit services. Section 202 of the Sarbanes-Oxley Act states the pre-approval requirements for all auditing and non-audit services, with exceptions provided for *de minimis* amounts under certain circumstances, as described in the Act and the proposed rules. This section also describes the delegation authority of the audit committee related to pre-approvals. We believe that investors should be informed of audit committee pre-approval procedures and policies in place to give investors a better understanding of how audit committees are managing relationships with independent accountants, including evaluating engagements with the accountant that could impair the accountant's independence.

The proposed disclosure would set out in detail the audit committee's policies and procedures for engaging the independent accountant to perform services other than audit, review and attest services. We expect registrants to provide clear, concise and understandable descriptions of the policies and procedures. Alternatively, registrants could include a copy of those policies and procedures with the proxy statement delivered to investors and filed with the Commission. Either method should allow shareholders to obtain a complete and accurate understanding of the audit committee's policies and procedures. We expect the policies and procedures would address auditor independence oversight functions in a prudent and responsible manner. Additionally, these procedures would describe, if applicable, the specific processes in place that permit and monitor activities meeting the *de minimis* exception.

We also believe investors would benefit from knowing what percentage of the fees reported in each of the "Audit-Related Fees," "Tax Fees," and "All Other Fees" categories were pre-approved by the audit committee pursuant to the policies and procedures instituted by the audit committee. That disclosure would provide insight into the extent to which the audit committee takes an active, direct role in considering each category of non-audit fee engagements.

The Sarbanes-Oxley Act requires the Commission to promulgate rules requiring companies to disclose the required information together with periodic reports required pursuant to sections 13(a) and 15(d) of the Exchange Act. In accordance with this mandate, we propose to require the new disclosures in a company's annual report. However, because we believe that this information is relevant to a decision to vote for a particular director or to elect, approve or ratify the choice of an independent public accountant, we propose to require this disclosure in a company's proxy statement on schedule 14A or information statement on schedule 14C. Because the information is proposed to be included in part III of annual reports on forms 10–K and 10–KSB, domestic companies would be able to incorporate the required disclosures from the proxy or information statement into the annual report.

Our intent is that this information be made available to investors of all registrants. However, not all registrants are required to file proxy statements. Thus, consistent with the provisions in the Act, registrants that do not issue proxy statements would be required to include appropriate disclosures in their annual filing included in form 10–K, form 10–KSB, 20–F, form 40–F and proposed form N–CSR as appropriate. For the reasons noted previously in this release, we propose to exempt asset-backed issuers and unit investment trusts from such disclosure requirements.

In addition, we propose to require parallel disclosure for registered management investment companies ("funds") in annual reports on proposed form N–CSR.[103] Like operating companies, registered management investment companies would also be required to include this information in proxy or information statements that relate to the election of directors, or the election, approval, or ratification of an independent public accountant.[104] However, in recent years, the proxy statement has become an ineffective vehicle for making information available to fund shareholders on a regular basis because many funds are no longer required to hold annual meetings.[105]

[99] *See* proposed item 9(e), schedule 14A.

[100] Currently, registrants need disclose only "Audit Fees," "Financial Systems Design and Implementation Fees" and "All Other Fees." (17 CFR 240.14a–101, item 9(e)). We are proposing to delete the category of "Financial Systems Design and Implementation Fees" because such services generally are prohibited. *See* section II.B.2 of this release.

[101] *See* Application of Revised Rules on Auditor Independence: Frequently Asked Questions. Office of the Chief Accountant, January 16, 2001, Question and answer no. 1.

[102] *See also* section 2(a)(2) the Sarbanes-Oxley Act which defines the term "audit".

[103] Proposed form N–CSR would be used by registered management investment companies to file certified shareholder reports with the Commission under the Sarbanes-Oxley Act of 2002. *See* Investment Company Act Release No. 25723 (Aug. 30, 2002) (67 FR 57298 (Sept. 9, 2002)); Sarbanes-Oxley Act of 2002, Pub. L. 107–204, 116 Stat. 745 (2002).

[104] 17 CFR 240.14a–101, item 9(e).

[105] For historical and other reasons, most funds are organized under the laws of Massachusetts or Maryland. The organizational and operational requirements of Massachusetts business trusts are not specified by statute, and e fund's essential structure is contained in the trust agreement, which generally includes e provision eliminating the need for annual shareholder meetings to elect directors. *See generally* Jones, Morel, and Storey, *The Massachusetts Business Trust ond Registered Investment Companies*, 13 DEL. J. CORP. L. 421 (1988). Under Maryland corporate law, fund charters or by-laws are not required to provide that annual meetings be held in any year in which election of directors is not required by the

Continued

Accordingly, we believe that the disclosure regarding audit committee pre-approval policies and procedures for audit and non-audit services and professional fees billed by auditors should also be required in annual reports on proposed form N–CSR, which would be filed with the Commission and available to investors.

- Is the proxy statement the appropriate location for this disclosure? If not, why?
- Should we permit incorporation by reference into the company's annual report?
- Would expansion of the proxy disclosure of professional fees paid to the independent auditor from three categories to four provide more useful information to investors?
- Are the new categories of disclosure appropriate? Are they well defined, or should they be more accurately defined? Should there be additional (or fewer) categories?
- Is disclosure of two years of fees appropriate? Should the proposed additional fee disclosures be expanded to three years or remain at one year?
- What, if any, additional information about professional fees would be useful to investors?
- For a registrant not subject to the proxy disclosure rules, such as foreign private issuers, should we require that the same disclosures be placed in annual reports?
- Is there any additional disclosure concerning the activities of audit committees that would be beneficial to investors?
- Should companies be required to provide the information in their quarterly reports? Should it be required that the information be included in other filings such as form 10–Q or 10–QSB?
- Should registered investment companies be required to provide the information in their semi-annual report to shareholders on proposed form N–CSR?
- Registered investment companies are required to provide disclosure of audit fees billed for the registrant only, but are required to disclose other types of fees in the aggregate for the registrant, its investment adviser, and certain other parties.[106] Is this appropriate, or should we also require disclosure of audit fees on an aggregate basis? In the alternative, should we require disclosure of audit-related fees or any other fees for the registrant only and not on an aggregate basis?
- If we adopt such a requirement, should we require or permit registrants to recalculate and report fees already disclosed for more than two years so that all fee information is consistently reported and available?

I. Transition Period

While much of the current proposal implements title II of the Act, we are also proposing changes which go beyond the provisions of the Act. In those areas, we are proposing that the provisions would be effective upon adoption of final rules. However, for those situations, we are considering the appropriate timing for the implementation of final rules and how best to allow for an orderly transition as a result of the new requirements imposed by the proposals. We are considering whether the application of some of these provisions should be delayed to a later date. For example, we are considering transition provisions related to the rules concerning audit partner rotation, audit committee communications, disclosures of fees paid to auditors, and partner compensation.

- Would a period of time beyond the adoption date of the final rules be necessary or appropriate for compliance with the final rules by smaller companies or companies with whose securities currently are not listed or quoted? If so, which rules should we consider a delayed effective date?
- How should an effective date be determined with respect to each amendment?
- Are there special considerations that we should take into account in providing a transition period for foreign private issuers?

III. General Request for Comments

- We invite any interested person wishing to submit written comments on the proposals or any matters that may impact the proposals, to do so. We specifically request comments from investors, issuers, and accounting firms.
- We solicit comment on each component of the proposals.
- Would the proposals related to audit committees and partner compensation help alleviate the pressure that clients may place on engagement partners or accounting firms to acquiesce to the clients' views on accounting issues? What are some of the other scenarios where such pressures might exist?

IV. Paperwork Reduction Act

Certain provisions of the proposed amendments to Regulation S–X, schedule 14A and forms 10–K, 10–KSB, 20–F, 40–F and proposed form N–CSR contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), and the Commission has submitted them to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Compliance with the proposed requirements would be mandatory. There would be no mandatory retention period for the information disclosed under the rules being proposed in this release. Responses to the disclosure requirements would not be kept confidential.

The titles for the collections of information are: "Regulation S–X"; "Proxy Statements—Regulation 14A and Schedule 14A"; "Form 10–K"; "Form 10–KSB"; "Form 20–F"; "Form 40–F"; and "Form N–CSR under the Investment Company Act of 1940 and Securities Exchange Act of 1934, Certified Shareholder Report."

Regulation S–X (OMB Control No. 3235–0009) is the central repository for rules related to the form and content of financial statements filed with the Commission. Regulation S–X, however, does not direct registrants to file financial statements or to collect financial data. Regulation S–X indicates

Investment Company Act. MD. CODE ANN., CORPS. & ASS'NS Code 2–501(b)(1)(2002). In addition, Delaware, Minnesota, and California also have business trust or special corporate law structures that have the effect of not requiring shareholder meetings other than those required by the Investment Company Act. DEL. CODE ANN. tit. 12, § 3806 (2001); Minn Stat. 302A.431 (2001); CAL. CORP. CODE 600(b) (West 2001).

Closed-end funds registered on national securities exchanges, however, are required to hold an annual meeting to elect directors under the rules of the exchanges. *See, e.g.*, American Stock Exchange Company Guide Listing Standards, Policies and Requirements § 704; New York Stock Exchange Listed Company Manual 302.00. Closed-end fund shareholders therefore generally would receive annual proxy statements.

[106] Item 9(e)(1), (2), and (3) of schedule 14A (17 CFR 240.14a–101, item 9(e)(1), (2), and (3)) (requiring disclosure under the caption "Audit Fees" of fees billed for audit of registrant's financial statements and disclosure under the captions "Financial Information Systems Design and Implementation Fees," and "All Other Fees" of fees billed for services rendered to the registrant, its investment adviser, and any entity controlling, controlled by, or under common control with the adviser that provides services to the registrant); proposed item 9(e)(1), (2), (3) and (4) of schedule 14A; proposed instruction 2 to item 9(e) of schedule 14A (proposing to require disclosure under the caption "Audit Fees" of fees billed for audit of registrant's financial statements, and disclosure under the captions "Audit-Related Fees," "Tax Fees," and "All Other Fees" of fees billed for services rendered to the registrant, the registrant's investment adviser, and any entity controlling, controlled by, or under common control with the adviser that provides services to the registrant).

what should be in the financial statements and how financial statements should be presented when they are required to be filed by other rules or forms under the securities laws. Because Regulation S–X does not require any information to be filed with the Commission, only one burden hour is assigned to cover a reading of the regulation. Burden hours and costs associated with the preparation of financial statements in accordance with Regulation S–X are allocated to the rules or forms that require the financial statements to be filed.

A. Communication With Audit Committees

As required by section 204 of the Sarbanes-Oxley Act, we are proposing to amend Regulation S–X to require each public accounting firm registered with the Public Company Accounting Oversight Board that audits an issuer's financial statements to report to the issuer's audit committee (1) all critical accounting policies and practices used by the issuer, (2) alternative accounting treatments within GAAP that have been discussed with management, including the ramifications of the use of the alternative treatments and the treatment preferred by the accounting firm, and (3) other material written communications between the accounting firm and management of the issuer such as any management letter or schedule of "unadjusted differences." The required reports need not be in writing but the report would be required to be presented to the audit committee before the auditor's report on the financial statements is filed with the Commission.[107]

We believe that auditing standards currently require discussions between the auditors and the audit committee of significant unusual, controversial, or emerging accounting policies, of the process used by management to select certain estimates, and of disagreements over certain accounting matters.[108] We further believe that audit committees generally are aware of management's letter making representations to the auditors, which the auditor uses in conducting the audit of the issuer's financial statements. Audit committees also should be aware of "unadjusted differences," if any, as a result of the enactment of section 401 of the Sarbanes-Oxley Act, which added section 13(i) to the Securities Exchange Act of 1934 ("Exchange Act").[109] Under new section 13(i) of the Exchange Act, therefore, there should be no material "unadjusted differences."

Because of these GAAS and legal provisions, we believe that adoption of the proposed rules regarding auditor reports to audit committees would not increase significantly the burden hours on accounting firms or registrants.

B. Disclosures of Audit and Non-Audit Services

1. Proxy and Information Statements

Schedule 14A [110] (OMB Control No. 3235–0059) prescribes the information that a company must include in its proxy statement to ensure that shareholders are provided material information relating to voting decisions. The Commission currently estimates that 7,661 registrants annually file schedule 14A. Schedule 14C [111] (OMB Control No. 3235–0057) prescribes the information that a company that is registered under section 12 of the Exchange Act must include in its information statement in advance of a security holders' meeting when it is not soliciting proxies from its security holders. The Commission currently estimates that 464 registrants annually file schedule 14C.

Item 9 of schedule 14A requires the disclosure of certain information regarding the registrant's relationship with the independent auditor of the company's financial statements when there is a solicitation relating to (1) a meeting at which directors to the company's board of directors are to be elected (or the solicitation of consents or authorizations in lieu of such a meeting) or (2) the election of the auditor, or the approval or ratification of the company's selection of the auditor. We are proposing to amend paragraph (e) of item 9 to provide more detailed information regarding the categories of fees paid by the registrant to the auditor and to inform investors about the critical role that audit committees play in assuring the auditor's independence. We believe that the proposed disclosure would allow investors to better assess an auditor's independence and the certain activities of an audit committee.

Item 9(e) currently requires disclosure of fees billed by the auditor in the last fiscal year, with the fees broken down into three categories: Audit fees, financial information systems design and implementation fees, and all other fees. The proposals would add disclosure of two categories (tax fees and audit-related fees), while eliminating one category (financial information systems design and implementation), and require disclosure of one more past year of each of these fees. Because these fees are already being disclosed, repeating the prior year's disclosures for comparison purposes should not increase significantly a registrant's compliance burden. In addition, breaking tax fees and audit-related fees out of the "all other" category of fees currently being disclosed should not result in any significant incremental burden.

Under the proposals, registrants also would be required to disclose any policies and procedures adopted by an audit committee to be followed for auditor engagements for services other than audit, review and attest services in the event that the audit committee does not expressly pre-approve the particular engagements. In addition, the proposals would require registrants to disclose what percentage of fees in each of the categories noted above (audit, audit-related, tax, and other) relate to engagements that were pre-approved by the audit committee.

We estimate that the incremental disclosure of fees, the audit committee's policies and procedures for approval of audit engagements, and the percentage of fees pre-approved by the audit committee, would impose, on average, two additional burden hours on each of the 7,661 filers of schedule 14A, or an aggregate 15,322 additional burden hours. We estimate that most of this time would relate to consideration and review of the disclosures of the audit committee's policies and procedures. We further estimate that approximately 75% of the extra burden hours, or approximately 11,492 hours, would be expended by internal staff and the remaining 25%, or 3,830 hours, would be for outside legal costs associated with reviewing the proposed disclosures. Assuming that outside legal costs would be an average of $300 per hour, the aggregate annual legal costs would be $1,149,000. Similarly, we estimate that these proposed disclosures would

[107] Release No. 33–8040 (Dec. 12, 2001) (66 FR 65013). In May of this year, we proposed rules to require disclosures that would enhance investors' understanding of the application of companies' critical accounting policies. The proposed disclosures would focus on accounting estimates a company makes in applying its accounting policies and the initial adoption by a company of an accounting policy that has a material impact on its financial presentation. Release No. 33–8098 (May 10, 2002) (67 FR 35620).

[108] *See* SAS 61, AU § 380, "Communication with Audit Committees or Others with Equivalent Authority and Responsibility."

[109] Each financial report that contains financial statements, and that is required to be prepared in accordance with (or reconciled to) generally accepted accounting principles under this title and filed with the Commission shall reflect all material correcting adjustments that have been identified by a registered public accounting firm in accordance with generally accepted accounting principles and the rules and regulations of the Commission.

[110] 17 CFR 240.14a–101.

[111] 17 CFR 240.14c–101.

impose, on average, two additional burden hours on each of the 464 filers of schedule 14C, or an aggregate 928 additional burden hours. Using the same allocation of hours and cost estimate of legal fees as for schedule 14A, we estimate that 696 hours would be expended by internal staff and the remaining 232 hours would be for outside legal assistance, producing an outside legal cost of $69,600.

2. Annual Reports on Form 10–K

The proposed disclosure generally should be presented in a company's proxy statement in accordance with item 9(e) of schedule 14A, and incorporated by reference into the form 10–K (OMB Control No. 3235–0063). Some companies that file forms 10–K, however, are not subject to the proxy disclosure requirements. These companies would, therefore, now be required to present the required disclosures in the form 10–K. We do not believe, however, that the disclosures would be burdensome to these companies because the information to be disclosed (fees billed to the company by the auditor in the last fiscal year, with the fees broken down into certain categories) should be readily available to the company.

We estimate that the incremental disclosure of fees, the audit committee's olicies and procedures for approval of audit engagements, and the percentage of fees pre-approved by the audit committee, would impose, on average, two additional burden hours per year on each of the 8,484 filers of form 10–K. Six thousand six hundred and seventy-six (6,676) of those filers, however, would provide the information under schedule 14A and 209 of those filers would provide the information under schedule 14C.[112] The burden hours for the disclosure by these filers therefore has been assigned to schedule 14A and schedule 14C, respectively. The burden imposed on the remaining 1,599 filers is being assigned to form 10–K. This results in 3,198 (2 hours x 1,599 filers) additional burden hours. We estimate that most of this time would relate to consideration and review of the disclosures of the audit committee's policies and procedures. We further estimate that approximately 75% of the extra burden hours, or approximately 2,399 hours, would be expended by internal staff and the remaining 25%, or 799 hours, would be for outside legal costs associated with reviewing the proposed disclosures. Assuming that outside legal costs would be an average of $300 per hour, the aggregate annual legal costs would be $239,700.

3. Annual Reports on Form 10–KSB

Form 10–KSB (OMB Control No. 3235–0420) is the annual report filed with the Commission by "small businesses issuers." A "small business issuer" is an entity that (1) has revenues of less than $25,000,000, (2) is a U.S. or Canadian issuer, (3) is not an investment company, and (4) if a majority owned subsidiary, the parent corporation is also a small business issuer. An entity is not a "small business issuer," however, if the aggregate market value of its outstanding voting and non-voting common stock held by non-affiliates is $25,000,000 or more.[113] We do not believe, however, that these disclosures would be burdensome to these companies because the information to be disclosed (fees billed to the company by the auditor in the last fiscal year, with the fees broken down into certain categories) should be readily available to the company.

We estimate that the incremental disclosure of fees, the audit committee's policies and procedures for approval of audit engagements, and the percentage of fees pre-approved by the audit committee, would impose, on average, two additional burden hours per year on each of the 3,820 filers of form 10–KSB. Nine hundred and eighty-five (985) of those filers, however, would provide the information under schedule 14A and 255 of those filers would provide the information under schedule 14C. The burden hours for the disclosure by these filers has been assigned to schedule 14A and schedule 14C, respectively. The burden imposed on the remaining 2,580 filers is being assigned to form 10–KSB. This results in 5,160 (2 hours x 2,580 filers) additional burden hours. We estimate that most of this time would relate to consideration and review of the disclosures of the audit committee's policies and procedures. We further estimate that approximately 75% of the extra burden hours, or approximately 3,870 hours, would be expended by internal staff and the remaining 25%, or 1,290 hours, would be for outside legal costs associated with reviewing the proposed disclosures. Assuming that outside legal costs would be an average of $300 per hour, the aggregate annual legal costs would be $387,000.

4. Annual Reports by Foreign Private Issuers on Form 20–F

Form 20–F (OMB Control No. 3235–0288) is used for the registration of securities of foreign private issuers pursuant to sections 12(b) or 12(g) of the Exchange Act and annual and transition reports filed with the Commission pursuant to sections 13(a) or 15(d) of the Exchange Act.[114]

Foreign private issuers generally are not subject to the proxy disclosure requirements and, therefore, would be required to present the required disclosures on form 20–F. We do not believe, however, that these disclosures would be burdensome to these companies because the information to be disclosed (fees billed to the company by the auditor in the last fiscal year, with the fees broken down into certain categories) should be readily available to the company.

We estimate that the incremental disclosure of fees, the audit committee's policies and procedures for approval of audit engagements, and the percentage of fees pre-approved by the audit committee, would impose, on average, two additional burden hours per year on each of the 1,194 filers of form 20–F, or 2,388 additional burden hours. We estimate that most of this time would relate to consideration and review of the disclosures of the audit committee's policies and procedures. We further estimate that approximately 25% of the extra burden hours, or approximately 597 hours, would be expended by internal staff and the remaining 75%, or 1,791 hours, would be for outside legal costs associated with reviewing the proposed disclosures because this form is prepared by foreign private issuers who rely more heavily on outside counsel for assistance. Assuming that outside legal costs would be an average of $300 per hour, the aggregate annual legal costs would be $537,300.

5. Reports by Certain Canadian Issuers on Form 40–F

Form 40–F is used by certain Canadian issuers to register securities with the Commission pursuant to section 12(b) or section 12(g) and for reports pursuant to section 15(d) of the Exchange Act. A Canadian issuer may use the form if it is subject to the reporting requirements solely by reason of having filed a registration statement on form F–7, F–8, F–9, F–10, or F–80 under the Securities Act of 1933. A Canadian issuer also may use the form if it has a reporting obligation under the Exchange Act and (1) the issuer is incorporated under the laws of Canada or any Canadian province or territory, (2) the issuer is a foreign private issuer or a crown corporation, (3) the issuer has been subject to periodic reporting requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 12 calendar months immediately preceding the filing of the form and currently is in compliance with such obligations, and (4) the aggregate market value of the public float of the issuer's outstanding equity shares is $75 million or more (no market value threshold needs to be satisfied, however, in connection with non-convertible securities eligible for registration on form F–9).[115]

Canadian companies that file form 40–F generally are not subject to the proxy disclosure requirements and, therefore, would be required to present the required disclosures on form 40–F. We do not believe, however, that these disclosures would be burdensome to these companies because the information to be disclosed (fees billed to the company by the auditor in the last fiscal year, with the fees broken down into certain categories) should be readily available to the company.

We estimate that the incremental disclosure of fees, the audit committee's policies and procedures for approval of audit engagements, and the percentage of fees pre-approved by the audit committee, would impose, on average, two additional burden hours per year on each of the 134 filers of form 40–F, or 268 additional burden hours. We estimate that most of this time would relate to consideration and review of the disclosures of the audit committee's policies and procedures. Consistent with our treatment of foreign private issuers filing form 20–F, we further estimate that approximately 25% of the extra burden hours, or approximately 67 hours, would be expended by internal staff and the remaining 75%, or 201 hours, would be for outside legal costs associated with reviewing the proposed disclosures. Assuming that outside legal costs would be an average of $300 per hour, the aggregate annual legal costs would be $60,300.

6. Proposed Form N–CSR

We issued a release proposing form N–CSR on August 30, 2002, pursuant to section 30 of the Investment Company Act (15 U.S.C. 80a–29) and sections 13 and 15(d) of the Exchange Act (15 U.S.C. 78m and 78o(d)). The proposed disclosure would be required in a registered management investment company's annual report on proposed form N–CSR. We estimate that the additional disclosure of fees, the audit committee's policies and procedures for approval of audit engagements, and the percentage of fees pre-approved by the audit committee, would impose, on average, 1.5 additional burden hours per year on each of the anticipated 3,700 filers of proposed form N–CSR. This results in 5,550 (1.5 hours x 3,700 filers) additional burden hours. We estimate that most of this time would relate to consideration and review of the disclosures of the audit committee's policies and procedures. We estimate that the cost of these burden hours would $81 per hour, resulting in aggregate internal costs of $449,550.[116] Further, we estimate that this additional disclosure would require 0.5 hours in legal review by outside counsel at an average rate of $300 per hour, resulting in aggregate annual outside legal costs of $555,000.

Pursuant to 44 U.S.C. 3506(c)(2)(B), we solicit comments to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimates of the burden of the proposed collections of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) evaluate whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–49–02. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No.S7–49–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

V. Cost—Benefit Analysis

We are sensitive to the costs and benefits imposed by our rules, and we have identified certain costs and benefits of these proposals. Additionally, certain of these costs are imposed by Congressional mandate through the enactment of the Sarbanes-Oxley Act. We request comments on all aspects of this cost-benefit analysis, including the identification of any additional costs or benefits. We encourage commenters to identify and supply relevant data concerning the costs or benefits of the proposed amendments.

A. Background

The Sarbanes-Oxley Act was enacted on July 30, 2002. Title II to that Act adds sections 10A(g) through 10A(l) to the Securities Exchange Act of 1934 ("Exchange Act") and requires that the Commission, within 180 days of enactment, adopt rules to carry out each of those sections.[117]

The proposed rules, in general, would:

- Revise the Commission's regulations related to the non-audit services that, if provided to an audit client, would impair an accounting firm's independence[118];
- Require that an issuer's audit committee pre-approve all audit and non-audit services provided to the issuer by the auditor of an issuer's financial statements[119];
- Prohibit any partner on the audit engagement team from providing audit services to the issuer for more than five consecutive years[120];
- Prohibit an accounting firm from auditing an issuer's financial statements if certain members of management of that issuer had been members of the accounting firm's audit engagement team within the one-year period preceding the commencement of audit procedures[121];
- Require that the auditor of an issuer's financial statements report certain matters to the issuer's audit committee, including "critical" accounting policies used by the issuer[122]; and

[112] These numbers are obtained by reviewing the number of filers that filed a form 10–K and schedule 14A or schedule 14C, respectively, between October 1, 2001, and September 30, 2002.

[113] 17 CFR 240.12b–2.

[114] 17 CFR 249.220f.

[115] 17 CFR 249.240f.

[116] *See* Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2002* (2002).

[117] Section 208(a) of the Sarbanes-Oxley Act of 2002.

[118] *See* section 201 of the Sarbanes-Oxley Act.

[119] *See* section 202 of the Sarbanes-Oxley Act.

[120] *See* section 203 of the Sarbanes-Oxley Act.

[121] See section 206 of the Sarbanes-Oxley Act.

[122] See section 204 of the Sarbanes-Oxley Act.

• Require disclosures to investors of information related to the audit and non-audit services provided by, and fees paid by the issuer to, the auditor of the issuer's financial statements.[123]

In addition, under the proposed rules, an accountant would not be independent from an audit client if any partner, principal or shareholder of the accounting firm who is a member of the engagement team received compensation based directly on any service provided or sold to that client other than audit, review and attest services. We believe that accounting firms should discontinue compensating these individuals for "cross-selling" services. While many of these proposed rules would respond directly to the provisions of title II of the Sarbanes-Oxley Act, certain of these proposals would go beyond the specific provisions of the Act to more fully address what we believe to be the Congressional intent. These provisions include:

• Our proposal requiring any partner on the audit engagement team be subject to the rotation requirements;

• Requiring a one-year cooling-off period for all audit client's employment of engagement team personnel; and

• Our proposal to limit an audit partner from receiving compensation for recommending non-audit services to an audit client.

B. Potential Benefits of the Proposed Rules

Potential benefits resulting from the proposed amendments include increased investor confidence in the independence of auditors, in the audit process, and in the reliability of reported financial information. As discussed below, clearer auditor independence regulations should provide investors with comfort that auditors are placing the interests of investors over financial or personal incentives. Proposed rules mandating that auditors communicate certain matters to audit committees should benefit investors by enhancing the opportunities for meaningful audit committee oversight of the financial reporting process. Investors also would benefit from the enhanced disclosure of the non-audit services provided by, and fees paid to, the accounting firm that audits and reviews the company's financial statements, and from better disclosure of the audit committee's role in approving the provision of non-audit services by the accounting firm that audits the company's financial statements. We believe that these factors could improve the efficiency of the markets and result in a lower cost of capital.

1. Auditor Independence

The amendments would facilitate the independence of the auditor from management in the following ways.

• Providing clearer definition of the lines of non-audit services that would impair an auditor's independence;

• Requiring that each engagement of the auditor to perform audit or non-audit services for the company be pre-approved by the audit committee, which serves as the representative of investors;

• Requiring the "rotation" of partners on the audit engagement to assure a periodic fresh look at the accounting and auditing issues presented in the engagement;

• Providing that the auditor's independence would be impaired if revenues to the accounting firm from the sale of non-audit services or products to a company were directly paid to any partner, principal, or shareholder of the firm who works on the audit of that company's financial statements. This provision should decrease the appearance of any pressure on the audit engagement partner to appease management during the audit process in order to facilitate sales of non-audit services and increase the appearance and reality of auditor independence; and

• Requiring a "cooling off" period between working on the audit engagement team and joining the client as a member of management in order to assure that personal relationships and the new member of management's knowledge of the audit plan do not negatively impact the audit process.

Strengthening auditor independence should provide investors with more comfort that the auditors would play their "gatekeeper" role in companies" financial reporting and provide further assurance that the true financial condition of companies is reflected in their financial reporting thereby allowing public companies less costly access to the capital markets.

2. Auditor Reports to Audit Committees

The proposed rules would require that each public accounting firm registered with the Public Company Accounting Oversight Board that audits an issuer's financial statements report to the issuer's audit committee (1) All critical accounting policies and practices used by the issuer, (2) alternative accounting treatments within GAAP that have been discussed with management, including the ramifications of the use of the alternative treatments and the treatment preferred by the accounting firm, and (3) other material written communications between the accounting firm and management of the issuer such as any management letter or schedule of "unadjusted differences."

The report by the Senate Committee on Banking, Housing, and Urban Affairs on the bill that later became the foundation for the Sarbanes-Oxley Act, in addressing the need for such reports from the auditor to the audit committee, stated, in part:

> The Committee believes that it is important for the audit committee to be aware of key assumptions underlying a company's financial statements and of disagreements that the auditor has with management. The audit committee should be informed in a timely manner of such disagreements, so that it can independently review them and intervene if it chooses to do so in order to assure the integrity of the audit.[124]

Almost eight months before passage of the Sarbanes-Oxley Act, in December 2001, we issued cautionary advice regarding each issuer disclosing in the Management Discussion and Analysis [125] section of its annual report those accounting policies that management believes are most critical to the preparation of the issuer's financial statements.[126] The cautionary advice indicated that "critical" accounting policies are those that are both most important to the portrayal of the company's financial condition and results and require management's most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain.[127] As part of that cautionary advice, we stated:

> Prior to finalizing and filing annual reports, audit committees should review the selection, application and disclosure of critical accounting policies. Consistent with auditing standards, audit committees should be apprised of the evaluative criteria used by management in their selection of the accounting principles and methods. Proactive discussions between the audit committee and the company's senior management and auditor about critical accounting policies are appropriate.[128]

We continue to believe that such communications are appropriate and facilitate the audit committee's oversight of the financial reporting process. Investors should benefit by the audit committee being in a position to challenge what it may view as novel or aggressive use of GAAP to enhance reports of the company's financial results or financial condition.

The rules proposed in May 2002 provide additional information about the application of critical accounting policies, including "critical accounting estimates" and the initial adoption of material accounting policies. Auditors may want to refer to these proposed rules,[129] as well as the December 2001 cautionary advice, in determining the types of matters to be communicated to the audit committee.

3. Enhanced Disclosures About the Services Provided by Auditors to Registrants

Investors would receive more detailed information about:

• Any policies and procedures adopted by an audit committee that are designed to assure that the provision of non-audit services and products by the auditor do not impair the auditor's independence,

• The fees paid by the registrant to the auditor in each of the last two years for audit, audit-related, tax, and all other services, and

• The percentage of fees in each of those categories that were pre-approved by the audit committee.

The proposed disclosures will afford investors greater visibility into those aspects of the auditor-client relationship. Providing better, more complete information in cases where non-audit services occur allows investors to determine for themselves whether there are concerns related to the auditor's independence. It also may allow investors to ask more direct and useful questions of management and directors regarding their decisions to engage the auditors for such services.

4. Compensation

The proposed rules specify that audit partners that are compensated for cross-selling non-audit services are not independent. This would further enhance the independence of the audit function since the audit partner's focus would be on the conduct of the audit rather than on efforts to sell other services to management. The danger inherent in compensation to audit partners for cross-selling non-audit services is that it might create a temptation for auditors to compromise the quality of the audit in order to maintain their relationship with clients to whom they hope to cross-sell such services.[130]

C. Potential Costs of the Proposals

1. Auditor Independence

Changes in our auditor independence regulations may impose costs on accounting firms and on any issuers that engage, or would like to consider engaging, the auditor of an issuer's financial statements to perform non-audit services.

(a) *Non-audit services.* According to the information available to the staff in 2000, approximately 12,600 registrants did not purchase any consulting services from the auditor of their financial statements, and 4,100 registrants reported purchasing such services.[131] Based on the scrutiny that these services have received over the past year, the Commission staff believes that the number of companies purchasing non-audit services from their auditor might have decreased significantly.

The current auditor independence rules state that the performance of certain non-audit services will impair an auditor's independence. The proposed rules, in some cases, would redefine the limits of those services and would add one more item, "expert services," to the list of prohibited services. These changes could impact the competitive markets for these services. Issuers would be precluded from engaging auditors to perform certain services in the categories of internal audit services, financial systems design and implementation services, appraisal and valuation services, actuarial services, and others, that may be performed under the current rules. These companies may incur costs from having to use a separate vendor for such services resulting in the possible loss of any synergistic benefits of having a single provider for both audit and non-audit services. In particular, the loss of company-specific information that might flow from the non-audit team to the audit engagement team, or vice versa, could in some instances lower the quality of either service. Issuers also may incur costs locating a new vendor and developing a business relationship with that vendor. In addition, issuers may incur costs from not being able to retain their preferred provider of non-audit services, if that preferred provider happens to also be their auditor. The difference in value between a preferred provider and a second choice may be substantial, particularly if the preferred provider has relatively unique service offerings or service offerings that are particularly well suited to the needs of the issuer.

Accounting firms may lose one or more sources of revenue if the proposed rules are adopted because they would no longer be able to sell certain non-audit services to their audit clients. We believe, however, that in view of the statements by the largest four accounting firms, and others, that they would no longer provide internal audit outsourcing services and financial system design and implementation services to audit clients,[132] costs associated with the proposed rules may be limited. Also, to the extent non-audit services are merely redistributed among the firms, there would be no net loss of revenue to public accounting firms as a whole.

(b) *Audit Committee Pre-approval of Services.* Under the proposed rules, all auditing and non-audit services to be provided by the auditor of an issuer's financial statements must be pre-approved by the issuer's audit committee.[133] There may be incremental

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[123] *See generally*, section 202 of the Sarbanes-Oxley Act; section 10A(i)(2) of the Exchange Act, 15 U.S.C. 78j–1(i)(2).

[124] Report of the Senate Committee on Banking, Housing, and Urban Affairs, "Public Company Accounting Reform and Investor Protection Act of 2002," Senate Report 107–205, 107th Cong., 2d Sess., at 21 (July 3, 2002).

[125] Item 303 of Regulation S–K (17 CFR 229.303), which requires disclosure about, among other things, trends, events or uncertainties known to management that would have a material impact on reported financial information.

[126] Release No. 33–8040 (Dec. 12, 2001) (66 FR 65013).

[127] *Id.*

[128] *Id.* (footnotes omitted).

[129] Release Nos. 33–8098 (May 10, 2002) (67 FR 35620).

[130] Moreover, such compensation might increase the effect of any conflict of interest inherent in the provision of non-audit services. It would do this by inadvertently providing a mechanism by which an issuer may influence an audit partner short of the threat to change auditors. That is, if issuers are not pleased with the results of an audit, such a compensation structure gives them the option to "punish" the audit partner by discontinuing the purchase of (or by not purchasing) the *non-audit services* and thereby causing the audit partner's compensation to be directly reduced. Since this punitive action is apt to be less costly to the issuer than would be a change in auditors, it represents a more credible threat to the audit partner than does the threat to change auditors. As a consequence, issuers may be more willing to employ this avenue of improper influence than to actually change auditors, and, indeed, audit partners may be more responsive to such pressure, given its enhanced credibility.

[131] *Id.*; 65 FR at 43185.

[132] Report of the Senate Committee on Banking, Housing, and Urban Affairs, "Public Company Accounting Reform and Investor Protection Act of 2002," Senate Report 107–205, 107th Cong., 2d Sess., at 18 (July 3, 2002).

[133] Section 301 of the Sarbanes-Oxley Act of 2002 requires the Commission to direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that does not meet certain criteria, including having an audit committee that performs certain functions. *See* section 10A(m) of the Exchange Act, 15 U.S.C. 78j–1(m). The Sarbanes-Oxley Act defines "audit committee" to be "(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the

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costs associated with audit committees performing this function. Such costs might include more frequent committee meetings, an increased workload on audit committee members, and having legal counsel review the audit committee's draft policies and procedures for engaging the auditors for non-audit services. The increased burden on audit committee members might result in the need to increase their compensation, resulting in additional costs to issuers. Some of these costs may be mitigated by the provisions in the Act and in the proposed rules that would allow the audit committee to delegate to one or more audit committee members the authority to grant pre-approvals of these services.[134]

Inadvertent violations of the Act and the proposed rules that would add to the costs of the rules also may be mitigated by the de minimus exception to the pre-approval requirement.[135] Under this exception, the pre-approval requirement is waived if: (1) The aggregate amount of the non-audit services is not more than five percent of the total amount of revenues paid by the issuer to the auditor during the fiscal year in which the non-audit services were provided, (2) at the time of the engagement the issuer did not recognize the services to be non-audit services, and (3) the services are approved by the audit committee prior to the completion of the audit.[136]

We also believe that as a result of the Commission's audit committee disclosure requirements adopted in 1999,[137] prior disclosures related to the involvement of the audit committee in recommending or approving changes in auditors and the resolution of disagreements between management and the auditors,[138] and professional standards that require communications between the auditor and audit committees on auditor independence issues,[139] many companies currently have audit committees that closely monitor issues related to the auditor's independence and the engagement of auditors to perform non-audit services. Accordingly, we believe that the incremental costs associated with the proposals would not be significant.

(c) *Rotation of Partners on the Audit Engagement.* Under the proposed rules, no partner would serve on an audit engagement team for more than five years.[140] Current professional requirements state that the partner in charge of an audit engagement should be replaced at least once every seven years.[141] The proposals, therefore, would require more partners to be rotated and the engagement partner to be rotated more often.

Costs associated with the periodic replacement of partners might include more frequent company-specific training, conducted by both the accounting firm and the company, as new partners join the team auditing that company's financial statements. For example, the new partners would need to learn the company's accounting and financial reporting procedures, controls and personnel. The proposed rules also might result in incremental costs related to some partners being required to relocate from one part of the country to another.

The costs related to these proposed rules would vary based on the proximity of an accounting firm's audit clients, the concentration of the firm's practice within an industry, and the availability of partners to whom the work may be redistributed, and similar factors.

Smaller firms that do not have sufficient partners to replace the partners on an audit engagement team may be particularly affected by the proposed rules in that they would have to accept more partners into the firm or lose the audit engagement.

It is difficult to calculate the costs associated with this portion of the proposed rules. However, it is likely that these costs may be passed on to issuers in the form of higher audit fees. As noted below, we request comments on the anticipated costs associated with all aspects of the proposed rules.

(d) *One-Year Cooling Off Period.* The proposed rules would indicate that an accounting firm is not independent with respect to an audit client if a former partner, principal, shareholder, or professional employee of an accounting firm is in a "financial reporting oversight role" at that client, unless the individual had not been a member of the audit engagement team for that client's financial statements during the one year period preceding the initiation of the audit.[142] A "financial reporting oversight role" is a role in which a person is in a position to or does influence the contents of financial statements or anyone who prepares them.[143] Such persons would include directors, chief executive officers, chief financial officers, chief accounting officers, controllers, and others.[144]

Currently, when a former professional employee of an accounting firm joins an audit client within one year of leaving the firm, and the individual has significant interaction with the accounting firm's audit engagement team, professional standards require the accounting firm to perform procedures to assure that the individual's knowledge of, or relationships with, the accounting firm do not adversely influence the quality of the audit.[145] These procedures include modifying the audit plan to adjust for the risk that the individual would be able to circumvent key aspects of the audit, and assuring that the people on the audit engagement team have the stature and objectivity not to be influenced by their former partner or co-employee and to be have the appropriate level of skepticism when evaluating the individual's representations and views. Because the proposed rules would limit the situations in which this situation could occur, accounting firms and audit clients would not have to pay for the performance of these procedures.

Costs might occur, however, from the company being required to delay the hiring, or not being able to hire, the individual that it believes is the most qualified person to perform a "financial reporting oversight role" at the company. This may add to recruitment costs or less efficient operations. Such costs are difficult to estimate and would vary from one company to another.

(e) *Compensation.* The proposed rules would provide that an auditor is not independent with respect to an audit client if a partner, principal or shareholder of an accounting firm, who is a member of the audit engagement team conducting an audit of that client's financial statements, earns or receives compensation based on the performance of, or in consideration of procuring, engagements to provide any services to that client other than audit, review, or attest services. This provision might affect the compensation plans of those firms that currently reward partners, principals, and shareholders of the firm for generating sales of non-audit services to their respective audit clients. If the proposed rules were adopted, those revenues would be allocated to other persons within the accounting firm. Absent this incentive, auditors may be less inclined to inform issuers of ways to improve their performance or condition through non-audit services. We do not expect, however, that there would be any incremental costs to the firm or to the client.

2. Auditor Reports to Audit Committees

Under the proposed rules, each public accounting firm registered with the Public Company Accounting Oversight Board that audits an issuer's financial statements must report to the issuer's audit committee (1) all critical accounting policies and practices used by the issuer, (2) alternative accounting treatments within GAAP that have been discussed with management, including the ramifications of the use of the alternative treatments and the treatment preferred by the accounting firm, and (3) other material written communications between the accounting firm and management of the issuer such as any management letter or schedule of "unadjusted differences."[146] The required reports need not be in writing but the report would be required to be presented to the audit committee before the auditor's report is filed with the Commission.

Because of existing GAAS and legal provisions,[147] we believe that adoption of the proposed rules regarding auditor reports to audit committees will not significantly increase costs for accounting firms or registrants. Any such costs may arise from the timing of the communications, which, under the proposed rules, must occur before the auditor's report is filed with the Commission.

3. Enhanced Disclosures About the Services Provided by Auditors to Registrants

The existing proxy disclosure rules require disclosure of all professional fees billed by the principal auditor in the last fiscal year, with the fees broken down into three categories: audit fees, financial information systems design and implementation fees, and all other fees. The proposals would divide the disclosure into two more categories—tax fees and audit-related fees—and add disclosure of one more year of these fees while eliminating separate disclosure of fees related to financial information systems design and implementation. The proposals also would require companies that do not file proxy statements to file this information with the Commission in their annual reports on forms 10–K and 10–KSB, foreign private issuers to file the information on form 20–F, certain Canadian issuers to file the information on form 40–F, and registered management investment companies to file the information on proposed form N–CSR.[148]

Registrants also would be required to disclose the audit committee's policies and procedures for approval of auditor engagements, and the percentage of fees in each of the four categories noted above (audit, audit-related, tax, and all other) that were pre-approved by the audit committee during each of the last two fiscal years.

Based on the staff's experience, we believe that the additional disclosure contemplated by the proposed rules would require, on average, approximately one-half of a page in a company's proxy statement or annual report. A financial printing company informed the staff that adding one-half of a page in the proxy statement would not be likely to increase the printing cost to the company because that much more text normally can be incorporated without increasing the page length by reformatting the document.[149] Accordingly, based on our preliminary estimates, there should be little, if any, additional printing costs from these additional disclosures.

For the purposes of the Paperwork Reduction Act, we have estimated that the incremental disclosure of fees, the disclosure of the audit committees policies and procedures for approval of audit engagements, and the percentage of fees pre-approved by the audit committee would impose, on average, two additional burden hours for each of the 7,661 filers of schedule 14A, or an aggregate annual burden of 15,322 additional burden hours. We estimate that most of this time would relate to consideration and review of the disclosures of the audit committee's policies and procedures. We further estimate that approximately 75% of the extra burden hours, or approximately 11,492 hours, would be expended by internal staff and the remaining 25%, or 3,830 hours, would be for outside legal costs associated with reviewing the proposed disclosures. Assuming that the internal staff costs the company an average of $125 per hour,[150] the aggregate annual cost for internal staff assistance would be approximately $1,436,500. If we assume that outside legal costs would be an average of $300 per hour, the aggregate annual legal costs would be $1,149,000. The total annual paperwork costs associated with the proposed disclosures, therefore, would be approximately $2,585,500. Similarly, we estimated that the 464 filers of schedule 14C would incur an additional annual burden of 928 hours, or which 696 hours would be imposed on the company itself and 232 would represent a cost for outside legal assistance. Based on these numbers, we estimate that the annual internal cost would be $87,000 (696 hours x $125 per

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financial statements of the issuer; and (B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer." Section 205(a) of the Sarbanes-Oxley Act, which, among other things, adds section 3(a)(58) to the Exchange Act.

[134] Section 202 of the Sarbanes-Oxley Act; section 10A(i)(3) of the Exchange Act, 15 U.S.C. 78j–1(i)(3).

[135] Section 202 of the Sarbanes-Oxley Act; section 10A(i)(1)(B) of the Exchange Act, 15 U.S.C. 78j–1(i)(1)(B).

[136] *Id.*

[137] Item 306 of Regulation S–K (17 CFR 229.306), and item 306 of Regulation S–B (17 CFR 228.306); *see* generally, Release No. 34–42266 (Dec. 22, 1999) (64 FR 73389). These disclosure requirements are discussed *supra*, in section II.C. of this release.

[138] Item 4 of form 8–K, 17 CFR 249.308 and item 304 of Regulation S–K, 17 CFR 229.304, which require disclosure of "whether the decision to change accountants was recommended or approved by: (A) Any audit or similar committee of the board of directors, if the issuer has such a committee; or (B) the board of directors, if the issuer has no such committee" and "whether any audit or similar committee of the board of directors, or the board of directors, discussed the subject matter of each of such disagreements with the former accountant* * *." Item 304(a)(1)(iii)(A), (iii)(B), and (iv)(B). 17 CFR 229.304(a)(1)(iii)(A), (iii)(B) and (iv)(B). For small business issuers, item 304(a)(1)(iii) of Regulation S–B, 17 CFR 228.304(a)(1)(iii) requires disclosure of "whether the decision to change accountants was recommended or approved by the board of directors or an audit or similar committee of the board of directors."

[139] *See, e.g.*, American Institute of Certified Public Accountants ("AICPA"), "Communications With Audit Committees," Statements on Auditing Standards No. ("SAS") 61, as amended by SAS 89 and 90; AICPA, Codification of Statements on Auditing Standards ("AU") § 380; Independence Standards Board, "Independence Discussions with Audit Committees," Independence Standard No. 1 (Jan. 1999).

[140] *See generally*, section 203 of the Sarbanes-Oxley Act.

[141] *See* American Institute of Certified Public Accountants, SEC Practice Section, *Requirements of Members*, at item e. The membership requirements are available online at *http://www.aicpa.org/members/div/secps/require.htm.*

[142] *See* section 206 of the Sarbanes-Oxley Act.

[143] *See* 17 CFR 210.2–01(f)(3) and proposed rule 2–01(f)(3)(B).

[144] *Id.*

[145] Independence Standards Board, "Independence Standard No. 3: Employment with Audit Clients" (July 2000).

[146] *See* section 204 of the Sarbanes-Oxley Act.

[147] *See* item 303 of Regulation S-K, 17 CFR 229.303; Release No. 33–8040 (Dec. 12, 2001); and SAS 61, AU § 380, "Communication with Audit Committees or Others with Equivalent Authority and Responsibility."

[148] Form 10–K is the annual report that registrants file with the Commission pursuant to section 13 or 15(d) of the Exchange Act, if no other annual reporting form has been prescribed. Small business issuers may use abbreviated form 10–KSB. A "small business issuer" is an entity that (1) has revenues of less than $25,000,000, (2) is a U.S. or Canadian issuer, (3) is not an investment company, and (4) if a majority owned subsidiary, the parent corporation is also a small business issuer. An entity is not a "small business issuer," however, if the aggregate market value of its outstanding voting and non-voting common stock held by non-affiliates is $25,000,000 or more. *See* 17 CFR 240.12b–2. Registered management investment companies would use proposed form N–CSR to file certified shareholder reports with the Commission under the Sarbanes-Oxley Act of 2002. *See* Investment Company Act Release No. 25723 (Aug. 30, 2002) (67 FR 57298 (Sept. 9, 2002)).

[149] *See* Release No. 34–41987 (Oct. 7, 1999) (64 FR 55648, at 55658).

[150] This cost estimate is based on data obtained from *The SIA Report* on *Management and Professional Earnings in the Securities Industry* (Oct. 2001).

hour) and the annual external cost would be $69,600 (232 hours x $300 per hour), for a total annual cost of $156,600.

For those registrants who would be providing the information on form 10–K, we estimated for the purposes of the Paperwork Reduction Act that the incremental disclosure of fees, the audit committee's policies and procedures for approval of audit engagements, and the percentage of fees pre-approved by the audit committee, would impose, on average, two additional burden hours per year on each of the 8,484 filers of form 10–K.[151] Six thousand six hundred and seventy-six (6,676) of those filers, however, would provide the information under schedule 14A and 209 of those filers would provide the information under schedule 14C. The burden hours for the disclosure by these filers therefore has been assigned to schedule 14A and schedule 14C, respectively. The burden imposed on the remaining 1,599 filers is being assigned to form 10–K. This results in 3,198 (2 hours x 1,599 filers) additional burden hours. We estimate that most of this time would relate to consideration and review of the disclosures of the audit committee's policies and procedures. We further estimate that approximately 75% of the extra burden hours, or approximately 2,399 hours, would be expended by internal staff and the remaining 25%, or 799 hours, would be for outside legal costs associated with reviewing the proposed disclosures. Assuming a cost of $125 per hour for internal costs results in aggregate internal costs of $299,875. Assuming that outside legal costs would be an average of $300 per hour, the aggregate annual legal costs would be $239,700. The total annual paperwork costs associated with the proposed disclosures, therefore, would be approximately $539,575.

For smaller companies that file forms 10–KSB[152] we estimated for the purposes of the Paperwork Reduction Act that the incremental disclosure of fees, the audit committee's policies and procedures for approval of audit engagements, and the percentage of fees pre-approved by the audit committee, would impose, on average, two additional burden hours per year on each of the 2,590 filers of form 10–KSB that do not file either schedule 14A or schedule 14C, or 5,180 additional burden hours. We estimate that most of this time would relate to consideration and review of the disclosures of the audit committee's policies and procedures. We further estimate that approximately 75% of the extra burden hours, or approximately 3,885 hours. Assuming a cost $125 per hour for internal staff, the aggregate internal costs would be approximately $485,625. The remaining 25%, or 1,295 hours, would be for outside legal costs associated with reviewing the proposed disclosures. Assuming that outside legal costs would be an average of $300 per hour, the aggregate annual legal costs would be $388,500. The total annual paperwork costs associated with the proposed disclosures, therefore, would be approximately $874,125.

Using a similar analysis, we estimated an increase of 2,388 burden hours and $537,300 in annual legal costs (2,388 x .75 x $300) for form 20–F. This produces an estimate of $298,500 (2,388 hours x $125 per hour) for internal costs, or a total cost of $835,800 ($537,300 + $298,500) for such filers. For form 40–F filers, we estimated an increase of 268 burden hours and $60,300 in annual legal costs (200 x .25 x $300). This produces an estimate of $33,500 (268 hours x $125 per hour) for internal costs, or a total cost of $93,800 ($60,300 + $33,500).

Proposed form N–CSR. We issued a release proposing form N–CSR on August 30, 2002, pursuant to section 30 of the Investment Company Act (15 U.S.C. 80a–29) and sections 13 and 15(d) of the Exchange Act (15 U.S.C. 78m and 78o(d)). For registered management investment companies that would be providing the information on proposed form N–CSR, we estimate that the incremental disclosure of fees, the audit committee's policies and procedures for approval of audit engagements, and the percentage of fees pre-approved by the audit committee, would impose, on average, two additional burden hours per year on each of the estimated 3,700 filers of proposed form N–CSR. This results in 7,400 (2 hours x 3,700 filers) additional burden hours. We estimate that most of this time would relate to consideration and review of the disclosures of the audit committee's policies and procedures. We further estimate that approximately 75% of the extra burden hours, or approximately 5,550 hours, would be expended by internal staff and the remaining 25%, or 1,850 hours, would be for outside legal costs associated with reviewing the proposed disclosures. We estimate a cost of $40 per hour for internal staff review, resulting in aggregate internal costs of $222,000. Further, we estimate that outside legal costs would be an average of $300 per hour, resulting in aggregate annual legal costs of $555,000. The total annual paperwork costs associated with the proposed disclosures, therefore, would be approximately $1,004,550.

D. Request for Comments

As noted above, we request comments on all aspects of this cost-benefit analysis, including the identification of any additional costs or benefits. We encourage commenters to identify and supply relevant data concerning the costs or benefits of the proposed amendments. We request comments, including supporting data, on the magnitude of the costs and benefits mentioned in this section.

- Are there any other costs or benefits that we have not identified? For example, would the additional duties on audit committees increase the cost of maintaining those committees? Would the amount of compensation demanded by audit committee members increase? Would there be a shortage of potential audit committee members that would lead to higher costs related to finding and retaining such members? Would the cost of officer/director liability insurance increase? Please describe any such costs and provide relevant data.
- Are there additional costs related to the proposed disclosures? If there are, please identify them and provide supporting data.
- We request comments on the reasonableness of the burden hour, cost estimates, and underlying assumptions related to the proposed disclosures.
- Will the prohibition of certain non-audit services impose greater costs on companies? If so, what will those costs be and how significant will those costs be?
- How much cost will issuers incur from not being able to retain their preferred providers of non-audit service, when that preferred provider happens to also be their auditor?
- What will be the impact, if any, on audit fees from the proposal to prohibit certain non-audit services?
- Are there any economies of scope that will be lost due to implementation of the auditor independence rules?
- Are there any economies of scale that will be lost due to implementation of the auditor independence rules?

VI. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[153] the Commission is requesting information regarding the potential impact of the proposals on the economy on an annual basis. Commentators should provide empirical data to support their views.

Section 23(a)(2) of the Exchange Act[154] requires the Commission, when adopting rules under the Exchange Act, to consider the anti-competitive effects of any rule it adopts. In this regard, we note that it may be possible that some small accounting firms would not have professionals, other than those working on the audit of a client's financial statements, with the expertise to provide non-audit services to that client. Because, under the proposed rules, receipt of fees by that professional from the provision of non-audit services would impair the auditor's independence, the accounting firm might not be in a position to provide non-audit services to that client. This proposal, therefore, could result in some companies seeking new providers of non-audit services. In addition, some companies that engage accounting firms for non-audit services permitted under the current rules, but not allowed under the Sarbanes-Oxley Act and the proposed rules, would be required to switch vendors for those services. This may have an impact on competition for those services, although to the extent the new vendor is another accounting firm, the result may a redistribution of services among firms rather than an increase or decrease in services. Small accounting firms also may be disadvantaged by the prohibition on partners providing auditing services to the issuer for more than five consecutive years, since they may not have other partners available to retain the client.

- Given that only larger clients have more than two partners as part of the audit process, would this provision impose higher costs on mid-tier firms?

In addition, section 2(b) of the Securities Act of 1933,[155] section 3(f) of the Exchange Act,[156] and section 2(c) of the Investment Company Act[157] require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.

One possible adverse impact on capital formation may come from additional costs related to audit committees. Although the proposed rules do not require companies to have audit committees, many companies may choose to establish such committees to facilitate application of the rules. Additional costs may be associated with forming such committees and, if necessary, recruiting and retaining independent directors to serve on those committees.

We believe, however, that investors need to have confidence in the independence of auditors and in the integrity of the financial information that fuels our securities markets. The proposals are designed to bolster investor confidence in the securities markets by strengthening auditor independence, improving the transparency of the role of corporate audit committees, and enhancing the reliability and credibility of financial statements of public companies. Accordingly, on the whole, the proposals should promote capital formation and market efficiency.

- We request comment on the anti-competitive effects of the proposals.
- The possible effects of our rule proposals on efficiency, competition, and capital formation are difficult to quantify. We request comment on these matters in connection with our proposed rules.

VII. Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Act Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed revisions to Regulation S–X and to item 9 of schedule 14A, and to forms 10–K, 10–KSB, 20–F, 40–F and proposed form N–CSR. The proposals would strengthen the Commission's requirements regarding the independence of auditors and related disclosures.

A. Reasons for the Proposed Action

The proposed rules generally implement a congressional mandate. Some of the proposals, although not specifically required by the statute, are designed to implement the intent of the Sarbanes-Oxley Act and to assure investors that independent auditors critically are examining reported financial information. The proposed rules should provide greater assurance to investors that independent auditors are performing their public responsibilities and that the financial information published by registrants and issuers is reliable.

The proposed rules, in general, would:

- Revise the Commission's regulations related to the non-audit services that, if provided to an audit client, would impair an accounting firm's independence;[158]
- Require that an issuer's audit committee pre-approve all audit and non-audit services provided to the issuer by the auditor of an issuer's financial statements;[159]
- Prohibit any partner on the audit engagement team from providing audit services to the issuer for more than five consecutive years;[160]
- Prohibit an accounting firm from auditing an issuer's financial statements if certain members of management of that issuer had been members of the accounting firm's audit engagement team within the one-year period preceding the commencement of audit procedures;[161]
- Require that the auditor of an issuer's financial statements report certain matters to the issuer's audit committee, including "critical" accounting policies used by the issuer;[162] and
- Require disclosures to investors of information related to the audit and non-audit services provided by, and fees paid by the issuer to, the auditor of the issuer's financial statements.[163]

In addition, under the proposed rules, an accountant would not be independent from an audit client if any partner, principal or shareholder of the accounting firm who is a member of the engagement team received compensation based on any service provided or sold to that client other than audit, review and attest services.

B. Objectives

Our objectives are to implement title II of the Sarbanes-Oxley Act in order to increase investor confidence in the independence of auditors, in the audit process, and in the reliability of reported financial information.[164] This would be accomplished by having: (1) Clearer auditor independence regulations that would provide investors with comfort that auditors are placing the interests of investors over financial or personal incentives, (2) rules mandating that auditors communicate certain matters to audit committees, which should enhance the opportunities for meaningful audit committee oversight of the financial reporting process, and (3) enhanced disclosure of

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[151] As noted previously, the proposed rules also would amend forms 20–F and 40–F. However, because the number of registrants which use these forms is very small, it is not expected to have a significant burden increase.

[152] 17 CFR 240.12b–2.

[153] Pub. L. 104–121, tit. II, 110 Stat. 857 (1996).

[154] 15 U.S.C 78w(a)(2).

[155] 15 U.S.C. 77b(b).

[156] 15 U.S.C. 78c(f).

[157] 15 U.S.C. 80a–2(c).

[158] *See* section 201 of the Sarbanes-Oxley Act.

[159] *See* section 202 of the Sarbanes-Oxley Act.

[160] *See* section 203 of the Sarbanes-Oxley Act.

[161] *See* section 206 of the Sarbanes-Oxley Act.

[162] *See* section 204 of the Sarbanes-Oxley Act.

[163] *See generally*, section 202 of the Sarbanes-Oxley Act; section 10A(i)(2) of the Exchange Act, 15 U.S.C. 78j–1(i)(2).

[164] *See* section 208 of the Sarbanes-Oxley Act.

the non-audit services provided by, and fees paid to, the accounting firm that audits and reviews the company's financial statements, and from better disclosure of the audit committee's role in approving the provision of non-audit services by the accounting firm that audits the company's financial statements. We believe that these factors may improve the efficiency of the markets and result in a lower cost of capital.

C. Legal Basis

We are proposing amendments to Regulation S–X and item 9 of schedule 14A and to forms 10–K, 10–KSB, 20–F, 40–F and proposed form N–CSR under the authority set forth in sections 3(a) and 208 of the Sarbanes-Oxley Act; schedule A and sections 7, 8, 10, 19 and 28 of the Securities Act, sections 3, 10A, 12, 13, 14, 17, 23 and 36 of the Exchange Act, sections 5, 10, 14 and 20 of the Public Utility Holding Company Act of 1935, sections 8, 30, 31 and 38 of the Investment Company Act of 1940, and sections 203 and 211 of the Investment Advisers Act of 1940.

D. Small Entities Subject to the Proposed Rules

The proposals would affect small registrants and small accounting firms that are small entities. Exchange Act rule 0–10(a) [165] and Securities Act rule 157 [166] define a company to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that approximately 2,500 companies were small entities, other than investment companies.

For purposes of the Investment Company Act, rule 0–10 [167] defines "small business" to be an investment company with net assets of $50 million or less as of the end of its most recent fiscal year. We estimate that approximately 225 investment companies met this definition.

Our rules do not define "small business" or "small organization" for purposes of accounting firms. The Small Business Administration defines small business, for purposes of accounting firms, as those with under $6 million in annual revenues.[168] We have only limited data indicating revenues for accounting firms, and we cannot estimate the number of firms with less than $6 million in revenues that practice before the Commission. We request comment on the number of accounting firms with revenue under $6 million.

E. Reporting, Recordkeeping and Other Compliance Requirements

1. Auditor Independence

The vast majority of registrants are audited by one of the four largest accounting firms, which clearly are not small entities. Nonetheless, changes in the auditor independence regulations may impose compliance requirements, recordkeeping and reporting requirements on small accounting firms and on any small registrant that engages, or would like to consider engaging, the auditor of an issuer's financial statements to perform non-audit services.

(a) *Non-audit services.* The current auditor independence rules state that the performance of certain non-audit services will impair an auditor's independence. The proposed rules, in some cases, would redefine the limits of those services and would add one more item, "expert services," to the list of prohibited services. These changes could impact the competitive markets for these services. In particular, the Commission is considering withdrawing the specific exemption in the current rules that allows audit clients with less than $200 million in total assets to engage the auditors of their financial statements to perform internal audit services.[169] Under the proposed rules, small issuers also would be precluded from engaging auditors to perform certain services in the categories of financial systems design and implementation services, appraisal and valuation services, actuarial services, and others, that may be performed under the current rules. Small registrants, therefore, may have to use a separate vendor for such services. Small accounting firms may lose one or more sources of revenue if the proposed rules are adopted because they would no longer be able to sell certain non-audit services to their audit clients.

According to the information available to the staff in 2000, however, approximately 12,600 registrants did not purchase any consulting services from the auditor of their financial statements, and 4,100 registrants reported purchasing such services.[170] Based on the attention that has been drawn to this area over the past year, the Commission staff believes that the number of small registrants purchasing non-audit services from their auditor, and the amount of small accounting firms providing services to audit clients that are Commission registrants, might have decreased significantly. Also, to the extent non-audit services are merely redistributed among the firms, there would be no net loss of revenue to public accounting firms as a whole.

(b) *Audit Committee Pre-approval of Services.* Under the proposed rules, all auditing and non-audit services to be provided by the auditor of an issuer's financial statements must be pre-approved by the issuer's audit committee.[171] The definition of audit committee in the Sarbanes-Oxley Act, which is cited in the proposed rules, however, indicates that if no such committee exists, the entire board of directors of the issuer may perform this function.[172] The rules, therefore, would not require a small company to form an audit committee.

There are reasons to believe that many small entities currently have audit committees.[173] Any small entity that does not have such a committee and would form one to facilitate operation of the proposed rules, however, would incur costs to establish such a committee and, if necessary, to recruit and retain the required number of independent directors. Small entities also might spend time and incur costs to document the audit committee's activities in the areas covered by the proposed rules, including drafting and maintaining the audit committee's policies and procedures related to engaging the auditor to perform non-audit services. Small entities also might incur costs in seeking the help of outside experts, particularly outside legal counsel, in drafting the audit committee's policies and procedures.

(c) *Rotation of Partners on the Audit Engagement.* Under the proposed rules, no partner would serve on an audit engagement team for more than five years.[174] Current professional requirements state that the partner in charge of an audit engagement should be replaced at least once every seven years.[175] The proposals, therefore, would require more partners to be rotated and the engagement partner to be rotated more often.

Costs associated with the periodic replacement of partners might include more frequent company-specific training because new partners joining the audit engagement team would need to learn the company's accounting and financial reporting procedures, controls and personnel. The proposed rules also might result in incremental costs related to some partners being required to relocate from one part of the country to another.

Smaller firms that do not have sufficient partners to make the required replacements of the partners on an audit engagement team may be particularly affected by the proposed rules. These small accounting firms might have to accept more qualified partners into the firm or lose the audit engagement.

(d) *One-Year Cooling Off Period.* The proposed rules would deem an accounting firm as not independent with respect to an audit client if a former partner, principal, shareholder, or professional employee of an accounting firm is in a "financial reporting oversight role" at that client, unless the individual had not been a member of the audit engagement team for that client's financial statements during the one year period preceding the initiation of the audit.[176] A "financial reporting oversight role" is a role in which a person is in a position to or does influence the contents of financial statements or anyone who prepares them.[177] Such persons would include directors, chief executive officers, chief financial officers, chief accounting officers, controllers, and others.[178] A small registrant might incur costs from a delay in hiring, or not being able to hire, the individual that it believes is the most qualified person to perform a "financial reporting oversight role" at the company. This may add to recruitment costs or less efficient operations. We have solicited comment and are considering alternatives to minimize the impact of this proposed rule on small entities.

(e) *Compensation.* Under the proposed rules, an accounting firm's independence would be impaired if any partner, principal or shareholder of the firm, who is a member of an engagement team auditing a client's financial statements, receives any compensation directly based on any service provided or sold to that client other than audit, review and attest services. Thus, accounting firms would have to discontinue compensating these individuals for "cross-selling" services.

Some small accounting firms might have a relatively small number of partners, principals or shareholders of the firm available to serve each client. Such firms might not have personnel, other than the partner in charge of the audit of a small company's financial statements, with sufficient expertise to market and provide non-audit services to that company. In such cases, the proposed rule might result in a small company being forced to find another provider for those services. This might result in increased costs related to small entities locating and engaging additional service providers, and might decrease revenues to small accounting firms.

2. Auditor Reports to Audit Committees

Under the proposed rules, each public accounting firm registered with the Public Company Accounting Oversight Board that audits an issuer's financial statements must report to the issuer's audit committee (1) all critical accounting policies and practices used by the issuer, (2) alternative accounting treatments within GAAP that have been discussed with management, including the ramifications of the use of the alternative treatments and the treatment preferred by the accounting firm, and (3) other material written communications between the accounting firm and management of the issuer such as any management letter or schedule of "unadjusted differences." [179] The required reports need not be in writing, but must be provided to the audit committee before the auditor's report on the financial statements if filed with the Commission.

Auditing standards currently require discussions between the auditors and the audit committee of significant unusual, controversial, or emerging accounting policies, of the process used by management to select certain estimates, and of disagreements over certain accounting matters. Further, audit committees generally are aware of management's letter making representations to the auditors, which the auditor uses in conducting the audit of the issuer's financial statements, and the auditors' letters to management on reportable conditions in internal controls and other matters. Also, due to enactment of section 401 of the Sarbanes-Oxley Act, all material adjustments identified by the auditor should be reflected in the issue's financial statements and, therefore, there should be no material "unadjusted differences."

Because of these GAAS and legal provisions, we believe that adoption of the proposed rules regarding auditor reports to audit committees will not significantly increase costs, including costs for small accounting firms and small registrants. Some costs may be incurred, however, to the extent communications would be required before the auditor's report is filed with the Commission.

3. Enhanced Disclosures About the Services Provided by Auditors to Registrants

Currently, disclosure is required in proxy and information statements of the fees billed in the most recent fiscal year under the categories of audit fees, information systems design and implementation fees, and all other fees. The proposals would require disclosure of the fees billed in each of the two most recent years, instead of the current requirement for disclosure of only the most recent year's fees. The proposals also would add the categories of tax fees and audit-related fees but eliminate separate disclosure of information systems design and implementation form the current list of audit fees, information systems design and implementation fees, and all other fees. The proposed rules also would require disclosure of the percentage of fees in each category that were pre-approved by the audit committee as opposed to being entered into under the audit committee's policies and procedures. Finally, the proposals would extend the disclosure requirements to all entities filing forms 10–K, 10–KSB, 20–F, 40–F and proposed form N–CSR.[180]

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[165] 17 CFR 240.0–10(a).

[166] 17 CFR 230.157.

[167] 17 CFR 270.0–10.

[168] 13 CFR 121.201.

[169] 17 CFR 210.2–01(c)(4)(v)(A).

[170] *Id.*; 65 FR at 43185.

[171] Section 301 of the Sarbanes-Oxley Act of 2002 requires the Commission to direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that does not meet certain criteria, including having an audit committee that performs certain functions. *See* section 10A(m) of the Exchange Act, 15 U.S.C. 78j–1(m). The Sarbanes-Oxley Act defines "audit committee" to be "(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and (B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer." Section 205(a) of the Sarbanes-Oxley Act, which, among other things, adds section 3(a)(58) to the Exchange Act.

[172] *Id.*

[173] *See, e.g.*, NACD, *2001–2002 Public Company Governance Survey* (Nov. 2001).

[174] *See generally*, section 203 of the Sarbanes-Oxley Act.

[175] *See* American Institute of Certified Public Accountants, SEC Practice Section, *Requirements of Members*, at item e. The membership requirements are available online at *http://www.aicpa.org/members/div/secps/require.htm*.

[176] *See* section 206 of the Sarbanes-Oxley Act.

[177] *See* 17 CFR 210.2–01(f)(3) and proposed rule 2–01(f)(3)(B).

[178] *Id.*

[179] *See* section 204 of the Sarbanes-Oxley Act.

[180] Form 10–K is the annual report that registrants file with the Commission pursuant to section 13 or 15(d) of the Exchange Act, if no other annual reporting form has been prescribed. Small business issuers may use abbreviated form 10–KSB. A "small business issuer" is an entity that (1) has revenues of less than $25,000,000, (2) is a U.S. or Canadian issuer, (3) is not an investment company, and (4) if a majority owned subsidiary, the parent corporation is also a small business issuer. An entity is not a "small business issuer," however, if the aggregate market value of its outstanding voting and non-voting common stock held by non-affiliates

Continued

The proposed rules would require all entities filing forms 10–K, 10–KSB, 20–F, 40–F and proposed form N–CSR to include the disclosure either in the proxy or information statement or, if the company does not issue a proxy or information statement, in forms 10–K, 10–KSB, 20–F, 40–F or proposed form N–CSR. The proposed rules, therefore, might require small entities to spend additional time and incur additional costs in preparing disclosures. Small entities also might incur costs to set up procedures to monitor the activities of the audit committee in order to collect and record the information to be disclosed under the proposed rules.

F. Duplicative, Overlapping or Conflicting Federal Rules

The Commission is not aware of any rules that duplicate, overlap, or conflict with the proposed rules.

G. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities;

2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities;

3. The use of performance rather than design standards; and

4. An exemption from coverage of the proposed amendments, or any part thereof, for small entities.

We do not propose to exempt small business issuers from the proposals because Congress indicated that any exemptions should be on a case-by-case basis and not by categories. We, nevertheless, are considering whether any exception or classifications for small businesses would be appropriate and consistent with the Sarbanes-Oxley Act. We believe investors in small companies, however, just as investors in large companies, would want and benefit from the proposed revisions in the auditor independence rules and enhanced communications between the auditor and the audit committee.

The proposed rules are designed to enhance auditors' independence and the reliability and credibility of financial statements for all public companies. Currently, we do not believe that it is feasible to further clarify, consolidate, or simplify the proposed rules for small entities. We are particularly mindful of the implications of our proposed rules on the provision of bookkeeping and internal controls services, as well as auditor rotation and cooling-off period requirements for small firms. We invite comments on these and all other issues.

H. Solicitation of Comments

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. Specifically, we request comments regarding the number of small entities that may be affected by the proposed rules, and the existence or nature of the potential impact on those small entities. We also seek comments on how to quantify the number of small accounting firms that would be affected by the proposals, and how to quantify the impact of the proposed rules on those firms.

Commenters are requested to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments on the proposed rules.

VIII. Codification Update

The Commission proposes to amend the "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982):

By amending section 602 to add a new discussion at the end of that section under the Financial Reporting Release Number (FR–64) assigned to the adopting release and including the text in the adopting release that discusses the final rules, which, if the proposals are adopted, would be substantially similar to section III of this release.

The Codification is a separate publication of the Commission. It will not be published in the Code of Federal Regulations.

IX. Statutory Bases and Text of Amendments

We are proposing amendments to rules 2–01 and 2–07 of Regulation S–X, item 9 of schedule 14A, forms 10–K, 10–KSB, 20–F and 40–F, and proposed form N–CSR under the authority set forth in schedule A and sections 7, 8, 10, 19 and 28 of the Securities Act, sections 3, 10A, 12, 13, 14, 17, 23 and 36 of the Exchange Act, sections 5, 10, 14 and 20 of the Public Utility Holding Company Act of 1935, sections 8, 30, 31 and 38 of the Investment Company Act of 1940, and sections 203 and 211 of the Investment Advisers Act of 1940 and sections 3(a) and 208 of the Sarbanes-Oxley Act.

List of Subjects

17 CFR Part 210

Accountants, Accounting.

17 CFR Part 240

Broker-dealers, Issuers, Securities.

17 CFR Part 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940 AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78l, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78ll, 78mm, 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), 80b–3, 80b–11 unless otherwise noted.

2. Section 210.2–01 is amended by:
a. Revising paragraph (c)(2)(iii);
b. Revising paragraph (c)(4);
c. Adding paragraph (c)(6);
d. Adding paragraph (c)(7);
e. Adding paragraph (c)(8);
f. Revising paragraph (f)(1);
g. Revising paragraph (f)(3); and
h. Adding paragraph (f)(17).

The revisions and additions read as follows:

§ 210.2–01 Qualifications of accountants.

* * * * *

(c) * * *

(2) * * *

(iii) *Employment at audit client of former employee of accounting firm.*

(A) A former partner, principal, shareholder, or professional employee of an accounting firm is in an accounting role or financial reporting oversight role at an audit client, unless the individual:

(*1*) Does not influence the accounting firm's operations or financial policies;

(*2*) Has no capital balances in the accounting firm; and

(*3*) Has no financial arrangement with the accounting firm other than one providing for regular payment of a fixed dollar amount (which is not dependent on the revenues, profits, or earnings of the accounting firm):

(*i*) Pursuant to a fully funded retirement plan, rabbi trust, or, in jurisdictions in which a rabbi trust does not exist, a similar vehicle; or

(*ii*) In the case of a former professional employee who was not a partner, principal, or shareholder of the accounting firm and who has been disassociated from the accounting firm for more than five years, that is immaterial to the former professional employee.

(B) A former partner, principal, shareholder, or professional employee of an accounting firm is in a financial reporting oversight role at an audit client, unless the individual:

(*1*) Was not a member of the audit engagement team of the audit client during the one year period preceding the date that audit procedures commenced. Audit procedures are deemed to have commenced at the earlier of:

(*i*) The date that the accountant commenced the audit for the period covered by the financial statements that included the date of the initial employment of the audit engagement team member by the audit client; or

(*ii*) The date that the accountant commenced review procedures for the period covered by the financial statements that included the initial employment of the audit engagement team member by the audit client.

* * * * *

(4) *Non-audit services.* An accountant is not independent if, at any point during the audit and professional engagement period, the accountant provides the following non-audit services to an audit client:

(i) *Bookkeeping or other services related to the accounting records or financial statements of the audit client.* Any service, where it is reasonably likely that the results of these services will be subject to audit procedures during an audit of the audit client's financial statements, including:

(A) Maintaining or preparing the audit client's accounting records;

(B) Preparing the audit client's financial statements that are filed with the Commission or form the basis of financial statements filed with the Commission; or

(C) Preparing or originating source data underlying the audit client's financial statements.

(ii) *Financial information systems design and implementation.* (A) Directly or indirectly, operating, or supervising the operation of, the audit client's information system or managing the audit client's local area network.

(B) Designing or implementing a hardware or software system that aggregates source data underlying the financial statements or generates information that is significant to the audit client's financial statements or other financial information systems taken as a whole.

(iii) *Appraisal or valuation services, fairness opinions, or contribution-in-kind reports.* Any appraisal service, valuation service or any service involving a fairness opinion or contribution-in-kind report for an audit client, where it is reasonably likely that the results of these services will be subject to audit procedures during an audit of the audit client's financial statements.

(iv) *Actuarial services.* Any actuarially-oriented advisory service involving the determination of amounts recorded in the financial statements and related accounts for the audit client, where it is reasonably likely that the results of these services will be subject to audit procedures during an audit of the audit client's financial statements.

(v) *Internal audit outsourcing services.* Any internal audit services related to the internal accounting controls, financial systems, or financial statements, for an audit client.

(vi) *Management functions.* Acting, temporarily or permanently, as a director, officer, or employee of an audit client, or performing any decision-making, supervisory, or ongoing monitoring function for the audit client.

(vii) *Human resources.* (A) Searching for or seeking out prospective candidates for managerial, executive, or director positions;

(B) Engaging in psychological testing, or other formal testing or evaluation programs;

(C) Undertaking reference checks of prospective candidates for an executive or director position;

(D) Acting as a negotiator on the audit client's behalf, such as determining position, status or title, compensation, fringe benefits, or other conditions of employment; or

(E) Recommending, or advising the audit client to hire, a specific candidate for a specific job (except that an accounting firm may, upon request by the audit client, interview candidates and advise the audit client on the candidate's competence for financial accounting, administrative, or control positions).

(viii) *Broker-dealer, investment adviser, or investment banking services.* Acting as a broker-dealer (registered or unregistered), promoter, or underwriter, on behalf of an audit client, making investment decisions on behalf of the audit client or otherwise having discretionary authority over an audit client's investments, executing a transaction to buy or sell an audit client's investment, or having custody of assets of the audit client, such as taking temporary possession of securities purchased by the audit client.

(ix) *Legal services.* Providing any service to an audit client that, under circumstances in which the service is provided, could be provided only by someone licensed, admitted, or otherwise qualified to practice law in the jurisdiction in which the service is provided.

(x) *Expert services unrelated to the audit.* Providing expert opinions for an audit client in connection with legal, administrative, or regulatory proceedings or acting as an advocate for an audit client in such proceedings.

* * * * *

(6) *Partner rotation.* An accountant is not independent of an audit client that is:

(i) An issuer as defined in section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(f)) when an audit engagement team partner, principal or shareholder performs audit, review or attest services for that issuer or any significant subsidiaries as defined in 17 CFR 210.1–02(w), as a partner, principal or shareholder in each of the five previous fiscal years of the issuer or any significant subsidiaries and continues to serve as a partner, principal or shareholder on the audit engagement team. Following five consecutive years where audit, review or attest services have not been provided to that issuer or any significant subsidiaries by the aforementioned partners, principals or shareholders such partners, principals or shareholders again may perform audit, review or attest services for the audit client.

(ii) An entity that is part of an investment company complex as defined in 17 CFR 210.2–01(f)(14) when any audit engagement team partner, principal or shareholder performs audit, review or attest services for any entity in the investment company complex, as a partner, principal or shareholder in

is $25,000,000 or more. *See* 17 CFR 240.12b–2. Registered management investment companies would use proposed form N–CSR to file certified shareholder reports with the Commission under the Sarbanes-Oxley Act of 2002. *See* Investment Company Act Release No. 25723 (Aug. 30, 2002) (67 FR 57298 (Sept. 9, 2002)).

each of the five previous fiscal years of the entity and continues to serve as a partner, principal or shareholder on the audit engagement team. Following five consecutive years where audit, review or attest services have not been provided to any entity in the investment company complex by the aforementioned partners, principals or shareholders such partners, principals or shareholders again may perform audit, review or attest services for the audit client.

(7) *Audit committee administration of the engagement.* An accountant is not independent of an issuer (as defined in section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(f))), other than an issuer that is an Asset-Backed Issuer as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter, or an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), other than a unit investment trust as defined by section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4(2)), unless:

(i) In connection with audit, review and attest reports required under the securities laws, the issuer's or registered investment company's audit committee pre-approves all such engagements;

(ii) For engagements other than those specified in paragraph (c)(7)(i) of this section, in accordance with section 10A(i) of the Securities Exchange Act of 1934, either:

(A) Before the accountant is engaged by the issuer or its subsidiaries, or the registered investment company or its subsidiaries, to render the service, the engagement is approved by the issuer's or registered investment company's audit committee; or

(B) The engagement to render the service is entered into pursuant to pre-approval policies and procedures established by the audit committee of the issuer or registered investment company, provided the audit committee is informed of each service.

(C) Notwithstanding paragraphs (c)(7)(ii)(A) and (B) of this section, the pre-approval requirement is waived with respect to the provision of services covered under paragraph (c)(7)(ii) of this section provided:

(*1*) The aggregate amount of all such services provided constitutes no more than five percent of the total amount of revenues paid by the audit client to its accountant during the fiscal year in which the services are provided;

(*2*) Such services were not recognized by the issuer or registered investment company at the time of the engagement to be non-audit services; and

(*3*) Such services are promptly brought to the attention of the audit committee of the issuer or registered investment company and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee;

(iii) In addition, a registered investment company's audit committee pre-approves its accountant's engagements under paragraph (c)(7)(ii) of this section with the registered investment company's investment adviser (not including a sub-adviser whose role is primarily portfolio management and is sub-contracted or overseen by another investment adviser) and any entity controlling, controlled by, or under common control with the investment adviser that provides services to the registered investment company in accordance with paragraphs (c)(7)(ii)(A) through (C) of this section, except that with respect to paragraph (c)(7)(ii)(C)(*1*) of this section, the aggregate amount of all services provided constitutes no more than five percent of the total amount of revenues paid to the registered investment company's accountant by the registered investment company, its investment adviser and any entity controlling, controlled by, or under common control with the investment adviser that provides services to the registered investment company during the fiscal year in which the services are provided.

(8) *Compensation.* An accountant is not independent of an audit client if, at any point during the audit and professional engagement period, any partner, principal or shareholder who is a member of the audit engagement team earns or receives compensation based on the performance of, or procuring of, engagements with that audit client to provide any products or services other than audit, review or attest services.

* * * * *

(f)(1) *Accountant,* as used in paragraphs (b) through (e) of this section, means a registered public accounting firm, certified public accountant or public accountant performing services in connection with an engagement for which independence is required. References to the accountant include any accounting firm with which the certified public accountant or public accountant is affiliated.

* * * * *

(3)(i) *Accounting role* means a role in which a person is in a position to or does exercise more than minimal influence over the contents of the accounting records or anyone who prepares them.

(ii) *Financial reporting oversight role* means a role in which a person is in a position to or does exercise influence over the contents of the financial statements or anyone who prepares them, such as when the person is a member of the board of directors or similar management or governing body, chief executive officer, president, chief financial officer, chief operating officer, general counsel, chief accounting officer, controller, director of internal audit, director of financial reporting, treasurer, or any equivalent position.

* * * * *

(17) *Audit committee* means a committee (or equivalent body) as defined in section 3(a)(58) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(58)).

3. By adding § 210.2–07 to read as follows:

§ 210.2–07 Communication with audit committees.

(a) Each registered public accounting firm that performs for an audit client that is an issuer (as defined in section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(f))), other than an issuer that is an Asset-Backed Issuer as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter, or an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), other than a unit investment trust as defined by section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4(2)), any audit required under the securities laws shall report, prior to the filing of such audit report with the Commission, to the audit committee of the issuer or registered investment company:

(1) All critical accounting policies and practices to be used;

(2) All alternative treatments of financial information within Generally Accepted Accounting Principles that have been discussed with management of the issuer or registered investment company, including:

(i) Ramifications of the use of such alternative disclosures and treatments; and

(ii) The treatment preferred by the registered public accounting firm;

(3) Other material written communications between the registered public accounting firm and the management of the issuer or registered investment company, such as any management letter or schedule of unadjusted differences.

(b) [Reserved]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

4. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 79q, 79j, 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), 80b–4, 80b–11, unless otherwise noted.

* * * * *

5. Section 240.10A–2 is added to read as follows:

§ 240.10A–2 Auditor independence.

It shall be unlawful for an auditor not to be independent under § 210.2–01(c)(2)(iii)(B), 2–01(c)(4), 2–01(c)(6), 2–01(c)(7) and 2–07.

6. Section 240.14a–101 is amended by revising paragraph (e) of item 9 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 9. *Independent public accountants.*

* * *

* * * * *

(e)(1) Disclose, under the caption *Audit Fees,* the aggregate fees billed for each of the last two fiscal years for professional services rendered by the principal accountant for the audit of the registrant's annual financial statements and review of financial statements included in the registrant's form 10–Q (17 CFR 249.308a) or 10–QSB (17 CFR 249.308b) for those fiscal years.

(2) Disclose, under the caption *Audit-Related Fees,* the aggregate fees billed in each of the last two fiscal years for assurance and related services by the principal accountant that are reasonably related to the performance of the audit or review of the registrant's financial statements and are not reported under paragraph (e)(1) of this section. Registrants shall describe each subcategory of services comprising the fees disclosed under this category.

(3) Disclose, under the caption *Tax Fees,* the aggregate fees billed in each of the last two fiscal years for professional services rendered by the principal accountant for tax compliance, tax consulting, and tax planning.

(4) Disclose, under the caption *All Other Fees,* the aggregate fees billed in each of the last two fiscal years for products and services provided by the principal accountant, other than the services reported in paragraphs (e)(1) through (e)(3) of this section. Registrants shall describe each subcategory of services comprising the fees disclosed under this category.

(5)(i) Disclose the audit committee's pre-approval policies and procedures described in paragraph (c)(7)(ii) of Regulation S–X (17 CFR 210.2–01(c)(7)(ii)).

(ii) Disclose the percentage of fees described in each of paragraphs (e)(2) through (e)(4) of this section that were approved by the audit committee pursuant to each of the paragraphs (c)(7)(ii)(A), (c)(7)(ii)(B) and, (c)(7)(ii)(C), of rule 2–01 of Regulation S–X (17 CFR 210.2–01(c)(7)(ii)(A), (B) and (C)).

(6) If greater than 50 percent, disclose the percentage of hours expended on the principal accountant's engagement to audit the registrant's financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant's full-time, permanent employees.

Instruction to Item 9(e).

For purposes of item 9(e)(2), (3), (4), and (5)(ii) registrants that are investment companies must disclose fees billed for services rendered to the registrant, the registrant's investment adviser (not including any sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser), and any entity controlling, controlled by, or under common control with the adviser that provides services to the registrant.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for part 249 is amended by revising the citations, § 249.220f, § 249.240f, § 249.310 and § 249.310b and a citation for § 249.331 is added in numerical order to read as follows:

Authority: 15 U.S.C. 78a *et seq.*, unless otherwise noted.

* * * * *

Section 249.220f is also issued under secs. 3(a), 202, 302, 404 and 407, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.240f is also issued under secs. 3(a), 202, 302, 404 and 407, Pub. L. No. 107–204, 116 Stat. 745.

* * * * *

Section 249.310 is also issued under 15 U.S.C. 78m, 78o(d) and 78w(a) and secs. 3(a), 202 and 302, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.310b is also issued under secs. 3(a), 202 and 302, Pub. L. No. 107–204, 116 Stat. 745.

* * * * *

Section 249.331 is also issued under secs. 3(a), 202, and 302, Pub. L. No. 107–204, 116 Stat. 745.

8. Amend form 20–F (referenced in § 249.220f) by adding paragraph (d) to item 15 to read as follows:

Note: The text of form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Item 15. *Certain Disclosures.*

* * * * *

(d) Principal Accountant Fees and Services.

(1) Disclose, under the caption *Audit Fees,* the aggregate fees billed for each of the last two fiscal years for professional services rendered by the principal accountant for the audit of the registrant's annual financial statements and review of financial statements included in the registrant's form 10–Q (17 CFR 249.308a) or 10–QSB (17 CFR 249.308b) for those fiscal years.

(2) Disclose, under the caption *Audit-Related Fees,* the aggregate fees billed in each of the last two fiscal years for assurance and related services by the principal accountant that are reasonably related to the performance of the audit or review of the registrant's financial statements and are not reported under paragraph (e)(1) of this section. Registrants shall describe each subcategory of services comprising the fees disclosed under this category.

(3) Disclose, under the caption *Tax Fees,* the aggregate fees billed in each of the last two fiscal years for professional services rendered by the principal accountant for tax compliance, tax consulting, and tax planning.

(4) Disclose, under the caption *All Other Fees,* the aggregate fees billed in each of the last two fiscal years for products and services provided by the principal accountant, other than the services reported in paragraphs (e)(1) through (e)(3) of this section. Registrants shall describe each subcategory of services comprising the fees disclosed under this category.

(5)(i) Disclose the audit committee's pre-approval policies and procedures described in paragraph (c)(7)(ii) of rule 2–01 of Regulation S–X (17 CFR 210.2–01(c)(7)(ii)).

(ii) Disclose the percentage of fees described in each of paragraphs (e)(2) through (e)(4) of this section that were approved by the audit committee pursuant to each of the paragraphs (c)(7)(ii)(A), (c)(7)(ii)(B), and (c)(7)(ii)(C), of rule 2–01 of Regulation S–X (17 CFR 210.2–01(c)(7)(ii)(A), (B) and (C)).

(6) If greater than 50 percent, disclose the percentage of hours expended on the principal accountant's engagement to audit the registrant's financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant's full-time, permanent employees.

Instructions to Item 15(d).

1. You do not need to provide the information called for by this item 15(d) unless you are using this form as an annual report.

2. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this item.

* * * * *

9. Amend form 40–F (referenced in § 249.240f) by adding paragraph (10) to general instruction B to read as follows:

Note: The text of form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 40–F

* * * * *

General Instructions

* * * * *

B. Information To Be Filed on This Form.

* * * * *

(10) Principal Accountant Fees and Services.

(1) Disclose, under the caption *Audit Fees*, the aggregate fees billed for each of the last two fiscal years for professional services rendered by the principal accountant for the audit of the registrant's annual financial statements and review of financial statements included in the registrant's form 10–Q (17 CFR 249.308a) or 10–QSB (17 CFR 249.308b) for those fiscal years.

(2) Disclose, under the caption *Audit-Related Fees*, the aggregate fees billed in each of the last two fiscal years for assurance and related services by the principal accountant that are reasonably related to the performance of the audit or review of the registrant's financial statements and are not reported under paragraph (e)(1) of this section. Registrants shall describe each subcategory of services comprising the fees disclosed under this category.

(3) Disclose, under the caption *Tax Fees*, the aggregate fees billed in each of the last two fiscal years for professional services rendered by the principal accountant for tax compliance, tax consulting, and tax planning.

(4) Disclose, under the caption *All Other Fees*, the aggregate fees billed in each of the last two fiscal years for products and services provided by the principal accountant, other than the services reported in paragraphs (e)(1) through (e)(3) of this section. Registrants shall describe each subcategory of services comprising the fees disclosed under this category.

(5)(i) Disclose the audit committee's pre-approval policies and procedures described in paragraph (c)(7)(ii) of rule 2–01 of Regulation S–X (17 CFR 210.2–01(c)(7)(ii)).

(ii) Disclose the percentage of fees described in each of paragraphs (e)(2) through (e)(4) of this section that were approved by the audit committee pursuant to each of the paragraphs (c)(7)(ii)(A), (c)(7)(ii)(B), and (c)(7)(ii)(C), of rule 2–01 of Regulation S–X (17 CFR 210.2–01(c)(7)(ii)(A), (B) and (C)).

(6) If greater than 50 percent, disclose the percentage of hours expended on the principal accountant's engagement to audit the registrant's financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant's full-time, permanent employees.

Notes to Instruction B.(10).

1. You do not need to provide the information called for by this instruction B.(10) unless you are using this form as an annual report.

2. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this instruction B.(10).

* * * * *

10. Amend form 10–K (referenced in § 249.310) by:

a. Redesignating item 16 of part IV as item 17 of part IV, and

b. Adding new item 16 to part III. The addition reads as follows:

Note: The text of form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–K

* * * * *

General Instructions

* * * * *

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

Part III

* * * * *

Item 16. Principal Accountant Fees and Services.

Furnish the information required by item 9(e) of schedule 14A (§ 240.14a–101 of this chapter).

(1) Disclose, under the caption *Audit Fees*, the aggregate fees billed for each of the last two fiscal years for professional services rendered by the principal accountant for the audit of the registrant's annual financial statements and review of financial statements included in the registrant's form 10–Q (17 CFR 249.308a) or 10–QSB (17 CFR 249.308b) for those fiscal years.

(2) Disclose, under the caption *Audit-Related Fees*, the aggregate fees billed in each of the last two fiscal years for assurance and related services by the principal accountant that are reasonably related to the performance of the audit or review of the registrant's financial statements and are not reported under paragraph (e)(1) of this section. Registrants shall describe each subcategory of services comprising the fees disclosed under this category.

(3) Disclose, under the caption *Tax Fees*, the aggregate fees billed in each of the last two fiscal years for professional services rendered by the principal accountant for tax compliance, tax consulting, and tax planning.

(4) Disclose, under the caption *All Other Fees*, the aggregate fees billed in each of the last two fiscal years for products and services provided by the principal accountant, other than the services reported in paragraphs (e)(1) through (e)(3) of this section. Registrants shall describe each subcategory of services comprising the fees disclosed under this category.

(5)(i) Disclose the audit committee's pre-approval policies and procedures described in paragraph (c)(7)(ii) of rule 2–01 of Regulation S–X (17 CFR 210.2–01(c)(7)(ii)).

(ii) Disclose the percentage of fees described in each of paragraphs (e)(2) through (e)(4) of this section that were approved by the audit committee pursuant to each of the paragraphs (c)(7)(ii)(A), (c)(7)(ii)(B), and (c)(7)(ii)(C), of rule 2–01 of Regulation S–X (17 CFR 210.2–01(c)(7)(ii)(A), (B) and (C)).

(6) If greater than 50 percent; disclose the percentage of hours expended on the principal accountant's engagement to audit the registrant's financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant's full-time, permanent employees.

Instruction to Item 16.

A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this item.

* * * * *

11. Amend form 10–KSB (referenced in § 249.310b) by adding item 16 to part III to read as follows:

Note: The text of form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–KSB

* * * * *

Part III

* * * * *

Item 16. Principal Accountant Fees and Services.

Furnish the information required by item 9(e) of schedule 14A (§ 240.14a–101 of this chapter).

(1) Disclose, under the caption *Audit Fees*, the aggregate fees billed for each of the last two fiscal years for professional services rendered by the principal accountant for the audit of the registrant's annual financial statements and review of financial statements included in the registrant's form 10–Q (17 CFR 249.308a) or 10–QSB (17 CFR 249.308b) for those fiscal years.

(2) Disclose, under the caption *Audit-Related Fees*, the aggregate fees billed in each of the last two fiscal years for assurance and related services by the principal accountant that are reasonably related to the performance of the audit or review of the registrant's financial statements and are not reported under paragraph (e)(1) of this section. Registrants shall describe each subcategory of services comprising the fees disclosed under this category.

(3) Disclose, under the caption *Tax Fees*, the aggregate fees billed in each of the last two fiscal years for professional services rendered by the principal accountant for tax compliance, tax consulting, and tax planning.

(4) Disclose, under the caption *All Other Fees*, the aggregate fees billed in each of the last two fiscal years for products and services provided by the principal accountant, other than the services reported in paragraphs (e)(1) through (e)(3) of this section. Registrants shall describe each subcategory of services comprising the fees disclosed under this category.

(5)(i) Disclose the audit committee's pre-approval policies and procedures described in paragraph (c)(7)(ii) of rule 2–01 of Regulation S–X (17 CFR 210.2–01(c)(7)(ii)).

(ii) Disclose the percentage of fees described in each of paragraphs (e)(2) through (e)(4) of this section that were approved by the audit committee pursuant to each of the paragraphs (c)(7)(ii)(A), (c)(7)(ii)(B), and (c)(7)(ii)(C), of rule 2–01 of Regulation S–X (17 CFR 210.2–01(c)(7)(ii)(A), (B) and (C)).

(6) If greater than 50 percent, disclose the percentage of hours expended on the principal accountant's engagement to audit the registrant's financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant's full-time, permanent employees.

Instruction to Item 16.

A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this item.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

12. The authority citation for part 274 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

Section 274.128 is also issued under secs. 3(a), 202, and 302, Pub. L. 107–204, 116 Stat. 745.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

13. By amending form N–CSR (referenced in §§ 249.331 and 274.128).

a. By revising general instruction D;

b. By redesignating items 5 and 6 as items 6 and 7; and

c. By adding a new item 5.

The revisions and additions read as follows:

Note: The text of form N–CSR does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–CSR

* * * * *

General Instructions

* * * * *

D. Incorporation by Reference.

A registrant may incorporate by reference information required by items 5 and 7(b). No other items of the form shall be answered by incorporating any information by reference. The information required by item 5 may be incorporated by reference from the registrant's definitive proxy statement (filed or required to be filed pursuant to Regulation 14A (17 CFR 240.14a–1 *et seq.*)) or definitive information statement (filed or to be filed pursuant to Regulation 14C (17 CFR 240.14c–1 *et seq.*)) which involves the election of directors, if such definitive proxy statement or information statement is filed with the Commission not later than 120 days after the end of the fiscal year covered by an annual report on this form. All incorporation by reference must comply with the requirements of this form and the following rules on incorporation by reference: Rule 10(d) of Regulation S–K under the Securities Act of 1933 (17 CFR 229.10(d)) (general rules on incorporation by reference, which, among other things, prohibit, unless specifically required by this form, incorporating by reference a document that includes incorporation by reference to another document; and limits incorporation to documents filed within the last 5 years, with certain exceptions); rule 303 of Regulation S–T (17 CFR 232.303) (specific requirements for electronically filed documents); rules 12b–23 and 12b–32 under the Securities Exchange Act of 1934 (additional rules on incorporation by reference for reports filed pursuant to sections 13 and 15(d) of the Securities Exchange Act of 1934); and rules 0–4, 8b–23, and 8b–32 under the Investment Company Act of 1940 (17 CFR 270.0–4, 270.8b–23, and 270.8b–32) (additional rules on incorporation by reference for investment companies).

* * * * *

Item 5. Principal Accountant Fees and Services.

(a) Disclose, under the caption *Audit Fees*, the aggregate fees billed for each of the last two fiscal years for professional services rendered by the principal accountant for the audit of the registrant's annual financial statements for those fiscal years.

(b) Disclose, under the caption *Audit-Related Fees*, the aggregate fees billed in each of the last two fiscal years for assurance and related services by the principal accountant that are reasonably related to the performance of the audit of the registrant's financial statements and are not reported under paragraph (a) of this item. Registrants shall describe each subcategory of services comprising the fees disclosed under this category.

(c) Disclose, under the caption *Tax Fees*, the aggregate fees billed in each of the last two fiscal years for professional services rendered by the principal accountant for tax compliance, tax consulting, and tax planning.

(d) Disclose, under the caption *All Other Fees*, the aggregate fees billed in each of the last two fiscal years for products and services provided by the principal accountant, other than the services reported in paragraphs (a) through (c) of this item. Registrants shall describe each subcategory of services comprising the fees disclosed under this category.

(e)(1) Disclose the audit committee's pre-approval policies and procedures described in paragraph (c)(7)(ii) of rule 2–01 of Regulation S–X (17 CFR 210.2–01(c)(7)(ii)).

(2) Disclose the percentage of fees described in each of paragraphs (b) through (d) of this item that were approved by the audit committee pursuant to each of the paragraphs (c)(7)(ii)(A), (B), and (C) of rule 2–01 of Regulation S–X (17 CFR 210.2–01(c)(7)(ii)(A), (B), and (C)).

(f) If greater than 50 percent, disclose the percentage of hours expended on the principal accountant's engagement to audit the registrant's financial statements for the most recent fiscal year that were attributed to work performed by persons other than the principal accountant's full-time, permanent employees.

Instructions

1. The information required by this item 5 is only required in a report on this form N–CSR that is required by item 7(a) to include a copy of an annual report transmitted to stockholders.

2. For purposes of paragraphs (b), (c), (d) and (e)(2) of this item, registrants must disclose fees billed for services rendered to the registrant, the registrant's investment adviser (not including any sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser), and any entity controlling, controlled by, or under common control with the adviser that provides services to the registrant.

* * * * *

By the Commission.

Dated: December 2, 2002.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–30884 Filed 12–12–02; 8:45 am]

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Federal Register

Friday,
December 13, 2002

Part III

General Services Administration

41 CFR Parts 102–71, et al.
Real Property Policies Update; Final Rules

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 102–71, 102–72, 102–73, 102–74, 102–75, 102–76, 102–78, 102–79, 102–80, 102–81 and 102–83

[FMR Amendment C–1]

RIN 3090–AH45

Real Property Policies Update

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is revising the Federal Management Regulation (FMR) to complete the transfer of coverage on real property policies from the Federal Property Management Regulations (FPMR) to the FMR. In addition to this regulatory action that amends the FMR, another final rule is being published today in the **Federal Register** that amends the FPMR by removing regulatory text and providing cross-references to the FMR. The FMR coverage is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

DATES: Effective December 13, 2002.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, Director, Real Property Policy Division, Office of Governmentwide Policy, General Services Administration, by phone at (202) 501–1737 or by e-mail at *stanley.langfeld@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

As part of GSA's regulatory improvement initiative, GSA published a final rule that created FMR parts 102–71 through 102–82 (41 CFR parts 102–71 through 102–82), entitled "Real Property Policies," in the **Federal Register** on January 18, 2001 (66 FR 5358). FMR parts 102–71 through 102–82 describe the current real property policies applicable to GSA and Federal agencies to whom GSA real property authority has been delegated. By amending this regulation, GSA will update the policies in the FMR and complete the transfer of policy from the FPMR to the FMR. In addition, this amendment creates a separate part, FMR part 102–83, to deal specifically with the updated location of space policy.

Public Law 107–217 was enacted on August 21, 2002, to revise and codify without substantive change certain laws related to public buildings, property, and works in Title 40 of the United States Code. GSA will update the legal citations in FMR parts 102–71 through 102–83 to reflect this new law in a separate regulatory action.

B. Executive Order 12866

The General Services Administration (GSA) has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for comment. Therefore, the Regulatory Flexibility Act does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose reporting, recordkeeping or information collection requirements which require the approval of the Office of Management and Budget pursuant to 44 U.S.C. 3501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 102–71, 102–72, 102–73, 102–74, 102–75, 102–76, 102–78, 102–79, 102–80 and 102–83

Administrative practice and procedure, Blind, Concessions, Federal buildings and facilities, Fire prevention, Government property management, Homeless, Individuals with disabilities, Location of space, Occupational safety and health, Parking, Real property acquisition, Security measures, Surplus Government property, Utilities.

For the reasons set forth in the preamble, GSA amends 41 CFR chapter 102 as follows:

PART 102–71—GENERAL

1. The authority citation for part 102–71 continues to read as follows:

Authority: 40 U.S.C. 486(c).

§ 102–71.15 [Removed and reserved]

2. Section 102–71.15 is removed and reserved.

3. Section 102–71.20 is revised to read as follows:

§ 102–71.20 What definitions apply to GSA's real property policies?

The following definitions apply to GSA's real property policies:

Act means the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended.

Airport means any area of land or water that is used, or intended for use, for the landing and takeoff of aircraft, and any appurtenant areas that are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

Alteration means remodeling, improving, extending, or making other changes to a facility, exclusive of maintenance repairs which are preventive in nature. The term includes planning, engineering, architectural work, and other similar actions.

Blanket work authorization means an open-end agreement with an agency with an agreed upon maximum dollar ceiling where there is an on-going account for processing small requests for reimbursable services. The need for the service is clearly recognized, but exactly when the service must be rendered during the fiscal year is unclear.

Carpool means a group of two or more people regularly using a motor vehicle for transportation to and from work on a continuing basis.

Commercial activities, within the meaning of subpart D, part 102–74 of this chapter, are activities undertaken for the primary purpose of producing a profit for the benefit of an individual or organization organized for profit. (Activities where commercial aspects are incidental to the primary purpose of expression of ideas or advocacy of causes are not *commercial activities* for purposes of this part.)

Crime prevention assessment is a formal, on-site review which consists of a detailed survey, review, and analysis of an occupant agency's vulnerability to criminal activity. In addition to the normal process of a physical security survey, it involves an intensive review of an occupant's and/or building's operation and administrative procedures. It is designed to identify specific weaknesses and to recommend cost-effective, positive steps to Federal managers in dealing with criminal threats and occurrences.

Cultural activities include, but are not limited to, films, dramatics dances, and musical presentations, and fine art exhibits, whether or not these activities are intended to make a profit.

Decontamination means the complete removal or destruction by flashing of explosive powders; the neutralizing and cleaning-out of acid and corrosive materials; the removal, destruction, or neutralizing of toxic, hazardous or infectious substances; and the complete removal and destruction by burning or detonation of live ammunition from contaminated areas and buildings.

Designated Official is the highest ranking official of the primary occupant agency of a Federal facility, or, alternatively, a designee selected by mutual agreement of occupant agency officials.

Disposal agency means the executive agency designated by the Administrator of General Services to dispose of surplus real or personal property.

Educational activities mean activities such as (but not limited to) the operation of schools, libraries, day care centers, laboratories, and lecture or demonstration facilities.

Emergency includes bombings and bomb threats, civil disturbances, fires, explosions, electrical failures, loss of water pressure, chemical and gas leaks, medical emergencies, hurricanes, tornadoes, floods, and earthquakes. The term does not apply to civil defense matters such as potential or actual enemy attacks, which are addressed by the Federal Emergency Management Agency.

Executive means a Government employee with management responsibilities who, in the judgment of the employing agency head or his/her designee, requires preferential assignment of parking privileges.

Executive agency means an executive department specified in section 101 of title 5; a military department specified in section 102 of such title; an independent establishment as defined in section 104(1) of such title; and a wholly owned Government corporation fully subject to the provisions of chapter 91 of title 31.

Federal agency means any executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his or her direction).

Federal agency buildings manager means the buildings manager employed by GSA or a Federal agency that has been delegated real property management and operation authority from GSA.

Federal Government real property services provider means any Federal Government entity operating under, or subject to, the authorities of the Administrator of General Services, that provides real property services to Federal agencies. This definition also includes private sector firms under contract with Federal agencies that deliver real property services to Federal agencies. This definition excludes any entity operating under, or subject to, authorities other than those of the Administrator of General Services.

Flame-resistant means meeting performance standards as described by the National Fire Protection Association (NFPA Standard No. 701). Fabrics labeled with the Underwriters Laboratories Inc., classification marking for flammability are deemed to be flame resistant for purposes of this part.

Foot-candle is the illumination on a surface one square foot in area on which there is a uniformly distributed flux of one lumen, or the illuminance produced on a surface all points of which are at a distance of one foot from a directionally uniform point source of one candela.

GSA means the General Services Administration, acting by or through the Administrator of General Services, or a designated official to whom functions under this part have been delegated by the Administrator of General Services.

Handicapped employee means an employee who has a severe, permanent impairment which for all practical purposes precludes the use of public transportation, or an employee who is unable to operate a car as a result of permanent impairment who is driven to work by another. Priority may require certification by an agency medical unit, including the Department of Veterans Affairs or the Public Health Service.

Highest and best use means the most likely use to which a property can be put, which will produce the highest monetary return from the property, promote its maximum value, or serve a public or institutional purpose. The highest and best use determination must be based on the property's economic potential, qualitative values (social and environmental) inherent in the property itself, and other utilization factors controlling or directly affecting land use (*e.g.* zoning, physical characteristics, private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historical considerations). Projected highest and best use should not be remote, speculative, or conjectural.

Landholding agency means the Federal agency that has accountability for the property involved. For the purposes of this definition, accountability means that the Federal agency reports the real property on its financial statements and inventory records.

Indefinite quantity contract (commonly referred to as *term contract*) provides for the furnishing of an indefinite quantity, within stated limits, of specific property or services during a specified contract period, with deliveries to be scheduled by the timely placement of orders with the contractor by activities designated either specifically or by class.

Industrial property means any real property and related personal property that has been used or which is suitable to be used for manufacturing, fabricating, or processing of products; mining operations; construction or repair of ships and other waterborne carriers; power transmission facilities; railroad facilities; and pipeline facilities for transporting petroleum or gas.

Landing area means any land or combination of water and land, together with improvements thereon and necessary operational equipment used in connection therewith, which is used for landing, takeoff, and parking of aircraft. The term includes, but is not limited to, runways, strips, taxiways, and parking aprons.

Life cycle cost is the total cost of owning, operating, and maintaining a building over its useful life, including its fuel and energy costs, determined on the basis of a systematic evaluation and comparison of alternative building systems; except that in the case of leased buildings, the life cycle cost shall be calculated over the effective remaining term of the lease.

Limited combustible means rigid materials or assemblies which have fire hazard ratings not exceeding 25 for flame spread and 150 for smoke development when tested in accordance with the American Society for Testing and Materials, Test E 84, Surface Burning Characteristics of Building Materials.

Maintenance, for the purposes of part 102–75, entitled "Real Property Disposal," of this chapter, means the upkeep of property only to the extent necessary to offset serious deterioration; also such operation of utilities, including water supply and sewerage systems, heating, plumbing, and air-conditioning equipment, as may be necessary for fire protection, the needs of interim tenants, and personnel employed at the site, and the requirements for preserving certain types of equipment. For the purposes of part 102–74, entitled "Facility Management," of this chapter, *maintenance* means preservation by inspection, adjustment, lubrication, cleaning, and the making of minor repairs. *Ordinary maintenance* means routine recurring work which is incidental to everyday operations; *preventive maintenance* means work programmed at scheduled intervals.

Management means the safeguarding of the Government's interest in property, in an efficient and economical manner consistent with the best business practices.

Nationally recognized standards encompasses any standard or modification thereof which:

(1) Has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby those interested and affected by it have reached substantial agreement on its adoption, or

(2) Was formulated through consultation by appropriate Federal agencies in a manner which afforded an opportunity for diverse views to be considered.

No commercial value means real property, including related personal property, which has no reasonable prospect of producing any disposal revenues.

Nonprofit organization means an organization identified in 26 U.S.C. 501(c).

Normally furnished commercially means consistent with the level of services provided by a commercial building operator for space of comparable quality and housing tenants with comparable requirements. Service levels are based on the effort required to service space for a five-day week, one eight-hour shift schedule.

Occupant agency means an organization that is assigned space in a facility under GSA's custody and control through the formal procedures outlined in part 101–17 of the Federal Property Management Regulations.

Occupancy Emergency Organization means the emergency response organization comprised of employees of Federal agencies designated to perform the requirements established by the Occupant Emergency Plan.

Occupant Emergency Plan means procedures developed to protect life and property in a specific federally-occupied space under stipulated emergency conditions.

Occupant Emergency Program means a short-term emergency response program. It establishes procedures for safeguarding lives and property during emergencies in particular facilities.

Postal vehicle means a Government-owned vehicle used for the transportation of mail, or a privately owned vehicle used under contract with the U.S. Postal Service for the transportation of mail.

Protection means the provisions of adequate measures for prevention and extinguishment of fires, special inspections to determine and eliminate fire and other hazards, and necessary guards to protect property against thievery, vandalism, and unauthorized entry.

Public area means any area of a building under the control and custody of GSA which is ordinarily open to members of the public, including lobbies, courtyards, auditoriums, meeting rooms, and other such areas not assigned to a lessee or occupant agency.

Public body means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or any political subdivision, agency, or instrumentality of the foregoing.

Public building means:

(1) Any building which is suitable for office and/or storage space for the use of one or more Federal agencies or mixed ownership corporations, such as Federal office buildings, post offices, customhouses, courthouses, border inspection facilities, warehouses, and any such building designated by the President. It also includes buildings of this sort that are acquired by the Federal Government under the Administrator's installment-purchase, lease-purchase, and purchase-contract authorities.

(2) *Public building* does not include buildings:

(i) On the public domain.

(ii) In foreign countries.

(iii) On Indian and native Eskimo properties held in trust by the United States.

(iv) On lands used in connection with Federal programs for agricultural, recreational, and conservation purposes.

(v) On or used in connection with river, harbor, flood control, reclamation or power projects, or for chemical manufacturing or development projects, or for nuclear production, research, or development projects.

(vi) On or used in connection with housing and residential projects.

(vii) On military installations.

(viii) On Department of Veterans Affairs installations used for hospital or domiciliary purposes.

(ix) Excluded by the President.

Real property means:

(1) Any interest in land, together with the improvements, structures, and fixtures located thereon (including prefabricated movable structures, such as Butler-type storage warehouses and quonset huts, and housetrailers with or without undercarriages), and appurtenances thereto, under the control of any Federal agency, except:

(i) The public domain;

(ii) Lands reserved or dedicated for national forest or national park purposes;

(iii) Minerals in lands or portions of lands withdrawn or reserved from the public domain which the Secretary of the Interior determines are suitable for disposition under the public land mining and mineral leasing laws;

(iv) Lands withdrawn or reserved from the public domain but not including lands or portions of lands so withdrawn or reserved which the Secretary of the Interior, with the concurrence of the Administrator of General Services, determines are not suitable for return to the public domain for disposition under the general public land laws because such lands are substantially changed in character by improvements or otherwise; and

(v) Crops when designated by such agency for disposition by severance and removal from the land.

(2) Improvements of any kind, structures, and fixtures under the control of any Federal agency when designated by such agency for disposition without the underlying land (including such as may be located on the public domain, on lands withdrawn or reserved from the public domain, on lands reserved or dedicated for national forest or national park purposes, or on lands that are not owned by the United States) excluding, however, prefabricated movable structures, such as Butler-type storage warehouses and quonset huts, and housetrailers (with or without undercarriages).

(3) Standing timber and embedded gravel, sand, or stone under the control of any Federal agency whether designated by such agency for disposition with the land or by severance and removal from the land, excluding timber felled, and gravel, sand, or stone excavated by or for the Government prior to disposition.

Recognized labor organization means a labor organization recognized under title VII of the Civil Service Reform Act of 1978 (Pub. L. 95–454) governing labor-management relations.

Recreational activities include, but are not limited to, the operations of gymnasiums and related facilities.

Regional Officer, within the meaning of part 102–74, subpart D of this chapter, means the Federal official designated to supervise the implementation of the Public Buildings Cooperative Use Act's occasional use provisions. The Federal official may be an employee of GSA or a Federal agency that has delegated authority from GSA to supervise the implementation of the Public Buildings Cooperative Use Act's occasional use provisions.

Related personal property means any personal property:

(1) Which is an integral part of real property or is related to, designed for, or specially adapted to the functional or productive capacity of the real property and the removal of which would significantly diminish the economic value of the real property. Normally, common use items, including but not limited to general-purpose furniture, utensils, office machines, office supplies, or general-purpose vehicles, are not considered to be related personal property; or

(2) Which is determined by the Administrator of General Services to be related to the real property.

Repairs means those additions or changes that are necessary for the protection and maintenance of property to deter or prevent excessive or rapid deterioration or obsolescence, and to restore property damaged by storm, flood, fire, accident, or earthquake.

Ridesharing means the sharing of the commute to and from work by two or more people, on a continuing basis, in any mode of transportation.

Special space alterations are those alterations required by occupant agencies that are beyond those standard alterations provided by GSA under the RENT system and are reimbursable from the requesting agency.

State means the fifty States, political subdivisions thereof, the District of Columbia, the Commonwealths of Puerto Rico and Guam, and the territories and possessions of the United States.

Unit price agreement provides for the furnishing of an indefinite quantity, within stated limits, of specific property or services at a specified price, during a specified contract period, with deliveries to be scheduled by the timely placement of orders upon the lessor by activities designated either specifically or by class.

Unusual hours means work hours that are frequently required to be varied and do not coincide with any regular work schedule. This category includes time worked by individuals who regularly or frequently work significantly more than 8 hours per day. *Unusual hours* does not include time worked by shift workers, by those on alternate work schedules, and by those granted exceptions to the normal work schedule (*e.g.*, flex-time).

Upon approval from GSA means when an agency either has a delegation of authority document from the Administrator of General Services or written approval from the Administrator or his/her designee before proceeding with a specified action.

Vanpool means a group of at least 8 persons using a passenger van or a commuter bus designed to carry 10 or more passengers. Such a vehicle must be used for transportation to and from work in a single daily round trip.

Zonal allocations means the allocation of parking spaces on the basis of zones established by GSA in conjunction with occupant agencies. In metropolitan areas where this method is used, all agencies located in a designated zone will compete for available parking in accordance with instructions issued by GSA. In establishing this procedure, GSA will consult with all affected agencies.

PART 102–72—DELEGATION OF AUTHORITY

4. The authority citation for part 102–72 continues to read as follows:

Authority: 40 U.S.C. 486(c), (d) and (e).

§ 102–72.30 [Amended]

5. In § 102–72.30(a), remove "§ 101–18.104" and add "§ 102–73.135" in its place.

§ 102–72.60 [Amended]

6. In § 102–72.60, remove "under § 101–20.106 of this title" and add "as specified in the GSA Customer Guide to Real Property" in its place.

§ 102–72.85 [Amended]

7. In § 102–72.85, remove the "part 101–47, subpart 101–47.6, of this title" and add "part 102–75, subpart F of this chapter" in its place.

8. Part 102–73 is revised to read as follows:

CHAPTER 102—FEDERAL MANAGEMENT REGULATION

SUBCHAPTER C—REAL PROPERTY

PART 102–73—REAL ESTATE ACQUISITION

Subpart A—General Provisions

Sec.
102–73.5 What is the scope of this part?
102–73.10 What is the basic real estate acquisition policy?
102–73.15 What real estate acquisition and related services must Federal agencies provide?

United States Postal Service-Controlled Space

102–73.20 Are Federal agencies required to give priority consideration to space in buildings under the custody and control of the United States Postal Service in fulfilling Federal agency space needs?

Locating Federal Facilities

102–73.25 What policies must executive agencies comply with in locating Federal facilities?

Historic Preservation

102–73.30 What historic preservation provisions must Federal agencies comply with prior to acquiring, constructing, or leasing space?

Prospectus Requirements

102–73.35 Is a prospectus required for all acquisition, construction, or alteration projects?
102–73.40 What happens if the project exceeds the prospectus threshold?

Subpart B—Acquisition by Lease

102–73.45 When may Federal agencies consider leases of privately owned land and buildings to satisfy their space needs?
102–73.50 Are Federal agencies that possess independent statutory authority to acquire leased space subject to requirements of this part?
102–73.55 On what basis must Federal agencies acquire leases?
102–73.60 With whom may Federal agencies enter into lease agreements?
102–73.65 Are there any limitations on leasing certain types of space?
102–73.70 Are executive agencies required to acquire leased space by negotiation?
102–73.75 What functions must Federal agencies perform with regard to leasing building space?
102–73.80 Who is authorized to contact lessors, offerors, or potential offerors concerning space leased or to be leased?
102–73.85 Can agencies with independent statutory authority to lease space have GSA perform the leasing functions?
102–73.90 What contingent fee policy must Federal agencies apply to the acquisition of real property by lease?
102–73.95 How are Federal agencies required to assist GSA?

Competition in Contracting Act of 1984

102–73.100 Is the Competition in Contracting Act of 1984 (CICA) applicable to lease acquisition?

Lease Construction

102–73.105 What rules must executive agencies follow when acquiring leasehold interests in buildings constructed for Federal Government use?

Price Preference for Historic Properties

102–73.110 Must Federal agencies offer a price preference to space in historic properties when acquiring leased space?
102–73.115 How much of a price preference must Federal agencies give when acquiring leased space using the lowest price technically acceptable source selection process?
102–73.120 How much of a price preference must Federal agencies give when acquiring leased space using the best value tradeoff source selection process?

Leases With Purchase Options

102–73.125 When may Federal agencies consider acquiring leases with purchase options?

Scoring Rules

102–73.130 What scoring rules must Federal agencies follow when considering leases and leases with purchase options?

Delegations of Leasing Authority

102–73.135 When may agencies that do not possess independent leasing authority lease space?

Categorical Space Delegations

102–73.140 What is a categorical space delegation?
102–73.145 What is the policy for categorical space delegations?
102–73.150 What types of space can Federal agencies acquire with a categorical space delegation?

Special Purpose Space Delegations

102–73.155 What is an agency special purpose space delegation?
102–73.160 What is the policy for agency special purpose space delegations?
102–73.165 What types of special purpose space may the Department of Agriculture lease?
102–73.170 What types of special purpose space may the Department of Commerce lease?
102–73.175 What types of special purpose space may the Department of Defense lease?
102–73.180 What types of special purpose space may the Department of Energy lease?
102–73.185 What types of special purpose space may the Federal Communications Commission lease?
102–73.190 What types of special purpose space may the Department of Health and Human Services lease?
102–73.195 What types of special purpose space may the Department of the Interior lease?
102–73.200 What types of special purpose space may the Department of Justice lease?
102–73.205 What types of special purpose space may the Office of Thrift Supervision lease?
102–73.210 What types of special purpose space may the Department of Transportation lease?
102–73.215 What types of special purpose space may the Department of Treasury lease?
102–73.220 What types of special purpose space may the Department of Veterans Affairs lease?

Limitations on the Use of Delegated Authority

102–73.225 When must Federal agencies submit a prospectus to lease real property?
102–73.230 What is the maximum lease term that a Federal agency may agree to when it has been delegated lease acquisition authority from GSA?
102–73.235 What policy must Federal agencies follow to acquire official parking spaces?

Subpart C—Acquisition by Purchase or Condemnation

Buildings

102–73.240 When may Federal agencies consider purchase of buildings?
102–73.245 Are agencies required to adhere to the policies for locating Federal facilities when purchasing buildings?
102–73.250 What factors must executive agencies consider when purchasing sites?

Land

102–73.255 What land acquisition policy must Federal agencies follow?
102–73.260 What actions must Federal agencies take to facilitate land acquisition?

Just Compensation

102–73.265 Are Federal agencies required to provide the owner with a written statement of the amount established as just compensation?
102–73.270 What specific information must be included in the summary statement for the owner that explains the basis for just compensation?
102–73.275 Are Federal agencies required to compensate a property owner for the owner's buildings, structures, or other improvements that must be removed from the property being acquired?
102–73.280 What are Federal agencies' responsibilities to compensate a tenant for tenant-owned property when the tenant has the right or obligation to remove buildings, structures, or other improvements at the end of the term?
102–73.285 Are there any prohibitions when a Federal agency pays "just compensation" to a tenant?

Expenses Incidental to Property Transfer

102–73.290 What property transfer expenses must Federal agencies cover when acquiring real property?

Litigation Expenses

102–73.295 Are Federal agencies required to pay for litigation expenses incurred by a property owner because of a condemnation proceeding?

Relocation Assistance Policy

102–73.300 What relocation assistance policy must Federal agencies follow?

Authority: 40 U.S.C. 486(c); Sec. 3(c), Reorganization Plan No. 18 of 1950 (40 U.S.C. 490 note); Sec. 1'201(b), E.O. 12072, 43 FR 36869, 3 CFR, 1978 Comp., p. 213.

Subpart A—General Provisions

§ 102–73.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the General Services Administration (GSA)/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

§ 102–73.10 What is the basic real estate acquisition policy?

When seeking to acquire space, Federal agencies should first seek space in Government-owned and Government-leased buildings. If suitable Government-controlled space is unavailable, Federal agencies must acquire real estate and related services in an efficient and cost effective manner.

§ 102–73.15 What real estate acquisition and related services must Federal agencies provide?

Federal agencies, upon approval from GSA, may provide real estate acquisition and related services, including leasing (with or without purchase options), building and/or site purchase, condemnation, and relocation assistance. For information on the design and construction of Federal facilities, see part 102–76 of this chapter.

United States Postal Service-Controlled Space

§ 102–73.20 Are Federal agencies required to give priority consideration to space in buildings under the custody and control of the United States Postal Service in fulfilling Federal agency space needs?

Yes, after considering the availability of GSA-controlled space and determining that no such space is available to meet its needs, Federal agencies must extend priority consideration to available space in buildings under the custody and control of the United States Postal Service (USPS) in fulfilling Federal agency space needs, as specified in the "Agreement Between General Services Administration and the United States Postal Service Covering Real and Personal Property Relationships and Associated Services," dated July 1985.

Locating Federal Facilities

§ 102–73.25 What policies must executive agencies comply with in locating Federal facilities?

Executive agencies must comply with the location policies in this part and part 102–83 of this chapter.

Historic Preservation

§ 102–73.30 What historic preservation provisions must Federal agencies comply with prior to acquiring, constructing, or leasing space?

Prior to acquiring, constructing, or leasing space, Federal agencies must comply with the provisions of section 110(a) of the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470h–2(a)), regarding the use of historic properties. Federal agencies can find guidance on protecting, enhancing and preserving historic and cultural property in part 102–78 of this chapter.

Prospectus Requirements

§ 102–73.35 Is a prospectus required for all acquisition, construction, or alteration projects?

No, a prospectus is not required if the dollar value of a project does not exceed the prospectus threshold. The Public Buildings Act of 1959, as amended, 40 U.S.C. 601–619, establishes a prospectus threshold, applicable to Federal agencies operating under, or subject to, the authorities of the Administrator of General Services, for the construction, alteration, purchase, and acquisition of any building to be used as a public building, and establishes a prospectus threshold to lease any space for use for public purposes. The current prospectus threshold value for each fiscal year can be found at *http://www.gsa.gov.*

§ 102–73.40 What happens if the project exceeds the prospectus threshold?

Such projects require approval by the Senate and the House of Representatives if the dollar value exceeds the prospectus threshold. In order to obtain this approval, prospectuses for such projects must be submitted to GSA and the Administrator of General Services will transmit the proposed prospectuses to Congress for consideration by the Senate and the House of Representatives.

Subpart B—Acquisition by Lease

§ 102–73.45 When may Federal agencies consider leases of privately owned land and buildings to satisfy their space needs?

Federal agencies may consider leases of privately owned land and buildings only when needs cannot be met satisfactorily in Government-controlled space and one or more of the following conditions exist:

(a) Leasing is more advantageous to the Government than constructing a new building, or more advantageous than altering an existing Federal building;

(b) New construction or alteration is unwarranted because demand for space in the community is insufficient, or is indefinite in scope or duration; or

(c) Federal agencies cannot provide for the completion of a new building within a reasonable time.

§ 102–73.50 Are Federal agencies that possess independent statutory authority to acquire leased space subject to requirements of this part?

No, Federal agencies possessing independent statutory authority to acquire leased space are not subject to GSA authority and, therefore, are not subject to the requirements of this part.

§ 102–73.55 On what basis must Federal agencies acquire leases?

Federal agencies must acquire leases on the most favorable basis to the Federal Government, with due consideration to maintenance and operational efficiency, and at charges consistent with prevailing market rates for comparable facilities in the community.

§ 102–73.60 With whom may Federal agencies enter into lease agreements?

Federal agencies, upon approval from GSA, may enter into lease agreements with any person, partnership, corporation, or other public or private entity, provided that such lease agreements do not bind the Government for periods in excess of twenty years (40 U.S.C. 490(h)(1)). Federal agencies may not enter into lease agreements with persons who are barred from contracting with the Federal Government (*e.g.*, Members of Congress or debarred or suspended contractors).

§ 102–73.65 Are there any limitations on leasing certain types of space?

Yes, the limitations on leasing certain types of space are as follows:

(a) In general, Federal agencies may not lease any space to accommodate computer and telecommunications operations; secure or sensitive activities related to the national defense or security; or a permanent courtroom, judicial chamber, or administrative office for any United States court, if the average annual net rental cost of leasing such space would exceed the prospectus threshold (40 U.S.C. 606(e)).

(b) However, Federal agencies may lease such space if the Administrator of General Services first determines that leasing such space is necessary to meet requirements which cannot be met in public buildings and then submits such determination to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives in accordance with 40 U.S.C. 606(e).

§ 102–73.70 Are executive agencies required to acquire leased space by negotiation?

Yes, executive agencies must acquire leased space by negotiation, except where the sealed bid procedure is required by the Competition in Contracting Act of 1984 (CICA), as amended (41 U.S.C. 253(a)).

§ 102–73.75 What functions must Federal agencies perform with regard to leasing building space?

Federal agencies, upon approval from GSA, must perform all functions of leasing building space, and land incidental thereto, for their use except as provided in this subpart.

§ 102–73.80 Who is authorized to contact lessors, offerors, or potential offerors concerning space leased or to be leased?

No one, except the Contracting Officer or his or her designee, may contact lessors, offerors, or potential offerors concerning space leased or to be leased for the purpose of making oral or written representation or commitments or agreements with respect to the terms of occupancy of particular space, tenant improvements, alterations and repairs, or payment for overtime services.

§ 102–73.85 Can agencies with independent statutory authority to lease space have GSA perform the leasing functions?

Yes, upon request, GSA may perform, on a reimbursable basis, all functions of leasing building space, and land incidental thereto, for Federal agencies possessing independent statutory authority to lease space. However, GSA reserves the right to accept or reject reimbursable leasing service requests on a case-by-case basis.

§ 102–73.90 What contingent fee policy must Federal agencies apply to the acquisition of real property by lease?

Federal agencies must apply the contingent fee policies in 48 CFR 3.4 to all negotiated and sealed bid contracts for the acquisition of real property by lease. Federal agencies must appropriately adapt the representations and covenants required by that subpart for use in leases of real property for Government use.

§ 102–73.95 How are Federal agencies required to assist GSA?

The heads of Federal agencies must:

(a) Cooperate with and assist the Administrator of General Services in carrying out his responsibilities respecting office buildings and space;

(b) Take measures to give GSA early notice of new or changing space requirements;

(c) Seek to economize their requirements for space; and

(d) Continuously review their needs for space in and near the District of Columbia, taking into account the feasibility of decentralizing services or activities which can be carried on elsewhere without excessive costs or significant loss of efficiency.

Competition in Contracting Act of 1984

§ 102–73.100 Is the Competition in Contracting Act of 1984 (CICA) applicable to lease acquisition?

Yes, executive agencies must obtain full and open competition among suitable locations meeting minimum Government requirements, except as otherwise provided by CICA (41 U.S.C. 253).

Lease Construction

§ 102–73.105 What rules must executive agencies follow when acquiring leasehold interests in buildings constructed for Federal Government use?

When acquiring leasehold interests in buildings to be constructed for Federal Government use, executive agencies must:

(a) Establish detailed building specifications before agreeing to a contract that will result in the construction of a building;

(b) Use competitive procedures;

(c) Inspect every building during construction to ensure that the building complies with the Government's specifications;

(d) Evaluate every building after completion of construction to determine that the building complies with the Government's specifications; and

(e) Ensure that any contract that will result in the construction of a building contains provisions permitting the Government to reduce the rent during any period when the building does not comply with the Government's specifications.

Price Preference for Historic Properties

§ 102–73.110 Must Federal agencies offer a price preference to space in historic properties when acquiring leased space?

Yes, Federal agencies must give a price preference to space in historic properties when acquiring leased space using either the lowest price technically acceptable or the best value tradeoff source selection processes.

§ 102–73.115 How much of a price preference must Federal agencies give when acquiring leased space using the lowest price technically acceptable source selection process?

Federal agencies must give a price evaluation preference to space in historic properties as follows:

(a) First to suitable historic properties within historic districts, a 10 percent price preference.

(b) If no suitable historic property within an historic district is offered, or the 10 percent preference does not result in such property being the lowest price technically acceptable offer, the Government will give a 2.5 percent price preference to suitable non-historic developed or undeveloped sites within historic districts.

(c) If no suitable non-historic developed or undeveloped site within an historic district is offered, or the 2.5 percent preference does not result in such property being the lowest price technically acceptable offer, the Government will give a 10 percent price preference to suitable historic properties outside of historic districts.

(d) Finally, if no suitable historic property outside of historic districts is offered, no historic price preference will be given to any property offered.

§ 102–73.120 How much of a price preference must Federal agencies give when acquiring leased space using the best value tradeoff source selection process?

When award will be based on the best value tradeoff source selection process, which permits tradeoffs among price and non-price factors, the Government will give a price evaluation preference to historic properties as follows:

(a) First to suitable historic properties within historic districts, a 10 percent price preference.

(b) If no suitable historic property within an historic district is offered or remains in the competition, the Government will give a 2.5 percent price preference to suitable non-historic developed or undeveloped sites within historic districts.

(c) If no suitable non-historic developed or undeveloped site within an historic district is offered or remains in the competition, the Government will give a 10 percent price preference to suitable historic properties outside of historic districts.

(d) Finally, if no suitable historic property outside of historic districts is offered, no historic price preference will be given to any property offered.

Leases With Purchase Options

§ 102–73.125 When may Federal agencies consider acquiring leases with purchase options?

Agencies may consider leasing with a purchase option at or below fair market value, consistent with the lease-purchase scoring rules, when one or more of the following conditions exist:

(a) The purchase option offers economic and other advantages to the Government and is consistent with the Government's goals;

(b) The Government is the sole or major tenant of the building, and has a long-term need for the property; or

(c) Leasing with a purchase option is otherwise in the best interest of the Government.

Scoring Rules

§ 102–73.130 What scoring rules must Federal agencies follow when considering leases and leases with purchase options?

All Federal agencies must follow the budget scorekeeping rules for leases, capital leases, and lease-purchases identified in appendices A and B of OMB Circular A–11. (For availability, *see* 5 CFR 1310.3.)

Delegations of Leasing Authority

§ 102–73.135 When may agencies that do not possess independent leasing authority lease space?

Federal agencies may perform for themselves all functions necessary to acquire leased space in buildings and land incidental thereto when:

(a) The authority may be delegated (see § 102–72.30(b) on the different types of delegations related to real estate leasing);

(b) The space may be leased for no rental, or for a nominal consideration of $1 per annum, and is limited to terms not to exceed 1 year;

(c) Authority has been requested by an executive agency and a specific delegation has been granted by the Administrator of General Services;

(d) A categorical delegation has been granted by the Administrator of General Services for space to accommodate particular types of agency activities, such as military recruiting offices or space for certain county level agricultural activities. A listing of categorical delegations is found at § 102–73.150; or

(e) The required space is found by the Administrator of General Services to be wholly or predominantly utilized for the special purposes of the agency to occupy such space and is not generally suitable for use by other agencies. Federal agencies must obtain prior approval from the GSA regional office having jurisdiction for the proposed leasing action, before initiating a leasing action invoiving 2,500 or more square feet of such special purpose space. GSA's approval must be based upon a finding that there is no vacant Government-owned or leased space available that will meet the agency's requirements. Agency special purpose space delegations can be found in §§ 102–73.165 through 102–73.220.

Categorical Space Delegations

§ 102–73.140 What is a categorical space delegation?

A categorical space delegation is a standing delegation of authority from the Administrator of General Services to a Federal agency to acquire a type of space identified in § 102–73.150 subject to limitations in this part.

§ 102–73.145 What is the policy for categorical space delegations?

Subject to the limitations cited in §§ 102–73.225 through 102–73.235, all Federal agencies are authorized to acquire the types of space listed in § 102–73.150 and, except where otherwise noted, may lease space for terms, including all options, of up to 20 years.

§ 102–73.150 What types of space can Federal agencies acquire with a categorical space delegation?

Federal agencies can use categorical space delegations to acquire:

(a) Space to house antennas, repeaters, or transmission equipment;

(b) Depots, including, but not limited to, stockpiling depots and torpedo net depots;

(c) Docks, piers, and mooring facilities (including closed storage space required in combination with such facilities);

(d) Fumigation areas;

(e) Garage space (may be leased only on a fiscal year basis);

(f) Greenhouses;

(g) Hangars and other airport operating facilities including, but not limited to, flight preparation space, aircraft storage areas, and repair shops;

(h) Hospitals, including medical clinics;

(i) Housing (temporary), including hotels (does not include quarters obtained pursuant to temporary duty travel or employee relocation);

(j) Laundries;

(k) Quarantine facilities for plants, birds, and other animals;

(l) Ranger stations; *i.e.*, facilities which typically include small offices staffed by one or more uniformed employees, and may include sleeping/family quarters, parking areas, garages, and storage space. Office space within ranger stations is minimal and does not comprise a majority of the space. (May also be referred to as guard stations, information centers, or kiosks);

(m) Recruiting space for the armed forces (lease terms, including all options, limited to 5 years);

(n) Schools directly related to the special purpose function(s) of an agency;

(o) Specialized storage/depot facilities, such as cold storage; self-storage units; and lumber, oil, gasoline, shipbuilding materials, and pesticide materials/equipment storage (general purpose warehouse type storage facilities not included); and

(p) Space for short-term use (such as conferences and meetings, judicial proceedings, and emergency situations).

Special Purpose Space Delegations

§ 102–73.155 What is an agency special purpose space delegation?

An agency special purpose space delegation is a standing delegation of authority from the Administrator of General Services to specific Federal agencies to lease their own special purpose space (identified in §§ 102–73.165 through 102–73.220), subject to limitations in this part.

§ 102–73.160 What is the policy for agency special purpose space delegations?

Subject to the limitations on annual rental amounts, lease terms, and leases on parking spaces cited in §§ 102–73.225 through 102–73.235, the agencies listed below are authorized to acquire special purpose space associated with that agency and, except where otherwise noted, may lease such space for terms, including all options, of up to 20 years. The agencies and types of space subject to special purpose space delegations are specified in §§ 102–73.165 through 102–73.220.

§ 102–73.165 What types of special purpose space may the Department of Agriculture lease?

The Department of Agriculture is delegated the authority to lease the following types of space:

(a) Cotton classing laboratories (lease terms, including all options, limited to 5 years);

(b) Land (if unimproved, may be leased only on a fiscal year basis);

(c) Miscellaneous storage by cubic foot or weight basis;

(d) Office space when required to be located in or adjacent to stockyards, produce markets, produce terminals, airports, and other ports (lease terms, including all options, limited to 5 years);

(e) Space for agricultural commodities stored in licensed warehouses and utilized under warehouse contracts; and

(f) Space utilized in cooperation with State and local governments or their instrumentalities (extension services) where the cooperating State or local government occupies a portion of the space and pays a portion of the rent.

§ 102–73.170 What types of special purpose space may the Department of Commerce lease?

The Department of Commerce is delegated authority to lease the following types of space:

(a) Space required by the Census Bureau in connection with conducting the decennial census (lease terms, including all options, limited to 5 years);

(b) Laboratories for testing materials, classified or ordnance devices, calibration of instruments, and atmospheric and oceanic research (lease terms, including all options, limited to 5 years);

(c) Maritime training stations;

(d) Radio stations;

(e) Land (if unimproved, may be leased only on a fiscal year basis); and

(f) National Weather Service meteorological facilities.

§ 102–73.175 What types of special purpose space may the Department of Defense lease?

The Department of Defense is delegated authority to lease the following types of space:

(a) Air Force—Civil Air Patrol Liaison Offices and land incidental thereto when required for use incidental to, in conjunction with, and in close proximity to airports, including aircraft and warning stations (if unimproved, land may be leased only on a fiscal year basis; for space, lease terms, including all options, limited to 5 years);

(b) Armories;

(c) Film library in the vicinity of Washington, DC;

(d) Mess halls;

(e) Ports of embarkation and debarkation;

(f) Post exchanges;

(g) Postal Concentration Center, Long Island City, NY;

(h) Recreation centers;

(i) Reserve training space;

(j) Service clubs; and

(k) Testing laboratories (lease terms, including all options, limited to 5 years).

§ 102–73.180 What types of special purpose space may the Department of Energy lease?

The Department of Energy is delegated authority to lease facilities housing the special purpose or special location activities of the old Atomic Energy Commission.

§ 102–73.185 What types of special purpose space may the Federal Communications Commission lease?

The Federal Communications Commission is delegated authority to lease monitoring station sites.

§ 102–73.190 What types of special purpose space may the Department of Health and Human Services lease?

The Department of Health and Human Services is delegated authority to lease laboratories (lease terms, including all options, limited to 5 years).

§ 102–73.195 What types of special purpose space may the Department of the Interior lease?

The Department of the Interior is delegated authority to lease the following types of space:

(a) Space in buildings and land incidental thereto used by field crews of the Bureau of Reclamation, Bureau of Land Management, and the Geological Survey in areas where no other Government agencies are quartered (unimproved land may be leased only on a fiscal year basis); and

(b) National Parks/Monuments Visitors Centers consisting primarily of

special purpose space (*e.g.*, visitor reception, information, and rest room facilities) and not general office or administrative space.

§ 102–73.200 What types of special purpose space may the Department of Justice lease?

The Department of the Justice is delegated authority to lease the following types of space:

(a) U.S. marshals office in any Alaska location (lease terms, including all options, limited to 5 years);

(b) Border Patrol Offices similar in character and utilization to police stations, involving the handling of prisoners, firearms, and motor vehicles, regardless of location (lease terms, including all options limited to 5 years);

(c) Space used for storage and maintenance of surveillance vehicles and seized property (lease terms, including all options, limited to 5 years);

(d) Space used for review and custody of records and other evidentiary materials (lease terms, including all options, limited to 5 years); and

(e) Space used for trial preparation where space is not available in Federal buildings, Federal courthouses, USPS facilities, or GSA-leased buildings (lease terms limited to not more than 1 year.)

§ 102–73.205 What types of special purpose space may the Office of Thrift Supervision lease?

The Office of Thrift Supervision is delegated authority to lease space for field offices of Examining Divisions required to be located within Office of Thrift Supervision buildings or immediately adjoining or adjacent to such buildings (lease terms, including all options, limited to 5 years).

§ 102–73.210 What types of special purpose space may the Department of Transportation lease?

The Department of Transportation is delegated authority to lease the following types of space (or real property):

(a) Land for the Federal Aviation Administration (FAA) at airports (unimproved land may be leased only on a fiscal year basis);

(b) General purpose office space not exceeding 10,000 square feet for the FAA at airports in buildings under the jurisdiction of public or private airport authorities (lease terms, including all options, limited to 5 years);

(c) Space for the U.S. Coast Guard oceanic unit, Woods Hole, MA; and

(d) Space for the U.S. Coast Guard port security activities.

§ 102–73.215 What types of special purpose space may the Department of Treasury lease?

The Department of Treasury is delegated authority to lease the following types of space:

(a) Space and land incidental thereto for the use of the Comptroller of the Currency, as well as the operation, maintenance and custody thereof (if unimproved, land may be leased only on a fiscal year basis; lease term for space, including all options, limited to 5 years); and

(b) Aerostat radar facilities necessary for U.S. Custom Service mission activities.

§ 102–73.220 What types of special purpose space may the Department of Veterans Affairs lease?

The Department of Veterans Affairs is delegated authority to lease the following types of space:

(a) Guidance and training centers located at schools and colleges; and

(b) Space used for veterans hospitals, including outpatient and medical-related clinics, such as drug, mental health, and alcohol.

Limitations on the Use of Delegated Authority

§ 102–73.225 When must Federal agencies submit a prospectus to lease real property?

In accordance with section 7(a) of the Public Buildings Act of 1959, as amended (40 U.S.C. 606), Federal agencies must submit a prospectus to the Administrator of General Services for leases involving a net annual rental, excluding services and utilities, in excess of the prospectus threshold provided in 40 U.S.C. 606. Agencies must be aware that prospectus thresholds are indexed and change each year.

§ 102–73.230 What is the maximum lease term that a Federal agency may agree to when it has been delegated lease acquisition authority from GSA?

Pursuant to GSA's long-term authority contained in section 210(h)(1) of the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. 490(h)(1)), agencies delegated the authorities outlined herein may enter into leases for the term specified in the delegation. In those cases where agency special purposes space delegations include the authority to acquire unimproved land, the land may be leased only on a fiscal year basis.

§ 102–73.235 What policy must Federal agencies follow to acquire official parking spaces?

Federal agencies that need parking must utilize available Government-owned or leased facilities. Federal agencies must make inquiries regarding availability of such Government-controlled space to GSA regional offices and document such inquiries. If no suitable Government-controlled facilities are available, an agency may use its own procurement authority to acquire parking by service contract.

Subpart C—Acquisition by Purchase or Condemnation

Buildings

§ 102–73.240 When may Federal agencies consider purchase of buildings?

Agencies may consider purchase of buildings on a case-by-case basis when one or more of the following conditions exist:

(a) It is economically more beneficial to own and manage the property;

(b) There is a long-term need for the property;

(c) The property is an existing building, or a building nearing completion, that can be purchased and occupied within a reasonable time; or

(d) When otherwise in the best interests of the Government.

§ 102–73.245 Are agencies required to adhere to the policies for locating Federal facilities when purchasing buildings?

Yes, when purchasing buildings, agencies must comply with the location policies in this part and part 102–83 of this chapter.

§ 102–73.250 What factors must executive agencies consider when purchasing sites?

Agencies must locate proposed Federal buildings on sites that are most advantageous to the United States. Executive agencies must consider factors such as whether the site will contribute to economy and efficiency in the construction, maintenance, and operation of the individual building, and how the proposed site relates to the Government's total space needs in the community. Prior to acquiring, constructing, or leasing buildings (or sites for such buildings), Federal agencies must use, to the maximum extent feasible, historic properties available to the agency. In site selections, executive agencies must consider Executive Orders 12072 (3 CFR, 1978 Comp., p. 213) and 13006 (40 U.S.C. 601a note). In addition, executive agencies must consider all of the following:

(a) Maximum utilization of Government-owned land (including excess land) whenever it is adequate, economically adaptable to requirements and properly located, where such use is consistent with the provisions of part 102–75, subpart B, of this chapter.

(b) A site adjacent to or in the proximity of an existing Federal building which is well located and is to be retained for long-term occupancy.

(c) The environmental condition of proposed sites prior to purchase. The sites must be free from contamination, unless it is otherwise determined to be in the best interests of the Government to purchase a contaminated site (*e.g.*, reuse of a site under an established "Brownfields" program).

(d) Purchase options to secure the future availability of a site.

(e) All applicable location policies in this part and part 102–83 of this chapter.

Land

§ 102–73.255 What land acquisition policy must Federal agencies follow?

Federal agencies must follow the land acquisition policy in the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. 4651–4655, that:

(a) Encourages and expedites the acquisition of real property by agreements with owners;

(b) Avoids litigation, including condemnation actions, where possible and relieves congestion in the courts;

(c) Provides for consistent treatment of owners; and

(d) Promotes public confidence in Federal land acquisition practices.

§ 102–73.260 What actions must Federal agencies take to facilitate land acquisition?

To facilitate land acquisition, Federal agencies must:

(a) Obtain one appraisal on each parcel, tract, or other real property;

(b) Pay a property owner (or occupant) or deposit payment in the registry of the court before requiring the owner to surrender the property;

(c) Provide property owners (and occupants) at least 90-days notice of displacement before requiring anyone to move. If a Federal agency permits the owner to keep possession for a short time after acquiring the owner's property, Federal agencies must not charge rent in excess of the property's fair rental value to a short-term occupier;

(d) Try to negotiate with owners on the price;

(e) Appraise the real property before starting negotiations and give the owner (or the owner's representative) the opportunity to accompany the appraiser during the inspection; and

(f) Establish an amount estimated to be the just compensation before starting negotiations and promptly offer to acquire the property for this full amount.

Just Compensation

§ 102–73.265 Are Federal agencies required to provide the owner with a written statement of the amount established as just compensation?

Yes, Federal agencies must provide the owner with a written statement of this amount and summarize the basis for it. When it's appropriate, Federal agencies must separately state the just compensation for the property to be acquired and damages to the remaining real property.

§ 102–73.270 What specific information must be included in the summary statement for the owner that explains the basis for just compensation?

The summary statement must:

(a) Identify the real property and the estate or interest the Federal agency is acquiring;

(b) Identify the buildings, structures, and other improvements the Federal agency considers part of the real property for which just compensation is being offered;

(c) State that the Federal agency based the estimate of just compensation on the Government's estimate of the property's fair market value. If only part of a property or less than a full interest is being acquired, Federal agencies must explain how they determined the just compensation for it; and

(d) State that the Government's estimate of just compensation is at least as much as the property's approved appraisal value.

§ 102–73.275 Are Federal agencies required to compensate a property owner for the owner's buildings, structures, or other improvements that must be removed from the property being acquired?

Yes, Federal agencies must acquire at least an equal interest in all buildings, structures, or other improvements on the real property they are acquiring, including those that the Government require to be removed or those that will interfere with the proposed use of the property.

§ 102–73.280 What are Federal agencies' responsibilities to compensate a tenant for tenant-owned property when the tenant has the right or obligation to remove buildings, structures, or other improvements at the end of the term?

If a tenant has the right or obligation to remove these buildings, structures, or other improvements at the end of his term, Federal agencies must determine the total just compensation for the property and pay the tenant the greater of two values:

(a) The fair market value of buildings, structures, or other improvements the tenant must remove.

(b) The contributive fair market value of the tenant's improvements to the entire property's fair market value. This value will be at least as much as the value of items the tenant must remove.

§ 102–73.285 Are there any prohibitions when a Federal agency pays "just compensation" to a tenant?

Yes, Federal agencies must not:

(a) Duplicate any payment to the tenant otherwise authorized by law; and

(b) Pay a tenant unless the landowner disclaims all interests in the tenant's improvements. In consideration for any such payment, the tenant must assign, transfer, and release to the Federal agency all of its right, title, and interest in the improvements. The tenant may reject such payment under this subpart and obtain payment for its property interests according to other sections of applicable law.

Expenses Incidental to Property Transfer

§ 102–73.290 What property transfer expenses must Federal agencies cover when acquiring real property?

Federal agencies must:

(a) Reimburse property owners for all reasonable expenses actually incurred for recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses needed to convey the property to the Federal Government;

(b) Reimburse property owners for all reasonable expenses actually incurred for penalty costs and other charges to prepay any existing, recorded mortgage that a property owner entered into in good faith and that encumbers the real property;

(c) Reimburse property owners for all reasonable expenses actually incurred for the prorated part of any prepaid real property taxes that cover the period after the Federal Government gets title to the property or effective possession of it, whichever is earlier; and

(d) Whenever possible, directly pay the costs identified in this section, so property owners will not have to pay them and then seek reimbursement from the Government.

Litigation Expenses

§ 102–73.295 Are Federal agencies required to pay for litigation expenses incurred by a property owner because of a condemnation proceeding?

Federal agencies must pay reasonable expenses for attorneys, appraisals, and engineering fees that a property owner incurs because of a condemnation proceeding, if any of the following are true:

(a) The court's final judgment is that the Federal agency cannot acquire the real property by condemnation.

(b) The Federal agency abandons the condemnation proceeding other than under an agreed-on settlement.

(c) The court renders a judgment in the property owner's favor in an inverse condemnation proceeding or the Federal agency agrees to settle such proceeding.

Relocation Assistance Policy

§ 102–73.300 What relocation assistance policy must Federal agencies follow?

Federal agencies, upon approval from GSA, must provide appropriate relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4651–4655) to eligible owners and tenants of property purchased for use by Federal agencies in accordance with the implementing regulations found in 49 CFR part 24 . Appropriate relocation assistance means that the Federal agency must pay the displaced person for actual:

(a) Reasonable moving expenses (in moving himself, his family, and business);

(b) Direct losses of tangible personal property as a result of moving or discontinuing a business;

(c) Reasonable expenses in searching for a replacement business or farm; and

(d) Reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed $10,000.

9. Part 102–74 is revised to read as follows:

PART 102–74—FACILITY MANAGEMENT

Subpart A—General Provisions

Sec.
102–74.5 What is the scope of this part?
102–74.10 What is the basic facility management policy?

Subpart B—Facility Management

102–74.15 What are the facility management responsibilities of occupant agencies?

Occupancy Services

102–74.20 What are occupancy services?
102–74.25 What responsibilities do executive agencies have regarding occupancy services?
102–74.30 What standard in providing occupancy services must executive agencies follow?
102–74.35 What building services must executive agencies provide?

Concession Services

102–74.40 What are concession services?
102–74.45 When must Federal agencies provide concession services?
102–74.50 May Federal agencies sell tobacco products in vending machines in Government-owned and leased space?
102–74.55 Are commercial vendors and nonprofit organizations required to operate vending facilities by permit or contractual arrangement?
102–74.60 Are Federal agencies required to give blind vendors priority in operating vending facilities?
102–74.65 Are Randolph-Sheppard Act vendors required to operate vending facilities by permit or contractual agreement?
102–74.70 What information must be in a permit for a vending facility?
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Appendix to Part 102–74—Rules and Regulations Governing Conduct on Federal Property

Authority: 40 U.S.C. 486(c); E.O. 12191, 45 FR 7997, 3 CFR, 1980 Comp., p 138.

Subpart A—General Provisions

§ 102–74.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

§ 102–74.10 What is the basic facility management policy?

Executive agencies must manage, operate and maintain Government-owned and leased buildings in a manner that provides for quality space and services consistent with their operational needs and accomplishes overall Government objectives. The management, operation and maintenance of buildings and building systems must:

(a) Be cost effective and energy efficient;

(b) Be adequate to meet the agencies' missions;

(c) Meet nationally recognized standards; and

(d) Be at an appropriate level to maintain and preserve the physical plant assets, consistent with available funding.

Subpart B—Facility Management

§ 102–74.15 What are the facility management responsibilities of occupant agencies?

Occupants of facilities under the custody and control of Federal agencies must:

(a) Cooperate to the fullest extent with all pertinent facility procedures and regulations;

(b) Promptly report all crimes and suspicious circumstances occurring on federally controlled property first to the regional law enforcement organization and other designated law enforcement agencies, and then through internal agency channels;

(c) Provide training to employees regarding protection and responses to emergency situations; and

(d) Make recommendations for improving the effectiveness of protection in Federal facilities.

Occupancy Services

§ 102–74.20 What are occupancy services?

Occupancy services are:

(a) Building services (see § 102–74.35);

(b) Concession services; and

(c) Conservation programs.

§ 102–74.25 What responsibilities do executive agencies have regarding occupancy services?

Executive agencies, upon approval from GSA, must manage, administer and enforce the requirements of agreements (such as Memoranda of Understanding) and contracts that provide for the delivery of occupancy services.

§ 102–74.30 What standard in providing occupancy services must executive agencies follow?

Executive agencies must provide occupancy services that substantially conform to nationally recognized standards. As needed, executive agencies may adopt other standards for buildings and services in federally-controlled facilities to conform to statutory requirements and to implement cost-reduction efforts.

§ 102–74.35 What building services must executive agencies provide?

Executive agencies, upon approval from GSA, must provide:

(a) Building services such as custodial, solid waste management (including recycling), heating and cooling, landscaping and grounds maintenance, tenant alterations, minor repairs, building maintenance, integrated pest management, signage, parking, and snow removal, at appropriate levels to support Federal agency missions; and

(b) Arrangements for raising and lowering the United States flags at appropriate times. In addition, agencies must display P.O.W. and M.I.A. flags at locations specified in 36 U.S.C. 902 on P.O.W./M.I.A. flag display days.

Concession Services

§ 102–74.40 What are concession services?

Concession services are any food or snack services provided by a Randolph-Sheppard Act vendor, commercial contractor or nonprofit organization (see definition in § 102–71.20 of this chapter), in vending facilities such as:

(a) Vending machines;

(b) Sundry facilities;

(c) Prepackaged facilities;

(d) Snack bars; and

(e) Cafeterias.

§ 102–74.45 When must Federal agencies provide concession services?

Federal agencies, upon approval from GSA, must provide concession services where building population supports such services and when the availability of existing commercial services is insufficient to meet Federal agency needs. Prior to establishing concessions, Federal agencies must ensure that:

(a) The proposed concession will be established and operated in conformance with applicable policies, safety, health and sanitation codes, laws, regulations, *etc.*, and will not contravene the terms of any lease or other contractual arrangement;

(b) Sufficient funds are legally available to cover all costs for which the Government may be responsible; and

(c) All contracts will be financially self-supporting and not compete with nearby commercial enterprise.

§ 102–74.50 May Federal agencies sell tobacco products in vending machines in Government-owned and leased space?

No, Public Law 104–52, Section 636, prohibits the sale of tobacco products in vending machines in Government-owned and leased space. The Administrator of GSA or the head of an Agency may designate areas not subject to the prohibition, if minors are prohibited and reports are made to the appropriate committees of Congress.

§ 102–74.55 Are commercial vendors and nonprofit organizations required to operate vending facilities by permit or contractual arrangement?

Commercial vendors and nonprofit organizations must operate vending facilities, including cafeterias, under a contractual arrangement with Federal agencies.

§ 102–74.60 Are Federal agencies required to give blind vendors priority in operating vending facilities?

With certain exceptions, the Randolph-Sheppard Act (20 U.S.C. 107 *et seq.*) requires that blind persons licensed by a State licensing agency under the provisions of the Randolph-Sheppard Act be authorized to operate vending facilities on any Federal property, including leased buildings. The Randolph-Sheppard Act imposes an obligation on Federal agencies to give priority to Randolph-Sheppard Act vendors for vending facilities in buildings that they operate.

§ 102–74.65 Are Randolph-Sheppard Act vendors required to operate vending facilities by permit or contractual agreement?

Except for cafeterias, Randolph-Sheppard Act vendors must obtain a permit from a Federal agency prior to operating vending facilities. Randolph-Sheppard Act vendors operating a cafeteria must have a contractual agreement with a Federal agency.

§ 102–74.70 What information must be in a permit for a vending facility?

In every permit for a vending facility, Federal agencies must describe the vending facility location and indicate:

(a) The name of the applicant State licensing agency;

(b) That the permit is issued for an indefinite period of time subject to suspension or termination on the basis of non-compliance with agreed upon terms;

(c) That the Government will not charge the State licensing agency for normal cleaning, maintenance and repair of the building structure in and immediately adjacent to the vending facility areas;

(d) That the State licensing agency is responsible for the costs associated with properly installing, cleaning, replacing, repairing, maintaining, and removing vending facilities and vending facility equipment;

(e) That blind licensees may sell newspapers, periodicals, publications, confections, tobacco products, foods, beverages, chances for any lottery authorized by State law and conducted by an agency of a State within such State, and other articles or services that the State licensing agency and the Government determine to be suitable for a particular location;

(f) That the blind licensee's articles and services may be dispensed automatically or manually and may be prepared on or off the premises;

(g) That the blind licensee is prohibited from selling tobacco products in vending machines in Government-owned and leased space, unless the Administer of General Services designates areas not subject to the prohibition;

(h) That vending facilities must be operated in compliance with applicable health, sanitation and building codes or ordinances;

(i) That the vendor must not install, modify, relocate, remove, or renovate vending facilities without the prior written approval and supervision of the Federal agency buildings manager and the State licensing agency;

(j) That the State licensing agency must pay for relocations that it initiates;

(k) That the Federal agency must pay for relocations that it initiates; and

(l) That the Federal agency must pay for all plumbing, electrical and mechanical costs related to the renovation of existing facilities.

§ 102–74.75 What responsibilities do State licensing agencies have in implementing the vending facility program for blind persons?

State licensing agencies must:

(a) Prescribe necessary procedures so that when they select vendors and employees for vending facilities no discrimination occurs because of sex, race, age, creed, color, national origin, physical or mental disability, or political affiliation;

(b) Take the necessary action to assure that vendors do not discriminate against any persons in furnishing, or refusing to furnish, to such person or persons the use of any vending facility, including any and all services, privileges, accommodations, and activities provided thereby; and

(c) Take the necessary action to assure that vendors comply with Title VI of the Civil Rights Act of 1964 and the GSA regulations issued pursuant thereto.

§ 102–74.80 Who has the initial responsibility for resolving vendor performance issues?

The State licensing agency must attempt to resolve day-to-day problems pertaining to the operation of the vending facility in an informal manner with the participation of the blind vendor and the Federal agency building's manager.

§ 102–74.85 What action must Federal agencies take if the State licensing agency is unable to informally resolve vendor performance issues?

Federal agencies must report in writing any unresolved vendor issues concerning the terms of the permit, the Randolph-Sheppard Act, or the regulations in this part to the State licensing agency supervisory personnel, so that the issues may be formally addressed and resolved.

§ 102–74.90 What information must Federal agencies report to the Secretary of Education concerning the vending facility program for blind persons?

Federal agencies, upon approval from GSA, must report to the Secretary of Education at the end of each fiscal year:

(a) The total number of applications for vending facility locations received from State licensing agencies;

(b) The number of applications approved;

(c) The number of applications denied;

(d) The number of applications still pending;

(e) The total amount of vending machine income collected; and

(f) The amount of such vending machine income disbursed to the State licensing agency in each State.

§ 102–74.95 Are Randolph-Sheppard Act vendors operating cafeterias required to meet the same contract performance requirements as commercial or nonprofit cafeteria operators?

Yes, Randolph-Sheppard Act vendors must meet the same contract performance requirements as commercial or nonprofit cafeteria operators.

Conservation Programs

§ 102–74.100 What are conservation programs?

Conservation programs are programs that improve energy and water efficiency and promote the use of solar and other renewable energy. These programs must promote and maintain an effective source reduction activity (reducing consumption of resources such as energy, water, and paper), resource recovery activity (obtaining materials from the waste stream that can be recycled into new products), and reuse activity (reusing same product before disposition, such as reusing unneeded memos for scratch paper).

Asset Services

§ 102–74.105 What are asset services?

Asset services include repairs (other than those minor repairs identified in § 102–74.35(a)), alterations and modernizations for real property assets. Typically, these are the type of repairs and alterations necessary to preserve or enhance the value of the real property asset.

§ 102–74.110 What asset services must executive agencies provide?

Executive agencies, upon approval from GSA, must provide asset services such as repairs (in addition to those minor repairs identified in § 102–74.35(a)), alterations, and modernizations for real property assets. For repairs and alterations projects for which the estimated cost exceeds the prospectus threshold, Federal agencies must follow the prospectus submission and approval policy identified in this part and part 102–73 of this chapter.

§ 102–74.115 What standard in providing asset services must executive agencies follow?

Executive agencies must provide asset services that maintain continuity of Government operations, continue efficient building operations, extend the useful life of buildings and related building systems, and provide a quality workplace environment that enhances employee productivity.

§ 102–74.120 Is a prospectus required to be submitted before emergency alterations can be performed?

No, a prospectus is not required to be submitted before emergency alterations can be performed. Federal agencies must immediately alter a building if the alteration protects people, buildings, or equipment; saves lives; and/or avoids further property damage. Federal agencies can take these actions in an emergency before GSA submits a prospectus on the alterations to the Committees for Public Works. GSA must submit a prospectus as soon as possible after the emergency.

§ 102–74.125 Are prospectuses required for reimbursable alteration projects?

A project which is to be financed in whole or in part from funds appropriated to the requesting agency may be performed without a prospectus if:

(a) Payment is made from agency appropriations that are not subject to Section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606); and

(b) GSA's portion of the cost, if any, does not exceed the prospectus threshold.

§ 102–74.130 When a prospectus is required, can GSA prepare a prospectus for a reimbursable alteration project?

Yes, if requested by a Federal agency, GSA will prepare a prospectus for a reimbursable alteration project.

§ 102–74.135 Who selects construction and alteration projects that are to be performed?

The Administrator of General Services selects construction and alteration projects to be performed.

§ 102–74.140 On what basis does the Administrator select construction and alteration projects?

The Administrator selects projects based on a continuing investigation and survey of the public building needs of the Federal Government. These projects must be equitably distributed throughout the United States, with due consideration given to each project's comparative urgency.

§ 102–74.145 What information must a Federal agency submit to GSA after the agency has identified a need for construction or alteration of a public building?

Federal agencies identifying a need for construction or alteration of a public building must provide information, such as a description of the work, location, estimated maximum cost, and justification to the Administrator of General Services.

§ 102–74.150 Who submits prospectuses for the construction or alteration of public buildings to the congressional committees?

The Administrator of General Services must submit prospectuses for public building construction or alteration projects to the congressional committees for public buildings oversight for approval.

Energy Conservation

§ 102–74.155 What energy conservation policy must Federal agencies follow in the management of facilities?

Federal agencies must:

(a) Comply with the energy conservation guidelines in 10 CFR part 436 (Federal Energy Management and Planning Programs); and

(b) Observe the energy conservation policies cited in this part.

§ 102–74.160 What actions must Federal agencies take to promote energy conservation?

Federal agencies must ensure that:

(a) Lights and equipment are turned off when not needed;

(b) Ventilation is not blocked or impeded; and

(c) Windows and other building accesses are closed during the heating and cooling seasons.

§ 102–74.165 What energy standards must Federal agencies follow for existing facilities?

Federal agencies must ensure that existing Federal facilities meet the energy standards prescribed by the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North American in ASHRAE/IES Standard 90A–1980, as amended by the Department of Energy. Federal agencies must apply these energy standards where they can be achieved through life cycle, cost effective actions.

§ 102–74.170 May exceptions to the energy conservation policies in this subpart be granted?

Yes, the Federal agency buildings manager may grant exceptions to the foregoing policies in this subpart to enable agencies to accomplish their missions more effectively and efficiently.

§ 102–74.175 Are Government-leased buildings required to conform with the policies in this subpart?

Yes, Federal agencies must ensure that all new lease contracts are in conformance with the policies prescribed in this subpart. Federal agencies must administer existing lease contracts in accordance with these policies to the maximum extent feasible.

§ 102–74.180 What illumination levels must Federal agencies maintain on Federal facilities?

Except where special circumstances exist, Federal agencies must maintain illumination levels at:

(a) 50 foot-candles at work station surfaces, measured at a height of 30 inches above floor level, during working hours (for visually difficult or critical tasks, additional lighting may be authorized by the Federal agency buildings manager);

(b) 30 foot-candles in work areas during working hours, measured at 30 inches above floor level;

(c) 10 foot-candles, but not less than 1 foot-candle, in non-work areas, to ensure safety during working hours (normally this will require levels of 5 foot-candles at elevator boarding areas, minimum of 1 foot-candle at the middle of corridors and stairwells as measured at the walking surface, 1 foot-candle at the middle of corridors and stairwells as measured at the walking surface, and 10 foot-candles in storage areas); and

(d) Levels essential for safety and security purposes, including exit signs and exterior lights.

§ 102–74.185 What heating and cooling policy must Federal agencies follow in Federal facilities?

Within the limitations of the building systems, Federal agencies must:

(a) Operate heating and cooling systems in the most overall energy efficient and economical manner;

(b) Maintain temperatures to maximize customer satisfaction by conforming to local commercial equivalent temperature levels and operating practices;

(c) Set heating temperatures no higher than 55 degrees Fahrenheit during non-working hours;

(d) Not provide air-conditioning during non-working hours, except as necessary to return space temperatures to a suitable level for the beginning of working hours;

(e) Not permit reheating, humidification and simultaneous heating and cooling; and

(f) Operate building systems as necessary during extreme weather conditions to protect the physical condition of the building.

§ 102–74.190 Are portable heaters, fans and other such devices allowed in Government-controlled facilities?

Federal agencies are prohibited from operating portable heaters, fans, and other such devices in Government-controlled facilities unless authorized by the Federal agency building's manager.

§ 102–74.195 What ventilation policy must Federal agencies follow?

During working hours in periods of heating and cooling, Federal agencies must provide ventilation in accordance with ASHRAE Standard 62, Ventilation for Acceptable Indoor Air Quality where physically practical. Where not physically practical, Federal agencies must provide the maximum allowable amount of ventilation during periods of heating and cooling and pursue opportunities to increase ventilation up to current standards. ASHRAE Standard 62 is available from ASHRAE Publications Sales, 1791 Tullie Circle NE, Atlanta, GA 30329–2305.

§ 102–74.200 What information are Federal agencies required to report to the Department of Energy (DOE)?

Federal agencies, upon approval of GSA, must report to the DOE the energy consumption in buildings, facilities, vehicles, and equipment within 45 calendar days after the end of each quarter as specified in the DOE Federal Energy Usage Report DOE F 6200.2 Instructions.

Ridesharing

§ 102–74.205 What Federal facility ridesharing policy must executive agencies follow?

In accordance with Executive Order 12191, "Federal Facility Ridesharing Program" (3 CFR, 1980 Comp., p. 138), executive agencies must actively promote the use of ridesharing (carpools, vanpools, privately-leased buses, public transportation, and other multi-occupancy modes of travel) by personnel working at Federal facilities to conserve energy, reduce congestion, improve air quality, and provide an economical way for Federal employees to commute to work.

§ 102–74.210 What steps must executive agencies take to promote ridesharing at Federal facilities?

To promote ridesharing at Federal facilities, agencies must:

(a) Establish an annual ridesharing goal for each facility;

(b) Report to the Administrator of General Services by June 1 of each year the goals established, the means developed to achieve those goals and the progress achieved; and

(c) Cooperate with State and local ridesharing agencies where such agencies exist.

§ 102–74.215 What specific ridesharing information must executive agencies report to the Administrator of General Services?

The head of each agency must submit to GSA by June 1 of each year a report that includes:

(a) The name, address, title, and telephone number of the agencywide Employee Transportation Coordinator (ETC);

(b) A narrative on actions taken and barriers encountered in promoting ridesharing within the agency;

(c) Information on any noticeable facility achievements; and

(d) A copy of instructions issued to the agency's facility ETC's for implementing the Federal Facility Ridesharing Program.

§ 102–74.220 Where should executive agencies send their Federal Facility Ridesharing Reports?

Agencies must send their Federal Facility Ridesharing Reports to the Office of Real Property (MP), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

§ 102–74.225 Are there any exceptions to these ridesharing reporting requirements?

Yes, facilities with less than 100 full-time employees or less than 100 full-time employees on the largest shift are not required to submit an annual report. Agencies must not subdivide buildings, groups of buildings or worksites for the purpose of meeting the exception standards.

Occupant Emergency Program

§ 102–74.230 Who is responsible for establishing an occupant emergency program?

The Designated Official (as defined in § 102–71.20 of this chapter) is responsible for developing, implementing and maintaining an Occupant Emergency Plan (as defined in § 102–71.20 of this chapter). The Designated Official's responsibilities include establishing, staffing and training an Occupant Emergency Organization with agency employees. Federal agencies, upon approval from GSA, must assist in the establishment and maintenance of such plans and organizations.

§ 102–74.235 Are occupant agencies required to cooperate with the Designated Official in the implementation of the emergency plans and the staffing of the emergency organization?

Yes, all occupant agencies of a facility must fully cooperate with the Designated Official in the implementation of the emergency plans and the staffing of the emergency organization.

§ 102–74.240 What are Federal agencies' occupant emergency responsibilities?

Federal agencies, upon approval from GSA, must:

(a) Provide emergency program policy guidance;

(b) Review plans and organizations annually;

(c) Assist in training of personnel;

(d) Otherwise ensure proper administration of Occupant Emergency Programs (as defined in § 102–71.20 of this chapter);

(e) Solicit the assistance of the lessor in the establishment and implementation of plans in leased space; and

(f) Assist the Occupant Emergency Organization (as defined in § 102–71.20 of this chapter) by providing technical personnel qualified in the operation of utility systems and protective equipment.

§ 102–74.245 Who makes the decision to activate the Occupant Emergency Organization?

The decision to activate the Occupant Emergency Organization must be made by the Designated Official, or by the designated alternate official. After normal duty hours, the senior Federal official present must represent the Designated Official or his/her alternates and must initiate action to cope with emergencies in accordance with the plans.

§ 102–74.250 What information must the Designated Official use to make a decision to activate the Occupant Emergency Organization?

The Designated Official must make a decision to activate the Occupant Emergency Organization based upon the best available information, including:

(a) An understanding of local tensions;

(b) The sensitivity of target agency(ies);

(c) Previous experience with similar situations;

(d) Advice from the Federal agency building's manager;

(e) Advice from the appropriate Federal law enforcement official; and

(f) Advice from Federal, State, and local law enforcement agencies.

§ 102–74.255 How must occupant evacuation or relocation be accomplished when there is immediate danger to persons or property, such as fire, explosion or the discovery of an explosive device (not including a bomb threat)?

The Designated Official must initiate action to evacuate or relocate occupants in accordance with the plan by sounding the fire alarm system or by other appropriate means when there is immediate danger to persons or property, such as fire, explosion or the discovery of an explosive device (not including a bomb threat).

§ 102–74.260 What action must the Designated Official initiate when there is advance notice of an emergency?

The Designated Official must initiate appropriate action according to the plan when there is advance notice of an emergency.

Parking Facilities

§ 102–74.265 Who must provide for the regulation and policing of parking facilities?

Federal agencies, upon approval from GSA, must provide for any necessary regulation and policing of parking facilities, which may include:

(a) The issuance of traffic rules and regulations;

(b) The installation of signs and markings for traffic control. (Signs and markings must conform with the Manual on Uniform Traffic Control Devices published by the Department of Transportation);

(c) The issuance of citations for parking violations; and

(d) The immobilization or removal of illegally parked vehicles.

§ 102–74.270 Are vehicles required to display parking permits in parking facilities?

When the use of parking space is controlled as in § 102–74.265, all privately-owned vehicles other than those authorized to use designated visitor or service areas must display a parking permit. This requirement may be waived in parking facilities where the number of available spaces regularly exceeds the demand for such spaces.

§ 102–74.275 May Federal agencies authorize lessors or parking management contractors to manage, regulate and police parking facilities?

Yes, Federal agencies, upon approval from GSA, may authorize lessors or parking management contractors to manage, regulate and police parking facilities.

§ 102–74.280 Are privately-owned vehicles converted for propane carburetion permitted in underground parking facilities?

Federal agencies must not permit privately-owned vehicles converted for propane carburetion to enter underground parking facilities unless the owner provides to the occupant agency and the Federal agency building's manager the installer's certification that the installation methods and equipment comply with National Fire Protection Association (NFPA) Standard No. 58.

§ 102–74.285 How must Federal agencies assign priority to parking spaces in controlled areas?

Federal agencies must reserve official parking spaces, in the following order of priority, for:

(a) Official postal vehicles at buildings containing the U.S. Postal Service's mailing operations.

(b) Federally-owned vehicles used to apprehend criminals, fight fires and handle other emergencies.

(c) Private vehicles owned by Members of Congress (but not their staffs).

(d) Private vehicles owned by Federal judges (appointed under Article III of the Constitution), which may be parked in those spaces assigned for the use of the Court, with priority for them set by the Administrative Office of the U.S. Courts.

(e) Other federally-owned and leased vehicles, including those in motor pools or assigned for general use.

(f) Service vehicles, vehicles used in child care center operations and vehicles of patrons and visitors. (Federal agencies must allocate parking for handicapped visitors whenever an agency's mission requires visitor parking.)

(g) Private vehicles owned by employees, using spaces not needed for official business.

§ 102–74.290 May Federal agencies allow employees to use parking spaces not required for official needs?

Yes, Federal agencies may allow employees to use parking spaces not required for official needs.

§ 102–74.295 Who determines the number of employee parking spaces for each facility?

The Federal agency buildings manager must determine the total number of spaces available for employee parking. Typically, Federal agencies must make a separate determination for each parking facility. However, in major metropolitan areas, Federal agencies may determine that allocations by zone would make parking more efficient or more equitably available.

§ 102–74.300 How must space available for employee parking be allocated among occupant agencies?

The Federal agency buildings manager must allocate space available for employee parking among occupant agencies on an equitable basis, such as by allocating such parking in proportion to each agency's share of building space, office space or total employee population, as appropriate. In certain cases, Federal agencies may allow a third party, such as a board composed of representatives of agencies sharing space, to determine proper parking allocations among the occupant agencies.

§ 102–74.305 How must Federal agencies assign available parking spaces to their employees?

Federal agencies must assign available parking spaces to their employees using the following order of priority:

(a) Severely handicapped employees (see definition in § 102–71.20 of this chapter).

(b) Executive personnel and persons who work unusual hours.

(c) Vanpool/carpool vehicles.

(d) Privately-owned vehicles of occupant agency employees that are regularly used for Government business at least 12 days per month and that qualify for reimbursement of mileage and travel expenses under Government travel regulations.

(e) Other privately-owned vehicles of employees, on a space-available basis. (In locations where parking allocations are made on a zonal basis, GSA and affected agencies may cooperate to issue additional rules, as appropriate.)

§ 102–74.310 What measures must Federal agencies take to improve the utilization of parking facilities?

Federal agencies must take all feasible measures to improve the utilization of parking facilities, including:

(a) The conducting of surveys and studies;

(b) The periodic review of parking space allocations;

(c) The dissemination of parking information to occupant agencies;

(d) The implementation of parking incentives that promote ridesharing;

(e) The use of stack parking practices, where appropriate; and

(f) The employment of parking management contractors and concessionaires, where appropriate.

Smoking

§ 102–74.315 What is the smoking policy for Federal facilities?

Pursuant to Executive Order 13058, "Protecting Federal Employees and the Public From Exposure to Tobacco Smoke in the Federal Workplace" (3 CFR, 1997 Comp., p. 216), it is the policy of the executive branch to establish a smoke-free environment for Federal employees and members of the public visiting or using Federal facilities. The smoking of tobacco products is prohibited in all interior space owned, rented or leased by the executive branch of the Federal Government, and in any outdoor areas under executive branch control in front of air intake ducts.

§ 102–74.320 Are there any exceptions to this smoking policy for Federal facilities?

Yes, this smoking policy does not apply in:

(a) Designated smoking areas that are enclosed and exhausted directly to the outside and away from air intake ducts, and are maintained under negative pressure (with respect to surrounding spaces) sufficient to contain tobacco smoke within the designated area. Agency officials must not require workers to enter such areas during business hours while smoking is ongoing;

(b) Any residential accommodation for persons voluntarily or involuntarily residing, on a temporary or long-term basis, in a building owned, leased or rented by the Federal Government;

(c) Portions of federally-owned buildings leased, rented or otherwise provided in their entirety to nonfederal parties;

(d) Places of employment in the private sector or in other non-Federal governmental units that serve as the permanent or intermittent duty station of one or more Federal employees; and

(e) Instances where an agency head establishes limited and narrow exceptions that are necessary to accomplish agency missions. Such exceptions must be in writing, approved by the agency head, and to the fullest extent possible provide protection of nonsmokers from exposure to environmental tobacco smoke. Authority to establish such exceptions may not be delegated.

§ 102–74.325 Who has the responsibility to determine which areas are to be smoking and which areas are to be nonsmoking areas?

Agency heads have the responsibility to determine which areas are to be smoking and which areas are to be nonsmoking areas. In exercising this responsibility, agency heads will give appropriate consideration to the views of the employees affected and/or their representatives and are to take into consideration the health issues involved. Nothing in this section precludes an agency from establishing more stringent guidelines. Agencies in multi-tenant buildings are encouraged to work together to identify designated smoking areas.

§ 102–74.330 Who must evaluate the need to restrict smoking at doorways and in courtyards?

Agency heads must evaluate the need to restrict smoking at doorways and in courtyards under executive branch control to protect workers and visitors from environmental tobacco smoke, and may restrict smoking in these areas in light of this evaluation.

§ 102–74.335 Who is responsible for monitoring and controlling areas designated for smoking and for ensuring that these areas are identified by proper signs?

Agency heads are responsible for monitoring and controlling areas designated for smoking and for ensuring that these areas are identified by proper signs. Suitable uniform signs reading "Designated Smoking Area" must be furnished and installed by the occupant agency.

§ 102–74.340 Who is responsible for signs on or near building entrance doors?

Federal agency building's managers must furnish and install suitable, uniform signs reading "No Smoking Except in Designated Areas" on or near entrance doors of buildings subject to this section. It is not necessary to display a sign in every room of each building.

§ 102–74.345 Does the smoking policy in this part apply to the judicial branch?

This smoking policy applies to the judicial branch when it occupies space in buildings controlled by the executive branch. Furthermore, the Federal Chief Judge in a local jurisdiction may be deemed to be comparable to an agency head and may establish exceptions for Federal jurors and others as indicated in § 102–74.320(e).

§ 102–74.350 Are agencies required to meet their obligations under the Federal Service Labor-Management Relations Act where there is an exclusive representative for the employees prior to implementing this smoking policy?

Yes, where there is an exclusive representative for the employees, Federal agencies must meet their obligations under the Federal Service Labor-Management Relations Act (5 U.S.C. 7101 *et seq.*) prior to implementing this section. In all other cases, agencies may consult directly with employees.

Accident and Fire Prevention

§ 102–74.355 With what accident and fire prevention standards must Federal facilities comply?

To the maximum extent feasible, Federal agencies must manage facilities in accordance with the accident and fire prevention requirements identified in § 102–80.80 of this chapter.

§ 102–74.360 What are the specific accident and fire prevention responsibilities of occupant agencies?

Each occupant agency must:

(a) Participate in at least one fire drill per year;

(b) Maintain a neat and orderly facility to minimize the risk of accidental injuries and fires;

(c) Keep all exits, accesses to exits and accesses to emergency equipment clear at all times;

(d) Not bring hazardous, explosive or combustible materials into buildings unless authorized by appropriate agency officials and by GSA and unless protective arrangements determined necessary by GSA have been provided;

(e) Ensure that all draperies, curtains or other hanging materials are of non-combustible or flame-resistant fabric;

(f) Ensure that freestanding partitions and space dividers are limited combustible, and their fabric coverings are flame resistant;

(g) Cooperate with GSA to develop and maintain fire prevention programs that ensure the maximum safety of the occupants;

(h) Train employees to use protective equipment and educate employees to take appropriate fire safety precautions in their work;

(i) Ensure that facilities are kept in the safest condition practicable, and conduct periodic inspections in accordance with Executive Order 12196 and 29 CFR part 1960;

(j) Immediately report accidents involving personal injury or property damage, which result from building system or maintenance deficiencies, to the Federal agency building's manager; and

(k) Appoint a safety, health and fire protection liaison to represent the occupant agency with GSA.

Subpart C—Conduct on Federal Property

Applicability

§ 102–74.365 To whom does this subpart apply?

The rules in this subpart apply to all property under the authority of the General Services Administration and to all persons entering in or on such property. Each occupant agency shall be responsible for the observance of these rules and regulations. Federal agencies must post the notice in the Appendix to this part at each public entrance to each Federal facility.

Inspection

§ 102–74.370 What items are subject to inspection by Federal agencies?

Federal agencies may, at their discretion, inspect packages, briefcases and other containers in the immediate possession of visitors, employees or other persons arriving on, working at, visiting, or departing from Federal property. Federal agencies may conduct a full search of a person and the vehicle the person is driving or occupying upon his or her arrest.

Admission to Property

§ 102–74.375 What is the policy on admitting persons to Government property?

Federal agencies must:

(a) Close property to the public during other than normal working hours. In those instances where a Federal agency has approved the after-normal-working-hours use of buildings or portions thereof for activities authorized by subpart D of this part, Federal agencies must not close the property (or affected portions thereof) to the public.

(b) Close property to the public during working hours only when situations require this action to ensure the orderly conduct of Government business. The designated official under the Occupant Emergency Program may make such decision only after consultation with the buildings manager and the highest ranking representative of the law enforcement organization responsible for protection of the property or the area. The designated official is defined in § 102–71.20 of this chapter as the highest ranking official of the primary occupant agency, or the alternate highest ranking offical or designee selected by mutual agreement by other occupant agency officials.

(c) Ensure, when property or a portion thereof is closed to the public, that admission to the property, or the affected portion, is restricted to authorized persons who must register upon entry to the property and must, when requested, display Government or other identifying credentials to Federal police officers or other authorized individuals when entering, leaving or while on the property. Failure to comply with any of the applicable provisions is a violation of these regulations.

Preservation of Property

§ 102–74.380 What is the policy concerning the preservation of property?

All persons entering in or on Federal property are prohibited from:

(a) Improperly disposing of rubbish on property;

(b) Willfully destroying or damaging property;

(c) Stealing property;

(d) Creating any hazard on property to persons or things; or

(e) Throwing articles of any kind from or at a building or the climbing upon statues, fountains or any part of the building.

Conformity With Signs and Directions

§ 102–74.385 What is the policy concerning conformity with official signs and directions?

Persons in and on property must at all times comply with official signs of a prohibitory, regulatory or directory nature and with the lawful direction of Federal police officers and other authorized individuals.

Disturbances

§ 102–74.390 What is the policy concerning disturbances?

All persons entering in or on Federal property are prohibited from loitering, exhibiting disorderly conduct or exhibiting other conduct on property which:

(a) Creates loud or unusual noise or a nuisance;

(b) Unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots;

(c) Otherwise impedes or disrupts the performance of official duties by Government employees; or

(d) Prevents the general public from obtaining the administrative services provided on the property in a timely manner.

Gambling

§ 102–74.395 What is the policy concerning gambling?

Except for the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and authorized by section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107 *et seq.*), all persons entering in or on Federal property are prohibited from:

(a) Participating in games for money or other personal property;

(b) Operating gambling devices;

(c) Conducting a lottery or pool; or

(d) Selling or purchasing of numbers tickets.

Narcotics and Other Drugs

§ 102–74.400 What is the policy concerning the possession and use of narcotics and other drugs?

Except in cases where the drug is being used as prescribed for a patient by a licensed physician, all persons entering in or on Federal property are prohibited from:

(a) Being under the influence, using or possessing any narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines; or

(b) Operating a motor vehicle on the property while under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines.

Alcoholic Beverages

§ 102–74.405 What is the policy concerning the use of alcoholic beverages?

Except where the head of the responsible agency or his or her designee has granted an exemption in writing for the appropriate official use of alcoholic beverages, all persons entering in or on Federal property are prohibited from being under the influence or using alcoholic beverages. The head of the responsible agency or his or her designee must provide a copy of all exemptions granted to the buildings manager and the highest ranking representative of the law enforcement organization, or other authorized officials, responsible for the security of the property.

Soliciting, Vending and Debt Collection

§ 102–74.410 What is the policy concerning soliciting, vending and debt collection?

All persons entering in or on Federal property are prohibited from soliciting commercial or political donations, vending merchandise of all kinds, displaying or distributing commercial advertising, or collecting private debts, except for:

(a) National or local drives for funds for welfare, health or other purposes as authorized by 5 CFR part 950, entitled "Solicitation Of Federal Civilian And Uniformed Service Personnel For Contributions To Private Voluntary Organizations," and sponsored or approved by the occupant agencies;

(b) Concessions or personal notices posted by employees on authorized bulletin boards;

(c) Solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978 (Pub. L. 95–454); and

(d) Lessee, or its agents and employees, with respect to space leased for commercial, cultural, educational, or recreational use under the Public Buildings Cooperative Use Act of 1976 (40 U.S.C. 490(a)(16)). Public areas of GSA-controlled property may be used for other activities in accordance with subpart D of this part.

Posting and Distributing Materials

§ 102–74.415 What is the policy for posting and distributing materials?

All persons entering in or on Federal property are prohibited from:

(a) Distributing free samples of tobacco products in or around Federal buildings, under Public Law 104–52, Section 636.

(b) Posting or affixing materials, such as pamphlets, handbills, or flyers, on bulletin boards or elsewhere on GSA-controlled property, except as authorized in § 102–74.410, or when these displays are conducted as part of authorized Government activities.

(c) Distributing materials, such as pamphlets, handbills or flyers, unless conducted as part of authorized Government activities. This prohibition does not apply to public areas of the property as defined in § 102–71.20 of this chapter. However, any person or organization proposing to distribute materials in a public area under this section must first obtain a permit from the building's manager as specified in subpart D of this part. Any such person or organization must distribute materials only in accordance with the provisions of subpart D of this part. Failure to comply with those provisions is a violation of these regulations.

Photographs for News, Advertising or Commercial Purposes

§ 102–74.420 What is the policy concerning photographs for news, advertising or commercial purposes?

Except where security regulations apply or a Federal court order or rule prohibits it, persons entering in or on Federal property may take photographs of:

(a) Space occupied by a tenant agency for non-commercial purposes only with the permission of the occupying agency concerned;

(b) Space occupied by a tenant agency for commercial purposes only with written permission of an authorized official of the occupying agency concerned; and

(c) Building entrances, lobbies, foyers, corridors, or auditoriums for news purposes.

Dogs and Other Animals

§ 102–74.425 What is the policy concerning dogs and other animals on Federal property?

Except seeing eye dogs, other guide dogs and animals used to guide or assist handicapped persons, persons may not bring dogs or other animals on Federal property for other than official purposes.

Vehicular and Pedestrian Traffic

§ 102–74.430 What is the policy concerning vehicular and pedestrian traffic on Federal property?

All vehicle drivers entering or while on Federal property:

(a) Must drive in a careful and safe manner at all times;

(b) Must comply with the signals and directions of Federal police officers or other authorized individuals;

(c) Must comply with all posted traffic signs;

(d) Must comply with any additional posted traffic directives approved by the GSA Regional Administrator, which will have the same force and effect as these regulations;

(e) Are prohibited from blocking entrances, driveways, walks, loading platforms, or fire hydrants; and

(f) Are prohibited from parking on Federal property without a permit. Parking without authority, parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs is prohibited. Vehicles parked in violation, where warning signs are posted, are subject to removal at the owner's risk and expense. Federal agencies may take as proof that a motor vehicle was parked in violation of these regulations or directives as prima facie evidence that the registered owner was responsible for the violation.

Explosives

§ 102–74.435 What is the policy concerning explosives on Federal property?

No person entering or while on Federal property may carry or possess explosives, or items intended to be used to fabricate an explosive or incendiary device, either openly or concealed, except for official purposes.

Weapons

§ 102–74.440 What is the policy concerning weapons on Federal property?

Federal law prohibits the possession of firearms or other dangerous weapons in Federal facilities and Federal court facilities by all persons not specifically authorized by Title 18, United States Code, Section 930. Violators will be subject to fine and/or imprisonment for periods up to five (5) years.

Nondiscrimination

§ 102–74.445 What is the policy concerning discrimination on Federal property?

Federal agencies must not discriminate by segregation or otherwise against any person or persons because of race, creed, sex, color, or national origin in furnishing or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided on the property.

Penalties

§ 102–74.450 What are the penalties for violating any rule or regulation in this subpart?

A person found guilty of violating any rule or regulation in this subpart while on any property under the charge and control of the U.S. General Services Administration shall be fined under title 18 of the United States Code, imprisoned for not more than 30 days, or both.

Impact on Other Laws or Regulations

§ 102–74.455 What impact do the rules and regulations in this subpart have on other laws or regulations?

No rule or regulation in this subpart may be construed to nullify any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated (section 205(c), 63 Stat. 390; 40 U.S.C. 486(c)).

Subpart D—Occasional Use of Public Buildings

§ 102–74.460 What is the scope of this subpart?

This subpart establishes rules and regulations for the occasional use of public areas of public buildings for cultural, educational and recreational activities as provided by the Public Buildings Cooperative Use Act of 1976 (Pub. L. 94–541).

Application for Permit

§ 102–74.465 Is a person or organization that wishes to use a public area required to apply for a permit from a Federal agency?

Yes, any person or organization wishing to use a public area must file an application for a permit from the Federal agency buildings manager.

§ 102–74.470 What information must persons or organizations submit so that Federal agencies may consider their application for a permit?

Applicants must submit the following information:

(a) Their full names, mailing addresses and telephone numbers;

(b) The organization sponsoring the proposed activity;

(c) The individual(s) responsible for supervising the activity;

(d) Documentation showing that the applicant has authority to represent the sponsoring organization; and

(e) A description of the proposed activity, including the dates and times during which it is to be conducted and the number of persons to be involved.

§ 102–74.475 If an applicant proposes to use a public area to solicit funds, is the applicant required to make a certification?

Yes, if an applicant proposes to use a public area to solicit funds, the applicant must certify, in writing, that:

(a) The applicant is a representative of and will be soliciting funds for the sole benefit of a religion or religious group; or

(b) The applicant's organization has received an official ruling of tax-exempt status from the Internal Revenue Service under 26 U.S.C. 501; or, alternatively, that an application for such a ruling is still pending.

Permits

§ 102–74.480 How many days does a Federal agency have to issue a permit following receipt of a completed application?

Federal agencies must issue permits within 10 working days following the receipt of the completed applications, unless the permit is disapproved in accordance with § 102–74.500.

§ 102–74.485 Is there any limitation on the length of time of a permit?

Yes, a permit may not be issued for a period of time in excess of 30 calendar days, unless specifically approved by the regional officer (as defined in § 102–71.20 of this chapter). After the expiration of a permit, Federal agencies may issue a new permit upon submission of a new application. In such a case, applicants may incorporate by reference all required information filed with the prior application.

§ 102–74.490 What if more than one permit is requested for the same area and time?

Federal agencies will issue permits on a first-come, first-served, basis when more than one permit is requested for the same area and times.

§ 102–74.495 If a permit involves demonstrations or activities that may lead to civil disturbances, what action must a Federal agency take before approving such a permit application?

Before approving a permit application, Federal agencies must coordinate with their law enforcement organization if a permit involves demonstrations or activities that may lead to civil disturbances.

Disapproval of Applications or Cancellation of Permits

§ 102–74.500 Can Federal agencies disapprove permit applications or cancel issued permits?

Yes, Federal agencies may disapprove any permit application or cancel an issued permit if:

(a) The applicant has failed to submit all information required under § 102–74.470 and § 102–74.475, or has falsified such information;

(b) The proposed use is a commercial activity as defined in § 102–71.20 of this chapter;

(c) The proposed use interferes with access to the public area, disrupts official Government business, interferes with approved uses of the property by tenants or by the public, or damages any property;

(d) The proposed use is intended to influence or impede any pending judicial proceeding;

(e) The proposed use is obscene within the meaning of obscenity as defined in 18 U.S.C. 1461–65; or

(f) The proposed use violates the prohibition against political solicitations in 18 U.S.C. 607.

§ 102–74.505 What action must Federal agencies take after disapproving an application or canceling an issued permit?

Upon disapproving an application or canceling a permit, Federal agencies must promptly:

(a) Notify the applicant or permittee of the reasons for the action; and

(b) Inform the applicant or permittee of his/her appeal rights under § 102–74.510.

Appeals

§ 102–74.510 How may the disapproval of a permit application or cancellation of an issued permit be appealed?

A person or organization may appeal the disapproval of an application or cancellation of an issued permit by notifying the regional officer (as defined in § 102–71.20 of this chapter), in writing, of the intent to appeal within 5 calendar days of the notification of disapproval or cancellation.

§ 102–74.515 Will the affected person or organization and the Federal agency buildings manager have an opportunity to state their positions on the issues?

Yes, during the appeal process, the affected person or organization and the Federal agency buildings manager will have an opportunity to state their positions on the issues, both verbally and in writing.

§ 102–74.520 How much time does the regional officer have to affirm or reverse the Federal agency building manager's decision after receiving the notification of appeal from the affected person or organization?

The regional officer must affirm or reverse the GSA building manager's decision, based on the information submitted, within 10 calendar days of the date on which the regional officer received notification of the appeal. If the decision is not rendered within 10 days, the application will be considered to be approved or the permit validly issued. The regional officer will promptly notify the applicant or permittee and the building's manager of the decision and the reasons therefor.

Schedule of Use

§ 102–74.525 May Federal agencies reserve time periods for the use of public areas for official Government business or for maintenance, repair and construction?

Yes, Federal agencies may reserve certain time periods for use of public areas:

(a) For official Government business; or

(b) For maintenance, repair, and construction.

Hours of Use

§ 102–74.530 When may public areas be used?

Permittees may use public areas during or after regular working hours of Federal agencies, provided that such uses will not interfere with Government business. When public areas are used by permittees after normal working hours, Federal agencies must lock, barricade or identify by signs, as appropriate, all adjacent areas not approved for such use to restrict permittees' activities to approved areas.

Services and Costs

§ 102–74.535 What items may Federal agencies provide to permittees free of charge?

Federal agencies may provide to permittees at no cost:

(a) Space; and

(b) Services normally provided at the building in question during normal hours of building operation, such as security, cleaning, heating, ventilation, and air-conditioning. The regional officer must approve an applicant's request to provide its own services, such as security and cleaning, prior to permit approval.

§ 102–74.540 What are the items for which permittees must reimburse Federal agencies?

Permittees must reimburse Federal agencies for services over and above those normally provided during normal business hours. Federal agencies may provide the services free of charge if the cost is insignificant and if it is in the public's interest.

§ 102–74.545 May permittees make alterations to the public areas?

Permittees must not make alterations to public areas, except with the prior written approval of the Federal agency building's manager. Federal agencies must not approve such alterations unless the Federal agency determines that the proposed alterations to a building should be made to encourage and aid in the proposed use. Permittees making alterations must ensure the safety of users and prevent damage to property.

§ 102–74.550 What items are permittees responsible for furnishing?

Permittees are responsible for furnishing items such as tickets, audio-visual equipment, and other items, which are necessary for the proposed use.

Conduct

§ 102–74.555 What rules of conduct must all permittees observe while on Federal property?

Permittees are subject to all rules and regulations governing conduct on Federal property as set forth in subpart C of this part. In addition, a permittee must:

(a) Not misrepresent his or her identity to the public;

(b) Not conduct any activities in a misleading or fraudulent manner;

(c) Not discriminate on the basis of race, creed, color, disability, sex or national origin in conducting activities;

(d) Not distribute any item, nor post or otherwise affix any item, for which prior written approval under § 102–74.415 has not been obtained;

(e) Not leave leaflets or other materials unattended on the property;

(f) Not engage in activities that would interfere with the preferences afforded blind licensees under the Randolph-Sheppard Act (20 U.S.C. 107); and

(g) Display identification badges while on Federal property, if engaging in the solicitation of funds as authorized by § 102–74.475. Each badge must indicate the permittee's name, address, telephone number, and organization.

Non-affiliation With the Government

§ 102–74.560 May Federal agencies advise the public of the presence of any permittees and their non-affiliation with the Federal Government?

Yes, Federal agencies reserve the right to advise the public through signs or announcements of the presence of any permittees and of their non-affiliation with the Federal Government.

Subpart E—Installing, Repairing, and Replacing Sidewalks

§ 102–74.565 What is the scope of this subpart?

In accordance with 40 U.S.C. 490(i), Federal agencies must comply with the real property policies in this subpart governing the installation, repair and replacement of sidewalks around buildings, installations, properties, or grounds under the control of executive agencies and owned by the United States.

§ 102–74.570 Are State and local governments required to fund the cost of installing, repairing, and replacing sidewalks?

No, the Federal Government must fund the cost of installing, repairing, and replacing sidewalks. Funds appropriated to the agency for installation, repair, and maintenance, generally, must be available for expenditure to accomplish the purposes of this subpart.

§ 102–74.575 How do Federal agencies arrange for work on sidewalks?

Upon approval from GSA, Federal agencies may:

(a) Authorize the appropriate State or local government to install, repair and replace sidewalks, or arrange for this work, and reimburse them for this work; or

(b) Contract or otherwise arrange and pay directly for installing, repairing and/or replacing sidewalks.

§ 102–74.580 Who decides when to replace a sidewalk?

Federal agencies, giving due consideration to State and local standards and specifications for sidewalks, decide when to install, repair or replace a sidewalk. However, Federal agencies may prescribe other standards and specifications for sidewalks whenever necessary to achieve architectural harmony and maintain facility security.

Appendix to Part 102–74—Rules and Regulations Governing Conduct on Federal Property

Federal Management Regulations

Title 41, Code of Federal Regulations, Part 102–74, Subpart C

Applicability (41 CFR 102–74.365). The rules in this subpart apply to all property under the authority of the General Services Administration and to all persons entering in or on such property. Each occupant agency shall be responsible for the observance of these rules and regulations. Federal agencies must post the notice in the Appendix to part 102–74 at each public entrance to each Federal facility.

Inspection (41 CFR 102–74.370). Federal agencies may, at their discretion, inspect packages, briefcases and other containers in the immediate possession of visitors, employees or other persons arriving on, working at, visiting, or departing from Federal property. Federal agencies may conduct a full search of a person and the vehicle the person is driving or occupying upon his or her arrest.

Admission to Property (41 CFR 102–74.375). Federal agencies must:

(a) Close property to the public during other than normal working hours. In those instances where a Federal agency has approved the after-normal-working-hours use of buildings or portions thereof for activities authorized by subpart D of this part, Federal agencies must not close the property (or affected portions thereof) to the public.

(b) Close property to the public during working hours only when situations require this action to ensure the orderly conduct of Government business. The designated official under the Occupant Emergency Program may make such decision only after consultation with the buildings manager and the highest ranking representative of the law enforcement organization responsible for protection of the property or the area. The designated official is defined in § 102–74.20 of this chapter as the highest ranking official of the primary occupant agency, or the alternate highest ranking offical or designee selected by mutual agreement by other occupant agency officials.

(c) Ensure, when property or a portion thereof is closed to the public, that admission to the property, or the affected portion, is restricted to authorized persons who must register upon entry to the property and must, when requested, display Government or other identifying credentials to Federal police officers or other authorized individuals when entering, leaving or while on the property. Failure to comply with any of the applicable provisions is a violation of these regulations.

Preservation of Property (41 CFR 102–74.380). All persons entering in or on Federal property are prohibited from:

(a) Improperly disposing of rubbish on property;

(b) Willfully destroying or damaging property;

(c) Stealing property;

(d) Creating any hazard on property to persons or things;

(e) Throwing articles of any kind from or at a building or the climbing upon statues, fountains or any part of the building.

Conformity with Signs and Directions (41 CFR 102–74.385). Persons in and on property must at all times comply with official signs of a prohibitory, regulatory or directory nature and with the lawful direction of Federal police officers and other authorized individuals.

Disturbances (41 CFR 102–74.390). All persons entering in or on Federal property are prohibited from loitering, exhibiting disorderly conduct or exhibiting other conduct on property which:

(a) Creates loud or unusual noise or a nuisance;

(b) Unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots;

(c) Otherwise impedes or disrupts the performance of official duties by Government employees; or

(d) Prevents the general public from obtaining the administrative services provided on the property in a timely manner.

Gambling (41 CFR 102–74.395). Except for the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and authorized by section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107 *et seq.*), all persons entering in or on Federal property are prohibited from:

(a) Participating in games for money or other personal property;

(b) Operating gambling devices;

(c) Conducting a lottery or pool; or

(d) Selling or purchasing of numbers tickets.

Narcotics and Other Drugs (41 CFR 102–74.400). Except in cases where the drug is being used as prescribed for a patient by a licensed physician, all persons entering in or on Federal property are prohibited from:

(a) Being under the influence, using or possessing any narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines; or

(b) Operating a motor vehicle on the property while under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines.

Alcoholic Beverages (41 CFR 102–74.405). Except where the head of the responsible agency or his or her designee has granted an exemption in writing for the appropriate official use of alcoholic beverages, all persons entering in or on Federal property are prohibited from being under the influence or using alcoholic beverages. The head of the responsible agency or his or her designee must provide a copy of all exemptions granted to the buildings manager and the highest ranking representative of the law enforcement organization, or other authorized officials, responsible for the security of the property.

Soliciting, Vending and Debt Collection (41 CFR 102–74.410). All persons entering in or on Federal property are prohibited from soliciting commercial or political donations; vending merchandise of all kinds; displaying or distributing commercial advertising, or collecting private debts, except for:

(a) National or local drives for funds for welfare, health or other purposes as authorized by 5 CFR part 950, entitled "Solicitation of Federal Civilian And Uniformed Service Personnel For Contributions To Private Voluntary Organizations," and sponsored or approved by the occupant agencies;

(b) Concessions or personal notices posted by employees on authorized bulletin boards;

(c) Solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978 (Public Law 95–454); and

(d) Lessee, or its agents and employees, with respect to space leased for commercial, cultural, educational, or recreational use under the Public Buildings Cooperative Use Act of 1976 (40 U.S.C. 490(a)(16)). Public areas of GSA-controlled property may be used for other activities in accordance with subpart D of this part.

Posting and Distributing Materials (41 CFR 102–74.415). All persons entering in or on Federal property are prohibited from:

(a) Distributing free samples of tobacco products in or around Federal buildings, under Public Law 104–52, Section 636.

(b) Posting or affixing materials, such as pamphlets, handbills, or flyers, on bulletin boards or elsewhere on GSA-controlled property, except as authorized in § 102–74.410, or when these displays are conducted as part of authorized Government activities.

(c) Distributing materials, such as pamphlets, handbills, or flyers, unless conducted as part of authorized Government activities. This prohibition does not apply to public areas of the property as defined in § 102–71.20 of this chapter. However, any person or organization proposing to distribute materials in a public area under this section must first obtain a permit from the building manager as specified in subpart D of this part. Any such person or organization must distribute materials only in accordance with the provisions of subpart D of this part. Failure to comply with those provisions is a violation of these regulations.

Photographs for News, Advertising, or Commercial Purposes (41 CFR 102–74.420). Except where security regulations apply or a Federal court order or rule prohibits it, persons entering in or on Federal property may take photographs of:

(a) Space occupied by a tenant agency for non-commercial purposes only with the permission of the occupying agency concerned;

(b) Space occupied by a tenant agency for commercial purposes only with written permission of an authorized official of the occupying agency concerned; and

(c) Building entrances, lobbies, foyers, corridors, or auditoriums for news purposes.

Dogs and Other Animals (41 CFR 102–74.425). Except seeing eye dogs, other guide dogs and animals used to guide or assist handicapped persons, persons may not bring dogs or other animals on Federal property for other than official purposes.

Vehicular and Pedestrian Traffic (41 CFR 102–74.430). All vehicle drivers entering or while on Federal property:

(a) Must drive in a careful and safe manner at all times;

(b) Must comply with the signals and directions of Federal police officers or other authorized individuals;

(c) Must comply with all posted traffic signs;

(d) Must comply with any additional posted traffic directives approved by the GSA Regional Administrator, which will have the same force and effect as these regulations;

(e) Are prohibited from blocking entrances, driveways, walks, loading platforms, or fire hydrants; and

(f) Are prohibited from parking on Federal property without a permit. Parking without authority, parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs is prohibited. Vehicles parked in violation, where warning signs are posted, are subject to removal at the owner's risk and expense. Federal agencies may take as proof that a motor vehicle was parked in violation of these regulations or directives as prima facie evidence that the registered owner was responsible for the violation.

Explosives (41 CFR 102–74.435). No person entering or while on property may carry or possess explosives, or items intended to be used to fabricate an explosive or incendiary device, either openly or concealed, except for official purposes.

Weapons (41 CFR 102–74.440) Federal law prohibits the possession of firearms or other dangerous weapons in Federal facilities and Federal court faiclities by all persons not specifically authorized by Title 18, United States Code, Section 930. Violators will be subject to fine and/or imprisonment for periods up to five (5) years.

Nondiscrimination (41 CFR 102–74.445). Federal agencies must not discriminate by segregation or otherwise against any person or persons because of race, creed, sex, color, or national origin in furnishing or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided on the property.

Penalties (41 CFR 102–74.450). A person found guilty of violating any rule or regulation in subpart C of this part while on any property under the charge and control of the U.S. General Services Administration shall be fined under title 18 of the United States Code, imprisoned for not more than 30 days, or both.

Impact on Other Laws or Regulations (41 CFR 102–74.455). No rule or regulation in this subpart may be construed to nullify any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated (section 205(c), 63 U.S. Statutes, 390; 40 U.S.C. 486(c)).

Warning—Weapons Prohibited

Federal law prohibits the possession of firearms or other dangerous weapons in

Federal facilities and Federal court faiclities by all persons not specifically authorized by Title 18, United States Code, Section 930. Violators will be subject to fine and/or imprisonment for periods up to five (5) years.

10. Part 102–75 is revised to read as follows:

PART 102–75—REAL PROPERTY DISPOSAL

Subpart A—General Provisions

Sec.
102–75.5 What is the scope of this part?
102–75.10 What basic real property disposal policy governs disposal agencies?

Real Property Disposal Services

102–75.15 What real property disposal services must disposal agencies provide?
102–75.20 How can Federal agencies with independent disposal authority obtain related disposal services?

Subpart B—Utilization of Excess Real Property

102–75.25 What are landholding agencies' responsibilities concerning the utilization of excess property?
102–75.30 What are disposal agencies' responsibilities concerning the utilization of excess property?
102–75.35 What are GSA's responsibilities concerning the identification of unneeded Federal Real Property?

Standards

102–75.40 What are the standards that each executive agency must use to identify unneeded Federal real property?
102–75.45 What does the term "Not utilized" mean?
102–75.50 What does the term "Underutilized" mean?
102–75.55 What does the term "Not being put to optimum use" mean?

Guidelines

102–75.60 What are landholding agencies' responsibilities concerning real property surveys?
102–75.65 Why is it important for executive agencies to notify the disposal agency of its real property needs?
102–75.70 Are their any exceptions to this notification policy?
102–75.75 What is the most important consideration in evaluating a proposed transfer of excess real property?
102–75.80 What are an executive agency's responsibilities before requesting a transfer of excess real property?
102–75.85 Can disposal agencies transfer excess real property to agencies for programs which appear to be scheduled for substantial curtailment or termination?
102–75.90 How is excess real property needed for office, storage, and related purposes normally transferred to the requesting agency?
102–75.95 Can Federal agencies which normally do not require real property (other than for office, storage, and related purposes) or which may not have statutory authority to acquire such property, obtain the use of excess real property?

Land Withdrawn or Reserved From the Public Domain

102–75.100 When an agency holds land withdrawn or reserved from the public domain and determines that it no longer needs this land, what must it do?
102–75.105 What responsibility does the Department of the Interior have if it determines that minerals in the land are unsuitable for disposition under the public land mining and mineral leasing laws?

Transfers Under Other Laws

102–75.110 Can transfers of real property be made under authority of laws other than the Federal Property and Administrative Services Act of 1949?

Reporting of Excess Real Property

102–75.115 Must reports of excess real property and related personal property be prepared on specific forms?
102–75.120 Is there any other information that needs to accompany (or be submitted with) the Report of Excess Real Property (Standard Form 118)?

Title Report

102–75.125 What information must agencies include in the title report?
102–75.130 If hazardous substance activity took place on the property, what specific information must an agency include on the title report?
102–75.135 If no hazardous substance activity took place on the property, What specific information must an agency include on the title report?

Other Necessary Information

102–75.140 In addition to the title report, what information must an executive agency transmit with the Report of Excess Real Property (Standard Form 118)?

Examination for Acceptability

102–75.145 Is GSA required to review each report of excess?
102–75.150 What happens when GSA determines that the report of excess is adequate?
102–75.155 What happens if GSA determines that the report of excess is insufficient?

Designation as Personal Property

102–75.160 Should prefabricated movable structures be designated real or personal property for disposition purposes?
102–75.165 Should related personal property be designated real or personal property for disposition purposes?
102–75.170 What happens to the related personal property in a structure scheduled for demolition?

Transfers

102–75.175 What are GSA's responsibilities regarding transfer requests?
102–75.180 May landholding agencies transfer excess real property without notifying GSA?
102–75.185 In those instances where landholding agencies may transfer excess real property without notifying GSA, which policies must they follow?
102–75.190 What amount must the transferee agency pay for the transfer of excess real property?
102–75.195 If the transferor agency is a wholly owned Government corporation, what amount must the transferee agency pay?
102–75.200 hat amount must the transferee agency pay if property is being transferred for the purpose of upgrading the transferee agency's facilities?
102–75.205 Are transfers ever made without reimbursement by the transferee agency?
102–75.210 What must a transferee agency include in its request for an exception from the 100 percent reimbursement requirement?
102–75.215 Who must endorse requests for exception to the 100 percent reimbursement requirement?
102–75.220 Where should an agency send a request for exception to the 100 percent reimbursement requirement?
102–75.225 Who must review and approve a request for exception from the 100 percent reimbursement requirement?
102–75.230 Who is responsible for property protection and maintenance costs while the request for exception is being reviewed?
102–75.235 May disposal agencies transfer excess property to the Senate, the House of Representatives, and the Architect of the Capitol?

Temporary Utilization

102–75.240 May excess real property be temporarily assigned/reassigned?

Nonfederal Interim Use of Excess Property

102–75.245 When can landholding agencies grant rights for nonfederal interim use of excess property reported to GSA?

Subpart C—Surplus Real Property Disposal

102–75.250 What general policy must disposal agencies follow concerning the disposal of surplus property?
102–75.255 What are disposal agencies' specific responsibilities concerning the disposal of surplus property?
102–75.260 When may disposal agencies dispose of surplus real property by exchange for privately owned property?
102–75.265 Are conveyance documents required to identify all agreements and representations concerning property restrictions and conditions?

Applicability of Antitrust Laws

102–75.270 Must antitrust laws be considered when disposing of property?
102–75.275 Who determines whether the proposed disposal would create or maintain a situation inconsistent with antitrust laws?
102–75.280 What information concerning a proposed disposal must a disposal agency provide to the Attorney General to determine the applicability of antitrust laws?
102–75.285 Can a disposal agency dispose of real property to a private interest specified in § 102–75.270 before advice is received from the Attorney General?

Disposals Under Other Laws

102–75.290 Can disposals of real property be made under authority of laws other than the Federal Property and Administrative Services Act of 1949?

Credit Disposals

102–75.295 What is the policy on extending credit in connection with the disposal of surplus property?

Appraisal

102–75.300 Are appraisals required for all real property disposal transactions?
102–75.305 What type of appraisal value must be obtained for real property disposal transactions?
102–75.310 Who must agencies use to appraise the real property?
102–75.315 Are appraisers authorized to consider the effect of historic covenants on the fair market value?
102–75.320 Does appraisal information need to be kept confidential?

Inspection

102–75.325 What responsibility does the landholding agency have to provide persons the opportunity to inspect available surplus property?

Submission of Offers To Purchase or Lease

102–75.330 What form must all offers to purchase or lease be in?

Provisions Relating to Asbestos

102–75.335 Where asbestos is identified, what information must the disposal agency incorporate into the offer to purchase and in the conveyance document?

Provisions Relating to Hazardous Substance Activity

102–75.340 Where hazardous substance activity has been identified on property proposed for disposal, what information must the disposal agency incorporate into the offer to purchase and conveyance document?
102–75.345 What is different about the statements in the offer to purchase and conveyance document if the sale is to a potentially responsible party with respect to the hazardous substance activity?

Public Benefit Conveyances

102–75.350 What are disposal agencies' responsibilities concerning public benefit conveyances?
102–75.355 What clause must be in the offer to purchase and conveyance documents for public benefit conveyances?
102–75.360 What wording must be in the non-discrimination clause which is required in the offer to purchase and in the conveyance document?

Power Transmission Lines

102–75.365 Do disposal agencies have to notify State entities and Government agencies that a surplus power transmission line and right-of-way is available?
102–75.370 May a State, or any political subdivision thereof, certify to a disposal agency that it needs a surplus power transmission line and the right-of-way acquired for its construction to meet the requirements of a public or cooperative power project?
102–75.375 What happens once a State, or political subdivision, certifies that it needs a surplus power transmission line and the right-of-way acquired for its construction to meet the requirements of a public or cooperative power project?
102–75.380 May power transmission lines and rights-of-way be disposed of in other ways?

Property for Public Airports

102–75.385 Do disposal agencies have the responsibility to notify eligible public agencies that airport property has been determined to be surplus?
102–75.390 May surplus airport property be conveyed or disposed of to a State, political subdivision, municipality, or tax-supported institution for a public airport?
102–75.395 What does the term "surplus airport property" mean?
102–75.400 Is industrial property located on an airport also considered to be "airport property"?
102–75.405 What responsibilities does the FAA have after receiving a copy of the notice (and a copy of the Report of Excess Real Property (Standard Form 118)) given to eligible public agencies that there is surplus airport property?
102–75.410 What action must the disposal agency take after an eligible public agency has submitted a plan of use and application to acquire property for a public airport?
102–75.415 What happens after the disposal agency receives the FAA's recommendation for disposal of the property for a public airport?
102–75.420 What happens if the FAA informs the disposal agency that it does not recommend disposal of the property for a public airport?
102–75.425 Who has sole responsibility for enforcing compliance with the terms and conditions of disposal for property disposed of for use as a public airport?
102–75.430 What happens if property conveyed for use as a public airport is revested in the United States?
102–75.435 Is the Airport and Airway Development Act of 1970 (Airport Act of 1970) applicable to the transfer of airports to State and local agencies?

Property for Use as Historic Monuments

102–75.440 Who must disposal agencies notify that surplus property is available for historic monument use?
102–75.445 Who can convey surplus real and related personal property for historic monument use?
102–75.450 What type of property is suitable or desirable for use as a historic monument?
102–75.455 May historic monuments be used for revenue-producing activities?
102–75.460 What information must disposal agencies furnish eligible public agencies?
102–75.465 What information must eligible public agencies interested in acquiring real property for use as a historic monument submit to the appropriate regional or field offices of the National Park Service (NPS) of the Department of the Interior?
102–75.470 What action must the National Park Service (NPS) of the Department of the Interior take after an eligible public agency has submitted an application for conveyance of surplus property for use as a historic monument?
102–75.475 What happens after the disposal agency receives the Secretary of the Interior's determination for disposal of the surplus property for a historic monument and compatible revenue-producing activities?
102–75.480 Who has the responsibility for enforcing compliance with the terms and conditions of disposal for surplus property conveyed for use as a historic monument?
102–75.485 What happens if property that was conveyed for use as a historic monument is revested in the United States?

Property for Educational and Public Health Purposes

102–75.490 Who must notify eligible public agencies that surplus real property for educational and public health purposes is available?
102–75.495 May the Department of Education or the Department of Health and Human Services notify nonprofit organizations that surplus real property and related personal property is available for educational and public health purposes?
102–75.500 Which Federal agencies may the head of the disposal agency (or his or her designee) assign for disposal surplus real property to be used for educational and public health purposes?
102–75.505 Is the request for educational or public health use of a property by an eligible nonprofit institution contingent upon the disposal agency's approval?

102–75.510 When must the Department of Education and the Department of Health and Human Services notify the disposal agency that an eligible applicant is interested in acquiring the property?
102–75.515 What action must the disposal agency take after an eligible public agency has submitted a plan of use for property for an educational or public health requirement?
102–75.520 What must the Department of Education or the Department of Health and Human Services address in the assignment recommendation that is submitted to the disposal agency?
102–75.525 What responsibilities do landholding agencies have concerning properties to be used for educational and public health purposes?
102–75.530 What happens if the Department of Education or the Department of Health and Human Services does not approve any applications for conveyance of the property for educational or public health purposes?
102–75.535 What responsibilities does the Department of Education or the Department of Health and Human Services have after receiving the disposal agency's assignment letter?
102–75.540 Who is responsible for enforcing compliance with the terms and conditions of the transfer for educational or public health purposes?
102–75.545 What happens if property that was transferred to meet an educational or public health requirement is revested in the United States for noncompliance with the terms of sale, or other cause?

Property for Providing Self-Help Housing or Housing Assistance

102–75.550 What does "self-help housing or housing assistance mean?"
102–75.555 Which Federal agency receives the property assigned for self-help housing or housing assistance for low-income individuals or families?
102–75.560 Who notifies eligible public agencies that real property to be used for self-help housing or housing assistance purposes is available?
102–75.565 Is the requirement for self-help housing or housing assistance use of the property by an eligible public agency or nonprofit organization contingent upon the disposal agency's approval of an assignment recommendation from the Department of Housing and Urban Development (HUD)?
102–75.570 What happens if the disposal agency does not approve the assignment recommendation?
102–75.575 Who notifies nonprofit organizations that surplus real property and related personal property to be used for self-help housing or housing assistance purposes is available?
102–75.580 When must HUD notify the disposal agency that an eligible applicant is interested in acquiring the property?
102–75.585 What action must the disposal agency take after an eligible public agency has submitted a plan of use for property for a self-help housing or housing assistance requirement?
102–75.590 What does the assignment recommendation contain?
102–75.595 What responsibilities do landholding agencies have concerning properties to be used for self-help housing or housing assistance use?
102–75.600 What happens if HUD does not approve any applications for self-help housing or housing assistance use?
102–75.605 What responsibilities does HUD have after receiving the disposal agency's assignment letter?
102–75.610 Who is responsible for enforcing compliance with the terms and conditions of the transfer of the property for self-help housing or housing assistance use?
102–75.615 Who is responsible for enforcing compliance with the terms and conditions of property transferred under section 414(a) of the 1969 HUD Act?
102–75.620 What happens if property that was transferred to meet a self-help housing or housing assistance use requirement is found to be in noncompliance with the terms of sale?

Property for Use as Public Park or Recreation Areas

102–75.625 Which Federal agency is assigned surplus real property for public park or recreation purposes?
102–75.630 Who must disposal agencies notify that real property for public park or recreation purposes is available?
102–75.635 What information must the Department of the Interior (DOI) furnish eligible public agencies?
102–75.640 When must DOI notify the disposal agency that an eligible applicant is interested in acquiring the property?
102–75.645 What responsibilities do landholding agencies have concerning properties to be used for public park or recreation purposes?
102–75.650 When must DOI request assignment of the property?
102–75.655 What does the assignment recommendation contain?
102–75.660 What happens if DOI does not approve any applications or does not submit an assignment recommendation?
102–75.665 What happens after the disposal agency receives the assignment recommendation from DOI?
102–75.670 What responsibilities does DOI have after receiving the disposal agency's assignment letter?
102–75.675 What responsibilities does the grantee or recipient of the property have in accomplishing or completing the transfer?
102–75.680 What information must be included in the deed of conveyance of any surplus property transferred for public park or recreation purposes?
102–75.685 Who is responsible for enforcing compliance with the terms and conditions of the transfer of property used for public park or recreation purposes?
102–75.690 What happens if property that was transferred for use as a public park or recreation area is revested in the United States by reason of noncompliance with the terms or conditions of disposal, or for other cause?

Property for Displaced Persons

102–75.695 Who can receive surplus real property for the purpose of providing replacement housing for persons who are to be displaced by Federal or federally assisted projects?
102–75.700 Which Federal agencies may solicit applications from eligible State agencies interested in acquiring the property to provide replacement housing for persons being displaced by Federal or federally assisted projects?
102–75.705 When must the Federal agency notify the disposal agency that an eligible State agency is interested in acquiring the property under section 218?
102–75.710 What responsibilities do landholding and disposal agencies have concerning properties used for providing replacement housing for persons who will be displaced by Federal or federally assisted projects?
102–75.715 When can a Federal agency request transfer of the property to the selected State agency?
102–75.720 Is there a specific or preferred format for the transfer request and who should receive it?
102–75.725 What does the transfer request contain?
102–75.730 What happens if a Federal agency does not submit a transfer request to the disposal agency for property to be used for replacement housing for persons who will be displaced by Federal or federally assisted projects?
102–75.735 What happens after the disposal agency receives the transfer request from the Federal agency?
102–75.740 Does the State agency have any responsibilities in helping to accomplish the transfer of the property?
102–75.745 What happens if the property transfer request is not approved by the disposal agency?

Property for Correctional Facility, Law Enforcement, or Emergency Management Response Purposes

102–75.750 Who is eligible to receive surplus real and related personal property for correctional facility, law enforcement, or emergency management response purposes?
102–75.755 Which Federal agencies must the disposal agency notify concerning the availability of surplus properties for correctional facility, law enforcement, or emergency management response purposes?
102–75.760 Who must the Office of Justice Programs (OJP) and the Federal Emergency Management Agency (FEMA) notify that surplus real property is available for correctional facility, law enforcement, or emergency management response purposes?
102–75.765 What does the term "law enforcement" mean?
102–75.770 Is the disposal agency required to approve a determination by the Department of Justice that identifies

surplus property for correctional facility use or for law enforcement use?
102–75.775 Is the disposal agency required to approve a determination by FEMA that identifies surplus property for emergency management response use?
102–75.780 When must DOJ or FEMA notify the disposal agency that an eligible applicant is interested in acquiring the property?
102–75.785 What specifically must DOJ or FEMA address in the assignment request or recommendation that is submitted to the disposal agency?
102–75.790 What responsibilities do landholding agencies and disposal agencies have concerning properties to be used for correctional facility, law enforcement, or emergency management response purposes?
102–75.795 What happens after the disposal agency receives the assignment request by DOJ or FEMA?
102–75.800 What information must be included in the deed of conveyance?
102–75.805 Who is responsible for enforcing compliance with the terms and conditions of the transfer of the property used for correctional facility, law enforcement, or emergency management response purposes?
102–75.810 What responsibilities do OJP or FEMA have if they discover any information indicating a change in use of a transferred property?
102–75.815 What happens if property conveyed for correctional facility, law enforcement, or emergency management response purposes is found to be in noncompliance with the terms of the conveyance documents?

Property for Port Facility Use

102–75.820 Which Federal agency is eligible to receive surplus real and related personal property for the development or operation of a port facility?
102–75.825 Who must the disposal agency notify when surplus real and related personal property is available for port facility use?
102–75.830 What does the surplus notice contain?
102–75.835 When must DOT notify the disposal agency that an eligible applicant is interested in acquiring the property?
102–75.840 What action must the disposal agency take after an eligible public agency has submitted a plan of use for and an application to acquire a port facility property?
102–75.845 What must DOT address in the assignment recommendation submitted to the disposal agency?
102–75.850 What responsibilities do landholding agencies have concerning properties to be used in the development or operation of a port facility?
102–75.855 What happens if DOT does not submit an assignment recommendation?
102–75.860 What happens after the disposal agency receives the assignment recommendation from DOT?
102–75.865 What responsibilities does DOT have after receiving the disposal agency's assignment letter?
102–75.870 Who is responsible for enforcing compliance with the terms and conditions of the port facility conveyance?
102–75.875 What happens in the case of repossession by the United States under a reversion of title for noncompliance with the terms or conditions of conveyance?

Negotiated Sales

102–75.880 When may executive agencies conduct negotiated sales?
102–75.885 What are executive agencies' responsibilities concerning negotiated sales?
102–75.890 What clause must be in the offer to purchase and conveyance documents for negotiated sales to public agencies?
102–75.895 What wording must be in the excess profits clause which is required in the offer to purchase and in the conveyance document?
102–75.900 What is a negotiated sale for economic development purposes?

Explanatory Statements for Negotiated Sales

102–75.905 When must the disposal agency prepare an explanatory statement?
102–75.910 Are there any exceptions to this policy of preparing explanatory statements?
102–75.915 Do disposal agencies need to retain a copy of the explanatory statement?
102–75.920 Where is the explanatory statement sent?
102–75.925 Is GSA required to furnish the disposal agency with the explanatory statement's transmittal letter sent to Congress?
102–75.930 What happens if there is no objection by an appropriate committee or subcommittee of Congress concerning the proposed negotiated sale?

Public Sales

102–75.935 What are disposal agencies' responsibilities concerning public sales?

Nonfederal Interim Use of Surplus Property

102–75.940 Can landholding agencies outlease surplus real property for nonfederal interim use?

Subpart D—Management of Excess and Surplus Real Property

102–75.945 What is GSA's policy concerning the physical care, handling, protection, and maintenance of excess and surplus real property and related personal property?

Taxes and Other Obligations

102–75.950 Who has the responsibility for paying taxes and other obligations pending transfer or disposal of the property?

Decontamination

102–75.955 Who is responsible for decontaminating excess and surplus real property?

Improvements or Alterations

102–75.960 May landholding agencies make improvements or alterations to excess or surplus property in those cases where disposal is otherwise not feasible?

Protection and Maintenance

102–75.965 Who must perform the protection and maintenance of excess and surplus real property pending transfer to another Federal agency or disposal?
102–75.970 How long is the landholding agency responsible for the expense of protection and maintenance of excess and surplus real property pending its transfer or disposal?
102–75.975 What happens if the property is not conveyed or disposed of during this time frame?
102–75.980 Who is responsible for protection and maintenance expenses if there is no written agreement or no Congressional appropriation to the disposal agency?

Assistance in Disposition

102–75.985 Is the landholding agency required to assist the disposal agency in the disposition process?

Subpart E—Abandonment, Destruction, or Donation to Public Bodies

102–75.990 May Federal agencies abandon, destroy, or donate to public bodies real property?

Dangerous Property

102–75.995 May Federal agencies dispose of dangerous property?

Determinations

102–75.1000 How is the decision made to abandon, destroy, or donate property?
102–75.1005 Who can make the determination within the Federal agency on whether a property can be abandoned, destroyed, or donated?
102–75.1010 When is a reviewing authority required to approve the determination concerning a property that is to be abandoned, destroyed, or donated?

Restrictions

102–75.1015 Are there any restrictions on Federal agencies concerning property donations to public bodies?

Disposal Costs

102–75.1020 Are public bodies ever required to pay the disposal costs associated with donated property?

Abandonment and Destruction

102–75.1025 When can a Federal agency abandon or destroy improvements on land or related personal property in lieu of donating it to a public body?
102–75.1030 May Federal agencies abandon or destroy property in any manner they decide?
102–75.1035 Are there any restrictions on Federal agencies concerning the abandonment or destruction of improvements on land or related personal property?
102–75.1040 May Federal agencies abandon or destroy improvements on land or related personal property before public notice is given of such proposed abandonment or destruction?
102–75.1045 Are there exceptions to the policy that requires public notice be given before Federal agencies abandon or destroy improvements on land or related personal property?
102–75.1050 Is there any property for which this subpart does not apply?

Subpart F—Delegations

Delegation to Department of Defense (DOD)

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Authority: 40 U.S.C. 486(c), 483(a), and 484; E.O. 12512; 50 FR 18453, 3 CFR, 1985 Comp., p. 340.

Subpart A—General Provisions

§ 102–75.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the General Services Administration (GSA)/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services. Federal agencies with authority to dispose of real property under the Federal Property and Administrative Services Act of 1949, as amended, will be referred to as "disposal agencies" in this part. Except in rare instances where GSA delegates disposal authority to a Federal agency, the "disposal agency" as used in this part refers to GSA.

§ 102–75.10 What basic real property disposal policy governs disposal agencies?

Disposal agencies must provide, in a timely, efficient, and cost effective manner, the full range of real estate services necessary to support their real property utilization and disposal needs. Landholding agencies must survey the real property under their custody or control to identify property that is not utilized, underutilized, or not being put to optimum use. Disposal agencies must have adequate procedures in place to promote the effective utilization and disposal of such real property.

Real Property Disposal Services

§ 102–75.15 What real property disposal services must disposal agencies provide?

Disposal agencies must provide real property disposal services for real property assets under their custody and control, such as the utilization of excess property, surveys, and the disposal of

surplus property, which includes public benefit conveyances, negotiated sales, public sales, related disposal services, and appraisals.

§ 102–75.20 How can Federal agencies with independent disposal authority obtain related disposal services?

Federal agencies with independent disposal authority are encouraged to obtain utilization, disposal, and related services from those agencies with expertise in real property disposal, such as GSA, as allowed by 31 U.S.C. 1535 (the Economy Act), so that they can remain focused on their core mission.

Subpart B—Utilization of Excess Real Property

§ 102–75.25 What are landholding agencies' responsibilities concerning the utilization of excess property?

Landholding agencies' responsibilities concerning the utilization of excess property are to:

(a) Achieve maximum use of their real property, in terms of economy and efficiency, to minimize expenditures for the purchase of real property;

(b) Increase the identification and reporting of their excess real property; and

(c) Fulfill its needs for real property, so far as practicable, by utilization of real property determined excess by other agencies, pursuant to the provision of this part, before it purchases nonfederal real property.

§ 102–75.30 What are disposal agencies' responsibilities concerning the utilization of excess property?

Disposal agencies' responsibilities concerning the utilization of excess property are to:

(a) Provide for the transfer of excess real property among Federal agencies, to mixed-ownership Government corporations, and to the municipal government of the District of Columbia; and

(b) Resolve conflicting requests for transferring real property that the involved agencies cannot resolve.

§ 102–75.35 What are GSA's responsibilities concerning the identification of unneeded Federal real property?

In accordance with Executive Order 12512, the Administrator of General Services is responsible for providing Governmentwide policy, oversight, and guidance for Federal real property management. The Administrator of General Services must issue standards, procedures, and guidelines for surveying the real property holdings of executive agencies on a continuing basis to identify properties which are not utilized, are underutilized, or are not being put to optimum use. In addition, the Administrator must develop survey reports describing any property or portion thereof which, in his or her judgment, is not utilized, is underutilized, or is not being put to optimum use, and which should be reported as excess property. These provisions are presently limited to fee-owned properties and supporting leaseholds and lesser interests located within the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

Standards

§ 102–75.40 What are the standards that each executive agency must use to identify unneeded Federal real property?

Each executive agency must identify unneeded Federal property using the following standards:

(a) Not utilized.

(b) Underutilized.

(c) Not being put to optimum use.

§ 102–75.45 What does the term "Not utilized" mean?

Not utilized means an entire property or portion thereof, with or without improvements, not occupied for current program purposes of the accountable executive agency, or occupied in caretaker status only.

§ 102–75.50 What does the term "Underutilized" mean?

Underutilized means an entire property or portion thereof, with or without improvements, which is used:

(1) Irregularly or intermittently by the accountable executive agency for current program purposes of that agency; or

(2) For current program purposes that can be satisfied with only a portion of the property.

§ 102–75.55 What does the term "Not being put to optimum use" mean?

Not being put to optimum use means an entire property or portion thereof, with or without improvements, which:

(1) Even though used for current program purposes, the nature, value, or location of the property is such that it could be utilized for a different and significantly higher and better purpose; or

(2) The costs of occupying are substantially higher than other suitable properties that could be made available through transfer, purchase, or lease with total net savings to the Government, after considering property values, costs of moving, occupancy, operational efficiency, environmental effects, regional planning, and employee morale.

Guidelines

§ 102–75.60 What are landholding agencies' responsibilities concerning real property surveys?

A landholding agency's responsibilities concerning real property utilization surveys are to:

(a) Survey real property under its control (*i.e.*, property reported on its financial statements) at least annually to identify property that is not utilized, underutilized, or not being put to optimum use. When other needs for the property are identified or recognized, the agency must determine whether continuation of the current use or another use would better serve the public interest, considering both the Federal agency's needs and the property's location. In conducting annual reviews of their property holdings, the GSA Customer Guide to Real Property Disposal can provide guidelines for executive agencies to consider in identifying unneeded Federal real property;

(b) Maintain its inventory of real property at the absolute minimum consistent with economical and efficient conduct of the affairs of the agency; and

(c) Promptly report to GSA real property that it has determined to be excess.

§ 102–75.65 Why is it important for executive agencies to notify the disposal agency of its real property needs?

It is important that each executive agency notify the disposal agency of its real property needs in order to determine whether the excess or surplus property of another agency is available which would meet its need and prevent the unnecessary purchase or lease of real property.

§ 102–75.70 Are there any exceptions to this notification policy?

Yes, executive agencies are not required to notify the disposal agency when an agency's proposed acquisition of real property is dictated by such factors as exact geographical location, topography, engineering, or similar characteristics which limit the possible use of other available property. For example, executive agencies are not required to notify disposal agencies concerning the acquisition of real property for a dam site, reservoir area, or the construction of a generating plant or a substation, since specific lands are needed, which limit the possible use of other available property. Therefore, no useful purpose would be served by notifying the disposal agency.

§ 102–75.75 What is the most important consideration in evaluating a proposed transfer of excess real property?

In every case of a proposed transfer of excess real property, the most important consideration is the validity and appropriateness of the requirement upon which the proposal is based. Also, a proposed transfer must not establish a new program which has never been reflected in any previous budget submission or congressional action. Additionally, a proposed transfer must not substantially increase the level of an agency's existing programs beyond that which has been contemplated in the President's budget or by the Congress.

§ 102–75.80 What are an executive agency's responsibilities before requesting a transfer of excess real property?

Before requesting a transfer of excess real property, an executive agency must:

(a) Screen its own property holdings to determine whether the new requirement can be met through improved utilization of existing real property; however, the utilization must be for purposes that are consistent with the highest and best use of the property under consideration;

(b) Review all real property under its accountability which it has been permitted or outleased and terminate the permit or lease for any property, or portion thereof, suitable for the proposed need if termination is not prohibited by the terms of the permit or lease.

(c) Utilize property that is or can be made available under § 102–75.80(a) or (b) for the proposed need in lieu of requesting a transfer of excess real property and reassign the property, when appropriate;

(d) Ensure that the appraised fair market value of the excess real property proposed for transfer will not substantially exceed the probable purchase price of other real property which would be suitable for the intended purpose;

(e) Limit the size and quantity of excess real property to be transferred to the actual requirements and separate, if possible, other portions of the excess installation for possible disposal to other agencies or to the public; and

(f) Consider the design, layout, geographic location, age, state of repair, and expected maintenance costs of excess real property proposed for transfer; agencies must be able to demonstrate that the transfer will be more economical over a sustained period of time than the acquisition of a new facility specifically planned for the purpose.

§ 102–75.85 Can disposal agencies transfer excess real property to agencies for programs which appear to be scheduled for substantial curtailment or termination?

Yes, but only on a temporary basis with the condition that the property will be released for further Federal utilization or disposal as surplus property at an agreed upon time when the transfer is arranged.

§ 102–75.90 How is excess real property needed for office, storage, and related purposes normally transferred to the requesting agency?

GSA may temporarily assign or direct the use of such excess real property to the requesting agency. See § 102–75.240.

§ 102–75.95 Can Federal agencies which normally do not require real property (other than for office, storage, and related purposes) or which may not have statutory authority to acquire such property, obtain the use of excess real property?

Yes, GSA can authorize the use of excess real property for an approved program. See § 102–75.240.

Land Withdrawn or Reserved From the Public Domain

§ 102–75.100 When an agency holds land withdrawn or reserved from the public domain and determines that it no longer needs this land, what must it do?

An agency holding unneeded land withdrawn or reserved from the public domain must submit to the appropriate GSA regional office a Report of Excess Real Property (Standard Form 118), with appropriate Schedules A, B, and C, only when:

(a) It has filed a notice of intention to relinquish with the Department of the Interior (43 CFR part 2372, *et seq.*) and sent a copy of the notice to the appropriate GSA regional office;

(b) The Department of the Interior has notified the agency that the Secretary of the Interior has determined that the lands are not suitable for return to the public domain for disposition under the general public land laws because the lands are substantially changed in character by improvements or otherwise; and

(c) The Department of the Interior provides a report identifying whether or not any other agency claims primary, joint, or secondary jurisdiction over the lands and whether its records show that the lands are encumbered by rights or privileges under the public land laws.

§ 102–75.105 What responsibility does the Department of the Interior have if it determines that minerals in the land are unsuitable for disposition under the public land mining and mineral leasing laws?

In such cases, the Department of the Interior must:

(a) Notify the appropriate GSA regional office of such a determination; and

(b) Authorize the landholding agency to identify in the Standard Form 118 any minerals in the land that the Department of the Interior determines to be unsuitable for disposition under the public land mining and mineral leasing laws.

Transfers Under Other Laws

§ 102–75.110 Can transfers of real property be made under authority of laws other than the Federal Property and Administrative Services Act of 1949?

Transfers of real property must be made only under the authority of the Federal Property and Administrative Services Act of 1949, unless the Administrator of General Services determines in each case that the transfer provisions of any such other law are consistent with the authority conferred by this Act. The provisions of this section shall not apply to transfers of real property authorized to be made by section 602(d) of the Act or by any special statute which directs or requires an executive agency to transfer or convey specifically described real property in accordance with the provisions of that statute.

Reporting of Excess Real Property

§ 102–75.115 Must reports of excess real property and related personal property be prepared on specific forms?

Yes, landholding agencies must prepare reports of excess real property and related personal property on:

(a) Standard Form (SF) 118, Report of Excess Real Property, and accompanying Standard Form 118a, Buildings Structures, Utilities, and Miscellaneous Facilities, Schedule A;

(b) Standard Form 118b, Land, Schedule B; and

(c) Standard Form 118c, Related Personal Property, Schedule C.

§ 102–75.120 Is there any other information that needs to accompany (or be submitted with) the Report of Excess Real Property (Standard Form 118)?

Yes, in all cases where Government-owned land is reported excess, executive agencies must include a title report, prepared by a qualified employee of the landholding agency, documenting the Government's title to the property.

Title Report

§ 102–75.125 What information must agencies include in the title report?

When completing the title report, agencies must include:

(a) The description of the property;

(b) The date title vested in the United States;

(c) All exceptions, reservations, conditions, and restrictions, relating to the title;

(d) Detailed information concerning any action, thing, or circumstance that occurred from the date the United States acquired the property to the date of the report which in any way affected or may have affected the United States' right, title, and interest in and to the real property (including copies of legal comments or opinions discussing the manner in which and the extent to which such right, title, or interest may have been affected). In the absence of any such action, thing, or circumstance, a statement to that effect must be made a part of the report;

(e) The status of civil and criminal jurisdiction over the land that is peculiar to the property by reason of it being Government-owned land. In the absence of any special circumstances, a statement to that effect must be made a part of the report;

(f) Detailed information regarding any known flood hazards or flooding of the property, and, if the property is located in a flood-plain or on wetlands, a listing of restricted uses (along with the citations) identified in Federal, State, or local regulations as required by Executive Orders 11988 and 11990 of May 24, 1977;

(g) The specific identification and description of fixtures and related personal property that have possible historic or artistic value;

(h) The historical significance of the property and whether the property is listed, is eligible for, or has been nominated for listing in the National Register of Historic Places or is in proximity to a property on the National Register. If the landholding agency is aware of any effort by the public to have the property listed on the National Register, it must also include this information;

(i) A description of the type, location, and condition of asbestos incorporated in the construction, repair, or alteration of any building or improvement on the property (*e.g.*, fire-proofing, pipe insulation, *etc.*) and a description of any asbestos control measures taken for the property. Agencies must also provide to GSA any available indication of costs and/or time necessary to remove all or any portion of the asbestos-containing materials. Agencies are not required to conduct any specific studies and/or tests to obtain this information. (The provisions of this subpart do not apply to asbestos on Federal property which is subject to section 120(h) of the Superfund Amendments and Reauthorization Act of 1986, Public Law 99–499); and

(j) A statement indicating whether or not, during the time the property was owned by the United States, any hazardous substance activity, as defined by regulations issued by the Environmental Protection Agency at 40 CFR part 373, took place on the property. Hazardous substance activity includes situations where any hazardous substance was stored for one year or more, known to have been released, or disposed of on the property. Agencies reporting such property shall review the regulations issued by the Environmental Protection Agency at 40 CFR part 373 for details on the information required.

§ 102–75.130 If hazardous substance activity took place on the property, what specific information must an agency include on the title report?

If hazardous substance activity took place on the property, the reporting agency must include information on the type and quantity of such hazardous substance and the time at which such storage, release, or disposal took place. The reporting agency must also advise the disposal agency if all remedial action necessary to protect human health and the environment with respect to any such hazardous substance activity was taken before the date the property was reported excess. If such action was not taken, the reporting agency must advise the disposal agency when such action will be completed or how the agency expects to comply with CERCLA in the disposal. See §§ 102–75.340 and 102–75.345.

§ 102–75.135 If no hazardous substance activity took place on the property, what specific information must an agency include on the title report?

If no hazardous substance activity took place, the reporting agency must include the following statement:

> The (reporting agency) has determined, in accordance with regulations issued by the Environmental Protection Agency at 40 CFR part 373, that there is no evidence indicating that hazardous substance activity took place on the property during the time the property was owned by the United States.

Other Necessary Information

§ 102–75.140 In addition to the title report, what information must an executive agency transmit with the Report of Excess Real Property (Standard Form 118)?

Executive agencies must provide:

(a) A legible, reproducible copy of all instruments in possession of the agency which affect the United State's right, title, or interest in the property reported or the use and operation of such property (including agreements covering and licenses to use, any patents, processes, techniques, or inventions). If it is impracticable to transmit the abstracts of title and related title evidence, agencies must provide the name and address of the custodian of such documents in the title report referred to in § 102–75.120;

(b) Any appraisal reports indicating or providing the fair market value or the fair annual rental of the property if requested by the disposal agency; and

(c) A certification by a responsible person that the property does or does not contain polychlorinated biphenyl (PCB) transformers or other equipment regulated by the Environmental Protection Agency (EPA) under 40 CFR part 761 if requested by the disposal agency. If the property does contain any equipment subject to EPA regulation under 40 CFR part 761, the certification must include the landholding agency's assurance that each piece of equipment is now and will continue to be in compliance with the EPA regulations until disposal of the property.

Examination for Acceptability

§ 102–75.145 Is GSA required to review each report of excess?

Yes, GSA must review each report of excess to ascertain whether the report was prepared according to the provisions of this part. GSA must notify the landholding agency, in writing, whether the report is acceptable or other information is needed within 15 calendar days after receipt of the report.

§ 102–75.150 What happens when GSA determines that the report of excess is adequate?

When GSA determines that a report is adequate, GSA will accept the report and inform the landholding agency of the acceptance date. However, the landholding agency must, upon request, promptly furnish any additional information or documents relating to the property required by GSA to accomplish a transfer or a disposal.

§ 102–75.155 What happens if GSA determines that the report of excess is insufficient?

Where GSA determines that a report is insufficient, GSA will return the report and inform the landholding agency of the facts and circumstances that make the report insufficient. The landholding agency must promptly take appropriate action to submit an acceptable report to GSA. If the landholding agency is unable to submit an acceptable report, the property will be removed from under the provisions of §§ 102–75.940 and 102–75.965. However, GSA may accept the report of excess on a conditional basis and identify what deficiencies in the report must be corrected in order for the report to gain full acceptance.

Designation as Personal Property

§ 102–75.160 Should prefabricated movable structures be designated real or personal property for disposition purposes?

Prefabricated movable structures such as Butler-type storage warehouses, quonset huts, and housetrailers (with or without undercarriages) reported to GSA along with the land on which they are located may, at GSA's discretion, be designated for disposition as personal property for off-site use or as real property for disposal with the land.

§ 102–75.165 Should related personal property be designated real or personal property for disposition purposes?

Related personal property may, at the disposal agency's discretion, be designated as personal property for disposal purposes. In making this designation for items having possible historic or artistic value, the disposal agency must ensure that Federal agencies, including the Smithsonian Institution (see § 102–36.60 of this chapter), are afforded the opportunity of obtaining them through personal property channels for off-site use for preservation and display off-site. Fixtures such as murals and fixed sculpture that have exceptional historical or artistic value may be designated for disposition by severance for off-site use. In making such designations, consideration must be given to such factors as whether the fixtures can be removed without seriously affecting the value of the realty and whether a ready disposition can be made of the severed fixtures.

§ 102–75.170 What happens to the related personal property in a structure scheduled for demolition?

When a structure is to be demolished, any fixtures or related personal property therein may, at the disposal agency's discretion, be designated for disposition as personal property where a ready disposition can be made of these items. As indicated in § 102–75.165, particular consideration should be given to designating items having possible historical or artistic value as personal property.

Transfers

§ 102–75.175 What are GSA's responsibilities regarding transfer requests?

Before property can be transferred among Federal agencies, to mixed-ownership Government corporations, and to the municipal government of the District of Columbia, GSA must determine that:

(a) The transfer is in the best interest of the Government;

(b) The requesting agency is the appropriate agency to hold the property; and

(c) The proposed land use will maximize use of the real property, in terms of economy and efficiency, to minimize expenditures for the purchase of real property.

§ 102–75.180 May landholding agencies transfer excess real property without notifying GSA?

Landholding agencies may, without notifying GSA, transfer excess real property that they use, occupy, or control under a lease, permit, license, easement, or similar instrument when—

(a) The lease or other instrument is subject to termination by the grantor or owner of the premises within nine months;

(b) The remaining term of the lease or other instrument, including renewal rights, will provide for less than nine months of use and occupancy; or

(c) The lease or other instrument provides for use and occupancy of space for office, storage, and related facilities, which does not exceed a total of 2,500 square feet.

§ 102–75.185 In those instances where landholding agencies may transfer excess real property without notifying GSA, which policies must they follow?

In those instances, landholding agencies must transfer property following the policies in this subpart.

§ 102–75.190 What amount must the transferee agency pay for the transfer of excess real property?

The transferee agency must pay an amount equal to the property's fair market value (determined by the Administrator);

(a) Where the transferor agency has requested the net proceeds of the transfer pursuant to section 204(c) of the Act; or

(b) Where either the transferor or transferee agency (or organizational unit affected) is subject to the Government Corporation Control Act (31 U.S.C. 841) or is a mixed-ownership Government corporation, or the municipal government of the District of Columbia.

§ 102–75.195 If the transferor agency is a wholly owned Government corporation, what amount must the transferee agency pay?

As may be agreed upon by GSA and the corporation, the transferee agency must pay an amount equal to—

(a) The estimated fair market value of the property; or

(b) The corporation's book value of the property.

§ 102–75.200 What amount must the transferee agency pay if property is being transferred for the purpose of upgrading the transferee agency's facilities?

Where the transfer is for the purpose of upgrading facilities (*i.e.*, for the purpose of replacing other property of the transferee agency which because of the location, nature, or condition thereof, is less efficient for use), the transferee must pay an amount equal to the difference between the fair market value of the property to be replaced and the fair market value of the property requested, as determined by the Administrator.

§ 102–75.205 Are transfers ever made without reimbursement by the transferee agency?

Transfers may be made without reimbursement by the transferee agency only if—

(a) Congress has specifically authorized the transfer without reimbursement, or

(b) The Administrator, with the approval of the Director of the Office of Management and Budget (OMB), has approved a request for an exception from the 100 percent reimbursement requirement.

§ 102–75.210 What must a transferee agency include in its request for an exception from the 100 percent reimbursement requirement?

The request must include an explanation of how granting the exception would further essential agency program objectives and at the same time be consistent with Executive Order 12512, Federal Real Property Management, dated April 29, 1985. The transferee agency must attach the explanation to the Request for Transfer of Excess Real and Related Personal Property (GSA Form 1334) prior to submitting the form to GSA. The

unavailability of funds alone is not sufficient to justify an exception.

§ 102–75.215 Who must endorse requests for exception to the 100 percent reimbursement requirement?

Agency heads must endorse requests for exceptions to the 100 percent reimbursement requirement.

§ 102–75.220 Where should an agency send a request for exception to the 100 percent reimbursement requirement?

Agencies must submit all requests for exception from the 100 percent reimbursement requirement to the appropriate GSA regional property disposal office.

§ 102–75.225 Who must review and approve a request for exception from the 100 percent reimbursement requirement?

The Administrator must review all requests for exception from the 100 percent reimbursement requirement. If the Administrator approves the request, it is then submitted to OMB for final concurrence. If OMB approves the request, then GSA may complete the transfer.

§ 102–75.230 Who is responsible for property protection and maintenance costs while the request for exception is being reviewed?

The agency requesting the property will assume responsibility for protection and maintenance costs where the disposal of the property is deferred for more than 30 days from the date OMB receives the request for an exception to the 100 percent reimbursement requirement. If the request is denied, the requesting agency may pay the fair market value for the property or withdraw its request. If the request is withdrawn, responsibility for protection and maintenance cost will return to the landholding agency at that time.

§ 102–75.235 May disposal agencies transfer excess property to the Senate, the House of Representatives, and the Architect of the Capitol?

Yes, disposal agencies may transfer excess property to the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his or her direction, pursuant to the provisions of section 602(e) of the Federal Property and Administrative Services Act of 1949. The amount of reimbursement for such transfer must be the same as would be required for a transfer of excess property to an executive agency under similar circumstances.

Temporary Utilization

§ 102–75.240 May excess real property be temporarily assigned/reassigned?

Yes, whenever GSA determines that it is more advantageous to assign property temporarily rather than permanently, it may do so. If the space is for office, storage, or related facilities, GSA will determine the length of the assignment/reassignment. Agencies are required to reimburse the landholding agency (or GSA, if GSA has become responsible for seeking an appropriation for protection and maintenance expenses) (see § 102–75.970) for protection and maintenance expenses. GSA may also temporarily assign/reassign excess real property for uses other than storage, office or related facilities. In such cases, the agency receiving the temporary assignment may be required to pay a rental or users charge based upon the fair market value of the property, as determined by GSA. If the property will be required by the agency for a period of more than 1 year, it may be transferred on a conditional basis, with an understanding that the property will be reported excess at an agreed upon time (*see* § 102–75.85). The requesting agency is responsible for protection and maintenance expenses.

Nonfederal Interim Use of Excess Property

§ 102–75.245 When can landholding agencies grant rights for nonfederal interim use of excess property reported to GSA?

Landholding agencies, upon approval from GSA, may grant rights for nonfederal interim use of excess property reported to GSA, when it is determined that such excess property is not required for the needs of any Federal agency and when the interim use will not impair the ability to dispose of the property.

Subpart C—Surplus Real Property Disposal

§ 102–75.250 What general policy must disposal agencies follow concerning the disposal of surplus property?

Disposal agencies must dispose of surplus real property:

(a) In the most economical manner consistent with the best interests of the Government; and

(b) Ordinarily for cash, consistent with the best interests of the Government.

§ 102–75.255 What are disposal agencies' specific responsibilities concerning the disposal of surplus property?

Disposal agencies must obtain from GSA a determination that there is no further Federal need or requirement for their excess real property and this property is surplus to the needs of the Federal Government. After receiving this determination, disposal agencies, upon approval from GSA, must expeditiously make the surplus property available for acquisition by State and local governmental units and nonprofit institutions (see § 102–75.350) or for sale by public advertising, negotiation, or other disposal action. Disposal agencies must consider the availability of real property for public purposes on a case-by-case basis, based on highest and best use and estimated fair market value. Where hazardous substance activity is identified, *see* §§ 102–75.340 and 102–75.345 for required information that the disposal agency must incorporate into the offer to purchase and conveyance document.

§ 102–75.260 When may disposal agencies dispose of surplus real property by exchange for privately owned property?

Disposal agencies may dispose of surplus real property by exchange for privately owned property for property management considerations such as boundary realignment or for providing access. Disposal agencies may also dispose of surplus real property by exchange for privately owned property where authorized by law, when the requesting Federal agency receives approval from the Office of Management and Budget and the appropriate oversight committees and where the transaction offers substantial economic or unique program advantages not otherwise obtainable by any other acquisition method.

§ 102–75.265 Are conveyance documents required to identify all agreements and representations concerning property restrictions and conditions?

Yes, conveyance documents must identify all agreements and representations concerning restrictions and conditions affecting the property's future use, maintenance, or transfer.

Applicability of Antitrust Laws

§ 102–75.270 Must antitrust laws be considered when disposing of property?

Yes, antitrust laws must be considered in any case in which there is contemplated a disposal to any private interest of:

(a) Real and related personal property which has an estimated fair market value of $3 million or more; or

(b) Patents, processes, techniques, or inventions, irrespective of cost.

§ 102–75.275 Who determines whether the proposed disposal would create or maintain a situation inconsistent with antitrust laws?

The Attorney General determines whether the proposed disposal would create or maintain a situation inconsistent with antitrust laws.

§ 102–75.280 What information concerning a proposed disposal must a disposal agency provide to the Attorney General to determine the applicability of anti-trust laws?

The disposal agency must promptly provide the Attorney General with notice of any such proposed disposal and the probable terms or conditions, as required by section 207 of the Federal Property and Administrative Services Act of 1949. If notice is given by any disposal agency other than GSA, a copy of the notice must also be provided simultaneously to the GSA regional office in which the property is located. Upon request, a disposal agency must furnish information that the Attorney General believes to be necessary in determining whether the proposed disposition or any other disposition of surplus real property violates or would violate any of the antitrust laws.

§ 102–75.285 Can a disposal agency dispose of real property to a private interest specified in § 102–75.270 before advice is received from the Attorney General?

No, advice from the Attorney General must be received before disposing of real property.

Disposals Under Other Laws

§ 102–75.290 Can disposals of real property be made under authority of laws other than the Federal Property and Administrative Services Act of 1949?

Except for disposals specifically authorized by special legislation, disposals of real property must be made only under the authority of the Federal Property and Administrative Services Act of 1949. However, the Administrator of General Services can evaluate, on a case-by-case basis, the disposal provisions of any other law to determine consistency with the authority conferred by the Act. The provisions of this section do not apply to disposals of real property authorized to be made by section 602(d) of the Act or by any special statute which directs or requires an executive agency named in the law to transfer or convey specifically described real property in accordance with the provisions of that statute.

Credit Disposals

§ 102–75.295 What is the policy on extending credit in connection with the disposal of surplus property?

The disposal agency:

(a) May extend credit in connection with any disposal of surplus property when it determines that credit terms are necessary to avoid reducing the salability of the property and potential obtainable price;

(b) Must administer and manage the credit disposal and any related security;

(c) May enforce, adjust, or settle any right of the Government with respect to extending credit in a manner and with terms that are in the best interests of the Government; and

(d) Must include provisions in the conveyance documents that obligate the purchaser, where a sale is made upon credit, to obtain the disposal agency's prior written approval before reselling or leasing the property. The disposal agency must ensure that the purchaser's credit obligations to the United States are fulfilled before approving the resale of the property.

Appraisal

§ 102–75.300 Are appraisals required for all real property disposal transactions?

Generally, yes, appraisals are required for all real property disposal transactions, except when:

(a) An appraisal will serve no useful purpose (*e.g.*, legislation authorizes conveyance without monetary consideration or at a fixed price). This exception does not apply to negotiated sales to public agencies intending to use the property for a public purpose not covered by any of the special disposal provisions in subpart C of this part; or

(b) The estimated fair market value of property to be offered on a competitive sale basis does not exceed $300,000.

§ 102–75.305 What type of appraisal value must be obtained for real property disposal transactions?

For all real property transactions requiring appraisals, agencies must obtain, as appropriate, an appraisal of either the fair market value or the fair annual rental value of the property available for disposal.

§ 102–75.310 Who must agencies use to appraise the real property?

Agencies must use only experienced and qualified real estate appraisers familiar with the types of property to be appraised when conducting the appraisal. When an appraisal is required for negotiation purposes, the same standard applies. However, agencies may authorize other methods of obtaining an estimate of the fair market value or the fair annual rental when the cost of obtaining that data from a contract appraiser would be out of proportion to the expected recoverable value of the property.

§ 102–75.315 Are appraisers authorized to consider the effect of historic covenants on the fair market value?

Yes, appraisers are authorized to consider the effect of historic covenants on the fair market value, if the property is on or eligible for the National Register of Historic Places.

§ 102–75.320 Does appraisal information need to be kept confidential?

Yes, appraisals, appraisal reports, appraisal analyses, and other pre-decisional appraisal documents are confidential and can only be used by authorized Government personnel who can substantiate the need to know this information. Appraisal information must not be divulged prior to the delivery and acceptance of the deed. Any persons engaged to collect or evaluate appraisal information must certify that:

(a) They have no direct or indirect interest in the property; and

(b) The report was prepared and submitted without bias or influence.

Inspection

§ 102–75.325 What responsibility does the landholding agency have to provide persons the opportunity to inspect available surplus property?

Landholding agencies should provide all persons interested in the acquiring available surplus property with the opportunity to make a complete inspection of the property, including any available inventory records, plans, specifications, and engineering reports that relate to the property. These inspections are subject to any necessary national security restrictions and are subject to the disposal agency's rules. (See §§ 102–75.335 and 102–75.985.)

Submission of Offers To Purchase or Lease

§ 102–75.330 What form must all offers to purchase or lease be in?

All offers to purchase or lease must be in writing, accompanied by any required earnest money deposit, using the form prescribed by the disposal agency. In addition to the financial terms upon which the offer is predicated, the offer must set forth the willingness of the offeror to abide by the terms, conditions, reservations, and restrictions upon which the property is offered, and must contain such other information as the disposal agency may request.

Provisions Relating to Asbestos

§ 102–75.335 Where asbestos is identified, what information must the disposal agency incorporate into the offer to purchase and in the conveyance document?

Where the existence of asbestos on the property has been brought to the attention of the disposal agency by the Report of Excess Real Property (Standard Form 118) information provided (see § 102–75.125), the disposal agency must incorporate this information (less any cost or time estimates to remove the asbestos-containing materials) into any offer to purchase and conveyance document and include the following wording:

Notice of the Presence of Asbestos—Warning!

(a) The Purchaser is warned that the property offered for sale contains asbestos-containing materials. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

(b) Bidders (Offerors) are invited, urged and cautioned to inspect the property to be sold prior to submitting a bid (offer). More particularly, bidders (offerors) are invited, urged and cautioned to inspect the property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto. The disposal agency will assist bidders (offerors) in obtaining any authorization(s) which may be required in order to carry out any such inspection(s). Bidders (Offerors) shall be deemed to have relied solely on their own judgment in assessing the overall condition of all or any portion of the property including, without limitation, any asbestos hazards or concerns.

(c) No warranties either express or implied are given with regard to the condition of the property including, without limitation, whether the property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of any bidder (offeror) to inspect, or to be fully informed as to the condition of all or any portion of the property offered, will not constitute grounds for any claim or demand for adjustment or withdrawal of a bid or offer after its opening or tender.

(d) The description of the property set forth in the Invitation for Bids (Offer to Purchase) and any other information provided therein with respect to said property is based on the best information available to the disposal agency and is believed to be correct, but an error or omission, including but not limited to the omission of any information available to the agency having custody over the property and/or any other Federal agency, shall not constitute grounds or reason for nonperformance of the contract of sale, or any claim by the Purchaser against the Government including, without limitation, any claim for allowance, refund, or deduction from the purchase price.

(e) The Government assumes no liability for damages for personal injury, illness, disability or death, to the Purchaser, or to the Purchaser's successors, assigns, employees, invitees, or any other person subject to Purchaser's control or direction, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the property which is the subject of this sale, whether the Purchaser, its successors or assigns has or have properly warned or failed properly to warn the individual(s) injured.

(f) The Purchaser further agrees that in its use and occupancy of the property it will comply with all Federal, State, and local laws relating to asbestos.

Provisions Relating to Hazardous Substance Activity

§ 102–75.340 Where hazardous substance activity has been identified on property proposed for disposal, what information must the disposal agency incorporate into the offer to purchase and conveyance document?

Where the existence of hazardous substance activity has been brought to the attention of the disposal agency by the Report of Excess Real Property (Standard Form 118) information provided (see §§ 102–75.125 and 102–75.130), the disposal agency must incorporate this information into any offer to purchase and conveyance document. In any offer to purchase and conveyance document, disposal agencies, generally, must also address the following (specific recommended language that addresses the following issues can be found in the GSA Customer Guide to Real Property Disposal):

(a) Notice of all hazardous substance activity identified as a result of a complete search of agency records by the landholding agency;

(b) A statement, certified by a responsible landholding agency official in the report of excess, that all remedial actions necessary to protect human health and the environment with regard to such hazardous substance activity have been taken (this is not required in the offer to purchase or conveyance document in the case of a transfer of property under the authority of section 120(h)(3)(C) of CERCLA, or the Early Transfer Authority);

(c) A commitment, on behalf of the United States, to return to correct any hazardous condition discovered after the conveyance that results from hazardous substance activity prior to the date of conveyance; and

(d) A reservation by the United States of a right of access in order to accomplish any further remedial actions required in the future.

§ 102–75.345 What is different about the statements in the offer to purchase and conveyance document if the sale is to a potentially responsible party with respect to the hazardous substance activity?

In the case where the purchaser or grantee is a potentially responsible party (PRP) with respect to hazardous substance activity on the property under consideration, the United States is no longer under a general obligation to certify that the property has been successfully remediated, or to commit to return to the property to address contamination that is discovered in the future. Therefore, the statements of responsibility and commitments on behalf of the United States referenced in § 102–75.340 should not be used. Instead, language should be included in the offer to purchase and conveyance document that is consistent with any agreement that has been reached between the landholding agency and the PRP with regard to prior hazardous substance activity.

Public Benefit Conveyances

§ 102–75.350 What are disposal agencies' responsibilities concerning public benefit conveyances?

Based on a highest and best use analysis, disposal agencies may make surplus real property available to State and local governments and certain nonprofit institutions at up to 100 percent public benefit discount for public benefit purposes. Some examples of such purposes are education, health, park and recreation, the homeless, historic monuments, public airports, highways, correctional facilities, ports, and wildlife conservation. The implementing regulations for these conveyances are found in this subpart.

§ 102–75.355 What clause must be in the offer to purchase and conveyance documents for public benefit conveyances?

Executive agencies must include in the offer to purchase and conveyance documents the non-discrimination clause in § 102–75.360 for public benefit conveyances.

§ 102–75.360 What wording must be in the non-discrimination clause which is required in the offer to purchase and in the conveyance document?

The wording of the non-discrimination clause must be as follows:

The Grantee covenants for itself, its heirs, successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof, that the said Grantee and such heirs, successors, and assigns shall not discriminate upon the basis of race, color, religion, or national origin in the use, occupancy, sale, or lease of the property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

Power Transmission Lines

§ 102–75.365 Do disposal agencies have to notify State entities and Government agencies that a surplus power transmission line and right-of-way is available?

Yes, disposal agencies must notify State entities and Government agencies of the availability of a surplus power transmission line and right-of-way.

§ 102–75.370 May a State, or any political subdivision thereof, certify to a disposal agency that it needs a surplus power transmission line and the right-of-way acquired for its construction to meet the requirements of a public or cooperative power project?

Yes, section 13(d) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(d)), and section 602(a) of the Federal Property and Administrative Services Act of 1949, allows any State or political subdivision, or any State or Government agency or instrumentality to certify to the disposal agency that a surplus power transmission line and the right-of-way acquired for its construction is needed to meet the requirements of a public or cooperative power project.

§ 102–75.375 What happens once a State, or political subdivision, certifies that it needs a surplus power transmission line and the right-of-way acquired for its construction to meet the requirements of a public or cooperative power project?

Generally, once a State or political subdivision certifies that it needs a surplus power transmission line and the right-of-way, the disposal agency may sell the property to the state, or political subdivision thereof, at the fair market value. However, if a sale of a surplus transmission line cannot be accomplished because of the price to be charged, or other reasons, and the certification by the State or political subdivision is not withdrawn, the disposal agency must report the facts involved to the Administrator of General Services, to determine what further action will or should be taken to dispose of the property.

§ 102–75.380 May power transmission lines and rights-of-way be disposed of in other ways?

Yes, power transmission lines and rights-of-way not disposed of by sale for fair market value may be disposed of following other applicable provisions of this part, including, if appropriate, reclassification by the disposal agency.

Property for Public Airports

§ 102–75.385 Do disposal agencies have the responsibility to notify eligible public agencies that airport property has been determined to be surplus?

Yes, the disposal agency must notify eligible public agencies that property currently used as or suitable for use as a public airport under the Surplus Property Act of 1944, as amended, has been determined to be surplus. A copy of the landholding agency's Report of Excess Real Property (Standard Form 118, with accompanying schedules) must be transmitted with the copy of the surplus property notice sent to the appropriate regional office of the FAA. The FAA must furnish an application form and instructions for the preparation of an application to eligible public agencies upon request.

§ 102–75.390 May surplus airport property be conveyed or disposed of to a State, political subdivision, municipality, or tax-supported institution for a public airport?

Yes, section 13(g) of the Surplus Property Act of 1944 (49 U.S.C. 47151) authorizes the disposal agency to convey or dispose of surplus airport property to a State, political subdivision, municipality, or tax-supported institution for use as a public airport.

§ 102–75.395 What does the term "surplus airport property" mean?

For the purposes of this part, surplus airport property is any surplus real property including improvements and personal property included as a part of the operating unit that the Administrator of the Federal Aviation Administration (FAA) deems is:

(a) Essential, suitable, or desirable for the development, improvement, operation, or maintenance of a public airport, as defined in the Federal Airport Act, as amended (49 U.S.C. 1101); or

(b) Reasonably necessary to fulfill the immediate and foreseeable future requirements of the grantee for the development, improvement, operation, or maintenance of a public airport, including property needed to develop sources of revenue from non-aviation businesses at a public airport. Approval for non-aviation revenue-producing areas shall be given only for such areas as are anticipated to generate net proceeds which do not exceed expected deficits for operation of the aviation area applied for at the airport.

§ 102–75.400 Is industrial property located on an airport also considered to be "airport property"?

No, if the Administrator of General Services determines that a property's highest and best use is industrial, then the property must be classified as such for disposal without regard to the public benefit conveyance provisions of this subpart.

§ 102–75.405 What responsibilities does the FAA have after receiving a copy of the notice (and a copy of the Report of Excess Real Property (Standard Form 118)) given to eligible public agencies that there is surplus airport property?

As soon as possible after receiving the copy of the surplus notice, the Federal Aviation Administration must inform the disposal agency of its determination. Then, the FAA must provide assistance to any eligible public agency known to have a need for the property for a public airport so that the public agency may develop a comprehensive and coordinated plan of use and procurement for the property.

§ 102–75.410 What action must the disposal agency take after an eligible public agency has submitted a plan of use and application to acquire property for a public airport?

After an eligible public agency submits a plan of use and application, the disposal agency must transmit two copies of the plan and two copies of the application to the appropriate FAA regional office. The FAA must promptly submit a recommendation to the disposal agency for disposal of the property for a public airport or must inform the disposal agency that no such recommendation will be submitted.

§ 102–75.415 What happens after the disposal agency receives the FAA's recommendation for disposal of the property for a public airport?

The head of the disposal agency, or his or her designee, may convey property approved by the FAA for use as a public airport to the eligible public agency, subject to the provisions of the Surplus Property Act of 1944, as amended.

§ 102–75.420 What happens if the FAA informs the disposal agency that it does not recommend disposal of the property for a public airport?

Any airport property that the FAA does not recommend for disposal as a public airport must be disposed of in accordance with other applicable provisions of this part. However, the disposal agency must first notify the landholding agency of its inability to dispose of the property for use as a public airport. In addition, the disposal agency must allow the landholding agency 30 days to withdraw the property from surplus or to waive any future interest in the property for public airport use.

§ 102–75.425 Who has sole responsibility for enforcing compliance with the terms and conditions of disposal for property disposed of for use as a public airport?

The FAA Administrator has the sole responsibility for enforcing compliance with the terms and conditions of disposals. The FAA is also responsible for the reforming, correcting, or amending of any disposal instrument; granting releases; and any action necessary for recapturing the property, using the provisions of the Act of October 1, 1949, 63 Stat. 700, and section 1402(c) of the Federal Aviation Act of 1958, 72 Stat. 807 (50 U.S.C. App. 1622a–1622c).

§ 102–75.430 What happens if property conveyed for use as a public airport is revested in the United States?

If property that was conveyed for use as a public airport is revested in the United States for noncompliance with the terms of the disposal, or other cause, the Administrator of the FAA must be accountable for the property and must report the property to GSA as excess property following the provisions of this part.

§ 102–75.435 Is the Airport and Airway Development Act of 1970 (Airport Act of 1970) applicable to the transfer of airports to State and local agencies?

No, the Airport and Airway Development Act of 1970 (49 U.S.C. sec. 47151 through sec. 47153) (Airport Act of 1970) does not apply to the transfer of airports to State and local agencies. The transfer of airports to State and local agencies may be made only under section 13(g) of the Surplus Property Act of 1944 which is continued (in effect) by the Act. Only property which the landholding agency determines cannot be reported excess to GSA for disposal under the Act, but nevertheless may be made available for use by a State or local public body as a public airport without being inconsistent with the Federal program of the landholding agency, may be conveyed under the Airport Act of 1970. In the latter instance, this act may be used to transfer non-excess land for airport development purposes providing it does not constitute an entire airport. An entire, existing and established airport can only be disposed of to a State or eligible local government under section 13(g) of the Surplus Property Act of 1944.

Property for Use as Historic Monuments

§ 102–75.440 Who must disposal agencies notify that surplus property is available for historic monument use?

Disposal agencies must notify State and areawide clearinghouses and eligible public agencies that property which may be conveyed for use as a historic monument has been determined to be surplus. A copy of the landholding agency's Report of Excess Real Property (Standard Form 118) with accompanying schedules must be transmitted with the copy of each notice that is sent to the appropriate regional or field offices of the National Park Service (NPS) of the Department of the Interior.

§ 102–75.445 Who can convey surplus real and related personal property for historic monument use?

A disposal agency may convey surplus real and related personal property for use as a historic monument, without monetary consideration, to any State, political subdivision, instrumentality thereof, or municipality, for the benefit of the public provided the Secretary of the Interior has determined that the property is suitable and desirable for such use.

§ 102–75.450 What type of property is suitable or desirable for use as a historic monument?

Only property conforming with the recommendation of the Advisory Board on National Parks, Historic Sites, Buildings, and Monuments shall be determined to be suitable or desirable for use as a historic monument.

§ 102–75.455 May historic monuments be used for revenue-producing activities?

The disposal agency may authorize the use of historic monuments conveyed under section 203(k)(3) of the Act or the Surplus Property Act of 1944, as amended, for revenue-producing activities if the Secretary of the Interior:

(a) Determines that the activities, described in the applicant's proposed program of use, are compatible with the use of the property for historic monument purposes;

(b) Approves the grantee's plan for repair, rehabilitation, restoration, and maintenance of the property;

(c) Approves the grantee's plan for financing the repair, rehabilitation, restoration, and maintenance of the property. The Department of the Interior must not approve the plan unless it provides that all income in excess of costs of repair, rehabilitation, restoration, maintenance and a specified reasonable profit or payment that may accrue to a lessor, sublessor, or developer in connection with the management, operation, or development of the property for revenue producing activities, is used by the grantee, lessor, sublessor, or developer, only for public historic preservation, park, or recreational purposes; and

(d) Examines and approves the grantee's accounting and financial procedures for recording and reporting on revenue-producing activities.

§ 102–75.460 What information must disposal agencies furnish eligible public agencies?

Upon request, the disposal agency must furnish eligible public agencies with adequate preliminary property information and, with the landholding agency's cooperation, provide assistance to enable public agencies to obtain adequate property information.

§ 102–75.465 What information must eligible public agencies interested in acquiring real property for use as a historic monument submit to the appropriate regional or field offices of the National Park Service (NPS) of the Department of the Interior (DOI)?

Eligible public agencies must submit the original and two copies of the completed application to acquire real property for use as a historic monument to the appropriate regional or field offices of the National Park Service (NPS) of the Department of the Interior (DOI), which will forward one copy of the application to the appropriate regional office of the disposal agency.

§ 102–75.470 What action must the National Park Service (NPS) of the Department of the Interior take after an eligible public agency has submitted an application for conveyance of surplus property for use as a historic monument?

The National Park Service must promptly:

(a) Submit the Secretary of the Interior's determination to the disposal agency; or

(b) Inform the disposal agency that no such recommendation will be submitted.

§ 102–75.475 What happens after the disposal agency receives the Secretary of the Interior's determination for disposal of the surplus property for a historic monument and compatible revenue-producing activities?

The head of the disposal agency or his or her designee may convey to an eligible public agency surplus property determined by the Secretary of the Interior to be suitable and desirable for use as a historic monument for the benefit of the public and for compatible revenue-producing activities subject to the provisions of section 203(k)(3) of the Act.

§ 102–75.480 Who has the responsibility for enforcing compliance with the terms and conditions of disposal for surplus property conveyed for use as a historic monument?

The Secretary of the Interior has the responsibility for enforcing compliance with the terms and conditions of such a disposal. DOI is also responsible for reforming, correcting, or amending any disposal instrument; granting releases; and any action necessary for recapturing the property using the provisions of section 203(k)(4) of the Act. The actions are subject to the approval of the head of the disposal agency.

§ 102–75.485 What happens if property that was conveyed for use as a historic monument is revested in the United States?

In such a case, the DOI must notify the appropriate GSA Public Buildings Service regional office immediately by letter when title to the historic property is to be revested in the United States for noncompliance with the terms and conditions of disposal or for other cause. The notification must cite the legal and administrative actions that the DOI must take to obtain full title and possession of the property. In addition, it must include an adequate description of the property, including any improvements constructed since the original conveyance to the grantee. After receiving a statement from the DOI that title to the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in consultation with the Department of Interior, determines that the property should be revested, DOI must submit a Report of Excess Real Property (SF 118) to GSA. GSA will review and act upon the SF 118, if acceptable. However, the grantee must provide protection and maintenance of the property until the title reverts to the Federal Government, including the period of the notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

Property for Educational and Public Health Purposes

§ 102–75.490 Who must notify eligible public agencies that surplus real property for educational and public health purposes is available?

The disposal agency must notify eligible public agencies that surplus property is available for educational and/or public health purposes. The notice must require that any plans for an educational or public health use, resulting from the development of the comprehensive and coordinated plan of use and procurement for the property, must be coordinated with ED or HHS, as appropriate. The notice must also let eligible public agencies know where to obtain the applications, instructions for preparing them, and where to submit the application. The requirement for educational or public health use of the property by an eligible public agency is contingent upon the disposal agency's approval, under § 102–75.515, of a recommendation for assignment of Federal surplus real property received from ED or HHS. Further, any subsequent transfer is subject to the approval of the head of the disposal agency as stipulated under section 203(k)(1) (A) or (B) of the Act and referenced in § 102–75.535.

§ 102–75.495 May the Department of Education or the Department of Health and Human Services notify nonprofit organizations that surplus real property and related personal property is available for educational and public health purposes?

Yes, ED or HHS may notify eligible nonprofit institutions that such property has been determined to be surplus. Notices to eligible nonprofit institutions must require eligible nonprofit institutions to coordinate any request for educational or public health use of the property with the appropriate public agency responsible for developing and submitting a comprehensive and coordinated plan of use and procurement for the property.

§ 102–75.500 Which Federal agencies may the head of the disposal agency (or his or her designee) assign for disposal surplus real property to be used for educational and public health purposes?

The head of the disposal agency or his designee may:

(a) Assign to the Secretary of the Department of Education (ED) for disposal under section 203(k)(1) of the Act surplus real property, including buildings, fixtures, and equipment, as recommended by the Secretary as being needed for school, classroom, or other educational use; or

(b) Assign to the Secretary of Health and Human Services (HHS) for disposal under section 203(k)(1) of the Act such surplus real property, including buildings, fixtures, and equipment situated thereon, as recommended by the Secretary as being needed for use in the protection of public health, including research.

§ 102–75.505 Is the request for educational or public health use of a property by an eligible nonprofit institution contingent upon the disposal agency's approval?

Yes, eligible nonprofit organizations will only receive surplus real property for an educational or public health use if the disposal agency approves or grants the assignment request from either ED or HHS. The disposal agency will also consider other uses for available surplus real property, taking into account the highest and best use determination. Any subsequent transfer is subject to the approval of the head of the disposal agency as stipulated under section 203(k)(1)(A) or (B) of the Act and referenced in this part.

§ 102–75.510 When must the Department of Education and the Department of Health and Human Services notify the disposal agency that an eligible applicant is interested in acquiring the property?

The ED and HHS must notify the disposal agency if it has an eligible applicant interested in acquiring the property within 30 calendar days after the date of the surplus notice. Then, after the 30-day period expires, ED or HHS has 30 calendar days to review and approve an application and request assignment of the property, or inform the disposal agency that no assignment request will be forthcoming.

§ 102–75.515 What action must the disposal agency take after an eligible public agency has submitted a plan of use for property for an educational or public health requirement?

When an eligible public agency submits a plan of use for property for an educational or public health requirement, the disposal agency must transmit two copies of the plan to the regional office of ED or HHS, as appropriate. The ED or HHS must submit to the disposal agency, within 30 calendar days after the date the plan is transmitted, a recommendation for assignment of the property to the Secretary of ED or HHS, or must inform the disposal agency, within the 30-calendar day period, that a recommendation will not be made for assignment of the property to ED or HHS, as appropriate. If, after

considering other uses for the property, the disposal agency approves the assignment recommendation from ED or HHS, it must assign the property by letter or other document to the Secretary of ED or HHS as appropriate. The disposal agency must furnish to the landholding agency a copy of the assignment, unless the landholding agency is also the disposal agency. If the recommendation is disapproved, the disposal agency must likewise notify the appropriate Department.

§ 102–75.520 What must the Department of Education or the Department of Health and Human Services address in the assignment recommendation that is submitted to the disposal agency?

Any assignment recommendation that the Department of Education or the Department of Health and Human Services submits to the disposal agency must provide complete information concerning the educational or public health use, including:

(a) Identification of the property;

(b) The name of the applicant and the size and nature of its program;

(c) The specific use planned;

(d) The intended public benefit allowance;

(e) The estimate of the value upon which such proposed allowance is based; and

(f) An explanation if the acreage or value of the property exceeds the standards established by the Secretary.

§ 102–75.525 What responsibilities do landholding agencies have concerning properties to be used for educational and public health purposes?

Landholding agencies must cooperate to the fullest extent possible with representatives of ED or HHS in their inspection of such property and in furnishing information relating to the property.

§ 102–75.530 What happens if the Department of Education or the Department of Health and Human Services does not approve any applications for conveyance of the property for educational or public health purposes?

In the absence of an approved application from ED or HHS to convey the property for educational or public health purposes, which must be received within the 30 calendar day time limit, the disposal agency will proceed with other disposal actions.

§ 102–75.535 What responsibilities does the Department of Education or the Department of Health and Human Services have after receiving the disposal agency's assignment letter?

After receiving the disposal agency's assignment letter, ED or HHS must furnish the disposal agency with a Notice of Proposed Transfer within 30 calendar days. If the disposal agency approves the proposed transfer within 30 days of receiving the Notice of Proposed Transfer, ED or HHS may prepare the transfer documents and proceed with the transfer. The Department of Education or the Department of Health and Human Services must take all necessary actions to accomplish the transfer within 15-calendar days beginning when the disposal agency approves the transfer. The ED or HHS must furnish the disposal agency two conformed copies of deeds, leases or other instruments conveying the property under section 203(k)(1) (A) or (B) of the Act and all related documents containing restrictions or conditions regulating the future use, maintenance or transfer of the property.

§ 102–75.540 Who is responsible for enforcing compliance with the terms and conditions of the transfer for educational or public health purposes?

The ED or HHS, as appropriate, is responsible for enforcing compliance with the terms and conditions of transfer. The ED or HHS is also responsible for reforming, correcting, or amending any transfer instruments; granting releases; and for taking any necessary actions for recapturing the property using or following the provisions of section 203(k)(4) of the Act. These actions are subject to the approval of the head of the disposal agency. The ED or HHS must notify the disposal agency of its intent to take any actions to recapture the property. The notice must identify the property affected, describe in detail the proposed action, and state the reasons for the proposed action.

§ 102–75.545 What happens if property that was transferred to meet an educational or public health requirement is revested in the United States for noncompliance with the terms of sale, or other cause?

In each case of repossession under a terminated lease or reversion of title for noncompliance with the terms or conditions of sale or other cause, ED or HHS must, prior to repossession or reversion of title, provide the appropriate GSA regional property disposal office with an accurate description of the real and related personal property involved using SF 118, Report of Excess Real Property, and the appropriate schedules. After receiving a statement from ED or HHS that the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in conjunction with the ED or HHS, determines that the property should be revested, ED or HHS must submit a SF 118 to GSA. The GSA will review and act upon the SF 118, if acceptable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

Property for Providing Self-Help Housing or Housing Assistance

§ 102–75.550 What does "self-help housing or housing assistance mean?'

Property for self-help housing or housing assistance (which is separate from the program under Title V of the McKinney-Vento Homeless Assistance Act covered in subpart H of this part) is property for low-income housing opportunities through the construction, rehabilitation, or refurbishment of housing, under terms that require that:

(a) Any individual or family receiving housing or housing assistance must contribute a significant amount of labor toward the construction, rehabilitation, or refurbishment; and

(b) Dwellings constructed, rehabilitated, or refurbished must be quality dwellings that comply with local building and safety codes and standards and must be available at prices below prevailing market prices.

§ 102–75.555 Which Federal agency receives the property assigned for self-help housing or housing assistance for low-income individuals or families?

The head of the disposal agency, or designee, may assign, at his/her discretion, surplus real property, including buildings, fixtures, and equipment to the Secretary of the Department of Housing and Urban Development (HUD).

§ 102–75.560 Who notifies eligible public agencies that real property to be used for self-help housing or housing assistance purposes is available?

The disposal agency must notify eligible public agencies that surplus property is available. The notice must require that any plans for self-help housing or housing assistance use resulting from the development of the comprehensive and coordinated plan of use and procurement for the property must be coordinated with HUD. Eligible public agencies may obtain an application form and instructions for preparing and submitting the application from HUD.

§ 102–75.565 Is the requirement for self-help housing or housing assistance use of the property by an eligible public agency or nonprofit organization contingent upon the disposal agency's approval of an assignment recommendation from the Department of Housing and Urban Development (HUD)?

Yes, the requirement for self-help housing or housing assistance use of the property by an eligible public agency or nonprofit organization is contingent upon the disposal agency's approval under § 102–75.585 of HUD's assignment recommendation/request. Any subsequent transfer is subject to the approval of the head of the disposal agency as stipulated under section 203(k)(6)(B) of the Act and referenced in § 102–75.605.

§ 102–75.570 What happens if the disposal agency does not approve the assignment recommendation?

If the recommendation is not approved, the disposal agency must also notify the Secretary of HUD and then may proceed with other disposal action.

§ 102–75.575 Who notifies nonprofit organizations that surplus real property and related personal property to be used for self-help housing or housing assistance purposes is available?

The HUD notifies eligible nonprofit organizations, following guidance in the GSA Customer Guide to Real Property Disposal. Such notices must require eligible nonprofit organizations to:

(a) Coordinate any requirement for self-help housing or housing assistance use of the property with the appropriate public agency; and

(b) Declare to the disposal agency an intent to develop and submit a comprehensive and coordinated plan of use and procurement for the property.

§ 102–75.580 When must HUD notify the disposal agency that an eligible applicant is interested in acquiring the property?

The HUD must notify the disposal agency within 30 calendar days after the date of the surplus notice. Then, after the 30-day period expires, HUD has 30 calendar days to review and approve an application and request assignment or inform the disposal agency that no assignment request is forthcoming.

§ 102–75.585 What action must the disposal agency take after an eligible public agency has submitted a plan of use for property for a self-help housing or housing assistance requirement?

When an eligible public agency submits a plan of use for property for a self-help housing or housing assistance requirement, the disposal agency must transmit two copies of the plan to the appropriate HUD regional office. The HUD must submit to the disposal agency, within 30 calendar days after the date the plan is transmitted, a recommendation for assignment of the property to the Secretary of HUD, or must inform the disposal agency, within the 30-calendar day period, that a recommendation will not be made for assignment of the property to HUD. If, after considering other uses for the property, the disposal agency approves the assignment recommendation from HUD, it must assign the property by letter or other document to the Secretary of HUD. The disposal agency must furnish to the landholding agency a copy of the assignment, unless the landholding agency is also the disposal agency. If the disposal agency disapproves the recommendation, the disposal agency must likewise notify the Secretary of HUD.

§ 102–75.590 What does the assignment recommendation contain?

Any assignment recommendation that HUD submits to the disposal agency must set forth complete information concerning the self-help housing or housing assistance use, including:

(a) Identification of the property;

(b) Name of the applicant and the size and nature of its program;

(c) Specific use planned;

(d) Intended public benefit allowance;

(e) Estimate of the value upon which such proposed allowance is based; and

(f) An explanation, if the acreage or value of the property exceeds the standards established by the Secretary.

§ 102–75.595 What responsibilities do landholding agencies have concerning properties to be used for self-help housing or housing assistance use?

Landholding agencies must cooperate to the fullest extent possible with HUD representatives in their inspection of such property and in furnishing information relating to such property.

§ 102–75.600 What happens if HUD does not approve any applications for self-help housing or housing assistance use?

In the absence of an approved application from HUD for self-help housing or housing assistance use, which must be received within the 30-calendar day time limit specified therein, the disposal agency must proceed with other disposal action.

§ 102–75.605 What responsibilities does HUD have after receiving the disposal agency's assignment letter?

After receiving the disposal agency's assignment letter, HUD must furnish the disposal agency with a Notice of Proposed Transfer within 30 calendar days. If the disposal agency approves the proposed transfer within 30 calendar days of receiving the Notice of Proposed Transfer, HUD may prepare the transfer documents and proceed with the transfer. The Department of Housing and Urban Development must take all necessary actions to accomplish the transfer within 15 calendar days beginning when the disposal agency approves the transfer. The HUD must furnish the disposal agency two conformed copies of deeds, leases or other instruments conveying the property under section 203(k)(6) of the Act and all related documents containing restrictions or conditions regulating the future use, maintenance or transfer of the property.

§ 102–75.610 Who is responsible for enforcing compliance with the terms and conditions of the transfer of the property for self-help housing or housing assistance use?

The HUD is responsible for enforcing compliance with the terms and conditions of transfer. The HUD is also responsible for reforming, correcting, or amending any transfer instrument; granting releases; and for taking any necessary actions for recapturing the property using the provisions of section 203(k)(4) of the Act. These actions are subject to the approval of the head of the disposal agency. The HUD must notify the head of the disposal agency of its intent to take action to recapture the property. The notice must identify the property affected, describe in detail the proposed action, and state the reasons for the proposed action.

§ 102–75.615 Who is responsible for enforcing compliance with the terms and conditions of property transferred under section 414(a) of the 1969 HUD Act?

The HUD maintains responsibility for properties previously conveyed under section 414(a) of the 1969 HUD Act. Property transferred to an entity other than a public body and used for any purpose other than that for which it was sold or leased within a 30-year period must revert to the United States. If the property was leased, then the lease terminates. The appropriate Secretary (HUD or Department of Agriculture) and the Administrator (GSA) can approve the new use of the property after the first 20 years of the original 30-year period has expired.

§ 102–75.620 What happens if property that was transferred to meet a self-help housing or housing assistance use requirement is found to be in noncompliance with the terms of sale?

In each case of repossession under a terminated lease or reversion of title for noncompliance with the terms or

conditions of sale or other cause, HUD (or USDA for property conveyed through the former Farmers Home Administration program under section 414(a) of the 1969 HUD Act) must, prior to repossession or reversion of title, provide the appropriate GSA regional office with an accurate description of the real and related personal property involved using the Report of Excess Real Property (SF 118), and the appropriate schedules. After receiving a statement from HUD (or USDA) that title to the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in conjunction with HUD (or USDA), determines that the property should be revested, HUD (or USDA) must submit a SF 118 to GSA. The GSA will review and act upon the SF 118, if acceptable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

Property for Use as Public Park or Recreation Areas

§ 102–75.625 Which Federal agency is assigned surplus real property for public park or recreation purposes?

The head of the disposal agency or his or her designee is authorized to assign to the Secretary of the Interior for disposal under section 203(k)(2) of the Act, surplus real property, including buildings, fixtures, and equipment as recommended by the Secretary as being needed for use as a public park or recreation area for conveyance to a State, political subdivision, instrumentalities, or municipality.

§ 102–75.630 Who must disposal agencies notify that real property for public park or recreation purposes is available?

The disposal agency must notify established State, regional, or metropolitan clearinghouses and eligible public agencies that surplus property is available for use as a public park or recreation area. The disposal agency must transmit the landholding agency's Report of Excess Real Property (SF 118, with accompanying schedules) with the copy of each notice sent to a regional or field office of the National Park Service (NPS) of the Department of the Interior.

§ 102–75.635 What information must the Department of the Interior (DOI) furnish eligible public agencies?

Upon request, DOI must furnish eligible public agencies with an application form to acquire property for permanent use as a public park or recreation area and preparation instructions for the application.

§ 102–75.640 When must DOI notify the disposal agency that an eligible applicant is interested in acquiring the property?

The DOI must notify the disposal agency if it has an eligible applicant interested in acquiring the property within 30 calendar days from the date of the surplus notice.

§ 102–75.645 What responsibilities do landholding agencies have concerning properties to be used for public park or recreation purposes?

Landholding agencies must cooperate to the fullest extent possible with DOI representatives in their inspection of the property and in furnishing information relating to the property.

§ 102–75.650 When must DOI request assignment of the property?

Within 30 calendar days after the expiration of the 30-calendar day period specified in § 102–75.640, DOI must submit to the disposal agency an assignment recommendation along with a copy of the application or inform the disposal agency that a recommendation will not be made for assignment of the property.

§ 102–75.655 What does the assignment recommendation contain?

Any recommendation submitted by DOI must provide complete information concerning the plans for use of the property as a public park or recreation area, including:

(a) Identification of the property;
(b) The name of the applicant;
(c) The specific use planned; and
(d) The intended public benefit allowance.

§ 102–75.660 What happens if DOI does not approve any applications or does not submit an assignment recommendation?

If DOI does not approve any applications or does not submit an assignment recommendation to convey the property for public park or recreation purposes, the disposal agency must proceed with other disposal action.

§ 102–75.665 What happens after the disposal agency receives the assignment recommendation from DOI?

If, after considering other uses for the property, the disposal agency approves the assignment recommendation from DOI, it must assign the property by letter or other document to the Secretary of the Interior. The disposal agency must furnish to the landholding agency a copy of the assignment, unless the landholding agency is also the disposal agency. If the recommendation is disapproved, the disposal agency must likewise notify the Secretary.

§ 102–75.670 What responsibilities does DOI have after receiving the disposal agency's assignment letter?

After receiving the disposal agency's assignment letter, the Secretary of the Interior must provide the disposal agency with a Notice of Proposed Transfer within 30 calendar days. If the disposal agency approves the proposed transfer within 30 calendar days, the Secretary may proceed with the transfer. The DOI must take all necessary actions to accomplish the transfer within 15 calendar days after the expiration of the 30-calendar day period provided for the disposal agency to consider the notice. The DOI may place the applicant in possession of the property as soon as practicable in order to minimize the Government's expense of protection and maintenance of the property. As of the date the applicant takes possession of the property, or the date it is conveyed, whichever occurs first, the applicant must assume responsibility for care and handling and all risks of loss or damage to the property, and has all obligations and liabilities of ownership. The DOI must furnish the disposal agency two conformed copies of deeds, leases, or other instruments conveying property under section 203(k)(2) of the Act and related documents containing reservations, restrictions, or conditions regulating the future use, maintenance or transfer of the property.

§ 102–75.675 What responsibilities does the grantee or recipient of the property have in accomplishing or completing the transfer?

Where appropriate, the disposal agency may make the assignment subject to DOI requiring the grantee or recipient to bear the cost of any out-of-pocket expenses necessary to accomplish the transfer, such as for surveys, fencing, security of the remaining property or otherwise.

§ 102–75.680 What information must be included in the deed of conveyance of any surplus property transferred for public park or recreation purposes?

The deed of conveyance of any surplus real property transferred for public park and recreation purposes under the Act must require that the property be used and maintained for the purpose for which it was conveyed in perpetuity. In the event that the property ceases to be used or maintained for that purpose, all or any portion of such property will in its existing condition, at the option of the United States, revert to the United States. The deed of conveyance may contain additional terms, reservations, restrictions, and conditions determined by the Secretary of the Interior to be necessary to safeguard the interest of the United States.

§ 102–75.685 Who is responsible for enforcing compliance with the terms and conditions of the transfer of property used for public park or recreation purposes?

The Secretary of the Interior is responsible for enforcing compliance with the terms and conditions of transfer. The Secretary is also responsible for reforming, correcting, or amending any transfer instrument; granting releases; and for recapturing any property following the provisions of section 202(k)(4) of the Act. These actions are subject to the approval of the head of the disposal agency. The DOI must notify the head of the disposal agency of its intent to take or recapture the property. The notice must identify the property affected, describe in detail the proposed action, including the reasons for the proposed action.

§ 102–75.690 What happens if property that was transferred for use as a public park or recreation area is revested in the United States by reason of noncompliance with the terms or conditions of disposal, or for other cause?

The DOI must notify the appropriate GSA regional office immediately by letter when title to property transferred for use as a public park or recreation area is to be revested in the United States for noncompliance with the terms or conditions of disposal or for other cause. The notification must cite the legal and administrative actions that the Department must take to obtain full title and possession of the property. In addition, it must include an adequate description of the property, using the SF 118 and the appropriate schedules. After receiving notice from DOI that title to the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in consultation with DOI, determines that the property should be revested, DOI must submit a SF 118 to GSA. The GSA will review and act upon the SF 118, if acceptable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

Property for Displaced Persons

§ 102–75.695 Who can receive surplus real property for the purpose of providing replacement housing for persons who are to be displaced by Federal or federally assisted projects?

Section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, authorizes the disposal agency to transfer surplus real property to a State agency to provide replacement housing under title II of the Act for persons who are or will be displaced by Federal or federally assisted projects.

§ 102–75.700 Which Federal agencies may solicit applications from eligible State agencies interested in acquiring the property to provide replacement housing for persons being displaced by Federal or federally assisted projects?

After receiving the surplus notice, any Federal agency needing property for replacement housing for displaced persons may solicit applications from eligible State agencies.

§ 102–75.705 When must the Federal agency notify the disposal agency that an eligible State agency is interested in acquiring the property under section 218?

Federal agencies must notify the disposal agency within 30 calendar days after the date of the surplus notice if an eligible State agency is interested in acquiring the property under section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

§ 102–75.710 What responsibilities do landholding and disposal agencies have concerning properties used for providing replacement housing for persons who will be displaced by Federal or federally assisted projects?

Both landholding and disposal agencies must cooperate, to the fullest extent possible, with Federal and State agency representatives in their inspection of the property and in furnishing information relating to the property.

§ 102–75.715 When can a Federal agency request transfer of the property to the selected State agency?

Federal agencies must advise the disposal agency and request transfer of the property to the selected State agency within 30 calendar days after the expiration of the 30-calendar-day period specified in § 102–75.705.

§ 102–75.720 Is there a specific or preferred format for the transfer request and who should receive it?

Any request submitted by a Federal agency must be in the form of a letter addressed to the appropriate GSA Public Buildings Service regional property disposal office.

§ 102–75.725 What does the transfer request contain?

Any transfer request must include:

(a) Identification of the property by name, location, and control number;

(b) The name and address of the specific State agency and a copy of the State agency's application or proposal;

(c) A certification by the appropriate Federal agency official that the property is required to house displaced persons authorized by section 218; that all other options authorized under title II of the Act have been explored and replacement housing cannot be found or made available through those channels; and that the Federal or federally assisted project cannot be accomplished unless the property is made available for replacement housing;

(d) Any special terms and conditions that the Federal agency deems necessary to include in conveyance instruments to ensure that the property is used for the intended purpose;

(e) The name and proposed location of the Federal or federally assisted project which is creating the requirement;

(f) Purpose of the project;

(g) Citation of enabling legislation or authorization for the project, when appropriate;

(h) A detailed outline of steps taken to obtain replacement housing for displaced persons as authorized under title II of the Act; and

(i) Details of the arrangements that have been made to construct replacement housing on the surplus property and to ensure that displaced persons will be provided housing in the development.

§ 102–75.730 What happens if a Federal agency does not submit a transfer request to the disposal agency for property to be used for replacement housing for persons who will be displaced by Federal or federally assisted projects?

If the disposal agency does not receive a request for assignment or transfer of the property under § 102–75.715, then the disposal agency must proceed with other appropriate disposal actions.

§ 102–75.735 What happens after the disposal agency receives the transfer request from the Federal agency?

If, after considering other uses for the property, the disposal agency

determines that the property should be made available for replacement housing under section 218, it must transfer the property to the designated State agency on such terms and conditions as will protect the United State's interest, including the payment or the agreement to pay to the United States all amounts received by the State agency from any sale, lease, or other disposition of the property for such housing. The sale, lease, or other disposition of the property by the State agency must be at the fair market value as approved by the disposal agency, unless a compelling justification is offered for disposal of the property at less than fair market value. Disposal of the property at less than fair market value must also be approved by the disposal agency.

§ 102–75.740 Does the State agency have any responsibilities in helping to accomplish the transfer of the property?

Yes, the State agency is required to bear the costs of any out-of-pocket expenses necessary to accomplish the transfer, such as costs of surveys, fencing, or security of the remaining property.

§ 102–75.745 What happens if the property transfer request is not approved by the disposal agency?

If the request is not approved, the disposal agency must notify the Federal agency requesting the transfer. The disposal agency must furnish a copy of the notice of disapproval to the landholding agency.

Property for Correctional Facility, Law Enforcement, or Emergency Management Response Purposes

§ 102–75.750 Who is eligible to receive surplus real and related personal property for correctional facility, law enforcement, or emergency management response purposes?

Under section 203(p)(1) of the Act, the head of the disposal agency or designee may, in his or her discretion, convey, without monetary consideration, to any State, or to those governmental bodies named in the Act, or to any political subdivision or instrumentality, surplus real and related personal property for:

(a) Correctional facility purposes, if the Attorney General has determined that the property is required for such purposes and has approved an appropriate program or project for the care or rehabilitation of criminal offenders;

(b) Law enforcement purposes, if the Attorney General has determined that the property is required for such purposes; and

(c) Emergency management response purposes, including fire and rescue services, if the Director of the Federal Emergency Management Agency has determined that the property is required for such purposes.

§ 102–75.755 Which Federal agencies must the disposal agency notify concerning the availability of surplus properties for correctional facility, law enforcement, or emergency management response purposes?

The disposal agency must provide prompt notification to the Office of Justice Programs (OJP), Department of Justice (DOJ), and the Federal Emergency Management Agency (FEMA) that surplus property is available. The disposal agency's notice or notification must include a copy of the landholding agency's Report of Excess Real Property (SF 118), with accompanying schedules.

§ 102–75.760 Who must the Office of Justice Programs (OJP) and the Federal Emergency Management Agency (FEMA) notify that surplus real property is available for correctional facility, law enforcement, or emergency management response purposes?

The OJP or FEMA must send notices of availability to the appropriate State and local public agencies. The notices must state that OJP or FEMA, as appropriate, must coordinate and approve any planning involved in developing a comprehensive and coordinated plan of use and procurement for the property for correctional facility, law enforcement, or emergency management response use. The notice must also state that public agencies may obtain application forms and preparation instructions from OJP or FEMA.

§ 102–75.765 What does the term "law enforcement" mean?

The OJP defines "law enforcement" as "any activity involving the control or reduction of crime and juvenile delinquency, or enforcement of the criminal law, including investigative activities such as laboratory functions as well as training."

§ 102–75.770 Is the disposal agency required to approve a determination by the Department of Justice that identifies surplus property for correctional facility use or for law enforcement use?

Yes, the disposal agency must approve a determination, under § 102–75.795, by DOJ that identifies surplus property required for correctional facility use or for law enforcement use before an eligible public agency can obtain such property for correctional facility or law enforcement use.

§ 102–75.775 Is the disposal agency required to approve a determination by FEMA that identifies surplus property for emergency management response use?

Yes, the disposal agency must approve a determination, under § 102–75.795, by FEMA that identifies surplus property required for emergency management response use before an eligible public agency can obtain such property for emergency management response use.

§ 102–75.780 When must DOJ or FEMA notify the disposal agency that an eligible applicant is interested in acquiring the property?

The OJP or FEMA must notify the disposal agency within 30 calendar days after the date of the surplus notice if there is an eligible applicant interested in acquiring the property. After that 30-calendar day period expires, OJP or FEMA then has another 30 days to review and approve an appropriate program and notify the disposal agency of the need for the property. If no application is approved, then OJP or FEMA must notify the disposal agency that there is no requirement for the property within the 30-calendar day period allotted for review and approval.

§ 102–75.785 What specifically must DOJ or FEMA address in the assignment request or recommendation that is submitted to the disposal agency?

Any determination that DOJ or FEMA submits to the disposal agency must provide complete information concerning the correctional facility, law enforcement, or emergency management response use, including:

(a) Identification of the property;

(b) Certification that the property is required for correctional facility, law enforcement, or emergency management response use;

(c) A copy of the approved application which defines the proposed plan of use; and

(d) The environmental impact of the proposed correctional facility, law enforcement, or emergency management response use.

§ 102–75.790 What responsibilities do landholding agencies and disposal agencies have concerning properties to be used for correctional facility, law enforcement, or emergency management response purposes?

Both landholding and disposal agencies must cooperate to the fullest extent possible with Federal and State agency representatives in their inspection of such property and in furnishing information relating to the property.

§ 102–75.795 What happens after the disposal agency receives the assignment request by DOJ or FEMA?

If, after considering other uses for the property, the disposal agency approves the assignment request by DOJ or FEMA, the disposal agency must convey the property to the appropriate grantee. The disposal agency must proceed with other disposal action if it does not approve the assignment request, if DOJ or FEMA does not submit an assignment request, or if the disposal agency does not receive the determination within the 30 calendar days specified in § 102–75.780. The disposal agency must notify OJP or FEMA 15 days prior to any announcement of a determination to either approve or disapprove an application for correctional, law enforcement, or emergency management response purposes and must furnish to OJP or FEMA a copy of the conveyance documents.

§ 102–75.800 What information must be included in the deed of conveyance?

The deed of conveyance of any surplus real property transferred under the provisions of section 203(p)(1) of the Act must provide that all property be used and maintained for the purpose for which it was conveyed in perpetuity. If the property ceases to be used or maintained for that purpose, all or any portion of the property must, at the option of the United States, revert to the United States in its existing condition. The deed of conveyance may contain additional terms, reservations, restrictions, and conditions the Administrator of General Services determines to be necessary to safeguard the United States' interests.

§ 102–75.805 Who is responsible for enforcing compliance with the terms and conditions of the transfer of the property used for correctional facility, law enforcement, or emergency management response purposes?

The Administrator of General Services is responsible for enforcing compliance with the terms and conditions of disposals. The GSA is also responsible for reforming, correcting, or amending any disposal instrument; granting releases; and any action necessary for recapturing the property following the provisions of section 203(p)(3) of the Act.

§ 102–75.810 What responsibilities do OJP or FEMA have if they discover any information indicating a change in use of a transferred property?

Upon discovery of any information indicating a change in use, OJP or FEMA must:

(a) Notify GSA; and

(b) Upon request, make a redetermination of continued appropriateness of the use of a transferred property.

§ 102–75.815 What happens if property conveyed for correctional facility, law enforcement, or emergency management response purposes is found to be in noncompliance with the terms of the conveyance documents?

The OJP or FEMA must, prior to the repossession, provide the appropriate GSA regional property disposal office with an accurate description of the real and related personal property involved. The OJP or FEMA must use the SF 118, Report of Excess Real Property, and the appropriate schedules for this purpose. After receiving a statement from OJP or FEMA that the title to the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in consultation with OJP or FEMA, determines that the property should be revested, OJP or FEMA must submit a SF 118 to GSA. The GSA will review and act upon the SF 118, if applicable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period following any notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

Property for Port Facility Use

§ 102–75.820 Which Federal agency is eligible to receive surplus real and related personal property for the development or operation of a port facility?

Under section 203(q)(1) of the Act, the Administrator of General Services, the Secretary of the Department of Defense (in the case of property located at a military installation closed or realigned pursuant to a base closure law), or their designee, may assign to the Secretary of the Department of Transportation (DOT) for conveyance, without monetary consideration, to any State, or to governmental bodies, any political subdivision, municipality, or instrumentality, surplus real and related personal property, including buildings, fixtures, and equipment situated on the property, that DOT recommends as being needed for the development or operation of a port facility.

§ 102–75.825 Who must the disposal agency notify when surplus real and related personal property is available for port facility use?

The disposal agency must notify established State, regional or metropolitan clearinghouses and eligible public agencies that surplus real property is available for the development or operation of a port facility. The disposal agency must transmit a copy of the notice to DOT and a copy of the landholding agency's Report of Excess Real Property (SF 118 and supporting schedules).

§ 102–75.830 What does the surplus notice contain?

Surplus notices to eligible public agencies must state:

(a) That public agencies must coordinate any planning involved in the development of the comprehensive and coordinated plan of use and procurement of property, with DOT, the Secretary of Labor, and the Secretary of Commerce;

(b) That any party interested in acquiring the property for use as a port facility must contact the Department of Transportation, Maritime Administration, for the application and instructions;

(c) That the disposal agency must approve a recommendation from DOT before it can assign the property to DOT (see § 102–75.905); and

(d) That any subsequent conveyance is subject to the approval of the head of the disposal agency as stipulated under section 203(q)(2) of the Act and referenced in § 102–75.865.

§ 102–75.835 When must DOT notify the disposal agency that an eligible applicant is interested in acquiring the property?

The DOT must notify the disposal agency within 30 calendar days after the date of the surplus notice if there is an eligible applicant interested in acquiring the property. After that 30-calendar day period expires, DOT then has another 30 calendar days to review and approve applications and notify the disposal agency of the need for the property. If no application is approved, then DOT must notify the disposal agency that there is no requirement for the property within the same 30-calendar day period allotted for review and approval.

§ 102–75.840 What action must the disposal agency take after an eligible public agency has submitted a plan of use for and an application to acquire a port facility property?

Whenever an eligible public agency has submitted a plan of use for a port facility requirement, the disposal agency must transmit two copies of the plan to DOT. The DOT must either submit to the disposal agency, within 30 calendar days after the date the plan is transmitted, a recommendation for assignment of the property to DOT, or inform the disposal agency, within the

30-calendar day period, that a recommendation will not be made for assignment of the property to DOT.

§ 102–75.845 What must DOT address in the assignment recommendation submitted to the disposal agency?

Any assignment recommendation that DOT submits to the disposal agency must provide complete information concerning the contemplated port facility use, including:

(a) An identification of the property;

(b) An identification of the applicant;

(c) A copy of the approved application, which defines the proposed plan of use of the property;

(d) A statement that DOT's determination (that the property is located in an area of serious economic disruption) was made in consultation with the Secretary of Labor;

(e) A statement that DOT approved the economic development plan, associated with the plan of use of the property, in consultation with the Secretary of Commerce; and

(f) A copy of the explanatory statement, required under section 203(q)(3)(c) of the Act.

§ 102–75.850 What responsibilities do landholding agencies have concerning properties to be used in the development or operation of a port facility?

Landholding agencies must cooperate to the fullest extent possible with DOT representatives and the Secretary of Commerce in their inspection of such property, and with the Secretary of Labor in affirming that the property is in an area of serious economic disruption, and in furnishing any information relating to such property.

§ 102–75.855 What happens if DOT does not submit an assignment recommendation?

If DOT does not submit an assignment recommendation or if it is not received within 30 calendar days, the disposal agency must proceed with other disposal action.

§ 102–75.860 What happens after the disposal agency receives the assignment recommendation from DOT?

If, after considering other uses for the property, the disposal agency approves the assignment recommendation from DOT, the disposal agency must assign the property by letter or other document to DOT. If the disposal agency disapproves the recommendation, the disposal agency must likewise notify DOT. The disposal agency must furnish to the landholding agency a copy of the assignment, unless the landholding agency is also the disposal agency.

§ 102–75.865 What responsibilities does DOT have after receiving the disposal agency's assignment letter?

After receiving the assignment letter from the disposal agency, DOT must provide the disposal agency with a Notice of Proposed Transfer within 30 calendar days after the date of the assignment letter. If the disposal agency approves the proposed transfer within 30 calendar days of the receipt of the Notice of Proposed Transfer, DOT may prepare the conveyance documents and proceed with the conveyance. The DOT must take all necessary actions to accomplish the conveyance within 15 calendar days after the expiration of the 30-calendar day period provided for the disposal agency to consider the notice. DOT must furnish the disposal agency two conformed copies of the instruments conveying property and all related documents containing restrictions or conditions regulating the future use, maintenance, or transfer of the property.

§ 102–75.870 Who is responsible for enforcing compliance with the terms and conditions of the port facility conveyance?

The DOT is responsible for enforcing compliance with the terms and conditions of conveyance, including reforming, correcting, or amending any instrument of conveyance; granting releases; and taking any necessary actions to recapture the property following the provisions of section 203(q)(4) of the Act. Any of these actions are subject to the approval of the head of the disposal agency. The DOT must notify the head of the disposal agency of its intent to take any proposed action, identify the property affected, and describe in detail the proposed action, including the reasons for the proposed action.

§ 102–75.875 What happens in the case of repossession by the United States under a reversion of title for noncompliance with the terms or conditions of conveyance?

In each case of a repossession by the United States, DOT must, at or prior to reversion of title, provide the appropriate GSA regional property disposal office, with a SF 118 and accompanying schedules. After receiving a statement from DOT that title to the property is proposed for revesting, GSA will review the statement and determine if title should be revested. If GSA, in consultation with DOT, determines that the property should be revested, DOT must submit a SF 118 to GSA. The GSA will review and act upon the SF 118, if acceptable. However, the grantee must provide protection and maintenance for the property until the title reverts to the Federal Government, including the period following the notice of intent to revert. Such protection and maintenance must, at a minimum, conform to the standards prescribed in the GSA Customer Guide to Real Property Disposal.

Negotiated Sales

§ 102–75.880 When may executive agencies conduct negotiated sales?

Executive agencies may conduct negotiated sales only when:

(a) The estimated fair market value of the property does not exceed $50,000;

(b) Bid prices after advertising are unreasonable (for all or part of the property) or were not independently arrived at in open competition;

(c) The character or condition of the property or unusual circumstances make it impractical to advertise for competitive bids and the fair market value of the property and other satisfactory terms of disposal are obtainable by negotiation;

(d) The disposals will be to States, Commonwealth of Puerto Rico, possessions, political subdivisions, or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtainable by negotiations. Negotiated sales to public bodies can only be conducted if a public benefit, which would not be realized from a competitive sale, will result from the negotiated sale; or

(e) Negotiation is otherwise authorized by the Federal Property and Administrative Services Act of 1949 or other law, such as disposals of power transmission lines for public or cooperative power projects.

§ 102–75.885 What are executive agencies' responsibilities concerning negotiated sales?

Executive agencies must:

(a) Obtain such competition as is feasible in all negotiations of disposals and contracts for disposal of surplus property; and

(b) Prepare and transmit an explanatory statement if the fair market value of the property exceeds $700,000, identifying the circumstances of each disposal by negotiation for any real property specified in 40 U.S.C. 484(e)(6)(A), to the appropriate committees of the Congress in advance of such disposal.

§ 102–75.890 What clause must be in the offer to purchase and conveyance documents for negotiated sales to public agencies?

Executive agencies must include in the offer to purchase and conveyance documents an excess profits clause, which usually runs for 3 years, to eliminate the potential for windfall profits to public agencies. This clause states that, if the purchaser should sell or enter into agreements to sell the property within 3 years from the date of title transfer by the Federal Government, all proceeds in excess of the purchaser's costs will be remitted to the Federal Government.

§ 102–75.895 What wording must be in the excess profits clause which is required in the offer to purchase and in the conveyance document?

The wording of the excess profits clause should be as follows:

Excess Profits Covenant for Negotiated Sales to Public Bodies

(a) This covenant shall run with the land for a period of 3 years from the date of conveyance. With respect to the property described in this deed, if at any time within a 3-year period from the date of transfer of title by the Grantor, the Grantee, or its successors or assigns, shall sell or enter into agreements to sell the property, either in a single transaction or in a series of transactions, it is covenanted and agreed that all proceeds received or to be received in excess of the Grantee's or a subsequent seller's actual allowable costs will be remitted to the Grantor. In the event of a sale of less than the entire property, actual allowable costs will be apportioned to the property based on a fair and reasonable determination by the Grantor.

(b) For purposes of this covenant, the Grantee's or a subsequent seller's allowable costs shall include the following:

(1) The purchase price of the real property;

(2) The direct costs actually incurred and paid for improvements which serve only the property, including road construction, storm and sanitary sewer construction, other public facilities or utility construction, building rehabilitation and demolition, landscaping, grading, and other site or public improvements;

(3) The direct costs actually incurred and paid for design and engineering services with respect to the improvements described in (b)(2) of this section; and

(4) The finance charges actually incurred and paid in conjunction with loans obtained to meet any of the allowable costs enumerated above.

(c) None of the allowable costs described in paragraph (b) of this section will be deductible if defrayed by Federal grants or if used as matching funds to secure Federal grants.

(d) In order to verify compliance with the terms and conditions of this covenant, the Grantee, or its successors or assigns, shall submit an annual report for each of the subsequent 3 years to the Grantor on the anniversary date of this deed. Each report will identify the property involved in this transaction and will contain such of the following items of information as are applicable at the time of submission:

(1) A statement indicating whether or not a resale has been made;

(2) A description of each portion of the property that has been resold;

(3) The sale price of each such resold portion;

(4) The identity of each purchaser;

(5) The proposed land use; and

(6) An enumeration of any allowable costs incurred and paid that would offset any realized profit.

(e) The Grantor may monitor the property and inspect records related thereto to ensure compliance with the terms and conditions of this covenant and may take any actions which it deems reasonable and prudent to recover any excess profits realized through the resale of the property.

§ 102–75.900 What is a negotiated sale for economic development purposes?

A negotiated sale for economic development purposes means that the public body purchasing the property will develop or make substantial improvements to the property with the intention of reselling or leasing the property in parcels to users to advance the community's economic benefit. This type of negotiated sale is acceptable where the expected public benefits to the community are greater than the anticipated proceeds derived from a competitive public sale.

Explanatory Statements for Negotiated Sales

§ 102–75.905 When must the disposal agency prepare an explanatory statement?

The disposal agency must prepare an explanatory statement of the circumstances of each of the following proposed disposals by negotiation:

(a) Any real property that has an estimated fair market value in excess of $700,000, except that any real property disposed of by lease or exchange is subject only to paragraphs (b) through (d) of this section;

(b) Any real property disposed of by lease for a term of 5 years or less, if the estimated fair annual rent is in excess of $100,000 for any of such years;

(c) Any real property disposed of by lease for a term of more than 5 years, if the total estimated rent over the term of the lease is in excess of $700,000; or

(d) Any real property or real and related personal property disposed of by exchange, regardless of value, or any property disposed in which any part of the consideration is real property.

§ 102–75.910 Are there any exceptions to this policy of preparing explanatory statements?

Yes, the disposal agency is not required to prepare an explanatory statement for property authorized to be disposed of without advertising by any provision of law other than section 203(e) of the Act.

§ 102–75.915 Do disposal agencies need to retain a copy of the explanatory statement?

Yes, disposal agencies must retain a copy of the explanatory statement in their files.

§ 102–75.920 Where is the explanatory statement sent?

Disposal agencies must submit each explanatory statement to the Administrator of General Services for review and transmittal by letter from the Administrator of General Services to the Committees on Government Operations and any other appropriate committees of the Senate and House of Representatives. Disposal agencies must include in the submission to the Administrator of General Services any supporting data that may be relevant and necessary for evaluating the proposed action.

§ 102–75.925 Is GSA required to furnish the disposal agency with the explanatory statement's transmittal letter sent to Congress?

Yes, GSA must furnish copies of its transmittal letters to the committees of the Congress (see § 102–75.920) to the disposal agency.

§ 102–75.930 What happens if there is no objection by an appropriate committee or subcommittee of Congress concerning the proposed negotiated sale?

If there is no objection, the disposal agency may consummate the sale on or after 35 days from the date the Administrator of General Services transmitted the explanatory statement to the committees. If there is an objection, the disposal agency must resolve objections with the appropriate congressional committee or subcommittee before consummating the sale.

Public Sales

§ 102–75.935 What are disposal agencies' responsibilities concerning public sales?

Disposal agencies must make available by competitive public sale any surplus property that is not disposed of by public benefit discount conveyance or by negotiated sale. Awards must be made to the responsible bidder whose bid will be most advantageous to the Government, price and other factors considered.

Nonfederal Interim Use of Surplus Property

§ 102–75.940 Can landholding agencies outlease surplus real property for nonfederal interim use?

Yes, landholding agencies may allow organizations to use surplus real

property awaiting disposal using either a lease or permit, only when:

(a) The lease or permit does not exceed one year and is revocable with not more than a 30-day notice by the disposal agency;

(b) The use and occupancy will not interfere with, delay, or impede the disposal of the property; and

(c) The agency executing the agreement is responsible for the servicing of such property.

Subpart D—Management of Excess and Surplus Real Property

§ 102–75.945 What is GSA's policy concerning the physical care, handling, protection, and maintenance of excess and surplus real property and related personal property?

GSA's policy is to:

(a) Manage excess and surplus real property, including related personal property, by providing only those minimum services necessary to preserve the Government's interest and realizable value of the property considered;

(b) Place excess and surplus real property in productive use through interim utilization, provided, that such temporary use and occupancy do not interfere with, delay, or retard its transfer to a Federal agency or disposal; and

(c) Render safe or destroy aspects of excess and surplus real property which are dangerous to the public health or safety.

Taxes and Other Obligations

§ 102–75.950 Who has the responsibility for paying taxes and other obligations pending transfer or disposal of the property?

The landholding agency is responsible for paying taxes or payments in lieu of taxes (in the event of subsequent enactment of legislation by Congress authorizing such payments on Government-owned property not legally assessable), rents, and insurance premiums and other obligations pending transfer or disposal.

Decontamination

§ 102–75.955 Who is responsible for decontaminating excess and surplus real property?

The landholding agency is responsible for all expense to the Government and for the supervision of the decontamination of excess and surplus real property that has been contaminated with hazardous materials of any sort. Extreme care must be exercised in the decontamination, management, and disposal of contaminated property in order to prevent such properties from becoming a hazard to the general public. The landholding agency must inform the disposal agency of any and all hazards involved relative to such property in order to protect the general public from hazards and to preclude the Government from any and all liability resulting from indiscriminate disposal or mishandling of contaminated property.

Improvements or Alterations

§ 102–75.960 May landholding agencies make improvements or alterations to excess or surplus property in those cases where disposal is otherwise not feasible?

Yes, landholding agencies may make improvements or alterations which involve rehabilitation, reconditioning, conversion, completion, additions, and replacements in structures, utilities, installations, and land improvements, in those cases where disposal cannot be accomplished without such improvements or alterations. However, agencies must not enter into commitments concerning improvements or alterations without GSA's prior approval.

Protection and Maintenance

§ 102–75.965 Who must perform the protection and maintenance of excess and surplus real property pending transfer to another Federal agency or disposal?

The landholding agency remains responsible and accountable for excess and surplus real property, including related personal property, and must perform the protection and maintenance of such property pending transfer to another Federal agency or disposal. Guidelines for protection and maintenance of excess and surplus real property are in the GSA Customer Guide to Real Property Disposal. The landholding agency is responsible for complying with the requirements of the National Oil and Hazardous Substances Pollution Contingency Plan and initiating or cooperating with others in the actions prescribed for the prevention, containment, or remedy of hazardous conditions.

§ 102–75.970 How long is the landholding agency responsible for the expense of protection and maintenance of excess and surplus real property pending its transfer or disposal?

Generally, the landholding agency is responsible for the cost of protection and maintenance of the property pending transfer or disposal for at least 12 months, but not more than 15 months. However, the landholding agency is responsible for providing and funding protection and maintenance during the period of delay if the landholding agency:

(a) Requests deferral of the disposal;

(b) Continues to occupy the property beyond the excess date to the detriment of orderly disposal; or

(c) Otherwise takes actions which result in a delay in the disposition.

§ 102–75.975 What happens if the property is not conveyed or disposed of during this time frame?

If the property is not transferred to a Federal agency or disposed of during the period mentioned in § 102–75.970, the disposal agency must pay or reimburse the landholding agency for protection and maintenance expense of such property from and after the expiration date of said period, only if:

(a) There is a written agreement between the landholding agency and the disposal agency specifying the maximum amount of protection and maintenance expense that the disposal agency is responsible for; and

(b) Appropriations have been made by Congress to the disposal agency in an amount sufficient to make such payment or reimbursement.

§ 102–75.980 Who is responsible for protection and maintenance expenses if there is no written agreement or no Congressional appropriation to the disposal agency?

If there is no written agreement (between the landholding agency and the disposal agency) or no Congressional appropriation to the disposal agency, the landholding agency is responsible for all protection and maintenance expenses, without any right of contribution or reimbursement from the disposal agency.

Assistance in Disposition

§ 102–75.985 Is the landholding agency required to assist the disposal agency in the disposition process?

Yes, the landholding agency must cooperate with the disposal agency in showing the property to prospective transferees or purchasers. Unless extraordinary expenses are incurred in showing the property, the landholding agency must absorb the entire cost of such actions.

Subpart E—Abandonment, Destruction, or Donation to Public Bodies

§ 102–75.990 May Federal agencies abandon, destroy, or donate to public bodies real property?

Yes, subject to the restrictions in this subpart, any Federal agency having control of real property which has no commercial value or for which the estimated cost of continued care and handling exceeds the estimated proceeds from its sale, may:

(a) Abandon or destroy Government-owned improvements and related personal property located on privately owned land;

(b) Destroy Government-owned improvements and related personal property located on Government-owned land; abandonment of such property is not authorized; or

(c) Donate to public bodies any Government-owned real property (land and/or improvements and related personal property), or interests therein.

Dangerous Property

§ 102–75.995 May Federal agencies dispose of dangerous property?

No, property which is dangerous to public health or safety must be made harmless or have adequate safeguards in place before it can be abandoned, destroyed, or donated to public bodies.

Determinations

§ 102–75.1000 How is the decision made to abandon, destroy, or donate property?

No property shall be abandoned, destroyed, or donated by a Federal agency under § 102–75.920, unless a duly authorized official of that agency determines, in writing, that:

(a) The property has no commercial value; or

(b) The estimated cost of its continued care and handling exceeds the estimated proceeds from its sale.

§ 102–75.1005 Who can make the determination within the Federal agency on whether a property can be abandoned, destroyed, or donated?

Only a duly authorized official of that agency not directly accountable for the subject property can make the determination.

§ 102–75.1010 When is a reviewing authority required to approve the determination concerning a property that is to be abandoned, destroyed, or donated?

A reviewing authority must approve determinations made under § 102–75.1000 before any such disposal, whenever all the property proposed to be disposed of by a Federal agency has a current estimated fair market value of more than $50,000.

Restrictions

§ 102–75.1015 Are there any restrictions on Federal agencies concerning property donations to public bodies?

Yes, Federal agencies must obtain prior concurrence of GSA before donating to public bodies:

(a) Improvements on land or related personal property having a current estimated fair market value in excess of $250,000; and

(b) Land, regardless of cost.

Disposal Costs

§ 102–75.1020 Are public bodies ever required to pay the disposal costs associated with donated property?

Yes, any public body receiving donated improvements on land or related personal property must pay the disposal costs associated with the donation, such as dismantling, removal, and the cleaning up of the premises.

Abandonment and Destruction

§ 102–75.1025 When can a Federal agency abandon or destroy improvements on land or related personal property in lieu of donating it to a public body?

A Federal agency may not abandon or destroy improvements on land or related personal property unless a duly authorized official of that agency finds, in writing, that donating the property is not feasible. This written finding is in addition to the determination prescribed in §§ 102–75.1000, 102–75.1005, and 102–75.1010. If donating the property becomes feasible at any time prior to actually abandoning or destroying the property, the Federal agency must donate it.

§ 102–75.1030 May Federal agencies abandon or destroy property in any manner they decide?

No, Federal agencies may not abandon or destroy property in a manner which is detrimental or dangerous to public health or safety or which will infringe on the rights of other persons.

§ 102–75.1035 Are there any restrictions on Federal agencies concerning the abandonment or destruction of improvements on land or related personal property?

Yes, GSA must concur on an agency's abandonment or destruction of improvements on land or related personal property prior to abandoning or destroying such improvements on land or related personal property—

(a) Which are of permanent type construction; or

(b) The retention of which would enhance the value of the underlying land, if it were to be made available for sale or lease.

§ 102–75.1040 May Federal agencies abandon or destroy improvements on land or related personal property before public notice is given of such proposed abandonment or destruction?

Except as provided in § 102–75.1045, a Federal agency must not abandon or destroy improvements on land or related personal property until after it has given public notice of the proposed abandonment or destruction. This notice must be given in the area in which the property is located, must contain a general description of the property to be abandoned or destroyed, and must include an offering of the property for sale. A copy of the notice must be given to the GSA regional property disposal office for the region in which the property is located.

§ 102–75.1045 Are there exceptions to the policy that requires public notice be given before Federal agencies abandon or destroy improvements on land or related personal property?

Yes, property can be abandoned or destroyed without public notice if—

(a) Its value is so low or the cost of its care and handling so great that retaining the property in order to post public notice is clearly not economical;

(b) Health, safety, or security considerations require its immediate abandonment or destruction; or

(c) The assigned mission of the agency might be jeopardized by the delay, and a duly authorized Federal agency official finds in writing, with respect to paragraph (a), (b), or (c) of this section, and a reviewing authority approves this finding. The finding must be in addition to the determinations prescribed in §§ 102–75.1000, 102–75.1005, 102–75.1010 and 102–75.1025.

§ 102–75.1050 Is there any property for which this subpart does not apply?

Yes, this subpart does not apply to surplus property assigned for disposal to educational or public health institutions pursuant to section 203(k) of the Act.

Subpart F—Delegations

Delegation to Department of Defense (DOD)

§ 102–75.1055 What is the policy governing delegations of real property disposal authority to the Secretary of Defense?

GSA delegates to the Secretary of Defense the authority to determine that Federal agencies do not need Department of Defense controlled excess real property and related personal property having a total estimated fair market value, including all the component units of the property, of less than $50,000; and to dispose of the property by means deemed most advantageous to the United States.

§ 102–75.1060 What must the Secretary of Defense do before determining that DOD-controlled excess real property and related personal property is not required for the needs of any Federal agency and prior to disposal?

The Secretary must conduct a Federal screening to determine that there is no further Federal need or requirement for the property.

§ 102–75.1065 When using a delegation of real property disposal authority under this subpart, is the DOD required to report excess property to GSA?

No, although the authority in this delegation must be used following the Federal Property and Administrative Services Act of 1949 and its implementing regulations.

§ 102–75.1070 Can this delegation of authority to the Secretary of Defense be redelegated?

Yes, the Secretary of Defense may redelegate the authority delegated in § 102–75.1055 to any officer or employee of the Department of Defense.

Delegation to Department of Agriculture (USDA)

§ 102–75.1075 What is the policy governing delegations of real property disposal authority to the Secretary of Agriculture?

GSA delegates authority to the Secretary of Agriculture to determine that Federal agencies do not need USDA-controlled excess real property and related personal property having a total estimated fair market value, including all the component units of the property, of less than $50,000; and to dispose of the property by means deemed most advantageous to the United States.

§ 102–75.1080 What must the Secretary of Agriculture do before determining that USDA-controlled excess real property and related personal property is not required for the needs of any Federal agency and prior to disposal?

The Secretary must conduct a Federal screening to determine that there is no further Federal need or requirement for the property.

§ 102–75.1085 When using a delegation of real property disposal authority under this subpart, is the USDA required to report excess property to GSA?

No, although the authority in this delegation must be used following the Federal Property and Administrative Services Act of 1949 and its implementing regulations.

§ 102–75.1090 Can this delegation of authority to the Secretary of Agriculture be redelegated?

Yes, the Secretary of Agriculture may redelegate authority delegated in § 102–75.1075 to any officer or employee of the Department of Agriculture.

Delegation to the Department of the Interior

§ 102–75.1095 What is the policy governing delegations of authority to the Secretary of the Interior?

GSA delegates authority to the Secretary of the Interior to:

(a) Maintain custody, control, and accountability for mineral resources in, on, or under Federal real property which the Administrator or his designee occasionally designates as currently utilized, excess, or surplus to the Government's needs;

(b) Dispose of mineral resources by lease and to administer those leases which are made; and

(c) Determine that Federal agencies do not need Department of the Interior controlled excess real property and related personal property with an estimated fair market value, including all components of the property, of less than $50,000; and to dispose of the property by means most advantageous to the United States.

§ 102–75.1100 Can this delegation of authority to the Secretary of the Interior be redelegated?

Yes, the Secretary of the Interior may redelegate this authority to any officer, official, or employee of the Department of the Interior.

§ 102–75.1105 What other responsibilities does the Secretary of the Interior have under this delegation of authority?

Under this authority, the Secretary of the Interior is responsible for:

(a) Maintaining proper inventory records, as head of the landholding agency;

(b) Monitoring the minerals as necessary, as head of the landholding agency, to ensure that no unauthorized mining or removal of the minerals occurs;

(c) Securing any appraisals deemed necessary by the Secretary;

(d) Coordinating with all surface landowners, Federal or otherwise, to ensure no unnecessary interference with the surface use;

(e) Ensuring that the damaged or disturbed lands are restored after removal of the mineral deposits;

(f) Notifying the Administrator of General Services when the disposal of all marketable mineral deposits is complete;

(g) Complying with the applicable environmental laws and regulations, including the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, *et seq.*); and the implementing regulations issued by the Council on Environmental Quality (40 CFR part 1500); section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f); and the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, *et seq.*) and the Department of Commerce implementing regulations (15 CFR parts 923 and 930);

(h) Forwarding promptly to the Administrator of General Services copies of any agreements executed under this authority; and

(i) Providing the Administrator of General Services with an annual accounting of the proceeds received from leases executed under this authority.

Native American-Related Delegations

§ 102–75.1110 What is the policy governing delegations of authority to the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education for property used in the administration of any Native American-related functions?

The GSA delegates authority to the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education to transfer and to retransfer to each other, upon request, any of the property of either agency which is being used and will continue to be used in the administration of any functions relating to the Native Americans. The term *property*, as used in this delegation, includes real property and such personal property as the Secretary making the transfer or re-transfer determines to be related personal property. The Departments must exercise the authority conferred in this section following applicable GSA regulations issued pursuant to the Act.

§ 102–75.1115 Are there any limitations or restrictions on this delegation of authority?

This authority must be used only in connection with property which the appropriate Secretary determines:

(a) Comprises a functional unit;

(b) Is located within the United States; and

(c) Has an acquisition cost of $100,000 or less, provided that the transfer or retransfer does not include property situated in any area which is recognized as an urban area or place as identified by the most recent decennial census.

§ 102–75.1120 Does the property have to be federally screened?

No, screening is not required because it would accomplish no useful purpose, since the property subject to transfer or retransfer will continue to be used in the administration of any functions relating to Native Americans.

§ 102–75.1125 Can the transfer/retransfer under this delegation be at no cost or without consideration?

Yes, transfers/retransfers under this delegation can be at no cost or without consideration, except:

(a) Where funds programmed and appropriated for acquisition of the property are available to the Secretary requesting the transfer or retransfer; or

(b) Whenever reimbursement at fair market value is required by subpart B of this part (entitled "Utilization of Excess Real Property".)

§ 102–75.1130 What action must the Secretary requesting the transfer take where funds were not programmed and appropriated for acquisition of the property?

The Secretary requesting the transfer or retransfer must certify in writing that no funds are available to acquire the property. The Secretary transferring or retransferring the property may make any determination necessary that would otherwise be made by GSA to carry out the authority contained in this delegation.

§ 102–75.1135 May this delegation of authority to the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education be redelegated?

Yes, the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education may redelegate any of the authority contained in this delegation to any officers or employees of their respective departments.

Subpart G—Conditional Gifts of Real Property To Further the Defense Effort

§ 102–75.1140 What is the policy governing the acceptance or rejection of a conditional gift of real property for a particular defense purpose?

Any Federal agency receiving an offer of a conditional gift of real property for a particular defense purpose within the purview of the Act of July 27, 1954, must notify the appropriate GSA regional office and must submit to GSA a recommendation indicating whether the Government should accept or reject the gift. Nothing in this subpart shall be construed as applicable to the acceptance of gifts under the provisions of other laws. The GSA must:

(a) Consult with the interested agencies before it may accept or reject such conditional gifts of real property on behalf of the United States or before it transfers such conditional gifts of real property to an agency; and

(b) Advise the donor and the agencies concerned of the action taken with respect to acceptance or rejection of the conditional gift and of its final disposition.

§ 102–75.1145 What action must the Federal agency receiving an offer of a conditional gift take?

Prior to notifying the appropriate GSA regional property disposal office, the receiving Federal agency must acknowledge receipt of the offer in writing and advise the donor that the offer will be referred to the appropriate GSA regional property disposal office. The receiving agency must not indicate acceptance or rejection of the gift on behalf of the United States at this time. The receiving agency must provide a copy of the acknowledgment with the notification and recommendation to the GSA regional property disposal office.

§ 102–75.1150 What happens to the gift if GSA determines it to be acceptable?

When GSA determines that the gift is acceptable and can be accepted and used in the form in which it was offered, GSA must designate an agency and transfer the gift without reimbursement to this agency to use as the donor intended.

§ 102–75.1155 May an acceptable gift of property be converted to money?

The GSA can determine whether or not a gift of property can and should be converted to money. After conversion, GSA must deposit the funds with the Treasury Department for transfer to an appropriate account which will best effectuate the intent of the donor, in accordance with Treasury Department procedures.

Subpart H—Use of Federal Real Property To Assist the Homeless Definitions

§ 102–75.1160 What definitions apply to this subpart?

Applicant means any representative of the homeless that has submitted an application to the Department of Health and Human Services to obtain use of a particular suitable property to assist the homeless.

Checklist or property checklist means the form developed by HUD for use by landholding agencies to report the information to be used by HUD in making determinations of suitability.

Classification means a property's designation as unutilized, underutilized, excess, or surplus.

Day means one calendar day including weekends and holidays.

Eligible organization means a State, unit of local government, or a private, nonprofit organization which provides assistance to the homeless, and which is authorized by its charter or by State law to enter into an agreement with the Federal Government for use of real property for the purposes of this subpart. Representatives of the homeless interested in receiving a deed for a particular piece of surplus Federal property must be section 501(c)(3) tax exempt.

Excess property means any property under the control of any Federal executive agency that is not required for the agency's needs or the discharge of its responsibilities, as determined by the head of the agency pursuant to 40 U.S.C. 483.

GSA means the General Services Administration.

HHS means the Department of Health and Human Services.

Homeless means:

(1) An individual or family that lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual or family that has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. This term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

HUD means the Department of Housing and Urban Development.

ICH means the Interagency Council on the Homeless.

Landholding agency means a Federal department or agency with statutory authority to control real property.

Lease means an agreement between either the Department of Health and Human Services for surplus property, or landholding agencies in the case of non-excess properties or properties subject to the Base Closure and Realignment Act (Pub. L. 100–526; 10 U.S.C. 2687), and the applicant, giving rise to the relationship of lessor and lessee for the use of Federal real property for a term of at least one year under the conditions set forth in the lease document.

Nonprofit organization means an organization, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or

individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.

Permit means a license granted by a landholding agency to use unutilized or underutilized property for a specific amount of time under terms and conditions determined by the landholding agency.

Property means real property consisting of vacant land or buildings, or a portion thereof, that is excess, surplus, or designated as unutilized or underutilized in surveys by the heads of landholding agencies conducted pursuant to section 202(b)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(b)(2)).

Regional Homeless Coordinator means a regional coordinator of the Interagency Council on the Homeless.

Representative of the Homeless means a State or local government agency, or private nonprofit organization that provides, or proposes to provide, services to the homeless.

Screen means the process by which GSA surveys Federal agencies, or State, local and nonprofit entities, to determine if any such entity has an interest in using excess Federal property to carry out a particular agency mission or a specific public use.

State Homeless Coordinator means a State contact person designated by a State to receive and disseminate information and communications received from the Interagency Council on the Homeless in accordance with section 210(a) of the Stewart B. McKinney Act of 1987, as amended.

Suitable property means that HUD has determined that a particular property satisfies the criteria listed in § 102–75.1185.

Surplus property means any excess real property not required by any Federal landholding agency for its needs or the discharge of its responsibilities, as determined by the Administrator of GSA.

Underutilized means an entire property or portion thereof, with or without improvements, which is used only at irregular periods or intermittently by the accountable landholding agency for current program purposes of that agency, or which is used for current program purposes that can be satisfied with only a portion of the property.

Unsuitable property means that HUD has determined that a particular property does not satisfy the criteria in § 102–75.1185.

Unutilized property means an entire property or portion thereof, with or without improvements, not occupied for current program purposes for the accountable executive agency or occupied in caretaker status only.

Applicability

§ 102–75.1165 What is the applicability of this subpart?

(a) This part applies to Federal real property which has been designated by Federal landholding agencies as unutilized, underutilized, excess or surplus, and is, therefore, subject to the provisions of title V of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411).

(b) The following categories of properties are not subject to this subpart (regardless of whether they may be unutilized or underutilized):

(1) Machinery and equipment.

(2) Government-owned, contractor-operated machinery, equipment, land, and other facilities reported excess for sale only to the using contractor and subject to a continuing military requirement.

(3) Properties subject to special legislation directing a particular action.

(4) Properties subject to a court order.

(5) Property not subject to survey requirements of Executive Order 12512 (April 29, 1985).

(6) Mineral rights interests.

(7) Air Space interests.

(8) Indian Reservation land subject to section 202(a)(2) of the Federal Property and Administrative Service Act of 1949, as amended.

(9) Property interests subject to reversion.

(10) Easements.

(11) Property purchased in whole or in part with Federal funds if title to the property is not held by a Federal landholding agency as defined in this part.

Collecting the Information

§ 102–75.1170 How will information be collected?

(a) *Canvass of landholding agencies.* On a quarterly basis, HUD will canvass landholding agencies to collect information about property described as unutilized, underutilized, excess, or surplus in surveys conducted by the agencies under section 202 of the Federal Property and Administrative Services Act (40 U.S.C. 483), Executive Order 12512, and subpart H of this part. Each canvass will collect information on properties not previously reported and about property reported previously the status or classification of which has changed or for which any of the information reported on the property checklist has changed.

(1) HUD will request descriptive information on properties sufficient to make a reasonable determination, under the criteria described below, of the suitability of a property for use as a facility to assist the homeless.

(2) HUD will direct landholding agencies to respond to requests for information within 25 days of receipt of such requests.

(b) *Agency annual report.* By December 31 of each year, each landholding agency must notify HUD regarding the current availability status and classification of each property controlled by the agency that—

(1) Was included in a list of suitable properties published that year by HUD; and

(2) Remains available for application for use to assist the homeless, or has become available for application during that year.

(c) *GSA inventory.* HUD will collect information, in the same manner as described in paragraph (a) of this section, from GSA regarding property that is in GSA's current inventory of excess or surplus property.

(d) *Change in status.* If the information provided on the property checklist changes subsequent to HUD's determination of suitability, and the property remains unutilized, underutilized, excess or surplus, the landholding agency shall submit a revised property checklist in response to the next quarterly canvass. HUD will make a new determination of suitability and, if it differs from the previous determination, republish the property information in the **Federal Register**. For example, property determined unsuitable for national security concerns may no longer be subject to security restrictions, or property determined suitable may subsequently be found to be contaminated.

Suitability Determination

§ 102–75.1175 Who issues the suitability determination?

(a) *Suitability determination.* Within 30 days after the receipt of information from landholding agencies regarding properties which were reported pursuant to the canvass described in § 102–75.1170(a), HUD will determine, under criteria set forth in § 102–75.1185, which properties are suitable for use as facilities to assist the homeless and report its determination to the

landholding agency. Properties that are under lease, contract, license, or agreement by which a Federal agency retains a real property interest or which are scheduled to become unutilized or underutilized will be reviewed for suitability no earlier than six months prior to the expected date when the property will become unutilized or underutilized, except that properties subject to the Base Closure and Realignment Act may be reviewed up to eighteen months prior to the expected date when the property will become unutilized or underutilized.

(b) *Scope of suitability.* HUD will determine the suitability of a property for use as a facility to assist the homeless without regard to any particular use.

(c) *Environmental information.* HUD will evaluate the environmental information contained in property checklists forwarded to HUD by the landholding agencies solely for the purpose of determining suitability of properties under the criteria in § 102–75.1185.

(d) *Written record of suitability determination.* HUD will assign an identification number to each property reviewed for suitability. HUD will maintain a written public record of the following:

(1) The suitability determination for a particular piece of property, and the reasons for that determination; and

(2) The landholding agency's response to the determination pursuant to the requirements of § 102–75.1190(a).

(e) *Property determined unsuitable.* Property that is reviewed by HUD under this section and that is determined unsuitable for use to assist the homeless may not be made available for any other purpose for 20 days after publication in the **Federal Register** of a notice of unsuitability to allow for review of the determination at the request of a representative of the homeless.

(f) *Procedures for appealing unsuitability determinations.* (1) To request review of a determination of unsuitability, a representative of the homeless must contact HUD within 20 days of publication of notice in the **Federal Register** that a property is unsuitable. Requests may be submitted to HUD in writing or by calling 1–800–927–7588 (Toll Free). Written requests must be received no later than 20 days after notice of unsuitability is published in the **Federal Register**.

(2) Requests for review of a determination of unsuitability may be made only by representatives of the homeless, as defined in § 102–75.1160.

(3) The request for review must specify the grounds on which it is based, *i.e.*, that HUD has improperly applied the criteria or that HUD has relied on incorrect or incomplete information in making the determination (*e.g.*, that property is in a floodplain but not in a floodway).

(4) Upon receipt of a request to review a determination of unsuitability, HUD will notify the landholding agency that such a request has been made, request that the agency respond with any information pertinent to the review, and advise the agency that it should refrain from initiating disposal procedures until HUD has completed its reconsideration regarding unsuitability.

(i) HUD will act on all requests for review within 30 days of receipt of the landholding agency's response and will notify the representative of the homeless and the landholding agency in writing of its decision.

(ii) If a property is determined suitable as a result of the review, HUD will request the landholding agency's determination of availability pursuant to § 102–75.1190(a), upon receipt of which HUD will promptly publish the determination in the **Federal Register**. If the determination of unsuitability stands, HUD will inform the representative of the homeless of its decision.

Real Property Reported Excess to GSA

§ 102–75.1180 For the purposes of this subpart, what is the policy concerning real property reported excess to GSA?

(a) Each landholding agency must submit a report to GSA of properties it determines excess. Each landholding agency must also provide a copy of HUD's suitability determination, if any, including HUD's identification number for the property.

(b) If a landholding agency reports a property to GSA which has been reviewed by HUD for homeless assistance suitability and HUD determined the property suitable, GSA will screen the property pursuant to § 102–75.1180(g) and will advise HUD of the availability of the property for use by the homeless as provided in § 102–75.1180(e). In lieu of the above, GSA may submit a new checklist to HUD and follow the procedures in § 102–75.1180(c) through § 102–75.1180(g).

(c) If a landholding agency reports a property to GSA which has not been reviewed by HUD for homeless assistance suitability, GSA will complete a property checklist, based on information provided by the landholding agency, and will forward this checklist to HUD for a suitability determination. This checklist will reflect any change in classification, *i.e.*, from unutilized or underutilized to excess.

(d) Within 30 days after GSA's submission, HUD will advise GSA of the suitability determination.

(e) When GSA receives a letter from HUD listing suitable excess properties in GSA's inventory, GSA will transmit to HUD within 45 days a response which includes the following for each identified property:

(1) A statement that there is no other compelling Federal need for the property and, therefore, the property will be determined surplus; or

(2) A statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(f) When an excess property is determined suitable and available and notice is published in the **Federal Register**, GSA will concurrently notify HHS, HUD, State and local government units, known homeless assistance providers that have expressed interest in the particular property, and other organizations, as appropriate, concerning suitable properties.

(g) Upon submission of a Report of Excess to GSA, GSA may screen the property for Federal use. In addition, GSA may screen State and local governmental units and eligible nonprofit organizations to determine interest in the property in accordance with current regulations. (*See* GSA Customer Guide to Real Property Disposal.)

(h) The landholding agency will retain custody and accountability and will protect and maintain any property which is reported excess to GSA as provided in § 102–75.965.

Suitability Criteria

§ 102–75.1185 What are suitability criteria?

(a) All properties, buildings, and land will be determined suitable unless a property's characteristics include one or more of the following conditions:

(1) *National security concerns.* A property located in an area to which the general public is denied access in the interest of national security (*e.g.*, where a special pass or security clearance is a condition of entry to the property) will be determined unsuitable. Where alternative access can be provided for the public without compromising national security, the property will not be determined unsuitable on this basis.

(2) *Property containing flammable or explosive materials.* A property located within 2,000 feet of an industrial, commercial or Federal facility handling

flammable or explosive material (excluding underground storage) will be determined unsuitable. Above ground containers with a capacity of 100 gallons or less, or larger containers which provide the heating or power source for the property, and which meet local safety, operation, and permitting standards, will not affect whether a particular property is determined suitable or unsuitable. Underground storage, gasoline stations, and tank trucks are not included in this category, and their presence will not be the basis of an unsuitability determination unless there is evidence of a threat to personal safety as provided in paragraph (a)(5) of this section.

(3) *Runway clear zone and military airfield clear zone.* A property located within an airport runway clear zone or military airfield clear zone will be determined unsuitable.

(4) *Floodway.* A property located in the floodway of a 100-year floodplain will be determined unsuitable. If the floodway has been contained or corrected, or if only an incidental portion of the property not affecting the use of the remainder of the property is in the floodway, the property will not be determined unsuitable.

(5) *Documented deficiencies.* A property with a documented and extensive condition(s) that represents a clear threat to personal physical safety will be determined unsuitable. Such conditions may include, but are not limited to, contamination, structural damage, or extensive deterioration, friable asbestos, PCB's, or natural hazardous substances such as radon, periodic flooding, sinkholes or earth slides.

(6) *Inaccessible.* A property that is inaccessible will be determined unsuitable. An inaccessible property is one that is not accessible by road (including property on small off-shore islands) or is land locked (*e.g.*, can be reached only by crossing private property and there is no established right or means of entry).

Determination of Availability

§ 102–75.1190 What is the policy concerning determination of availability statements?

(a) Within 45 days after receipt of a letter from HUD pursuant to § 102–75.1170(a), each landholding agency must transmit to HUD a statement of one of the following:

(1) In the case of unutilized or underutilized property:

(i) An intention to declare the property excess;

(ii) An intention to make the property available for use to assist the homeless; or

(iii) The reasons why the property cannot be declared excess or made available for use to assist the homeless. The reasons given must be different than those listed as suitability criteria in § 102–75.1185.

(2) In the case of excess property that had previously been reported to GSA:

(i) A statement that there is no compelling Federal need for the property and that, therefore, the property will be determined surplus; or

(ii) A statement that there is a further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

Public Notice of Determination

§ 102–75.1195 What is the policy concerning making public the notice of determination?

(a) No later than 15 days after the last-45 day period has elapsed for receiving responses from the landholding agencies regarding availability, HUD will publish in the **Federal Register** a list of all properties reviewed, including a description of the property, its address, and classification. The following designations will be made:

(1) Properties that are suitable and available.

(2) Properties that are suitable and unavailable.

(3) Properties that are suitable and to be declared excess.

(4) Properties that are unsuitable.

(b) Information about specific properties can be obtained by contacting HUD at the following toll free number: 1–800–927–7588.

(c) HUD will transmit to the ICH a copy of the list of all properties published in the **Federal Register**. The ICH will immediately distribute to all state and regional homeless coordinators area-relevant portions of the list. The ICH will encourage the state and regional homeless coordinators to disseminate this information widely.

(d) No later than February 15 of each year, HUD shall publish in the **Federal Register** a list of all properties reported pursuant to § 102–75.1170(b).

(e) HUD shall publish an annual list of properties determined suitable, but that agencies reported unavailable, including the reasons such properties are not available.

(f) Copies of the lists published in the **Federal Register** will be available for review by the public in the HUD headquarters building library (room 8141); area-relevant portions of the lists will be available in the HUD regional offices and in major field offices.

Application Process

§ 102–75.1200 How may representatives of the homeless apply for the use of properties to assist the homeless?

(a) *Holding period.* (1) Properties published as available for application for use to assist the homeless shall not be available for any other purpose for a period of 60 days beginning on the date of publication. Any representative of the homeless interested in any underutilized, unutilized, excess or surplus Federal property for use as a facility to assist the homeless must send to HHS a written expression of interest in that property within 60 days after the property has been published in the **Federal Register.**

(2) If a written expression of interest to apply for suitable property for use to assist the homeless is received by HHS within the 60-day holding period, such property may not be made available for any other purpose until the date HHS or the appropriate landholding agency has completed action on the application submitted pursuant to that expression of interest.

(3) The expression of interest should identify the specific property, briefly describe the proposed use, include the name of the organization, and indicate whether it is a public body or a private, nonprofit organization. The expression of interest must be sent to the Division of Health Facilities Planning (DHFP) of the Department of Health and Human . Services at the following address: Director, Division of Health Facilities Planning, Public Health Service, room 17A–10, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. The HHS will notify the landholding agency (for unutilized and underutilized properties) or GSA (for excess and surplus properties) when an expression of interest has been received for a particular property.

(4) An expression of interest may be sent to HHS any time after the 60-day holding period has expired. In such a case, an application submitted pursuant to this expression of interest may be approved for use by the homeless if:

(i) No application or written expression of interest has been made under any law for use of the property for any purpose; and

(ii) In the case of excess or surplus property, GSA has not received a bona fide offer to purchase that property or advertised for the sale of the property by public auction.

(b) *Application requirements.* Upon receipt of an expression of interest, DHFP will send an application packet to the interested entity. The application packet requires the applicant to provide certain information, including the following:

(1) *Description of the applicant organization.* The applicant must document that it satisfies the definition of a "representative of the homeless," as specified in § 102–75.1160. The applicant must document its authority to hold real property. Private, nonprofit organizations applying for deeds must document that they are section 501(c)(3) tax-exempt.

(2) *Description of the property desired.* The applicant must describe the property desired and indicate that any modifications made to the property will conform to local use restrictions, except for, in the case of leasing the property, local zoning regulations.

(3) *Description of the proposed program.* The applicant must fully describe the proposed program and demonstrate how the program will address the needs of the homeless population to be assisted. The applicant must fully describe what modifications will be made to the property before the program becomes operational.

(4) *Ability to finance and operate the proposed program.* The applicant must specifically describe all anticipated costs and sources of funding for the proposed program. The applicant must indicate that it can assume care, custody, and maintenance of the property and that it has the necessary funds or the ability to obtain such funds to carry out the approved program of use for the property.

(5) *Compliance with non-discrimination requirements.* Each applicant and lessee under this part must certify in writing that it will comply with the requirements of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations; and as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations; and the prohibitions against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations. The applicant must state that it will not discriminate on the basis of race, color, national origin, religion, sex, age, familial status, or handicap in the use of the property, and will maintain the required records to demonstrate compliance with Federal laws.

(6) *Insurance.* The applicant must certify that it will insure the property against loss, damage, or destruction in accordance with the requirements of 45 CFR 12.9.

(7) *Historic preservation.* Where applicable, the applicant must provide information that will enable HHS to comply with Federal historic preservation requirements.

(8) *Environmental information.* The applicant must provide sufficient information to allow HHS to analyze the potential impact of the applicant's proposal on the environment, in accordance with the instructions provided with the application packet. The HHS will assist applicants in obtaining any pertinent environmental information in the possession of HUD, GSA, or the landholding agency.

(9) *Local government notification.* The applicant must indicate that it has informed the applicable unit of general local government responsible for providing sewer, water, police, and fire services, in writing of its proposed program.

(10) *Zoning and local use restrictions.* The applicant must indicate that it will comply with all local use restrictions, including local building code requirements. Any applicant which applies for a lease or permit for a particular property is not required to comply with local zoning requirements. Any applicant applying for a deed of a particular property, pursuant to § 102–75.1200(b)(3), must comply with local zoning requirements, as specified in 45 CFR part 12.

(c) *Scope of evaluations.* Due to the short time frame imposed for evaluating applications, HHS' evaluation will, generally, be limited to the information contained in the application.

(d) *Deadline.* Completed applications must be received by DHFP, at the above address, within 90 days after an expression of interest is received from a particular applicant for that property. Upon written request from the applicant, HHS may grant extensions, provided that the appropriate landholding agency concurs with the extension. Because each applicant will have a different deadline based on the date the applicant submitted an expression of interest, applicants should contact the individual landholding agency to confirm that a particular property remains available prior to submitting an application.

(e) *Evaluations.* (1) Upon receipt of an application, HHS will review it for completeness and, if incomplete, may return it or ask the applicant to furnish any missing or additional required information prior to final evaluation of the application.

(2) HHS will evaluate each completed application within 25 days of receipt and will promptly advise the applicant of its decision. Applications are evaluated on a first-come, first-serve basis. HHS will notify all organizations that have submitted expressions of interest for a particular property regarding whether the first application received for that property has been approved or disapproved. All applications will be reviewed on the basis of the following elements, which are listed in descending order of priority, except that paragraphs (e)(2)(iv) and (e)(2)(v) of this section are of equal importance:

(i) *Services offered.* The extent and range of proposed services, such as meals, shelter, job training, and counseling.

(ii) *Need.* The demand for the program and the degree to which the available property will be fully utilized.

(iii) *Implementation time.* The amount of time necessary for the proposed program to become operational.

(iv) *Experience.* Demonstrated prior success in operating similar programs and recommendations attesting to that fact by Federal, State, and local authorities.

(v) *Financial ability.* The adequacy of funding that will likely be available to run the program fully and properly and to operate the facility.

(3) Additional evaluation factors may be added as deemed necessary by HHS. If additional factors are added, the application packet will be revised to include a description of these additional factors.

(4) If HHS receives one or more competing applications for a property within 5 days of the first application, HHS will evaluate all completed applications simultaneously. The HHS will rank approved applications based on the elements listed in § 102–75.1200(e)(2) and notify the landholding agency, or GSA, as appropriate, of the relative ranks.

Action on Approved Applications

§ 102–75.1205 What action must be taken on approved applications?

(a) *Unutilized and underutilized properties.* (1) When HHS approves an application, it will so notify the applicant and forward a copy of the application to the landholding agency. The landholding agency will execute the lease, or permit document, as

appropriate, in consultation with the applicant.

(2) The landholding agency maintains the discretion to decide the following:

(i) The length of time the property will be available. (Leases and permits will be for a period of at least one year, unless the applicant requests a shorter term.)

(ii) Whether to grant use of the property via a lease or permit.

(iii) The terms and conditions of the lease or permit document.

(b) *Excess and surplus properties.* (1) When HHS approves an application, it will so notify the applicant and request that GSA assign the property to HHS for leasing. Upon receipt of the assignment, HHS will execute a lease in accordance with the procedures and requirements set out in 45 CFR part 12. In accordance with § 102–75.965, custody and accountability of the property will remain throughout the lease term with the agency that initially reported the property as excess.

(2) Prior to assignment to HHS, GSA may consider other Federal uses and other important national needs; however, in deciding the disposition of surplus real property, GSA will generally give priority of consideration to uses to assist the homeless. The GSA may consider any competing request for the property made under section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)) (education, health, public park or recreation, and historic monument uses) that is so meritorious and compelling that it outweighs the needs of the homeless, and HHS may likewise consider any competing request made under subsection 203(k)(1) (education and health uses) of that law.

(3) Whenever GSA or HHS decides in favor of a competing request over a request for property for homeless assistance use as provided in paragraph (b)(2) of this section, the agency making the decision will transmit to the appropriate committees of the Congress an explanatory statement which details the need satisfied by conveyance of the surplus property, and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

(4) *Deeds.* Surplus property may be conveyed to representatives of the homeless pursuant to section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)(1), and section 501(f) of the McKinney-Vento Act, as amended, 42 U.S.C. 11411. Representatives of the homeless must complete the application packet pursuant to the requirements of § 102–75.1200 and in accordance with the requirements of 45 CFR part 12.

(c) *Completion of lease term and reversion of title.* Lessees and grantees will be responsible for the protection and maintenance of the property during the time that they possess the property. Upon termination of the lease term or reversion of title to the Federal Government, the lessee or grantee will be responsible for removing any improvements made to the property and will be responsible for restoration of the property. If such improvements are not removed, they will become the property of the Federal Government. The GSA or the landholding agency, as appropriate, will assume responsibility for protection and maintenance of a property when the lease terminates or title reverts.

Unsuitable Properties

§ 102–75.1210 What action must be taken on properties determined unsuitable for homeless assistance?

The landholding agency will defer, for 20 days after the date that notice of a property is published in the **Federal Register**, action to dispose of properties determined unsuitable for homeless assistance. The HUD will inform landholding agencies or GSA if appeal of an unsuitability determination is filed by a representative of the homeless pursuant to § 102–75.1175(f)(4). The HUD will advise the agency that it should refrain from initiating disposal procedures until HUD has completed its reconsideration process regarding unsuitability. Thereafter, or if no appeal has been filed after 20 days, GSA or the appropriate landholding agency may proceed with disposal action in accordance with applicable law.

No Applications Approved

§ 102–75.1215 What action must be taken if there is no expression of interest?

(a) At the end of the 60-day holding period described in § 102–75.1200(a), HHS will notify GSA, or the landholding agency, as appropriate, if an expression of interest has been received for a particular property. Where there is no expression of interest, GSA or the landholding agency, as appropriate, will proceed with disposal in accordance with applicable law.

(b) Upon advice from HHS that all applications have been disapproved, or if no completed applications or requests for extensions have been received by HHS within 90 days from the date of the last expression of interest, disposal may proceed in accordance with applicable law.

PART 102–76—DESIGN AND CONSTRUCTION

11. The authority citation for part 102–76 continues to read as follows:

Authority: 40 U.S.C. 486(c) (in furtherance of the Administrator's authorities under 40 U.S.C. 601–619 and elsewhere as included under 40 U.S.C. 490(a) and (c)); E.O. 12411, 48 FR 13391, 3 CFR, 1983 Comp., p. 155; E.O. 12512, 50 FR 18453, 3 CFR, 1985 Comp., p. 340.

§ 102–76.25 [Amended]

12. Section 102–76.25(b) is amended by removing "part 101–19, subpart 101–19.6, of this title" and adding "36 CFR parts 1190 and 1191" in its place.

PART 102–78—HISTORIC PRESERVATION

13. The authority citation for part 102–78 continues to read as follows:

Authority: 16 U.S.C. 470 h–2; 40 U.S.C. 486(c) and 490(a).

14. Section 102–78.60 is revised to read as follows:

§ 102–78.60 When leasing space, are Federal agencies able to give preference to space in historic properties or districts?

Yes, Executive Order 13006 requires executive agencies that have a mission requirement to locate in an urban area to give first consideration to space in historic buildings and districts inside central business areas. Agencies may give a price preference of up to 10 percent to space in historic buildings and districts, in accordance with §§ 102–73.115 and 102–73.120 of this chapter.

15. Part 102–79 is revised to read as follows:

PART 102–79—ASSIGNMENT AND UTILIZATION OF SPACE

Sec.

102–79.5 What is the scope of this part?
102–79.10 What basic assignment and utilization of space policy governs an executive agency?
102–79.15 What objectives must an executive agency strive to meet in providing assignment and utilization of space services?
102–79.20 What standard must executive agencies promote when assigning space?
102–79.25 May Federal agencies allot space in Federal buildings for the provision of child care services?
102–79.30 May Federal agencies allot space in Federal buildings for establishing fitness centers?
102–79.35 What elements must Federal agencies address in their planning effort for establishing fitness programs?
102–79.40 Can Federal agencies allot space in Federal buildings to Federal credit unions?
102–79.45 What type of services may Federal agencies provide without charge to Federal credit unions?
102–79.50 What standard must executive agencies promote in their utilization of space?
102–79.55 Is there a general hierarchy of consideration that agencies must follow in their utilization of space?
102–79.60 Are agencies required to use historic properties available to the agency?
102–79.65 What guidelines must an agency follow if it elects to establish a public access defibrillation program in a Federal facility?

Authority: 40 U.S.C. 486(c); E.O. 12411, 48 FR 13391, 3 CFR, 1983 Comp., p. 155; and E.O. 12512, 50 FR 18453, 3 CFR, 1985 Comp., p. 340.

§ 102–79.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

§ 102–79.10 What basic assignment and utilization of space policy governs an executive agency?

Executive agencies must provide a quality workplace environment that supports program operations, preserves the value of real property assets, meets the needs of the occupant agencies, and provides child care and physical fitness facilities in the workplace when adequately justified. An executive agency must promote maximum utilization of Federal workspace, consistent with mission requirements, to maximize its value to the Government.

§ 102–79.15 What objectives must an executive agency strive to meet in providing assignment and utilization of space services?

Executive agencies must provide assignment and utilization services that will maximize the value of Federal real property resources and improve the productivity of the workers housed therein.

§ 102–79.20 What standard must executive agencies promote when assigning space?

Executive agencies must promote the optimum use of space for each assignment at an economical cost to the Government, provide quality workspace that is delivered and occupied in a timely manner, and assign space based on mission requirements.

§ 102–79.25 May Federal agencies allot space in Federal buildings for the provision of child care services?

Yes, in accordance with 40 U.S.C. 490b, Federal agencies can allot space in Federal buildings to individuals or entities who will provide child care services to Federal employees if such:

(a) Space is available;

(b) Agency determines that such space will be used to provide child care services to children of whom at least 50 percent have one parent or guardian who is a Federal Government employee; and

(c) Agency determines that such individual or entity will give priority for available child care services in such space to Federal employees.

§ 102–79.30 May Federal agencies allot space in Federal buildings for establishing fitness centers?

Yes, in accordance with 5 U.S.C. 7901, Federal agencies can allot space in Federal buildings for establishing fitness programs.

§ 102–79.35 What elements must Federal agencies address in their planning effort for establishing fitness programs?

Federal agencies must address the following elements in their planning effort for establishing fitness programs:

(a) A survey indicating employee interest in the program;

(b) A three-to five-year implementation plan demonstrating long-term commitment to physical fitness/health for employees;

(c) A health related orientation, including screening procedures, individualized exercise programs, identification of high-risk individuals, and appropriate follow-up activities;

(d) Identification of a person skilled in prescribing exercise to direct the fitness program;

(e) An approach that will consider key health behavior related to degenerative disease, including smoking and nutrition;

(f) A modest facility that includes only the essentials necessary to conduct a program involving cardiovascular and muscular endurance, strength activities, and flexibility;

(g) Provision for equal opportunities for men and women, and all employees, regardless of grade level.

§ 102–79.40 Can Federal agencies allot space in Federal buildings to Federal credit unions?

Yes, in accordance with 12 U.S.C. 1770, Federal agencies may allot space in Federal buildings to Federal credit unions without charge for rent or services if:

(a) At least 95 percent of the membership of the credit union to be served by the allotment of space is composed of persons who either are presently Federal employees or were Federal employees at the time of admission into the credit union, and members of their families; and

(b) Space is available.

§ 102–79.45 What type of services may Federal agencies provide without charge to Federal credit unions?

Federal agencies may provide without charge to Federal credit union services such as:

(a) Lighting;

(b) Heating and cooling;

(c) Electricity;

(d) Office furniture;

(e) Office machines and equipment;

(f) Telephone service (including installation of lines and equipment and other expenses associated with telephone service); and

(g) Security systems (including installation and other expenses associated with security systems).

§ 102–79.50 What standard must executive agencies promote in their utilization of space?

Executive agencies, when acquiring or utilizing federally owned and leased space under the Federal Property and Administrative Services Act of 1949, as amended, must promote efficient utilization of space. Where there is no Federal agency space need, executive agencies must make every effort to maximize the productive use of vacant space through the issuance of permits, licenses or leases to nonfederal entities to the extent authorized by law.

§ 102–79.55 Is there a general hierarchy of consideration that agencies must follow in their utilization of space?

Yes, Federal agencies must:

(a) First utilize space in Government-owned and Government-leased buildings.

(b) If there is no suitable space in Government-owned and Government-leased buildings, utilize space in buildings under the custody and control of the U.S. Postal Service.

(c) If there is no suitable space in buildings under the custody and control of the U.S. Postal Service, agencies may acquire real estate by lease, purchase, or construction, as specified in part 102–73 of this chapter.

§ 102–79.60 Are agencies required to use historic properties available to the agency?

Yes, Federal agencies must assume responsibility for the preservation of the historic properties they own or control. Prior to acquiring, constructing or leasing buildings, agencies must use, to the maximum extent feasible, historic properties already owned or leased by the agency (16 U.S.C. 470h–2).

§ 102–79.65 What guidelines must an agency follow if it elects to establish a public access defibrillation program in a Federal facility?

Federal agencies electing to establish a public access defibrillation program in a Federal facility must follow the guidelines, entitled "Guidelines for Public Access Defibrillation Programs in Federal Facilities," which can be obtained from the Office of Real Property (MP), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

16. Part 102–80 is revised to read as follows:

PART 102–80—SAFETY AND ENVIRONMENTAL MANAGEMENT

Subpart A—General Provisions

Sec.

102–80.5 What is the scope of this part?

102–80.10 What are the basic safety and environmental management policies for real property?

Subpart B—Safety and Environmental Management

Asbestos

102–80.15 What are Federal agencies' responsibilities concerning the assessment and management of asbestos?

Radon

102–80.20 What are Federal agencies' responsibilities concerning the abatement of radon?

Indoor Air Quality

102–80.25 What are Federal agencies' responsibilities concerning the management of indoor air quality?

Lead

102–80.30 What are Federal agencies' responsibilities concerning lead?

Hazardous Materials and Wastes

102–80.35 What are Federal agencies' responsibilities concerning the monitoring of hazardous materials and wastes?

Underground Storage Tanks

102–80.40 What are Federal agencies' responsibilities concerning the management of underground storage tanks?

Seismic Safety

102–80.45 What are Federal agencies' responsibilities concerning seismic safety in Federal facilities?

Risks and Risk Reduction Strategies

102–80.50 Are Federal agencies responsible for identifying/estimating risks and for appropriate risk reduction strategies?

102–80.55 Are Federal agencies responsible for managing the execution of risk reduction projects?

Facility Assessments

102–80.60 Are Federal agencies responsible for performing facility assessments?

Incident Investigation

102–80.65 What are Federal agencies' responsibilities concerning the investigation of incidents, such as fires, accidents, injuries, and environmental incidents?

Responsibility for Informing Tenants

102–80.70 Are Federal agencies responsible for informing their tenants of the condition and management of their facility safety and environment?

Assessment of Environmental Issues

102–80.75 Who assesses environmental issues in Federal construction and lease construction projects?

Subpart C—Accident and Fire Prevention

102–80.80 What general accident and fire prevention policy must Federal agencies comply with?

State and Local Codes

102–80.85 Are federally owned and leased buildings exempt from State and local code requirements in fire protection?

Fire Administration Authorization Act of 1992

102–80.90 Is the Fire Administration Authorization Act of 1992 (Public Law 102–522) relevant to fire protection engineering?

102–80.95 Is the Fire Administration Authorization Act of 1992 applicable to all Federal agencies?

Automatic Sprinkler Systems

102–80.100 What performance objective should an automatic sprinkler system be capable of meeting?

Equivalent Level of Safety Analysis

102–80.105 What information must be included in an equivalent level of safety analysis?

102–80.110 What must an equivalent level of safety analysis indicate?

102–80.115 Is there more than one option for establishing that an equivalent level of safety exists?

102–80.120 What analytical and empirical tools should be used to support the life safety equivalency evaluation?

102–80.125 Who has the responsibility for determining the acceptability of each equivalent level of safety analysis?

102–80.130 Who must perform the equivalent level of safety analysis?

102–80.135 What is a qualified fire protection engineer?

Room of Origin

102–80.140 What is meant by "room of origin"?

Flashover

102–80.145 What is meant by "flashover"?

Reasonable Worst Case Fire Scenario

102–80.150 What is meant by "reasonable worst case fire scenario"?

Authority: 40 U.S.C. 486(c) and 490.

Subpart A—General Provisions

§ 102–80.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the General Services Administration (GSA)/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services. The responsibilities for safety and environmental management under this part are intended to apply to GSA or those Federal agencies operating in GSA space pursuant to a GSA delegation of authority.

§ 102–80.10 What are the basic safety and environmental management policies for real property?

The basic safety and environmental management policies for real property are that Federal agencies must:

(a) Provide for a safe and healthful work environment for Federal employees and the visiting public;

(b) Protect Federal real and personal property;

(c) Promote mission continuity;

(d) Provide reasonable safeguards for emergency forces if an incident occurs;

(e) Assess risk;

(f) Make decisionmakers aware of risks; and

(g) Act promptly and appropriately in response to risk.

Subpart B—Safety and Environmental Management

Asbestos

§ 102–80.15 What are Federal agencies' responsibilities concerning the assessment and management of asbestos?

Federal agencies have the following responsibilities concerning the assessment and management of asbestos:

(a) Inspect and assess buildings for the presence and condition of asbestos-containing materials. Space to be leased must be free of all asbestos containing materials, except undamaged asbestos flooring in the space or undamaged boiler or pipe insulation outside the space, in which case an asbestos management program conforming to Environmental Protection Agency (EPA) guidance must be implemented;

(b) Manage in-place asbestos that is in good condition and not likely to be disturbed;

(c) Abate damaged asbestos, and asbestos likely to be disturbed. Federal agencies must perform a pre-alteration asbestos assessment for activities that may disturb asbestos;

(d) Not use asbestos in new construction, renovation/modernization or repair of their owned or leased space. Unless approved by GSA, Federal agencies must not obtain space with asbestos through purchase, exchange, transfer, or lease, except as identified in paragraph (a) of this section; and

(e) Communicate all written and oral asbestos information about the leased space to tenants.

Radon

§ 102–80.20 What are Federal agencies' responsibilities concerning the abatement of radon?

Federal agencies have the following responsibilities concerning the abatement of radon in space when radon levels exceed current EPA standards:

(a) Retest abated areas and make lessors retest, as required, abated areas to adhere to EPA standards; and

(b) Test non-public water sources (in remote areas for projects such as border stations) for radon according to EPA guidance. Radon levels that exceed current applicable EPA standards must be mitigated. Federal agencies must retest, as required, to adhere to EPA standards.

Indoor Air Quality

§ 102–80.25 What are Federal agencies' responsibilities concerning the management of indoor air quality?

Federal agencies must assess indoor air quality of buildings as part of their safety and environmental facility assessments. Federal agencies must respond to tenant complaints on air quality and take appropriate corrective action where air quality does not meet applicable standards.

Lead

§ 102–80.30 What are Federal agencies' responsibilities concerning lead?

Federal agencies have the following responsibilities concerning lead in buildings:

(a) Test space for lead-based paint in renovation projects that require sanding, welding or scraping painted surfaces.

(b) Not remove lead based paint from surfaces in good condition.

(c) Test all painted surfaces for lead in proposed or existing child care centers.

(d) Abate lead-based paint found in accordance with Department of Housing and Urban Development (HUD) Lead-Based Paint Guidelines, available by writing to HUD USER, PO Box 6091, Rockville, MD, 20850.

(e) Test potable water for lead in all drinking water outlets.

(f) Take corrective action when lead levels exceed the HUD Guidelines.

Hazardous Materials and Wastes

§ 102–80.35 What are Federal agencies' responsibilities concerning the monitoring of hazardous materials and wastes?

Federal agencies' responsibilities concerning the monitoring of hazardous materials and wastes are:

(a) Monitor the transport, use, and disposition of hazardous materials and waste in buildings to provide for compliance with GSA, Occupational Safety and Health Administration (OSHA), Department of Transportation, EPA, and applicable State and local requirements. In addition to those operating in GSA space pursuant to a delegation of authority, tenants in GSA space must comply with these requirements.

(b) In leased space, include in all agreements with the lessor requirements that hazardous materials kept in leased space are kept and maintained according to applicable Federal, State, and local environmental regulations.

Underground Storage Tanks

§ 102–80.40 What are Federal agencies' responsibilities concerning the management of underground storage tanks?

Federal agencies have the following responsibilities concerning the management of underground storage tanks in real property:

(a) Register, manage and close underground storage tanks, including heating oil and fuel oil tanks, in accordance with GSA, EPA, and applicable State and local requirements.

(b) Require the party responsible for tanks they use but don't own to follow these requirements and to be responsible for the cost of compliance.

Seismic Safety

§ 102–80.45 What are Federal agencies' responsibilities concerning seismic safety in Federal facilities?

Federal agencies must follow the standards issued by the Interagency Committee on Seismic Safety in Construction (ICSSC) as the minimum level acceptable for use by Federal agencies in assessing the seismic safety of their owned and leased buildings and in mitigating unacceptable seismic risks in those buildings.

Risks and Risk Reduction Strategies

§ 102–80.50 Are Federal agencies responsible for identifying/estimating risks and for appropriate risk reduction strategies?

Yes, Federal agencies must identify and estimate safety and environmental management risks and appropriate risk reduction strategies for buildings. Federal agencies occupying as well as operating buildings must identify any safety and environmental management risks and report or correct the situation, as appropriate. Federal agencies must use the applicable national codes and standards as a guide for their building operations.

§ 102–80.55 Are Federal agencies responsible for managing the execution of risk reduction projects?

Yes, Federal agencies must manage the execution of risk reduction projects in buildings they operate. Federal agencies must identify and take appropriate action to eliminate hazards and regulatory noncompliance.

Facility Assessments

§ 102–80.60 Are Federal agencies responsible for performing facility assessments?

Yes, Federal agencies must evaluate facilities to comply with GSA's safety and environmental program and applicable Federal, State and local environmental laws and regulations. Federal agencies should conduct these evaluations in accordance with schedules that are compatible with repair and alteration and leasing operations.

Incident Investigation

§ 102–80.65 What are Federal agencies' responsibilities concerning the investigation of incidents, such as fires, accidents, injuries, and environmental incidents?

Federal agencies have the following responsibilities concerning the investigation of incidents, such as fires, accidents, injuries, and environmental incidents in buildings they operate:

(a) Investigate all incidents regardless of severity.

(b) Form Boards of Investigation for incidents resulting in serious injury, death, or significant property losses.

Responsibility for Informing Tenants

§ 102–80.70 Are Federal agencies responsible for informing their tenants of the condition and management of their facility safety and environment?

Yes, Federal agencies must inform their tenants of the condition and management of their facility safety and environment. Agencies operating GSA buildings must report any significant facility safety or environmental concerns to GSA.

Assessment of Environmental Issues

§ 102–80.75 Who assesses environmental issues in Federal construction and lease construction projects?

Federal agencies must assess required environmental issues throughout planning and project development so that the environmental impacts of a project are considered during the decision making process.

Subpart C—Accident and Fire Prevention

§ 102–80.80 What general accident and fire prevention policy must Federal agencies comply with?

Federal agencies must:

(a) Comply with the occupational safety and health standards established in the Occupational Safety and Health Act (OSHA) of 1970 (Pub. L. 91–596); Executive Order 12196; 29 CFR part 1960, and applicable safety and environmental management criteria identified in this part;

(b) Not expose occupants and visitors to unnecessary risks;

(c) Provide safeguards that minimize personal harm, property damage, and impairment of Governmental operations, and that allow emergency forces to accomplish their missions effectively.

(d) Follow accepted fire prevention practices in operating and managing buildings;

(e) To the maximum extent feasible, comply with one of the nationally recognized model building codes and with other nationally recognized codes in their construction or alteration of each building in accordance with 40 U.S.C. 619.

(f) Use the applicable national codes and standards as a guide for their building operations.

State and Local Codes

§ 102–80.85 Are federally owned and leased buildings exempt from State and local code requirements in fire protection?

Federally owned buildings are generally exempt from State and local code requirements in fire protection; however, in accordance with 40 U.S.C. 619, each building constructed or altered by a Federal agency must be constructed or altered, to the maximum extent feasible, in compliance with one of the nationally recognized model building codes and with other nationally recognized codes. Leased buildings are subject to local code requirements and inspection.

Fire Administration Authorization Act of 1992

§ 102–80.90 Is the Fire Administration Authorization Act of 1992 (Public Law 102–522) relevant to fire protection engineering?

Yes, the Fire Administration Authorization Act of 1992 (Pub. L. 102–522) requires sprinklers or an equivalent level of safety in certain types of Federal employee office buildings, Federal employee housing units, and federally assisted housing units.

§ 102–80.95 Is the Fire Administration Authorization Act of 1992 applicable to all Federal agencies?

Yes, the Act applies to all Federal agencies and all federally owned and leased buildings in the United States.

Automatic Sprinkler Systems

§ 102–80.100 What performance objective should an automatic sprinkler system be capable of meeting?

The performance objective of the automatic sprinkler system is that it must be capable of protecting human lives. Sprinklers should be capable of controlling the spread of fire and its effects beyond the room of origin. A functioning sprinkler system should activate prior to the onset of flashover.

Equivalent Level of Safety Analysis

§ 102–80.105 What information must be included in an equivalent level of safety analysis?

The equivalent level of life safety evaluation is to be performed by a qualified fire protection engineer. The analysis should include a narrative discussion of the features of the building structure, function, operational support systems and occupant activities that impact fire protection and life safety. Each analysis should describe potential reasonable worst case fire scenarios and their impact on the building occupants and structure. Specific issues that must be addressed include rate of fire growth, type and location of fuel items, space layout, building construction, openings and ventilation, suppression capability, detection time, occupant notification, occupant reaction time, occupant mobility, and means of egress.

§ 102–80.110 What must an equivalent level of safety analysis indicate?

To be acceptable, the analysis must indicate that the existing and/or proposed safety systems in the building provide a period of time equal to or greater than the amount of time available for escape in a similar building complying with the Act. In conducting these analyses, the capability, adequacy, and reliability of all building systems impacting fire growth, occupant knowledge of the fire, and time required to reach a safety area will have to be examined. In particular, the impact of sprinklers on the development of hazardous conditions in the area of interest will have to be assessed.

§ 102–80.115 Is there more than one option for establishing that an equivalent level of safety exists?

Yes, the following are three options for establishing that an equivalent level of safety exists:

(a) In the first option, the margin of safety provided by various alternatives is compared to that obtained for a code complying building with complete sprinkler protection. The margin of safety is the difference between the available safe egress time and the required safe egress time. Available safe egress time is the time available for evacuation of occupants to an area of safety prior to the onset of untenable conditions in occupied areas or the egress pathways. The required safe egress time is the time required by occupants to move from their positions at the start of the fire to areas of safety. Available safe egress times would be developed based on analysis of a number of assumed reasonable worst case fire scenarios including assessment of a code complying fully sprinklered building. Additional analysis would be used to determine the expected required safe egress times for the various scenarios. If the margin of safety plus an appropriate safety factor is greater for an alternative than for the fully sprinklered building, then the alternative should provide an equivalent level of safety.

(b) A second alternative is applicable for typical office and residential scenarios. In these situations, complete sprinkler protection can be expected to prevent flashover in the room of fire origin, limit fire size to no more than 1 megawatt (950 Btu/sec), and prevent flames from leaving the room of origin. The times required for each of these conditions to occur in the area of interest must be determined. The shortest of these three times would become the time available for escape. The difference between the minimum time available for escape and the time required for evacuation of building occupants would be the target margin of safety. Various alternative protection strategies would have to be evaluated to determine their impact on the times at which hazardous conditions developed in the spaces of interest and the times required for egress. If a combination of fire protection systems provides a margin of safety equal to or greater than the target margin of safety, then the combination could be judged to provide an equivalent level of safety.

(c) As a third option, other technical analysis procedures, as approved by the responsible agency head, can be used to show equivalency.

§ 102–80.120 What analytical and empirical tools should be used to support the life safety equivalency evaluation?

Analytical and empirical tools, including fire models and grading schedules such as the Fire Safety Evaluation System (Alternative Approaches to Life Safety, NEPA 101A) should be used to support the life safety equivalency evaluation. If fire modeling is used as part of an analysis, an assessment of the predictive capabilities of the fire models must be included. This assessment should be conducted in accordance with the American Society for Testing and Materials Standard Guide for Evaluating the Predictive Capability of Fire Models (ASTM E 1355).

§ 102–80.125 Who has the responsibility for determining the acceptability of each equivalent level of safety analysis?

The head of the agency responsible for physical improvements in the facility or providing Federal assistance or a designated representative will determine the acceptability of each equivalent level of safety analysis. The determination of acceptability must include a review of the fire protection engineer's qualifications, the appropriateness of the fire scenarios for the facility, and the reasonableness of the assumed maximum probable loss. Agencies should maintain a record of each accepted equivalent level of safety analysis and provide copies to fire departments or other local authorities for use in developing prefire plans.

§ 102–80.130 Who must perform the equivalent level of safety analysis?

A qualified fire protection engineer must perform the equivalent level of safety analysis.

§ 102–80.135 What is a qualified fire protection engineer?

A *Qualified fire protection engineer* is defined as an individual, with a thorough knowledge and understanding of the principles of physics and chemistry governing fire growth, spread, and suppression, meeting one of the following criteria:

(a) An engineer having an undergraduate or graduate degree from a college or university offering a course of study in fire protection or firesafety engineering, plus a minimum of 4 years work experience in fire protection engineering;

(b) A professional engineer (P.E. or similar designation) registered in Fire Protection Engineering; or

(c) A professional engineer (P.E. or similar designation) registered in a related engineering discipline and holding Member grade status in the International Society of Fire Protection Engineers.

Room of Origin

§ 102–80.140 What is meant by "room of origin"?

Room of origin means an area of a building where a fire can be expected to start. Typically, the size of the area will be determined by the walls, floor, and ceiling surrounding the space. However, this could lead to unacceptably large areas in the case of open plan office space or similar arrangements. Therefore, the maximum allowable fire area should be limited to 200 m^2 (2000 ft^2) including intervening spaces. In the case of residential units, an entire apartment occupied by one tenant could be considered as the *room of origin* to the extent it did not exceed the 200 m^2 (2000 ft^2) limitation.

Flashover

§ 102–80.145 What is meant by "flashover"?

Flashover means fire conditions in a confined area where the upper gas layer temperature reaches 600 °C (1100 °F) and the heat flux at floor level exceeds 20 kW/m^2 (1.8 $Btu/ft^2/sec$).

Reasonable Worst Case Fire Scenario

§ 102–80.150 What is meant by "reasonable worst case fire scenario"?

Reasonable worst case fire scenario means a combination of an ignition source, fuel items, and a building location likely to produce a fire which would have a significant adverse impact on the building and its occupants. The development of *reasonable worst case scenarios* must include consideration of types and forms of fuels present (*e.g.*, furniture, trash, paper, chemicals), potential fire ignition locations (*e.g.*, bedroom, office, closet, corridor), occupant capabilities (*e.g.*, awake, intoxicated, mentally or physically impaired), numbers of occupants, detection and suppression system adequacy and reliability, and fire department capabilities. A quantitative analysis of the probability of occurrence of each scenario and combination of events will be necessary.

PART 102–81—SECURITY

17. The authority citation for part 102–81 continues to read as follows:

Authority: 40 U.S.C. 318a, 486(c) and 490.

18. Section 102–81.15 is revised to read as follows:

§ 102–81.15 Who is responsible for upgrading and maintaining security standards in each existing federally-owned and leased facility?

In a June 28, 1995, Presidential Policy Memorandum for Executive Departments and Agencies, entitled, "Upgrading Security at Federal Facilities" (see the Weekly Compilation of Presidential Documents, vol. 31, p. 1148), the President directed that executive agencies must, where feasible, upgrade and maintain security in facilities they own or lease under their own authority to the minimum standards specified in the Department of Justice's June 28, 1995 study entitled "Vulnerability Assessment of Federal Facilities." The study may be obtained by writing to the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA, 15250–7954.

19. Section 102–81.20 is added to read as follows:

§ 102–81.20 Are the security standards for new federally owned and leased facilities the same as the standards for existing federally owned and leased facilities?

No, the minimum standards specified in the Department of Justice's June 28, 1995 study entitled "Vulnerability Assessment of Federal Facilities" identifies the minimum-security standards that agencies must adhere to for all existing owned and leased Federal facilities. As specified in § 102–81.25, new federally owned and leased facilities must be designed to meet the standards identified in the document entitled "Interagency Security Committee Security Design Criteria for New Federal Office Buildings and Major Modernization Projects," dated May 28, 2001. The security design criteria for new facilities takes into consideration technology developments, new cost consideration, the experience of practitioners applying the criteria, and the need to balance security requirements with public building environments that remain lively, open, and accessible.

20. Section 102–81.25 is added to read as follows:

§ 102–81.25 Do the Interagency Security Committee Security Design Criteria apply to all new federally owned and leased facilities?

No, the Interagency Security Committee Security Design Criteria:

(a) Apply to new construction of general purpose office buildings and new or lease-construction of

courthouses occupied by Federal employees in the United States and not under the jurisdiction and/or control of the Department of Defense. The criteria also apply to lease-constructed projects being submitted to Congress for appropriations or authorization. Where prudent and appropriate, the criteria apply to major modernization projects.

(b) Do not apply to airports, prisons, hospitals, clinics, and ports of entry, or to unique facilities such as those classified by the Department of Justice Vulnerability Assessment Study as Level V. Nor will the criteria overrule existing Federal laws and statutes, and other agency standards that have been developed for special facilities, such as border stations and child care centers.

21. Section 102–81.30 is added to read as follows:

§ 102–81.30 What information must job applicants at child care centers reveal?

Anyone who applies for employment (including volunteer positions) at a child care facility, located on federally controlled property (including federally leased property), must reveal any arrests and convictions on the job application. *Employment at a child care facility* means any position that involves work with minor children, such as a teacher, day care worker, or school administrator.

22. Part 102–83 is added to read as follows:

PART 102–83—LOCATION OF SPACE

Subpart A—General Provisions

Sec.

102–83.5 What is the scope of this part?
102–83.10 What basic location of space policy governs an executive agency?
102–83.15 Is there a general hierarchy of consideration that agencies must follow in their utilization of space?

Subpart B—Location of Space

Delineated Area

102–83.20 What is a delineated area?
102–83.25 Who is responsible for identifying the delineated area within which a Federal agency wishes to locate specific activities?
102–83.30 In addition to its mission and program requirements, are there any other issues that Federal agencies must consider in identifying the delineated area?
102–83.35 Are executive agencies required to consider whether the central business area will provide for adequate competition when acquiring leased space?
102–83.40 Who must approve the final delineated area?
102–83.45 Where may executive agencies find guidance on appealing GSA's decisions and recommendations concerning delineated areas?

Rural Areas

102–83.50 What is the Rural Development Act?
102–83.55 What is a rural area?
102–83.60 What is an urbanized area?
102–83.65 Are executive agencies required to give first priority to the location of new offices and other facilities in rural areas?

Urban Areas

102–83.70 What is Executive Order 12072?
102–83.75 What is Executive Order 13006?
102–83.80 What is an urban area?
102–83.85 What is a central business area?
102–83.90 Do Executive Orders 12072 and 13006 apply to rural areas?
102–83.95 After an agency has identified that its geographic service area and delineated area are in an urban area, what is the next step for an agency?
102–83.100 Why must agencies consider available space in properties under the custody and control of the U.S. Postal Service?
102–83.105 What happens if there is no available space in non-historic buildings under the custody and control of the U.S. Postal Service?
102–83.110 When an agency's mission and program requirements call for the location in an urban area, are executive agencies required to give first consideration to central business areas?
102–83.115 What is a central city?
102–83.120 What happens if an agency has a need to be in a specific urban area that is not a central city in a metropolitan area?

Preference to Historic Properties

102–83.125 Are executive agencies required to give preference to historic properties when acquiring leased space?

Authority: 40 U.S.C. 486(c); E.O. 12072; and E.O. 13006

Subpart A—General Provisions

§ 102–83.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

§ 102–83.10 What basic location of space policy governs an executive agency?

Each executive agency is responsible for identifying its geographic service area and the delineated area within which it wishes to locate specific activities, consistent with its mission and program requirements, and in accordance with all applicable statutes, regulations and policies.

§ 102–83.15 Is there a general hierarchy of consideration that agencies must follow in their utilization of space?

Yes, Federal agencies must follow the hierarchy of consideration identified in § 102–79.55 of this chapter.

Subpart B—Location of Space

Delineated Area

§ 102–83.20 What is a delineated area?

Delineated area means the specific boundaries within which space will be obtained to satisfy an agency space requirement.

§ 102–83.25 Who is responsible for identifying the delineated area within which a Federal agency wishes to locate specific activities?

Each Federal agency is responsible for identifying the delineated area within which it wishes to locate specific activities, consistent with its mission and program requirements, and in accordance with all applicable laws, regulations, and Executive Orders.

§ 102–83.30 In addition to its mission and program requirements, are there any other issues that Federal agencies must consider in identifying the delineated area?

Yes, Federal agencies must also consider real estate, labor, and other operational costs and applicable local incentives when identifying the delineated area.

§ 102–83.35 Are executive agencies required to consider whether the central business area will provide for adequate competition when acquiring leased space?

In accordance with the Competition in Contracting Act of 1984 (CICA), as amended (41 U.S.C. 253(a)), executive agencies must consider whether restricting the delineated area for obtaining leased space to the central business area will provide for adequate competition when acquiring leased space. Where an executive agency determines that the delineated area must be expanded beyond the CBA in order to provide adequate competition, the agency may expand the delineated area in consultation with local officials. Executive agencies must continue to include the CBA in such expanded areas.

§ 102–83.40 Who must approve the final delineated area?

Federal agencies conducting the procurement must approve the final delineated area for site acquisitions and lease actions and must confirm that the final delineated area complies with the requirements of all applicable laws, regulations, and Executive Orders.

§ 102–83.45 Where may executive agencies find guidance on appealing GSA's decisions and recommendations concerning delineated areas?

The GSA Public Buildings Service provides guidance in their Customer Guide to Real Property on the process for appealing GSA's decisions and recommendations concerning delineated areas.

Rural Areas

§ 102–83.50 What is the Rural Development Act?

In the Rural Development Act, as amended, Congress directs Federal agencies to develop policies and procedures to give first priority to the location of new offices and other Federal facilities in rural areas. The intent of the Act is to revitalize and develop rural areas and help foster a balance between rural and urban America.

§ 102–83.55 What is a rural area?

Rural area means a city, town, or unincorporated area that has a population of 50,000 inhabitants or less, other than an urbanized area immediately adjacent to a city, town, or unincorporated area that has a population in excess of 50,000 inhabitants, as specified in the Rural Development Act, as amended.

§ 102–83.60 What is an urbanized area?

An urbanized area is a statistical geographic area defined by the Census Bureau, consisting of a central place(s) and adjacent densely settled territory that together contain at least 50,000 people, generally with an overall population density of at least 1,000 people per square mile.

§ 102–83.65 Are executive agencies required to give first priority to the location of new offices and other facilities in rural areas?

Yes, executive agencies must give first priority to the location of new offices and other facilities in rural areas in accordance with the Rural Development Act (7 U.S.C. 2204b–1), unless their mission or program requirements call for locations in an urban area. First priority to the location of new offices and other facilities in rural areas must be given in accordance with the hierarchy specified in § 102–79.55 of this chapter.

Urban Areas

§ 102–83.70 What is Executive Order 12072?

Executive Order 12072, entitled "Federal Space Management," requires all executive agencies that have a mission requirement to locate in an urban area to give first consideration to locating Federal facilities in central business areas, and/or adjacent areas of similar character, to use them to make downtowns attractive places to work, conserve existing resources, and encourage redevelopment. It also directs executive agencies to consider opportunities for locating cultural, educational, recreational, or commercial activities within the proposed facility.

§ 102–83.75 What is Executive Order 13006?

Executive Order 13006, entitled "Locating Federal Facilities on Historic Properties in Our Nation's Central Cities," requires all executive agencies that have a mission requirement to locate in an urban area to give first consideration to locating Federal facilities in historic buildings and districts within central business areas. It also directs executive agencies to remove regulatory barriers, review their policies, and build new partnerships with the goal of enhancing participation in the National Historic Preservation program.

§ 102–83.80 What is an urban area?

Urban area means any metropolitan area (MA) as defined by the Office of Management and Budget (OMB) in OMB Bulletin No. 99–04, or succeeding OMB Bulletin, that doesn't meet the definition of rural area in § 102–83.55.

§ 102–83.85 What is a central business area?

Central business area means the centralized community business area and adjacent areas of similar character, including other specific areas that may be recommended by local officials in accordance with Executive Order 12072. The central business areas are designated by local government and not by Federal agencies.

§ 102–83.90 Do Executive Orders 12072 and 13006 apply to rural areas?

No, Executive Orders 12072 and 13006 only apply to agencies looking for space in urban areas.

§ 102–83.95 After an agency has identified that its geographic service area and delineated area are in an urban area, what is the next step for an agency?

After an agency identifies its geographic service area and delineated area within which it wishes to locate specific activities are in an urban area (*i.e.*, determined that the agency's mission requirements dictate a need to locate its facility in an urban area), Federal agencies must seek space in historic properties already under agency control, in accordance with section 110 of the National Historic Preservation Act. The Act provides that prior to purchasing, constructing or leasing new space, Federal agencies must:

(a) Consider agency-controlled historic properties within historic districts inside central business areas when locating Federal operations, in accordance with Executive Order 13006 (which, by reference, also incorporates the requirements in Executive Order 12072 and the Rural Development Act of 1972);

(b) Then consider agency-controlled developed or undeveloped sites within historic districts, if no suitable agency-controlled historic property specified in paragraph (a) of this section is available;

(c) Then consider agency-controlled historic properties outside of historic districts, if no suitable agency-controlled site exists within a historic district as specified in paragraph (b) of this section;

(d) Then consider non-historic agency-controlled properties, if no suitable agency-controlled historic properties outside of historic districts exist as specified in paragraph (c) of this section;

(e) Then consider historic properties under the custody and control of the U.S. Postal Service, if there is no available space in non-historic agency-controlled properties specified in paragraph (d) of this section.

(f) Then consider non-historic properties under the custody and control of the U.S. Postal Service, if there is no available space in historic properties under the custody and control of the U.S. Postal Service specified in paragraph (e) of this section.

§ 102–83.100 Why must agencies consider available space in properties under the custody and control of the U.S. Postal Service?

See § 102–73.20 of this chapter.

§ 102–83.105 What happens if there is no available space in non-historic buildings under the custody and control of the U.S. Postal Service?

If no suitable space in non-historic buildings under the custody and control of the U.S. Postal Service is available, agencies may then acquire real estate by purchase, lease, or construction, in accordance with FMR part 102–73.

§ 102–83.110 When an agency's mission and program requirements call for the location in an urban area, are executive agencies required to give first consideration to central business areas?

Yes, if an agency has a specific location need to be in an urban area,

then Executive Orders 12072 and 13006 require that agencies should give first consideration to locating in a historic building in a historic district in the CBA of a central city of the appropriate metropolitan area. If no such space is available, agencies must give consideration to locating in a non-historic building in a historic district in the CBA of a central city of the appropriate metropolitan area. If no such space is available, agencies must give consideration to locating in a historic building outside of a historic district in the CBA of a central city of the appropriate metropolitan area. If no such space is available, agencies should give consideration to locating in a non-historic building outside of a historic district in the CBA of a central city of the appropriate metropolitan area.

§ 102–83.115 What is a central city?

Central cities are those central cities defined by OMB in OMB Bulletin No. 99–04 or succeeding OMB Bulletin.

§ 102–83.120 What happens if an agency has a need to be in a specific urban area that is not a central city in a metropolitan area?

If an agency has a need to be in a specific urban area that is not a central city in a metropolitan area, then the agency must give first consideration to locating in a historic building in a historic district in the CBA of the appropriate metropolitan area. If no such space is available, agencies must give consideration to locating in a non-historic building in a historic district in the CBA of the appropriate metropolitan area. If no such space is available, agencies must give consideration to locating in a historic building outside of a historic district in the CBA of the appropriate metropolitan area. If no such space is available, agencies should give consideration to locating in a non-historic building outside of a historic district in the CBA of the appropriate metropolitan area.

Preference to Historic Properties

§ 102–83.125 Are executive agencies required to give preference to historic properties when acquiring leased space?

Yes, Federal agencies must give a price preference when acquiring space via either the lowest price technically acceptable or the best value tradeoff source selection process. See part 102–73 of this chapter for additional guidance.

Dated: October 31, 2002.

Stephen A. Perry,

Administrator of General Services.

[FR Doc. 02–30050 Filed 12–12–02; 8:45 am]

BILLING CODE 6820–23–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–6, 101–18, 101–19, 101–20, 101–33, 101–47

[FPMR Amendment D–99]

RIN 3090–AH60

Real Property Policies

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is transferring coverage on real property policies to the Federal Management Regulation (FMR). A final rule published in the **Federal Register** at 66 FR 5358 (January 18, 2001) moved many of the real property policies to the FMR. An amendment to those regulations appears elsewhere in today's **Federal Register**. This final rule completes the transfer by removing all FPMR coverage on real property policies and providing cross references to direct readers to the coverage in the FMR.

EFFECTIVE DATE: December 13, 2002.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, Director, Real Property Policy Division, at (202) 501–1737.

SUPPLEMENTARY INFORMATION:

A. Background

To promote efficient management of Government assets, which is the Federal Property and Administrative Services Act's original intent, GSA is improving its regulatory system by establishing the Federal Management Regulation (FMR) as the successor regulation to the Federal Property Management Regulations (FPMR). The FMR will contain a refined set of policies and regulatory requirements on managing property and administrative services. Non-regulatory guidance, procedures, information, and standards now in the FPMR is being removed from the regulation and will be available in separate documents, such as customer service guides, handbooks, brochures, Internet Web sites, and FMR bulletins.

B. Executive Order 12866

The General Services Administration (GSA) has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for comment. Therefore, the Regulatory Flexibility Act does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose reporting. recordkeeping or information collection requirements which require the approval of the Office of Management and Budget pursuant to 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 101–6, 101–18, 101–19, 101–20, 101–33, 101–47, 102–73, 102–74, 102–75, 102–76, 102–80, 102–82, and 102–83

Acquisition of real property, Administrative practices and procedures, Concessions, Crime, Federal buildings and facilities, Fire prevention, Government real property management, Location of space, Public utilities, Safety and environmental management, Security measures, Vending facility program for blind persons.

For the reasons set forth in the preamble, GSA amends 41 CFR chapter 101 as follows:

CHAPTER 101—[AMENDED]

PART 101–6—MISCELLANEOUS REGULATIONS

1. Subpart 101–6.3 is revised to read as follows:

Subpart 101–6.3—Ridesharing

Authority: 40 U.S.C. 486(c); Executive Order 12191 dated February 1, 1980; Sec. 205(c), 63 Stat. 390.

§ 101–6.300 Cross-reference to the Federal Management Regulation (FMR) 41 CFR chapter 102 parts 1 through 220.

For information on Federal facility ridesharing, *see* FMR part 102–74 (41 CFR part 102–74).

2. Subpart 101–6.6 is revised to read as follows:

Subpart 101–6.6—Fire Protection (Firesafety) Engineering

Authority: 40 U.S.C. 486(c).

§ 101–6.600 Cross-reference to the Federal Management Regulation (FMR) 41 CFR chapter 102 parts 1 through 220.

For information on fire protection (firesafety) engineering, *see* FMR part 102–74 (41 CFR part 102–74) and FMR part 102–80 (41 CFR part 102–80).

3. Part 101–18 is revised to read as follows:

PART 101–18—ACQUISITION OF REAL PROPERTY

Authority: E.O. 12072, Sec. 1–201(b), 43 FR 36869.

§ 101–18.0 Cross-reference to the Federal Management Regulation (FMR) 41 CFR chapter 102 parts 1 through 220).

For information on acquisition of real property, *see* FMR part 102–73 (41 CFR part 102–73).

4. Part 101–19 is revised to read as follows:

PART 101–19—CONSTRUCTION AND ALTERATION OF PUBLIC BUILDINGS

Authority: 40 U.S.C. 486(c); 40 U.S.C. 490 (The Federal Property and Administrative Services Act of 1949, as amended, Sec. 205(c) and 210, 63 Stat. 377); and 40 U.S.C. 601–619 (The Public Buildings Act of 1959, as amended); Pub. L. 92–313.

§ 101–19.0 Cross-reference to the Federal Management Regulation (FMR) 41 CFR chapter 102 parts 1 through 220).

For information on construction and alteration of public buildings, *see* FMR parts 102–74 (41 CFR part 102–74) and 102–76 (41 CFR part 102–76).

5. Part 101–20 is revised to read as follows:

PART 101–20—MANAGEMENT OF BUILDINGS AND GROUNDS

Authority: 40 U.S.C. 486(c); The Federal Property and Administrative Services Act of 1949, as amended, Sec. 205(c), 63 Stat. 390.

§ 101–20.0 Cross-reference to the Federal Management Regulation (FMR) 41 CFR chapter 102 parts 1 through 220).

For information on management of buildings and grounds, *see* FMR part 102–74 (41 CFR part 102–74).

6. Part 101–33 is revised to read as follows:

PART 101–33—PUBLIC UTILITIES

Authority: 40 U.S.C. 486(c); The Federal Property and Administrative Services Act of 1949, as amended, Sec. 205(c), 63 Stat. 390.

§ 101–33.0 Cross-reference to the Federal Management Regulation (FMR) 41 CFR chapter 102 parts 1 through 220).

For information on public utilities, *see* FMR part 102–82 (41 CFR part 102–82).

7. Part 101–47 is revised to read as follows:

PART 101–47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

Authority: 40 U.S.C. 486(c); The Federal Property and Administrative Services Act of 1949, as amended, Sec. 205(c), 63 Stat. 390.

§ 101–47.0 Cross-reference to the Federal Management Regulation (FMR) 41 CFR chapter 102 parts 1 through 220).

For information on utilization and disposal of real property, *see* FMR part 102–75 (41 CFR part 102–75).

8. The Appendix to Subchapter D is revised to read as follows:

Appendix to Subchapter D—Temporary Regulations Federal Property Management Regulations; Interim Rule D–1

PART 101–17—ASSIGNMENT AND UTILIZATION OF SPACE

§ 101–17.0 Cross-reference to the Federal Management Regulation (FMR) 41 CFR chapter 102 parts 1 through 220).

For information on location of space, *see* FMR part 102–83 (41 CFR part 102–83).

Dated: July 30, 2002.

Stephen A. Perry,

Administrator of General Services.

[FR Doc. 02–30051 Filed 12–12–02; 8:45 am]

BILLING CODE 6820–23–P

VOL
67
ISS
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Federal Register

Friday,
December 13, 2002

Part IV

Department of Health and Human Services

42 Part 73

Office of the Inspector General

42 CFR Part 1003

Possession, Use, and Transfer of Select Agents and Toxins; Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 73

Office of Inspector General

42 CFR Part 1003

RIN 0920–AA08

Possession, Use, and Transfer of Select Agents and Toxins

AGENCY: Centers for Disease Control and Prevention, Office of Inspector General, HHS.

ACTION: Interim final rule.

SUMMARY: This document establishes requirements regarding possession and use in the United States, receipt from outside the United States, and transfer within the United States, of select agents and toxins. This includes requirements concerning registration, security risk assessments, safety plans, security plans, emergency response plans, training, transfers, record keeping, inspections, and notifications. This document also contains delegations of authority to the Office of Inspector General concerning civil money penalties. The interim final rule implements provisions of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 and is designed to provide protection against misuse of select agents and toxins whether inadvertent or the result of terrorist acts against the United States homeland (such as the recent terrorist acts involving anthrax) or other criminal acts. In addition and in accordance with the Agricultural Bioterrorism Protection Act of 2002, the Department of Agriculture is establishing, by separate regulation, standards and procedures governing the possession, use, and transfer of biological agents and toxins that have been determined to have the potential to pose a severe threat to both human and animal health, to animal health, to plant health, or to animal and plant products. This action is necessary to protect animal and plant health, and animal and plant products.

DATES: The interim final rule is effective as of February 7, 2003. However, for dates of specific applicability see § 73.0. Written comments must be submitted on or before February 11, 2003. The final rule will be published after consideration of the comments.

ADDRESSES: Select Agent Program, Centers for Disease Control and Prevention, 1600 Clifton Rd., E–79, Atlanta, GA 30333. Comments may be e-mailed to: *SAPcomments@CDC.GOV.*

FOR FURTHER INFORMATION CONTACT: Minh Thomas, Select Agent Program, Centers For Disease Control and Prevention, 1600 Clifton Rd., MS E–79, Atlanta Ga. 30333. (404) 498–2259.

SUPPLEMENTARY INFORMATION: This document establishes requirements regarding possession and use in the United States, receipt from outside the United States, and transfer within the United States, of certain biological agents and toxins (referred to below as select agents and toxins). This includes requirements concerning registration, security risk assessments, safety plans, security plans, emergency response plans, training, transfers, record keeping, inspections, and notifications. The Act requires an interim final rule and mandates its effective date and transition provisions. The new regulations are set forth in a new 42 CFR part 73 (referred to below as the part 73 regulations).

The part 73 regulations implement provisions of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Public Law 107–188 (referred to below as the Act).

In general, the entities regulated under the part 73 regulations are academic institutions and biomedical centers; commercial manufacturing facilities (the pharmaceutical industry); federal, state, and local laboratories, including clinical and diagnostic laboratories; and research facilities.

Based on provisions of the Act (42 U.S.C. 262a, note), the part 73 regulations supersede the regulations at 42 CFR 72.6 (referred to below as the § 72.6 regulations). The § 72.6 regulations, which became effective April 15, 1997, established certain shipping and handling requirements on laboratory facilities that send or receive "select agents." In addition to regulating transfers, the part 73 regulations, among other things, cover the "possession and use" of select agents and toxins and include requirements for security risk assessments conducted by Department of Justice. The Act bolstered the authority to protect against misuse of select agents and toxins whether inadvertent or the result of terrorist acts against the United States homeland (such as the recent terrorist acts involving anthrax) or other criminal acts.

The Act gives the Department of Agriculture (referred to below as USDA) the authority and responsibility for regulating activities regarding select agents and toxins to protect animal and plant health and animal and plant products. The Act gives the Department of Health and Human Services (referred to below as HHS) the authority and responsibility for regulating activities regarding select agents and toxins to protect the public health and safety. Some of the select agents and toxins regulated under this part are also regulated by USDA under 9 CFR part 121. The select agents and toxins subject to regulation by both agencies are identified as "overlap" select agents and toxins and those regulated solely by HHS are identified as HHS select agents and toxins. The Act provides for interagency coordination between the two departments regarding overlap select agents and toxins.

Purpose and Scope—§ 73.2

In addition to explaining information discussed above, § 73.2 explains that the part 73 regulations do not apply in two types of situations. Paragraph (b) states that the part 73 regulations do not set requirements for the exportation of select agents or toxins. The Department of Commerce has primary responsibility for regulating the exportation of microorganisms and toxins at 15 CFR. Paragraph (c) states that the part 73 regulations do not set requirements for the transportation in commerce of select agents or toxins. The Department of Transportation has primary responsibility for regulating the transportation of such select agents and toxins as hazardous materials under 49 CFR parts 171 through 180. Other agencies may also have authority over microorganisms that are exported or transported. For example, FDA regulates unapproved products used in clinical trials and such products would be subject to FDA's provisions as well as the provisions of the Department of Commerce or the Department of Transportation. The regulation only lists the agencies with primary authority over transportation and exports.

General Prohibition—§ 73.3

The provisions of § 73.3, consistent with the intent of the Act, provide that entities and individuals are allowed to conduct activities regulated by the part 73 regulations only if they are conducted for a lawful purpose and in accordance with the part 73 regulations.

List of Select Agents and Toxins—§§ 73.4 and 73.5

The HHS select agents and toxins are listed in § 73.4 and the overlap select agents and toxins are listed in § 73.5.

In a notice of intent to issue regulations published in the **Federal Register** on August 23, 2002, we specified those agents and toxins that we were considering for inclusion in the HHS and overlap lists and requested

comments regarding whether changes should be made. The comment period closed September 17, 2002. We received 22 comments. The select agents and toxins specified in §§ 73.4 and 73.5 are the same as those listed in the notice of intent to issue regulations, except for changes made based on comments, including changes to reflect current taxonomic classification and nomenclature. A number of commenters simply agreed with entries on the list. Those comments requesting substantive changes to the list are discussed below.

We prepared the list for the notice of intent to issue regulations after receiving extensive input from a group of scientists from 21 Federal government entities. We made all of the determinations discussed below in response to the comments based on recommendations from the same group of scientists.

The Act (42 U.S.C. 262a (a)(1)(B)) provides the following criteria that the HHS Secretary must consider for establishing the list:

- The effect on human health of exposure to the agent or toxin;
- The degree of contagiousness of the agent or toxin and the methods by which the agent or toxin is transferred to humans;
- The availability and effectiveness of pharmacotherapies and immunizations to treat and prevent any illness resulting from infection by the agent or toxin; and
- Any other criteria, including the needs of children and other vulnerable populations that the HHS Secretary considers appropriate.

The interim final rule does not make distinctions concerning children or other specific populations because we are unaware of any basis for making such distinctions.

The notice did not include "viruses causing hantavirus pulmonary syndrome" and "yellow fever virus" on the list of select viruses. One commenter, without providing reasons, asserted that they should be included on the list. We have not included them on the list in the interim final rule. "Viruses causing hantavirus pulmonary syndrome" are difficult to propagate and there is a lack of data establishing laboratory acquired infections. Also, there is an available and effective vaccine for "Yellow fever virus."

The notice included "Monkeypox virus" on the list of select viruses. One commenter indicated that it is not easily transmissible to humans, there is no indication that this agent has ever been chosen as a potential bioweapon, and this agent has not been demonstrated to result in high levels of mortality. We have included "Monkeypox virus" on the list of non-overlap viruses. Monkeypox has similarities with smallpox virus in that monkeypox has a similar clinical presentation, causes similar mortality rates as observed in recent outbreaks, is highly infectious when aerosolized, and is reported to have chains of transmission for several generations.

The notice included "Herpes B virus" on the list of select viruses. Six commenters indicated that it should be deleted based on assertions that there is no indication that this agent has ever been chosen as a potential bioweapon, the agent has not been shown to be easily transmissible to humans, the agent has not been demonstrated to result in high levels of mortality, and there is little evidence in the literature of true aerosol transmission of the naturally occurring virus. With changes to reflect current taxonomic classification and nomenclature, we have included it on the list of HHS agents and toxins as "Cercopithecine herpesvirus 1 (Herpes B virus)" based on the scientific data that it is lethal to humans, can be replicated in large concentrations, and can cause infection via the aerosol route.

The notice did not include "Camelpox" on the list of select viruses. One commenter asserted that "Camelpox" should be included on the list based on the assertion that recent publications have raised concerns about its potential use as a biological weapon. We have not included "Camelpox" on the list because it has not been associated with human illness or disease.

The notice included "Variola major (smallpox)" on the list of select viruses. One commenter requested that we change "Variola major (smallpox)" to "Variola major and variola minor associated viruses including alastrim." We have made this change by including "Variola major virus (Smallpox virus) and Variola minor (Alastrim)" on the list of HHS select agents and toxins. "Variola minor virus," also known as "Variola Alastrim," is another virus that causes smallpox and like "Variola major virus" is highly infectious and lethal and can be spread by inhalation.

The notice included "*Coccidioides immitis*" and "*Coccidioides posadasii*" on the list of select fungi. One commenter indicated that both should be deleted based on the assertion that neither species of "*Coccidioides*" presented a risk for use as biological weapons. Another commenter asserted that "*Coccidioides immitis*" should be deleted based on the assertion that most infections with "*Coccidioides immitis*" do not cause severe illness. We have included "*Coccidioides immitis*" on the overlap list and "*Coccidioides posadasii*" on the HHS list because they are highly infectious when aerosolized and sporulate easily in culture.

The notice did not include "*Histoplasma capsulatum*" or "*Blastomyces species*" in the list of select fungi. One commenter asserted that these organisms should be included on the list since they easily can be spread by aerosol. We have not included them on the list because they are difficult to cultivate and do not sporulate readily.

The notice did not include "aflatoxins" on the list of select toxins. One commenter asserted, without reasons, that these organisms should be included on the list. We have not included them on the list because the acute toxicity is too low to pose a significant mass casualty threat.

The notice included "Shigatoxin and Shiga-like toxins" on the list of select toxins. One commenter asserted that a change is needed in the reference to "Shiga-like toxins" to clarify that it does not include analogous proteins that are not toxic, and another commenter similarly asserted that the same term should identify or at least quantify the specific "Shiga-like toxins" to be included. We agree with the commenters and clarified the list of select toxins to include "Shigatoxin and Shiga-like ribosome inactivating proteins."

In the notice, certain toxins were on the list of select toxins only if the aggregate amount were more than a specified amount. Three commenters argued in favor of the principle that a toxin should be listed without distinctions regarding amounts. One commenter asserted that the aggregate amounts for toxins are too low and do not take into account the vastly different toxicities of these listed materials. We made no changes based on these comments. The Act (42 U.S.C. 262a (a)(1)(A)) states that the list is to include those toxins that have the potential to pose a severe threat to public health and safety. We believe that the specified toxins at levels below the threshold levels do not meet the Act's criteria for inclusion. Further, as evidenced by the different amounts for certain toxins, we did take into account the different toxicities of toxins.

One commenter recommended that the list of toxins include only those with an LD_{50} for vertebrates of less than 100 nanograms per kilogram body weight and two other commenters recommended that the list of toxins include only those that would theoretically contain one million LD_{50}'s

for vertebrates for each listed toxin. No changes were made based on these comments. These comments do not take into account the potential threat of large quantities of the toxins.

One commenter asserted that the "Botulinum neurotoxins" should be included only if quantities are greater than 13 milligrams and the listing for "*Clostridium perfringens* epsilon toxin" should be included only if quantities are greater than 68 milligrams. No changes are made based on this comment. The comment does not take into account that even the specified amounts could cause significant numbers of mortalities.

With respect to the listing in the notice of "full-length" nucleic acids, commenters raised concern that the deletion of one nucleic acid would not constitute "full-length" even though capable of causing harm similar to a "full-length." We agree with the commenters and changed the listings to exclude only those forms that are not capable of yielding infectious and/or replication-competent forms of any of the viruses listed (accordingly, forms such as microarrays are not on the list).

Regarding the proposed regulation of "Nucleic acids (synthetic or naturally derived) of Variola major virus (smallpox virus) and Variola minor virus (Alastrim) that are 100 nucleotides or more in length," one commenter noted that Variola virus shares many conserved nucleic acid sequences with other Orthopoxviruses (*e.g.*, vaccinia virus). Thus, the proposed requirement could result in the unintentional regulation of nucleic acids from other viruses. Because nucleic acids from Variola major virus and Variola minor virus that are capable of infection or replication are already listed as select agents in § 73.4 (d)(1), this requirement is being deleted.

The provisions of §§ 73.4 and 73.5 include procedures for excluding attenuated strains of select agents and toxins upon a determination that they do not meet the Act's criteria for inclusion, *i.e.*, they do not pose a severe threat to the public health and safety. The procedures also include provisions for providing notice for determinations. A written decision to an applicant granting the request for an exclusion will apply to all others.

Exemption Regarding Diagnosis, Verification, or Proficiency Testing—§ 73.6(a)

Paragraph (a) of § 73.6 states that an entity is exempt from the provisions of this part, other than § 73.14 (transfer), if all of the following apply:

- The only activities conducted by the entity that are subject to the part 73 regulations concern select agents or toxins that are contained in specimens or in isolates from the specimens presented for diagnosis, verification, or proficiency testing;
- Upon identification as the result of diagnosis or verification, the entity immediately reports to HHS any of the following: Variola major virus (Smallpox virus) and Variola minor (Alastrim), *Bacillus anthracis*, *Yersinia pestis*, Botulinum neurotoxins, *Francisella tularensis*, Ebola viruses, Marburg virus, Lassa fever virus, and South American Haemorrhagic Fever viruses (Junin, Machupo, Sabia, Flexal, Guanarito);
- The entity reports as required under Federal, State, or local law, to appropriate authorities;
- After diagnosis, verification, or proficiency testing, the entity either transfers the specimens or isolates from the specimens to a facility eligible for receiving them, or destroys them on-site by autoclaving, incineration, or by means of a sterilization or neutralization process sufficient to cause inactivation;
- The entity transfers or destroys those select agents or toxins used for diagnosis or verification within seven calendar days after identification, unless directed otherwise by the Federal Bureau of Investigation or other law enforcement entity after consultation with the HHS Secretary;
- The entity transfers or destroys those select agents or toxins used for proficiency testing within 90 calendar days after receipt; and
- The entity prepares a record of the identification and transfer or destruction on CDC Form 0.1318, submits the completed form to the HHS Secretary within seven calendar days after the transfer or destruction, and maintains a copy of the record for a period of three years.

The provisions of this exemption meet the requirements of the Act (42 U.S.C. 262a (g)(1)). The Act mandates such an exemption for diagnosis, verification, or proficiency testing regarding select agents and toxins. It also requires reporting to HHS and when required under Federal, State, or local law, to other appropriate authorities, and further requires the agents or toxins to be transferred or destroyed after use.

This requirement that the entity immediately reports to HHS upon identification of any of biological agents listed in § 73.6 (a)(2) is warranted because HHS has determined that these pose the greatest risk to public health and safety and national security.

Allowing seven calendar days for transfer or destruction for select agents or toxins identified through diagnosis or verification and 90 calendar days for transfer or destruction of select agents or toxins used for proficiency testing will provide sufficient time to accomplish the intended purpose.

The requirements that the entity must notify HHS within seven calendar days after identification and maintain the record of notification, provide a means for documenting that the transfer or destruction actually occurred. We request comment on the sufficiency of the 7-day and 90-day requirements for the transfer or destruction of the select agent or toxin after identification.

Exemption Regarding Products Cleared, Approved, Licensed, or Registered Under Certain Laws—§ 73.6(b)

Paragraph (b) of § 73.6 states that unless the HHS Secretary issues an order to an entity making specific provision of this part applicable to protect the public health and safety, products that are, bear, or contain listed select agents or toxins that are cleared, approved, licensed, or registered under any of the following laws are exempt from the provisions of the part 73 regulations insofar as their use is only for the approved purposes and meets the requirements of such laws:

(1) The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*);

(2) Section 351 of the Public Health Service Act pertaining to biological products (42 U.S.C. 262);

(3) The Act commonly known as the Virus-Serum-Toxin Act (21 U.S.C. 151–159); or

(4) The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*).

This exemption is mandated by the Act (42 U.S.C. 262a (g)(2)).

Exemption Regarding Investigational Products—§ 73.6(c)

Paragraph (c) of § 73.6 states that the HHS Secretary may exempt on a case-by-case basis an investigational product that is, bears, or contains a listed select agent or toxin from the requirements of the regulations when such product is being used in an investigation authorized under a Federal Act referred to above in the discussion concerning § 73.6 (b) and additional regulation under this part is not necessary to protect public health and safety. Paragraph (c) also sets forth application provisions and requires the HHS Secretary to make a determination within 14 calendar days after receipt of the application if the application meets certain requirements.

The Act specifically provides for this exemption, including the time frame for making a decision (42 U.S.C. 262a (g)(2)). We limited the exemption to investigational products authorized under those Acts specified in § 73.6 (b) because we are unaware of any other acts that could be used to meet the specified criteria. There is a requirement that applicant notify the HHS Secretary when authorization is no longer in effect (*e.g.*, IND is put on clinical hold). An exemption granted under this paragraph continues in effect only so long as the investigation continues in accordance with the authorization under a Federal Act referred to in paragraph (b) of this section.

Exemption Regarding Domestic or Foreign Public Health Emergency § 73.6(d)

Paragraph (d) of § 73.6 states that the HHS Secretary may temporarily exempt an entity from the requirements of the regulations, in whole or in part, based on a determination that the exemption is necessary to provide for the timely participation of the entity in response to a domestic or foreign public health emergency. Paragraph (d) further provides that the exemption may not exceed 30 calendar days, except that the HHS Secretary may grant one extension of an additional 30 calendar days. In addition, it sets forth application provisions.

The Act specifically provides for this exemption, including the time limits (42 U.S.C. 262a (g)(3)).

Exemption Based on Agricultural Emergency § 73.6(e)

Paragraph (e) of § 73.6 states that upon request of the USDA Secretary, after the granting by the USDA Secretary of an exemption under section 212(g)(1)(D) of the Agricultural Bioterrorism Protection Act of 2002 based on a finding that there is an agricultural emergency, the HHS Secretary may temporarily exempt an entity from the applicability of the requirements of this part, in whole or in part, to provide for the timely participation of the entity in response to the agricultural emergency. Paragraph (e) further provides that the exemption may not exceed 30 calendar days, except that upon the request of the USDA Secretary, the HHS Secretary may grant one extension of an additional 30 calendar days.

The Act specifically provides for this exemption, including the time limits (42 U.S.C. 262a (g)(4)).

Registration—§ 73.7

Paragraph (a) of § 73.7 states that an entity may not possess or use in the United States, receive from outside the United States, or transfer within the United States, any select agent or toxin unless the entity has been granted a certificate of registration by HHS or USDA. This reflects requirements in the Act (42 U.S.C. 262a (d)).

Paragraph (b) contains information concerning the submission of an application for a certificate of registration to HHS or USDA and sets forth the information required to be included in the application. The requested information is needed to determine whether an applicant is eligible for a certificate of registration by meeting the requirements of the part 73 regulations. The requested information is necessary to make a preliminary determination if the entity meets the requirements of this part. We are requesting comments on the information required in the application for registration.

Paragraph (c) explains that an application that covers any HHS select agent or toxin (regardless of whether it also covers overlap select agents or toxins) must be submitted to HHS and an application that covers only overlap select agents or toxins may be submitted either to HHS or USDA. This reflects the intent of the Act to provide joint jurisdiction over activities and avoid unnecessary burden regarding overlap select agents and toxins (7 U.S.C. 8411). Regardless of which agency receives the application regarding an overlap select agent or toxin, both agencies will provide input before a determination is made to grant or deny a certificate of registration.

Paragraph (d) provides that a certificate of registration will be valid only for the specific select agents and toxins and the specified activities and locations consistent with the information upon which the certificate of registration or amendment was granted. This requirement reflects the conclusion that each situation for conducting activities involving select agents and toxins is unique, and HHS or USDA can only issue a certificate of registration based on the information submitted.

Paragraph (d) also provides that the Responsible Official of an agency must get prior approval by promptly notifying the HHS Secretary in writing in accordance with § 73.21, if any change occurs in any information submitted in the application for the certificate of registration or amendments. This includes modifications to the list of individuals approved under § 73.8, changes in area of work, or changes in protocols or objectives of studies. This requirement is necessary to enable HHS to ensure that the entity continues to meet the requirements of the part 73 regulations.

Paragraph (d) contains provisions for obtaining amendments to a certificate of registration to add select agents or toxins or to change specified activities or locations.

Paragraph (e) contains provisions for granting a certificate of registration if the requirements of the part 73 regulations are met. Paragraph (e) also notes, consistent with the discussion above, that HHS will issue a certificate of registration or amendment for an HHS overlap select agent or toxin only if the USDA Secretary concurs that the requirements for obtaining a certificate of registration or amendment under 9 CFR part 121 have been met.

Paragraph (f) provides that a certificate of registration will cover activities at only one general physical location (a building or a complex of buildings at a single mailing address). This is designed to ensure that the Responsible Official is not over-extended and will be able to perform the activities required under § 73.9.

Paragraph (g) provides that a certificate of registration will be valid for up to three years. This will allow for varied expiration dates and thereby lessen the subsequent administrative burden regarding the processing of renewals. We are seeking comments on this time period for renewal of a registration.

Paragraph (h) provides that an entity must provide notice in writing to the HHS Secretary in accordance with § 73.21 at least five business days before destroying a select agent or toxin, if the destruction is for the purpose of discontinuing activities with an agent or toxin covered by a certificate of registration. This will allow the HHS Secretary to observe the destruction or take other action as appropriate.

Security Risk Assessments—§ 73.8

Paragraph (a) of § 73.8 states that an entity may not possess or use in the United States, receive from outside the United States, or transfer within the United States, any select agent or toxin unless the entity and any individual who owns or controls the entity are approved by the HHS Secretary or the USDA Secretary based on security risk assessments by the Attorney General. Paragraph (b) of § 73.8 states that an individual may not have access to a select agent or toxin unless approved by the HHS Secretary or the USDA Secretary based on a security risk assessment by the Attorney General. These security risk assessments are required by the Act (42 U.S.C. 262a (e)).

Based on specific authority in the Act, paragraph (a) provides that the security risk assessment requirements do not apply to Federal, State, or local governmental agencies (42 U.S.C. 262a (e)), but the security risk assessments do apply to the Responsible Official and other individuals working for such agencies.

Paragraph (c) sets forth procedures for obtaining the security risk assessments.

Paragraph (d) restates the criteria in the Act for disapproving entities and individuals (42 U.S.C. 262a (e)). The Act states that "restricted persons," as defined in 18 U.S.C. 175b, may not be granted access to select agents and toxins (42 U.S.C. 262a (e)). A restricted person is a person who:

- Is under indictment for a crime punishable by imprisonment for a term exceeding 1 year;
- Has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;
- Is a fugitive from justice;
- Is an unlawful user of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));
- Is an alien illegally or unlawfully in the United States;
- Has been adjudicated as a mental defective or has been committed to any mental institution;
- Is an alien (other than an alien lawfully admitted for permanent residence) who is a national of a country as to which the Secretary of State has made a determination (that remains in effect) that such country has repeatedly provided support for acts of international terrorism; or
- Has been discharged from the Armed Services of the United States under dishonorable conditions.

In addition, the HHS Secretary may deny or limit access if the individual is reasonably suspected by any Federal law enforcement or intelligence agency of: Committing a crime set forth in section 2332b(g)(5) of title 18 U.S.C.; knowing involvement with an organization that engages in domestic or international terrorism (as defined in section 2331of such title18) or with any other organization that engages in intentional crimes of violence; or being an agent of a foreign power (as defined in section 1801 of title 50 U.S.C.

Consistent with specific provisions in the Act, paragraph (e) also allows for limited approvals (42 U.S.C. 262a (e)).

Paragraph (f) provides that unless a shorter period is granted under paragraph (e), an approval for an entity or individual will be valid for three years unless terminated sooner at the request of the entity or individual, or terminated for cause.

Paragraph (g) implements specific provisions of the Act for requesting the Attorney General to expedite the security risk assessment process and for expediting the HHS Secretary's review process (42 U.S.C. 262a (e)). The Act allows expedited processing only for individuals (not entities). Expedited processing will be given to those cases showing good cause (*e.g.*, public health or agricultural emergencies, national security, impending expiration of a research grant, a short-term visit by a prominent researcher).

Responsible Official—§ 73.9

Under § 73.9, an entity conducting regulated activities must identify and authorize an individual as the Responsible Official. The Responsible Official must:

- Be approved for access to biological agents and toxins under § 73.8;
- Be familiar with the requirements of the part 73 regulations, and
- Have authority and responsibility to ensure that the requirements of the part 73 are met, on behalf of the entity.

These requirements regarding a Responsible Official are necessary to ensure management oversight of the implementation of the part 73 regulations and to establish a point of contact.

This section also provides for the designation of Alternate Responsible Officials to conduct the duties of the Responsible Official. The Responsible Official may identify one or more individuals, any of whom may serve as the Alternate Responsible Official when the Responsible Official is unavailable. The Responsible Official and all individuals identified to serve as the Alternate Responsible Official must meet all of the qualifications for a Responsible Official.

We recommend that the Responsible Official and Alternate Responsible Officials be either biosafety officers or senior management officials of the entity, or both. Although we understand that some entities have limited staff, to help foster objectivity we strongly recommend where feasible that the Responsible Official should not be an individual actually using, working with, or transferring or receiving the select agents and toxins.

Safety—§ 73.10

Paragraph (a) of § 73.10 states that an entity subject to the provisions of the part 73 regulations must develop and implement a safety plan that:

- Considers the biosafety standards and requirements appropriate for BSL2, 3, or 4 operations,

as those standards and requirements pertain to the respective select agents. Guidance for biosafety standards for BSL2, 3, or 4 operations is contained in the CDC/NIH publication, "Biosafety in Microbiological and Biomedical Laboratories," including all appendices except Appendix F.

- Meets the specific requirements for handling toxins found in 29 CFR 1910.1450, Occupational Exposure to Hazardous Chemicals in Laboratories' and/or 29 CFR 1910.1200, "Hazard Communication," whichever applies.
- Considers the requirements for handling toxins found in Appendix I in the CDC/NIH publication, "Biosafety in Microbiological and Biomedical Laboratories."
- Considers the requirements for handling genetic elements, recombinant nucleic acids, and

recombinant organisms found in "NIH Guidelines for Research Involving Recombinant DNA Molecules." This includes, among other things, provisions regarding security assessments, physical containment, biological containment, and local review.

These provisions are designed to implement the mandate in the Act to establish safety provisions commensurate with the risk the biological agent or toxin poses to the public health and safety (42 U.S.C. 262a (b)). Both BMBL and the NIH Guidelines provide for graded requirements based on the level of hazard posed by the specific agents and toxins. The work with these agents and toxins are classified into biosafety levels (BSL 1 through 4) based on their hazards and the quantities being handled. As the level of risk increases, the guidelines impose more stringent requirements for safety practices. These guidelines are accepted standards in the biomedical sector. In addition, grants that are awarded for funding improvements to public health agencies mandate compliance with the NIH Guidelines. Similarly, new grants from NIH to fund research on select agents and toxins mandate compliance with the NIH guidelines. Consequently, we expect that entities subject to this rule either are complying with these guidelines or are making provisions to comply. Further, these are essentially the same requirements imposed on entities under the § 72.6 regulations. We are seeking comments on the incorporation of these guidelines as requirements.

Paragraph (b) of § 73.10 states that:

- The Responsible Official must conduct regular inspections of the laboratory where select agents and toxins are stored or used to ensure compliance with all of the procedures and protocols of the safety plan,
- The results of these inspections must be documented, and
- Any problems identified during inspections must be addressed.

These provisions are added to help ensure that the safety provisions are met.

The concerns that prompted this rule and its authorizing statute are not limited to the Select Agents listed herein. Laboratory manipulation of microbes can alter their characteristics, either intentionally or inadvertently, so as to increase their virulence, pathogenicity, or host range or alter their mode of transmission or route of exposure in ways that increase risks to human, animal, or plant health. In particular, the resulting modified organisms could present risks equal to or even greater than the current select agents and toxins.

In recognition of this prospect, and to protect public health and safety and ensure security, paragraph (c) states that an entity may not conduct the following experiments unless approved by the HHS Secretary, after consultation with experts:

- Experiments utilizing recombinant DNA that involve the deliberate transfer of a drug resistance trait to select agents that are not known to acquire the trait naturally, if such acquisition could compromise the use of the drug to control disease agents in humans, veterinary medicine, or agriculture.
- Experiments involving the deliberate formation of recombinant DNA containing genes for the biosynthesis of select toxins lethal for vertebrates at an $LD_{50} < 100$ ng/kg body weight.

This is to ensure that these categories of experiments with select agents and toxins involving recombinant DNA (as defined in the NIH Guidelines) are conducted only if safe to do so.

Also, we have reserved paragraph (d) for possible future specification of additional types of experiments that might warrant stringent scrutiny in the interest of safety; and we hereby request comments concerning what additional experiments, regardless if regulated under the part 73 regulations, might warrant such attention. In particular, we request comments addressing issues concerning experiments with biological agents that could possibly increase their virulence or pathogenicity; change their natural mode of transmission, route of exposure, or host range in ways adverse to human, animal, or plant health; result in the deliberate transfer of a drug resistant trait or a toxin-producing capability to a microorganism by means that do not involve recombinant DNA techniques; or involve research with Variola major virus and Variola minor virus (*e.g.*, experiments involving the transfer of Variola nucleic acid sequences into any other orthopoxvirus). In light of the deletion from the select agent list of Variola nucleic acids that are 100 nucleotides or more in length, we request comments on whether a less restrictive, but scientifically sound threshold is needed. We also request comments regarding the form such special oversight should take; for example, the rule could require that, whenever laboratory manipulation of a microorganism increases its risk profile significantly, whether intentionally or inadvertently, the Responsible Official report such to the HHS Secretary and discontinue work with the modified organism until the HHS Secretary has made recommendations regarding appropriate safety practices.

Security—§ 73.11

The provisions of § 73.11 require entities subject to the provisions of the part 73 regulations to develop and implement a security plan establishing policy and procedures that ensure the security of areas containing select agents and toxins. The provisions of § 73.11 are designed to meet these objectives and the Act's mandate to establish security requirements for the purpose of protecting the public health and safety (42 U.S.C.262a (e)). We invite comments on these provisions, and are particularly interested in views on whether the provisions are sufficient to meet the purposes stated above.

Emergency Response—§ 73.12

The provisions of § 73.12 state that entities required to register under the part 73 regulations must develop and implement an emergency response plan. The requirements for the plan are designed to ensure that entities plan ahead to be ready to take appropriate action to deal with any hazard that could arise.

We also note that if the entity has prepared and implemented an emergency response plan or is part of a larger institution's plan developed under other Federal, State, or local emergency response planning laws (*e.g.*, OSHA's hazardous waste operations and emergency response standard), that plan, with any necessary amendments, may be used to meet the requirements of § 73.12.

Training—§ 73.13

The provisions of § 73.13 state that an entity required to register under this part must provide information and training on safety and security for working with select agents or toxins on a timely basis to each individual approved for access under § 73.8 and each unapproved individual working in, or visiting, areas where select agents and toxins are handled or stored. The criteria in § 73.13 are designed, consistent with the Act's mandate concerning training (42 U.S.C. 262a (b), to ensure that individuals understand the hazards and how to deal with them.

We also note that if the entity has an existing training program under OSHA or other government or entity programs, that training program, with any necessary amendments, may be used to meet the requirements of § 73.13.

Transfers—§ 73.14

The transfer provisions in § 73.14, consistent with specific provisions of the Act (42 U.S.C. 262a (b)), state that a select agent or toxin may not be transferred from one entity to another entity within the United States (regardless of whether the transfer is interstate or intrastate), or received by an entity in the United States from an entity outside the United States, unless the transfer meets specified requirements. The transfer provisions are designed to ensure that select agents and toxins are shipped only to recipients that have authority to use or possess them. Also, the transfer provisions are designed to ensure that HHS and the participants monitor the shipments and that any problems are quickly reported to HHS so that any required action could be taken.

Records—§ 73.15

The provisions of § 73.15 set forth record keeping requirements concerning the list of approved individuals, inventories, access to agents and toxins, and areas where agents are used. These requirements are designed to allow determinations concerning compliance with the requirements of the part 73 regulations and to help assign what action should be taken if an emergency were to arise. Some of the requirements concerning quantities apply only to toxins since quantity data concerning replicating organisms may not be meaningful. We invite comments on these requirements.

Inspections—§ 73.16

The part 73 regulations at § 73.16 set forth inspection provisions that apply during the time an application is pending and any time when a certificate

of registration is in effect. This allows the HHS Secretary, without prior notification and with or without cause, to inspect any site at which activities regulated by part 73 are conducted and to inspect and copy any records relating to the activities covered by this part. This section implements the provisions of the Act that authorize inspections as necessary to ensure compliance with the part 73 regulations (42 U.S.C. 262a (f)).

Notification for Theft, Loss, or Release—§ 73.17

Consistent with the mandate in the Act, § 73.17 sets forth requirements for reporting thefts, losses, or releases of select agents or toxins (42 U.S.C. 262a (g)(8) and (j)). This is intended to determine responsibility for reporting and to help ensure that the appropriate information is reported so that effective and timely responses can be made.

Administrative Review—§ 73.18

To implement requirements of the Act (42 U.S.C. 262a (e)(7)), § 73.18 provides that an entity may obtain review of a decision denying or revoking a certificate of registration under 73.7 and the affected entity or individual may obtain review of a decision denying or revoking approval under 73.8. To help ensure timely resolution of disputes, the request for such review must be submitted in writing within 30 calendar days after the adverse decision. Under this section, the request for review must state the factual basis for the review, which will be carried out in accordance with 42 U.S.C. 262a(e)(7). Where the adverse decision is in whole or in part based upon notification by the Attorney General under 42 U.S.C. 262a(e)(3), the request for review will be forwarded to the Attorney General for the Attorney General's review and final notification to the HHS Secretary.

Civil Money Penalties—§ 73.19

A discussion regarding the authority for, and the implementation of, civil money penalties by the Office of Inspector General is set forth below under the heading "Civil money penalties."

Criminal Penalties—§ 73.20

The provisions of § 73.20 are informational. They note that the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188) provides specific criminal penalties for violation of provisions of the part 73 regulations. They also note that other criminal penalties may apply for violation of the part 73 regulations.

Submissions and Forms—§ 73.21

Paragraphs (a), (b), and (c) of § 73.21 explain how to obtain forms and how to submit applications, requests, notifications, and other information under the part 73 regulations.

To help ensure the timely resolution of matters, paragraph (d) of § 73.21 sets forth a mechanism for considering applications or requests to be abandoned if the applicant or requester fails to respond within 30 calendar days (or within such time period agreed upon by the applicant or requester and the HHS Secretary) to an HHS request for additional information.

Applicability and Related Requirements—§ 73.0

The provisions of § 73.0 include a phase-in period for certain requirements to allow entities to comply without causing disruption or termination of research or educational projects.

The phase-in for entities that on February 7, 2003, already were conducting activities under a certificate of registration issued under § 72.6 of this chapter or already were lawfully possessing select agents and toxins are as follows:

1. On and after February 7, 2003, the following provisions of part 73 are applicable: § 73.1 Definitions; § 73.2 Purpose and scope; § 73.3 General prohibition; § 73.4 HHS select agents and toxins; § 73.5 Overlap select agents and toxins; § 73.6 Exemptions from requirements under this part; § 73.9 Responsible Official; § 73.10 Safety; § 73.12 Emergency response; § 73.13 Training, but only those training provisions relating to safety and emergency response; § 73.15 Records; § 73.16 Inspections; § 73.17 Notification for theft, loss, or release; § 73.18 Administrative review; § 73.19 Civil money penalties; § 73.20 Criminal penalties; and § 73.21 Submissions and forms.

2. Before conducting activities subject to the interim final during the period from March 12, 2003, through November 11, 2003, such an entity must have submitted to HHS or USDA an application package under § 73.7 certifying compliance with the provisions referred to in (1) above.

3. Before conducting activities subject to the interim final during the period from March 12, 2003, through April 11, 2003, such an entity must have submitted applications for security risk approvals under § 73.8 to the Attorney General for the entity, the Responsible Official, and any individual who owns or controls the entity.

4. On and after March 12, 2003, such an entity must comply with the transfer requirements in § 73.14.

5. On and after April 12, 2003, such an entity must comply with the requirement to obtain security risk approvals under § 73.8 for the entity, the Responsible Official, and any individual who owns or controls the entity.

6. Before conducting activities subject to the interim final during the period from April 12, 2003, through June 11, 2003, such an entity must have submitted applications for security risk approvals under § 73.8 for all individuals with access to select agents and toxins.

7. On and after June 12, 2003, such an entity must comply with the requirement to obtain security risk approvals under § 73.8 for all individuals with access to select agents and toxins.

8. Before conducting activities subject to the interim final during the period from June 12, 2003, through September 11, 2003, such an entity must comply with the requirement in § 73.11 to develop a security plan.

9. On and after September 12, 2003, such an entity must fully comply with the provisions of § 73.11, including the provisions regarding the implementation of a security plan, and must fully comply with the provisions of § 73.13, including the training provisions relating to security.

10. On and after November 12, 2003, such an entity must comply with the requirement in § 73.7 to obtain a certificate of registration.

11. Such an entity also remains:

- Subject to the registration provisions of the § 72.6 regulations until November 12, 2003, when superseded by § 73.7;
- Subject to the security provisions regarding development of a security plan until June 12, 2003, when superseded by the requirement to develop a security plan under § 73.11;
- Subject to the security provisions of the § 72.6 regulations regarding implementation of a security plan until September 12, 2003, when superseded by the requirement to fully comply with § 73.11;
- Subject to the training provisions of the § 72.6 regulations related to security until September 12, 2003, when superseded by the requirement to fully comply with § 73.13; and
- Subject to the transfer provisions of the § 72.6 regulations until March 12, 2003, when superseded by § 73.14.

The following is a timeline of the registration phase-in period that is described in the previous paragraph:

2/7/03 Rule effective	3/12/03 Application due	4/12/03 DOJ review
73.1 Definitions 73.2 Purpose and scope 73.3 General prohibition 73.4 Non-overlap select biological agents and toxins 73.5 Overlap select biological agents and toxins 73.6 Exemptions from requirements under this part 73.9 Responsible Official 73.10 Safety 73.12 Emergency Response 73.13 Training (Safety and Emergency Response Provisions) 73.15 Records 73.16 Inspections 73.17 Notification for theft, loss, or release 73.18 Appeals 73.19 Civil money penalties 73.20 Criminal penalties 73.21 Submissions and forms	—Application certifies compliance with effective sections. 73.8—Certifies that applications for DOJ review for entity and RO submitted. 73.14—Transfer section effective	73.8 Application for DOJ review for individuals submitted. —Entity and RO DOJ review completed.
6/12/03 DOJ review/security	**9/12/03 Security/Training plan**	**11/12/03 Full compliance**
73.8—Individual DOJ review complete 73.11—Development of security plan	73.11 Security plan implemented 73.13 Training (security provisions	73.7—Registration section effective —Entity must be in full compliance with Part 73

We have also provided a more limited phase-in for entities that on February 7, 2003, were not already conducting activities under a certificate of registration issued under § 72.6 of this chapter and were not already lawfully possessing select agents as follows:

(1) On and after February 7, 2003, the following sections are applicable: §§ 73.1 through 73.6 (definitions, purpose and scope, general prohibition, HHS select agents and toxins, overlap select agents and toxins, exemptions from requirements under this part); §§ 73.8 through 73.10 (Security risk assessments, Responsible Official, Safety); §§ 73.12 through 73.21 (emergency response, training, transfers, records; inspections; notification for theft, loss, or release; administrative review; civil money penalties; criminal penalties; and submissions and forms) and must hold a valid permit under 9 CFR part 122 and/or 42 CFR part 71.54.

(2) On and after September 12, 2003, the provisions of § 73.11 (security) are applicable.

(3) On and after November 12, 2003, the provisions of § 73.7 (registration) are applicable.

(4) During the period from February 7, 2003, through November 11, 2003, such an entity may not conduct activities regulated under this part unless the entity has submitted to HHS or USDA an application package under § 73.7 certifying compliance with the provisions referred to in paragraph (b)(2) of this section.

Civil Money Penalties

In 1981, Congress enacted the civil money penalty statute, section 1128A of the Social Security Act (42 U.S.C. 1320a–7a), as one of several administrative remedies to combat increases in fraud and abuse. The civil money penalty law authorized the HHS Secretary and the Inspector General to impose civil money penalties and program exclusions on individuals and entities whose wrongdoing caused injury to HHS programs or their beneficiaries. Since 1981, the civil money penalty provisions have been expanded to apply by reference to numerous types of fraudulent and abusive activities.

The Act specifically authorized civil money penalties against any individual or other person violating the part 73 regulations (42 U.S.C. 262a (i)). The Act incorporates by reference many of the provisions of section 1128A of the Social Security Act. As a result, and in accordance with section 1128A(j)(2) of the Social Security Act, the Office of the Inspector General may impose a civil money penalty in an amount not exceeding $250,000 in the case of an individual, and up to $500,000 in the case of any other person, who violates the Act. Accordingly, to address this new civil money penalty authority, we added provisions to the part 73 regulations at § 73.19 and are amending 42 CFR parts 1003 as follows:

- In § 1003.100, Basis and purpose, we are revising paragraph (a), redesignating paragraph (b)(3) to read as (b)(4), and adding a new paragraph (b)(3), stating the broad purpose of this new civil money penalty authority.
- In § 1003.101, Definitions, we are adding a definition for the term "Select agents and toxins" consistent with the definition in the part 73 regulations.
- In § 1003.102, Basis for CMPs and assessments, we are redesignating existing paragraphs (d) and (e) to read respectively as paragraphs (e) and (f), and adding a new paragraph (d) to cross-reference the implementing regulations and the OIG's authority to impose penalties for determined violations.
- In § 1003.103, Amount of penalty, we are adding a new paragraph (l) to address the $250,000/$500,000 maximum penalty amounts.

The OIG specifically seeks public comments on the possible inclusion of specific mitigating and aggravating factors in considering penalty amounts.

Disclosure Provisions

The Act (42 U.S.C. 262a (h)) prohibits the disclosure under the Freedom of Information Act (5 U.S.C. 552) of certain information concerning registrations; transfer documentation; safeguard and security measures; notifications of

releases; and evaluations and reports of inspections.

Authority for Interim Final Rule

The Act requires this document to be published as an interim final rule (42 U.S.C. 262a, note).

Paperwork Reduction Act

The Centers for Disease Control and Prevention (referred to below as the CDC) has determined that the Paperwork Reduction Act (44 U.S.C. Chapter 35) applies to the data collection activities in this Interim Final Rule. In compliance with the Paperwork Reduction Act, CDC publishes a list of information collection requests under review by the Office of Management and Budget (OMB). To request more information on the proposed data collection or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. CDC is requesting an emergency clearance from OMB to collect data under the Interim Final Rule. Written comments should be received within 30 days of this notice. Send written comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS D–24, Atlanta, Georgia 30333. OMB is expected to act on this request within 60 days of publication of this notice.

Proposed Project: Possession, Use, and Transfer of Select Agents and Toxins—New—Office of the Director (OD), Centers for Disease Control and Prevention. As explained above, the Act specifies that the HHS Secretary shall provide for the establishment and enforcement of standards and procedures governing the possession and use of Select Agents. Also as explained above, the part 73 regulations provide that facilities that possess or use within the United States, receive from outside the United States, or transfer within the United States, select agents or toxins must register with the HHS Secretary. The HHS Secretary has designated CDC as the agency responsible for collecting this information.

CDC is proposing to collect this information through the use of five separate forms. These forms are: (1) Application for Registration; (2) Facility Notification Form; (3) Request for Exemption; (4) Transfer of Select Agent Form; and (5) Clinical and Diagnostic Laboratory Reporting Form.

The Application for Registration (CDC Form 0.1319) will be used by facilities to register with CDC. The Application for Registration requests facility information, a list of select agents and toxins in use, possession, or for transfer by the facility, characterization of the select agent, and laboratory information. This form is a modification of an existing form approved under OMB Control No. 0920–0199. Estimated average time to complete this form is 3 hours, 45 minutes for an entity with one principal investigator working with one select agent. CDC estimates that entities will need an additional 45 minutes for each additional investigator or select agent. This is an increase of 1 hour, 45 minutes over the previous form due to new reporting requirements for security and identification of those individuals the entity has designated to have a legitimate need to handle or use select agents or toxins.

Facilities must amend their registration if certain changes occur in the information submitted to the HHS Secretary. To apply for an amendment to a certificate of registration, an entity must obtain the relevant portion of the application package and submit the information requested in the package to CDC. Estimated time to amend a registration package is 60 minutes.

The Facility Notification Form (CDC Form 0.1316) must be completed by facilities whenever there is release of a select agent or theft or loss of a select agent. This is a new form. Estimated average time to complete this form is 60 minutes.

The Request for Exemption Form (CDC Form 0.1317) will be used by facilities that are using select agents or toxins in investigational new drug testing or in cases of public health emergency. This is a new form. Estimated average time to complete this form is 70 minutes.

The Transfer of Select Agent Form (CDC Form EA–101) will be used by facilities requesting transfer of a select agent or toxin to their facilities and by the facility transferring the agent. This is a modification of an existing form approved under OMB Control No. 0920–0199. Estimated average time to complete this form is 1 hour, 45 minutes. This is an increase of 75 minutes due to procedural changes.

The Clinical and Diagnostic Laboratory Exemption Report (CDC Form 0.1318) will be used by clinical and diagnostic laboratories to notify the HHS Secretary that select agents or toxins identified as the result of diagnosis or proficiency testing have been properly disposed of. This is a new form. Estimated average time to complete this form is 60 minutes.

In addition to the standardized forms, the part 73 regulations also outline situations in which an entity must notify or make a request of the HHS Secretary in writing and CDC is requesting OMB approval to collect this information. The regulation states that an entity must notify the HHS Secretary in writing at least five business days before destroying select agents or toxins. The estimated time to gather the information and submit this notification is 30 minutes. An entity may also apply to the HHS Secretary for an expedited review of an individual by the Attorney General. To apply for this expedited review, an entity must submit a request in writing to the HHS Secretary establishing the need for such action. The estimated time to gather the information and submit this request is 30 minutes. Entities should be aware that CDC is not developing standardized forms to use in these situations. Rather, the entity should provide the information as requested in the appropriate section of the regulation.

As part of the safety requirements of this regulation, the Responsible Officer is required to conduct regular inspections (at least annually) of the laboratory where the select agents and toxins are stored. The results of these inspections must be documented. CDC estimates that, on the average, such documentation will take one hour.

Finally, as part of the safety requirements of this regulation, the entity is required to record the identity of the individual trained, the date of training, and the means used to verify that the employee understood the training. Estimated time for this documentation is 2 hours per principal investigator.

An entity or an individual may request administrative review of a decision denying or revoking certification of registration in writing within 30 calendar days after the adverse decision. This request should include a statement of the factual basis for the review. CDC estimates the time to prepare and submit such a request is four hours.

Finally, an entity must implement a system to ensure that certain records and databases are accurate and that the authenticity of records may be verified. The time to implement such a system is estimated to average four hours.

The total annualized burden for this data collection is 30,777 hours.

CFR reference	Data collection	Number of respondents	Responses per respondent	Average hourly burden
73.7(b)	Registration Application	817	1	3.75
73.7(d)	Amendment to Registration Application	817	2	1
73.17(a)(e)	Notification Form	10	1	1
73.6(c–e)	Request for Exemption	17	1	70/60
73.14	Transfer of Select Agent	1,000	5	1.75
73.6(a)(2)	Clinical and Diagnostic Laboratory Exemption Report	1,000	4	1
73.7(h)	Notification of inactivation	6	1	30/60
73.9(g)	Request expedited review	6	1	30/60
73.10(b)	Documentation of Self-Inspection	817	1	1
73.13(f)	Documentation of training	817	1	2
73.18	Administrative Review	14	1	4
73.15(d)	Ensure secure Recordkeeping System	817	1	4

Executive Order 12866 and Regulatory Flexibility Act

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

In the course of developing the rule, CDC considered the rule's costs and benefits. CDC's analysis is summarized below.

Affected Entities. At least 1,653 entities have indicated that they possess select agents or toxins. Of these, 1,167 entities are expected to have HHS select agents or toxins or overlap select agents or toxins used in non-agricultural research. Of these 1,167 entities, only 817 are expected to register under the rule. The remaining 350 entities perform only diagnostic work and would be exempted from most of the provisions of the rule, thereby avoiding most of the regulatory burden associated with the rule.

The entities generally fall into one of four categories: academic institutions and biomedical centers; commercial manufacturing facilities (the pharmaceutical industry); federal, state, and local laboratories, including clinical and diagnostic laboratories; and research facilities. Based on the initial notifications, academic institutions and commercial facilities comprise 81 percent of the regulated entities.

The expected registered entities are estimated to have about 20,000 staff that will be required to submit information to the Attorney General for approval. In general, entities limit access to select agents or toxins to a far smaller population than their overall workforce. In most cases, this smaller population is composed of scientific staff. The number of employees directly handling select agents or toxins typically ranges from approximately three individuals at smaller commercial and state entities to more than one hundred researchers at some large academic institutions. On average, commercial entities authorize approximately 12 individuals to work with select agents or toxins. Similarly, at state entities the average number of authorized employees is estimated at about 15. Authorized populations at research institutes and at federal entities are larger, with approximately 25 employees handling select agents or toxins on average. Academic institutions have the largest staff directly working with select agents or toxins, averaging almost 40 authorized persons per entity.

Costs. To determine the burden that the interim final rule will impose, CDC contacted a number of entities to discuss existing practices. To protect staff as well as the public, entities using select agents or toxins already employ a variety of laboratory safety practices. In general, entities are adhering to guidance in the "Biosafety in Microbiological and Biomedical Laboratories (BMBL)," 4th Edition, as applicable to their specific biosafety level category (*e.g.*, BSL2, BSL3, BSL4) category. Biosafety levels range from BSL1 through BSL4, although BSL2 represents the minimum level at which laboratories might reasonably work with limited quantities of certain select agents. The analysis assumes that only a relatively small number of laboratories (52 laboratories, or 6.4 percent of the 817 expected to register) use safety practices that are inadequate for appropriate handling of select agents.

There is wide variation in current security practices, although there is a correlation between BSL levels and security levels. For example, BSL–3 laboratories tend to have more security than BSL–2 laboratories. Nevertheless, even for laboratories of the same type or BSL level, some variation exists. There also appears to be systematic variation across laboratories of different types. In general, security is relatively strong at federal laboratories, research institutes, and commercial laboratories; security practices at academic institutions and state laboratories are more variable.

Most entities (approximately 70 percent) have a training program in place that addresses the safety of staff that is in proximity to or handling select agents. Of the remaining entities (that do not have a standard safety training program in place), some of them train people on the job as necessary for the employee to learn some skills or improve his or her proficiency. All commercial entities have a standardized safety training program in place—at the very least for the technical staff that work in the laboratories. The vast majorities of entities (85 percent) have a system in place to record and monitor the inventory of select agents or toxins.

Because many of the laboratories that will register under this rule are already substantially in compliance with the practices required, the costs of the rule are limited. The median annualized cost of the rule is estimated to range from $9,300 to $201,000 (annualized over 20 years). The estimated first year cost of the rule ranges from $23,400 for a small commercial entity with a BSL 3 lab to $730,400 for a medium university with a BSL2–3 lab. The total annualized cost of the rule is estimated to be $41 million.

Most of the cost of the rule (over 60 percent) is attributable to four initial activities: limiting access to select agents and work areas; developing and implementing a security plan; developing and implementing a safety plan; and obtaining risk assessments for existing staff.

Benefits. The benefits to public health and safety from implementation of the rule are clear, although difficult to quantify. The benefits of the interim final rule result from the strengthened prevention that the rules provide against

either accidental or intentional release of a select agent or toxin. The cost of such an event in human life could be very high. A release caused by one of the select agents or toxins would require a complicated and expensive emergency response effort. This effort could include extensive public health measures, such as quarantine, preventative treatment and health testing for large numbers of potentially exposed persons, and extensive decontamination. Substantial costs could be incurred by hospitals and other medical facilities and institutions of government at all levels. A release, or widespread fear of one, also would create significant secondary effects. It could disrupt business, transportation, and many other aspects of normal behavior, on both a short-term and potentially a long-term basis.

The impacts resulting from the October 2001 anthrax attacks provide an example of the costs that a limited release could incur. The anthrax attacks caused five fatalities and 17 illnesses, disrupted business and government activities, closed substantial parts of the postal service, and caused widespread apprehension and changes in behavior. Costs included more than $23 million to decontaminate one Senate office building; approximately $2 billion in revenues lost to the postal service, and as much as $3 billion in additional costs to the postal service for cleanup of contamination and procurement of mail-sanitizing equipment. Substantial costs due to lost productivity throughout the economy and from ongoing costs of the investigations into the incident are additional impacts.

Implementation of the interim final rule will provide a means of determining where select agents and toxins are located; ensure that their transfer, storage, and use can be tracked; provide for the screening of personnel with access to such agents or toxins; and require that entities in possession of such agents or toxins develop and implement effective means of biosafety and physical security. The benefit of these provisions is a reduced likelihood of either an accidental or intentional release of select agents and toxins and the consequent avoidance of costs associated with such a release.

In large part, the rule establishes common sense rules that already should be followed by entities conducting activities under the rule. Moreover, any costs of compliance should not be significant. The annualized cost on small entities would not exceed one percent of sales or revenue stream and the initial cost would not exceed three percent of sales or revenue stream. A copy of the economic analysis, "Regulatory Impact Analysis, 42 CFR part 73, Select Biological Agents and Toxins, Interim Final Rule," is available from on the CDC Web site at *http://www.cdc.gov*.

Therefore, the HHS Secretary hereby certifies that the interim final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532 that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

List of Subjects in 42 CFR Part 73

Biologics, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Transportation.

List of Subjects in 42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs-health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties, Social security.

Dated: December 4, 2002.

Tommy G. Thompson,

Secretary.

For the reasons stated in the preamble, 42 CFR Chapters I and V are amended as follows:

1. Part 73 is added to 42 CFR chapter I to read as follows:

PART 73—SELECT AGENTS AND TOXINS

73.0 Applicability and related requirements.
73.1 Definitions.
73.2 Purpose and scope.
73.3 General prohibition.
73.4 HHS select agents and toxins.
73.5 Overlap select agents and toxins.
73.6 Exemptions from requirements under this part.
73.7 Registration.
73.8 Security risk assessments.
73.9 Responsible Official.
73.10 Safety.
73.11 Security.
73.12 Emergency response.
73.13 Training.
73.14 Transfers.
73.15 Records.
73.16 Inspections.
73.17 Notification for theft, loss, or release.
73.18 Administrative review.
73.19 Civil money penalties.
73.20 Criminal penalties.
73.21 Submissions and forms.

Authority: 42 U.S.C. 262a; sections 201–204, 221 and 231 of Title II of Public Law 107–188, 116 Stat. 637 (42 U.S.C. 262a)

§ 73.0 Applicability and related requirements.

(a) For those entities that on February 7, 2003, were conducting activities under a certificate of registration issued under § 72.6 of this chapter, or were lawfully possessing select agents and toxins, the provisions of part 73 and § 72.6 of this chapter are applicable as follows:

(1) On and after February 7, 2003, the following sections are applicable: §§ 73.1 through 73.6 (definitions, purpose and scope, general prohibition, HHS select agents and toxins, overlap select agents and toxins, exemptions from requirements under this part); § 73.9 (Responsible Official); § 73.10 (Safety); § 73.12 (emergency response); and §§ 73.15 through 73.21 (records; inspections; notification for theft, loss, or release; administrative review; civil money penalties; criminal penalties; and submissions and forms).

(2) On and after February 7, 2003, the provisions of § 73.13 concerning training related to safety and emergency response are applicable; and on and after September 12, 2003, the remaining provisions of § 73.13, including those concerning training related to security, are applicable.

(3) On and after March 12, 2003, the provisions of § 73.14 (transfers) are applicable.

(4) On and after April 12, 2003, the provisions of § 73.8 regarding security risk assessments for the entity, the Responsible Official, and any individual who owns or controls the entity are applicable; and on and after June 12, 2003, the remainder of § 73.8 (including the provisions regarding individual risk assessments for other than the Responsible Official or any individual who owns or controls the entity) is applicable.

(5) On and after June 12, 2003, the provisions of § 73.11 regarding the development of a security plan are applicable, and on and after September 12, 2003, the remainder of the provisions of § 73.11, including the provisions regarding the implementation of a security plan, is applicable.

(6) On and after November 12, 2003, the provisions of § 73.7 (registration) are applicable.

(b) The following also applies to those entities that on February 7, 2003, already were conducting activities under a certificate of registration issued under § 72.6 of this chapter or already were lawfully possessing select agents and toxins:

(1) During the period from March 12, 2003, through November 11, 2003, such an entity may not conduct activities regulated under this part unless the entity has submitted to HHS or USDA an application package under § 73.7 certifying compliance with the provisions referred to in paragraph (a)(1) of this section and the provisions in § 73.13 concerning training related to safety and emergency response.

(2) During the period from March 12, 2003, through April 11, 2003, such an entity may not conduct activities regulated under this part unless the entity has submitted applications for approval under § 73.8 (security risk assessment) to the Attorney General for the entity, the Responsible Official, and any individual who owns or controls the entity.

(3) During the period from April 12, 2003, through June 11, 2003, such an entity may not conduct activities regulated under this part unless the entity has submitted applications for approval under § 73.8 (security risk assessments) to the Attorney General for all individuals (other than the Responsible Official and any individual who owns or controls the entity) with access to select agents and toxins.

(4) Such an entity remains:

(i) Subject to the registration provisions of § 72.6 of this chapter until November 12, 2003, when superseded by § 73.7;

(ii) Subject to the security provisions of § 72.6 of this chapter regarding development of a security plan until June 12, 2003, when superseded by the requirement to develop a security plan under § 73.11;

(iii) Subject to the security provisions of § 72.6 of this chapter regarding implementation of a security plan until September 12, 2003, when superseded by the requirement to fully comply with § 73.11;

(iv) Subject to the training provisions of § 72.6 of this chapter related to security until September 12, 2003, when superseded by the training provisions of § 73.13 relating to security; and

(v) Subject to the transfer provisions of § 72.6 of this chapter until March 12, 2003, when superseded by § 73.14.

(c) For those entities that on February 7, 2003, were not already were conducting activities under a certificate of registration issued under § 72.6 of this chapter and were not already lawfully possessing select agents and toxins, the provisions of part 73 are applicable as follows:

(1) On and after February 7, 2003, the following sections are applicable: §§ 73.1 through 73.6 (definitions, purpose and scope, general prohibition, HHS select agents and toxins, overlap select agents and toxins, exemptions from requirements under this part); §§ 73.8 through 73.10 (Security risk assessments, Responsible Official, Safety); §§ 73.12 through 73.21 (emergency response, training, transfers, records; inspections; notification for theft, loss, or release; administrative review; civil money penalties; criminal penalties; and submissions and forms) and must hold a valid permit under 9 CFR part 122 and/or 42 CFR part 71.54.

(2) The provisions of § 73.11 are applicable on and after September 12, 2003.

(3) On and after November 12, 2003, the provisions of § 73.7 (registration) are applicable.

(4) During the period from February 7, 2003, through November 11, 2003, such an entity may not conduct activities regulated under this part unless the entity has submitted to HHS or USDA an application package under § 73.7 certifying compliance with the provisions referred to in paragraph (b)(2) of this section.

§ 73.1 Definitions.

For purposes of this part:

Biological agent means any microorganism (including, but not limited to, bacteria, viruses, fungi, rickettsiae, or protozoa), or infectious substance, or any naturally occurring, bioengineered, or synthesized component of any such microorganism or infectious substance, capable of causing death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism; deterioration of food, water, equipment, supplies, or material of any kind; or deleterious alteration of the environment.

CDC means Centers for Disease Control and Prevention of the Department of Health and Human Services.

Diagnosis means the analysis of specimens for the purpose of identifying or confirming the presence of a listed select agent *or toxin* provided that such analysis is directly related to protecting the public health or safety.

Entity means any government agency (Federal, State, or local), academic institution, corporation, company, partnership, society, association, firm, sole proprietorship, or other legal entity.

HHS means the Department of Health and Human Services.

HHS Secretary means the Department of Health and Human Services or his or her designee, unless otherwise specified.

HHS select agent or toxin means a biological agent or toxin included in § 73.4.

Overlap select agent or toxin means a biological agent or toxin included in § 73.5.

Proficiency testing means a sponsored, time-limited analytical trial whereby one or more analytes, previously confirmed by the sponsor, are submitted to the testing laboratory for analysis and where final results are graded, scores are recorded and provided to participants, and scores for participants are evaluated.

Principal investigator means the one individual who is designated by the entity to direct a project or program and who is responsible to the entity for the scientific and technical direction of that project or program.

Select agent or toxin or *select agent and toxin* without identification as HHS or overlap means all of those biological agents or toxins included in §§ 73.4 and 73.5 of this part.

Toxin means the toxic material or product of plants, animals, microorganisms (including, but not limited to, bacteria, viruses, fungi, rickettsiae, or protozoa), or infectious substances, or a recombinant or synthesized molecule, whatever their origin and method of production, and includes any poisonous substance or biological product that may be engineered as a result of biotechnology, produced by a living organism; or any poisonous isomer or biological product, homolog, or derivative of such a substance.

United States means the United States of America, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

USDA means the United States Department of Agriculture.

USDA Secretary means the Department of Agriculture or his or her designee, unless otherwise specified.

Verification means the processes required to assure the accuracy, precision, and the analytical sensitivity and specificity of any procedure used for diagnosis.

§ 73.2 Purpose and scope.

(a) This part sets forth requirements regarding the possession or use in the United States, receipt from outside the United States, or transfer within the United States, of select agents and toxins. The requirements are designed to implement provisions of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188). The Act was

designed to provide protection against the effects of misuse of select agents and toxins whether inadvertent or the result of terrorist acts against the United States homeland or other criminal acts. The agents and toxins subject to requirements under this part are those that have the potential to pose a severe threat to public health and safety. They are further identified as either HHS select agents and toxins or overlap select agents and toxins. The term HHS select agents and toxins refers to those select agents and toxins subject to these regulations but not subject to USDA requirements at 9 CFR part 121. The overlap group consists of those select agents and toxins subject to requirements promulgated by the HHS Secretary under this part and also subject to corresponding requirements promulgated by USDA at 9 CFR part 121.

(b) This part does not set requirements for the exportation of select agents or toxins. The Department of Commerce has primary responsibility for regulating the exportation of microorganisms and toxins in Title 15 of the Code of Federal Regulations.

(c) This part does not set requirements for the transportation in commerce of select agents or toxins. The Department of Transportation has primary responsibility for regulating the transportation of such select agents and toxins as hazardous materials under 49 CFR parts 171 through 180.

§ 73.3 General prohibition.

An entity or individual may not possess or use in the United States, receive from outside the United States, or transfer within the United States, a select agent or toxin unless such activities are conducted for a lawful purpose and in accordance with the provisions of this part. Registration, exclusions, and exemptions are automatically revoked when any event occurs that results in an entity or individual no longer being eligible.

§ 73.4 HHS select agents and toxins.

Except for exclusions under paragraph (f) of this section, the viruses, bacteria, fungi, toxins, genetic elements, recombinant nucleic acids, and recombinant organisms specified in paragraphs (a) through (e) of this part are HHS select agents and toxins.

(a) Viruses:

(1) Crimean-Congo haemorrhagic fever virus.

(2) Ebola viruses.

(3) Cercopithecine herpesvirus 1 (Herpes B virus).

(4) Lassa fever virus.

(5) Marburg virus.

(6) Monkeypox virus.

(7) South American Haemorrhagic Fever viruses (Junin, Machupo, Sabia, Flexal, Guanarito).

(8) Tick-borne encephalitis complex (flavi) viruses (Central European Tick-borne encephalitis, Far Eastern Tick-borne encephalitis [Russian Spring and Summer encephalitis, Kyasanur Forest disease, Omsk Hemorrhagic Fever]).

(9) Variola major virus (Smallpox virus) and Variola minor virus (Alastrim).

(b) Bacteria:

(1) *Rickettsia prowazekii.*

(2) *Rickettsia rickettsii.*

(3) *Yersinia pestis.*

(c) Fungi: *Coccidioides posadasii.*

(d) Toxins:

(1) Abrin.

(2) Conotoxins.

(3) Diacetoxyscirpenol.

(4) Ricin.

(5) Saxitoxin.

(6) Tetrodotoxin.

(7) Shiga-like ribosome inactivating proteins.

(e) Genetic Elements, Recombinant Nucleic Acids, and Recombinant Organisms:

(1) Select agent viral nucleic acids (synthetic or naturally derived, contiguous or fragmented, in host chromosomes or in expression vectors) that can encode infectious and/or replication competent forms of any of the select agent viruses.

(2) Nucleic acids (synthetic or naturally derived) that encode for the functional form(s) of any of the toxins listed in paragraph (d) of this section if the nucleic acids:

(i) Are in a vector or host chromosome;

(ii) Can be expressed *in vivo* or *in vitro*; or

(iii) Are in a vector or host chromosome and can be expressed *in vivo* or *in vitro*.

(3) Viruses, bacteria, fungi, and toxins listed in paragraphs (a) through (d) of this section that have been genetically modified.

(f) Exclusions:

(1) This section does not include any select agent or toxin that is in its naturally occurring environment provided it has not been intentionally introduced, cultivated, collected, or otherwise extracted from its natural source.

(2) This section does not include non-viable select agent organisms or nonfunctional toxins.

(3) Paragraph (a) of this section does not include the vaccine strain of Junin virus (Candid #1).

(4) Paragraph (d) of this section does not include the following toxins (in the purified form or in combinations of pure and impure forms) if the aggregate amount under the control of a principal investigator does not, at any time, exceed the amount specified: 100 mg of Abrin; 100 mg of Conotoxins; 1,000 mg of Diacetoxyscirpenol; 100 mg of Ricin; 100 mg of Saxitoxin; 100 mg of Shiga-like ribosome inactivating proteins; or 100 mg of Tetrodotoxin.

(5) The HHS Secretary may exclude from this section attenuated strains of HHS select agents or toxins upon a determination that they do not pose a severe threat to the public health and safety. To apply for an exclusion an applicant must submit a request in writing in accordance with § 73.21 to the HHS Secretary establishing that the attenuated strain or toxin is eligible for exclusion. The HHS Secretary will provide a written decision granting the request, in whole or in part, or denying the request. An exclusion will be effective upon notification to the applicant. Exclusions will be published in the notice section of the **Federal Register** and will be listed on the CDC Web site at *http://www.cdc.gov*. Exclusions also will be referenced in this section when changes are made based on periodic reviews.

§ 73.5 Overlap select agents and toxins.

Except for exclusions under paragraph (f) of this section, the viruses, bacteria, fungi, toxins, genetic elements, recombinant nucleic acids, and recombinant organisms specified in paragraphs (a) through (e) of this part are overlap select agents and toxins.

(a) Viruses:

(1) Eastern Equine Encephalitis virus.

(2) Nipah and Hendra Complex viruses.

(3) Rift Valley fever virus.

(4) Venezuelan Equine Encephalitis virus.

(b) Bacteria:

(1) *Bacillus anthracis.*

(2) *Brucella abortus.*

(3) *Brucella melitensis.*

(4) *Brucella suis.*

(5) *Burkholderia mallei* (formerly *Pseudomonas mallei*).

(6) *Burkholderia pseudomallei* (formerly *Pseudomonas pseudomallei*).

(7) Botulinum neurotoxin producing species of *Clostridium.*

(8) *Coxiella burnetii.*

(9) *Francisella tularensis.*

(c) Fungi: *Coccidioides immitis.*

(d) Toxins:

(1) Botulinum neurotoxins.

(2) *Clostridium perfringens* epsilon toxin.

(3) Shigatoxin.

(4) Staphylococcal enterotoxins.

(5) T–2 toxin.

(e) Genetic elements, recombinant nucleic acids, and recombinant organisms:

(1) Select agent viral nucleic acids (synthetic or naturally derived, contiguous or fragmented, in host chromosomes or in expression vectors) that can encode infectious and/or replication competent forms of any of the select agent viruses.

(2) Nucleic acids (synthetic or naturally derived) that encode for the functional form(s) of any of the toxins listed in paragraph (d) of this section if the nucleic acids:

(i) Are in a vector or host chromosome;

(ii) Can be expressed *in vivo* or *in vitro*; or

(iii) Are in a vector or host chromosome and can be expressed *in vivo* or *in vitro*.

(3) Viruses, bacteria, fungi, and toxins listed in paragraphs (a) through (d) of this section that have been genetically modified.

(f) Exclusions:

(1) This section does not include any select agent or toxin that is in its naturally occurring environment provided that it has not been intentionally introduced, cultivated, collected, or otherwise extracted from its natural source.

(2) This section does not include non-viable select agent organisms or nonfunctional toxins.

(3) Paragraph (a) does not include the vaccine strain of Rift Valley fever virus (MP–12) or Venezuelan Equine encephalitis virus vaccine strain TC–83.

(4) Paragraph (d) of this section does not include the following toxins (in the purified form or in combinations of pure and impure forms) if the aggregate amount under the control of a principal investigator does not, at any time, exceed the amount specified: 0.5 mg of Botulinum neurotoxins; 5 mg of Staphylococcal enterotoxins; 100 mg of *Clostridium perfringens* epsilon toxin; 100 mg of Shigatoxin; or 1,000 mg of T–2 toxin.

(5) The HHS Secretary, after consultation with the USDA Secretary, may exclude from this section attenuated strains of overlap select agents or toxins upon a determination that they do not pose a severe threat to the public health and safety and do not meet the criteria in 9 CFR part 121 for inclusion. To apply for an exclusion, an applicant must submit a request in writing in accordance with § 73.21 to the HHS Secretary or the USDA Secretary in accordance with 9 CFR part 121, establishing that the attenuated strain is eligible for exclusion. In response to an application submitted to the HHS Secretary, the HHS Secretary will provide a written decision granting the request, in whole or in part, or denying the request. An exclusion will be effective upon notification to the applicant. Exclusions will be published in the notice section of the **Federal Register** and will be listed on the CDC Web site at *http://www.cdc.gov*. Also, they will be referenced in this section when changes are made based on periodic reviews.

§ 73.6 Exemptions from requirements under this part.

(a) An entity is exempt from the provisions of this part, other than § 73.14 (transfer), provided that all of the following apply:

(1) The only activities conducted by the entity that are subject to this part concern select agents or toxins that are contained in specimens or in isolates from specimens presented for diagnosis, verification, or proficiency testing;

(2) Upon identification of a select agent or toxin as the result of diagnosis or verification, the entity immediately reports to the HHS Secretary by telephone, facsimile, or e-mail in accordance with § 73.21 any of the following: Variola major virus (Smallpox virus) and Variola minor (Alastrim), *Bacillus anthracis*, *Yersinia pestis*, Botulinum neurotoxins, *Francisella tularensis*, Ebola viruses, Marburg virus, Lassa fever virus, and South American Haemorrhagic Fever viruses (Junin, Machupo, Sabia, Flexal, Guanarito);

(3) The entity reports as required under Federal, State, or local law, to appropriate authorities;

(4) After the diagnosis, verification, or proficiency testing, the entity either transfers the specimens or isolates containing a select agent or toxin from the specimens to a facility eligible for receiving them under this part, or destroys them on-site by autoclaving, incineration, or by a sterilization or neutralization process sufficient to cause inactivation;

(5) The entity transfers or destroys those select agents or toxins used for diagnosis or testing within seven days after identification, unless directed otherwise by the Federal Bureau of Investigation or other law enforcement entity after consultation with the HHS Secretary; and

(6) The entity transfers or destroys those select agents or toxins used for proficiency testing within 90 days after receipt; and

(7) The entity prepares a record of the identification and transfer or destruction on CDC Form 0.1318, submits the completed form to the HHS Secretary in accordance with § 73.21 within seven days after identification, and maintains a copy of the record for a period of three years.

(b) Unless the HHS Secretary issues an order to an entity making specific provisions of this part applicable to protect the public health and safety, products that are, bear, or contain listed select agents or toxins that are cleared, approved, licensed, or registered under any of the following laws, are exempt from the provisions of this part insofar as their use is only for the approved purpose and meets the requirements of such laws:

(1) The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*);

(2) Section 351 of the Public Health Service Act pertaining to biological products (42 U.S.C. 262);

(3) The Act commonly known as the Virus-Serum-Toxin Act (21 U.S.C. 151–159); or

(4) The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq*).

(c) The HHS Secretary may exempt from the requirements of this part on a case-by-case basis an investigational product that is, bears, or contains a select agent or toxin, when such product is being used in an investigation authorized under a Federal Act referred to in paragraph (b) of this section and additional regulation under this part is not necessary to protect public health and safety. To apply for an exemption an applicant must submit to the HHS Secretary in accordance with § 73.21 a completed CDC Form 0.1317 certifying that the product is being used in an investigation authorized under a Federal Act referred to in paragraph (b) of this section, and that additional regulation under this part is not necessary to protect public health and safety. The HHS Secretary shall make a determination regarding the application within 14 calendar days after receipt, provided the application meets all of the requirements of this section and the application establishes that the investigation has been authorized under the cited Act. The HHS Secretary will provide a written decision granting the request, in whole or in part, or denying the request. The applicant must notify the HHS Secretary when an authorization for an investigation no longer exists. This exemption automatically ceases when such authorization is no longer in effect.

(d) The HHS Secretary may temporarily exempt an entity from the requirements of this part, in whole or in part, based on a determination that the exemption is necessary to provide for the timely participation of the entity in

response to a domestic or foreign public health emergency. With respect to the emergency involved, the exemption may not exceed 30 days, except that the HHS Secretary may grant one extension of an additional 30 days. To apply for an exemption or an extension of an exemption, an applicant must submit to the HHS Secretary in accordance with § 73.21 a completed CDC Form 0.1317 establishing the need to provide for the timely participation of the entity in a response to a domestic or foreign public health emergency. The HHS Secretary will provide a written decision granting the request, in whole or in part, or denying the request.

(e) Upon request of the USDA Secretary, after the USDA Secretary has granted an exemption under section 212(g)(1)(D) of the Agricultural Bioterrorism Protection Act of 2002 based on a finding that there is an agricultural emergency, the HHS Secretary may temporarily exempt an entity from the applicability of the requirements of this part, in whole or in part, to provide for the timely participation of the entity in response to the agricultural emergency. With respect to the emergency, the exemption under this part may not exceed 30 days, except that upon the request of the USDA Secretary, the HHS Secretary may grant one extension of an additional 30 days.

§ 73.7 Registration.

(a) An entity may not possess or use in the United States, receive from outside the United States, or transfer within the United States, any select agent or toxin unless the entity has been granted a certificate of registration by the HHS Secretary or the USDA Secretary.

(b) To apply for a certificate of registration an entity must:

(1) Obtain a registration application number from the HHS Secretary and then apply for approval under § 73.8 for the entity, the Responsible Official, and any individual who owns or controls the entity; and

(2) In accordance with § 73.21, submit the information requested to the HHS Secretary or the USDA Secretary as specified in the registration application package [CDC Form 0.1319]. Information submitted will be used to determine whether the applicant would be eligible to conduct activities under this part. Minimum information required includes:

(i) Identification information (*e.g.*, name, address, contact numbers, identification number assigned by the Attorney General for compliance with § 73.8);

(ii) The name, source, and characterization information on select agents and toxins included in the registration, and quantities held at the time of the application;

(iii) The location, including building and room and floor plans for each building and room, where each select agent or toxin will be stored or used;

(iv) Information addressing safety, security, emergency response plans, and training, including descriptions of any equivalent measures adopted pursuant to § 73.11(d);

(v) The name, position, and identification information regarding the Responsible Official, including the identification number assigned by the Attorney General for compliance with § 73.8;

(vi) A list of individuals who will need access to select agents and toxins;

(vii) A certification statement signed by the Responsible Official attesting to the accuracy of the information submitted; and

(viii) Any other information necessary for the determination.

(c) An application that covers any HHS select agents or toxins (regardless of whether it also covers overlap select agents or toxins) must be submitted to the HHS Secretary in accordance with § 73.21. An application that covers only overlap select agents or toxins may be submitted to either the HHS Secretary or the USDA Secretary.

(d) A certificate of registration will be valid only for the specific select agents and toxins, and the specified activities and locations that are consistent with the information provided by the entity upon which the certificate of registration or amendment was granted. The Responsible Official must promptly notify the HHS Secretary in writing in accordance with § 73.21, if a change occurs in any information submitted to the HHS Secretary in the application for the certificate of registration or amendments. This includes modifications to the list of individuals approved under § 73.8, changes in area of work, or changes in protocols or objectives of studies. To apply for an amendment to a certificate of registration to add select agents or toxins or to change specified activities or locations, an entity must obtain the relevant portion of the registration application package and submit the information requested in the package to the agency that issued the certificate of registration. The package must be submitted to the appropriate address specified in the package.

(e) In response to an application to the HHS Secretary for a certificate of registration or amendment for select agents and toxins, the HHS Secretary will issue a certificate of registration or amendment if it is determined that the stated activities would be lawful (based on information submitted by the applicant or otherwise obtained by the HHS Secretary) and meet the requirements of this part. Otherwise, the application for a certificate of registration or amendment will be denied. The HHS Secretary will issue a certificate of registration or amendment for an overlap select agent or toxin only if the USDA Secretary concurs that the requirements for obtaining a certificate of registration or amendment under 9 CFR part 121 have been met. The determination of whether a certificate of registration or amendment will be granted may be contingent upon inspection or submission of additional information.

(f) A certificate of registration will cover activities at only one general physical location (a building or a complex of buildings at a single mailing address).

(g) Unless terminated sooner in accordance with this paragraph, a certificate of registration will be valid for up to three years. To obtain a new certificate of registration an entity must submit a new application. (Note: To help ensure timely processing of an application for a certificate of registration or amendment, the applicant should submit the application at least eight weeks prior to the expiration date.)

(1) The HHS Secretary will terminate a certificate of registration based on a determination that the recipient no longer conducts activities covered by the certificate.

(2) Also, the HHS Secretary may terminate a certificate of registration based on a security risk assessment under § 73.8 or failure to comply with the provisions of this part, and may take such action immediately if necessary to protect the public health or safety. Upon such termination, any select agent or toxin in the possession of the entity must be destroyed or transferred as directed by the HHS Secretary.

(h) An entity must provide notice in writing to the HHS Secretary in accordance with § 73.21 at least five business days before destroying a select agent or toxin, if the destruction would be for the purpose of discontinuing activities with a select agent or toxin covered by a certificate of registration. This will allow the HHS Secretary to observe the destruction or take other action as appropriate.

§ 73.8 Security risk assessment.

(a) An entity may not possess or use in the United States, receive from outside the United States, or transfer within the United States, any select agent or toxin unless approved by the HHS Secretary or the USDA Secretary based on a security risk assessment by the Attorney General. This paragraph does not apply to Federal, State, or local governmental agencies, but does apply to the Responsible Official and others working for or otherwise acting on behalf of such agencies.

(b) An entity may not provide an individual access to a select agent or toxin and an individual may not access a select agent or toxin, unless the individual is approved by the HHS Secretary or the USDA Secretary, based on a security risk assessment by the Attorney General.

(c) To obtain a security risk assessment under this section, an entity must submit to the Attorney General the information requested for the entity, the Responsible Official, any individual who owns or controls the entity, and any other individuals required to obtain approval under this section. The determinations regarding approval will be made by the agency that is responsible for making determinations regarding the corresponding certificate of registration. An entity will receive prompt notice of action taken in response to a request for approval for the entity, the Responsible Official, and individuals. An individual will receive prompt notice of a denial of approval.

(d) The Attorney General will conduct a security risk assessment on entities and individuals whose identifying information is properly submitted. Based on the security risk assessment, the Attorney General will notify the HHS Secretary if the Attorney General identifies any entity, individual who owns or controls the entity, or any other individual who is:

(1) A restricted person under 18 U.S.C. 175b; or

(2) Reasonably suspected by any Federal law enforcement or intelligence agency of:

(i) Committing a crime specified in 18 U.S.C. 2332b(g)(5);

(ii) Having a knowing involvement with an organization that engages in domestic or international terrorism (as defined in 18 U.S.C. 2331) or with any other organization that engages in intentional crimes of violence; or

(iii) Being an agent of a foreign power (as defined in 50 U.S.C. 1801).

(e) The HHS Secretary will deny or revoke access to any select agent or toxin to an entity or individual identified by the Attorney General as a restricted person under paragraph (d)(1). The HHS Secretary will deny or revoke access to any select agent or toxin to an entity or individual identified by the Attorney General as meeting the criteria of paragraph (d)(2) unless determined by the HHS Secretary to be warranted in the interest of the public health and safety or national security. For individuals meeting the criteria of paragraph (d)(2) the HHS Secretary may provide a limited approval for a specified time based upon the finding that circumstances warrant such action in the interest of the public health and safety or national security.

(f) Unless a shorter period is granted under paragraph (e) of this section, an approval for an entity or individual under this section will be valid for five years unless terminated sooner. The HHS Secretary may terminate an approval for an entity or an individual based on a request from the entity or individual, a security risk assessment under this section, or a failure to comply with the provisions of this part, and may take such action immediately if necessary to protect the public health and safety, or national security.

(g) The HHS Secretary will request the Attorney General to expedite the review process for an individual and will take action to expedite the HHS Secretary's review process for an individual upon a showing of good cause (*e.g.*, public health or agricultural emergencies, national security, impending expiration of a research grant, a short-term visit by a prominent researcher). To apply for an expedited review, an entity must submit a request in writing in accordance with § 73.21 to the HHS Secretary establishing the need for such action. The HHS Secretary will provide a written decision granting the request, in whole or in part, or denying the request.

§ 73.9 Responsible Official.

(a) As a condition of conducting activities regulated under this part, an entity must identify and authorize an individual as the Responsible Official. The Responsible Official may identify one or more individuals, any of whom may serve as the Alternate Responsible Official when the Responsible Official is unavailable. The Responsible Official and all individuals identified to serve as the Alternate Responsible Official must meet all of the qualifications for a Responsible Official. The Responsible Official and all Alternate Responsible Officials must:

(1) Be approved under § 73.8;

(2) Be familiar with the requirements of this part; and

(3) Have authority and responsibility to ensure that the requirements of this part are met, on behalf of the entity.

(b) For purposes of this part, the Alternate Responsible Official acting in the absence of the Responsible Official may conduct all of those activities required under this part to be performed by the Responsible Official.

(c) The Responsible Official is responsible for ensuring compliance with the regulations, including:

(1) Developing and implementing safety, security and emergency response plans in accordance with § 73.10—§ 73.12;

(2) Allowing only approved individuals to have access to select agents or toxins in accordance with § 73.8 and § 73.11;

(3) Providing appropriate training for safety, security and emergency response in accordance with § 73.13;

(4) Transferring select agents or toxins in accordance with § 73.14;

(5) Providing timely notice of any theft, loss, or release of a select agent or toxin in accordance with § 73.13;

(6) Maintaining detailed records of information necessary to give a complete accounting of all activities related to select agents or toxins in accordance with § 73.15.

(7) The reporting of the identification of a select agent or toxin as a result of diagnosis, verification or proficiency testing in accordance with § 73.6.

§ 73.10 Safety.

(a) An entity subject to the provisions of this part, must develop and implement a safety plan. In developing a safety plan, an entity should consider:

(1) The biosafety standards and requirements for BSL 2, 3, or 4 operations, as they pertain to the respective select agents, that are contained in the CDC/NIH publication, "Biosafety in Microbiological and Biomedical Laboratories," including all appendices except Appendix F. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 371954, Pittsburgh, Pennsylvania, 75250–7954 or call in the Washington, DC metropolitan area 202–512–1800 or outside that area call toll free 1–866–512–1800. Copies may be inspected at the Centers for Disease Control and Prevention, 1600 Clifton Road, Mail Stop E–79, Atlanta, Georgia. This publication is also available on the CDC Web site at *http://www.cdc.gov*.

(2) The specific requirements for handling toxins found in 29 CFR 1910.1450, "Occupational Exposure to Hazardous Chemicals in Laboratories" and/or 29 CFR 1910.1200, "Hazard

Communication," whichever applies and specific provisions for handling toxins found in Appendix I in the CDC/NIH publication, "Biosafety in Microbiological and Biomedical Laboratories,"

(3) For provisions of the safety plan relating to genetic elements, recombinant nucleic acids and recombinant organisms, the "NIH Guidelines for Research Involving Recombinant DNA Molecules," (NIH Guidelines). This includes, among other things, provisions regarding risk assessment, physical containment, biological containment, and local review and applies to all recombinant DNA research, regardless of funding. Copies may be obtained from the Centers for Disease Control and Prevention, 1600 Clifton Road, Mail Stop E–79, Atlanta, Georgia, 30333. Copies may be inspected at the Centers for Disease Control and Prevention, 1600 Clifton Road, Mail Stop E–79, Atlanta, Georgia. The "NIH Guidelines for Research Involving Recombinant DNA Molecules," is also available on the CDC Web site at *http://www.cdc.gov.*

(b) The Responsible Official or his or her designee must conduct regular inspections (at least annually) of the laboratory where select agents and toxins are stored or used to ensure compliance with all of the procedures and protocols of the safety plan. The results of these inspections must be documented, and any deficiencies identified during inspections must be corrected.

(c) An entity may not conduct the following experiments unless approved by the HHS Secretary after consultation with experts:

(1) Experiments utilizing recombinant DNA that involve the deliberate transfer of a drug resistance trait to select agents that are not known to acquire the trait naturally, if such acquisition could compromise the use of the drug to control disease agents in humans, veterinary medicine, or agriculture.

(2) Experiments involving the deliberate formation of recombinant DNA containing genes for the biosynthesis of select toxins lethal for vertebrates at an LD50 < 100 ng/kg body weight.

(d) [Reserved]

§ 73.11 Security.

(a) An entity must develop and implement a security plan establishing policy and procedures that ensure the security of areas containing select agents and toxins. The security plan must be based on a systematic approach in which threats are defined, vulnerabilities are examined, and risks associated with those vulnerabilities are mitigated with a security systems approach.

(b) The plan must:

(1) Describe inventory control procedures, minimal education and experience criteria for those individuals with access to select agents or toxins, physical security, and cyber security;

(2) Contain provisions for routine cleaning, maintenance, and repairs; provisions for training personnel in security procedures; provisions for securing the area (*e.g.*, card access, key pads, locks) and protocols for changing access numbers or locks following staff changes;

(3) Describe procedures for loss or compromise of keys, passwords, combinations, etc.;

(4) Contain procedures for reporting suspicious persons or activities, loss or theft of listed agents or toxins, release of listed agents or toxins, or alteration of inventory records;

(5) Contain provisions for the control of access to containers where listed agents and toxins are stored; and procedures for reporting and removing unauthorized persons;

(6) Contain provisions for ensuring that all individuals with access, including workers and visitors, understand security requirements and are trained and equipped to follow established procedures;

(7) Establish procedures for reporting and removing unauthorized persons; and

(8) Establish procedures for securing the area when individuals approved under § 73.8 are not present (*e.g.*, card access system, key pads, locks), including protocols for changing access numbers or locks following staff changes.

(c) The security plan must be reviewed by the RO at least annually and after any incident.

(d) With respect to areas containing select agents and toxins, the entity must adhere to the following security requirements or implement measures to achieve an equivalent or greater level of security as the provisions below:

(1) Allow unescorted access only to individuals who have been approved under § 73.8 and who are performing a specifically authorized function during hours required to perform the defined job (including delivery to an outside shipping agent for transportation in commerce);

(2) Allow individuals not approved under § 73.8 to conduct routine cleaning, maintenance, repairs, and other non-laboratory functions only when escorted and continually monitored by individuals approved under § 73.8;

(3) Provide for the control of access to containers where select agents and toxins are stored by requiring freezers, refrigerators, cabinets, and other containers where stocks of select agents and toxins are stored to be locked (*e.g.*, card access system, lock boxes) when they are not in the direct view of approved staff, and by using other monitoring measures as needed, such as video surveillance;

(4) Require the inspection of all packages upon entry to and exit from the area;

(5) Establish a protocol for intra-entity transfers, including provisions for ensuring that the packaging, and movement from a laboratory to another laboratory or from a laboratory to a shipping place, is conducted under the supervision of an individual approved under § 73.8;

(6) Require that each approved individual under 73.8 does not share with any other person, his or her unique means (*e.g.*, keycards or passwords) of accessing the area or select agent or toxin;

(7) Require that each individual approved under § 73.8 report any of the following immediately to the Responsible Official:

(i) Any loss or compromise of their keys, passwords, combinations, etc.;

(ii) Any suspicious persons or activities;

(iii) Any loss or theft of select agents or toxins;

(iv) Any release of select agents or toxins; and

(v) Any sign that inventory and use records of select agents or toxins have been altered or otherwise compromised.

(e) The entity must separate areas where select agents and toxins are stored or used from the public areas of the buildings.

(f) Upon termination of the use, a select agent or toxin must be

(1) Securely stored in accordance with the requirements of this section;

(2) Transferred to another registered facility in accordance with § 73.14; or

(3) Destroyed on-site by autoclaving, incineration, or another recognized sterilization or neutralization process.

§ 73.12 Emergency response.

(a) An entity required to register under this part must develop and implement an emergency response plan that meets the requirements of OSHA Hazardous waste operations and emergency response standard at 29 CFR 1910.120. Nothing in this section is to supersede or preempt the enforcement of the emergency response requirements imposed by the other statute or regulation.

(b) The emergency response plan must be coordinated with any entity-wide plans. The plan must address such events as bomb threats, severe weather (hurricanes, floods), earthquakes, power outages, and other natural disasters or emergencies.

(c) The emergency response plan must address the following:

(1) The hazards associated with the use of the select agents and toxins;

(2) Any hazards associated with response actions that could lead to a spread of a select agent or toxin;

(3) Planning and coordination with outside parties;

(4) Personnel roles, lines of authority, training, and communication;

(5) Emergency recognition and prevention;

(6) Safe distances and places of refuge;

(7) Site security and control;

(8) Evacuation routes and procedures;

(9) Decontamination;

(10) Emergency medical treatment and first aid;

(11) Emergency alerting and response procedures;

(12) Critique of response and follow-up;

(13) Personal protective and emergency equipment; and

(14) Special procedures needed to address the hazards of specific agents.

§ 73.13 Training.

(a) An entity required to register under this part and falls outside of the OSHA Bloodborne Pathogen Standard 29 CFR 1910.1030(a) must provide information and training on safety and security for working with select agents and toxins to each individual approved for access under § 73.8 and each unapproved individual working in, or visiting, areas where select agents and toxins are handled or stored. The information and training must meet the requirements of this section and must ensure that all individuals who work in, or visit, the areas understand the hazards of select agents and toxins present in the area.

(b) The entity must provide information and training at the time of an individual's initial assignment to a work area where select agents or toxins are present and prior to assignments involving new exposure situations. The entity must provide refresher training annually.

(c) The Responsible Official must provide appropriate training in safety, containment, and security to all individuals with access to areas where select agents and toxins are handled or stored.

(d) In lieu of initial training for those individuals already involved in handling select agents or toxins, the Responsible Official may certify in writing that the individual has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities.

(e) The entity must ensure that each individual with access to areas where select agents or toxins are handled or stored received and understood the training required by this section unless certified under paragraph (d) of this section. The entity must record the identity of the individual trained, the date of training, and the means used to verify that the employee understood the training.

§ 73.14 Transfers.

A select agent or toxin may not be transferred from one entity to another entity within the United States (regardless of whether the transfer is interstate or intrastate), or received by an entity in the United States from an entity outside the United States, unless:

(a) The sender:

(1) Has a certificate of registration that covers the transfer of the particular select agent or toxin to be transferred,

(2) Meets the exemption requirements under § 73.6 (a) for the particular select agent or toxin to be transferred, or

(3) Is transferring the select agent or toxin from outside the United States (and all import requirements are met);

(b) The recipient has a certificate of registration that includes the particular select agent or toxin to be transferred;

(c) Prior to the transfer, the recipient and sender completes CDC Form EA–101, and the recipient submits to the HHS Secretary in accordance with § 73.21 a completed CDC Form EA–101.

(d) CDC has authorized the transfer based on the finding that the recipient has a certificate of registration covering the transfer of the select agent or toxin;

(e) The sender complies with all applicable laws concerning packaging and shipping;

(f) The Responsible Official of the recipient provides a completed paper copy or facsimile transmission of CDC Form EA–101 to the sender and to the HHS Secretary within 2 business days of receipt of the select agent or toxin; and

(g) The recipient immediately reports to the HHS Secretary if the select agent or toxin has not been received within 48 hours after the expected delivery time, or if the package received containing select agents or toxins has been leaking or was otherwise damaged.

(h) When the select agents or toxins are consumed or destroyed after a transfer, the recipient must within five business days report such fact to the HHS Secretary in accordance with § 73.21 on a CDC Form EA–101.

Note to § 73.14: This section does not cover transfers within an entity when the sender and the recipient are covered by the same certificate of registration.

§ 73.15 Records.

The Responsible Official must maintain complete records relating to the activities covered by this Part. Such records include:

(a) An entity required to register under this part must maintain an up-to-date, accurate list of the individuals approved under § 73.8 for access to select agents and toxins.

(b) The entity must maintain an accurate, current inventory of each select agent and toxin held. The inventory records must include the following information for each select agent and toxin:

(1) The name, characteristics, and source data;

(2) The quantity held on the date of the first inventory (toxins only);

(3) The quantity acquired, the source, and date of acquisition;

(4) The quantity, volume, or mass destroyed or otherwise disposed of and the date of each such action;

(5) The quantity used and date(s) of the use (toxins only);

(6) The quantity transferred, the date of transfer, and individual to whom it was transferred (this includes transfers within an entity when the sender and the recipient are covered by the same certificate of registration);

(7) The current quantity held (toxins only);

(8) Any select agent or toxin lost, stolen, or otherwise unaccounted for; and

(9) A written explanation of any discrepancies.

(c) The entity must maintain the following records:

(1) For access to the select agents or toxins:

(i) The name of each individual who has accessed any select agent or toxin;

(ii) The select agent or toxin used;

(iii) The date when the select agent or toxin was removed, if removed from long-term storage or holdings for stock cultures;

(iv) The quantity removed (toxins only);

(v) The date the select agent or toxin was returned to the long-term storage or holdings for stock cultures; and

(vi) The quantity returned (toxins only);

(2) For access to the area where select agents are used or stored:

(i) The name of each individual who has accessed the area;
(ii) The date and time the individual entered the area;
(iii) The date and time the individual left the area; and
(iv) For individuals not approved under § 73.8, the individual approved under § 73.8 who accompanied the unapproved individual into the area.
(d) The entity must implement a system to ensure that all records and databases created under paragraphs (b) and (c) of this section are accurate, and that the authenticity of records may be verified.
(e) The entity must create a record concerning inspections conducted under § 73.10(b).
(f) Safety, security, and emergency response plans.
(g) Training records.
(h) Transfer documents (CDC Form EA–101) and permits.
(i) Safety and security incident reports.
(j) The entity must maintain all records created under this part for three years.

§ 73.16 Inspections.

The HHS Secretary, without prior notification and with or without cause, shall be allowed to inspect any site at which activities regulated by this part are conducted and shall be allowed to inspect and copy any records relating to the activities covered by this part.

§ 73.17 Notification for theft, loss, or release.

(a) Upon discovery of a theft or loss of a select agent or toxin, an entity required to register under this part must immediately notify the HHS Secretary and State and local law enforcement. The notification must be reported to the HHS Secretary by either telephone, facsimile, or e-mail in accordance with § 73.21.
(b) Thefts or losses must be reported whether the select agent or toxin is subsequently recovered or the responsible parties are identified.
(c) When reporting a theft or loss, the entity must provide the following information:
(1) The name of the select agent or toxin and any identifying information (*e.g.*, strain or other characterization information);
(2) An estimate of the quantity lost or stolen;
(3) An estimate of the time during which the theft or loss occurred; and
(4) The location (building, room) from which the theft or loss occurred.
(d) The entity shall immediately notify the HHS Secretary and State and local public health agencies of any release of a select agent or toxin causing occupational exposure or release outside of the primary containment barriers. The report must be made to the HHS Secretary by telephone, facsimile, or e-mail in accordance with § 73.21.
(e) When reporting a release, the entity must provide the following information:
(1) The name of the select agent or toxin and any identifying information (*e.g.*, strain or other characterization information);
(2) An estimate of the quantity released;
(3) The time and duration of the release;
(4) The environment into which the release occurred (*e.g.*, in building or outside of building, waste system);
(5) The location (building, room) from which the release occurred;
(6) The number of individuals potentially exposed at the facility.
(7) Actions taken to respond to the release; and
(8) Hazards posed by the release.
(f) Within seven calendar days of theft, loss, or release, the entity must submit a follow-up report in writing to the HHS Secretary on CDC Form 0.1316 in accordance with § 73.21.

§ 73.18 Administrative review.

An entity may obtain review of a decision denying or revoking a certificate of registration under § 73.7 and the affected entity or individual may obtain review of a decision denying or revoking approval under § 73.8 by requesting such review in writing within 30 calendar days after the adverse decision. The request for review must state the factual basis for the review, which will be carried out in accordance with 42 U.S.C. 262a(e)(7). Where the adverse decision is in whole or in part based upon notification by the Attorney General under 42 U.S.C. 262a (e)(3), the request for review will be forwarded to the Attorney General for the Attorney General's review and final notification to the HHS Secretary.

§ 73.19 Civil money penalties.

(a) The Inspector General of the Department of Health and Human Services is delegated authority to conduct investigation and to impose civil money penalties against any individual or entity in accordance with regulations in 42 CFR part 1003 for violation of the regulations in this part, as authorized by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188). The delegation of authority includes all powers contained in section 6 of the Inspector General Act of 1978 (5 U.S.C. App.).
(b) The administrative law judges in, assigned to, or detailed to the Departmental Appeals Board (DAB) have been delegated authority to conduct hearings and to render decisions with respect to the imposition of civil money penalties, as authorized by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188). This delegation includes, but is not limited to, the authority to administer oaths and affirmations, to subpoena witnesses and documents, to examine witnesses, to exclude or receive and give appropriate weight to materials and testimony offered as evidence, to make findings of fact and conclusions of law, and to determine the civil money penalties to be imposed.
(c) The DAB of the Department of Health and Human Services is delegated authority to make final determinations with respect to the imposition of civil money penalties for violations of the regulations of this part.

§ 73.20 Criminal Penalties.

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188) provides specific criminal penalties for violation of provisions of this part. This is in addition to any other criminal penalties that would apply for violation of provisions of this part.

§ 73.21 Submissions and forms.

(a) CDC forms referred to in this part, including registration application packages, may be obtained on the Select Agent Program Web site at *http://www.cdc.gov,* or by requesting them in writing from the Select Agent Program, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mail Stop E 79, Atlanta, Georgia 30333. Forms (including any required attachments) must be submitted in accordance with the instructions on the form.
(b) Applications, requests, notifications, and other information required to be submitted to the HHS Secretary in writing, but not required to be on a form, unless otherwise specified, must be submitted to the Select Agent Program, Center for Disease Control and Prevention, 1600 Clifton Road, NE., Mail Stop E 79, Atlanta, Georgia 30333, or by e-mail at *lrsat@cdc.gov.*
(c) Information not required to be submitted to the HHS Secretary on a form may be submitted to the Select Agent Program, Center for Disease Control and Prevention, 1600 Clifton Road, NE., Mail Stop E 79, Atlanta, Georgia 30333, or by e-mail at *lrsat@cdc.gov.*
(d) If an application or request submitted to the HHS Secretary is incomplete or additional information is needed to allow the decision maker to make a determination, the HHS Secretary will notify the applicant or requester in writing of the deficiency and request additional information. If the applicant or requester fails to respond within 30 calendar days (or within such time period agreed upon by the applicant or requester and the HHS Secretary) the application or request will be deemed abandoned.
(e) You may request forms or other information from the USDA at the following address: APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 40, Riverdale, MD 20737–1231.

PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS AND EXCLUSIONS

1. The authority citation for part 1003 is revised to read as follows:

Authority: 42 U.S.C. 262a, 1302, 1320–7, 1320a–7a, 1320b–10, 1395u(j), 1395u(k), 1395cc(j), 1395dd(d)(1), 1395mm, 1395nn(g), 1395ss(d), 1396b(m), 11131(c), and 11137(b)(2).

2. Section 1003.100 is amended by revising paragraph (a), republishing the introductory text for paragraphs (b) and (b)(1), revising paragraphs (b)(1)(xiv) and (b)(1)(xv), and by adding a new paragraph (b)(1)(xvi) to read as follows:

§ 1003.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128(c), 1128A, 1140, 1876(i)(6), 1877(g), 1882(d) and 1903(m)(5) of the Social Security Act; sections 421(c) and 427(b)(2) of Pub. L. 99–660; and section 201(i) of Pub. L. 107–188 (42 U.S.C. 1320–7(c), 1320a–7a, 1320b–10, 1395mm, 1395ss(d), 1396b(m), 11131(c), 11137(b)(2) and 262).
(b) *Purpose.* This part—
(1) Provides for the imposition of civil money penalties and, as applicable, assessments against persons who—
* * * * *
(xiv) Have submitted, or caused to be submitted, certain prohibited claims, including claims for services rendered by excluded individuals employed by or otherwise under contract with such person, under one or more Federal health care programs;
(xv) Violate the Federal health care programs' anti-kickback statute as set forth in section 1128B of the Act; or
(xvi) Violate the provisions of part 73 of this chapter, implementing section 351A(b) and (c) of the Public Health Service Act, with respect to the possession and use within the United States, receipt from outside the United States, and transfer within the United States, of select agents and toxins in use, or transfer of listed biological agents and toxins.
* * * * *

3. Section 1003.101 is amended by republishing the introductory text and by adding, in alphabetical order, a definition for the term "Select agents and toxins" to read as follows:

§ 1003.101 Definitions.

For purposes of this part:
* * * * *
Select agents and toxins means agents and toxins that are listed by the HHS Secretary as having the potential to pose a severe threat to public health and safety, in accordance with section 351A(a)(1) of the Public Health Service Act.
* * * * *

4. Section 1003.102 is amended by republishing the introductory text for paragraph (b), and by adding a new paragraph (b)(16) to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

* * * * *
(b) The OIG may impose a penalty and, where authorized, an assessment against any person (including an insurance company in the case of paragraphs (b)(5) and (b)(6) of this section) whom it determines in accordance with this part—
* * * * *
(16) Is involved in the possession or use in the United States, receipt from outside the United States, or transfer within the United States, of select agents and toxins in violation of part 73 of this chapter as determined by the HHS Secretary, in accordance with sections 351A(b) and (c) of the Public Health Service Act.
* * * * *

5. Section 1003.103 is amended by adding a new paragraph (l) to read as follows:

§ 1003.103 Amount of penalty.

* * * * *
(l) For violations of section 351A(b) or (c) of the Public Health Service Act and 42 CFR part 73, the OIG may impose a penalty of not more than $250,000 in the case of an individual, and not more than $500,000 in the case of any other person.

[FR Doc. 02–31370 Filed 12–9–02; 4:03 pm]
BILLING CODE 4160–17–P

VOL
67
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Federal Register

Friday,
December 13, 2002

Part V

Department of Agriculture

Animal and Plant Health Inspection Service

7 CFR Part 331

9 CFR Part 121

Agricultural Bioterrorism Protecton Act of 2002; Possession, Use and Transfer of Biological Agents and Toxins; Interim Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 331

9 CFR Part 121

[Docket No. 02–088–1]

RIN 0579–AB47

Agricultural Bioterrorism Protection Act of 2002; Possession, Use, and Transfer of Biological Agents and Toxins

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: In accordance with the Agricultural Bioterrorism Protection Act of 2002, we are establishing, by regulation, standards and procedures governing the possession, use, and transfer of biological agents and toxins that have been determined to have the potential to pose a severe threat to both human and animal health, to animal health, to plant health, or to animal and plant products. This action is necessary to protect animal and plant health, and animal and plant products.

DATES: This interim rule is effective on February 11, 2003. We will consider all comments that we receive on or before February 11, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–088–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–088–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–088–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information concerning the regulations in 7 CFR part 331, contact Dr. Robert Flanders, Chief, Pest Permit Evaluations Branch, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236, (301) 734–5930.

For information concerning the regulations in 9 CFR part 121, contact Dr. Denise Spencer, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–3277.

SUPPLEMENTARY INFORMATION:

Background

On June 12, 2002, the President signed into law the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. 107–188). Title II of Pub. L. 107–188, "Enhancing Controls on Dangerous Biological Agents and Toxins" (sections 201 through 231), provides for the regulation of certain biological agents and toxins by the Department of Health and Human Services (subtitle A, sections 201–204) and the Department of Agriculture (subtitle B, sections 211–213), and provides for interagency coordination between the two departments regarding overlap agents and toxins (subtitle C, section 221). Subtitle D (section 231) provides for criminal penalties regarding certain biological agents and toxins. For the Department of Health and Human Services, the Centers for Disease Control and Prevention (CDC) has been designated as the agency with primary responsibility for implementing the provisions of the Act; the Animal and Plant Health Inspection Service (APHIS) is the agency fulfilling that role for the Department of Agriculture (USDA).

In subtitle B (which is cited as the "Agricultural Bioterrorism Protection Act of 2002," referred to below as the Act), section 212(a) provides, in part, that the Secretary of Agriculture (the Secretary) must establish by regulation a list of each biological agent and each toxin that she determines has the potential to pose a severe threat to animal or plant health, or to animal or plant products. The Act further requires (under section 213(b)) that all persons in possession of any listed biological agent or toxin must, within 60 days of the publication of that interim rule, notify the Secretary of such possession.

In accordance with these statutory requirements, on August 12, 2002, we published in the **Federal Register** (67 FR 52383–52389, Docket No. 02–082–1) an interim rule that established the initial lists of biological agents and toxins and set out the manner in which persons in possession of listed agents and toxins were to provide notice of such possession. To accomplish this, we established two new parts in the Code of Federal Regulations (CFR), one part in the plant-related provisions of title 7, chapter III, and one part in the animal-related provisions of title 9, chapter I. Each part was constructed similarly, with a section that provided definitions for specific terms used in the part, a section that set out the list of biological agents and toxins, and a section that provided guidance on the manner in which notice of possession was to be provided. On September 26, 2002, we published a technical amendment to the interim rule (67 FR 60519–60520, Docket No. 02–082–2) in which we updated the definitions of *biological agent* and *toxin* in each part.

Under section 212 of the Act, the Secretary must also provide by regulation for the establishment and enforcement of standards and procedures governing the possession, use, and transfer of listed biological agents and toxins in order to protect animal and plant health, and animal and plant products. Specifically, sections 212(b) and (c) require that the Secretary:

- Establish and enforce safety procedures for listed agents and toxins, including measures to ensure proper training and appropriate skills to handle agents and toxins, and proper laboratory facilities to contain and dispose of agents and toxins;
- Establish and enforce safeguard and security measures to prevent access to listed agents and toxins for use in domestic or international terrorism or for any other criminal purpose;
- Establish procedures to protect animal and plant health, and animal and plant products, in the event of a transfer or potential transfer of a listed agent or toxin in violation of the safety procedures and safeguard and security measures established by the Secretary; and
- Ensure appropriate availability of biological agents and toxins for research, education, and other legitimate purposes.

This interim rule establishes the regulations required under the Act. To accomplish this, we are amending 7 CFR part 331 and 9 CFR part 121. First, we are changing the title of both parts from "Possession of Biological Agents and Toxins" to "Possession, Use, and Transfer of Biological Agents and Toxins" to indicate the expanded scope of the regulations. Second, we are adding and removing definitions in §§ 331.1 and 121.1, as detailed below. Third, we are moving the lists of biological agents and toxins out of §§ 331.2 and 121.2 and adding in their place a new section that sets out the purpose and scope of each part. Fourth, we are removing the notification requirements in §§ 331.3 and 121.3, which are no longer applicable, and placing the lists of biological agents and toxins in those sections. We are amending both lists, as discussed below, and moving the exemption provisions found in the original § 121.2 to a new section, § 121.4. Finally, we are adding new sections that set out the effective dates, exemptions, registration requirements, responsibilities of the responsible official, safety and security requirements, transfer requirements, and appeals process. These new sections are discussed in detail below.

Effective and Applicability Dates

Both 7 CFR part 331 and 9 CFR part 121 begin with sections that discuss the effective dates of the regulations, §§ 331.0 and 121.0, respectively. Pursuant to section 213(c) of the Act, the Secretary must, not later than 180 days after the Act's enactment, promulgate an interim final rule establishing the standards and procedures governing the possession, use, and transfer of listed biological agents and toxins that shall take effect 60 days after the date on which the rule is promulgated. However, the Act also requires that the interim final rule include timeframes for the applicability of the rule that minimize disruption of research or educational projects that involve biological agents or toxins listed pursuant to section 212(a)(1) and that were underway as of the effective date of such rule.

Accordingly, in 7 CFR 331.0 and 9 CFR 121.0 we provide that the regulations in both parts are effective on February 11, 2003. On and after that date, any individual or entity possessing, using, or transferring any listed agent or toxin must be in compliance with the provisions of each part.

However, to minimize the disruption of research or educational projects (*e.g.*, teaching demonstrations) involving listed agents or toxins that were underway as of the effective date of these regulations, we provide that any individual or entity possessing such agents or toxins as of the effective date (current possessors) will be afforded additional time to reach full compliance with the regulations in each part. Any provision not specifically cited in paragraphs (a) through (f) of 7 CFR 331.0 and 9 CFR 121.0 will applicable as of February 11, 2003.

In recognition of the potential delays in registering individuals and entities under these regulations during the first year of implementation and the subsequent delay of research, we will also afford additional time to reach full compliance with the regulations to individuals and entities who do not currently possess listed agents or toxins. Therefore, we provide that any individual or entity who does not possess listed agents or toxins by the effective date of these regulations, but who wishes to initiate a research or educational project prior to November 12, 2003, must be in compliance with the provisions of these regulations that are applicable for current possessors at the time of application, as provided in paragraphs (a) through (e) of 7 CFR 331.0 and 9 CFR 121.0.

In paragraph (a) of both parts, we set forth the transfer provisions that will be applicable during the phase-in period. Specifically, we provide that, during the period from February 11, 2003, to November 12, 2003, listed agents or toxins may only be transferred to an individual or entity that is not registered under 7 CFR part 331 or 9 CFR part 121 if the individual or entity has been issued a permit by the APHIS Administrator (the Administrator) under 7 CFR part 330 or 9 CFR 122 to import or move interstate that specific agent or toxin. Since some individuals or entities may not have been issued a permit prior to the effective date of these regulations, we further provide that an individual or entity may apply for a permit. In addition to the permit required under 7 CFR part 330 or 9 CFR 122, an individual or entity will also be required to submit APHIS Form 2041, in accordance with §§ 331.13(c) and 121.14(c), respectively.

Because USDA permits do not cover intrastate movement, an individual or entity may not receive a listed agent or toxin that is being moved intrastate until that individual or entity is registered in accordance with 7 CFR part 331 or 9 CFR part 121.

With regard to overlap agents and toxins, we provide that from February 11, 2003, to November 12, 2003, listed overlap agents or toxins may only be transferred to an individual or entity not registered under 9 CFR part 121 using the permit provisions described above or, if the individual or entity is registered under CDC's select agent program for that specific overlap agent or toxin, in accordance with CDC's regulations in 42 CFR part 72. The regulations in 42 CFR part 72 cover all inter-entity transfers of "select agents," which include overlap agents and toxins, whether interstate or intrastate. We note, however, that CDC's regulations in 42 CFR part 72 will be superseded by CDC's new select agent regulations in 42 CFR part 73 on March 12, 2003, and, thereafter, listed overlap agents or toxins may be transferred to an individual or entity not registered under 9 CFR part 121 or 42 CFR part 73 using the permit provisions described above.

In paragraph (b) of both parts, we require that the responsible official submit the registration application package by March 12, 2003, as required in 7 CFR 331.8 and 9 CFR 121.9. In addition, we require that the responsible official submit to the United States Attorney General (the Attorney General) the names and identifying information for the responsible official; alternate responsible official, where applicable; entity; and, where applicable, the individual who owns or controls the entity.

Paragraph (c) of both parts requires the responsible official to submit to the Attorney General by April 11, 2003, the names and identifying information for all individuals whom the responsible official has identified as having a legitimate need and the appropriate training and skills to handle or use listed agents or toxins. We note that these individuals must have received appropriate training in biosafety and/or containment, in accordance with 7 CFR 331.12 or 9 CFR 121.13.

We recognize that developing and implementing the security section of the Biocontainment and Security Plan (7 CFR 331.11) or the Biosafety and Security Plan (9 CFR 121.12) may require additional time to consult with security experts and to obtain the necessary funding. Therefore, in paragraph (d) of both parts, we provide that the responsible official will have until June 12, 2003, to submit the security section of the plan to APHIS or, for overlap agents or toxins, to APHIS or CDC. Then the responsible official has until September 12, 2003, to implement that security plan and provide security training in accordance with 7 CFR 331.12 or 9 CFR 121.13.

Finally, by November 12, 2003, the registration application process must be complete and the entity must be in full compliance with the regulations.

Definitions

In 7 CFR 331.1 and 9 CFR 121.1, we define the terms used in the regulations. In our August 2002 interim rule establishing the regulations, we defined the terms *biological agent, facility, person, responsible facility official,* and *toxin* in both parts, while the term *overlap agent or toxin* was defined only in 9 CFR 121.1 (this term is not applicable to the plant-related regulations in 7 CFR part 331).

In this interim rule, we are removing the definition of *person* in both parts because the term is no longer used in 7 CFR part 331 and 9 CFR part 121. In addition, we are removing the definition of *responsible facility official* from both parts and adding *responsible official* in its place. We are removing the definition of *responsible facility official* because the term is no longer used in 7 CFR part 331 and 9 CFR part 121. The term *responsible facility official* (RFO) was initially adopted by CDC for its select agent program (42 CFR part 72) and it is too limited in scope for our purposes. Specifically, the term only refers to transfers (rather than possession, use, and transfers) and dictates who should be the RFO (a safety officer, a senior management official, or both). We believe that these individuals may not always be the appropriate individual to ensure compliance with these regulations.

Therefore, we use the term *responsible official* in 7 CFR part 331 and 9 CFR part 121. We define *responsible official* as "the individual designated by an entity to act on its behalf. This individual must have the authority and control to ensure compliance with the regulations in this part." We believe that this definition is broad enough to allow entities to designate the appropriate individual to be the responsible official, and it places the responsibility of selecting the appropriate individual on the entity, rather than on APHIS.

To be consistent with CDC, we are also removing the definition of *facility* in both parts and adding *entity* in its place. We define *entity* as "any government agency (Federal, State, or local), academic institution, corporation, company, partnership, society, association, firm, sole proprietorship, or other legal entity."

Furthermore, in 9 CFR part 121, we are revising the definition of *overlap agent or toxin* to reflect changes made to the definitions of *biological agent* and *toxin* in the September 2002 technical amendment noted previously and changes made to the list in this rule. Thus, *overlap agent or toxin* is defined as "any microorganism (including, but not limited to, bacteria, viruses, fungi, rickettsiae, or protozoa) or toxin that poses a risk to both human and animal health and that is listed in § 121.3(b)."

In this interim rule, we define the terms *Administrator, APHIS, Attorney General, CDC, diagnostic laboratory, import, interstate, permit, State, United States,* and *USDA* in both 7 CFR 331.1 and 9 CFR 121.1. *Administrator* is defined as "the Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator." *APHIS* is defined as "the Animal and Plant Health Inspection Service of the United States Department of Agriculture." *Attorney General* is defined as "the Attorney General of the United States or any person authorized to act for the Attorney General." *CDC* is defined as "the Centers for Disease Control and Prevention of the United States Department of Health and Human Services." *Diagnostic laboratory* is defined as "a laboratory facility that receives specimens for the purpose of determining identities of pests, pathogens, contaminants, or causes of disease." *USDA* is defined as "the United States Department of Agriculture."

To clarify the transfer provisions in the regulations, we define *permit* as "written authorization by the Administrator to import or move interstate biological agents or toxins, under conditions prescribed by the Administrator." *Import* means "to move into, or the act of movement into, the territorial limits of the United States," while *interstate* means "from one State into or through any other State, or within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States." In addition, we define *State* as "any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States." Finally, the term *United States* means "all of the States."

In 7 CFR 331.1, we also define *PPQ* and *specimen. PPQ* is defined as "the Plant Protection and Quarantine Programs of the Animal and Plant Health Inspection Service." *Specimen* is defined as "a sample of material collected for use in testing, such as plant tissues (*e.g.*, stems, seeds, flowers, pollen, leaves, roots, fruits, tubers, tissue cultures, protoplasts), soil, water, swabs, cultures, and suspensions."

In 9 CFR 121.1, we also define *clinical laboratory, proficiency testing,* and *specimen* to clarify the exemption provisions for clinical or diagnostic laboratories in that part. *Clinical laboratory* is defined as "a laboratory facility that receives patients and collects specimens for processing or shipping to another laboratory," while *proficiency testing* is defined as "a sponsored, time-limited analytical trial whereby one or more analytes, previously confirmed by the sponsor, are submitted to the testing laboratory for analysis and where final results are graded, scores are recorded and provided to participants, and scores for participants are evaluated for acceptance." Finally, *specimen* is defined as "a sample of material collected for use in testing, such as tissues, gastrointestinal contents, feces, bodily fluids (blood, serum, etc.), soil, water, feed or feed ingredients, swabs, cultures, and suspensions."

Purpose and Scope

To facilitate understanding of the regulations, both 7 CFR 331.2 and 9 CFR 121.2 discuss the purpose and scope of the regulations. Specifically, 7 CFR 331.2(a) states that part 331 sets forth the requirements for possession, use, and transfer of biological agents or toxins that have been determined to have the potential to pose a severe threat to plant health or plant products, while 9 CFR 121.2(a) states that part 121 sets forth the requirements for possession, use, and transfer of biological agents or toxins that have been determined to have the potential to pose a severe threat to both human and animal health, or to animal health or animal products. Both 7 CFR 331.2(a) and 9 CFR 121.2(a) note that the purpose of the regulations is to ensure the safe handling of such agents or toxins, and to protect against the use of such agents or toxins in domestic or international terrorism or for any other criminal purpose.

In 7 CFR 331.2(b) and 9 CFR 121.2(b), we further provide that any individual or entity that possesses, uses, or transfers any listed agent or toxin must register in accordance with §§ 331.6 and 121.7, respectively. In order for an entity to register, each entity must designate an individual who has the authority and control to ensure compliance with the regulations to be the responsible official. It is the responsible official who must complete and submit the registration application package to APHIS or, for overlap agents or toxins, to APHIS or CDC. As part of registration, the responsible official, the entity, and, where applicable, the individual who owns or controls such entity will be subject to a security risk assessment by the Attorney General.

Finally, 7 CFR 331.2(c) and 9 CFR 121.2(c) state that the responsible official is responsible for ensuring compliance with the safety procedures in the regulations, including implementing the Biocontainment and Security Plan (7 CFR 331.11) or the Biosafety and Security Plan (9 CFR 121.12); providing the proper training to individuals that handle or use listed agents or toxins; and providing proper laboratory facilities to contain and dispose of such agents or toxins. In addition, the responsible official is responsible for ensuring compliance with the safeguard and security measures in the regulations, including restricting access to only those individuals who have a legitimate need to handle or use agents or toxins and who have been approved to handle or use such agents or toxins, and transferring listed agents or toxins only to registered individuals or entities.

List of Biological Agents and Toxins

In our August 2002 interim rule, we established the initial lists of biological agents and toxins required under section 212(a)(1) of the Act. In this interim rule, we are amending the lists of biological agents and toxins in both 7 CFR 331.3 and 9 CFR 121.3.

We have made several changes to 7 CFR 331.3. In 7 CFR 331.3(a), we have amended the entry for *Ralstonia solanacearum,* race 3. A comment submitted in response to our August 2002 interim rule reported that race 3 strains are common in the United States and should not be listed; however, race 3, biovar 2 strains are not common in the United States and would pose a severe threat to plant health or plant products if introduced. We agree and have amended the entry for *Ralstonia solanacearum* to specify race 3, biovar 2.

In addition, we have added several provisions that limit the applicability of the regulations in part 331. First, in 7 CFR 331.3(b) we provide that any biological agent or toxin listed in that section that is in its naturally occurring environment will not be subject to the requirements of part 331, provided that the biological agent or toxin has not been intentionally introduced, cultivated, collected, or otherwise extracted from its natural source. We have included this provision because we believe that it would be impractical to regulate a biological agent or toxin that is in its naturally occurring environment. Listed agents or toxins could be found in castor beans or corn going to market, for example, and it would be impractical to apply these regulations in such cases.

Second, in 7 CFR 331.3(c) we provide that biological agents or toxins that meet certain criteria do not have the potential to pose a severe threat to plant health or to plant products. Thus, an individual or entity that only possesses, uses, or transfers an agent or toxin that meets any of the following criteria will not be subject to the requirements of this part: (1) Nonviable agents that are, bear, or contain listed agents or toxins; or (2) genetic elements or subunits of listed agents or toxins, if the genetic elements or subunits are not capable of causing disease.

We have also made several changes to the list in 9 CFR 121.3 to be consistent with CDC and to reflect changes in scientific nomenclature. In June 2002, CDC convened an interagency working group to review its list of 36 select agents, some of which are the overlap agents that are listed in our regulations, and develop recommendations regarding possible changes to that list. Because that process was in its initial stages at the time we published the August 2002 interim rule that established the list of biological agents and toxins, the list of overlap agents and toxins reflected the select agent list promulgated by CDC in October 1996. The interagency working group has since submitted its recommendations to CDC.

Based on the interagency working group's recommendations, we have removed aflatoxin from the list of overlap agents and toxins in § 121.3(b), and we have moved Nipah virus from the animal agent and toxin list to the overlap agent and toxin list. In addition, we have added Botulinum neurotoxin producing species of *Clostridium* to the overlap agent and toxin list.

Due to changes in scientific nomenclature, in 9 CFR 121.3(b) we have replaced the entry for equine morbillivirus (Hendra virus) with Hendra virus; replaced *Burkholderia (Pseudomonas) mallei* with *Burkholderia mallei*; replaced *Burkholderia (Pseudomonas) pseudomallei* with *Burkholderia pseudomallei*; and replaced Botulinum toxin with Botulinum neurotoxins.

In 9 CFR 121.3(c), we have adopted CDC's provisions regarding genetic elements, recombinant nucleic acids, and recombinant organisms to be consistent with CDC's list of overlap agents and toxins.

To clarify that we are regulating the agent that causes disease rather than the disease itself and to be consistent with CDC's approach, in 9 CFR 121.3(d) we have replaced the entry for avian influenza (highly pathogenic) with avian influenza virus (highly pathogenic); replaced African swine fever with African swine fever virus; replaced classical swine fever with classical swine fever virus; replaced malignant catarrhal fever with malignant catarrhal fever virus (exotic); replaced Peste des petits ruminants with Peste des petits ruminants virus; replaced sheep pox with sheep pox virus; and replaced vesicular stomatitis (exotic) with vesicular stomatitis virus (exotic).

In addition, in 9 CFR 121.3(d) we have replaced the entry for Newcastle disease virus (exotic) with Newcastle disease virus (VVND) to make it clear that we are regulating only velogenic strains.

Moreover, in 9 CFR 121.3 we have added several provisions that limit the applicability of the regulations in part 121. First, in 9 CFR 121.3(e) we provide that any biological agent or toxin listed in that section that is in its naturally occurring environment will not be subject to the requirements of part 121, provided that the biological agent or toxin has not been intentionally introduced, cultivated, collected, or otherwise extracted from its natural source. We have included this provision because we believe that it would be impractical to regulate a biological agent or toxin that is in its naturally occurring environment. Listed agents or toxins could be found in cattle or infected humans, for example, and it would be impractical to apply these regulations in such cases.

Second, in 9 CFR 121.3(f) we provide that biological agents or toxins that meet certain criteria do not have the potential to pose a severe threat to both human and animal health, or to animal health or animal products. Therefore, an individual or entity possessing, using, or transferring an agent or toxin that meets any of the following criteria will not be subject to the requirements of part 121:

(1) Nonviable agents or fixed tissues that are, bear, or contain agents or toxins listed in § 121.3. However, we note that the importation and interstate movement of these nonviable agents and fixed tissues are still subject to the permit requirements under 9 CFR part 122; or

(2) Genetic elements or subunits of animal agents or toxins listed in § 121.3(d), if the genetic elements or subunits are not capable of causing disease. However, we note that the importation and interstate movement of these genetic elements or subunits of listed agents or toxins are still subject to

the permit requirements under 9 CFR part 122; or

(3) Overlap toxins under the control of a principal investigator (or equivalent), if the total aggregate amount does not, at any time, exceed the following amounts: 0.5 mg of Botulinum neurotoxins (types A–G), 100 mg of *Clostridium perfringens* epsilon toxin, 100 mg of Shigatoxin, 5 mg of Staphylococcal enterotoxins, and 1,000 mg of T–2 toxin.

Finally, in 9 CFR 121.3(g) we have established a procedure by which an individual or entity may request a determination by the Administrator that an attenuated strain of a biological agent does not pose a severe threat to both human and animal health, or to animal health or animal products. This provision is necessary because some attenuated strains of a biological agent may not pose a severe threat to both human and animal health, or to animal health or animal products. Therefore, by definition, such attenuated strains would be excluded from the list of biological agents or toxins in § 121.3.

Accordingly, 9 CFR 121.3(h) provides that an individual or entity may request review by the Administrator to determine whether or not a specific attenuated strain poses a severe threat to both human and animal health, or to animal health or animal products. For overlap agents, an individual or entity may request review by APHIS or CDC. If APHIS or CDC determines that a specific attenuated strain does not pose a severe threat to human and animal health, or to animal health or animal products, and the individual or entity in possession of that particular attenuated strain will not be subject to the requirements of part 121. We note, however, that this determination will be limited to the specific attenuated strain and to the specific activities involving that attenuated strain.

APHIS or CDC will notify the applicant and publish a notice in the **Federal Register** if it is determined that a specific attenuated strain does not pose a severe threat to human and animal health, to animal health, or to animal products, the individual or entity in possession of that particular attenuated strain will not be subject to the requirements of part 121. Under 9 CFR 121.3(h)(4), an individual or entity may request reconsideration of an adverse decision in writing to the Administrator.

Section 212(a)(2) of the Act requires that the lists of biological agents and toxins be reviewed and republished biennially, or more often as needed, and revised as necessary. In addition, the Act requires that, when determining whether to include an agent or toxin, the Secretary shall consult with appropriate Federal departments and agencies and with scientific experts representing appropriate professional groups. To accomplish this, we may hold public meetings to provide the opportunity for Federal departments and agencies and scientific experts to comment on the lists in 7 CFR 331.3 and 9 CFR 121.3.

Exemptions

Section 212(g)(1) of the Act explicitly sets forth the exemptions for overlap agents and toxins. The exemptions for overlap agents and toxins in 9 CFR 121.4 match the provisions in the Act. We set forth similar provisions for exemptions for plant agents and toxins in 7 CFR 331.4 and animal agents and toxins in 9 CFR 121.5.

In accordance with section 212(g)(1)(B) of the Act, 9 CFR 121.4(a) provides that clinical or diagnostic laboratories and other entities possessing, using, or transferring overlap agents or toxins that are contained in specimens presented for diagnosis or verification will be exempt from the requirements of part 121, provided that the identification of such agents or toxins is immediately reported to the APHIS or CDC, and to other appropriate authorities when required by Federal, State, or local law; and, within 7 days after identification, such agents or toxins are transferred or inactivated, and APHIS Form 2040 is submitted to APHIS or CDC. We further provide that a copy of the completed form must be maintained for 3 years.

Based on information provided by CDC and APHIS' National Veterinary Services Laboratories (NVSL), and taking into consideration the threat posed by listed agents and toxins, we believe that 7 days will provide ample time after identification to inactivate the agent or toxin, or to make transfer arrangements and to transfer the agent or toxin.

To be consistent with the exemptions for overlap agents and toxins, in 7 CFR 331.4(a) and 9 CFR 121.5(a) we have adopted this exemption for diagnostic laboratories (the term clinical laboratories is not applicable to the plant-related regulations in 7 CFR part 331 or the animal-related regulations in 9 CFR part 121). We note, however, that diagnostic laboratories and other entities will still be required to obtain a permit under 7 CFR part 330 and 9 CFR part 122 to import and move interstate any listed agent or toxin.

In 7 CFR 331.4(a), 9 CFR 121.4(a), and 9 CFR 121.5(a), we further provide that, during agricultural emergencies or outbreaks, or in endemic areas, the Administrator may require less frequent reporting. For example, during an outbreak, we may allow biweekly reporting of identifications of a specific agent. In such cases, we will inform the diagnostic laboratories or other entities of this temporary change to the notification requirements.

In 9 CFR part 121, we also provide an exemption for clinical or diagnostic laboratories and other entities conducting proficiency testing. Specifically, in 9 CFR 121.4(b) we provide that clinical or diagnostic laboratories and other entities possessing, using, or transferring overlap agents or toxins that are contained in specimens presented for proficiency testing will be exempt from the requirements of part 121, provided that the identification of such agents or toxins, and their derivatives, is reported to the APHIS or CDC and to other appropriate authorities when required by Federal, State, or local law; and within 90 days of receipt of the agents or toxins, the agents or toxins are transferred or inactivated, and APHIS Form 2040 is submitted to APHIS or CDC. We further provide that a copy of the completed form must be maintained for 3 years.

Paragraph (a) of 9 CFR 121.5 contains the same exemption provision for animal agents or toxins that are contained in specimens presented for proficiency testing. Based on information provided by NVSL, which conducts such proficiency testing, we believe that 90 days will provide ample time to run the necessary tests for any listed agent or toxin.

We wish to emphasize that a clinical or diagnostic laboratory, or other entity, will be exempt only if it satisfies the specific requirements of these exemptions. Clinical or diagnostic laboratories and other entities must register in accordance with the regulations if they wish to maintain a viable agent or active toxin as a positive control. This is consistent with the "fundamental premise of the [Act]—that all those who maintain possession of a [listed biological agent or toxin] must register and be subject to appropriate security and safety requirements." (H.R. Conf. Rep. No. 107–481, at 122 (2002)).

Pursuant to section 212(g)(1)(C) of the Act, the regulations in 9 CFR part 121 provide exemptions for products that are, bear, or contain agents or toxins that have been cleared, approved, licensed, or registered under certain Federal laws. Generally, we believe that it is unnecessary to impose additional regulation on products that have been cleared, approved, licensed, or registered pursuant to certain Federal laws because these laws already provide adequate safeguards. However, it is possible there will be some instances when existing regulation under Federal law is inadequate. In those instances, the regulations provide that the Administrator may impose additional regulation if he or she determines that it is necessary to protect animal or plant health, and animal or plant products.

Accordingly, for overlap agents or toxins and animal agents or toxins, 9 CFR part 121 (§§ 121.4(c) and 121.5(e), respectively) provides that, unless the Administrator by order determines that additional regulation of a specific product is necessary to protect animal health, or animal products, an individual or entity possessing, using, or transferring products that are, bear, or contain agents or toxins will be exempt from the requirements of this part if the products have been cleared, approved, licensed, or registered pursuant to:

(1) The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*);

(2) Section 351 of Public Health Service Act (42 U.S.C. 262);

(3) The Virus-Serum-Toxin Act (21 U.S.C. 151–159); or

(4) The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 131 *et seq.*).

In addition, in 9 CFR 121.4(d) we provide that an individual or entity possessing, using, or transferring investigational products that are, bear, or contain overlap agents or toxins may be exempt from the requirements of this part if such product is being used in an investigation authorized by any Federal law and the Administrator determines that additional regulation under this part is not necessary to protect animal health or animal products. An individual or entity possessing, using, or transferring such investigational products may apply for an exemption from the requirements of this part by submitting APHIS Form 2042 to APHIS or CDC. Given the time sensitivity of investigational or clinical trials, the Administrator shall make a determination regarding an exemption within 14 days after receipt of the application and notification that the investigation has been authorized under a Federal law.

We have added a similar provision for experimental products in 9 CFR 121.5(f). However, because it is not required by the Act, in § 121.5(f) we did not stipulate that the Administrator will make a determination regarding an exemption within 14 days after receipt of the application and notification that the investigation has been authorized under a Federal law. We did not include this provision in order to give the Administrator the discretion to take longer than 14 days to make a determination, when necessary. However, we expect that the Administrator will make determinations regarding such exemptions in a timely manner.

Furthermore, in 9 CFR 121.5(c) we provide that an individual or entity receiving diagnostic reagents and vaccines that are, bear, or contain listed agents or toxins, also known as high consequence livestock pathogens or toxins, that are produced at USDA diagnostic facilities will be exempt from the requirements of part 121. These diagnostic reagents and vaccines are products that would be cleared, approved, licensed, or registered pursuant to the Virus-Serum-Toxin Act (21 U.S.C. 151–159), but for the fact that they are produced by USDA.

In accordance with section 212(g)(1)(D) of the Act, 9 CFR 121.4(e) provides that the Administrator may exempt an individual or entity from the requirements of the regulations, in whole or in part, for 30 days if it is necessary to respond to a domestic or foreign agricultural emergency involving an overlap agent or toxin. The Administrator may extend the exemption once for an additional 30 days, as deemed necessary.

In 9 CFR 121.4(f), we set forth a similar provision for public health emergencies. Specifically, § 121.4(f) provides that, upon request of the Secretary of Health and Human Services, the Administrator may exempt an individual or entity from the requirements of the regulations, in whole or in part, for 30 days if the Secretary of Health and Human Services has granted an exemption for a public health emergency involving an overlap agent or toxin. The Administrator may extend the exemption once for an additional 30 days, as deemed necessary.

Finally, section 212(g)(2) of the Act provides that the Secretary may grant exemptions from the applicability of the regulations if the Secretary determines that such exemptions are consistent with protecting animal or plant health and animal or plant products. This general exemption authority affords the Secretary more discretion to exempt plant and animal agents and toxins than overlap agents and toxins, since the Act specifically sets forth the exemptions for overlap agents and toxins.

Accordingly, 7 CFR 331.4(b) and 9 CFR 121.5(f) indicate that the Administrator may grant exemptions from the requirements of these parts upon a showing of good cause and a determination that it is consistent with protecting animal or plant health and animal or plant products. For example, such exemptions may be granted for agricultural emergencies involving plant or animal agents or toxins. An individual or entity may request in writing an exemption from the requirements of the regulations.

Registration Requirements and Procedures

In accordance with section 212(d) of the Act, 7 CFR 331.5(a) and 9 CFR 121.6(a) require that, unless exempted under those parts, an individual or entity possessing, using, or transferring listed agents or toxins must register with APHIS. Section 121.6(a) of 9 CFR part 121 further requires that an individual or entity possessing, using, or transferring overlap agents or toxins must register with APHIS or CDC.

We note that Congress expected that most registrants would be public and private entities, rather than individuals. (H.R. Conf. Rep. No. 107–481, at 125 (2002)). Thus, 7 CFR 331.5(b) and 9 CFR 121.6(b) indicate that, to apply for a certificate of registration, each entity must designate an individual to be the responsible official. The responsible official must have the authority and control to ensure compliance with the regulations. The responsible official must complete and sign the registration application package, and will be the individual contacted by APHIS or CDC if any questions arise concerning the application or subsequent compliance. As part of registration, the responsible official and the entity will be subject to a security risk assessment by the Attorney General.

While most registrants are likely to be entities, both 7 CFR 331.5(b) and 9 CFR 121.6(b) provide that, in the event that an individual applies for and is granted a certificate of registration, we will consider the individual to be the responsible official.

We wish to emphasize that it is the entity's responsibility to designate the appropriate individual to be the responsible official (i.e., an individual who has the authority and control to *ensure compliance* with the regulations). To satisfy this requirement, a university may choose to designate the Dean of Agriculture to be the responsible official rather than the biosafety officer because the Dean of Agriculture may have better oversight and authority to ensure compliance with the regulations.

Furthermore, we note that a certificate of registration will apply to only one general physical location (*e.g.*, a building or complex of buildings at a

single mailing address). If an entity has more than one general physical location, then the entity must register each location and must designate an individual to be the responsible official for each location.

Although not contemplated by the Act, we recognize that there may be times when the responsible official is unavailable. Since some functions may only be performed by the responsible official (*i.e.*, transfers), this may disrupt research or other approved activities. Therefore, in 7 CFR 331.5(c) and 9 CFR 121.6(c), we provide that an entity may designate one or more individuals to be an alternate responsible official, who may act for the responsible official when that individual is unavailable. These individuals must have the authority and control to ensure compliance with the regulations when acting as the responsible official. These individuals will also be subject to a security risk assessment by the Attorney General as part of registration.

To apply for a certificate of registration, 7 CFR 331.8(a) and 9 CFR 121.9(a) provide that the responsible official must submit all of the information and documentation required in the registration application package to APHIS, including the name, source, and characterization data for each agent or toxin to be registered, as required by section 212(d)(2) of the Act. For overlap agents or toxins, the responsible official must submit all of the information and documentation required in the registration package to either APHIS or CDC. The responsible official must submit the registration application package to APHIS in cases where he/she is seeking registration for either plant and animal agents or toxins, and overlap agents or toxins.

In 7 CFR 331.6(b) and 9 CFR 121.7(b), we provide that APHIS may issue a certificate of registration upon:

(1) Approval of the responsible official; the alternate responsible official, where applicable; the entity; and, where applicable, the individual who owns or controls the entity following a security risk assessment by the Attorney General. As provided for by the Act, we may waive the security risk assessment of the entity and the individual who owns or controls such entity for Federal, State, or local governmental agencies;

(2) Approval of the containment and security of the entity (7 CFR 331.6) or approval of the biosafety, containment, and security of the entity (9 CFR 121.7). For plant-related agents or toxins, the entity's containment and security procedures must be commensurate with the risk of the agent or toxin, given its intended use. Similarly, for overlap and animal agents or toxins, the entity's biosafety, containment, and security procedures must be commensurate with the risk of the agent or toxin, given its intended use. APHIS will review the Biocontainment and Security Plan or the Biosafety and Security Plan, as applicable, and may inspect and evaluate the premises and records to determine compliance with the regulations and the biosafety and/or containment and security requirements. For overlap agents and toxins, APHIS or CDC will review the Biosafety and Security Plan, and may inspect and evaluate the premises and records to determine compliance with the regulations and the biosafety and/or containment and security requirements; and

(3) A determination by the Administrator that the individual or entity seeking to register has a lawful purpose to possess, use, or transfer such agents or toxins.

Furthermore, 9 CFR 121.7(c) provides that APHIS and CDC will review applications for registration and amendments to a certificate of registration for overlap agents or toxins, and a certificate of registration or amendment to a certificate of registration will only be issued if APHIS and CDC concur.

As indicated in 7 CFR 331.6(c) and 9 CFR 121.7(d), a certificate of registration will be valid for only specific agents or toxins, and specific activities and locations. A certificate of registration may cover more than one listed agent or toxin, and it may be amended to cover additional listed agents or toxins. A responsible official may request an amendment to a certificate of registration by submitting the relevant pages from the registration application package to the agency that issued the certificate of registration, either APHIS or CDC.

Furthermore, under 7 CFR 331.6(d) and 9 CFR 121.7(e), a certificate of registration may be amended to reflect changed circumstances (*e.g.*, replacement of the responsible official, changes in ownership or control of the entity, changes in the activities involving the agent or toxin). The responsible official must immediately notify the agency that issued the certificate of registration, either APHIS or CDC, of such changes in circumstances that occur after submission of the application for registration or after receipt of a certificate of registration. We note that replacement of the responsible official or change in ownership or control of an entity will require a security risk assessment for the new individual(s) who owns or controls the entity.

There may be instances where a responsible official wishes to discontinue possessing, using, or transferring one or more agents or toxins for which they are registered. In those instances, 7 CFR 331.5(e) and 9 CFR 121.6(f) state that the responsible official may inactivate the agent or toxin or he/she may transfer the agent or toxin to a registered individuals or entities. The responsible official must notify APHIS or, for overlap agents, APHIS or CDC, 5 business days prior to the planned inactivation so that we may have the opportunity to observe the inactivation of the agents or toxins. APHIS or CDC will notify the responsible official if we wish to observe the inactivation of the agents or toxins.

Finally, 7 CFR 331.6(f) and 9 CFR 121.7(g) indicate that a certificate of registration will be valid for a maximum of 3 years. To minimize the administrative burden associated with this new registration program, initially we will assign expiration dates ranging from 24 to 36 months to stagger the dates for renewing registration. Upon renewal, we expect that all certificates of registration will be valid for 3 years.

Denial, Revocation, and Suspension of Registration

Section 212(e)(6)(A) of the Act provides that an individual who seeks to register shall be subject to a database check by the Attorney General. Section 212(e)(6)(B) goes on to provide that other persons (*i.e.*, entities) shall be subject to a database check by the Attorney General, and, where applicable, the individual who owns or control such person (*i.e.*, entity) shall be subject to a database check by the Attorney General.

Pursuant to section 212(e)(3) of the Act, upon receipt of the names and identifying information of those seeking to register, the Attorney General will use criminal, immigration, national security, and other electronic databases for the purpose of identifying whether the individuals are within any of the categories described in 18 U.S.C. 175b (relating to restricted persons). According to 18 U.S.C. 175b, the term "restricted person" means an individual who:

(A) Is under indictment for a crime punishable for a term exceeding 1 year;

(B) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;

(C) Is a fugitive from justice;

(D) Is an unlawful user of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(E) Is an alien illegally or unlawfully in the United States;

(F) Has been adjudicated as a mental defective or has been committed to any mental institution;

(G) Is an alien (other than an alien lawfully admitted for permanent residence) who is a national of a country as to which the Secretary of State, pursuant to section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j), section 620A of chapter 1 of part M of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or section 40(d) of chapter 3 of the Arms Export Control Act (22 U.S.C. 2780(d)), has made a determination (that remains in effect) that such country has repeatedly provided support for acts of international terrorism; or

(H) Has been discharged from the Armed Services of the United States under "dishonorable conditions."

Section 212(e)(3) of the Act further provides that the Attorney General will use criminal, immigration, national security, and other electronic databases for the sole purpose of identifying whether the individuals are reasonably suspected by any Federal law enforcement or intelligence agency of committing a crime set forth in 18 U.S.C. 2332b(g)(5); knowing involvement with an organization that engages in domestic or international terrorism (as defined in 18 U.S.C. 2331) or with any other organization that engages in intentional crimes of violence; or being an agent of a foreign power as defined in 50 U.S.C. 1801.

Accordingly, in 7 CFR 331.7(a) and 9 CFR 121.8(a) we provide that APHIS may deny an application for registration or revoke registration if the Attorney General identifies the individual as within any of the categories described in the previous paragraphs.

With regard to overlap agents or toxins, 9 CFR 121.8(b) provides that APHIS or CDC will deny an application for registration or revoke registration if the Attorney General identifies the individual as a "restricted person" as described in 18 U.S.C. 175b. APHIS or CDC may deny an application for registration or revoke registration if the Attorney General identifies the individual as within any of the remaining categories described above.

Furthermore, in keeping with the safety and security requirements of the Act, in 7 CFR 331.7(a) and 9 CFR 121.8(a), we provide that APHIS may deny an application for registration or revoke registration if the responsible official does not have a lawful purpose to possess, use, or transfer listed agents or toxins; the responsible official is an individual who handles or uses listed agents or toxins and he/she does not have the necessary training or skills to handle such agents or toxins; the entity does not meet the biosafety and/or containment and security requirements prescribed by the Administrator; there are egregious or repeated violations of the biosafety, containment, or security requirements; or the Administrator determines that such action is necessary to protect animal or plant health, and animal or plant products.

We may summarily revoke or suspend registration for any of the reasons set forth in 7 CFR 331.7(a) and in paragraphs (a) and (b) of 9 CFR 121.8. In accordance with 7 CFR 331.7(c) and 9 CFR 121.8(d), we will notify the responsible official in writing if an application for registration is denied or a certificate of registration is revoked or suspended. For overlap agents or toxins, APHIS or CDC will provide the necessary notification.

Finally, both parts provide that denial of an application for registration, revocation of registration, and suspension of registration may be appealed under §§ 331.16 and 121.17, respectively.

Responsibilities of the Responsible Official

To facilitate compliance with the regulations, 7 CFR 331.9 and 9 CFR 121.10 both set out the responsibilities of the responsible official. Specifically, the regulations indicate the responsible official is responsible for:

- Developing and implementing a Biocontainment and Security Plan or a Biosafety and Security Plan, as applicable;
- Allowing only approved individuals within the entity to have access to listed agents or toxins;
- Providing appropriate training in biosafety and/or containment and security procedures for all personnel;
- Transferring agents or toxins only to registered individuals or entities;
- Ensuring that all visitors are informed of and follow the entity's security requirements and procedures;
- Notifying APHIS or, for overlap agents, APHIS or CDC, of changes in circumstances;
- Providing timely notice of any theft, loss, or release of a biological agent or toxin; and
- Maintaining detailed records of information necessary to give a complete accounting of all of the entity's activities related to agents or toxins.

In addition, both parts provide that the responsible official for a diagnostic laboratory or other entity possessing, using, or transferring listed agents or toxins that are contained in specimens presented for diagnosis must immediately report the identification of such agents or toxins to the Administrator and to other appropriate authorities when required by Federal, State, or local law. Furthermore, both parts provide that the Administrator may require less frequent reporting during agricultural emergencies or outbreaks, or in endemic areas. We are adopting these reporting requirements because this information will help us to identify outbreaks and to monitor activities related to listed agents and toxins.

Finally, to be consistent with CDC, we have adopted the CDC's approach on experiments involving recombinant DNA. We believe this provision will address concerns about laboratory manipulation of microbes that alter their characteristics (*e.g.*, increased virulence, pathogenicity, or host range; alter mode of transmission or route of exposure) and increase the risks to human, animal, or plant health.

Accordingly, in 9 CFR 121.10(c) we provide that a responsible official must ensure that the following experiments are not conducted unless approved by the Administrator, after consultation with experts:

(1) Experiments utilizing recombinant DNA that involve the deliberate transfer of a pathogenic trait or drug resistance trait to biological agents that are not known to acquire the trait naturally, if such acquisition could compromise the use of the drug to control disease agents in humans, veterinary medicine, or agriculture; and

(2) Experiments involving the deliberate formation of recombinant DNA containing genes for the biosynthesis of toxins lethal for vertebrates at an LD_{50}<100 ng/kg body weight.

In addition, we request comments concerning what additional experiments, regardless if regulated under these regulations, might warrant similar scrutiny in the interest of safety. In particular, we request comments addressing issues concerning experiments with biological agents that could possibly increase their virulence or pathogenicity, change their natural mode of transmission, route of exposure, or host range in ways adverse to human, animal, or plant health; or result in the deliberate transfer a drug resistant trait or a toxin-producing capability to a microorganism by means that do not involve recombinant DNA techniques. We also request comments regarding the form oversight should

take; for example, the rule could require that, whenever laboratory manipulation of a microorganism increases its risk profile significantly, whether intentionally or inadvertently, the responsible official report such to the Administrator and discontinue work with the modified organism until the Administrator has made recommendations regarding appropriate safety practices.

Restricting Access to Biological Agents and Toxins

Section 212(e)(1) of the Act provides that the Secretary shall establish appropriate safeguard and security requirements for persons possessing, using, or transferring biological agents or toxins commensurate with the risk such agent poses to animal and plant health, and animal and plant products (including the risk of use in domestic or international terrorism). Section 212(e)(2)(A) goes on to state that the regulations must include provisions to ensure that the registered person provides access to listed agents and toxins to only those individuals whom the registered person has determined have a legitimate need to handle or use such agents or toxins. In addition, section 212(b)(1)(A) requires that the Secretary establish and enforce safety procedures for agents and toxins, including measures to ensure proper training and appropriate skills to handle such agents and toxins.

Accordingly, 7 CFR 331.10(a) and 9 CFR 121.11(a) provide that an individual may not have access to biological agents or toxins listed in §§ 331.3 and 121.3, respectively, unless approved by APHIS or, for overlap agents, APHIS or CDC. Both parts require the responsible official to ensure that only approved individuals within the entity have access to listed agents or toxins. In addition, the responsible official must request such access for only those individuals who have a legitimate need to handle or use listed agents or toxins, and who have the appropriate training and skills to handle such agents or toxins.

We recognize that a responsible official may want to minimize the number of individuals who require access approval. Accordingly, we reiterate that such approval is necessary only for those individuals who have a legitimate need to *handle or use* agents or toxins, and who have the appropriate training and skills to handle such agents or toxins. For those individuals who do not have a legitimate need to handle or use agents or toxins, or who do not have the appropriate training and skills to handle agents or toxins (e.g., visitors, janitorial and maintenance staff, and contractors), a responsible official may restrict access to agents or toxins by requiring that such individuals be escorted at all times by an individual with access approval from APHIS or CDC. If a responsible official adopts such a practice, it should be contained in the Biocontainment and Security Plan or the Biosafety and Security Plan, as applicable.

To ensure that individuals who handle or use listed agents or toxins have the appropriate training and skills, 7 CFR 331.10(c) requires that the responsible official must provide appropriate training in containment and security procedures to all individuals with access to agents and toxins in accordance with 7 CFR 331.12. Similarly, 9 CFR 121.11(c) requires that the responsible official must provide appropriate training in biosafety and/or containment and security procedures to all individuals with access to agents and toxins in accordance with 9 CFR 121.13.

Furthermore, the responsible official must provide APHIS with information about the individual's training and skills, such as a curriculum vitae for principal investigators and researchers, and a description of training completed by support personnel (7 CFR 331.10(e) and 9 CFR 121.11(e)).

In order to obtain access approval for an individual, section 212(e)(2)(B) of the Act requires that the responsible official submit the names and identifying information for those individuals deemed to have a legitimate need to handle or use listed agents or toxins to the Secretary and the Attorney General, promptly after determining the individuals need access, and periodically thereafter, not less frequently than once every 5 years. We note that the screening of employees working with agents or toxins is the primary responsibility of the responsible official, not the individual employee. (H.R. Conf. Rep. No. 107–481, at 125 (2002)).

Both 7 CFR 331.10(d) and 9 CFR 121.11(d) indicate that, for each individual identified by the responsible official as having a legitimate need to handle or use listed agents or toxins, the responsible official must submit that individual's name and identifying information to APHIS and the Attorney General. Paragraph (d) of 9 CFR 121.11 further provides that, for overlap agents, the responsible official must submit this information to either APHIS or CDC and the Attorney General.

Pursuant to section 212(e)(3) of the Act, upon receipt of the names and identifying information, the Attorney General will use criminal, immigration, national security, and other electronic databases for the purpose of identifying whether the individuals are within any of the categories described in 18 U.S.C. 175b (relating to restricted persons). Section 212(e)(3) of the Act further provides that the Attorney General will use criminal, immigration, national security, and other electronic databases for the purpose of identifying whether the individuals are reasonably suspected by any Federal law enforcement or intelligence agency of committing a crime set forth in 18 U.S.C. 2332b(g)(5); knowing involvement with an organization that engages in domestic or international terrorism (as defined in 18 U.S.C. 2331) or with any other organization that engages in intentional crimes of violence; or being an agent of a foreign power as defined in 50 U.S.C. 1801.

In 7 CFR 331.10(h) and 9 CFR 121.11(h), we provide that we may deny or limit access of an individual to listed agents or toxins if the Attorney General identifies the individual as within any of the categories described in the previous paragraph. This is consistent with the requirements in section 212(e)(2)(C)(i) of the Act.

With regard to overlap agents or toxins, 9 CFR 121.11(i) provides that APHIS or CDC will deny an individual access to overlap agents or toxins if the Attorney General identifies the individual as a "restricted person" as described in 18 U.S.C. 175b. APHIS or CDC may deny or limit access of an individual if the Attorney General identifies the individual as within any of the remaining categories described above.

Furthermore, in keeping with the safety and security requirements of the Act, both 7 CFR 331.10(h) and 9 CFR 121.11(h) provide that we may deny or limit access if the individual does not have a legitimate need to handle listed agents or toxins; the individual does not have the necessary training or skills to handle listed agents or toxins; or the Administrator determines that such action is necessary to protect animal or plant health or animal or plant products.

The Administrator will determine what constitutes limited access on a case-by-case basis. The determination will take into consideration all the facts at hand and be commensurate with the risks posed by the agent or toxin. Generally, we expect that an individual granted limited access will only be allowed to handle or use an agent or toxin under the direct supervision of an approved individual.

Section 212(e)(3)(C) of the Act provides that the Attorney General will notify the Secretary whether the individual is within any of the categories discussed previously. Then the Secretary will notify the responsible official if an individual is granted or denied access to listed agents or toxins (section 212(e)(4)).

Accordingly, both 7 CFR 331.10(g) and 9 CFR 121.11(g) provide that we will notify the responsible official if an individual is granted full or limited access, or denied access, to biological agents or toxins, and we will notify the individual if he/she is denied access or granted only limited access to such agents or toxins. Paragraph (g) of 9 CFR 121.11 further provides that, for overlap agents or toxins, APHIS or CDC will provide the necessary notification.

Pursuant to section 212(e)(5) of the Act, 7 CFR 331.10(f) and 9 CFR 121.11(f) indicate that we may expedite the access approval process for individuals upon request by the responsible official and a showing of good cause, such as public health or agricultural emergencies, national security, impending expiration of a research grant, or a short-term visit by a prominent researcher. We note, however, that the Act specifically provides that expedited review is not available for individuals or entities seeking to register (section 212(e)(6)).

Both 7 CFR 331.10(j) and 9 CFR 121.11(k) provide that access approval for individuals is valid for 5 years and, thereafter, the responsible official shall request access approval every 5 years for as long as the individual needs access to such agents or toxins. This is consistent with the requirements of the Act.

In 7 CFR 331.10(k) and 9 CFR 121.11(l), we further provide that the responsible official must immediately notify APHIS or, for overlap agents or toxins, APHIS or CDC, when an individual's access to listed agents or toxins is terminated by the entity and the reasons therefore. We believe this information will be relevant to any subsequent determinations to allow that individual access to listed agents or toxins.

Section 212(e)(7)(A)(i) of the Act requires that the regulations provide for an opportunity for review by the Secretary, when requested by the individual involved, of a determination to deny that individual access to listed agents or toxins. Thus, 7 CFR 331.10(i) and 9 CFR 121.11(j) provide that an individual may appeal the Administrator's decision to deny or limit access to biological agents or toxins, in accordance with §§ 331.16 and 121.17, respectively.

Biocontainment and Security Plan/ Biosafety and Security Plan

Sections 212(b) and (c) of the Act require that the Secretary establish and enforce safety procedures for listed agents and toxins, including measures to ensure proper training and appropriate skills to handle agents and toxins, and proper laboratory facilities to contain and dispose of agents and toxins. In addition, sections 212(b) and (c) of the Act require that the Secretary establish and enforce safeguard and security measures to prevent access to listed agents and toxins for use in domestic or international terrorism or for any other criminal purpose. Pursuant to section 212(e)(1), the safeguard and security requirements must be commensurate with the risk posed by the agent or toxin.

Because different agents and toxins pose differing degrees of risk, depending on factors such as their escape potential and availability of a suitable habitat (for plant-related agents) and transmission and effect of exposure to the agent or toxin (for overlap and animal agents or toxins), we believe that it would be counterproductive to attempt to prepare a detailed list of prescriptive requirements for entities (*i.e.*, a "one size fits all" design standard). Rather, we have prepared a brief set of performance standards that we will consider to the degree to which they are appropriate to the risks presented by a particular agent or toxin, given its intended use and the location of the entity.

Accordingly, 7 CFR 331.11 requires that, as a condition of registration, an individual or entity must develop and implement a Biocontainment and Security Plan. Similarly, 9 CFR 121.12 requires that, as a condition of registration, an individual or entity must develop and implement a Biosafety and Security Plan. The titles and provisions of the plans are different because the agents listed under 7 CFR 331.3 do not pose a severe threat to human health and, therefore, it is unnecessary to require that the plant-related plan address personnel safety and health.

In 7 CFR 331.11, we provide that the plan must contain sufficient information and documentation to describe the containment procedures and the security systems and procedures. The plan's containment and security provisions must be commensurate with the risk posed by the agent or toxin, given its intended use.

Similarly, in 9 CFR 121.12 we provide that the plan must contain sufficient information and documentation to describe the biosafety and containment procedures, and the security systems and procedures. The plan's biosafety, containment, and security provisions must be commensurate with the risk posed by the agent or toxin, given its intended use.

Pursuant to section 212(e)(9) of the Act, we will provide technical assistance and guidance upon request to help individuals and entities develop their plans.

In 7 CFR 331.11(a)(1), we provide that the plan's containment procedures must be sufficient to contain the agent or toxin (*e.g.*, physical structure and features of the entity, and operational and procedural safeguards) while in 9 CFR 121.12(a)(1) we provide that the plan's biosafety and containment procedures must be sufficient to contain the agent or toxin (*e.g.*, physical structure and features of the entity, and operational and procedural safeguards). As previously noted, these provisions are different because the agents listed under 7 CFR 331.3 do not pose a severe threat to human health and, therefore, it is unnecessary to require that the plant-related plan address personnel safety and health.

We expect that a number of the individuals or entities seeking to register under these regulations will have previously been issued permits under 7 CFR part 330 or 9 CFR part 122, or will have been registered under CDC's select agent regulations in 42 CFR part 72 and thus will have appropriate biosafety and/or containment procedures already in place. It is likely that these biosafety and/or containment procedures will meet the requirements of the regulations or could be easily modified to meet the requirements of the regulations. Therefore, we encourage individuals or entities seeking to register to make use of existing biosafety and/or containment procedures, and to modify such procedures as necessary.

In 7 CFR 331.11(a)(2) and 9 CFR 121.12(a)(2), we further provide that the security systems and procedures must be designed according to a site-specific risk assessment and must provide graded protection in accordance with the threat posed by the agent or toxin. This site-specific risk assessment should involve a threat assessment and risk analysis in which threats are defined, vulnerabilities examined, and risks associated with those vulnerabilities are identified.

The security systems and procedures must be tailored to address site-specific characteristics and requirements, ongoing programs, and operational needs and must mitigate the risks identified in the risk assessment. The

plan must describe inventory control procedures, personnel suitability for those individuals with access to listed agents or toxins, physical security, and cybersecurity. The plan must also contain provisions for routine cleaning, maintenance, and repairs; provisions for securing the area (*e.g.*, card access, key pads, locks) and protocols for changing access numbers or locks following staff changes; procedures for loss or compromise of keys, passwords, combinations, etc.; procedures for reporting suspicious persons or activities, loss or theft of listed agents or toxins, release of listed agents or toxins, or alteration of inventory records; provisions for the control of access to containers where listed agents and toxins are stored; and procedures for reporting and removing unauthorized persons.

Moreover, with respect to areas containing listed agents or toxins, an entity or individual must adhere to the following security requirements or implement measures to achieve an equivalent or greater level of security as the provisions below:

- Allow unescorted access only to approved individuals who are performing a specifically authorized function during hours required to perform that job;
- Allow individuals not approved under 7 CFR 331.10 or 9 CFR 121.11 to conduct routine cleaning, maintenance, repairs, and other non-laboratory functions only when escorted and continually monitored by approved individuals;
- Provide for the control of access to containers where listed agents and toxins are stored by requiring that such containers be locked when not in the direct view of an approved individual and by using other monitoring measures, as needed;
- Require the inspection of all packages upon entry and exit;
- Establish a protocol for intra-entity transfers, including provisions for ensuring that the packaging and movement, is conducted under the supervision of an approved individual;
- Require that approved individuals do not share with any other person their unique means of accessing the area or listed agents or toxins; and
- Require that approved individuals immediately report any of the following to the responsible official: Any loss or compromise of keys, passwords, combinations, etc.; any suspicious persons or activities; any loss or theft of listed agents or toxins; any release of a listed agent or toxin; and any sign that inventory and use records for listed agents and toxins have been altered or otherwise compromised.

We recommend that security experts be consulted to ensure that the individual or entity develops security systems and procedures that will meet the requirements of this section. However, we recognize that this may not be possible in every instance. Therefore, we reiterate that we will provide technical assistance and guidance upon request.

In 7 CFR 331.11(a)(3) and 9 CFR 121.12(a)(3), we also require that the plans include incident response plans for containment breach, security breach, inventory violations, non-biological incidents such as workplace violence, and cybersecurity breach. Under 7 CFR 331.11(a)(3), the incident response plans must address containment, inventory control, and notification of managers and responders; while under 9 CFR 121.12(a)(3) the incident response plans must address containment, personnel safety and health, inventory control, and notification of managers and responders. As discussed above, it is unnecessary for 7 CFR 331.11(a)(3) to address personnel safety and health because the plant-related agents do not pose a severe threat to human health.

Finally, to ensure that the Biocontainment and Security Plan continues to meet the entity's containment and security needs, in 7 CFR 331.11(b) we require that the plan be reviewed, performance tested, and updated annually. The plan must also be reviewed and revised, as necessary, after any incident. We include these same requirements in 9 CFR121.12(b) in order to ensure that the Biosafety and Security Plan continues to meet the entity's biosafety, containment, and security needs.

Training

To ensure that individuals who handle or use listed agents or toxins have the appropriate training and skills, 7 CFR 331.12(a) provides that the responsible official must provide appropriate training in containment and security procedures to all individuals with access to listed agents and toxins while 9 CFR 121.13(a) provides that the responsible official must provide appropriate training in biosafety, containment, and security procedures to all individuals with access to listed agents and toxins. These provisions are different because the agents listed under 7 CFR 331.3 do not pose a severe threat to human health and, therefore, it is unnecessary to require that the plant-related plan address personnel safety and health.

Both 7 CFR 331.12 and 9 CFR 121.13 provide that the responsible official must provide information and training to an individual at the time the individual is assigned to work with a listed agent or toxin. In addition, the responsible official must provide refresher training annually.

Transfer of Biological Agents and Toxins

In accordance with 212(b) of the Act, 7 CFR 331.13 and 9 CFR 121.14 set forth the transfer requirements for biological agents and toxins. Both 7 CFR 331.13 and 9 CFR 121.14 provide that a listed biological agent or toxin may only be transferred to individuals or entities registered to possess, use, or transfer that particular agent or toxin. However, the sender of an agent or toxin may be an individual or entity that has a certificate of registration for the agent or toxin, an individual or entity that is exempt from the requirements of the regulations, or an individual or entity located outside of the United States. Biological agents or toxins may only be transferred under the conditions in each section and must be authorized by APHIS or, for overlap agents or toxins, by APHIS or CDC, prior to the transfer.

Both 7 CFR 331.13(a) and 9 CFR 121.14(a) incorporate the existing permit requirements under the plant pest regulations in 7 CFR part 330 and the organisms and vectors regulations in 9 CFR part 122, respectively. We believe the current permitting systems provided for by the existing plant pest and organisms and vectors regulations will complement the requirements under these new regulations, and will provide additional protections for the transfer of listed agents and toxins. We do not expect that these permit requirements will be burdensome, since permits for listed biological agents or toxins issued under 7 CFR part 330 and 9 CFR part 122 are valid for up to 1 year and can be renewed.

Thus, §§ 331.13(a) and 121.14(a) provide that, in addition to the permit required under 7 CFR part 330 or 9 CFR part 122, respectively, biological agents or toxins may only be imported or moved interstate with the prior authorization of APHIS or, for overlap agents or toxins, APHIS or CDC. To obtain such authorization, the sender and the responsible official for the recipient must complete and submit APHIS Form 2041 to APHIS or CDC, in accordance with §§ 331.13(c) and 121.14(c).

Furthermore, under 7 CFR 331.12(b), plant agents or toxins listed in 7 CFR 331.3 may be moved intrastate only with the prior authorization of APHIS, and under 9 CFR 121.14(b), animal agents or toxins listed in 9 CFR 121.3(c) may be moved intrastate only with the prior authorization of APHIS and overlap agents or toxins listed in 9 CFR 121.3(b) may be moved intrastate only with the prior authorization of APHIS or CDC. Again, to obtain such authorization, the sender and the responsible official for the recipient must complete and submit APHIS Form 2041 to APHIS or CDC, in accordance with §§ 331.13(c) and 121.14(c).

To track the actual transfer of the agents and toxins, we are adopting CDC's transfer process to be consistent with CDC and because a number of regulated parties are already familiar with this transfer process. This transfer process is designed to provide an accurate record of the transfer; such information may be crucial in the event of a criminal or epidemiological investigation.

Both 7 CFR 331.13(c) and 9 CFR 121.14(c) set out the transfer process and procedures (APHIS Form 2041). Specifically, both parts provide that, prior to each transfer, the sender and the responsible official for the recipient must complete APHIS Form 2041. Then the sender must submit the form to APHIS or, for overlap agents or toxins, to APHIS or CDC.

After reviewing the form, APHIS will authorize the transfer based on a finding that the recipient has a certificate of registration covering the transfer of the listed agent or toxin. For overlap agents and toxins, APHIS or CDC will authorize the transfer based on a finding that the recipient has a certificate of registration covering the transfer of the listed agent or toxin.

To confirm the transfer, 7 CFR 331.13(c)(3) and 9 CFR 121.14(c)(3) provide that the responsible official for the recipient must notify the agency authorizing the transfer (either APHIS or CDC) and the sender upon receipt of the agent or toxin by mailing or faxing a completed APHIS Form 2041 to APHIS or CDC within 2 business days.

Furthermore, 7 CFR 331.13(c)(4) and 9 CFR 121.14(c)(4) provide that the recipient must notify APHIS or, for overlap agents, APHIS or CDC, immediately if the agent or toxin has not been received within 48 hours after the expected delivery or if the package containing the agent or toxin is leaking or has been damaged.

Finally, both 7 CFR 331.13(d) and 9 CFR 121.14(d) provide that the sender must comply with all applicable laws governing packaging and shipping.

Although not contained in this interim rule, pursuant to section 212(b) of the Act, we note that APHIS has incident response procedures in place to protect animal and plant health and animal and plant products in the event of a transfer or potential transfer in violation of the safety procedures and safeguard and security measures established by these regulations. Generally, these incident response procedures consist of coordinating with appropriate Federal, State, and local agencies; communicating with stakeholders, industry partners, and diagnostic laboratories about the potential threat; elevating surveillance; and communicating with international agencies, if necessary.

Records

The recordkeeping requirements in 7 CFR 331.14 and 9 CFR 121.15 are designed to document an entity's compliance with the regulations and to satisfy the investigational needs of APHIS and the Attorney General, in accordance with section 212 of the Act. In 7 CFR 331.14 and 9 CFR 121.15, we provide that the responsible official must maintain complete records of information necessary to give an accounting of all of the activities related to agents or toxins listed in §§ 331.3 and 121.3, respectively. Such records must include the Biocontainment and Security Plan or the Biosafety and Security Plan, as applicable; a current list of all individuals with access to agents or toxins; training records for such individuals; accurate and current inventory records (including source and characterization data); permits and transfer documents (APHIS Form 2041) issued by APHIS or, for overlap agents and toxins, APHIS or CDC; security records (*e.g.*, transactions from automated access control systems, testing and maintenance of security systems, visitor logs); and biosafety, containment, and security incident reports.

We require that the responsible official maintain such records for 3 years and produce such records, upon request, to APHIS or CDC inspectors, and appropriate Federal, State, or local law enforcement authorities.

Inspections

Section 212(f) of the Act provides that the Secretary shall have the authority to inspect persons to ensure compliance with the regulations, including prohibitions on restricted persons and other provisions of subsection 212(e) of the Act. Accordingly, in 7 CFR 331.15(a) we require that any APHIS inspector be allowed, without previous notification, to enter and inspect the entire premises, all materials and equipment, and all records required to be maintained by the regulations. Likewise, in 9 CFR 121.16(a) we require that any APHIS or CDC inspector be allowed to conduct such inspections.

As previously noted, APHIS may inspect and evaluate the premises and records prior to issuing a certificate of registration in order to ensure compliance with the regulations (7 CFR 331.15(b) and 9 CFR 121.16(b)). APHIS or CDC may conduct such inspections for overlap agents or toxins. Once registered, inspections of the premises and records will be conducted to ensure compliance with the regulations.

Notification in the Event of Theft, Loss, or Release

The Act specifically requires notification in the event of theft, loss, or release of a biological agent or toxin. Therefore, 7 CFR 331.16(a) and 9 CFR 121.17(a) provide that the responsible official must orally notify APHIS and appropriate Federal, State, and local law enforcement agencies immediately upon discovery of the theft or loss of agents or toxins listed in §§ 331.3 and 121.3, respectively. The regulations further provide that the oral notification must be followed by a written report within 7 days. We are allowing 7 days for the submission of the written report to give the responsible official ample time to compile information and investigate the theft or loss in order to provide a more detailed report.

Similarly, 7 CFR 331.16(b) and 9 CFR 121.17(b) provide that the responsible official must orally notify APHIS immediately upon discovery that a release of a listed agent or toxin has occurred outside of the biocontainment area. As with notification of theft or loss, the regulations provide that oral notification of a release must be followed by a written report within 7 days. The regulations further provide that APHIS will notify relevant Federal, State, and local authorities, and the public, if necessary. In § 121.17(b), we additionally provide that, if the release involves an overlap agent or toxin, we will also notify the Secretary of Health and Human Services.

Administrative Review

Section 212(e)(7)(A)(i) of the Act states that the regulations shall provide for an opportunity for review by the Secretary, when requested by the individual involved, of a determination to deny that individual access to listed agents or toxins and, when requested by the person involved, of a determination to deny or revoke registration for that person.

Accordingly, both 7 CFR 331.17 and 9 CFR 121.18 provide that an individual

or entity may appeal a denial or revocation of registration. An individual who has been denied access to listed agents or toxins or who has been granted only limited access to listed agents or toxins may appeal that decision. We note that an entity may not appeal the denial or limitation of an individual's access to listed agents or toxins.

Both 7 CFR 331.17 and 9 CFR 121.18 provide that the appeal must be in writing and submitted to the Administrator within 30 days of the decision. The appeal must state all of the facts and reasons upon which the individual or entity disagrees with the decision. Where the denial or revocation of registration or the denial or limitation of an individual's access approval is based solely upon an identification by the Attorney General, APHIS will forward the request for review to the Attorney General to review.

In accordance with section 212(e)(7)(A)(iii), the decision of the Administrator constitutes final agency action for purposes of 5 U.S.C. 702.

Section 212(e)(7)(A)(ii) of the Act provides that the Secretary, during a review of a determination, may consider information relevant to the review ex parte to the extent that disclosure of the information could compromise national security or an investigation by any law enforcement agency.

Civil and Criminal Penalties

While not reflected in the regulations, we note that the Act provides for civil and criminal penalties for violations of the regulations. Under section 212(i) of the Act, any person who violates any provision of these regulations will be subject to a civil money penalty, in addition to any other penalties that may apply under law. The civil money penalty shall not exceed $250,000 for an individual and $500,000 for any other person.

Section 231 of the Act sets out the criminal penalties for violations of the regulations. Section 231(b)(2) of the Act provides that whoever transfers a biological agent or toxin to a person who the transferor knows or has reasonable cause to believe is not registered shall be fined or imprisoned for no more than 5 years, or both. Similarly, section 231(c)(2) provides that whoever knowingly possesses a biological agent or toxin without registering under the regulations shall be fined or imprisoned no more than 5 years, or both.

Immediate Action

Immediate action is necessary in order for USDA to comply with the requirements of Title II, subtitle B, of Pub. L. 107–188, which requires the publication of this interim rule not later than December 9, 2002. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

For this rule, we have prepared an economic analysis. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866, as well as an analysis of the potential economic effects of this proposed rule on small entities, as required under 5 U.S.C. 603. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. 107–188), the Secretary of Agriculture is required to provide by regulation for the establishment and enforcement of standards and procedures governing the possession and use of the listed biological agents and toxins; the establishment and enforcement of safety requirements for the transfer of listed agents and toxins; the establishment and enforcement of safeguard and security measures to prevent access to listed agents and toxins for use in domestic or international terrorism or other criminal purpose; and the establishment of procedures to protect animal and plant health, and animal and plant products, in the event of a transfer in violation of the established safety and security measures. For the Health and Human Services Department (HHS), CDC is taking similar measures related to biological agents and toxins that have the potential to adversely affect human health or human and animal health.

Small Entities

The Regulatory Flexibility Act requires that agencies specifically consider the economic effects of their rules on small entities. The entities most likely to be affected by this rule are those laboratories and other institutions conducting research and related activities that involve the use of listed biological agents and toxins. Most affected entities (other than Federal or State governmental entities) would be considered part of North American Industrial Classification System (NAICS) code 541710, "Research and Development in the Physical, Engineering, and Life Sciences." Some affected entities would be considered part of NAICS 541940, "Veterinary Services;" NAICS 611310, "Colleges, Universities and Professional Schools;" NAICS 325412, "Pharmaceutical Preparation Manufacturing;" NAICS 325413, "In-Vitro Diagnostic Substance Manufacturing;" and NAICS 325414, "Biological Product (except Diagnostic) Manufacturing."

The Small Business Administration (SBA) has established guidelines for determining when establishments are to be considered "small" under the Regulatory Flexibility Act. An entity in NAICS 541710, 325413, or 325414 is considered to be a small entity if it has 500 or fewer employees; for NAICS 325412, that threshold is 750 or fewer employees. An entity in NAICS 611310 is considered small with annual receipts/revenues of $6 million or less.

According to the 1997 Economic Census, no less [1] than 95 percent of life sciences research and development establishments subject to Federal income tax, and no less than 92 percent of those establishments not subject to Federal income taxes, can be considered small. More than 99 percent of "biological (except diagnostic) manufacturing" establishments, more than 98 percent of "diagnostic manufacturing" establishments, and at least 94 percent of "pharmaceutical manufacturing" establishments are considered small. The economic census does not contain information on the establishment size of veterinary service entities. According to data from the U.S. Department of Education, about 31 percent of reporting postsecondary institutions had revenue of less than $6 million in fiscal year 1995–96.

Benefits of the Rule

Benefits associated with this rule are the avoided losses to animals or plants that could be attacked by these organisms, and their products and markets. Losses include reduction in yield and productivity of affected hosts, public and private control costs, and loss in export revenue due to trade embargoes. The listed agents and toxins include viruses, bacteria, and fungi that potentially pose a severe threat to plant health or plant products. The listed pathogens could threaten a number of important crops including citrus, corn, potatoes, rice, stone fruit, and soybeans. In 2001, soybean production alone was valued at more than $12 billion. The rule also covers biological agents and toxins that have been determined to have the potential to pose a sever threat to both human and animal health, to animal health, or to animal products. Paragraph (b) of 9 CFR 121.2 lists 21 overlap agents and toxins. This list was drawn from CDC's list of select agents, the overlap being those select agents that pose a risk to both human and animal health. The 23 agents and toxins listed in 9 CFR 121.2(d) include the causative agents of 14 of the 15 diseases classified by the Office International des Epizooties (OIE) as "List A" diseases. (The causative agent of the fifteenth List A disease, Rift Valley fever, is an overlap agent listed in the above part.) List A diseases are, according to OIE, those transmissible diseases that have the potential for very serious and rapid spread, irrespective of national borders, that are of serious socioeconomic or public health consequence and that are of major importance in the international trade of animals and animal products. Five of the remaining nine agents and toxins are OIE List B diseases, *i.e.*, transmissible diseases that are considered to be of socioeconomic and/or public health importance within countries and that are significant in the international trade of animals and animal products. The three remaining diseases/disease agents—two restricted foreign animal pathogens and one emerging paramyxovirus—were included on the list based on the determination that they potentially pose a severe threat to animal health or animal products.

The costs associated with outbreaks can be very high as is demonstrated by natural outbreaks that have occurred. For example, it has been estimated that the losses to agriculture and the food chain from the recent FMD outbreak in the United Kingdom, including the costs compensated by the government amount to about £3.1 billion ($4.7 billion). In 1999, Ekboir estimated the potential impacts of an FMD outbreak in California alone at between $8.5 and $13.5 billion.[2] Also, a BSE crisis occurred in the UK (which has a cattle industry about 1/10 the size of that in the United States) in 1996. It has been estimated [3] that the total resource costs to the UK economy as a result of BSE in the first 12 months after the onset of the 1996 crisis were in the range of £740 million to £980 million ($1.2 billion to $1.5 billion), or just over 0.1 percent of the gross domestic product of the United Kingdom. In addition to these losses, the UK lost its entire export market for beef following the crisis.

The above cited consequences relate to natural or accidental introduction. Deliberate introduction greatly increases the probability of an agent or toxin becoming established and causing wide-ranging and devastating impacts on the economy, disruption to society, diminished confidence in public and private institutions, and possible loss of life. The perpetrators would have the advantage of controlling the time of introduction of the agent, introducing agents into remote or highly susceptible areas, multiple introductions of the same agent, or simultaneous release of different agents. Intentional introductions permit an increased probability of survival of a pathogen, the use of highly virulent strains and high concentrations of inoculum, and precise timing of release to coincide with maximal colonization potential.[4]

Costs of the Rule

Facilities that possess listed agents and toxins will be affected by this rule. Those facilities are primarily research and diagnostic facilities. They include Federal, State, and university laboratories, and commercial enterprises.

Because affected entities vary widely and the information needed to determine an individual facility's biosafety, containment and physical security situation will not be available until the registration process occurs, information on specific necessary changes at any individual facility and thus those costs are not available. However, some general observations regarding the potential costs can be made.

Affected Entities

There are approximately 33 academic, commercial, and State and Federal government facilities that have indicated their possession of listed plant pathogens and thus affected by this rule. This information was obtained from the notifications received by Plant Protection and Quarantine, APHIS–USDA.

In addition, there are approximately 619 commercial diagnostic facilities, university research and diagnostic facilities, State and Federal diagnostic and research facilities, and others in possession of animal and/or overlap agents or toxins that are expected to be affected by this rule.[5]

The facilities that deal with listed plant agents and toxins are academic institutions, commercial diagnostic and research facilities, and State and Federal Government facilities. Almost 60 percent of the affected facilities are academic and almost 30 percent government. The affected facilities tend to be small.

The facilities that deal with animal and overlap agents are academic, commercial, government, non-profit, and other. Twenty-nine percent of the facilities with listed agents and toxins are identified academic institutions, 45 percent as private commercial or non-profit entities, and 15 percent as government. The remaining 11 percent are not identified, but include veterinary practices. Animal and overlap agents are used primarily in diagnostic work and research.

The level of security at the facilities dealing with listed agents and toxins is currently very diverse, ranging from a locked freezer to a lock on the door to razor wire perimeter fencing, a guard post, locks or coded entry, and visitor escorts.

Exemptions From the Rule

Clinical and diagnostic laboratories are specifically exempted from the provisions of the regulations for possessing, using, or transferring animal

[1] The establishment size breakdown in the economic census does not precisely fit the SBA guidelines.

[2] Ekboir, J.M., "Potential impact of foot-and-mouth disease in California: The role and contribution of animal health surveillance and monitoring services." Davis, CA: Agricultural Issues Center, Division of Agriculture and Natural Resources, University of California, Davis, 1999.

[3] DTZ Pieda Consulting, "Economic Impact of BSE on the UK economy." A Report commissioned by the UK Agricultural Departments and HM Treasury.

[4] National Research Council.

[5] As of October 18, 2002, 1,653 entities had submitted notifications that they possess biological agents or toxins affecting animals and/or humans listed by either USDA or HHS. In this analysis, we use 1,653 entities. In coordination with CDC, we assumed that those facilities with animal agents and those with animal and overlap agents will be affected by the APHIS rule. Those facilities with human agents and those human and overlap agents were assumed to be affected by the CDC rule. About one-half of those facilities with only overlap agents were assumed to be affected by the APHIS rule (50 percent of facilities with only overlaps, except all medical practices which were attributed to the CDC rule and all veterinary practices which were attributed to the APHIS rule). Facilities with both animal and human agents were considered in both analyses. This may cause some double counting if entities with both animal and human agents do not also have separate laboratories for that work. Numbers provided by Ed Gaunt, ASI—contractor collecting and compiling notification information.

or overlap agents or toxins that are contained in specimens presented for diagnosis or verification, and for agents that are contained in specimens presented for proficiency testing; provided that the facilities follow the requirements on disposal, transfer and notification. Facilities that handle fixed tissues that are, bear, or contain listed animal agents or toxins will be exempt from the registration requirements, provided that a permit has been issued to the facility under 9 CFR part 122. In addition, the Secretary may grant exemptions from the applicability of the regulations as they apply to animal only and plant agents and toxins if the Secretary determines that such exemptions are consistent with protecting animal and plant health, and animal and plant products. Registered diagnostic laboratories will also be required to report identifications of listed agents and toxins when presented for diagnosis. APHIS expects to receive 1,000 required notifications of identification and 250 exemption applications in a given year. It is estimated that complying with the exemption requirements will cost $72 per notification and $84 per exemption application.[6]

Registration

Under this rule, unless exempted a person or facility shall not possess, use, or transfer any listed agent or toxin without a certificate of registration issued by APHIS or CDC. The registration process is designed to obtain critical information concerning persons or facilities in possession of certain agents or toxins, as well as the specific characteristics of the agents and toxins. Information to determine that persons seeking to register have a lawful purpose to possess, use, or transfer agents or toxins will also be required as part of the registration process. This will involve security risk assessments by the U.S. Department of Justice, and collecting and providing the required information. Also as a condition of registration, a Biocontainment and Security Plan or Biosafety and Security Plan must be developed. It is estimated that it will cost between $414 and $778 per facility to collect and provide the required information. Registration amendments are expected to cost $86 each. In addition, it is estimated that re-applying for registration will cost $299 to $459 for those facilities to re-apply, as the registration is valid for up to 3 years.[7] It is estimated that the development of the biosafety/biocontainment plan will cost $2,777 at those facilities needing one. The security plan should be covered in the facility security assessment below. Complying with inactivation requirements is estimated to cost $43 per notification.

Transfer

Under this rule, listed biological agents and toxins may only be transferred to persons registered to possess, use, or transfer that particular agent or toxin. However, the sender may be an individual or facility exempt from the requirements of this rule, or an individual or facility located outside the United States. Transfer must occur only with prior authorization, notification of receipt by the recipient, and notification of overdue or damaged shipments. It is estimated that complying with these requirements will cost $124 for each of an expected 6,520 transfers in a year.

Biosafety and Containment Procedures

Biosafety and containment requirements ensure that the combination of work practices and physical containment are proportional to the risk associated with the agent or toxin. USDA permits dealing with the listed agents and toxins already required the biosafety and containment level commensurate with the risk associated with the pathogen covered in the permit or registration. Therefore, to the extent that affected entities are already permittees, the biosafety and containment requirements of this rule will have already been required at those facilities. There are almost 400 individual permittees with listed agents and toxins representing an unknown number of facilities.[8] In addition, some portion of the potentially affected entities will be exempt from the requirements of this rule, and therefore not affected by the biosafety requirements.

Physical Security Procedures

This rule will require that any facility where listed agents and toxins are held adequately provide for the physical security of the premises. This rule does not specify how security needs are to be met, only that they are adequate. Because the current level of security is very diverse, physical security components may have to be added in various quantities (including none) to meet the specific security needs of a given facility.

An example of security spending at USDA laboratories shows security upgrades at NVSL in Ames, IA, completed in 2002 cost $550,077 ($6.63/ft², 83,000 ft² total area). Installations of electronic security components can include closed-circuit television (CCTV) (*e.g.*, cameras, VCR, and control equipment), intrusion detection system (access-control card readers, card-keys, operating computer and software), all cabling associated with the security system, and integrating the system with the off-site monitoring. Other security related expenses that could be needed at a given facility included a facility security assessment (to prepare the security plan required in the rule) and entry control equipment (x-ray, metal detectors). Other features would entail yearly recurring costs (*i.e.*, off-site monitoring, an equipment maintenance agreement, and guard service).

The average cost per square foot of electronic portion of security for budget purposes ranges from $6.25/ft² for facilities under 80,000 ft² to $8.33/ft² for facilities in excess of 150,000 ft². This is based on average actual security system installations for APHIS facilities, and includes CCTV, intrusion detection systems, integration, perimeter protection, design, construction, and construction management, but not biometric technology, and assumes single-story facilities and has been adjusted for laboratory-type facilities.

This rule will require that all information resources related to listed biological agents and toxins have an appropriate level of protection in the system that is used to acquire, store, manipulate, manage, move, control, display, switch, interchange, receive or transmit that information. Most affected entities have a variety of compelling reasons, including regulatory requirements, for already protecting information.

Other Costs

Other costs associated with this rule include the costs of any additional training that may occur, record keeping, complying with the requirements for theft/loss/release notification, and appealing rulings. It is estimated that yearly recordkeeping will cost from $450 to $1,499 per registered facility. It is estimated that theft, loss, and release reporting will cost $72 for each occurrence. It is estimated that appeal requirements will cost $311 for each occurrence, and that the requests for expedited reviews will cost $43 each.

[6] Based on Bureau of Labor Statistics data. Labor rates used are the same as used by CDC in their analysis of listed agents and toxins. See Supporting Statement for Information Collection Request "Part 73—Select Biological Agents and Toxins" for CDC rule covering 42 CFR part 73.

[7] Registrations will be valid for up to 3 years. It is estimated that approximately two-thirds of all facilities will be required to reapply within the first 3 years.

[8] Because of the data on notification of possession of listed agents and toxins, we cannot directly link permittees to facilities.

Costs to APHIS

Costs to APHIS that may be incurred as a result of the rule include the cost for processing facility registrations, notifications of identification of agents and toxins, exemption applications, transfer applications, theft/loss/release notifications and appeals, and performing facility inspections. It is estimated that APHIS will incur costs associated with this rule of as much as $1.5 million in the first year. Paperwork processing will cost APHIS $744,705 per year. In addition, APHIS may incur costs associated with providing technical assistance on compliance with this rule. Inspections are expected to cost between $240 and $997 per facility and occur every 3 years along with registration, or $156,000 to $650,000 for all facilities. Additional inspector training to cover the needs of this rule may be needed as well. The cost may be similar to the current level. In 2002, APHIS spent $35,480 on inspector training. Background checks or security clearances for all inspectors could be expected to cost $45,000. User fees to offset government costs will not be collected by APHIS under this rule.

Potential Impact of This Rule

Approximately 70 percent of research and development (commercial and non-profit laboratories dealing with human, animal, and plant agents), biological (except diagnostic) manufacturing, diagnostic manufacturing, pharmaceutical manufacturing, and other private establishments affected by this rule have fewer than 20 employees, and another 15 percent have between 20 and 49 employees.[9] Plant laboratories (Federal, commercial, non-profit, and academic) tend to be very small with fewer than 10 persons having access to the agents or toxins. Veterinary diagnostic laboratories (commercial, State or university) and university research laboratories likely have fewer than 100 employees.[10] Federal facilities covered by the rule will be affected by the registration requirements but should not have to make alterations due to the biosafety, containment and security requirements of this rule because they already must meet or exceed the requirements of this rule. In addition, an unknown portion of facilities will be exempt from the provisions of the rule. The level of security at the facilities dealing with listed agents and toxins is currently very diverse, ranging from a lock on the door to razor wire perimeter fencing, a guard post, locks or coded entry and visitor escorts.

For the purpose of assessing the impact of the security requirements of the rule, we make the following assumptions based on the available information on the size distribution of the affected entities:

- Eighty percent of affected facilities have an area to be secured of approximately 10,000 ft²;[11]
- Five percent of affected facilities are Federal facilities and will not need security upgrades as a result of this rule;
- Fifteen percent of affected facilities have an area to be secured of approximately 30,000 ft²;[12] and
- Because facilities will have varying levels of existing security, security needs, and methods of meeting those needs, the average security upgrades in APHIS facilities is used as a proxy for upgrades at these facilities. (The proxy is based on upgrading to state of the art equipment, which may or may not be used at a given facility.)

Using an average budget estimate for upgrading the electronic portion of a security system of $6.25/ft², a facility with 10,000 ft² to secure by installing electronic security countermeasures would need to budget $62,500 and a facility with 30,000 ft² to secure would need to budget $187,500. To obtain an aggregate cost estimate we apply these budget estimates to the 95 percent of facilities with area to be secured based on the size of that area. It should be noted that, as indicated above, utilizing APHIS' costs as a proxy implies that all facilities have baseline levels of electronic security similar to that of APHIS facilities and will upgrade to state-of-the-art technology. However, because the baseline level of security present at each facility is unknown and ultimate security needs are varied, this may or may not be the case. A given facility may be exempt and need no upgrade, may already have adequate security in place, or may need an upgrade but not to state-of-the-art.

Applying a budget cost of $62,500 to the 80 percent of affected facilities with 10,000 ft² to secure gives an overall cost of $32.6 million. Applying a budget cost of $187,500 to the 15 percent of affected entities with 30,000 ft² to secure gives a cost of $18.4 million.

In addition, a facility could need none, some, or all of the following:

- Facility security assessment, including developing a security plan as per the rule; $8.9 million if the 80 percent with smaller spaces all need a $17,000 assessment and $2.5 million if the 15 percent with larger spaces all need a $25,000 assessment.
- Entry control equipment; includes x-ray—small unit ($28,000 per unit), x-ray—large unit ($40,000 per unit), and metal detector(s) ($20,000 per unit). Other features would entail yearly recurring costs.
- Yearly recurring costs: Off-site monitoring ($10,000 to $45,000 per year); an equipment maintenance agreement ($12,000 to $30,000 per year); and guard service—unarmed ($30.00/hr per security post), armed ($35.00/hr per security post), and a supervisor ($40.00/hr).

This rule will involve other costs to the regulated community. It is estimated that complying with the exemption and notification of identification requirements will have a total cost of $93,000 per year. The rule will also involve the costs associated with the registration requirements. It is estimated that it will cost $315,980 to collect and provide the required information. Registration amendments are expected to cost $100,964 in the first year. In addition, it is estimated that it will cost $214,809 for facilities to collect and provide the required information for re-application. Complying with the requirements concerning the transfer of listed agents and toxins could cost $808,480 per year. The rule could also entail costs for any needed upgrades to biosafety and containment, and cybersecurity. These costs are expected to be small. To the extent that affected entities are already permittees, the biosafety and containment requirements of the new act will have already been required at those facilities. Affected entities have a variety of compelling reasons, including legislation, for already protecting information. The rule also requires that a biosafety and security plan be developed. It is estimated that the development of the biosafety portion of the plan could cost

[9] 1997 Economic Census. Department of Commerce, Census Bureau.

[10] AAVLD provided information on 10 diagnostic laboratories. These laboratories ranged in size from 11 to 100 employees including faculty, staff (part- and full-time), and students. In addition, the AAVLD president estimated that diagnostic labs in general would likely have between 6 and 80 employees. According to Dr. Denise Spenser, USDA–APHIS, university research on listed agents likely involves fewer than 100 persons (3 to 5 principal investigators out of about 25 faculty members in each of 3 or 4 departments—microbiology (veterinary microbiology), chemistry, and physiology, 3 to 5 (20 at most) investigators, technicians, and students in each laboratory).

[11] In addition to laboratory space, these facilities can have offices, conference rooms, administration space, mechanical/electrical rooms and storage space. The building code allowance for business use type buildings, which includes laboratories, is 100 ft² per occupant. We assume that the actual space at these facilities is 2 to 5 times this allowance. This would cover facilities with fewer than 50 employees.

[12] This space is larger and assumed to be able to house more than 50 employees.

in total $1.5 million if one-half of the 652 affected facilities need to develop new plans. The security portion would be developed as part of the facility security assessment above. It is estimated that notifications of inactivation would cost $1,376 per year. Other costs of the rule also include record keeping costs, estimated at $425,265 per year. The estimated total cost associated with notifications of theft, loss and release of listed agents or toxins is $144 per year. The estimated total cost associated with appeals under this rule is estimated to be $311 per year. The estimated total cost associated with expedited reviews under this rule is estimated to be $14,018 per year.

The costs to APHIS include processing facility registrations, notifications of identification of agents and toxins, exemption applications, transfer applications, theft/loss notifications, appeals, performing facility inspections, and providing technical assistance for compliance. It is estimated that this will cost as much as $1.5 million in the first year. Paperwork processing is estimated to cost APHIS $744,705 per year.[13] In addition, APHIS may incur costs associated with providing technical assistance on compliance with this rule. Facility inspections will occur every 3 years and are estimated to cost between $240 and $997 each, or between $156,480 and $650,044 for all registered facilities.[14] Additional inspector training could cost $35,480 annually and security clearances $45,000 for all inspectors.

TABLE 1.—SUMMARY OF POTENTIAL COSTS

Activity	One-time costs	Recurring costs
Exemptions from the regulations:		
Applications		$72,000/year.
Notifications of identification		$21,000/year.
Registration:		
Application	$315,980	
Renewal		$214,809/every 3 years.
Amendments to registration		$100,964/year (first year).
Biosafety/Biocontainment plan	$1.5 million	
Inactivations		$1,376.
Security plan/security assessment	$11.4 million [1]	
Transfer		$808,480/year.
Physical security procedures [2]:		
Electronic security (cameras, card readers, etc.) [3]	$51 million [4]	
Entry control (X-ray, metal detectors)	$20,000–$40,000 each (as needed)	
Off-site monitoring		$10,000–$45,000/year (as needed).
Maintenance agreement		$12,000–$30,000/year (as needed).
Guard service		$30–$40/hour (as needed).
Other costs:		
Recordkeeping		$425,265/year.
Theft/loss/release notification		$144/year.
Appeals		$311/year.
Expedited reviews		$14,018/year.
Costs to APHIS:		
Processing paperwork		$744,705/year.
Inspections		$156,000–$650,000 every 3 years.
Inspector training		$35,480/year.
Inspector security clearances	$45,000	

[1] Assumes $17,000 for small facility, $25,000 for large facility.
[2] Because security needs are site specific and the rule allows for site specific security solutions, the approaches and applications will be varied. Actual additional physical security measures added will vary (including none) based on the current level of security and the specific security needs of a given facility.
[3] Estimate of the aggregate cost is based on an average facility cost per square foot to upgrade to state of the art technology.
[4] Based on $62,500 for 10,000 ft^2 (assuming 80 percent of facilities), $187,500 for 30,000 ft^2 (assuming 15 percent of facilities), and $0 for no upgrades (assuming 5 percent of facilities).

The above is given to provide perspective on the magnitude of the potential costs associated with the rule. The facilities covered in this rule can and do vary from a small laboratory contained within a larger facility to large dedicated buildings to large groups of buildings and land. Because security needs are site specific and the rule allows for site specific security solutions, the approaches and applications will be varied. Physical security measures may have to be added in various quantities (including none) to meet the specific security needs of a facility. Also, some of the impacts of this rule are somewhat offset by previous requirements, funding from other sources for upgrades that would otherwise be mandated by this rule, and flexibility in the rule that allows for site-specific needs to be met in the most cost effective manner possible.

Summary

While the costs associated with this rule could be considerable, some of those impacts are somewhat offset by previous requirements, funding from other sources for upgrades that would otherwise be mandated by this rule, and flexibility in the rule that allows for site specific needs to be met in the most cost effective manner possible. In addition, these costs are greatly outweighed by the benefits of preventing a deliberate introduction of a listed agent or toxin into the United States. Should any listed agent or toxin be intentionally introduced, the consequences would be significant as demonstrated by natural outbreaks that have occurred.

[13] Costs to Government for information Collections for Select Agent Registrations.

[14] These costs are based on current APHIS user fees for facility inspections: Biosecurity Level (BSL) 3, a flat $997, and BSL2 $60 to $80/hr for about 4 hours. Under this rule, users will not be charged for the inspections and thus the Government will absorb the cost of those inspections.

Consequences could include costs of eradication efforts, disruption of markets, difficulties in sustaining an adequate food and fiber supply, and the potential spread of disease infestations over large areas. Deliberate introduction greatly increases the probability of an agent or toxin becoming established and causing wide-ranging and devastating impacts on the economy, disruption to society, diminished confidence in public and private institutions, and possible loss of life.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, we will publish a document in the **Federal Register** providing notice of the assigned OMB control number or, if approval is denied, providing notice of what action we plan to take.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 02–088–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 02–088–1 and send your comments within 60 days of publication of this rule.

This interim rule establishes regulations governing the possession, use, and transfer of biological agents and toxins that have been determined to have the potential to pose a severe threat to both human and animal health, to animal health, to plant health, or to animal products and plant products. Unless specifically exempted under the regulations, an individual or entity must register with APHIS or, for overlap agents or toxins, APHIS or CDC, in order to possess, use, or transfer biological agents or toxins.

To register, an individual or entity must submit a registration application package; develop and implement a Biocontainment and Security Plan or Biosafety and Security Plan, as applicable; and request access approval for individuals who have been identified as having a legitimate need to handle or use listed agents or toxins and who have the appropriate training and skills to handle or use such agents or toxins.

We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

For 7 CFR part 331:

Estimate of burden: Public reporting burden for this collection of information is estimated to average 4.5590 hours per response.

Respondents: Researchers, universities, research and development organizations, diagnostic laboratories and other interested parties who possess, use, or transfer agents or toxins deemed a severe threat to animal or plant health, or animal or plant products.

Estimated annual number of respondents: 33

Estimated annual number of responses per respondent: 4.8787.

Estimated annual number of responses: 161.

Estimated total annual burden on respondents: 734.

For 9 CFR part 121:

Estimate of burden: Public reporting burden for this collection of information is estimated to average 2.56493 hours per response.

Respondents: Researchers, universities, research and development organizations, diagnostic laboratories and other interested parties who possess, use, or transfer agents or toxins deemed a severe threat to animal or plant health, or animal or plant products.

Estimated annual number of respondents: 619.

Estimated annual number of responses per respondent: 15.573.

Estimated annual number of responses: 9,640.

Estimated total annual burden on respondents: 24,726.

(Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

7 CFR Part 331

Agricultural research, Laboratories, Plant diseases and pests, Reporting and recordkeeping requirements.

9 CFR Part 121

Agricultural research, Animal diseases, Laboratories, Medical research, Reporting and recordkeeping requirements.

Accordingly, we are revising 7 CFR part 331 and 9 CFR part 121 to read as follows:

7 CFR Chapter III

PART 331—POSSESSION, USE, AND TRANSFER OF BIOLOGICAL AGENTS AND TOXINS

Sec.

331.0 Effective and applicability dates.
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331.11 Biocontainment and security plan.
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331.15 Inspections.
331.16 Notification in the event of theft, loss, or release of a biological agent or toxin.
331.17 Administrative review.

Authority: Secs. 211–213, Title II, Pub. L. 107–188, 116 Stat. 647 (7 U.S.C. 8401).

§ 331.0 Effective and applicability dates.

The regulations in this part are effective on February 11, 2003.On and after that date, any person possessing, using, or transferring any agent or toxin listed in § 331.3 must be in compliance with the provisions of this part. However, so as not to disrupt research or educational projects involving listed agents or toxins that were underway as of the effective date of this part, any person possessing such agents or toxins as of the effective date (current possessors) will be afforded additional time to reach full compliance with this part. Any provision not specifically cited in paragraphs (a) through (f) of this section will be applicable as of February 11, 2003. In addition, any individual or entity who does not possess listed agents or toxins by the effective date of this part, but who wishes to initiate a research or educational project prior to November 12, 2003, must be in compliance with the provisions of this part that are applicable for current possessors at the time of application, as provided in paragraphs (a) through (e) of this section.

(a) During the period from February 11, 2003, to November 12, 2003, biological agents or toxins listed in § 331.3 may only be transferred to an individual or entity that is not registered under this part if the individual or entity has been issued a permit by the Administrator under part 330 of this chapter to import or move interstate that specific agent or toxin. If an individual or entity has not been issued a permit under part 330 of this chapter, the individual or entity may apply for a permit. To receive an agent or toxin, an individual or entity will also be required to submit APHIS Form 2041, in accordance with § 331.13(c). Because USDA permits do not cover intrastate movement, an individual or entity may not receive a listed agent or toxin that is being moved intrastate until that individual or entity is registered in accordance with this part.

(b) By March 12, 2003, the responsible official must submit the registration application package as required in § 331.8. In addition, the responsible official must submit to the Attorney General the names and identifying information for the responsible official; alternate responsible official, where applicable; entity; and, where applicable, the individual who owns or controls the entity.

(c) By April 11, 2003, the responsible official must submit to the Attorney General the names and identifying information for all individuals whom the responsible official has identified as having a legitimate need to handle or use listed agents or toxins, and who have the appropriate training and skills to handle such agents or toxins, as required in § 331.10.

(d) By June 12, 2003, the responsible official must submit to APHIS the security section of the Biocontainment and Security Plan required in § 331.11.

(e) By September 12, 2003, the responsible official must implement the security section of the Biocontainment and Security Plan, as required in § 331.11, and provide security training in accordance with 7 CFR 331.12.

(f) By November 12, 2003, the registration application process must be complete and the entity in full compliance with the regulations in this part.

§ 331.1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Attorney General. The Attorney General of the United States or any person authorized to act for the Attorney General.

Biological agent. Any microorganism (including, but not limited to, bacteria, viruses, fungi, rickettsiae, or protozoa), or infectious substance, or any naturally occurring, bioengineered, or synthesized component of any such microorganism or infectious substance, capable of causing:

(1) Death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(2) Deterioration of food, water, equipment, supplies, or material of any kind; or

(3) Deleterious alteration of the environment.

Centers for Disease Control and Prevention (CDC). The Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

Diagnostic laboratory. A laboratory facility that receives specimens for the purpose of determining the identities of pests, pathogens, contaminants, or causes of disease.

Entity. Any government agency (Federal, State, or local), academic institution, corporation, company, partnership, society, association, firm, sole proprietorship, or other legal entity.

Import. To move into, or the act of movement into, the territorial limits of the United States.

Interstate. From one State into or through any other State, or within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

Permit. A written authorization by the Administrator to import or move interstate biological agents or toxins, under conditions prescribed by the Administrator.

PPQ. The Plant Protection and Quarantine Programs of the Animal and Plant Health Inspection Service

Responsible official. The individual designated by an entity to act on its behalf. This individual must have the authority and control to ensure compliance with the regulations in this part.

Specimen. A sample of material collected for use in testing, such as plant tissues (*e.g.*, stems, seeds, flowers, pollen, leaves, roots, fruits, tubers, tissue cultures, protoplasts), soil, water, swabs, cultures, and suspensions.

State. Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

Toxin. The toxic material or product of plants, animals, microorganisms (including, but not limited to, bacteria, viruses, fungi, rickettsiae, or protozoa), or infectious substances, or a recombinant or synthesized molecule, whatever their origin and method of production, and includes:

(1) Any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or

(2) Any poisonous isomer or biological product, homolog, or derivative of such a substance.

United States. All of the States.

USDA. The United States Department of Agriculture.

§ 331.2 Purpose and scope.

(a) This part sets forth the requirements for possession, use, and transfer of biological agents or toxins that have been determined to have the potential to pose a severe threat to plant health or to plant products. The purpose of this part is to ensure the safe handling of such agents or toxins, and to protect against the use of such agents or toxins in domestic or international terrorism or for any other criminal purpose.

(b) Accordingly, this part provides that any individual or entity that possesses, uses, or transfers any agent or toxin listed in § 331.3 must register in accordance with § 331.6. To register, each entity must designate an individual who has the authority and control to ensure compliance with the regulations to be the responsible official. The responsible official must complete and submit the registration application package to APHIS. As part of registration, the responsible official, the entity, and, where applicable, the individual who owns or controls such entity will be subject to a security risk assessment by the Attorney General.

(c) The responsible official is responsible for ensuring compliance with the safety procedures in this part, including implementing the Biocontainment and Security Plan in accordance with § 331.11, providing the proper training to individuals who handle or use agents or toxins listed in § 331.3, and providing proper laboratory facilities to contain and dispose of such agents or toxins. In addition, the responsible official is responsible for ensuring compliance with the safeguard and security measures in this part, including restricting access to only those individuals who have a legitimate need to handle or use agents or toxins and who have been approved in accordance with § 331.10, and transferring such agents or toxins only to registered individuals or entities in accordance with § 331.13.

§ 331.3 List of biological agents and toxins.

(a) The biological agents and toxins listed in this section have been determined to have the potential to pose a severe threat to plant health or to plant products.

Liberobacter africanus, Liberobacter asiaticus
Peronosclerospora philippinensis
Phakopsora pachyrhizi
Plum pox potyvirus
Ralstonia solanacearum, race 3, biovar 2
Sclerophthora rayssiae var. *zeae*
Synchytrium endobioticum
Xanthomonas oryzae pv. *oryzicola*
Xylella fastidiosa (citrus variegated chlorosis strain)

(b) The Administrator has determined that it would be impractical to regulate a biological agent or toxin that is in its naturally occurring environment. Therefore, any biological agent or toxin listed in this section that is in its naturally occurring environment will not be subject to the requirements of this part, provided that the biological agent or toxin has not been intentionally introduced, cultivated, collected, or otherwise extracted from its natural source.

(c) The Administrator has determined that biological agents or toxins that meet any of the following criteria do not have the potential to pose a severe threat to plant health or to plant products. Therefore, an individual or entity that only possesses, uses, or transfers an agent or toxin that meets any of the following criteria will not be subject to the requirements of this part:

(1) Nonviable agents that are, bear, or contain listed agents or toxins;

(2) Genetic elements or subunits of listed agents or toxins, if the genetic elements or subunits are not capable of causing disease.

§ 331.4 Exemptions.

(a) Diagnostic laboratories [1] and other entities possessing, using, or transferring agents or toxins that are contained in specimens presented for diagnosis or verification will be exempt from the requirements of this part, provided that:

(1) The identification of such agents or toxins is immediately reported to the Administrator and to other appropriate authorities when required by Federal, State, or local law; and

(2) Within 7 days after identification, the agents or toxins are transferred or inactivated, and APHIS Form 2040 is submitted to the Administrator.[2] During agricultural emergencies or outbreaks, or in endemic areas, the Administrator may require less frequent reporting. A copy of the completed form must be maintained for 3 years.

(b) In addition to the exemption provided in paragraph (a) of this section, the Administrator may grant a specific exemption upon a showing of good cause and upon his or her determination that such exemption is consistent with protecting animal or plant health, and animal or plant products. An individual or entity that possesses, uses, or transfers agents or toxins may request in writing an exemption from the requirements of this part. If granted, such exemptions are valid for a maximum of 3 years; thereafter, an individual or entity must request a new exemption. If a request for exemption is denied, an individual or entity may request reconsideration in writing to the Administrator. The request for reconsideration must state all of the facts and reasons upon which the individual or entity relies to show that the exemption was wrongfully denied. The Administrator will grant or deny the request for reconsideration as promptly as circumstances allow and will state, in writing, the reasons for the decision. If there is a conflict as to any material fact, the individual or entity may request a hearing to resolve the conflict.[3]

§ 331.5 Registration; who must register.

(a) Unless exempted under § 331.4, any individual or entity that possesses, uses, or transfers any agent or toxin listed in § 331.3 must register with APHIS.

(b) Each entity must designate an individual to be its responsible official. The responsible official must have the authority and control to ensure compliance with the regulations. The responsible official must complete and sign the registration application package, and will be the individual contacted by APHIS if any questions arise concerning the application or subsequent compliance with the regulations in this part. As part of registration, the responsible official and the entity will be subject to a security risk assessment by the Attorney General. While most registrants are likely to be entities, in the event that an individual applies for and is granted a certificate of registration, APHIS will consider the individual to be the responsible official.

(c) An entity may designate an individual to be an alternate responsible official, who may act for the responsible

[1] However, diagnostic laboratories and other persons will still be required to obtain a permit under part 330 of this chapter in order to import or move interstate any listed agent or toxin.

[2] A diagnostic laboratory or other person must immediately notify APHIS by calling (301) 734–5519. APHIS Form 2040 may be obtained by calling (301) 734–5519 or faxing a request to (301) 734–8700. The form is also available on the Internet at *http://www.aphis.usda.gov/ppq/permits.* The completed form may be mailed to Biological and Technical Services, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; or faxed to (301) 734–8700.

[3] A request for exemption may be mailed to biological and Technical Services, PPQ, APHIS, 4700 River road Unit 133, Riverdale, MD 20737–1236; or faxed to (301) 734–8700.

official when he/she is unavailable. This individual must have the authority and control to ensure compliance with the regulations when acting for the responsible official. This individual will also be subject to a security risk assessment by the Attorney General as part of registration.

§ 331.6 Registration; general provisions.

(a) Unless exempted under this part, an individual or entity shall not possess, use, or transfer any agent or toxin listed in § 331.3 without a certificate of registration issued by APHIS.

(b) A certificate of registration may be issued upon:

(1) Approval of the responsible official; the alternate responsible official, where applicable; the entity; and, where applicable, the individual who controls the entity following a security risk assessment by the Attorney General;[4] and

(2) Approval of the containment and security of the entity. The entity's containment and security procedures must be commensurate with the risk of the agent or toxin, given its intended use. APHIS will review the Biocontainment and Security Plan, and may inspect and evaluate the premises and records to determine compliance with the regulations and the containment and security requirements; and

(3) A determination by the Administrator that the individual or entity seeking to register has a lawful purpose to possess, use, or transfer such agents or toxins.

(c) A certificate of registration will be valid for only the specific agents or toxins listed on the certificate and specific activities and locations. A certificate of registration may cover more than one listed agent or toxin, and it may be amended to cover additional listed agents or toxins.

(d) A certificate of registration may be amended to reflect changed circumstances (*e.g.*, replacement of the responsible official, changes in ownership or control of the entity,[5] changes in the activities involving the agent or toxin). The responsible official must immediately notify APHIS of such changes in circumstances that occur after submission of the application for registration or after receipt of a certificate of registration.

(e) If a responsible official wishes to discontinue possessing, using, or transferring a particular agent or toxin, the responsible official may inactivate the agent or toxin or he/she may transfer the agent or toxin to a registered individuals or entities in accordance with § 331.12. The responsible official must notify APHIS 5 business days prior to the planned inactivation so that we may have the opportunity to observe the inactivation of the agents or toxins. We will notify the responsible official if we wish to observe the inactivation of the agents or toxins.

(f) A certificate of registration will be valid for a maximum of 3 years.

§ 331.7 Denial, revocation, or suspension of registration.

(a) APHIS may deny an application for registration or revoke registration if:

(1) The Attorney General identifies the responsible official, entity, or the individual who owns or controls the entity as within any of the categories described in 18 U.S.C. 175b; or

(2) The Attorney General identifies the responsible official, entity, or the individual who owns or controls the entity as reasonably suspected by any Federal law enforcement or intelligence agency of:

(i) Committing a crime set forth in 18 U.S.C. 2332b(g)(5); or

(ii) Knowing involvement with an organization that engages in domestic or international terrorism (as defined in 18 U.S.C. 2331) or with any other organization that engages in intentional crimes of violence; or

(iii) Being an agent of a foreign power as defined in 50 U.S.C. 1801; or

(3) The responsible official does not have a lawful purpose to possess, use, or transfer agents or toxins listed in § 331.3; or

(4) The responsible official is an individual who handles or uses listed agents or toxins and he/she does not have the necessary training or skills to handle such agents or toxins; or

(5) The entity does not meet the containment and security requirements prescribed by the Administrator;[6] or

(6) There are egregious or repeated violations of the containment or security requirements; or

(7) The Administrator determines that such action is necessary to protect animal or plant health, and animal or plant products.

(b) APHIS may summarily revoke or suspend registration for any of the reasons set forth in paragraph (a) of this section.

(c) APHIS will notify the responsible official in writing if an application for registration is denied or a certificate of registration is revoked or suspended.

(d) Denial of an application for registration, revocation of registration, and suspension of registration may be appealed under § 331.16.

§ 331.8 Registration; how to register.

(a) To apply for a certificate of registration, an individual or entity must submit all of the information and documentation required in the registration application package to APHIS, including the name, source, and characterization data for each agent or toxin to be registered.

(b) The registration application package may be obtained by calling (301) 734–5519 or faxing a request to (301) 734–8700. It is also available on the Internet at *http://www.aphis.usda.gov/ppq/permits*. The completed registration application package may be mailed to APHIS, Plant Protection and Quarantine, Biological and Technical Services, 4700 River Road Unit 133, Riverdale, MD 20737–1236; or faxed to (301) 734–8700. Assistance in completing the registration application may be requested by calling (301) 734–5519.

§ 331.9 Responsibilities of the responsible official.

(a) The responsible official is responsible for ensuring compliance with the regulations, including:

(1) Developing and implementing a Biocontainment and Security Plan in accordance with § 331.11;

(2) Allowing only approved individuals within the entity to have access to any agents or toxins listed in § 331.3 in accordance with § 331.10;

(3) Providing appropriate training in containment and security procedures for all personnel in accordance with § 331.12;

(4) Transferring agents or toxins only to registered individuals or entities in accordance with § 331.13;

(5) Ensuring that all visitors are informed of and follow the entity's security requirements and procedures;

(6) Notifying APHIS of changes in circumstances in accordance with § 331.6;

(7) Providing timely notice of any theft, loss, or release of a biological agent or toxin in accordance with § 331.16;

(8) Maintaining detailed records of information necessary to give a complete accounting of all of the activities related to agents or toxins listed in § 331.3 in accordance with § 331.14.

[4] The security risk assessment of the entity and the individual who owns or controls such entity may be waived for Federal, State, or local governmental agencies.

[5] Any change in ownership or control of an entity will require a security risk assessment for the new individual(s) who owns or controls the entity.

[6] If registration is denied for this reason, we may provide technical assistance and guidance.

(b) In addition to the requirements in paragraph (a) of this section, the responsible official for a diagnostic laboratory or other entity possessing, using, or transferring agents or toxins listed in § 331.3 that are contained in specimens presented for diagnosis must immediately report the identification of such agents or toxins to the Administrator and to other appropriate authorities when required by Federal, State, or local law.[7] During agricultural emergencies or outbreaks, or in endemic areas, the Administrator may require less frequent reporting.

§ 331.10 Restricting access to biological agents and toxins.

(a) An individual may not have access to biological agents or toxins listed in § 331.3 unless approved by APHIS. APHIS will grant, limit, or deny access of individuals to listed agents or toxins.

(b) The responsible official is responsible for ensuring that only approved individuals within the entity have access to any agents or toxins listed in § 331.3. The responsible official must request such access for only those individuals who have a legitimate need to handle or use listed agents or toxins, and who have the appropriate training and skills to handle such agents or toxins.

(c) The responsible official must provide appropriate training in containment and security procedures to all individuals with access to agents and toxins listed in § 331.3, in accordance with § 331.12.

(d) For each individual identified by the responsible official as having a legitimate need to handle or use listed agents or toxins, the responsible official must submit that individual's name and identifying information to APHIS and the Attorney General.

(e) In addition, the responsible official must submit information about the individual's training and skills to APHIS (*e.g.*, curriculum vitae for principal investigators and researchers, and a description of training completed by support personnel).

(f) APHIS may expedite the access approval process for individuals upon request by the responsible official and a showing of good cause (*e.g.*, agricultural emergencies, national security, impending expiration of a research grant, a short-term visit by a prominent researcher).

(g) APHIS will notify the responsible official if an individual is granted full or limited access, or denied access to listed agents or toxins. APHIS will also notify the individual if he/she is denied access or granted only limited access.

(h) APHIS may deny or limit access of an individual to listed agents or toxins if:

(1) The Attorney General identifies the individual as within any of the categories described in 18 U.S.C. 175b;

(2) The Attorney General identifies the individual as reasonably suspected by any Federal law enforcement or intelligence agency of committing a crime set forth in 18 U.S.C. 2332b(g)(5); knowing involvement with an organization that engages in domestic or international terrorism (as defined in 18 U.S.C. 2331) or with any other organization that engages in intentional crimes of violence; or being an agent of a foreign power as defined in 50 U.S.C. 1801;

(3) The individual does not have a legitimate need to handle listed agents or toxins;

(4) The individual does not have the necessary training or skills to handle listed agents or toxins;

(5) The Administrator determines that such action is necessary to protect plant health or plant products.

(i) An individual may appeal the Administrator's decision to deny or limit access under § 331.15.

(j) Access approval is valid for 5 years; thereafter, the responsible official shall request renewal of access approval every 5 years for as long as the individual needs access to agents or toxins listed in § 331.3.

(k) The responsible official must immediately notify APHIS when an individual's access to listed agents or toxins is terminated by the entity and the reasons therefor.

§ 331.11 Biocontainment and security plan.

(a) As a condition of registration, an individual or entity must develop and implement a Biocontainment and Security Plan:[8] The Biocontainment and Security Plan must contain sufficient information and documentation to describe the containment procedures and the security systems and procedures. The plan must be commensurate with the risk of the agent or toxin, given its intended use.

(1) *Containment procedures.* The containment procedures must be sufficient to contain the agent or toxin (*e.g.*, physical structure and features of the entity, and operational and procedural safeguards). At a minimum, the plan must address containment and inventory control.

(2) *Security systems and procedures.*[9] The security systems and procedures must be designed according to a site-specific risk assessment and must provide graded protection in accordance with the threat posed by the agent or toxin.

(i) The site-specific risk assessment should involve a threat assessment and risk analysis in which threats are defined, vulnerabilities examined, and risks associated with those vulnerabilities are identified.

(ii) The security systems and procedures must be tailored to address site-specific characteristics and requirements, ongoing programs, and operational needs, and must mitigate the risks identified under paragraph (a)(2)(i) of this section.

(iii) The plan must describe inventory control procedures, personnel suitability for those individuals with access to agents or toxins listed in § 331.3, physical security, and cybersecurity. The plan must also contain provisions for securing the area (*e.g.*, card access, key pads, locks) and protocols for changing access numbers or locks following staff changes; procedures for loss or compromise of keys, passwords, combinations, etc.; procedures for reporting suspicious persons or activities, loss or theft of listed agents or toxins, release of listed agents or toxins, or alteration of inventory records; provisions for the control of access to containers where listed agents and toxins are stored; provisions for routine cleaning, maintenance, and repairs; and procedures for reporting and removing unauthorized persons.

(iv) With respect to areas containing listed agents or toxins, an entity or individual must adhere to the following security requirements or implement measures to achieve an equivalent or greater level of security as the provisions below:

(A) Allow unescorted access only to approved individuals who are performing a specifically authorized function during hours required to perform that job;

[7] A diagnostic laboratory or other person must immediately notify APHIS by calling (301) 734–5519.

[8] Technical assistance and guidance may be obtained by calling (301) 734–5519.

[9] For guidance, see the USDA Departmental Manual No. 9610–001, "USDA Security Policies and Procedures for Biosafety Level-3 Facilities" (August 30, 2002). The manual may be obtained by calling (301) 734–5519. The manual is also available on the Internet at *http://www.usda.gov/ocio/directives/DM/DM9610–001.htm*. See also Appendix F, "Biosafety in Microbiological and Biomedical Laboratories," in Morbidity and Mortality Weekly Report (2002). This document may be obtained by writing to Select Agent Program, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Mail Stop E 79, Atlanta, GA 30333. It is also available on the Internet at *http://www.cdc.gov/mmwr*.

(B) Allow individuals not approved under § 331.10 to conduct routine cleaning, maintenance, repairs, and other non-laboratory functions only when escorted and continually monitored by approved individuals;

(C) Provide for the control of access to containers where listed agents and toxins are stored by requiring that such containers be locked when not in the direct view of an approved individual and by using other monitoring measures, as needed;

(D) Require the inspection of all packages upon entry and exit;

(E) Establish a protocol for intra-entity transfers, including provisions for ensuring that the packaging and movement, is conducted under the supervision of an approved individual;

(F) Require that approved individuals do not share with any other person their unique means of accessing the area or listed agents or toxins; and

(G) Require that approved individuals immediately report any of the following to the responsible official:

(*1*) Any loss or compromise of keys, passwords, combinations, etc.;

(*2*) Any suspicious persons or activities;

(*3*) Any loss or theft of listed agents or toxins;

(*4*) Any release of a listed agent or toxin; and

(*5*) Any sign that inventory and use records for listed agents and toxins have been altered or otherwise compromised.

(3) *Incident response procedures.*[10] The Biocontainment and Security Plan must also include incident response plans for containment breach, security breach, inventory violations, non-biological incidents such as workplace violence, and cybersecurity breach. The incident response plans must address containment, inventory control, and notification of managers and responders. The incident response plans must also address such events as bomb threats, severe weather (floods, hurricanes, tornadoes), earthquakes, power outages, and other natural disasters or emergencies.

(b) The Biocontainment and Security Plan must be reviewed, performance tested, and updated annually. The plan must also be reviewed and revised, as necessary, after any incident.

§ 331.12 Training.

(a) The responsible official must provide appropriate training in containment and security procedures to all individuals with access to agents and toxins listed in § 331.3.

(b) The responsible official must provide information and training to an individual at the time the individual is assigned to work with a listed agent or toxin. The responsible official must provide refresher training annually.

§ 331.13 Transfer of biological agents and toxins.

Biological agents and toxins listed in § 331.3 may only be transferred to an individual or entity registered to possess, use, or transfer that particular agent or toxin. However, the sender of an agent or toxin may be an individual or entity that has a certificate of registration for the agent or toxin, an individual or entity that is exempt from the requirements of this part, or an individual or entity located outside of the United States. Biological agents or toxins may only be transferred under the conditions of this section and must be authorized by APHIS prior to the transfer.

(a) *Importation and interstate movement.* In addition to the permit required under part 330 of this chapter, biological agents or toxins listed in § 331.3 may be imported or moved interstate only with the prior authorization of APHIS. To obtain such authorization, the sender and the responsible official for the recipient must complete and submit APHIS Form 2041 to APHIS, in accordance with paragraph (c) of this section.

(b) *Intrastate movement.* Biological agents or toxins listed in § 331.3 may be moved intrastate only with the prior authorization of APHIS. To obtain authorization, the sender and the responsible official for the recipient must complete and submit APHIS Form 2041 to APHIS prior to each transfer, in accordance with paragraph (c) of this section.

(c) *APHIS Form 2041; process and procedures.* (1) Prior to each transfer, the sender and the responsible official for the recipient must complete APHIS Form 2041, and the sender must submit the form to APHIS.[11]

(2) APHIS will authorize the transfer based on a finding that the recipient has a certificate of registration covering the transfer of the listed agent or toxin.

(3) The responsible official for the recipient entity must notify APHIS and the sender upon receipt of the agent or toxin by mailing or faxing a completed APHIS Form 2041 within 2 business days.

(4) The responsible official for the recipient must notify APHIS immediately if the agent or toxin has not been received within 48 hours after the expected delivery or if the package containing the agent or toxin is leaking or has been damaged.

(d) The sender must comply with all applicable laws governing packaging and shipping.

§ 331.14 Records.

(a) The responsible official must maintain complete, up-to-date records of information necessary to give an accounting of all of the activities related to agents or toxins listed in § 331.3. Such records must include the following:

(1) The Biocontainment and Security Plan;

(2) A current list of all individuals with access to agents or toxins listed in § 331.3;

(3) Training records for individuals with access to such agents or toxins;

(4) Accurate and current inventory records (including source and characterization data);

(5) Permits and transfer documents (APHIS Form 2041) issued by APHIS;

(6) Security records (*e.g.*, transactions from automated access control systems, testing and maintenance of security systems, visitor logs); and

(7) Containment and security incident reports.

(b) The responsible official must maintain such records for 3 years.

(c) All records must be produced upon request to APHIS inspectors, and appropriate Federal, State, or local law enforcement authorities.

§ 331.15 Inspections.

(a) To ensure compliance with the regulations, any APHIS inspector must be allowed, without previous notification, to enter and inspect the entire premises, all materials and equipment, and all records required to be maintained by this part.

(b) Prior to issuing a certificate of registration to an entity or individual, APHIS may inspect and evaluate their premises and records to ensure compliance with the regulations and the containment and security requirements.

§ 331.16 Notification in the event of theft, loss, or release of a biological agent or toxin.

(a) The responsible official must orally notify APHIS and appropriate Federal, State, or local law enforcement agencies immediately upon discovery of the theft or loss of agents or toxins listed in § 331.3. The oral notification must be followed by a written report (APHIS Form 2043) within 7 days.

(b) The responsible official must orally notify APHIS immediately upon discovery that a release of an agent or toxin has occurred outside of the biocontainment area. The oral notification must be followed by a written report (APHIS Form 2043) within 7 days. Upon notification and a finding that the release poses a threat to animal or plant health, or animal or plant products, APHIS will notify relevant Federal, State, and local authorities, and the public, if necessary.

(c) The responsible official must orally notify APHIS of a theft, loss, or release of an agent or toxin by calling (301) 734–5519. A copy of APHIS Form 2043 may be obtained by writing to Biological and Technical Services, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236, or by calling (301) 734–5519. APHIS Form 2043 may be mailed to the same address or faxed to (301) 734–8700.

§ 331.17 Administrative review.

An individual or entity may appeal a denial or revocation of registration under this part. An individual who has been denied access to listed agents or toxins or who has been granted only limited access to listed agents or toxins under this part may appeal that decision.[12] The appeal must be in writing and submitted to the Administrator within 30 days of the decision. The appeal must state all of the facts and reasons upon which the individual or entity disagrees with the decision. Where the denial or revocation of registration or the denial or limitation of an individual's access approval is based solely upon an identification by the Attorney General, APHIS will forward the request for review to the Attorney General. The Administrator's decision constitutes final agency action.

[10] The requirements in this paragraph do not supercede or preempt the enforcement of emergency response requirements imposed by other statutes or regulations.

[11] APHIS Form 2041 may be obtained by calling (301) 734–5519 or faxing a request to (301) 734–8700. The form is also available on the Internet at *http://www.aphis.usda.gov/ppq/permits.* APHIS Form 2041 may be mailed to Biological and Technical Services, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; or faxed to (301) 734–8700.

[12] An entity may not appeal the denial or limitation of an individual's access to listed agents or toxins.

9 CFR Chapter I

PART 121—POSSESSION, USE, AND TRANSFER OF BIOLOGICAL AGENTS AND TOXINS

Sec.

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Authority: Secs. 211–213, Title II, Pub. L. 107–188, 116 Stat. 647 (7 U.S.C. 8401).

§ 121.0 Effective and applicability dates.

The regulations in this part are effective on February 11, 2003. On and after that date, any person possessing, using, or transferring any agent or toxin listed in § 121.3 must be in compliance with the provisions of this part. However, so as not to disrupt research or educational projects involving listed agents or toxins that were underway as of the effective date of this part, any person possessing such agents or toxins as of the effective date (current possessors) will be afforded additional time to reach full compliance with this part. Any provision not specifically cited in paragraphs (a) through (f) of this section will be applicable as of February 11, 2003. In addition, any person who does not possess listed agents or toxins by the effective date of this part, but who wishes to initiate a research or educational project prior to November 12, 2003, must be in compliance with the provisions of this part that are applicable for current possessors at the time of application, as provided in paragraphs (a) through (e) of this section.

(a) During the period from February 11, 2003, to November 12, 2003, biological agents or toxins listed in § 121.3 may only be transferred to an individual or entity that is not registered under this part if:

(1) The individual or entity is registered by CDC for that specific overlap agent or toxin in accordance with 42 CFR part 72; or

(2) The individual or entity has been issued a permit by the Administrator under part 122 of this subchapter to import or move interstate that specific agent or toxin. If an individual or entity has not been issued a permit under part 122 of this subchapter, the individual or entity may apply for a permit. To receive an agent or toxin, an individual or entity will also be required to submit APHIS Form 2041, in accordance with § 121.14(c). Because USDA permits do not cover intrastate movement, unless registered by CDC under 42 CFR part 72, an individual or entity may not receive a listed agent or toxin that is being moved intrastate until that individual or entity is registered in accordance with this part.

(b) By March 12, 2003, the responsible official must submit the registration application package as required in § 121.9. In addition, the responsible official must submit to the Attorney General the names and identifying information for the responsible official; alternate responsible official, where applicable; entity; and, where applicable, the individual who owns or controls the entity.

(c) By April 11, 2003, the responsible official must submit to the Attorney General the names and identifying information for all individuals whom the responsible official has identified as having a legitimate need to handle or use listed agents or toxins, and who have the appropriate training and skills to handle such agents or toxins, as required in § 121.11.

(d) By June 12, 2003, the responsible official must submit the security section of the Biosafety and Security Plan required in § 121.12 to APHIS or, for overlap agents or toxins, to APHIS or CDC.

(e) By September 12, 2003, the responsible official must implement the security section of the Biosafety and Security Plan, as required in § 121.12, and provide security training in accordance with 9 CFR 121.13.

(f) By November 12, 2003, the registration application process must be complete and the entity in full compliance with the regulations in this part.

§ 121.1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Attorney General. The Attorney General of the United States or any person authorized to act for the Attorney General.

Biological agent. Any microorganism (including, but not limited to, bacteria, viruses, fungi, rickettsiae, or protozoa), or infectious substance, or any naturally occurring, bioengineered, or synthesized component of any such microorganism

or infectious substance, capable of causing:

(1) Death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(2) Deterioration of food, water, equipment, supplies, or material of any kind; or

(3) Deleterious alteration of the environment.

Centers for Disease Control and Prevention (CDC). The Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

Clinical laboratory. A laboratory facility that receives patients and collects specimens for processing or shipping to another laboratory.

Diagnostic laboratory. A laboratory facility that receives specimens for the purpose of determining the identities of pests, pathogens, contaminants, or causes of disease.

Entity. Any government agency (Federal, State, or local), academic institution, corporation, company, partnership, society, association, firm, sole proprietorship, or other legal entity.

Import. To move into, or the act of movement into, the territorial limits of the United States.

Interstate. From one State into or through any other State, or within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

Overlap agent or toxin. Any microorganism (including, but not limited to, bacteria, viruses, fungi, rickettsiae, or protozoa) or toxin that poses a risk to both human and animal health and that is listed in § 121.3(b).

Permit. A written authorization by the Administrator to import or move interstate biological agents or toxins, under conditions prescribed by the Administrator.

Proficiency testing. A sponsored, time-limited analytical trial whereby one or more analytes, previously confirmed by the sponsor, are submitted to the testing laboratory for analysis and where final results are graded, scores are recorded and provided to participants, and scores for participants are evaluated for acceptance.

Responsible official. The individual designated by an entity to act on its behalf. This individual must have the authority and control to ensure compliance with the regulations in this part.

Specimen. A sample of material collected for use in testing, such as tissues, gastrointestinal contents, feces, bodily fluids (blood, serum, etc.), soil, water, feed or feed ingredients, swabs, cultures, and suspensions.

State. Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

Toxin. The toxic material or product of plants, animals, microorganisms (including, but not limited to, bacteria, viruses, fungi, rickettsiae, or protozoa), or infectious substances, or a recombinant or synthesized molecule, whatever their origin and method of production, and includes:

(1) Any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or

(2) Any poisonous isomer or biological product, homolog, or derivative of such a substance.

United States. All of the States.

USDA. The United States Department of Agriculture.

§ 121.2 Purpose and scope.

(a) This part sets forth the requirements for possession, use, and transfer of biological agents or toxins that have been determined to have the potential to pose a severe threat to both human and animal health, to animal health, or to animal products. The purpose of this part is to ensure the safe handling of such agents or toxins, and to protect against the use of such agents or toxins in domestic or international terrorism or for any other criminal purpose.

(b) Accordingly, this part provides that any individual or entity that possesses, uses, or transfers any agent or toxin listed in § 121.3 must register in accordance with § 121.7. To register, each entity must designate an individual who has the authority and control to ensure compliance with the regulations to be the responsible official. The responsible official must complete and submit the registration application package to APHIS or, for overlap agents or toxins, to APHIS or CDC. As part of registration, the responsible official, the entity, and, where applicable, the individual who owns or controls such entity will be subject to a security risk assessment by the Attorney General.

(c) The responsible official is responsible for ensuring compliance with the safety procedures in this part, including implementing the Biosafety and Security Plan in accordance with § 121.12, providing the proper training to individuals who handle or use agents or toxins listed in § 121.3, and providing proper laboratory facilities to contain and dispose of such agents or toxins. In addition, the responsible official is responsible for ensuring compliance with the safeguard and security measures in this part, including restricting access to only those individuals who have a legitimate need to handle or use agents or toxins and who have been approved in accordance with § 121.11, and transferring such agents or toxins only to registered individuals or entities in accordance with § 121.13.

§ 121.3 List of biological agents and toxins.

(a) Except as provided in paragraphs (f) and (g) of this section, the Administrator has determined that the biological agents and toxins listed in this section have the potential to pose a severe threat to both human and animal health, to animal health, or to animal products.

(b) *Overlap agents and toxins.*

Bacillus anthracis
Botulinum neurotoxins
Botulinum neurotoxin producing species of *Clostridium*
Brucella abortus
Brucella melitensis
Brucella suis
Burkholderia mallei
Burkholderia pseudomallei
Clostridium botulinum
Clostridium perfringens epsilon toxin
Coccidioides immitis
Coxiella burnetii
Eastern equine encephalitis virus
Francisella tularensis
Hendra virus
Nipah virus
Rift Valley fever virus
Shigatoxin
Staphylococcal enterotoxins
T–2 toxin
Venezuelan equine encephalitis virus

(c) Genetic elements, recombinant nucleic acids, and recombinant organisms of overlap agents or toxins:

(1) Biological agent viral nucleic acids (synthetic or naturally derived, contiguous or fragmented, in host chromosomes or in expression vectors) that can encode infectious and/or replication competent forms of any of the biological agent viruses.

(2) Nucleic acids (synthetic or naturally derived) that encode for the functional form(s) of any of the toxins listed in paragraph (b) of this section, if the nucleic acids:

(i) Are in a vector or host chromosome;

(ii) Can be expressed *in vivo* or *in vitro*; or

(iii) Are in a vector or host chromosome and can be expressed in *vivo* or *in vitro*.

(3) Viruses, bacteria, fungi, and toxins listed in paragraph (b) of this section that have been genetically modified.

(d) *Animal agents and toxins.*

African horse sickness virus
African swine fever virus
Akabane virus
Avian influenza virus (highly pathogenic)
Bluetongue virus (exotic)
Bovine spongiform encephalopathy agent
Camel pox virus
Classical swine fever virus
Cowdria ruminantium (Heartwater)
Foot-and-mouth disease virus
Goat pox virus
Japanese encephalitis virus
Lumpy skin disease virus
Malignant catarrhal fever virus (exotic)
Menangle virus
Mycoplasma capricolum/M. F38/*M. mycoides capri* (contagious caprine pleuropneumonia)
Mycoplasma mycoides mycoides (contagious bovine pleuropneumonia)
Newcastle disease virus (VVND)
Peste des petits ruminants virus
Rinderpest virus
Sheep pox virus
Swine vesicular disease virus
Vesicular stomatitis virus (exotic)

(e) The Administrator has determined that it would be impractical to regulate a biological agent or toxin that is in its naturally occurring environment. Therefore, any biological agent or toxin listed in this section that is in its naturally occurring environment will not be subject to the requirements of this part, provided that the biological agent or toxin has not been intentionally introduced, cultivated, collected, or otherwise extracted from its natural source.

(f) The Administrator has determined that biological agents or toxins that meet any of the following criteria do not have the potential to pose a severe threat to both human and animal health, or to animal health or animal products. Therefore, an individual or entity that only possesses, uses, or transfers an agent or toxin that meets any of the following criteria will not be subject to the requirements of this part:

(1) Nonviable agents or fixed tissues that are, bear, or contain agents or toxins listed in this section.[1]

(2) Genetic elements or subunits of agents or toxins listed in paragraph (d) of this section, if the genetic elements or subunits are not capable of causing disease.[2]

(3) Overlap toxins under the control of a principal investigator (or equivalent), if the total aggregate amount does not, at any time, exceed the following amounts: 0.5 mg of Botulinum neurotoxins (types A–G), 100 mg of *Clostridium perfringens* epsilon toxin, 100 mg of Shigatoxin, 5 mg of Staphylococcal enterotoxins, and 1,000 mg of T–2 toxin.

(g) *Attenuated strains.* Attenuated strains of biological agents listed in this section may not have the potential to pose a severe threat to both human and animal health, to animal health, or to animal products. Thus, an individual or entity may request review by the Administrator to determine whether a specific attenuated strain poses a severe threat to both human and animal health, or to animal health or animal products. For overlap agents, an individual or entity may request review by APHIS or CDC.

(1) If APHIS or CDC determines that a specific attenuated strain does not pose a severe threat to human and animal health, or to animal health or animal products, an individual or entity will not be subject to the requirements of this part. This determination will be limited to the specific attenuated strain and to the specific activities involving that attenuated strain.

(2) An individual or entity may request a review by writing to the Administrator or, for overlap agents, by writing to the Administrator or CDC.[3]

(3) If it is determined that a specific attenuated strain does not pose a severe threat, APHIS or CDC will notify the applicant and publish a notice in the **Federal Register**.

(4) An individual or entity may request reconsideration of an adverse decision in writing to the Administrator. The request for reconsideration must state all of the facts and reasons upon which the individual or entity relies upon to show the decision was incorrect. The Administrator will grant or deny the request for reconsideration as promptly as circumstances allow and will state, in writing, the reasons for the decision. If there is a conflict as to any material fact, the individual or entity may request a hearing to resolve the conflict.

§ 121.4 Exemptions for overlap agents or toxins.

(a) Clinical or diagnostic laboratories and other entities possessing, using, or transferring overlap agents or toxins that are contained in specimens presented for diagnosis or verification will be exempt from the requirements of this part, provided that:

(1) The identification of such agents or toxins is immediately reported to APHIS or CDC, and to other appropriate authorities when required by Federal, State, or local law; and

(2) Within 7 days after identification, the agents or toxins are transferred or inactivated, and APHIS Form 2040 is submitted to APHIS or CDC.[4] During agricultural emergencies or outbreaks, or in endemic areas, the Administrator may require less frequent reporting. A copy of the completed form must be maintained for 3 years.

(b) Clinical or diagnostic laboratories and other entities possessing, using, or transferring overlap agents or toxins that are contained in specimens presented for proficiency testing will be exempt from the requirements of this part, provided that:

(1) The identification of such agents or toxins, and their derivatives, is immediately reported to the APHIS or CDC, and to other appropriate authorities when required by Federal, State, or local law; and

(2) Within 90 days of receipt, the agents or toxins are transferred or inactivated, and APHIS Form 2040 is submitted to APHIS or CDC. A copy of the completed form must be maintained for 3 years.

(c) Unless the Administrator by order determines that additional regulation of a specific product is necessary to protect animal or plant health, or animal or plant products, an individual or entity possessing, using, or transferring products that are, bear, or contain overlap agents or toxins will be exempt from the requirements of this part if the products have been cleared, approved, licensed, or registered pursuant to:

(1) The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*);

(2) Section 351 of Public Health Service Act (42 U.S.C. 262);

(3) The Virus-Serum-Toxin Act (21 U.S.C. 151–159); or

(4) The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 131 *et seq.*).

(d) An individual or entity possessing, using, or transferring investigational products that are, bear, or contain

[1] However, the importation and interstate movement of these genetic elements or subunits of listed agents or toxins are still subject to the permit requirements under part 122 of this subchapter.

[2] See footnote 1.

[3] A request to review an attenuated strain may be mailed to National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; or faxed to (301) 734–3652. For overlap agents, a request for review may be mailed to the above address or to Select Agent Program, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Mail Stop E 79, Atlanta, GA 30333; or faxed to (404) 498–2265.

[4] A clinical or diagnostic laboratory, or other entity, may immediately notify APHIS by faxing (301) 734–3652. APHIS Form 2040 may be obtained by calling APHIS at (301) 734–3277 or by calling CDC at (404) 498–2265. The form is also available on the Internet at *http://www.aphis.usda.gov/vs/ncie.bto.html* or *http://www.cdc.gov/od/ohs/lrsat.htm*. The completed form may be mailed or faxed to APHIS or CDC, as provided in footnote 3.

overlap agents or toxins may be exempt from the requirements of this part if such product is being used in an investigation authorized by any Federal law and the Administrator determines that additional regulation under this part is not necessary to protect animal or plant health, and animal or plant products.

(1) An individual or entity possessing, using, or transferring such investigational products may apply for an exemption from the requirements of this part by submitting APHIS Form 2042 to APHIS or CDC.

(2) For investigational products authorized under any of the Federal laws specified in paragraph (c) of this section, the Administrator shall make a determination regarding an exemption within 14 days after receipt of the application and notification that the investigation has been authorized under a Federal law.

(e) The Administrator may exempt an individual or entity from the requirements of this part, in whole or in part, for 30 days if it is necessary to respond to a domestic or foreign agricultural emergency involving an overlap agent or toxin. The Administrator may extend the exemption once for an additional 30 days.

(f) Upon request of the Secretary of Health and Human Services, the Administrator may exempt an individual or entity from the requirements of this part, in whole or in part, for 30 days if the Secretary of Health and Human Services has granted an exemption for a public health emergency involving an overlap agent or toxin. The Administrator may extend the exemption once for an additional 30 days.

§ 121.5 Exemptions for animal agents and toxins.

(a) Diagnostic laboratories and other entities possessing, using, or transferring agents or toxins that are contained in specimens presented for diagnosis or verification will be exempt from the requirements of this part, provided that:

(1) The identification of such agents or toxins is immediately reported to the Administrator and to other appropriate authorities when required by Federal, State, or local law; and

(2) Within 7 days after identification, the agents or toxins are transferred or inactivated, and APHIS Form 2040 is submitted to the Administrator.[5] During agricultural emergencies or outbreaks, or in endemic areas, the Administrator may require less frequent reporting. A copy of the completed form must be maintained for 3 years.

(b) Diagnostic laboratories and other entities possessing, using, or transferring agents or toxins that are contained in specimens presented for proficiency testing will be exempt from the requirements of this part, provided that:

(1) The identification of such agents or toxins, and their derivatives, is immediately reported to the Administrator, and to other appropriate authorities when required by Federal, State, or local law; and

(2) Within 90 days of receipt, the agent or toxins are transferred or inactivated, and APHIS Form 2040 is submitted to the Administrator. A copy of the completed form must be maintained for 3 years.

(c) An individual or entity receiving diagnostic reagents and vaccines that are, bear, or contain listed agents or toxins, also known as high consequence livestock pathogens or toxins, that are produced at USDA diagnostic facilities will be exempt from the requirements of this part.

(d) Unless the Administrator by order determines that additional regulation is necessary to protect animal health or animal products, an individual or entity possessing, using, or transferring products that are, bear, or contain listed agents or toxins will be exempt from the requirements of this part if the products have been cleared, approved, licensed, or registered pursuant to:

(1) The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*);

(2) Section 351 of Public Health Service Act (42 U.S.C. 262);

(3) The Virus-Serum-Toxin Act (21 U.S.C. 151–159); or

(4) The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 131 *et seq.*).

(e) An individual or entity possessing, using, or transferring experimental products that are, bear, or contain listed agents or toxins may be exempt from the requirements of this part if such product is being used in an investigation authorized by any Federal law and the Administrator determines that additional regulation under this part is not necessary to protect animal or plant health, and animal or plant products. An individual or entity possessing, using, or transferring such experimental products may apply for an exemption from the requirements of this part by submitting APHIS Form 2042 to APHIS.

(f) In addition to the exemptions provided in paragraphs (a) through (e) of this section, the Administrator may grant a specific exemption upon a showing of good cause and upon his or her determination that such exemption is consistent with protecting animal health and animal products. An individual or entity that possesses, uses, or transfers agents or toxins may request in writing an exemption from the requirements of this part. If granted, such exemptions are valid for a maximum of 3 years; thereafter, an individual or entity must request a new exemption. If a request for exemption is denied, an individual or entity may request reconsideration in writing to the Administrator. The request for reconsideration must state all of the facts and reasons upon which the individual or entity relies to show that the exemption was wrongfully denied. The Administrator will grant or deny the request for reconsideration as promptly as circumstances allow and will state, in writing, the reasons for the decision. If there is a conflict as to any material fact, the individual or entity may request a hearing to resolve the conflict.[6]

§ 121.6 Registration; who must register.

(a) Unless exempted under §§ 121.4 or 121.5, any individual or entity that possesses, uses, or transfers any agent or toxin listed in § 121.3 must register with APHIS or, for overlap agents or toxins, APHIS or CDC.

(b) Each entity must designate an individual to be its responsible official. The responsible official must have the authority and control to ensure compliance with the regulations. The responsible official must complete and sign the registration application package, and will be the individual contacted by APHIS or CDC if any questions arise concerning the application or subsequent compliance with the regulations in this part. As part of registration, the responsible official and the entity will be subject to a security risk assessment by the Attorney General. While most registrants are likely to be entities, in the event that an individual applies for and is granted a certificate of registration, APHIS will consider the individual to be the responsible official.

[5] A diagnostic laboratory or other entity must immediately notify APHIS by faxing (301) 734–3652. APHIS Form 2040 may be obtained by calling (301) 734–3277. The form is also available on the Internet at *http://www.aphis.usda.gov/vs/ncie.bta.html*. The completed form may be mailed to National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; or faxed to (301) 734–3652.

[6] A request for exemption may be mailed to National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; or faxed to (301) 734–3652.

(c) An entity may designate one or more individuals to be an alternate responsible official, who may act for the responsible official when he/she is unavailable. These individuals must have the authority and control to ensure compliance with the regulations when acting as the responsible official. These individuals will also be subject to a security risk assessment by the Attorney General as part of registration.

§ 121.7 Registration; general provisions.

(a) Unless exempted under §§ 121.4 or 121.5, an individual or entity shall not possess, use, or transfer any agent or toxin listed in § 121.3 without a certificate of registration issued by APHIS or CDC.

(b) A certificate of registration may be issued upon:

(1) Approval of the responsible official; the alternate responsible official, where applicable; the entity; and, where applicable, the individual who owns or controls the entity following a security risk assessment by the Attorney General; [7] and

(2) Approval of the biosafety, containment, and security of the entity. The entity's biosafety, containment, and security procedures must be commensurate with the risk of the agent or toxin, given its intended use. APHIS or CDC will review the Biosafety and Security Plan, and may inspect and evaluate the premises and records to determine compliance with the regulations and the biosafety, containment, and security requirements; and

(3) A determination by the Administrator that the individual or entity seeking to register has a lawful purpose to possess, use, or transfer such agents or toxins.

(c) For overlap agents, APHIS and CDC will review applications for registration and amendments to a certificate of registration, and a certificate of registration or amendment to a certificate of registration will only be issued if APHIS and CDC concur.

(d) A certificate of registration will be valid for only the specific agents or toxins listed in the certificate and specific activities and locations. A certificate of registration may cover more than one listed agent or toxin, and it may be amended to cover additional listed agents or toxins.

(e) A certificate of registration may be amended to reflect changed circumstances (*e.g.*, replacement of the responsible official, changes in ownership or control of the entity,[8] changes in the activities involving the agent or toxin). The responsible official must immediately notify the agency that issued the certificate of registration, either APHIS or CDC, of such changes in circumstances that occur after submission of the application for registration or after receipt of a certificate of registration.

(f) If a responsible official wishes to discontinue possessing, using, or transferring a particular agent or toxin, the responsible official may inactivate the agent or toxin or he/she may transfer the agent or toxin to a registered individual or entity in accordance with § 121.13. The responsible official must notify APHIS or, for overlap agents or toxins, APHIS or CDC, 5 business days prior to the planned inactivation so that we may have the opportunity to observe the inactivation of the agents or toxins. APHIS or CDC will notify the responsible official if we wish to observe the inactivation of the agents or toxins.

(g) A certificate of registration will be valid for a maximum of 3 years.

§ 121.8 Denial, revocation, or suspension of registration.

(a) APHIS may deny an application for registration or revoke registration if:

(1) The Attorney General identifies the responsible official, entity, or individual who owns or controls the entity as within any of the categories described in 18 U.S.C. 175b; or

(2) The Attorney General identifies the responsible official, entity, or individual who owns or controls the entity as reasonably suspected by any Federal law enforcement or intelligence agency of:

(i) Committing a crime set forth in 18 U.S.C. 2332b(g)(5); or

(ii) Knowing involvement with an organization that engages in domestic or international terrorism (as defined in 18 U.S.C. 2331) or with any other organization that engages in intentional crimes of violence; or

(iii) Being an agent of a foreign power as defined in 50 U.S.C. 1801; or

(3) The responsible official does not have a lawful purpose to possess, use, or transfer agents or toxins listed in § 121.3; or

(4) The responsible official is an individual who handles or uses agents or toxins listed in § 121.3 and he/she does not have the necessary training or skills to handle such agents or toxins; or

(5) The entity does not meet the biosafety, containment, and security requirements prescribed by the Administrator; [9] or

(6) There are egregious or repeated violations of the biosafety, containment, or security requirements; or

(7) The Administrator determines that such action is necessary to protect animal or plant health, and animal or plant products.

(b) For overlap agents or toxins, APHIS or CDC shall deny an application for registration or revoke registration if the Attorney General identifies the responsible official, entity, or individual who owns or controls the entity as within any of the categories described in 18 U.S.C. 175b. APHIS or CDC may also deny registration or revoke registration for the reasons set forth in paragraphs (a)(2) through (a)(7) of this section.

(c) APHIS may summarily revoke or suspend registration for any of the reasons set forth in paragraphs (a) and (b) of this section.

(d) APHIS will notify the responsible official in writing if an application for registration is denied or a certificate of registration is revoked or suspended. For overlap agents or toxins, APHIS or CDC will notify the responsible official in writing if an application for registration is denied or a certificate of registration is revoked or suspended.

(e) Denial of an application for registration, revocation of registration, and suspension of registration may be appealed under § 121.17.

§ 121.9 Registration; how to register.

(a) To apply for a certificate of registration, the responsible official must submit all of the information and documentation required in the registration application package to APHIS, including the name, source, and characterization data for each agent or toxin to be registered. For overlap agents or toxins, the responsible official must submit all of the information and documentation required in the registration package to either APHIS or CDC. The responsible official must submit the registration application package to APHIS in cases where he/she is seeking registration for both animal and overlap agents and toxins.

(b) For animal agents and toxins, the registration application package may be obtained by calling (301) 734–3277 or faxing a request to (301) 734–3652. It is also available on the Internet at *http://www.aphis.usda.gov/vs/ncie.bta.html*. The completed registration application package must be mailed to National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40,

[7] The security risk assessment of the entity and the individual who owns or controls such entity may be waived for Federal, State, or local governmental agencies.

[8] Any change in ownership or control of an entity will require a security risk assessment for the new individual(s) who owns or controls the entity.

[9] If registration is denied for this reason, we may provide technical assistance and guidance.

Riverdale, MD 20737–1231. Assistance in completing the registration application may be requested by calling (301) 734–3277.

(c) For overlap agents and toxins, the registration application package may be obtained by contacting APHIS, as set forth in paragraph (b) of this section, or by calling CDC at (404) 498–2255; faxing a request to (404) 498–2265; or writing to Select Agent Program, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Mail Stop E 79, Atlanta, GA 30333. It is also available on the Internet at *http://www.cdc.gov/od/ohs/lrsat.htm*. The completed registration application package may be mailed to APHIS at the address provided in paragraph (b) of this section or to CDC's Select Agent Program at the address provided in this paragraph. Assistance in completing the registration application may be requested by calling APHIS or CDC at the telephone numbers provided in this section.

§ 121.10 Responsibilities of the responsible official.

(a) The responsible official is responsible for ensuring compliance with the regulations, including:

(1) Developing and implementing a Biosafety and Security Plan in accordance with § 121.12;

(2) Allowing only approved individuals within the entity to have access to any agents or toxins listed in § 121.3 in accordance with § 121.11;

(3) Providing appropriate training in biosafety, containment, and security procedures for all personnel in accordance with § 121.13;

(4) Transferring agents or toxins only to registered individuals or entities in accordance with § 121.14;

(5) Ensuring that all visitors are informed of and follow the entity's security requirements and procedures;

(6) Notifying APHIS or, for overlap agents or toxins, APHIS or CDC, of changes in circumstances in accordance with § 121.7;

(7) Providing timely notice of any theft, loss, or release of a biological agent or toxin in accordance with § 121.17;

(8) Maintaining detailed records of information necessary to give a complete accounting of all of the activities related to agents or toxins listed in § 121.3 in accordance with § 121.15.

(b) In addition to the requirements in paragraph (a) of this section, the responsible official for a diagnostic laboratory or other entities possessing, using, or transferring agents or toxins listed in § 121.3 that are contained in specimens presented for diagnosis must immediately report the identification of such agents or toxins to the Administrator and to other appropriate authorities when required by Federal, State, or local law.[10] During agricultural emergencies or outbreaks, or in endemic areas, the Administrator may require less frequent reporting.

(c) In addition to the requirements in paragraph (a) of this section, the responsible official must ensure that the following experiments are not conducted unless approved by the Administrator, after consultation with experts:

(1) Experiments utilizing recombinant DNA that involve the deliberate transfer of a pathogenic trait or drug resistance trait to biological agents that are not known to acquire the trait naturally, if such acquisition could compromise the use of the drug to control disease agents in humans, veterinary medicine, or agriculture.

(2) Experiments involving the deliberate formation of recombinant DNA containing genes for the biosynthesis of toxins lethal for vertebrates at an LD_{50}<100 ng/kg body weight.

§ 121.11 Restricting access to biological agents and toxins.

(a) An individual may not have access to biological agents or toxins listed in § 121.3 unless approved by APHIS or CDC. APHIS will grant, limit, or deny access of individuals to listed agents or toxins. APHIS or CDC will grant, limit, or deny access of individuals to overlap agents or toxins.

(b) The responsible official is responsible for ensuring that only approved individuals within the entity have access to any agents or toxins listed in § 121.3. The responsible official must request such access for only those individuals who have a legitimate need to handle or use agents or toxins, and who have the appropriate training and skills to handle such agents or toxins.

(c) The responsible official must provide appropriate training in biosafety, containment, and security procedures to all individuals with access to agents and toxins listed in § 121.3.

(d) For each individual identified by the responsible official as having a legitimate need to handle or use agents or toxins, the responsible official must submit that individual's name and identifying information to APHIS and the Attorney General. For overlap agents or toxins, the responsible official must submit this information to either APHIS or CDC and the Attorney General.

(e) In addition, the responsible official must submit information about the individual's training and skills to APHIS or, for overlap agents or toxins, APHIS or CDC (*e.g.*, curriculum vitae for principal investigators and researchers, and a description of training completed by support personnel).

(f) APHIS may expedite the access approval process for individuals upon request by the responsible official and a showing of good cause (*e.g.*, public health or agricultural emergencies, national security, impending expiration of a research grant, a short-term visit by a prominent researcher).

(g) APHIS will notify the responsible official if an individual is granted full or limited access, or denied access to listed agents or toxins. APHIS will also notify the individual if he/she is denied access or granted only limited access. For overlap agents or toxins, APHIS or CDC will provide the necessary notification.

(h) APHIS may deny or limit access of an individual to listed agents or toxins if:

(1) The Attorney General identifies the individual as within any of the categories described in 18 U.S.C. 175b;

(2) The Attorney General identifies the individual as reasonably suspected by any Federal law enforcement or intelligence agency of committing a crime set forth in 18 U.S.C. 2332b(g)(5); knowing involvement with an organization that engages in domestic or international terrorism (as defined in 18 U.S.C. 2331) or with any other organization that engages in intentional crimes of violence; or being an agent of a foreign power as defined in 50 U.S.C. 1801;

(3) The individual does not have a legitimate need to handle listed agents or toxins;

(4) The individual does not have the necessary training or skills to handle listed agents or toxins;

(5) The Administrator determines that such action is necessary to protect animal health or animal products.

(i) For overlap agents or toxins, APHIS or CDC will deny an individual access to such agents or toxins if the Attorney General identifies the individual as within any of the categories described in 18 U.S.C. 175b. APHIS or CDC may also deny or limit access of an individual for the reasons set forth in paragraphs (f)(2) through (f)(5) of this section.

(j) An individual may appeal the Administrator's decision to deny or limit access under § 121.17.

[10] A diagnostic laboratory or other entity must immediately notify APHIS by faxing (301) 734–3652.

(k) Access approval is valid for 5 years; thereafter, the responsible official shall request renewal of access approval every 5 years for as long as the individual needs access to agents or toxins listed in § 121.3.

(l) The responsible official must immediately notify APHIS or, for overlap agents or toxins, APHIS or CDC, when an individual's access to agents or toxins listed in § 121.3 is terminated by the entity and the reasons therefore.

§ 121.12 Biosafety and security plan.

(a) As a condition of registration, the responsible official must develop and implement a Biosafety and Security Plan.[11] The Biosafety and Security Plan must contain sufficient information and documentation to describe the biosafety and containment procedures, and the security systems and procedures. The plan must be commensurate with the risk of the agent or toxin, given its intended use.

(1) *Biosafety and containment procedures.*[12] The biosafety and containment procedures must be sufficient to contain the agent or toxin (*e.g.*, physical structure and features of the entity, and operational and procedural safeguards). At a minimum, the plan must address containment, personnel safety and health, and inventory control.

(2) *Security systems and procedures.*[13] The security systems and procedures must be designed according to a site-specific risk assessment and must provide graded protection in accordance with the threat posed by the agent or toxin.

(i) The site-specific risk assessment should involve a threat assessment and risk analysis in which threats are defined, vulnerabilities examined, and risks associated with those vulnerabilities are identified.

(ii) The security systems and procedures must be tailored to address site-specific characteristics and requirements, ongoing programs, and operational needs and must mitigate the risks identified under paragraph (a)(2)(i) of this section.

(iii) The plan must describe inventory control procedures, personnel suitability for those individuals with access to agents or toxins listed in § 121.3, physical security, and cybersecurity. The plan must also contain provisions for routine cleaning, maintenance, and repairs; provisions for securing the area (*e.g.*, card access, key pads, locks) and protocols for changing access numbers or locks following staff changes; procedures for loss or compromise of keys, passwords, combinations, etc.; procedures for reporting suspicious persons or activities, loss or theft of listed agents or toxins, release of listed agents or toxins, or alteration of inventory records; provisions for the control of access to containers where listed agents and toxins are stored; and procedures for reporting and removing unauthorized persons.

(iv) With respect to areas containing listed agents or toxins, an entity or individual must adhere to the following security requirements or implement measures to achieve an equivalent or greater level of security as the provisions below:

(A) Allow unescorted access only to approved individuals who are performing a specifically authorized function during hours required to perform that job;

(B) Allow individuals not approved under § 121.11 to conduct routine cleaning, maintenance, repairs, and other non-laboratory functions only when escorted and continually monitored by approved individuals;

(C) Provide for the control of access to containers where listed agents and toxins are stored by requiring that such containers be locked when not in the direct view of an approved individual and by using other monitoring measures, as needed;

(D) Require the inspection of all packages upon entry and exit;

(E) Establish a protocol for intra-entity transfers, including provisions for ensuring that the packaging and movement, is conducted under the supervision of an approved individual;

(F) Require that approved individuals do not share with any other person their unique means of accessing the area or listed agents or toxins; and

(G) Require that approved individuals immediately report any of the following to the responsible official:

(*1*) Any loss or compromise of keys, passwords, combinations, etc.;

(*2*) Any suspicious persons or activities;

(*3*) Any loss or theft of listed agents or toxins;

(*4*) Any release of a listed agent or toxin; and

(*5*) Any sign that inventory and use records for listed agents and toxins have been altered or otherwise compromised.

(3) *Incident response procedures.*[14] The Biosafety and Security Plan must also include incident response plans for containment breach, security breach, inventory violations, non-biological incidents such as workplace violence, and cybersecurity breach. The incident response plans must address personnel safety and health, containment, inventory control, and notification of managers and responders. The incident response plans must also address such events as bomb threats, severe weather (floods, hurricanes, tornadoes), earthquakes, power outages, and other natural disasters or emergencies.

(b) The Biosafety and Security Plan must be reviewed, performance tested, and updated annually. The plan must also be reviewed and revised, as necessary, after any incident.

§ 121.13 Training.

(a) The responsible official must provide appropriate training in biosafety, containment, and security procedures to all individuals with access to agents and toxins listed in § 121.3.

(b) The responsible official must provide information and training to an individual at the time the individual is assigned to work with a listed agent or toxin. The responsible official must provide refresher training annually.

§ 121.14 Transfer of biological agents and toxins.

Biological agents and toxins listed in § 121.3 may only be transferred to individuals or entities registered to possess, use, or transfer that particular agent or toxin. However, the sender of an agent or toxin may be an individual or entity that has a certificate of registration for the agent or toxin, an individual or entity that is exempt from the requirements of this part, or an individual or entity located outside of the United States. Biological agents or toxins may only be transferred under the conditions of this section and must be authorized by APHIS or, for overlap agents or toxins, by APHIS or CDC, prior to the transfer.

[11] Technical assistance and guidance may be obtained by calling (301) 734–3277.

[12] For guidance on biosafety and containment procedures, see the CDC/NIH publication, "Biosafety in Microbiological and Biomedical Laboratories" (4th ed. 1999).

[13] For guidance, see the USDA Departmental Manual No. 9610–001, "USDA Security Policies and Procedures for Biosafety Level-3 Facilities" (August 30, 2002). The manual may be obtained by calling (301) 734–3277. The manual is also available on the Internet at *http://www.usda.gov/ocio/directives/DM/DM9610–001.htm*. See also Appendix F, "Biosafety in Microbiological and Biomedical Laboratories," in Morbidity and Mortality Weekly Report (2002). This document may be obtained by writing to Select Agent Program, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Mail Stop E 79, Atlanta, GA 30333. It is also available on the Internet at *http://www.cdc.gov/mmwr*.

[14] The requirements in this paragraph do not supercede or preempt the enforcement of emergency response requirements imposed by other statutes or regulations.

(a) *Importation and interstate movement.* In addition to the permit required under part 122 of this subchapter, biological agents or toxins listed in § 121.3 may be imported or moved interstate only with the prior authorization of APHIS or, for overlap agents or toxins, APHIS or CDC. To obtain such authorization, the sender and the responsible official for the recipient must complete and submit APHIS Form 2041 to APHIS or CDC, in accordance with paragraph (c) of this section.

(b) *Intrastate movement.* Biological agents or toxins listed in § 121.3 may be moved intrastate only with the prior authorization of APHIS or, for overlap agents or toxins, APHIS or CDC. To obtain such authorization, the sender and the responsible official for the recipient must complete and submit APHIS Form 2041 to APHIS or CDC, in accordance with paragraph (c) of this section.

(c) *APHIS Form 2041; process and procedures.* (1) Prior to each transfer, the responsible official for the recipient and sender must complete APHIS Form 2041, and the sender must submit the form to APHIS or, for overlap agents or toxins, to APHIS or CDC.[15]

(2) APHIS or CDC will authorize the transfer based on a finding that the recipient has a certificate of registration covering the transfer of the listed agent or toxin.

(3) The responsible official for the recipient must notify the agency authorizing the transfer (either APHIS or CDC) and the sender upon receipt of the agent or toxin by mailing or faxing a completed APHIS Form 2041 to APHIS or CDC within 2 business days.

(4) The responsible official for the recipient must notify APHIS or CDC immediately if the agent or toxin has not been received within 48 hours after the expected delivery or if the package containing the agent or toxin is leaking or has been damaged.

(d) The sender must comply with all applicable laws governing packaging and shipping.

[15] APHIS Form 2041 may be obtained by calling APHIS at (301) 734–3277 or by calling CDC at (404) 498–2265. The form is also available on the Internet at *http://www.aphis.usda.gov/vs/ncie.bta.html* or *http://www.cdc.gov/od/ohs/lrsat.htm*. APHIS Form 2041 may be mailed to National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; or faxed to (301) 734–3652. For overlap agents and toxins, it may be mailed to the above address or to Select Agent Program, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Mail Stop E 79, Atlanta, GA 30333; or faxed to (404) 498–2265.

§ 121.15 Records.

(a) The responsible official must maintain complete, up-to-date records of information necessary to give an accounting of all of the activities related to agents or toxins listed in § 121.3. Such records must include the following:

(1) The Biosafety and Security Plan;

(2) A current list of all individuals with access to agents or toxins listed in § 121.3;

(3) Training records for individuals with access to such agents or toxins;

(4) Accurate and current inventory records (including source and characterization data);

(5) Permits and transfer documents (APHIS Form 2041) issued by APHIS and CDC;

(6) Security records (*e.g.*, transactions from automated access control systems, testing and maintenance of security systems, visitor logs);

(7) Biosafety, containment, and security incident reports.

(b) The responsible official must maintain such records for 3 years.

(c) All records must be produced upon request to APHIS or CDC inspectors, and appropriate Federal, State, or local law enforcement authorities.

§ 121.16 Inspections.

(a) To ensure compliance with the regulations, any APHIS or CDC inspector must be allowed, without previous notification, to enter and inspect the entire premises, all materials and equipment, and all records required to be maintained by this part.

(b) Prior to issuing a certificate of registration to an entity or individual, APHIS or CDC may inspect and evaluate the premises and records to ensure compliance with the regulations and the biosafety, containment, and security requirements.

§ 121.17 Notification in the event of theft, loss, or release of a biological agent or toxin.

(a) The responsible official must orally notify APHIS and appropriate Federal, State, or local law enforcement agencies immediately upon discovery of the theft or loss of agents or toxins listed in § 121.3. The oral notification must be followed by a written report (APHIS Form 2043) within 7 days.

(b) The responsible official must orally notify APHIS immediately upon discovery that a release of an agent or toxin has occurred outside of the biocontainment area. The oral notification shall be followed by a written report (APHIS Form 2043) within 7 days. Upon notification and a finding that the release poses a threat to animal or plant health, or animal or plant products, APHIS will notify relevant Federal, State, and local authorities, and the public, if necessary. If the release involves an overlap agent or toxin, APHIS will also notify the Secretary of Health and Human Services.

(c) The responsible official must orally notify APHIS of a theft, loss, or release of an agent or toxin by calling (866) 994–5698. A copy of APHIS Form 2043 may be obtained by writing to National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; or by calling (301) 734–3277. The form is also available on the Internet at *http://www.aphis.usda.gov/vs/ncie.bta.html*. APHIS Form 2043 may be mailed to the same address or faxed to (301) 734–3652.

§ 121.18 Administrative review.

An individual or entity may appeal a denial or revocation of registration under this part. An individual who has been denied access to listed agents or toxins or who has been granted only limited access to listed agents or toxins under this part may appeal that decision.[16] The appeal must be in writing and submitted to the Administrator within 30 days of the decision. The appeal must state all of the facts and reasons upon which the individual or entity disagrees with the decision. Where the denial or revocation of registration or the denial or limitation of an individual's access approval is based solely upon an identification by the Attorney General, APHIS will forward the request for review to the Attorney General. The Administrator's decision constitutes final agency action.

Done in Washington, DC this 9th day of December 2002 .

Charles D. Lambert,

Acting Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 02–31373 Filed 12–9–02; 4:03 pm]

BILLING CODE 3410–34–P

[16] An entity may not appeal the denial or limitation of an individual's access to listed agents or toxins.

Federal Register

Friday,
December 13, 2002

Part VI

Department of Labor

Pension and Welfare Benefits Administration

Publication of Year 2002 Form M–1; Notice

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Publication of Year 2002 Form M–1

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice on the Availability of the Year 2002 Form M–1.

SUMMARY: This document announces the availability of the Year 2002 Form M–1, Annual Report for Multiple Employer Welfare Arrangements and Certain Entities Claiming Exception. A copy of this new form is attached.

FOR FURTHER INFORMATION CONTACT: Amy J. Turner, Pension and Welfare Benefits Administration, Department of Labor, at (202) 693–8335.

SUPPLEMENTARY INFORMATION:

I. Background

The Form M–1 is required to be filed under section 101(g) and section 734 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and 29 CFR 2520.101–2.

II. The Year 2001 Form M–1

This document announces the availability of the Year 2002 Form M–1, Annual Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs). A copy of the new form is attached. This year's Form M–1 is substantively identical to the Year 2001 Form M–1. In addition, the filing deadlines for the Year 2002 Form M–1 parallel those for last year's form. Specifically, the Year 2002 Form M–1 is generally due March 1, 2003, with an extension until May 1, 2003 available. These Year 2002 deadlines were also previously published; they are included in the Department of Labor's regulations implementing the Form M–1 filing requirement and they were set forth in last year's Form M–1.

PWBA is committed to working together with administrators to help them comply with this filing requirement. Additional copies of the Form M–1 are available on the Internet at: *http://www.dol.gov/pwba*. In addition, after printing, copies will be available by calling the PWBA toll-free publication hotline at 1–866–275–7922. Questions on completing the form are being directed to the PWBA help desk at (202) 693–8360.

Statutory Authority

Sec. 29 U.S.C. 1024, 1027, 1059, 1132(c)(5), 1135, 1181–1183, 1185, 1185a, 1185b, 1191, 1191a, 1191b, 1191c; Sec. 101, Pub. L. 104–191, 101 Stat. 1936 (29 U.S.C. 1181); Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987.

Signed at Washington, DC, this 9th day of December, 2002.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

BILLING CODE 4510–29–P

2002 Form M-1	**Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)**	OMB No. 1210-0116
MEWA/ECE Form This Form is Open to Public Inspection	This report is required to be filed under section 101(g) of the Employee Retirement Income Security Act of 1974 and 29 CFR 2520.101-2. → See separate instructions before completing this form.	Department of Labor Pension and Welfare Benefits Administration

PART I REPORT IDENTIFICATION INFORMATION

Complete either Item **A** or Item **B** (as applicable) and Item **C**.

A If this is an annual report, specify whether it is for:
(*1*) ❑ The 2002 calendar year; or
(*2*) ❑ The fiscal year beginning _____ and ending _____
mm/dd/yyyy mm/dd/yyyy

B If this is a special filing, specify whether it is:
(*1*) ❑ A 90-day origination report;
(*2*) ❑ An amended report; or
(*3*) ❑ A request for an extension.

C If this is a final report, check here . . . . . → ❑

PART II MEWA OR ECE IDENTIFICATION INFORMATION

1a Name and address of the MEWA or ECE	**1b** Telephone number of the MEWA or ECE **1c** Employer Identification Number (EIN) **1d** Plan Number (PN)
2a Name and address of the administrator of the MEWA or ECE	**2b** Telephone number of the administrator **2c** Employer Identification Number (EIN)
3a Name and address of the entity sponsoring the MEWA or ECE	**3b** Telephone number of the sponsor **3c** Employer Identification Number (EIN)

PART III REGISTRATION INFORMATION

4 Specify the most recent date the MEWA or ECE was originated . . . . . → _____

5 Complete the following chart. (See Instructions for **Item 5**)

5a	5b	5c	5d	5e	5f	5g
Enter all States where the entity provides coverage.	Is the entity a licensed health insurance issuer in this State?	If you answer "yes" to **5b**, list any NAIC number.	If you answer "no" to **5b**, is the entity fully insured?	If you answer "yes" to **5d**, enter the name of the insurer and its NAIC number.	Does the entity purchase stop-loss coverage?	If you answer "yes" to **5f**, enter the name of the stop-loss insurer and its NAIC number.
	❑ Yes ❑ No		❑ Yes ❑ No		❑ Yes ❑ No	
	❑ Yes ❑ No		❑ Yes ❑ No		❑ Yes ❑ No	
	❑ Yes ❑ No		❑ Yes ❑ No		❑ Yes ❑ No	
	❑ Yes ❑ No		❑ Yes ❑ No		❑ Yes ❑ No	
	❑ Yes ❑ No		❑ Yes ❑ No		❑ Yes ❑ No	

For Paperwork Reduction Act Notice, see page 8 of the Instructions. Form M-1

6 Of the States identified in **Item 5a**, list those States in which the MEWA or ECE conducted 20 percent or more of its business (based on the number of participants receiving coverage for medical care under the MEWA or ECE).

7 Total number of participants covered under the MEWA or ECE . . . . . →

PART IV INFORMATION FOR COMPLIANCE WITH PART 7 OF ERISA

8a Has the MEWA or ECE been involved in any litigation or enforcement proceeding in which noncompliance with any provision of Part 7 of Subtitle B of Title I (Part 7) of ERISA was alleged? Answer for the year to which this filing applies and any time since then up to the date of completing this form. Answer "Yes" for any State or Federal litigation or enforcement proceeding (including any administrative proceeding), whether the allegation concerns a provision under Part 7 of ERISA, a corresponding provision under the Internal Revenue Code or Public Health Service Act, a breach of any duty under Title I of ERISA if the underlying violation relates to a requirement under Part 7 of ERISA, or a breach of a contractual obligation if the contract provision relates to a requirement under Part 7 of ERISA. (The instructions to this form contain additional information that may be helpful in answering this question.) . . . . . → ❑ Yes ❑ No

8b If you answered "Yes" to **Item 8a**, identify each litigation or enforcement proceeding. With respect to each, include (if applicable): (1) the case number, (2) the date, (3) the nature of the proceedings, (4) the court, (5) all parties (for example, plaintiffs and defendants or petitioners and respondents), and (6) the disposition. You may answer this question by attaching a copy of the complaint with the name of the MEWA or ECE, the disposition of the case, and the phrase "Item 8b Attachment," noted in the upper right corner.

9 Complete the following. (Note: The instructions to this form contain four detailed worksheets which may be helpful in completing this item. Please read the instructions carefully before answering the following questions.)

9a Is the coverage provided by the MEWA or ECE in compliance with the portability provisions of the Health Insurance Portability and Accountability Act of 1996 and the Department's regulations issued thereunder? (See Worksheet A) . . . . . →	❑ Yes	❑ No	❑ N/A
9b Is the coverage provided by the MEWA or ECE in compliance with the Mental Health Parity Act of 1996 and the Department's regulations issued thereunder? (See Worksheet B) . . . . . →	❑ Yes	❑ No	❑ N/A
9c Is the coverage provided by the MEWA or ECE in compliance with the Newborns' and Mothers' Health Protection Act of 1996 and the Department's regulations issued thereunder? (See Worksheet C) . . . . . →	❑ Yes	❑ No	❑ N/A
9d Is the coverage provided by the MEWA or ECE in compliance with the Women's Health and Cancer Rights Act of 1998? (See Worksheet D) . . . . . →	❑ Yes	❑ No	❑ N/A

IF MORE SPACE IS REQUIRED FOR ANY ITEM, YOU MAY ATTACH ADDITIONAL PAGES. (SEE INSTRUCTIONS SECTION 2.4)

Caution: *Penalties may apply in the case of a late or incomplete filing of this report.*

Under penalty of perjury and other penalties set forth in the instructions, I declare that I have examined this report, including any accompanying attachments, and to the best of my knowledge and belief, it is true and correct. Under penalty of perjury and other penalties set forth in the instructions, I also declare that, unless this is an extension request, this report is complete.

Signature of administrator → _____ Date → _____

Type or print name of administrator → _____

Department of Labor
Pension and Welfare Benefits Administration

Year 2002 Instructions for Form M-1

Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)

ERISA refers to the Employee Retirement Income Security Act of 1974, as amended

Notes on the 2002 Form M-1

- This year's Form M-1 is substantively identical to the 2001 Form M-1.
- A minor procedural change was made to the Report Identification Information in Part I of the form. A new Item C was added to indicate whether this is a final report. For more information on new Item C, see the line-by-line instructions in Section 3.1.
- The Year 2002 Form M-1 is generally due March 1, 2003, with an extension until May 1, 2003, available.

Introduction

This form is required to be filed under sections 101(g) and 734 of ERISA and 29 CFR 2520.101-2.

The Department of Labor, Pension and Welfare Benefits Administration (PWBA), is committed to working together with administrators to help them comply with this filing requirement. Additional copies of the Form M-1 are available by calling the **PWBA toll-free hotline** at **1-866-275-7922** and on the Internet at: **www.dol.gov/pwba**. If you have any questions (such as whether you are required to file this report) or if you need any assistance in completing this report, please call the **PWBA help desk** at **(202) 693-8360.**

All Form M-1 reports are subject to a computerized review. It is in the filer's best interest that the responses accurately reflect the circumstances they were designed to report.

Contents

The instructions are divided into three main sections.

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SECTION 1

1.1 Definitions

"Administrator"
For purposes of this report, the "administrator" is the person specifically designated by the terms of the MEWA or ECE. However, if the MEWA or ECE is a group health plan and the administrator is not so designated, the "plan sponsor" is the administrator. ("Plan sponsor" is defined in ERISA section 3(16)(B) as (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.) Moreover, in the case of a MEWA or ECE for which an administrator is not designated and a plan sponsor cannot be identified, the administrator is the person or persons actually responsible (whether or not so designated under the terms of the MEWA or ECE) for the control, disposition, or management of the cash or property received by or contributed to the MEWA or ECE, irrespective of whether such control, disposition, or management is exercised directly by such person or persons or indirectly through an agent or trustee designated by such person or persons.

"Employer Identification Number" or "EIN"
An EIN is a nine-digit employer identification number. For example, 00-1234567. Entities who do not have an EIN can apply for one on Form SS-4, Application for Employer Identification Number. This form can be obtained at most IRS or Social Security Administration offices. PWBA does NOT issue EINs.

"Entity Claiming Exception" or "ECE"
For purposes of this report, the term "entity claiming exception" or "ECE" means any plan or other arrangement that is established or maintained for the purpose of offering or providing medical benefits to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, and that claims it is not a MEWA because the plan or other arrangement claims the exception relating to plans established or maintained pursuant to one or more collective bargaining agreements (contained in section 3(40)(A)(i) of ERISA).

The administrator of an ECE must file this report each year for the first 3 years after the ECE is "originated." (Warning: An ECE may be "originated" more than once. Each time an ECE is "originated," more filings are triggered.)

"Employee Welfare Benefit Plan"
In general, an employee welfare benefit plan means any plan, fund, or program established or maintained by an employer or by an employee organization, or by both, to the extent such plan, fund, or program provides its participants or beneficiaries the benefits listed in section 3(1) of ERISA (including benefits for medical care).

"Excepted Benefits"
Part 7 of Subtitle B of Title I (Part 7) of ERISA does not apply to any group health plan or group health insurance issuer in relation to its provision of excepted benefits.

Certain benefits that are generally not health coverage are excepted in all circumstances. These benefits are: coverage only for accident (including accidental death and dismemberment), disability income insurance, liability insurance (including general liability insurance and automobile liability insurance), coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, automobile medical payment insurance, credit-only insurance (for example, mortgage insurance), and coverage for on-site medical clinics.

Other benefits that generally are health coverage are excepted if certain conditions are met. Specifically, limited scope dental benefits, limited scope vision benefits, and long-term care benefits are excepted if they are provided under a separate policy, certificate, or contract of insurance, or are otherwise not an integral part of the group health plan. For more information on these limited excepted benefits, see the Department of Labor's regulations at 29 CFR 2590.732(b)(3).

In addition, noncoordinated benefits may be excepted benefits. The term "noncoordinated benefits" refers to coverage for a specified disease or illness (such as cancer-only coverage) or hospital indemnity or other fixed dollar indemnity insurance (such as insurance that pays $100/day for a hospital stay as its only insurance benefit), if three conditions are met. First, the benefits must be provided under a separate policy, certificate, or contract of insurance. Second, there can be no coordination between the provision of these benefits and another exclusion of benefits under a group health plan maintained by the same plan sponsor. Third, benefits must be paid without regard to whether benefits are provided with respect to the same event under a group health plan maintained by the same plan sponsor. For more information on these noncoordinated excepted benefits, see the Department of Labor's regulations at 29 CFR 2590.732(b)(4).

Finally, supplemental benefits may be excepted if certain conditions are met. Specifically, the benefits are excepted only if they are provided under a separate policy, certificate or contract of insurance, and the benefits are medicare supplemental (commonly known as "Medigap" or "MedSupp") policies, TRICARE supplements, or supplements to certain employer group health plans. Such supplemental coverage cannot duplicate primary coverage and must be specifically designed to fill gaps in primary

coverage, coinsurance, or deductibles. Note that retiree coverage under a group health plan that coordinates with Medicare may serve a supplemental function similar to that of a Medigap policy. However, such employer-provided retiree "wrap around" benefits are not excepted benefits (because they are expressly excluded from the definition of a Medicare supplemental policy in section 1882(g)(1) of the Social Security Act). For more information on supplemental excepted benefits, see the Department of Labor's regulations at 29 CFR 2590.732(b)(5).

"Group Health Plan"
In general, a group health plan means an employee welfare benefit plan to the extent that the plan provides benefits for medical care to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise. See ERISA section 733(a).

"Health Insurance Issuer" or "Issuer"
The term "health insurance issuer" or "issuer" is defined, in pertinent part, in 2590.701-2 of the Department's regulations as "an insurance company, insurance service, or insurance organization (including an HMO) that is required to be licensed to engage in the business of insurance in a State and that is subject to State law which regulates insurance . . . . Such term does not include a group health plan."

"Multiple Employer Welfare Arrangement" or "MEWA"
In general, a multiple employer welfare arrangement (MEWA) is an employee welfare benefit plan or other arrangement that is established or maintained for the purpose of offering or providing medical benefits to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that the term does not include any such plan or other arrangement that is established or maintained under or pursuant to one or more agreements that the Secretary finds to be collective bargaining agreements, by a rural electric cooperative, or by a rural telephone cooperative association. See ERISA section 3(40). (Note: Many States regulate entities as MEWAs using their own, State definition of the term. Whether or not an entity meets a State's definition of a MEWA for purposes of regulation under State law is a matter of State law.)

For more information on MEWAs, visit PWBA's Web site at **www.dol.gov/pwba** or call the **PWBA's toll-free hotline** at **1-866-275-7922** and ask for the booklet entitled, "MEWAs: Multiple Employer Welfare Arrangements Under the Employee Retirement Income Security Act: A Guide to Federal and State Regulation."

For information on State MEWA regulation, contact your State Insurance Department.

"Originated"
For purposes of this report, a MEWA or ECE is "originated" each time any of the following events occur:

(1) The MEWA or ECE first begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-employed individuals);

(2) The MEWA or ECE begins offering or providing such coverage after any merger of MEWAs or ECEs (unless all MEWAs or ECEs involved in the merger were last originated at least 3 years prior to the merger); or

(3) The number of employees to which the MEWA or ECE offers or provides coverage for medical care is at least 50 percent greater than the number of such employees on the last day of the previous calendar year (unless such increase is due to a merger with another MEWA or ECE under which all MEWAs and ECEs that participate in the merger were last originated at least 3 years prior to the merger).

Therefore, a MEWA or ECE may be originated more than once.

"Plan Number" or "PN"
A PN is a three-digit number assigned to a plan or other entity by an employer or plan administrator. For plans or other entities providing welfare benefits, the first plan number should be number 501 and additional plans should be numbered consecutively.

"Sponsor"
For purposes of this report, the "sponsor" means:

(1) If the MEWA or ECE is a group health plan, the sponsor is the "plan sponsor," which is defined in ERISA section 3(16)(B) as (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan; or

(2) If the MEWA or ECE is not a group health plan, the sponsor is the entity that establishes or maintains the MEWA or ECE.

1.2 Who Must File

General Rules
The administrator of a multiple employer welfare arrangement (MEWA) generally must file this report for every calendar year, or portion thereof, that the MEWA offers or provides benefits for medical care to the employees of two or more employers (including one or more self-employed individuals). The administrator of an entity claiming exception (ECE) must file the report if the ECE was last originated at any time within 3 years before the annual filing due date. (See the definition of "originated" in Section 1.1 and the discussion of when to file in Section 1.3.) **(Caution:** An ECE may be "originated" more than once. Each time an ECE is "originated," more filings are triggered.)

Exception
Irrespective of the general rules (described above), in no event is reporting required by the administrator of a MEWA or ECE if the MEWA or ECE is licensed or authorized to operate as a health insurance issuer in every State in which it offers or provides coverage for medical care to employees (or to their beneficiaries).

Additional Guidance
(1) In response to comments, and consistent with the question-and-answer guidance published in April and June of 2000, no penalties will be assessed against the administrator of a MEWA or ECE if the MEWA or ECE meets any of the following conditions:

(i) It provides coverage that consists solely of excepted benefits (defined above), which are not subject to Part 7 of ERISA. (However, if the MEWA or ECE provides coverage that consists both of excepted benefits and other benefits for medical care that are not excepted benefits, the administrator of the MEWA or ECE is required to file the Form M-1.)

(ii) It is an employee welfare benefit plan that is not subject to ERISA, including a governmental plan, church plan, or plan maintained only for the purpose of complying with workers' compensation laws, within the meaning of sections 4(b)(1), 4(b)(2), or 4(b)(3) of ERISA, respectively.

(iii) It provides coverage only through employee welfare benefit plans that are not covered by ERISA, including governmental plans, church plans, and plans maintained only for the purpose of complying with workers' compensation laws, within the meaning of sections 4(b)(1), 4(b)(2), and 4(b)(3) of ERISA, respectively.

(2) In addition, in response to comments, and consistent with the question-and-answer guidance published in April and June of 2000, no penalties will be assessed against the administrator of an entity that would not constitute a MEWA or ECE but for the following circumstances:

(i) It provides coverage to the employees of two or more trades or businesses that share a common control interest of at least 25 percent at any time during the plan year, applying principles similar to the principles applied under section 414 of the Internal Revenue Code.

(ii) It is created by a change in control of businesses (such as a merger or acquisition) that is for a bona fide business purpose (that is, for a purpose other than avoiding Form M-1 filing) and is temporary in nature (that is, it does not extend beyond the end of the plan year following the year in which the change in control occurs).

(iii) It is a group health plan that covers a very small number of participants who are not employees (or former employees) of the plan sponsor, such as non-employee members of the board of directors or independent contractors. The number of non-employee participants covered by the plan is very small if it does not exceed one percent of the total number of participants, determined as of the last day of the year to be reported (or, in the case of a 90-day origination report, determined as of the 60th day following the origination date).

Good Faith Determinations Regarding Whether an Entity is an ECE
Accordingly, subject to the exceptions described above, the administrator of a MEWA is required to file annually. By contrast, the administrator of an ECE is required to file for 3 years following an origination.

Whether or not an entity is a MEWA or ECE is determined by the administrator acting in good faith. Therefore, if an administrator makes a good faith determination at the time of the filing that the entity is maintained pursuant to one or more collective bargaining agreements, then the entity is an ECE. Moreover, if the administrator makes a further good faith determination at the time of the filing that the ECE is not required to file because its most recent origination was more than 3 years ago, then a filing is not required. Even if the entity is later determined to be a MEWA, filings are not required prior to the determination that the entity is a MEWA if at the time the filings were due, the administrator made a good faith determination that the entity was an ECE. However, filings are required for the years after the determination that the entity is a MEWA.

In contrast, while an administrator's good faith determination that an entity is an ECE may eliminate the requirement that the administrator of the entity file under this section for more than 3 years after the entity's origination date, the administrator's determination does not affect the applicability of State law to the entity. Accordingly, incorrectly claiming the exception may eliminate the need to file under this section, if the claiming of the exception is done in good faith. However, the claiming of the exception for ECEs under this filing requirement does not prevent the application of State law to an entity that is later determined to be a MEWA. This is because the filing, or the failure to file, under this section does not in any way affect the application of State law to a MEWA.

1.3 When to File

General Rule
The administrator of a MEWA or ECE that is required to file must file the Form M-1 no later than March 1 following any calendar year for which a filing is required (unless March 1 is a Saturday, Sunday, or Federal holiday, in which case the form must be filed no later than the following business day).

90-Day Origination Report
In general, an expedited filing is also required after a MEWA or ECE is originated. To satisfy this requirement, the administrator must complete and file the Form M-1 within 90 days of the date the MEWA or ECE is originated (unless the last day of the 90-day period is a Saturday, Sunday, or Federal holiday, in which case the form must be filed no later than the following business day).

Exception to the 90-Day Origination Report Requirement
No 90-Day Origination Report is required if the entity was originated in October, November, or December.

Extensions
A one-time extension of time to file will automatically be granted if the administrator of the MEWA or ECE requests an extension. To request an extension, the administrator must: (1) complete Parts I and II of the Form M-1 (and check Box B(3) in Part I); (2) sign, date, and type the administrator's name at the end of the form; and (3) file this request for extension no later than the normal due date for the report. In such a case, the administrator will have an additional 60 days to file a completed Form M-1. A copy of this request for extension must be attached to the completed Form M-1 when filed.

1.4 Where to File

Completed copies of the Form M-1 should be sent to:
Public Documents Room, PWBA
Room N-1513, U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

1.5 Penalties

ERISA provides for the assessment or imposition of a penalty for failure to file a report, failure to file a completed report, and late filings. In the event of no filing, an incomplete filing, or a late filing, a penalty may apply of up to $1,000 a day for each day that the administrator of the MEWA or ECE fails or refuses to file a complete report (or a higher amount if adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996). In addition, certain other penalties may apply.

SECTION 2

2.1 Year to be Reported

General Rule
The administrator of a MEWA or ECE that is required to file should complete the form using the previous calendar year's information. (For example, for a filing due by March 1, 2003, calendar year 2002 information should be used.)

Fiscal Year Exception
The administrator of a MEWA or ECE that is required to file may report using fiscal year information if the administrator of the MEWA or ECE has at least 6 continuous months of fiscal year information to report. (Thus, for example, for a filing that is due by March 1, 2003, fiscal year 2002 information may be used if the administrator has at least 6 continuous months of fiscal year 2002 information to report.) In this case, the administrator should check Box A(2) in Part I and specify the fiscal year.

2.2 The 90-Day Origination Report

When a MEWA or ECE is originated, a 90-Day Origination Report is generally required. (See Section 1.3 on When to File). When filing a 90-Day Origination Report, the administrator is required to complete the Form M-1 using information based on at least 60 continuous days of operation by the MEWA or ECE.

Remember, there is an exception to the 90-Day Origination Report requirement. No 90-Day Origination Report is required if the entity was originated in October, November, or December.

2.3 Signature and Date

The administrator must sign and date the report. The signature must be original. The name of the individual who signed as the administrator must be typed or printed clearly on the line under the signature line.

2.4 Attaching Additional Pages

If more space is needed to complete any item on the Form M-1, additional pages may be attached. Additional pages must be the same size as this form (8½" x 11") and should include the name of the MEWA or ECE, the Item number, and the word "Attachment" in the upper right corner. In addition, the attachment for any item should be in a format similar to that item on the form.

2.5 Amended Report

To correct errors and/or omissions on a previously filed Form M-1, submit a completed Form M-1 with Part I, Box B(2) checked and an original signature. When filing an amended report, answer all questions and circle the amended line numbers.

SECTION 3

Important: "Yes/No" questions must be marked "Yes" or "No," but not both. "N/A" is not an acceptable response unless expressly permitted in the instructions to that line.

3.1 Line-By-Line Instructions

Part I - Report Identification Information
Complete either Item A or Item B, as applicable.

Annual Reports: If this is an annual report, check either box A(1) or box A(2).

Box A(1): Check this box if calendar year information is being used to complete this report. (See Section 2.1 on Year to be Reported.)

Box A(2): Check this box if fiscal year information is being used to complete this report. Also specify the fiscal year. (For example, if fiscal year 2002 information is being used instead of calendar year 2002 information, specify the dates the fiscal year begins and ends.) (See Section 2.1 on Year to be Reported.)

Special Filings: If this is a special filing, check either box B(1), box B(2), or box B(3).

Box B(1): Check this box if the filing is a 90-Day Origination Report. (See Section 1.2 on Who Must File, Section 1.3 on When to File, and Section 2.2 on 90-Day Origination Reports.)

Box B(2): Check this box if the filing is an Amended Report. (See Section 2.5 on Amended Reports.)

Box B(3): Check this box if the administrator of the MEWA or ECE is requesting an extension. (See Section 1.3 on When to File.)

Final Reports: Check the box in Item C if the administrator does not intend to file a Form M-1 next year. For example, if this is the third filing following an origination for an ECE, or if a MEWA has ceased operations, the administrator should check this box.

Part II – MEWA or ECE Identification Information

Items 1a through 1d: Enter the name, address, and telephone number of the MEWA or ECE, and any employer identification number (EIN) and plan number (PN) used by the MEWA or ECE in reporting to the Department of Labor or the Internal Revenue Service. If the MEWA or ECE does not have any EINs associated with it, leave Item 1c blank. If the MEWA or ECE does not have any PNs associated with it, leave Item 1d blank. In answering these questions, list only EINs and PNs used by the MEWA or ECE itself and not those used by group health plans or employers that purchase coverage through the MEWA or ECE. For more information on EINs or PNs, see Section 1.1 on Definitions.

Items 2a through 2c: Enter the name, address, and telephone number of the administrator of the MEWA or ECE, and the EIN used by the administrator in reporting to the Department of Labor or the Internal Revenue Service. For this purpose, use only an EIN associated with the administrator as a separate entity. Do not use any EIN associated with the MEWA or ECE itself. For more information on the definition of "administrator," and on EINs or PNs, see Section 1.1 on Definitions.

Items 3a through 3c: Enter the name, address, and telephone number of the entity sponsoring the MEWA or ECE, and any EIN used by the sponsor in reporting to the Department of Labor or the Internal Revenue Service. For this purpose, use only an EIN associated with the sponsor. Do not use any EIN associated with the MEWA or ECE itself. For more information on the definition of "sponsor," and on EINs or PNs, see Section 1.1 on Definitions. If there is no such entity, leave Item 3 blank and skip to Item 4.

Part III - Registration Information

Item 4: Enter the date the MEWA or ECE was most recently "originated." For this purpose, see the definition of "originated" in Section 1.1.

Item 5: Complete the chart. If the report is a 90-Day Origination Report, complete this item with information that is current as of the 60th day following the origination date. Otherwise, complete this item with information that is current as of the last day of the year to be reported. (See Section 2.1 on Year to be Reported.) When completing the chart, complete Item 5a first. Then for each row, complete Item 5b through Item 5g as it applies to the State listed in Item 5a.

Item 5a. Enter all States in which the MEWA or ECE provides benefits for medical coverage. For this purpose, list the State(s) where the employers (of the employees receiving coverage) are domiciled. In answering this question, a "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Northern Mariana Islands. Enter one State per row.

Item 5b. For each State listed in Item 5a, specify whether the MEWA or ECE is licensed or otherwise authorized to operate as a health insurance issuer in the State listed in that row. (For a definition of the term "health insurance issuer," see Section 1.1.) For more information on whether an entity that is a licensed or registered MEWA in a State meets the definition of a health insurance issuer in that State, contact the State Insurance Department.

Item 5c. For each "yes" answer in Item 5b, enter the National Association of Insurance Commissioners (NAIC) number.

Item 5d. For each "no" answer in Item 5b, specify whether the MEWA or ECE is fully insured through one or more health insurance issuers in each State.

Item 5e. For each "yes" answer in Item 5d, enter the name of the insurer and its NAIC number (if available). If there is more than one insurer, enter all insurers and their NAIC numbers (if applicable).

Item 5f. In each State listed in Item 5a, specify whether the MEWA or ECE has purchased any stop-loss coverage. For this purpose, stop-loss coverage includes any coverage defined by the State as stop-loss coverage. For this purpose, stop-loss coverage also includes any financial reimbursement instrument that is related to liability for the payment of health claims by the MEWA or ECE, including reinsurance and excess loss insurance.

Item 5g. For each "yes" answer in Item 5f, enter the name of the stop-loss insurer and its NAIC number (if available). If there is more than one stop-loss insurer, enter all stop-loss insurers and their NAIC numbers (if applicable).

Item 6: Of the States identified in Item 5a, identify all States in which the MEWA or ECE conducted 20 percent or more of its business (based on the number of participants receiving coverage for medical care under the MEWA or ECE).

For example, consider a MEWA that offers or provides coverage to the employees of six employers. Two employers are located in State X and 70 participants in the MEWA receive coverage through these two employers. Three employers are located in State Y and 30 participants in the MEWA receive coverage through these three employers. Finally, one employer is located in State Z and

200 participants in the MEWA receive coverage through this employer. In this example, the administrator of the MEWA should specify State X and State Z under Item 6 because the MEWA conducts 23$^1/_3$ percent of its business in State X (70/300 = 23$^1/_3$ percent) and 66$^2/_3$ percent of its business in State Z (200/300 = 66$^2/_3$ percent). However, the administrator should not specify State Y because the MEWA conducts only 10 percent of its business in State Y (30/300 = 10 percent).

If the report is a 90-Day Origination Report, complete this item with information that is current as of the 60th day following the origination date. Otherwise, complete this item with information that is current as of the last day of the year to be reported. (See Section 2.1 on Year to be Reported.)

Item 7: Identify the total number of participants covered under the MEWA or ECE. For more information on determining the number of participants, see the Department of Labor's regulations at 29 CFR 2510.3-3(d).

If the report is a 90-Day Origination Report, complete this item with information that is current as of the 60th day following the origination date. Otherwise, complete this item with information that is current as of the last day of the year to be reported. (See Section 2.1 on Year to be Reported.)

Part IV - Information for Compliance with Part 7 of ERISA

Background Information on Part 7 of ERISA: On August 21, 1996, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) was enacted. On September 26, 1996, both the Mental Health Parity Act of 1996 (MHPA) and the Newborns' and Mothers' Health Protection Act of 1996 (Newborns' Act) were enacted. On October 21, 1998, the Women's Health and Cancer Rights Act of 1998 (WHCRA) was enacted. All of the foregoing laws amended Part 7 of Subtitle B of Title I (Part 7) of ERISA with new requirements for group health plans. With respect to most of these requirements, corresponding provisions are contained in Chapter 100 of Subtitle K of the Internal Revenue Code (Code) and Title XXVII of the Public Health Service Act (PHS Act). These provisions generally are substantively identical.

The Departments of Labor, the Treasury, and Health and Human Services first issued interim final regulations implementing HIPAA's portability, access, and renewability provisions on April 1, 1997 (published in the Federal Register on April 8, 1997, 62 FR 16893). Two clarifications of the HIPAA regulations were published in the Federal Register on December 29, 1997, at 62 FR 67687. Regulations implementing the MHPA provisions were published in the Federal Register on December 22, 1997, at 62 FR 66931. Also, regulations implementing the substantive provisions of the Newborns' Act were published in the Federal Register on October 27, 1998, at 63 FR 57545. Moreover, the notice requirements with respect to group health plans that provide coverage for maternity or newborn infant coverage are described in the Department of Labor's summary plan description content regulations at 2520.102-3(u). Finally, the Department of Labor has published two sets of informal, question-and-answer guidance on WHCRA. These sets of question-and-answer guidance are available on the Department's website at **www.dol.gov/pwba** and from **PWBA's toll-free hotline** at **1-866-275-7922**.

General Information Regarding the Applicability of Part 7: In general, the foregoing provisions apply to group health plans and health insurance issuers in connection with a group health plan.

Many MEWAs and ECEs are group health plans or health insurance issuers. However, even if a MEWA or ECE is neither a group health plan nor a health insurance issuer, if the MEWA or ECE offers or provides benefits for medical care through one or more group health plans, the coverage is required to comply with Part 7 of ERISA and the MEWA or ECE is required to complete Items 8a through 9d.

Relation to Other Laws: States may, under certain circumstances, impose stricter laws with respect to health insurance issuers. Generally, questions concerning State laws should be directed to that State's Insurance Department.

For More Information: PWBA has published two compliance assistance publications on these recent health care laws. The first, "Compliance Assistance Guide: Recent Changes in Health Care Law," includes comprehensive information on HIPAA, MHPA, the Newborns' Act, and WHCRA. The second, "Compliance Assistance for Group Health Plans: HIPAA and Other Recent Health Care Laws" provides key compliance considerations for group health plans. You may obtain these publications, or speak to a benefits advisor about these laws, by calling the **PWBA toll-free hotline** at **1-866-275-7922**. These booklets are also available on the Internet at: **www.dol.gov/pwba**.

Items 8a and 8b: With respect to Item 8a, check "yes" or "no" as applicable. For this purpose, do not include any audit that does not result in required corrective action. If you answer "yes" under Item 8a, identify, in Item 8b, any such litigation or enforcement proceeding.

Item 9a: The HIPAA portability requirements added sections 701, 702, and 703 of ERISA.

General Applicability. In general, you should answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing benefits for medical care to employees through one or more group health plans.

Exceptions. You may answer "N/A" if either of the following paragraphs apply:

(1) The MEWA or ECE is a small health plan (as described in section 732(a) of ERISA and 2590.732(a) of the Department's regulations).

(2) The MEWA or ECE offers coverage only to small group health plans (as described in section 732(a) of ERISA and 2590.732(a) of the Department's regulations).

Worksheet. For purposes of determining if a MEWA or ECE is in compliance with these provisions, Worksheet A may be helpful.

Item 9b: MHPA added section 712 of ERISA.

General Applicability. In general, you should answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing benefits for medical care to employees through one or more group health plans.

Exceptions. You may answer "N/A" if any of the following paragraphs apply:

(1) The MEWA or ECE is a small group health plan (as described in section 732(a) of ERISA and 2590.732(a) of the Department's regulations).

(2) The MEWA or ECE offers coverage only to small group health plans (as described in section 732(a) of ERISA and 2590.732(a) of the Department's regulations).

(3) The MEWA or ECE does not provide both medical/surgical benefits and mental health benefits.

(4) The MEWA or ECE offers or provides coverage only to small employers (as described in the small employer exemption contained in section 712(c)(1) of ERISA and 2590.712(e) of the Department's regulations).

(5) The coverage has satisfied the requirements for the increased cost exemption (described in section 712(c)(2) of ERISA and 2590.712(f) of the Department's regulations).

Worksheet. For purposes of determining if a MEWA or ECE is in compliance with these provisions, Worksheet B may be helpful.

Item 9c: The Newborns' Act added section 711 of ERISA.

General Applicability. In general, you should answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing benefits for medical care to employees through one or more group health plans.

Exceptions. You may answer "N/A" if either of the following paragraphs apply:

(1) The MEWA or ECE does not provide benefits for hospital lengths of stay in connection with childbirth.

(2) The MEWA or ECE is subject to State law regulating such coverage, instead of the federal Newborns' Act requirements, in all States identified in Item 5a, in accordance with section 711(f) of ERISA and 2590.711(e) of the Department's regulations.

Worksheet. For purposes of determining if a MEWA or ECE is in compliance with these provisions, Worksheet C may be helpful.

Item 9d: WHCRA added section 713 of ERISA.

General Applicability. In general, you should answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing benefits for medical care to employees through one or more group health plans.

Exceptions. You may answer "N/A" if any of the following paragraphs apply:

(1) The MEWA or ECE is a small health plan (as described in section 732(a) of ERISA and 2590.732(a) of the Department's regulations).

(2) The MEWA or ECE offers coverage only to small group health plans (as described in section 732(a) of ERISA and 2590.732(a) of the Department's regulations).

(3) The MEWA or ECE does not provide medical/surgical benefits with respect to a mastectomy.

Worksheet. For purposes of determining if a MEWA or ECE is in compliance with these provisions, Worksheet D may be helpful.

3.2 Voluntary Worksheets

Voluntary worksheets, which may be used to help assess an entity's compliance with Part 7 of ERISA, are included on the following pages of these instructions. These worksheets may also be helpful in answering Items 9a through 9d of the Form M-1.

Paperwork Reduction Act Notice

We ask for the information on this form to carry out the law as specified in ERISA. You are required to give us the information. We need it to determine whether the MEWA or ECE is operating according to law. You are not required to respond to this collection of information unless it displays a current, valid OMB control number.

The average time needed to complete and file the form is estimated below. These times will vary depending on individual circumstances.

Learning about the law or the form: 2 hrs.

Preparing the form: 50 min. - 1 hr. and 35 min.

Worksheet A

(Form M-1)

Determining Compliance with the HIPAA Provisions in Part 7 of Subtitle B of Title I of ERISA

Do NOT file this worksheet.

Department of Labor
Pension and Welfare Benefits Administration

This worksheet may be used to help assess an entity's compliance with the HIPAA provisions of Part 7 of Subtitle B of Title I (Part 7) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, it is not a complete description of all the provisions and is not a substitute for a comprehensive compliance review. Use of this worksheet is voluntary, and it should not be filed with your Form M-1.

If you answer "No" to any of the questions below, you should review your entity's operations because the entity may not be in full compliance with the HIPAA provisions in Part 7 of ERISA. If you need help answering these questions or want additional guidance, you should contact the U.S. Department of Labor's Pension and Welfare Benefits Administration (PWBA) office in your region or consult with legal counsel or a professional employee benefits advisor.

(1) Does the coverage provided by the MEWA or ECE issue complete certificates of creditable coverage automatically to individuals who lose coverage under the MEWA or ECE and to individuals upon request? . . . . . ❑ Yes ❑ No

- Section 701(e) of ERISA and § 2590.701-5 of the Department's regulations require group health plans and group health insurance issuers to issue, free of charge, certificates of creditable coverage automatically to individuals who lose coverage and to any individual upon request.
- To be complete, the certificate must include: the date, the name of the plan, the participant and/or beneficiary's name and identification information, the plan administrator's contact information (name, address, and telephone number, a telephone number to call for further information (if different than the plan administrator's number)), and the individual's creditable coverage information, as described below. (**TIP: Don't forget dependent information.)
- With respect to an individual's creditable coverage information, the certificate must reflect either: (1) that an individual has at least 18 months of creditable coverage; or (2) the date any waiting period (or affiliation period) began and the date creditable coverage began. In addition, the certificate must reflect either: (1) the date creditable coverage ended; or (2) that coverage is continuing. (**TIP: Don't forget waiting period information.)
- For a certificate issued automatically upon loss of coverage, the certificate should reflect the last continuous period of coverage. For a certificate issued upon request, the certificate should reflect each period of continuous coverage that the individual had in the 24 months prior to the date of request (up to 18 months of creditable coverage).
- Most health coverage is creditable coverage. However, coverage consisting solely of excepted benefits is not creditable coverage. Examples of benefits that may be excepted benefits include limited-scope dental benefits, limited-scope vision benefits, hospital indemnity benefits, and Medicare supplemental benefits.
- If you have a question about whether health coverage offered by a MEWA or ECE is creditable coverage or is coverage consisting solely of excepted benefits, contact **PWBA toll-free** at **1-866-275-7922**.

(2) Does the coverage provided by the MEWA or ECE make available a procedure for individuals to request and receive certificates? . . . . . ❑ Yes ❑ No

- Section 2590.701-5(a)(4)(ii) of the Department's regulations requires group health plans and group health insurance issuers to establish a procedure for individuals to request and receive certificates.

(3) If the coverage provided by the MEWA or ECE imposes a preexisting condition exclusion period, are notices provided informing individuals of the exclusion, the terms of the exclusion, and the right of individuals to demonstrate creditable coverage to reduce the period of the exclusion? . . . . . ❑ Yes ❑ No ❑ N/A

- Section 2590.701-3(c) of the Department's regulations prohibits a group health plan, and a group health insurance issuer, from imposing a preexisting condition exclusion with respect to a participant or a dependent of the participant before notifying the participant, in writing, of the existence and terms of any preexisting condition exclusion under the plan and of the rights of individuals to demonstrate creditable coverage.

Question # 3 is continued on the next page.

- **TIP: Check for "hidden" preexisting condition exclusion periods. Coverage or exclusion provisions that limit benefits based on the fact that a condition was present before an individual's effective date of coverage are preexisting condition exclusions and must either be eliminated, or must comply with HIPAA's limitations on preexisting condition exclusion periods, including this general notice provision, the individual notice provision described in Question #4, and HIPAA's other limits on preexisting condition exclusion periods, described in Question #5.

- The description of the rights of individuals to demonstrate creditable coverage includes a description of the right of the individual to request a certificate from a prior plan or issuer, if necessary, and a statement that the current plan or issuer will assist in obtaining a certificate from any prior plan or issuer, if necessary.

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(4) If the coverage provided by the MEWA or ECE imposes a preexisting condition exclusion period, are letters of determination and notification of creditable coverage provided within a reasonable time after the receipt of individuals' creditable coverage information? . . . . . ❑ Yes ❑ No ❑ N/A

- Section 2590.701-5(d) of the Department's regulations states that, within a reasonable time following receipt of evidence of creditable coverage, a plan or issuer seeking to impose a preexisting condition exclusion with respect to an individual is required to disclose to the individual, in writing, its determination of any preexisting condition exclusion period that applies to the individual, and the basis for such determination, including the source and substance of any information on which the plan or issuer relied.

- In addition, the plan or issuer is required to provide the individual with a written explanation of any appeal procedures established by the plan or issuer and with a reasonable opportunity to submit additional evidence of creditable coverage.

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(5) If the coverage provided by the MEWA or ECE imposes a preexisting condition exclusion, does it comport with HIPAA's other limitations on preexisting condition exclusions? . . . . . ❑ Yes ❑ No ❑ N/A

- **TIP: Again, check for "hidden" preexisting condition exclusion periods. Coverage or exclusion provisions that limit benefits based on the fact that a condition was present before an individual's effective date of coverage are preexisting condition exclusions and must either be eliminated or must comply with HIPAA's limitations on preexisting condition exclusion periods.

- Section 701(a)(1) of ERISA and § 2590.701-3(a)(1)(i) of the Department's regulations provide that a plan or issuer may impose a preexisting condition exclusion period only if it relates to a condition for which medical advice, diagnosis, care, or treatment was recommended or received within the 6-month period ending on the individual's enrollment date in the plan or coverage. (Therefore, genetic information is not treated as a preexisting condition in the absence of a diagnosis of the condition related to such information.) (In addition, for health insurance issuers, State law may prescribe a shorter period than the 6-month period that generally applies.)

- The enrollment date, for purposes of the HIPAA limitations on preexisting condition exclusion periods, is the first day of coverage or, if there is a waiting period, the first day of the waiting period. (**TIP: If the MEWA or ECE imposes a waiting period, ensure that the 6-month look-back period ends on the first day of the waiting period, not the first day of coverage.)

- Section 701(a)(2) of ERISA and § 2590.701-3(a)(1)(ii) of the Department's regulations provide that any preexisting condition exclusion period is limited to 12 months (18 months for late enrollees) after an individual's enrollment date in the plan or coverage. (For health insurance issuers, State law may prescribe a shorter period.) (**TIP: If the MEWA or ECE imposes a waiting period, ensure that the 12-month (or 18-month for late enrollees) maximum preexisting condition exclusion period begins on the first day of the waiting period, not the first day of coverage.)

- Section 701(a)(3) of ERISA and § 2590.701-3(a)(1)(iii) of the Department's regulations provide that any preexisting condition exclusion period is reduced by the number of days of an individual's creditable coverage prior to his or her enrollment date.

- When determining the number of days of creditable coverage, the plan or issuer is not required to take into account any days that occur prior to a significant break in coverage. The Federal law defines a significant break in coverage as a break of 63 days or more. However, State law applicable to health insurance coverage offered or provided by health insurance issuers may provide for a longer period.

- In any case, section 701(d) of ERISA and § 2590.701-3(b) of the Department's regulations provide that a group health plan, and a group health insurance issuer, may not impose any preexisting condition exclusion period with regard to a child who enrolls in a group heath plan within 30 days of birth, adoption, or placement for adoption and who does not incur a subsequent significant break in coverage. In addition, a group health plan, and a group health insurance issuer, may not impose a preexisting condition exclusion relating to pregnancy. (For health insurance issuers, State law may further restrict the extent to which a preexisting condition exclusion may be imposed.)

(6) Does the coverage provided by the MEWA or ECE provide notices of special enrollment rights to employees who are eligible to enroll in the plan or coverage? . . . . . ❑ Yes ❑ No

- Section 2590.701-6(c) of the Department's regulations requires that, on or before the time an employee is offered the opportunity to enroll in a group health plan or coverage, the plan or issuer provide the employee with a description of the plan's special enrollment rules.

- For this purpose, the plan may use the following model description of special enrollment rules:

  If you are declining enrollment for yourself or your dependents (including your spouse) because of other health insurance coverage, you may in the future be able to enroll yourself or your dependents in this plan, provided that you request enrollment within 30 days after your other coverage ends. In addition, if you have a new dependent as a result of marriage, birth, adoption, or placement for adoption, you may be able to enroll yourself and your dependents, provided that you request enrollment within 30 days after the marriage, birth, adoption, or placement for adoption.

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(7) Does the coverage provided by the MEWA or ECE provide special enrollment rights to individuals who lose other coverage and to individuals who acquire a new dependent, if they request enrollment within 30 days of the loss of coverage, marriage, birth, adoption, or placement for adoption? ❑ Yes ❑ No

- Section 701(f) of ERISA and § 2590.701-6 of the Department's regulations require group health plans, and group health insurance issuers, if certain conditions are met, to permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of such an employee if the dependent is eligible, but not enrolled, for coverage under such terms) to enroll for coverage under the terms of the plan if the individual either: (1) has a new dependent through marriage, birth, adoption, or placement for adoption; or (2) loses eligibility for other group health plan or health insurance coverage or employer contributions towards the other coverage terminate.

- **TIP: Ensure that the MEWA or ECE provides special enrollment to all individuals who qualify. Among others, this includes individuals who lose eligibility for individual market coverage, individuals who voluntarily terminate employment and lose group health plan coverage (even if they are eligible for COBRA continuation coverage), individuals who exhaust COBRA, children who "age out" of eligibility under another parent's group health plan, individuals who move out of a group health plan's HMO service area, and individuals whose employers cease contributing towards their group health plan coverage (even if coverage does not cease).

- For individuals who special enroll after marriage or loss of other coverage, coverage must be made effective no later than on the first day of the first calendar month following the date the completed request for enrollment is received. For individuals who special enroll after birth, adoption, or placement for adoption, coverage must be made effective no later than the date of such birth, adoption, or placement for adoption. (**TIP: Ensure that effective dates of coverage for special enrollees are correct.)

- For State laws applicable to health insurance issuers that may provide individuals with additional special enrollment rights, check with an attorney or the Insurance Department in your State.

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(8) Does the coverage provided by the MEWA or ECE have rules for eligibility (including continued eligibility) that comply with the nondiscrimination requirements that prohibit discrimination against any individual or a dependent based on any health factor? . . . . . ❑ Yes ❑ No

- Section 702(a) of ERISA and § 2590.702(a) of the Department's regulations provide that a group health plan, and a group health insurance issuer, may not establish rules for eligibility (including continued eligibility, rules defining any applicable waiting periods, and rules relating to late and special enrollment) of any individual to enroll under the terms of the plan based on a health factor.

- The health factors are: health status, medical condition (including both physical and mental illnesses), claims experience, receipt of health care, medical history, genetic information, evidence of insurability (including conditions arising out of acts of domestic violence and participation in activities such as motorcycling, snowmobiling, all-terrain vehicle riding, horseback riding, skiing, and other similar activities), and disability.

Question #8 is continued on the next page.

- These rules prohibit discrimination within a group of similarly situated individuals. Under §2590.702(d) of the Department's regulations, plans may treat distinct groups of similarly situated individuals differently, if the distinctions between or among the group are not based on a health factor. If distinguishing among groups of participants, plans and issuers must base distinctions on bona fide employment-based classifications consistent with the employer's usual business practice. Whether an employment-based classification is bona fide is based on relevant facts and circumstances, such as whether the employer uses the classification for purposes independent of qualification for health coverage. Bona fide employment-based classifications might include: full-time versus part-time employee status; different geographic location; membership in a collective bargaining unit; date of hire or length of service; or differing occupations. In addition, plans may treat participants and beneficiaries as two separate groups of similarly situated individuals. Plans may also distinguish among beneficiaries. Distinctions among groups of beneficiaries may be based on bona fide employment-based classifications of the participant through whom the beneficiary is receiving coverage, relationship to the participant (such as spouse or dependent), marital status, age or student status of dependent children, or any other factor that is not a health factor.

- Also, nothing prohibits a plan from establishing more favorable rules for eligibility for individuals with an adverse health factor, such as disability.

- **TIP: Ensure that the plan does not require individuals to present evidence of insurability, such as passing a physical exam, providing a certificate of good health, or demonstrating good health through answers to a health care questionnaire, in order to enroll in the plan. (This is a violation, even if the plan provision is imposed only at late enrollment.)

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(9) Does the coverage provided by the MEWA or ECE comply with the nondiscrimination rules by providing benefits uniformly to participants and beneficiaries? . . . . . ❑ Yes ❑ No

- Under § 2590.702(b)(2) of the Department's regulations, a plan is not required to provide any benefits, but benefits provided must be uniformly available and any benefit restrictions must be applied uniformly to all similarly situated individuals and cannot be directed at any individual participants or beneficiaries based on a health factor. (A plan amendment applicable to all similarly situated individuals and made effective no earlier than the first day of the next plan year is not considered directed at individual participants and beneficiaries.)

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(10) If the coverage provided by the MEWA or ECE imposes a source-of-injury restriction, does it comply with the nondiscrimination provisions? . . . . . ❑ Yes ❑ No ❑ N/A

- Under § 2590.702(b)(2)(iii) of the Department's regulations, plans may exclude benefits for treatment of certain injuries based on the source of that injury, except that plans may not exclude benefits otherwise provided for treatment of an injury if that injury results from an act of domestic violence or a medical condition.

- **TIP: An example of a permissible source-of-injury exclusion would include a plan provision that provides benefits for head injuries generally, but excludes benefits for head injuries sustained while participating in bungee jumping, as long as the injuries do not result from a medical condition or domestic violence. However, an example of an impermissible source-of-injury exclusion would include a plan provision that excludes coverage for self-inflicted injuries (or injuries resulting from attempted suicide) if the injuries are otherwise covered by the plan and if the injuries are the result of a medical condition, such as depression.

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(11) Does the coverage provided by the MEWA or ECE comply with the nondiscrimination requirements that prohibit requiring any individual (as a condition of enrollment or continued enrollment) to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health factor? ❑ Yes ❑ No

- Section 702(b) of ERISA and § 2590.702(b) of the Department's regulations provide that a group health plan, and a group health insurance issuer, may not require any individual (as a condition of enrollment or continued enrollment under the plan) to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health factor.

- However, nothing restricts the amount that an employer may be charged for coverage under a group health plan and nothing prevents a plan or issuer from establishing premium discounts or rebates or modifying applicable copayments or deductibles in return for adherence to bona fide wellness programs. On January 8, 2001, the Department published proposed rules describing bona fide wellness programs under § 2590.702(f). Essentially, these proposed rules permit rewards that are not contingent on an individual meeting a standard related to a health factor. In addition, these proposed rules permit rewards that are contingent on an individual meeting a standard related to a health factor if:

Question #11 is continued on the next page.

  - The reward does not exceed a specified percentage of the total employee-only premium. (Comments were invited as to whether a 10 percent, 15 percent, or 20 percent limitation might be appropriate.)
  - The program is reasonably designed to promote good health or prevent disease. (For this purpose, a program must allow individuals an opportunity to qualify for the reward at least once each year.)
  - The reward is available to all similarly situated individuals. In particular, the program must allow a reasonable alternative standard for individuals for whom it is unreasonably difficult due to a medical condition to satisfy the original program standard or for whom it is medically inadvisable to attempt to satisfy the original program standard during that time period. (The plan must also disclose the availability of a reasonable alternative standard in all plan materials describing the terms of the program.)

- (Note: Nothing prohibits a plan from establishing more favorable premium rates for indivduals with an adverse health factor, such as disability.)

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(12) Does the coverage provided by the MEWA or ECE comply with the rules prohibiting list billing? . . . . ❑ Yes ❑ No

- Section 2590.702(c)(2)(ii) of the Department's regulations prohibits charging or quoting group health plans separate rates that vary for individuals based on health factors. This practice is commonly referred to as list billing. This does not prevent MEWAs or ECEs from taking the health factors of each individual into account in establishing a blended/aggregate rate for providing coverage to the plan.

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(13) Does the coverage provided by the MEWA or ECE comply with the nondiscrimination regulations by providing coverage without any nonconfinement clauses? . . . . . ❑ Yes ❑ No

- Typically, a nonconfinement clause will deny or delay eligibility for some or all benefits if an individual is confined to a hospital or other health care institution. Sometimes nonconfinement clauses also deny or delay eligibility if an individual cannot perform ordinary life activities. Section 2590.702(e)(1) of the Department's regulations explains that these clauses violate ERISA sections 702(a) (if the clause delays or denies eligibility) and 702(b) (if the clause raises individual premiums).

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(14) Does the coverage provided by the MEWA or ECE comply with the nondiscrimination regulations by providing coverage without any impermissible actively-at-work clauses? . . . . . ❑ Yes ❑ No

- Typically, actively-at-work provisions delay eligibility for benefits based on an individual being absent from work. Section 2590.702(e)(2) of the Department's regulations explains that actively-at-work provisions generally violate ERISA sections 702(a) (if the clause delays or denies eligibility) and 702(b) (if the clause raises individual premiums or contributions), unless absence from work due to a health factor is treated, for purposes of the plan, as if the individual is at work. Nonetheless, an exception provides that a plan may establish a rule for eligibility that requires an individual to begin work for the employer sponsoring the plan before eligibility commences. Further, plans may establish rules for eligibility or set an individual's premium or contribution rate in accordance with the rules relating to similarly situated individuals in § 2590.702(d) of the Department's regulations. For example, a plan that treats full-time and part-time employees differently for other employment-based purposes, such as eligibility for other employee benefits, may distinguish, in rules for eligibility under the plan, between full-time and part-time employees.

- **TIP: An impermissible actively-at-work provision would include a plan provision under which employees generally become eligible to enroll 30 days after the first day of employment. However, if an employee is not actively at work on the first day after the end of the 30-day period, then eligibility is delayed until the first day the employee is actively at work. Note: If the plan treated any employee absent from work due to a health factor as being actively at work, then the provision would not violate § 2590.702(e)(2) and section 702(a) of ERISA.

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(15) If the entity is a group health plan which is a multiemployer plan or a MEWA, does it comply with the guaranteed renewability requirements, which generally prohibit it from denying an employer whose employees are covered under a group health plan continued access to the same or different coverage under the terms of the plan? . . ❑ Yes ❑ No ❑ N/A

- Section 703 of ERISA provides that a group health plan that is a multiemployer plan or a MEWA may not deny an employer whose employees are covered under the plan continued access to the same or different coverage under the terms of the plan, other than: for nonpayment of contributions; for fraud or other intentional misrepresentation of material fact by the employer; for noncompliance with material plan provisions; because the plan is ceasing to offer any coverage in a geographic area; in the case of a plan that offers benefits through a network plan, because there is no longer any individual enrolled through the employer who lives, resides, or works in the service area of the network plan and the plan acts without regard to the claims experience of the employer or any health factor in relation to those individuals or their dependents; and for failure to meet the terms of an applicable collective bargaining agreement, to renew a collective bargaining or other agreement requiring or authorizing contributions to the plan, or to employ employees covered by such an agreement.

- For other laws applicable to health insurance issuers that may provide additional guaranteed renewability requirements, check with an attorney or the Insurance Department in your State.

Worksheet B

(Form M-1)

Determining Compliance with the MHPA Provisions in Part 7 of Subtitle B of Title I of ERISA

Do NOT file this worksheet.

Department of Labor
Pension and Welfare Benefits Administration

This worksheet may be used to help assess an entity's compliance with the MHPA provisions of Part 7 of Subtitle B of Title I (Part 7) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, it is not a complete description of all the provisions and is not a substitute for a comprehensive compliance review. Use of this worksheet is voluntary, and it should not be filed with your Form M-1.

If you answer "No" to the question below, you should review your entity's operations because the entity may not be in full compliance with the MHPA provisions in Part 7 of ERISA. If you need help answering this question or want additional guidance, you should contact the U.S. Department of Labor's Pension and Welfare Benefits Administration (PWBA) office in your region or consult with legal counsel or a professional employee benefits advisor.

Q. If the MEWA or ECE offers or provides coverage for both mental health benefits and medical/surgical benefits, does the coverage comply with the requirements of the MHPA provisions, which are contained in section 712 of ERISA? . . . . . ❑ Yes ❑ No ❑ N/A

- Section 712 of ERISA and § 2590.712 of the Department's regulations generally provide for parity in the application of aggregate lifetime dollar limits and in the application of annual dollar limits between benefits for medical and surgical care and benefits for mental health coverage.
- These provisions do not require a group health plan or group health insurance coverage to provide any mental health coverage. Further, MHPA does not apply to benefits for treatment of substance abuse or chemical dependency.
- There are also exemptions for small employers and certain plans or coverage with increased costs. For more information on these exemptions, contact **PWBA toll free** at **1-866-275-7922**.

Worksheet C

(Form M-1)

Determining Compliance with the Newborns' Act Provisions in Part 7 of Subtitle B of Title I of ERISA

Do NOT file this worksheet

Department of Labor
Pension and Welfare Benefits Administration

This worksheet may be used to help assess an entity's compliance with the Newborns' Act provisions of Part 7 of Subtitle B of Title I (Part 7) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, it is not a complete description of all the provisions and is not a substitute for a comprehensive compliance review. Use of this worksheet is voluntary, and it should not be filed with your Form M-1.

If you answer "No" to either of the questions below, you should review your entity's operations because the entity may not be in full compliance with the Newborns' Act provisions in Part 7 of ERISA. If you need help answering these questions or want additional guidance, you should contact the U.S. Department of Labor's Pension and Welfare Benefits Administration (PWBA) office in your region or consult with legal counsel or a professional employee benefits advisor.

(1) If the MEWA or ECE offers or provides benefits for hospital stays in connection with childbirth and is subject to the Newborns' Act, does the coverage comply with the Newborns' Act's substantive requirements, which are contained in section 711 of ERISA? . . . . . ❑ Yes ❑ No ❑ N/A

- Section 711 of ERISA and § 2590.711 of the Department's regulations generally provide that a group health plan, and a group health insurance issuer, that offers benefits for hospital lengths of stay in connection with childbirth may not restrict benefits for any hospital length of stay in connection with childbirth for the mother or her newborn child, following a vaginal delivery to less than 48 hours, and following a cesarean section to less than 96 hours, unless the attending provider, in consultation with the mother, decides to discharge earlier.
- In addition, such a plan or issuer may not require that the provider obtain authorization from the plan or issuer for prescribing any length of hospital stay up to 48 hours following a vaginal delivery and up to 96 hours following a cesarean section. Nor may such a plan or issuer penalize an attending provider for providing care in a manner consistent with this law or provide incentives to an attending provider to provide care in a manner that is inconsistent with this law. Nor may such a plan or issuer deny the mother or newborn eligibility or continued eligibility, or provide incentives to mothers to encourage them to accept less than the minimum length of stay required. Nor may such a plan or issuer restrict benefits for any portion of a period within a hospital length of stay required by this law in a manner that is less favorable than the benefits provided for any preceding portion of the stay.
- **TIP: Check whether the Federal Newborns' Act's requirements in section 711 of ERISA apply, or whether the coverage is instead subject to State law regulating such coverage. For this purpose, the following information is helpful:

  (A) Self-insured coverage: The Federal Newborns' Act's requirements in section 711 of ERISA apply to self-insured benefits offered in connection with childbirth.

  (B) Insured coverage: On the other hand, State law (rather than Federal law) applies to health insurance coverage offered in connection with childbirth if the State law meets certain criteria specified in ERISA section 711(f). Based on a preliminary review of State laws as of July 1, 2002, State law rather than Federal law applies to health insurance coverage offered in connection with childbirth in all States and other U.S. jurisdictions except:

  Wisconsin, Puerto Rico, the Virgin Islands, American Samoa, Wake Island, and the Northern Mariana Islands.

  Therefore, the Federal Newborns' Act provisions appear to apply to health insurance coverage in these States and jurisdictions.

(2) If the MEWA or ECE offers or provides benefits in connection with childbirth, are the disclosure requirements under the Newborns' Act satisfied? . . . . . ❑ Yes ❑ No ❑ N/A

- Section 2520.102-3(u) of the Department's regulations requires all group health plans providing maternity benefits to include a statement in their summary plan descriptions (SPDs) advising of the requirements under Federal or State law applicable to the coverage relating to hospital lengths of stay in connection with childbirth for a mother or newborn child. If the Federal law applies in some areas and State law applies in other areas, the SPD should describe the different areas and the Federal or State requirements applicable in each. (Note: Parallel disclosure requirements are contained in section 711(d) of ERISA, if applicable (see discussion of federal Newborns' Act applicability above under Question 1).)

- For this purpose, a MEWA or ECE that is subject to the Newborns' Act's disclosure requirements through ERISA may use the following sample language:

  Group health plans and health insurance issuers generally may not, under Federal law, restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery, or less than 96 hours, following a cesarean section. However, Federal law generally does not prohibit the mother's or newborn's attending provider, after consulting with the mother, from discharging the mother or her newborn earlier than 48 hours (or 96 hours, as applicable). In any case, plans and issuers may not, under Federal law, require that a provider obtain authorization from the plan or the issuer for prescribing a length of stay not in excess of 48 hours (or 96 hours).

- A similar disclosure requirement applies to nonfederal governmental plans. For mandated language required to be used with respect to such plans, see 45 CFR 146.130(d)(2) (published in the Federal Register at 63 FR 57561 on October 27, 1998).

Worksheet D
(Form M-1)

Determining Compliance with the WHCRA Provisions in Part 7 of Subtitle B of Title I of ERISA

Do NOT file this worksheet

Department of Labor
Pension and Welfare Benefits Administration

This worksheet may be used to help assess an entity's compliance with the WHCRA provisions of Part 7 of Subtitle B of Title I (Part 7) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, it is not a complete description of all the provisions and is not a substitute for a comprehensive compliance review. Use of this worksheet is voluntary, and it should not be filed with your Form M-1.

If you answer "No" to either of the questions below, you should review your entity's operations because the entity may not be in full compliance with the WHCRA provisions in Part 7 of ERISA. If you need help answering these questions or want additional guidance, you should contact the U.S. Department of Labor's Pension and Welfare Benefits Administration (PWBA) office in your region or consult with legal counsel or a professional employee benefits advisor.

(1) If the MEWA or ECE offers or provides mastectomy coverage, does the coverage comply with WHCRA's substantive requirements, which are contained in section 713 of ERISA? . . . . . ❑ Yes ❑ No ❑ N/A

- Section 713 of ERISA generally provides that a group health plan, and a group health insurance issuer, that offers mastectomy coverage must also provide coverage for reconstructive surgery in a manner determined in consultation with the attending physician and the patient. Coverage includes all stages of reconstruction of the breast on which the mastectomy was performed, surgery and reconstruction of the other breast to produce a symmetrical appearance, prostheses, and treatment of physical complications of the mastectomy, including lymphedemas.

- In addition, a plan or issuer may not deny a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of WHCRA. Nor may a plan or issuer penalize or otherwise reduce or limit the reimbursement of an attending provider, or provide incentives (monetary or otherwise) to an attending provider, to induce such provider to furnish care to an individual participant or beneficiary in a manner inconsistent with WHCRA.

- Plans and issuers may impose deductibles or coinsurance requirements for reconstructive surgery, prostheses, and treatment of physical complications in connection with a mastectomy, but only if the deductibles and coinsurance are consistent with those established for other benefits under the plan or coverage.

- State law protections may apply to certain health insurance coverage if the State law was in effect on October 21, 1998 (the date of enactment of WHCRA) and the State law requires at least the coverage for reconstructive breast surgery that is required by WHCRA.

(2) If the MEWA or ECE offers or provides mastectomy coverage, are the disclosure requirements under WHCRA satisfied? . . . . . ❑ Yes ❑ No ❑ N/A

- Section 713(a) of ERISA establishes a disclosure requirement under which group health plans, and their health insurance issuers, must describe the benefits required under WHCRA. The notice is to be provided to participants upon enrollment in the plan and annually thereafter.

- The enrollment notice must describe the benefits that WHCRA requires group health plans and issuers to cover. If the following information is provided, then the group health plan is in compliance with this requirement:

  If you have had or are going to have a mastectomy, you may be entitled to certain benefits under the Women's Health and Cancer Rights Act of 1998 (WHCRA). For individuals receiving mastectomy-related benefits, coverage will be provided in a manner determined in consultation with the attending physician and the patient, for:

  ° All stages of reconstruction of the breast on which the mastectomy was performed;

Question #2 is continued on the next page.

° Surgery and reconstruction of the other breast to produce a symmetrical appearance;

° Prostheses; and

° Treatment of physical complications of the mastectomy, including lymphedemas.

These benefits will be provided subject to the same deductibles and coinsurance applicable to other medical and surgical benefits provided under this plan. Therefore, the following deductibles and coinsurance apply: [insert deductibles and coinsurance applicable to these benefits].

If you would like more information on WHCRA benefits, call your Plan Administrator [insert phone number].

- WHCRA's annual notice must be provided once each year. The following language may be used to satisfy the annual notice requirement:

Do you know that your plan, as required by the Women's Health and Cancer Rights Act of 1998, provides benefits for mastectomy-related services including all stages of reconstruction and surgery to achieve symmetry between the breasts, prostheses, and complications resulting from a mastectomy, including lymphedemas? Call your Plan Administrator [insert phone number] for more information.

[FR Doc. 02–31427 Filed 12–12–02; 8:45 am]
BILLING CODE 4510–29–C

Federal Register

Friday,
December 13, 2002

Part VII

Federal Election Commission

41 CFR Parts 100, 101, et al.
Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds; Final Rule

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 110, 111, and 113

[Notice 2002–25]

Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is issuing final rules regarding disclaimers in political communications, fraudulent solicitations, civil penalties, personal use of campaign funds, and a technical amendment under the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act"). The final rules implement portions of the Bipartisan Campaign Reform Act of 2002 ("BCRA") that govern new requirements for disclaimers accompanying radio, television, print, and other campaign communications, expand the FECA's fraudulent misrepresentation prohibition, increase the FECA's civil penalties for violating the prohibition on contributions made in the name of another, and codify the "irrespective" test regarding the personal use of campaign funds by candidates and Federal office holders.

The Commission had planned to address BCRA-related rules for inaugural committees in this rulemaking; however, inaugural committees will now instead be addressed in a future rulemaking. Further information is provided in the supplementary information that follows.

EFFECTIVE DATES: January 13, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. John C. Vergelli, Acting Assistant General Counsel, or Attorneys, Ms. Ruth Heilizer (personal use), Ms. Dawn Odrowski (fraudulent solicitations and civil penalties), or Mr. Richard Ewell (disclaimers), 999 E Street, NW., Washington, DC, 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107–155, 116 Stat. 81 (March 27, 2002), contains extensive and detailed amendments to the Federal Election Campaign Act of 1971 ("FECA" or "the Act"), as amended, 2 U.S.C. 431 *et seq.* This is one in a series of rulemakings the Commission is undertaking to implement the provisions of BCRA and to meet the rulemaking deadlines set out in BCRA.

Section 402(c)(1) of BCRA establishes a general deadline of 270 days for the Commission to promulgate regulations to carry out BCRA, which is December 22, 2002. The final rules do not apply with respect to runoff elections, recounts, or election contests resulting from the November 2002 general election. 2 U.S.C. 431 note.

Because of the brief period before the statutory deadline for promulgating these rules, the Commission received and considered public comments expeditiously. The Notice of Proposed Rulemaking ("NPRM"), on which these final rules are based, was published in the **Federal Register** on August 29, 2002. 67 FR 55348 (Aug. 29, 2002). Thirteen written comments were received. The names of the commenters and their comments are available at *http:www.fec.gov/register.htm* under "Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds." A public hearing was not held.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate, and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on disclaimers, fraudulent solicitation, civil penalties, and personal use of campaign funds were transmitted to Congress on December 9, 2002.

Explanation and Justification

Introduction

These final rules address changes to: disclaimer requirements for campaign communications (2 U.S.C. 441d); fraudulent misrepresentations for purposes of soliciting contributions or donations (2 U.S.C. 441h); civil penalties for a particular knowing and willful violation of FECA (2 U.S.C. 437g); permissible uses of campaign funds by candidates and officeholders (2 U.S.C. 439a); and a technical amendment to the definition of "Act" to include BCRA amendments to FECA.

11 CFR 100.18 Act (2 U.S.C. 431(19))

Pre-BCRA, 11 CFR 100.18 defined "Act" to mean the Federal Election Campaign Act as amended by the 1974, 1976, and 1980 amendments. The final rules amend this definition to include the amendments to FECA within the Bipartisan Campaign Reform Act.

11 CFR 110.11 Communications; advertising; disclaimers (2 U.S.C. 441d)

Under 2 U.S.C. 441d, certain communications must include disclaimers identifying who paid for and, where applicable, who authorized the communication. In BCRA, Congress added new specificity to these requirements, expanded the disclaimer requirement to reach disbursements to finance "any communication" made by political committees through any type of general public political advertising, and required that "electioneering communications" include disclaimers. *See* 2 U.S.C. 441d. Congress also enacted "stand by your ad" requirements for certain radio and television communications. 2 U.S.C. 441d(d).

The Commission is implementing these statutory changes by deleting pre-BCRA 11 CFR 110.11 in its entirety, and adopting a new section 110.11 that is organized into a more easily understandable rule. As explained in detail below, revised section 110.11 incorporates many substantive provisions from the pre-BCRA version of the section.

11 CFR 110.11(a) Scope

Paragraph (a) sets out the scope of the section by specifying which communications must carry disclaimers. Under 2 U.S.C. 441d(a), as amended by Congress through BCRA section 311, disclaimers are required whenever a person makes a disbursement for an electioneering communication, whenever a political committee makes a disbursement for the purpose of financing "any communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising," or whenever any person makes a disbursement for the purpose of financing "communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising." The descriptive list of "through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising" is similar to the language used by Congress in BCRA to describe a "public communication," as defined in 2 U.S.C. 431(22). *See also* 11 CFR 100.26 (67 FR 49111 (July 29, 2002)). The two descriptive lists differ in three respects. First, a "public communication" covers "any broadcast, cable, or satellite transmission," whereas section 441d(a) refers only to communications through "any broadcasting station." Second, a

"public communication" includes a "telephone bank to the general public," as defined in 2 U.S.C. 431(24), whereas telephone banks are not specifically mentioned in section 441d(a). Third, a "public communication" includes a "mass mailing," which is defined as more than 500 pieces of substantially similar mail. 2 U.S.C. 431(22), (23). Section 441d(a) refers to a "mailing," without any numerical minimum. Congress, through BCRA, removed the pre-BCRA reference to a "*direct* mailing" (emphasis added).

The Commission noted in the NPRM that the 2 U.S.C. 441d(a) references to "communication" share a fundamental similarity with the definition of "public communication" (2 U.S.C. 431(22)) in that both contain the virtually identical and broadly inclusive phrase, "or any other type [form] of general public political advertising," to describe what is encompassed by the respective definitions.[1] Because of the inclusion of this virtually identical phrase, the Commission interprets each term listed in the definition of "public communication" or in 2 U.S.C. 441d(a) as a specific example of one form of "general public political advertising." In other words, the universe of "general public political advertising," as it has been functionally defined by Congress through both the definition of "public communication" and in section 441d(a), encompasses all the terms explicitly included by Congress, in addition to other potential forms of general public political advertising not specifically listed.

The Commission sought comment on whether the description of "communication" in 2 U.S.C. 441d(a) should be equated with the term "public communication," as defined in 2 U.S.C. 431(22). The Commission noted that one effect of using the consistent terminology of "public communication" to describe the 2 U.S.C. 441d(a) communications would be that "telephone banks to the general public" would be subject to the disclaimer requirements. Another effect of using the consistent terminology of "public communication" would be to harmonize the meaning of "mailing" with "mass mailing," and the coverage of "any broadcasting station" with "any broadcast, cable, or satellite transmission."

The Commission received two comments on this issue. Both commenters argued that the terms "public communication" and "communication," as used in the section 441d(a) context, should be treated as distinct terms with separate definitions. One commenter, advised against any interpretation that would have the effect of making the disclaimer requirements applicable to telephone banks. That commenter asserted that the existence of several state laws limiting or prohibiting taped phone messages are already sufficient to deter abuse in this area, and disclaimer requirements would only serve to chill speech.

The Commission does not agree with this commenter that state laws regarding taped calls are sufficient to supplant the statutory disclaimer requirement, even in those few states that do have laws limiting taped calls. Requiring a caller to identify himself or herself serves important disclosure functions consistent with Congressional intent to broaden the reach of the previous laws regarding disclaimers and would likely complement state laws limiting the use of taped calls.

The other commenter stated that treating the term "communication" in 2 U.S.C. 441d(a) the same as "public communication" would "conflate and confuse two separate concepts that Congress established to meet two distinct purposes." That commenter also asserted that the inclusion of other forms of "general public political advertising" does not indicate that the two terms share the same meaning. The commenter supported this assertion by citing to the Commission's previous explanation that "general language following a listing of specific terms * * * does not evidence Congressional intent to include a separate and distinct term that is not listed * * *" *See* Final Rules and Explanation and Justification, "Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money," 67 FR 49072 (July 29, 2002).

The Commission notes that its prior statement cited by the commenter was made in the context of a decision not to include Internet communications within the definition of "public communication." Unlike the term "telephone bank to the general public" and the other terms listed in the BCRA definition of "public communication," communications over the Internet were not specifically listed as one of the forms of "general public political advertising." But while general language following a list of specific terms may not, by itself, provide sufficient evidence of Congressional intent, the Commission believes that such intent can be found where Congress has provided additional guidance as to the proper interpretation of that general language elsewhere in the same statute. In the Commission's judgment, the use of the phrase "or any other type [form] of general public political advertising," which is used in BCRA only in the two locations specified above,[2] should be interpreted in a virtually identical manner. Therefore, each form of communication specifically listed in the definition of "public communication," as well as each form of communication listed with reference to a "communication" in 2 U.S.C. 441d(a), must be a form of "general public political advertising." To include the term "telephone bank to the general public" within the meaning of "general public political advertising" in one part of the statute but not the other would be to provide two different meanings to the term "general public political advertising." Rather than conflating and confusing two separate concepts, the Commission, when appropriate, is establishing a consistent meaning from the repeated use of a single statutory phrase in order to promote simplicity and symmetry between the various statutory provisions and within the regulations.

This approach also incorporates Congressional intent, apparent in 2 U.S.C. 441d(d), to regulate communications by radio and television, and the Commission's judgment that it would be unsupportable to require a disclaimer for a television communication that was broadcast, while not requiring a disclaimer for the same communication merely because it was carried on cable or satellite. It is also consistent with other uses (or proposed uses) of the term "public communication" in its regulations. The Commission has used the term "public communication" to clarify the definition of "generic campaign activity,"[3] *see* 11 CFR 100.25, and has proposed the use of "public communication" in a separate and ongoing rulemaking to describe communications that may be coordinated with a candidate, authorized committee, or political party committee. *See* proposed 11 CFR 109.21(c) and 109.37(a)(2), Notice of Proposed Rulemaking on Coordinated and Independent Expenditures, 67 FR

[1] Section 431(22) uses the word "form," while section 441d(a) uses the word "type;" the Commission discerns no substantive differences arising from the choice of synonyms.

[2] See the definition of "public communication" in BCRA section 101 (2 U.S.C. 431(22)) and with reference to the scope of the disclaimer provisions in BCRA section 311 (2 U.S.C. 441d(a).)

[3] Congress defined "generic campaign acitivity" in BCRA as a "*campaign activity*" that promotes a political party and does not promote a candidate or non-Federal candidate. Pub. L. 107–155, sec. 101 (March 27, 2002) emphasis added).

60042, 60065 and 60068 (Sept. 24, 2002).

In addition, by employing the term "public communication" in the section 110.11 disclaimer rules, the Commission avoids assigning different meanings to the term "mailing" in 2 U.S.C. 441d(a) and "mass mailing," the term used in the definition of "public communication" and defined by Congress in BCRA as more than 500 pieces of substantially similar mail. *See* 2 U.S.C. 431(23). In BCRA, Congress amended 2 U.S.C. 441d(a)(1) by removing the adjective "direct" from the pre-BCRA term "direct mailing," thereby removing a term that had been defined differently than the BCRA definition of "mass mailing." In the NPRM in this rulemaking, however, the Commission proposed a definition of the term "mailing" for purposes of the disclaimer requirements that would have treated "mailing" differently than the term "mass mailing." The Commission has reconsidered this separate definition of "mailing" in light of its efforts to promote simplicity and symmetry within its regulations. Both "mass mailing" and "mailing" are examples of "general public political advertising," as set forth in the definition of "public communication" at 2 U.S.C. 431(22) and at 2 U.S.C. 441d(a). Congress did not provide a separate definition of "mailing." Therefore, in the Commission's judgment, the statutory term "mailing" used in 2 U.S.C. 441d(a) should not be given a separate meaning from "mass mailing" in the Commission's regulations. As a result, disclaimers would not be required for mailings unless the mailings are comprised of more than 500 pieces of substantially similar mail. See 2 U.S.C. 431(23).

While the term "public communication" serves generally to describe the proper reach of the disclaimer rules, the Commission has decided that certain Internet-based communications also should be covered. The Commission has for years interpreted the statute to require disclaimers on electronic mail and Internet website communications. *See, e.g.*, Advisory Opinions 1995–9 and 1999–37. In view of the widespread use of this technology in modern campaigning, and the relatively non-intrusive nature of disclaimer requirements, the Commission has concluded that the interests served by prompt public disclosure warrant application of the disclaimer provisions.

Nonetheless, to avoid overreaching in this area, and to maintain some symmetry with the definition of "public communication," the Commission is limiting the coverage of electronic mail to situations involving more than 500 substantially similar unsolicited communications. This approach would not require a disclaimer on electronic mail where the recipients have taken some affirmative step to be on a list used by the sender, such as responding positively to a request to be on such list. Moreover, regarding websites, the Commission is extending the disclaimer requirements only to political committee websites. This will assure, for example, that a website created and paid for by an individual will not have to include a disclaimer. At the same time, arguably, the most significant use of electronic mail and websites to conduct campaign activity will have to provide the public notice of who is responsible.

In order to incorporate the foregoing Internet-based applications in the final disclaimer rules, 11 CFR 110.11(a) provides that for purposes of the section, the term "public communication" also covers more than 500 unsolicited electronic mail communications and websites of political committees. This is the Commission's only divergence from the 11 CFR 100.26 definition of "public communication."

The Commission notes that it has initiated a separate rulemaking regarding several Internet-related issues. The disclaimer provisions may be revisited in that rulemaking.

Paragraphs (a)(1) through (4) of the final rules in 11 CFR 110.11 enumerate the particular types of such communications to which the disclaimer requirements apply. For the reasons described above and unless otherwise specified, the term "communications" is used in the preceding sentence and the remainder of the narrative below as a shorthand reference that encompasses both "public communications" and "electioneering communications." Throughout revised section 110.11, the word "type" is used, rather than "form," as in the pre-BCRA version of the regulation. This change has no substantive effect and only serves to conform the regulation to the language of the statute. *See* 2 U.S.C. 441d; *see also* 11 CFR 100.27.

In BCRA, Congress provided that "any communication" for which a political committee makes a disbursement must include a disclaimer, expanding the scope of the disclaimer requirement for political committees beyond communications constituting express advocacy and communications soliciting contributions. Compare pre- and post-BCRA versions of 2 U.S.C. 441d(a). Revised paragraph (a)(1) of section 110.11 reads, "[a]ll public communications for which a political committee makes a disbursement."

In contrast, revised paragraph (a)(2) of section 110.11 requires that "[a]ll public communications by any person that expressly advocate the election or defeat of a clearly identified candidate" must include a disclaimer. 2 U.S.C. 441d(a). The revised rule does not substantively change the disclaimer requirement for express advocacy communications from the pre-BCRA version of the regulation because BCRA does not alter the reach of the disclaimer requirements for persons that are not political committees, except with regard to electioneering communications (*see* below).

Similarly, paragraph (a)(3) of section 110.11 requires "[a]ll public communications by any person" that solicit a contribution must include a disclaimer. 2 U.S.C. 441d(a). Here, too, the revised rule does not change the disclaimer requirement for solicitations from the pre-BCRA version of the rule because BCRA makes no changes in this regard.

Congress amended 2 U.S.C. 441d(a) to require that "electioneering communications" include disclaimers. In paragraph (a)(4) of section 110.11, the Commission requires that "[a]ll electioneering communications by any person" include a disclaimer. The term "electioneering communication" is defined in 11 CFR 100.29(a). *See* Electioneering Communications Final Rules and Explanation and Justification 67 FR 65190 (Oct. 23, 2002).

The Internal Revenue Service ("IRS") commented generally on the scope of the Commission's proposed rules and found no direct conflict with the Internal Revenue Code or the regulations thereunder. The IRS noted that the Commission proposed at 11 CFR 110.11(a)(1)(iii) to require a disclaimer statement for all types of "general public political advertising" by any person soliciting contributions. The IRS also requested that for the benefit of tax-exempt organizations the Commission should restate certain requirements of section 6113 of the Internal Revenue Code (26 U.S.C. 6113). The IRS stated that section 6113 provides that certain tax-exempt organizations that are not eligible to receive tax deductible charitable contributions, and whose gross annual receipts normally exceed $100,000, must disclose in an "express statement (in a conspicuous and easily recognizable format)" that contributions to the organization are not deductible for Federal income tax purposes as charitable contributions. This provision applies to organizations that are not eligible to receive deductible charitable contributions and are described in section 501(c), section 501(d), or section 527. The Internal Revenue Service issued Notice 88–120 to provide safe harbors for meeting the requirements of section 6113.

11 CFR 110.11(b) General Content Requirements

Paragraph (b) of section 110.11 sets out the general content requirements for disclaimers, depending on who paid for the communication and, where applicable, who authorized the communication. Pre-BCRA paragraphs (a)(1)(i) and (ii) of section 110.11, which applied to communications authorized and paid for by a candidate and communications authorized by a candidate but paid for by another person, respectively, are redesignated as paragraphs (b)(1) and (2) in the revised regulation, respectively, without substantive revision.

Paragraph (b)(3) of section 110.11 applies to a communication, including any solicitation, that is not paid for or authorized by a candidate. The provisions of pre-BCRA 11 CFR 110.11(a)(1)(iii) are replaced with paragraph (b)(3), with one substantive change. In BCRA, Congress provided that a covered communication not authorized by a candidate, his or her authorized committees or agents must have a disclaimer that includes the "permanent street address, telephone number, or World Wide Web address" of the person who paid for the communication. 2 U.S.C. 441d(a)(3). Similar language is being added in paragraph (b)(3).

The Commission is not including pre-BCRA 11 CFR 110.11(a)(1)(iv) in revised section 110.11. This paragraph applied to "solicitations directed to the general public on behalf of a political committee which is not an authorized committee of a candidate" and required that these solicitations only state the name of the person who paid for the communication. In the NPRM the Commission proposed deleting paragraph (a)(1)(iv). Given that Congress amended 2 U.S.C. 441d(a) to extend the disclaimer requirements to apply "whenever a political committee makes a disbursement for the purpose of financing any communication" through any type of general public political advertisement, and given that Congress did not create a specific exception for authorization language in solicitations by unauthorized committees, the Commission is not retaining pre-BCRA 11 CFR 110.11(a)(1)(iv).

11 CFR 110.11(c) Disclaimer Specifications

A. Specifications for All Disclaimers

In BCRA, Congress created a number of specific requirements for disclaimers to be included in communications covered by the statute. These statutory requirements vary, depending on whether the communication is printed or broadcast through radio or television, and on whether a candidate or another person pays for the communication. 2 U.S.C. 441d(c), (d). Paragraph (c) combines the disclaimer requirements in pre-BCRA 11 CFR 110.11(a)(5) with the new requirements Congress added in BCRA.

Paragraph (c)(1) sets forth a general, "clear and conspicuous" requirement applicable to all disclaimers, regardless of the medium in which the communication is transmitted. Paragraph (c)(1) is a slightly revised version of the "clear and conspicuous" requirement in pre-BCRA 11 CFR 110.11(a)(5). The final sentence of paragraph (c)(1) provides that a disclaimer is not clear and conspicuous if it is difficult to read or hear, or if its placement is easily overlooked. This modifies the corresponding pre-BCRA provision, which was focused on print communications only, by generalizing it to apply to communications made through other media as well. This generalization is justified by BCRA's revision to section 441d, which broadened the scope of the statute. No commenters addressed this paragraph.

B. Specific Requirements for Printed Communications

Several of the specific disclaimer requirements added by BCRA apply only to printed communications. 2 U.S.C. 441d(c)(1). Paragraph (c)(2) of section 110.11 implements the new statutory specifications, and also incorporates three of the print-specific provisions of pre-BCRA 11 CFR 110.11.

One commenter suggested that the pre-BCRA disclaimer regulations work well and should not be changed except where required under BCRA. For the most part, the Commission agrees, but with the recognition that Congress has in fact required a number of changes in the disclaimer provisions through BCRA. For example, the pre-BCRA requirement that a disclaimer be "clear and conspicuous" was limited to printed communications. In BCRA, Congress added a new requirement that the disclaimer in a printed communication be of "sufficient type-size to be clearly readable by the recipient of the communication." 2 U.S.C. 441d(c)(1). Given the specificity of the statutory requirements added by BCRA, new paragraph (c)(2)(i) restates the "sufficient type size" requirement verbatim, while new paragraphs (c)(2)(ii) and (c)(2)(iii) also precisely track 2 U.S.C. 441d(c)(2) and (3), respectively.

The Commission sought comment on whether the term "sufficient type size" requires additional clarification or a "safe harbor" provision. Three commenters responded and each stated that the Commission should provide some additional guidance or "safe harbor" in the form of an "objective" standard for type size. One commenter advocated a type-size requirement related to the smallest font size of a communication, but a different commenter warned that such a requirement could be easily circumvented by reducing the type-size of one sentence, or even one word, in the communication. Two commenters also expressed concerns that a type-size requirement based on the size of the largest font size in the communication would be "unworkable" or "overly complex." One commenter supported an approach that would set a fixed minimum type size.

The Commission shares the concerns expressed by the commenters regarding formulas fixed to the smallest or largest type size in a communication's core message text. However, the Commission is also reluctant to set one fixed minimum type size for all communications because a type size that can be easily read in a newspaper might be completely unreadable when included on a billboard or other large, printed communication. Therefore, in 11 CFR 110.11(c)(2)(i), the Commission is creating a "safe harbor" provision that establishes a fixed, twelve-point type size as a sufficient size for disclaimer text in newspapers, magazines, flyers, signs and other printed communications that are no larger than the common poster size of 24 inches by 36 inches. However, no specific safe harbor provision would apply to larger printed communications because the Commission concludes that the vast differences in the potential size and manner of display of larger printed communications would render fixed type-size examples ineffective and inappropriate. Whether a disclaimer on a larger printed communication is of sufficient type size to be clearly readable is therefore to be determined on a case-by-case basis, taking into account the vantage point from which the communication is intended to be seen or read as well as the actual size of the disclaimer text.

Paragraph (c)(2)(ii) of section 110.11 specifies that the disclaimer included in printed communications must be contained within a printed box set apart from the other contents of the communication. 2 U.S.C. 441d(c)(2). Paragraph (c)(2)(iii) specifies that the text of the disclaimer must be printed with a reasonable degree of color contrast between the background and the printed statement. 2 U.S.C. 441d(c)(3). Both of these requirements apply regardless of the size of the printed material under paragraph (c)(2)(i).

In the NPRM, the Commission sought comment on whether the statutory phrase "reasonable degree of color contrast" should be further defined, and specifically whether the color contrast for the disclaimer notice should be related to the color contrast of the core message text. One commenter drew a distinction between the statutory requirement of color contrast between the "background and printed statement," 2 U.S.C. 441d(c)(3), and the Commission's suggestion in the narrative of the NPRM that a color contrast is required between the disclaimer text and the core message text. The Commission notes that color contrast between the disclaimer text and the core message text is not required by the statute, and is not required by the final rules. This should alleviate the commenter's concern that such an additional requirement might require three different colors (a background color, a core message text color, and a disclaimer text color), thereby effectively prohibiting simple black and white communications and possibly raising the cost for the communication. Therefore, paragraph (c)(2)(iii) addresses only the contrast between the text and background of a communication, and provides two "safe harbor" examples that, when followed, comply with the color-contrast requirement. First, paragraph (c)(2)(iii) specifies that the color contrast requirement is met if the disclaimer is printed in black text on a white background. Second, paragraph (c)(2)(iii) specifies that the color contrast requirement is met if the degree of contrast between the background color and the disclaimer text color is at least as great as the degree of contrast between the background color and the color of the largest text in the communication. Please note that these two examples do not constitute the only ways to satisfy the color contrast requirements, and that they are safe harbors, not mandatory requirements. This approach is intended to provide a clear, flexible safe harbor that will ensure that the disclaimer does not blend in with the background of the communication any more than a headline or other key part of the core message text, and thereby providing certainty to persons making communications needing disclaimers.

Paragraphs (c)(2)(iv) and (v) incorporate pre-BCRA regulatory provisions specific to print communications. Paragraph (c)(2)(iv), to which the provisions of pre-BCRA paragraph (a)(5)(i) are redesignated without substantive revision, states that a disclaimer need not appear on the front or cover page of a communication, except for communications that only contain a front face, such as billboards. Paragraph (c)(2)(v), to which the provisions of pre-BCRA paragraph (a)(5)(ii) are redesignated without substantive change, states that a communication that would require a disclaimer if distributed separately, and that is included in a package of materials, must contain the required disclaimer.

C. Specific Requirements for Radio and Television Communications That Are Authorized by Candidates

In BCRA, Congress added new requirements for disclaimers in radio and television communications paid for by candidates or persons authorized by candidates. 2 U.S.C. 441d(d)(1). Paragraph (c)(3) implements these specific statutory requirements as described below.

Paragraph (c)(3)(i) tracks the new statutory language requiring that a communication that is paid for or authorized by a candidate or the candidate's authorized committee and transmitted through radio must include an audio statement spoken by the candidate himself or herself. 2 U.S.C. 441d(d)(1)(A). The statement must identify the candidate, and state that the candidate has approved the communication. *Id.*

Likewise, paragraphs (c)(3)(ii) tracks the new statutory language requiring that a communication that is paid for or authorized by a candidate or the candidate's authorized committee and transmitted through television have an oral disclaimer spoken by the candidate himself or herself. 2 U.S.C. 441d(d)(1)(B). The provision requires the candidate to identify himself or herself, and to state that he or she has approved the communication. In addition, Congress specified that the candidate must convey that message in one of two ways: through a full-screen view of the candidate making the statement or through a "clearly identifiable photographic or similar image of the candidate" that appears during the candidate's voice-over statement. Paragraph (c)(3)(ii)(A) sets forth the first option, while paragraph (c)(3)(ii)(B) sets forth the second option and provides additional guidance regarding the meaning of "clearly identifiable." The only commenter who specifically addressed this issue suggested that the picture of the candidate should only be considered "clearly identifiable" if it is displayed in a full-screen view. However, the Commission notes that although Congress specifically required a full-screen view when the candidate is shown making the statement, Congress did not require a full-screen view for the still picture. The Commission views this as an intentional distinction that contemplated an alternative to the full-screen view. Therefore, the Commission is establishing a safe harbor provision whereby a still picture of the candidate shall be considered "clearly identifiable" if it occupies at least 80% of the vertical screen height. That size is, in the Commission's judgment, a meaningful alternative to the full-screen requirement, and complies with Congress's mandate that the picture be "clearly identifiable."

Congress also established a third disclaimer requirement for communications paid for or authorized by a candidate and transmitted through television. In addition to the oral statement described above, each television communication must contain a "clearly readable" written statement that appears at the end of the communication "for a period of at least four seconds" with a "reasonable degree of color contrast" between the background and the disclaimer statement. *See* 2 U.S.C. 441d(d)(2)(B)(ii). These statutory requirements are implemented in new 11 CFR 110.11(c)(3)(iii).

The pre-BCRA regulations provided that a written disclaimer appearing on the screen of a television communication "shall be considered clear and conspicuous if [it] appear[s] in letters equal to or greater than four (4) percent of the vertical picture height for not less than four (4) seconds." Pre-BCRA 11 CFR 110.11(a)(5)(iii). Two commenters urged the Commission to retain the four-percent height provision as a "safe harbor." However, the new Congressional color-contrast requirement in 2 U.S.C. 441d(d)(2)(B)(ii) renders the pre-BCRA "safe harbor" incomplete because the four-percent-for-four-seconds provision does not address color contrast.

The Commission is therefore setting forth the statutory "clearly readable" requirement in paragraph 11 CFR 110.11(c)(3)(iii) and is employing the same four percent height provision and the four-second duration provision as two of the three specific criteria that will determine whether a statement is "clearly readable." Rather than providing a "safe harbor," paragraphs 11 CFR 110.11(c)(3)(iii)(A), (B), and (C) provide, respectively, that the statement will not be considered "clearly readable" unless it appears in letters equal to or greater than four percent of the vertical picture height, it appears for at least four seconds, and the statement contains a reasonable degree of color contrast with the background.

Paragraph (c)(3)(iii)(B) sets forth the four-second duration requirement in accordance with the BCRA language. 2 U.S.C. 441d(d)(1)(B).

Paragraph 11 CFR 110.11(c)(3)(iii)(C) addresses the new color contrast requirement in BCRA, which is the third criterion used to determine whether a statement is clearly readable. Because the statute did not define "reasonable degree of color contrast," the Commission requested comment on several different approaches. To continue the same "safe harbor" approach of pre-BCRA paragraph (a)(5)(iii), the regulations would have to describe "reasonable degree of color contrast" in an objective manner. The same commenter who addressed the color contrast issue in the context of printed communications also suggested that the Commission avoid overly complicated or cost-incurring definitions of "reasonable degree of color contrast" in the context of television communications. For the same reasons stated above with reference to the color contrast requirements for printed communications, the Commission is providing "safe harbors" for disclaimers that are printed in black text on a white background, as well as disclaimers that have at least the same degree of contrast with the background color as the degree of contrast between the background color and the color of the largest text used in the communication. 11 CFR 110.11(c)(3)(iii)(C). Either of these disclaimer formats would satisfy the color-contrast requirement, which is the third criterion used to determine whether the statement is "clearly readable."

The Commission received no comments on the two proposed examples of spoken disclaimers that, if used by a candidate, will satisfy the requirements of paragraphs (c)(3)(i), (ii) and (iii). These examples, located in paragraph (c)(3)(iv), are not mandatory and are not the only acceptable disclaimers. Paragraph (c)(3)(iv) is intended to provide a clear "safe harbor" for candidates, authorized committees, and others required to include disclaimers in communications.

D. Specific Requirements for Radio and Television Communications Paid for by Other Persons and Not Authorized by Candidates

In BCRA, Congress set forth a scripted audio statement required for disclaimers in communications transmitted through radio or television and paid for by persons other than candidates or persons authorized by candidates. 2 U.S.C. 441d(d)(2). New paragraph (c)(4) tracks the statutory language by requiring the name of the political committee or other person responsible for the communication and any connected organization to be included in the communication. "Connected organization" is defined in 11 CFR 100.6. Paragraph (c)(4) also requires that communications transmitted through a telephone bank, as defined in 11 CFR 100.28, carry the same statement. *See* discussion regarding the inclusion of telephone banks within the term "public communication," above, and the discussion of specific requirements for radio, telephone bank, and television communications authorized by candidates, above. The scripted statement is: "XXX is responsible for the content of this advertising." 2 U.S.C. 441d(d)(2).

Furthermore, in the case of a television transmission, Congress required that the statement be conveyed by a "full-screen view of a representative of the political committee or other person making the statement," or in a "voice-over" by such representative. 2 U.S.C. 441d(d)(2). The Commission sought comment on whether the regulation should specify who may represent the payor for this purpose. One commenter urged the Commission to require an officer of the organization to make the statement, rather than a volunteer or paid celebrity. In contrast, another commenter argued that any restriction on who could make the statement "would far exceed the scope of BCRA," which allows a "representative of the committee *or other person*" to make the statement. *See* 2 U.S.C. 441d(d)(2) (emphasis added). The Commission agrees with the latter commenter that the statute does not appear to contemplate any additional restrictions on the choice of the person making the disclaimer statement. Furthermore, the Commission sees no reason to remove additional flexibility where the plain emphasis of the relevant statutory provision is the content and conspicuousness of the disclaimer, not the individual speaking those words. The Commission also notes that where Congress clearly intended that a specific person convey the disclaimer message for an authorized radio or television communication, it did so explicitly by providing that the candidate must make the statement. *Compare* 2 U.S.C. 441d(d)(1) with 2 U.S.C. 441d(d)(2). Thus, 11 CFR 110.11(c)(4)(ii) does not include any specific limitation regarding who must speak the required message. In addition, unlike the requirements for television communications authorized by candidates, the audio statement required for television communications that are not authorized by candidates can be accomplished through voice-over without any requirement of a photograph or similar representation of the speaker.

Finally, as with authorized television communications, the disclaimer statement for a television communication that is not authorized by any candidate must also appear in writing at the end of the communication in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement for a period of at least four seconds. 2 U.S.C. 441d(d)(2). Paragraphs 11 CFR 110.11(c)(4)(iii)(A), (B), and (C) are therefore identical to 11 CFR 110.11(c)(3)(iii)(A), (B), and (C). *See* above explanation of 11 CFR 110.11(c)(3)(iii).

11 CFR 110.11(d) Coordinated and Independent Expenditures by Political Party Committees

Paragraph (d) of section 110.11 covers disclaimers for communications that constitute coordinated party expenditures and independent expenditures by national, state, district, and local political party committees. The relevant pre-BCRA provisions of 11 CFR 110.11(a)(2) are being redesignated as paragraph (d)(1), with one minor grammatical change and without substantive change.

Although the Commission did not propose any significant substantive changes for disclaimer requirements related to coordinated party expenditures, one commenter expressed concern that a communication paid for by a political party committee with funds subject to the 2 U.S.C. 441a(d) coordinated expenditure limits would, solely by virtue of being a 2 U.S.C. 441a(d) coordinated expenditure, be considered to be "authorized" communications subject to the requirements of 11 CFR 110.11(c)(3).

The Commission does not intend such a result and believes that such an interpretation would be contrary to its longstanding policy of permitting political party committees to avail themselves of the 2 U.S.C. 441a(d) limits, both before and after a party's primary, without any showing of candidate authorization or actual "coordination" with a candidate. *See* "Party Expenditures vs. Contributions: Similarities," *Campaign Guide for Political Party Committees* at p.16 (1996) ("It is up to the party committee to decide.") Therefore, the Commission is adding new paragraph (d)(2) to 11 CFR 110.11 to make it clear that a communication paid for by a political party committee through a section 441a(d) expenditure will not be considered to be authorized by a candidate solely by virtue of using the funds subject to the section 441a(d) limits. 11 CFR 110.11(d)(3). Please note, however, that while this clarification recognizes a political party committee's freedom to characterize its payment as a "coordinated expenditure" even when no actual coordination occurred, the communication would be considered authorized by the candidate (and would therefore require an authorization statement to that effect) if the candidate approves the communication. The Commission is also making clear that communications made by a political party committee pursuant to 2 U.S.C. 441a(d) that are distributed prior to the date the party committee's candidate is nominated need not carry disclaimers indicating that the communication was authorized by any candidate, but only must indicate who paid for the communication. 11 CFR 110.11(d)(1)(ii).

Paragraph (d)(3) covers communications that constitute independent expenditures by political party committees. It states that the disclaimer provisions apply to such communications, and that a "non-authorization notice" is required, as with any other independent expenditure communication. *See* pre-BCRA 11 CFR 109.3 and proposed 11 CFR 109.10(e) (as proposed in a separate Notice of Proposed Rulemaking on Consolidated Reporting, 67 FR 64555 (October 21, 2002).)

11 CFR 110.11(e) Exempt Activities

The Commission is redesignating the provisions of pre-BCRA 11 CFR 110.11(a)(4), pertaining to communications that qualify as "exempt activities," as paragraph (e) of section 110.11. In the NPRM, the Commission proposed to make only minor, non-substantive revisions. 67 FR 55351. Although not so expressly stated in the NPRM, the Commission based this proposal on the tentative conclusion that Congress did not intend, in BCRA, to overturn the Commission's longstanding approach to disclaimers for exempt activities. The Commission received no comments on this proposal.

The Commission has concluded that no substantive revisions are necessary. The Commission has, however, rewritten the paragraph to make it clear that public communications that constitute exempt activities are covered by the requirements of paragraphs (a), (b), (c)(1), and (c)(2) of section 110.11, but are not subject to the new "stand by your ad" requirements in paragraphs (c)(3) and (c)(4) of section 110.11. This revision is not intended to change the rule substantively; rather, it is only intended to clarify the rule in light of the new provisions added by BCRA.

11 CFR 110.11(f) Exceptions

Exceptions to the disclaimer requirements are set out in paragraph (f). The exceptions in pre-BCRA paragraphs (a)(6)(i), (ii), and (iii) are being redesignated as paragraphs (f)(1)(i), (ii), and (iii), respectively, with only grammatical, non-substantive revision.

The Commission is incorporating the provisions of pre-BCRA 11 CFR 110.11(a)(7), regarding certain communications by a separate segregated fund or its connected organization, in paragraph (f)(2), because this provision is essentially an exception. In addition, in paragraph (f)(2), the word "form" is being changed to "type." This change has no substantive effect, and is being done only to conform to the language of the statute. *See* 2 U.S.C. 441d(a). In addition, the reference "general public political advertising" in pre-BCRA 11 CFR 110.11(a)(7) is replaced with a reference to a "public communication." 11 CFR 110.11(f)(2). No commenters addressed this provision.

11 CFR 110.11(g) Comparable Rate for Campaign Purposes

Paragraph (g) of section 110.11 continues the pre-BCRA rule pertaining to comparable rates for print advertising. That is, the contents of pre-BCRA 11 CFR 110.11(b) are being redesignated as paragraph (g). Other than the addition of a heading for the paragraph, there are no revisions to the pre-BCRA rule. Paragraph (g) tracks 2 U.S.C. 441d(b), as did its pre-BCRA predecessor. No commenters addressed this provision.

11 CFR 110.16 Prohibitions on Fraudulent Misrepresentations

BCRA adds a subsection to the fraudulent misrepresentation statute at 2 U.S.C. 441h. The new provision, 2 U.S.C. 441h(b), prohibits a person from fraudulently misrepresenting that the person is speaking, writing or otherwise acting for, or on behalf of, a Federal candidate or political party, or an employee or agent of either, for the purpose of soliciting contributions or donations. It also prohibits persons from participating in, or conspiring to participate in, plans, schemes, or designs to make such fraudulent misrepresentations in soliciting contributions and donations. BCRA also non-substantively amends the existing fraudulent misrepresentation statute by redesignating it as subsection (a) of 2 U.S.C. 441h. The regulation implementing this provision, together with the pre-BCRA fraudulent misrepresentation regulation formerly found at 11 CFR 110.9(b),[4] is combined in new 11 CFR 110.16.

The pre-BCRA fraudulent misrepresentation provision, now codified at 2 U.S.C. 441h(a), is aimed at fraudulent misrepresentation of campaign authority. For additional background, *see Legislative History of Federal Election Campaign Act Amendments of 1974* at 521. The statute prohibits a candidate, his or her employee or agent, or an organization under the candidate's control, from purporting to speak, write, or act for another candidate or political party on a matter that is damaging to the other candidate or party. Section 441h(a) encompasses, for example, a candidate who distributes letters containing statements damaging to an opponent and who fraudulently attributes them to the opponent. The Commission has determined that "on a matter that is damaging" includes actions or spoken or written communications that are intended to suppress votes for the candidate or party who has been

[4] Another BCRA rulemaking amended 11 CFR 110.9, formerly entitled "Miscellaneous Provisions," to address only violations of the contribution limits and was re-titled accordingly. *See* Final Rules and Explanation and Justification for Contribution Limitations and Prohibitions, 67 FR 69928 (Nov. 19, 2002). Other provisions previously addressed in 11 CFR 110.9 include fraudulent misrepresentation, price index increase and voting age population. This rulemaking redesignates and amends the fraudulent misrepresentation provision. The "Contribution Limitations and Prohibitions" rulemaking redesignates and amends the price index increase provision. *See id.* A third BCRA rulemaking project entitled "Coordination and Independent Expenditures" proposes to redesignate and amend the voting age population provision. *See* NPRM at 67 FR 60042, 60060 (Sept. 24, 2002).

fraudulently misrepresented. A violation of section 441h(a) does not depend on whether the candidate or party who is fraudulently represented goes on to win an election. While the precise harm may be difficult to quantify, harm is presumed from the nature of the communication. Proof of financial damages is unnecessary.

Because the language and purpose of the pre-BCRA misrepresentation statute encompasses only misrepresentations by a candidate or the candidate's employee or agent, the Commission has historically been unable to take action in enforcement matters where persons unassociated with a candidate or candidate's authorized committee have solicited funds by purporting to act on behalf of a specific candidate or political party. Candidates have complained that contributions that contributors believed were going to benefit the candidate were diverted to other purposes, harming both the candidate and contributor. Consequently, the Commission has frequently included in its annual legislative recommendations to Congress a recommendation that 2 U.S.C. 441h be amended to specifically prohibit any person from fraudulently misrepresenting a candidate or political party in solicitations. *See Federal Election Commission Annual Reports* for 2000 at 39, for 1999 at 47–48, for 1998 at 52, and 1997 at 47. BCRA's prohibition on fraudulent solicitations of contributions and donations implements those legislative recommendations. 2 U.S.C. 441h(b); *see* 148 Cong. Rec. S3122 (daily ed. March 29, 2001) (statement of Sen. Nelson).

The Commission received one comment on the proposed rules to implement BCRA's fraudulent solicitation provision and to redesignate the pre-BCRA fraudulent misrepresentation rule. The commenter expressed support for combining these two provisions in a new rule. The commenter agreed that an anti-fraud provision aimed at fraudulent fundraising and applicable to a broader range of persons was needed.

The final rule at 11 CFR 110.16(a) remains unchanged from the proposed rule in the NPRM. Paragraph (a) amends the pre-BCRA fraudulent misrepresentation regulation, formerly found at 11 CFR 110.9(b), by adding the title, "In general." This change follows BCRA, which added a similar heading to section (a) of 2 U.S.C. 441h. Technical amendments also make the wording of paragraph (a) gender-neutral. Finally, paragraph (a)(2) has been amended from the pre-BCRA rule to include the word "scheme" so that it tracks the statute.

The final rule at 11 CFR 110.16(b) tracks the statutory language in BCRA. No changes are being made from the proposed rule. Paragraph (b)(1) prohibits a person from fraudulently misrepresenting that the person speaks, writes, or otherwise acts for or on behalf of a candidate, political party, or an employee or agent of either, in soliciting contributions or donations. As used in section 110.16(b)(1), "donation" has the same meaning as in 11 CFR 300.2(e). *See* Final Rules for Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 FR 49064, 49122 (July 29, 2002). Paragraph (b)(2) prohibits a person from willfully and knowingly participating in, or conspiring to participate in, any plan, scheme, or design to violate proposed paragraph (b)(1).

The Commission notes that the fraudulent misrepresentations prohibited in both 11 CFR 441h(a) and (b) and 11 CFR 110.16(a) and (b) differ from common law fraud. Unlike common law fraudulent misrepresentation, section 441h gives rise to no tort action. Section 441h is part of a Federal statute designed to address campaign finance abuses, not common law fraud. *See generally Buckley* v. *Valeo*, 424 U.S. 1, 26–27 (1976).

The Supreme Court has recognized that statutes that address schemes to defraud, such as sections 441h(a)(2) and (b)(2), do not require proof of the common law requirements of "justifiable reliance" and "damages." *Neder* v. *United States*, 527 U.S. 1, 24–25 (1999) ("The common law requirements of 'justifiable reliance' and 'damages,' for example, plainly have no place in federal fraud statutes * * *" "By prohibiting the 'scheme to defraud' rather than the completed fraud, the elements of reliance and damage would clearly be inconsistent with the statutes Congress enacted"), *citing United States* v. *Stewart*, 872 F.2d 957, 960 (10th Cir. 1989).

Another indication that the fraudulent misrepresentations prohibited by section 441h differ from common law fraud is that section 441h(a) states that the fraudulent misrepresentation must be "on a matter which is damaging to [the misrepresented] candidate or political party." If the statute were to require proof of damage in common law fraudulent misrepresentation, then the phrase "on a matter which is damaging" is superfluous. Courts construe statutes so "as to avoid rendering superfluous any parts thereof." *Astoria Fed. Sav. & Loan Ass'n* v. *Solimino*, 501 U.S. 104 (1991); *see also Federal Election Commission* v. *Arlen Specter '96*, 150 F. Supp.2d 797, 806 (2001), quoting *Bennett* v. *Spear*, 520 U.S. 154, 173 (1997).

11 CFR 111.24 Civil Penalties (2 U.S.C. 437g(a)(5), (6), (12), 28 U.S.C. 2461 nt.).

The Act imposes civil penalties on anyone violating any portion of FECA or the Presidential Election Campaign Fund Act ("Fund Act") or the Presidential Primary Matching Payment Account Act ("Matching Payment Act"). The Act's civil penalties, found at 2 U.S.C. 437g(a)(5), (6), and (12), are organized into two tiers of monetary penalties; one tier of penalties for violations of the Act, and a second tier of penalties for "knowing and willful" violations of the Act.

BCRA amends sections 437g(a)(5)(B) and 437g(a)(6)(C) by separating out and increasing the penalties for a subset of knowing and willful violations, namely, contributions that are made in the name of another. *See* 2 U.S.C. 441f. Such contributions are often made through a conduit to circumvent the contribution limits. The amendment to 2 U.S.C. 437g(a)(5)(B) increases the civil penalties for such violations to "not less than 300 percent of the amount involved in the violation" and "not more than the greater of $50,000 or 1,000 percent of the amount involved in the violation."

Section 437g(a)(6)(C) of FECA, authorizing a court to impose civil penalties on a person who knowingly and willfully violates the Act, has been similarly amended by BCRA. Accordingly, the Commission amends 11 CFR 111.24 to implement these amendments to FECA.

Specifically, the Commission is dividing 11 CFR 111.24(a) into paragraphs (a)(1), and (a)(2)(i) and (ii). Paragraph (a)(1) contains the unchanged language of the pre-BCRA regulation for civil penalties for violations of the Act or the Fund Act or Matching Payment Act. Paragraph (a)(2) addresses "knowing and willful" violations and is further divided into paragraphs (a)(2)(i) and (ii). Paragraph (a)(2)(i) contains the unchanged language of the pre-BCRA regulation for civil penalties for knowing and willful violations of FECA or the Fund Act or the Matching Payment Act. 11 CFR 111.24(a)(2)(ii) implements BCRA's amendments to FECA increasing civil penalties for knowing and willing violations involving contributions made in the name of another. In the case of a knowing and willful violation of the prohibition on contributions in the name of another, the civil penalty is not

less than an amount that is equal to 300 percent of the amount of the violation, and the civil penalty is not more than $50,000 or an amount equal to 1,000 percent of the amount of the violation, whichever is greater. The Commission received no comments on these amended rules, which are identical to the proposed rules, previously published.

11 CFR Part 113 Use of Campaign Accounts for Non-Campaign Purposes (2 U.S.C. 439a)

Introduction

In BCRA, Congress deleted 2 U.S.C. 439a in its entirety, and replaced it with an entirely new section. Subsection (a) of the amended section sets forth the following four categories of "permitted uses" of campaign funds: (1) Otherwise authorized expenditures in connection with a candidate's campaign for Federal office; (2) ordinary and necessary expenses incurred in connection with a Federal officeholder's duties; (3) contributions to certain tax-exempt organizations; and (4) transfers, without limitation, to national, state or local political party committees. 2 U.S.C. 439a(a)(1) through (4). Congress also included a list of non-exhaustive, *per se* prohibited personal uses of campaign funds, including home mortgage, rent or utility payments, clothing purchases, noncampaign-related automobile expenses, country club memberships, vacations or other noncampaign-related trips, household food items, tuition payments, noncampaign-related admissions to entertainment events, such as sporting events, concerts, and theatres, and health club dues. 2 U.S.C. 439a(b)(2)(A) through (I).

Former 2 U.S.C. 439a was the statutory basis for the Commission's pre-BCRA "personal use" rules. It allowed candidates and Federal officeholders to use excess campaign funds to pay for ordinary and necessary expenses incurred in connection with their duties as Federal officeholders, certain contributions to tax-exempt organizations, and other lawful purposes, including transfers, without limitation, to national, state or local political party committees. The former section 439a also generally prohibited candidates and Federal officeholders from converting their excess campaign funds to personal uses.

Two pre-BCRA regulations implemented the statutory conversion-to-personal-use prohibition. 11 CFR 113.1(g)(1)(i) set out a non-exhaustive list of *per se* prohibited personal uses, and 11 CFR 113.1(g)(1)(ii) described uses that the Commission evaluated on a case-by-case basis. In addition, the latter regulation stated that uses that would exist "irrespective" of a candidate's campaign or a Federal officeholder's duties constitute personal use. Finally, another pre-BCRA regulation, which described the permissible uses of excess campaign funds, included the "any other lawful purpose" language from former section 439a. 11 CFR 113.2(d).

In the NPRM, the Commission proposed regulations that would implement amended section 439a. The Commission also requested comments on several issues. With regard to the personal use regulations, the Internal Revenue Service commented that it saw no direct conflict between the Commission's proposals and the Internal Revenue Code or the regulations thereunder. Other comments are addressed below.

Unchanged Provisions of 11 CFR 113.1(e) and 11 CFR 113.2

1. Per se Personal Uses

The pre-BCRA version of 2 U.S.C. 439a contained a general prohibition against the personal use of campaign funds, but did not specify any particular impermissible uses. In contrast, the Commission's pre-BCRA personal use regulations specifically defined certain uses of campaign funds or donations as *per se* prohibited personal uses. 11 CFR 113.1(g)(1)(i).

When Congress enacted BCRA, it amended 2 U.S.C. 439a(b) to include a non-exhaustive list of prohibited personal uses of campaign funds. As one of BCRA's principal sponsors explained, amended section 439a *"[c]odifies FEC regulations relating to the personal use of campaign funds by candidates"* (emphasis added). 148 *Cong. Rec.* S1993–4 (daily ed. March 18, 2002) (statement of Sen. Feingold). However, the Commission noted in the NPRM that several of the personal use provisions in amended section 439a were not adopted verbatim, but were instead summaries of pre-BCRA personal use regulations. For example, the statute now prohibits the use of campaign contributions for "a clothing purchase" (2 U.S.C. 439a(b)(2)(B)); whereas the pre-BCRA corresponding regulation at 11 CFR 113.1(g)(1)(i)(C) prohibited the personal use of "[c]lothing, other than items of *de minimis* value that are used in the campaign, such as campaign 'T-shirts' or caps with campaign slogans." In addition, amended section 439a did not incorporate all of the pre-BCRA *per se* personal use rules in their entirety. *Compare* post-BCRA 2 U.S.C. 439a(b)(2)(A) through (I) with pre-BCRA 11 CFR 113.1(g)(1)(i). In the NPRM, the Commission stated that it interpreted new subsection (b) of 2 U.S.C. 439a to provide an even firmer statutory foundation for the *per se* rules at 11 CFR 113.1(g)(1)(i) than did the pre-BCRA version of section 439a. No commenters opposed this interpretation, and two commenters supported it. Accordingly, aside from the exceptions noted below, the Commission is retaining its pre-BCRA *per se* personal use regulations.

2. Irrespective test

As the Commission noted in the NPRM, pre-BCRA section 113.1(g)(1)(ii) stated that a use that would exist "irrespective" of a candidate's campaign or a Federal officeholder's duties would constitute a prohibited personal use. In BCRA, Congress codified the "irrespective" test as part of new section 439a(b)(2) ("For the purposes of paragraph (1), a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office * * *") As the Commission explained in the NPRM, BCRA's "irrespective" test is virtually identical to the language in section 113.1(g)(1)(ii). The Commission proposed to continue to apply the "irrespective" test as it had done prior to BCRA. No comments were received specifically on this issue, although one commenter cited BCRA's "irrespective" language in the context of the commenter's analysis of the "noncampaign-related trip" language in proposed 11 CFR 113.1(g)(i)(K). (Noncampaign-related trips are discussed below.) Therefore, in the final rule, the Commission is not revising the "irrespective" test.

Amended Provisions of 11 CFR 113.1

1. 11 CFR 113.1(b) and (e)—Excess Campaign Funds

In BCRA, Congress deleted the phrase "in excess of any amount necessary to defray" campaign expenses from section 439a. Former section 113.1(e) defined "excess campaign funds" to mean "amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures." In the NPRM, the Commission proposed not to change section 113.1(e), but raised the issue of whether Congress intended to eliminate the discretion of candidates and Federal officeholders to use these excess campaign funds "for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office." 2 U.S.C. 439a(a)(2). No commenters opposed the Commission's proposal to leave section 113.1(e) unchanged, and one commenter supported leaving the "excess campaign funds" phrase intact.

To ensure that 11 CFR part 113 is consistent with the plain language of BCRA, the Commission has decided that the term "excess campaign funds" should be dropped. Accordingly, the title of part 113, (formerly "Excess Campaign Funds and Funds Donated to Support Federal Officeholder Activities") now reads "Campaign Funds and Funds Donated to Support Federal Officeholder Activities." In addition, the references to the term "excess campaign funds" throughout part 113 are being deleted.

The Commission is also deleting 11 CFR 113.1(e), which previously defined "excess campaign funds" as "amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures."

The Commission is also making the following conforming amendments. In paragraphs (e)(1)(i), (e)(5), and (f), the term "campaign funds" is being substituted for "excess campaign funds." Lastly, the Commission is also changing "excess campaign funds" to "campaign funds" in paragraph (b), which defines "office accounts."

2. 11 CRF 113.1(g)(1)(i)(B)—Funeral Expenses

Notwithstanding a principal sponsor's statement that the BCRA codifies the Commission's personal use regulations, amended section 439a failed to include two per se examples of personal use contained in 11 CFR 113.1(g). One of these, funeral, cremation or burial expenses, is being retained with significant exceptions. These would include such expenses for a candidate, employee or volunteer of authorized committees whose death arises out of, or in the course of, campaign activity. While there is no legislative history pertaining to this particular category of personal uses, it is at least a permissible construction of the BCRA to conclude that Congress deliberately excluded funeral expenses from its list of excluded uses of campaign funds. Norman J. Singer, Statutes and Statutory Construction § 47.23 (6th ed. 2000) ("When 'include' is utilized, it is generally improper to conclude that entities not specifically enumerated are excluded. * * * It has also been assumed that when the legislature expresses things through a list, the court assumes that what is not listed is excluded.").

In any event, limiting the use of campaign funds for funeral expenses resulting from a death that arises out of, or in the course of, campaign activity meets the Commission's "irrespective" test now codified in 2 U.S.C. 439a(b)(2). The phrase, "arises out of, or in the course of," is a term of art employed in workers" compensation statutes and insurance contracts and would cover, for instance, deaths resulting from injuries suffered during campaign activity.

In addition, with respect to funeral expenses for authorized committee staff and volunteers who die in the course of campaign activity, public policy considerations counsel the permission of the payment of such expenses from campaign funds as campaign volunteers and staff, unlike officeholders and their staff, generally do not receive any fringe benefits that would cover the cost of funeral expenses.

3. 11 CFR 113.1(g)(1)(i)(I)—Using Contributions To Pay Salaries to Candidates

In the NPRM, the Commission proposed adding a new rule, 11 CFR 113.1(g)(1)(i)(I), which would prohibit candidates from using campaign funds to pay themselves salaries or otherwise compensate themselves for income lost as a result of campaigning for Federal office. In AO 1999–1, the Commission banned the use of campaign funds to pay candidate salaries, in part because candidates would otherwise be able to spend campaign funds received as salaries for prohibited personal uses such as food, clothing, utilities, mortgages and other prohibited uses. Also, although the Commission noted that one of BCRA's principal sponsors stated that BCRA was intended to codify the Commission's current regulations but not its advisory opinions (148 *Cong. Rec.* S2143 (daily ed. March 20, 2002) (statement of Sen. Feingold)), the Commission preliminarily concluded that this proposed addition to its regulations would be consistent with the non-exhaustive list of prohibited personal uses in amended 2 U.S.C. 439a(b)(2).

The Commission sought comment as to whether or not principal campaign committees should be able to pay a candidate's salary out of campaign funds. Three commenters opposed the NPRM's proposal to prohibit the payment of candidate salaries and no commenter supported the proposal. One commenter argued that the definition of personal use does not encompass a payment to, as distinguished from an obligation of, a candidate. The same commenter also argued that because many candidates must forego salary in order to conduct the business of the campaign, a candidate who is dependent on an income is put at a severe disadvantage compared to an incumbent who is free to campaign at all times without any reduction in compensation or to an affluent challenger, who can afford to campaign without receiving any compensation.

The commenter also noted that AO 1999–1, which cites AOs 1996–34, 1995–42, and 1995–20, stated that the Commission has permitted the use of campaign funds to enable candidates and immediate family members to attend campaign events. Finally, the commenter concluded that candidates without significant resources might not be able to forego salary payments in order to run for Federal office, and recommended that the Commission promulgate a regulation permitting candidates to be paid salaries from campaign funds, with restrictions sufficient to prevent abuse.

A second commenter, citing the above-mentioned statement by one of BCRA's principal sponsors that the new law was not intended to codify the Commission's advisory opinions, asserted that the Commission lacked the authority to characterize salary payments to candidates from campaign funds as a *per se* prohibited personal use. This commenter also argued that, were it not for their campaign responsibilities, candidates would not have to leave their jobs and give up their salaries. Thus, the commenter concluded, this situation fulfills BCRA's "irrespective" test. The commenter also maintained that paying salaries to candidates so that they can buy personal items and services is akin to corporate employees making political contributions from their salaries. The commenter drew the analogy that, because corporate contributions are illegal but contributions from corporate employees are not, candidates should be able to draw salaries from campaign funds and should be allowed to purchase personal goods and services. Noting that would-be candidates of modest means might not be able to run for Federal office without salaries, the commenter urged the Commission not to change existing rules on this subject, but rather to either reconsider AO 1999–1 or let Congress decide the issue.

Finally, a third commenter, who joined in the comments of the previous two commenters, maintained that the

Commission's proposal exceeds both Congress's mandate in BCRA and congressional intent. The commenter also stated that the proposal would exacerbate what the commenter characterized as "enhanced advantages conferred upon the wealthy, including incumbent federal office holders," by BCRA. The commenter concluded that, unlike officeholders, persons of average means need a salary in order to pay expenses while running for office.

The Commission agrees with the commenters that the payment of a salary to a candidate is not a prohibited personal use as defined under Commission regulations since, but for the candidacy, the candidate would be paid a salary in exchange for services rendered to an employer. The Commission's personal use regulations issued on February 9, 1995 adopted the "irrespective test" in determining whether expenses would be deemed personal use. In the Explanation and Justification, the Commission explained that "if campaign funds are used for a financial obligation that is caused by campaign activity or the activities of an officeholder, that use is not personal use." Explanation and Justification, Final Rules on Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 FR 7862, at 7863–7864 (Feb. 9, 1995). A salary paid to a candidate would be in return for the candidate's services provided to the campaign and the necessity of that salary would not exist irrespective of the candidacy. As the Commission has previously stated, under the Act and Commission regulations, a candidate and the candidate's campaign committee have wide discretion in making expenditures to influence the candidate's election, but may not convert excess campaign funds to personal use. 2 U.S.C. 431(9) and 439a, AOs 1992–4, 1991–2, 1988–13, 1987–2, 1987–1, 1984–42, 1984–8, 1980–138 and 1980–49. Therefore, the Commission will permit a candidate's principal campaign committee to pay a salary to the candidate, thus superseding AO 1999–1.

Advisory Opinions 2001–10, 2001–03, 2000–40, 2000–37, and 2000–12 state the Commission will permit the use of campaign funds for salary payments to a member of the candidate's family provided that that the family member is providing bona fide services to the campaign and the salary does not exceed fair market value for the services provided. Unlike the payment of salaries to members of a candidate's family, however, there need not be any showing that a candidate is providing bona fide services to the campaign; the fact that the candidate's work is valuable to his or her campaign shall be presumed.

Note that a candidate's salary does not, however, constitute a qualified campaign expense as that term is defined in 11 CFR 9002.11 and 9032.9.

The payment of salaries to candidates from campaign funds is subject to certain conditions in the final rules. First, the candidate's salary must be paid from his or her principal campaign committee only, as defined in 11 CFR 100.5(e)(1). This condition precludes the possibility of multiple salaries, and generally adds clarifying specificity.

Second, the salary payment to the candidate must not exceed the minimum annual salary for the Federal office sought. Thus, if a candidate seeks a seat held by a member of the House of Representatives or the Senate who holds a leadership position, and is thus paid more than the minimum salary payable to a member of the House of Representatives or the Senate, respectively, the candidate's salary payment shall nonetheless not exceed the lowest salary for the Federal office that he or she seeks. Any salary payment to a candidate from campaign funds in excess of the salary paid to a Federal officeholder—U.S. House, U.S. Senate, or the Presidency—shall be considered personal use. *See* definition of "Individual holding Federal office," 11 CFR 300.2(o). *See also* 11 CFR 113.1(c) and 11 CFR 100.4. Further, any earned income that the candidate receives from salaries or wages from any other source will count towards the limit of the minimum annual salary for the Federal office sought. This condition will prevent candidates from paying themselves a salary from campaign funds on top of other earned income that they receive from other sources, such as from private-sector employment, to the extent that such combined payments exceed the minimum annual salary for the Federal office that the candidate is seeking. This ceiling on permissible candidate salaries from campaign funds is intended to prevent possible abuse in terms of candidates paying themselves exorbitant salaries, and will likewise ensure that a challenger may be paid out of campaign funds no more than the officeholder whom he or she is running against is paid by the government for his or her government service. Additionally, no candidate may receive a salary from campaign funds in excess of what he or she received as earned income in the year prior to becoming a candidate. This additional safeguard will help ensure that campaign salaries are not used to enrich candidates, but instead used to compensate candidates for lost income that is forgone due to becoming a candidate.

Third, the final rule requires candidates who avail themselves of this salary provision to provide income tax records from the relevant years and other evidence of earned income upon the request of the Commission.

Fourth, payments made under this paragraph must be computed on a pro-rata basis. This is intended to prevent a candidate's principal campaign committee from paying the candidate the entire minimum annual salary for the Federal office sought by the candidate, unless he or she is a candidate, as defined by 11 CFR 100.3(a), for at least one year. Any tax payments required by the Internal Revenue Service, or state and/or local governments, are the responsibility of the candidate.

Fifth, an incumbent Federal officeholder, as defined in 11 CFR 100.5(f)(1), must not receive salary payments as a candidate from campaign funds. Otherwise, of course, such an incumbent officeholder would be receiving two salaries, one from his or her campaign and one for his or her official duties.

Sixth, under the final rules at 11 CFR 113.1(g)(1)(i)(I), the first payment of a salary from campaign funds to a candidate must be made no earlier than the filing deadline for access to the primary election ballot for Federal candidates, as determined by State law, or in those states that do not conduct primaries, on January 1 of each even-numbered year. *See* 11 CFR 100.24(a)(1)(i). If the candidate wins the primary election, the principal campaign committee may continue to pay him or her a salary from campaign funds through the date of the general election, up to and including the date of any general runoff. Id. If the candidate loses the primary, withdraws from the race, or otherwise ceases to be a candidate, no salary payments may be paid beyond that date. In odd-numbered years in which a special election for a Federal office occurs, the principal campaign committee of a candidate may pay him or her a salary from campaign funds starting on the date the special election is set and ending on the day of the special election. *See* 11 CFR 100.24(a)(1)(ii).

In making this decision, the Commission is satisfied that, because all candidate and family members' salaries will be fully disclosed to the public, those who contribute to the campaign and who support the candidate will be able to voice their approval, or disapproval, of this use of campaign funds.

4. 11 CFR 113.1(g)(1)(i)(J) and 11 CFR 113.1(g)(1)(ii)(C)—Noncampaign-Related Trips

One issue on which the Commission requested comment is raised by 2 U.S.C. 439a(b)(2)(E), which specifically included a *"vacation or other noncampaign-related trip"* (emphasis added) as a *per se* statutorily prohibited personal use. The NPRM accordingly proposed to add "[a] vacation or other noncampaign-related trip" to the regulatory list of *per se* personal uses in proposed 11 CFR 113.1(g)(1)(i)(K). The Commission also proposed to modify the pre-BCRA case-by-case rules at 11 CFR 113.1(g)(1)(ii)(C), which applies to "travel expenses" to reflect the changes made by BCRA. Seven sets of commenters, including the principal sponsors of BCRA, addressed the Commission's proposal.

The principal sponsors of BCRA stated that Congress had intentionally left intact the statutory provision that states that campaign funds may be used "for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office."[5] *Compare* pre-BCRA 2 U.S.C. 439a with new 2 U.S.C. 439a(a)(2); *see also* 11 CFR 113.1(g)(5). The principal sponsors explained that Congress did not intend to modify current law or practice governing the use of campaign funds for travel expenses in connection with officeholders' duties. Consequently, they requested that the Commission modify the following regulations: proposed 11 CFR 113.1(g)(1)(i)(J); proposed 113.1(g)(1)(i)(K); proposed 11 CFR 113.1(g)(ii)(C); and 11 CFR 113.1(g)(5).

Another group of commenters also observed that new section 439a(a)(2) states that campaign funds may be used "for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office." This language, these commenters stated, expresses Congress's intent to allow Senators to use campaign funds for their official expenses, including fact-finding trips. These commenters also pointed out that fact-finding trips, which members would not take but for their official duties, would not occur "irrespective" of their official duties. Therefore, these trips constitute part of members' official duties and do not constitute a prohibited personal use of campaign funds.

Finally, two commenters acknowledged that 2 U.S.C. 439a(b)(2) includes a vacation or noncampaign-related trip in the list of prohibited uses. Nonetheless, they asserted that, if the Commission were to issue regulations to ban the use of campaign funds for noncampaign-related travel, it would be ignoring Congress's clear authorization in amended 2 U.S.C. 439a(a)(2) to allow the use of campaign funds for expenses incurred in connection with an individual's duties as a Federal officeholder, and the "irrespective" test, which, as stated above, is now part of amended 2 U.S.C. 439a(b)(2). They urged the Commission to construe the statute as a whole.

Other commenters also argued that the Commission should not prohibit the use of campaign funds to pay for all noncampaign-related travel, including fact-finding trips. As did the previous commenters, these commenters noted that BCRA permits the use of campaign funds "for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office." Therefore, the commenters urged the Commission not to adopt regulations defining "noncampaign-related" travel as a *per se* prohibited personal use, but rather to evaluate travel on a case-by-case basis under 11 CFR 113.1(g)(1)(ii)(C), as has been the Commission's rule.

Another commenter asserted that the Commission has historically treated the use of campaign funds for campaign-related travel and for officeholder travel as permissible. This commenter argued that the language of amended 2 U.S.C. 439a(a) has explicitly made this practice permissible by listing both campaign expenditures and officeholder-related expenses as acceptable uses of campaign funds. If, according to the commenter, Congress intended to change its longstanding practice, it would have done so explicitly, in its list of *per se* prohibited personal uses. This commenter concluded that Congress's failure to specifically exclude officeholder-related travel from the *per se* list of prohibited personal uses in amended 2 U.S.C. 439a(b)(2) was inadvertent, and recommended that the Commission exclude both officeholder-related travel and campaign-related travel from proposed 11 CFR 113.1(g)(1)(i)(K).

A commenter stated that there is no need to change the Commission's current personal use regulations because Congress did not intend either to limit or ban an officeholder's ability to use campaign funds for officeholder travel, even if the travel is not campaign-related, such as fact-finding trips. A different commenter maintained that campaign funds should not be used for fact-finding trips. Instead, the commenter recommended that campaign funds not be used for anything other than campaign costs, such as advertising and campaign literature, with the exception of charitable contributions.[6]

Based on Congressional guidance and the reasoning expressed in other comments concerning this matter, the Commission is not adding the "noncampaign-related trip" language to the list of *per se* personal uses in the final rules in 11 CFR 113.1(g)(1)(i)(J). Thus, this paragraph provides only that the use of campaign funds for a vacation is a *per se* personal use. (This proposed provision was designated as paragraph (g)(1)(i)(K) in the proposed rules.) The Commission is persuaded that amended section 439a(a), which provides that campaign funds may be used "for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office," encompasses certain noncampaign-related travel, notwithstanding the language of 2 U.S.C. 439a(b)(2)(E). Accordingly, aside from vacations, which are enumerated as a *per se* personal use in the final rules in 11 CFR 113.1(g)(1)(i)(J), the Commission will continue to evaluate travel expenses on a case-by-case basis under existing 11 CFR 113.1(g)(1)(ii)(C).

5. 11 CFR 113.1(g)(1)(ii)(D)—Noncampaign-Related Automobile Expenses

BCRA amended 2 U.S.C. 439a by including "a noncampaign-related automobile expense" in the list of *per se* prohibited uses of campaign funds. Given that statutory provision, the Commission proposed to delete vehicle expenses from the case-by-case rules set out in 11 CFR 113.1(g)(1)(ii).

Two sets of commenters addressed this proposal. BCRA's principal sponsors stated that the Commission's proposed regulation could be read, incorrectly, to completely prohibit the use of campaign funds for any vehicle expenses (other than for *de minimis* amounts), including campaign-related expenses. The other commenters argued

[5] For a detailed explanation of how the Commission's personal use rules interact with the rules of the House of Representatives and the Senate, see the Commission's 1995 Explanation and Justification of its rules concerning personal use of campaign funds at 60 FR 7870–7871 (Feb. 9, 1995).

[6] According to the commenter, charitable contributions made with campaign funds should be allowed as long as the candidates themselves do not receive tax deductions for the charitable contributions. The Commission notes that contributions to certain charities are permitted by 2 U.S.C. 439a(a)(3) and 11 CFR 113.1(g)(2). Whether those contributions are tax-deductible falls within the jurisdiction of the Internal Revenue Service.

that the Commission should not interpret BCRA to prohibit the use of campaign funds for all noncampaign-related vehicle expenses. Instead, these commenters urged the Commission to continue to permit, on a case-by-case basis, vehicle expenses paid for with campaign funds that are used for Federal officeholder purposes.

The Commission agrees with these reasons to continue to assess vehicle expenses on a case-by-case basis under 11 CFR 113.1(g)(1)(ii)(D). The text of proposed 11 CFR 113.1(g)(1)(i)(J) was identical to that of pre-BCRA 11 CFR 113.1(g)(1)(ii)(D). The Commission further notes that one of BCRA's principal sponsors explained that the " * * * personal use * * * provision is intended to *codify the FEC's current regulations* on the use of campaign funds for personal expenses * * *" (emphasis added). 148 *Cong. Rec.* S2143 (daily ed. March 20, 2002) (statement of Sen. Feingold).

The Commission acknowledges the BCRA's sponsors' observation that the beginning of paragraph (g)(1)(ii)(D) could be read to prohibit campaign and officeholder-related uses of vehicles funded by campaign contributions. ("Vehicle expenses, unless they are a *de minimis* amount.") 11 CFR 113.1(g)(1)(ii)(D)). The Commission notes, however, that this provision must be read together with the next sentence ("If a committee uses campaign funds to pay expenses associated with a vehicle that is used for both personal activities beyond a *de minimis* amount and campaign or officeholder related activities, the portion of the vehicle expenses associated with the personal activities is personal use, unless the person(s) using the vehicle for personal activities reimburse(s) the campaign account within thirty days for the expenses associated with the personal activities.").

6. 11 CFR 113.1(g)(5) and 11 CFR 113.1(g)(6)—Technical Changes

The Commission is making non-substantive changes to two cross-references in 11 CFR 113.1(g)(5) to the definition of "expenditure," and to one cross-reference in 11 CFR 113.1(g)(6) to the definition of "contribution." These citation changes conform to the reorganized regulations on "contributions" and "expenditures." 67 FR 50582 (Aug. 5, 2002).

7. 11 CFR 113.1(g)(7) Members of Candidate Family

The Commission is revising the provision in this regulation that includes as a member of the candidate's family a person who shares a residence with the candidate. This change was not addressed in the NPRM, but is being included to clarify the intent of the regulation and to eliminate any potential conflict with the Defense of Marriage Act, 1 U.S.C. § 7. While the personal use prohibition applies to "any person," the regulations apply special scrutiny to members of a candidate's family as potential conduits for evasion of the personal use prohibition. At the same time, the regulations recognize that a joint account shared with one or more family members may be used to pay a candidate's personal living expenses without the role of the family members in such payments being treated as a contribution. 11 CFR 113.1(g)(6)(ii).

The revised regulation recognizes that any payments to a person sharing a residence with a candidate could serve as a means of supporting the candidate's personal living expenses and thus bans gifts from the campaign to family members or persons residing with the candidate, 11 CFR 113.1(g)(4), subjects salary payments by the campaign to such persons to certain conditions, 11 CFR 113.1(g)(1)(H), and limits payments for real or personal property owned by family members and used for campaign purposes. 11 CFR 113.1(g)(1)(E)(2). Use of campaign funds for mortgage, rent or utility payments for the residence of a candidate or of a member of the candidate's family is also prohibited, 11 CFR 113.1(g)(1)(E)(1), but would not operate any differently in the case of a family member who resides with the candidate. Similarly, anyone actually residing with a candidate could pay a share of living expenses without having those payments be deemed contributions to the candidate's campaign. Finally, personal funds of candidates would include the candidate's share of any joint accounts held by the candidate and a person residing with the candidate. 11 CFR 113.1(g)(6)(ii).

The revised regulation includes any person residing with the candidate within the definition of "Members of the candidate's family." The provision formerly included "a person who has a committed relationship with the candidate, such as sharing a residence and having mutual responsibility for each other's personal welfare or living expenses." The "committed relationship" condition could have been read as an approximation of marriage, especially as the 1995 Explanation and Justification for this provision, 60 FR 7872 (Feb. 29, 1995), stated that persons in this committed relationship category "will be treated as the equivalent of the candidate's spouse." This rendering of the statute appears to be prohibited by the Defense of Marriage Act, 1 U.S.C. § 7, which provides that "[i]n determining the meaning of any Act of Congress, or of any ruling, regulation, of interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife."

In addition, the Commission was concerned that a committed relationship does not represent a generally recognized legal test (for instance, most states do not recognize non-marital relationships contemplated by the "committed relationship" provision) and thus would be difficult for the Commission to ascertain and enforce if called upon to do so. The question of residence or domicile on the other hand is a factual matter that does not call upon the Commission to inquire into or make judgments about the nature of the relationship between a candidate and persons residing with the candidate.

8. 11 CFR 113.1(g)(8)—Recordkeeping Requirement

In the NPRM, the Commission proposed new 11 CFR 113.1(g)(8), a recordkeeping requirement for campaign funds used for expenses that may be partly personal in nature. Such expenses may include vehicle, legal, meal, and travel expenses. *See* 11 CFR 113.1(g)(1)(ii)(A) through (D) and 11 CFR 113.2. As stated in the NPRM, the proposed regulation is based on the analysis in AO 2001–3, which advised that a member of Congress who proposed to pay for a vehicle with campaign funds and use it for a combination of campaign, official, and personal uses, should keep a log detailing each use of the car. Keeping such logs will help the Commission to determine to what extent "case-by-case" expenses are personal in nature. No commenters addressed this provision. The Commission adopts this provision as 11 CFR 113.1(g)(8), with one modification to clarify that the log will also serve to distinguish personal uses from uses related to a Federal office holder's duties.

Amended Provisions of 11 CFR 113.2

Given the amendments BCRA made to 2 U.S.C. 439a described above regarding the deletion of the phrase "excess campaign funds" and the amendments being made to 11 CFR 113.1, the Commission is revising section 113.2 in several respects. First, the title and the introductory portion of this section are being changed to more clearly convey that this section sets forth the permissible non-campaign uses of funds in a campaign account, rather than uses of what were previously called "excess campaign funds."

In the NPRM, the Commission noted that former 2 U.S.C. 439a included the phrase "for any other lawful purpose" in addition to enumerating permissible uses of excess campaign funds. BCRA amended section 439a by deleting "any other lawful purpose" from the list of permitted uses. Nonetheless, in the NPRM, the Commission proposed retaining that term in pre-BCRA 11 CFR 113.2(d). One commenter disagreed with the Commission's proposed rule and recommended that the "any other lawful purpose" language be deleted from the regulation. This commenter noted that pre-BCRA 11 CFR 113.2(d), which closely tracks the wording of section 439a, provides for four broad permissible uses of campaign funds: (1) Ordinary and necessary expenses incurred in connection with the duties of a holder of Federal office; (2) contributions to an organization described in 26 U.S.C. 170(c); (3) transfers to a national, state or local party committee; and (4) any other lawful purpose, except that such funds may not be converted to personal use, other than to defray officeholder expenses or repay loans made by the candidate for campaign purposes. Pointing out that BCRA deletes "any other lawful purpose" as an expressly permissible use of campaign funds, the commenter argued that BCRA reduces the categories of permissible uses of campaign funds from four to three. Thus, the commenter concluded that the "any other lawful purpose" language in 11 CFR 113.2(d) should be deleted and that the regulation should be revised accordingly.

The Commission concludes that the commenter's reasoning is correct, and therefore is removing and reserving paragraph (d) of former section 113.2, which referred to "any other lawful purpose." With this revision, it is now clear that in addition to defraying expenses in connection with a campaign for federal office, campaign funds may be used only for the enumerated non-campaign purposes identified in paragraphs (a), (b), and (c) of section 113.2, and that this listing of permissible non-campaign purposes is exhaustive.

The Commission notes that, pursuant to 2 U.S.C. 432(e)(3)(B), authorized committees also may make contributions of $1,000 or less to authorized committees of other candidates. This provision was not amended by BCRA which otherwise generally increased contribution limits to $2,000 per person. Authorized committees may make contributions to organizations other than those described in section 170(c) of the Internal Revenue Code of 1986 and other authorized committees (subject to the $1,000 limit) unless those contributions are in connection with the campaign for Federal office of the authorizing candidate. In furtherance of a Federal candidate's election, that Federal candidate may contribute to state and local candidates pursuant to this section.

A provision addressing the repayment of candidate loans has been deleted from section 113.2 as part of the removal of paragraph (d). The Commission will, if necessary, address this issue in the upcoming "Millionaires' Amendment" rulemaking. *See* 2 U.S.C. 441a(j).

Although the Commission is not amending section 113.2(e)(1), which refers to "excess funds," it is changing section 113.2(e)(1)(i), which refers to "any excess campaign or donated funds." These rules permit qualified Members of Congress who served in the 102d Congress or an earlier Congress to convert to personal use the unobligated balance of their excess funds as of Nov. 30, 1989. Paragraph (e)(1) addresses "excess funds," rather than "excess campaign funds," and sets forth detailed instructions to determine this amount. Revised paragraph (e)(1)(i) now refers simply to "campaign funds."

In light of Congress deleting the phrase "in excess of any amount to defray" campaign expenses from section 439a, and the Commission's revision herein to 11 CFR 113.1 and 113.2, officeholders may spend campaign funds to defray campaign expenses and expenses incurred in connection with the recipient's duties as a holder of federal office, and that such expenses may be paid in any order, at their discretion.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached final rules will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that national, State, and local party committees of the two major political parties to which the fraudulent solicitation, disclaimers, and civil penalties rules apply are not small entities under 5 U.S.C. 601. In addition, the rules for personal use only affect individuals, not entities, and the rules for the prohibition on fraudulent solicitation do not carry an economic impact. Furthermore, the requirements of the disclaimer rules as applied to small entities are no more than what is necessary to comply with the new statute enacted by Congress, and in any event, such entities will not incur significant additional costs in complying with these requirements. The increase in civil penalties do not unduly burden small entities since a small entity would pay a civil penalty only if the entity engaged in a specific knowing and willful violation of the Act.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 110

Campaign funds, and political committees and parties.

11 CFR Part 111

Campaign funds, and political committee and parties.

11 CFR Part 113

Campaign funds, and political candidates.

For the reasons set out in the preamble, subchapter A of chapter I of title 11 of the *Code of Federal Regulations* is amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 434, 438(a)(8).

2. Section 100.18 is revised to read as follows:

§ 100.18 Act (2 U.S.C. 431(19)).

Act means the Federal Election Campaign Act of 1971 (Pub. L. 92–225), as amended in 1974 (Pub. L. 93–443), 1976 (Pub. L. 94–283), 1980 (Pub. L. 96–187), and 2002 (Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155).

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

3. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, and 441k.

4. Section 110.11 is revised to read as follows:

§ 110.11 Communications; advertising; disclaimers (2 U.S.C 441d).

(a) *Scope.* This section applies only to public communications, defined for this

section to include the communications at 11 CFR 100.26 plus unsolicited electronic mail of more than 500 substantially similar communications and Internet websites of political committees available to the general public, and electioneering communications as defined in 11 CFR 100.29. The following types of such communications must include disclaimers, as specified in this section:

(1) All public communications for which a political committee makes a disbursement.

(2) All public communications by any person that expressly advocate the election or defeat of a clearly identified candidate.

(3) All public communications by any person that solicit any contribution.

(4) All electioneering communications by any person.

(b) *General content requirements.* A disclaimer required by paragraph (a) of this section must contain the following information:

(1) If the communication, including any solicitation, is paid for and authorized by a candidate, an authorized committee of a candidate, or an agent of either of the foregoing, the disclaimer must clearly state that the communication has been paid for by the authorized political committee;

(2) If the communication, including any solicitation, is authorized by a candidate, an authorized committee of a candidate, or an agent of either of the foregoing, but is paid for by any other person, the disclaimer must clearly state that the communication is paid for by such other person and is authorized by such candidate, authorized committee, or agent; or

(3) If the communication, including any solicitation, is not authorized by a candidate, authorized committee of a candidate, or an agent of either of the foregoing, the disclaimer must clearly state the full name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication, and that the communication is not authorized by any candidate or candidate's committee.

(c) *Disclaimer specifications.*

(1) *Specifications for all disclaimers.* A disclaimer required by paragraph (a) of this section must be presented in a clear and conspicuous manner, to give the reader, observer, or listener adequate notice of the identity of the person or political committee that paid for and, where required, that authorized the communication. A disclaimer is not clear and conspicuous if it is difficult to read or hear, or if the placement is easily overlooked.

(2) *Specific requirements for printed communications.* In addition to the general requirement of paragraphs (b) and (c)(1) of this section, a disclaimer required by paragraph (a) of this section that appears on any printed public communication must comply with all of the following:

(i) The disclaimer must be of sufficient type size to be clearly readable by the recipient of the communication. A disclaimer in twelve (12)-point type size satisfies the size requirement of this paragraph (c)(2)(i) when it is used for signs, posters, flyers, newspapers, magazines, or other printed material that measure no more than twenty-four (24) inches by thirty-six (36) inches.

(ii) The disclaimer must be contained in a printed box set apart from the other contents of the communication.

(iii) The disclaimer must be printed with a reasonable degree of color contrast between the background and the printed statement. A disclaimer satisfies the color contrast requirement of this paragraph (c)(2)(iii) if it is printed in black text on a white background or if the degree of color contrast between the background and the text of the disclaimer is no less than the color contrast between the background and the largest text used in the communication.

(iv) The disclaimer need not appear on the front or cover page of the communication as long as it appears within the communication, except on communications, such as billboards, that contain only a front face.

(v) A communication that would require a disclaimer if distributed separately, that is included in a package of materials, must contain the required disclaimer.

(3) *Specific requirements for radio and television communications authorized by candidates.* In addition to the general requirements of paragraphs (b) and (c)(1) of this section, a communication that is authorized or paid for by a candidate or the authorized committee of a candidate (*see* paragraph (b)(1) or (b)(2) of this section) that is transmitted through radio or television, or through any broadcast, cable, or satellite transmission, must comply with the following:

(i) A communication transmitted through radio must include an audio statement by the candidate that identifies the candidate and states that he or she has approved the communication; or

(ii) A communication transmitted through television or through any broadcast, cable, or satellite transmission, must include a statement that identifies the candidate and states that he or she has approved the communication. The candidate shall convey the statement either:

(A) Through an unobscured, full-screen view of himself or herself making the statement, or

(B) Through a voice-over by himself or herself, accompanied by a clearly identifiable photographic or similar image of the candidate. A photographic or similar image of the candidate shall be considered clearly identified if it is at least eighty (80) percent of the vertical screen height.

(iii) A communication transmitted through television or through any broadcast, cable, or satellite transmission, must also include a similar statement that must appear in clearly readable writing at the end of the television communication. To be clearly readable, this statement must meet all of the following three requirements:

(A) The statement must appear in letters equal to or greater than four (4) percent of the vertical picture height;

(B) The statement must be visible for a period of at least four (4) seconds; and

(C) The statement must appear with a reasonable degree of color contrast between the background and the text of the statement. A statement satisfies the color contrast requirement of this paragraph (c)(3)(iii)(C) if it is printed in black text on a white background or if the degree of color contrast between the background and the text of the statement is no less than the color contrast between the background and the largest type size used in the communication.

(iv) The following are examples of acceptable statements that satisfy the spoken statement requirements of paragraph (c)(3) of this section with respect to a radio, television, or other broadcast, cable, or satellite communication, but they are not the only allowable statements:

(A) "I am [insert name of candidate], a candidate for [insert Federal office sought], and I approved this advertisement."

(B) "My name is [insert name of candidate]. I am running for [insert Federal office sought], and I approved this message."

(4) *Specific requirements for radio and television communications paid for by other persons and not authorized by a candidate.* In addition to the general requirements of paragraphs (b) and (c)(1) of this section, a communication not authorized by a candidate or a candidate's authorized committee that is transmitted through radio or television or through any broadcast, cable, or satellite transmission, must comply with the following:

(i) A communication transmitted through radio or television or through any broadcast, cable, or satellite transmission, must include the following audio statement, "XXX is responsible for the content of this advertising," spoken clearly, with the blank to be filled in with the name of the political committee or other person paying for the communication, and the name of the connected organization, if any, of the payor unless the name of the connected organization is already provided in the "XXX is responsible" statement; and

(ii) A communication transmitted through television, or through any broadcast, cable, or satellite transmission, must include the audio statement required by paragraph (c)(4)(i) of this section. That statement must be conveyed by an unobscured full-screen view of a representative of the political committee or other person making the statement, or by a representative of such political committee or other person in voice-over.

(iii) A communication transmitted through television or through any broadcast, cable, or satellite transmission, must also include a similar statement that must appear in clearly readable writing at the end of the communication. To be clearly readable, the statement must meet all of the following three requirements:

(A) The statement must appear in letters equal to or greater than four (4) percent of the vertical picture height;

(B) The statement must be visible for a period of at least four (4) seconds; and

(C) The statement must appear with a reasonable degree of color contrast between the background and the disclaimer statement. A disclaimer satisfies the color contrast requirement of this paragraph (c)(4)(iii)(C) if it is printed in black text on a white background or if the degree of color contrast between the background and the text of the disclaimer is no less than the color contrast between the background and the largest type size used in the communication.

(d) *Coordinated party expenditures and independent expenditures by political party committees.*

(1)(i) For a communication paid for by a political party committee pursuant to 2 U.S.C. 441a(d), the disclaimer required by paragraph (a) of this section must identify the political party committee that makes the expenditure as the person who paid for the communication, regardless of whether the political party committee was acting in its own capacity or as the designated agent of another political party committee.

(ii) A communication made by a political party committee pursuant to 2 U.S.C. 441a(d) and distributed prior to the date the party's candidate is nominated shall satisfy the requirements of this section if it clearly states who paid for the communication.

(2) For purposes of this section, a communication paid for by a political party committee, other than a communication covered by paragraph (d)(1)(ii) of this section, that is being treated as a coordinated expenditure under 2 U.S.C. 441a(d) and that was made with the approval of a candidate, a candidate's authorized committee, or the agent of either shall identify the political party that paid for the communication and shall state that the communication is authorized by the candidate or candidate's authorized committee.

(3) For a communication paid for by a political party committee that constitutes an independent expenditure under 11 CFR 100.16, the disclaimer required by this section must identify the political party committee that paid for the communication, and must state that the communication is not authorized by any candidate or candidate's authorized committee.

(e) *Exempt activities.* A public communication authorized by a candidate, authorized committee, or political party committee, that qualifies as an exempt activity under 11 CFR 100.140, 100.147, 100.148, or 100.149, must comply with the disclaimer requirements of paragraphs (a), (b), (c)(1), and (c)(2) of this section, unless excepted under paragraph (f)(1) of this section, but the disclaimer does not need to state whether the communication is authorized by a candidate, or any authorized committee or agent of any candidate.

(f) *Exceptions.* (1) The requirements of paragraphs (a) through (e) of this section do not apply to the following:

(i) Bumper stickers, pins, buttons, pens, and similar small items upon which the disclaimer cannot be conveniently printed;

(ii) Skywriting, water towers, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable; or

(iii) Checks, receipts, and similar items of minimal value that are used for purely administrative purposes and do not contain a political message.

(2) For purposes of this section, whenever a separate segregated fund or its connected organization solicits contributions to the fund from those persons it may solicit under the applicable provisions of 11 CFR part 114, or makes a communication to those persons, such communication shall not be considered a type of public communication and need not contain the disclaimer required by paragraphs (a) through (c) of this section.

(g) *Comparable rate for campaign purposes.*

(1) No person who sells space in a newspaper or magazine to a candidate, an authorized committee of a candidate, or an agent of the candidate, for use in connection with the candidate's campaign for nomination or for election, shall charge an amount for the space which exceeds the comparable rate for the space for non-campaign purposes.

(2) For purposed of this section, comparable rate means the rate charged to a national or general rate advertiser, and shall include discount privileges usually and normally available to a national or general rate advertiser.

5. Section 110.16 is added to read as follows:

§ 110.16 Prohibitions on fraudulent misrepresentations.

(a) *In general.* No person who is a candidate for Federal office or an employee or agent of such a candidate shall—

(1) Fraudulently misrepresent the person or any committee or organization under the person's control as speaking or writing or otherwise acting for or on behalf of any other candidate or political party or employee or agent thereof in a matter which is damaging to such other candidate or political party or employee or agent thereof; or

(2) Willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (a)(1) of this section.

(b) *Fraudulent solicitation of funds.* No person shall—

(1) Fraudulently misrepresent the person as speaking, writing, or otherwise acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations; or

(2) Willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (b)(1) of this section.

PART 111—COMPLIANCE PROCEDURE (2 U.S.C. 437g, 437d(a))

6. The authority citation for part 111 continues to read as follows:

Authority: 2 U.S.C. 437g, 437d(a), 438(a)(8); 28 U.S.C. 2461 nt.

7. In § 111.24, paragraph (a) is revised as follows:

§ 111.24 Civil penalties (2 U.S.C. 437g(a)(5), (6), (12), 28 U.S.C. 2461 nt.).

(a) Except as provided in 11 CFR part 111, subpart B and in paragraph (b) of this section, a civil penalty negotiated by the Commission or imposed by a court for a violation of the Act or chapters 95 or 96 of title 26 (26 U.S.C.) shall be as follows:

(1) Except as provided in paragraph (a)(2) of this section, in the case of a violation of the Act or chapters 95 or 96 of title 26 (26 U.S.C.), the civil penalty shall not exceed the greater of $5,500 or an amount equal to any contribution or expenditure involved in the violation.

(2) Knowing and willful violations.

(i) In the case of a knowing and willful violation of the Act or chapters 95 or 96 of title 26 (26 U.S.C.), the civil penalty shall not exceed the greater of $11,000 or an amount equal to 200% of any contribution or expenditure involved in the violation.

(ii) Notwithstanding paragraph (a)(2)(i) of this section, in the case of a knowing and willful violation of 2 U.S.C. 441f, the civil penalty shall not be less than 300% of the amount of any contribution involved in the violation and shall not exceed the greater of $50,000 or 1,000% of the amount of any contribution involved in the violation.

* * * * *

PART 113—USE OF CAMPAIGN ACCOUNTS FOR NON-CAMPAIGN PURPOSES (2 U.S.C. 439a)

8. The authority citation for part 113 continues to read as follows:

Authority: 2 U.S.C. 432(h), 438(a)(8), 439a, and 441a.

9. In § 113.1, paragraphs (b) and (g) are revised to read as follows, and paragraph (e) is removed and reserved:

§ 113.1 Definitions (2 U.S.C. 439a).

* * * * *

(b) *Office account.* Office account means an account established for the purposes of supporting the activities of a Federal or State officeholder which contains campaign funds and funds donated, but does not include an account used exclusively for funds appropriated by Congress, a State legislature, or another similar public appropriating body, or an account of the officeholder which contains only the personal funds of the officeholder.

* * * * *

(e) [Removed and reserved]

* * * * *

(g) *Personal use. Personal use* means any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder.

(1)(i) Personal use includes but is not limited to the use of funds in a campaign account for any item listed in paragraphs (g)(1)(i)(A) through (J) of this section:

(A) Household food items or supplies.

(B) Funeral, cremation or burial expenses except those incurred for a candidate (as defined in 11 CFR 100.3) or an employee or volunteer of an authorized committee whose death arises out of, or in the course of, campaign activity.

(C) Clothing, other than items of *de minimis* value that are used in the campaign, such as campaign "T-shirts" or caps with campaign slogans.

(D) Tuition payments, other than those associated with training campaign staff.

(E) Mortgage, rent or utility payments—

(*1*) For any part of any personal residence of the candidate or a member of the candidate's family; or

(*2*) For real or personal property that is owned by the candidate or a member of the candidate's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property usage.

(F) Admission to a sporting event, concert, theater or other form of entertainment, unless part of a specific campaign or officeholder activity.

(G) Dues, fees or gratuities at a country club, health club, recreational facility or other nonpolitical organization, unless they are part of the costs of a specific fundraising event that takes place on the organization's premises.

(H) Salary payments to a member of the candidate's family, unless the family member is providing *bona fide* services to the campaign. If a family member provides *bona fide* services to the campaign, any salary payment in excess of the fair market value of the services provided is personal use.

(I) Salary payments by a candidate's principal campaign to a candidate in excess of the lesser of: the minimum salary paid to a Federal officeholder holding the Federal office that the candidate seeks; or the earned income that the candidate received during the year prior to becoming a candidate. Any earned income that a candidate receives from salaries or wages from any other source shall count against the foregoing limit of the minimum salary paid to a Federal officeholder holding the Federal office that the candidate seeks. The candidate must provide income tax records from the relevant years and other evidence of earned income upon the request of the Commission. Salary shall not be paid to a candidate before the filing deadline for access to the primary election ballot for the Federal office that the candidate seeks, as determined by State law, or in those states that do not conduct primaries, on January 1 of each even-numbered year. *See* 11 CFR 100.24(a)(1)(i). If the candidate wins the primary election, his or her principal campaign committee may pay him or her a salary from campaign funds through the date of the general election, up to and including the date of any general election runoff. If the candidate loses the primary, withdraws from the race, or otherwise ceases to be a candidate, no salary payments may be paid beyond the date he or she is no longer a candidate. In odd-numbered years in which a special election for a Federal office occurs, the principal campaign committee of a candidate for that office may pay him or her a salary from campaign funds starting on the date the special election is set and ending on the day of the special election. *See* 11 CFR 100.24(a)(1)(ii). During the time period in which a principal campaign committee may pay a salary to a candidate under this paragraph, such payment must be computed on a pro-rata basis. A Federal officeholder, as defined in 11 CFR 100.5(f)(1), must not receive salary payments as a candidate from campaign funds.

(J) A vacation.

(ii) The Commission will determine, on a case-by-case basis, whether other uses of funds in a campaign account fulfill a commitment, obligation or expense that would exist irrespective of the candidate's campaign or duties as a Federal officeholder, and therefore are personal use. Examples of such other uses include:

(A) Legal expenses;

(B) Meal expenses;

(C) Travel expenses, including subsistence expenses incurred during travel. If a committee uses campaign funds to pay expenses associated with travel that involves both personal activities and campaign or officeholder-related activities, the incremental expenses that result from the personal activities are personal use, unless the person(s) benefiting from this use reimburse(s) the campaign account within thirty days for the amount of the incremental expenses, and

(D) Vehicle expenses, unless they are a *de minimis* amount. If a committee uses campaign funds to pay expenses associated with a vehicle that is used for both personal activities beyond a *de minimis* amount and campaign or officeholder-related activities, the portion of the vehicle expenses associated with the personal activities is personal use, unless the person(s) using the vehicle for personal activities reimburse(s) the campaign account within thirty days for the expenses associated with the personal activities.

(2) *Charitable donations.* Donations of campaign funds or assets to an organization described in section 170(c) of Title 26 of the United States Code are not personal use, unless the candidate receives compensation from the organization before the organization has expended the entire amount donated for purposes unrelated to his or her personal benefit.

(3) *Transfers of campaign assets.* The transfer of a campaign committee asset is not personal use so long as the transfer is for fair market value. Any depreciation that takes place before the transfer must be allocated between the committee and the purchaser based on the useful life of the asset.

(4) *Gifts.* Gifts of nominal value and donations of a nominal amount made on a special occasion such as a holiday, graduation, marriage, retirement, or death are not personal use, unless made to a member of the candidate's family.

(5) *Political or officially connected expenses.* The use of campaign funds for an expense that would be a political expense under the rules of the United States House of Representatives or an officially connected expense under the rules of the United States Senate is not personal use to the extent that the expense is an expenditure under subpart D of part 100 or an ordinary and necessary expense incurred in connection with the duties of a holder of Federal office. Any use of funds that would be personal use under paragraph (g)(1) of this section will not be considered an expenditure under subpart D of part 100 or an ordinary and necessary expense incurred in connection with the duties of a holder of Federal office.

(6) *Third party payments.* Notwithstanding that the use of funds for a particular expense would be a personal use under this section, payment of that expense by any person other than the candidate or the campaign committee shall be a contribution under subpart B of part 100 to the candidate unless the payment would have been made irrespective of the candidacy. Examples of payments considered to be irrespective of the candidacy include, but are not limited to, situations where—

(i) The payment is a donation to a legal expense trust fund established in accordance with the rules of the United States Senate or the United States House of Representatives;

(ii) The payment is made from funds that are the candidate's personal funds as defined in 11 CFR 110.10(b), including an account jointly held by the candidate and a member of the candidate's family;

(iii) Payments for that expense were made by the person making the payment before the candidate became a candidate. Payments that are compensation shall be considered contributions unless—

(A) The compensation results from *bona fide* employment that is genuinely independent of the candidacy;

(B) The compensation is exclusively in consideration of services provided by the employee as part of this employment; and

(C) The compensation does not exceed the amount of compensation which would be paid to any other similarly qualified person for the same work over the same period of time.

(7) *Members of the candidate's family.* For the purposes of paragraph (g) of this section, the candidate's family includes:

(i) The spouse of the candidate;

(ii) Any child, step-child, parent, grandparent, sibling, half-sibling or step-sibling of the candidate or the candidate's spouse;

(iii) The spouse of any child, step-child, parent, grandparent, sibling, half-sibling or step-sibling of the candidate; and

(iv) A person who shares a residence with the candidate.

(8) *Recordkeeping.* For those uses of campaign funds described in proposed paragraphs (g)(1)(i) and (g)(1)(ii) of this section that involve both personal use and either campaign or office-holder use, a contemporaneous log or other record must be kept to document the dates and expenses related to the personal use of the campaign funds. The log must be updated whenever campaign funds are used for personal expenses, as described in paragraph (g)(1) of this section, rather than for campaign or office-holder expenses. The log or other record must also be maintained and preserved for 3 years after the report disclosing the disbursement is filed, pursuant to 11 CFR 102.9 and 104.14(b).

10. In § 113.2, the section heading, the introductory language, and paragraphs (e)(1)(i), (e)(5), and (f) are revised to read as follows, and paragraph (d) is removed and reserved:

§ 113.2 Permissible non-campaign uses of funds (2 U.S.C. 439a).

In addition to defraying expenses in connection with a campaign for federal office, funds in a campaign account or an account described in 11 CFR 113.3:

* * * * *

(d) [Removed and reserved]

(e) * * *

(1) * * *

(i) Cash assets the Member may convert any excess campaign or donated funds in an amount up to the Member's authorized committee(s)' cash on hand, determined under 11 CFR 104.3(a)(1), as of November 30, 1989, less the committee(s)' total outstanding debts as of that date.

* * * * *

(5) 103d Congress or later Congress: A qualified Member who serves in the 103d Congress or a later Congress may not convert to personal use any campaign or donated funds, as of the first day of such service.

(f) Nothing in this section modifies or supersedes other Federal statutory restrictions or relevant State laws that may apply to the use of campaign or donated funds by candidates or Federal officeholders.

Dated: December 10, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–31521 Filed 12–12–02; 8:45 am]

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To provide for the acquisition of land and construction of an interagency administrative and visitor facility at the entrance to American Fork Canyon, Utah, and for other purposes. (Dec. 6, 2002; 116 Stat. 2815)

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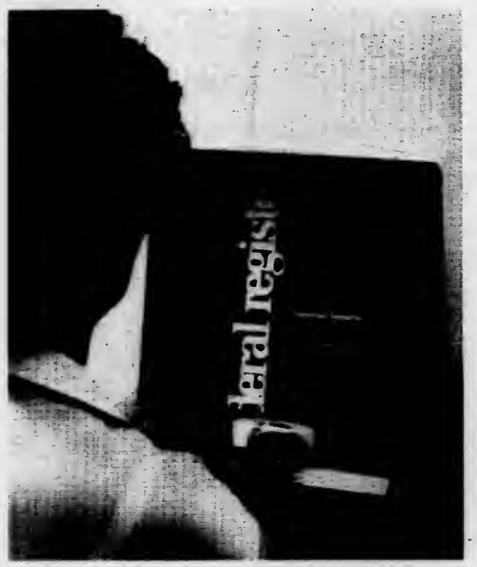
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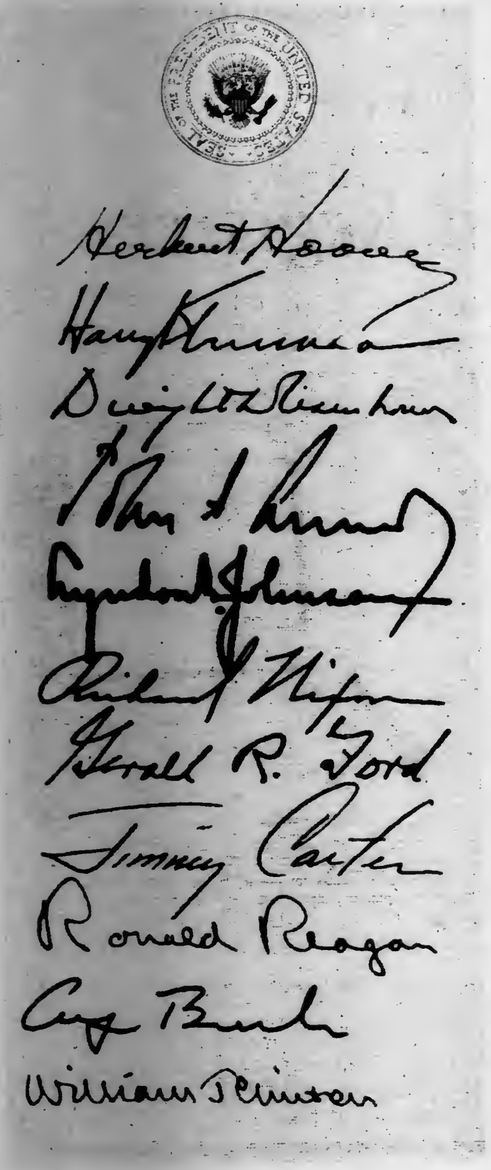
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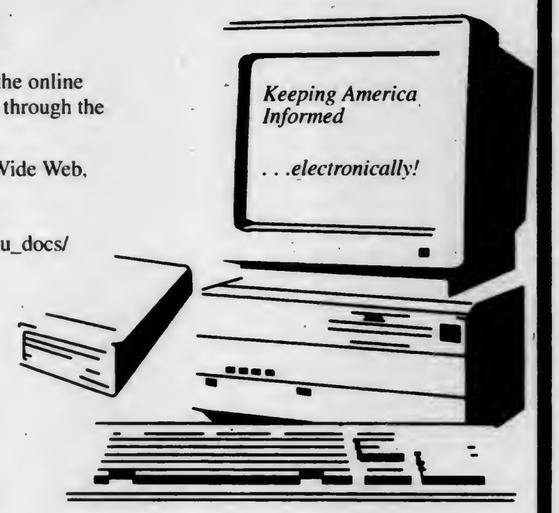
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Federal Register

12–16–02 Monday
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–11–AD; Amendment 39–12977; AD 2002–25–02]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. TPE331–3, –5, –6, –8, –10, and –11 Series Turboprop and TSE331–3 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Honeywell International Inc. (formerly AlliedSignal Inc., Garrett Turbine Engine Company and AiResearch Manufacturing Company of Arizona) TPE331–3, –5, –6, –8, –10, and –11 series turboprop and TSE331–3 series turboshaft engines. This amendment requires removing weld repaired first stage compressor impellers from service. This amendment is prompted by an uncontained TPE331–11U turboprop engine failure and an in-flight shutdown due to the separation of the first stage Ti 6–4 compressor impeller. The actions specified by this AD are intended to prevent uncontained engine failures, in-flight shutdowns, and secondary damage.

DATES: Effective January 21, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 21, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Honeywell Engines, Systems and Services, Technical Data Distribution, M/S 2101–201, P.O. Box 52170, Phoenix, AZ 85072–2170; telephone: (602) 365–2493 (General Aviation), (602) 365–5535 (Commercial); fax: (602) 365–5577 (General Aviation and Commercial). This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood CA 90712–4137; telephone: (562) 627–5246; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Honeywell International Inc. (formerly AlliedSignal Inc., Garrett Turbine Engine Company and AiResearch Manufacturing Company of Arizona) TPE331–3, –5, –6, –8, –10, and –11 series turboprop and TSE331–3 series turboshaft engines was published in the **Federal Register** on July 25, 2002 (67 FR 48577). That action proposed to require removing weld repaired first stage compressor impellers from service, in accordance with Honeywell Alert Service Bulletin TPE331–A72–2083, revision 1, dated May 17, 2002.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

One commenter states that paragraph (a)(3) as-written in the proposal, implies that the 12,500 cycle limit applies only to weld repairs that would be performed after the effective date of the AD. The FAA agrees, and has moved the last phrase of that paragraph which states, after the effective date of the AD, to the beginning of the sentence, for clarity.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 2,040 engines of the affected design in the worldwide fleet. The FAA estimates that 1,020 engines installed on aircraft of U.S. registry would be affected by this AD. The FAA estimates that 1,000 engines will have the required actions done during a scheduled engine overhaul. The FAA also estimates that it would take approximately 2 work hours per engine to do the actions during scheduled engine overhauls and 80 work hours per engine during unscheduled engine overhauls, and that the average labor rate is $60 per work hour. Required parts would cost approximately $9,600 per engine to do the actions during scheduled engine overhauls and $14,600 per engine which includes consumables, during unscheduled engine overhauls. Based on these figures, the total cost of the AD on U.S. operators is estimated to be $10,108,000.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–25–02 Honeywell International Inc.: Amendment 39–12977. Docket No. 2001–NE–11–AD.

Applicability: This airworthiness directive (AD) is applicable to Honeywell International Inc. (formerly AlliedSignal Inc., Garrett Turbine Engine Company and AiResearch Manufacturing Company of Arizona) TPE331–3, –5, –6, –8, –10, and –11 series turboprop and TSE331–3 series turboshaft engines. These engines are installed on, but not limited to Ayres S–2R series; Beech 18 and 45 series and Models JRB–6, 3N, 3NM, 3TM, and B100; Cessna Model 441; Construcciones Aeronauticas, S.A. (CASA) C–212 series; De Havilland DH 104 series 7AXC (Dove); Dornier 228 series; Fairchild SA226 and SA227 series (Swearingen Merlin and Metro series); Grumman American G–164 series; Jetstream 3101; Mitsubishi MU–2B series (MU–2 series); Prop-Jets, Inc. Model 400; Rockwell Commander S–2R; Shorts Brothers and Harland, Ltd. SC7 (Skyvan); Pilatus PC–6 series (Fairchild Porter and Peacemaker); and Schweizer G–164 series; and Twin Commander Aircraft Corp. (Jetprop Commander) Models 695 and 695A airplanes; and Sikorsky S–55 series (Helitec Corp. S55T) helicopters.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent an uncontained engine failure, in-flight shutdown, and secondary damage, do the following:

Removal of Weld Repaired First Stage Compressor Impellers From Service

(a) Remove from service weld repaired first stage compressor impellers, P/N's 896223–1, –2, –3, and –7 and 3107109–2, with SN's listed in Table 1 and Table 2 of the Accomplishment Instructions in 2.A.(1) and 2.A.(2) of Honeywell Alert Service Bulletin TPE331–A72–2083, revision 1, dated May 17, 2002, in accordance with the following schedule:

(1) Remove impellers with no record of cycles since weld repair, within 3,600 cycles-in-service (CIS) or at the next engine overhaul, or at the next major Continuous Airworthiness Maintenance (CAM) compressor section inspection, after the effective date of this AD, whichever occurs first.

(2) Remove impellers with more than 8,900 cycles since "weld repair," within 3,600 CIS, or at the next engine overhaul, or at the next major CAM compressor section inspection after the effective date of this AD, whichever occurs first.

(3) After the effective date of this AD, remove impellers with 8,900 or less cycles since "weld repair," before reaching 12,500 cycles since weld repair.

(b) For purposes of this AD, weld repaired or weld repair is defined as an impeller repair which involved heat treating and that was performed from 1980 through 1997 at Honeywell Aerospace Services, Aftermarket-Phoenix Repair and Overhaul, 1944 E. Sky Harbor Circle, Phoenix, AZ. 85034 (FAA Certificate Number ZN3R030M). Former names and FAA certificate numbers for Honeywell's Repair and Overhaul Facility are listed in section 2.A. of the Accomplishment Instructions in Honeywell Alert Service Bulletin TPE331–A72–2083, revision 1, dated May 17, 2002.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(e) The impeller removals must be done in accordance with Honeywell International Inc. Alert Service Bulletin TPE331–A72–2083, revision 1, dated May 17, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Honeywell Engines, Systems and Services, Technical Data Distribution, M/S 2101–201, P.O. Box 52170, Phoenix, AZ 85072–2170; telephone: (602) 365–2493 (General Aviation), (602) 365–5535 (Commercial); fax: (602) 365–5577 (General Aviation and Commercial). Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on January 21, 2003.

Issued in Burlington, Massachusetts, on December 2, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–31172 Filed 12–13–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–35–AD; Amendment 39–12980; AD 2002–25–05]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Limited BN–2 and BN2A Mk. III Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Pilatus Britten-Norman (Pilatus Britten-Norman) Limited BN–2 and BN2A Mk. III series airplanes. This AD requires you to inspect the universal joints on the pilot's and co-pilot's control column to determine the diameter of the shaft and replace any universal joint that is the wrong size. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to correct the installation of universal joints that have the wrong-sized shaft, which could result in failure of the pilot's and/or co-pilot's control column. Such failure could lead to loss of control of the airplane.

DATES: This AD becomes effective on February 3, 2003.

The Director of the Federal Register approved the incorporation by reference

of certain publications listed in the regulations as of February 3, 2003.

ADDRESSES: You may get the service information referenced in this AD from B–N Group Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–35–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all Pilatus Britten-Norman BN–2 and BN2A Mk. III series airplanes. The CAA reports that, during maintenance on one of the affected airplanes, an undersized universal joint was found. This installation of undersized universal joints is the result of a quality control problem.

What Is the Potential Impact if FAA Took No Action?

This condition, if not corrected, could cause failure of the pilot's and/or co-pilot's control column. Such failure could result in loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Pilatus Britten-Norman BN–2 and BN2A Mk. III series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 18, 2002 (67 FR 58737). The NPRM proposed to require you to inspect the universal joints on the pilot's and co-pilot's control column to determine the diameter of the shaft and replace any universal joint that is the wrong size.

Was the Public Invited to Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

What Are the Differences Between This AD, the Service Information, and the CAA AD?

The CAA AD and the service information requires inspection and, if necessary, replacement of any universal joint that is not the correct size within the next 10 hours time-in-service (TIS) after the effective date of the AD. We are requiring you to inspect and, if necessary, replace within 30 days after the effective date of this AD. We do not have justification to require this action within the next 10 hours TIS. We use compliance times such as this when we have identified an urgent safety of flight situation. We believe that 30 days will give the owners or operators of the affected airplanes enough time to have the actions accomplished without compromising the safety of the airplanes.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 135 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost per universal joint	Parts cost	Total cost per universal joint	Total cost on U.S. operators
1 workhour × $60 = $60 (3 universal joints per airplane).	No parts required	$60 ($60 × 3 universal joints per airplane = $180).	$180 × 135 = $24,300.

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost per universal joint	Parts cost	Total cost per universal joint
2 workhours × $60 = $120	$2,000 per universal joint	$120 + $2,000 = $2,120.

Compliance Time of This AD

What Is the Compliance Time of This AD?

The compliance time of this AD is "within the next 30 days after the effective date of this AD."

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

This unsafe condition is not a result of the number of times the airplane is operated. The chance of this situation occurring is the same for an airplane with 10 hours time-in-service (TIS) as it is for an airplane with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–25–05 Pilatus Britten-Norman Limited: Amendment 39–12980; Docket No. 2002–CE–35–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models, all serial numbers, that are certificated in any category:

Models

BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2T, BN–2T–4R, BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct the installation of universal joints that have the wrong-sized shaft, which could result in failure of the pilot's and/or co-pilot's control column. Such failure could lead to loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect all universal joints on the pilot's and co-pilot's control columns to determine the diameter of the shaft. (i) If the universal joint diameter is 1.154 to 1.155 inches, re-install into the airplane; and. (ii) If the universal joint diameter is not 1.154 to 1.155 inches in diameter, replace with a new universal joint that has the a diameter of 1.154 to 1.155 inches.	Inspect within the next 30 days after February 3, 2003 (the effective date of this AD). Replace prior to further flight after the inspection.	In accordance with B–N Group Ltd. Service Bulletin Number SB 284, Issue 1, dated May 9, 2002.
(2) Do not install any universal joint that is not 1.154 to 1.155 inches in diameter.	As of February 3, 2003 (the effective date of this AD).	In accordance with B–N Group Ltd. Service Bulletin Number SB 284, Issue 1, dated May 9, 2002.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with B–N Group Ltd. Service Bulletin Number SB 284, Issue 1, dated May 9, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from B–N Group Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in British AD Number 004–05–2002, dated May 30, 2002.

(i) *When does this amendment become effective?* This amendment becomes effective on February 3, 2003.

Issued in Kansas City, Missouri, on December 5, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–31394 Filed 12–13–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9025]

RIN 1545–BA05

Intercompany Transactions: Conforming Amendments to Section 446

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: On July 18, 1995, the Treasury Department and the IRS published final regulations governing the intercompany transaction system of the consolidated return regulations. Those regulations state that the timing rules of the intercompany transaction system are a method of accounting. At the time of the publication of those regulations, no amendment was made to the regulations promulgated under section 446 to coordinate with that statement. This document contains final regulations confirming that the timing rules of the intercompany transaction regulations are a method of accounting. These regulations apply to all taxpayers filing consolidated returns.

DATES: *Effective Date:* These regulations are effective December 16, 2002.

Applicability Date: These regulations apply to consolidated return years beginning on or after November 7, 2001.

FOR FURTHER INFORMATION CONTACT: Vincent Daly, (202) 622–7770, or Jeffery G. Mitchell (202) 622–4930 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

On July 18, 1995, the Treasury Department and the IRS published in the **Federal Register** (60 FR 36671 (1995–2 C.B. 147)) final regulations under § 1.1502–13 governing the intercompany transaction system of the consolidated return regulations. Included in such regulations was an express statement that "[t]he timing rules of [the intercompany transaction regulations] are a method of accounting for intercompany transactions, to be applied by each member in addition to the member's other methods of accounting." § 1.1502–13(a)(3)(i). At the time of the publication of those final regulations, no amendment was made to the regulations promulgated under section 446 to coordinate with the statement in § 1.1502–13(a)(3)(i) that the timing rules of § 1.1502–13 are a method of accounting.

In *General Motors* v. *Commissioner*, 112 T.C. 270 (1999), the Tax Court determined that the timing rule of former § 1.1502–13(b)(2) was not a method of accounting for purposes of section 446(e). On November 7, 2001, the Treasury and the IRS published in the **Federal Register** a notice of proposed rulemaking (REG–125161–01, 66 FR 56262 (2001–48 I.R.B. 538)) proposing amendments to CFR part 1 under section 446 of the Internal Revenue Code to confirm that the timing rules of § 1.1502–13 are a method of accounting. No written comments responding to the notice of proposed rulemaking were received, and no public hearing was requested or held. Therefore, the proposed regulations are adopted by this Treasury decision without change.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Vincent Daly, Office of the Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

2. Section 1.446–1 is amended by adding paragraph (c)(2)(iii) to read as follows:

§ 1.446–1 General rule for methods of accounting.

* * * * *

(c) * * *

(2) * * *

(iii) The timing rules of § 1.1502–13 are a method of accounting for intercompany transactions (as defined in § 1.1502–13(b)(1)(i)), to be applied by each member of a consolidated group in addition to the member's other methods of accounting. *See* § 1.1502–13(a)(3)(i). This paragraph (c)(2)(iii) is applicable to consolidated return years beginning on or after November 7, 2001.

* * * * *

3. In § 1.1502–13, the second sentence of paragraph (a)(3)(i) is revised to read as follows:

§ 1.1502–13 Intercompany transactions.

(a) * * *

(3) * * *

(i) * * * *See* § 1.1502–17 and, with regard to consolidated return years beginning on or after November 7, 2001, § 1.446–1(c)(2)(iii). * * *

* * * * *

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: December 9, 2002.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 02–31614 Filed 12–13–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

29 CFR Part 500

Migrant and Seasonal Agricultural Worker Protection

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The purpose of this document is to change the Public Registry toll-free telephone number listed in § 500.170 of regulations, 29 CFR part 500.

DATES: This rule is effective on December 16, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Ziegler, Team Leader, Farm Labor Team, Office of Enforcement Policy, Wage and Hour Division, Employment

Standards Administration, U.S. Department Labor, Telephone (202) 693–0700. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule imposes no reporting or recordkeeping requirements on the public.

II. Background

Section 500.170 of regulations, 29 CFR part 500 requires the Administrator to establish a Central Public Registry of all persons issued a Certificate of Registration or a Farm Labor Contractor Employee Certificate. Information contained within the registry is made available upon request, either via the mail or by telephone. The toll-free number to call for obtaining information from the central public registry was formerly 1–800–800–0235. The Department of Labor's change in phone service has resulted in a new toll-free number for all public inquiries. The new number is 1–866–4US–WAGE (1–866–487–9243).

A. Summary of Rule

Section 500.170 of Regulations, 29 CFR part 500 is amended to provide for a new toll-free telephone number for obtaining information contained in the Central Public Registry. The new number is 1–866–4US–WAGE (1–866–487–9243).

B. Executive Order 12866

Because this rule merely changes the applicable toll-free telephone number for obtaining registry information, it is limited to agency organization and management matters and is, therefore, not subject to the requirements of Executive Order 12866. *See* Sec. 3(d)(3) of E.O. 12866.

C. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b)(3), the requirements of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1165, 5 U.S.C. 601 *et seq.* pertaining to regulatory flexibility analysis, do not apply to this rule. *See* 5 U.S.C 601(2). The rule simply changes an applicable telephone number and will not have a significant economic impact on a substantial number of small entities.

D. Administrative Procedure Act

This regulation relates to internal agency practice or management or organization and is procedural in nature. Accordingly, pursuant to 5 U.S.C. §§ 553(a)(2) and 553 (b)(3)(A), the requirements for prior notice and public comment do not apply to this rule.

The Secretary also for good cause finds, pursuant to 5 U.S.C. 553(d)(3), that this rule should take effect immediately because it is merely a technical procedural change in an applicable toll-free telephone number which does not affect any substantive rights.

E. Document Preparation

This document was prepared under the direction and control of Tammy D. McCutchen, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 500

Administrative practice and procedure, Agricultural, Aliens, Carpools, Farmer, Farm labor contractor, Housing standards, Immigration, Insurance, Investigation, Labor, Manpower training programs, Migrant labor, Motor carriers, Motor vehicle safety, Occupational safety and health, Penalties, Reporting requirements, Safety, Seasonal agricultural workers, Transportation, Wages.

For the reasons set forth above, 29 CFR part 500 is amended as set forth below.

Signed at Washington, DC on this 10th day of December, 2002.

Tammy D. McCutchen,

Administrator, Wage and Hour Division.

PART 500—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION

1. The authority citation for part 500 is revised to read as follows:

Authority: Pub. L. 97–470, 96 Stat. 2583 (29 U.S.C. 1801–1872); Secretary's Order No. 4–2001, 66 FR 29656.

2. Section 500.170 is revised to read as follows:

§ 500.170 Establishment of registry.

The Administrator shall establish a central public registry of all persons issued a Certificate of Registration or a Farm Labor Contractor Employee Certificate. The central public registry shall be available at the Regional Offices of the Wage and Hour Division and its National Office in Washington, DC. Information filed therein shall be made available upon request. Requests for information contained in the registry may also be directed by mail to the Administrator, Wage and Hour Division. Attn: MSPA, U.S. Department of Labor, Washington, DC 20210. Alternatively, requests for registry information may be made by telephone by calling 1–866–4US–WAGE (1–866–487–9243), a toll-free number, during the hours of 8 a.m. to 5 p.m., in your time zone, Monday through Friday.

[FR Doc. 02–31525 Filed 12–13–02; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–02–122]

RIN 2115–AE46

Special Local Regulations; Winterfest Boat Parade, Broward County, Fort Lauderdale, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing special local regulations for the annual Winterfest Boat Parade held on the first Saturday falling between December 13 and 19, inclusive, each year in Fort Lauderdale, Florida. This rule creates four separate regulated areas and restricts operations of non-participant vessels in the regulated areas. These regulations are to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from 4 p.m. until 11 p.m. annually, on the first Saturday falling between December 13 and 19, inclusive.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of [CGD07–02–122] and are available for inspection or copying at Coast Guard Group Miami, 100 MacArthur Causeway, Miami Beach, Florida, 33139 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BMC Sorensen or BM1 Vaughn, Coast Guard Group Miami, Florida at (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On October 31, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Special Local Regulations; Winterfest Boat Parade, Borward County, Fort Lauderdale, FL" in the **Federal Register** (67 FR 66349). We did not receive any letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Winterfest Boat Parade is a nighttime parade of approximately 110 pleasure boats ranging in length from 20 feet to 200 feet decorated with holiday lights. Approximately 1500 spectator craft typically view the parade. The parade will form in the staging area at the Port Everglades turning basin and on a portion of the Intracoastal Waterway (ICW) south of the turning basin and will proceed north on the ICW to Lake Santa Barbara where the parade will disband.

These regulations create regulated areas for the staging area, judging area, viewing area, and parade route. Non-participant vessels are prohibited from entering or anchoring in the staging area. Further, no vessel is allowed to enter or anchor in the viewing and judging areas. During the parade transit, these regulations prohibit non-participant vessels from approaching within 175 yards ahead of the lead vessel and 175 yards astern of the last participant vessel in the parade, and within 15 yards on either side of the outboard parade vessels, unless authorized by the Coast Guard Patrol Commander. The event sponsor will have watercraft in the area to guide mariners around the regulated areas.

The staging area of this regulation overlaps with existing security zones published in 33 CFR Part 165 by the Coast Guard Captain of the Port of Miami. These security zones are activated when passenger vessels, vessels carrying cargoes of particular hazard, or vessels carrying liquified hazardous gas as defined in 33 CFR parts 120, 126, and 127 respectively, enter or moor in Port Everglades. These security zones remain in effect during this event and no person or vessel may enter the security zones without the permission of the Coast Guard Patrol Commander.

Discussion of Comments and Changes

The Coast Guard received no comments on the proposed rule and is adopting it in whole.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979) because this rule is only in effect for 7 hours each year and the Coast Guard Patrol Commander may allow vessels to enter portions of the regulated areas on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities. The term "small entities" include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the regulated areas during the Winterfest Boat Parade. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because this rule is only in effect for 7 hours each year and the Coast Guard Patrol Commander may allow vessels to enter portions of the regulated areas on a case-by-case basis.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandate Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action"

under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1D, that this action is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. Add § 100.735 to read as follows:

§ 100.735 Winterfest Boat Parade, Broward County, Fort Lauderdale, Florida

(a) *Regulated areas.* (1) *Staging area.* The staging area consists of all waters of the Port Everglades turning basin, including the North and South extensions, all waters of the Bar Cut west of a line from position 26°05.668′ N, 080°06.491′ W, to position 26°05.557′ N, 080°06.491′ W, and all waters of the ICW, bank to bank, from Dania Sound Light 35 (LLNR 47575) to the Port Everglades turning basin.

(2) *Parade route.* The parade route consists of the Intracoastal Waterway (ICW), bank to bank, from a line drawn across the ICW at the 17th Street Causeway Bridge between position 26°06.098′ N, 080°07.179′ W and position 26°06.092′ N, 080°07.085′ W, to Pompano Beach Daybeacon 74 (LLNR 47230).

(3) *Viewing area.* The viewing area consists of all waters of the ICW east of the centerline of the charted channel from the Sunrise Boulevard Bridge (26°08.281′ N, 080°06.482′ W) past Hugh Taylor Birch State Park to position 26°09.0′ N, 080°06.3′ W at the north end of Hugh Taylor Birch State Park.

(4) *Judging area.* The judging area consists of an area of the ICW, bank to bank, from a point on the northwest side of the 17th Street Causeway Bridge in position 26°06.098′ N, 080°07.179′ W, north to position 26°06.131′ N, 080°07.19′ W, then east to position 26°06.131′ N, 080°07.10′ W, then back south to position 26°06.092′ N, 080°07.085′ W at the northeast side of the 17th Street Causeway Bridge.

(b) *Special local regulations.* (1) *Staging area.* Non-participant vessels are prohibited from entering or anchoring in the staging area, unless authorized by the Coast Guard Patrol Commander. The Coast Guard Patrol Commander may allow vessels to enter the staging area when the last participant vessel has departed the staging area. The Coast Guard Patrol Commander will notify the public via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 16 (157. MHz) if vessels are allowed to enter the staging area.

(2) *Parade route.* During the parade transit, non-participant vessels are prohibited from approaching within 175 yards ahead of the lead vessel and 175 yards astern of the last participating vessel in the parade, and within 15 yards either side of the parade unless authorized by the Coast Guard Patrol Commander.

(3) *Viewing and judging areas.* Vessels are prohibited from entering or anchoring in the viewing and judging areas unless authorized by the Coast Guard Patrol Commander.

(4) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Miami, Florida and is also the designated representative of the Captain of the Port of Miami for purposes of enforcing security zones in Port Everglades during this event.

(c) *Dates.* This section is effective from 4 p.m. until 11 p.m. annually, on the first Saturday falling between December 13 and 19, inclusive.

Dated: December 6, 2002.

F.M. Rosa,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 02–31601 Filed 12–13–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–139]

Drawbridge Operation Regulations: Niantic River, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations that govern the Amtrak Bridge across the Niantic River, mile 0.0, at Niantic, Connecticut. This temporary deviation will allow the bridge to remain in the closed position from 7 a.m. on December 15, 2002 through 5 p.m. on January 31, 2003. This temporary deviation is necessary to facilitate electrical repairs at the bridge.

DATES: This deviation is effective from December 15, 2002 through January 31, 2003.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York 10004, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District Bridge Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Schmied, Project Officer, First Coast Guard District Bridge Branch, (212) 668–7165.

SUPPLEMENTARY INFORMATION: The vertical clearance under the Amtrak Bridge in the closed position is 11 feet at mean high water and 14 feet at mean low water. The existing regulations are listed at 33 CFR 117.215(a).

The bridge owner, Amtrak, requested a temporary deviation from the Drawbridge Operation Regulations to facilitate necessary maintenance, the replacement of the electrical control system, at the bridge.

The Coast Guard coordinated this project with the mariners who normally use this waterway to help determine the best time period to perform this necessary bridge maintenance.

Under this temporary deviation the Amtrak Bridge, mile 0.0, across the Niantic River, may remain in the closed position from 7 a.m. on December 15, 2002 through 5 p.m. on January 31, 2003. Vessels that can pass under the bridge without a bridge opening may do so at all times.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: December 4, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–31541 Filed 12–13–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–142]

Drawbridge Operation Regulations: Jamaica Bay and Connecting Waterways, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations that govern the Marine Parkway Bridge across Jamaica Bay, mile 3.0, between Brooklyn and Queens, New York. This temporary deviation will allow the bridge to remain in the closed position from 7 a.m. on December 19, 2002 through 5 p.m. on December 20, 2002. This temporary deviation is necessary to facilitate repairs at the bridge.

DATES: This deviation is effective from December 19, 2002 through December 20, 2002.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York 10004, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District Bridge Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Schmied, Project Officer, First Coast Guard District Bridge Branch, (212) 668–7165.

SUPPLEMENTARY INFORMATION: The vertical clearance under the Marine Parkway Bridge in the closed position is 55 feet at mean high water and 59 feet at mean low water. The existing regulations are listed at 33 CFR 117.795.

The bridge owner, MTA Bridges and Tunnels Authority, requested a temporary deviation from the Drawbridge Operation Regulations to facilitate necessary maintenance, the removal of work platforms, at the bridge.

The Coast Guard coordinated this project with the mariners who normally use this waterway to help determine the best time period to perform this necessary bridge maintenance.

Under this temporary deviation the Marine Parkway Bridge, mile 3.0, across Jamaica Bay, may remain in the closed position from 7 a.m. on December 19, 2002 through 5 p.m. on December 20, 2002.

This deviation from the operating regulations is authorized under 33 CFR § 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: December 4, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–31540 Filed 12–13–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–138]

Drawbridge Operation Regulations: Hutchinson River, Eastchester Creek, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the South Fulton Avenue Bridge, mile 2.9, across Eastchester Creek, at Mount Vernon, New York. Under this temporary deviation the bridge may remain closed to vessel traffic from 7 a.m. on December 11, 2002 through 5 p.m. on December 13, 2002, and from 7 a.m. on December 18, 2002 through 5 p.m. on December 20, 2002. This temporary deviation is necessary to facilitate repairs at the bridge.

DATES: This deviation is effective from December 11, 2002 through December 20, 2002.

FOR FURTHER INFORMATION CONTACT: Joeseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The South Fulton Avenue Bridge has a vertical clearance in the closed position of 6 feet at mean high water and 13 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.793(c).

The bridge owner, Westchester County Department of Public Works, requested a temporary deviation from the drawbridge operation regulations to facilitate necessary maintenance, the replacement of the span limit switches, at the bridge. The bridge must remain in the closed position to perform these repairs. Vessels that can pass under the bridge without a bridge opening may do so at all times.

The Coast Guard coordinated this closure with the mariners who normally use this waterway to help facilitate this necessary bridge repair and to minimize any disruption to the marine transportation system.

Under this temporary deviation the South Fulton Avenue Bridge may remain closed to vessel traffic from 7 a.m. on December 11, 2002 through 5 p.m. on December 13, 2002, and from 7 a.m. on December 18, 2002 through 5 p.m. on December 20, 2002.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: December 5, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–31602 Filed 12–13–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–02–042]

RIN 2115–AA97

Security Zone; San Juan, PR

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing moving and fixed security zones 50 yards around all cruise ships entering, departing, moored or anchored in the Port of San Juan, Puerto Rico. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port of San Juan or his designated representative.

DATES: This rule is effective on May 1, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of

docket [CGD07–02–042] and are available for inspection or copying at Coast Guard Marine Safety Office San Juan, Rodriguez and Del Valle Building, San Martin Street, Carr. #2, Km. 4.9, Guaynabo, Puerto Rico, 00968, between the hours of 7 a.m. and 3:30 p.m., Monday through Friday, excluding Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Chip Lopez at Coast Guard Marine Safety Office San Juan, Puerto Rico, (787) 706–2444.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 25, 2002, we published a notice of proposed rulemaking (NPRM) entitled: Security Zone, San Juan Puerto Rico, in the **Federal Register** (67 FR 42741). We received no letters commenting on the proposed rule. No public hearing was requested and none was held.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Port of San Juan, Puerto Rico, against cruise ships entering, departing and moored within the Port of San Juan. Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely.

The terrorist acts against the United States on September 11, 2001, have increased the need for safety and security measures on U.S. ports and waterways. In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard is establishing temporary security zones around all cruise ships entering, departing and moored within the Port of San Juan. We previously published two temporary final rules entitled "Security Zone; San Juan, PR" in the **Federal Register** on January 17, 2002 (67 FR 2330) and on June 13, 2002 (67 FR 40608). These temporary final rules contained similar provisions as those in this rulemaking.

The security zone for a cruise ship entering the Port of San Juan will be activated when the cruise ship is one mile north of the number 3 buoy, at approximate position 18°28′17″ N, 66°07′37.5″ W. The zone for a vessel would be deactivated when the vessel passes this buoy on its departure from the Port of San Juan. The security zones encompass all waters 50 yards around a cruise ship.

Persons and vessels are prohibited from entering into or transiting through a security zone unless authorized by the Captain of the Port (COTP), or his designated representative. Each person and vessel in a security zone must obey any direction or order of the COTP. The COTP may remove any person, vessel, article, or thing from a security zone. No person may board, or take or place any article or thing on board, any vessel in a security zone without the permission of the Captain of the Port. The Captain of the Port will notify the public of these security zones through Marine Safety Information Bulletins via facsimile and the Marine Safety Office San Juan Web site at *http://www.msocaribbean.com.*

Discussion of Comments and Changes

No comments were received on the proposed rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary because other vessels will be able to safely navigate around the zones while in place and persons may be authorized to enter or transit the zone with the permission of the Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "Small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. The rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the Port of San Juan when a cruise ship is entering, departing, moored or anchored in the Port of San Juan. This rule will not have a significant economic impact on a substantial number of small entities because other vessels will be able to safely navigate around the zones while in place and persons may be authorized to enter or transit the zone with the permission of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Chip Lopez at (787) 706–2444 for assistance in understanding this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small businesses. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this rule and has determined that, under figure 2–1, paragraph (34)g, of Commandant Instruction M16475.lC, that this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.758 is added to read as follows:

§ 165.758 Security Zone; San Juan, Puerto Rico.

(a) *Location.* Moving and fixed security zones are established 50 yards around all cruise ships entering, departing, moored or anchored in the Port of San Juan, Puerto Rico. The security zone for a cruise ship entering port is activated when the vessel is one mile north of the #3 buoy, at approximate position 18°28′17″ N, 66°07′37.5″ W. The security zone for a vessel is deactivated when the vessel passes this buoy on its departure from the port.

(b) *Regulations.* (1) Under general regulations in § 165.33 of this part, entering, anchoring, mooring or transiting in these zones is prohibited unless authorized by the Coast Guard Captain of the Port of San Juan.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at the Greater Antilles Section Operations Center at (787) 289–2041 or via VHF radio on Channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(3) The Marine Safety Office San Juan will attempt to notify the maritime community of periods during which these security zones will be in effect by providing advance notice of scheduled arrivals and departures of cruise ships via a broadcast notice to mariners.

(c) *Definition.* As used in this section, *cruise ship* means a passenger vessel greater than 100 feet in length that is authorized to carry more than 150 passengers for hire, except for a ferry.

(d) *Authority.* In addition to 33 U.S.C 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: November 26, 2002.

W.J. Uberti,

Captain, Coast Guard, Captain of the Port.

[FR Doc. 02–31599 Filed 12–13–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Charleston–02–146]

RIN 2115–AA97

Security Zones; Charleston Harbor, Cooper River, SC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is maintaining the temporary fixed security zones for the waters under the Highway 17 bridges over Charleston Harbor and the Don Holt I–526 Bridge over the Cooper River. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Vessels are prohibited from anchoring, mooring, or loitering within these zones, unless specifically authorized by the Captain of the Port, Charleston, South Carolina or his designated representative.

DATES: This regulation is effective on December 17, 2002 until 11:59 p.m. July 15, 2003. Comments and related material must reach the Coast Guard on or before February 14, 2003.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office Charleston, 196 Tradd Street, Charleston, South Carolina 29401. Coast Guard Marine Safety Office Charleston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP Charleston 02–146], will become part of this docket and will be available for inspection or copying at Marine Safety Office Charleston, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Kevin D. Floyd, Coast Guard Marine Safety Office Charleston, at (843) 747–7411.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a Notice of Proposed Rulemaking (NPRM). Publishing a NPRM and delaying the effective date of this rule would be contrary to national security since immediate action is necessary to protect the public, ports and waterways of the United States.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

Based on the September 11, 2001, terrorist attack on the World Trade Center in New York and the Pentagon in Arlington, VA, there is an increased risk that subversive terrorist activity could be launched by vessels or persons in close proximity to the Port of Charleston, S.C., against bridges within the security zones continued by this rule. If a bridge were damaged or destroyed, the Port of Charleston would be isolated from access to the sea, crippling the local economy and negatively impacting national security. These temporary security zones are necessary to protect the safety of life and property on the navigable waters, prevent potential terrorist threats aimed at the bridges crossing the main shipping channels in the Port of Charleston, S.C. and to ensure the continued unrestricted access to the sea from the Port.

A similar temporary rule was published in the **Federal Register** on October 18, 2001 (67 FR 9194, 9195, February 28, 2002) creating temporary security zones around these bridges. That rule expired on January 15, 2002. Those security zones were extended by another temporary rule published on February 22, 2002 (67 FR 9201) which expired on June 15, 2002. Those security zones were again extended by a temporary rule published in the **Federal Register** on July 3, 2002 (67 FR 44555) and will expire on December 16, 2002.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). We expect the economic impact of this rule to be so minimal so that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The limited geographic area impacted by the security zones will not restrict the movement or routine operation of commercial or recreational vessels through the Port of Charleston. Also, an individual may request a waiver of these regulations from the Coast Guard Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this rule would have a significant economic effect on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the limited geographic area encompassed by the security zones will not restrict the movement or routine operation of commercial or recreational vessels through the Port of Charleston. Also, an individual may request a waiver of these regulations from the Coast Guard Captain of the Port of Charleston.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may also send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationships between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this rule and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR Part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T07–146 is added to read as follows:

§ 165.T07–146 Security Zones; Charleston Harbor, Cooper River, South Carolina.

(a) *Regulated area.* (1) A temporary fixed security zone is established for the waters around the Highway 17 bridges, to encompass all waters of the Cooper River within a line connecting the following points: 32 deg.48.23′ N, 079 deg.55.3′ W; 32 deg.48.1′ N, 079 deg.54.35′ W; 32 deg.48.34′ N, 079 deg.55.25′ W; 32 deg.48.2′ N, 079 deg.54.35′ W.

(2) Another temporary fixed security zone is established for the waters around the Interstate 526 Bridge spans (Don Holt Bridge) in Charleston Harbor and on the Cooper River and will encompass all waters within a line connecting the following points: 32 deg.53.49′ N, 079 deg.58.05′ W; 32 deg.53.42′ N, 079 deg.57.48′ W; 32 deg.53.53′ N, 079 deg.58.05′ W; 32 deg.53.47′ N, 079 deg.57.47′ W.

(b) *Regulations.* In accordance with the general regulations 165.33 of this part, vessels are allowed to transit through these zones but are prohibited from mooring, anchoring, or loitering within these zones unless specifically authorized by the Captain of the Port.

(c) *Authority.* In addition to 33 U.S.C. 1321 and 49 CFR 1.46, the authority for this section includes 33 U.S.C. 1226.

(d) *Effective dates.* This section is effective on December 17, 2002 until 11:59 p.m. on July 15, 2003.

Dated: December 2, 2002.

G.W. Merrick,

Commander, Coast Guard, Captain of the Port.

[FR Doc. 02–31600 Filed 12–13–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA125–5058a; FRL–7422–1]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Repeal of Emission Standards for Perchloroethylene Dry Cleaning Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Virginia State Implementation Plan (SIP). The revision consists of the repeal of emission standards for perchloroethylene (perc) dry cleaning systems. EPA is approving this revision in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on February 14, 2003 without further notice, unless EPA receives adverse written comment by January 15, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Walter Wilkie, Acting Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Pauline De Vose, (215) 814–2186, or by e-mail at *devose.pauline@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

On November 9, 2001, the Commonwealth of Virginia (Virginia) submitted a formal revision to its SIP. The SIP revision consists of the repeal of emission standards for perc dry cleaning systems contained in Article 38 (9 VAC 5–40–5350 *et seq.*) of 9 VAC 5 Chapter 40.

Perc was added to the list of compounds excluded from the definition of volatile organic compound (VOC) on the basis that it has negligible photochemical reactivity (40 CFR 51.100 (s)). Perc is a solvent commonly used in dry cleaning, maskant operations and degreasing operations.

Summary of SIP Revision

The SIP revision contained in Article 38 (9 VAC 5–40–5350 *et seq.*) of 9 VAC 5 Chapter 40 requires the owners and operators of perc dry cleaning systems to limit air emissions. The SIP revision is repealing the emission standards of perc, since perc has a negligible photochemical reactivity and has an insignificant impact on ozone formation (61 FR 4588, February 7, 1996).

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain

program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *." The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

II. Final Action

EPA is approving the revision to the Virginia SIP repealing the emission standards for perc dry cleaning systems contained in Article 38 (9 VAC 5–40–5350 *et seq.*) of 9 VAC 5 Chapter 40. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on February 14, 2003 without further notice unless EPA receives adverse comment by January 15, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 14, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the repeal of emission standards for perc dry cleaning systems from the Virginia SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Recordkeeping and reporting requirements, Volatile organic compounds.

Dated: December 4, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

2. In § 52.2420, the table in paragraph (c) is amended by removing the entry for Chapter 40, Part II, Article 38 Dry Cleaning Systems [Rule 4–38].

[FR Doc. 02–31470 Filed 12–13–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7412–6]

New Jersey: Final Authorization of State Hazardous Waste Program Revision

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.* ("RCRA"), and the regulations thereunder, the State of New Jersey (the "State") applied for final authorization of changes to its hazardous waste program. These revisions were adopted by the State in January 1999. The Environmental Protection Agency, Region 2 ("EPA") has reviewed the State's application and has determined that the State's revisions to its hazardous waste program satisfy all of the requirements necessary to qualify for final authorization. Accordingly, EPA is today approving and authorizing the State's revisions through this immediate final rule. EPA did not publish a proposal before today's rule because it views this as a routine program change to the State's hazardous waste program and does not expect comments that oppose this approval. Consequently, unless EPA receives written comments which oppose this authorization during the comment period, the decision to authorize the revisions to the State's hazardous waste program will take effect as provided below. If EPA receives comments that oppose this action, EPA shall publish a document in the **Federal Register** withdrawing this rule before it takes effect. In addition to this rule, EPA is publishing in the proposed rules section of today's **Federal Register**, a separate notice that proposes to authorize the State's program revisions. This proposal (the "companion proposal") will serve as a proposal to authorize the State's program revisions, if necessary, as explained more fully below in the section identifying the effective date of this rule as well as in the companion proposal itself.

DATES: This rule will become effective on February 14, 2003, unless adverse comments are received by January 15, 2003. If EPA receives such comment, EPA will publish a timely withdrawal of this rule in the **Federal Register** and inform the public that this rule will not take effect.

ADDRESSES: Written comments should be sent to Walter M. Mugdan, Director, Division of Environmental Planning and Protection, U.S. EPA, Region 2, 290 Broadway, New York, New York 10007–1866, (212) 637–3724. For further information contact Clifford Ng, Division of Environmental Planning and Protection, USEPA, Region 2, 290 Broadway (22nd Floor) New York, NY 10007–1866; telephone (212) 637–4113; E mail—*ng.clifford@epamail.epa.gov.*

Copies of the State's application for authorization are available for inspection and copying as follows:

The New Jersey Department of Environmental Protection ("NJDEP")

Address: Public Access Center, NJDEP, 401 East State Street, 1st Floor, Trenton, NJ 08625.

Hours: Monday through Friday (excluding holidays), 8:30 a.m.–1 p.m., 2 p.m.–4:30 p.m.

Telephone: (609) 777–3373.

EPA

Address: EPA Library, 16th Floor, 290 Broadway, New York, NY 10007–1866.

Hours: Monday through Thursday (excluding holidays), 9 a.m.–4:30 p.m., Friday (excluding holidays), 9 a.m.–1 p.m.

Telephone: (212) 637–3185.

FOR FURTHER INFORMATION CONTACT: Clifford Ng, (212) 637–4113.

SUPPLEMENTARY INFORMATION: This rule will become effective on February 14, 2003, unless adverse comments are received during the comment period. In the event that such adverse comments are received, EPA will publish in the **Federal Register** a notice withdrawing this rule before it becomes effective. EPA will then base any further decision on the authorization of the State's program revisions on the companion proposal published in today's **Federal Register** and will address all public comments in a later final rule. Interested persons may not have another opportunity to comment. Therefore, if you want to comment on this authorization, you must do so at this time. If EPA receives comments that oppose only the authorization of a particular revision to the State's hazardous waste program, EPA will withdraw that part of this rule, but the authorization of the program revisions that the comments do not oppose will become effective on the date specified above. The **Federal Register** notice of withdrawal will specify which part of the authorization will become effective, and which part is being withdrawn.

I. State Authorization Under RCRA

Pursuant to section 3006 of RCRA, 42 U.S.C. 6926, EPA may, upon application by a state, authorize the applicant state's hazardous waste program to operate in the state in lieu of the federal hazardous waste program. For purposes of authorization, the federal hazardous waste program (the "Federal Program") is comprised of the regulations published in Title 40 of the Code of Federal Regulations ("CFR") under the authority of RCRA. To qualify for final authorization, a state's hazardous waste program must: (1) Be equivalent with the Federal Program; (2) be consistent with the Federal Program; and (3) provide for adequate enforcement. RCRA section 3006(b), 42 U.S.C. 6926(b).

II. Background—History of RCRA Authorization Within the State

In 1985, the State was granted final authorization by EPA for the RCRA base program, effective February 21, 1985 (50 FR 5260, 2/7/85). At that time the base

program covered the essential core of the Federal Program as reflected in the initial enactment of RCRA prior to its amendment by the Hazardous and Solid Waste Amendments of 1984. In 1988 and 1993 EPA authorized the State for a small number of additional regulations (53 FR 30054, 8/10/88, and 58 FR 59370, 11/9/93).

On October 21, 1996, the State repealed its regulations comprising its then existing hazardous waste program, including those regulations authorized by EPA, and adopted a new program (N.J.A.C. 7:26G–1.1 *et seq.*, 28 New Jersey Register 4606, 10/21/96). As part of this October 21, 1996 adoption, the State adopted, with certain exceptions and modifications, 40 CFR Parts 124, 260–266, 268 and 270 as set forth in the July 1, 1993 CFR, by incorporation by reference, and designated these provisions N.J.A.C. 7:26G–4 through N.J.A.C. 7:26G–13, inclusive. (28 New Jersey Register 4652–4668, 10/21/96. N.J.A.C. 7:26G–4 through N.J.A.C. 7:26G–13 are referred to below as the "State Program"). Under cover of a letter dated January 13, 1999, the State submitted an application meeting the requirements of 40 CFR Part 271, requesting authorization of the State Program.[1] In August 1999, EPA published a Federal Register notice in which it authorized the State Program. (64 FR 41823, 8/2/99).

III. The January 1999 Adoption and the Scope of the Authorization for Which the State Has Applied

On September 8, 1998, the State proposed various amendments to the State Program, as well as amendments to the procedures by which revisions to the state Program would subsequently be adopted. (30 N.J.R. 3128, 9/8/98). On January 19, 1999, the State adopted the proposed amendments with changes responsive to public comment. (31 N.J.R. 166, 1/19/99, the "Adoption"). In terms of process, the Adoption amended the New Jersey Administrative Code ("N.J.A.C.") by establishing a procedure pursuant to which the regulations comprising the Federal Program would subsequently be adopted by prospective incorporation by reference. (N.J.A.C. 7:26G–1.4(b), (c), (e) and (j)–(l), 31 N.J.R. 169–70, 1/19/99). Substantively, the Adoption revised the State Program by incorporating by reference all of the changes to the Federal Program promulgated by EPA from July 2, 1993 through July 31, 1998, with certain specified modifications, and by prospectively incorporating the Federal Program as thereafter amended and supplemented. Since the CFR is current through July 1 of the calendar year in which it is published, this means that in effect the State incorporated by reference the Federal Program as set forth in the July 1998 version of 40 CFR; incorporated by reference all amendments or additions to the Federal Program adopted by EPA from July 2 through July 31, 1998, of which there was only one: 63 FR 37780 (7/14/98), amending subsection 40 CFR 261.5(j); and prospectively incorporated by reference the regulations comprising the Federal Program as subsequently amended and supplemented. (The period from July 2, 1993 through July 31, 1998, shall be referred to below as the "relevant period").

Under cover of a letter dated August 22, 2002, the State submitted an application meeting the requirements of 40 CFR Part 271, requesting final authorization of the State Program revisions made in the Adoption with a specified limitation. Thus, in its application, the State limited its request for authorization to those of its regulations which incorporate by reference the changes to the Federal Program promulgated by EPA during the relevant period. Conversely, the State in its application is not requesting to be authorized for those of its regulations which were adopted by means of prospective incorporation by reference of federal regulations promulgated by EPA subsequent to July 31, 1998. (The revisions to the State Program for which the State has requested authorization shall be referred to below as the "1999 Program Revisions").

IV. Decision

A. Authorizotion of the 1999 Program Revisions and the State Program As Revised

EPA has reviewed the State's application and has determined that the 1999 Program Revisions possess the requisite equivalence and consistency with the Federal Program. Furthermore, the State's application indicates that the State possesses the necessary enforcement resources and is prepared to utilize those resources to provide adequate enforcement of the State Program as revised. Accordingly, EPA has determined that the 1999 Program Revisions qualify for authorization and hereby approves and authorizes them.

As noted above, the Adoption adopts the changes to the Federal Program promulgated by EPA during the relevant period, with certain specified modifications. These modifications, however, are not substantive. Rather, they reflect appropriate substitutions of State citations for federal citations, the substitution of State terminology for federal terminology where the subject federal terms are not replaced globally in the State Program's definitions (7:26G–4.2), the exclusion from said definitional section of certain required federal terminology, technical corrections to State rules, and the nonadoption of federal regulations applicable only to facilities outside the State or not otherwise required for authorization. None of these nonsubstantive modifications impact the requisite equivalence or consistency of the State Program as revised, and therefore, pose no obstacle to authorization.

EPA notes that its determination to authorize the 1999 Program Revisions is based on the information submitted to EPA by the State. If the criteria upon which EPA bases its approval subsequently change for any reason, including without limitation changes in State laws, regulations or administrative procedures, or major budgetary changes, which negate the equivalency or consistency of one or more provisions of the 1999 Program Revisions, or in any way limit the State's ability to enforce or properly administer the State Program as revised, EPA may revisit its approval. In such event, EPA may exercise its authority, provided in 40 CFR 271.22, to afford the State an opportunity to correct any program deficiencies, or EPA may withdraw authorization of the 1999 Program Revisions, in whole or in part. Furthermore, authorization of the 1999 Program Revisions by EPA shall not be deemed in any way as a waiver by EPA of any of its statutory rights under RCRA including but not limited to sections 3004(v), 3005(c)(3), 3007, 3008, 3013, 3020(c) and 7003 (42 U.S.C. 6924(v), 6925(c)(3), 6927, 6928, 6934, 6939b(c) and 6973).

B. Exceptions

In 1999, when EPA authorized the State Program, it did so with two important exceptions. These two exceptions are in no way altered by today's action authorizing the 1999 Program Revisions. These two exceptions to EPA's authorization of the State Program, as revised, are specified below.

[1] The State's redesignation of the Parts of the Federal Program adopted by incorporation by reference on October 21, 1996, and comprising the State Program, is as follows: N.J.A.C. 7:26G–4 (40 CFR Part 260); N.J.A.C. 7:26G–5 (40 CFR Part 261); N.J.A.C. 7:26G–6 (40 CFR Part 262); N.J.A.C. 7:26G–7 (40 CFR Part 263); N.J.A.C. 7:26G–8 (40 CFR Part 264); N.J.A.C. 7:26G–9 (40 CFR Part 265); N.J.A.C. 7:26G–10 (40 CFR Part 266); N.J.A.C. 7:26G–11 (40 CFR Part 268); N.J.A.C. 7:26G–12 (40 CFR Part 270); and N.J.A.C. 7:26G–13 (40 CFR Part 124).

(1) *Corrective Action* In its October 1996 adoption, in N.J.A.C. 7:26G–8.1(a), the State incorporated by reference 40 CFR Part 264 , the part of the Federal Program fixing the standards for the owners and operators of hazardous waste treatment, storage and disposal facilities. In the remaining subparagraphs of 7:26G–8.1 [(b) through (h)] the State neither omitted 40 CFR 264.101, 264.552 and 264.553, nor adopted these federal regulations with modifications. Thus, in 1996 the State adopted 40 CFR 264.101, 264.552 and 264.553 by means of incorporation by reference through 7:26G–8.1(a). The above three sections of the Federal Program are the sections implementing the corrective action provisions of RCRA, which provisions were incorporated into RCRA upon the enactment of the Hazardous and Solid Waste Amendments of 1984. The State, despite its adoption of 40 CFR 264.101, 264.552 and 264.553, informed EPA in its 1999 application for authorization of the State Program that it was not applying for authorization for corrective action at that time, and would apply for corrective action authorization under a separate application in the future. Accordingly, in its 1999 **Federal Register** notice authorizing the State Program, while EPA authorized N.J.A.C. 7:26G–8.1(a), EPA did not authorize the State for corrective action, and stated explicitly that 40 CFR 264.101, 264.552 and 264.553 would remain in full force and effect, and that until the State is authorized for corrective action, EPA would continue to issue corrective action permits within the State. (64 FR at 41824, 8/2/99).

In its current application, the State again has not sought authorization for corrective action. Consequently, the State remains unauthorized for corrective action; 40 CFR 264.101, 264.552 and 264.553 remain in full force and effect; and EPA shall continue to issue corrective action permits within the State pursuant to federal permitting regulations, until the State is authorized for corrective action.

(2) *Loss of Interim Status* The second exception evolves the regulations governing the loss of interim status. In its October 1996 adoption, in N.J.A.C. 7:26G–12.1(a), the State incorporated by reference 40 CFR 270.73(a) and (b). The State, however, did not incorporate by reference 40 CFR 270.73(c)-(g). Rather, the State replaced these subparagraphs of 40 CFR 270.73 with 7:26G–12.1(c)(16). Title 40 CFR 270.73 is the regulation in the Federal Program governing the loss of interim status (RCRA section 3005(c)(2)(C) and (e)(2)(3), 42 U.S.C. 6925(c)(2)(C) and (e)(2)(3)). N.J.A.C. 7:26G–12.1(c)(16) provides that the State may terminate interim status at its discretion, under a variety of circumstances subject to a hearing, if requested. By contrast, the federal loss of interim status regulations, excluded by the State and replaced by 7:26G–12.1(c)(16), are non-discretionary and operate automatically, without the opportunity for a hearing, if the requirements cited in these federal provisions are not met. Since 7:26G–12.1(c)(16) is discretionary and lacks automatic application, it is not equivalent to 40 CFR 270.73(c)-(g), is less stringent than 40 CFR 270.73(c)-(g), and therefore, could not be authorized. Consequently, in its 1999 **Federal Register** notice authorizing the State Program, EPA did not authorize the State for N.J.A.C. 7:26G–12.1(c)(16), and stated explicitly that 40 CFR 270.73(c)-(g) would remain in full force and effect.

In the 1999 Program Revisions, the State did not alter the provisions of N.J.A.C. 7:26G–12.1(c)(16) which previously precluded its authorization. Consequently, EPA today is not authorizing the State for N.J.A.C. 7:26G–12.1(c)(16), and 40 CFR 270.73(c)-(g) shall remain in full force and effect.

V. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes the State's requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action does not have tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 9, 2000). It does not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, as specified in Executive Order 13175. This action will not have substantial direct effects on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State of New Jersey's RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a state's application for authorization as long as such state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and

other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective 60 days after publication of this notice, or later, if adverse comment is received.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This rule is issued under the authority of Sections 2002(a), 3006 and 7004(b) of RCRA, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 28, 2002.

William J. Muszynski,

Deputy Regional Administrator, Region II.

[FR Doc. 02–31015 Filed 12–13–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3087; MM Docket No. 01–144; RM–10142, RM–10340]

Radio Broadcasting Services; Snyder, Littlefield, Wolfforth & Floydada, TX & Hobbs, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a petition filed by Charles Crawford requesting an allotment at Snyder, Texas, we shall allot Channel 235C3 in lieu of Channel 237C3 to the community at coordinates 32–42–25 and 101–05–36. *See* 66 FR 37632, July 19, 2001. In response to a counterproposal filed in this proceeding by 21st Century Radio Venture, Inc. and Littlefield Broadcasting, LLC, we shall substitute Channel 238C1 for Channel 238C3 at Littlefield, Texas, reallot Channel 238C1 to Wolfforth, Texas, and modify the license for Station KAIQ accordingly. The coordinates for Channel 238C1 at Wolfforth are 33–33–00 and 102–05–11. To accommodate the allotment at Wolfforth, Station KPER, Hobbs, New Mexico, has consented to a site change. The coordinates for the new site are 32–41–37 and 103–17–24. To further accommodate the Wolfforth allotment, Station KAIQ, Floydada, Texas, has filed a one-step application to modify its license to specify operation on Channel 291C3 in lieu of Channel 237A. The issue of opening the allotment of Channel 235C3 at Snyder, Texas, for auction will be addressed by the Commission in a subsequent order. With this action, this proceeding is terminated.

DATES: Effective December 23, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01–144, adopted October 23, 2002, and released November 8, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 235C3 at Snyder, by removing Littlefield, Channel 238C3 and by adding Wolfforth, Channel 238C1.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–31605 Filed 12–13–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991207325–0063–02; I.D. 100699A]

Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Halibut and Sablefish IFQ Cost Recovery Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of standard prices and fee percentage for North Pacific halibut and sablefish Individual Fishing Quota (IFQ) cost recovery program.

SUMMARY: The NMFS publishes IFQ standard prices and notification of adjustment of the IFQ fee percentage for the IFQ Cost Recovery Program in the halibut and sablefish fisheries of the North Pacific. This action is required by regulations in 50 CFR part 679. This action is intended to provide holders of halibut and sablefish IFQs with information to calculate the payments required for IFQ cost recovery fees due by January 31, 2003.

DATES: Effective December 16, 2002.

FOR FURTHER INFORMATION CONTACT: Kristie Balovich, Fee Coordinator, 907–586–7344.

SUPPLEMENTARY INFORMATION:

Background

NMFS, Alaska Region, administers the halibut and sablefish IFQ programs in the North Pacific. The IFQ Programs are limited access systems authorized by section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982. Fishing under the IFQ Programs began in March 1995. Regulations implementing the IFQ Program are set forth at 50 CFR part 679.

In 1996, the Magnuson-Stevens Act was amended (by Public Law 104–297) to, among other things, require the Secretary of Commerce to "collect a fee to recover the actual costs directly related to the management and enforcement of any * * * individual fishing quota program." (Section 304(d)(2)(A)). Section 304(d)(2) of the Magnuson-Stevens Act specifies an upper limit on these fees, when the fees must be collected, and where the fees must be deposited. Section 303(d)(4) of the Magnuson-Stevens Act allows

NMFS to reserve up to 25 percent of the fees collected for use in an IFQ loan program to aid in financing the purchase of IFQ or quota share (QS) by entry-level and small-vessel fishermen.

On December 27, 1999, NMFS published a proposed rule to implement the IFQ Cost Recovery Program (64 FR 72302) and published the final rule on March 20, 2000 (65 FR 14919). The final regulations implementing the IFQ Cost Recovery Program are set forth at 50 CFR 679.45.

Under the regulations, an IFQ permit holder incurs a cost recovery fee liability for every pound of IFQ halibut and IFQ sablefish that is landed on his or her IFQ permit(s). The IFQ permit holder is responsible for self-collecting the fee liability for all IFQ halibut and IFQ sablefish landings on his or her permit(s). The IFQ permit holder is also responsible for submitting a fee liability payment to NMFS on or before the due date of January 31 following the year in which the IFQ landings were made. The dollar amount of the fee due is determined by multiplying the annual IFQ fee percentage (3 percent or less) by the ex-vessel value of each IFQ landing made on a permit and summing the totals of each permit (if more than one).

Fee Percentage

Three percent of the ex-vessel value of IFQ halibut and IFQ sablefish harvested is the maximum fee amount allowed by section 304(d)(2)(B) of the Magnuson-Stevens Act. Regulations at § 679.45(d) allow the Administrator, Alaska Region, NMFS (Regional Administrator), to reduce the fee percentage if actual management and enforcement costs could be recovered through a lesser percentage. In this event the Regional Administrator will publish a notification of any adjustment of the IFQ fee percentage in the **Federal Register** pursuant to § 679.45(d)(4).

For 2002, the Regional Administrator has determined that a fee of 2.0 percent (0.02) is necessary to recover the actual management and enforcement costs. Therefore, the Regional Administrator is adjusting the cost recovery fee applicable to year 2002 IFQ landings from 3 percent (0.03) to 2.0 percent (0.02).

Standard Prices

The fee liability is based on the sum of all payments of monetary worth made to fishermen for the sale of the fish. This includes any retro-payments, e.g., bonuses, delayed partial payments, post-season payments, made to the IFQ permit holder for previously landed IFQ halibut or sablefish.

For purposes of calculating IFQ cost recovery fees, NMFS distinguishes between two types of ex-vessel value: "actual ex-vessel value" and "standard ex-vessel value." "Actual ex-vessel value" is the amount of all compensation, monetary or non-monetary, that an IFQ permit holder received as payment for his or her IFQ fish sold. "Standard ex-vessel value" is the default value on which to base fee liability calculations. However, IFQ permit holders have the option of using "actual ex-vessel value" if they can satisfactorily document those values.

Regulations at § 679.45(c)(2)(i) require the Regional Administrator to publish IFQ standard prices during the last quarter of each calendar year. These standard prices are used, along with estimates of IFQ halibut and sablefish landings, to calculate standard values. The standard prices are described in U.S. dollars per IFQ equivalent pound, for IFQ halibut and IFQ sablefish landings made during the year. IFQ equivalent pound(s) means the weight amount, recorded in pounds, for an IFQ landing and calculated as round weight for sablefish and headed and gutted ("net") weight for halibut. NMFS calculates the standard prices to reflect, as closely as possible, by month and port or port-group, the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings. The standard prices for IFQ halibut and IFQ sablefish are listed in the following table. Data from ports are combined as necessary to protect confidentiality of data submissions.

REGISTERED BUYER STANDARD PRICES BY LANDING LOCATION FOR 2002 IFQ SEASON

LANDING LOCATION	PERIOD ENDING	HALIBUT STANDARD PRICE	SABLEFISH STANDARD PRICE
CORDOVA	March 31		
	April 30	$1.99	
	May 31	$1.99	$1.99
	June 30	$2.03	
	July 31	$2.21	
	August 31	$2.44	
	September 30	$2.77	
	October 31	$2.77	
	November 30	$2.77	
DUTCH HARBOR	March 31		
	April 30	$1.83	
	May 31	$1.77	$1.76
	June 30	$1.87	$1.78
	July 31	$1.96	
	August 31	$2.12	$2.10
	September 30	$2.29	$1.95
	October 31	$2.29	$1.95
	November 30	$2.29	$1.95
HOMER	March 31	$2.17	$1.85
	April 30	$2.13	$1.86
	May 31	$1.97	
	June 30	$2.07	
	July 31	$2.19	$2.18
	August 31	$2.54	$2.17
	September 30	$2.90	
	October 31	$2.90	
	November 30	$2.90	

REGISTERED BUYER STANDARD PRICES BY LANDING LOCATION FOR 2002 IFQ SEASON—Continued

LANDING LOCATION	PERIOD ENDING	HALIBUT STANDARD PRICE	SABLEFISH STANDARD PRICE
KETCHIKAN	March 31		
	April 30		
	May 31	$2.06	
	June 30		
	July 31	$2.20	
	August 31	$2.40	
	September 30	$2.74	
	October 31	$2.74	
	November 30	$2.74	
KODIAK	March 31	$2.13	
	April 30	$1.89	$1.98
	May 31	$1.34	$1.98
	June 30	$1.91	$2.04
	July 31	$1.97	$2.20
	August 31	$2.23	
	September 30	$2.56	$2.34
	October 31	$2.56	$2.34
	November 30	$2.56	$2.34
PETERSBURG	March 31	$2.06	
	April 30	$2.04	
	May 31	$2.03	$2.03
	June 30	$2.02	
	July 31	$2.08	
	August 31	$2.37	
	September 30	$2.71	
	October 31	$2.71	
	November 30	$2.71	
SEWARD	March 31	$2.28	$2.01
	April 30	$2.07	$1.94
	May 31	$1.92	$1.94
	June 30	$1.99	$2.03
	July 31		
	August 31		
	September 30	$2.73	$2.40
	October 31	$2.73	$2.40
	November 30	$2.73	$2.40
SITKA	March 31		
	April 30	$1.95	
	May 31		
	June 30		
	July 31		
	August 31		
	September 30	$2.68	
	October 31	$2.68	
	November 30	$2.68	

REGISTERED BUYER STANDARD PRICES BY PORT GROUP FOR 2002 IFQ SEASON

PORT GROUP	PERIOD ENDING	HALIBUT STANDARD PRICE	SABLEFISHSTANDARD PRICE
[1]BERING SEA	March 31		
	April 30	$1.70	$1.78
	May 31	$1.76	$1.82
	June 30	$1.84	$1.90
	July 31	$1.93	$1.98
	August 31	$2.07	$2.11
	September 30	$2.25	$2.00
	October 31	$2.25	$2.00
	November 30	$2.25	$2.00

REGISTERED BUYER STANDARD PRICES BY PORT GROUP FOR 2002 IFQ SEASON—Continued

PORT GROUP	PERIOD ENDING	HALIBUT STANDARD PRICE	SABLEFISHSTANDARD PRICE
[2]CENTRAL GULF	March 31	$2.19	$1.98
	April 30	$2.04	$2.04
	May 31	$1.75	$1.99
	June 30	$1.98	$2.07
	July 31	$2.07	$2.15
	August 31	$2.46	$2.23
	September 30	$2.67	$2.44
	October 31	$2.67	$2.44
	November 30	$2.67	$2.44
[3]SOUTHEAST	March 31	$2.14	$2.06
	April 30	$2.05	$2.04
	May 31	$2.04	$2.09
	June 30	$2.03	$2.22
	July 31	$2.17	$2.28
	August 31	$2.37	$2.34
	September 30	$2.72	$2.64
	October 31	$2.72	$2.64
	November 30	$2.72	$2.64
[4]ALL	March 31	$2.16	$2.03
	April 30	$2.03	$2.02
	May 31	$1.83	$2.00
	June 30	$1.97	$2.11
	July 31	$2.04	$2.14
	August 31	$2.26	$2.23
	September 30	$2.60	$2.49
	October 31	$2.60	$2.49
	November 30	$2.60	$2.49

[1] Landing locations Within Port Group - Bering Sea:.Adak, Akutan, Akutan Bay, Atka, Bristol Bay, Chefornak, Dillingham, Captains Bay, Dutch Harbor, Egegik, Ikatan Bay, Hooper Bay, King Cove, King Salmon, Kipnuk, Mekoryuk, Naknek, Nome, Quinhagak, Savoonga, St. George, St. Lawrence, St. Paul, Togiak, Toksook Bay, Tununak, Beaver Inlet, Ugadaga Bay, Unalaska.

[2] Landing Locations Within Port Group - Central Gulf of Alaska: Anchor Point, Anchorage, Chignik, Cordova, Eagle River, False Pass, West Anchor Cove, Girdwood, Chinitna Bay, Halibut Cove, Homer, Kasilof, Kenai, Kenai River, Alitak, Kodiak, Port Bailey, Nikiski, Ninilchik, Old Harbor, Palmer, Sand Point, Seldovia, Resurrection Bay, Seward, Valdez.

[3] Landing Locations Within Port Group - Southeast Alaska: Angoon, Baranof Warm Springs, Craig, Edna Bay, Elfin Cove, Excursion Inlet, Gustavus, Haines, Hollis, Hoonah, Hyder, Auke Bay, Douglas, Tee Harbor, Juneau, Kake, Ketchikan, Klawock, Metlakatla, Pelican, Petersburg, Portage Bay, Port Alexander, Port Graham, Port Protection, Point Baker, Sitka, Skagway, Tenakee Springs, Thorne Bay, Wrangell, Yakutat.

[4] Landing Locations Within Port Group - All: For Alaska: All landing locations included in 1, 2, and 3. For California: Eureka, Fort Bragg, Other California. For Oregon: Astoria, Aurora, Lincoln City, Newport, Warrenton, Other Oregon. For Washington: Anacortes, Bellevue, Bellingham, Nagai Island, Edmonds, Everett, Granite Falls, Ilwaco, La Conner, Port Angeles, Port Orchard, Port Townsend, Ranier, Fox Island, Mercer Island, Seattle, Standwood, Other Washington. For Canada: Port Hardy, Port Edward, Prince Rupert, Vancouver, Haines Junction, Other Canada.

Dated: December 4, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–31447 Filed 12–13–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 241
Monday, December 16, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

[Docket No. FV02–369]

RIN 0581–AC21

Perishable Agricultural Commodities Act (PACA): Amending Regulations To Extend PACA Coverage to Fresh and Frozen Fruits and Vegetables That Are Coated or Battered

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture (USDA) is proposing to amend the regulations under the Perishable Agricultural Commodities Act (PACA or Act) to extend PACA coverage to include fresh and frozen fruits and vegetables that are coated or battered to maintain taste, color, and/or texture prior to or after cooking. It is USDA's opinion that coated or battered fruits and vegetables are covered under the PACA since the process of coating or battering does not alter the character of the end product. USDA seeks to codify its position so that all dealers of perishable agricultural commodities are properly on notice as to the scope of products covered by PACA regulations.

DATES: Comments must be received by January 15, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to Dexter Thomas, Senior Marketing Specialist, PACA Branch, F & V Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 2095–So. Bldg., Washington, DC 20250–0242. E-mail *dexter.thomas@usda.gov*. All comments should reference the docket number and the date and page number of this issue in the **Federal Register** and will be made available for public inspection in the PACA Branch during regular business hours and posted on the Internet at *www.ams.usda.gov/fv/paca.htm*.

FOR FURTHER INFORMATION CONTACT: James R. Frazier, Chief, PACA Branch, Room 2095–So. Bldg., Fruit and Vegetable Programs, AMS, USDA, Washington, DC 20250, Phone (202) 720–2272.

SUPPLEMENTARY INFORMATION: This proposal is issued under authority of section 15 of the PACA (7 U.S.C. 499o).

The Perishable Agricultural Commodities Act (PACA or Act) establishes a code of fair trade practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent trade practices. In this way, the law fosters an efficient nationwide distribution system for fresh and frozen fruits and vegetables, benefiting the whole marketing chain from farmer to consumer. USDA's Agricultural Marketing Service (AMS) administers and enforces the PACA.

The PACA also imposes a statutory trust for the benefit of unpaid sellers or suppliers on all perishable agricultural commodities received by a commission merchant, dealer, or broker and all inventories of food or other products derived from the sale of such commodities or products. Sellers who preserve their trust rights are entitled to payment ahead of other creditors, from trust assets, of money owed on past due accounts.

In January 2000, the largest food service distributor in the United States filed for chapter 11 bankruptcy protection. The company, which listed over $30 million in produce debt, settled all PACA trust claims except five that involved over $11 million in coated and battered potato products. The firm contended that the coated and battered potatoes were not covered under the PACA trust provisions (7 U.S.C. 499 (e) c). As a result of the disputed bankruptcy claims, the Frozen Potato Products Institute (FPPI), a national trade association whose members are frozen potato processors accounting for 95 percent of all frozen potato products in the United States, in June 2000, asked AMS for a written advisory opinion to clarify whether or not coated or battered potato products are covered under the PACA.

The majority of FPPI's members coat or batter their potato products to preserve their color and crispness while under heat lamps after cooking. The operation involves dipping potato strips into a mixture of water and natural vegetable starch (*e.g.*, potato or rice). Subsequently, a crisping agent such as dextrin and/or a chemical leavening agent are added to the product. The product is then air blown to remove all but a thin layer of coating, oil-blanched, and then finally frozen.

Coated or battered products are in great demand by fast food restaurants and consumers because the operation preserves the color and crispness of potatoes held under heat lamps, a common practice in fast food restaurants, although it does not alter the taste or texture of the product. Frozen potato processors have seen dramatic growth in the market for coated potatoes since the technology was first introduced in the early 1990's, and FPPI states that it expects that trend to continue. The food service distributor that filed for bankruptcy protection supplied approximately 36,000 restaurants throughout the United States.

According to FPPI, 8.2 billion pounds of frozen potato products were produced in the United States from April 1999 to April 2000. Out of that total, approximately 26 percent were coated or battered, accounting for 2.1 billion pounds of potato products with a market value exceeding $800 million.

In its response to FPPI, dated August 16, 2000, AMS concluded that coating or battering does not alter the essential character of the potato products because the operation leaves them virtually indistinguishable in appearance and texture from those that have not been coated or battered. The operation, AMS stated, is directly analogous to those described in 7 CFR 46.2(u) that may be performed on a perishable agricultural commodity without changing the commodity into a food of a different kind or character. In addition, the use of starches in the operation likely has less of an impact on the texture or essential character of the potato than other processes already expressly accepted in CFR 46.2(u), such as chopping, oil blanching, and adding sugar or other sweetening agents.

FPPI is now asking that USDA amend the PACA regulations' definition of "fresh fruits and fresh vegetables" (7 CFR 42 (u), to expressly extend PACA coverage to perishable agricultural commodities that have been coated or battered. In its petition of June 21, 2001, FPPI requested that AMS codify its August 2000 opinion to ensure that all dealers of perishable agricultural commodities are properly on notice as to the scope of products covered by PACA regulations.

Executive Orders 12866 and 12988

This proposed rule, issued under the Perishable Agricultural Commodities Act (7 U.S.C. 499 *et. seq.*), has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform, and is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those whose annual receipts are less than $5,000,000. There are approximately 15,700 firms licensed under the PACA, many of which could be classified as small entities.

AMS recognizes that frozen potato products represent the largest single frozen commodity in the United States. PACA coverage of such commodities would affect countless growers, shippers, processors, and distributors who deal in the commodities, most of which are small businesses. To exclude over 26 percent of frozen potato products from coverage of the PACA is inconsistent with the intent of Congress in enacting the PACA to protect producers and dealers of fresh and frozen fruits and vegetables.

This regulatory amendment is being proposed in response to the petition of the frozen food industry to codify USDA's opinion that the coating or battering of fruits and vegetables is an operation that is not considered as changing a commodity into a food of a different kind or character. Producers and distributors of coated and battered product would benefit since they would have the same rights as those afforded other processors and suppliers whose product may be indistinguishable in appearance or texture, but not coated or battered. AMS believes that codifying this opinion will help reduce litigation time and expenses for small produce businesses that seek to enforce their trust rights in federal district courts.

Given the preceding discussion, AMS has made an initial determination that the provisions of this proposed rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements that are covered by this proposed rule were approved under OMB number 0581–0031 on September 30, 2001, and expire on September 30, 2004.

List of Subjects in 7CFR Part 46

Agricultural commodities, Brokers, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 46 is proposed to be amended as follows:

PART 46—[AMENDED]

1. The authority citation for part 46 continues to read as follows:

Authority: Sec. 15, 46 Stat. 537; 7 U.S.C. 499o.

2. In § 46.2, paragraph (u) would be revised to read as follows:

§ 46.2 Definitions.

* * * * *

(u) *Fresh fruits and fresh vegetables* include all produce in fresh form generally considered as perishable fruits and vegetables, whether or not packed in ice or held in common or cold storage, but does not include those perishable fruits and vegetables which have been manufactured into articles of food of a different kind or character. The effects of the following operations shall not be considered as changing a commodity into a food of a different kind or character: Water, steam, or oil blanching, battering, coating, chopping, color adding, curing, cutting, dicing, drying for the removal of surface moisture; fumigating, gassing, heating for insect control, ripening and coloring; removal of seed, pits, stems, calyx, husk, pods rind, skin, peel, et cetera; polishing, precooling, refrigerating, shredding, slicing, trimming, washing with or without chemicals; waxing, adding of sugar or other sweetening agents; adding ascorbic acid or other agents to retard oxidation; mixing of several kinds of sliced, chopped, or diced fruit or vegetables for packaging in any type of containers; or comparable methods of preparation.

* * * * *

Dated: December 9, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–31583 Filed 12–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV03–916–1]

Nectarines, Pears, and Peaches Grown in California; Continuance Referenda

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referenda order.

SUMMARY: This document directs that referenda be conducted among eligible growers of California nectarines, pears, and peaches to determine whether they favor continuance of the marketing orders regulating the handling of nectarines, pears, and peaches grown in the production area.

DATES: The referenda will be conducted from January 6 through January 31, 2003. To vote in these referenda, growers must have been producing California nectarines, pears, and peaches during the period April 1 through November 30, 2002.

ADDRESSES: Copies of the marketing orders may be obtained from the office of the referenda agents at 2202 Monterey Street, Suite 102B, Fresno, California 93721, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture (USDA), 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237.

FOR FURTHER INFORMATION CONTACT: Kurt J. Kimmel or Terry Vawter, California Marketing Field Office, Marketing Order Administration Branch, Fruit and

Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone (559) 487–5901; fax (559) 487–5906; or Kathleen Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Ave., SW., Stop 0237, Washington, DC 20250–0237; telephone (202) 720–2491; fax (202) 720–8938.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 916 (7 CFR part 916) and Marketing Order No. 917 (7 CFR part 917), hereinafter referred to as the "orders," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," it is hereby directed that referenda be conducted to ascertain whether continuance of the orders is favored by growers. The referenda shall be conducted during the period January 6 through January 31, 2003, among California nectarine, pear, and peach growers in the production area. Only growers that were engaged in the production of California nectarines, pears, and peaches during the period of April 1 through November 30, 2002, may participate in the continuance referenda.

Although pears are included under the provisions of M.O. 917, those provisions have been suspended since April 1994. Since that time, the pear industry has been regulated by a State marketing order. If the results of the pear referendum do not favor continuance, the pear order will be terminated. Otherwise, this suspension will remain in effect unless the pear industry recommends reactivation of the federal program.

USDA has determined that continuance referenda are an effective means for determining whether growers favor continuation of marketing order programs. The USDA would consider termination of the orders if less than two-thirds of the growers voting in the referenda and growers of less than two-thirds of the volume of California nectarines, pears, and peaches represented in the referenda favor continuance. In evaluating the merits of continuance versus termination, the USDA will not only consider the results of the continuance referenda. The USDA will also consider all other relevant information concerning the operation of the orders and the relative benefits and disadvantages to growers, handlers, and consumers in order to determine whether continued operation of the orders would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the ballot materials used in the referenda herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0189 for nectarines, pears, and peaches. It has been estimated that it will take an average of 30 minutes for each of the approximately 2,130 growers of California nectarines, pears, and peaches to cast a ballot. Participation is voluntary. Ballots postmarked after January 31, 2003, will not be included in the vote tabulation.

Kurt J. Kimmel and Terry Vawter of the California Marketing Field Office, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, are hereby designated as the referenda agents of USDA to conduct such referenda. The procedure applicable to the referenda shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR part 900.400 et. seq).

Ballots will be mailed to all growers of record and may also be obtained from the referenda agents and from their appointees.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: December 9, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–31582 Filed 12–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71, 82, and 94

[Docket No. 00–107–1]

RIN 0579–AB31

Salmonella Enteritidis Phage-Type 4; Remove Import Restrictions and Salmonella Enteritidis serotype Enteritidis; Remove Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations to remove import restrictions on eggs (other than hatching eggs) of poultry, game birds, and other birds from regions where *Salmonella enteritidis* phage-type 4 exists. Previously, *Salmonella enteritidis* phage-type 4 had not been isolated in the United States; therefore, those import restrictions were necessary to help prevent *Salmonella enteritidis* phage-type 4 from being introduced into this country. However, *Salmonella enteritidis* phage-type 4 is now known to be present in the United States. This action would eliminate restrictions on the importation of eggs from regions where *Salmonella enteritidis* phage-type 4 exists. We are also proposing to remove our regulations regarding poultry disease caused by *Salmonella enteritidis* serotype *enteritidis*. These regulations are no longer enforced, and it is necessary to remove them to make our regulations consistent with our enforcement.

DATES: We will consider all comments that we receive on or before February 14, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 00–107–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–107–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 00–107–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Assistant Director, Sanitary International Standards Team, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–3577.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products into the United States in order to prevent the introduction of various animal diseases including *Salmonella enteritidis* phage-type 4. *S. enteritidis* phage-type 4 is one of several kinds of *Salmonella* bacteria, and it has been isolated and identified as the cause of numerous outbreaks of salmonellosis in poultry in many parts of the world. Additionally, it has become one of the most prevalent serotypes causing salmonellosis in humans.

In this document, we are proposing to remove the import restrictions related to *S. enteritidis* phage-type 4 contained in part 94, as well as the interstate movement restrictions related to *S. enteritidis* serotype *enteritidis* contained in our regulations in 9 CFR parts 71 and 82 (*S. enteritidis* phage-type 4 is one of several strains of *S. enteritidis* serotype *enteritidis*). As explained in greater detail in the following paragraphs, the regulations in parts 71 and 82 regarding poultry disease caused by *Salmonella enteritidis* serotype *enteritidis* are no longer enforced, and it is necessary to remove them to make our regulations consistent with our enforcement. Further, because those interstate movement restrictions are not enforced, it is necessary to remove the import restrictions in part 94 in order to eliminate, consistent with our obligations under international agreements, import requirements that are more restrictive than our domestic movement requirements.

When *S. enteritidis* phage-type 4 was first identified as affecting poultry, it was seen as a serious threat. *S. enteritidis* phage-type 4 can cause significant mortality in poultry flocks, sometimes as high as 20 percent. Once introduced, salmonellosis can spread rapidly throughout a flock. It may also be passed from one generation to the next by transovarial transmission and eggshell penetration.

The regulations in § 94.6 restrict, among other things, the importation of eggs (other than hatching eggs) into the United States that were produced by poultry, game birds, or other birds that were raised in any region where *S. enteritidis* phage-type 4 is considered to exist, imported from any region where S. enteritidis phage-type 4 is considered to exist, or moved into or through any region where *S. enteritidis* phage-type 4 is considered to exist at any time before importation or during shipment to the United States. Canada is listed in § 94.6(b)(2) as the only region considered to be free of *S. enteritidis* phage-type 4.

At the time the import restrictions in § 94.6 concerning *S. enteritidis* phage-type 4 were established, *S. enteritidis* phage-type 4 had not been isolated in the United States, so these import restrictions were necessary to help prevent the introduction of the disease into this country. However, in May of 1994, *S. enteritidis* phage type 4 was detected in the State of California in a commercial layer flock. Since that initial detection, *S. enteritidis* phage-type 4 has been found in flocks across the United States.

State and Federal programs are in place to monitor and control *S. enteritidis* phage-type 4 in the United States. In addition to State laws, the cooperative State/Federal/industry National Poultry Improvement Plan includes a "U.S. S. Enteritidis Clean" program for certifying the freedom of hatching eggs and chicks from *S. enteritidis*.

There are regulations in subpart C of 9 CFR part 82 that contain, in part, restrictions on the interstate movement of eggs from flocks affected with *S. enteritidis* serotype *enteritidis*. As noted previously, *S. enteritidis* phage-type 4 is one of several strains of *S. enteritidis* serotype *enteritidis*.

There are also regulations in 9 CFR 71.3(a) that prohibit the interstate movement of poultry and animals affected by certain diseases, including *S. enteritidis* serotype *enteritidis*, with certain exceptions. Specifically, paragraph (c)(4) of § 71.3 provides that poultry affected with disease caused by *S. enteritidis* serotype *enteritidis* may be moved interstate in accordance with 9 CFR part 82.

However, the regulations regarding *S. enteritidis* in subpart C of part 82 and § 71.3 are no longer enforced and have not been enforced since the mid-1990s. In 1995, as a result of the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, October 13, 1994), the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) received the authority and resources to support pathogen reduction programs relating to *S. enteritidis*, including the authority to administer and enforce the regulations in subpart C of part 82 and § 71.3. This reorganization streamlined authority to allow FSIS to control and monitor *S. enteritidis* as, primarily, a human health concern. Then, in fiscal year 1996, Congress determined that the egg industry had developed its own *S. enteritidis* program and deferred funding for the enforcement of the regulations regarding *S. enteritidis* in subpart C of part 82 and § 71.3 and for other Federal *S. enteritidis* programs.

Because those regulations are no longer enforced, flocks in the United States that are affected with *S. enteritidis* serotype *enteritidis*, including phage-type 4, are not subject to the interstate movement restrictions contained in § 71.3 and subpart C of part 82. We are, therefore, proposing to amend § 71.3 by removing its references to *S. enteritidis* serotype *enteritidis* and to amend part 82 by removing subpart C.

Additionally, because *S. enteritidis* phage-type 4 is known to exist in the United States and the movement of eggs from affected flocks is not subject to interstate movement or other restrictions, we are proposing to remove the import restrictions in § 94.6 on the importation of eggs (other than hatching eggs) of poultry, game birds, and other birds from regions where *S. enteritidis* phage-type 4 exists to eliminate import requirements that are more restrictive than our domestic movement requirements. Removing those provisions would mean that the definitions in § 94.0 for the terms *Salmonella enteritidis, Salmonella enteritidis, phage-type 4*, and *Salmonellosis* would no longer be needed. We would, therefore, remove those definitions from § 94.0.

Miscellaneous

We are also proposing to remove a reference in § 94.6 to Velogenic Viscerotropic Newcastle Disease (VVND). This disease is now called Exotic Newcastle Disease (END) and is referred to as such elsewhere in our regulations. Additionally, we are

proposing to correct a footnote in § 94.6. This footnote refers to "Operational Support" staff, which is an outdated title. The new name for that staff is "Animal Health Programs." We would also make several nonsubstantive editorial changes to the regulations for clarity and consistency.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We are proposing to amend the regulations to remove import restrictions on eggs (other than hatching eggs) of poultry, game birds, and other birds from regions where *S. enteritidis* phage-type 4 exists. Previously, *S. enteritidis* phage-type 4 had not been isolated in the United States; therefore, those import restrictions were necessary to help prevent *S. enteritidis* phage-type 4 from being introduced into this country. However, *S. enteritidis* phage-type 4 is now known to be present in the United States. This action would eliminate restrictions on the importation of eggs from regions where *S. enteritidis* phage-type 4 exists. We are also proposing to remove our regulations regarding poultry disease caused by *S. enteritidis* serotype *enteritidis*. These regulations are no longer enforced, and it is necessary to remove them to make our regulations consistent with our enforcement.

The following analysis, which also serves as our cost-benefit analysis, considers the potential economic effects of this proposed rule on domestic egg producers.

S. enteritidis phage-type 4 is considered to exist in all parts of the world except Canada. Under the current regulations, the importation of eggs (other than hatching eggs) from or through regions affected with *S. enteritidis* phage-type 4 is restricted, but not prohibited. However, in 1999, the last year for which relevant census information is available, the United States imported only 5.8 million dozen eggs (other than hatching eggs), which is equivalent to less than 0.1 percent of U.S. production that year. Eighty percent of these shell egg imports were from China. Imported eggs from Canada, the only region not subject to import restrictions because of its freedom from *S. enteritidis* phage-type 4, accounted for less than 1 percent of all U.S. shell egg imports in 1999.

The United States does not export a significant amount of its egg supply. In 1999, the United States exported 117 million dozen eggs (other than hatching eggs), which is equivalent to only 2 percent of the U.S. nonhatching egg production for that year. As these figures indicate, virtually all eggs produced in the United States are consumed domestically.

After China, the United States is the world's second largest egg producer. In China and other top egg-producing countries, including Japan, India, Russia, Mexico, and France, virtually all eggs produced are consumed domestically. Combined, these 6 countries exported 122 million dozen eggs in 1999, less than 1 percent of their combined production that year. While the Netherlands exported the most eggs (226 million dozen), that region is not among the top 7 egg-producing nations. Mexico reported no egg exports between 1996 and 1999.

We expect that this proposed rule would have little or no effect on U.S. producers, large or small, for the following reasons:

- Current restrictions on eggs (other than hatching eggs) from regions where END exists are quite similar to the restrictions regarding *S. enteritidis* phage-type 4 that we are proposing to remove.
- END is considered to exist in five of the top six foreign egg-producing regions. Therefore, with the exception of France, where END is not considered to exist, import restrictions on eggs would still be in place for the regions most likely to export eggs to the United States.
- Transporting eggs to the United States from foreign markets is expensive.
- Egg production in the United States is highly mechanized, which offsets potential cost advantages that foreign producers may have over U.S. producers with regard to labor wage rates.

Based on these considerations, we believe that the proposed removal of the restrictions on the importation of eggs from regions where *S. enteritidis* phage-type 4 exists would not result in any appreciable increase in egg imports or otherwise affect domestic egg producers.

Additionally, we do not expect any impact on domestic egg producers or other poultry producers to result from our proposed removal of the regulations regarding *S. enteritidis* in subpart C of part 82 and § 71.3 since these regulations are no longer enforced and have not been enforced since fiscal year 1995.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 71

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 82

Animal diseases, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR parts 71, 82, and 94 as follows:

PART 71—GENERAL PROVISIONS

1. The authority citation for part 71 would be revised to read as follows:

Authority: 7 U.S.C. 8304–8306, 8308, 8310, 8313, and 8315; 7 CFR 2.22, 2.80, and 371.4.

§ 71.3 [Amended]

2. Section § 71.3 would be amended as follows:

a. In paragraph (a), by removing the words "poultry disease caused by *Salmonella enteritidis* serotype *enteritidis*,".

b. By removing paragraph (c)(4) and redesignating paragraph (c)(5) as paragraph (c)(4).

PART 82—EXOTIC NEWCASTLE DISEASE (END) AND CHLAMYDIOSIS

3. The authority citation for part 82 would continue to read as follows:

Authority: 7 U.S.C. 8304–8306, 8308, 8313, and 8315; 7 CFR 2.22, 2.80, and 371.4.

4. The title for part 82 would be revised to read as above.

Subpart C—[Removed]

5. In part 82, subpart C (§§ 82.30 through 82.38) would be removed.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

6. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 450, 7711–7714, 7751, 7754, 8303, 8306, 8308, 8310, 8311, and 8315; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.0 [Amended]

7. Section 94.0 would be amended by removing the definitions of *Salmonella enteritidis, Salmonella enteritidis, phage-type 4*, and *Salmonellosis*.

8. Section 94.6 would be amended as follows:

a. By revising the section heading to read as follows.

b. By removing paragraph (b) and redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively.

c. In newly redesignated paragraph (b)(2), by removing the comma after the word "Administrator" and, at the end of the paragraph, by removing the word "him" and adding the words "the Administrator" in its place.

d. In newly redesignated paragraph (b)(6), in the first sentence, by removing the words "paragraph (c)" and adding the words "paragraphs (b)(1) through (b)(5)" in their place and by removing the words ",Veterinary Services", and, in the third sentence, by removing the words "paragraph (e)" and adding the words "paragraph (d)" in their place.

e. In newly redesignated paragraph (c), by revising the paragraph heading and the introductory text to read as follows.

f. In newly redesignated paragraph (c)(1)(ix)(C)(*1*), footnote 7, by removing the words "Operational Support," and adding the words "Animal Health Programs," in their place.

g. In newly redesignated paragraph (c)(1)(ix)(C)(*2*), in the last sentence, by removing the word "VVND" and adding the word "END" in its place.

h. By removing newly redesignated paragraph (c)(1)(x).

i. In newly redesignated paragraph (c)(2), in the last sentence, by removing the words "or *S. enteritidis*, phage-type 4,".

j. In newly redesignated paragraph (c)(3), by removing the words "or *S. enteritidis*, phage-type 4," both times they occur, and by removing the words "paragraph (e)" and adding the words "paragraph (d)" in their place.

k. In newly redesignated paragraph (c)(4), by removing the words "or *S. enteritidis*, phage-type 4," both times they occur, and by removing the words "paragraph (e)" and adding the words "paragraph (d)" in their place.

§ 94.6 Carcasses, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds; importations from regions where Exotic Newcastle Disease is considered to exist.

* * * * *

(c) *Eggs (other than hatching eggs) from regions where END is considered to exist.* Eggs (other than hatching eggs[6]) from poultry, game birds, or other birds may be imported only in accordance with this section if they: Are laid by poultry, game birds, or other birds that are raised in any region where END is considered to exist (see paragraph (a) of this section); are imported from any region where END is considered to exist; or are moved into or through any region where END is considered to exist at any time before importation or during shipment to the United States.

* * * * *

Done in Washington, DC, this 11th day of December 2002.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 02–31569 Filed 12–13–02; 8:45 am]

BILLING CODE 3410–34–P

[6] The requirements for importing hatching eggs are contained in part 93 of this chapter.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commisison

18 CFR Part 35

[Docket Nos RM01–12–000; RM02–1–000; RM02–12–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Market Design; Standardization of Generator Interconnection and Procedures; Standardization of Small Generator Interconnection Agreements and Procedures

December 3, 2002.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of technical conference.

SUMMARY: To advance the work related to the referenced proceedings and the transmission pricing issue, on January 21, 2003, Commission staff will hold a technical conference on queuing of interconnection requests. The conference will discuss specific issues related to interconnection queuing practices and procedures. Further details about the conference, including details about how to request participation in the conference as a panelist, will be provided in supplemental notices.

DATES: Conference will be held on: January 21, 2003.

ADDRESSES: Send requests to speak to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Norma McOmber, Office of Markets, Tariffs and Rates—Division of Policy, Analysis and Rulemakings, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8022, *Norma.McOmber@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Electricity Market Design and Structure

[Docket No. RM01–12–000]

Standardization of Generator Interconnection Agreements and Procedures

[Docket No. RM02–01–000]

Standardization of Small Generator Interconnection Agreements and Procedures

[Docket No. RM02–12–000]

Notice of Technical Conference

To advance work related to the referenced proceedings and the

transmission pricing issue, Commission staff will hold a technical conference on queuing of interconnection requests.

This technical conference will be held on January 21, 2003, from approximately 9:30 a.m. to 5 p.m. at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. The conference is open to the public, and registration is not required. Members of the Commission may attend and participate in the discussions.

The conference will discuss specific issues related to interconnection queuing practices and procedures, such as: whether queue position should be treated as a property right; whether the Commission should introduce due diligence requirements to prevent cancelled or delayed plants from delaying other units in the queue; how to manage the queue to best serve regional infrastructure planning, grid management, and infrastructure development needs while improving certainty for infrastructure developers; whether the Commission should standardize queue management practices across regions and RTOs or establish a set of national core principles; the most effective method for analyzing impacts of uncertain combinations of loads and generators on the grid; a critical look at current ISO/RTO interconnection queue management practices; whether small (< 20MW) generator impacts on the grid warrant different analysis and queuing treatment for small generators; and interconnection queue experiences.

Further details about the conference, including information regarding how to request participation in the conference as a panelist, will be provided in supplemental notices. The staff contact person for this conference is Norma McOmber (202–502–8022 or e-mail *Norma.McOmber@FERC.GOV*).

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646), for a fee. They will be available for the public on the Commission's FERRIS system two weeks after the conference. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements, should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection website at *http://www.capitolconnection.gmu.edu* and click on "FERC."

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31580 Filed 12–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Pittsburgh–02–019]

RIN 2115–AA97

Security Zone; Ohio River Mile 119.0 to 119.8, Natrium, West Virginia

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a security zone encompassing all waters extending 200 feet from the water's edge of the left descending bank of the Ohio River, beginning from mile marker 119.0 and ending at mile marker 119.8. This security zone is necessary to protect Pittsburgh Plate Glass Industries (PPG), persons, and vessels from subversive or terrorist acts. Entry of persons or vessels into this security zone is prohibited unless authorized by the Coast Guard Captain of the Port Pittsburgh or designated representative.

DATES: Comments and related material must reach the Coast Guard on or before February 14, 2003.

ADDRESSES: You may mail comments and related material to Marine Safety Office Pittsburgh, Suite 1150 Kossman Bldg., 100 Forbes Ave., Pittsburgh, PA 15222–1371. Marine Safety Office Pittsburgh maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Pittsburgh, Suite 1150 Kossman Bldg., 100 Forbes Ave., Pittsburgh, PA between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer (PO) Michael Marsula, Marine Safety Office Pittsburgh at (412) 644–5808 x2114.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP Pittsburgh 02–019], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Pittsburgh at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

The Captain of the Port Pittsburgh established a temporary security zone for the area adjacent to PPG that expired on June 15, 2002. [COTP Pittsburg–02–001, 67 FR 9589] No comments or objections were received concerning this rule. National security and intelligence officials have warned that future terrorist attacks against civilian targets are anticipated. In response to those continued threats, heightened awareness and security of our ports and harbors is necessary. The Captain of the Port has established a temporary security zone for this area [COTP Pittsburgh–02–019, 67 FR 58332]. That temporary final rule was published in the **Federal Register** on September 16, 2002 and remains in effect until February 15, 2003.

The Captain of the Port has determined that there is a need for this security zone to remain in effect indefinitely because of the continued threat of terrorism and the nature of material handled at PPG. The proposed rule will establish a permanent security zone identical to the previous and existing zones.

Discussion of Proposed Rule

A security zone is proposed for all water extending 200 feet from the water's edge of the left descending bank of the Ohio River from mile marker 119.0 to 119.8. All persons and vessels would be prohibited from entering or remaining in this zone without the permission of the Captain of the Port Pittsburgh or his designated representative.

The zone is designed to increase protection around the PPG facility in Natrium, West Virginia. It increases the opportunity for detection of a waterborne attack on the facility and consequently enhances public health and safety through providing greater defense and security at this location and its surrounding areas. The location of this security zone will limit access to only the waters immediately adjacent to the facility and will permit vessels to safely navigate around the zone. The establishment of this security zone will have minimal impact on maritime traffic in the vicinity of the facility.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This rule will not obstruct the regular flow of vessel traffic and will allow vessel traffic to pass safely around the security zone. Vessels may be permitted to enter the security zone on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The Coast Guard is unaware of any small entities that would be impacted by this proposed rule. The navigable channel remains open to all vessel traffic. We received no comments or objections regarding the previous security zone covering the same area.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Michael Marsula; Marine Safety Office Pittsburgh at (412) 644–5808 x2114.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A "Categorical Exclusion

Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.822 to read as follows:

§ 165.822 Security Zone; Ohio River Mile 119.0 to 119.8, Natrium, West Virginia.

(a) *Location.* The following area is a security zone: the waters of the Ohio River, extending 200 feet from the water's edge of the left descending bank beginning from mile marker 119.0 and ending at mile marker 119.8.

(b) *Regulations.* (1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Pittsburgh or his designated representative.

(2) Persons or vessels desiring to transit the area of the security zone may contact the Captain of the Port Pittsburgh at telephone number 412–644–5808 or on VHF channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Pittsburgh or designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: November 18, 2002.

S.L. Hudson,

Commander, U.S. Coast Guard, Captain of the Port, Pittsburgh.

[FR Doc. 02–31539 Filed 12–13–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA125–5058b; FRL–7421–9]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Repeal of Emission Standards for Perchloroethylene Dry Cleaning Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia (Virginia). This action proposes to approve Virginia's repeal of its emission standards for perchloroethylene dry cleaning systems. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by January 15, 2003.

ADDRESSES: Written comments should be addressed to Walter Wilkie, Acting Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Pauline De Vose, (215) 814–2186, at the EPA Region III address above, or by e-mail at *devose.pauline@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Virginia's repeal of emission standards for perc dry cleaning systems, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comments on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: December 4, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 02–31469 Filed 12–13–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7412–7]

New Jersey: Proposed Authorization of State Hazardous Waste Program Revision

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.* ("RCRA"), and the regulations thereunder, the State of New Jersey (the "State") applied for final authorization of changes to its hazardous waste program. These revisions were adopted by the State in January 1999. The Environmental Protection Agency, Region 2 ("EPA") has reviewed the State's application and has determined that the State's revisions to its hazardous waste program satisfy all of the requirements necessary to qualify for final authorization. Accordingly, EPA proposes to grant final authorization to the State for these revisions, which are described in the "Rules and Regulations" section of today's **Federal Register**. In that section, EPA is authorizing the revisions by an immediate final rule. EPA did not publish a proposal prior to the immediate final rule because EPA believes that this action is not controversial and does not expect comments that oppose it. EPA has explained the reasons for this authorization in the preamble to the immediate final rule. Unless EPA receives written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date set forth therein, and EPA will not take further action on this proposal. If EPA receives comments that oppose this action, EPA shall withdraw the portion of the immediate final rule that is the subject of the comments, and it will not take effect.

EPA shall then respond to those public comments opposing this authorization in a second final authorization notice. This second final notice may or may not include changes based on comments received during the comment period. Interested persons may not have another opportunity for comment. Therefore, if you want to comment on this proposal, you must do so at this time.

DATES: Comments on this action must be received by the close of business on January 15, 2003.

ADDRESSES: Written comments should be sent to Walter M. Mugdan, Director, Division of Environmental Planning and Protection, U.S. EPA, Region 2, 290 Broadway, New York, New York 10007–1866, (212) 637–3724. For further information contact Clifford Ng, Division of Environmental Planning and Protection, USEPA, Region 2, 290 Broadway (22nd Floor) New York, NY 10007–1866; telephone (212) 637-4113; E-mail—*ng.clifford@epamail.epa.gov*.

Copies of the State's application for authorization are available for inspection and copying as follows:

The New Jersey Department of Environmental Protection ("NJDEP")

Address: Public Access Center, NJDEP, 401 East State Street, 1st Floor, Trenton, NJ 08625.

Hours: Monday through Friday (excluding holidays), 8:30 a.m.–1 pm., 2 p.m.–4:30 p.m.

Telephone: (609) 777–3373.

EPA

Address: EPA Library, 16th Floor, 290 Broadway, New York, NY 10007–1866.

Hours: Monday through Thursday (excluding holidays), 9 a.m.–4:30 p.m. Friday (excluding holidays), 9 a.m.–1 p.m.

Telephone: (212) 637–3185.

FOR FURTHER INFORMATION CONTACT: Clifford Ng, (212) 637–4113.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of today's **Federal Register**.

Dated: October 28, 2002.

William J. Muszynski,

Deputy Regional Administrator, Region II.

[FR Doc. 02–31014 Filed 12–13–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Bureau of Land Management

43 CFR Parts 4100 and 5000

RIN 1090–AA83

Special Rules Applicable to Public Land Hearings and Appeals; Grazing Administration—Exclusive of Alaska, Administrative Remedies; Grazing Administration—Effect of Wildfire Management Decisions; Administration of Forest Management Decisions

AGENCY: Office of Hearings and Appeals; Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Hearings and Appeals (OHA) is proposing to amend its existing regulations governing hearings and appeals to simplify proof of service, to codify who has a right of appeal, and to expedite its review of wildfire management decisions. The Bureau of Land Management (BLM) is adding regulations to make its wildfire management decisions effective immediately and to expedite review of those decisions. The amendments and additions to both OHA and BLM regulations are needed to clarify and expedite administrative review procedures.

DATES: You should submit your comments by February 14, 2003. The Department of the Interior will not necessarily consider comments postmarked or received by messenger after the above date.

ADDRESSES: Mail: Director, Office of Hearings and Appeals, Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, VA 22203, Attn: RIN 1090–AA83. Personal or messenger delivery: 801 N. Quincy Street, Suite 300, Arlington, VA 22203. Direct internet response: *http://www.blm.gov/nhp/news/regulatory/index.html*. Internet e-mail: *WOComment@blm.gov* (Include "Attn: AA83").

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, VA 22203, Phone: 703–235–3750, or Michael H. Schwartz, Group Manager, Regulatory Affairs, Bureau of Land Management, U.S. Department of the Interior, 1849 C Street, NW, Room 401 LS, Washington, DC 20240, Phone: 202–452–5198. Persons who use a telecommunications device for the deaf (TDD) may contact either individual by calling the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

II. Background

III. Review Under Procedural Statutes and Executive Orders

I. Public Comment Procedures

A. How Do I Comment on the Proposed Rule?

If you wish to comment, you may submit your comments by any one of several methods.

- You may mail comments to Director, Office of Hearings and Appeals, Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, VA 22203, Attn: RIN 1090–AA83.
- You may deliver comments to 801 N. Quincy Street, Suite 300, Arlington, VA 22203.
- You may comment via the Internet by accessing our automated commenting system located at *www.blm.gov/nhp/news/regulatory/index.html* and following the instructions there.
- You may also comment via e-mail to *WOComment@blm.gov*. We intend this address for use by those who want to keep their electronic comments confidential and for those who are unable, for whatever reason, to use the Internet site. Please submit e-mail comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: AA83" and your name and return address in your e-mail message.

If you do not receive a confirmation that we have received your electronic message, contact us directly at (202) 452–5030.

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

The Department of the Interior may not necessarily consider or include in the Administrative Record for the final rule comments that we receive after the

close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under "**ADDRESSES**: Personal or messenger delivery" during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Individual respondents may request confidentiality, either in a letter or e-mail, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment letter or e-mail. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

II. Background

The changes included in this proposal are important because BLM must provide a way to implement fire management decisions on both rangelands and forest lands with a minimum of delay. On August 22, 2002, President Bush released the Administration's Healthy Forests Initiative. The Initiative responds to the current threat of catastrophic wildfires posed by unnaturally dense and unhealthy forests and rangelands. One component of the Initiative directs Agriculture Secretary Ann Veneman, Interior Secretary Gale Norton, and Council on Environmental Quality Chairman James Connaughton to improve regulatory processes to ensure more timely decisions, greater efficiency, and better results in reducing the risk of catastrophic wildfires by restoring forest and rangeland health. The regulations proposed today are part of the Initiative.

The experience of recent fire seasons strongly suggests that the faster BLM is able to take action to reduce future threats of wildland fires, the more likely BLM can safeguard public and firefighter health and safety, protect property, and improve environmental baseline conditions in the wildland-urban interface and other priority areas. This recent experience shows that wildfire management decisions are by their nature urgent, both to speed recovery from past fires and thereby prevent erosion, water pollution, and other harmful legacies that they have caused, and to prevent or reduce catastrophic wildfires in upcoming dry seasons. Therefore, this rule proposes to make these decisions effective immediately.

A. Standing to Appeal

OHA proposes to codify its decisions on who has a right to appeal a decision. The regulation at 43 CFR 4.410 provides that "[a]ny party to a case who is adversely affected by a decision of the Bureau of Land Management or of an administrative law judge shall have a right of appeal to the Board." Both "party to a case" and "adversely affected" have been discussed in several Board decisions, *e.g., San Juan Coal Co.*, 155 IBLA 389, 393 (2001); *Legal and Safety Employer Research, Inc.*, 154 IBLA 167, 171–72 (2001); and *Powder River Basin Resource Council*, 124 IBLA 83, 89 (1992). Those decisions define a "party to a case" as one who has taken the action that is the subject of the BLM decision on appeal, is the object of that decision, or has participated in the process leading to the decision, *e.g.*, by filing comments on an environmental analysis or filing a protest of the proposed decision. They define "adversely affected" as requiring a legally cognizable interest that would be harmed by the BLM decision. OHA proposes to add provisions to section 4.410 to reflect these decisions. A "legally cognizable interest" is a commonly used term in IBLA decisions. Whether one has such an interest depends on the facts of the particular case. In general, a property or economic interest in the land involved in BLM's decision would suffice, as would use of the land for earning a livelihood or for recreation. On the other hand, one's general concern about the subject matter of the decision or the interest of a person who uses the land in trespass, without claim or color of right, would not afford a right of appeal. The rule also proposes to provide, consistent with IBLA precedent, that a party may only raise issues on appeal that it raised with the agency whose decision it is appealing. See, for example, *Henry A. Alker*, 62 IBLA 211, 212 (1982); *Southern Utah Wilderness Alliance*, 128 IBLA 52, 59 (1993).

B. Effectiveness of BLM Wildfire Management Decisions

BLM is proposing to add section 4190.1 and amend section 5003.1. The former addition provides that fire management decisions affecting rangelands will become effective immediately. Current regulations are silent. The latter change provides that fire management decisions affecting forest management will become effective immediately. In both sections, we have included language stating that IBLA will promptly issue a decision on the merits of any appeal, since the BLM decision will not be subject to the automatic stay of 43 CFR 4.21(a). (Alternatively, because BLM wildfire management decisions would be in full force and effect, they would be final agency actions subject to immediate judicial review. 5 U.S.C. 704 (2000); *Darby* v. *Cisneros*, 113 S.Ct. 2539, 2547–48 (1993).) These changes would apply only to fire management decisions, not to other decisions relating to grazing or timber sales.

The proposed rule identifies the following as items that wildfire decisions are likely to include:

(1) fuel reduction or fuel treatment such as prescribed burns and mechanical, chemical, and biological thinning methods; and

(2) projects to stabilize and rehabilitate lands affected by wildfire.

We specifically request comment as to whether the list is appropriate, requires modification, or should be expanded.

These proposed regulations refer to a requirement that IBLA will issue a decision on the merits of an appeal of a wildfire management decision within the time limits specified in 43 CFR 4.416. That new regulation would require a decision within 60 days after all pleadings have been filed by the parties.

C. Proof of Service

In the Department's experience, the existing regulations requiring proof of service of documents filed with ALJs and IBLA are unnecessary. For appeals to IBLA, 43 CFR 4.413(a) requires that service of a notice of appeal and of written arguments must be made on adverse parties and the appropriate office of the Office of the Solicitor "in the manner prescribed in § 4.401(c)," that is, by delivering the copy personally or by sending the document by registered or certified mail, return receipt requested. 43 CFR 4.401(c)(1). Similar provisions apply to proceedings before ALJs, *e.g.*, 43 CFR 4.422(c)(1).

The regulations at 43 CFR 4.401(c)(2) and 4.422(c)(2) require that service be proved by a written statement of the person who made service (for personal delivery) or by a Postal Service return receipt (for service by mail). These regulations were adopted in 1971. In the meantime, many courts have adopted rules that provide that a "certificate of service" or "affidavit of service" may be substituted for proof of service of documents that must be served. For example, Rule 5.3 of the U.S. District Court for the District of Columbia provides: "Proof of service * * * shall show the date and manner of service, and may be by certificate of an attorney of record or other proof satisfactory to the Court." There is no need to be more formal or burdensome in administrative proceedings. We therefore propose to amend sections 4.401(c)(2), 4.422(c)(2), and 4.450–5 to provide that a certificate of service is adequate proof of service.

III. Review Under Procedural Statutes and Executive Orders

A. *Regulatory Planning and Review (Executive Order 12866).* Under the criteria in Executive Order 12866, this document is not a significant rule. The Office of Management and Budget has not reviewed this rule under Executive Order 12866.

1. This rule will not have an annual economic effect of $100 million or more or adversely affect in a material way an economic sector, productivity, competition, jobs, the environment, public health or safety, or other units of government or communities. A cost-benefit and economic analysis is not required. These amended regulations will have virtually no effect on the economy because they merely simplify proof of service, codify who has a right of appeal, make BLM wildfire management decisions effective immediately, and expedite review of those decisions.

2. This rule will not create inconsistencies with or interfere with other agencies' actions. This rule amends existing regulations of the Office of Hearings and Appeals and the Bureau of Land Management so that they will continue to be consistent with each other.

3. This rule will not alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. These proposed regulations have to do only with the procedures for hearings and appeals of BLM land management decisions, not with entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. These proposed regulations merely simplify proof of service, codify who has a right of appeal, make BLM wildfire management decisions effective immediately, and expedite review of those decisions.

4. This rule does not raise novel legal or policy issues. These proposed regulations merely simplify proof of service, codify who has a right of appeal, make BLM wildfire management decisions effective immediately, and expedite review of those decisions.

B. *Regulatory Flexibility Act.* The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Simplifying proof of service, codifying who has a right of appeal, making BLM wildfire management decisions effective immediately, and expediting review of those decisions will have no appreciable effect on small entities. A Small Entity Compliance Guide is not required.

C. *Small Business Regulatory Enforcement Fairness Act.* This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

1. This rule would not have an annual effect on the economy of $100 million or more. Simplifying proof of service, codifying who has a right of appeal, making BLM wildfire management decisions effective immediately, and expediting review of those decisions should have no effect on the economy.

2. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies, or geographic regions. Simplifying proof of service, codifying who has a right of appeal, making BLM wildfire management decisions effective immediately, and expediting review of those decisions will not affect costs or prices for citizens, individual industries, government agencies, or geographic regions.

3. This rule would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Simplifying proof of service, codifying who has a right of appeal, making BLM wildfire management decisions effective immediately, and expediting review of those decisions will have no effects, adverse or beneficial, on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. *Unfunded Mandates Reform Act.* In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*):

1. This rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. Small government entities rarely appeal BLM wildfire management decisions. Simplifying proof of service, codifying who has a right of appeal, making BLM wildfire management decisions effective immediately, and expediting review of those decisions will neither uniquely nor significantly affect these governments. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.* is not required.

2. This rule would not produce an unfunded Federal mandate of $100 million or more on State, local, or tribal governments or the private sector in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

E. *Takings (Executive Order 12630).* In accordance with Executive Order 12630, the rule would not have significant takings implications. A takings implication assessment is not required. These amendments to existing regulations that will simplify proof of service, codify who has a right of appeal, make BLM wildfire management decisions effective immediately, and expedite review of those decisions will have no effect on property rights.

F. *Federalism (Executive Order 13132).* In accordance with Executive Order 13132, these proposed regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. There is no foreseeable effect on states from simplifying proof of service, codifying who has a right of appeal, making BLM wildfire management decisions effective immediately, and expediting review of those decisions. A Federalism Assessment is not required.

G. *Civil Justice Reform (Executive Order 12988).* In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. This rule, because it merely simplifies proof of service, codifies who has a right of appeal, makes BLM wildfire management decisions effective immediately, and expedites review of those decisions will not burden either administrative or judicial tribunals.

H. *Paperwork Reduction Act.* These regulations do not require an information collection from 10 or more parties, and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I has not been prepared and has not been approved by the Office of Policy Analysis. These proposed regulations simplify proof of service, codify who has a right of appeal, make BLM wildfire management decisions effective immediately, and expedite review of those decisions. They do not require the public to provide information.

I. *National Environmental Policy Act.* The Department has analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, Council on Environmental Quality (CEQ) regulations, 40 CFR Part 1500, and the Department Manual (DM). CEQ regulations, at 40 CFR 1508.4, define a "categorical exclusion" as a category of actions that the Department has determined ordinarily do not individually or cumulatively have a significant effect on the human environment. The regulations further direct each department to adopt NEPA procedures, including categorical exclusions. 40 CFR 1507.3. The Department has determined that the proposed rule is categorically excluded from further environmental analysis under NEPA in accordance with 516 DM 2, Appendix 1, which categorically excludes: "[p]olicies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature." In addition, the Department has determined that none of the exceptions to categorical exclusions, listed in 516 DM 2, Appendix 2, applies to the proposed rule. The proposed rule is an administrative and procedural rule, relating to the timing of the effectiveness of BLM wildfire management decisions and the Department's administrative appeals process. The rule would not change the requirement that projects must comply with NEPA. Therefore, an environmental assessment or environmental impact statement under NEPA is not required.

J. *Executive Order 13175, Consultation and Coordination with Indian Tribal Governments.* As required by Executive Order 13175 and 512 DM 2, the Department of the Interior has evaluated potential effects of the proposed rule on Federally recognized Indian tribes and has determined that there are no potential effects. The proposed rule would not affect Indian trust resources; it simplifies proof of service, codifies who has a right of appeal, makes BLM wildfire management decisions effective immediately, and expedites review of those decisions.

K. *Effects on the Nation's Energy Supply (Executive Order 13211).* In accordance with Executive Order 13211, this proposed rule would not have a significant effect on the nation's energy supply, distribution, or use. Simplifying proof of service, codifying who has a right of appeal, making BLM wildfire management decisions effective immediately, and expediting review of those decisions will not affect energy supply or consumption.

L. *Clarity of this Regulation.* Executive Order 12866 requires each agency to write regulations that are easy to understand, including answers to the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a renumbered heading; for example, § 4.21 General provisions.) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (6) What else could we do to make the rule easier to understand? Please send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

M. *Author.* The principal author of this proposed rule is Will A. Irwin, Administrative Judge, Inferior Board of Land Appeals, assisted by Michael Hickey and Amy Sosin, Office of the Solicitor, and Michael H. Schwartz, Bureau of Land Management, Department of the Interior.

List of Subjects

43 CFR Part 4

Administrative practice and procedure, Grazing lands, Public lands.

43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management, Reporting and recordkeeping requirements.

43 CFR Part 5000

Administrative practice and procedure, Forests and forest products, Public lands.

For the reasons set forth in the preamble, part 4, subpart E, and subpart 5003 of Title 43 of the Code of Federal Regulations are proposed to be amended, and subpart 4190 of Title 43 of the Code of Federal Regulations is proposed to be added, as set forth below:

Dated: December 10, 2002.

Robert S. More,

Director, Office of Hearings and Appeals.

Dated: December 10, 2002.

Rebecca W. Watson,

Assistant Secretary of the Interior.

43 CFR Subtitle A—Office of the Secretary of the Interior

PART 4—[AMENDED]

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

1. The authority for 43 CFR Part 4, Subpart E, continues to read:

Authority: Sections 4.470 to 4.478 also issued under authority of sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

2. In § 4.401, revise paragraph (c)(2) to read as follows:

§ 4.401 Documents.

* * * * *

(c) * * *

(2) A party or its representative must sign a written statement at the conclusion of any document that a party must serve under the regulations in this part certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service.

* * * * *

3. In § 4.410, redesignate paragraph (b) as (e) and add paragraphs (b), (c), and (d) to read as follows:

§ 4.410 Who may appeal.

* * * * *

(b) A party to a case, as set forth in paragraph (a) of this section, is one who has taken action that is the subject of the decision on appeal, is the object of that decision, or has otherwise participated in the process leading to the decision under appeal, *e.g.*, by filing a mining claim or application for use of public lands, by commenting on an environmental document, or by filing a protest to a proposed action.

(c) To the extent applicable, a party to a case, as set forth in paragraph (a) of this section, may raise on appeal only those issues raised in its prior participation.

(d) A party to a case is adversely affected, as set forth in paragraph (a) of this section, when that party has a legally cognizable interest, and the decision on appeal has caused, or will cause, injury to that interest.

* * * * *

4. Section 4.416 is added to read as follows:

§ 4.416 Appeals of wildfire management decisions.

The Interior Board of Land Appeals must decide appeals from BLM decisions under § 4190.1 and § 5003.1(b) of this title within 60 days after all pleadings have been filed.

5. In § 4.422, revise paragraph (c)(2) to read as follows:

§ 4.422 Documents.

* * * * *

(c) * * *

(2) A party or its representative must sign a written statement at the conclusion of any document that the party must serve under the regulations in this part certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service.

* * * * *

6. In § 4.450–5, revise the introductory paragraph to read as follows:

§ 4.450–5 Service.

The complaint must be served upon every contestee in the manner provided in § 4.422(c)(1). Proof of service must be made in the manner provided in § 4.422(c)(2). In certain circumstances, service may be made by publication as provided in paragraph (b)(1) of this section. When the contest is against the heirs of a deceased entryman, the notice must be served on each heir. If the person to be personally served is an infant or a person who has been legally adjudged of unsound mind, service of notice must be made by delivering a copy of the notice to the legal guardian or committee, if there is one, of such infant or person of unsound mind. If there is no guardian or committee, then service must be by delivering a copy of the notice to the person having the infant or person of unsound mind in charge.

* * * * *

43 CFR Chapter II—Bureau of Land Management, Department of the Interior

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

7. The authority citation for part 4100 continues to read:

Authority: 43 U.S.C. 315, 315a-315r, 1181d, 1740.

8. Add subpart 4190, consisting of §4190.1, to read as follows:

Subpart 4190—Effect of wildfire management decisions

§ 4190.1 Effect of wildfire management decisions.

(a) Notwithstanding the provisions of 43 CFR 4.21, BLM rangeland wildfire management decisions are in immediate full force and effect. Wildfire management includes but is not limited to:

(1) Fuel reduction or fuel treatment such as prescribed burns and mechanical, chemical, and biological thinning methods; and

(2) Projects to stabilize and rehabilitate lands affected by wildfire.

(b) The Interior Board of Land Appeals will issue a decision on the merits of an appeal of a wildfire management decision under paragraph (a) of this section within the time limits prescribed in 43 CFR 4.416.

PART 5000—ADMINISTRATION OF FOREST MANAGEMENT DECISIONS

9. The authority citation for part 5000 continues to read as follows:

Authority: 43 U.S.C. 1181(a); 43 U.S.C. 1701; 30 U.S.C. 601 *et seq;*

Subpart 5003–Administrative Remedies

10. Revise § 5003.1 to read as follows:

§ 5003.1 Effect of decisions.

(a) Filing a notice of appeal under part 4 of this title does not automatically suspend the effect of a decision governing or relating to forest management as described under §§ 5003.2 and 5003.3.

(b) Notwithstanding the provisions of 43 CFR 4.21, BLM wildfire management decisions made under this part and parts 5400 through 5510 of this chapter are in immediate full force and effect. Wildfire management includes but is not limited to:

(1) Fuel reduction or fuel treatment such as prescribed burns and mechanical, chemical, and biological thinning methods; and

(2) Projects to stabilize and rehabilitate lands affected by wildfire.

(c) The Interior Board of Land Appeals will issue a decision on the merits of an appeal of a wildfire management decision under paragraph (b) of this section within the time limits prescribed in 43 CFR 4.416.

[FR Doc. 02–31575 Filed 12–11–02; 3:00 pm]

BILLING CODE 4310–79–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration (NHTSA)

49 CFR Part 533

[Docket No. 2002–11419; Notice 2]

RIN 2127–AI70

Light Truck Average Fuel Economy Standards Model Years 2005–07

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes the establishment of corporate average fuel economy standards for light trucks, pursuant to 49 U.S.C. chapter 329, manufactured in model years (MY) 2005 through 2007. The agency is proposing to set the standard for light trucks at 21.0 mpg for MY 2005, 21.6 mpg for MY 2006 and 22.2 mpg for MY 2007.

DATES: Comments must be received on or before February 14, 2003.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

You may call Docket Management at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For technical issues, call Ken Katz, Lead Engineer, Fuel Economy Division, Office of Planning and Consumer Standards, at (202) 366–0846, facsimile (202) 493–2290, electronic mail *kkatz@nhtsa.dot.gov.*

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I. Background

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973–74, Congress enacted the Energy Policy and Conservation Act (EPCA). The Act established an automotive fuel economy regulatory program by adding Title V, "Improving Automotive Efficiency," to the Motor Vehicle Information and Cost Saving Act. Title V has been amended from time to time and codified without substantive change as Chapter 329 of title 49, United States Code. Chapter 329 provides for the issuance of average fuel economy standards for passenger automobiles and automobiles that are not passenger automobiles (light trucks).

Section 32902(a) of chapter 329 states that the Secretary of Transportation shall prescribe by regulation corporate average fuel economy (CAFE) standards for light trucks for each model year. That section also states that "[e]ach standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year." The Secretary has delegated the authority to implement the automotive fuel economy program to the NHTSA Administrator. 49 CFR 1.50(f).

The first light truck fuel economy standards were established for MY 1979 and applied to light trucks with Gross Vehicle Weight Ratings (GVWR) up to 6000 pounds. Beginning with MY 1980, NHTSA raised this GVWR ceiling to 8500 pounds. For MYs 1979–1981, NHTSA established separate standards for two-wheel drive (2WD) and four-wheel drive (4WD) light trucks, without a "combined" standard blending the two together. Beginning with MY 1982, NHTSA established a combined standard, plus optional 2WD and 4WD standards. After MY 1991, NHTSA dropped the optional 2WD and 4WD standards. During MYs 1980–1995, NHTSA also required U.S. light truck manufacturers' "captive imports" to be separated from their other truck models in determining compliance with CAFE standards. The following table lists the "combined" standards established since MY 1982:

Model year	CAFE standard (mpg)
MY 1982	17.5
MY 1983	19.0
MY 1984	20.0
MY 1985	19.5
MY 1986	20.0
MY 1987	20.5
MY 1988	20.5
MY 1989	20.5
MY 1990	20.0
MY 1991	20.2
MY 1992	20.2
MY 1993	20.4
MY 1994	20.5
MY 1995	20.6
MY 1996–2004	20.7

In 1994, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** outlining NHTSA's intention to set standards for some, or all, of the model years from 1998 to 2006. 59 FR 16324 (April 6, 1994).

On November 15, 1995, the Department of Transportation and Related Agencies Appropriations Act for FY 1996 was enacted. Pub. L. 104–50. *Section 330 of that Act provided:*

> None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations * * * prescribing corporate average fuel economy standards for automobiles * * * in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

We then issued a notice of proposed rulemaking (NPRM) limited to MY 1998, proposing to set the light truck CAFE standard for that year at 20.7 mpg, the same standard as had been set for MY 1997. 61 FR 145 (January 3, 1996). This 20.7 mpg-standard was adopted by a final rule issued on March 29, 1996. 61 FR 14680 (April 3, 1996).

On September 30, 1996, the Department of Transportation and Related Agencies Appropriations Act for FY 1997 was enacted. Public. Law. 104–205. Section 323 of that Act included the same language on CAFE standards as that of Section 330 of the FY 1996 Appropriations Act. The agency followed the same process as the prior year and established a MY 1999 light truck CAFE standard of 20.7 mpg, the same standard that had been set for MYs 1997 and 1998.

Because the same limitation on the setting for CAFE standards was included in the Appropriations Acts for each of FYs 1998–2001, the agency followed that same procedure during those fiscal years and did not issue any NPRMs in the series of rulemakings we conducted to establish the light truck fuel economy standards for MYs 2000–2003. The agency concluded in those rulemakings, as it had when setting the MY 1999 standard, that the restrictions contained in the Appropriations acts prevented the issuance of any standards other than the standard set for the prior model year. The agency also determiped that issuing an NPRM was unnecessary and contrary to the public interest because there was no other course of action available to it.

The Department of Transportation and Related Agencies Appropriations Act for FY 2001 was enacted on October 23, 2000. Public Law 106–346. This law provided appropriations for the Department of Transportation for FY 2001, and is the law under which we issued the light truck CAFE standard for MY 2003. While Section 320 of that Act contained a restriction on CAFE rulemaking identical to that contained in prior appropriation acts, the conference committee report for that act directed that NHTSA fund a study by National Academy of Sciences (NAS) to evaluate the effectiveness and impacts of CAFE standards (H.R. Conf. Rep. No. 106–940, at 117–118).

The NAS submitted its report to the Department of Transportation on July 30, 2001. The final report was released in January 2002. The report concludes that technologies exist that could significantly increase passenger car and light truck fuel economy within 15 years. However, their development cycles—as well as future economic, regulatory, safety and consumer preferences—will influence the extent to which these technologies appear in the U.S. market.

All but two members of the NAS committee noted: "the downweighting and downsizing that occurred in the late 1970s and early 1980s, some of which was due to CAFE standards, probably resulted in an additional 1300 to 2600 traffic fatalities in 1993." (NAS, pp. 3 and 111.) Specifically, "to the extent that the size and weight of the fleet have been constrained by CAFE requirements * * * those requirements have caused more injuries and fatalities on the road than would otherwise have occurred." (NAS, p. 29).

The NAS found that to minimize financial impacts on manufacturers, their suppliers, their employees and consumers, sufficient lead-time (consistent with normal product life cycles) should be given when considering increases in CAFE standards. The report stated that there are advanced technologies that could be employed, without negatively affecting the automobile industry, if sufficient lead-time were provided to the manufacturers. In the NAS' view, the selection of future fuel economy standards will require uncertain and difficult trade-offs among environmental benefits, vehicle safety, cost, energy independence, and consumer preferences. It also suggests that changing the CAFE regulatory program to one based on vehicle attributes, such as weight, and allowing "credit trading" could eliminate the current CAFE program's encouragement of downweighting or the production and sale of more small cars, and also would reduce costs. (NAS, pp. 5, 113) Recognizing the many trade-offs that must be considered in setting fuel economy standards, the committee took no position on what the appropriate CAFE standards should be for future years. In February 2002, Secretary Mineta asked Congress "to provide the Department of Transportation with the necessary authority to reform the CAFE program, guided by the NAS report's suggestions."

In a letter dated July 10, 2001, Secretary of Transportation Mineta asked the House and Senate Appropriations Committees to lift the restriction on the agency spending funds for the purposes of improving CAFE standards. The Department of Transportation and Related Agencies Appropriations Act for FY 2002 (Pub. L. 107–87) was enacted on December 18, 2001, and does not contain a provision restricting the Secretary's authority to prescribe fuel economy standards.

To prepare any fuel economy standard, the agency must collect information relating to prospective CAFE levels, analyze and weigh the information in light of the statutory criteria for determining the "maximum feasible" average fuel economy level, and incorporate this information and analysis into a rulemaking action to set the standard, with opportunity for notice and comment. As NHTSA was unable to spend any funds by virtue of Section 320 of the FY 2001 Appropriations Act and the predecessor restrictions in earlier Appropriations Acts, it was not able to prepare the factual or analytical foundation necessary for rulemaking to establish new CAFE levels from September 1995 to December 2001.

When issuing our January 2002 proposal to establish the MY 2004 standard at 20.7 mpg (67 FR 3470), we noted that the availability of funds did not translate into an immediate ability to conduct the level of analysis needed to set fuel economy standards. Although a number of commenters reacted to this proposal by advocating a higher MY 2004 standard, the agency determined, on the basis of the limited information available and the proximity to the model year, to set the MY 2004 Standard at 20.7 mpg (67 FR 16052, April 4, 2002).

On February 7, 2002, we issued a Request for Comments (67 FR 5767) seeking data on which we could base our analysis of appropriate CAFE standards for light trucks for upcoming model years. We also sought comments on possible reforms to the CAFE program, as it applies to both passenger cars and light trucks, to protect passenger safety, advance fuel-efficient technologies, and obtain the benefits of market-based approaches.

II. Agency Proposal

This notice proposes to establish an average fuel economy standard for light trucks for each of MYs 2005–07. The agency is proposing to set the corporate average fuel economy standard for light trucks at 21.0 mpg for MY 2005, 21.6 mpg for MY 2006 and 22.2 mpg for MY 2007.

After receiving comments and reviewing any additionally provided data, we may decide to set the standards at different levels than those proposed. Factual uncertainties that could result in lower standards include the possibility that planned technological actions may not achieve anticipated fuel economy benefits or may prove to be infeasible. Similarly, factual uncertainties that could result in higher standards include the possibility that manufacturers may be able to improve fuel economy in their fleets by further technological advances beyond those currently planned.

We believe that the advent of advanced vehicle technologies, such as hybrid propulsion systems and advanced diesel engines, will allow for the development of advanced fuel economy should they permeate the motor vehicle market. Fuel cell technology has the capacity over the long term to reframe the basic transportation system. While we are limited today in setting fuel economy standards for the relative short term and within the constraints of the current CAFE statute, we will continue to support and encourage the development of advanced vehicle technologies capable of substantial fuel economy improvements and a market structure to support them through efforts like FreedomCAR, continued targeted research dollars and consumer tax incentives. Consistent with the recommendations of the NAS report, we intend to study programmatic CAFE alternatives and to implement those reforms consistent with our statutory authority to allow for greater improvements in fuel economy safely in the years beyond those addressed in this proposal.

The proposal is a significant step toward accomplishing the target in the conference energy bill to save at least 5 billion gallons of gasoline from MYs 2006 through MY 2012. The proposed increases for MYs 2006–2007 alone will generate more than 3 billion gallons of gasoline savings compared to what would be used by those vehicles if they only achieved the current fuel economy standard of 20.7 mpg. Even if the standard remained at 22.2 mpg for MYs 2008 through 2012, approximately 8 billion gallons of gasoline would be saved during MYs 2006 through 2012.

III. Manufacturer Projections for Model Years 2005–2007

In evaluating manufacturers' fuel economy capabilities for MY 2005-07, we have analyzed manufacturers' current projections and underlying product plans and considered what, if any, additional actions the manufacturers could take to improve their fuel economy. We note that although manufacturers may receive credit towards their CAFE compliance by placing alternative fuel vehicles into the market, the statute prohibits us from taking such benefits into consideration in determining the maximum feasible fuel economy standard.

A. General Motors

General Motors' (GM) current share of the light truck market is 25.5%. In its May 2002 submission, General Motors projected that its light truck fleet would achieve a CAFE level of between 18.7 and 20.0 mpg for 2005 MY, between 18.8 and 20.1 mpg for MY 2006 and between 19.1 and 20.8 mpg for MY 2007. Its projections include sales of GMC, Chevrolet, Pontiac, Buick, Cadillac and Saturn vehicles.

B. Ford

Ford Motor Company controls approximately 27.5% of the light truck market in the United States. In its May 2002 submission, Ford provided data from which the agency projects its light

truck fleet would achieve a CAFE level of 20.9 mpg for MY 2005, 21.6 for MY 2006 mpg and 22.0 mpg for MY 2007. Its data include sales of Ford branded vehicles, as well as Lincoln, Mercury, Mazda, Land Rover and Volvo branded vehicles. Ford indicated that its estimates of fuel economy improvements are typically 40 to 60 percent higher than the corresponding improvements of actual production vehicles, thus it is possible that Ford's current product plan for MY 2005–2007 could result in a CAFE level for its light truck fleet of up to 0.5 mpg less per model year.

C. DaimlerChrysler

DaimlerChrysler controls approximately 24.6 percent of the light truck market. In its May 2002 submission, DaimlerChrysler provided data from which the agency projects that its light truck fleet would achieve a CAFE level of 21.3 mpg for MY 2005, 21.6 mpg for MY 2006 and 22.2 mpg for MY 2007. Its data includes sales of Chrysler, Jeep, Dodge, Mercedes and Mitsubishi brand vehicles. DaimlerChrysler indicated that its fuel economy estimates include risks that their CAFE projections won't be met due to technology issues, product offerings, consumer acceptance, future safety regulations and the economic climate. These risks could cause the CAFE level for DaimlerChrysler light truck fleet to be approximately 0.4 to 0.7 mpg less per model year.

In response to the agency's Request for Comments, DaimlerChrysler, Ford and General Motors clarified their public commitments relating to fuel economy improvements in their vehicles. Ford clarified its July 27, 2000, announcement that it planned to increase the fuel economy of its sport utility vehicle fleet by 25 percent by the 2005 calendar year. Ford stated that its plan calls for a significant fuel economy improvement in its existing fleet combined with the introduction of new SUVs with higher fuel economy capabilities. Ford also clarified that its commitment uses MY 2000 as the base year and that the increase will become effective with the introduction of the MY 2006 vehicles during the latter half of 2005.

General Motors stated that its public announcement did not refer to its average fuel economy levels, but rather to its leadership in light truck fuel economy and its intent to remain the leader over the next five years. GM also made clear that its leadership relates to the manufacture and sale of more fuel-efficient light trucks as measured through model-to-model comparisons of comparable vehicles.

DaimlerChrysler stated that it is committed to improving the fuel efficiency of all of its vehicles and that its fleet will match or exceed those of other full-line manufacturers.

D. Other Manufacturers

Honda, Toyota and Nissan each provided responses to all or many of the questions posed in the Request for Comments. All three of these manufacturers provided information regarding a variety of technologies for improving fuel efficiency that they plan on incorporating into their light trucks by the 2005 model year. For the technologies discussed, they provided the estimated fuel economy benefit, when the technology would be available for use, its potential applications, where it is currently being employed on their light trucks, and the estimated costs associated with employing the technology. None, however, provided detailed projections regarding their MY 2005–2010 product plans or information regarding vehicle specifications or estimated fuel economy values for those model years.

A number of foreign-based manufacturers participating in the U.S. market did not submit any response to our Request for Comments. Of these companies, which include BMW, Isuzu, Volkswagen, Hyundai, Kia, Suzuki, and others, only Isuzu sold more than 100,000 light trucks in the 2001 model year. The projected MY 2001 CAFE values and production for all light truck manufacturers other than GM, Ford and DaimlerChrysler are shown in following table:

Manufacturer	MY 2001 CAFE, mpg	MY 2001 production, units	MY 2001 market share, percentage
Toyota	22.1	647,416	8.9
Nissan	20.7	377,338	5.2
Honda	24.9	252,430	3.5
Isuzu	21.1	131,400	1.82
Kia	22.9	58,000	0.80
BMW	19.2	52,957	0.73
Hyundai	25.2	47,000	0.652
Suzuki	22.0	45,958	0.63
Volkswagen	20.5	10,183	0.14

IV. Maximum Feasible Average Fuel Economy Considerations

The CAFE statute sets forth the parameters within which the agency is required to establish corporate average fuel economy standards. Section 32902(a) directs the Secretary of Transportation (who has delegated this authority to the NHTSA Administrator) to prescribe by regulation average fuel economy standards for light trucks at least 18 months before the beginning of each model year, and provides that "each standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year." The agency is required to consider the factors in 49 U.S.C. 32902(f) when determining the "maximum feasible" average fuel economy standards for any given model year. Although the EPCA does not include motor vehicle safety as an express statutory criterion, NHTSA may consider safety in accordance with the Administration's emphasis on safety in setting CAFE standards. Motor vehicle safety has long been recognized as an integral part of the agency's consideration of economic practicability, and this rulemaking includes consideration of the safety implications of the proposed new standards for light trucks.

As discussed in many past fuel economy notices, it is clear from the legislative history that Congress intended NHTSA to take industry-wide considerations into account in determining the maximum feasible average fuel economy levels, and not to limit its analysis to any particular company's ability to meet the standard. Consistent with the mandate that the agency consider economic practicability, the agency has determined maximum feasible CAFE standards with regard to the projected capabilities of those manufacturers whose vehicles constitute a substantial share of the market.

This does not necessarily mean that CAFE standards will be set at the level asserted by the "least capable manufacturer" with a substantial share of the market (Ford, GM and DaimlerChrysler). Instead, it means that we must consider the statutory factors with regard to these manufacturers, weighing their asserted capabilities, product plans and economic conditions against their projected capabilities, the need for the nation to conserve energy and the effect of other regulations (including motor vehicle safety and emissions regulations) and other public policy objectives.

This approach is consistent with the Conference Report on the legislation enacting the CAFE statute:

> Such determination [of maximum feasible average fuel economy level] should take industry-wide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer that might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic manufacturers that currently exist and the possible implications for the national economy and for reduced competition association [sic] with a severe strain on any manufacturer. * * *
>
> S. Rep. No. 94–516, 94th Congress, 1st Sess. 154–155 (1975).

The agency has historically included consideration of numerous public policy concerns, whether considered as part of the enumerated factors or in addition to them. For example, the agency always has considered the impact of the average fuel economy standard on motor vehicle and passenger safety. As the United States Court of Appeals pointed out in upholding NHTSA's exercise of judgment in setting the 1987–1989 passenger car standards, "NHTSA has always examined the safety consequences of the CAFE standards in its overall consideration of relevant factors since its earliest rulemaking under the CAFE program." *See, Competitive Enterprise Institute* v. *NHTSA (CEI I)*, 901 F.2d 107, 121 at n.11 (DC Cir. 1990).

The courts have routinely affirmed the agency's authority to balance all of these considerations in applying the statutory factors and have consistently upheld NHTSA's conclusions. *See, e.g., Center for Auto Safety* v. *NHTSA*, 793 F.2d 1322 (*CAS II*)(D.C. Cir. 1986) (administrator's consideration of market demand as component of economic practicability found to be reasonable); *Public Citizen* v. *NHTSA*, 848 F.2d 256 (D.C. Cir.1988)(Congress established broad guidelines in the fuel economy statutes; agency's decision to set lower standard a reasonable accommodation of conflicting policies); *CEI I*, 901 F.2d 107 (D.C. Cir.1990)(agency setting of fuel economy standards and considerations of safety impacts upheld).

We have tentatively concluded that this proposal is within the technological feasibility and economic practicability of the primary contributors to the light truck market, is capable of being met without substantial product restrictions, vehicle weight reduction or adverse effects on air quality, and will enhance the ability of the nation to conserve fuel consumption and reduce its dependence on foreign oil.

We anticipate that hybrid vehicles and advanced diesel engines will begin to permeate the motor vehicle market and enhance the overall fuel efficiency of the vehicle fleet. We seek comments on the availability of advanced technology vehicles both during the 2005–2007 MY time frame and beyond, and on CAFE-related mechanisms, available under current statutory authority or through reformed CAFE standards that may require new statutory authority, through which the government can encourage and augment the incorporation of these vehicles into the fleet.

V. Technological Feasibility

Using the data submitted in response to our Request for Comments, we believe that some manufacturers may be able to achieve CAFE performance better than they currently project. The agency's analysis of CAFE capability involves technological improvement and the potential to limit growth in horsepower/weight ratios.[1] Although the agency's analysis includes the possibility that manufacturers may limit growth in horsepower/weight ratios, we believe that manufacturers will meet the proposed CAFE levels without any meaningful deviation from the planned performance and weight of their vehicles. Additionally, we do not expect any manufacturers to engage in any meaningful type of mix shifting to meet these standards, other than those already being planned. The agency's analysis assumes manufacturers will not reduce vehicle weight in order to comply with the proposed new standard. Under this approach, our CAFE standards will not adversely affect motor vehicle safety. However, we invite comments on this approach. Commenters are asked to provide data and analysis on the possibility or likelihood that manufacturers will comply with these new standards by reducing vehicle weight and, if so, the safety consequence of weight reduction.

The Preliminary Economic Assessment (PEA) discusses in detail fuel efficiency enhancing technologies expected to be available during the MY 2005–2007 time period. Some of the technologies discussed in the PEA have been used for over a decade (*e.g.*, overhead camshafts, engine friction reduction, and low friction lubricants). Some have only recently been incorporated into passenger cars, (*e.g.*, 5-speed and 6-speed automatic transmissions and variable valve timing). Some have been under development for a number of years but have not been produced in quantity for an extended period (*e.g.*, cylinder deactivation, variable valve lift and timing, continuously variable transmission (CVT), integrated starter/generator, advanced diesels and hybrid drive-trains).

The agency has analyzed potential technological improvements to the product offerings for each manufacturer with a significant share of the light truck market. As indicated above, Ford, General Motors and DaimlerChrysler are the dominant manufacturers in the light truck segment. In comparison, Toyota, Honda or Nissan do not manufacture a substantial share of the light trucks sold in the U.S. We also note that unlike the domestic manufacturers, none of the foreign manufacturers of trucks provided detailed responses to our prior request for comments.

Because Ford, General Motors and DaimlerChrysler each have a substantial share of the light truck market, we focused our analysis on their capabilities. Historically, the agency has premised its analysis of economic practicability on what level each manufacturer with a substantial share of the market could achieve without needing to engage in product restriction (with a potentially adverse effect on jobs and consumer choice) or weight

[1] This analysis is based on the information provided in response to our Request for Comments. A more detailed discussion of these issues is contained in the agency's Preliminary Economic Assessment (PEA), which has been placed in the docket for this notice. Some of the information included in the PEA, including the details of manufacturers' future product plans, has been determined by the Agency to be confidential business information the release of which could cause competitive harm. The public version of the PEA omits the confidential information.

reductions (with a potentially adverse effect on safety). The limit of economic practicability has been considered to be that of the least capable manufacturer with a substantial share of the relevant market because the CAFE program seeks to find the maximum level of fuel economy achievable without impeding American jobs or motor vehicle safety.

To define the maximum CAFE level that will not lead to adverse consequences, we reviewed in detail the confidential product plans provided by the major contributors to the market and assessed their technological capabilities. By doing so, we are able tentatively to determine the extent to which each can enhance their fuel economy performance using available technology.

In examining the potential for improvements in light truck fuel economy, we considered potential technological improvements using a three-stage analysis in which different improvements in efficiency are applied to the light truck fleet at different times. Technologies that were reported by a particular manufacturer to be available for use in MY 2005 or earlier—but were not necessarily being applied by that manufacturer—are regarded in NHTSA's analysis as "Stage 1" technologies. Other technologies, including potential transmission and engine improvements, that some manufacturers indicated were part of planned production programs were designated as "Stage 2" improvements. Finally, improvements in efficiency garnered by replacing planned sales of vehicles equipped with 6.0L or larger engines to almost identical models equipped with 5.3L or larger engines was designated as "Stage 3." To repeat, none of the efficiency improvements envisioned in our analysis involved significant changes in vehicle mass or size.

Our analysis does not incorporate a rigid methodology to achieve the proposed levels of fuel economy. For instance, we estimate that replacing an overhead valve engine with a multi-valve overhead camshaft engine of the same displacement and replacing a 4-speed automatic transmission with a 5- or 6-speed automatic transmission offer about the same potential level of improvement. One of them may be more attractive to a particular manufacturer because of its cost, ease of manufacturing, or the model lines to which it would apply. Nor does this analysis include the many minor types of improvements in electronic controls and engine valving that could provide further fuel economy gains. These are omitted because it is difficult to definitively determine which of these technologies will be included in the models that manufacturers plan to produce in MY 2005–2007.

A. General Motors

In its submission, General Motors described a variety of technologies that could be used to improve fuel economy. For each such technology, GM included its estimated fuel economy benefit, the basis for that estimate, whether the benefit was direct or interactive, a description of how the technology works and how it increases fuel economy, when the technology would be available for use, its potential applications, where it is currently employed in GM's light truck fleets, where the technology could potentially be used, risks in employing the technology, and potential impacts on noise, vibration and harshness (NVH), safety, emissions, cargo and towing capacity.

The agency relied on these descriptions in determining which Stage 1 technologies GM could employ in MYs 2005–2007 to enhance its fuel economy performance. Our analysis indicates that GM could employ five technologies by MY 2005 in certain parts of its light truck fleet with an additional three technologies employed in certain parts of its light truck fleet by MY 2006. The five technologies would carry over to MY 2006–2007, while the additional three technologies would carry over to MY 2007. All of these technologies would, in NHTSA's view, continue to be used in future model years. We also used the numbers provided by GM for percentage increase in fuel economy in calculating the possible fuel economy increase attributable to each of these technologies.

To determine which Stage 2 technologies GM could employ, on which vehicles and/or engines they could be employed, and when they could be employed, NHTSA relied on its own engineering judgment and the submissions from other manufacturers. In looking at these submissions, together with what GM provided, NHTSA has analyzed which Stage 2 technologies could be applied to GM's light truck fleet for MYs 2005–2007. Our analysis indicates that GM could employ two technologies by model year 2005, and an additional technology by model year 2006. One of the technologies introduced in MY 2005 would only carry over into MY 2006, because the vehicles that could use this technology are being redesigned in MY 2007, and indications are that this specific technology application is included in the vehicle redesign. The other technologies would carry over in MY 2007 and would continue to be employed in future model years. To determine the possible fuel economy increase attributable to each of these technologies, NHTSA examined manufacturer-provided estimates for the percentage increases in fuel economy for each technology. If a manufacturer had already introduced a specific technology or was introducing it by MY 2005, we placed more credence on that value, especially if it was in the NAS range and if at least one other manufacturer estimated a similar value for the fuel economy potential of that technology.

The Stage 3 analysis includes projections of the potential CAFE increase that could result from moving the sales of vehicles equipped with 6.0L or larger engines to almost identical models equipped with 5.3L or larger engines. The agency reviewed GM's publicly available data and believes, based on that review, that the bulk of GM models equipped with the 6.0 L engines could be replaced with 5.3 L engines without notably degrading the cargo and towing capacity of these vehicles. If this were the only change made to GM's light truck fleet, it would increase GM's projected CAFE by 0.1 mpg for MYs 2005–2007.

The potential improvements to the GM light truck CAFE are summarized in the following table. Due to rounding, the individual improvements may not equal the potential CAFE for GM.

POTENTIAL GM CAFE IMPROVEMENTS, MPG

Model year	Stage 1 improvements	Stage 2 improvements	Stage 3 improvements	Total	Potential CAFE, mpg.
2005	.439	.466	.1065	1.012	20.97
2006	.936	.502	.0616	1.500	21.63
2007	.921	.496	.0825	1.499	22.29

Although General Motors also included a discussion of uncertainties and penalties that could adversely affect its fuel economy levels, we did not make further adjustments to account for these reservations. We believe that the increasing popularity of crossover vehicles may limit the future sales of full size Sport Utility Vehicles, and that the increasing use of traction control and limited slip differentials could replace 4WD in many applications at both lower cost and weight.

B. Ford Motor Company

Ford's submission included information similar to that provided by General Motors. The agency engaged in the same type of analysis in assessing Ford's potential fuel economy capabilities as it did in assessing GM's potential capabilities.

Our Stage 1 analysis showed that Ford could employ one technology on certain models by MY 2005, with an additional technology employed on certain models by MY 2007. The agency used the numbers provided by Ford for percentage increase in fuel economy in calculating the possible fuel economy increase attributable to each of these technologies. We did not carry over the benefits for the MY 2005 technology to further years because Ford is redesigning many of these vehicles in MY 2006–2007 and appears to have included this technology in calculating its fuel economy estimates. Starting with MY 2007, Ford could use another technology on some vehicles.

Our Stage 2 analysis showed that by MY 2007, Ford could offer two technologies two years earlier, one of which requires the use of an additional complimentary technology, with all carrying over into future model years.

The Stage 3 analysis projects potential CAFE improvements resulting from moving the sales of vehicles equipped with 6.0L or larger engines to almost identical models equipped with slightly smaller engines. Ford does not project the production of any vehicles with a 6.0L engine or larger engine, thus there are no potential CAFE increases resulting from Stage 3.

Based on these assessments, the agency has estimated modest adjustments to the projections based on Ford's data. We estimate that Ford can achieve an additional .08 mpg in CAFE performance through Stage 1 improvements in MY 2005 and an additional .02 mpg in Stage 1 and .17 mpg in Stage 2 improvements in MY 2007. These CAFE adjustments result in CAFE capability of 21.0 mpg for MY 2005, 21.6 mpg for MY 2006 and 22.2 mpg for MY 2007. Ford also described a number of risks and opportunities in its submission. Ford stated that its initial estimates of fuel economy improvements are typically higher than what actual production vehicles achieve. NHTSA didn't downwardly adjust Ford's estimates because the agency believes that its estimates of the effectiveness of fuel economy technologies—which are based on confidential data, the NAS study, publicly available information, and engineering judgment—are reasonable.

C. DaimlerChrysler

DaimlerChrysler's plans include comparatively more fuel-efficient technologies in MYs 2005–2007, including the use of Stage 2 technology. Although Honda may be incorporating slightly more advanced technology than DaimlerChrysler, the level of detail Honda provided is insufficient to allow us to conclude that DaimlerChrysler could enhance its fuel economy performance through the use of technologies similar to those employed by Honda. Therefore, the agency has not adjusted DaimlerChrysler's numbers to incorporate additional Stage 1 or Stage 2 technologies.

The Stage 3 analysis includes projections of the potential CAFE increase that could result from moving the sales of vehicles equipped with 6.0L or larger engines to almost identical models equipped with 5.3L or larger engines. The potential Stage 3 improvements to the DaimlerChrysler light truck CAFE result in a .02 mpg improvement in Stage 3 adjustment in MY 2006 and a .01 mpg Stage 3 adjustment in MY 2007. Accordingly, we estimate DaimlerChrysler's light truck CAFE capability to be 21.3 mpg for MY 2005, 21.6 mpg for MY 2006 and 22.2 mpg for MY 2007.

DaimlerChrysler indicated that its fuel economy estimates include risks that their CAFE projections won't be met due to technology issues, product offerings, consumer acceptance, future safety regulations and the economic climate. NHTSA didn't downwardly adjust DaimlerChrysler's estimates because the agency believes that its estimates of the effectiveness of fuel economy technologies—which are based on confidential data, the NAS study, publicly available information, and engineering judgment—are reasonable.

VI. Economic Practicability

The agency has historically reviewed whether a CAFE standard is economically practicable in terms of whether the standard is one "within the financial capability of the industry, but not so stringent as to threaten substantial economic hardship for the industry." *See, e.g., Public Citizen* v. *National Highway Traffic Safety Administration*, 848 F.2d 256, 264 (D.C. Cir. 1988). In essence, the agency reviews what is technologically feasible for manufacturers to achieve without leading to adverse economic consequences, such as a significant loss of jobs or the unreasonable elimination of consumer choice. The CAFE statute does not compel that fuel savings be gained at the expense of American jobs or competition within the motor vehicle market.

At the same time, the law does not preclude a CAFE standard that poses reasonable, even if considerable, challenges to any individual manufacturer. The Conference Report makes clear, and the case law affirms, that "a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy." *CEI–I*, 793 F.2d 1322, 1352 (D.C. Cir. 1986). Instead, the agency is compelled "to weigh the benefits to the nation of a higher fuel economy standard against the difficulties of individual automobile manufacturers." *Id.* The statute permits the imposition of reasonable, "technology forcing" challenges on any individual manufacturer, but does not contemplate standards that will result in "severe" economic hardship by forcing reductions in employment or impeding competition.

In the past, the agency has set CAFE standards above its estimate of the capabilities of a manufacturer with less than a substantial, but more than a de minimus, share of the market. See, *e.g., Center for Auto Safety* v. *National Highway Traffic Safety Administration*, 793 F.2d 1322, 1326 (D.C. Cir. 1986) (noting that the agency set the MY 1982 light truck standard at a level that might be above the capabilities of Chrysler, based on the conclusion that the energy benefits associated with the higher standard would outweigh the harm to Chrysler, and further noting that Chrysler had 10–15% market share while Ford had 35% market share). On another occasion the agency has reduced the CAFE standard to address unanticipated market conditions that rendered the established CAFE standard unreasonable and likely to lead to severe economic consequences. 49 FR 41250, 50 FR 40528, 53 FR 39275, *Public Citizen* v. *National Highway Traffic Safety Administration*, 848 F.2d 256, 264 (D.C. Cir. 1988).

The agency has estimated not only the anticipated costs imposed on GM, Ford and DaimlerChrysler to comply with the proposed standards, but also the significance of the societal benefits anticipated to be achieved through direct and indirect fuel savings. We have tentatively concluded that these proposals need not result in significant reductions in employment or competition, and that—while challenging—they are achievable within the framework described above, and that they will benefit society considerably. For the sake of this analysis, we have translated the societal benefits into dollar values and compared those values to our estimated costs to the manufacturers for this proposal.

A. Costs to the Manufacturers

In order to estimate the costs of complying with the proposed standards, the agency developed cost estimates for the various technologies NHTSA expects manufacturers to employ to improve fuel efficiency. Our cost estimates were based on two principal considerations. We first assumed that manufacturers would apply technologies in keeping with our analysis of feasible Stage 1, Stage 2 and Stage 3 technologies. Second, we also assumed that manufacturers would apply less costly technologies before those that are more costly (ranked on a cost per mpg investment basis).

Within the range of values anticipated for each technology, we selected the "expected" cost impacts and fuel consumption impacts considered most plausible during the model years under consideration for the industry in general. Some manufacturers might achieve more benefit than others using similar technologies or on specific vehicles. However, this analysis assumes an equal impact from specific technologies for all manufacturers and vehicles. The technologies were ranked based on the cost per percentage point improvement in fuel economy and applied where available to each manufacturer's fleet in their order of rank. For example, we estimated that greater use of variable valve timing would yield a 1% improvement in fuel economy at a cost of $89 per vehicle. This measure would therefore be applied after engine friction reduction technologies, which we estimated would produce a 1.5% improvement in fuel economy at a cost of $35, yielding a cost per percentage point improvement of $23. The complete list of the technologies and the agency's estimates of cost and yield may be found in the PEA.

Using the estimated costs and yields for the different technologies, the agency then examined the projections provided by different manufacturers for their light truck fleet fuel economy for the 2005–2007 model years. Although the details of the projections of individual manufacturers are confidential, present fuel economy performance indicates that some manufacturers would, if their fleets remain unchanged, be able to meet the proposed standards without significant expenditures. Other manufacturers will have to expend significantly more effort to meet the proposed standards.

NHTSA estimates the average incremental cost per vehicle needed to meet the proposed standards to be $14 for MY 2005, $28 for MY 2006, and $47 for MY 2007. The total incremental cost (the cost necessary to bring the corporate average fuel economy for light trucks from 20.7 mpg to the proposed standards) is estimated to be $108 million for MY 2005, $221 million for MY 2006, and $373 million for MY 2007. More detailed specifics on the methodology employed are included in the PEA.

While we have also conducted an analysis of the potential job losses arising should manufacturers choose to restrict products in lieu of incorporating technologies into their product plans, we believe product restrictions and associated employment reductions to be unnecessary to meet the proposed CAFE standards. We acknowledge that we have proposed some changes in engine assignments, but believe that these changes will neither change the basic utility of the trucks in terms of their cargo carrying and towing capacities nor require a substantial shift in product mix that will have economic significance.

The fact that consumers are willing to pay higher prices for the larger engine suggests that they place some value on the additional horsepower. We seek comment on whether consumers are more likely to buy larger trucks, beyond the purview of the CAFE program, to obtain the perceived benefit, or whether they are more likely to purchase trucks of like size with slightly smaller engines.

The agency has long recognized that one way to meet a CAFE standard is to restrict the availability of products that reduce, rather than enhance, a company's fleet wide corporate average fuel economy level. Conversely, the agency also acknowledges that restricting available product can adversely affect fuel economy. Consumers unable to obtain light trucks at or near the maximum weight vehicle within the CAFE limit (currently 8500 pounds GVWR) may choose to purchase vehicles above that weight. Such vehicles may be more readily available since they are outside the purview of the CAFE program. Of course, compliance through product restriction also poses the possibility of limiting consumer choice.

The agency has tentatively concluded that it is unnecessary for any manufacturer to restrict the utility of their products to meet our proposed CAFE standards. Accordingly, we do not believe that any employment restriction should result from this proposal.

B. Benefits to Society From This Proposal

The agency also performed an analysis of the economic and environmental benefits of this proposal by performing estimates of fuel savings over the lifetime of the model year (approximately 25 years). Impacts other than direct fuel savings were translated into dollar values and then factored into our cumulative estimates. Therefore, each impact is measured by the difference between a measure—such as total gallons of fuel consumed by light trucks produced during a single model year over its entire 25-year life span in the fleet—under the manufacturer plans compared to the fuel consumed with a stricter standard in effect. The agency's analysis estimated future impacts in both undiscounted terms and by their present value discounted using a 7 annual percent discount rate.

In estimating the direct benefits of decreased fuel consumption, forecasts of light truck sales for future years were obtained from the Energy Information Administration's (EIA) Annual Energy Outlook 2002 (AEO 2002). Fuel economy performance for each future model year's light trucks under the current CAFE standard and with alternative standards in effect were estimated using the agency's projections for the application of fuel saving technologies. As shown in our PEA, NHTSA estimates that approximately 7,654,000 light trucks will be sold in the 2005 model year. For the 2006 and 2007 model years, the estimates are 7,795,000 and 7,922,000 vehicles respectively.

The economic value of annual fuel savings resulting from higher light truck CAFE standards was then assessed by applying the Energy Information Administration's AEO 2002 forecast of future fuel prices to each year's estimated fuel savings. In turn, future fuel savings were estimated by dividing the total number of miles the surviving population of vehicles of that model year are estimated to be driven by the average on-road fuel economy level associated with the base standard of 20.7 mpg. NHTSA then assumed that if the same trucks met a higher CAFE standard when sold, their total fuel consumption during each subsequent calendar year is calculated by dividing the increased number of miles they are driven as a result of the higher fuel economy resulting from that standard. The sum of these annual fuel savings over each calendar year that vehicles remain in service represents the cumulative fuel savings resulting from applying a stricter CAFE standard to light trucks produced during that model year.

NHTSA's analysis of the benefits of external factors totaled $0.083 per gallon of gasoline, including $0.048 for "monopsony" effect (the effect on the world market price of gasoline from reducing U.S. demand), and $0.035 for reducing the threat of supply disruptions. Incorporating these indirect benefits into the direct benefits of fuel saved as a result of higher CAFE standards produced an incremental benefit to consumers, when reduced to present value, of $29 per vehicle for MY 2005, $66 per vehicle for MY 2006 and $100 per vehicle for MY 2007. The total present value of these direct and indirect benefits is estimated to be $219 million for MY 2005, $512 million for MY 2006 and $792 million for MY 2007.

We have also analyzed the effect of the proposed standard on vehicle emissions. Estimates of the reduced economic value of damages to human health resulting from emissions of regulated air pollutants were obtained from a detailed recent analysis conducted by the Environmental Protection Agency. These estimates were applied to the estimated changes in emissions of each criteria pollutant to determine the resulting change in damage costs caused by that pollutant. Because reliable estimates of damage costs from contributions to potential climate change by emissions of carbon dioxide, other greenhouse gases and airborne toxic pollutants are not yet available, the PEA did not assign a monetary value to changes in these particular emissions. Our analysis indicated that the proposed MY 2005 standard would result in a net reduction of criteria pollutants with a present value of $179,200. For MY 2006, this net reduction would have a present value of $818,500 and for MY 2007 the net reduction of criteria pollutants would have value of $1,644,400.

C. Comparison of Estimated Industry Costs v. Estimated Societal Benefits

In sum, then, the total incremental costs by model year compared to the incremental societal benefits by model year are as follows:

	Total costs (million)	Total societal benefits (million)	Net benefits (million)
MY 2005	$108	$219	$111
MY 2006	221	513	292
MY 2007	373	794	421

In light of these figures, we have tentatively concluded that the proposal serves the overall interests of the American people and is consistent with the balancing Congress has compelled us to do when establishing corporate average fuel economy levels. For all the reasons stated above, we believe the proposal is economically practicable and, independently, that it is a cost beneficial advancement for American society.

In a well-functioning market with fully informed consumers and manufacturers, consumers would take into account the savings to themselves associated with more fuel-efficient vehicles. If the value of cumulative fuel savings exceeded the additional price and associated financing cost of purchasing a more fuel-efficient vehicle, consumers should be inclined to buy these vehicles and producers should be inclined to sell them. The NHTSA estimates find that the direct fuel-savings to consumers account for the majority of the total social benefits, and exceed the estimated costs of adopting more fuel-efficient technologies. Thus, the question arises as to what market conditions could explain this situation and whether fuel saving technologies will be adopted in the absence of increasing CAFE standards.

One possibility is that consumers have not demanded greater fuel efficiency, despite the benefits to be gained, because of the difficulty and time involved in calculating the total savings associated with purchasing a more fuel-efficient vehicle. As a percentage of new vehicle purchase prices, the savings and costs of fuel economy increases are relatively small. Assuming the NHTSA calculations are correct and that light truck markets are reasonably competitive, consumers generally could be made better off if manufacturers were forced to offer more fuel efficiency. A more remote possibility is that the light truck market is not sufficiently competitive and manufacturers can survive without maximizing profits. In that case market forces would not be sufficient to ensure that manufacturers include in their vehicles fuel-saving technologies even though doing so would increase profits. A final possibility is that NHTSA's cost and/or benefit estimates are incomplete. For example, it could be that greater fuel efficiency comes with tradeoffs in power, safety, and design not accounted for in NHTSA's estimated costs, that the engineering costs of implementing new technologies are actually greater than those estimated, or that the actual fuel savings are less than those estimated.

The agency invites comments on the ability of consumers to compare capital costs to expected fuel savings, the cost to them of doing so, as well as suggestions for facilitating these calculations. The agency also invites comments on the competitiveness of the light truck market and the technical tradeoffs between fuel efficiency and other characteristics of light trucks that consumers value.

As part of the interagency review process, the Energy Information Agency (EIA) has provided NHTSA with a preliminary analysis of the energy and economic impacts of an increase in light truck fuel economy standards comparable to the proposed rule. Specifically, EIA analyzed standards of 21.2, 21.7, and 22.2 mpg for model years 2005–2007, respectively. Using its National Energy Modeling System (NEMS), EIA's analysis indicates that the actual average fuel economy of new light trucks would increase to 21.7 mpg in model year 2005—well beyond the 21.2 mpg required during that year—but would fall slightly short of the 22.2 mpg standard by model year 2007. The EIA analysis also projects that NHTSA's proposed rule would cause a greater increase in the cost of light trucks than estimated by NHTSA and a slight reduction in the average weight of light

trucks. NHTSA estimated no weight reduction. EIA's estimates of fuel savings resulting from stricter CAFE standards for light trucks also appear to be larger than those calculated in NHTSA's analysis. Finally, EIA's projected effects on employment and real GDP are slightly negative through 2010, but become positive during 2011 to 2020.

The differences in results of the two analyses of the proposed light truck standards stem primarily from differences in the underlying approaches of models. For example, the NEMS model effectively treats all manufacturers identically whereas NHTSA's approach relies heavily on detailed manufacturer-specific data. As a result of these differences, NHTSA's approach has advantages for analyzing the effects of near-term modest increases while the NEMS approach is more useful for analyzing longer-term industry-wide effects of larger increases in the standards. For shorter-term analysis of modest increases in required fuel economy levels, confidential information about the differences in the relative fuel economy capabilities of the individual manufacturers at the model-specific level is essential. This is because the technology application burdens and cost impacts imposed on individual manufacturers by the stricter standards will differ significantly. Where longer-term, industry-wide analysis of significant increases in fuel economy standards is required, current differences in manufacturer capabilities become much less relevant. In addition, NEMS' ability to estimate macroeconomic "feedbacks" from stricter CAFE standards is very useful.

EIA's analysis has been included in the public docket for this rulemaking. NHTSA welcomes comment and wants to ensure that the CAFE program and future increases in CAFE standards do not adversely impact vehicle safety or employment. To this end, the agency is examining possible reforms to the CAFE system and may later propose specific reforms if they are superior to the current system in terms of improving fuel economy without negative safety and employment consequences.

VII. The Effect of Other Government Regulations on Fuel Economy

The statute specifically directs us to consider the impact other government regulations have on fuel economy. This statutory factor constitutes an express recognition that fuel economy standards should not be set without due consideration given to other regulatory concerns, such as motor vehicle and passenger safety and motor vehicle emissions. The primary influence of many of these policies is the addition of weight to the vehicle, with the commensurate reduction in fuel economy.

A. Federal Motor Vehicle Safety Standards

The agency has evaluated the impact of the Federal motor vehicle safety standards using MY 2001 vehicles as a baseline. We have issued or are about to issue a number of Federal motor vehicle safety standards that become effective between the MY 2001 baseline and MY 2007. The fuel economy impact, if any, of these new requirements would take the form of increased vehicle weight resulting from the design changes needed to meet new standards.

The average test weight (roughly equal to curb weight plus 300 pounds) of the light truck fleet in MY 2001 was 4,501 pounds. The average test weight for General Motors, Ford, and DaimlerChrysler light trucks subject to the standard for MY 2001 was 4,627 pounds. Our review of new safety requirements that will apply to the MY 2005–2007 light truck fleet indicates that compliance with the following safety standards will have an impact on vehicle weight:

i. FMVSS 138, Tire Pressure Monitoring System

As required by the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, NHTSA is requiring Tire Pressure Monitoring Systems be installed in all passenger cars, multipurpose passenger vehicles, trucks and buses that have a GVWR of 10,000 pounds or less, effective in November 2003. We estimate the weight that would be added consists of electrical parts that would not weigh more than half a pound (0.23 kilograms or less) per vehicle.

ii. FMVSS 139, Tire Upgrade

The TREAD Act mandated rulemaking to revise and update our safety performance requirements for tires. While the agency's Preliminary Economic Assessment of the proposed tire upgrade indicated there would be added cost for the improved tires but no increased weight, it is possible that some vehicles would need larger tires, which would add an undetermined minimal amount of weight to those vehicles.

iii. FMVSS 201, Occupant Protection in Interior Impact

This standard specifies requirements to afford protection for occupants from impacts with interior parts of the vehicle. The new amendment relates to upper pillars, front and rear headers, the side roof rails and other upper interior parts. It applies to passenger cars and to multipurpose vehicles, trucks, and buses with a GVWR of 10,000 pounds (4,536 kilograms) or less. Additional padding could be added or pillars could be redesigned to pass the upgraded standard. We estimate the average weight gain would be 7.5 pounds (3.4 kilograms) per vehicle.

iv. FMVSS 202, Head Restraints

This proposed regulation would improve front seat head restraints in passenger cars, pickups, vans, and utility vehicles and require head restraints in the rear outboard positions. Because many pickup trucks and some vans do not have back seats, the average weight increase for this standard is lower than for automobiles. We estimate the average weight gain across light trucks, vans and SUVs would add 4.3 pounds (1.94 kilograms) per vehicle.

v. FMVSS 208, Occupant Crash Protection

This rule amends our occupant crash protection standard to require that future air bags be designed to create less risk of serious air bag-induced injuries than current air bags, particularly for small women and young children; and provide improved frontal crash protection for all occupants, by means that include advanced air bag technology. Additional weight would come from sensors, switches, indicators, and associated electrical equipment. We estimate the average weight gain would be 3.4 pounds (1.54 kilograms).

vi. FMVSS 225, Child Restraint Anchorage Systems

The Final Economic Assessment (February 1999) for FMVSS 213 and 225 estimates the additional weight for improved anchorages would be less than 1 pound (0.45 kilogram).

vii. FMVSS 301, Fuel System Integrity

This proposed rule would amend the testing standards for rear-end and side crashes and resulting fuel leaks. Although a few models (generally in the middle of their production lives) might require heavy additions such as a polymer guard for the bottom of the fuel tank, most would not. Many vehicles already pass the more stringent standards, and those affected are not likely to be pick-up trucks or vans. It is estimated that weight added will be only lightweight items such as a flexible filler neck. We estimate the average weight gain across this vehicle class would be 0.24 pounds (0.11 kilograms) per vehicle.

In summary, NHTSA estimates that weight additions required by FMVSS regulations that will be effective between the MY 2001 fleet and MY 2007 fleet will average about 17 pounds per vehicle. As indicated elsewhere, the agency expects that manufacturers will not use weight reduction as one of the technologies available to improve fuel economy. As our analysis of feasible improvements in fuel economy assumes that manufacturer projections of future vehicle weights are valid and does not change these weights, weight increases due to new safety standard requirements, or whatever voluntary safety improvements the manufacturers are planning, will occur without the manufacturers being penalized by having to reduce weight to meet a fuel economy standard.

B. Federal Motor Vehicle Emissions Standards

With input from the United States Environmental Protection Agency (EPA), NHTSA has evaluated the impact of a number of vehicle related emissions standards on fuel economy. In addition, NHTSA's Environmental Assessment examines how the proposed average fuel economy standard impacts air quality (the enhancement of which is at the core of the relevant EPA and state regulations) by affecting emissions of criteria pollutants. Many of these regulations are currently being incorporated into the vehicle fleet through a multi-year phase-in. NHTSA believes there to be no significant fuel economy impact between the baseline MY 2001 and MY 2007 resulting from federal or state emissions regulations.

The state of California has, in recent court filings, asserted that NHTSA has not treated the CAFE statute as preempting state efforts to engage in CAFE related regulation, stating that "time and time again, NHTSA in setting CAFE standards has commented on the fuel economy effects of California's emissions regulations, and not once has it even suggested that these were preempted." *See* Appellants Opening Brief filed on behalf Michael P. Kenny in *Central Valley Chrysler-Plymouth, Inc. et. al.* v. *Michael P. Kenny,* No. 02–16395, at p. 33 (9th Circuit 2002). As a result, the State suggests that it may, consistent with federal law, issue regulations that relate to fuel economy.

The State misses the point. The agency reviews emissions requirements to ensure that we do not establish a standard that is infeasible in light of other public policy considerations, including federal and state efforts to regulate emissions. Thus, we consider potential fuel economy losses due to more stringent emissions requirements when we determine maximum feasible fuel economy levels.

This does not mean that a state may issue a regulation that relates to fuel economy and which addresses the same public policy concern as the CAFE statute. Our statute contains a broad preemption provision making clear the need for a uniform, federal system: "When an average fuel economy standard prescribed under this chapter is in effect, a State or a political subdivision of a State may not adopt or enforce a law or regulation related to fuel economy standards or average fuel economy standards for automobiles covered by an average fuel economy standard under this chapter." 49 U.S.C. 32919(a).

The fact that NHTSA had not expressly addressed this particular aspect of California's requirements should not have been interpreted as tacit acceptance. Indeed, the United States has taken the express position in the *Kenny* case that it has a substantial interest in enforcing the federal fuel economy standards and in ensuring that states adhere to the Congressional directive prohibiting them from adopting or enforcing any law or regulation related to fuel economy or average fuel economy standards.

i. Tier 2 Requirements

On February 10, 2000, EPA published a final rule (65 FR 6698) establishing new federal emissions standards for vehicles classified by EPA as passenger cars, light trucks and medium duty vehicles. These new emissions standards, known as Tier 2 standards, are designed to focus on reducing the emissions most responsible for the ozone and particulate matter (PM) impact from these vehicles. The program also applies the same set of federal standards to all passenger cars, light trucks, and medium-duty passenger vehicles. Under the Tier 2 standards, light trucks include "light light-duty trucks" (or LLDTs), rated at less than 6000 pounds GVWR and "heavy light-duty trucks" (or HLDTs), rated at more than 6000 pounds GVWR. For new passenger cars and light LDTs, the Tier 2 standards phase-in beginning in MY 2004, and are to be fully phased-in by MY 2007. During the phase-in period of MYs 2004–2007, all passenger cars and light LDTs not certified to the primary Tier 2 standards must meet an interim standard equivalent to the current National Low Emission Vehicle (NLEV) standards for light duty vehicles. In addition to establishing new emissions standards for vehicles, the Tier 2 standards also establish limits for the sulfur content of gasoline.

When issuing the Tier 2 standards, EPA responded to comments regarding the impact of the Tier 2 standard and its impact on the Supplemental Federal Test Procedure by indicating that it believed that the Tier 2 standards would not have an adverse effect on fuel economy.

In setting the MY 2004 light truck CAFE standard, we noted that one of the commenters indicated that the Tier 2 standards would impact on its ability to meet fuel economy standards. DaimlerChrysler, while addressing its strong support for continuation of the dual-fuel incentive program, stated that the Tier 2 standards presented special challenges for ethanol-fueled vehicles. The company did not, however, indicate the nature of these challenges and the degree to which the Tier 2 standards would impact on its ability to meet the CAFE light truck standard. Therefore, we have no basis to suggest the Tier 2 standards will adversely affect fuel economy.

ii. Onboard Refueling Vapor Recovery

On April 6, 1994, EPA published in the **Federal Register** a final rule (59 FR 16262) controlling vehicle-refueling emissions through the use of onboard refueling vapor recovery (ORVR) vehicle-based systems. These requirements applied to light-duty vehicles beginning in the 1998 model year, and were phased-in over three model years. The ORVR requirements also apply to light-duty trucks with a gross vehicle weight rating up to 6000 lbs, beginning in model year 2001 and phasing-in over three model years at the same rate as for light-duty vehicles. For light-duty trucks with a gross vehicle weight rating of 6001–8500 lbs, the ORVR requirements first apply in the 2004 model year and phase-in over three model years at the same rate as light-duty vehicles.

The ORVR requirements impose a weight penalty on vehicles as they necessitate the installation of vapor recovery canisters and associated tubing and hardware. However, the operation of the ORVR system results in fuel vapors being made available to the engine for combustion while the vehicle is being operated. As these vapors provide an additional source of energy that would otherwise be lost to the atmosphere through evaporation, the ORVR requirements do not have a net negative impact on fuel economy.

iii. Supplemental Federal Test Procedure

The Federal Test Procedure (FTP) contains the test conditions and procedures used by the EPA when conducting new vehicle emissions and fuel economy tests. On October 26, 1996, EPA issued a final rule (61 FR 54852) revising the tailpipe emission portions of the Federal Test Procedure (FTP) for light-duty vehicles (LDVs) and light-duty trucks (LDTs). The revision created a Supplemental Federal Test Procedure (SFTP) designed to address shortcomings with the existing FTP in the representation of aggressive (high speed and/or high acceleration) driving behavior, rapid speed fluctuations, driving behavior following startup, and use of air conditioning. The SFTP also contains requirements designed to more accurately reflect real road forces on the test dynamometer. EPA chose to apply the SFTP requirements to trucks through a phase-in. Light-duty trucks with a gross vehicle weight rating (GVWR) up to 6000 lbs were subject to a three-year phase-in ending in the 2002 model year. Heavy light-duty trucks, those with a GVWR greater than 6000 lbs but not greater than 8500 lbs, are subject to a phase-in in which 40 percent of each manufacturer's production must meet the SFTP requirements in the 2002 model year, 80 percent in 2003, and 100 percent in the 2004 model year.

The 2004 model year represents the final phase-in year for light trucks subject to CAFE standards. Although DaimlerChrysler has indicated that the changes to the FTP will have a disproportionately negative impact on light truck fuel economy, EPA has determined that the net effect on fuel economy for the recent test procedure changes is near zero. EPA considered the effects of four test changes: single-roll electric dynamometer with full-speed load simulation, elimination of the 10% air conditioning load factor, elimination of the 5500 maximum test weight for cars, and improved test equipment. While some changes decreased measured fuel economy, others raised it; with the net result of a near zero effect. This determination was based on the total fleet, which is a mix of front wheel drive and rear wheel drive cars and trucks.

Considering trucks alone is not likely to change that determination. Trucks, as a sub-class, have a larger mix of rear wheel drive vehicles than the combined fleet. This would lead to a slightly increased effect of the single roll dynamometer and thereby slightly lower measured fuel economy. However, the truck sub-class also has higher road load horsepower than the combined fleet. This would lead to slightly higher effects due to the elimination of the 10% air conditioning load and thereby slightly higher measured fuel economy. The net effect of the combined test procedure changes on the truck sub-class is still expected to be near zero.

iv. California Air Resources Board LEV II and Section 177 States

The State of California Low Emission Vehicle II regulations (LEV II) will apply to passenger cars and light trucks in the 2004 model year. The LEV II amendments restructure the light-duty truck category so that trucks with a gross vehicle weight rating of 8,500 pounds or lower are subject to the same low-emission vehicle standards as passenger cars. LEV II requirements also include more stringent emission standards for passenger car and light-duty truck LEVs and ultra low emission vehicles (ULEVs), and establish phase-in requirements that begin in 2004. During the initial year of the four-year phase-in, the LEV II standards require that 25 percent of production comply.

Comments submitted by DaimlerChrysler indicated that company's concern that compliance with LEV II requirements may be difficult for dual-fuel vehicles. The company, did not, however, provide any details or data regarding these challenges.

The term "Section 177 States" refers to states that voluntarily adopt the more stringent California emissions standards. As of November 2000, Massachusetts, New York and Maine had adopted the California Low Emission Vehicle (LEV) program. NHTSA has not received any data showing any impact on the 2004 light truck fuel economy capabilities as a result of states other than California adopting the California emissions standards.

VII. The Need of the Nation To Conserve Energy

The Energy Policy and Conservation Act (EPCA) arose in response to the energy crises created by the oil embargo of 1973–1974. The Act established an automotive fuel economy regulatory program by adding Title V, "Improving Automotive Efficiency," to the Motor Vehicle Information and Cost Saving Act. The Department is specifically directed by the Act to balance the technological and economic challenges with the nation's need to conserve energy.

While EPCA grew out of the energy crisis of the 1970s, the United States also faces considerable energy challenges today. As made clear in the National Energy Policy, efficient energy use and conservation are important elements of a comprehensive program to address the nation's current energy challenges:

> America's current energy challenges can be met with rapidly improving technology, dedicated leadership, and a comprehensive approach to our energy needs. Our challenge is clear—we must use technology to reduce demand for energy, repair and maintain our energy infrastructure, and increase energy supply. Today, the United States remains the world's undisputed technological leader; but recent events have demonstrated that we have yet to integrate 21st-century technology into an energy plan that is focused on wise energy use, production, efficiency, and conservation.

Conserving energy, especially reducing the nation's dependence on imported petroleum, benefits the nation's efforts to address the energy challenges in several ways. Reducing total petroleum use and reducing petroleum imports decrease our economy's vulnerability to oil price shocks and improves our national security.

We believe that the Administration's support of continued development of advanced technology, such as fuel cell technology, and an infrastructure to support it, may help to achieve significant reductions in foreign oil dependence and stability in the world oil market. The continued infusion of hybrid propulsion and advanced diesel vehicles into the U.S. light truck fleet may also contribute to reduced dependence on petroleum. However, as noted above, these technologies are not likely to substantially infuse into the light truck market in the relative short term.

We have tentatively concluded that the proposed light truck CAFE standards will be important contributors to the comprehensive program of addressing the nation's more immediate energy challenges. The transportation sector consumes the majority of the petroleum used in the United States. Within the transportation sector, passenger cars and light trucks, the vehicles covered by fuel economy standards account for almost 60% of petroleum consumption.

Our analysis suggests that increasing the CAFE standards, as proposed, will contribute to energy conservation. In assessing the impact of the proposal, we accounted for the increased vehicle mileage that accompanies reduced costs to consumers associated with greater fuel efficiency and have tentatively concluded that the proposal will lead to considerable fuel saving. While increasing fuel economy without increasing the cost of fuel will lead to some additional vehicle travel, the overall impact on fuel conservation remains positive. Increasing fuel economy by 10% will produce an estimated 8–9% reduction in fuel consumption.

We acknowledge that, despite the CAFE program, the United States' dependence on foreign oil and petroleum consumption has increased in recent years. Nonetheless, data suggests that past fuel economy increases have had a major impact on U.S. petroleum use. The National Research Council determined that if the fuel efficiency of the vehicle fleet had not improved since the 1970s, the U.S. gasoline consumption and oil imports would be about 2.8 million barrels per day higher than they are today. Although a nearly complete turnover of the light duty vehicle fleet takes about 15 years, increases in the fuel economy of new vehicles eventually raise the fuel efficiency of all vehicles as older cars and trucks are scrapped.

Nor do we believe that the proposed increases in the light truck CAFE standards applicable to the 2005–2007 MYs will unduly lead to so-called "energy waste." This theory, presented in comments responding to our Request for Comments, rests on the notion that efforts to reduce energy use can result in negative economic effects from losses in product values, profits and worker incomes. As discussed above, the agency has determined that the proposed CAFE standards can be achieved through the use of available technologies and without imposing product restrictions, job losses or adverse safety consequences. Within the bounds of technological feasibility and economic practicability, the proposal will in fact enhance "energy efficiency" without adverse ancillary effects.

VIII. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The rulemaking proposed in this Notice of Proposed Rulemaking will be economically significant if adopted. Accordingly, OMB reviewed it under Executive Order 12866. The rule, if adopted, would also be significant within the meaning of the Department of Transportation's Regulatory Policies and Procedures. The agency has estimated that compliance with the average fuel economy standards proposed would cost over $100 million.

Because the proposed rule is major and economically significant, the agency has prepared a Preliminary Economic Assessment and placed it in the docket and on the agency's Web site.

B. National Environmental Policy Act

Consistent with the requirements of the National Environmental Policy Act and the regulations of the Council on Environmental Quality, the agency has prepared a Draft Environmental Assessment of this proposed action, and has placed the analysis in the docket. Based on the Draft Environmental Assessment, the agency does not, at this time, anticipate that the proposed action will have a significant effect on the quality of the human environment. The agency seeks comments on the Draft Environmental Assessment.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act and certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rationale for this certification is that there are no single stage light truck manufacturers within the United States with 1,000 or fewer employees.

D. Executive Order 13132 Federalism

Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." Executive Order 13132 defines the term "Policies that have federalism implications" to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

This Notice of Proposed Rulemaking would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. The statute under which the CAFE program is administered clearly states that states may not adopt or enforce any law or regulation that relates to fuel economy standards. 49 U.S.C. 32919(a). Thus, the requirements of section 6 of the Executive Order do not apply to this notice.

E. The Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, of more than $100 million annually, but it will result in the expenditure of that magnitude by vehicle manufacturers and/or their suppliers. In promulgating this proposal, NHTSA considered whether average fuel economy standards lower and higher than those proposed would be appropriate. NHTSA has tentatively concluded that the proposed standards are the maximum feasible standards for the light truck fleet for MYs 2005–2007 in light of the statutory considerations.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There are no new information collection requirements in this proposal.

G. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

H. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the notice clearly stated?
- Does the notice contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the notice easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the notice easier to understand?

If you have any responses to these questions, please forward them to Otto Matheke, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

I. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This proposed rule does not have a disproportionate effect on children. The primary effect of this proposal is to conserve energy resources by setting fuel economy standards for light trucks.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [2] in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

There are no voluntary consensus standards for U.S. fuel economy. Therefore, setting this future standard does not involve the use of any voluntary standards.

K. Executive Order 13211

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. If the regulatory action meets either criterion, we must evaluate the adverse energy effects of the planned rule and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

The proposed rule seeks to establish light truck fuel economy standards that will reduce the consumption of petroleum and will not have any adverse energy effects. Accordingly, this rulemaking action is not designated as a significant energy action.

L. Department of Energy Review

In accordance with 49 U.S.C. 32902(j), we submitted this proposed rule to the Department of Energy for review. That Department did not make any comments that we have not addressed.

IX. Comments

Submission of Comments

How Can I Influence NHTSA's Thinking on This Notice?

In developing this notice, we tried to address the concerns of all our stakeholders. Your comments will help us determine what standards should be set for light truck fuel economy. We invite you to provide different views on questions we ask, new approaches and technologies we did not ask about, new data, how this notice may affect you, or other relevant information. We welcome your views on all aspects of this notice, but request comments on specific issues throughout this notice. We grouped these specific requests near the end of the sections in which we discuss the relevant issues. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning as clearly as possible.
- Provide empirical evidence, wherever possible, to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the notice, such as the units or page numbers of the preamble, or the regulatory sections.
- Be sure to include the name, date, and docket number of the proceeding with your comments.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail. Each electronic filer will receive electronic confirmation that his or her submission has been received.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a proposed rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted By Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on "search."

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–2002–1234," you would type "1234." After typing the docket number, click on "search."

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 533

Energy conservation, Motor vehicles.

PART 533—[AMENDED]

In consideration of the foregoing, 49 CFR part 533 would be amended as follows:

1. The authority citation for part 533 would continue to read as follows:

Authority: 49 U.S.C. 32902; delegation of authority at 49 CFR 1.50.

2. Section 533.5(a) would be amended by revising Table IV to read as follows:

§ 533.5 Requirements.

(a) * * *

TABLE IV

Model year	Standard
2001	20.7
2002	20.7
2003	20.7
2004	20.7
2005	21.0
2006	21.6
2007	22.2

* * * * *

Issued: December 10, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–31522 Filed 12–13–02; 8:45 am]

BILLING CODE 4910–59–P

[2] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as "performance-based or design-specific technical specification and related management systems practices." They pertain to "products and processes, such as size, strength, or technical performance of a product, process or material."

Notices

Federal Register
Vol. 67, No. 241
Monday, December 16, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 10, 2002.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: Meeting the Information Requirements of the Animal Welfare Act Workshop Registration Form.

OMB Control Number: 0158–NEW.

Summary of Collection: The U.S. Department of Agriculture, National Agricultural Library (NAL), Animal Welfare Information Center conducts a workshop titled "Meeting the Information Requirements of the Animal Welfare Act". The proposed registration from collects information from interested parties necessary to register them for the workshop. The information includes: workshop data preferences, signature, name, title, organization name, mailing address, phone and fax numbers and email address. The information will be collected using online and printed versions of the form. Also forms can be fax or mailed.

Need and Use of the Information: NAL will collect information to register participants, contact them regarding schedule changes, control the number of participants due to limited resources and training space, and compile and customize class materials to meet the needs of the participants. Failure to collect the information would prohibit the delivery of the workshop and significantly inhibit NAL's ability to provide up-to-date information on the requirements of the Animal Welfare Act.

Description of Respondents: Not-for-Profit Institutions; Business or Other for-profit; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 100.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 8.

Cooperative State Research, Education, and Extension Service

Title: Application Kit for Research and Extension Programs.

OMB Control Number: 0524–0039.

Summary of Collection: The United States Department of Agriculture (USDA), Cooperative State Research, Education, and Extension Service (CSREES) administers several competitive, peer-previewed research and extension programs, under which awards of a high-priority nature are made. These programs are authorized pursuant to the authorities contained in the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101), the Smith-Lever Act, and a variety of other legislative authorities. Before grants can be awarded, certain information is required from applicants as part of an overall package. Because the proposals submitted are competitive in nature and necessitate review by peer panelists, it is particularly important that applicants provide the information in a standardized fashion to ensure equitable treatment for all. CSREES will collect information using forms CSREES 2002, 2003, 2004, 2005, 2006, 2007, and 2008 and 2010.

Need and Use of the Information: CSREES will collect the following information: Program Summary and Narrative, Credentials, Budget, Identification of Conflicts of Interest, and Collect of Environmental Impact Information. The information will reduce the potential for errors or omissions of important data essential in the proposal review and award process. The information will be used to respond to inquiries from Congress, other governmental agencies, and the grantee community.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; Individuals or households; Federal Government; State, Local or Tribal Government.

Number of Respondents: 9,450.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 156,813.

Cooperative State Research, Education, and Extension Service

Title: Questionnaire for Potential Reviewers.

OMB Control Number: 0524–NEW.

Summary of Collection: The United States Department of Agriculture (USDA), Cooperative State Research, Education, and Extension Service (CSREES) administers several competitive, peer-reviewed research and extension programs, under which awards of a high-priority nature are made. These programs are authorized pursuant to the authorities contained in the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101), the Smith-Lever Act, and a variety of other legislative authorities. CSREES receives approximately 6,000 research, education, and extension proposals per year, of which approximately 2,000 are awarded. The majority of these; proposals are subject to a rigorous peer-review process involving technical experts located worldwide. Given the highly technical nature of many of the proposals, the quality of the peer-review greatly depends on the appropriate matching of the proposal subject matter with the technical expertise of the reviewer. As a result, a single database of technical experts is an invaluable tool for CSREES in accomplishing a suitable marriage of proposal content with reviewer experts. CSREES is seeking clearance to conduct a survey in the form of a questionnaire sent to individuals who have the technical expertise. The survey will be done by email, hard copy or other appropriate mechanism.

Need and Use of the Information: CSREES will collect information to enable a program officer to perform searches for specific technical expertise and the expressed willingness to be a reviewer and will also allow a program officer to consider, for example, conflict-of-interest issues and a balanced composition of reviewers. This process enables the program officer to identify, in an expeditious and efficient manner, the most appropriate reviewers.

Description of Respondents: Individuals or households.

Number of Respondents: 75,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 12,500.

Foreign Agricultural Service

Title: CCC's Export Credit Guarantee program (GSA–102), Intermediate Credit Guarantee Program (GSM–103) Supplier Credit Guarantee Program (SCGP).

OMB Control Number: 0551–004.

Summary of Collection: The Commodity Credit Corporation (CCC) of the U.S. Department of Agriculture administers under 7 CFR Part 1493, the Export Credit Guarantee Program (GSM–102), the intermediate Export Credit program (GSM–103), and Supplier Credit Guarantee Program (SCGP). These programs provide guarantees to exporters in order to maintain and increase overseas importers ability to purchase U.S. agricultural goods. The Export Credit Guarantee Programs are designed to stimulate U.S. private sector financing of foreign purchases of U.S. agricultural commodities on credit terms. Since the Export Credit Guarantee Programs operate off commercial sales, the majority of the information required for program participation, including the guarantee application, evidence of export report, assignment notice, and filing of notices of default. The Foreign Agricultural Service (FAS) will collect information from the guarantee applications submitted by the participants by telephone, mail, or fax.

Need and Use of the Information: FAS will collect information from participating U.S. exporters in order to determine the exporters eligibility for program benefits. The information is also used in fulfilling CCC obligation under the issued payment guarantee. If the information were not collected CC would be unable to determine if export sales under the programs would be eligible for coverage or, if coverage conformed to program requirements.

Description of Respondents: Business or other for-profit.

Number of Respondents: 857.

Frequency of Responses: Record keeping, Reporting: On occasion.

Total Burden Hours: 11,415.

Foreign Agricultural Agency

Title: Emergency Relief from Duty-Free Imports of Perishable Products Under the Andean Trade Promotion and Drug Eradication Act (ATPDEA).

OMB Control Number: 0551–0033.

Summary of Collection: The Andean Trade Preference Act (the Act) (19 U.S.C. 3201 *et seq.*) was signed into law on December 4, 1991 and expired December 4, 2001. Section 3104 of H.R. 3009, the "Trade Act of 2002" amended section 208(b) of the Act to extend the termination date to December 31, 2006, retroactive to December 4, 2001. The Act authorizes the President to provide duty-free treatment to imports from Bolivia, Colombia, Ecuador, and Peru, except for specifically excluded products. Section 204(d) provides, in part, that a petition for emergency import relief maybe filed with the Secretary of Agriculture at the same time a petition for import relief is filed with the United States International Trade Commission (ITC). Emergency import relief is limited to restoration of general tariffs during the period of the ITC's investigation.

Need and Use of the Information: The Foreign Agricultural Service will collect the following information to be included in a petition: a description of the imported perishable product concerned; country of origin of imports data indicating increased imports are a substantial cause of serious injury to the domestic industry producing a like or directly competitive product; evidence of serious injury; and a statement indicating why emergency action would be warranted. The information collected provides essential data for the Secretary regarding specific market conditions with respect to the industry requesting emergency relief.

Description of Respondents: Business or other for-profit; Farms; Individuals or households.

Number of Respondents: 2.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 46.

Farm Service Agency

Title: Request for Direct Loan Assistance.

OMB Control Number: 0560–0167.

Summary of Collection: Section 302 (7 U.S.C. 1922) of the Consolidated Farm and Rural Development Act (CONACT) provides that the Secretary is authorized to make and insure loans under this title to farmers and ranchers. The Farm Service Agency (FSA) has issued regulations through the **Federal Register** process to implement the making and servicing of direct loans in chapter 18 of the Code of Federal Regulations. These regulations establish the information collection necessary for FSA to make and service direct loans. The loans include Operating, Farm Ownership. Soil and Water, Softwood Timber Production, Emergency, Economic Emergency, Economic Opportunity, Recreation, and Rural Housing loans for farm service building. FSA will collect information using form FSA 410–1.

Need and Use of the Information: FSA will collect information to determine if the applicant/borrower meets the eligibility requirements established in the CONACT. FSA will also collect the following information: name, address, telephone number; social security number; type of farming operation; information relating to the applicant's credit history; the source and amount of nonfarm income, and a financial statement. If the information were not collected FSA would not be able to make an accurate eligibility and financial feasibility determination on respondents' request for new loans and loan servicing actions.

Description of Respondents: Farm; Federal Government; Business or other-for-profit; Individuals or household.

Number of Respondents: 48,321.

Frequency of Responses: Reporting: Other (when applying for benefits).

Total Burden Hours: 96,642.

Rural Utilities Service

Title: Use of Consultants Funded by Borrowers, 7 CFR 1789.

OMB Control Number: 0572–0115.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the Department of Agriculture that makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste facilities in rural areas. The loan

programs are managed in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, as amended, and as prescribed by Office of Management and Budget Circular A–129, Policies for Federal Credit programs and Non-Tax Receivable, which states that agencies must, based on a review of a loan application, determine that an applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance. RUS has the authority to use consultants voluntarily funded by borrowers for financial, legal, engineering, and other technical services. However, all RUS borrowers are eligible to fund consultant services but are not required to fund consultants.

Need and Use of the Information: RUS will collect information to determine whether it is appropriate to use a consultant voluntarily funded by the borrower to expedite a particular borrower application. If the information were not submitted, RUS would be unable to determine if using a consultant would accelerate the specific application process.

Description of Respondents: Not-for-profit institutions; Business or other for-profits.

Number of Respondents: 6.

Frequency of Responses: Reporting: On Occasion.

Total Burden Hours: 12.

Rural Utilities Service

Title: Broadband pilot grant program.

OMB Control Number: 0572–0127.

Summary of Collection: The Rural Utilities Service has the responsibility to deploy a Broadband Pilot Grant Program to provide broadband infrastructure to rural, lower income communities on a "community-oriented connectivity" basis. This service is intended to promote economic development and provide enhanced educational and health care opportunities.

Need and Use of the Information: RUS' will provide financial assistance in the form of grants to eligible entities to provide broadband transmission service in rural communities where such service does not currently exist. RUS will use the information to determine that funds needed to complete the project are adequate based on the amount requested.

Description of Respondents: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 300.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 48,010.

Rural Housing Service

Title: 7 CFR 3550—Direct Single Family Housing Loan and Grant Program, HB–1–3550, HB–2–3550.

OMB Control Number: 0575–0172.

Summary of Collection: The Rural Housing Service (RHS) is a credit agency for rural housing and community development within the Rural Development mission area of the Department of Agriculture. Section 501 of Title V of the Housing Act of 1949, as amended, authorizes the Secretary of Agriculture to administer such programs and to prescribe regulations to ensure that these loans and grants provided with Federal funds are made to eligible applicants for authorized purposes, and that subsequent servicing an benefits provided to borrowers are consistent with the authorizing statute. RHS offers a supervised credit program to extend financial assistance to construct, improve, alter, repair, replace or rehabilitate dwellings, which will provide modest, decent, safe, and sanitary housing to eligible individuals living in rural areas. To assist individuals in obtaining affordable housing, a borrower's house payment may be subsidized to an interest rate as low as 1%. The information requested by RHS is vital to be able to process applications for RHS assistance and make prudent credit and program decisions. RHS will collect information using several forms.

Need and Use of the Information: RHS will collect information to verify program eligibility requirements; continued eligibility requirements for borrower assistance; servicing of loans; eligibility for special servicing assistance such as: payment subsidies, moratorium (stop) on payments, delinquency workout agreements; liquidation of loans; and, debt settlement. The information is used to ensure that the direct Single Family Housing Programs are administered in a manner consistent with legislative and administrative requirements. Without the information RHS would be unable to determine if a borrower would qualify for services or if assistance has been granted to which the customer would not be eligible under current regulations and statutes.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 500,000.

Frequency of Responses: Reporting; On occasion; Annually.

Total Burden Hours: 513,872.

Animal and Plant Health Inspection Service

Title: Animal Welfare Licensing and inspection Requirements for Dealers of Dogs Intended for Hunting, Breeding, or Security Purpose.

OMB Control Number: 0579–0169.

Summary of Collection: The Laboratory Animal Welfare Act (AWA) P.L. 890544 enacted August 24, 1966, requires the U.S. Department of Agriculture (USDA) to regulate the humane care and handling of dogs, cats, guinea pigs, hamster, rabbits, and nonhuman primates.

The legislation was the result of extensive demand by organized animal welfare groups and private citizens requesting a Federal law covering the transportation, care, and handling of laboratory animals. As part of these standards, the Animal and Plant health Inspection Service (APHIS) must regulate dealers of dogs used for hunting, security, or breeding purposes. APHIS will collect information using several forms.

Need and Use of the Information: APHIS will collect information (1) to insure that animals intended for use in research facilities or exhibition purposes or for use as pets are provided humane care and treatment; (2) to assure the humane treatment of animals during transportation in commerce; and (3) to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen. The information collected will help determine whether a reporting facility is following professionally acceptable standards governing care, treatment, and use of animals. Without the information it would be impossible to enforce the AWA program, perform compliance investigations, or initiate proceedings against violators.

Description of Respondents: Business or other for-profit.

Number of Respondents: 12.

Frequency of Responses: Recordkeeping; Reporting; On occasion.

Total Burden Hours: 16.

Agricultural Marketing Service

Title: Lamb Promotion, Research and Information Program: Rules and Regulations.

OMB Control Number: 0581–0203.

Summary of Collection: The agricultural Marketing Service (AMS) has the responsibility for the national commodity research and promotion programs. The authority for the Lamb Promotion, Research, and Information Order is established under the Commodity Promotion, Research, and Information Act of 1996. These

programs carry out projects relating to research, consumer information advertising, producer information, market development, and product research with the goal of maintaining and expanding their existing markets and uses and strengthening their position in the marketplace.

Need and Use of the Information: The Certification of Non-Producer status Form is used by market agencies to certify that certain transactions are exempt from assessments and were resold not later than 10 days from the date on which the agency acquired ownership and no additional assessment was due. The information required by this form is not available from any other source because it relates specifically to individual lamb producers, feeders, seedstock producers, first handlers and exporters.

Description of Respondents: Farms; individuals or households; Business or other for-profit.

Number of Respondents: 3,318.

Frequency of Responses: Recordkeeping; Reporting; Monthly.

Total Burden Hours: 1,195.

Food Safety and Inspection Service

Title: Survey of Egg, Meat, and Poultry Plants: Current Practices and Technologies for Controlling Pathogens in Manufacturing Processes.

OMB Control Number: 0583–NEW.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et. seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et. seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031–1056). These statutes mandate that FSIS protect the public by ensuring that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged. FSIS will conduct surveys of egg, meat, and poultry plants. The survey will provide accurate and up-to-date information about current practices and technologies used in the egg, meat, and poultry industries to control and reduce pathogens in their manufacturing processes.

Need and Use of the Information: FSIS will collect information to establish an accurate, quantitative baseline for pathogen control, sanitation, testing, training, and other practices used by egg, meat, and poultry plants. FSIS will also use the information collected to determine whether specific regulatory actions are needed, and if so, the types of regulatory actions that will achieve desired objectives in the most efficient and effective manner. Without the information FSIS would have insufficient quantitative information about practices and technologies used in the eggs, meat, and poultry industries to control or reduce pathogens in manufacturing processes.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1,309.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 741.7.

Food and Nutrition Service

Title: 7 CFR Part 215—Special Milk Program for Children.

OMB Control Number: 0584–0005.

Summary of Collection: Section 3 of the Child Nutrition Act (CNA) of 1966 (P.L. 89–642, as amended; 42 U.S.C. 1772) authorizes the Special Milk Program (SMP) for Children. The SMP is a food assistance program whose objective is to encourage children to consume milk. The program provides the availability of federally subsidized milk, which is delivered through nonprofit milk service operations run by schools and institutions. Such organizations may operate the SMP in either a pricing or nonpricing mode. Needy children in organizations that operate the SMP in its pricing mode may receive their milk free if the sponsoring organization elects to serve free milk. Although the responsibility for administering the SMP at the Federal level has been assigned to USDA, the enabling legislation requires that SMP operations within the states be administered by State Agencies (SAs).

Need and Use of the Information: The Food and Nutrition Service (FNS) will collect information to compute the amount of Federal SMP funds due the SA under the performance-funding formula; analyze and evaluate the results of program operation within each state and nationwide; respond to data requests from the Congress, OMB, and advocacy groups and the general public; develop budget projections of the amount of Federal funds needed to pay SMP program benefits; and regulate the flow of Federal funds to SA. Without this information FNS would not be able to evaluate program operations.

Description of Respondents: State, Local, and Tribal Government; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 15,199.

Frequency of Responses: Recordkeeping; Reporting: Monthly; Annually.

Total Burden Hours: 702,767.

Food and Nutrition Service

Title: Food Stamp Forms: Applications, Periodic Reporting, Notices.

OMB Control Number: 0584–0064.

Summary of Collection: The Food Stamp Act of 1977 (the Act) establishes a program whereby needy households may apply for and receive food stamp benefits. The Act requires certain reporting and recordkeeping requirements in administering the program. The Act specifies national eligibility standards and impose certain administrative requirements on State agencies in administering the program. Information must be collected from households to assure that they are eligible for the program and that they receive the correct amount of food stamp benefits. Information collected is limited to that necessary for the administration and enforcement of the Food Stamp Program. The Food and Nutrition Service (FNS) will use an application to collect information. Fours laws modify or add additional information collected, reporting, and recordkeeping requirement associated with the application and certification of households for the Food Stamps Program: The four laws are: Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), dated 8/22/96; Public Law 104–208, the Omnibus Consolidated Appropriations Act (OCAA), dated 9/30/96; Public Law 105–33, the Balanced Budget Act (BBA), dated August 5, 1997; and Public Law 105–185, the Agricultural Research, Extension and Education Reform Act of 1998 (AREERA), dated June 23, 1998. The various provisions of these laws are implemented at 7 CFR Part 272, 273, and 274.

Need and Use of the Information: FNS will collect information to determine the eligibility of households for the food stamp program and to determine the correct benefit levels for eligible households. The social security number will be used to check the identity of household members, to prevent duplicate participation, to make mass food stamp changes, and to verify information. If information is not collected to certify households in accordance with the Act or changing the frequency of information or reporting requirements as they relate to the application, certification, and continue eligibility of households would result in a direct violation of the Act and its implementing regulations. Further, benefits could be overissued or underissued for a long period of time if

necessary information is not collected or actions are not taken timely.

Description of Respondents: State, Local, and Tribal Government; Individuals or household.

Number of Respondents: 18,131,799.

Frequency of Responses: Recordkeeping; Reporting: On occasion: Monthly; Quarterly.

Total Burden Hours: 28,333,895.

Farm Service Agency

Title: Brokerage Agreement for the Transportation of USDA Commodities.

OMB Control Number: 0560–NEW.

Summary of Collection: 49 U.S.C. 13102(2), 13712, and 49 CFR Chapter 10, Part 1090–1099, authorizes the Export Operations Division (EOD) to collect information to determine Broker compliance with KCCO requirements and to determine the eligibility of Brokers to haul agricultural products for the United States Department of Agriculture (USDA). Brokers must complete the Brokerage Agreement for the transportation of USDA commodities. The Brokerage Agreement is used to establish the transportation service needs of the USDA, Farm Service Agency (FSA), Kansas City Commodity Office (KCCO), operating as Commodity Credit Corporation (CCC), for the brokered movement of its freight.

Need and Use of the Information: FSA will collect information to ensure that the applicant has both the willingness and the capability to meet the needs of KCCO and to establish the rules for which the broker can expect corporation. Without the information, KCCO could not meet program requirements.

Description of Respondents: Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 113.

Frequency of Responses: Reporting: Other (Once).

Total Burden Hours: 113.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 02–31570 Filed 12–13–02; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–092–1]

Aventis CropScience; Availability of Petition and Environmental Assessment for Determination of Nonregulated Status for Cotton Genetically Engineered for Glufosinate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Aventis CropScience seeking a determination of nonregulated status for cotton designated as Transformation Event LLCotton25, which has been genetically engineered for tolerance to the herbicide glufosinate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this cotton presents a plant pest risk. We are also making available for public comment an environmental assessment for the proposed determination of nonregulated status.

DATES: We will consider all comments that we receive on or before February 14, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comments (an original and three copies) to Docket No. 02–092–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 02–092–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–092–1" on the subject line.

You may read the petition, the environmental assessment, and any comments we receive on this notice of availability in our reading room. The reading room is located in room 1141, USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure that someone is available to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Koehler, Biotechnology Regulatory Services, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–4886. To obtain a copy of the petition or the environmental assessment, contact Ms. Kay Peterson at (301) 734–4885; e-mail: *Kay.Peterson@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

On February 12, 2002, APHIS received a petition (APHIS Petition No. 02–042–01p) from Aventis CropScience (Aventis) of Research Triangle Park, NC, requesting a determination of nonregulated status under 7 CFR part 340 for cotton (*Gossypium hirsutum* L.) designated as Transformation Event LLCotton25 (LLCotton25), which has been genetically engineered for tolerance to the herbicide glufosinate. The Aventis petition states that the subject cotton should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, LLCotton25 has been genetically engineered to contain a stably integrated *bar* gene isolated from *Streptomyces hygroscopicus*, strain ATCC21705. The *bar* gene encodes phosphinothricin-N-acetyltransferase (PAT), and the PAT enzyme catalyzes the conversion of L-phosphinothricin, the active ingredient in glufosinate, to an inactive form, thus conferring resistance to the herbicide. Expression of the added genes is controlled in part by gene sequences from the plant pathogens cauliflower mosaic virus and *Agrobacterium tumefaciens*. *Agrobacterium*-mediated gene transfer was used to transfer the added genes into the recipient Coker 312 cotton variety.

LLCotton25 has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from plant pathogens. This cotton has been field tested since 1999 in the United States under APHIS notifications. In the process of reviewing the notifications for field trials of the subject cotton, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In § 403 of the Plant Protection Act (7 U.S.C. 7701–7772), "plant pest" is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which genetically modified plants allow for a new use of a pesticide or involve a different use pattern for the pesticide, EPA must approve the new or different use. Accordingly, Aventis has submitted a pesticide petition to EPA to expand the registration of glufosinate to include use on LLCotton25.

When the use of the pesticide on the genetically modified plant would result in an increase in the residues in a food or feed crop for which the pesticide is currently registered, or in new residues in a crop for which the pesticide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended (21 U.S.C. 301 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by EPA under the FFDCA.

FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. The petitioner has begun consultation with FDA on the subject cotton.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for determination of nonregulated status from interested persons for a period of 60 days from the date of this notice. We are also soliciting written comments from interested persons on the environmental assessment (EA) prepared to provide the public with documentation of APHIS' review and analysis of any potential environmental impacts and plant pest risk associated with a proposed determination of nonregulated status for Aventis' LLCotton25.

The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). The petition and the environmental assessment and any comments received are available for public review, and copies of the petition and the environmental assessment may be ordered (see the **FOR FURTHER INFORMATION CONTACT** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. After reviewing and evaluating the comments on the petition and the environmental assessment and other data and information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Aventis' herbicide-tolerant LLCotton25 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 166, 1622n, 7756, and 7761–7772; 31 U.S.C. 9701;7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 10th day of December 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–31567 Filed 12–13–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–102–1]

Draft Guideline on Testing for the Detection of Mycoplasma Contamination

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: A draft guideline titled "Testing for the Detection of Mycoplasma Contamination" has been developed by the International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). The draft guideline provides procedures for the testing of some veterinary biologics to detect mycoplasma contamination. Since the draft guideline applies to veterinary biological products regulated by the Animal and Plant Health Inspection Service under the Virus-Serum-Toxin Act, we are requesting comments on its provisions so that we may include any relevant public input on the draft in the Agency's comments to the VICH Steering Committee.

DATES: We will consider all comments on the draft guideline that we receive on or before February 14, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and

three copies) to: Docket No. 02–102–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–102–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–102–1" on the subject line.

You may read any comments that we receive on the draft guideline in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

You may request a copy of the draft guideline "Testing for the Detection of Mycoplasma Contamination" by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. The draft guideline is also available on the Internet at *http://www.aphis.usda.gov/vs/cvb/lpd/notices*.

FOR FURTHER INFORMATION CONTACT: For information regarding VICH, contact Dr. Richard E. Hill, Director, Center for Veterinary Biologics-Licensing and Policy Development, VS, APHIS, 510 South 17th Street, Suite 104, Ames, IA 50010; (515) 232–5785. For information regarding the draft guideline "Testing for the Detection of Mycoplasma Contamination," contact Dr. Donna M. Gatewood at the same address and telephone number.

SUPPLEMENTARY INFORMATION: The International Cooperation on Harmonization of Technical Requirements for the Registration of Veterinary Medicinal Products (VICH) brings together the regulatory authorities of the European Union, Japan, and the United States and representatives from the animal health industry in the three regions. The purpose of VICH is to harmonize technical requirements for veterinary products (both drugs and biologics). Regulatory authorities and industry experts from Australia and New Zealand participate as observers. The VICH initiative is conducted under the auspices of the International Office of Epizootics. The World Federation of the Animal Health Industry (COMISA, the Confederation Mondiale de L'Industrie de la Sante Animale) provides the secretarial support for VICH activities. The U.S. Government is represented in VICH by the Food and Drug Administration (FDA) and the Animal and Plant Health Inspection Service (APHIS). The FDA provides expertise regarding veterinary drugs, while APHIS fills a corresponding role for veterinary biological products. As VICH members, FDA and APHIS participate in efforts to enhance harmonization and have expressed their commitment to seeking scientifically based harmonized technical requirements for the development of veterinary drugs and biological products. One of the goals of harmonization is to identify and reduce the differences in technical requirements for veterinary drugs and biologics among regulatory agencies in different countries.

This notice informs the public that a draft document, "Testing for the Detection of Mycoplasma Contamination" (VICH Topic GL34), has been made available for comments by the VICH Steering Committee. The draft guideline is intended to provide an international testing standard for the detection of mycoplasma contamination in veterinary biologics. Because the draft guideline applies to some veterinary biological products regulated by APHIS under the Virus-Serum-Toxin Act, we are requesting comments on its provisions so that we may include any relevant public input on the draft in the Agency's comments to the VICH Steering Committee.

The draft document reflects current APHIS thinking on testing veterinary biologics for the detection of mycoplasma contamination. In accordance with the VICH process, once a final draft of "Testing for the Detection of Mycoplasma Contamination" has been approved, the guideline will be recommended for adoption by the regulatory bodies of the European Union, Japan, and the United States. As with all VICH documents, the final guideline will not create or confer any rights for or on any person and will not operate to bind APHIS or the public. Further, a VICH guideline specifically provides for the use of alternative approaches if those approaches are proven to be equivalent by scientifically accepted criteria.

Ultimately, APHIS intends to consider the VICH Steering Committee's final guidance document for use by U.S. veterinary biologics licensees, permittees, and applicants. In addition, APHIS will consider its use as a basis for testing veterinary biologics for mycoplasma contamination under 9 CFR 113.28. APHIS may also use the final guidance document as the basis for proposed additions or amendments to its regulations in 9 CFR chapter I, subchapter E (Viruses, Serums, Toxins, and Analogous Products; Organisms and Vectors). Because we anticipate that applicable provisions of the final version of "Testing for the Detection of Mycoplasma Contamination" may be introduced into APHIS' veterinary biologics regulatory program in the future, we encourage your comments on the draft version.

Authority: 21 U.S.C. 151 *et seq.*

Done in Washington, DC, this 10th day of December 2002 .

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–31568 Filed 12–13–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Reinstatement, Without Change, of PreviouslyApproved Information Collection That Has Expired for Stewardship Incentive Program

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the reinstatement, without change, of a previously approved, but now expired, information collection required for participation of non-industrial private forest owners in the State and Private Forestry Stewardship Incentive Program. The collected information identifies (1) the Stewardship Incentive Program assignment of payment, (2) Internal Revenue Service income reporting requirements for participants, and (3) the participants' delegated power of attorney.

DATES: Comments must be received in writing on or before February 14, 2003.

ADDRESSES: Written comments concerning this notice should be addressed to Forest Service, USDA, Attn: Stewardship Coordinator, Cooperative Forestry Staff, Mail Stop 1123, 1400 Independence Avenue, SW., Washington, DC 20250–1123.

Comments may also be sent via email to *hbrockman@fs.fed.us*, or via facsimile to (202) 205–1271.

The public may inspect comments received at the offices of the Cooperative Forestry Staff, Sidney Yates Building, 4th Floor SE, 201 14th Street, SW., Washington, DC 20250, during normal business hours. Visitors are encouraged to call ahead to (202) 205–1694 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Hal Brockman, Cooperative Forestry Staff, (202) 205–1694; or Susan Stein, Cooperative Forestry Staff, (202) 205–0837.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Forest Service is seeking a reinstatement, without change, of a previously approved, but now expired, information collection authorized under Office of Management and Budget (OMB) Control Number 0596–0120 and required for participation of non-industrial private forest owners in the State and Private Forestry Stewardship Incentive Program. Several Forest Service information collection forms are approved under this authorization number: Stewardship Incentive Program (SIP)–36, Assignment of Payment; SIP–211, Power of Attorney; SIP–211–1, Power of Attorney for Husband and Wife; and SIP–502, Payment Limitation Review. The collected information is used to facilitate the participation of non-industrial private forest owners in the State and Private Forestry Stewardship Incentive Program.

An additional form, AD–245, SIP Request for Cost-Shares, also is used when applying for cost-share funds. A request for extension of approval for this information collection is being requested by the Farm Service Agency(OMB 0560–0082), which works cooperatively with the Forest Service to administer the Stewardship Incentive Program.

Data gathered in this information collection are not available from other sources.

Description of Information Collection

The following describes the information collection to be reinstated:

Title: SIP–36, Assignment of Payment.

OMB Number: 0596–0120.

Expiration Date of Approval: July 31, 2002.

Type of request: Reinstatement of a previously approved information collection that has expired.

Abstract: The non-industrial private forest landowner completes SIP–36 to assign a cost-share payment to a third party. The information requested includes the payment amount assigned and the names, addresses, and signatures of assignor and assignee.

Estimate of Annual Burden: 10 minutes.

Types of Respondents: Non-industrial private forest owners.

Estimated Annual Number of Respondents: 1,000.

Estimated Annual Number of Responses per Respondent: 1 per form.

Estimated Total Annual Burden on Respondents: 167 hours.

Description of Information Collection

The following describes the information collection to be reinstated:

Title: SIP–211, Power of Attorney.

OMB Number: 0596–0120.

Expiration Date of Approval: July 31, 2002.

Type of request: Reinstatement of a previously approved information collection that has expired.

Abstract: The non-industrial private forest landowner completes SIP–211 to appoint power of attorney for the landowner. The landowner indicates in this form whether power of attorney is being granted for (1) all actions; (2) the signing of an application; (3) the receiving of payments; (4) pledge of agreements; (5) the making of reports; or (6) other. It is signed by the landowner and witnesses.

Estimate of Annual Burden: 5 minutes.

Types of Respondents: Non-industrial private forest owners.

Estimated Annual Number of Respondents: 1,000.

Estimated Annual Number of Responses per Respondent: 1 per form.

Estimated Total Annual Burden on Respondents: 83 hours.

Description of Information Collection

The following describes the information collection to be reinstated:

Title: SIP–211–1, Power of Attorney for Husband and Wife.

OMB Number: 0596–0120.

Expiration Date of Approval: July 31, 2002.

Type of request: Reinstatement of a previously approved information collection that has expired.

Abstract: Participants who are husband and wife and who wish to assign each other power of attorney complete Form SIP–211–1. It requires the husband and wife to print and sign their names on the form.

Estimate of Annual Burden: 5 minutes.

Types of Respondents: Non-industrial private forest owners.

Estimated Annual Number of Respondents: 1,000.

Estimated Annual Number of Responses per Respondent: 1 per form.

Estimated Total Annual Burden on Respondents: 83 hours.

Description of Information Collection

The following describes the information collection to be reinstated:

Title: SIP–502, Payment Limitation Review.

OMB Number: 0596–0120.

Expiration Date of Approval: July 31, 2002.

Type of request: Reinstatement of a previously approved information collection that has expired.

Abstract: To ensure they have not exceeded the cost-share payment limit for a fiscal year and also to meet Internal Revenue Service income reporting requirements, non-industrial private forest owners complete SIP-502. A landowner is not allowed to receive more than $10,000 in SIP cost-share payments in a single fiscal year. Program participants provide their name and address, entity identification number, and date entity formed. They also check off the type of entity (*e.g.*, individual, irrevocable trust, revocable trust, corporation, limited partnership, general partnership, joint venture, estate, or other). Participants also list all stockholders, members, heirs, or beneficiaries having an interest in the entity.

Estimate of Annual Burden: 25 minutes.

Types of Respondents: Non-industrial private forest owners.

Estimated Annual Number of Respondents: 1,000.

Estimated Annual Number of Responses per Respondent: 1 per form.

Estimated Total Annual Burden on Respondents: 417 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on

respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including name and address when provided, will become a matter of public record. Comments received in response to this notice will be summarized and included in the request for Office of Management and Budget approval.

Dated: December 4, 2002.

Joel D. Holtrop,

Deputy Chief, State and Private Forestry.

[FR Doc. 02–31571 Filed 12–13–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on January 6, 2003, in Weaverville, California. The purpose of the meeting is to discuss the selection of title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on January 6, 2003, from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Office of Education Conference Room, 201 Memorial Drive, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Ann Garland, Designated Federal Official, USDA, Six Rivers National Forest, P.O. Box 68, Willow Creek, CA 95573. Phone: (530) 629–2118. E-mail: *agarland@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The committee will discuss the environmental analysis process and project monitoring, fuels projects, and the strategy for future projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 9, 2002.

Bud Zangger,

Acting Forest Supervisor.

[FR Doc. 02–31563 Filed 12–13–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on January 7, 2003, in Crescent City, California. The purpose of the meeting is to discuss the selection of title II projects under Pub. L. 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on January 7, 2003, from 6 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Del Norte County Unified School District Board Room, 301, West Washington Boulevard, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail: *lchapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The committee will discuss and prioritize project proposals submitted by the public and Six Rivers National Forest. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 9, 2002.

Bud Zangger,

Acting Forest Supervisor.

[FR Doc. 02–31564 Filed 12–13–02; 8:45 am]

BILLING CODE 3416–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

RIN 0596–AB99

National Environmental Policy Act Documentation Needed for Fire Management Activities; Categorical Exclusions

AGENCY: Forest Service, USDA, and Department of the Interior.

ACTION: Notice of proposed National Environmental Policy Act implementing procedures; request for comment.

SUMMARY: The Department of Agriculture, Forest Service and Department of the Interior give notice of, and request comment on, their proposal to revise their procedures for implementing the National Environmental Policy Act (NEPA) and Council on Environmental Quality (CEQ) regulations. These revisions are being made to Forest Service Handbook 1909.15, chapter 30, and Department of the Interior Manual 516 DM, chapter 2, Appendix 1, which describe categorical exclusions, *i.e.*, categories of actions that will not result in significant impacts on the environment and therefore normally do not require further analysis in either an environmental assessment or an environmental impact statement. The proposal would add two such categories of actions to the agencies' NEPA procedures: (1) Hazardous fuels reduction activities (such as thinning overstocked stands and brush); and (2) activities for rehabilitating and stabilizing lands and infrastructure (such as reseeding) impacted by wildland fires or fire suppression. The Departments reviewed over 3,000 hazardous fuel reduction and rehabilitation/stabilization projects and concluded that these categories of actions do not individually or cumulatively result in significant effects on the human environment. The intended effect of these two categorical exclusions is to facilitate efficient planning and timely decisions concerning treatment of hazardous fuels and stabilization and rehabilitation of areas so as to reduce risks to communities and the environment caused by severe fires.

The hazardous fuels reduction categorical exclusion will only apply to projects identified in a manner consistent with the collaborative framework in the 10-Year Comprehensive Strategy Implementation Plan. Moreover, these hazardous fuels reduction activities: (1) Would not be conducted in wilderness areas or where they would impair the suitability of wilderness study areas for preservation for wilderness; (2) would not include the use of herbicides or pesticides; (3) would not involve the construction of new permanent roads or other infrastructure, and (4) would not include activities such as timber sales that do not have hazardous fuels reduction as their primary purpose. Activities carried out under the rehabilitation and stabilization categorical exclusion would only take place after a wildfire. These activities cannot use herbicides or pesticides, nor include the construction of new permanent roads or other infrastructure. Activities conducted under either of the proposed categorical exclusions must be consistent with agency and Departmental procedures, land and resource management plans, and must comply with all applicable Federal, State, and tribal laws for protection of the environment (*e.g.*, compliance with State standards for air quality). These categorical exclusions will not apply where there are extraordinary circumstances, such as adverse effects on threatened and endangered species or their designated critical habitat, wilderness areas, inventoried roadless areas, wetlands, and archeological or historic sites.

Hazardous fuels reduction and rehabilitation/stabilization activities will help reach the goal of restoring fire-adapted ecosystems, which will benefit many species and their habitat. Public comment is invited and will be considered in development of the final procedures.

DATES: Comments must be received in writing by January 15, 2003.

ADDRESSES: Mail written comments to: Healthy Forests Initiative, USDA FS Content Analysis Team, P.O. Box 221150, Salt Lake City, Utah 84116.

Comments also may be submitted via facsimile to (801) 517–1015 or by e-mail to *healthyforests@fs.fed.us.* If comments are sent via facsimile or e-mail, the public is requested not to send duplicate written comments via regular mail.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection. Persons wishing to inspect the comments need to call (801) 517–1020 to facilitate an appointment.

FOR FURTHER INFORMATION CONTACT: Dave Sire, USDA Forest Service, Ecosystem Management Coordination, (202) 205–2935, or Willie Taylor, Department of the Interior, Office of Environmental Policy and Compliance, (202) 208–3891. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 4 p.m., Eastern Standard Time, Monday through Friday. Additional information and analysis can be found under the Healthy Forests Initiative at *http://www.fs.fed.us/projects/HFI.shtml.*

SUPPLEMENTARY INFORMATION:

Overview

On August 22, 2002, President Bush established the Healthy Forests Initiative, directing the Departments of Agriculture and Interior and the Council on Environmental Quality to improve regulatory processes to ensure more timely decisions, greater efficiency, and better results in reducing the risk of catastrophic wildfires by restoring forest health.

In response to this direction, the Departments of Agriculture and the Interior propose two new categorical exclusions. The first, addressing hazardous fuels reduction projects, is intended to better protect lives, communities, and ecosystems from the risk of high-intensity wildland fire. The second, addressing rehabilitation and stabilization projects, is intended to better restore natural resources and infrastructure after a fire. These two proposed categorical exclusions will increase the ability of the agencies to expeditiously reduce hazardous fuels, thereby lowering the intensity and rapid spread of wildfires, and facilitate the agency's abilities to rapidly rehabilitate and stabilize burned areas to protect watersheds and resources.

Why Do the Departments Need the Proposed Categorical Exclusions?

As stated in the Administration's "Healthy Forests: An Initiative for Wildfire Prevention and Stronger Communities", there are 190 million acres of Federal forests and rangelands in the 48 contiguous states at risk of severe wildland fires that threaten human safety, property, and ecosystem integrity. Drought conditions coupled with years of fuel buildup combine to make these lands vulnerable to intense, fast-moving fires that often are far more destructive than those in prior years. In the aftermath of wildland fires, timely rehabilitation and stabilization projects are critical to preventing additional threats to communities and ecosystems, such as soil erosion, mudslides, invasive species, and deteriorating watersheds.

The 2000 fire season, for example, was one of the worst in 50 years. Approximately 123,000 fires burned more than 8.4 million acres. The total acreage burned was more than twice the 10-year national average. At times, nearly 30,000 personnel were on the fire lines, including military and firefighters from other countries. More than $2 billion from Federal accounts was spent suppressing wildland fires. This amount does not include State and local firefighting suppression costs, direct and indirect economic losses to communities, loss of property, and damage to ecosystems.

The trend since 2000 has continued. During 2002, catastrophic wildfires continued to make national headlines, burning over 7.1 million acres. According to the General Accounting Office 1999 report, "Western National Forests—A Cohesive Strategy Is Needed to Address Catastrophic Wildfire Threats," wildfires have increasingly become large, intense, and catastrophic in the currently denser stands of the national forests in the interior West. For example, the 2002 Rodeo Fire in Arizona grew from 800 to 46,000 acres in one day. In addition, Oregon and Colorado experienced unusually large fires, with Colorado's Hayman fire being five times larger than the previous largest recorded fire in that State's history.

Congress and the Executive Branch identified coordinated and strategic fuels treatment as necessary to undo a century of fuels buildup. In August 2000, the Secretaries of Agriculture and the Interior began an effort designed to reduce fire impacts on communities and ensure effective firefighting capacity in the future. The result was the National Fire Plan, which Congress later supported through appropriations language in the fiscal year (FY) 2001 appropriations act for the Department of the Interior and related agencies. As part of its direction, Congress mandated the creation of a coordinated national 10-year comprehensive strategy. The resulting strategy, "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy," completed in August of 2001, was developed by Federal, State, tribal, and local government and non-governmental representatives. In May of 2002, these same parties completed the Implementation Plan for the 10-Year Comprehensive Strategy. The Implementation Plan establishes a performance-based framework for improving the management of wildland fire and hazardous fuels; meeting the need for ecosystem restoration and rehabilitation; implementing protective measures to reduce the risk of wildland

fire to communities and environments and monitoring progress over time.

The unprecedented collaboration among Federal, State, tribal and local governments, citizens and groups reached a powerful consensus that immediate action was needed. Thus, the 10-Year Comprehensive Strategy Implementation Plan set four primary goals: (1) Improve fire prevention and suppression; (2) reduce hazardous fuels; (3) restore fire-adapted ecosystems; and (4) promote community assistance. For each goal, the 10-Year Comprehensive Strategy Implementation Plan identifies specific outcomes, performance measures, and implementation tasks that guide agency actions and measure performance. Moreover, a key implementation task under Goal Two of the 10-Year Comprehensive Strategy Implementation Plan requires agencies to assess regulatory processes governing hazardous fuels projects and activities done in conformance with the 10-Year Comprehensive Strategy and Implementation Plan and to identify measures to improve the timeliness of decisions. The proposed categorical exclusions respond to this task and the goal of restoring fire-adapted ecosystems under Goal Three of the 10-Year Comprehensive Strategy Implementation Plan.

The proposed categorical exclusions will provide the departments with identical management tools that will improve consistency and cooperation among Federal agencies in the implementation of hazardous fuels reduction, stabilization, and rehabilitation projects. This improved cooperation will, in turn, foster more effective collaboration among Federal, State, tribal, and local governments and interested stakeholders consistent with the 10-Year Comprehensive Strategy Implementation Plan.

What Is a Categorical Exclusion?

The National Environmental Policy Act (NEPA), and accompanying Council on Environmental Quality (CEQ) regulations (40 CFR 1500), require that each agency establish specific criteria for and identification of three types of actions: (1) Those that require preparation of an environmental impact statement; (2) those that require the preparation of an environmental assessment; and (3) those that are categorically excluded from further analysis and documentation in an environmental assessment or an environmental impact statement. Actions qualify for (3), a categorical exclusion, if they do not individually or cumulatively have a significant impact on the human environment and warrant no further analysis and documentation in an environmental assessment or an environmental impact statement. Agencies must, however, recognize the exceptions to the application of a categorical exclusion that extraordinary circumstances may require.

A categorical exclusion is not an exemption from the requirements of NEPA. Categorical exclusions are an essential part of NEPA that provide a categorical determination that the activities do not result in significant impacts, eliminating the need for individual analyses and lengthier documentation. CEQ regulations at 40 CFR 1500.4(p), 1507.3 and 1508.4 direct agencies to use categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and do not require the preparation of an environmental assessment or an environmental impact statement, thereby reducing excessive paperwork.

Current United States Department of Agriculture (USDA) Forest Service procedures for complying with and implementing NEPA are set out in Forest Service Handbook (FSH) 1909.15, Chapter 30, which establishes two types of categorical exclusions. The first, set out at section 31.1, consists of categories of actions that are so routine and limited that a record is not required. The second type, set out at section 31.2, consists of categories of actions that require documentation in a Decision Memo that explains the rationale for applying a categorical exclusion and not preparing an environmental assessment or an environmental impact statement. The two categorical exclusions proposed in this notice would fall within the Forest Service's second type of categorical exclusion that requires a Decision Memo.

Current Department of the Interior procedures for complying with NEPA are set out in Departmental Manual 516 DM. Department-wide categorical exclusions are established in 516 DM, chapter 2, Appendix 1. In applying the categorical exclusions, bureaus must make a determination that the exemptions do not apply. No specific form of documentation has previously been required for this determination. While the Department of the Interior has not required formal documentation of its department-wide categorical exclusions, many bureaus of the Department of the Interior prescribe some formal documentation for their bureau-specific categorical exclusions. Due to the desire to have comparable categorical exclusions and consistency in use, the Department of the Interior will issue instructions for documenting and distributing the rationale for applying either of these two proposed categorical exclusions, consistent with Forest Service procedures.

As directed by the CEQ regulations at 40 CFR 1508.4, both the USDA Forest Service and the Department of the Interior procedures provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect. Extraordinary circumstances occur, for example, where proposed actions would have adverse effects on federally listed threatened and endangered species or their designated critical habitat, wilderness areas, inventoried roadless areas, wetlands, and archeological or historic sites. Where extraordinary circumstances occur, project analyses are documented in an environmental assessment or environmental impact statement. The proposed categorical exclusions would be applied in the absence of extraordinary circumstances in accordance with departmental procedures. The USDA Forest Service provisions for extraordinary circumstances are set out in FSH 1909.15, section 30.3. The Department of the Interior provisions for extraordinary circumstances, called exceptions, are set out in 516 DM, chapter 2, Appendix 2. USDA Forest Service and the Department of the Interior provisions for extraordinary circumstances may be viewed at *http://www.fs.fed.us/projects/HFI.shtml.*

Explanation of Proposed Categorical Exclusions

The USDA Forest Service and the Department of the Interior are proposing two categorical exclusions. These categorical exclusions would apply to National Forest System lands and to lands managed by the Department of the Interior agencies, including lands administered by the Bureau of Land Management, National Park Service, Fish and Wildlife Service, the Bureau of Indian Affairs, and the Bureau of Reclamation.

The first categorical exclusion proposed by the USDA Forest Service and the Department of the Interior addresses hazardous fuels reduction projects. Hazardous fuels consist of combustible vegetation (live or dead), such as grass, leaves, ground litter, plants, shrubs, and trees, that contribute to the threat of ignition and high fire intensity and/or high rate of spread. Hazardous fuels reduction involves manipulation, including combustion or removal of fuels, to reduce the likelihood of ignition and/or to lessen potential damage to the ecosystem from

intense wildfire and to create conditions where firefighters can safely and effectively control wildfires. Activities that could be conducted under this proposed categorical exclusion are the thinning of trees (commercial or pre-commercial as identified in the 10-Year Comprehensive Strategy Implementation Plan) and the removal of combustible vegetation through mechanical means, grazing, and the use of prescribed fire.

The second proposed category addresses rehabilitation and stabilization of resources and infrastructure in the aftermath of a fire. Activities that could be conducted under this proposed categorical exclusion include rehabilitation of habitat, watersheds, and infrastructure impacted by wildfire and/or wildfire suppression. Reseeding or planting, fence construction, culvert repair, installation of erosion control devices, and repair of roads and trails are examples of activities necessary for the stabilization and rehabilitation of habitat, watersheds, historical, archeological, and cultural sites, and infrastructure impacted by wildfire and/or wildfire suppression.

When Will the Categorical Exclusions Be Used?

The hazardous fuels reduction categorical exclusion will be applicable only to projects identified in a manner that is consistent with the collaborative framework in the 10-Year Comprehensive Strategy Implementation Plan. Additionally, categorically excluded hazardous fuels reduction activities would not be conducted in wilderness areas or where they would impair the suitability of wilderness study areas for preservation as wilderness. Categorically excluded hazardous fuels reduction activities are further limited in that they cannot include the use of herbicides or pesticides or the construction of new permanent infrastructure. Infrastructure may be reconstructed, but no new permanent roads or new permanent construction may take place under this categorical exclusion.

Activities carried out under the rehabilitation and stabilization categorical exclusion would apply only to activities in the aftermath of a wildfire. Such activities are further limited in that they cannot include the use of pesticides or the construction of new permanent infrastructure. Infrastructure may be reconstructed, but no new permanent roads or new permanent construction may take place under this categorical exclusions.

Activities conducted using the proposed categorical exclusions must be consistent with agency and Departmental procedures, and with applicable land and resource management plans. For example, procedures and plans call for appropriate buffers from riparian areas or areas containing cultural or historical artifacts and for timing activities to avoid species of concern and sensitive species nesting periods. Products generated by use of mechanical methods under the proposed hazardous fuel reduction categorical exclusion would be sold or otherwise utilized or disposed of in accordance with agency and Departmental procedures.

In addition, the activities under both proposed categorical exclusions must meet all applicable Federal, State, and tribal laws or other requirements imposed for protection of the environment. For example, the Clean Air Act requires compliance with State standards for air quality. A categorical exclusion would not be used if air quality standards could not be met. Similarly, the Wilderness Act provides certain protections for areas designated by Congress as wilderness areas. Categorical exclusions would not be used where a proposed activity may have adverse effects on wilderness characteristics.

In addition, agencies can avoid significant environmental effects by following agency procedures related to compliance with other applicable laws. For example, effects on archeological and cultural resources can often be mitigated simply by identifying and avoiding those resources. As another example, the use of fire is coordinated with State regulatory agencies concerned with air quality to ensure that burning is carried out when atmospheric conditions are favorable to smoke dispersal.

In using categorical exclusions, agencies must continue conducting appropriate consultations with Federal and State regulatory agencies, such as those required by the Endangered Species Act and the National Historic Preservation Act. Activities categorically excluded from documentation in an environmental assessment or an environmental impact statement must still be evaluated to assess effects on threatened and endangered species, and undergo an appropriate level of consultation with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service. Similarly, categorically excluded activities undergo surveys and evaluation of effects on properties protected by the National Historic Preservation Act, along with appropriate consultation with State Historic Preservation Officers. Such consultations help ensure that cumulative effects across jurisdictions will not be significant. The USDA Forest Service and the Department of the Interior invite comments on any additional factors to consider in crafting the final categorical exclusions that address the scope of their implementation.

Rationale for the Proposal

The Departments have extensive experience in hazardous fuels management, as well as in stabilization and rehabilitation of resources following a wildfire. In examining the basis for proposing these two categorical exclusions, the USDA Forest Service and the Department of the Interior reviewed projects that were undertaken for hazardous fuels reduction, and rehabilitation/stabilization. Some projects involved multiple activities of these types. The information review included 30 different data items for each project, including information on project location and size, vegetation cover type, fuels treatment type, predicted environmental effects, actual environmental effects after project completion, and mitigation measures. Environmental effects include ecological, aesthetic, historic, cultural, economic, social, or health effects as defined in 40 CFR 1508.8.

The agencies reviewed over 3,000 hazardous fuels reduction and rehabilitation/stabilization projects completed in FY 1998 through FY 2002; of these, over half were documented with environmental assessments, less than 50 were documented with environmental impact statements, and the remainder were categorically excluded from either of these types of documentation under existing categorical exclusions. Only 12 of these environmental impact statements contained predictions of significant environmental effects from hazardous fuels reduction and rehabilitation/stabilization activities. Current USDA Forest Service and the Department of the Interior NEPA procedures would preclude the application of any categorical exclusion to these 12 projects because of extraordinary circumstances. Had the 12 projects been considered for a categorical exclusion they would not have qualified because of extraordinary circumstances stemming from adverse effects on threatened and endangered species and uncertainty over the significance of effects on air quality and water quality.

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The review indicates that hazardous fuels reduction activities and rehabilitation/stabilization activities, absent extraordinary circumstances, do not individually or cumulatively have significant effects on the human environment. A summary of the review is available at *http://www.fs.fed.us/projects/HFI.shtml.*

The CEQ regulations state that categorically excluded actions must not individually or cumulatively have a significant effect on the human environment (40 CFR 1508.4). Based on the previously discussed application of environmental laws, agency procedures, and the aforementioned review of the over 3,000 hazardous fuels reduction and rehabilitation/stabilization activities, the agencies conclude that the proposed categories of actions do not individually or cumulatively have significant effects on the human environment and, therefore, do not require either an environmental assessment or an environmental impact statement.

Monitoring Performance

Under the 10-Year Comprehensive Strategy Implementation Plan, the Secretaries of the Interior and the USDA have committed to a formal review process to monitor and evaluate performance, suggest revisions, and make necessary adaptations to the Strategy in collaboration with Federal, State, tribal, and local stakeholders. The agencies will conduct monitoring of selected collaboratively developed projects and activities to assess the progress and effectiveness of planning and implementation. Projects implemented under these proposed categorical exclusions will be included in this review.

Any revisions to the 10-Year Comprehensive Strategy Implementation Plan will integrate new information obtained from scientific research and on-the-ground experiences. As part of this monitoring and evaluation, the effectiveness of hazardous fuels reduction and rehabilitation/stabilization projects and the application of categorical exclusions will be reviewed. Based on monitoring results these categorical exclusions may be augmented or modified. Future modifications to these proposed categorical exclusions, if necessary, would be based in part on the results of monitoring and would involve additional public review.

The actual mechanism for monitoring will be the National Fire Plan Operations and Reporting System (NFPORS).

At the onset of the National Fire Plan, the wildland fire agencies identified the need for tools to assist them in capturing, monitoring and reporting accomplishments. While each agency had some mechanisms in place to meet accountability requirements, the agencies did not have an overarching system capable of providing sufficient analysis and reporting. Instead, each organization relied on a variety of disparate mechanisms for tracking and reporting hazardous fuels accomplishments.

In order to provide a single, unified interagency system, the Department of Interior teamed with the USDA Forest Service to develop the NFPORS. The system will collect data in the areas of restoration and rehabilitation, hazardous fuels reduction, community assistance, and the method of NEPA compliance (categorical exclusion, environmental assessment, or environmental impact statement).

Public Involvement in the Use of the Proposed Categories

The 10-Year Comprehensive Strategy provides a collaborative framework for the selection and prioritization of hazardous fuels reduction projects which includes extensive public participation. Use of the proposed hazardous fuels reduction categorical exclusion to meet the goals of the 10-Year Comprehensive Strategy will, therefore, include the public as provided in the collaborative framework.

Indeed, local involvement is the primary source of annual hazardous fuels project planning, prioritization, and resource allocation. The amount of collaboration at the local level will be consistent with the complexity of land ownership patterns, resource management issues, and the number of interested stakeholders. The hazardous fuels reduction categorical exclusion will be applicable only to projects identified consistent with this collaborative framework.

Conclusion

Consistent with direction provided by the President under the Healthy Forests Initiative and the 10-Year Comprehensive Strategy Implementation Plan, the agencies propose two new categorical exclusions: one for hazardous fuels reduction and one for stabilization and rehabilitation of resources and infrastructure after a fire. Based upon a review of field data, the agencies conclude that actions identified in the proposed categories would not individually or cumulatively have significant effects on the human environment and, therefore, would not require preparation of an environmental assessment or an environmental impact statement.

These proposed categorical exclusions would permit timely response to forest health problems involving hazardous fuels and would provide for timely stabilization and rehabilitation of resources and infrastructure impacted by fire and/or wildfire suppression. Public comment is invited on this proposal and will be considered in adopting final categorical exclusions. The text of the proposed categorical exclusions is set out at the end of this notice.

Regulatory Certifications

Environmental Impact

These proposed categorical exclusions would add direction to guide field employees in the USDA Forest Service and the Department of the Interior regarding requirements for National Environmental Policy Act (NEPA) documentation for fire management activities. Forest Service Handbook 1909.15, section 31.1b categorically excludes from documentation in an environmental assessment or environmental impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." Department of the Interior Manual 516 DM, chapter 2, Appendix 1 categorically excludes from documentation in an environmental assessment or environmental impact statement "policies, directives, regulations, and guidelines of an administrative, financial, technical, or procedural nature." The agencies' preliminary assessment is that these proposed categorical exclusions fall within these categories of actions in the absence of extraordinary circumstances. A final determination will be made upon adoption of the final categorical exclusions. In addition, pursuant to 40 CFR 1505.1 and 1507.3, the USDA Forest Service and the Department of the Interior are consulting with the Council on Environmental Quality (CEQ) to ensure full compliance with the purposes and provisions of NEPA and the CEQ implementing regulations.

Regulatory Impact

These proposed categorical exclusions have been reviewed under Departmental procedures and Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this is a significant regulatory action as defined by Executive Order 12866. Accordingly, OMB has reviewed these proposed categorical exclusions.

This action to add two categorical exclusions to the agencies' NEPA procedures will not have an annual effect of $100 million or more on the economy or adversely affect productivity, competition, jobs, the environment, public health or safety, or State, tribal, or local governments. This action may interfere with an action taken or planned by another agency or raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this action is subject to Office of Management and Budget review under Executive Order 12866.

Moreover, this action has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it is hereby certified that the proposed categorical exclusions will not have a significant economic impact on a substantial number of small entities as defined by the act because it will not impose record-keeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

Federalism

The agencies have considered these proposed categorical exclusions under the requirements of Executive Order 13132, Federalism, and have concluded that they conform with the federalism principles set out in this Executive Order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agencies have determined that no further assessment of federalism implications is necessary.

Consultation and Coordination With Indian Tribal Governments

These proposed categorical exclusions do not have tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and therefore advance consultation with tribes is not required.

No Takings Implications

These proposed categorical exclusions have been analyzed in accordance with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the proposed categorical exclusions do not pose the risk of a taking of Constitutionally protected private property.

Civil Justice Reform

In accordance with Executive Order 12988, it has been determined that these categorical exclusions do not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Unfunded Mandates

Pursuant to title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agencies have assessed the effects of these proposed categorical exclusions on State, local, and tribal governments and the private sector. These proposed categorical exclusions do not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Energy Effects

These proposed categorical exclusions have been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that these proposed categorical exclusions do not constitute a significant energy action as defined in the Executive order.

Controlling Paperwork Burdens on the Public

These proposed categorical exclusions do not contain any additional record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use, and therefore, impose no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

For the Forest Service, U.S. Department of Agriculture.

Dated: December 10, 2002.

Dale N. Bosworth,

Chief.

For the U.S. Department of the Interior.

Dated: December 11, 2002.

Christopher B. Kearney,

Acting Assistant Secretary for Policy, Management and Budget.

Proposed Categorical Exclusions

Note: When the proposed categorical exclusions have been finalized, the USDA Forest Service and the Department of the Interior will issue the categorical exclusions in their NEPA procedures. The categorical exclusions would appear in Forest Service Handbook (FSH) 1909.15, Environmental Policy and Procedures, section 31.2 and Department of the Interior Manual 516 DM, chapter 2, Appendix 1, Departmental Categorical Exclusions. Reviewers who wish to view the entire chapter 30 of FSH 1909.15 may obtain a copy electronically from the USDA Forest Service directives page on the World Wide Web at *http://www.fs.fed.us/im/directives/.* Reviewers who wish to view the Department of the Interior Manual 516 DM may obtain a copy electronically from the Department of the Interior page at *http://elips.doi.gov/table.cfm.*

Following is the text of the two categorical exclusions:

- Hazardous fuels reduction activities (prescribed fire, and mechanical or biological methods such as crushing, piling, thinning, pruning, cutting, chipping, mulching, grazing and mowing) when the activity has been identified consistent with the framework described in A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy Implementation Plan. Such activities:
  - —Shall be conducted consistent with agency and Departmental procedures and land and resource management plans; and
  - —Shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness; and
  - —Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure.
- Activities (such as reseeding or planting, fence construction, culvert repair, installation of erosion control devices, and repair of roads and trails) necessary for the stabilization and rehabilitation of habitat, watersheds, historical, archeological, and cultural sites and infrastructure impacted by wildfire and/or wildfire suppression. Such activities:
  - —Shall be conducted consistent with agency and Departmental procedures and land and resource management plans; and
  - —Shall not include the use of herbicides or pesticides or the

construction of new permanent roads or other new permanent infrastructure.

[FR Doc. 02–31576 Filed 12–11–02; 3:00 pm]

BILLING CODE 3410–11 and 4310–70–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of the program for the Housing Preservation Grant Program.

DATES: Comments on this notice must be received by February 11, 2003 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Mary Fox, Senior Loan Specialist, Multi-Family Housing Processing Division, RHS, United States Department of Agriculture, Stop 0781, 1400 Independence Ave., SW., Washington, DC 20250–0782, Telephone (202) 720–1624.

SUPPLEMENTARY INFORMATION:

Title: RHS/Housing Preservation Grant Program.

OMB Number: 0575–0115.

Expiration Date of Approval: April 30, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: The primary purpose of the Housing Preservation Grant Program is to repair or rehabilitate individual housing, rental properties, or co-ops owned or occupied by very low- and low-income rural persons. Grantees will provide eligible homeowners, owners of rental properties and owners of co-ops with financial assistance through loans, grants, interest reduction payments or other comparable financial assistance for necessary repairs and rehabilitation of dwellings to bring them up to code or minimum property standards. Where repair and rehabilitation assistance is not economically feasible or practical the replacement of existing, individual owner occupied housing is available.

These grants were established by Public Law 98–181, the Housing Urban-Rural Recovery Act of 1983, which amended the Housing Act of 1979 (Pub. L. 93–383) by adding section 533, 42 U.S.C. S 2490(m), Housing Preservation Grants (HPG). In addition, the Secretary of Agriculture has authority to prescribe rules and regulations to implement HPG and other programs under 42 U.S.C. S 1480(j).

Section 533(d) is prescriptive about the information applicants are to submit to RHS as part of their application and in the assessments and criteria RHS is to use in selecting grantees. An applicant is to submit a "statement of activity" describing its proposed program, including the specific activities it will undertake, and its schedule. RHS is required in turn to evaluate proposals on a set of prescribed criteria, for which the applicant will also have to provide information, such as: (1) Very low- and low-income persons proposed to be served by the repair and rehabilitation activities; (2) participation by other public and private organizations to leverage funds and lower the cost to the HPG program; (3) the area to be served in terms of population and need: (4) cost data to assure greatest degree of assistance at lowest cost; (5) administrative capacity of the applicant to carry out the program. The information collected will be the minimum required by law and by necessity for RHS to assure that it funds responsible grantees proposing feasible projects in areas of greatest need. Most data are taken from a localized area, although some are derived from census reports of city, county and Federal governments showing population and housing characteristics.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .96 hours per response.

Respondents: A public body or a public or private nonprofit corporation.

Estimated Number of Respondents: 1,850.

Estimated Number of Responses per Respondent: 6.5.

Estimated Total Annual Burden on Respondents: 11,614 hours.

Copies of this information collection can be obtained from Jean Mosley, Regulations and Paperwork Management Branch at (202 692–0041).

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jean Mosley, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: December 4, 2002.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 02–31523 Filed 12–13–02; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–820]

Suspension of Antidumping Investigation: Fresh Tomatoes From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of suspension of antidumping investigation on fresh tomatoes from Mexico.

EFFECTIVE DATE: December 16, 2002.

SUMMARY: The Department of Commerce has suspended the antidumping investigation involving fresh tomatoes from Mexico. The basis for the suspension of the antidumping investigation is an agreement between the Department of Commerce and producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico wherein each signatory producer/exporter has agreed to revise its prices to eliminate completely the injurious effects of exports of this merchandise to the United States.

FOR FURTHER INFORMATION CONTACT: Mark Ross or Janis Kalnins at (202) 482–4794 or (202) 482–1393, respectively; Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 353 (1996).

Background

On April 18, 1996, the Department initiated an antidumping investigation to determine whether imports of fresh tomatoes from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV) (61 FR 18377, April 25, 1996). On May 16, 1996, the U.S. International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination.

On October 10, 1996, the Department and Mexican tomato growers/exporters initialed a proposed agreement to suspend the antidumping investigation. On October 28, 1996, the Department preliminarily determined that imports of fresh tomatoes from Mexico are being sold at LTFV in the United States. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Tomatoes from Mexico*, 61 FR 56607 (November 1, 1996) (*Preliminary Determination*). On the same day on which the Department issued the *Preliminary Determination*, the Department and certain growers/exporters of fresh tomatoes from Mexico signed an agreement to suspend the investigation (1996 Suspension Agreement). See *Suspension of Antidumping Investigation: Fresh Tomatoes from Mexico*, 61 FR 56618 (November 1, 1996).

On May 31, 2002, Mexican tomato growers/exporters accounting for a significant percentage of all fresh tomatoes imported into the United States from Mexico provided written notice to the Department of their withdrawal from the 1996 Suspension Agreement on fresh tomatoes from Mexico. Because the 1996 Suspension Agreement no longer covered substantially all imports of fresh tomatoes from Mexico, effective July 30, 2002, the Department terminated the 1996 Suspension Agreement, terminated the sunset review of the suspended investigation, and resumed the antidumping investigation. See *Notice of Termination of Suspension Agreement, Termination of Sunset Review, and Resumption of Antidumping Investigation: Fresh Tomatoes from Mexico*, 67 FR 50858 (August 6, 2002). With the termination of the 1996 Suspension Agreement, in accordance with section 734(i)(1)(B) of the Act, the Department resumed the underlying antidumping investigation.

On November 8, 2002, the Department and Mexican tomato growers/exporters initialed a proposed agreement suspending the resumed antidumping investigation on imports of fresh tomatoes from Mexico. The Department provided parties an opportunity to submit comments on the initialed agreement, and on November 22, 2002, the Department received comments from several parties. The memorandum titled "Comments on the Proposed Agreement Suspending the Antidumping Duty Investigation" from Mark Ross, Program Manager, to the File explains the Department's response to these comments.

On December 4, 2002, the Department and certain growers/exporters of fresh tomatoes from Mexico signed a new suspension agreement (2002 Suspension Agreement). The 2002 Suspension Agreement is attached to this notice of Suspension of Antidumping Investigation.

Scope Clarification

On September 30, 1996, Desert Glory, Ltd. (Desert Glory), filed a letter requesting that the Department exclude cocktail tomatoes from the scope of the investigation. The petitioners responded to Desert Glory's letter on October 10, 1996, clarifying that the petition's scope did not include cocktail tomatoes. In the *Preliminary Determination*, the Department excluded cocktail tomatoes from the scope of the investigation.

On September 17, 2002, the petitioners filed a letter requesting the withdrawal of their October 10, 1996, scope-clarification letter and encouraged the Department to exercise its own authority to clarify the scope of the investigation so that it includes cocktail tomatoes. On November 15, 2002, the Department released a draft scope-clarification memorandum to the parties to the proceeding to communicate the Department's intent to include cocktail tomatoes in the scope of the investigation and give the parties the opportunity to present their views on this intention.

On November 20, 2002, Desert Glory submitted comments on the draft scope-clarification memorandum, and on November 25, 2002, the petitioners submitted rebuttal comments. After analysis of these comments and the information on the record, the Department determined to include cocktail tomatoes within the scope of the investigation. See December 4, 2002, memorandum entitled "Scope Clarification" from Laurie Parkhill, Office Director, to Faryar Shirzad, Assistant Secretary for Import Administration, available in the Central Records Unit, Room B–099 of the main building of the Commerce Department.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposal to suspend the antidumping investigation. In accordance with section 734(c) of the Act, we have determined that extraordinary circumstances are present in this case, as defined by section 734(c)(2)(A) of the Act. See the memorandum titled "Existence of Extraordinary Circumstances" from Laurie Parkhill, Office Director, to Faryar Shirzad, Assistant Secretary for Import Administration.

The 2002 Suspension Agreement provides that the subject merchandise will be sold at or above the established reference price and, for each entry of each exporter, the amount by which the estimated normal value exceeds the export price (or constructed export price) will not exceed 15 percent of the weighted-average amount by which the estimated normal value exceeded the export price (or constructed export price) for all LTFV entries of the producer/exporter examined during the course of the investigation. We have determined that the 2002 Suspension Agreement will eliminate completely the injurious effect of exports to the United States of the subject merchandise and prevent the suppression or undercutting of price levels of domestic fresh tomatoes by imports of that merchandise from Mexico.

We have also determined that the 2002 Suspension Agreement is in the public interest and can be monitored effectively, as required under section 734(d) of the Act. See the memorandum titled "Public Interest Assessment of the Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico" from Jeffrey May, Director of the Office of Policy, to Faryar Shirzad, Assistant Secretary for Import Administration.

For the reasons outlined above, we find that the 2002 Suspension Agreement meets the criteria of section 734(c) of the Act.

International Trade Commission

In accordance with section 733(f) of the Act, the Department has notified the ITC of the 2002 Suspension Agreement.

Suspension of Liquidation

The suspension of liquidation ordered in the preliminary affirmative determination in this case published on November 1, 1996, and resumed on August 6, 2002 (see 67 FR 50858), shall continue to be in effect, subject to section 734(h)(3) of the Act. Section 734(f)(2)(B) of the Act provides that the Department may adjust the security required to reflect the effect of the 2002 Suspension Agreement. The Department has found that the 2002 Suspension Agreement eliminates completely the injurious effects of imports and, thus, the Department is adjusting the security required from signatories to zero. The security rates in effect for imports from non-signatory growers remain as published in the *Preliminary Determination*.

Notwithstanding the 2002 Suspension Agreement, the Department will continue the investigation if it receives such a request within 20 days after the date of publication of this notice in the **Federal Register**, in accordance with section 734(g) of the Act.

Enforcement

To ensure effective enforcement of the 2002 Suspension Agreement, the Department worked closely with the U.S. Customs Service in drafting the terms of the 2002 Suspension Agreement. Pursuant to its obligations under section 734(i) of the Act, the U.S. Customs Service has informed the Department that it concurs with the enforcement provisions the Department included in the 2002 Suspension Agreement.

Administrative Protective Order Access

The Administrative Protective Orders (APOs) the Department granted in the original investigation segment of this proceeding remain in place. While the investigation is suspended, parties subject to those APOs may retain, but may not use, information received under those APOs. All parties wishing access to business proprietary information submitted during the administration of the 2002 Suspension Agreement must submit new APO applications. An APO for the administration of the 2002 Suspension Agreement will be placed on the record within five days of the date of publication of this notice in the **Federal Register**.

We are publishing this notice in accordance with section 734 of the Act and 19 CFR 353.18.

Dated: December 10, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

December 4, 2002 Agreement

Suspension of Antidumping Investigation: Fresh Tomatoes from Mexico

Pursuant to section 734(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c(c)) ("the Act"), and section 353.18 of the U.S. Department of Commerce ("the Department") regulations (19 C.F.R. 353.18), the Department and the signatory producers/exporters of fresh tomatoes from Mexico enter into this Suspension Agreement (the "Agreement"). On the basis of this Agreement, the Department shall suspend its antidumping duty investigation, the initiation of which was published on April 25, 1996 (61 FR 18377), with respect to fresh tomatoes from Mexico, subject to the terms and provisions set out below.

I. Product Coverage

The merchandise subject to this Agreement is all fresh or chilled tomatoes (fresh tomatoes) which have Mexico as their origin, except for those tomatoes which are for processing. For purposes of this Agreement, processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying, or the addition of chemical substances, or converting the tomato product into juices, sauces, or purees. In Appendix F of this Agreement the Department has outlined the procedure that signatories must follow for selling subject merchandise for processing. Fresh tomatoes that are imported for cutting up, not further processing (*e.g.*, tomatoes used in the preparation of fresh salsa or salad bars), are covered by this Agreement.

Commercially grown tomatoes, both for the fresh market and for processing, are classified as Lycopersicon esculentum. Important commercial varieties of fresh tomatoes include common round, cherry, grape, plum, greenhouse, and pear tomatoes, all of which are covered by this Agreement.

Tomatoes imported from Mexico covered by this Agreement are classified under the following subheadings of the Harmonized Tariff Schedules of the United States (HTSUS), according to the season of importation: 0702 and 9906.07.01 through 9906.07.09. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of this Agreement is dispositive.

II. U.S. Import Coverage

The signatories are the producers and exporters in Mexico which account for substantially all of the subject merchandise imported into the United States. The Department may at any time during the period of the Agreement require additional producers/exporters in Mexico to sign the Agreement in order to ensure that not less than substantially all imports into the United States are subject to the Agreement.

III. Basis for the Agreement

Each signatory individually agrees that, in order to prevent price suppression or undercutting, it will not sell, on and after the effective date of the Agreement, merchandise subject to the Agreement at prices that are less than the reference price, in accordance with Appendix A to this Agreement.

In order to satisfy the requirements of section 734(c)(1)(B) of the Act, each signatory agrees individually that for each entry the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 percent of the weighted-average amount by which the estimated normal value exceeded the export price (or the constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation, in accordance with the calculation methodologies described in Appendix B of this Agreement.

IV. Monitoring of the Agreement

A. Import Monitoring

1. The Department will monitor entries of fresh tomatoes from Mexico to ensure compliance with section III. of this Agreement.

2. The Department will review publicly available data and other official import data, including, as appropriate, records maintained by the U.S. Customs Service, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

B. Compliance Monitoring

1. The Department may require, and each signatory agrees to provide, confirmation, through documentation provided to the Department, that the price received on any sale subject to this Agreement was not less than the established reference price. The Department may require that such documentation be provided, and be subject to verification, within thirty days of the sale.

2. The Department may require, and each signatory agrees to report in the prescribed format and using the prescribed method of data compilation, each sale of the merchandise subject to this Agreement, either directly or indirectly to unrelated purchasers in the United States, including each adjustment applicable to each sale, as specified by the Department.

Each signatory agrees to permit review and on-site inspection of all information deemed necessary by the Department to verify the reported information.

3. The Department may conduct administrative reviews under section 751 of the Act, upon request or upon its own initiative, to ensure that exports of fresh tomatoes from Mexico are at prices consistent with the terms of this Agreement. The Department may perform verifications pursuant to administrative reviews conducted under section 751 of the Act.

4. At any time and without prior notice, the Department may conduct verifications of parties handling signatory merchandise to determine whether they are selling signatory merchandise in accordance with the terms of this Agreement.

C. Shipping and Other Arrangements

1. All reference prices will be expressed in U.S.$/lb. in accordance with Appendix A of this Agreement. Subject to paragraph 24 of Annex 703.2 of the North American Free Trade Agreement, the quality of each entry of fresh tomatoes exported to the United States from Mexico will conform with any applicable U.S. Department of Agriculture minimum grade, size, and/or quality import requirements in effect.

2. Signatories agree not to circumvent the Agreement and to undertake measures that will help to prevent circumvention. For example, each signatory will take the following actions:

a. It is the responsibility of all signatories to ensure that sales of their merchandise are made consistent with the requirements of this Agreement. To that end, each signatory shall enter into a contract, with the party that is responsible for the first sale of its subject merchandise to an unaffiliated customer in the United States (the Selling Agent),[1] that incorporates the terms of this Agreement. Through a contractual arrangement signatories shall also require the Selling Agent establish a contract with third parties to ensure that adjustments for spoilage or other claims inconsistent with the Agreement will not be permitted. Further, this contractual arrangement must establish that the Selling Agent maintain documentation demonstrating that sales of their merchandise are made consistent with the requirements of this Agreement.

b. Each signatory will label its boxes of subject merchandise that are exported to the United States with its name, signatory identification number, and a statement that "These Tomatoes Were Grown/Exported by a Signatory of the December 2002 Suspension Agreement." Alternatively, if the signatory that exports the tomatoes is different from the entity that grew the tomatoes, it will label the boxes with its name and its signatory identification number.

c. Each signatory will label its boxes of fresh tomatoes sold in Mexico with its name and the title "Prohibida Su Exportacion."

3. Not later than thirty days after each quarter, each signatory will submit a written statement to the Department certifying that all sales during the must recently completed quarter were at net prices (after rebates, backbilling, discounts for quality and other claims) at or above the reference price and were not part of or related to any act or practice which would have the effect of hiding the real price of the fresh tomatoes being sold (*e.g.*, a bundling arrangement, discounts/free goods/financing package, swap, or other exchange). Each signatory agrees to permit full verification of its certification as the Department deems necessary.

D. Rejection of Submissions

The Department may reject: 1) Any information submitted after the deadlines set forth in this Agreement; 2) any submission that does not comply with the filing, format, translation, service, and certification of documents requirements under 19 CFR 353.31; 3) submissions that do not comply with the procedures for establishing business proprietary treatment under 19 CFR 353.32 or any information that it is unable to verify to its satisfaction. If information is not submitted in a complete and timely fashion or is not fully verifiable, the Department may use the facts otherwise available for the basis of its decision, as it determines appropriate, unless the Department determines that section V. applies.

E. Compliance Consultations

1. When the Department identifies, through import or compliance monitoring or otherwise, that sales may have been made at prices inconsistent with section III. of this Agreement, the Department will notify each signatory which it believes is responsible or, if applicable, notify the signatory's representative. The Department will consult with each such party for a period of up to sixty days to establish a factual basis regarding sales that may be inconsistent with section III. of this Agreement.

2. During the consultation period, the Department will examine any information that it develops or which is submitted, including information requested by the Department under sections IV.A. and B. above.

F. Review

If the Department is not satisfied at the conclusion of the consultation period that sales by such signatory are being made in compliance with this Agreement, the Department may conduct a review to determine whether this Agreement is being violated by such signatory. This provision does not limit or restrict the Department's authority to conduct an administrative review under section 751 of the Act and paragraph IV.B.3. of this Agreement.

G. Operations Consultations

The Department will consult with the signatory producers/exporters regarding the operations of this Agreement. A party to the Agreement may request such consultations in any April or September (*i.e.*, prior to the beginning of each season) following the first year of the signing of this Agreement.

In order to evaluate whether this Agreement fulfills the requirements of section 734(c)(1)(A) of the Act (prevents the suppression or undercutting of price levels of domestic products by imports of fresh tomatoes), within 30 days from the date this Agreement is signed the Department will begin to analyze historical price and shipment volume data from certain U.S. and Mexican producers of fresh tomatoes. The Department will also gather such information concerning prices and shipment volumes experienced during the first four months of this Agreement and any other information the Department believes pertinent to its analysis.

The Department expects to make an adjustment to the reference price to take into account such events as significant changes in the relationship of domestic prices and volumes to import prices and volumes. In evaluating the significance of any change, the Department will look both to the extent of the change and its duration. For example, a very high percentage change in the relationship may be significant even though it occurs over a brief time period.

The information gathered will be subject to release under administrative protective order and to comment by interested parties. Where appropriate, the information will also be subject to verification. The Department will complete its evaluation of this information by July 31, 2003, and will release the results of its analysis for comment. The Department will issue the final results of its analysis by October 1, 2003. The Department will post any revision to the reference price to its Web site (*http://www.ia.ita.doc.gov/tomato*), and any such revision will take effect on November 1, 2003.

In order to evaluate whether this Agreement fulfills the requirements of section 734(c)(1)(B) of the Act, the Department may conduct an administrative review under section 751 of the Act, upon request or upon its own initiative, to ensure that for each entry of each exporter the amount by which the estimated normal value exceeds the export price (or the constructed export price) did not exceed 15 percent of the weighted-average amount by which the estimated normal value exceeded the export price (or the constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation, in accordance with the calculation methodologies described in Appendix B. An affirmative determination under section 751 of the Act may result in the termination of this Agreement.

V. Violations of the Agreement

A. If the Department determines that the Agreement is being or has been violated or no longer meets the requirements of sections 734(c) or (d) of the Act, the Department shall take action it determines appropriate under section 734(i) of the Act and the Department's regulations.

B. Pursuant to section 734(i) of the Act the Department will refer any intentional violations of the Agreement to the U.S. Customs Service. Any person who intentionally violates the Agreement shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedures as the penalty imposed for a fraudulent violation of section 592(a) of the Act. A fraudulent violation of section 592(a) of the Act is punishable by a civil penalty in an amount not to exceed the domestic value of the merchandise. For purposes of the Agreement, the domestic value of the merchandise will be deemed to be the reference price, as the signatories agree not to sell the subject merchandise at prices that are less than the reference price or to ensure that sales of the subject merchandise are made consistent with the terms of the Agreement.

C. In addition, the Department will examine the activities of signatories, their Selling Agents, and any other party to a sale subject to the Agreement to determine whether any activities conducted by any party aided or abetted another party's

[1] The Selling Agent can be an importer, agent, broker, distributor, or any other entity that facilitates the transaction between the signatory and the first unaffiliated U.S. customer.

violation of the Agreement. If any such parties are found to have aided or abetted another party's violation of the Agreement, they shall be subject to the same civil penalties described in section V.B. above.

Signatories of this Agreement consent to the release of all information presented to or obtained by the Department during the conduct of verifications with the U.S. Customs Service and/or the U.S. Department of Agriculture. Further, through a contractual arrangement, signatories shall require that the Selling Agent consent to the release of all information presented to or obtained by the Department during the conduct of verifications with the U.S. Customs Service and/or the U.S. Department of Agriculture.

D. The following activities shall be considered violations of the Agreement:

1. Sales that are at net prices (after rebates, backbilling, discounts for quality and other claims) that are below the reference price.

2. Any act or practice which would have the effect of hiding the real price of the fresh tomatoes being sold (*e.g.*, a bundling arrangement, discounts/free goods financing package, swap, or other exchange).

3. Sales that are not in accordance with the terms and conditions applied by the Department when calculating prices for transactions involving adjustments due to changes in condition after shipment as detailed in Appendix D of this Agreement.

4. Selling signatory tomatoes to Canada in a manner that is not consistent with the requirements of Appendix E of this Agreement.

5. Selling signatory tomatoes for processing in the United States in a manner that is not consistent with the requirements of Appendix F of this Agreement.

6. Any other act or practice that the Department or U.S. Customs Service finds in violation of the Agreement.

VI. Other Provisions

A. In entering into this Agreement the signatories do not admit that any exports of fresh tomatoes from Mexico are having or have had an injurious effect on fresh tomato producers in the United States or have been sold at less than fair value. The signatories also do not admit that greenhouse, cherry, or any other particular type of tomatoes are properly considered within the scope of the underlying investigation.

B. The signatories may withdraw from this Agreement upon ninety days written notice to the Department.

C. Upon request, the Department will advise any signatory of the Department's methodology for calculating its export price (or constructed export price) and normal value which, for purposes of this Agreement, are described in Appendix B of this Agreement. Further, the Department reserves the right to modify its methodology in calculating export price (or constructed export price) and normal value.

VII. Disclosure and Comment

A. If the Department proposes to revise the reference price as a result of consultations under this Agreement, not later than three months prior to the first day of each semi-annual period, the Department will disclose the results and the methodology of the Department's calculation of the preliminary reference price established for that upcoming semi-annual period.

B. Not later than seven days after the date of disclosure under paragraph VII.A., the parties to the proceeding may submit written comments to the Department, not to exceed fifteen pages. After reviewing these submissions, the Department will provide the final reference price for the upcoming semi-annual period, normally within thirty days after the date of disclosure under paragraph VII.A.

C. The Department may make available to representatives of each interested party to the proceeding, under appropriately drawn administrative protective orders, any business proprietary information submitted to the Department pursuant to section IV. of this Agreement, as well as the results of the Department's analysis of that information.

VIII. Termination

Absent affirmative determinations under the five-year review provisions of sections 751 and 752 of the Act, the Department expects to terminate this Agreement and the underlying investigation no later than five years from the date on which this Agreement is published in the **Federal Register**.

IX. Effective Date

The effective date of the Agreement is the date on which it is published in the **Federal Register**.

Dated: December 4, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

The following parties hereby certify that the members of their organization agree to abide by all terms of the Agreement:

Dated: December 4, 2002.

Dr. Rolando Zubia Rivera,
President.
For Caades Sinaloa, A.C.

Dated: December 4, 2002.

Mauricio Castaneda Castro,
President.
For Consejo Agricola de Baja California, A.C.

Dated: December 4, 2002.

Ing. Angel I. Urrutia M.,
President.
For Asociacion Mexicana de Productores de Hortalizas de Invernadero, A.C.

Dated: December 4, 2002.

Ing. Rafael Orduno Valdez,
President.
For Union Agricola Regional de Sonora, Productores de Hortalizas Frutas y Legumbres.

Dated: December 4, 2002.

Basilio Gatzionis Torres,
President.
For Confederacion Nacional de Productores de Hortalizas.

Appendix A—Suspension of Antidumping Investigation—Fresh Tomatoes from Mexico—Reference Price

Consistent with the requirements of section 734(c) of the Act, to eliminate completely the injurious effect of exports to the United States and to prevent the suppression or undercutting of price levels of domestic fresh tomatoes, the Department and signatory producer/exporters of subject merchandise hereby agree to adopt the reference prices calculated based on the methodology outlined in the November 1, 1996, agreement suspending the antidumping investigation involving fresh tomatoes from Mexico, as amended on August 14, 1998. See *Suspension of Antidumping Investigation; Fresh Tomatoes from Mexico*, 61 FR 56618, 56620 (November 1, 1996), October 28, 1996, Memorandum to Robert S. LaRussa titled "The Prevention of Price Suppression or Undercutting of Price Levels in the Suspension Agreement Covering Fresh Tomatoes from Mexico," and *Amendment to the Suspension Agreement on Fresh Tomatoes from Mexico*, 63 FR 43674 (August 14, 1998). Accordingly, the reference price for the July 1 through October 22 period will be $0.172 per pound and the reference price for the October 23 through June 30 period will be $0.2108 per pound.

These reference prices will remain in effect unless modified in accordance with the provisions of paragraph IV.G. of the Agreement.

The term "reference price" refers to the price F.O.B. from the Selling Agent. The reference price includes all palletizing and cooling charges incurred prior to shipment from the Selling Agent. The actual movement or handling expenses beyond the point of entry into the United States (*e.g.*, McAllen, Nogales, Otay Mesa) must be added to the reference price and must reflect the cost for an arm's-length transaction. The charts below contain examples of the minimum common trucking charges the USDA observed for the 2002 winter season.

F.O.B. McAllen to:	Los Angeles	New York	Chicago
Rate ($US)/Per Truckload	$800	$2000	$1200

F.O.B. Nogales to:	Los Angeles	New York	Chicago
Rate ($US)/Per Truckload	$800	$3500	$2400

Parties should refer to *http://www.ams.usda.gov/fv/mncs/fvwires.htm* to obtain examples of common trucking charges pertinent to the current season. Where the Selling Agent sells through an affiliated party, the transfer price from the Selling Agent to the affiliate must be at or above the reference price and any subsequent sale to an unaffiliated party must include the actual cost of markups (*e.g.*, trucking charges) that reflect arm's-length costs. For guidance on the trucking-charge markup for such resales, parties should refer to *http://www.ams.usda.gov/fv/mncs/fvwires.htm* to obtain common trucking charges pertinent to the current season.

During the Department's verifications of parties handling signatory merchandise it will ascertain whether (1) the handling expenses beyond the point of entry into the United States are added to the reference price and reflect the actual cost for an arm's-length transaction and (2) the transfer price from Selling Agents to their affiliates are at or above the reference price and any subsequent sale to an unaffiliated party includes markups (*e.g.*, trucking charges) that reflect arm's-length costs.

The reference price for each type of box shall be determined based on the average weights stated in the chart contained in Appendix C of the Agreement.

Appendix B—Suspension of Antidumping Investigation—Fresh Tomatoes From Mexico—Analysis of Prices at Less Than Fair Value

A. Normal Value

The cost or price information reported to the Department that will form the basis of the normal value (NV) calculations for purposes of the Agreement must be comprehensive in nature and based on a reliable accounting system (*e.g.*, a system based on well-established standards and can be tied either to the audited financial statements or to the tax return filed with the Mexican government).

1. Based on Sales Prices in the Comporison Market

When the Department bases normal value on sales prices, such prices will be the prices at which the foreign like product is first sold for consumption in the comparison market in the usual commercial quantities and in the ordinary course of trade. Also, to the extent practicable, the comparison shall be made at the same level of trade as the export price (EP) or constructed export price (CEP). The calculation of normal value based on a sales price in the comparison market will vary depending on whether the comparison is price-to-EP or price-to-CEP.

2. Constructed Value

When normal value is based on constructed value, the Department will compute constructed values (CVs) specific growing season specific based on the sum of each respondent's growing costs for each type of tomato, plus amounts for selling, general and administrative expenses (SG&A), U.S. packing costs, and profit. The Department will collect this cost data for an entire growing season in order to determine the accurate per-unit CV of that growing season.

Calculation of CV:

+ Direct Materials
+ Direct Labor
+ Factory overhead
= Cost of Manufacturing
+ Home Market SG&A*
= Cost of Production
+ Profit*
= Constructed Value (CV)

* SG&A and profit are based on home-market sales of the foreign like product made in the ordinary course of trade.

B. Export Price and Constructed Export Price

EP and CEP refer to the two types of calculated prices for merchandise imported into the United States. Both EP and CEP are based on the price at which the subject merchandise is first sold to a person not affiliated with the foreign producer or exporter.

Calculation of EP:

Gross Unit Price

– Movement Expenses
– Discounts and Rebates
= Export Price (EP)

Calculation of CEP:

Gross Unit Price

– Movement Expenses
– Discounts and Rebates
– Direct Selling Expenses
– Indirect Selling Expenses that relate to commercial activity in the United States
– The cost of any further manufacture or assembly incurred in the United States
– CEP Profit
= Constructed Export Price (CEP)

C. Fair Comparisons

To ensure that a fair comparison with normal value is made, the Department will make adjustments to the price to the first unaffiliated customer in calculating the EP or CEP. For both EP and CEP the Department will add packing costs, if not already included in the price, rebated import duties, and, if applicable, certain countervailing duties. For both EP and CEP, the Department will deduct transportation costs and export taxes or duties. In calculating CEP, the Department will make additional deductions for commissions, direct selling expenses incurred in selling the merchandise under investigation in the United States, the cost of any further manufacture or assembly performed in the United States, and a portion of profit. In addition, the Department will deduct indirect selling expenses that relate to commercial activity in the United States.

Appendix C—Suspension of Antidumping Investigation—Fresh Tomatoes From Mexico—Box Weights

The Department has the sole authority to make revisions to the Box Weight Chart used to apply the reference price to particular box configurations. The reference price for each type of box shall be determined based on the average weights stated in the chart below. The Department will coordinate with the U.S. Customs Service in its collection and review of data for calculating and monitoring box-specific average weights. To derive representative average weights for each box type in the chart below, the Department will weigh twenty sample boxes, randomly chosen without notice, from three different shippers (*i.e.*, an average weight of sixty boxes for each box type in the chart).

If the Department determines to revise an average weight figure based upon information that an average weight on the chart is no longer accurate, the Department will provide at least fifteen days notice to signatories (either directly or through their representative in this proceeding) prior to the effective date of such revised average weights for purposes of this Agreement. The Department will determine the revised average weight in accordance with the procedure described above. Once the Department determines the revised average weight, the weight will become effective at the beginning of the next growing season (which will be either July 1 or October 23 of a year).

In the event that a signatory intends to export subject merchandise to the United States in a box for which there is no average weight on the chart, the signatory shall notify the Department in writing no later than forty-five days prior to the date of the first exportation of such boxes to the United States. Signatories can obtain from the Department's website a copy of the suggested form for submitting this information. See "Notification of Intent to Ship Tomatoes in a Specialty Pack" at *http://ia.ito.doc.gov/tomato/suggested_forms/*. This information must be submitted to the Department in accordance with the filing instructions set forth under 19 CFR 353.31 and 353.32. The Department shall allow any interested party to submit written comments, not to exceed ten pages, on the appropriate average weight for the box within seven days after the filing of the written notification by the signatory, and the Department shall inform the signatory or its representative of the average weight for the box no later than thirty days after filing of the written notification by the signatory.

BOX-WEIGHT CHART.—SUSPENSION OF ANTIDUMPING INVESTIGATION ON FRESH TOMATOES FROM MEXICO

Box Type*	Layers	Size	Avg. Kg. weight	Avg. Lb. weight**	Reference Price	
					July 1–Oct. 22 $0.172/lb	Oct. 23–June 30 $0.2108/lb
Tomato (cherry)		12 Baskets	6.32	13.93	2.40	2.94
Tomato (cherry)	Bulk	Bulk	8.13	17.92	3.08	3.78
Tomato	2L	3 x 4				
Tomato	2L	4 x 4	10.78	23.77	4.09	5.01
Tomato	2L	4 x 5	10.81	23.83	4.10	5.02
Tomato	2L	5 x 5	10.43	22.99	3.96	4.85
Tomato	2L	5 x 6	9.71	21.41	3.68	4.51
Tomato	3L	6 x 6	13.33	29.39	5.05	6.19
Tomato	3L	6 x 7	12.92	28.48	4.90	6.00
Tomato	Bulk	25 lbs.***	12.15	26.79	4.61	5.65
Tomato	1L	Long Box	7.41	16.34	2.81	3.44
Tomato (Green)	Bulk	Small—20 lb.	8.16	17.99	3.09	3.79
Tomato Grape	Bulk	20 lb				
Tomato Grape	Bulk	10 lb				
Tomato Grape	Clam Shell	12 Baskets—12 oz				
Tomato Grape	Clam Shell	12 Baskets—10 oz				
Tomato Cluster		11 lb. Euro				
Tomato Cluster	1L	11 lb. Flat				
Tomato Club Pack	1L	5 lb				

*Applicable regardless of production method (*e.g.*, field grown or greenhouse grown).
**Conversion factor from kg. to lb. based on 1 kg.= 2.20462 lbs.
***Also applicable to 4/7 bushel cartons.

Appendix D—Suspension of Antidumping Investigation—Fresh Tomatoes from Mexico—Procedures for Making Adjustments to the Sales Price Due to Certain Changes in Condition After Shipment

The purpose of this appendix is to explain the procedures for making adjustments to the sales price of signatory tomatoes due to certain changes in condition after shipment, such that the sales price for any tomatoes accepted in a lot[1] do not fall below the reference price. The procedures outlined in this appendix only apply if the adjustment reduces the net sales price below the reference price.

As explained in Appendix A of the Agreement, the term "reference price" refers to the price F.O.B. from the Selling Agent. The reference price includes all palletizing and cooling charges incurred prior to shipment from the Selling Agent. The actual movement or handling expenses beyond the point of entry into the United States (*e.g.*, McAllen, Nogales, Otay Mesa) must be added to the reference price and must reflect the cost for an arm's-length transaction. The charts below contain examples of the minimum common trucking charges the USDA observed for the 2002 winter season.

F.O.B. McAllen to:	Los Angeles	New York	Chicago
Rate ($US) / Per Truckload	$800	$2000	$1200

F.O.B. Nogales to:	Los Angeles	New York	Chicago
Rate ($US) / Per Truckload	$800	$3500	$2400

Parties should refer to *http://www.ams.usda.gov/fv/mncs/fvwires.htm* to obtain examples of common trucking charges pertinent to the current season. Where the Selling Agent sells through an affiliated party, the transfer price from the Selling Agent to the affiliate must be at or above the reference price and any subsequent sale to an unaffiliated party must include the actual cost of markups (*e.g.*, trucking charges) that reflect arm's-length costs. For guidance on the trucking-charge markup for such resales, parties should refer to *http://www.ams.usda.gov/fv/mncs/fvwires.htm* to obtain common trucking charges pertinent to the current season.

Appendix G of the Agreement outlines specific actions that signatories should take to ensure that their efforts to abide by the Agreement are upheld in any claims taken to the U.S. Department of Agriculture under the Perishable Agricultural Commodities Act.

To facilitate the verification of claims for changes in condition after shipment, the contract between the signatory and the Selling Agent must establish that claims be resolved and all paper work be completed within fifteen business days after the USDA inspection unless the claim is referred to PACA for mediation. When filing quarterly certifications with the Department, signatories should report the number of lots on which claims for condition defects were granted, the total volume of tomatoes destroyed or donated, and the total value of claims granted. Signatories can obtain from the Department's website a copy of the suggested form for submitting the quarterly certification information. See "Quarterly Certification" at *http://ia.ito.doc.gov/tomato/suggested_forms/*.

A. Contractual Terms for Rejecting All or Part of a Lot

1. A USDA inspection certificate must be provided to support claims for rejection of all or part of a lot. Further, no adjustments will be made for failure to meet suitable shipping conditions unless supported by an unrestricted USDA inspection.

2. If the USDA inspection indicates that the lot has: 1) over 8% soft/decay condition defects; 2) over 15% of any one condition defect; or 3) greater than 20% total condition defects, the receiver may reject the lot or may accept a portion of the lot and reject the quantity of tomatoes lost during the salvaging process. In those instances, price adjustments will be calculated as described below. For purposes of this Agreement, a condition defect is any defect listed in the chart in part A.6. below. When a lot of tomatoes has condition defects in excess of those outlined above as documented on a USDA inspection certificate, the documented percentage of the tomatoes with condition defects are considered DEFECTIVE tomatoes.

3. No adjustments will be made for failure to meet suitable shipping conditions if the USDA inspection certificate does not indicate one of the condition thresholds outlined above.

4. The USDA inspection must be called for no more than six hours from the time of arrival at the destination specified by the receiver and be performed in a timely fashion thereafter. If there is more than one USDA inspection on a given lot, the inspection certificate corresponding to the first inspection is the one that will be used for making any adjustment to the sales price. However, if an appeal inspection is conducted, it will supercede the first inspection, as long as the appeal inspection is requested within a reasonable amount of time from the first inspection.

The first receiver of the product, regardless of whether that receiver is acting as an agent or a broker for an unrelated purchaser or whether the receiver is the unrelated purchaser acting on its own right, must specify the city/metropolitan area of the destination of the product. The inspection will take place at the destination of delivery as specified prior to shipment.

No adjustments will be granted for a USDA inspection at a destination which is different from the destination specified by the first receiver of the product. In the event that the first receiver does not specify the city/metropolitan area of the destination of the product, the six-hour period within which an inspection may be requested will begin to run at such time as title to the product transfers to the unrelated purchaser, for example, upon loading of the product at the first handler's (importer's) warehouse in an F.O.B. transaction and upon delivery of the product to the first buyer's warehouse in a delivered sale.

A person or company shall be considered an agent or broker for an unrelated purchaser: (1) when that person or company falls within the description of types of broker operations set forth in 7 CFR 46.27; or (2) have provided a broker's memorandum of sale as set forth in 7 CFR 46.28(a). The following paragraphs apply if a broker or dealer is involved in the transaction.

A broker, unlike a dealer, does not take ownership or control of the tomatoes but arranges for delivery directly to the vendor or purchaser. Because a broker never takes ownership or control over the tomatoes, the customer and not the broker may request an inspection, and only the customer is entitled to any resulting adjustments. The inspection would take place at the customer's destination, as specified in the broker's contract with the Selling Agent.

When a dealer is involved in the sale, the destination of delivery stated in the contract is where the inspection is to take place. If the dealer does not specify the destination of delivery, the default destination of delivery is the warehouse of the Selling Agent. With respect to a lot of tomatoes that is owned or controlled by a dealer, it is the responsibility of the dealer to request an inspection of the tomatoes in his possession in a timely manner, if he deems it necessary. If the dealer does not request an inspection in a timely manner (*i.e.*, within six hours from the time of arrival at the destination specified by the dealer) and resells the tomatoes to a third party, which does request an inspection, the dealer is then responsible for all costs and adjustments pertaining to the inspection and the condition or quality of the tomatoes.

5. Under this Agreement, adjustments to the sales price of signatory tomatoes will be permitted only for the condition defects identified in the table below and for no other defects.

Condition Defects

(1) Sunken & Discolored Areas
(2) Sunburn
(3) Internal Discoloration
(4) Freezing Injury
(5) Chilling Injury
(6) Alternaria Rot
(7) Gray Mold Rot
(8) Bacterial Soft Rot
(9) Soft/Decay

6. In calculating the transaction price for lots subject to an adjustment claim for condition defects, as defined above, the tomatoes classified as DEFECTIVE will be treated as rejected and as not having been sold.

B. Contractual Terms for Rejection of Partial Loads

If the lot contains condition defects greater than those outlined above and the receiver does not reject the entire lot of tomatoes, the Department will factor certain adjustments into the transaction price, provided that the following conditions apply:

1. The price invoiced to and paid by the receiver for the accepted tomatoes must not fall below the reference price.

2. The Selling Agent may reimburse the receiver for actual destruction costs associated with the DEFECTIVE tomatoes. If properly documented, these expenses will not be considered in the calculation of the price of the accepted tomatoes.

3. The Selling Agent may reimburse the receiver for the portion of freight expenses allocated to the DEFECTIVE tomatoes. If properly documented, these expenses will not be considered in the calculation of the price of the accepted tomatoes.

4. If the Selling Agent follows the guidelines outlined below, it may reimburse the receiver for repacking charges directly associated with salvaging reconditioning the lot. If properly documented, these expenses will not be considered in the calculation of the price of the accepted tomatoes.

a. If the salvaging and reconditioning activity is performed by a party unaffiliated with the Selling Agent's customer the fee charged for the service may be reimbursed if the Selling Agent's customer can provide evidence for such costs *i.e.*, specifically, proof-of-payment documentation for the invoice from the repacker).

b. If the salvaging and reconditioning activity is performed by the Selling Agent's customer or a party affiliated with the Selling Agent, the direct labor costs or, in lieu thereof, one-half of the ordinary and customary repacking charges may be reimbursed. To substantiate such costs the Selling Agent's customer or party affiliated with the Selling Agent must provide detailed records of the labor cost incurred for repacking or, where applicable, evidence of the ordinary and customary repacking costs.

5. The Selling Agent may reimburse the receiver for the inspection fees listed on the USDA inspection certificate. If properly documented, these expenses will not be considered in the calculation of the price of the accepted tomatoes.

6. Any reimbursements from, by, or on behalf of the Selling Agent that are not specifically mentioned in items B.2., B.3., B.4., or B.5. above, or that are not properly documented, will be factored into the calculation of the price for the accepted tomatoes.

7. The receiver may not resell the DEFECTIVE tomatoes. The receiver may choose to have the DEFECTIVE tomatoes destroyed, donated to non-profit food banks, or returned to the Selling Agent. The DEFECTIVE tomatoes may not be sold.[2]

8. In addition, for each transaction involving adjustments due to changes in condition after shipment the Selling Agent must obtain/maintain the following documents/information:

—Shipper name.
—Shipping manifest.
—Details of the shipper invoice, including invoice number, date, brand, tomato type, quantity (boxes), and value.
—Documentation supporting the freight expenses incurred for the original shipment.
—USDA inspection certificate.
—Detailed listing of the expenses incurred in salvaging the non-DEFECTIVE tomatoes and documentation supporting the expenses.
—Description of the destruction or donation process and documentation from the landfill or food bank.
—Proof-of-payment documentation for any destruction costs.
—A statement that "No monies or other compensation was received for the destroyed or donated tomatoes."
—Signature of a responsible official at the receiver.

C. Contractual Terms for Rejection of Full Loads

In cases where the receiver has rejected the full lot of tomatoes based on condition defects, the Selling Agent may choose to have the entire lot destroyed, donated to non-profit food banks, or returned. If the entire lot is destroyed or donated, the Selling Agent will require the receiver to provide the documentation noted above for partial-lot

[1] For these purposes, a lot is defined as a grouping of tomatoes in a particular shipment that is distinguishable by packing type.

[2] Tomatoes for processing must be handled in accordance with the guidelines set forth in Appendix F of the Agreement.

rejections. Further, the Selling Agent may reimburse the receiver for ordinary and customary expenses that the receiver incurred with respect to the lot, including those expenses associated with the destruction or donation process, as long as the Selling Agent obtains the support documentation specified above under B.8. The Department will treat such transactions as "non-sales" provided that adequate support documentation is available.

Alternatively, the Selling Agent may sell the entire rejected lot to another receiver. In that case, the price paid must be not less than the reference price plus all costs incurred (*e.g.*, transportation, commissions, etc.) from the F.O.B. port of entry to the final receiver. If the final receiver finds that the lot contains condition defects greater than those outlined above, it shall follow the directions stated above with respect to rejection of partial loads.

D. Contractual Terms for Partial vs. Unrestricted Lot Inspections

As explained in part A.1. above, the Department will only allow adjustments to the transaction price for condition defects if the USDA inspection is unrestricted. During the time between the call for inspection and the arrival of the USDA inspector, the receiver might sell part of the lot and, therefore, by the time the USDA inspector arrives, that part is not available for inspection. If the USDA inspector is allowed full access to the partial lot, the Department will consider this an unrestricted partial-lot inspection. Alternatively, if the USDA inspector is not allowed full access to the partial lot, the Department will deem it a restricted inspection. No adjustments will be made for failure to meet suitable shipping conditions if the USDA inspection is restricted. For purposes of this Agreement, when calculating an adjustment for failure to meet suitable shipping conditions where an unrestricted partial-lot inspection has taken place, only the portion of the lot inspected is eligible for adjustment. The portion of the lot that the receiver sold prior to the inspection will not be eligible for an adjustment based on the USDA inspection.

For example, before the USDA inspector arrives, the receiver sells 140 boxes of 5x5s from a lot identified as 160 5x5s on the invoice. When the USDA inspector arrives the receiver requesting the inspection provides full access to the partial lot within its possession. The inspector finds that the partial lot of 20 5x5s has soft/decay condition defects of 25 percent and notes this on this inspection certificate. Under the Agreement, only the 20 5x5s are eligible for an adjustment for failure to meet suitable shipping conditions, and the 140 5x5s that the receiver already sold will not be eligible for an adjustment based on the USDA inspection.

Appendix E—Suspension of Antidumping Investigation—Fresh Tomatoes from Mexico—Contractual Arrangement for Documenting Sales of Signatory Merchandise To Canada

Based on our experience in this proceeding, it is common practice for the signatory's Selling Agent to enter the merchandise into the United States for consumption and then re-export it to Canada. The purpose of this appendix is to: 1) outline the process that each signatory of this Agreement must follow to ensure that the Selling Agent properly documents sales to Canada as such and 2) ensure that the signatory notifies the Canadian customer that any resales of its merchandise from Canada into the United States must be in accordance with the terms of this Agreement.

To document sales of Mexican tomatoes to Canada properly, this Agreement requires that such transactions be made pursuant to a contractual arrangement where each signatory requires that the Selling Agent that facilitates the sale to Canada maintain the following information in its files:

- Signatory name and identification number;
- Shipping manifest;
- An invoice identifying sale date, brand, tomato type, quantity (boxes), and value; and
- Entry documentation from Canadian Customs (*i.e.*, Landing Form).

If a signatory to the Agreement or its Selling Agent does not document a sale to Canada in accordance with the procedures outlined above, the Department will consider the transaction a U.S. sale.

We also require signatories to ensure that the Canadian customer is notified that any resale of the signatory merchandise from Canada into the United States must be in accordance with the terms of the Agreement and that any movement or handling expenses beyond the point of export from Mexico must be added to the reference price and must reflect the actual cost for an arm's-length transaction. Signatories can obtain from the Department's website a copy of the suggested form for providing such notification. See "Form for Notifying Canadian Customer That Resales of Signatory Merchandise Into the United States Are Covered by the Terms of the December 2002 Suspension Agreement" at *http://ia.ita.doc.gov/tomato/suggested_forms/*. Further, through contractual arrangement each signatory must require that the Selling Agent maintain evidence in its files to document that the Canadian customer was notified that any resales of the signatory merchandise from Canada into the United States must be in accordance with the terms of the Agreement.

Appendix F—B Suspension of Antidumping Investigation—Fresh Tomatoes From Mexico—Procedure Signatories Must Follow for Selling Subject Merchandise for Processing

Sales to the United States of signatory tomatoes for processing must be:

1. Sold directly to a processor (in other words, the first purchaser in the United States of tomatoes for processing must be an actual processor);

2. Accompanied by an "Importer's Exempt Commodity Form"—Form FV–6, within the meaning of 7 CFR section 980.501(a)(2) and 980.212(l), should be used for all tomatoes for processing that are covered by the Florida Marketing Order; tomatoes for processing that are not covered by the Florida Marketing order (*e.g.*, romas, grape tomatoes, greenhouse tomatoes and any tomatoes that are entered during the part of the year that the Florida Marketing Order is not in effect) must be accompanied by the "December 2002 Suspension Agreement—Tomatoes for Processing Exemption Form". The exempt commodity form must be presented to U.S. Customs at the time of crossing at the port of entry into the United States and both the Selling Agent and the processor must maintain a copy of the form.

3. Shipped in a packing form that is not typical of tomatoes for the fresh market (*e.g.*, bulk containers in excess of 50 lbs)—examples of typical fresh-market packing forms are identified in the Box-Weight Chart in Appendix C of the Agreement; and

4. Clearly labeled on the packaging as "Tomatoes for Processing".

Signatories can obtain from the Department's website an example of the "December 2002 Suspension Agreement—Tomatoes for Processing Exemption Form". See *http://ia.ita.doc.gov/tomato/suggested_forms/*. If a party in the United States facilitates the transaction, through contractual arrangement each signatory must require that the party follow the procedures outlined above.

Appendix G—Suspension of Antidumping Investigation—Fresh Tomatoes From Mexico—Specific Actions That Signatories Should Take to Ensure That Their Efforts To Abide by the Agreement Are Upheld in Any Claims Taken to the U.S. Department of Agriculture Under the Perishable Agricultural Commodities Act

This appendix provides guidance on the specific actions signatories can take to ensure that their efforts to abide by the Agreement are upheld in any claims taken to the Department of Agriculture under the Perishable Agricultural Commodities Act (PACA).

The Chief of the Department of Agriculture's PACA branch, James R. Frazier, has confirmed that this Agreement is enforceable under PACA regulations and PACA's claim settlement process. According to Mr. Frazier, in settling a claim, PACA will uphold actions taken by a signatory or a signatory's representative (collectively "signatory") to comply with the Agreement to the extent that the sales contract for the transaction at issue establishes that the sale is subject to the terms of the Agreement. In other words, if, prior to making the sale, the signatory, or the Selling Agent acting on behalf of the signatory through a contractual arrangement, informs the customer that the sale is subject to the terms of the Agreement and identifies those terms, PACA will recognize the identified terms of the Agreement as integral to the sales contract. In particular, signatories should inform their customers that their contractual agreement to allow defect claim adjustments is limited in accordance with the Agreement, including:

- Claims for adjustments must be supported by an unrestricted USDA inspection called for no more than six hours from the time of arrival at the receiver and performed in a timely fashion thereafter.
- The USDA inspection must find that the condition defects exceed the thresholds outlined in Appendix D above.
- Any price adjustments will be limited to the actual percentage of condition defects as documented by a USDA inspection certificate.
- The price adjustments will be limited to actual destruction costs, the allocated freight expense, and salvaging and reconditioning expenses calculated in accordance with Appendix D above.
- The customer may not resell any defective tomatoes. Instead, they must be destroyed, returned or donated to a non-profit food bank. Signatories should provide a copy of the Agreement to any customer which may be unfamiliar with its terms or which has questions about those terms.

The process by which a signatory could provide evidence to PACA that its sales contracts were made subject to the terms of the Agreement including, in particular, those terms listed above is outlined below.

- The signatory should maintain written documentation demonstrating that it had informed its customers and the customers accepted that the sales were subject to the terms of the Agreement prior to issuing the invoice. A signed contract to that effect would be the best evidence of that fact; however, a purchase by the customer after being informed of the relevance of the Agreement is evidence of acceptance.
- The signatory should send letters to its customers via registered mail, return receipt requested, informing the customers that, as a signatory to the Agreement, all of the signatory's sales are subject to the terms of the Agreement and that, by purchasing from them, the buyer agrees to those terms. The letter should also indicate that the signatory's sales personnel do not have authority to alter the terms of the Agreement.
- In addition, the signatory should include a statement on its order confirmation sheets that its contract with the buyer is subject to the terms of the Agreement as detailed in the signatory's "pre-season" letter and maintain a copy of the order confirmations and fax receipts demonstrating that they were sent to the customer prior to making the sale. If the sale is to a first-time purchaser that did not receive a "pre-season" letter, a letter should be supplied to the buyer prior to making a sale.
- The signatory should instruct its sales personnel to inform customers making purchases by telephone or at the loading dock that the sale is subject to the terms of the Agreement and its restrictions on price adjustments and, by purchasing from them, the buyer agrees to those terms. In fact, the sales personnel should provide a copy of the letter to the customer and, ideally, have the customer acknowledge receipt of the letter, in writing, prior to making the sale. Such an established practice will help to ensure that even new customers are informed properly of the terms of sale prior to completing a contract.

PACA does not require any one particular form of written documentation but USDA officials have confirmed that, if signatories maintain written evidence demonstrating that their customers were informed that their sales were made subject to the terms of the Agreement prior to sale, PACA will recognize those terms as part of the sales contract.

[FR Doc. 02–31618 Filed 12–11–02; 3:41 pm]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 021028258–2258–01]

Notice of Intent To Disseminate Infrared Spectral Library

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The National Institute of Standards and Technology has recently announced its intent to add condensed phase infrared spectra to its current library of gas phase infrared spectra. NIST plans on making this library widely available via the Internet for scientists, engineers and other parties interested in gas phase infrared spectra. This notice solicits comments concerning proposed plans for disseminating this new data through the Internet.

DATES: Comments must be received by January 15, 2003.

ADDRESSES: Comments should be sent to the attention of Dr. Stephen Stein at the National Institute of Standards and Technology, Mail Stop 8380, 100 Bureau Drive, Gaithersburg, MD, 20899–8380.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen Stein by writing to the above address or by e-mail at *stephen.stein@nist.gov* or by telephone at (301) 975–2444.

SUPPLEMENTARY INFORMATION: On August 8, 2002, NIST published a notice in the **Federal Register** entitled "Notice of Intent to Update Infrared Spectral Library", in which comments were invited concerning the addition of approximately 10,000 digitized, condensed-phase infrared spectra to an existing NIST gas-phase collection. NIST received two comments from one individual. One of those comments made to that notice raised the issue of what methods NIST will use to disseminate the database. Based upon that comment, NIST decided that the means of data dissemination should be opened for discussion. As a result, NIST has decided to re-open the comment period and request public comments on the issue of the means of data dissemination by NIST. Therefore, in this notice, we invite interested parties to provide comments concerning possible means of dissemination of this new data. Current NIST plans are to publish this data on the Internet via the NIST WebBook (*http://webbook.nist.gov/*) in the same manner as currently employed for the gas-phase infrared data. This data is made freely available on a single-spectrum lookup basis, with individual spectra selected for display by users. No library searching or full or partial database downloading capabilities are planned.

Dated: December 4, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–31617 Filed 12–13–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Proposed Information Collection; Comment Request; Public Telecommunications Facilities Program Grant Monitoring

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A).

DATES: Written comments must be submitted on or before February 14, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 1401 Constitution Avenue, NW., Washington, DC 20230 (or via the Internet *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Clifton Beck, NTIA, Room H–4888, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of the Public Telecommunications Facilities Program is to assist, through matching funds, in

the planning and construction of public telecommunications facilities in order to achieve the following objectives:

- Extend delivery of public telecommunications services to as many citizens in the United States as possible by the most efficient and economical means, including the use of broadcast and non-broadcast technologies;
- Increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and
- Strengthen the capability of existing public radio and television stations to provide public telecommunications services to the public.

II. Method of Collection

Paper form and the Internet.

III. Data

OMB Number: 0660–0001.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Not-for-profit institutions, state or local government.
Estimated Number of Respondents: 1,950.
Estimated Time Per Response: 3 hours.
Estimated Total Annual Burden Hours: 6,268.
Estimated Total Annual Cost to the Public: 0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to the notice will be summarized and/or included in the request for OMB approval of the information collection; they will also become a matter of public record.

Dated: December 10, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–31558 Filed 12–13–02; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Statutory Invention Registration

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 14, 2003.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231; by telephone at (703) 308–7400; by e-mail at *susan.brown@uspto.gov*; or by facsimile at (703) 308–7407.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office (USPTO), Washington, DC 20231; by telephone at (703) 308–5107; or by e-mail at *bob.spar@uspto.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

A statutory invention registration is not a patent. It has the defensive attributes of a patent but does not have the enforceable attributes of a patent. In other words, a person occasionally invents something solely for personal use (not for production or sale) and does not want to go through the effort and expense of obtaining a patent on the invention. At the same time, the inventor wants to prevent someone else from later obtaining a patent on a like invention. In that situation, the inventor can register a statutory invention and have it published. Once published, it cannot be claimed by another person.

37 U.S.C. 157 authorizes the United States Patent and Trademark Office (USPTO) to publish a statutory invention registration containing the specifications and drawings of a regularly filed application for a patent without examination, providing the patentee meets all the requirements for printing, waives the right to receive a patent on the invention within a certain period of time prescribed by the USPTO, and pays all application, publication and other processing fees.

The USPTO administers 35 U.S.C. 157 through 37 CFR 1.293–1.297. Under these rules, an applicant for an original patent may request, at any time during the pendency of the applicant's pending complete application, that the specifications and drawings be published as a statutory invention registration. Any request for a statutory invention registration may be examined to determine if the requirements have been met, if the subject matter of the application is appropriate for publication, and if the requirements for publication are met.

The public may petition the USPTO to review rejection decisions within one month or such other time as is set forth in the decision refusing publication. The public may also petition the USPTO to withdraw a request to publish a statutory invention registration prior to the date of the notice of the intent to publish.

If the request for a statutory invention registration is approved, a notice to that effect will be published in the USPTO's Official Gazette. Each statutory invention registration published will include a statement relating to the attributes of a statutory invention registration.

A Change Worksheet was approved by the Office of Management and Budget (OMB) on November 29, 2001, which decreased the number of responses for this collection by 10 (from 83 to 73) due to the availability of 18-month publications of patent applications. Consequently, the total burden hours were also reduced by 4, (from 33 to 29) as a program change.

The public uses form PTO/SB/94, Request for Statutory Invention Registration, to request and authorize publication of a regularly-filed patent application as a Statutory Invention Registration, to waive the right to receive a United States patent on the same invention claimed in the identified patent application, to agree that the waiver will be effective upon publication of the statutory invention registration, and to state that the identified patent application complies with the requirements for printing. No forms are associated with the petition for a review of the refusal to publish a statutory invention registration or the petition to withdraw the request for publication of a statutory invention registration.

II. Method of collection

By mail, facsimile, or hand delivery to the USPTO when the applicant or agent files a statutory invention registration with the USPTO.

III. Data

OMB Number: 0651–0036.
Form Number(s): PTO/SB/94.
Type of Review: Extension of a currently approved collection.
Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; the Federal Government; and state, local or tribal governments.
Estimated Number of Respondents: 73 responses per year.
Estimated Time Per Response: The USPTO estimates that it will take approximately 24 minutes each to gather, prepare, and submit the request for statutory invention registration, the petition to review the rejection decision, and the petition to withdraw the publication request, depending upon the complexity of the situation. This collection contains 1 form and 2 petitions.
Estimated Total Annual Respondent Burden Hours: 29 hours per year.
Estimated Total Annual Respondent Cost Burden: $7,308. Using the professional hourly rate of $252 per hour for associate attorneys in private firms, the USPTO estimates $7,308 per year for salary costs associated with respondents.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Statutory Invention Registration	24 minutes	70	28.0
Petition to Review Rejection Decision	24 minutes	1	0.4
Petition to Withdraw Publication Request	24 minutes	2	0.8
Total		73	29.2

Estimated Total Annual Nonhour Respondent Cost Burden: $107,146. There are no capital start-up costs or maintenance costs associated with this information collection. However this collection does have postage costs and filing fees.

The public may submit the paper forms and petitions in this collection to the USPTO by mail through the United States Postal Service. The USPTO estimates that the average first-class postage cost for a mailed submission will be 49 cents, and that customers filing the documents associated with this information collection may choose to mail their submissions to the USPTO. Therefore, the USPTO estimates that up to 73 submissions per year may be mailed to the USPTO at an average first-class postage cost of 49 cents, for a total postage cost of $36.

There is annual nonhour cost burden in the way of filing fees associated with this collection. Since the filing fees have not previously been included in this collection, the total number of filings is being used to calculate these costs.

The estimated filing costs for this collection of $107,110 are calculated in the accompanying chart.

Item	Response (a)	Filing fee ($) (b)	Total non-hour cost burden (a) × (b)
Statutory Invention Registration (requested prior to mailing of first office action, 37 CFR 1.17(n))	24	$920.00	$22,080.00
Statutory Invention Registration (requested after mailing of first office action, 37 CFR 1.17(o))	46	1,840.00	84,640.00
Petition to Review Rejection Decision	1	130.00	130.00
Petition to Withdraw Publication Request	2	130.00	260.00
Total	73		107,110.00

The USPTO estimates that the total non-hour respondent cost burden for this collection in the form of postage costs and filing fees amounts to $107,146.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: December 9, 2002.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 02–31574 Filed 12–13–02; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the African Growth and Opportunity Act (AGOA)

December 10, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Determination.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that handloomed fabric made in Malawi and handmade articles made from such handloomed fabric that are made in Malawi qualify for preferential treatment under Section 112(a) of the African Growth and

Opportunity Act (AGOA). Therefore, imports of eligible products from Malawi with an appropriate AGOA Visa will qualify for duty-free treatment under the AGOA.

EFFECTIVE DATE: December 23, 2002.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION: The African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-2000)(AGOA) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. In a letter to the Commissioner of Customs dated January 18, 2001, the United States Trade Representative directed Customs to require that importers provide an appropriate export visa from a beneficiary sub-Saharan African country to obtain preferential treatment under section 112(a) of the AGOA (66 FR 7837). The first digit of the visa number corresponds to one of nine groupings of textile and apparel products that are eligible for preferential tariff treatment. Grouping "9" is reserved for handmade, handloomed, or folklore articles.

Under Section 2 of Executive Order 13191 of January 17, 2001, CITA is authorized to "consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being handloomed, handmade, or folklore articles" (66 FR 7272). Consultations with Malawi were held on November 13, 2002, and CITA has now determined that handloomed fabrics produced in and exported from Malawi and handmade articles produced in and exported from Malawi made from such handloomed fabrics are eligible for preferential tariff treatment under section 112(a) of the AGOA. In the letter published below, CITA directs the Commissioner of Customs to allow entry of such products of Malawi under Harmonized Tariff Schedule provision 9819.11.27, when accompanied by an appropriate export visa in grouping "9".

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Department of the Treasury, Washington, DC 20229.Dear Commissioner: The Committee for the Implementation of Textiles Agreements (CITA), pursuant to Sections 112(a) of the African Growth and Opportunity Act (Title I of Pub. L. No. 106-200) (AGOA) and Executive Order 13101 of January 17, 2001, has determined that, effective on December 23, 2002, handloomed fabric produced in Malawi and handmade articles produced in Malawi from such handloomed fabric shall be treated as being handloomed, handmade, or folklore articles under the AGOA, and that an export visa issued by the Government of Malawi for Grouping "9" is a certification by the Government of Malawi that the article is handloomed, handmade, or folklore. CITA directs you to permit duty-free entry of such articles accompanied by the appropriate visa and entered under heading 9819.11.27 of the Harmonized Tariff Schedule of the United States.

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–31572 Filed 12–13–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability for the Revised Draft Environmental Impact Statement/ Environmental Impact Report for the Pier J South Maine Terminal Expansion Project, Los Angeles County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, Los Angeles District, Regulatory Branch, in coordination with the Port of Long Beach, has completed a Revised Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Pier J South Marine Terminal Expansion project. The Port of Long Beach requires authorization pursuant to section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act for 115 acres of landfill in three phases, dredging up to 10,000,000 cubic yards of sediment, construction of a new concrete pile-supported wharf, new terminal buildings and a new rail yard.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the Revised Draft EIS/EIR should be directed to Dr. Aaron O. Allen, Senior Project Manager, Regulatory Branch, U.S. Army Crops of Engineers, P.O. Box 532711, Los Angeles, CA, 90053–2325, phone: (805) 585–2148.

SUPPLEMENTARY INFORMATION: None.

Luz D. Ortiz,

Army Federol Register Liaison.

[FR Doc. 02–31453 Filed 12–13–02; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 15, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren.Whittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 11, 2002.

Joseph Schubart,

Acting Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Reinstatement.
Title: Application for 34 CFR part 602 The Secretary's Recognition of Accrediting Agencies.
Frequency: Annually and every 5 years.
Affected Public: Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 61.
Burden Hours: 1,036.
Abstract: This information is needed to determine if an accrediting agency complies with the Criteria for Recognition and should be recognized by the Secretary.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–31577 Filed 12–13–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket Nos. EA–272]

Application To Export Electric Energy; Advantage Energy, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Advantage Energy, Inc. (AEI) has applied to export electric energy from the United States to Canada, pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before January 15, 2003.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (Fax 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On November 14, 2002, AEI applied to the Office of Fossil Energy, of the Department of Energy (DOE) for authority to export electric energy from the United States to Canada. AEI was incorporated in New York in 1997 and operates as a power marketer and broker of electric power with its principal place of business in Buffalo, New York.

In FE Docket No. EA–272, AEI proposes to export electric energy to Canada and to arrange for the delivery of those exports to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company and Vermont Electric Transmission Company. AEI will purchase the power to be exported from electric utilities and federal power marketing agencies as defined in the FPA.

The construction of each of the international transmission facilities to be utilized by AEI has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the AEI application to export electric energy to Canada should be clearly marked with Docket EA–272. Additional copies are to be filed directly with Kevin H. Schoener, Executive Vice President/COO, 3556 Lake Shore Road, Suite 120, Buffalo, NY 14219.

A final decision will be made on this application after the environmental impact has been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov.* Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on December 9, 2002.

Anthony Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–31584 Filed 12–13–02; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 02–79–LNG, et al.]

Marathon LNG Marketing LLC, et. al; Orders Granting and Vacating Authority To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during October 2002, it issued orders granting and vacating authority to import and export natural gas, including liquefied natural gas. These orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation), or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478, The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 4, 2002.

Clifford P. Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum, Import & Export Activities, Office of Fossil Energy.

Appendix

ORDERS GRANTING AND VACATING IMPORT/EXPORT AUTHORIZATIONS

[DOE/FE Authority.]

Order No.	Date issued	Importer/Exporter FE Docket No.	Import volume	Export volume	Comments
1827	11–5–02	Marathon LNG Marketing LLC, 02–79–LNG	116 Bcf		Import LNG from various international sources beginning on November 5, 2002, and extending through November 4, 2004.
1828	11–7–02	Fortuna (U.S.) Inc., 02–80–NG	75 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on December 1, 2002, and extending through November 30, 2004.
1829	11–21–02	Engage Energy America LLC, 02–81–LNG	1,000 Bcf	1,000 Bcf	Import natural gas from Canada, including liquified natural gas, and export natural gas to Canada, beginning on December 1, 2002, and extending through November 30, 2004.
1830	11–25–02	Pemex Gas Y Petroquimica Basica, 02–83–NG.	1.1 Tcf		Import and export a combined total of natural gas from and to Canada, beginning on November 25, 2002, and extending through November 24, 2004.
1830	11–25–02	Pemex Gas Y Petroquimica Basica, 00–93–NG.			Vacate blanket import and export authority. Order No. 1656.
1831	11–29–02	Keyspan Gas East Corporation, 02–85–NG	2 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on January 15, 2003, and extending through January 14, 2005.

[FR Doc. 02–31585 Filed 12–13–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2835]

New York State Electric & Gas Corporation; Notice of Authorization for Continued Project Operation

December 10, 2002.

On October 27, 2000, New York State Electric & Gas Corporation, licensee for the Rainbow Falls Project No. 2835, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2835 is located on the Ausable River and Black Brook in Clinton and Essex Counties, New York.

The license for Project No. 2835 was issued for a period ending November 30, 2002. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2835 is issued to New York State Electric & Gas Corporation for a period effective December 1, 2002, through November 30, 2003, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before December 1, 2003, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that New York State Electric & Gas Corporation is authorized to continue operation of the Rainbow Falls Project No. 2835 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31596 Filed 12–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2852–015]

New York State Electric & Gas Corporation, New York; Notice of Availability of Environmental Assessment

December 11, 2002.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486; 52 FR 47897), the Office of Energy projects staff have reviewed the application for a nonpower license for the Keuka Hydroelectric Project, located between Waneta Lake and Lamoka Lake impoundments, and Keuka Lake in Steuben and Schuyler Counties, New York and have prepared an Environmental Assessment (EA) for the project. The EA contains the staff's analysis of the potential environmental effects of the proposed action by the applicant, the proposed action with additional staff-recommended measures, and no-action.

A copy of the EA is available for review in the public Reference Branch, Room 2–A, of the Commission's office at 888 First Street, NE., Washington, DC 20426. The EA may also be viewed on the web at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Any comments should be filed within 30 days from the date of this notice and addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix "Keuka Hydroelectric Project, FERC No. 2852–015" to all comments. Comments may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

For further information, contact Patti Leppert at (202)502–6034 or by E-mail at *patricia.leppert@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–31597 Filed 12–13–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0334; FRL–7283–5]

Exposure Modeling Work Group; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Exposure Modeling Work Group (EMWG) will hold a 1–day meeting on December 17, 2002. This notice announces the location and time for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Tuesday, December 17, 2002, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Office of Pesticide Programs (OPP), Environmental Protection Agency, Crystal Mall #2, Room 311, 1921 Jefferson Davis Hwy., Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Michael R. Barrett, Environmental Fate and Effects Division (7507C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6391; fax number: (703) 308–6309; e-mail address: *barrett.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0334. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crstal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

The Exposure Modeling Workgroup meets on a roughly quarterly interval to discuss current issues in modeling pesticide fate, transport, and exposure to pesticides in support of risk assessments in a regulatory context.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT.**

IV. Tentative Agenda

This unit provides tentative agenda topics for the 1–day meeting.

1. Welcome and introductions.
2. Old action items.

3. Brief Updates

- EPA's pesticide root zone model/exposure analysis modeling system (PRZM/EXAMS) model.
- Spray drift task force progress.
- Rice modeling.
- European union activities.
- United States Department of Agriculture (USDA) agricultural research service activities.

- Environmental fate data base.
- New mefeorological files.
- Turf umbrella.
- WARP model.

4. Major Topics

- EFED water quality priorities for FY 2003 - themes for 2003.
- European Union activities: FOCUS ground water and surface water assessment methods, mitigation measures and processes for refining risk assessments.
- Prospective ground water data base - data reporting and formatting issues.
- USDA research service - eiforts to address needs of regulators in their pesticide mitigation and modeling research, results of recent workshop.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 10, 2002.

Steven Bradbury,

Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 02–31613 Filed 12–12–02; 9:03 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0072; FRL–7284–9]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from November 2, 2002 to November 19, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT– 2002–0072 and the specific PMN number or TME number, must be received on or before January 15, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0072. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e- mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select" search," and then key in docket ID number— OPPT–2002–0072. The system is an" anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2002–0072 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2002–0072 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which

covers the period from November 2, 2002, to November 19, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 37 PREMANUFACTURE NOTICES RECEIVED FROM: 11/02/02 TO 11/19/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0044	10/18/02*	01/16/03	Lambent Technologies	(S) Dispersant	(S) Glycerides, soya mono- and di-phosphates
P–03–0045	10/18/02*	01/16/03	Lambent Technologies	(S) Lubricant; mold release agent; emulsifier	(S) Glycerides, soya mono- and di, phosphates, sodium salts
P–03–0092	11/04/02	02/02/03	CBI	(G) Flame/fire retardant-open, non-dispersive use	(G) Phosphoric acid monoamine salt
P–03–0093	11/04/02	02/02/03	CBI	(G) Epoxy polymer for coatings and composites	(G) Polyglycidyl ether of (p-hydroxy styrene) novolak
P–03–0094	11/04/02	02/02/03	CBI	(G) Colorant for plastics	(G) Co-poly-2-methyl-1,5-pentane isophthalimide
P–03–0095	11/05/02	02/03/03	CBI	(G) Viscosity index improver	(G) Alkyl methacrylate copolymer
P–03–0096	11/05/02	02/03/03	Henkel Loctite Corporation	(S) A component of adhesive formulations for general industrial bonding applications	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha,alpha'-[1,3-phenylenebis[(1-methylethylidene) iminocarbonyl]]bis[.omega.-[[[3-(trimethoxysilyl)propyl] amino]carbonyl]oxy]-
P–03–0097	11/05/02	02/03/03	CBI	(G) Viscosity index improver and pour point depressant	(G) Alkyl methacrylate copolymer
P–03–0098	11/04/02	02/02/03	The Dow Chemical Company	(S) Polymer used in foams and adhesives manufacture	(G) Blocked, isocyanate terminated urethane prepolymer
P–03–0099	11/05/02	02/03/03	CBI	(S) Industrial coatings	(S) 2-propenoic acid, 2-methyl-, butyl ester, polymer with butyl 2-propenoate, ethenylbenzene and 2,5-furandione
P–03–0100	11/04/02	02/02/03	CBI	(G) Reactant in thermoset coating degree of containment -- (c) open, non-dispersive use	(G) Amine polymer
P–03–0101	11/05/02	02/03/03	CBI	(G) Rheology modifying component of funtional fluid	(G) Aliphatic ester
P–03–0102	11/05/02	02/03/03	CBI	(G) Rheology modifying component of functional fluid	(G) Aliphatic esters
P–03–0103	11/05/02	02/03/03	CBI	(G) Synthetic industrial lubricant for contained use	(G) Pentaerythritol and dipentaerythritol mixed esters of branched and linear fatty acids
P–03–0104	11/06/02	02/04/03	CBI	(G) Agricultural inert	(G) Tristyryl phenol alkoxylate salt
P–03–0105	11/07/02	02/05/03	CBI	(G) Carrier oil component	(G) Hydrotreated petroleum distillate extract
P–03–0106	11/08/02	02/06/03	CBI	(G) Surface treatment agent	(G) Fluoropolyether derivative fluoronated payurethane resin
P–03–0107	11/08/02	02/06/03	Epson EL Paso, Inc.	(G) Binder resin for ink	(S) 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate and ethenylbenzene, sodium salt
P–03–0108	11/12/02	02/10/03	CBI	(G) Textile colorant	(G) Substituted cyan acetic acid pentyl ester
P–03–0109	11/14/02	02/12/03	Morflex Inc.	(S) Coating (radiation curable); inks (radiation curable); adhesives (radiation curable)	(G) Vinyl ether terminated polyester polymer
P–03–0110	11/14/02	02/12/03	Estron Chemical, Inc.	(G) Additive for coatings industry.	(G) Optsa/epoxy resin
P–03–0111	11/18/02	02/16/03	CBI	(G) Material for coating agent	(G) Modified polyvinylalcohol
P–03–0112	11/18/02	02/16/03	CBI	(S) Luminescent pigment used in safetymarking tape, signs, toys, novelties	(G) Alkaline earth alumindte, rare earth doped

I. 37 PREMANUFACTURE NOTICES RECEIVED FROM: 11/02/02 TO 11/19/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0113	11/18/02	02/16/03	CBI	(G) Use as a component of food packaging and other industrial uses.	(G) Modified evoh polymer
P–03–0114	11/18/02	02/16/03	CBI	(G) Use as a component of food packaging and other industrial uses.	(G) Modified evoh polymer
P–03–0115	11/18/02	02/16/03	CBI	(G) Use as a component of food packaging and other industrial uses	(G) Modified evoh polymer
P–03–0116	11/19/02	02/17/03	Reterra	(S) Intermediate for polyester resins	(G) Polyester polyol
P–03–0117	11/19/02	02/17/03	CBI	(G) Pastic additive	(G) Silicate
P–03–0118	11/19/02	02/17/03	Solutia Inc	(S) Binder for industrial coatings	(G) Epoxy modified alkyd resin
P–03–0119	11/19/02	02/17/03	Solutia Inc	(S) Binder for industrial coatings	(G) Polyurethane resin
P–03–0120	11/19/02	02/17/03	Johnson Polymer	(G) Open, non-dispersive use	(G) Acrylic emulsion
P–03–0121	11/19/02	02/17/03	Johnson Polymer	(G) Open, non-dispersive use	(G) Acrylic emulsion
P–03–0122	11/19/02	02/17/03	Johnson Polymer	(G) Open, non-dispersive use	(G) Acrylic emulsion
P–03–0123	11/19/02	02/17/03	Johnson Polymer	(G) Open, non-dispersive use	(G) Acrylic emulsion
P–03–0124	11/19/02	02/17/03	Johnson Polymer	(G) Open, non-dispersive use	(G) Acrylic emulsion
P–03–0125	11/19/02	02/17/03	Johnson Polymer	(G) Open, non-dispersive use	(G) Acrylic emulsion
P–03–0126	11/18/02	02/16/03	Scotia Ventures	(S) Paper coating additive; wet-end paper additive	(S) Ethanaminium, n,n,n-trimethyl-2-[(1-oxo-2-propenyl)oxy]-, chloride, polymers with hydrolyzed poly(vinyl acetate)

*Entry left over from the October 2002 report.

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 22 NOTICES OF COMMENCEMENT FROM: 11/02/02 TO 11/19/02

Case No.	Received Date	Commencement/Import Date	Chemical
P–00–0899	11/13/02	11/01/02	(G) Urea alkoxy silane
P–00–1130	11/07/02	10/21/02	(G) Acetylenic alcohol
P–00–1131	11/07/02	10/15/02	(G) Alkynyl acetate
P–01–0173	11/13/02	11/06/02	(G) Silated urethane polymer
P–01–0529	11/13/02	11/04/02	(G) Organo aluminium complex
P–02–0207	11/07/02	10/30/02	(G) Quaternary salt
P–02–0234	11/04/02	10/26/02	(G) Sulphonated azo/hydrazo dye
P–02–0235	11/04/02	10/26/02	(G) Sulphonated azo/hydrazo dye
P–02–0515	11/19/02	11/13/02	(G) Silated urethane resin
P–02–0573	11/12/02	10/23/02	(G) Cycloaliphatic amine adducts
P–02–0613	11/06/02	10/20/02	(G) Polyacrylate resin
P–02–0623	11/19/02	10/14/02	(G) Substituted cyan acetic acid butylester and butoxyethylester
P–02–0624	11/19/02	10/14/02	(G) Substituted cyan acetic acid butylester and butoxyethylester
P–02–0716	11/04/02	10/23/02	(G) Butyl acrylate, polymer with styrene and methylamino chloride compounds, nitrate
P–02–0739	11/07/02	10/07/02	(G) Amine salt
P–02–0814	11/08/02	10/30/02	(G) Aliphatic unsaturated ketone
P–02–0827	11/15/02	11/10/02	(G) Bisacylphosphinoxide
P–02–0838	11/04/02	10/22/02	(G) Dipentaerythritol ester of branched and linear fatty acids
P–02–0874	11/14/02	10/28/02	(S) Hexanedioic acid, polymer with 2,2-dimethyl-1,3-propanediol, 1,2-ethanediamine, 1,6-hexanediol, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid and 1,1'-methylenebis[4-isocyanatocyclohexane], compound with nu,nu-diethylethanamine
P–94–1901	11/15/02	10/25/02	(G) Blocked aliphatic polyisocyanate
P–96–1499	11/07/02	10/09/02	(G) Aminoslkylmodified silicone fluid
P–97–0074	11/14/02	11/08/02	(S) 1,2 ethanediamine, monohydrochloride

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated:December 9, 2002.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–31588 Filed 12–13–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0325; FRL–7282–3]

Revised Final Health Effects Test Guidelines; Acute Toxicity Testing–Background and Acute Oral Toxicity; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a unified library for test guidelines issued by the Office of Prevention, Pesticides and Toxic Substances (OPPTS) for use in testing chemical substances to develop data for submission to EPA under the Toxic Substances Control Act (TSCA), the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). These test guidelines represent an Agency effort that began in 1991 to harmonize the test guidelines within OPPTS, as well as to harmonize the OPPTS test guidelines with those of the Organization for Economic Cooperation and Development (OECD). The process for developing and amending these test guidelines includes public participation and the extensive involvement of the scientific community, including peer review by the Scientific Advisory Panel (SAP), the Scientific Advisory Board (SAB) and other expert scientific organizations. Guidelines are also reviewed, when appropriate, by the Interagency Coordinating Committee for Alternative Methods (ICCVAM) for determination of validation status. With this notice, EPA is announcing the availability of the revised final test guidelines for Series 870–Health Effects Test Guidelines, OPPTS 870.1000 Acute Toxicity Testing–Background and OPPTS 870.1100 Acute Oral Toxicity.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: TSCA information contact: TSCA Hotline at TAIS/7408, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

FIFRA information contact: Communications Services Branch (7506C), Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5017; fax number: (703) 305–5558.

For FIFRA technical information contact: Deborah McCall, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7109; e-mail address: *mccall.deborah@epa.gov*.

For TSCA technical information on OPPTS 870.1100 contact: Elizabeth Margosches, Risk Assessment Division (7403M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–7636; e-mail address: *margosches.elizabeth@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under TSCA, FFDCA, or FIFRA, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Copies of This Document and Other Related Information?

A. Docket

EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0325. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

B. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. You may also obtain copies of test guidelines from the EPA Internet Home Page at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit II.A. Once in the system, select "search," then key in the appropriate docket ID number.

III. What Action is EPA Taking?

EPA is announcing the availability of the revised final test guideline for Series 870–Health Effects Test Guidelines, OPPTS 870.1100 Acute Oral Toxicity. An improved Up-and-Down Procedure (UDP) protocol for acute oral toxicity testing was developed, by a team of regulatory and industry scientists, that is better able to provide the types of testing data needed for U.S. agencies to make regulatory decisions. The revised protocol includes a primary test, a limit test, and determination of the confidence intervals for the LD50. A software program to assist laboratory users in the conduct of the test was also developed. The revised final test guideline was reviewed by EPA's SAP in a public meeting on December 12, 2001, which was announced in the **Federal Register** on November 15, 2001 (66 FR 57438) (FRL–6811–1), and recommendations of the SAP were incorporated into the test protocol. The ICCVAM reviewed the protocol at an open meeting on July 25, 2000, and again in a public teleconference meeting held on July 21, 2001, where changes recommended in the earlier meeting were reviewed and accepted. The improved UDP was adopted as test guideline 425 by OECD in December 2001. The UDP in this guideline is of value in reducing the number of animals required to determine the acute oral toxicity of a chemical. In addition to the estimation of LD50 and confidence intervals, the test allows the observation of signs of toxicity. Moreover, use of OECD guidance for humane endpoints should reduce the overall suffering of animals in this type of test. The Agency strongly recommends the use of the revised UDP to meet the testing requirements for industrial chemicals and registration of pesticides. Acute oral toxicity studies using the UDP which are initiated after December 17, 2002, should be in accordance with the UDP described in this guideline. Two other alternative guidelines are available through OECD (420 Acute Oral Toxicity–Fixed Dose Method and 423 Acute Oral Toxicity–Acute Toxic Class Method). These methods assess lethality within a dose range. The Agency is also making available revised final test guideline OPPTS 870.1000 Acute Toxicity Testing–Background to reflect revision of the OPPTS 870.1100 Acute Oral Toxicity test guideline and acceptability of two other OECD alternative guidelines.

IV. Are There Any Applicable Voluntary Consensus Standards That EPA Should Consider?

This notice of availability does not involve a proposed regulatory action that would require the Agency to consider voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) of NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide an explanation to Congress, through Office of Management and Budget (OMB), when the Agency decides not to use available and applicable voluntary consensus standards when the NTTAA directs the Agency to do so.

List of Subjects

Environmental protection, Chemical testing, Test guideline.

Dated: December 11, 2002.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 02–31612 Filed 12–12–02; 9:03 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Schedule Change; FCC To Hold Open Commission Meeting, Wednesday, December 11, 2002

December 10, 2002.

Please note that the time for the Federal Communications Commission Open Meeting is rescheduled from 9:30 a.m. to 1:30 p.m.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, December 11, 2002, which is scheduled to commence at 1:30 p.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Wireless Tele-Communications	The Wireless Telecommunications Bureau will report on the status of unintentional wireless 911 calls.
2	Wireless Tele-Communications	*Title:* Facilitating the Provisions of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services. *Summary:* The Commission will consider a Notice of Inquiry that would seek comment on the effectiveness of current regulatory tools in facilitating the delivery of spectrum-based services to rural areas and the extent to which rural telephone companies and other entities seeking to serve rural areas have opportunities to provide spectrum-based services.
3	Wireless Tele-Communications	*Title:* Revisions of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (CC Docket No. 94–102); Amendment of Parts 2 and 25 to Implement the Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding and Arrangements; Petition of the National Telecommunications and Information Administration to Amend Part 25 of the Commission's Rules to Establish Emissions Limits for Mobile and Portable Earth Stations Operating in the 1610–1660.5 MHz Band (IB Docket No. 99–67). *Summary:* The Commission will consider a Further Notice of Proposed Rulemaking concerning access to emergency services from services and devices that may not be currently within the scope of the Commission's E911 rules.
4	Wireless Tele-Communications	*Title:* Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services. *Summary:* The Commission will consider a Notice of Inquiry seeking information that can be used to analyze the status of competition in the CMRS industry for purpose of its Eighth Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services.
5	Office of Engineering and Technology	*Title:* Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band. *Summary:* The Commission will consider a Notice of Inquiry concerning the possibility of permitting unlicensed transmitters to operate in additional frequency bands.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at Qualexint@aol.com.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events web page at *www.fcc.gov/realaudio*. Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, telephone number (703) 834–1470, Ext. 19; fax number (703) 834–0111.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–31713 Filed 12–12–02; 2:40 pm]

BILLING CODE 6712–01–U

FEDERAL RESERVE SYSTEM

Change In Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 30, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Herbert L. Winemiller and Gwyneth A. Winemiller, both of Fort Pierce, Florida; to retain control of Whittington Bancorp, Inc., Benton, Illinois, and thereby indirectly retain control of State Bank of Whittington, Benton, Illinois.

B. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Paul David Pieschel, Springfield, Minnesota; to acquire control of Piesco, Inc., Springfield, Minnesota, and thereby indirectly acquire control of Citizens State Bank Norwood Young America, Norwood Young America, Minnesota, and Farmers and Merchants State Bank of Springfield, Springfield, Minnesota.

Board of Governors of the Federal Reserve System, December 10, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–31537 Filed 12–13–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 7, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. IBERIABANK Corporation, New Iberia, Louisiana; to merge with Acadiana Bancshares, Inc., Lafayette, Louisiana, and thereby indirectly acquire voting shares of LBA Savings Bank, Lafayette, Louisiana.

Board of Governors of the Federal Reserve System, December 10, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–31538 Filed 12–13–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice.

SUMMARY: The FTC is submitting the information collection requirements of its proposed revision of the Pay-Per-Call Rule to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act.

DATES: Comments must be submitted on or before January 15, 2003.

ADDRESSES: Send comments regarding the burden estimate or any other aspect of the information collection, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503, ATTN.: Desk Officer for the Federal Trade Commission (comments in electronic form should be sent to *oira-docket@omb.eop.gov*), and also to the Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580 (or *PPC–PRA@ftc.gov*, except as noted below). All submissions should be captioned "Pay-Per-Call Rule" and be identified as responding to this notice.

If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the electronic mailboxes noted earlier. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii).

FOR FURTHER INFORMATION CONTACT: Alex Tang, Office of the General Counsel, FTC, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2447. For information regarding the Pay-Per-Call rulemaking, contact Elizabeth Hone, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, FTC, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3207. A separate Supporting Statement that the Commission is also submitting to OMB will be made available on the Commission's public record of the Pay-Per-Call rulemaking proceeding and on the FTC's Web site, *http://www.ftc.gov*.

SUPPLEMENTARY INFORMATION: On October 30, 1998, the Commission published a notice of proposed rulemaking (63 FR 58524) to amend its Pay-Per-Call Rule 16 CFR part 308.[1] The Rule, which implements Titles II and III of the Telephone Disclosure and Dispute Resolution Act, 15 U.S.C. 5711 *et seq.*, requires the disclosure of cost and other information with regard to pay-per-call services and establishes dispute resolution procedures for telephone-billed purchases (*i.e.*, charges for pay-per-call services or other charges appearing on a telephone bill other than telecommunications charges). As explained in the notice of proposed rulemaking, the Rule contains certain reporting and disclosure requirements that are subject to OMB review under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520.[2] Accordingly, the FTC submitted the Rule with proposed amendments to OMB (*see* 64 FR 70031, Dec. 15, 1999) for its approval, which was granted until December 31, 2002 (OMB control number 3084–0102). Because that approval is expiring and the Commission has not yet adopted the proposed amendments in final form, the Commission is submitting the Rule with proposed amendments for approval again under the same control number through December 31, 2005.

As required by the PRA, the Commission's NPRM, 63 FR 58556–57, invited public comment on the Rule's information collection requirements and proposed amendments before their submission to OMB. Although the Commission received no comments directly responding to the Commission's specific PRA questions, the Commission received one comment, from U.S. West, stating that its current cost for making an annual disclosure of dispute resolution procedures under the Rule was $53,000 and that this annual cost would increase to $819,000 if the disclosures were required with every billing cycle under a proposed amendment to § 308.20(m)(1). This comment and others (available on the FTC's Web site, *http://www.ftc.gov*) are being considered by the staff to determine whether to recommend that the Commission not adopt that proposed amendment so as to minimize the Rule's compliance burden.

Pursuant to 44 U.S.C. 3507(a)(1)(D) and 5 CFR 1320.5(a)(1)(iv)(B), the Commission publishes the following additional information, and invites any further public comment to OMB and the Commission, regarding the information collection requirements and proposed amendments being submitted again to OMB.

Title: Trade Regulation Rule Concerning Pay-Per-Call Services and Other Telephone-Billed Purchases ("Pay-Per-Call Rule").

Summary of the collection of information: Reporting and disclosure requirements to implement Titles II and III of the Telephone Disclosure and Dispute Resolution Act of 1992, as amended, 15 U.S.C. 5711 *et seq.*, which requires the disclosure of cost and other information with regard to pay-per-call services and establishes dispute resolution procedures for telephone-billed purchases.

Brief description of the need for and proposed use of the information: The reporting and disclosure requirements are mandated by statute and are necessary to help prevent unfair and deceptive acts and practices in the advertising and operation of pay-per-call services and in the collection of charges for telephone-billed purchases. The information obtained by the Commission pursuant to the reporting requirement is used for law enforcement purposes. The disclosure requirements ensure that consumers are adequately informed of the costs they can expect to incur in using a pay-per-call service, that they will not be liable for unauthorized non-toll charges on their telephone bills, and that they have certain dispute resolution rights and obligations with respect to such telephone-billed purchases.

Likely respondents, including estimated number and proposed frequency of response: Respondents are common carriers (subject to the reporting requirement only, unless acting as a billing entity), information providers (vendors) offering one or more pay-per-call services or programs, and billing entities. The Commission, to obtain OMB approval of the Rule, had previously estimated that it would request information pursuant to the reporting requirement from no more than approximately 25 common carriers per year, and that the disclosure requirements would apply to 20,000 information vendors and 1400 billing entities. *See* 61 FR 43764, 43767–78 (Aug. 26, 1996). In October 1998, when the Commission issued its NPRM, and in December 1999, when the Commission first submitted its proposal to OMB for approval, the Commission increased its prior burden estimates by 12% to account for industry growth in information vendors and/or pay-per-call services since the prior estimates. *See* 63 FR 58556–57 (NPRM); 64 FR 70031 (submission to OMB). In submitting the Rule and proposed amendments for OMB approval again, the Commission is increasing the burden estimate this time by 5% to account for additional growth, if any, in the industry since the agency's December 1999 submission.[3]

Estimated annual reporting and recordkeeping burden: The total estimated annual hours burden of the information collection requirements of the Rule, including the proposed amendments, is 5,386,983 (or 5,387,000 rounded). This burden consists entirely of reporting and disclosure requirements; as explained earlier (n. 2), there are no recordkeeping requirements. The burden hour estimate for each reporting or disclosure requirement has been multiplied by a special "blended" wage rate (expressed in dollars per hour), based on the particular skill mix needed to carry out that requirement, to determine the total annual cost of that requirement. The blended rate calculations are based on the following skill categories and average wage rates: $75/hour for professional (attorney) services; $20/hour for skilled clerical workers; $25/

[1] The Rule was originally promulgated as the "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992" and was known as the "900-Number Rule." It will be renamed the "Trade Regulation Rule Concerning Pay-Per-Call Services and Other Telephone-Billed Purchases" and is referred to in the Commission's notice of proposed rulemaking and in this document as the "Pay-Per-Call Rule."

[2] Neither the Rule nor the proposed amendments contain any recordkeeping requirements that would be subject to the PRA.

[3] This increase is roughly equivalent to the current annual rate of inflation (1.51% based on the Consumer Price Index published through Sept. 2002), multiplied by three to represent the three-year period since the last OMB submission. Absent other applicable data from the record of this proceeding, the Commission recognizes that this 5% estimate may or may not reflect the actual growth in the relevant industry in the three-year period since the FTC's last burden estimate. The agency seeks public comment or data that might help refine the estimate.

hour for computer programmers; and $50/hour for management time. Annual burden hour estimates (and the estimated total cost of those hours) have been provided below.

The burden estimates do not contain a separate set of figures for other annual "cost" burdens, if any—*i.e.*, (a) capital and start-up costs or (b) operation, maintenance and purchase of outside services not already reflected in the above burden hour estimates and associated annual costs. Capital or start-up costs are generally subsumed in activities otherwise undertaken in the ordinary course of business (*e.g.*, business records from which only existing information must be reported to the Commission, pay-per-call advertisements or audiotexts to which cost or other disclosures are added, etc.). To the extent that entities incur operating or maintenance expenses, or purchase outside services to satisfy the Rule's requirements, staff believe those expenses are also included in (or, if contracted out, would be comparable to) the burden hours and estimated annual burden estimates provided below (where such expenses are labor-related), or are otherwise included in the ordinary cost of doing business (where the expenses are other than labor-related).

Reporting requirement: This requirement is currently set forth in § 308.6 of the Rule, to be amended and redesignated § 308.19(a). The previous estimated hours burden for this reporting requirement (*i.e.*, to provide certain information to the Commission upon request) was 140 hours annually (based on 25 common carriers each spending 5 hours annually plus a 12% increase), which is being increased by 5% to 147 hours annually, at an average revised wage rate of $75/hour (100 percent of each hour for attorney services) or a total annual cost of $11,025.

Disclosure requirements: (1) *Advertising.* The advertising disclosure requirements of the current Rule would be consolidated into §§ 308.3, 308.4 and 308.7 of the Rule, as amended. The current estimated annual burden on the industry is 129,360 hours. This figure reflects the Commission's original estimate of 20,000 vendors each making certain basic cost disclosures (one hour per disclosure) in three advertisements for pay-per-call services (60,000 burden hours total) plus one hour for an additional disclosure in each of the estimated 50 percent of ads that are directed to individuals under 18 (30,000 burden hours) and each of the estimated 30 percent of all pay-per-call ads relating to sweepstakes or information on federal programs (18,000 burden hours), or a total of 108,000 burden hours (rounded to 110,000), which was increased in the 1999 submission to OMB by 12% for industry growth to 123,200, and has been increased again in this submission by 5% to 129,360 hours. The total estimated annual cost of these burden hours is $5,821,200 using a blended wage rate of $45/hour (40 percent attorney services, 50 percent skilled clerical workers, and 10 percent for management time).

Two proposed amendments, §§ 308.4(a)(1)(iii)(B) and 308.6(b),[4] would add 31,752 annual burden hours to the total, or a total annual cost of $1,428,840 using the $45/hour blended wage rate discussed above. The first of these amendments, requiring disclosures when a call is billed on a variable time rate basis, assumes that 20 percent of the estimated 70,560 advertised pay-per-call services (*i.e.*, after the 5 and 12 percent increases) would need to contain such a disclosure, thereby accounting for 14,112 burden hours, at an annual cost of $635,040. The burden associated with the second amendment, requiring an audio signal to indicate (*i.e.*, disclose) the end of free time used to advertise certain pay-per-call services, is estimated at 17,640 burden hours, assuming this requirement applies to 25 percent of advertised pay-per-call services, or an annual cost of $793,800.

(2) *Preamble.* The Rule's existing preamble disclosure requirement, set forth in § 308.9, imposes an estimated burden of 10 hours annually, for an annual burden of 705,600 burden hours based on 70,560 advertised pay-per-call services. The cost associated with these burden hours is $31,752,000, using a blended wage rate of $45/hour (*i.e.*, similar to the blended rate used for advertising disclosures). As explained in the notice of proposed rulemaking, the estimated burden of a proposed amendment of the preamble disclosure requirement, § 308.4(a)(2)(iii)(B), is one additional hour for approximately 30 percent of the advertised pay-per-call services, or an estimated 21,168 hours, for a total annual cost of $952,560.

(3) *Telephone-billed charges in billing statements.* This requirement is currently set forth in § 308.5(j) of the Rule, which the Commission proposes to redesignate and incorporate into § 308.18, as amended. The blended rate used to calculate the cost of these disclosures was $51.50/hour (50 percent attorney services, 20 percent skilled technical workers, 20 percent computer programming, and 10 percent for management time). The estimated annual burden of this disclosure requirement was 28,224 hours (*i.e.*, 10 percent of 20,000 vendors making spot checks at 12 hours per spot check, or 24,000 burden hours, plus 5 and 12 percent), so the annual cost would be $1,453,536. As explained in the notice of proposed rulemaking, no additional burden is anticipated from any amendments of this requirement.

(4) *Dispute resolution procedures in billing statements.* This disclosure requirement is currently set forth in § 308.7(c), to be redesignated § 308.20, as amended. The blended rate being used for these disclosures is $36/hour (40 percent computer programming, 20 percent attorney services, 30 percent skilled clerical workers, and 10 percent for management time). The estimated hour burden for the annual notice component of this requirement is 8,232 burden hours (based on 1,400 billing entities taking 5 hours to review, revise and provide disclosures annually, as explained in the NPRM, plus 5 and 12 percent), or a total cost of $296,352. An additional 2,940,000 burden hours would be associated with specific notices in those cases where a customer reports a billing error (*i.e.*, 5 percent of an estimated 50 million calls plus 5 and 12 percent, requiring one hour per billing error), or $105,840,000 annually. The additional burden hours for proposed amendments to § 308.2(i) and (j), requiring new disclosures of certain information regarding personal identification numbers issued to customers for access and billing purposes, have been estimated at 52,500 hours (*i.e.*, 5% over the 1999 estimate) or an annual cost of $1,890,000. The additional burden hours for proposed amendments to require certain new disclosures in connection with billing dispute resolution, § 308.18(n)(2) and § 308.18(n)(4), would entail 1,470,000 hours for an annual cost of $52,920,000.

Dated: December 10, 2002.

William E. Kovacic,

General Counsel.

[FR Doc. 02–31586 Filed 12–13–02; 8:45 am]

BILLING CODE 6750–01–P

[4] The PRA discussion in the NPRM erroneously referred to this provision as "308.7(b)." *See* 63 FR 58556.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standard and Security.

Time and Date: 9 a.m. to 5 p.m., December 10, 2002. 9 a.m. to 12:30 p.m., December 11, 2002.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue, SW., Washington, DC.

Status: Open.

Purpose: In the morning session on December 10, the Subcommittee on Standards and Security will discuss the Administrative Simplification Compliance Act (ASCA) database statistics, identify HIPAA implementation best practices, and assess opportunities for improving the standards maintenance process. In the afternoon the Subcommittee will discuss the scope of work for the cost/benefit analysis regarding possible migration to ICD–10–CM/ICD–10–PCS and will discuss and prepare for the January Subcommittee hearings on complementary and alternative medicine issues. On December 11 the subcommittee will discuss the scope and the criteria for recommendations on the selection of Patient Record Medical Information (PMRI) terminologies under HIPAA.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Karen Trudel, Senior Technical Advisor, Security and Standards Group, Centers for Medicare and Medicaid Services, MS: C5–24–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, telephone: 410–786–9937; or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone: (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Dated: December 4, 2002.

James Scanlon,

Acting Director, Office of Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 02–31556 Filed 12–13–02; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

The National Advisory Council for Healthcare Research and Quality; Meeting Cancellation

With this notice, the Agency for Healthcare Research and Quality informs the public of the cancellation of its meeting on "The National Advisory Council for Healthcare Research and Quality" for December 10. The original meeting notice was published on the **Federal Register** on November 21, 2002, Volume 67, Number 225, Page No. 70226.

Dated: December 9, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–31543 Filed 12–10–02; 4:27 pm]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifiers: CMS–R–205, CMS–R–206, CMS–10050, and CMS–R–228]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Extension of a currently approved collection; Title of Information Collection: Information Collection Requirements Referenced in HIPAA for the Individual Market and Supporting Regulations at 45 CFR 148; *Form No.:* CMS—R–205 (OMB #0938–0703); *Use:* Information collection requirements (ICRs) will ensure that issuers in the individual market comply with Title 1 of the Health Insurance Portability and Accountability Act, provide individuals with certificates of coverage necessary to demonstrate prior creditable coverage and file documentation with CMS for review in a Federal direct enforcement state. ICRs will also ensure States' flexibility to implement state alternative mechanisms; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Individuals or households, Not-for-profit institutions, Federal government, and State, local, or tribal government; *Number of Respondents:* 1,041; *Total Annual Responses:* 3,242,500; *Total Annual Hours:* 914,347.

(2) *Type of Information Collection Request:* Extension of a currently approved collection; Title of Information Collection: Information Collection Requirements Referenced in HIPAA for the Group Market and Supporting Regulations at 45 CFR 146; *Form No.:* CMS—R–206 (OMB #0938–0702); *Use:* Information collection requirements (ICRs) will ensure that issuers in the group market comply with Title 1 of the Health Insurance Portability and Accountability Act, including providing individuals with certificates of creditable coverage, notifying individuals about their status with respect to pre-existing condition exclusions, and giving them special enrollment rights to which they are entitled and that states and the Federal government have the flexibility necessary to enforce HIPAA.; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Individuals or households, Not-for-profit institutions, Federal government, and State, local, or tribal government; *Number of Respondents:* 2,080; *Total Annual Responses:* 43,003,297; *Total Annual Hours:* 2,652,281.

(3) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Survey of Newly Eligible Medicare Beneficiaries; *Form No.:* CMS–10050 (OMB #0938–0869); *Use:* It is not enough to merely mail information about the Medicare program to each beneficiary. We need to know not only that the beneficiaries got the information, but that they understood the information and are able to use it in making choices about their Medicare participation. To this end, CMS must

have measure(s) over time of what beneficiaries know and understand about the Medicare program now to be able to quantify and attribute any changes to their understanding or behavior to information/education initiatives. Measuring beneficiary information needs and knowledge over time will help us to evaluate the impact of information/education and other initiatives as well as to understand how the population is changing apart from such initiatives; *Frequency:* Monthly; *Affected Public:* Individuals or households; *Number of Respondents:* 3,600; *Total Annual Responses:* 3,600; *Total Annual Hours:* 1,080.

(4) *Type of Information Collection Request:* Revision of currently approved collection; *Title of Information Collection:* Adjusted Community Rate (ACR) Proposal Medicare+Choice; *Form No.:* CMS–R–228 (OMB #0938–0742); *Use:* Under Part C of the Social Security Act (ACT), a Medicare + Choice (M + C) organization is required to offer a benefit package that is approved and priced properly to all Medicare beneficiaries residing in the service area. This form is used by M + C organization to price its benefit packages; *Frequency:* Annually; *Affected Public:* Business or other-for-profit, Not-for-profit institutions and State, Local or Tribal Government; *Number of Respondents:* 700 ; *Total Annual Responses:* 700 ; *Total Annual Hours:* 66,500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 6, 2002.

Julie Brown,

Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–31546 Filed 12–13–02; 8:45 am]

BILLING CODE 4210–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10073, CMS–R–290, CMS–1557]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Survey of Rural Medicare Providers Regarding Provider Education Needs; *Form No.:* CMS–10073 (OMB #0938–NEW); *Use:* The Division of Provider Education and Training, Centers for Medicare and Medicaid Services (CMS), is requesting Office of Management and Budget (OMB) approval to conduct a survey of the provider education needs of rural Medicare providers. CMS has contracted The Lewin Group to develop and field the survey instrument, analyze and synthesize the information collected, and present findings and recommendations to help CMS better understand the provider education needs of rural providers. The study will also provide an assessment of the specific and unique education challenges faced by rural Medicare providers and the success of current education methods in meeting those challenges; *Frequency:* Other: One-time; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 1,832; *Total Annual Responses:* 1,832; *Total Annual Hours:* 608.

(2) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Procedures for Making National Coverage Decisions; *Form No.:* CMS–R–0290 (OMB #0938–0776); *Use:* These information collection requirements provide the process CMS will use to make a national coverage decision for a specific item or service under sections 1862 and 1871 of the Social Security Act. This will streamline our decision making process and will increase the opportunities for public participation in making national coverage decisions; *Frequency:* Recordkeeping, other (as needed); *Affected Public:* Business or other for-profit, not-for-profit institutions; *Number of Respondents:* 200; *Total Annual Responses:* 200; *Total Annual Hours:* 8,000.

(3) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Survey Report Form Clinical Laboratory Improvement Amendments (CLIA) and Supporting Regulations in 42 CFR 493.1—493.2001; *Form No.:* CMS–1557 (OMB #0938–0544); *Use:* CLIA requires the Department of Health and Human Services (DHHS) to establish certification requirements for any laboratory that performs tests on human specimens, and to certify through the issuance of a certificate that those laboratories meet the requirements established by DHHS. The information collected on this survey form is used in the administrative pursuit of the Congressionally-mandated program with regard to regulation of laboratories participating in CLIA. In order for the State survey agency to report to CMS its findings on facility compliance with the individual standards on which CMS determines compliance, the surveyor completes the Survey Report Form. The Survey Worksheet provides space to document the surveyor's notes; *Frequency:* Biennially; *Affected Public:* Business or other for profit, not for profit institutions, and State, local or tribal government; *Number of Respondents:* 26,500; *Total Annual Responses:* 13,250; *Total Annual Hours:* 6,625.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 6, 2002.

Julie Brown,

Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–31547 Filed 12–13–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Availability of Funds for Loan Repayment Program for Repayment of Health Professions Educational Loans

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: The Administration's budget request for Fiscal Year (FY) 2003 includes $11,923,500 for the Indian Health Service (IHS) Loan Repayment Program (LRP) for health professions educational loans (undergraduate) in return for full-time clinical service in Indian health programs. It is anticipated that $11,923,500 will be available to support approximately 298 competing awards averaging $40,000 per award.

This program announcement is subject to the appropriation of funds. This notice is being published early to coincide with the recruitment activity of the IHS, which competes with other Government and private health management organizations to employ qualified health professionals. Funds must be expended by September 30 of the fiscal year. This program is authorized by section 108 of the Indian Health Care Improvement Act (IHCIA) as amended, 25 U.S.C. 1601 *et seq*. The IHS invites potential applicants to request an application for participation in the LRP.

DATES: Applications for the FY 2003 LRP will be accepted and evaluated monthly beginning January 17, 2003, and will continue to be accepted each month thereafter until all funds are exhausted. Subsequent monthly deadline dates are scheduled for Friday of the second full week of each month. Notice of awards will be mailed on the last working day of each month.

Applicants selected for participation in the FY 2003 program cycle will be expected to being their service period no later than September 30, 2003.

Applicants shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks are *not* acceptable as proof of timely mailing.)

Applications received after the monthly closing date will be held for consideration in the next monthly funding cycle. Applicants who do not receive funding by September 30, 2003, will be notified in writing.

For to be used for application: Applications must be submitted on the form entitled "Application for the Indian Health Service Loan Repayment Program," identified with the Office of Management and Budget approval number of OMB #0917–0014 (expires 12/31/02).

ADDRESSES: Application materials may be obtained by calling or writing to the address below. In addition, completed applications should be returned to: IHS Loan Repayment Program, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852, PH: 301/443–3396 [between 8 a.m. and 5 p.m. (EST) Monday through Friday, except Federal holidays].

FOR FURTHER INFORMATION CONTACT: Please address inquiries to Ms. Jacqueline K. Santiago, Chief, IHS Loan Repayment Program, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852, PH: 301/443–3396 [between 8 a.m. and 5 p.m. (EST) Monday through Friday, except Federal holidays].

SUPPLEMENTARY INFORMATION: Section 108 of the IHCIA, as amended by Pub. L. 100–713 and 102–573, authorizes the IHS LRP and provides in pertinent part as follows:

The Secretary, acting through the Service, shall establish a program to be known as the Indian health Service Loan Repayment Program (hereinafter referred to as the "Loan Repayment Program") in order to assure an adequate supply of trained health professionals necessary to maintain accreditation of, and provide health care services to Indians through, Indian health programs.

Section 4(n) of the IHCIA, as amended by the Indian Health Care Improvement Technical Corrections Act of 1996, Pub. L. 104–313, provides that:

"Health Profession" means allopathic medicine, family medicine, internal medicine, pediatrics, geriatric medicine, obstetrics and gynecology, podiatric medicine, nursing, public health nursing, dentistry, psychiatry, osteopathy, optometry, pharmacy, psychology, public health, social work, marriage and family therapy, chiropractic medicine, environmental health and engineering, an allied health profession, or any other health profession.

For the purposes of this program, the term "Indian health program" is defined in Section 108(a)(2)(A), as follows:

* * * any health program or facility funded, in whole or in part, by the IHS for the benefit of Indians and administered:

a. Directly by the Service; (or)

b. By any Indian tribe or tribal or Indian organization pursuant to a contract under:

(1) The Indian Self-Determination Act: or

(2) Section 23 of the Act of April 30, 1908, (25 U.S.C. 47), popularly known as the Buy Indian Act; or

(3) By an urban Indian organization pursuant to Title V of this act.

Applicants may sign contractual agreements with the Secretary for 2 years. The IHS will repay all, or a portion of the applicant's health profession educational loans (undergraduate and graduate) for tuition expenses and reasonable educational and living expenses in amounts up to $20,000 per year for each year of contracted service. Payments will be made annually to the participant for the purpose of repaying his/her outstanding health profession educational loans. Payment of health profession education loans will be made to the participant within 120 days, from the date the contract becomes effective.

The Secretary must approve the contract before the disbursement of loan repayments can be made to the participant. Participants will be required to fulfill their contract service agreements through full-time clinical practice at an Indian health program site determined by the Secretary. Loan repayment sites are characterized by physical, cultural, and professional isolation, and have histories of frequent

staff turnover. All Indian health program sites are annually prioritized with the Agency by discipline, based on need or vacancy.

All health professionals will receive up to $20,000 per year for the length of their contract. Where the amount of the LRP award may result in an increase in Federal income tax liability, the IHS will pay an additional 20 percent of the participant's total loan repayments to the Internal Revenue Service for the increased tax liability.

For FY 2003 new LRP applicants who are or will be stationed in an IHS Health care facility with a health professional vacancy rate of at least 40% for 6 consecutive months and has been deemed a health professional critical shortage site by the Director of IHS may receive up to $30,000 per year plus an additional 31 percent for Federal Withholding if funding is available. Current LRP participants at critical shortage sites will continue to receive up to $20,000 a year and a 20 percent tax subsidy rate until their current contracts have expired. However, LRP participants stationed at critical shortage sites who wish to extend their contracts will be eligible to receive up to the amount of $30,000 a year and a 31 percent tax subsidy for the additional contract period if funds are available and the funding will not exceed the total of the individual's outstanding eligible health profession educational loans.

Pursuant to section 108(b), to be eligible to participate in the LRP, an individual must:

(1) A. Be enrolled:

(i) In a course of study or program in an accredited institution, as determined by the Secretary, within any State and be scheduled to complete such course of study in the same year such individual applies to participate in such program; or

(ii) In an approved graduate training program in a health profession; or

B. Have a degree in a health profession and a license to practice; and

(2) A. Be eligible for, or hold an appointment as a Commissioned Officer in the Regular or Reserve Corps of the Public Health Service (PHS); or

B. Be eligible for selection for civilian service in the Regular or Reserve Corps of the (PHS); or

C. Meet the professional standards for civil service employment in the IHS; or

D. Be employed in an Indian health program without service obligation; and

(3) Submit to the Secretary an application for a contract to the Loan Repayment Program

All program must sign and submit to the Secretary, a written contract agreeing to accept repayment of educational loans and to serve for the applicable period of obligated service in a priority site as determined by the Secretary, and submit a signed affidavit attesting to the fact that they have been informed of the relative merits of the U.S. PHS Commissioned Corps and the Civil Service as employment options.

Once the applicant is approved for participation in the LRP, the applicant will receive confirmation of his/her loan repayment award and the duty site at which he/she will serve his/her loan repayment obligation.

The IHS has identified the positions in each Indian health program for which there is a need or vacancy and ranked those position in order of priority by developing discipline-specific prioritized lists of sites. Ranking criteria for these sites include the following:

- Historically critical shortages caused by frequent staff turnover;
- Current unmatched vacancies in a Health Profession Discipline;
- Projected vacancies in a Health Profession Discipline;
- Ensuring that the staffing needs of Indian health program administered by an Indian Tribe or Tribal or health organization receive consideration on an equal basis with programs that are administered directly by the Service; and
- Giving priority to vacancies in Indian health programs that have a need for health professionals to provide health care services as a result of individuals having breached LRP contracts entered into under this section.
- Consistent with this priority ranking, in determining applications to be approved and contracts to accept, the IHS will give priority to applications made by American Indians and Alaska Natives and to individuals recruited through the efforts of Indian Tribes or Tribal or Indian organizations.
- Funds appropriated for the LRP in FY 2003 will be distributed among the health profession as follows: allophathic/osteopathic practitioners will receive 27 percent, registered nurses 20 percent, mental health professionals 10 percent, dentists 12 percent, pharmacies 10 percent, optometrists 5 percent, physician assistants/advanced practice nurses 6 percent, podiatrists 4 percent, physical therapists 2 percent, other professions 4 percent. This requirement does not apply if the number of applicants from these groups, respectively, is not sufficient to meet the requirement.

Applicants whose applications were complete by September 30, 2000, and who want to complete in the FY 2003 award cycle, will receive a site score equal to either their FY 2000, FY 2001, FY 2002, or the FY 2003 score, whichever is higher.

The following factors are equal in weight when applied, and are applied when all other criteria are equal and a selection must be made between applicants.

One or all of the following factors may be applicable to an applicant, and the applicant who has the most of these factors, all other criteria being equal, would be selected.

- An applicant's length of current employment in the IHS, Tribal, or urban program.
- Availability for service earlier than other applicants (first come, first served).
- Date the individual's application was received.

Any individual who enters this program and satisfactorily completes his or her obligated period of service may apply to extend his/her contract on a year-by-year basis, as determined by the IHS. Participants extending their contracts will receive up to the maximum amount of $20,000 per year plus an additional 20 percent for Federal Withholding. Participants who were awarded loan repayment contracts prior to FY 2000 will be awarded extensions up to the amount of $30,000 a year and 31 percent in tax subsidy if funds are available, and will not exceed the total of the individual's outstanding eligible health profession educational loans.

Any individual who owes an obligation for health professional service to the Federal Government, a State, or other entity is not eligible for the LRP unless the obligation will be completely satisfied before they begin service under this program.

The IHS Area Offices and Services Units are authorized to provide additional funding to make awards to applicants in the LRP, but must be in compliance with any limits in the appropriation and Section 108 of the Indian Health Care Improvement Act not to exceed the amount authorized in the IHS appropriation (up to $22,000,000 for FY 2003.)

Should an IHS Area Office contribute to the LRP, those funds will be used for only those sites located in that Area. Those sites will retain their relative ranking from the national site-ranking list. For example, the Albuquerque Area Office identifies supplemental monies for dentists. Only the dental positions within the Albuquerque Area will be funded with the supplemental monies consistent with the national ranking and site index within that Area.

Should an IHS Service Unit contribute to the LRP, those funds will be used for only those sites located in that Service Unit. Those sites will retain their relative ranking from the national site-ranking list. For example, Chinle Service Unit identifies supplemental monies for pharmacies. The Chinle Service Unit consists of two facilities, namely the Chinle Comprehensive Health Care Facility and the Tsaile PHS Indian Health Center. The national ranking will be used for the Chinle Comprehensive Health Care Facility (Score =44) and the Tsaile PHS Indian Health Center (Score =46). With a score of 46, the Tsaile PHS Indian Center would receive priority over the Chinle Comprehensive Health Care Facility.

This program is not subject to review under Executive Order 12372.

Dated: December 9, 2002.

The Catalog of Federal Domestic Assistance Number is 93.164.

Charles W. Grim,

Assistant Surgeon General, Interim Director.

[FR Doc. 02–31581 Filed 12–13–02; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443-7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Registration Form for the National Registry of Effective Prevention Programs—(OMB No. 0930–0210; Extension, no change)—section 515(d) of the Public Health Service Act (42 U.S.C. 290bb–21) requires that the Director of SAMHSA's Center for Substance Abuse Prevention (CSAP) establish a national data base providing information on programs for the prevention of substance abuse and specifies that the data base shall contain information appropriate for use by public entities and information appropriate for use by nonprofit private entities. Since 1994, CSAP has met this responsibility through the High Risk Populations Databank on programs for the prevention of substance abuse funded by direct CSAP grants. Because relatively few direct grants of this type have been issued in recent years, CSAP must expand its information collection to include voluntary submission of descriptions of effective substance abuse prevention conducted by state and local governments, nonprofit entities, and the private sector.

CSAP has developed a template to enable practitioners who have evidence that their program reduces risk factors or increases protective factors pertaining to substance abuse to nominate their own standardized program for the Registry. Each program that is nominated should have been standardized (including curriculum manuals, implementation manuals, videotapes, *etc.*), well implemented, and findings should derive from well designed research efforts. Program models nominated will be reviewed and rated by experts annually to be recommended to the field.

CSAP will promote selected models by providing funds to support development of program materials for dissemination, by connecting program developers with organizations able to help in the dissemination efforts, and by promoting model programs nationally through CSAP's State Incentive Grant recipients and regional Centers for Applied Prevention Technology. Annual burden estimates for the Registry are shown in the table below.

Type of submission	Number of respondents	Responses/ respondent	Hours/ response	Total burden hours
Complete	180	1	1.25	225
Abbreviated	8	1	.25	2
Total	188			227

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 10, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–31561 Filed 12–13–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4723–FA–13]

Announcement of Funding Awards for Fiscal Year 2002; Brownfields Economic Development Initiative

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for the Fiscal Year 2002 Brownfields Economic Development Initiative. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to stimulate economic development by local governments and private sector parties in brownfields.

FOR FURTHER INFORMATION CONTACT: Donald P. Mains, Deputy Assistant Secretary for Economic Development, U.S. Department of Housing and Urban Development, Room 7136, 451 Seventh Street, SW., Washington, DC 20410,

telephone (202) 708–4091. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on (800) 877–8399, or 202–708–1455. (Telephone numbers, other than the two "800" numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: The Brownfields Economic Development Initiative is administered by the Office of Economic Development under the Assistant Secretary for Community Planning and Development. The Office of Economic Development administers HUD's ongoing grant programs to assist local governments, nonprofit organizations and the private sector in economic development efforts.

The Brownfields Economic Development Initiative (BEDI) was enacted in section 108(q) of the Housing and Community Development Act of 1974, as amended. Eligible applicants include units of general local government eligible for assistance under the Community Development Block Grant (CDBG) program, as well as urban counties that are eligible under the CDBG program. Each unit of general local government or CDBG-eligible urban county must use its BEDI award to enhance the security of a loan guaranteed by HUD under section 108 of the Housing and Community Development Act of 1974, as amended, for the same project, or to improve the viability of a project financed with the section 108-guaranteed loan. The Brownfields Economic Development Initiative provides each grantee up to $2,000,000 for the redevelopment of abandoned, idled or underutilized industrial or commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination.

The Catalog of Federal Domestic Assistance number for this program is 14.246.

On March 26, 2002 (67 FR 14135) HUD published a Super Notice of Funding Availability (SuperNOFA) announcing the availability of $29,008,155 in FY 2002 funds for the Browonfields Economic Development Initiative. The Department reviewed, evaluated and scored the applications received based on the criteria in the SuperNOFA. As a result, HUD has funded the applications announced below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as set forth below.

List of Awardees for Grant Assistance Under the FY 2002 Brownfields Economic Development Initiative; Funding Competition, by Name, Address, Phone Number, Grant Amount

California

City of Anaheim, 200 S. Anaheim Boulevard, Anaheim, CA 92805, (714) 765–4306, $650,000.
City of Los Angles, 200 N. Spring Street, Los Angeles, CA 90012, (213) 978–0670, $2,000,000.
City of Richmond, 330 25th Street, Richmond, CA 94804, (510) 307–8140, $1,000,000.
City of Bakersfield, 1501 Truxton Avenue, Bakersfield, CA 93301, (661) 326–3765, $250,000.
City of Los Angeles, 215 W. 6th Street, 3rd Floor, Los Angeles, CA 90014, (213) 485–2952, $1,400,000.
City of San Jose, 801 N. First Street, San Jose, CA 95110, (408) 794–1056, $2,000,000.
City of Visalia, 707 West Acequia Avenue, Visalia, CA 93291, (559) 713–4511, $244,000.

Florida

City of Miami, 444 SW. 2 Avenue, Suite 1035, Miami, FL 33130, (305) 416–1414, $1,000,000.
City of Pompano Beach, 100 West Atlantic Boulevard, Pompano Beach, FL 33060, (954) 786–4083, $500,000.

Iowa

City of Waterloo, 715 Mulberry Street, Waterloo, IA 50703, (319) 291–4366, $2,000,000.

Illinois

City of Rockford, 425 E. State Street, Rockford, Il 61104, (815) 987–5694, $300,000.

Massachusetts

City of Worcester, 455 Main Street, Rm. 309, Worcester, MA 01608, $1,000,000.

Michigan

City of Flint, 1101 S. Saginaw Street, Flint, MI 48502, (810) 766–7436, $780,000.
Wayne County, Building L–13, 600 Randolph, Detroit, MI 48226, (313) 224–5250, $650,000.

New Mexico

City of Carlsbad, PO Box 1569, Carlsbad, NM 88220, (505) 887–1191, $775,000.

New York

City of New York, 100 Gold Street, Rm. 5–B2, New York, NY 10038, (212) 863–8060, $665,000.
City of Yonkers, 40 North Broadway, Yonkers, NY 10701, (914) 377–6619, $1,000,000.

Pennsylvania

Chester County, 2 North High Street, PO Box 2748, West Chester, PA 19380, (610) 344–6900, $2,000,000.
City of Pittsburgh, 414 Grant Street, Pittsburgh, PA 15219, (412) 255–6554, $1,500,000.
City of Reading, 815 Washington Street, Reading, PA 19601, (610) 655–6211, $1,100,000.

Rhode Island

City of East Providence, 145 Taunton Avenue, East Providence, RI 02924, (401) 435–7530, $2,000,000.

Utah

City of Orem, 56 North Street, Orem, UT, (801) 226–1521, $500,000.

Virginia

City of Norfolk, 810 Union Street, Rm. 1100, Norfolk, VA 23510, (757) 533–4685, $2,000,000.

Dated: December 10, 2002.

Roy Bernardi,

Assistant Secretary for Community , Planning and Development.

[FR Doc. 02–31545 Filed 12–13–02; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for an Incidental Take Permit for the Development and Operation of a High Adventure Boy Scout Camp on the 4,848-Acre Griffith League Ranch, Bastrop County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Boy Scouts of America Capitol Area Council #564 (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–065406–0. The requested permit, which is for a period of 50 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the development and operation of a high adventure Boy Scout Camp on the 4,848-acre Griffith League Ranch, Bastrop County, Texas. The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application.

DATES: Written comments on the application should be received within 60 days of the date of this publication.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by written or telephone request to Sybil Vosler, U.S. Fish and Wildlife Service, Ecological Services Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request or by appointment only during normal business hours (8 a.m. to 4:30 p.m.) at the U.S. Fish and Wildlife Service Office, Austin, Texas. Data or comments concerning the application and EA/HCP should be submitted in writing to the Field Supervisor, U.S. Fish and Wildlife Service Office, Austin, Texas at the above address. Please refer to permit number TE–065406–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Sybil Vosler at the above U.S. Fish and Wildlife Service Office, Austin, Texas.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: The Boy Scouts of America Capitol Area Council #564 plans to develop and operate a high adventure Boy Scout Camp on the 4,848-acre Griffith League Ranch, Bastrop County, Texas. This action would eliminate up to approximately 498 acres of habitat and moderately impact up to 416 acres of Houston toad habitat resulting in take of the Houston toad. The Applicant proposes to compensate for this incidental take of the Houston toad by setting aside and managing under a long-term conservation easement up to 748 acres of the Griffith League Ranch for the benefit of the toad depending on the actual acres impacted. The Boy Scouts expect that balance of the Houston toad habitat on the Griffith League Ranch will have little or no impact from activities such as day hiking, backpacking, orienteering and nature studies. The Boy Scouts of America Capitol Area Council #564 believe they could use their resources to manage the Griffith League Ranch in such a manner as to avoid impacts and protect the toad as much as possible while carrying out their primary mission. They will also incorporate information regarding the conservation of the Houston toad into the educational program at Griffith League Ranch and facilitate scientific studies aimed at increasing the available information about the toad by making the Griffith League Ranch available for such studies.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible, would not provide a valuable social service, and would not contribute to positive management and increased knowledge of the Houston toad. Alteration of the project design increased the level of impacts and was rejected.

A determination of jeopardy or non-jeopardy to the species and a decision pursuant to the National Environmental Policy Act will not be made until at least 60 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and NEPA regulations (40 CFR 1506.6).

Geoffrey L. Haskett,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 02–31565 Filed 12–13–02; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of a Permit Application for Incidental Take and Notice of Availability of an Environmental Assessment/Habitat Conservation Plan For Issuance of an Endangered Species Act Section 10(a)(1)(B) for the Cactus Ferruginous Pygmy-Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Exeter LXI, L.L.C. (Applicant) has applied for an incidental take permit (TE–063647–0) pursuant to section 10(a) of the Endangered Species Act (Act). The requested permit would authorize the incidental take of the endangered cactus ferruginous pygmy-owl (*Glaucidium brasilianiam cactorum*), which would occur as a result of the construction and occupation of a proposed 103-acre residential development project (Skyranch) in Pima County, Arizona. A draft Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the proposed development project has been prepared as required under section 10(a)(1)(B).

DATES: Written comments on the application should be received within 60 days of the date of this publication.

ADDRESSES: Persons wishing to review the application and draft EA/HCP may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Kim Hartwig, U.S. Fish and Wildlife Service, 110 S. Church Ave, Suite 3450, Tucson, Arizona 85701 (520/670–4617). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8 a.m. to 4:30 p.m.) at the U.S. Fish and Wildlife Service, Tucson, Arizona. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, 110 South Church Ave, Suite 3450, Tucson, Arizona 85701. Please refer to permit number TE–063647–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Kim Hartwig, U.S. Fish and Wildlife Service, 110 S. Church Ave, Suite 3450, Tucson, Arizona 85701.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the cactus ferruginous pygmy-owl. However, the Fish and Wildlife Service (Service), under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Exeter LXI, L.L.C. plans to construct a residential development on 103-acres of the 515-acre Skyranch property. This action will eliminate 103 acres or less of cactus ferruginous pygmy-owl habitat. The Service and the Applicant have prepared a draft EA/HCP that outlines the measures necessary to minimize and mitigate to the maximum extent practicable the incidental take of the cactus ferruginous pygmy-owl. The Applicant proposes to compensate for the incidental take of the cactus ferruginous pygmy-owl by preserving 413 acres of the 515-acre Skyranch property as a Reserve, which will be buffered from development by development setbacks.

A determination of jeopardy or non-jeopardy to the species and a decision

pursuant to the National Environmental Policy Act (NEPA) will not be made until at least 60 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and NEPA regulations (40 CFR 1506.6).

Geoffrey L. Haskett,

Regional Director, Region 2.

[FR Doc. 02–31566 Filed 12–13–02; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–03–1020–PG]

Notice of Public Meeting, New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) New Mexico Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held on January 9–10, 2003, at the Sheraton Uptown, 2600 Louisiana Blvd., Albuquerque, NM beginning at 8 a.m. The meeting will adjourn at approximately 5 p.m. both days. An optional Field Trip is planned for the Placitas area. The three established RAC subcommittees will meet in the late afternoon or evening on Thursday, January 9. The public comment period will begin at 10 a.m. on Friday, January 10, and end at 12 noon.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in New Mexico. At this meeting, we will have briefings/discussion on:

- Report from the RAC Chairs' and Collaborative Land Use Planning Meetings.
- What is the RAC's role.
- Where can the RAC's influence be most effective over the next 1–2 years.
- Future planning and problem solving.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. New Mexico RAC meetings are coordinated with the representative of the Governor of the State of New Mexico, the Office of the Lieutenant Governor.

FOR FURTHER INFORMATION CONTACT: Theresa Herrera, RAC Coordinator, New Mexico State Office, Office of External Affiars, Bureau of Land Management, P.O. Box 27115, Santa Fe, NM 87502–0115, (505) 438–7517.

Dated: December 6, 2002.

Richard A. Whitley,

Acting State Director.

[FR Doc. 02–31548 Filed 12–13–02; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1410–PG]

Notice of Public Meeting, Alaska Resource Advisory Council

AGENCY: Bureau of Land Management, Alaska State Office, Interior.

ACTION: Notice of public meeting

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Alaska Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held February 13–14, 2003, at the Anchorage Federal Office Building, located at 7th and C Street, beginning at 8:30 a.m. The public comment period will begin at 1 p.m. February 13.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK 99513. Telephone (907) 271–3322 or e-mail *Teresa_McPherson@ak.blm.gov.*

SUPPLEMENTARY INFORMATION: the 13-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Alaska. At this meeting, topics we plan to discuss include:

- The Resource Advisory Council's 2003 work plan.
- Outdated withdrawals on federal public lands in Alaska.
- Status of planning in the National Petroleum Reserve Alaska (NPR–A).
- Other topics the Council may rise.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allotted for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact BLM.

Dated: December 6, 2002.

Linda S.C. Rundell,

Acting State Director.

[FR Doc. 02–31562 Filed 12–13–02; 8:45 am]

BILLING CODE 4310–JA–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–460]

Certain Sortation Systems, Parts Thereof, and Products Containing Same; Commission Decision To Review Portions of a Final Initial Determination Finding a Violation of Section 337; Schedule for Filing Written Submissions on the Violation Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review portions of the final initial determination issued by the presiding administrative law judge (ALJ) on October 22, 2002, finding a violation of section 337 of the Tariff Act of 1930, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3041. Copies of the public version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may also be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol.public.* Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation is before the Commission for a determination of whether to review, in whole or in part, the final initial determination ("ID") of the presiding administrative law judge ("ALJ"), in which he found a violation of section 337 of the Tariff Act of 1930, as amended.

The Commission voted to institute this investigation on July 19, 2001, based upon a complaint filed on June 25, 2001, by Rapistan Systems Advertising Corp. and Siemens Dematic Corp., both of Grand Rapids, Michigan. 66 FR 38741 (July 25, 2001). Named as respondents were Vanderlande Industries Nederland BV of the Netherlands, and Vanderlande Industries of Atlanta, Georgia (collectively referred to as "Vanderlande"). Vanderlande Industries Nederland BV of the Netherlands designs and manufactures the accused sortation systems, and Vanderlande Industries of Atlanta imports, sells, and installs the accused sortation systems.

Complainants alleged that respondents had violated section 337 by importing into the United States, selling for importation, and selling within the United States after importation certain sortation systems, or components thereof, covered by independent claims 1, 13, 23, 30, and 42 and dependent claims 2, 3, 4, 8, 9, 17, 18, 20, 22, 24, 27, 29, 33, 35, 36, 37, 39, 43, 45, 46, 47, and 49 of U.S. Patent No. 5,127, 510 ("the '510 patent"), owned by Rapistan Systems and exclusively licensed to Siemens Dematic. On April 5, 2002, complainants filed an unopposed motion asking for the termination of the investigation with respect to claims 2, 3, 8, 9, 18, 24, 36, 37, 29, 46, 47, and 49. On May 16, 2002, the ALJ granted the motion in an ID (Order No. 32) and the Commission determined not to review that ID. The claims of the '510 patent at issue are therefore claims 1, 4, 13, 17, 20, 22, 23, 27, 29, 30, 33, 35, 42, 43, and 45. The complaint further alleged that an industry in the United States exists, as required by subsection (a)(2) of section 337.

An evidentiary hearing was held on June 4–17, 2002. On October 22, 2002, the ALJ issued his final ID, in which he determined that respondents' sortation systems, and parts thereof, infringe claims 1 and 4 of the '510 patent, and that the '510 patent is valid and enforceable. Based upon these findings, he found a violation of section 337.

The ALJ recommended issuance of a limited exclusion order barring importation of the accused Mark 2 Posisorter and its parts and components. He recommended excluding spare parts destined for UPS's Hub 2000 facility in Louisville, Kentucky from the scope of the limited exclusion order. He also recommended a bond during the Presidential review period in the amount of 100 percent of the entered value of the infringing products.

On November 4, 2002, Vanderlande and the IA petitioned for review of the ALJ's final ID, and Rapistan submitted a contingent petition for review asking that the Commission review certain issues if it decided to review the ID. On November 12, 2002, Vanderlande, Rapistan, and the IA filed reply submissions.

Having reviewed the record in this investigation, including the parties' written submissions, the Commission has determined to review the ID on the following issues: (1) The ID's construction of the element "contiguous, generally planar surfaces sloping downward from an upper extent of said diverting surface laterally inward and longitudinally forward or rearward" in independent claim 30, and dependent claims 33, and 35, and the infringement findings related to this claim element; and (2) the ID's findings regarding the elements of equitable estoppel.

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in Vanderlande being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background information, see the Commission Opinion, Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360, USITC Publication 2843 (Dec. 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the violation issues under review, and on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding and the ALJ's conclusions concerning the two violation issues. Complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Written submissions and proposed remedial orders must be filed no later than the close of business on December 23, 2002. Reply submissions must be filed no later than the close of business on December 30, 2002. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions

will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and sections 210.42, 210.43, 210.45, and 210.50 of the Commission's rules of practice and procedure, 19 CFR 210.42, 210.43, 210.45, and 210.50.

Issued: December 11, 2002.
By order of the Commission.

Marilyn R. Abbott,

Secretory.

[FR Doc. 02–31621 Filed 12–13–02; 8:45 am]

BILLING CODE 9020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Extension of the Unemployment Insurance (UI) Title XII Advances Process

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the DOL is soliciting comments concerning the proposed extension of the process for requesting advances from the Federal Unemployment Account (FUA) and repayment of such advances under title XII of the Social Security Act (SSA). Technically, there is no request for information. There is, however, a paperwork burden on States because they must prepare and transmit formal requests for the authority to request advances and the repayment of said advances.

A copy of the proposed procedure can be obtained by contacting the addressee listed below.

DATES: Written comments must be submitted on or before February 14, 2003.

ADDRESSES: Office of Workforce Security, Employment and Training Administration, Department of Labor, Room S 4231, 200 Constitution Ave, NW., Washington, DC, 20210; 202–693–3200 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: James E. Herbert 202–693–2926, *jherbert@doleta.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Title XII section 1201 of the SSA provides for advances to States from the FUA. The law further sets out specific requirements to be met by a State requesting an advance:

- The Governor must apply for the advance;
- The application must cover a 3 month period and the Secretary of Labor must be furnished with estimates of the amounts needed in each month of the 3 month period;
- An application for an advance shall be made on such forms and shall contain such information and data (fiscal and otherwise) concerning the operation and administration of the State unemployment compensation law as the Secretary of Labor deems necessary or relevant to the performance of his duties under this title;
- The amount required by any State for the payment of compensation in any month shall be determined with due allowance for contingencies and taking into account all other amounts that will be available in the State's unemployment fund for the payment of compensation in such month;
- The term "compensation" means cash benefits payable to individuals with respect to their unemployment exclusive of expenses of administration.

Section 1202(a) of the SSA provides that the Governor of any State may at any time request that funds be transferred from the account of such State to the FUA in repayment of part or all of the balance of advances made to such State under section 1201. These applications and repayments may be requested by an individual designated for that authority in writing by the Governor. The DOL proposes to extend this procedure through January 2006.

II. Review Focus

The DOL is particularly interested in comments which:

- Evaluate whether the proposed extension of the current procedure is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed extension of the current procedure, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the procedure; and
- Minimize the burden of the procedure on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

III. Current Actions

This action is requested to maintain the continuity of current procedures which have succeeded in the orderly application and repayment operations at both the State and Federal levels. This is not a data collection process.

Agency: Employment and Training Administration, Department of Labor.

Title: Governor's requests for advances from the Federal unemployment account or requests for voluntary repayment of such advances.

OMB Number: 1205–0199.

Affected Public: State governments.

Total Respondents: 50 States, Washington, DC, the Virgin Islands, and Puerto Rico are covered by this process. The DOL estimates eight States will request advances and make voluntary repayments over the next 3 years. The DOL estimates that there will be 10 annual actions for each State.

Frequency: As needed, based on a State's discretion.

Total Responses: 240.

Average Time Per Response: 1 hour.

Estimated Total Burden Hours: 240.

Estimated Total Burden Cost: There are no startup or capital costs. The operating and maintenance costs for the States will be 240 hours × $25 per hour = *$6,000*. The operating and maintenance costs for the Federal government will be 240 responses × 3 hours per response × $60 per hour = *$43,200*.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 10, 2002.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. 02–31526 Filed 12–13–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6551]

State of Alaska Commercial Fisheries Entry Commission Permit #57748Q, Aleknagik, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57748Q, Aleknagik, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31528 Filed 12–13–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6557]

State of Alaska Commercial Fisheries Entry Commission Permit #55124B, Chignik Lake, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #55124B, Chignik Lake, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31529 Filed 12–13–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6553]

State of Alaska Commercial Fisheries Entry Commission Permit #58075V, Aleknagik, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #58075V, Aleknagik, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31527 Filed 12–13–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6559]

State of Alaska Commercial Fisheries Entry Commission Permit #67320B, Clarks Point, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #67320B, Clarks Point, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31530 Filed 12–13–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6561]

State of Alaska Commercial Fisheries Entry Commission Permit #58475G, Clarks Point, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #58475G, Clarks Point, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31531 Filed 12–13–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6563]

State of Alaska Commercial Fisheries Entry Commission Permit #58702U, Clarks Point, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #58702U, Clarks Point, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31532 Filed 12–13–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6564]

State of Alaska Commercial Fisheries Entry Commission Permit #57320W, Clarks Point, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57320W, Clarks Point, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistonce.

[FR Doc. 02–31533 Filed 12–13–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6565]

State of Alaska Commercial Fisheries Entry Commission Permit #57539S, Clarks Point, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57539S, Clarks Point, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistonce.

[FR Doc. 02–31534 Filed 12–13–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6569]

State of Alaska Commercial Fisheries Entry Commission Permit #61712F, Dillingham, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61712F, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31535 Filed 12–13–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6570]

State of Alaska Commercial Fisheries Entry Commission Permit #61358P, Dillingham, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61358P, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31536 Filed 12–13–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection The Remedial Education Provisions of the Fair Labor Standards Act. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 14, 2003.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, e-mail *pforkel@fenix2.dol-esa.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

Under the Fair Labor Standards Act (FLSA), employees who lack a high school diploma or whose reading level or basic skills are at or below the eighth grade level, may be required by their employers to attend up to 10 hours per week of remedial education. Employees who are subject to the overtime provisions of the FLSA ordinarily must be paid one and one-half times their regular rate of pay for all hours worked over 40 in each workweek. The additional hours devoted to such remedial education would not have to be compensated at the same time and one-half overtime rate; however, employees must receive compensation at their regular rate of pay for time spent receiving such remedial education. Employers wishing to utilize the partial overtime exemption for such employees must record the hours of employees spent in remedial education. This information collection is currently approved for use through June 30, 2003.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department seeks the extension of approval to collect this information in order to review and determine employer compliance with the applicable section of the FLSA.

This information collection is for recordkeeping only. There is no change in the information collection request since the last OMB approval.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: The Remedial Education Provisions of the Fair Labor Standards Act.

OMB Number: 1215–0175.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Total Recordkeepers: 15,000.

Frequency: Once per week for 10 weeks.

Average Time per Record: 1 minute per week for 10 weeks (10 min. per employee).

Total Burden Hours: 15,000.

Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 10, 2002.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Offie of Management, Administration ond Planning, Employment Standards Administration.

[FR Doc. 02–31524 Filed 12–13–02; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10 a.m., Thursday, December 19, 2002.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Request for a Federal Credit Union to Expand its Community Charter.
2. Requests from Three (3) Federal Credit Unions to Convert to Community Charters.
3. Request from a Federal Credit Union to Add an Underserved Area to its Field of Membership.
4. Appeal from a Federal Credit Union of the Regional Director's Denial of a Field of Membership Expansion Request.
5. Proposed Rule: Part 703 of NCUA's Rules and Regulations, Investment and Deposit Activities.
6. Notice and Request for Comment on Corporate Federal Credit Union Bylaws.
7. National Credit Union Share Insurance Fund (NCUSI) Operating Level for 2003.
8. Community Development Revolving Loan Fund for Credit Unions: Notice of Applications for Participation and Interest Rate for Loans.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, December 19, 2002.

PLACE: Board Room 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. One (1) Insurance Appeal. Closed pursuant to Exemption (6).
2. Revisions to Delegations of Authority and Travel Manual. Closed pursuant to Exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone: 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–31701 Filed 12–12–02; 2:16 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 55, "Operators' Licenses".

2. *Current OMB approval number:* 3150–0018.

3. *How often the collection is required:* As necessary for NRC to meet its responsibilities to determine the eligibility of applicants for operators' licenses, prepare or review initial operator licensing and requalification examinations, and review applications for and performance of simulation facilities.

4. *Who is required or asked to report:* Holders of and applicants for facility (*i.e.*, nuclear power, research, and test reactor) operating licenses and individual operators' licenses.

5. *The number of annual respondents:* 106.

6. *The number of hours needed annually to complete the requirement or request:* 65,586 (approximately 44,736 hours of reporting burden and approximately 20,850 hours of recordkeeping burden).

7. *Abstract:* 10 CFR Part 55, "Operators' Licenses," of the NRC's regulations, specifies information and data to be provided by applicants and facility licenses so that the NRC may make determinations concerning the licensing and requalification of operators for nuclear reactors, as necessary to promote public health and safety. The reporting and recordkeeping requirements contained in 10 CFR Part 55 are mandatory for the licensees and applicants affected.

Submit, by February 14, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 9th day of December 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–31610 Filed 12–13–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power & Light Company; H. B. Robinson Steam Electric Plant, Unit No. 2; Exemption

1.0 Background

Carolina Power & Light Company (CP&L) is the holder of Facility Operating License No. DPR–23, which authorizes operation of the H. B. Robinson Steam Electric Plant, Unit No. 2 (HBRSEP2). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Darlington County, South Carolina.

2.0 Request/Action

Pursuant to 10 CFR 55.59(c), a facility's licensed operator requalification program must be conducted for a continuous period not to exceed 2 years (24 months) and upon conclusion must be promptly followed, pursuant to a continuous schedule, by successive requalification programs. Each 2-year requalification program must include a comprehensive biennial written examination and annual operating tests.

By letter dated October 11, 2002, CP&L requested a one-time exemption from the schedular requirements of 10 CFR 55.59(c). Specifically, for HBRSEP2, CP&L has requested a one-time extension from December 31, 2002, to March 31, 2003, for completing the licensed operator requalification annual operating test and comprehensive biennial written examination. This requested exemption would allow an extension of 3 months beyond the schedule for completion of the operating test and written examination as required by 10 CFR 55.59(c). CP&L's letter constitutes a request for exemption under 10 CFR 55.11, which states: "The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property and are otherwise in the public interest." The exemption is being requested for HBRSEP2 due to an unusually high workload associated with a plant refueling outage (RFO21) and a power uprate project, which occurred just prior to the originally scheduled examinations. Due to the refueling outage and power uprate activities, which included modifying the plant-specific simulator and extensive training of personnel on new and modified procedures, development and administration of the written examination and operating test within the required schedule is viewed as a schedule and workload hardship by the licensee.

3.0 Discussion

Pursuant to 10 CFR 55.11, the Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property and are otherwise in the public interest.

The Commission has determined that, pursuant to 10 CFR 55.11, granting an exemption to the facility licensee from the schedular requirements in 10 CFR 55.59(c) by allowing HBRSEP2 a one-time extension in the allowed time for completing the licensed operator requalification annual operating test and comprehensive biennial written examination is authorized by law and will not endanger life or property and is otherwise in the public interest. Although the schedular requirements of 10 CFR 55.59(c) at HBRSEP2 will be exceeded, operator performance continues to be satisfactory, as demonstrated both in the plant and during other aspects of operator requalification training. Granting this exemption will allow HBRSEP2 to continue with safe plant operations during the refueling outage, which includes a power uprate project, without undue hardship to plant personnel and HBRSEP2 licensed operators.

4.0 Conclusion

Accordingly, the Commission hereby grants the facility licensee an exemption on a one-time basis from the schedular requirements of 10 CFR 55.59(c) to allow the current HBRSEP2 requalification program to be extended beyond the 24 months, from December 31, 2002, to March 31, 2003. The NRC understands that, following the completion of the operating test and written examination, the next 24-month licensed operator requalification program will begin on April 1, 2003, and continue for a 24-month period.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (67 FR 72983).

This exemption is effective upon issuance and expires on March 31, 2003.

Dated at Rockville, Maryland, this 10th day of December, 2002.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–31608 Filed 12–13–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–00017]

Notice of Consideration of Amendment Request for the Dow Chemical Company, Midland, MI and Opportunity for Providing Comments and Requesting a Hearing

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Material License No. STB–527 issued to The Dow Chemical Company (Dow), to authorize decommissioning of its Bay City Site Decommissioning Management Plan (SDMP) site in Bay City, Michigan.

Dow began using thorium metal and compounds in 1956 for the production of magnesium-thorium alloys at a Dow-owned site in Bay City, Michigan. The waste slag from the alloying process was disposed of on Dow property in Bay City. Magnesium-thorium material returned by Dow customers was received at Dow's Midland, MI, site for storage. The decommissioning plan (DP) submitted by Dow to decommission the two (Midland and Bay City) sites was approved by a license amendment on July 19, 1996 (Amendment 6). The Midland site was remediated and removed from the license on March 3, 2000 (Amendment 8). After remediating about 31 acres of the 40 acre contaminated area at the Bay City site, Dow proposed, in March 2001, a different approach and conceptual plan for remediating the remaining nine acres. According to Dow, the reason for the change in the approach is that the decommissioning cost is expected to be too high under the previously approved DP. In August 2001, Dow submitted a Supplement to the previously (1996) approved DP. This Supplement was rejected in September 2001 because it was found to be administratively deficient for a detailed technical review. Dow submitted a revised Supplement on January 31, 2002. On July 19, 2002, Dow submitted Attachment 1 to the January 31, 2002, revised Supplement. An NRC administrative review, documented in a letter to Dow dated August 5, 2002, found the revised Supplement acceptable to begin a technical review.

If the NRC approves the revised Supplement, the approval will be documented in an amendment to NRC License No. STB–527. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and either an Environmental Assessment or an Environmental Impact Statement.

II. Opportunity To Provide Comments

The NRC is providing notice to individuals in the vicinity of the site that the NRC is in receipt of a revised Supplement to the DP, and will accept comments concerning this decommissioning proposal and its associated environmental impacts. Comments with respect to this action should be provided in writing within 30 days of this notice and addressed to M. (Sam) Nalluswami, Project Manager, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6694, fax number (301) 415–5398, e-mail: *smn@nrc.gov*. Comments received after 30 days will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

III. Opportunity To Request a Hearing

NRC also provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Whether or not a person has or intends to provide comments as set out in section II above, pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m., Federal workdays; or

2. By mail or telegram, addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be also transmitted to the

Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov*.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, The Dow Chemical Company, Ashman Center, 4520 East Ashman, Midland, MI 48674, Attention: Mr. Ben Baker, Project Manager, and;

2. The NRC staff, by delivery to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m., Federal workdays, or by mail, addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR Part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

IV. Further Information

The application for the license amendment and supporting documentation are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. (ADAMS Access Numbers: January 31, 2002, Revised Supplement—ML023170462; July 19, 2002, Attachment 1—ML023170508; August 5, 2002, Acceptance Letter—ML022280370) Any questions with respect to this action should be referred to M. (Sam) Nalluswami, Project Manager, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6694. Fax: (301) 415–5398.

Dated at Rockville, Maryland, this 9th day of December, 2002.

For the Nuclear Regulatory Commission.

Larry Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–31611 Filed 12–13–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8968]

Notice of Timely Receipt and Consideration of Renewal Application for the Crownpoint Uranium Project, Crownpoint, NM, and Opportunity To Provide Comments and To Request a Hearing

I. Introduction

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated August 22, 2002, a request from Hydro Resources, Inc. (HRI) for renewal of NRC Source Material License SUA–1580 for the Crownpoint Uranium Project. The application is deemed timely filed, and accordingly, the license will not expire until final action has been taken by the NRC.

In January 1998, HRI was granted by the NRC, Source Material License SUA–1580 for uranium production at the Crownpoint Uranium Project which is the subject of an ongoing adjudication before the NRC. HRI has submitted a license renewal application for a second term. The application only requests the extension of the effective dates of the existing license, all the processes authorized by the current license will remain unchanged.

If the NRC approves the renewal request, the approval will be documented in the issuance of a renewed HRI license. However, before approving the proposed renewal, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

II. Opportunity To Provide Comments

The NRC is providing notice to individuals in the vicinity of the facility that the NRC is in receipt of this request, and will accept comments concerning this action within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room T–6 D59, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852, from 7:30 a.m. until 4:15 p.m. on Federal workdays.

III. Opportunity To Request a Hearing

NRC also provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Whether or not a person has or intends to provide comments as set out in section II above, pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m., Federal workdays; or

2. By mail or telegram, addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearings be also transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov*.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Hydro Resources, Inc., 650 South Edmonds Lane, Suite 108, Lewisville, Texas 75067, Attention: Mr. Mark S. Pelizza, President; and

2. The NRC staff, by delivery to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m., Federal workdays, or by mail, addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Because continuing disruptions in the delivery mail to United States Government offices, it is requested that requests for hearing be transmitted to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h).

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

IV. Further Information

The application for the license renewal is available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Number: ML022460195, License Renewal Request, August 22, 2002). Documents may also be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Any questions with respect to this action should be referred to Mr. Michael Layton, Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–8A33, Washington, DC 20555–0001. Telephone: 301–415–6676. Fax: 301–415–5955.

Dated at Rockville, Maryland, this 9th day of December, 2002.

For the U.S. Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–31607 Filed 12–13–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–318]

Calvert Cliffs Nuclear Power Plant, Inc., Calvert Cliffs Nuclear Power Plant, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) Part 50.44, 46 and Appendix K for Renewed Facility Operating License No. DPR–69, issued to Calvert Cliffs Nuclear Power Plant, Inc. (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit No. 2 (Calvert Cliffs), located in Calvert County, Maryland.

Environmental Assessment

Identification of the Proposed Action

The proposed action, as described in the licensee's application for exemption dated August 6, 2002, would allow the licensee to use up to four lead fuel assemblies (LFAs) with an advanced cladding material, a zirconium-based alloy, that does not meet the definition of Zircaloy or ZIRLO, which are referred to in Title 10 of the Code of Federal Regulations section 50.46(a)(1)(i). The LFAs are scheduled to be loaded into the Calvert Cliffs Unit 2 reactor core during the upcoming refueling outage and would remain in the core for 2 cycles.

The Need for the Proposed Action

The proposed exemption from 10 CFR 50.44, 10 CFR 50.46, and Appendix K to 10 CFR Part 50 is needed because these regulations specifically refer to light-water reactors containing fuel consisting of uranium oxide pellets enclosed in zircaloy or ZIRLO tubes. A new zirconium-based alloy cladding has been developed, which is not the same chemical composition as zircaloy or ZIRLO. Therefore, the licensee needs an exemption to insert up to four assemblies containing the new fuel cladding material into the Calvert Cliffs reactor core for test during operation.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that, the proposed exemption will not present an undue risk to the public health and safety. The safety evaluation performed by Framatone ANP, Inc. demonstrates that the predicted chemical, mechanical, and material performance of the M5 cladding is acceptable under all anticipated M5™ operational occurrences and postulated accidents. Furthermore, the LFAs will be placed in non-limiting core locations. In the unlikely event that cladding failures occur in the LFAs, environmental impact would be minimal and is bounded by previous environmental impact statements.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

In regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the Calvert Cliffs Nuclear Power Plant (CCNPP) dated April 1973 or the Final Environmental Impact Statement for License Renewal for the CCNPP dated October 1999.

Agencies and Persons Consulted

On September 5, 2002, the staff consulted with the Maryland State official, Richard McLean of the Maryland Department of the Environment, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the

proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 6, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*.

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 6th day of December 2002.

For the Nuclear Regulatory Commission.

Guy S. Vissing,

Acting Chief, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–31609 Filed 12–13–02; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Privacy Act of 1974, System of Records

AGENCY: Postal Service.

ACTION: Notice of new and deleted systems of records.

SUMMARY: The Postal Service proposes a reorganization of the current Privacy Act systems of records, as they relate to its external customers. The Postal Service is creating 16 new systems and deleting 22 existing systems of records. The new systems contain all records provided by individual and business customers to the Postal Service.

The new systems encompass a wider range of programs and services in order to provide customers with a comprehensive view of the Postal Service's data collection and management practices. They are organized into more useful categories and are written in plain English. The new systems incorporate our Privacy Act and Postal Service privacy policy requirements, and they reflect the Postal Service focus on industry best practices in protecting customer privacy. The routine uses that apply to customer systems have been revised to more clearly communicate the ways in which the Postal Service uses customer information.

This notice publishes:

Explanation (Section A)
Systems of records index (Section B)
Privacy Act overview (Section C)
Routine uses for general systems (Section D)
Routine uses for customer systems (Section E)
Deletion of 22 systems of records (Section F)
Advance notice of 16 new systems of records (Section G)
Complete text of new systems of records (Section H)

Deleted Systems

The 22 existing systems deleted by the reorganization are listed as follows:

010.010 Address Change, Mail Forwarding, and Related Services Records
010.020 Boxholder Records
010.050 Delivery of Mail Through Agents
010.060 Free Matter for Blind and Visually Handicapped Persons
010.070 Mailbox Irregularities
010.090 Customer Public Key Certificate Records
040.010 Memo to Mailers Address File
040.020 Sexually Oriented Advertisements
040.030 Auction Customer Address Files
040.050 Customer Electronic Document Preparation and Delivery Records
040.060 Customer Electronic Bill Presentment and Payment Records
050.050 International Money Transfer Transaction and Inquiry Records
050.070 Funds Transaction/Transfer Reports
050.080 Suspicious Transaction Reports
090.020 Passport Application Records
140.020 Postage—Postage Evidencing System Records
160.010 Domestic Insured, Registered, Collect on Delivery (COD), and Express Mail Claim and Inquiry Records
160.020 International Ordinary, Insured, Registered, and Express Mail Inquiry and Application for Indemnity Records
220.010 Marketing Database—Customer Records
220.020 Express Mail Service Customer Mailing List
220.030 Postal Products Sales and Distribution
400.010 USPS eServices Registration System Records

New Systems

The preceding 22 systems will be replaced in their entirety with the 16 new systems of records listed as follows:

500.000 Address Change, Mail Forwarding, and Related Services
510.100 *www.usps.com* Registration
510.200 *www.usps.com* Ordering, Payment, and Fulfillment
510.300 Offline Registration, Payment, and Fulfillment
520.100 Mailer Services—Applications and Approvals
520.200 Mail Management and Tracking Activity
530.000 Customer Service and Correspondence
540.000 Customer Delivery Instructions
550.000 Auction Files
560.000 Financial Transactions
570.100 Trust Funds and Transaction Records
570.200 Meter Postage and PC Postage Customer Data and Transaction Records
580.000 Post Office and Retail Services
590.000 Sales, Marketing, Events, and Publications
600.000 International Services
610.000 Identity and Document Verification Services

These actions comply with subsection (e)(4) of the Privacy Act (5 U.S.C. 552a) that requires an agency to publish notice of the existence and character of its systems of records upon establishment or revision, and with paragraph 3a(8) of Appendix I to OMB Circular No. A–130 requiring an agency to conduct a review of the accuracy of its systems of records.

DATES: Any interested party may submit written comments on the proposed new systems of records. Sections A through H will become effective without further notice January 27, 2003, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Written comments on this proposal should be mailed or delivered to the Records Officer, United States Postal Service, 475 L'Enfant Plaza, Room 5846, Washington, DC 20260–5846. Copies of all written comments will be available at the above address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert J. Faruq at (202) 268–2608.

SUPPLEMENTARY INFORMATION: The Postal Service has revised its Privacy Act systems of records that relate to its customers. The systems of records have been issued in order to clearly communicate the Postal Service's data collection and management practices to all its customers.

The existing customer-related systems have been combined and recategorized into 16 new systems. The new systems have been updated in order to improve usability for customers, ensure inclusion of individuals who use business-oriented products and services, and revise and clarify routine uses of information for customer-related systems.

The new systems of records will enhance privacy protection by extending protections to business customers, expanding programs covered, incorporating privacy policies, refining disclosures of information, and establishing systems that are clearer and easier to use and understand.

The new systems of records are not expected to have any adverse effect on privacy rights.

Following are:

Section A—Explanation
Section B—Index
Section C—Privacy Act protections
Section D—Routine uses for general systems
Section E—Routine uses for customer systems
Section F—Deletion of 22 systems
Section G—Notice of 16 new systems
Section H—Complete text of new systems

Section A. Explanation

This notice includes Sections A–H relating to systems of records under the Privacy Act.

Section B is a complete index of Postal Service systems of records that incorporates all of the changes published in this notice. Section B is divided into two parts:

Part 1 includes all general systems, such as personnel systems, litigation systems, and other noncustomer systems.

Part 2 includes all systems that contain records relating to Postal Service customers.

Section C contains an overview of the Privacy Act, its protections, and a description of authorized disclosures.

Section D contains the routine uses that apply to all general systems of records.

Section E contains the routine uses that apply to all customer systems of records.

Section F is a listing of the 22 deleted systems of records with specific references for each deleted system to the new system containing the relevant records.

Section G is the advance notice of the 16 new systems of records, with a listing and brief description of each system.

Section H contains the complete text of the 16 new systems of records.

Section B. Systems of Records Index

Part 1. General Systems of Records

010.000 Collection and Delivery Records
.030 Carrier Drive-Out Agreements
.040 City Carrier Route Records
.080 Rural Carrier Route Records
.020.000 Corporate Relations
.010 Biographical Summaries of Management Personnel for Press Release
030.000 Equal Employment Opportunity/Alternative Dispute Resolution
.010 EEO Discrimination Complaint Files
.020 EEO Staff Selection Records
.030 EEO Administrative Litigation Case Files
.040 Roster of Alternative Dispute Resolution Providers
050.000 Finance Records
.005 Accounts Receivable Files
.020 Payroll System
.040 Uniform Allowance Program
.060 Accounts Payable Files
060.000 Consumer Protection Records
.010 Fraud, False Representation, Lottery, and Nonmailability Case Records
.020 Pandering Act Prohibitory Orders
.030 Appeals Involving Mail Withheld from Delivery
.040 Appeals from Termination of Post Office Box or Caller Service
070.000 Inquiries and Complaints
.010 Correspondence Files of the Postmaster General
.020 Government Officials' Inquiry System
.040 Employee Complaint Records
080.000 Inspection Requirements
.010 Investigative File System
.020 Mail Cover Program Records
.030 Vehicular Violations Records System
100.000 Office Administration
.010 Carpool Coordination/Parking Services Records System
.050 Localized Employee Administration Records
110.000 Property Management
.010 Accountable Property Records
.020 Possible Infringement of Postal Service Intellectual Property Rights
120.000 Personnel Records
.020 Blood Donor Records System
.035 Employee Accident Records
.036 Discipline, Grievance, and Appeals Records for Nonbargaining Unit Employees
.040 Employee Job Bidding Records
.050 Employee Ideas Program Records
.060 Confidential Statements of Employment and Financial Interests
.061 Public Financial Disclosure Reports for Executive Branch Personnel
.070 General Personnel Folders (Official Personnel Folders and Records Related Thereto)
.090 Medical Records
.091 Vehicle Operators Controlled Substance and Alcohol Testing Records
.098 Office of Workers' Compensation Program (OWCP) Record Copies
.099 Injury Compensation Payment Validation Records
.100 Performance Awards System Records
.110 Preemployment Investigation Records
.120 Personnel Research and Test Validation Records
.121 Applicant Race, Sex, National Origin, and Disability Status Records
.130 Postmaster Selection Program Records
.140 Employee Assistance Program (EAP) Records
.151 Recruiting, Examining, and Appointment Records
.152 Career Development and Training Records
.153 Individual Performance Evaluation/Measurement
.154 Employee Survey Process System Records
.170 Safe Driver Awards Records
.180 Skills Bank (Human Resources Records)
.190 Supervisors' Personnel Records
.210 Vehicle Maintenance Personnel and Operators Records
.220 Arbitration Case Files
.230 Adverse Action Appeals (Administrative Litigation Case Files)
.240 Garnishment Case Files
150.000 Records and Information Management Records
.010 Information Disclosure Accounting Records (Freedom of Information Act)
.015 Freedom of Information Act Appeals and Litigation Records
.020 Information Disclosure Accounting Records (Privacy Act)
.025 Privacy Act Appeals and Litigation Records
.030 Computer Logon ID Records
170.000 Resource Management/Productivity Records
.010 Workload/Productivity Management Records
.020 Resource Management Database
190.000 Litigation Records
.010 Miscellaneous Civil Action and Administrative Proceeding Case Files
.020 National Labor Relations Board Administrative Litigation Case Files
.030 Employee and Labor Relations Court Litigation Case Files
200.000 Nonmail Monetary Claims
.010 Relocation Assistance Claims
.020 Monetary Claims for Personal Property Loss or Damage Involving Present or Former Employees
.030 Tort Claims Records
210.000 Contractor Records
.010 Architect-Engineers Selection Records
.020 Driver Screening System Assignment Records
.030 Contractor Employee Fingerprint Records
.040 Supplier and Contractor Records
300.000 Inspector General's Records
.010 Investigative File System

Part 2. Customer Systems of Records

500.000 Address Change, Mail Forwarding, and Related Services
510.000 Registration, Fulfillment of Products and Services
.100 *www.usps.com* Registration
.200 *www.usps.com* Ordering, Payment and Fulfillment
.300 Offline Registration, Payment and Fulfillment

520.000 Mail Management and Tracking
.100 Mailer Services—Applications and Approvals
.200 Mail Management and Tracking Activity
530.000 Customer Service and Correspondence
540.000 Customer Delivery Instructions
550.000 Auction Files
560.000 Financial Transactions
570.000 Trust Funds and Transaction Records
.100 Trust Funds and Transaction Records
.200 Meter Postage and PC Postage Customer Data and Transaction Records
580.000 Post Office and Retail Services
590.000 Sales, Marketing, Events, and Publications
600.000 International Services
610.000 Identity and Document Verification Services

Section C. Privacy Act Protections

Privacy Act

The Privacy Act of 1974, 5 U.S.C. 552a, applies to Federal agencies, including the Postal Service. The Privacy Act provides protections for personal information that an agency maintains in a system of records. A system of records describes a file, database, or program from which information is retrieved about an individual by name or other personal identifier.

Privacy Act Protections

The Privacy Act establishes recordkeeping, access, and nondisclosure requirements for information maintained in a system of records. The Privacy Act requires agencies to publish a description of each system of records to provide full information on how personal information within the system is treated. This includes how information is collected, used, disclosed, stored, and disposed of. It also includes how individuals can obtain access to, correct, and amend, information relating to themselves that is stored in the system.

The Privacy Act places limitations and requirements on how information from within a system can be disclosed, as described below. Sections D and E contain the complete description of routine uses that apply to the Postal Service systems of records.

Authorized Disclosures and Routine Uses

Under the Privacy Act, information can only be disclosed from a system, internally or externally, under one of two conditions.

1. The individual has authorized the disclosure in writing.
2. The disclosure fits within one of 12 specified categories.

The following is a description of disclosures, including those authorized by the Privacy Act, Postal Service routine uses, and regulations.

Disclosures Authorized by the Privacy Act

The Privacy Act authorizes disclosures in the following 12 circumstances. To see the official text of the Privacy Act, see 5 U.S.C. 552a(b).

Under the Privacy Act, disclosures are authorized:

1. To agency employees who need the information to perform their job.
2. As required by the Freedom of Information Act (FOIA).
3. For routine uses for which the agency has provided proper notice.
4. To the Bureau of the Census for purposes related to census and survey activities.
5. To a recipient who provides advance written assurance that the information will only be used for statistical research or reporting, and the information provided does not identify individuals.
6. To the National Archives and Records Administration for historic preservation purposes.
7. To other domestic government agencies for a civil or criminal law enforcement activity if the activity is authorized by law. In such cases, the agency head must specify in writing both the law enforcement activity and the particular information needed.
8. To a person upon a showing of compelling circumstances affecting an individual's health or safety. The agency must send notice of the disclosure to the individual's last known address.
9. To Congress, or to any of its committees or subcommittees, to the extent the matter is within their jurisdiction.
10. To the Comptroller General in the performance of duties of the General Accounting Office.
11. Pursuant to the order of a court of competent jurisdiction.
12. To a consumer reporting agency in order to collect claims owed to the Government.

Postal Service Disclosures and Routine Uses

The Privacy Act allows agencies to disclose information from a system of records if they establish a routine use describing the disclosure (see 3 above). Under the Privacy Act, routine uses are defined as disclosures that are compatible with the purpose for which the information was collected—in other words, disclosures that are appropriate and necessary for the efficient conduct of government business. Routine uses for each system of records are established by publishing them in a **Federal Register** notice that describes the system. They must also be disclosed in a notice given to an individual when information is collected directly from the individual. Routine uses that apply to general and customer systems of records are contained in Sections D and E, respectively.

The Privacy Act also allows disclosures required by the Freedom of Information Act (FOIA). Postal Service regulations implementing the Privacy Act and FOIA are contained in 39 CFR parts 261–268. Postal Service regulations describe treatment for particular FOIA and other requests, and describe exemptions permitting nondisclosure for certain personal and business information as allowed by FOIA.

Section D. Prefatory Statement of Routine Uses That Apply to the General Systems of Records

General Systems of Records

Section D includes routine uses for general systems of records. General systems include systems relating to employees, Finance, Postal Inspection Service, litigation, and other systems that are not primarily related to Postal Service customers.

Routine Uses for General Systems

The following are routine uses for general systems of records. (**Note:** The letter "i" was not used.) Each system notice indicates which standard routine uses are incorporated, as well as any specific routine uses that apply.

a. *Disclosure for Law Enforcement Purposes.* When the Postal Service becomes aware of an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, or in response to the appropriate agency's request on a reasonable belief that a violation has occurred, the relevant records may be referred to the appropriate agency, whether Federal, state, local, or foreign, charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

b. *Disclosure Incident to Litigation.* Records from this system may be disclosed to the U.S. Department of Justice or the other counsel representing the Postal Service, or may be disclosed in a proceeding before a court or adjudicative body before which the Postal Service is authorized to appear, when (a) the Postal Service; or (b) any

Postal Service employee in his or her official capacity; or (c) any Postal Service employee in his or her individual capacity whom the Department of Justice has agreed to represent; or (d) the United States when it is determined that the Postal Service is likely to be affected by the litigation, is a party to litigation or has an interest in such litigation, and such records are determined by the Postal Service or its counsel to be plausibly relevant to the litigation, provided, however, that in each case, the Postal Service determines that disclosure of the records is a use of the information that is compatible with the purpose for which it was collected. This routine use specifically contemplates that information may be released in response to relevant discovery and that any manner of response allowed by the rules of the forum may be employed.

c. *Disclosure Incident to Requesting Information.* Records may be disclosed to a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent information, such as licenses, when necessary to obtain information from such agency that is relevant to a Postal Service decision about the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, permit, or other benefit.

d. *Disclosure to Requesting Agency.* Records may be disclosed to a Federal, state, local, or foreign agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conduct of a security or suitability investigation of an individual, the reporting of an investigation of an employee, the letting of a contract, or the issuance or a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. *Congressional Inquiries.* Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the prompting of that individual.

f. *Disclosure to Agents and Contractors.* Records or information from this system may be disclosed to an expert, consultant, or other individual who is under contract to the Postal Service to fulfill an agency function, but only to the extent necessary to fulfill that function. This may include disclosure to any individual with whom the Postal Service contracts to reproduce by typing, photocopy, or other means, any record for use by Postal Service officials in connection with their official duties or to any individual who performs clerical or stenographic functions relating to the official business of the Postal Service.

g. *Storage.* Inactive records may be transferred to a Federal records center for Storage prior to destruction.

h. *Disclosure to Office of Management and Budget.* Records from this system may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that circular.

j. *Disclosure to Outside Auditors.* Records in this system may be subject to review by an independent certified public accountant during an official audit of Postal Service finances.

k. *Disclosure to Equal Employment Opportunity Commission.* Records from this system may be disclosed to an authorized investigator, administrative judge, or complaints examiner appointed by the Equal Employment Opportunity Commission, when requested in connection with the investigation of formal complaint of discrimination filed against the U.S. Postal Service under 29 CFR Part 1614.

l. *Disclosure to Merit Systems Protection Board or Office of the Special Counsel.* Records from this system may be disclosed to the Merit Systems Protection Board or Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies, investigations of alleged or possible prohibited personnel practices, and such other functions as may be authorized by law.

m. *Disclosure to Labor Organizations.* Pursuant to the National Labor Relations Act, records from this system may be furnished to a labor organization when needed by that organization to properly perform its duties as the collective bargaining representative of Postal Service employees in an appropriate bargaining unit.

Section E. Prefatory Statement of Routine Uses That Apply to Customer Systems

Customer Systems of Records

Section E includes routine uses for systems of records containing information relating to Postal Service customers.

Routine Uses for Customer Systems

The following standard routine uses apply to Postal Service systems of records for customer information. The routine uses fall into three categories: (1) Disclosures that are legally required (such as in a legal proceeding); (2) disclosures that facilitate the customer transaction (such as sharing data with contractors assisting in the program); and (3) disclosures for the benefit of the customer (such as sharing with a congressional office at a customer's behest). A system may have an additional routine use or uses on occasion. Those routine uses will be disclosed in each system notice.

1. *Disclosure for Law Enforcement Purposes.* Relevant records may be disclosed to appropriate law enforcement agencies to investigate, prevent, or take action regarding suspected illegal activities against the Postal Service. Records may be disclosed to other law enforcement agencies as required by law.

2. *Disclosure Incident to Legal Proceedings.* When the Postal Service has an interest in litigation or other legal proceedings before a state, Federal, local, administrative, or foreign adjudicative body, relevant records may be disclosed before that adjudicative body and/or to the Department of Justice or other legal counsel representing the Postal Service or its employees, and in response to relevant discovery.

3. *Disclosure to Government Agencies.* Relevant records may be disclosed to a Federal, state, local or foreign government agency when necessary in connection with decisions by the requesting agency, or by the Postal Service, regarding personnel matters, issuance of security clearances, letting of contracts, or decisions to issue licenses, grants, or other benefits.

4. *Congressional Inquiries.* Relevant records about an individual may be disclosed to a congressional office in response to an inquiry from the congressional office made at the prompting of that individual.

5. *Disclosure to Agents, Contractors, and Partners.* Relevant records may be disclosed to entities under contract or agreement with the Postal Service, when necessary to fulfill a Postal Service function or to provide Postal Service products and services to customers.

6. *Disclosure to Agencies and Entities for Financial Transactions.* Relevant records may be disclosed to credit bureaus, government agencies, and service providers that perform identity verification and credit risk assessment services; to financial institutions or payees to facilitate or resolve issues with payment services; or to collection agencies for the purposes of debt collection.

7. *Disclosure to Auditors.* Relevant records may be disclosed to government

agencies and other entities authorized to audit the Postal Service and Postal Service activities, including financial and other audits of the Postal Service.

8. *Disclosure for Customer Service Purposes.* Relevant records may be disclosed to entities if the disclosure is part of the service to the customer. This includes disclosures to addressees of mail to process inquiries and claims; entities to which the customer wants to provide identity verification; the State Department for passport processing; international posts or agents to process international services or inquiries; or disclosures to mailers of sexually oriented advertisements of a list of individuals who do not want to receive them.

9. *Disclosure to Labor Organizations.* Pursuant to the National Labor Relations Act, records may be furnished to a labor organization when needed by that organization to perform properly its duties as the collective bargaining representative of Postal Service employees in an appropriate bargaining unit.

Section F. Deletion of 22 Systems of Records

The following systems have been deleted. The records from the deleted systems are contained in the 16 new systems of records as follows:

010.010 Address Change, Mail Forwarding, and Related Services Records is incorporated into 500.000 Address Change, Mail Forwarding, and Related Services.

400.010 USPS eServices Registration System Records is incorporated into 510.100 usps.com Registration Services.

040.050 Customer Electronic Document Preparation and Delivery Records is incorporated into 510.200 www.usps.com Ordering, Payment and Fulfillment Services.

220.030 Postal Products Sales and Distribution is incorporated into 510.300 Offline Registrations, Payment, and Fulfillment.

010.050 Delivery of Mail Through Agents, 010.060 Free Matter for Blind and Visually Handicapped Persons, 010.070 Mailbox Irregularities, and *040.020 Sexually Oriented Advertisements* are incorporated into 540.000 Customer Delivery Instructions.

040.030 Auction Customer Address File is incorporated into 550.000 Auction Files.

040.060 Customer Electronic Bill Presentment and Payment Records; 050.050 International Money Transfer Transaction and Inquiry Records; 050.070 Funds Transaction/Transfer Reports; and *050.080 Suspicious Transaction Reports* are incorporated into 560.000 Financial Transactions.

220.020 Express Mail Service Customer Mailing List is incorporated into 570.100 Trust Funds and Transaction Records

140.020 Postage—Postage Evidencing System Records is incorporated into 570.200 Meter Postage and PC Postage Customer Data and Transaction Records.

010.020 Boxholder Records, 090.020 Passport Application Records, 160.010 Domestic Insured, Registered, Collect on Delivery (COD), and Express Mail Claim and Inquiry Records, and *160.020 International Ordinary, Insured, Registered, and Express Mail Inquiry and Application for Indemnity Records* are incorporated into 580.000 Post Office and Retail Services.

220.010 Marketing Database—Customer Records and *040.010 Memo to Mailers Address File* are incorporated into 590.000 Sales, Marketing, Events, and Publications.

010.090 Customer Public Key Certificate Records is incorporated into 610.000 Identity and Document Verification Services.

Section G. Advance Notice of New Systems

Reports of new systems of records, as required by 5 U.S.C. 552a (o), have been submitted to OMB and Congress pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records about Individuals."

The following 16 new systems contain records relating to Postal Service customers:

500.000 Address Change, Mail Forwarding, and Related Services

This system includes records relating to change of address, mail forwarding, and related services performed online or offline.

510.100 www.usps.com Registration

This system includes records relating to customers who register on *http://www.usps.com.*

510.200 www.usps.com Ordering, Payment, and Fulfillment

Customers are required to provide information when ordering products or services on *http://www.usps.com.* This system includes records relating to the ordering, payment, and fulfillment for these products and services. Products and services include stamps, Postal Service products, shipping supplies, and shipping services, such as obtaining delivery status information, receipts, and labels.

510.300 Offline Registration, Payment and Fulfillment

This system includes records relating to customers who register, and/or order products or services by offline means. This system includes records related to the following activities: stamps and products by mail, catalog, phone, or fax; customer loyalty programs; package service pick-up; and shipping supplies ordering and fulfillment offline.

520.100 Mailer Services—Applications and Approvals

This system includes records relating to customers who wish to use mail management and tracking products and services. This includes records relating to applications and approvals for programs including the following: CONFIRM, PostalOne!, presort accuracy systems, drop ship appointments, ePubWatch, and registration for Confirmation Services and Special Services.

520.200 Mail Management and Tracking Activity

This system includes records relating to customers who use mail management and tracking services. This includes records related to orders for redelivery and hold mail services; schedule drop ship appointments; receive feedback on mailing efficiency; track their mailings; order mail transportation equipment; and receive electronic transmissions of mail scan information. Programs covered include: PostalOne!, CONFIRM, ePubWatch, drop ship appointments, Delivery Unit Notification, Confirmation Services, and Special Services for which the customer has registered.

530.000 Customer Service and Correspondence

This system includes records related to customer service interactions. The system includes records related to customer service support provided by or for the following: Business Service Networks, Nonprofit Mailing Support; mail management and tracking products and services; Delivery Confirmation service and Special Services; and other telephone, e-mail and correspondence-based customer service interactions.

540.000 Customer Delivery Instructions

This system includes records relating to special delivery requirements. The system includes delivery instructions for the following customers: Customers who receive mail delivery through agents; customers who are visually disabled and receive free mail matter; customers with noncompliant mailboxes; and customers who request

that certain types of mail not be delivered.

550.000 Auction Files

This system includes records relating to individuals who request information about or participate in auctions of surplus and/or undeliverable items. This system includes records relating to online and offline auctions, performed directly by the Postal Service or by third parties.

560.000 Financial Transactions

This system includes records relating to financial transactions. Financial transactions include funds transfers and online payment services, claims and inquiries related to online payment services, funds transfers, money orders, and stored-value cards. The records include documentation of certain transactions required by anti-money laundering statutes and regulations.

570.100 Trust Funds and Transaction Records

This system includes records collected from customers who open, maintain, and use trust fund payment accounts. This system includes records relating to Permit, CAPS, PostalOne!, and Express Mail Corporate Accounts.

570.200 Meter Postage and PC Postage Customer Data and Transaction Records

This system includes records relating to meter and PC Postage registration, usage, and payment.

580.000 Post Office and Retail Services

This system includes records relating to retail transactions conducted at Post Offices and other locations. This includes records relating to the following: Passport applications and payment; Post Office box and caller services; and the use of self-service equipment. The system also contains records relating to special mail services including: Domestic Insured Mail or Registered Mail; collect on delivery (COD); insured, registered, and recorded international mail; domestic and international Express Mail; and inquiries and claims related to special mail services. (**Note:** Financial services, such as funds transfers, are covered by the system of records for Financial Transactions.)

590.000 Sales, Marketing, Events, and Publications

This system includes records relating to customer interactions with sales personnel, responses to marketing messages, orders for Postal Service publications, and attendance at events. This system includes records relating to the following activities: Sales; marketing (including business reply cards, e-mail campaigns, and telephone-based marketing interactions); subscriptions to Postal Service publications such as "Memo to Mailers"; customer contests and surveys; and Postal Service events such as the National Postal Forum (NPF) and meetings of Postal Customer Councils (PCCs) and the Mailers Technical Advisory Committee (MTAC).

600.000 International Services

This system includes records relating to international transactions and services, including compliance with domestic and foreign customs requirements. This includes records relating to Customs Pre-Advisory System (CPAS), International Customized Mail Agreements, and international tray label tracking.

610.000 Identity and Document Verification Services

This system contains records related to Postal Service identity and document verification and authentication services. The services provide verification and authentication services, enhanced mail security, and enhanced customer service. Programs in the system include authentication services (such as verifying identities at Postal Service facilities), public key certificates, and electronic postmarks.

Section H. Complete Text of New Systems

This part contains the complete text of the Postal Service's customer-related Privacy Act systems of records.

USPS 500.000

SYSTEM NAME:

Address Change, Mail Forwarding, and Related Services.

SYSTEM LOCATION:

Postal Service National Customer Support Center (NCSC), Computerized Forwarding System (CFS) sites, Post Offices, and contractor sites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers requesting change of address, mail forwarding or other related services either online or offline. Customers who are victims of a natural disaster who request mail forwarding services through the American Red Cross.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Customer information: Name, title, signature, customer number, old address, new address, filing date, and other contact information.

2. Verification and payment information: Credit and/or debit card number, type, and expiration date; information for identity verification; billing information.

3. Demographic information: Designation as individual/family/business.

4. Customer preferences: Permanent or temporary move; mail forwarding instructions; service requests and responses.

5. Customer inquiries and comments: Description of service requests and responses.

6. Records from service providers, including for move-related services, such as name of provider; customer name, number, and contact information; information related to products purchased, billing, and customer service; and records for identity verification.

7. Optional customer information: Information a customer chooses to save to apply to future transactions, such as names, addresses, proof of identification, billing, and other information used to request a service.

8. Protective Orders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S):

1. To provide mail forwarding and change of address services.

2. To provide address correction services.

3. To provide address information to the American Red Cross about a customer who has been relocated because of disaster.

4. To provide customers the ability to contact providers of move-related services (e.g., moving vans or supplies).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the standard routine uses for customer-related systems, the following additional routine uses also apply:

a. Disclosure upon request. The new address of a specific business or organization that has filed a permanent change of address order may be furnished to any individual on request. (Note: The new address of an individual or family will not be furnished pursuant to this routine use, but only when authorized by one of the standard routine uses listed above or one of the specific routine uses listed below.)

b. Disclosure for Address Correction. Disclosure of any customer's new permanent address may be made to a mailer, only if the mailer is in

possession of the old address: From the National Change of Address file if the mailer is seeking corrected addresses for a mailing list; from the CFS if a mailpiece is undeliverable as addressed; or from the Locatable Address Correction System if an address designation has been changed or assigned. Copies of change of address orders may not be furnished.

c. Disclosure for Voter Registration. Any customer's permanent change of address may be disclosed to a duly formed election board or registration commission using permanent voter registration. Copies of change of address orders may be furnished.

d. Disclosure to Government Agency. Any customer's permanent or temporary change of address information may be disclosed to a Federal, state, or local government agency upon prior written certification that the information is required for the performance of its duties. A copy of the change of address order may be furnished. Name and address information may be disclosed to government planning authorities, or firms under contract with those authorities, if an address designation has been changed or assigned.

e. Disclosure to Law Enforcement Agency. Any customer's permanent or temporary change of address information may be disclosed to a law enforcement agency, for oral requests made through the Postal Inspection Service, but only after the Postal Inspection Service has confirmed that the information is needed for a criminal investigation. A copy of the change of address order may be furnished.

f. Disclosure for Service of Process. Any customer's permanent or temporary change of address information may be disclosed to a person empowered by law to serve legal process, or the attorney for a party in whose behalf service will be made, or a party who is acting pro se, upon receipt of written information that meets prescribed certification requirements. Disclosure will be limited to the address of the specifically identified individual (not other family members or individuals whose names may also appear on the change of address order). A copy of the change of address order may not be furnished.

g. Disclosure for Jury Service. Any customer's change of address information may be disclosed to a jury commission or other court official, such as a judge or court clerk, for purpose of jury service. A copy of the change of address order may be furnished.

h. Disclosure at Customer's Request. If the customer elects, change of address information may be disclosed to government agencies or other entities, and requests for move-related services may be forwarded to the specified service provider.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Change of address orders are maintained on file at the delivery unit. They are filed alphabetically by name within a month. Records generated from the source document are recorded on the Forwarding Control system file server and on 8-mm tapes at CFS units. Electronic change of address records and related service records are also stored on disk and/or magnetic tape in a secured environment. Change of address records are consolidated in a National Change of Address (NCOA) File at the NCSC. Selected extracts of NCOA are provided to a limited number of firms under contract or license agreement with the Postal Service. Records pertaining to move-related services are also transmitted to specific service providers, including government agencies and private companies under contract to the Postal Service.

RETRIEVABILITY:

Records are retrieved by the following methods:

For paper records: by name, address, date, and ZIP Code.

For electronic records: by name, address, date, ZIP Code, and customer number for electronic change of address and related service records; by name, address, and e-mail address for customer service records; by service provider name or number for service provider records.

SAFEGUARDS:

Access to and use of these records is limited to those individuals whose official duties require such access. Contractor/licensee is subject to contract controls and unannounced on-site audits and inspection by the Postal Inspection Service.

RETENTION AND DISPOSAL:

National change of address records are retained for 4 years from the effective date.

Records saved at the customer's option are retained until the customer notifies the Postal Service to delete the previous transaction records or the account is disabled for inactivity. The customer may request modifications to saved records at any time, and those modifications will be executed upon receipt of that request.

All other records are retained for up to 18 months. Records are destroyed or deleted at the end of the retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Technology Officer and Senior Vice President, United States Postal Service, 475 L'Enfant Plz. SW., Washington DC 20260.

Vice President, Delivery and Retail, United States Postal Service, 475 L'Enfant Plz. SW., Washington DC 20260.

NOTIFICATION PROCEDURE:

Customers wanting to know if information about them is maintained in this system of records should address inquiries to their local postmaster. Inquiries should contain full name, address, effective date of change order, route number (if known), and ZIP Code. Customers wanting to know if information about them is also maintained in the NCOA File should address such inquiries to: Manager, NCOA, National Customer Support Center, United States Postal Service, 6060 Primacy Parkway, Memphis TN 38188–0001.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Customers, personnel, and service providers.

USPS 510.100

SYSTEM NAME:

http://www.usps.com Registration.

SYSTEM LOCATION:

Information Systems Service Centers (ISSC), Postal Service Headquarters Marketing, and contractor sites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers who register via the Postal Service Web site at *http://www.usps.com.*

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Customer information: Name; customer ID(s); company name; job title and role; home, business, and billing address; home and business phone and fax number; e-mail; URL; and Automated Clearing House (ACH) information.

2. Identity verification information: Question, answer, username, user ID, and password.

3. Business specific information: Business type and location, business IDs, annual revenue, number of employees, industry, nonprofit rate status, product usage information, annual and/or monthly shipping budget, payment method and information, planned use of product, and age of Web site.

4. Customer preferences: Preferences to receive Postal Service marketing information, preferences to receive marketing information from Postal Service partners, preferred means of contact, preferred e-mail format, product and/or service marketing preference.

5. Customer feedback: Method of referral to Web site.

6. Registration information: Date of registration.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S):

1. To provide online registration services for customers.

2. To obtain accurate contact information in order to deliver requested products, services, and other material.

3. To authenticate customer logon information for *http://www.usps.com.*

4. To permit customer feedback in order to improve *http://www.usps.com* or Postal Service products and services.

5. To enhance understanding and fulfillment of customer needs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The standard routine uses for customer-related systems apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated database, computer Storage media, and paper.

RETRIEVABILITY:

By customer name, customer ID(s), phone number, or mail or e-mail address.

SAFEGUARDS:

Paper records, computers, and computer Storage tapes and disks are maintained in controlled-access areas or under general supervision of program personnel. Computers are protected by a cipher lock system, card key system, or other physical access control methods. Computer systems are also protected with an installed security software package, computer logon identifications, and operating system controls including access controls, terminal and use identifications, and file management. Online data transmissions are protected by encryption.

For small business registration, computer Storage tapes and disks are maintained in controlled-access areas or under general scrutiny of program personnel. Access is controlled by logon ID and password as authorized by the Marketing organization via secure Web site. Online data transmissions are protected by encryption.

Access to these records is limited to authorized personnel. Contractors must provide similar protection subject to a security compliance review by the Postal Inspection Service.

RETENTION AND DISPOSAL:

ACH records are retained for up to 2 years.

Records stored in the registration database are retained until the customer cancels the profile record, for 3 years after the customer last accesses records, or until the relationship ends.

For small business registration, records are retained for 5 years after the relationship ends.

Records are destroyed or deleted at the end of the retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Marketing Officer and Senior Vice President, United States Postal Service, 1735 N Lynn St., Arlington VA 22209.

NOTIFICATION PROCEDURE:

Customers wanting to know if information about them is maintained in this system of records must address inquiries in writing to the system manager. Inquiries must contain name, address, and other identifying information.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Customers.

USPS 510.200

SYSTEM NAME:

www.usps.com Ordering, Payment, and Fulfillment.

SYSTEM LOCATION:

Postal Service Marketing Headquarters; Information Systems Service Centers (ISSC); Philatelic Fulfillment Centers; Post Offices; and contractor sites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers who place orders and/or make payment for Postal Service products and services through *http://www.usps.com.*

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Customer information: Name, customer ID(s), phone and/or fax number, mail and e-mail address.

2. Payment information: Credit and/or debit card number, type, and expiration date, billing information, Automated Clearing House (ACH) information.

3. Shipping and transaction information: Product and/or service ID numbers, descriptions, and prices; name and address(es) of recipients; order number and delivery status; electronic address lists; electronic documents or images; job number.

4. Claims submitted for defective merchandise.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S):

1. To fulfill orders for Postal Service products and services.

2. To promote increased use of the mail by providing electronic document preparation and mailing services for customers.

3. To provide shipping supplies and services, including return receipts and labels.

4. To provide recurring ordering and payment services for products and services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The standard routine uses for customer-related systems apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated databases, computer Storage media, and paper.

RETRIEVABILITY:

By customer name, customer ID(s), phone number, mail or e-mail address, or job number.

SAFEGUARDS:

Paper records and computer Storage tapes and disks are maintained in

controlled-access areas or under general supervision of program personnel. Computers containing information are located in controlled-access areas with personnel access controlled by a cipher lock system, card key system, or other physical access control method. Computer systems are protected with an installed security software package, computer logon identifications, and operating system controls including access controls, terminal and user identifications, and file management. Online data transmission is protected by encryption, dedicated lines, and authorized access codes. For shipping supplies, data is protected within a stand-alone system within a controlled-access facility.

Access to these records is limited to those persons whose official duties require such access. Contractors must provide similar protection subject to contract controls and security compliance review by the Postal Inspection Service.

RETENTION AND DISPOSAL:

Records related to mailing online and online tracking and/or Confirmation Services supporting a customer order are retained for up to 30 days from completion of fulfillment of the order, unless retained longer by request of the customer. Records related to shipping services and domestic & international labels are retained for 90 days. Delivery Confirmation and return receipt records are retained for 6 months. Signature Confirmation records are retained for 1 year. ACH records are retained for up to 2 years.

Other customer records are retained for 3 years after the customer relationship ends.

Records are destroyed or deleted at the end of the retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Marketing Officer and Senior Vice President, United States Postal Service, 1735 N Lynn St., Arlington VA 22209.

NOTIFICATION PROCEDURE:

Customers wanting to know if information about them is maintained in this system of records must address inquiries in writing to the system manager. Inquiries must contain name, address, customer ID(s), and order number, if known.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Customers.

USPS 510.300

SYSTEM NAME:

Offline Registration, Payment, and Fulfillment.

SYSTEM LOCATION:

Postal Service Marketing Headquarters; Information Systems Service Centers (ISSC); Philatelic Fulfillment Service Center; area and district facilities; Post Offices; and contractor sites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers who register for Postal Service programs, place orders and/or make payment for Postal Service products and services via offline means.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Customer information: Name, customer ID(s), company name, job title, home, business, and billing address(es), phone number(s), fax number(s), e-mail, URL, verification question and answer, username, and password.

2. Payment information: Credit and/or debit card number, type, and expiration date; billing name and address; check; money order, Automated Clearing House (ACH) information.

3. Shipping information: Product and/or service ID number, name and address of recipient.

4. Customer preferences: Preferences to receive Postal Service marketing information, preferences to receive marketing information from Postal Service partners, preferred contact media, preferred e-mail format, product and/or service marketing preference.

5. Customer feedback: Method of referral.

6. Order processing: Inquiries on status of orders; claims submitted for defective merchandise; lists of individuals who have submitted bad checks.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S):

1. To provide offline registration services for customers.

2. To fulfill requests for Postal Service products, services, and other materials.

3. To authenticate customer information and permit customer feedback.

4. To operate recurring ordering and payment services for products and services.

5. To enhance understanding and fulfillment of customer needs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The standard routine uses for customer-related systems apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated databases, computer Storage media, and paper forms.

RETRIEVABILITY:

By customer name, customer ID(s), phone number, mail or e-mail address, or order number.

SAFEGUARDS:

Paper records and computer Storage tapes and disks are maintained in controlled-access areas or under general scrutiny of program personnel. Computers containing information are located in controlled-access areas with personnel access controlled by a cipher lock system, card key system, or other physical access control method. Computer systems are protected with an installed security software package, computer logon identifications, and operating system controls including access controls, terminal and user identifications, and file management. Online data transmission is protected by encryption, dedicated lines, and authorized access codes. For shipping supplies, data is protected within a stand-alone system within a controlled-access facility.

Access to these records is limited to those persons whose official duties require such access. Contractors must provide similar protection subject to contract controls and security compliance review by the Postal Inspection Service.

RETENTION AND DISPOSAL:

ACH records are retained for up to 2 years. Other records are retained for up to 3 years after the customer relationship ends.

Records are destroyed or deleted at the end of the retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Marketing Officer and Senior Vice President, United States Postal Service, 1735 N Lynn St., Arlington, VA 22209.

NOTIFICATION PROCEDURE:

Customers wanting to know if information about them is maintained in this system of records must address inquiries in writing to the system

manager. Inquiries must contain name, address, and other identifying information.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Customers.

USPS 520.100

SYSTEM NAME:

Mailer Services—Applications and Approvals.

SYSTEM LOCATION:

Postal Service Headquarters; Information Systems Service Centers (ISSC); National Customer Support Center (NCSC); district facilities; detached mailing units; and facilities that access Postal Service computers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers who apply for mail management and tracking products or services.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Customer information: Applicant and key contacts name, mail and e-mail address, phone number, fax number, customer ID(s), job title and/or role, employment status, company name, location, industry, monthly shipping budget, annual revenue, payment information, Automated Clearing House (ACH) information.

2. Customer or product identification and authentication: User and manager customer ID(s) and/or passwords; customer signature, date, last four digits of Social Security Number (SSN); Postal Service site; security personnel name, signature, date, telephone number, and last four digits of SSN; Postal Service location information; D–U–N–S® Number; postage meter numbers; permit numbers; POSTNET code; mailer ID(s); publication name(s) and ID(s); and name(s) of authorized users.

3. Mail practices and delivery information: Type of mailing equipment and/or containers used, mail preparation information, drop shipment sites and codes, compatibility with mailing automation equipment; presort options and tests, frequency of mailings, mail volume, primary type of mailing, destination information, use of contracted mail services, names and addresses of contractors and advertisers, publication name(s) and ID(s), and appointment times.

4. Technical information: Hardware, software, and equipment names, types, versions, and specifications; media preferences; mail site specifications.

5. Product usage and payment information: Package volumes, package weights, product ordered, quantity ordered, billing information, products used, ordered date, inventory date, and usage measure dates.

6. Customer feedback: Method of referral.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S):

1. To provide application services for mail management and tracking products and services.

2. To authenticate applicant information, assign computer logon IDs, and qualify and assist users.

3. To provide product and/or service updates, service, and support.

4. To collect accurate technical data to ensure the proper operation of electronic data transmission and software.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The standard routine uses for customer-related systems apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated database, computer Storage media, and paper.

RETRIEVABILITY:

By customer name, customer ID(s), or logon ID.

SAFEGUARDS:

Paper records, computers, and computer Storage tapes and disks are maintained in controlled-access areas or under general supervision of program personnel. Computers are protected by a cipher lock system, card key system, or other physical access control methods. Computer systems are also protected with an installed security software package, computer logon identifications, and operating system controls including access controls, terminal and use identifications, and file management. Online data transmissions are protected by encryption.

Access to these records is limited to authorized personnel, who must be identified with a badge. Contractors must provide similar protection subject to a security compliance review by the Postal Inspection Service.

RETENTION AND DISPOSAL:

Logon records are retained for 1 year after computer access. ACH records are retained for up to 2 years. Security access records are retained for 2 years after computer access privileges are cancelled.

Other customer records are retained for 4 years after the customer relationship ends.

Records are deleted or destroyed at the end of the retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Marketing Officer and Senior Vice President, United States Postal Service, 1735 N Lynn St., Arlington, VA 22209.

NOTIFICATION PROCEDURE:

Customers wanting to know if information about them is maintained in this system of records must address inquiries in writing to the system manager. Inquiries should contain name, customer ID(s), if any, and/or logon ID.

RECORD ACCESS PROCEDURES:

Requests for access much be made in accordance with the Notification Procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Customers.

USPS 520.200

SYSTEM NAME:

Mail Management and Tracking Activity.

SYSTEM LOCATION:

Postal Service Headquarters; Information Systems Service Centers (ISSC); and Mail Transportation Equipment Service Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers who use Postal Service mail management and tracking services.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Customer information: Customer or contact name, mail and e-mail address, title or role, and phone number.

2. Identification information: Customer ID(s), last four digits of Social Security Number (SSN), D–U–N–S

Number; mailer and mailing ID, advertiser name/ID, username, and password.

3. Data on mailings: Paper and electronic data on mailings, including postage statement data (such as volume, class, rate, postage amount, date and time of delivery, mailpiece count), destination of mailing, delivery status, mailing problems, presort information, reply mailpiece information, container label numbers, package label, Special Services label, article number, and permit numbers.

4. Payment information: Credit and/or debit card number, type, and expiration date; Automated Clearing House (ACH) information.

5. Customer preference data: Hold mail begin and end date, redelivery date, delivery options, shipping and pickup preferences, drop ship codes, comments and instructions, mailing frequency, preferred delivery dates.

6. Product usage information: Special Services label and article number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S):

1. To provide mail acceptance, induction, and scheduling services.

2. To fulfill orders for mail transportation equipment.

3. To provide customers with information about the status of mailings within the Postal Service network.

4. To help mailers identify performance issues regarding their mail.

5. To provide delivery units with information needed to fulfill requests for mail redelivery and hold mail service at the address and for the dates specified by the customer.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The standard routine uses for customer-related systems apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated databases, computer Storage media, and paper.

RETRIEVABILITY:

By customer name, customer ID(s), or logon ID.

SAFEGUARDS:

Paper records, computers, and computer Storage tapes and disks are maintained in controlled-access areas or under general supervision of program personnel. Computers are protected by a cipher lock system, card key system, or other physical access control methods. Computer systems are also protected with an installed security software package, computer logon identifications, and operating system controls including access controls, terminal and use identifications, and file management. Online data transmissions are protected by encryption.

Access to these records is limited to authorized personnel, who must be identified with a badge. Contractors must provide similar protection subject to a security compliance review by the Postal Inspection Service.

RETENTION AND DISPOSAL:

CONFIRM records are retained for up to 30 days. Records related to ePubWatch, Confirmation Services and hold mail services are retained for up to 1 year. Special Services and drop ship records are retained for 2 years. ACH records are retained for up to 2 years.

Other records are retained for 4 years after the relationship ends.

Records are destroyed or deleted at the end of the retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Marketing Officer and Senior Vice President, United States Postal Service, 1735 N Lynn St., Arlington VA 22209.

NOTIFICATION PROCEDURE:

Customers wanting to know if information about them is maintained in this system of records must address inquiries in writing to the system manager. Inquiries should contain name, customer ID(s), if any, and/or logon ID.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Customers.

SYSTEM LOCATION:

Postal Service Consumer Advocate, Headquarters; Information Systems Service Centers (ISSC); the Integrated Business Systems Solutions Center (IBSSC); the National Customer Support Center (NCSC); districts, Post Offices, contractor sites; and detached mailing units at customer sites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records relating to customers who contact customer service by online and offline channels. This includes customers making inquiries via e-mail, 1–800–ASK–USPS, other toll-free contact centers, or the BSN, as well as customers with product-specific service or support issues.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Customer information: customer and key contact name, mail and e-mail address, phone and/or fax number; customer ID(s); title, role, and employment status; company name, location, type and URL; vendor and/or contractor information.

2. Identity verification information: Last four digits of Social Security Number (SSN), username and/or password, D–U–N–S Number, mailer ID number, publisher ID number, security level and clearances, and business customer number.

3. Product and/or service use information: Product and/or service type, product numbers, technology specifications, quantity ordered, logon and product use dates and times, case number, pickup number, article number, and ticket number.

4. Payment information: Credit and/or debit card number, type, and expiration date; billing information; checks, money orders, or other payment method.

5. Customer preferences: Drop ship sites and media preference.

6. Service inquiries and correspondence: Contact history; nature of inquiry, dates and times, comments, status, resolution, and Postal Service personnel involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S):

1. To enable review and response services for customer inquiries and concerns regarding the Postal Service and its products and services.

2. To ensure that customer accounts and needs are attended to in a timely manner.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The standard routine uses for customer-related systems apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated databases, computer Storage media, and paper.

RETRIEVABILITY:

By customer name, customer ID(s), mail or e-mail address, phone number, customer account number, case number, article number, pickup number, and last four digits of SSN, ZIP Code, or other customer identifier.

SAFEGUARDS:

Paper records, computers, and computer Storage tapes and disks are maintained in controlled-access areas or under general supervision of program personnel. Computers are protected by a cipher lock system, card key system, or other physical access control methods. Computer systems are also protected with an installed security software package, computer logon identifications, and operating system controls including access controls, terminal and use identifications, and file management. Online data transmissions are protected by encryption.

Access to these records is limited to authorized personnel, who must be identified with a badge. Contractors must provide similar protection subject to a security compliance review by the Postal Inspection Service.

RETENTION AND DISPOSAL:

Customer care records for usps.com products are retained for 90 days. Records related to 1–800-ASK-USPS, Delivery Confirmation service, Special Services, and international call centers are retained for 1 year. Customer complaint records are retained for 3 years. Business Service Network records are retained for 5 years.

Other records are retained for 2 years after resolution of the inquiry.

Records are deleted or destroyed at the end of the retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President and Consumer Advocate, United States Postal Service, 475 L'Enfant Plz. SW., Washington DC 20260–2200.

NOTIFICATION PROCEDURE:

Customers wanting to know if information about them is maintained in this system of records must address inquiries to the system manager in writing. Inquiries should include name, address, and other identifying information.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Customers.

USPS 540.000

SYSTEM NAME:

Customer Delivery Instructions.

SYSTEM LOCATION:

Postal Service Headquarters, Prohibitory Order Processing Center, districts, Information Systems Service Centers (ISSC), and Post Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Customers requesting delivery of mail through an agent and the agent to whom the mail is to be delivered.

2. Customers who are visually disabled and cannot use or read conventionally printed material and who are receiving postage-free service in their delivery areas.

3. Customers whose mailboxes do not comply with Postal Service standards and regulations.

4. Customers who elect to have their name and address, or the name and address of their children under 19 years of age or a deceased spouse, placed on the list of individuals who do not want to receive sexually oriented advertisements through the mail.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Customer information: name, address, phone number, customer ID(s), signature, application number, names and birthdates of children under 19; reports of mailbox irregularities and date; postmaster signature.

2. Verification information: photocopies of IDs, customer name, address, signature, statement from competent authority as being visually impaired.

3. Agency information: agent name, address, signature, and phone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, 404, 3010, and 3403.

PURPOSE(S):

1. To provide for efficient and secure mail delivery services.

2. To permit authorized delivery of mail to the addressee's agent.

3. To enable the efficient processing of mail for visually disabled customers.

4. To protect customers from mail fraud and identity theft.

5. To maintain a list, available to mailers of sexually oriented advertisements (SOAs) of individuals desiring not to receive such matter through the mail.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the standard routine uses for customer-related systems, the following additional routine use also applies:

Information may be disclosed for the purpose of identifying an address as an address of an agent to whom mail is delivered on behalf of other persons. This routine use does not authorize the disclosure of the identities of persons on behalf of whom agents receive mail.

All routine uses are subject to the following exception:

Information concerning an individual who has filed an appropriate protective court order with the postmaster will not be disclosed under any of the general routine uses except pursuant to the order of a court of competent jurisdiction.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated databases, computer Storage media, and paper.

RETRIEVABILITY:

By customer name, address, and application number, or by customer ID(s).

SAFEGUARDS:

Records are kept in file cabinets or computer Storage with access limited to those individuals whose official duties require such access. Contractors are subject to contract controls and unannounced onsite audits and inspection by the Postal Inspection Service. Automated records are subject to computer center access controls.

RETENTION AND DISPOSAL:

Records related to requests not to receive sexually oriented advertisements are retained for up to 5 years after request.

Other records are retained for 1 year from the date the customer relocates, cancels an order, corrects a cited mailbox irregularity, or terminates the special instruction.

Records are deleted or destroyed at the end of the retention period.

SYSTEM MANAGER(S) AND ADDRESS:

For SOA records: Vice President, Pricing and Classification, United States Postal Service, 1735 N Lynn Street, Arlington, VA 22209.

For other delivery records: Vice President, Delivery and Retail, United

States Postal Service, 475 L'Enfant Plz. SW., Washington, DC 20260.

NOTIFICATION PROCEDURE:

Customers wanting to know if information about them is maintained in this system pertaining to mail delivery by agents, noncompliant mailboxes, or with regard to free matter for the visually disabled, must address inquiries to their local postmasters. Customers should include name, address, and other identifying information.

Customers wanting to know if information about them is maintained in this system pertaining to requests not to receive sexually oriented advertising must address inquiries to the system manager. Customers should include name, address, application number, and the date of filing, if applicable.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Customers; cosigners of the request for delivery of mail through an agent; medical personnel or other competent authorities; and Postal Service personnel.

USPS 550.000

SYSTEM NAME:

Auction Files.

SYSTEM LOCATION:

Postal Service Mail Recovery Centers, Information Systems Service Centers (ISSC), participating Post Offices, and contractor sites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers who participate in or request information about Postal Service auctions.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Customer Information: Name, customer ID(s), mail and e-mail address, and phone number.
2. Payment information: Online transaction information, credit and/or debit card number, type, and expiration date; check, or money order.
3. Customer feedback: Means of referral.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S):

1. To maintain a list of names and addresses of customers participating in or requesting information about auctions.
2. To accurately process delivery and payment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The standard routine uses for customer-related systems apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated databases, computer Storage media, and paper.

RETRIEVABILITY:

By customer name, customer ID(s), or other identifier.

SAFEGUARDS:

Paper records and disks are kept in locked cabinets. Online data is password protected.

RETENTION AND DISPOSAL:

Records are retained for up to 1 year after entry.

Records are deleted or destroyed at the end of the retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President and Consumer Advocate, United States Postal Service, 475 L'Enfant Plz. SW., Washington, DC 20260.

NOTIFICATION PROCEDURE:

Customers wanting to know if information about them is maintained in this system must address inquiries to the postmaster of the participating Post Office, or to the system manager for online auctions. Inquiries must contain full name, address, and other identifying information.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Customers.

USPS 560.000

SYSTEM NAME:

Financial Transactions.

SYSTEM LOCATION:

Postal Service Headquarters; Information System Service Centers; Accounting Service Centers; anti-money laundering support group; and contractor sites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Customers who use online payment or funds transfer services.
2. Customers who file claims or make inquiries related to online payment services, funds transfers, money orders, and stored-value cards.
3. Customers who purchase funds transfers or stored-value cards in an amount of $1000 or more per day, or money orders in an amount of $3000 or more per day, or who purchase or redeem any such services in a manner requiring collection of information as potential suspicious activities under anti-money laundering requirements. Recipients of funds transfers and the beneficiaries of funds from money orders totaling $10,000 in one day.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Customer information: Name, customer ID(s), mail and e-mail address, telephone number, occupation, type of business, and customer history.
2. Identity verification information: Date of birth, username and/or ID, password, Social Security Number (SSN) or tax ID number, and driver's license number (or other type of ID if driver's license is not available, such as Alien Registration Number, Passport Number, Military ID, Tax ID Number). (**NOTE:** For online payment services, SSNs are collected, but not retained, in order to verify ID.)
3. Billers registered for online payment services: biller name and contact information, bill detail, and bill summaries.
4. Transaction information: Name, address, and phone number of purchaser, payee, and biller; amount, date, and location; credit and/or debit card number, type, and expiration; sales, refunds, and fees; type of service selected and status; sender and recipient bank account and routing number; bill detail and summaries; transaction number, serial number, and/or reference number or other identifying number, pay out agent name and address; type of payment, currency, and exchange rate; Post Office information such as location, phone number, and terminal; employee ID numbers, license number and state, and employee comments.
5. Information to determine credit-worthiness: period at current residence, previous address, and period of time with same phone number.

6. Information related to claims and inquiries: name, address, phone number, signature, SSN, location where product was purchased, date of issue, amount, serial number, and claim number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404 and 31 U.S.C. 5318, 5325, 5331 and 7701.

PURPOSE(S):

1. To provide financial products and services.
2. To respond to inquiries and claims related to financial products and services.
3. To fulfill requirements of anti-money laundering statutes and regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The standard routine uses for customer-related systems apply. Legally required disclosures to agencies for law enforcement purposes include disclosures of information relating to money orders, funds transfers, and stored-value cards as required by anti-money laundering statutes and regulations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated database, computer storage media, microfiche, and paper.

RETRIEVABILITY:

For online payment and funds transfer services, information is retrieved by customer name, customer ID(s), transaction number, or address.

Claim information is retrieved by name of purchaser or payee, claim number, serial number, transaction number, check number, customer ID(s), or ZIP Code.

Information related to anti-money laundering is retrieved by customer name; SSN; alien registration, passport, or driver's license number; serial number; transaction number; ZIP Code; transaction date; data entry operator number; and employee comments.

SAFEGUARDS:

Paper records, computers, and computer storage tapes and disks are maintained in controlled-access areas or under general supervision of program personnel. Computers are protected by a cipher lock system, card key system, or other physical access control methods. Computer systems are also protected with an installed security software package, computer logon identifications, and operating system controls including access controls, terminal and use identifications, and file management. Online data transmissions are protected by encryption.

Access to these records is limited to authorized personnel. Contractors must provide similar protection subject to contract controls and a security compliance review by the Postal Inspection Service.

RETENTION AND DISPOSAL:

Summary records, including bill due date, bill amount, biller information, biller representation of account number, and the various status indicators, are retained for 2 years from the date of processing.

For funds transfers, transaction records are retained for 3 years.

Records related to claims are retained for up to 3 years from date of final action on the claim.

Forms related to fulfillment of anti-money laundering requirements are retained for 5 years from the end of the calendar quarter in which they were created.

Related automated records are retained for the same 5-year period and purged from the system quarterly after the date of creation.

Enrollment records related to online payment services are retained for 7 years after the subscriber's account ceases to be active or the service is cancelled.

Account banking records, including payment history, Demand Deposit Account (DDA) number, and routing number, are retained for 7 years from the date of processing.

Records are deleted or destroyed at the end of the retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Financial Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plz. SW., Washington, DC 20260.

Chief Marketing Officer and Senior Vice President, United States Postal Service, 1735 N. Lynn St., Arlington, VA 22209.

NOTIFICATION PROCEDURE:

For online payment services, funds transfers, and stored-value cards, individuals wanting to know if information about them is maintained in this system must address inquiries in writing to the Chief Marketing Officer. Inquiries must contain name, address, and other identifying information, as well as the transaction number for funds transfers.

For money order claims and anti-money laundering documentation, inquiries should be addressed to the Chief Financial Officer. Inquiries must include name, address, or other identifying information of the purchaser (such as driver's license, Alien Registration Number, Passport Number, etc), and serial or transaction number. Information collected for anti-money laundering purposes will only be provided in accordance with Federal anti-money laundering laws and regulations.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Customers, recipients, financial institutions, and Postal Service employees.

USPS 570.100

SYSTEM NAME:

Trust Funds and Transaction Records.

SYSTEM LOCATION:

Postal Service Headquarters Marketing; Information Systems Service Centers (ISSC); district offices; Post Offices; and detached mailing units.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers who are users of trust fund payment accounts.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Customer information: Customer and key contact name, mail and e-mail address, phone and fax number(s); D–U–N–S Number; customer ID(s), taxpayer ID number.
2. Transactional information: Permit authorizations and numbers, postage paid, postage class transaction dates, volume, weight, and revenue of mailing, postage indicium created, estimated annual postage, percent by mailing type, type of user, mailing data files including Postal Service location where the mail was entered.
3. Information necessary for processing electronic payments: Bank name, contact name, bank address and telephone number, bank account number, bank transit ABA number, voided check, credit and/or debit card number, type, and expiration date; Automated Clearing House (ACH) information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S):

1. To establish and maintain trust fund accounts and process payments.
2. To ensure revenue protection.
3. To provide information and updates to users of these accounts.
4. To enhance understanding and fulfillment of customer needs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The standard routine uses for customer-related systems apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated database, computer Storage media, and paper.

RETRIEVABILITY:

By customer name or customer ID(s), account number, and/or address.

SAFEGUARDS:

Paper records, computers, and computer Storage tapes and disks are maintained in controlled-access areas or under general supervision of program personnel. Computers are protected by a cipher lock system, card key system, or other physical access control methods. Computer systems are also protected with an installed security software package, computer logon identifications, and operating system controls including access controls, terminal and use identifications, and file management. Online data transmissions are protected by encryption.

Access to these records is limited to authorized personnel, who must be identified with a badge. Contractors must provide similar protection subject to contract controls and a security compliance review by the Postal Inspection Service.

RETENTION AND DISPOSAL:

ACH records are retained for up to 2 years.

Other records in this system are retained for up to 4 years after the relationship ends.

Records are deleted or destroyed at the end of the retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Marketing Officer and Senior Vice President, United States Postal Service, 1735 N Lynn St., Arlington VA 22209.

NOTIFICATION PROCEDURE:

To access Permit records, customers must make a written request to their local postmaster. Correspondence must include name, address, account number, company name, mailing location, and a clear description of the issue.

To access all other records, customers must make a written request to the system manager. Correspondence must include name, address, account numbers, and other identifying information.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Customers.

USPS 570.200

SYSTEM NAME:

Meter Postage and PC Postage Customer Data and Transaction Records.

SYSTEM LOCATION:

Postal Service Headquarters Marketing, Postal Service facilities, Information Systems Security Centers (ISSC), and partner locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Postage evidencing system users.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Customer information: customer ID(s), contact name, address, and telephone number; company name; and change of address information.
2. Identification information: Business customer number, license number, date of license issuance, device ID number, device model number, and certificate serial number.
3. Business-specific information: Estimated annual postage and annual percentage of mail by type, type of usage, and primary business function.
4. Transactional information: Post Office where mail is entered; number, amount, and date of postage purchases; ascending and descending register values; amount of unused postage refunded; contact telephone number; destinating five-digit ZIP Code, date, and rate category of each indicium created; and transaction documents.
5. Financial information: Credit and/or debit card number, type, expiration date, and transaction number; check and electronic fund transfer information; Automated Clearing House (ACH) information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S):

1. To enable responsible administration of postage evidencing system activities.
2. To enhance understanding and fulfillment of customer needs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the standard routine uses for customer-related systems, the following additional routine use also applies:

The name and address of the holder of a postage meter license authorizing use of a postage meter printing a specified indicium will be furnished to any person provided the holder is using the license for a business or firm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated databases, computer Storage media, and paper.

RETRIEVABILITY:

By customer name and by numeric file of postage evidencing systems ID number, by customer ID(s), or customer license number.

SAFEGUARDS:

Paper records and computer Storage media are maintained in closed file cabinets in secured facilities. Automated records are protected by computer password. Information obtained from users over the Internet is transmitted electronically to the Postal Service by authorized postage evidencing system providers via a virtual private network.

RETENTION AND DISPOSAL:

ACH records are retained for up to 2 years. Records of payment are retained for up to 7 years.

Other records in this system are retained for up to 4 years after final entry or the duration of the license.

Records are deleted or destroyed at the end of the retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Marketing Officer and Senior Vice President, United States Postal Service, 1735 N Lynn St, Arlington VA 22209.

NOTIFICATION PROCEDURE:

Customers wanting to know if information about them is maintained in this system of records must address inquires in writing to: Manager, Postage Technology Management, United States Postal Service, 1735 North Lynn St, Arlington VA 22209.

Inquiries should include the individual's name as it appears on the postage evidencing system license and the license number.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Customers; authorized service providers of postage evidencing systems; and Postal Service personnel.

USPS 580.000

SYSTEM NAME:

Post Office and Retail Services.

SYSTEM LOCATION:

Postal Service Headquarters, Consumer Advocate; Information Systems Service Centers (ISSC); Accounting Service Centers; and Postal Service facilities, including Post Offices (New Jersey, as an exception, does not store passport information in Post Offices), international claims and inquiry offices, and contractor locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Customers who apply for or purchase products and services at Post Offices or other retail sites. This includes products and services related to passports, Post Office boxes, caller services, and self-service equipment.
2. Senders and recipients of special mail services.
3. Authorized users of Post Office boxes and caller services.
4. Customers with inquiries or claims relating to special mail services.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Customer information: Name, customer ID(s), company name, phone number, mail and e-mail address, record of payment, passport applications and a description of passport services rendered, Post Office box and caller service numbers.
2. Identity verification and biometric information: Driver's license; two forms of ID; signature; photographic image via self-service equipment; fingerprints, date of birth, and Social Security Numbers (SSNs) as required for passports by the State Department.
3. Recipient information: Name, address, and signature.
4. Names and addresses of persons authorized to access a Post Office box or caller service.
5. Claim and inquiry information: Mailer and addressee name, mail and e-mail address, and phone number; claimant SSN and signature; claim or inquiry description, number, and status.
6. Payment information: Credit and/or debit card number, type, and expiration date.
7. Product information: Article number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, 404, and 411; 22 U.S.C. 214; and 31 U.S.C. 7701.

PURPOSE(S):

1. To enable customers to apply for and purchase nonfinancial products and services at Post Offices and other retail locations.
2. To ensure accurate mail delivery.
3. To respond to inquiries and claims related to special mail services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the standard routine uses for customer-related systems, the following additional routine uses also apply with the exception noted below:

a. Disclosure of boxholder information may be made to a federal, state, or local government agency upon prior written certification that the information is required for the performance of its duties. A copy of PS Form 1093, *Application for Post Office Box or Caller Service,* may be furnished.

b. The name or address of the holder of a Post Office box may be disclosed to a person empowered to serve legal process, or the attorney for a party in whose behalf service will be made, or a party who is acting pro se, on receipt of written information that meets prescribed certification requirements. A copy of PS Form 1093 will not be furnished.

c. Disclosure of boxholder information may be made, on prior written certification from a foreign government agency citing the relevance of the information to an indication of a violation or potential violation of law and its responsibility for investigating or prosecuting such violation, and only if the address is (a) outside the United States and its territories, and (b) within the territorial boundaries of the requesting foreign government. A copy of PS Form 1093 may be furnished.

All routine uses are subject to the following exception: Information concerning an individual boxholder who has filed an appropriate protective court order with the postmaster will not be disclosed under any routine use except pursuant to the order of a court of competent jurisdiction.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated databases, computer Storage media, and paper.

RETRIEVABILITY:

By name, customer ID(s), ZIP Code, article number, claim number, Post Office box or caller service number, check number, or debit and/or credit card number.

SAFEGUARDS:

Paper records, computers, and computer Storage tapes and disks are maintained in controlled-access areas or under general supervision of program personnel. Computers are protected by a cipher lock system, card key system, or other physical access control methods. Computer systems are also protected with an installed security software package, computer logon identifications, and operating system controls including access controls, terminal and use identifications, and file management. Online data transmissions are protected by encryption.

Access to these records is limited to authorized personnel, who must be identified with a badge. Contractors must provide similar protection subject to contract controls and a security compliance review by the Postal Inspection Service.

RETENTION AND DISPOSAL:

Passport applications are mailed on the day of acceptance with fees and documentation. Records related to passports are destroyed after 4 months.

Records related to Special Services for domestic and International Express Mail are retained for up to 1 year. Domestic and international Special Services records are retained for 2 years. Records relating to Post Office boxes and caller services are retained for up to 2 years after the customer relationship ends. Records collected via self-service equipment are retained for up to 2 years. Records related to credit and/or debit card transactions are retained for 2 years. Records related to inquiries and claims are retained for up to 3 years from final action on the claim. Records related to retail transactions are retained for up to 5 years.

Records are deleted or destroyed at the end of the retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Marketing Officer and Senior Vice President, United States Postal Service, 1735 N Lynn St., Arlington, VA 22209.

Senior Vice President, Operations, United States Postal Service, 475 L'Enfant Plz. SW., Washington, DC 20260.

NOTIFICATION PROCEDURE:

For records relating to Post Office boxes, caller services, self-service, and passports, inquiries made in person must be made by the subject individual at the local Post Office. Requestors must identify themselves with a driver's license or military, government, or other form of acceptable identification. (**Note:** for passports, inquiries are best directed to the Department of State, which maintains the original case file.)

For Special Services, information can be obtained from the facility where the service was obtained, or can be accessed on *http://www.usps.com*. Inquiries should include name, date of mailing, and article number. For Special Services claims, customers can write a letter, including name, date of claim, and claim number, to the head of the facility where the claim was filed, or can call 888–601–9328.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Customers.

USPS 590.000

SYSTEM NAME:

Sales, Marketing, Events, and Publications.

SYSTEM LOCATION:

Postal Service Headquarters Marketing and Public Policy; Information Systems Service Centers (ISSC); National Customer Service Center; Area and District Postal Service facilities; Post Offices; and contractor sites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers who interact with Postal Service sales personnel, respond to direct marketing messages, request publications, respond to contests and surveys, and attend Postal Service events.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Customer information: Customer and key contacts' names, mail and e-mail addresses, phone, fax and pager numbers; job descriptions, titles, and roles; other names and e-mails provided by customers.

2. Identifying information: Customer ID(s), D-U-N-S Numbers, Postal Service account numbers, meter numbers, and signatures.

3. Business specific information: Firm name, size, and years in business; number of employees; sales and revenue information; business sites and locations; URLs; company age; industrial classification numbers; use of Postal Service and competitors products and services; types of customers served; customer equipment and services; advertising agency and spending; names of Postal Service employees serving the firm; and calls made.

4. Information specific to companies that act as suppliers to Postal Service: Contract start and end dates, contract award number, contract value, products and/or services sold under contract.

5. Information provided by customers as part of a survey or contest.

6. Payment information: Credit and/or debit card number, type, expiration date, and check information; and Automated Clearing House (ACH) information.

7. Event information: Name of event; role at event; itinerary; and membership in a PCC.

8. Customer preferences: Preferences for badge name and accommodations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S):

1. To understand the needs of customers and improve Postal Service sales and marketing efforts.

2. To provide appropriate materials and publications to customers.

3. To conduct registration for Postal Service and related events.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The standard routine uses for customer-related systems apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated databases, computer Storage media, and paper.

RETRIEVABILITY:

For sales, events, and publications, information is retrieved by customer name or customer ID(s), mail or e-mail address, and phone number.

For direct marketing, information is retrieved by Standard Industry Code (SIC) or North American Industry Classification System (NAISC) number, and company name.

SAFEGUARDS:

For sales, events, and publications, paper records and computer Storage tapes and disks are maintained in controlled-access areas or under general supervision of program personnel. Computers containing information are located in controlled-access areas with personnel access controlled by a cipher lock system, card key system, or other physical access control method, as appropriate. Authorized persons must be identified by a badge. Computer systems are protected with an installed security software package, computer logon identifications, and operating system controls including access controls, terminal and user identifications, and file management. Online data transmission is protected by encryption.

For direct marketing, paper records and computer Storage tapes and disks are maintained in controlled-access areas or under general scrutiny of program/contractor personnel. Access is controlled by logon ID and password as authorized by the Marketing organization via secure Web site. Within the secured Storage facility, authorized persons must be identified by a badge. Online data transmission is protected by encryption.

Contractors must provide similar protections subject to contract controls and a security compliance review by the Postal Inspection Service.

RETENTION AND DISPOSAL:

Records relating to organizations and publication mailing lists are retained until the customer ceases to participate. ACH records are retained for up to 2 years. Records relating to direct marketing, advertising, and promotions are retained for 5 years.

Other records are retained for 3 years after the relationship ends.

Records are deleted or destroyed at the end of the retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Marketing Officer and Senior Vice President, United States Postal Service, 1735 N. Lynn St., Arlington VA 22209.

NOTIFICATION PROCEDURE:

For information pertaining to sales, inquiries should be addressed to: Office of Sales Performance Assessment and Administration, 1735 N. Lynn St., Arlington, VA 22209.

Customers wanting to know if other information about them is maintained in this system of records must address inquiries in writing to the Chief Marketing Officer, and include their name and address.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the NotificationProcedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Customers, Postal Service personnel, and list providers.

USPS 600.000

SYSTEM NAME:

International Services.

SYSTEM LOCATION:

Postal Service Headquarters, Information Systems Service Centers (ISSC), and Postal Service facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers shipping to or from international locations.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Customer information: customer name, customer ID(s), and contact information.

2. Name and address of senders and addressees.

3. Information pertaining to mailings: Contents, order number, volume, destination, weight, origin, and type of mailing.

4. Customer barcode scan data.

5. Company name; contact name, title, and phone and fax number; mail and e-mail address; after-hours contact name and phone number; Tax ID number; Permit account number; and CAPS account number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S):

1. To provide international mailings and business services.

2. To provide Postal Service scan data to customers for mail tracking purposes.

3. To support customized mail agreements with international customers.

4. To satisfy reporting requirements for customs purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The standard routine uses for customer-related systems apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated databases, computer Storage media, and paper.

RETRIEVABILITY:

By customer name, ID number(s).

SAFEGUARDS:

Paper records and computer Storage tapes and disks are maintained in controlled-access areas or under general supervision of program personnel. Hardware is stored in secure cabinets and hardcopy materials are stored in locked Storage cabinets. Data is firewall protected and accessible by the customer by username and password. Postal Service access is restricted to authorized personnel.

RETENTION AND DISPOSAL:

Records related to the Pre-Customs Advisory System are retained for 5 years and then erased, according to the requirements of domestic and foreign Customs services.

Other records are retained for 3 years after the relationship ends.

Records are deleted or destroyed at the end of the retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President, International Business, United States Postal Service, 1735 N Lynn St, Arlington VA 22209.

NOTIFICATION PROCEDURE:

Customers wanting to know if other information about them is maintained in this system of records must address inquiries in writing to the system manager, and include their name and address.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Customers and Postal Service personnel.

USPS 610.000

SYSTEM NAME:

Identity and Document Verification Services.

SYSTEM LOCATION:

Postal Service Marketing, Headquarters; Information Systems Service Centers (ISSC); and contractor sites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers who apply for identity and document verification services.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Customer information: Name, address, customer ID(s), telephone number, mail and e-mail address, date of birth, place of birth, company name, title, role, and employment status.

2. Names and contact information of users who are authorized to have access to data.

3. Verification and payment information: Credit and/or debit card information or other account number, government issued ID type and number, verification question and answer, and payment confirmation code. (Note: Social Security Number (SSN) and credit and/or debit card information are collected, but not stored, in order to verify ID.)

4. Biometric information including fingerprint, photograph, height, weight, and iris scans. (Note: Information may be collected, secured, and returned to customer, but not stored.)

5. Digital certificate information: Customer's public key(s), certificate serial numbers, distinguished name, effective dates of authorized certificates, certificate algorithm, date of revocation or expiration of certificate, and Postal Service-authorized digital signature.

6. Transaction information: clerk signature; product use and inquiries,

7. Electronic information related to encrypted documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S):

1. To provide services related to identity and document verification services.

2. To issue and manage public key certificates and/or electronic postmarks.

3. To provide secure mailing services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The standard routine uses for customer-related systems apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated databases, computer Storage media, and paper.

RETRIEVABILITY:

By customer name, customer ID(s), distinguished name, certificate serial number, receipt number, and transaction date.

SAFEGUARDS:

For public keys, hardcopy records and computer records are stored in a building with access controlled by guards and room access controlled by card readers. Information in the database is protected by a security architecture of several levels that includes an asynchronous gateway, network firewall, operating security system, and database software security architecture. Internal access to the database is limited to the system administrator, database administrator, and designated support personnel. Key pairs are protected against cryptanalysis by encrypting the private key and by using a shared secret algorithm to protect the encryption key, and the certificate authority key is stored in a separate, tamperproof, hardware device. Activities are audited, and archived information is protected from corruption, deletion, and modification.

For authentication services and electronic postmark, electronic data is transmitted via secure socket layer (SSL) encryption to a secured data center. Computer media are stored within a secured, locked room within the facility. Access to the database is limited to the system administrator, database administrator, and designated support personnel. Paper forms are stored within a secured area within locked cabinets.

RETENTION AND DISPOSAL:

Records related to Pending Public Key Certificate Application Files are added as received to an electronic database, moved to the authorized certificate file when they are updated with the required data, and records not updated within 90 days from the date of receipt are destroyed.

Records related to the Public Key Certificate Directory are retained in an electronic database, are consistently updated, and records are destroyed as they are superseded or deleted.

Records related to the Authorized Public Key Certificate Master File are retained in an electronic database for the life of the authorized certificate.

When the certificate is revoked, it is moved to the certificate revocation file.

The Public Key Certificate Revocation List is cut off at the end of each calendar year and records are destroyed 30 years from the date of cutoff.

Records may be retained longer with customer consent or request.

Other records in this system are retained for 7 years.

Records are deleted or destroyed at the end of the retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Marketing Officer and Senior Vice President, United States Postal Service, 1735 N Lynn St, Arlington VA 22209.

NOTIFICATION PROCEDURE:

For authentication services, electronic postmarks, and digital certificates, inquiries should be addressed to:

Manager, Identity and Document Verification Services, United States Postal Service, 475 L'Enfant Plz. SW., Washington DC 20260.

Customers wanting to know if other information about them is maintained in this system of records must address inquiries in writing to the system manager, and include their name and address.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Customers.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–31386 Filed 12–13–02; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 67 FR 72711, December 6, 2002.

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

ANNOUNCEMENT OF CLOSED MEETING: Additional meeting.

The Securities and Exchange Commission will hold an additional closed meeting during the week of December 9, 2002:

An additional closed meeting will be held on Thursday, December 12, 2002 at 2 p.m.

Commissioner Atkins, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting scheduled for Thursday, December 12, 2002, will be:

Formal orders of investigation;

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions;

Adjudicatory matter; and

Litigation matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 11, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–31635 Filed 12–11–02; 4:32 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of December 16, 2002:

An Open Meeting will be held on Wednesday, December 18, 2002, at 10 a.m., in Room 1C30, the William O. Douglas Room, and a Closed Meeting will be held on Thursday, December 19, 2002, at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Open Meeting scheduled for Wednesday, December 18, 2002 will be:

1. The Commission will consider whether to adopt exemptions for most standardized options from provisions of the Securities Act of 1933 and from the registration requirements of the Securities Exchange Act of 1934. The exemptions would ensure comparable regulatory treatment of standardized options and security futures products.

2. The Commission will consider proposing new rules and rule amendments to implement (a) the mandated electronic filing of reports required to be filed by officers, directors and principal security holders under section 16(a) of the Securities Exchange Act of 1934; and (b) Web site posting of such reports by issuers, both of which are required by section 16(a)(4) of the Exchange Act, as amended by section 403 of the Sarbanes-Oxley Act of 2002.

The subject matter of the Closed Meeting scheduled for Thursday, December 19, 2002 will be:

Formal orders of investigation;

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions; and

Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 11, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31657 Filed 12–12–02; 11:28 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46961; File No. SR–BSE–2002–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Its Solely Listed Issue Credit

December 6, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on November 1, 2002, the Boston Stock Exchange, Inc. ("BSE") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the BSE. On December 3, 2002, the BSE filed Amendment No. 1 to the proposal with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend the portion of its Floor Operations Fee Schedule that pertains to solely listed issue credit.

The text of the proposed rule change is available at the Office of the Secretary, the BSE and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John A. Boese, Assistant Vice President, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 2, 2002 ("Amendment No. 1"), which replaced the original Form 19b–4 in its entirety. In Amendment No. 1, the BSE made technical corrections to Item 9 of the original Form 19b–4 and to the Transaction Fee Schedule provided in Exhibit 2.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Floor Operations Fee Schedule to increase its Solely Listed Issue credit. The BSE seeks to increase from $25 to $50 per issue the monthly credit it offers its specialists for trading those issues that are only listed on the BSE ("Solely Listed Issues"). The BSE believes that its Solely Listed Issue program is an integral part of the products and services it offers its customers and proposes this increase as a way to assist in maintaining the program.

2. Statutory Basis

The BSE believes the proposed rule change is consistent with section 6 of the Act[4] in general, and with section 6(b)(4) of the Act[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its issuers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The BSE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The BSE has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the BSE believes that the proposal establishes or changes a due, fee, or other charge, it has become effective pursuant to section 19(b)(3)(A) of the Act[6] and subparagraph (f)(2) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–2002–19 and should be submitted by January 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31589 Filed 12–13–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46957; File No. SR–CBOE–2002–62]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Proposing to Amend Interpretation .01(b)(2) and .05(d)(ii) to CBOE Rule 5.3 Which Establish the Pricing Criteria for Securities that Underlie Options Traded on the Exchange

December 6, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 11, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend Interpretation .01(b)(2) and .05(d)(ii) to CBOE Rule 5.3, which establish the pricing criteria for securities that underlie options traded on the Exchange. The text of the proposed rule change follows. Additions are in *italics*. Deleted text is in [brackets].

* * * * *

Chapter V—Securities Dealt In

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Criteria for Underlying Securities

Rule 5.3

(a) Underlying securities in respect of which put or call option contracts are approved for listing and trading on the Exchange must meet the following criteria:

(1) The security must be duly registered and

(i) Listed on a national securities exchange; or

(ii) Traded through the facilities of a national securities association and reported as a "national market system" ("NMS") security as set forth in Rule 11Aa3–1 under the Securities Exchange Act of 1934; and

(2) The security shall be characterized by a substantial number of outstanding shares which are widely held and actively traded.

(b) In addition, the Board of Directors shall from time to time establish guidelines to be considered by the Exchange in evaluating potential underlying securities for Exchange option transactions. There are, however, many relevant factors which must be considered in arriving at such a determination. The fact that a particular security may meet the guidelines established by the Board does not necessarily mean that it will be approved as an underlying security. Further, in exceptional circumstances an underlying security may be approved by the Exchange even though it does not meet all of the guidelines. The Exchange may also give consideration to maintaining diversity among various industries and issuers in selecting underlying securities.

. . . Interpretations and Policies:

.01 The Board of Directors has established guidelines to be considered by the Exchange in evaluating potential underlying securities for Exchange option transactions. Absent exceptional circumstances with respect to Paragraphs (a)(1) or (2), or (b)(1) or (2) listed below, at the time the Exchange selects an underlying security for Exchange option transactions, the following guidelines with respect to the issuer shall be met.

(a) Guidelines applicable to the issuer of the security are:

(1) There are a minimum of 7,000,000 shares of the underlying security which are owned by persons other than those required to report their stock holdings under Section 16(a) of the Securities Exchange Act of 1934.

(2) There are a minimum of 2,000 holders of the underlying security.

(3) The issuer is in compliance with any applicable requirements of the Securities Exchange Act of 1934.

(b) Guidelines applicable to the market for the security are:

(1) Trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding twelve months.

(2) *(A) If the underlying security is a "covered security" as defined under Section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least $3.00 for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation for listing and trading. For purposes of this Interpretation .01(b)(2)(A), the market price of such underlying security is measured by the closing price reported in the primary market in which the underlying security is traded.*

(B) If the underlying security is not a "covered security", [T]the market price per share of the underlying security has been at least $7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days.

.02–.04 No Change.

.05(a)–(c) No Change.

(d) In the case of a Restructuring transaction that satisfies either or both of the conditions of subparagraphs (a)(1) or (a)(2) above in which shares of a Restructure Security are sold in a public offering or pursuant to a rights distribution:

(i) The Exchange may assume the satisfaction of one or both of the requirements of paragraphs (a)(1) and (a)(2) of Interpretation and Policy .01 above on the date the Restructure Security is selected for options trading only if: (A) The applicable conditions set forth in clause (i) of paragraph (c) above are met with respect to whichever of these requirements is assumed to be satisfied, or (B) the condition set forth in clause (ii) of paragraph (c) above is met, in either case subject to the limitations stated in said paragraph (c).

(ii) The Exchange may certify that the market price of the Restructure Security satisfies the requirement of paragraph (b)(2) of Interpretation and Policy .01 above by relying on the market price history of the Original Security prior to the ex-date for the Restructuring Transaction in the manner described in paragraph (a) above, but only if the Restructure Security has traded "regular way" on an exchange or automatic quotation system for at least five trading days immediately preceding the date of selection, and at the close of trading on each trading day preceding the date of selection, as well as at the opening of trading on the date of selection the market price of the Restructure Security was at least $7.50, *or, if the Restructure Security is a Covered Security, as defined in paragraph (b)(2) of Interpretation and Policy .01 above, the market price of the Restructure Security was at least $3.00.*

(iii) No Change.

.06–.09 No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its pricing requirement for securities that underlie options traded on the Exchange ("underlying security"). Currently, Interpretation .01(b)(2) to CBOE Rule 5.3 requires that the market price per share of any underlying security must be at least $7.50 for the majority of business days during the three calendar months preceding the date of selection of an option class, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days.

The Exchange now proposes to amend Interpretation .01(b)(2) to CBOE Rule 5.3 to provide that, for underlying securities that are deemed Covered Securities, as defined under section 18(b)(1)(A) of the Securities Act of 1933 ("1933 Act"),[3] the closing market price of the underlying security must be at least $3.00 per share for the five previous consecutive business days prior to the date on which CBOE submits an option class certification. For Underlying Securities that are not Covered Securities, the Exchange states that the current $7.50 price per share requirement would continue to apply.

When the $7.50 price requirement was first implemented, the listed options market was in its infancy. Now more than twenty-eight years after the CBOE first started trading listed options, the Exchange states the listed options market is a mature market with sophisticated investors. The Exchange does not believe that this particular criteria serves to accomplish its presumed intended purpose, *i.e.*, to prevent the proliferation of option classes on overlying securities that lack liquidity needed to maintain fair and orderly markets. The Exchange states that it now seeks to move away from what it believes is a paternalistic approach to listing standards and allow the desires of its customers and the workings of the marketplace to determine the securities on which the Exchange will list options.

In determining to list any number of new option classes, the Exchange must ensure that its own systems and those of the Options Price Reporting Authority ("OPRA") have the capacity to handle the potential increased capacity requirements. Also, due to recent trends in the securities markets, there has been a marked increase in the number of underlying securities that, but for the pricing standard, would otherwise qualify for options listing on the Exchange. The Exchange states that changing the pricing standard to the proposed $3.00 market price per share requirement would allow the Exchange to evaluate whether to list options on a greater number of classes without compromising investor protection.

The Exchange does not propose to amend any of the other criteria in CBOE Rule 5.3, including the requirements that: there must be a minimum of 7,000,000 shares of the underlying security owned by public investors; there must be a minimum of 2,000 holders of the underlying security; and, that there must be a trading volume of at least 2,400,000 shares in the preceding twelve months. Additionally, by requiring the Underlying Security to be listed on the New York Stock Exchange, Inc., American Stock Exchange LLC ("Amex"), or Nasdaq National Market System ("Nasdaq"),[4] the Exchange states that this would ensure that the underlying security meets the highest listing standards in the securities industry. However, if the underlying security does not qualify as a Covered Security, the $7.50 market price per share standard still will apply.

The Exchange believes that the proposed $3.00 market price per share standard is also consistent with the guideline price in CBOE's Delisting Criteria Rule,[5] which is used to determine whether an underlying security previously approved for Exchange options transactions no longer meets the requirements for the continuance of approval. Interpretations and Policies .01(d) and .02 to CBOE Rule 5.4 sets a $3-market price per share as the threshold for determining whether the Exchange may continue listing and trading options on an underlying security that was previously approved for options trading under CBOE Rule 5.3. As long as a $3.00 standard is recognized as an acceptable pricing standard for options trading, albeit as a standard for continued listing, the Exchange believes that the proposed $3.00 should be the threshold standard for initial listing standards as well.

The Exchange also proposes, as a safeguard against price manipulation, that the underlying security have a closing market price of at least $3.00 per share for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation for listing and trading. The market price of such underlying security

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Section 18(b)(1)(A) of the 1933 Act provides that, "[a] security is a covered security if such security is—listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities) * * *" 15 U.S.C. 77r(b)(1)(A). The term Covered Security, for the operation of proposed amendments to Interpretation .01(b)(2) to CBOE Rule 5.3 herein, would not include those securities defined under section 18(b)(1)(B) of the 1933 Act. 15 U.S.C. 77r(b)(1)(B).

[4] *See* 15 U.S.C. 77r(b)(1)(A).

[5] *See* Interpretation .01 to CBOE Rule 5.4.

would be measured by the closing price reported in the primary market in which the underlying security is traded. The Exchange believes that a "look back" period of five consecutive days would provide a sufficient measure of protection from any attempts to manipulate the market price of the underlying security.

The Exchange also believes that the proposed rule change would encourage the delisting of inactive option classes, particularly those classes in which the market price of the underlying security is below $7.50. Currently, a Designated Primary Market Maker ("DPM") on the Exchange to whom an option class has been allocated may be reluctant to delist an inactive option class if the market price of the underlying security is below $7.50 because once delisted, the Exchange's current initial listing criteria must be met to re-list the option class, including the requirement that the market price per share of the underlying security be at least $7.50 for the majority of business days during the preceding three months. The Exchange also notes that the Commission recently granted CBOE approval to list additional series on an option class even though the market price of the underlying security is below $3, provided that at least one other options exchange trades the series to be added, and at the time the other options exchange added that series, it met the requirements to add new series, including the $3 price requirement.[6]

The proposed $3 price standard and the five-day look-back period would provide a reliable test for stability and, at the same time, presents a more reasonable time period for qualifying the price of an underlying security. The Exchange further believes that this proposed abbreviated qualification period, in combination with CBOE's existing quarterly delisting program,[7] would contribute to reducing unnecessary quote traffic.

Finally, for the purposes of consistency within CBOE Rules, the Exchange proposes to amend Interpretation and Policy .05(d)(ii) to CBOE Rule 5.3. Currently, Interpretation .05(d)(ii) to CBOE Rule 5.3 provides a method to certify that the market price of a Restructure Security satisfies the pricing requirement of Interpretation and Policy .01(b)(2) to CBOE Rule 5.3 and specifically references the $7.50 market price per share. In order to make Interpretation .05(d)(ii) to CBOE Rule 5.3 consistent with the pricing standard change to Interpretation .01(b)(2) to CBOE Rule 5.3, the amended rule would reflect that the market price standard for Restructure Securities also shall be reduced from $7.50 to $3.00 as long as the Restructure Security is a Covered Security.

2. Statutory Basis

The Exchange believes that the current proposal will allow the Exchange to provide investors with those options that are most useful and demanded by them without sacrificing any investor protection. As such, the Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[8] in general and furthers the objectives of section 6(b)(5)[9] in particular in that it will promote just and equitable principles of trade; facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system; and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2002–62 and should be submitted by January 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31550 Filed 12–13–02; 8:45 am]

BILLING CODE 8010–01–P

[6] *See* Securities Exchange Act Release No. 46501 (September 16, 2002), 67 FR 59585 (September 23, 2002) (SR–CBOE–2002–52). The Exchange represents that these rules are consistent with similar rules regarding listing and maintenance standards of the Amex, International Securities Exchange, Inc., Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

[7] CBOE states that it maintains an active delisting program which requires the quarterly delisting of multiply listed option classes that do not trade more than 20 contracts per day on the Exchange.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46971; File No. SR–CBOE–2002–67]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Amending the Margin Rule 12.3 to Incorporate Security Futures

December 9, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On November 21, 2002, the CBOE filed an amendment to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its margin rules under CBOE Rule 12.3 to incorporate security futures. Below is the text of the proposed rule change, as amended. Proposed new language is italicized; proposed deletions are bracketed.

* * * * *

Chicago Board Options Exchange, Incorporated

Rules

* * * * *

Chapter XII

Margins

Rule 12.1 No change

Rule 12.2 Time Margin Must Be Obtained

(a) Securities Other Than Security Futures Contracts. The amount of initial margin, or payment in respect of cash account transactions, required by this Rule shall be obtained as promptly as possible and in any event within one payment period as defined in Section 220.2 of Regulation T of the Board of Governors of the Federal Reserve System. The amount of maintenance margin required by this Rule shall be obtained as promptly as possible and in any event within 15 *business* days.

Rule 12.3 Margin Requirements

(a) No change

(b) Customer Margin Accounts—General Rule. Subject to the exceptions set forth in parts (c) *and (k)* hereof, the minimum amount of margin which must be maintained in margin accounts of customers having positions in securities shall be as follows:

(1) No change

(2) No change

(c)–(e) No Change

(f) Market maker and specialist accounts.

(1) *Definitions.* For purposes of this section (f), the following terms shall have the meanings specified below.

(A) The term "related instrument" within an option class or product group means any related derivative product, *including security futures contracts,* that meets the offset level requirements for product groups under Rule 15c3–1 of the Exchange Act, or any applicable SEC staff interpretations or no-action positions (hereinafter referred to as SEC Rule 15c3–1).

(B) The term "product group" means two or more option classes, related instruments, and qualified stock baskets for which it has been determined that a percentage of offsetting profits may be applied to losses in the determination of net capital as set forth in SEC Rule 15c3–1.

(C) The term "option class" refers to all option contracts covering the same underlying instrument.

(D) The term "underlying instrument" refers to long and short positions covering the same security, or a security which is exchangeable for or convertible into the underlying security within a period of 90 days. The term underlying instrument shall not be deemed to include securities options, futures contracts, options on futures contracts, *security futures contracts,* qualified stock baskets, or unlisted instruments.

(E) The term "qualified stock basket" shall have the meaning as defined in SEC Rule 15c3–1.

(F) The term "net liquidating equity" shall mean the sum of positive cash balances and long securities positions less negative cash balances and short securities positions held in the accounts.

(2) The following positions of members may be carried upon a margin basis that is satisfactory to the member and the carrying broker or dealer:

(A) positions in which the member makes a market and permitted offset transactions as defined below[.] *and*

(B) positions in security futures contracts that qualify for exclusion from the margin requirements of SEC and Commodity Futures Trading Commission ("CFTC") regulations pursuant to SEC Rule 400(c)(2)(v) under the Exchange Act and CFTC Rule 41.42(c)(2)(v), and any permitted offset transactions designated by the exchange or association upon which the member trades the security futures contract.

Notwithstanding the other provisions of this paragraph (f), a member organization may clear and carry the market-maker permitted offset positions of one or more registered specialists, registered market-makers, or Designated Primary Market-Makers pursuant to the rules of a national securities exchange (all of which are deemed specialists for all purposes under the [Securities] Exchange Act [of 1934]) (hereinafter referred to as "market-maker(s)") upon a margin basis satisfactory to the concerned parties. The amount of any deficiency between the equity maintained by the market-maker and the haircuts specified in SEC Rule 15c3–1 shall be considered as a deduction from net worth in the net capital computation of the carrying broker or dealer.

(3) *Permitted Offset Transactions.*

(A) For purposes of this subparagraph (f)(3), a permitted offset position means, in the case of an option in which a market-maker makes a market, a position in the underlying instrument or other related instrument, and in the case of other securities in which a market-maker makes a market, a position in options overlying the securities in which a market-maker makes a market, if the account holds the following permitted offset positions:

(i) A long position in the underlying instrument or *security futures contract* offset by a short option position which is "in or at the money";

(ii) A short position in the underlying instrument or *security futures contracts* offset by a long option position which is "in or at the money";

(iii) A stock position resulting from the assignment of a market-maker short option position *or delivery in respect of a short security futures contract;*

(iv) A stock position resulting from the exercise of a market-maker long option position *or taking delivery in respect of a long security futures contract;*

(v) A net long position in a security (other than an option) in which a market-maker makes a market;

(vi) A net short position in a security (other than an option) in which the market-maker makes a market; or

(vii) An offset position as defined in SEC Rule 15c3–1, including its appendices, or any applicable SEC staff interpretation or no-action position

Permitted offset transactions must be effected for market-making purposes such as hedging, risk reduction, rebalancing of positions, liquidation, or accommodation of customer orders, or other similar market-maker purpose.

For purposes of this subparagraph (f)(3), the term "in- or at-the-money" means the current market price of the underlying security is not more than two standard exercise intervals below (with respect to a call option) or above (with respect to a put option) the exercise price of the option; the term "in the money" means the current market price of the underlying instrument or index is not below (with respect to a call option) or above (with respect to a put option) the exercise price of the option; and, the term "overlying option" means

[3] *See* letter from Madge M. Hamilton, Senior Attorney, CBOE, to Theodore R. Lazo, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated November 20, 2002 ("Amendment No. 1"). Amendment No. 1 makes technical changes to the proposed rule text.

a put option purchased or a call option written against a long position in an underlying instrument, or a call option purchased or a put option written against a short position in an underlying instrument.

(B) Reserved

(C)(1) Reserved

(2) For any member which acts as a Market-Maker on the Exchange, the carrying member organization may combine all Market-Maker accounts in which the Market-Maker or its nominee(s) participates, with the exception of joint accounts in which the Market-Maker or its nominee are not the sole participants, for purpose of computing its requirements as prescribed by SEC Rule 15c3–1.

(3) On any business day on which positive net liquidating equity is not maintained in the account(s), the carrying member organization must make a call to the member for additional equity at least equal to the deficit and must notify the Exchange's Department of Financial Compliance of the deficit. The carrying member organization may extend no further credit in the account(s) until the account(s) maintains a positive net liquidating equity and, if the member organization's call for additional equity is not met, steps should be taken promptly to liquidate the positions in the account(s). If the deficit is not resolved by noon of the following business day the carrying member organization must send telegraphic notice to the Exchange as well as the regional and national offices of the Securities and Exchange Commission. However, nothing in this subparagraph (C) shall prohibit the carrying firm from effecting hedging transactions in the deficit account with the prior written approval of the carrying firm's SEC designated examining authority.

(4) In the case of a joint account carried by a member organization for a Market-Maker or specialist in which the Member Organization participates, the margin deposited by the other participants may be in any amount which is mutually satisfactory.

(g)(i) Broker-Dealer Account. A member organization may carry the proprietary account of another broker-dealer, which is registered with the SEC, upon a margin basis which is satisfactory to both parties, provided the requirements of Regulation T of the Board of Governors of the Federal Reserve System *and, in respect of security futures contracts, SEC Rules 400 through 406 under the Exchange Act and CFTC Rules 41.42 through 41.48* are adhered to and the account is not carried in a deficit equity condition. The amount of any deficiency between the equity maintained in the account and the margin required by the other provisions of this Rule shall be deducted in computing the Net Capital of the member organization under Rule 15c3–1 of the Exchange Act.

(ii) Requirements for Joint Back Office Participants. A member organization may carry the accounts of joint back office ("JBO") participants upon a margin basis which is satisfactory to both parties, provided the requirements of Regulation T Section 220.7 and CBOE Rule 13.4 are adhered to and the account has a minimum equity of not less than $1,000,000. If equity is below $1,000,000 the carrying organization must issue a call for additional funds or securities which shall be obtained within five business days.

(h) Notwithstanding any provisions of paragraphs (b) through (g) *and (k)* hereof, the Exchange may at any time impose higher margin requirements in respect of positions in any security (including any series of options dealt in on an exchange) when it deems such higher margin requirements to be advisable in light of the price of the security or in light of existing market conditions pertaining generally or with respect to such security.

(i) For the purpose of effecting new securities transactions and commitments, the customer shall be required to deposit margin or have equity in cash and/or securities in the account which shall be at least the greater of:

(1) The amount specified in Regulation T of the Board of Governors of the Federal Reserve System[,] *and, in respect of security futures contracts, SEC Rules 400 through 406 under the Exchange Act and CFTC Rules 41.42 through 41.48,* or

(2) The amount specified in paragraphs (b), [and] (c) *and (k)* of this Rule, or

(3) Such greater amount as the Exchange may from time to time require for specific securities, or

(4) Equity of at least $2,000 except that cash need not be deposited in excess of the cost of any security purchased (this equity and cost of purchase provision shall not apply to "when distributed" securities in a cash account).

Withdrawals of cash or securities may be made from any account which has a debit balance, "short" position or commitments, provided the account is in compliance with Regulation T of the Board of Governors of the Federal Reserve System *and the security futures contract margin requirements pursuant to SEC Rules 400 through 406 under the Exchange Act and CFTC Rules 41.42 through 41.48,* and after such withdrawal the equity in the account is at least the greater of $2,000 or an amount sufficient to meet the maintenance margin requirements of this Rule.

(j) Reserved

(k) Security Futures Contracts. Nothing in this paragraph (k) or other rules of this Chapter XII shall be applicable to security futures contract transactions and positions in a futures account.

(1) General Rule. In relation to security futures contracts, no member organization may effect a transaction or carry an account for a customer, whether a member or nonmember of the Exchange, without proper and adequate margin in accordance with this Chapter XII, all other applicable rules of the Exchange, SEC Rules 400 through 406 under the Exchange Act and CFTC Rules 41.42 through 41.48. No transaction in a security futures contract may be effected, nor may a position in a security futures contract be carried, in a securities cash account.

(2) Time Allowed for Obtaining Margin. If initial or maintenance margin owed is not obtained prior to the day on which the account is deemed undermargined for purposes of SEC Rule 15c3–1(c)(2)(xii), member organizations must comply with the provisions of paragraph (k)(3) below. Extensions of time shall be unavailable.

(3) Net Capital. In computing its net capital, a member organization shall deduct any initial or maintenance margin deficiency attributable to security futures contracts in accordance with the undermargined account provision of SEC Rule 15c3–1(c)(2)(xii).

(4) Day Trading. Day trading rules shall not be applicable to security futures contracts.

(5) Definitions. For the purposes of this paragraph (k), the following terms shall have the meanings specified below.

(A) The term "security futures contract" means a "security future" as defined in Section 3(a)(55) of Exchange Act.

(B) The term "current market value", with respect to security futures contracts, means "current market value" as defined in SEC Rule 401(4)(i)(A) or (4)(i)(B), whichever is applicable, under the Exchange Act and CFTC Rule 41.43(4)(i)(A) or (4)(i)(B), whichever is applicable.

(C) The term "underlying security" means, in the case of physically settled security futures contracts, the security that is delivered upon expiration of the contract, and, in the case of cash settled security futures contracts, the security or securities index the price or level of which determines the final settlement price for the security futures contract upon its expiration. The term "underlying security" also means, in the case of a securities index, an underlying stock basket, or equivalent units of a registered investment company meeting the criteria set forth in CBOE Rule 5.3 and the Interpretations and Policies there under.

(D) The term "underlying basket" means, in the case of a securities index, a group of securities futures contracts where the underlying securities as defined in paragraph (C) above include each of the component securities of the applicable index and which meets the following conditions (i) the quantity of each underlying security is proportional to its representation in the index, (ii) the total market value of the underlying securities is equal to the aggregate value of the applicable index, (iii) the basket cannot be used to offset more than the number of contracts or warrants represented by its total market value, and (iv) the security futures contracts shall be unavailable to support any other contract or warrant transaction in the account.

(6) Exceptions. For the offsetting positions specified in the table below, member organizations may apply the corresponding initial and maintenance margin requirement minimums, notwithstanding the margin required on a security futures contract pursuant to paragraph (k)(1) above, or on other securities pursuant to paragraphs (b) and (c) of this Rule.

All options referred to mean options on the underlying security, not the security futures contract.

All requirements that are expressed in terms of an option's exercise price, in-the-money amount, and out-of-the-money amount mean the aggregate amount (i.e., multiply by number of shares per contract or the contract multiplier).

	Security futures contract type	Margin account initial requirement	Margin account maintenance requirement
Long and Short Security Futures Contract. same underlying different expiration months same or different market(s)	Single Stock, Narrow-Based Index.	5% of the current market value of the long or short security futures contract, whichever is greater.	Same as initial.
	Single Stocks vs. Narrow-Based Index 1.	5% of the current market value of the long or short security futures contract(s), whichever is greater.	Same as initial.
Long and Short Security Futures Contract. same underlying same expiration month different markets 2	Single Stock Narrow-Based Index	3% of the current market value of the long or short security futures contract, whichever is greater.	Same as initial.
Long Security Futures Contract and Short Underlying. same underlying	Single Stock	None required on long security futures contract. Short sale proceeds plus 50% requirement on short stock position.	None required on long security futures contract. Short stock requirement is 105% of stock market value.
	Narrow-Based Index	None required on long security futures contract. Short sale proceeds plus 50% requirement on short stock basket.3.	None required on long security futures contract. Short stock basket requirement is 105% of basket market value.
Long Security Futures Contract and Short Call. same underlying	Single Stock, Narrow-Based Index.	20% of the current market value of the long security futures contract plus any call in-the-money amount. None required on short call. Proceeds from the call sale may be applied.	20% of the current market value of the long security futures contract plus any call in-the money amount.
	Single Stocks 4 vs. Narrow-Based Index Call Option. Narrow-Based Indices 4 vs. Broad-Based Index Call Option.	20% of the current market value of the long basket of security futures contracts plus any call in-the-money amount. None required on short index call. Proceeds from the call sale may be applied.	20% of the current market value of the long basket of security futures contracts plus any call in-the-money amount.
Long Security Futures Contract and Long Put. same underlying	Single Stock, Narrow-Based index.	20% of the current market value of the long security futures contract Pay for long put in full.	10% of the put exercise price plus any put out-of-the-money amount or 20% of the current market value of the long security futures contract, whichever is lower.
	Single Stocks 4 vs. Narrow-Based Index Call Option. Narrow-Based Indices 4 vs. Broad-Based Index Put Option.	20% of the current market value of the long basket of security futures contracts. Pay for long index put in full.	10% of the index put exercise price plus any put out-of-the-money amount or 20% of the current market value of the long basket of security futures contracts, whichever is lower.
Short Security Futures Contract and Long Underlying. same underlying	Single Stock	None required on the short security futures contract. 50% requirement on long stock position.	5% of the current market value of the long stock position.

	Security futures contract type	Margin account initial requirement	Margin account maintenance requirement
	Narrow-Based Index	None required on the short narrow-based security futures contract. 50% requirement on long stock basket.4.	5% of the current market value of the long stock basket 4
Short Security Futures Contract and Long Marginable Convertible 5. same underlying	Single Stock	None required on the short security futures contract. 50% requirement on long convertible security.	10% of the current market value of the long convertible security.
Short Security Futures Contract and Long Call 6. same underlying	Single Stock	20% of the current market value of the short security futures contract. Pay for long call in full.	10% of the call exercise price plus any call out-of-the-money amount or 20% of the current market value of the short security futures contract, whichever is lower.
	Single Stocks 4 vs. Narrow-Based Index Call Option. Narrow-Based Indices 4 vs. Broad-Based Index Call Option.	20% of the current market value of the short basket of security futures contracts. Pay for long index call in full.	10% of the index call exercise price plus any call out-of-the-money amount or 20% of the current market value of the short basket of security futures contracts, whichever is lower.
Short Security Futures Contract and Short Put. same underlying	Single Stock	20% of the current market value of the short security futures contract plus any put in-the-money amount. None required on short put. Proceeds from the put sale may be applied.	20% of the current market value of the short security futures contract plus any put in-the-money amount.
	Single Stocks 4 vs. Narrow-Based Index Put Option. Narrow-Based Indices 4 vs. Broad-Based Index Put Option.	20% of the current market value of the short basket of security futures contracts plus any put in-the-money amount. None required on short index put. Proceeds from the index put sale may be applied.	20% of the current market value of the short basket of security futures contracts plus any put in-the-money amount.
Long Security Futures Contract, Short Call and Long Put. same underlying put and call must have same exercise price	Single Stock Narrow Based Index. Single Stocks 4 vs. Narrow-Based Index Options. Narrow-Based Indices 4 vs. Broad-Based Index Options.	20% of the current market value of the long security futures contract(s) plus any call in-the-money amount. Pay for long put in full. None required on short call. Proceeds from call sale may be applied.	10% of the exercise price plus any call in-the-money amount.
Long Security Futures Contract, Short Call and Long Put. same underlying put exercise price must be below call exercise price	Single Stock Narrow Based Index. Single Stocks 4 vs. Narrow-Based Index Options. Narrow-Based Indices 4 vs. Broad-Based Index Options.	20% of the current market value of the long security futures contract(s) plus any call in-the-money amount. Pay for long put in full. None required on short call. Proceeds from call sale may be applied.	10% of the put exercise price plus any put out-of-the-money amount, or 20% of the call exercise price plus any call in-the-money amount, whichever is lower.
Short Security Futures Contract, Long Call and Short Put. same underlying put and call must have same exercise price	Single Stock Narrow Based Index. Single Stocks 4 vs. Narrow-Based Index Options. Narrow-Based Indices 4 vs. Broad-Based Index Options.	20% of the current market value of the short security futures contract(s) plus any call in-the-money amount. Pay for long put in full. None required on short put. Proceeds from put sale may be applied.	10% of the exercise price plus any put in-the-money amount.

1 A long (short) basket of security futures contracts on individual equities offset with a short (long) security futures contract on a narrow-based index. A basket of security futures contracts must qualify as an "underlying basket" in accordance with CBOE Rule 12.3(k)(5)(D).

2 Contract specifications must be substantively identical.

3 The stock basket must qualify as an "underlying stock basket" in accordance with CBOE Rule 12.3(a)(7).

4 A basket of security futures contracts must qualify as an "underlying basket" in accordance with CBOE Rule 12.3(k)(5)(D).

5 The convertible security must be immediately exchangeable for or convertible into, without restriction (including the payment of money), the security underlying the single stock future.

6 A long warrant (issued by the issuer of the underlying security) is also permitted (single stock futures only). The long warrant must be paid for in full and shall have no value for margin purposes.

* * * Interpretations and Policies:

.01–.15 No change

Rule 12.4 No change

Rule 12.5. Determination of Value for Margin Purposes

Positions in active securities, *except security futures contracts*, dealt in on a recognized exchange (including option contracts) shall, for margin purposes, be valued at current market value prices; provided that, whether or not dealt in on an exchange, only those options contracts on a stock or stock index, or a stock index warrant, having an expiration that exceeds 9 months and which are listed or guaranteed by the carrying broker-dealer, may be deemed to have market value for the purposes of Rule 12.3(c). *Security futures contracts shall have no value for margin purposes.* Positions in other securities shall be valued conservatively in the light of current market prices and the amount of anticipated realization upon a liquidation of the entire position. Substantial additional margin must be required in all cases where the securities carried are subject to unusually rapid or violent changes in value, or where the amount carried is such that they cannot be liquidated promptly.

12.6 No change

12.7 No change

12.8 No change

Rule 12.9. Meeting Margin Calls by Liquidation Prohibited

No Member Organization shall permit a customer to make a practice of effecting transactions requiring initial or additional margin or full cash payment and then furnishing such margin or making such full cash payment by liquidation of the same or other commitments. The provisions of this Rule shall not apply to *margin calls attributable to security futures contract transactions nor to* any account maintained for another broker or dealer, exclusive of the partners, officers and directors of such other broker or dealer, provided such other broker or dealer is a Member Organization of the Exchange or has agreed in good faith with the Member Organization carrying the account that he will maintain a record equivalent to that referred to in Rule 12.12 of these Rules.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE is proposing to amend its margin rules, in a manner consistent with the joint margin regulations of the Commission and the Commodity Futures Trading Commission ("CFTC")[4] to incorporate security futures. Specifically, CBOE is proposing to add a new provision (k) to CBOE Rule 12.3 to address margin for security futures contracts. The proposed amendments would: (1) Require the initial and maintenance margin for security futures contracts to be 20 percent unless an offset provision provides for a different margin requirement or the positions are excluded from CBOE Rule 12.3(k); (2) allow for good faith margin of certain positions in security futures contracts; (3) clarify that security futures contracts have no value for margin purposes; (4) make necessary conforming changes to other CBOE margin provisions; and (5) make some non-substantive changes to CBOE margin rules for consistency purposes.

The passage of the Commodity Futures Modernization Act of 2000 (the "CFMA")[5] in December of 2000 enabled futures contracts on individual stocks and narrow-based indexes to be traded in the United States for the first time. The CFMA conferred upon the Board of Governors of the Federal Reserve System (the "FRB") authority to set margin requirements for security futures contracts. The FRB delegated this authority to the SEC and the CFTC jointly, as permitted by the CFMA. The SEC and the CFTC have jointly issued rules and regulations.[6]

CBOE's proposed margin requirements for security futures contracts would adopt the provisions of the joint regulations of the SEC and CFTC ("Joint Regulations").[7] Proposed new provision (k) to CBOE Rule 12.3 would require compliance with the security futures contract margin requirements of the SEC and CFTC, in addition to the Exchange margin rules and Regulation T of the FRB. Therefore, under proposed CBOE Rule 12.3(k)(1), the initial and maintenance margin requirement for a security futures contract would be 20 percent of the current market value of the contract unless an offset provision enumerated in 12.3(k) or another rule provided for a different margin requirement.

The current market value of the contract would be calculated on a mark-to-market basis at the conclusion of each trading day. Based on the mark-to-market value of a security futures contract, a variation settlement amount could be debited from or credited to a customer's account balance at the conclusion of the trading day. These variation settlement entries represent actual cash withdrawals from, or deposits to, the account that will change its cash balance in the same way as would any other routine cash withdrawal or deposit. When account equity is computed, variation settlement amounts are automatically accounted for in that they can be viewed as integrated into the cash balance, which is a component of the formula for computing equity. Proposed CBOE Rule 12.3(k)(2) would set a time limit for obtaining required margin by incorporating by reference under CBOE Rule 12.3(k)(3) the same time frame that the SEC's Net Capital Rule[8] permits maintenance margin calls to remain unsatisfied before the member organization must deduct the maintenance margin deficiency in computing its net capital. In other words, under the SEC's rules, if a customer did not satisfy an initial or maintenance margin call on a security futures contract for five days, the broker or dealer carrying that customer's security futures positions would be required to take a deduction for the undermargined customer account when computing its own net capital.

CBOE Rule 12.3(k)(4) would expressly state that day trading rules do not apply to security futures contracts. CBOE believes that a level playing field should be maintained between the securities and futures industries. Securities accounts would be at a competitive disadvantage to futures accounts if CBOE, or any other securities self-regulatory organization, were to impose day trading (*i.e.*, intra-day) margin requirements on security futures contract transactions in securities accounts, because futures accounts are not subject to day trading margin requirements. Moreover, the Joint Regulations do not implement a day trading (*i.e.*, intra-day) margin requirement.

Consistent with the Joint Regulations, the Exchange is proposing lower margin requirements for a security futures contract held in conjunction with an offsetting position in another security

[4] *See* Securities Exchange Act Release No. 46292 (August 1, 2002), 67 FR 53146 (August 14, 2002).

[5] Appendix E of the Pub. L. 106–554, 114 Stat. 2763 (2000).

[6] *See* note 4, *supra*.

[7] 17 CFR 242.400 through 242.406 and 17 CFR 41.42 through 41.49.

[8] 17 CFR 240.15c3–1(c)(2)(xii).

futures contract, an underlying security, or an option on an underlying security. Such lower margin requirements are appropriate for these offsetting positions since the risk of the combined positions is lower than the risk of the positions viewed separately.[9] Therefore, the Exchange proposes to incorporate all of the offsets identified in the Supplementary Information section of the **Federal Register** release announcing the final Joint Regulations, except for the offset involving a broad-based index future (No. 17), as a broad-based index future cannot be carried in a securities account.[10] Under the enumerated offsets, a person could have a margin requirement for a position in security futures contracts that was lower than 20 percent. For example, a person holding a long and a short securities futures contract in the same underlying security, but having different expiration months, would have a margin requirement of five percent of the current market value of the long or short contract, whichever is greater. Under another offset provision, a person holding long and short security futures contracts in the same underlying security, with the same expiration month, but listed and traded on different markets, would have a three percent margin requirement. The offsets would be listed in table format under proposed CBOE Rule 12.3(k)(6).

A number of offsets involve a basket of security futures contracts. For example, a basket of security futures contracts on individuals stocks may serve as an offset to a security futures contract on a narrow-based index or option on a narrow-based index. Also, a basket of narrow-based security futures contracts may serve as an offset to an option on a broad-based index. A definition of "underlying basket" as pertains to security futures contracts is proposed.[11] The primary purpose of the definition of "underlying basket" is to require that the composition of the basket match the composition of the index being offset.

The Exchange proposes to amend CBOE Rule 12.3(f) (Market-Maker and Specialist Accounts) to permit options market-makers to receive good faith margin treatment for hedging transactions in security futures contracts that are based on the same underlying security as the options in which they make markets. In addition, security futures contracts that qualify for the exclusion from margin under the Joint Regulations[12] would be subject to margin that is satisfactory to the member and the carrying broker or dealer.

CBOE proposes other amendments to the margin rules. Proposed changes to CBOE Rule 12.5 would clarify that security futures contracts have no value for margin purposes. Proposed amendments to CBOE Rule 12.2, Time Margin Must Be Obtained, and CBOE Rule 12.9, Meeting Margin Calls by Liquidation Prohibited, would clarify that these rules do not apply to security futures contracts. The proposed rule change also makes necessary conforming changes to other margin provisions,[13] and other non-substantive changes being proposed for consistency purposes.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Exchange Act[14] in general and furthers the objectives of section 6(b)(5) of the Exchange Act[15] in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. CBOE notes that the proposed rules are intended to implement the margin requirements for security futures contracts in the Joint Regulations. CBOE believes that the proposed rule change would remove impediments to trading security future contracts and promote just and equitable principles of trade by incorporating security futures and appropriate offsets into CBOE's margin rules in a manner that will promote competition and permit people to utilize security futures contracts for hedging purposes. As such, the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the File No. SR–CBOE–2002–67 and should be submitted by January 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31590 Filed 12–13–02; 8:45 am]

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[9] In some cases only lower maintenance margin levels are proposed.

[10] *See* note 4, *supra*.

[11] *See* proposed CBOE Rule 12.3(k)(5)(D).

[12] SEC Rule 400(c)(2)(v); CFTC Rule 41.42(c)(2)(v).

[13] *See* Proposed CBOE Rules 12.3(b), (f)(1)(A) and (D), (2)(A), (3)(A)(i), (A)(ii), (A)(iii) and (A)(iv), (g)(i), (h), and (i)(2).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46956; File No. SR–DTC–2002–15]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Accelerated Approval of a Proposed Rule Change To Eliminate the FAST Certificates-on-Demand Service

December 6, 2002.

I. Introduction

On September 4, 2002, The Depository Trust Company filed with the Securities and Exchange Commission ("Commission") a proposed rule change File No. SR–DTC–2002–15 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on November 12, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

II. Description

Currently, DTC's FAST COD service allows participants to request for same day availability a physical certificate in the participant's or its nominee's name for issues which are held in DTC's nominee name, Cede & Co., at the transfer agent under DTC's FAST program. After consultation with the largest users of the service, DTC has decided to eliminate the FAST COD service due to decreasing demand for the service. Currently, there is an average of approximately five FAST COD requests per day. In the place of FAST COD, participants may continue to use the Rush Withdrawals-by-Transfer ("RWT") service[3] or the Deposit/Withdrawal at Custodian ("DWAC") service.[4] RWT allows participants to quickly obtain physical certificates, which can be registered in either the participant's name or its customer's name. Using DWAC, participants can request certificates in client name directly from the transfer agents.

III. Discussion

Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[5] By eliminating a duplicative and infrequently used service such as FAST COD, the rule change allows DTC to better allocate the resources used on FAST COD toward other needed programs or improvements. An improved distribution of resources should assist DTC in removing impediments to and perfecting the national system for the prompt and accurate clearance and settlement of securities transactions. Furthermore, DTC has other services, RWT and DWAC, that it participants can use in place of FAST COD. Accordingly, the Commission believes the proposed rule change is consistent with the Act and specifically with Section 17A(b)(3)(f) of the Act.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication because this will allow DTC to eliminate the FAST COD service and reallocate those resources to other projects scheduled for completion by the end of the year.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2002–15) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–31554 Filed 12–13–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 46772, (November 5, 2002, 67 FR 68709, 2002).

[3] For more information about the RWT service, see Securities Exchange Act Release Nos. 30505 (March 20, 1992) [SR–DTC–91–23](order approving implementation of the RWT service on permanent basis); 27518 (December 7, 1989)(order granting temporary extension of the RWT service); 26960 (June 23, 1989) [SR–DTC–89–11] (order granting approval of the RWT service procedures); 27052 (July 21, 1989) [SR–DTC–89–1] (order granting temporary approval of the RWT service).

[4] For more information about the DWAC service, see Securities Exchange Release No. 30283 (January 23, 1992) [SR–DTC–91–16] (order granting approval of the DWAC service).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46959; File No. SR–ISE–2002–27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange, Inc., Relating to the Repeal of Limitations on Orders

December 6, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 21, 2002, the International Securities Exchange, Inc. ("ISE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to repeal the provision in Rule 717 that prohibits Electronic Access Members ("EAMs") from sending in more than one order every 15 seconds for the same beneficial owner in options on the same underlying security. Below is the text of the proposed rule change. Proposed deletions are in [brackets].

* * * * *

Rule 717. Limitations on Orders

* * * * *

[(h) Multiple Orders for the Same Beneficial Account.

Members shall not cause the entry of more than one order every fifteen (15) seconds for the account of the same beneficial owner in options on the same underlying security; provided, however that this shall not apply to multiple orders in different series of options on the same underlying security if such orders are part of a spread.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the rule filing is to repeal the ISE's "15-second speed bump." This rule prohibits EAMs from sending in more than one order every 15 seconds for the same beneficial owner in options on the same underlying security. The ISE adopted this speed bump in 2000 to protect ISE market makers from exposure across multiple series of options if they receive orders in many series at the same time.[3] However, since adopting this rule, more sophisticated risk management tools have been developed, permitting market makers to limit risk on a market-wide basis. Accordingly, this rule is no longer necessary. Also, eliminating this restriction on trading will provide EAMs and their customers with enhanced access to the ISE.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5)[4] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

[3] *See* Securities Exchange Act Release No. 44017 (February 28, 2001), 66 FR 13820 (March 7, 2001).

[4] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2002–27 and should be submitted by January 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31552 Filed 12–13–02; 8:45 am]

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[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46976; File No. SR–ISE–2002–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, Inc., Relating to Payment-for-Order-Flow and Marketing Fees

December 9, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 20, 2002, the International Securities Exchange, Inc. ("ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which the ISE has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing: (1) To reduce its payment-for-order-flow fee from $.65 a contract to $.55 a contract; (2) to lower the cap on each payment-for-order-flow fund from $650,000 to $550,000; and (3) to extend the waiver of the marketing fee from December 31, 2002 to June 30, 2003. The text of the proposed rule change is available at the ISE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it had received. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of those statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The ISE operates a payment for order flow program as approved by the Commission.[3] This program is currently

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43833 (January 10, 2001), 66 FR 7822 (January 25, 2001).

funded through a $.65 fee paid by ISE market makers for each customer contract they execute. The ISE is proposing to reduce its payment-for-order-flow fee from $.65 a contract to $.55 a contract. The ISE also has established a ceiling of $650,000 in each of the 10 payment-for-order-flow funds it maintains.[4] The ISE is proposing to lower the cap on each payment-for-order-flow fund from $650,000 to $550,000.

The ISE has also established a $.10 marketing fee, paid by market makers on customer contracts, that funds general ISE marketing efforts to increase order flow from Electronic Access members.[5] The ISE has waived that fee for the second half of this year.[6] The ISE is proposing to extend the waiver of the marketing fee from December 31, 2002 to June 30, 2003.

The ISE states that it regularly monitors the levels of these fees and ceilings to help ensure that the payment-for-order-flow and marketing efforts are sufficiently funded and that the fees it imposes on its market makers are no higher than necessary. With respect to payment-for-order-flow, the ISE states that it historically has collected more money than its Primary Market Makers have paid out. The ISE believes that it can adequately maintain this program with the reduced fee and ceiling. With respect to the marketing fee, the ISE currently has sufficient retained funds from the time the fee was in effect to pay for anticipated marketing efforts for the beginning part of next year. Thus, the ISE is proposing to extend this fee waiver through June 2003.

The basis for this proposed rule change is the requirement of section 6(b)(4) under the Act[7] that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

[4] *See* Securities Exchange Act Release Nos. 45128 (December 4, 2001), 66 FR 64325 (December 12, 2001) and 45772 (April 17, 2002), 67 FR 20563 (April 25, 2002). The ISE has divided the options it trades into 10 groups, with one Primary Market Maker assigned to each group. The ISE maintains a payment-for-order-flow fund for each group, consisting of the fees collected from market makers trading options in that group. The Primary Market Maker for the group is responsible for arranging and making all payments to Electronic Access Members for order flow sent to the ISE in options in that group.

[5] *See* Securities Exchange Act Release No. 44102 (March 26, 2001), 66 FR 17590 (April 2, 2001).

[6] *See* Securities Exchange Act Release No. 46189 (July 11, 2002), 67 FR 47587 (July 19, 2002).

[7] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The ISE has not solicited, and does not intend to solicit, comments on this proposed rule change. The ISE has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(2) thereunder[9] because it changes an ISE fee. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to SR–ISE–2002–26 and should be submitted by January 6, 2003.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31592 Filed 12–13–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46948; File No. SR–NASD 2002–157]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding ACT Risk Management

December 4, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change to NASD Rule 6150 regarding the risk management function provided by Nasdaq's Automated Confirmation Transaction Service ("ACT"). Upon approval of the proposed rule change, Nasdaq will permit members to voluntarily utilize the ACT risk management function, provided that they utilize another risk management tool of equal quality and that they and the correspondent firms for whom they clear trades continue to report clearing-eligible trades to ACT in compliance with applicable ACT rules. The text of the proposed rule change is available at Nasdaq and at the Commission.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ACT is an automated trade reporting and reconciliation service that speeds the post-execution steps of price and volume reporting, comparison, and clearing of pre-negotiated trades completed in Nasdaq, OTC Bulletin Board, and other over-the-counter securities. ACT handles transactions negotiated over the phone or executed through any of Nasdaq's automated trading services. It also manages post-execution procedures for transactions in exchange-listed securities that are traded off-board in the Nasdaq InterMarket. Participation in ACT is mandatory for NASD members that are members of a clearing agency registered with the Commission, that have a clearing arrangement with such a member, or that participate in any of Nasdaq's trading services.

An integral part of ACT is the risk management function. The ACT risk management function provides firms that clear for other firms with the capability to establish acceptable levels of credit for their introducing firms. ACT risk management also enables clearing brokers to monitor buy/sell-trading activity of their introducing firms, establish trading thresholds, allow/inhibit large trades, add/delete clearing relationships, and access a real-time database of correspondent trading activity.[3] Clearing brokers providing clearing services to correspondent firms are assessed risk management charges of $0.035 per trade and $17.25 per month per correspondent firm with charges limited to a maximum of $10,000 per month per correspondent.[4] Given their lack of credit exposure, self-clearing brokers without correspondents have no reason to utilize the ACT risk management function and are not assessed risk management charges.

The ACT service was implemented for self-clearing firms in March 1990.[5] The ACT service for clearing brokers and their executing correspondents, including the risk management function, was implemented in October 1990;[6] the ACT risk management service charge was implemented in November 1990.[7] The NASD's impetus for creating ACT risk management was the market break of 1987. After studying the market break, the Commission urged the NASD to create an automated system to facilitate rapid, reliable trade comparison and clearing. At that time, clearing brokers and clearing Agencies urged the NASD to include a real-time risk management tool within its new automated system.[8]

Nasdaq considers risk management to be a mandatory service for all clearing brokers because effective, real-time, risk management by each and every clearing broker is critical to the protection of investors and other market participants. Recently, however, Nasdaq has learned that clearing brokers have developed their own risk management procedures and controls comparable to the service provided by ACT. While ACT risk management is integral to the surveillance procedures of many clearing firms, Nasdaq recognizes that a one-size-fits-all approach may no longer be appropriate to meet the surveillance needs of all clearing brokers, particularly in light of the constantly evolving ownership structures of many clearing firms and broker-dealers.

As such, Nasdaq would like to make ACT risk management an optional service for all clearing brokers that clear for correspondents reporting trades into ACT. In order to ensure that all clearing brokers continue to effectively manage their risk, Nasdaq will require that a clearing broker meet several conditions prior to opting out of the ACT risk management service. First, a clearing broker must submit a letter that specifies the correspondent or correspondents for which it no longer requires the risk management service. Additionally, it must state in its letter that it uses an internal risk management capability to monitor the trading activities and risk exposures of its correspondents for which it is opting out of the service. Finally, clearing brokers that discontinue the use of ACT risk management, as well as the correspondents for whom they clear, must continue to comply with all applicable rules governing the reporting of trades to ACT.

Once Nasdaq receives a satisfactory letter from a clearing broker requesting relief from ACT risk management, Nasdaq will discontinue the assessment of risk management charges for the specified correspondent(s) on the first day of the month following the date the firm requested relief from ACT risk management charges.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[9] in general and with section 15A(b)(6) of the Act,[10] in particular, in that the proposal is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a national market system and, in general, to protect investors and the public interest. By requiring clearing brokers to utilize a risk management tool comparable to its own, Nasdaq hopes to ensure that there is no degradation in risk management practices. If, in the future, Nasdaq determines that a degradation of this sort has occurred, Nasdaq will reassess this rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–157 and should be submitted by January 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31551 Filed 12–13–02; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* NASD Rule 6150.

[4] *See* Securities Exchange Act Release No. 34–42984 (June 27, 2000), 65 FR 41119 (July 3, 2000) (File No. SR–NASD–00–35).

[5] *See* Securities Exchange Act Release No. 34–27229 (September 8, 1989), 54 FR 38484 (September 18, 1989) (File No. SR–NASD–89–25).

[6] *See* Securities Exchange Act Release No. 34–28583 (October 26, 1990), 55 FR 46120 (November 1, 1990) (File No. SR–NASD–89–25).

[7] *See* Securities Exchange Act Release No. 34–28595 (November 5, 1990), 55 FR 47161 (November 9, 1990) (File No. SR–NASD–90–57).

[8] *See* SR–NASD–89–25 (May 31, 1989), and Amendments thereto.

[9] 15 U.S.C. 78o–3.

[10] 15 U.S.C. 78o–3(b)(6).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46974; File No. SR–NASD–2002–113]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Implementation of a Fingerprinting Program for Nasdaq Employees and Independent Contractors

December 9, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq amended the proposed rule change on September 10, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to adopt NASD Rule 0140, Fingerprint-Based Background Checks of Nasdaq Employees and Independent Contractors, which will establish a program for conducting fingerprint-based background checks of Nasdaq employees and independent contractors. Nasdaq will implement the proposed rule change as soon as practicable following approval by the Commission. Below is the text of the proposed rule, as amended. Proposed rule language, as amended, is in italics.

0140. Fingerprint-Based Background Checks of Nasdaq Employees and Independent Contractors.

(a) In order to enhance the physical security of the facilities, systems, data, and information of The Nasdaq Stock Market, Inc. ("Nasdaq"), it shall be the policy of Nasdaq to conduct a fingerprint-based criminal records check of (i) all prospective and current employees, (ii) all prospective and current independent contractors who have or are anticipated to have access to Nasdaq facilities for ten business days or longer, and (iii) all prospective and current temporary employees who have or are anticipated to have access to Nasdaq facilities for ten business days or longer. Nasdaq shall apply this policy in all circumstances where permitted by applicable law.

(b) Nasdaq shall submit fingerprint cards obtained pursuant to the foregoing policy to the Attorney General of the United States or his or her designee for identification and processing. Nasdaq shall at all times maintain the security of fingerprint cards and information received from the Attorney General or his or her designee.

(c) Nasdaq shall evaluate information received from the Attorney General or his or her designee in accordance with the terms of a written fingerprint policy and provisions of applicable law. A felony or serious misdemeanor conviction will be a factor in considering whether to hire a prospective employee, take adverse employment action with respect to a current employee, or deny prospective or current independent contractors or temporary employees access to Nasdaq's facilities.

(d) A prospective employee who refuses to submit to fingerprinting shall be denied employment by Nasdaq, and a prospective independent contractor or temporary employee who refuses to submit to fingerprinting shall be denied access to Nasdaq facilities. A current employee, independent contractor, or temporary employee who refuses to submit to fingerprinting will be terminated following notice and being given three opportunities to submit.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In the wake of the September 11, 2001 terrorist attacks, Nasdaq has been exploring ways in which to enhance the security of the critical financial infrastructure that it operates. Market participants use Nasdaq systems to execute and report transactions in Nasdaq-listed securities and rely upon Nasdaq for the dissemination of quotation and transaction information,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* September 9, 2002, letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, Nasdaq added language to the proposed rule text to indicate that the rule applies only where permitted by applicable law and deleted text from the Purpose sections of the form and draft notice related to the preemption of certain state laws by Commission order.

while the capital markets have traditionally looked to Nasdaq as the market of choice for new listings. According to Nasdaq, 4,109 companies (with a market valuation of $2.9 trillion) had shares listed for trading on Nasdaq as of December 31, 2001; the average daily volume of transactions during 2001 was 1.9 billion shares valued at $44.1 billion. Accordingly, a significant disruption in the operation of Nasdaq systems could have serious adverse effects on U.S. and world financial markets.

Nasdaq has active and aggressive programs in place to minimize the risk of system disruptions, including the use of multiple computer facilities in separate geographic locations that are designed to provide redundancy and back-up. In addition, since 1999, Nasdaq has conducted background checks and urinalysis drug testing of all new employees. The background check involves verification of social security number, previous employment, education, credentials, and professional licenses, as well as a name-based criminal record check. The latter consists of an examination of courthouse records of counties where the applicant, according to his employment application, resided during the past seven years. Although this process constitutes a measure of due diligence, it is subject to evasion by applicants who provide false information. Moreover, it does not provide a basis for conducting a comprehensive nationwide search of records. As a result, even if an applicant with a criminal history provides accurate information, the search would not uncover pertinent records if the applicant was tried and convicted in a jurisdiction other than his place of residence.

By contrast, a background check that makes use of the fingerprint database maintained by the Federal Bureau of Investigation ("FBI") permits a nationwide search that covers federal, state, local, and military convictions. Accordingly, it significantly reduces the number of "false negatives" (*i.e.*, failures to uncover pertinent criminal records) associated with less comprehensive searches and eliminates "false positives" caused by confusion of individuals having the same or similar names.

Access to the FBI's database is permitted only when authorized by law. Numerous federal and state laws, however, authorize employers to conduct fingerprint-based background checks that make use of the FBI's database.[4] Notably, section 17(f)(2) of the Act[5] and SEC Rule 17f–2[6] require employees of broker-dealers, transfer agents, and clearing agencies to be fingerprinted and authorize self-regulatory organizations ("SROs") to maintain facilities for processing and storing fingerprint cards and criminal record information received from the FBI database with respect to such cards. Ironically, section 17(f)(2) of the Act[7] does not require SROs to fingerprint their own employees. Nasdaq strongly believes, however, that a proposed rule change to institute a fingerprinting program for Nasdaq employees and independent contractors will enhance NASD's ability to perform its statutory obligations under section 15A of the Act[8] and is therefore authorized under that section. Specifically, by allowing Nasdaq to conduct a more thorough background check of persons that have access to Nasdaq facilities, the proposed rule change will enhance Nasdaq's ability to identify and exclude individuals whose prior criminal activities may pose a threat to the security of Nasdaq operations. This will in turn assist NASD in carrying out the purposes of the Act, preventing fraudulent and manipulative acts and practices, promoting just and equitable principles of trade, removing impediments to and perfecting the mechanism of a free and open market and a national market system, and protecting investors and the public interest. Moreover, although section 17(f)(2) of the Act does not mandate the fingerprinting of SRO employees, it explicitly directs the Attorney General (*i.e.*, the FBI) to provide SROs designated by the Commission with access to criminal history record information.

The rule that Nasdaq is proposing is concerned with the administration of Nasdaq and Nasdaq believes that it might therefore be filed on an immediately effective basis pursuant to section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(3)[10] thereunder. However, Nasdaq is seeking Commission approval for the rule under section 19(b)(2)[11] because Nasdaq believes that it would not be appropriate or practical to institute a fingerprinting program without an explicit determination by the Commission that the program is authorized under the Act. Nasdaq believes that such a determination will be required by the FBI as a precondition to Nasdaq obtaining an Originating Agency Identifier ("ORI") number from the FBI that will identify Nasdaq as an entity authorized to submit fingerprints to the FBI.

According to Nasdaq, an act to require fingerprint-based background checks of SRO employees who are regularly employed in New York State was passed by both the New York State Assembly and Senate and signed into law by Governor George E. Pataki on August 20, 2002.[12] The New York law also requires SROs to fingerprint independent contractors that provide services to them if those individuals have "access to records * * * or other material or secure buildings or secure property, which place the security of [the SRO] at risk." The New York law will require Nasdaq to implement its proposed fingerprinting program for employees and some independent contractors in New York State. However, Commission approval of the program would still be required to implement the program in other states where Nasdaq has critical operations, especially Connecticut and Maryland.[13]

As reflected in the text of the proposed rule change, the program will apply to prospective and current employees, as well as prospective and current temporary employees and independent contractors who have or are anticipated to have access to Nasdaq facilities for ten business days or longer. Refusal to submit to fingerprinting will be grounds for termination or denial of employment or access to Nasdaq facilities. Information received from the FBI concerning an individual will be evaluated in accordance with the terms of a written fingerprint policy, which reflects the application of employment laws governing the use of information concerning criminal convictions in employment decisions. In accordance with such laws, a felony or serious misdemeanor conviction will be a factor in considering whether to hire a prospective employee, take adverse employment action with respect to a current employee, or deny prospective or current independent contractors or temporary employees access to Nasdaq's facilities.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(2) and (b)(6) of the Act,[14] in that the proposal is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove the impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. Nasdaq believes that the proposed rule will assist the NASD in carrying out the purposes of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change as amended, or

B. Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–113 and should be submitted by January 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31591 Filed 12–13–02; 8:45 am]

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[4] *See, e.g.*, 42 U.S.C. 5119a (child care providers); Pub. L. 92–544, 86 Stat. 1109, 1115 (employees of federally chartered or insured banks); Alaska Stat. 04.11.295 (liquor license applicants); Ariz. Rev. Stat. 32–122.02 (home inspectors); Cal. Bus. & Prof. Code 6980.18 (locksmiths); Fla. Stat. 468.453 (athlete agents); Official Code Ga. Ann. 43–47–6 (used car dealers); Ohio Rev. Code Ann. 3770.051 (vendors of lottery equipment).

[5] 15 U.S.C. 78q(f)(2).

[6] 17 CFR. 240.17f–2.

[7] 15 U.S.C. 78q(f)(2).

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(3).

[11] 15 U.S.C. 78s(b)(2).

[12] 2002 N.Y. Laws 453 (Aug. 20, 2002).

[13] Nasdaq notes that a California statute provides that employers in that state may not require employees to submit to fingerprinting as a condition of employment if the fingerprints are provided to a third party. Cal. Labor Code 1051. Although Nasdaq has a small number of California employees, they are not involved in the day-to-day operation of Nasdaq market systems. Accordingly, Nasdaq will exempt California employees from its program.

[14] 15 U.S.C. 78o–3(b)(2) and 15 U.S.C. 78o–3(b)(6).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46977; File No. SR–NASD–2002–160]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Remove Inoperative Rule Language Relating to Fees for the Nasdaq Workstation I Service

December 9, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 5, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Nasdaq has prepared. Nasdaq has designated this proposal as one concerned solely with the administration of the self-regulatory organization under section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(3) thereunder,[4] which renders the rule immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rules 7010(f) and 7020 to remove inoperative rule language relating to fees for the discontinued Nasdaq Workstation I service. Nasdaq will implement the proposed rule change immediately upon filing.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

A. Rule 7010. System Services

(a)–(e) No change.

(f) Nasdaq Workstation™ Service:

(1) [The following charges shall apply to the receipt of Level 2 or Level 3 Nasdaq Service via an authorized personal computer (PC):]

[Service Charge]	[$345/PC/month].
[Advance Communication Charge]	[$135/PC/month for the first unit, $85/PC/month for each additional unit at the same site].
[Maintenance (offered only on UNISYS and Tandem PCs)]	[$55/PC/month].
[Second Monitor/keyboard Attached to an Authorized PC]	[$195/month].

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

[(2)] The following charges shall apply to the receipt of Level 2 or Level 3 Nasdaq Service via equipment and communications linkages prescribed for the Nasdaq Workstation II Service:

Service Charge	$1,875/month per service delivery platform ("SDP") from December 1, 2000 through February 28, 2001, $2,035/month per SDP beginning March 1, 2001.
Display Charge	$525/month per presentation device ("PD").
Additional Circuit/SDP Charge	$3,075 per month from December 1, 2000 through February 28, 2001, and $3,235/month beginning March 1, 2001*.
Maintenance	*$55/SDP or PD logon/month.*

A subscriber that accesses Nasdaq Workstation II Service via an application programming interface ("API") shall be assessed the Service Charge for each of the subscriber's SDPs and shall be assessed the Display Charge for each of the subscriber's API linkages, including an NWII substitute or quote-update facility. API subscribers also shall be subject to the Additional Circuit /SDP Charge.

(3) No change.

* A subscriber shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its SDPs by placing eight PDs and/or API servers on an SDP and obtains an additional SDP(s); in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each "underutilized" SDP(s) (*i.e.*, the difference between the number of SDPs a subscriber has and the number of SDPs the subscriber would need to support its PDs and/or API servers, assuming an eight-to-one ratio). A subscriber also shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its T1 circuits by placing eighteen SDPs on a T1 circuit; in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each "underutilized" SDP slot on the existing T1 circuit(s). Regardless of the SDP allocation across T1 circuits, a subscriber will not be subject to the Additional Circuit/SDP Charge if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDP, assuming an eighteen-to-one ratio.

(g)–(s) No change.

7020. [Equipment Related Charges] *Reserved*

[(a) The charge for using Nasdaq terminal equipment shall be $120 per month for the first terminal and $105 per month for each additional terminal where all terminals are located on the same premises.]

[(b) The charge for using interrogation or display devices which are not supplied by Nasdaq, but which utilize a Nasdaq supplied modem, shall be $75 per month for the first comparable device and $55 per month for each additional comparable device where all devices are located on the same premises.]

[(c) The charge for using interrogation or display devices and modems which are not supplied by Nasdaq shall be $50 per month for each such device located on the same premises.]

[(d) Nasdaq subscribers utilizing UNISYS or Tandem personal computers (PCs) authorized for emulation of the Harris standard terminal may elect to receive maintenance through Nasdaq at the rate of $55/PC/month.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule filing is to remove several provisions from Nasdaq's schedule of charges for service and equipment that reflect charges for the discontinued Nasdaq Workstation I service, which was replaced by the Nasdaq Workstation II service ("NWII") during the mid-1990s.[5] The services to which these charges relate are no longer provided by Nasdaq, so the fees are being removed from the rules. In addition, language relating to a $55 per month computer hardware maintenance fee, which remains applicable to NWII, is being relocated, with updated terminology being used to describe the fee.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[6] including section 15A(b)(5) of the Act,[7] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility of system which the NASD operates or controls. The proposed rule change removes discontinued Nasdaq Workstation I services from Nasdaq's schedule of charges, thereby clarifying rule language related to fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(3) thereunder.[9] At any time within 60 days after the filing of this proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection

[5] *See* Securities Exchange Act Release No. 35189 (January 3, 1995), 60 FR 3014 (January 12, 1995) (SR–NASD–94–76).

[6] 15 U.S.C. 78o–3.

[7] 15 U.S.C. 78o–3(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(3).

of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–160 and should be submitted by January 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31593 Filed 12–13–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46958; File No. SR–NSCC–2002–08]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to New Clearing Fund Valuation of Deposited Securities

December 6, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 3, 2002, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify NSCC's clearing fund rules to permit NSCC to apply haircuts to securities pledged by NSCC participants as clearing fund collateral.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of NSCC's Rules and Procedures to establish haircuts for securities posted by NSCC members as clearing fund collateral.

Under Rule 4, NSCC members are required to make deposits to NSCC's clearing fund.[3] Rule 4 also states that NSCC, at its discretion, may permit part of a member's (with the exception of "mutual fund/insurance services members") clearing fund deposit to be evidenced by an open account indebtedness secured by (a) unmatured bearer bonds that are either direct obligations of or obligations guaranteed as to principal and interest by the United States or its agencies ("qualifying bonds") and/or (b) one or more irrevocable letters of credit under certain guidelines established within NSCC's rules.[4]

In its efforts to ensure that it has adequate collateral to cover its members' obligations, NSCC has decided to haircut the value of securities deposited to meet clearing fund requirements. The proposed haircut percentages will range from 2% to 5% and will be based on the type of security deposited, its market risk, and years to maturity.[5] The proposed haircuts are similar to those currently applied by The Depository Trust Company as a part of its risk management controls. These percentages may change from time to time and NSCC will communicate any changes to participants should this occur.

NSCC intends to implement this change no sooner than thirty days after the Commission's approval of this proposed rule filing provided, however, that NSCC would like to make this change effective concurrent with the changes covered by proposed rule change File No. SR–NSCC–2002–05.[6]

NSCC believes that this proposed rule change is consistent with the provisions of the Act and the rules and regulations there under because it will ensure that NSCC is able to better safeguard securities and funds in its possession.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] The amount of each member's required deposit is determined by NSCC in accordance with one or more formulas.

[4] The Commission recently approved a NSCC proposed rule change (File No. SR–NSCC–2002–05) that increased the minimum amount of cash that must be deposited by members (with the exception of "mutual fund/insurance services members") to satisfy clearing fund requirements and that limited the amount of a deposit that may be collateralized with letters of credit. Securities Exchange Act Release Nos. 46931 (Nov. 27, 2002) and 46389 (Aug. 21, 2002), 67 FR 55053 (Aug 27, 2002).

[5] NSCC's proposed haircut schedule for U.S. Treasury and agency securities is: Interest bearing with remaining terms to maturity of up to 10 years—2%; interest bearing with remaining terms to maturity in excess of 10 years—5%; Zero coupon with remaining terms to maturity of up to 5 years—2%; Zero coupon with remaining terms to maturity in excess of 5 years—5%.

[6] *Supra* note 4.

organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at NSCC's principal office. All submissions should refer to File No. SR–NSCC–2002–08 and should be submitted by December 31, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–31555 Filed 12–13–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46960; File No. SR–NYSE–2002–62]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Continuing Annual Fees for Domestic and Non-U.S. Issuers, Technical Original Listing Fees, and Supplemental Listing Applications Fees (Sections 902.02, 902.03, and 902.04 of the NYSE Listed Company Manual)

December 6, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 20, 2002, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing to amend Sections 902.02, 902.03, and 902.04 of the NYSE's Listed Company Manual (the "Manual") to increase and simplify the continuing annual listing fee pricing for all listed companies (excluding closed-end funds), and to increase the fee for technical original listings and supplemental listing applications. The NYSE is also proposing to make permanent an overall $1 million per issuer fee cap that has been in effect on a pilot basis, scheduled to expire on December 31, 2002.[3] The text of the proposed rule change is available at the Office of the Secretary, the NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NYSE is proposing changes to certain of its original and continuing annual listing fees, all of which it proposes will become effective on January 1, 2003.

The NYSE in recent years has reduced or capped listing fees in several respects.[4] However, the NYSE has determined that certain listing fee increases have now become necessary to ensure that revenue is adequate to satisfy increasing costs for operations, technology, regulation and infrastructure. The proposed revisions to listing fees are intended to increase revenue, simplify the continuing annual fee structure and change a historical policy that has kept the continuing fees of certain companies at unusually low levels. While the NYSE believes these proposed fee increases will impact listed companies, it should be noted that the NYSE is also increasing fees applicable to members and member organizations. Such member fee increases are being filed in a separate rule proposal.

The NYSE believes the simplest of the changes proposed herein are increases to the "technical original" listing fee and the minimum fee charged for consideration of a listing application. Section 902.02B of the NYSE Listed Company Manual provides for a "reduced initial fee" of $5,300 when a company makes a technical change in the nature of the company without substantively affecting the equity position or rights of its common shareholders. This fee, often referred to as a "technical original" listing fee, applies when, for example, a company changes its state of incorporation or reincorporates, forms a holding company which replaces the listed company, or does a reverse split. The NYSE is proposing to increase this fee from $5,300 to $15,000.

Section 902.02B of the NYSE Listed Company Manual also specifies that the minimum fee for the consideration of any listing application is $1,500. When shares are being issued concurrently with the application, the company is charged the greater of the per share rate or this minimum fee. (Similarly, the minimum fee would not be payable when the company pays the higher "technical original" listing fee described in the immediately preceding paragraph.) However, this $1,500 fee is payable either when shares are listed as part of a reserve for future issuances (since the per share fee is not applied until that future date), or when the company makes a technical supplemental application that does not involve the listing of additional shares, such as an application to record a change of corporate name, or a change to the par value or title of a security. The NYSE is proposing to increase this fee from $1,500 to $2,500.

The NYSE proposes to amend Section 902.02 of the NYSE Listed Company Manual, which relates to the continuing annual listing fee.[5] This fee is payable annually on each security listed on the NYSE and traded as an equity on the NYSE's trading floor. The NYSE believes that the changes being proposed will represent an overall increase in continuing annual fee revenue to the NYSE, but will also significantly simplify the fee schedule, making the NYSE's fees more easily understandable to listed companies and others.

It should first be noted that the NYSE considers it appropriate to ameliorate the immediate impact of these changes on any particular company. Accordingly, the impact of these proposed changes to the continuing annual fee as described below will be capped for each issuer at $75,000 for calendar 2003, and at $150,000 for calendar 2004.[6] For a company hitting both those caps, the full impact of these price changes would not be borne until calendar 2005.

Continuing annual fees for each issuer are based on the number of its securities listed (including American Depositary Securities represented by American Depositary Receipts), and there is a schedule of per share rates set forth in Section 902.02C (Section 902.04C for non-U.S. companies) of the NYSE Listed Company Manual. Currently that schedule is tiered, with a per share rate of $1,650 per million shares for the first and second million shares, and a per share rate of $830 per million shares for additional shares beyond two million. The NYSE is proposing to eliminate the tiers, so that the per share rate will simply be $930 per million shares subject to a minimum continuing annual fee of $35,000, as provided for in Section 902.04C of the proposed rule change to the NYSE Listed Company Manual.

The NYSE's current price schedule, as set forth in Section 902.02C of the NYSE Listed Company Manual, includes a concept informally referred to as "range minima," in which issuers with up to 50 million shares listed pay a minimum continuing annual fee of $35,000, those with up to 100 million shares listed pay a minimum continuing annual fee of $48,410, those with up to 200 million shares listed pay a minimum of $64,580, and those with more than 200 million shares listed pay a minimum of $80,440. In a further effort to simplify our pricing structure, the NYSE is proposing to eliminate these "ranges," leaving only the basic minimum fee of $35,000 referred to above.

Continuing annual fees, which are set forth in Section 902.02C and Section 902.04C of the NYSE Listed Company Manual, are assessed separately on each class of security issued. Because some companies have more than one class of common stock listed on the NYSE, the NYSE currently provides that if one class pays the $35,000 minimum fee, the other class(es) are subject to lower minima (ranging from $16,170 to $32,320) depending on the number of shares listed. To simplify this structure, the NYSE is proposing that when a company has multiple classes of common stock listed on the NYSE, the class with the greatest number of shares outstanding will be subject to the $35,000 minimum, and each additional class of common stock will be subject to a minimum fee of $20,000 per class.

Under Section 902.02C of the NYSE Listing Standards, classes of securities other than common stock are currently subject to the same continuing annual fee rate schedule as common stock, but with a lower minimum fee of $3,600, rather than $35,000. Accordingly, the NYSE proposes that the new rate schedule of $930 per million shares will apply to these securities, and the applicable minimum will be raised from $3,600 to $5,000. Also, the NYSE notes that in the case of companies with listed preferred stock that do not have common stock listed here, the original listed preferred issue will be subject to the $35,000 minimum annual fee, although other classes listed will be subject to the $5,000 minimum.

"Short-term securities" are those securities having a term of seven years or less (*e.g.*, index warrants, foreign currency warrants, contingent value rights, *etc.*). Section 902.03B of the NYSE Listed Company Manual currently provides for a special set of "range minima" applicable to such securities, that actually subjects such issues to higher minimum continuing annual fees than are otherwise applied to non-common stock securities as described in the preceding paragraph. To eliminate this anomaly, the NYSE proposes to amend Section 902.03B of the NYSE Listed Company Manual to apply to such "short term securities" the new rate schedule of $930 per million shares, and to also apply the same $5,000 annual minimum as is applicable to other non-common securities.

Finally, Section 902.02C of the NYSE Listed Company Manual currently removes from the calculation of continuing annual fees any shares which have been listed for a period of 15 years or more. This policy results in companies having disparate continuing annual fees despite having similar amounts of stock listed on the NYSE. The NYSE proposes to eliminate this policy for all listed companies with the exception of closed-end funds.

Separate and distinct from the foregoing price changes, the NYSE also proposes to make permanent a per issuer overall $1 million fee cap that was implemented starting with the 2000 calendar year.[7] That cap, codified in Section 902.02, by its terms was put into effect on a pilot basis for three years, through calendar 2002. The NYSE's experience with this rule has demonstrated that it is an appropriate limitation to avoid overburdening any particular company in an unusual year, and the NYSE proposes to make the pilot permanent.

2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with Section 6(b)(4) of the Act[8] which provides that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43163 (August 16, 2000), 65 FR 51389 (August 23, 2000) (SR–NYSE–00–16).

[4] For example, *see* Securities Exchange Act Release No. 42270 (December 22, 1999), 65 FR 312 (January 4, 2000) (SR–NYSE–99–41), (capping original listing fees at $500,000); Securities Exchange Act Release No. 43164 (August 16, 2000), 65 FR 51387 (August 23, 2000) (SR–NYSE–00–15), (implementing a flat initial listing fee for tracking stocks, later modified to cover all additional classes of common stock); Securities Exchange Act Release No. 45995 (May 29, 2002), 67 FR 39089 (June 6, 2002) (SR–NYSE–2002–20) (implementing a flat initial listing fee for tracking stocks to cover all additional classes of common stock); Securities Exchange Act Release No. 43163, 65 FR 51389 (August 23, 2000) (SR–NYSE–00–16), (capping total listing fees per issuer in any given calendar year at $1 million); and Securities Exchange Act Release No. 43700 (December 11, 2002), 65 FR 79147 (December 18, 2000) (SR–NYSE–00–48), (reducing the original listing fee cap to $250,000 and imposed a new allocation fee on NYSE specialists).

[5] At this time, the NYSE is not making any change to the continuing annual fees as applied to closed end funds listed on the NYSE, which continue to be subject to the fee schedule currently in effect. The Commission notes, however, that the NYSE is in the process of developing a revised fee schedule for closed-end fund issuers.Telephone conversation between Annmarie Tierny, Senior Counsel, Office of General Counsel, NYSE and Tim Fox, Law Clerk, Division of Market Regulation, December 5, 2002. In addition, no changes are being proposed to the several specific pricing provisions provided in Section 902.02C for "fund families" with a number of funds listed on the NYSE.

[6] The Commission notes that the NYSE represented that it communicated these fee caps to issuers in a letter sent to the issuers during calendar year 2002. Telephone conversation between Annmarie Tierny, Senior Counsel, Office of General Counsel, NYSE and Tim Fox, Law Clerk, Division of Market Regulation, Commission, December 5, 2002.

[7] *See* Securities Exchange Act Release No. 43163 (August 16, 2000), 65 FR 51389 (August 23, 2000) (SR–NYSE–00–16).

[8] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NYSE has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2002–62 and should be submitted by December 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31553 Filed 12–13–02; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3473]

State of Alaska

As a result of the President's major disaster declaration on December 4, 2002, I find that the Kenai Peninsula Borough, Kodiak Island Borough, and Chignik Bay area to include Chignik, Chignik Lake, Chignik Lagoon in the State of Alaska constitute a disaster area due to damages caused by severe winter storms, flooding, coastal erosion and tidal surge occurring on October 23, 2002 and continuing through November 12, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 3, 2003 and for economic injury until the close of business on September 4, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

In addition, applications for economic injury loans from small businesses located in the following areas and jurisdictions may be filed until the specified date at the above location: Lake and Peninsula Borough, Matunuska-Susitna Borough, Municipality of Anchorage, Chugach Regional Educational Attendance Areas (REAA), and Iditarod Area REAA in the State of Alaska.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere:	5.875
Homeowners without credit available elswhere:	2.937
Businesses with credit available elsewhere:	6.648
Businesses and non-profit organizations without credit available elsewhere:	3.324
Others (including non-profit organizations) with credit available elsewhere:	5.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without credit available elswhere:	3.324

[9] 17 CFR 200.30–3(a)(12).

The number assigned to this disaster for physical damage is 347311. For economic injury the number is 9T6600 for Alaska.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 9, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–31549 Filed 12–13–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Radioactive Materials; Conference

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of international conference.

SUMMARY: This notice is to advise interested persons that the International Atomic Energy Agency (IAEA), International Maritime Organization, and the Universal Postal Union are co-sponsoring an international conference on the safe transport of radioactive materials. The conference will take place at the Austria Centre, Vienna, Austria from July 7 through July 11, 2003. The objective of the conference is to exchange information on issues related to the safe transport of radioactive material and to formulate recommendations regarding further international co-operation in this area.

FOR FURTHER INFORMATION CONTACT: Richard Boyle, Radioactive Materials Branch, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; Phone: (202) 366–2993, Facsimile: (202) 366–3753, email: *rick.boyle@rspa.dot.gov*.

SUPPLEMENTARY INFORMATION: The conference is directed to a broad spectrum of professionals dealing with the safe transport of radioactive material. The preliminary agenda includes topical sessions on: adequacy and effectiveness of the international transport regulations; effectiveness of radiation protection in transport; packaging and transport of nuclear fuel cycle material; packaging and transport of non-nuclear fuel cycle material; compliance and quality assurance programming; liability in the transport of radioactive material; and emergency response and preparedness. There is no registration fee for this conference but all individuals and parties interested in attending must forward a completed participation form to the Office of Hazardous Materials Safety point of contact listed above for transmission to the IAEA by June 1, 2003. Individuals interested in submitting a paper for this conference should prepare it in accordance with the IAEA conference guidelines and submit it to both IAEA and the Office of Hazardous Materials Safety point of contact listed above by February 1, 2003. Copies of the official conference announcement, the participation and paper submission forms, and instructions and due dates for completion of these forms may be downloaded from the IAEA Transport Division's Web site at: *http://www.iaea.org/ns/rasanet/programme/radiationsafety/transportsafety/2_detailled_info_on_tsu_prog.htm*.

Issued in Washington, DC on December 4, 2002.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–31595 Filed 12–13–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA), DOT

[Docket No. RSPA–98–4034]

Pipeline Safety: Project Modifications Approved for the Natural Gas Pipeline Company of America Pipeline Risk Management Demonstration Project

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of risk management project modification and finding of no significant impact.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) has amended the Risk Management Demonstration Project Order issued to Natural Gas Pipeline Company of America (NGPL) to allow NGPL to conduct alternative risk control activities on five of its pipeline segments in lieu of compliance with certain pipeline safety regulations. OPS has also made a finding that this amendment will have no significant impacts on the environment.

ADDRESSES: Comments on this or any other demonstration project will be accepted in the Docket throughout the 4-year demonstration period. You may send comments to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0991, or you may submit your comments electronically by logging on to the following Internet Web address: *http://dms.dot.gov*, and then clicking on "Help & Information" for instructions on how to file a document electronically. Comments should identify the docket number RSPA–1998–4034. Persons should submit the original comment document and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard. The Dockets Facility is located on the plaza level of the Nassif Building in Room 401, 400 Seventh Street, SW., Washington, DC. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Elizabeth Callsen, OPS, (202) 366–4572, regarding the subject matter of this document. Contact the Dockets Unit, (202) 366–5046, for docket material. Comments may also be reviewed on line at the DOT Docket Management System Web site at *http://dms.dot.gov/*.

SUPPLEMENTARY INFORMATION:

Project Order Amendment

On December 31, 1998, OPS issued Natural Gas Pipeline Company of America (NGPL)[1] a Risk Management Demonstration Project Order authorizing NGPL to conduct a risk management project on its interstate natural gas transmission pipeline system. The project was one of several demonstration projects in a risk demonstration program authorized by 49 U.S.C. 60126. Since that Order was issued, NGPL identified five segments in its pipeline system where it proposed to perform alternative risk control activities in lieu of compliance with the regulations addressing class location changes. In a Notice dated August 17, 2001 (66 FR 43295), OPS described in detail the five segments and the proposed alternative activities. OPS stated that its analysis of the proposed activities had found them likely to provide superior protection. OPS announced its intent to amend the Demonstration Project Order and allow the alternative activities, after consideration of public comment. OPS did not receive any public comment in response to that Notice.

This Notice announces OPS's issuance of an amendment to NGPL's Demonstration Project Order to exempt the five pipeline segments from compliance with 49 CFR 192.611 conditioned on NGPL performing the alternative activities. The decision to amend the Demonstration Project Order to allow the exemption is based on the conclusion that the alternative activities will provide superior safety to that provided by compliance with 49 CFR 192.611.

More detailed descriptions of all aspects of the NGPL demonstration project are available in the following documents:

(1) 66 FR 43295, "Pipeline Safety: Intent to Approve Project Modifications and Environmental Assessment of Modifications for the Natural Gas Pipeline Company of America Risk Management Demonstration Project,"August 17, 2001.

(2) Docket Number RSPA–1998–4034–5, "Appendix A: Environmental Assessment," August 14, 2001.

(3) 63 FR 46497, "Pipeline Safety: Intent to Approve Project and Environmental Assessment for the Natural Gas Pipeline Company of America Risk Management Demonstration Project," September 1, 1998.

(4) 64 FR 1067, "Pipeline Safety: Natural Gas Pipeline Company of America; Approved for Risk Management Demonstration Program," January 7, 1999.

(5) "Demonstration Project Prospectus: Natural Gas Pipeline Company," available via the Pipeline Risk Management Information System (PRIMIS) on the OPS Web page at *http://ops.dot.gov*, and following the links to "Initiatives" and "Risk Management Initiative."

(6) "Risk Management Demonstration Project Order," RMD 98–4, December 31, 1998.

(7) "Amendment to Risk Management Demonstration Project Order," RMD 98–4, Amendment 1, November 18, 2002.

Finding of No Significant Impact (FONSI)

In accordance with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332), the Council on Environmental Quality regulations (40 CFR 1500–1508), and Department of Transportation (DOT) Order 5610.1c, Procedures for Considering Environmental Impacts, OPS conducted an Environmental Assessment (EA) of the alternative activities NGPL proposed

[1] In 1998, NGPL was acquired by KN Energy, Inc. In October, 1999, KN Energy merged with Kinder Morgan, Inc. The merged company is named Kinder Morgan, Inc. (KMI). NGPL now operates its pipeline system as a subsidiary of KMI. The scope of the Risk Management Demonstration Project remains limited to the NGPL system.

on the five pipeline segments (Docket #RSPA–1998–4034–5, "Appendix A: Environmental Assessment", August 14, 2001). In that EA, OPS concluded that the alternative activities would not have significant environmental impacts.

OPS received no public comment on the Environmental Assessment. Based on the analysis and conclusions reached in the Environmental Assessment and the analysis conducted in the above-listed documents, OPS has determined that there are no significant impacts on the environment associated with this action. The Environmental Assessment and the other above-listed documents are incorporated by reference into this FONSI. To summarize, OPS has concluded that the risk control alternatives on the five pipeline segments will provide superior protection for people living near the NGPL pipeline system when compared to current regulatory requirements. Although the alternative activities are expected to provide environmental benefits, due to the minimal environmental impact associated with gas pipeline failures, these benefits are not expected to be significant. The additional environmental protection results primarily from reducing the likelihood that pipeline failures will occur.

Issued in Washington, DC on December 9, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–31542 Filed 12–13–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Customs Service

Modification, Expansion, and Re-Designation of National Customs Automation Program Test of the Account-Based Declaration Prototype To Free and Secure Trade

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: In this notice, Customs is re-designating the National Customs Automation Program (NCAP) test of an Account-Based Declaration Prototype (NCAP/P) as the Free and Secure Trade (FAST) prototype, and modifying the importer eligibility requirements from those set forth in a notice published in the **Federal Register** on August 21, 1998. The FAST prototype will provide expedited processing of participants' qualifying merchandise in designated traffic lanes, provided that the merchandise is transported by certain registered highway carriers and drivers and that specified data is submitted to Customs prior to the merchandise's arrival at the border. Customs is also announcing the addition of two additional ports of entry along the Northern Border for the testing of the prototype and the suspension of prototype participation at the one port of entry along the Southern Border. Participants in the present NCAP/P test need not reapply for participation in the FAST if they are participants in the Customs Trade Partnership against Terrorism (C–TPAT) initiative. Current NCAP/P participants must continue to follow all the operational procedures of the program and will be bound by the terms and conditions found in this notice effective upon publication of this notice. Public comments concerning any aspect of this test program or procedure are solicited.

EFFECTIVE DATES: The redesignated FAST program will begin upon publication of this notice. This prototype will be tested until the Automated Commercial Environment (ACE) is completed. Applications to participate in this NCAP prototype test may be submitted at any time throughout the duration of this test. Evaluations of the prototype will occur periodically. Public comments on any aspect of the planned test must be received on or before January 1, 2003. All comments received will be part of the public record and made available to third parties upon request.

ADDRESSES: Written requests to participate in the prototype test should be sent to U.S. Customs Service, FAST Registration Office, 50 South Main Street, Suite 100R, St. Albans, Vermont 05478. Comments regarding any aspect of the test should be sent or faxed to Enrique S. Tamayo, U.S. Customs Service, 1300 Pennsylvania Avenue NW., Room 5.2A, Washington, DC 20229, telephone number: (202) 927–3112; fax number: (202) 927–1096.

FOR FURTHER INFORMATION CONTACT:

For inquiries regarding the eligibility of specific importers contact: Richard DiNucci at (202) 927–6302;

For questions on reconciliation contact: John Leonard at (202) 927–0915;

For questions on statement processing contact: Debbie Scott at (202) 927–1962;

For questions on violation billing contact: Byron Kissane at (202) 927–2148;

For questions on other aspects of the FAST Prototype contact: Daniel Buchanan at (617) 565–6236.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 1997 Customs published a General Notice in the **Federal Register** (62 FR 14731) that announced Customs plan to conduct a test, pursuant to § 101.9(b) of the Customs Regulations (19 CFR 101.9(b)), of a planned National Customs Automation Program component (*see* 19 U.S.C. 1411–1414) called an account-based declaration prototype, known by the acronym NCAP/P. The NCAP/P was developed to provide the first operational demonstration of the Automated Commercial Environment (ACE), with capabilities for processing imports that would integrate the new account-based import declaration process with other aspects of the Trade Compliance process and selected features of NCAP elements of Title VI of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057 (December 8, 1993), popularly known as the Customs Modernization Act which established the National Automation Program (NCAP) as an automated and electronic system for the processing of commercial importations. This phase of the NCAP/P test was initially limited to certain importers that imported certain merchandise by truck through three ports: Laredo, Texas; and Detroit and Port Huron, Michigan.

On August 21, 1998 Customs published another General Notice in the **Federal Register** (63 FR 44949) that replaced the previously published document to revise the importer eligibility requirements for participation in the NCAP/P, incorporate enhancements to reconciliation, and clarify the statement process. This second General Notice also outlined the development and evaluation methodology that would be used in the test. As with the first notice, public comments were invited on any aspect of the test. Reference to these earlier documents should be sought by importers interested in participating in this account-based declaration processing prototype, or interested in understanding the ACE Trade Compliance account-based declaration process, which includes remote location filing, statement processing, and reconciliation. Further, the information published by Customs on August 21, 1998, concerning the test development methodology, the general requirements for the prototype test, maintenance of account, misconduct procedures, identification of the regulatory provisions suspended, and evaluating the prototype, remains the same except as provided below.

It is noted that Customs also published another document in the **Federal Register** concerning the NCAP/P on October 15, 1998 (63 FR 55426). That document discussed Customs plan to expand the NCAP/P to five additional ports of entry. The planned expansion to those ports has yet to occur.

Prototype Changes

This document advises the public that Customs is redesignating the NCAP/P as the Free and Secure Trade (FAST) prototype and is modifying the importer eligibility requirements to reflect the need for ensuring security while facilitating the processing of merchandise. This document also announces the addition of two additional ports of entry along the Northern Border for the testing of the prototype and the suspension of prototype participation at the one port of entry along the Southern Border. Public comments concerning any aspect of this test are solicited.

The NCAP/P is redesignated as the FAST prototype to clearly show that importers must now participate in the Customs-Trade Partnership Against Terrorism (C–TPAT) Program to participate or to continue participating in the testing of the prototype and that U.S./Canada border highway carriers and their drivers must be FAST registered. Merchandise imported by C–TPAT participating importers will also be eligible for expedited processing along the U.S./Canada border in FAST-designated traffic lanes under Pre-Arrival Processing System (PAPS) procedures, provided that the U.S./Canada border highway carriers and the drivers are FAST registered. Conveyances transporting merchandise that is comprised of both shipments of merchandise of C–TPAT-participating importers and shipments of non-C–TPAT-participating importers will not be afforded FAST-expedited processing.

The C–TPAT is a joint government-business initiative to build cooperative relationships that strengthen overall supply chain and border security for the United States. Importers participate in the C–TPAT by agreeing to work with Customs in improving security procedures along the entire supply chain of the merchandise they import.

The FAST Program is a bilateral initiative between the United States and Canada to enhance the security and safety along their shared border, while also enhancing the economic prosperity of each country, by aligning, to the maximum extent possible, their customs commercial programs. A component of the Northern-border FAST Program is Highway Carriers Registration, which allows FAST-approved highway carriers and their designated drivers in possession of a valid FAST/Commercial Driver Card to use FAST-lane processing at designated ports of entry.

The PAPS (Pre-Arrival Processing System) is an automated cargo release procedure adopted by Customs that requires certain entry data generated by a carrier to be submitted to Customs prior to the arrival of the merchandise at the designated port of entry for cargo selectivity concerns and utilizes barcode technology to expedite the release of those commercial shipments not selected for examination. To process a PAPS transaction, the carrier attaches a unique barcode label which consists of the carriers Standard Carrier Alpha Code (SCAC) and pro bill number to each invoice and truck manifest while the merchandise is still in Canada. This information is then transmitted to the U.S. Customs broker who prepares a Border Cargo Selectivity entry in the Automated Commercial System (ACS) before the merchandise arrives at the U.S. border. When the merchandise arrives at the U.S. border, the Customs inspector wands the barcode information which automatically retrieves the entry information from the ACS system. If no examination is needed, the Inspector releases the truck from the primary booth; thus, reducing the carrier's wait time and easing congestion at that border crossing.

For further information and application procedures regarding the C–TPAT and Northern-border FAST initiatives, and for further information regarding the PAPS procedures visit Customs Web site at *http://www.customs.ustreas.gov/tpatf.htm.*

The importer eligibility requirements for participation in the redesignated FAST prototype are modified to reflect the need for ensuring security while facilitating the processing of properly documented merchandise. Applicants no longer have to be designated as within the top echelon of importers or import merchandise within any of the Customs Primary Focus Industry categories, but must be a participant in the C–TPAT initiative; existing NCAP/P participants must be prepared to follow all the operational procedures and will be bound by the terms and conditions found in this and the previously cited notice. Further, if the importer will be entering merchandise along the Northern border, then both the Northern-border highway carriers and their drivers must be FAST registered.

Regarding the addition of two additional ports of entry along the Northern Border for the testing of the prototype and the suspension of prototype participation at the one port of entry along the Southern Border, from the date of publication of this notice, importers may now enter merchandise for prototype processing at the Northern-border ports of:

1. Port Huron (Blue Water Bridge) and Detroit (Ambassador Bridge and/or Windsor Tunnel), Michigan;
2. Blaine, Washington; and
3. Buffalo (including the Peace Bridge and Lewiston Bridge) and Champlain, New York.

At this time, prototype processing is suspended at the Southwest-border port of entry at Laredo, Texas. Customs will consider re-establishing this prototype at the Laredo port of entry if sufficient interest is shown by the importing community.

Application for FAST

Participants in the present NCAP/P need not re-apply to participate in the FAST prototype, but must be prepared to follow all the operational procedures and will be bound by the terms and conditions found in the previously cited notice and this notice effective upon publication of this notice and their carriers and drivers must become FAST registered by February 1, 2003 to continue receiving expedited release under FAST. For ease of reference, the application information for new applicants, is set forth in this document.

Importers who wish to participate in the FAST prototype must submit an application to the St. Albans, Vermont, Service Port at the address indicated with the following information:

A. Importer's name, address, and IRS employer identification number or social security number;

B. Names and addresses of all shippers and all sellers/vendors for the FAST prototype;

C. A listing of all the 6-digit HTS numbers under which the imported commodities will be classified;

D. The surety and surety code and the number of the continuous surety bond which will cover all cargo processed under FAST procedures. If the applicant plans to reconcile their FAST entry summaries, a commitment to file the bond rider prior to flagging underlying entry summaries for reconciliation, along with identification of the port in which the continuous bond and rider are filed must be included;

E. Names, addresses, and SCAC of truck carriers who will be transporting FAST shipments across the international borders. Note, both the highway carriers and their drivers must be FAST registered;

F. Names, addresses and filer codes of any customs brokers who will be filing data;

G. The approximate total number of entries per month expected to be processed at each of the following locations:

1. Port Huron (Blue Water Bridge) and Detroit (Ambassador Bridge and/or Windsor Tunnel), Michigan;

2. Blaine, Washington; and

3. Buffalo (including the Peace Bridge and Lewiston Bridge) and Champlain, New York;

H. Detailed description of anticipated issues and/or commodities for which the participant anticipates electing reconciliation.

I. Because the Importer Compliance Monitoring Program test was terminated on May 30, 2002 (*see*, **Federal Register** document published April 30, 2002 (67 FR 21322)) in favor of a new program called the Importer Self-Assessment (*see*, **Federal Register** document published June 17, 2002 (67 FR 41298)), the former NCAP/P requirement to furnish in the application a statement in which the applicant commits to undergo and cooperate fully with a Customs Compliance Assessment is no longer applicable.

Customs will make admissibility determinations on FAST shipments based on cargo examinations and the information supplied with the application, which will serve as a pre-filed entry for FAST purposes. Existing NCAP/P participants are not required to re-submit identification of their existing suppliers. However, the carriers and drivers employed for FAST processing under this prototype will be required to become FAST registered for the importer to continue receiving expedited release under FAST by February 1, 2003.

Importers who submit applications to participate in the FAST will be notified in writing of their acceptance or rejection. If an applicant is denied participation, the notification letter will include the reasons for that denial. Eligible importers whose initial application is rejected may re-apply upon correction of the situation that led to the denial.

Dated: December 11, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–31578 Filed 12–13–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Federal Law Enforcement Training Center

FLETC Glynco, GA; Notice of Availability of Document for Review

AGENCY: Federal Law Enforcement Training Center, Treasury.

ACTION: Notice of availability of environmental assessment for public review.

SUMMARY: Notice is hereby given that the Federal Law Enforcement Training Center (FLETC), pursuant to the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations for Implementing the National Environmental Policy Act (40 CFR parts 1500–1508), and Department of the Treasury Directive 75–02 (Department of the Treasury Environmental Quality Program), has prepared an Environmental Assessment (EA) related to the acquisition of County roads in Glynn County Georgia. The FLETC proposes to close the portions of each road that are located adjacent to the tract of land that FLETC is proposing to purchase, create cul-de-sacs/entry gates at the terminal points for both roads, and construct a security fence and a perimeter road on the northern and eastern perimeter of the parcel. The public and resource agencies were invited to attend a public meeting held November 7, 2002, and participate in the planning and analysis of the proposed project. At that meeting the FLETC discussed the environmental review process, described the project and alternatives under consideration, discussed the scope of environmental issues to be investigated in accordance with the requirements of NEPA, and answered questions from attendees.

An EA document has been prepared in accordance with NEPA and Department of the Treasury requirements, addressing the various project alternatives, their potential environmental impacts, and issues raised during the November 7, 2002, public meeting. This document will be available for public review and comment from December 16, 2002, until January 16, 2003, at the following locations:

1. Three Rivers Regional Library, 2400 Reynolds Street, Brunswick, Georgia 31520, 912–267–1212.

2. Department of the Treasury, Library, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Contact Bill McGovern at 202–622–0043.

Significant comments received from the public and agencies during the review period will be addressed in the EA and included in an appendix. Should the FLETC determine, based on the public's comments and the information presented in the EA, that the impacts of the acquisition of the county roads, the proposed closing of portions of the roads that are adjacent to the tract of land that FLETC is proposing to purchase, the construction of cul-de-sacs/entry gates at the terminal points for both roads, and construction of a security fence and a perimeter road on the northern and eastern perimeter of the parcel will not have a significant environmental impact, it will prepare a Finding of No Significant Impact (FONSI) for publication in the **Federal Register** and in a newspaper in general circulation at the project location. Should significant environmental impacts be determined to exist due to the project, the FLETC will proceed with the preparation of an Environmental Impact Statement, per the requirements of NEPA, the Council on Environmental Quality, and its own environmental policies and procedures.

DATES: Written comments concerning the EA should be received on or before January 16, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Ms. Susan Shaw, NEPA Coordinator/Project Manager, Building T–726 Glynco, GA 31524.

FOR FURTHER INFORMATION CONTACT: Susan Shaw, NEPA Coordinator/Project Manager, FLETC, at (912) 261–4557. Ms. Shaw's e-mail address is *sshaw@fletc.treas.gov.*

SUPPLEMENTARY INFORMATION: The FLETC has a mission of providing high quality, cost-effective training of federal law enforcement personnel. The acquisition of portions of the County roads and the construction of the security fence and perimeter road will allow the FLETC to maintain a secure campus setting. The FLETC facility is located approximately three miles north of Brunswick in Glynn County, GA. The project site is situated at the intersection of Sidney Lanier Drive and Etheridge Drive adjacent to the Sossner Tap & Tool Corporation located at 2100 Sidney Lanier Drive, Brunswick, GA, in the Glynco-McBride industrial Park.

Authority: The Council on Environmental Quality's National Environmental Policy Act, 40 CFR parts 1500 *et seq.*

Dated: December 10, 2002.

Paul Magalski,

Assistant Director, Office of Compliance, Federal Law Enforcement Training Center.

[FR Doc. 02–31622 Filed 12–13–02; 8:45 am]

BILLING CODE 4810–32–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 99–39

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 99–39, Form 941 e-file program.

DATES: Written comments should be received on or before February 14, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 941 e-file Program.

OMB Number: 1545–1557.

Revenue Procedure Number: Revenue Procedure 99–39.

Abstract: Revenue Procedure 99–39 provides the requirements of the Form 941 e-file Program, which combines the Form 941 Electronic Filing (ELF) Program with an on-line filing program that allows a taxpayer to electronically file a Form 941, Employer's Quarterly Federal Tax Return, using a personal computer, modem, and commercial tax preparation software.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 390,200.

Estimated Time Per Respondent: 37 minutes.

Estimated Total Annual Burden Hours: 238,863.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 4, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–31615 Filed 12–13–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–7–88]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–7–88, (TD 8379), Excise Tax Relating to Gain or Other Income Realized By Any Person on Receipt of Greenmail (§§ 155.6011–1, 155.6001–1, 155.6081–1, and 155.6161–1).

DATES: Written comments should be received on or before February 14, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665 or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Excise Tax Relating to Gain or Other Income Realized By Any Person on Receipt of Greenmail.

OMB Number: 1545–1049.

Regulation Project Number: IA–7–88.

Abstract: The regulations provide rules relating to the manner and method of reporting and paying the nondeductible 50 percent excise tax imposed by section 5881 of the Internal Revenue Code with respect to the receipt of greenmail. The reporting requirements will be used to verify that the excise tax imposed under section 5881 is properly reported and timely paid.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 4.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 5, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–31616 Filed 12–13–02; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 67, No. 241

Monday, December 16, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

Correction

In notice document 02–30902 appearing on page 72646 in the issue of Friday, December 6, 2002, make the following correction:

On page 72646, in the second column, under the heading **SUMMARY**, in the sixth line, "USA–CDA–2002–1904–09" should read, "USA–MEX–2002–1904–10".

[FR Doc. C2–30902 Filed 12–13–02; 8:45 am]

BILLING CODE 1505–01–D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1200

RIN 3095–AB12

Official Seals

Correction

In rule document 02–30766 beginning on page 72101 in the issue of Wednesday, December 4, 2002, make the following correction:

§ 1200.2 [Corrected]

On page 72101, in the third column, in § 1200.2, in the first paragraph, in the second line, "30" should read, "3".

[FR Doc. C2–30766 Filed 12–13–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service

Proposed Collection of Information: Resolution Authorizing Execution of Depositary, Financial Agency, and Collateral Agreement; and Depositary, Financial Agency, and Collateral Agreement

Correction

In notice document 02–30016 appearing on page 71010 in the issue of Wednesday, November 27, 2002, make the following correction:

On page 71010, in the third column, in the second line, "The" should read, "They".

[FR Doc. C2–30016 Filed 12–13–02; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Monday,
December 16, 2002

Part II

Department of Justice

Immigration and Naturalization Service

Registration of Certain Nonimmigrant Aliens From Designated Countries; Notice

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[AG Order No. 2636–2002]

Registration of Certain Nonimmigrant Aliens from Designated Countries

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This Notice requires certain nonimmigrant aliens to appear before, register with, and provide requested information to the Immigration and Naturalization Service on or before February 21, 2003. It applies to certain nonimmigrant aliens from one of the countries designated in this Notice who were last admitted to the United States on or before September 30, 2002, and who will remain in the United States after February 21, 2003. The specific requirements are set forth in the Notice. This is the third such Notice that the Attorney General has published. This Notice is applicable to certain nationals and citizens of Armenia, Pakistan, and Saudi Arabia who entered the United States on or before September 30, 2002, and who will remain in the United States after February 21, 2003. Aliens described in this Notice are required to register and provide additional information to the Immigration and Naturalization Service between January 13, 2003, and February 21, 2003, inclusive.

EFFECTIVE DATES: This Notice is effective on January 13, 2003. Aliens described in this Notice are required to register and provide additional information to the Immigration and Naturalization Service on or before February 21, 2003.

FOR FURTHER INFORMATION CONTACT: Dan Brown, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Room 6100, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION: Section 265(b) of the Immigration and Nationality Act ("Act"), as amended, 8 U.S.C. 1305(b), provides that

> (t)he Attorney General may in his discretion, upon ten days notice, require the natives of any one or more foreign states, or any class or group thereof, who are within the United States and who are required to be registered under this subchapter, to notify the Attorney General of their current addresses and furnish such additional information as the Attorney General may require.

Additionally, section 263(a) of the Act, 8 U.S.C. 1303(a), provides that the Attorney General may "prescribe special regulations and forms for the registration and fingerprinting of * * * aliens of any other class not lawfully admitted to the United States for permanent residence." The Attorney General has previously exercised his authority under these and other provisions of the Act to establish special registration procedures under 8 CFR 264.1(f). 67 FR 52584 (Aug. 12, 2002). These requirements are known as the National Security Entry—Exit Registration System ("NSEERS"). In accordance with the authority set forth in 8 CFR 264.1(f)(4), the Attorney General has determined that certain nonimmigrant aliens specified in this Notice shall be registered and required to provide specific information. The Attorney General has the sole discretion to make this determination. Under this Notice certain nonimmigrant nationals or citizens of Armenia, Pakistan, and Saudi Arabia are required to appear at an Immigration and Naturalization Service ("Service") office to register under NSEERS and provide additional information. This is the third Notice that the Attorney General has published. *See* 67 FR 67766 (Nov. 6, 2002); 67 FR 70526 (Nov. 22, 2002). Previous Notices have applied to certain nonimmigrant nationals or citizens of Afghanistan, Algeria, Bahrain, Eritrea, Iran, Iraq, Lebanon, Libya, Morocco, North Korea, Oman, Qatar, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen.

In light of recent events, and based on intelligence information available to the Attorney General, the Attorney General has determined that the aliens described in paragraph (a) of this Notice must appear before the Service and provide certain information. This Notice applies only to certain nonimmigrant aliens from one of the countries designated in this Notice who were last admitted to the United States on or before September 30, 2002, and who will remain after February 21, 2003. Based on intelligence information available to the Attorney General, the Attorney General has determined that registering all nonimmigrant aliens from the covered countries would not enhance national security. Moreover, the Attorney General has determined that it would not be administratively feasible at the present time to register all of the nonimmigrants from the specific countries covered by this Notice, and that the delay occasioned by registering all nonimmigrants from the countries covered by this Notice would jeopardize the national security. Accordingly, the Attorney General has determined that only males aged 16 years or older need to be registered at this time.

Furthermore, the Attorney General has determined that an alien who has an application for asylum pending on the date of publication of this Notice has already provided sufficient information in the application for asylum, along with fingerprints, to warrant exclusion from this Notice.

Although section 265(b) of the Act, 8 U.S.C. 1305(b), provides a minimum period of 10 days notice for covered aliens to provide their current address and other required information, this Notice allows an alien described by the Notice a period of more than 30 days to register. The Attorney General has determined that such additional time to register is in the best interests of the United States and has extended this time to register solely as a matter of discretion.

Finally, until further notice, once enrolled within NSEERS by registration under this Notice, an alien described in paragraph (a) of this Notice is required to register annually with the Service. All aliens described in paragraph (a) shall comply with all other provisions of 8 CFR 264.1(f)(5) through (f)(9).

A willful failure to comply with the requirements of this Notice constitutes a failure to maintain nonimmigrant status under section 237(a)(1)(C)(i) of the Act, 8 U.S.C. 1227(a)(1)(C)(i). See 8 CFR 214.1(f). Pursuant to section 237(a)(3)(A) of the Act, 8 U.S.C. 1227(a)(3)(A), an alien who fails to comply with the provisions of this Notice is deportable, unless the alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful. Finally, if an alien subject to this Notice fails, without good cause, to comply with the requirement in 8 CFR 264.1(f)(8) that the alien must report to an inspecting officer of the Service when departing the United States, the alien shall thereafter be presumed to be inadmissible under, but not limited to, section 212(a)(3)(A)(ii) of the Act, 8 U.S.C. 1182(a)(3)(A)(ii). See 8 CFR 264.1(f)(8).

Notice of Requirements for Registration of Certain Nonimmigrant Aliens From Designated Countries

Pursuant to sections 261 through 266 of the Immigration and Nationality Act ("Act"), as amended, 8 U.S.C. 1302 through 1306, and particularly sections 263(a) and 265(b) of the Act, 8 U.S.C. 1303(a) and 8 U.S.C. 1305(b), and 8 CFR 264.1(f), I hereby order as follows:

(a) *Scope.* Except as provided in paragraph (g), an alien is required to register pursuant to this Notice if the alien:

(1) Is a male who was born on or before January 13, 1987;

(2) Is a national or citizen of Armenia, Pakistan, or Saudi Arabia, who was inspected by the Immigration and Naturalization Service and was last admitted to the United States as a nonimmigrant on or before September 30, 2002; and

(3) Will remain in the United States after February 21, 2003.

(b) *Dual citizens.* This Notice is applicable to any alien who is a national or citizen of a designated country, notwithstanding any dual nationality or citizenship.

(c) *Requirement to appear before an immigration officer.* All aliens described in paragraph (a) shall, between January 13, 2003, and February 21, 2003, inclusive, appear before an immigration officer at any of the locations listed in the appendix to this Notice.

(d) *Information to be provided.* All aliens described in paragraph (a) shall:

(1) Answer questions under oath before an immigration officer, which answers shall be recorded by the immigration officer;

(2) Present to such immigration officer:

(i) The alien's travel documents, including passport and the Form I–94 issued upon admission, and any other forms of government-issued identification;

(ii) Proof of residence, such as, but not limited to, title to land or a lease or a rental agreement, and, if applicable, proof of matriculation at an educational institution, and, if applicable, proof of employment; and

(iii) Such other information as is requested by the immigration officer; and

(3) Shall be fingerprinted and photographed by the immigration officer.

(e) Annual reporting obligations. All aliens described in paragraph

(a) shall appear, within 10 days of each anniversary of the date on which they were registered under this Notice, before an immigration officer at any of the locations listed in the appendix to this Notice and answer questions under oath. All aliens described in paragraph (a) shall comply with all other provisions of 8 CFR 264.1(f)(5)–(9).

(f) *Notice of Change of Address.* All aliens described in paragraph (a) shall advise the Immigration and Naturalization Service, through the filing of Form AR–11, of any change of address within 10 days of such change of address. If an alien fails to notify the Immigration and Naturalization Service in writing of a change of address and the new address, as required by section 265(a) of the Act, 8 U.S.C. 1305(a), the alien may be subject to prosecution under section 266(b) of the Act, 8 U.S.C. 1306(b), and may be deportable as provided in section 237(a)(3)(A) of the Act, 8 U.S.C. 1227(a)(3)(A). If it becomes necessary to place the alien in removal proceedings, the Immigration and Naturalization Service may use the most recent address provided by the alien for service of the Notice to Appear.

(g) *Inapplicability.* The requirements of this Notice do not apply to any alien who:

(1) Is presently in a nonimmigrant classification under section 101(a)(15)(A) or 101(a)(15)(G) of the Act, 8 U.S.C. 1101(a)(15)(A) or 8 U.S.C. 1101(a)(15)(G);

(2) Is lawfully admitted to the United States for permanent residence; or

(3) Has an application for asylum pending on December 16, 2002, or has been granted asylum, under section 208 of the Act, 8 U.S.C. 1158.

Dated: December 12, 2002.

John Ashcroft,

Attorney General.

Appendix: Immigration and Naturalization Service Offices for Registration of Certain Nonimmigrants Pursuant to Notice of December 16, 2002

ALASKA—Anchorage, 620 East 10th Avenue, Anchorage, Alaska 99501
ARIZONA—Phoenix, 2035 North Central Avenue, Phoenix, Arizona 85004
ARIZONA—Tucson, 6431 South Country Club Road, Tucson, Arizona 85706–5907
ARKANSAS—Fort Smith, 4991 Old Greenwood Road, Fort Smith, Arkansas 72903
CALIFORNIA—Fresno, 865 Fulton Mall, Fresno, California 93721
CALIFORNIA—Los Angeles, 300 North Los Angeles Street, Room 2024, Los Angeles, California 90012
CALIFORNIA—Sacramento, 650 Capitol Mall, Sacramento, CA 95814
CALIFORNIA—San Bernardino, 655 West Rialto Avenue, San Bernardino, California 92410
CALIFORNIA—San Diego, 880 Front Street, Suite 1209, San Diego, California 92101
CALIFORNIA—San Francisco, 444 Washington Street, San Francisco, California 94111
CALIFORNIA—San Jose, 1887 Monterey Road, San Jose, California 95112
CALIFORNIA—Santa Ana, 34 Civic Center Plaza, Santa Ana, California 92701
COLORADO—Denver, 4730 Paris Street, Denver, CO 80239
CONNECTICUT—Hartford, 450 Main Street, 4th Floor, Hartford, Connecticut 06103
FLORIDA—Jacksonville, 4121 Southpoint Boulevard, Jacksonville, Florida 32216
FLORIDA—Miami, 7880 Biscayne Boulevard, Miami, Florida 33138
FLORIDA—Orlando, 9403 Tradeport Drive Orlando, Florida 32827
FLORIDA—Tampa, 5524 West Cypress Street, Tampa, Florida 33607–1708
FLORIDA—West Palm Beach, 326 Fern Street, Riviera Beach, Florida 33401
GEORGIA—Atlanta, 77 Forsyth Street, SW., Atlanta, Georgia 30303
GUAM—Agana, Sirena Plaza, Suite 100, 108 Hernan Cortez Avenue, Hagatna, Guam 96910
HAWAII—Honolulu, 595 Ala Moana Boulevard, Honolulu, Hawaii 96813
IDAHO—Boise, 1185 South Vinnell Way Boise, Idaho 83709
ILLINOIS—Chicago, 230 South Dearborn, 2nd Floor Chicago, Illinois 60604
INDIANA—Indianapolis, 950 N. Meridian Street, Room 400, Indianapolis, Indiana 46204
IOWA—Des Moines, 210 Walnut Street, Room 369, Des Moines, Iowa 50309
KANSAS—Wichita, 271 West 3rd Street North, Suite 1050, Wichita, Kansas 67202–1212
KENTUCKY—Louisville, 601 West Broadway, Room 390, Louisville, Kentucky 40202
LOUISIANA—New Orleans, 701 Loyola Avenue, New Orleans, Louisiana 70113
MAINE—Portland, 176 Gannet Drive, South Portland, Maine 04106
MARYLAND—Baltimore, 31 Hopkins Place, Baltimore, Maryland 21201
MASSACHUSETTS—Boston, Government Center, JFK Federal Building, Boston, Massachusetts 02203
MICHIGAN—Detroit 333, Mount Elliot Street, Detroit, Michigan 48207–4381
MINNESOTA—Minneapolis, 2901 Metro Drive, Suite 100, Bloomington, Minnesota 55425
MISSOURI—Kansas City, 9747 Northwest Conant Avenue, Kansas City, Missouri 64153
MISSOURI—St. Louis, 1222 Spruce Street, St. Louis, Missouri 63103
MONTANA—Helena, 2800 Skyway Drive, Helena, Montana 59601
NEBRASKA—Omaha, 3736 South 132nd Street, Omaha, Nebraska 68144
NEVADA—Las Vegas, 3373 Pepper Lane, Las Vegas, NV 89120–2739
NEVADA—Reno, 1352 Corporate Boulevard, Reno, Nevada 85902
NEW HAMPSHIRE—Manchester, 803 Canal Street, Manchester, New Hampshire 03101
NEW JERSEY—Cherry Hill, 1886 Greentree Road, Cherry Hill, New Jersey 08003
NEW JERSEY—Newark, 970 Broad Street, Newark, New Jersey 07102
NEW MEXICO—Albuquerque, 1720 Randolph Road SE, Albuquerque, New Mexico 87106
NEW YORK—Albany, 1086 Troy-Schenectady Road, Latham, New York 12110
NEW YORK—Buffalo, 130 Delaware Avenue, Buffalo, New York 14202
NEW YORK—New York City, 26 Federal Plaza, New York, New York 10278
NORTH CAROLINA—Charlotte, 210 E. Woodlawn Road, Building 6, Suite 138, Charlotte, North Carolina 28217
OHIO—Cincinnati, 550 Main Street, Room 4001, Cincinnati, Ohio 45202
OHIO—Cleveland, 1240 East Ninth Street, Cleveland, Ohio 44199
OHIO—Columbus, 50 West Broad Street, Suite 304D, Columbus, Ohio 43215

OKLAHOMA—Oklahoma City, 4149 Highline Boulevard, Suite 300, Oklahoma City, Oklahoma 73108
OREGON—Portland, 511 Northwest Broadway, Portland, Oregon 97209
PENNSYLVANIA—Philadelphia, 1600 Callowhill Street, Philadelphia, Pennsylvania 19130
PENNSYLVANIA—Pittsburgh, 1000 Liberty Avenue, Room 214, Pittsburgh, Pennsylvania 15222
PUERTO RICO—San Juan, 7 Tabonuco Street, Guaynabo, Puerto Rico 00968
RHODE ISLAND—Providence, 200 Dyer Street, Providence, Rhode Island 02903
ST. CROIX—Christiansted, Sunny Isle Shopping Center, Christiansted, St. Croix, U.S. Virgin Islands 00820
ST. THOMAS—Charlotte Amalie, Nisky Center, Suite 1A, First Floor South, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00802
SOUTH CAROLINA—Charleston, 170 Meeting Street, Fifth Floor, Charleston, South Carolina 29401
SOUTH CAROLINA—Greer, 142–D West Philips Road, Greer, South Carolina 29650
TENNESSEE—Memphis, 1314 Sycamore View Road, Suite 100, Memphis, Tennessee 38134
TEXAS—Dallas, 8101 North Stemmons Freeway, Dallas, Texas 75247
TEXAS—El Paso, 1545 Hawkins Boulevard, El Paso, Texas 79925
TEXAS—Harlingen, 2102 Teege Avenue, Harlingen, Texas 78550–4667
TEXAS—Houston, 126 Northpoint Drive, Houston, Texas 77060
TEXAS—San Antonio, 8904 Fourwinds Drive, San Antonio, Texas 78239
UTAH—Salt Lake City, 5272 South College Drive, #100, Murray, Utah 84123
VERMONT—St. Albans, 64 Gricebrook Road, St. Albans, Vermont 05478
VIRGINIA—Norfolk, 5280 Henneman Drive, Norfolk, Virginia 23513
WASHINGTON, D.C., 4420 North Fairfax Drive, Arlington, Virginia 22203
WASHINGTON—Seattle, 815 Airport Way, South, Seattle, Washington 98134
WASHINGTON—Spokane, 920 W. Riverside Room 691, Spokane, Washington 99201
WASHINGTON—Yakima, 417 E. Chestnut, Yakima, Washington 98901
WEST VIRGINIA—Charleston, 210 Kanawha Boulevard West, Charleston, West Virginia 25302
WISCONSIN—Milwaukee, 310 East Knapp Street, Milwaukee, Wisconsin 53202

For further information relating to this notice and information about local office hours and locations, the public may call the National Customer, Service Center at 1–800–375–5283 or (TTY) 1–800–767–1833, or visit the INS, Web site at *http://www.ins.gov/*.

[FR Doc. 02–31717 Filed 12–13–02; 8:45 am],
BILLING CODE 4410–10–P

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Federal Register

Monday,
December 16, 2002

Part III

The President

Executive Order 13279—Equal Protection of the Laws for Faith-Based and Community Organizations
Executive Order 13280—Responsibilities of the Department of Agriculture and the Agency for International Development With Respect to Faith-Based and Community Initiatives

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Presidential Documents

Title 3—

The President

Executive Order 13279 of December 12, 2002

Equal Protection of the Laws for Faith-Based and Community Organizations

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 121(a) of title 40, United States Code, and section 301 of title 3, United States Code, and in order to guide Federal agencies in formulating and developing policies with implications for faith-based organizations and other community organizations, to ensure equal protection of the laws for faith-based and community organizations, to further the national effort to expand opportunities for, and strengthen the capacity of, faith-based and other community organizations so that they may better meet social needs in America's communities, and to ensure the economical and efficient administration and completion of Government contracts, it is hereby ordered as follows:

Section 1. *Definitions.* For purposes of this order:

(a) "Federal financial assistance" means assistance that non-Federal entities receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, food commodities, direct appropriations, or other assistance, but does not include a tax credit, deduction, or exemption.

(b) "Social service program" means a program that is administered by the Federal Government, or by a State or local government using Federal financial assistance, and that provides services directed at reducing poverty, improving opportunities for low-income children, revitalizing low-income communities, empowering low-income families and low-income individuals to become self-sufficient, or otherwise helping people in need. Such programs include, but are not limited to, the following:

(i) child care services, protective services for children and adults, services for children and adults in foster care, adoption services, services related to the management and maintenance of the home, day care services for adults, and services to meet the special needs of children, older individuals, and individuals with disabilities (including physical, mental, or emotional disabilities);

(ii) transportation services;

(iii) job training and related services, and employment services;

(iv) information, referral, and counseling services;

(v) the preparation and delivery of meals and services related to soup kitchens or food banks;

(vi) health support services;

(vii) literacy and mentoring programs;

(viii) services for the prevention and treatment of juvenile delinquency and substance abuse, services for the prevention of crime and the provision of assistance to the victims and the families of criminal offenders, and services related to intervention in, and prevention of, domestic violence; and

(ix) services related to the provision of assistance for housing under Federal law.

(c) "Policies that have implications for faith-based and community organizations" refers to all policies, programs, and regulations, including official

guidance and internal agency procedures, that have significant effects on faith-based organizations participating in or seeking to participate in social service programs supported with Federal financial assistance.

(d) "Agency" means a department or agency in the executive branch.

(e) "Specified agency heads" mean the Attorney General, the Secretaries of Agriculture, Education, Health and Human Services, Housing and Urban Development, and Labor, and the Administrator of the Agency for International Development.

Sec. 2. *Fundamental Principles and Policymaking Criteria.*

In formulating and implementing policies that have implications for faith-based and community organizations, agencies that administer social service programs supported with Federal financial assistance shall, to the extent permitted by law, be guided by the following fundamental principles:

(a) Federal financial assistance for social service programs should be distributed in the most effective and efficient manner possible;

(b) The Nation's social service capacity will benefit if all eligible organizations, including faith-based and other community organizations, are able to compete on an equal footing for Federal financial assistance used to support social service programs;

(c) No organization should be discriminated against on the basis of religion or religious belief in the administration or distribution of Federal financial assistance under social service programs;

(d) All organizations that receive Federal financial assistance under social services programs should be prohibited from discriminating against beneficiaries or potential beneficiaries of the social services programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with Federal financial assistance, and in their outreach activities related to such services, should not be allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice;

(e) The Federal Government must implement Federal programs in accordance with the Establishment Clause and the Free Exercise Clause of the First Amendment to the Constitution. Therefore, organizations that engage in inherently religious activities, such as worship, religious instruction, and proselytization, must offer those services separately in time or location from any programs or services supported with direct Federal financial assistance, and participation in any such inherently religious activities must be voluntary for the beneficiaries of the social service program supported with such Federal financial assistance; and

(f) Consistent with the Free Exercise Clause and the Free Speech Clause of the Constitution, faith-based organizations should be eligible to compete for Federal financial assistance used to support social service programs and to participate fully in the social service programs supported with Federal financial assistance without impairing their independence, autonomy, expression, or religious character. Accordingly, a faith-based organization that applies for or participates in a social service program supported with Federal financial assistance may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations that receive Federal financial assistance may use their facilities to provide social services supported with Federal financial assistance, without removing or altering religious art, icons, scriptures, or other symbols from these facilities. In addition, a faith-based organization that applies for or participates in a social service program supported with Federal financial assistance may retain religious terms in its organization's name,

select its board members on a religious basis, and include religious references in its organization's mission statements and other chartering or governing documents.

Sec. 3. *Agency Implementation.*

(a) Specified agency heads shall, in coordination with the White House Office of Faith-Based and Community Initiatives (White House OFBCI), review and evaluate existing policies that have implications for faith-based and community organizations in order to assess the consistency of such policies with the fundamental principles and policymaking criteria articulated in section 2 of this order.

(b) Specified agency heads shall ensure that all policies that have implications for faith-based and community organizations are consistent with the fundamental principles and policymaking criteria articulated in section 2 of this order. Therefore, specified agency heads shall, to the extent permitted by law:

(i) amend all such existing policies of their respective agencies to ensure that they are consistent with the fundamental principles and policymaking criteria articulated in section 2 of this order;

(ii) where appropriate, implement new policies for their respective agencies that are consistent with and necessary to further the fundamental principles and policymaking criteria set forth in section 2 of this order; and

(iii) implement new policies that are necessary to ensure that their respective agencies collect data regarding the participation of faith-based and community organizations in social service programs that receive Federal financial assistance.

(c) Within 90 days after the date of this order, each specified agency head shall report to the President, through the Director of the White House OFBCI, the actions it proposes to undertake to accomplish the activities set forth in sections 3(a) and (b) of this order.

Sec. 4. *Amendment of Executive Order 11246.*

Pursuant to section 121(a) of title 40, United States Code, and section 301 of title 3, United States Code, and in order to further the strong Federal interest in ensuring that the cost and progress of Federal procurement contracts are not adversely affected by an artificial restriction of the labor pool caused by the unwarranted exclusion of faith-based organizations from such contracts, section 204 of Executive Order 11246 of September 24, 1965, as amended, is hereby further amended to read as follows:

"SEC. 204 (a) The Secretary of Labor may, when the Secretary deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order.

(b) The Secretary of Labor may, by rule or regulation, exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier.

(c) Section 202 of this Order shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in this Order.

(d) The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor that are in all respects separate

and distinct from activities of the contractor related to the performance of the contract: provided, that such an exemption will not interfere with or impede the effectuation of the purposes of this Order: and provided further, that in the absence of such an exemption all facilities shall be covered by the provisions of this Order."

Sec. 5. *General Provisions.*

(a) This order supplements but does not supersede the requirements contained in Executive Orders 13198 and 13199 of January 29, 2001.

(b) The agencies shall coordinate with the White House OFBCI concerning the implementation of this order.

(c) Nothing in this order shall be construed to require an agency to take any action that would impair the conduct of foreign affairs or the national security.

Sec. 6. *Responsibilities of Executive Departments and Agencies.* All executive departments and agencies (agencies) shall:

(a) designate an agency employee to serve as the liaison and point of contact with the White House OFBCI; and

(b) cooperate with the White House OFBCI and provide such information, support, and assistance to the White House OFBCI as it may request, to the extent permitted by law.

Sec. 7. *Judicial Review.*

This order is intended only to improve the internal management of the executive branch, and it is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, or entities, its officers, employees or agents, or any person.

THE WHITE HOUSE,
December 12, 2002.

[FR Doc. 02–31831
Filed 12–13–02; 12:09 pm]
Billing code 3195–01–P

Presidential Documents

Executive Order 13280 of December 12, 2002

Responsibilities of the Department of Agriculture and the Agency for International Development With Respect to Faith-Based and Community Initiatives

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to help the Federal Government coordinate a national effort to expand opportunities for faith-based and other community organizations and to strengthen their capacity to better meet social needs in America's communities, it is hereby ordered as follows:

Section 1. *Establishment of Centers for Faith-Based and Community Initiatives at the Department of Agriculture and the Agency for International Development.* (a) The Secretary of Agriculture and the Administrator of the Agency for International Development shall each establish within their respective agencies a Center for Faith-Based and Community Initiatives (Center).

(b) Each of these Centers shall be supervised by a Director, appointed by the agency head in consultation with the White House Office of Faith-Based and Community Initiatives (White House OFBCI).

(c) Each agency shall provide its Center with appropriate staff, administrative support, and other resources to meet its responsibilities under this order.

(d) Each Center shall begin operations no later than 45 days from the date of this order.

Sec. 2. *Purpose of Executive Branch Centers for Faith-Based and Community Initiatives.* The purpose of the agency Centers will be to coordinate agency efforts to eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and other community organizations in the provision of social services.

Sec. 3. *Responsibilities of the Centers for Faith-Based and Community Initiatives.* Each Center shall, to the extent permitted by law:

(a) conduct, in coordination with the White House OFBCI, an agency-wide audit to identify all existing barriers to the participation of faith-based and other community organizations in the delivery of social services by the agency, including but not limited to regulations, rules, orders, procurement, and other internal policies and practices, and outreach activities that either facially discriminate against or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs;

(b) coordinate a comprehensive agency effort to incorporate faith-based and other community organizations in agency programs and initiatives to the greatest extent possible;

(c) propose initiatives to remove barriers identified pursuant to section 3(a) of this order, including but not limited to reform of regulations, procurement, and other internal policies and practices, and outreach activities;

(d) propose the development of innovative pilot and demonstration programs to increase the participation of faith- based and other community organizations in Federal as well as State and local initiatives; and

(e) develop and coordinate agency outreach efforts to disseminate information more effectively to faith-based and other community organizations with respect to programming changes, contracting opportunities, and other agency initiatives, including but not limited to Web and Internet resources.

Sec. 4. *Reporting Requirements.*

(a) *Report.* Not later than 180 days from the date of this order and annually thereafter, each of the two Centers described in section 1 of this order shall prepare and submit a report to the White House OFBCI.

(b) *Contents.* The report shall include a description of the agency's efforts in carrying out its responsibilities under this order, including but not limited to:

(i) a comprehensive analysis of the barriers to the full participation of faith-based and other community organizations in the delivery of social services identified pursuant to section 3(a) of this order and the proposed strategies to eliminate those barriers; and

(ii) a summary of the technical assistance and other information that will be available to faith-based and other community organizations regarding the program activities of the agency and the preparation of applications or proposals for grants, cooperative agreements, contracts, and procurement.

(c) *Performance Indicators.* The first report, filed 180 days after the date of this order, shall include annual performance indicators and measurable objectives for agency action. Each report filed thereafter shall measure the agency's performance against the objectives set forth in the initial report.

Sec. 5. *Responsibilities of the Secretary of Agriculture and the Administrator of the Agency for International Development.* The Secretary and the Administrator shall:

(a) designate an employee within their respective agencies to serve as the liaison and point of contact with the White House OFBCI; and

(b) cooperate with the White House OFBCI and provide such information, support, and assistance to the White House OFBCI as it may request, to the extent permitted by law.

Sec. 6. *Administration and Judicial Review.* (a) The agency actions directed by this executive order shall be carried out subject to the availability of appropriations and to the extent permitted by law.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, or entities, its officers, employees or agents, or any other person.

THE WHITE HOUSE,
December 12, 2002.

[FR Doc. 02–31832
Filed 12–12–02; 12:09 pm]
Billing code 3195–01–P

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Pacific Halibut and sablefish; IFQ Cost Recovery Program; published 12-16-02

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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S. 1240/P.L. 107–329

To provide for the acquisition of land and construction of an interagency administrative and visitor facility at the entrance to American Fork Canyon, Utah, and for other purposes. (Dec. 6, 2002; 116 Stat. 2815)

S. 2237/P.L. 107–330

Veterans Benefits Act of 2002 (Dec. 6, 2002; 116 Stat. 2820)

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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Federal Register
Vol. 67, No. 242
Tuesday, December 17, 2002

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 27

[Doc. CN–01–004]

RIN 0581–ACOO

Revision of Regulations for Determining Price Quotations for Spot Cotton

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is amending the regulations concerning designation of the spot markets used to calculate differences for tenderable qualities delivered against cotton futures contracts. The re-designated spot markets will better reflect the trading value of tenderable qualities. Presently, regulations provide for the Secretary of Agriculture to determine and designate spot markets from which spot cotton price information can be collected. Currently, there are seven designated markets that qualify under the Cotton Futures Act requirements and five of those are designated to determine differences for the settlement of futures contracts. The Commodity Futures Trading Commission, in an effort to better reflect market transparency, approved a request from the New York Board of Trade that the spot markets used to calculate commercial differences in Cotton Futures Exchange deliveries be re-designated. The requested changes were as follows: replace the South Delta quote with the West Texas quote; and replace the North Delta quote with the average of the combined North and South Delta quotes.

Including West Texas quotes and combining and averaging North and South Delta quotes provides a more accurate reflection of cotton that is traded for cotton futures contracts.

EFFECTIVE DATE: April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Norma McDill, Deputy Administrator, Cotton Program, AMS, USDA, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Telephone (202) 720–2145, facsimile (202) 690–1718, or e-mail *norma.mcdill@usda.gov.*

SUPPLEMENTARY INFORMATION: A proposed rule detailing the revisions was published in the **Federal Register** on July 23, 2002, (67 FR 48050). A 90-day comment period was provided for interested persons to respond to the proposed rule. No comments were received and no changes have been made in the provisions of the final rule.

Executive Order 12866

This rule was determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This final rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small entities.

The New York Cotton Future Market traders include the entire cotton industry: farmers, merchants, and textile mill owners. There are an estimated 3,000 traders. This final rule would affect all such traders. The majority of the traders are small businesses under the criteria established by the Small Business Administration. Amending the regulations to change the designated spot markets for determining tenderable differences will not significantly affect small businesses as defined under the RFA because:

(1) The information gathered will be more reflective of the cotton traded for cotton futures contracts and add more transparency to the market;

(2) The competitive position or market access of small entities in the cotton industry would not be affected;

(3) No new costs would be imposed on the affected industry.

Paperwork Reduction Act

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0029 under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Background

The Secretary of Agriculture is authorized under the U.S. Cotton Futures Act (7 U.S.C. 15b) to make such regulations as determined necessary to carry out the provisions of the Act. The Act provides for the designation of at least five bona fide spot markets from which spot cotton price information can be collected. Presently, there are seven such designated markets that qualify under the Cotton Futures Act requirements. The seven designated markets are as follows: Southeastern, North Delta, South Delta, East Texas and Oklahoma, West Texas, Desert Southwest and San Joaquin Valley. For the purposes of determining settlement of futures contracts five of the seven spot markets are used. They are Southeastern, North Delta, South Delta, East Texas and Oklahoma, and Desert Southwest. The Cotton Program of the Agricultural Marketing Service provides market information from these spot markets under the Cotton Statistics and Estimates Act (7 U.S.C. 473b) and the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(g)).

The Commodity Futures Trading Commission, in an effort to better reflect market transparency, approved a request from the New York Board of Trade to change the spot markets used to calculate commercial differences in

Cotton Futures Exchange deliveries. This final rule would change the designation of the spot markets which are used daily to calculate price differences for cotton futures contracts. The current designations were published in the **Federal Register** on August 4, 1988 (53 FR 29327). As previously stated, differences are quoted for those qualities of cotton which are tenderable on active futures contracts in five designated markets. These differences are averaged to obtain the differences quoted for futures settlement.

This final rule would provide that differences would continue to be quoted for those qualities of cotton which are tenderable on active futures contracts in all of the five markets currently designated for this purpose. However, the West Texas spot market would be added as a bone fide spot market for the settlement of futures contracts, and the North Delta and South Delta spot markets would be combined and averaged together when used for this purpose of calculating differences of tenderable qualities for the settlement of futures contracts. This final rule would change the calculation of differences of tenderable qualities for the settlement of futures contracts to be the average of the differences of (1) the Southeastern spot market; (2) the East Texas/Oklahoma spot market; (3) the West Texas spot market; (4) the Desert Southwest spot market; and (5) the combination and averaging of the North Delta and South Delta spot markets. The remaining designated spot markets would not change. These modifications are expected to more accurately reflect the trading value of tenderable cotton on futures contracts and add more transparency in the market.

List of Subjects in 7 CFR Part 27

Commodity futures, cotton.

For the reasons set forth in the preamble, 7 CFR Part 27 is revised as follows:

PART 27—[AMENDED]

1. The authority citation for 7 CFR Part 27 continues to read as follows:

Authority: 7 U.S.C. 15b, 7 U.S.C. 4736, 7 U.S.C. 1622(g).

2. In § 27.94, paragraph (a) is revised to read as follows:

§ 27.94 Spot markets for contract settlement purposes.

(a) For cotton delivered in settlement of any No. 2 contract on the New York Cotton Exchange: Southeastern, North and South Delta, Eastern Texas and Oklahoma, West Texas, and Desert Southwest.

* * * * *

Dated: December 10, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–31633 Filed 12–16–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–018–4]

Change in Disease Status of Great Britain With Regard to Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of certain animals, meat, and other animal products by adding Great Britain (England, Scotland, Wales, and the Isle of Man) to the list of regions considered free of rinderpest and foot-and-mouth disease (FMD) and to the list of regions subject to certain import restrictions on meat and animal products because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. This final rule follows an interim rule that removed Great Britain and Northern Ireland from those lists due to detection of FMD in those regions. Based on the results of an evaluation of the current FMD situation in Great Britain, which took into account, among other things, that Great Britain has met the standards of the Office International des Epizooties for being considered to be free of FMD, we have determined that Great Britain can be added to the list of regions considered free of FMD. This rule relieves certain FMD-related prohibitions and restrictions on the importation of ruminants and swine and fresh (chilled or frozen) meat and other products of ruminants and swine into the United States from Great Britain.

EFFECTIVE DATE: December 17, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Anne Goodman, Supervisory Staff Officer, Regionalization Evaluation Services Staff, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various animal diseases, including rinderpest and foot-and-mouth disease (FMD). These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are considered free of rinderpest or free of both rinderpest and FMD. Rinderpest or FMD is considered to exist in all parts of the world not listed. Section 94.11 of the regulations lists regions of the world that the Animal and Plant Health Inspection Service (APHIS) has determined to be free of rinderpest and FMD, but from which importation of meat and animal products into the United States is restricted because of the regions' proximity to or trading relationships with rinderpest- or FMD-affected regions.

In an interim rule effective January 15, 2001, and published in the **Federal Register** on March 14, 2001 (66 FR 14825–14826, Docket No. 01–018–1), we amended the regulations by removing Great Britain (England, Scotland, Wales, and the Isle of Man) and Northern Ireland from the list of regions considered to be free of rinderpest and FMD. (The **Federal Register** published a correction (66 FR 18357) to the interim rule on April 6, 2001.) That interim rule was necessary because FMD had been confirmed in those regions. The effect of the interim rule was to prohibit or restrict the importation of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine into the United States from Great Britain and Northern Ireland.

Although we removed Great Britain and Northern Ireland from the list of regions considered to be free of rinderpest and FMD, we recognized in the interim rule that the appropriate authorities had responded to the detection of FMD by imposing restrictions on the movement of ruminants, swine, and ruminant and swine products from FMD-affected areas; by conducting heightened surveillance activities; and by initiating measures to eradicate the disease. We stated that we intended to reassess the situation in those regions at a future date in the context of Office International des Epizooties (OIE) standards, and that as part of that reassessment process, we would

consider all comments received regarding the interim rule.

Additionally, we stated in the interim rule that the future reassessments would enable us to determine whether it was necessary to continue to prohibit or restrict the importation of ruminants or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine from Great Britain and Northern Ireland, or whether we could restore Great Britain and Northern Ireland to the list of regions in which FMD is not known to exist, or regionalize portions of Great Britain or Northern Ireland as FMD-free.

On January 9, 2002, we published a final rule in the **Federal Register** (67 FR 1072–1074, Docket No. 01–031–3) in which we restored Northern Ireland (as well as the Netherlands) to the list of regions considered to be free of rinderpest and FMD and to the list of regions subject to certain import restrictions on meat and animal products because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. The action with respect to Northern Ireland and the Netherlands was based on the results of an evaluation of the FMD situation in those regions, which took into account, among other things, that each region met the standards of the OIE for being considered to be free of FMD.

On July 16, 2002, we published a notice in the **Federal Register** (67 FR 46628–46629, Docket No. 01–018–2) in which we advised the public of the availability of an evaluation that we had prepared concerning the FMD disease status of Great Britain. (We published a correction (67 FR 54164, Docket No. 01–018–3) to that notice on August 21, 2002.) The evaluation, entitled "APHIS Evaluation of FMD Status of Great Britain (England, Scotland, Wales, and the Isle of Man)" (May 2002), assessed the FMD status of Great Britain and the related disease risks associated with importing animals and animal products into the United States from Great Britain.

We solicited comments concerning the evaluation for 60 days ending September 16, 2002, and received 10 comments by that date. The comments were submitted by animal breeders and producers, an animal breeders' association, national beef and pork industry associations, and artificial insemination businesses. Seven of the 10 commenters supported restoring Great Britain to the list of FMD-free regions and relieving certain prohibitions and restrictions on the importation of animals and animal products into the United States from Great Britain. The other comments are discussed below.

One commenter expressed concern that the European Union (EU) is reportedly willing to accept the risk of an outbreak of FMD once every 10 years. The commenter asked what level of FMD risk is acceptable to the United Kingdom, and what actions the United Kingdom was taking to achieve that level of risk.

There is no research of which we are aware, and the commenter did not make reference to any specific report, that indicates that the EU or the United Kingdom is willing to accept the risk of an outbreak of FMD under any circumstances. Regardless of the level of risk that any individual country might be willing to accept, we prepare risk assessments based on our own standards. Our evaluation of Great Britain's eradication and control efforts, including site visits that are detailed in a document that is available to the public (see following section, "Status of Great Britain"), clearly shows that Great Britain has implemented effective measures to prevent further outbreaks of FMD.

Two commenters stated that, given the delay in diagnosis of FMD in Great Britain during the outbreak in 2001, education regarding the importance of early reporting of suspicious disease situations is advisable. The commenter inquired whether APHIS had any information about any such continuing educational efforts in Great Britain.

The United Kingdom's Department for Environment, Food, and Rural Affairs (DEFRA) maintains a Web site (*http://www.defra.gov.uk/footandmouth*) that offers information about, among other things, the disease and the 2001 outbreak, government restrictions and control measures, and precautions that farmers can take to avoid future outbreaks, including looking for early signs of disease. This information, made readily available to the public, through the internet and other media, demonstrates the commitment of the government of the United Kingdom to maintaining a high level of awareness and education regarding FMD.

One commenter wanted to know if we have received information about the compliance of former swill feeding operations with the swill feeding ban that was enacted by the United Kingdom in May 2001.

The ban on swill feeding is an important mitigating measure for the prevention of FMD, and DEFRA has initiated enforcement measures to ensure compliance with the ban. For 12 months following the implementation of the ban, local authorities, in cooperation with the Chief Veterinary Officer of DEFRA, visited all former swill feeders. The visits occurred at 2 weeks, 1 month, 2 months, 6 months, and 12 months. During those 12 months, many of the former swill feeders gave up pig production altogether. The swill feeding operations that remained were thoroughly inspected to ensure that they had changed their feeding regimes in compliance with the ban. Local authorities took feed samples at any swill feeding operation that they suspected was using meat or meat products in their feed. The necessary enforcement measures, up to and including prosecution, were taken in all cases of non-compliance with the ban. These non-compliant swill feeding operations continue to be inspected on a regular basis to ensure that compliance is upheld.

In addition to these inspection measures, the Chief Veterinary Officer of DEFRA has also instituted an awareness campaign aimed at former swill feeding operators as well as the public. Information about alternative methods of feeding, safe disposal of untreated swill, and various feed options has all been made available on DEFRA's Web site. Letters have been written to the local authorities emphasizing the importance of continued vigilance in their enforcement activities, and DEFRA's State Veterinary Service continues to work closely with the local authorities. Our risk assessment and site visits, in addition to the subsequent information we have received from DEFRA, indicate that these actions taken by DEFRA to ensure compliance with the swill feeding ban have been, and continue to be, an effective mitigation measure against the reintroduction of FMD.

Two commenters asked about the level of testing that had been done in deer and feral boars in areas of the country that had contained infected domestic animals.

The information available to us indicates that the wildlife populations were not tested extensively because FMD infections in wildlife were not believed to be a factor in the spread of FMD or to be a reservoir of infection. Detection and eradication efforts were focused on infected domestic animals. We believe that the risk of the spread of FMD from wildlife is minimal because the disease has been eradicated in the domestic livestock, and there has been no reintroduction of the disease from wildlife.

Two commenters noted that Canada will not allow the importation from the United Kingdom of some commodities that have been imported into the United

Kingdom from certain trading partners in the EU known to be infected with FMD. These commenters asked whether APHIS has reviewed the risk to the United Kingdom, and then subsequently to the United States, of these types of importations. These commenters also inquired how the United Kingdom's import controls for commodities from FMD countries compare to the United States' import controls for commodities from FMD countries, and what level of protection is provided by the 100 percent documentation and identity checks conducted by the United Kingdom on the origin of meat imported from FMD countries.

The risk to the United Kingdom and subsequently to the United States of these types of importations is addressed in the current regulations that govern the importation of meat and other animal products. These regulations include special restrictions for those FMD-free regions that: (1) Supplement their national meat supply by the importation of fresh (chilled or frozen) meat of ruminants or swine from regions that are designated as having FMD; (2) share a common land border with regions that are designated as having FMD; or (3) import ruminants or swine from regions where FMD exists under conditions that are less restrictive than are acceptable for importation into the United States. These restrictions, found in § 94.11, will apply to Great Britain and offer additional protection against the possibility of the introduction of FMD into the United States.

One commenter noted the outbreaks of classical swine fever and FMD in the last 2 years in the United Kingdom and asked if APHIS' risk evaluation and assessment process addressed future risks to the United States based on this type of history.

Our risk evaluation and assessment process takes into account the quick and effective response of the government after the initial outbreaks of these diseases. The emergency response lessons that DEFRA learned have led to an increased level of sensitivity and an enhanced level of awareness of the potential for disease incursions. Although it is impossible to predict the potential for future risk with complete certainty, we believe that the continued surveillance and ongoing educational and control efforts of DEFRA, combined with the restrictions of § 94.11 discussed above, support our determination that there does not exist an undue risk of FMD being introduced into the United States through the importation of animals or animal products from Great Britain.

Two commenters requested that APHIS review other disease situations with regard to health risks to the U.S. livestock herd. One of the commenters specifically mentioned postweaning multi-systemic wasting syndrome (PMWS) and porcine dermatitis and nephropathy syndrome (PDNS), which the commenter said were increasing in prevalence and severity in Great Britain.

APHIS conducts ongoing review and analysis of diseases that could affect the U.S. livestock herd. With regard to PMWS and PDNS, both of these diseases already exist in the United States, and we have initiated an evaluation process to determine the extent of their spread and the health risks that they present both in the United Kingdom and in the United States.

Another commenter supported relieving restrictions on the importation from Great Britain of embryos and semen under certain conditions, but opposed relieving restrictions on the importation of other animal products from Great Britain because of FMD and because of the "unknown incubation period" of bovine spongiform encephalopathy (BSE).

Our evaluation of Great Britain's FMD control and eradication efforts since the initial outbreak of FMD indicates that they have been effective. The evaluation, which also took into account OIE's standards, found that there is no undue risk of the presence of FMD in Great Britain. Based on this evidence, we do not consider it necessary to prohibit the importation of animals and animal products from Great Britain due to FMD.

However, because the United Kingdom is listed in § 94.18(a)(1) as a region in which BSE is considered to exist, the importation of ruminants and fresh (chilled or frozen) meat, meat products, and edible products other than meat (excluding gelatin, milk, and milk products) from ruminants from the United Kingdom will continue to be prohibited. Status of Great Britain

In this final rule, we are restoring Great Britain to the list in § 94.1(a) of regions that are considered to be free of rinderpest and FMD. Our reasons follow.

When FMD occurs in an FMD-free country or zone where vaccination is not practiced before the outbreak, the OIE requires a waiting period of 3 months after the last case, when stamping-out and serological surveillance are applied, before that FMD-free country or zone can be reevaluated.

Great Britain did not vaccinate animals against FMD before the initial outbreak that was confirmed on February 20, 2001. Following the initial outbreak, Great Britain implemented a stamping-out policy, movement control measures, serological surveillance, import controls, a ban on swill feeding, and enhanced control of international waste to ultimately control and eradicate the disease.

The last case of FMD in Great Britain occurred on September 30, 2001. The animals were slaughtered immediately, and more than 3 months had elapsed by the time the evaluation was conducted. The OIE reinstated the FMD-free status of the United Kingdom on January 22, 2002. This reinstatement was a significant factor in our evaluation.

We have evaluated the FMD eradication efforts in Great Britain based on information provided to us by this region and by our own site visits. Our findings and site visit reports may be viewed on the Internet at *http://www.aphis.usda.gov/vs/reg-request.html*. You may also request paper copies of these documents by calling or writing the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to Docket No. 01–018–4 when requesting copies. These documents are also available in our reading room. (The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.)

We further believe that we have an obligation under our international trade agreements to restore a region previously recognized as FMD-free to our list of regions free of FMD as soon as practicable upon its meeting OIE standards for free status. The United States would expect the same policy to be applied in the event of an outbreak of disease, and subsequent eradication of that disease, in this country.

Based on our findings, and after reviewing comments submitted to us on the interim rule and on the evaluation, we are amending the regulations by restoring Great Britain to the list in § 94.1(a)(2) of regions that are declared free of both rinderpest and FMD. We are also restoring GreatBritain to the list in § 94.11(a) of regions that are declared free of rinderpest and FMD but that are subject to special restrictions on the importation of their meat and other animal products into the United States. The regions listed in § 94.11(a) are subject to these special restrictions because they: (1) Supplement their national meat supply by importing fresh (chilled or frozen) meat of ruminants or swine from regions that are designated in § 94.1(a) as regions where rinderpest or FMD exists; (2) have a common land border with regions where rinderpest or FMD exists; or (3) import ruminants or swine from regions where rinderpest or FMD exists under conditions less restrictive than would be acceptable for importation into the United States.

This action relieves certain restrictions due to FMD on the importation into the United States of certain live animals and animal products from Great Britain. However, because Great Britain has certain trade practices regarding ruminants and swine that are less restrictive than are acceptable for importation into the United States, the importation of meat and other products from ruminants and swine into the United States from Great Britain continues to be subject to certain restrictions. Further, because the United Kingdom is listed in § 94.18(a)(1) as a region in which BSE is considered to exist, the importation of ruminants, fresh (chilled or frozen) meat, meat products, and certain other edible products of ruminants from the United Kingdom will continue to be prohibited.

Miscellaneous

In § 94.18, we refer to Northern Ireland and Great Britain (England, Scotland, Wales, and the Isle of Man) collectively as the United Kingdom. In this rule, we are amending §§ 94.1 and 94.11 to be consistent with § 94.18. Therefore, instead of adding Great Britain to the lists of regions in §§ 94.1 and 94.11, we are removing the references to Northern Ireland that are currently in both sections and adding the United Kingdom to those lists.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is warranted to relieve certain restrictions on the importation of ruminants and swine and fresh (chilled or frozen) meat and other products of ruminants and swine into the United States from Great Britain that are no longer necessary. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the regulations governing the importation of certain animals, meat, and other animal products by adding Great Britain to the list of regions considered to be free of rinderpest and FMD and to the list of regions that are subject to certain import restrictions on meat and animal products because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. This final rule follows an interim rule that removed Great Britain and Northern Ireland from those lists due to detection of FMD in those regions. Based on the results of an evaluation of the current FMD situation in Great Britain, which took into account, among other things, that Great Britain met the standards of the OIE for being considered to be free of FMD, we have determined that Great Britain can be added to the list of regions considered free of FMD. This final rule relieves certain prohibitions and restrictions on the importation of ruminants and swine and fresh (chilled or frozen) meat and other products of ruminants and swine into the United States from Great Britain.

Great Britain has not historically been a major source of U.S. imports of the products affected by the FMD-related prohibitions and restrictions of the regulations, which include live ruminants, live swine, fresh (chilled or frozen) meat of ruminants and swine, processed ruminant and swine meat, some dairy products, animal feeds, and other ruminant and swine products such as semen, embryos, untanned hides and skins, unwashed wool, hair, bones, blood, and some other byproducts. Past imports of these products from Great Britain represent a small fraction of the total U.S. imports or total U.S. production of these products. Given the BSE-related prohibitions that will continue to apply to the importation of ruminants, fresh (chilled or frozen) meat, meat products, and certain other edible products of ruminants from the United Kingdom, as well as the restrictions on the importation of meat and other products from ruminants and swine from the United Kingdom that will apply under § 94.11, this final rule is not expected to alter these past trade patterns.

The majority of entities potentially affected by this final rule are considered small. For example, in 1997, approximately 97 percent (2,919 of 2,992) of meat and meat product wholesalers, 99 percent (1,490 of 1,503) of livestock wholesalers,[1] 92 percent (79,155 of 86,022) of dairy farms, 99.3 percent (651,542 of 656,181) of cattle farms, 87 percent (40,185 of 46, 353) of hog and pig farms, 99.5 percent (29,790 of 29,938) of sheep and goat farms,[2] 98 percent (1,272 of 1,297) of slaughtering establishments, and 95 percent (1,324 of 1,393) of meat processing establishments[3] would be considered small entities under the criteria set by the Small Business Administration. However, these entities should be little affected by this rulemaking because of the negligible effect on imports.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

[1] 1997 Economic Census, Department of Commerce, Bureau of the Census.

[2] 1997 Census of Agriculture, USDA, National Agricultural Statistics Service.

[3] 1997 Economic Census, Department of Commerce, Bureau of the Census.

Authority: 7 U.S.C. 450, 7711–7714, 7751, 7754, 8303, 8306, 8308, 8310, 8311, and 8315; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C.4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) is amended by removing the words "Northern Ireland,", by removing the word "and" immediately before the word "Trust", and by adding the words ", and the United Kingdom" immediately after the words "Pacific Islands".

§ 94.11 [Amended]

3. In § 94.11, paragraph (a), the first sentence is amended by removing the words "Northern Ireland," and by removing the words "and Switzerland", and adding the words "Switzerland, and the United Kingdom" in their place.

Done in Washington, DC, this 12th day of December 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–31659 Filed 12–16–02; 8:45 am]

BILLING CODE 3410–34–P

RAILROAD RETIREMENT BOARD

20 CFR Parts 260 and 320

RIN 3220–AB03

Requests for Reconsideration and Appeals Within the Board

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations to simplify the procedures with respect to requests for reconsideration and appeals within the Board. These amendments clarify the appeals procedures and make the regulations more readable and understandable to the public.

DATES: This rule is effective December 17, 2002.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, (312) 751–4945, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Part 260 of the Board's regulations deals generally with administrative review of denials of claims or requests for waiver of recovery of overpayments under the Railroad Retirement Act (RRA). Part 320 deals with the same matters under the Railroad Unemployment Insurance Act (RUIA). The Board believes this regulation streamlines the process without diminishing the rights of claimants in the administrative review process. In addition, the Board believes that part 260 has been made more readable and thus more understandable to the public.

Specifically, the Board amends § 260.2 to clarify that the procedure applicable to the appeal of a decision denying the crediting of compensation also applies to the crediting of service months under the RRA. Sections 260.3(d) and 320.10(e) are amended to add as possible good cause for failure to file a timely reconsideration request or appeal within the agency that the claimant believed his or her representative had filed such a request or appeal. In order to protect an appellant where he or she may have a problem obtaining appeal forms, §§ 260.5(b), 260.9(b), 320.12, and 320.39 are amended to provide that the right to appeal is protected by the submission of a written request received within the appeal period stating an intent to appeal, if the claimant files the appeal form within the 30-day period following the date of the letter sending the form to the claimant.

As proposed, section 260.5(l) provides that a hearing may be conducted by telephone conference at the discretion of the hearings officer. We have also amended section 320.25(d) to conform it to proposed section 260.5(l), which is being adopted without change.

A request for waiver of recovery of an overpayment must be filed within 60 days of the notice of overpayment. Sections 260.4(c) and 320.11(f) provide that the Board will still consider a request for waiver filed after the 60-day time period, but may proceed to collect the overpayment and that any amounts collected prior to the request for waiver will not be waived.

The regulation amends both parts 260 and 320 to delay recovery of an erroneous payment when a timely appeal is filed with the Bureau of Hearings and Appeals (new paragraphs 260.5(d) and 320.12(c)) and also when a timely appeal is filed with the three-member Board (new paragraphs 260.9(d) and 320.39(b)).

Sections 260.9(d) and (e) clarify that new evidence will ordinarily not be accepted on appeal to the three-member Board from a decision of a hearings officer, but that argument will be accepted. A new § 320.40(d) parallels § 260.9(e). Sections 260.10 and 320.49 provide that the date of postmark will be considered the date of filing a document with the Board. Finally, a number of nomenclature changes are made to reflect a recent reorganization.

Sections 260.10 and 320.49 are revised to state that as a general rule a document is filed on the day it is received by the Board but that the date of a postmark or other evidence of the date of mailing will be used to establish a filing date. The current § 320.49 contains a provision that allows the Board and a base-year employer to agree to transmit documents and notices by electronic mail. That sentence was inadvertently omitted from the proposed rule, and has been restored in the final rule as paragraph 320.49(c).

The Board published the proposed rule on March 29, 2002 (67 FR 15127), and invited comments by May 28, 2002. No comments were received. With the exceptions for §§ 320.25(d) and 320.49 noted above, the proposed rule has been redrafted as a final rule without change.

Collection of Information Requirements

Pursuant to the Paperwork Reduction Act of 1995, the information collection associated with this rule, the Form HA–1, used to file appeals to the Bureau of Hearings and Appeals and to the three-member Board, has been approved by the Office of Management and Budget under control number 3220–0007. This collection has been cleared for use through August 31, 2004 by the Office of Management and Budget.

Regulatory Impact Statement

Prior to publication of this final rule, the Board submitted this rule to the Office of Management and Budget for review pursuant to Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually. This final rule is not a major rule in terms of the aggregate costs involved. Specifically, we have determined that this final rule is not a major rule with economically significant effects because it would not result in increases in total expenditures of $100 million or more per year.

The revisions made by this final rule are significant. Parts 260 and 320 explain the procedures for seeking review of and appealing a decision through several levels within the Railroad Retirement Board. The revisions should result in modest savings in administrative costs due to the streamlining of procedures. However, the revisions will benefit the agency's constituents as a result of the overall additional protections provided.

Both the Regulatory Flexibility Act and the Unfunded Mandates Act of 1995 define "agency" by referencing the definition of "agency" contained in 5 U.S.C. 551(1). Section 551(1)(E) excludes from the term "agency" an agency that is composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them. The Railroad Retirement Board falls within this exclusion (45 U.S.C. 231f(a)) and is therefore exempt from the Regulatory Flexibility Act and the Unfunded Mandates Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule under the threshold criteria of Executive Order 13132 and have determined that it would not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

In accordance with the provisions of Executive Order 12866, this regulation has been reviewed by the Office of Management and Budget.

List of Subjects

20 CFR Part 260

Administrative practice and procedure, Railroad retirement, Reporting and recordkeeping requirements.

20 CFR Part 320

Administrative practice and procedure, Claims, Railroad unemployment insurance, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Railroad Retirement Board amends title 20, chapter II, parts 260 and 320 of the Code of Federal Regulations as follows:

PART 260—REQUESTS FOR RECONSIDERATION AND APPEALS WITHIN THE BOARD FROM DECISIONS ISSUED BY THE BUREAU OF DISABILITY AND MEDICARE OPERATIONS, BUREAU OF RETIREMENT BENEFITS, BUREAU OF SURVIVOR BENEFITS, OFFICE OF RETIREMENT AND SURVIVOR PROGRAMS, AND THE BUREAU OF RESEARCH AND EMPLOYMENT ACCOUNTS

1. The authority citation for part 260 continues to read as follows:

Authority: 45 U.S.C. 231f; 45 U.S.C. 231g; 45 U.S.C. 355.

2. The heading of part 260 is revised to read as follows:

PART 260—REQUESTS FOR RECONSIDERATION AND APPEALS WITHIN THE BOARD

3. The heading of § 260.1, and introductory paragraph (a) are revised to read as follows:

§ 260.1 Initial decisions.

(a) *General.* Claims for benefits shall be adjudicated and initial decisions made by the Board concerning:

* * * * *

4. In §§ 260.1(b), 260.1(d)(1), and (d)(2), remove the words "Director of the appropriate bureau or office" and "appropriate bureau or office" wherever they appear, and add in their place the word "Board".

5. The heading and § 260.2 are revised to read as follows:

§ 260.2 Initial decisions on the amount of service and compensation credited to an employee.

Within 30 days after receipt of a timely request by an employee for amendment with respect to the number of service months and amount of compensation credited to the employee by the Board under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, the Board shall appoint a qualified employee to make a determination with respect to such matter. The employee appointed by the Board shall promptly render a decision. Written notice of such decision shall be communicated to the employee within 30 days after such decision is made. Such decision shall include notification of the employee's right to reconsideration of the initial decision as provided in § 260.3. For purposes of this section, a timely request to amend an employee's record of service months and compensation maintained under the Railroad Retirement Act shall be filed within four years after the date on which the report of service months and compensation was required to be made to the Board by the employee's employer. See § 211.16 of this chapter.

6. In § 260.3 the heading, paragraph (a) introductory text, paragraphs (b) through (d), and paragraph (f) are revised to read as follows:

§ 260.3 Request for reconsideration of initial decision.

(a) *Right to file request for reconsideration.* Every claimant shall have the right to file a request for reconsideration of an initial decision described in § 260.1(a) or in § 260.2. *Provided, however,* That:

* * * * *

(b) *Written request for reconsideration.* A written request for reconsideration may be filed with any office of the Board within 60 days from the date on which notice of the initial decision is mailed to the claimant. The claimant shall state the basis for the reconsideration request and provide any additional evidence which is available. No hearing will be provided.

(c) *Right to further review of initial decision.* The right to further review of an initial decision shall be forfeited unless a written request for reconsideration is filed within the time period prescribed in this section or good cause is shown by the claimant for failing to file a timely request for reconsideration.

(d) *Timely request for reconsideration.* In determining whether the claimant has good cause for failure to file a timely request for reconsideration the bureau director shall consider the circumstances which kept the claimant from filing the request on time and if any action by the Board misled the claimant. Examples of circumstances where good cause may exist include, but are not limited to:

(1) A serious illness which prevented the claimant from contacting the Board in person, in writing, or through a friend, relative or other person;

(2) A death or serious illness in the claimant's immediate family which prevented him or her from filing;

(3) The destruction of important and relevant records;

(4) A failure to be notified of a decision;

(5) An unusual or unavoidable circumstance existed which demonstrates that the claimant would not have known of the need to file timely or which prevented the claimant from filing in a timely manner; or

(6) The claimant thought that his or her representative had requested reconsideration.

(e) * * *

(f) *Timely review.* The Board shall make every effort to issue a decision upon reconsideration and send a copy of the decision to the claimant within 60 days of the date that the decision for reconsideration is filed.

(g) * * *

7. In § 260.4 the heading is revised, and paragraphs (b) through (i) are revised to read as follows:

§ 260.4 Request for waiver of recovery of an overpayment and/or for reconsideration of an initial erroneous payment decision.

* * * * *

(b) *Request for waiver of recovery and/or reconsideration of an erroneous payment decision and for a personal conference.* A request for reconsideration of an erroneous payment decision must be filed in accordance with § 260.3(b) of this part. A request for waiver of recovery of an overpayment decision and for a personal conference under this section shall be in writing and addressed to the field office of the Board set forth in the initial decision letter or to the Debt Recovery Manager and shall be filed within 60 calendar days from the date on which notice of the overpayment decision was sent to the beneficiary. The beneficiary shall state in the request whether he or she elects to have a personal conference. If the beneficiary does not elect to have a personal conference with respect to his or her request for waiver of recovery or for reconsideration of the overpayment decision, he or she may, along with the request, submit any evidence and argument which he or she would like to present in support of his or her case.

(c) *Right to further review of an initial overpayment decision.* The right to further review of an initial overpayment decision shall be forfeited unless a written request for reconsideration is filed within the time period prescribed in § 260.3(b) of this part (60 days) or good cause, as defined in section 260.3(d) of this part, is shown by the beneficiary for failing to file a timely request for reconsideration. Nothing in this section shall be taken to mean that waiver of recovery will not be considered in these cases where the request for waiver is not filed within 60 days, but action to recover the erroneous payment will not be deferred if such a request is not filed within 60 days. Any amounts recovered prior to the date on which the request for waiver as permitted under the preceding sentence is filed shall not be waived under part 255 of this chapter.

(d) *Delay in commencement of recovery of erroneous payment.* Where a timely request for waiver or reconsideration is filed as provided in this section, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such request for waiver or reconsideration has been made and notice thereof mailed to the claimant.

(e) *Impartial review.* Upon receipt of a timely request for personal conference under this section, the Board shall promptly arrange for the selection of a Board employee to conduct a personal conference in the case. The employee designated to conduct the personal conference under this section shall not have had any prior involvement with the initial erroneous payment decision and shall conduct the personal conference in a fair and impartial manner. The employee designated to conduct the personal conference under this section shall promptly schedule a time and place for the personal conference and promptly notify the beneficiary of such. If the beneficiary agrees, the personal conference may be conducted by telephone.

(f) *Personal conference.* The beneficiary shall upon request have the opportunity to review, prior to the personal conference, his or her claim folder and all documents pertinent to the issues raised. A personal conference conducted under this section shall be informal. At the personal conference the beneficiary shall be afforded the following rights:

(1) To present his or her case orally and to submit evidence, whether through witnesses or documents;

(2) To cross-examine adverse witnesses who appear at the personal conference; and

(3) To be represented by counsel or other person.

(g) *Preparation of recommended decision.* Upon completion of the personal conference the employee who conducts the personal conference shall prepare a summary of the case including a statement of the facts, the employee's findings of fact and law, and a recommended decision.

(h) *Timely review.* The Board shall make every effort to render a decision with respect to the beneficiary's request for reconsideration of the initial erroneous payment determination and/or waiver of recovery and notify the beneficiary of that decision within 60 days of the date that the request for reconsideration and/or waiver is filed or the date that the summary of the case is received from the employee who conducts the personal conference, whichever is later.

(i) *Right to appeal adverse decision.* If the Board renders a decision adverse to the beneficiary, he or she may appeal the decision to the Bureau of Hearings and Appeals, as provided in § 260.5 of this part.

(j) * * *

8. The heading and § 260.5 are revised to read as follows:

§ 260.5 Appeal from a reconsideration decision.

(a) *General.* Every claimant shall have a right to appeal to the Bureau of Hearings and Appeals from any reconsideration decision with which he or she disagrees.

(b) *Appeal from a reconsideration decision.* Appeal from a reconsideration decision shall be made by filing the form prescribed by the Board for such purpose. Such appeal must be filed with the Bureau of Hearings and Appeals within 60 days from the date upon which notice of the reconsideration decision is mailed to the claimant. Any written request stating an intent to appeal which is received within the 60-day period will protect the claimant's right to appeal, provided that the claimant files the appeal form within the later of the 60-day period following the date of the reconsideration decision, or the 30-day period following the date of the letter sending the form to the claimant.

(c) *Right to review of a reconsideration decision.* The right to review of a reconsideration decision shall be forfeited unless an appeal is filed in the manner and within the time prescribed in this section.

However, when a claimant fails to file an appeal with the Bureau of Hearings and Appeals within the time prescribed in this section, the hearings officer may waive this requirement of timeliness. Such waiver shall only occur in cases where the claimant has made a showing of good cause for failure to file a timely appeal. Good cause for failure to file a timely appeal will be determined by a hearings officer in the manner prescribed in § 260.3(d) of this part.

(d) *Delay in the commencement of recovery of erroneous payment.* Where a timely appeal seeking waiver of recovery of an erroneous payment has been filed with the Bureau of Hearings and Appeals, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such appeal seeking waiver has been made and notice thereof has been mailed to the claimant.

(e) *Impartial review.* Within 30 days after the claimant has filed a proper appeal, the Director of Hearings and Appeals shall appoint a hearings officer to act on the appeal. The Director of Hearings andAppeals may, if the Bureau of Hearings and Appeals' caseload dictates, appoint a qualified Board employee, other than a hearings officer assigned to the Bureau of Hearings and Appeals, to act as a hearings officer with respect to a case. Such hearings officer shall not have any interest in the parties or in the outcome of the proceedings, shall not have directly participated in the initial decision or the reconsideration decision from which the appeal is made, and shall not have any other interest in the matter which might prevent a fair and impartial decision.

(f) *Power of hearings officer to conduct hearings.* In the development of appeals, the hearings officer shall have the power to hold hearings, require and compel the attendance of witnesses by subpoena or otherwise in accordance with the procedures set forth in part 258 of this chapter, administer oaths, rule on motions, take testimony, and make all necessary investigations.

(g) *Evidence presented in support of appeal.* (1) The appellant, or his or her representative, shall be afforded full opportunity to present testimony, or written evidence or exhibits upon any controversial question of fact; to examine and cross-examine witnesses; and to present argument in support of the appeal.

(2) The formal rules of evidence shall not apply; however, the hearings officer may exclude evidence which he or she finds is irrelevant or repetitious. Any evidence excluded by the hearings officer shall be described and that description made part of the record.

(3) If, in the judgment of the hearings officer, evidence not offered by the appellant is available and is relevant and material to the merits of the claim, the hearings officer may obtain such evidence upon his or her own initiative. If new evidence is obtained after an oral hearing, other than evidence submitted by the appellant or his or her representative, the hearings officer shall provide the appellant or his or her representative with a copy of such evidence. In such event, the appellant shall have 30 days to submit rebuttal evidence or argument or to request a supplemental hearing to confront and challenge such new evidence. The appellant may move for an extension of time to submit rebuttal evidence or argument and the hearings officer may grant the motion upon a showing of good cause.

(h) *Submission of written argument in lieu of oral hearings.* Where the hearings officer finds that no factual issues are presented by an appeal, and the only issues raised by the appellant are issues concerning the application or interpretation of law, the appellant or his or her representative shall be afforded full opportunity to submit written argument in support of the claim but no oral hearing shall be held.

(i) *Conduct of oral hearing.* (1) In any case in which an oral hearing is to be held, the hearings officer shall schedule a time and place for the conduct of the hearing. The hearing shall not be open to the public. The hearings officer shall promptly notify by mail the party or parties to the proceeding as to the time and place for the hearing. The notice shall include a statement of the specific issues involved in the case. The hearings officer shall make every effort to hold the hearing within 150 days after the date the appeal is filed.

(2) If the appellant objects to the time or place of the hearing, he or she must notify the hearings officer no later than 5 calendar days before the time set for the hearing. The appellant must state the reason for his or her objection. If at all possible, the request should be in writing. The hearings officer will change the time or place of the hearing if he or she finds there is good cause to do so.

(3) The hearings officer shall rule on any objection timely filed by a party under paragraph (i) of this section and shall notify the party of his or her ruling thereon. The hearings officer may for good cause shown, or upon his or her own motion, reschedule the time and/or place of the hearing. The hearings officer also may limit or expand the issues to be resolved at the hearing.

(4) If neither a party nor his or her representative appears at the time and place scheduled for the hearing, that party shall be deemed to have waived his or her right to an oral hearing unless said party either filed with the hearings officer a notice of objection showing good cause why the hearing should have been rescheduled, which notice was timely filed but not ruled upon, or, within 10 days following the date on which the hearing was scheduled, said party files with the hearings officer a motion to reschedule the hearing showing good cause why neither the party nor his or her representative appeared at the hearing and further showing good cause as to why said party failed to file at the prescribed time any notice of objection to the time and place of the hearing.

(5) If the hearings officer finds either that a notice of objection was timely filed showing good cause to reschedule the hearing, or that the party has within 10 days following the date of the hearing filed a motion showing good cause for failure to appear and to file a notice of objection, the hearings officer shall reschedule the hearing. If the hearings officer finds that the hearing shall not be rescheduled, he or she shall so notify the party in writing.

(j) *Record of evidence considered.* The hearings officer will make a record of the material evidence. The record will include the applications, written statements, reports, and other documents that were used in making the determination under review and any other additional evidence the appellant or any other party to the hearing presents in writing. If a hearing was held in the appeal, the tape recording of the hearing will be part of the record while the appeal is pending. The hearings officer's decision will be based on the record. The entire record at any time during the pendency of the appeal shall be available for examination by the appellant or by his or her duly authorized representative.

(k) *Extension of time to submit evidence.* Except where the hearings officer has determined that additional evidence not offered by the appellant at or prior to the hearing is available, the record shall be closed as of the conclusion of the hearing. The appellant may request an extension of time to submit evidence and the hearings officer will grant the request upon a showing of good cause for failure to have submitted the evidence earlier. The extension shall be for a period not exceeding 30 days.

(l) *Hearing by telephone.* At the discretion of the hearings officer, any hearing required under this part may be conducted by telephone conference. (The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 3220-0007)

§ 260.8 [Amended]

9. In § 260.8, remove the word "bureau" wherever it appears and add in its place the word "office".

10. Section 260.9 is amended by redesignating paragraphs (d) through (g) as paragraphs (e) through (h), by revising paragraph (b), adding a new paragraph (d), and by revising redesignated paragraph (e) and redesignated paragraph (f) to read as follows:

§ 260.9 Final appeal from a decision of the hearings officer.

* * * * *

(b) *Appeal from decision of hearings officer.* Final appeal from a decision of a hearings officer shall be made by the execution and filing of the final appeal form prescribed by the Board. Such appeal must be filed with the Board within 60 days from the date upon which notice of the decision of the hearings officer is mailed to the appellant at the last address furnished by him or her. Any written request stating an intent to appeal which is received within the 60-day period will protect the claimant's right to appeal,

Provided that the claimant files the appeal form within the later of the 60-day period following the date of the reconsideration decision, or the 30-day period following the date of the letter sending the form to the claimant.

(c) * * *

(d) *Delay in the commencement of recovery of erroneous payment.* Where a timely appeal seeking waiver of recovery of an erroneous payment has been filed with the three-member Board, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such appeal seeking waiver has been made and notice thereof has been mailed to the claimant.

(e) *Submission of additional evidence.* Upon final appeal to the Board, the appellant shall not have the right to submit additional evidence. However, the Board may grant a request to submit new evidence where new and material evidence is available that, despite due diligence, was not available before the decision of the hearings officer was issued.

The Board may also obtain new evidence on its own motion. Upon admission of new evidence, the Board, at its discretion, may:

(1) Vacate the decision of the hearings officer and remand the case to the Bureau of Hearings and Appeals for issuance of a new decision. The decision of the hearings officer on remand may be appealed to the Board in the manner described in paragraph (b) of this section; or

(2) Return the case to the hearings officer for further consideration with direction to submit a recommended decision to the Board.

(f) *Decision of the Board.* The decision of the Board shall be made upon the record of evidence developed by the hearings officer and any additional evidence admitted pursuant to paragraph (e) of this section. The appellant may submit additional argument in writing with the appeal to the Board. The appellant shall have no right to an oral presentation before the Board except where the Board so permits. Such presentation shall be limited in form, subject matter, length, and time as the Board may indicate to the appellant.

* * * * *

11. The heading, and § 260.10 are revised to read as follows:

§ 260.10 Determination of date of filing.

(a) *General rule.* Except as otherwise provided in paragraph (b) of this section, for purposes of this part, a document or form is filed on the day it is received by an office of the Board or by an employee of the Board who is authorized to receive it at a place other than one of the Board's offices.

(b) *Other dates of filing.* The Board will also accept as the date of filing the date a document or form is mailed to the Board by the United States mail, if using the date the Board receives it would result in the loss or lessening of rights. The date shown by a U.S. postmark will be used as the date of mailing. If the postmark is unreadable, or there is no postmark, the Board will consider other evidence of when the document or form was mailed to the Board.

PART 320—INITIAL DETERMINATIONS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT AND REVIEWS OF AND APPEALS FROM SUCH DETERMINATIONS

12. The authority citation for part 320 continues to read as follows:

Authority: 45 U.S.C. 355 and 362(1).

§ 320.5 Initial determinations.

13. In § 320.5, following the words "Director of", remove the words "Unemployment and Sickness Insurance" and add in their place the words "Policy and Systems".

14. In § 320.6, the introductory paragraph of § 320.6(b) is revised, a new paragraph (b)(8) is added, paragraphs (d) and (e) are revised, and a new paragraph (f) is added to read as follows:

§ 320.6 Adjudicating office.

* * * * *

(b) *Field offices.* Field offices are authorized to make initial determinations on the following issues relating to eligibility for unemployment or sickness benefits, as the case may be:

* * * * *

(8) Whether a claimant's earnings attributable to days in a period for which he or she has registered for unemployment benefits exceed the amount of the applicable monthly compensation base.

* * * * *

(d) *Director of Operations.* The Director of Operations is authorized to make determinations on all issues of eligibility for unemployment and sickness benefits as set forth in paragraphs (b) and (c) of this section, and on any other issue not reserved to the Director of Policy and Systems by paragraph (e) of this section.

(e) *Director of Policy and Systems.* The Director of Policy and Systems shall adjudicate:

(1) The applicability of the disqualification in section 4(a–2)(iii) of the Railroad Unemployment Insurance Act if the claimant's unemployment results from a strike against a railroad employer by which he or she is employed; and

(2) Whether a plan submitted by an employer or other person or company qualifies as a nongovernmental plan for unemployment or sickness insurance, within the meaning of part 323 of this chapter.

(f) *Debt Recovery Manager.* The Debt Recovery Manager shall adjudicate:

(1) All requests for waiver of recovery of an erroneous payment made under the Railroad Unemployment Insurance Act; and

(2) Offers of compromise of debts arising out of the benefit provisions of the Railroad Unemployment Insurance Act.

15. In § 320.10, paragraph (e) is revised to read as follows:

§ 320.10 Reconsideration of initial determination.

* * * * *

(e) *Timely request for reconsideration.* In determining whether either the claimant or the base-year employer(s) has good cause for failure to file a timely request for reconsideration, the adjudicating office shall consider the circumstances which kept either the claimant or the base-year employer(s) from filing the request on time and whether any action by the Board misled either of them. Examples of circumstances where good cause may exist include, but are not limited to:

(1) A serious illness which prevented the claimant from contacting the Board in person, in writing, or through a friend, relative or other person;

(2) A death or serious illness in the claimant's immediate family which prevented him or her from filing.

(3) The destruction of important and relevant records;

(4) A failure to be notified of a decision;

(5) The existence of an unusual or unavoidable circumstance which demonstrates that either the claimant or the base-year employer(s) would not have known of the need to file timely or which prevented either of them from filing in a timely manner; or

(6) The claimant thought that his or her representative had requested reconsideration.

16. In § 320.11, paragraphs (a) and (f) are revised to read as follows, and in paragraphs (d), (e), and (g), remove the words "Director of Unemployment and Sickness Insurance", and add in their place the words "Debt Recovery Manager"; also, in paragraphs (d) and (g), remove the word "Director" and add in its place the word "Manager" wherever it appears.

§ 320.11 Request for waiver of recovery.

(a) *Time limitation.* The claimant shall have 60 days from the date of the notification of the erroneous payment determination in which to file a request for waiver, except that where an erroneous payment is not subject to waiver in accordance with § 340.10(e) of this chapter, waiver may not be requested and recovery will not be stayed. Such requests shall be made in writing and be filed by mail or in person at any Board office. The claimant shall, along with the request, submit any evidence and argument which he or she would like to present in support of his or her case. A request solely for reconsideration of an overpayment shall not be considered a request for waiver under this section but shall be treated as a request for reconsideration under § 320.10 of this part.

* * * * *

(f) *Requests made after 60 days.* Nothing in this section shall be taken to mean that waiver of recovery will not be considered in those cases where the request for waiver is not filed within 60 days, but action to recover the erroneous payment will not be deferred if such request is not filed within 60 days, and any amount of the erroneous payment recovered prior to the date on which the request is filed shall not be subject to waiver under part 340 of this chapter. Further, it shall not be considered that a claimant prejudices his or her request for waiver by tendering all or a portion of an erroneous payment or by selecting a particular method of repaying the debt. However, no waiver consideration shall be given to a debt which is settled by compromise.

* * * * *

17. Section 320.12 is revised to read as follows:

§ 320.12 Appeal to the Bureau of Hearings and Appeals.

(a) Any party aggrieved by a decision under § 320.10 of this part or a claimant aggrieved by a decision under § 320.11 of this part may appeal such decision to the Bureau of Hearings and Appeals. Such an appeal shall be made by filing the form prescribed by the Board for such purpose. The appeal must be filed with the Bureau of Hearings and Appeals within 60 days from the date upon which notice of the decision on reconsideration or waiver of recovery was mailed to either a claimant or the base year employer(s). Any written request stating an intent to appeal which is received within the 60-day period will protect the claimant's or base-year employer's right to appeal, *Provided that* the claimant or base-year employer files the appeal form within the later of the 60-day period from the date of the reconsideration decision, or the 30-day period following the date of the Board's letter sending the appeal form to the claimant or base-year employer.

(b) If no appeal is filed within the time limits specified in paragraph (a) of this section, the decision of the adjudicating office under §§ 320.10 or 320.11 of this part shall be considered final and no further review of such decision shall be available unless the hearings officer finds that there was good cause for the failure to file a timely appeal as described in § 320.10 of this part.

(c) Where a timely appeal seeking waiver of recovery of an erroneous payment has been filed with the Bureau of Hearings and Appeals, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such appeal seeking waiver has been made and notice thereof has been mailed to the claimant.

18. In § 320.25, paragraphs (a), (b), and (d) are revised to read as follows:

§ 320.25 Hearing of appeal.

(a) *Manner of conducting hearing.* The hearing shall be informal, fair, and impartial, and shall be conducted in such manner as to ascertain the substantial rights of the parties. The hearing shall not be open to the public.

(b) *Evidence presented in support of appeal.* (1) Any party, or his or her representative, shall be afforded full opportunity to present evidence upon any controversial question of fact, orally or in writing or by means of exhibits; to examine and cross-examine witnesses; and to present argument in support of the appeal.

(2) The formal rules of evidence shall not apply; however, the hearings officer may exclude evidence which he or she finds is irrelevant or repetitious. Any evidence excluded by the hearings officer shall be described and that description made part of the record.

(3) If, in the judgment of the hearings officer, evidence not offered is available and is relevant and material to the merits of the claim, the hearings officer may obtain such evidence upon his or her own initiative. If new evidence is obtained after an oral hearing, other than evidence submitted by a party or his representative, the hearings officer shall provide the parties or their representatives with a copy of such evidence. In such event, any party shall have 30 days to submit rebuttal evidence or argument or to request a supplemental hearing to confront and challenge such new evidence. Any party may move for an extension of time to submit rebuttal evidence or argument and the hearings officer may grant the motion upon a showing of good cause.

(c) * * *

(d) *Hearing by telephone.* At the discretion of the hearings officer, any hearing required under this part may be conducted by telephone conference.

19. Section 320.28 is revised to read as follows:

§ 320.28 Record of evidence considered.

The hearings officer will make a record of the material evidence. The record will include the applications, written statements, reports, and other documents that were used in making the determination under review and any other additional evidence the appellant or any other party to the hearing presents in writing. If a hearing was held in the appeal, the tape recording of the hearing will be part of the record while the appeal is pending. The hearings officer's decision will be based on the record. The entire record at any time during the pendency of the appeal shall be available for examination by any party or by his or her duly authorized representative.

20. Section 320.39 is revised to read as follows:

§ 320.39 Execution and filing of appeal to Board from decision of hearings officer.

(a) An appeal to the Board from the decision of a hearings officer shall be filed on the form provided by the Board and shall be executed in accordance with the instructions on the form. Such appeal shall be filed within 60 days from the date upon which notice of the decision of the hearings officer was mailed to the parties. The right to further review of a decision of a hearings officer shall be forfeited unless formal final appeal is filed in the manner and within the time prescribed in this section. Any written request stating an intent to appeal which is received within the 60-day period will protect the claimant's right to appeal, *Provided that* the claimant files the appeal form within the later of the 60-day period following the date of the reconsideration decision, or the 30-day period following the date of the letter sending the appeal form to the claimant. However, when a party fails to file an appeal before the Board within the time prescribed in this section, the Board may waive this requirement if along with the final appeal, the party in writing requests an extension of time.

The request for an extension of time must give the reasons why the final appeal form was not filed within the time limit prescribed in this section. If in the judgment of the Board the reasons given establish that the party has good cause for not filing the final appeal form within the time limit prescribed, the Board will consider the appeal to have been filed in a timely manner. The Board will use the standards found in § 320.10(e) of this part in determining if good cause exists.

(b) Where a timely appeal seeking waiver of recovery of an erroneous payment has been filed with the three-member Board, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such appeal seeking waiver has been made and notice thereof has been mailed to the claimant.

21. The heading of § 320.40 is revised, and a new paragraph(d) is added to read as follows:

§ 320.40 Procedure before the Board on appeal from a decision of a hearings officer.

* * * * *

(d) Any party may submit additional argument in writing with the appeal to the Board. No party shall have the right to an oral presentation before the Board except where the Board so permits. Such presentation may be limited in form, subject matter, length, and time as the Board may indicate to the parties.

22. Section 320.49 is revised to read as follows:

§ 320.49 Determination of date of filing.

(a) *General rule.* Except as otherwise provided in paragraph (b) of this section, for purposes of this part, a document or form is filed on the day it is received by an office of the Board or by an employee of the Board who is authorized to receive it at a place other than one of the Board's offices.

(b) *Other dates of filing.* The Board will also accept as the date of filing the date a document or form is mailed to the Board by the United States mail, if using the date the Board receives it would result in the loss or lessening of rights. The date shown by a U.S. postmark will be used as the date of mailing. If the postmark is unreadable, or there is no postmark, the Board will consider other evidence of when the document or form was mailed to the Board.

(c) *Use of electronic mail.* By agreement between a base-year employer and the Board, any document required to be filed with the Board or any notice required to be sent to the employer may be transmitted by electronic mail.

Dated: December 11, 2002.

By Authority of the Board,

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 02–31640 Filed 12–16–02; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF STATE

22 CFR Part 40

[Public Notice 4218]

Visas: Uncertified Foreign Health-Care Workers

AGENCY: Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: This rule changes the requirements pertaining to the issuance of visas to certain foreign health care workers. It provides that an alien who seek to enter the United States to perform health-care services (other than a physician) is excludable unless the alien presents a certificate establishing the alien's competency in a specific health care field issued by the Commission on Graduates of Foreign Nursing Schools (CGFNS) or another credentialing organization approved by the Attorney General through the Immigration and Naturalization Service (INS). The promulgation of this rule is necessary in order to comply with U.S. laws regarding the inadmissibility of aliens into the United States. The rule will result in the imposition of a requirement for certain visa applicants seeking to enter the United States as health care workers to obtain documentation of their professional credentials and qualifications from approved private credentialing agencies and provide that documentation to a consular officer in order to qualify for visa issuance.

DATES: Effective date: This interim rule is effective on December 17, 2002.

Comment date: The Department will consider comments submitted on or before February 18, 2003.

ADDRESSES: Please submit comments in duplicate to Chief, Legislation and Regulations Division, Visa Services, Department of State, 20520–0106, by e-mail to *VisaRegs@state.gov*, or by fax at 202–663–3898.

FOR FURTHER INFORMATION CONTACT: Penafrancia D. Salas, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, 202–663–2878.

SUPPLEMENTARY INFORMATION:

What Is the Authority for This Rule?

Section 343 of the Illegal Immigration Reform and Immigrant Responsibility Ac (IIRIRA), Pub. L. 104–208, 110 Stat. 3009, 636–37 (1996), created a new ground of inadmissibility and visa ineligibility now codified as section 212(a)(5)(C) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(a)(5)(C). It provides that, subject to section 212(r) of the INA, an alien who seeks to enter the United States for the purpose of performing labor as a health care worker, other than as a physician, is excludable (inadmissible) unless the alien presents to the consular officer a certificate from the CGFNS or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services (HHS) verifying that:

(a) The alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission to the United States under the classification specified in the application; are comparable with that required for an American health care worker of the same type; are authentic; and, in the case of a license, unencumbered; and

(b) The alien has the level of competence in oral and written English considered by the Secretary of HHS in consultation with the Secretary of Education, to be appropriate for the health care work of the kind in which the alien will be engaged; as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write; and

(c) If a majority of States licensing the profession in which the alien intends to work recognize a test predicting the success on the profession's licensing or certification examination, that the alien has passed such an examination.

INA section 212(r) mandates separate certification procedures for certain aliens seeking to enter the United States to perform nursing services. In general, such procedures apply to those aliens who already possess a valid State license and who received their nursing training in a country where the quality of education and the English proficiency of nursing graduates have been recognized by the CGFNS as meeting its standards.

How Is the Department Amending Its Regulations?

The Department is adding a new section to its regulations at 22 CFR 40.53 that instructs a consular officer to obtain the appropriate statutorily required certification of competency from an alien seeking to enter the United States to perform services in certain health care occupations, prior to issuing an immigrant or a nonimmigrant visa to the alien.

Does the Department Intend To Continue To Exercise Its Discretion Under Section 212(d)(3)(A) of the INA to Temporarily Waive This Inadmissibility for Nonimmigrant Aliens Seeking To Enter the United States as Health Care Workers Where There May Be Conflict With the North American Free Trade Agreement (NAFTA)?

The Department and INS have exercised their joint discretion under section 212(d)(3)(A) to waive the certification requirement for nonimmigrants due to a possible conflicting obligation of the United States under NAFTA. The Department will continue to use its discretion to temporarily waive this inadmissibility for nonimmigrant health care workers until concerned Executive branch agencies resolve the apparent conflict.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department's implementation of this regulation as an interim rule is based upon the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). The amendment to the regulation simply implements a legislative mandate without interpretation and codifies current practices. Therefore, the Department has determined that it is appropriate to publish this rule as an interim rule. Nevertheless, the Department will solicit comments from the public.

The Regulatory Flexibility Act

The Department of State, pursuant with the Regulatory Flexibility Act (5 U.S.C. 605(b), has assessed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

Although this rule is being promulgated in conjunction with the Immigration and Naturalization Service, a domestic agency, the Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department has reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Part 40

Aliens, Nonimmigrants, Immigrants, Documentation, Passports and visas.

For the reasons set forth in the preamble, the Department is amending the regulations at 22 CFR part 40 to read as follows:

PART 40—[AMENDED]

1. The authority citation for part 40 shall continue to read:

Authority: 8 U.S.C. 1104.

2. Section 40.53 is added to read as follows:

§ 40.53 Uncertified Foreign Health-Care Workers.

(a) Subject to paragraph (b) of this section, a consular officer must not issue a visa to any alien seeking admission to the United States for the purpose of performing services in a health care occupation, other than as a physician, unless, in addition to meeting all other requirements of law and regulation, the alien provides to the officer a certification issued by the Commission On Graduates of Foreign Nursing Schools (CGFNS) or another credentialing service that has been approved by the Attorney General for such purpose, which certificate complies with the provisions of sections 212(a)(5)(C) and 212(r) of the Act, 8 U.S.C. 1182(a)(5)(C) and 8 U.S.C. 1182(r), respectively, and the regulations found at 8 CFR 212.15.

(b) Paragraph (a) of this section does not apply to an alien:

1. Seeking to enter the United States in order to perform services in a non-clinical health care occupation as described in 8 CFR 212.15(b)(1); or

2. Who is the immigrant or nonimmigrant spouse or child of a foreign health care worker and who is seeking to accompany or follow to join as a derivative applicant the principal alien to whom this section applies; or

3. Who is applying for an immigrant or a nonimmigrant visa for any purpose other than for the purpose of seeking entry into the United States in order to perform health care services as described in 8 CFR 212.15.

Dated: November 29, 2002.

George C. Lannon,

Acting Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 02–31603 Filed 12–16–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 4217]

Exchange Visitor Program; Correction

AGENCY: Department of State.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to a regulation published in the **Federal Register** by the United States Information Agency (USIA) on May 28, 1997 [62 FR 28801]. The regulation relates to requests for a

waiver of the two-year home-country physical presence requirement for exchange visitors who are foreign medical graduates.

EFFECTIVE DATE: December 17, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20522–0113.

SUPPLEMENTARY INFORMATION: Regulatory Findings

Background

On May 28, 1997, the USIA (which has now been incorporated by the Department of States) published an amendment to their regulations regarding requests for waivers of the two-year home-country physical presence requirement by interested U.S. Government agencies on behalf of exchange visitors who are foreign medical graduates. The rule amended 514.44 of 22 CFR (now 41.63). Paragraph (c)(4)(iii), as amended, contained an error in the U.S. Code citation.

Correction

The regulation at 41.63(c)(4)(iii) contains a statement to be signed and dated by foreign medical graduate exchange visitors. The statement indicates that the medical graduate will incur penalties, as provided for under the provisions of "18 U.S.C. 1101," for making false or misleading statements. The U.S.C. cite was incorrect, and should have been "18 U.S.C. 1001". This rule amends the U.S.C. citation.

List of Subjects in 22 CFR Part 41

Nonimmigrants, Visas and passports.

Accordingly, for the reasons set forth in the preamble, 22 CFR 41 is corrected as follows:

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. The authority citation for part 41 continues to read as follows:

Authority: 8 U.S.C. 1104, 1181, 1201, 1202; Pub. L. 105–277, 112, Stat. 2681 *et seq.*

§ 41.63 Two-year home-country physical presence requirement.

2. In § 41.63 (c)(4)(iii) change the U.S.C. cite to read "18 U.S.C. 1001."

Dated: December 12, 2002.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 02–31484 Filed 12–16–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice 4219]

Documentation of Immigrants—Visa Registration

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the Department's regulation that defines "registration" in connection with an application for an immigrant visa. This change is necessary because the current definition, as written, may be interpreted as being inconsistent with other sections of thisPart concerning the Secretary of State's authority to cancel the registration of an alien who fails to apply for an immigrant visa within a specific one-year time period. When this rule becomes effective the "registration" of an immigrant visa applicant will be defined to mean the filing of an immigrant visa form (DS–230), when duly executed, or the transmission by the Department to the alien of a notification of the availability of an immigrant visa, whichever occurs first.

EFFECTIVE DATE: December 17, 2002.

FOR FURTHER INFORMATION CONTACT: Pamela R. Chavez, Legislation andRegulations Division, 202–663–1206.

SUPPLEMENTARY INFORMATION:

What Statutes Require Registration and Termination of Registration?

The registration of every immigrant alien in connection with the alien's visa application is required under Section 221(b) of the Immigration and Nationality Act (INA).Section 203(g) of the INA requires that the Secretary of State terminate an alien's registration if he or she fails to apply for an immigrant visa within one year following notification that a visa is available.

What Procedures Have Been Used To Register An Alien and To Terminate an Alien's Registration?

In order to make its procedures conform to changes in the Immigration Act of 1990 (Pub. L. 101–649), the Department published several amendments to its regulations on October 1, 1991.(*See* 56 FR 49678). The amendments revised, among other things, the regulation to allow a consular officer to begin termination of an alien's registration for an immigrant visa if the alien failed to apply within one year from the date of transmission of the consular officer's notification to the alien that a visa was available (*see* 22 CFR 42.83). In making this revision, however, the Department did not also amend its corresponding definition of "registration." Therefore, the Department is publishing this rule to correct this oversight. TheDepartment has been applying this definition in its daily practice since 1991.

Regulatory Analysis and Findings

Administrative Procedure Act

The Department's implementation of this regulation as a final rule is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3). The amendments reflect a change in the Department's procedures rather than a change in policy.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act(5 U.S.C.605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the SmallBusiness RegulatoryEnforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review.Therefore, in accordance with the letter to the Department of State of February 4, 1994 from the Director of the Office of Management and Budget, it does not require review by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 42

Aliens, Immigrants, Passports and visas.

Accordingly, for the reasons set forth in the preamble part 42 is amended as follows:

PART 42—[AMENDED]

1. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104.

2. Revise paragraph (b) of § 42.67 to read as follows:

§ 42.67 Execution of application, registration, and fingerprinting.

* * * * *

(b) *Registration.* The alien shall be considered to be registered for the purposes of INA 221(b) and 203(g) upon the filing of Form DS–230, when duly executed, or the transmission by the Department to the alien of a notification of the availability of an immigrant visa, whichever occurs first.

* * * * *

Dated: December 2, 2002.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 02–31686 Filed 12–16–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

[BOP–1009–F]

RIN 1120–AA15

Incoming Publications: Softcover Materials

AGENCY: Bureau of Prisons, DOJ.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) revises its regulations on incoming publications. The amendment provides that inmates in medium security, high security, and administrative institutions may receive softcover materials only from a publisher, book club, or bookstore. This amendment is necessary to reduce the amount of contraband introduced into Federal prisons through materials sent by mail. The presence of contraband in the prisons, including drugs, weapons, and escape-related materials pose grave dangers to staff, inmates and the public. We considered alternate solutions to the problem of intercepting contraband, such as the use of technological security devices or increased staffing, but determined that these options wereimpracticable. This rule change also allows the Unit Manager to make an exception to this requirement and to the existing similar requirement for hardcover publications and newspapers. We intend this rule change to strengthen security procedures designed to prevent introduction to contraband into Bureau institutions.

EFFECTIVE DATE: January 16, 2003.

ADDRESSES: Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: The Bureau amends its regulations on incoming publications (28 CFR part 540, subpart F). Regulations in 28 CFR 540.71 had allowed an inmate to receive paperback books and magazines from any source. A proposed rule was published in the **Federal Register** on January 18, 1994 (59 FR 2668). The proposed rule required that, in medium security, high security, and administrative institutions, only softcover publications from the publisher, book club, or book store would be permitted. Existing regulations already required this restriction on hardcover books and newspapers.

The proposed rule also provided for exceptions when a publication was no longer available from the publisher, book club, or bookstore. In such cases, the Unit Manager may require that the inmate provide written documentation that the publication is no longer available from these sources.

The proposed amendment was intended to simplify, and consequently strengthen, Bureau procedures designed to prevent the introduction of contraband into Bureau institutions. Bureau regulations on inmate legal activities (28 CFR part 543, subpart B) which restated in § 543.11(d) the policy on receipt of incoming publications were also proposed to be revised in a conforming amendment.

The public comment period on the Bureau's proposed rule closed on March 21, 1994. Comments were received from approximately 187 commenters (approximately 176 submitting a form letter response). A summary of the issues raised by these comments and agency response follow.

The form letter stated that the proposed regulation discriminated against all prisoners, indigent prisoners, religious organizations and groups, legal organizations and groups, news organizations and groups, small and independent businesses and employees, and free enterprise. The form letter also claimed that the proposed regulation cut prisoners off from their local, national, and international community contact and ties; impaired First Amendment rights to religious freedom; impaired a right to read, learn, and mentally, emotionally and spiritually grow and progress; and inflicted severe economic additional hardships on the families and friends of inmates, and on the general national and international communities. Finally, the form letter claimed the proposed regulations were in violation of the Constitution (in particular, the First Amendment), and were in violation of the Geneva Convention, international treaties and agreements, and the Universal Declaration of Human Rights. No specifics were provided regarding the latter alleged violations.

As an initial response, the Bureau notes that the rule applies to inmates in medium security, high security, and administrative facilities only. As of September, 2002, approximately 51% of federal inmates were housed in minimum and low security institutions, and would therefore be unaffected by this amendment. Based upon a general reevaluation of security needs at all facilities, the Bureau is considering extending the restriction to minimum and low security level institutions. That amendment will be addressed in a new proposed rule.

In any case, the revised regulations do not stop inmates from maintaining local, national, and international community contact and ties. Rather, the regulations address how the contact may be maintained through the media of softcover materials. Further specific response is provided below in conjunction with responses to other individual commenters (including those

few form letters which contained additional comments).

Some commenters stated that this rule would discriminate against the indigent and create severe economic hardships, not only on indigent inmates, but also on their families, who would not be able to send material which the family had acquired initially for their own use.

The Bureau believes that this concern ignores other resources available to inmates and other avenues of recirculating softcover materials. For example, inmates retain access to a variety of reading materials in the institution's library. Inmates and their families can mitigate the presumed severe economic impact: Books sent to the inmate by family from a publisher, bookstore, or book club could be mailed by the inmate back to family or friends after the inmate has finished with the book. General limitations on inmate personal property preclude an inmate from amassing a large library of reading materials. Ordinarily the inmate would need to dispose of excess personal material such as books. Mailing the books back to family or friends accomplishes both purposes.

Even so, we believe that the Bureau's need to maintain a secure facility free from contraband outweighs any presumed economic hardship or inconvenience experienced by families or by inmates with relation to the minimal cost of mailing materials to family. The Bureau is mandated, in 18 U.S.C. 4042(a)(3), to provide for the protection and discipline of those in our custody. This statutory mandate compels us to limit the introduction of contraband, which may endanger the health, safety, and security of inmates and Bureau employees, despite minimal costs or inconveniences to the inmate, family or friends.

One commenter expressed concern that, because of specific assessments and/or fines, many inmates would not be able to afford magazine subscriptions or would have to make choices in the expenditure of their available funds.

If this is meant to imply that the inmate's only recourse is to solicit magazines from family and friends, the Bureau's response is that the revised regulations do not preclude family and friends from responding to such requests by initiating subscriptions under the inmate's name. With respect to the inmate's having to make choices on the expenditure of his or her funds, the Bureau notes that such decisions are not unique to inmates, but are an ordinary practice for all responsible persons.

With respect to the general comment that the proposed rule was unconstitutional (based on perceived violations of various amendments), the Bureau disagrees, noting that the revised regulations are a rational means of achieving a legitimate correctional management goal (namely, to preserve internal order and discipline and to maintain institutional security) and that the inmate has other means to obtain similar information.

More specifically, one commenter argued that the proposed rule violates the First Amendment rights of non-prisoners to mail what they choose. We believe that security considerations support the proposed restrictions on what inmates may receive in medium security, high security, and administrative facilities. As noted above, the Bureau believes that security needs at minimum and low security institutions may warrant similar restrictions, and that will be the subject of a separate proposed rulemaking.

The same commenter felt that the proposal is unconstitutionally over-inclusive. The restrictions that the proposed amendment creates, however, are not "unnecessarily broad." The amendment does not totally ban incoming softcover materials; it merely restricts the sources that these materials may come from, in the same manner as is done for hardcover materials and newspapers.

With respect to commenters who suggested that the proposed rule impermissibly violated the First Amendment right to religious freedom or discriminated against religious organizations and groups, the Bureau disagrees. The rule is content neutral. Inmates are still entitled to the same publications as before the proposed rule; we only change the means of obtaining these publications.

One commenter suggested that the proposed rule violates the Constitution on equal protection grounds. The commenter felt the "the proposed rule is discriminatory by denying equal opportunity" to those low and minimum security inmates who are incarcerated in administrative facilities. The Bureau believes that the nature of administrative facilities requires procedural regulation based on the highest common denominator of inmates at the facility. The dedication of monetary and staff resources to allow for differentiation between security levels of inmates at any one administrative institution would be impracticable. Placement in an administrative facility is ordinarily a temporary assignment.

Other commenters further alleged that the rule is unconstitutional on the grounds of Fifth Amendment due process. However, the amendment poses neither a procedural nor a substantive due process violation. The rulemaking's comment period provided the public, including inmates, with an opportunity to voice their comments and concerns about the proposed rule. The inmate retains further due process protection through use of the administrative remedy program (28 CFR part 542).

Commenters argued that the proposed rule will deny them "the right to read, learn and mentally, spiritually, and emotionally grow and progress." The Bureau disagrees. Inmates still retain the opportunity to obtain the material; the means of access have been limited for security reasons.

As stated above, the goal of the Bureau is to maintain security within the facilities free from contraband. Under the new rule, inmates are still permitted to read the same types of publications that they have been allowed to read before the proposed rule. Additionally, inmates can always "read, learn and mentally, spiritually and emotionally grow and progress" in the facility's library, which serves as an additional resource. Inmates are also provided with educational programs within the facility.

Several commenters questioned the Bureau's motives for issuing the amendment. In particular, a commenter suggested that the Bureau may be attempting to control "the free flow of ideas through prison walls." Another commenter felt that "the rule is aimed more at controlling the political content of the information that inmates receive rather than controlling the introduction of contraband." The Bureau emphasizes that this regulation operates in a content-neutral fashion and is not part of any attempt to control the content of the materials coming into Bureau correctional facilities.

A third commenter suggested that the rule is partly motivated by the book publishers "pushing for the sale of a new book rather than have a used one passed on to prisoners" from outside sources. The Bureau's action is based on security concerns and has not been spurred by the interests of book publishers.

Some commenters argued that the proposed rule was overly restrictive. One commenter claimed the motivation behind this rule was "a Bureau desire to re-allocated staff resources" without regard for the impact upon inmates and the general public. This commenter felt that the interest of the public in allowing inmates to receive softcover publications outweighed the interest of the Bureau to re-allocate staff resources.

The Bureau believes that the revised regulations properly balance security needs of the higher rated institutions and the inmate population, given the limitations of budgetary constraints. The current restrictions on sources for hardcover materials have functioned effectively to reduce the risk of contraband entering the institution. In contrast, the lack of restrictions on softcover materials has become problematic. for example, at one high security institution, over the course of a year approximately 25 softcover materials received at the institution contained contraband. In most instances, the contraband was drug-related.

It is important to note that the presence of even minute quantities of drug contraband pose serious problems to the security, discipline, and good order of a correctional institution. Through this rulemaking, extend to softcover materials procedures that have proven effective for hardcover materials.

As for the question of reallocating staff time, one anticipated benefit is a reduction in the amount of tome taken to process contraband which enters that institution by minimizing the likelihood that contraband will be mailed into the institution. Staff will continue to examine all mail (including softcover materials from a publisher, book store, or book club) for contraband.

Several commenters felt that the threat of contraband from soft cover materials should be addressed through use of "high tech security features" or revised mail room procedures. The Bureau believes reliance upon "high tech security features" is not practicable in this instance, given the limitations of budget and available technology.

Staff currently examine all mail both manually and with x-ray scanners. While these scanners are effective for identifying metallic contraband, they are not effective for paper contraband or for organic contraband such as drugs. The cost of devices designed to detect drugs ranges from $36,000 to over $100,000 per unit, depending upon the type of device selected. No one type of device is technically suitable for all of the various types of drug contraband. Consequently, an institution may need more than one of these devices. The Bureau currently operates 107 institutions; 54 of these institutions are medium security level or higher and consequently are covered under the revised regulations. The minimum cost to purchase just one of these devices for each of these 54 institutions ranges from 1.9 to 5.4 million dollars. Additional costs for supplies. The appreciable length of time needed to conduct tests with these devices is yet another consideration which leads the Bureau to determine that the proposed restriction of sources is the more reasonable solution for minimizing the possible introduction of contraband to the institution through softcover materials.

One commenter recommended the use of dogs for intercepting drugs. The Bureau notes that extensive use of dogs for this purpose entails costs of maintenance and handling, and even so may not provide adequate security against the wide range of possible contraband.

One commenter speculated that softcover material offered less opportunity than hardbound material for the transmission of contraband. In actuality, softcover material poses different opportunities for such transmission. The presence of numerous advertising or subscription inserts in a magazine complicates a search for certain types of contraband.

One commenter, apparently assuming that the problem cloud be addressed through efficiencies in operation, recommended processing softcover material on alternate days. The daily volume of mail is sufficiently high that efficiencies effected through the suggested change for processing mail would be negligible.

Commenters were also concerned that the new rule would leave institution mail staff with nothing to do. While the revised procedure should greatly reduce the likelihood that contraband will enter the institutions through such mail, staff must continue to monitor incoming publications. As one commenter noted, under the revised provision, Bureau staff would have to verify the legitimacy of the sender. The amount of time saved by the procedure can be devoted to these or other duties.

There are a variety of other concerns raised by commenters regarding perceived inconveniences of the rule. One commenter was concerned that reading materials in foreign languages will be difficult to obtain. Other commenters state that old manuscripts, books, and other publications cannot be readily obtained from publishers. One commenter worried that inmates whose friends and families live in small towns will be especially burdened, because many small towns do not have bookstores that offer a wide variety of reading materials.

While the bureau acknowledges that some inconveniences may result from this rule, book clubs do offer a wide variety of reading material, typically at a reduced cost, and are available to everyone regardless of location. Furthermore, reading material in foreign languages is available in most bookstores. The interests of the Bureau to maintain security and order outweigh the minor inconveniences that some inmates may experience.

Some commenters objected to the rule, stating that it would be too difficult to receive certain publications which they speculated would not be readily available from authorized sources. The Bureau notes that the rule contains an exception provision which allows the Unit Manager to authorize the receipt of publications from other sources if the publication is no longer available from the publisher, book club, or bookstore. One commenter argued that approved exceptions by the Unit Manager would be difficult to obtain. The Bureau expects that the use of the exception provision will be adequate for the purpose, and further adjustments to the exception provision can be made if the need becomes apparent.

One commenter argued that most softcover books, and magazines were purchased by family and friends at stores which do not provide mailing services. The Bureau believes this comment is highly speculative. Regardless, the Bureau contends that adequate choice exists for individuals purchasing softcover material (as is already the case for hardcover material).

Some commenters expressed concern that inmates would not be able to receive books from bookstores which ship by United Parcel Service (UPS) because prison addresses contain post office box numbers. These commenters stated that UPS does not deliver to post office box addresses. This has not proven to be a problem in the past with the delivery of hardcover materials from bookstores. Bureau facilities do receive deliveries from UPS and other package carriers.

One commenter assumed that books purchased from a used bookstore would not be acceptable. This, however, is not the case. A used bookstore could be the agent for mailing softcover material to an inmate.

Several commenters suggest that the proposed rule is inconsistent with the goals of rehabilitation. They feel that the rule impairs inmate education and self-improvement. The Bureau disagrees. While the rule places limitations, for reasons of security, on how certain material may be obtained, it is not intended to cut off total access to such material. Furthermore, the Bureau itself offers educational programs for inmates, including a mandatory literacy program with a GED standard and, in certain circumstances, post-secondary education programs.

The education department of the Bureau is responsive, to the extent that its budget allows, to inmate requests for library materials. The budget for an institution's education department covers education programming and library operations (including acquisitions). The statement by one commenter that institution libraries have no funds for acquisition of books is not generally true. This commenter stated that surplus books are donated by inmates to the institution's library and, based upon the assumption that fewer books would be sent into the institution, the amendment would result in fewer books being donated.

One commenter is concerned that the proposed rule change will adversely affect the inmate's ability to receive legal materials. The new rule will not significantly affect the inmate's ability to receive legal materials. Legal reference materials are available to inmates through the institution's law library. Purchasing legal reference materials from outside sources should not be problematic because they may be procured in the same manner as other softcover or hardcover publications.

The commenter expressed a concern that this rule would prevent his receiving softcover legal materials from his attorney. First, this rule does not govern correspondence and mail sent by attorneys to their clients. We have rules governing legal mail in 28 CFR 540.19. Secondly, this rule would only apply if an inmate receives softcover materials from the attorney. It would not prevent an inmate from receiving legal documents from his/her attorney of record or materials such as books from the institution's law library or directly from a publisher, book club or bookstore.

The proposed conforming amendment to the regulations on inmate legal activities (28 CFR 543.11) which restated the policy on receipt of incoming publications is not longer necessary because those provisions were replaced by a cross-reference in an amendment published on January 31, 1997 (62 FR 4890).

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review" section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, as required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Direct of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Sarah Qureshi, Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First St., NW., Washington, DC 20534; telephone (202) 307–2105.

List of Subjects in 28 CFR Part 540

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we revise 28 CFR part 540 as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

The authority citation for 28 CFR part 540 is revised to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

Revise paragraph (a) of § 540.71 to read as follows:

§ 540.71 Procedures.

(a)(1) At all Bureau institutions, an inmate may receive hardcover publications and newspaper only from the publisher, from a book club, or from a bookstore.

(2) At medium security, high security, and administrative institutions, an inmate may receive softcover publications (for example, paperback books, newspaper, clippings, magazines, and other similar items) only from the publisher, from a book club, or from a bookstore.

(3) At minimum security and low security institutions, an inmate any receive softcover publications (other than newspapers) from any source.

(4) The Unit Manager may make an exception to the provisions of paragraphs (a)(1) and (2) of this section of the publication is no longer available from the publisher, book club, or bookstore. The Unit Manager shall require that the inmate provide written documentation that the publication is no longer available from these sources. The approval or disapproval of any request for an exception is to be documented, in writing, on an Authorization to Receive a Package form which will be used to secure the item.

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[FR Doc. 02–31310 Filed 12–11–02; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1904

[Docket No. R–02B]

RIN 1218–AC06

Occupational Injury and Illness Recording and Reporting Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is delaying the effective date of three provisions of the Occupational Injury and Illness Recording and Reporting Requirements rule published January 19, 2001 (66 FR 5916–6135). The provisions being delayed define "musculoskeletal disorder (MSD)" and require employers to check the MSD column on the OSHA Log if an employee experiences a work-related musculoskeletal disorder, state that MSDs are not considered privacy concern cases, and require employers to enter a check in the hearing loss column of the OSHA 300 Log for cases involving occupational hearing loss. The effective date of these provisions is delayed from January 1, 2003 until January 1, 2004. OSHA will implement the hearing loss column requirements on January 1, 2004, and will continue to evaluate the MSD provisions over the next year. *See* **SUPPLEMENTARY INFORMATION** for the specific regulatory sections and paragraphs.

DATES: The amendments in this rule will become effective on January 1, 2003. Section 1904.10(b)(7) added on July 1, 2002 (67 FR 44037) and effective on January 1, 2003, is further delayed until January 1, 2004. Section 1904.12, revised on January 19, 2001 (66 FR 5916), effective on January 1, 2002, and delayed on October 12, 2001 (66 FR 52031), is further delayed until January 1, 2004. The second sentence of 1904.29(b)(7)(vi), revised on January 19, 2001, effective on January 1, 2002, and delayed on October 12, 2001 (66 FR 52031), is further delayed until January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Jim Maddux, Occupational Safety and Health Administration, U.S. Department of Labor, Directorate of Standards and Guidance, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. The MSD Provisions

In January, 2001 OSHA published revisions to its rule on recording and reporting occupational injuries and illnesses (66 FR 5916–6135) to take effect on January 1, 2002. A more complete discussion of the MSD definition issue is contained in the preamble to the January 19, 2001 rule. On July 3, 2001, OSHA proposed to delay the effective date until January 1, 2003, of 29 CFR 1904.12, recording criteria for cases involving work-related musculoskeletal disorders. OSHA explained that it was reconsidering the requirement in 29 CFR 1904.12 that employers check the MSD column on the OSHA Log for a case involving a "musculoskeletal disorder" as defined in that section. This action was taken in light of the Secretary of Labor's decision to develop a comprehensive plan to address ergonomic hazards, and to schedule a series of forums to consider key issues relating to the plan, including the approach to defining ergonomic injuries (66 FR 35113–35115).

After considering the views of interested parties, OSHA published a final rule on October 12, 2001 delaying the effective date of 29 CFR 1904.12 until January 1, 2003. OSHA also added a note to 29 CFR 1904.29(b)(7)(vi) explaining that the second sentence of that section, which provides that MSDs are not "privacy concern cases," would not become effective until January 1, 2003.

OSHA concluded that delaying the effective date of the MSD definition in Section 1904.12 was appropriate because the Secretary was considering a related definitional question in the context of her comprehensive ergonomics plan. The Agency found that it would be premature to implement § 1904.12 before considering the views of business, labor and the public health community on the problem of ergonomic hazards. It also found that it would create confusion and uncertainty to require employers to implement the new definition of MSD contained in § 1904.12 while the Secretary was considering how to define an ergonomic injury under the comprehensive plan (66 FR 52031–52034).

On April 5, 2002, OSHA announced a comprehensive plan to address ergonomic injuries through a combination of industry-targeted guidelines, enforcement measures, workplace outreach, research, and dedicated efforts to protect Hispanic and other immigrant workers. In that announcement, OSHA found that no single definition of "ergonomic injury" was appropriate for all contexts, stating that, as OSHA develops guidance material for specific industries, the Agency may narrow the definition as appropriate to address the specific workplace hazards covered. (OSHA Press Release USDL 02–201 and associated Frequently Asked Questions).

On July 1, 2002, OSHA proposed to delay the effective date of Section 1904.12 for an additional year until January 1, 2004 to give the agency the time needed to resolve whether and how MSDs should be defined for recordkeeping purposes. This proposed delay had no effect on the employer's obligation to record all workplace injuries and illnesses that meet the criteria established in Sections 1904.4 through 1904.7, including those related to ergonomic stressors. The July 1, 2002 **Federal Register** document also requested public comment on various issues related to the MSD definition and column requirement. These issues included the following: "Is an MSD column needed on the OSHA 300 Log? Should the column be reinstated in § 1904.12 or should § 1904.12 be deleted? Would the statistics generated by an additional column be superior to the statistics now generated by the BLS?" (67 FR 44127)

The period for submission of comments on the proposed rule closed on August 30, 2002. After considering the views of interested parties, OSHA has determined that the effective date of Sections 1904.12 and 1904.29(b)(7)(vi) should be delayed until January 1, 2004. This **Federal Register** document addresses only the delayed effective date of these provisions. OSHA is still considering the need for an MSD column and other substantive issues related to § 1904.12 on which comment has been requested. OSHA will announce its decision on these issues in a subsequent **Federal Register** document.

A. Comments on MSD Delay

Many commenters supported the delay, citing reasons similar to those in the July 1, 2002 proposal, or urged OSHA to rescind Section 1904.12 altogether (Exs. 2–2, 2–3, 2–5, 2–6, 2–7, 2–8, 2–9, 2–12, 2–13, 2–14, 2–15, 2–16, 2–21, 2–23, 2–27, 2–28, 2–29, 2–30, 2–31, 2–32, 2–33, 2–35, 3–3, 3–4, 3–5, 3–12, 3–13, 3–14, 3–16, 3–17). In a representative comment, the American Dental Association stated that:

The proposal demonstrates the Agency's understanding of the complexity of defining MSDs and the potential consequences of adopting a hastily developed standardized definition. It is likely that once a MSD

definition is adopted by OSHA it would be difficult to alter or change it in future rulemakings, so it is important that the Agency not act precipitously (Ex. 2–15)

Commenters suggested that additional delay was appropriate to allow for consideration of relevant comment (*See, e.g.*, Exs. 2–2, 2–5, 3–14), to avoid confusion (*See, e.g.*, Exs. 2–2, 2–3, 2–5, 2–16, 2–33), to avoid unnecessary training and computer programming costs (*See, e.g.*, Exs. 2–7, 2–12, 2–21). Two commenters argued that delay was not harmful because there is no effect on the recording of MSD cases (*See, e.g.*, Exs. 2–3, 2–30) and one stated that the delays would not affect safety because MSD cases would be recorded even when the MSD column was not checked (*See, e.g.*, Ex. 3–13). Several commenters suggested that OSHA should delay the MSD definition for recordkeeping purposes until a common definition is adopted for ergonomic purposes (*See, e.g.*, Exs. 2–13, 2–16, 2–30).

Other commenters recommended deletion of the § 1904.12 requirements, including the MSD column and the MSD definition (*See, e.g.*, Exs. 2–2, 2–3, 2–5, 2–6, 2–7, 2–8, 2–9, 2–12, 2–13, 2–14, 2–16, 2–21, 2–23, 2–27, 2–28, 2–29, 2–30, 2–31, 2–32, 2–35, 3–5, 3–12, 3–13, 3–14, 3–16, 3–17), arguing that it is an unnecessary paperwork burden (*See, e.g.*, Exs. 2–2, 2–5, 2–9, 2–12, 2–21, 2–23), that a column is not needed (*See, e.g.*, Exs. 2–7, 2–9, 2–14, 2–21, 2–23, 2–27, 2–30, 3–5, 3–12, 3–16), that OSHA's comprehensive ergonomics plan found that no single definition is appropriate (*See, e.g.*, Exs. 2–3, 2–12, 2–13, 2–16, 2–28, 2–29, 2–32, 2–35), that the § 1904.12 MSD definition was inappropriate (*See, e.g.*, Exs. 2–3, 2–6, 2–7, 2–8, 2–9, 2–12, 2–13, 2–16, 2–23, 2–27, 2–28, 2–29, 2–30, 2–31, 2–32, 2–35, 3–3, 3–14, 3–16), and that controversy and lack of consensus in the scientific and medical communities on the MSD issue makes it premature for OSHA to include a regulatory definition (*See, e.g.*, Exs. 2–8, 2–12, 2–13, 2–14, 2–31, 2–32, 2–35, 3–17).

Several commenters opposed a delay in implementing the recordkeeping rule's definition of MSD and the requirement to check the MSD column (*See, e.g.*, Exs. 2–10, 2–11, 2–18, 2–19, 2–20, 2–22, 2–24, 2–25, 2–26, 2–34, 2–35, 2–36, 2–37, 2–39, 3–2, 3–7, 3–9, 3–15). The United Food & Commercial Workers International Union (UFCW) stated:

> The UFCW believes strongly that OSHA should utilize the broadest definition for recording musculoskeletal disorders on the OSHA Form 300. As well, columns for recording MSDs and hearing loss are absolutely necessary for accurate surveillance as well as utilization of the logs for prevention purposes of these two significant safety and health problems facing UFCW members (Ex. 2–39)

Commenters argued against further delay because delay will make it difficult to collect information on these disorders and make it difficult to take future action (*See, e.g.*, Exs. 2–10, 2–22, 2–24, 2–35, 3–9), delay will make it more difficult to track MSD (*See, e.g.*, Exs. 2–19, 2–20, 2–24, 2–35, 2–36, 2–39, 3–7, 3–9, 3–15), an MSD column can be used to identify injuries and develop prevention strategies (*See, e.g.*, Exs. 2–10, 2–11, 2–18, 2–19, 2–20, 2–22, 2–24, 2–25, 2–34, 2–35, 2–36, 2–39, 3–9, 3–15), an MSD column is needed to develop more complete and consistent statistics by BLS (*See, e.g.*, Exs. 2–11, 2–18, 2–20, 2–24, 2–25, 2–26, 2–35, 2–36, 3–7), an MSD column helps OSHA and NIOSH during workplace interventions (*See, e.g.*, Exs. 2–20, 2–24, 2–25, 2–26), and lack of an MSD column may lead to under-recording of MSD injuries (*See, e.g.*, Ex. 2–25).

Many commenters supported the broad definition of MSD in § 1904.12 to promote a complete capture of MSD cases regardless of risk factor, to produce more complete statistics on MSD, to protect workers from MSD injury by identifying ergonomic problems, and because it is difficult to ascertain one-time versus ongoing exposure (*See, e.g.*, Exs. 2–4, 2–10, 2–11, 2–18, 2–20, 2–22, 2–24, 2–26, 2–34, 2–35, 2–36, 2–39, 3–6). Commenters also expressed their support of the MSD definition in the Section 1904.12 regulation, noting its similarity to definitions used in many other contexts, such as industrial hygiene practice, OSHA's guidelines for meatpacking plants, the National Academy of Sciences reports on ergonomics, NIOSH, employers with effective ergonomics programs, OSHA's settlement agreements, the former recordkeeping system, other government agencies, and other countries (*See, e.g.*, Exs. 2–10, 2–11, 2–19, 2–20, 2–22, 2–24, 2–25, 2–26, 2–35, 2–36, 2–39, 3–9, 3–15). Several commenters observed that the definition is the same as the MSD definition used by the Bureau of Labor Statistics for the last three years (*See, e.g.*, Exs. 2–10, 2–11, 2–19, 2–20, 2–22, 2–24, 2–35, 2–36, 2–39, 3–15).

The AFL–CIO (Ex. 2–24–1) supported these comments, and also argued that, without an MSD definition it would be difficult for DOL to take enforcement actions on ergonomics hazards under the general duty clause. The AFL–CIO also argued that the January 2001 revised OSHA recordkeeping rule included provisions that would assist employers, unions, workers and the government in identifying and addressing MSDs. The AFL–CIO recommended that the Department of Labor maintain the provisions of the 2001 recordkeeping rule and move immediately to implement the rule in its entirety.

B. OSHA's Decision on MSD Delay

OSHA does not believe that a MSD definition should be implemented now, for the same reasons outlined in the July 1, 2002 proposal to delay § 1904.12. While the Agency has not yet decided on the correct approach for dealing with the Part 1904 MSD definition, OSHA plans to publish a final rule in 2003 to resolve the MSD definition issue for the year 2004 and beyond.

OSHA does not agree that delayed implementation of Section 1904.12 will make it more difficult for employers, workers and OSHA to address workplace ergonomic hazards, or undermine OSHA's ability to enforce the general duty clause for ergonomic hazards. Employers are required to record all injuries and illnesses meeting the criteria established in Sections 1904.4 through 1904.7 of the recordkeeping rule regardless of whether a particular injury or illness meets the definition of MSD in Section 1904.12. Thus, the delay in implementing Section 1904.12 will not reduce the number of cases recorded or affect the narrative description of the injury or illness that must be provided for each case. Employers who use the Log and injury reports to discover ergonomic hazards will be able to continue to do so, relying on the description-of-injury information and other data to identify MSDs in their workplaces. Employees will continue to have access to the information provided in the Log and, under the new rule, to the information in the part of the Incident Report explaining how the incident occurred. Employers and employees will be able to categorize this injury and illness information in any manner they find useful.

The delay will not affect the quality or availability of useful statistical data on MSDs. At the facility level, employers, employees and government workers will continue to estimate MSD incidents by analyzing individual injury and illness entries, just as they have done in the past.

Finally, OSHA notes that the delay in the implementation of Section 1904.12 will have no effect on the Department's enforcement of the general duty clause. The definition of MSD in that section has never been in effect, and has not been a factor in enforcement of the clause. The sole effect of the delay is that employers need not use the definition to categorize cases on the OSHA Recordkeeping Log for calendar year 2003. This recordkeeping issue does not affect an employer's obligation under the general duty clause. The employer remains obligated to free its workplace from recognized hazards that are likely to cause serious physical harm.

OSHA is modifying the note following the introduction to Section 1904.12 to inform employers of the policy that will be in effect during 2003. The note also informs the employer that, instead of checking the column on the 300 Log for musculoskeletal disorders (since this column has been removed from the log), the employer is to check the column for "injury" or "all other illness," depending on the circumstances of the case.

In a related matter, the privacy provisions of Part 1904 use the MSD definition from § 1904.12. Specifically, paragraph 1904.29(b)(7)(vi) of the rule states that employers must consider an illness case to be a privacy concern case, and withhold the employee's name from the forms, if the employee independently and voluntarily requests that his or her name not be entered on the Log. The second sentence of the paragraph states "[m]usculoskeletal disorders (MSDs) are not considered privacy concern cases." Because the effective date of the § 1904.12 MSD definition is being delayed, OSHA will be unable to implement the § 1904.29(b)(7)(vi) requirement during 2003. Accordingly, OSHA is modifying the note to Section 1904.29(b)(7)(vi) stating that the second sentence takes effect on January 1, 2004.

II. The Hearing Loss Column Provisions

In January, 2001 OSHA published revisions to its rule on recording and reporting occupational injuries and illnesses (66 FR 5916–6135) to take effect on January 1, 2002, including provisions for recording occupational hearing loss when an employee experienced a standard threshold shift (STS). An STS is defined in OSHA's § 1910.95 noise standard as a change in hearing threshold, relative to the baseline audiogram for that employee, of an average of 10 decibels (dB) or more at 2000, 3000, and 4000 hertz (Hz) in one or both ears. On July 3, 2001, OSHA proposed to delay the effective date of 29 CFR 1904.10 Recording criteria for cases involving occupational hearing loss until January 1, 2003. OSHA explained that it was reconsidering the requirement in 29 CFR § 1904.10 due to ongoing concerns about the level of hearing loss that should be considered a significant health condition, asked for comment on whether or not to delay the provisions while reconsidering the issue, and asked the public to submit substantive comments on the hearing loss recording issue (66 FR 35113–35115).

After considering the views of interested parties, OSHA published a final rule on October 12, 2001 delaying the effective date of 29 CFR 1904.10 until January 1, 2003, and setting forth interim hearing loss recording criteria for 2002 (66 FR 52031–52034). The Agency then issued a final rule on July 1, 2002 establishing new recording criteria for occupational hearing loss that captured STS cases when the employee's overall hearing level exceeded 25 dB from audiometric zero. (67 FR 44037–44048). In a separate proposed rule published that same date, OSHA proposed to delay the requirement to check a hearing loss column on the OSHA 300 Log, and asked for substantive comment on the utility of the column, the usefulness of the data that would be produced, and any costs or burdens associated with implementing a hearing loss column (67 FR 44124–44127).

The period for submission of comments on the proposed rule closed on August 30, 2002. After considering the views of interested parties, OSHA has determined that the effective date of Section 1904.10(b)(7) should be delayed until January 1, 2004. OSHA will implement the provisions at that time, and does not see any need for further delay on the hearing loss column issue.

A. Comments on the Need for and Whether To Delay the Hearing Loss Column

A number of commenters either supported OSHA's proposed one-year delay of § 1904.10(b)(7), or recommended deleting the requirement to identify hearing loss cases in a separate column of the OSHA 300 Log (*See, e.g.*, Exs. 2–3, 2–6, 2–7, 2–14, 2–28, 2–29, 2–30, 2–33, 2–35, 3–1, 3–3, 3–4, 3–5, 3–12, 3–13, 3–14, 3–17). Commenters argued that delay will reduce the cost and burden associated with revising and reissuing the form (*See, e.g.*, Exs. 2–3, 2–7, 2–28, 2–29, 3–13), will provide time to update and distribute the forms (*See, e.g.*, Exs. 2–28, 2–29, 3–13), will allow employers enough time to update computer software used to comply with Part 1904 (*See, e.g.*, Exs. 2–28, 2–29), provide time for employee training (*See, e.g.*, Ex. 3–13), minimize confusion due to the inflated number of hearing loss cases recorded in the first year (*See, e.g.*, Exs. 2–28, 2–29), and allow OSHA to work with BLS to work out an alternative methods for collecting statistics (*See, e.g.*, Ex. 2–35).

Commenters also supported a delay until the MSD column issue is resolved (*See, e.g.*, Exs. 2–3, 2–26, 3–13) so the forms would only be revised once. For example, NIOSH stated that it "[r]ecognizes that multiple year revisions in the OSHA 300 form may cause confusion among employers and can jeopardize the accuracy of survey data based on a sample of 300 Logs. Therefore, NIOSH believes that OSHA should make every effort to consolidate any revisions to the OSHA 300 Log decides to make at one point in time" (Ex. 2–26).

A number of commenters recommended OSHA delete the hearing loss column altogether (*See, e.g.*, Exs. 2–6, 2–7, 2–14, 2–30, 2–35, 3–3, 3–5, 3–12, 3–14, 3–17). Commenters objected to the column with statements that a separate column for hearing loss is not needed (*See, e.g.*, Exs. 2–6, 2–7, 2–14, 2–30, 2–35, 3–5), because it is unclear how the column would be used to improve the effectiveness of an employer's hearing conservation program, given the follow-up actions required by 1910.95 (*See, e.g.*, Exs. 2–7, 2–35), because the data will not shed light on causes or provide value in determining prevention strategies (*See, e.g.*, Ex. 2–30), because work relatedness determinations are subject to error and a column is subject to more error than a survey that accounts for non-occupational hearing loss (*See, e.g.*, Ex. 2–35), because statistics can be generated from the descriptions on the 300 Log (*See, e.g.*, Ex. 2–6), and that it would be better to conduct a BLS survey with real life examples, questions and practical definitions with input from industry, medical professions, and statisticians (*See, e.g.*, Ex. 3–14). The National Grain and Feed Association argued that the column would have no protective value, stating that:

> It is unclear how a separate hearing loss column on the 300 Log could be used to further improve the effectiveness of an employer's hearing conservation program. For example OSHA's Occupational Noise Exposure Standard (29 CFR 1910.95) already requires employers to monitor employees' exposure to noise and take certain actions if workplace noise exceeds specific levels, including implementing a hearing conservation program, employee audiograms, administrative and engineering controls and employee training (Ex. 3–14).

Other commenters opposed further delay of the hearing loss column and urged OSHA to implement the

§ 1904.10(b)(7) requirements in 2003 (*See, e.g.*, Exs. 2–4, 2–10, 2–11, 2–17, 2–18, 2–19, 2–22, 2–24, 2–25, 2–26, 2–34, 2–36, 2–37, 2–39, 3–9, 3–15). These commenters argued that a hearing loss column is needed to provide a basis for prevention efforts (*See, e.g.*, Exs. 2–11, 2–17, 2–19, 2–20, 2–24, 2–36, 2–37, 3–7, 3–15), that there is little or no burden to adding a hearing loss column (*See, e.g.*, Exs. 2–4, 2–11, 2–24, 2–34, 2–37, 2–39), and that waiting for resolution of the MSD column issue is unnecessary and inappropriate and causes unnecessary delay with collection and analysis of the data. (*See, e.g.*, Exs. 2–4, 2–24, 2–34). The International Chemical Workers Union Council stated that delay will condemn more workers and even supervisors to unnecessary hearing loss, and that a column would provide information to employees because "There are no requirements for employers to post or even develop a summary of hearing loss by workplace, department, or job type. As such, the only way that workers and their representatives can learn what areas of the plant and how many workers are experiencing significant hearing loss is by these being posted on the 300 Log, by word of mouth, or by convincing the employer to develop a summary of hearing loss on a yearly basis" (Ex. 2–34).

Commenters also cited statistical reasons for a hearing loss column, stating that a column will improve the BLS data as current BLS data on hearing loss is limited and includes only cases resulting in days away from work (*See, e.g.*, Exs. 2–10, 2–11, 2–17, 2–18, 2–19, 2–20, 2–24, 2–26, 2–34, 2–36, 2–37, 2–39), that there are no other credible sources of national statistics on hearing loss (*See, e.g.*, Ex. 2–20), that no alternative data collection methods are as effective (*See, e.g.*, Ex. 2–10), and that there is no other cost effective method for collecting occupational hearing loss statistics (*See, e.g.*, Exs. 2–24, 2–26). The Coalition to Protect Workers' Hearing (Ex. 2–4), which includes the American Academy of Audiology, the American Association of Occupational Health Nurses, the American Industrial Hygiene Association, the American Speech-Language-Hearing Association, the Council for Accreditation in Occupational Hearing Conservation, the Institute of Noise Control Engineering, The National Hearing Conservation Association, and Self Help for Hard of Hearing People, Inc., argued that:

> The inability to quantify with reasonable accuracy rather than estimate the effects of noise on the U.S. workforce has significant ramifications. While we understand the effects of noise on hearing reasonably well, we are unable to address such issues as the efficacy of hearing protection devices, strengths or deficiencies in hearing conservation programs, and benchmarking standards for comparable employers and industries without comprehensive data on prevalence of noise induced hearing loss.

B. OSHA's Reasons for Retaining the Hearing Loss Column

OSHA has decided to retain the hearing loss column. Doing so will improve the Nation's statistical information on occupational hearing loss, facilitate analysis of hearing loss data at individual workplaces, and improve the Agency's ability to assess this common occupational disorder. One of the major functions of the Part 1904 regulation is to produce national statistics for occupational injury and illness (29 U.S.C. 657.(c)(1)). The data will clearly improve the Nation's statistics on occupational hearing loss. The current data published by the Bureau of Labor Statistics for injuries and illnesses occurring in year 2000 reveal that the category entitled "Disorders of the ear, mastoid process, hearing" provided estimates of 316 cases, and the subcategory of "deafness, hearing loss" provided estimates of 146 cases (*http://www.bls.gov/iif/oshwc/osh/case/ostb1047.txt*.

Because the BLS statistics on case characteristics only reflect injuries and illnesses that result in days away from work, and workers commonly suffer hearing loss and never require a day away from work, the BLS estimates represent only a minor fraction of the total hearing loss experienced by U.S. workers and do not reflect the incidence of occupational hearing loss. A discussion of the BLS data systems and how they function may be found at *http://www.bls.gov/bls/safety.htm*. By providing a separate 300 Log column for this disorder, the data for hearing loss will be summarized by the employer at the end of the year, and will be captured by the BLS when sampled employers submit their summary injury and illness information. Thus, national statistics will be available, for the first time, that include cases that result in days away from work and those that do not. Since OSHA recently published new criteria for recording occupational hearing loss that will result in consistent data capture of significant hearing loss cases (67 FR 44037–44048), the column can be used by BLS to generate useful, consistent, and accurate statistics for the Nation.

The resulting statistics will be of value to several groups. The data will have value on their own as a public information resource that can be accessed by students, hearing loss professionals, researchers, and others. The data can be used by policy makers to prioritize hearing loss prevention efforts and measure the performance of those efforts, whether they are enforcement, guidance, outreach or consultation. OSHA believes that the greatest value of the data will be realized by employers and employees at individual workplaces. These individuals have always had the ability to determine the incidence of hearing loss cases in their workplace via analysis of the individual case descriptions on the OSHA 300 Logs; the hearing loss column will only make this task easier. The greater value of the column lies in the new ability to benchmark the hearing loss statistics of an individual workplace to the hearing loss statistics for industry as a whole, or to hearing loss statistics for a comparable industry classification. This will allow employers and employees to compare their hearing loss prevention performance to the performance of their peers and know whether or not their efforts are succeeding. This is a function that is not required under the § 1910.95 noise standard, and is a useful purpose of the Part 1904 records.

OSHA disagrees with the arguments against a hearing loss column. In response to the criticism that the data will not shed light on causes or provide value in determining preventive strategies (*See, e.g.*, Ex. 2–30), a mere entry on the Log does not, by itself, show an employer or employee how to prevent hearing loss. That is the function of further analysis of the hearing loss cases, the workplace, and the employer's hearing conservation program. In this matter, hearing loss is no different than any other type of injury or illness. The Log provides descriptive data about occupational injuries and illnesses and some of the circumstances surrounding them. It does not replace the need for causal analysis of occupational injuries and illnesses. One commenter also raised the error rate for determining the work relatedness of hearing loss cases (Ex. 2–35). OSHA notes that the data only reflect work-related hearing loss cases. Part 1904 requires the employer to consider the case to be work-related only when exposure at work either causes or contributes to a hearing loss, or significantly aggravates a pre-existing hearing loss (§ 1904.5). Section 1904.10(b)(6) allows the employer to consider the case non work-related if a physician or other licensed health care professional determines the hearing loss is not work related.

Finally, the column is not burdensome. Although the rule does not require employers to use computer software to track injuries and illnesses, many employers do so voluntarily, and these employers will have some minimal initial costs to revise their software. Employers will also experience a small training cost to familiarize the employees who maintain the records with the new column. However, once these tasks are completed, it is no more burdensome to check a hearing loss column than one of the other columns on the form.

C. OSHA's Reasons for Delaying the Hearing Loss Column

OSHA has decided to delay the § 1904.10(b)(7) requirements until January 1, 2004. While the Agency has now received comment on the hearing loss column and has collected adequate information to evaluate the issue, there is not enough time to implement the requirement for use in 2003. As the American Petroleum Institute remarked, the one year delay would "[p]rovide adequate time for OSHA to update and distribute the form 300 and 300S; provide adequate time for employers to update their recordkeeping software and retrain those responsible for recordkeeping; provide OSHA with valuable input from stakeholders; minimize confusion, including the inflated number of hearing loss cases that would be expected during the first (changeover) year of the new criteria for hearing loss; and make more efficient use of resources" (Ex. 2–29).

OSHA agrees with the API. In order to implement the hearing loss column in 2003, the Agency would need to redesign the forms, print them in sufficient quantity, and distribute them for employers use. The states with OSHA Approved State Plans would need to modify their regulations and any state-specific forms they use to obtain equivalent data. Employers would need to implement the new forms, change any software they might be using to keep their records, and make any other changes they deem necessary. While none of these tasks are particularly difficult or burdensome, there is clearly insufficient time available to accomplish these tasks before January 1 of 2003. Waiting until January 2004 will provide all affected parties with more than adequate time to implement the new forms in a methodical, planned fashion.

D. Other Hearing Loss Issues

OSHA would like to clarify three matters in relation to recording occupational hearing loss in conjunction with the Section 1904.10 final rule issued July 1, 2002. First, the preamble to the final rule stated that employers in the shipbuilding industries are not covered by OSHA's noise standard § 1910.95 and are therefore not required to perform audiometric tests. (67 FR 44038, 44040). This statement was an error. OSHA Directive STD 0.2 Identification of General Industry Safety and Health Standards (29 CFR 1910) Applicable to Shipyard Work specifically states that employers in the shipbuilding industry that are covered by the 29 CFR part 1915 Standards are required to comply with a number of 29 CFR Part 1910 standards, including the § 1910.95 requirements for occupational noise.

The second issue involves the computation of a Standard Threshold Shift (STS), which is one part of the two-part recording criteria recently published (67 FR 44037–44048). (The case must also reflect a 25 dB hearing level compared to audiometric zero.) The STS computation is to be made in accordance with the Occupational Noise Exposure Standard 1910.95. As OSHA stated in the preamble to the July 1, 2002 rulemaking, the Section 1904.10 regulation "[u]ses existing measurements employers are already using to comply with the OSHA noise standard, resulting in less paperwork burden for employers covered by both rules" (67 FR 44040). Under 1910.95, the employee's current audiogram is compared to the employee's baseline audiogram, which may be the original audiogram taken when the employee was first placed in a hearing conservation program, or the revised baseline audiogram allowed by the Occupational Noise Exposure standard. Paragraph 1910.95(g)(9) of the noise rule states:

> (9) Revised baseline. An annual audiogram may be substituted for the baseline audiogram when, in the judgment of the audiologist, otolaryngologist, or physician who is evaluating the audiogram:
>
> (i) The standard threshold shift revealed by the audiogram is persistent, or
>
> (ii) The hearing threshold shown in the annual audiogram indicates significant improvement over the baseline audiogram.

OSHA's former recording criteria required the employer to track separate baselines for recording and hearing conservation purposes. However, the new Part 1904 hearing loss recording system relies on the existing 1910.95 calculations, and separate baselines will no longer be required. In short, under the new Part 1904, a recordable hearing loss case occurs when an employee experiences an STS (as defined in 29 CFR 1910.95), the STS is work-related, and the employee's aggregate hearing loss exceeds 25dB from audio metric zero.

Third, OSHA has noted concern among employers because the application of the new two-part test in the new § 1904.10 recording criteria will result in an increase in recorded hearing loss cases. As noted in the July 1, 2002 rulemaking, the new criteria will capture more hearing loss cases. Employers will experience an increase in recorded hearing loss cases in 2003 and future years. Caution must be used when comparing the 2003 and future data to prior years, when the 25 dB criteria for recordkeeping was used. OSHA recognizes this increase, and will take the changes in the recordkeeping rule into account when evaluating an employer's injury and illness experience.

Agency Determination of Good Cause for an Accelerated Effective Date

The Administrative Procedure Act generally requires a thirty-day period between the publication date and the effective date of a final substantive rule. 5 U.S.C. 553(d) provides, in relevant part, as follows:

> The required publication or service of a substantive rule shall be made not less than thirty days before its effective date, except—
>
> (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; [or]
>
> * * *
>
> (3) as otherwise provided by the agency for good cause found and published with the rule.

There will not be thirty days between the publication of this final rule and its effective date of January 1, 2003. However, the exemptions from the thirty-day requirement recognized in 5 U.S.C. 553(d)(1) and (3) apply here. First, this final rule grants an exemption by delaying certain regulatory requirements that would otherwise take effect for the year 2003. The requirements to check the MSD column and the hearing loss column are effective on January 1, 2003 as a matter of law unless this rule takes effect before that date. Therefore, the rule grants an exemption to a legal requirement, and is excepted from the thirty-day effective date requirement.

Moreover, OSHA also finds that there is good cause to make the rule effective on January 1, 2003, even if that date is less than thirty days from publication. The effective date for the requirements to check the MSD and hearing loss

columns was delayed during 2002 while OSHA considered comment on issues related to these requirements. This rule merely continues the status quo during 2003; it does not require any change in recordkeeping procedures.

If this rule cannot be made effective until thirty days from publication, employers will be required to comply with the new MSD and hearing loss column requirements for a brief time during 2003, only to revert back to the existing requirements. This would impose burdensome requirements on employers to quickly train their employees and modify their recordkeeping software in time to accommodate the new requirements on January 1. These extraordinary efforts would be wasted since the columns would be in effect for only a short time, and would produce no worthwhile data. Moreover, there would be a substantial degree of confusion about compliance responsibilities since the current recordkeeping forms do not contain the columns or the MSD definition, and OSHA could not produce and distribute new forms in time. For these reasons, OSHA believes that this final rule must take effect on January 1, 2003.

Paperwork Reduction Act

The final rule will continue OSHA's current policies regarding the recording of hearing loss and musculoskeletal tissue disorders during 2003 and will not impose any new paperwork requirements during that year. The addition of a new hearing loss column in 2004 will result in minor paperwork burdens associated with the addition of a new column, involving training of recordkeeping staff, obtaining new forms, and conversion of non-mandatory computer programs. The forms will be made available free of charge in 2003, before they are required for use in 2004. These burdens are already taken into account in the paperwork estimates for this rule.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601), the Assistant Secretary certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The rule does not add any new requirements, merely delaying the effective date of two sections of the rule, and allowing a previously delayed section to go into effect in 2004.

State Plans

The 26 States and territories with their own OSHA-approved occupational safety and health plans must adopt a comparable regulation within six months of the publication date of this final regulation. These states and territories are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Connecticut, New Jersey, and New York have OSHA approved State Plans that apply to state and local government employees only.

Due to the short amount of time remaining in 2002, some of the states may not complete their rulemaking actions by January 1, 2003. However, the states will complete rulemaking to delay the effective dates of their equivalent regulations shortly thereafter. In the meantime, employers in these states will use the same forms used in federal jurisdiction states (which as noted above do not currently contain the columns or MSD definition) to ensure the uniformity of national data per Section 1904.37.

Executive Order

This document has been deemed significant under Executive Order 12866 and has been reviewed by OMB.

Authority

This document was prepared under the direction of John Henshaw, Assistant Secretary for Occupational Safety and Health. It is issued under Section 8 of the Occupational Safety and Health Act (29 U.S.C. 657) and 5 U.S.C. 553.

Signed at Washington, DC this 11th day of December, 2002.

John Henshaw,

Assistant Secretary of Labor.

For the reasons stated in the preamble, OSHA hereby amends 29 CFR Part 1904 as set forth below:

PART 1904—[AMENDED]

1. The authority citation for part 1904 continues to read as follows:

Authority: 29 U.S.C. 657, 658, 660, 666, 669, 673, Secretary of Labor's Order No. 3–2000 (65 FR 50017), and 5 U.S.C. 533.

2. Revise § 1904.10(b)(7) to read as follows:

§ 1904.10 Recording criteria for cases involving occupational hearing loss.

* * * * *

(b) * * *

(7) *How do I complete the 300 Log for a hearing loss case?*

When you enter a recordable hearing loss case on the OSHA 300 Log, you must check the 300 Log column for hearing loss. (Note: § 1904.10(b)(7) is effective beginning January 1, 2004.)

* * * * *

3. Revise the note to § 1904.12 to read as follows:

§ 1904.12 Recording criteria for cases involving work-related musculoskeletal disorders.

* * * * *

Note to §§ 1904.12: This section is effective January 1, 2004. From January 1, 2002 until December 31, 2003, you are required to record work-related injuries and illnesses involving muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs in accordance with the requirements applicable to any injury or illness under §§ 1904.5, §§ 1904.6, §§ 1904.7, and §§ 1904.29. For entry (M) on the OSHA 300 Log, you must check either the entry for "injury" or "all other illnesses."

4. Revise § 1904.29(b)(7)(vi) to read as follows:

§ 1904.29 Forms.

* * * * *

(b) * * *

(7) * * *

(vi) Other illnesses, if the employee independently and voluntarily requests that his or her name not be entered on the log. Musculoskeletal disorders (MSDs) are not considered privacy concern cases. (Note: The first sentence of this §§ 1904.29(b)(7)(vi) is effective on January 1, 2002. The second sentence is effective beginning on January 1, 2004.)

* * * * *

[FR Doc. 02–31619 Filed 12–16–02; 8:45 am]

BILLING CODE 4510–26–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 253

[Docket No. 2002–4 CARP NCBRA]

Noncommercial Educational Broadcasting Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is publishing final regulations adjusting the royalty rates and terms under the Copyright Act for the noncommercial educational broadcasting compulsory license for the period 2003 through 2007.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380. Telefax: (202) 252–3423

SUPPLEMENTARY INFORMATION:

Background

Section 118 of the Copyright Act, 17 U.S.C., creates a compulsory license for the use of certain copyrighted works in connection with noncommercial broadcasting. Terms and rates for this compulsory license applicable to parties who are not subject to privately negotiated licenses are published in 37 CFR part 253 and are subject to adjustment at five-year intervals. This is a window year for such an adjustment.

After extended negotiations initiated by the Library of Congress, the parties in this docket submitted proposals for adjustment of the rates and terms contained in part 253. Section 251.63(b) of the Copyright Arbitration Royalty Panel ("CARP") rules, 37 CFR, provides that terms and rates for a statutory license may be adopted by the Librarian of Congress in lieu of a CARP proceeding if all parties reach a settlement, and the Librarian publishes the negotiated terms and rates in the **Federal Register** for notice and comment. If no one objects to the proposed rates and terms and submits a Notice of Intent to Participate in a CARP proceeding, then the Librarian may adopt the negotiated rates and terms as final.

On October 30, 2002, the Library published a Notice of Proposed Rulemaking ("NPRM") setting forth the rates and terms negotiated by the parties in this proceeding for the period 2003–2007. 67 FR 66090 (October 30, 2002). The NPRM specified that objecting parties must submit their objections and Notices of Intent to Participate by December 2, 2002. No filings were received. Consequently, pursuant to 37 CFR 252.63(b), the Librarian moves to final rules.

Effective Date

The final section 118 royalty terms and rates are effective on January 1, 2003. January 1, 2003, is less than 30 days from publication of the notice of the final rule. Section 553 of the Administrative Procedure Act, 5 U.S.C., provides that final rules shall not be effective less than 30 days from their publication unless, *inter alia*, the agency finds good cause, a description of which must be published with the rule. 5 U.S.C. 553(d)(3). Good cause exists in this case.

The final rules are the product of negotiations between representatives of copyright owners and copyright users. All owners and users affected by these rates have already had the opportunity to participate in the process, and any additional interested parties were afforded further opportunity to participate when the Copyright Office published them as proposed rules in the **Federal Register**. 67 FR 66090 (October 30, 2002). The copyright owners and users who negotiated the final rules have the expectation that they will become effective on January 1, 2003. Even those parties affected by the rules who did not participate in their negotiation are aware that 2002 is a window year for new rates and terms for the 2003–2007 period, beginning on January 1, 2003. *See* 67 FR at 66092.

The negotiations that produced these final rules took a considerable amount of time to orchestrate and did not result in final agreements until late this year. In addition, some of the rates are dependent upon changes in the Consumer Price Index, information which was not known until the end of November. This resulted in a delay in publishing the final rules until now. Because of these circumstances, and because no parties affected by these rules are prejudiced, good cause exists that they become effective less than 30 days from date of publication of this Notice.

List of Subjects in 37 CFR Part 253

Copyright, Music, Radio, Television, Rates.

Final Regulations

For the reasons set out in the preamble, the Library of Congress amends part 253 of 37 CFR as follows:

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

1. The authority citation for part 253 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

2. Section 253.1 is amended by removing the phrase "January 1, 1998 and ending on December 31, 2002" and adding "January 1, 2003 and ending on December 31, 2007" in its place.

§ 253.3 [Removed and Reserved]

3. Section 253.3 is removed and reserved.

4. Section 253.4 is amended as follows:

a. In the introductory text, by removing ", or compositions in the repertories of ASCAP, BMI, or SESAC which are licensed on terms and conditions established by a duly empowered Copyright Arbitration Royalty Panel pursuant to the procedures set forth in subchapter B of 37 CFR, part 251.";

b. By revising paragraph (a);

c. in paragraph (c), by removing the phrase "January 1, 1998, to December 31, 2002" and adding "January 1, 2003, to December 31, 2007" in its place; and

d. in paragraph (d), by removing "three" and adding "four" in its place.

The revisions to § 253.4 read as follows:

§ 253.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d).

* * * * *

(a) Determination of royalty rate. (1) For performance of such work in a feature presentation of PBS:
2003–2007 ..... $224.22
(2) For performance of such a work as background or theme music in a PBS program:
2003–2007 ..... $56.81
(3) For performance of such a work in a feature presentation of a station of PBS:
2003–2007 ..... $19.16
(4) For performance of such a work as background or theme music in a program of a station of PBS:
2003–2007 ..... $4.04
(5) For the performance of such a work in a feature presentation of NPR:
2003–2007 ..... $22.73
(6) For the performance of such a work as background or theme music in an NPR program:
2003–2007 ..... $5.51
(7) For the performance of such a work in a feature presentation of a station of NPR:
2003–2007 ..... $1.61
(8) For the performance of such a work as background or theme music in a program of a station of NPR:
2003–2007 ..... $.57
(9) For purposes of this schedule the rate for the performance of theme music in an entire series shall be double the single program theme rate.
(10) In the event the work is first performed in a program of a station of PBS or NPR, and such program is subsequently distributed by PBS or NPR, an additional royalty payment shall be made equal to the difference between the rate specified in this section for a program of a station of PBS or NPR, respectively, and the rate specified in this section for a PBS or NPR program, respectively.

* * * * *

§ 253.5 [Amended]

5. Section 253.5(c)(3) is amended by removing "$66" and adding "$80" in its place.

6. Section 253.6(c) is revised to read as follows:

§ 253.6 Performance of musical compositions by other public broadcasting entities.

* * * * *

(c) Royalty rate. A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, in 2003, $460; in 2004, $475; in 2005, $495; in 2006, $515; in 2007, $535.

(2) For all such compositions in the repertory of BMI, in 2003, $460; in 2004, $475; in 2005, $495; in 2006, $515; in $2007, $535.

(3) For all such compositions in the repertory of SESAC, in 2003, $98; in 2004, $100; in 2005, $102; in 2006, $104; in 2007, $106.

(4) For the performance of any other such compositions, in 2003 through 2007, $1.

* * * * *

7. Section 253.7 is amended as follows:

a. In paragraph (a), by removing "or compositions represented by the Harry Fox Agency, Inc., SESAC, and/or the National Music Publishers Association and which are licensed on terms and conditions established by a duly empowered Copyright Arbitration Royalty Panel pursuant to the procedures set forth in this subchapter,"; and

b. By revising paragraph (b).

The revisions to § 253.7 read as follows:

§ 253.7 Recording rights, rates and terms.

* * * * *

(b) Royalty rate. (1)(i) For uses described in paragraph (a) of this section of a musical work in a PBS-distributed program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in that PBS-distributed program:

	2003–2007
Feature	$112.40
Concert feature (per minute)	33.75
Background	56.81
Theme:	
Single program or first series program	56.81
Other series program	23.06

(ii) For such uses other than in a PBS-distributed television program, the royalty fee shall be calculated by multiplying the following per-composition rates by the number of different compositions in that program:

	2003–2007
Feature	$9.29
Concert feature (per minute)	2.44
Background	4.04
Theme:	
Single program or first series program	4.04
Other series program	1.61

(iii) In the event the work is first recorded other than in a PBS-distributed program, and such program is subsequently distributed by PBS, an additional royalty payment shall be made equal to the difference between the rate specified in this section for other than a PBS-distributed program and the rate specified in this section for a PBS-distributed program.

(2) For uses licensed herein of a musical work in a NPR program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in any NPR program distributed by NPR. For purposes of this schedule "National Public Radio" programs include all programs produced in whole or in part by NPR, or by any NPR station or organization under contract with NPR.

	2003–2007
Feature	$12.17
Concert feature (per minute)	17.86
Background	6.10
Theme:	
Single program or first series program	6.10
Other series program	2.43

(3) For purposes of this schedule, a "Concert Feature" shall be deemed to be the nondramatic presentation in a program of all or part of a symphony, concerto, or other serious work originally written for concert performance or the nondramatic presentation in a program of portions of a serious work originally written for opera performance.

(4) For such uses other than in an NPR-produced radio program:

	2003–2007
Feature	$.78
Feature (concert)(per half hour)	1.63
Background	.39

(5) The schedule of fees covers use for a period of three years following the first use. Succeeding use periods will require the following additional payment: additional one-year period—25 percent of the initial three-year fee; second three-year period—50 percent of the initial three-year fee; each three-year fee thereafter—25 percent of the initial three-year fee; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2007, shall be subject to the royalty rates established in this schedule.

* * * * *

8. Section 253.8 is amended by revising paragraphs (b)(1) and (f)(1) to read as follows (the undesignated paragraph following (b)(1) is unchanged):

§ 253.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.

* * * * *

(b) * * *

(1) The following schedule of rates shall apply to the use of works within the scope of this section:

(i) For such uses in a PBS-distributed program:

	2003–2007
(A) For featured display of a work	$68.67
(B) For background and montage display	33.49
(C) For use of a work for program identification or for thematic use	135.37
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule	44.47

(ii) For such uses in other than PBS-distributed programs:

	2003–2007
(A) For featured display of a work	$44.47
(B) For background and montage display	22.80
(C) For use of a work for a program identification or for thematic use	90.91
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of this schedule	22.80

* * * * *

(f) * * *

(1) The rates of this schedule are for unlimited use for a period of three years from the date of the first use of the work under this schedule. Succeeding use periods will require the following additional payment: Additional one-year period—25 percent of the initial three-year fee; second three-year period—50 percent of the initial three-year fee; each three-year period thereafter—25 percent of the initial three-year fee; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2007, shall be subject to the rates established in this schedule.

* * * * *

9. In § 253.10, the first sentence in paragraph (a) is revised to read:

§ 253.10 Cost of living adjustment.

(a) On December 1, 2003, the Librarian of Congress shall publish in the **Federal Register** a notice of the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to December 1, 2002, to the most recent Index published prior to December 1, 2003. * * *

* * * * *

Dated: December 3, 2002.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 02–31620 Filed 12–16–02; 8:45 am]

BILLING CODE 1410–31–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 01–76; FCC 02–320]

Assessment and Collection of Regulatory Fees for Fiscal Year 2001

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: In this document, the Commission denies the petition for reconsideration of Bennet & Bennet, PLLC, on behalf of its local multipoint distribution service (LMDS) clients, filed August 10, 2001.

FOR FURTHER INFORMATION CONTACT: Rob Fream, Office of Managing Director at (202) 418–0408 or Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: Adopted: November 21, 2002; Released December 4, 2002.

I. Introduction

1. By this order we deny the petition for reconsideration of Bennet & Bennet, PLLC, on behalf of its LMDS clients, filed August 10, 2001.[1] Bennet seeks reconsideration of *Assessment of Regulatory Fees for Fiscal Year 2001*, 16 FCC Rcd 13525 (2001), 66 FR 36177, July 11, 2001, (2001 Fee Order), to the extent that order reaffirmed the classification of the LMDS within the category of MDS services for purposes of assessing regulatory fees for FY 2001. As a result of this determination, LMDS facilities are subject to an annual fee of $450 per call sign. Bennet asserts that LMDS should be classified as a microwave service, which would subject it to a $5 annual fee payable for an entire ten year license term at the time of renewal (total payment $50). Bennet also argues that the FY 2001 MDS fee is excessive.

II. Background

2. In the 2001 Fee Order, the Commission rejected the arguments of Winstar Communications, Inc. that LMDS should be reclassified as a microwave service. Fee Order, 16 FCC Rcd 13532 paragraph 22. Winstar justified its proposal by arguing that there had been increased administrative activity associated with part 21 MDS this year, whereas there had been little activity associated with LMDS. It also noted generally that it could think of no similarity between LMDS and MDS and no reason why LMDS should be treated differently than other part 101 fixed Microwave services. Sprint opposed the proposal, noting that the LMDS administrative burden had been higher in the year 2000 and had been supported by fee contributions by MDS users. Further, Sprint argued that there were many similarities between the services, including that they both provided the same high speed voice and data services, although LMDS focused on large business users and MMDS focused on residential consumers. The Commission held that although LMDS and microwave services may utilize the same equipment, LMDS is operationally similar to MDS. The Commission concluded that this functional classification had proven adequate for more than 2 years and there was no reason to change it. Additionally, the Commission rejected the arguments of Worldcom, Inc. that the increase in the MDS fee from $275 in FY 2000 to $450 was excessive. Fee Order, 16 FCC Rcd at 13531–32 paragraphs 18–20. The Commission found that the $450 figure reflected the best accounting methods and the most accurate data available.

III. Bennet's Petition for Reconsideration

3. Bennet, who did not file comments earlier in this proceeding, now seeks reconsideration of the Commission's decision to continue to include LMDS in the MDS category for assessing regulatory fees. Bennet contends that LMDS should be included in the microwave category for purposes of assessing fees. In support of its contention, Bennet posits that significant differences exist between the LMDS and MDS services. According to Bennet, these differences include: That MDS uses site based licenses and individually licensed station hub sites, while LMDS uses geographically based licenses and generally does not use individually licensed hubs; that MDS is primarily a one-way video service, while LMDS is primarily a two-way service; and that LMDS and MDS use different equipment and network configurations and have different propagation characteristics, with LMDS and microwave services having more propagation limitations. It further states that the services serve different markets. In this regard, it notes that LMDS and other part 101 microwave services compete against each other in the same target markets and that the Commission's regulatory fee scheme unjustifiably places LMDS at a competitive disadvantage because the other part 101 services pay only a nominal regulatory fee. It also notes that licensing and rulemaking actions for MDS require more administrative resources than the resources required for LMDS. As to the size of the MDS fee, Bennet maintains that the increase from $275 to $450 is burdensome and not supported by any corresponding increase in regulatory costs.

4. Sprint responds that MDS and LMDS are operationally, competitively, and legally similar, both providing high speed wireless voice and data services, but noting that MDS serves primarily residential users and LMDS primarily serves large business users. Sprint contends that differences in the cost of licensing LMDS and MDS are irrelevant since the cost of licensing is not included in calculating annual fees. Fee Order, 16 FCC Rcd at 13595. In Sprint's view, reclassifying LMDS would

[1] Sprint Corp. filed an opposition on August 27, 2001.

unfairly increase the fees for other MDS operators.

IV. Discussion

5. Based on our review of the record in this proceeding, we find that Bennet's petition fails to provide sufficient grounds for us to depart summarily from the Commission's previous analysis regarding this matter. The Commission's decision to subject LMDS and MDS to identical regulatory fees stemmed largely from the fact that LMDS was operationally similar to MDS and MMDS.[2] In this regard, we note, for example, that we have previously noted that LMDS is competitive with MMDS.[3] Moreover, as the Commission has permitted licensees increasing flexibility in the use of their spectrum, the pattern has been for distinctions between LMDS and MMDS to erode.[4] While Bennet attempts to illustrate that LMDS more closely parallels certain microwave services, it does not dispute the similarities which we have previously noted between LMDS and MMDS. We also concur with Sprint's argument that licensing costs, which are covered by application fees assessed under section 8 of the Act, 47 U.S.C. 158, are not recovered through section 9 regulatory fees of the Act, 47 U.S.C. 159, and, therefore, have no bearing on our decision. We note, moreover, that, pending changes to the statutory schedule of fees in section 8, LMDS services have not been assessed any section 8 application fees. Consequently, we continue to believe, based on the record before us, that LMDS should be included in the MDS category for regulatory fees for FY 2001. As to the increase in the MDS fee, we believe that we have thoroughly explained this matter in the 2001 Fee Order. No further discussion of this point is warranted. Moreover, the public interest would not be served by disrupting the current fee process, which has been completed by numerous entities, pending resolution of this matter, particularly given that many of Bennet's arguments were raised for the first time on reconsideration.

6. While an insufficient record exists to lead us to modify our decision with respect to LMDS services in FY 2001, we plan to develop a more complete record on these issues in the next regulatory fee proceeding. In addition, in light of continuing technological convergence, innovation, and evolving service offerings in the marketplace, we will provide parties in an upcoming wireless bureau proceeding the opportunity to address our existing fixed wireless regulatory fee assessments and their application to similarly situated service providers. The development of a comprehensive record on these issues will enable us to review our existing classifications for certain services and identify the need, if any, for modifications in the regulatory fee amounts assessed for particular service categories.

7. *Accordingly, it is ordered*, that the petition for reconsideration of Bennet & Bennet, PLLC on behalf of its LMDS clients, filed August 10, 2001, is denied.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–31711 Filed 12–16–02; 8:45 am]

BILLING CODE 6712–01–P

[2] *Assessment of Regulatory Fees for Fiscal Year 2001*, 16 FCC Rcd 13525, 13532 para. 22 (2001).

[3] *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5–30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, 15 FCC Rcd 11857, 11868 para. 25 (2000).

[4] For example, the Commission has authorized MMDS providers, like LMDS licensees, to offer two-way communications. *Amendments of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, MM Docket No. 97–217, 13 FCC Rcd 19112 (1998), *recon.* 14 FCC Rcd 12764 (1999), *further recon.*, 15 FCC Rcd 14566 (2000). Moreover, as a result of the Commission's reorganization, MMDS matters, like LMDS matters, now are handled by the Wireless Telecommunications Bureau. *Wireless Bureau to Assume All Regulatory Duties Associated with ITFS and MDS/MMDS Services*, Public Notice (Mar. 18, 2002).

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[EB Docket No. 01–66]

Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published in the **Federal Register** of Tuesday, April 16, 2002 (67 FR 18502). The regulations related to the technical and operational requirements for the Emergency Alert System (EAS) contained in part 11 of the rules.

DATES: Effective December 17, 2002.

FOR FURTHER INFORMATION CONTACT: Kathy Berthot, Enforcement Bureau, Technical and Public Safety Division, at (202) 418–7454.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections revised the technical and operational requirements for the EAS. The revisions were intended to enhance the capabilities and performance of the EAS during state and local emergencies, thereby promoting public safety.

Need for Correction

As published, the final regulations inadvertently omitted the existing State and Territory FIPS number codes used in transmitting EAS messages.

List of Subjects in 47 CFR Part 11

Radio, Television

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Accordingly, 47 CFR part 11 is corrected by making the following corrective amendments:

PART 11—EMERGENCY ALERT SYSTEM (EAS)

1. The authority citation for part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (o). 303(r), 544(g) and 606.

2. Section 11.31 is amended by revising paragraph (f) as follows:

§ 11.31 EAS Protocol.

* * * * *

(f) The State, Territory and Offshore (Marine Area) FIPS number codes (SS) are as follows. County FIPS numbers (CCC) are contained in the State EAS Mapbook.

	FIPS#
State:	
AL	01
AK	02
AZ	04
AR	05
CA	06
CO	08
CT	09
DE	10
DC	11
FL	12
GA	13
HI	15
ID	16
IL	17
IN	18
IA	19
KS	20
KY	21
LA	22
ME	23
MD	24
MA	25
MI	26
MN	27
MS	28
MO	29
MT	30
NE	31
NV	32
NH	33
NJ	34
NM	35
NY	36
NC	37
ND	38
OH	39
OK	40
OR	41
PA	42
RI	44
SC	45
SD	46
TN	47
TX	48
UT	49
VT	50
VA	51
WA	53
WV	54
WI	55
WY	56
Terr.:	
AS	60
FM	64
GU	66
MH	68
MH	68
PR	72
PW	70
UM	74
VI	78
Offshore (Marine Areas) [1]:	
Eastern North Pacific Ocean, and along U.S. West Coast from Canadian border to Mexican border	57
North Pacific Ocean near Alaska, and along Alaska coastline, including the Bering Sea and the Gulf of Alaska	58
Central Pacific Ocean, including Hawaiian waters	59
South Central Pacific Ocean, including American Samoa waters	61
Western Pacific Ocean, including Mariana Island waters	65
Western North Atlantic Ocean, and along U.S. East Coast, from Canadian border south to Currituck Beach Light, N.C	73
Western North Atlantic Ocean, and along U.S. East Coast, south of Currituck Beach Light, N.C., following the coastline into Gulf of Mexico to Bonita Beach, FL., including the Caribbean	75
Gulf of Mexico, and along the U.S. Gulf Coast from the Mexican border to Bonita Beach, FL	77
Lake Superior	91
Lake Michigan	92
Lake Huron	93
Lake St. Clair	94
Lake Erie	96
Lake Ontario	97
St. Lawrence River above St. Regis	98

[1] Effective May 16, 2002, broadcast stations, cable systems and wireless cable systems may upgrade their existing EAS equipment to add these marine area location codes on a voluntary basis until the equipment is replaced. All models of EAS equipment manufactured after August 1, 2003, must be capable of receiving and transmitting these marine area location codes. Broadcast stations, cable systems and wireless cable systems which replace their EAS equipment after February 1, 2004, must install equipment that is capable of receiving and transmitting these location codes.

[FR Doc. 02–31712 Filed 12–16–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 24

[WT Docket No. 01–108; FCC 02–229 and FCC 02–247]

Public Mobile Services and Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this *Report and Order* and *Second Report and Order*, the Commission makes significant modifications to its rules that cover the Cellular Radiotelephone and other services as part of its Biennial Review of rules. The Commission modifies or eliminates various rules that have become outdated due to supervening rules, technological change, or increased competition among providers of Commercial Mobile Radio Services (CMRS). The actions that the Commission takes in these items amends its rules to modify the requirement that cellular carriers provide analog service compatible with Advanced Mobile Phone Service (AMPS) specifications by establishing a five-year transition period after which the analog standard will not be required, but may still be provided.

DATES: Effective February 18, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **FEDERAL REGISTER** as of February 18, 2003.

FOR FURTHER INFORMATION CONTACT: Roger Noel or Linda Chang, Wireless Telecommunications Bureau, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a consolidated summary of the Federal Communications Commission's *Report and Order* (*R&O*), FCC 02–229, adopted August 8, 2002, and released September 24, 2002, and *Second Report and Order* (*2nd R&O*), FCC 02–247, adopted September 10, 2002, and released September 24, 2002. The full text of the R&O and 2nd R&O is available for public inspection during regular business hours at the FCC Reference Information Center, 445 12th St., SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor: Qualex International, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com*.

Synopsis of Report and Order

I. Background

1. In June 2001, the Commission issued a *Notice of Proposed Rulemaking* seeking to identify and address outdated rule sections of part 22. *See* Year 2000 Biennial Regulatory Review—Amendment of part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, *Notice of Proposed Rulemaking*, 66 FR 31589 (June 12, 2001) (*NPRM*). As the Commission observed in the *NPRM*, technological advances have allowed cellular carriers to increase the capacity of their systems, and to provide advanced services to their customers in the form of enhanced service quality and advanced calling features. Moreover, the mobile telephony industry has become much more competitive with the entry of CMRS providers using technologies other than analog cellular into the market. Many of the Commission's cellular rules, however, do not reflect these developments, and continue to be more applicable to the earlier forms of cellular than the more advanced digital services available today. Accordingly, the Commission concluded in the *NPRM* that it is appropriate to re-examine its original cellular rules to determine whether certain rules should be eliminated or modified.

II. Discussion

A. Section 11 of the Communications Act

2. In 1996, Congress anticipated that the development of competition would lead market forces to reduce the need for regulation and amended the Communications Act of 1934 to permit and encourage competition in various communications markets. *See* Telecommunications Act of 1996, Pub.

Law No. 104–104, 110 Stat. 56 (1996) ("1996 Act"), introductory statement (the 1996 Act was intended "[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."); Joint Managers' Statement, S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 113 (1996) at 1 (stating that the 1996 Act would establish a "pro-competitive, deregulatory national policy framework"). Section 11 of the 1996 Act requires the Commission to review biennially all of its regulations "that apply to the operations or activities of any provider of telecommunications service" and to "determine whether any such regulation is no longer necessary in the public interest as a result of meaningful economic competition between providers of such service." *See* 47 U.S.C. 161. In the past, the Commission has looked to the plain meaning of the text for guidance in exercising its obligation pursuant to section 11. *See* In the Matter of 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01–14, Report and Order, 67 FR 1626 (Jan. 14, 2002). The Commission has stated that "the language places an obligation on the Commission to 'determine' if the regulation in question 'is no longer necessary in the public interest as the result of meaningful economic competition.'" *Id.* at 1617. Further, section 11 explicitly provides that "the Commission shall repeal or modify" any regulation that it determines is no longer necessary in the public interest as a result of meaningful economic competition. 47 U.S.C. 161(b). The Commission notes that section 11 places the burden on the Commission to make the requisite determinations; no particular burden is placed on the opponents or proponents of a given rule. The Commission has previously interpreted the language of section 11 as directing it to examine why a rule originally was "necessary" and whether it continues to be necessary. The Commission has found that in making the determination whether a rule remains "necessary" in the public interest once meaningful economic competition exists, the Commission must consider whether the concerns that led to the rule or the rule's original purposes may be achieved without the rule or with a modified rule. *Id.* at 1628.

B. Analog Cellular Compatibility Standard

3. In establishing the Cellular Radiotelephone Service in the early 1980s, the Commission found that a single technology—analog—should be mandated to accomplish two goals: (1) To enable subscribers of one cellular system to be able to use their existing terminal equipment (*i.e.*, mobile handset) in a cellular market in a different part of the country (roaming); and (2) to facilitate competition by eliminating the need for cellular consumers to acquire different handset equipment in order to switch between the two competing carriers within the consumers' home market (thus ensuring reasonable consumer costs.). To facilitate these goals, all carriers were required to provide service exclusively in accordance with the then-existing compatibility standard for analog systems, known as Advanced Mobile Phone Service (AMPS). The detailed technical standards for AMPS were set out in the Office of Engineering and Technology Bulletin No. 53 (OET 53) in April 1981. The OET 53 specifications established technical operational parameters and descriptions of call processing algorithms and protocols to be used by analog cellular systems. Pursuant to § 22.901, a carrier must provide service to any subscriber within the carrier's CGSA, including both the carrier's subscribers and roaming customers that are using technically compatible equipment. 47 CFR 22.901. Section 22.901(d) specifically requires that carriers make mobile services available to subscribers whose mobile equipment conforms to the AMPS compatibility standard. 47 CFR 22.901(d). The Commission's cellular rules, in effect, continue to obligate carriers to provide analog service consistent with the standard identified two decades ago in OET 53.

4. After reviewing the record, the Commission concludes that in light of the present competitive state of mobile telephony, the nationwide coverage achieved by cellular carriers, and the clear market demand for nationwide, ubiquitous coverage by carriers, the analog requirement has substantially achieved its purpose of ensuring that the public has access to low-cost, compatible equipment and to nationwide roaming. Not only does the Commission determine that the rule is no longer necessary to achieve its purposes, it concludes that it imposes costs and impedes spectral efficiency. The development of the mobile telephony industry further leads the Commission to find that these objectives can largely be accomplished by market forces without the need for regulation. The Commission therefore concludes that the analog requirement should be removed. However, eliminating the rule immediately without a reasonable transition period would be extremely disruptive to certain consumers, particularly those with hearing disabilities as well as emergency-only consumers, who currently continue to rely on the availability of analog service and lack digital alternatives. Accordingly, the Commission modifies its rules requiring application of the analog compatibility standard to include a sunset period of five years, during which time the Commission anticipates that problems regarding access will likely be resolved. In order to enable the Commission to monitor the adequacy of access to mobile telephony by those currently reliant on analog service, certain CMRS carriers will be required to file reports prior to the sunset, describing the extent to which hearing aid-compatible digital devices are available to and usable by consumers with hearing disabilities, and the progress made in informing their customers of the impact of the 5-year sunset date on 911-only phones and analog-only phones, as well as the availability of digital replacements for donated analog phones.

1. Indefinite Retention of the Analog Requirement is not Warranted

5. The Commission finds that it is not necessary to retain the analog requirement in order to ensure competition. Indeed, the Commission concludes that continuing to require carriers to operate consistent with the AMPS standard may hinder competition by causing spectral inefficiencies and increased costs to those carriers who would prefer to concentrate on digital technology. Additionally, the robust mobile telephony market leads the Commission to conclude that the analog requirement is no longer necessary to ensure reasonable costs, as well as the continued availability of roaming to the vast majority of consumers. Removal of the requirement is consistent with its desire to move toward a less regulatory approach, as well as a congressional directive to treat similarly-situated CMRS in a like manner.

6. *The analog requirement is no longer needed to foster competition.* The Commission sought to ensure that there was competition, albeit limited, within any given market by compelling carriers to operate consistent with AMPS specifications as well as requiring that carriers serve all consumers using AMPS-compatible handsets. The mobile telephony industry, however, has changed immensely in the two decades since the establishment of the cellular service. The market for mobile telephony service now includes the Personal Communications Services (PCS) and the Specialized Mobile Radio (SMR) service in addition to cellular. The Commission noted in its *Seventh CMRS Competition Report* that 268 million people, or 94 percent of the total U.S. population, currently reside in areas in which three or more different operators (cellular, broadband PCS, and/or digital SMR providers) offer mobile telephony service in the counties in which they live. Over 229 million people, or 80 percent of the U.S. population, live in counties with five or more mobile telephony operators offering service, while 151 million people, or 53 percent of the population live in counties with at least six different mobile telephony operators.

7. Rather than encouraging competition, the Commission concludes that, in many instances, the analog requirement harms competition by imposing unnecessary operating costs and impeding the spectral efficiency of the two cellular providers in the market. First, the analog requirement places a financial burden on cellular licensees who would prefer to use their spectrum and other resources on digital technology rather than setting aside a portion to support their analog facilities. Cellular licensees that deploy digital technologies must also maintain a minimum scale analog network. These cellular licensees incur operation and maintenance costs for two mobile telephony networks in order to comply with Commission rules. Also, by maintaining two networks, operation and maintenance costs associated with the digital network may be higher because the carrier is not able to optimize the system as efficiently as it would if there was only one network. Second, the Commission also agrees with commenters who argue that imposition of the analog requirement impedes spectral efficiency. Digital technologies are more efficient than analog, use less bandwidth, and give consumers access to advanced services not feasible with analog. The analog requirement prevents cellular licensees from choosing to efficiently utilize their spectrum by installing an all-digital network and potentially providing additional advanced services. Further, the analog requirement may result in certain carriers being capacity constrained in certain geographic markets depending on the amount of spectrum dedicated to AMPS, usage by AMPS customers, type of digital technology, and how intensively their digital customers utilize their services. Thus, to the extent that a cellular carrier incurs costs to operate an analog network that it would not maintain but for the analog requirement, the Commission concludes that the rule imposes unnecessary financial burdens and hinders spectral efficiency. These factors in turn impede the ability of the cellular carrier to compete vis-à-vis other mobile telephony providers who are not subject to the requirement.

8. *Access to reasonably priced equipment is not dependent on the continued imposition of the analog requirement.* It is no longer the case that the analog requirement is needed to ensure reasonably priced equipment, and, as a result, increased competition. Because early cellular mobile equipment was expensive, the Commission concluded that it was cost-prohibitive for consumers to switch providers in the event the two carriers in the market utilized different technical standards. The Commission found that consumers would be discouraged from switching cellular providers if they had to purchase additional equipment in order to be served by the second carrier. The Commission found that mandating a specific technology would enable consumers to choose between carriers without regard to cost of equipment, thereby encouraging competition between the carriers. Today, however, mobile handsets are much less expensive. The declining cost of such equipment as well as the frequent carrier subsidy of the cost of the telephones have diminished the handset disincentives for consumers switching between providers (whether cellular or other CMRS). Consumers are now able to easily choose from a panoply of carriers and technologies.

9. *Roaming is not dependent on the analog requirement.* The Commission continues to consider the existence of a nationwide, compatible service to be a major goal for the cellular service. However, given the current competitive state of mobile telephony, the Commission concludes that consumers will continue to have the ability to roam outside of their home markets even in the absence of the analog requirement. In the years since the cellular service was established, many CMRS providers using digital technology, particularly broadband PCS and SMR services, have developed and established a strong market presence. When the rules for market-based PCS and SMR services were established, the Commission declined to impose technological compatibility rules, and allowed carriers the flexibility to implement air interface technologies of their own choosing. In the absence of a Commission-mandated standard for PCS and SMR, carriers have nonetheless established systems providing seamless nationwide service in response to customer demand. Service providers have been successful in establishing nationwide systems, even though they employ different air interface technologies, by acquiring licenses in as many markets as possible, establishing roaming agreements with other carriers who have implemented the same digital technology, and providing multimode handsets that allow customers to roam using analog cellular service where interoperable digital service is not available.

10. The Commission does not find persuasive arguments that elimination of the analog requirement will force small and regional carriers to convert to digital earlier than they would otherwise in order to ensure seamless service to their customers and other consumers, or that such a transition will be cost-prohibitive for such service providers or their customers. The choice to switch from analog to digital technology, as well as the rate at which the transition occurs, are business decisions made by the individual carrier. Indeed, the Commission concludes that market forces are already at work with respect to small and regional carriers. After reviewing current and future market trends in mobile telephony, the Commission finds that many small and regional carriers are or will be shifting their systems towards digital technology. The Commission expects that construction by PCS licensees in rural areas will continue to increase, thereby providing digital services to customers in rural areas. With the introduction of digital services by PCS providers, cellular licensees are likely to find it competitively necessary to install or expand their digital network, regardless of whether or not the analog requirement is retained. Moreover, the Commission expects that the increasing presence of multimode handsets will minimize the necessity for small and regional carriers to completely switch to a digital system. Accordingly, the Commission concludes that roaming and interoperability concerns held by small and regional carriers are not a sufficient basis to require the continued application of the analog requirement.

11. The Commission notes that the five-year sunset period it is establishing for other reasons should mitigate the concerns of small or regional carriers, such as the disruptions to operations that an immediate elimination of the

analog requirement might cause. For example, a transition period permits carriers to evaluate their current and future technology choices as well as those of their current roaming partners. Carriers will have the opportunity to negotiate new contracts where needed to ensure the availability of roaming services to their customers. Also, the elimination of the cellular analog requirement will increase the demand for the development and commercial implementation of multimode/multiband handsets, a process that is already occurring. By the end of the transition period, these handsets should be widely available and customers may choose to migrate to these new handsets depending on their roaming needs. Further, the transition period provides additional time for PCS licensees in both Rural Service Areas (RSAs) and Metropolitan Statistical Areas (MSAs) to further build out their licensed service areas in order to enhance opportunities for roaming for all consumers.

12. *The possible impact on telematics providers does not justify retention of the analog requirement.* Telematics providers argue that the elimination of the rule will significantly impair their ability to provide service because these systems require analog technology due to its ubiquitous coverage, and that there is currently no other widely-deployed technology available to adequately support telematics services. While digital service providers are continuing to expand their service area footprint, commenters argue that there are still large gaps in coverage, and note that the various digital standards are not interoperable. Commenters argue that digital systems cannot yet transmit both voice and data on the same call, a feature that commenters argue is important for telematics providers. Commenters assert that the interoperability problem is particularly difficult for telematics devices because manufacturers must choose a technology that is embedded in a vehicle that will have a useful life of ten or more years. Telematics providers contend that, unlike the typical cellular subscriber who can readily switch to digital handsets if necessary, the development cycle (the length of time necessary to design, test, and install equipment in vehicles) and hardware basis of telematics-equipped vehicles prevents users of such services from quickly and easily migrating to a new technology. Commenters argue that, in evaluating this issue, the Commission should take into account the useful life of the vehicle, the vehicle development cycle, as well as investments made by owners of vehicles with embedded telematics systems.

13. The Commission concludes that arguments advanced by telematics providers do not constitute sufficient basis to warrant the indefinite imposition of an outdated technical standard. Each of the factors identified by telematics providers—*e.g.* development cycles of vehicles, choice of hardware and technology platforms—are considerations within the control of the individual provider or the original equipment manufacturer with whom it partners. However, as in the case of regional carriers, the Commission finds that the sunset period it is establishing for other reasons should also mitigate any significant impacts that might affect telematics providers. During the transition period, the Commission anticipates that telematics providers will be able to partner with cellular, PCS, and SMR carriers in order to secure service on the carriers' digital networks. Based on the record, the Commission concludes that within the next five years, the telematics industry will make great strides towards developing multimode devices that will provide interoperability and facilitate roaming on digital networks. Moreover, the majority of commenters concede that a reasonable transition period would ease any concerns regarding the elimination of the analog requirement.

14. *Modification of the rule is supported by section 332 of the Communications Act.* Another factor supporting the modification of the analog requirement to include a five-year sunset is section 332 of the Act, which directs the Commission to regulate CMRS providers to technical and operational rules comparable to those that apply to providers of substantially similar common carrier services. Section 332 requires that differences between rules governing competing services should be conformed if the Commission determines that the differences distort competition by placing unequal regulatory burdens on different types of CMRS providers. Over the years, the Commission has shifted towards taking a less regulatory approach in setting out technical standards for the various wireless services. Yet in the case of cellular, while the Commission has afforded carriers the flexibility to deploy new technologies and to offer digital services similar to that offered by PCS providers, cellular carriers must nonetheless continue to provide analog service. The analog standard forces cellular carriers to incur costs and burdens not assumed by other CMRS licensees despite the similarity of services provided by cellular carriers as compared with other providers.

2. Sunset of the Analog Requirement

a. 911-Only Phones and Unsubscribed Emergency Phones

15. A primary reason for the growth of mobile telephony is the safety and security functions of wireless telephones. Indeed, some consumers acquire wireless telephones that can only make 911 calls. These 911-only consumers can be categorized as: (1) "Unsubscribed" consumers of recycled phones that were previously, but are no longer, service-initialized by a wireless carrier, and have been reissued under some type of donor program, such as phones donated to victims of domestic violence, and (2) subscribers of newly manufactured 911-only phones that can only make 911 calls but are incapable of receiving any incoming calls. Consumers of the latter are often elderly persons who cannot afford basic wireless service or do not want typical wireless service, but desire immediate access to emergency services. The Commission concludes that a transition period is warranted in order to mitigate possible negative effects to emergency-only consumers that might otherwise occur with an immediate elimination of the analog requirement. Also, in some geographic areas in which digital coverage is currently insufficient, a transition period will allow carriers time to enhance coverage. The transition period will allow for the continued expansion of digital networks and further conversion of analog networks to digital, thereby providing for a more extensive network of digital technologies. During the transition period, service providers can conduct customer outreach in order to educate consumers that analog services may be discontinued on a certain date, thereby providing emergency-only consumers with time to migrate from analog to digital handsets.

16. Although there is currently a sizable number of unsubscribed analog and 911-only consumers, it can be assumed that the total number of such users will decline in the future, as digital networks expand and carriers migrate current analog customers to digital services. The Commission expects that unsubscribed consumers will have access to digital equipment as digital handsets are being donated as well as analog handsets. It is reasonable to assume that the number of digital handsets will increase over time because the number of digital subscribers is approximately three times that of analog subscribers, and a consumer uses a handset on average for 1.5 to 2.5 years before acquiring a new one. Because handsets are recycled every 18 to 30 months, the Commission concludes that a transition period should ensure that recipients of donated mobile telephones have access to digital equipment.

b. Accessibility Issues

17. The Commission has for some time been cognizant of the concerns held by persons with hearing disabilities regarding their ability to access wireless technologies and services. Although most consumers have a variety of mobile technologies and services available to them, persons with hearing disabilities desiring to use wireless devices must currently rely on analog service or the small number of digital phones that are currently compatible with hearing aids—a compatibility that is limited to certain types of hearing aids. Unlike analog handsets, digital technologies have been shown to cause interference to hearing aids and cochlear implants. For the most part, analog wireless equipment does not pose interference problems for hearing aid wearers because they transmit signals at a steady rate; no extraneous audible noise is produced because these signals are not demodulated by the handset and in turn amplified by the hearing aid. Unlike analog equipment, however, digital wireless telephones do not transmit electromagnetic energy at a steady rate, and the fluctuations can cause disruptive interference to hearing aids or cochlear implants. Currently, nearly all digital equipment can cause some interference to many types of hearing aids and cochlear implants.

18. The Commission's review of the record leads it to conclude that immediately removing the requirement that cellular carriers operate consistent with the analog compatibility standard would indeed be detrimental to persons with hearing disabilities. Because persons with hearing disabilities must continue to rely on analog technology for access to wireless service at this time, the Commission finds that the record supports implementing a transition period during which time it anticipates that digital solutions to the hearing aid-compatibility problem will be developed and made widely available. In order to ensure that analog service remains available to persons with hearing disabilities while industry seeks to develop accessible digital technologies, the Commission provides for a five-year transition period before the elimination of the analog requirement. The Commission concludes that a five-year period provides a reasonable time frame for the development of solutions to hearing aid-compatibility issues. The progress made in developing digital TTY solutions leads it to determine that the industry will also likely be able to develop digital solutions for telephones within a five-year period. Moreover, mandating a shorter timeframe may result in persons with hearing disabilities gaining access to digital handsets more quickly than if the Commission sets out a longer period. Because the Commission is reserving the right to extend the sunset period in the event that solutions to hearing aid-compatibility problems are unsatisfactory, the industry has an incentive to develop digital solutions to the access problem.

19. The Commission notes that it is establishing a transition period to safeguard the ability of persons with hearing disabilities to access mobile telephony services even though carriers are otherwise obligated to ensure that telecommunications service is accessible to persons with disabilities. Section 255 of the Communications Act requires that "[a] provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable." *See* 47 U.S.C. 255(c). In the *NPRM*, the Commission observed that if the analog requirement was eliminated, section 255 would still require that carriers to make digital services compatible with hearing aid devices. Although a few commenters argue that mobile telephony providers and manufacturers can circumvent the provisions of section 255, the Commission concludes that section 255 requires providers to ensure that their services remain accessible to persons with hearing disabilities. However, the independent requirements of section 255 notwithstanding, the Commission finds that it is appropriate to also establish a five-year transition period in order to address the particular current problem of hearing aid-compatibility with digital handsets, and ensure access to mobile telephony service for persons with hearing disabilities.

20. *Reporting requirement.* In order to monitor the progress made by the wireless and hearing aid industries in developing solutions, and to ensure that wireless services are continuing to be made available to persons with hearing disabilities as well as 911-only consumers, the Commission will require that, no later than the third and fourth anniversary of the effective date of this order, certain CMRS licensees and other entities file reports with the Commission. The reports will be required from all cellular licensees providing nationwide coverage. In addition, the reports must inform the Commission whether each carrier intends to discontinue analog service, identify the markets in which it plans to discontinue analog service, and for how long it plans to continue analog service and in which markets. If a carrier intends to discontinue analog service, the carrier must certify and provide information in its report that there are hearing aid-compatible digital devices available to persons with hearing disabilities at the time of filing, or, if no such equipment is available at the time of filing, describe the extent to which, by the end of the fifth year, digital equipment will be available to persons with hearing disabilities in market(s) where the carrier intends to discontinue analog service. Carriers may also be required to show in their reports that they are in compliance with the provisions of section 255 of the Act, as well as with any other obligations required of them by the Commission. Such carriers, in their reports, may also be required to describe their plan for informing its subscribers, the public and other interested parties regarding plans to discontinue analog service. Finally, other interested parties will be able to file reports or comments as appropriate, and the Commission encourages joint efforts. Such Reports will be made publicly available to all interested parties who may file supplemental information as appropriate to ensure that the Commission has a full record. The information contained in the reports will be used to determine whether or not the Commission will initiate a proceeding to extend the sunset date or take appropriate enforcement action under section 255.

21. Further, the Hearing Aid Compatibility Act of 1988 (HAC Act) requires almost all new telephones to "provide internal means for effective use with hearing aids that are designed to be compatible with telephones which meet established technical standards for hearing aid compatibility," but provides an exemption for certain categories of phones including those used with CMRS and the private mobile radio services (or PMRS). 47 U.S.C. 610(b)(1); *see* 47 CFR 68.4(a). In November 2001, the Commission initiated a proceeding to examine whether this exemption continues to remain necessary, or whether the statutory criteria for revocation or limitation of the exemption have been satisfied. *See* In the Matter of Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket

No. 01–309, *Notice of Proposed Rulemaking*, 16 FCC Rcd 20558 (2001) (*HAC Proceeding*). The action taken here does not preclude the Commission from independently requiring carriers to comply with HAC requirements, even during the 5-year transition period, in the event that the Commission determines in the *HAC Proceeding* that the statutory criteria for revocation or limitation of the exemption have been satisfied. Finally, the Wireless Telecommunications Bureau, in conjunction with the Consumer & Governmental Affairs Bureau, will work closely with the Food and Drug Administration and the Commission's Office of Engineering and Technology in the development of standards for hearing aid design that alleviate interference.

C. Electronic Serial Number Rule

22. In the *NPRM*, the Commission proposed to remove § 22.919 of its rules, which sets forth electronic serial number (ESN) design requirements for manufacturers of cellular telephones. The purpose of this rule was to address the problem of cellular "cloning" fraud that was prevalent in the mid-1990s. Over the years, however, other measures have developed to combat cloning fraud. For example, Congress enacted the Wireless Telephone Protection Act of 1998 to address fraudulent and unauthorized use of wireless telecommunications services. Further, the cellular industry has developed a more secure access protocol, known as authentication. Other anti-fraud countermeasures developed by the industry include "radio frequency fingerprinting," which identifies a mobile handset by its unique radio transmission characteristics, as well as "call profiling," which enables carriers to monitor for unusual, sudden changes in calling patterns.

23. After reviewing the original purpose of the rule, the anti-fraud techniques that have been developed since the adoption of the rule, as well as the comments in this proceeding, the Commission concludes that the ESN rule is no longer necessary in the public interest and adopts its proposal to eliminate § 22.919. The concerns that led to the adoption of this rule have been addressed and no longer require retention of this rule. The Commission finds that it is unnecessary to continue to mandate detailed hardware design requirements given the success the wireless industry has had in developing other more effective anti-fraud measures.

D. Channelization Requirements

24. Section 22.905 identifies the part of the electromagnetic spectrum that is allocated to the Cellular Radiotelephone Service and divides it into two blocks, labeled A and B. *See* 47 CFR 22.905. It also sets forth a channelization plan that sub-divides each block into 416 paired 30 kHz channels and designates 21 of these paired channels as control channels. Alternative technologies, including the principal digital technologies many cellular licensees have overlaid on top of their analog networks, are exempt from this channelization plan rule. The Commission proposed in the *NPRM* to remove the channelization plan for compatible AMPS cellular systems from § 22.905 of its rules, and to rephrase the remainder of that section such that it specifies only the portions of the electromagnetic spectrum allocated to the Cellular Radiotelephone Service and which frequency ranges make up the two initial blocks. The Commission reasoned that the analog technology to which the channelization plan is applicable is well-established nationwide, and thus removing the plan would not pose any risk of decreased cellular technical compatibility.

25. Given the number of standard analog base stations and handsets in use today and the efficiencies to be gained by implementing alternative digital (not analog) technologies, it appears highly unlikely that any carrier would have the incentive to deploy an alternative analog technology during the five-year sunset adopted in this proceeding. Further, carriers will continue to be bound by existing roaming agreements for at least some portion of the sunset, again making it highly unlikely that there would be any incentive to deploy an alternative analog technology. The Commission notes that the AMPS channelization plan is the current industry standard for AMPS and will presumably continue to provide guidance to licensees through the sunset of the analog requirement.

E. Modulation Requirements and In-bond Emissions Limitations

26. In the *NPRM*, the Commission sought comment on its proposal to modify § 22.915 of its rules, which sets out a number of technical specifications for, *inter alia*, the performance of audio filter and deviation limiter circuitry in analog cellular telephones, and adjustment of the modulation levels in analog cellular telephones. Consistent with its less regulatory approach with PCS and other CMRS, as well as its proposal to eliminate the analog requirement, the Commission proposed to eliminate the provision set out in § 22.915 requiring cellular systems to have the capability to provide service using the modulation types specified in OET 53 (analog compatibility standard). The Commission also proposed to remove all rules governing audio filter and deviation limiter performance, modulation levels, and in-band radio frequency emission limits.

27. The Commission also proposed changes to § 22.917 of its rules, which prescribes emission masks limiting both in-band and out-of-band radio frequency emissions. As with the proposal to remove the channelization requirements, the Commission proposed changes to the introductory paragraph of § 22.917, which requires that analog modulated emissions be transmitted only on the communication channels. Further, the Commission sought comment regarding how it should define the out-of-band emission limit in order to provide an adequate measure of interference protection to other licensees and service, while also allowing licensees the flexibility to establish a different limit where appropriate. Specifically, the Commission asked whether licensees should be permitted to operate transmitters on frequencies closer to the edge of their authorized spectrum than full compliance with § 22.917 would normally allow, as long as all potentially affected parties (*i.e.* adjacent licensees) agree to such a provision. The Commission also noted that its Wireless Communications Service (WCS) rules provide this flexibility, and it indicated that cellular and broadband PCS licensees would also benefit from such flexibility. Accordingly, the Commission sought to conform the language and provisions of the out-of-band emission limit rules specific to the cellular service and broadband PCS with those applicable to WCS.

28. As the Commission is moving toward a less regulatory approach with respect to its service rules and is permitting carriers to deploy technologies that best fit the needs of the market, the Commission adopts its proposal with certain modifcations. Further, the Commission concludes that, because it seeks to ensure regulatory conformity wherever practical, its rules regarding out-of-band emissions limits for the various services should be similar.

29. However, certain commenters to the proceeding point out that implementation of the measurement resolution bandwidth specified in the proposed rule would have the effect of imposing a stricter out-of-band emission limit than that which currently applies. Specifically, the commenters object to the proposed rule's specification that compliance with the out-of-band emissions limit should be measured by using instrumentation employing a resolution bandwidth of 1 MHz or more from the center of the band. In proposing the rule change, the Commission sought only to harmonize certain procedures in the WCS, PCS and cellular services, and did not intend to make the out-of-band emission limits more restrictive. Accordingly, the Commission modifies the proposed rule by substituting in language that is more consistent with recently adopted International Telecommunications Union (ITU) standards for emissions. *See* ITU–R SM.329.

F. Vertical Wave Polarization Requirement

30. Section 22.367(a)(4) of the Commission's rules provides that electromagnetic waves radiated by base, mobile, and auxiliary test transmitters in the Cellular Radiotelephone Service must be vertically polarized. 47 CFR 22.367(a)(4). This rule was originally adopted in order to promote technical compatibility for cellular systems, as well as to reduce the likelihood of interference from cellular transmitters to broadcast television (TV) reception on the upper UHF TV channels. *See* In the Matter of Revision of part 22 of the Commission's Rules Governing the Public Mobile Services, CC Docket No. 92–115, *Report and Order*, 9 FCC Rcd 6513 (1994). The Commission tentatively concluded in the *NPRM* to relax § 22.367 of its rules to provide that cellular stations no longer be limited as to the polarization of the transmitted waves. The Commission specifically sought comment on what interference or adverse effects might be caused to mobile, fixed, and broadcast services operating in the cellular service spectrum or adjacent spectrum.

31. The original purposes of the rule no longer warrant this requirement on cellular carriers. The Commission is persuaded that relaxation of this requirement will have little effect on interoperability or UHF television channels. Even if a base station's transmissions are vertically polarized, many hand-held mobile units may not benefit from vertical polarization because they are either held in a manner such that their antenna is not vertical, or because the transmission's polarization will be shifted due to reflections from man-made structures. Accordingly, a vertically polarized transmission generally will provide little interoperability benefit to users of hand-held mobile phones. Furthermore, cellular base stations transmit on frequencies above 869 MHz (a minimum separation of 63 MHz from the closest UHF television frequency), thereby reducing the likelihood of interference with upper-band UHF television channels.

32. The Commission is not persuaded by arguments that the vertical polarization requirement should not be removed because it could result in reduced RF coverage for its end users, and impair telematics' ability to provide geographic location information for emergency services. The Commission notes that such concerns are limited to rural areas, where cellular carriers are unlikely to use other than vertical polarization because they have little incentive to do so. In addition, it is anticipated that cellular carriers will make the appropriate technical adjustments to account for varying polarization of transmit and receive antennas, and thereby obtain equivalent analog cellular performance at the boundaries of a rural cell site when using alternative technologies. The Commission notes that cellular carriers already have the flexibility to reduce coverage or turn off their systems for short or long periods without seeking prior approval of the Commission or notifying customers of their intended action. Further, telematics carriers may negotiate with cellular carriers and may enter into voluntary contractual relationships to accommodate specific coverage needs. Finally, the Commission believes that the industry and not regulation should dictate technical specifications wherever possible. Given these reasons, the Commission is not persuaded that it is necessary to retain this rule simply to ensure coverage for telematics subscribers attempting calls on the fringe of rural cell sites.

G. Assignment of System Identification Numbers

33. Section 22.941 of the Commission's rules sets forth the procedure by which the Commission assigns system identification numbers (SIDs) to systems in the Cellular Radiotelephone Service. SIDs are used by cellular systems to identify the home system of a cellular telephone and by cellular telephones to determine their roaming status. 47 CFR 22.941. In the *NPRM*, the Commission proposed to no longer consider SIDs as a term of the cellular license and to remove the requirement in § 22.941 of its rules that cellular licensees notify the Commission of the use of additional SIDs. The Commission proposed to retain portions of that rule that provide that a cellular system may transmit another system's SID only if that system consents to such use.

34. The Commission concludes that it is not necessary in the public interest to retain the current cellular SID rules as set out in § 22.941 of its rules as there is no public policy rationale that SIDs must be a term of cellular authorizations. There are no SID rules for PCS, SMR, or other CMRS, and this administrative function is carried out successfully within those radio services by the private sector without Commission involvement. Further, the Commission removes the SID rule in its entirety, including the "consent for use" portion of the rule (*i.e.* allowing the usage of another system's SID only pursuant to consent). The Commission finds no reason to retain a portion of the rule or intervene when the private sector has shown, as in the case of PCS, for example, that it is capable of coordinating these types of administrative functions on its own. For the reasons stated above, the Commission is eliminating the SID rule in favor of administration of this function by the private sector. In eliminating this rule, the Commission must take certain steps to provide a smooth transition of the SID administration function to the private sector. These steps include identifying a party or parties to administer the function, transitioning the Commission's SID database to the party(s), and publicizing the change to the cellular industry. Therefore, the Commission authorizes and directs the Wireless Telecommunications Bureau to take all necessary steps to privatize this function.

H. Determination of Cellular Geographic Service Area

35. Section 22.911(a) of the Commission's rules sets forth a standardized method for determining the CGSA of a cellular system. A system's CGSA is defined as the geographic area served by the system, within which that system is entitled to protection and adverse effects are recognized for the purpose of determining whether a petitioner has standing. *See* 47 CFR 22.99. Cellular licensees must provide the Commission with certain technical parameters describing each cell site that makes up the external boundary of its system. These technical parameters (latitude, longitude, height above average terrain, and power), or in some cases, an alternative study, are used to determine the service area boundary (SAB) for each cell site. In this vein, the

geographic area within the aggregated SAB contours of a system (excluding areas outside the market boundary) is its CGSA. The method for determining the CGSA uses a general mathematical formula to calculate distances from the cell site along the cardinal radials to the SAB of each cell in the system. *See* 47 CFR 22.911, 22.912.

36. Section 22.911(b) provides, however, that any cellular licensee may apply for a modification of its licensed CGSA if it believes that the standard method produces a CGSA that is substantially different from the actual coverage of its system. In adopting this alternative approach for calculating the CGSA, the Commission stated that alternative showings would only be accepted where the change to the CGSA is substantial and justified by unique or unusual circumstances, or where the SAB formula is clearly inapplicable. When preparing to file an application requesting such a modification, the licensee must employ alternative methods (actual measurements, more accurate prediction models or a combination of the two) to determine the location of the median 32 dBuV/m field strength contour and the distances along cardinal radials to that contour. In describing how these distances to the median 32 dBuV/m contours must be used to determine the CGSA, paragraphs (b)(1) and (b)(3) of § 22.911 use the term SAB in several places. In the Commission's experience, this occasionally leads licensees to believe that they may employ the alternative methods to determine an SAB, as opposed to the CGSA, and then to use that "alternate" SAB in connection with various other rules such as the SAB extension rule or the traffic capture protection rule. In the *NPRM*, the Commission sought to clarify that the SAB of a cell derived using the standard method and the 32 dBuV/m contour that is used when preparing an alternative CGSA determination are different and not interchangeable. Accordingly, the Commission proposed to reword paragraphs (b)(1) and (b)(3) of § 22.911 to replace the word "SAB" with "32 dBuV/m contour."

37. The Commission adopts the rule clarification as proposed. In setting out the standard method, the Commission sought to establish a method that would simplify and remove a measure of uncertainty from the process of calculating and plotting CGSAs. The Commission sought to prevent disagreements between parties and the Commission regarding the accuracy of methods used by parties to predict or measure actual coverage for a particular location or terrain. Although there may be certain situations in which it may not represent actual coverage as closely as other methods, the standard formula provides a simple and consistent method by which to calculate cellular system coverage. The Commission's decision to clarify § 22.911(a) is consistent with its original intent in limiting the scope of alternate CGSA showings, *i.e.*, to expedite Commission processing of applications, thereby avoiding delays in the provision of cellular service to the public. The Commission does not foreclose, however, the ability of carriers in adjacent markets to agree to the use of an alternative propagation method, or to enter into contract agreements, pursuant to § 22.912, to allow SAB extensions calculated using the standard method into the other carrier's CGSA. The Commission believes that a process that affords carriers flexibility and permits parties to enter into contractual agreements will expedite service to subscribers, in comparison to a more protracted process whereby parties must present and argue the merits of conflicting engineering studies before the Commission.

I. Service Commencement and Construction Periods

38. Section 22.946, which sets out construction requirements relating to the deployment of new cellular systems, was previously amended in the Commission's *Universal Licensing System* proceeding. *See* In the Matter of Biennial Regulatory Review—Amendment of parts 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System, WT Docket No. 98–20, Report and Order, 63 FR 6894 (Dec. 14, 1998) (*ULS Report and Order*). In implementing the *ULS Report and Order*, however, a table entitled "H–1—Commencement of Service," was inadvertently deleted from § 22.946. Because certain information in the table was out-dated, the Commission proposed to correct § 22.946 by re-inserting the table, and to reflect updated information. The Commission also proposed to delete the final phrase of § 22.946(b), which prohibits cellular system licensees from "intentionally serv[ing] only roamer stations."

39. As consumers now have numerous mobile telephony offerings from which to choose, the concern regarding lack of competition no longer exists. Accordingly, the Commission will remove the provision that prohibits service only to roamer stations. Further, after the Commission adopted the *NPRM*, it issued a *Report and Order* in WT Docket No. 97–112 regarding cellular service in the Gulf of Mexico. *See* In the Matter of Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico, WT Docket No. 97–112, Amendment of part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket No. 90–6, *Report and Order*, 67 FR 9596 (March 4, 2002). In that proceeding, the Commission amended § 22.946 to reflect construction requirements for licensees in the Gulf of Mexico. Because it was necessary to amend § 22.946 to add the Gulf of Mexico construction requirements, the Commission decided to re-insert the inadvertently omitted Table H–1 at that time. The Commission notes that § 22.946 was amended to re-insert Table H–1 after the comment period in this proceeding had run, and that no one filed comments opposing that correction to this rule section.

J. Incidental Services Rule

40. Section 22.323 of the Commission's rules authorizes carriers to provide other communications services incidental to the primary public mobile service, provided certain conditions are met. In general, § 22.323 requires carriers providing incidental services to protect mobile subscribers by ensuring that: (1) The costs and charges of subscribers not wishing to use incidental services are not increased as a result of the carrier's provision of incidental services to other subscribers; (2) the quality and availability of primary public mobile service does not materially deteriorate; and (3) provision of such incidental services is not inconsistent with the Communications Act of 1934 or the Commission's rules and policies. 47 CFR 22.323. In the *NPRM*, the Commission proposed to eliminate these conditions, and sought comment on whether it should also remove the remaining provision (*i.e.*, the statement that incidental services are permitted) as it applies to some or all part 22 services.

41. In a related matter, the *NPRM* also sought comment on FreePage Corporation's (FreePage) request that § 22.323 be amended to include the "Limited Program Distribution Service" (LPDS) service proposed by FreePage as an "incidental service." In February 2000, the Wireless Telecommunications Bureau sought comment on a petition for rulemaking filed by FreePage requesting that the Commission amend § 22.323 to permit paging licensees to use their assigned channels to transmit audio programming of interest to a narrow or specialized audience. Possible services cited by FreePage included, without limitation, children's programming, foreign language programming, and reading services for persons who have sight disabilities.

42. In the *NPRM*, the Commission invited comments on whether spectrum assigned to CMRS licensees could be used for the LPDS service proposed by FreePage. In particular, the Commission sought comments addressing whether the service proposed by FreePage is in fact a broadcast service, and, therefore, whether it would need to change existing spectrum allocation and service rules to permit LPDS service in spectrum assigned to CMRS licensees. More generally, the Commission also requested comments on what effects, if any, the implementation of FreePage's LPDS proposal would have on other authorized service offerings or services proposed in pending Commission rulemaking proceedings. Finally, the Commission solicited comments from members of the disability community regarding how they might benefit from a revision of the Commission's rules that would permit use of the spectrum for programming to narrow or specialized audiences.

43. The Commission agrees with commenters that the imposing of conditions on the provision of incidental services by part 22 licensees is no longer necessary. Section 22.323(a) imposes the condition that the costs and charges to subscribers not wishing to receive incidental services may not be increased as a result of the provision of incidental services to other subscribers. Because of the competitive wireless environment, however, CMRS licensees are not subject to federal rate regulation and are not permitted to file tariffs with the Commission. Under these circumstances, the Commission concludes that this rate restriction is unnecessary, as any dissatisfied subscriber will have the option of switching to a competing carrier. The Commission further concludes that there is no reason to retain the remainder of the rule in the absence of those conditions. The Commission recognizes that some commenters advocated that it retain this portion of the rule on the grounds that having an express provision for incidental services codified in the rules is helpful in demonstrating to state commissions that certain services must be treated as CMRS exempt from state and local regulation of rates and entry.

44. With respect to FreePage's request to include a provision in § 22.323 that LPDS is an incidental service within the meaning of the rule, the Commission denies the request but grants alternative relief as follows. First, the Commission finds that it is unnecessary to determine whether FreePage's LPDS service constitutes an incidental service because FreePage may provide any form of fixed or mobile service under a part 22 authorization, provided only that its service does not constitute broadcasting. Second, to the extent FreePage's intended service offering constitutes broadcast service, the Commission finds that it is in the public interest to provide FreePage with the flexibility to provide its LPDS service pursuant to the terms of a developmental authorization. The Commission therefore directs Commission staff to waive the allocation if necessary in order to process the developmental license. Accordingly, FreePage may file an application for developmental authority with the Commission, which will be processed by the Wireless Telecommunications Bureau pursuant to the regulations set forth in § 22.401 of the Commission's rules. The Commission believes that a developmental license will afford FreePage the opportunity to assess consumer demand for its LPDS service offering.

K. Cellular Anti-Trafficking Rules

45. In the *NPRM*, the Commission noted that §§ 22.937, 22.943, and 22.945 were originally adopted to prevent speculation and trafficking in cellular licenses that were awarded by random selection. Because the Commission is now required to resolve mutually exclusive applications for initial cellular licenses through competitive bidding, it proposed to eliminate or substantially modify rule §§ 22.937, 22.943, and 22.945 as they are now unnecessary and no longer serve the public interest.

46. In adopting § 22.937, the Commission stated that it was requiring applicants to show financial qualification because of the large capital investment required to finance the complex and sophisticated technology associated with cellular operations. The Commission noted that cellular service was viewed as a relatively high-cost business venture because the service was still at an early stage of development. The Commission concludes that § 22.937 is no longer necessary as a general matter because the cellular radiotelephone service has matured and there are two authorized cellular carriers in all MSAs and virtually all RSAs. The Commission's cellular rules have been amended to permit interested parties to file applications for any areas not serviced by cellular carriers after the expiration of the applicable build-out period, and such applications are now subject to competitive bidding. Although it proposed to retain § 22.937 in the context of comparative renewal proceedings, the Commission finds that the rule is not necessary. The Commission has the authority to seek financial qualification information in a comparative renewal proceeding if it so chooses. The Commission therefore eliminates § 22.937 in its entirety.

47. The Commission similarly concludes that § 22.943 should be removed as unnecessary. The Commission's anti-trafficking rules were developed to deter speculation on cellular licenses. In setting out the anti-trafficking rules, the Commission sought to balance the public interest in liberal transferability of licenses with a means to deter insincere applicants from speculating on unbuilt facilities. Accordingly, the Commission proposed to eliminate § 22.943 to the extent that it prohibits trafficking in cellular licenses and precludes unserved area licensees from assigning or transferring an authorization until they have provided service to subscribers for at least one year. The Commission noted that the cellular service-specific anti-trafficking rule set out in § 22.943 may be unnecessary and duplicative as there are similar provisions in part 1 of its rules that are applicable to all wireless services.

48. While § 22.943 was useful in deterring speculation during the time period in which it used lotteries to select licensees, the Commission now uses competitive bidding to resolve mutual exclusivity. Mutually exclusive applications for licenses in other CMRS are also required to be resolved through the use of competitive bidding. Yet in those cases, the Commission does not impose service-specific anti-trafficking rules, or mandate specific holding periods prior to assignment or transfer of licenses acquired through competitive bidding. Accordingly, the Commission eliminates the portions of § 22.943 that prohibit trafficking in cellular licenses, and that require carriers who acquired unserved area licenses to provide service to subscribers for at least one year before such licenses may be assigned or transferred. The Commission further finds that the cellular service-specific anti-trafficking rule set out in § 22.943 is unnecessary, given the presence of the anti-trafficking provisions of § 1.948(i), which is applicable to all services. *See* 47 CFR 1.948(i).

49. The Commission's conclusion to remove service-specific anti-trafficking provisions of § 22.943 extends to § 22.943(c), which states that it will not

accept applications for consent to assign or transfer a cellular authorization acquired by a current licensee for the first time as a result of a comparative renewal proceeding until the system has provided service to subscribers for at least three years. *See* 47 CFR 22.943(c). The Commission noted in the *NPRM* that it would leave intact portions of § 22.937 relating cellular renewal proceedings, but requested comment on whether to retain § 22.943(c). Although § 22.943(c) also relates to cellular renewals, it is nonetheless an anti-trafficking provision and should be removed as duplicative of rule § 1.948(i).

50. Similarly, because § 22.945 was adopted for the sole purpose of preventing lottery system abuses, the Commission's obligation to resolve mutual exclusivity through competitive bidding also makes this rule unnecessary. An applicant filing more than one application for a specific unserved area under the current rules would have no advantage over other applicants seeking authorization to serve the same geographic area.

L. Other Rule Changes Recommended by Commenters

51. In the *NPRM*, the Commission not only sought comment on its specific proposals, but also invited comment on whether it should modify any additional provisions of its part 22 rules as a result of competitive or technological developments.

1. Overhaul of the Unserved Area Licensing Rules

52. Section 22.941 sets forth the "unserved area" licensing process for the cellular service. Certain carriers recommend that the Commission replace the unserved area licensing process. 47 CFR 22.941. In general, the commenters point out that the current site-by-site approach requires pre-approval each time a licensee wishes to expand its system. Proposals by two of the commenters favor a one-time process that licenses the remaining unserved areas, so that pre-approval of future expansions is no longer necessary. One recommendation proposes that the Commission abandon the per-application approach of the unserved area rules and instead: (1) Automatically incorporate areas of 50 square miles or less into the CGSAs of the first-authorized incumbent adjoining the unserved area; and (2) open a filing window for all unserved areas exceeding 50 square miles, resulting in either the incorporation of the unserved area into the incumbent carrier's CGSA, or an auction among mutually exclusive applicants. Another proposal recommends eliminating filings for unserved areas of less than 50 square miles that are completely surrounded by an incumbent's CGSA (*i.e.*, the incumbent is the only one eligible under the rules to file an application), while another recommends that incumbents should be able to cover unserved areas of less than 50 square miles on a secondary basis without having to obtain prior Commission approval.

53. The Commission declines to adopt such changes. Suggestions made by commenters constitute a fundamental change to its cellular service licensing model, and, as such, are beyond the scope of this proceeding. The Commission also notes that under its current process, the Commission receives approximately 40 unserved area applications each month, disposing of each usually within 45–60 days. Given that so few unserved area applications are filed with the Commission today and are processed quickly, it questions whether the burdens on all licensees of a major overhaul at this point warrants any corresponding benefits. In considering the wisdom of making significant changes within the cellular unserved licensing context, the Commission would need to identify an alternative approach that is administratively efficient, less complicated than the current approach, represents an improvement over the status quo in terms of speed of licensing and convenience for licensees, and continues to provide small as well as large carriers with reasonable opportunities to serve currently unserved areas. Given that the current system results in little administrative delay, the Commission does not find that commenters have done so. Moreover, commenters have failed to adequately address construction, interference protection, and market structure issues that would need to be addressed under a new processing regime. The Commission believes that a more complete record must be developed before any Commission action is warranted.

2. CGSA Expansion Notifications

54. One commenter seeks to remove the requirement that licensees notify the Commission of each CGSA expansion for markets within the initial five-year construction period. Currently, § 22.165(e) requires licensees to notify the Commission within 15 days of expanding their CGSAs, even during the initial five-year construction period. Cellular licensees are free to construct facilities anywhere within their markets without the possibility of competing applications during the initial construction period. The proposal would have the Commission require the licensee to file a system information update at the end of the five-year period, *i.e.*, identify the areas that are served and unserved in preparation for the unserved area Phase I process.

55. The Commission agrees that generally it and other licensees have no interest in knowing the precise location of an initial licensee's CGSA until the end of the initial five-year period. At that point, the CGSA must be a matter of record available to potential Phase I unserved area applicants as well as the Commission's staff in order to process the unserved area applications. Presently, there are only eleven cellular markets that are still within the initial five-year construction period. In addition, the Commission will soon issue initial licenses in three of the remaining RSAs. Even though very few licensees will be in a position to take advantage of this change, the Commission will revise the rule substantially as requested. Therefore, the Commission will revise § 22.165(e) to require licensees in their initial five-year build-out period to notify the Commission of cell sites making up their CGSAs once yearly on the anniversary of license grant, rather than requiring licensees to file notifications within 15 days of initiating service at each site. The Commission concludes that revising this requirement to provide for an annual reporting obligation will minimize unnecessary regulatory burdens for initial cellular licensees while providing a reasonably up-to-date source of data for other cellular licensees and Commission staff.

3. Contract Extension Clarification

56. Section 22.912 of the Commission's rules provides that any SAB extensions into an adjacent carrier's CGSA requires the consent of the adjacent carrier. One commeter requested the Commission to clarify that, in the case where an adjacent carrier has already consented to analog SAB extensions into its CGSA, a separate agreement is not required in order to extend the SAB of a digital signal into the CGSA so long as it does not exceed boundary established by the initial analog agreement. The Commission clarifies that its rules do not limit the scope of private, contractual agreements between cellular licensees in this case. To the extent that a carrier enters into an agreement that provides for extensions of both analog and digital signals into an adjacent carrier's CGSA, the Commission's rules do not require separate notification to the Commission of such extensions; a single notification of the scope of that extension will be adequate notice.

III. Administrative Matters

A. Paperwork Reduction Act Analysis

57. The actions taken in this *Report and Order* have been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law No. 104–13, and found to impose no new or modified recordkeeping requirements or burdens on the public.

B. Final Regulatory Flexibility Analysis

58. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM*. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The comments received are discussed below. The Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Order

59. In the Telecommunications Act of 1996, Congress added sections 11 and 202(h) to the Communications Act of 1934, as amended, requiring the Commission to (1) review biennially its regulations that pertain to the operations or activities of telecommunications service providers, and (2) determine whether those regulations are no longer necessary in the public interest as a result of meaningful economic competition. 47 U.S.C. 11(b). Following such review, the Commission is required to modify or repeal any such regulations that are no longer in the public interest. Accordingly, as part of the Commission's year 2000 Biennial Review of regulations, the *Report and Order* amends part 22 of the Commission's rules by modifying or eliminating various rules that have become outdated due to technological change, increased competition in the Commercial Mobile Radio Services (CMRS) market, or supervening rules.

60. In particular, the *Report and Order* removes the cellular analog requirement after a five-year transition period and requires reports by certain CMRS licensees and other entities showing the level of access to mobile telephony had by persons with hearing disabilities or those using emergency-only phones. The *Report and Order* also removes the manufacturing requirements governing Electronic Serial Numbers (ESNs) in cellular telephones, as well as modifying several other technical rules. In the same vein, the Commission found some of the cellular anti-trafficking rules to be outdated because they were adopted during a period when the Commission resolved mutually exclusive applications for initial cellular services through lottery, rather than the current system of resolving such mutually exclusive applications through competitive bidding. The Commission also reevaluated certain other part 22 rules that apply both to cellular and to other CMRS, specifically § 22.323, which imposes conditions on the provision of "incidental" services by Public Mobile Services providers.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

61. Although the Commission received numerous comments in response to the *NPRM*, it received no comments in response to the IRFA. However, as described below, the Commission nonetheless considered potential significant economic impacts of the rules on small entities.

62. Analog Compatibility Requirement. Although the comments suggest that elimination of the analog requirement would not affect the majority of wireless consumers that are already using digital service, some commenters contend that there are particular classes of consumers and service providers that would be harmed by elimination of the rule. These commenters focus particularly on the possibility that, if the rule were eliminated, cellular carriers in major markets would be likely to drop analog service in those markets to provide more capacity for their digital systems. Commenters argue that, at the very least, the requirement should be eliminated only after a transition period. The unavailability of analog service in these markets, commenters contend, would have an adverse impact on the following groups:

63. *Small and regional carriers.* Small and regional carriers argue that, if the analog requirement is eliminated, they will be forced to transition from solely analog services to digital in order to ensure that their customers will have service outside of their home market, as well as to continue to provide roaming service to customers of the large nationwide carriers. They argue that eliminating the analog requirement will force them to bear the financial burden of immediately converting to digital, regardless of consumer demand within their particular markets. Further, these commenters assert that a decision to adopt any particular digital technology will be dictated by a small/regional carrier's larger roaming partner. Moreover, commenters argue that, in certain areas, a small or regional licensee may be positioned between major markets whose licensees have chosen incompatible digital technologies, forcing it to choose between roaming partners and multiple digital standards in the absence of analog technology. These commenters argue that, in the absence of interoperable digital technology, the analog requirement should not be eliminated.

64. *Analog-only consumers.* It is estimated that there are approximately 26 million analog-only subscribers. These include consumers who use analog-only handsets because their carriers do not provide digital service (mainly rural cellular carriers) as well as subscribers who have purchased 911-only mobile phones. Remaining analog-only users are non-subscribers, such as certain elderly or victims of domestic violence, who have received recycled analog equipment for use for emergency purposes. Presently, a customer using analog-only equipment can roam on other cellular networks in the event the consumer is outside of his/her home market. Commenters argue that these cellular customers would lose the ability to roam with their current analog-only handset if the analog standard is eliminated and both carriers within a given area shut down their analog networks.

65. *Telematics.* Telematics services providers have, for the most part, relied on analog technology to ensure interoperable communications nationwide. Telematics advocates assert that analog service is vital, due to the ambulant nationwide nature of telematics technology. It is argued that digital systems cannot yet transmit both voice and data on the same call, a feature that commenters argue is important for telematics providers. These commenters assert that the interoperability problem is particularly difficult for telematics devices because manufacturers must choose a technology that is embedded in a vehicle that will have a useful life of ten or more years. Moreover, these providers assert that, unlike the typical cellular subscriber who can readily switch to digital handsets if necessary, the development cycle (the length of time necessary to design equipment, test, and install in compatible vehicles) and hardware basis of telematics-equipped vehicles prevents users of such services from quickly and easily migrating to a new technology. These providers argue that telematics devices are imbedded into vehicles in such a

way as to make it cost prohibitive to retrofit legacy vehicles with analog-based equipment. Given the development cycles and life spans of such vehicles (often longer than ten years), commenters argue that the immediate elimination of the analog rule would be a setback for telematics providers and their customers. Instead, certain telematics providers argue that if the analog requirement must be eliminated, the industry must be given a reasonable transition period, and suggest that such a transition period would be ten years.

66. *Persons with hearing disabilities.* Persons with hearing disabilities desiring to use wireless devices must currently rely on analog service or the small number of digital phones that are currently compatible with only certain hearing aids. Unlike analog handsets, digital technologies have been shown to cause interference to hearing aids and cochlear implants. Accessibility advocates and those with hearing disabilities note that market forces (*e.g.* need for spectrum efficiency, enhanced services such as wireless data) make a shift to digital technology inevitable. These commenters argue that at this point, however, due to the lack of hearing aid-compatible digital equipment, persons with hearing disabilities must rely on analog equipment to access mobile telephony, thereby settling for inferior sound quality, fewer service options, and higher prices. Commenters argue that, because persons with hearing disabilities account for only a small percentage of mobile telephony users, there are not sufficient economic incentives for carriers to expend resources to ensure that these individuals have access to wireless service. Accessibility advocacy groups maintain that the analog requirement should not be eliminated (if at all) until new digital services are accessible and readily available to persons with hearing disabilities.

67. Electronic Serial Number. Numerous commenters support the proposal to remove § 22.919. Commenters agree that the industry is capable of developing anti-fraud measures on its own and that the rule prevents carriers from deploying advanced technologies such as smart cards. One commenter, however, supports elimination of the detailed design requirements in the rule, but would keep the requirement that cellular telephones have a unique ESN. Further, two other commenters argue that removing the ESN rule would be disruptive to other aspects of cellular service. Alternatively, another commenter supports the Commission's proposal, but does so because it believes that it should be legal to clone cellular telephones (in particular, as a small business activity) for customers who are already legitimate cellular subscribers, as opposed to those who are not subscribers.

68. Channelization Requirements. A majority of the commenters addressing this issue support the Commission's proposal. One commenter, however, opposes the elimination of the channelization plan rule prior to the elimination of the analog service requirement, stating that some cellular carriers might start providing analog service using a different and incompatible analog channel plan, which would leave some subscribers without roamer service. Another commenter also opposes removal of the channelization plan because it believes that the rule provides a legal basis for "frequency protection" from adjacent systems using digital technologies.

69. Modulation Requirements and In-band Emissions Limitations. The Commission received a number of comments supporting various aspects of its proposal to a number of technical specifications for, *inter alia*, the performance of audio filter and deviation limiter circuitry in analog cellular telephones, and adjustment of the modulation levels in analog cellular telephones. One commenter states that § 22.915 should be eliminated because the rule's requirements are specific to the AMPS analog compatibility standard, and, as such, are contrary to the goal of allowing carriers to implement the technologies of their choice, and stifles the development of technologically advanced systems. Certain commenters, however, object to the specific language the Commission proposed for the out-of-band emission limit measurement rule in § 22.917. These parties point out that implementation of the measurement resolution bandwidth specified in the proposed rule would have the effect of imposing a stricter out-of-band emission limit than that which currently applies. A few commenters submitted alternative language which more accurately reflect the Commission's intended goal of harmonizing certain procedures in the wireless communications services (WCS), personal communications services (PCS) and cellular services.

70. Wave Polarization Requirement. A majority of the commenters addressing this issue generally support relaxation of the rule requiring electromagnetic waves radiated by transmitters to be vertically polarized because of the technical flexibility it will provide cellular carriers. One commenter notes that flexibility in polarization is beneficial in order to reduce multipath fading and to improve signal quality, while another points out that eliminating the vertical polarization requirement will permit carriers to reduce the antenna space needed on towers, thereby benefiting carriers as well as the public by fostering more aesthetically pleasing antenna sites, reducing the number of antennas required at a particular site (thereby reducing the need for local zoning clearance in many cases), permitting collocation of multiple carriers' facilities on the same tower, and reducing site deployment costs.

71. One commenter, however, objects to relaxing the rule on the basis that non-vertical antenna polarization could result in reduced RF coverage for its end users and impair telematics' ability to provide geographic location information for emergency services. Specifically, the commenter notes that it utilizes analog cellular technology to provide location-based telematics service offerings, such as automatic crash notification, through systems embedded in vehicles of certain automobile manufacturers. Likewise, another commenter objects to relaxing the requirement because of the "isolation" it provides to cellular systems from co-channel and adjacent-channel transmitters.

72. Assignment of System Identification Numbers. Commenters generally support the proposal to eliminate the procedures and rules set forth in § 22.941 by which the Commission administers cellular system identification numbers (SIDs). The commenters agree that there is no regulatory purpose in retaining SIDs as a term of cellular licenses. As commenters point out, there are no SID rules for PCS, SMR, or other CMRS, and this administrative function is carried out successfully within those radio services by the private sector without Commission involvement.

73. Determination of Cellular Geographic Service Area. Several cellular carriers oppose the Commission's intent to clarify the language in § 22.911(b) regarding the term "SAB" (service area boundary) in situations in which a carrier employs alternative methods to calculate the CGSA of its system. One commenter advocates that the Commission in fact allow alternative propagation methods to be used for evaluating signal extensions into adjacent systems, in lieu of the formula in § 22.911(a), and another commenter argues that when a carrier has determined its CGSA by use of an alternative method, it is "illogical and inconsistent" to require that cell SABs be used for all other purposes.

74. Incidental Services Rule. Commenters generally agree that the Commission should modify § 22.323 of its rules that permits carriers to provide other communications services incidental to the primary public mobile service. Commenters, on the other hand, believe that the provision in § 22.323 that states that incidental services are permitted should be retained. Several of the carriers addressing this issue point out that an express provision for incidental services is helpful in demonstrating to state commissions that certain services must be treated as CMRS exempt from state and local regulation of rates and entry.

Description and Estimate of the Number of Small Entities to which the Rules Will Apply

75. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3). A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

76. This *Report and Order* results in rule changes that could affect small businesses that currently are or may become Cellular Radiotelephone Service providers that are regulated under subpart H of part 22 of the Commission's rules. In addition, changes to § 22.323 of the Commission's rules could affect service providers that are regulated under any provisions of part 22 of the Commission's rules. These include, in addition to Cellular Radiotelephone Service providers, providers of Paging and Radiotelephone (Common Carrier Paging), Air-Ground Radiotelephone, Offshore Radiotelephone, and Rural Radiotelephone services. In addition, pursuant to § 90.493(b) of the Commission's rules, paging licensees on exclusive channels in the 929–930 MHz bands are subject to the licensing, construction, and operation rules set forth in part 22. *See* 47 CFR 90.493(b). As this rulemaking proceeding may apply to multiple services, the Commission analyzes the number of small entities affected on a service-by-service basis. In addition to service providers, some of the proposed rule changes may also affect manufacturers of cellular telecommunications equipment. The Commission will include a separate discussion regarding the number of small cellular equipment manufacturing entities that are potentially affected by the proposed rule changes.

77. Cellular Radiotelephone Service. The SBA has developed a small business size standard for small businesses in the category "Cellular and Other Wireless Telecommunications." 13 CFR 121.201, North American Industry Classification System (NAICS) code 513322. Under that SBA category, a business is small if it has 1,500 or fewer employees. According to the Bureau of the Census, only twelve firms from a total of 1,238 cellular and other wireless telecommunications firms operating during 1997 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, the Commision notes that there are 1,807 cellular licenses; however, a cellular licensee may own several licenses. According to the most recent *Trends in Telephone Service* data, 806 carriers reported that they were engaged in the provision of either cellular service, PCS, or SMR telephony services, which are placed together in that data. *See Trends in Telephone Service*, Industry Analysis Division, Common Carrier Bureau, Table 5.3—Number of Telecommunications Service Providers that are Small Businesses (August 2001). The Commission has estimated that 323 of these are small under the SBA small business size standard. Accordingly, based on this data, the Commission estimates that not more than 323 cellular service providers will be affected by these revised rules.

78. Paging. The Commission has adopted, and the SBA has approved, a two-tier definition of small businesses in the context of auctioning licenses in the paging services. Under this definition, a small business is defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. *See* Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, *Third Report*, FCC 98–91(rel. June 11, 1998). The Commission has estimated that as of January 1998, there were more than 600 paging companies in the United States. In the August 2001 *Trends in Telephone Service* data, 427 carriers reported that they were engaged in the provision of paging and messaging service; 407 of these firms identified themselves as having 1,500 or fewer employees. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or meet the small business thresholds set forth above, or the number of these carriers that are regulated under part 22 of the Commission's rules, and thus is unable at this time to estimate with precision the number of affected paging carriers that would qualify as small business concerns under its definition. However, the Commission estimates that the majority of existing paging providers qualify as small entities under its definition. Consequently, the Commission estimates that there are up to approximately 600 currently licensed small paging carriers that may be affected by the rule changes set out in the *Report and Order*. Further in December 2001, 182 bidders placed high bids for 5,323 geographic area paging licenses in Auction No. 40. Applications remain pending as of the release of this *Report and Order*. Thus, in addition to existing licensees, the rule changes adopted in the *Report and Order* could affect paging licenses won in Auction No. 40.

79. Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small business specific to the Air-Ground radiotelephone service. Accordingly, the Commission uses the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 24 licensees in the Air-Ground radiotelephone service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

80. Offshore Radiotelephone Service. This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are less than ten licensees in this service. The Commission has not adopted a definition of small business specific to the Offshore Radiotelephone Service. Accordingly, the Commission uses the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500

persons. The Commission assumes that all licensees in this service are small entities, as that term is defined by the SBA.

81. Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). The Commission therefore uses the SBA definition applicable to radiotelephone companies; *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

82. Cellular Equipment Manufacturers. Some of the actions adopted in the *Report and Order* will also affect manufacturers of cellular equipment. The Commission does not know how many cellular equipment manufacturers are in the current market. The 1997 Economic Census provides that there were 1,089 communications-related equipment manufacturing companies as of 1997. This category includes not only cellular equipment manufacturers, but television and AM/FM radio manufacturers as well. Under SBA regulations, a "radio and television broadcasting and wireless communications equipment manufacturing" company, which includes not only U.S. cellular equipment manufacturers but also firms that manufacture radio and television broadcasting and other communications equipment as well as electronic components, must have a total of 750 or fewer employees in order to qualify as a small business concern. 13 CFR 121.201, NAICS code 334220. Although the exact number is unknown, the number of cellular equipment manufacturers is considerably lower than 1,089. U.S. Census Bureau, *1997 Economic Census, Manufacturing Subject Series*, at Table 3—Detailed Statistics by Industry: 1997, NAICS code 334220 (October 2000).

83. Broadband Personal Communications Service. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 "small" and "very small" business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission reauctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. Based on this information, the Commission concludes that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks plus the 48 winning bidders in the re-auction, for a total of 231 small entity PCS providers as defined by the SBA small business standards and the Commission's auction rules. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

84. The Commission will require that, (1) three years from the effective date of this order and (2) four years from the effective date of this order, certain CMRS licensees and other entities file reports with the Commission. In the reports, the carrier must either certify that, within their own markets, there are, at the time of filing, hearing aid-compatible digital devices available to and usable by persons with hearing disabilities for use with that carrier's digital network, or, if no such equipment is available at the time of filing, describe the extent to which, by the end of the fifth year, digital equipment will be available to and usable by persons with hearing disabilities, and describe how the public is being informed of their availability. If upon review of the filings, the Commission determines that significant problems remain regarding access to mobile telephony by persons with hearing disabilities, the Commission may find that the analog requirement will be removed only for technologies where hearing aid-compatibility solutions are available, or that the sunset period will be extended for all carriers. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.

85. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. *See* 5 U.S.C. 603.

86. Because several commenters argued that certain entities, such as persons with hearing disabilities and small and regional carriers, may be harmed by the immediate removal of the analog requirement, the Commission instituted a five-year transition period to ease the transition to digital technology. By establishing this five-year transition period, the Commission takes account of the potentially smaller resources available to small entities.

87. The *Report and Order* concluded that several of the Commission's technical and anti-trafficking cellular rules are outdated. Therefore, modifying or eliminating these rules should decrease the costs associated with regulatory compliance for cellular service providers, provide additional flexibility in manufacturing cellular equipment, and also enhance the market demand for some products. Also, amending the incidental services rules will allow licensees in the part 22 services greater flexibility in the types of services they offer. The Commission notes that the intent underlying its actions is to lessen the levels of regulation, consistent with its mandate for undertaking biennial reviews. The Commission has therefore described, supra, actions intended to lessen the regulatory burden on carriers and equipment manufacturers, including small entities.

88. *Report to Congress:* The Commission will send a copy of the *Report and Order*, including the associated FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order*, including the associated FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and associated FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

IV. Ordering Clauses

89. Pursuant to the authority of sections 4(i), 7, 303(c), 303(f), 303(g), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r), and 332, the rule changes specified below are adopted.

90. The rule changes set forth below *will become effective* February 18, 2003.

91. Certain commercial mobile radio service carriers and other entities must submit reports regarding access to mobile telephony services by emergency-only consumers and persons with hearing disabilities at one and two years prior to the sunset of the rules requiring cellular carriers to provide analog service compatible with Advanced Mobile Phone Service (AMPS) specifications.

92. The Wireless Telecommunications Bureau is authorized to carry out such actions necessary to transfer the administration of cellular system identification numbers as identified herein.

Synopsis of the Second Report and Order

I. Background

93. In the *NPRM*, the Commission proposed to modify various general cellular service requirements set out in § 22.901 of the Commission's rules. First, the Commission proposed deleting current § 22.901(d), which addresses alternative cellular technologies. Because the rule is drafted as though the principal cellular technology is analog technology, the Commission therefore proposed deleting current § 22.901(d) and adding the following language to the introductory paragraph of the rule: "In providing cellular services, each cellular system may incorporate any technology that meets all applicable technical requirements in this part."

94. The Commission also proposed deleting certain §§ 22.901(a) and 22.901(b) of its rules. Section 22.901(a) requires that cellular licensees provide subscribers with information regarding the service area of the cellular provider. The Commission sought comment on whether there is any material difference between the service-area-related information provided by cellular providers in comparison with other providers of CMRS services. The *NPRM* also requested comment on whether, in light of the current level of competition in the provision of CMRS services, such a requirement is still necessary to ensure that consumers have access to service-area-related information. Section 22.901(b) requires the cellular licensee to notify the Commission in the event that a subscriber's request for service is denied due to lack of cellular system capacity. *See* 47 CFR 22.901(b). The Commission proposed removing this requirement, noting that the rule does not provide any mechanism for ameliorating any instance of a lack of system capacity. The Commission also explained that, given the current level of competition, consumers who are denied service by a particular provider due to lack of capacity will be very likely to have other service options.

95. Further, the Commission proposed deleting the first sentence of the introductory paragraph, which provides that "Cellular system licensees must provide cellular mobile radiotelephone service upon request to all cellular subscribers in good standing . . .." 47 CFR 22.901. The Commission also proposed removing the specific reference in the introductory paragraph that provides that a cellular system may terminate service when a subscriber "operates a cellular telephone in an airborne aircraft."

II. Discussion

96. First, the Commission concludes that the competitive state of the mobile telephony market renders unnecessary both § 22.901(d) to the extent it characterizes certain technologies as "primary" or "alternative" as well as the first sentence in the introductory paragraph of § 22.901 to the extent it requires licensees to "provide cellular mobile radiotelephone service upon request to all cellular subscribers in good standing." The Commission deletes the existing text of § 22.201(d) (which implies that analog is the principal technology in use). The Commission adds a technologically-neutral statement to § 22.901: "In providing cellular services, each cellular system may incorporate any technology that meets all applicable technical requirements of this part." Further, the Commission finds that the statement in the introductory paragraph about provision of service to "cellular subscribers in good standing" is unnecessary because, even in the absence of this rule, cellular service providers, like all common carriers, are required to comply with sections 201 and 202 of Title II of the Act. Those sections require cellular carriers to provide service upon reasonable request, to have charges, practices, classifications, and regulations that are just and reasonable, and to avoid unjust or unreasonable discrimination in their charges, practices, classifications, regulations, facilities, or services. Further, the Commission notes that there are no other comparable rule requirements placed on other CMRS licensees.

97. Second, the Commission finds that it is no longer necessary to require cellular carriers to provide subscribers with information regarding the service area of the provider and therefore delete § 22.901(a). While the Commission agrees that consumers should have access to information about carriers' service areas prior to purchasing wireless services, as well as while using the services, it finds that cellular carriers, as well as PCS and digital SMR carriers are already making this information available at retail outlets, as well as via the internet. The Commission notes that PCS and digital SMR providers are doing so without any comparable regulatory requirement, presumably because consumers demand this information. Notably, the Commission believes the rule is no longer necessary because, even in the absence of the rule, cellular carriers will continue to make this information available while marketing their services in today's competitive marketplace.

98. Third, the Commission finds that the current level of competition renders unnecessary the provision in § 22.901(b) that carriers must notify the Commission in the event that a subscriber's request for service is denied due to lack of capacity. As a threshold matter, the Commission is unaware of any cellular licensee having filed such a notification with the Commission. The Commission notes that carriers must provide sufficient capacity for analog service in instances where it is required. In fact, revised § 22.901(b)(2) states in part that "[c]ellular licensees must allot sufficient system resources such that the quality of AMPS provided, in terms of geographic coverage and traffic capacity, is fully adequate to satisfy the concurrent need for AMPS availability." The Commission believes that this rule provision, combined with the choices of wireless services available to consumers today, will ensure that consumers of analog services will continue to receive adequate service even in the absence of the notification requirement.

99. Finally, the Commission concludes that it is unnecessary to retain the provision in the introductory paragraph to § 22.901 stating that a carrier may terminate service to a customer who operates a cellular telephone while on board an airborne aircraft. The Commission finds that there is no basis to retain this provision

because its rules already explicitly prohibit operation of cellular telephones on board airborne aircraft, and a cellular licensee would be within its obligations under sections 201 and 202 of the Act in terminating the service of customers who violate the Commission's rules. Further, such a rule could be misinterpreted to limit a cellular or other CMRS licensee's ability to terminate service to customers in the case of other types of rule violations. Therefore, the Commission finds that an express condition regarding airborne operation is unnecessary and potentially confusing to licensees.

III. Administrative Matters

A. Paperwork Reduction Act Analysis

100. The actions taken in the *Second Report and Order* have been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law No. 104–13, and found to impose no new or modified recordkeeping requirements or burdens on the public.

B. Final Regulatory Flexibility Analysis

101. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM*. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The comments received are discussed below. The Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Order

102. As part of the Commission's year 2000 Biennial Review of regulations, the *Second Report and Order* amends part 22 of the Commission's rules by modifying or eliminating various rules that have become outdated due to technological change, increased competition in the Commercial Mobile Radio Services (CMRS) market, or supervening rules.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

103. A number of commenters argue that certain portions of § 22.901 should be removed as outdated, duplicative, and unnecessary. Other commenters, however, argued that the Commission should retain the requirement in § 22.901(a) requiring cellular licensees to provide service area a information to potential customers. They argue that consumers require access to this information in order to make sound choices when purchasing wireless services. Likewise, other commenters urge the Commission to retain the requirement in § 22.901(b) requiring cellular licensees to notify the Commission in the event a consumer's request for service is denied due to lack of capacity. They argue that eliminating the rule may lead to cellular carriers not providing sufficient capacity for analog services going forward.

Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

104. Cellular Radiotelephone Service. The SBA has developed a small business size standard for small businesses in the category "Cellular and Other Wireless Telecommunications." 13 CFR 121.201, North American Industry Classification System (NAICS) code 513322. Under that SBA category, a business is small if it has 1,500 or fewer employees. According to the Bureau of the Census, only twelve firms from a total of 1,238 cellular and other wireless telecommunications firms operating during 1997 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, the Commision notes that there are 1,807 cellular licenses; however, a cellular licensee may own several licenses. According to the most recent *Trends in Telephone Service* data, 806 carriers reported that they were engaged in the provision of either cellular service, PCS, or SMR telephony services, which are placed together in that data. *See Trends in Telephone Service*, Industry Analysis Division, Common Carrier Bureau, Table 5.3—Number of Telecommunications Service Providers that are Small Businesses (August 2001). The Commission has estimated that 323 of these are small under the SBA small business size standard. Accordingly, based on this data, the Commission estimates that not more than 323 cellular service providers will be affected by these revised rules.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

105. None.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

106. The *Second Report and Order* concluded that certain provisions of § 22.901 are unnecessary in light of meaningful economic competition or technological advances. Therefore, modifying or eliminating these provisions should decrease the costs associated with regulatory compliance for cellular service providers, provide additional flexibility in manufacturing cellular equipment, and also enhance the market demand for some products.

Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rules

107. None.

108. *Report to Congress:* The Commission will send a copy of the *Second Report and Order*, including the associated FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Second Report and Order*, including the associated FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

List of Subjects

47 CFR part 22

Communications common carriers, Communications equipment , Incorporation by reference, Reporting and recordkeeping requirements.

47 CFR part 24

Communications common carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the Preamble, the Federal Communications Commission amends 47 CFR part 22 as follows:

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309 and 332.

2. Section 22.165 is amended by revising paragraph (e) to read, as follows:

§ 22.165 Additional transmitters for existing systems.

* * * * *

(e) *Cellular radiotelephone service.* During the five-year build-out period, the service area boundaries of the additional transmitters, as calculated by the method set forth in § 22.911(a), must remain within the market, except that the service area boundaries may extend beyond the market boundary into the area that is part of the CGSA or is already encompassed by the service area boundaries of previously authorized facilities. After the five-year build-out period, the service area boundaries of the additional transmitters, as calculated by the method set forth in § 22.911(a), must remain within the CGSA. Licensees must notify the Commission (FCC Form 601) of any transmitters added under this section that cause a change in the CGSA boundary. The notification must include full size and reduced maps, and supporting engineering, as described in § 22.953(a)(1) through (3). If the addition of transmitters involves a contract service area boundary (SAB) extension (*see* § 22.912), the notification must include a statement as to whether the five-year build-out period for the system on the relevant channel block in the market into which the SAB extends has elapsed and whether the SAB extends into any unserved area in the market. The notification must be made electronically via the ULS, or delivered to the filing place (*see* § 1.913 of this chapter) once yearly during the five-year build-out on the anniversary of the license grant date.

* * * * *

§ 22.323 [Removed]

3. Section 22.323 is removed.

4. Section 22.367 is amended by removing and reserving paragraph (a)(4) and by revising paragraph (d), to read as follows:

§ 22.367 Wave polarization.

* * * * *

(a) * * *

(4) [Reserved]

* * * * *

(d) *Any polarization.* Base, mobile and auxiliary test transmitters in the Cellular Radiotelephone Service are not limited as to wave polarization. Public Mobile Service stations transmitting on channels higher than 960 MHz are not limited as to wave polarization.

§ 22.377 [Amended]

5. Section 22.377 is amended by removing paragraph (c).

6. Section 22.901 is revised to read as follows:

§ 22.901 Cellular service requirements and limitations.

The licensee of each cellular system is responsible for ensuring that its cellular system operates in compliance with this section.

(a) Each cellular system must provide either mobile service, fixed service, or a combination of mobile and fixed service, subject to the requirements, limitations and exceptions in this section. Mobile service provided may be of any type, including two way radiotelephone, dispatch, one way or two way paging, and personal communications services (as defined in part 24 of this chapter). Fixed service is considered to be primary service, as is mobile service. When both mobile and fixed service are provided, they are considered to be co primary services. In providing cellular services, each cellular system may incorporate any technology that meets all applicable technical requirements in this part.

(b) Until February 18, 2008, each cellular system that provides two-way cellular mobile radiotelephone service must—

(1) Maintain the capability to provide compatible analog service ("AMPS") to cellular telephones designed in conformance with the specifications contained in sections 1 and 2 of the standard document ANSI TIA/EIA–553–A–1999 Mobile Station—Base Station Compatibility Standard (approved October 14, 1999); or, the corresponding portions, applicable to mobile stations, of whichever of the predecessor standard documents was in effect at the time of the manufacture of the telephone. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the standard may be purchased from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112–5704 (or via the internet at *http://global.ihs.com)*. Copies are available for inspection at the Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, or the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(2) Provide AMPS, upon request, to subscribers and roamers using such cellular telephones while such subscribers are located in any portion of the cellular system's CGSA where facilities have been constructed and service to subscribers has commenced. *See* also § 20.12 of this chapter. Cellular licensees must allot sufficient system resources such that the quality of AMPS provided, in terms of geographic coverage and traffic capacity, is fully adequate to satisfy the concurrent need for AMPS availability.

7. Section 22.905 is revised to read as follows:

§ 22.905 Channels for cellular service.

The following frequency bands are allocated for assignment to service providers in the Cellular Radiotelephone Service.

(a) Channel Block A: 869—880 MHz paired with 824—835 MHz, and 890—891.5 MHz paired with 845—846.5 MHz.

(b) Channel Block B: 880—890 MHz paired with 835—845 MHz, and 891.5—894 MHz paired with 846.5—849 MHz.

8. Section 22.911 is amended by revising the first sentence in paragraphs (b)(1) and (b)(3), to read as follows:

§ 22.911 Cellular geographic service area.

* * * * *

(b) * * *

(1) The alternative CGSA determination must define the CGSA in terms of distances from the cell sites to the 32 dBuV/m contour along the eight cardinal radials, with points in other azimuthal directions determined by the method given in paragraph (a)(6) of this section. * * *

* * * * *

(3) The provision for alternative CGSA determinations was made in recognition that the formula in paragraph (a)(1) of this section is a general model that provides a reasonable approximation of coverage in most land areas, but may under-predict or over-predict coverage in specific areas with unusual terrain roughness or features, and may be inapplicable for certain purposes, *e.g.*, cells with a coverage radius of less than 8 kilometers (5 miles). * * *

* * * * *

§ 22.915 [Removed]

9. Section 22.915 is removed.

10. Section 22.917 is revised to read as follows:

§ 22.917 Emission limitations for cellular equipment.

The rules in this section govern the spectral characteristics of emissions in the Cellular Radiotelephone Service.

(a) *Out of band emissions.* The power of any emission outside of the authorized operating frequency ranges must be attenuated below the transmitting power (P) by a factor of at least 43 + 10 log(P) dB.

(b) *Measurement procedure.* Compliance with these rules is based on the use of measurement instrumentation employing a resolution bandwidth of 100 kHz or greater. In the 1 MHz bands immediately outside and adjacent to the frequency block a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. A narrower resolution bandwidth is permitted in all cases to improve measurement accuracy provided the measured power is integrated over the full required measurement bandwidth (*i.e.* 100 kHz or 1 percent of emission

bandwidth, as specified). The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emissions are attenuated at least 26 dB below the transmitter power.

(c) *Alternative out of band emission limit.* Licensees in this service may establish an alternative out of band emission limit to be used at specified band edge(s) in specified geographical areas, in lieu of that set forth in this section, pursuant to a private contractual arrangement of all affected licensees and applicants. In this event, each party to such contract shall maintain a copy of the contract in their station files and disclose it to prospective assignees or transferees and, upon request, to the FCC.

(d) *Interference caused by out of band emissions.* If any emission from a transmitter operating in this service results in interference to users of another radio service, the FCC may require a greater attenuation of that emission than specified in this section.

§ 22.919 [Removed]

11. Section 22.919 is removed.

12. Section 22.921 is revised to read as follows:

§ 22.921 911 call processing procedures; 911-only calling mode.

Mobile telephones manufactured after February 13, 2000 that are capable of operating in the analog mode described in the standard document ANSI TIA/EIA–553–A–1999 Mobile Station—Base Station Compatibility Standard (approved October 14, 1999—available for purchase from Global Engineering Documents, 15 Inverness East, Englewood, CO 80112), must incorporate a special procedure for processing 911 calls. Such procedure must recognize when a 911 call is made and, at such time, must override any programming in the mobile unit that determines the handling of a non-911 call and permit the call to be transmitted through the analog systems of other carriers. This special procedure must incorporate one or more of the 911 call system selection processes endorsed or approved by the FCC.

§ 22.933 [Removed]

13. Section 22.933 is removed.

§ 22.937 [Removed]

14. Section 22.937 is removed.

§ 22.941 [Removed]

15. Section 22.941 is removed.

16. Section 22.943 is revised to read as follows:

§ 22.943 Limitations on transfer of control and assignment for authorizations issued as a result of a comparative renewal proceeding.

Except as otherwise provided in this section, the FCC does not accept applications for consent to transfer of control or for assignment of the authorization of a cellular system that has been acquired by the current licensee for the first time as a result of a comparative renewal proceeding until the system has provided service to subscribers for at least three years.

(a) The FCC may accept and grant applications for consent to transfer of control or for assignment of the authorization of a cellular system that is to be transferred as a part of a bona fide sale of an on-going business to which the cellular operation is incidental.

(b) The FCC may accept and grant applications for consent to transfer of control or for assignment of the authorization of a cellular system that is to be transferred as a result of the death of the licensee.

(c) The FCC may accept and grant applications for consent to transfer of control or for assignment of authorization if the transfer or assignment is pro forma and does not involve a change in ownership.

§ 22.945 [Removed]

17. Section 22.945 is removed.

18. Section 22.946 is amended by revising paragraph (b) and (c) to read as follows:

§ 22.946 Service commencement and construction systems.

* * * * *

(b) To satisfy this requirement, a cellular system must be interconnected with the public switched telephone network (PSTN) and must be providing service to mobile stations operated by its subscribers and roamers. A cellular system is considered to be providing service only if mobile stations can originate telephone calls to and receive telephone calls from wireline telephones through the PSTN.

(c) *Construction period for specific facilities.* The construction period applicable to specific new or modified cellular facilities for which a separate authorization is granted is one year, beginning on the date the authorization is granted.

PART 24—PERSONAL COMMUNICATIONS SERVICES

19. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

20. Section 24.238 is revised to read as follows:

§ 24.238 Emission limitations for Broadband PCS equipment.

The rules in this section govern the spectral characteristics of emissions in the Broadband Personal Communications Service.

(a) *Out of band emissions.* The power of any emission outside of the authorized operating frequency ranges must be attenuated below the transmitting power (P) by a factor of at least 43 + 10 log(P) dB.

(b) *Measurement procedure.* Compliance with these rules is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or greater. However, in the 1 MHz bands immediately outside and adjacent to the frequency block a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. A narrower resolution bandwidth is permitted in all cases to improve measurement accuracy provided the measured power is integrated over the full required measurement bandwidth (*i.e.* 1 MHz or 1 percent of emission bandwidth, as specified). The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emissions are attenuated at least 26 dB below the transmitter power.

(c) *Alternative out of band emission limit.* Licensees in this service may establish an alternative out of band emission limit to be used at specified band edge(s) in specified geographical areas, in lieu of that set forth in this section, pursuant to a private contractual arrangement of all affected licensees and applicants. In this event, each party to such contract shall maintain a copy of the contract in their station files and disclose it to prospective assignees or transferees and, upon request, to the FCC.

(d) *Interference caused by out of band emissions.* If any emission from a transmitter operating in this service results in interference to users of another radio service, the FCC may require a greater attenuation of that emission than specified in this section.

[FR Doc. 02–31382 Filed 12–16–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–02–14043; Notice 1]

Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule, technical amendment.

SUMMARY: This document updates the outdated addresses in NHTSA's regulation regarding documents incorporated by reference into various Federal motor vehicle safety standards. In addition, this document properly identifies those organizations identified in the regulation that have been replaced by a successor organization.

DATES: *Effective Date:* This rule is effective December 17, 2002.

FOR FURTHER INFORMATION CONTACT: For legal issues, you may call Rebecca MacPherson, Office of the Chief Counsel, at 202–366–2992.

You may send mail to this official at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION: The National Highway Traffic Safety Administration has adopted a regulation that provided a centralized location for documents incorporated by reference into various Federal motor vehicle safety standards. This regulation is located at 49 CFR 571.5, Matter incorporated by reference. Over the past several years, NHTSA has included its incorporations by reference in the safety standards as they are adopted or amended. Accordingly, the addresses contained in 49 CFR 571.5 have, in many instances, become outdated. Additionally, one of the documents incorporated by reference, Data from the National Health Survey, Public Health Publication No. 1000, series 11, no. 8, has been updated, and the information contained in that publication is now available from the Center for Disease Control, rather than the Department of Health, Education, and Welfare.

List of Subjects in 49 CFR part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166 delegation of authority at 49 CFR 1.50.

2. Section 571.5 is amended by revising paragraphs (b)(2) through (b)(6) and (b)(8), as follows:

§ 571.5 Matter incorporated by reference.

* * * * *

(b) * * *

(2) *Standards of the American Society for Testing and Materials (ASTM).* They are published by the American Society for Testing and Materials. Information and copies may be obtained by writing to:.ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959.

(3) *Standards of the American National Standards Institute (ANSI).* They are published by the American National Standards Institute. Information and copies may be obtained by writing to: RESNA, 1700 North Moore St., Suite 1540, Arlington, VA 22209–1903.

(4) *Data on the Weight Height and Selected Body Dimensions of Adults.* They are published by the National Center for Health Statistics, Centers for Disease Control (CDC). Information and copies may be obtained on the CDC web site at *http://www.cdc.gov/nchs* or by writing to National Division for Health Statistics, Division of Data Services, Hyattsville, MD 20782–2003.

(5) *Test Methods of the American Association of Textile Chemists and Colorists (AATCC).* They are published by the American Association of Textile Chemists and Colorists. Information and copies may be obtained by writing to: AATCC, 1 Davis Dr., P.O. Box 12215, Research Triangle Park, NC 27709.

(6) *Test methods of the Illuminating Engineering Society of North America (IES).* They are published by the Illuminating Engineering Society of North America. Information and copies may be obtained by writing to: IES, 120 Wall St., 7th Floor, New York, NY 10005.

* * * * *

(8) *Standards of the American Society of Mechanical Engineers (ASME).* They are published by the American Society of Mechanical Engineers. Information and copies may be obtained by writing to: ASME, 22 Law Drive, P.O. Box 2900, Fairfield, NJ 07007–2900.

* * * * *

Signed on: December 10, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–31598 Filed 12–16–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 021209298–2298–01; I.D. 120402C]

RIN 0648–AQ59

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Revision of the Charter Vessel and Headboat Permit Moratorium in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency rule with request for comments.

SUMMARY: NMFS issues this emergency rule to extend certain permit-related deadlines contained in the final rule implementing the charter vessel/headboat permit moratorium for reef fish and coastal migratory pelagic fish in the Gulf of Mexico and to make minor logistical adjustments consistent with those deadline extensions, *e.g.*, extend effectiveness of some existing permits. Moratorium permit deadlines extended by this rule include the December 16, 2002, deadline for having a moratorium permit aboard vessels operating in these fisheries; and the deadline for a decision regarding appeals related to eligibility. These actions are necessary to ensure that participants with valid permits in these fisheries are able to continue to participate in these fisheries pending resolution of an eligibility criterion issue in the amendments and final rule implementing the permit moratorium. That eligibility criterion issue will be addressed subsequently through the normal rulemaking process that will include additional public comment. The intended effect is to maintain continuity in these fisheries until an issue regarding permit eligibility under the moratorium can be resolved.

EFFECTIVE DATE: This rule is effective December 17, 2002 through June 16, 2003. Comments must be received no

later than 5 p.m., eastern time, January 16, 2003.

ADDRESSES: Written comments on this emergency rule must be sent to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

Copies of an economic analysis supporting this emergency rule may be obtained from NMFS' Southeast Regional Office at the address above.

FOR FURTHER INFORMATION CONTACT: Phil Steele, 727–570–5305; fax: 727–570–5583, e-mail: *Phil.Steele@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for reef fish is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) that was prepared by the Gulf of Mexico Fishery Management Council (Council). The fisheries for coastal migratory pelagic resources are managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Coastal Migratory Pelagics FMP) that was prepared jointly by the Council and the South Atlantic Fishery Management Council. These FMPs were approved by NMFS and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The Council, in cooperation with the Gulf charter vessel/headboat industry, developed Amendment 14 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Amendment 14) and Amendment 20 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Amendment 20) to address issues of increased fishing mortality and fishing effort in the for-hire (charter vessel/headboat) sector of the recreational fishery in the Gulf of Mexico. NMFS approved Amendments 14 and 20 and promulgated the charter vessel/headboat moratorium regulations 67 FR 43558, June 28, 2002) to implement the amendments.

However, after a recent review of the administrative record, NMFS and the Council have determined that the amendments contained an error relating to the eligibility criteria and, therefore, did not correctly reflect the action taken by the Council. Thus, the regulations implementing the amendments also contained this error, and not all persons entitled to receive charter vessel/headboat permits under the moratorium approved by the Council would be able to receive permits under the erroneous amendments and regulations. The regulations that implemented the moratorium require all charter operators in the Gulf of Mexico EEZ to have a valid "moratorium permit," as opposed to the prior open access charter permit, beginning December 26, 2002.

This emergency rule will minimize any potential adverse effects resulting from the error in the amendments and implementing regulations until the issue can be resolved through the normal rulemaking process. This rule defers the date that the "moratorium permit" is required until June 16, 2003. This rule also automatically extends the expiration date of valid or renewable "open access" permits for these fisheries through June 16, 2003, *i.e.*, no additional renewal application is required during this period. This emergency rule also extends the deadlines for issuance of "moratorium permits" and for resolution of appeals, consistent with the extension of the date the "moratorium permit" is required. However, those applicants who qualified under the existing regulations will be issued "moratorium permits" as soon as possible. NMFS intends to initiate the normal rulemaking process to correct the eligibility criterion error as soon as possible.

For the reasons stated above, this emergency rule meets NMFS policy guidelines for the use of emergency rules (62 FR 44421, August 21, 1997), because the emergency situation results from recently discovered circumstances; presents a serious management problem in the fishery; and the emergency rule realizes immediate benefits that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration expected under the normal rulemaking process.

NMFS prepared an economic evaluation of the regulatory impacts associated with this emergency rule, which is summarized as follows.

The major effect of the emergency rule is the avoidance of severe economic loss that would occur through the disruption of the business operation of 935 for-hire vessel businesses. Under the current final rule implementing a for-hire permit moratorium, 2,037 vessels would qualify for the limited access permit and be allowed continued operation in the Gulf of Mexico for-hire fishery. An additional 935 vessels would be disqualified for the permit and, therefore, excluded from the fishery due to the errors in the amendments and the implementing final rule. These vessels represent 30 percent of the Council-intended valid participants in the fishery (3,071 vessels). Average receipts per for-hire vessel in the Gulf of Mexico are estimated at $64,000–$80,000 per year. Assuming a new amendment required less than 180 days for implementation, the emergency rule would eliminate the potential loss of $30–$37 million in receipts from these vessels. Additionally, approximately 112,000 for-hire angler trips would be allowed to be taken, supporting $37.5 million in angler expenditures. Due to the avoidance of business cessation and subsequent loss of all associated receipts, the emergency rule is determined to have a significant positive economic impact on a substantial number of small business entities.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency rule is necessary to minimize significant adverse social and economic impacts, (*i.e.*, unintended exclusion of participation in these fisheries), that would otherwise occur as a result of an error in Amendments 14 and 20 and their implementing regulations. The AA has also determined that this rule is consistent with the Magnuson-Stevens Act and other applicable laws.

The emergency rule is determined to be not significant under Executive Order 12866. Copies of the economic evaluation are available (*see* **ADDRESSES**).

Because there is no requirement to provide for prior notice and opportunity for public comment on this rule the analytical requirements of the Regulatory Flexibility Act do not apply.

This emergency rule would defer permit-related deadlines established in the final rule implementing the charter vessel/headboat permit moratorium in the Gulf of Mexico (67 FR 43558, June 28, 2002) until an inconsistency in that rule's permit eligibility criteria can be resolved through normal rulemaking procedures, *i.e.*, proposed rule, public comment, and final rule. Specifically, the deadlines for issuance of a moratorium permit, for the requirement to have a moratorium permit aboard a vessel, and for the Regional Administrator's (RA) decision regarding appeals are deferred pending subsequent rulemaking to resolve the eligibility criterion. This action will allow those applicants who would have otherwise been denied initial access to the fishery to continue participating in the fishery. Currently, the open access permits are set to expire on December 26, 2002. For these reasons, the AA finds good cause to waive the requirement to provide prior notice and the opportunity for public comment, pursuant to authority set forth at U.S.C. 553(b)(B), as such procedures would be impracticable. This emergency rule relieves restrictions by deferring deadlines for obtaining required permits and by extending the effectiveness of certain existing permits to allow continued participation in these fisheries. Because this is a substantive rule that relieves a restriction, the 30-day delayed effectiveness provision of the Administrative Procedures Act does not apply.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 10, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 622.4 Permits and fees.

2. In § 622.4:

a. In paragraph (r) introductory text, a final sentence is added to read as follows:

* * * * *

(r) * * * Notwithstanding the other provisions of this paragraph (r), the expiration dates of all charter vessel/headboat permits for Gulf reef fish or Gulf coastal migratory pelagic fish that were not issued under the provision of this paragraph (r) and that are valid or renewable as of December 17, 2002, will be extended through June 16, 2003, provided that a permit has not been issued under this paragraph (r) for the applicable vessel.

* * * * *

b. In paragraph (r)(1), the first sentence is suspended, and a new sentence is added in its place to read as follows:

(r) * * *

(1) * * * Beginning June 16, 2003, the only valid charter vessel/headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish are those that have been issued under the moratorium criteria in this paragraph (r).

* * * * *

c. In paragraph (r)(6), the first sentence is suspended, and a new sentence is added in its place to read as follows:

* * * * *

(r) * * *

(6) * * * If a complete application is submitted in a timely manner and the applicable eligibility requirements specified in paragraph (r)(2) of this section are met, the RA will issue a charter vessel/headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish or a letter of eligibility for such fisheries, as appropriate, and mail it to the applicant not later than June 6, 2003.

d. Paragraph (r)(8)(v) is suspended and paragraph (r)(8)(vi) is added to read as follows:

* * * * *

(r) * * *

(8) * * *

(vi) The RA will notify the applicant of the decision regarding the appeal by February 18, 2003, or within 30 days after the conclusion of the oral hearing, if applicable. The RA's decision will constitute the final administrative action by NMFS.

* * * * *

[FR Doc. 02–31699 Filed 12–16–02; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 67, No. 242
Tuesday, December 17, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA–276–0374; FRL–7423–4]

Approval and Promulgation of Implementation Plans and Designation of Areas; California—Indian Wells Valley PM–10 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve pursuant to the Clean Air Act (CAA or the Act) the moderate area plan and maintenance plan for the Indian Wells Valley planning area in California and to redesignate the area from nonattainment to attainment for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10).

DATES: Comments on this proposal must be received in writing by January 16, 2003.

ADDRESSES: Please address your comments to Karen Irwin, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. You may inspect and copy the rulemaking docket for this notice at the following location during normal business hours. We may charge you a reasonable fee for copying parts of the docket.

Environmental Protection Agency, Region 9 Air Division, Air Planning Office (AIR–2) 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the SIP materials are also available for inspection at the addresses listed below:

Kern County Air Pollution Control District, 2700 "M" Street, Suite 302, Bakersfield, CA 93301.

California Air Resources Board, 1001 I Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Karen Irwin, Air Planning Office (AIR–2), EPA Region 9, at (415) 947–4116 or: *irwin.karen@epa.gov*

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I. Summary of Action

We are proposing to approve the moderate area nonattainment plan and maintenance plan submitted to EPA by the California Air Resources Board (ARB) on December 5, 2002.[1] If EPA takes final action on this proposal, the Indian Wells Valley PM–10 nonattainment area (Indian Wells) would be redesignated to attainment for the 24-hour and annual PM–10 NAAQS.

II. Introduction

A. What National Ambient Air Quality Standards Are Considered in Today's Rulemaking?

Particulate matter with an aerodynamic diameter of 10 micrometers or less (PM–10) is the pollutant that is the subject of this action. The NAAQS are safety thresholds for certain ambient air pollutants set to protect public health and welfare. PM–10 is among the ambient air pollutants for which we have established such a health-based standard.

PM–10 causes adverse health effects by penetrating deep in the lung, aggravating the cardiopulmonary system. Children, the elderly, and people with asthma and heart conditions are the most vulnerable.

On July 1, 1987 (52 FR 24634), we revised the NAAQS for particulate matter with an indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. *See* 40 CFR 50.6.

The annual primary PM–10 standard is 50 ug/m^3 as an annual arithmetic mean. The 24-hour PM–10 standard is 150 ug/m^3 with no more than one expected exceedance per year. The secondary PM–10 standards, promulgated to protect against adverse welfare effects, are identical to the primary standards. *Id.*

B. What Is a State Implementation Plan?

The Clean Air Act requires States to attain and maintain ambient air quality equal to or better than the NAAQS. The State's commitments for attaining and maintaining the NAAQS are outlined in the State Implementation Plan (or SIP) for that State. The SIP is a planning document that, when implemented, is designed to ensure the achievement of the NAAQS. Each State currently has a SIP in place, and the Act requires that SIP revisions be made periodically as necessary to provide continued compliance with the standards.

SIPs include, among other things, the following: (1) An inventory of emission sources; (2) statutes and regulations adopted by the State legislature and executive agencies; (3) air quality analyses that include demonstrations that adequate controls are in place to meet the NAAQS; and (4) contingency measures to be undertaken if an area fails to attain the standard or make reasonable progress toward attainment by the required date.

The State must make the SIP available for public review and comment through a public hearing, it must be adopted by the State, and submitted to EPA by the Governor or his designee. EPA takes Federal action on the SIP submittal thus rendering the rules and regulations Federally enforceable. The approved SIP serves as the State's commitment to take actions that will reduce or eliminate air quality problems. Any subsequent revisions to the SIP must go through the formal SIP revision process specified in the Act.

C. What Is the Classification of This Area?

Upon enactment of the 1990 Clean Air Act Amendments (CAA or Act), PM–10 areas meeting the requirements of either (i) or (ii) of section 107(d)(4)(B) of the Act were designated nonattainment for PM–10 by operation of law and classified "moderate." These areas included all former Group I PM–10 planning areas identified in 52 FR 29383 (August 7, 1987) and further clarified in 55 FR 45799 (October 31, 1990), and any other areas violating the NAAQS for PM–10 prior to January 1, 1989 (many of these areas were identified by footnote 4 in the October 31, 1990 FederalRegister document). A **Federal Register** document announcing the areas designated nonattainment for PM–10 upon enactment of the 1990 Amendments, known as "initial" PM–10 nonattainment areas, was published on March 15, 1991 (56 FR 11101). A subsequent **Federal Register** document correcting some of these areas was published on August 8, 1991 (56 FR 37654). These nonattainment designations and moderate area classifications were codified in 40 CFR part 81 in a **Federal Register** document published on November 6, 1991 (56 FR 56694).

The Searles Valley planning area was designated nonattainment and classified as moderate. The area originally included three subregions (Coso Junction, Indian Wells Valley and Trona) under the planning jurisdiction of different air pollution control agencies. On August 6, 2002, EPA changed the boundaries of the Searles Valley PM–10 nonattainment area by dividing this area into three separate, newly created PM–10 nonattainment areas. 67 FR 50805. One of these areas is Indian Wells Valley which is under the jurisdiction of the Kern County Air Pollution Control District (APCD or the District). The Indian Wells Valley PM–10 nonattainment area boundaries include the portion of Kern County contained within the United States Geological Survey Hydrologic Unit #18090205. The Indian Wells Valley area covers approximately 300 square miles and is populated by about 30,000 persons, with only one community of significant size, Ridgecrest.

D. What Are the Applicable CAA Provisions for PM–10 Moderate Area Plans?

The air quality planning requirements for moderate PM–10 nonattainment areas are set out in subparts 1 and 4 of title I of the Act. We have issued guidance in a General Preamble describing our preliminary views on how we will review SIPs and SIP revisions submitted under title I of the Act, including those containing moderate PM–10 nonattainment area SIP provisions. 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992). The General Preamble provides a detailed discussion of our interpretation of the title I requirements.

1. Statutory Provisions

States with initial moderate PM–10 nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

(a) Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

(b) Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

(c) Pursuant to section 189(c)(1), for plan revisions demonstrating attainment, quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

(d) Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area.

In addition, States must submit a permit program for the construction of new and modified major stationary sources in 1992 and contingency measures in 1993. See sections 189(a) and 172(c)(5).

2. Clean Data Areas Approach

The clean data areas approach applies the clean data policy concept already in place for ozone[2] to selected PM–10 nonattainment areas in order to approve control measures for these areas into the SIP. The approach only applies to PM–10 areas with simple PM–10 source problems, such as residential wood combustion and fugitive dust. If an area meets the following requirements, the State will no longer be required to develop, among other things, an attainment demonstration. The requirements for the approach are:

(a) The area has attained the PM–10 NAAQS with the three most recent years of quality assured air quality data.

(b) The State must continue to operate an appropriate PM–10 air quality monitoring network, in accordance with 40 CFR part 58, in order to verify the attainment status of the area.

(c) The control measures responsible for bringing the area into attainment must be approved by EPA as meeting the CAA requirements for RACM/RACT.

(d) An emissions inventory must be completed for the area. In addition to the above requirements for the use of the clean data areas approach, any requirements that are connected solely to designation or classification, such as new source review (NSR) and RACM/RACT, will remain in effect. However, the requirements under CAA sections 172(c) and 189 for developing attainment demonstrations, RFP

[1] We previously received a draft of the plan for review.

[2] See memorandum from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS) to Regional Division Directors entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," May 10, 1995.

demonstrations and contingency measures are suspended.

Any sanctions and/or federal implementation plan (FIP) clocks that may be running for an area due to failure to submit, or disapproval of any attainment demonstration, RFP or contingency measure requirements, are stopped. In addition, areas are still required to demonstrate transportation conformity. Areas typically use the build/no-build test or the no-greater-than-1990 test because the requirements for an attainment demonstration and RFP, which establish the budgets, no longer apply. However, the emissions budget test applies once a maintenance plan is submitted and its budgets are determined adequate. The applicable tests for general conformity still apply.

The use of the clean data areas approach does not constitute a CAA section 107(d) redesignation, but only serves to approve nonattainment area SIPs required under part D of the CAA.[3]

E. What Are the Applicable Provisions for Redesignation To Attainment for PM–10?

The 1990 CAA Amendments revised section 107(d)(3)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment:

(1) The area must have attained the applicable NAAQS;

(2) The area has a fully approved SIP under section 110(k) of the Act;

(3) The air quality improvement must be due to permanent and enforceable reductions;

(4) The area has met all relevant requirements under section 110 and part D of the Act; and

(5) The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

Our primary guidance on redesignation requests is a September 4, 1992 memorandum from John Calcagni, Director, Air Quality Management Division, to Regional Division Directors, entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" (Calcagni memo). Below is a summary of the discussion in the memo of each of the above statutory requirements:

a. Attainment of the Standard. There are two components involved in making this demonstration. The first component concerns ambient air quality monitoring. The ambient air quality monitoring data used to demonstrate attainment should be representative of the area of highest concentration. The monitors should remain at the same location for the duration of the monitoring period required for demonstrating attainment. The data should be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the Air Quality Systems (AQS) Database for public review. The second component relies on supplemental EPA-approved air quality modeling to ensure source impacts are comprehensively evaluated, however, specific circumstances may determine whether there is a need for modeling. See also section IV.A.2.a of this proposed action.

b. State Implementation Plan Approval. The SIP for the area must be fully approved under section 110(k) and must satisfy all requirements that apply to the area.

c. Permanent and Enforceable Improvement in Air Quality. The State must be able to reasonably attribute the improvement in air quality to emission reductions which are permanent and enforceable. Attainment resulting from temporary reductions in emission rates (*e.g.*, reduced production or shutdown due to temporary adverse economic conditions) or unusually favorable meteorology would not qualify as an air quality improvement due to permanent and enforceable emission reductions.

d. Section 110 and part D Requirements. A State must meet all requirements of section 110 and part D that were applicable prior to submittal of the complete redesignation request except those suspended by the use of the clean data approach. These requirements must be fully approved into the plan at or before the time EPA redesignates the area. Section 110(a)(2) contains general requirements for nonattainment plans and part D consists of general requirements applicable to all areas which are designated nonattainment based on a violation of the NAAQS and pollutant-specific subparts.[4] One of the applicable requirements necessary for redesignation is that the State show its SIP provisions are consistent with section 176(c) conformity requirements.

e. Fully Approved Maintenance Plan. CAA section 175A provides the general framework for maintenance plans. The Calcagni memo lists five core provisions to ensure maintenance of the relevant NAAQS in an area seeking redesignation: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and contingency plan. Below is a summary of each provision:

1. Attainment Inventory. The State should develop an attainment emissions inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS. Where the State has made an adequate demonstration that air quality has improved as a result of the SIP, the attainment inventory will generally be the actual inventory at the time the area attained the standard. This inventory should be consistent with EPA's most recent guidance on emissions inventories, including emissions during the time period associated with the monitoring data showing attainment.

2. Maintenance Demonstration. There are two means by which maintenance of the NAAQS in the future can be demonstrated—a projected inventory showing that future emissions for the 10-year period following redesignation will not exceed the level of the attainment inventory, or modeling showing that the future mix of sources and emission rates in the 10-year period following redesignation will not cause a violation of the NAAQS. The projected inventory should consider future growth, including population and industry, be consistent with the attainment inventory, and document data inputs and assumptions. Any assumptions concerning emission rates must reflect permanent, enforceable measures.

3. Monitoring Network. Once an area has been redesignated, the State should continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area.

4. Verification of Continued Attainment. Each State should ensure that it has the legal authority to implement and enforce all measures necessary to attain and to maintain the NAAQS. One such measure is ambient and source emission data. Also, the State should track the progress of the maintenance plan. One option is for the State to periodically update the emissions inventory. Another option is a comprehensive review of the factors that were used in developing the attainment inventory to show no significant change; if such review showed significant change, the State should then perform an update of the inventory. In any event, the State should monitor the indicators for triggering contingency measures.

5. Contingency Plan. A maintenance plan is required to include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. For purposes of CAA section 175A, a State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expeditiously once they are triggered. The plan should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State. As a necessary part of the plan, the State should also identify specific indicators, or triggers, which will be used to determine when the contingency measures need to be implemented. The EPA will review what constitutes a contingency plan on a case-by-case basis. At a minimum, it must require that the State will implement all measures contained in the part D nonattainment plan for the area prior to redesignation.

[3] Moreover, the lack of a requirement to submit the SIP revisions noted above and the suspension of sanction clocks/FIP requirements will exist only as long as the area continues to attain the NAAQS. If we determine prior to a final redesignation to attainment that the area has violated the standards, the basis for the determination that the area need not make these SIP revisions would no longer exist.

[4] Note that this requirement and the second requirement, SIP approval, discussed previously are effectively coterminous.

III. Background

On December 5, 2002, ARB submitted to EPA the "PM–10 (Respirable Dust) Attainment Demonstration, Maintenance Plan, and Redesignation Request; Kern County Portion of Indian Wells Valley Segment of 'Searles Valley' Federal Planning Area," Kern County Air Pollution Control District, September 5, 2002 (September 2002 plan) that is the subject of this proposed action.[5,6] On December 6, 2002, we found that the submittal met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

The Indian Wells PM–10 nonattainment area has two PM–10 monitoring sites. One is located downwind of the City of Ridgecrest and the "main base" of the Naval Air Weapons Station at China Lake-Powerline Road (China Lake monitor). This site has been monitoring PM–10 emissions since 1990. The other site is located in downtown Ridgecrest at City Hall, 100 West California Avenue (Ridgecrest monitor). This second site began monitoring PM–10 concentrations in January 2000.

On June 13, 2001, EPA proposed to find, pursuant to CAA section 188(b)(2), that the Indian Wells Valley had not attained the 24-hour and annual PM–10 NAAQS by the applicable attainment date of December 31, 1994. 66 FR 31873. This proposed finding was based on inadequate data collection from the China Lake monitor during the 1992–1994 period. If EPA had finalized that proposal, the Indian Wells Valley nonattainment area would have been reclassified by operation of law as a serious PM–10 nonattainment area under CAA section 188(b)(2)(A).

When we issued our proposed finding of failure to attain, the Indian Wells Valley had not recorded any PM–10 exceedances during 1999 and 2000, but ambient air quality data for the year 2001 in its entirety was not yet available. Today's action proposing to redesignate the area to attainment is predicated on ambient air quality data from the year 2001 in full, in combination with the data sets from the years 1999 and 2000.

IV. Review of the State Submittal

A. Is the Moderate Area Plan Approvable?

1. Did the State Meet the CAA Procedural Provisions?

Prior to adoption by the State, the plan received proper public notice and was the subject of a public hearing in Bakersfield on September 5, 2002.

2. Has the State Demonstrated that the Area Qualifies for the Clean Data Policy?

a. Based on the past 3 years of air quality data, is the area attaining both the 24-hour and annual PM–10 NAAQS?

Attainment of the annual PM–10 standard is achieved when the annual arithmetic mean PM–10 concentration over a three year period is equal to or less than 50 ug/m^3. Attainment of the 24-hour standard is determined by calculating the expected number of days in a year with PM–10 concentrations greater than 150 ug/m^3. The 24-hour standard is attained when the expected number of days with levels above 150 ug/m^3 (averaged over a three year period) is less than or equal to one. Three consecutive years of air quality data are generally necessary to show attainment of the 24-hour and annual standards for PM–10. See 40 CFR part 50 and appendix K. A complete year of air quality data, as referred to in 40 CFR part 50, appendix K, is comprised of all 4 calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.

All data cited in the following discussion are recorded in the AQS database. Three years of clean data (1999–2001) have been recorded in the Indian Wells Valley, with values well below both the 24-hour and annual NAAQS. The monitoring data meets EPA's minimum requirements for data collection and data substitution. The following table summarizes the PM–10 data collected at the China Lake monitoring site during the period 1999—2001.[7]

Year	1st max 24-hr conc. (μg/m^3)	2nd max 24-hr conc. (μg/m^3)	3rd max 24-hr conc. (μg/m^3)	4th max 24-hr conc. (μg/m^3)	Annual average (μg/m^3)	3 year annual average (μg/m^3)
1999	28	28	27	24	16	NA
2000	53	38	34	30	15	NA
2001	115	37	27	26	15	NA
						15

Source: EPA/AQS database.

[5] ARB submitted in October 1993 an initial moderate area PM–10 plan for the Searles Valley PM–10 nonattainment area, including the Indian Wells subregion, entitled "Searles Valley Planning Area State Implementation Plan," November 1991. (November 1991 plan).

[6] While the moderate area nonattainment plan, the maintenance plan and the redesignation request are contained in one document, each component is discussed separately in the sections of this proposed action.

[7] The Calcagni memo notes that air quality modeling should be considered in determining whether an area has attained the NAAQS. However, accurately estimating fugitive dust emissions for input to dispersion modeling over a large area is much more difficult than for point sources of gaseous pollutants, which were the archetypes for development of much of our modeling guidance. This is due to uncertainty in fugitive dust emissions' temporal and spatial variability. Since the Indian Wells September 2002 plan addresses a simple PM–10 source problem (fugitive dust) in an area that lacks major stationary sources, we believe it is adequate for the attainment demonstration to be based on representative monitoring data rather than dispersion modeling.

The highest annual arithmetic mean calculated during 1999–2001 was 16; the highest 24-hour value recorded in that time period was 115 μg/m[3]. Data collected in 2002 through the end of October has shown the highest 24-hour value recorded as 74 μg/m[3].

Additional data collected by the Kern County APCD at the Ridgecrest monitoring site supports our proposed finding that the Indian Wells Valley area has attained the PM–10 NAAQS. This monitor does not have three full years of data at this time since it began operation in January 2000. The following table summarizes the data from the Ridgecrest monitoring site.

RIDGECREST PM–10 MONITORING DATA 2000–2001

Year	1st max conc. (μg/m[3])	2nd max conc. (μg/m[3])	3rd max conc. (μg/m[3])	4th max conc. (μg/m[3])	Annual average (μg/m[3])
2000	90	52	48	45	21
2001	63	46	41	38	21

The monitoring site at China Lake upon which this proposed finding of attainment is based is representative of the area of highest PM–10 concentration, downwind of the City of Ridgecrest.[8] The China Lake monitor readings are affirmed by data showing concentrations well within the standards collected from the Ridgecrest monitor, which also represents a site of highest PM–10 concentration.[9]

Based on quality-assured monitoring data from 1999 through 2001 meeting the requirements of 40 CFR part 50, appendix K, we propose to find that the Indian Wells Valley PM–10 nonattainment area has attained the PM–10 NAAQS.

b. Is the State continuing to operate an appropriate PM–10 air quality monitoring network?

As stated previously, demonstrating that an area has attained the PM–10 NAAQS involves submittal of ambient air quality data from an ambient air monitoring network representing peak PM–10 concentrations which should be stored in AQS. Once the area has been redesignated, the State will continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. ARB has committed to work with Kern County APCD to ensure continued PM–10 air quality monitoring in the Indian Wells Valley PM–10 nonattainment area, in accordance with 40 CFR Part 58, for at least 10 years following redesignation of the area to attainment, in order to verify the attainment status of the area.[10] This commitment satisfies the obligation to maintain an adequate monitoring program in the area.

c. Has EPA approved as meeting the CAA's RACM/RACT requirements the control measures responsible for bringing the area into attainment?

In this action, we are proposing to approve the following measures as meeting the RACM requirement of CAA section 189(a)(1)(C)[11] that we can reasonably ascertain were collectively responsible for bringing the area into attainment of the 24-hour PM–10 standard:[12]

1. Fugitive Dust Control Plan for the Naval Air Weapons Station, China Lake, California (September 1, 1994).[13] This plan establishes controls for unpaved roads, disturbed vacant land and open storage piles.

2. Paving of unpaved roads between 1993 and the present.[14] The District identifies the funding sources for some of those road miles as California Department of Motor Vehicle funds, City of Ridgecrest funds and Congestion Mitigation and Air Quality funds.

3. Kern County 1990 Land Use Ordinance—Chapter 18.55 and Kern County Development Standards, Chapter III. This ordinance requires paving of streets for new subdivisions according to the County Development Standards.[15]

4. City of Ridgecrest Municipal Code 1980 which requires paving of streets for new subdivisions.[16]

5. Bureau of Land Management closure of 83 miles of unpaved roads/off-highway vehicle trails, between 1994 and the present[17], which reduces disturbance to open areas and corresponding windblown emissions.

6. Rule 401 "Visible Emissions," November 29, 1993; Rule 404.1 "Particulate Matter Concentration, April 18, 1972; and Rule 405 "Particulate Matter Emission Rate," July 18, 1983, with respect to control of process fugitive emissions.

This list is a subset of the measures attributed in the September 2002 plan as responsible for bringing the area into attainment.[18] We look to the November 1991 plan for the Searles Valley Planning Area to provide information on the sources that primarily contributed to the area's exceedences. The November 1991 plan provides a source category breakdown for emissions contributing to the China Lake monitor which recorded an exceedence of 166 μg/m[3] on the selected March 13, 1991 design day.[19] Unpaved roads were estimated to contribute 46 percent of the emissions, wind erosion 14 percent, process fugitives 17 percent and stationary stack emissions 1 percent. The remaining contribution (22 percent) was attributed to government aircraft associated with the Naval Air Weapons Station. However, since the District does not have authority to control military flight operations, the District focused its control strategy on the unpaved road, wind erosion and process fugitive categories.[20]

In the current submittal, Kern County APCD only credits emission reductions to the unpaved road, wind erosion and process fugitive categories,[21] further confirming that controls on these sources are primarily responsible for the area's ability to attain the 24-hour standard.

Our list of control measures responsible for bringing the area into attainment therefore only includes measures that reduced emissions from these three areawide source categories.[22]

The September 2002 plan attributes a 25 percent reduction in process fugitives (0.06 tons per day), a 15 percent reduction in wind erosion PM–10 emissions (0.08 tons per day) and a 25 percent reduction in unpaved road PM–10 emissions (0.41 tons per day) from the measures implemented in the area. While the actual reduction achieved from each of these categories is uncertain, the clean monitoring data reported in the 1998–2001 timeframe speaks to their success.

We conclude that the six control measures listed in this subsection are responsible for bringing the area into attainment, and therefore propose to approve them into the California SIP as meeting the RACM provisions of CAA section 189(a)(1)(C). The submittal demonstrates that these measures have been fully carried out. The measures will be approved SIP regulations upon finalization of this proposed action.

The measures have been implemented in total with sufficient expedition to achieve three years of clean data between 1999 and 2001. In addition to these six controls, we consider the other measures implemented in the Indian Wells area as supplemental strategies that contributed still further emission reductions and public health protection. Continued implementation of these measures will help ensure that the Indian Wells area maintains the 24-hour and annual PM–10 NAAQS but we are not relying on them for this determination.

3. Do the Emissions Inventories Meet CAA Provisions?

Our guidance specifies that an attainment inventory be developed that identifies the level of emissions during the time period associated with the monitoring data showing attainment. ARB has developed an actual inventory of emissions for the year 2001 and has estimated the inventory for the year 1999. See Chapter 7, Table 7–1 of the September 2002 plan. Total tonnage per day in 1999 is estimated to be 5.76 and total tonnage per day in 2001 is estimated to be 5.68. We can assume the estimated tonnage per day in 2000 lies in between these two values. A detailed inventory is provided in Appendix C of the September 2002 plan and was prepared by ARB using its most recent emissions factors. Background information on the assumptions underlying the emissions inventory estimates can be found in a report titled "Development of Emission Growth Surrogates and Activity Projections Used in Forecasting Point and Area Source Emissions, Final Report," E.H. Pechan and Associates, February 26, 2001 (Pechan Report).

For the mobile source component of the emissions inventories, ARB uses a California-specific model known as EMFAC, including the model used to calculate exhaust and evaporative emissions from motor vehicles and the contribution of mobile emissions to the PM–10 inventory. We have no evidence that supports a conclusion that PM–10 gaseous precursors (such as nitrogen oxides) within the area are a significant contributor to the PM–10 nonattainment problem, and therefore emissions inventories for PM–10 gaseous precursors were not included in the plan and are not required. *See also* footnote 11 and section IV.D.1 of this proposed action which discuss stationary source and motor vehicle exhaust emissions.

We propose to approve the emissions inventory under CAA section 172(c)(3) as current, accurate, and complete.

4. Are the CAA Provisions for New Source Review Satisfied?

All new major sources and modifications to existing major sources are subject to the new source review (NSR) and prevention of significant deterioration (PSD) requirements of Rule 210.1. We have not yet approved the District's NSR rule into the SIP, but, for major sources and modifications of PM–10 emissions, we have delegated to Kern County APCD the authority to administer the PSD program.

CAA section 172(c)(5) requires NSR permits for the construction and operation of new and modified major stationary sources anywhere in nonattainment areas. We have determined that areas being redesignated from nonattainment to attainment do not need to comply with the requirement that a NSR program be approved prior to redesignation provided that the area demonstrates maintenance of the standard without part D nonattainment NSR in effect. The rationale for this decision is described in a memorandum from Mary Nichols dated October 14, 1994 ("Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment"). We have determined that the Indian Wells Valley September 2002 plan's maintenance demonstration does not rely on nonattainment NSR and, therefore, the area need not have a fully approved nonattainment NSR program prior to approval of the redesignation request.

The requirements of the Part D NSR program will be replaced by the PSD program once the area has been redesignated.[23] Kern County's PSD program pursuant to 40 CFR 52.21 will become effective in the area with respect to PM–10 upon redesignation of the area to attainment, per the delegation agreement between EPA and Kern County APCD dated August 12, 1999.

B. Is the Maintenance Plan Approvable?

1. Does the Plan Contain an Adequate Attainment Inventory?

Yes. See section IV.A.3 of this proposed action.

2. Does the Plan Demonstrate Future Maintenance of the NAAQS?

As previously discussed, the Calcagni memo identifies two means by which maintenance of the NAAQS in the future can be demonstrated—emissions inventory projections or modeling for the 10-year period following redesignation. The Indian Wells Valley September 2002 plan relies on the former.

The plan includes a linear model forecast that projects emissions in tons per day between 2001 and 2013[24] and corresponding concentrations. Overall, ARB predicts that emissions in the Indian Wells Valley PM–10 nonattainment area will decrease from 5.68 tons per day in 2001 to 5.18 tons per day in 2013. This decrease reflects assumptions that fugitive dust emissions from farming operations and farmland (part of the area source and natural wind erosion source categories, respectively) will decrease by urbanization and attrition of farmland throughout Kern County. In contrast, increased urbanization would lead to slight emissions increases in all other categories throughout the county, although this effect is so slight on the unpaved road and offroad mobile source categories that the daily tonnage from these two categories remains the same. ARB's projections are based on assumptions of statewide population growth that are incorporated into the

[8] September 2002 plan, Chapter 5, pg. 5–1.
[9] Op. Cit.
[10] ARB Executive Order G–125–295, pg. 4 of the submittal.
[11] CAA Section 172(c)(1) requires RACT for existing sources in PM–10 nonattainment areas and CAA Section 189(e) requires RACT provisions for gaseous precursors of PM–10 except where EPA determines that such sources do not contribute significantly to PM–10 levels exceeding the standard. There are no major stationary sources of PM–10 in the nonattainment area, and total emissions associated with all industrial sources account for only 0.16 tons per day, or less than 3 percent of PM–10 emissions in 2001. For this reason, no sources within the Indian Wells area are subject to the RACT requirement, either with respect to primary or secondary PM–10 emissions.
[12] There have been no recorded exceedances of the annual 50 μg/m[3] PM–10 standard in the area since the inception of PM–10 monitoring. September 2002 plan, Chapter 2, pg. 2–1.
[13] Appendix D of the September 2002 plan.
[14] Appendix E of the September 2002 plan "Map of Roadways Paved".
[15] Appendix E of the September 2002 plan.
[16] Op. Cit.
[17] Appendix E of the September 2002 plan, letter from Hector Villalobos, U.S. Bureau of Land Management, to Thomas Paxson, Kern County APCD, September 9, 2002.
[18] See Table 4–3 of the September 2002 plan.
[19] The design day, by definition, is the day with the highest ambient concentration determined to be the result of local effects, *i.e.* a worst case day.
[20] November 1991 plan, pg. 6.
[21] September 2002 plan, Chapter 4, Table 4–2.
[22] See EPA's Technical Support Document associated with this proposed rule for our evaluation of other measures listed in the September 2002 plan that we are not proposing to approve as responsible for bringing the area into attainment.
[23] Calcagni memo, pg. 6.
[24] September 2002 plan, Chapter 7, Table 7–1.

Pechan Report emission factors.[25] However, statewide growth assumptions may not apply to growth trends in the Indian Wells area because the Kern County APCD indicates that the area experienced a reduction in population between 1990 and 2001,[26] and no significant population increases in the area are anticipated in the future. Kern County APCD explains that the economy is heavily dependent on Naval Air Weapon Station activities which have declined in recent years and only a small amount of farming is conducted in the Valley, limited by groundwater supplies and weather.

The linear model forecast in the plan conservatively assumes a baseline "worst case" concentration of 149 μg/m^3 in the year 2001. Since the highest maximum 24-hour value recorded in 2001 equaled 115 μg/m^3 (this is also the highest value recorded in the 1998–2001 time frame), we believe it more accurately reflects current conditions. Assuming no significant population change, the emissions inventory would remain the same into the future, thus not triggering an exceedence. ARB's calculations (under the population growth scenario) show a decrease in emissions of 0.5 tons per day after 2001, resulting in a maximum concentration of 136 μg/m^3 in 2013. Even if the expected decreases in farming operations and farmland do not occur as predicted, the result would be an emissions increase of only 0.19 tons per day by 2013. Based on the highest 24-hour concentration recorded in the 1999–2001 time frame (115 μg/m^3), this increase would be too slight to have an impact on maintenance of the 24-hour standard.

Although an exceedence attributable to Owens Lake PM–10 transport has not been recorded in the area since 1995, for purposes of maintaining the NAAQS, we consider the possibility for an Owens Lake wind event to cause or contribute to a future exceedence. Indian Wells Valley is located at the southern edge of the 50-mile radius Owens Lake impact zone with respect to NAAQS violations.[27] Fugitive dust controls are currently being implemented on Owens Lake according to the adopted and EPA SIP-approved Owens Valley PM–10 SIP. As of January 27, 2002, control measures were implemented on ten (10) square miles of lake bed[28] and controls on an additional 3.5 square miles of lake bed are to be completed by December 31, 2002.[29]

Another 3 square miles will be controlled by December 31, 2003 and the Great Basin APCD has committed to revise the Owens Valley PM–10 Plan in 2003 to provide for controls on any additional square milage deemed necessary for attainment of the NAAQS by December 31, 2006. EPA has approved these controls as meeting Best Available Control Measures (BACM) for the Owens Valley PM–10 nonattainment area, required per CAA 189(b) for PM–10 nonattainment areas classified as serious. 64 FR 48305 (September 3, 1999). Therefore, we believe this adequately addresses future PM–10 transport emissions from Owens Lake into surrounding areas.

3. Does the Plan Meet the CAA Provisions for Contingency Measures?

The maintenance plan must identify contingency measures to promptly correct any violation of the NAAQS that occurs after redesignation of the area.[30] *See* section II.E of this proposed action for additional detail.

Kern County APCD has included a contingency measure in the Indian Wells Valley plan to control unpaved roads for an emission reduction of 0.16 tons per day.[31] Kern County APCD has also identified a trigger for the contingency measure, which is failure of the area to maintain the NAAQS.[32]

Furthermore, Kern County APCD indicates that additional contingency control measures could be implemented as needed, for example control of truck tire carryout onto paved roads.[33] Since it is difficult to predict what source category(ies) would potentially contribute to a future exceedence, we believe it is appropriate for our proposed approval to rely on a contingency measure that targets additional emissions reductions from unpaved roads, which constituted the single largest source of PM–10 emissions for the 1991 design day exceedence. We conclude that the plan satisfies the contingency measure provision of CAA Section 175A(d).

4. Has the State Committed to Continue to Operate an Appropriate PM–10 Air Quality Monitoring Network?

Yes. See section IV.A.2.b of this proposed action.

5. Has the State Provided for Verification of Continued Attainment?

According to the Calcagni memo, the State's maintenance plan submittal should indicate how the State will track the progress of the maintenance plan. ARB continually updates its inventory as new information becomes available, and will review impacts of inventory changes on the Indian Wells maintenance portion of the September 2002 plan and notify EPA if inventory changes necessitates a revision to the maintenance strategy and plan.[34]

C. Is the Redesignation Request Approvable?

1. Has the Area Attained the 24-hour and Annual PM–10 NAAQS?

Yes. See section IV.A.2.a of this proposed action.

2. Has the Area Met All Relevant Requirements Under Section 110 and Part D of the Act?

Yes. See section IV.A of this proposed action.

3. Does the Area Have a Fully Approved SIP Under Section 110(k) of the Act?

Yes. We are proposing to approve in today's action the moderate area plan for the Indian Wells Valley, and confirming that the SIP meets other applicable provisions of the CAA. See section IV.A of this proposed action.

4. Has the State Shown That the Air Quality Improvement in the Area Is Permanent and Enforceable?

CAA sections 110(a) and 172(c) generally require that plan provisions include enforceable emissions limitations, means or techniques. If an implemented measure has resulted in permanent emission reductions, we need not evaluate it for enforceability. Measures 2 through 5 (see section IV.A.2.c. of this proposed action) which we are proposing as meeting RACM per CAA 189(a) are permanent measures for the following reasons. Measures 2, 3 and 4 concern road paving, which is permanent by its very nature. Measure 5 concerns BLM closure of off-highway roads/trails which reduces emissions from wind erosion through permanent prevention of disturbance.

Measure 1 (Naval Air Weapons Fugitive Dust Control Plan) was developed employing a three-step process that included identifying/characterizing potential sources of fugitive dust, proposing control measures, and establishing a compliance schedule for the control measures to be completed. The Dust Control Plan presents a detailed assessment of each fugitive dust source. The Plan requires paving of unpaved roads with motor vehicle traffic of 25 vehicle trips per day or more that are greater than or equal to 75 feet in length; closing off of certain areas of vacant land from use and allowing natural recrusting or vegetation growth; stabilizing unpaved traffic and parking areas by applying recycled asphalt or concrete, spreading and compacting granite, or applying chemical dust stabilizers; watering an open pit actively disturbed once a week prior to and after soil excavation; and covering all open storage piles with a tarp or other suitable material. Once approved into the SIP, the dust control plan will be federally enforceable.

Measure 6 includes Kern County APCD Rules 401, 404.1 and 405. These rules have been previously approved by EPA and remain a federally enforceable component of the California SIP.

5. Does the Area Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the Act?

We are proposing to approve the maintenance plan based on applicable EPA guidance as discussed in section IV.B.

D. Conformity

Section 176(c)(1) of the Act prohibits federal agencies from permitting, approving, or funding any activity in nonattainment or maintenance areas that does not conform to a SIP once the SIP has been approved by EPA under section 110 of the Act. Section 176(c)(1) also prohibits metropolitan planning organizations (MPOs), such as the Kern County Counsel of Governments, from approving any project, program, or plan that does not conform to a SIP once the SIP has been approved by EPA under section 110 of the Act. The transportation conformity rule and the general conformity rules, which were developed in response to Section 176(c)(1), apply to nonattainment areas and attainment areas with maintenance plans. Both rules provide that conformity can be demonstrated by showing that the expected emissions from planned actions are consistent with the emissions budgets for the area.

1. Transportation Conformity

A motor vehicle emissions budget consists of the projected vehicle-related PM–10 emissions. For Indian Wells, this includes PM–10 from paved and unpaved roads and construction activities. A transportation conformity finding is a demonstration that emissions associated with regional transportation plans (RTPs) and transportation improvement plans (TIPs) do not exceed emission budgets contained in the SIP for the area. The transportation conformity budgets contained in the Indian Wells Plan are 1.6 tons per day for 2001 and 1.7 tons per day for 2013.

PM–10 vehicle exhaust is a very small portion of the total 2001 PM–10 inventory, 1.7 percent, and only 6 percent of the motor vehicle emissions budget. Therefore, Kern County APCD has concluded that vehicle exhaust PM–10 is not a significant factor in ensuring that future transportation plans will not interfere with maintenance of the PM–10 standard, and has not included the exhaust emissions in the budget.

Our review of the budgets has also been announced on EPA's conformity website: *http://www.epa.gov/oms/traq*. Once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity." We are concurrently revising the budgets for adequacy against the criteria contained in the conformity rule (40 CFR 93.118(e)(4)). In this notice, we propose to approve the PM–10 motor vehicle emission budgets contained in the plan as meeting the purposes of section 176(c)(1) and the transportation conformity rule at 40 CFR part 93, subpart A. We expect to publish a notice announcing our findings on the budgets in January 2003.

2. General Conformity

For Federal actions which are required to address the specific requirements of the general conformity rule, one set of requirements applies particularly to ensuring that emissions from the action will not cause or contribute to new violations of the NAAQS, exacerbate current violations, or delay timely attainment. One way that this requirement can be met is to demonstrate that "the total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment area, would not exceed the emissions budgets specified in the applicable SIP." 40 CFR 93.158(a)(5)(i)(A).

The decision about whether to include specific allocations of allowable emissions increases to sources is one made by the State and local air quality agencies. Such emissions budgets are unlike and not to be confused with those used in transportation conformity. Emissions budgets in transportation conformity are required to limit and restrain emissions. Emissions budgets in general conformity allow increases in emissions up to specified levels.

Kern County APCD and ARB have not chosen to include any specific emissions allocations for Federal projects that would be subject to the provisions of general conformity.

V. Proposed Action

We are proposing to approve the moderate area plan and the maintenance plan for the Indian Wells Valley, and to redesignate the area from nonattainment to attainment for the 24-hour and annual PM–10 NAAQS.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). It merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law.

Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule would approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This

[25] Pechan Report, pg. 41.

[26] September 2002 plan, Chapter 4, pg. 4–5 and Chapter 7, pg. 7–1.

[27] "Owens Valley PM–10 Planning Area Demonstration of Attainment State Implementation Plan", Great Basin Unified APCD, November 16, 1998, pg. S–3.

[28] Letter from Brian Lamb, Great Basin APCD, to Richard Harasick, Los Angeles Department of Water and Power, March 12, 2002.

[29] Op. Cit. Owens Valley PM–10 Plan, pg. S–17.

[30] Calcagni memo, pg. 12.

[31] September 2002 plan, Chapter 8, pg. 8–1.

[32] September 2002 plan, Appendix A, Rule 402, section III.F.

[33] September 2002 plan, Chapter 8, pg. 8–1.

[34] ARB Executive Order G–125–295, pg. 3 of the submittal.

action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This proposed action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control.

Dated: December 6, 2002.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 02–31665 Filed 12–16–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA–274–0372; FRL–7422–5]

Approval and Promulgation of State Implementation Plans and Designation of Areas for Air Quality Planning Purposes; California—Coachella Valley

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve state implementation plan (SIP) revisions submitted by the State of California to provide for attainment of the particulate matter (PM–10) national ambient air quality standard (NAAQS) in the Coachella Valley area and to establish emissions budgets for purposes of transportation conformity. EPA is also proposing to grant the State's request for an extension of the PM–10 attainment deadline to December 31, 2006. EPA is proposing to approve the SIP revisions under provisions of the Clean Air Act (CAA) regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: Written comments on this proposal must be received by January 16, 2003.

ADDRESSES: Comments should be mailed to: Eleanor Kaplan, Office of Air Planning (AIR–2), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. The rulemaking docket for this notice is available for public inspection during normal business hours at the EPA Region 9 office. A reasonable fee may be charged for copying parts of the docket.

Copies of the SIP materials are also available for inspection at the following locations:

California Air Resources Board, 1001 I Street, Sacramento, California 95814

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California 91765–0932. The 2002 plan is electronically available at: *http://www.aqmd.gov/aqmp/*.

FOR FURTHER INFORMATION CONTACT: Eleanor Kaplan, (415) 947–4147 or *kaplan.eleanor@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" means EPA. This supplementary information is organized as follows.

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I. Background

A. Summary

We are proposing to approve the SIP revisions submitted by the State of California to provide for the attainment of the particulate matter (PM–10) NAAQS for the Coachella Valley (Valley) and to grant the State's request that the attainment date be extended from December 31, 2001 to December 31, 2006. We are also proposing to approve the motor vehicle emissions budgets contained in the revised SIP as adequate for transportation conformity purposes.

B. Description of the Coachella Valley and its PM–10 Problem

The Coachella Valley PM–10 nonattainment area consists of an approximately 2,500 square mile portion of central Riverside County in California. The Valley, which is part of the Salton Sea Air Basin, extends in a northwest-southeast direction from the Banning Pass to the Salton Sea and is bounded by the San Jacinto Mountains to the west and the Little San Bernardino Mountains to the east. The Valley includes ten local jurisdictions, namely: the County of Riverside and the following cities: Cathedral City, Coachella, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs and Rancho Mirage.

The Valley's climate is continental desert-type with hot summers, mild winters and very little annual rainfall. Elevation ranges from approximately 500 feet above sea level in the northern part of the Valley to about 150 feet below sea level near the Salton Sea.

The economy of the Valley is mixed. The upper portion which includes the area north of Indio is used primarily for resort and retirement activities. The lower portion is also urbanized but is oriented around an agricultural economy that extends south of the Riverside County-Imperial County boundary. Agricultural commodities such as citrus fruit, dates, grapes, etc. are grown almost year round.

One of the major sources of PM–10 in the Valley is locally generated fugitive dust. Fugitive dust usually refers to the dust put into the atmosphere by the wind blowing over plowed fields, dirt roads or desert or sandy areas with little or no vegetation. There are also human caused sources of fugitive dust that include entrained road dust from paved and unpaved roads, agriculture and construction activities and disturbed vacant land.

In addition to man-made sources, windblown dust from the desert also is a major contributor to PM–10 in the Valley. High winds occur in the area because the low elevation in part of the Valley provides a natural path for the movement of air from the ocean into the desert during the summer and for the passage of storms moving from west to east during the winter. These winds can occasionally exceed 60 miles per hour and can pick up large amounts of natural desert soils which can then be transported over large distances.

C. Particulate Matter and Health Effects

Particulate matter with an aerodynamic diameter of less than 10 micrometers (PM–10) is the pollutant that is the subject of this action. The NAAQS are safety thresholds for certain ambient air pollutants set by EPA to protect public health and welfare. PM–10 is among the ambient air pollutants for which EPA has established a health-based standard. There are two separate NAAQS for PM–10, an annual standard of 50 micrograms per cubic meter (μg/m_3) and a 24-hour standard of 150 μg/m_3.[1] PM–10 causes adverse health effects by penetrating deep in the lung, aggravating the cardiopulmonary system. Children, the elderly, and people with asthma and heart conditions are the most vulnerable.

[1] EPA revised the NAAQS for particulate matter on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulates with new standards applying only to particulate matter up to 10 microns in diameter (PM–10). At that time, EPA established two PM–10 standards. The annual PM–10 standard is attained when the expected annual arithmetic mean of the 24-hour samples averaged over a 3-year period does not exceed 50 micrograms per cubic meter (μg/m^3). The 24-hour PM–10 standard of 150 μg/m^3 is attained if samples taken for 24-hour periods have no more than one expected exceedance per year, averaged over 3 years. See 40 CFR 50.6 and 40 CFR part 50, appendix K.

On July 18, 1997 EPA reaffirmed the annual PM–10 standard and slightly revised the 24-hour standard (62 FR 38651). In the same action, EPA also established two new standards for PM, both applying only to particulate matter up to 2.5 microns in diameter (PM–2.5).

D. Design and Classification

When the Clean Air Act Amendments (CAAA) were enacted in 1990, all areas in the United States that were previously designated as federal nonattainment areas for PM–10, including the Valley, were initially designated as "moderate" PM–10 nonattainment. Once an area is designated nonattainment, section 188 of the CAA outlines the process for classification of the area and establishes the area's attainment date.

EPA determined on January 8, 1993, that the Valley could not practicably attain the PM–10 NAAQS by the applicable attainment deadline for moderate areas which was December 31, 1994, per section 188 (c)(1) of the Act, and reclassified the area as serious PM–10 nonattainment. See 58 FR 3334. In accordance with section 189(b)(2) of the Act, the applicable deadline for submittal of SIPs for the Valley addressing the requirements for serious PM–10 nonattainment areas in section 189(b) and (c) of the Act were:

(1) August 8, 1994 (18 months after the effective date of the reclassification), SIP to ensure the implementation of BACM no later than 4 years after reclassification;

(2) February 8, 1997 (4 years after the effective date of the reclassification), SIP to provide for progress and expeditious attainment.

The South Coast Air Quality Management District (SCAQMD), which has jurisdiction over the Valley, adopted the 1994 Best Available Control Measures (BACM) SIP for the Valley on July 8, 1994 and the California Air Resources Board (CARB) submitted the plan to us on August 26, 1994. The 1994 plan, in accordance with the provisions of CAA section 189(b)(1)(B), identified the Best Available Control Measures (BACM) that were required for this serious PM–10 nonattainment area and committed to implementation of these measures by February 8, 1997.

Subsequent air quality monitoring data indicated that there were no violations of the annual or 24-hour PM–10 NAAQS in the Valley for the years 1993–1995. On December 13, 1996 the SCAQMD adopted a Request for Redesignation and a Maintenance Plan ("1996 plan") and on February 5, 1997 CARB submitted the plan to us. The 1996 plan addressed the remaining plan provisions for serious PM–10 nonattainment areas, as specified in the CAA sections 188 and 189, and requested redesignation to attainment based on three years of clean data. However, before EPA acted on the 1996 plan, the area recorded a violation of the annual PM–10 NAAQS during the period from 1999 through 2001 and was therefore unable to meet its attainment date of December 31, 2001.

On June 21, 2002 and September 13, 2002 the SCAQMD adopted an amendment to the 1996 Valley Plan ("2002 Plan"). The California Air Resources Board (CARB) submitted the 2002 Plan to EPA on November 18, 2002. The amendment contains four revisions: (1) It requests an extension of the attainment date to December 31, 2006; (2) it demonstrates attainment by 2006; (3) it establishes motor vehicle emissions budgets for purposes of transportation conformity and (4) it formally withdraws the maintenance plan provisions and the redesignation request contained in the 1996 plan. On November 20, 2002, we found that the 2002 Plan met the completeness criteria in 40 CFR part 51, appendix V.

For the 1996 and 2002 Plans the SCAQMD and CARB satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption of both the 1996 and 2002 Plans, and the motor vehicle budgets. The SCAQMD conducted public workshops, and properly noticed the public hearings at which the Plans were adopted. The SIP submittal for the 1996 and 2002 Plans includes proof of publication of notices for the public hearings. Therefore, we conclude that the 1996 and 2002 Plans met the public notice and involvement requirements of sections 110(a)(1) of the CAA.

Beyond meeting the CAA public notice and involvement requirements, the SCAQMD and the Coachella Valley Association of Governments (CVAG) conducted an exemplary program involving the public in the SIP development process. A Valley Task Force (Task Force) was formed with a wide diversity of members including mayors and city council members of all Valley cities, tribal chairs or co-chairs from all local Indian tribes, city managers, representatives from the local farm bureau, building industry association, developers, CALTRANS, and staff from the SCAQMD, CARB and EPA. The Task Force operated through sub-committees to review and comment on SIP development and implementation issues. The Task Force intends to assist adoption and implementation of the control measures that it helped develop.

E. CAA Requirements

Title I of the CAA was substantially amended in 1990 to establish new planning requirements and attainment deadlines for the NAAQS. The most fundamental of these nonattainment area provisions applicable to the Valley is the requirement that the State submit a SIP demonstrating attainment of the PM–10 NAAQS. This demonstration must be based upon enforceable measures to achieve emission reductions leading to emissions at or below the level predicted to result in attainment of the NAAQS throughout the nonattainment area. The measures must meet the standard for Reasonably Available Control Measures (RACM) and BACM and the measures must be implemented expeditiously and ensure attainment no later than the applicable CAA deadline.

EPA has issued a "General Preamble" describing the Agency's preliminary views on how EPA intends to act on SIPs submitted under Title I of the Act. See 57 FR 13498 (April 16, 1992), 57 FR 18070 (April 28, 1992). EPA later issued an Addendum to the General Preamble providing guidance on SIP requirements for serious PM–10 areas. 59 FR 41998 (August 16, 1994). The reader should refer to these documents for a more detailed discussion of EPA's preliminary interpretations of Title I requirements. In this proposed rulemaking action, EPA applies these policies to the Valley PM–10 SIP submittal, taking into consideration the specific factual issues presented.

Since the 2002 Plan requests an extension of the attainment date beyond the applicable deadline of December 31, 2001, it is also subject to the provisions of CAA section 188(e) which deal with the requirements for extension of attainment dates for serious PM–10 nonattainment areas.

II. Evaluation of the SIP Submittals

A. Separation of Rulemaking Actions on the Annual and 24-hour Standards

Although, as discussed above, the Act contains two PM–10 NAAQS (an annual and a 24-hour standard) in this proposed action we are evaluating the Valley 2002 Plan only for its compliance with the requirements for attaining the annual PM–10 standard.[2] We need not, at this time, evaluate the plan for its compliance with the Act's requirements for the 24-hour PM–10 standard because the data indicate that there were no violations of the 24-hour standard during the period 1993–2001.[3] We find therefore that the area is currently in attainment for the 24-hour PM standard.

Although the Valley had attained both the annual and 24-hour PM–10 NAAQS during the years 1993–1995, increased construction activities in the Valley during the period 1999–2001 caused a violation of the annual standard at the area's two monitoring sites as shown in Table 1.

TABLE 1.—ANNUAL ARITHMETIC MEAN FOR PM–10 IN THE VALLEY, 1999–2001

	1999	2000	2001	Expected AAM
Indio	52.7	51.9	49.4	51.3
Palm Springs	28.9	24.4	26.7	26.7

Note: samples collected on high wind days are excluded.

B. Emissions Inventory

CAA section 172(c)(3) requires that nonattainment area plans include a comprehensive, accurate, and current inventory of actual emissions from all sources in the nonattainment area.

The inventory in the 2002 Plan supersedes the 1996 Plan inventory and includes a 2000 base year inventory that utilizes the 1995 inventory representing annual average and 24-hour emissions. Information on the methodology that was employed in developing estimates for emissions sources for the 1995 inventory is contained in Chapter 3 of the 1996 Plan.

In addition to the 2000 base year inventory, the 2002 Plan provides future year inventories for 2003 and 2006. The emission reductions assumed from control measure implementation by December 2003 are included in the 2003 inventory.

CARB uses a California-specific model known as EMFAC for the mobile source component of the emissions inventories, including the model used to calculate exhaust and evaporative emissions from motor vehicles and the contribution of mobile emissions to the PM–10 inventory. The version of the model that was and remains currently available for use in the 1996 and 2002 Plans is known as EMFAC 7G, adopted by CARB in 1996. (CARB, *Methodology for Estimating Emissions from On-Road Motor Vehicles, 1996*). EPA has approved EMFAC 7G for use in transportation plan and program conformity analyses (letter from David Howekamp, EPA to Michael P. Kenny, CARB, dated April 16, 1998).

CARB has recently prepared draft revisions to EMFAC 7G, which CARB has committed to finalize and submit in the near future. However, because EMFAC 7G represented the best available emissions model at the time the plan was developed and submitted, our approval of the 2002 Plan's emissions inventory and the motor vehicle emissions budgets derived from EMFAC 7G is warranted at this time.

Both SCAQMD and CARB have committed to submit within a very short period of time a revised plan with updated and refined emission inventories and budgets. The agencies will base the new plan and budgets on use of the most current and accurate emissions data, including the revised version of the EMFAC model for motor vehicle emissions incorporating the latest planning assumptions on vehicle fleet and age distribution, and incorporating the latest activity levels.

In proposing to approve the 2002 Plan based on EMFAC 7G, we also find it significant that the motor vehicle exhaust and brake and tire wear emissions in both the 1996 and 2002 Plan inventories constitute only about 3% of the total emissions, demonstrating that PM–10 from motor vehicles (exclusive of reentrained dust from paved and unpaved roads) is not a significant contributor to the air quality problem in the Valley. In summary, we are proposing to approve the 2002 Plan based on EMFAC 7G because it is the only currently approved model, CARB and SCAQMD have committed to revise the PM–10 Plan based on the updated version of EMFAC in 2003, and the overall contribution of PM–10 from motor vehicles is only about 3%.

The transportation conformity implications of our proposed approval are discussed later in this document in Section II under Motor Vehicle Emissions Budgets.

C. Control Measures

1. Applicable Requirements

Because the Valley is classified as serious nonattainment for PM–10, the nonattainment plan for the area must include control measures that reflect a BACM level of control for each source category that contributes significantly to a violation of the annual NAAQS. CAA section 189(b)(1)(B).[4]

By analogy to Title I Part C of the Clean Air Act relating to Prevention of Significant Deterioration (PSD), EPA interprets BACM for serious PM–10 areas as generally similar to the definition of Best Available Control Technology (BACT) for the PSD program. PM–10 BACM is therefore defined as "the maximum degree of emissions reduction of PM–10 and PM–10 precursors from a source * * * which is determined on a case by case basis, taking into account energy, environmental, and economic impacts and other costs, to be achievable for such source through application of production processes and available methods, systems, and techniques for control of each such pollutant." General Preamble Addendum, 59 FR 42010 (August 16, 1994).

Finally, the control measures in the serious area plan must be sufficient to achieve expeditious attainment by the applicable date.

2. Identification of Significant Source Categories

The 1996 Plan (Tables 4–1 and 4–2) used receptor modeling to identify the emission sources that contribute to the PM–10 air quality at specific receptor sites. The receptor model used is the Chemical Mass Balance (CMB) Model. This method matches the measured chemical components of the PM–10 samples with known chemical profiles of individual sources of PM–10 particles. The results of this model are shown in Table 4–1 of the 1996 Plan "Annual Average Source Contributions for the Coachella Valley."

Future year PM–10 concentrations were estimated using a linear rollback approach for each primary source. In the linear rollback approach, it is presumed that future year PM–10 contributions from each source category are a linear function of emission rates for each source category. Table 4–3 in the 1996 Plan provides base year and future ambient PM–10 concentrations.

From these evaluations, the 1996 Plan identified significant sources and a determination of which categories have "significant" impacts on PM–10 concentrations. The significant sources identified include background, transport, mobile, fugitive dust (including construction, paved roads, unpaved roads, agriculture, windblown), and vegetative burning.

We propose to find that the 2002 Plan has not excluded any source categories that should be considered significant from its list of significant source categories. The 2002 Plan presents acceptable modeling to evaluate the impact of various PM–10 sources and source categories on PM–10 levels.

The 2000 inventory in the 2002 Plan indicates that emissions from industrial point sources were insignificant—0.29 tons per day out of a total of 54.44 tons per day from all sources. Therefore, based on their negligible impact on ambient PM–10 levels, we propose to determine that major sources of PM–10 precursors do not contribute significantly to PM–10 levels which exceed the annual standard in the Valley.

3. Description of Control Measures

(a) BACM: Existing Controls

In the 1994 plan (Chapter 4) and the 1996 plan (Chapter 1), the SCAQMD has provided extensive documentation on both the control measures included in the plan and those rejected. The documentation quantifies the costs of implementation, discusses the technological feasibility of control options, explains the schedule for expeditious implementation and examines other factors as part of a comprehensive justification of the measures as reflecting BACM. Implementation of BACM in the Valley has been carried out through dust control ordinances of the local jurisdictions in Valley, and with AQMD Rules 403 and 403.1 serving as backstop regulations for the Valley's construction activity emissions.

The local ordinances developed by Riverside County, Cathedral City, Coachella, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs and Rancho Mirage are based on a model fugitive dust control ordinance developed by CVAG, local governments, and the SCAQMD. The ordinances typically require: (1) Dust control plans for each construction project needing a grading permit; (2) plans to pave or chemically treat unpaved surfaces if daily vehicle trips exceed 150; (3) imposition of 15 mph speed limits for unpaved surfaces if daily vehicle trips do not exceed 150; (4) paving or chemical treatment of unpaved parking lots; and (5) actions to discourage use of unimproved property by off-highway vehicles.

SCAQMD Rule 403, Fugitive Dust, helps to establish performance criteria for the local dust ordinances and also serves as a backstop rule for the Valley. The Rule establishes reasonably available and best available fugitive dust control measures to reduce fugitive dust emissions associated with agricultural operations, construction/demolition activities (including grading, excavation, loading, crushing, cutting, planing, shaping or ground breaking), earth-moving activities, track out of bulk material onto public paved roadways, and open storage piles or disturbed surface areas.

The Rule 403 Handbook allows producers to be exempted from Rule 403 requirements if they implement a specified number of conservation practices listed for the particular operation. The handbook includes conservation practices for active operations, inactive operations, farm yard areas, track-out, unpaved roads, and storage piles. EPA approved the handbook into the SIP because implementation of the conservation practices should achieve the emission reductions that would otherwise be accomplished through compliance with the general provisions of Rule 403. (65 FR 8057, February 17, 2000).

SCAQMD Rule 403.1, Wind Entrainment of Fugitive Dust, establishes dust control requirements under high wind conditions in the Valley. The Rule consists of additional

[2] The two PM–10 standards are independent and must be addressed independently by states in their SIPs. This independence was highlighted by the Ninth Circuit Court of Appeals in *Ober* v. *EPA*, 84 F.3d 304 (9th Cir. 1996).

[3] There were exceedances of the 24-hour PM–10 standard during 2000-2001 but not in 1999. Those exceedances were caused by high wind events and were flagged by the SCAQMD under the provisions of EPA's Natural Events Policy which is discussed in detail in Section III of this proposed action. If EPA concurs that data were properly flagged under that policy, the data are not used for purposes of determining attainment of the NAAQS or for computing a design value for the area. EPA has received documentation from CARB justifying the flagging of each of these events under the Natural Events Policy and concurs with CARB's justification. Given the flagging of all the 24-hour exceedances during 2000 and 2001, EPA concludes that there was no violation of the 24-hour standard during the period from 1999–2001.

[4] When a moderate area is reclassified to serious, the requirement to implement RACM in section 189(a)(1)(C) continues to apply. Thus, a serious area's PM–10 plan must provide for the implementation of RACM as expeditiously as practicable to the extent that the RACM requirements have not been satisfied in the area's moderate plan. We are not making an independent assessment of the Plan's control measures against the RACM and RACT requirements since the plan will meet RACM and RACT requirements if it is found to meet the BACM requirement.

fugitive dust measures for agriculture, abandoned disturbed surface areas, and bulk material deposits entrained by high winds within the Valley. EPA also approved the sections of Rule 403.1 Implementation Handbook including the chapters on "Wind Monitoring" and "Storage Piles".[5]

Clean Streets Management Program: In order to assure implementation of the control measures that had been enacted for entrained road dust, which is one of the larger source categories in the Valley, CVAG has worked to secure funding for a Clean Streets Management Program through the allocation of Congestion Mitigation and Air Quality (CMAQ) funds which now falls under the Transportation Efficiency Act for the 21st Century (TEA–21). Under the Clean Streets Management Program, local jurisdictions submit proposals to CVAG requesting funding for implementation of clean streets management practices, *i.e.*, stabilization of unpaved shoulders, installation of wind breaks, etc. CVAG has provided technical assistance to the local jurisdictions to identify cost effective eligible projects for CMAQ funding.

(b) Most Stringent Measures (MSM)

One of the requirements for an extension of attainment date, which the Valley has requested (see section II G) is that "the State demonstrates to the satisfaction of the Administrator that the plan for that area includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State, and can feasibly be implemented in the area." (CAA section 188(e)).

Chapter 4 of the 2002 Plan contains a description of the SCAQMD's MSM analysis. That analysis compares the provisions in the Valley's local dust control ordinances and applicable SCAQMD Rules 403 and 403.1 to regulations from Maricopa County (Arizona), Clark County (Nevada) the San Joaquin Valley (California) and the South Coast Air Basin (California). These areas were selected because of similar geographic conditions (arid climates) as the Valley and because of recent planning/rule development efforts in these regions. MSM analyses were provided for each fugitive dust category, including construction activities, disturbed vacant lands, unpaved roads/parking lots, paved road dust and agricultural activities. (See sections 4.1, 4.2, 4.3, 4.4 and 4.5 of the 2002 Plan.)

The upgraded control measures that resulted from the Valley MSM analysis are categorized as Construction (CV BCM 1), Disturbed Lands (CV BCM 2), Unpaved Roads and Unpaved Parking Lots (CV BACM 3), Paved Roads (CV BACM 4), and Agriculture (CV BCM 5). The implementing agencies are either the local jurisdictions or the SCAQMD or, in the instances of Construction and Paved Roads, both parties.

Chapter 5 of the 2002 Plan provides the control strategy that has been developed by the SCAQMD based on their MSM analysis. Table 2 below summarizes Tables 5–1 and 5–2 contained in the 2002 Plan which provide information on the adoption and implementation schedules for the MSMs, the implementing agencies and the estimated tonnage per day reduction for each of these control measures.

TABLE 2.—MSM ADOPTION AND IMPLEMENTATION SCHEDULES, AND PROJECTED EMISSION REDUCTIONS FOR THE VALLEY

Control measure	Source category	Implementing agency	Adoption schedule	Implementation schedule	Estimated emission reductions 2006
CV BACM 1	Construction	Local Jurisdictions	Prior to 10/1/03	Begin no later than 10/1/03.	2.0 tons/day.
		AQMD	Prior to 1/1/04	Begin no later than 1/04.	
CV BACM 2	Disturbed Lands	Local Jurisdictions	10/03	Begin no later than 10/03.	TBD After Survey.
CV BACM 3	Unpaved Roads and lots.	Local Jurisdictions	10/03	Begin no later than 10/1/03, phased implementation.	0.71 tons/day.
CV BACM 4	Paved Roads	Local Jurisdictions	10/03	Begin no later than 10/1/03.	0.57 tons/day.
		AQMD	01/04	Begin no later than 1/04.	
CV BCM 5	Agriculture	AQMD	01/04	Begin no later than 1/04.	0.02 tons/day.
Total Projected Emission Reductions.					3.3 tons/day.

3. Implementation of Control Measures

The SCAQMD commits to meet the adoption dates, implementation dates, and emission reduction targets, unless a measure, in whole or in part, is determined to be infeasible. Should that be the case, the SCAQMD commits to achieve equivalent reductions on the same schedule through substitute controls. If the SCAQMD determines that a control measure is infeasible, SCAQMD staff would document the infeasibility of the control measure provision and propose a replacement provision or contingency measure (if necessary) to achieve equivalent emissions reductions. Significant changes to a control measure would need to be documented in a SIP revision and would be subject to EPA review and approval. The plan cites the feasibility criteria as: (1) Cost feasibility, namely that a control measure is considered cost feasible if the cost-effectiveness is less than $5,300 per ton of PM–10 reduced on an annual basis, and (2)

[5] EPA originally approved a version of Rule 403 into the SIP on June 14, 1978. The SCAQMD subsequently revised the rule in 1992, 1993 and February 14, 1997. On August 11, 1998 (63 FR 42786) EPA proposed granting limited approval and limited disapproval of Rule 403 as amended on February 14, 1997 because it did not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. EPA gave final limited approval and disapproval of Rule 403 on December 9, 1998 (63 FR 67784). Following another amendment that was submitted by the SCAQMD as a SIP revision on May 13, 1999, EPA granted full approval of the Rule on February 17, 2000 (65 FR 8057).

technological feasibility, namely that a control measure is considered technically feasible if the following conditions are satisfied: the control technology is currently available and the control efficiency is at least 10%.

4. Proposed Action on Control Measures

We conclude that the 2002 Plan demonstrates that the control measures for each significant source category are consistent with the BACM requirement in terms of the timing, degree, and extent of the control program and reflect current MSM.

We therefore propose to approve the control measures under CAA section 110(k)(3), as meeting the requirements of CAA sections 110(a), 188(e) and 189(b)(1)(B). We are proposing to approve each of the control measure commitments to adopt and implement rules and ordinances by specified dates and to achieve particular emission reductions by milestone years. We are also proposing to approve the commitment made by the SCAQMD Board directing the Executive Officer to update the 2002 Plan, including emissions budgets in 2003, using the latest approved motor vehicle emissions model and planning assumptions.

D. Contingency Measure

The CAA (section 172(c)(9)) requires that the SIP include contingency measures to be implemented if the area fails to meet progress requirements or to attain the NAAQS by the applicable deadline. Implementation of these contingency measures is automatic, and requires no further action by the SCAQMD or any other agency.

The contingency measure identified in the 2002 Plan, CVCTY 3, is the requirement to reduce emissions from turf overseeding activities on Golf Courses/Turf Areas. Turf overseeding generates fugitive dust through the raking process and thatch removal when summer grass is replaced with winter rye grasses. According to the SCAQMD, following a series of studies, new methods were developed to remove the summer grass resulting in fugitive dust emission reduction. The SCAQMD staff believes the control measure is currently being adopted voluntarily by local golf courses, but in the event of failure of Reasonable Further Progress (RFP) or nonattainment by the year 2006 or if voluntary compliance drops, SCAQMD would propose to implement the measure with a SCAQMD rule or rule amendment.

EPA concludes that the 2002 Plan satisfies the contingency requirements, and proposes to approve the 2002 Plan's contingency provisions under section 172(c)(9).

E. Reasonable Further Progress and Milestones

The 2002 Plan must also include quantitative milestones which are to be achieved every 3 years until the area is redesignated to attainment, and show Reasonable Further Progress (RFP) toward attainment by the applicable attainment deadline. CAA section 189(c).

Table 3–4 in the 2002 Plan, "2002 PM–10 Emission Inventory by Major Source Category" shows that the total tpd emissions from all sources for 2000 year was 54.44. Table E–1 contained in Appendix E of the Plan provides a baseline inventory for 2003 which was selected by the SCAQMD as the milestone year and shows that emissions reductions resulting from the adoption and implementation of CV BCM–1 "Construction and Earth Movement Activities," would amount to a total of 0.96 tpd, reducing the total amount of emissions from all sources in 2003 to 54.08 tpd, which represents remaining emissions by the end of 2003. assuming a 50% combined ordinance/rule penetration. The reduction in total tpd emissions from 2002 to 2003 demonstrates reasonable progress toward the attainment level projected for 2006.

The SCAQMD made a commitment in resolutions accompanying the 2002 Plan to update the plan, including emissions budgets in 2003, using the latest approved version of EMFAC and the latest approved planning assumptions.[6] In addition, CARB's Executive Order G–125–391, accompanying the submittal of the 2002 Plan, stated that CARB, "upon the timely submission by the District of an approvable revision to the 2002 Coachella Valley PM–10 State Implementation Plan and 2002 Coachella Valley PM–10 State Implementation Plan Addendum, shall process such revision and submit it to the U.S. EPA in 2003."

We find that the assumptions regarding the control measures are reasonable. Therefore we propose to find that the 2002 Plan meets the provisions of CAA section 189(c) requiring quantitative milestones showing RFP toward attainment by the attainment date of 2006.

F. Attainment Demonstration

The SIP must provide a detailed demonstration (including air quality modeling) that the specified control strategy will reduce PM–10 emissions so that the standards will be attained as soon as practicable but no later than December 31, 2006, assuming final EPA approval of the attainment deadline extension. CAA section 189(b)(1)(A). EPA considers the area to be in attainment of the NAAQS if 24-hour concentrations are 150 μg/m3 or less and the annual arithmetic mean is 50 μg/m3 or less.

The attainment demonstration in the 2002 Plan analyzes both the 24-hour and annual NAAQS, but since the Valley has not violated the 24-hour standard during the period from 1993—2001, our review is limited to the annual standard.

A modeled attainment demonstration for the PM–10 annual standard should first estimate the temporal and spatial distribution of PM–10 and PM–10 precursor emissions reductions that result from the adopted control measures by the attainment date. It should then simulate the ambient air concentration of the remaining emissions in an air quality model and show that all locations within the nonattainment area have annual average PM–10 concentrations at or below the level of the annual PM–10 standard of 50 μg/m3. *See* "Guidelines on Air Quality Models," 40 CFR part 52, appendix W, § 7.2.2 and "PM–10 SIP Development Guideline", EPA–450/286–001, June 1987.

The attainment demonstration in the 2002 Plan relies on control measures that either are approved or have been proposed for approval and meet our SIP enforceability criteria. The emissions estimates credited to these control measures in the attainment demonstration are reasonable and the measures are being implemented on a schedule that is as expeditious as practicable and will result in attainment by the earliest practicable date.

[6] Resolution No. 02–21 adopted by the SCAQMD Board June 21, 2002:

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board directs the Executive Officer to update the 2002 CVSIP, including emissions budgets in 2003, using the latest approved motor vehicle emissions model and planning assumptions; and

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board requests that the U.S. EPA approve the District's commitment to forward to the CARB for review and submittal to the U.S. EPA as a revision to the State Implement Plan by 2003 the update to the PM–10 emissions inventory portion of the 2002 CVSIP, including revised emission budgets using the latest approved motor vehicle emissions model and planning assumptions; and

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District requests that the U.S. EPA approve the emissions budgets based on the 2002 CVSIP for use only until the U.S. EPA finds adequate the revised budgets for the same years submitted as part of the 2003 revision to the 2002 CVSIP.

A complete description of the modeling for the Valley is found in the 1996 Plan (Chapter 4). In summary, modeling was based on the following:

The SCAQMD determined primary PM–10 source apportionment by a combination of receptor models. Source apportionment information, which was used in the 1994 and the 1996 Plan was determined through receptor modeling known as the Chemical Mass Balance (CMB) model which is a USEPA approved method that matches the measured chemical components of the PM–10 samples with known chemical profiles of individual sources of PM–10 particles.

Since secondary particles in the Valley represent a small component of the PM–10 problem and are transported from the South Coast Air Basin and since the limited number of major sources in the Valley are already regulated for NO_X, SO_X and VOC emissions under existing SCAQMD rules, the SCAQMD did not model secondary PM–10 generated within the Valley. However, the impact of transported secondary particulates into the Coachella Valley from the South Coast Air Basin was projected using UAM/LC (Urban Airshed Model/Linear Chemistry).

The modeling attainment demonstration for future years in the 2002 Plan utilized a linear rollback approach for each primary source category.

Based on this modeling, the 2002 Plan (Tables 6–2 and 6–3) compares the annual and 24 hour PM design values for the years 2003 and 2006. The table provides information on 2006 concentrations both for the baseline and control scenarios as shown in Table 3 below. This modeling demonstrates attainment of the annual average PM 10 standard by the year 2006 and continued attainment of the 24-hour standard in 2006.

TABLE 3.—2003 AND 2006 MODELED PM–10 CONCENTRATIONS (μG/M³) IN THE VALLEY

Source	2003 baseline annual	2003 baseline 24-hour	2006 baseline annual	2006 baseline 24-hour	2006 annual with more controls	2006 24-hour with more controls
Background	3.0	3.0	3.0	3.0	3.0	3.0
Transport	5.9	14.1	5.9	14.1	5.8	14.1
Mobile	1.1	3.3	1.1	3.2	1.1	3.2
Fugitive Dust:						
Construction	4.5	16.6	4.7	17.1	4.2	15.4
Paved Roads	4.5	16.2	4.6	16.9	3.7	13.3
Unpaved Roads	3.2	11.6	3.2	11.6	2.8	10.0
Agriculture	0.6	2.1	0.5	2.0	0.5	1.9
Windblown	18.3	66.7	18.3	66.7	18.3	66.7
Veg. Burning	5.5	9.7	5.2	9.2	5.2	9.2
Others	3.8	3.1	4.0	3.3	4.0	3.3
Totals	50.4	133.0	50.6	147.0	48.6	140.1

In contrast to other pollutants, we have not issued detailed modeling guidelines for PM–10, nor have we established minimum performance requirements for PM–10 modeling. We have reviewed the SCAQMD's modeling approaches for both primary PM–10 and secondary PM–10, using both receptor modeling and dispersion modeling. We believe that the modeling in the 1996 and 2002 Plans provides a reasonable basis for linking emissions with air quality, for identifying an appropriate control strategy, and for determining whether the strategy delivers attainment for the 24-hour and annual PM–10 NAAQS.

The SCAQMD's modeling shows that the level of emissions after implementation of the proposed set of control strategies would result in ambient concentrations within the Valley in 2006 consistent with attainment of annual and 24-hour PM–10 NAAQS. We therefore conclude that the air quality modeling and attainment demonstration contained in Chapter 6 of the 2002 Plan are consistent with existing EPA guidance, and we propose to approve the attainment demonstration under CAA section 189(b)(1)(A).

G. Extension of Attainment Deadline

CAA section 188(e) allows states to apply for up to a 5-year extension of the serious area attainment deadline of December 31, 2001. In order to obtain the extension, there must be a showing that: (1) Attainment by 2001 would be impracticable; (2) the state complied with all requirements and commitments pertaining to the area in the implementation plan for the area; and (3) the state demonstrates that the plan for the area includes the most stringent measures (MSM) that are included in the SIP of any state or are achieved in practice in any state, and can feasiblely be implemented in the area.

As discussed in section II C above, we propose to conclude that the 2002 Plan includes BACM and MSM for each significant source category, and that the implementation schedule for each control measure is as expeditious as practicable. Using UAM/LC and chemical mass balance modeling techniques discussed above in section II F, the SCAQMD calculated the annual arithmetic mean for PM–10 based on 1999–2001 data for the two sampling sites in the area at Palm Springs and Indio. That data showed that the Palm Springs site had an expected annual arithmetic mean of 26.7 μg/m³ while the Indio site with an expected annual arithmetic mean of 51.6 μg/m³ exceeded the annual standard. Table E–2 of Appendix E of the 2002 Plan shows that by the end of 2003 the average tons per day would be 54.08. Table 3–7 of the 2002 Plan shows that in 2006 with all the SIP controls in place the tons per day emitted would be 51.11. The 2003 data are above the carrying capacity and, based on this, we therefore conclude that 2006, the requested extension date, is the most expeditious date that the Valley can attain the standard.

We find that the SCAQMD has met the CAA provisions relating to attainment date extensions, and we propose to grant, under CAA section 188(e), a 5-year attainment date extension to December 31, 2006.

H. Review of Natural Events Action Plan

Section 188(f) of the CAA provides that the Administrator may, on a case-by-case basis, waive any requirement

applicable to any serious area under subpart 4 where the Administrator determines that anthropogenic sources of PM–10 do not contribute significantly to the violation of the PM–10 standard in the area. In May of 1996 EPA issued a Natural Events Policy (Policy) that was intended to provide guidance to air districts regarding the exclusion of ambient air quality data affected by extraordinary natural events such as volcanic and seismic activity, wildland fires and high winds.

In order to qualify for the exclusion of ambient air quality data, the Policy requires the adoption of a Natural Events Action Plan (NEAP) to minimize emissions and to protect public health. The Policy requires that the NEAP (1) establish public notification and education programs, (2) minimize public exposures to high concentrations of PM–10 due to future natural events, (3) abate or minimize appropriate contributing controllable sources of PM–10, (4) identify, study and implement practical mitigating measures as necessary, (5) periodically reevaluate the conditions causing violations of the PM–10 NAAQS in the area and the state of implementation of the NEAP and the adequacy of the actions being implemented, (6) document natural events, and (7) develop the NEAP in conjunction with the stakeholders affected by the plan.

In accordance with the requirements of the Policy, the SCAQMD included a NEAP in the 1996 Plan and submitted a revised version in the 2002 Plan. Although EPA does not require that a NEAP be submitted as part of a SIP the Policy states that final plans should be submitted to EPA for review and comment.

The revised NEAP describes the status of the commitments made in the 1996 NEAP, all of which were fully implemented with the exception of the element "Evaluation and implementation of practical mitigation measures," which was partially implemented by an initial blowsand study. Phase 2 of that study has not been initiated to date owing to funding constraints.

We find that the NEAP in the 2002 Plan meets the requirements of the Agency's Natural Events Policy. Further, we would like to commend the staff of the SCAQMD and the CVAG on the scope of the plan and the wide cooperation and expertise that has been involved in its implementation.

I. Motor Vehicle Emissions Budgets

Rate of progress and attainment demonstration submittals must specify the maximum amount of transportation-related motor vehicle emissions allowed in each milestone year and the attainment year and demonstrate these emissions levels, when considered with emissions from all other sources, are consistent with RFP and attainment. In order for us to find these emissions levels or "budgets" adequate and approvable, the submittal must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and be approvable under all pertinent SIP requirements.

The budgets defined by this and other plans, when they are approved into the SIP or, in some cases, when they are found to be adequate, are then used to determine the conformity of transportation plans, programs, and projects to the SIP, as described by CAA section 176(c)(3)(A). For more detail on this part of the conformity requirements, see 40 CFR 93.118. For transportation conformity purposes, the cap on emissions of transportation-related PM–10 precursors is known as the motor vehicle emissions budget. The budget must reflect all of the motor vehicle control measures contained in the attainment demonstration (40 CFR 93.118()(4)(v)), and must include PM–10 and PM–10 precursor emissions from the following sources: motor vehicles, reentrained dust from traffic on paved and unpaved roads, and emissions during construction of highway and rail projects.

A motor vehicle budget for the Valley for the attainment year 2006 is presented in Table 3–8 of the 2002 Plan and the budget for milestone year 2003 is presented in appendix E, Table E–3. Both budgets appear below in Table 4.

TABLE 4.—2003 AND 2006 MOTOR VEHICLE EMISSION BUDGETS FOR TRANSPORTATION CONFORMITY FOR THE VALLEY

[PM–10 tons/day]

	2003[1]	2006
Motor Vehicles	1.04	0.98
Reentrained paved road dust	7.04	6.27
Reentrained unpaved road dust	5.44	4.72
Road Construction	0.06	0.06
Total	13.58	12.03

[1] Presents remaining emissions at the end of the year 2003 with implementation of CV BCM–1 and 50% combined ordinance/rule penetration by that time.

As discussed above in section II.B, Emissions Inventory, the motor vehicle emissions portion of this budget (the evaporative and tailpipe emissions) was developed using the EMFAC 7G motor vehicle emissions factors.

We propose to approve the motor vehicle emission budget contained in the 2002 Plan as consistent with the adequacy criteria of 40 CFR 93.118(e)(4), including consistency with the baseline emission inventory, and the reductions needed for continued attainment of the standard after the attainment deadline.

As discussed in section II.B, CARB is finalizing a revised version of EMFAC, and both CARB and SCAQMD have committed to adopt and submit a comprehensive revision to the PM–10 plan in 2003, using the new EMFAC, incorporating the latest planning assumptions on vehicle fleet and age distribution, and incorporating the latest activity levels. This revised plan will include revised budgets, based on the new inventory and attainment demonstration. Assuming that these new budgets are adequate and approvable, the new budgets will soon replace the budgets in the current submittal.

Since these revised budgets will be based on the most current and accurate motor vehicle emissions data, we intend to allow expedited use of the updated budgets in transportation conformity determinations. Therefore, we propose to limit our proposed approval of the budgets in the current submittal to last only until we find adequate the new budgets that are expected to be adopted in 2003 as part of the revised PM–10 plan for the Valley. On the effective date of our adequacy finding for the new budgets, our approval of the budgets in the current submittal would terminate and thus the new budget would apply for purposes of transportation conformity. 67 FR 69139 (November 15, 2002).

III. Summary of EPA's Proposed Action

We are proposing to approve the serious area PM–10 SIP submitted by the State of California for the Valley. Specifically, we are proposing to approve the 1996 Plan and the 2002 Plan with respect to the CAA requirements for emissions inventories under section 172(c)(3); control measures under section 110(k)(3), as meeting the requirements of sections 110(a) and 188(b)(1)(B); RFP under section 189(c); contingency measures under section 172(c)(9); demonstration of attainment under section 189(b)(1)(A); and motor vehicle emissions budgets under section 176(c)(2)(A). We are also proposing to approve the State's request for an extension of the attainment date from December 31, 2001 to December 21, 2006 under CAA section 188(e). We show the proposed approvals in Table 5 "Proposed Approvals of South Coast

PM–10 Submittals for the Coachella area."

PROPOSED APPROVALS OF SOUTH COAST PM–10 SUBMITTTALS FOR THE VALLEY

CAA section	Provision	SIP submittal	Plan citation
172(c)(3)	Emission Inventories	2002 Plan	*2002 Plan*, Ch 3.
110(a), 188(e), and 189(b)(1)(B)	Control Measures	1994 Plan, 1996 Plan, 2002 Plan	*1996 Plan*, Ch. 4, *2002 Plan*, Ch. 4, Ch. 5.
189(c)	Reasonable Further Progress	2002 Plan	*Appendix E–3*, Table E–2.
172(c)(9)	Contingency Measures	2002 Plan	*2002 Plan*, Ch. 4, Ch. 5.
189(b)(1)(A)	Attainment Demonstration	2002 Plan	*2002 Plan*, Ch. 6.
176(c)(2)(A)	Motor Vehicle Emissions Budget	2002 Plan	*2002 Plan, Ch. 3 Appendix E 2002 Table E–3.*
188(e)	Attainment Date Extension	2002 Plan	*2002 Plan*, Ch. 8.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 13211,"Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: December 6, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 02–31679 Filed 12–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA–274–0371; FRL–7422–4]

Approval and Promulgation of State Implementation Plans and Designation of Areas for Air Quality Planning Purposes; California—South Coast

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve state implementation plan (SIP) revisions submitted by the State of California to provide for attainment of the particulate matter (PM–10) national ambient air quality standards (NAAQS) in the Los Angeles-South Coast Air Basin Area and to establish emissions budgets for purposes of transportation conformity. EPA is also proposing to grant the State's request for an extension of the PM–10 attainment deadline to December 31, 2006. EPA is proposing to approve the SIP revisions under provisions of the Clean Air Act (CAA) regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: Written comments on this proposal must be received by January 16, 2003.

ADDRESSES: Please mail comments to: Dave Jesson (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. The rulemaking docket for this notice is available for public inspection during normal business hours at EPA's Region IX office. A reasonable fee may be charged for copying parts of the docket.

Copies of the SIP materials are also available for inspection at the following locations:

California Air Resources Board, 1001 I Street, Sacramento, California, 95812

South Coast Air Quality Management District, 21865 E. Copley Drive Diamond Bar, California, 91765–0932

Most of the plan materials are also electronically available at: *http://www.aqmd.gov/aqmp.*

FOR FURTHER INFORMATION CONTACT: Dave Jesson, EPA Region IX, (415) 972–3957, or *jesson.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

A. Summary

We are proposing to approve portions of the 1994 and 1997 plans, the 1998 and 1999 plan amendments, and the 2002 status report for the South Coast Air Basin (or "South Coast"), as these SIP submittals pertain to PM–10, and to grant the State's request that the attainment date for the 24-hour and annual PM–10 NAAQS be extended from December 31, 2001, to December 31, 2006.[1] We are also proposing to approve emissions budgets for purposes of transportation conformity.

B. PM–10 Problem in the South Coast Air Basin

Although great progress has been made in reducing PM–10 concentrations, the South Coast continues to violate both the 24-hour and annual PM–10 NAAQS, and the State must therefore submit measures and other provisions sufficient to make expeditious progress and attain the NAAQS.[2] The South Coast PM–10 plans were prepared to meet applicable CAA provisions, including attainment of the PM–10 NAAQS throughout the basin. Preparation of these plans was particularly challenging because PM–10 concentrations in the South Coast consist of both primary particulate (such as road dust and diesel soot, emitted directly into the atmosphere) and secondary particulate (particles formed through atmospheric chemical reactions from precursor gases, notably oxides of nitrogen, oxides of sulfur, and ammonia), and the principal causes of PM–10 violations show a strong spatial variation within the South Coast.

The health effects from elevated PM–10 concentrations include lung damage, increased respiratory disease, and premature death. Children, the elderly, and people suffering from heart and lung disease, such as asthma, are especially at risk.

C. CAA Provisions

Title I of the Federal CAA was substantially amended in 1990 to establish new planning requirements and attainment deadlines for the NAAQS. The nonattainment area plan provisions for PM–10 areas appear in CAA section 189. The most fundamental of these provisions is the requirement that the State submit a SIP demonstrating attainment of the PM–10 NAAQS. CAA section 189(a)(1)(B) and 189(b)(1)(A). This demonstration must be based upon enforceable measures to achieve emission reductions leading to emissions at or below the level predicted to result in attainment of the NAAQS throughout the nonattainment area. For areas classified as serious, such as the South Coast, the measures must meet the standard for Best Available Control Measures (BACM), and the measures must be implemented expeditiously and ensure attainment no later than the applicable CAA deadline. Because the State requests an extension of the attainment date beyond the applicable deadline of December 31, 2001, CAA section 188(e) provides that the State must demonstrate that the plan includes the most stringent measures (MSM) that are included in any implementation plan or are achieved in practice, and can feasibly be implemented in the area.

EPA has issued a "General Preamble" describing the Agency's preliminary views on how EPA intends to act on SIPs submitted under Title I of the Act. *See* 57 FR 13498 (April 16, 1992), 57 FR 18070 (April 28, 1992). EPA later issued an Addendum to the General Preamble providing guidance on SIP requirements for serious PM–10 areas. 59 FR 41998 (August 16, 1994). The reader should refer to these documents for a more detailed discussion of EPA's preliminary interpretations of Title I requirements. In this proposed rulemaking action, EPA applies these policies to the South Coast PM–10 SIP submittals, taking into consideration the specific factual issues presented.

D. Designation and Classification

On the date of enactment of the 1990 CAA Amendments, PM–10 areas, including the South Coast Air Basin, meeting the qualifications of section 107(d)(4)(B) of the amended Act, were designated nonattainment by operation of law. *See* 56 FR 11101 (March 15, 1991).

Once an area is designated nonattainment, section 188 of the CAA outlines the process for classification of the area and establishes the area's attainment date. In accordance with section 188(a), at the time of designation, all PM–10 nonattainment areas, including the South Coast Air Basin, were initially classified as moderate by operation of law. Section 188(b)(1) of the Act further provides that moderate areas can subsequently be reclassified as serious before the applicable moderate area attainment date if at any time EPA determines that the area cannot "practicably" attain the PM–10 NAAQS by this attainment date.

[1] The nonattainment area includes all of Orange County and the more populated portions of Los Angeles, San Bernardino, and Riverside Counties. For a description of the boundaries of the Los Angeles-South Coast Air Basin Area, see 40 CFR 81.305.

[2] EPA revised the NAAQS for particulate matter on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulates with new standards applying only to particulate matter up to 10 microns in diameter (PM–10). At that time, EPA established two PM–10 standards. The annual PM–10 standard is attained when the expected annual arithmetic mean of the 24-hour samples averaged over a 3-year period does not exceed 50 micrograms per cubic meter (ug/m3). The 24-hour PM–10 standard of 150 ug/m3 is attained if samples taken for 24-hour periods have no more than one expected exceedance per year, averaged over 3 years. See 40 CFR 50.6 and 40 CFR part 50, appendix K.

On July 18, 1997, EPA reaffirmed the annual PM–10 standard, and slightly revised the 24-hour PM–10 standard (62 FR 38651). In the same action, EPA also established two new standards for PM, both applying only to particulate matter up to 2.5 microns in diameter (PM–2.5).

This SIP submittal addresses the 24-hour and annual PM–10 standards as originally promulgated. An opinion issued by the U.S. Court of Appeals for the D.C. Circuit in *American Trucking Assoc., Inc., et al.* v. *USEPA*, No. 97–1440 (May 14, 1999), among other things, vacated the new standards for PM–10 that were published on July 18, 1997 and became effective September 16, 1997. However, the PM–10 standards promulgated on July 1, 1987 were not an issue in this litigation, and the Court's decision does not affect the applicability of those standards in this area. Codification of those standards continues to be recorded at 40 CFR 50.6.

EPA determined on January 8, 1993, that the South Coast could not practicably attain the PM–10 NAAQS by the applicable attainment deadline for moderate areas (December 31, 1994, per section 188(c)(1) of the Act), and reclassified the area as serious (58 FR 3334). In accordance with section 189(b)(2) of the Act, the applicable deadline for submittal of SIPs for the South Coast addressing the requirements for serious PM–10 nonattainment areas in section 189(b) and (c) of the Act were:

(1) August 8, 1994 (18 months after the effective date of the reclassification)—SIP to ensure the implementation of BACM no later than 4 years after reclassification;

(2) February 8, 1997 (4 years after the effective date of the reclassification)—SIP to provide for progress and expeditious attainment.

The 1994 PM10 plan addresses the first requirement and the 1997 plan addresses the second requirement.

E. Adoption and Submittal

The South Coast Air Quality Management District (SCAQMD) adopted the 1994 Air Quality Management Plan (AQMP) on September 9, 1994, and the California Air Resources Board (CARB) submitted the plan to us on November 15, 1994. This plan addresses the BACM provisions of CAA section 189(b)(1)(B).[3]

The SCAQMD adopted the 1997 AQMP on November 15, 1996, and CARB submitted the plan on February 5, 1997. This plan addresses the remaining plan provisions for serious PM–10 nonattainment areas, as specified in CAA sections 188 and 189.

In addition to PM–10, these two AQMPs address carbon monoxide (CO), ozone, and nitrogen dioxide (NO2).[4] By operation of law pursuant to CAA section 110(k)(1)(B), the PM–10 portions of the 1994 and 1997 plan submittals became complete 6 months after submittal by the State—*i.e.*, on May 15, 1995, and August 5, 1997, respectively.

On April 10, 1998, the SCAQMD adopted a 1998 amendment to the 1997 plan, establishing 2010 and 2020 PM–10 motor vehicle emission budgets. The State submitted these budgets to us as a SIP revision on April 22, 1998, and this submittal became complete by operation of law on October 22, 1998.

On December 10, 1999, the SCAQMD adopted a 1999 amendment to the 1997 plan, primarily addressing the ozone elements of the plan but also affecting some control measures relating to PM–10. CARB submitted the 1999 amendment on February 4, 2000. On March 15, 2000, we found that the 1999 amendment met the completeness criteria in 40 CFR part 51, appendix V.

On June 7, 2002, the SCAQMD adopted and on November 18, 2002, CARB submitted a status report, including motor vehicle emissions budgets for purposes of transportation conformity under CAA section 176(c), based on the motor vehicle emissions in the 1997 PM–10 plan. On November 20, 2002, we found that this submittal met the completeness criteria in 40 CFR part 51, appendix V.

In this document, we refer to the PM–10 portion of the 1994 and 1997 Air Quality Management Plans as "the 1994 plan" and "1997 plan." We refer to the 1998 and 1999 amendments to the 1997 plan as the "1998 amendments," and "1999 amendments," respectively, and we refer to the 2002 submittal as the "2002 status report."

Both the District and CARB satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption of the plans and the motor vehicle emissions budgets. The District conducted numerous public workshops, and properly noticed the public hearing at which the plans were adopted. The SIP submittals include proof of publication for notices of the public hearings. Therefore, we conclude that the 1994 and 1997 plans, the 1998 and 1999 amendments, and the 2002 status report met the public notice and involvement requirements of section 110(a)(1) of the CAA.

II. Evaluation of the SIP Submittals

A. Emission Inventories

The emission inventories in the 1997 plan supersede those in the 1994 plan. The 1997 plan includes summary emission inventories for major source categories in tons per annual average day for VOC, NO_X, CO, SOx, and PM–10 for the 1993 base year (Table 3–3A) and for 2000 (Table 3–5A) and 2006 (Table 3–6A). Appendix III (*Base and Future Year Emission Inventories*) to the 1997 plan provides more detailed emissions inventories for 1987, 1990, 1993, 1997, 2000, 2002, 2003, 2005, and 2006. Appendix III also includes additional emissions data, including planning inventories for summer and winter days, and estimates of emission reductions from each of the 1997 plan control measures for 2000, 2006, and subsequent years. Finally, Appendix III documents the source of the data and references SCAQMD and ARB reports that provide detailed information on the methodologies used to estimate emissions from area sources.

Appendix V (*Modeling and Attainment Demonstrations*) includes estimated emission reductions by control measure for PM–10 milestone years (1997, 2000, 2003, and 2006) and the detailed emission inventories used in the modeling analyses.

The 1997 plan's emission inventories employ activity levels, emission factors, and growth projections that were the most current and accurate available when the plan was required to be submitted and when the plan was, in fact, submitted: February 1997. The emission inventories are complete with respect to sources that have been found to contribute to PM–10 violations. We therefore propose to approve the emission inventories in Chapter 3, Appendix III, and Appendix V of the 1997 plan as meeting the provisions of CAA section 172(c)(3).

In the years since development, adoption, and submittal of the 1997 plan, CARB has prepared draft revisions to the mobile source component of the emissions inventories, including the model used to calculate exhaust and evaporative emissions from motor vehicles. This California-specific motor vehicle emissions model is known as EMFAC. The version of the model available for development of the 1997 PM–10 plan is known as EMFAC 7G, adopted by CARB in 1996 (CARB, *Methodology for Estimating Emissions from On-Road Motor Vehicles*, 1996).[5]

CARB and SCAQMD have formally committed to adopt and submit a revised PM–10 plan and revised motor vehicle emissions budgets by Spring 2003, and to base the new plan and budgets on use of the most current and accurate emissions data, including the latest available version of the EMFAC model for motor vehicle emissions, incorporating the latest planning assumptions on vehicle fleet and age distribution, and incorporating the latest activity levels. This revised plan will also update the ozone and CO SIPs and budgets for the South Coast, which are similarly based on motor vehicle emissions calculated using EMFAC 7G and planning assumptions available in 1996.

We believe that approval of the 1997 plan's emissions inventories and the motor vehicle emissions budgets derived from the 1997 plan's emissions inventories is warranted at this time, since the inventories and budgets reflect the best available information at the time of the plan's preparation. Moreover, both SCAQMD and CARB have committed to submit, within a short period of time, a revised plan with updated emissions inventories and budgets. The transportation conformity implications of our proposed approval are discussed later in this document, in section II.G., Motor Vehicle Emissions Budgets.

B. Control Measures

1. Applicable Requirements

Because the South Coast is classified as serious for PM–10, the nonattainment plan for the area must include control measures that reflect a BACM level of control for each source category that contributes significantly to a violation of the 24-hour or annual PM–10 NAAQS.[6]

By analogy to Title I Part C of the Clean Air Act relating to Prevention of Significant Deterioration (PSD), EPA interprets BACM for serious PM–10 areas as generally similar to the definition of Best Available Control Technology (BACT) for the PSD program. PM–10 BACM is therefore defined as "the maximum degree of emissions reduction of PM–10 and PM–10 precursors from a source * * * which is determined on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, to be achievable for such source through application of production processes and available methods, systems, and techniques for control of each such pollutant." General Preamble Addendum, 59 FR 42010 (August 16, 1994).

EPA exempts from the BACM requirement de minimis source categories, which do not contribute significantly to nonattainment. By analogy to the new source permit programs (40 CFR 51.165(b)), EPA has presumed that a source category contributes significantly to a violation of the 24-hour PM–10 NAAQS if its impact at the location of expected violation would exceed 5 μg/m3, and would contribute significantly to a violation of the annual PM–10 NAAQS if its impact at the time and location of the expected violation would exceed 1 μg/m3. 59 FR 42011. However, states must also review the potential to attain the PM–10 NAAQS earlier through application of controls on anthropogenic sources below these general levels.

SCAQMD identified significant categories as part of the BACM provisions of the 1994 plan. Appendix I–D (*Best Available Control Measures—PM10 SIP for the South Coast Air Basin*), Chapter 3, includes a calculation of the ambient impact of source categories at 5 representative sampling sites in the South Coast, which were subject to source apportionment analysis. Table 3–2 shows source contribution to annual average concentrations of ammonium sulfate, ammonium nitrate, secondary carbon, and geological particulate. Table 3–3 shows contributions to 24-hour average concentrations for the same species. The Tables show that the following categories were clearly significant contributors with respect to both of the NAAQS: Paved road dust, unpaved road dust, construction and demolition, and motor vehicles. The SCAQMD noted that 3 other categories are slightly above the de minimis levels but, given emission uncertainties, may not be significant: Non-farm equipment, non-utility internal combustion engines, and refinery boilers and heaters. These 3 source categories and most of the source categories that are below the de minimis levels were subject to stringent SCAQMD or CARB regulations, which helped keep PM–10 impact levels from these categories low, despite the large population and activity levels in the basin.

CAA section 189(b)(1)(B) provides that BACM must be implemented within 4 years after the date the area is reclassified to serious. In the case of the South Coast, reclassification to serious became effective on January 8, 1993, so BACM implementation is required by January 8, 1997.

Because the State has requested an extension of the PM–10 NAAQS attainment deadline pursuant to CAA section 188(e), the plan must include a demonstration that "the plan for the area includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State, and can feasibly be implemented in the area."

Finally, the control measures in the serious area plan must be sufficient to achieve expeditious attainment by the applicable deadline.

2. Description of Control Measures

The control measures in the 1997 PM–10 plan are described at length in Appendix IV–A (*Stationary and Mobile Source Control Measures*). To reduce secondary precursor emissions of PM–10 (notably NO_X and, to a lesser extent, SO_x, VOC, and ammonia), the 1997 PM–10 plan relies on a large number of SCAQMD and CARB control measures, either as part of the base line emissions (this is primarily the case for measures which were fully adopted in regulatory form by 1996) or as specific control measure commitments. The majority of these control measures have been approved in prior actions on South Coast ozone plans or on individual SCAQMD regulations submitted over the years.[7]

The 1997 plan also contains SCAQMD control measure commitments to reduce primary PM–10. These control measure commitments have not been previously approved and we are proposing approval of them at this time. Table 1 below, entitled "South Coast PM–10 Control Measure Commitments," lists for each primary PM–10 control measure the SCAQMD commitments to adopt and implement the measure by specific dates to achieve particular emission reductions. A thorough discussion of each of the measures may be found in Appendix IV–A; the adoption and implementation dates are taken from Table 7–3 in the 1997 plan, Table 2–1 in the 1999 amendments, and Attachment D in the 2002 status report; the emission reduction commitments are taken from the 1997 plan, Appendix V, Attachment A, and from the 2002 status report, Attachment D.

[3] SCAQMD adopted and CARB submitted in 1991 an AQMP intended, in part, to satisfy the CAA section 189(a) provisions for PM–10 nonattainment areas classified as moderate. We did not take action on this plan and are not doing so now, since the plan was superseded by the subsequent SIP submittals.

[4] We granted interim approval to the CO portion of the 1997 submittal on April 21, 1998 (63 FR 19661), and we approved the NO2 portion of the 1997 submittal on July 24, 1998 (63 FR 39747). On January 8, 1997 (62 FR 1150), we approved the ozone portion of the 1994 submittal. On April 10, 2000 (65 FR 18903), we approved the ozone portion of the 1997 submittal, as amended in December 1999, as a replacement for the 1994 ozone plan.

[5] EPA has approved EMFAC 7G for use in transportation plan and program conformity analyses (letter from David Howekamp, EPA, to Michael P. Kenny, CARB, dated April 16, 1998).

[6] The plan must also satisfy lesser control measure provisions applicable to moderate areas. Reasonably Available Control Measures (RACM) for areas sources such as fugitive dust, and Reasonably Available Control Technology (RACT) for stationary sources such as commercial and industrial operations. We are not making an independent assessment of the plan's control measures against the RACM and RACT requirements, since the plan will meet RACM and RACT requirements if it is found to meet the BACM requirement.

[7] See, for example, our approval of the 1997 ozone plan and that plan's NO_X and VOC control measure commitments, as amended in 1999 (65 FR 6091, February 8, 2000; 65 FR 18903, April 10, 2000). We have approved the District's NO_X and VOC regulations in separate rulemaking over the years. You may see copies of the approved rules at: *http://www.epa.gov/region09/oir/sips/*. See also our approval of SCAQMD's fugitive dust regulations, Rules 403 (Fugitive Dust) and 1186 (PM–10 Emissions from Paved and Unpaved Roads and Livestock Operations), on August 11, 1998 (63 FR 42786) and February 17, 2000 (65 FR 8057).

TABLE 1.—SOUTH COAST PM–10 CONTROL MEASURE COMMITMENTS

[Emission reductions shown in tons per day of PM–10]

Measure	Adoption date	Implementation date	2003 emission reductions	2006 emission reductions
BCM–01 Emission Reductions from Paved Roads (Rule 403)	1997	1997	53.33	54.40
BCM–06 Emission Reductions from Fugitive Dust Sources to meet BACM Requirements (Rule 403)	1997	1997	5.65	5.88
BCM–03 Emission Reductions from Unpaved Roads & Parking Lot and Staging Areas (Rule 403)	1997	1997–2006	10.49	15.21
BCM–04 Emission Reductions from Agricultural Activities (Rule 403)	1997	1997–9	0.03	0.03
CMB–09 Emission Reductions from Petroleum Fluid Catalytic Cracking Units	[1]2002	[1]2006	0.00	0.48
PRC–01 Emission Reductions from Woodworking Operations	[1]2002	[1]2002	7.20	7.50
PRC–03 Emission Reductions from Restaurant Operations	[1]2003–4	[1]2004–6	0.00	7.87
WST–01 Emission Reductions from Livestock Waste	[2]2002	[2]2004	6.16	5.96

[1] These dates reflect changes made in the 2002 status report, amending the 1997 plan.
[2] These dates reflect changes made in the 1999 amendments to the 1997 plan.

In the 1994 and 1997 plans and in the appendices to the plans (*e.g.*, 1994 plan, Appendix I–D), the District has provided extensive documentation on both the control measures included in the plan and those rejected. The documentation quantifies the costs of implementation, discusses the technological feasibility of control options, explains the schedule for expeditious implementation, and examines other factors as part of a comprehensive justification of the measures as reflecting BACM. As discussed above, the plans also include quantitative analyses of the South Coast emissions sources and a determination of which categories have "significant" impacts on PM–10 concentrations.

SCAQMD also reviewed the measures against the MSM criteria, in order to demonstrate that the plan reflects the most stringent measures that were included in the implementation plan of any State or were achieved in practice in any State, and can feasibly be implemented in the area. SCAQMD further analyzed all source categories and control approaches as part of an "all feasible measures" requirement of State law, and assessed on an international scale those potential control measures that could be adopted to attain the ozone NAAQS in the South Coast, the only ozone area in the country classified as extreme.

We agree with the SCAQMD's conclusion that the District's control measures represent the most stringent measures at the time the plans were required to be submitted. The plans therefore demonstrate that BACM and MSM have been adopted for each of the significant source categories.[8]

[8] The SCAQMD's analyses were performed in the months immediately prior to adoption and submittal of the 1994 and 1997 plans, and so reflect information current at that time on the availability and applicability of control measures within the South Coast to address the BACM and MSM criteria. As part of the 2003 plan revision, SCAQMD intends to reassess BACM and MSM and adopt any measures directed by a new BACM or MSM evaluation. However, for purposes of our action on the submittals now before us, we are applying BACM and MSM tests appropriate at the time of the plans' submittal dates, when the BACM and serious area attainment plans were due. Because the statutory BACM implementation deadline will have passed for any new measures included in the 2003 plan revision, that plan must assure that BACM will be implemented "as soon as possible." Delaney v. EPA, 898 F.2d 687, 691 (9th Cir. 1990). EPA has interpreted this requirement to be "as soon as practicable." 55 FR 36458, 36505 (September 9, 1990).

3. Proposed Action on Control Measures

We conclude that the submittals demonstrate that the control measures for each significant source category, and for *de minimis* categories as a whole, are consistent with the BACM requirement in terms of the timing, degree, and extent of the control program and reflect MSM at the time the plan was required to be submitted.

We also conclude that the measures are sufficient to meet RFP and expeditious attainment provisions, as discussed below in sections II.D and II.F.

We therefore propose to approve the control measures under CAA section 110(k)(3), as meeting the requirements of CAA sections 110(a), 188(e), and 189(b)(1)(B). We are proposing to approve each of the control measure commitments to adopt and implement rules by specified dates and to achieve particular emission reductions by milestone years. Specifically, we are approving the SCAQMD's enforceable commitments in Table 1, taken from Attachment D to the 2002 status report, and the descriptions of the measures in Appendix IV–A of the 1997 plan, as amended by the 1999 amendments.

C. Contingency Measures

The CAA requires that the SIP include contingency measures to be implemented if the area fails to meet progress requirements or to attain the NAAQS by the applicable deadline. In response to this provision, the 1997 plan includes contingency measures, 3 of which are specifically directed toward increasing reductions of primary PM–10: CTY–12—Emission Reductions from Paved Roads (Curb and Gutter/ Chemical Stabilization); CTY–13— Further Emission Reductions from Construction and Demolition Activities; and CTY–14—Emission Reductions from Miscellaneous Sources (Weed Abatement). These measures are discussed at length in Appendix IV, Section 6, pages IV–6–25 through IV–6–33. Each measure has the potential to achieve significant further PM–10 reductions and may be implemented quickly to cure a SIP shortfall.

We conclude that the 1997 plan satisfies the contingency requirements, and propose to approve the SCAQMD's contingency measure commitments under CAA section 110(k)(3) as meeting the contingency provisions of CAA section 172(c)(9). Specifically, we are approving the contingency measure commitments as set forth in Section 6 of Appendix IV–A to the 1997 plan.

D. Reasonable Further Progress (RFP) and Milestones

The plan must also include quantitative milestones which are to be achieved every 3 years until the area is redesignated to attainment, and show RFP toward attainment by the applicable attainment deadline. CAA section 189(c).

The 1997 plan, as modified by the 2002 status report, includes enforceable schedules for implementation of the specified control measures resulting in the emissions levels shown in Table 2—"South Coast PM–10 Reasonable Further Progress Milestones." Using the approaches discussed in Section II.F. below, the SCAQMD modeled the emissions levels for 2006 to demonstrate attainment of both the 24-hour and annual PM–10 NAAQS.

TABLE 2.—SOUTH COAST PM–10 REASONABLE FURTHER PROGRESS MILESTONES

[Emissions are shown in tons per day]

Pollutant	2003	2006
PM–10	310	301
NO_X	748	635
SO_X	64	67
VOC	747	623

EPA proposes to approve this annual schedule as meeting the RFP and milestone requirements of CAA section 189(c), since the schedule reflects expeditious implementation of BACM and expeditious attainment of the 24-hour and annual PM–10 NAAQS. We are approving the RFP and milestone provisions in the 1997 plan, Chapters 4 and 6, Appendix III, and Chapter 2 of Appendix V, as modified by the 2002 status report.

E. Attainment Demonstration

The SIP must provide a detailed demonstration (including air quality modeling) that the specified control strategy will reduce PM–10 emissions so that the standards will be attained as soon as practicable but no later than December 31, 2006, assuming final EPA approval of the attainment date extension. CAA section 189(b)(1)(A). EPA considers the area to be in attainment of the NAAQS if 24-hour concentrations are 150 ug/m3 or less and the annual arithmetic mean is 50 ug/m3 or less. In the case of the South Coast, the attainment demonstration in the 1997 PM–10 plan must analyze both the 24-hour and annual NAAQS, since the area has historically violated both NAAQS.

Because of the complexity and diversity of the PM–10 problem in the South Coast, the SCAQMD decided to use a variety of modeling approaches to assess control scenarios and determine attainment of the 24-hour and annual PM–10 NAAQS: (1) Urban Airshed Modeling with Linear Chemistry Module (UAM/LC (Lurmann and Kumar 1996); (2) the Chemical Mass Balance (CMB) receptor model for source apportionment in the Basin; (3) the particle in cell (PIC) model developed by California Institute of Technology for determining sulfate and nitrate formation; and (4) UAM-Aero (Kumar and Lurmann, 1996) for evaluating interactions of emissions, meteorology, and aerosol chemistry. The inputs and applications of each of these models are described in Chapter 2 of Appendix V (Modeling and Attainment Demonstrations) of the 1997 plan.

The modeling results for 2000, 2006, and 2010 are presented in the 1997 AQMP, Chapter 5 (Figures 5–3, 5–4, and 5–5), and on pages V–2–58 to V–2–67 of Appendix V. The UAM/LC and CMB modeling predicts that the peak annual concentration in 2006 with implementation of controls will be 48.10 ug/m3, compared to the 50 ug/m3 annual PM–10 NAAQS. The speciated rollback analysis predicts peak concentrations of 47.10 ug/m3 for 2006 with controls. The UAM/LC and CMB modeling predicts that the peak 24-hour concentration in 2006 with controls will be 142.9 ug/m3, while the speciated rollback analysis predicts 136.26 ug/m3, compared to the 150 ug/m3 24-hour PM–10 NAAQS.

In contrast to other pollutants, we have not issued detailed modeling guidelines for PM–10, nor have we established minimum performance requirements for PM–10 modeling.[9] We have reviewed the SCAQMD's modeling approaches for both primary PM–10 and secondary PM–10, using both receptor modeling and dispersion modeling. We believe that the modeling in the 1997 plan provides a reasonable basis for linking emissions with air quality, for identifying an appropriate control strategy, and for determining whether the strategy delivers attainment for both the 24-hour and annual PM–10 NAAQS.

The SCAQMD's modeling shows that the level of emissions after implementation of the proposed set of control strategies would result in ambient concentrations within the South Coast in 2006 consistent with attainment of both the 24-hour and annual PM–10 NAAQS. We therefore conclude that the air quality modeling and attainment demonstration contained in the 1997 plan, Chapter 5 and Appendix V, Chapter 2, are consistent with existing EPA guidance, and we propose to approve the attainment demonstration under CAA section 189(b)(1)(A).

[9] Over the years, EPA has issued some recommendations on PM–10 modeling, including those codified at 40 CFR part 51, appendix W, 7.2.1 and 7.2.2, and those set forth in the PM–10 SIP Development Guideline (USEPA 450/2–860001, 6/87). Although we do not set minimum performance goals or require model performance evaluation for PM–10 modeling, the SCAQMD included a performance evaluation for the UAM/LC at each of the 5 study sites for sulfate, nitrate, ammonium, and primary PM–10 (1997 plan, Appendix V, pages V–2–52 to V–2–54). For the peak site, Rubidoux, the annual percent error is under 20 percent for nitrate, ammonium, and primary PM–10, but is 42.9 percent for sulfate. Sulfates, however, account for less than 5 ug/m3 at each of the stations, and bias in the prediction performance is thus typically less than 2 ug/m3.

F. Extension of the Attainment Deadline

CAA section 188(e) allows states to apply for up to a 5-year extension of the serious area attainment deadline of December 31, 2001. In order to obtain the extension, there must be a showing that: (1) The plan for the area includes the most stringent measures that are included in the SIP of any state or are achieved in practice in any state, and can feasibly be implemented in the area, (2) the state complied with all requirements and commitments pertaining to the area in the implementation plan for the area, and (3) attainment by 2001 would be impracticable.

As discussed in section II.B. above, we propose to conclude that the South Coast PM–10 plans include BACM and MSM for each significant source category, and that the implementation schedule for each control measure is as expeditious as practicable. Attachment B to the 2002 status report shows that the responsible agencies have generally met the SIP requirements and commitments. Although the adoption and implementation dates of some of the 1997 plan's scheduled measures have been revised, EPA agrees with the SCAQMD that SIP implementation has been satisfactory and changes in the schedule should not adversely affect air quality at the 2003 milestone or at the 2006 attainment date.

Using UAM/LC and chemical mass balance modeling techniques discussed below in section II.E., the SCAQMD calculated 24-hour and annual PM10 concentrations in the year 2000 for the 5 representative sampling sites in the basin, with and without the plan control measures (1997 plan, Tables 2–17 and 2–19). The results show attainment at 4 of the sites but not at the Rubidoux site in northwestern Riverside County, where continued violations of both the 24-hour and annual NAAQS were predicted, despite aggressive implementation of BACM and MSM. Similar modeling analyses for 2006 show that additional emissions reductions from BACM and MSM, along with further emissions reductions from de minimis source categories, reduced ambient PM–10 concentrations further, bringing Rubidoux values slightly below both the 24-hour and annual PM–10 NAAQS. Based on this analysis, the SCAQMD determined that attainment

could not feasibly be achieved before 2006.

We find that the SCAQMD has met the CAA provisions relating to attainment date extensions, and we propose to grant, under CAA section 188(e), a 5-year attainment date extension to December 31, 2006, for attainment of both the 24-hour and annual PM–10 NAAQS, based on the demonstration provided in the 1997 plan in Chapters 5 and 6 and in Appendix V, Chapter 2.

G. Motor Vehicle Emission Budgets

Rate of progress and attainment demonstration submittals must specify the maximum emissions of transportation-related precursors of PM–10 allowed in each milestone year and the attainment year. The submittals must also demonstrate that these emissions levels, when considered with emissions from all other sources, are consistent with RFP and attainment. In order for us to find these emissions levels or "budgets" adequate and approvable, the submittal must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and be approvable under all pertinent SIP requirements.

The budgets defined by this and other plans when they are approved into the SIP or, in some cases, when the budgets are found to be adequate, are then used to determine the conformity of transportation plans, programs, and projects to the SIP, as described by CAA section 176(c)(3)(A). For more detail on this part of the conformity requirements, *see* 40 CFR 93.118. For transportation conformity purposes, the cap on emissions of transportation-related PM–10 precursors is known as the motor vehicle emissions budget. The budget must reflect all of the motor vehicle control measures contained in the attainment demonstration (40 CFR 93.118(e)(4)(v)), and must include PM–10 and PM–10 precursor emissions from the following sources: motor vehicles, reentrained dust from traffic on paved and unpaved roads, and emissions during construction of highway and rail projects.[10]

The motor vehicle emissions budgets are presented in Table 3 below, entitled "South Coast PM–10 Plan Motor Vehicle Emissions Budgets," which is taken from Attachment C to the 2002 status report. Emission reductions attributed to transportation control measures (TCMs) in the SIP are shown as positive numbers, and emission increases associated with the TCMs are shown as negative numbers in Table 3; however, as noted, the TCM emissions impacts are incorporated in the motor vehicle emissions lines in the budgets.

TABLE 3.—SOUTH COAST PM–10 PLAN MOTOR VEHICLE EMISSIONS BUDGETS

[Emissions are shown in tons per day]

Year and Source Category	PM–10	NO_x	VOC
2003 Budget:			
Motor vehicles	14.5	429.1	258.0
Reentrained dust from paved roads	130.6	.....	.....
Reentrained dust from unpaved roads	41.9	.....	.....
Construction of transportation projects	27.1	.....	.....
Total	214.1	419.1	258.0
TCM reductions (already included in budget)	0.1	–1.8	9.6
2006 Budget:			
Motor vehicles	13.7	350.2	187.2
Reentrained dust from paved roads	133.2	.....	.....
Reentrained dust from unpaved roads	37.2	.....	.....
Construction of transportation projects	28.1	.....	.....
Total	212.2	350.2	187.2
TCM reductions (already included in budget)	0.1	–2.3	14.7
2010 Budget:			
Motor vehicles	13.5	282.7	81.8
Reentrained dust from paved roads	136.7	.....	.....
Reentrained dust from unpaved roads	37.2	.....	.....
Construction of transportation projects	29.1	.....	.....
Total	216.5	282.7	81.8
TCM reductions (already included in budget)	0.2	–3.2	17.0
2020 Budget:			
Motor vehicles	14.6	272.3	56.3
Reentrained dust from paved roads	143.7	.....	.....
Reentrained dust from unpaved roads	37.2	.....	.....
Construction of transportion projects	30.0	.....	.....
Total	225.5	272.3	56.3
TCM Reductions	0.5	7.2	11.4

As discussed above in section II.A., Emission Inventories, the motor vehicle emissions portion of these budgets (*i.e.*, the evaporative and tailpipe emissions) was developed using the EMFAC 7G motor vehicle emissions factors.

[10] The conformity regulations provide that, for purposes of budgets and conformity determinations, the applicable pollutants are VOC, NO_x, and PM–10 if the applicable implementation plan establishes a budget for such emissions as part of the RFP, attainment, or maintenance strategy, or EPA has made such a finding. 40 CFR 91.102(b)(2)(iii). Thus, although the SCAQMD has established SO_x as a PM–10 precursor in the South Coast and has set RFP and attainment reduction targets for SO_x, the conformity regulations do not allow for SO_x budgets. The conformity regulations require that, in PM–10 areas with SIPs which identify construction-related fugitive PM–10 as a contributor to the nonattainment problem, the PM–10 budget and conformity analysis must include fugitive PM–10 emissions associated with the construction of highway and transit projects. 40 CFR 93.122(d)(2).

When the 2010 and 2020 budgets were adopted on April 10, 1998, SCAQMD submitted with the 1998 amendments a modeled demonstration that the emissions levels for motor vehicles reflected in the budgets, combined with emissions levels from all other PM–10 and PM–10 precursor emissions sources in the South Coast, would be consistent with maintenance of the 24-hour and annual PM–10 NAAQS. This demonstration was required in order to allow for approval of the budgets, since the budgets show a slight increase in emissions of primary PM–10 over the 2006 attainment levels (an increase of 2 percent in 2010 and 6 percent in 2020). The demonstration showed that the increase in primary PM–10 associated with motor vehicles is more than offset by decreases in emissions of secondary PM–10 precursors, resulting in projected 24-hour and annual concentrations below the predicted 2006 levels, which are below the NAAQS.

We propose to approve the motor vehicle emission budgets as consistent with the adequacy criteria of 40 CFR 93.118(e)(4), including consistency with the baseline emissions inventories, the motor vehicle control measure emission reductions used in the progress and attainment demonstration, and the reductions needed for continued attainment of the standard after the attainment deadline. Specifically, we are approving the budgets in the 2002 status report, which are based on, and consistent with, the 1997 plan and the 1998 amendment.

As discussed in section II.A., CARB is finalizing a revised version of EMFAC, and both CARB and SCAQMD have committed to adopt and submit a comprehensive revision to the PM–10 plan in Spring 2003, using the new EMFAC, incorporating the latest planning assumptions on vehicle fleet and age distribution, and incorporating the latest activity levels. This revised plan will include revised budgets, based on the new inventory and attainment demonstration. Assuming that these new budgets are adequate and approvable, the new budgets will soon replace the budgets in the current submittal.

Since these revised budgets will be based on the most current and accurate motor vehicle emissions data, we intend to allow for expedited use of the updated budgets in transportation conformity determinations. Therefore, we propose to limit our proposed approval of the budgets in the current submittal to last only until we find adequate the new budgets that are expected to be adopted in Spring 2003 as part of the revised PM–10 plan for the South Coast. On the effective date of our adequacy finding for the new budgets, our approval of the budgets in the current submittal would terminate and thus the new adequate budget would apply for purposes of transportation conformity. We have separately promulgated a similar limitation on the approval of the existing South Coast ozone and nitrogen dioxide (NO_2) budgets, in order to expedite use of new budgets associated with these pollutants in the 2003 plan revision for the South Coast. 67 FR 69139 (November 15, 2002).

III. Summary of EPA's Proposed Action

We are proposing to approve the serious area PM–10 SIP submitted by the State of California for the South Coast. Specifically, we are proposing to approve the 1994 and 1997 PM–10 plans, the 1998 and 1999 amendments, and the 2002 status report with respect to the CAA requirements for emissions inventories under section 172(c)(3); control measures under section 110(k)(3), as meeting the requirements of sections 110(a), 188(e), and 189(b)(1)(B); RFP under section 189(c); contingency measures under section 172(c)(9); demonstration of attainment under section 189(b)(1)(A); and motor vehicle emissions budgets under section 176(c)(2)(A). We are proposing to limit our approval of the motor vehicle emissions budgets to last only until the effective date of our adequacy findings for new replacement budgets. We are also proposing to approve the State's request for an extension of the attainment date from December 31, 2001 to December 31, 2006, under CAA section 188(e). We show the proposed approvals in Table 4—"Proposed Approvals of South Coast PM–10 Submittals."

TABLE 4.—PROPOSED APPROVALS OF SOUTH COAST PM–10 SUBMITTALS

CAA section	Provision	SIP submittal	Plan citation
172(c)(3)	Emission inventories	1997 plan	1997 plan Ch. 3; App. III; App. V, Ch. 2
110(a), 188(e), and 189(b)(1)(B)	Control measures	1994 plan 1997 plan 1999 amendment 2002 status report	1997 plan Ch. 4, App. IV–A; 1999 plan, App. B; 2002 status report, Att. D
189(c)	Reasonable further progress	1997 plan 2002 status report	1997 plan, Ch. 4 & 6, App. III, App. V, Ch. 2; 2002 status report
172(c)(9)	Contingency measures	1997 plan	1997 plan, App. IV–A
189(b)(1)(A)	Attainment demonstration	1997 plan	1997 plan, Ch. 5, App. V
176(c)(2)(A)	Motor vehicle emissions budgets	1997 plan 1998 amendment 2002 status report	2002 status report, Att. C
188(e)	Attainment date extension	1997 plan	1997 plan, Ch. 5 & 6, App. V, Ch. 2

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing

requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state plan implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: December 6, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 02–31680 Filed 12–16–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 43, 63 and 64

[IB Docket Nos. 02–324, 96–261; DA 02–3314]

International Settlements Policy Reform and International Settlement Rates

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: On October 25, 2002, the Federal Communications Commission published a proposed rule document initiating a proceeding to re-examine the Commission's International Settlements Policy. In light of recent international developments, the Commission decided to extend the initial pleading cycle by 35 days to allow interested parties an opportunity to include in their initial comments any response to these recent developments and their effect on the policies under consideration in the proposed rulemaking.

DATES: Comments are due on or before January 14, 2003. Reply Comments are due on or before February 6, 2003.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. *See* Supplementary Information for filing instructions.

FOR FURTHER INFORMATION CONTACT: James Ball, Chief, or Lisa Choi, Senior Legal Advisor, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: 1. On October 11, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) seeking comment from the public regarding possible reform of its International Settlements Policy, International Simple Resale and benchmarks policies, and the issue of foreign mobile termination rates. (*See* 67 FR 65527, October 25, 2002.)

2. The Commission has become aware of the recent actions taken by several foreign administrations to impose rate floors on international termination rates, including U.S.-international accounting rates. Actions of this nature raise concerns insofar as they have the potential to cause increases in consumer calling rates by raising commercially-negotiated termination rates between U.S. and foreign carriers. The NPRM in this proceeding specifically asked for comment on potential anticompetitive harms to U.S. carriers and consumers from foreign carriers with market power.

3. In light of these recent developments and the questions raised in the NPRM regarding possible reform of the Commission's ISP and accounting rate policies, we extend the pleading cycle established in the NPRM, FCC 02–285, IB Docket Nos. 02–324 & 96–261, by 35 days in order to allow interested parties an opportunity to include in their initial comments any response to these recent developments and their effect on the policies under consideration in the proposed rulemaking. We find that the public interest will be served by this brief extension of both the comment and reply dates to allow for a more complete record in this proceeding.

4. Accordingly, pursuant to §§ 1.1 of the Commission's rules, 47 CFR 1.1, the new comment due date is January 14, 2003 and the new reply comment due date is February 6, 2003. Instructions for filing pleadings in this proceeding are set forth in the NPRM, available on the Commission's website at *http://www.fcc.gov*. All comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

Federal Communications Commission.

James Ball,

Chief, Policy Division, International Bureau.

[FR Doc. 02–31604 Filed 12–16–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3189; MB Docket No. 02–363, RM–10604]

Digital Television Broadcast Service; Asheville, NC and Greenville, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Meredith Corporation, licensee of Station WHNS(TV), channel 21 and paired digital channel 57, Asheville, North Carolina, proposing the reallotment of channel 21 and paired digital channel 57, from Asheville to Greenville, South Carolina, and the modification of station WHNS(TV)'s license accordingly.

DATES: Comments must be filed on or before January 16, 2003, and reply comments on or before February 1, 2003.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James E. Dunstan, Esquire, Garvey, Schubert & Barer, Fifth Floor, 1000 Potomac Street, NW., Washington, DC 20007 (Counsel for Meredith Corporation).

FOR FURTHER INFORMATION CONTACT: Brad Lerner, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–363, adopted November 18, 2002, and released November 25, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606, the Table of Television Allotments under North Carolina, is amended by removing channel 21 at Asheville and under South Carolina, is amended by adding channel 21 at Greenville.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under North Carolina, is amended by removing DTV Channel 21 at Asheville and under South Carolina, is amended by adding DTV channel 57 at Greenville.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–31715 Filed 12–16–02; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 67, No. 242
Tuesday, December 17, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas National Forest; California; Stream Fire Restoration Project

AGENCY: Forest Service, USDA.
ACTION: Revised notice of intent.

Responsible Official and Lead Agency

Plumas National Forest Supervisor Jim Peña is the responsible official.

Dated: December 10, 2002.
Robert G. Macwhorter,
Deputy Forest Supervisor.
[FR Doc. 02–31639 Filed 12–16–02; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Service Industries, Tourism & Finance (SITF)

ACTION: Notice of development of a mailing list for U.S. companies interested in design, engineering, construction and other projects for the 2008 Beijing Olympics.

SUMMARY: In July 2001, Beijing was awarded the right to host the 2008 Olympics. In preparation for the games, Beijing plans to spend approximately U.S. $23 billion on the games. This includes Olympic sport facilities, as well as major enhancements to infrastructure projects in Beijing to improve the city's water processing, transportation, telecommunication networks and other projects. The Department of Commerce is developing a mailing list for U.S. companies interested in participating in the projects. If you would like to receive information on design, engineering, construction or other projects, contact the Service Industries Office at the email address below. Please provide a contact name, company name, address, phone and fax number, email address and what types of projects you are interested in knowing more about.

FOR FURTHER INFORMATION CONTACT: Ann Reed or Russell Adise in the International Trade Administration at the U.S. Department of Commerce at *osi@ita.doc.gov*, or by phone at 202–482–6165 and 202–482–5086.

Dated: November 21, 2002.
Keith Roth,
Acting Director, Office of Service Industries.
[FR Doc. 02–31710 Filed 12–16–02; 8:45 am]
BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–863]

Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.
EFFECTIVE DATE: December 17, 2002.
FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Sheila Forbes at (202) 482–3019 and (202) 482–4697, respectively; AD/CVD Enforcement, Office 8, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.
SUPPLEMENTARY INFORMATION:

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 of the Department of Commerce's (the Department's) Regulations (2002), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

On December 2, 2002, the Department published in the **Federal Register** (67 FR 71533) a Notice of Opportunity to Request Administrative Review of such orders, findings, or suspended investigations with December anniversary dates. In publishing the December 2, 2002 Notice of Opportunity to Request Administrative Review, the Department inadvertently omitted a reference to the antidumping duty order on Honey from the People's Republic of China (A-570–863), which has a December anniversary date. Accordingly, the Department is separately publishing this notice of an opportunity for interested parties to request an administrative review of the antidumping duty order on Honey from the People's Republic of China (A-570–863).

Opportunity to Request a Review

Not later than the last day of December 2002, interested parties may request administrative review of the following antidumping duty order on honey from the People's Republic of China for the following period:

Antidumping Duty Proceeding	Period
People's Republic of China: Honey, A-570–863	5/11/01–11/30/02

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Duty Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of December 2002. If the Department does not receive, by the last day of December 2002, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: December 10, 2002.
Joseph A. Spetrini,
Deputy Assistant Secretary for Import Administration, Group III.
[FR Doc. 02–31627 Filed 12–16–02; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–882]

Notice of Initiation of Antidumping Duty Investigation: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.
ACTION: Initiation of Antidumping Duty Investigation

EFFECTIVE DATE: December 17, 2002.
FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Jim Mathews, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4136 or (202) 482–2778, respectively.
SUPPLEMENTARY INFORMATION:

Initiation Of Investigation

The Petition

On November 20, 2002, the Department received a petition filed in proper form by Washington Mills Company, Inc. On November 27, 2002, the petition was amended to include two additional petitioners, C-E Minerals and Treibacher Schleifmittel Corporation (collectively, the petitioners). The Department received information supplementing the petition throughout the initiation period.

In accordance with section 732(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of refined brown aluminum oxide from the People's Republic of China (PRC) are, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department to initiate. *See infra*, "Determination of Industry Support for the Petition."

Scope of Investigation

The merchandise covered by this investigation is ground, pulverized or refined artificial corundum, also known as brown aluminum oxide or brown fused alumina, in grit size of 3/8 inch or less. Excluded from the scope of the investigation is crude artificial corundum in which particles with a diameter greater than 3/8 inch constitute at least 50 percent of the total weight of the entire batch. The scope includes brown artificial corundum in which particles with a diameter greater than 3/8 inch constitute less than 50 percent of the total weight of the batch. The merchandise under investigation is currently classifiable under subheading 2818.10.20.00 of the *Harmonized Tariff Schedule of the United States*(HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is

responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

We reviewed the description of the domestic like product presented in the petition. At this time, we have no basis on the record to find the petition's definition of the domestic like product to be inaccurate. Therefore, we have adopted the domestic like product set forth in the petition, which is defined in the "Scope of Investigation" section above.

Finally, the Department has determined that, pursuant to section 732(c)(4)(A) of the Act, the petition contains adequate evidence of industry support and, therefore, polling is unnecessary. *See* the Import Administration Antidumping Investigation Initiation Checklist, Industry Support section, December 10, 2002 (Initiation Checklist), on file in the Central Records Unit, Room B-099 of the main Department of Commerce building. The Department has determined that the petitioners have demonstrated industry support representing over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, because the Department received no opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 732(c)(4)(A)(ii) are also met. Accordingly, we determine that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

[1] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp.639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

Export Price and Normal Value

The following are descriptions of the allegation of sales at less than fair value upon which the Department based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to the U.S. price and the factors of production are discussed in greater detail in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we may re-examine the information and revise the margin calculation, if appropriate.

Regarding the information involving non-market economies (NME), the Department presumes, based on the extent of central government control in an NME, that a single dumping margin, should there be one, is appropriate for all NME exporters in the given country. In the course of the investigation, all parties will have the opportunity to provide relevant information related to the issues of a country's NME status and the granting of separate rates to individual exporters. *See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994).

Export Price

The petitioners based export price (EP) on the FOB PRC price of the subject merchandise as invoiced to one of the petitioners. No adjustments were made to this FOB price.

Normal Value

The petitioners allege that the PRC is an NME country, and that in all previous investigations the Department has determined that the PRC is an NME. *See, e.g., Notice of Final Determination in the Less Than Fair Value Investigation of Steel Wire Rope From the People's Republic of China*, 66 FR 12759, 12761 (Feb. 28, 2001). In accordance with section 771(18)(c) of the Act, any determination that a foreign country has at one time been considered an NME shall remain in effect until revoked. Therefore, the PRC will continue to be treated as an NME unless and until its NME status is revoked. Pursuant to section 771(18)(C)(i) of the Act, because the PRC's status as a NME remains in effect, the petitioners determined the dumping margin using an NME analysis.

The petitioners assert that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) a market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to that of the PRC in terms of per-capita gross national income. Based on the information provided by the petitioners, we believe that the petitioners' use of India as a surrogate country is appropriate for purposes of initiation of this investigation.

The petitioners valued the factors of production using the quantities of inputs to produce refined brown aluminum oxide as reported by one of the petitioners because the petitioners stated that current reliable information about PRC factor quantities was not reasonably available. The factors of production and usage amounts were derived from the petitioners' average actual production experience for various sizes of refined brown aluminum oxide during the period April through September 2002.

The surrogate values for bauxite and coke were based on the 2000–2001 annual report of Carborundum Universal Limited (CUMI), an Indian producer of refined aluminum oxide. The surrogate values for borings and electrodes were based on the values reported in the *Monthly Statistics of the Foreign Trade of India*. Labor was valued using the regression-based wage rate for the PRC provided by Import Administration's website and in accordance with 19 CFR 351.408(c)(3). The petitioners valued electricity using the 2000 price for India quoted in *Energy Prices & Taxes, Quarterly Statistics*, published by the International Energy Agency of the OECD. The petitioners made an adjustment to the sum of these values to account for a small amount of ferrosilicon produced and sold as a by-product.

To determine factory overhead, SG&A, and financial expenses, the petitioners relied on ratios derived from the financial statements of CUMI. The petitioners valued the by-product, ferrosilicon, by using their own sales value. Based on the information provided by the petitioners, we believe that the surrogate values represent information reasonably available to the petitioners and are acceptable for purposes of initiation of this investigation.

Based upon a comparison of EP to normal value (NV), the petitioners estimate a margin of 131.38 percent.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of refined brown aluminum oxide from the PRC are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of imports of the subject merchandise sold at less than NV.

The petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, production employment, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* the Initiation Checklist.

Initiation of Antidumping Investigation

Based upon our examination of the petition on refined brown aluminum oxide, we have found that it meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of refined brown aluminum oxide from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the Government of the PRC.

ITC Notification

We have notified the ITC of our initiation as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine no later than January 6, 2003, whether there is a reasonable indication that imports of refined brown aluminum oxide from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: December 10, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–31628 Filed 12–16–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-351–806]

Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation of order in part.

SUMMARY: On August 8, 2002, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty (AD) order on silicon metal from Brazil. The merchandise covered by this order is silicon metal from Brazil. This review covers three manufacturers/exporters, Rima Industrial SA (Rima), Companhia Ferroligas Minas Gerais - Minasligas (Minasligas) and Companhia Carbureto de Calcio (CBCC). The period of review (POR) is July 1, 2000, through June 30, 2001.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled *"Final Results of the Review."* We also have we have made a final determination to revoke the order with respect to Rima.

EFFECTIVE DATE: December 17, 2002.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor, telephone: (202) 482–5831, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as mended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (2002).

Background

On August 8, 2002, the Department published the preliminary results of administrative review of the AD order on silicon metal from Brazil. *See Silicon Metal From Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent To Revoke Order in Part*, 67 FR 51539 (August 8, 2002)(*Preliminary Results*). This review covers three manufacturers/exporters, Rima, Minasligas and CBCC. The POR is July 1, 2000, through June 30, 2001. We invited parties to comment on our preliminary results of review. We received comments on September 16, 2002, from Rima, Minasligas, CBCC (collectively the respondents), and Elkem Metals Company and Globe Metallurgical (collectively the petitioners). On September 23, 2002, we received rebuttal comments from the petitioners, Minasligas and CBCC.

The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The merchandise covered by this administrative review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this administrative review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is

not subject to the order. Although the HTS item numbers are provided for convenience and for U.S. Customs purposes, the written description remains dispositive.

Revocation

The Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation as described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than normal value (NV) in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the revocation request; and (3) an agreement to reinstatement in the order or suspended investigation, as long as any exporter or producer is subject to the order (or suspended investigation), if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department will consider the following in determining whether to revoke the order in part: (1) Whether the producer or exporter requesting revocation has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping; and (3) whether the producer or exporter requesting revocation in part has agreed in writing to the immediate reinstatement of the order, as long as any exporter or producer is subject to the order, if the Department concludes that the exporter or producer, subsequent to revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(b)(2); *see also Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent to Revoke Antidumping Duty Order in Part: Certain Pasta From Italy*, 66 FR 34414, 34420 (June 28, 2001).

I. Rima: Determination to Revoke Order in Part

In the preliminary results, we determined that Rima met the requirements for revocation. *See Preliminary Results*, 67 FR at 51540–51541(August 8, 2002). On September 11, 2002, we established a separate schedule for parties to submit additional information regarding the necessity of the AD order with respect to Rima. *See Memorandum from Thomas Futtner to Holly A. Kuga; Silicon Metal from Brazil; Comment Period for Revocation*, dated September 11, 2002. We received no comments from the petitioners or Rima on this revocation determination. We now find, based on the final results in this review and the final results of the two preceding reviews, that Rima has demonstrated three consecutive years of sales at not less than NV. Furthermore, we find that Rima's aggregate sales to the United States were made in commercial quantities during each of those three years. *See Preliminary Results* 67 FR at 51541 (August 8, 2002). Finally, based on our review of the record, there is no basis to find that the continued application of the AD order is necessary to offset dumping. Therefore, for the final results, we find that Rima qualifies for revocation of the order on silicon metal from Brazil, under 19 CFR 351.222(b)(2).

II. Minasligas: Determination Not to Revoke Order in Part

In the preliminary results, we found that Minasligas did not meet the requirements for revocation because it did not have a zero or *de minimis* dumping margin during the 1999–2000 POR. *See Preliminary Results*, 67 FR at 51541 (August 8, 2002). Because of this, we preliminarily determined that Minasligas failed to make sales of subject merchandise "at not less than NV for a period of at least three consecutive years," as required by the Department's regulations. Consequently, because no evidence has been presented to change our preliminary findings on this issue, we continue to find, for the final results, that Minasligas does not qualify for revocation of the AD order on silicon metal from Brazil, under 19 CFR 351.222(b)(2).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Bernard T. Carreau, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated December 6, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B-099 ("B-099") of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://www.ita.doc.gov/import_admin/records/frn/*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made the following changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memorandum, accessible in B-099 and on the Web at *http://www.ita.doc.gov/import___admin/records/frn/*.

1. We made an adjustment to Minasligas' home market imputed credit expense in order to correct double counting.
2. We included stowage, customs, weighing and bill of lading release expenses in Minasligas' foreign movement expenses.
3. We subtracted Programa de Integracao Social (PIS) and Contribuicao do Fin Social (COFINS) taxes from NV in Minasligas' margin calculation program.
4. We excluded value-added taxes (VAT) from CBCC's cost of production (COP).
5. We made an adjustment to the exchange rate calculation for Rima, Minasligas and CBCC.
6. We made an adjustment to the currency conversion formula for Rima and CBCC.

Final Results of Review

We determine that the following percentage weighted-average margins exist for the period July 1, 2000, through June 30, 2001:

Manufacturer/exporter	Margin (percent)
Rima	0.00
Minasligas	0.74
CBCC	0.00

Effective Date of Revocation

This revocation applies to all entries of subject merchandise that are produced by Rima and that are also exported by Rima, entered, or withdrawn from warehouse, for consumption on or after July 1, 2001. The Department will order the suspension of liquidation ended for all such entries and will instruct U.S. Customs to release any cash deposits or bonds. The Department will further instruct U.S. Customs to refund with interest any cash deposits on entries made after June 30, 2001.

Assessment

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review. We will direct the Customs Service to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's entries during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) Cash deposits for Rima will no longer be required and the suspension of liquidation will cease for entries made on or after July 1, 2001; (2) the cash deposit rate for the other reviewed companies will be the rates shown above; (3) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (4) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (5) the cash deposit rate for all other manufacturers or exporters will continue to be 91.06 percent. This rate is the "All Others" rate from the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: December 6, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix Issues in Decision Memorandum

Minasligas

1. Circumstance of Sale Adjustment for PIS and COFINS Taxes
2. Home Market Credit
3. Foreign Movement Expenses
4. Model Matching
5. Duty Drawback and the Treatment of VAT, *i.e.*, Imposto Sobre a Circulacao de Mercadorias e Servicos and Imposto Sobre Produtos Industrialzados Taxes
6. Home Market Movement Expenses
7. PIS and COFINS Taxes and the Margin ProgramCBCC

8a. Special Rule for Value Added After Importation

8b. Further Manufactured Products

9. Related Party Transactions
10. VAT and COP

Minasligas, CBCC and Rima

11. Exchange Rate

CBCC and Rima

12. Currency Conversion

[FR Doc. 02–31625 Filed 12–16–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–854]

Certain Tin Mill Products From Japan: Preliminary Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 28, 2002, the Department of Commerce ("the Department") published a notice of initiation of a changed circumstances review with the intent to revoke, in part, the antidumping duty order on certain tin mill products from Japan with respect to certain laminated tin-free steel, as described below. *See Certain Tin Mill Products From Japan: Notice of Initiation of Changed Circumstances Antidumping Duty Review*, 67 FR 65783 (October 28, 2002) *("Initiation Notice")*. In our *Initiation Notice* we invited interested parties to comment. On October 29, 2002, Nippon Steel Corporation ("NSC") filed a letter on behalf of Ohio Coatings Company ("Ohio Coatings") stating that Ohio Coatings does not oppose the exclusion of certain laminated tin-free steel from the antidumping duty order. We now preliminarily revoke this order, in part, with respect to future entries of certain laminated tin-free steel described below, based on the fact that domestic parties have expressed no interest in the continuation of the order with respect to certain laminated tin-free steel.

EFFECTIVE DATE: December 17, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1394.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended ("the Act"), by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR part 351 (2002).

SUPPLEMENTARY INFORMATION:

Background

On August 28, 2000, the Department published in the **Federal Register** the antidumping duty order on certain tin

mill products from Japan. *See Notice of Antidumping Duty Order: Certain Tin Mill Products from Japan* 65 FR 52067 (August 28, 2000) (*TMP Order*). On September 6, 2002, Nippon Steel Corporation ("Nippon"), an exporter and manufacturer of the subject merchandise requested that the Department revoke, in part, the antidumping duty order on certain tin mill products from Japan. Specifically, Nippon requested that the Department revoke the order with respect to imports meeting the following specifications: Tin-free steel laminated on one or both sides of the surface with a polyester film, consisting of two layers (an amorphous layer and an outer crystal layer), that contains no more than the indicated amounts of the following environmental hormones: 1 mg/kg BADGE (BisPhenol—A Di-glycidyl Ether), 1 mg/kg BFDGE (BisPhenol—F Di-glycidyl Ether), and 3 mg/kg BPA (BisPhenol—A). Nippon included letters from Weirton Steel Corporation, United States Steel Corporation, Bethlehem Steel Corporation, USS-Posco Industries, and National Steel Corporation, in its request for the changed circumstances review stating their support for the exclusion of the laminated tin-free steel, as described above. However, the Department had no information on the record that these domestic producers of tin mill products, account for substantially all, or at least 85 percent, of the production of the domestic like product (*See Oil Country Tubulor Goods From Mexico: Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 14213 (March 24, 1999). Therefore, we did not combine this initiation with the preliminary determination, which is our normal practice under section 351.221(c)(3)(ii) of the Department's regulations.

On October 28, 2002, the Department published a notice of initiation of a changed circumstances review of the antidumping duty order on certain tin mill products from Japan with respect to certain laminated tin-free steel. *See Initiation Notice*. In the *Initiation Notice*, we indicated that interested parties could submit comments for consideration in the Department's preliminary results not later than 14 days after publication of the initiation of the review, and submit responses to those comments no later than 7 days following the submission of comments. On October 29, 2002, Nippon filed a letter on behalf of Ohio Coatings stating that Ohio Coatings does not oppose the exclusion of certain laminated tin-free steel from the antidumping duty order on tin mill products from Japan. We did not receive any other comments, nor any rebuttal comments.

Scope of Review

The products covered by this antidumping order are tin mill flat-rolled products that are coated or plated with tin, chromium or chromium oxides. Flat-rolled steel products coated with tin are known as tin plate. Flat-rolled steel products coated with chromium or chromium oxides are known as tin-free steel or electrolytic chromium-coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed or further processed, such and scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single- or double-reduced), and whether or not coated with a plastic material. All products that meet the written physical description are within the scope of this order unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

—Single reduced electrolytically chromium coated steel with a thickness 0.238 mm (85 pound base box) (#10%) or 0.251 mm (90 pound base box) (#10%) or 0.255 mm (#10%) with 770 mm (minimum width) (#1.588 mm) by 900 mm (maximum length if sheared) sheet size or 30.6875 inches (minimum width) (# 1/16 inch) and 35.4 inches (maximum length if sheared) sheet size; with type MR or higher (per ASTM) A623 steel chemistry; batch annealed at T2 1/2 anneal temper, with a yield strength of 31 to 42 kpsi (214 to 290 Mpa); with a tensile strength of 43 to 58 kpsi (296 to 400 Mpa); with a chrome coating restricted to 32 to 150 mg/m^2; with a chrome oxide coating restricted to 6 to 25 mg/m^2 with a modified 7B ground roll finish or blasted roll finish; with roughness average (Ra) 0.10 to 0.35 micrometers, measured with a stylus instrument with a stylus radius of 2 to 5 microns, a trace length of 5.6 mm, and a cut-off of 0.8 mm, and the measurement traces shall be made perpendicular to the rolling direction; with an oil level of 0.17 to 0.37 grams/base box as type BSO, or 2.5 to 5.5 mg/m^2 as type DOS, or 3.5 to 6.5 mg/m^2 as type ATBC; with electrical conductivity of static probe voltage drop of 0.46 volts drop maximum, and with electrical conductivity degradation to 0.70 volts drop maximum after stoving (heating to 400 degrees F for 100 minutes followed by a cool to room temperature).

—Single reduced electrolytically chromium- or tin-coated steel in the gauges of 0.0040 inch nominal, 0.0045 inch nominal, 0.0050 inch nominal, 0.0061 inch nominal (55 pound base box weight), 0.0066 inch nominal (60 pound base box weight), and 0.0072 inch nominal (65 pound base box weight), regardless of width, temper, finish, coating or other properties.

—Single reduced electrolytically chromium coated steel in the gauge of 0.024 inch, with widths of 27.0 inches or 31.5 inches, and with T–1 temper properties.

—Single reduced electrolytically chromium coated steel, with a chemical composition of 0.005% max carbon, 0.030% max silicon, 0.25% max manganese, 0.025% max phosphorous, 0.025% max sulfur, 0.070% max aluminum, and the balance iron, with a metallic chromium layer of 70–130 mg/m^2, with a chromium oxide layer of 5–30 mg/m^2, with a tensile strength of 260–440 N/mm^2 , with an elongation of 28–48%, with a hardness (HR–30T) of 40–58, with a surface roughness of 0.5–1.5 microns Ra, with magnetic properties of Bm (KG)10.0 minimum, Br (KG) 8.0 minimum, Hc (Oe) 2.5–3.8, and MU 1400 minimum, as measured with a Riken Denshi DC magnetic characteristic measuring machine, Model BHU–60.

—Bright finish tin-coated sheet with a thickness equal to or exceeding 0.0299 inch, coated to thickness of 3/4 pound (0.000045 inch) and 1 pound (0.00006 inch).

—Electrolytically chromium coated steel having ultra flat shape defined as oil can maximum depth of 5/64 inch (2.0 mm) and edge wave maximum of 5/64 inch (2.0 mm) and no wave to penetrate more than 2.0 inches (51.0 mm) from the strip edge and coilset or curling requirements of average maximum of 5/64 inch (2.0 mm) (based on six readings, three across each cut edge of a 24 inches (61 cm) long sample with no single reading exceeding 4/32 inch (3.2 mm) and no more than two readings at 4/32 inch (3.2 mm)) and (for 85 pound base box item only: crossbuckle maximums of 0.001 inch (0.0025 mm) average having no reading above 0.005 inch (0.127 mm)), with a camber maximum of 1/4 inch (6.3 mm) per 20 feet (6.1 meters), capable of being bent 120 degrees on a 0.002 inch radius without cracking, with a chromium coating weight of metallic chromium at 100 mg/m^2 and chromium oxide of 10 mg/m^2, with a chemistry of 0.13% maximum carbon, 0.60% maximum manganese, 0.15% maximum silicon, 0.20% maximum copper, 0.04% maximum phosphorous, 0.05% maximum sulfur, and 0.20% maximum aluminum, with a surface finish of Stone Finish 7C, with a DOS-A oil at an aim level of 2 mg/square meter, with not more than 15 inclusions/foreign matter in 15 feet (4.6 meters) (with inclusions not to exceed 1/32 inch (0.8 mm) in width and 3/64 inch (1.2 mm) in length), with thickness/temper combinations of either 60 pound base box (0.0066 inch) double reduced CADR8 temper in widths of 25.00 inches, 27.00 inches, 27.50 inches, 28.00 inches, 28.25 inches, 28.50 inches, 29.50 inches, 29.75 inches, 30.25 inches, 31.00 inches, 32.75 inches, 33.75 inches, 35.75 inches, 36.25 inches, 39.00 inches, or 43.00 inches, or 85 pound base box (0.0094 inch) single reduced CAT4 temper in widths of 25.00 inches, 27.00 inches, 28.00 inches, 30.00 inches, 33.00 inches, 33.75 inches, 35.75 inches, 36.25 inches, or 43.00 inches, with width tolerance of #1/8 inch, with a thickness tolerance of #0.0005 inch, with a maximum coil weight of 20,000 pounds (9071.0 kg), with a minimum coil weight of 18,000 pounds (8164.8 kg) with a coil inside diameter of 16 inches (40.64 cm) with a steel core, with a coil maximum outside diameter of 59.5 inches (151.13 cm), with a maximum of one weld (identified with a paper flag) per coil, with a surface free of scratches, holes, and rust.

—Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents in the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.7 mg/square foot of chromium applied as a cathodic dichromate treatment, with coil form having restricted oil film weights of 0.3–0.4 grams/base box of type DOS-A oil, coil inside diameter ranging from 15.5 to 17 inches, coil outside diameter of a maximum 64 inches, with a maximum coil weight of 25,000 pounds, and with temper/coating/dimension combinations of : (1) CAT 4 temper, 1.00/.050 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 33.1875 inch ordered width; or (2) CAT5 temper, 1.00/0.50 pound/base box coating, 75 pound/base box (0.0082 inch) thickness, and 34.9375 inch or 34.1875 inch ordered width; or (3) CAT5 temper, 1.00/0.50 pound/base box coating, 107 pound/base box (0.0118 inch) thickness, and 30.5625 inch or 35.5625 inch ordered width; or (4) CADR8 temper, 1.00/0.50 pound/base box coating, 85 pound/base box (0.0093 inch) thickness, and 35.5625 inch ordered width; or (5) CADR8 temper, 1.00/0.25 pound/base box coating, 60 pound/base box (0.0066 inch) thickness, and 35.9375 inch ordered width; or (6) CADR8 temper, 1.00/0.25 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 32.9375 inch, 33.125 inch, or 35.1875 inch ordered width.

—Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents on the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.5 mg/square foot of chromium applied as a cathodic dichromate treatment, with ultra flat scroll cut sheet form, with CAT 5 temper with 1.00/0.10 pound/base box coating, with a lithograph logo printed in a uniform pattern on the 0.10 pound coating side with a clear protective coat, with both sides waxed to a level of 15–20 mg/216 sq. in., with ordered dimension combinations of (1) 75 pound/base box (0.0082 inch) thickness and 34.9375 inch × 31.748 inch scroll cut dimensions; or (2) 75 pound/base box (0.0082 inch) thickness and 34.1875 inch × 29.076 inch scroll cut dimensions; or (3) 107 pound/base box (0.0118 inch) thickness and 30.5625 inch × 34.125 inch scroll cut dimension.

—Tin-free steel coated with a metallic chromium layer between 100–200 mg/m^2 and a chromium oxide layer between 5–30 mg/m^2; chemical composition of 0.05% maximum carbon, 0.03% maximum silicon, 0.60% maximum manganese, 0.02% maximum phosphorous, and 0.02% maximum sulfur; magnetic flux density ("Br") of 10 kg minimum and a coercive force ("Hc") of 3.8 Oe minimum.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States ("HTSUS"), under HTSUS subheadings 7210.11.0000, 7210.12.0000, 7210.50.0000, 7212.10.0000, and 7212.50.0000 if of non-alloy steel and under HTSUS subheadings 7225.99.0090, and 7226.99.0000 if of alloy steel. Although the subheadings are provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

Preliminary Results of Review and Intent to Revoke in Part the Antidumping Duty Order

Pursuant to sections 751(d)(1) of the Act, the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances administrative review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it determines that (i) producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or (ii) if other changed circumstances sufficient to warrant revocation exist. Since the Department did not receive any comments during the comment period opposing the exclusion of certain laminated tin-free steel from the antidumping duty order, the Department is preliminarily revoking the order on certain tin mill products from Japan, in part, for all future entries with regard to the products which meet the specifications above.

Interested parties wishing to comment on these results may submit briefs to the Department no later than 14 days after the publication of this notice in the **Federal Register**. Parties will have five days subsequent to this due date to submit rebuttal comments, limited to the issues raised in those comments. Parties who submit comments or rebuttal comments in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument (no longer than five pages, including footnotes). Any requests for hearing must be filed within 14 days of the publication of this notice in the **Federal Register**.

All written comments must be submitted in accordance with 19 CFR 351.303, and must be served on all interested parties on the Department's service list. The Department will also

issue its final results of review within 270 days after the date on which the changed circumstances review is initiated, in accordance with 19 CFR 351.216(e), and will publish these results in the **Federal Register**. While the changed circumstances review is underway, the current requirement for a cash deposit of estimated antidumping duties on all subject merchandise, including the merchandise that is the subject of this changed circumstances review, will continue unless and until it is modified pursuant to the final results of this changed circumstances review or an administrative review.

This notice is in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.222 of the Department's regulations.

Dated: December 10, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–31626 Filed 12–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.021114276–2276–01; I.D. 120302C]

RIN 0648–ZB31

Financial Assistance for Environmental Education Projects in the Chesapeake Bay Watershed

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The purpose of this document is to invite the public to submit new proposals and to reapply for projects considered for continuation for available funding to implement environmental education projects in the following two priority areas: "Meaningful" Chesapeake Bay or Stream Outdoor Experience and Professional Development in the Area of Environmental Education for Teachers Within the Chesapeake Bay Watershed. Potential recipients may submit separate proposals for each priority area or may submit one proposal that addresses both priority areas. Funds are available to K-through–12 public and independent schools and school systems, institutions of higher education, community-based and nonprofit organizations, state or local government agencies, interstate agencies, and Indian tribal governments. This document describes the conditions under which project proposals will be accepted and criteria under which proposals will be evaluated for funding consideration. Selected recipients will enter into either a cooperative agreement or a grant. It is the intent of the NOAA Chesapeake Bay Office to continue with several existing relationships and to make awards through this program for projects pending successful progress reports and review. Therefore, funding for some proposals may be limited to ongoing projects.

DATES: Preliminary proposals must be received by 5 p.m. eastern standard time on January 16, 2003. Preliminary proposals received after that time will not be accepted. Full proposals must be received by 5 p.m. eastern standard time on March 17, 2003. Full proposals received after that time will not be considered for funding. Preliminary and full proposals will not be accepted electronically nor by facsimile machine submission.

ADDRESSES: You can obtain a proposal package from and send completed preliminary and full proposals to: Seaberry J. Nachbar, NOAA Chesapeake Bay Office, 410 Severn Avenue, Suite 107A, Annapolis, MD 21403. You can also obtain the proposal package from the NOAA Chesapeake Bay Office Education Home Page *http://noaa.chesapeakebay.net/education.*

FOR FURTHER INFORMATION CONTACT: Seaberry J. Nachbar, Education Coordinator, NOAA Chesapeake Bay Office, telephone: (410) 267–5664, or e-mail: *seaberry.nachbar@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Authority

The Fish and Wildlife Act of 1956, as amended, at 16 U.S.C. 753a, authorizes the Secretary of Commerce (Secretary), to develop adequate, coordinated, cooperative research and training programs for fish and wildlife resources, to continue to enter into cooperative agreements with colleges and universities, with game and fish departments of several states, and with nonprofit organizations relating to cooperative research units. The Secretary of Commerce, acting through the Under Secretary of Commerce for Oceans and Atmosphere, is authorized by 15 U.S.C. 1540 to enter into cooperative agreements and other financial agreements with any nonprofit organization to aid and promote scientific and educational activities to foster public understanding of the National Oceanic and Atmospheric Administration or its programs. This announcement is subject to the availability of funding under the Departments of Commerce (DOC), State, the Judiciary, and Related Agencies Appropriations Act of 2003 make funds available to the Secretary.

B. Catalog of Federal Assistance (CFDA)

The projects to be funded are in support of the Chesapeake Bay Studies (CFDA 11.457), under the Chesapeake Bay Watershed Education and Training Program.

C. Program Description

The NOAA Chesapeake Bay Office's (NCBO)Bay Watershed Education and Training (B-WET) Program was established in 2002 to provide environment-based education to students, teachers, and communities throughout the Chesapeake Bay watershed. Using the environment as the context for learning has been shown to increase a student's academic achievement performance, enthusiasm and engagement for learning, and encourages greater pride and ownership in accomplishments. The environment can provide a platform upon which educators can create a curriculum that interests learners and revitalizes teachers.

The B-WET grant program is a competitively based program that supports existing environmental education programs, fosters the growth of new programs, and encourages the development of partnerships among environmental education programs throughout the entire Chesapeake Bay watershed. Funded projects assist in meeting the Stewardship and Community Engagement goals of the *Chesapeake 2000 agreement* (see Stewardship and Meaningful Watershed Educational Experiences document for details *http://www.chesapeakebay.net/pubs/subcommittee/cesc/c2k.pdf).* Projects support organizations that provide students "meaningful" Chesapeake Bay or stream outdoor experiences and teachers professional development opportunities in the area of environmental education. The B-WET Program has an opportunity to create a population that is knowledgeable about the Chesapeake Bay watershed environment. Environmentally educated individuals can become effective future workers, problem solvers, and thoughtful community leaders and participants.

II. Priority Areas and Evaluation Criteria

All projects must address State (DE, MD, NY, PA, VA, WV) and/or District (DC) academic learning standards. Proposals should address one or both of the two priority areas: (1) "Meaningful" Chesapeake Bay or Stream Outdoor Experience; or (2) Professional Development in the Area of Environmental Education for Teachers Within the Chesapeake Bay Watershed. Potential recipients may submit separate proposals for each priority area or may submit one proposal that addresses both priority areas.

A. "Meaningful" Chesapeake Bay or Stream Outdoor Experience

The NCBO seeks proposals for projects that provide opportunities for students (K through 12) to participate in a "meaningful" Chesapeake Bay or stream outdoor experience. The Chesapeake Bay, with its tributaries, provides an excellent opportunity for environmental education. In many cases, its tidal and non-tidal waters and the surrounding landscape provide "hands-on" laboratories where students can see, touch, and learn about the Chesapeake Bay watershed and the greater environment. In other cases, the Bay watershed can be brought alive to the classroom through a strong complement of outdoor and classroom experiences. The Chesapeake Bay and its tributaries should be considered a living resource that provides a genuine, locally relevant source of environmental knowledge that can be used to help advance student learning skills and problem-solving abilities across the entire school curriculum.

Total anticipated funding is about $925,000. Of the amount available for this priority area, about $825,000 will be awarded to larger organizations that provide environmental education programs and up to $100,000 to smaller, community-based organizations that work at a local level to provide environmental education programs.

Proposals will be evaluated on the following seven criteria. Reviewers will assign scores ranging from 0 to 100 points.

1. *Experiences follow the scope and sequence of a "meaningful" Chesapeake Bay or stream outdoor experience:* This part of the program comprises a series of concepts and perceptions appropriate for K- through 12–grade students. See also the Stewardship and Meaningful Watershed Educational Experiences document (*http://www.chesapeakebay.net/pubs/subcommittee/cesc/c2k.pdf).* (15 points)

a. From K to 5. Experiences should be neighborhood-based and reinforce such basic concepts as maps and models, habitat principles, and the concept of the water cycle and watersheds.

b. From 6 to 8. Experiences should focus on team and class projects and investigations, conducted in or near water. Experiences should reinforce science, mathematics, and technology skills developed in middle school.

c. From 9 to 12. Experiences should be first-hand knowledge in or near water and should relate to the earth and biological sciences, concepts developed in civics and government, and attitudes reinforcing responsible citizenship.

2. *"Meaningful" Chesapeake Bay or stream outdoor experiences are hands-on and investigative or project-oriented:* Experiences should include activities where questions, problems, and issues are investigated through data collection, observation, and hands-on activities. Experiences should stimulate observation, motivate critical thinking, develop problem-solving skills, and instill confidence in students. Experiences should not be limited to tours, gallery visits, simulations, demonstrations, or "nature" walks but should encourage the student to assist, share, communicate, and connect directly with the outdoors. Experiences do not have to be water-based activities directly on the Bay, tidal rivers, streams, creeks, ponds, wetlands, or other bodies of water. As long as there is an intentional connection to water quality, watershed, and the larger ecological system, outdoor experiences may include terrestrial activities (e.g., erosion control, buffer creation, groundwater protection, and pollution prevention). (15 points)

3. *"Meaningful" Chesapeake Bay or stream outdoor experiences are richly structured:* Experiences should consist of three general parts, not necessarily occurring in this order- a preparation phase; an outdoor phase; and an analysis, reporting phase. Projects should provide teachers with the support, materials, resources, and information needed to conduct these three parts. The preparation phase should focus on a question, problem, or issue and involve students in discussions about it. The action phase should include one or more outdoor experiences sufficient to conduct the project, make the observations, or collect the data required. The reflection phase should refocus on the question, problem, or issue; analyze the conclusions reached; evaluate the results; and assess the activity and the learning. (15 points)

4. *Projects are new or significantly enhanced:* Proposals should consist of a project that is new to an organization's environmental education program or includes additions that significantly enhance an existing project. For example, projects could include different participants, focus on a new audience, concentrate on a different geographic location, or employ new techniques, methods, or ideas. (10 points)

5. *Projects demonstrate partnerships:* Project proposals should include partners involving any of the eligible applicants. Partnerships refers to the forming of a collaborative working relationship between two or more organizations. The B-WET Program strongly encourages applicants to partner with schools and/or school systems. All partners should be actively involved in the project, not just supply equipment or curricula. (20 points)

6. *Justification and allocation of the proposed budget:* Proposals will be evaluated on the reasonableness of the proposed budget. (15 points)

7. *Project evaluation:* Explain how you will ensure that you are meeting the goals and objectives of your project. Evaluation plans may be quantitative and/or qualitative and may include, for example, evaluation tools, observation, or outside consultation.(10 points)

B. Professional Development in the Area of Environmental Education for Teachers within the Chesapeake Bay Watershed

The NCBO seeks proposals for projects that provide Kthrough–12 teachers within the Chesapeake Bay watershed opportunities for professional development in the area of environmental education. As the purveyors of education, teachers can ultimately make meaningful environmental education experiences for students by weaving together classroom and field activities within the context of their curriculum and of current critical issues that impact the watershed. Systematic, long-term professional development opportunities will reinforce a teacher's ability to teach, inspire, and lead young people toward thoughtful stewardship of our natural resources.

Total anticipated funding is about $925,000. Proposals will be evaluated on the following six criteria. Reviewers will assign scores ranging from 0 to 100 points.

1. *Projects should be developed to provide teachers with the teaching of a "meaningful" Chesapeake Bay or stream outdoor experience and promote follow-through by encouraging teachers*

to implement a "meaningful" Bay or stream outdoor experience in their classroom: Projects should ensure that professional development experiences for the teacher ultimately benefit the student. Professional development opportunities should instruct teachers about a "meaningful" Chesapeake Bay or stream outdoor experience (for details see the Stewardship and Meaningful Watershed Educational Experiences document *http://www.chesapeakebay.net/pubs/subcommittee/cesc/c2k.pdf*) and encourage teachers to implement a "meaningful" Chesapeake Bay or stream outdoor experience in their classroom. For example, professional development courses could result in a lesson plan; provide teachers with materials, or resources needed for carrying out a "meaningful" Chesapeake Bay or stream outdoor experience in their classroom; and/or require teachers to document how they will incorporate what they have just learned into the classroom. A point of contact should be provided to the teacher for technical support during the school year. (30 points)

2. Projects involve external sharing and communication: Projects should promote peer-to-peer sharing and emphasize the need for external sharing and communication. Projects should include a mechanism that encourages teachers to share their experiences with other teachers and with the environmental education community. (15 points)

3. Projects are new or significantly enhanced: Proposals should consist of a project that is new to an organization's environmental education program or that includes additions that significantly enhance an existing project. For example, projects could include different participants, focus on a new audience, concentrate on a different geographic location, or employ new techniques, methods, or ideas. (10 points)

4. Projects demonstrate partnerships: Project proposals should include partners involving any of the eligible applicants. Partnerships refers to the forming of a collaborative working relationship between two or more organizations. The B-WET Program strongly encourages applicants to partner with schools and/or school systems. All partners should be actively involved in the project, not just supply equipment or curricula. (20 points)

5. Justification and allocation of the proposed budget: Proposals will be evaluated on the reasonableness of the proposed budget. (15 points)

6. Project evaluation: Explain how you will ensure that you are meeting the goals and objectives of your project. Evaluation plans may be quantitative and/or qualitative and may include, for example, evaluation tools, observation, or outside consultation. (10 points)

III. Funding

A. Funding Availability

This solicitation announces that approximately $1.85M may be available in FY 2003, in award amounts to be determined by the proposals and available funds. Applicants are hereby given notice that funds have not yet been appropriated for this program.

About $925,000 will be for proposals that provide opportunities for students (K through 12) to participate in a "Meaningful" Chesapeake Bay or Stream Outdoor Experience. Of the amount available for this priority area, about $825,000 will be awarded to larger organizations that provide environmental education programs and about $100,000 will be awarded to smaller, community-based organizations that work at a local level to provide environmental education programs. About $925,000 will be for proposals that provide opportunities for Professional Development in the area of Environmental Education for Teachers within the Chesapeake Bay Watershed.

It is the intent of the NOAA Chesapeake Bay Office to continue with several existing relationships and to make awards through this program for projects pending successful progress reports and review. Therefore, funding for some proposals may be limited to ongoing projects.

There is no guarantee that sufficient funds will be available to make awards for all qualified projects. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and the NOAA representatives. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If one incurs costs prior to receiving an award agreement signed by an authorized NOAA official, one would do so solely at one's own risk of these costs not being included under the award.

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published October 30, 2002 (67 FR 66109), is applicable to this solicitation.

B. Award Limits

The NCBO anticipates that typical project awards for "Meaningful" Bay or Stream Outdoor Experiences and Professional Development in the Area of Environmental Education for Teachers will range from $10,000 to $150,000. Proposals will be considered for funds greater than the specified ranges.

C. Continuation of Projects

Proposals may be considered eligible for continuation beyond the first project and budget period. Proposals may be submitted up to 3 years. However, funds will be made available for only a 12–month award period and any continuation of the award period will be subject to an approved scope of work, satisfactory progress, a panel review, and available funding to continue the award. No assurance for a funding continuation exists; funding will be at the complete discretion of NOAA.

First-year proposals must include a full description of the activities and budget for the first year as described in this announcement, and should include a summary description of the proposed work for each subsequent year and a estimated budget by line item (without the supporting budget detail pages) for review and analysis. If selected for funding the applicant will be required to submit a full proposal for the second year by the deadline announced in the following year's competitive cycle. Proposals will be evaluated through a review panel process, but will not be subject to competition with new proposals.

D. Funding Instrument

Whether the funding instrument is a grant or a cooperative agreement will be determined by the amount of NCBO's involvement in the project. A cooperative agreement will be used if NCBO is involved substantially in:

1. Monitoring the progress of each funded project; and
2. Working with the recipients to prepare annual reports summarizing current accomplishments of the project.

E. Cost-sharing Requirements

The NCBO strongly encourages applicants applying for either priority area to leverage as much investment as possible. Federal funds may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the final selection process.

IV. Instructions for Application

A. Eligible Applicants

Eligible applicants for both priority areas (i.e., "Meaningful" Chesapeake Bay or Stream Outdoor Experience and Professional Development in the Area of Environmental Education for Teachers Within the Chesapeake Bay Watershed) are K-through–12 public and independent schools and school systems, institutions of higher education, community-based and nonprofit organizations, state or local government agencies, interstate agencies, and Indian tribal governments in the Chesapeake Bay watershed.

The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that work in undeserved areas. The NCBO encourages proposals involving any of the above institutions.

B. Project Start Dates

Projects should not begin before August 1, 2003.

C. Preliminary Proposals

Applicants may submit a preliminary proposal prior to submitting a full proposal. Preliminary proposals will undergo an assessment to be reviewed by program staff and other reviewers to determine if the proposed project is aligned with program priorities. This assessment process is intended to form the basis for providing feedback as to how the proposal may more closely align with program priorities. Under this type of process, regardless of any feedback that a potential applicant may receive in response to a preliminary proposal, the applicant still has a right to submit a complete new application under the program.

It is strongly encouraged that applicants are involved in the preliminary proposal process and incorporate preliminary proposal feedback into the full proposal. Participation in this process will be taken into consideration in the final selection process. Applicants will receive feedback approximately four weeks after the preliminary proposal deadline.

D. Format and Requirements

Preliminary and full proposals must be complete and must follow the format described in this notice. Potential recipients may submit separate proposals for each priority areas (i.e., "Meaningful" Chesapeake Bay or Stream Outdoor Experience or Professional Development in the Area of Environmental Education for Teachers Within the Chesapeake Bay Watershed) or may submit one proposal that addresses both priorities. Applicants should not assume prior knowledge on the part of the NCBO as to the relative merits of the project described in the application.

1. *Preliminary proposal format:* Applicants are required to submit two copies of the preliminary proposal. Preliminary proposal format must be in at least a 10–point font, one-sided, and no more than two pages in length. Preliminary proposals that are longer than two pages will not be considered. No institutional signatures or Federal government forms are needed while submitting preliminary proposals. The following information should be included:

(1) Organization title.
(2) Principal Investigator (PI).
(3) Address, telephone number, and email address of applicant.
(4) Priority area(s) for which you are applying (i.e., "Meaningful" Chesapeake Bay or Stream Outdoor Experience; Professional Development in the Area of Environmental Education for Teachers in the Chesapeake Bay Watershed).
(5) Project title.
(6) Geographical area of focus.
(7) Project objectives.
(8) Explain how your project addresses State (DE, MD, NY, PA, VA, WV) and/or District (DC) academic learning standards and the definition of a "meaningful" watershed educational experience.
(9) Summary of work to be performed (include demographics of the audience to be served and the number of students and/or teachers to be involved).
(10) Total Federal funds requested.
(11) Tentative partners involved in project.

2. *Full proposal format:* Applicants are required to submit one signed original and two copies of the full proposal. Proposal format must be in at least a 10–point font, double-spaced, unbound, and one-sided. Brevity will assist reviewers and program staff in dealing effectively with proposals. Therefore, the Project Description may not exceed 15 pages. Tables and visual materials, including charts, graphs, maps, photographs, and other pictorial presentations are not included in the 15–page limitation. Appendices may be included but must not exceed a total of 10–pages in length. Appendices may include information such as curriculum, resumes, and/or letters of endorsement. Additional informational material will be disregarded. Proposals must include the following information:

a. *Project summary (1–page limit):* It is recommended that each proposal contain a summary of no more than one page that provides the following:
(1) Organization title.
(2) Address, telephone number, and email address of applicant.
(3) Priority area(s) for which you are applying (i.e., "Meaningful" Chesapeake Bay or Stream Outdoor Experience; Professional Development in the Area of Environmental Education for Teachers in the Chesapeake Bay Watershed).
(4) Project title.
(5) Project duration (one year project period beginning to end dates, starting on the first of the month and ending on the last day of the month). Please note if projects are being submitted with the intent of continuation beyond the first year.
(6) Principal Investigator(s) (PI).
(7) Project objectives.
(8) Summary of work to be performed (include number of teachers and/or students that will be involved in your project).(9) Total Federal funds requested.
(10) Cost-sharing to be provided from non-Federal sources, if any. Specify whether contributions are project-related cash or in-kind.
(11) Total project cost.

b. *Project description (15–page limit):* Describe precisely what your project will achieve why, how, who, and where. The project description should include results from prior B-WET Program support, if applicable.

(1) Why: Explain the purpose of your project. This should include a clear statement of the work to be undertaken and include the following:

–Explain specifically how your project addresses State (DE, MD, NY, PA, VA, WV) and/or District (DC) academic learning standards and how it is integrated into the current school curriculum.

–Explain which priority area(s) your project addresses (i.e., (1)≥Meaningful" Chesapeake Bay or Stream Outdoor Experience;(2) Professional Development in the Area of Environmental Education for Teachers Within the Chesapeake Bay Watershed).

–Specifically describe how your project addresses each of the evaluation criteria listed in that priority area (i.e., each of the seven criteria for the "Meaningful" Chesapeake Bay or Stream Outdoor Experience priority area or each of the six criteria for the Professional Development in the area of Environmental Education for Teachers within the Chesapeake Bay Watershed priority area).

(2) How: Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished. Explain your strategy, objectives, activities, delivery methods, and accomplishments to establish for reviewers that you have realistic goals

and objectives and that you will use effective methods to achieve them. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and target completion dates.

–Project Objectives: Objectives should be simple and understandable; as specific and quantitative as possible; clear as to the "what and when," but should avoid the "how and why." Projects should be accomplishment oriented and identify specific performance measures.

(3) Who: Explain who will conduct the project. Include the following:

–List each organization, cooperator, or other key individuals who will work on the project, along with a short description of the nature of their effort or contribution.

–Identify the target audience and demonstrate an understanding of the needs of that audience (include specifically how many students and/or teachers are involved in your project).(4) Where: Give a precise location of the project and area(s) to be served.

c. Need for government financial assistance: Demonstrate the need for assistance. Explain why other funding sources cannot fund all the proposed work.

d. *Benefits or results expected:* Identify and document the results or benefits to be derived from the proposed activities.

e. *Total project costs:* Total project costs are the amount of funds required to accomplish what is proposed in the Project Description and include contributions and donations.

Explain the calculations and provide a narrative to support specific items or activities, such as personnel/salaries, fringe benefits, travel, equipment, supplies, contract costs, and indirect costs. The budget detail and narrative submitted with the application should match the dollar amounts on all required forms. Additional cost detail may be required prior to a final analysis of overall cost allowability, allocability, and reasonableness. Please Note the following funding restrictions:

–The budget may include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal government, see Administrative Requirements, Section VI, B.

–Funds for salaries and fringe benefits may be requested only for those personnel who are directly involved in implementing the proposed project and whose salaries and fringe benefits are directly related to specific products or outcomes of the proposed project. NOAA strongly encourages applicants to request reasonable amounts of funding for salaries and fringe benefits to ensure that your proposal is competitive.

f. *Letters of support from partners:* Letters of support should be included for partners that are making a significant contribution to the project, if applicable.

3. *Federal forms:* Applicants may obtain required Federal forms from the NOAA Chesapeake Bay Office Web site (see **ADDRESSES**) or from the NOAA Grants Web site: *http://www.rdc.noaa.gov/grants/index.html.*

a.*Cover sheet:* All applicants must use Office of Management and Budget (OMB) Standard Form 424 (revised 7/97) as the cover sheet for each project.

b. *Budget form:* All applicants must use a Standard Budget Form (SF–424A) required for all Federal grants.

c. *Form CD–511:* All applicants must submit a CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying".

d. *SF–424B:* All applicants must submit a SF–424B, "Assurances of Non-Construction Programs".

e. *CD–346 "Applicant for Funding Assistance":* Required for the following individuals–Sole Proprietorship, Partnerships, Corporations, Joint Venture, Non-profit Organizations.

V. Selection Procedures

A. Initial Evaluation of the Applications

NOAA will review all applications to assure that they meet all the requirements of this announcement, including eligibility and relevance to the Bay Watershed Education and Training (B-WET) Program.

B. Technical Review

New applications meeting the requirements of this solicitation will undergo an external technical review. This review will normally involve individuals in the field of environmental education from both NOAA and non-NOAA organizations. Proposals will be scored based on the evaluation criteria as defined in Section II (A) and II (B). Reviewers will be asked to review independently and to provide a score and comments on each proposal. No consensus advice will be given by the technical reviewers.

C. Review Panel

The NCBO will convene a review panel consisting of at least three experts in the field of environmental education.

1. *Projects considered for continuation:* The review panel will discuss existing proposals that were awarded with the possibility of continuation. Review panel members will take into consideration the successful completion of the project within the defined project period, whether the goals of the project were achieved, and the cost effectiveness of the project. Review panel members will then independently determine whether the projects should be considered for continuation. No consensus advice will be given by the reviewer panel members.

2. *New proposals:* The review panel will then discuss new proposals as a panel, incorporating the evaluation provided by the technical reviewers. The reviewers may then take into account the following: (a) diversity of geographic location, (b) diversity of applicants, and (c) proposed budget. Each review panel member will then score the submitted new applications individually on a scale from 1 (poor) to 5 (excellent). No consensus advice will be given by the review panel members.

D. Funding Decision

New proposals will then be evaluated and ranked numerically for funding based upon the technical and the panel review scores by the Program staff. After the new proposals have been ranked, the Chief of the NCBO, in consultation with Program staff, will determine which projects will be recommended for funding. Existing proposals with the possibility of continuation will take priority over new proposals.

Numerical ranking will be the primary consideration for deciding which of the new proposals will be selected for funding. However, in making the final selections, the Chief of the NCBO may also consider matching leverage, duplication with other projects, participation of the projects in the preliminary proposal process, and program goals. Accordingly, numerical ranking is not the sole factor in deciding which new proposals will be selected for funding. The Chief of the NCBO will prepare a written justification for any recommendations for funding that fall outside the ranking order, or any cost adjustments. The exact amount of funds awarded to each project will be determined in pre-award negotiations among the applicant, the Grants Office, and the NCBO staff. Potential grantees should not initiate projects in expectation of Federal funding until an award document signed by an authorized NOAA official has been received.

Unsuccessful applications will be kept on file in the Program office for a period of at least 12 months, then destroyed.

VI. Administrative Requirements

A. Pre-award Notification Requirements

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** Notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** Notice published October 30, 2002 (67 FR 66109) is applicable to this solicitation.

B. Indirect Cost Rates

Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the recipient shall be the lesser of the line item amount for the Federal share of indirect costs contained in the approved budget of the award, or the Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by an oversight or cognizant Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date. However, the Federal share of the indirect costs may not exceed 25 percent of the total proposed direct costs for this Program. Applicants with indirect costs above 25 percent may use the amount above the 25 percent level as cost sharing. If the applicant does not have a current negotiated rate and plans to seek reimbursement for indirect costs, documentation necessary to establish a rate must be submitted within 90 days of receiving an award.

C. Allowable Costs

Funds awarded cannot necessarily pay for all the costs that the recipient might incur in the course of carrying out the project. Allowable costs are determined by reference to the OMB Circulars A–122, "Cost Principles for Nonprofit Organizations≥; A–21, "Cost Principles for Education Institutions≥; and A–87, "Cost Principles for State, Local and Indian Tribal Governments." Generally, costs that are allowable include salaries, equipment, supplies, and training, as long as these are "necessary and reasonable.≥

Classification

This action has been determined to be "not significant" for purposes of Executive Order 12866. Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs.≥

Under section 553 (a)(2) of the Administrative Procedure Act, prior notice and an opportunity for public comment are not required for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for the purposes of the Regulatory Flexibility Act.

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, and 424B has been approved by OMB under the respective control numbers 0348–0044, 0348–0044, and 0348–0040.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB control number.

Dated: December 10, 2002.

Rebecca Lent

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–31697 Filed 12–16–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 021127289–2289–01, I.D. 091002E]

RIN 0648–ZB34

Financial Assistance for Research and Development Projects in the Gulf of Mexico and off the U.S. South Atlantic Coastal States; Cooperative Research Program (CRP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of solicitation for applications.

SUMMARY: Subject to the availability of funds, NMFS (hereafter referred to as "we" or "us") announces the availability of Federal assistance under the Cooperative Research Program (CRP) Grant Program. This announcement provides guidelines, evaluations criteria and selection procedures for the program.

Under the CRP program, we provide financial assistance for research and development projects that optimize the use of fisheries in the Gulf of Mexico and along the Atlantic coast involving the U.S. fishing industry (commercial and recreational), including fishery biology, resource assessment, socio-economic assessments, management and conservation, selected harvest methods, and fish handling and processing.

DATES: We must receive your application by close of business (5 p.m. eastern standard time) on February 18, 2003. Applications received after that time will not be considered for funding.

ADDRESSES: You can obtain an application package from, and send your completed applications to: Ellie Francisco Roche, Chief, State/Federal Liaison Office, Southeast Regional Office, NMFS, 9721 Executive Center Drive, N., St. Petersburg, FL 33702. You can also obtain the application package from the SERO homepage at: *http://caldera.sero.nmfs.gov/grants/programs/.*

You must submit one signed original and two copies of the completed application (including supporting information). We will accept neither facsimile applications, nor electronically forwarded applications.

FOR FURTHER INFORMATION CONTACT: Ellie Francisco Roche, Chief, State/Federal Liaison Office, (727)570–5324.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The CRP is a competitive Federal assistance program that funds projects seeking to increase and improve the working relationship between researchers from the NMFS, state fishery agencies, universities, and fishermen. Congress has initiated the cooperative research funding to assist the NMFS to improve the confidence that both commercial and recreational fishermen have in the data and analyses performed in support of fisheries management. The CRP has as its principal goal to provide a means of involving commercial and recreational fishermen in the collection of fundamental fisheries information to support the development and evaluation of management and regulatory options.

B. Funding

We are soliciting applications for Federal assistance pursuant to 15 U.S.C. 713c 3(d). This document describes how you can apply for a grant or cooperative agreement under the CRP Grant Program and how we determine which applications we will fund.

Approximately $2.0 million may be available in fiscal year (FY) 2003 for funding projects. This amount includes possible in-house projects. Publication of this notice obligates neither NMFS to award any specific grant or cooperative agreement nor all or any parts of the available funds.

Project proposals accepted for funding will need to be completed within 18 months.

C. Catalog of Federal Domestic Assistance

This program is described in the "Catalog of Federal Domestic Assistance" under program number 11.454 entitled Unallied Management.

II. Funding Priorities

Your proposal must address one of the priority areas listed below as they pertain to federally-managed species or species relevant to Federal fisheries management plans. If you select more than one priority, you should list first on your application the priority that most closely reflects the objectives of your proposal.

Projects should focus on the greatest probability of collecting data that aids in recovering, maintaining, or improving the status of stocks upon which fisheries depend; improving the understanding of factors affecting recruitment success and long-term sustainability of fisheries; and/or generating increased values and opportunities for fisheries. Projects are evaluated as to the likelihood of achieving these objectives, with consideration of the magnitude of the eventual economic or social benefits that may be realized. Priority is given to funding projects in the subject areas listed in this section, but proposals in other areas are considered on a funds-available basis.

A. Commercial Finfish

There are several priorities within this general category that relate to the collection of catch, effort, size frequency, bycatch, and detailed data on fishing area by vessels in the commercial fisheries for finfish species. The following general categories are identified in priority order:

1. *Monitor the effects of closed Marine Protected Areas.* Research is needed to identify methods to measure the response of marine resource to changes in regulations for Marine Protected Areas (MPAs). (a) Projects are needed to thoroughly assess the impacts of times/area closures in the Southeast Region that have been designated to protect finfish spawning aggregations and/or concentrations of sub-legal fish. (b) Projects to collect fine-scale data for catch-effort are needed to help refine the definition (spatial and temporal) of MPAs. (c) Projects should include use of fishermen's knowledge about critical habitat for the range of species harvested. An example is the large MPA intended to protect small swordfish and other highly migratory species off the US southeastern coast.

2. *Characterize the total catch (from all fleets affecting the stocks), including catch composition and disposition of the catch.* (a) Projects are needed to collect detailed information on the composition and disposition of bycatch and discards. (b) Investigations are needed to determine more efficient and effective methods to record catches more accurately and on a real-time basis during the actual fishing (e.g. electronic logbooks). (c) Projects are needed to develop methods to increase the amount of at-sea observation with the application of imaging systems. (d) Projects are needed to fully utilize scientific observers on-board vessels as a means of collecting detailed catch, effort and disposition data. In cases where vessel space does not permit adding an observer, it might be possible to designate the captain or a crew member as the responsible individual on-board for recording these data. Projects need to evaluate the type of training and equipment that are required to assure that scientifically reliable data are collected. (e) Data collection projects are needed to determine the effects of increasing size limits or reducing possession limits on discard rates. If discard mortalities are high, such management measures might counteract the intended conservation benefits to the stock. Discard mortality rates currently used in assessments are generally based on small numbers of observations or are unknown. Research is needed to develop estimates of discard mortality rates as a function of size, gear, area, season and depth of fishing is needed to improve the basis for estimating the conservation benefits or losses associated with size limits for a wide range of stocks. (f) Data collection projects are needed to help improve the information on life history and biological investigations on commercial finfish species are needed. Improved information about the age-structure of the catch (both retained and discarded) based on otolith or other hard-part age readings provide an improved basis for monitoring the stock's resilience to fishing. Improved information on the reproductive characteristics of the stock provides a basis for refining estimates of long-term potential productivity of the stock. Collection of biological specimens from the catch is necessary for improving our understanding of the life history characteristics that influence the stock's resilience to fishing and potential for production. Research activities which provide life history biological specimens are encouraged.

3. *Monitoring stock abundance through study-fleet applications.* This type of cooperative research requires long-term commitment in terms of funding and application. (a) The objective is to develop a consistent sampling methodology that will permit tracking relative abundance of a fishery resource across time. The initial step for such applications is the development of sampling designs and protocols to be applied by the fleet, including intercalibration studies between vessels, if needed. (b) Projects are needed to develop methods to determine the appropriate sampling designs and pilot studies are needed. An example is the potential development of a recruitment index for swordfish, sampling in regions with high abundance of Young of the Year, generally in the areas that are now closed to longlining in the Gulf and along the southeastern US coast.

4. *Projects to develop and test gear and fishing strategy modifications to reduce or eliminate unintended catch are needed.*

5. *Fishing capacity investigations.* There appears to be a wide-spread mismatch between the current capacity of the regional fishing fleets and the productivity of the stocks. Cooperative research into methods to optimize capacity to better match the long-term potential productivity of the regional stocks is needed. A number of possibilities ranging from Individual Quota Systems to Vessel Capacity Control programs could be considered. It was noted that there are likely regional/fishery differences that would require different approaches.

B. Caribbean Fisheries

Orientation meetings have recently been conducted between the Caribbean Fisheries Management Council and the fishing industry. These meetings focused upon closing fisheries in portions of the Exclusive Economic Zone (EEZ) by establishing additional Marine Protected Areas (MPAs). It was evident that representatives from the Caribbean were clearly in touch with concerns expressed by user groups from their region and were attuned to potentials for cooperative research. Two areas, (1) habitat and fisheries and (2) corals, were identified as principal research topics.

1. *Habitat and fisheries.* (a) Research and data collection to estimate the social and economic impacts that are related to closures of MPAs are a high priority. Currently the Caribbean has five seasonal closures in the EEZ for spawning aggregates of fish and one no-take zone consisting of an annual closure. The size of these areas is not as vast as areas established on the mainland, but for the size of the fishing grounds in the Caribbean, they are significant. Although research has been conducted on the biological impacts of several no-take zones, little or no research has been done to estimate the impacts on the fishing communities and the economics of these fisheries. (b) Although research has been done by scientists, research should focus on industry being utilized as a conduit to take scientists to locations for study. The commercial sector can avail the scientific community tremendous assistance in generating information and knowledge about area closure times and spawning areas. (c) Enormous potential exists for cooperative research between industry and the scientific community. Significant research of closed areas can be effectively achieved by incorporating commercial fishermen with scientific investigations. Commercial fishermen could also assist the scientific community to locate areas of recruitment. (d) Projects are also needed to investigate the benefits of rotating MPAs (either temporal or spatial). Once an area is closed, it remains closed forever, but research is needed to determine the biological and socioeconomic benefits of alternating MPAs between open and closed.

2. *Corals.* (a) Research is needed to determine the impact on coral reefs from both commercial and recreational fishing activity. Industry participation is needed to research the impacts of gear on coral reefs. (b) Research is needed to determine the impacts to coral resulting from recreational fishing activities. Overall the information on recreational fishing activities on coral reefs is sparse, even though there are approximately 60,000 recreational vessels in the Caribbean. Research should focus on diving, recreational boating and anchoring on coral reefs.

C. Recreational and Charter Fishery

1. *Socioeconomic research.* (a) Research needs to be performed to determine the numbers of recreational fishermen and related trips need to be accurately defined. (b) Data needs to be collected to expand the information base for the socioeconomic characteristics or the recreational and charter boat industries. (c) In addition to data collection activities, research needs to be done to investigate the potential economic impacts and costs associated with recreational fishing.

2. *Research on Management Alternatives.* (a) Research into the effects of seasonal closures or MPAs on the recreational and charter boat industries are a priority. (b) Investigations should include benefits and costs to the stocks, as well as socioeconomic benefits/costs to participants in the fishery. (c) One key element is research into the potential impact of closures and/or MPAs to improve spawning stocks. The biological impact of such management alternatives should be more clearly understood regarding impact to spawning stocks. (d) Another key question is the potential impacts of closures on the recruitment of stocks that are important for recreational and charter boat industries. (e) Research is also needed to determine the potential of bag and size limits on species that are important to recreational and charter boat industries. Emphasis of the research should be on looking at alternatives to size limits. (f) Bycatch post-release mortality closely relates to alternative management measures and research is needed to adequately measure these mortality rates. At-sea observers on recreational and charter boat trips are a possible means of performing this type of research and should be considered for this research topic.

3. *Catch/Effort Data.* Data collection projects are needed to improve the data on catch and effort from the private recreational fishermen. Research is needed to determine whether and at what level an increase in the numbers of intercept interviews are needed to improve better resolution in the estimates of the catch and effort for the private recreational fishery.

4. *Habitat research.* (a) Research is needed to evaluate the effectiveness of artificial reefs, what can artificial reefs do for the fishing community, and estimate associated impacts. (b) Research is needed to determine the impacts and effects of harmful algal blooms such as red tide on recreational and charter boat fisheries. (c) Investigations are needed into requirements for essential fisheries habitat for certain species - gag group, goliath grouper and sharks.

1. *Social and economic impact of fluctuations in domestic shrimp values.* (a) Research is needed on the effects on the domestic shrimp fishery by high quantities of imports from foreign countries. (b) Research is also needed to investigate the social and economic impacts. This type of research should include impacts on communities, both local fishery-dependent areas and the industry as a whole.

2. *Identifying non-trawlable areas.* Research is needed to investigate how habitat enhancements of non-trawlable areas could benefit shrimp fisheries. For example, artificial reefs could be an important method to improve certain fisheries. Such research could include investigations to determine if enhancements could increase habitat for juvenile fish, i.e. red snapper, and not only sub-adult and adult species.

3. *Quantification of effort.* Research is needed to continue recent effort to improve and better quantitate fishing effort. Such research needs to incorporate the conditions and recommendations negotiated with the shrimp industry. Areas of concern are insurance for at-sea observers, acceptable gear and protecting confidential data that are collected by the projects.

4. *BRD testing protocols.* Research needs to be continued to develop more efficient methods to certify finfish reduction devices. It would be beneficial for the shrimp industry if certification protocol that is more desirable for both the resource and the user could be developed.

5. *Quantification of bycatch rates.* Research is needed to expand existing methods of extrapolating trawl bycatch data for a broad range of conditions and fishing grounds. Use of scientific fishery observers should be expanded to collect bycatch information for a wide a range of fishing area and conditions as possible.

III. How to Apply

To apply for grants or cooperative agreements, you must follow the instructions in this document.

A. Eligibility

Eligible applicants include institutions of higher education, other nonprofits, commercial organizations, state governments, and private citizens. Federal agencies or institutions are not eligible. Foreign governments, organizations under the jurisdiction of foreign governments, and international organizations are excluded for purposes of their solicitation since the objective of the CRP is to optimize research and development benefits from U.S. marine fishery resources.

B. Duration and Terms of Funding

We will award grants or cooperative agreements for a maximum period of up to 18 months. For the extent of substantial involvement, *see* Section III. D. The award period depends upon the duration of funding requested in the applications, the decision of the NMFS selecting official on the amount of funding, the results of post-selection negotiations between the applicant and NOAA officials, and pre-award review

of the application by NOAA and Department of Commerce (DOC) officials.

C. Cost Sharing

Cost-sharing is not required for the CRP. Applications must provide the total budget necessary to accomplish the project, including contributions and/or donations. Because 15 U.S.C. 713c 3(c)(4)(B) provides that the amount of Federal funding must be at least 50 percent of the estimated cost of the project, the total costs shown in the proposal will be evaluated for appropriateness according to the administrative rules, including 15 CFR 14.23 and 15 CFR 24.24, as appropriate. If an applicant chooses to cost-share, and if that application is selected for funding, the applicant is bound by the percentage of the cost share reflected in the grant or cooperative agreement award. Note: Costs incurred in either the development of a project or the financial assistance application, or time expended in any subsequent discussions or negotiations prior to the award, are neither reimbursable nor recognizable as part of the recipient's cost share.

D. Application Format and Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation. Your application must be complete and must follow the format described in the CRP Application Package. Applicants should contact the NMFS Southeast Regional Office for a copy of this solicitation's CRP Application Package (*see* **ADDRESSES**). You may also obtain the application package from the SERO Home Page at: *ttp//caldera.sero.nmfs.gov/grants/programs/*.

Project applications must identify the principal participants, and include copies of any agreements describing the specific tasks to be performed by participants. Project applications should give a clear presentation of the proposed work, the methods for carrying out the project, its relevance to managing and enhancing the use of Gulf of Mexico and Atlantic fishery resources, and cost estimates as they relate to specific aspects of the project. Budgets must include a detailed breakdown, by category of expenditures, with appropriate justification for both the Federal and non-Federal shares. The budget must include estimates of the time and cost to the government required of the SEFSC partner. The cost of the SEFSC partner is not to be included as part of the project cost, but should be included as a separate budget item.

Applications should exhibit familiarity with related work that is completed or ongoing. Proposals should state whether the research applies to the Gulf of Mexico, South Atlantic or North Atlantic for highly migratory species or multiple areas. Successful applicants are required to collect and manage data in accordance with standardized procedures and format approved or specified by NMFS and to participate with NMFS in specific cooperative activities that are determined by consultations between NMFS and successful applicants before project grants are awarded. All data collected as part of an awarded grant must be provided to the National Marine Fisheries Service/Southeast Fisheries Science Center. Data must be edited and specified as accurate by the Principal Investigator.

All applicants must either be a commercial or recreational fisherman or have a written agreement that the proposed research includes a commercial or recreational fisherman or fishermen.

All applicants must include a written agreement with a person employed by the Southeast Fisheries Science Center (SEFSC) that will act as a partner in the proposed research project. The SEFSC partner will assist the applicant to develop a design for the project to assure that the outcome will provide suitable, scientific data and results to support needed fisheries management information.

Applications must be one-sided and unbound. All incomplete applications are returned to the applicant. Three copies (one original and two copies) of each application are required and should be submitted to the NMFS Southeast Regional Office, State/Federal Liaison Office (*see* **ADDRESSES**).

E. Indirect Costs

The total dollar amount of the indirect costs awarded under this program will not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 25 percent of the Federal share of the total proposed direct costs dollar amount in the application, whichever is less. A copy of the current, approved, negotiated Indirect Cost Agreement with the Federal Government must be included with the application.

IV. Screening, Evaluation, and Selection Procedures

A. Initial Screening of Applications

When we receive applications we will screen them to ensure that they were received by the deadline date (*see* **DATES**); include SF 424 signed and dated by an authorized representative; were submitted by an eligible applicant, either a commercial or recreational fisherman or contains a written agreement with a commercial or recreational fisherman; includes a written agreement with an SEFSC partner; address one of the funding priorities for federally managed species; and include a budget, statement of work, and milestones, and identify the principal investigator. We do not have to screen applications before the submission deadline in order to identify deficiencies that would cause your application to be rejected so that you would have an opportunity to correct them. However, should we do so and provide you information about deficiencies, or should you independently decide it is desirable to do so, you may correct any deficiencies in your application before the deadline. After the deadline, the application must remain as submitted; no changes can be made to it. If your application does not conform to these requirements and the deadline for submission has passed, the application will be returned without further consideration.

B. Evaluations of Proposed Projects

1. Technical evaluation. Application responsive to this solicitation will be evaluated by three or more appropriate private and public sector experts to determine their technical merit. These reviewers will provide individual evaluations of the proposals. No consensus advice will be given. These reviewers provide comments and assign scores to the applications based on the following criteria, with the weights shown in parentheses:

a. Does the proposal have a clearly stated goals(s) with associated objectives that meet the needs outlined in the project narrative? (30 points maximum)

b. Does the proposal clearly identify and describe, in the project outline and statement of work, scientific methodologies and analytical procedures that will adequately address project goals and objectives? (30 points maximum)

c. Do the principal investigators provide a realistic timetable to enable full accomplishment of all aspects of the research? (20 points maximum)

d. How effective are the proposed methods in enabling the principal investigators to maintain stewardship of the project performance, finances, cooperative relationships, and reporting requirements? (10 points maximum)

e. Does the budget appropriately allocate and justify costs? (10 points maximum)

2. Scientific Panel. Applications together with the technical reviewers' comments and scores are presented to a Scientific Panel composed of NMFS scientific experts. This panel provides comments and rates each proposal as either "Recommended for Funding" or "Not Recommended for Funding" based on merits of the science, the necessity of the information that would be gained by the project, and the likelihood of assisting industry or fisheries management.

3. CRP Panel. Proposals that are "Recommended for Funding" by the Scientific Panel are presented to a panel of non-NOAA Fishery experts known as the CRP Panel. Each member of the Panel individually considers if needs of the Agency are addressed in each proposal, if the project assists industry, and if the project addresses issues that are important to regional fisheries management. The individuals on the Panel provide comments and rate each of these proposals as either "Recommended for Funding" or "Not Recommended for Funding." No consensus advice will be given by the Panel. The Program Manager ranks the proposals in the order of preferred funding based on the number of Panel members recommending the proposal for funding.

4. Science Center Director. The ranked proposals are provided to the Science Center Director, who is the selecting official, in the order of preferred funding, based on the number of Panel members recommending the proposal for funding. If there are ties in the rankings, those ties will be distinguished by the peer review score. The Science Center Director also receives the Panel members' individual comments, and comments from the Scientific Panel for projects it rated as "Recommended for Funding.≥

The Science Center Director, in the consultation with the Regional Administrator, determines the projects to be recommended for funding. Though rarely used, the Science Center Director has an option to make a selection that falls outside the CRP Panel's order of preferred funding on the following grounds: for geographic diversity, if not enough projects have addressed a priority, or because of duplication with other funded grants within NOAA. The Science Center Director will justify in writing any such selection.

The exact amount of funds awarded, the final scope of activities, the project duration, and specific NMFS cooperative involvement with the activities of each project are determined in pre-award negotiations between the applicant, the NOAA Grants Office and the NMFS Program Office. Projects must not be initiated by recipients until a signed award is received from the NOAA Grants Office. Successful applications generally are recommended within 210 days from the date of publication of this notice. The earliest start date of awards average 90 days after each project is selected and after all NMFS/applicant negotiations of cooperative activities have been completed. The earliest start date of awards is about 300 days after the date of publication of this notice. Applicants should consider this selection and processing time in developing requested start dates for their applications. Unsuccessful applications will be returned to the applicant.

V. Administrative Requirements

A. Your Obligations as an Applicant

You must:

1. Meet all application requirements and provide all information necessary for the evaluation of the proposal, including one signed original and nine signed copies of the application.

2. Be available to respond to questions during the review and evaluation of the proposal(s).

B. Your Obligations as a Successful Applicant (Recipient)

If you are selected to receive a grant award for a project, you must:

1. Manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

2. Keep records sufficient to document any costs incurred under the award, and allow access to these records for audit and examination by the Secretary of Commerce, the Comptroller General of the United States, or their authorized representatives; and submit financial status reports (SF 269) to NOAA Grants in accordance with the award conditions.

3. Submit semiannual project status reports on the use of funds and progress of the project to us within 30 days after the end of each 6–month period. You will submit these reports to the individual identified as the NMFS Program Officer in the funding agreement.

4. Submit a final report within 90 days after completion of each project to the NMFS Program Officer. The final report must describe the project and include an evaluation of the work you performed and the results and benefits in sufficient detail to enable us to assess the success of the completed project.

5. Submit all data collected as part of the project to the SEFSC partner. Project data must be edited and verified as accurate by the applicant prior to being submitted to the SEFSC. Data must be submitted in the agreed upon format.

6. In addition to the final report, we request that you submit any publications printed with grant funds (such as manuals, surveys, etc.) to the NMFS Program Office for dissemination to the public.

C. Other Requirements of Recipients

If a grant is made that specifically requires the collection of information from the public, there will be a delay to allow NMFS to obtain the required Paperwork Reduction Act (PRA) approval prior to the start of the collection. This approval process takes a minimum of 4 months. Information on the PRA process can be found at the following Web site address: *www.rdc.noaa.gov@pra*.

Applications under this program are subject to the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs.≥

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act (5 U.S.C. 553a(2)) or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This action has been determined to be not significant for purposed of Executive Order 12866.

Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information requirements subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, SF-LLL, SF–424B, and SF–269 have been approved by OMB under the respective control numbers 0348–0043, 0348–0040, 0348–0046 and 0348–0039. Public reporting burden for the latter collections of information is estimated to average 4 hours for an application, 1 hour for a semi-annual report, and 1 hour for a

final report. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of these collection of information, including suggestions for reducing this burden to Ellie Francisco Roche (*see* **ADDRESSES**).

Authority: 15 U.S.C. 713c–3(d)

Dated: December 9, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–31698 Filed 12–16–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120902G]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings of the Reef Fish Advisory Panel (AP) and the Standing and Special Reef Fish Scientific and Statistical Committee (SSC) from January 6 through January 9, 2003.

DATES: The Council's Reef Fish AP will convene at 9 a.m. on Monday, January 6, 2003 and conclude by 4 p.m. on Tuesday, January 7, 2003. The SSC will convene at 9 a.m. on Wednesday, January 8, 2003 and will conclude by 4 p.m. on Thursday, January 9, 2003.

ADDRESSES: The meetings will be held at the Hilton Tampa Airport Westshore Hotel, 2225 Lois Avenue, Tampa, FL; telephone: 813–877–6688.Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The AP and the SSC will review reports of the Council's Reef Fish Stock Assessment Panel (RFSAP) and Socioeconomic Panel (SEP) on the stock assessments and status of the red grouper and yellowedge grouper stocks in the Gulf of Mexico. These stock assessments were prepared by the NMFS and were presented to the RFSAP during their September 17–19, 2002 meeting. Red grouper assessments were previously conducted in 1991, 1993, and 1999. This is the first time that a stock assessment has been conducted on yellowedge grouper.

In October 2000, NMFS declared red grouper to be overfished, based on the 1999 assessment plus additional analyses conducted at the request of the RFSAP. In September 2002, the Council submitted a red grouper rebuilding plan to NMFS (Secretarial Amendment 1 to the Reef Fish Fishery Management Plan), which is currently being reviewed by NMFS. Based on the results of the 2002 red grouper stock assessment and the recommendations of the RFSAP, SEP, AP, and SSC, the Council may choose to modify its proposals for rebuilding the red grouper stock. The AP and SSC will provide recommendations to the Council on both red grouper and yellowedge grouper regulations.

Although other non-emergency issues not on the agenda may come before the AP/SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP/SSC will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agendas of these meetings and the stock assessments can be obtained by calling the Council office at 813–228–2815 (toll-free 888–833–1844). Additional materials, including the RFSAP report and the SEP report, can also be obtained from the Council office or downloaded from the Council Web site (*http://www.gulfcouncil.org*) but the SEP report may not be available until just prior to the meetings.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see ADDRESSES) by December 27, 2002.

Dated: December 10, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–31692 Filed 12–16–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120902H]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Shrimp Advisory Panel (AP).

DATES: The Shrimp AP meeting is scheduled to begin at 8:30 a.m. on Tuesday, January 7, 2003.

ADDRESSES: The meeting will be held at the at the New Orleans Airport Hilton, 901 Airline Highway, Kenner, LA; telephone: 504–469–5000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813-228-2815.

SUPPLEMENTARY INFORMATION: The Shrimp AP will convene to receive reports from NMFS on the biological and economic aspects of the 2002 Cooperative Shrimp Closure with the state of Texas. The Shrimp AP may make recommendations for a cooperative closure with Texas for 2003. The Shrimp AP will also review a revised Options Paper for Amendment 13 to the Shrimp Fishery Management Plan (FMP) addressing maximum sustainable yield (MSY), optimum yield (OY), maximum stock size threshold (MSST), and maximum fishing mortality threshold (MFMT) for shrimp stocks, as well as vessel monitoring systems (VMS), and bycatch issues.

The Shrimp AP consists principally of commercial shrimp fishermen, dealers, and association representatives.

Although other non-emergency issues not on the agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. Copies of the agenda can be obtained by calling 813–228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (*see* **ADDRESSES**) by December 27, 2002.

Dated: December 10, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–31693 Filed 12–16–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120902I]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held on January 13–16, 2003.

ADDRESSES: These meetings will be held at the Holiday Inn Riverwalk, 217 North St Mary's, San Antonio, TX 78205; telephone: 210–224–2500.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

January 15

8:30 a.m.—Convene.

8:45 a.m. - 12 noon—Receive public testimony on the Cooperative Texas Shrimp Closure and on yellowedge and red grouper total allowable catch (TAC). Final action on these TACs will be taken at a subsequent meeting.

1:30 p.m. - 5:30 p.m.—Receive the report of the Reef Fish Management Committee.

January 16

8:30 a.m. - 9:30 a.m.—Receive the report of the Shrimp Management Committee.

9:30 a.m. - 11:30 a.m.—Receive the report of the Habitat Protection Committee.

11:30 a.m. - 12 noon—Receive the Mackerel Management Committee Report.

1:30 p.m. - 3 p.m. -Complete action on the Draft Red Snapper Individual Fishing Quota (IFQ) profile.

3 p.m. - 3:45 p.m.—Receive the South Atlantic Fishery Management Council liaison report.

3:45 p.m. - 4 p.m.—Receive Enforcement Reports.

4 p.m. - 4:15 p.m.—Receive the NMFS Regional Administrator's Report.

4:15 p.m. - 4:45 p.m.—Receive Director's Reports.

4:45 p.m. - 5 p.m.—Other Business.

January 13

8 a.m. - 10:30 a.m.—Convene the Shrimp Management Committee to hear a review of the economic condition of the Texas shrimp industry by Mike Haby of Texas A&M University and biological and economic reports by National Marine Fisheries Service (NMFS) on the cooperative Texas Shrimp Closure. The committee will also review the Draft Amendment 13 Options Paper addressing maximum sustainable yield (MSY), optimum yield (OY), maximum stock size threshold (MSST), and maximum fishing mortality threshold (MFMT) for shrimp stocks; vessel monitoring systems (VMS); and bycatch. The committee will make recommendations for full Council review on Thursday morning.

10:30 a.m. - 11:30 a.m.—Convene the Mackerel Management Committee to review a draft regulatory amendment/ environmental assessment (EA) which addresses MSY, OY, MSST, and MFMT for the coastal migratory pelagic species.

1 p.m. - 5:30 p.m.—Convene the Reef Fish Management Committee to to hear the Reef Fish Stock Assessment Panel (RFSAP) report and Socioeconomic Panel (SEP) report on red and yellowedge groupers. They will also review the Draft Reef Fish Amendment 18 Options Paper and the Draft Reef Fish Amendment 21. The Reef Fish Amendment 18 Options Paper considers additional alternatives for management of the grouper stocks. The Reef Fish Amendment 21 considers alternatives related to the marine reserves established as gag aggregation sites off central west Florida. The Committee will also suggest to NMFS and NOAA General Counsel the types of penalties that should be used to deter violations of the provisions of an individual fishing quota (IFQ) system for red snapper. The committee will hear a presentation by NMFS enforcement on violations of the western longline prohibited area.

January 14

8:30 a.m. - 12 noon—Continue the Reef Fish Management Committee if necessary.

1:30 p.m. - 5:30 p.m.—Convene the Habitat Protection Committee to review and comment on the Draft Environmental Impact Statement (DEIS) for the Essential Fish Habitat (EFH) Generic Amendment.

Although non-emergency issues not contained in the agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the MSFCMA, provided the public has been notified of the Council's intent to take final action to address the emergency. A copy of the Committee schedule and agenda can be obtained by calling (813) 228–2815.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (*see* **ADDRESSES**) by January 6, 2003.

Dated: December 10, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–31694 Filed 12–16–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief

Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 18, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 11, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.
Title: Federal Perkins/NDSL Loan Assignment Form.
Frequency: On occasion.
Affected Public: Not-for-profit institutions; businesses or other for-profit; individuals or household.
Reporting and Recordkeeping Hour Burden:
Responses: 21,262.
Burden Hours: 8,505.
Abstract: This form is used to collect pertinent data regarding student loans from institutions participating in the Federal Perkins Loan Program. The Perkins Assignment Form serves as the transmittal document in the assignment of such loans to the Federal government.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–31645 Filed 12–16–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.116N]

Fund for the Improvement of Postsecondary Education—Special Focus Competition (Institutional Cooperation and Student Mobility in Postsecondary Education among the United States, Canada and Mexico); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas or improvement approaches in postsecondary education.

Eligible Applicants: Institutions of higher education or combinations of institutions and other public and private nonprofit institutions and agencies.

Applications Available: December 17, 2002.

Deadline for Transmittal of Applications: April 11, 2003.

Deadline for Intergovernmental Review: July 15, 2003.

Available Funds: Approximately $300,000 for FY 2003.

Estimated Range of Awards: $30,000 for FY 2003. $200,000–$215,000 for four-year duration of grant.

Estimated Average Size of Awards: $30,000 for FY 2003. $210,000 for four-year duration of grant.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit your narrative to the equivalent of no more than twenty (20) double-spaced pages using the following standards:

- A "page" is 8.5" × 11" on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the title page, the budget section, including the narrative budget justification, the assurances and certifications, the resumes, the bibliography, or the letters of support.

Our reviewers will not read any pages of your application narrative that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98, and 99.

SUPPLEMENTARY INFORMATION: This program is a Special Focus Competition to support projects addressing a particular problem area or improvement approach in postsecondary education. The competition also includes an invitational priority to encourage proposals designed to support the formation of educational consortia of American, Canadian and Mexican institutions to encourage cooperation in the coordination of curricula, the exchange of students and the opening of educational opportunities throughout North America. The invitational priority is issued in cooperation with Canada and Mexico. Canadian and Mexican institutions participating in any consortium proposal responding to the invitational priority may apply, respectively, to Human Resources Development Canada and the Mexican Department of Public Education for additional funding under separate Canadian and Mexican competitions.

Priority

We are particularly interested in applications that meet the following invitational priority.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priority a competitive or absolute preference over other applications.

Invitational Priority

Projects that support consortia of institutions of higher education that promote institutional cooperation and student mobility among the United States, Canada, and Mexico.

Methods for Applying Selection Criteria

We give equal weight to the listed criteria. Within each of the criteria, we give equal weight to each of the factors.

Selection Criteria

In evaluating applications for grants under this program competition, we use selection criteria chosen from those listed in 34 CFR 75.210 of EDGAR.

FOR APPLICATIONS OR FURTHER INFORMATION CONTACT: Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 1990 K Street, NW, 8th Floor, Washington, DC 20006–8544. You may also request application forms by calling 732–544–2504 (fax on demand), or application guidelines by calling 202–358–3041 (voice mail) or submitting the name of the competition and your name and postal address to *FIPSE@ED.GOV* (e-mail).

Applications are also listed on the FIPSE Web Site: *http://www.ed.gov.FIPSE.*

e-APPLICATIONS are available at: *http://e-grants.ed.gov.*

If you use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. For additional program information call the FIPSE office 202–502–7500 between the hours of 8 a.m. and 5 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact number listed under **FOR APPLICATIONS OR FURTHER INFORMATION CONTACT.**

Individuals with disabilities also may obtain a copy of the application package in an alternative format by contacting that number. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting electronic applications differ from those in the Education Department General Administrative Regulations (EDGAR)(34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C.553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Program for North American Mobility in Higher Education (CFDA No. 84.116N) is one of the programs included in this project. If you are an applicant under the Program for North American Mobility in Higher Education, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-Application pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Title Page, (substitutes for the ED Form 424), Budget Summary Form (substitutes for the ED Form 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days of submitting your electronic application, fax a signed copy of the Title Page (replaces ED 424) to the Application Control Center after following these steps:

(1) Print the Title Page from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the Title Page.

(4) Fax the Title page to the Application Control Center at 202 260–1349 within three working days of submitting your electronic application.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Program for North American Mobility in Higher Education and you are prevented from submitting your application on the closing dates because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2) (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date. The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-Grants help desk at 1–888–336–8930.

You may access the electronic grant application for the Program for North American Mobility in Higher Education at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic

Applications) in the application package.

Note: Due to the upgrading of software, we anticipate that the e-Application system will be unavailable for several days in mid-December.

The tentative schedule for this down time is from 7 p.m., December 12 until 6 a.m., December 16, Washington, DC time. Please check *http://e-grants.ed.gov* for any updates on the unavailability of the e-Application system.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC area at 202 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 20 U.S.C. 1138–1138d.

Dated: December 12, 2002.

Sally Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–31690 Filed 12–16–02; 8:45 am]

BILLING CODE 4001–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.116M]

Fund for the Improvement of Postsecondary Education—Special Focus Competition: US-Brazil Higher Education Consortia Program (Institutional Cooperation and Student Mobility in Postsecondary Education Between the United States and Brazil)

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2003.

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas or improvement approaches in postsecondary education.

Eligible Applicants: Institutions of higher education or combinations of institutions and other public and private nonprofit institutions and agencies.

Applications Available: December 17, 2002.

Deadline for Transmittal of Applications: March 28, 2003.

Deadline for Intergovernmental Review: May 27, 2003.

Estimated Available Funds: $300,000. The estimated amount of funds available for awards is based on the Administration's request for this program for FY 2003. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $28,000–$32,000 for FY 2003; $190,000–$210,000 for 4-year duration of grant.

Estimated Average Size of Awards: $30,000 for FY 2003; $200,000 for 4-year duration of grant. (The first year grant is a preparatory phase. The grant amounts in subsequent years will be higher during the implementation phase of the grant).

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98, and 99.

SUPPLEMENTARY INFORMATION: This program is a Special Focus Competition under the Fund for the Improvement of Postsecondary Education (Title VII, Part B of the Higher Education Act of 1965, as amended) to support projects addressing a particular problem area or improvement approach in postsecondary education. The competition also includes an invitational priority to encourage proposals designed to support the formation of educational consortia of American and Brazilian institutions to encourage cooperation in the coordination of curricula, the exchange of students, and the opening of educational opportunities between the United States and Brazil. The invitational priority is issued in cooperation with Brazil. These awards support only the participation of U.S. institutions and students in these consortia. Brazilian institutions participating in any consortium proposal responding to the invitational priority may apply, respectively, to the Coordination of Improvement of Personnel of Superior Level (CAPES), Brazilian Ministry of Education, for additional funding under a separate but parallel Brazilian competition.

Priority

Invitational Priority

We are particularly interested in applications that meet the following invitational priority:

Projects that support consortia of institutions of higher education that promote institutional cooperation and student mobility between the United States and Brazil.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the priority a competitive or absolute preference over other applications.

Methods for Applying Selection Criteria: The Secretary gives equal weight to the listed criteria. Within each of the criteria, the Secretary gives equal weight to each of the factors.

Selection Criteria

In evaluating applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 75.210.

(1) The significance of the proposed project, as determined by—

(a) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies;

(b) The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for their being used effectively in a variety of other settings; and

(c) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(2) The quality of the design of the proposed project, as determined by—

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable; and

(b) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(3) The adequacy of resources, as determined by—

(a) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project;

(b) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support; and

(c) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(4) The quality of the project personnel, as determined by—

(a) The qualifications, including relevant training and experience, of key project personnel; and

(b) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In Fiscal Year 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The US-Brazil Higher Education Consortia Program—CFDA No. 84.116M is one of the programs included in the pilot project. If you are an applicant under the US-Brazil Higher Education Consortia Program—CFDA No. 84.116M, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the US-Brazil Higher Education Consortia Program—CFDA No. 84.116M and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery.

For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2) (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date. The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-Grants help desk at 1–888–336–8930.

You may access the electronic grant application for the US-Brazil Higher Education Consortia Program—CFDA No. 84.116M at: *http://e-grants.ed.gov*.

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html*.

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.116M.

FOR FURTHER INFORMATION CONTACT: Copies of the application materials and further program information may also be obtained from Cindy Fisher, Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 1990 K Street, NW., 8th Floor, Washington, DC 20006–8544. Telephone: (202) 502–7500. You may also request application guidelines by submitting the name of the competition (US-Brazil) and your name and postal address to: *fipse@ed.gov*.

Applications are also available on the FIPSE Web site at: *http://www.ed.gov/offices/OPE/FIPSE/Brazil/*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.* Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal**

Register, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1138–1138d.

Dated: December 12, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–31691 Filed 12–16–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–16: Catalysis Science

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Basic Energy Sciences (BES) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving grant applications for high-risk, long-term, multi-investigator, multidisciplinary research on the science of catalysis. See Supplementary Information below for specific guidelines. The goal of the Catalysis Science research effort is to develop combined experimental and theoretical approaches to enable molecular-level understanding of catalytic reaction mechanisms, ultimately enabling the prediction of catalytic reactivity at multiple time and length scales. Strongly encouraged are: (a) Applications containing synergistic integration of physical, chemical, and/or biochemical experimentation with solid state and molecular reactivity theories; (b) applications that integrate atomistic design of catalytically active sites; molecular, supramolecular or solid-state synthesis; and in-situ, time- and space-resolved, spectroscopy and microscopy; (c) applications to identify mechanisms and principles common to homogeneous, heterogeneous, and bio catalysis for the purpose of advancing the understanding of catalysis and developing novel chemical or physical functionalities; and (d) applications to understand and manage catalyst complexity arising from the combination of diverse functionalities, namely chemical, biological, electronic, optical, magnetic, mechanical, thermal, etc. DOE National Laboratory investigators should refer to the complementary request for proposals announced under: *http://www.sc.doe.gov/production/grants/grants.html.*

DATES: Letters of intent are required and must include the information specified under Application Guidelines, and must be submitted by 4:30 p.m., E.S.T., February 5, 2003. Full applications must be preceded by the letters of intent and must be submitted by 4:30 p.m., E.S.T., March 26, 2003, in order to be accepted for merit review and consideration for award during Fiscal Year 2003.

ADDRESSES: Letters of intent must be sent as email attachment in PDF format to Drs. Raul Miranda (*raul.miranda@science.doe.gov*) and William Millman (*william.millman@science.doe.gov*). Formal applications referencing Program Notice 03–16 must be sent electronically by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov* (*see* also *http://www.sc.doe.gov/production/grants/grants.html.*). IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS Web site. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be E-mailed to the IIPS Help Desk at: *HelpDesk@e-center.doe.gov* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html.*

If you are unable to submit the application through IIPS, please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212, in order to gain assistance for submission through IIPS or to receive special approval and instruction on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. Raul Miranda by telephone at: (301) 903–8014, or Dr. William Millman at: (301) 903–5805, or at the E-mail addresses mentioned above, or by mail at U.S. Department of Energy, Office of Science, SC–14/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290.

SUPPLEMENTARY INFORMATION:

General and Particular Goals of This Notice

The general goals of the Catalysis Science research effort at the Office of Basic Energy Sciences are the following: (1) Attain a fundamental scientific understanding of catalytic reactivity of molecular, supramolecular or nanoscale, and condensed matter; (2) acquire basic knowledge of the structural, dynamic, and electronic aspects of multi-atom assemblies that are associated with materials undergoing chemical transformations and converting or transferring energy or mass; and (3) develop the methodology and tools to design and synthesize hard, soft (macromolecular and biological), and hybrid materials at the atomic level to achieve controlled reactivity, multi-functionality, and time-dependent behavior.

The particular goal of the Catalysis Science effort is to dramatically accelerate the development of a predictive science of chemical catalysis by means of appropriate theoretical and experimental collaborations. To that end, focused and joint activities among complementary scientists and engineers will be supported to discover structure-property relationships and set the foundations for comprehensive theories of catalyst reactivity and time-dependent behavior. Consequently, support will be given for the use of advanced experimental and theoretical tools, as well as the development of new synthetic, spectroscopic, structural, theoretical and information management tools, for achieving systematic probing and exacting control of structure-reactivity relationships.

Expected Long-Term Impact of the Research Funded Under This Notice

The fundamental understanding sought with this research should, in the long term, lead to novel molecular or nanoscale constructs endowed with designed chemical reactivity. As catalysts, such materials should possess, by definition, the ability to direct chemical transformations quickly, selectively, and repeatedly, toward desired sets of products, without themselves suffering degradation. To convert selected species that may be components of complex mixtures, future catalysts will also possess enzyme-like reactant specificity and chemo-, regio- and stereo-selectivity. Acting in environments with various types of heterogeneity, future synthetic catalysts will be self-adaptive or externally controllable, by incorporating both sensing and acting functionalities in the same structure. Future catalysts will have self-healing capabilities in order to reverse degradation and prevent deactivation. They might be tunable to absorb energy in specific spectral ranges and deliver such energy to selected chemical bonds. These complex structures will efficiently convert currently intractable fossil and renewable feedstocks into clean fuels, chemical commodities, fine chemicals and special materials. They will also dramatically purify our environment, protect our security, balance our body chemistry, and impact a number of industries: power, food, transportation, electronics, housing, etc. The objective of this research effort is to develop fundamental scientific understanding of the physicochemical mechanisms and discovery of the principles that will allow the design and controlled synthesis of the catalysts that will achieve this vision.

Emphasis on Research Teams

Note: Single investigators wishing to submit an application in response to the goals stated in this notice should contact an appropriate program manager in the Office of Basic Energy Sciences. *See* above for contact information.

Applications are sought from multi-investigator teams that focus on the creation of new approaches to research in catalysis. Thus, applications that present novel approaches to integrating or coordinating the various aspects of catalysis (heterogeneous, homogeneous and biological) are particularly encouraged, as are applications that integrate advanced experimental techniques, synthetic methodology, and theory and modeling. Participation by investigators who are new to catalysis science research is strongly encouraged.

In particular, this notice targets imaginative multidisciplinary research efforts coordinating some or all of the following disciplines: chemistry, biology, physics, materials science, engineering; molecular and solid state synthesis, structural and spectroscopic instrumentation, reaction mechanisms and dynamics; chemical and materials theory, applied mathematics, information science and computation. The application should describe how that coordination may lead to a predictive science of catalysis.

Applicants are invited, but not required, to partner with multiple institutions: universities, DOE National Laboratories (FFRDCs) and Nanoscale Science Research Centers, when appropriate and necessary for the intellectual and operational benefit of the collaboration. Applications must include a management plan describing the intellectual responsibility of each investigator and how each of them is essential to achieving the overall project milestones (see Application Guidelines for detailed instructions.)

In multi-institutional applications, only the leading institution must submit the original application, including separate and detailed budgets from each institution. Research collaboration with DOE FFRDCs is welcome, but funds will be provided to these organizations under a separate notice (*http://www.sc.doe.gov/production/grants/grants.html.*) A guide for submitting a collaborative application with a national laboratory can be accessed via the web at: *http://www.sc.doe.gov/production/grants/Colab.html.* International collaborations are also welcome, but the international partner will not receive funding under this notice. Use of national and international user facilities is encouraged but not required. All projects will be evaluated using the same criteria, regardless of the submitting institution.

Program Funding

It is anticipated that up to $4 million will be available for up to 6 new grant awards during Fiscal Year 2003, contingent upon the availability of appropriated funds. For this initial funding period, three-year grants are expected, also contingent upon the availability of appropriated funds, progress of the research, and continuing program need.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following criteria listed in descending order of importance as codified at 10 CFR part 605.10(d) (*http://www.sc.doe.gov/production/grants/605index.html*):

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of applicant's personnel and adequacy of proposed resources;
4. Reasonableness and appropriateness of the proposed budget.

In addition, applications will be evaluated in terms of the organizational plan and the research coordination. The evaluation will also include program policy factors such as the relevance of the proposed research to the terms of the announcement and programmatic needs.

External peer reviewers will be selected with regard to both their scientific expertise and the absence of conflict of interest. Non-federal reviewers may be used and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Application Guidelines

Note: Each university investigator is limited to only one application as either principal investigator/project director or co-principal investigator.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR part 605 and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.* The application Face Page, form DOE F 4650.2, must contain the principal investigator/project director's name, institution, phone number, fax number, and E-mail address. Requests for three-year grants are expected. For multi-institutional applications, see further instructions below.

The letter of intent should be brief and contain a project title, principal investigator/project director, co-principal investigators, external collaborators not included in the budget, institutions involved, estimated total budget, purpose and innovative aspects of the research, and primary role of each principal investigator. The letters of intent are not binding and will be used by program managers exclusively for preliminary identification of potential peer reviewers, conflicts of interest, and duplications of effort.

The full application shall contain a research description limited to a maximum of 40 pages per application, including figures, tables, and previous results. It must also contain a research

management and coordination plan, limited to 10 pages. The application must have a short abstract focusing on the goals of the research and an executive summary that includes research methodology and coordination plan for the research team. Attachments must include a brief biography for each investigator and external collaborator; a listing of all current and pending federal, state, and private support for each investigator listed in the budget; and letters of commitment from external collaborators not included in the budget. The required page and font format are: 8.5 inch x 11 inch page size; 1 inch top, bottom and right margins; 1.25 inch left margin; single, 1.5 or double line spacing; 12 pt font size for text and appropriate fonts for equations and symbolic notation. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications.

The application must have the following ordered format:

1—Face page (DOE F 4650.2).
2—Table of contents.
3—Project abstract (400 word maximum).
4—Executive summary (3 page maximum).
5—Budget for each year and cumulative budget (DOE F 4620.1).
6—Budget explanation.
7—Cover page(s) with project title, names of project director and co-principal investigators and their affiliations. For multi-institutional applications, list the investigator names, their institutions, the yearly amount request from each institution and the yearly total request.
8—Research description (40 page maximum, including goals, background, research plan, previous results (if any), and research methodology).
9—Research management and coordination plan (10 page maximum).
10—References (including full titles).
11—Biographical sketches (3 page maximum per principal investigator and external collaborator).
12—Description of main facilities to be used in the research.
13—Current and pending support for each investigator listed in the budget(s).
14—Letters of commitment from external collaborators.
15—Federal certification pages for the submitting institution.
16—Appendix 1 (For multi-institutional applications only): original signed pages.
17—Appendix 2 (For multi-institutional applications only): combined budget sheets.

Specific Instructions for Multi-Institutional Applications

The leading institution project director/principal investigator is responsible for the management and coordination of the overall effort and for submitting the application. If the application were funded, each institution would receive a separate grant or contract and there would be no subcontracts. Therefore, each institution must prepare and sign its own face page (item 1 listed above), budget sheets and explanation (items 5–6 above) and federal certification pages (item 15 above). On the face page, each institution should identify its principal investigator and specify its amount request. The project director/principal investigator of the leading institution must electronically or otherwise submit the application using the following format: (item 1) leading institution face page citing the amount requested by the leading institution; (items 2–15) body of the application including the leading institution's budget and explanation (items 5–6); (item 16) Appendix 1, containing all original budgets, explanations and federal certification pages from the other institutions; and (item 17) Appendix 2, containing a spreadsheet that combines the budgets from the multiple institutions in an easily readable format.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, on December 10, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–31649 Filed 12–16–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–244–000, et al.]

California Independent System Operator Corporation, et al.; Electric Rate and Corporate Filings

December 9, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. California Independent System Operator Corporation

[Docket No. ER03–244–000]

Take notice that on December 5, 2002, the California Independent System Operator Corporation (ISO), submitted an informational filing in accordance with Article IX, Section B of the Stipulation and Agreement approved by the Commission on May 28, 1999, California Independent System Operator Corp., 87 FERC ¶ 61,250. ISO states that this provision requires the ISO to provide on a confidential basis to the Commission (I) information regarding any notice from an RMR Unit requesting a change of Condition; (ii) the date the chosen Condition will begin; and (iii) if the change is from Condition 2, the applicable level of Fixed Option Payment.

The ISO also states that unredacted copies of this filing have been served, subject to the applicable Non-Disclosure and Confidentiality Agreement in the RMR Contract, on the designated RMR contact persons at the California Public Utilities Commission and the California Electricity Oversight Board. The ISO adds that redacted copies of this filing have been served, subject to the Non-Disclosure and Confidentiality Agreement in the RMR Contract, on the designated RMR contact persons at the relevant Responsible Utilities and the relevant RMR Owners. Moreover, the ISO indicates that redacted copies of this filing have been served on the California Public Utilities Commission, the California Electricity Oversight Board, the California Energy Commission and all parties with effective Scheduling Coordinator Agreements under the ISO Tariff.

Comment Date: December 26, 2002.

2. PECO Energy Company

[Docket No. ER03–245–000]

Take notice that on December 5, 2002 PECO Energy Company (PECO) filed a Notice of Cancellation of FERC Electric Tariff, Volume 5 that was filed on July 9, 1996 in Docket No. OA96–13.

PECO requests that the cancellation be effective on February 3, 2003. PEPCO states that notice of the cancellation has been served to all 32 parties who have executed service under the Tariff.

Comment Date: December 26, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31637 Filed 12–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–95–071, et al.]

San Diego Gas & Electric Company, et al.; Electric Rate and Corporate Filings

December 10, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents

[Docket No. EL00–95–071]

Investigation of practices of the California Independent System Operator and the California Power Exchange.

[Docket No. EL00–98–060]

Public meeting in San Diego, California.

[Docket No. EL00–107–013]

Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc., and Southern Energy California, L.L.C., Complainants, v. California Independent System Operator Corporation, Respondent.

[Docket No. EL00–97–007]

California Electricity Oversight Board, Complainant, v. all sellers of energy and ancillary services into the energy and ancillary services markets operated by the California Independent System Operator and the California Power Exchange, Respondents.

[Docket No. EL00–104–012]

California Municipal Utilities Association, Complainant, v. all jurisdictional sellers of energy and ancillary services into markets operated by the California Independent System Operator and the California Power Exchange, Respondents.

[Docket No. EL01–1–013]

Californians for Renewable Energy, Inc. (CARE), Complainant, v. Independent Energy Producers, Inc., and all sellers of energy and ancillary services into markets operated by the California Independent System Operator and the California Power Exchange; all scheduling coordinators acting on behalf of the above sellers; California Independent System Operator Corporation; and California Power Exchange Corporation, Respondents.

[Docket No. EL01–2–007]

Investigation of wholesale rates of public utility sellers of energy and ancillary services in the Western System Coordinating Council.

[Docket No. EL01–68–026]

Take notice that on December 2, 2002, the California Independent System, Operator Corporation (ISO) tendered for filing a compliance filing made in compliance with the Commission's October 31, 2002, Order on Compliance Filing and Compliance Report. The compliance filing revises section 5.11 of the ISO's tariff, in accordance with the October 31 Order.

The ISO states that this filing has been served on all entities that are on the official service list for these dockets.

Comment Date: January 2, 2002.

2. New York Independent System Operator, Inc.

[Docket Nos. ER00–3591–015, ER00–1969–017, ER00–3038–008, ER02–2081–002and EL00–70–009]

Take notice that on December 2, 2002, the New York Independent System Operator, Inc. (NYISO) tendered for filing a compliance filing in accordance with the Commission's October 31, 2002, order in the above-captioned proceedings.

The NYISO has served a copy of this filing upon all parties designated on the official service lists compiled by the Secretary in these proceedings.

Comment Date: December 23, 2002.

3. Southern California Edison Company

[Docket No. ER03–247–000]

Take notice that on December 6, 2002, Southern California Edison Company (SCE) tendered for filing a three-party letter agreement between SCE, Pure Power Energy Company, LLC (Pure Power Energy), and Wintec Energy, Ltd. (Wintec).

The purpose of the letter agreement is for SCE, Pure Power Energy and Wintec to agree upon a short-term arrangement pursuant to which SCE will engineer, design, and install additional protection equipment necessary to interconnect the demonstration project at SCE's Buckwind Substation; and for SCE to provide short-term, temporary interconnection service via the existing interconnection facilities at Buckwind Substation. SCE respectfully requests that the letter agreement become effective on November 29, 2002.

Copies of this filing were served upon the Public Utilities Commission of the State of California, Pure Power Energy, and Wintec.

Comment Date: December 27, 2002.

4. Pacific Gas and Electric Company

[Docket No. ER03–248–000]

Take notice that on December 6, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing a revised Appendix B to service agreement no. 42 for Network Integration Transmission Service (NITS) and an agreement for installation or allocation of special facilities, both between PG&E and the San Francisco Bay Area Rapid Transit District (BART).

The revised NITS Appendix B reflects changes due to the BART-San Francisco International Airport Extension Project. The SFA permits PG&E to recover the ongoing costs associated with owning, operating and maintaining certain special facilities required by BART for interconnection with PG&E's system. As detailed in the special facilities agreement, PG&E proposes to charge BART an equivalent one-time payment cost of ownership charge equal to the rates for transmission-level, customer-financed facilities in PG&E's currently effective electric rule 2, as filed with the California Public Utilities Commission (CPUC). PG&E's currently effective rate of 0.31% for transmission-level, customer-financed special facilities is

contained in the CPUC's advice letter 1960-G/1587-E, effective August 5, 1996, a copy of which is included as attachment 3 of this filing.

PG&E has requested certain waivers. Copies of this filing have been served upon BART, the California Public Utilities Commission and the California Independent System Operator Corporation.

Comment Date: December 27, 2002.

5. Illinois Power Company

[Docket No. ER03–249–000]

Take notice that on December 6, 2002, Illinois Power Company (Illinois Power), filed an interconnection and operating agreement entered into with Franklin County Power of Illinois, LLC and subject to Illinois Power's open access transmission tariff.

Illinois Power requests an effective date of November 17, 2002, for the agreement and seeks a waiver of the Commission's notice requirement. Illinois Power has served a copy of the filing on Franklin County Power of Illinois, LLC.

Comment Date: December 27, 2002.

6. Northern Indiana Public Service Company

[Docket No. ER03–250–000]

Take notice that on December 6, 2002, Northern Indiana Public Service Company (Northern Indiana) filed a service agreement for network integration transmission service, a network operating agreement, and an electric distribution service agreement with the Indiana Municipal Power Agency (IMPA).

Northern Indiana has requested an effective date of February 1, 2003. Copies of this filing have been sent to IMPA, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment Date: December 27, 2002.

7. CinCap IX, LLC.

[Docket No. ER03–251–000]

Take notice that on December 6, 2002, Cincap IX, LLC tendered for filing a notice of cancellation, pursuant to 18 CFR 35.15, giving notice of cancellation of its market-based electric tariff filed with the Commission.

Comment Date: December 27, 2002.

8. Tampa Electric Company.

[Docket No. ER03–252–000]

Take notice that on December 6, 2002, Tampa Electric Company (Tampa Electric) tendered for filing notices of cancellation of a power sales agreement with Hardee Power Partners Limited (HPP) and two related transmission service agreements with HPP under Tampa Electric's open access transmission tariff. Tampa Electric proposes that the cancellations be made effective on January 1, 2003.

Copies of the filing have been served on HPP and the Florida Public Service Commission.

Comment Date: December 27, 2002.

9. PJM Interconnection, L.L.C.

[Docket No. ER03–254–000]

Take notice that on December 6, 2002, PJM Interconnection, L.L.C. (PJM), submitted for filing amendments to the amended and restated PJM operating agreement (operating agreement) to amend the "Membership Requirements" provisions (1) to delete the requirement that the additional member agreements executed by new members of PJM be filed with the FERC; and (2) to permit entities to become members of PJM effective as of the date the supplemental membership agreements are countersigned by the president of PJM rather than the date specified by the Commission. A new schedule 12 also is added to the operating agreement listing all current of PJM members.

Pursuant to section 35.15 of the Commission's regulations, 18 CFR 35.15, and sections 4.1(C) and 18.18.2 of the operating agreement, PJM also submits for filing notice that several entities have withdrawn their memberships in PJM and a notice of cancellations for the additional member agreements that have FERC rate schedule designations and are being cancelled due to the PJM member withdrawals.

Copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region.

Comment Date: December 27, 2002.

10. Midwest Energy, Inc.

[Docket No. ES03–15–000]

Take notice that on December 3, 2002, Midwest Energy, Inc. submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to incur up to and including $37,714,286 of debt and requesting an exemption from the Commission's competitive bidding requirements in order to purchase certain regulated electric transmission and distribution systems from Westar Energy, Inc.

Comment Date: January 2, 2003.

11. ISO New England Inc.

[Docket No. OA97–237–000]

Take notice that on December 5, 2002, ISO New England Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) its "Quarterly Report for Regulators," as required by New England Power Pool Market rules and procedures 17, for the fourth quarter.

Comment Date: December 26, 2002

Standard Paragraph

Any person desiring to be hear or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 18 CFR 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31636 Filed 12–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons to Attend

December 11, 2002.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

Agency Holding Meeting: Federal Energy Regulatory Commission.

Date and Time: November 20, 2002 (Within a relatively short time before or after the regular Commission Meeting).

Place: Hearing Room 6, 888 First Street, NE., Washington, DC 20426.

Status: Closed.

Matters to be Considered: Non-Public Investigations and Inquiries and Enforcement Related Matters.

For Further Information Contact: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Massey and Brownell voted to hold a closed meeting on December 18, 2002. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31816 Filed 12–13–02; 11:29 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

December 11, 2002.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: December 18, 2002, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

NOTE: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

For a recording listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

813th—Meeting, December 18, 2002, Regular Meeting, 10 a.m.

Administrative Agenda

A–1.
DOCKET# AD02–1 000, Agency Administrative Matters

A–2.
DOCKET# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

A–3.
DOCKET# AD03–2, 000 Report on Market Monitoring Workshop

Markets, Tariffs and Rates—Electric

E–1.
DOCKET# EC03–14, 000 Ameren Services Company, FirstEnergy Corp., Northern Indiana Public Service Company, National Grid USA, and Midwest Independent Transmission System Operator, Inc.
OTHER#S ER02–2233 001 Ameren Services Company, FirstEnergy Corp., Northern Indiana Public Service Company, National Grid USA, and Midwest Independent Transmission System Operator, Inc.

E–2. DOCKET# ER03–86, 000, Midwest Independent Transmission System Operator, Inc.

E–3.
DOCKET# ER02–1420, 006, Midwest Independent Transmission System Operator, Inc.
OTHER#S ER02–1420, 003, Midwest Independent Transmission System Operator, Inc.; ER02–1420 004, Midwest Independent Transmission System Operator, Inc.

E–4.
DOCKET# ER03–83, 000, TRANSLink Development Company, LLC

E–5.
DOCKET# RT01–35, 009, Avista Corporation, Bonneville Power Administration, Idaho Power Company, Nevada Power Company, North Western Energy, L.L.C., PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., Sierra Pacific Power Company, and British Columbia Hydro and Power Authority

E–6.
DOCKET# RT02–1, 003, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico and Tucson Electric Power Company
OTHER#S EL02–9, 001, WestConnect RTO, LLC

E–7. OMITTED

E–8.
DOCKET# EC02–113, 000, Cinergy Services, Inc., on behalf of PSI Energy, Inc., CinCap Madison, LLC and CinCap VII, LLC

E–9.
DOCKET# EL02–60, 003, *Public Utilities Commission of the State of California* v. *Sellers of Long Term Contracts to the California Department of Water Resources*
OTHER#S EL02–62, 003, *California Electricity Oversight Board* v. *Sellers of Energy and Capacity Under Long-Term Contracts with the California Department of Water Resources*

E–10.
DOCKET# RT01–2, 001, PJM Interconnection L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company and UGI Utilities Inc.
OTHER#S RT01–2, 002, PJM Interconnection L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company and UGI Utilities Inc.

E–11.
DOCKET# OA97–261, 003, Pennsylvania-New Jersey-Maryland Interconnection
OTHER#S EC96–28, 004, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company and Public Service Electric and Gas Company; EC96–29, 004, PECO Energy Company; EL96–69, 004, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company and Public Service Electric and Gas Company; ER96–2516, 004, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company and Public Service Electric and Gas Company; ER96–2668, 004, PECO Energy Company; EC97–38, 002, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, Public Service Electric and Gas Company, Atlantic City Electric

Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, and Metropolitan Edison Company; EL97–44, 002, Pennsylvania-New Jersey-Maryland Interconnection Restructuring; OA97–678, 002, PJM Interconnection, L.L.C.; ER97–1082, 005, Pennsylvania-New Jersey-Maryland Interconnection; ER97–3189, 031, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, and Metropolitan Edison Company; ER97–3273 002 Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, Public Service Electric and Gas Company, and Pennsylvania-New Jersey-Maryland Interconnection Restructuring

E–12.
DOCKET# PL03–1, 000, Proposed Pricing Policy for Transmission Independence

E–13.
DOCKET# ER02–2014, 000, Entergy Services, Inc.
OTHER#S ER02–2014, 003, Entergy Services, Inc. ER02–2014 004 Entergy Services, Inc.

E–14.
DOCKET# EC02–91, 000, UBS AG
OTHER#S EL02–105, 000, UBS AG; EC02–120, 000, Bank of America, N.A.; EL02–130, 000, Bank of America, N.A.

E–15.
DOCKET# ER03–147, 000, ISO New England Inc.

E–16.
DOCKET# EL01–10, 000, Puget Sound Energy, Inc.
OTHER#S EL01–10, 001, Puget Sound Energy, Inc.

E–17.
DOCKET# EL03–19, 000, *Southern California Edison Company* v. *Enron Generating Facilities:* Victory Garden Phase IV Partnership, Sky River Partnership, Cabazon Power Partners LLC, Zond Wind System Partners, Ltd. Series 85–A and Zond Wind System Partners, Ltd. Series 85–B
OTHER#S QF85–686, 002, *Southern California Edison Company* v. *Enron Generating Facilities:* Victory Garden Phase IV Partnership, Sky River Partnership, Cabazon Power Partners LLC, Zond Wind System Partners, Ltd. Series 85–A and Zond Wind System Partners, Ltd. Series 85–B; QF85–687, 002, *Southern California Edison Company* v. *Enron Generating Facilities:* Victory Garden Phase IV Partnership, Sky River Partnership, Cabazon Power Partners LLC, Zond Wind System Partners, Ltd. Series 85–A and Zond Wind System Partners, Ltd. Series 85–B; QF87–365, 005, Zond Windsystems Holding Company: QF90–43 004 Victory Garden Phase IV Partnership; QF90–43, 005, *Southern California Edison Company* v. *Enron Generating Facilities:* Victory Garden Phase IV Partnership, Sky River Partnership, Cabazon Power Partners LLC, Zond Wind System Partners, Ltd. Series 85–A and Zond Wind System Partners, Ltd. Series 85–B; QF91–59, 005, Sky River Partnership; QF91–59, 006, *Southern California Edison Company* v. *Enron Generating Facilities:* Victory Garden Phase IV Partnership, Sky River Partnership, Cabazon Power Partners LLC, Zond Wind System Partners, Ltd. Series 85–A and Zond Wind System Partners, Ltd. Series 85–B; QF95–186, 005, *Southern California Edison Company* v. *Enron Generating Facilities:* Victory Garden Phase IV Partnership, Sky River Partnership, Cabazon Power Partners LLC, Zond Wind System Partners, Ltd. Series 85–A and Zond Wind System Partners, Ltd. Series 85–B; EL03–17, 000, Investigation of Certain Enron-Affiliated QFs

E–18.
DOCKET# OA97–237, 000; New England Power Pool
OTHER#S OA97–608, 000, New England Power Pool; ER97–1079, 000, New England Power Pool; ER97–3574, 000, New England Power Pool; ER97–4421, 000, New England Power Pool; ER98–499, 000, NEW England Power Pool;

E–19.
DOCKET# ER02–1326, 001, PJM Interconnection L.L.C.
OTHER# ER02–1326, 002, PJM Interconnection L.L.C.

E–20.
DOCKET# ER02–2015, 002, Southern Company Services, Inc.

E–21.
DOCKET# ER96–399, 000, Northern Indiana Public Service Company, Inc.

E–22.
DOCKET# ER02–648, 000, Sithe New Boston, LLC
OTHER# ER02–648, 001, Sithe New Boston, LLC

E–23.
OMITTED

E–24.
DOCKET# ER00–1053, 006, Maine Public Service Company
OTHER# ER00–1053, 007, Maine Public Service Company

E–25.
DOCKET# ER03–140, 000, Concord Electric Company, Exeter & Hampton Electric Company, and Unitil Energy Systems, Inc.

E–26.
DOCKET# ER02–2463, 000, ISO New England Inc.
OTHER# ER02–2463, 001, ISO New England Inc.

E–27.
DOCKET# ER02–994, 003, Duke Energy Corporation

E–28.
DOCKET# EL98–36, 002, *Aquila Power Corporation* v. *Entergy Services, Inc.*, Entergy Arkansas, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Gulf States, Inc.

E–29.
DOCKET# EL01–68, 013, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council

E–30.
DOCKET# RM01–12, 001, Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design

E–31.
DOCKET# ER02–2170, 000, Aquila, Inc.
OTHER# ER02–2170, 001, Aquila, Inc.

E–32.
DOCKET# ER02–2234, 002, California Power Exchange Corporation
OTHER# ER02–2234, 003, California Power Exchange Corporation; ER02–2234, 004, California Power Exchange Corporation

E–33.
DOCKET# ER03–93, 000, El Paso Electric Company

E–34.
OMITTED

E–35.
OMITTED

E–36.
DOCKET# EL00–62, 053, New England Power Pool and ISO New England, Inc.
OTHER# EL00–62, 052, New England Power Pool and ISO New England, Inc.; ER02–2330, 001, New England Power, Pool and ISO New England, Inc.; ER02–2330, 002, New England Power Pool and ISO New England, Inc.; ER02–2330, 003, New England Power Pool and ISO New England, Inc.

E–37.
DOCKET# RM00–7, 007, Revision of Annual Charges Assessed to Public Utilities

E–38.
OMITTED

E–39.
DOCKET# EL03–10, 000, *Northeast Utilities Service Company* v. *NRG Energy, Inc.*

E–40.
DOCKET# RM01–8, 003, Filing Requirements for Electric Utility Service Agreements

E–41.
DOCKET# OA02–9, 000, CED Rock Springs, Inc., and Rock Springs Generation, LLC

E–42.
OMITTED

E–43.
DOCKET# EL03–14, 000, City of Azusa, California
OTHER# EL00–105, 006, City of Vernon, California; ER00–2019, 005, California Independent System Operator Corporation; EL03–15, 000, City of Anaheim, California; EL03–20, 000, City of Riverside, California; EL03–21, 0003, City of Banning, California

E–44.
OMITTED

E–45.
OMITTED

E–46.
DOCKET# EL02–6, 000, *Dynegy Midwest Generation, Inc., and Dynegy Power Marketing, Inc.*, v. *Commonwealth Edison Company*

E–47.
DOCKET# EL02–108, 000, *Truckee Donner Public Utility District* v. *Idaho Power Company, IDACORP Energy, L.P., and IDACORP, Inc.*

E–48.
OMITTED

E–49.
DOCKET# EL01–23, 000, *Dynegy Power Marketing, Inc., El Segundo Power, LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC* v. *California Independent System Operator Corporation*

E–50.
DOCKET# EL03–16, 000, PPL Electric Utilities Corporation

E–51.
DOCKET# ER02–250, 000, California Independent System Operator Corporation
OTHER# ER02–479, 000, Pacific Gas and Electric Company; ER02–527, 003, California Independent System Operator Corporation

E–52.
DOCKET# EL03–11, 000, *Wisvest-Connecticut, LLC* v. *ISO New England, Inc.*

E–53.
OMITTED

E–54.
OMITTED

E–55.
DOCKET# EL00–105, 006, City of Vernon, California
OTHER# ER00–2019, 005, California Independent System Operator Corporation

E–56.
OMITTED

E–57.
OMITTED

E–58.
DOCKET# ER02–851, 005, Southern Company Services, Inc.
OTHER# ER02–851, 006, Southern Company Services, Inc.

E–59.
DOCKET# ER02–925, 000, Southern California Edison Company
OTHER# ER02–925, 001, Southern California Edison Company; ER02–925, 002, Southern California Edison Company

E–60.
DOCKET# RM02–9, 001, Electronic Filing of Form 1, and Elimination of Certain Designated Schedules in Form Nos. 1 and 1–F

E–61.
DOCKET# EL01–50, 001, *KeySpan-Ravenswood, Inc.* v. *New York ISO*

Miscellaneous Agenda

M–1.
DOCKET# PL02–5, 000, Statement of Administrative Policy on Separation of Function

M–2.
DOCKET# RM02–10, 000, Electronic Registration

Markets, Tariffs and Rates—Gas

G–1.
OMITTED

G–2.
OMITTED

G–3.
DOCKET# GT02–35, 002, Tennessee Gas Pipeline Company

G–4.
DOCKET# RP00–467, 001, Midwestern Gas Transmission Company
OTHER#S RP00–467, 000, Midwestern Gas Transmission Company; RP01–19, 000, Midwestern Gas Transmission Company; RP01–19, 001, Midwestern Gas Transmission Company

G–5.
DOCKET# RP01–205, 003, Southern Natural Gas Company

G–6.
DOCKET# RP03–17, 000, Missouri Interstate Gas, LLC

G–7.
DOCKET# RP02–114, 001, Tennessee Gas Pipeline Company

G–8.
DOCKET# RP02–361, 001, Gulfstream Natural Gas System, L.L.C.
OTHER#S RP02–361, 003, Gulfstream Natural Gas System, L.L.C.; RP02–361, 004, Gulfstream Natural Gas System, L.L.C.

G–9.
DOCKET# RP02–382, 002, Crossroads Pipeline Company
OTHER#S RP02–382, 001, Crossroads Pipeline Company

G–10.
OMITTED

G–11.
OMITTED

G–12.
OMITTED

G–13.
DOCKET# RP00–341, 002, Egan Hub Partners, L.P.
OTHER#S RP01–48, 001, Egan Hub Partners, L.P.

G–14.
DOCKET# RP99–274, 006, Kern River Gas Transmission Company
OTHER#S RP99–274, 007, Kern River Gas Transmission Company

G–15.
OMITTED

G–16.
DOCKET# RP01–612, 003, ANR Pipeline Company
OTHER#S RP01–612, 000, ANR Pipeline Company; RP01–612, 001, ANR Pipeline Company; RP01–612, 002, ANR Pipeline Company

G–17.
DOCKET# RP02–396, 001, Great Lakes Gas Transmission Limited Partnership

G–18.
DOCKET# RP00–336, 007, El Paso Natural Gas Company

G–19.
DOCKET# RP00–497, 001, Viking Gas Transmission Company
OTHER#S RP01–47, 001, Viking Gas Transmission Company; RP00–497, 000, Viking Gas Transmission Company; RP01–47, 002, Viking Gas Transmission Company; RP01–47, 003, Viking Gas Transmission Company; RP01–47, 000, Viking Gas Transmission Company

G–20.
DOCKET# RP02–196, 004, Reliant Energy Gas Transmission Company
OTHER#S RP02–196, 000, Reliant Energy Gas Transmission Company; RP02–196, 001, Reliant Energy Gas Transmission Company; RP02–196, 002, Reliant Energy Gas Transmission Company; RP02–196, 003, Reliant Energy Gas Transmission Company

G–21.
OMITTED

G–22.
OMITTED

G–23.
OMITTED

G–24.
OMITTED

G–25.
DOCKET# RP02–383, 002, Columbia Gas Transmission Corporation
OTHER#S RP02–383, 001, Columbia Gas Transmission Corporation

G–26.
DOCKET# RP02–384, 002, Columbia Gulf Transmission Company
OTHER#S RP02–384, 001, Columbia Gulf Transmission Company

G–27.
OMITTED

G–28.
OMITTED

G–29.
DOCKET# RP00–495, 002, Texas Gas Transmission Corporation
OTHER#S RP01–97, 001, Texas Gas Transmission Corporation

G–30.
DOCKET# RP00–315, 000, Gulf South Pipeline Company, LP.

G–31.
DOCKET# RP03–66, 000, MIGC, INC.

G–32.
DOCKET# RP02–533, 000, Kinder Morgan Interstate Gas Transmission LLC

G–33.
OMITTED

G–34.
DOCKET# RM03–3, 000, Elimination of Paper Filing Requirements of Form Nos. 2, 2A and 6

G–35.
DOCKET# RP02–365, 000, Northern Natural Gas Company

G–36.
DOCKET# RP03–41, 000, *e prime, inc* v. *PG&E Transmission, Northwest Corporation*

G–37.
OMITTED

G–38.
DOCKET# PR03–1, 000, ONEOK Field Services Company

G–39.
DOCKET# RP99–166, 000, Stingray Pipeline Company, L.L.C.

G–40.
DOCKET# RP99–381, 000, Wyoming Interstate Company, Ltd.

G–41.
DOCKET# RP03–46, 000, Enbridge Pipelines (UTOS) L.L.C.

G–42.
OMITTED

G–43.
OMITTED

G–44.
DOCKET# PR02–21, 000, Duke Energy Guadalupe Pipeline, Inc
OTHER#S PR02–21, 001, Duke Energy Guadelupe Pipeline, Inc

G–45.

DOCKET# PR02–17, 001, Gulf States Pipeline Corporation
OTHER#S PR02–17, 000, Gulf States Pipeline Corporation
G–46.
DOCKET# RP95–197, 047, Transcontinental Gas Pipe Line Corporation
OTHER#S RP97–71, 039, Transcontinental Gas Pipe Line Corporation
G–47.
DOCKET# RP02–232, 001, Great Lakes Gas Transmission Limited Partnership
G–48.
OMITTED
G–49.
DOCKET# GT95–11, 002, Williams Gas Pipelines Central, Inc.
OTHER#S RI83–9, 003, Colorado Interstate Gas Company and Northern Natural Gas Company; GP83–11, 002, Colorado Interstate Gas Company and Northern Natural Gas Company
G–50.
DOCKET# RP98–52, 000, Williams Gas Pipelines Central, Inc.
OTHER#S GP98–3, 000, OXY USA Inc.; GP98–4, 000, Amoco Production Co.; GP98–13, 000, ExxonMobil; GP98–16, 000, Union Pacific Resources Inc.; SA98–33, 000, Pioneer Natural Resources USA, Inc.
G–51.
DOCKET# RP98–40, 000, Panhandle Eastern Pipe Line Company
OTHER#S GP98–6, 000, Anadarko Petroleum Corp. GP98–7, 000, OXY USA Inc.; GP98–27, 000, Oneok Exploration Co.; GP98–32, 000, Anadarko Production Co.; SA99–7, 000, Charlotte Hill Gas Co.; SA99–14, 000, Green Wolf Oil Co.
G–52.
DOCKET# GP99–15, 000, Burlington Resources Oil & Gas Company
OTHER#S RP98–39, 000, Northern Natural Gas Company; SA98–101, 000, Continental Energy
G–53.
DOCKET# RP98–53, 000, Kinder Morgan Interstate Gas Transmission L.L.C.
OTHER#S GP98–29, 000, ONEOK Resources Co.
G–54.
DOCKET# SA98–96, 000 Partnership Properties Co.
OTHER# SA98–4, 000 Edgar W. White; RP98–54, 000, Colorado Interstate Gas Company
G–55.
OMITTED
G–56.
DOCKET# RP98–54, 000, Colorado Interstate Gas Company
G–57.
DOCKET# RP98–39, 000, Northern Natural Gas Company
G–58.
DOCKET# RP98–39, 024, Northern Natural Gas Company
OTHER# SA98–7, 000, Dorchester Hugoton, Ltd.; RP98–40, 030, Panhandle Eastern Pipe Line Company; RP98–54, 034, Colorado Interstate Gas Company; SA98–100, 000, IMC Global Inc.; SA99–1, 000, Burlington Resources Oil & Gas Company; GP99–16, 000, Joel T. Strohl, Scott T. Strohl, and Sid Strohl; GP99–17, 000, Joel T. Strohl, Scott T. Strohl, and Sid Strohl; GP99–18, 000, Kansas Independent Oil & Gas Association, a/k/a Robert E. Krehbiel
G–59.
DOCKET# RP03–104, 000, Colorado Interstate Gas Company
G–60.
DOCKET# RP95–197, 048, Transcontinental Gas Pipe Line Corporation
OTHER# RP95–197, 049, Transcontinental Gas Pipe Line Corporation; RP97–71, 040, Transcontinental Gas Pipe Line Corporation; RP03–84, 000, Transcontinental Gas Pipe Line Corporation

Energy Projects—Hydro

H–1.
DOCKET# P–2566, 031, Consumers Energy Company
H–2.
OMITTED
H–3.
DOCKET# DI02–2, 001, Sheldon Jackson College
H–4.
OMITTED
H–5.
DOCKET# P–11162, 005, Wisconsin Power & Light Company

Energy Projects—Certificates

C–1.
DOCKET# CP02–374, 000, Hackberry LNG Terminal, LLC
OTHER# CP02–376, 000, Hackberry LNG Terminal, LLC; CP02–377, 000, Hackberry LNG Terminal, LLC; CP02–378, 000, Hackberry LNG Terminal, LLC
C–2.
DOCKET# CP02–60, 001, CMS Trunkline LNG Company, LLC
OTHER# CP02–60, 000, CMS Trunkline LNG Company, LLC
C–3.
DOCKET# CP02–142, 000, Columbia Gas Transmission Corporation
OTHER# CP01–260, 000, Columbia Gas Transmission Corporation; CP01–260, 001, Columbia Gas Transmission Corporation; CP02–142, 001, Columbia Gas Transmission Corporation
C–4.
DOCKET# CP02–116, 000, Tennessee Gas Pipeline Company
OTHER# CP02–117, 000, Tennessee Gas Pipeline Company
C–5.
DOCKET# CP02–204, 000, Transcontinental Gas Pipe Line Corporation
C–6.
DOCKET# CP02–391, 000, Natural Gas Pipeline Company of America
C–7.
DOCKET# CP03–8, 000, Regent Resources Ltd.
C–8.
OMITTED
C–9.
DOCKET# CP02–417, 000, Colorado Interstate Gas Company
OTHER#S CP02–424, 000, Westpan Resources L.P.
C–10.
DOCKET# CP02–434, 000, ANR Pipeline Company
C–11.
DOCKET# CP01–439, 002, Columbia Gas Transmission Corporation
C–12.
DOCKET# CP02–399, 001, Missouri Interstate Gas, LLC
OTHER# CP02–400, 001, Missouri Interstate Gas, LLC; CP02–401, 001, Missouri Interstate Gas, LLC

Magalie R. Salas,

Secretary.

[FR Doc. 02–31817 Filed 12–13–02; 11:29 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

December 6, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Exempt

Docket No.	Date filed	Presenter or requester
1. Project No. 2042–013	11–25–02	Lloyd K. Harding.
2. RP00–241–000	11–29–02	R. D. Milam.
3. CP02–396–000	12–02–02	Edward L. Smith, Jr.
4. RP00–241–000	12–02–02	Diane Pibbs.
5. RP00–241–000	12–03–02	Mark G. Papa, Wayne Gibbons.
6. Project No. 1494–220	12–03–02	Larry D. Hogue, P.E.
7. CP01–415–000	12–03–02	Ellen Fulcher.
8. RP00–241–000	12–03–02	F. Brian Bradstreet.
9. Project No. 2017–011	12–05–02	Hon. Ron W. Goode.
10. Project No. 2726–000	12–06–02	Fred Winchell.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31579 Filed 12–16–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

FRL–7422–7]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 104(k)(6); Announcement of Proposal Deadlines for the Competition for the 2003 National Brownfields Job Training Grants

AGENCY: Environmental Protection Agency.

ACTION: Notice of the availability of Brownfields grant application guidelines and deadlines for submissions of proposals.

SUMMARY: The Environmental Protection Agency (EPA) will begin to accept proposals for the National Brownfields Job Training Grants on December 17, 2002. Proposals are due on January 24, 2003. This notice provides information on how to obtain the application guidelines.

Funding for the brownfields job training grants is authorized under section 104(k)(6) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9604(k). These grants provide training to facilitate site assessment, remediation of brownfields sites, or site preparation. (See Catalogue of Federal Domestic Assistance Number: 66.811; a revised CFDA number entry has been submitted for approval). Eligibility for Brownfields job training grants is limited to "eligible entities" as defined in section 104(k)(1) of CERCLA and non profit organizations.

The National brownfields job training grants will be awarded on a competitive basis using a one step proposal selection process. EPA expects to make up 10 Brownfields job training grant awards in fiscal year 2003, contingent upon the availability of funds. The maximum funding level for each grant will be $ 200,000. Applicants are encouraged to contact and, if possible, meet with EPA Regional Brownfields Contacts.

DATES: This action is effective as of December 17, 2002. The application deadline for Proposals for the 2003 job training grants is January 24, 2003. All Proposals must be postmarked by USPS or delivered to U.S. EPA Headquarters no later than January 24, 2003, and a duplicate copy sent to the appropriate U.S. EPA Regional Office.

Obtaining Proposal Guidelines: The proposal guidelines are available via the Internet: *http://www.epa.gov/brownfields/.*

Copies of the Proposal Guidelines will also be mailed upon request. Requests should be made by calling the U.S. EPA Call Center at the following numbers:

Washington, DC Metro Area at 703–412–9810

Outside Washington, DC Metro at 1–800–424–9346

TDD for the Hearing Impaired at 1–800–553–7672

In order to ensure that the Guidelines are received in time to be used in the preparation of the proposal, applicants should request a copy as soon as possible and in any event no later than seven (7) working days before the proposal due date. Applicants who request copies after that date might not receive the proposal guidelines in time to prepare and submit a responsive proposal.

ADDRESSES: Mailing addresses for U.S. EPA Regional Offices and U.S. EPA Headquarters are provided in the Proposal Guidelines.

FOR FURTHER INFORMATION CONTACT: The U.S.EPA's Office of Solid Waste and Emergency Response, Office of Brownfields Cleanup and Redevelopment, (202) 566–2777.

SUPPLEMENTARY INFORMATION: On January 11, 2002, President George W. Bush signed into law the Small Business Liability Relief and Brownfields Revitalization Act. This act amended the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA) to authorize federal financial assistance for brownfields revitalization, including grants for assessment, cleanup, and job training. Funding for the brownfields job training grants is authorized under section 104(k)(6) of CERCLA, 42 U.S.C. 9604(k)(6). Eligibility for Brownfields job training grants is limited to "eligible entities" as defined in section 104(k)(1) of CERCLA and non profit organizations.

Eligible governmental entities include a General Purpose Unit of Local Government; Land Clearance Authority or other quasi-governmental entity that operates under the supervision and control of, or as an agent of, a general purpose unit of local government; Governmental Entity Created by State Legislature; Regional council or group of general purpose units of local government; Redevelopment Agency

that is chartered or otherwise sanctioned by a state; State; Indian Tribe other than in Alaska; and Alaska Native Regional Corporation, Alaska Native Village Corporation, and Metlakatla Indian Community. In addition, Intertribal Consortia, other than those composed of ineligible Alaskan tribes, are eligible to apply for the brownfields job training grants.

For the purposes of determining a nonprofit organization's eligibility for the brownfields job training grant program, EPA will use the definition of nonprofit organizations contained in section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999, Public Law 106–107. The term "nonprofit organization" means any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational, service, charitable, or similar purpose in the public interest; is not organized primarily for profit; and uses net proceeds to maintain, improve, or expand the operation of the organization.

To ensure a fair selection process, evaluation panels consisting of EPA Regional and Headquarters staff and other federal agency representatives will assess how well the proposals meet the selection criteria outlined in the application booklet, Proposal Guidelines for Brownfields Job Training Grants (November 2002). Proposals will be evaluated and ranked by National Evaluation Panels. The evaluation panels will review the proposals carefully and assess each response based on how well it addresses the criteria, briefly outlined below. There are two different types of criteria—threshold criteria and ranking criteria. Applicants must meet the threshold criteria to be considered for an award of a grant. Responses to the evaluation criteria will be utilized to determine whether to make an award and the amount of funds to be awarded.

Job Training Grants

Threshold Criteria

A. Location of Project
B. Applicant Eligibility
C. Proof of Non-Duplication of effort

Ranking Criteria

A. Community Need (a maximum of 10 points may be received for this criterion)
B. Institutional Capacity (a maximum of 15 points may be received for this criterion)
C. Training Program Objectives and Plans (a maximum of 20 points may be received for this criterion)
D. Budget, Schedule and Leveraging (a maximum of 25 points may be received for this criterion)
E. Community Involvement and Partnerships (a maximum of 20 points may be received for this criterion)
F. Measures of Success (a maximum of 10 points may be received for this criterion)

Final selections will be made by EPA senior management after considering the ranking of Final Proposals by the National Evaluation Panels EPA decisions may take into account other statutory and policy considerations, such as urban and non-urban distribution and other geographic factors; compliance with the statutory petroleum funding allocation; designation as a Federal Empowerment Zone, Enterprise Community, or Renewal Community; population; and whether the applicant is a federally recognized Indian tribe. There is no guarantee of an award.

Dated: December 5, 2002.

Sven Kaiser,

Acting Director, Office of Brownfields Cleanup and Redevelopment, Office of Solid Waste and Emergency Response.

[FR Doc. 02–31677 Filed 12–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7423–2]

Chesapeake Bay Program

The U.S. Environmental Protection Agency's Chesapeake Bay Program Office, on behalf of the partners of the Chesapeake Bay Program, announces an extension to the comment period for the Draft Chesapeake Bay Comprehensive Oyster Management Plan until January 15, 2003. The draft plan addresses both habitat restoration and oyster fishery management. It emphasizes biologically based, strategic decision making, enables an adaptive management approach, and provides for better coordination among key agencies, organizations, and institutions involved in oyster restoration in Maryland and Virginia waters of Chesapeake Bay and its tidal tributaries. The Chesapeake Bay oyster partners include the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, the National Oceanic and Atmospheric Administration, the Maryland Department of Natural Resources, the Virginia Marine Resources Commission, the Maryland Oyster Recovery Partnership, the Virginia Oyster Heritage Program, the Chesapeake Bay Foundation, the University of Maryland, and the Virginia Institute of Marine Science. Following receipt of comments, a final draft plan will be circulated to Chesapeake Bay Program signatory partners for approval. It is expected that the final plan will be adopted by the Chesapeake Executive Council in 2003. The draft plan is available on-line at the EPA Region III Web site *http://www.epa.gov/r3chespk/*, or at the Chesapeake Bay Program Web site *http://www.chesapeakebay.net* or by regular mail from the EPA Chesapeake Bay Program Office (Phone: 410–267–5700).

Comments should be postmarked no later than January 15, 2003. Comments can be sent either by email to fritz.mike@epa.gov or by regular mail to Michael Fritz, U.S. EPA, 410 Severn Avenue, Suite 109, Annapolis, MD 21403. Further information about the Chesapeake Bay Program and oysters and other living resources in the bay is available at *http://www.chesapeakebay.net*.

Diana Esher,

Deputy Director, Chesapeake Bay Program Office.

[FR Doc. 02–31670 Filed 12–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7423–1]

Intent to Grant a Co-Exclusive Patent License

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to grant a co-exclusive patent license.

SUMMARY: Pursuant to 35 U.S.C. 207 and 37 CFR part 404, EPA hereby gives notice of its intent to grant a co-exclusive, royalty-bearing, revocable license to practice the invention described and claimed in the patents listed below, all corresponding patents issued throughout the world, and all reexamined patents and reissued patents granted in connection with such patents, to Sensors, Inc., Saline, Michigan and to Horiba Instruments, Inc., Irvine, California, including its parent, subsidiaries, affiliates and companies controlled by Horiba. The patents are:

U.S. Patent No. 6,148,656, entitled "Real-time On-road Vehicle Exhaust Gas Modular Flowmeter and Emissions Reporting System," issued November 21, 2000.

U.S. Patent No. 6,382,014, entitled "Real-time On-road Vehicle Exhaust Gas Modular Flowmeter and Emissions Reporting System," issued May 7, 2002.

U.S. Patent No. 6,470,732, entitled "Real-time Exhaust Gas Modular Flowmeter and Emissions Reporting System for Mobile Apparatus," issued October 29, 2002.

The invention was announced as being available for licensing in the March 1, 1999 issue of the **Federal Register** (64 FR 9990) as U.S. Patent Application No. 09/226,920, filed January 5, 1999, and claiming priority from a provisional application filed January 5, 1998.

The proposed co-exclusive license will contain appropriate terms, limitations, and conditions to be negotiated in accordance with 35 U.S.C. 209 and 37 CFR 404.5 and 404.7 of the U.S. Government patent licensing regulations.

EPA will negotiate the final terms and conditions and grant the co-exclusive license, unless within 15 days from the date of this notice EPA receives, at the address below, written objections to the grant, together with supporting documentation. The documentation from objecting parties having an interest in practicing the above patents should include an application for an exclusive or nonexclusive license with the information set forth in 37 CFR 404.8. The EPA Patent Counsel and other EPA officials will review all written responses and then make recommendations on a final decision to the Director or Deputy Director of the Office of Transportation and Air Quality, who have been delegated the authority to issue patent licenses under EPA Delegation 1–55.

DATES: Comments on this notice must be received by EPA at the address listed below by January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Alan Ehrlich, Patent Counsel, Office of General Counsel (Mail Code 2377A), Environmental Protection Agency, Washington, DC 20460, Telephone (202) 564–5457.

Dated: December 6, 2002.

Marla E. Diamond,

Associate General Counsel, Finance and Operations Law Office.

[FR Doc. 02–31671 Filed 12–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7422–8]

Clean Water Act Section 303(d): Availability of 12 Modified Total Maximum Daily Loads (TMDLs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment of the administrative record file for 12 modified TMDLs and the calculations for these TMDLs prepared by EPA Region 6 for waters listed in the Mermentau and Vermilion/Teche river basins, under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to the lawsuit styled *Sierra Club, et al.* v. *Clifford et al.*, No. 96–0527, (E.D. La.).

DATES: Comments must be submitted in writing to EPA on or before January 16, 2003.

ADDRESSES: Comments on the 12 modified TMDLs should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. For further information, contact Ellen Caldwell at (214) 665–7513. The administrative record file for these TMDLs are available for public inspection at this address as well. Documents from the administrative record file may be viewed at *www.epa.gov/region6/water/tmdl.htm*, or obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the United States Environmental Protection Agency (EPA), styled *Sierra Club, et al.* v. *Clifford et al.*, No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner. EPA originally established these TMDLs pursuant to a consent decree entered in this lawsuit. EPA is now modifying these TMDLs.

EPA Seeks Comments on 12 Modified TMDLs

By this notice EPA is seeking comment on the following 12 modified TMDLs for waters located within the Mermentau and Vermilion/Teche river basins:

Subsegment	Waterbody name	Pollutant
050102	Bayou Joe Marcel	Pathogen indicators.
060204	Bayou Courtableau—Origin to West Atchafalaya Borrow Pit Canal.	Pathogen indicators.
060212	Chatlin Lake Canal and Bayou Dulac	Pathogen indicators.
060701	Tete Bayou	Pathogen indicators.
060703	Bayou Portage	Pathogen indicators.
060901	Bayou Petite Anse	Pathogen indicators.
060909	Lake Peigneur	Pathogen indicators.
060911	Dugas Canal	Pathogen indicators.
060204	Bayou Courtableau—Origin to West Atchafalaya Borrow Pit Canal.	Sulfates.
050201	Bayou Plaquemine Brule—Headwaters to Bayou Des Cannes.	TDS.
050501	Bayou Queue de Tortue—Headwaters to Mermentau River.	TDS.
060208	Bayou Boeuf—Headwaters to Bayou Courtableau	TDS.

EPA previously requested the public to provide EPA with any significant data or information that might impact the original 12 TMDLs in Federal Register Notices: Volume 65, Number 173, pages 54032–54034 (September 6, 2000) and Volume 65, Number 196, page 60189 (October 10, 2000).

EPA now requests that the public provide any water quality related data and information that may be relevant to the calculations for these 12 modified

TMDLs. EPA will review all data and information submitted during the public comment period and revise the modifications to the TMDLs where appropriate. EPA will then forward the modified TMDLs to the Louisiana Department of Environmental Quality (LDEQ). LDEQ will incorporate the modified TMDLs into its current water quality management plan.

Dated: December 9, 2002.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 02–31678 Filed 12–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7421–3]

Final NPDES General Permit for Reject Water from Reverse Osmosis Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final NPDES general permits—MAG450000.

SUMMARY: The Director of the Office of Ecosystem Protection, Environmental Protection Agency-New England (EPA–NE), is issuing Notice of Final National Pollutant Discharge Elimination System (NPDES) general permits for reject water from reverse osmosis units to certain waters in the State of Massachusetts. These final NPDES general permits establish Notice of Intent (NOI) requirements, effluent limitations, standards, prohibitions, and management practices for reverse osmosis reject water.

Owners and/or operators of sites that discharge reject water from reverse osmosis units will be required to submit an NOI to EPA–NE to be covered by the appropriate general permit and will receive a written notification from EPA–NE of permit coverage and authorization to discharge under one of these general permits. The eligibility requirements are discussed in detail in sections II and III in the fact sheet to this **Federal Register** Notice and the reader is strongly urged to go to that section before reading further. These general permits do not cover new sources as defined under 40 CFR 122.2.

DATES: The general permits shall be effective on the date specified in the final general permits published in the **Federal Register** and will expire five years from the date that the final permits are published in the **Federal Register**. If the general permits are not reissued prior to the expiration date, they will be administratively continued and remain in effect as long as the permittee submits a new notice of intent two months prior the expiration date of the general permit.

ADDRESSES: Notice of Intent to be authorized to discharge under these permits should be sent to: United States Environmental Protection Agency (CPE), 1 Congress Street, Suite 1100, Boston, Massachusetts 02114–2023, and Massachusetts Department of Environmental Protection, Division of Watershed Management, 627 Main Street, 2nd floor, Worcester, Massachusetts 01608.

FOR FURTHER INFORMATION CONTACT: Additional information concerning these final permits may be obtained between the hours of 8 a.m. and 4 p.m. Monday through Friday excluding holidays from: Betsy Davis, Office of Ecosystem Protection, Environmental Protection Agency, 1 Congress Street, Suite 1100, Boston, MA 02114–2023; telephone: 617–918–1576.

SUPPLEMENTARY INFORMATION: The following Fact Sheet and Supplementary Information section sets forth principal facts and the significant factual, legal and policy questions considered in the development of these final general permits. A reasonable fee may be charged for copying requests.

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Finol General Permits

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Fact Sheet and Supplemental Information

I. Introduction

The Director of the Office of Ecosystem Protection, EPA-New England, is issuing general permits for the discharge of reject water from reverse osmosis units to certain waters in the State of Massachusetts. This document contains Part I, the Draft General NPDES Permits and, Part II, Standard Conditions.

II. Coverage of General Permits

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit unless such a discharge is otherwise authorized by the Act. EPA's regulations authorize the issuance of "general permits" to one or more categories or subcategories of discharges (*see* 40 CFR 122.28). EPA may issue a single, general permit to a category of point sources located within the same geographic area whose discharges warrant similar pollution control measures.

A. The Director of an NPDES permit program is authorized to issue a general permit if there are a number of point sources operating in a geographic area that:

1. Involve the same or substantially similar types of operations;
2. Discharge the same types of wastes;
3. Require the same effluent limitations or operating conditions;
4. Require the same or similar monitoring requirements; and
5. In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

Authorization under these general permits shall require prior submittal of certain facility information. Upon receipt of all required information, the permit issuing authority may allow or disallow coverage under these general permits.

B. The similarity of the discharge is prompting EPA to issue these general permits. When issued, these permits will enable facilities to maintain compliance with the Act, will extend environmental and regulatory controls to new dischargers, and will avoid a backlog of individual permit applications. The issuing of these general permits in Massachusetts is warranted by the similarity of environmental conditions; State regulatory requirements applicable to the discharges and receiving waters; and the technology employed.

Violations of a condition of a general permit constitute a violation of the Clean Water Act and subjects the discharger to the penalties in section 309 of the Act.

III. Exclusions

These general permits will not be available to:

1. Facilities whose discharge(s) could cause or contribute to adverse water quality impacts.
2. Mobile water purification units using reverse osmosis as a means of water treatment.
3. Facilities whose wastewater is treated with a reverse osmosis system, that are required to follow established effluent guidelines and standards pursuant to 40 CFR Subchapter N.
4. Facilities when the Director requires an individual permit, based on considerations of the following:
a. The variability of the pollutants or pollutant parameters in the effluent based on chemical specific information.
b. Recommendations from the State.
c. Other considerations which the Director determines could cause or contribute to adverse water quality impacts.

EPA has determined that these general permits will not be available to "New Source" dischargers as defined in 40 CFR 122.2 due to the site specific nature of the environmental review required by the National Environmental Policy Act of 1969 (NEPA), 33 U.S.C. 4321 *et seq.* for those facilities. "New Sources" must comply with New Source Performance Standards (NSPS) and are subject to the NEPA process in 40 CFR 6.600. Consequently, EPA has determined that it would be more appropriate to address "New Sources" through the individual permit process.

Any owner or operator authorized by a general permit may request to be excluded from coverage of a general permit by applying for an individual permit. This request may be made by submitting a NPDES permit application together with reasons supporting the request. The Director may also require any person authorized by a general permit to apply for and obtain an individual permit. Any interested person may petition the Director to take this action. However, individual permits will not be issued for sources covered by these general permits unless it can be clearly demonstrated that inclusion under one of these general permits is inappropriate. The Director may consider the issuance of individual permits when:

1. The discharger is not in compliance with the terms and conditions of the general permit;
2. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
3. Effluent limitation guidelines are subsequently promulgated for the point sources covered by the general NPDES permit;
4. A Water Quality Management Plan or Total Maximum Daily Load (TMDL) containing requirements applicable to such point sources is approved;
5. Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
6. The discharge(s) is a significant contributor of pollution or in violation of State Water Quality Standards for the receiving water; or
7. The discharge(s) is into an impaired water of the Federal Clean Water Act 303 (d) list, and the pollutant/stressor listed on the section 303 (d) list is one of the parameters limited in the permit.

In accordance with 40 CFR 122.28(b)(3)(iv), the applicability of the general permit is automatically terminated on the effective date of the individual permit.

IV. Permit Basis and Other Conditions of the General NPDES Permit

A. Statutory Requirements

Section 301(a) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1311(a), makes it unlawful to discharge pollutants to waters of the United States without a permit. Section 402 of the Act, 33 U.S.C. 1342, authorizes EPA to issue NPDES permits allowing discharges that will meet certain requirements, including CWA sections 301, 304, and 401 (33 U.S.C. 1331, 1314, and 1341). Those statutory provisions state that NPDES permits must include effluent limitations requiring authorized discharges to: (1) Meet standards reflecting specified levels of technology-based treatment requirements; (2) comply with State Water Quality Standards; and (3) comply with other state requirements adopted under authority retained by states under CWA section 510, 33 U.S.C. 1370.

EPA is required to consider technology and water quality requirements when developing permit limits. 40 CFR part 125, subpart A sets the criteria and standards that EPA must use to determine which technology-based requirements, requirements under section 301(b) of the Act and/or requirements established on a case by case basis under section 401(a)(1) of the Act, should be included in the permit.

B. Antidegradation Provisions

The conditions of the permit reflect the goal of the CWA and EPA to achieve and maintain water quality standards. The environmental regulations pertaining to the State Antidegradation Policies which protect the State's surface waters from degradation of water quality is found in the following provision: Massachusetts Water Quality Standards 314 CMR 4.04 *Antidegradation Provisions*.

These general permits do not apply to any new or increased discharge to receiving waters unless the discharge is shown to be consistent with the State's antidegradation policies. This determination shall be made in accordance with the appropriate State antidegradation implementation procedures for these general permits. EPA will not authorize discharges under these general permits until it receives a favorable antidegradation review and certification from the States. (Concurrent to the publication of these general permits in the **Federal Register**, EPA has formally requested the State to make an antidegradation certification determination). The Commonwealth of Massachusetts will conduct antidegradation reviews for notices of

intent to discharge, under these general permits, into Class A waters.

C. Effluent Limitations

1. *Technology-based Effluent Limitations:* EPA has not promulgated National Effluent Guidelines for reverse osmosis reject water discharges. EPA also believes that the limits established to meet the water quality standards discussed below are sufficient to satisfy Best Available Technology Economically Achievable/Best Conventional Pollutant Control Technology (BAT/BCT) described in section 304(a) of the Act. Therefore, as provided in section 402(a)(1) of the Act, EPA has determined to issue these general permits utilizing Best Professional Judgement (BPJ) to meet the above stated criteria for BAT/BCT described in section 304(b) of the Act. Accordingly, monthly average and maximum daily limitations for Total Suspended Solids (TSS) and Total Residual Chlorine are established based upon Best Professional Judgement pursuant to section 402(a)(1) of the CWA.

2. *Water Quality Based Effluent Limitations:* Under section 301(b)(1)(C) of the Act, discharges are subject to effluent limitations based on water quality standards when EPA and the State determine that effluent limits more stringent than technology-based limits are necessary to maintain or achieve state or federal water quality standards. A water quality standard consists of three elements: (1) Designated beneficial uses, (2) a numeric or narrative water-quality criteria sufficient to protect the assigned designated use(s), and (3) an antidegradation policy that ensures that water quality improvements are conserved, maintained, and protected. Receiving stream requirements are established according to numerical and narrative standards adopted under state and/or federal law for each stream use classification. Section 401 of the CWA requires that EPA obtain State certification which ensures that all water quality standards and other appropriate requirements of state law will be satisfied. Regulations governing State certification are set forth in 40 CFR 124.53 and 124.55. The State of Massachusetts has narrative criteria in their water quality regulations. *See* Massachusetts 314 CMR 4.05(5)(e) that prohibits toxic discharges in toxic amounts. These permits do not allow for the addition of materials or chemicals which would produce a toxic effect to any aquatic life. Reverse osmosis reject water shall not contain or come in contact with raw materials, intermediate products, finished products or process wastes. Therefore, it could be assumed that the discharges do not contain toxic or hazardous pollutants or oil or grease. Nevertheless, toxic effects may still occur as a result of toxic source water, toxic pollutants due to the use of chlorine or due to dissolution of the piping in the local water systems that is typically the source of water used in reverse osmosis. Any reverse osmosis reject water which would violate water quality standards established for toxic or hazardous pollutants would not qualify for these general permits and an individual permit would be required. Water quality criteria applicable to reverse osmosis reject water discharges covered by these general permits include pH, copper, and ammonia. A summary of the effluent limitations are described below:

pH

These general permits include proposed pH limitations which are required by state water quality standards and are at least as stringent as pH limitations set forth at 40 CFR 133.102. The water quality criteria for the pH limitations for Massachusetts can be found at 314 CMR 4.05.

Copper, Total

EPA is required to limit any pollutant that is or may be discharged at a level that has caused, or has reasonable potential to cause, or contributes to an excursion above any water quality criterion. Copper may be toxic to aquatic life at low concentrations, so the permits contain numerical limits for total recoverable copper and specifies an appropriate method of analysis. The copper limits have been calculated (see Attachment B) to reflect the water quality criteria published in the **Federal Register** on December 10, 1998. The maximum daily limit for copper based on the acute water quality criteria is 73 ug/l and the average monthly limit, based on the chronic criteria, is 52 ug/l when the dilution factor is between 10 and 99. The maximum daily limit for copper based on the acute water quality criteria is 730 ug/l and the average monthly limit, based on the chronic criteria, is 516 ug/l when the dilution factor is between 100 and 1000.

Nitrogen, Total Ammonia

Chloromines are introduced into the water source used in reverse osmosis units when the units are bleached or cleaned with hypochlorite. Ammonia in the source water reacts with hypochlorite creating chloromines causing the reject water to contain ammonia. Therefore, Total Ammonia Nitrogen is required to be monitored monthly. This parameter will be used in conjunction with additional water quality data to evaluate whether ammonia from reverse osmosis units has a potential impact on the receiving water.

D. Monitoring and Reporting Requirements

Effluent limitations and monitoring requirements which are included in the general permits describe the requirements to be imposed on the facilities to be covered. Facilities covered by the final general permits will be required to submit to EPA New England and the Massachusetts Department of Environmental Protection a Discharge Monitoring Report (DMR) containing effluent data. The frequency of reporting is determined in accordance with the State's provisions.

The monitoring requirements have been established to yield data representative of the discharge under authority of section 308(a) of the Act and 40 CFR 122.41(j), 122.44(i) and 122.48, and as certified by the State.

E. Endangered Species

The proposed limits are sufficiently stringent to assure that water quality standards for both aquatic life protection and human health protection will be met. The effluent limitations established in these permits ensure protection of aquatic life and maintenance of the receiving water as an aquatic habitat. The Region finds that adoption of these final permits are unlikely to adversely affect any threatened or endangered species or its critical habitat. EPA will consult with the United States Fish and Wildlife Service and National Marine Fisheries Service on this determination. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service will notify EPA for any new listings.

The National Marine Fisheries Service has indicated that the endangered shortnose sturgeon (*Acipenser brevirostrum*) inhabits certain sections of the Merrimack and Connecticut Rivers in Massachusetts. Any facility whose discharge may adversely effect the sturgeon or any other threatened or endangered species or its habitat, is required to contact the National Marine Fisheries at the following address: U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS), Habitat and Protected Resources Division, One Blackburn Drive, Gloucester, MA 01903–2298.

F. Standard Permit Conditions

40 CFR 122.41 and 122.42 establish requirements which must be in all NPDES permits. Specific language will be provided to permittees in part II of the permit.

G. State (401) Certification

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State in which the discharge originates certifies that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA. EPA–NE will request that the Commonwealth of Massachusetts conduct section 401 reviews and issue a State certification. In addition, EPA and the Commonwealth of Massachusetts will jointly issue the final permits.

H. Environmental Impact Statement Requirements

These general permits do not authorize discharges from any new sources as defined under 40 CFR 122.2. Therefore, the National Environmental Policy Act, 33 U.S.C. 4321 *et seq.*, does not apply to the issuance of these general NPDES permits.

I. National Historic Preservation Act of 1966, 16 U.S.C. SS470 et seq.

Facilities which adversely affect properties listed or eligible for listing in the National Registry of Historic Places under the National Historic Preservation Act of 1966, 16 U.S.C. SS470 *et seq.* are not authorized to discharge under this permit.

J. Essential Fish Habitat

Under the 1996 Amendments (Pub. L. 104–267) to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.* (1998)), EPA is required to consult with NMFS if EPA's action or proposed actions that it funds, permits or undertakes, "may adversely impact any essential fish habitat." 16 U.S.C. 1855(b). The Amendments broadly define "essential fish habitat" (EFH) as "waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity." 16 U.S.C. 1802(10). Adverse impact means any impact which reduces the quality and/or quantity of EFH. 50 CFR 600.910(a). Adverse effects may include direct (*e.g.*, contamination or physical disruption), indirect (*e.g.*, loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative or synergistic consequences of actions.

Essential Fish Habitat is only designated for fish species for which federal Fisheries Management Plans exist. 16 U.S.C. 1855(b)(1)(A). EFH designations for New England were approved by the U.S. Department of Commerce on March 3, 1999.

The proposed limits for these general permits are sufficiently stringent to assure that state water quality standards will be met. The effluent limitations established in these permits ensure protection of aquatic life and maintenance of the receiving water as an aquatic habitat. The Region finds that adoption of the proposed permit is unlikely to adversely affect any fish or shellfish currently listed with a Fisheries Management Plan or its critical habitat. EPA will seek written concurrence from the National Marine Fisheries Service on this determination.

V. Other Legal Requirements

A. Executive Order 12866

EPA has determined that the general permits are not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements of these permits were previously approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.*, and assigned OMB control number 2040–0086 (NPDES permit application) and 2040–0004 (Discharge Monitoring Reports).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. The permits issued today, however, are not a "rule" subject to the requirements of 5 U.S.C. 553(b) and, are therefore, not subject to the Regulatory Flexibility Act.

D. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Pub. L. 104–4, generally requires Federal agencies to assess the effects of their "regulatory actions" (defined to be the same as "rules" subject to the RFA) on tribal, state and local governments and the private sector. The permits issued today, however, are not a "rule" subject to the RFA and, are therefore, not subject to the requirements of UMRA.

Dated: November 30, 2002.

Robert W. Varney,

Regional Administrator, Region 1.

Part I—Final General Permit Under the National Pollutant Discharge Elimination System (NPDES)

(**Note:** Part IA and Part IB contain general permits for the state of Massachusetts (both Commonwealth and Indian Country Lands).)

A. Massachusetts General Permit, Permit No. MAG450000

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*; the "CWA"), and the Massachusetts Clean Waters Act, as amended, (M.G.L. Chap. 21, sections 26–53), operators of facilities located in Massachusetts, which discharge reject water from reverse osmosis units to the classes of waters as designated in the Massachusetts Water Quality Standards, 314 CMR 4.00 *et seq.*, are authorized to discharge to all waters, unless otherwise restricted, in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective when issued. This permit and the authorization to discharge expire at midnight, five years from the effective date of the publication in the **Federal Register**.

Signed this 29th day of November, 2002.

Linda M. Murphy,

Director, Office of Ecosystem Protection, U.S. Environmentol Protection Agency, Boston, MA.

Glenn Haas,

Director, Division of Watershed Manogement, Bureau of Resource Protection, Mossachusetts Department of Environmentol, Protection, Boston, MA.

Part I—Effluent Limitations and Monitoring Requirements

1. During the period beginning on the effective date and lasting through expiration, the permittee is authorized to discharge reject water from reverse osmosis units. This permit is only for facilities discharging to freshwater with a dilution factor from 10 to less than 100.

a. Each outfall discharging effluent from reverse osmosis units shall be limited and monitored as specified below. Monitoring for each outfall shall be reported.

Effluent characteristics	Units	Discharge limitations			Monitoring requirements	
		Average monthly	Average weekly	Maximum daily	Measurement frequency	Sample type
Flow[1,3,4]	MGD	Report		Report	Continuous	Recorder.
TSS[3,4]	mg/l	30		45	1/Month	24-Hour Composite.[5]
	lbs/day	Report		Report	1/Month	24-Hour Composite.[5]
Total Residual Chlorine[3,4,6]	mg/l	0.11		0.2	1/Week	Grab.
pH[2,3,4]	S.U.	(See conditions I.A.1.g) Not Less Than 6.0			1/Week	Grab.
Dissolved Oxygen	mg/1				1/Week	Grab.
Ammonia[3,4]	µg/l	Report		Report	1/Month	Grab.
Copper, Total[3,4,7]	µg/l	52		73	1/Month	24-Hour Composite.[5]
LC–50 and C–NOEC, (%)[6]		see Part 1.A.1.k				24-Hour Composite.[5]

Footnotes:

1. The flow shall be continuously measured and recorded using a flow meter.
2. Requirement for State Certification.
3. Samples shall be taken only when discharging, and prior to mixing with stormwater. All samples shall be tested using the analytical methods found in 40 CFR part 136, or alternative methods approved by EPA in accordance with the procedures in 40 CFR part 136. All samples shall be 24-hour composites unless specified as a grab sample in 40 CFR part 136.
4. In addition to the monthly monitoring requirements, the permittee is required to sample the effluent and report the results twice per year when the reverse osmosis units are cleaned. The reason for the additional sampling and reporting requirements is due to the potential of an increased load of pollutants being discharged to the receiving stream during the cleaning process.
5. A 24-hour composite sample will be conducted of at least 1 grab sample taken each hour during periods of discharge.
6. The minimum level (ML) for chlorine is defined as 50 µg/l. This value is the minimum level for chlorine using EPA approval methods found in most currently approved version of *Standard Methods for the Examination of Water and Wastewater* Method 4500 CL–E and G, or *United States Environmental Protection Agency Manual of Methods of Analysis of Water and Wastewater*, Method 330.5. One of these methods must be used to determine total residual chlorine. For effluent limitations less than 50 µg/l, compliance/non-compliance will be determined on ML. Sample results of less than 50 µg/l or less shall be reported as zero on the discharge monitoring report.
7. The minimum level (ML) for copper is defined as 5 µg/l. This value is the minimum level for copper using the Furnance Atomic Absorption analytical method (EPA Method 220.2). For effluent limitations of less than 5 µg/l, compliance/non-compliance will be determined based on the ML from this method, or another approved method that has an equivalent or lower ML, one of which must be used. Sample results of 5 µg/l or less shall be reported as zero on the Discharge Monitoring Report.
8. LC–50 is the concentration of effluent in a sample that causes mortality to 50% of the test population at a specific time of observation. C–NOEC, No Observed Effect Concentration, is the highest concentration of effluent to which organisms are exposed in a life-cycle test or partial life-cycle test which cause no adverse effect on growth, survival and reproduction at a specific time of observation as determined from hypothesis testing where the test results (growth, survival, and/or reproduction) exhibit a linear dose-response relationship. However, where the test results do not exhibit a linear dose-response relationship, report the lowest concentration where there is no observable effect. End of Footnotes.

Part I—Final General Permit under the National Pollutant Discharge Elimination System (NPDES)

(**Note:** Part IA and Part IB contain general permit for the state of Massachusetts (both Commonwealth and Indian Country Lands).)

B. Massachusetts General Permit, Permit No. MAG450000

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*; the "CWA"), and the Massachusetts Clean Waters Act, as amended, (M.G.L. Chap. 21, sections 26–53), operators of facilities located in Massachusetts, which discharge reject water from reverse osmosis units to the classes of waters as designated in the Massachusetts Water Quality Standards, 314 CMR 4.00 *et seq.*, are authorized to discharge to all waters, unless otherwise restricted, in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective when issued. This permit and the authorization to discharge expire at midnight, five years from the effective date of the publication in the **Federal Register**.

Signed this 29th day of November, 2002.

Linda M. Murphy,

irector, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Boston, MA.

Glenn Haas,

Director, Division of Watershed Management, Bureau of Resource Protection, Massachusetts Department of Environmental Protection, Boston, MA.

Part I—Effluent Limitations and Monitoring Requirements

1. During the period beginning on the effective date and lasting through expiration, the permittee is authorized to discharge reject water from reverse osmosis units. This permit is only for facilities discharging to freshwater with a dilution factor from 100 to 1000.

a. Each outfall discharging effluent from reverse osmosis units shall be limited and monitored as specified below. Monitoring for each outfall shall be reported.

Effluent characteristics	Units	Discharge limitations			Monitoring requirements	
		Average monthly	Average weekly	Maximum daily	Measurement frequency	Sample type
Flow[1,3,4]	MGD	Report		Report	Continuous	Recorder
TSS[3,4]	mg/l	30		45	1/Month	24-Hour Composite[5]
	lbs/day	Report		Report	1/Month	24-Hour Composite[5]
Total Residual Chlorine[3,4,6]	mg/l	1.0		1.0	1/Week	Grab.
pH[2,3,4]	S.U.	(See conditions I.A.1.g)			1/Week	Grab.

Effluent characteristics	Units	Discharge limitations			Monitoring requirements	
		Average monthly	Average weekly	Maximum daily	Measurement frequency	Sample type
Dissolved Oxygen	mg/l	NOT LESS THAN 6.0			1/Week	Grab.
Ammonia[3,4]	ug/l	Report		Report	1/Month	Grab.
Copper, Total[3,4,7]	ug/l	516		730	1/Month	24-Hour Composite[5]
LC and C-NOEC, (%)[8]		see Part 1.A.1.k.				24-Hour Composite[5]

Footnotes:

1. The flow shall be continuously measured and recorded using a flow meter.
2. Requirement for State Certification.
3. Samples shall be taken only when discharging, and prior to mixing with stormwater. All samples shall be tested using the analytical methods found in 40 CFR Part 136, or alternative methods approved by EPA in accordance with the procedures in 40 CFR Part 136. All samples shall be 24-hour composites unless specified as a grab sample in 40 CFR Part 136.
4. In addition to the monthly monitoring requirements, the permittee is required to sample the effluent and report the results twice a year when the reverse osmosis units are cleaned. The reason for the additional sampling and reporting requirements is due to the potential of an increased load of pollutants being discharged to the receiving stream during the cleaning process.
5. A 24-hour composite sample will be conducted of at least 1 grab sample taken each hour during periods of discharge.
6. The minimum level (ML) for chlorine is defined as 50 ug/l. This value is the minimum level for chlorine using EPA approval methods found in most currently approved version of *Standard Methods for the Examination of Water and Wastewater*, Method 4500 CL–E and G, or *United States Environmental Protection Agency Manual of Methods of Analysis of Water and Wastes*, Method 330.5. One of these methods must be used to determine total residual chlorine. For effluent limitations less than 50 ug/l, compliance/non-compliance will be determined on ML. Sample results of less than 50 ug/l or less shall be reported as zero on the discharge monitoring report.
7. The minimum level (ML) for copper is defined as 5 ug/l. This value is the minimum level for copper using the Furnance Atomic Absorption analytical method (EPA Method 220.2). For effluent limitations of less than 5 ug/l, compliance/non-compliance will be determined based on the ML from this method, or another approved method that has an equivalent or lower ML, one of which must be used. Sample results of 5 ug/l or less shall be reported as zero on the Discharge Monitoring Report.
8. LC–50 is the concentration of effluent in a sample that causes mortality to 50% of the test population at a specific time of observation. C–NOEC, No Observed Effect Concentration, is the highest concentration of effluent to which organisms are exposed in a life-cycle test or partial life-cycle test which cause no adverse effect on growth, survival and reproduction at a specific time of observation as determined from hypothesis testing where the test results (growth, survival, and/or reproduction) exhibit a linear dose-response relationship. However, where the test results do not exhibit a linear dose-response relationship, report the lowest concentration where there is no observable effect.

Part 1.A.1. Effluent Limitations and Monitoring Requirements for All Permits (Continued)

b. The discharge shall not cause a violation of the water quality standards of the receiving water.

c. The discharge shall not cause an objectionable discoloration of the receiving water.

d. There shall be no discharge of floating solids or visible foam in other than trace amounts.

e. The results of sampling for any parameter above its required frequency must also be reported.

f. Samples taken in compliance with the monitoring requirements specified above shall be taken at a location that provides a representative analysis of the effluent just prior to discharge to the receiving water or if the effluent is commingled with another discharge, prior to such commingling.

g. The pH of the effluent for discharges to Class A and Class B waters shall be in the range of 6.5–8.3 standard units and not more than 0.5 units outside of the background range. There shall be no change from background conditions that would impair any uses assigned to the receiving water Class.

h. The use of products containing formaldehye is prohibited.

i. There shall be no discharge of biocides, pathogenic organisms, toxic, radioactive, corrosive substances at levels or in combinations sufficient to be toxic or harmful to humans, animals, plant or aquatic life, or in amounts to interfere with State Water Quality Standards.

j. The discharge shall not cause the dissolved oxygen level in the receiving water to drop below 6.0 mg/l.

k. Chronic (and modified acute) toxicity test(s) shall be performed on the effluent from reverse osmosis systems by the permittee upon request by EPA and/or the MA DEP. Testing shall be performed in accordance with EPA toxicity protocol to be provided at the time of the request. The test shall be performed on a 24-hour composite sample to be taken during normal facility operation. The result of the test(s) shall be forwarded to both the EPA and the State within 30 days after completion.

B. State Permit Conditions

1. These NPDES Discharge Permits are issued jointly by the U. S. Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection (MADEP) under Federal and State law, respectively. As such, all the terms and conditions of these permits are hereby incorporated into and constitute discharge permits issued by the Commissioner of the Massachusetts Department of Environmental Protection to M.G.L. Chap. 21, section 43.

2. Each Agency shall have the independent right to enforce the terms and conditions of these permits. Any modification, suspension or revocation of these permits shall be effective only with respect to the Agency taking such action, and shall not affect the validity or status of these permits as issued by the other Agency, unless and until each Agency has concurred in writing with such modification, suspension or revocation. In the event any portion of these permits are declared, invalid, illegal or otherwise issued in violation of State law such permits shall remain in full force and effect under Federal law as an NPDES Permit issued by EPA. In the event these permits are declared invalid, illegal or otherwise issued in violation of Federal law, these permits shall remain in full force and effect under State law as permits issued by the Commonwealth of Massachusetts.

C. Common Elements of all Permits

1. Conditions of the General Permit

a. *Geographic Areas: Massachusetts* (Permit No. MAG450000). All of the discharges to be authorized by these general NPDES permits for dischargers in the Commonwealth of Massachusetts are into all waters of the Commonwealth as specified in Part I.A. of these permits unless otherwise restricted by the Massachusetts Surface Water Quality Standards, 314 CMR 4.00 (or as revised).

b. *Exclusions:* These permits are not available for discharges into impaired waters on the Federal Clean Water Act 303(d) list which are not attaining state water quality standards for the parameters limited in the permit. These general permits are not available to

"New Source" dischargers as defined in 40 CFR 122.2.

c. *Notification by Permittees:* Operators of sites whose discharge, or discharges are effluent from reverse osmosis units and whose sites are located in the geographic areas described in part I.C.1.a. above, shall submit to the Regional Administrator, EPA–NE, a Notice of Intent to be covered by the appropriate general permit. Notifications must be submitted by all permittees who are seeking coverage under these permits. This written notification must include for each individual site, the owner's and/or operator's legal name, address and telephone number; the site's name, address, contact name, and telephone number; the number and type of sites (SIC code) to be covered; the site location(s); the number of discharge points, and the anticipated duration, volume, and rate of discharge for each outfall; a topographic map (or other map if a topographic map is not available) indicating the site's location(s) and discharge point(s); latitude and longitude of outfall(s); a description of any wastewater treatment; schematic of the reverse osmosis system; the name(s) of the receiving waters into which discharge will occur; antidegradation review where necessary (see section IV.C of the Fact Sheet); new and increased discharges from reverse osmosis activities that may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat are not authorized under these general permits (see section IV. E of the Fact Sheet). The notice must be signed in accordance with the signatory requirements of 40 CFR § 122.22.

Each facility must certify that the discharge for which it is seeking coverage under one of these general permits consists solely of reject water from discharges from reverse osmosis units. An authorization to discharge under one of these general permits, where the reverse osmosis unit discharges to a municipal or private storm drain owned by another party, does not convey any rights or authorization to connect to that drain.

Each site must also submit a copy of the Notice of Intent to the Massachusetts DEP. Copies of the State Application Form Appendix E (BRP WM 11b), and the Transmittal Form for Permit Application and Payment, may be obtained at the DEP Web site at (*www.state.ma.us/dep*) <(*www.state.magnet.us/dep*):> by clicking on "Permit Applications" and "Watershed Management"; by telephoning the DEP Info Service Center (Permitting) at 617–338–2255 or 1–800–462–0444 in 508, 413, 978 and 781 area codes; or from any DEP Regional Service Center located in each Regional Office.

Three copies of the transmittal form are needed. Copy 1 (the original) of the transmittal form and Appendix E should be sent to Massachusetts Department of Environmental Protection, 627 Main Street, 2nd floor, Worcester, MA 01608. Copy 2 of the transmittal form and the $295 fee should be sent to DEP, P.O. Box 4062, Boston, MA 02111. Municipalities are fee-exempt, but should send a copy of the transmittal form to that address. Keep Copy 3 of the transmittal form and a copy of the application package for your records. The sites authorized to discharge under one of these final general permits will receive written notification from EPA–NE with State concurrence. Failure to submit to EPA–NE a Notice of Intent to be covered and/or failure to receive from EPA–NE written notification of permit coverage means that the facility is not authorized to discharge under one of these general permits. Sites who are denied permit coverage by EPA–NE are not authorized under these general permits to discharge from those sites to the receiving waters.

2. Administrative Aspects

a. Request to be covered: A facility is not covered by any of these general permits until it meets the following requirements. First, it must send a Notice of Intent (NOI) to EPA–NE and Massachusetts DEP indicating it meets the requirements of the permit and wants to be covered. And second, it must be notified in writing by EPA–NE that it is covered by one of these general permits.

b. Eligibility to Apply: Any facility operating under an effective (unexpired) individual NPDES permit may request that the individual permit be revoked and that coverage under one of these general permits be granted, as outlined in 40 CFR 122.28(b)(3)(v). If EPA revokes the individual permit, the general permit would apply to the discharge.

Facilities with expired individual permits that have been administratively continued in accordance with 40 CFR 122.6 may apply for coverage under one of these general permits. When coverage is granted the expired individual permit automatically will cease being in effect.

Proposed new dischargers may apply for coverage under one of these general permits and must submit the NOI 90 days prior to the discharge.

c. Continuation of General Permit After Expiration: If these permits are not reissued prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedures Act and remain in force and in effect as to any particular permittee as long as the permittee submits a new Notice of Intent two (2) months prior to the expiration date in the permit. However, once these permits expire EPA cannot provide written notification of coverage under either of these general permits to any permittee who submits Notice of Intent to EPA after the permit's expiration date. Any permittee who was granted permit coverage prior to the expiration date will automatically remain covered by the continued permit until the earlier of:

(1) Reissuance of these permits, at which time the permittee must comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or

(2) The permittee's submittal of a Notice of Termination; or

(3) Issuance of an individual permit for the permittee's discharges; or

(4) A formal permit decision by the Director not to reissue these general permits, at which time the permittee must seek coverage under an alternative general permit or an individual permit.

D. Monitoring and Reporting

Monitoring results obtained during each calendar month shall be summarized and recorded on separate Discharge Monitoring Report Form(s), postmaked no later than the 15th day of following month. All communications and any required submittals should be sent to both EPA–NE and the appropriate State office at the following addresses:

1. EPA–NE

U.S. Environmental Protection Agency, New England Region, Water Technical Unit (SEW), Post Office Box 8127, Boston, MA 02114.

2. Massachusetts Department of Environmental Protection

a. The Regional Offices wherein the discharge occurs, shall receive a copy of all notifications and communications:

Massachusetts Department of Environmental Protection, Western Regional Office, 436 Dwight Street, Springfield, MA 01103.

Massachusetts Department of Environmental Protection, Southeastern Regional Office, 20 Riverside Drive, Lakeville, MA 02347.

Massachusetts Department of Environmental Protection, Northeastern Regional Office, 205A Lowell Street, Wilmington, MA 01887.

Massachusetts Department of Environmental Protection, Central Regional Office, 627 Main Street, 2nd floor, Worcester, Massachusetts 01608.

b. Copies of all notifications required by these permits shall also be submitted to the State at:

Massachusetts Department of Environmental Protection, Division of Watershed Management, 627 Main Street, 2nd floor, Worcester, MA 01608.

E. Additional General Permit Conditions

1. *Termination of Operations:* Operators of facilities and/or operations authorized under these permits shall notify the Director upon the termination of discharges. The notice must contain the name, mailing address, and location of the facility for which the notification is submitted, the NPDES permit number for the reverse osmosis reject water discharge identified by the notice, and an indication of whether the reverse osmosis reject water discharge has been eliminated or the operator of the discharge has changed. The notice must be signed in accordance with the signatory requirements of 40 CFR 122.22.

2. When the Director May Require Application for an Individual NPDES Permit;

a. The Director may require any person authorized by these permits to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take such action. Instances where an individual permit may be required include the following:

(1) The discharge(s) is a significant contributor of pollution;

(2) The discharger is not in compliance with the conditions of the permit;

(3) A change has occurred in the availability of the demonstrated technology of practices for the control or abatement of pollutants applicable to the point source;

(4) Effluent limitation guidelines are promulgated for point sources covered by the permit;

(5) A Water Quality Management Plan or Total Maximum Daily Load containing requirements applicable to such point source is approved;

(6) Discharge to the territorial sea;

(7) Discharge into waters that are not attaining state water quality standards; or,

(8) The point source(s) covered by the permit no longer:

(a) Involves the same or substantially similar types of operations;

(b) Discharges the same types of wastes;

(c) Requires the same effluent limitations or operating conditions;

(d) Requires the same or similar monitoring; and

(e) In the opinion of the Director, it is more appropriately controlled under an individual permit than under one of these general NPDES permits.

b. The Director may require an individual permit only if the permittee authorized by the general permit has been notified in writing that an individual permit is required, and has been given a brief explanation of the reasons for this decision.

3. When an Individual NPDES Permit may be Requested;

a. Any operator may request to be excluded from the coverage of these general permits by applying for an individual permit.

b. When an individual NPDES permit is issued to an operator otherwise subject to the general permit, the applicability of the permit to that owner or operator is automatically terminated on the effective date of the individual permit.

F. Summary of Response to Comments

(1) Comment Submitted by, National Pretreatment Program, U.S. EPA, Washington, DC

Comment #1: I have reviewed the draft General Permit (MAG450000) and have concerns regarding the vast availability of coverage under this permit for any type of generated wastewater that uses Reverse Osmosis as its treatment process.

In particular, I know of some industrial facilities whose wastewaters are subject to Effluent Guidelines and Standards (40 CFR subchapter N or specifically, 40 CFR parts 405–471) that use Reverse Osmosis as their treatment processes. Specifically, pharmaceutical facilities, metal finishers and a textile facility. If we do not provide an exclusion for such facilities that are already subjected to effluent guidelines and standards, we are not fully satisfying the requirements of 40 CFR 122.44(a)(2) and relying on the "permit as a shield" concept for all pollutants listed within those standards.

Response: This permit is not intended for facilities that generate industrial wastewaters who are subject to Effluent Guidelines and Standards under 40 CFR subchapter N. If effluent guidelines and standards exists then it is possible that an individual permit would be needed to reflect the standards in the guidelines. Additional language has been included in the final permit under section III. Exclusions, that states if Effluent Guidelines and Standards exists facilities are required to follow them to treat wastewater even if a reverse osmosis system is part of the treatment process.

Therefore, this permit is only meant for coverage of discharges of RO reject water from facilities using RO as a treatment process to purify potable water for various further uses. This permit is not intended to authorize discharge from RO units used from wastewater treatment as a stand alone process or in combination with other treatment processes.

(2) Comment Submitted by the Army National Guard Bureau, Environmental Programs Division, Arlington, Virginia.

Comment #2: The Army National Guard (ARNG) uses reverse osmosis water purification units (ROWPUs) in the field during training exercises. ARNG personnel train with this equipment to prepare for foreign or domestic emergency water incidents. An initiative that we in the Water Program here at National Guard Bureau (NGB) have been pushing is the use of the Modular Multi-Fluid Filtration System (MMFFS), which is used to treat post-ROWPU "reject water" down to almost drinking water quality. The MMFFS is a mobile unit that follows the ROWPU in the field. Several states have even allowed Army personnel to discharge MMFFS-treated water straight to the ground or to the stormwater system after they reviewed the water quality standards the MMFFS delivers.

Please consider adding language to the Final Rule which discusses MMFFS and MMFFS-type ROWPU "reject water" treatment systems. And where does this piece of equipment fall into regulation within the context of the proposed rule?

Response: The reject water from Modular Multi-Fluid Filtration Systems will not be covered under this permit. The intent of this general permit is for facilities that discharge RO reject to the same surface water body over time, and it is only for coverage of facilities in Massachusetts. The reject water from a MMFFS unit potentially could be discharged to any number of surface water bodies, and in several states. For instance, when a unit was ready to be discharged how would the permittee know that the dilution of each receiving stream was greater than 10 to 1? How would the permittee take copper samples when the reject water was being discharged to different water bodies? Discharge from these units could not meet the requirements in the general permit. Discharges from these systems are not regulated under this General Permit.

(3) Comment Submitted by Massachusetts Resource Authority (MWRA), Boston, Massachusetts

Comment #3: Reduce the Monitoring Frequency Requirements for Each Outfall. Dischargers that receive the NPDES General Permit will be required to conduct weekly sampling for Total Residual Chlorine, pH, and Dissolved Oxygen. The sampling frequency seems to be excessive. MWRA is concerned that excessive sampling costs will discourage dischargers from obtaining and complying with this permit.

Response: The weekly sampling frequency in the draft permit will help ensure compliance with the permit requirements on a consistent basis. EPA feels that weekly sampling and analysis for TRC, pH, and DO are routine, inexpensive, and easily performed procedures. RO reject water discharges may be intermittent and prone to periodic fluctuations in quality, thus EPA is requiring weekly sampling and analysis for these parameters.

Comment #4: Require continuous pH recording for Each Outfall. Rather than, or in addition to, a weekly Grab sampling event for pH, we believe that a continuous pH-recording device on the discharge line would provide more representative monitoring. Generally, the MWRA finds the installation of a continuous pH-recording device helpful, because it provides a thorough pH characterization of the discharge.

Response: The analytical methods specified in 40 CFR part 136 are required for all monitoring performed under the NPDES program, and grab samples are the required pH collection method. Since the quality and flow of the wastestream for reverse osmosis systems are not highly variable grab samples will remain the method of collection for pH samples.

Comment #5: Identify who should conduct sample analyses required by the General Permit. The proposed analytical activities required by the General Permit should be conducted by Mass. DEP certified lab. Most dischargers will not have the in-house expertise to conduct these analyses as required by 40 CFR part 136.

Response: As long as analytical methods in 40 CFR part 136 are used to determine characteristics in the effluent, EPA does not require permittee's to use MA certified labs for analytical testing.

Comment #6: Expand the General Permit's coverage to include water from the backwash filters from incoming water treatment. In addition to RO reject water, MWRA prohibits any filter backwash discharge, unless specifically authorized by an MWRA permit. The General Permit would help minimize clean water discharges to the sewer systems in the Commonwealth of Massachusetts if it covered filter backwash discharges from incoming water treatment filters.

Response: EPA has determined that this general permit will authorize only the discharge of reject water from RO units. Including other discharges such as filter backwash waters would unnecessarily complicate this permit and perhaps require individual permits to be issued.

TRC Limits

The TRC limits in the final permit are more stringent than what was published in the draft permit. After careful consideration, EPA and MA DEP determined that the average monthly and maximum daily TRC limits of 1.0 mg/l published in the draft permit would not meet water quality criteria with dilution factors between 10 and 99. Therefore the limits were changed in the final permit to be protective of surface water. Chlorine and chlorine compounds produced by the chlorination of wastewater can be extremely toxic to aquatic life. The effluent limits for daily maximum Total Residual Chlorine (TRC) were developed using the acute and chronic criterion defined in the *EPA Quality Criteria for Water*, 1986 (Gold Book), as adopted by the MA DEP into the State Water Quality Standards. The criterion was multiplied by the available receiving water dilution. The criterion states that the average total residual chlorine in the receiving water should not exceed 11 ug/l for chronic toxicity protection and the maximum daily total residual chlorine in the receiving water should not exceed 19 ug/l for acute toxicity production.

Toxicity Test

EPA and MA DEP have added language to the final permit that requires that permittee to submit toxicity test results upon request.

Part II—Standard Conditions

A. General Requirements

1. *Duty to Comply:* The permittee must comply with all conditions of this permit. Any permit in noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

a. The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

b. The CWA provides that any person who violates sections 301, 302, 306, 307, 308, 318, or 405 of the CWA or any permit condition or limitation implementing any of such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402 (a)(3) or 402(b)(8) of the CWA is subject to a civil penalty not to exceed $25,000 per day for each violation. Any person who *negligently* violates such requirements is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both. Any person who *knowingly* violates such requirements is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

Note: *See* 40 CFR 122.41(a)(2) for additional enforcement criteria.

c. Any person may be assessed an administrative penalty by the Administrator for violating sections 301, 302, 306, 307, 308, 318, or 405 of the CWA, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the CWA. Administrative penalties for Class I violations are not to exceed $10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $25,000. Penalties for Class II violations are not to exceed $10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $125,000.

2. *Permit Actions:* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

3. *Duty to Provide Information:* The permittee shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Regional

Administrator, upon request, copies of records required to be kept by this permit.

4. *Reopener Clause:* The Regional Administrator reserves the right to make appropriate revisions to this permit in order to establish any appropriate effluent limitations, schedules of compliance, or other provisions which may be authorized under the CWA in order to bring all discharges into compliance with the CWA.

5. *Oil and Hazardous Substance Liability:* Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA, or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

6. *Property Rights:* The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges.

7. *Confidentiality of Information:*

a. In accordance with 40 CFR part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, *EPA may make the information available to the public without further notice.* If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR part 2 (Public Information).

b. Claims of confidentiality for the following information will be denied:

(i) The name and address of any permit applicant or permittee;

(ii) Permit applications, permits, and effluent data as defined in 40 CFR 2.302(a)(2).

c. Information required by NPDES application forms provided by the Regional Administrator under § 122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

8. *Duty to Reapply:* If the permittee wishes to continue an activity regulated by this permit after its expiration date, the permittee must apply for and obtain a new permit. The permittee shall submit a new notice of intent at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Regional Administrator. (The Regional Administrator shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

9. *State Authorities:* Nothing in part 122, 123, or 124 precludes more stringent State regulation of any activity covered by these regulations, whether or not under an approved State program.

10. *Other Laws:* The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, nor does it relieve the permittee of its obligation to comply with any other applicable Federal, State, and local laws and regulations.

B. Operations and Maintenance of Pollution Control

1. *Proper Operation and Maintenance:* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of the permit.

2. *Need to Halt or Reduce Not a Defense:* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. *Duty to Mitigate:* The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. *Bypass:*

a. *Definitions*

(1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. *Bypass not exceeding limitations.* The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs B.4.c and 4.d of this section.

c. *Notice.*

(1) *Anticipated bypass:* If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) *Unanticipated bypass:* The permittee shall submit notice of an unanticipated bypass as required in paragraph D.1.e (24-hour notice).

d. *Prohibition of bypass:*

(1) Bypass is prohibited, and the Regional Administrator may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c)(i)The permittee submitted notices as required under paragraph 4.c of this section.

(ii)The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet the three conditions listed above in paragraph 4.d of this section.

5. *Upset:*

a. *Definition.* "Upset" means an exceptional incident in which there is unintentional and temporary non-compliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of paragraph B.5.c of this section are met. No determination made during administrative review of claims that

noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c. *Conditions necessary for a demonstration of upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required in paragraphs D.1.a and 1.e (24-hour notice); and

(4) The permittee complied with any remedial measures required under B.3. above.

d. *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

C. Monitoring and Records

1. Monitoring and Records

a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR part 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application *except for the information concerning storm water discharges which must be retained for a total of 6 years.* This retention period may be extended by request of the Regional Administrator at any time.

c. Records of monitoring information shall include:

(1) The date, exact place, and time of sampling or measurements;

(2) The individual(s) who performed the sampling or measurements;

(3) The date(s) analyses were performed;

(4) The individual(s) who performed the analyses;

(5) The analytical techniques or methods used; and

(6) The results of such analyses.

d. Monitoring results must be conducted according to test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, unless other test procedures have been specified in the permit.

e. The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

2. *Inspection and Entry:* The permittee shall allow the Regional Administrator, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

D. Reporting Requirements

1. Reporting Requirements

a. *Planned changes.* The permittee shall give notice to the Regional Administrator as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject to the effluent limitations in the permit, nor to the notification requirements under 40 CFR 122.42(a)(1).

(3) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition or change may justify the application of permit conditions different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

b. *Anticipated noncompliance.* The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

c. *Transfers.* This permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act. (*See* § 122.61; in some cases, modification or revocation and reissuance is mandatory.)

d. *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(1) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Regional Administrator for reporting results of monitoring of sludge use or disposal practices.

(2) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Regional Administrator.

(3) Calculations for all limitations which require averaging of measurement shall utilize an arithmetic mean unless otherwise specified by the Regional Administrator in the permit.

e. Twenty-four hour reporting.

(1) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(2) The following shall be included as information which must be reported within 24 hours under this paragraph.

(a) Any unanticipated bypass which exceeds any effluent limitation in the permit. (*See* § 122.41(g))

(b) Any upset which exceeds any effluent limitation in the permit.

(c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Regional Administrator in the permit to be reported within 24 hours. (*See* § 122.44(g))

(3) The Regional Administrator may waive the written report on a case-by-case basis for reports under paragraph D.1.e if the oral report has been received within 24 hours.

f. *Compliance Schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

g. *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under paragraphs D.1.d, D.1.e and, D.1.f of this section at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph D.1.e of this section.

h. *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Regional Administrator, it shall promptly submit such facts or information.

2. Signatory Requirement

a. All applications, reports, or information submitted to the Regional Administrator shall be signed and certified. (*See* § 122.22)

b. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

3. *Availability of Reports:* Except for data determined to be confidential under paragraph A.8. above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Regional Administrator. As required by the CWA, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in section 309 of the CWA.

E. Other Conditions

1. *Definitions* for purposes of this permit are as follows:

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Applicable standards and limitations means all State, interstate, and Federal standards and limitations to which a "discharge" or a related activity is subject to, including water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in "approved States," including any approved modifications or revisions.

Average means the arithmetic mean of values taken at the frequency required for each parameter over the specified period. For total and/or fecal coliforms, the average shall be the geometric mean.

Average monthly discharge limitation means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

Average weekly discharge limitation means the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Best Professional Judgement (BPJ) means a case-by-case determination of Best Practicable Treatment (BPT), Best Available Treatment (BAT) or other appropriate standard based on an evaluation of the available technology to achieve a particular pollutant reduction.

Composite Sample—A sample consisting of a minimum of eight grab samples collected at equal intervals during a 24-hour period (or lesser period as specified in the section on Monitoring and Reporting) and combined proportional to flow, or a sample continuously collected proportionally to flow over that same time period.

Continuous Discharge means a "discharge" which occurs without interruption throughout the operating hours of the facility except for infrequent shutdowns for maintenance, process changes, or similar activities.

CWA or "The Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92–500, as amended by Pub. L. 95–217, Pub. L. 95–576, Pub. L. 96–483 and Pub. L. 97–117; 33 U.S.C. 1251 *et seq.*

Daily Discharge means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

Director means the person authorized to sign NPDES permits by EPA and/or the State.

Discharge Monitoring Report Form (DMR) means the EPA standard national form, including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by permittees. DMRs must be used by "approved States" as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's.

Discharge of a pollutant means:
(a) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or
(b) Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger."

Effluent limitation means any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States," the waters of the "contiguous zone," or the ocean.

Effluent limitations guidelines means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise "effluent limitations."

EPA means the United States "Environmental Protection Agency."

Grab Sample—An individual sample collected in a period of less than 15 minutes.

Hazardous Substance means any substance designated under 40 CFR part 116 pursuant to section 311 of CWA.

Maximum daily discharge limitation means the highest allowable "daily discharge."

Municipality means a city, town, borough, county, parish, district, association, or other public body created by of under State law and having jurisdiction over disposal or sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribe organization, or a designated and approved management agency under section 208 of CWA.

National Pollutant Discharge Elimination System means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA. The term includes an "approved program."

New discharger means any building, structure, facility, or installation:
(a) From which there is or may be a "discharge of pollutants";
(b) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;
(c) Which is not a "new source"; and
(d) Which has never received a finally effective NPDES permit for discharges at that "site".

This definition includes an "indirect discharger" which commences discharging into "waters of the United States" after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a "site" for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a "site" under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Regional Administrator in the issuance of a final permit to be an area of biological concern. In determining whether an area is an area of biological concern, the Regional Administrator shall consider the factors specified in 40 CFR 125.122.(a)(1) through (10).

An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a "new discharger" only for the duration of its discharge in an area of biological concern.

New source means any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced:
(a) After promulgation of standards of performance under section 306 of CWA which are applicable to such.
(b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

NPDES means "National Pollutant Discharge Elimination System."

Non-Contact Cooling Water is water used to reduce temperature which does not come in direct contact with any raw material, intermediate product, a waste product or finished product.

Owner or operator means the owner or operator of any "facility or activity" subject to regulation under the NPDES programs.

Permit means an authorization, license, or equivalent control document issued by EPA or an "approved State."

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Point source means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:
(a) Sewage from vessels; or
(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

Primary industry category means any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et al.* v. *Train*, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in appendix A of 40 CFR part 122.

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Regional Administrator means the Regional Administrator, EPA—New England, Boston, Massachusetts.

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands.

Secondary Industry Category means any industry category which is not a "primary industry category."

Toxic pollutant means any pollutant listed as toxic in appendix D of 40 CFR part 122, under section 307(a)(l) of CWA.

Uncontaminated storm water is precipitation to which no pollutants have been added and has not come into direct contact with any raw material, intermediate product, waste product or finished product.

Waters of the United States means:
(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
(b) All interstate waters, including interstate "wetlands";
(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or,
(3) Which are used or could be used for industrial purposes by industries in interstate commerce;
(d) All impoundments of waters otherwise defined as waters of the United States under this definition;
(e) Tributaries of waters identified in paragraphs (a)–(d) of this definition;
(f) The territorial sea; and
(g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)–(f) of this definition.

Whole Effluent Toxicity (WET) means the aggregate toxic effect of an effluent measured directly by a toxicity test.

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

2. Abbreviations when used in this permit are defined below:

cu. M/day or M3/day cubic meters per day.
mg/l milligrams per liter.
µg/l micrograms per liter.
lbs/day pounds per day.
kg/day kilograms per day.
Temp. °C temperature in degrees Centigrade.
Temp. °F temperature in degrees Fahrenheit.
Turb. turbidity measured by the Nephelometric Method (NTU).
pH. a measure of the hydrogen ion concentration.
CFS cubic feet per second.
MGD million gallons per day.
Oil & Grease Freon extractable material.
ml/l milliliter(s) per liter.
Cl_2 total residual chlorine.

Attachment A—Dilution Factor Calculations

Equation used to calculate available dilution factor at Outfall 001.

$$\text{Dilution Factor} = \frac{(Q_{001} + Q_{FD} \times 1.547)}{Q_{FD} \times 1.547}$$

Where:
Q_{001} = Estimated 7Q10 flow* at Outfall 001, in cubic foot/seconds (cfs)
Q_{FD} = Facility's design flow, in million gallons per day (MGD)
1.547 = Factor to convert MGD to CFS

* The 7Q10 is the lowest observed mean river flow for 7 consecutive days, recorded over a 10-year recurrence interval.

Example Calculation
Q_{001} = 325 cfs
Q_{FD} = 3.2 MGD.

Attachment B—Copper Calculation

Copper limits for dilutions between 10 and 99
Estimated hardness = 50.
ln 50 = 3.912
chronic copper limit: criterion continuous concentration
$e^{[(0.8545*3.912)+(-1.702)]} * 10.0$
= 5.159 × 10.0
= 51.59 µg/l
= 52 µg/l.
acute copper limit
$e^{[(0.9422*3.912)+(-1.700)]} * 10.0$
= 7.285 × 10.0
= 72.85 µg/l
= 73 µg/l.

Copper limits for dilutions between 100 and 1000
Estimated hardness = 50.
ln 50 = 3.912
chronic copper limit: criterion continuous concentration
$e^{[(0.8545*3.912)+(-1.702)]} * 100.0$
= 5.159 × 100.0
= 515.59 µg/l
= 516 µg/l.
acute copper limit
$e^{[(0.9422*3.912)+(-1.700)]} * 100.0$
= 7.285 × 100.0
= 728.85 µg/l
= 730 µg/l.

[FR Doc. 02–31465 Filed 12–16–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7422–6]

Public Water Supervision Program Revision for the State of Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Tennessee is revising its approved Public Water System Supervision Program. Tennessee has adopted drinking water regulations which incorporate the requirements of the Filter Backwash Recovery Rule and the Radionuclides Rule. EPA has determined that these revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA intends to approve this State program revision.

All interested parties may request a public hearing. A request for a public hearing must be submitted by January 16, 2003 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by January 16, 2003, a public hearing will be held. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on January 16, 2003. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on the behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday,

at the following offices: Tennessee Department of Environment and Conservation, Division of Water Supply, 401 Church Street, L&C Tower, Sixth Floor, Nashville, Tennessee, 37243–1549, or at the Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street Southwest, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Vivian Doyle, EPA Region 4, Drinking Water Section at the Atlanta address given above, or by telephone at (404) 562–9942.

Authority: Sections 1401 and 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR parts 141 and 142.

Dated: December 4, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–31676 Filed 12–16–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 98–67; DA 02–3168]

Notice of Telecommunications Relay Service (TRS) Applications for State Certification Accepted Pleading Cycle Established for Comment on TRS Certification Applications

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission notifies the public, state Telecommunications Relay Service (TRS) programs, and TRS providers that TRS applications for certification have been accepted and that the pleading cycle for comments and reply comments regarding these applications has been established.

DATES: Comments must be filed on or before January 9, 2003, and reply comments on or before January 27, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: Erica Myers, (202) 418–2429 (voice), (202) 418–0464 (TTY), or e-mail *emyers@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket 98–67; released November 15, 2002. This notice seeks public comment on the above-referenced applications for TRS certification. Copies of applications for certification are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The applications for certification are also available on the Commission's Web site at *http://www.fcc.gov/cgb/dro/trs_by_state.html*. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

Interested parties may file comments in this proceeding no later than January 9, 2003. Reply comments may be filed no later than January 27, 2003. When filing comments, please reference CC Docket No. 98–67 and the relevant state file number of the state application that is being commented upon. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette or via e-mail in Microsoft Word. These diskettes should be submitted to: Erica Myers, Federal Communications Commission, 445 12th Street, SW., Room 6–A432, Washington DC 20554. The e-mail should be submitted to Erica Myers at *emyers@fcc.gov*. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98–67, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. *See* 47 CFR 1.1200 and 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or e-mail at *bmillin@fcc.gov*. This *Public Notice* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro*.

Synopsis

Notice is hereby given that the states listed below have applied to the Commission for renewal of the certification of their State Telecommunications Relay Service (TRS) program pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. 225 and the Commission's rules, 47 CFR 64.601–605. Current state certifications expire July 25, 2003. Applications for certification, covering the five year period of July 26, 2003 to July 25, 2008, must demonstrate that the state TRS program complies with the ADA and the Commission's rules for the provision of TRS.

File No: TRS–47–02
Commission for the Deaf and Hard of Hearing, State of Arkansas.

File No: TRS–48–02
Commission for the Deaf and Hearing Impaired, State of Connecticut.

File No: TRS–50–02
Florida Public Utilities Commission, State of Florida.

File No: TRS–53–02
Maine Public Utilities Commission, State of Maine.

File No: TRS–54–02
Michigan Public Service Commission, State of Michigan.

File No: TRS–55–02
Mississippi Public Service Commission, State of Mississippi.

File No: TRS–45–02
New Jersey Board of Utilities, State of New Jersey.

File No: TRS–14–02
Commission for the Deaf and Hard of Hearing, State of New Mexico.

File No: TRS–58–02
Pennsylvania Public Utilities Commission, State of Pennsylvania.

File No: TRS–28–02
Telecommunications Regulatory Board, State of Puerto Rico.

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer & Governmentol Affairs Bureau.

[FR Doc. 02–31714-Filed 12–16–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–02–47–C (Auction No. 47); DA 02–3153]

Closed Auction of Licenses for Cellular Unserved Service Areas Scheduled for February 12, 2003; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of seven licenses to provide cellular service in unserved areas scheduled for February 12, 2003. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Auction No. 47 is scheduled to begin on February 12, 2003.

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: Ken Burnley, Legal Branch, or Jeff Crooks, Auctions Operations Branch, at (202) 418–0660; Lisa Stover, Auctions Operations Branch, at (717) 338–2888. Media Contact: Lauren Kravetz at (202) 418–7944. Commercial Wireless Division: Mike Kleeb, Licensing and Technical Analysis Branch, at (202) 418–0620; Amal Abdallah, Policy and Rules Branch, at (202) 418–7307 or Evan Baranoff, Policy and Rules Branch, at (202) 418–7142.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 47 Procedures Public Notice* released on November 15, 2002. The complete text of the *Auction No. 47 Procedures Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The *Auction No. 47 Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail to *qualexint@aol.com*.

I. General Information

A. Introduction

1. By the *Auction No. 47 Procedures Public Notice*, the Wireless Telecommunications Bureau ("Bureau") announces the procedures and minimum opening bids for the upcoming auction of seven licenses to provide cellular service in unserved areas ("Auction No. 47") scheduled for February 12, 2003.

2. In accordance with the Balanced Budget Act of 1997, the Bureau released a public notice on September 16, 2002, seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 47. The Bureau received one comment and no reply comments in response to the *Auction No. 47 Comment Public Notice*. The Bureau subsequently released a second public notice on October 25, 2002, revising the inventory, auction start date, and seeking comment on procedural issues. The Bureau did not receive any comments in response to the *Auction No. 47 Revised Comment Public Notice*, 67 FR 69221 (November 15, 2002).

i. Licenses to Be Auctioned

3. Participation in Auction No. 47 is limited to those applicants who have filed the long-form applications listed in Attachment A of the *Auction No. 47 Procedures Public Notice*. All applications within a mutually exclusive applicant group ("MX Group") are directly mutually exclusive with one another and therefore a single license will be auctioned for each MX Group identified in Attachment A of the *Auction No. 47 Procedures Public Notice*. The winning bidder for a particular MX Group will be authorized to construct only the facilities proposed in its long-form application(s) for that MX Group as identified in Attachment A of the *Auction No. 47 Procedures Public Notice*.

4. As stated in the *Competitive Bidding Ninth Report and Order*, 61 FR 58333 (November 14, 1996), all pending mutually exclusive applications for unserved area licenses in the Cellular Radiotelephone Service must be resolved through a system of competitive bidding. When the short-form applications of two or more applicants within an MX Group are accepted for filing, mutual exclusivity exits for auction purposes. Once mutual exclusivity exists for auction purposes, even if only one applicant within an MX Group submits an upfront payment, that applicant is required to submit a bid in order to obtain the license.

B. Rules and Disclaimers

i. Relevant Authority

5. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the Cellular Radiotelephone Service contained in title 47, part 22 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in the *Auction No. 47 Procedures Public Notice;* the *Auction No. 47 Comment Public Notice* and the *Auction No. 47 Revised Comment Public Notice;* and the *Part 1 Fifth Report and Order*, 65 FR 52401 (August 29, 2000), (as well as prior and subsequent Commission proceedings regarding competitive bidding procedures).

6. Auction participants bidding on licenses for cellular unserved service areas should also be familiar with the *Competitive Bidding Ninth Report and Order.*

7. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at *http://wireless.fcc.gov/auctions.* Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554 or may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* When ordering documents from Qualex, please provide the appropriate FCC number (for example, FCC 96–361 for the *Competitive Bidding Ninth Report and Order).*

ii. Prohibition of Collusion

8. To ensure the competitiveness of the auction process, the Commission's rules prohibit competing applicants from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction.

9. Bidders in Auction No. 47 are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm). In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.

10. Applicants may enter into bidding agreements before filing their FCC form 175, as long as they disclose the existence of the agreement(s) in their form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other competing applicants. By signing their FCC form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c).

11. In addition, § 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.

12. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment E of the *Auction No. 47 Procedures Public Notice.*

iii. Due Diligence

13. Potential bidders also should be aware that certain applications (including those for modification), petitions for rulemaking, requests for special temporary authority ("STA") waiver requests, petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants or incumbent licensees. The Bureau notes that resolution of these matters could have an impact on the availability of spectrum in Auction No. 47. In addition, although the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction.

14. Potential bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 47.

15. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. Potential bidders are strongly encouraged to physically inspect any sites located in, or near, the unserved areas for which they plan to bid.

iv. Bidder Alerts

16. All applicants must certify on their FCC form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

17. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.

18. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 47 to deceive and defraud unsuspecting investors.

Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than $25,000.
- The sales representative makes verbal representations that: (a) The Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

19. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals regarding Auction No. 47 may also call the FCC Consumer Center at (888) CALL-FCC ((888)225–5322).

v. National Environmental Policy Act ("NEPA") Requirements

20. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a wireless antenna facility is a federal action, and the licensee must comply with the Commission's NEPA rules for each such facility. The Commission's NEPA rules require, among other things, that the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

21. The auction will be held on Wednesday, February 12, 2003. Unless otherwise announced, all seven licenses will be offered at the same time with bidders placing one bid per license. The start and finish times for the bidding round will be announced by public notice at least one week before the start of the auction.

ii. Auction Title

22. Auction No. 47—Closed Cellular Unserved.

iii. Bidding Methodology

23. The bidding methodology for Auction No. 47 will be single-round sealed-bid. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

24. Listed are important dates associated with Auction No. 47:

Short-Form Application (FCC FORM 175).	January 13, 2003; 6 p.m. e.t.
Upfront Payments (via wire transfer).	January 27, 2003; 6 p.m. e.t.
Mock Auction	February 7, 2003.
Auction	February 12, 2003.

v. Requirements for Participation

25. Those wishing to participate in the auction must:

- Submit a short-form application (FCC form 175) electronically by 6 p.m. e.t., January 13, 2003.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. e.t., January 27, 2003.
- Comply with all provisions outlined in the Auction No. 47 Procedures Public Notice.

vi. General Contact Information

26. The following is a list of general information relating to Auction No. 47:

General Auction Information: General Auction Questions—FCC Auctions Hotline, (888) 225–5322, Press Option #2, or direct (717) 338–2888. Hours of service: 8 a.m.–5:30 p.m. e.t.

Auction Legal Information: Auctions Rules, Policies, Regulations—Auction and Industry Analysis Division, Legal Branch, (202) 418–0660.

Licensing Information: Rules, Policies, Regulations, Licensing Issues, Due Diligence, Incumbency Issues—Commercial Wireless Division, (202) 418–0620.

Technical Support: Electronic Filing Automated Auction System—FCC Auctions Technical Support Hotline, (202) 414–1250 (Voice), (202) 414–1255 (TTY). Hours of service: Monday through Friday 8 a.m: to 6 p.m. e.t.

Payment Information: Wire Transfers, Refunds—FCC Auctions Accounting Branch, (202) 418–1995, (202) 418–2843 (Fax).

Telephonic Bidding: Will be furnished only to qualified bidders.

FCC Copy Contractor: Additional Copies of Commission Documents—Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. (202) 863–2893, (202) 863–2898 (Fax), *qualexint@aol.com* (E-mail).

Press Information: Lauren Kravetz (202) 418–7944.

FCC Forms: (800) 418–3676 (outside Washington, DC). (202) 418–3676 (in the Washington Area). *http://www.fcc.gov/formpage.html.*

FCC Internet Sites: *http://www.fcc.gov. http://wireless.fcc.gov/auctions. http://wireless.fcc.gov/uls.*

II. Short-Form (FCC Form 175) Application Requirements

27. Guidelines for completion of the short-form application (FCC form 175) are set forth in Attachment C to the *Auction No. 47 Procedures Public Notice*. The short-form application seeks the applicant's name and address, legal classification, status, identification of the license(s) sought, the authorized bidders and contact persons. Applicants must certify on their FCC form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license and that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

28. The Commission determines whether mutual exclusivity exists for auction purposes by reviewing all of the short-form (FCC form 175) applications that have been accepted for filing. In the event that review of all the FCC form 175 applications accepted for filing determines that only one applicant in a given MX Group has applied for the license to be auctioned for that MX Group, that license will be removed from the auction. In such a case, the Commission will process the long-form application(s) of the party that applied for the given license on its FCC form 175 and dismiss the long-form application(s) of the other applicant. In the event that neither applicant in a given MX Group applies for the license to be auctioned for that MX Group, the long-form application(s) of both applicants will be dismissed.

A. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)

29. Applicants must comply with the uniform part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC form 175, applicants will be required to file an "Exhibit A" providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in § 1.2112 of the Commission's rules.

B. Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B)

30. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. As discussed above, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue discussions with competing applicants after the deadline. Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an "Exhibit B" to the FCC form 175.

31. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other competing applicants provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

C. Bidding Credit Eligibility

32. Bidding credits for designated entities will not be available in Auction No. 47. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. *See* section V.C, *infra*.

D. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit C)

33. Each applicant must certify on its FCC form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interest have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The applicant must provide such information for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules (as amended in the *Part 1 Fifth Report and Order*). Applicants must include this statement as Exhibit C of the FCC form 175. Prospective bidders are reminded that the statement must be made under penalty of perjury and, further, submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

34. "Former defaulters"—*i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 47, provided that they are otherwise qualified. However, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

E. Installment Payments

35. Installment payment plans will not be available in Auction No. 47.

F. Other Information (FCC Form 175 Exhibits D and E)

36. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit (Exhibit D) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do so on Exhibit E (Miscellaneous Information) to the FCC form 175.

G. Minor Modifications to Short-Form Applications (FCC Form 175)

37. After the short-form filing deadline (January 13, 2003), applicants may make only minor changes to their FCC form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections or proposed service areas, change the certifying official or change control of the applicant). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants must make these modifications to their FCC form 175 electronically and should submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: *auction47@fcc.gov*. The electronic mail summarizing the changes should include a subject or caption referring to Auction No. 47. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

38. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Kenneth Burnley of the Auctions and Industry Analysis Division at (202) 418–0660.

H. Maintaining Current Information in Short-Form Applications (FCC Form 175)

39. Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC form 175 application.

III. Pre-Auction Procedures

A. Auction Seminar

40. An auction seminar will not be held for Auction No. 47. Applicants having questions about pre-auction procedures, conduct of the auction, the FCC Automated Auction System , or the Cellular Radiotelephone Service and auction rules are encouraged to contact the appropriate staff listed in the *Auction No. 47 Procedures Public Notice*.

B. Short-Form Application (FCC Form 175)—Due January 13, 2003

41. In order to be eligible to bid in this auction, each applicant must first submit an FCC form 175 application with the license(s) selected. This application must be submitted electronically and received at the Commission no later than 6 p.m. e.t. on January 13, 2003. Late applications will not be accepted.

42. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* part III.D.

i. Electronic Filing

43. Applicants must file their FCC form 175 applications electronically. Applications may generally be filed at any time beginning at 9 a.m. e.t. on January 7, 2003, until 6 p.m. e.t. on January 13, 2003. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline of 6 p.m. e.t. on January 13, 2003.

44. Applicants must press the "SUBMIT Application" button on the "Submission" page of the electronic form to successfully submit their FCC form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC form 175 is included in Attachment B. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); hours of service Monday through Friday, from 8 a.m. to 6 p.m. e.t. In order to provide better service to the public, *all calls to the hotline are recorded.*

45. Applicants can also contact Technical Support via e-mail. To obtain the address, click the Support tab on the form 175 Homepage.

ii. Completion of the FCC Form 175

46. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC form 175. Instructions for completing the FCC form 175 are in Attachment C of the *Auction No. 47 Procedures Public Notice*. Applicants are encouraged to begin preparing the required attachments for FCC form 175 prior to submitting the form. Attachments B and C to the *Auction No. 47 Procedures Public Notice* provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

47. The FCC form 175 electronic review system may be used to locate and print applicants' FCC form 175 information. Applicants may also view other applicants' completed FCC form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any exhibits to their FCC form 175 applications. There is no fee for accessing this system. *See* Attachment B of the *Auction No. 47 Procedures Public Notice* for details on accessing the review system.

C. Application Processing and Minor Corrections

48. After the deadline for filing the FCC form 175 applications has passed, the FCC will process all timely-submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

49. As described more fully in the Commission's rules, after the January 13, 2003, short-form filing deadline, applicants may make only minor corrections to their FCC form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, or change control of the applicant).

D. Upfront Payments—Due January 27, 2003

50. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice form (FCC form 159). After completing the FCC form 175, filers will have access to an electronic version of the FCC form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. e.t. on January 27, 2003.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 47 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the January 27, 2003, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

51. Wire transfer payments must be received by 6 p.m. e.t. on January 27,

2003. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261.

Receiving Bank: Mellon Pittsburgh.

Beneficiary: FCC/Account # 910–0198.

OBI Field: (Skip one space between each information item).

"*Auctionpay*"

FCC Registration Number (FRN): (same as FCC form 159, block 11 and/or 21).

Payment Type Code (same as FCC form 159, block 24A: A47U).

FCC Code 1 (same as FCC form 159, block 28A: "47").

Payer Name (same as FCC form 159, block 2).

Lockbox No. #358410.

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

52. Applicants must fax a completed FCC form 159 (revised 2/00) to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 47:" Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

53. A completed FCC Remittance Advice Form (FCC form 159, revised 2/00) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC form 159 are included in Attachment D to the *Auction No. 47 Procedures Public Notice.* An electronic version of the FCC form 159 is available after filing the FCC form 175. The FCC form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

54. In the *Part 1 Order, Memorandum Opinion and Order,* and *Notice of Proposed Rule Making,* the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order,* the Commission ordered that "former defaulters," *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-"former defaulters."

55. In both the *Auction No. 47 Comment Public Notice* and *Auction No. 47 Revised Comment Public Notice,* the Bureau proposed that the amount of the upfront payment would determine the number of bidding units on which a bidder may place bids. In order to bid on a license, otherwise qualified bidders that applied for that license on form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied on form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place a bid.

56. In both the *Auction No. 47 Comment Public Notice* and *Auction No. 47 Revised Comment Public Notice,* the Bureau proposed to set the upfront payment for each license at $500 per license. Having received no comments regarding the amount of the proposed upfront payments, the Bureau therefore adopts its proposed upfront payment amounts for Auction No. 47. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 47 Procedures Public Notice.*

57. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units on which it may wish to bid on, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it plans to bid. Bidders should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

58. Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

Note: An applicant may, on its FCC form 175, apply for every applicable license being offered, but its actual bidding will be limited by the bidding units reflected in its upfront payment.

iv. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

59. The Commission will use wire transfers for all Auction No. 47 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed below be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418–2843 by January 27, 2003. All refunds will be returned to the payer of record as identified on the FCC form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418–0578 or Tim Dates at 202–418–0496.

Name of Bank
ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)
Taxpayer Identification Number (see below)
Correspondent Bank (if applicable)
ABA Number
Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in part V.E., *infra.*

E. Auction Registration

60. Approximately 10 days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

61. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) required to place bids and the other containing the SecurID cards. These mailings will be sent only to the contact person at the contact address listed on the FCC form 175.

62. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, February 5, 2003, should contact the Auctions Hotline at (717) 338–2888. Receipt of both registration mailings is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

63. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing in person at the FCC Auction Headquarters located at 445 12th St., SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

F. Electronic Bidding

64. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. Qualified bidders are permitted to bid electronically or telephonically , *i.e.*, over the Internet or the FCC's Wide Area Network. In either case, each authorized bidder must have its own Remote Security Access SecurID card, which the FCC will provide at no charge. Each applicant with less than three authorized bidders will be issued two SecurID cards, while applicants with three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the FCC Automated Auction System user manual are only mailed to the contact person at the contact address listed on the FCC form 175. Please note that each SecurID card is tailored to a specific auction, therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 47. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number. Each applicant should indicate its bidding preference-electronic or telephonic—on the FCC form 175.

65. Please note that the SecurID cards can be recycled, and the Bureau encourages bidders to return the cards to the FCC. The Bureau will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

G. Mock Auction

66. All qualified bidders will be eligible to participate in a mock auction on Friday, February 7, 2003. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

67. Auction No. 47 will be held on Wednesday, February 12, 2003. The start and finish time of the bidding round will be announced in a later public notice, which will be released approximately 10 days before the start of the auction.

A. Auction Structure

i. Single Round Sealed Bid Auction

68. In both the *Auction No. 47 Comment Public Notice* and *Auction No. 47 Revised Comment Public Notice,* the Bureau proposed to award all licenses in Auction No. 47 using a single-round sealed-bid auction design. In its comments, Western Wireless objects to this design proposal and urges the Bureau instead to utilize a simultaneous multiple-round auction or, if that is not possible, a "sealed-second-bid" single round design. Western Wireless contends that there exists informational advantages to using these alternative auction formats. The Bureau believes that due to the unusual circumstances of Auction No. 47, in which there are only two bidders, both of whom are very familiar with the areas to be licensed, these informational advantages are not necessary. Therefore, the Bureau concludes that it is operationally feasible and appropriate to auction the cellular unserved service area licenses through a single-round sealed-bid auction.

ii. Maximum Eligibility

69. In both the *Auction No. 47 Comment Public Notice* and *Auction No. 47 Revised Comment Public Notice,* the Bureau proposed that the amount of the upfront payment submitted by a bidder would determine the maximum eligibility (as measured in bidding units) for each bidder. The Bureau received no comments on this issue.

70. For Auction No. 47, the Bureau adopts its proposal. The amount of the upfront payment submitted by a bidder determines the number of bidding units on which a bidder may place bids. Note again that each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A on a bidding unit per dollar basis. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid. As there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline, prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the dollar amount a bidder may bid on any license.

iii. Auction Delay or Cancellation

71. In the *Auction No. 47 Comment Public Notice,* the Bureau proposed that, by public notice or by announcement during the auction, the Bureau may delay or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.

72. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts its proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction or cancel the auction in its entirety. Network interruption may cause the Bureau to delay the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau.

B. Bidding Procedures

i. Round Structure

73. The single-round sealed-bid format will consist of one bidding round followed by the release of the auction results. The start and finish time of the bidding round will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

ii. Reserve Price or Minimum Opening Bid

74. *Background.* The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

75. In both the *Auction No. 47 Comment Public Notice* and *Auction No. 47 Revised Comment Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 47 in the amount of $500 per license. The Bureau received no comments concerning this proposal. Therefore, the minimum opening bid for each license is set at $500 and is set forth in Attachment A of the *Auction No. 47 Procedures Public Notice.*

iii. Bidding

76. During the bidding round, a bidder may place bids in any whole dollar amount equal to or greater than the minimum opening bid for as many licenses as it wishes (subject to its eligibility). Bidders also have the option of making multiple submissions during the bidding round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid submitted as that bidder's bid.

77. Please note that all bidding will take place remotely either through the Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their call well in advance of the close of the round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 47.

78. A bidder's ability to bid on specific licenses in the auction is determined by two factors: (i) the licenses applied for on FCC form 175 and (ii) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those licenses for which the bidder applied on its FCC form 175.

79. The Automated Auction System requires each bidder to be logged in during the bidding round using the bidder identification number provided in the registration materials, and the generated SecurID code. Bidders are strongly encouraged to print a bid confirmation after they submit their bids.

80. Finally, bidders are cautioned that they should type their bid amounts carefully because, even if mistakenly or erroneously made, bidders still assume a binding obligation to pay their full bid amount.

iv. Bid Removal and Bid Withdrawal

81. In the *Auction No. 47 Comment Public Notice*, the Bureau proposed bid removal and bid withdrawal procedures. With respect to bid withdrawals, the Bureau proposed not to allow any bid withdrawals in Auction No. 47. The Bureau received no comments on this issue. Therefore, the Bureau adopts its proposal.

82. Bid Removal Procedures. Before the close of the bidding round, a bidder has the option of removing any bids placed in the round. By using the "remove bid" function in the bidding system, a bidder may effectively "unsubmit" any bid placed within the round.

v. Winning Bids and Tie Bids

83. At the end of the bidding round, the winning bids will be determined based on the highest gross bid amount received for each license. In the event of identical bids on a license (*i.e.*, tied bids), the Bureau proposed to allow an additional bidding round for bidders to submit higher bids for only the license(s) with tied bids. The Commission would announce the schedule for the subsequent round, via an announcement in the Auctions Bidding System, concurrent with the release of round results. In the event of tied bids, the Bureau proposed to use a random number generator to select a high bid from among the tied bids. A random number will be assigned to each bid. The tie bid having the highest random number will become the high bid. The remaining bidder, as well as the high bidder, will be able to submit higher bid in the next round. If neither bidder submits a higher bid, the high bid from the previous round will win the license. If any bids are received in the next round, the winning bid will be determined on the highest gross bid amount received for each license. The Bureau received no comments on its proposal. Therefore, the Bureau adopts its proposal.

vi. Auction Announcements

84. The FCC will use auction announcements to announce items such as the schedule for a subsequent round in the event of tied bids on a license. All FCC auction announcements will be available by clicking on a link in the Automated Auction System.

vii. Maintaining the Accuracy of FCC Form 175 Information

85. As noted in part II.G., after the short-form filing deadline, applicants may make only minor changes to their FCC form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Applicants must make these modifications to their FCC form 175 electronically and should submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: *auction47@fcc.gov*. The electronic mail summarizing the changes should include a subject or caption referring to Auction No. 47. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

86. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Kenneth Burnley of the Auctions and Industry Analysis Division at (202) 418–0660.

V. Post-Auction Procedures

A. Down Payments

87. After the auction has ended, the Commission will issue a public notice declaring the auction closed, identifying winning bidders and any down payments due.

88. Within 10 business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its winning bids. *See* 47 CFR 1.2107(b).

B. Long-Form Applications

89. Within an MX Group, the previously filed long-form applications(s) of the unsuccessful bidder will be dismissed following the grant of the winning bidder's license.

C. Tribal Land Bidding Credit

90. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally-recognized tribal lands that are unserved by any telecommunications carrier or that have a telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f).

91. A winning bidder applies for the tribal land bidding credit *after* winning the auction. Instructions for applying for this credit will be provided in a public notice after the close of the auction. Licensees receiving a tribal land bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f).

92. For additional information on the tribal land bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal land bidding credits and related public notices. Relevant documents can be viewed on the Commission's auctions Web site at *http://wireless.fcc.gov/auctions* by clicking on the *Tribal Land Credits* link.

D. Default and Disqualification

93. Any winning bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

E. Refund of Remaining Upfront Payment Balance

94. Applicants that submitted upfront payments but were not a winning bidder for a license in Auction No. 47 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. All refunds will be returned to the payer of record, as identified on the FCC form 159, unless the payer submits written authorization instructing otherwise.

95. Qualified bidders must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser or Tim Dates, 445 12th Street, SW., Room 1–C863, Washington, DC 20554.

96. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Tim Dates at (202) 418–0496 or Gail Glasser at (202) 418–0578.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions & Industry Analysis Division, WTB.

[FR Doc. 02–31634 Filed 12–16–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–3293]

Auction of Multichannel Video Distribution and Data Service Licenses (MVDDS) Is Rescheduled

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces that the start of the upcoming of MVDDS licenses scheduled for February 12, 2003 is rescheduled for August 6, 2003.

DATES: The MVDDS auction is scheduled to begin on August 6, 2003.

FOR FURTHER INFORMATION CONTACT: *Media Contact:* Lauren Kravetz at (202) 418–7944. *Wireless Telecommunications Bureau:* FCC Auctions Hotline at (888) 225–5322, Press Option #2.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released by the Wireless Telecommunications Bureau on November 26, 2002. The complete text of the Public Notice is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. The November 26, 2002 Public Notice may also be purchased from the Commission's duplication contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

The Wireless Telecommunications Bureau announces the auction of the Multichannel Video Distribution and Data Service (MVDDS) licenses previously scheduled to begin on February 12, 2003, has been rescheduled for August 6, 2003. Future public notices will seek comment on specific terms and conditions for this auction. The key dates are listed:

Auction Seminar: June 5, 2003.

Short Form Deadline: June 16, 2003. (FCC 175 Application)

Upfront Payment Deadline: July 10, 2003.

Mock Auction: August 1, 2003.

Auction Begins: August 6, 2003.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 02–31716 Filed 12–16–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Notice Announcing an Open Meeting of the Board

Time and Date: 10 a.m., Friday, December 20, 2002.

Place: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

Status: The entire meeting will be open to the public.

Matter to be Considered:

- Amendments to the Federal Home Loan Bank of Atlanta Capital Plan.
- Proposed Rule: Disclosure under the Securities Act of 1933.
- Resolution Posing Questions to the 12 Federal Home Loan Banks Regarding Modernized Membership.
- Final Rule: Procedure for Conducting the Monthly Survey of Rates and Terms on Conventional One-Family, Non-Farm Mortgage Loans.

FOR FURTHER INFORMATION CONTACT: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Arnold Intrater,

General Counsel.

[FR Doc. 02–31846 Filed 12–13–02; 12:47 pm]

BILLING CODE 6725–01–P

FEDERAL TRADE COMMISSION

Charges for Certain Disclosures

AGENCY: Federal Trade Commission.

ACTION: Notice Regarding Charges for Certain Disclosures.

SUMMARY: The Federal Trade Commission announces that the current $9.00 ceiling on allowable charges under section 612(a) of the Fair Credit Reporting Act ("FCRA") will remain unchanged for 2003. Under 1996 amendments to the FCRA, the Federal Trade Commission is required to increase the $8.00 amount referred to in paragraph (1)(A)(i) of section 612(a) on January 1 of each year, based proportionally on changes in the Consumer Price Index ("CPI"), with fractional changes rounded to the nearest fifty cents. The CPI increased 12.28 percent between September 1997, the date the FCRA amendments took effect, and September 2002. This increase in the CPI and the requirement that any increase be rounded to the nearest fifty cents results in no change in the current maximum allowable charge of $9.00.

EFFECTIVE DATE: January 1, 2003.

ADDRESSES: Federal Trade Commission, 600 PA. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Keith B. Anderson, Bureau of Economics, Federal Trade Commission, Washington, DC 20580, 202–326–3428.

SUPPLEMENTARY INFORMATION: Section 612(a)(1)(A) of the Fair Credit Reporting Act, as amended in 1996, states that, where a consumer reporting agency is permitted to impose a reasonable charge on a consumer for making a disclosure to the consumer pursuant to section 609, the charge shall not exceed $8 and shall be indicated to the consumer before making the disclosure. Section 612(a)(2) goes on to state that the Federal Trade Commission ("the Commission") shall increase the $8.00 maximum amount on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents.

The Commission considers the $8 amount referred to in paragraph (1)(A)(i) of section 612(a) to be the baseline for the effective ceiling on reasonable charges dating from the effective date of the amended FCRA, *i.e.*, September 30, 1997. Each year the Commission calculates the proportional increase in the Consumer Price Index (using the most general CPI, which is for all urban consumers, all items) from September 1997 to September of the current year. The Commission then determines what modification, if any, from the original base of $8 should be made effective on January 1 of the subsequent year, given the requirement that fractional changes be rounded to the nearest fifty cents.

Between September 1997 and September 2002, the Consumer Price Index for all urban consumers and all items increased by 12.28 percent—from an index value of 161.2 in September 1997 to a value of 181.0 in September 2002. An increase of 12.28 percent in the $8.00 base figure would lead to a new figure of $8.98. However, because the statute directs that the resulting figure be rounded to the nearest $0.50, the allowable charge should be $9.00.

The Commission therefore determines that the allowable charge for the year 2003 will remain unchanged at $9.00.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–31646 Filed 12–16–02; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Public Workshop: Advertising of Weight Loss Products

AGENCY: Federal Trade Commission (FTC).

ACTION: Extension of public comment period.

SUMMARY: The FTC issues an amendment to its notice announcing publicWorkshop, extending the time period during which persons may submit written comments on the topics discussed by the panelists.

DATES: Written comments must be received on or before February 3, 2003.

ADDRESSES: Written comments may be submitted to Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or e-mailed to *weightloss@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Rona Kelner, (202) 326–2752, *rkelner@ftc.gov*, or Lesley Fair, (202) 326–3081, *lfair@ftc.gov*, Division of Advertising Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. To read the Commission's policy on how it handles the information you may submit, please visit *http://www.ftc.gov/ftc/privacy.htm.*

SUPPLEMENTARY INFORMATION:

November 19, 2002, Workshop

On November 19, 2002, the FTC held a public workshop on deception in weight-loss advertising. The goal of the workshop was to explore the impact of deceptive weight loss ads and to develop new approaches for combating weight loss advertising fraud. Three panels were convened over the course of the day, each focusing, respectively, on science, industry, and media issues.

The first panel consisted of researchers, academicians, medical professionals, and industry experts who discussed the state of the science regarding weight loss. These panelists evaluated eight common claims found in ads for weight loss products and opined on whether these claims promised results that are not scientifically feasible.

The second panel was comprised of representatives from the weight loss industry, including companies that sell weight loss products and trade associations that represent dietary supplement makers. This panel discussed the problem that deceptive advertising poses for legitimate industry players, and addressed what industry self-regulatory efforts have been, and could be, implemented.

The third panel was made up of media experts and representatives of media organizations and outlets. This panel focused on the role of the media in screening out false and deceptive advertisements, and discussed new approaches to effective media screening.

A detailed agenda, transcript, and other information about the workshop can be found on the FTC's Web site at *http://www.ftc.gov/bcp/workshops/weightloss.*

Form and Availability of Comments

To continue the discussion on this important topic, the FTC is extending the time period during which public comments may be submitted. Interested parties may file written comments on the issues that the panels addressed until February 3, 2003. Comments should be captioned "Advertising of Weight Loss Products Workshop—Comment, P024527."

Parties sending written comments should submit an original and two copies of each document. To enable prompt review and public access, paper submissions should include a version on diskette in PDF, ASCII,WordPerfect, or Microsoft Word format. Diskettes should be labeled with the name of the party, and the name and version of the word processing program used to create the document. Alternatively, comments may be e-mailed to *weightloss@ftc.gov.*

Written comments will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and FTC regulations, 16 CFR 4.9, Monday through Friday between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Room, Room 130–H, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. This notice and, to the extent possible, all comments will also be posted on the FTC Web site, *http://www.ftc.gov.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–31647 Filed 12–16–02; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Opportunity for Cooperative Research and Development Agreements (CRADAs) To Develop Novel Mechanical and Biological Treatments in Interventional Cardiovascular Medicine Using X-ray Fluoroscopy and Real-Time Magnetic Resonance Imaging

AGENCY: National Heart, Lung, and Blood Institute.

ACTION: Notice.

SUMMARY: The National Heart, Lung, and Blood Institute (NHLBI) of the National Institutes of Health (NIH) announces the opportunity for Cooperative Research and Development Agreements (CRADAs) to develop novel mechanical and biological treatments in interventional cardiovascular medicine using x-ray fluoroscopy and real-time magnetic resonance imaging. The NHLBI seeks potential Collaborators wishing to provide expertise in (1) novel biological treatments for cardiovascular disease, including adult-derived stem cell and cardiovascular progenitor cells, (2) novel agents for therapeutic angiogenesis for myocardial or peripheral artery applications, (3) novel mechanisms of drug, gene, or cell delivery to the myocardium or skeletal muscle to treat manifestations of coronary or peripheral artery atherosclerosis, and (4) intravascular devices for real-time magnetic resonance imaging-guided treatments including but not limited to angioplasty balloons, recanalization systems, percutaneous cardiac valves, stents, endografts, and bypass grafts.

The NHLBI seeks capability statements from parties interested in entering into a potential CRADA to manufacture, prototype, and test the above-specified agents or devices leading to early clinical testing and development. Collaborator applicants developing capability statements may also include proposals to provide funding for possible commercial uses of interest to the Collaborator. The availability of private sector support may increase the feasibility of particular aspects of the final design, but the primary criterion for selecting potential collaborators is the scientific merit of proposals for developing a plan to identify novel putative therapeutic agents and devices.

The NHLBI can provide extensive preclinical and clinical support in the development of Collaborator deliverables, including animal experiments, advanced x-ray fluoroscopic and magnetic resonance imaging laboratories, and investigations conducted in the Warren G. Magnuson Clinical Center at the Bethesda campus of the National Institutes of Health.

The control of clinical trials shall reside entirely with the Institute and the scientific participants of the trial. In the event that any adverse effects are encountered which, for legal or ethical reasons, may require communication with the U.S. Food and Drug Administration, the relevant collaborating institutions will be notified. Neither the conduct of the trial nor the results should be represented as an NHLBI endorsement of the agent, drug, or device under study.

DATES: Only written CRADA capability statements received by the NHLBI within 21 days of publication of this notice will be considered during the initial design phase. Confidential information must be clearly labeled. Potential collaborators may be invited to meet with the Selection Committee at the Collaborators' expense to provide additional information. The Institute may issue an additional notice of CRADA opportunity during the design phase if circumstances change or if the design alters substantially.

FOR FURTHER INFORMATION CONTACT: Capability statements should be submitted to Ms. Peg Koelble, Office of Technology Transfer and Development, National Heart, Lung, and Blood Institute, National Institutes of Health, 31 Center Drive, Room 1B30, Bethesda, MD 20892–2490; Tel: 301–594–4095; Fax: 301–594–3080; e-mail: *koelblep@nhlbi.nih.gov.*

Capability Statements: A Selection Committee will use the information provided in the "Collaborator Capability Statements" received in response to this announcement to help in its deliberations. It is the intention of the NHLBI that all qualified Collaborators have the opportunity to provide information to the Selection Committee through their capability statements. The Capability Statement should not exceed 10 pages and should address the following selection criteria:

1. The statement should provide specific details of the method to be used in the development of novel candidate biological treatments, delivery systems, or real-time MRI-guided mechanical treatments for cardiovascular disease.

2. The statement should include a detailed plan demonstrating the ability to provide sufficient capacity in drug, gene, or stem cell development and manufacturing or in mechanical device prototyping, testing, development, and manufacturing.

3. The statement may include outline measures of interest to the Collaborator. The specifics of the proposed outcome measures and the proposed support should include but not be limited to: expertise in the proposed field, specific personnel allocation to the proposed collaboration, specific internal or external funding commitment to support the advancement of scientific research, services, facilities, equipment, or other resources that would contribute to the conduct of the commercial development.

4. The statement must address willingness promptly to publish research results and ability to be bound by PHS intellectual property policies (*see* CRADA: *http://ott.od.nih.gov/newpages/crada.pdf*).

Dated: December 6, 2002.

Carl Roth,

Associate Director for Scientific Program Operation, National Heart, Lung, and Blood Institute.

[FR Doc. 02–31630 Filed 12–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

The National Toxicology Program (NTP) Announces the Availability of the Report on Carcinogens, Tenth Edition

The Report on Carcinogens, Tenth Edition was submitted to the Congress by the Secretary HHS and also released publicly on December 11, 2002. It is available on the Internet and can be accessed from the Environmental Health Perspectives web site at: *http://www.ehponline.org* or from the NTP

Web site at: *http://ntp-server.niehs.nih.gov*. Hard copies of the Report on Carcinogens, Tenth Edition can also be obtained by contacting Environmental Health Perspectives, ATTN: Order Processing, 1001 Winstead Drive Suite 355, Cary, NC 27513; Telephone: 866–541–3841 or 919–653–2586; Fax (919) 678–8696; email: *ehponline@niehs.nih.gov*.

Background

The Report on Carcinogens (RoC) (previously known as the Annual Report on Carcinogens) is a Congressionally mandated listing of known human carcinogens and reasonably anticipated human carcinogens whose preparation is delegated to the National Toxicology Program by the Secretary, Department of Health and Human Services (DHHS). Section 301(b)(4) of the Public Health Service Act, as amended, provides that the Secretary, (DHHS), shall publish a biennial report which contains a list of all substances (1) which either are known to be human carcinogens or may reasonably be anticipated to be human carcinogens; and (2) to which a significant number of persons residing in the United States are exposed. The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed and the extent to which the implementation of Federal regulations decreases the risk to public health from exposure to these chemicals.

The RoC is an informational scientific and public health document that identifies and discusses agents, substances, mixtures, or exposure circumstances that may pose a carcinogenic hazard to human health. It serves as a meaningful and useful compilation of data on the (1) carcinogenicity, genotoxicity, and biologic mechanisms of the listed substances in humans and/or animals, (2) the potential for exposure to these substances, and (3) the regulations promulgated by Federal agencies to limit exposures. The report does not present quantitative assessments of carcinogenic risk, an assessment that defines the conditions under which the hazard may be unacceptable. Listing of substances in the report, therefore, does not establish that such substances present carcinogenic risks to individuals in their daily lives. Such formal risk assessments are the purview of the appropriate Federal, State, and local health regulatory and research agencies.

New Listings to the RoC, Tenth Edition

The RoC, Tenth Edition, contains 228 entries, 15 of which have not appeared in earlier RoCs. The Tenth Edition of the RoC also changes the listing of beryllium and beryllium compounds from reasonably anticipated to be human carcinogens to known to be human carcinogens, with corresponding revisions of the earlier profile for these chemicals. The Tenth Edition of the RoC lists estrogens, steroidal as known human carcinogens. This listing of steroidal estrogens supersedes the previous listing of individual estrogens in the RoC (including conjugated estrogens, estradiol-17β, estrone, ethinylestradiol, and mestranol) and applies to all chemicals of this steroid class. The profile for steroidal estrogens includes information on carcinogenicity, properties, use, production, exposure, and regulations for steroidal estrogens as a class, as well as some specific information for individual estrogens. The table below summarizes the actions taken for the substances or exposure circumstances reviewed for possible listing in or change in the listing in the RoC, Tenth Edition.

The new entries for the Report on Carcinogens, Tenth Edition, including those whose listing changed, underwent a multiphase peer review. This review included three scientific peer reviews, two consisting of scientists within the Federal government and the other consisting of an outside peer review by both government and non-government scientists. During the entire review period, there was extensive opportunity for public comment and stakeholder review. The three scientific review committees evaluated all available data relevant to the criteria for inclusion of candidate nominations in the report. The criteria used in the review process and a detailed description of the review procedures, including the steps in the current formal review process, can be obtained from the NTP Web site at *http://ntp-server.niehs.nih.gov/* or by contacting: Dr. C. W. Jameson, Head—Report on Carcinogens, National Toxicology Program, MD EC–14, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–4096, fax: (919) 541–0144, email: *jameson@niehs.nih.gov*.

Questions or comments concerning the RoC, Tenth Edition should be directed to: Dr. Mary Wolfe, Office of Scientific Review and NTP Liaison, MDA3–01, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–0530, fax: (919) 541–0295, e-mail: *wolfe@niehs.nih.gov*.

Dated: December 9, 2002.

Kenneth Olden,

Director, National Toxicology Program.

SUMMARY FOR AGENTS, SUBSTANCES, MIXTURES OR EXPOSURE CIRCUMSTANCES BEING ADDED TO OR CHANGING THE LISTING IN THE TENTH EDITION OF THE REPORT ON CARCINOGENS

Nominations	Primary uses or exposures	Action
2-Amino-3-methylimidazo[4,5-f] quinoline (IQ)/CAS# 76180–96–6.	One of a series of heterocyclic amines that is formed in food during heating or cooking and is found in cooked meats and eggs. It is also found in cigarette smoke.	Listed as reasonably anticipated to be a human carcinogen.
Beryllium and Beryllium Compounds	Used in fiber optics and cellular network communications systems, aerospace, defense and other industry applications.	Listing changed to known to be human carcinogens.
2,2-bis-(Bromomethyl)–1,3-propanediol (Technical Grade)/CAS# 3296–90–9.	Used as a flame retardant in unsaturated polyester resins, for molded products, and in the production of rigid polyurethane foam.	Listed as reasonably anticipated to be a human carcinogen.
Broad Spectrum UV Radiation and UVA Radiation, UVB Radiation and UVC Radiation.	Solar and artificial sources of ultraviolet radiation	Broad Spectrum UV Radiation listed as known to be a human carcinogen, UVA Radiation, UVB Radiation and UVC Radiation each listed as reasonably anticipated to be a human carcinogen.
Chloramphenicol/CAS# 56–75–7	Used as an antibiotic since the 1950s but currently has restricted use in the United States because it causes blood dyscrasia.	Listed as reasonably anticipated to be a human carcinogen.

SUMMARY FOR AGENTS, SUBSTANCES, MIXTURES OR EXPOSURE CIRCUMSTANCES BEING ADDED TO OR CHANGING THE LISTING IN THE TENTH EDITION OF THE REPORT ON CARCINOGENS—Continued

Nominations	Primary uses or exposures	Action
2,3-Dibromo-1-Propanol/CAS# 96–13–9	Used as an intermediate in the preparation of flame retardants and as an intermediate in the manufacture of pesticides and pharmaceuticals.	Listed as reasonably anticipated to be a human carcinogen.
Dyes Metabolized to Dimethoxybenzidine	Dyes used in leather, paper, plastics, rubber, and textile industries.	Listed as reasonably anticipated to be human carcinogens.
Dyes Metabolized to Dimethylbenzidine	Dyes used in printing textiles, as biological stains, and in color photography.	Listed as reasonably anticipated to be human carcinogens.
Estrogens, Steroidal	Comprise a group of structurally related hormones that control sex and growth characteristics and are commonly used in hormone replacement therapy (HRT) to treat symptoms of menopause and in oral contraceptives.	Listed as known to be human carcinogens.
Methyleugenol/CAS# 93–15–2	Occurs naturally in oils, herbs and spices and is used in its natural or synthetic forms as a flavoring agent, insect attractant, anesthetic and in sunscreens.	Listed as reasonably anticipated to be a human carcinogen
Nickel and Nickel Compounds	Used in many industrial and commercial applications including alloys, catalysts, batteries, pigments, and ceramics.	Metallic Nickel listed as reasonably anticipated to be a human carcinogen, Nickel Compounds listed as known to be human carcinogens, Nickel alloys not listed.
Styrene7,8-oxide/CAS# 96–09–3	Used mainly as an intermediate in the production of styrene glycol and its derivatives, in the production of reinforced plastics, and as a chemical intermediate for cosmetics, surface coatings, agricultural and biological chemicals.	Listed as reasonably anticipated to be a human carcinogen.
Trichloroethylene/CAS# 79–01–6	Used as an industrial solvent for vapor degreasing and cold cleaning of fabricated metal parts.	Remains listed as reasonably anticipated to be a human carcinogen.
Vinyl Bromide/CAS# 593–60–2	Used predominantly in polymers in the production of fabrics and fabric blends used in sleepwear (mostly children's) and home furnishings, as well as in leather, fabricated metal products and in the production of pharmaceuticals and fumigants.	Listed as reasonably anticipated to be a human carcinogen.
Vinyl Fluoride/CAS# 75–02–5	Used mainly in the production of polyvinyl fluoride and other fluoropolymers that are widely used because they are resistant to weather and have great strength, chemical inertness, and low permeability to air and water.	Listed as reasonably anticipated to be a human carcinogen.
Wood Dust	Created when machines or tools are used to cut or shape wood. High amounts of wood dust are produced in sawmills, dimension mills, furniture making industries, cabinetmaking, and carpentry.	Listed as a known to be a human carcinogen.

[FR Doc. 02–31629 Filed 12–16–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No.FR–4734–N–73]

Notice of Submission of Proposed Information Collection to OMB: Customer-Survey of Households Living in Federally Assisted Units

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: January 16, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2528–0170) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including

number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Customer-Survey of Households Living in Federally Assisted Units.

OMB Approval Number: 2528–0170.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: This survey provides HUD feedback to help local housing agencies improve their Section 8 programs. Additionally, it provides HUD's policy, program, and budget managers with improved measures for tracking national housing conditions over time.

No changes in the Survey are contemplated, except for the following minor improvements:

1. Respondents who live in apartments are asked: "How many apartments in your building?"

They are provided the following response options: 2–4 4–8 8 or more.

The first two options have typos and will be corrected to read: 2–3 4–7 8 or more.

2. Respondents are provided a telephone hotline number to use if they have concerns or questions. One type of feedback at the hotline indicated that some did not understand the term "screening."

The question "The landlord does a good job screening tenants" will be replaced with "Most tenants here are acceptable as neighbors."

The two questions "If you have been in this apartment for more than one year, describe how things have changed* * *Landlord's screening of new tenants?" and "If you have been in this apartment for more than one year, describe how things have changed* * *Amount of crime around your homes?" will be eliminated.

3. The following questions will be added to the "Neighborhood" section of the questionnaire:

A. Travel by bus to grocery shopping and jobs.

Response options:

Not a problem, some problem, big problem, no bus service in this town.

B. Travel by car to grocery shopping and jobs.

Response options:

Not a problem, some problem, big problem, no car.

Lack of transportation is known to be a barrier to deconcentration of poverty and employment. We do not know, however, the extent to which this problem confronts households assisted by the HVC program. The replacement items are intended provide pertinent data.

Respondents: Individuals or households.

Frequency of Submission: Less than annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	267,000	0.70		0.22		41,385

Total Estimated Burden Hours: 41,385.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 10, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–31702 Filed 12–16–02; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). We, the U.S. Fish and Wildlife Service, solicit review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before January 16, 2003 to receive our consideration.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–031850

Applicant: Gretchen Cummings, El Cajon, California.

The permittee requests an amendment to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with demographic research throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–064644

Applicant: Jason Wolfe, El Cajon, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with demographic research throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–064645

Applicant: Gregg Anderson, San Marcos, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with demographic research throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–064359

Applicant: Sophie Chiang, Irvine, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with demographic research throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–020548

Applicant: U.S. Geological Survey, Biological Resources Division, Western Ecological Science Center, Vallejo, California.

The permittee requests an amendment to take (capture, mark, and release) the salt marsh harvest mouse (*Reithrodontomys raviventris*) in conjunction with genetic research throughout the southern range of the species in California, and extend the geographic area to throughout the range of the species in California to take (harass by survey) the California clapper rail (*Railus longirostris obsoletus*) in conjunction with distribution studies for the purpose of enhancing their survival.

Permit No. TE–017352

Applicant: Commonwealth of the Northern Mariana Islands, Saipan, Mariana Islands.

The permittee requests an amendment to take (locate and monitor nests) the Nightingale reed-warbler (*Acrocephalus luscinia*) in conjunction with research in the Northern Mariana Islands for the purpose of enhancing its survival.

Permit No. TE–795934

Applicant: Jones & Stokes, Sacramento, California.

The permittee requests an amendment to take (harass by survey) the Cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in conjunction with demographic studies in Arizona for the purpose of enhancing its survival.

Permit No. TE–016591

Applicant: Wendy Weber, Hayward, California.

The permittee requests an amendment to take (harass by survey, capture, and release) the Sonoma and Santa Barbara distinct population segments of the California tiger salamander (*Ambystoma californiense*) in conjunction with demographic research in Sonoma and Santa Barbara Counties, California for the purpose of enhancing their survival.

Permit No. TE–064944

Applicant: Charles Patterson, Lafayette, California.

The applicant requests a permit to take (harass by survey, capture, and release) the Sonoma distinct population segment of the California tiger salamander (*Ambystoma californiense*) in conjunction with demographic research in Sonoma County, California for the purpose of enhancing its survival.

Permit No. TE–797665

Applicant: Regional Environmental, Inc., San Diego, California.

The permittee requests an amendment to remove/reduce to possession the *Ambrosia pumila* (San Diego ambrosia) in conjunction with research in Riverside and San Diego Counties, California for the purpose of enhancing its survival.

Permit No. TE–702631

Applicant: Regional Director, Region 1, U.S. Fish and Wildlife Service, Portland, Oregon.

The permittee requests an amendment to remove/reduce to possession *Lomatium cookii* (Cook's lomatium) and *Limnanthes floccosa grandiflora* (large-flowered wooly meadowfoam) in conjunction with recovery efforts throughout the range of each species for the purpose of enhancing their propagation and survival.

We solicit public review and comment on each of these permit applications.

Dated: December 2, 2002.

Rowan Gould,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 02–31641 Filed 12–16–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Revised Assessment Plan for the Natural Resource Damage Assessment at the St. Louis River/Interlake/Duluth Tar Superfund Site

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is given that the document titled "Assessment Plan for the Natural Resource Damage Assessment at the St. Louis River Interlake/Duluth Tar Superfund Site, 9/24/02" ("The Plan") is available for public review. The U.S. Departments of the Interior (Fish and Wildlife Service, Bureau of Indian Affairs) and Commerce (National Oceanic and Atmospheric Administration), The State of Minnesota (Minnesota Department of Natural Resources, Minnesota Pollution Control Agency), The Fond du Lac Band of Lake Superior Chippewa, and The 1854 Authority (representing the Bois Forte Band and Grand Portage Band of Lake Superior Chippewa) are trustees for natural resources ("trustees") considered in this assessment, pursuant to subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR 300.600 and 300.610, and Executive Order 12580.

The trustees are following the guidance of the Natural Resource Damage Assessment Regulations found at 43 CFR part 11, and provided the public an opportunity to review a draft Plan and submit comments (67 FR 132, Jul. 10, 2002). The trustees considered all comments received, and revised the draft Plan. The Plan announced by this Notice is considered to be complete for implementation, as provided for in 43 CFR 11.32(c).

Interested members of the public are invited to review the Plan. Copies of the Plan can be requested from the address listed below.

DATES: The trustees completed revisions to the Plan on September 24, 2002.

ADDRESSES: Requests for copies of the Plan should be sent to: Marilyn Danks, Trustee Coordinator, Minnesota Department of Natural Resources, Division of Ecological Services, 500 Lafayette Road, St. Paul, MN 55155–4025. You may also submit requests for copies of the Plan by sending electronic mail (e-mail) to: *marilyn.danks@dnr.state.mn.us.* See **SUPPLEMENTARY INFORMATION** for information about electronic mailing and access.

FOR FURTHER INFORMATION CONTACT: *Case Management and Logistical Information:* Dave Warburton, (612) 725–3548 (x203) *Technical Information:* Annette Trowbridge, (612) 725–3548 (x202).

SUPPLEMENTARY INFORMATION: The trustees are undertaking an assessment of damages resulting from suspected injuries to natural resources in and near the Lower St. Louis River which have been exposed to hazardous substances released by industrial activity at the St. Louis River/Interlake/Duluth Tar Superfund Site. The trustees suspect this exposure has caused injury and resultant damages to trustee resources. The injury and resultant damages will be assessed under the Comprehensive Environmental Response,

Compensation, and Liability Act, as amended, and the Clean Water Act, as amended, in order to determine the appropriate type and extent of resource restoration. The Assessment Plan addresses the trustees' overall assessment approach, and utilizes both existing data as well as additional data to be collected as described in study workplans attached to the Plan. It is important to note that the purpose of the Plan is to organize the approach for determining and quantifying natural resource injuries and calculating the damages associated with those injuries; the Plan is not a claim for damages for injuries to all natural resources listed in the Assessment Plan. The trustees provided the public an opportunity to review a draft Plan and submit comments (67 FR 132, Jul. 10, 2002). All comments received by the trustees in response to the draft Plan were carefully reviewed and considered. As a result, a number of revisions were made to the draft Plan. Revisions made to the draft Plan in response to public comments include minor wording changes clarifying the responsible parties as identified by Minnesota Pollution Control Agency, decisions regarding implementation of the assessment, the State's role under the Minnesota Environmental Response, Compensation, and Liability Act, and coordination of the assessment with the Remedial Investigation/Feasibility Study process. A paragraph was also added to clarify the availability of quality assurance project plans for trustee-conducted studies. Other changes included corrected capitalization of words and citations and/or references, wording edits, additions of scientific names for fish and wildlife species, and updated confirmation of exposure values. The Avian Exposure and Injury Study Workplan did not change. The Methods section of the Fish Exposure and Injury Study Workplan was rearranged to clarify procedures, and to note that individual fish are being analyzed in 2002, for greater statistical strength in the study. A "Revisions to Draft Assessment Plan" document, is included with the Plan, and provides a listing of all revisions. These revisions are not significant and do not alter the scope or methodologies proposed for the assessment. Therefore, the Assessment Plan, with these modifications, is considered to be complete for implementation. All of the comments received on the draft Plan during the public review period, as well as trustee responses to those comments, will be included in the Report of Assessment to be completed at the conclusion of the assessment.

This Plan may be modified at any stage of the assessment as new information becomes available. If significant modifications are made to this Plan, and when other major planning documents and/or reports that are part of the assessment process are completed, the trustees will solicit public comments on the modifications or other documents as provided in 43 CFR part 11. Any further Plan modifications considered to be non-significant will be made available for public review, but the implementation of such modifications will not be delayed as a result of the review. Plan addenda may be prepared by the trustees to provide public notice of additional data collection activities. Restoration of natural resources will be proposed by the trustees following the assessment.

Electronic Mail and Access

You may request copies of the Plan, and the "Revisions to Draft Assessment Plan" document, by sending electronic mail (e-mail) to: *marilyn.danks@dnr.state.mn.us*. Do not use any special characters or forms of encryption in your e-mail.

Dated: November 22, 2002.

William F. Hartwig,

Regional Director, Region 3, U.S. Fish and Wildlife Service.

[FR Doc. 02–31638 Filed 12–16–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930, 1430–EU; N–65600]

Notice of Realty Action: Competitive Sale of Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Competitive sale of public land in Humboldt County, Nevada.

SUMMARY: The below listed public land in Orovada, Humboldt County, Nevada, has been examined and found suitable for disposal pursuant to sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (90 Stat. 2750, 43 U.S.C. 1713 and 1719), and the Federal Land Transaction Facilitation Act of July 25, 2000 (Pub. L. 106–248).

DATES: For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the Assistant Field Manager, Nonrenewable Resources.

ADDRESSES: Written comments should be addressed to Bureau of Land Management, Colin P. Christensen, Assistant Field Manager, Nonrenewable Resources, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445.

SUPPLEMENTARY INFORMATION: The following described parcel of land, situated in Humboldt County, Nevada, is being offered for sale as a competitive sale:

Mount Diablo Meridian, Nevada

T. 45 N., R. 37 E., Section 35, S½SE¼
Containing 80 acres more or less

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest. The subject land shall be sold for not less than fair market value as determined by appraisal. The locatable, salable, and leasable mineral rights will be conveyed simultaneously with the surface estate. The Fort McDermitt Tribe did not respond to Consultation. The disposal would not generate any adverse energy impacts or limit energy production and distribution (EO 13212).

The above described land is hereby classified for disposal in accordance with Executive Order 6910 and the Act of June 28, 1934, as amended. Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, and leasing under the mineral leasing laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first. Upon publication of this notice and until completion of the sale, the BLM is no longer taking or accepting land use applications affecting the parcel being offered for sale.

This sale will be by competitive procedures. Bids must not be less than the appraised fair market value. The appraised fair market value is $26,000.00 (twenty-six thousand dollars and no cents). All bids shall be sealed. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Department of the Interior, Bureau of Land Management for not less than 10 percent or more than 30 percent of the bid amount. Sealed bid envelopes must be marked on the lower left corner with the sale date and the number "N–65600". At least 60 days prior to the sale, the sale date and appraised fair market value shall be advertised for three consecutive weeks in the Humboldt Sun and Battle Mountain Bugle newspapers. If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by supplemental bid. The designated high bidders shall be allowed to submit sealed bids as designated by the Authorized Officer.

Federal law requires all bidders must be U.S. citizens 18 years of age or older, a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property; or an entity, including but not limited to associations or partnerships, legally capable of conveying and holding property or interests therein under the laws of the State of Nevada. Certification or qualification, including citizenship or corporation or partnership, must accompany the bid deposit.

In order to determine the fair market value of the subject land through appraisal, certain assumptions have been made on the attributes and limitations of the lands and potential effects of local regulations and policies on potential land uses. Through publication of this notice, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government.

Furthermore, no warranty of any kind shall be given or implied by the United States as to the potential uses of the land offered for sale; conveyance of the subject land will not be on a contingency basis. It is the buyers' responsibility to be aware of all applicable local government policies and regulations that would affect the subject lands. It is also the buyers' responsibility to be aware of existing and potential uses for nearby properties. When conveyed out of federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals would be the responsibility of the buyer.

The purchaser/patentee, by accepting a patent, agrees to indemnify, defend, hold harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising out of or in connection with the use/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of federal, state, and local laws and regulations that are now or may in the future become applicable to the real property; (2) judgments, claims or demands of any kind incurred by the United States: (4) other releases or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s), as defined by federal or state environmental laws; off, on, into or under land, property and other interests of the United Stated; (5) other activities by which solids or hazardous substances or wastes, as defined by federal laws are generated, released or stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid wastes or hazardous substances or wastes; or (6) natural resource damages as defined by federal and state law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

The patent, when issued, will contain the following reservation to the United States: A right-of-way thereon for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

And will be subject to:

1. Those rights for power transmission line purposes which have been granted to Harney Electric Cooperative, Inc., by Right-of-way NEV–058382 under the Act of October 21, 1976 (43 U.S.C. 1761).

2. County Road #316 under the jurisdiction of Humboldt County which runs the entire length of the parcel along the south edge of the parcel, being the south section line of section 35, T. 45 N., R. 37 E., and having a total width of 22 feet.

3. Those rights for a buried cable which have been granted to Oregon Idaho Utilities, Inc., dba Humboldt Telephone Company by Right-of-way N–60463 under the Act of October 21, 1976 (43 U.S.C. 1761).

The purchaser, by accepting the land patent, agrees to take the property subject to current grazing lease, authorized under the Taylor Grazing Act, 43 U.S.C. 315f, Act of June 28, 1934. The two year notification commenced on August 27, 2001. The lease shall expire on August 26, 2003.

It has been determined that the subject parcel contains no mineral value. The parcel will be sold with no reservation of mineral rights to the United States. Acceptance of a sale offer will constitute an application for conveyance of those mineral interests. The purchaser will be required to pay a $50.00 non-refundable filing fee for conveyance of said mineral interests when remitting final payment for the parcel.

The purchase price does not include the costs for publication in the **Federal Register**. The purchaser will be required to reimburse the BLM for publishing costs.

Protests: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding whether the BLM followed proper administrative procedures in reaching the decision or any other factor directly related to the suitability of the land for a competitive sale. The Environmental Assessment NV–020–02–11 (EA) and Decision Record are available for review at the Winnemucca Field Office. Comments should be sent to Colin P. Christensen, Assistant Field Manager, Nonrenewable Resources, at the address listed below. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The BLM may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with the FLPMA or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

This notice in the **Federal Register** allows the parcel to be re-offered for sale until the parcel has been sold at the discretion of the Authorized Officer. In the event the parcel is not sold, the parcel shall be automatically opened for entry without further notice on December 30, 2003.

FOR FURTHER INFORMATION CONTACT: M. Lynn Trost, Realty Specialist, Bureau of Land Management, at 5100 E. Winnemucca Blvd., Winnemucca, NV 89445, or telephone (775) 623–1500.

Dated: September 26, 2002.

Terry A. Reed,

Winnemucca Field Manager.

[FR Doc. 02–31664 Filed 12–16–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities: Proposed Collection, Comments Requested

ACTION: 30-Day notice of information collection under review: reinstatement, without change, of a previously approved collection for which approval

has expired; application for suspension of deportation.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. The proposed information collection was previously published in the **Federal Register** on October 4, 2002, Volume 67, Number 193, Pages 62265–62266, allowing for a 60 day comment period.

The purpose of this notice is to allow an additional 30 days for public comments until January 16, 2003. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the item contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed colleciton of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Colleciton:* Application for Suspension of Deportation.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number EOIR–40, Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract Primary:* Individuals or households. *Other:* None.

Abstract: This form is used by certain deportable aliens to apply for suspension of deportation pursuant to former section 244 of the Immigration and Nationality Act and 8 CFR 240.56 (2002).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,000 responses per year at 5 hours, 45 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 11,500 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 11, 2002.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 02–31662 Filed 12–16–02; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)—1369]

Extension of Deadline for Applications for Promising Programs for Substance Abuse Prevention Replication and Evaluation Initiative

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency, Justice.

ACTION: Notice of extension of deadline for applications.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has extended the deadline for applications for the Promising Programs for Substance Abuse Prevention: Replication and Evaluation Initiative Solicitation (published in the **Federal Register** on Friday November 15, 2002, at 67 FR 69246).

DATES: The deadline for applications has been extended from December 30, 2002 to January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Janet Chiancone, Program Manager, Research and Program Development Division, Office of Juvenile Justice and Delinquency Prevention, 202–353–9258 [This is not a toll-free number.] (E-mail: *chiancoj@ojp.usdoj.gov.*)

SUPPLEMENTARY INFORMATION: For more information about this program, and for information on how to obtain and submit an application, see Program Announcement for the Promising Programs for Substance Abuse Prevention: Replication and Evaluation Initiative, 67 FR 69246, November 15, 2002.

J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 02–31689 Filed 12–16–02; 8:45 am]

BILLING CODE 4410–18–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–17]

Notice of Issuance of Amendment to Materials License SNM–2509; Trojan Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Amendment 3 to Materials License No. SNM–2509 held by Portland General Electric Company (PGE) for the receipt, possession, storage, and transfer of spent fuel at the Trojan Independent Spent Fuel Storage Installation (ISFSI), located in Columbia County, Oregon. The amendment is effective as of the date of issuance.

By application dated October 18, 2002, PGE requested an amendment to its ISFSI license to increase the Technical Specification for the Holtec International Multi Purpose Canister (MPC) helium backfill upper pressure limit from 33.3 psig to 39.3 psig at a reference temperature of 70°F.

This amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. An Environmental

Assessment and Finding of No Significant Impact regarding this amendment has been issued (67 FR 75865; December 10, 2002).

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

For further details with respect to this amendment, see the application dated October 18, 2002, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD or from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML022970061. The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 10th day of December 2002.

For the Nuclear Regulatory Commission

Christopher M. Regan,

Project Manager, Licensing Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–31663 Filed 12–16–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of December 16, 23, 30, 2002, January 6, 13, 20, 2003.

PLACE: Commissions' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 16, 2002

Tuesday, December 17, 2002

9:30 a.m.: Briefing on Policy Options and Recommendations for Revising the NRC's Process for Handling Discrimination Issues (Public Meeting) (Contact: Ho Nieh, 301–415–1721).

This meeting will be webcast live at the Web address *http://www.nrc.gov.*

Wednesday, December 18, 2002

9:30 a.m.: Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360).

This meeting will be webcast live at the Web address *http://www.nrc.gov.*

3 p.m.: Discussion of Security Issues (Closed—Ex. 1).

Week of December 23, 2002—Tentative

There are no meetings scheduled for the Week of December 23, 2002.

Week of December 30, 2002—Tentative

There are no meetings scheduled for the Week of December 30, 2002.

Week of January 6, 2003—Tentative

There are no meetings scheduled for the Week of January 6, 2003.

Week of January 13, 2003—Tentative

Tuesday, January 14, 2003

10 a.m.: Briefing on Status of NRR Programs, Performance, and Plans (Public Meeting) (Contact: Darrell Roberts, 301–415–1669).

This meeting will be webcast live at the Web address *http://www.nrc.gov.*

Week of January 20, 2003—Tentative

Thursday, January 23, 2003

2 p.m.: Briefing on Status of NMSS Programs, Performance, and Plans—Materials Safety (Pubic Meeting)

This meeting will be webcast live at the Web address *http://www.nrc.gov*

Note: The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: R. Michelle Schroll (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

This notice is distributed by mail to several hundred subscribers, if you no longer wish to receive it, ow would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: December 12, 2002.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

[FR Doc. 02–31868 Filed 12–13–02; 2:14 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 38–107

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 38–107, Verification of Who is Getting Payments, is used to verify that the entitled person is indeed receiving the monies payable. Failure to collect this information would cause OPM to pay monies absent the assurance of the correct payee.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

We estimate 25,400 RI 38–107 forms are completed annually. Each form takes forms takes approximately 10 minutes to complete. The annual estimated burden is 4,234 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before February 18, 2003.

ADDRESSES: Send or deliver comments to Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Desktop Publishing and Printing Team, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–31642 Filed 12–16–02; 8:45 am]

BILLING CODE 6325–50–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Information Collection: SF 2817

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) will submit to the Office of Management and Budget (OMB) a request for review of an information collection. SF 2817, Life Insurance Election, is used by employees and assignees (those who have acquired ownership and control of an employee's or annuitant's coverage through the enrollee's assignment of life insurance). The form is used as the official agency record of the individual's coverage and enrollment status under the Federal Employees' Group Life Insurance (FEGLI) program, and as acknowledgment and authorization by the individual for collection from him or her of the enrollee share of the premium contributions.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 100 forms are completed annually by assignees. Each form takes approximately 15 minutes to complete. The annual estimated burden is 25 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Christopher N. Meuchner, Insurance Policy and Information Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3425, Washington, DC 20415–3660.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Desktop Publishing and Printing Team, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–31643 Filed 12–16–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: RI 98–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reclearance of a revised information collection. RI 98–7, We Need Important Information About Your Eligibility for Social Security Disability Benefits, is used by OPM to verify receipt of Social Security Administration (SSA) disability benefits, to lessen or avoid overpayment to Federal Employees Retirement System (FERS) disability retirees. It notifies the annuitant of the responsibility to notify OPM if SSA benefits begin and the overpayment that will occur with the receipt of both benefits.

Approximately 3,000 RI 98–7 forms will be completed annually. We estimate it takes approximately 5 minutes to complete the form. The annual burden is 250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or Email to *mbtoomey@opm.gov*. Please include your mailing address with your request.

DATES: Comments on this proposal should be received on or before January 16, 2003.

ADDRESSES: Send or deliver comments to—

Lawrence P. Holman, Acting Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3313, Washington, DC 20415–3520; and

Stuart Shapiro, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus Benson, Team Leader, Desktop Publishing and Printing Team, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–31644 Filed 12–16–02; 8:45 am]

BILLING CODE 6325–50–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of e-Smart Technologies, Inc.; Order of Suspension of Trading

December 12, 2002.

It appears to the Securities and Exchange Commission ("Commission"), based on information provided by the staff, that there is a lack of adequate and accurate information concerning the management, business practices and results of operations of e-Smart Technologies, Inc. ("e-Smart"). The securities of e-Smart Technologies, Inc. are quoted on the Pink Sheets under the symbol ESMT. Information has been provided to the Commission raising concerns as to the adequacy and accuracy of e-Smart's publicly disseminated information concerning, among other things, e-Smart's results of operations, contractual relationships, ownership of technology assets, and projected revenues and profits.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of e-Smart.

Therefore, it is ordered that, pursuant to section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act"), trading in the securities of e-Smart is suspended for the period from 9:30 a.m. e.s.t. December 13, 2002, through 11:59 p.m. e.s.t., on December 27, 2002.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–31842 Filed 12–13–02; 2:38 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46983; File No. SR–Amex–2002–95]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to Member Notifications Required in Connection With Offerings and Distributions of Amex-Listed Securities

December 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 18, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has proposed new Amex Rules 193(f) and 570A that would require notification to Amex by members and member organizations in connection with offerings and distributions of Amex-listed securities. The text of the proposed rule change is as follows; new text is underlined:

Affiliated Persons of Specialists

Rule 193. (a) through (e): No change.

(f)(i) An approved person associated with a specialist member organization ("Affiliated Specialist") that is entitled to an exemption from certain Exchange rules pursuant to Exchange Rule 193 shall notify the Exchange of its participation in any distribution or tender or exchange offer of any security covered by paragraph (f)(ii) of this rule, in such form and within such time frame as may be prescribed by the Exchange and shall provide the information required below:

1. name of security
2. symbol
3. type of security
4. symbol of reference security or securities (if different from security being distributed)
5. description of distribution or tender or exchange offer
6. distribution price or terms of tender or exchange offer
7. date of pricing
8. time of pricing
9. pricing basis (e.g., Amex or consolidated close)
10. beginning and ending dates of the restricted period under Regulation M (if applicable) or, for a tender or exchange offer, the date the offer is publicly announced and its expiration date
11. firm submitting notification
12. name and title of individual submitting notification
13. telephone number
14. such other information as the Exchange may from time to time require.

(ii) The notification requirements of this rule are applicable to any security in which the Affiliated specialist is registered where such security is either:

1. the subject of a tender or exchange offer (or any other security which is immediately convertible into or exchangeable for such security) for purposes of Rule 14e–5 under the Securities Exchange Act of 1934; or

2. a covered security as defined in Rule 100 of Regulation M.

* * * Commentary

No change.

Notification Requirements for Offerings of Listed Securities

Rule 570A. (a) A member or member organization which acts as the lead underwriter of any offering in a listed security shall notify the Exchange of such offering in such form and within such time frame as may be prescribed by the Exchange and shall provide the information required below:

1. name of security
2. symbol
3. type of security
4. number of shares offered
5. offering price
6. date of pricing
7. time of pricing
8. pricing basis (e.g., Amex or Consolidated close)
9. beginning and ending dates of the restricted period under Regulation M (if applicable)
10. syndicate members
11. firm submitting notification
12. name of individual submitting notification
13. telephone number
14. such other information as the Exchange may from time to time require.

(ii) The notification requirements of this rule are applicable to any security in which the Affiliated Specialist is registered where such security is either:

1. the subject of a tender or exchange offer (or any other security which is immediately convertible into or exchangeable for such security) for purposes of Rule 14e–5 under the Securities Exchange Act of 1934; or

2. a covered security as defined in Rule 100 of Regulation M.

* * * Commentary

No change.

Notification Requirements for Offerings of Listed Securities

Rule 570A. (a) A member or member organization which acts as the lead underwriter of any offering in a listed security shall notify the Exchange of such offering in such form and within such time frame as may be prescribed by the Exchange and shall provide the information required below:

1. name of security
2. symbol
3. type of security
4. number of share offered
5. offering price
6. date of pricing
7. time of pricing
8. pricing basis (e.g., Amex or Consolidated close)
9. beginning and ending dates of the restricted period under Regulation M (if applicable)
10. syndicate members
11. firm submitting notification
12. name of individual submitting notification
13. telephone number
14. such other information as the Exchange may from time to time require.

(b) Any Exchange member or member organization effecting a syndicate covering transaction or imposing a penalty bid or placing or transmitting a stabilizing bid in a listed security shall provide prior notice of such to the Exchange in such format and within such time frame as the Exchange may from time to time require.

* * * * *

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing new paragraph (f) to Amex Rule 193 (Affiliated Persons of Specialists) and new Amex Rule 570A to require notification by Amex members and member organizations when they are participating in an offering of Amex-listed securities. The proposed rules, which are substantially similar to New York Stock Exchange ("NYSE") Rules 460.30 and 392, respectively, are intended to codify the disclosure and notification requirements included in Regulation M under the Act. Amex has stated that it has previously issued Information Circulars (97–0262, 97–0570, and 01–0295) that set forth member obligations and provided the formats for reporting to Amex information relating to stabilizing transactions, covering transactions, penalty bids, and distributions.

Amex Rule 193(f) would require notification to the Exchange whenever an approved person associated with a specialist member organization that has a functional separation approved pursuant to Amex Rule 193 participates in a distribution or tender offer of a specialist's specialty security, as covered by Amex Rule 193(f)(ii). The required information is similar to that required under proposed Amex Rule 570A.

Amex Rule 570A (Notification Requirements for Offerings of Listed Securities) would require notification to the Exchange whenever a member or member organization acts as a lead underwriter of any offering of an Amex-listed security. Such notification would enable the Exchange to monitor trading in the security or any related security traded on the Exchange for possible price manipulation. The data required to be transmitted to the Exchange would include the name and type of the security, symbol, number of shares offered, offering price, date, time and basis of pricing, applicable restricted period, and syndicate members, as well as the firm, name, and telephone number of the individual submitting the notification.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b) of the Act[3] in general, and furthers the objectives of Sections 6(b)(5)[4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received in connection with the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–95 and should be submitted by January 7, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] which requires that an exchange have rules that are designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

As previously noted, the rules proposed by Amex are nearly identical to two rules of the New York Stock Exchange.[6] Given that the Commission has previously found the NYSE rules to be consistent with the Act,[7] the Commission finds good cause for approving the Amex proposal pursuant to Section 19(b)(2) of the Act prior to the thirtieth day after the date of publication of notice in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–Amex–2002–95) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31655 Filed 12–16–02; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b)(5).

[6] Proposed Amex Rule 193(f) imitates NYSE Rule 460.30; proposed Amex Rule 570A imitates NYSE Rule 392.

[7] *See* Securities Exchange Act Release No. 38478 (April 4, 1997), 62 FR 17899 (April 11, 1997) (approving NYSE Rules 460.30 and 392). *See also* Securities Exchange Act Release No. 38873 (July 24, 1997), 62 FR 41118 (July 31, 1997) (amending NYSE Rule 392 to require notification by NYSE member organizations of any stabilizing bid made in connection with an offering of a NYSE-listed security). Proposed Amex Rule 193(f) incorporates the NYSE amendment.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46981; File No. SR–CBOE–2001–59]

Self-Regulatory Organizations; Order Granting Approval to the Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Amending CBOE Disciplinary Rules 17.4, 17.9 and 17.10

December 11, 2002.

I. Introduction

On December 6, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend provisions of its disciplinary rules. On December 17, 2001, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on January 3, 2002.[4] The Commission received no comments on the proposal and Amendment No. 1. On May 13, 2002, the Exchange filed Amendment No. 2 to the proposed rule change.[5] On October 9, 2002, the Exchange filed Amendment No. 3 to the proposed rule change.[6] The Commission is approving the proposed rule change and Amendment No. 1, and is publishing notice of, and granting accelerated approval to, Amendment Nos. 2 and 3 to the proposed rule change.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*, and proposed deletions are in brackets.

* * * * *

Chicago Board Options Exchange, Incorporated Rules

Chapter XVII—Discipline

Rule 17.4. Charges

(a) No Change.
(b) No Change.
(c) No Change.
(d) No member or person associated with a member shall make or knowingly cause to be made an ex parte communication with any member of the Business Conduct Committee *or Board* concerning the merits of any matter pending under Chapter XVII of the Rules. No member of the Business Conduct Committee *or Board* shall make or knowingly cause to be made an ex parte communication with any member or any person associated with a member concerning the merits of any matter pending under Chapter XVII of the Rules.

* * * * *

* * * Interpretations and Policies

.01 No Change.

.02 No violation of Rule 17.4(d) shall be deemed to occur if the ex parte communication deals solely with procedural matters rather than the merits of the investigation or proceeding.

.03 No person shall be deemed to violate Rule 17.4(d) if the person refuses an attempted communication concerning the merits of an investigation or proceeding as soon as it becomes apparent that the communication concerns the merits. In order for this Interpretation .03 to apply, the person refusing the attempted communication must promptly notify Exchange regulatory staff about the attempted communication and how the person responded to it. Exchange regulatory staff shall memorialize this information of the attempted communication in the regulatory record of the investigation or disciplinary proceeding. In addition, the CBOE provided the following examples of what it would consider "solely procedural matters" for purposes of proposed Interpretation .02: "the time, place, or manner of events in the disciplinary process, or the procedural requirements set forth in the Exchange's rules as they apply to the disciplinary proceedings."

Rule 17.9. Decision

Following a hearing conducted pursuant to Rule 17.6 of this Chapter, the Panel shall issue a decision in writing, based solely on the record, determining whether the Respondent has committed a violation and imposing the sanction, if any, therefor. Where the Panel is not composed of at least a majority of the members of the Business Conduct Committee, its determination shall be automatically reviewed by a majority of the Committee, which may affirm, reverse or modify in whole or in part or may remand the matter for additional findings or supplemental proceedings. Such modification may include an increase or decrease of the sanction. The decision shall include a statement of findings and conclusions, with the reasons therefor, upon all material issues presented on the record. Where a sanction is imposed, the decision shall include a statement specifying the acts or practices in which the Respondent has been found to have engaged and setting forth the specific provisions of the Securities Exchange Act of 1934, as amended, rules and regulations promulgated thereunder, constitutional provisions, by-laws, rules, interpretations or resolutions of the Exchange of which the acts are deemed to be in violation. The Respondent *and the Office of Enforcement* shall be promptly sent a copy of the decision. After Board review pursuant to Rule 17.10, or the time for such review has expired, the decision will be considered final, and the Exchange shall publish a summary of the decision in the Exchange Bulletin.

* * * * *

Rule 17.10. Review

(a)

(1) Petition. *Both t*[T]he Respondent *and the Office of Enforcement* shall have 15 days after service of notice of *any* [a] decision made pursuant to Rule 17.9 of this Chapter to petition for review of the decision by filing a copy of the petition with the Secretary of the Exchange ("Secretary") and *with all other parties to the hearing* [the Exchange's Office of Enforcement]. Such petition shall be in writing and shall specify the findings and conclusions to which exceptions are taken together with reasons for such exceptions. Any objections to a decision not specified by written exception shall be considered to have been abandoned.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Christopher R. Hill, Attorney II, Office of Enforcement, Legal Division, CBOE, to Sapna C. Patel, Attorney, Division of Market Regulation ("Division"), Commission, dated December 13, 2001 ("Amendment No. 1").

[4] Securities Exchange Act Release No. 45191 (December 26, 2001), 67 FR 378.

[5] *See* letter from Nancy Nielsen, Director of Arbitration and Assistant Secretary, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated May 10, 2002 ("Amendment No. 2"). In Amendment No. 2, the CBOE deleted proposed CBOE Rule 17.15, which would have governed ex parte communications with any member of the CBOE Board of Directors ("Board"), and amended CBOE Rule 17.4 to incorporate the Board into the prohibition against ex parte communications with the Exchange's Business Conduct Committee ("BCC"). In addition, Amendment No. 2 proposes to add Interpretations .02 and .03 to CBOE Rule 17.4.

[6] *See* letter from Christopher R. Hill, Attorney II, Office of Enforcement, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated October 8, 2002 ("Amendment No. 3"). In Amendment No. 3, the CBOE proposed to clarify in Interpretation .03 that a person refusing an ex parte communication must notify Exchange regulatory staff about such ex parte communication and how he or she responded to it, and that the Exchange regulatory staff must memorialize such

(2) Written Submissions. Within 15 days after a [Respondent's] petition for review has been filed with the Secretary of the Exchange pursuant to paragraph (a)(1) of this Rule, *the other parties to the hearing* [Exchange staff] may *each* submit to the Secretary a written response to the petition. A copy of the response must be served upon the *petitioner* [Respondent]. *The petitioner* [A Respondent] has 15 days from the service of the response to file a reply with the Secretary and the *other parties to the* hearing [Office of Enforcement].

(b) Conduct of Review. The review shall be conducted by the Board or a committee of the Board composed of at least three Directors whose decision must be ratified by the Board. Any Director who participated in a matter before the Business Conduct or other Committee may not participate in any review of that matter by the Board. Unless the Board shall decide to open the record for the introduction of evidence or to hear argument, such review shall be based solely upon the record and the written exceptions filed by the parties. New issues may be raised by the Board; *the parties to the hearing* [Respondents] shall be given notice of and an opportunity to address any such new issues. The Board may affirm, reverse or modify, in whole or in part, the decision of the Business Conduct Committee. Such modification may include an increase or decrease of the sanction. The decision of the Board shall be in writing, shall be promptly served on the Respondent *and the Office of Enforcement*, and shall be final.

(c) Review on Motion of Board. The Board may on its own initiative order review of a decision made pursuant to Rule 17.7 or 17.9 of this Chapter within 30 days after notice of the decision has been served on the Respondent *and the Office of Enforcement*. Such review shall be conducted in accordance with the procedure set forth in paragraph (b) of this Rule.

(d) No change.

* * * * *

II. Description of the Proposal

A. Ex Parte Communications with Exchange Board Members Prohibited

Exchange Rule 17.4(d) prohibits members or persons associated with members from making or causing ex parte communications with any member of the BBC concerning the merits of any matter pending under the disciplinary rules of the Exchange. This prohibition is to eliminate the potential that such communications might somehow influence the outcome of an investigation or enforcement matter. The proposed rule change would amend Exchange Rule 17.4(d) to also forbid ex parte communications with members of the Board. The Exchange represents that such communications are already prohibited by some of the other self-regulatory organizations ("SROs").[7]

The proposed rule change would also add two new Interpretations to clarify the application of the amended Exchange Rule 17.4(d). Proposed Interpretation .02 addresses the current language of Exchange Rule 17.4(d), which permits ex parte communications that do not "concern the merits." Proposed Interpretation .02 distinguishes permissible ex parte communications from those "concerning the merits" by specifying that the only permissible ex parte communications are those that deal "solely" with procedural matters. The Exchange considers examples of "solely procedural matters" to include the following: "the time, place, or manner of events in the disciplinary process, or the procedural requirements set forth in the Exchange's rules as they apply to the disciplinary proceedings."[8]

Proposed Interpretation .03 is intended to provide workable guidelines for Board and BCC members, particularly those who work on the Exchange trading floor. In such positions, these Board and BCC members are subject to the possibility that a member or associated person involved in an investigation or disciplinary proceeding may approach them and launch into a conversation or other communication concerning the merits of their disciplinary case before the Board or BCC member can stop them. The Exchange believes it would be unfair in such circumstances to subject the Board or BCC member to disciplinary action for violation of Exchange Rule 17.4(d) if the violation of the Rule is caused by the unpredictable and uncontrollable actions of a third party. At the same time, the Exchange believes that Board or BCC members in such circumstances remain responsible for adhering to Exchange Rule 17.4(d) and encouraging members and associated persons to do likewise. To balance these concerns, proposed Interpretation .03 clarifies that, in such circumstances, Board or BCC members will not be deemed to have violated Exchange Rule 17.4(d) so long as they "refuse the communication" (*e.g.*, stop the conversation, stop reading the e-mail or letter, etc.) as soon as it becomes apparent that the communication concerns the merits of the case. In addition, the Exchange proposes to require that a person refusing an ex parte communication notify Exchange regulatory staff about such ex parte communication and how he or she responded to it, and also requires that the Exchange regulatory staff memorialize such information of the attempted communication in the regulatory record of the investigation or disciplinary proceeding.[9] The Exchange represents that copies of the attempted communication will be given to all of the parties involved in the proceeding.[10]

B. Exchange Office of Enforcement's Right To Appeal

Exchange Rule 17.10(a) permits a respondent in a disciplinary matter to appeal a decision of the BCC to the Board, but does not grant the Exchange's Office of Enforcement ("OOE") a similar right of appeal. The proposed rule change would permit the Exchange's OOE to appeal factual findings that the OOE thinks may have been in error, as well as to appeal disciplinary sanctions that the OOE deems insufficient. The Exchange represents that such appeals are already authorized at other SROs.[11] Therefore, the Exchange proposes to amend Exchange Rules 17.9 and 17.10 to give the OOE and the Respondent equivalent rights in the appellate process.

III. Discussion

The Commission has carefully reviewed the proposed rule change, as amended, and finds that it is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b) of the Act.[12] Specifically, the Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act[13] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. In addition, the Commission finds that the proposed rule change, as amended, is consistent with sections 6(b)(1) and 6(b)(7) of the Act[14] in that it requires compliance by the Exchange members and persons associated with its members with the Act, the rules and regulations thereunder, and Exchange rules; and provides a fair procedure for the disciplining of Exchange members.

The Commission believes that the proposed rule change, as amended, should limit ex parte communications in the disciplinary process, thereby providing a safeguard against influence over the outcome of a disciplinary proceeding and eliminating the appearance of unfairness. The Commission notes that the Exchange currently prohibits ex parte communications between persons involved in disciplinary proceedings and the Exchange's BCC. Extending the prohibition to Board members is consistent with practices on other SROs.[15]

The Commission believes that proposed Interpretations .02 and .03 to the proposed rule change should provide objective criteria and guidance regarding the application of the proposed rule change, as amended. The Commission notes that proposed Interpretation .02 excludes from the prohibition against ex parte communications any ex parte communications dealing solely with procedural matters. The Commission further notes that the Exchange has provided examples of what it considers "solely procedural matters." The Commission believes that proposed Interpretation .03 strikes the right balance permitting persons who refuse an attempted ex parte communication to avoid violating the rule, provided that they report such attempted communication and their responses to such communications to Exchange regulatory staff. The proposed Interpretation would also require Exchange regulatory staff to keep a record of the attempted ex parte communication in the regulatory record of the investigation or disciplinary proceeding. In addition, the Commission notes that the Exchange has represented that it will give copies of the attempted ex parte communication to all of the parties involved in the proceeding.[16]

Furthermore, the Commission believes that allowing the Exchange's OOE to appeal a decision of the BCC to the Board regarding factual findings that the OOE believes may have been in error or disciplinary sanctions that it finds insufficient, is consistent with practices on other SROs.[17]

In addition, the Commission finds good cause for approving Amendment Nos. 2 and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 deletes proposed CBOE Rule 17.15 and amends CBOE Rule 17.4 to incorporate the Board into the prohibition against ex parte communications with the BCC. The Commission believes this change is not substantively different from the proposal, as published. In addition, it makes sense for the Board to be subject to the same limitations that the BCC is subject to. As discussed more fully above, Amendment No. 3 provides clarity to proposed rule change by requiring persons to report attempted communications, and by requiring Exchange regulatory staff to memorialize the communications. In addition, Amendment No. 3 provides examples of what the Exchange would consider "solely procedural matters" for purposes of proposed Interpretation .02. The Commission, therefore, finds good cause to approve Amendment Nos. 2 and 3 to the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 and 3, including whether the Amendment Nos. 2 and 3 to the proposed rule change are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2001–59 and should be submitted by January 7, 2003.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–CBOE–2001–59) and Amendment No. 1 are hereby approved, and that Amendment Nos. 2 and 3 to the proposed rule change are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31653 Filed 12–16–02; 8:45 am]

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[7] *See* American Stock Exchange LLC Exchange Disciplinary Proceedings Rule 11(a); National Association of Securities Dealers, Inc. ("NASD") Rule 9143(a); and Pacific Exchange, Inc. Rule 10.3(a).

[8] *See* Amendment No. 3, *supra* note 6. The Exchange represents that by "manner of events in a disciplinary process," it means the sequence of events in the disciplinary process. Telephone conversation between Christopher R. Hill, Attorney II, Office of Enforcement, Legal Division, CBOE, and Kathy A. England, Assistant Director, and Sapna C. Patel, Attorney, Division, Commission, on December 5, 2002.

[9] See Amendment No. 3, *supra* note 6.

[10] Telephone conversation between Christopher R. Hill, Attorney II, Office of Enforcement, Legal Division, CBOE, and Kathy A. England, Assistant Director, and Sapna C. Patel, Attorney, Division, Commission, on December 5, 2002.

[11] *See* New York Stock Exchange, Inc. Rule 476(f); NASD Rule 9311; and Securities Exchange Act Release No. 43554 (November 14, 2001), 65 FR 69975 (November 21, 2001) (File No. SR–Amex–00–22).

[12] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(1); and 15 U.S.C. 78f(b)(7).

[15] See, *e.g.*, supra note 7.

[16] Telephone conversation between Christopher R. Hill, Attorney II, Office of Enforcement, Legal Division, CBOE, and Kathy A. England, Assistant Director, and Sapna C. Patel, Attorney, Division, Commission, on December 5, 2002.

[17] See, *e.g.*, supra note 11.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] *See* letter from Richard J. McDonald, Managing Director, Product Development, CME, to Office of Market Supervision, Division of Market Regulation, Continued

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46975; File No. SR–CME–2002–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Mercantile Exchange Relating to Listing Standards for Security Futures Products

December 9, 2002.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on October 28, 2002, Chicago Mercantile Exchange ("CME" or "the Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CME.

On November 1, 2002, CME filed an amendment to the proposed rule change to clarify the proposed rules.[3] On

November 6, 2002, CME filed an amendment to the proposed rule change to reflect technical changes to the proposed rules.[4] On November 20, 2002, CME filed an amendment to the proposed rule change to provide additional information for inclusion in this Notice, and to reflect further technical changes to the proposed rules.[5]

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. CME also has certified the proposed rule change with the Commodity Futures Trading Commission ("CFTC") under Section 5c(c) of the Commodity Exchange Act[6] on October 28, 2002.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

CME proposes to adopt Security Futures Product Listing Standards ("CME Listing Standards") for purposes of Section 6(h) of the Act.[7] The CME Listing Standards are generally identical to the sample listing standards (the "Sample Listing Standards") published in Staff Legal Bulletin No. 15 ("SLB 15")[8] except that they:

- Reflect the modifications to the statutory listing standards requirements adopted by the Commission and the CFTC governing shares of American Depositary Receipts, exchange-traded funds, trust-issued receipts and shares of registered closed-end management investment companies;[9] and
- Establish an approximately equal dollar weighting methodology for physically settled futures based on narrow-based security indices ("NBIs") which (1) requires the number of each component security to be rounded up or down to the nearest multiple of 100 shares or receipts in the course of the initial index composition and any subsequent rebalancing, (2) contemplates mandatory annual rebalancing of such indices under specified circumstances, complemented by CME's ability to rebalance indices on an interim basis if it so elects; and (3) ensures that outstanding contracts will not be affected by any rebalancing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CME has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 6(h)(3) of the Act[10] identifies requirements for listing standards applicable to security futures products. In particular, the Act requires that such listing standards: (1) Must be no less restrictive than comparable listing standards for options traded on a national securities exchange; and (2) must require that trading in security futures products not be readily susceptible to manipulation of the price of such products or of the underlying securities or options on such securities.

Listing Standards—The Sample Listing Standards found in SLB 15 were modeled after listing standards employed by option exchanges and were intended to provide guidance as to how the requirements under the Act may be addressed but also provided that alternate standards could be consistent with the Act as well.

Accordingly, the CME Listing Standards are generally modeled on the Sample Listing Standards (as modified by the Commissions' orders regarding American Depositary Receipts, exchange-traded funds, trust-issued receipts and registered closed-end management investment companies[11] and subject to additional modifications relating to physically settled futures based on NBIs described above. These additional modifications are (1) limited in application to physically settled contracts, and (2) designed to enhance the utility of NBI futures in connection with hedging, arbitrage and other investment applications.

CME contemplates the possibility that it may seek to list physically settled NBI futures per its belief that physical settlement might reduce basis risk and result in tighter bid/offer spreads, limiting the potential for market manipulation, under certain circumstances where the NBI is comprised of a very limited number of securities.

CME believes that it is impracticable to make delivery of securities in lot sizes smaller than the customary transactional unit of 100 shares or receipts. Thus, rounding is required with respect to the initial composition and subsequent rebalancing of physically settled futures based on NBIs. If the composition of NBIs were subject to frequent or retroactive changes as a result of index rebalancings, NBI futures would lose their potential as particularly effective tools in the implementation of hedging, arbitrage and other investment applications.

The Sample Listing Standards contemplate at least quarterly rebalancings of equal dollar-weighted indices. The CME Listing Standards modify this requirement by providing that an approximately equal dollar-weighted NBI underlying a physically settled security futures product is to be rebalanced annually, but only if the aggregate value of the security position with the highest value is two or more times greater than the aggregate value of the security position with the lowest value in the index for a specified time period. CME believes that this procedure effectively balances the potential adverse consequences of frequent composition adjustments with concerns regarding the degree to which an NBI represents the subject industry sector.

CME may rebalance NBIs on an interim basis if warranted as a result of extraordinary changes in the relative values of the component securities. To the extent investors with open positions must rely upon the continuity of the futures contract, CME Listing Standards clarify that outstanding contracts are unaffected by rebalancings. Precedent for these provisions may be found in the rules of the American Stock Exchange ("Amex") for portfolio depositary receipts[12] and index fund shares[13]

Commission, dated October 31, 2002 ("Amendment No. 1").

[4] See letter from Richard J. McDonald, Managing Director, Product Development, CME, to Office of Market Supervision, Division of Market Regulation, Commission, dated November 5, 2002 ("Amendment No. 2").

[5] See letter from Richard J. McDonald, Managing Director, Product Development, CME, to Office of Market Supervision, Division of Market Regulation, Commission, dated November 19, 2002 ("Amendment No. 3").

[6] 7 U.S.C. 7a–2(c).

[7] 15 U.S.C. 78f(h).

[8] SEC Division of Market Regulation: Staff Legal Bulletin No. 15: Listing Standards for Trading Security Futures Products (September 5, 2001).

[9] See Joint Order Granting the Modification of Listing Standards Requirements (American Depository Receipts), Securities Exchange Act Release No. 44725 (August 20, 2001) *and* Joint Order Granting the Modification of Listing Standards Requirements (Exchange Traded Funds, Trust Issued Receipts and shares of Closed-End Funds), Securities Exchange Act Release No. 46090 (June 19, 2002), 67 FR 42760 (June 25, 2002).

[10] 15 U.S.C. 78f(h)(3)(I).

[11] See *supra*, n. 9.

[12] See Amex Rule 1000, in particular Commentary .03 thereto.

[13] See Amex Rule 1000A, in particular Commentary .02 thereto.

which provide for a "modified equal-dollar weighting" and do not appear to provide for rebalancing. Rebalancing is likewise not required in the context of trust-issued receipts traded on Amex.[14]

The contents of the CME Listing Standards, including the approximately equal dollar-weighting methodology described above, will be publicly available and fully disclosed.

Section 6(h)(3) Requirements—Section 6(h)(3) of the Act[15] contains detailed requirements for listing standards and conditions for trading applicable to security futures products. Set forth below is a summary of each such requirement or condition, followed by a brief explanation of how CME will comply with it, whether by particular provisions in the CME Listing Standards or otherwise.

Clause (A) of Section 6(h)(3)[16] requires that any security underlying a security future be registered pursuant to Section 12 of the Act.[17] This requirement is addressed by CME Rules 70001.2, 70003.2.b. and 70004.2.a.

Clause (B) of Section 6(h)(3)[18] requires that a market on which a physically settled security futures product is traded have arrangements in place with a registered clearing agency for the payment and delivery of the securities underlying the security futures product. CME has reached an agreement with a registered clearing agency to facilitate the payment and delivery of securities underlying security futures products. This agreement will be fully operational prior to any possible delivery event associated with such security futures products.

Clause (C) of Section 6(h)(3)[19] provides that listing standards for security futures products must be no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association registered pursuant to Section 15A(a) of the Act.[20] For the reasons discussed above, notwithstanding specified differences between the Sample Listing Standards and the CME Listing Standards, CME believes that the latter are no less restrictive than comparable listing standards for exchange-traded options.

Clause (D) of Section 6(h)(3)[21] requires that each security future be based on common stock or such other equity securities as the Commission and the Commodity Futures Trading Commission jointly determine appropriate. This requirement is addressed by Rules 70001.1, 70003.2.c. and 70004.2.b.

Clause (E) of Section 6(h)(3)[22] requires that each security futures product be cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on one market and offset on another market that trades such product. CME intends to clear security futures products traded through Exchange facilities through the CME Clearing House Division. The Clearing House Division will have in place all provisions for linked and coordinated clearing as mandated by law and statute as of the effective date of such laws and statutes.

Clause (F) of Section 6(h)(3)[23] requires that only a broker or dealer subject to suitability rules comparable to those of a national securities association registered pursuant to Section 15A(a) of the Act[24] effect transactions in a security futures product.

CME clearing members, and their correspondents, are bound by the applicable sales practice rules of the National Futures Association ("NFA"), which is a national securities association. As such, the sales practice rules of the NFA are, perforce, comparable to those of a national securities association registered pursuant to Section 15A(a) of the Act.[25] The application of NFA sales practice rules is extended beyond the CME clearing membership to the extent that NFA By-Law 1101 provides that "[n]o member may carry an account, accept an order or handle a transaction in commodity futures contracts for or on behalf of any non-Member of NFA."

Clause (G) of Section 6(h)(3)[26] requires that each security futures product be subject to the prohibition against dual trading in Section 4j of the Commodity Exchange Act[27] and the rules and regulations thereunder or the provisions of Section 11(a) of the Act[28] and the rules and regulations thereunder. Exchange Rule 123 requires Exchange members to comply with all applicable "provisions of the Commodity Exchange Act and regulations duly issued pursuant thereto by the CFTC."

Note that the prohibition of dual trading in security futures products per CFTC Regulation § 41.27[29] adopted pursuant to Section 4j(a) of the Commodity Exchange Act[30] applies to a contract market operating an electronic trading system if such market provides participants with a time or place advantage or the ability to override a predetermined matching algorithm. CME anticipates that trading of security futures products on CME will be fully electronic. Further, the Exchange will not provide participants with a time or place advantage or the ability to override a predetermined matching algorithm in the context of security futures products.

Clause (H) of Section 6(h)(3)[31] provides that trading in a security futures product must not be readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities.

CME Listing Standards are designed to ensure that CME products and the underlying securities will not be readily susceptible to price manipulation. Exchange Rule 432 defines activity "to manipulate prices or to attempt to manipulate prices" as a "major offense," punishable, per Exchange Rule 430, by "expulsion, suspension, and/or a fine of not more than $1,000,000 plus the monetary value of any benefit received as a result of the violative action."

Clause (I) of Section 6(h)(3)[32] requires that procedures be in place for coordinated surveillance amongst the market on which a security futures product is traded, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading.

CME is an affiliate member of the Intermarket Surveillance Group ("ISG") and is party to an affiliate agreement and an agreement to share market surveillance and regulatory information with the other ISG members. Further, CME is party to a supplemental agreement regarding security futures

[14] See Amex Rule 1202, in particular Commentary .01 thereto.

[15] 15 U.S.C. 78f(h)(3).

[16] 15 U.S.C. 78f(h)(3)(A).

[17] 15 U.S.C. 78l.

[18] 15 U.S.C. 78f(h)(3)(B).

[19] 15 U.S.C. 78f(h)(3)(C).

[20] 15 U.S.C. 78o–3f(a).

[21] 15 U.S.C. 78f(h)(3)(D).

[22] 15 U.S.C. 78f(h)(3)(E).

[23] 15 U.S.C. 78f(h)(3)(F).

[24] 15 U.S.C. 78o–(a).

[25] 15 U.S.C. 78o–(a).

[26] 15 U.S.C. 78f(h)(3)(G).

[27] 7 U.S.C. 6j.

[28] 15 U.S.C. 78k.

[29] 17 CFR 41.27.

[30] 7 U.S.C. 4j(a).

[31] 15 U.S.C. 78f(h)(3)(H).

[32] 15 U.S.C. 78f(h)(3)(I).

with the other ISG members with respect to affiliate ISG membership.[33]

Note that CME Rule 424 permits CME to enter into agreements for the exchange of information and other forms of mutual assistance with domestic or foreign self-regulatory organizations, associations, boards of trade and their respective regulators.

Clause (J) of Section 6(h)(3)[34] requires that a market on which a security futures product is traded have in place audit trails necessary or appropriate to facilitate the coordinated surveillance referred to in the preceding paragraph.

The audit trail capability provided by GLOBEX®, the Exchange's trade matching engine, includes specialized electronic surveillance programs to identify potentially abusive trades and trade patterns. GLOBEX creates and maintain an electronic transaction history database that contains information with respect to all transactions executed on the Exchange. The audit trail capability includes an electronic analysis capability, permitting the sorting and presentation of data included in the transaction history in order to reconstruct trading and to identify possible trading violations with respect to both customer and market abuses.

Information recorded with respect to each order includes: Time entered, terms of the order, order type, instrument and contract month, price, quantity, account type, account designation, user code and clearing firm. This information is archived and maintained by the CME Market Regulation Department.

For orders that cannot be immediately entered into CME's systems and, therefore, will not be recorded electronically at the time they are received, Exchange Rule 536 requires that the complete written records of each order must be prepared and retained. Each such record must be retained for at least five years.

Clause (K) of Section 6(h)(3)[35] requires that a market on which a security futures product is traded have in place procedures to coordinate trading halts between such market and any market on which any security underlying the security futures product is traded and other markets on which any related security is traded.

The Exchange proposes to amend its Rules 71001.E. and 71301.E. to clarify that trading in security futures shall be halted when a regulatory halt occurs in the underlying security or securities, as defined in CFTC Regulation 41.1(l). The Exchange intends to make such amendment by certification of such amendments with the CFTC per Section 5c(c) of the Commodity Exchange Act and Regulation 41.24 thereunder, with a copy to the SEC.

Clause (L) of Section 6(h)(3)[36] requires that the margin requirements for a security futures product comply with the regulations prescribed pursuant to Section 7(c)(2)(B) of the Act.[37] As set forth in Amendment No. 1 to a Form 19b–4 separately filed by CME with the Commission on October 3, 2002, CME believes that its proposed Rules regarding customer margin are consistent with the requirements of the Act.

For the reasons described above, CME submits that the CME Listing Standards submitted herewith, satisfy the requirements set forth in Section 6(h)(3) of the Act.[38]

2. Statutory Basis

The CME Listing Standards are authorized by, and consistent with, Section 6(b)(5)[39] of the Act because they are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the CME Listing Standards will have an impact on competition because (1) it may be anticipated that other self-regulatory organizations that will list security futures products will adopt substantially similar listing standards; and (2) any concerns about possible anti-competitive effects should be evaluated in light of the standards applicable to other financial instruments based on narrowly based security indices or baskets, which are consistent with the CME Listing Standards.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the CME Listing Standards have not been solicited.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective on October 28, 2002, except that the technical changes made in Amendment Nos. 2 and 3 have become effective on November 5 and 19, respectively. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[40]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings also will be available for inspection and copying at the principal office of CME. Electronically submitted comments will be posted on the Commission's Internet website (*http://www.sec.gov*). All submissions should refer to File No. SR–CME–2002–02 and should be submitted by January 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[41]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31652 Filed 12–16–02; 8:45 am]

BILLING CODE 8010–01–U

[33] *See* Joint Notice of Final Rules, Release No. 34–45956 (May 17, 2002), 67 FR 36740, 36750–51 (May 24, 2002).

[34] 15 U.S.C. 78f(h)(3)(J).

[35] 15 U.S.C. 78f(h)(3)(K).

[36] 15 U.S.C. 78f(h)(3)(L).

[37] 15 U.S.C. 78g(c)(2)(B).

[38] 15 U.S.C. 78f(h)(3).

[39] 15 U.S.C. 78f(g).

[40] 15 U.S.C. 78s(b)(1).

[41] 17 CFR 200.30–3(a)(75).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46972; File No. SR–NASD–2002–165]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Retroactive Fees for Software Products Offered by The Nasdaq Stock Market, Inc.

December 9, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 15, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On November 27, 2002, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 7050 to establish the fees for software products sold by Nasdaq Trading Applications as part of Nasdaq's Transaction Services for business products. Nasdaq will apply the proposed rule change on a retroactive basis for the period from July 25, 2002 to the date of this filing.[4] Below is the text of the proposed rule change. Proposed new language is *italicized*.

* * * * *

7050. Other Services

(a)–(d) No Change.

(e) Software Products

(1) The following fees shall be paid by customers of Tools™:

(A) Fee charge	*Price*
Minimum fee per market participant (includes coverage of up to 49 stocks on an unlimited number of Nasdaq Workstation II terminals located at a single office).	*$1,000/month*
Coverage of each additional block of 25 or fewer stocks	*$500/month*
Each additional office equipped with Tools	*$1,000/month*
Aggregate maximum fee per market participant	*$15,000/month*

(B) Customers who also subscribe to Tools Plus℠ services shall receive the following reduction on fees incurred pursuant to subsection (1)(A):

Number of Tools Plus terminals	*Discount*
Five or fewer Tools Plus terminals	*50%*
Between six and 15 Tools Plus terminals	*75%*
Greater than 15 Tools Plus terminals	*100%*

(2) The following deposits and fees shall be paid by all customers of Tools Plus:

(A) Each customer shall pay a deposit at the time it initially subscribes to Tools Plus equal to two times the subscriber's aggregate monthly Terminal Charge (as defined below), calculated based on the number of terminals ordered by the subscriber upon subscribing to Tools Plus (the "Deposit"). The Deposit shall be refunded to the customer upon termination of its subscription to Tools Plus after deducting any outstanding balances owed Nasdaq.

(B) Terminal Charge

Fee charge	*Price*
Terminal Charge per terminal ("PT") equipped with Tools Plus (More than 30 terminals if customer signs two year contract).	*$500/PT/month*
(All other situations)	*$750/PT/month*
Minimum fee	*$2,000/month*

(C) Fee charge	*Price*
Connection Charge to Nasdaq Computer-to-Computer Interface (CTCI) Connection Charge to Nasdaq Service.	*$265/month*
Delivery Platform (SDP) (charged to subscribers who handle customer orders)	*$250/month*
Installation Fee (one-time charge for Tools Plus and includes one terminal)	*$13,550*
(Each additional terminal)[5]	*$140*
Port Charges (one-time charge per line)	*$1,250*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from John A Zecca, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 26, 2002 ("Amendment No. 1"). In Amendment No. 1, Nasdaq deleted text from Section 3(a)(1) of the 19b–4 filing and from Exhibit 1 to the 19b–4 filing discussing filings previously approved by the Commission.

[4] Nasdaq has filed a separate proposal that was immediately effective pursuant to Section 19(b)(3) of the Act and Rule 19b–4 thereunder, to impose these same fees prospectively from November 15, 2002, the date of this filing. *See* Securities Exchange Act Release No. 46973 (December 9, 2002) (SR–NASD–2002–164).

(C) Fee charge	Price
(One-time aggregate charge for two lines)	$2,500
Training Fee on-site at customer	$400/day (plus travel expenses)
Training Fee for course at Nasdaq Tools	$150/course
Electronic communication network (ECN) maintenance charge (charged to subscribers who route orders to ECN).	$250/per ECN/month

[5] Installation Fee includes two hours of on-site training of customer personnel and all programming costs associated with one customized interface for the customer to access its clearing firm.

Market data redistribution charges, which are set by the relevant market data provider, are passed through to Tools Plus subscribers at cost.

(D) Labor rates for programming customized interfaces and maintenance on interfaces for customers of Nasdaq Tools Plus shall be billed according to the following rates:

Calendar Year 2002	Calendar Year 2003 and thereafter
Senior Programmer: $175/hour	$200/hour
Programmer: $125/hour	$150/hour
Junior Programmer: $100/hour	$125/hour
Project Management: $150/hour	$175/hour
Network Engineer: $125/hour	$150/hour
Operations Support: $100/hour	$125/hour

* * * * *

II. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth below in Sections A, B, and C, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. *Background.* Nasdaq has integrated the software product line of its former subsidiary, Nasdaq Tools, Inc., into Nasdaq. The purpose of this proposed rule change is to establish fees for these software products.

On March 7, 2000, Nasdaq purchased Financial Systemware, Inc., a manufacturer of software products for the financial services industry. Financial Systemware was renamed "Nasdaq Tools, Inc." and became a wholly-owned subsidiary of Nasdaq.[6]

On July 31, 2002, Nasdaq Tools, Inc. was merged into Nasdaq, with Nasdaq assuming all of the assets and liabilities of Nasdaq Tools, Inc. Nasdaq now provides these software products through Nasdaq Trading Applications, a part of Nasdaq's Transactions Services business products. Nasdaq Trading Applications currently sells two products: Tools ™ and Tools Plus ℠. These products assist market participants with their trading.

Tools is a management software product that enhances the functionality of the Nasdaq Workstation II ("NWII") and assists market participants (primarily market makers)[7] in efficiently managing their quotes, monitoring and executing incoming orders, checking for closed, locked, or crossed markets, and monitoring the depth of the market. Tools Plus is an order management service for market participants that improves order and quote features and facilitates trade reporting and compliance with SEC and NASD requirements. The order and quote features include: Real-time valuation (including tracking positions, profits and losses, automatic execution and display of orders); direct access to electronic communication networks ("ECNs"); and risk management. In addition, Tools Plus assists subscribers with trade reporting to the Automated Confirmation Transaction Service ("ACT"). Tools Plus distributes data associated with compliance obligations including the NASD's Order Audit Trail System ("OATS") and Rules 11Ac1–5[8] and 11Ac1–6[9] under the Act. Tools Plus also aids market participants in fulfilling SEC-mandated compliance and reporting obligations by delivering customer data to the market maker's clearing firm. The Tools and Tools Plus products are discussed in more detail below.

b. *Tools:* Tools is a Microsoft Windows-based software product for market participants that provides quote and order management features. Tools increases the functionality of NWII by eliminating or reducing the number of mouse point-and-click features required to execute functions on NWII terminals and providing access to compliance alerts. Tools functions on the NWII without the purchase of additional hardware. Customers of Tools do not receive any priority or other advantage in accessing Nasdaq's systems as a result of their subscription to Tools. The Tools software allows a NWII user to:

[6] On April 18, 2001, the Securities and Exchange Commission (the "Commission") issued an order entitled "Order Granting Application for a Conditional Exemption by the National Association of Securities Dealers, Inc. Relating to the Acquisition and Operation of a Software Development Company by the Nasdaq Stock Market, Inc." (the "Exemption Order"). *See* Securities Exchange Act Release No. 44201 (April 18, 2001), 66 FR 21025 (April 26, 2002). The Exemption Order gave Nasdaq a conditional exemption from Section 19(b) of the Securities Exchange Act of 1934 (the "Act") that allowed Nasdaq Tools, Inc. to operate its business without triggering the proposed rule change requirements of Section 19(b). Nasdaq filed a letter dated July 25, 2002 informing the Commission that from that date forward Nasdaq would comply with Section 19(b) with respect to Nasdaq Tools' products. *See* Letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated July 25, 2002. In the letter, Nasdaq acknowledged that it would have to seek a new exemption order from the Commission if Nasdaq subsequently determined to operate Nasdaq Tools in a manner requiring exemptive relief of Section 19(b) of the Act.

[7] Nasdaq has represented that only members will be affected by these fees. Telephone conversation between John A. Zecca, Assistant General Counsel, Nasdaq and Susie Cho, Special Counsel, Division, Commission, December 3, 2002.

[8] 17 CFR 240.11Ac1–5.

[9] 17 CFR 240.11Ac1–6.

• Monitor on a single display window selected securities for a number of preset criteria and quickly edit or activate the main quote management features.

• Automatically send for execution an order equal to the aggregate number of shares available for a particular stock through the Nasdaq National Market Execution System (also known as "SuperSoes") and Nasdaq Order Display Facility (also known as "SuperMontage") at the inside market and simultaneously update the quote for the stock.

• Monitor SelectNet broadcast orders for electronic execution based on pre-selected order size and price increment parameters and simultaneously update the quote for the stock.

• Limit the impact of a single large order on the price of a security by dividing the order and executing block orders of a size that will not update the quote for the stock.

• Preset trading parameters for selected groups of stocks, called "baskets," which Tools will execute in order sizes up to the aggregate number of shares available for each stock at the inside market.

• Monitor securities for locked/crossed markets through a Locked/Crossed Market Alert Window and communicate with another market maker who has locked or crossed the market for a stock.

Tools is distributed as an integrated product that includes all features without additional charge. The fee schedule for Tools proposed in the rule change would apply to all customers of Tools and are comparable to fees previously charged for Tools. In accordance with prior practice, the proposed fee schedule calculates fees for use of the Tools product on a monthly basis.

Specifically, the market participant would pay a minimum monthly fee of $1,000 that entitles it to cover up to 49 stocks on an unlimited number of NWII terminals in a single office, with coverage of additional stocks sold in blocks of 25 stocks for $500 per block. Nasdaq also would assess an additional fee of $1,000 for each additional branch office equipped with Tools software. There would be a maximum monthly fee of $15,000 per market participant. Nasdaq would discount the fees charged on Tools for customers who also subscribe to Tools Plus. Such customers would receive the following discounts on any Tools fees:

• Five or fewer Tools Plus terminals—50% discount on Tools fees;

• Between six and 15 Tools Plus terminals—75% discount on Tools fees; and

• Greater than 15 Tools Plus terminals—100% discount (no additional Tools fees charged).

Nasdaq believes that the proposed discount on Tools fees for customers who also subscribe to Tools Plus is consistent with the provisions of Section 15A(b)(5)[10] and 15A(b)(6)[11] of the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq receives cost savings when delivering two software products to the same customer. These savings include reductions in:

• Installation costs, through savings in travel and work hours;

• Training expenses, as Nasdaq personnel can train the same personnel on both systems simultaneously, reducing on-site travel;

• Costs of ongoing technical support; and

• Billing and collection costs.

The incremental discount on Tools also reflects economies of scale for larger volume customers of Tools Plus who are likely to use Tools on a large number of terminals. In addition, there is overlap between the functionality of the two products. For example, both Tools and Tools Plus deliver market information disseminated by Nasdaq and provide quote update features. Thus, the discount also serves to avoid charging customers of both products twice for similar functionality. For these reasons, Nasdaq believes that the discount allows an equitable allocation of fees among Tools and Tools Plus customers.

c. *Tools Plus.* Nasdaq Tools, Inc. launched Tools Plus in the fall of 2001 as an order management service for NWII users that provides continuously updated valuation (including tracking positions, profits and losses, automatic execution), order display and risk management functions. Tools Plus also assists subscribers with trade reporting to ACT and connections to ECNs. Tools Plus distributes data associated with compliance obligations including the NASD's OATS Rules and Rules 11Ac1–5[12] and 11Ac1–6[13] under the Act. Tools Plus also delivers customer data to the customer's clearing firm. In particular, Tools Plus allows a customer to:

• Pre-configure the screen layout to monitor orders and quotes using various criteria.

• Combine multiple keystroke or mouse functions when executing orders and routing orders through Nasdaq systems (SuperMontage, SuperSoes, SelectNet or the Advanced Computerized Execution System ("ACES")), and non-Nasdaq systems (such as ECNs or other Tools Plus customers).

• Access a single screen quote montage displaying customized quote information from various ECNs connected to Tools Plus (currently, Wave Securities, LLC (ARCA) and Redibook ECN, LLC; Brut, LLC; The Island ECN; Instinet; MarketXT, Inc.; and B-Trade Services, LLC), if the customer has a subscriber agreement with the ECN.

• Access the following tools to manage risk and assess the profitability of trading activity at the firm:

—A monitoring feature that allows a supervisor to see the activity of each trader in the firm and track on a continuous basis each trader's profitability and long, short and total trade exposure.

—Updated information on the profitability for the firm of trading in a particular security.

• Facilitate compliance with Commission and self regulatory organization requirements by:

—Tracking and displaying all orders covered by NASD IM–2110–2, which prohibits NASD members from trading ahead of customer limit orders.

—Compiling order and trade data that can automatically be sent to the market maker's clearing firm after the close of the trading day.

—Reporting statistical information on order execution required by Rules 11Ac1–5 and 11Ac1–6 under the Act to third-party disclosure services.

—Creating a data file that meets the NASD's OATS requirements, which can be transmitted to the NASD on a nightly basis.[14]

[10] 15 U.S.C. 78o–3(b)(5).

[11] 15 U.S.C. 78o–3(b)(6).

[12] 17 CFR 240.11Ac1–5.

[13] 17 CFR 240.11Ac1–6.

[14] Nasdaq reaffirms the representation made in a prior rule change that we commit that we will not use OATS data to gain a competitive advantage over another SRO or broker dealer (market maker or ECN) and confirms that we have put in place effective internal controls to carry out this policy of not using OATS data to obtain a competitive advantage. *See* Letter from Richard G. Ketcheum,

Continued

• Customize Tools Plus software to accept order flow from any custom interface and to route orders to any system that the market maker requests.

Nasdaq provides two Microsoft NT database servers per market maker (the "client servers"). These servers are housed at the Nasdaq Trading Applications facility, currently in Jersey City, New Jersey. The client servers are connected through Nasdaq Trading Applications' network infrastructure to the Tools Plus core servers that re-distribute market data that is provided from the multiple data sources, including Nasdaq systems and ECNs and other non-Nasdaq systems discussed above. The client servers also store all order, position tracking and profit and loss information. Customers of Tools Plus do not receive any priority or other advantage in accessing Nasdaq's systems as a result of their subscription to Tool Plus. Tools Plus is designed to comply with the requirements of Rule 11Ac1–2(c) under the Act.[15]

The fees schedule for Tools Plus proposed in the rule change would apply to all customers and are comparable to fees previously charged for Tools Plus. The Tools Plus proposed fee structure consists of charges for installation, monthly terminal fees, connection to ECNs, monthly maintenance, equipment and pass through fees from the various data providers. The fee proposal includes a monthly fee per terminal of $750, with a volume reduction to $500 per terminal for customers with more than 30 or more terminals equipped with Tools Plus if the customer signs a two year contract (collectively, "Terminal Charges"). There is a monthly minimum aggregate fee for Terminal Charges of $2,000 per subscriber. Nasdaq Tools requires a deposit equal to two times the customer's actual monthly Terminal Charges, which is refunded to the customer upon termination of the contract net of any outstanding balances owed Nasdaq.

In addition, Nasdaq would charge subscribers for Computer to Computer Interface ("CTCI") and Service Delivery Platform ("SDP") [16] connections and for market data redistribution charges. Prior to the merger of Nasdaq and Nasdaq Tools, Inc., Nasdaq charged Nasdaq Tools, Inc. as a vendor for such purposes according to the same fee schedule applied to other vendors.[17] Nasdaq proposes to continue to use the same fee schedule applied to Nasdaq Tools, Inc. for these Nasdaq connections and information unless and until Nasdaq files a new proposed rule change. Nasdaq anticipates that the CTCI and SDP fees charged to customers of Tools Plus would continue to approximate the fees charged to vendors of Nasdaq.[18] The proposed fees are as follows:

• Connection to Nasdaq CTCI: $265 per subscriber (regardless of number of terminals);

• Connection to Nasdaq SDP: $250 per month per subscriber (regardless of number of terminals); and

• Market data redistribution charges: as set by relevant market data provider and passed through to Tools Plus subscribers at cost.

The SDP and CTCI charges relate to Tools Plus' CTCI and SDP connections to Nasdaq's systems and are in addition to any SDP and CTCI connections a customer may have to link directly to Nasdaq. The purposes for which Tools Plus connects to Nasdaq are limited and, accordingly, do not require a large amount of bandwidth. Nasdaq Trading Applications is able to send and receive data for a number of customers using the same SDP and CTCI connections and the fees charged to the subscribers to Tools Plus for the connections reflect these economies of scale. An NWII that displays Tools Plus connects directly to Nasdaq systems through an application-programming interface ("API"). Nasdaq directly bills customers of Tools Plus for API linkages.[19]

In addition, Nasdaq proposes to charge the following fees for Tools Plus:

• Installation fee of $13,550 for Tools Plus and one terminal and $140 for each additional terminal;

• One-time port charge of $1,250 for each line or $2,500 for two lines for access to Tools Plus;

• Training Fees of $400 per day plus travel expenses for on-site training and $150 for training course at Nasdaq (2 hours of training per user is included in price of installation); and

• ECN access maintenance charge of $250 per month for each customer (regardless of number of terminals) for each ECN accessed through Tools Plus.[20]

Nasdaq also creates custom interfaces for Tools Plus subscribers. Subscribers are supplied with a Statement of Work that outlines the time and resources needed to complete the project. The Statement of Work must be approved and signed by both the subscriber and Nasdaq before any programming begins. As is currently the case, each Tools Plus subscriber would receive one custom interface to the subscriber's clearing firm as part of the cost of installation of Tools Plus. Nasdaq proposes to charge by the hour for all other customized programming and maintenance on custom interfaces based on the labor schedule set forth below:

Standard labor rates for:

Calendar Year 2002	Calendar Year 2003 and thereafter
Senior Programmer: $175/hour.	$200/hour.
Programmer: $125/hour	$150/hour.
Junior Programmer: $100/hour.	$125/hour.
Project Management: $150/hour.	$175/hour.
Network Engineer: $125/hour	$150/hour.
Operations Support: $100/hour.	$125/hour.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[21] in general, and with Section 15A(b)(5) of the Act,[22] in particular, in that it provides for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq believes that the fees are reasonable in that they have been calculated to approximate the fees previously charged for Tools and Tools Plus products.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

President, Nasdaq, to Robert L.D. Colby, Deputy Director, Division, Commission, dated January 8, 2001.

[15] 17 CFR 240.11Ac1–2(c).

[16] SDP charges are only paid by subscribers who handle customer orders.

[17] See NASD Rule 7010(f)(2) (SDP) and Rule 7010(f)(3) (CTCI). The SDP and CTCI fees charged customers of Tools Plus under the proposed fee schedule reflect band width savings that allow multiple customers to use the same SDP and CTCI connections, as discussed *infra*.

[18] Telephone conversation between John A. Zecca, Assistant General Counsel, Nasdaq and Susie Cho, Special Counsel, Division, Commission, December 9, 2002.

[19] Fees related to API linkages are set forth at NASD Rule 7010(f).

[20] This charge only applies to subscribers who route orders to the ECN.

[21] 15 U.S.C. 78o–3.

[22] 15 U.S.C. 78o–3(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change contained in this filing.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–165 and should be submitted by January 7, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,[23] and in particular, the requirements of Section 15A(b)(5) of the Act,[24] which requires that the rules of an association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. The Commission notes that these fees will only be charged to users of Tools and Tools Plus and that the fees will be applied uniformly to all customers. In addition, the Commission notes that these fees have been calculated to be comparable with fees previously charged for Tools and Tools Plus.

The Commission also notes that Nasdaq has represented that when Nasdaq Tools Inc. was a subsidiary, Nasdaq treated Nasdaq Tools Inc. as a vendor in assessing certain fees and that it will continue to apply the same schedule as applied to Nasdaq Tools Inc. For example, Nasdaq proposes to continue to use the same fee schedule applied to Nasdaq Tools, Inc. for CTCI and SDP connections and information unless and until Nasdaq files a new proposed rule change.[25] The Commission also notes that customers of Tools and Tools Plus do not receive any other advantage in accessing Nasdaq's systems as a result of their subscription to Tools or Tools Plus.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that Nasdaq has requested accelerated approval because these fees are the same fees that are being charged prospectively for the same products and are consistent with the fees previously charged to customers of Tools and Tools Plus.[26] The Commission believes that accelerated approval of the proposal will permit the most efficient implementation of the fees and reduce confusion for existing customers of Tools and Tools Plus. Based on the above, the Commission believes that there is good cause, consistent with Section 15A(b)(5) [27] and Section 19(b) [28] of the Act to approve the proposal on an accelerated basis.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–NASD–2002–165), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31650 Filed 12–16–02; 8:45 am]

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[23] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78o–3(b)(5).

[25] *See supra* note 17.

[26] *See supra* note 4.

[27] 15 U.S.C. 78o–3(b)(5).

[28] 15 U.S.C. 78s(b).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46973; File No. SR–NASD–2002–164]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for Software Products Offered by the Nasdaq Stock Market, Inc.

December 9, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 15, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 7050 to establish the fees for software products sold by Nasdaq Trading Applications as part of Nasdaq's Transaction Services for business products.[3] Below is the text of the proposed rule change. Proposed new language is *italicized*.[4]

* * * * *

7050. Other Services

(a)–(d) No Change.

(e) Software Products

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Telephone conversation between John A. Zecca, Assistant General Counsel, Nasdaq and Susie Cho, Special Counsel, Division, Commission, December 3, 2002.

[4] Nasdaq has filed a separate proposal pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder, to impose these same fees on a retroactive basis for the period from July 25, 2002 to the date of this filing. *See* Securities Exchange Act Release No. 46972 (December 9, 2002) (SR–NASD–2002–165).

(1) The following fees shall be paid by customers of Tools™:

(A) Fee charge	*Price*
Minimum fee per market participant (includes coverage of up to 49 stocks on an unlimited number of Nasdaq Workstation II terminals located at a single office).	*$1,000/month*
Coverage of each additional block of 25 or fewer stocks	*$500/month*
Each additional office equipped with Tools	*$1,000/month*
Aggregate maximum fee per market participant	*$15,000/month*

(B) Customers who also subscribe to Tools Plus℠ services shall receive the following reduction on fees incurred pursuant to subsection (1)(A):

Number of tools plus terminals	*Discount*
Five or fewer Tools Plus terminals	*50%*
Between six and 15 Tools Plus terminals	*75%*
Greater than 15 Tools Plus terminals	*100%*

(2) The following deposits and fees shall be paid by all customers of Tools Plus:

(A) Each customer shall pay a deposit at the time it initially subscribes to Tools Plus equal to two times the subscriber's aggregate monthly Terminal Charge (as defined below), calculated based on the number of terminals ordered by the subscriber upon subscribing to Tools Plus (the "Deposit"). The Deposit shall be refunded to the customer upon termination of its subscription to Tools Plus after deducting any outstanding balances owed Nasdaq.

(B) Terminal Charge	
Fee charge	*Price*
Terminal charge per terminal ("PT") equipped with Tools Plus (More than 30 terminals if customer signs two year contract).	*$500/PT/month*
(All other situations)	*$750/PT/month*
Minimum fee	*$2,000/month*

(C) Fee charge	*Price*
Connection Charge to Nasdaq Computer-to-Computer Interface (CTCI)	*$265/month*
Connection Charge to Nasdaq Service Delivery Platform (SDP)(charged to subscribers who handle customer orders).	*$250/month*
Installation Fee (one-time charge for Tools Plus and includes one terminal)	*$13,550*
(Each additional terminal)[5]	*$140*
Port Charges (one-time charge per line)	*$1,250*
(One-time aggregate charge for two lines)	*$2,500*
Training Fee on-site at customer	*$400/day (plus travel expenses)*
Training Fee for course at Nasdaq Tools	*$150/course*
Electronic communication network (ECN) maintenance charge (charged to subscribers who route orders to ECN).	*$250/per ECN/month*

Market data redistribution charges, which are set by the relevant market data provider, are passed through to Tools Plus subscribers at cost.

(D) Labor rates for programming customized interfaces and maintenance on interfaces for customers of Nasdaq Tools Plus shall be billed according to the following rates:

Calendar year 2002	*Calendar year 2003 and thereafter*
Senior Programmer: $175/hour.	*$200/hour*
Programmer: $125/hour	*$150/hour*
Junior Programmer: $100/hour.	*$125/hour*
Project Management: $150/hour.	*$175/hour*
Network Engineer: $125/hour	*$150/hour*
Operations Support: $100/hour.	*$125/hour*

[5] Installation Fee includes two hours of on-site training of customer personnel and all programming costs associated with one customized interface for the customer to access its clearing firm.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth below in Sections A, B, and C, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. *Background.* Nasdaq has integrated the software product line of its former subsidiary, Nasdaq Tools, Inc., into Nasdaq. The purpose of this proposed rule change is to establish fees for these software products.

On March 7, 2000, Nasdaq purchased Financial Systemware, Inc., a manufacturer of software products for the financial services industry. Financial Systemware was renamed "Nasdaq Tools, Inc." and became a wholly-owned subsidiary of Nasdaq.[6] On July 31, 2002, Nasdaq Tools, Inc. was merged into Nasdaq, with Nasdaq assuming all of the assets and liabilities of Nasdaq Tools, Inc. Nasdaq now provides these software products through Nasdaq Trading Applications, a part of Nasdaq's Transactions Services business products. Nasdaq Trading Applications currently sells two products: Tools™ and Tools Plus℠. These products assist market participants with their trading.

Tools is a management software product that enhances the functionality of the Nasdaq Workstation II ("NWII") and assists market participants (primarily market makers)[7] in efficiently managing their quotes, monitoring and executing incoming orders, checking for closed, locked, or crossed markets, and monitoring the depth of the market. Tools Plus is an order management service for market participants that improves order and quote features and facilitates trade reporting and compliance with SEC and NASD requirements. The order and quote features include: real-time valuation (including tracking positions, profits and losses, automatic execution and display of orders); direct access to electronic communication networks ("ECNs"); and risk management. In addition, Tools Plus assists subscribers with trade reporting to the Automated Confirmation Transaction Service ("ACT"). Tools Plus distributes data associated with compliance obligations including the NASD's Order Audit Trail System ("OATS") and Rules 11Ac1–5[8] and 11Ac1–6[9] under the Act. Tools Plus also aids market participants in fulfilling SEC-mandated compliance and reporting obligations by delivering customer data to the market maker's clearing firm. The Tools and Tools Plus products are discussed in more detail below.

b. *Tools.* Tools is a Microsoft Windows-based software product for market participants that provides quote and order management features. Tools increases the functionality of NWII by eliminating or reducing the number of mouse point-and-click features required to execute functions on NWII terminals and providing access to compliance alerts. Tools functions on the NWII without the purchase of additional hardware. Customers of Tools do not receive any priority or other advantage in accessing Nasdaq's systems as a result of their subscription to Tools. The Tools software allows a NWII user to:

- Monitor on a single display window selected securities for a number of preset criteria and quickly edit or activate the main quote management features.
- Automatically send for execution an order equal to the aggregate number of shares available for a particular stock through the Nasdaq National Market Execution System (also known as "SuperSoes") and Nasdaq Order Display Facility (also known as "SuperMontage") at the inside market and simultaneously update the quote for the stock.
- Monitor SelectNet broadcast orders for electronic execution based on pre-selected order size and price increment parameters and simultaneously update the quote for the stock.
- Limit the impact of a single large order on the price of a security by dividing the order and executing block orders of a size that will not update the quote for the stock.
- Preset trading parameters for selected groups of stocks, called "baskets," which Tools will execute in order sizes up to the aggregate number of shares available for each stock at the inside market.
- Monitor securities for locked/crossed markets through a Locked/Crossed Market Alert Window and communicate with another market maker who has locked or crossed the market for a stock.

Tools is distributed as an integrated product that includes all features without additional charge. The fee schedule for Tools proposed in the rule change would apply to all customers of Tools and are comparable to fees previously charged for Tools. In accordance with prior practice, the proposed fee schedule calculates fees for use of the Tools product on a monthly basis.

Specifically, the market participant would pay a minimum monthly fee of $1,000 that entitles it to cover up to 49 stocks on an unlimited number of NWII terminals in a single office, with coverage of additional stocks sold in blocks of 25 stocks for $500 per block. Nasdaq also would assess an additional fee of $1,000 for each additional branch office equipped with Tools software. There would be a maximum monthly fee of $15,000 per market participant. Nasdaq would discount the fees charged on Tools for customers who also subscribe to Tools Plus. Such customers would receive the following discounts on any Tools fees:

- Five or fewer Tools Plus terminals—50% discount on Tools fees;
- Between six and 15 Tools Plus terminals—75% discount on Tools fees; and
- Greater than 15 Tools Plus terminals—100% discount (no additional Tools fees charged).

Nasdaq believes that the proposed discount on Tools fees for customers who also subscribe to Tools Plus is consistent with the provisions of Sections 15A(b)(5)[10] and 15A(b)(6)[11] of the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq receives cost savings when delivering two software products to the same customer. These savings include reductions in:

- Installation costs, through savings in travel and work hours;
- Training expenses, as Nasdaq personnel can train the same personnel on both systems simultaneously, reducing on-site travel;
- Costs of ongoing technical support; and
- Billing and collection costs.

The incremental discount on Tools also reflects economies of scale for larger volume customers of Tools Plus who are likely to use Tools on a large number of terminals. In addition, there is overlap between the functionality of the two products. For example, both Tools and Tools Plus deliver market information disseminated by Nasdaq

[6] On April 18, 2001, the Securities and Exchange Commission (the "Commission") issued an order entitled "Order Granting Application for a Conditional Exemption by the National Association of Securities Dealers, Inc. Relating to the Acquisition and Operation of a Software Development Company by the Nasdaq Stock Market, Inc." (the "Exemption Order"). *See* Securities Exchange Act Release No. 44201 (April 18, 2001), 66 FR 21025 (April 26, 2002). The Exemption Order gave Nasdaq a conditional exemption from Section 19(b) of the Securities Exchange Act of 1934 (the "Act") that allowed Nasdaq Tools, Inc. to operate its business without triggering the proposed rule change requirements of Section 19(b). Nasdaq filed a letter dated July 25, 2002 informing the Commission that from that date forward Nasdaq would comply with Section 19(b) with respect to Nasdaq Tools' products. *See* Letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated July 25, 2002. In the letter, Nasdaq acknowledged that it would have to seek a new exemption order from the Commission if Nasdaq subsequently determined to operate Nasdaq Tools in a manner requiring exemptive relief of Section 19(b) of the Act.

[7] Nasdaq has represented that only members will be affected by these fees. *See supra* note 3.

[8] 17 CFR 240.11Ac1–5.

[9] 17 CFR 240.11Ac1–6.

[10] 15 U.S.C. 78*o*–3(b)(5).

[11] 15 U.S.C. 78*o*–3(b)(6).

and provide quote update features. Thus, the discount also serves to avoid charging customers of both products twice for similar functionality. For these reasons, Nasdaq believes that the discount allows an equitable allocation of fees among Tools and Tools Plus customers.

Nasdaq contends that the proposed discount is consistent with previous rebates and discounts approved by the Commission. For example, Nasdaq contends that the Commission has approved credits and discounts based on transaction volume [12] and credits provided to owners of exchange seats that were not available to certain lessees of seats.[13] Nasdaq further contends that the discount also enables Nasdaq Trading Applications to compete with discounts offered by larger unregulated providers of management software and services. According to Nasdaq, this competition gives market participants greater product choice in the management software business.

c. *Tools Plus.* Nasdaq Tools, Inc. launched Tools Plus in the fall of 2001 as an order management service for NWII users that provides continuously updated valuation (including tracking positions, profits and losses, automatic execution), order display and risk management functions. Tools Plus also assists subscribers with trade reporting to ACT and connections to ECNs. Tools Plus distributes data associated with compliance obligations including the NASD's OATS Rules and Rules 11Ac1–5 and 11Ac1–6 under the Act. Tools Plus also delivers customer data to the customer's clearing firm. In particular, Tools Plus allows a customer to:

• Pre-configure the screen layout to monitor orders and quotes using various criteria.

• Combine multiple keystroke or mouse functions when executing orders and routing orders through Nasdaq systems (SuperMontage, SuperSoes, SelectNet or the Advanced Computerized Execution System ("ACES")), and non-Nasdaq systems (such as ECNs or other Tools Plus customers).

• Access a single screen quote montage displaying customized quote information from various ECNs connected to Tools Plus (currently, Wave Securities, LLC (ARCA) and Redibook ECN, LLC; Brut, LLC; The Island ECN; Instinet; MarketXT, Inc.; and B-Trade Services, LLC), if the customer has a subscriber agreement with the ECN.

• Access the following tools to manage risk and assess the profitability of trading activity at the firm:

—A monitoring feature that allows a supervisor to see the activity of each trader in the firm and track on a continuous basis each trader's profitability and long, short and total trade exposure.

—Updated information on the profitability for the firm of trading in a particular security.

• Facilitate compliance with Commission and self regulatory organization requirements by:

—Tracking and displaying all orders covered by NASD IM–2110–2, which prohibits NASD members from trading ahead of customer limit orders.

—Compiling order and trade data that can automatically be sent to the market maker's clearing firm after the close of the trading day.

—Reporting statistical information on order execution required by Rules 11Ac1–5 and 11Ac1–6 under the Act to third-party disclosure services.

—Creating a data file that meets the NASD's OATS requirements, which can be transmitted to the NASD on a nightly basis.[14]

• Customize Tools Plus software to accept order flow from any custom interface and to route orders to any system that the market maker requests.

Nasdaq provides two Microsoft NT database servers per market maker (the "client servers"). These servers are housed at the Nasdaq Trading Applications facility, currently in Jersey City, New Jersey. The client servers are connected through Nasdaq Trading Applications' network infrastructure to the Tools Plus core servers that re-distribute market data that is provided from the multiple data sources, including Nasdaq systems and ECNs and other non-Nasdaq systems discussed above. The client servers also store all order, position tracking and profit and loss information. Customers of Tools Plus do not receive any priority or other advantage in accessing Nasdaq's systems as a result of their subscription to Tool Plus. Tools Plus is designed to comply with the requirements of Rule 11Ac1–2(c) under the Act.[15]

The fees schedule for Tools Plus proposed in the rule change would apply to all customers and are comparable to fees previously charged for Tools Plus. The Tools Plus proposed fee structure consists of charges for installation, monthly terminal fees, connection to ECNs, monthly maintenance, equipment and pass through fees from the various data providers. The fee proposal includes a monthly fee per terminal of $750, with a volume reduction to $500 per terminal for customers with more than 30 or more terminals equipped with Tools Plus if the customer signs a two year contract (collectively, "Terminal Charges"). There is a monthly minimum aggregate fee for Terminal Charges of $2,000 per subscriber. Nasdaq Tools requires a deposit equal to two times the customer's actual monthly Terminal Charges, which is refunded to the customer upon termination of the contract net of any outstanding balances owed Nasdaq.

In addition, Nasdaq would charge subscribers for Computer to Computer Interface ("CTCI") and Service Delivery Platform ("SDP") [16] connections and for market data redistribution charges. Prior to the merger of Nasdaq and Nasdaq Tools, Inc., Nasdaq charged Nasdaq Tools, Inc. as a vendor for such purposes according to the same fee schedule applied to other vendors.[17] Nasdaq proposes to continue to use the same fee schedule applied to Nasdaq Tools, Inc. for these Nasdaq connections and information unless and until Nasdaq files a new proposed rule change. Nasdaq anticipates that the CTCI and SDP fees charged to customers of Tools Plus would continue to approximate the fees charged to vendors of Nasdaq.[18] The proposed fees are as follows:

• Connection to Nasdaq CTCI: $265 per subscriber (regardless of number of terminals);

• Connection to Nasdaq SDP: $250 per month per subscriber (regardless of number of terminals); and

• Market data redistribution charges: as set by relevant market data provider and passed through to Tools Plus subscribers at cost.

The SDP and CTCI charges relate to Tools Plus' CTCI and SDP connections to Nasdaq's systems and are in addition to any SDP and CTCI connections a customer may have to link directly to Nasdaq. The purposes for which Tools Plus connects to Nasdaq are limited and, accordingly, do not require a large amount of bandwidth. Nasdaq Trading Applications is able to send and receive data for a number of customers using the same SDP and CTCI connections and the fees charged to the subscribers to Tools Plus for the connections reflect these economies of scale. An NWII that displays Tools Plus connects directly to Nasdaq systems through an application-programming interface ("API"). Nasdaq directly bills customers of Tools Plus for API linkages.[19]

In addition, Nasdaq proposes to charge the following fees for Tools Plus:

• Installation fee of $13,550 for Tools Plus and one terminal and $140 for each additional terminal;

• One-time port charge of $1,250 for each line or $2,500 for two lines for access to Tools Plus;

• Training Fees of $400 per day plus travel expenses for on-site training and $150 for training course at Nasdaq (2 hours of training per user is included in price of installation); and

• ECN access maintenance charge of $250 per month for each customer (regardless of number of terminals) for each ECN accessed through Tools Plus.[20]

Nasdaq also creates custom interfaces for Tools Plus subscribers. Subscribers are supplied with a Statement of Work that outlines the time and resources needed to complete the project. The Statement of Work must be approved and signed by both the subscriber and Nasdaq before any programming begins. As is currently the case, each Tools Plus subscriber would receive one custom interface to the subscriber's clearing firm as part of the cost of installation of Tools Plus. Nasdaq proposes to charge by the hour for all other customized programming and maintenance on custom interfaces based on the labor schedule set forth below:

Standard Labor rates for:

Calendar year 2002	Calendar year 2003 and thereafter
Senior Programmer: $175/hour.	$200/hour
Programmer: $125/hour	$150/hour
Junior Programmer: $100/hour.	$125/hour
Project Management: $150/hour.	$175/hour
Network Engineer: $125/hour	$150/hour
Operations Support: $100/hour.	$125/hour

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[21] in general, and with Section 15A(b)(5) of the Act,[22] in particular, in that it provides for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq believes that the fees are reasonable in that they have been calculated to approximate the fees previously charged for Tools and Tools Plus products.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

A. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change contained in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [23] and subparagraph (f) of Rule 19b–4,[24] thereunder because it establishes or changes a due, fee or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–164 and should be submitted by January 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31651 Filed 12–16–02; 8:45 am]

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[12] Securities Exchange Act Release No. 44899 (October 2, 2001), 66 FR 51707 (October 10, 2001) (SR–NASD–01–63), Securities Exchange Act Release No. 44898 (October 2, 2001), 66 FR 51703 (October 10, 2001) (SR–NASD–01–64) (charges for order execution decrease incrementally as market maker's order volume increases).

[13] Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–01–49).

[14] Nasdaq reaffirms the representation made in a prior rule change that we commit that we will not use OATS data to gain a competitive advantage over another SRO or broker dealer (market maker or ECN) and confirms that we have put in place effective internal controls to carry out this policy of not using OATS data to obtain a competitive advantage. *See* Letter from Richard G. Ketchum, President, Nasdaq, to Robert L.D. Colby, Deputy Director, Division, Commission, dated January 8, 2001.

[15] 17 CFR 240.11Ac1–2(c).

[16] SDP charges are only paid by subscribers who handle customer orders.

[17] *See* NASD Rule 7010(f)(2) (SDP) and Rule 7010(f)(3) (CTCI). The SDP and CTCI fees charged customers of Tools Plus under the proposed fee schedule reflect band width savings that allow multiple customers to use the same SDP and CTCI connections, as discussed *infra*.

[18] Telephone conversation between John A. Zecca, Assistant General Counsel, Nasdaq and Susie Cho, Special Counsel, Division, Commission, December 9, 2002.

[19] Fees related to API linkages are set forth at NASD Rule 7010(f).

[20] This charge only applies to subscribers who route orders to the ECN.

[21] 15 U.S.C. 78o–3.

[22] 15 U.S.C. 78o–3(b)(5).

[23] 15 U.S.C. 78s(b)(3)(A)(ii).

[24] 17 CFR 240.19b–4(f).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46982; File No. SR–PCX–2002–70]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Amend its Schedule of Fees and Charges Relating to the Archipelago Exchange

December 11, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 15, 2002, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which the PCX has prepared. The Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] CFR 240.19b–4.

publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its fee schedule for services provided to ETP Holders and Sponsored Participants (collectively "Users") on the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. Specifically, the PCX proposes to (1) increase the per share transaction fee for odd-lot orders in listed securities that are routed away via ArcaEx and executed by another market center; and (2) increase the transaction credit for Market Makers who provide liquidity in exchange-listed American Depositary Receipts ("ADRs"). The text of the proposed rule change is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of the statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Routing Service Fee

The PCX currently charges all Users a transaction fee of $0.004 per share for any unfilled or residual portion of an odd-lot order in a listed security, including exchange-traded funds ("ETFs"), that is routed away via ArcaEx and executed by another market center or participant. The PCX proposes to increase this transaction fee to $0.03 per share to conform to the current fee of $0.03 per share that is applied to odd-lot orders executed on ArcaEx. The PCX notes that odd-lot orders that are created as a result of a partial fill of a round lot that are subsequently routed away and executed on another market will continue to be subject to the $0.004 per-share fee applicable to round lot orders. The PCX believes that this fee is reasonable and is structured to allocate fairly the costs of operating the ArcaEx facility.

2. Market Maker Transaction Credit

The PCX is proposing to increase the level of the transaction credit paid to market makers who provide liquidity in exchange-listed American Depositary Receipts ("ADRs"). Currently, market makers who enter "Q Orders" [3] in exchange-listed ADRs that are subsequently executed against incoming marketable orders earn a credit of $0.0015 per share. The PCX proposes to increase the level of the transaction credit for ADRs from $0.0015 to $0.002 per share.[4] The increased credit of $0.002 is the same amount that is currently applied to orders that provide liquidity in ETFs.[5] The PCX states that this credit is intended to create additional incentives to market makers to provide liquidity in ADRs that are traded on the ArcaEx facility.

The PCX believes that the proposal is consistent with section 6(b) of the Act,[6] particularly section 6(b)(4) of the Act,[7] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [8] and Rule 19b–4 (f) thereunder [9] because it changes a PCX fee. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that that action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of the filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–70 and should be submitted by January 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31654 Filed 12–16–02; 8:45 am]

BILLING CODE 8010–01–P

[3] Q Orders are limit orders that are submitted to ArcaEx by a market maker in those securities in which the market maker is registered to trade. *See* PCXE Rule 7.31(k).

[4] The current $0.02 per share credit that is provided to any market maker that executes against an odd-lot order in the Odd Lot Tracking Order Process will remain in effect.

[5] The increased credit of $0.002 parallels a recent change to the User Transaction Credit for certain transactions in ADRs. *See* Securities Exchange Act Release No. 46784 (November 7, 2002), 67 FR 69283 (November 15, 2002) (SR–PCX–2002–68).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

[10] 17 CFR 200.30–3(a)(12).

OFFICE OF SPECIAL COUNSEL

Change of Address for Dallas Office

AGENCY: Office of Special Counsel

ACTION: Notice

SUMMARY: Effective Monday, December 9, 2002, the Dallas Field Office (DFO) of the U.S. Office of Special Counsel (OSC) moved to the A. Maceo Smith Federal Building, 525 Griffin Street, Room 824, Box 103, Dallas, TX 75202. The DFO telephone number continues to be (214) 767–8871. Additional OSC contact information can be found on the agency Web site at *http://www.osc.gov*.

EFFECTIVE DATE: December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Kathryn Stackhouse, by mail to the Planning and Advice Division, 1730 M Street, NW. (Suite 201), Washington, DC 20036; by telephone, at (202) 653–8971; or by fax, at (202) 653–5161.

Dated: December 10, 2002.

Elaine D. Kaplan,

Special Counsel.

[FR Doc. 02–31648 Filed 12–16–02; 8:45 am]

BILLING CODE 7405–01–S

DEPARTMENT OF STATE

[Public Notice 4231]

Culturally Significant Objects Imported for Exhibition; Determinations: "Origins of the Russian Avant-Garde"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, I hereby determine that the objects to be included in the exhibition, "Origins of the Russian Avant-Garde," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with a foreign lender. I also determine that the exhibition or display of the exhibit objects at the Walters Art Museum, Baltimore, Maryland, from on or about February 13, 2003, to on or about May 25, 2003, the Fine Arts Museum of San Francisco, San Francisco, California, from on or about June 29, 2003, to on or about September 21, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: December 11, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–31688 Filed 12–16–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4230]

Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to the Moroccan Islamic Combatant Group (GICM)

Acting under the authority of Section 1(b) of Executive Order 13224 of September 23, 2001, and in consultation with the Secretary of the Treasury and the Attorney General, I hereby determine that the Moroccan Islamic Combatant Group (GICM) has committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register.**

Dated: December 5, 2002.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 02–31687 Filed 12–16–02; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: System of Records

AGENCY: Transportation Security Administration, DOT.

ACTION: Notice to establish three systems of records.

SUMMARY: DOT proposes to establish three systems of records under the Privacy Act of 1974 and to exempt them from certain provisions of the Act.

EFFECTIVE DATE: January 27, 2003. If no comments are received, the proposal will become effective on the above date. If comments are received, the comments will be considered and, where adopted, the documents will be republished with changes.

FOR FURTHER INFORMATION CONTACT: Yvonne L. Coates, Department of Transportation, Office of the Secretary, 400 7th Street, SW., Washington, DC 20590, (202) 366–6964 (telephone), (202) 366–7024 (fax), *Yvonne.Coates@ost.dot.gov* (Internet address).

SUPPLEMENTARY INFORMATION: The Department of Transportation systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the above mentioned address.

DOT/TSA 001

SYSTEM NAME:

Transportation Security Enforcement Record System (TSERS).

SECURITY CLASSIFICATION:

Classified, sensitive.

SYSTEM LOCATION:

Records are maintained in the Office of Chief Counsel, the Office of the Associate Under Secretary for Aviation Operations, and the Office of the Associate Under Secretary for Inspection, Transportation Security Administration (TSA), Department of Transportation, 400 7th Street, SW., Washington, DC 20590. Records will also be maintained at the various TSA field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Owners, operators, and employees in all modes of transportation for which TSA has security-related duties; witnesses; passengers undergoing screening of their person or property; and individuals against whom investigative, administrative, or legal enforcement action has been initiated for violation of certain Transportation Security Administration Regulations (TSR), relevant provisions of 49 U.S.C. chapter 449, or other laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to the screening of passengers and property and the investigation or prosecution of any alleged violation, including name of and demographic information about alleged violators and witnesses; place of violation; Enforcement Investigative Reports (EIRs); security incident reports, screening reports, suspicious-activity

reports and other incident or investigative reports; statements of alleged violators and witnesses; proposed penalty; investigators' analyses and work papers; enforcement actions taken; findings; documentation of physical evidence; correspondence of TSA employees and others in enforcement cases; pleadings and other court filings; legal opinions and attorney work papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 114(d), 44901, 44903, 44916, 46101, 46301.

PURPOSE(S):

The records are created in order to maintain a civil enforcement and inspections system for all modes of transportation for which TSA has security related duties. They may be used, generally, to identify, review, analyze, investigate, and prosecute violations or potential violations of transportation security laws.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Furnish responses to queries from Federal, State, tribal, territorial, and local law enforcement and regulatory agencies, both foreign and domestic, regarding individuals who may pose a risk to transportation or national security; a risk of air piracy or terrorism or a threat to airline or passenger safety; or a threat to aviation safety, civil aviation, or national security.

(2) Furnish information to airport operators, aircraft operators, and maritime and land transportation operators about individuals who are their employees, job applicants, or contractors, or persons to whom they issue identification credentials, or grant clearances to secured areas in transportation facilities.

(3) Disclose information to a Federal, State, or local agency, maintaining a civil, criminal or other relevant enforcement information or other pertinent information, that has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit.

(4) Furnish information to the news media in accordance with the guidelines contained in 28 CFR 50.2, which relate to civil and criminal proceedings.

(5) Furnish information to the Department of State and the Intelligence Community to further those agencies' efforts with respect to individuals who may pose a risk to transportation or national security; a risk of air piracy or terrorism or a threat to airline or passenger safety; or a threat to aviation safety, civil aviation, or national security.

(6) Provide information or records, when appropriate, to international and foreign governmental authorities in accordance with law and formal or informal international agreement.

(7) To any person performing a contract for TSA to the extent necessary to perform the contract.

(8) To any agency or instrumentality charged under applicable law with the protection of the public health or safety under exigent circumstances where the public health or safety is at risk.

(9) To provide information contained in the records to third parties during the course of any law enforcement investigation into violations or potential violations of transportation security laws to the extent necessary to obtain information pertinent to the investigation.

(10) To the Department of Justice, United States Attorney's Office, or other Federal agencies for further collection action on any delinquent debt when circumstances warrant.

(11) To a debt collection agency for the purpose of debt collection. *See also* DOT Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Privacy Act information may be reported to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12) collecting on behalf of the United States Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and in computer-accessible storage media. Records are also stored on microfiche and roll microfilm.

RETRIEVABILITY:

Records are retrieved by name, address, social security account number, administrative action or legal enforcement numbers, or other assigned identifier of the individual on whom the records are maintained.

SAFEGUARDS:

Access to TSA working and storage areas is restricted to DOT employees on a "need to know" basis. Strict control measures are enforced to ensure that access to classified and/or sensitive information in these records is also based on "need to know." Electronic access is limited by computer security measures that are strictly enforced. Generally, TSA file areas are locked after normal duty hours and the facilities are protected from the outside by security personnel.

RETENTION AND DISPOSAL:

National Archives and Records Administration approval is pending for the records in this system. Paper records and information stored on electronic storage media are maintained within TSA for 5 years and then forwarded to Federal Records Center. Records are destroyed after 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Information Systems Program Manager, Office of the Chief Counsel, Transportation Security Administration, GSA Regional Office Building Room 5002, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should contact the System Manager at the above address. Inquiries should include the individual's full name, social security number, and return address.

RECORD ACCESS PROCEDURE:

See "Notification Procedure." Individuals requesting access must comply with the DOT's Privacy Act regulations on verification of identity (49 CFR 10.37).

CONTESTING RECORD PROCEDURES:

See "Notification Procedure."

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the alleged violator, TSA employees or contractors, witnesses to the alleged violation or events surrounding the alleged violation, other third parties who provided information regarding the alleged violation, state and local agencies, and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system are exempt under 5 U.S.C. 552a(k)(2).

DOT/TSA 002

SYSTEM NAME:

Transportation Workers Employment Investigations System (TWEI).

SECURITY CLASSIFICATION:

Classified, sensitive.

SYSTEM LOCATION:

Records are maintained at the offices of the Transportation Security Administration (TSA), Department of Transportation (DOT), 400 7th Street, SW., Washington, DC 20590. Some records may also be maintained at the offices of a TSA contractor, or in TSA field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Individuals, other than employees of Federal, State, tribal, territorial, and local governments (including law enforcement officers), who require or seek access to airport sterile areas; have unescorted access authority to a security identification display area (SIDA); have authority to grant others unescorted access to a SIDA; are seeking unescorted access authority to a SIDA; are seeking to have authority to grant others unescorted access to a SIDA; have regular escorted access to a SIDA; or are seeking regular escorted access to a SIDA.

b. Individuals who have or are seeking responsibility for screening passengers or carry-on baggage, and those individuals serving as immediate supervisors and the next supervisory level to those individuals, other than employees of the TSA who perform or seek to perform these functions.

c. Individuals who have or are seeking responsibility for screening checked baggage or cargo, and their immediate supervisors, other than employees of the TSA who perform or seek to perform these functions.

d. Individuals who have or are seeking the authority to accept checked baggage for transport on behalf of an aircraft operator that is required to screen passengers.

e. Pilots, flight engineers, flight navigators, and flight attendants assigned to duty in an aircraft during flight time for an aircraft operator that is required to adopt and carry out a security program.

f. Individuals, other than employees of Federal, State, tribal, territorial, and local governments, who have or are seeking access to a transportation facility in the maritime or land transportation system.

g. Other individuals who are connected to the transportation industry for whom TSA may be required by statute to conduct background investigations to provide an adequate level of transportation security.

CATEGORIES OF RECORDS IN THE SYSTEM:

TSA's automated system may contain any or all of the following: (a) Name; (b) social security number; (c) date of birth; (d) submitting office number of the airport, aircraft operator, or maritime or land transportation operator submitting the individual's information; (e) OPM case number; (f) other data as required by form FD 258 (fingerprint card); (g) dates of submission and transmission of the information, as necessary to assist in tracking submissions, payments, and transmission of records; (h) identification records obtained from the Federal Bureau of Investigation (FBI), which are compilations of criminal history record information pertaining to individuals who have criminal fingerprints maintained in the FBI's Fingerprint Identification Records System (FIRS); (i) data gathered from foreign governments that is necessary to address security concerns in the aviation, maritime, or land transportation systems; (j) information provided by the Central Intelligence Agency and other members of the Intelligence Community, and (k) other information provided by the information systems of other Federal, State, tribal, and local governmental agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. sections 114 and 44936.

PURPOSE(S):

To facilitate the performance of employment investigations, including fingerprint-based criminal history records checks (CHRCs), which Federal law and TSA regulations require for the individuals identified in "Categories of individuals covered by the system" above.

a. To assist in the management and tracking of the status of employment investigations.

b. To permit the retrieval of the results of employment investigations, including criminal history records checks and searches in other governmental identification systems, performed on the individuals covered by this system.

c. To permit the retrieval of information from other law enforcement and intelligence databases on the individuals covered by this system.

d. To track the fees incurred and payment of those fees by the airport operators, aircraft operators, and maritime and land transportation operators for services related to the employment investigations.

e. To facilitate the performance of other investigations that TSA may be required by statute to complete to provide an adequate level of transportation security.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Furnish information or records, electronically or manually, to contractors, grantees, experts, consultants, agents and other non-DOT employees performing or working on a contract, service, grant, cooperative agreement, or other assignment from the Federal government for the purpose of providing consulting, data processing, clerical, or secretarial functions to assist TSA in all functions relevant to the employment investigations.

(2) Furnish to airport operators, aircraft operators, and maritime and land transportation operators that are required to conduct an employment investigation, or to be informed of the results of an employment investigation, for individuals covered by this system pursuant to 49 U.S.C. 114 and 44936 and regulations in 49 CFR chapter XII.

(3) Furnish to the Office of Personnel Management (OPM), the FBI, and other government agencies, as necessary, to conduct the employment investigations and to facilitate payment and accounting.

(4) Furnish responses to queries from Federal, State, tribal, territorial, and local law enforcement and regulatory agencies, both foreign and domestic, regarding individuals who may pose a risk to transportation or national security; a risk of air piracy or terrorism or a threat to airline or passenger safety; or a threat to aviation safety, civil aviation, or national security.

(5) Furnish information to individuals and organizations, in the course of enforcement efforts, to the extent necessary to elicit information pertinent to the investigation, prosecution, or enforcement of civil or criminal statutes, rules, regulations or orders regarding individuals who may pose a risk to transportation or national security; a risk of air piracy or terrorism or a threat to airline or passenger safety; or a threat to aviation safety, civil aviation, or national security.

(6) Disclose information to a Federal, State, tribal, territorial, or local agency maintaining a civil, criminal or other relevant enforcement information or other pertinent information, that has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit.

(7) Furnish information to the news media in accordance with the guidelines contained in 28 CFR 50.2, which relate to civil and criminal proceedings.

(8) Furnish information to the Department of State and the Intelligence Community to further those agencies' efforts with respect to individuals who may pose a risk to transportation or national security; a risk of air piracy or

terrorism or a threat to airline or passenger safety; or a threat to aviation safety, civil aviation, or national security.

(9) Provide information or records, when appropriate, to international and foreign governmental authorities in accordance with law and formal or informal international agreement.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In electronic storage media and hard copy.

RETRIEVABILITY:

TSA system administrators can retrieve information by the unique "submitting office number" of the aviation, maritime, or land transportation operator that submitted the individual's information, the individual's social security number, individual's name and date of birth, the date the request was scheduled for processing, date the investigation is closed, and the OPM case number.

Aviation, maritime, and land transportation operators retrieve the status and results of the employment investigations only for those individuals whose information they have submitted, and can do so electronically. Aviation, maritime, and land transportation operators use their submitting office number combined with the social security number of the requested subject to retrieve an individual's records.

SAFEGUARDS:

All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to those authorized with a need-to-know; using locks, alarm devices, and passwords; and encrypting data communications.

RETENTION AND DISPOSAL:

National Archives and Records Administration approval is pending for the records in this system. The request is for all records to be purged one year after receipt by TSA.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Security, Office of Finance and Administration, TSA, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

To determine whether this system contains records relating to you, write to the System Manager identified above.

RECORD ACCESS PROCEDURES:

Same as "Notification Procedures" above. Provide your full name and a description of information that you seek, including the time frame during which the record(s) may have been generated. Individuals requesting access must comply with the DOT's Privacy Act regulations on verification of identity (49 CFR 10.37).

CONTESTING RECORD PROCEDURES:

Same as "Notification Procedures," and "Record Access Procedures" above.

RECORD SOURCE CATEGORIES:

Information is collected from individuals subject to a criminal history records check under 49 U.S.C. 114 and 44936 and 49 CFR chapter XII. Information is also collected from aviation, maritime, and land transportation operators. Information is also collected from domestic and international intelligence sources, including the Central Intelligence Agency. The sources of information in the criminal history records obtained from the FBI are set forth in the Department of Justice Privacy Act system of records notice "JUSTICE/FBI–009."

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system are exempt under 5 U.S.C. 552a(k)(1) and (k)(2).

DOT/TSA 004

SYSTEM NAME:

Personnel Background Investigation File System.

SECURITY CLASSIFICATION:

Classified, sensitive.

SYSTEM LOCATION:

Records are maintained at the offices of the Transportation Security Administration (TSA), Department of Transportation (DOT), 400 7th Street, SW., Washington, DC 20590. Some records may also be maintained at the offices of a TSA contractor, or in TSA field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TSA employees, applicants for TSA employment, and TSA contract employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains an index reference record used to track the status of an applicant's background investigation, standard form 85P—Questionnaire For Public Trust Positions," investigative summaries and compilations of criminal history record checks, and administrative records and correspondence incidental to the background investigation process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301, 3302; 49 U.S.C. 114, 44935; and Executive Orders 10,450, 10,577, and 12,968.

PURPOSE(S):

The system will maintain investigative and background records used to make suitability and eligibility determinations for the individuals listed under "Categories of individuals."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Except as noted in Question 14 of the Questionnaire for Public Trust Positions, when a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute, particular program statute, regulation, rule, or order issued pursuant thereto, the relevant records may be disclosed to the appropriate Federal, State, tribal, territorial, foreign, local, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order.

2. To any source or potential source from which information is requested in the course of an investigation concerning the hiring or retention of an employee or other personnel action, or the issuing or retention of a security clearance, contract, grant, license, or other benefit, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

3. To contractors, grantees, experts, consultants, or volunteers when necessary to perform a function or service related to this record for which they have been engaged. Such recipients are required to comply with the Privacy Act, 5 U.S.C. 552a, as amended.

4. To contractors, grantees, experts, consultants or volunteers to communicate the results of a suitability and/or eligibility determination for their employee or contractor, or for any other individual performing work for the agency under their direction and control.

5. To any agency or instrumentality charged under applicable law with the protection of the public health or safety under exigent circumstances where the public health or safety is at risk.

See also Department of Transportation Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and in computer-accessible storage media. Records are also stored on microfiche and roll microfilm.

RETRIEVABILITY:

Records are retrieved by name, address, and social security account number or other assigned tracking identifier of the individual on whom the records are maintained.

SAFEGUARDS:

Access to TSA working and storage areas is restricted to DOT employees on a "need to know" basis. Strict control measures are enforced to ensure that access to these records is also based on "need to know." Generally, TSA file areas are locked after normal duty hours and the facilities are protected from the outside by security personnel.

RETENTION AND DISPOSAL:

Paper records and information stored on electronic storage are destroyed upon notification of death or not later than 5 years after separation or transfer of employee or no later than 5 years after contract relationship expires, whichever is applicable.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Security, Transportation Security Administration, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

To determine whether this system contains records relating to you, write to the System Manager identified above.

RECORD ACCESS PROCEDURES:

Same as "Notification Procedures" above. Provide your full name and a description of information that you seek, including the time frame during which the record(s) may have been generated. Individuals requesting access must comply with the Department of Transportation's Privacy Act regulations on verification of identity (49 CFR 10.37).

CONTESTING RECORD PROCEDURES:

Same as "Notification Procedure," and "Record Access Procedures" above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the job applicant on the Questionnaire For Public Trust Positions, law enforcement and intelligence agency record systems, publicly-available government records and commercial data bases.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system are exempt under 5 U.S.C. 552a(k)(5).

OMB CONTROL NUMBERS:

OMB No. 3206–0191, standard form 85P—Questionnaire For Public Trust Positions.

Dated: December 10, 2002.

Yvonne L. Coates,

Privacy Act Coordinator.

[FR Doc. 02–31594 Filed 12–16–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34269]

RailAmerica, Inc., et al.—Control and Merger Exemption—A&R Line, Inc., and J.K. Line, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board grants an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323–25 for noncarrier RailAmerica, Inc., *et al.*, to acquire control of A&R Line, Inc. (A&R Line), and J.K. Line, Inc. (J.K. Line), two wholly owned Class III railroad subsidiaries of Cargill, Incorporated, and to merge A&R Line and J.K. Line into the Toledo, Peoria & Western Railway Corporation, subject to the employee protective conditions described in *Wisconsin Central Ltd.—Acquisition Exem.—Union Pac. RR*, 2 S.T.B. 218 (1997).

DATES: This exemption will be effective on December 31, 2002. Petitions to stay must be filed by December 23, 2002. Petitions to reopen must be filed by December 27, 2002.

ADDRESSES: An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34269, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of all pleadings must be served on petitioners' representative, Louis E. Gitomer, Esq., Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Copies of the decision may be purchased from Dā 2 Dā Legal Copy Service by calling (202) 293–7776 (assistance for the hearing impaired is available through FIRS at 1–800–877–8339) or by visiting Suite 405, 1925 K Street, NW., Washington, DC 20006.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 11, 2002.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams,

Secretary.

[FR Doc. 02–31683 Filed 12–16–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Financial Management Service

Privacy Act of 1974; Computer Matching Programs

AGENCY: Financial Management Service, Treasury.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. 552a, the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the conduct by Financial Management Service (FMS) of matching programs.

EFFECTIVE DATE: January 16, 2003.

ADDRESSES: Comments or inquiries may be submitted to the Debt Management Services, Financial Management Service, 401 14th Street, SW., Room 448B, Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Program Specialist, Debt Management Services, (202) 874–6660.

SUPPLEMENTARY INFORMATION: FMS is the lead agency in the Federal government for administrative debt collection, and collects delinquent non-tax debts owed to the Federal government and delinquent debts owed to States, including past-due child support

obligations being enforced by States. One of the key debt collection tools used by FMS is administrative offset. As amended by the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104–134 (April 26, 1996), 31 U.S.C. 3716 requires Federal disbursing officials to offset payments to collect delinquent debts submitted to FMS by Federal agencies for collection by offset. This process is known as "centralized administrative offset" or "centralized offset." In addition, 31 U.S.C. 3716 authorizes the use of centralized offset to collect delinquent debts owed to states. Federal and State agencies submit delinquent debtor information to FMS, and FMS maintains information about individuals in a "system of records" for debt collection entitled "Debt Collection Operations System," identified as Treasury/FMS .014.

To implement the centralized offset provisions of the DCIA, FMS matches records concerning Federal payments with its debt collection records. To date, FMS has concentrated its efforts on offsetting Treasury-disbursed payments made by FMS. For this purpose, a comprehensive notice of computer matches was published in the **Federal Register** on August 28, 1997, Volume 62 at page 45699 concerning records contained in FMS' payment systems of records (Payment Issue Records for Regular Recurring Benefit Payments (Treasury/FMS .002) and Payment Records for Other than Regular Recurring Benefit Payments (Treasury/FMS .016)) with records contained in the FMS' Debt Collection Operations System.

FMS is working with other Federal agencies authorized to disburse Federal payments, known as Non-Treasury Disbursing Officials (NTDOs), to implement centralized offset of payments disbursed by Federal agencies other than FMS. *See, for example,* the notice published in the **Federal Register** on September 23, 2002, Volume 67 at page 59596 concerning payments disbursed by the United States Postal Service. This notice concerns the computer matching programs used to facilitate administrative offset involving records from FMS' "Debt Collection Operations System" and records from the following system maintained by an NTDO: United States Department of Defense: DFAS Payroll Locator File System (PLFS) (T7330).

The DCIA provides authority for Treasury to waive subsections (o) and (p) of 5 U.S.C. 552a (relating to computer matching agreements and post-offset notification and verification) upon written certification by the head of a state or an executive, judicial, or legislative agency seeking to collect the claim that the requirements of subsection (a) of 31 U.S.C. 3716 have been met. Treasury has exercised its authority to waive the aforementioned requirements, and the waiver will be in effect prior to the commencement of the computer matching program(s) identified in this notice. Interested parties may obtain documentation concerning the waiver from the contact listed above.

NAME OF SOURCE AGENCY:

United States Department of Defense

NAME OF RECIPIENT AGENCY:

Financial Management Service

BEGINNING AND COMPLETION DATES:

These programs of computer matches will commence not earlier than the thirtieth day after this notice appears in the **Federal Register**. The matching will continue indefinitely, or until the waiver from the requirements of 5 U.S.C. 552a(o) and (p) is revoked.

PURPOSE:

The purpose of these programs of computer matches is to identify payments made to individuals who owe delinquent debts to the Federal government or to state governments, as well as individuals who owe past-due support being collected by state governments, which will be collected by offset pursuant to 31 U.S.C. 3716, and to offset such payments where appropriate to satisfy those debts.

AUTHORITY:

Authority for these programs of computer matches is granted under 31 U.S.C. 3716.

CATEGORIES OF INDIVIDUALS COVERED:

Individuals receiving payments from the Federal government which are disbursed by the United States Department of Defense; and individuals who owe debts to the United States and/or a state government, or who owe past-due support being enforced by a state government, and whose debts may be collected by offset in accordance with 31 U.S.C. 3716.

CATEGORIES OF RECORDS COVERED:

Included in these programs of computer matches is information concerning the debtor contained in the Debt Collection Operations System (Treasury/FMS .014) including name, taxpayer identification number, the amount of the indebtedness, the name and address of the state or Federal agency who is principally responsible for collecting the debt, and the name, phone number and address of a state or agency contact. Information contained in the following system: United States Department of Defense: DFAS Payroll Locator File System (PLFS) (T7330), which shall be included in these programs of computer matches shall include name, taxpayer identification number, mailing address, and the amount and type of payment.

Dated: December 9, 2002.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

[FR Doc. 02–31587 Filed 12–16–02; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Privacy Act of 1974; System of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury (Department) gives notice of a proposed system of records entitled "Treasury/DO .216—Treasury Security Access Control and Certificates Systems."

DATES: Comments must be received no later than January 16, 2003. The proposed system of records will be effective January 27, 2003, unless the Department receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to Patrick Geary, Director, Physical Security, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC. E-mail: *patrick.geary@do.treas.gov*

FOR FURTHER INFORMATION CONTACT: Patrick Geary, Office of Security, (202) 622–1058.

SUPPLEMENTARY INFORMATION: The Department of the Treasury is giving notice of a new system of records which is subject to the Privacy Act. The proposed system of records will maintain Treasury headquarters, Departmental Offices (DO), information on all employees and contractors working in DO for the purpose of providing additional physical and cyber security for DO assets. The new system of records covers three principal areas: (1) Physical access to the Treasury headquarters complex, selected spaces in that complex and other DO spaces; (2) Access to cyber information assets; and (3) Physical access to off-site continuity of operations locations. New

identification badges will be issued containing the employee's photograph, fingerprint minutia, a public key (PKI) certificate and the employee's social security number.

DO plans to implement a new Access Control System for Treasury headquarters including the Main Treasury and Annex buildings that will utilize new DO identification badges to be issued because of the September 11, 2001 incidents. The new badge will be used to gain access to cyber assets including the DO desktop PC, the DO LAN, DO laptop and notebook computers. Finally, the new badge will be utilized by selected DO staff and contractors involved and/or designated as key personnel during conditions that require activation of the DO COOP locations. The badge, which includes biometrics, will be used as an additional level of security authentication during conditions that involve activation of COOP sites.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated November 30, 2000. This system of records, "Treasury/DO .216—Treasury Security Access Control and Certificates Systems," is published in its entirety below.

Dated: December 3, 2002.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

Treasury/DO .216

SYSTEM NAME:

Treasury Security Access Control and Certificates Systems.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Treasury employees, contractors, media representatives, other individuals requiring access to Treasury facilities or to receive government property, and those who need to gain access to a Treasury DO cyber asset including the network, LAN, desktops and notebooks.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application for security/access badge, individual's photograph, finger print record, special credentials, allied papers, registers, and logs reflecting sequential numbering of security/access badges. The system also contains information needed to establish accountability and audit control of digital certificates that have been assigned to personnel who require access to Treasury DO cyber assets including the DO network and LAN as well as those who transmit electronic data that requires protection by enabling the use of public key cryptography. It also contains records that are needed to authorize an individual's access to a Treasury network.

Records may include the individual's name, organization, work telephone number, Social Security Number, date of birth, Electronic Identification Number, work e-mail address, username and password, country of birth, citizenship, clearance and status, title, home address and phone number, biometric data including fingerprint minutia, and alias names.

Records on the creation, renewal, replacement or revocation of digital certificates, including evidence provided by applicants for proof of identity and authority, sources used to verify an applicant's identity and authority, and the certificates issued, denied and revoked, including reasons for denial and revocation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321; the Electronic Signatures in Global and National Commerce Act, Pub. L. 106–229, and E.O. 9397 (SSN).

PURPOSE(S):

The purpose is to: Improve security to both Treasury DO physical and cyber assets; maintain records concerning the security/access badges issued; restrict entry to installations and activities; ensure positive identification of personnel authorized access to restricted areas; maintain accountability for issuance and disposition of security/access badges; maintain an electronic system to facilitate secure, on-line communication between Federal automated systems, between Federal employees or contractors, and or the public, using digital signature technologies to authenticate and verify identity; provide a means of access to Treasury cyber assets including the DO network, LAN, desktop and laptops; and to provide mechanisms for non-repudiation of personal identification and access to DO sensitive cyber systems including but not limited to human resource, financial, procurement, travel and property systems as well as tax, econometric and other mission critical systems. The system also maintains records relating to the issuance of digital certificates utilizing public key cryptography to employees and contractors for purpose of the transmission of sensitive electronic material that requires protection.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to: (1) Appropriate Federal, state, local and foreign agencies for the purpose of enforcing and investigating administrative, civil or criminal law relating to the hiring or retention of an employee; issuance of a security clearance, license, contract, grant or other benefit;

(2) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of or in preparation for civil discovery, litigation, or settlement negotiations, in response to a subpoena where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) A contractor for the purpose of compiling, organizing, analyzing, programming, or otherwise refining records to accomplish an agency function subject to the same limitations applicable to U.S. Department of the Treasury officers and employees under the Privacy Act;

(4) A Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(6) The Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, Federal Labor Relations Authority, and the Office of Special Counsel for the purpose of properly administering Federal personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and regulations;

(7) Representatives of the National Archives and Records Administration (NARA) who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906; and

(8) Other Federal agencies or entities when the disclosure of the existence of the individual's security clearance is

needed for the conduct of government business.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored as electronic media and paper records.

RETRIEVABILITY:

Records are retrieved by individual's name, social security number, electronic identification number and/or access/security badge number.

SAFEGUARDS:

Entrance to data centers and support organization offices are restricted to those employees whose work requires them to be there for the system to operate. Identification (ID) cards are verified to ensure that only authorized personnel are present. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols which are periodically changed. Reports produced from the remote printers are in the custody of personnel and financial management officers and are subject to the same privacy controls as other documents of like sensitivity.

Access is limited to authorized employees. Paper records are maintained in locked safes and/or file cabinets. Electronic records are password-protected. During non-work hours, records are stored in locked safes and/or cabinets in locked room.

Protection and control of any sensitive but unclassified (SBU) records are in accordance with TD P 71–10, Department of the Treasury Security Manual. Access to the records is available only to employees responsible for the management of the system and/or employees of program offices who have a need for such information.

RETENTION AND DISPOSAL:

The records on government employees and contractor employees are retained for the duration of their employment at the Treasury Department. The records on separated employees are destroyed or sent to the Federal Records Center in accordance with General Records Schedule 18.

SYSTEM MANAGER(S) AND ADDRESS:

Departmental Offices: Director, Office of Physical Security, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendix A.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The information contained in these records is provided by or verified by the subject individual of the record, supervisors, other personnel documents, and non-Federal sources such as private employers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–31261 Filed 12–16–02; 8:45 am]
BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Customs Service

Modification of National Customs Automation Program Test Regarding Electronic Presentation of Cargo Declarations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces modifications to the vessel paperless manifest program test that provides for the electronic transmission of certain vessel cargo declaration information to Customs through the Vessel Automated Manifest System (AMS). Specifically, the changes to the program test relate to the following: (1) Test participants must electronically transmit cargo declaration information to Customs through Vessel AMS 24 hours prior to lading the cargo aboard the vessel at the foreign port; (2) test participants must electronically transmit manifest information on empty containers to Customs through the Empty Container Module within Vessel AMS; and (3) Customs is discontinuing use of the paperless cargo declaration standards checklist that was developed for determining carrier compliance with the test. Public comments are invited on any aspect of the program test as further modified by today's announcement.

DATES: The effective date for test participants to transmit cargo declaration information 24 hours prior to lading the cargo aboard vessels at foreign ports is December 2, 2002. The effective date for test participants to electronically transmit manifest data on empty containers to Customs through the Empty Container Module within Vessel AMS is June 2, 2003. Letters requesting participation in the test and comments concerning any aspect of the test will continue to be accepted throughout the testing period.

ADDRESSES: Written comments regarding the program test and letters requesting participation in the program test should be addressed to the Manifest and Conveyance Branch, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Room 5.2b, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: For operational or policy matters: Julie Hannan, Manifest and Conveyance Branch, (202–927–1364); or Pete Flores, Manifest and Conveyance Branch, (202–927–0333).

For legal matters: Larry L. Burton, Office of Regulations and Rulings, (202–572–8724).

SUPPLEMENTARY INFORMATION:

Background

On September 10, 1996, Customs published a notice in the **Federal Register** (61 FR 47782) announcing a program test to allow the electronic transmission of certain vessel cargo declaration information to Customs through the Automated Manifest System (AMS). The September 10, 1996, notice described the parameters and requirements of the test, informed interested members of the public of the eligibility and application criteria for participation in the test, and requested comments concerning any aspect of the test. The test commenced on February 11, 1997, and, by a notice published in the **Federal Register** (62 FR 66719) on December 19, 1997, the program test was extended and modified with respect to the presentation of manifest information on empty containers. Since its inception, as noted, the test has been running successfully with 35 vessel carriers as participants.

Pertinent Aspects of Current Program Test

As prescribed in the September 10, 1996, program test notice, a participating vessel carrier must electronically transmit to Customs complete and accurate cargo declaration information no less than 48 hours prior to the actual arrival of the vessel at a port in the United States.

Furthermore, as modified by the December 19, 1997, notice, the program test provided that empty containers were to be manifested either by transmitting through the Customs Automated Manifest System (AMS) a list of the empty containers on board the vessel by port of discharge, or by providing the same list to Customs on paper, using a CF (Customs Form) 1302 Cargo Declaration.

Lastly, it is observed that, in implementing the program test, Customs developed a paperless manifest standards checklist for determining carrier compliance with all parameters and operating procedures established under the program test.

Modifications to the Vessel Paperless Manifest Program Test

Today's notice announces a number of changes to the above-described requirements and operating procedures for the vessel paperless manifest program test. These changes to the program test are discussed below.

Presentation of Information 24 Hours Before Foreign Lading

Most significantly, today's notice modifies the program test to provide that test participants must electronically transmit required vessel cargo declaration information to Customs 24 hours before the cargo is laden aboard the vessel at the foreign port. This modification to the program test is necessary to ensure that test participants comply with the final rule document published in the **Federal Register** (67 FR 66318) as Treasury Decision (T.D.) 02–62 on October 31, 2002. The final rule document, T.D. 02–62, amended the Customs Regulations principally to require that vessel cargo declaration information be presented to Customs at least 24 hours prior to lading the cargo aboard the vessel at the foreign port.

In this regard, it is noted that T.D. 02–62 expressly informed the public that the vessel paperless manifest program test would be amended by the effective date of the final rule (December 2, 2002) so as to require participants in the test to abide by the 24-hour requirement for presenting required vessel cargo declaration information to Customs (67 FR at 66324). As explained in the final rule document, such advance presentation of vessel cargo declaration information to Customs is required and urgently needed in order to enable Customs to evaluate the risk of smuggling weapons of mass destruction through the use of oceangoing cargo containers before goods are loaded on vessels at a foreign port for importation into the United States, and for enforcement of other Customs law violations.

Electronic Presentation of Empty Container Lists

Vessel carriers participating in the program test must electronically transmit to Customs lists of empty containers that are carried aboard any of their vessels destined for the United States. Also, any vessel carrier participating in the test that slot charters a vessel destined for the United States must electronically transmit any required lists of empty containers carried aboard the vessel for which that carrier is responsible. It is noted that there is no requirement that a bill of lading be associated with any empty container manifesting under the program test.

Moreover, as made clear in T.D. 02–62 (67 FR at 66328), all participants in the vessel paperless manifest program test must continue to file an empty container list with Customs 48 hours prior to the arrival of the vessel in the United States.

Lists Presented Through Empty Container Module of Automated Manifest System

Beginning June 2, 2003, the electronic transmission of such empty container lists to Customs must be effected through the Empty Container Module of the Customs Vessel Automated Manifest System (AMS). To successfully effect such transmissions and continue participation in this empty container manifest program, test participants using the American National Standards Institute, Accredited Standards Committee X12 (ANSI, ASCX12) electronic format must convert to the latest version of that format (4010).

Initial Empty Container List; Re-Transmitted Lists for Intermediate Ports

Specifically, 48 hours prior to the arrival of a vessel at the first port in the United States, the test participant, beginning June 2, 2003, must electronically transmit to Customs through the Empty Container Module an initial list of all empty containers carried aboard the vessel, regardless of their anticipated port(s) of unlading. The electronically transmitted list must also reflect the foreign port of loading of each empty container.

Furthermore, if the vessel is thereafter proceeding coastwise, within 24 hours after the time of the vessel's arrival at the first United States port, and at least two hours prior to its estimated time of arrival at the next United States port, the test participant must retransmit the empty container list indicating all empty containers remaining on board the vessel from foreign as well as those domestic containers which were laden aboard at the previous United States port and which are to be discharged either at other United States ports or at foreign destinations. This same procedure of re-transmitting an updated listing of empty containers to Customs must be repeated for each intermediate port at which the vessel calls in the United States.

In addition, if empty containers were laden aboard the vessel at any preceding United States port, the re-transmitted empty container list must reflect the specific United States port where those containers were laden and, if applicable, the domestic port where such containers are to be discharged from the vessel. To accomplish this, the Census Schedule D code for the domestic port of lading or discharge, if applicable, must be included in the re-transmitted list in connection with such containers; these codes may be found in the port record (P01/P4).

Final Empty Container List After Arrival at Last United States Port

After the vessel has arrived at its last United States port of call and before the vessel proceeds foreign, the test participant is required to transmit a final updated empty container list that must enumerate all empty containers then aboard the vessel; and if any of those containers were laden either at any preceding United States port and/or at the last United States port of call, the final empty container list must again specify each port where such containers were laden, with reference to the Census Schedule D code for that port. Customs presumes that all the empty containers in this final listing will be carried foreign.

Exception for Vessel Transporting Only Empty Containers

For any vessel destined to the United States carrying only empty containers, a test participant may transmit only one empty container list without also having to transmit the electronic equivalent of a cargo declaration for such containers; the empty container list must be transmitted 48 hours prior to the arrival of the vessel at the first port in the United States. However, if the vessel will call at multiple ports in the United States, an electronic equivalent of a cargo declaration covering all the ports at which the vessel will call in the United States must be transmitted to Customs prior to the submission of the empty container list.

Error in Transmitting Empty Container List

Customs wishes to advise that if the Empty Container Module registers or detects any error or omission in connection with information transmitted for any container included on an electronic empty container list,

the entire list will fail to be processed through the system. In such a case, the information for the container must be corrected or included on the list and the list re-transmitted to Customs in its entirety.

Release of Empty Containers Unladen at a Port

Any empty containers that are unladen at a United States port will be considered automatically released from Customs custody, unless the local Customs office indicates by physical means (by telephone or facsimile notification) that some empty containers are to be held. No electronic status notifications will be generated related to the empty container list transmitted. The AMS Empty Container Module does not allow electronic holds to be placed on empty containers.

Evaluations of Carrier Compliance; Checklists

In implementing the program test, Customs developed a paperless manifest standards checklist for determining carrier compliance with all test parameters and operating procedures required under the program test. However, this paperless manifest standards checklist and associated reviews that were established to evaluate carrier performance in the program test are being discontinued.

Anyone interested in participating in the test should refer to the test notice published in the September 10, 1996, **Federal Register** for eligibility and application information.

Dated: November 26, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–31623 Filed 12–16–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0018]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of General Counsel, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of General Counsel (OGC), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to apply for accreditation to represent claimants for benefits before VA and to confer power of attorney on an attorney, agent or individual service organization representative for claim representation purposes.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 18, 2003.

ADDRESSES: Submit written comments on the collection of information to James T. Dehn (022G2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to: *James.Dehn@mail.va.gov*. Please refer to "OMB Control No. 2900–0018" in any correspondence.

FOR FURTHER INFORMATION CONTACT: James T. Dehn at (202) 273–6331or FAX (202) 273–6404.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OGC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OGC's functions, including whether the information will have practical utility; (2) the accuracy of OGC's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles and Form Numbers

a. Application for Accreditation as Service Organization Representative, VA Form 21.

b. Appointment of Individual as Claimant's Representative, VA Form 22a.

OMB Control Number: 2900–0018

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21 is used to obtain basic information necessary to determine whether an individual may be accredited as a service organization representative for the purposes of representation of claimants before the VA. The information is used to evaluate qualifications, ensure against conflicts of interest, and allow appropriate organization officials to certify the character and qualifications applicants. It is designed to ensure that regulatory standards for accreditation have been met so that claimants for VA benefits have available a pool of qualified claims representatives to assist them in the preparation, presentation, and prosecution of their claims.

VA Form 22a is used by a claimant for VA benefits to confer power of attorney upon an attorney, agent, or individual service organization representative in order that the attorney, agent, or individual representative may represent the claimant in proceedings before VA. Generally, this power of attorney permits VA to release to the attorney, agent, or individual representative records pertinent to the benefit claim. The form contains a release to be completed by the claimant, which permits the claimant to authorize or prohibit VA from disclosing medical records specifically protected by 38 U.S.C. 7332.

Affected Public: Individuals and households, Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government.

Estimated Annual Burden

a. VA Form 21—600 hours.

b. VA Form 22a—1,600 hours.

Estimated Average Burden Per Respondent

a. VA Form 21—15 minutes.

b. VA Form 22a—15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Form 21—2,400.

b. VA Form 22a—6,400.

Dated: December 4, 2002.

By direction of the Secretary:

Loise Russell,

Computer Specialist, Records Management Service.

[FR Doc. 02–31704 Filed 12–16–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0379]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to verify the actual number of hours worked by a work-study claimant.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 18, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0379" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Time Record (Work-Study Program), VA Form 22–8690.

OMB Control Number: 2900–0379.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–8690 is used to report the number of hours completed and to ensure that the amount of benefits payable to a claimant who is pursuing work-study is correct. When a claimant elects to receive an advance payment, VA will make the advance payment for 50 hours, but will withhold benefits (to recoup the advance payment) until the claimant completes his or her 50 hours of service. VA will not pay any additional amount in advance payment cases until the claimant completes a total of 100 hours of service (50 hours for the advance payment and 50 hours for an additional payment). If the claimant elects not to receive an advance payment, benefits are payable when the claimant completes 50 hours of service.

Affected Public: Not-for-profit institutions, Individuals or households, Business or other for-profit, Federal Government, and State, Local or Tribal Governments.

Estimated Annual Burden: 10,333 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 31,000.

Estimated Annual Responses: 124,000.

Dated: December 4, 2002.

By direction of the Secretary:

Loise Russell,

Computer Specialist, Records Management Service.

[FR Doc. 02–31705 Filed 12–16–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0381]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 16, 2003.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0381." Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0381" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Notice for Election to Convey and/or Invoice for Transfer of Property, VA Form 26–8903.

OMB Control Number: 2900–0381.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–8903 serves four purposes: holder's election to convey, invoice for the purchase price of the property, VA's voucher for authorizing payment to the holder, and establishment of VA's property records. When VA specifies an amount in relation to the foreclosure of a GI home loan and the holder elects to convey the property to VA, Section 3732 of Title 38, U.S.C., and 38 CFR 36.4320(a)(1), provide that if a minimum amount for credit to the borrower's indebtedness has been specified by VA in relation to the sale of the real property and the holder is the successful bidder at the sale for no more than the amount specified by VA, the holder will credit the indebtedness with that amount. The holder may then retain the property, or not later than 15 days after the date of sale, advise VA of its election to convey and transfer the property to the VA. VA needs to know the amount bid at the sale, the type of deed to be used for transferring title from the holder to VA, occupancy information, and the hazard insurance coverage. VA Form 26–8903 provides the holder, which has elected to convey a property to VA, with a convenient and uniform means of

notification to the proper VA regional office.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 14, 2002, at pages 53045–53046.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 4,167 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Total Respondents: 25,000.

Dated: December 4, 2002.

By direction of the Secretary.

Loise Russell,

Computer Specialist, Records Management Service.

[FR Doc. 02–31706 Filed 12–16–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 16, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to 2900–New."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "2900–New."

SUPPLEMENTARY INFORMATION:

Title: Women Veterans Ambulatory Care Use: Patterns, Barriers, and Influences, VA Form 10–21063(NR).

Type of Review: New collection.

Abstract: The purpose of the study is to gain an understanding of VA women veterans' use of health care from the perspective of women. The data collected will: (1) Provide patterns of VA and non-VA ambulatory care use by women veterans, and contrast them to those of male veterans; (2) identify barriers and influences on VA ambulatory care use, including those related to women's military experience, veteran identity, and perceptions about the availability and quality of VA women's health care; (3) identify factors associated with gender gaps in VA ambulatory care use and; (4) apply these findings to develop interventions and policies to improve access of women veterans to VA ambulatory care.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 24, 2002 at pages 59880.

Affected Public: Individuals or households.

Estimated Annual Burden: 683 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 2,050.

Dated: December 4, 2002.

By direction of the Secretary.

Loise Russell,

Computer Specialist, Records Management Service.

[FR Doc. 02–31707 Filed 12–16–02; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 67, No. 242

Tuesday, December 17, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–23–000 (Phase II)]

Consolidated Edison Company of New York, Inc. v. Public Service Electric and Gas Company; Notice Partially Vacating Procedural Schedule and Authorizing Establishment of New Dates

December 3, 2002.

Correction

In notice document 02–31087 appearing on page 72929 in the issue of Monday, December 9, 2002, make the following correction:

On page 72929, in the second column, in the document heading, add a docket number to read as set forth above.

[FR Doc. C2–31087 Filed 12–16–02; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Tuesday,
December 17, 2002

Part II

Federal Aviation Administration

14 CFR Parts 1, et al.
Area Navigation (RNAV) and Miscellaneous Amendments; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 71, 91, 95, 97, 121, 125, 129, and 135

[Docket No. FAA–2002–14002; Notice No. 02–20]

RIN 2120–AH77

Area Navigation (RNAV) and Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing to amend its regulations to reflect technological advances that support area navigation (RNAV); make certain terms consistent with those of the International Civil Aviation Organization; remove the middle marker as a required component of instrument landing systems; and clarify airspace terminology. The proposed changes are intended to facilitate the transition from ground-based navigation to new reference sources, enable advancements in technology, and increase efficiency of the National Airspace System.

DATES: Send your comments on or before January 31, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW., Washington, DC 20590. You must identify the Docket number FAA–2002–14002 at the beginning of your comments, and you should submit two copies. If you wish to receive confirmation that FAA has received your comments, include a self-addressed, stamped postcard on which the Docket number appears.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the Nassif Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Lawrence Buehler, Flight Technologies and Procedures Division, Flight Standards Service, AFS–400, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone: (202) 385–4586.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The FAA also invites comments on the environmental, energy, federalism, or economic impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA asks that you send two copies of written comments.

The FAA will file all comments received, as well as a report summarizing each substantive public contact with FAA personnel in the docket. The docket for this rulemaking is available for public inspection before and after the comment closing date. You can review the docket in person or using the Internet (*see* **ADDRESSES** above).

Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed late if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of comments.

Availability of Rulemaking Documents

You can get an electronic copy of this document by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web Page *(http://dms.dot.gov/search)*.

(2) On the search page, type in the last digits of the docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the docket summary information for the docket you selected, click on the document number of the item you wish to review.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web Page at *http://www.faa.gov/avr/armhome.htm* or the Government Printing Office's Web Page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling 202–267–9680. Be sure to identify the docket number, or notice number with amendment number, of this rulemaking.

Guide to Terms and Acronyms Used in This Document

AGL—Above ground level
APV—Approach procedures with vertical guidance
ASR—Airport surveillance radar
ATS—Air Traffic Service
DA—Decision altitude
DH—Decision height
DME—Distance measuring equipment
FL—Flight level
GPS—Global Positioning System
ICAO—International Civil Aviation Organization
IAP—Instrument approach procedure
IFR—Instrument flight rules
ILS—Instrument landing system
MAA—Maximum authorized IFR altitude
MCA—Minimum crossing altitude
MDA—Minimum descent altitude
MEA—Minimum en route IFR altitude
MOCA—Minimum obstruction clearance altitude
MSL—Mean sea level
NAS—National Airspace System
NAVAID—Navigational aid
NDB—Nondirectional beacon
NM—Nautical mile
OEP—Operational Evolution Plan
Over the top—Over the top of clouds
PANS—Procedures for Air Navigation Services
PAR—Precision approach radar
RNAV—Area navigation
RVR—Runway visual range
SARPs—International Standards and Recommended Practices
SIAP—Standard Instrument Approach Procedure
TLOF—Touchdown and lift-off area
VOR—Very high frequency omnidirectional range
VORTAC—VOR omnidirectional range/tactical air navigation

Outline of the Preamble

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I.C. International Standardization
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I.D.1. Elimination of Middle Markers
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I. Background

I.A. Area Navigation (RNAV)

Historically, the principal means of air navigation for instrument flight rules (IFR) operations in the United States National Airspace System (NAS) has been a system of ground-based navigation aids (NAVAIDs), including nondirectional beacon (NDB), very high frequency omnidirectional range (VOR), and distance measuring equipment (DME). Airways and instrument procedures were developed using these NAVAIDs; however, this has required pilots to fly directly toward, or away from, the NAVAID. This limitation has resulted in less-than-optimal routes and instrument procedures, and contributed to an inefficient use of airspace.

The advent of area navigation (RNAV) in the 1960's provided enhanced navigation capabilities to the pilot. Early RNAV allowed properly equipped aircraft to navigate via a user-defined track without the need to fly directly toward or away from a ground-based navigation aid. Early RNAV systems still relied, however, on signals from a ground-based NAVAID for source information to calculate navigational position information. To take advantage of this improved navigation capability, in the 1970's, the FAA began to publish a series of instrument approach procedures (IAPs) and routes for use by RNAV-equipped aircraft. A nationwide system of high-altitude RNAV routes was established consisting of approximately 156 route segments.

These fixed routes still depended on reference to ground-based NAVAIDs. The FAA later determined that most aircraft using RNAV in the en route system were doing so on a random basis using inertial navigation systems (INS) with little use being made of the fixed high altitude RNAV route structure. Operators were using RNAV by going from point to point. They were not using the high-altitude RNAV route structure that was designed and published by the FAA. This minimal use of the charted RNAV routes proved insufficient to justify their retention on a cost-benefit basis. As a result, in January 1983, the FAA revoked all high altitude RNAV routes in the coterminous United States. The RNAV routes in the State of Alaska were retained and remain in use today because of the scarcity of ground-based navigational aids there.

I.B. Recent Technological Improvements

The technology that evolved over the past 40 years gave avionics systems increased positional accuracy, which provided users with a greater ability to fly direct routes between any two points. In recent years, satellite navigation using the Global Positioning System (GPS) has provided even greater flexibility in defining routes, establishing instrument procedures, and designing airspace. When GPS is combined with existing RNAV system capabilities, continuous course guidance is available over longer routes than are possible with ground-based NAVAIDs, which have limited coverage due to terrain or signal reception restrictions. Augmented GPS also introduces the ability to provide vertical guidance information for nonprecision instrument approaches. This has the potential to significantly reduce the risk of accidents caused by controlled flight into terrain (CFIT).

As a result of these technological advances, the FAA has implemented a number of RNAV routes for use by air carriers operating suitably equipped aircraft in the northeast, southeast, and southwest regions of the United States. The results so far have demonstrated the potential of RNAV, when used with new navigation reference sources, such as GPS. The entire NAS can be realigned by using more direct and user-preferred routes, thus achieving greater system flexibility, efficiency, and capacity.

Air navigation is expected to become increasingly dependent on RNAV systems that navigate with reference to geographic positions specified in latitude and longitude coordinates rather than to or from a ground-based navigation aid. Reliance on RNAV in the NAS will expand as enhancements to GPS are developed and deployed, increasing its accuracy and reliability.

The changes proposed in this NPRM would facilitate the use of RNAV throughout all phases of flight (departure, en route, and approach), which is a goal of the Free Flight program. The Free Flight program is designed to enhance the safety and efficiency of the NAS. It moves the NAS from a centralized command-and-control system between pilots and air traffic controllers to a system that allows pilots, whenever practical, to choose their own routes and file flight plans that follow the most efficient and economical routes. The changes proposed in this NPRM would result in greater flexibility in air traffic routing, instrument approach procedure design, and airspace use than is now possible under a ground-based system structure. The improved navigation accuracy and flexibility would enhance both system capacity and overall flight safety, and would promote the Free Flight concept in the NAS by enabling the NAS to move from reliance on ground-based NAVAIDs.

I.C. International Standardization

The International Civil Aviation Organization (ICAO) is an agency of the United Nations that promotes the development of uniform world-wide procedures and standardization to ensure the safety and efficiency of international civil aviation operations. ICAO's standards are found in the 18 Annexes to the Convention on International Civil Aviation. To achieve this standardization, ICAO publishes various International Standards and Recommended Practices (SARPs) and Procedures for Air Navigation Services (PANS). This proposal is part of a continuing effort to recognize the advent of new technologies and international efforts to create a seamless air traffic system by making the terms used in FAA's regulations consistent with ICAO terminology.

I.D. Middle Markers and Outer Markers

Middle and outer markers are beacons that define points along the glide path on an instrument landing system (ILS) approach. An outer marker is usually located at or near the glide path intercept point of an ILS approach, normally 4 to 7 miles from the runway threshold. A middle marker indicates a position approximately 3,500 feet from the landing threshold. This is normally located near the point where an aircraft on the glide path will be at an altitude of approximately 200 feet above the elevation of the runway touchdown zone. For a Category I ILS approach, this coincides with the decision height, or the height at which a pilot must decide whether to continue the approach to landing or execute a missed approach procedure. This proposal would eliminate the middle marker as a required ILS component and would enable the use of other navigation means to substitute for the outer marker beacon.

I.D.1. Elimination of Middle Markers

According to instrument procedure design criteria, all required components must be operational in order for the pilot to fly the ILS to the lowest authorized approach minimums. Originally, the middle marker was a required component of an ILS. Terminal instrument procedure design criteria

required that, when the middle marker was inoperative, a penalty was applied to increase the published landing minimums to compensate. The higher minimums imposed by these penalties could result in the pilot being unable to land at that destination.

In January 1988, through Operations Specifications, the FAA eliminated the landing penalties of increased landing minimums for 14 CFR part 121 and part 135 operators conducting ILS approaches with inoperative middle markers. The justification for this change was the long-term operational success experienced by European air carriers and the U.S. Department of Defense when not using middle markers and when not applying penalties for inoperative middle markers. On December 4, 1990, therefore, the FAA removed the inoperative middle marker landing minimum penalties for all operators through change 10 to the Terminal Instrument Procedures (TERPS).

In June 1992, the FAA completed an evaluation of the operational effectiveness and safety benefits of middle markers during ILS operations and issued a document entitled "Middle Marker Evaluation Project." A copy of the evaluation has been placed in the docket for this rulemaking. That evaluation studied 165 missed approaches—83 with the middle marker operative, and 82 with the middle marker inoperative. The approaches were conducted by 18 pilots. Two pilots worked for the FAA, and 16 worked, or had worked, in corporate aviation. None of the pilots was told the objective of the flight test until after the flight test. The result of the evaluation was that there was no significant difference in pilot performance while conducting an ILS approach with or without a middle marker. Consequently, on October 15, 1992, the landing minima penalties for conducting an ILS approach with an inoperative middle marker were removed for the Standard Instrument Approach Procedures (SIAPs). This actien was taken because the FAA has determined that middle markers are redundant and are no longer needed for safety. The FAA is therefore proposing that the requirement for middle markers be removed from its regulations.

I.D.2. Substitutes for Outer Markers

The outer marker is another required component of the ILS. In lieu of a marker beacon, a compass locator transmitter, DME, or airport surveillance radar (ASR) may be used to identify the outer marker position. This proposal would allow the use of waypoints for outer markers, resulting in additional flexibility in airspace utilization and procedure design.

I.E. Operational Evolution Plan (OEP)

This proposal would address a portion of the FAA's Operational Evolution Plan (OEP), which is the FAA's overall plan to modernize the NAS. The OEP has several components, including ones to alleviate en route congestion, increase arrival and departure rates at airports, improve response to en route severe weather, and improve operational procedures and tools for operations in poor airport weather conditions. Task 3.2 of the OEP states that arrival and departure routes should be constructed independent of navigation aids. A subordinate task is to review and update the Code of Federal Regulations to allow for routing independent of ground-based navigation aids.

II. General Discussion of the Proposals

II.A. RNAV

The expanded use of RNAV and GPS navigation would fully support the FAA's Free Flight concept. RTCA's Task Force 3 issued a report in 1995 in which it defined the implementation of a concept to move from today's largely ground-based system by applying current technologies. (*See* "Final Report of RTCA Task Force 3, Free Flight Implementation," October 26, 1995/ November 1995. Copies are available for purchase from RTCA, 1828 L St. NW., Suite 805, Washington, DC 20036 (telephone 202–833–9339).) Although the immediate effect of the proposed amendments would be to allow increased use of GPS, the proposed terminology changes would also be broad enough to allow for new technologies as they become available and are approved for use.

II.B. ICAO

As an ICAO Contracting State, the United States strives to adhere to the rules and procedures set forth in the ICAO SARPs and PANS as much as possible. For example, in 1993, the United States reclassified its domestic airspace to adopt, in part, the ICAO airspace classifications (*i.e.*, Class A, Class B, etc.) outlined in Annex 11 to the Convention. In formulating this NPRM, the FAA has an opportunity to make additional terminology in its regulations consistent with ICAO. The current U.S. terminology for naming routes differs from that used by ICAO. Through this proposal, the United States would adopt the ICAO term "Air Traffic Service (ATS) Route" to describe the U.S. en route structure. Other examples of how this proposal would promote compatibility with ICAO include the proposed addition of the term "decision altitude (DA)," and the proposed change of the abbreviation of HAT from "height above touchdown" to "height above threshold." The proposed changes would be a step in bringing U.S. terminology closer to fulfilling the United States' responsibilities as an ICAO member.

II.C. Middle and Outer Markers

In addition to the proposed amendments regarding RNAV, the FAA is proposing to update its regulations to eliminate the middle marker as a required basic ground component of an ILS, and to increase the number of acceptable substitutes for the outer marker component of an ILS. These amendments would facilitate flexibility in the development of new instrument approach procedures.

II.D. Changes in Terminology

The following are subject areas in which the FAA is proposing to change the terminology in its regulations. For specific sections that are amended, *see* "III. Section-by-Section Discussion of the Proposed Changes" in this preamble.

II.D.1. Decision Height (DH) and Decision Altitude (DA)

References to "decision height" and "DH" are being replaced with references to "decision altitude" and "DA," respectively, where minimums are based upon barometric altitude, which is expressed in feet above mean sea level (MSL). In contrast, where minimums are based upon height above ground level (AGL), the term decision height (DH) is used. These changes are being proposed to make the FAA's regulations consistent with ICAO terminology and to more accurately describe when the decision to continue the approach below the authorized minima or make a missed approach is made.

II.D.2. RNAV

The FAA is proposing to revise the definition of "area navigation (RNAV)." The FAA is also proposing to remove references to the words "ground" and "radio" where using these words restricts the type of navigation and communication systems persons can use. The amendments would either replace those words with less restrictive language or remove them entirely, which would allow the expanded use of RNAV systems and permit persons to take advantage of future changes in technology.

II.D.3. En Route

The FAA is proposing new terms, "Air Traffic Service (ATS) route" and "area navigation (RNAV) route."

"Air Traffic Service (ATS) route" would be used to describe the U.S. en route structure. The term "ATS route" would include Federal airways, jet routes, and area navigation routes in the United States.

"Area navigation (RNAV) route" would refer to ATS routes established for the use of aircraft capable of using area navigation. Note that not all RNAV-capable aircraft are suitably equipped to operate on all RNAV routes. The FAA would determine the means to qualify aircraft for various RNAV operations and the method for promulgating the requirements to operate on RNAV routes. These requirements would be promulgated similarly to the way part 71 routes and part 97 procedures are currently promulgated.

In addition, the FAA is proposing to change the current definition of "route segment" to facilitate RNAV operations.

II.D.4. Approach and Landing Using Instrument Approach Procedures

The FAA is proposing to amend the following definitions—

- Nonprecision approach procedure.
- Precision approach procedure.

The FAA is proposing to add the following terms—

- Approach procedure with vertical guidance (APV).
- Area navigation route.
- Category I operations.
- Decision altitude (DA).
- Instrument approach procedure (IAP).

The FAA is proposing to revise the following definitions—

- Category II, III, IIIa, IIIb, and IIIc operations
- Decision height (DH).
- Minimum descent altitude (MDA).

III. Section-By-Section Discussion of the Proposed Changes

Section 1.1 General definitions

Air Traffic Service (ATS) route: The FAA is proposing to adopt the term "Air Traffic Service (ATS) route" to describe the U.S. route structure. The term ATS route would include jet routes, area navigation (RNAV) routes, and arrival and departure routes. An ATS route would be defined by route specifications. These route specifications may include an ATS route designator, the path to or from fixes, distance between fixes, reporting requirements, and the lowest safe altitude determined by the appropriate authority.

Approach procedure with vertical guidance (APV): This new term would mean an instrument approach procedure based on lateral path and glide path. These approach procedures are flown to a decision altitude (DA). Although these procedures include glide path information, they may not meet the requirements currently established for precision approach and landing operations. This includes the vertical navigation performance and airport infrastructure requirements (*i.e.*, ICAO Annex 14 and FAA Advisory Circular (AC) 150/5300–16). Safety for these procedures is maintained by increasing the required obstacle clearance height or required visibility. An example of an APV approach is the LNAV/VNAV (lateral navigation/ vertical navigation) approach minima currently published on RNAV approach plates.

Area navigation low route and Area navigation high route: These terms would be removed and replaced with the term "area navigation (RNAV) route." *See* discussion of "area navigation (RNAV) route" below.

Area navigation (RNAV): The definition of "area navigation (RNAV)" would be broadened by removing the words "station-referenced navigation signals," which refer to ground-based signals, and adding the words "flight path" to cover operations in both the lateral and vertical planes (*i.e.* lateral navigation (LNAV) and vertical navigation (VNAV)).

Area navigation (RNAV) route: The new term "area navigation (RNAV) route" would refer to those ATS routes established for aircraft capable of using area navigation equipment suitable for those routes.

Category I (CAT I) operation: The term "Category I operation" commonly has been used in the aviation industry and in the preambles of FAA regulatory documents for years, but it has never been defined in the CFR. The FAA is therefore proposing to add a definition of this term. The proposed definition of "Category I (CAT I) operation" is "a precision approach with a decision altitude that is not lower than 200 feet (60 meters) above the threshold and with either a visibility of not less than one half statute mile (800 meters) or a runway visual range (RVR) of not less than 1,800 feet (550 meters)."

Category II (CAT II) operation, Category III (CAT III) operation, Category IIIa (CAT IIIa) operation, Category IIIb (CAT IIIb) operation, and Category IIIc (CAT IIIc) operation: These definitions would be revised to incorporate the concept of precision RNAV. In each of these definitions, the terms "ILS approach" or "ILS instrument approach" would be replaced with the terms "precision approach" and "precision instrument approach," respectively. The definitions would also be updated to be compatible with the Joint Aviation Authorities (JAA) terminology.

Decision altitude (DA): The FAA proposes to add the definition for "decision altitude (DA)" to describe the mean sea level altitude at which the decision to continue the approach below the authorized minima or make a missed approach is made. This term would be consistent with ICAO terminology.

Decision height (DH): The definition of "decision height" would be revised to specify that it applies only to Category II and III approaches rather than Category I approaches, which would refer to decision altitude. See discussion under "II.D.1. Decision Height (DH) and Decision Altitude (DA)."

Final approach fix (FAF): This term would be added to indicate that a final approach fix is associated with a nonprecision approach.

Instrument approach procedure (IAP): This term would be added. It is a general term that applies to all types of approach procedures.

Minimum descent altitude (MDA): The definition of "minimum descent altitude" would be revised to change the words "final approach" to "nonprecision final approach," and to remove the references to "standard instrument approach procedure" and "electronic glide slope." This change would clarify the definition, as an MDA is applicable to a SIAP without electronic glide slope.

Night: The FAA is proposing to revise the definition of the term "night" to reflect that local night may differ from the times published in the American Air Almanac. This concept of local night could limit operations at a particular location when the FAA determines it to be necessary for the safety of operations, for example, when terrain causes sunset significantly earlier than the Almanac indicates.

Nonprecision approach procedure (NPA): The FAA is proposing to revise the definition of this term so that there would be no reference to "electronic glide slope." The term would apply to navigation systems that provide lateral (but not vertical) path deviation guidance.

Precision approach procedure (PA): The FAA is proposing to revise the definition so that there would be no references to "standard instrument approach procedure" and "electronic glide slope." The revised term, however,

would still be based on lateral course and track information with vertical glide path information. Currently, ILS, microwave landing systems (MLS), Global Navigation Satellite System (GNSS) landing systems (GLS) and precision approach radar (PAR) are recognized precision approach systems.

Precision final approach fix (PFAF): This term would be added to indicate that a precision final approach fix is associated with a precision or APV approach procedure.

RNAV waypoint: The FAA proposes to remove the definition of "RNAV way point (W/P)" because it is overly restrictive.

Route segment: The definition of "route segment" would be revised to mean a portion of a route bounded on each end by a fix or NAVAID. The proposed change would facilitate the development of RNAV routes.

Section 1.2 Abbreviations and Symbols

The FAA proposes to add the following acronyms to the list of abbreviations and symbols in § 1.2:

APV means approach procedure with vertical guidance.

NM means nautical mile.

NPA means nonprecision approach.

PA means precision approach.

RNAV means area navigation.

Part 71 Amended

The current part 71 is limited to ground-based navigation systems, includes extraneous information, and is not organized clearly. Although the amendments would not be related directly to the RNAV proposals, the FAA proposes to take this opportunity to improve the readability of part 71 by separating the sections that provide general information about part 71 (§§ 71.1 through 71.15) from the sections that apply only to Class A airspace, and by combining or realigning the sections in part 71 in a more efficient way. These changes are discussed in further detail below.

Part 71 Heading Revised

The FAA proposes to revise the heading of part 71. The current title, "Designation Of Class A, Class B, Class C, Class D, And Class E Airspace Areas; Airways; Routes; And Reporting Points," would be revised to read "Designation of Class A, Class B, Class C, Class D, and Class E Airspace Areas: Air Traffic Service Routes; and Reporting Points." In the new heading, the words "Airways; Routes" would be replaced with the words "Air Traffic Service Routes," which would cover jet routes, VOR Federal airways, Colored Federal airways, and area navigation routes. This would be consistent with ICAO's use of the term "air traffic service routes."

Subpart A—Class A Airspace

The FAA proposes to move the heading of subpart A so that it appears directly before § 71.31 and revise it to read, "Class A Airspace." As a result, sections appearing at the beginning of part 71 would provide general information on multiple sections in part 71, and sections in the newly designated subpart A (§§ 71.31 and 71.33) would contain regulations pertinent only to Class A airspace. This would make subpart A consistent with the rest of part 71, where subpart designations correspond to the airspace classes covered. For example, subpart A would cover class A airspace; subpart B would cover class B airspace, and so forth.

Section 71.11 Air Traffic Service (ATS) Routes

The FAA proposes to add § 71.11, Air Traffic Service (ATS) routes. The text for the new section would come from the current § 71.75, Extent of Federal airways, paragraphs (a), (b)(1), and (d). This text would be revised to apply to ATS routes in general. The FAA is proposing this change to include ATS route terminology and to improve the organization of part 71.

Paragraph (a) of § 71.11 would differ from the text of § 71.75 in that the words "navigational aid or intersection" that are currently in § 71.75, would read, "navigation aid, fix, or intersection" for defining route segments. These changes would accommodate the development of ATS routes that are not linked to ground-based navigation aids.

Paragraph (b) of § 71.11 would differ from the text of § 71.75 by referencing FAA Order 8260.3, "U.S. Standard for Terminal Instrument Procedures (TERPS)," as the source for criteria regarding ATS route dimensions and protected airspace.

Paragraph (c) would differ from the text of § 71.75 by stating that all ATS routes exclude the airspace of prohibited areas, rather than just Federal airways. This would mean that if the route passed through a prohibited area (*i.e.*, a type of special use airspace designated under 14 CFR part 73), the FAA would write an exclusion into the legal description of the route that stated that the prohibited area airspace was excluded from the route.

Section 71.13 Classification of Air Traffic Service (ATS) Routes

The FAA proposes to use the current text of § 71.73, Classification of Federal airways, as a basis for proposed new § 71.13, Classification of Air Traffic Service (ATS) routes, and expand the scope of it to classify the Federal airway, jet route, and area navigation route components of the U.S. route structure as ATS routes. The FAA is proposing this change to improve the organization of part 71 and to facilitate the development of RNAV routes that are not linked to ground-based navigation aids.

Section 71.15 Designation of Jet Routes and VOR Federal Airways

The text of proposed § 71.15 would come from current § 71.79, with information added to ensure that the stated place name criteria apply to jet routes as well as VOR Federal airways. This change is proposed to consolidate similar information and to reorganize part 71 for clarity.

Section 71.73 Classification of Federal Airways

Section 71.73 would be removed and used as a basis for new § 71.13. This change would result in classifying the various types of ATS routes in one section for clarity and would improve the organization of part 71. *See* discussion of § 71.13 above.

Section 71.75 Extent of Federal Airways

Section 71.75 would be removed and parts of it used as a basis for new § 71.11. This change would consolidate related information, remove information that is not needed, and improve the organization of part 71. *See* discussion of § 71.11 above.

Section 71.79 Designation of VOR Federal Airways

The FAA proposes to remove § 71.79 and move the information to the proposed new § 71.15, Designation of jet routes and VOR Federal airways. This change improves the organization of part 71 by consolidating related information. *See* discussion of § 71.15 above.

Section 91.129 Operations in Class D Airspace

The FAA is proposing to revise § 91.129(e) in clearer language. Although substantive changes would be made only in paragraph (e)(2) (discussed below), the FAA is taking this opportunity to propose clearer language for the rest of (e).

Currently, § 91.129(e)(2) requires that when a pilot of a large or turbine-powered airplane is approaching to land on a runway served by an ILS and within Class D airspace, the pilot must fly at an altitude at or above the glide slope between the outer marker (or the point of interception with the glide slope, if compliance with the applicable distance-from-cloud-criteria requires interception closer in) and the middle marker. The proposed rule would require that a person operate at or above the glide path between the precision final approach fix (or point of interception with the glide slope, if compliance with the applicable distance-from-cloud criteria requires interception closer in) and the published decision altitude or decision height. Specifically, changes to (e)(2) would be as follows—

(1) The phrase "served by an instrument landing system (ILS)" would read "served by an APV or precision approach procedure." The reason for the change is that ILS is not the only type of approach with a glide path.

(2) The term "glide slope" would read "glide path" because the term "glide slope" is generally used with respect to ILS, whereas the term "glide path" includes both ILS and APV.

(3) The reference to "outer marker" would be replaced with "precision final approach fix." This would facilitate determining aircraft position as appropriate (*e.g.*, DME, RNAV, or radar) and would make the paragraph consistent with proposed § 91.175(k). The term "middle marker" would be replaced by "decision altitude or decision height."

Section 91.131 Operations in Class B Airspace

The FAA is proposing to revise § 91.131(c)(1) by adding the words "suitable RNAV system" to provide another option for meeting the communications and navigation equipment requirement. This change would be consistent with the proposed definition of RNAV.

Section 91.175 Takeoff and Landing Under IFR

The FAA is proposing to revise § 91.175(a) by replacing the term "instrument letdown" with the term "instrument approach" because "letdown" is outdated terminology.

The FAA is proposing to revise paragraph (b) to change the term "DH" to "DA/DH." *See* discussion "II.D.1. Decision Height (DH) and Decision Altitude (DA)" above.

Paragraph (c) would be amended to change the term "DH" to "DA/DH." *See* discussion "II.D.1. Decision Height (DH) and Decision Altitude (DA)" above.

The FAA is proposing to amend the introductory text of paragraph (e) by changing the word "pilot" to "person" to make the regulation consistent with the definition of "person" currently in § 1.1. In addition, paragraph (e)(1)(ii) would be revised to replace the term "DH" with "DA/DH." *See* discussion "II.D.1. Decision Height (DH) and Decision Altitude (DA)" above.

The FAA is proposing to revise paragraph (f) to clarify that published takeoff minimums are associated with a particular departure procedure. Takeoff minimums are determined from the analysis of a particular runway environment. Thus, the departure procedure must be followed for a particular runway to ensure adequate obstacle clearance.

Paragraph (h) would be amended by removing the RVR table from paragraph (h)(2) and replacing it with a reference to FAA Order 8260.3, "U.S. Standard for Terminal Instrument Procedures (TERPS)," which contains the RVR table. This would eliminate duplication, and ensure that the public has information based on on-going changes in technology. In addition to appearing in FAA Order 8260.3, the RVR table also appears in the Aeronautical Information Manual (AIM), the Instrument Flying Handbook, and in the Flight Information Publications.

Paragraph (j) would be amended by changing the word "pilot" to "person" to make the regulation consistent with the definition of "person" currently in § 1.1.

Paragraph (k) would be amended to allow certain locations on the ILS to be fixed by other-than-ground-based navigation aids. As technology develops, these points could be indicated by fix instead of actual markers. Finally, middle markers would be deleted from this paragraph as they are no longer a basic component of an ILS. Although some middle markers are still in use, no additional middle markers are being installed at new ILS sites.

Section 91.177 Minimum Altitudes for IFR Operations

The FAA is proposing to amend § 91.177 (a) by adding language to clarify that the section would apply when both a minimum en route IFR altitude (MEA) and a minimum obstruction clearance altitude (MOCA) are prescribed for a particular route or route segment. The sentence that currently appears as concluding text of paragraph (a)(2) would be moved to paragraph (a)(1) and amended by adding the phrase, "using VOR for navigation." This proposed change would clarify that a person could travel at the MOCA for the full route segment if the person is using another navigation system that meets navigation requirements and is available, *e.g.* GPS-based RNAV. If, however, a person were using VOR for navigation then the person would have to operate at the MEA except within 22 NM of the VOR facilities. If a person were using a navigation system other than VOR or GPS, the person would have to take positive action to ensure that he or she was receiving a suitable navigation signal along the full route. This change would allow operations at the MOCA, provided the applicable navigation signals were available. Although the change would be permissive, it would not change the requirements for communication and surveillance along the route. Therefore, the FAA may require a higher altitude to meet all the requirements of communication, navigation, and surveillance.

Section 91.179 IFR Cruising Altitude or Flight Level

The FAA is proposing to amend § 91.179 by adding introductory text to read, "Unless otherwise authorized by the ATC, the following rules apply." While the FAA recognizes that there will be an ATC clearance associated with an IFR operation, adding this clause would facilitate the future implementation of new technology by giving the FAA the flexibility to allow alternatives to current altitude assignment procedures.

Section 91.181 Course To Be Flown

The FAA proposes to amend § 91.181(a) by removing the words "a Federal airway" and adding in their place "an ATS route," since the proposed changes in § 71.13 define an ATS route to include Federal airways and the new RNAV routes.

Section 91.183 IFR Communications

The FAA would amend § 91.183 by removing the word "radio" from the heading and from the introductory text of paragraph (a). Paragraph (a) introductory text would also be changed by adding at the beginning the phrase, "Unless otherwise authorized by the FAA, * * *" This phrase would facilitate the use of advanced communications by means other than voice.

Section 91.185 IFR Operations: Two-Way Communications Failure

Section 91.185 would be amended by removing the word "radio" from the heading and from paragraph (a). This would eliminate reliance on radio technology.

Section 91.189 Category II and III Operations: General Operating Rules

The FAA proposes to amend § 91.189 (c) by replacing the term "DH" and adding the term "DA/DH." See discussion under "II.D.1. Decision Height (DH) and Decision Altitude (DA)" above.

The FAA would also amend paragraph (d) by changing the word "pilot" to "person" to make the regulation consistent with the definition of "person" currently in § 1.1.

Section 91.205 Powered Civil Aircraft with Standard Category U.S. Airworthiness Certificates: Instrument and Equipment Requirements

Currently, § 91.205 (d)(2) states that, for IFR flight, "two-way radio communications system and navigation equipment appropriate to the ground facilities to be used" are required. The FAA is proposing to amend (d)(2) by removing references to radio and ground facilities to facilitate future developments in communications. As amended, the paragraph would prescribe for IFR flight, "two-way communication and navigation systems suitable for the route to be flown."

Paragraph (e) would be revised to require that aircraft operating at and above 18,000 feet (flight level (FL) 180) would have to be equipped with DME. The current rule sets the limit at 24,000 feet MSL (FL 240). On October 14, 1971, the FAA completed the lowering of the base of the positive control area (now called Class A airspace) from 24,000 feet to 18,000 feet MSL over the entire 48 contiguous States. (*See* 36 FR 15743; Aug. 18, 1971.) This proposed change would make this section consistent with the current floor of Class A airspace. While this proposed rule change would extend the equipment requirements for civil aircraft to FL 180, most affected aircraft already meet these standards. The FAA specifically seeks comments on this proposed change.

In addition, paragraph (e) would be amended to include suitable RNAV system as an alternative to DME. Modern RNAV systems provide distance from the active waypoint as an integral function. This distance readout can serve any purpose that DME serves.

Section 91.219 Altitude Alerting System or Device: Turbojet-Powered Civil Airplanes

The FAA is proposing to amend § 91.219 (b)(5) by replacing the term "DH" with the term "DA/DH." See discussion under "II.D.1. Decision Height (DH) and Decision Altitude (DA)" above.

Section 91.511 Communication and Navigation Equipment for Over-Water Operations

The FAA is proposing to amend § 91.511 by changing the heading from "Radio equipment for over-water operations" to "Communication and navigation equipment for over-water operations." Paragraph (a)(1) would be amended by changing the term "radio communication equipment" to "communication equipment." This change would facilitate future developments in technology. Also, in this paragraph the term "surface facility" would be changed to "communication facility" because, in the future, communication facilities may not be on the surface.

Section 91.711 Special Rules for Foreign Civil Aircraft

The FAA is proposing to amend § 91.711 (c)(1)(ii) by changing the term "radio navigational equipment appropriate to the navigational facilities to be used" to "navigation equipment suitable for the route to be flown." This change would facilitate future developments in navigation technology.

Paragraph (e) would be amended by changing the specified flight level and by adding reference to "an IFR-approved RNAV system." As amended, the paragraph would state that foreign aircraft operating at and above 18,000 feet (FL 180) must be equipped with DME or an IFR-approved RNAV system. The current rule sets the limit at 24,000 feet MSL (FL 240); however, the altitude defining the base of Class A airspace (formerly the positive control area) was lowered from 24,000 feet (FL 240) to 18,000 feet (FL 180) in October 1971. While this rule change would increase the requirements for foreign civil aircraft, the FAA believes that the affected aircraft already meet these standards. The FAA specifically seeks comments on this proposed change. In addition, the provision for a suitable RNAV system is being added because modern RNAV systems provide distance from the active waypoint as an integral function in lieu of DME. This distance readout from a RNAV system can serve any purpose that DME serves.

Section 95.1 Applicability

The FAA is proposing to revise § 95.1. In paragraphs (a), (b), and (d), references to "Federal airway(s), jet route(s), area navigation low or high route(s)" would be changed to "ATS route(s)." The use of the term "ATS route" would make the FAA's regulations consistent with ICAO.

Paragraph (d) would be further amended in the second sentence by adding the phrase, "Unless otherwise specified," to the beginning, and by changing the term "radio fixes" to "navigation fixes." These changes would increase the flexibility of the FAA to allow the use of other-than-ground-based navigation systems.)

Current paragraph (e) uses 25 miles as the distance for reception of navigation signals. The FAA proposes to revise the paragraph to allow air navigation along the entire route (subject to air traffic restrictions) at the MOCA when using suitable navigation systems (*e.g.*, GPS). Also, because nautical miles are the standard unit of measurement in air navigation, the reference to "25 miles" would be converted to "22 nautical miles."

Paragraph (f) would be revised to specify that an MRA is applicable only to intersections defined by ground-based navigation aids.

In paragraph (g), the term "facility or way point" would be changed to "ground-based navigation aid." Current paragraph (g)(1), which addresses reception requirements, would be retained in proposed paragraph (g), and the term "facilities" would be changed to "signals." Finally, the text of current paragraph (g)(2) would be removed. These changes would increase the flexibility of the rule to allow the use of other-than-ground-based navigation systems.

Part 97—Heading Revised

The heading for part 97, now reading "Standard Instrument Approach Procedures" would be revised to read "Standard Instrument Procedures" because the part is not limited to approach procedures.

Section 97.1 Applicability

The FAA is proposing to revise § 97.1 to provide a more accurate and complete description of the applicability of part 97. The words "standard instrument approach procedures" would be changed to "standard instrument procedures" to reflect the fact that part 97 refers to takeoffs and approaches. The proposed rules also would expand the scope of part 97 to include departure procedures, since those departure procedures are used as the basis for takeoff weather minimums. Proposed § 97.1 would clarify that published civil takeoff weather minimums are based on a specified route, and that pilots must comply with that route unless an alternative route has been assigned by ATC. The section would be further amended by deleting the words "for instrument letdown," which is obsolete terminology.

Section 97.3 Symbols and Terms Used in Procedures

The FAA is proposing to revise § 97.3 by to remove the paragraph designations and to organize the terms alphabetically. In addition, the following terms would be revised:

The terms "A" (alternate airport weather minimum) in paragraph (a), "C" (circling landing minimum) in paragraph (d), and "S" (straight in minimum) in paragraph (s), would be removed in the proposed revision of § 97.3. These items are more appropriately spelled in full in the legend of the approach charts.

The term "approach procedure segments" would be modified to include specification of a path to accommodate RNAV approaches, and "DH" would be replaced with "DA/DH."

The term "ceiling minimum" in paragraph (e) would be changed to "ceiling" and clarified to refer to airport elevation rather than the current general term "surface of the airport."

The term "D" (day) in paragraph (f) would be removed, as the term is no longer used.

The term "decision height" that appears in the definition of "missed approach" in paragraph (c)(5), and in the definition of "copter procedures" in paragraph (d)(1), would be changed to "decision altitude or decision height (DA/DH)." *See* discussion "II.D.1. Decision Height (DH) and Decision Altitude (DA)" above.

The term "copter procedures" would further be revised to clarify the circumstances under which the reduction of the charted visibility is authorized. It is also important to highlight that the one-quarter mile prevailing visibility and the 1200-foot RVR mentioned in the proposed definition are minimum limits. Although both are specified to permit the application of reduced visibility minimums if either visibility or RVR is reported, no equivalency between one-quarter mile and the 1200-foot RVR is intended. For equivalency, *see* the RVR tables in Flight Information Publications.

The term "HAA" (height above airport) in paragraph (h) would be revised to add the words, "expressed in feet."

The term "HAL" (height above landing) in paragraph (h)(1) would be revised to read, "height of the DA/MDA above a designated helicopter landing area elevation used for helicopter instrument approach procedures." This proposed definition would include references to decision altitude (see II.D.1. above) and MDA (see discussion of § 1.1 above), and would facilitate future Wide-Area Augmentation Systems (WAAS) operations.

The term "HAS" would be added to read, "height of the DA/MDA above the highest terrain/surface within a 5,200-foot radius of the missed approach point used in helicopter instrument approach procedures and is expressed in feet AGL." This definition would support point-in-space operations and provide additional information for maneuvering in the vicinity of a heliport.

The term "HAT" (height above touchdown), which currently appears in paragraph (i), would be revised to read, "height above threshold expressed in feet." This would be a nomenclature change to make the FAA's regulations consistent with ICAO and is not considered operationally significant. Changes to approach charts and affected FAA documents will be made during regular review process.

The term "HCH" would be added to read, "helipoint crossing height and is the computed height of the vertical guidance path above the helipoint elevation at the helipoint expressed in feet." This is a new technical term used in the construction of helicopter instrument approach procedures. The HCH affects the size of the obstacle evaluation area for the copter instrument approach and is another means of providing a margin of safety to the operator.

This proposal would also add the term "helipoint," which is normally the center point of the touchdown and lift-off area (TLOF). It is usually a designated arrival and departure point located in the center of an obstacle-free area, 150-feet square, overlying an approved landing area, where the approach may be terminated in a hover or touchdown. The helipad of intended landing may not be located at the helipoint, however.

The term "MSA" (minimum safe altitude) would be revised in more general wording. The proposed wording allows for any navigation aid or fix to be the reference point, which would provide greater flexibility in procedure construction. The distance is specified on the approach chart.

The term "N" (night) in paragraph (m) would be removed from § 97.3 because the abbreviation is no longer in use.

The term "point in space approach" in paragraph (o)(1) would be removed because the definition is out of date. The term is accurately defined in FAA Order 8260.3 "U.S. Standard for Terminal Instrument Procedures (TERPS)" (incorporated by reference in proposed § 97.20), and, therefore, would not need to be duplicated in § 97.3.

The term "shuttle" in current paragraph (t), would be removed because it is obsolete. It would be replaced with the term "hold in lieu of PT," meaning a holding pattern established under applicable FAA criteria, and used in lieu of a procedure turn (PT) to execute a course reversal. By adding this new term, the FAA intends to codify current procedures for using a holding pattern in lieu of a procedure turn for course reversal.

The term "SIAP" (standard instrument approach procedure) would be added to the section because it is a commonly used acronym.

The term "T" (takeoff minimum) would be revised for clarity and accuracy to mean nonstandard takeoff minimums or specified departure routes/procedures, or both.

Section 97.5 Bearings, Courses, Headings, Radials, Miles

The FAA is proposing to amend § 97.5 by adding the word "tracks" to the heading and to paragraph (a). The word "tracks" is used to describe the type of information provided by GPS and RNAV systems. Also, paragraph (a) would be amended by adding the phrase "unless otherwise designated" to the end of the paragraph. This change would allow for future changes in technology and flexibility in route construction and assignment.

Section 97.10 General

The FAA is proposing to remove § 97.10, General. This section prescribes standard instrument procedures "other than those based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS)." These types of approach procedures no longer exist.

Section 97.20 General

The FAA is proposing to revise § 97.20 to incorporate FAA Order 8260.3, "U.S. Standard for Terminal Instrument Procedures (TERPS)," and FAA Order 8260.19, "Flight Procedures and Airspace" into the Code of Federal Regulations. These orders would be added to include the requirements for the developing and processing of instrument procedures. The proposed text is shown in the regulation, and the FAA would get approval from the Director of the Federal Register if it is adopted as final.

Section 121.99 Communications Facilities

The FAA is proposing to amend § 121.99(a) by changing the term "two-

way radio communication system" to "two-way communication system." In addition, the term "point-to-point circuits" would be changed to "communication links." These changes would make the regulation more flexible for modern means of communication and would allow for future changes in technology. In addition, the FAA is proposing to add a requirement for a communication system that would have two-way voice communication capability for use between each airplane and the appropriate dispatch office, and between each airplane and the appropriate ATC unit, for non-normal and emergency conditions. The FAA believes it would be necessary from the pilot workload and flight safety standpoints to retain two-way voice communication capability for non-normal and emergency conditions. Data link communication systems currently require a pilot to use a keyboard to communicate between the airplane and the stations described above. Reliance on data link communications alone during an emergency could cause an unsafe condition.

Additionally, with respect to communications between the airplane and the dispatch office, the FAA is proposing to add a definition of "rapid communications" that is based on a legal interpretation issued by the Regional Counsel of the FAA's southern region on May 26, 1977. A copy of this interpretation can be found in the public docket for this rulemaking. Generally speaking, rapid communication means that the calling party must be able to establish communication with the called party in less than 4 minutes.

Section 121.103 En Route Navigation Systems

The FAA is proposing to revise § 121.103 by changing the heading from "En route navigational facilities" to "En route navigation systems." In addition, the term "nonvisual ground aids" would be changed to "navigation aids" in paragraphs (a) and (b). The wording would be changed to make the regulation performance-based by requiring that the navigation aids are available over the route to navigate the airplane along the route with the required accuracy, so that any suitable navigation system could be used. Demonstration of compliance to this requirement would be specific to the operator, the aircraft navigation system (*e.g.*, GPS, DME/DME, DME/DME/INS), the available navigation aids, and the route (including planned contingencies such as alternates). The required accuracy is defined by the route specifications (including route width) or as defined by ATC if not operating on a route.

Finally, the section would be revised to permit "other operations approved by the FAA" to be conducted without navigation aids. These revisions would allow for changes in technology.

Section 121.121 En Route Navigation Facilities

The FAA is proposing to revise § 121.121 by changing the title from "En route navigational facilities" to "En route navigation systems," and the section would be formatted to be consistent with § 121.103. In addition, the term "nonvisual ground aids" would be changed to "navigation aids" in paragraphs (a) and (b). The wording would be changed to make the regulation performance-based by requiring that adequate navigation aids are available to navigate the airplane along the route with the required accuracy, so that any suitable navigation system could be used. "Lighted airways" also would be removed because it is an obsolete term. Finally, paragraph (b)(3) would be revised, consistent with the proposed change to § 121.103(b)(3), to permit "other operations approved by the FAA." This revision would allow for future changes in technology.

Section 121.344 Digital Flight Data Recorders for Transport Category Airplanes

The FAA proposes to amend § 121.344 (a)(54) by replacing the term "decision height" with the term "decision altitude/decision height." *See* discussion "II.D.1. Decision Height (DH) and Decision Altitude (DA)" above.

Section 121.345 Communication Equipment

Section 121.345 would be revised by replacing the word "radio" in the heading and in paragraphs (a) and (b), with the word "communication." This would eliminate the reliance on voice technology and allow for future developments in technology.

Section 121.347 Communication and Navigation Equipment for Operations Under VFR Over Routes Navigated by Pilotage

The FAA is proposing to amend § 121.347 by changing the term "radio equipment" to "communication and navigation equipment" in the heading. In addition, the FAA would amend paragraph (a) to change "radio equipment" to "communication equipment," remove the word "ground" from (a)(1), and clarify (a)(2) by removing words "lateral boundaries of the surface areas of."

Paragraph (b) would be revised to separate the communication and navigation equipment requirements, and the requirement for navigation equipment would be made more generic to accommodate RNAV systems. A marker beacon receiver or ILS receiver would not be required under the proposed rule since precision approaches are not appropriate to VFR operations, so the last phrase of this paragraph would be deleted.

These changes would allow for communications that are not "voice" communications, would make the regulation more flexible for modern means of communication, and would allow for future changes in technology.

Section 121.349 Communication and Navigation Equipment for Operations Under VFR Over Routes Not Navigated by Pilotage or for Operations Under IFR or Over the Top

The FAA is proposing to revise § 121.349 to recodify and clarify existing requirements. The proposed paragraph (a) would replace the requirement for two independent receivers with a requirement for two independent navigation systems. The two independent navigation systems must be suitable for the route to be flown, so that they both support compliance with the requirements proposed in § 121.103(a) or § 121.121(a). There would be no requirement for the two systems to be identical, so that a single VOR and a single suitable RNAV system would satisfy this requirement on a Victor airway. The intent of this rule is to ensure that there is no single point of failure or event affecting aircraft navigation systems that causes loss of the ability to navigate along the intended route or to navigate to a suitable diversion airport. The change is also intended to address the vulnerability of GPS, which uses very weak signals that are susceptible to interference. For example, two minimum GPS (or other satellite navigation) receivers may not be considered "independent," since both are so vulnerable to interference. However, the proposed rule would be performance-based rather than prescriptive; thus, it is possible that two GPS receivers with an anti-jam capability could be considered independent, since they would not be so vulnerable to interference. Systems are considered independent if there is no probable failure or event that could affect both systems. In addition, the allowance for a single ILS and marker beacon would be extended to any precision approach or APV system.

The paragraph would also be revised to broaden the exception for two independent navigation systems in paragraph (b) to allow for the use of any single navigation system consistent with the provisions in proposed § 121.349(c). In addition, for non-normal and emergency operating conditions, the FAA proposes to add a requirement for at least one of the independent communication systems to have two-way voice communication capability. The requirement to report DME failures has been removed since it is required in current § 91.187. These changes would make the regulation more flexible for modern means of communication and navigation and would allow for future changes in technology.

The proposed changes to § 121.349 are intended to be broad in scope. The proposed wording would allow for the future evolution of navigation system technology. Presently the FAA sees a need for a full DME infrastructure and a minimal VOR network to remain for the foreseeable future. However, as the NAS evolves and navigation technology improves, a satellite-based system may become the core of the aviation navigation system.

The proposed rule language is designed to provide the most flexibility for the operator rather than being prescriptive. It would be through the operations specification process that the operator would indicate the suitability of its equipage. The FAA sees a benefit to the use of a performance-based rule for both the operator and the regulator, as this would be a way to address the variety of navigation equipment installed in the various fleets. The FAA seeks comments on whether to adopt a broad, performance-based rule language or a narrow, prescriptive language requiring specific systems.

Section 121.351 Communication and Navigation Equipment for Extended Over-Water Operations and for Certain Other Operations

The FAA is proposing to amend § 121.351 by changing the words "radio equipment" to "communication and navigation equipment" in the heading, and the words "radio communication" to "communication and navigation" in paragraph (a). This would permit the use of data link communications systems for normal operating conditions. Also, paragraph (a) would be revised to require at least one of the independent communication systems to have two-way voice communication capability for non-normal and emergency operating conditions. In addition, references would be changed to be consistent with other proposed changes and requirements would be explained in full instead of referring the reader to another section of the CFR.

Also, paragraph (c)(1) would be revised to use terminology consistent with the proposed changes to §§ 121.103 and 121.121, and paragraph (c)(3) would be revised to apply to aircraft equipped with only VHF communications equipment.

Section 121.419 Pilots and Flight Engineers: Initial, Transition, and Upgrade Ground Training

The FAA proposes to amend § 121.419(a)(1)(vii) by replacing the term "DH" with the term "DA/DH." *See* discussion "II.D.1. Decision Height (DH) and Decision Altitude (DA)" above.

Section 121.559 Emergencies: Supplemental Operations

The FAA is proposing to amend § 121.559(c) by replacing the term "ground radio station" with the term "communication facility. The term "communications facility" is more accurate than the term "ground radio station." *See* discussion for § 121.565 below.

Section 121.561 Reporting Potentially Hazardous Meteorological Conditions and Irregularities of Ground and Navigation Facilities

The FAA is proposing to amend § 121.561 by revising the heading to replace the words "ground and navigation facilities" with "ground facilities and navigation aids." The same change is proposed for paragraph (a). The term "navigation aids" is used throughout this proposal.

Section 121.565 Engine Inoperative: Landing; Reporting

The FAA is proposing to amend § 121.565(c) by replacing the term "ground radio station" with the term "communication facility" and the term "station" with "facility." The term "communication facility" is more accurate than "ground radio station" since the communication facility could be other than ATC. For example, if a pilot sent a report to dispatch or to the Aeronautical Radio, Inc. (ARINC) service provider, then dispatch or the ARINC service provider would forward the report to ATC.

Section 121.579 Minimum Altitudes for Use of Autopilot

The FAA is proposing to amend § 121.579(b) by replacing the term "decision height" with the term "DA/DH." *See* discussion "II.D.1. Decision Height (DH) and Decision Altitude (DA)" above. In addition, the FAA is proposing to replace the term "ILS" with the word "precision" in (b)(1) and (b)(2). This would be consistent with the proposed definition of "precision approach procedure" in § 1.1.

Section 121.651 Takeoff and Landing Weather Minimums: IFR: All Certificate Holders

The FAA proposes to amend § 121.651 by replacing the term "DH" with "DA/DH" in paragraph (c). See discussion "II.D.1. Decision Height (DH) and Decision Altitude (DA)" above.

Current paragraph (d) sets forth requirements for a final approach segment of an instrument approach procedure (other than a Category II or Category III procedure) at an airport with less-than-certain visibility minimums where the ILS and an operative PAR are collocated and coincident. The FAA is proposing to amend the paragraph to expand it from only ILS to include an operative PAR and any other precision instrument approach system.

Section 121.652 Landing Weather Minimums: IFR: All Certificate Holders

The FAA proposes to amend § 121.652 by replacing the term "DH" with "DA/DH" in paragraph (a). *See* discussion "II.D.1. Decision Height (DH) and Decision Altitude (DA)" above.

Appendix M to Part 121

The FAA proposes to amend Appendix M to part 121 by replacing the words, "Selected decision height" with the words "Selected decision altitude/decision height" in Parameter Number 54. *See* discussion "II.D.1. Decision Height (DH) and Decision Altitude (DA)" above.

Section 125.51 En Route Navigational Facilities

The FAA proposes to revise the heading to read "En route navigation aids" and to amend paragraphs (a) and (b) of § 125.51 by replacing the words "nonvisual ground aids" with "navigation aids" to allow for navigation by other-than-ground-based navigation aids, and to change the heading from "en route navigational facilities" to "en route navigation systems."

Section 125.203 Radio and Navigational Equipment

Section 125.203 would be revised. In the heading, the words "Radio and navigational" would be replaced with the words "Communication and navigation." Throughout the rest of the

section, proposed changes would mirror proposed §§ 121.349, 129.17 and 135.165 requirements. These are described in the discussion of proposed § 121.349. In addition, because nautical miles are the standard unit of measurement in air navigation, the words "25 miles" in paragraph (a) would be replaced with the words "22 nautical miles."

For the purposes of § 125.203, a system that provides both communication and navigation may be used in place of separate communications and navigation systems. However, existing § 125.203(d) would be removed because it does not contain a requirement and is merely guidance.

Section 125.321 Reporting Potentially Hazardous Meteorological Conditions and Irregularities of Ground and Navigation Facilities

The FAA is proposing to revise § 125.321 so that it would be identical to proposed § 121.561.

Section 125.379 Landing Weather Minimums: IFR

The FAA proposes to amend § 125.379(a) by replacing the term "DH" with "DA/DH" in paragraph (a). See discussion "II.D.1. Decision Height (DH) and Decision Altitude (DA)" above.

Section 125.381 Takeoff and Landing Weather Minimums: IFR

The FAA is proposing to amend § 125.381(a) and (b) by changing the word "pilot" to "person" to make the regulation consistent with the definition of "person" currently in § 1.1.

The FAA is also proposing to revise § 125.381(c) to update the terminology and to reorganize the paragraph to improve its clarity. As proposed, the term "outer marker" would be replaced with the more accurate term "precision final approach fix" in paragraph (c)(1). In addition, the FAA is proposing to change the term "DH" to "DA/DH." See discussion under "II.D.1. Decision Height (DH) and Decision Altitude (DA)" above.

Section 129.16 Communication and Navigation Equipment for Rotorcraft Operations Under VFR Over Routes Navigated by Pilotage

The FAA is proposing to add new § 129.16 to mirror the requirements of § 121.347 for part 129 rotorcraft VFR operations. This would impose no burden on operators of those rotorcraft because they are already equipped with the communication equipment, and the communication and navigation equipment needed for night VFR operations, that would meet the proposed requirements. These changes would make the regulation more flexible for modern means of communication and navigation and would allow for future changes in technology.

Section 129.17 Radio Equipment

The FAA is proposing to revise the heading of § 129.17 to replace "radio equipment" with "aircraft communication and navigation equipment for operations under IFR or over the top." Throughout the rest of the section, proposed changes would mirror proposed §§ 121.347, 121.349, and 135.165 requirements. These are described in the explanation of changes to § 121.349. The change would impose no burden on operators of those aircraft because they are already equipped with the communication and navigation equipment that would meet the proposed requirements. These changes would make the regulation more flexible for modern means of communication and navigation and would allow for future changes in technology.

Section 129.21 Control of Traffic

The FAA is proposing to revise § 129.21 to remove references to "ground" and "voice." This revision would enable air carriers to take advantage of advances in technology.

Appendix A to Part 129

The FAA is proposing to revise paragraph (b), Section IV, of part 129, Appendix A, to replace the words "Radio Facilities: Communications" with "Communications Facilities" in the paragraph heading, and by replacing the words "ground radio communication facilities" with "communication facilities" in the text. This would allow those facilities to be located wherever appropriate.

Section 135.67 Reporting Potentially Hazardous Meteorological Conditions and Irregularities of Communications or Navigation Facilities

The FAA is proposing to amend § 135.67 so that the section would be identical to proposed § 121.561.

Section 135.78 Instrument Approach Procedures and IFR Landing Minimums

The FAA is proposing to add new § 135.78 to be consistent with the requirements in §§ 121.567 and 125.325. This would give the FAA a regulatory basis for authorizing in the certificate holder's operations specifications for new kinds of approaches and revising weather minimums for certain conditions.

Section 135.79 Flight Locating Requirements

The FAA is proposing to amend § 135.79(a)(3) by replacing the term "radio or telephone communications" with the term "communications." By using less specific language, certificate holders would have greater flexibility in determining what type of communication equipment to use, and thus be able to take advantage of changes in technology.

Section 135.93 Autopilot: Minimum Altitudes for Use

The FAA is proposing to replace the words "When using an instrument approach facility other than ILS," at the beginning of § 135.93(b) with the words "For other than precision approaches, * * *" This would eliminate the use of the word "facility." Under the existing language, paragraph (b) already allows for approach and landing operations with vertical guidance (APV) by using the phrase "other than ILS." The term "facility" is not necessary and would be removed to improve clarity.

Paragraph (c) would be amended to facilitate future technology by replacing the words "For ILS approaches" in the beginning of the paragraph with "For precision approaches."

Section 135.152 Flight Recorders

The FAA proposes to amend § 135.152 (h)(54) by replacing the words "decision height" with the words "decision altitude/decision height" in paragraph (a). *See* discussion "II.D.1. Decision Height (DH) and Decision Altitude (DA)" above.

Section 135.161 Communication and Navigation Equipment for Aircraft Operations Under VFR Over Routes Navigated by Pilotage

The FAA is proposing to revise § 135.161 to mirror the requirements of § 121.347 (a) and (b) for operations conducted under VFR over routes navigated by pilotage. This would not result in a substantive change to the existing requirements in the section. These changes would make the regulation more flexible for modern means of communication and would allow for future changes in technology. In addition, the FAA is proposing to remove the words "carrying passengers" to make the section applicable to all VFR operations, including all-cargo.

Section 135.165 Radio and Navigational Equipment: Extended Over-Water or IFR Operations

The FAA is proposing to revise the heading of § 135.165 and to amend the section by removing the words "radio communication and navigational equipment appropriate to the facilities to be used" and using the words "communication systems," "navigation systems" and "suitable for the route to be flown."

Throughout the rest of the section, proposed changes would mirror proposed §§ 121.349, 125.203, and 129.17 requirements. These are described in the discussion of proposed § 121.349. Also, for non-normal and emergency conditions, the FAA would add a requirement that aircraft used in extended over-water or IFR operations be equipped with at least one independent communication system having two-way voice communication capability. These changes would make the regulation more flexible for modern means of communication and navigation and would allow for future changes in technology. For the purposes of § 135.165, a system that provides both communication and navigation may be used in place of separate communications and navigation systems. However, existing § 135.165(c) would be removed because it does not contain a requirement and is merely guidance.

Section 135.225 IFR: Takeoff, Approach and Landing Minimums

The FAA is proposing to amend § 135.225 (a), (b), (e), (f), and (g) by changing the word "pilot" to "person" to make the regulation consistent with the definition of "person" currently in § 1.1.

The FAA is also proposing to amend paragraph (c)(1) by changing the term "an ILS final approach" to the term "a precision or APV approach." This would broaden the term to address any precision approach and the new APV approaches, not only ILS.

In the introductory text of paragraph (c)(3), the words "on a final approach using a VOR, NDB, or comparable approach procedure" would be changed to "on a nonprecision final approach."

In paragraphs (c)(3)(ii) and (d), the term "DH" would be changed to "DA/DH." *See* discussion "II.D.1. Decision Height (DH) and Decision Altitude (DA)" above.

Section 135.345 Pilots: Initial, Transition, and Upgrade Ground Training

The FAA proposes to amend § 135.345(a)(7) by replacing the term "DH" with "DA/DH" in paragraph (a). *See* discussion "II.D.1. Decision Height (DH) and Decision Altitude (DA)" above.

Section 135.371 Large Transport Category Airplanes: Reciprocating Engine Powered: En Route Limitations: One Engine Inoperative

The FAA is proposing to amend § 135.371(c)(2) by removing the word "radio." This would eliminate the reliance on ground-based navigational aid fixes and permit the use of other means such as RNAV waypoints to identify such fixes.

Section 135.381 Large Transport Category Airplanes: Turbine Engine Powered: En Route Limitations: One Engine Inoperative

The FAA is proposing to amend § 135.381(b)(2) by removing the word "radio." This would eliminate the reliance on voice technology.

Appendix F to Part 135

The FAA proposes to amend Appendix F to part 135 by replacing the words, "Selected decision height" with the words "Selected decision altitude/decision height" in Parameter Number 54. *See* discussion "II.D.1.Decision Height (DH) and Decision Altitude (DA)" above.

IV. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this proposed rule.

V. International Compatibility

In keeping with United States obligations under the Convention on International Civil Aviation, it is the FAA's policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that corresponded to these proposed regulations.

VI. Economic Evaluation

Proposed and final rule changes to federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531 through 2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a federal mandate likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that this NPRM: (1) Would not be "a significant regulatory action" as defined in the Executive Order, and would not be "significant" as defined in the Department of Transportation's Regulatory Policies and Procedures; (2) would not have a significant impact on a substantial number of small entities; (3) would not impose barriers to international trade; and (4) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses are available in the docket, and are summarized below.

Benefits and Costs

The proposed rule expands the use of area navigation systems to allow for technological advances that support RNAV, such as GPS, while retaining the current ground-based systems. The proposed rule would not impose an obligation to change current navigation systems, and therefore, the proposed rule would mandate no costs on aircraft operators. The proposed rule would also add language that would codify current practice and, therefore, would not impose costs. To enhance safety, the proposed rule would revise the definition of "night," which would allow the FAA to limit operations at locations where terrain might result in an earlier nightfall than published in the American Air Almanac. This could affect a very small number of airports in the United States, and, while the FAA does not expect any cost impact, the agency asks for comments.

Cost savings might result because the proposed rule would enable the use of advanced RNAV navigation routes that the FAA has been developing. These routes are typically more direct, and therefore, shorter than the current Federal Airways and jet routes and in following these advanced RNAV routes aircraft may require less fuel and time to reach their destinations. Advanced

area navigation routes have not been planned, so cost savings cannot be reliably estimated at this time. However, estimates of cost savings from flying advanced RNAV test routes that the FAA has established are in excess of $30 million annually.

In addition, the proposed rule would amend the current regulation and eliminate the middle marker as a required ILS component, as indicated in § 91.175 (k) of the proposed amendments. In 1992, the FAA completed an evaluation of the operational effectiveness and safety benefits provided by a middle marker during ILS operations. The evaluation concluded that a middle marker makes no significant difference in pilot performance while conducting an ILS approach. Elimination of the middle marker as a required ILS component would result in net cost savings to owners of middle marker facilities who choose to decommission their middle marker facilities. Owners of middle marker facilities would save a total of $2.3 million per year if all the 672 middle marker facilities are decommissioned. The total operating cost savings over 15 years would be $34 million (approximately $20 million discounted). However, there are costs to decommission the facilities and these costs range from $10,000 to $30,000 per facility. The FAA assumes that half the middle markers would be decommissioned at the end of 2003 and the other half at the end of 2004. The total cost to decommission all the middle marker facilities would range from a total of $6.7 million ($6.0 million discounted) to approximately $20.2 million ($18.2 million discounted). The net cost savings would be $27.2 million ($13.5 million discounted) over the 15 year period given the low estimate of decommissioning costs to $13.8 million ($1.3 million discounted) given the high estimate.

In addition, the proposed amendments would expand the number of acceptable substitutes for the outer marker. This would allow more flexibility in the design of future instrument approaches.

VII. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and a Regulatory Flexibility Analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule may effect those privately owned small airports that would be allowed to decommission their middle marker facilities. There are an estimated 38 non-Federal middle marker facilities. For the purposes of this regulatory flexibility determination, the FAA assumes that all 38 middle marker facilities are at airports operated by small entities. The estimated cost to decommission a middle marker facility ranges from $10,000 to $30,000 per facility. On the other hand, the non-Federal navigation facilities would save operating costs by no longer having to maintain and operate these middle marker facilities. These savings would be about $3,400 annually per facility. Over a period of 15 years, each facility would save $51,000 in operating costs if it decommissioned its middle markers. However, the proposed rule would not mandate that the middle marker facilities be decommissioned. The private facility owners would not be required to decommission their facilities; therefore they would only do so if they believed it to be cost-beneficial. Consequently, the FAA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from the public regarding this finding.

VIII. International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

This action proposes to impose requirements on foreign air carriers operating in the United States that would mirror the communication and navigation equipment requirements placed on domestic air carriers operating in the United States. This would mean that the requirements imposed on foreign air carriers operating in the United States would be consistent with those that are imposed on U.S. commercial operators and air carriers operating domestically. For example, proposed §§ 121.349, 125.203, and 135.165 would impose substantially the same communication and navigation system requirements for operations in the United States under IFR or over the top as proposed in § 129.17 for foreign air carriers that conduct IFR or over the top operations in the United States. Therefore the FAA has determined that the proposed rule would have a neutral impact on foreign trade and would create no obstacles to the foreign commerce of the United States.

IX. Unfunded Mandate Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." This proposed rule would not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

X. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this proposal would not have federalism implications.

XI. Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

XII. Energy Impact

The energy impact of this proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) (Pub. L. 94–163, as amended; 42 U.S.C. 6362) and FAA Order 1053.1. The FAA has determined that the proposed rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 71

Airspace, Navigation (air).

14 CFR Part 91

Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements.

14 CFR Part 95

Air traffic control, Airspace, Alaska, Navigation (air), Puerto Rico.

14 CFR Part 97

Air traffic control, Airports, Navigation (air), Weather.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements

14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Security, Smoking.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendments

In consideration of the foregoing, the Federal Administration Aviation proposes to amend chapter I of 14 CFR as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

2. Amend § 1.1 as follows:

a. Remove the definitions of Area navigation high route, Area navigation low route, Category II operations, Category III operations, Category IIIa operations, Category IIIb operations, Category IIIc operations, Decision height, Minimum descent altitude, Nonprecision approach procedure, Precision approach procedure, and RNAV way point.

b. Add definitions for Air Traffic Service (ATS) route, Approach procedure with vertical guidance (APV), Area navigation (RNAV) route, Category I (CAT I) operation, Category II (CAT II) operation, Category III (CAT III) operation, Category IIIa (CAT IIIa) operation, Category IIIb (CAT IIIb) operation, Category IIIc (CAT IIIc) operation, Decision altitude (DA), Decision height (DH), Final approach fix (FAF), Instrument approach procedure (IAP), Minimum descent altitude (MDA), Nonprecision approach procedure (NPA), Precision approach procedure (PA), and Precision final approach fix (PFAF) in alphabetical order to read as set forth below.

c. Revise the definitions of Area navigation (RNAV), Night, and Route segment to read as set forth below.

§ 1.1 General definitions.

* * * * *

Air Traffic Service (ATS) route is a specified route designated for channeling the flow of traffic as necessary for the provision of air traffic services. The term "ATS route" refers to a variety of airways, including jet routes, area navigation (RNAV) routes, and arrival and departure routes. An ATS route is defined by route specifications, which may include:

(1) An ATS route designator;

(2) The path to or from significant points;

(3) Distance between significant points;

(4) Reporting requirements; and

(5) The lowest safe altitude determined by the appropriate authority.

* * * * *

Approach procedure with vertical guidance (APV) is an instrument approach procedure based on lateral path and vertical glide path. These procedures may not conform to requirements for precision approaches.

* * * * *

Area navigation (RNAV) is a method of navigation that permits aircraft operations on any desired flight path.

Area navigation (RNAV) route is an ATS route based on RNAV that can be used by suitably equipped aircraft.

* * * * *

Category I (CAT I) operation is a precision instrument approach and landing with a decision altitude that is not lower than 200 feet (60 meters) above the threshold and with either a visibility of not less than ½ statute mile (800 meters), or a runway visual range of not less than 1,800 feet (550 meters).

Category II (CAT II) operation is a precision instrument approach and landing with a decision height lower than 200 feet (60 meters), but not lower than 100 feet (30 meters), and with a runway visual range of not less than 1,200 feet (350 meters).

Category III (CAT III) operation is a precision instrument approach and landing with a decision height lower than 100 feet (30 meters) or no DH, and with a runway visual range less than 1,200 feet (350 meters).

Category IIIa (CAT IIIa) operation is a precision instrument approach and landing with a decision height lower than 100 feet (30 meters), or no decision height, and with a runway visual range of not less than 700 feet (200 meters).

Category IIIb (CAT IIIb) operation is a precision instrument approach and landing with a decision height lower than 50 feet (15 meters), or no decision height, and with a runway visual range of less than 700 feet (200 meters), but not less than 150 feet (50 meters).

Category IIIc (CAT IIIc) operation is a precision instrument approach and landing with no decision height and with a runway visual range less than 150 feet (50 meters).

* * * * *

Decision altitude (DA) is a specified altitude at which a person must initiate a missed approach if the person does not see the required visual reference. Decision altitude is expressed in feet above mean sea level.

Decision height (DH) is a specified height above the ground level at which a person must initiate a missed approach during a Category II or III approach if the person does not see the required visual reference.

Final approach fix (FAF) defines the beginning of the nonprecision final

approach segment and the point where final segment descent may begin.

* * * * *

Instrument approach procedure (IAP) is a predetermined ground track and vertical profile that provides prescribed measures of obstruction clearance and assurance of navigation signal reception capability. An IAP enables a person to maneuver a properly equipped aircraft with reference to approved flight instruments from a specified position and altitude to—

(1) A position and altitude from which a landing can be completed; or

(2) A position and altitude at which holding or en route flight may begin.

* * * * *

Minimum descent altitude (MDA) is the lowest altitude to which a person may descend on a nonprecision final approach, or during a circle-to-land maneuver, until the visual reference requirements of § 91.175(c) of this chapter are met. Minimum descent altitude is expressed in feet above mean sea level.

* * * * *

Night is the time between the end of evening civil twilight and the beginning of morning civil twilight, as published in the American Air Almanac, converted to local time or such other period between sunset and sunrise, as may be prescribed by the FAA.

* * * * *

Nonprecision approach procedure (NPA) is an instrument approach procedure based on a lateral path and no vertical glide path.

* * * * *

Precision approach procedure (PA) is an instrument approach procedure based on a lateral path and a vertical glide path.

Precision final approach fix (PFAF) defines the beginning of the precision or APV final approach segment, and denotes the location where the glide path intersects the intermediate segment altitude; *i.e.*, where final segment descent on glide path may begin.

* * * * *

Route segment is a portion of a route bounded on each end by a fix or navigation aid (NAVAID).

* * * * *

3. Amend § 1.2 by adding the following abbreviations in alphabetical order to read as follows:

§ 1.2 Abbreviations and symbols.

* * * * *

APV means approach procedure with vertical guidance.

* * * * *

NM means nautical mile.

NPA means nonprecision approach procedure.

* * * * *

PA means precision approach procedure.

* * * * *

RNAV means area navigation.

* * * * *

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

4. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

5. Revise the heading of part 71 to read as set forth above.

Subpart A—Class A Airspace

6. Transfer the heading "Subpart A—General; Class A Airspace" from where it appears preceding § 71.1 to preceding § 71.31 and revise it to read as set forth above.

7. Add § 71.11 to read as follows:

§ 71.11 Air Traffic Service (ATS) routes.

Unless otherwise specified, the following apply:

(a) An Air Traffic Service (ATS) route is based on a centerline that extends from one navigation aid, fix, or intersection, to another navigation aid, fix, or intersection (or through several navigation aids, fixes, or intersections) specified for that route.

(b) ATS routes include the primary protected airspace dimensions defined in FAA Order 8260.3, "United States Standard For Terminal Instrument Procedures (TERPS)." Order 8260.3 is incorporated by reference in § 97.20 of this chapter.

(c) An ATS route does not include the airspace of a prohibited area.

8. Add § 71.13 to read as follows:

§ 71.13 Classification of Air Traffic Service (ATS) routes.

Unless otherwise specified, ATS routes are classified as follows:

(a) In subpart A of this part:

(1) Jet routes.

(2) Area navigation (RNAV) routes.

(b) In subpart E of this part:

(1) VOR Federal airways.

(2) Colored Federal airways.

(i) Green Federal airways.

(ii) Amber Federal airways.

(iii) Red Federal airways.

(iv) Blue Federal airways.

(3) Area navigation (RNAV) routes.

9. Add § 71.15 to read as follows:

§ 71.15 Designation of jet routes and VOR Federal airways.

Unless otherwise specified, the place names appearing in the descriptions of airspace areas designated as jet routes in subpart A of FAA Order 7400.9, and as VOR Federal airways in subpart E of FAA Order 7400.9, are the names of VOR or VORTAC navigation aids. FAA Order 7400.9 is incorporated by reference in § 71.1.

§ 71.73 [Removed]

10. Remove § 71.73.

§ 71.75 [Removed]

11. Remove § 71.75.

§ 71.77 [Removed]

12. Remove § 71.77.

§ 71.79 [Removed]

13. Remove § 71.79.

PART 91—GENERAL OPERATING AND FLIGHT RULES

14. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

15. Amend § 91.129 by revising paragraph (e) to read as follows:

§ 91.129 Operations in Class D airspace.

* * * * *

(e) *Minimum altitudes when operating to an airport in Class D airspace.* (1) Unless required by the applicable distance-from-cloud criteria, each person operating a large or turbine-powered airplane must enter the traffic pattern at an altitude of at least 1,500 feet above the elevation of the airport and maintain at least 1,500 feet until further descent is required for a safe landing.

(2) Each person operating a large or turbine-powered airplane that is performing approach and landing operations with vertical guidance (APV) or a precision approach procedure must:

(i) Operate at an altitude at or above the glide path between the published precision final approach fix and the decision altitude (DA), or decision height (DH), as applicable; or

(ii) If compliance with the applicable distance-from-cloud criteria requires interception closer in, operate at or above the glide path, between the point of interception of glide path and the DA or the DH.

(3) Each person operating an airplane approaching to land on a runway served by a visual approach slope indicator must maintain an altitude at or above the glide path until a lower altitude is necessary for a safe landing.

(4) Paragraphs (e)(2) and (e)(3) of this section do not prohibit normal bracketing maneuvers above or below the glide slope that are conducted for the purpose of remaining on the glide path.

* * * * *

16. Amend § 91.131 by revising paragraph (c)(1) to read as follows:

§ 91.131 Operations in Class B airspace.

* * * * *

(c) * * *

(1) *For IFR operation.* An operable and suitable RNAV system, or VOR or TACAN receiver; and

* * * * *

17. Amend § 91.175 by amending paragraphs (e) introductory text and (j) by removing the word "pilot" and adding in its place the word "person," by revising paragraphs (a), (b), (c) introductory text, (e)(1)(ii), (f) introductory text, (h), and (k) to read as follows:

§ 91.175 Takeoff and landing under IFR.

(a) *Instrument approaches to civil airports.* Unless otherwise authorized by the FAA, when it is necessary to use an instrument approach to a civil airport, each person operating an aircraft must use a standard instrument approach procedure prescribed in part 97 of this chapter for that airport. This paragraph does not apply to United States military aircraft.

(b) *Authorized DA/DH or MDA.* For the purpose of this section, when an approach procedure requires the use of DA/DH or MDA, the authorized DA/DH or MDA is the highest of the following—

(1) The DA/DH or MDA prescribed by the approach procedure.

(2) The DA/DH or MDA prescribed for the pilot in command.

(3) The DA/DH or MDA for which the aircraft is equipped.

(c) *Operation below DA/DH or MDA.* Where a DA/DH or MDA is applicable, no pilot may operate an aircraft, except a military aircraft of the United States, at any airport below the authorized MDA or continue an approach below the authorized DA/DH unless—

* * * * *

(e) * * *

(1) * * *

(ii) Upon arrival at the missed approach point, including a DA/DH where a DA/DH is specified and its use is required, and at any time after that until touchdown.

* * * * *

(f) *Civil airport takeoff minimums.* Unless otherwise authorized by the FAA, no person operating an aircraft under part 121, 125, 129, or 135 of this chapter may takeoff from a civil airport under IFR unless weather conditions are at or above the weather minimums for IFR takeoff prescribed for that airport under part 97 of this chapter. Where published civil takeoff minimums are based on a specified route, persons operating that aircraft must comply with that route unless an alternative route has been assigned by ATC. If takeoff minimums are not prescribed under part 97 of this chapter for a particular airport, the following minimums apply to takeoffs under IFR for aircraft operating under part 121, 125, 129, or 135 of this chapter:

* * * * *

(h) *Comparable values of RVR and ground visibility.* Except for Category II or Category III minimums, if RVR minimums for takeoff or landing are prescribed in an instrument approach procedure, but RVR is not reported for the runway of intended operation, the RVR minimum must be converted to ground visibility in accordance with the Comparable Values of RVR and Ground Visibility table in FAA Order 8260.3, "United States Standard for Terminal Instrument Procedures (TERPS)" (incorporated by reference in § 97.20 of this chapter). This visibility is the minimum for takeoff or landing on that runway.

* * * * *

(k) *ILS components.* The basic components of an ILS are the localizer, glide slope, and outer marker, and, when installed for use with Category II or Category III instrument approach procedures, an inner marker. The following means may be used to substitute for the outer marker: compass locator; precision approach radar (PAR) or airport surveillance radar (ASR); DME, VOR, or nondirectional beacon fixes authorized in the standard instrument approach procedure; and a suitable RNAV system in conjunction with a fix identified in the standard instrument approach procedure. Applicability of, and substitution for, the inner marker for a Category II or III approach is determined by the appropriate 14 CFR part 97 approach procedure, letter of authorization, or operations specification pertinent to the operation.

18. Amend § 91.177 by revising paragraph (a) to read as follows:

§ 91.177 Minimum altitudes for IFR operations.

(a) *Operation of aircraft at minimum altitudes.* Except when necessary for takeoff or landing, no person may operate an aircraft under IFR below—

(1) The applicable minimum altitudes prescribed in parts 95 and 97 of this chapter. However, if both a MEA and a MOCA are prescribed for a particular route or route segment, a person may operate an aircraft below the MEA down to, but not below, the MOCA, provided the applicable navigation signals are available. For aircraft using VOR for navigation, this applies only when the aircraft is within 22 nautical miles of that VOR (based on the reasonable estimate by the pilot operating the aircraft of that distance); or

(2) If no applicable minimum altitude is prescribed in parts 95 and 97 of this chapter, then—

(i) In the case of operations over an area designated as a mountainous area in part 95 of this chapter, an altitude of 2,000 feet above the highest obstacle within a horizontal distance of 4 nautical miles from the course to be flown; or

(ii) In any other case, an altitude of 1,000 feet above the highest obstacle within a horizontal distance of 4 nautical miles from the course to be flown.

* * * * *

19. Amend § 91.179 by adding introductory text to read as follows:

§ 91.179 IFR cruising altitude or flight level.

Unless otherwise authorized by ATC, the following rules apply—

* * * * *

§ 91.181 [Amended]

20. Amend § 91.181 by removing the words "a Federal airway" and adding in their place the words "an ATS route" in paragraph (a).

21. Amend § 91.183 by revising the heading and the introductory text to read as follows:

§ 91.183 IFR communications.

Unless otherwise authorized by the FAA, the pilot in command of each aircraft operated under IFR in controlled airspace must monitor the appropriate frequency and must report the following as soon as possible—

* * * * *

§ 91.185 [Amended]

22. Amend § 91.185 heading and paragraph (a) by removing the word "radio."

§ 91.189 [Amended]

23. Amend § 91.189 (c) by removing the term "DH" and adding in its place the term "DA/DH" wherever it appears, and amend paragraph (d) by removing

the word "pilot" and inserting the word "person."

24. Amend § 91.205 by revising paragraphs (d)(2) and (e) to read as follows:

§ 91.205 Powered civil aircraft with standard category U.S. airworthiness certificates: Instrument and equipment requirements.

* * * * *

(d) * * *

(2) Two-way communication and navigation equipment suitable for the route to be flown.

* * * * *

(e) *Flight at and above 18,000 feet MSL (FL 180).* If VOR navigation equipment is required under paragraph (d)(2) of this section, no person may operate a U.S.-registered civil aircraft within the 50 states and the District of Columbia at or above FL 180 unless that aircraft is equipped with approved DME or a suitable RNAV system. When the DME or RNAV system required by this paragraph fails at and above FL 180, the pilot in command of the aircraft must notify ATC immediately, and then may continue operations at and above FL 180 to the next airport of intended landing where repairs or replacement of the equipment can be made.

* * * * *

§ 91.219 [Amended]

25. Amend § 91.219(b)(5) by removing the term "DH" and adding in its place the term "DA/DH."

26. Amend § 91.511 by revising the heading and paragraph (a)(1) introductory text to read as follows:

§ 91.511 Communication and navigation equipment for over-water operations.

(a) * * *

(1) Communication equipment appropriate to the facilities to be used that can transmit to, and receive from, at least one communication facility from any place along the route:

* * * * *

27. Amend § 91.711 by revising paragraphs (c)(1)(i), (c)(1)(ii), and (e) introductory text to read as follows:

§ 91.711 Special rules for foreign civil aircraft.

* * * * *

(c) * * *

(1) * * *

(i) Communication equipment.

(ii) Navigation equipment suitable for the route to be flown.

* * * * *

(e) *Flight at and above FL 180.* If VOR navigation equipment is required under paragraph (c)(1)(ii) of this section, no person may operate a foreign civil aircraft within the 50 States and the District of Columbia at or above FL 180, unless the aircraft is equipped with DME or an IFR-approved RNAV system. When the DME or RNAV system required by this paragraph fails at and above FL 180, the pilot in command of the aircraft must notify ATC immediately and may then continue operations at and above FL 180 to the next airport of intended landing where repairs or replacement of the equipment can be made. A foreign civil aircraft may be operated within the 50 States and the District of Columbia at or above FL 180 without DME or an IFR-approved RNAV system when operated for the following purposes, and ATC is notified before each takeoff:

* * * * *

PART 95—IFR ALTITUDES

28. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, and 14 CFR 11.49(b)(2).

29. Revise § 95.1 to read as follows:

§ 95.1 Applicability.

(a) This part prescribes altitudes governing the operation of aircraft under IFR on ATS routes, or other direct routes for which an MEA is designated in this part. In addition, it designates mountainous areas and changeover points.

(b) The MAA is the highest altitude on an ATS route, or other direct route for which an MEA is designated, at which adequate reception of VOR signals is assured.

(c) The MCA applies to the operation of an aircraft proceeding to a higher minimum en route altitude when crossing specified fixes.

(d) The MEA is the minimum en route IFR altitude on an ATS route, ATS route segment, or other direct route. The MEA applies to the entire width of the ATS route, ATS route segment, or other direct route between fixes defining that route. Unless otherwise specified, an MEA prescribed for an off airway route or route segment applies to the airspace 4 nautical miles on each side of a direct course between the navigation fixes defining that route or route segment.

(e) The MOCA assures obstruction clearance on an ATS route, ATS route segment, or other direct route, and adequate reception of VOR navigation signals within 22 nautical miles of a VOR station used to define the route.

(f) The MRA applies to the operation of an aircraft over an intersection defined by ground-based navigation aids. The MRA is the lowest altitude at which the intersection can be determined using the ground-based navigation aids.

(g) The changeover point (COP) applies to operation of an aircraft along a Federal airway, jet route, or other direct route; for which an MEA is designated in this part. It is the point for transfer of the airborne navigation reference from the ground-based navigation aid behind the aircraft to the next appropriate ground-based navigation aid to ensure continuous reception of signals.

PART 97—STANDARD INSTRUMENT PROCEDURES

30. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

31. Revise the heading for part 97 to read as set forth above.

32. Revise § 97.1 to read as follows:

§ 97.1 Applicability.

(a) *General.* This part prescribes standard instrument procedures to airports in the United States and the weather minimums that apply to takeoffs and landings under IFR at those airports.

(b) *Departure procedures.* This part also prescribes departure procedures (DPs) developed for aircraft operating under parts 121, 125, 129, and 135 of this chapter to avoid obstacles, and establishes weather minimums that apply for takeoff under IFR at civil airports. Where published civil takeoff weather minimums are based on a specified route, persons operating that aircraft must comply with that route unless an alternative route has been assigned by ATC.

33. Revise § 97.3 to read as follows:

§ 97.3 Symbols and terms used in procedures.

As used in the standard instrument procedures prescribed in this part—

Aircraft approach category means a grouping of aircraft based on a speed of 1.3 V_{so} (at maximum certificated landing weight). V_{so} and the maximum certificated landing weight are those values established for the aircraft by the certificating authority of the country of registry. The categories are as follows—

(1) Category A: Speed less than 91 knots.

(2) Category B: Speed 91 knots or more but less than 121 knots.

(3) Category C: Speed 121 knots or more but less than 141 knots.

(4) Category D: Speed 141 knots or more but less than 166 knots.

(5) Category E: Speed 166 knots or more.

Approach procedure segments for which altitudes (minimum altitudes, unless otherwise specified) and paths are prescribed in procedures, are as follows—

(1) Initial approach is the segment between the initial approach fix and the intermediate fix or the point where the aircraft is established on the intermediate course or final approach course.

(2) Initial approach altitude is the altitude (or altitudes, in high altitude procedure) prescribed for the initial approach segment of an instrument approach.

(3) Intermediate approach is the segment between the intermediate fix or point and the final approach fix.

(4) Final approach is the segment between the final approach fix or point and the runway, airport, or missed approach point.

(5) Missed approach is the segment between the missed approach point, or point of arrival at decision altitude or decision height (DA/DH), and the missed approach fix at the prescribed altitude.

Ceiling means the minimum ceiling, expressed in feet above the airport elevation, required for takeoff or required for designating an airport as an alternate airport.

Copter procedures means helicopter procedures, with applicable minimums as prescribed in § 97.35. Helicopters may also use other procedures prescribed in subpart C of this part and may use the Category A minimum descent altitude (MDA), or decision altitude or decision height (DA/DH). For other than "copter-only" approaches, the required visibility minimum for Category I approaches may be reduced to one-half the published visibility minimum for Category A aircraft, but in no case may it be reduced to less than one-quarter mile prevailing visibility, or, if reported, 1,200 feet RVR. Reduction of visibility minima on Category II instrument approach procedures is prohibited.

FAF means final approach fix.

HAA means height above airport and is expressed in feet.

HAL means height above landing and is the height of the DA/MDA above a designated helicopter landing area elevation used for helicopter instrument approach procedures and is expressed in feet.

HAS means height above the surface and is the height of the DA/MDA above the highest terrain/surface within a 5,200-foot radius of the missed approach point used in helicopter instrument approach procedures and is expressed in feet AGL.

HAT means height above threshold expressed in feet.

HCH means helipoint crossing height and is the computed height of the vertical guidance path above the helipoint elevation at the helipoint expressed in feet.

Helipoint means the aiming point for the final approach course for heliports. It is normally the center point of the touchdown and lift-off area (TLOF). The helipoint elevation is the highest point on the TLOF and is the same elevation as heliport elevation.

Hold in lieu of PT means a holding pattern established under applicable FAA criteria, and used in lieu of a procedure turn to execute a course reversal.

MAP means missed approach point.

More than 65 knots means an aircraft that has a stalling speed of more than 65 knots (as established in an approved flight manual) at maximum certificated landing weight with full flaps, landing gear extended, and power off.

MSA means minimum safe altitude, expressed in feet above mean sea level, depicted on an approach chart that provides at least 1,000 feet of obstacle clearance for emergency use within a certain distance from the specified navigation facility or fix.

NA means not authorized.

NOPT means no procedure turn required. Altitude prescribed applies only if procedure turn is not executed.

Procedure turn means the maneuver prescribed when it is necessary to reverse direction to establish the aircraft on an intermediate or final approach course. The outbound course, direction of turn, distance within which the turn must be completed, and minimum altitude are specified in the procedure. However, the point at which the turn may be begun, and the type and rate of turn, is left to the discretion of the pilot.

RA means radio altimeter setting height.

RVV means runway visibility value.

SIAP means standard instrument approach procedure.

65 knots or less means an aircraft that has a stalling speed of 65 knots or less (as established in an approved flight manual) at maximum certificated landing weight with full flaps, landing gear extended, and power off.

T means nonstandard takeoff minimums or specified departure routes/procedures or both.

TDZ means touchdown zone.

Visibility minimum means the minimum visibility specified for approach, landing, or takeoff, expressed in statute miles, or in feet where RVR is reported.

34. Amend § 97.5 by revising the heading and paragraph (a) to read as follows:

§ 97.5 Bearings, courses, tracks, headings, radials, miles.

(a) All bearings, courses, tracks, headings, and radials in this part are magnetic, unless otherwise designated.

* * * * *

§ 97.10 [Removed and reserved]

35. Remove and reserve § 97.10.

36. Revise § 97.20 to read as follows:

§ 97.20 General.

(a) This subpart prescribes standard instrument procedures based on the criteria contained in FAA Order 8260.3, "U.S. Standard for Terminal Instrument Procedures (TERPS)" and FAA Order 8260.19, "Flight Procedures and Airspace." These standard instrument procedures and FAA Orders were approved for incorporation by reference by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. They may be examined at the following locations:

(1) FAA Orders 8260.3 and 8260.19 may be examined at the Federal Aviation Administration, Flight Standards Service, Flight Technologies and Procedures Division (AFS–420), 6500 S. MacArthur Blvd., Oklahoma City, OK, and at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. These Orders are available for purchase from the U.S. Government Printing Office, 710 N. Capitol Street, NW, Washington, DC 20401.

(2) Standard instrument procedures may be examined at the Federal Aviation Administration, National Flight Data Center (ATA–110), 800 Independence Avenue, S.W., Washington, DC, and at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(b) Standard instrument procedures and associated supporting data are documented on specific forms under FAA Order 8260.19 and are promulgated by the FAA through the National Flight Data Center (NFDC) as the source for aeronautical charts and avionics databases. These procedures are then portrayed on aeronautical charts and included in avionics databases prepared by the National Aeronautical Charting Office (AVN–500) and other publishers of aeronautical data for use by pilots using the NFDC source data. The terminal aeronautical charts published by the U.S. Government were approved for incorporation by reference by the Director of the Federal Register pursuant

to 5 U.S.C. 552(a) and 1 CFR part 51. They may be examined at the Federal Aviation Administration, National Flight Data Center (ATA–110), 800 Independence Avenue, SW., Washington, DC, and at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. These charts are available for purchase from the FAA National Aeronautical Charting Office, Distribution Division AVN–530, 6303 Ivy Lane, Suite 400, Greenbelt, MD 20770.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

37. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

38. Amend § 121.99 by revising paragraph (a) to read as follows:

§ 121.99 Communications facilities.

(a) Each certificate holder conducting domestic or flag operations must show that a two-way communication system, or other means of communication approved by the FAA, is available over the entire route under normal operating conditions. The communications may be direct links or via an approved communication link that will provide reliable and rapid communications under normal operating conditions between each airplane and the appropriate dispatch office, and between each airplane and the appropriate air traffic control unit, except as specified in § 121.351(c). For non-normal and emergency operation conditions, the communication system for use between each airplane and the appropriate dispatch office and between each airplane and the appropriate ATC unit must have two-way voice communication capability. For the purpose of communications between the airplane and the dispatch office under this section, the term "rapid communications" means that the caller must be able to establish communications with the called party in less than four minutes.

* * * * *

39. Revise § 121.103 to read as follows:

§ 121.103 En route navigation systems.

(a) Except as provided in paragraph (b) of this section, each certificate holder conducting domestic or flag operations must show, for each proposed route (including to any regular, provisional, refueling or alternate airports), that suitable navigation aids are available over the route to navigate the airplane along the route with the required accuracy. Navigation aids required for approval of routes outside of controlled airspace are listed in the certificate holder's operations specifications except for those aids required for routes to alternate airports.

(b) Navigation aids are not required for any of the following operations—

(1) Day VFR operations that the certificate holder shows can be conducted safely by pilotage because of the characteristics of the terrain;

(2) Night VFR operations on routes that the certificate holder shows have reliably lighted landmarks adequate for safe operation; and

(3) Other operations approved by the FAA.

40. Revise § 121.121 to read as follows:

§ 121.121 En route navigation systems.

(a) Except as provided in paragraph (b) of this section, no certificate holder conducting supplemental operations may conduct any operation over a route (including to any destination, refueling or alternate airports) unless suitable navigation aids are available over the route to navigate the airplane along the route with the required accuracy. Navigation aids required for routes outside of controlled airspace are listed in the certificate holder's operations specifications except for those aids required for routes to alternate airports.

(b) Navigation aids are not required for any of the following operations—

(1) Day VFR operations that the certificate holder shows can be conducted safely by pilotage because of the characteristics of the terrain;

(2) Night VFR operations on routes that the certificate holder shows have reliably lighted landmarks adequate for safe operation; and

(3) Other operations approved by the FAA.

§ 121.344 [Amended]

41. Amend § 121.344 by removing the words "decision height" and adding in their place the words "decision altitude/decision height" in paragraph (a)(54).

§ 121.345 [Amended]

42. Amend § 121.345 by removing the word "radio" in the heading and in paragraphs (a) and (b) and adding in its place the word "communication."

43. Amend § 121.347 by revising the heading, paragraphs (a) introductory text, (a)(1), (a)(2), and (b) to read as follows:

§ 121.347 Communication and navigation equipment for operations under VFR over routes navigated by pilotage.

(a) No person may operate an airplane under VFR over routes that can be navigated by pilotage unless the airplane is equipped with the communication equipment necessary under normal operating conditions to fulfill the following:

(1) Communicate with at least one appropriate station from any point on the route; and

(2) Communicate with appropriate air traffic control facilities from any point within Class B, Class C, or Class D airspace, or within a Class E airspace surface area designated for an airport in which flights are intended.

* * * * *

(b) No person may operate an airplane at night under VFR over routes that can be navigated by pilotage unless that airplane is equipped with—

(1) Communication equipment necessary under normal operating conditions to fulfill the functions specified in paragraph (a) of this section; and

(2) Navigation equipment suitable for the route to be flown.

44. Revise § 121.349 to read as follows:

§ 121.349 Communication and navigation equipment for operations under VFR over routes not navigated by pilotage or for operations under IFR or over the top.

(a) *Navigation equipment requirements.* Except as provided in paragraph (c) of this section, no person may conduct operations under VFR over routes that cannot be navigated by pilotage, or operations conducted under IFR or over the top, unless the airplane used in those operations is equipped with at least two approved independent navigation systems suitable for the route to be flown and authorized in the certificate holder's operations specifications. However, only one navigation system need be provided for precision approach and APV operations. Equipment used to receive signals en route also may be used to receive signals on approach, if it is capable of receiving both signals.

(b) *Communication equipment requirements.* No person may operate an airplane under VFR over routes that cannot be navigated by pilotage, and no person may operate an airplane under IFR or over the top, unless the airplane is equipped with—

(1) For normal operating conditions, at least two independent communication systems that fulfill the functions specified in § 121.347(a); and

(2) Except as required in § 121.99, for non-normal and emergency operating conditions, at least one of the two independent communication systems that fulfills the functions specified in § 121.347(a), and has two-way voice communication capability.

(c) *Use of a single independent navigation system.* Notwithstanding the requirements in paragraph (a) of this section, the airplane may be equipped with a single independent navigation system suitable for the route to be flown if:

(1) The airplane is equipped with at least one other independent navigation system suitable, in the event of loss of the navigation capability of the single system at any point along the route, for navigating safely to a suitable airport and completing an instrument approach;

(2) Both navigation systems are authorized by the FAA in the certificate holder's operations specifications; and

(3) The airplane has sufficient fuel so that the flight may proceed safely to a suitable airport by use of the remaining navigation system, and complete an instrument approach and land.

(d) *Use of VOR navigation equipment.* If VOR navigation equipment is used to comply with paragraph (a) or (c) of this section, no person may operate an airplane unless it is equipped with at least one approved DME or suitable IFR approved RNAV system.

(e) *Additional communication system equipment requirements.* In addition to the requirements in paragraph (b) of this section, no person may operate an airplane having a passenger seat configuration of 10 to 30 seats, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds or less, under IFR, over the top, or in extended over-water operations unless it is equipped with at least—

(1) Two microphones; and

(2) Two headsets, or one headset and one speaker.

45. Amend § 121.351 by revising the heading and paragraphs (a), (c)(1), and (c)(3) to read as follows:

§ 121.351 Communication and navigation equipment for extended over-water operations and for certain other operations.

(a) Except as provided in paragraph (c) of this section, no person may conduct an extended over-water operation unless the airplane is equipped with at least two independent communication systems that meet the following requirements—

(1) The communication equipment necessary under normal operating conditions to communicate with at least one appropriate station from any point on the route;

(2) The communication equipment necessary under normal operating conditions to receive meteorological information from any point on the route by either of two independent communication systems. One of the communication systems used to comply with this paragraph may be used to comply with paragraphs (a)(1) and (a)(3) of this section;

(3) For non-normal and emergency operating conditions, one communication system having two way voice communication capability; and

(4) Two LRNSs when VOR or ADF radio navigation equipment is unusable along a portion of the route.

* * * * *

(c) * * *

(1) The ability of the flightcrew to navigate the airplane along the route with the required accuracy,

* * * * *

(3) The duration of the very high frequency communications gap, if only very high frequency communication equipment is installed.

§ 121.419 [Amended]

46. Amend § 121.419(a)(1)(vii) by removing the term "DH" and adding in its place the term "DA/DH".

§ 121.559 [Amended]

47. Amend § 121.559(c) by removing the words "ground radio station" and adding in their place the words "communication facility".

48. Amend § 121.561 by revising the heading to read as set forth below and by amending paragraph (a) by removing the words "ground or navigational facility" and adding in their place the words "ground facility or navigation aid".

§ 121.561 Reporting potentially hazardous meteorological conditions and irregularities of ground facilities or navigation aids.

* * * * *

§ 121.565 [Amended]

49. Amend § 121.565(c) by removing the words "ground radio station" and adding in their place the words "communication facility" and by removing the word "station" and adding in its place the word "facility".

§ 121.579 [Amended]

50. Amend § 121.579(b) introductory text by removing the words "decision height" and adding in their place the term "DA/DH" and amend paragraphs (b)(1) and (b)(2) by removing the term "ILS" and adding in its place the word "precision".

51. Amend § 121.651 by replacing the term "DH" with the term "DA/DH" wherever it appears in paragraph (c) and by revising paragraph (d) introductory text to read as follows:

§ 121.651 Takeoff and landing weather minimums: IFR: All certificate holders.

* * * * *

(d) A pilot may begin the final approach segment of a Category I precision approach procedure at an airport when the visibility is less than the visibility minimums prescribed for that procedure if that airport is served by an operative PAR and another operative precision instrument approach system, and both the PAR and the precision approach are used by the pilot. However, no person may continue an approach below the authorized DA, unless—

* * * * *

§ 121.652 [Amended]

52. Amend § 121.652(a) by removing the term "DH" wherever it appears and adding in its place the term "DA/DH".

Appendix M to Part 121 [Amended]

53. Amend Appendix M by removing the words "Selected decision height" and adding in their place the words "Selected decision altitude/decision height" in Parameter number 54.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

54. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

55. Amend § 125.51 by revising the heading to read as set forth below and amend paragraphs (a) and (b) by removing the words "nonvisual ground aids" and adding in their place the words "navigation aids".

§ 125.51 En route navigation aids.

* * * * *

56. Revise § 125.203 to read as follows:

§ 125.203 Communication and navigation equipment.

(a) No person may operate an airplane unless it has two-way communication equipment able, at least in flight, to transmit to, and receive from, appropriate facilities 22 nautical miles away.

(b) No person may operate an airplane over the top unless it has navigation equipment suitable for the route to be flown.

(c) No person may operate an airplane carrying passengers under IFR or in

extended over-water operations unless the airplane has at least the following equipment:

(1) Two transmitters;

(2) Two microphones;

(3) Two headsets or one headset and one speaker;

(4) Two independent communication systems, one of which must have two-way voice communication capability, capable of transmitting to, and receiving from, at least one appropriate facility from any place on the route to be flown; and

(5) Two approved independent navigation systems suitable for the route to be flown and authorized in the certificate holder's operations specifications. However, only one navigation system need be provided for precision approach and APV operations. Equipment used to receive signals en route also may be used to receive signals on approach, if it is capable of receiving both signals.

(d) *Use of a single independent navigation system.* Notwithstanding the requirements in paragraph (c) of this section, the airplane may be equipped with a single independent navigation system suitable for the route to be flown if—

(1) The airplane is equipped with at least one other independent navigation system suitable, in the event of loss of the navigation capability of the single system at any point along the route, for navigating safely to a suitable airport and completing an instrument approach;

(2) Both navigation systems are authorized by the FAA in the certificate holder's operations specifications; and

(3) The airplane has sufficient fuel so that the flight may proceed safely to a suitable airport by use of the remaining navigation system, and complete an instrument approach and land.

(e) *Use of VOR navigation equipment.* If VOR navigation equipment is required by paragraph (c) or (d) of this section, no person may operate an airplane unless it is equipped with at least one approved DME or a suitable IFR approved RNAV system.

(f) Notwithstanding the requirements of paragraph (c) of this section, installation and use of a single LRNS and a single LRCS for extended over-water operations in certain geographic areas may be authorized by the Administrator and approved in the certificate holder's operations specifications. The following are among the operational factors the Administrator may consider in granting an authorization:

(1) The ability of the flight crew to navigate the airplane along the route with the required accuracy;

(2) The length of the route being flown with a single navigation or communication system; and

(3) The duration of the very high frequency communications gap, if only very high frequency communication equipment is installed.

57. Amend § 125.321 by revising the heading to read as set forth below and by removing the words "ground or navigational facility"and adding in their place the words "ground facility or navigation aid".

§ 125.321 Reporting potentially hazardous meteorological conditions and irregularities of ground facilities or navigation aids.

* * * * *

§ 125.379 [Amended]

58. Amend § 125.379(a) by removing the term "DH" wherever it appears and adding in its place the term "DA/DH".

59. Amend § 125.381 (a) and (b) by removing the word "pilot" and adding in its place the word "person", and by revising paragraph (c) to read as follows:

§ 125.381 Takeoff and landing weather minimums: IFR.

* * * * *

(c) If a pilot initiates an instrument approach procedure based on a weather report that indicates that the specified visibility minimums exist and subsequently receives another weather report that indicates that conditions have worsened to below the minimum requirements, then the pilot may continue with the approach and landing only if both of the following conditions are met—

(1) The later weather report is received when the airplane is in one of the following landing phases:

(i) The airplane is on a precision approach or APV and has passed the precision final approach fix.

(ii) The airplane is on the final approach segment using a nonprecision approach procedure.

(iii) The airplane is on a PAR final approach and has been turned over to the final approach controller.

(2) The pilot in command finds, on reaching the authorized MAP or DA/DH, that the actual weather conditions are at or above the minimums prescribed in the certificate holder's operations specifications.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

60. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 41706, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906.

61. Add § 129.16 to read as follows:

§ 129.16 Communication and navigation equipment for rotorcraft operations under VFR over routes navigated by pilotage.

(a) No person may operate a rotorcraft under VFR over routes that can be navigated by pilotage unless the rotorcraft is equipped with the communication equipment necessary under normal operating conditions to fulfill the following:

(1) Communicate with at least one appropriate station from any point on the route;

(2) Communicate with appropriate air traffic control facilities from any point within Class B, Class C, or Class D airspace, or within a Class E airspace surface area designated for an airport in which flights are intended; and

(3) Receive meteorological information from any point en route.

(b) No person may operate a rotorcraft at night under VFR over routes that can be navigated by pilotage unless that rotorcraft is equipped with—

(1) Communication equipment necessary under normal operating conditions to fulfill the functions specified in paragraph (a) of this section; and

(2) Navigation equipment suitable for the route to be flown.

62. Revise § 129.17 to read as follows:

§ 129.17 Aircraft communication and navigation equipment for operations under IFR or over the top.

(a) *Aircraft navigation equipment requirements.* No person may conduct operations under IFR or over the top unless the aircraft used in those operations is equipped with at least two approved independent navigation systems suitable for the route to be flown and authorized in the certificate holder's operations specifications. However, only one navigation system needs to be provided for precision approach and APV operations. Equipment used to receive signals en route also may be used to receive signals on approach, it if is capable of receiving both signals.

(b) *Aircraft communication equipment requirements.* No person may operate an aircraft under IFR or over the top, unless it is equipped with—

(1) For normal operating conditions, at least two independent communication systems that fulfill the functions specified in § 121.347(a) of this chapter; and

(2) For non-normal and emergency operating conditions, at least one of the two independent communication systems that fulfills the functions specified in § 121.347(a) of this chapter must have two-way voice communication capability.

(c) *Use of a single independent navigation system.* Not withstanding the requirements in paragraph (a) of this section, the aircraft may be equipped with a single independent navigation system suitable for the route to be flown if—

(1) The aircraft is equipped with at least one other independent navigation system suitable, in the event of loss of the navigation capability of the single system at any point along the route, for navigating safely to a suitable airport and completing an instrument approach.

(2) Both navigation systems are authorized by the FAA in the certificate holder's operations specifications; and

(3) The aircraft has sufficient fuel so that the flight may proceed safely to a suitable airport by use of the remaining navigation system, and complete an instrument approach and land.

(d) *VOR navigation equipment.* If VOR navigation equipment is required by paragraph (a) or (c) of this section, no person may operate an aircraft unless it is equipped with at least one approved DME or suitable IFR approved RNAV system.

63. Revise § 129.21 to read as follows:

§ 129.21 Control of traffic.

(a) Subject to applicable immigration laws and regulations, each foreign air carrier must furnish sufficient personnel necessary to provide two-way communications between its aircraft and stations at places where the FAA finds that communication is necessary but cannot be maintained in a language with which station operators are familiar.

(b) Each person furnished by a foreign air carrier under paragraph (a) of this section must be able to speak English and the language necessary to maintain communications with its aircraft and must assist station operators in directing traffic.

64. Amend Appendix A to part 129 by revising paragraph (b), Section IV, to read as follows:

Appendix A to Part 129—Application for Operations Specifications by Foreign Air Carriers

* * * * *

(b) * * *

Sec. IV. Communications facilities. List all communication facilities to be used by the applicant in the conduct of the proposed operations within the United States and over that portion of the route between the last point of foreign departure and the United States.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

65. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

66. Amend § 135.67 by revising the heading to read as set forth below and by removing the words "ground communications or navigational facility" and adding in their place the words "ground facility or navigation aid".

§ 135.67 Reporting potentially hazardous meteorological conditions and irregularities of ground facilities or navigation aids.

* * * * *

67. Add § 135.78 to read as follows:

§ 135.78 Instrument approach procedures and IFR landing minimums.

No person may make an instrument approach at an airport except in accordance with IFR weather minimums and instrument approach procedures set forth in the certificate holder's operations specifications.

§ 135.79 [Amended]

68. Amend § 135.79(a)(3) by removing the words "radio or telephone communications" and adding in their place the word "communications".

§ 135.93 [Amended]

69. Amend § 135.93(b) by removing the words "When using an instrument approach facility other than ILS," and adding in their place the words "For other than precision approaches," and amend paragraph (c) by removing the words "For ILS approaches," and adding in their place the words "For precision approaches,".

§ 135.152 [Amended]

70. Amend § 135.152(h)(54) by removing the words "decision height" and adding in their place the words "decision altitude/decision height".

71. Revise § 135.161 to read as follows:

§ 135.161 Communication and navigation equipment for aircraft operations under VFR over routes navigated by pilotage.

(a) No person may operate an aircraft under VFR over routes that can be navigated by pilotage unless the aircraft is equipped with the communication equipment necessary under normal operating conditions to fulfill the following:

(1) Communicate with at least one appropriate station from any point on the route.

(2) Communicate with appropriate air traffic control facilities from any point within Class B, Class C, or Class D airspace, or within a Class E airspace surface area designated for an airport in which flights are intended.

(3) Receive meteorological information from any point en route.

(b) No person may operate an aircraft at night under VFR over routes that can be navigated by pilotage unless that aircraft is equipped with—

(1) Communication equipment necessary under normal operating conditions to fulfill the functions specified in paragraph (a) of this section; and

(2) Navigation equipment suitable for the route to be flown.

72. Revise § 135.165 to read as follows:

§ 135.165 Communication and navigation equipment: Extended over-water or IFR operations.

(a) *Aircraft navigation equipment requirements.* No person may conduct operations under IFR or extended over-water unless the aircraft used in those operations is equipped with at least two approved independent navigation systems suitable for the route to be flown and authorized in the certificate holder's operations specifications. However, only one navigation system need be provided for precision approach and APV operations. Equipment used to receive signals en route also may be used to receive signals on approach, if it is capable of receiving both signals.

(b) *Use of a single independent navigation system.* Notwithstanding the requirements in paragraph (a) of this section, the aircraft may be equipped with a single independent navigation system suitable for the route to be flown if:

(1) The aircraft is equipped with at least one other independent navigation system suitable, in the event of loss of the navigation capability of the single system at any point along the route, for navigating safely to a suitable airport

and completing an instrument approach;

(2) Both navigation systems are authorized by the FAA in the certificate holder's operations specifications; and

(3) The aircraft has sufficient fuel so that the flight may proceed safely to a suitable airport by use of the remaining navigation system, and complete an instrument approach and land.

(c) *VOR navigation equipment.* Whenever VOR navigation equipment is required by paragraph (a) or (b) of this section, no person may operate an aircraft unless it is equipped with at least one approved DME or suitable IFR approved RNAV system.

(d) *Aircraft communication equipment requirements.* Except as permitted in paragraph (e) of this section, no person may operate a turbojet airplane having a passenger seat configuration, excluding any pilot seat, of 10 seats or more, or a multiengine airplane in a commuter operation, as defined in part 119 of this chapter, under IFR or in extended over-water operations unless it is equipped with—

(1) For normal operating conditions, at least two independent communication systems that fulfill the functions specified in § 121.347(a) of this chapter; and

(2) For non-normal and emergency operating conditions, at least one of the two independent communication systems that fulfills the functions specified in § 121.347(a) of this chapter must have two-way voice communication capability.

(e) *IFR or extended over-water communications equipment requirements.* A person may operate an aircraft other than that specified in paragraph (d) of this section under IFR or in extended over-water operations if it meets all of the requirements of this section, with the exception that only one communication system transmitter is required for operations other than extended over-water operations.

(f) *Additional aircraft communication equipment requirements.* In addition to the requirements in paragraphs (d) and (e) of this section, no person may operate an aircraft under IFR or in extended over-water operations unless it is equipped with at least:

(1) Two microphones; and

(2) Two headsets or one headset and one speaker.

(g) *Extended over-water exceptions.* Notwithstanding the requirements of paragraphs (a), (b), (d) and (e) of this section, installation and use of a single LRNS and a single LRCS for extended over-water operations in certain geographic areas may be authorized by the Administrator and approved in the certificate holder's operations specifications. The following are among the operational factors the Administrator may consider in granting an authorization:

(1) The ability of the flight crew to navigate the airplane along the route with the required accuracy,

(2) The length of the route being flown with a single navigation or communication system; and

(3) The duration of the very high frequency communications gap, if very high frequency communications equipment is installed.

73. Amend § 135.225 (a), (b), (e), (f), and (g) by removing the word "pilot" and adding in its place the word "person", and by revising paragraphs (c)(1), (c)(3) introductory text, (c)(3)(ii), and (d) to read as follows:

§ 135.225 IFR: Takeoff, approach and landing minimums.

* * * * *

(c) * * *

(1) On a precision or APV approach and has passed the precision final approach fix; or

* * * * *

(3) On a nonprecision final approach; and the aircraft—

* * * * *

(ii) Where a final approach fix is not specified, has completed the procedure turn and is established inbound toward the airport on the final approach course within the distance prescribed in the procedure. The approach may be continued, and a landing made, if the pilot finds, upon reaching the authorized MDA or DA/DH, that actual weather conditions are at or above the minimums prescribed for the procedure.

(d) For each pilot in command of a turbine-powered airplane who has not served at least 100 hours as pilot in command in that type of airplane, the MDA or DA/DH and visibility landing minimums prescribed in part 97 of this chapter or in the certificate holder's operations specifications for a particular approach must be increased by 100 feet and one half statute mile, respectively, but not to exceed the ceiling and visibility minimums for that approach when used as an alternate airport.

* * * * *

§ 135.345 [Amended]

74. Amend § 135.345(a)(7) by removing the term "DH" and adding in its place the term "DA/DH".

§ 135.371 [Amended]

75. Amend § 135.371(c)(2) by removing the word "radio".

§ 135.381 [Amended]

76. Amend § 135.381(b)(2) by removing the word "radio".

Appendix F to Part 135 [Amended]

77. Amend Appendix F by removing the words "Selected decision height" and adding in their place the words "Selected DA/DH" in Parameter number 54.

Issued in Washington, DC on December 3, 2002.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

[FR Doc. 02–31150 Filed 12–16–02; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Tuesday,
December 17, 2002

Part III

Department of Health and Human Services

42 CFR Parts 54 and 54a

45 CFR Part 96

Charitable Choice Regulations; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Parts 54 and 54a

45 CFR Part 96

RIN 0930–AA11

Charitable Choice Regulations Applicable to States Receiving Substance Abuse Prevention and Treatment Block Grants, Projects for Assistance in Transition From Homelessness Formula Grants, and to Public and Private Providers Receiving Discretionary Grant Funding From SAMHSA for the Provision of Substance Abuse Services Providing for Equal Treatment of SAMHSA Program Participants

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Charitable Choice statutory provisions of section 581–584 and section 1955 of the Public Health Service Act, applicable to the Substance Abuse Prevention and Treatment (SAPT) Block Grant program, the Projects for Assistance in Transition from Homelessness (PATH) formula grant program, insofar as recipients provide substance abuse services, and to SAMHSA discretionary grants for substance abuse treatment or prevention services, which are all administered by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services. It is SAMHSA's policy that, within the framework of constitutional church-state guidelines, faith-based organizations should be able to compete on an equal footing for SAMHSA funding, and SAMHSA supports the participation of faith-based organizations in its programs for the provision of substance abuse services.

DATES: Submit written comments on this proposal by February 18, 2003. Submit written comments on the information collection provisions by January 16, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of Policy, Planning and Budget, SAMHSA, Attn: Winnie Mitchell by fax (301–443–1450) or e-mail (*samhsareg@samhsa.gov*). Communications should refer to the above docket number and title. A copy of each communication submitted will be available for inspection and copying between 9 a.m. and 5 p.m. at the above address. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB,Attn: Lauren Wittenberg by fax (202–395–6974) or e-mail (*Lauren_Wittenberg@omb.eop.gov*).

FOR FURTHER INFORMATION CONTACT: Winnie Mitchell of the Office of Policy, Planning and Budget, SAMHSA by fax (301–443–1450) or e-mail (*samhsareg@samhsa.gov*).

SUPPLEMENTARY INFORMATION:

Background

Section 1955 of the Public Health Service Act, 42 U.S.C. 300x–65, as added by the Children's Health Act of 2000 (Pub. L. 106–310), as well as sections 581–584 of the Public Health Service Act, 42 U.S.C. 290kk, *et seq.*, as added by the Consolidated Appropriations Act (Pub. L. 106–554),(hereinafter referred to as "SAMHSA Charitable Choice provisions") set forth certain provisions which are designed to give people in need of substance abuse services a greater choice of SAMHSA-supported substance abuse prevention and treatment programs. SAMHSA's Charitable Choice provisions ensure that religious organizations are able to compete on an equal footing for Federal substance abuse funding administered by SAMHSA, without impairing the religious character of such organizations and without diminishing the religious freedom of SAMHSA beneficiaries. These provisions apply to recipients of the Substance Abuse Prevention and Treatment (SAPT) Block Grant funds, the Projects for Assistance in Transition from Homelessness (PATH) formula grant funds, 42 U.S.C. 290cc–21, *et seq.*, and to SAMHSA discretionary grants funds for substance abuse prevention and treatment services (42 U.S.C. 290aa, *et seq.*)

President Bush has made it one of his Administration's top priorities to ensure that Federal programs are fully open to faith-based and community groups in a manner that is consistent with the Constitution. It is the Administration's view that faith-based organizations are an indispensable part of the social services network of the United States. Faith-based organizations, including places of worship, nonprofit organizations, and neighborhood groups, offer scores of social services to those in need. The SAMHSA Charitable Choice provisions are consistent with the Administration's belief that there should be an equal opportunity for all organizations—both faith-based and nonreligious—to participate as partners in Federal programs to serve Americans in need.

Purpose of Proposed Rule

The SAMHSA Charitable Choice provisions contain important protections both for religious organizations that receive SAMHSA funding for substance abuse services and for the individuals who receive services from such programs. The objective of this proposed rule is to ensure that SAMHSA substance abuse programs are open to all eligible organizations, regardless of religious character or affiliation, and to establish clearly the proper uses to which funds may be put and the conditions for receipt of funding. The proposed regulations seek to provide maximum flexibility to the States and local governments, and to religious organizations that are "program participants" in implementing these provisions. In that vein, SAMHSA proposes that duly-designated officials from the States and applicants for SAMHSA discretionary funding for applicable programs assure that they will comply with these provisions.

Proposed Regulations

The Department is proposing to amend the regulations to add 42 CFR part 54 and part 54a. Part 54 addresses implementation of these provisions with regard to SAMHSA's Substance Abuse Prevention and Treatment (SAPT) Block Grant, 42 U.S.C. 300x to 300x-66, and to SAMHSA's Projects for Assistance in Transition from Homelessness (PATH) Formula Grants, 42 U.S.C. 290cc–21 to 290cc–35, in which the State has most of the responsibility for implementation. Part 54a addresses implementation of these provisions with regard to SAMHSA's discretionary grant programs, 42 U.S.C. 290aa *et seq.*, in which implementation responsibility is shared among SAMHSA, and the States and local governments as recipients of those grants. Some of the main provisions of the proposed rule are as follows, along with specific questions regarding the alternative service provision on which SAMHSA is seeking input during the regulatory comment process.

Equal Treatment for Religious Organizations. Under SAMHSA's Charitable Choice provisions, organizations are eligible to participate in SAMHSA programs without regard to their religious character or affiliation, and organizations may not be excluded from the competition for Federal funds simply because they are religious. Specifically, religious organizations are eligible to compete for funding on the same basis, and under the same eligibility requirements, as all other nonprofit organizations. The Federal government, and State and local governments administering Federal funds under SAMHSA substance abuse grant programs, are prohibited from discriminating against organizations on the basis of religion or their religious character.

Restriction on Religious Activities By Organizations That Receive Funding Directly From SAMHSA. The proposed rule describes limitations on the use of substance abuse funds provided directly from SAMHSA or the relevant State or local government to an organization, as opposed to those funds that an organization receives as the result of the genuine and independent private choice of a beneficiary.[1]

Specifically, SAMHSA funds that are provided directly to a participating organization may not be used to support inherently religious activities, such as worship, religious instruction, or proselytization. If the organization engages in such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct SAMHSA assistance, and participation must be voluntary for the beneficiaries of the SAMHSA-funded programs or services. This requirement ensures that SAMHSA funds provided directly to religious organizations are not used to support inherently religious activities. Thus, SAMHSA funds provided directly to a participating organization, including formula grant funds, must not be used by a substance abuse treatment or prevention program, for example, to conduct prayer meetings, studies of sacred texts, or any other activity that is inherently religious.

This restriction does not mean a SAMHSA-funded substance abuse service organization cannot engage in inherently religious activities. It means simply that such an organization cannot fund these activities with the funds provided directly by SAMHSA or the relevant State or local government. Thus, faith-based organizations that receive direct SAMHSA funds must take steps to separate, in time or location, their inherently religious activities from the government-funded services that they offer.

In addition, any participation by a beneficiary in such religious activities must be voluntary. An invitation to participate in an organization's religious activities is not in itself inappropriate. However, participating religious organizations must be careful to reassure program beneficiaries that they will receive SAMHSA-funded help even if they do not participate in these activities, and that their decision will have no bearing on the services they receive. In short, any participation by recipients of SAMHSA-funded services in such religious activities must be voluntary and understood to be voluntary.

These restrictions on inherently religious activities do not apply where SAMHSA funds are provided to religious organizations as a result of a genuine and independent private choice of a beneficiary. A religious organization may receive SAMHSA funds as the result of a beneficiary's genuine and independent private choice if, for example, the State has established a voucher, coupon, certificate, or similar funding mechanism for a beneficiary to redeem using SAMHSA funds under a program that is designed by a State to give that individual a choice among providers. Thus, religious organizations that receive SAMHSA funds to provide services as a result of a beneficiary's genuine and independent private choice need not separate, in time or location, their inherently religious activities from the SAMHSA-funded services they provide, provided they otherwise satisfy the requirements of the program.

Religious Character and Independence of Religious Organizations. The proposed rule clarifies that a religious organization that participates in SAMHSA programs retains its independence from Federal, State, and local governments. It may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not use direct SAMHSA funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use their facilities to provide SAMHSA-funded substance abuse services, without removing religious art, icons, scriptures, or other symbols. In addition, a religious organization receiving funds from SAMHSA for substance abuse services may retain religious terms in its organization's name, may select its board members on a religious basis, and may include religious references in its organization's mission statements and other governing documents.

Employment Practices. The proposed rule clarifies that the participation of a religious organization in, or its receipt of funds from, a SAMHSA substance abuse services program does not affect that organization's exemption provided under 42 U.S.C. 2000e–1 regarding employment practices.

Title VII of the Federal Civil Rights Act of 1964 provides that a religious organization may, without running afoul of Title VII, hire employees who share its religious beliefs. This provision protects the religious liberty of communities of faith. It helps enable faith-based groups to promote common values, a sense of community and unity of purpose, and shared experiences through service—all of which can contribute to a religious organization's effectiveness. The SAMHSA Charitable Choice provisions thus reflect the recognition that a religious organization may determine that, in order to define or carry out its mission, it is important that it be able to take its faith into account in making employment decisions.

To the extent that 42 U.S.C. 300x–57(a)(2) or 42 U.S.C. 290cc–33(a)(2) imposes religious nondiscrimination requirements on the employment practices of program participants, the proposed rule clarifies that such requirements do not apply to program participants that demonstrate that these requirements would substantially burden their exercise of religion. In addition to being a reasonable construction of the SAMHSA Charitable Choice provisions, including 42 U.S.C. 300x–57, 300x–65, 290cc–33, 290kk–1, and 290kk–2, the inapplicability of section 300x–57(a)(2) and 290cc–33(a)(2) to religious organizations that can demonstrate a substantial burden on their exercise of religion arises from the Religious Freedom Restoration Act, 42 U.S.C. 2000bb *et seq.* Under this statute, the government may not impose legal requirements that substantially burden a grantee's exercise of religion except in defined circumstances. 42 U.S.C. 2000bb–1(a)–(b). As applied here, where a religious entity establishes that its exercise of religion would be substantially burdened by the religious nondiscrimination requirements of sections 300x–57(a)(2) or 290cc–33(a)(2), the Religious Freedom Restoration Act supercedes those statutory requirements, thus exempting the religious entity therefrom.

This determination is based on several factors: religious entities are

[1] In the Charitable Choice context, the term "direct" funding is used to describe funds that are provided "directly" by a governmental entity or an intermediate organization with the same duties as a governmental entity, as opposed to funds that an organization receives as the result of the genuine and independent private choice of a beneficiary. In other contexts, the term "direct" funding may be used to refer to those funds that an organization receives directly from the Federal government (also known as "discretionary" funding), as opposed to funding that it receives from a State or local government (also known as "indirect" or "block grant" funding). In these proposed regulations, the term "direct" has the former meaning.

provided an exemption, under 42 U.S.C. 2000e–1(a), from the religious nondiscrimination requirements of the Civil Rights Act of 1964, which reflects Congress's judgment that employment decisions are an important component of religious entities' autonomy; many federal funding programs do not impose a religious nondiscrimination requirement upon the employment practices of grantees; 42 U.S.C. 300x–57(a)(2) and 290cc–33(a)(2) do not apply to the discretionary grant programs administered by the Secretary under this title; and secular entities that administer federally funded social programs generally are not precluded from considering their ideologies in making employment decisions. Congress's highly selective application of religious nondiscrimination requirements in the employment context belies the notion that there is a compelling governmental interest in applying such requirements to entities that make decisions to hire individuals of a particular religion in order to maintain their religious identity, autonomy, and/or communal religious exercise. A recipient that demonstrates a substantial burden from the application of the religious nondiscrimination requirements of sections 300x–57(a)(2) or 290cc–33(a)(2) is therefore entitled to employ individuals of a particular religion, notwithstanding the requirements of those provisions, as it would otherwise be entitled to do under 42 U.S.C. 2000e–1(a).

A religious organization that is a recipient of SAMHSA funds for the provision of substance abuse services that wishes to establish a substantial burden from the application of 42 U.S.C. 300x–57(a)(2) or 290cc–33(a)(2) to its organization, for the purpose of obtaining an exemption under 42 U.S.C. 2000bb, *et seq.*, must certify : (1) That it sincerely believes that employing individuals of a particular religion is important to the definition and maintenance of its religious identity, autonomy, and/or communal religious exercise; (2) that it makes employment decisions on a religious basis in analogous programs; (3) that the grant would materially affect its ability to provide the type of services in question; and (4) that providing the services in question is expressive of its values or mission. The organization must maintain documentation to support these determinations and must make such documentation available to SAMHSA upon request.

Finally, the proposed rule makes clear that nothing in this section shall be construed to modify or affect any State law or regulation that relates to discrimination in employment.

Nondiscrimination Against Beneficiaries. The proposed rule also clarifies provisions of SAMHSA's Charitable Choice provisions that apply to the individuals who receive SAMHSA-funded services. First, the proposed rule makes it clear that religious organizations participating in a SAMHSA-funded substance abuse program are prohibited from discriminating against beneficiaries or potential beneficiaries on the basis of religion or religious belief. Accordingly, religious organizations, in providing substance abuse services funded in whole or in part by SAMHSA, and in their outreach activities related to such services, may not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to participate actively in a religious practice.

Notice, Referral, and Provision of Alternative Services. SAMHSA invites specific comment on sections 54.8 and 54a.8 of the following regulations, regarding a program beneficiary's right to alternative services. In general, SAMHSA believes that securing alternative services for an individual at the local level may ultimately not be a function best performed by a Federal agency, but is rather best met by those who know the community best and are most informed about the availability of services. Because SAMHSA seeks to maximize State and provider flexibility in implementing these provisions, and because SAMHSA wants to ensure that the regulations rely on existing State and local practices for implementation, SAMHSA is seeking comment on the following general questions:

- How can State and local flexibility be maximized in implementing these provisions?
- How accurate are the paperwork burden estimates and how can the paperwork burden related to implementing these provisions be minimized?
- How should SAMHSA track the effectiveness of the implementation of these Charitable Choice provisions? What methods should States and program participants use and report to ensure implementation of the Charitable Choice provisions?

General Requirements. The proposed rule clarifies SAMHSA's Charitable Choice provisions stipulating that individuals who are receiving or may receive substance abuse services from a program participant funded in whole or in part by SAMHSA may object to the religious character of that participant, in which case they are entitled to receive services from an alternative provider. They have a right to receive a referral to an alternative provider within a reasonable period of time. That alternative provider must be reasonably accessible and have the capacity to provide comparable services to the individual. According to the SAMHSA Charitable Choice provisions, such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection. The alternative provider need not be a secular organization. It must simply be a provider to which the program beneficiary has no religious objection.

To implement this right, the proposed rule imposes obligations on both SAMHSA-funded religious organizations and the governmental entity administering the program with respect to notice, referral, and provision of services from alternative providers. SAMHSA recognizes that a range of methods of fulfilling these responsibilities is possible, and therefore does not seek to prescribe a single, inflexible referral system that States must adopt. Rather, SAMHSA encourages State agencies, working in concert with local governments, religious providers, and other program providers, to develop systems to comply with the requirements, monitor compliance, identify compliance problems, and take necessary corrective actions. It is important that State and local agencies and religious organizations work cooperatively to develop systems to comply with these provisions, monitor compliance, identify compliance problems and take necessary corrective actions.

Notice. The SAMHSA Charitable Choice provisions require SAMHSA-funded religious organizations providing substance abuse services, public agencies that refer individuals to such SAMHSA-funded programs, and the appropriate Federal, State, or local governments that administer these SAMHSA-funded programs to ensure that notice is provided to beneficiaries and prospective beneficiaries regarding alternative services. The notice must articulate clearly the program beneficiary's right to a referral and to services that reasonably meet the timeliness, capacity, accessibility, and equivalency requirements discussed above. A model notice, which States and religious organizations are free to use, is provided at the end of this proposed rule.

Referral to Alternative Provider. If an individual objects to the religious character of the substance abuse treatment or prevention program from which they are receiving services, the religious organization must refer the individual, within a reasonable period of time, to another provider of substance abuse services. SAMHSA invites specific comment on what constitutes a "reasonable period of time" under various circumstances. Should States be given the flexibility to determine this, given that there are established referral and substance abuse services systems in each State? Alternatively, should SAMHSA provide a clearer idea of what is a reasonable period of time (for example, "within 48 hours," "within one week," *etc.*)?

In making a referral, the religious organization must consider any list that the State or local government makes available of other entities in a reasonably accessible geographic area that provide substance abuse services. For example, a religious organization could check SAMHSA's treatment facility locator at *http://findtreatment.samhsa.gov* to identify providers in the surrounding area and consult with the relevant governmental officials about referrals to programs that are reasonably accessible and of equal value. The locator includes residential treatment programs, outpatient treatment programs, and hospital inpatient programs for drug addiction and alcoholism. All information in the locator is updated each year, based on facility responses to SAMHSA's National Survey of Substance Abuse Services. Further updates are made monthly as new information is provided by facilities.

SAMHSA-funded religious organizations must take reasonable steps to ensure that the individual makes contact with the alternative provider to which the individual is referred, and they must notify "the appropriate Federal, State, or local government" of the referral. In the case of the SAPT and PATH programs, the appropriate government is the State. In the case of SAMHSA's substance abuse prevention and treatment discretionary grant funding, it is either SAMHSA or the recipient State or local government.

For SAPT or PATH programs, if the religious organization cannot locate an appropriate alternative provider for a referral, it should contact the State agency that administers the program. The State agency can then take steps to identify an appropriate alternative. In the event that the State agency is unable to locate an alternative provider, the State can contact SAPT block grant or PATH grant officials in SAMHSA for assistance. For SAMHSA discretionary grants made directly to religious organizations, the religious organization can work with SAMHSA to identify an appropriate referral. For SAMHSA discretionary grants to States and localities, the religious organization can work with the recipient government to identify an appropriate referral, using the referral system utilized by the State or locality as required by the rule.

The religious organization (program participant) shall take reasonable steps to ensure that the individual makes contact with the alternative provider to which the individual is referred. All referrals are to be made in a manner consistent with all applicable confidentiality laws, including, but not limited to, 42 CFR part 2. Upon referring a program beneficiary to an alternative provider, the program participant shall notify the appropriate Federal, State, or local government agency that administers the program of such referral. It is the States' responsibility to determine the nature and timing of such notification under the SAPT block grant and the PATH program. SAMHSA invites specific comment on how referring organizations can ensure that individuals make contact with alternative providers, and whether and how they should document the steps they have taken, in a manner that is consistent with all applicable confidentiality laws. For example, should the provider be required to record and call the alternative provider to notify them of the referral; to provide the name and address of the alternative provider to the program beneficiary; and to make a second follow-up call to the alternative provider? What burdens would such requirements place on providers?

Provision of Alternative Services. Under SAMHSA's Charitable Choice provisions, the responsibility for providing the alternative services rests with the "the appropriate Federal, State, or local government" that administers the program or is a program participant. Alternative service providers identified by the Federal, State, or local government must be reasonably accessible and have the capacity to provide comparable substance abuse services. The services provided by the alternative provider must have a value that is not less than the value of the services that the individual would have received from the referring organization.

The SAMHSA Charitable Choice provisions require States to provide and fund alternative services for SAPT-funded and PATH program beneficiaries who have objected to the religious character of a program participant. States may use SAPT block grant and PATH grant funding to provide and fund such services from a provider to which the program beneficiaries do not have a religious objection, in a manner consistent with State law and policy.

With respect to SAMHSA discretionary grant funding, when SAMHSA provides funding directly to another unit of government, such as a State or local government, that unit of government is responsible for providing the alternative services. When SAMHSA provides discretionary grant funding directly to nongovernmental organizations, SAMHSA is the responsible unit of government.

SAMHSA invites comment on the following questions related to the implementation of this provision:

- How can an alternative services system best be implemented in a system characterized by treatment gaps, shortages and waiting lists (*i.e.*, how can program beneficiaries best be assured of alternative services?)
- Similarly, what constitutes "reasonably accessible services," given the differences in available services in various regions of the country?
- What is the best understanding of the phrase "services that * * * have a value that is not less than the value of [services that would otherwise be provided]"?
- Under discretionary programs, what are the options for securing and financing alternative services? Would placing the responsibility on the grantee for securing alternative services as a condition of the grant award (including financing of such services, as necessary) be consistent with the statutory requirement that the appropriate Federal, State, or local governments "provide" alternative services? Or does the statute require these governmental entities to secure and finance alternative services? What sort of financial problems would be imposed by placing such responsibilities on grantees?

Fiscal Accountability. The proposed rule outlines the financial responsibility incurred through the receipt of SAMHSA funds. Religious organizations that receive SAMHSA funds for substance abuse services are subject to the same regulations as other nongovernmental organizations to account, in accordance with generally accepted auditing and accounting principles, for the use of such funds. In addition, religious organizations are required to keep any Federal funds that they receive for substance abuse services segregated in a separate account from non-Federal funds. Only the segregated Federal funds are subject to

audit by the government under the SAMHSA program.

Effect on State and Local Funds. The proposed rule, consistent with 42 U.S.C. 300x–65(d), provides that if a State or local government contributes its own funds to supplement SAMHSA-funded substance abuse activities, the State or local government has the option to separate out the Federal funds or commingle them. However, if the funds are commingled, the SAMHSA Charitable Choice provisions apply to all of the commingled funds.

Treatment of intermediate organizations. The proposed rule provides that, if a nongovernmental organization (referred to here as an "intermediate organization"), acting under a contract or other agreement with the Federal Government or a State or local government, is given the authority under the contract or agreement to select other nongovernmental organizations to provide services under any substance abuse program, the intermediate organization has the same duties under the SAMHSA Charitable Choice provisions and the implementing regulations as the government and must ensure that there is compliance with the SAMHSA Charitable Choice provisions. The intermediate organization retains all other rights of a nongovernmental organization under SAMHSA's Charitable Choice provisions.

Educational Requirements for Personnel in Drug Treatment Programs. The proposed rule reiterates the requirement of 42 U.S.C. 290kk–3, which provides that, in determining whether personnel of a program participant that has a record of successful drug treatment for the preceding three years have satisfied State or local requirements for education and training, a State or local government shall not discriminate against education and training provided to such personnel by a religious organization, so long as such education and training is comparable to the coursework or training provided by nonreligious organizations or is comparable to education and training that the State or local government would otherwise credit for purposes of determining whether the relevant requirements have been satisfied.

Assurances and State Oversight of the Charitable Choice Requirements. In order to ensure that States receiving grant funding under the SAPT block grant and PATH formula grant programs abide by the Charitable Choice provisions and provide oversight of religious organizations that provide substance abuse services under such programs, the proposed rule requires States, as part of their applications for funding under each program, to certify that they will comply with all of the requirements of the SAMHSA Charitable Choice provisions and to submit to the Secretary a summary each year of the steps it has taken to implement this regulation. The Department is proposing changes to existing regulations for the SAPT block grant to require such assurance and summary. Similar assurances, to be signed by applicants for SAMHSA PATH funds and discretionary substance abuse treatment and prevention grants, will be added to the assurances listed in PHS Form 5161, *Public Health Service Grant Application for State and Local Government Applicants and Non-governmental Applicants for Health Services Projects.*

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). We have determined that the rule is a "significant regulatory action" under section 3(f) of the Executive Order, and it has therefore been reviewed by the Office of Management and Budget under that order.

Regulatory Flexibility

The Regulatory Flexibility Act (5 U.S.C. chapter 6) requires that regulatory actions be analyzed to determine whether they will have a significant impact on a substantial number of small entities. We have determined that this is not a "major" rule under the Regulatory Flexibility Act of 1980, and that it will not have an effect on the States or on the distribution of power and responsibilities among the various levels of government.

Unfunded Mandates

The Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. We have determined that this rule will not result in an aggregate expenditure by State, local or tribal governments of $100 million or more in any given year.

Executive Order 13132: Federalism Implications

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. Consistent with Executive Order 13132, we specifically solicit comment from State and local government officials on this proposed rule.

Paperwork Reduction Act of 1995

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3507(d)). The title, description and respondent description of the information collections are shown in the following paragraphs with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Regulations to Implement SAMHSA's Charitable Choice Statutory Provisions—42 CFR Parts 54 and 54a.

Description: Section 1955 of the Public Health Service Act (42 U.S.C. 300x-65), as amended by the Children's Health Act of 2000 (Pub. L. 106–310) and sections 581–584 of the Public Health Service Act (42 U.S.C. 290kk *et seq.*, as added by the Consolidated Appropriations Act (Pub. L. 106–554)), set forth various provisions which aim to ensure that religious organizations are able to compete on an equal footing for Federal funds to provide substance abuse services. These provisions allow religious organizations to offer substance abuse services to individuals without impairing the religious character of the organizations or the religious freedom of the individuals who receive the services. The provisions apply to the Substance Abuse Prevention and Treatment Block Grant (SAPT BG), to the Projects for Assistance in Transition from Homelessness (PATH) formula grant program, and to certain Substance Abuse and Mental Health Services Administration (SAMHSA) discretionary grant programs (programs that pay for substance abuse treatment and prevention services, not for certain infrastructure and technical assistance activities). Every effort has been made to assure that the reporting, recordkeeping and disclosure requirements of the proposed regulations allow maximum flexibility in implementation and impose minimum burden.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Response burden estimate: This proposed rule includes requirements for disclosure by program participants to program beneficiaries of their rights to receipt of services from an alternative service provider, for notification by program participants to the applicable level of government of referrals made to alternative service providers, and requirements for reporting of activities to comply with these regulations. The rule also requires that a program participant under the Substance Abuse Prevention and Treatment Block Grant (SAPT BG) and the Projects for Assistance in Transition from Homelessness (PATH) programs that believes it would be substantially burdened by application of the requirements of 42 U.S.C. 300x-57(a)(2) or 42 U.S.C. 290cc-33(a)(2) must sign a certification to that effect and must maintain documentation to support the certification.

ANNUAL BURDEN ESTIMATES

42 CFR citation and purpose	Number of responses	Responses per respondent	Hours per response	Total hours
Part 54—States Receiving SAPT Block Grants and/or Projects for Assistance in Transition from Homelessness Grants				
Reporting				
54.8(c)(4) Program 40 4 0.33 53 participant notification to responsible unit of government regarding referrals to alternative service providers	40	4	0.33	53
54.8(e) Annual report 56 1 2.00 112 by PATH grantees on activities undertaken to comply with 42 CFR Part 54	56	1	2.00	112
Disclosure				
54.8(b) Program participant notice to program beneficiaries of rights to referral to an alternative service provider.				
SAPT BG	1,000	275	.05	13,750
PATH	100	170	.05	850
Recordkeeping				
54.6(b) Documentation must be maintained to demonstrate significant burden for program participants under 42 U.S.C. 300x-57 or 42 U.S.C. 290cc-33(a)(2)	50	1	1.00	50
Part 54—Subtotal	1,156		14,815	
Part 54a—States, local governments and religious organizations receiving funding under Title V of the PHS Act for substance abuse prevention and treatment services				
Reporting				
54a.8(c)(1)(iv) Program participant notification to State or local government of a referral to an alternative provider	25	4	.083	8
54a(8)(d) Program participant notification to SAMHSA of referrals	20	2	.25	10
Disclosure				
54a.8(b) Program participant notice to program beneficiaries of rights to referral to an alternative service provider	100	275	.05	1,375
Part 54a—Subtotal	100			1,393
Total	1,256			16,208

In addition, the regulations for the Substance Abuse Prevention andTreatment Block Grant (45 CFR part 96) will be amended to include at 45 CFR 92.122(f)(5) a requirement to include as part of the annual report a description of the activities the State has undertaken to comply with 42CFR part 54. This reporting burden is estimated as follows:

45 CFR citation and purpose	Number of respondents	Responses per respondent	Hours per response	Total hours
96.122(f)(5) Annual report of activities the State undertook to comply with 42 CFR Part 54	60	1	2	120

As required by section 3507(d) of the PRA the Secretary has submitted a copy of this proposed rule to OMB for its review. Comments on the information collection requirements are specifically solicited in order to: (1) Evaluate

whether the proposed collection of information is necessary for the proper performance of DHHS's functions, including whether the information will have practical utility; (2) evaluate the accuracy of DHHS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to DHHS on the proposed regulations.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB. (address above).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires us to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." Although it is not clear that the proposed rule will have tribal implications, we specifically solicit comment on this proposed rule from tribal officials.

Dated: December 12, 2002.

Tommy G. Thompson,

Secretary of Health and Human Services.

List of Subjects

42 CFR Parts 54 and 54a

Grant programs—social programs, Public assistance programs, Substance abuse treatment.

45 CFR Part 96

Grant programs—social programs

The Department of Health and Human Services proposes to amend 42 CFR chapter I and 45 CFR subtitle A as follows:

1. Add a new part 54 to title 42 of the Code of Federal Regulations to read as follows:

42 CFR—CHAPTER I

PART 54—CHARITABLE CHOICE REGULATIONS APPLICABLE TO STATES RECEIVING SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANTS AND/OR PROJECTS FOR ASSISTANCE IN TRANSITION FROM HOMELESSNESS GRANTS

Sec.

54.1 Scope.
54.2 Definitions.
54.3 Nondiscrimination against religious organizations.
54.4 Religious activities.
54.5 Religious character and independence.
54.6 Employment practices.
54.7 Nondiscrimination requirement.
54.8 Right to services from an alternative provider.
54.9 Assurances and State oversight of the Charitable Choice requirements.
54.10 Fiscal accountability.
54.11 Effect on State and local funds.
54.12 Treatment of intermediate organizations.
54.13 Educational requirements for personnel in drug treatment programs.

Authority: 42 U.S.C. 300x–65 *et seq.*, 42 U.S.C. 290kk *et seq.*, 42 U.S.C. 300x–21, *et seq.*, 42 U.S.C. 290cc–21, *et seq.*, and 42 U.S.C. 2000bb, *et seq.*

§ 54.1 Scope.

These provisions apply only to awards that pay for substance abuse prevention and treatment services under 42 U.S.C. 300x–21 *et seq.*, and 42 U.S.C. 290cc–21 to 290cc–35. This part does not apply to awards under any such authorities for activities that do not involve the direct provision of substance abuse services, such as for infrastructure activities authorized under section 1971 of the PHS Act, 42 U.S.C. 300y, and for technical assistance activities. This part implements the SAMHSA Charitable Choice provisions, 42 U.S.C. 300x–65 and 42 U.S.C. 290kk, *et seq.*

§ 54.2 Definitions.

(a) *Applicable program* means the programs authorized under:

(1) The Substance Abuse Prevention and Treatment (SAPT) Block Grant, 42 U.S.C. 300x to 300x–66, and

(2) The Projects for Assistance in Transition from Homelessness (PATH) Formula Grants, 42 U.S.C. 290cc–21 to 290cc–35 insofar as they fund substance abuse prevention and/or treatment services.

(b) *Religious organization* means a nonprofit religious organization.

(c) *Program beneficiary* means an individual who receives substance abuse services under a program funded in whole or in part by applicable programs.

(d) *Program participant* means a public or private entity that has received financial assistance, under an applicable program.

(e) *SAMHSA* means the Substance Abuse and Mental Health Services Administration.

(f) *SAMHSA Charitable Choice provisions* means the provisions of 42 U.S.C. 300x–65 and 42 U.S.C. 290kk.

(g) *Direct funding or Funds provided directly* means funding that is provided to an organization directly by a governmental entity or intermediate organization that has the same duties as a governmental entity, as opposed to funding that an organization receives as the result of the genuine and independent private choice of a beneficiary through a voucher, certificate, coupon, or other similar mechanism.

§ 54.3 Nondiscrimination against religious organizations.

(a) Religious organizations are eligible, on the same basis as any other organization, to participate in applicable programs, as long as their services are provided consistent with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution. Except as provided herein or in the SAMHSA Charitable Choice provisions, nothing in these regulations shall restrict the ability of the Federal government, or a State or local government, from applying to religious organizations the same eligibility conditions in applicable programs as are applied to any other nonprofit private organization.

(b) Neither the Federal government nor a State or local government receiving funds under these programs shall discriminate against an organization that is, or applies to be, a program participant on the basis of the organization's religious character or affiliation.

§ 54.4 Religious activities.

No funds provided directly from SAMHSA or the relevant State or local government to organizations participating in applicable programs may be expended for inherently religious activities, such as worship, religious instruction, or proselytization. If an organization conducts such activities, it must offer them separately, in time or location, from the programs or services for which it receives funds directly from SAMHSA or the relevant State or local government under any applicable program, and participation must be voluntary for the program beneficiaries.

§ 54.5 Religious character and independence.

A religious organization that participates in an applicable program will retain its independence from Federal, State, and local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs. The organization may not expend funds that it receives directly from SAMHSA or the relevant State or local government, to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide services supported by applicable programs, without removing religious art, icons, scriptures, or other symbols. In addition, a SAMHSA-funded religious organization retains the authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

§ 54.6 Employment practices.

(a) The participation of a religious organization in, or its receipt of funds from, an applicable program does not affect that organization's exemption provided under 42 U.S.C. 2000e–1 regarding employment practices.

(b) To the extent that 42 U.S.C. 300x–57(a)(2) or 42 U.S.C. 290cc–33(a)(2) precludes a program participant from employing individuals of a particular religion to perform work connected with the carrying on its activities, those provisions do not apply if such program participant is a religious corporation, association, educational institution, or society and can demonstrate that its religious exercise would be substantially burdened by application of these religious nondiscrimination requirements to its employment practices in the program or activity at issue.

(1) In order to make this demonstration, the program participant must certify:

(i) That it sincerely believes that employing individuals of a particular religion is important to the definition and maintenance of its religious identity, autonomy, and/or communal religious exercise;

(ii) That it makes employment decisions on a religious basis in analogous programs;

(iii) That the grant would materially affect its ability to provide the type of services in question; and

(iv) That providing the services in question is expressive of its values or mission.

(2) The organization must maintain documentation to support the determinations in paragraph (b)(1) of this section and must make such documentation available to SAMHSA upon request.

(c) Nothing in this section shall be construed to modify or affect any State law or regulation that relates to discrimination in employment.

(d) The phrases "with respect to the employment," "individuals of a particular religion," and "religious corporation, association, educational institution, or society" shall have the same meaning as those terms have under section 702 of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1(a).

§ 54.7 Nondiscrimination requirement.

A religious organization that is a program participant shall not, in providing program services or engaging in outreach activities under applicable programs, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

§ 54.8 Right to services from an alternative provider.

(a) *General requirements.* If an otherwise eligible program beneficiary or prospective program beneficiary objects to the religious character of a program participant, within a reasonable period of time after the date of such objection, such program beneficiary shall have rights to notice, referral, and alternative services, as outlined in paragraphs (b) through (d) of this section.

(b) *Notice.* Program participants that refer an individual to alternative service providers, and the State government that administers the applicable programs, shall ensure that notice of the individual's right to services from an alternative provider is provided to program beneficiaries or prospective beneficiaries. The notice must clearly articulate the program beneficiary's right to a referral and to services that reasonably meet the requirements of timeliness, capacity, accessibility, and equivalency as discussed in this section.

(c) *Referral to an alternative provider.* If a program beneficiary or prospective program beneficiary objects to the religious character of a program participant that is a religious organization, that participating religious organization shall, within a reasonable time after the date of such objection, refer such individual to an alternative provider. The State shall have a system in place to ensure that referrals are made to an alternative provider. That system shall ensure that the following occurs:

(1) The religious organization that is a program participant shall, within a reasonable time after the date of such objection, refer the beneficiary to an alternative provider.

(2) In making such referral, the program participant shall consider any list that the State or local government makes available to entities in the geographic area that provide program services, which may include utilizing any treatment locator system developed by SAMHSA;

(3) All referrals shall be made in a manner consistent with all applicable confidentiality laws, including, but not limited to, 42 CFR part 2 ("Confidentiality of Alcohol and Drug Abuse Patient Records");

(4) Upon referring a program beneficiary to an alternative provider, the program participant shall notify the State of such referral; and

(5) The program participant shall ensure that the program beneficiary makes contact with the alternative provider to which he or she is referred.

(d) *Provision and Funding of Alternative Services.* The State, in administering the SAPT block grant and PATH programs, shall provide to an otherwise eligible program beneficiary or prospective program beneficiary who objects to the religious character of a program participant and fund services from an alternative provider that is reasonably accessible and has the capacity to provide comparable services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection. The alternative provider need not be a secular organization. It must simply be a provider to which the program beneficiary has no religious objection.

(e) *PATH Annual Report.* As part of the annual report to SAMHSA, PATH grantees shall include a description of the activities the grantee has taken to comply with 42 CFR part 54.

§ 54.9 Assurances and State oversight of the charitable choice requirements.

In order to ensure that States receiving grant funding under the SAPT block grant and PATH formula grant programs comply with the SAMHSA Charitable Choice provisions and provide oversight of religious organizations that provide substance abuse services under such programs, States are required as part of their applications for funding to certify that they will comply with all of the requirements of such provisions and the implementing regulations under this part, and that they will provide such oversight of religious organizations.

§ 54.10 Fiscal accountability.

(a) Religious organizations that receive applicable program funds for substance abuse services are subject to the same regulations as other nongovernmental organizations to account, in accordance with generally accepted auditing and accounting principles, for the use of such funds.

Religious organizations shall segregate Federal funds they receive under an applicable program into a separate account from non-Federal funds. Only the Federal funds shall be subject to audit by government under the SAMHSA program.

§ 54.11 Effect on State and local funds.

If a State or local government contributes its own funds to supplement activities carried out under the applicable programs, the State or local government has the option to separate out the Federal funds or commingle them. If the funds are commingled, the provisions of this part shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

§ 54.12 Treatment of intermediate organizations.

If a nongovernmental organization (referred to here as an "intermediate organization"), acting under a contract or other agreement with the Federal Government or a State or local government, is given the authority under the contract or agreement to select nongovernmental organizations to provide services under any applicable program, the intermediate organization shall have the same duties under this part as the government. The intermediate organization retains all other rights of a nongovernmental organization under this part and the SAMHSA Charitable Choice provisions.

§ 54.13 Educational requirements for personnel in drug treatment programs.

In determining whether personnel of a program participant that has a record of successful drug treatment for the preceding three years have satisfied State or local requirements for education and training, a State or local government shall not discriminate against education and training provided to such personnel by a religious organization, so long as such education and training is comparable to that provided by nonreligious organizations, or is comparable to education and training that the State or local government would otherwise credit for purposes of determining whether the relevant requirements have been satisfied.

2. Add a new part 54a to title 42 of the Code of Federal Regulations to read as follows:

PART 54a—CHARITABLE CHOICE REGULATIONS APPLICABLE TO STATES, LOCAL GOVERNMENTS AND RELIGIOUS ORGANIZATIONS RECEIVING FUNDING UNDER TITLE V OF THE PUBLIC HEALTH SERVICE ACT, 42 U.S.C. 290aa, ET SEQ., FOR SUBSTANCE ABUSE PREVENTION AND TREATMENT SERVICES

Sec.

54a.1 Scope.
54a.2 Definitions.
54a.3 Nondiscrimination against religious organizations.
54a.4 Religious activities.
54a.5 Religious character and independence.
54a.6 Employment practices.
54a.7 Nondiscrimination requirement.
54a.8 Right to services from an alternative provider.
54a.9 Oversight of the Charitable Choice requirements.
54a.10 Fiscal accountability.
54a.11 Effect on State and local funds.
54a.12 Treatment of intermediate organizations.
54a.13 Educational requirements for personnel in drug treatment programs.
54a.14 Determination of nonprofit status.

Authority: 42 U.S.C. 300x-65, and 42 U.S.C. 290kk, *et seq.*, 42 U.S.C. 290aa, *et seq.*

§ 54a.1 Scope.

These provisions apply only to awards that pay for substance abuse prevention and treatment services under Title V of the Public Health Service Act, 42 U.S.C. 290aa, *et seq.*, which are administered by the Substance Abuse and Mental Health Services Administration. This part does not apply to awards under any such authorities for only mental health services or for certain infrastructure and technical assistance activities, such as cooperative agreements for technical assistance centers, that do not provide direct services to clients. This part implements the provisions of 42 U.S.C. 300x-65 and 42 U.S.C. 290kk, *et seq.*

§ 54a.2 Definitions.

(a) *Applicable program* means the programs authorized under Title V of the PHS ct, 42 U.S.C. 290aa, *et seq.*, for the provision of substance abuse prevention and or treatment services.

(b) *Religious organization* means a nonprofit religious organization.

(c) *Program beneficiary* means an individual who receives substance abuse services under a program funded in whole or in part by applicable programs.

(d) *Program participant* means a public or private entity that has received financial assistance under an applicable program.

(e) *SAMHSA* means the Substance Abuse and Mental Health Services Administration.

(f) *SAMHSA Charitable Choice provisions* means the provisions of 42 U.S.C. 300x-65 and 42 U.S.C. 290kk *et seq.*

(g) *Direct funding or Funds provided directly* means funding that is provided to an organization directly by a governmental entity or intermediate organization that has the same duties as a governmental entity, as opposed to funding that an organization receives as the result of the genuine and independent private choice of a beneficiary through a voucher, certificate, coupon, or other similar mechanism.

§ 54a.3 Nondiscrimination against religious organizations.

(a) Religious organizations are eligible, on the same basis as any other organization, to participate in applicable programs as long as their services are provided consistent with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution. Except as provided herein or in the SAMHSA Charitable Choice provisions, nothing in these regulations shall restrict the ability of the Federal government, or a State or local government, from applying to religious organizations the same eligibility conditions in applicable programs as are applied to any other nonprofit private organization.

(b) Neither the Federal government nor a State or local government receiving funds under these programs shall discriminate against an organization that is, or applies to be, a program participant on the basis of the organization's religious character or affiliation.

§ 54a.4 Religious activities.

No funds provided directly from SAMHSA or the relevant State or local government to organizations participating in applicable programs may be expended for inherently religious activities, such as worship, religious instruction, or proselytization. If an organization conducts such activities, it must offer them separately, in time or location, from the programs or services for which it receives funds directly from SAMHSA or the relevant State or local government under any applicable program, and participation must be voluntary for the program beneficiaries.

§ 54a.5 Religious character and independence.

A religious organization that participates in an applicable program will retain its independence from Federal, State, and local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs. The organization may not expend funds that it receives directly from SAMHSA or the relevant State or local government to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide services supported by applicable programs, without removing religious art, icons, scriptures, or other symbols. In addition, a SAMHSA-funded religious organization retains the authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

§ 54a.6 Employment practices.

(a) The participation of a religious organization in or its receipt of funds from an applicable program does not affect that organization's exemption provided under 42 U.S.C. 2000e-1 regarding employment practices.

(b) Nothing in this section shall be construed to modify or affect any State law or regulation that relates to discrimination in employment.

§ 54a.7 Nondiscrimination requirement.

A religious organization that is a program participant shall not, in providing program services or engaging in outreach activities under applicable programs, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

§ 54a.8 Right to services from an alternative provider.

(a) *General requirements.* If an otherwise eligible program beneficiary or prospective program beneficiary objects to the religious character of a program participant, within a reasonable period of time after the date of such objection, such program beneficiary shall have rights to notice, referral, and alternative services, as outlined in subsections 54.8a(b)–(d) of this section. With respect to SAMHSA discretionary programs, for purposes of determining what is the appropriate Federal, State, or local government, the following principle shall apply: When SAMHSA provides funding directly to another unit of government, such as a State or local government, that unit of government is responsible for providing the alternative services. When SAMHSA provides discretionary grant funding directly to a nongovernmental organization, SAMHSA is the responsible unit of government.

(a) *Notice.* Program participants that refer an individual to alternative providers, and the appropriate Federal, State, or local governments that administer the applicable programs, shall ensure that notice of the individual's rights to services from an alternative provider is provided to program beneficiaries or prospective beneficiaries. The notice must clearly articulate the program beneficiary's right to a referral and to services that reasonably meet the requirements of timeliness, capacity, accessibility, and equivalency as discussed in this section.

(c) *Referral to services from an alternative provider.* If a program beneficiary or a prospective program beneficiary objects to the religious character of a program participant that is a religious organization, that participating religious organization shall, within a reasonable time after the date of such objection, refer such individual to an alternative provider.

(1) When the State or local government is the responsible unit of government , the State shall have a system in place to ensure that such referrals are made. That system shall ensure that the following occurs:

(i) The religious organization that is a program participant shall, within a reasonable time after the date of such objection, refer the beneficiary to an alternative provider.

(ii) In making such referral, the program participant shall consider any list that the State or local government makes available to entities in the geographic area that provide program services, which may include utilizing any treatment locator system developed by SAMHSA;

(iii) All referrals are to be made in a manner consistent with all applicable confidentiality laws, including, but not limited to, 42 CFR part 2 ("Confidentiality of Alcohol and Drug Abuse Patient Records");

(iv) Upon referring a program beneficiary to an alternative provider, the program participant shall notify the responsible unit of government of such referral;

(2) When SAMHSA is the responsible unit of government, the referral process is as follows:

(i) When a program beneficiary requests alternative services, the program participant will seek to make such a referral.

(ii) If the religious organization cannot locate an appropriate provider of alternative services, the program participant will contact SAMHSA. They will work together to identify additional alternative providers, utilizing the SAMHSA Treatment Locator system, if appropriate.

(iii) The program participant will contact these alternative providers and seek to make the referral, in a manner consistent with all applicable confidentiality laws, including, but not limited to, 42 CFR part 2

("Confidentiality of Alcohol and Drug Abuse Patient Records")

(iv) In the event the program participant is still unable to locate an alternative provider, it may again contact SAMHSA for assistance.

(d) *Referral Reporting Procedures.* The program participant shall notify the appropriate Federal, state or local government agency that administers the program of such referral. If a State or local government is the responsible unit of government, they may determine their own reporting procedures. When SAMHSA is the responsible unit of government, this notification will occur during the course of the regular reports that may be required under the terms of the funding award.

(e) *Provision and Funding of Alternative Services.* The responsible unit of government, as defined in subsection (a), shall provide to an otherwise eligible program beneficiary or prospective program beneficiary who objects to the religious character of a program participant, services and fund services from an alternative provider that is reasonably accessible to, and has

the capacity to provide such services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection. The alternative provider need not be a secular organization. It must simply be a provider to which the program beneficiary has no religious objection.

§ 54a.9 Oversight of the Charitable Choice requirements.

In order to ensure that program funds are used in compliance with the SAMHSA Charitable Choice provisions, applicants for funds under applicable programs are required, as part of their applications for funding, to certify that they will comply with all of the requirements of the SAMHSA Charitable Choice provisions and the implementing regulations under this part.

§ 54a.10 Fiscal accountability.

(a) Religious organizations that receive applicable program funds for substance abuse services are subject to the same regulations as other nongovernmental organizations to account, in accordance with generally accepted auditing and accounting principles, for the use of such funds.

(b) Religious organizations shall segregate Federal funds they receive under applicable programs into a separate account from non-Federal funds Only the Federal funds shall be subject to audit by the government under the SAMHSA program.

§ 54a.11 Effect on State and local funds.

If a State or local government contributes its own funds to supplement activities carried out under the applicable programs, the State or local government has the option to separate out the Federal funds or commingle them. If the funds are commingled, the provisions of this part shall apply to all of the commingled funds, in the same manner, and to the same extent, as the provisions apply to the Federal funds.

§ 54a.12 Treatment of intermediate organizations.

If a nongovernmental organization (referred to here as an " intermediate organization"), acting under a contract or other agreement with the Federal Government or a State or local government, is given the authority under the contract or agreement to select nongovernmental organizations to provide services under any applicable program, the intermediate organization shall have the same duties under this part as the government. The intermediate organization retains all other rights of a nongovernmental organization under this part and the SAMHSA Charitable Choice provisions.

§ 54a.13 Educational requirements for personnel in drug treatment programs.

In determining whether personnel of a program participant that has a record of successful drug treatment for the preceding three years have satisfied State or local requirements for education and training, a State or local government shall not discriminate against education and training provided to such personnel by a religious organization, so long as such education and training is comparable to that provided by nonreligious organizations, or is comparable to education and training that the State or local government would otherwise credit for purposes of determining whether the relevant requirements have been satisfied.

§ 54a.14 Determination of nonprofit status.

The nonprofit status of any SAMHSA applicant can be determined by any of the following:

(a) Reference to the organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code.

(b) A copy of a currently valid IRS Tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a nonprofit status and that none of the net earnings accrue to any private shareholder or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the organization.

(e) Any of the above proof for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local nonprofit affiliate.

45 CFR Subtitle A

PART 96—[AMENDED]

3. In 45 CFR subtitle A, amend part 96 as follows:

a. In § 96.122, add paragraph (f)(5)(v) to read as follows:

§ 96.122 Application content and procedures

* * * * *

(f) * * *

(5) * * *

(v) A description of the activities the State has undertaken to comply with 42 CFR part 54.

* * * * *

b. In § 96.123, add paragraph (a)(18) to read as follows:

§ 96.123 Assurances

(a) * * *

(18) The State will comply with the requirements of 42 CFR part 54.

[FR Doc. 02–31673 Filed 12–12–02; 4:32 pm]

BILLING CODE 4160–17–P

Federal Register

Tuesday,
December 17, 2002

Part IV

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 260

Charitable Choice Provisions Applicable to the Temporary Assistance for Needy Families Program; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 260

RIN 0970–AC12

Charitable Choice Provisions Applicable to the Temporary Assistance for Needy Families Program

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Charitable Choice statutory provisions at section 104 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) as amended. These provisions apply to the Temporary Assistance for Needy Families (TANF) program administered by the Administration for Children and Families (ACF). The proposed rule applies to State and local governments that administer or provide TANF services and benefits through contracts with organizations or with certificates, vouchers, or other forms of disbursement, as well as to faith-based organizations that receive, or apply to receive such funding. It is ACF's policy that, within constitutional church-state guidelines, faith-based organizations should be able to compete on an equal footing for TANF funding, and ACF supports the participation of faith-based organizations in the TANF program.

DATES: Consideration will be given to comments received by February 18, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to April Kaplan, Administration for Children and Families, Office of Family Assistance, 370 L'Enfant Promenade, SW., 5th floor, Washington, DC 20447. Comments will be available for public inspection Monday through Friday 8:30 a.m. to 5 p.m. at the above address. You may also transmit comments electronically via the Internet at: *http://www.acf.dhhs.gov/hypernews/topics21.htm.* To download an electronic version of the rule, you should access *http://www.acf.dhhs.gov/budget.html.*

FOR FURTHER INFORMATION CONTACT: April Kaplan, (202) 401–5138.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

This proposed regulation is issued under the authority granted to the Secretary of Health and Human Services (the Secretary) by 42 U.S.C. 1302, and 42 U.S.C. 604a. Section 1302 of 42 U.S.C. authorizes the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Social Security Act (the Act). Section 604a of Title 42 of the United States Code sets forth provisions authorizing States to use faith-based groups, as well as other nongovernmental charities, community groups and private organizations, to provide benefits and services under the TANF program that help families achieve self-sufficiency and includes certain conditions related to such authority.

Section 417 of the Social Security Act provides that the Federal government may not regulate or enforce State conduct under the TANF provisions authorized in Title IV-A, except to the extent expressly provided by law. Section 417 applies only to Federal regulation or enforcement of provisions in Title IV-A of the Act. Because this proposed rule implements provisions in PRWORA, rather than the TANF provisions in Title IV-A, the limitations set forth in section 417 do not apply. These proposed regulations are drafted in a manner that provides States with maximum flexibility, while complying with the Charitable Choice statutory provisions.

II. Background

Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104–193) sets forth certain "Charitable Choice" provisions clarifying State authority to use religious organizations to provide benefits and services that help families achieve self-sufficiency under the TANF program (hereinafter referred to as "TANF Charitable Choice provisions.") In addition to giving families a greater choice of TANF-funded providers, these provisions set forth certain requirements to ensure that religious organizations are able to compete on an equal footing for funds under the TANF program, without impairing the religious character of such organizations and without diminishing the religious freedom of TANF beneficiaries.

President Bush has made it one of his Administration's top priorities to ensure that Federal programs are fully open to faith-based and community groups in a manner that is consistent with the Constitution. It is the Administration's view that faith-based organizations are an indispensable part of the social services network of the United States. Faith-based organizations, including places of worship, nonprofit organizations, and neighborhood groups, offer scores of social services to those in need. The TANF Charitable Choice provisions are consistent with the Administration's belief that there should be an equal opportunity for all organizations—both faith-based and nonreligious—to participate as partners in Federal programs to serve Americans in need.

III. Regulatory Provisions

The TANF Charitable Choice provisions contain important protections both for religious organizations that receive funding and for the individuals who receive their services. This proposed rule would implement the Charitable Choice provisions applicable to State and local governments, and to religious organizations in their use of TANF funding. The objective of this proposed rule is to ensure that the TANF program is open to all eligible organizations, regardless of their religious affiliation or character, and to establish clearly the proper uses to which funds may be put and the conditions for receipt of funding.

Under the proposed rule a new section 260.34, "What conditions apply to the Charitable Choice provisions of TANF?" would be added to existing TANF rules. Introductory language would address the applicability of the Charitable Choice provisions of TANF. Specifically, the rules would provide that Charitable Choice applies whenever a State or local government uses Federal TANF funds or expends State or local funds claimed to meet the maintenance-of-effort (MOE) requirements of TANF to procure services and benefits from nongovernmental organizations, or redeems certificates, vouchers, or other forms of disbursement from them in connection with the TANF program. When State or local funds are used to meet the TANF maintenance-of-effort requirements, the provisions apply irrespective of whether the State or local funds are co-mingled with Federal funds, segregated, or expended in separate State programs. The proposed rules also clarify that, pursuant to section 104(k) of PRWORA, nothing in the Charitable Choice requirements shall be construed to preempt any provision of a State constitution or State statute that prohibits or restricts the

expenditure of State funds in or by religious organizations.

When the term "assistance" is used in the Charitable Choice provisions, it broadly refers to all kinds of help, services and benefits and is broader than the definition of "assistance" found under section 260.31 of this part. Thus, the Charitable Choice provisions apply to any and all of the services and benefits available to clients through contracts, certificates, vouchers, or other forms of disbursement of TANF funds. However, because the Charitable Choice provisions refer only to State and local governments, they do not apply to Tribal governments operating TANF programs under section 412 of the Social Security Act.

The proposed rule also would make the following specific additions to the TANF rules:

- *Equal Treatment for Religious Organizations.* Under the TANF Charitable Choice provisions, organizations are eligible to participate in the TANF program without regard to their religious character or affiliation, and organizations may not be excluded from the competition for TANF funds simply because they are religious. Specifically, religious organizations are eligible to compete for funding on the same basis, and under the same eligibility requirements, as all other nonprofit organizations. The Federal government, and State and local governments administering funds under the TANF program, are prohibited from discriminating against organizations on the basis of religion or their religious character.
- *Restriction on Religious Activities by Organizations that Receive Direct TANF Funding.* Paragraph (b) of section 260.34 of the proposed rule describes limitations on the use of TANF funding provided directly to an organization by a governmental entity or an intermediate organization that has the same duties as a governmental entity, as opposed to those funds that an organization receives as the result of the genuine and independent private choice of a beneficiary.[1] Specifically, TANF and MOE funds that are provided directly to a participating organization may not be used to support inherently religious activities, such as worship, religious instruction, or proselytization. If an organization engages in such activities, the activities must be offered separately, in time or location, from the programs or services for which it receives direct TANF or MOE funds, and participation must be voluntary for the beneficiaries. This requirement ensures that such funds are not used to support inherently religious activities. Thus, direct TANF and MOE funds may not be used, for example, to conduct prayer meetings, studies of sacred texts, or any other activity that is inherently religious.

  This restriction does not mean that an organization that receives direct TANF or MOE funds cannot engage in inherently religious activities. It simply means that such an organization cannot fund these activities with direct TANF funds. Additionally, an organization cannot fund these activities with funds that are used to meet the MOE requirements, since those funds must be spent consistent with the Charitable Choice requirements. Thus, faith-based organizations that receive direct TANF or MOE funds must take steps to separate, in time or location, their inherently religious activities from the TANF or MOE-funded services that they offer.

  In addition, any participation by a program beneficiary in such religious activities must be voluntary. An invitation to participate in an organization's religious activities is not in itself inappropriate. However, directly-funded religious organizations must be careful to reassure program beneficiaries that they will receive help even if they do not participate in these activities, and that their decision will have no bearing on the services they receive. In short, any participation by recipients of services in such religious activities must be voluntary and understood to be voluntary.

  These restrictions on inherently religious activities do not apply where TANF or MOE funds are provided to religious organizations as a result of a genuine and independent private choice of a beneficiary. A religious organization may receive such funds as the result of a beneficiary's genuine and independent private choice if, for example, a beneficiary redeems a voucher, coupon, certificate, or similar funding mechanism that was provided to that individual using TANF or MOE funds under a program that is designed to give that individual a choice among providers. Thus, religious organizations that receive TANF funds to provide services as a result of a beneficiary's genuine and independent private choice need not separate, in time or location, their inherently religious activities from the TANF funded services they provide, provided they otherwise satisfy the requirements of the program.
- *Religious Character and Independence of Religious Organizations.* Paragraph (c) of the proposed rule clarifies that a religious organization that participates in the TANF program retains its independence from Federal, State, and local governments, provided that it does not use direct TANF or MOE funds to support inherently religious activities. It may continue to carry out its mission, including the definition, practice and expression of its religious beliefs. Among other things, religious organizations may use their facilities to provide TANF-funded services, without removing religious art, icons, scriptures, or other symbols. In addition, a TANF-funded religious organization may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.
- *Employment Practices.* Under paragraph (d), the proposed rule clarifies that the receipt of TANF or MOE funds does not affect a participating religious organization's exemption provided under 42 U.S.C. 2000-e regarding employment practices. Title VII of the Federal Civil Rights Act of 1964 provides that a religious organization may, without running afoul of Title VII, hire employees who share its religious beliefs. This provision helps enable faith-based groups to promote common values, a sense of community and unity of purpose, and shared experiences through service—all of which can contribute to a religious organization's effectiveness. It thus helps protect the religious liberty of communities of faith. The TANF Charitable Choice provisions thus reflects the recognition that a religious organization may determine that, in order to define or carry out its mission, it is important that it be able to take its faith into account in making employment decisions.
- *Nondiscrimination Against Beneficiaries.* The proposed rule also contains provisions that apply to the individuals who receive TANF- or MOE-funded services. The first of these is found under paragraph (e) of the proposed rule, which clarifies that religious organizations are prohibited from discriminating against beneficiaries or potential beneficiaries

[1] In the Charitable Choice context, the term "direct" funding is used to describe funds that are provided "directly" by a governmental entity or an intermediate organization with the same duties as a governmental entity, as opposed to funds that an organization receives as the result of the genuine and independent private choice of a beneficiary. In other contexts, the term "direct" funding may be used to refer to those funds that an organization receives directly from the Federal government (also known as "discretionary" funding), as opposed to funding that it receives from a State or local government (also known as "indirect" or "block grant" funding). In these proposed regulations, the term "direct" has the former meaning.

on the basis of religion or religious belief. Accordingly, religious organizations, in providing services funded in whole or in part by TANF or MOE, may not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

• *Notice, Referral, and Provision of Services from Alternative Providers.* Paragraph (f) of section 260.34 of the proposed rule clarifies that individuals who are receiving or may receive TANF or MOE-funded services may object to the religious character of that provider, in which case they are entitled to receive services from an alternative provider. In such cases, the State or local agency must refer the individual to an alternative provider of services within a reasonable period of time, as defined by the State. That alternative provider must be reasonably accessible and have the capacity to provide comparable services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection. The alternative provider need not be a secular organization. It must simply be a provider to which the program beneficiary has no religious objection. Because of the comprehensive nature and range of services provided under TANF, we are explicitly leaving it to the States' discretion how best to define and achieve these statutory objectives.

A client's right to alternative services is best implemented when he or she is informed and referral procedures for alternative services are in place. Therefore, the proposed rule outlines the responsibilities of religious organizations, and State or local governments, with respect to notice, referral, and provision of services from alternative providers.

Notice. Under the proposed rule, States and local governments shall ensure that notice is provided to beneficiaries and prospective beneficiaries regarding alternative services. The notice should clearly articulate the program beneficiary's right to a referral, within a reasonable period of time, as defined by the State, to an alternative service provider. That alternative provider must be reasonably accessible and have the capacity to provide comparable services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the provider to which the individual had such objection, as reasonably determined by the State agency. While the responsibility for providing the alternative service rests with the State or local agency, each participating organization has a responsibility to help clients know and understand their rights.

Referral. If an individual objects to the religious character of the organization providing services they are receiving, the State or provider must refer the individual, within a reasonable period of time, as defined by the State, to an alternative provider of services. That alternative provider must be reasonably accessible and have the capacity to provide comparable services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection, as determined by the State. In making a referral, the State or local government, and religious organization, in consultation with the recipient, should consider alternative providers reasonably available in the geographic area.

We encourage State and local governments and contracting organizations to develop and implement reasonable procedures for tracking referred clients to make sure that the individual makes or has an opportunity to make contact with the alternative provider to which the individual is referred.

Provision of Alternative Services. The responsibility for providing the alternative services rests with the "the appropriate Federal, State, or local government" that administers the program. As discussed above, the State or local agency must refer the individual to an alternative provider of services within a reasonable period of time, as defined by the State. That alternative provider must be reasonably accessible and have the capacity to provide comparable services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection, as determined by the State.

ACF recognizes that a range of methods may fulfill these responsibilities, and therefore does not seek to prescribe a single, inflexible referral system that States must adopt. Rather, we encourage State agencies, working in concert with local governments and program providers, to develop systems to comply with the requirements, monitor compliance, identify compliance problems, and take necessary corrective actions. It is important that the State agency and religious organizations work cooperatively to develop systems to comply with this provision, monitor compliance, identify compliance problems and take necessary corrective actions.

• *Fiscal Accountability.* Under paragraph (g) of the proposed rule, we outline the financial responsibility incurred through the receipt of TANF funds. Religious organizations that contract to provide TANF services or benefits are subject to the same requirements as other nongovernmental organizations to account, in accordance with generally accepted auditing and accounting principles, for the use of such funds. Religious organizations may segregate their TANF accounts from nongovernmental funds for other activities. If religious organizations choose to segregate their funds in this manner, only the segregated funds are subject to audit by the government under the TANF program.

• *Effect on State and Local Funds.* The TANF Charitable Choice requirements apply to "a State program funded under part A of title IV of the Social Security Act," or under the TANF program. Section 104 of PRWORA also applies to "any other program established or modified under title I or title II of this Act that permits contracts with organizations; or permits certificates, vouchers, or other forms of disbursement to be provided to beneficiaries as a means of providing assistance." Title I of PRWORA encompasses all the TANF provisions, including the requirement at section 409(a)(7) that States expend State or local funds on eligible families for activities that serve TANF purposes. These State contributions are known as maintenance-of-effort, or MOE, contributions. Therefore, under the proposed rules at paragraph (h), the Charitable Choice provisions apply whenever a State or local government uses Federal TANF funds or expends State or local funds claimed to meet the "maintenance-of-effort" (MOE) requirements of the TANF program to procure services and benefits from nongovernmental organizations, or redeems certificates, vouchers, or other forms of disbursement. In other words, when State or local funds are used to meet the TANF MOE requirements, the Charitable Choice provisions apply irrespective of whether the State or local funds are co-mingled with Federal funds, segregated, or expended in separate State programs. The proposed rules also clarify that, pursuant to section 104(k) of PRWORA, nothing in the Charitable Choice requirements shall be construed to preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations.

• *Treatment of Intermediate Organizations.* Finally, paragraph (i) of the proposed rule provides that, if a nongovernmental organization (referred to here as an "intermediate organization"), acting under a contract or other agreement with the Federal government or a State or local government, is given the authority under the contract or agreement to select other nongovernmental organizations to provide services under the program, the intermediate organization must ensure that there is compliance with the Charitable Choice provisions. The intermediate organization retains all other rights of a nongovernmental organization under the Charitable Choice provisions.

IV. Paperwork Reduction Act of 1995

No new information collection requirements are imposed by these regulations, nor are any existing requirements changed as a result of their promulgation. Therefore, the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), regarding reporting and record keeping, do not apply.

V. Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments. State governments are not considered small entities under the Regulatory Flexibility Act.

VI. Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This rule is considered a "significant regulatory action" under the Executive Order, and therefore has been reviewed by the Office of Management and Budget.

VII. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

The Department has determined that this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

VIII. Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. chapter 8.

IX. Assessment of Federal Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These regulations will not have an impact on family well being as defined in the legislation.

X. Executive Order 13132

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. Consistent with Executive Order 13132, we specifically solicit comment from State and local government officials on this proposed rule.

List of Subjects in 45 CFR Part 260

Grant programs—social programs, Loan programs—social programs, Public assistance programs.

Dated: December 12, 2002.

Tommy G. Thompson,

Secretary of Health and Human Services.

For the reasons discussed above, title 45 CFR chapter II is proposed to be amended as follows:

PART 260—[AMENDED]

1. The authority citation for 45 CFR part 260 continues to read as follows:

Authority: 42 U.S.C. 601, 601 note, 603, 604, 606, 607, 608, 609, 610, 611, 619, and 1308.

2. Section 260.30 is amended to add the following two definitions in alphabetical order to read as follows:

§ 260.30 What definitions apply under the TANF regulations?

* * * * *

Direct funding or funds provided directly means funding that is provided to an organization directly by a governmental entity or an intermediary organization that has the same duties as a governmental entity, as opposed to funding that an organization receives as the result of the genuine and independent private choice of a beneficiary.

* * * * *

Religious organization means a nonprofit religious organization.

* * * * *

3. A new § 260.34 is added to read as follows:

§ 260.34 What conditions apply to the Charitable Choice provisions of TANF?

These Charitable Choice provisions apply whenever a State or local government uses Federal TANF funds or expends State and local funds used to meet maintenance-of-effort requirements of the TANF program to procure services and benefits from nongovernmental organizations, or provides TANF beneficiaries with certificates, vouchers, or other forms of disbursement redeemable from such organizations. However, nothing in this section shall be construed to preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations.

(a) (1) Religious organizations are eligible, on the same basis as any other organization, to participate in TANF programs as long as their TANF or MOE-funded services are provided consistent with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution.

(2) Neither the Federal government nor a State or local government in its use of TANF or MOE funds shall discriminate against an organization that applies to provide, or provides, TANF services or benefits on the basis of the organization's religious character or affiliation.

(b) No TANF or MOE funds provided directly to participating organizations may be expended for inherently religious activities, such as worship, religious instruction, or proselytization. If an organization conducts such activities, it must offer them separately, in time or location, from the programs or services for which it receives direct TANF funds under this part, and participation must be voluntary for the beneficiaries of those programs or services.

(c) A religious organization that participates in the TANF program will retain its independence from Federal, State, and local governments and may continue to carry out its mission,

including the definition, practice and expression of its religious beliefs, provided that it does not expend TANF or MOE funds that it receives directly to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide TANF-funded services without removing religious art, icons, scriptures, or other symbols. In addition, a TANF-funded religious organization retains the authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) The participation of a religious organization in, or its receipt of funds from, a TANF program does not affect that organization's exemption provided under 42 U.S.C. 2000e-1 regarding employment practices.

(e) A religious organization that receives TANF or MOE funds shall not, in providing program services or benefits, discriminate against a TANF applicant or recipient on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

(f) If an otherwise eligible TANF applicant or recipient objects to the religious character of a TANF service provider, the recipient is entitled to receive services from an alternative provider. In such cases, the State or local agency must refer the individual to an alternative provider of services within a reasonable period of time, as defined by the State agency. That alternative provider must be reasonably accessible and have the capacity to provide comparable services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection, as defined by the State agency. The alternative provider need not be a secular organization. It must simply be a provider to which the recipient has no religious objection. States may define and apply the terms "reasonably accessible," "a reasonable period of time," "comparable," "capacity," and " value that is not less than." The appropriate State or local governments that administer TANF-funded programs shall ensure that notice of their right to alternative services is provided to applicants or recipients. The notice must clearly articulate the recipient's right to a referral and to services that reasonably meet the timeliness, capacity, accessibility, and equivalency requirements discussed above.

(g) Religious organizations that receive TANF funds are subject to the same regulations as other nongovernmental organizations to account, in accordance with generally accepted auditing/accounting principles, for the use of such funds. Religious organizations may keep any TANF funds they receive for services segregated in a separate account from nongovernmental funds. If religious organizations choose to segregate their funds in this manner, only the TANF funds are subject to audit by the government under the program.

(h) This section applies whenever a State or local organization uses TANF funds to procure services and benefits from nongovernmental organizations, or redeems certificates, vouchers, or other forms of disbursement from them whether with Federal funds, or State and local funds claimed to meet the maintenance-of-effort requirements of section 409(a)(7) of the Social Security Act. When State or local funds are used to meet the TANF MOE requirements, the provisions apply irrespective of whether the State or local funds are co-mingled with Federal funds, segregated, or expended in separate State programs.

(i) *Preemption.* Nothing in this section shall be construed to preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations.

(j) If a nongovernmental intermediate organization, acting under a contract or other agreement with a State or local government, is given the authority under the contract or agreement to select nongovernmental organizations to provide TANF or MOE-funded services, the intermediate organization must ensure that there is compliance with the Charitable Choice provisions. The intermediate organization retains all other rights of a nongovernmental organization under the Charitable Choice provisions.

[FR Doc. 02–31674 Filed 12–12–02; 4:32 pm]
BILLING CODE 4184–01–P



Federal Register

Tuesday,
December 17, 2002

Part V

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 1050

Charitable Choice Provisions Applicable to Programs Authorized Under the Community Services Block Grant Act; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1050

RIN 0970–AC13

Charitable Choice Provisions Applicable to Programs Authorized Under the Community Services Block Grant Act

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Charitable Choice statutory provisions at section 679 of the Community Services Block Grant Act ("CSBG Act"). These provisions apply to programs authorized under the Act, including the Community Services Block grant program, Training, Technical Assistance and Capacity Building program, Community Food and Nutrition Program, National Youth Sports program, and discretionary grants for economic development, rural community development, and neighborhood innovation, which are all administered by the Administration for Children and Families (ACF). It is ACF's policy that, within the framework of constitutional church-state guidelines, faith-based organizations should be able to compete on an equal footing for funding, and ACF supports the participation of faith-based organizations in these programs.

DATES: Consideration will be given to comments received by February 18, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to Administration for Children and Families, Office of Community Services, 370 L'Enfant Promenade, SW., 5th floor, Washington, DC 20447. Attention: Clarence Carter. Comments will be available for public inspection Monday through Friday 8:30 a.m. to 5 p.m. on the 5th floor of the Department's offices at the above address. You may also transmit comments electronically via the Internet at: *http://www.acf.dhhs.gov/hypernews/*. To download an electronic version of the rule, you should access ACF's regulation page at: *http://www.acf.dhs.gov/budget/html*.

FOR FURTHER INFORMATION CONTACT: Clarence Carter, (202) 401–9333.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

This proposed regulation is issued under the authority granted to the Secretary of Health and Human Services (the Secretary) by 42 U.S.C. 9901. Section 9901 sets forth provisions authorizing States to provide an opportunity for active participation by faith based groups, as well as charitable, private, and neighborhood based organizations, in programs directed to eliminate poverty.

II. Background

Title II of the Community Opportunities, Accountability, and Training and Education Services Act of 1998 (COATS) (Pub. L. 105–285) set forth certain "Charitable Choice" provisions clarifying Federal, State, and local authority to use religious organizations to provide benefits and services that help families achieve self-sufficiency in programs authorized under the CSBG Act. In addition to giving families a greater choice of providers, these provisions set forth certain requirements to ensure that religious organizations are able to compete on an equal footing for funds without impairing the religious character of such organizations and without diminishing the religious freedom of the CSBG Act recipients.

President Bush has made it one of his Administration's top priorities to ensure that Federal programs are fully open to faith-based and community groups in a manner that is consistent with the Constitution. It is the Administration's view that faith-based organizations are an indispensable part of the social services network of the United States. Faith-based organizations, including places of worship, nonprofit organizations, and neighborhood groups, offer scores of social services to those in need. The Charitable Choice provisions in the CSBG Act are consistent with the Administration's belief that there should be an equal opportunity for all organizations—both faith-based and nonreligious—to participate as partners in Federal programs to serve Americans in need.

III. Regulatory Provisions

The Charitable Choice provisions in the CSBG Act contain important protections both for religious organizations that receive funding and for the individuals who receive their services. This proposed rule would implement the Charitable Choice provisions applicable to Federal, State, and local governments when funding public and private organizations—including religious organizations. The objective of this proposed rule is to ensure that the CSBG Act programs are open to all eligible organizations, regardless of their religious affiliation or character, and to establish clearly the proper uses of CSBG Act funds and the conditions for receipt of funding.

Under the proposed rule a new Part 1050, "Charitable Choice Under the Community Services Block Grant Programs," would be added to Title 45 of the Code of Federal Regulations. We propose to add three sections under this part.

First, section 1050.1, "Scope," would provide that this part applies to all programs authorized in the Community Services Block Grant Act.

Second, section 1050.2, "Definitions," would provide the following definitions applicable to this proposed new part:

Applicable Program means any program authorized under Title II of the Community Opportunities, Accountability, and Training and Education Act of 1998, 42 U.S.C. 9901, et. seq.

Direct funding, directly funded, or funding provided directly means funding that is provided to an organization directly from a governmental entity or an intermediate organization, as opposed to funding that an organization receives as a result of the genuine and independent private choice of a beneficiary.

Intermediate Organization means a non-governmental organization that is authorized by the terms of a contract, grant or other agreement with the Federal Government, or a State or local government, to select other non-governmental organizations to provide assistance under an applicable program. For example, when a State uses CSBG funds to pay for technical assistance services provided by a private entity and also authorizes that entity to subcontract for a portion of the technical assistance effort, the private entity is an intermediate organization.

Program Beneficiary or Recipient means an individual who receives services under a program funded in whole or part by an applicable program.

Program Participant means a public or private entity that has received financial assistance under an applicable program.

Religious organization means a nonprofit religious organization.

The third and final section of the proposed new part, "What Conditions Apply to the Charitable Choice Provisions of the CSBG Act?" would be found at section 1050.3. Introductory language would speak to the applicability of the Charitable Choice provisions of the CSBG Act. Specifically, the rules would provide that the Charitable Choice provisions apply whenever the Federal government, or State or local governments, provide awards, contracts, or other assistance under any program authorized in the Community Services Block Grant Act, 42 U.S.C. 9901, *et seq.* Additionally, these provisions apply whenever an intermediate organization acting under a contract, grant, or other agreement with a Federal, State, or local government entity selects another nongovernmental organizations to provide assistance under any of the programs authorized in the CSBG Act.

However, because the Charitable Choice provisions refer only to Federal, State and local governments, these provisions do not apply to Tribal governments operating CSBG programs under section 677 of the Community Services Block Grant Act.

The CSBG Charitable Choice rules apply to programs carried out under the CSBG statute. When a program is funded by CSBG as well as by other Federal sources, the CSBG Charitable Choice rules apply to the use of those funds except to the extent that the Charitable Choice provisions are inconsistent with provisions applicable to the other funding sources.

Section 1050.3 of the proposed rule would contain the following elements:

• *Equal Treatment for Religious Organizations.* The Charitable Choice provision in the CSBG Act clarifies the rights of faith-based organizations that receive funding. The proposed rule would make clear under paragraph (a) of section 1050.3 that organizations are eligible to participate in assistance programs without regard to their religious character or affiliation, and that organizations may not be excluded from the competition for program funds simply because they are religious. Specifically, religious organizations are eligible to compete for funding on the same basis, and under the same eligibility requirements, as all other nonprofit organizations. The Federal government, and State and local governments and intermediate organizations administering programs under the CSBG Act, are prohibited from discriminating against organizations on the basis of religion or their religious character.

The Charitable Choice provisions must be implemented within the context of the authorizing legislation. The Community Services Block Grant program under the CSBG Act contains specific requirements concerning CSBG eligible entities. The law requires that all eligible entities in that program administer CSBG funds "through a tripartite board * * * that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities." (42 U.S.C. 9910). Section 9910 further requires that the tripartite board include equal representation from elected public officials, representatives of low-income families in the neighborhoods served, and officials or members of business, industry, labor, religious, law enforcement, education or other major groups interested in the community served.

• *Restriction on Religious Activities by Organizations that Receive Direct CSBG Funding.* Paragraph (b) of section 1050.3 of the proposed rule describes limitations on the use of funds provided under the CSBG Act directly to an organization by a governmental entity or by an intermediate organization that has the same duties as a governmental entity, as opposed to those funds that an organization receives as the result of the genuine and independent private choice of a beneficiary.[1] Specifically, program funds that are provided directly to a participating organization may not be used to support inherently religious activities, such as worship, religious instruction, or proselytization. If the organization engages in such activities, the activities must be offered separately, in time or location, from the programs or services for which it receives direct funding under the CSBG Act, and participation must be voluntary for the program participants. This requirement ensures that program funds provided directly to religious organizations are not used to support inherently religious activities. Thus, funds provided directly under the CSBG Act to a participating organization may not be used, for example, to conduct prayer meetings, studies of sacred texts, or any other activity that is inherently religious. Additionally, organizations may not fund these activities with cost sharing or matching funds, which must be used in a manner consistent with the federal funds.

This restriction does not mean that an organization that receives direct funding under the CSBG Act cannot engage in inherently religious activities. It simply means such an organization cannot fund these activities with such funds provided directly from a government source or an intermediate organization that has the same duties as a governmental entity. Thus, faith-based organizations that receive direct funding must take steps to separate, in time or location, their inherently religious activities from the government- or intermediate organization-funded services that they offer.

In addition, any participation by a beneficiary in such religious activities must be voluntary. An invitation to participate in an organization's religious activities is not in itself inappropriate. However, participating religious organizations must be careful to reassure program beneficiaries that they will receive services even if they do not participate in these activities, and that their decision will have no bearing on the services they receive. In short, any participation by recipients of services in such religious activities must be voluntary and understood to be voluntary.

These restrictions on inherently religious activities do not apply where CSBG funds are provided to religious organizations as a result of a genuine and independent private choice of a program beneficiary. A religious organization may receive funds as the result of a beneficiary's genuine and independent private choice if, for example, a beneficiary redeems a voucher, coupon, certificate, or similar funding mechanism that was provided to that individual under a program that is designed to give that individual a choice among providers. Thus, religious organizations that receive funds under the CSBG Act as a result of a beneficiary's genuine and independent private choice need not separate, in time or location, their inherently religious activities from the CSBG-funded services they provide, provided that they otherwise satisfy the requirements of the program.

• *Religious Character and Independence of Religious Organizations.* Paragraph (c) of the proposed rule clarifies that a religious organization that participates in the CSBG Act programs retains its independence from Federal, State, and local governments, provided that it does not use direct program funds to support inherently religious activities. It may continue to carry out its mission, including the definition, practice and expression of its religious beliefs. Among other things, religious organizations may use their facilities to provide government-funded services, without removing religious art, icons, scriptures, or other symbols. In addition, a government-funded religious organization may retain religious terms in its organization's name, select its

[1] In the Charitable Choice context, the term "direct" funding is used to describe funds that are provided "directly" by a governmental entity or an intermediate organization with the same duties as a governmental entity, as opposed to funds that an organization receives as the result of the genuine and independent private choice of a beneficiary. In other contexts, the term "direct" funding may be used to refer to those funds that an organization receives directly from the Federal government (also known as "discretionary" funding), as opposed to funding that it receives from a State or local government (also known as "indirect" or "block grant" funding). In these proposed regulations, the term "direct" has the former meaning.

board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

• *Employment Practices.* Under paragraph (d), the proposed rule clarifies that the receipt of funds from programs authorized in the CSBG Act does not affect a participating religion organization's exemption provided under 42 U.S.C. 2000-e regarding employment practices. Title VII of the Federal Civil Rights Act of 1964 provides that a religious organization may, without running afoul of Title VII, employ individuals who share its religious beliefs. This provision helps enable faith-based groups to promote common values, a sense of community and unity of purpose, and shared experiences through service—all of which can contribute to a religious organization's effectiveness. It thus helps protect the religious liberties of communities of faith. The CSBG Act's Charitable Choice provisions thus reflect the recognition that a religious organization may determine that, in order to define or carry out its mission, it is important that it be able to take its faith into account in making employment decisions.

• *Nondiscrimination Against Beneficiaries.* The proposed rule also contains provisions that apply to the individuals who receive funded services. The first of these is found under paragraph (e) of the proposed rule. This section clarifies that religious organizations are prohibited from discriminating against beneficiaries or potential beneficiaries on the basis of religion or religious belief. Accordingly, religious organizations, in providing services funded in whole or in part under any program authorized in the CSBG Act, may not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

• *Fiscal Accountability.* Under paragraph (f) of the proposed rule, we outline the financial responsibility incurred through the receipt of funds from programs authorized under the CSBG Act. Religious organizations that receive such funding to provide services or benefits are subject to the same requirements as other nongovernmental organizations to account, in accordance with generally accepted auditing and accounting principles, for use of such funds. Religious organizations are also required to account for the expenditure of all governmental funds and are subject to audit by the government. Religious organizations must segregate their government funds provided under any of the programs in the CSBG Act from their other funds so that only the use of their government funds would be subject to audit under the applicable CSBG Act program.

• *Effect on State and Local Funds.* The proposed rule at paragraph (g) provides that if a State or local government contributes its own funds to supplement federal CSBG funded activities, the State or local government has the option to separate out the Federal funds or commingle them. However, if the funds are commingled, the Charitable Choice provisions apply to all of the commingled funds.

• *Treatment of Intermediate Organizations.* Finally, paragraph (h) of the proposed rule provides that, if a nongovernmental organization (referred to here as an "intermediate organization"), acting under a contract, grant, or other agreement with the Federal Government or a State or local government, is given the authority under the contract or agreement to select other nongovernmental organizations to provide services under the program, the intermediate organization must ensure that there is compliance with the Charitable Choice provisions. The intermediate organization retains all other rights of a nongovernmental organization under the Charitable Choice provisions.

IV. Paperwork Reduction Act of 1995

No new information collection requirements are imposed by these regulations, nor are any existing requirements changed as a result of their promulgation. Therefore, the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), regarding reporting and record keeping, do not apply.

V. Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities.

VI. Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This rule is considered a "significant regulatory action" under 3(f) of the Executive Order, and therefore has been reviewed by the Office of Management and Budget.

VII. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

The Department has determined that this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

VIII. Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. chapter 8.

IX. Assessment of Federal Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These regulations will not have an impact on family well being as defined in the legislation.

X. Executive Order 13132

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. Consistent with Executive Order 13132, we specifically solicit comment from State and local government officials on this proposed rule.

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires us to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." Although it is not clear that the proposed rule will have tribal implications, we specifically solicit comment on this proposed rule from tribal officials.

List of Subjects in 45 CFR Part 1050

Grant programs-social programs.

(Catalog of Federal Domestic Assistance Programs No. 93569 Community Services Block Grant)

Dated: December 12, 2002.

Tommy G. Thompson,

Secretary of Health and Human Services.

For the reasons discussed above, we are proposing to add to 45 CFR chapter X a new part 1050 to read as follows:

PART 1050—CHARITABLE CHOICE UNDER THE COMMUNITY SERVICES BLOCK GRANT PROGRAM

Sec.

1050.1 Scope.
1050.2 Definitions.
1050.3 What conditions apply to the Charitable Choice provisions of the CSBG Act?

Authority: 42 U.S.C. 9901 *et seq.*

§ 1050.1 Scope.

This part applies to programs authorized under the Community Services Block Grant Act (CSBG Act). (42 U.S.C. 9901, 9913, 9920, 9921, 9922, 9923)

§ 1050.2 Definitions.

Applicable program means any program authorized under Title II of the Community Opportunities, Accountability, and Training and Education Act of 1998, 42 U.S.C. 9901, *et seq.*

Direct funding, directly funded or funding provided directly means funding that is provided to an organization directly by a governmental entity or an intermediate organization that has the same duties as a governmental entity, as opposed to funding that an organization receives as a result of the genuine and independent private choice of a beneficiary.

Intermediate organization means an organization that is authorized by the terms of a contract, grant or other agreement with the Federal Government, or a State or local government, to select other non-governmental organizations to provide assistance under an applicable program. For example, when a State uses CSBG funds to pay for technical assistance services provided by a private entity and also authorizes that entity to subcontract for a portion of the technical assistance effort, the private entity is an intermediate organization.

Program beneficiary or recipient means an individual who receives services under a program funded in whole or part by an applicable program.

Program participant means a public or private entity that has received financial assistance under an applicable program.

Religious organization means a nonprofit religious organization.

§ 1050.3 What conditions apply to the Charitable Choice provisions of the CSBG Act?

These Charitable Choice provisions apply whenever the Federal government, or a State or local government, uses-CSBG provided awards, contracts, or other assistance under any program authorized in the Community Services Block Grant, 42 U.S.C. 9901, *et seq.* Additionally, these provisions apply whenever an intermediate organization acting under a contract, grant, or other agreement with a Federal, State, or local government entity selects nongovernmental organizations to provide assistance under any of the programs authorized under the Community Services Block Grant Act.

(a)(1) Religious organizations are eligible, on the same basis as any other organization, to participate in the applicable programs as long as they use program funds consistent with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution.

(2) Neither the Federal government nor a State or local government receiving funds under an applicable program shall discriminate against an organization that applies to provide, or provides, services or benefits on the basis of the organization's religious character or affiliation.

(b) No program participant that receives direct funding under an applicable program may expend the program funds, for inherently religious activities, such as worship, religious instruction, or proselytization. If an organization conducts such activities, it must offer them separately, in time or location, from the programs or services directly funded under any applicable program, and participation must be voluntary for program beneficiaries.

(c) A religious organization that participates in an applicable program will retain its independence from Federal, State, and local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not expend any direct funding under the applicable program to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide services funded under an applicable program without removing religious art, icons, scriptures, or other symbols. In addition, such a religious organization retains the authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) The participation of a religious organization in, or its receipt of funds from, an applicable program does not affect that organization's exemption provided under 42 U.S.C. 2000e–1 regarding employment practices.

(e) A religious organization that receives funds under an applicable program, shall not, in providing program services or benefits, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

(f) Religious organizations that receive funds under an applicable program are subject to the same regulations as other nongovernmental organizations to account, in accordance with generally accepted auditing and accounting principles, for the use of such funds. In addition, religious organizations are required to keep any Federal funds they receive for services segregated in a separate account from non-Federal funds. Only the segregated government funds are subject to audit by the government under the applicable program.

(g) If a State or local government contributes its own funds to supplement CSBG funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, the Charitable Choice provisions apply to all of the commingled funds.

(h) If a nongovernmental intermediate organization, acting under a grant, contract, or other agreement with the Federal, State or local government, is given the authority to select nongovernmental organizations to provide services under an applicable program, then the intermediate organization must ensure that there is compliance with these Charitable Choice provisions. The intermediate organization retains all other rights of a nongovernmental organization under the Charitable Choice provisions.

[FR Doc. 02–31675 Filed 12–12–02; 4:32 pm]
BILLING CODE 4184–01–P

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Federal Register

Tuesday,
December 17, 2002

Part VI

Federal Communications Commission

47 CFR Parts 73 and 76
Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part S 73 and 76

[MM Docket No. 98–204; FCC 02–303]

RIN 4223

Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Commission solicits comment on how to apply Equal Employment Opportunity ("EEO") rules to part-time employees. The Commission also seeks comment on how many and what types of positions in the broadcast and multichannel video programming distributors (MVPD) industry would fall into the part-time classification. The intended effect is to invite comments on all aspects of the Commission's proposal.

DATES: Comments are due on or before December 20, 2002; reply comments are due on or before January 6, 2003.

FOR FURTHER INFORMATION CONTACT: Estella Salvatierra, Media Bureau, (202) 418–1789 or via e-mail at *Esalvatierra@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's *Third Notice of Proposed Rulemaking ("3rd NPRM")* MM 98–204; FCC 02–303, adopted November 7, 2002, and released November 20, 2002. The complete text of this *3rd NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via email *qualexint@aol.com*. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419 comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings* (63 FR 24121, May 1, 1998). This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact Brian Millin at (202) 418–7426 (voice), (202) 418–7365 (TTY), or via e mail at *bmillin@fcc.gov*. Parties may submit their comments using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies. Comments may be filed as an electronic file via the Internet at *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply. Additional information on ECFS is available at *http://www.fcc.gov/e-file/ecfs.html*.

Filings may also be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Synopsis of Third Notice of Proposed Rulemaking

1. The EEO rules apply to all "full-time employees," defined as those whose regular work schedule is 30 hours or more a week. We have previously applied a "substantial compliance" policy to positions involving less than 30 hours a week, although we did not require reporting of this effort and did not focus on part-time hires in our review of EEO programs. As discussed, we do not have sufficient evidence in the current record to make an informed decision about whether and how to apply the new EEO rules and policies to part-time positions, defined as less than 30 hours per week. We are thus seeking comment on this issue. In particular, we seek comment on how many and what types of positions in the broadcast and MVPD industries fall into this category, what is the significance of these positions in terms of entry into broadcasting, how burdensome compliance with the recruitment, record-keeping, and reporting requirements for all or some part-time positions would be for broadcasters and MVPDs, and whether the requirements applicable to part-time positions should be the same as or different from those applicable to full-time positions. We also seek comment on whether we should set a minimum number of hours for a part-time position to be covered by the rules and, if so, what that minimum should be.

Procedural Matters

2. *Ex Parte Rules.* With respect to the *3rd NPRM*, this is a permit-but-disclose notice and comment proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. *See:* 47 CFR 1.1202, 1.1203, and 1.1206(a).

7. *Initial Regulatory Flexibility Analysis.* With respect to the *3rd NPRM*, an IRFA is contained. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an IRFA of the possible significant economic impact on small entities of the proposals contained in this *3rd NPRM*. Written public comments are requested on the IRFA. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *3rd NPRM*, but they must have a distinct heading designating them as responses to the IRFA.

Paperwork Reduction Act

3. *Initial Paperwork Reduction Act of 1995 Analysis.* This *3rd NPRM* contains either a proposed or modified

information collection in that part-time hires could potentially be subject to information collection requirements. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *3rd NPRM*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this *3rd NPRM;* OMB comments are due 60 days from the date of publication of this *3rd NPRM* in the **Federal Register**. Comments should address: (a) Whether the potential collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 Twelfth Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov* and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Edward.Springer@omb.eop.gov*.

Initial Regulatory Flexibility Analysis

4. As required by the RFA, the Commission has prepared this present IRFA of the possible significant economic impact on small entities by the policies and rules proposed in this *3rd NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *3rd NPRM* provided. The Commission will send a copy of the *3rd NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *3rd NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rule Changes

5. This *3rd NPRM* requests comments concerning the applicability of new equal employment opportunity ("EEO") rules and policies with respect to part-time employees of broadcast and multichannel video programming distributors ("MVPDs"). The EEO rules apply to full-time employees, defined as those whose regular work schedule is 30 hours or more a week. The current record is insufficient to allow the Commission to determine whether and how to apply the rules to part-time positions, defined as fewer than 30 hours per week. The *3rd NPRM* seeks comment on this issue. In particular, the *3rd NPRM* seeks comment on how many and what types of positions in the broadcast and MVPD industries fall into this category; the significance of these positions in terms of entry into broadcasting; how burdensome compliance with the recruitment, record-keeping, and reporting requirements for all or some part-time positions would be for broadcasters and MVPDs; and whether the requirements applicable to part-time positions should be the same as or different from those applicable to full-time positions. We also seek comment on whether we should set a minimum number of hours for a part-time position to be covered by the rules and, if so, what that minimum should be.

B. Legal Basis

6. Authority for the actions proposed in this *3rd NPRM* may be found in sections 1, 4(i), 4(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 634 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 554.

C. Recording, Recordkeeping, and Other Compliance Requirements

7. As noted, the purpose of this rulemaking is to determine whether and how to apply the Commission's EEO rules to employment positions involving fewer than 30 hours per week. Hence, this *3rd NPRM* anticipates that any recording, recordkeeping and compliance requirements proposed for part-time employees will not exceed those already provided for full-time employees.

D. Description and Estimate of the Number of Small Entities to Which the Rule Would Apply

1. Definition of a "Small Business"

8. The proposed rules would apply to broadcast stations and MVPDs. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. The RFA, 5 U.S.C. 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the [SBA] and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

9. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. Finally, "small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The United States Bureau of the Census (Census Bureau) estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

2. Issues in Applying the Definition of a "Small Business"

10. As discussed, we could not precisely apply the foregoing definition of "small business" in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us. An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television station is dominant in its field of operation. Accordingly, the following estimates of small businesses to which the new rules will apply do not exclude any radio or television station from the definition of a small business on this

basis and are therefore overinclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. As discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which the rules may apply may be overinclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

11. With respect to applying the revenue cap, the SBA has defined "annual receipts" specifically in 13 CFR 121.104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use in applying the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

12. Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. The SBA defines affiliation in 13 CFR 121.103. In this context, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Instead of making an independent determination of whether television stations were affiliated based on SBA's definitions, we relied on the databases available to us to provide us with that information.

3. Estimates Based on Census Data

13. The proposed rules will apply to broadcast television and radio stations. The SBA defines a television broadcasting station that has no more than $12.0 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under other North American Industry Classification (NAICS) numbers.

14. There were 1,695 full-service television stations operating in the as of December 2001. According to Census Bureau data for 1997, there were 906 Television Broadcasting firms, total, that operated for the entire year. Of this total, 734 firms had annual receipts of $9,999,999.00 or less and an additional 71 had receipts of $10 million to $24,999,999.00. Under this standard, the majority of firms can be considered small.

15. The SBA defines a radio broadcasting station that has no more than $6 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. Radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number. According to Census Bureau data for 1997, there were 4,476 Radio Stations (firms), total, that operated for the entire year. Of this total 4,265 had annual receipts of $4,999,999.00 or less, and an additional 103 firms had receipts of $5 million to $9,999,999.00. Under this standard, the great majority of firms can be considered small.

16. The proposed rules would also apply to MVPDs. SBA has developed a definition of a small entity for cable and other program distribution, which includes all such companies generating $12.5 million or less in annual receipts. This definition includes direct broadcast satellite services (DBS), multipoint distribution systems (MDS), and local multipoint distribution service (LMDS). According to Census Bureau data for 1997, there were 1,311 firms within the industry category Cable and Other Program Distribution, total, that operated for the entire year. Of this total, 1,180 firms had annual receipts of $9,999,999.00 or less, and an additional 52 firms had receipts of $10 million to $24,999,999.00. Under this standard, the majority of firms can be considered small.

17. *Coble Systems:* The Commission has developed, with SBA's approval, its own definition of small cable system operators. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve more than 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the rules proposed herein.

18. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate less than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenue in the aggregate exceeds $250,000,000." The Commission has determined that there are 67,700,000 subscribers in the United States. We found that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450. Since we do not request nor collect information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

19. *MDS:* MDS involves a variety of transmitters, which are used to relay programming to the home or office. The Commission has defined "small entity" for purposes of the 1996 auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. These stations were licensed prior to implementation of section 309(j) of the Communications Act of 1934, as amended. Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 met the definition of a small business.

20. *LMDS:* The auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission reauctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the reauction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

21. *DBS:* Because DBS provides subscription services, it falls within the SBA-recognized definition of "Cable and Other Program Distribution." This definition provides that a small entity is one with $12.5 million or less in annual receipts. Currently, there are nine DBS authorizations, though there are only two DBS companies in operation at this time. We neither request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would be considered a small business under the SBA definition.

22. An alternative way to classify small entities is by the number of employees. Based on available data, we estimate that in 1997 the total number of full-service broadcast stations with four or fewer employees was 5186, of which 340 were television stations. Similarly, we estimate that in 1997, 1900 cable employment units employed fewer than six full-time employees. Also, in 1997, 296 "MVPD" employment units employed fewer than six full-time employees. We also estimate that in 1997, the total number of full-service broadcast stations with five to ten employees was 2145, of which 200 were television stations. Similarly, we estimate that in 1997, 322 cable employment units employed six to ten full-time employees. Also, in 1997, approximately 65 MVPD employment units employed six to ten full-time employees.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

23. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

24. This *3rd NPRM* seeks comments on the applicability of the EEO rules to part-time employees, and would not change the status of small broadcasters or MVPDs.

25. We note that the issue at hand affects the compliance burdens of entities that, by definition, are not within our EEO small business size standards. We have nonetheless created this present initial analysis to encourage comments by small entities and create a fuller record.

26. Currently, broadcasters with station employment units of five to ten full-time employees are provided some relief from EEO program requirements, and station employment units of fewer than five full-time employees are not required to demonstrate compliance with the EEO program requirements. In addition, MVPD employment units employing six to ten full-time employees are provided some relief from the EEO program requirements, and MVPD employment units with fewer than six full-time employees are not required to demonstrate compliance with the EEO program requirements.

F. Federal Rules That Overlap, Duplicate, or Conflict With the Proposed Rules

27. We note that certain commenters have indicated that federal, state and local EEO requirements serve much the same purpose as our EEO Rule. We have addressed these arguments in *3rd NPRM.*

Ordering Clause

28. *Authority.* This *3 NPRM* is issued pursuant to authority contained in sections 1, 4(i), 4(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 634 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 554.

29. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *3rd NPRM* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

30. MM Docket No. 98–204 will remain open for the limited purpose of considering the issues raised in this *3rd NPRM,* and to facilitate any additional proceedings upon further order of the Commission.

List of Subjects in 47 CFR Parts 73 and 76

Cable television, Equal employment opportunity.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 73 and 76 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

2. Section 73.2080 is revised to read as follows:

§ 73.2080 Equal employment opportunities (EEO).

(a) *General EEO policy.* Equal opportunity in employment shall be afforded by all licensees or permittees of commercially or noncommercially operated AM, FM, TV, Class A TV or international broadcast stations (as defined in this part) to all qualified persons, and no person shall be discriminated against in employment by such stations because of race, color,

religion, national origin, or sex. Religious radio broadcasters may establish religious belief or affiliation as a job qualification for all station employees. However, they cannot discriminate on the basis of race, color, national origin or gender from among those who share their religious affiliation or belief. For purposes of this rule, a religious broadcaster is a licensee which is, or is closely affiliated with, a church, synagogue, or other religious entity, including a subsidiary of such an entity.

(b) *General EEO program requirements.* Each broadcast station shall establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity and nondiscrimination in every aspect of station employment policy and practice. Under the terms of its program, a station shall:

(1) Define the responsibility of each level of management to ensure vigorous enforcement of its policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;

(2) Inform its employees and recognized employee organizations of the equal employment opportunity policy and program and enlist their cooperation;

(3) Communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, or sex, and solicit their recruitment assistance on a continuing basis;

(4) Conduct a continuing program to exclude all unlawful forms of prejudice or discrimination based upon race, color, religion, national origin, or sex from its personnel policies and practices and working conditions; and

(5) Conduct a continuing review of job structure and employment practices and adopt positive recruitment, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility.

(c) *Specific EEO program requirements.* Under the terms of its program, a station employment unit must:

(1) Recruit for every full-time job vacancy in its operation. A job filled by an internal promotion is not considered a vacancy for which recruitment is necessary. Religious radio broadcasters who establish religious affiliation as a qualification for a job position are not required to comply with these recruitment requirements with respect to that job position or positions, but will be expected to make reasonable, good faith efforts to recruit applicants who are qualified based on their religious affiliation. Nothing in this section shall be interpreted to require a broadcaster to grant preferential treatment to any individual or group based on race, color, national origin, religion, or gender.

(i) A station employment unit shall use recruitment sources for each vacancy sufficient in its reasonable, good faith judgment to widely disseminate information concerning the vacancy.

(ii) In addition to such recruitment sources, a station employment unit shall provide notification of each full-time vacancy to any organization that distributes information about employment opportunities to job seekers or refers job seekers to employers, upon request by such organization. To be entitled to notice of vacancies, the requesting organization must provide the station employment unit with its name, mailing address, e-mail address (if applicable), telephone number, and contact person, and identify the category or categories of vacancies of which it requests notice. (An organization may request notice of all vacancies).

(2) Engage in at least four (if the station employment unit has more than ten full-time employees and is not located in a smaller market) or two (if it has five to ten full-time employees and/or is located entirely in a smaller market) of the following initiatives during each two-year period beginning with the date stations in the station employment unit are required to file renewal applications, or the second, fourth or sixth anniversaries of that date.

(i) Participation in at least four job fairs by station personnel who have substantial responsibility in the making of hiring decisions;

(ii) Hosting of at least one job fair;

(iii) Co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities;

(iv) Participation in at least four events sponsored by organizations representing groups present in the community interested in broadcast employment issues, including conventions, career days, workshops, and similar activities;

(v) Establishment of an internship program designed to assist members of the community to acquire skills needed for broadcast employment;

(vi) Participation in job banks, Internet programs, and other programs designed to promote outreach generally (*i.e.*, that are not primarily directed to providing notification of specific job vacancies);

(vii) Participation in scholarship programs designed to assist students interested in pursuing a career in broadcasting;

(viii) Establishment of training programs designed to enable station personnel to acquire skills that could qualify them for higher level positions;

(ix) Establishment of a mentoring program for station personnel;

(x) Participation in at least four events or programs sponsored by educational institutions relating to career opportunities in broadcasting;

(xi) Sponsorship of at least two events in the community designed to inform and educate members of the public as to employment opportunities in broadcasting;

(xii) Listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities;

(xiii) Provision of assistance to unaffiliated non-profit entities in the maintenance of web sites that provide counseling on the process of searching for broadcast employment and/or other career development assistance pertinent to broadcasting;

(xiv) Provision of training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination;

(xv) Provision of training to personnel of unaffiliated non-profit organizations interested in broadcast employment opportunities that would enable them to better refer job candidates for broadcast positions;

(xvi) Participation in other activities designed by the station employment unit reasonably calculated to further the goal of disseminating information as to employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities.

(3) Analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach to potential applicants, and address any problems found as a result of its analysis.

(4) Periodically analyze measures taken to:

(i) Disseminate the station's equal employment opportunity program to job applicants and employees;

(ii) Review seniority practices to ensure that such practices are nondiscriminatory;

(iii) Examine rates of pay and fringe benefits for employees having the same duties, and eliminate any inequities based upon race, national origin, color, religion, or sex discrimination;

(iv) Utilize media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, national origin, color, religion or sex over another;

(v) Ensure that promotions to positions of greater responsibility are made in a nondiscriminatory manner;

(vi) Where union agreements exist, cooperate with the union or unions in the development of programs to ensure all persons of equal opportunity for employment, irrespective of race, national origin, color, religion, or sex, and include an effective nondiscrimination clause in new or renegotiated union agreements; and

(vii) Avoid the use of selection techniques or tests that have the effect of discriminating against any person based on race, national origin, color, religion, or sex.

(5) Retain records to document that it has satisfied the requirements of paragraphs (c)(1) and (2) of this section. Such records, which may be maintained in an electronic format, shall be retained until after grant of the renewal application for the term during which the vacancy was filled or the initiative occurred. Such records need not be submitted to the FCC unless specifically requested. The following records shall be maintained:

(i) Listings of all full-time job vacancies filled by the station employment unit, identified by job title;

(ii) For each such vacancy, the recruitment sources utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to paragraph (c)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;

(iii) Dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing vacancies;

(iv) Documentation necessary to demonstrate performance of the initiatives required by paragraph (c)(2) of this section, including sufficient information to fully disclose the nature of the initiative and the scope of the station's participation, including the station personnel involved;

(v) The total number of interviewees for each vacancy and the referral source for each interviewee; and

(vi) The date each vacancy was filled and the recruitment source that referred the hiree.

(6) Annually, on the anniversary of the date a station is due to file its renewal application, the station shall place in its public file, maintained pursuant to § 73.3526 or § 73.3527, and on its web site, if it has one, an EEO public file report containing the following information (although if any broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the twelve months covered by the EEO public file report, its EEO public file report shall cover the period starting with the date it acquired the station):

(i) A list of all full-time vacancies filled by the station's employment unit during the preceding year, identified by job title;

(ii) For each such vacancy, the recruitment source(s) utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to paragraph (c)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;

(iii) The recruitment source that referred the hiree for each full-time vacancy during the preceding year;

(iv) Data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and the total number of interviewees referred by each recruitment source utilized in connection with such vacancies; and

(v) A list and brief description of initiatives undertaken pursuant to paragraph (c)(2) of this section during the preceding year.

(d) *Small Station Exemption.* The provisions of paragraphs (b) and (c) of this section shall not apply to station employment units that have fewer than five full-time employees.

(e) *Definitions.* For the purposes of this rule:

(1) A full-time employee is a permanent employee whose regular work schedule is 30 hours per week or more.

(2) A station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.

(3) A smaller market includes metropolitan areas as defined by the Office of Management and Budget with a population of fewer than 250,000 persons and areas outside of all metropolitan areas as defined by the Office of Management and Budget.

(f) *Enforcement.* The following provisions apply to employment activity concerning full-time positions at each broadcast station employment unit (defined in this part) employing five or more persons in full-time positions, except where noted.

(1) All broadcast stations, including those that are part of an employment unit with fewer than five full-time employees, shall file a Broadcast Equal Employment Opportunity Program Report (Form 396) with their renewal application. Form 396 is filed on the date the station is due to file its application for renewal of license. If a broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the period that is to form the basis for the Form 396, information provided on its Form 396 should cover the licensee's EEO recruitment activity during the period starting with the date it acquired the station. Stations are required to maintain a copy of their Form 396 in the station's public file in accordance with the provisions of §§ 73.3526 and 73.3527.

(2) The Commission will conduct a mid-term review of the employment practices of each broadcast television station and each radio station that is part of an employment unit of more than ten full-time employees four years following the station's most recent license expiration date as specified in § 73.1020. Each such licensee is required to file with the Commission the Broadcast Mid-Term Report (FCC Form 397) four months prior to that date. If a broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the period that is to form the basis for the Form 397, its Report should cover the licensee's EEO recruitment activity during the period starting with the date it acquired the station.

(3) If a station is subject to a time brokerage agreement, the licensee shall file Forms 396, Forms 397, and EEO public file reports concerning only its own recruitment activity. If a licensee is a broker of another station or stations, the licensee-broker shall include its recruitment activity for the brokered station(s) in determining the bases of Forms 396, Forms 397 and the EEO public file reports for its own station. If a licensee-broker owns more than one station, it shall include its recruitment activity for the brokered station in the Forms 396, Forms 397, and EEO public file reports filed for its own station that is most closely affiliated with, and in the same market as, the brokered station. If a licensee-broker does not own a station in the same market as the brokered station, then it shall include its recruitment activity for the brokered station in the Forms 396, Forms 397, and EEO public file reports filed for its

own station that is geographically closest to the brokered station.

(4) Broadcast stations subject to this section shall maintain records of their recruitment activity necessary to demonstrate that they are in compliance with the EEO rule. Stations shall ensure that they maintain records sufficient to verify the accuracy of information provided in Forms 396, Forms 397, and EEO public file reports. To determine compliance with the EEO Rule, the Commission may conduct inquiries of licensees at random or if it has evidence of a possible violation of the EEO Rule. In addition, the Commission will conduct random audits. Specifically, each year approximately five percent of all licensees in the television and radio services will be randomly selected for audit, ensuring that, even though the number of radio licensees is significantly larger than television licensees, both services are represented in the audit process. Upon request, stations shall make records available to the Commission for its review.

(5) The public may file complaints throughout the license term based on a station's Form 397 or the contents of a station's public file. Provisions concerning filing, withdrawing, or non-filing of informal objections or petitions to deny license renewal, assignment, or transfer applications are delineated in §§ 73.3584 and 73.3587–3589 of the Commission's rules.

(g) *Sanctions and Remedies.* The Commission may issue appropriate sanctions and remedies for any violation of this rule.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

3. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

4. Section 76.75 is amended by revising paragraphs (b), (f), (g), (h), (i), and (j); and removing paragraph (k), to read as follows:

§ 76.75 Specific EEO program requirements.

* * * * *

(b) Establish, maintain and carry out a positive continuing program of outreach activities designed to ensure equal opportunity and nondiscrimination in employment. The following activities shall be undertaken by each employment unit:

(1) Recruit for every full-time job vacancy in its operation. A job filled by an internal promotion is not considered a vacancy for which recruitment is necessary. Nothing in this section shall be interpreted to require a multichannel video programming distributor to grant preferential treatment to any individual or group based on race, national origin, color, religion, age, or gender.

(i) An employment unit shall use recruitment sources for each vacancy sufficient in its reasonable, good faith judgment to widely disseminate information concerning the vacancy.

(ii) In addition to using such recruitment sources, a multichannel video programming distributor employment unit shall provide notification of each full-time vacancy to any organization that distributes information about employment opportunities to job seekers or refers job seekers to employers, upon request by such organization. To be entitled to notice of vacancies, the requesting organization must provide the multichannel video programming distributor employment unit with its name, mailing address, e-mail address (if applicable), telephone number, and contact person, and identify the category or categories of vacancies of which it requests notice. (An organization may request notice of all vacancies).

(2) Engage in at least two (if the unit has more than ten full-time employees and is not located in a smaller market) or one (if the unit has six to ten full-time employees and/or is located, in whole or in part, in a smaller market) of the following initiatives during each twelve-month period preceding the filing of an EEO program annual report:

(i) Participation in at least two job fairs by unit personnel who have substantial responsibility in the making of hiring decisions;

(ii) Hosting of at least one job fair;

(iii) Co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities;

(iv) Participation in at least two events sponsored by organizations representing groups present in the community interested in multichannel video programming distributor employment issues, including conventions, career days, workshops, and similar activities;

(v) Establishment of an internship program designed to assist members of the community in acquiring skills needed for multichannel video programming distributor employment;

(vi) Participation in job banks, Internet programs, and other programs designed to promote outreach generally (*i.e.*, that are not primarily directed to providing notification of specific job vacancies);

(vii) Participation in a scholarship program designed to assist students interested in pursuing a career in multichannel video programming communications;

(viii) Establishment of training programs designed to enable unit personnel to acquire skills that could qualify them for higher level positions;

(ix) Establishment of a mentoring program for unit personnel;

(x) Participation in at least two events or programs sponsored by educational institutions relating to career opportunities in multichannel video programming communications;

(xi) Sponsorship of at least one event in the community designed to inform and educate members of the public as to employment opportunities in multichannel video programming communications;

(xii) Listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities;

(xiii) Provision of assistance to unaffiliated non-profit entities in the maintenance of web sites that provide counseling on the process of searching for multichannel video programming employment and/or other career development assistance pertinent to multichannel video programming communications;

(xiv) Provision of training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination;

(xv) Provision of training to personnel of unaffiliated non-profit organizations interested in multichannel video programming employment opportunities that would enable them to better refer job candidates for multichannel video programming positions;

(xvi) Participation in other activities reasonably calculated by the unit to further the goal of disseminating information as to employment opportunities in multichannel video programming to job candidates who might otherwise be unaware of such opportunities.

* * * * *

(f) A multichannel video programming distributor shall analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach, and address any problems found as a result of its analysis.

(g) Analyze on an ongoing basis its efforts to recruit, hire, promote and use services without discrimination on the basis of race, national origin, color, religion, age, or sex and explain any difficulties encountered in implementing its equal employment opportunity program. For example, this requirement may be met by:

(1) Where union agreements exist, cooperating with the union or unions in the development of programs to ensure all persons equal opportunity for employment, and including an effective nondiscrimination clause in new or renegotiated union agreements;

(2) Reviewing seniority practices to ensure that such practices are nondiscriminatory;

(3) Examining rates of pay and fringe benefits for employees having the same duties, and eliminating any inequities based upon race, national origin, color, religion, age, or sex discrimination;

(4) Evaluating the recruitment program to ensure that it is effective in achieving a broad outreach to potential applicants.

(5) Utilizing media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, national origin, color, religion, age, or sex over another; and

(6) Avoiding the use of selection techniques or tests that have the effect of discriminating against qualified minority groups or women.

(h) A full-time employee is a permanent employee whose regular work schedule is 30 hours per week or more.

(i) The provisions of paragraphs (b)(1)(ii), (b)(2), (c), and (f) of this section shall not apply to multichannel video programming distributor employment units that have fewer than six full-time employees.

(j) For the purposes of this rule, a smaller market includes metropolitan areas as defined by the Office of Management and Budget with a population of fewer than 250,000 persons and areas outside of all metropolitan areas as defined by the Office of Management and Budget.

5. Section 76.77 is revised to read as follows:

§ 76.77 Reporting requirements and enforcement.

(a) *EEO program annual reports.* Information concerning a unit's compliance with the EEO recruitment requirements shall be filed by each employment unit with six or more full-time employees on FCC Form 396–C on or before September 30 of each year. If a multichannel video programming distributor acquires a unit during the twelve months covered by the EEO program annual report, the recruitment activity in the report shall cover the period starting with the date the entity acquired the unit.

(b) *Certification of Compliance.* The Commission will use the recruitment information submitted on a unit's EEO program annual report to determine whether the unit is in compliance with the provisions of this subpart. Units found to be in compliance with these rules will receive a Certificate of Compliance. Units found not to be in compliance will receive notice that they are not certified for a given year.

(c) *Investigations.* The Commission will investigate each unit at least once every five years. Employment units are required to submit supplemental investigation information with their regular EEO program annual reports in the years they are investigated. If an entity acquires a unit during the period covered by the supplemental investigation, the information submitted by the unit as part of the investigation shall cover the period starting with the date the operator acquired the unit. The supplemental investigation information shall include a copy of the unit's EEO public file report for the preceding year.

(d) *Records and inquiries.* Employment units subject to this subpart shall maintain records of their recruitment activity in accordance with § 76.75 to demonstrate whether they are in compliance with the EEO rules. Units shall ensure that they maintain records sufficient to verify the accuracy of information provided in their EEO program annual reports and the supplemental investigation responses required by § 76.1702 to be kept in a unit's public file. To determine compliance with the EEO rules, the Commission may conduct inquiries of employment units at random or if the Commission has evidence of a possible violation of the EEO rules. Upon request, employment units shall make records available to the Commission for its review.

(e) *Public complaints.* The public may file complaints based on EEO program annual reports, supplemental investigation information, or the contents of a unit's public file.

(f) *Sanctions and remedies.* The Commission may issue appropriate sanctions and remedies for any violation of the EEO rules.

6. Section 76.1702 is revised to read as follows:

§ 76.1702 Equal employment opportunity.

(a) Every employment unit with six or more full-time employees shall maintain for public inspection a file containing copies of all EEO program annual reports filed with the Commission pursuant to § 76.77 and the equal employment opportunity program information described in paragraph (b) of this section. These materials shall be placed in the unit's public inspection file annually by the date that the unit's EEO program annual report is due to be filed and shall be retained for a period of five years. The file shall be maintained at the central office and at every location with six or more full-time employees. A headquarters employment unit file and a file containing a consolidated set of all documents pertaining to the other employment units of a multichannel video programming distributor that operates multiple units shall be maintained at the central office of the headquarters employment unit. The multichannel video programming distributor shall provide reasonable accommodation at these locations for undisturbed inspection of its equal employment opportunity records by members of the public during regular business hours.

(b) The following equal employment opportunity program information shall be included annually in the unit's public file, and on the unit's web site, if it has one, at the time of the filing of its FCC Form 396–C:

(1) A list of all full-time vacancies filled by the multichannel video programming distributor employment unit during the preceding year, identified by job title;

(2) For each such vacancy, the recruitment source(s) utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to § 76.75(b)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;

(3) The recruitment source that referred the hiree for each full-time vacancy during the preceding year;

(4) Data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and the total number of interviewees referred by each recruitment source utilized in connection with such vacancies; and

(5) A list and brief description of the initiatives undertaken pursuant to § 76.75(b)(2) during the preceding year, if applicable.

Note: The following appendix will not appear in the Code of Federal Regulations.

BILLING CODE 6712–01–P

Appendix—FCC Forms

Federal Communications Commission
Washington, D.C. 20554

NOT Approved by OMB
3060-0120

BROADCAST EQUAL EMPLOYMENT OPPORTUNITY
MODEL PROGRAM REPORT

Legal Name of the Applicant		
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	
	Facility ID Number	Call Sign

☐ Application for Construction Permit for New Station ☐ Application for Assignment of License

☐ Application for Transfer of Control

a. Service Type: ☐ AM ☐ FM ☐ TV ☐ Other (specify)

b. Community of License: City | State

INSTRUCTIONS

Applicants seeking authority to construct a new commercial, noncommercial or international broadcast station, applicants seeking authority to obtain assignment of the construction permit or license of such a station, and applicants seeking authority to acquire control of an entity holding such construction permit or license are required to afford equal employment opportunity to all qualified persons and to refrain from discrimination in employment and related benefits on the basis of race, color, religion, national origin or sex. See 47 C.F.R. Section 73.2080. Pursuant to these requirements, an applicant who proposes to employ five or more full-time employees must establish a program designed to ensure equal employment opportunity. This is submitted to the Commission as the Model EEO Program. For purposes of this form, a station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.

Guidelines for a Model EEO Program and a Model EEO Program are attached.

NOTE: Check appropriate box, sign the certification below and return to FCC:

Station employment unit will employ fewer than 5 full-time employees; therefore no written program is being submitted.

Station employment unit will employ 5 or more full-time employees. Our Model EEO Program is attached. (You must complete all sections of this form.)

I certify that the statements made herein are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Signed	Name of Respondent
Title	Date

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

FCC 396-A
October 2002

GUIDELINES TO THE MODEL EEO PROGRAM

The model EEO program adopted by the Commission for construction permit applicants, assignees, and transferees contains five sections designed to assist the applicant in establishing an effective EEO program for its station. The specific elements which should be addressed are as follows:

I. GENERAL POLICY

The first section of the program should contain a statement by the applicant that it will afford equal employment opportunity in all personnel actions without regard to race, color, religion, national origin or sex, and that it has adopted an EEO program which is designed to fully utilize the skills of qualified persons.

II. RESPONSIBILITY FOR IMPLEMENTATION

This section calls for the name (if known) and title of the official who will be designated by the applicant to have responsibility for implementing the station's program.

III. POLICY DISSEMINATION

The purpose of this section is to disclose the manner in which the station's EEO policy will be communicated to employees and prospective employees. The applicant's program should indicate whether it: (a) intends to utilize an employment application form which contains a notice informing job applicants that discrimination is prohibited and that persons who believe that they have been discriminated against may notify appropriate governmental agencies; (b) will post a notice which informs job applicants and employees that the applicant is an equal opportunity employer and that they may notify appropriate governmental authorities if they believe that they have been discriminated against; and (c) will seek the cooperation of labor unions, if represented at the station, in the implementation of its EEO program and in the inclusion of nondiscrimination provisions in union contracts. The applicant should also set forth any other methods it proposes to utilize in conveying its EEO policy (e.g., orientation materials, on-air announcements, station newsletter) to employees and prospective employees.

V. RECRUITMENT

The applicant should specify the recruitment sources and other techniques it proposes to use to attract qualified job applicants. The purpose of the listing is to assist the applicant in developing specialized referral sources to ensure wide dissemination of vacancy information as job opportunities occur. Sources which subsequently prove to be nonproductive should not be relied on and new sources should be sought.

MODEL EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

I. GENERAL POLICY

It will be our policy to provide equal employment opportunity to all qualified individuals without regard to race, color, religion, national origin or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation, training and termination.

It will also be our policy to promote the realization of equal employment opportunity through a positive, continuing program of specific practices designed to ensure the full realization of equal employment opportunity without regard to race, color, religion, national origin or sex.

To make this policy effective, and to ensure conformance with the Rules and Regulations of the Federal Communications Commission, we have adopted an Equal Employment Opportunity Program which includes the following elements:

II. RESPONSIBILITY FOR IMPLEMENTATION

Name/Title

will be responsible for the administration and implementation of our Equal Employment Opportunity Program. It will also be the responsibility of all persons making employment decisions with respect to the recruitment, evaluation, selection, promotion, compensation, training and termination of employees to ensure that our policy and program is adhered to and that no person is discriminated against in employment because of race, color, religion, national origin or sex.

III. POLICY DISSEMINATION

To ensure that all members of the staff are cognizant of our equal employment opportunity policy and their individual responsibilities in carrying out this policy, the following communication efforts will be made:

☐ The station's employment application forms will contain a notice informing prospective employees that discrimination because of race, color, religion, national origin or sex is prohibited and that they may notify the appropriate local, State or Federal agency if they believe they have been the victims of discrimination.

☐ Appropriate notices will be posted informing applicants and employees that the station is an Equal Opportunity Employer and of their right to notify an appropriate local, State or Federal agency if they believe they have been the victims of discrimination.

☐ We will seek the cooperation of unions, if represented at the station, to help implement our EEO program and all union contracts will contain a nondiscrimination clause.

☐ Other (specify)

IV. RECRUITMENT

To ensure that information concerning each full-time vacancy is widely disseminated, we propose to use the following list of recruitment sources consistent with the requirements of 47 C.F.R. Section 73.2080:

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this report. We will use the information you provide to determine if the benefit requested is consistent with the public interest. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your request may be referred to the Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your request may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government, is a party to a proceeding before the body or has an interest in the proceeding. In addition, all information provided in this form will be available for public inspection. If you owe a past due debt to the federal government, any information you provide may also be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized. If you do not provide the information requested on this report, the report may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authority. We have estimated that each response to this collection of information will average 1 hour. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0120), Washington, D. C. 20554. We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0120.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission
Washington, D.C. 20554

Approved by OMB
3060-0113

BROADCAST EQUAL EMPLOYMENT OPPORTUNITY PROGRAM REPORT

(To be filed with broadcast license renewal application)

(For FCC Use Only)
Code No.

Legal Name of the Licensee		
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	
	Facility ID Number	Call Sign

TYPE OF BROADCAST STATION:

Commercial Broadcast Station

☐ Radio ☐ TV

Low Power TV

International

Noncommercial Broadcast Station

☐ Educational Radio

☐ Educational TV

List call sign and location of all stations included on this report. List commonly owned stations that share one or more employees. Also list stations operated by the licensee pursuant to a time brokerage agreement. Indicate on the table below which stations are operated pursuant to a time brokerage agreement. To the extent that licensees include stations operated pursuant to a time brokerage agreement on this report, responses or information provided in Sections I through IV should take into consideration the licensee's EEO compliance efforts at brokered stations, as well as any other stations, included on this form. For purposes of this form, a station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.

Call Sign	Facility ID Number	Type (check applicable box)	Location (city, state)	Time Brokerage Agreement (check applicable box)
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No

CONTACT PERSON IF OTHER THAN LICENSEE

Name			Street Address
City	State	Zip Code	Telephone No. ( )

FILING INSTRUCTIONS

Broadcast station licensees are required to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, national origin, religion, and sex. See 47 C.F.R. Section 73.2080. Pursuant to these requirements, a license renewal applicant whose station employment unit employs five or more full-time station employees must file a report of its activities to ensure equal employment opportunity. If a station employment unit employs fewer than five full-time employees, no equal employment opportunity program information need be filed. If a station employment unit is filing a combined report, a copy of the report must be filed with each station's renewal application.

A copy of this report must be kept in the station's public file. These actions are required to obtain license renewal. Failure to meet these requirements may result in sanctions or license renewal being delayed or denied. These requirements are contained in 47 C.F.R. Section 73.2080 and are authorized by the Communications Act of 1934, as amended.

DISCRIMINATION COMPLAINTS. Have any pending or resolved complaints been filed during this license term before any body having competent jurisdiction under federal, state, territorial or local law, alleging unlawful discrimination in the employment practices of the station(s)? ☐ Yes ☐ No

If so, provide a brief description of the complaint(s), including the persons involved, the date of the filing, the court or agency, the file number (if any), and the disposition or current status of the matter.

Does your station employment unit employ fewer than five full-time employees? ☐ Yes ☐ No
Consider as "full-time" employees all those permanently working 30 or more hours a week.

If your station employment unit employs fewer than five full-time employees, complete the certification below, return the form to the FCC, and place a copy in your station(s) public file. You do not have to complete the rest of this form. If your station employment unit employs five or more full-time employees, you must complete all of this form and follow all instructions.

CERTIFICATION

This report must be certified, as follows:
A. By licensee, if an individual;
B. By a partner, if a partnership (general partner, if a limited partnership);
C. By an officer, if a corporation or an association; or
D. By an attorney of the licensee, in case of physical disability or absence from the United States of the licensee.

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

I certify to the best of my knowledge, information and belief, all statements contained in this report are true and correct.

Signed	Name of Respondent
Title	Telephone No. (include area code)
Date	

The purpose of this document is to provide broadcast licensees, the FCC, and the public with information about whether the station is meeting equal employment opportunity requirements.

GENERAL POLICY
A broadcast station must provide equal employment opportunity to all qualified individuals without regard to their race, color, national origin, religion or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation, training and termination.

RESPONSIBILITY FOR IMPLEMENTATION
A broadcast station must assign a particular official overall responsibility for equal employment opportunity at the station. That official's name and title are:

NAME	TITLE

It is also the responsibility of all persons at a broadcast station making employment decisions with respect to recruitment, evaluation, selection, promotion, compensation, training and termination of employees to ensure that no person is discriminated against in employment because of race, color, religion, national origin or sex.

I. EEO PUBLIC FILE REPORT
Attach as an exhibit one copy of each of the EEO public file reports from the previous two years. Stations are required to place annually such information as is required by 47 C.F.R. Section 73.2080 in their public files.

Exhibit No.

II. NARRATIVE STATEMENT
Provide a statement in an exhibit which demonstrates how the station achieved broad and inclusive outreach during the two-year period prior to filing this application. Stations that have experienced difficulties in their outreach efforts should explain.

Exhibit No.

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this report. We will use the information you provide to determine if the benefit requested is consistent with the public interest. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your request may be referred to the Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your request may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government, is a party to a proceeding before the body or has an interest in the proceeding. In addition, all information provided in this form will be available for public inspection. If you owe a past due debt to the federal government, any information you provide may also be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized. If you do not provide the information requested on this report, the report may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authority. We have estimated that each response to this collection of information will average 1 hour, 30 minutes. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0113), Washington, D. C. 20554. We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0113.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. 3507.

NOTICE

SHOULD YOU NO LONGER OPERATE THIS EMPLOYMENT UNIT, PLEASE FURNISH THE CURRENT OPERATOR'S NAME, ADDRESS, DATE OF TRANSFER AND RETURN THE FORM 396-C IMMEDIATELY. CALL (202) 418-1450 TO OBTAIN FORMS FOR NEWLY ACQUIRED UNITS OR IF YOU HAVE ANY EEO QUESTIONS

RETURN THE COMPLETED FORM IN DUPLICATE INCLUDING ANSWERS TO THE SUPPLEMENTAL INVESTIGATION SHEET (SIS) IF APPLICABLE AS SOON AS POSSIBLE. FOR YOUR INFORMATION, THE UPPER RIGHT HAND CORNER OF THE FORM 396-C WILL BE MARKED WITH AN "X" FOR THOSE UNITS THAT MUST FILL OUT AN SIS. PURSUANT TO SECTION 76.1802 OF THE COMMISSION'S RULES, THE DUE DATE FOR FILING FORM 396-C IS SEPTEMBER 30TH OF EACH YEAR.

Federal Communications Commission
Washington, D.C. 20554

Approved by OMB
3060-0095/0574

INSTRUCTIONS FOR COMPLETING
FCC FORM 396-C

YOU ARE STRONGLY URGED TO CONSULT THE COMMISSION'S CABLE EEO RULES BEFORE COMPLETING THIS FORM
47 C.F.R. Section 76.71 et seq.

General Instructions

Supply the requested information for the unit. If the unit is to submit a Supplemental Investigation Sheet (SIS), one will be attached to the form and an "x" will appear in the brackets before "Supplemental Investigation Sheet Attached" located in the box "For FCC Use Only" on page 1 of the form. If the unit no longer exists due to consolidation with another unit, or is no longer under your control, attach as Exhibit A an explanation and proceed to Section V.

Section I

A. In addition to the unit operator's legal name, supply, if applicable, the name of the MSO owning or controlling the operator.

B. Supply the address to which you want the correspondence sent.

C. Supply the county and state of the unit's principal employment office.

D. A full-time employee is one who permanently works 30 or more hours per week.

E. Insert the payroll period in July, August or September used for this year's report.

F. Place an X in the appropriate brackets for each possible exhibit.

Section II

Submit as Exhibit A, a list of communities added or deleted from the unit using the format provided. To obtain this information, review the prior year's form for the unit, noting the communities then comprising the unit, and comparing that list with the names of the communities now comprising the unit.
(NOT APPLICABLE TO MVPD UNITS)

Section III

Carefully answer each of the nine (9) questions by checking either Yes or No. If the answer is No, attach as Exhibit B an explanation. The focus of question three is on whether cable units have engaged in broad and inclusive outreach. The Commission does not require the targeting of certain kinds of sources or organizations. With regard to question five, we clarify that efforts to seek out entrepreneurs should be broad enough to cover all segments of the community, and that no entity should be excluded on the basis of race, color, religion, national origin, age or gender. See 47 C.F.R. Section 76.75.

Section IV

You may attach as Exhibit C any additional information you believe useful in the FCC's evaluation of your EEO efforts. There is no requirement to provide such information.

Section V

Sign and date the form in the spaces provided. Also, print the name of the official signing as well as the title of that person. Return the original and one copy to the Commission by September 30th. Retain a copy for your files.

Supplemental Investigation Sheet (SIS)

If required, attach as Exhibits D, E, and F the job descriptions requested in Part I, the responses to the questions checked in Part II, and the EEO public file report requested in Part III.

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPER REDUCTION ACT

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this report. We will use the information you provide to determine if the benefit requested is consistent with the public interest. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your request may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your request may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government is a party to a proceeding before the body or has an interest in the proceeding. In addition, all information provided in this form will be available for public inspection. If you owe a past due debt to the federal government, any information you provide may also be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized. If you do not provide the information requested in this report, the report may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authority. We have estimated that each response to this collection of information will vary from 10 minutes to 1 hour, 15 minutes. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0095/0574), Washington D.C. 20554. We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Remember – you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0095/0574.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 95-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

FCC FORM 396-C

Approved by OMB
3060-0095

Submit the original and one copy by September 30:

Federal Communications Commission
Policy Division, Media Bureau
Washington, D. C. 20554

For FCC Use Only

Emp. Unit ID # _____

( ) Supplemental Investigation Sheet (SIS) Attached

SECTION I IDENTIFYING INFORMATION

A. Name of Operator:		
MSO Name:		
B. Employment Unit's Mailing Address		
City	State	Zip Code
C. County and State in which unit's employment office is located		

E. Pay Period Covered by this Report (inclusive dates)

D. Category of Respondent (check applicable box)

( ) Fewer than six (6) full-time employees during the selected payroll period: Complete Sections I, II and VIII

( ) Six (6) or more full-time employees during the selected payroll period: Complete ALL sections of the Form 395-A and the Supplemental Investigation Sheet, if attached

F. Attachments: (Check applicable boxes)

Not Applicable	Attached	Exhibit - For:
( )	( )	A-Section II
	( )	B-Section III
( )	( )	C-Section IV
( )	( )	D-SIS-Job Descriptions
	( )	E-SIS Narrative Responses
( )	( )	F-SIS EEO Public File Report

SECTION II COMMUNITY INFORMATION

System Communities Comprising Local Employment Unit			
Ident No.	Name of Community	Location (State)	Type

Review the list of communities served on the previous year's submission and attach as Exhibit A any additions or deletions using the format noted above. NOTE: APPLICABLE ONLY TO CABLE OPERATORS AND NOT TO OTHER MVPD UNITS.

Exhibit No. A

SECTION III EEO POLICY AND PROGRAM REQUIREMENTS

Check YES or NO to each of the following questions. If answer to any question below is NO, attach as EXHIBIT B an explanation.

Exhibit No. B

YES	NO		
( )	( )	1.	Have you complied with the outreach provisions of the FCC's Cable Equal Employment Opportunity Rule, 47 C.F.R. Section 76.75(b) during the twelve month period prior to filing this form?
( )	( )	2.	Do you disseminate widely your EEO Program to job applicants, employees, and those with whom you regularly do business?
( )	( )	3.	Do you contact organizations, media, educational institutions, and other potential sources of applicants for referrals whenever job vacancies are available in your organization?
( )	( )	4.	Do you undertake to offer promotions to positions of greater responsibility in a nondiscriminatory manner?
( )	( )	5.	To the extent possible, do you seek out entrepreneurs in a nondiscriminatory manner and encourage them to conduct business with all parts of your organization?
( )	( )	6.	Do you analyze the results of your efforts to recruit, hire, promote, and use services in a nondiscriminatory manner and use these results to evaluate and improve your EEO program?
( )	( )	7.	Do you define the responsibility of each level of management to ensure a positive application and vigorous enforcement of your policy of equal employment opportunity and maintain a procedure to review and control managerial and supervisory performance?
( )	( )	8.	Do you conduct a continuing program to exclude every form of prejudice or discrimination based upon race, color, religion, national origin, age, or sex from your personnel policies and practices and working conditions?
( )	( )	9.	Do you conduct a continuing review of job structure and employment practices and maintain positive recruitment training, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility?

SECTION IV ADDITIONAL INFORMATION

You may provide as Exhibit C any additional information that you believe might be useful in evaluating your efforts to comply with the Commission's EEO provisions. There is no requirement to provide additional data or information.

Exhibit No. C

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This report must be certified as follows:

A By the individual owning the reporting system if individually owned;

B By a partner, if a partnership; or

C. By an officer, if a corporation or association.

I certify that to the best of my knowledge, information and belief, all statements contained in this report are true and correct

Signed	Title
Date	Name of Respondent
Telephone No. (include area code)	

9.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE (U.S. CODE, TITLE 47, SECTION 312(a)(1), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

Give brief job descriptions for employees in the job categories specified below. The number specified in the box indicates the number of different job descriptions that are to be submitted for each category. Job descriptions should include the position title and a brief description of the major duties and responsibilities of the individual(s) in the position.

1. ☐ Officials and Managers
2. ☐ Professionals
3. ☐ Technicians
4. ☐ Sales Workers
5. ☐ Office and Clerical
6. ☐ Craft Workers (skilled)
7. ☐ Operatives (semi-skilled)
8. ☐ Laborers (unskilled)
9. ☐ Service Workers

Part II Inquiries Concerning EEO Program and Practices

Submit responses to the inquiries indicated by an "X." Responses should be brief, but must provide sufficient information to describe the employment unit's activity and efforts in the area of inquiry.

1. ☐ Describe the employment unit's efforts to comply with the outreach provisions of 47 C.F.R. Section 76.75(b) or (f).
2. ☐ Describe the employment unit's efforts to disseminate widely its equal employment opportunity program to job applicants, employees, and those with whom it regularly does business.
3. ☐ Name the organizations, media, educational institutions, and other recruitment sources used to attract applicants whenever job vacancies become available.
4. ☐ Explain the employment unit's efforts to promote in a nondiscriminatory manner to positions of greater responsibility.
5. ☐ Describe the employment unit's efforts to encourage entrepreneurs to conduct business in a nondiscriminatory manner with all parts of its operation and provide an analysis of the results of those efforts.
6. ☐ Report the findings of the employment unit's analysis of its efforts to recruit, hire and promote in a nondiscriminatory manner and explain any difficulties encountered in implementing its EEO program.
7. ☐ Describe the responsibility of each level of the employment unit's management with respect to application and enforcement of its EEO policy and explain the procedure for review and control of managerial and supervisory performance.
8. ☐ Describe the manner in which the employment unit conducts its continuing review of job structure and employment practices.
9. ☐ Other Inquiries:

Part III EEO Public File Report

Attach a copy of the EEO public file report from the previous year. Cable entities are required to place annually such information as is required by 47 C.F.R. Section 76.1702 in their public files.

EMP UNIT ID:

MSO NAME:
OPR NAME:

Federal Communications Commission
Washington, D.C. 20554

DRAFT
NOT Approved by OMB
3060-0922

BROADCAST MID-TERM REPORT

(For FCC Use Only)
Code No.

Legal Name of the Licensee		
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	
	Facility ID Number	Call Sign

TYPE OF BROADCAST STATION :

Commercial Broadcast Station

☐ Radio ☐ TV

Low Power TV

International

Noncommercial Broadcast Station

☐ Educational Radio

☐ Educational TV

List call sign and location of all stations included on this statement. List commonly owned stations that share one or more employees. Also list stations operated by the licensee pursuant to a time brokerage agreement. Indicate on the table below which stations are operated pursuant to a time brokerage agreement. To the extent that licensees include stations operated pursuant to a time brokerage agreement on this report, responses or information provided in Sections I through III should take into consideration the licensee's EEO compliance efforts at brokered stations, as well as any other stations, included on this form. For purposes of this form, a station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.

Call Sign	Facility ID Number	Type (check applicable box)	Location (city, state)	Time Brokerage Agreement (check applicable box)
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No

SEND NOTICES AND COMMUNICATIONS TO THE FOLLOWING NAMED PERSON AT THE ADDRESS INDICATED BELOW:

Name			Street Address
City	State	Zip Code	Telephone No. ( )

FILING INSTRUCTIONS

Broadcast station licensees are required to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, national origin, religion, and sex. See 47 C.F.R. Section 73.2080. Pursuant to these requirements, a television station employment unit that employs five or more full-time station employees must file a full and complete Broadcast Mid-Term Report. If a televsoin station employment unit employs fewer than five full-time employees, only the first two pages of this report need be filed.

A copy of this Mid-Term Report must be kept in the station's public file. Failure to meet these requirements may result in sanctions or remedies. These requirements are contained in 47 C.F.R. Section 73.2080 and are authorized by the Communications Act of 1934, as amended.

Does your station employment unit employ fewer than ten full-time employees if television or fewer than eleven full-time employees if radio? ☐ Yes ☐ No

If yes, you do not have to file this form with the FCC. However, you have the option to complete the certification below, return the form to the FCC, and place a copy in your station(s) public file. You do not have to complete the rest of this form. If your station employment unit employs five or more full -time employees,if television, or eleven or more full-time employees if radio, you must complete all of this form and follow all instructions.

CERTIFICATION

This report must be certified, as follows:
A. By licensee, if an individual;
B. By a partner, if a partnership (general partner, if a limited partnership);
C. By an officer, if a corporation or an association; or
D. By an attorney of the licensee, in case of physical disability or absence from the United States of the licensee.

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

certify to the best of my knowledge, information and belief, all statements contained in this report are true and correct.

Signed	Name of Respondent
Title	Telephone No. (include area code)
Date	

GENERAL POLICY
A broadcast station must provide equal employment opportunity to all qualified individuals without regard to their race, color, national origin, religion or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation, training and termination.

RESPONSIBILITY FOR IMPLEMENTATION
A broadcast station must assign a particular official overall responsibility for equal employment opportunity at the station. That official's name and title are:

NAME	TITLE

It is also the responsibility of all persons at a broadcast station making employment decisions with respect to recruitment, evaluation, selection, promotion, compensation, training and termination of employees to ensure that no person is discriminated against in employment because of race, color, religion, national origin or sex.

MID-TERM REPORT
Television station employment units with five or more full-time employees and radio station employment units with more than ten full-time employees filing in the middle of the license term must attach a copy ofeach of the EEO public file reports from the previous two years. Stations are required to place annually such information as is required by 47 C.F.R. Section 73.2080 in their public files.

☐

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

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BILLING CODE 6712-01-C

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Federal Register

12–18–02 Wednesday
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Federal Register

12–18–02 Wednesday
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Pages 77399–77644

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Rules and Regulations

Federal Register
Vol. 67, No. 243
Wednesday, December 18, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE192, Special Condition 23–132–SC]

Special Conditions; Cessna Model 441 Airplane; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to S–TEC, One S–TEC Way Municipal Airport, Mineral Wells, TX 76007, for a Supplemental Type Certificate for Cessna Model 441 airplanes. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument systems (EFIS) display Model "Meggitt Magic" for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). This special condition contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is December 6, 2002. Comments must be received on or before January 17, 2003.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE192, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE192. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4123.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE192." The postcard will be date stamped and returned to the commenter.

Background

On June 6, 2002, S–TEC Corporation, One S–TEC Way, Mineral Wells Airport, Mineral Wells, Texas 76067, made an application to the FAA for a new Supplemental Type Certificate for the Cessna Model 441 (Conquest) airplanes. The Conquest is currently approved under Type Certificate No. A28CE. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS, that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, S–TEC Corporation must show that the Cessna Model 441 airplanes meets the following provisions, or the applicable regulations in effect on the date of application for the modification to reference airplanes.

The Certification Basis that is incorporated by reference for the Cessna Model 441 airplane is listed under the Type Certificate Data Sheet No. A28CE with the exception of FAR Part 23.1301 as amended by Amendment 23–20; 23.1309, 23.1311, and 23.1321 as amended by Amendment 23–49; and the special conditions adopted by this rulemaking action. Noise requirements are not an issue because there is no change to the engine or aircraft fuselage.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become a part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

S–TEC Corporation plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from HIRF: Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz ...	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz ...	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz ...	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz ...	2000	200
18 GHz–40 GHz ...	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter peak electrical field strength from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated either by tests, analysis, models, similarity with existing systems, or by any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to the Cessna Model 441 airplanes. Should S–TEC Corporation apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR part 21, §§ 21.16 and 21.101; and 14 CFR part 11, §§ 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Cessna Model 441 airplanes modified by S–TEC Corporation to add an EFIS.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on December 6, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–31882 Filed 12–17–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–48–AD; Amendment 39–12982; AD 2002–21–51]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS355E, F, F1, F2, and N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2002–21–51, which was sent previously to all known U.S. owners and operators of Eurocopter France (ECF) helicopters by individual letters. This AD requires certain checks of the magnetic chip detector plug (chip detector) for any metal particles and the main gearbox (MGB) oil-sight glass for dark-colored oil. If any of these are present, the AD requires inspecting the lubrication pump (pump) and, if necessary, replacing the MGB and the pump with an airworthy MGB and pump. Also, this AD requires that a different MGB or pump with any time-in-service (TIS) must meet the requirements of this AD before being installed. This AD was prompted by four reports of malfunctions of the MGB pump. The actions specified by this AD are intended to prevent failure of the MGB pump, seizure of the MGB, loss of drive to an engine and main rotor, and subsequent loss of control of the helicopter.

DATES: Effective January 2, 2003, to all persons except those persons to whom it was made immediately effective by Emergency AD 2002–21–51, issued on October 17, 2002, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before February 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–48–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Ed Cuevas, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5355, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On October 17, 2002, the FAA issued Emergency AD 2002–21–51 for the specified ECF helicopters, which requires checking the chip detector for metal particles and the MGB oil-sight glass for dark oil and taking an oil sample if dark oil is observed. If you find metal particles on the chip detector or if an oil sample confirms that the oil is dark or dark purple, the AD requires further inspection of the pump and, if necessary, replacing the MGB and the pump with an airworthy MGB and pump. Also, the AD requires that a different MGB or pump with any TIS must meet the requirements of this AD before being installed. The AD was prompted by four reports of malfunction of the MGB pump. The bearings of the driven pinion inside the pump can deteriorate resulting in pump failure and loss of oil pressure in the MGB. This condition, if not corrected, could result in seizure of the MGB, loss of drive to an engine and main rotor, and subsequent loss of control of the helicopter.

The FAA has reviewed ECF Alert Telex No. 05.00.40, dated June 6, 2002 (Telex), which describes procedures for inspecting the MGB magnetic plug for sludge and the MGB for very dark oil and inspecting the pump. The Telex specifies overhauling the MGB if you find any of the following in the pump: Bearing crank pin play, bronze bushing out-of-round, offset of the driven gear pinion, certain wear, or metal chips. Pending the results of various investigations and to prevent loss of the drive train of the main transmission linkage for one or both engines, ECF specifies these procedures for all pumps.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on these helicopter models. The DGAC advises of four reports of pump deterioration. The DGAC advises that, in time, the insufficiently lubricated power transmission assembly deteriorates resulting in loss of the drive train for one or both engines (deterioration of the combiner gearbox gears). The DGAC classified the Telex as mandatory and issued AD No. 2002–331–071(A) dated July 10, 2002, to ensure the continued airworthiness of these helicopters.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, this AD requires the following:

- Before the first flight of the day and at intervals not to exceed 10 hours TIS, check the chip detector for metal particles and the MGB oil-sight glass for dark oil.
- If you find metal particles on the chip detector, before further flight, inspect the pump.
- If you observe dark oil through the MGB oil sight glass, before further flight, take an oil sample to confirm that the oil is dark or dark purple.
- If the oil sample is dark or dark purple, before further flight, inspect the pump, part number 355A32–0700–00, –01, or –01M.
- If you find crank pin play, out-of-round bronze bushing, offset of the driven gear pinion, metal chips, or certain wear, replace the MGB and the pump with an airworthy MGB and pump before further flight.
- A different MGB or pump with any TIS must meet the requirements of this AD before installation.

An owner/operator (pilot) may perform the visual checks for metal particles on the magnetic chip detector plug and for dark oil in the MGB oil-sight glass and must enter compliance with those requirements into the helicopter maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v). A pilot may perform

these checks because they only involve visual checks for magnetic particles on the magnetic plug, which can be removed without the use of tools, and the MGB oil-sight glass for dark-colored oil and can be performed equally well by a pilot or a mechanic.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. The checks of the MGB and pump are required in a very short period of time, specifically, before the first flight of each day and at intervals not to exceed 10 hours TIS. Also, if necessary, the inspections and replacement of the pump and MGB are required before further flight. Therefore, this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on October 17, 2002, to all known U.S. owners and operators of the specified ECF helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that this AD will affect approximately 105 helicopters of U.S. registry. The FAA also estimates that it will take approximately 10 minutes to check the magnetic plug and the MGB oil sight glass, 4 work hours to remove the MGB and pump, 1 work hour to inspect the pump, and 4 work hours to install a serviceable MGB and pump. The average labor rate is $60 per work hour. Required parts will cost approximately $4000 for an overhauled pump and up to $60,000 for an overhauled MGB per helicopter. The manufacturer has represented to the FAA that the standard warranty applies if failure occurs within the first 2 years and operating time is less than 1000 hours. Based on these figures, the FAA estimates a total cost impact of the AD on U.S. operators to be $337,540 per year, assuming replacement of one MGB and pump on one helicopter per year and a daily check on all helicopters for 260 days per year.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–48–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–21–51 Eurocopter France: Amendment 39–12982. Docket No. 2002–SW–48–AD.

Applicability: Model AS355E, F, F1, F2, and N helicopters, with a main gearbox (MGB) lubrication pump (pump), part number 355A32–0700–00, –01, –01M, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the MGB pump, seizure of the MGB, loss of drive to an engine and main rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before the first flight of each day and at intervals not to exceed 10 hours time-in-service (TIS), check the MGB magnetic chip detector plug (chip detector) for any metal particles. Also, check for dark oil in the MGB oil-sight glass. An owner/operator (pilot) holding at least a private pilot certificate may perform this visual check and must enter compliance into the aircraft maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v).

Note 2: Eurocopter France Alert Telex No. 05.00.40, dated June 6, 2002, pertains to the subject of this AD.

(1) Before further flight, if any metal particles are found on the chip detector, inspect the pump.

(2) Before further flight, if dark oil is observed through the MGB oil-sight glass, take an oil sample to confirm that the oil is dark or dark purple. If the oil sample is dark or dark purple, before further flight, inspect the pump.

(3) While inspecting the pump, if you find any of the following, replace the MGB and the pump with an airworthy MGB and pump before further flight:

(i) Crank pin play,

(ii) Out of round bronze bushing (A of Figure 1),

(iii) Offset of the driven gear pinion,

(iv) Metal chips, or

(v) Wear (C of Figure 1).

See the following Figure 1:

BILLING CODE 4910–13–P



Figure 1

BILLING CODE 4910–13–C

Note 3: If wear occurs in B only in Figure 1, replacing the MGB and the pump is not necessary.

(b) Before installing a different MGB or a pump with any TIS, accomplish the requirements of paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on January 2, 2003, to all persons except those persons to whom it was made immediately effective by Emergency AD 2000–21–51, issued October 17, 2002, which contained the requirements of this amendment.

Note 5: The subject of this AD is addressed in Direction Generale De L'Aviation Civile, France, AD No. 2002–331–071(A), dated July 10, 2002.

Issued in Fort Worth, Texas, on December 10, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–31751 Filed 12–17–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–35–AD; Amendment 39–12976; AD 2002–25–01]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332C, AS332L, AS332L1, SA330F, SA330G, and SA330J Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (ECF) model helicopters that requires inspecting the tail rotor pitch change rod (change rod) bearing (bearing) and, after inspecting the control rod, replacing the bearing if it does not meet the specified tolerance. This AD requires inspecting the bearing for spalling, friction, and grinding and inspecting the control rod and bearing housing for wear marks and scoring. This amendment is prompted by the seizure of a bearing on an ECF Model SA330 helicopter. The actions specified by this AD are intended to prevent bearing wear, seizure of the bearing, loss of tail rotor effectiveness, and subsequent loss of control of the helicopter.

DATES: Effective January 22, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 22, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for ECF Model AS332C, AS332L, AS332L1, SA330F, SA330G, and SA330J helicopters, was published in the **Federal Register** on July 19, 2002 (67 FR 47488). That action proposed to require the following inspections initially, repetitively, and before installing any tail rotor gearbox that has been previously installed on another helicopter and has not been inspected:

- Inspect the tail rotor spider for end play. Remove the change rod bearing if the tail rotor spider is not within allowable tolerances.
- Inspect each bearing for spalling, friction, grinding, damaged bearing sealing flanges, overheating at the bearing inner and outer races and the flanges, deposits of corrosion, and shearing or wear marks on the lockwasher, and remove any unairworthy bearing.
- If a bearing is removed, before replacing the bearing, inspect the change rod for visible wear marks or scoring on the bearing journal circumference. If wear marks or circular scoring is found, repair or replace the bearing housing.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model AS332C, AS332C1, AS332L, AS332L1, SA330F, SA330G, and SA330J helicopters. The DGAC advises that the pitch change rod bearing seized on a Model SA330 helicopter.

ECF has issued Eurocopter France Alert Service Bulletin (ASB) Nos. 05.81, Revision 2, and 05.00.29, Revision 3, both dated January 18, 2001, which specify modifying the operational and bearing check procedure for the change rod equipped with bearing, part number (P/N) 330A33–9903–20. The DGAC classified ASB No. 05.00.29, Revision 3, dated January 18, 2001, as mandatory and issued AD No. 1990–230–041(A) R4, dated February 21, 2001, to ensure the continued airworthiness of the ECF Model AS332 helicopters in France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 3 helicopters of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per helicopter to inspect and replace a bearing, and that the average labor rate is $60 per work hour. Required parts will cost approximately $120 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,080, assuming one bearing is replaced on each helicopter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–25–01 Eurocopter France: Amendment 39–12976. Docket No. 2001–SW–35–AD.

Applicability: Model AS332C, AS332L, AS332L1, SA330F, SA330G, and SA330J helicopters with a tail rotor pitch change rod (rod) and a bearing, part number 330A33–9903–20, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Within 20 hours time-in-service (TIS) or 1 month, whichever occurs first, or before installing any tail rotor gearbox previously installed on another helicopter and not inspected within the previous 250 hours TIS, unless accomplished previously, and thereafter at intervals not to exceed 250 hours TIS or 18 months, whichever occurs first.

To prevent bearing wear, bearing seizure of the change rod, loss of tail rotor effectiveness, and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect the axial end play of the tail rotor pitch change spider assembly in accordance with the Accomplishment Instructions, paragraph 2.B.1. of Eurocopter France (ECF) Alert Service Bulletin No. 05.81, Revision 2, dated January 18, 2001 (ASB 330) for the ECF Model 330 helicopters or Eurocopter France Alert Service Bulletin No. 05.00.29, Revision 3, dated January 18, 2001, (ASB 332) for the Model 332 helicopters. If the axial end play is not within allowable tolerances, remove the rod bearing from service.

(b) Inspect each bearing for spalling, friction, grinding, damaged bearing sealing flanges, overheating at the bearing inner and outer races and the flanges, deposits of corrosion, and shearing or wear marks on the lockwasher in accordance with the Accomplishment Instructions, paragraph 2.B.2., of ASB 330 or ASB332, as applicable. Remove from service any unairworthy bearing.

(c) If a bearing is removed from service, before replacing the bearing with an airworthy bearing:

(1) Inspect the change rod for visible wear marks or scoring on the bearing journal circumference. If marks or scoring is found, remove the change rod from service.

(2) Inspect the bearing housing for visible wear marks or circular scoring. If wear marks or circular scoring is found, repair or replace the bearing housing in accordance with the Accomplishment Instructions, paragraph 2.B.3., of ASB 330 or ASB 332, as applicable.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(e) Special flight permits will not be issued.

(f) The inspections required by this AD shall be done in accordance with the Accomplishment Instructions in Eurocopter France Alert Service Bulletin No. 05.81, Revision 2, dated January 18, 2001, for Model 330 helicopters, or Eurocopter France Alert Service Bulletin No. 05.00.29, Revision 3, dated January 18, 2001, for Model 332 helicopters. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 22, 2003.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 1990–230–041(A) R4, dated February 21, 2001.

Issued in Fort Worth, Texas, on November 25, 2002.

Eric D. Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–31177 Filed 12–17–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–30–AD; Amendment 39–12981; AD 2002–25–06]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A. Olympus 593 Mk. 610–14–28 Turbojet Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A. (RR) Olympus 593 Mk. 610–14–28 turbojet engines, installed in BAe/SNIAS Concorde Type 1 airplanes that have been modified in accordance with Airbus Concorde service bulletins No.'s SST 57–078, SST 57–079, SST 57–080, and SST 57–082. This action requires initial and repetitive engine fuel filter inspections and fuel sample analysis. This amendment is prompted by a report of fuel tank liner materials found in and partially through an engine fuel filter. The actions specified in this AD are intended to prevent contamination of any or all of the four airplane engine fuel control units, causing power loss or one or more engines to shutdown.

DATES: Effective January 2, 2003. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 2, 2003.

Comments for inclusion in the Rules Docket must be received on or before February 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–30–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "*9-ane-adcomment@faa.gov*". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce Defence (Europe) Technical Publications Department, P.O. Box 3, Filton, Bristol BS34 7QE, England, telephone 011 7979 6060; fax 011 7979 7234. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Glorianne Niebuhr, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7132; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), notified the FAA that an unsafe condition may exist on BAe/SNIAS Concorde Type 1 airplanes with Olympus 593 Mk. 610–14–28 turbojet engines installed. The CAA advises that BAe/SNIAS Concorde Type 1 airplanes that have been modified in accordance with Airbus Concorde service bulletins No.'s SST 57–078, SST 57–079, SST 57–080, and SST 57–082, have undergone mandatory modification to install Viton and Kevlar liner materials to the fuel tanks. This mandatory modification action resulted from an airplane crash.

The modification is necessary, and will minimize a fuel leak from the airframe in case of puncture of the airframe skin. After one of the airplanes re-entered service, a Kevlar fiber was found in one of the engine fuel systems during fuel filter inspection. This fiber came from one of the modified fuel tanks, and was positioned partially through the fuel filter mesh. The CAA and RR advise that additional kevlar fibers could wash away from tank liners into all four engine fuel systems on the airplane. That condition, if not corrected, could cause contamination of any or all of the four airplane engine fuel control units, causing power loss or one or more engines to shutdown.

Manufacturer's Service Information

RR has issued Olympus 593 Mandatory Service Bulletin (MSB) No. OL.593–73–9093–109, Revision 1, dated November 23, 2001, that specifies instructions for initial and repetitive engine fuel filter inspections and fuel sample analysis. The CAA classified this service bulletin as mandatory and issued AD 004–11–2001 in order to ensure the airworthiness of these RR engines in the UK.

Bilateral Airworthiness Agreement

This engine model is manufactured in the UK and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination of an Unsafe Condition and Required Actions

Although none of these affected engines are used on any airplanes that are registered in the United States, the possibility exists that these engines could be used on airplanes that are registered in the United States in the future. Since an unsafe condition has been identified that is likely to exist or develop on other RR Olympus 593 Mk. 610–14–28 turbojet engines of the same type design, this AD is being issued to prevent contamination of any or all of the four airplane engine fuel control units, causing power loss or one or more engines to shutdown. This AD requires initial and repetitive engine fuel filter inspections and fuel sample analysis. The actions must be done in accordance with the service bulletin described previously.

Immediate Adoption of This AD

Since there are currently no domestic operators of this engine model, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–30–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–25–06 Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A.: Amendment 39–12981. Docket No. 2002–NE–30–AD.

Applicability

This airworthiness directive (AD) is applicable to Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A. (RR) Olympus 593 Mk. 610–14–28 turbojet engines, installed in BAe/SNIAS Concorde Type 1 airplanes that have been modified in accordance with Airbus Concorde service bulletins No.'s SST 57–078, SST 57–079, SST 57–080, and SST 57–082. These engines are installed on, but not limited to, BAe/SNIAS Concorde Type 1 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the

requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent contamination of any or all of the four airplane engine fuel control units, causing power loss or one or more engines to shutdown, do the following after the effective date of this AD:

(a) Perform initial and repetitive engine fuel filter inspections in accordance with 2.A. of Accomplishment Instructions of RR Olympus 593 Mandatory Service Bulletin (MSB) OL.593–73–9093–109, Revision 1, dated November 23, 2001.

(b) Perform initial and repetitive fuel sample analysis in accordance with 2.B. of Accomplishment Instructions of RR Olympus 593 MSB OL.593–73–9093–109, Revision 1, dated November 23, 2001.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated By Reference

(e) The fuel filter inspections and fuel sample analysis must be done in accordance with Rolls Royce Olympus 593 MSB OL.593–73–9093–109, Revision 1, dated November 23, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce Defence (Europe) Technical Publications Department, P.O. Box 3, Filton, Bristol BS34 7QE, England, telephone 011 7979 6060; fax 011 7979 7234. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in CAA airworthiness directive 004–11–2001, dated November 2001.

Effective Date

(f) This amendment becomes effective on January 2, 2003.

Issued in Burlington, Massachusetts, on December 6, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–31473 Filed 12–17–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Insular Affairs

15 CFR Part 303

[Docket No. 991228350–2301–04]

RIN 0625–AA57

Changes in the Insular Possessions Watch, Watch Movement and Jewelry Program

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: The Departments amend their regulations governing watch duty-exemption allocations and the watch and jewelry duty-refund benefits for producers in the United States insular possessions (the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands). The rule amends ITA regulations by clarifying the meaning of "permanent resident," which is a term used in Public Law 97–446 and the current regulations.

EFFECTIVE DATE: January 17, 2003

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–3526.

SUPPLEMENTARY INFORMATION: We published proposed regulatory revisions on August 29, 2002 (67 FR 55375). We received a letter from one commenter. The commenter stated that a definition for "permanent resident" is probably unnecessary but that, if there must be a definition, it should afford greater flexibility, particularly with respect to the 183 day per year residency requirement.

The commenter also pointed out that management employees at program companies who are responsible for administrative, sales and marketing activities are frequently required to travel outside the insular possessions and, therefore, may not be able to meet the 183 day residency requirement even though they permanently reside in the insular possessions. The Departments find this argument unpersuasive. It has been the Departments' experience in administering the program over the years that most program companies have related companies based in the United States which handle almost all of their sales and marketing functions. Indeed, we are aware that most managers in the insular possessions do not go to the United States even once a year. When they do come to the United States, we understand that few, if any, spend more than two weeks a year away from the insular possessions because of their primary responsibility to oversee day-to-day manufacturing operations, do related paperwork and make shipments. We are also aware that people who handle sales and marketing of the watches and jewelry have appropriately been from related companies located in the United States, because that is where the sales activity takes place.

The commenter also stated that the 183 day residency requirement could result in denial of program benefits if an employee moved permanently to the insular possessions with less than six months left in the calendar year; if the employee has been a lifelong resident and leaves or retires or dies prior to July; or if the employee quits or is fired and moves away from the insular possession after less than six months in the insular possession. Although the commenter's hypothetical scenarios could occur, we believe they reflect rare and exceptional circumstances. It is our opinion that rules having general applicability are most firmly grounded in, and should reflect an awareness of, the usual and unexceptional, not the exceptional. Were such hypothetical exceptions to occur, watch and jewelry companies may avail themselves of the Departments' appeal procedures which are provided for in 19 CFR 303.13 and 303.21. These appeal procedures are specifically designed to accommodate such unusual circumstances. As in the past, we will continue to give due consideration to any such appeals for relief in an expeditious manner in order to avoid inequitable outcomes.

In summary, we would like to point out that the vast majority of employees in the insular possessions watch and jewelry program have only one residence and work in the insular possessions for over 183 days a year.

This rule merely clarifies the eligibility requirements for the few who have one residence in the insular possessions and one or more residences outside the insular possessions. The regulation is nothing more than a codification of the Departments' longstanding practice. The codification is necessary because of several recent inquiries and challenges regarding the Departments' practice in administering the "permanent resident" requirement. The six months (183 day) residency requirement has been a matter of administrative practice since the beginning of the program in 1967 and was more formally included in the Annual Application (Form ITA–334P) in 1982. This regulation is intended to clarify the term "permanent resident" in order to make the Departments" practice more predictable and less open to ambiguous interpretation.

Accordingly, we are adopting the proposed new definition in final form. The insular possessions watch industry provision in Sec. 110 of Pub. L. No. 97–446 (96 Stat. 2331) (1983), as amended by Sec. 602 of Pub. L. No. 103–465 (108 Stat. 4991) (1994); additional U.S. Note 5 to chapter 91 of the Harmonized Tariff Schedule of the United States ("HTSUS"), as amended by Pub. L. 94–241 (90 Stat. 263)(1976) requires the Secretary of Commerce and the Secretary of the Interior, acting jointly, to establish a limit on the quantity of watches and watch movements which may be entered free of duty during each calendar year. The law also requires the Secretaries to establish the shares of this limited quantity which may be entered from the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands ("CNMI"). After the Departments have verified the data submitted on the annual application (Form ITA–334P), the producers' duty-exemption allocations are calculated from the territorial share in accordance with 15 CFR 303.14 and each producer is issued a duty-exemption license. The law further requires the Secretaries to issue duty-refund certificates to each territorial watch and watch movement producer based on the company's duty-free shipments and creditable wages paid during the previous calendar year.

Pub. L. 106–36 (113 Stat. 127) (1999) authorizes the issuance of a duty-refund certificate to each territorial jewelry producer for any article of jewelry provided for in heading 7113 of the HTSUS which is the product of any such territory. The value of the certificate is based on creditable wages paid and duty-free units shipped into the United States during the previous calendar year. Although the law specifically mentions the U.S. Virgin Islands, Guam and American Samoa, the issuance of the duty-refund certificate would also apply to the CNMI due to the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Pub. L. 94–241), which states that goods from the CNMI are entitled to the same tariff treatment as imports from Guam. *See also* 19 CFR 7.2(a). In order to be considered a product of such territories, the jewelry must meet the U.S. Customs Service substantial transformation requirements (the jewelry must become a new and different article of commerce as a result of production or manufacture performed in the territory). To receive duty-free treatment, the jewelry must also satisfy the requirements of General Note 3(a)(iv) of the HTSUS and applicable Customs Regulations (19 CFR 7.3).

Amendments

We amend Subpart A § 303.2(a) by adding paragraph (a)(16) and Subpart B § 303.16(a) by adding paragraph (a)(11) to provide a definition for "permanent resident" in order to clarify the meaning of the term solely for purposes of the insular possessions watch and jewelry program. The program was designed to spur local employment by giving producers benefits based on creditable wages paid to local people who were permanently domiciled in the insular possessions. Therefore, the Annual Application (Form ITA–334P) has always required each applicant to state the wages paid to employees who did not reside and work in the territory for at least six months during the calendar year so that the wages paid to non-residents could be deducted from the total wages before the creditable wages benefits were calculated. The program was not designed to give benefits based on creditable wages paid to program owners, shareholders or employees who are not domiciled in the insular possessions. The definition continues to provide producers with benefits based on creditable wages including the creditable wages paid to program workers who meet the permanent resident criteria which require a person with one or more residences outside the insular possessions to maintain his or her domicile in the insular possessions, to reside (*i.e.*, be physically present for at least 183 days per year) and work in the territory at a program company, and to maintain his or her principal office for day-to-day work in the insular possessions. It is the responsibility of the party to provide documentation for the 183 day claim, if it is requested by the Departments. There will continue to be no benefits based on wages paid to persons who do not meet these permanent resident criteria.

Administrative Law Requirements

Regulatory Flexibility Act. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chief Counsel for Regulation at the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule. No comments were received regarding the economic impact of this final rule. As a result, no final regulatory flexibility analysis was prepared.

Paperwork Reduction Act. This rulemaking does not involve new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. Collection activities are currently approved by the Office of Management and Budget under control numbers 0625–0040 and 0625–0134.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information unless it displays a currently valid OMB Control Number.

E.O. 12866. It has been determined that this rulemaking is not significant for purposes of Executive Order 12866.

List of Subjects in 15 CFR Part 303

Administrative practice and procedure, American Samoa, Customs duties and inspection, Guam, Imports, Marketing quotas, Northern Mariana Islands, Reporting and recordkeeping requirements, Virgin Islands, Watches and jewelry.

For reasons set forth above, the Departments amend 15 CFR Part 303 as follows:

PART 303—WATCHES, WATCH MOVEMENTS AND JEWELRY PROGRAM

1. The authority citation for 15 CFR Part 303 continues to read as follows:

Authority: Pub. L. 97–446, 96 Stat. 2331 (19 U.S.C. 1202, note); Pub. L. 103–465, 108 Stat. 4991; Pub. L. 94–241, 90 Stat. 263 (48 U.S.C. 1681, note); Pub. L. 106–36, 113 Stat. 127, 167.

2. Section 303.2 is amended by adding paragraph (a)(16) as follows:

§ 303.2 Definitions and forms.

(a) * * *

(16) *Permanent resident* means a person with one residence which is in the insular possessions or a person with one or more residences outside the insular possessions who meets criteria that include maintaining his or her domicile in the insular possessions, residing (*i.e.*, be physically present for at least 183 days per year) and working in the territory at a program company, and maintaining his or her primary office for day-to-day work in the insular possessions.

* * * * *

3. Section 303.16 is amended by adding paragraph (a)(11) as follows:

§ 303.16 Definitions and forms.

(a) * * *

(11) *Permanent resident* means a person with one residence which is in the insular possessions or a person with one or more residences outside the insular possessions who meets criteria that include maintaining his or her domicile in the insular possessions, residing (*i.e.*, be physically present for at least 183 days per year) and working in the territory at a program company, and maintaining his or her primary office for day-to-day work in the insular possessions.

* * * * *

Faryar Shirzad,

Assistant Secretary for Import Administration, Department of Commerce.

David B. Cohen,

Deputy Assistant Secretary for Insular Affairs, Department of the Interior.

[FR Doc. 02–31892 Filed 12–17–02; 8:45 am]

BILLING CODE 3510–DS–P; 4310–93–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Commodity Pool Operators and Commodity Trading Advisors

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (the "Commission" or "CFTC") has adopted amendments which govern Commodity Pool Operators ("CPOs") and Commodity Trading Advisors ("CTAs"). These amendments make clear that certain Disclosure Documents, annual financial reports, notices of eligibility, claims of exemption, and requests for extensions of time to file annual financial reports, need only be filed with the National Futures Association ("NFA") and need not also be filed with the Commission. The Commission, in separate Notices and Orders published elsewhere in the **Federal Register**, has authorized NFA to receive and review these documents.

DATES: Effectice January 1, 2003. Amendments to Commission Rules 4.7(b)(3)(i) and 4.22 shall be applicable with regard to commodity pool annual financial reports for fiscal years ending on December 31, 2002, and thereafter.

FOR FURTHER INFORMATION CONTACT: Kevin P. Walek, Assistant Director, Eileen R. Chotiner, Futures Trading Specialist, Audit and Financial Review Section, or Michael A. Piracci, Attorney Advisor, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Background

In a Notice and Order issued in 1997 (the "1997 Order"), the Commission, among other things, authorized NFA to process: (1) Notices of eligibility for exclusion for certain otherwise regulated persons from the definition of CPO, pursuant to Commission Rule 4.5;[1] (2) notices of claim for exemption from certain part 4 requirements with respect to commodity pools and CTAs whose participants or clients are qualified eligible persons, pursuant to Commission Rule 4.7; (3) claims of exemption from certain part 4 requirements for CPOs with respect to pools that principally trade securities, pursuant to Commission Rule 4.12(b); (4) statements of exemption from registration as a CPO, pursuant to Commission Rule 4.13; and (5) notices of exemption from registration as a CTA for certain persons registered as an investment adviser, pursuant to Rule 4.14(a)(8).[2] As part of the 1997 Order, the Commission also authorized NFA to receive and review Disclosure Documents required to be filed with the Commission by CPOs, pursuant to Commission Rule 4.26(d), with regard to "privately offered"[3] commodity pools, and CTAs, pursuant to Commission Rule 4.36(d).[4]

In a separate notice published elsewhere today in the **Federal Register**, the Commission is authorizing NFA, with regard to commodity pool annual financial reports for fiscal years ending on December 31, 2002, and thereafter, to, among other things: (1) Rceive and review annual financial reports required to be filed by CPOs pursuant to Commission Rules 4.7(b)(3) and 4.22(c); (2) receive and grant or deny applications filed pursuant to Commission Rule 4.22(f)(1) for extensions of time to distribute annual financial reports; and (3) process notices of claims of extension of time to distribute and file annual financial reports filed pursuant to Commission Rule 4.22(f)(2).

II. Rule Amendments

In the 1997 notice and order and the notice and order published elsewhere in the **Federal Register** today, the Commission noted that NFA Compliance Rule 2–13[5] requires NFA members to file with NFA copies of any documents required to be filed with the Commission pursuant to part 4 of the Commission's Rules. Moreover, certain of the Commission rules that are the subject of the orders explicitly require that the document be filed with both NFA and the Commission.[6] As a result of the Commission authorizations, it is no longer necessary for the Commission to receive copies of these documents. As discussed more fully in the notice published elsewhere today in the **Federal Register**, the Commission will have immediate electronic access to all required pertinent information contained in these documents. Moreover, if the Commission or Commission staff requires a hard copy of any of the subject documents, NFA will make such copies available within 24 hours. Accordingly, it is not necessary for the Commission to impose upon the persons filing these documents the burden and cost of having to file the documents with both NFA and the Commission. The Commission is, therefore, amending the subject rules to make clear that the required documents

[1] Commission rules referred to herein may be found at 17 CFR ch. I (2002).

[2] *See* 62 FR 52088 (Oct. 6, 1997).

[3] *See* note 2, *supra*. Pursuant to Commission Rule 4.24(d)(3)(i), "privately offered" commodity pools are those offered pursuant to section 4(2) of the Securities Act of 1933, as amended (15 U.S.C. 77d(2)), or pursuant to Regulation D thereunder (17 CFR 230.501 *et seq.*).

[4] Pursuant to Commission Rule 4.24(d)(3)(i), privately offered commodity pools are those that are offered pursuant to section 4(2) of the Securities Act of 1933, as amended (15 U.S.C. 77d(2)), or pursuant to Regulation D thereunder (17 CFR 230.501 *et seq.*).

[5] NFA Rules may be found on NFA's Web site at: *http://www.nfa.futures.org.*

[6] *See*, e.g., Commission Rule 4.14(a)(8)(v).

need only be filed with NFA and need not also be filed with the Commission.[7]

Generally, the amendments being adopted herein are simply removing the phrase "the Commission" and, where appropriate, adding in its place "the National Futures Association."[8] In the 1997 Order, the Commission authorized NFA to review Disclosure Documents that CPOs are required to file, pursuant to Commission Rule 4.26(d), with regard to only those Disclosure Documents filed for "privately offered" pools. The Commission, therefore, continues to receive and review Disclosure Documents for pools that are not "privately offered." Accordingly, Rule 4.26(d) is being amended by adding paragraph (d)(3) to make clear that Disclosure Documents for pools that are not "privately offered" must be filed with the Commission, as well as any subsequent amendments to such Disclosure Documents.

III. Effective Date

The amendments adopted by the Commission herein shall be effective January 1, 2003, except for the amendments to Commission Rules 4.7(b)(3) and 4.22, which involve the annual financial reports of commodity pools and extensions of time for filing such reports. As discussed in the notice published elsewhere today in the **Federal Register**, in order to avoid disruption of outstanding reviews of annual financial reports, this authorization is effective only with regard to commodity pool annual financial reports for fiscal years ending on December 31, 2002, and thereafter. Accordingly, the amendments to Rules 4.7(b)(3) and 4.22 are similarly effective only with regard to commodity pool annual financial reports for fiscal years ending on December 31, 2002, and thereafter. CPOs, therefore, must continue to file annual financial reports and extensions of time for such reports with both the Commission and NFA regarding any commodity pool annual financial reports for fiscal years ending prior to December 31, 2002.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")[9] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The rule amendments do not require a new collection of information on the part of any entities subject to the proposed rule amendments. Accordingly, for purposes of the PRA, the Commission certifies that these rule amendments will not impose any new reporting or recordkeeping requirements.

B. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

These amendments are intended to minimize the filing burdens imposed upon CPOs and CTAs by making clear that the subject documents need only be filed with NFA and not also the Commission. The Commission is considering the costs and benefits of these rules in light of the specific provisions of section 15(a) of the Act:

1. *Protection of market participants and the public.* While the amendments are expected to lessen the filing burdens imposed upon CPOS and CTAs, they do not reduce the type of information and documents that must be provided to customers of CPOs and CTAs. Moreover, these documents will continue to be reviewed for compliance with the Act and Commission Rules. Accordingly, the amendments being adopted herein should have no effect on the Commission's ability to protect market participants and the public.

2. *Efficiency and competition.* The amendments, by requiring that the subject documents need only be filed with NFA and not also the Commission, should increase the efficiency with which CPOs and CTAs comply with the applicable regulations.

3. *Financial integrity of futures markets and price discovery.* The amendments should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the futures and options markets.

4. *Sound risk management practices.* The amendments being adopted herein should have no effect on the risk management practices of the futures and options industry.

5. *Other public interest considerations.* The amendments should make compliance with the applicable Commission rules more efficient without imposing any costs to the regulatory oversight of commodity registrants.

After considering these factors, the Commission has determined to adopt the amendments discussed above.

C. Administrative Procedure Act

The Commission has determined that the amendments discussed herein relate solely to agency organization, procedure, and practice. Accordingly, the provisions of the Administrative Procedure Act that generally require notice of proposed rulemaking and that provide other opportunities for public participation are not applicable.[10] The Commission further finds that, because the amendments relieve a restriction as to the required filing of documents and the amendments have no adverse effect upon a member of the public, there is good cause to make them effective less than thirty days after publication in the **Federal Register**.[11]

List of Subjects in 17 CFR Part 4

Reporting and recordkeeping requirements.

For the reasons discussed in the foregoing, the Commission hereby amends chapter I of title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6b, 6c, 6(c), 6l, 6m, 6n, 6o, 12a, and 23.

2. Section 4.5 is amended as follows:

a. By amending the introductory text of paragraph (c) by removing "Commission" and by adding in its place "National Futures Association";

b. By amending paragraph (c)(3) by removing "Commission" and adding in its place "National Futures Association";

c. By amending paragraph (d)(1) by removing "Commission" and adding in its place "National Futures Association";

d. By removing paragraph (f)(3); and

e. Redesignating paragraph (f)(4) as (f)(3).

3. Section 4.7 is amended as follows:

a. By amending paragraph (b)(3)(i) by removing "the Commission and";

b. By amending paragraph (d)(1)(viii) by removing "in duplicate with the Commission at the address specified in § 4.2 and";

c. By amending paragraph (d)(1)(ix) by removing every instance of "Commission" and adding in its place "National Futures Association";

d. By revising paragraph (d)(2); and

e. By amending paragraph (d)(3) by removing "Commission" and adding in its place "National Futures Association".

The revisions read as follows:

§ 4.7 Exemption from certain Part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.

* * * * *

(d) * * *

(2) The notice will be effective upon receipt by the National Futures Association with respect to each pool for which it was made where the claimant is a commodity pool operator and otherwise generally where the claimant is a commodity trading advisor; *Provided*, That any notice which does not include all the required information shall not be effective, and that if at the time the National Futures Association receives the notice an enforcement proceeding brought by the Commission under the Act or the regulations is pending against the pool operator or trading advisor or any of its principals, the exemption will not be effective until twenty-one calendar days after receipt of the notice by the National Futures Association and that in such case an exemption may be denied by the Commission or the National Futures Association or made subject to such conditions as the Commission or the National Futures Association may impose.

* * * * *

§ 4.12 [Amended]

4. Section 4.12 is amended as follows:

a. By amending the introductory text of paragraph (b)(3) by removing "Commission" and adding in its place "National Futures Association";

b. By removing paragraph (b)(3)(vii);

c. By redesignating paragraph (b)(3)(viii) as (b)(3)(vii) and by amending paragraph (b)(3)(vii) as redesignated by removing "A copy also must be" and adding in its place "Be"; and

d. By amending paragraph (b)(5)(ii) by removing "Commission" and adding in its place "National Futures Association".

§ 4.13 [Amended]

5. Section 4.13 is amended as follows:

a. By removing paragraph (b)(1)(iv)(A); and

b. By redesignating paragraph (b)(1)(iv)(B) as (b)(1)(iv)(A).

6. Section 4.14 is amended as follows:

a. By amending paragraph (a)(8)(iii) by removing "Commission" and adding in its place "National Futures Association";

b. By removing paragraph (a)(8)(v)(C); and

c. By redesignating paragraph (a)(8)(v)(D) as (a)(8)(v)(C) and by amending paragraph (a)(8)(v)(C) as redesignated by removing "A copy also must be filed" and adding in its place "Filed".

§ 4.22 [Amended]

7. Section 4.22 is amended as follows:

a. By amending the introductory text of paragraph (c) by removing "two copies of the Report with the Commission" and adding in its place "a copy of the Report with the National Futures Association" and by removing "Commission" and adding in its place "National Futures Association";

b. By amending paragraph (f)(1) by removing every instance of "Commission' and adding in its place "National Futures Association"; and

c. By amending paragraph (f)(2)(i) by removing "and the Commission".

8. Section 4.26 is amended by revising paragraph (d) to read as follows:

§ 4.26 Use, amendment and filing of Disclosure Document.

* * * * *

(d) Except as provided by § 4.8 and paragraph (d)(3) of this section:

(1) The commodity pool operator must file with the National Futures Association one copy of the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate not less than 21 calendar days prior to the date the pool operator first intends to deliver such Document or documents to a prospective participant in the pool; and

(2) The commodity pool operator must file with the National Futures Association one copy of the subsequent amendments to the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect requiring the amendment.

(3) With respect to pools that are not offered pursuant to section 4(2) of the Securities Act of 1933, as amended (15 U.S.C. 77d(2)), or pursuant to Regulation D thereunder (17 CFR 230.501 *et seq.*), a commodity pool operator must:

(i) File with the Commission one copy of the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate not less than 21 calendar days prior to the date the pool operator first intends to deliver such Document or documents to a prospective participant in the pool; and

(ii) File with the Commission one copy of the subsequent amendments to the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect requiring the amendment.

§ 4.36 [Amended]

9. Section 4.36(d) is amended by removing every instance of "Commission" and adding in its place "National Futures Association".

Issued in Washington, DC, on December 11, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–31685 Filed 12–17–02; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

17 CFR Part 420

RIN 1505–AA88

Government Securities Act Regulations: Large Position Rules

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury ("Treasury," "We," or "Us") is

[7] The Commission rules being amended herein are rule: (1) 4.5; (2) 4.7; (3) 4.12; (4) 4.13; (5) 4.14; (6) 4.22; (7) 4.26; and (8) 4.36.

[8] *See* the amendments to Commission Rule 4.5 being adopted herein.

[9] 44 U.S.C. 3501 *et seq.*

[10] 5 U.S.C. 553(b)(3)(A) (1994).

[11] *See* 5 U.S.C. 553(d) (1994).

issuing in final form an amendment to the reporting requirements pertaining to very large positions in certain Treasury securities. The regulations are issued under the Government Securities Act Amendments of 1993 ("GSAA"). The purpose of the rules is to provide Treasury with information to better understand the causes of market shortages in certain Treasury securities. With the exception of one minor clarification, we are adopting the changes as proposed. We believe the changes made to the rules by this amendment will improve the information available to Treasury. Specifically, the amendment modifies the report to require separate reporting of certain components of the "net trading position" and the "gross financing position." The amendment revises the current "memorandum" item to require that the par amount of securities delivered through repurchase agreements be separated by maturity classification. In addition, it adds a new memorandum item to the large position report to require that the gross par amount of "fails to deliver" be reported. Finally, the amendment also modifies the definition of "gross financing position" to eliminate the optional exclusion in the calculation of the amount of securities received through certain financing transactions.

EFFECTIVE DATE: This amendment is effective January 17, 2003.

ADDRESSES: You may download this final rule from the Bureau of the Public Debt's Web site at *www.publicdebt.treas.gov*. It is also available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena (Executive Director), Lee Grandy (Associate Director), or Kevin Hawkins (Government Securities Specialist), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 691–3632 or e-mail us at *govsecreg@bpd.treas.gov*.

SUPPLEMENTARY INFORMATION: We re-examined the "large position rules" [1] and on July 31, 2002, published proposed amendments to the rules that would improve the information available to Treasury to better understand the causes of market shortages in certain Treasury securities. [2] In this notice, we first provide background on the rules and why we are changing them. Next we discuss the public comments we received in response to the proposed rulemaking, and then we describe the final amendments. As explained below, we are adopting the proposed changes with one minor clarification.

I. Background

A. Statutory Authority

In response to short squeezes in two-year Treasury notes that occurred in the government securities market in 1990–1991, Congress included in the GSAA [3] a provision granting Treasury new authority to prescribe rules requiring any person or entity holding, maintaining, or controlling large positions in to-be-issued or recently-issued Treasury securities to keep records and, when requested by Treasury, to file reports of such large positions. The provision was intended to improve the information available to Treasury, the Federal Reserve Bank of New York (as Treasury's agent), and the Securities and Exchange Commission (referred to as "regulators" in this document) regarding very large positions in Treasury securities held by market participants and to ensure that regulators have the tools necessary to understand unusual conditions in the Treasury securities market.

B. Reporting and Recordkeeping Requirements

The rules provide for an "on-demand" reporting system rather than a regular, ongoing system of reporting.[4] Large position reports must be filed with the Federal Reserve Bank of New York ("FRBNY") in response to a notice from us requesting large position information on a specific issue of a Treasury security by entities with positions that equal or exceed the reporting threshold specified in the notice (currently not less than $2 billion). The notice is in the form of a press release we issue and subsequently publish in the **Federal Register**. We also provide the press release to major news and financial publications and wire services for dissemination. An electronic mailing list for notification of calls for large position reports that was implemented in 1998 is also available at Public Debt's website at the address provided earlier in this rule. This provides market participants with information about calls for large position reports in the most timely and efficient manner. The reports must be received by the FRBNY before noon Eastern time on the fourth business day after the issuance of the Treasury press release calling for large position information.

A "reportable position" is the sum of the net trading position, the gross financing position and the net fails position in a specified issue of a Treasury security collectively controlled by a reporting entity.[5] All positions are required to be reported at par value on a trade date basis.

The recordkeeping requirements provide that any person or entity controlling at least a $2 billion position in a specific Treasury security must maintain and preserve certain records that enable the entity to compile, aggregate and report large position information.[6]

C. Who Is Subject to the Rules

Treasury's large position recordkeeping and reporting rules apply to all persons and entities, foreign and domestic, that control a reportable position in a Treasury security, such as: government securities brokers and dealers; registered investment companies; registered investment advisers; custodians, including depository institutions, that exercise investment discretion; hedge funds; pension funds; insurance companies; and foreign affiliates of U.S. entities.[7] The broad application of the rule to include both foreign and domestic entities is consistent with the statutory purpose of the GSAA.[8]

We reiterate that large positions are not inherently harmful, and that there is no presumption of manipulative or illegal intent on the part of the controlling entity merely because its position is large enough to be subject to Treasury's rules.

D. Proposed Rulemaking

Since the rules became effective in 1997, we have conducted annual calls for reports to test the accuracy and reliability of large position reporting systems. These tests have given us valuable experience and insight as we consider how to improve the information provided to regulators. This experience, in addition to our ongoing need to take into account the liquidity and efficiency of the Treasury securities market, caused us to re-examine the rules and issue a proposed rulemaking on July 31, 2002.[9] The modifications that were proposed reflected our continuing need for the ability to obtain useful information, while minimizing the costs and burdens on market participants.

The proposed rulemaking requested public comment on changes to the large position rules that would require:

- Separate reporting of the par amount of each of the five components of the "net trading position;"
- Separate reporting of the total par amount of securities received through reverse repurchase agreements by maturity classification in the "gross financing position" (*i.e.*, either "overnight and open" or "term");
- Separate reporting in the current memorandum item of the total par amount of securities delivered through repurchase agreements by maturity classification (*i.e.*, either "overnight and open" or "term");
- Reporting of the amount of "fails to deliver" in a new memorandum item; and
- Elimination of the optional exclusion in the calculation of the "gross financing position" for the amount of securities received through certain financing transactions.[10]

II. Comments Received in Response to the Proposed Rulemaking

We received one comment letter in response to the proposed rulemaking, from The Bond Market Association (TBMA).[11] Overall, TBMA was supportive of the proposed rule. The commenter noted that more detailed reporting of the net trading and gross financing positions would require many reporting entities to reconfigure their internal systems used to generate large position reports, thus increasing compliance costs. However, TBMA deemed the modifications appropriate because they should improve the depth of information available to Treasury and other regulators thereby enhancing transparency and enabling regulatory authorities to better understand the causes of market shortages of Treasury securities."

TBMA suggested that we extend the current three and a half day reporting deadline to a full four business days. The commenter asserted that the broader reporting obligations could be "unduly burdensome" for entities that must consolidate information from global affiliates into a single report. The commenter also suggested that Treasury move the release time for the announcement of calls for large position reports to 8:00 a.m. (EST).

As noted above, TBMA was supportive of requiring more detailed reporting of the gross financing position. However, TBMA urged "Treasury to clarify in the final rule that the specific maturity date for a term repo transaction does not need to be reported."

TBMA was fully supportive of eliminating the optional exclusion in the calculation of the gross financing position for certain transactions, including where the counterparty retains the right to substitute securities. The commenter stated that, "The proposed change would create a simpler and more unambiguous rule," that would "reduce compliance costs" and "ensure consistent treatment of overnight reverse repurchase transactions and term repurchase transactions where the counterparty retains a technical right of substitution."

III. Amendment to the Rule

After considering the one comment letter received, we are adopting the amendment essentially as proposed with a clarification recommended by the commenter. As recommended, we are clarifying in the rule amendment our intention that specific maturity dates for term repurchase agreements and term reverse repurchase agreements not be reported. That means that only the total dollar amount of the outstanding contracts for term repurchase agreements and term reverse repurchase agreements, respectively, are to be reported.

Accordingly, § 420.3(c)(1) and (c)(3), and Appendix B are revised to require that each of the five components in § 420.2(f)(1)–(5) that, together, comprise the "net trading position," to be reported separately. As we stated in the proposed rulemaking, since entities already are collecting this information to calculate their total net trading position, we believe that the separation of these components should not prove to be very burdensome.

Section 420.3(c)(1) and (c)(3), and Appendix B are revised to require entities to separate the reverse repurchase agreement components by maturity classification (*i.e.*, break out reverse repurchase agreements as either "overnight and open" or "term") in the reporting of the gross financing position. Similarly, the current memorandum item is revised to require that the total gross par amounts of securities delivered through repurchase agreements be reported by maturity classification. As previously discussed, a clarification has been added that only the total dollar amount of term reverse repurchase agreements and term repurchase agreements, respectively, is to be reported. We believe the separate reporting of these individual components in the large position formula, as well as the separation of reverse repurchase agreements and repurchase agreements by maturity classification, will help us to better understand the reporting entity's degree of control and economic interest in the particular security.

Section 420.3(c)(2) and Appendix B are revised to add a second memorandum item to the large position information for the gross par amount of "fails to deliver." This will help us to better understand a reporting entity's fails situation without increasing the burden on reporting entities since fails to deliver are already factored into the "net fails position" component.

Finally, the definition of "gross financing position" is revised at § 420.2(c) to eliminate in its entirety the optional exclusion for certain securities received through financing transactions. A conforming change is also made to item #2 "Gross Financing Position" in appendix B to part 420 (Sample Large Position Report) to reflect the elimination of the optional exclusion. This means that a reporting entity may no longer elect to reduce its gross financing position by the par amount of the securities received in transactions: in which the counterparty retains the right to substitute securities; that are subject to third party custodial relationships; or that are hold-in-custody agreements. We believe this change will enhance the usefulness of the large position reports to regulators. We agree with the commenter that this change will result in a simpler and more unambiguous rule.

Regarding the commenter's request that Treasury extend the current three and one-half day reporting deadline to a full four days, and also that Treasury move the release time for the announcement of calls for large position reports to 8 a.m. EST, we have decided

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[1] The rules were issued on September 12, 1996 (61 FR 48338) and were effective on March 31, 1997. They established a new part 420 of the regulations issued by Treasury in 17 CFR, Chapter IV, Subchapter A, providing recordkeeping and reporting requirements related to very large positions in certain Treasury securities.

[2] 67 FR 49630 (July 31, 2002).

[3] Pub. L. No. 103–202, 107 Stat. 2344 (15 U.S.C. 78o–5(f))(1993).

[4] See *supra* note 1.

[5] 17 CFR 420.2(h).

[6] 17 CFR 420.4

[7] The rules provide a total exemption for foreign central banks, foreign governments and international monetary authorities (*e.g.*, the World Bank) (collectively, foreign official organizations). Federal Reserve Banks are also exempt for the portion of any reportable position they control for their own account.

[8] H.R. Rep. No. 103–255 (September 23, 1993).

[9] See *supra* note 2.

[10] Currently, § 420.2(c) provides that a reporting entity may elect to reduce its gross financing position by the par amount of the securities received in transactions: in which the counterparty retains the right to substitute securities; that are subject to third party custodial relationships; or that are hold-in-custody agreements.

[11] The proposed rule, and the comment letter, dated September 16, 2002, are available for downloading on the Internet, and for inspection and copying at the Treasury Department Library at the address provided earlier in this final rule.

not to change the current rule. We have given consideration to this comment and are sympathetic to market participants' concerns regarding the time needed for some reporting entities to coordinate with overseas affiliates, aggregate position totals and file a single consolidated large position report. However, to be balanced against these concerns is the need for reports to be filed quickly in order to accomplish the purpose of the rules. If unusual market conditions or a pricing anomaly exist, we believe three and one-half days is a significant amount of time for regulators to wait for the reports that will enable us to make better and more timely decisions to ensure the integrity, liquidity and efficiency of the Treasury market. Also, although we will attempt to release announcements of large position calls in the morning when possible, Treasury must retain the flexibility to announce a call at any time of the day due to market developments and our need to quickly obtain information on market shortages. Market participants with very large positions should be prepared for an announcement of a call for large position reports at any time.

We believe the notification of calls for large position reports e-mail list that has been available at Public Debt's Web site since 1998 has provided a valuable electronic service. Anyone signing up is promptly notified anytime Treasury announces a call for large position reports, with a link provided in the e-mail message to the actual Press Release announcing the call. We understand that market participants, including many affiliates, have found that this enhanced system for dissemination of call announcements has been very useful in providing them with the call information in a more timely and efficient manner.

To allow market participants sufficient time to make necessary preparations for compliance, we are providing for a 30-day delayed effective date from the date of publication in the **Federal Register** of the amendment to the rules.

IV. Special Analysis

The regulations are not a "significant regulatory action" pursuant to Executive Order 12866.

We certify under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that these amendments, if adopted, would not have a significant economic impact on a substantial number of small entities. We continue to believe that small entities will not control positions of $2 billion or greater in any particular Treasury security. The inapplicability of these amendments to small entities indicates there is no significant impact. As a result, a regulatory flexibility analysis is not required.

The collections of information contained in the final amendments have been reviewed and approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995.[12] Under the Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

The collection of information in the final amendments is contained in § 420.3. The rules at § 420.3 continue to require a reporting entity whose position equals or exceeds the announced large position threshold for a specific issue of a Treasury security to report the information to FRBNY. We believe few reporting entities would actually have to file reports because the minimum reporting threshold ($2 billion) remains high. Moreover, we expect that our requests for information will be infrequent. We plan to continue testing the reporting and recordkeeping systems of market participants by requesting large position reports at least annually. The threshold limit will be determined based on market conditions at the time of the call.

We do not believe that market participants would find the additional "fails to deliver" memorandum item burdensome since they already determine this figure when calculating their "net fails position" on line 3 of the existing large position report. The "fails to deliver" memorandum item is simply a place for reporting entities to record a previously derived number.

We also do not anticipate that the elimination of the voluntary optional exclusion within the "gross financing position" would be a significant inconvenience for market participants. It is unlikely that removing this exclusion from the large position calculation would increase the time burden that entities face when calculating their positions, although it may result in more entities filing large position reports.

We believe the separate reporting of the "net trading position" components would not be very burdensome for market participants since they must already collect this information to calculate their net trading position. We also believe market participants would not find it very burdensome to separate their reporting of reverse repurchase agreements and repurchase agreements by maturity classification. Since the changes taking effect require more detailed information to be provided by reporting entities that file reports in response to a call for reports by Treasury, we increased the annual reporting burden in our submission to OMB by 40 hours, representing an increase from four to eight hours per large position report submitter.

The collection of information is intended to enable the Treasury and other regulators to better understand the possible causes of market shortages in certain Treasury securities. This information would help ensure that the Treasury securities market remains liquid and efficient.

Estimated total annual reporting burden: 40 hours.

Estimated annual number of respondents: 10.

Estimated annual frequency of response: On occasion.

Comments on the accuracy of the estimate for this collection of information or suggestions to reduce the burden should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Department of the Treasury, Washington, DC, 20503; and to the Government Securities Regulations Staff, Bureau of the Public Debt, 999 E Street, NW., Room 315, Washington, DC 20239–0001.

List of Subjects in 17 CFR Part 420

Banks and banking, Government securities, Investments, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, 17 CFR part 420 is amended as follows:

PART 420—LARGE POSITION REPORTING

1. The authority citation for Part 420 continues to read as follows:

Authority: 15 U.S.C. 78o–5(f).

2. Section 420.2 is amended by revising paragraph (c) to read as follows:

§ 420.2 Definitions.

* * * * *

(c) "Gross financing position" is the sum of the gross par amounts of a security issue received from financing transactions, including reverse repurchase agreement transactions, bonds borrowed, and as collateral for financial derivatives and other securities transactions (*e.g.*, margin loans). In calculating the gross financing position, a reporting entity may not net its positions against repurchase agreement transactions, securities loaned, or securities pledged as collateral for financial derivatives and other securities transactions.

* * * * *

3. Section 420.3 is amended by revising paragraphs (c)(1), (c)(2) and (c)(3) to read as follows:

§ 420.3 Reporting.

* * * * *

(c)(1) In response to a notice issued under paragraph (a) of this section requesting large position information, a reporting entity with a reportable position that equals or exceeds the specified large position threshold stated in the notice shall compile and report the amounts of the reporting entity's reportable position in the order specified, as follows:

(i) Net trading position, and each of the following items that together comprise the net trading position:

(A) Cash/immediate net settled positions,

(B) Net when-issued positions for to-be-issued and reopened issues,

(C) Net forward settling positions, including next-day settling,

(D) Net positions in futures contracts requiring delivery of the specific security, and

(E) Net holdings of STRIPS principal components of the specific security;

(ii) Gross financing position and each of the following items that comprise the gross financing position:

(A) Securities received through reverse repurchase agreements by maturity classification:

(*1*) Overnight and open, and

(*2*) Term (report the total dollar amount of the outstanding contracts, summing across maturity dates), and

(B) Securities received through bonds borrowed, and as collateral for financial derivatives and other financial transactions.

(iii) Net fails position; and

(iv) Total reportable position.

(2) The large position report must include the following two additional memorandum items:

(i) The total gross par amounts of securities delivered through:

(A) Repurchase agreements by maturity classification:

(*1*) Overnight and open, and

(*2*) Term (report the total dollar amount of the outstanding contracts, summing across maturity dates), and

(B) Securities loaned, and as collateral for financial derivatives and other securities transactions.

(ii) The gross par amount of "fails to deliver" in the security. This total must also be included in Net Fails Position, Line 3.

(3) An illustration of a sample report is contained in Appendix B.

Each of the net trading position components shall be netted and reported as a positive number (long position), a negative number (short position), which should be shown in parenthesis, or zero (flat position). The total net trading position shall also be reported as the applicable positive or negative number (or zero). Each of the components of the gross financing position shall be reported. The total gross financing position, which is the sum of the gross financing position components, shall also be reported. The net fails position should be reported as a single entry. If the amount of the net fails position is zero or less, report zero. The total reportable position, which is the sum of the net trading position, gross financing position, and net fails position, must be reported. Each component of Memorandum 1 shall be reported. The total of Memorandum 1, which is the sum of its components, shall also be reported. Memorandum 2, which is the gross par amount of fails to deliver, shall also be reported. All of these positions should be reported in the order specified above. All position amounts should be reported on a trade date basis and at par in millions of dollars.

* * * * * *

4. Appendix B to Part 420 Sample Large Position Report, "Formula for Determining a Reportable Position," is revised to read as follows:

Appendix B to Part 420—Sample Large Position Report

FORMULA FOR DETERMINING A REPORTABLE POSITION

[$ Amounts in millions at par value as of trade date]

Security Being Reported	$
Date For Which Information is Being Reported	$
1. Net Trading Position:	
Cash/Immediate Net Settled Positions	$
Net When-Issued Positions for To-Be-Issued and Reopened Issues	$
Net Forward Settling Positions Including Next-Day Settling	$
Net Positions in Futures Contracts Requiring Delivery of the Specific Security	$
Net Holdings of STRIPS Principal Components of the Specific Security	$
Total Net Trading Position	$
2. Gross Financing Position:	
Total of securities received through	
Reverse Repurchase Agreements	
Overnight and Open	$
Term	$
Bonds borrowed, and as collateral for financial derivatives and other financial transactions	$
Total Gross Financing position	$
3. Net Fails Position	$
(Fails to receive less fails to deliver. If equal to or less than zero, report 0.)	
4. Total Reportable Position	= $
Memorandum 1:	
Report the total gross par amounts of securities delivered through	
Repurchase Agreements	
Overnight and Open	$
Term	$
Securities loaned, and as collateral for financial derivatives and other securities transactions	$

[12] 44 U.S.C. 3507(d).

FORMULA FOR DETERMINING A REPORTABLE POSITION—Continued

[$ Amounts in millions at par value as of trade date]

Total Memorandum 1	$
Memorandum 2: Report the gross par amount of fails to deliver. Included in the calculation of line item 3 (Net Fails Position)	$

Dated: December 6, 2002.

Brian C. Roseboro,

Assistant Secretary for Financial Markets.

[FR Doc. 02–31837 Filed 12–17–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9027]

RIN 1545–AX89

Levy Restrictions During Installment Agreements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to restrictions on levy during the period that an installment agreement is proposed or in effect. The regulations reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998.

EFFECTIVE DATE: These regulations are effective December 18, 2002.

FOR FURTHER INFORMATION CONTACT: Frederick W. Schindler, (202) 622–3620 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 6331 of the Internal Revenue Code (Code). The regulations reflect the amendment of section 6331 by section 3462 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105–206 (112 Stat. 685, 764). New section 6331(k) codifies the IRS practice of withholding collection during consideration of a taxpayer's offer to compromise and extends that practice to proposed installment agreements. These regulations deal principally with the effect of subsection 6331(k) when an installment agreement has been proposed and is pending, is in effect, or has been rejected or terminated. On April 17, 2002, a notice of proposed rulemaking (REG–104762–00; 67 FR 18839) reflecting these changes was published in the **Federal Register**. No written comments on the proposed regulations were received. No public hearing was scheduled or held.

Explanation of Provisions

The regulations provide that, subject to certain exceptions, the IRS may not levy to collect a liability while a taxpayer's proposal to enter into an installment agreement for payment of that liability is pending, for 30 days after rejection of such a proposal, while an installment agreement is in effect, for 30 days after termination of an installment agreement by the IRS, and during a timely filed appeal of a rejection or termination by the IRS. A proposed installment agreement is considered pending when it is accepted for processing by the IRS and remains pending until the IRS accepts or rejects it or the taxpayer withdraws the proposal. The final regulations clarify that the IRS may not accept a proposed installment agreement for processing if jurisdiction over the tax liability at issue has been transferred to the Department of Justice for prosecution or defense. If a proposed installment agreement does not contain sufficient information for the IRS to determine whether the proposal should be accepted, the IRS will request the additional necessary information from the taxpayer and provide a reasonable time period for the taxpayer to respond. The IRS may reject the proposed installment agreement if the requested information is not provided.

Collection by levy is not prohibited if the taxpayer waives the restriction on levy in writing, if the IRS determines that collection of the tax liability is in jeopardy, or if the IRS determines that the proposed installment agreement was submitted solely to delay collection. The exception for proposals submitted solely to delay collection is based on the legislative history accompanying RRA 1998, which explained that Congress did not intend that levy would be prohibited if the IRS determined that an offer to compromise was submitted solely to delay collection. H.R. Conf. Rep. No. 509, 105th Cong., 2d Sess. 288 (1998). Because the legislative history indicates that Congress intended the same restrictions on levy with respect to offers in compromise be applicable to installment agreements, these regulations adopt the same rule with respect to proposed installment agreements.

The regulations provide that the IRS may take actions other than levy to protect the interests of the United States with respect to collection of the liability to which an installment agreement or proposed installment agreement relates. Those actions include, but are not limited to: crediting an overpayment against the liability pursuant to section 6402, filing or refiling notices of Federal tax lien, and taking action to collect from persons liable for the tax but not named in the installment agreement.

The proposed regulations provided that the IRS cannot institute a court proceeding against the taxpayer named in the installment agreement to collect the tax covered by the installment agreement. In the final regulations, this provision has been clarified. It now states that the IRS may not refer a case to the Department of Justice to collect an unpaid tax through a judicial proceeding while levy is prohibited by these regulations. The IRS may, however, authorize the Department of Justice to file a counterclaim in any refund proceeding commenced by a taxpayer, participate in bankruptcy or insolvency cases commenced by or against the taxpayer, or join a taxpayer in any other proceeding in which liability for the tax at issue may be established or disputed. Such proceedings may involve taxes for which more than one person may be jointly and severally liable for the same tax, or may involve persons liable for related liabilities, such as a trust fund recovery penalty under section 6672 or a personal liability for excise tax under section 4103.

While an installment agreement allows the IRS to accept the payment of tax in installments, the agreement does not conclusively establish the taxpayer's liability. A taxpayer therefore is not prohibited from seeking a refund of taxes paid pursuant to an installment agreement. Allowing the IRS to join the taxpayer in a proceeding where the liability for the tax may be established or disputed will protect the Government from having to litigate the same tax in multiple forums only to face the argument in each separate case (including, potentially, from the taxpayer named in an installment agreement) that the person or persons not party to that suit were solely or principally liable for non-payment of the taxes at issue. The notice of proposed rulemaking stated that if a judgment was obtained against a taxpayer named in an installment agreement, collection would continue to occur pursuant to the terms of the installment agreement. The final regulations clarify that this statement applies only when the Department of Justice refers the case back to the IRS for collection after the judgment is obtained. Section 6331(k) does not limit the collection options of the Department of Justice once a case has been referred to the Department by the IRS.

The regulations provide that the statute of limitations for collection under section 6502 is suspended while a proposed installment agreement is pending, for 30 days after rejection or termination of an installment agreement, and during a timely filed appeal of the rejection or termination decision. The running of the collection statute resumes after an installment agreement takes effect. The statute of limitations for collection shall continue to run if an exception under this section applies and levy is not prohibited with respect to the taxpayer.

These regulations apply to installment agreements proposed or entered into on or after the date final regulations are published in the **Federal Register**. However, the rules set forth in these regulations mirror practices the IRS has been following administratively since the enactment of RRA 1998.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the preceding notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Frederick W. Schindler, Office of the Associate Chief Counsel (Procedure & Administration), Collection, Bankruptcy & Summonses Division.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Sections 301.6331–3 and 301.6331–4 are added to read as follows:

§ 301.6331–3 Restrictions on levy while offers to compromise are pending.

Cross-reference. For provisions relating to the making of levies while an offer to compromise is pending, *see* § 301.7122–1.

§ 301.6331–4 Restrictions on levy while installment agreements are pending or in effect.

(a) *Prohibition on levy*—(1) *In general.* No levy may be made to collect a tax liability that is the subject of an installment agreement during the period that a proposed installment agreement is pending with the Internal Revenue Service (IRS), for 30 days immediately following the rejection of a proposed installment agreement, during the period that an installment agreement is in effect, and for 30 days immediately following the termination of an installment agreement. If, within the 30 days following the rejection or termination of an installment agreement, the taxpayer files an appeal with the IRS Office of Appeals, no levy may be made while the rejection or termination is being considered by Appeals. This section will not prohibit levy to collect the liability of any person other than the person or persons named in the installment agreement.

(2) *When a proposed installment agreement becomes pending.* A proposed installment agreement becomes pending when it is accepted for processing. The IRS may not accept a proposed installment agreement for processing following reference of a case involving the liability that is the subject of the proposed installment agreement to the Department of Justice for prosecution or defense. The proposed installment agreement remains pending until the IRS accepts the proposal, the IRS notifies the taxpayer that the proposal has been rejected, or the proposal is withdrawn by the taxpayer. If a proposed installment agreement that has been accepted for processing does not contain sufficient information to permit the IRS to evaluate whether the proposal should be accepted, the IRS will request the taxpayer to provide the needed additional information. If the taxpayer does not submit the additional information that the IRS has requested within a reasonable time period after such a request, the IRS may reject the proposed installment agreement.

(3) *Revised proposals of installment agreements submitted following rejection.* If, following the rejection of a proposed installment agreement, the taxpayer makes a good faith revision of the proposal and submits the revision within 30 days of the date of rejection, the provisions of this section shall apply to that revised proposal.

(4) *Exceptions.* Paragraph (a)(1) of this section shall not prohibit levy if the taxpayer files a written notice with the IRS that waives the restriction on levy imposed by this section, the IRS determines that the proposed installment agreement was submitted solely to delay collection, or the IRS determines that collection of the tax to which the installment agreement or proposed installment agreement relates is in jeopardy.

(b) *Other actions by the IRS while levy is prohibited*—(1) *In general.* The IRS may take actions other than levy to protect the interests of the Government with regard to the liability identified in an installment agreement or proposed installment agreement. Those actions include, for example—

(i) Crediting an overpayment against the liability pursuant to section 6402;

(ii) Filing or refiling notices of Federal tax lien; and

(iii) Taking action to collect from any person who is not named in the installment agreement or proposed installment agreement but who is liable for the tax to which the installment agreement relates.

(2) *Proceedings in court.* Except as otherwise provided in this paragraph (b)(2), the IRS will not refer a case to the Department of Justice for the commencement of a proceeding in court, against a person named in an installment agreement or proposed installment agreement, if levy to collect the liability is prohibited by paragraph

(a)(1) of this section. Without regard to whether a person is named in an installment agreement or proposed installment agreement, however, the IRS may authorize the Department of Justice to file a counterclaim or third-party complaint in a refund action or to join that person in any other proceeding in which liability for the tax that is the subject of the installment agreement or proposed installment agreement may be established or disputed, including a suit against the United States under 28 U.S.C. 2410. In addition, the United States may file a claim in any bankruptcy proceeding or insolvency action brought by or against such person. If a person named in an installment agreement is joined in a proceeding, the United States obtains a judgment against that person, and the case is referred back to the IRS for collection, collection will continue to occur pursuant to the terms of the installment agreement.

(c) *Statute of limitations*—(1) *Suspension of the statute of limitations on collection.* The statute of limitations under section 6502 for collection of any liability shall be suspended during the period that a proposed installment agreement relating to that liability is pending with the IRS, for 30 days immediately following the rejection of a proposed installment agreement, and for 30 days immediately following the termination of an installment agreement. If, within the 30 days following the rejection or termination of an installment agreement, the taxpayer files an appeal with the IRS Office of Appeals, the statute of limitations for collection shall be suspended while the rejection or termination is being considered by Appeals. The statute of limitations for collection shall continue to run if an exception under paragraph (a)(4) of this section applies and levy is not prohibited with respect to the taxpayer.

(2) *Waivers of the statute of limitations on collection.* The IRS may continue to request, to the extent permissible under section 6502 and § 301.6159–1, that the taxpayer agree to a reasonable extension of the statute of limitations for collection.

(d) *Effective date.* This section is applicable on December 18, 2002.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: December 11, 2002.

Pamela F. Olson,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 02–31856 Filed 12–17–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9026]

RIN–1545–BA95

Low-Income Taxpayer Clinics—Definition of Income Tax Return Preparer

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that exclude certain Low-Income Taxpayer Clinics (LITCs) that qualify for grants under section 7526 of the Internal Revenue Code from the definition of income tax return preparer under section 7701(a)(36). These final regulations also exclude certain persons who are employed by, or volunteer for, such clinics.

DATES: *Effective Date:* These regulations are effective December 18, 2002.

Applicability Date: These regulations apply to returns that are prepared on or after December 18, 2002.

FOR FURTHER INFORMATION CONTACT: Brinton T. Warren, at (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to the definition of the term *income tax return preparer* under section 7701(a)(36) of the Internal Revenue Code (Code). On June 11, 2002, a notice of proposed rulemaking was published in the **Federal Register** (67 FR 39915). One comment was received in response to the notice of proposed rulemaking. No public hearing was requested or held. After consideration of the comment, the proposed regulations under section 7701(a)(36) are adopted.

These regulations have been promulgated in furtherance of the purposes of Section 3601(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685) (1998) (RRA 1998). Section 3601(a), which added section 7526 of the Code, provides grants to qualified LITCs. Qualified LITCs represent taxpayers in controversies with the IRS and operate programs to inform individuals for whom English is a second language (ESL taxpayers) about their rights and responsibilities as taxpayers (ESL outreach). Qualified LITCs are either clinical programs run by accredited educational institutions that allow students to represent low-income taxpayers, or tax-exempt organizations that provide representation to low-income taxpayers.

Section 7701(a)(36), defining the term income tax return preparer, was enacted by section 1203 of the Tax Reform Act of 1976, Public Law 94–455 (90 Stat. 1520) (1976) (TRA 1976). TRA 1976 also enacted many of the provisions of sections 6694 and 6695, which impose penalties for certain acts and omissions by income tax return preparers.

The preparer penalties enacted by TRA 1976 reflect the concern of Congress with improper practices within the commercial tax services industry. See H. Rep. No. 94–658, 94th Cong. 1st Sess. 274 (1976), 1976–3 (Vol. 2) C.B. 966. Consistent with the commercial focus of the legislative history, the definition of an income tax return preparer requires that the tax return or claim for refund be prepared "for compensation." Persons who do not receive compensation are not income tax return preparers for purposes of section 7701(a)(36) regardless of the extent to which they are involved with the preparation of a return or claim for refund.

Under section 7526(b)(1)(A)(i), a qualified LITC may not charge more than a nominal fee for its authorized services (except for reimbursement of actual costs incurred). These final regulations, consistent with the notice of proposed rulemaking, specify the circumstances in which an LITC may receive a nominal fee that will not be considered compensation for purposes of section 7701(a)(36).

Explanation of Revisions and Summary of Comment

These final regulations adopt the proposed amendments without substantive change. Under these final regulations, qualified LITCs, as defined by section 7526, and employees and volunteers of such LITCs, that provide assistance with a tax return or claim for refund will not be treated as income tax return preparers if two requirements are satisfied.

First, any such return preparation assistance must be (i) directly related to a controversy with the IRS for which the LITC is providing assistance or (ii) an ancillary part of an LITC's ESL outreach program. Second, the LITC cannot charge a separate fee or vary a fee based on whether the LITC provides assistance with a return of tax or claim for refund, or charge more than a nominal fee for its services. The regulations apply to returns prepared on or after December 18, 2002.

The commentator focused on the scope of the direct relation requirement that applies to LITCs that represent taxpayers in controversies. The commentator observed that, for a nonfiler to obtain the benefits of an offer in compromise or installment agreement, it is sometimes necessary for an LITC to prepare a number of the nonfiler's returns for prior years. The commentator requested clarification as to whether preparation of the prior-year returns is directly related to the nonfiler's controversy with the IRS. As in the commentator's example, in cases where the preparation of a taxpayer's return is required to resolve a controversy for which an LITC is representing a taxpayer, such preparation would be treated under these final regulations as directly related to that controversy.

These regulations do not address the definition of a nominal fee. The Treasury Department and the IRS specifically requested comments on the need for a definition of a nominal fee and the factors that should be considered in defining a nominal fee. No comments were received on this topic. The Treasury Department and the IRS conclude that the definition of nominal fee should not be addressed in these regulations at this time. The final regulations do not specifically address the qualifications of an LITC under section 7526. The Treasury Department and IRS reiterate the view, originally stated in the preamble of the proposed regulations, that a qualified LITC may not provide return preparation assistance other than assistance directly related to a controversy with the IRS or assistance that is an ancillary part of an ESL outreach program.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Drafting Information

The principal author of the regulations is Brinton T. Warren of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7701–15 is amended by:

1. Removing the language "and" at the end of paragraph (a)(7)(iii).

2. Removing the period at the end of paragraph (a)(7)(iv) and adding a semicolon in its place.

3. Adding paragraphs (a)(7)(v) through (a)(7)(viii).

The additions read as follows:

§ 301.7701–15 Income tax return preparer.

* * * * * * *

(a) * * *

(7) * * *

(v) Any individual who provides tax assistance as part of a qualified Low-Income Taxpayer Clinic (LITC), as defined by section 7526, subject to the requirements of paragraphs (a)(7)(vii) and (viii) of this section; and

(vi) Any organization that is a qualified Low-Income Taxpayer Clinic (LITC), as defined by section 7526, subject to the requirements of paragraphs (a)(7)(vii) and (viii) of this section.

(vii) Paragraphs (a)(7)(v) and (vi) of this section apply only if any assistance with a return of tax or claim for refund under subtitle A is directly related to a controversy with the Internal Revenue Service for which the qualified LITC is providing assistance, or is an ancillary part of an LITC program to inform individuals for whom English is a second language about their rights and responsibilities under the Internal Revenue Code.

(viii) Notwithstanding paragraph (a)(7)(vii) of this section, paragraphs (a)(7)(v) and (vi) of this section do not apply if an LITC charges a separate fee or varies a fee based on whether the LITC provides assistance with a return of tax or claim for refund under subtitle A, or if the LITC charges more than a nominal fee for its services.

* * * * * *

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: December 11, 2002.

Pamela F. Olson,

Assistant Secretary for Tax Policy.

[FR Doc. 02–31855 Filed 12–17–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9028]

RIN 1545–AX04

Third Party Contacts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance on third-party contacts made with respect to the determination or collection of tax liabilities. The regulations reflect changes to section 7602 of the Internal Revenue Code made by section 3417 of the Internal Revenue Service Restructuring and Reform Act of 1998. The regulations potentially affect all taxpayers whose Federal tax liabilities are being determined or collected by the IRS.

DATES: *Effective Dates:* These regulations are effective on December 18, 2002.

Applicability Dates: For the date of applicability, see section 301.7602–2(g).

FOR FURTHER INFORMATION CONTACT: Robert A. Miller, 202–622–3630 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 3417 of the IRS Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105–206 (112 Stat. 685), amended section 7602 by adding section 7602(c). This provision prohibits IRS officers and employees from contacting any person, other than the taxpayer, with respect to the determination or collection of the taxpayer's liability without giving the taxpayer reasonable advance notice that contacts with

persons other than the taxpayer may be made.

On January 2, 2001, the IRS published in the **Federal Register** a notice of proposed rulemaking (66 FR 32479) to interpret and implement section 7602(c). Two written comments were received but a public hearing was not held. The proposed regulations, as revised by this Treasury decision, are substantially adopted.

As described more fully in the preamble to the proposed regulations, the final regulations balance a taxpayer's business and reputational interests with third parties' privacy interests and the IRS' responsibility to administer the internal revenue laws effectively. By providing general pre-contact notice followed by post-contact identification, these final regulations enable a taxpayer to come forward with information required by the IRS before third parties are contacted. The taxpayer's business and reputational interests therefore can be addressed without impeding the IRS' ability to make those third-party contacts that are necessary to administer the internal revenue laws.

These final regulations do not finalize the provisions in the proposed regulations regarding periodic reports. Subsequent to the issuance of the proposed regulations, the IRS determined that the issuance of periodic reports may result in harm to third parties and, accordingly, has determined that periodic reports should not be issued. Taxpayers will continue to receive pre-contact notice and may specifically request from the IRS reports of persons contacted.

Comments on the Proposed Regulations

§ 301.7602–2(e)(3)(ii)—Post Contact Reports

The proposed regulations provided that for contacts with the employees, officers, or fiduciaries of any entity who are acting within the scope of their employment or relationship, it is sufficient to record the entity as the person contacted.

One commentator noted that there may be situations where the name of a specific employee of a business should be recorded and made available to the taxpayer. The commentator suggests adopting a "safe harbor" rule that requires that the name of the party contacted be recorded whenever there is any doubt about how the contact should be recorded. The commentator stated that whenever an employee of a business is contacted due to his or her personal knowledge or business relationship with the taxpayer, the name of the specific employee contacted should be recorded in the contact record rather than (or in addition to) the name of the business entity.

This comment has not been adopted in the final regulations. The final regulations do not prevent IRS employees from providing more than the name of the entity in the record of contact when an employee of a business is contacted. Because the information being sought typically is that of the entity, and not of any specific employee outside of their capacity as an employee, requiring the identification of the specific employees contacted is not required to provide notice to the taxpayer of the contact made and may impede the IRS' ability to obtain information from the entity.

§ 301.7602–2(f)(3)—Reprisal Exception

The proposed regulations provided that a statement by the person contacted that harm may occur is good cause for the IRS to believe that reprisal may occur. Such contacts are not reported by the IRS to the taxpayer.

One commentator asserted that the proposed regulations are inconsistent with the statute's origin and purpose because the proposed regulations (i) subordinate the rights given to taxpayers to the rights of third parties and the IRS; (ii) provide an insufficient threshold for determining whether good cause exists to conclude that reprisal may occur; (iii) permit a third party to express concerns that providing notice to the taxpayer may result in reprisal against another person; (iv) permit the IRS to make a reprisal determination based upon information obtained from any source; and (v) permit the IRS to make a reprisal determination without peer or supervisory review. In brief, the commentator argued that the scope of what would be considered reprisal is too broad and that the determination of when reprisal would be considered to exist is too lenient. The commentator claimed that the adoption of the proposed regulations would render the requirement in section 7602(c) to provide taxpayers with a record of persons contacted a nullity.

The Treasury Department and the IRS do not agree that the proposed regulations are either too broad with respect to what will be considered reprisal or too permissive with respect to the determination of whether the potential for reprisal exists. As a general matter, by including a reprisal exception to the notice requirements of section 7602(c), Congress recognized that the rights of taxpayers to receive notice of third-party contacts must be balanced with the rights of third parties to be free from adverse consequences that may result from the IRS providing such notice. The reprisal exception reflects Congress' determination that a taxpayer's right to know whom the IRS has contacted is outweighed by a third party's right to be free from any reprisal. Moreover, since the statute's effective date, the IRS has been operating under reprisal procedures consistent with the proposed regulations. Based upon the small number of reprisal concerns expressed to date, the Treasury Department and the IRS believe that the final regulations, which make no change to the proposed regulations with respect to this issue, appropriately balance the competing interests reflected in the statute and will not render section 7602(c)(2) a nullity.

More specifically, the Treasury Department and the IRS believe that a third party is in the best position to evaluate its relationship with a taxpayer and the potential for reprisal if a contact with that third party is reported by the IRS to the taxpayer. Requiring the IRS to investigate each claim of potential reprisal, including supervisory review of a reprisal determination, would place a heavy administrative burden on the IRS and, more importantly, would intrude into the third party's affairs and require IRS employees to make judgments that they are not well positioned to make. For these reasons, the final regulations do not adopt the "probable cause" standard suggested by the commentator. In addition, the rights provided to a taxpayer under section 7602(c) (*i.e.*, prior notice that contacts with third parties may be made and a record of persons contacted) cannot be equated with a person's Fourth Amendment right to be free from unreasonable searches and seizures.

In addition, the statute clearly contemplates that the reprisal exception is not limited to concerns of reprisal against the third party contacted. The reprisal exception applies when providing notice to the taxpayer "may involve reprisal against *any person*." section 7602(c)(3)(B) (emphasis added). The statutory exception also does not restrict the source of information that can be used in making a reprisal determination. In certain cases, an IRS employee may be in possession of information that is unknown to the third party contacted but which suggests that reprisal may occur against another person if the contact with the third party is reported to the taxpayer.

Finally, limiting the reprisal exception to physical harm would be inconsistent with the statute and Congress' clear concern that third parties be free from adverse consequences as a result of being contacted by the IRS regarding a taxpayer's liability. Congress did not define or limit the kind of reprisal situations with which it was concerned. Excluding economic, emotional, or other types of harm would significantly diminish the third-party protections provided by the reprisal exception.

Modifications of Proposed Regulations

§ 301.7602–2(c)(1)(i)

The proposed regulations stated that for purposes of section 7602(c), an IRS employee includes, inter alia, a person who, through a written agreement with the IRS, is subject to disclosure restrictions consistent with section 6103. The final regulations provide that an IRS employee includes a person described in section 6103(n), an officer or employee of such person, and a person who is subject to disclosure restrictions pursuant to a written agreement in connection with the solicitation of an agreement described in section 6103(n) and its implementing regulations. This change was made to provide a legally precise statement of the rule and to clarify that persons who provide tax administration services to the IRS and who enter into nondisclosure agreements with the IRS, as well as prospective bidders who enter into nondisclosure agreements, are treated as IRS employees for purposes of section 7602(c).

§ 301.7602–2(c)(1)(ii) Example 3

The regulations provide that returning unsolicited telephone calls or speaking with persons other than the taxpayer as part of an attempt to speak to the taxpayer are not initiations of third-party contacts. This provision is illustrated by *Example 3*, where a revenue agent trying to contact the taxpayer to discuss the taxpayer's pending examination twice calls the taxpayer's place of business. The first call is answered by a receptionist, and the second call is answered by the office answering machine. The example in the regulations states that in both situations the employee leaves a message "stating only his name, telephone number, that he is with the IRS, and asks that the taxpayer call him." The phrase "that he is with the IRS" has been deleted from the example in the final regulations because there may be situations where it would be inappropriate for an IRS employee to identify his or her employer in a telephone conversation or message that can be seen or heard by persons other than the taxpayer. See section 6304(b)(4).

§ 301.7602–2(c)(3)(ii)

The final regulations add *Examples 6(a)* and *6(b)* to illustrate the application of the third-party contact rules to audits of TEFRA partnerships.

§ 301.7602–2(d)(2)

The regulations provide that the pre-contact notice need not be provided to a taxpayer for third-party contacts when advance notice has otherwise been provided to the taxpayer pursuant to another statute, regulation or administrative procedure. The proposed regulations provide that the Collection Due Process (CDP) notice furnished under section 6330 and its regulations is an example of a situation where the pre-contact notice requirement is fulfilled by another notice. The final regulations modify the proposed regulations to clarify that CDP notices sent to taxpayers pursuant to section 6330 and its regulations constitute reasonable advance notice that contacts with third parties may be made for purposes of effectuating a levy.

§ 301.7602–2(f)(7)

The final regulations add examples to illustrate the application of the nonadministrative contacts exception.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Likewise, section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Charles B. Christopher of the Office of Associate Chief Counsel, Procedure & Administration (Collection, Bankruptcy & Summonses Division).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURES AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7602–2 is added to read as follows:

§ 301.7602–2 Third party contacts.

(a) *In general.* Subject to the exceptions in paragraph (f) of this section, no officer or employee of the Internal Revenue Service (IRS) may contact any person other than the taxpayer with respect to the determination or collection of such taxpayer's tax liability without giving the taxpayer reasonable notice in advance that such contacts may be made. A record of persons so contacted must be made and given to the taxpayer upon the taxpayer's request.

(b) *Third-party contact defined.* Contacts subject to section 7602(c) and this regulation shall be called "third-party contacts." A third-party contact is a communication which—

(1) Is initiated by an IRS employee;

(2) Is made to a person other than the taxpayer;

(3) Is made with respect to the determination or collection of the tax liability of such taxpayer;

(4) Discloses the identity of the taxpayer being investigated; and

(5) Discloses the association of the IRS employee with the IRS.

(c) *Elements of third-party contact explained*—(1) *Initiation by an IRS employee*— (i) *Explanation*—(A) *Initiation.* An IRS employee initiates a communication whenever it is the employee who first tries to communicate with a person other than the taxpayer. Returning unsolicited telephone calls or speaking with persons other than the taxpayer as part of an attempt to speak to the taxpayer are not initiations of third-party contacts.

(B) *IRS employee.* For purposes of this section, an IRS employee includes all officers and employees of the IRS, the Chief Counsel of the IRS and the National Taxpayer Advocate, as well as a person described in section 6103(n), an officer or employee of such person, or a person who is subject to disclosure restrictions pursuant to a written agreement in connection with the solicitation of an agreement described in section 6103(n) and its implementing

regulations. No inference about the employment or contractual relationship of such other persons with the IRS may be drawn from this regulation for any purpose other than the requirements of section 7602(c).

(ii) *Examples.* The following examples illustrate this paragraph (c)(1):

Example 1. An IRS employee receives a message to return an unsolicited call. The employee returns the call and speaks with a person who reports information about a taxpayer who is not meeting his tax responsibilities. Later, the employee makes a second call to the person and asks for more information. The first call is not a contact initiated by an IRS employee. Just because the employee must return the call does not change the fact that it is the other person, and not the employee, who initiated the contact. The second call, however, is initiated by the employee and so meets the first element.

Example 2. An IRS employee wants to hire an appraiser to help determine the value of a taxpayer's oil and gas business. At the initial interview, the appraiser signs an agreement that prohibits him from disclosing return information of the taxpayer except as allowed by the agreement. Once hired, the appraiser initiates a contact by calling an industry expert in Houston and discusses the taxpayer's business. The IRS employee's contact with the appraiser does not meet the first element of a third-party contact because the appraiser is treated, for section 7602(c) purposes only, as an employee of the IRS. For the same reason, however, the appraiser's call to the industry expert does meet the first element of a third-party contact.

Example 3. A revenue agent trying to contact the taxpayer to discuss the taxpayer's pending examination twice calls the taxpayer's place of business. The first call is answered by a receptionist who states that the taxpayer is not available. The IRS employee leaves a message with the receptionist stating only his name and telephone number, and asks that the taxpayer call him. The second call is answered by the office answering machine, on which the IRS employee leaves the same message. Neither of these phone calls meets the first element of a third-party contact because the IRS employee is trying to initiate a communication with the taxpayer and not a person other than the taxpayer. The fact that the IRS employee must either speak with a third party (the receptionist) or leave a message on the answering machine, which may be heard by a third party, does not mean that the employee is initiating a communication with a person other than the taxpayer. Both the receptionist and the answering machine are only intermediaries in the process of reaching the taxpayer.

(2) *Person other than the taxpayer*—(i) *Explanation.* The phrases "person other than the taxpayer" and "third party" are used interchangeably in this section, and do not include—

(A) An officer or employee of the IRS, as defined in paragraph (c)(1)(i)(B) of this section, acting within the scope of his or her employment;

(B) Any computer database or website regardless of where located and by whom maintained, including databases or web sites maintained on the Internet or in county courthouses, libraries, or any other real or virtual site; or

(C) A current employee, officer, or fiduciary of a taxpayer when acting within the scope of his or her employment or relationship with the taxpayer. Such employee, officer, or fiduciary shall be conclusively presumed to be acting within the scope of his or her employment or relationship during business hours on business premises.

(ii) *Examples:* The following examples illustrate this paragraph (c)(2):

Example 1. A revenue agent examining a taxpayer's return speaks with another revenue agent who has previously examined the same taxpayer about a recurring issue. The revenue agent has not contacted a "person other than the taxpayer" within the meaning of section 7602(c).

Example 2. A revenue agent examining a taxpayer's return speaks with one of the taxpayer's employees on business premises during business hours. The employee is conclusively presumed to be acting within the scope of his employment and is therefore not a "person other than the taxpayer" for section 7602(c) purposes.

Example 3. A revenue agent examining a corporate taxpayer's return uses a commercial online research service to research the corporate structure of the taxpayer. The revenue agent uses an IRS account, logs on with her IRS user name and password, and uses the name of the corporate taxpayer in her search terms. The revenue agent later explores several Internet web sites that may have information relevant to the examination. The searches on the commercial online research service and Internet websites are not contacts with "persons other than the taxpayer."

(3) *With respect to the determination or collection of the tax liability of such taxpayer*—(i) *Explanation*—(A) *With respect to.* A contact is "with respect to" the determination or collection of the tax liability of such taxpayer when made for the purpose of either determining or collecting a particular tax liability and when directly connected to that purpose. While a contact made for the purpose of determining a particular taxpayer's tax liability may also affect the tax liability of one or more other taxpayers, such contact is not for that reason alone a contact "with respect to" the determination or collection of those other taxpayers' tax liabilities. Contacts to determine the tax status of a pension plan under chapter 1, subchapter D (Deferred Compensation) of the Internal Revenue Code, are not "with respect to" the determination of plan participants" tax liabilities. Contacts to determine the tax status of a bond issue under chapter 1, subchapter B, Part IV (Tax Exemption Requirements for State and Local Bonds) of the Internal Revenue Code, are not "with respect to" the determination of the bondholders' tax liabilities. Contacts to determine the tax status of an organization under chapter 1, subchapter F (Exempt Organizations) of the Internal Revenue Code, are not "with respect to" the determination of the contributors' liabilities, nor are any similar determinations "with respect to" any persons with similar relationships to the taxpayer whose tax liability is being determined or collected.

(B) *Determination or collection.* A contact is with respect to the "determination or collection" of the tax liability of such taxpayer when made during the administrative determination or collection process. For purposes of this paragraph (c) only, the administrative determination or collection process may include any administrative action to ascertain the correctness of a return, make a return when none has been filed, or determine or collect the tax liability of any person as a transferee or fiduciary under chapter 71 of Title 26.

(C) *Tax liability.* A *tax liability* means the liability for any tax imposed by Title 26 of the United States Code (including any interest, additional amount, addition to the tax, or penalty) and does not include the liability for any tax imposed by any other jurisdiction nor any liability imposed by other Federal statutes.

(D) *Such taxpayer.* A contact is with respect to the determination or collection of the tax liability of "such taxpayer" when made while determining or collecting the tax liability of a particular, identified taxpayer. Contacts made during an investigation of a particular, identified taxpayer are third-party contacts only as to the particular, identified taxpayer under investigation and not as to any other taxpayer whose tax liabilities might be affected by such contacts.

(ii) *Examples.* The following examples illustrate the operation of this paragraph (c)(3):

Example 1. As part of a compliance check on a return preparer, an IRS employee visits the preparer's office and reviews the preparer's client files to ensure that the proper forms and records have been created and maintained. This contact is not a third-party contact "with respect to" the preparer's clients because it is not for the purpose of determining the tax liability of the preparer's clients, even though the agent might discover information that would lead the agent to recommend an examination of one or more of the preparer's clients.

Example 2. A revenue agent is assigned to examine a taxpayer's return, which was prepared by a return preparer. As in all such examinations, the revenue agent asks the taxpayer routine questions about what information the taxpayer gave the preparer and what advice the preparer gave the taxpayer. As a result of the examination, the revenue agent recommends that the preparer be investigated for penalties under section 6694 or 6695. Neither the examination of the taxpayer's return nor the questions asked of the taxpayer are "with respect to" the determination of the preparer's tax liabilities within the meaning of section 7602(c) because the purpose of the contacts was to determine the taxpayer's tax liability, even though the agent discovered information that may result in a later investigation of the preparer.

Example 3. To help identify taxpayers in the florist industry who may not have filed proper returns, an IRS employee contacts a company that supplies equipment to florists and asks for a list of its customers in the past year in order to cross-check the list against filed returns. The employee later contacts the supplier for more information about one particular florist who the employee believes did not file a proper return. The first contact is not a contact with respect to the determination of the tax liability of "such taxpayer" because no particular taxpayer has been identified for investigation at the time the contact is made. The later contact, however, is with respect to the determination of the tax liability of "such taxpayer" because a particular taxpayer has been identified. The later contact is also "with respect to" the determination of that taxpayer's liability because, even though no examination has been opened on the taxpayer, the information sought could lead to an examination.

Example 4. A revenue officer, trying to collect the trust fund portion of unpaid employment taxes of a corporation, begins to investigate the liability of two corporate officers for the section 6672 Trust Fund Recovery Penalty (TFRP). The revenue officer obtains the signature cards for the corporation's bank accounts from the corporation's bank. The contact with the bank to obtain the signature cards is a contact with respect to the determination of the two identified corporate officers' tax liabilities because it is directly connected to the purpose of determining a tax liability of two identified taxpayers. It is not, however, a contact with respect to any other person not already under investigation for TFRP liability, even though the signature cards might identify other potentially liable persons.

Example 5. The IRS is asked to rule on whether a certain pension plan qualifies under section 401 so that contributions to the pension plan are excludable from the employees' incomes under section 402 and are also deductible from the employer's income under section 404. Contacts made with the plan sponsor (and with persons other than the plan sponsor) are not contacts "with respect to" the determination of the tax liabilities of the pension plan participants because the purpose of the contacts is to determine the status of the plan, even though that determination may affect the participants' tax liabilities.

Example 6(a). The IRS audits a TEFRA partnership at the partnership (entity) level pursuant to sections 6221 through 6233. The tax treatment of partnership items is at issue, but the respective tax liabilities of the partners may be affected by the results of the TEFRA partnership audit. With respect to the TEFRA partnership, contacts made with employees of the partnership acting within the scope of their duties or any partner are not section 7602(c) contacts because they are considered the equivalent of contacting the partnership. Contacts relating to the tax treatment of partnership items made with persons other than the employees of the partnership who are acting within the scope of their duties or the partners are section 7602(c) contacts with respect to the TEFRA partnership, and reasonable advance notice should be provided by sending the appropriate Letter 3164 to the partnership's tax matters partner (TMP). Individual partners who are merely affected by the partnership audit but who are not identified as subject to examination with respect to their individual tax liabilities need not be sent Letters 3164.

Example 6(b). In the course of an audit of a TEFRA partnership at the partnership (entity) level, the IRS intends to contact third parties regarding transactions between the TEFRA partnership and specific, identified partners. In addition to the partnership's TMP, the specific, identified partners should also be provided advance notice of any third-party contacts relating to such transactions.

(4) *Discloses the identity of the taxpayer being investigated*—(i) *Explanation.* An IRS employee discloses the taxpayer's identity whenever the employee knows or should know that the person being contacted can readily ascertain the taxpayer's identity from the information given by the employee.

(ii) *Examples.* The following examples illustrate this paragraph (c)(4):

Example 1. A revenue agent seeking to value the taxpayer's condominium calls a real estate agent and asks for a market analysis of the taxpayer's condominium, giving the unit number of the taxpayer's condominium. The revenue agent has revealed the identity of the taxpayer, regardless of whether the revenue agent discloses the name of the taxpayer, because the real estate agent can readily ascertain the taxpayer's identity from the address given.

Example 2. A revenue officer seeking to value the taxpayer's condominium calls a real estate agent and, without identifying the taxpayer's unit, asks for the sales prices of similar units recently sold and listing prices of similar units currently on the market. The revenue officer has not revealed the identity of the taxpayer because the revenue officer has not given any information from which the real estate agent can readily ascertain the taxpayer's identity.

(5) *Discloses the association of the IRS employee with the IRS.* An IRS employee discloses his association with the IRS whenever the employee knows or should know that the person being contacted can readily ascertain the association from the information given by the employee.

(d) *Pre-contact notice*—(1) *In general.* An officer or employee of the IRS may not make third-party contacts without providing reasonable notice in advance to the taxpayer that contacts may be made. The pre-contact notice may be given either orally or in writing. If written notice is given, it may be given in any manner that the IRS employee responsible for giving the notice reasonably believes will be received by the taxpayer in advance of the third-party contact. Written notice is deemed reasonable if it is—

(i) Mailed to the taxpayer's last known address;

(ii) Given in person;

(iii) Left at the taxpayer's dwelling or usual place of business; or

(iv) Actually received by the taxpayer.

(2) *Pre-contact notice not required.* Pre-contact notice under this section need not be provided to a taxpayer for third-party contacts of which advance notice has otherwise been provided to the taxpayer pursuant to another statute, regulation or administrative procedure. For example, Collection Due Process notices sent to taxpayers pursuant to section 6330 and its regulations constitute reasonable advance notice that contacts with third parties may be made in order to effectuate a levy.

(e) *Post-contact reports*—(1) *Requested reports.* A taxpayer may request a record of persons contacted in any manner that the Commissioner reasonably permits. The Commissioner may set reasonable limits on how frequently taxpayer requests need be honored. The requested report may be mailed either to the taxpayer's last known address or such other address as the taxpayer specifies in the request.

(2) *Contents of record*—(i) *In general.* The record of persons contacted should contain information, if known to the IRS employee making the contact, which reasonably identifies the person contacted. Providing the name of the person contacted fully satisfies the requirements of this section, but this section does not require IRS employees to solicit identifying information from a person solely for the purpose of the post-contact report. The record need not contain any other information, such as the nature of the inquiry or the content of the third party's response. The record need not report multiple contacts made with the same person during a reporting period.

(ii) *Special rule for employees.* For contacts with the employees, officers, or

fiduciaries of any entity who are acting within the scope of their employment or relationship, it is sufficient to record the entity as the person contacted. A fiduciary, officer or employee shall be conclusively presumed to be acting within the scope of his employment or relationship during business hours on business premises. For purposes of this paragraph (e)(2)(ii), the term *entity* means any business (whether operated as a sole proprietorship, disregarded entity under § 301.7701–2 of the regulations, or otherwise), trust, estate, partnership, association, company, corporation, or similar organization.

(3) *Post-contact record not required.* A post-contact record under this section need not be made, or provided to a taxpayer, for third-party contacts of which the taxpayer has already been given a similar record pursuant to another statute, regulation, or administrative procedure.

(4) *Examples.* The following examples illustrate this paragraph (e):

Example 1. An IRS employee trying to find a specific taxpayer's assets in order to collect unpaid taxes talks to the owner of a marina. The employee asks whether the taxpayer has a boat at the marina. The owner gives his name as John Doe. The employee may record the contact as being with John Doe and is not required by this regulation to collect or record any other identifying information.

Example 2. An IRS employee trying to find a specific taxpayer and his assets in order to collect unpaid taxes talks to a person at 502 Fernwood. The employee asks whether the taxpayer lives next door at 500 Fernwood, as well as where the taxpayer works, what kind of car the taxpayer drives and whether the camper parked in front of 500 Fernwood belongs to the taxpayer. The person does not disclose his name. The employee may record the contact as being with a person at 502 Fernwood. If the employee then makes the same inquiries of another person on the street in front of 500 Fernwood, and does not learn that person's name, the latter contact may be reported as being with a person on the street in front of 500 Fernwood.

Example 3. An IRS employee examining a return obtains loan documents from a bank where the taxpayer applied for a loan. After reviewing the documents, the employee talks with the loan officer at the bank who handled the application. The employee has contacted only one "person other than the taxpayer." The bank and not the loan officer is the "person other than the taxpayer" for section 7602(c) purposes. The contact with the loan officer is treated as a contact with the bank because the loan officer was an employee of the bank and was acting within the scope of her employment with the bank.

Example 4. An IRS employee issues a summons to a third party with respect to the determination of a taxpayer's liability and properly follows the procedures for such summonses under section 7609, which requires that a copy of the summons be given to the taxpayer. This third-party contact need not be maintained in a record of contacts available to the taxpayer because providing a copy of the third-party summons to the taxpayer pursuant to section 7609 satisfies the post-contact recording and reporting requirement of this section.

Example 5. An IRS employee serves a levy on a third party with respect to the collection of a taxpayer's liability. The employee provides the taxpayer with a copy of the notice of levy form that shows the identity of the third party. This third-party contact need not be maintained in a record of contacts available to the taxpayer because providing a copy of the notice of levy to the taxpayer satisfies the post-contact recording and reporting requirement of this section.

(f) *Exceptions.* (1) *Authorized by taxpayer*—(i) *Explanation.* Section 7602(c) does not apply to contacts authorized by the taxpayer. A contact is "authorized" within the meaning of this section if—

(A) The contact is with the taxpayer's authorized representative, that is, a person who is authorized to speak or act on behalf of the taxpayer, such as a person holding a power of attorney, a corporate officer, a personal representative, an executor or executrix, or an attorney representing the taxpayer; or

(B) The taxpayer or the taxpayer's authorized representative requests or approves the contact.

(ii) *No prevention or delay of contact.* This section does not entitle any person to prevent or delay an IRS employee from contacting any individual or entity.

(2) *Jeopardy*—(i) *Explanation.* Section 7602(c) does not apply when the IRS employee making a contact has good cause to believe that providing the taxpayer with either a general pre-contact notice or a record of the specific person contacted may jeopardize the collection of any tax. For purposes of this section only, good cause includes a reasonable belief that providing the notice or record will lead to—

(A) Attempts by any person to conceal, remove, destroy, or alter records or assets that may be relevant to any tax examination or collection activity;

(B) Attempts by any person to prevent other persons, through intimidation, bribery, or collusion, from communicating any information that may be relevant to any tax examination or collection activity; or

(C) Attempts by any person to flee, or otherwise avoid testifying or producing records that may be relevant to any tax examination or collection activity.

(ii) *Record of contact.* If the circumstances described in this paragraph (f)(2) exist, the IRS employee must still make a record of the person contacted, but the taxpayer need not be provided the record until it is no longer reasonable to believe that providing the record would cause the jeopardy described.

(3) *Reprisal*—(i) *In general.* Section 7602(c) does not apply when the IRS employee making a contact has good cause to believe that providing the taxpayer with either a general pre-contact notice or a specific record of the person being contacted may cause any person to harm any other person in any way, whether the harm is physical, economic, emotional or otherwise. A statement by the person contacted that harm may occur against any person is sufficient to constitute good cause for the IRS employee to believe that reprisal may occur. The IRS employee is not required to further question the contacted person about reprisal or otherwise make further inquiries regarding the statement.

(ii) *Examples.* The following examples illustrate this paragraph (f)(3):

Example 1. An IRS employee seeking to collect unpaid taxes is told by the taxpayer that all the money in his and his brother's joint bank account belongs to the brother. The IRS employee contacts the brother to verify this information. The brother refuses to confirm or deny the taxpayer's statement. He states that he does not believe that reporting the contact to the taxpayer would result in harm to anyone but further states that he does not want his name reported to the taxpayer because it would appear that he gave information. This contact is not excepted from the statute merely because the brother asks that his name be left off the list of contacts.

Example 2. Assume the same facts as in *Example 1*, except that the brother states that he fears harm from the taxpayer should the taxpayer learn of the contact, even though the brother gave no information. This contact is excepted from the statute because the third party has expressed a fear of reprisal. The IRS employee is not required to make further inquiry into the nature of the brothers' relationship or otherwise question the brother's fear of reprisal.

Example 3. An IRS employee is examining a joint return of a husband and wife, who recently divorced. From reading the court divorce file, the IRS employee learns that the divorce was acrimonious and that the ex-husband once violated a restraining order issued to protect the ex-wife. This information provides good cause for the IRS employee to believe that reporting contacts which might disclose the ex-wife's location may cause reprisal against any person. Therefore, when the IRS employee contacts the ex-wife's new employer to verify salary information provided by the ex-wife, the IRS employee has good cause not to report that contact to the ex-husband, regardless of whether the new employer expresses concern about reprisal against it or its employees.

(4) *Pending criminal investigations*—(i) *IRS criminal investigations.* Section 7602(c) does not apply to contacts made during an investigation, or inquiry to determine whether to open an investigation, when the investigation or inquiry is—

(A) Made against a particular, identified taxpayer for the primary purpose of evaluating the potential for criminal prosecution of that taxpayer; and

(B) Made by an IRS employee whose primary duties include either identifying or investigating criminal violations of the law.

(ii) *Other criminal investigations.* Section 7602(c) does not apply to contacts which, if reported to the taxpayer, could interfere with a known pending criminal investigation being conducted by law enforcement personnel of any local, state, Federal, foreign or other governmental entity.

(5) *Governmental entities.* Section 7602(c) does not apply to any contact with any office of any local, state, Federal or foreign governmental entity except for contacts concerning the taxpayer's business with the government office contacted, such as the taxpayer's contracts with or employment by the office. The term *office* includes any agent or contractor of the office acting in such capacity.

(6) *Confidential informants.* Section 7602(c) does not apply when the employee making the contact has good cause to believe that providing either the pre-contact notice or the record of the person contacted would identify a confidential informant whose identity would be protected under section 6103(h)(4).

(7) *Nonadministrative contacts*—(i) *Explanation.* Section 7602(c) does not apply to contacts made in the course of a pending court proceeding.

(ii) *Examples.* The following examples illustrate this paragraph (f)(7):

Example 1. An attorney for the Office of Chief Counsel needs to contact a potential witness for an upcoming Tax Court proceeding involving the 1997 and 1998 taxable years of the taxpayer. Section 7602(c) does not apply because the contact is being made in the course of a pending court proceeding.

Example 2. While a Tax Court case is pending with respect to a taxpayer's 1997 and 1998 income tax liabilities, a revenue agent is conducting an examination of the taxpayer's excise tax liabilities for the fiscal year ending 1999. Any third-party contacts made by the revenue agent with respect to the excise tax liabilities would be subject to the requirements of section 7602(c) because the Tax Court proceeding does not involve the excise tax liabilities.

Example 3. A taxpayer files a Chapter 7 bankruptcy petition and receives a discharge. A revenue officer contacts a third party in order to determine whether the taxpayer has any exempt assets against which the IRS may take collection action to enforce its federal tax lien. At the time of the contact, the bankruptcy case has not been closed. Although the bankruptcy proceeding remains pending, the purpose of this contact relates to potential collection action by the IRS, a matter not before or related to the bankruptcy court proceeding.

(g) *Effective Date.* This section is applicable on December 18, 2002.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 02–31857 Filed 12–17–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

[BOP–1064–F]

RIN 1120–AA59

Incoming Publications: Nudity and Sexually Explicit Material or Information

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, we finalize our interim final rule which implemented a statutory provision prohibiting the Bureau of Prisons (Bureau) from using appropriated funds to "distribute or make available any commercially published information or material" that features nudity or is sexually explicit. We now publish this rule as a final rule and further clarify that "commercially published information or material" includes photographs or other pictorial depictions.

DATES: This rule is effective on December 18, 2002.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION:

History of This Rule

The Fiscal Year 1997 Omnibus Budget Act (Pub. L. 104–208) first required that we use no funds available to the Bureau "to distribute or make available any commercially published information or material to a prisoner when it is made known to [us] that such information or material is sexually explicit or features nudity."

On November 6, 1996, we published procedures implementing this provision in the Act as an interim final rule (61 FR 57568). The rule, effective December 1, 1996, became 28 CFR 540.70—540.72.

Within the two months after publishing this rule, we received six comments from individuals challenging the constitutionality of the statutory provisions underlying these rules on First Amendment grounds. The commenters generally argued that denying inmates access to information or material that is sexually explicit or features nudity violated their constitutional right to freedom of speech and communication.

Before we could respond to these comments, a group of inmates and publishers promptly challenged the constitutionality of the policy implemented by these rules in the case of *Amatel* v. *Reno,* 975 F. Supp. 365 (D.D.C. 1997). On August 12, 1997, the court in Amatel issued a nationwide preliminary injunction prohibiting us from using these procedures. We then suspended application of these rules.

On September 15, 1998, the U.S. Court of Appeals for the District of Columbia Circuit reversed the district court's preliminary injunction. *Amatel* v. *Reno,* 156 F.3d 192 (D.C. Cir. 1998) (rehearing *en banc* denied Dec. 23, 1998). They further appealed to the U.S. Supreme Court, which denied certiorari on June 24, 1999, *Amatel* v. *Reno,* 119 S. Ct. 2392 (1999).

Amatel upheld the apparent constitutionality of this statutory provision. By lifting the injunction, the U.S. Court of Appeals in *Amatel* allowed us to reimplement the policy mandated by statute through these rules.

What We Are Doing Now

In this rule, we finalize 28 CFR 540.70 through 540.72, as originally published in 1996 (61 FR 57568). We also amend § 540.72(b)(1) to clarify that "commercially published information or material" includes photographs or other pictorial depictions in response to a recent trend towards receipt of such prohibited materials. These photographs often arrive as commercially published information or material and are, therefore, prohibited by this rule. Although our previous definition of commercially published information or material did not explicitly include photographs or pictorial depictions, that prohibition is certainly implicit.

The Fiscal Year 1997 Omnibus Budget Act (Pub. L. 104–208) (1997 Budget Act)

prohibited us from using authorized funds to "distribute or make available any commercially published information or material" (emphasis added) if it is "sexually explicit or features nudity". This effectively requires us to prohibit dissemination in our institutions of this type of material. We do not have the discretion to allow inmates to receive the information or material that the statute prohibits. We therefore interpret this provision to prohibit mailroom intake processing of this type of material.

The prohibition in the 1997 Budget Act was later repeated in section 615 of the Fiscal Year 2000 Omnibus Budget Act (Pub. L. 106–113) and section 614 of the D.C. Appropriations Act for Fiscal Year 2001 (Pub. L. 106–553). Currently, the prohibition is found in section 614 of the Department of Commerce, Justice, and State, The Judiciary and Related Agencies Appropriations Act 2002 (P.L. 107–77)(2002 Budget Act). We therefore clarify in our regulation that "commercially published information or material" includes photographs or pictorial depictions.

Although photographs and pictorial depictions that are "sexually explicit" or feature nudity are implicitly banned by the aforementioned statutory prohibitions, this clarification is necessary because inmates and members of the public misread our previous rule, which did not explicitly mention photographs and pictorial depictions. A recent trend involves inmates receiving sexually explicit or nude photographs from apparently commercial photography studios or from individual members of the public attempting to set up a form of paid correspondence through which inmates would buy photographs that were sexually explicit or featured nudity.

Inmates and members of the general public have the misapprehension that this type of "paid correspondence" (soliciting payment for photographs that are sexually explicit or feature nudity) is not prohibited by either (1) the general restriction in 28 CFR 540.12(a) on correspondence that threatens the security, discipline and good order an institution; or (2) our rule in 28 CFR 540.72(b)(1) defining "commercially published information or material" prohibited under section 614 of the 2002 Budget Act.

The general restriction in 28 CFR 540.12(a), which allows Wardens to "establish and exercise controls to protect individuals, and the security, discipline, and good order of the institution" encompasses the Bureau's discretion to reject photographs featuring nudity and explicit sexuality from non-commercial sources, such as an inmate's wife or girlfriend. Such personal photographs typically cause disciplinary problems among inmates and compromise institution security and good order. However, the "paid correspondence" incidents described above could be viewed as commercial correspondence which, arguably, could be thought beyond the reach of the Warden's controls on personal correspondence.

Likewise, it was argued that the restrictions on commercial correspondence did not apply to this form of "paid correspondence" because it was not explicitly encompassed in the previous rule. 28 CFR 540.72(b)(1) defined "commercially published information or material" under the statutory prohibition as: "any book, booklet, pamphlet, magazine, periodical, newsletter, or similar document, including stationery and greeting cards, published by any individual, organization, company, or corporation which is distributed or made available through any means or media for a commercial purpose. This definition includes any portion extracted, photocopied, or clipped from such items."

This definition represented the Bureau's efforts to encompass all "material" featuring nudity or explicit sexuality contemplated by the statute. Although we believed our definition of commercially published information or material was sufficiently inclusive, inmates and members of the public have misinterpreted this definition as not applicable to photographs or pictorial depictions that are sexually explicit or featuring nudity. This rule change is therefore necessary to explicitly clarify that the statutory prohibition in section 614 of the 2002 Budget Act of all "commercially published information or material" that is "sexually explicit or features nudity" includes photographs and pictorial depictions. We intend this change to eliminate current misunderstanding of the statute by inmates and the general public.

Inmates are allowed to possess material that is "sexually explicit or features nudity" if that material was in their possession before this interim final rule became effective on December 1, 1996. Other regulations prohibit inmates from receiving sexually explicit materials during visits or through personal mail. Similarly, inmates may not receive, through the mail or otherwise, any materials which threaten the safety, security, good order of the institution, or violates criminal laws. Such materials are prohibited by the these rules, and the rules on inmate correspondence, part 540, subpart B.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review", section 1(b), Principles of Regulation. The Director of the Bureau of Prisons has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local and tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We want to make Bureau documents easier to read and understand. If you can suggest how to improve the clarity of these regulations, call or write to Sarah Qureshi at the address or telephone number listed above.

List of Subjects in 28 CFR Part 540

Prisoners.

Kathleen Hawk Sawyer,
Director, Bureau of Prisons.

Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend 28 CFR part 540 as follows.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for part 540 is revised to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

§ 540.72 [Amended]

2. Amend § 540.72 by adding "photograph or other pictorial depiction," before "or similar document" in paragraph (b)(1).

[FR Doc. 02–31660 Filed 12–17–02; 8:45 am]
BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

[BOP–1083–I]

RIN 1120–AA78

Inmate Discipline: Prohibited Acts: Change in Code Numbers for Agency Tracking Purposes Only

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim final rule.

SUMMARY: This document makes a minor change to a recently published Bureau of Prisons (Bureau) final rule on inmate discipline regarding violations of the Bureau's telephone policy. Before we published the final rule, our prohibited acts code number 406 referred to minor mail *and* telephone infractions (in the existing low moderate severity level category prohibited act). When we published our final rule, we wished to distinguish minor mail infractions from minor telephone infractions, so we created a new code number, 497, for minor telephone infractions. Code number 406, therefore, covered only minor mail infractions. However, if we use the code number 406 in the Bureau's computer tracking system, that code number will retrieve both mail *and* telephone minor infractions, instead of *only* the mail infractions covered by the code number 406. For clarity, therefore, we reserve code number 406 and assign the code number 410 to the prohibited act covering minor mail infractions. This correction, while maintaining the language of 406, as published in the previous rule, only changes the number of that prohibited act to 410. We make this change to be able to more accurately track specific telephone-related acts using code number 497 only or mail-related prohibited acts using code number 410 only.

DATES: *Effective:* December 18, 2002. *Comments:* Comments by February 18, 2003.

ADDRESSES: Send comments to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: The Bureau makes this minor correction to its final rule published on October 6, 2000 (64 FR 59724), on inmate discipline regarding violations of the telephone policies.

Why Are We Making This Rule Change?

Before we published the October 6th final rule, our prohibited acts code number 406 referred to minor mail *and* telephone infractions (in the existing low moderate severity level category prohibited act).

When we published the October 6th final rule, we wished to distinguish minor mail infractions from minor telephone infractions, so we created a new code number, 497, for minor telephone infractions. Code number 406, therefore, covered only minor mail infractions.

However, if we use the code number 406 in the Bureau's computer tracking system, that code number will retrieve both mail *and* telephone minor infractions, instead of *only* the mail infractions covered by the code number 406.

For clarity, therefore, we reserve code number 406 and assign the code number 410 to the prohibited act covering minor mail infractions. This correction, while maintaining the language of 406, as published in the previous rule, only changes the number of that prohibited act to 410. We make this change to be able to more accurately track specific telephone-related acts using code number 497 only or mail-related prohibited acts using code number 410 only.

Why Are We Making This Change as an Interim Final Rule?

The Administrative Procedure Act (5 U.S.C. 553) allows exceptions to notice-and-comment rulemaking for "(A)interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or (B) when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."

This rulemaking is exempt from normal notice-and-comment procedures because it is a minor clarification of currently existing Bureau policy. We are modifying our rule to enable us to more accurately track specific prohibited acts using original prohibited act code numbers in our computer tracking system. The language of the prohibited act remains the same, only the code number that refers to it changes.

Because this change reflects current Bureau policy and is a minor clarification of current agency procedure and practice, we find that normal notice-and-comment rulemaking is unnecessary. We are, however, allowing the public to comment on this rule change by publishing it as an interim final rule.

Where To Send Comments

You can send written comments on this rule to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

We will consider comments received during the comment period before taking final action. We will try to consider comments received after the end of the comment period. In light of comments received, we may change the rule.

We do not plan to have oral hearings on this rule. All the comments received remain on file for public inspection at the above address.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive

Order 12866, "Regulatory Planning and Review", section 1(b), Principles of Regulation. The Director, Bureau of Prisons has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States; on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Sarah Qureshi, Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, 202–514–6655.

List of Subjects in 28 CFR Part 541

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend part 541 in subchapter C of 28 CFR, chapter V as follows.

Subchapter C—Institutional Management

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

1. The authority citation for part 541 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

2. In § 541.13, Table 3 is amended by redesignating the text of code 406 as 410 under the low moderate category, and adding the phrase "(Not to be used)" after code 406.

§ 541.13 Prohibited acts and disciplinary severity scale.

* * * * *

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE

Code	Prohibited acts	Sanctions
.	.	.
LOW MODERATE CATEGORY		
*	*	*
406	(Not to be used)	
*	*	*

[FR Doc. 02–31661 Filed 12–17–02; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles–Long Beach 02–006]

RIN 2115–AA97

Security Zone; Waters Adjacent to Diablo Canyon Nuclear Power Plant, Avila Beach, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard has established a security zone in the waters adjacent to Diablo Canyon Nuclear Power Plant near Avila Beach, California. This action is necessary to ensure public safety and prevent sabotage or terrorist acts against the power plant and individuals near or in the power plant facilities and the surrounding communities. Entry into this zone will be prohibited unless specifically authorized by the Captain of the Port Los Angeles-Long Beach.

DATES: This rule is effective January 17, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [COTP Los Angeles-Long Beach 02–006] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office/Group Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Rob Griffiths, Assistant Chief of Waterways Management Division, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 29, 2002, we published an interim rule with request for comments entitled "Security Zone; Waters Adjacent to Diablo Canyon Nuclear Power Plant, Avila Beach, CA" in the **Federal Register** (67 FR 15117). We received no letters commenting on the rule. No public hearing was requested, and none was held.

Previously, on October 24, 2001, we published a temporary final rule (TFR) entitled "Security Zones: Los Angeles Harbor, Los Angeles, CA and Avila Beach, CA" in the **Federal Register** (66 FR 53713) that expired on March 29, 2002.

The Captain of the Port has determined the need for continued security regulations exists. Accordingly, this rulemaking makes permanent the temporary security zone published in the **Federal Register** on March 29, 2002.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and growing tensions in Iraq have made it prudent for U.S. ports and properties of national significance to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on the waterfronts of nuclear power plants by establishing security zones to aid in the waterside protection of these facilities. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against a nuclear power plant would have on the surrounding area and communities, the Coast Guard is establishing a security zone around the Diablo Canyon Nuclear Power Plant near Avila Beach, California. This security zone helps the Coast Guard to prevent vessels or persons from engaging in terrorist actions against nuclear power plants.

Discussion of Comments and Changes

We received no letters commenting on the interim rule. No public hearing was requested, and none was held. Therefore, we have made no changes and will implement the provisions of the interim rule as written.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We received no letters commenting on the interim rule. No public hearing was requested, and none was held.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

We received no letters commenting on the interim rule. No public hearing was requested, and none was held.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. We received no letters commenting on the interim rule. No public hearing was requested, and none was held.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

We received no letters commenting on the interim rule. No public hearing was requested, and none was held.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

We received no letters commenting on the interim rule. No public hearing was requested, and none was held.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

We received no letters commenting on the interim rule. No public hearing was requested, and none was held.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

We received no letters commenting on the interim rule. No public hearing was requested, and none was held.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

We received no letters commenting on the interim rule. No public hearing was requested, and none was held.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,

because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

We received no letters commenting on the interim rule. No public hearing was requested, and none was held.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

We received no letters commenting on the interim rule. No public hearing was requested, and none was held.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are establishing a security zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.1155 to read as follows:

§ 165.1155 Security Zone; Diablo Canyon Nuclear Power Plant, Avila Beach, California.

(a) *Location.* The following area is a security zone: all waters of the Pacific Ocean, from surface to bottom, within a 2,000 yard radius of Diablo Canyon Nuclear Power Plant centered at position 35°12′23″ N, 120°51′23″ W. [Datum: NAD 83].

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Los Angeles-Long Beach, or his or her designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 1–800–221–8724 or on VHF-FM channel 16 (156.8 MHz). If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: December 6, 2002.

J. M. Holmes,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach.

[FR Doc. 02–31767 Filed 12–17–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY 139–200307(a); FRL–7423–3]

Approval and Promulgation of Implementation Plans for Kentucky: Source-Specific Revision for Lawson Mardon Packaging

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a source-specific revision to the State Implementation Plan (SIP) of the Commonwealth of Kentucky. This revision allows Lawson Mardon Packaging, USA, Corporation to have an alternative compliance averaging period of 30 days instead of the 24-hour averaging period specified by Kentucky air quality regulations 59:210 and 59:212.

DATES: This direct final rule is effective February 18, 2003 without further notice, unless EPA receives adverse comment by January 17, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Michele Notarianni, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).)

Copies of the Commonwealth's submittal are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (Michele Notarianni, 404/562–9031, *notarianni.michele@epa.gov*)

Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. (502/573–3382)

FOR FURTHER INFORMATION CONTACT: Michele Notarianni at address listed above or 404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

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I. Today's Action
II. EPA's Evaluation
III. Final Action

I. Today's Action

The EPA is approving a source-specific revision into the Kentucky SIP for the Lawson Mardon Packaging, USA, Corporation (LMP) located in Shelby County, Kentucky. The revision was submitted to EPA by Kentucky on March 4, 2002. This revision allows LMP to use a 30-day averaging period instead of the required 24-hour averaging period as specified in Kentucky air quality regulations 59:210, "New fabric, vinyl and paper surface coating operations," and 59:212, "New graphic arts facilities using rotogravure and flexography." The effect of today's approval action is that once LMP's synthetic minor operating permit is finalized, LMP shall determine compliance with volatile organic compound (VOC) emission rates allowed by its permit every 30 days instead of every 24 hours.

II. EPA's Evaluation

The LMP plant in Shelbyville, Kentucky manufactures flexible packaging for the food and pharmaceutical industries. LMP currently operates a total of 15 printing and/or laminating machines. The plant's proposed, facility-wide synthetic minor operating permit covers all 15 machines, and is conditioned on EPA's approval of the permit as a source-specific SIP revision.

The Agency's policy regarding emissions time averaging for existing sources of VOCs is established and clarified in a January 20, 1984, EPA Memorandum from John O'Connor, Acting Director of the Office of Air Quality Planning and Standards, to Air Directors in Regions I-X. The policy requires that SIP revisions relating to VOC control must maintain the National Ambient Air Quality Standards (NAAQS) for ozone. To allow VOC compliance averaging periods greater than 24 hours, the policy establishes four conditions which are summarized below along with EPA's analysis of the LMP submittal.

Condition 1: Real reductions in actual emissions must be achieved, consistent with Reasonably Available Control Technology (RACT) levels in SIPs or Agency control technique guidelines. *EPA Analysis:* Incinerators are used as add-on controls on those production lines required to have them. These controls meet or exceed RACT control levels.

Condition 2: Averaging periods must be as short as practicable, and in no case longer than 30 days. *EPA Analysis:* LMP has requested a 30-day compliance averaging period, which meets this condition. LMP supported its request with a statistical analysis demonstrating that daily, maximum potential VOC emissions are significantly less than daily, maximum allowable VOC emissions. The level of confidence for the statistical analysis is 99.73 percent.

Condition 3: A demonstration must be made that the use of averaging periods greater than 24 hours will not jeopardize the ozone NAAQS or the Reasonable Further Progress (RFP) plan for the area. *EPA Analysis:* LMP submitted a statistical analysis to compare 24-hour and 30-day compliance averaging results against maximum allowable permit VOC emission rates. The analysis accounts for potential daily emission fluctuations and shows that actual VOC emissions for eight of LMP's older machines are consistently and far below the allowable VOC emission rates. The analysis does not include data from seven, newer machines, which were installed after submittal of LMP's permit application, because data were not available at that time. However, because the seven, newer machines have better overall control efficiencies and less variation than the older machines, the statistical analysis for the existing machines may also be applied to the new machines as representative. A further consideration is that LMP uses continuous emission monitoring systems to ensure its control equipment is operating properly and within limits.

Condition 4: Sources in areas with measured violations cannot be considered for longer term averaging until the SIP has been revised to demonstrate attainment of the ozone NAAQS and maintenance of RFP. *EPA Analysis:* Shelby County, Kentucky is currently classified as unclassified/attainment for the 1-hour ozone NAAQS and is currently attaining the standard. The closest, downwind monitor has not shown an exceedance of the 1-hour NAAQS within the last five years. Conditions addressing RFP plans are not applicable to 1-hour ozone attainment areas.

III. Final Action

EPA is approving this source-specific revision to the Kentucky SIP allowing LMP to use a 30-day compliance averaging period because it is consistent with the requirements of the Clean Air Act and EPA policy. Use of an alternative averaging period is not expected to jeopardize maintenance of the 1-hour ozone NAAQS in Shelby County for reasons discussed in section II.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 18, 2003 without further notice unless the Agency receives adverse comments by January 17, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 18, 2003 and no further action will be taken on the proposed rule.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the

National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 18, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 5, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart S—Kentucky

2. Section 52.920(d) is amended by adding a new entry at the end of the table to read as follows:

§ 52.920 Identification of plan.

* * * * *

(d) * * *

EPA—APPROVED KENTUCKY SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit number	State effective date	EPA approval date	Federal Register Notice
Lawson Mardon USA Packaging Corporation	N/A	February 18, 2003	December 18, 2002	[Insert FR page citation]

* * * * *

[FR Doc. 02–31666 Filed 12–17–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 32

[CC Docket No. 02–269; FCC 02–309]

Federal-State Joint Conference on Accounting Issues

AGENCY: Federal Communications Commission.

ACTION: Final rule; delay of effective date.

SUMMARY: This order suspends the implementation of four previously adopted accounting and reporting rule changes until July 1, 2003 to allow the recently established Federal-State Joint Conference on Accounting Issues to review them because of the great interest in these changes by Joint Conference members.

DATES: The effective date for amendments to 47 CFR 32.5200, 32.6562 and 32.6620 published at 67 FR 5670, February 6, 2002, is further delayed until July 1, 2003.

FOR FURTHER INFORMATION CONTACT: Jane Jackson, Associate Chief, Wireline Competition Bureau, (202) 418–1500.

SUPPLEMENTARY INFORMATION: On November 5, 2001, the Commission released a Report and Order, 67 FR 5670, February 6, 2002, as part of its biennial review of accounting requirements and Automated Reporting Management Information System (ARMIS) reporting requirements. In the order, the Commission adopted a number of accounting and reporting requirement reforms. The reforms included the creation of several new part 32 Uniform System of Accounts subaccounts and the elimination or modification of other part 32 accounts and subaccounts and modification of ARMIS reporting requirements. Changes to the part 32 accounting rules are scheduled to take effect January 1, 2003. On March 8, 2002, BellSouth Corporation, SBC Communications Inc., and Verizon filed a joint petition for reconsideration asking that two newly-created subaccounts—the wholesale and retail subaccounts to Account 6620, Services—be eliminated. The petitioners also requested that the Commission change the reporting of "Loop Sheath Kilometers" back to "Sheath Kilometers." The petitioners argued that the Commission should delay implementation of the relevant rule changes pending review of the arguments raised in their earlier reconsideration petition. The petitioners asserted that implementation of the rule changes will be very costly and time-consuming, and requested that they not be required to undertake this work while the Commission considers their petition. AT&T Corp. opposed both the petition for reconsideration and the request to delay implementation. On September 5, 2002, the Commission convened the Federal-State Joint Conference on Accounting Issues, which is undertaking "a cooperative federal and state review of regulatory accounting and reporting requirements in order to determine their adequacy and effectiveness in the current market and make recommendations for improvements." In preliminary discussions, members of the Joint Conference identified the following two part 32 accounting changes adopted earlier that they believe should be subject to further consideration before implementation: the consolidation of Account 5230, Directory revenue, with other miscellaneous revenue accounts into Account 5200, Miscellaneous revenue; and the consolidation of the depreciation and amortization expense accounts (Accounts 6561 through 6565) into Account 6562, Depreciation and amortization expenses. The Commission believes that further consideration of these changes by the Joint Conference is reasonable and defers the implementation of the following accounting and reporting requirement rule changes for six months: (1) The consolidation of Accounts 6621 through 6623 into Account 6620, with subaccounts for wholesale and retail; (2) the consolidation of Account 5230, Directory revenue, into Account 5200, Miscellaneous revenue; (3) the consolidation of the depreciation and amortization expense accounts (Accounts 6561 through 6565) into Account 6562, Depreciation and amortization expenses; and (4) the revised "Loop Sheath Kilometers" data collection in Table II of ARMIS Report 43–07. The effective date for the rule changes to Accounts 5200, 6562, and 6620 had earlier been extended to January 1, 2003, published on April 24, 2002, at 67 FR 20052, and now are further extended to July 1, 2003. The change affecting ARMIS Report 43–07 is extended to July 1, 2003.

Federal Communications Commission.

Jane E. Jackson,

Associate Chief, Wireline Competition Bureau.

[FR Doc. 02–31606 Filed 12–17–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 121202A]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: General category closure.

SUMMARY: NMFS has determined that the 2002 fishing year Atlantic bluefin tuna (BFT) General category quota will be attained by December 15, 2002. Therefore, the General category fishery will be closed effective 11:30 p.m. on December 15, 2002. This action is being taken to prevent overharvest of the total adjusted General category quota of 882.0 metric tons (mt).

DATES: Effective 11:30 p.m. local time on December 15, 2002, through May 31, 2003.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Dianne Stephan,978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories. The General category landings quota, including time-period subquotas and the New York Bight set-aside, are specified annually as required under § 635.27(a)(1). The 2002 fishing year General category quota and effort control specifications were issued on October 1, 2002 #(67 FR 61537).

General Category Closure

NMFS is required, under § 635.28 (a)(1), to file with the Office of the **Federal Register** for publication, notification of closure when a BFT quota is reached, or is projected to be reached. On and after the effective date and time of such closure notification, for the remainder of the fishing year, or for a specified period as indicated in the notification, fishing for, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period, or until such date as specified in the notification.

Adjustments to the 2002 fishing year BFT quota specifications issued pursuant to § 635.27 (FR cites on 67 FR 68045 Nov. 8 '02 adjustments and 67 FR 71487 Dec. 2 '02) set a total coastwide General category quota of 882.0 mt of large medium and giant BFT to be harvested from the regulatory area during the 2002 fishing year. Based on reported landings and effort, NMFS projects that this quota will be reached by December 15, 2002. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT intended for sale by persons aboard vessels in the General or Charter/Headboat categories must cease at 11:30 p.m. local time December 15, 2002. The intent of this closure is to prevent overharvest of the adjusted quota established for the General category.

General category permit holders may tag and release BFT while the General category is closed, subject to the requirements of the tag-and-release program at § 635.26.

Vessels permitted in the HMS Charter/Headboat category may continue to fish for and retain BFT under the Angling category regulations. The current Angling category daily retention limit, effective from November 1, 2002 through May 31, 2003 (67 FR 39869, June 11, 2002) is one large school or small medium BFT (measuring from 47 to less than 73 inches (from 119 to less than 185 cm) curved fork length). In addition, HMS Charter/Headboat category vessels may continue to retain one large medium or giant "trophy" BFT, measuring 73 inches (185 cm) or greater, per fishing year (June 1 through May 31). Trophy BFT can not be sold and all BFT landed under the Angling category quota must be reported by calling 1–888–872–8862 or by using the Internet at *www.nmfspermits.com*, unless there is a landing tag requirement in the state of landing.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds for good cause that providing prior notice and public comment for this action, as required under 5 U.S.C. 553 (b) (B), is impracticable and contrary to the public interest. This closure is intended to prevent the overharvest of the adjusted BFT quota established for the coastwide General category. The fishery is currently underway and any delay in closure could cause the fishery to exceed the quota and be inconsistent with domestic and international requirements and objectives. For these reasons the AA also finds good cause to waive the 30–day delay in effective date pursuant to 5 U.S.C. 553 (d) (1) and (3). NMFS provides as much advance notification of the closure as possible by publishing the closure notice in the **Federal Register**, faxing notification to individuals on the HMS FAX Network and to known fishery representatives, announcing the notice on the Atlantic Tunas Information Line, and announcing the closure notice over NOAA Weather and Coast Guard radio channels. This action is required under 50 CFR 635.28(a) (1) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 13, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–31853 Filed 12–13–02; 2:38 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 020325070–2296–03; I.D. 071299C]

RIN 0648–AM91

Atlantic Highly Migratory Species (HMS) Fishing Vessel Permits; Charter Boat Operations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: Under the framework provisions of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), NMFS amends the consolidated regulations governing the Atlantic HMS fisheries to define operations and regulations for HMS Charter/Headboats (CHBs), require an Atlantic HMS recreational permit, adjust the time frame for permit category changes for Atlantic HMS and Atlantic tunas permits, clarify the regulations regarding the retention of Atlantic bluefin tuna (BFT) in the Gulf of Mexico by recreational and HMS CHB vessels, and allow NMFS to set differential BFT retention limits by vessel type (*e.g.*, charter boats, headboats).

DATES: Effective March 1, 2003.

ADDRESSES: Copies of supporting documents, including the HMS FMP, are available from the Highly Migratory Species Management Division, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. The supporting documents will also be posted on the e-Comments Web site listed under *http://www.nmfs.noaa.gov* and the HMS Web site *http://www.nmfs.noaa.gov/sfa/hmspg.html*. Comments on the burden-hour estimates or other aspects of the collection of information that are part of this rulemaking can be submitted to NMFS, but must also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Brad McHale at (978) 281–9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas, swordfish, and billfish are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator (AA) for Fisheries, NOAA. Sharks are managed solely under the authority of the Magnuson-Stevens Act.

Background

Background information about the need for revisions to the HMS regulations was provided in the preamble to the proposed rule (67 FR 20716, April 26, 2002), and is not repeated here. By this final rule, NMFS defines operations and regulations for HMS CHBs; requires an Atlantic HMS recreational permit; adjusts the time frame for permit category changes for Atlantic HMS and Atlantic tunas permits; and clarifies the regulations regarding the retention of BFT in the Gulf of Mexico by recreational and HMS CHB vessels. This final rule also amends the regulatory text to clarify the authority to set differential BFT retention limits by vessel type (*e.g.*, charter boats, headboats) which was restated less clearly when the HMS regulations were consolidated under 50 CFR part 635 (64 FR 29090, May 28, 1999).

Changes from the Proposed Rule

This final rule changes some of the proposed revisions to the regulatory text and some paragraphs have been consolidated. In § 635.4, several proposed revisions to paragraphs (b) and (d) have been revised, the references to certain other permit requirements in the proposed revisions to paragraphs (b) and (d) have been consolidated into paragraph (a), and paragraph (c) has been added. These changes were made to clarify the intent of the regulatory text, to reduce duplication and to facilitate enforcement of the regulations.

Comments and Responses

NMFS conducted three public hearings on the proposed rule and received written, oral, and electronic comments (through the NMFS e-Comments pilot project website at *http://www.nmfs.noaa.gov*) over a 30–day comment period. The majority of the comments were in support of the proposed actions. Responses to specific comments on the issues contained in the proposed rule are provided here.

Comment 1: NMFS has received comments stating that applying the recreational yellowfin tuna (YFT) retention limit to HMS CHB vessels at all times precludes legitimate commercial activity when the vessels are not carrying fee-paying anglers. Commenters have also indicated that some HMS CHB vessels have historically conducted commercial fishing trips for YFT when not operating as a for-hire vessel. Some commenters stated that the HMS FMP did not specifically address commercial fishing by the for-hire fleet and the impacts of prohibiting such commercial fishing on this segment of the fishery. Other commenters stated that HMS CHB vessels should not have the ability to land as many YFT as they can on commercial vessels because the stock is currently defined as fully exploited and an increase in fishing mortality could have adverse effects.

Response: NMFS agrees that applying the recreational YFT retention limit to HMS CHB vessels at all times precludes legitimate commercial activity when the vessels are not carrying fee-paying passengers. The HMS CHB permit is considered a commercial tuna permit in that tunas caught by vessels possessing the permit may be sold. Prior to July 1, 1999, CHB vessels had the ability to retain and sell all YFT that were caught, as long as they met the minimum size requirements. In 2000, commercial handgear landings of YFT totaled 283.7 metric tons (mt), amounting to approximately 4 percent of total U.S. YFT landings, or 9 percent of all commercial landings. Dealer weighout data reported to NMFS included 839 handgear trips that sold YFT from 1998 through 2000, and about 10 percent of these trips were reported by CHBs. Thus, although commercial YFT landings by CHB vessels may be significant to individual vessel operators, they represent less than 1 percent of total U.S. YFT landings.

NMFS has determined that allowing HMS CHB vessels to retain YFT under the commercial limits when not engaged in for-hire activities would not adversely affect the YFT stock. NMFS recognizes the dual nature of the operations of certain vessels issued the HMS CHB permit. Thus, the final rule defines for-hire fishing in a way that would allow such vessels to fish under commercial limits when not engaged in for-hire fishing. The definition of for-hire fishing is similar to that used in other U.S. fisheries operating in the Caribbean, Gulf of Mexico, and South Atlantic. For those vessels that engage in both for-hire and commercial fishing, the impact of this action is positive, as it clarifies the requirements to allow them to participate in both types of fisheries.

Comment 2: Many comments stated that requiring recreational permits for all HMS vessels is long over due. They noted that issuing an HMS Angling category permit will provide critical data by which to accurately assess the status of the Atlantic HMS fishery in the recreational sector. Other commenters stated that this permit requirement will even the playing field and protect the rights of both commercial and recreational fishermen. NMFS also received comments stating that it is essential to know the universe of participants and the total effort that is involved in the recreational sector of HMS fisheries. It was stated that the permits could be used to further our scientific understanding of these HMS. The comment stated that the permit should be merged with the current Atlantic tunas Angling category permit to reduce the burden on the recreational sector. NMFS also received a comment stating that there are other methods of identifying the universe of recreational HMS fishermen, such as coordinating with the states, which would relieve the public of the burden of having to renew the Federal permit on an annual basis.

Response: The HMS recreational permit will enable NMFS to more accurately monitor recreational landings and generate catch and release statistics for all recreational HMS, thereby enhancing HMS management and research efforts. Knowledge of the universe of recreational fishermen and of total fishing effort, catch, and bycatch is incomplete at present, with most data collection currently focused on the Atlantic tunas fisheries. Estimates of some of these parameters are currently made using survey instruments, such as the Large Pelagic Survey (LPS) and the Marine Recreational Fisheries Statistics Survey (MRFSS), as well as reporting from registered tournaments. The current Atlantic tunas angling category permit will be replaced with an Atlantic HMS recreational permit system, which will greatly improve information available to NMFS regarding the recreational Atlantic HMS fisheries by providing an accurate measure of participation, which will improve estimates of effort, catch, and bycatch (including discards) for several important species.

Comment 3: NMFS received a number of comments stating that, due to the nature of the HMS fisheries, effective management is essential throughout the entire range of the regulated species. These commenters agreed that NMFS must exercise jurisdiction over U.S.-flagged vessels regardless of where a vessel is fishing.

Response: NMFS recognizes that state-federal jurisdictional issues are complex. NMFS will work with the individual states to evaluate how permit conditions applied to recreational vessels issued Federal permits may resolve jurisdictional concerns. Upon completing discussions with the states, NMFS may address this issue in a separate rulemaking.

Comment 4: Many comments stated that the different retention limits for inspected headboats are justifiable provided that there is a maximum retention limit placed upon the vessel.

Response: With the BFT retention limits generally defined in terms of the number of fish that can be retained per vessel, a maximum retention limit can be inequitable for U.S. Coast Guard (USCG) inspected vessels authorized to carry a larger number of passengers. This action clarifies the HMS regulations for setting differential retention limits by vessel type (*e.g.*, charter boat vs. headboat).

Comment 5: Several comments stated that the E-comments system is a step in the right direction in providing the public with efficient means to submit comments, and in allowing NMFS to take more stakeholders' insights into account when making final rules. Some commenters also stated that having the ability to see previously submitted comments enhances their understanding of the proposed changes and the potential impacts.

Response: NMFS' E-comments pilot project was a success. NMFS will expand the use of this system and will continue to explore ways to use technology to enhance the public's ability to learn about and participate in NMFS rulemaking activities.

Comment 6: Some commenters stated that the HMS CHB recreational trip definition should be coordinated with the regional fishery management councils, NMFS law enforcement, and USCG to minimize the confusion and complexity with different definitions in different fisheries.

Response: NMFS coordinated with other management bodies and enforcement agencies to develop a recreational trip definition for HMS CHB vessels. This issue was discussed at length during the 2001 Advisory Panel (AP) meeting, and there was general consensus among the AP members that defining a charter trip in a manner similar to that used in the NMFS Southeast Region regulations (based on paying passengers aboard and/or the number of persons aboard, with three people or less on board constituting a "commercial" trip and more than three on board constituting a "charter" trip) is appropriate for HMS, especially regarding the YFT bag limit issue.

Comment 7: A few comments received stated that it is unacceptable to charge every fishermen $27.00 per year for the use of the HMS resources. These commenters felt that the fee was a means of generating funds for the Federal government and that NMFS could establish a permit program and obtain the same information without charging a fee. Other commenters stated that the fee is reasonable.

Response: Under the Magnuson-Stevens Act, NMFS is authorized to charge fees for permits to participants in fisheries conducted in the U.S. exclusive economic zone. Administrative costs recovery is a NOAA policy, and the fee is calculated annually to recover the costs attributable to the automated permit and reporting system. Under current law, these funds cannot be directly applied to NMFS' programs, but must be deposited into the General Fund of the United States Treasury.

Classification

These regulatory amendments are published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.* The Assistant Administrator (AA) for Fisheries, NOAA, has determined that the regulations contained in this final rule are necessary to implement the recommendations of ICCAT and for the management of the Atlantic HMS fisheries.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) at the proposed rule stage that, if implemented, this final rule would not have a significant economic impact on a substantial number of small entities. No comments were received that would alter the basis for this determination. However, as noted above, a few of the comments received expressed concern about charging a fee for the use of the HMS resources. These commenters felt that the permit fee was a means to generate funds for the Federal government and that NMFS could establish a permit program without

charging a fee. However, under the Magnuson-Stevens Act, NMFS is authorized to charge fees for permits issued to participants in fisheries conducted in the U.S. exclusive economic zone. Further, administrative cost recovery is NOAA's policy, and the minimal fee (currently $27 per year) is calculated annually to recover the costs attributable to the automated permit and reporting system. Under current law, these funds cannot be directly applied to NMFS' programs, but must be deposited into the General Fund of the United States Treasury. Given the prior certification to SBA, neither an Initial nor a Final Regulatory Flexibility Analysis was prepared.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an Environmental Assessment (EA) for this final rule, and the AA has concluded that there would be no significant impact on the human environment. The EA presents analyses of the anticipated impacts of these final actions and the other alternatives considered. A copy of the EA and other analytical documents prepared for this final rule are available from NMFS (*see* **ADDRESSES**).

The regulations implemented through this final rule are not expected to increase endangered species or marine mammal interaction rates. On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act. A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. On July 9, 2002 (67 FR 45393), NMFS implemented the reasonable and prudent alternative required by the BiOp. None of the actions in this final rule would have any additional impact on sea turtles as these actions would not likely increase or decrease pelagic longline effort, nor are they expected to shift effort into other fishing areas. No irreversible or irretrievable commitments of resources are expected from the final actions that would adversely affect the implementation of the requirements of the BiOp.

The areas affected by these final actions have been identified as essential fish habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, the Caribbean Fishery Management Council, and the HMS Management Division of NMFS. It is not anticipated that the actions will have any adverse impacts on EFH; therefore, no consultation is required.

This final rule contains two new collection-of-information requirements and restates several existing reporting requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The first new collection of information is approved under OMB Control Number 0648–0327 and is an extension of the Atlantic tunas recreational Angling category permit requirement to include fishermen who fish for all Atlantic HMS, including swordfish, sharks, and billfish, with an estimated public reporting burden of 30 minutes per response for initial permit applications and 6 minutes per response for renewing the permit. The second collection is approved under OMB Control Number 0648–0373 and extends gear-marking requirements to persons acquiring this permit who were not previously subject to a permit requirement, with an estimated response time of 15 minutes per float. This final rule also restates a number of collection-of-information requirements that OMB has previously approved. These requirements and their OMB control numbers and estimated response times are: vessel permits for Atlantic tunas and Atlantic HMS Charter/headboats, initial (30 minutes; 0648–0327) and renewal (6 minutes; 0648–327); vessel permits for Atlantic shark and swordfish (20 minutes; 0648–0205); dealer permits for Atlantic sharks and swordfish (5 minutes; 0648–0205); call in recreational landing reports for Atlantic bluefin tuna (5 minutes; 0648–0328); dealer permits for Atlantic tunas (5 minutes; 0648–0202); gear marking (15 minutes; 0648–0373); and vessel marking (45 minutes; 0648–0373).

All estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (*see* **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Statistics, Treaties.

Dated: December 10, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635, is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.2, the definition for "For-hire trip" is added, in alphabetical order, to read as follows:

§ 635.2 Definitions.

* * * * *

For-hire trip means a recreational fishing trip taken by a vessel with an Atlantic HMS Charter/Headboat permit during which paying passenger(s) are aboard; or, for uninspected vessels, trips during which there are more than three persons aboard, including operator and crew; or, for vessels that have been issued a Certificate of Inspection by the U.S. Coast Guard to carry passengers for hire, trips during which there are more persons aboard than the number of crew specified on the vessel's Certificate of Inspection.

* * * * *

3. In § 635.4, paragraphs (a)(1), (a)(2), (a)(5), (b), (d)(1) through (d)(3), (h)(1) introductory text, and (m)(1) are revised, and paragraph (c) is added to read as follows:

§ 635.4 Permits and fees.

* * * * *

(a) General. (1) Authorized activities. Each permit issued by NMFS authorizes certain activities, and persons may not conduct these activities without the appropriate permit, unless otherwise authorized by NMFS in accordance with this part. In certain cases, additional permits may be required to authorize these same or related activities under federal, state or local jurisdictions.

(2) Vessel permit inspection. The owner or operator of a vessel of the United States must have the appropriate valid permit on board the vessel to fish for, take, retain, or possess Atlantic HMS when engaged in recreational fishing and to fish for, take, retain or possess Atlantic tunas, swordfish, or sharks when engaged in commercial fishing. The vessel operator must make such permit available for inspection upon request by NMFS or by a person authorized by NMFS. The owner of the vessel is responsible for satisfying all of the requirements associated with obtaining, maintaining, and making available for inspection all required vessel permits.

* * * * *

(5) Display upon offloading. Upon transfer of Atlantic HMS, the owner or operator of the harvesting vessel must present for inspection the vessel's HMS Charter/Headboat permit and/or Atlantic tunas, shark, or swordfish permit to the receiving dealer. The permit must be presented prior to completing any applicable landing report specified at § 635.5(a)(1), (a)(2) and (b)(2)(i).

* * * * *

(b) HMS Charter/Headboat permits. (1) The owner of a charter boat or headboat used to fish for, take, retain, or possess any Atlantic HMS must obtain an HMS Charter/Headboat permit. A vessel issued an HMS Charter/Headboat permit for a fishing year shall not be issued an HMS Angling permit or an Atlantic Tunas permit in any category for that same fishing year, regardless of a change in the vessel's ownership.

(2) While persons aboard a vessel that has been issued an HMS Charter/Headboat permit are fishing for or are in possession of Atlantic HMS, the operator of the vessel must have a valid Merchant Marine License or Uninspected Passenger Vessel License, as applicable, issued by the U.S. Coast Guard pursuant to regulations at 46 CFR part 10. Such Coast Guard license must be carried on board the vessel.

(c) HMS Angling permits. The owner of each vessel used to fish recreationally for Atlantic HMS or on which Atlantic HMS are retained or possessed, must obtain an HMS Angling permit. Atlantic HMS caught, retained, possessed, or landed by persons on board vessels with an HMS Angling permit may not be sold or transferred to any person for a commercial purpose. A vessel issued an HMS Angling permit for a fishing year shall not be issued an HMS Charter/Headboat permit or an Atlantic Tunas permit in any category for that same fishing year, regardless of a change in the vessel's ownership. An Atlantic Tunas Angling category permit issued for the 2002 fishing year shall meet the vessel permit requirements of this paragraph through May 31, 2003.

(d) Atlantic Tunas vessel permits. (1) The owner of each vessel used to fish for or take Atlantic tunas commercially or on which Atlantic tunas are retained or possessed with the intention of sale must obtain an HMS Charter/Headboat permit issued under paragraph (b) of this section, or an Atlantic tunas permit in one, and only one, of the following categories: General, Harpoon, Longline, Purse Seine, or Trap.

(2) Persons aboard a vessel with a valid Atlantic Tunas, HMS Angling, or HMS Charter/Headboat permit may fish for, take, retain, or possess Atlantic tunas, but only in compliance with the quotas, catch limits, size classes, and gear applicable to the permit category of the vessel from which he or she is fishing. Persons may sell Atlantic tunas only if the harvesting vessel has a valid permit in the General, Harpoon, Longline, Purse Seine, or Trap category of the Atlantic Tunas permit or a valid HMS Charter/Headboat permit.

(3) A vessel issued an Atlantic Tunas permit in any category for a fishing year shall not be issued an HMS Angling permit, HMS Charter/Headboat permit, or an Atlantic Tunas permit in any other category for that same fishing year, regardless of a change in the vessel's ownership.

* * * * *

(h) * * *

(1) Atlantic Tunas, HMS Angling, and HMS Charter/Headboat vessel permits.

* * * * *

(m) Renewal--(l) General. Persons must apply annually for a dealer permit for Atlantic tunas, sharks, and swordfish, and for an Atlantic HMS Angling, HMS Charter/Headboat, tunas, shark, or swordfish vessel permit. Except as specified in the instructions for automated renewals, a renewal application must be submitted to NMFS, at an address designated by NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit provided that the specific requirements for the requested permit are met, including those described in § 635.4 (l)(2), all reports required under the Magnuson-Stevens Act and ATCA have been submitted, including those described in § 635.5, and the applicant is not subject to a permit sanction or denial under paragraph (a)(6) of this section.

* * * * *

4. In § 635.5, the first sentence of paragraph (c) is revised to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(c) Anglers. The owner of a vessel permitted in the HMS Angling or HMS Charter/Headboat category must report all BFT landed under the Angling category quota to NMFS through the automated catch reporting system by calling 1–888–USA-TUNA or posting the required information at http://www.nmfspermits.com within 24 hours of the landing. * * *

* * * * *

5. In § 635.6, paragraph (b)(1) introductory text and the first sentence of paragraph (c)(1) are revised to read as follows:

§ 635.6 Vessel and gear identification.

* * * * *

(b) Vessel identification. (1) An owner or operator of a vessel for which a permit has been issued under § 635.4, other than an HMS Angling permit, must display the vessel number

* * * * *

(c) Gear identification. (1) The owner or operator of a vessel for which a permit has been issued under § 635.4 and that uses a handline, harpoon, longline, or gillnet, must display the vessel's name, registration number or Atlantic Tunas, HMS Angling, or HMS Charter/Headboat permit number on each float attached to a handline or harpoon and on the terminal floats and high-flyers (if applicable) on a longline or gillnet used by the vessel. * * *

* * * * *

6. In § 635.22, paragraphs (a), (c), and (d) are revised to read as follows:

§ 635.22 Recreational retention limits.

(a) General. Atlantic HMS caught, possessed, retained, or landed under these recreational retention limits may not be sold or transferred to any person for a commercial purpose. Recreational retention limits apply to a longbill spearfish taken or possessed shoreward of the outer boundary of the Atlantic EEZ, to a shark taken from or possessed in the Atlantic EEZ, and to a yellowfin or bluefin tuna taken from or possessed in the Atlantic Ocean. The operator of a vessel for which a retention limit applies is responsible for the vessel retention limit and the cumulative retention limit based on the number of persons aboard. Federal recreational retention limits may not be combined with any recreational retention limit applicable in state waters.

* * * * *

(c) Sharks. One shark from either the large coastal, small coastal or pelagic group may be retained per vessel per trip, subject to the size limits described

in § 635.20(e), and, in addition, one Atlantic sharpnose shark may be retained per person per trip. Regardless of the length of a trip, no more than one Atlantic sharpnose shark per person may be possessed on board a vessel. No prohibited sharks listed in Table 1(d) of appendix A to this part may be retained. The recreational retention limit for sharks applies to a person who fishes in any manner, except to a person aboard a vessel issued an Atlantic Sharks LAP under § 635.4. When a commercial Atlantic shark fishery is closed under § 635.28, the recreational retention limit for sharks may be applied to persons aboard a vessel issued an Atlantic Sharks LAP under § 635.4, only if that vessel has also been issued an HMS Charter/Headboat permit under § 635.4 and is engaged in a for-hire trip.(d) Yellowfin tuna. Three yellowfin tunas per person per day may be retained. Regardless of the length of a trip, no more than three yellowfin tuna per person may be possessed on board a vessel. The recreational retention limit for yellowfin tuna applies to a person who fishes in any manner, except to a person aboard a vessel issued an Atlantic Tunas vessel permit under § 635.4. The recreational retention limit for yellowfin tuna applies to persons aboard a vessel that has been issued an HMS Charter/Headboat permit only when the vessel is engaged in a for-hire trip.

7. In § 635.23, paragraphs (b) introductory text, (b)(2), (b)(3), (c) introductory text, and (c)(3) are revised to read as follows:

§ 635.23 Retention limits for BFT.

* * * * *

(b) Angling category. BFT may be retained and landed under the daily limits and quotas applicable to the Angling category by persons aboard vessels issued an HMS Angling permit as follows:

* * * * *

(2) School, large school, or small medium BFT. (i) No school, large school, or small medium BFT may be retained, possessed, landed, or sold in the Gulf of Mexico.

(ii) One school, large school, or small medium BFT per vessel per day may be retained, possessed, or landed outside the Gulf of Mexico. Regardless of the length of a trip, no more than a single day's allowable catch of school, large school, or small medium BFT may be possessed or retained.

(3) Changes to retention limits. To provide for maximum utilization of the quota for BFT spread over the longest period of time, NMFS may increase or decrease the retention limit for any size class BFT or change a vessel trip limit to an angler limit and vice versa. Such increase or decrease in retention limit will be based on a review of daily landing trends, availability of the species on the fishing grounds, and any other relevant factors. Such adjustments to the retention limits may be applied separately for persons aboard a specific vessel type, such as private vessels, headboats or charter boats. NMFS will adjust the daily retention limit specified in paragraph (b)(2) of this section by filing with the Office of the **Federal Register** for publication notification of the adjustment. Such adjustment will not be effective until at least 3 calendar days after notification is filed with the Office of the **Federal Register** for publication.

(c) HMS Charter/Headboat. Persons aboard a vessel issued an HMS Charter/Headboat permit may retain and land BFT under the daily limits and quotas applicable to the Angling category or the General category as follows:

* * * * *

(3) When fishing other than in the Gulf of Mexico and when the fishery under the General category has not been closed under § 635.28, a person aboard a vessel that has been issued an HMS Charter/Headboat permit may fish under either the retention limits applicable to the General category specified in paragraphs (a)(2) and (a)(3) of this section or the retention limits applicable to the Angling category specified in paragraphs (b)(2) and (b)(3) of this section. The size category of the first BFT retained will determine the fishing category applicable to the vessel that day.

* * * * *

8. In § 635.27, the first three sentences of paragraph (a) introductory text, the first two sentences of paragraph (a)(1)(i) introductory text, and the first sentence of paragraph (a)(2) introductory text are revised to read as follows:

§ 635.27 Quotas.

(a) BFT. Consistent with ICCAT recommendations, NMFS will subtract any allowance for dead discards from the fishing year's total U.S. quota for BFT that can be caught and allocate the remainder to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The total landing quota will be divided among the General, Angling, Harpoon, Purse Seine, Longline, and Trap categories. Consistent with these allocations and other applicable restrictions of this part, BFT may be taken by persons aboard vessels issued Atlantic Tunas permits, HMS Angling permits, or HMS Charter/Headboat permits. * * *

(1) * * *

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category landings quota. See § 635.23 (c)(3) regarding landings by vessels with an HMS Charter/Headboat permit that are counted against the General category landings quota. * * *

* * * * *

(2) Angling category landings quota. The total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 19.7 percent of the overall annual U.S. BFT landings quota. * * *

* * * * *

9. In § 635.28, paragraph (b)(3) is revised to read as follows:

§ 635.28 Closures.

* * * * *

(b) * * *

(3) When the fishery for a shark species group is closed, a fishing vessel issued an Atlantic Sharks LAP pursuant to § 635.4 may not possess or sell a shark of that species group, except under the conditions specified in § 635.22 (a) and (c), and a permitted shark dealer may not purchase or receive a shark of that species group from a vessel issued an Atlantic Sharks LAP, except that a permitted shark dealer or processor may possess sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage.

* * * * *

10. In § 635.31, paragraph (a)(1) is revised to read as follows:

§ 635.31 Restrictions on sale and purchase.

(a) Atlantic tunas. (1) Persons that own or operate a vessel from which an Atlantic tuna is landed or offloaded may sell such Atlantic tuna only if that vessel has a valid HMS Charter/Headboat permit, or a General, Harpoon, Longline, Purse Seine, or Trap category permit for Atlantic Tunas issued under this part. However, no person shall sell a BFT smaller than the large medium size class. Also, no large medium or giant BFT taken by a person aboard a vessel with an Atlantic HMS Charter/Headboat permit fishing in the Gulf of Mexico at any time, or fishing outside the Gulf of Mexico when the fishery under the General category has been closed, shall be sold (see § 635.23(c)). Persons shall sell Atlantic tunas only to a dealer that has a valid permit for purchasing Atlantic tunas issued under this part.

* * * * *

11. In § 635.71, paragraphs (b)(1), (b)(3), (b)(14), and (b)(15), are revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(b) * * *

(1) Engage in fishing with a vessel that has been issued an Atlantic Tunas or Atlantic HMS permit under § 635.4, unless the vessel travels to and from the area where it will be fishing under its own power and the person operating that vessel brings any BFT under control (secured to the catching vessel and/or brought on board) with no assistance from another vessel, except as shown by the operator that the safety of the vessel or its crew was jeopardized or other circumstances existed that were beyond the control of the operator.

* * * * *

(3) Fish for, catch, retain, or possess a BFT less than the large medium size class by a person aboard a vessel other than one that has on board a valid HMS Angling or Charter/Headboat permit, or an Atlantic tunas Purse Seine category permit as authorized under § 635.23 (b), (c), and (e)(2).

* * * * *

(14) As a person aboard a vessel issued an HMS Angling or Charter/Headboat permit, fail to immediately cease fishing and immediately return to port after catching a large medium or giant BFT or fail to report such catch, as specified in § 635.23(b)(1)(iii) and (c)(1) through (c)(3).

(15) As a person aboard a vessel issued an HMS Angling or HMS Charter/Headboat permit, sell, offer for sale, or attempt to sell a large medium or giant BFT retained when fishing under the circumstances specified in § 635.23(b)(1)(iii) and (c)(1) through (c)(3).

* * * * *

[FR Doc. 02–31695 Filed 12–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 112902A]

Fisheries of the Exclusive Economic Zone off Alaska; Bycatch Rate Standards for the First Half of 2003

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Pacific halibut and red king crab bycatch rate standards; request for comments.

SUMMARY: NMFS announces Pacific halibut and red king crab bycatch rate standards for the first half of 2003. Publication of these bycatch rate standards is necessary under regulations implementing the vessel incentive program (VIP). This action is necessary to implement the bycatch rate standards for trawl vessel operators who participate in the Alaska groundfish trawl fisheries. The intent of this action is to avoid excessive prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), January 20, 2003, through 2400 hours, A.l.t., June 30, 2003. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., January 2, 2003.

ADDRESSES: Comments may be submitted to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Comments also may be sent via facsimile (fax) to 907–586–7557. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK 99801. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, fax 907–586–7465, e-mail *mary.furuness@noaa.gov*.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) are managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 679.

Regulations at § 679.21(f) implement the VIP to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels must not exceed Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and "other trawl" fisheries and the BSAI yellowfin sole and "bottom pollock" fisheries. Vessel operators also must not exceed red king crab bycatch rate standards specified for the BSAI yellowfin sole and "other trawl" fisheries in Bycatch Limitation Zone 1 (defined in § 679.2). The fisheries included under the incentive program are defined in regulations at § 679.21(f)(2).

Regulations at § 679.21(f)(3) require that halibut and red king crab bycatch rate standards for each fishery included under the incentive program be published in the **Federal Register**. The standards are in effect for specified seasons within the 6–month periods of January 1 through June 30, and July 1 through December 31. Because the Alaskan groundfish fisheries are closed to trawling from January 1 to January 20 of each year (§ 679.23(c)), the Administrator, Alaska Region, NMFS (Regional Administrator) is promulgating bycatch rate standards for the first half of 2003 effective from January 20, 2003, through June 30, 2003.

As required by § 679.21(f)(4), bycatch rate standards are based on the following information:

(A) Previous years' average observed bycatch rates;

(B) Immediately preceding season's average observed bycatch rates;

(C) The bycatch allowances and associated fishery closures specified under §§ 679.21(d) and (e);

(D) Anticipated groundfish harvests for that fishery;

(E) Anticipated seasonal distribution of fishing effort for groundfish; and

(F) Other information and criteria deemed relevant by the Regional Administrator.

At its October 2002 meeting, the Council reviewed Pacific halibut and red king crab bycatch rates experienced by vessels participating in the fisheries under the incentive program during

1998 2002. The Council recommended that the same rates used in the first half of 2002 be used for the first half of 2003. Along with bycatch rate standards, the industry and the Council are exploring opportunities under fishery cooperatives and other voluntary or mandatory arrangements to control bycatch and optimize the amount of groundfish harvested under halibut and crab bycatch limits. Under § 679.50(k), vessel specific prohibited species bycatch rates from observer data are published weekly on the NMFS, Alaska Region website (www.fakr.noaa.gov). The Council's recommended bycatch rate standards are listed in Table 1.

TABLE 1—BYCATCH RATE STANDARDS, BY FISHERY AND QUARTER, FOR THE FIRST HALF OF 2003 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA.

Fishery and quarter	2003 bycatch rate standard
Halibut bycatch rate standards(kilogram (kg) of halibut/metric ton (mt) of groundfish catch)	
BSAI Midwater pollock	
Qt 1	1.0
Qt 2	1.0
BSAI Bottom pollock	
Qt 1	5.0
Qt 2	5.0
BSAI Yellowfin sole	
Qt 1	5.0
Qt 2	5.0
BSAI Other trawl	
Qt 1	30.0
Qt 2	30.0
GOA Midwater pollock	
Qt 1	1.0
Qt 2	1.0
GOA Other trawl	
Qt 1	40.0
Qt 2	40.0
Zone 1 red king crab bycatch rate standards (number of crab/mt of groundfish catch)	
BSAI yellowfin sole	
Qt 1	2.5
Qt 2	2.5
GOA Other trawl	
Qt 1	2.5
Qt 2	2.5

Bycatch Rate Standards for Pacific Halibut

The Regional Administrator based standards for the first half of 2003 on the anticipated seasonal fishing effort for groundfish species and on the 1998 2002 halibut bycatch rates observed in the trawl fisheries included under the vessel incentive program. In 2002, the BSAI pollock A season was January 20 through June 10 and the pollock fisheries for processing by the inshore and offshore components ended 9 weeks prior to June 10. Directed fishing for pollock for processing by the inshore and offshore components reopened June 10, the start of the 2002 pollock B season. Also, the community development quota (CDQ) pollock fishery ended 10 weeks before the end of the A season and did not resume until mid-July. In 2003, the proposed A season allowance for Bering Sea pollock (40 percent of the directed fishing allowance) would be available January 20 through June 10, with the remainder available June 10 through November 1. As in past years, the directed fishing allowances specified for the first 2003 pollock season likely will be reached before June 10. In the GOA, the 2003 proposed pollock fishery seasons will be from January 20 to February 25 for the "A" season and from March 10 to May 31 for the "B" season.

As in past years, the halibut bycatch rate standard recommended for the BSAI and GOA midwater pollock fisheries (1 kg halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. The average halibut bycatch rates for the BSAI 2002 first and second calendar quarter fisheries are equal to 0.08 and 0.05 kg halibut/mt groundfish, respectively, and the average halibut bycatch rates for the GOA 2002 first calendar quarter fishery is equal to 0.02 kg halibut/mt groundfish. In the GOA, directed fishing for pollock did not occur in the second calendar quarters of 2001 or 2002. Thus, the incidental catch rates of halibut during this time period in 2001 and 2002 are zero. The recommended standard is intended to encourage vessel operators to maintain off-bottom trawl operations.

Since 1999, the use of nonpelagic trawl gear has been prohibited when engaged in directed fishing for non-CDQ pollock in the BSAI (§ 679.24(b)(4)). Even with this prohibition, a vessel using pelagic trawl gear may be assigned to the BSAI bottom pollock fishery defined at § 679.21(f)(2) because assignment to the bottom pollock fishery for purposes of the VIP is based on retained catch composition during a weekly period instead of gear type. If the majority of the catch is pollock, but pollock comprises less than 95 percent of the catch, then a haul is assigned to the BSAI bottom pollock fishery. The prohibition on the use of nonpelagic trawl gear has reduced the number of hauls assigned to the BSAI bottom pollock fishery. Since the prohibition became effective, the halibut bycatch rates for this fishery are low compared to the halibut bycatch rate standards established for this fishery, with an average halibut bycatch rate for the 2002 first and second calendar quarter fisheries equal to 0.68 and 0.00 kg halibut/mt groundfish, respectively.

Other factors that could affect the spatial and temporal distribution of directed fishing for pollock include the allocations of pollock among the inshore and offshore fleets under the American Fisheries Act and the implementation of conservation measures that are necessary under the Endangered Species Act to mitigate pollock fishery impacts on Steller sea lions. At this time, the effects of these changes on halibut bycatch rates in the pollock fishery are unknown.

Data available on halibut bycatch rates in the BSAI yellowfin sole fishery during the first and second quarters of 2002 showed an average bycatch rate of 5 and 13 kg halibut/mt of groundfish, respectively. These rates are similar to rates experienced in past years. The Council's recommendation to use the same bycatch rates in 2003 as was used in 2002 would continue bycatch rate standards that represent an acceptable level of halibut bycatch in the yellowfin sole fishery while encouraging vessel operators to continue efforts to avoid unacceptably high halibut bycatch rates while participating in this fishery.

For the "other trawl" fisheries, the Council supported a 30–kg halibut/mt of groundfish bycatch rate standard for the BSAI and a 40 kg halibut/mt of groundfish bycatch rate standard for the GOA. Observer data collected from the 2002 BSAI "other trawl" fishery show first and second quarter halibut bycatch rates of 10 and 26 kg halibut/mt of groundfish, respectively. Observer data collected from the 2002 GOA "other trawl" fishery show first and second quarter halibut bycatch rates of 20 and 61 kg halibut/mt of groundfish, respectively.

Since 1997, with the exception of the GOA second quarter "other trawl" fishery, the average bycatch rates experienced by vessels participating in the GOA and BSAI "other trawl" fisheries for the first half of the year have been lower than the specified bycatch rate standards for these fisheries. The Council and NMFS have determined that the recommended halibut bycatch rate standards for the "other trawl" fisheries, including the second quarter GOA fishery, would continue bycatch rate standards that represent an acceptable level of halibut bycatch in these fisheries and will encourage vessel operators to avoid high halibut bycatch rates while participating in these fisheries. Furthermore, these standards will provide some leniency to those vessel operators who choose to use large mesh trawl gear or other devices as a means to reduce groundfish discard amounts or who are forced to fish in different seasons or fishing grounds under measures implemented to mitigate fishing impacts on Steller sea lions and their critical habitat.

Bycatch Rate Standards for Red King Crab

For the BSAI yellowfin sole and "other trawl" fisheries in Zone 1 of the Bering Sea subarea, the Council's recommended red king crab bycatch rate standard is 2.5 crab/mt of groundfish. This standard is unchanged since 1992. The red king crab bycatch rates experienced by the BSAI yellowfin sole fishery in Zone 1 for the first and second quarters of 2002 average 0.47 and 1.76 crab/mt of groundfish, respectively. Although these rates are lower than the standards, these rates are higher than bycatch rates experienced in previous years. The average bycatch rates of red king crab experienced in the BSAI "other trawl" fishery during the first and second quarters of 2002 were 0.12 and 0.72 crab/mt groundfish, respectively. The trawl closures in Zone 1 that were implemented to reduce red king crab bycatch are one of the primary reasons the red king crab bycatch rates remain below the standards.

For the period January through October 2002, the total bycatch of red king crab by trawl vessels fishing in Zone 1 is estimated at 89,944 crab, less than the 97,000 red king crab bycatch limit established for the trawl fisheries in Zone 1. NMFS anticipates that the 2003 red king crab bycatch in Zone 1 will be similar to 2002 because the crab bycatch reduction measures will remain the same.

In spite of anticipated 2003 red king crab bycatch rates being significantly lower than 2.5 red king crab/mt of groundfish, the Council recommended the red king crab bycatch rate standards be maintained at these levels. These levels continue to provide protection against unacceptably high rates of bycatch in these fisheries while providing some leniency to those vessel operators that choose to use large mesh trawl gear as a means to reduce groundfish discard amounts.

The Regional Administrator has determined that the recommended bycatch rate standards are appropriately based on the information and considerations necessary for such determinations under § 679.21(f). Therefore, the Regional Administrator establishes the halibut and red king crab bycatch rate standards for the first half of 2003 as set forth in Table 1. These bycatch rate standards may be revised and these revisions published in the **Federal Register** when deemed appropriate by the Regional Administrator pending his consideration of the information set forth at § 679.21(f)(4).

As required in regulations at §§ 679.2 and 679.21(f)(5), the 2003 fishing months are specified as the following periods for purposes of calculating vessel bycatch rates under the incentive program:

Month 1: January 1 through February 1;

Month 2: February 2 through March 1;

Month 3: March 2 through March 29;

Month 4: March 30 through May 3;

Month 5: May 4 through May 31;

Month 6: June 1 through June 28;

Month 7: June 29 through August 2;

Month 8: August 3 through August 30;

Month 9: August 31 through September 27;

Month 10: September 28 through November 1;

Month 11: November 2 through November 29; and

Month 12: November 30 through December 31.

Classification

This action is taken under 50 CFR 679.21(f) and is exempt from Office of Management and Budget review under Executive Order 12866.

NMFS finds good cause to waive the requirement for prior notice and comment pursuant to 5 U.S.C. 553(b)(B) as such procedures are unnecessary. With the exception of the first quarter BSAI bottom pollock halibut bycatch rate standard that was changed in January 2001, all the first and second quarter halibut and red king crab bycatch rate standards have remained unchanged since the start of the 1994 fishing year. NMFS has not received any written comments on these rate standards during public comment opportunities and did not receive any comments from the public at the council's October 2002 meeting.

Authority: Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

Dated: December 10, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–31696 Filed 12–17–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 243
Wednesday, December 18, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–51–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This proposed AD would require you to repetitively replace the nose landing gear (NLG) drag link right-hand part every 4,000 landings until an improved design NLG drag link right-hand part is installed. This proposed AD would also require you to install an improved design NLG drag link right-hand part as terminating action for the repetitive replacements. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this proposed AD are intended to prevent structural failure of the NLG caused by fatigue damage to the NLG drag link right-hand part that develops over time, which could result in either an unintended NLG extension during flight or the nose landing gear not properly locking upon extension, which could lead to loss of airplane control during landing operations.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before January 23, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–51–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–51–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer; FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the proposed rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–51–AD." We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports that 3 aircraft experienced a failure of the nose landing gear (NLG) drag link assembly during cruise flight. The actuator attachment levers on the right-hand upper drag link part failed. In all cases, the NLG fell out due to gravity, and the emergency spring pack extended it forward and allowed safe landings.

What are the consequences if the condition is not corrected? Structural failure of the NLG drag link right-hand part could result in either an unintended NLG extension during flight or the NLG not properly locking upon extension. This could lead to loss of airplane control during landing operations.

Is there service information that applies to this subject? Pilatus has issued Service Bulletin No. 32–014, dated August 13, 2002.

What are the provisions of this service information? The service bulletin includes procedures for replacing the NLG drag link right-hand part with a part number of the improved design. Temporary Revision No. 32–14 (dated June 4, 2002) to Pilatus PC–12 Maintenance Manual 32–20–06 provides instructions for replacing with the same design part.

What action did the FOCA take? The FOCA classified this service bulletin as mandatory and issued Swiss AD Number HB 2002–271, dated June 17, 2002, in order to ensure the continued airworthiness of these airplanes in Switzerland.

Was this in accordance with the bilateral airworthiness agreement? These airplane models are manufactured in Switzerland and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the FOCA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What has FAA decided? The FAA has examined the findings of the FOCA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Pilatus Models PC–12 and PC–12/45 of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed would require repetitive replacement of the NLG drag link right-hand part every 4,000 landings until an improved design NLG drag link right-hand part is installed. This proposed AD would also require you to install an improved NLG drag link as terminating action for the repetitive replacements.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 265 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed replacement with the same design part:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
6 workhours × $60 per hour = $360.	$1,000	$1,360	$2,560 × 265 = $360,400

We estimate the following costs to accomplish the proposed replacement with the improved design part:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
6 workhours × $60 per hour = $360	$2,200	$2,560	$2,560 × 265 = $678,400

Compliance Time of This Proposed AD

What would be the compliance time of this proposed AD? The compliance time of this proposed AD is based on the number of landings rather than hours time-in-service (TIS).

Why is the compliance time of this proposed AD presented in landings? The reason for this type of compliance is that the area that is showing fatigue is the NLG drag link right-hand part. This area of the airplane is used during the landing operation. We have determined to base the compliance time for this proposed AD upon the number of landings.

Since airplane operators are not required to keep track of landings, we will provide a method of calculating hours TIS into landings.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft Ltd.: Docket No. 2002–CE–51–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models PC–12 and PC–12/45 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended

to prevent structural failure of the nose landing gear (NLG) caused by fatigue damage to the NLG drag link right-hand part that develops over time. Such failure could result in either an unintended NLG extension during flight or the NLG not properly locking upon extension, which could lead to loss of airplane control during landing operations.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following, unless already accomplished:

Actions	Compliance	Procedures
(1) Replace the nose landing gear (NLG) drag link right-hand part, part number (P/N) 532.20.12.140 with the same part number or FAA-approved equivalent part number.	Initially upon the accumulation of 4,000 landings on the nose landing gear (NLG) drag link right hand part or within the next 100 landings after the effective date of this AD, whichever occurs later. Repetitively thereafter at every accumulated 4,000 landings on the nose landing gear drag link right hand part until accomplishment of paragraph (d)(2) of this AD, which is terminating action for these replacements.	In accordance with Temporary Revision No. 32–14 (dated June 4, 2002) to Pilatus PC–12 Maintenance Manual 32–20–06.
(2) Replace the NLG drag link right-hand part, P/N 532.20.12.140, with an improved design NLG drag link right-hand part, P/N 532.20.12.289 or FAA-approved equivalent part number. Installing the improved part number terminates the repetitive replacement requirements of paragraph (d)(1) of this AD.	At the third replacement required in paragraph (d)(1) of this AD (8,000 hours TIS after the initial replacement).	In accordance with Pilatus Aircraft Ltd. Service Bulletin No. 32–014, dated August 13, 2002, and the applicable maintenance manual.
(3) Do not install, on any affected airplane, an NLG drag link right-hand part that is not P/N 532.20.12.289 or FAA-approved equivalent part number.	Upon accumulating 8,000 hours TIS after the initial replacement required in paragraph (d)(1) of this AD.	Not Applicable.

Note 1: The compliance times of this AD are presented in landings instead of hours time-in-service (TIS). If the number of landings is unknown, hours TIS may be used by multiplying the number of hours TIS by 0.5.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Swiss AD Number HB 2002–271, dated June 17, 2002.

Issued in Kansas City, Missouri, on December 9, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–31753 Filed 12–17–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–33–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–365N, SA–365N1, AS–365N2, AS 365 N3, SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Eurocopter France (ECF) Model SA–365N, SA–365N1, AS–365N2, AS 365 N3, and SA–366G1 helicopters. This proposal would require inspecting the 9-degree frame flange (frame) for the correct edge distance of the four attachment holes for the stretcher support and for a crack and repairing the frame if necessary. This proposal is prompted by a quality control check that revealed some stretcher attachment holes were improperly located on the frame where there was insufficient edge distance. The actions specified by this proposed AD are intended to prevent failure of the frame due to a crack at the stretcher support attachment holes, loss of a passenger door, damage to the rotor system, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before February 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–33–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2001–SW–33–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–33–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model SA–365N, SA–365N1, AS–365N2, AS 365 N3, and SA–366G1 helicopters. The DGAC advises of the discovery of insufficient edge distance on the left-hand side frame of some stretcher attachment holes improperly located during manufacture. This condition, if not corrected, could lead to failure of the frame, loss of a passenger door, damage to the rotor system, and subsequent loss of control of the helicopter.

ECF has issued AS 365 Alert Service Bulletin (ASB) No. 53.00.43, dated January 31, 2001, for the Model AS and SA 365 helicopters and AS 366 Alert Service Bulletin 53.06, dated June 1, 2001, for the Model SA–366G1 helicopters. The ASB's specify measuring the edge distance on the frame of the four attachment holes of the stretcher support, inspecting for a crack, installing a repair on the frame or stop-drilling the crack, and monitoring the crack for continued growth. The DGAC classified these service bulletins as mandatory and issued AD No. 2001–061–053(A), dated February 21, 2001, for the SA–365N, SA–365N1, AS–365N2, AS 365 N3 helicopters and AD No. 2001–283–025(A), dated July 11, 2001, for the SA–336G1 helicopters to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other ECF model helicopters of the same type designs registered in the United States. Therefore, the proposed AD would require, within 50 hours time-in-service, inspecting the frame for the correct edge distance of the four attachment holes of the stretcher support and for a crack and repairing the frame if necessary. The repair must be approved by the Manager, FAA, Rotorcraft Standards Staff. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 45 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours to visually inspect each helicopter and 10 work hours to repair an estimated 10 helicopters to correct edge distance only and 12 work hours to repair edge distance and cracks for an estimated 5 helicopters, and that the average labor rate is $60 per work hour. Required parts would cost approximately $200 per helicopter for the repair of the 15 helicopters. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $18,000.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2001–SW–33–AD.

Applicability: Model SA–365N, SA–365N1, AS–365N2, AS 365 N3, and SA–366G1 helicopters.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the frame due to a crack at the stretcher support attachment holes, loss of a passenger door, damage to the rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service, inspect each 9-degree frame flange (frame) by measuring the edge distance at the four attachment holes of the stretcher support at Z2321 as shown in detail "A" of Figure 1 in Eurocopter France AS 365 Alert Service Bulletin 53.00.43, dated January 31, 2001, for the Models SA–365N, SA–365N1, AS–365N2, and AS 365 N3 (365 ASB) or Eurocopter France AS 366 Alert Service Bulletin 53.06, dated June 1, 2001, for the Model SA366G–1 (366 ASB) helicopters. Inspect the area around the attachment holes for a crack.

(1) If the edge distance of all attachment holes is equal to or more than 5 mm (0.197 inch) and no crack is present, no further action is required by this AD.

(2) If the edge distance is less than 5 mm and no crack is present, before further flight, install a reinforcing angle in accordance with the Accomplishment Instructions paragraphs 2.B.2. of the 365 ASB or 366 ASB, as appropriate. Accomplishing the requirements of paragraphs 2.B.2. of the 365 ASB or 366 ASB constitutes terminating action for the requirements of this AD.

(3) If the frame is cracked, before further flight, repair the frame with a repair design approved by the Manager, FAA, Rotorcraft Standards Staff. Repairing the frame constitutes terminating action for the requirements of this AD.

Note 2: There is not a specific repair designed for a cracked frame. The ASB advises contacting the manufacturer for a customized repair design.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD Nos. 2001–283–025(A), dated July 11, 2001, for the Model SA366 helicopters and 2001–061–053(A), dated February 21, 2001, for the Model AS and SA–365N helicopters.

Issued in Fort Worth, Texas, on December 9, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–31830 Filed 12–17–02; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AB34

Exclusion for Certain Otherwise Regulated Persons From the Definition of the Term "Commodity Pool Operator"

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: The Commodity Futures Trading Commission (the "Commission" or "CFTC") is extending the comment period for the proposed amendment to Rule. 4.5 (the "Proposal") that would add an alternative limitation on the non-hedge activities of eligible persons claiming relief under the rule. The new deadline for submitting public comments is January 13, 2003.

DATES: Written comments must be received on or before January 13, 2003.

ADDRESSES: Comments on the proposed rule should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5528, or by e-mail to *secretary@cftc.gov*. Reference should be made to "Proposed Amendment to Rule 4.5 for Non-Hedge Activity."

FOR FURTHER INFORMATION CONTACT: Barbara S. Gold, Associate Director, Division of Clearing and Intermediary Oversight, or Ronald Hobson, Industry Economist, Office of the Chief Economist, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, telephone number: (202) 418–5441 or (202) 418–5285, respectively; facsimile number: (202) 418–5536, or (202) 418–5660, respectively, and electronic mail: *gbold@cftc.gov* or *3rhobson@cftc.gov*, respectively.

SUPPLEMENTARY INFORMATION: On October 28, 2002, the Commission published for comment a proposed amendment to Rule 4.5,[1] the rule that excludes certain eligible persons from the definition of the term "commodity pool operator" with respect to the operation of certain otherwise regulated entities, provided that certain commodity interest trading restrictions are met. The Proposal would add an alternative criterion for permissible non-hedge commodity interest trading by entities with respect to which exemption is claimed under Rule 4.5. The Proposal established a 45-day period for submitting public comment, ending December 12, 2002.

By letter dated December 10, 2002, a law firm representing futures industry participants requested an extension of the Proposal's comment period so that the expiration date of this comment period would conform with the expiration date of the comment period for the Commission's Advance Notice of Proposed Rulemaking ("ANPR") regarding further exemptions from commodity pool operator and commodity trading advisor registration,[2] which is January 13, 2003. The request claims substantial overlap of many of the issues raised by the Proposal and by the ANPR and thus that conforming period for the two releases would facilitate a comprehensive treatment of related issues.

In response to this request and in order to ensure that an adequate opportunity is provided for submission of meaningful comments, the Commission has determined to extend the comment period for the Proposal for an additional thirty days to January 13, 2003.

Issued in Washington, DC on 12, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–31847 Filed 12–17–02; 8:45 am]

BILLING CODE 6351–01–M

[1] 67 FR 65743.

[2] 67 FR 68785 (November 13, 2002).

RAILROAD RETIREMENT BOARD

20 CFR Part 206

RIN 3220–AB56

Account Benefits Ratio

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend its regulations to add a new part to explain how it will compute the account benefits ratio. The Railroad Retirement and Survivors' Improvement Act of 2001 amended the Railroad Retirement Act to require that on an annual basis the Board compute an account benefits ratio for the most recent 10 preceding fiscal years and a projection of the account benefits ratio for the next 5 succeeding fiscal years. In determining the account benefits ratio, the Board has interpreted several terms utilized in that computation. Since the account benefits ratio will be used in determining the tier II tax rate for calendar years after 2003, we propose to issue this regulation to clarify how we will compute the account benefits ratio.

DATES: Comments should be submitted on or before February 18, 2003.

ADDRESSES: Any comments should be submitted to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, (312) 751–4945, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Effective for calendar years after 2003, the tier II tax rate will be determined in accord with a formula that relies on the average account benefits ratio. *See* section 3241 of the Internal Revenue Code as amended by section 204 of Public Law 107–90. The Board has decided to set forth how it will compute the account benefits ratio so that all parties, rail labor, rail management and the public, will be aware of how we intend to compute the account benefits ratio. Part 206 of the Board's regulations deals with the manner by which the account benefits ratio will be computed. Section 206.1 contains definitions of the terms that are used to compute the account benefits ratio. In making these calculations, the Board based its definitions on the language of the statute and the purpose of computing the account benefits ratio.

The term "total benefits and administrative expenses paid" is computed on a cash basis, since the use of the word "paid" demonstrates that the computation should be made on a cash basis. In addition, "total benefits paid" is computed on the basis of net benefits paid, *i.e.* the gross benefits paid in a particular fiscal year minus any benefit overpayments actually recovered in that fiscal year. The purpose of computing the account benefits ratio is to ensure that there are adequate funds to pay benefits due under the Railroad Retirement Act. Using net benefits paid more accurately reflects the amount of benefits paid in a given year.

The term "assets" is defined in the regulation as the total of the market value of all cash and investments held in the Railroad Retirement Account and the National Railroad Retirement Investment Trust (and for years before 2002, the Social Security Equivalent Benefits Account). Excluded from "assets" is the amount of accounts receivable. While a receivable may be viewed as an asset under certain circumstances, the language of the Railroad Retirement and Survivors' Improvement Act of 2001 leads us to conclude that Congress did not contemplate inclusion of accounts receivable in the computation of the account benefits ratio. By providing that the computation is to be made based on the fair market value of the assets in the Investment Trust and the accounts, Congress signaled that the computation should be made based on the amount of cash and the value of investments in the Investment Trust and the accounts. Moreover, disregarding accounts receivables in computing the account benefits ratio is consistent with the cash basis being used to determine total benefits and administrative expenses paid in a given fiscal year. The term "administrative expenses paid" is also defined in the regulation. All Railroad Retirement Board administrative expenses are currently paid from a single administrative account. The only amounts recorded in the Railroad Retirement Account are "cash transfers" to that administrative account. The amount used for calculating the administrative expenses paid will be the amount of those cash transfers from the Railroad Retirement Account in each fiscal year. Also included in total administrative expenses will be those amounts transferred from the Railroad Retirement Account to the Limitation on the Office of Inspector General. The expenses of the Inspector General are appropriate railroad retirement program expenses that must be considered in determining total administrative expenses. Finally, the administrative expenses of the National Railroad Retirement Investment Trust will also be included in this term.

Collection of Information Requirements

This rule does not impose additional information collection and record keeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

Regulatory Impact Statement

Prior to publication of this proposed rule, the Board submitted this rule to the Office of Management and Budget for review pursuant to Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually. This proposed rule is not a major rule in terms of the aggregate costs involved. The costs associated with the addition of a new part to the Board's regulations are administrative in nature, and include the costs associated with drafting and publishing the regulation as a proposed and then a final rule. We have determined that this proposed rule is not a major rule with economically significant effects because it would not result in increases in total expenditures of $100 million or more per year.

The proposed rule is significant. Part 206 explains how the Railroad Retirement Board will compute the account benefits ratio in accordance with sections 108 and 204 of the Railroad Retirement and Survivors Improvement Act of 2001. The purpose of the proposed regulation is to provide a written explanation so that all parties, rail labor, rail management, and the public, will be aware of how the Board intends to compute the account benefits ratio. Thus, the proposed rule will benefit the agency's constituents, who will be aware of how the account benefits ratio is computed.

Both the Regulatory Flexibility Act and the Unfunded Mandates Act of 1995 define "agency" by referencing the definition of "agency" contained in 5 U.S.C. 551(1). Section 551(1)(E) excludes from the term "agency" an agency that is composed of representatives of the parties or of representatives of organizations of the

parties to the disputes determined by them. The Railroad Retirement Board falls within this exclusion (45 U.S.C. 231f(a)) and is therefore exempt from the Regulatory Flexibility Act and the Unfunded Mandates Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule under the threshold criteria of Executive Order 13132 and have determined that it would not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

In accordance with the provisions of Executive Order 12866, this regulation has been reviewed by the Office of Management and Budget.

List of Subjects in 20 CFR part 206

Railroad retirement.

For the reasons set out in the preamble, the Railroad Retirement Board proposes to add Part 206 to Title 20, chapter II of the Code of the Federal Regulations to read as follows:

PART 206—ACCOUNT BENEFITS RATIO

Sec.
206.1 Definitions.
206.2 Computations.

Authority: 45 U.S.C. 231f(b)(5); 45 U.S.C. 231u(a).

§ 206.1 Definitions.

Except as otherwise expressly noted, as used in this part—

Account benefits ratio means the amount determined by the Railroad Retirement Board by dividing the fair market value of the assets in the Railroad Retirement Account and the National Railroad Retirement Investment Trust (and for years prior to 2002, the Social Security Equivalent Benefits Account) as of the close of each fiscal year by the total benefits and administrative expenses paid from those accounts during the fiscal year.

Administrative expenses paid means the amount of the cash transfers from the Railroad Retirement Account to the agency's single administrative fund. Also included in this term is the amount of the cash transfers from the Railroad Retirement Account to the Limitation on the Office of Inspector General and the administrative expenses paid by the National Railroad Retirement Investment Trust.

Assets means the market value of cash and investments in the Railroad Retirement Account and the National Railroad Retirement Investment Trust (and for years before 2002, the Social Security Equivalent Benefits Account).

Average account benefits ratio means for any calendar year, the average of the account benefits ratio for the 10 most recent fiscal years ending before such calendar year. If the amount computed is not a multiple of 0.1, such amount shall be increased to the next highest 0.1.

Total benefits paid means the total amount of benefits paid from the Railroad Retirement Account and the National Railroad Retirement Investment Trust in a fiscal year minus any benefit overpayments actually recovered during that fiscal year.

§ 206.2 Computation.

(a) On or before November 1, 2003, the Railroad Retirement Board shall:

(1) Compute the account benefits ratios for each of the most recent 10 preceding fiscal years; and

(2) Certify the account benefits ratio for each such fiscal year to the Secretary of the Treasury.

(b) On or before November 1 of each year after 2003, the Railroad Retirement Board shall:

(1) Compute the account benefits ratio for the fiscal year ending in such year; and

(2) Certify the account benefits ratio for such fiscal year to the Secretary of the Treasury.

(c) No later than May 1 of each year, beginning in 2003, the Board shall compute its projection of the account benefits ratio and the average account benefits ratios for each of the next succeeding 5 fiscal years.

Dated: December 12, 2002.

By Authority of the Board,

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 02–31776 Filed 12–17–02; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

20 CFR Part 217

RIN 3220–AB55

Application for Annuity or Lump Sum

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend its regulations to permit the filing of applications via the Internet. The Government Paperwork Elimination Act provides that federal agencies are required by October 21, 2003, to provide "for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper". The proposed changes to part 217 will permit the filing of applications for benefits under the Railroad Retirement Act electronically.

DATES: Submit comments on or before February 18, 2003.

ADDRESSES: Address any comments concerning this proposed rule to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, (312) 751–4945, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: The amendments would revise part 217 of the Board's regulations (20 CFR 217) to permit the filing of applications via the Internet. The Government Paperwork Elimination Act, Pub. L. 105–277 §§ 1701–1710 (codified as 44 U.S.C. § 3504n), provides that Federal agencies are required by October 21, 2003, to provide "for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper". The proposed changes to part 217 will permit the filing of applications under the Railroad Retirement Act electronically.

The change to § 217.5 provides that the application may be filed electronically. That section is further amended to provide that if the application is filed electronically, the applicant's proper use of the Board's User ID/Pin/Password system is an acceptable signature.

The Board currently uses a User ID/PIN/Password system that allows railroad employers access to RRBLINK to make electronic tax deposits and electronically submit Form DC–1, "Employer's Quarterly Report of Contributions Under the Railroad Unemployment Insurance Act". A User ID/PIN/Password system is used to access the *http://www.pay.gov* site. The U.S. Department of the Treasury operates the *http://www.pay.gov* site. Such a system also is consistent with the guidance provided by the Department of Justice regarding the use of electronic processes.

The change to § 217.6 makes an electronic submission of an application through the Board's system a valid application for benefits under the Railroad Retirement Act. Section 217.15 is amended to permit a claimant to file an application electronically through the Board's system.

Section 217.16 has been amended to clarify the filing date when an application is filed electronically. Section 217.17 has been amended to permit the submission of an application through the Board's electronic system using a User ID/PIN/Password as an adequate signature. Section 217.18 has been amended to explain when an electronic submission of an application is not acceptable.

Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, agencies are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. Because this rule proposes to collect application information by a different method, *i.e.*, via the Internet rather than on a paper application, and in order to fairly evaluate whether an information collection should be approved, section 3506(c)(2)(A) of the PRA of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

The information which will be collected via the Internet is the same information currently collected on paper applications. Those information collections through paper applications have been approved by OMB under the following control numbers, which expire as indicated: 3220–0002, Application for Employee Annuity under the Railroad Retirement Act, expiring July 31, 2003; 3220–0030, Application for Survivor Insurance Annuities, expiring March 31, 2004; 3220–0031, Application for Survivor Death Benefits, expiring January 31, 2003; and 3220–0042, Application for Spouse Annuity under the Railroad Retirement Act, expiring July 31, 2003.

The Board has not yet completed development of the format to be used in collecting application information via the Internet. We will therefore again solicit public comment on this rule along with the actual format to be used to collect application information via the Internet at the final rule stage of this rule.

Regulatory Impact Statement

Prior to publication of this proposed rule, the Board submitted this rule to the Office of Management and Budget for review pursuant to Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually. This proposed rule is not a major rule in terms of the aggregate costs involved. While this amendment should result in modest savings in administrative costs due to the streamlining of procedures, we have determined that this proposed rule is not a major rule with economically significant effects because it would not result in increases in total expenditures of $100 million or more per year.

The proposed rule is significant because for the first time applicants for benefits under the Railroad Retirement Act will be afforded a method of applying for benefits without completing a written form. Part 217 is proposed to be amended to permit the filing of applications for an annuity or lump sum electronically via the Internet in accordance with the provisions of the Government Paperwork Elimination Act. Sections 1701–1710 of that Act, Pub. L. 105–277 (codified as 44 U.S.C. 3504n), require Federal agencies to provide for the option of electronic maintenance, submission, or disclosure of information, when practicable, as a substitute for paper. The proposed changes to Part 217 will benefit the agency's constituents who will have the opportunity to file applications for benefits electronically via the Internet.

Both the Regulatory Flexibility Act and the Unfunded Mandates Act of 1995 define "agency" by referencing the definition of "agency" contained in 5 U.S.C. 551(1). Section 551(1)(E) excludes from the term "agency" an agency that is composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them. The Railroad Retirement Board falls within this exclusion (45 U.S.C. 231f(a)) and is therefore exempt from the Regulatory Flexibility Act and the Unfunded Mandates Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule under the threshold criteria of Executive Order 13132 and have determined that it would not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

In accordance with the provisions of Executive Order 12866, this regulation has been reviewed by the Office of Management and Budget.

List of Subjects in 20 CFR Part 217

Claims, Railroad retirement, Reporting and record keeping requirements.

For the reasons set out in the preamble, the Railroad Retirement Board proposes to amend title 20, chapter II, part 217 of the Code of Federal Regulations as follows:

PART 217—APPLICATION FOR ANNUITY OR LUMP SUM

1. The authority citation for part 217 continues to read as follows:

Authority: 45 U.S.C. 231d and 45 U.S.C. 231f.

2. Section 217.5 of Subpart B is revised to read as follows:

§ 217.5 When an application is a claim for an annuity or lump sum.

An application is a claim for an annuity or lump sum if it complies with paragraphs (a), (b), and (c):

(a) It is either on an application form completed and filed with the Board or is submitted electronically through the Board's system as described in § 217.6;

(b) It is either:

(1) Signed by the claimant or by someone described in § 217.17 who can sign the application for the claimant; or

(2) Filed electronically through the Board's system.

(c) It is filed with the Board on or before the date of death of the claimant. (See § 217.10 for limited exceptions.) (Approved by the Office of Management and Budget under control number 3220–0002)

3. Section 217.6 of Subpart B is amended by adding a new paragraph (d) to read as follows:

§ 217.6 What is an application filed with the Board.

* * * * *

(d) *Claim filed electronically.* A claim filed electronically utilizing the Board's

system with a User ID/Pin/Password is a valid application for an annuity or lump sum.

4. Section 217.15 of Subpart C is amended by adding a new paragraph (c) to read as follows:

§ 217.15 Where to file.

* * * * *

(c) *Electronic filing.* An application for an annuity or lump sum may be filed electronically through the Board's Web site, *www.rrb.gov* utilizing a User ID/Pin/Password.

5. Section 217.16 of Subpart C is amended by adding a new paragraph (f) to read as follows:

§ 217.16 Filing date.

* * * * *

(f) On the date that the electronic filing of an application for an annuity or lump sum is accepted as submitted by the Board's electronic system.

6. Section 217.17 of Subpart C is amended by adding a new paragraph (f) to read as follows:

§ 217.17 Who may sign an application.

* * * * *

(f) An application for an annuity or lump sum that is filed electronically through the Board's Web site, *http://www.rrb.gov*, utilizing a User ID/Pin/Password. The use by the applicant of his/her self-selected password in conjunction with the Board's User ID/PIN/Password system has the same validity as a signature on a paper application.

(Approved by the Office of Management and Budget under control numbers 3220–0002, 3220–0030, 3220–0031, and 3220–0042)

7. Section 217.18 of Subpart C is amended by adding a new paragraph (d) to read as follows:

§ 217.18 When application is not acceptable.

* * * * *

(d) *Electronic filing.* If an application for an annuity is filed through the Board's electronic system and it is rejected by that system, the claimant must submit another application. If the new application, electronic or paper, is submitted within 30 days from the notification that the initial filing was rejected, the Board will set the filing date of the subsequent application as the date the rejected application was attempted to be filed.

Dated: December 12, 2002.

By Authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 02–31775 Filed 12–17–02; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–151043–02]

RIN 1545–BB44

Rents and Royalties

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the inclusion in gross income of advance rentals. The proposed regulations authorize the Commissioner to provide rules allowing for the inclusion of advance rentals in gross income in a year other than the year of receipt. The proposed regulations will affect taxpayers that receive advance payments for the use of certain items (such as intellectual property) to be designated by the Commissioner.

DATES: Written or electronic comments and requests for a public hearing must be received by February 18, 2003.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–151043–02), Room 5226, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:ITA:RU (REG–151043–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs*.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Edwin B. Cleverdon, at (202) 622–7900; concerning submissions of comments, Guy Traynor, at (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 relating to the inclusion in gross income of advance rentals under section 61.

Explanation of Provisions

Currently § 1.61–8(b) provides that, except as provided in section 467 and the regulations thereunder, advance rentals must be included in gross income in the year of receipt regardless of the period covered or the method of accounting employed by the taxpayer. The proposed amendments authorize the Commissioner to provide, through administrative guidance, rules for deferring income inclusion of advance rentals to a taxable year other than the year of receipt. This amendment will ensure that the Commissioner, in modifying Rev. Proc. 71–21 (1971–2 C.B. 549), may provide deferral rules for licenses of intellectual property.

Proposed Effective Date

The regulations, as proposed, are effective on the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Edwin B. Cleverdon, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.61–8, the first sentence of paragraph (b) is revised to read as follows:

§ 1.61–8 Rents and royalties.

* * * * *

(b) * * * Except as provided in section 467 and the regulations thereunder, and except as otherwise provided by the Commissioner in published guidance (see § 601.601(d)(2) of this chapter), gross income includes advance rentals, which must be included in income for the year of receipt regardless of the period covered or the method of accounting employed by the taxpayer. * * *

* * * * *

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 02–31858 Filed 12–17–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 215

RIN 0596–AB89

Notice, Comment, and Appeal Procedures for Projects and Activities on National Forest System Lands

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; request for comment.

SUMMARY: The Forest Service is proposing to amend the rule adopted in 1994 for the notice, comment, and appeal procedures for projects and activities implementing land and resource management plans on National Forest System lands. The proposed rule changes current procedures to clarify certain provisions and reduce complexity in the current rule, improve efficiency of processing appeals, encourage early and effective public participation in the environmental analysis of projects and activities, and ensure consistency with the provisions of the statutory authority. Topics addressed include emergency situations; 30-day notice and comment procedures; site-specific comments; who may appeal; and the formal disposition process. Public comment is invited and will be considered in development of the final rule.

DATES: Comments must be received in writing by February 18, 2003.

ADDRESSES: Send written comments to USDA FS, Appeal Rule Content Analysis Team, P.O. Box 9079, Missoula, MT 59807; by electronic mail to *215appeals@fs.fed.us*; or by facsimile to (406) 329–3556. To aid in our analysis of comments, it would be helpful if comments are organized section by section. Please note that all comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The agency cannot confirm receipt of comments. Individuals wishing to inspect the comments should call (406) 329–3038 to facilitate an appointment. Additional information is provided at *http://www.fs.fed.us/emc/applit/index.htm*.

FOR FURTHER INFORMATION CONTACT: Ginger Hamilton, Program Manager, Content Analysis Team (406) 329–3038.

SUPPLEMENTARY INFORMATION:

Background

The Forest Service has a long-term commitment to promoting effective public involvement in both planning and project level decisionmaking. For example, in 1977, the proposed National Forest Management Act (NFMA) regulations directed that forest plan approvals, although subject to mandatory public involvement, would not be subject to administrative appeal. 44 FR 25554, 25589 (May 4, 1979). The final regulations adopted in 1979 dropped the no appeal provision and such appeals were allowed. In 1989 the Forest Service again undertook a major revision of its appeal regulations splitting its appeal regulations into two major rules, one for the general public (36 CFR part 217) and one for holders of special use permits (36 CFR 251.80). By 1992, the Forest Service had determined that the process had become too complex, confrontational and costly.

In 1992, the Forest Service undertook a year-long review and evaluation of its administrative appeal procedures. The 1992 review uncovered many problems with the procedures and led to the publication of a proposed rule to amend 36 CFR part 217 to continue allowing forest plan-level appeals but substituting an expanded pre-decisional public involvement opportunity to replace post-decisional administrative appeals of environmental assessments (57 FR 10444) and eliminating appeals of categorical exclusions for projects. The Forest Service received over 30,000 comments on the proposed rule. Before a final rule was published, however, Congress, operating through an annual appropriation rider, enacted section 322 of Interior and Related Agencies Appropriation Act of Fiscal Year 1993, Pub. L. 102–381, 106 Stat. 1419, (hereinafter "Appeals Reform Act" (ARA) instructing the Secretary of Agriculture to establish a notice, comment and appeal process modifying the existing appeal regulations.

The ARA contains relatively little specific guidance beyond the statutorily established timelines. The Forest Service was, therefore, tasked with establishing the process that would lay out the particulars of the appeals procedures. The origins of the ARA derive primarily from an amendment co-sponsored by Senators Craig and DeConcinni. The Craig-DeConcinni amendment was subsequently amended by the conference committee with a consensus from both parties of Congress. The Senate floor colloquy during consideration of the conference committee report contains revealing statements which support the conclusion that Congress intended to allow the agency to determine the appropriate scope and other details regarding the appeal process to be developed by the Secretary. Senator Craig described "a reasonable and balanced approach to resolve the debate over the future of the Forest Service's appeal process." 138 Cong. Rec. S15848 (Sept. 30, 1992). While Congress was clearly taking matters into its own hands regarding whether there should be an appeal system and the specific timeframes for how long such an appeal could take, Congress did not provide a detailed legislative framework. In fact, the legislative history shows that Congress even intended for the agency to address a statutory drafting error regarding the duration of administrative stays through the agency regulations.

The Forest Service has a continuing commitment to periodically review its regulations, identify specific problems in administering them, and determine whether they meet Congressional intent, as well as agency and public needs. Experience with the procedures at 36

CFR part 215 has shown that certain provisions in the current rule consistently raise questions or reduce efficient processing of appeals. In April 2001, the agency chartered a team to assess the part 215 appeal rule, identify ways to reduce the complexity of the current rule, and improve efficiency for the public and the Forest Service. The team conducted interviews with and solicited comments from a cross-section of agency personnel at the various field levels and the national headquarters staff.

Implementation issues associated with the current rule that were most often cited generally fell into two areas: inefficiency of the procedures and the process for public involvement. Specific issues identified included: The 30-day notice and comment process; emergency situations; informal disposition; dismissals; interested parties; the definition of projects implementing a land and resource management plan; who may file an appeal; appeal issues; and electronic transmission of comments and/or appeals. In addition, many comments stated that the provisions in the current rule exceed the requirements of the Act. After careful consideration, the agency has determined that the major areas needing attention are: Emergency situations; 30-day notice and comment process; site-specific comments; who may file an appeal; and the formal disposition process. As a result, the Forest Service is proposing to amend 36 CFR part 215. The proposed changes would clarify and reduce the complexity of the rule; elicit more effective public participation by seeking public comment early in the process; provide for electronic submission of comments; result in more consistent application of the rule; simplify the language; and reorganize the rule into a more logical sequence.

Two particular regulatory issues warrant special attention: The scope of decisions subject to appeal ("proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans") and stays of "emergency" actions. Congress did not provide statutory definitions for either of these terms.

The existing appeal regulations provide for appeals of actions evaluated in an environmental assessment or environmental impact statement, as well as one specific class of categorically excluded activities that is no longer in use. The ARA was enacted in direct response to the Forest Service's 1992 proposed regulation that would have substituted appeals with a pre-decisional review. Congress preferred appeals over pre-decisional public involvement for these assessments. Congress did not express a specific intent regarding where the "line should be drawn" or to "set in concrete" which activities would be subject to notice, comment and appeal. Nor was there any indication that Congress intended to extend the notice, comment and appeal requirements to all classes of categorically excluded activities. This was a determination left to the discretion and judgment of the Secretary. Congress knew that not every decision of the Forest Service was subject to appeal before the 1992 Act.

The agency believes that Congress used the phrase "proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans" to delineate between administrative appeals of forest plans and project level decisions, rather than define a comprehensive or precise set of activities. Congress could, of course, have provided a specific definition. But Congress did not do so and absent such a definition, the courts have recognized that agencies are free, indeed expected, to fill in the gaps and that such regulatory interpretations are due deference. Through the 1993 rulemaking process the Secretary concluded that the Forest Service's categorically excluded activities were generally not of the sort that Congress would have intended to apply additional notice, comment and appeal requirements given the generally minor potential for environmental effects.

One exception was made to require notice, comment and appeal for timber sales exceeding certain volume limits, but that category is no longer in use. This exception, however, does illustrate a consistent interpretation by the Department that Congress intended to grant the Secretary the authority to establish a flexible process through rulemaking. The appeal regulation's reliance upon its existing administrative framework (the agency's NEPA procedures) is also consistent with other Forest Service regulations that rely on the NEPA procedures for guidance regarding public participation (see *e.g.* 36 CFR 219.6(b)). This practice is in keeping with the Council on Environmental Quality's instructions for agencies to "integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice * * *". 40 CFR 1500.2(c).

By their very nature, activities that have been categorically excluded generally have no significant environmental effect, or stated otherwise, were determined not to cross the NEPA "significance threshold" based on the agency's experience, judgment, and analysis from implementing similar activities over many years. Therefore they typically do not include preparation of extensive records; in fact, the Forest Service NEPA procedures do not require decision documents or project files to be maintained for many categorical exclusions. Congress' intent was to streamline an appeal process in need of revision, not entangle the agency in a costly and time-consuming exercise for minor decisions by Forest Service officials. That being the case, the Forest Service has determined that including affected and interested individuals in project planning early in the process is more effective than subjecting these projects to formal and extensive notice, comment and appeal procedures.

The existing regulation's treatment of categorically excluded activities is the subject of unresolved litigation. While that litigation is currently focused on procedural matters, the agency believes that both the current and proposed regulations are within the scope of the Secretary's delegated authority to establish a notice, comment and appeal process as set forth in the ARA. This assumption is supported by the fact that during the ten years of implementation of the 1993 regulations, Congress has not sought to amend the ARA to adjust the agency's implementation, and has in fact relied upon the regulatory structure and exempted individual and classes of activities from the regulations. For example, in July 2002, Congress passed legislation recognizing the urgency of the severe fire threat posed to private homes from fire and diseased trees in the Black Hills National Forest and the procedural problems that could delay prompt action. The legislation exempted timber cutting as part of a fuels treatment project from public notice and comment as well as judicial review and appeals.

Regardless of the scope of the administrative appeals procedures, Forest Service procedures require that all projects subject to the National Environmental Policy Act (NEPA), including projects covered under categorical exclusions, include interested and affected individuals in project planning to the extent appropriate considering the nature and complexity of the proposed action. For example, for hazardous fuels reduction projects near communities, the Forest Service would collaborate with local constituents in a manner consistent with the process identified in A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy Implementation Plan.

The ARA expressly authorizes the Chief to exempt certain activities from the mandatory stay provision in an "emergency" but does not provide a statutory definition or specify particular criteria for making such determinations. The agency's 1993 regulations attempted to provide such guidance, but experience has shown the need for refinement. In particular, the Forest Service wishes to clarify that economic factors can be relied upon in making the determination of whether to exempt a project from stay while an appeal is pending. During implementation of the current rule, the agency has found that the rule is unnecessarily restrictive and results in undue waste of natural and economic resources. Fire impacted forest ecosystems and damaged watersheds impose a variety of economic costs to communities and implementation delays can result in loss of economic value that may alter the agency's options for addressing resource problems. The proposed regulation would adjust the definition of "emergency" to address this issue.

The significance of specific changes to the current rule is indicated in the following section-by-section description. Minor changes are summarized, while more detail is included for new sections and those sections that involve substantive change.

Proposed Section 215.1 Purpose and scope. This proposed section incorporates the current § 215.1 with changes that are generally minor and clarifying in nature. Proposed paragraph (b) is rewritten to eliminate repetitive language and to clearly state that the appeals process is available only for those who commented during the time period for the opportunity to comment and that appeal issues are limited to those raised during that comment period (§ 215.5). Other changes to note are that here and throughout the proposed rule the phrase "opportunity to comment" is often used to better reflect Congressional intent to require a specific time period to seek public comment.

Proposed Section 215.2 Definitions. This proposed section incorporates the current § 215.2 with changes. The proposed rule adds six new terms: Appeal disposition, emergency situation, name, National Forest System lands, projects and activities implementing a land and resource management plan, and substantive comments; removes three terms because they would no longer be applicable to the 215 regulations as amended: Decision document, decision memo, and interested party; removes the definition for "proposed timber harvest categorically excluded from documentation under Forest Service Handbook 1909.12, section 31.2, paragraph 4" as this was removed from the Handbook; and revises and updates several terms and definitions as explained in the following paragraphs. Terms and definitions not set out here are unchanged from the current rule.

Appeal. The proposed definition replaces the verb "objects" with "seeking review of" to distinguish appeals from the recently established "objection" process in the 2000 planning regulation at 36 CFR part 219.

Appeal Deciding Officer. The proposed definition corrects a typographical error and changes "Forest Service line officer" to "Secretary of Agriculture or Department or agency designee," making it clear that the Secretary can serve as the Deciding Officer in the event that there is an appeal of a Chief's decision.

Appeal period. The proposed definition clarifies that the appeal periods begins following publication of the legal notice of a decision.

Appeal record. The proposed definition is rewritten to eliminate unnecessary wording; delete the term "written comment submitted by interested parties" to conform to the proposed removal of the term "interested party"; and add "the Appeal Reviewing Officer's recommendation," which was inadvertently omitted in the current rule.

Appeal Reviewing Officer. The proposed definition clarifies that a Department of Agriculture official can also serve as an Appeal Reviewing Officer.

Categorical Exclusion. This proposed term was changed to conform to the regulations governing categorical exclusions. The current term is categorically excluded.

Comment period. This proposed definition is rewritten and changed to state that the notice of the opportunity to comment must be published in a legal notice as opposed to the current language, which merely says a notice must be published. Additionally, the information in § 215.5 on how to compute the comment period is included.

Decision document. For clarity, it is proposed to remove this term and use Decision Notice and/or Record of Decision as appropriate.

Decision documentation. It is proposed to shorten and clarify this definition and eliminate the unnecessary examples of what might constitute decision documentation.

Decision memo. It is proposed to remove this definition because it is no longer applicable to this regulation.

Environmental Assessment (EA).— Language was added to this proposed definition to conform to that found in 40 CFR 1508.9 regarding an EA.

Emergency situation. It is proposed to move the definition to § 215.2, while incorporating and revising the description at current § 215.10. While the Act does not specifically define emergency situations, it gives the Chief discretion to determine when an emergency situation exists. This proposed definition would be broadened to make clear that emergency situations can include situations not explicitly listed in the current description at section 215.10. Additionally, experience has shown that some emergency situations on National Forest System lands may pose a risk to adjacent lands and therefore, warrant being included in the definition of emergency situations. Some situations may result in substantial loss of economic value if implementation is delayed. Further, the examples are removed, as it is impossible to predict all possible scenarios where an emergency situation exists.

Forest Service line officer. The proposed definition removes the current examples of line positions, as they are not necessary for understanding and applying the definition.

Interested party. It is proposed to remove this term and thus the definition, which is not used in the proposed rule. Related information is set out in the description of proposed § 215.12.

Name. It is proposed to add this definition. Because the proposed rule provides for accepting electronic comments and appeals, it is critical that the Forest Service have the ability to identify individuals and organizations in order to establish their standing (ability to submit appeals).

National Forest System lands. This definition, based on § 200.1(c)(2), is added to clarify what lands comprise the National Forest System. This definition makes clear that research and experimental areas (such as experimental forests) are included in National Forest System lands.

Projects and activities implementing a land and resource management plan. It is proposed to add this definition. The Act uses this phrase to define what proposed actions are subject to this part; however, the current regulation does not provide a definition. Application of the current rule has shown that the lack of

a definition causes confusion about exactly which projects and activities are subject to notice, comment, and appeal. Further, the proposed definition makes clear that research activities on all National Forest System lands are subject to this part.

Proposed action—The proposed definition was changed to remove the words "recommend" and "implement" to avoid confusion. Actions that are "recommended" are not subject to this rule and actions that have been approved and already subject to this rule are not subjected again at implementation.

Proposed timber harvest categorically excluded from documentation under Forest Service Handbook 1909.12, section 31.2, paragraph 4. It is proposed to remove this term from the definitions and throughout the proposed rule because this categorical exclusion is no longer in use.

Responsible Official. The proposed definition would replace "line officer" and "authority and responsibility to make decisions" with "Forest Service employee who has the delegated authority to make and implement the decision" to clarify that some decisions subject to this rule are made and implemented by a Regional Director, through delegated authority, even though this position is not considered a "Forest Service line officer."

Substantive comments. It is proposed to add this definition in order to define a new term that is added to the proposed rule. The explanation for adding this term is included in the proposed §§ 215.5 and 215.6 below.

Proposed Section 215.3 Proposed actions subject to legal notice and opportunity to comment. This proposed section revises and incorporates current regulatory text from § 215.3, and revises the heading to include the term "opportunity to comment."

Since timber harvest is no longer an activity that may be categorically excluded from documentation in an environmental assessment (EA) or environmental impact statement (EIS), current paragraph (b) is removed; current paragraph (c) on nonsignificant amendments to land and resource management plans is redesignated to paragraph (b).

Proposed paragraph (c) would apply procedures for notice and opportunity to comment to revision of an EA based on new information or changed circumstances. Paragraph (c) is added because confusion has resulted from not having addressed this point in the current rule.

Current paragraph (d) covering National Forests without land and resource management plans is removed as all National Forests now have approved land and resource management plans.

Current paragraph (e) is redesignated (d) and is rewritten to say "research activities" instead of "forestry research activities" to reflect that research activities conducted on National Forest System lands for which environmental analysis is performed, include forestry as well as other types of research.

Proposed Section 215.4 Actions not subject to legal notice and opportunity to comment. This proposed section revises and incorporates the regulatory text from the current § 215.4 and revises the heading to include the term "opportunity to comment."

Proposed paragraph (b) is rewritten excluding from notice and opportunity to comment all proposed actions that are categorically excluded. As explained when 36 CFR part 215 was promulgated (58 FR 58905), it is appropriate to exclude proposed actions that are categorically excluded from notice and opportunity to comment. For all projects subject to NEPA, Forest Service procedures require that interested and affected individuals be included in project planning through public involvement commensurate with the nature and complexity of the proposed action. By their very nature, proposed actions that may be categorically excluded from documentation in an EA or EIS generally have little to no environmental effect.

The current rule does not address the application of this section to the following situation: a determination by the Responsible Official that new information or changed circumstances does not result in revision of the EA. Proposed paragraph (d) is added to clarify that such situations are not subject to notice and opportunity to comment.

Proposed Section 215.5 Legal notice of proposed action and opportunity to comment. The proposed heading is rewritten for clarity and to include the term "opportunity to comment." This proposed section retains but also revises and reorganizes most of the requirements in current § 215.5 and also incorporates pertinent paragraphs from current § 215.6. The proposed paragraph headings are rewritten for clarity and to reflect the reorganization of this section. In this section and throughout the proposed rule, the terms "notice" and "public notice" are replaced with the term "legal notice" to reflect standard practice and terminology. "Legal notice" is intended to mean publication in the legal notice section of the paper of record.

Proposed paragraph (a), "Timing for publication of legal notice," would incorporate and revise current paragraph (b)(2)(i) to give the Responsible Official discretion to determine the most effective timing for publishing the legal notice of the proposed action and opportunity to comment. There are instances when a proposed action is well developed, with sufficient information to allow for substantive public comment during the scoping phase of project planning. Other times, it might be more helpful to the Responsible Official for the comment period to occur prior to alternative development. In a third instance, a comment period after alternative development might be of most benefit. These are examples of how the rule's flexibility allows for the most effective use of the comment period significantly earlier in the project planning than the current rule permits. Timing for the comment period would be determined on a project-by-project basis, depending on the nature and complexity of the project. The flexibility with such discretion would allow the Responsible Official to provide an opportunity for early comment and meaningful public participation during project planning, at the stage when comments will be most helpful in developing public understanding and an effective project. The Forest Service expects to develop policy guidance with regard to the appropriate timing of the 30-day comment period following promulgation of a final rule. This change is consistent with the statutory language of the Act. In contrast, the current rule requires that the EA be mailed to any individual who is known to have participated, a procedure which goes beyond the requirements in the Act and unnecessarily delays the process by requiring, in all cases, the mandated 30-day comment period only after the EA is completed.

Proposed paragraphs (b)(1) through (b)(5) incorporate the regulatory text concerning notice and comments from the current §§ 215.5, 215.6(a) and 215.10(d)(2).

Proposed paragraph (b)(4)(i)–(viii), "Content of legal notice," adds all forms of the Responsible Official's address; the acceptable format for electronic comments; a signature requirement for each individual or organization listed; a statement that the ability to appeal is tied to timely submission of comments; and information about emergency situations.

The proposed rule provides for electronic submission of comments which is not addressed in the current rule. Proposed paragraph (b)(4)(v), requires that the legal notice specify a standard format for electronic comments, because experience has shown that not all electronic submissions are compatible with the Forest Service computer systems. It should be noted that those availing themselves of electronic transmission of comments are responsible for ensuring that their submissions are timely. The Forest Service is unable to accept responsibility for failure of electronic devices.

The notice requirements for emergency situations are currently described in current § 215.10(d) "Implementation of decisions," but it is more appropriate to include them in proposed paragraph (b)(4)(ix).

Proposed paragraph (b)(5) incorporates current § 215.6(a) concerning the time period for comments and is rewritten for clarity. The current requirement that the public notice for comment include the date the comment period ends has resulted in problems and confusion for the agency and the public. Currently, the agency employee preparing the legal notice must estimate the date of publication and the date the comment period ends, for inclusion in the notice. However, because publication delays are not uncommon, there have been numerous instances of confusion as to the correct deadline for accepting comments. The remedy to this problem is found in proposed paragraphs (b)(5) to (b)(5)(i)(B), which describe how the commenter can determine the last day for accepting comments by noting the newspaper date of the legal notice and adding thirty days. Comments must be sent by the end of the 30th day.

The current regulation does not address extending the comment period and this has resulted in confusion. Proposed paragraph (b)(5)(ii), which conforms to the language in the Act, explicitly states that the period for the opportunity to comment cannot be extended.

Proposed paragraph (c), "Comments," revises and incorporates the requirements regarding the content of comments currently in § 215.6(b), and adds new paragraphs (1) and (3), requiring signatures on the comment letters, that comments must be specific and provides consistent requirements for oral comments. The requirements in paragraph (c) through (c)(3) are rewritten to address the following difficulties encountered during implementation of the current rule: identification of those who can appeal when comment letters list several organizations but include only one signature with a statement that the individual represents all the organizations; uncertainty as to which proposed action the comments address; receipt of comments that are not relevant to the specific project or activity or are so general in nature that they are not useful to the Responsible Official in making a more informed decision; and inconsistency in submission of oral comments.

Proposed Section 215.6 Consideration of comments. This section, as proposed, is considerably shortened from the current rule because the current paragraphs (a) and (b) on procedures for commenting are moved to proposed § 215.5. In order to encourage the public to submit meaningful and specific comments, the remaining paragraphs are revised by requiring the consideration of all substantive written and oral comments.

Proposed Section 215.7 Legal notice of decision. This proposed section makes minor revisions, incorporates the requirements in the current Notice of decision, § 215.9, and adds two new paragraphs as described below.

Proposed paragraph (a)(2)(ii) would require that the legal notice describe how the time period for filing an appeal is calculated and would clarify that it is the appellants' responsibility to determine the time allotted, based on the publication date of the legal notice and not relying on dates or time frames provided by any other source. To avoid any confusion should publication be delayed, this proposed paragraph also makes clear that an actual date for the end of the comment period shall not be included in the legal notice.

Proposed paragraph (a)(2)(vi) would provide for notification of the public as to when implementation may occur in emergency situations as set out in proposed § 215.9(b). While implementation of decisions regarding emergency situations is discussed in current § 215.10(d), there is no requirement to notify the public of timeframes.

Proposed Section 215.8 Decision implementation. This proposed section incorporates, revises, and redesignates at paragraphs (a) through (c)(2), the requirements currently in § 215.10 paragraphs (a) through (c). Proposed paragraph (c) differentiates between when decisions documented in a Decision Notice (DN) or in a Record of Decision (ROD) can be implemented, which was inadvertently omitted from the current § 215.10. This differentiation is necessary to ensure compliance with the Council on Environmental Quality (CEQ) regulations governing final environmental impact statement (FEIS) and ROD timeframes.

Proposed Section 215.9 Emergency situations. This proposed section is added to set out procedures for emergency situations in a separate section for clarity and so that they can be located quickly and easily. The definition for emergency situations, at current (§ 215.10(d)(1)), is moved to § 215.2, Definitions.

Proposed paragraph (a) clarifies that authority for determination of an emergency situation is not reserved to the Chief and may be delegated, though not below the Regional Forester or Station Director level. The current regulation appears to reserve this determination solely for the Chief, although the Act does not mandate such reservation.

Proposed paragraph (b) incorporates current § 215.10(d) regarding implementation of emergency situations and clarifies when implementation of the project or activity may begin. In addition, it differentiates between decisions determined to be an emergency documented either in a Decision Notice (DN) or in a Record of Decision (ROD). This differentiation is necessary to clarify compliance with the Council on Environmental Quality (CEQ) regulations governing final environmental impact statement (FEIS) and ROD timeframes.

Proposed paragraph (c) reiterates that the legal notice shall include information about the determination of an emergency situation. Examples of emergency situations are removed because they do not cover all emergency situations that may occur, which caused confusion.

Proposed Section 215.10 Decisions subject to appeal. This proposed section incorporates § 215.7(a) of the current rule and adds two new paragraphs to proposed paragraph (a). To clarify existing confusion over how to apply this section when considering new information or changed circumstances, paragraph (a)(2) is added; and a new paragraph (a)(3) is added to clarify and address those instances where the Forest Service makes decisions in conjunction with other federal agencies but where only a portion of the decision applies to National Forest System lands.

Current paragraph § 215.7(b) is removed because Forest Service policy no longer allows timber harvest projects and activities to be documented in a decision memo.

Proposed paragraph (b) is added, but it is only a technical change. Currently these decisions are discussed in § 215.8(c) Decisions not subject to appeal, which could be misleading to someone who has the option to use the appeal process at either part 215 or part

251. It is more appropriate under this section.

Proposed Section 215.11 Decisions and actions not subject to appeal. This proposed section revises, reorganizes and incorporates the requirements from current § 215.8. Proposed paragraph (b) is added to address situations involving new information or changed circumstances that do not result in a new decision and make clear that this situation is not subject to appeal. Proposed paragraph (c)(ii) is added (corresponding to that provided for environmental assessments in proposed paragraph (c)(i)) for situations where no comments or only supportive comments are received during the comment period for a draft environmental impact statement (DEIS), and the Responsible Official's decision does not modify the preferred alternative identified in the DEIS. This was an inadvertent omission in the current rule.

Proposed paragraph (c) combines two current paragraphs ((a)(2) and (b)), and removes sentences and examples found in the current rule that are necessary for understanding and paragraph (c) in the current § 215.8 is moved to proposed § 215.10, "Decisions subject to appeal."

Proposed paragraph (d) differentiates between environmental assessments (EAs) and environmental impact statements (EISs) not subject to appeal and proposed paragraph (d)(ii) sets out that for a decision to not be subject to appeal under this paragraph, both criteria must be met.

Proposed paragraphs (f), "Nonsignificant amendments to land and resource management plans," and (g), "Concurrences and recommendations from other federal agencies" are added for clarification and to eliminate confusion about what is subject to appeal. Concurrences and recommendations from other federal agencies are not Forest Service decisions, nor do they meet the definition of a Forest Service "project or activity implementing a land and resource management plan" and thus would not be subject to appeal.

Proposed Section 215.12 Who may appeal. This proposed section incorporates current § 215.11, paragraphs (a), (c), and (d) and is rewritten for clarity.

Proposed paragraph (a) combines current paragraphs § 215.11(a)(1) and that portion of (2) regarding submission of comments pursuant to provisions of § 215.6 (now proposed § 215.5). The remaining portion of paragraph (a)(2) is removed to more closely conform to the Act in regard to "who may appeal". The Forest Service believes that a mere "expression of interest", such as that of an individual having no participation in the project planning process, but who requested a copy of the decision, does not meet Congressional intent for who may appeal. This conclusion is based on a reading of those portions of the Act and the Congressional colloquy regarding the appeal process, which make clear that an individual's participation in the statutorily mandated public comment period is required to establish standing to appeal.

Current § 215.11(b) "Interested parties," is removed. The current provision exceeds the provisions of the Act, which only addresses appellants or those individuals who have participated in the planning process and who have provided comments within the proscribed timeframes.

Proposed paragraph (b) addresses procedures for appeals listing multiple individuals or organizations. The current regulations are unclear on how to process appeals with multiple names to determine who has standing to appeal, resulting in inconsistent application across the Forest Service.

Proposed Section 215.13 Where to file appeals. This section incorporates the requirements in current § 215.12, adds two levels of Responsible Officials inadvertently omitted from the current regulation: Chief of the Forest Service and Research Work Unit Leader, and clarifies that a Station Director is also considered a Responsible Official.

Proposed Section 215.14 Appeal time periods and process. The requirements in current § 215.13 are incorporated in proposed section § 215.14; paragraphs are rewritten for clarity, reorganized, and redesignated.

Proposed paragraph (b) clarifies that all time periods that end on a Saturday, Sunday, or federal holiday shall be extended to the end of the next federal working day.

Proposed paragraph (c) clarifies how timeliness shall be determined for various methods of delivery, including e-mail; states that an automated response should be received from the agency when an appeal is electronically mailed, as a verification of receipt; and that should an electronic response not be received, it is the appellant's responsibility to provide evidence that the appeal was sent in a timely manner.

Current § 215.13(e), "Interested party comments," is removed, as discussed in proposed § 215.12 and the remainder of proposed § 215.14 is redesignated. Proposed paragraph (e) rewrites current paragraph § 215.13(f)(1) replacing "transmit appeal record" with "transmit decision documentation." The appeal record is assembled by the Deciding Officer, not the Responsible Official. Further, the current paragraph on review recommendation (§ 215.13(f)(2)) is removed because the Act does not include any time period for the review recommendation. The regulatory text describing what an appeal decision must contain at § 215.13(f)(3) is moved to proposed § 215.18.

Proposed Section 215.15 Appeal content. This section of the proposed rule retains the requirements of current § 215.14.

Proposed paragraph (a) is rewritten with minor changes for terminology consistency and to clarify that the focus of the appeal is providing project- or activity-specific evidence and rationale as it relates to the decision. The term "remanded" in current paragraph (a) is removed because it is not used elsewhere in either the current rule or the proposed rule.

Proposed paragraph (b) rewrites, reorganizes, and redesignates current § 215.14(b). Proposed paragraph (b)(5) clarifies that appeal issues are limited to substantive comments submitted during the comment period. This change is consistent with the Act.

Proposed paragraph (c) is added, setting out those instances when an appeal would not be accepted. It makes clear to those planning to appeal that it is to their benefit to include all applicable information.

Proposed Section 215.16 Dismissal of appeal without review. The requirements in current § 215.15 now appear in proposed § 215.16.

Proposed paragraph (a) is rewritten for clarity and consistency with proposed § 215.14, to show how timeframes for different delivery methods are applied. Current § 215.15(a)(7) concerning filing for judicial review is removed in accordance with Public Law 103–354, the USDA Reorganization Act of 1993. Current § 215.15(a)(5) is rewritten as proposed paragraph (a)(6) and is consistent with proposed § 215.15(b)(5) concerning the limitation of appeal issues. Proposed paragraph (a)(9) is added to provide for dismissal when an appellant withdraws an appeal and to be consistent with the current rule which provides for dismissal when a responsible official withdraws a decision.

Proposed Section 215.17 Informal disposition. The requirements in current § 215.16 are incorporated in proposed § 215.17, with minor changes.

Proposed paragraph (b) is rewritten to clarify that it is the "initial" meeting that must occur within 15 days. This change alleviates the confusion about whether informal resolution must be concluded within 15 days.

Proposed paragraph (c) removes the reference to interested parties, consistent with the proposed change removing this term elsewhere in the rule.

Proposed paragraph (d) is rewritten, articulating the various scenarios that may result from informal disposition.

Proposed Section 215.18 Formal review and disposition procedures. The requirements of current § 215.17 are incorporated in proposed § 215.18 and the proposed heading is changed to "Formal review and disposition procedures" for clarity.

Proposed paragraph (b)(1) adds the procedures to use when an appeal decision includes instructions. The omission of these procedures in the current rule has resulted in confusion about the procedures to follow in such cases. Proposed paragraph (b)(2) articulates that issuing an appeal decision is not required; this change is consistent with the Act.

Proposed paragraph (c) makes clear that an appeal decision cannot be issued after the 45th day.

Proposed paragraph (d) is moved from current § 215.18, "Appeal Deciding Officer authority", as it is more appropriate in this section.

Proposed Section 215.19 Appeal Deciding Officer's authority. This proposed section incorporates the language from current § 215.18, except for paragraph (c), reorganizing it to more clearly follow the process as it relates to the Appeal Deciding Officer's (ADO) authority.

Proposed paragraph (b) is rewritten to clarify that the ADO may consolidate appeals and issue one or more appeal decisions, whereas the current § 215.18 language implies that the only options are one decision for all appellants or separate decisions for each appellant.

Proposed paragraph (c) is added, describing the ADO's authority when appeals listing multiple names are received. The current regulations do not address these types of appeals, resulting in inconsistent application of the regulation. As discussed above, paragraph (c) regarding appeal decisions from the current § 215.18 is moved to proposed § 215.18(d), "Formal review and disposition" and a new paragraph (d) is added, clarifying that the ADO's decision can be different from the Appeal Reviewing Officer's recommendation. This provision was not addressed specifically in the Act but was implied with the use of the term "recommendation."

Proposed Section 215.20 Appeal Reviewing Officer's responsibilities. This proposed section incorporates and revises the language from current § 215.19. The proposed heading is revised to be consistent with the Act and the paragraph headings are also revised. Proposed paragraph (a) is revised to conform directly with the language in the Act regarding who may be designated as the Appeal Reviewing Officer. Proposed paragraph (b) clarifies the scope of review, using language from the Act. Proposed paragraph (c) clarifies that the Appeal Reviewing Officer has an option to issue one recommendation or as many as appropriate in cases involving multiple appeals of decisions.

Proposed Section 215.21 Secretary's authority. This proposed section is added to set out the relationship between the Secretary of Agriculture and the Forest Service concerning decisionmaking and the rules of this part.

Proposed Section 215.22 Judicial proceedings. The concepts from current § 215.20 are incorporated in this proposed section, but it is rewritten to remove the option for waiver since Public Law 103–354, the USDA Reorganization Act of 1993 (7 U.S.C. 6901) supercedes this option.

Proposed Section 215.23 Applicability and effective date. This proposed section specifies in paragraph (a) when the new procedures in the final rule would apply. Proposed paragraph (b) would provide that decisions for which legal notice is given prior to the effective date of the final rule would remain subject to the rules previously in effect in part 215.

Proposed Section 215.24 Information Collection Requirements. This section explains that the rule contains information collection requirements as defined in 5 CFR part 1320 by specifying the information that appellants must supply in an appeal. The OMB Control Number for this information will be included in the final rule.

Regulatory Certifications

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants user fees, or loan programs or the rights and obligations of recipients of such programs.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. Therefore, a regulatory flexibility analysis is not required for this proposed rule.

Environmental Impacts

This proposed rule would revise the administrative procedures and requirements to guide notice, comment, and appeal of projects and activities implementing a land and resource management plan. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43168; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instruction." This proposed rule clearly falls within this category of actions and no extraordinary circumstances exist which would require preparation of an environmental assessment or an environmental impact statement.

Energy Effects

This proposed rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed rule does not constitute a significant energy action as defined in the Executive order. Procedural in nature, this proposed rule would revise the administrative procedures and requirements to guide notice, comment, and appeal of projects and activities implementing a land and resource management plan.

Controlling Paperwork Burdens on the Public

This proposed rule at 36 CFR 215.15 sets out requirements for the information that appellants must provide in an appeal. As such, this proposed rule contains information collection requirements as defined in 5 CFR part 1320 and, therefore, is subject to the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. part 3501 *et seq.*) and implementing regulations at 5 CFR part 1320.

Federalism

The agency has considered this proposed rule under the requirements of

Executive Order 13132, Federalism, and Executive Order 12875, Government Partnerships. The agency has made a preliminary assessment that the proposed rule conforms with the federalism principles set out in these Executive orders; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Based on comments received on this proposed rule, the agency will consider if any additional consultation will be needed with State and local governments prior to adopting a final rule.

Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications as defined in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and, therefore, advance consultation with tribes is not required.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of Constitutionally protected private property. This proposed rule would only revise the administrative procedures and requirements that guide notice, comment, and appeal of projects and activities implementing a land and resource management plan.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The agency has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this proposed rule. Nevertheless, in the event that such a conflict were to be identified, the proposed rule, if implemented, would preempt the State or local laws or regulations found to be in conflict. However, in that case, (1) No retroactive effect would be given to this proposed rule; and (2) the Department would not require the parties to use administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

List of Subjects in 36 CFR Part 215

Administrative practice and procedure, National forests.

Therefore, for the reasons set forth in the preamble, it is proposed to amend Part 215 of Title 36 of the Code of Federal Regulations as follows:

PART 215—NOTICE, COMMENT, AND APPEAL PROCEDURES FOR NATIONAL FOREST SYSTEM PROJECTS AND ACTIVITIES

Sec.

215.1 Purpose and scope.
215.2 Definitions.
215.3 Proposed actions subject to legal notice and opportunity to comment.
215.4 Actions not subject to legal notice and opportunity to comment.
215.5 Legal notice of proposed action and opportunity to comment.
215.6 Consideration of comments.
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215.11 Decisions and actions not subject to appeal.
215.12 Who may appeal.
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215.14 Appeal time periods and process.
215.15 Appeal content.
215.16 Dismissal of appeal without review.
215.17 Informal disposition.
215.18 Formal review and disposition procedures.
215.19 Appeal Deciding Officer's authority.
215.20 Appeal Reviewing Officer's responsibilities.
215.21 Secretary's authority.
215.22 Judicial proceedings.
215.23 Applicability and effective date.
215.24 Information collection requirements

Authority: 16 U.S.C. 472, 551; sec. 322, Pub. L. 102–381, 106 Stat. 1419 (16 U.S.C. 1612 note).

§ 215.1 Purpose and scope.

(a) *Purpose.* The rules of this part have two purposes. First, this part establishes a process by which the public receives notice and an opportunity to comment on proposed actions for projects and activities implementing a land and resource management plan prior to a decision by the Responsible Official. Second, this part establishes an appeal process and identifies the decisions that may be appealed, who may appeal those decisions, the responsibilities of the participants in an appeal, and the procedures that apply for the prompt disposition of the appeal.

(b) *Scope.* The notice of proposed actions and opportunity to comment provides an opportunity for the public to provide meaningful input prior to the decision on projects and activities implementing land and resource management plans. The rules of this part complement, but do not replace, numerous other opportunities to participate in and influence the agency's project and activity planning, such as those provided by the National Environmental Policy Act of 1969 (NEPA), the National Forest Management Act, and the implementing regulations and procedures in 40 CFR parts 1500–1508 and 36 CFR parts 216 and 219, Forest Service Manual (FSM) Chapters 1920 and 1950, and Forest Service Handbooks (FSH) 1909.12 and 1909.15. The appeal process is available to those who submit comments during the comment period, and issues are limited to those specifically raised by the appellant in their comments. Appeal disposition constitutes the final administrative determination of the United States Department of Agriculture.

§ 215.2 Definitions.

Appeal—The written document filed with an Appeal Deciding Officer by someone seeking review of a decision.

Appeal Deciding Officer—The Secretary of Agriculture or the Department or agency designee having the delegated authority and responsibility to render a decision on an appeal filed under this part.

Appeal disposition—Either a written appeal decision or written notification that an appeal decision will not be issued.

Appeal period—The 45-calendar-day period following publication of the legal notice of a decision during which an appeal may be filed with the Appeal Deciding Officer.

Appeal record—The information upon which review of an appeal is conducted, consisting of the decision documentation, the legal notice of decision, the appeal, the Responsible Official's documentation of the informal disposition meeting, and the Appeal Reviewing Officer's recommendation.

Appeal Reviewing Officer—An agency or Department of Agriculture official who reviews an appeal and makes a written recommendation to the Appeal Deciding Officer on the disposition of the appeal.

Appellant—An individual or organization filing an appeal under this part.

Categorically excluded—Proposed actions which do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental impact statement (EIS) nor an environmental assessment (EA) is required (40 CFR 1508.4; Forest Service Handbook (FSH) 1909.15, Chapter 30).

Comment period—The 30-calendar-day period following publication of the legal notice of a proposed action, during which the public has the opportunity to provide comments to a Responsible Official on a proposed action subject to this part. The time period is computed using calendar days, including Saturdays, Sundays, and federal holidays. However, when the time period expires on a Saturday, Sunday, or federal holiday, comments shall be accepted until the end of the next federal working day.

Decision documentation—The Decision Notice or Record of Decision and all relevant environmental and other analysis documentation and records on which the Responsible Official bases a decision under appeal.

Decision Notice (DN)—A concise written record of a Responsible Official's decision based on an environmental assessment and a finding of no significant impact (40 CFR 1508.9; FSH 1909.15, Chapter 40).

Emergency situation—A situation on National Forest System lands in which a proposed action would provide relief from hazards threatening human health and safety or natural resources on those or adjacent lands; or that would result in substantial loss of economic value to the Government if implementation of the proposed action were delayed.

Environmental Assessment (EA)—A concise public document that provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact, aids an agency's compliance with NEPA when no environmental impact statement is necessary, and facilitates preparation of a statement when one is necessary. (40 CFR 1508.9; FSH 1909.15, Chapter 40).

Environmental Impact Statement (EIS)—A detailed written statement as required by section 102(2)(C) of the National Environmental Policy Act of 1969 (40 CFR 1508.11; FSH 1909.15, Chapter 20).

Finding of No Significant Impact (FONSI)—A document prepared by a federal agency presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement, therefore, will not be prepared. It includes the environmental assessment or a summary of it and shall note any other environmental documents related to it (40 CFR1508.13; FSH 1909.15, Chapter 40).

Forest Service line officer—A Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions subject to this part.

Name—The first and last name of an individual or the name of an organization. An e-mail address or electronic username is insufficient for identification of an individual or organization.

National Forest System lands—Proclaimed or designated National Forests; National Grasslands; Purchase Units; Land Utilization Projects; Research and Experimental Areas; and other areas (36 CFR 200.1(c)(2)).

Projects and activities implementing a land and resource management plan—Site-specific projects and activities, including those for research, on National Forest System lands that are approved in a Decision Notice or Record of Decision by a Forest Service official.

Proposed action—A proposal made by the Forest Service to authorize an action on National Forest System lands to meet a specific purpose and need which is subject to the notice and comment provisions of this part.

Record of Decision—A document signed by a Responsible Official recording a decision that was preceded by preparation of an environmental impact statement (40 CFR 1505.2; FSH 1909.15, Chapter 20).

Responsible Official—The Forest Service employee who has the delegated authority to make and implement a decision subject to this part.

Substantive comments—Comments that are within the scope of the proposed action, are specific to the proposed action, and have a direct relationship to the proposed action.

§ 215.3 Proposed actions subject to legal notice and opportunity to comment.

The legal notice and opportunity to comment procedures (§ 215.5) only apply to:

(a) Proposed projects and activities implementing land and resource management plans (§ 215.2) for which an environmental assessment (EA) is prepared.

(b) Proposed nonsignificant amendments to land and resource management plans (36 CFR part 219) that are included as part of a decision on a project or activity for which an EA is prepared.

(c) Proposed revision of the EA based on consideration of new information or changed circumstances (FSH 1909.15, section 18).

(d) Proposed research activities to be conducted on National Forest System lands for which an EA is prepared.

§ 215.4 Actions not subject to legal notice and opportunity to comment.

The procedures for legal notice and opportunity to comment (§ 215.5) do not apply to:

(a) Proposed projects and activities described in a draft environmental impact statement (EIS), for which notice and comment procedures are governed by 40 CFR 1500–1508.

(b) Projects and activities which are categorically excluded from documentation in an EIS or environmental assessment (EA) pursuant to FSH 1909.15, sections 31.1 and 31.2.

(c) Projects and activities not subject to the provisions of the National Environmental Policy Act and the implementing regulations at 40 CFR parts 1500–1508 and the National Forest Management Act and the implementing regulations at 36 CFR part 219.

(d) New information or changed circumstances, based upon which, the Responsible Official determines that revision of the EA is not required (FSH 1909.15, section 18).

(e) Rules promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or policies and procedures issued in the Forest Service Manual and Handbooks (36 CFR parts 200 and 216).

(f) Proposed nonsignificant amendment to a land and resource management plan that is made separately from a project or activity specified in § 215.3(b).

§ 215.5 Legal notice of proposed action and opportunity to comment.

(a) *Timing for publication of notice.* Comments on the proposed action shall be accepted for 30 days following the date of publication of the notice; the Responsible Official has the discretion to determine the most effective timing for publishing the legal notice of the proposed action and opportunity to comment (§ 215.5(b)).

(b) *Giving Notice*—(1) *Principal newspaper.* Through notice published annually in the **Federal Register**, each Regional Forester shall advise the public of the principal newspapers utilized for publishing legal notices required by this part.

(2) The Responsible Official shall promptly mail the proposed action (§ 215.2) to any individual or organization who has requested it and to individuals who have participated in project planning.

(3) The Responsible Official shall publish a legal notice of the opportunity to comment on a proposed action in the principal newspaper identified in § 215.5(b)(1), or in the case of the Chief of the Forest Service, in the **Federal Register**.

(4) *Content of legal notice.* All legal notices shall include the following:

(i) The title and brief description of the proposed action;

(ii) A general description of the proposed action's location with sufficient information to allow the interested public to identify the location;

(iii) Instructions on how to obtain additional information on the proposed action;

(iv) The name, title, telephone number, and addresses (street, postal, facsimile, and e-mail) of the Responsible Official to whom comments are to be submitted;

(v) The acceptable format(s) for electronic comments;

(vi) A statement indicating that each individual, or a representative from each organization, must sign comment letters.

(vii) Rather than giving a specific date, a statement indicating that the opportunity to comment ends 30 days following the date of publication of the legal notice;

(viii) A statement indicating that only those who submit timely comments will be accepted as appellants; and

(ix) When applicable, a statement that the Responsible Official is requesting an emergency situation determination or it has been determined that an emergency situation exists for the project or activity as provided for in § 215.9.

(5) *Computation of time period.* The 30-day comment period begins on the first day after publication of the legal notice. The time period is computed using calendar days, including Saturdays, Sundays, and federal holidays. However, when the time period expires on a Saturday, Sunday, or federal holiday, comments shall be accepted until the end of the next federal working day.

(i) The Responsible Official shall accept comments on the proposed action that are:

(A) Postmarked, e-mailed, faxed, or otherwise submitted (for example, express delivery service) by the end of the 30th calendar day following publication of the legal notice (§ 215.5(b)(3)); or

(B) Hand-delivered and received by the end of the 30th calendar day following publication of the legal notice (§ 215.5(b)(3)).

(ii) The time period for the opportunity to comment shall not be extended.

(c) *Comments.* Written and oral comments shall be accepted and shall become a matter of public record.

(1) Anyone commenting must provide the following information:

(i) Name and address;

(ii) Title of the proposed action; and

(iii) Specific substantive comments (§ 215.2) on the proposed action along with supporting reasons that the Responsible Official should consider in reaching a decision.

(2) Written Comments Signature. Written comments, submitted via delivery service (for example, U.S. Postal Service, express mail service, courier, etc.) or submitted in person, must be signed. When a written comment, submitted via delivery service or in person, is filed on behalf of multiple individuals, each name listed must include a signature.

Verification of the author(s) may be necessary for electronically submitted comments. For organizations, a signature of an individual officially representing each organization must be included. Comments received from an official representative(s) of an organization are considered as those of the organization only, and do not meet comment requirements of this section for individual members of that organization.

(3) Oral Comments—Oral comments must be provided at the agency office during normal business hours via telephone or in person, or if non-business hours, must be at an official agency function which is designed to elicit public comment.

§ 215.6 Consideration of comments.

(a) All written comments received by the Responsible Official shall be placed in the project file.

(b) The Responsible Official shall clearly identify the date all oral comments are received in response to the legal notice (§ 215.5), document them, and place in the project file.

(c) The Responsible Official shall consider all substantive written and oral comments submitted in compliance with § 215.5(b)(5)(i) and (c).

§ 215.7 Legal notice of decision.

(a) The Responsible Official shall publish a legal notice of any decision subject to appeal (§ 215.10) in the principal newspaper (§ 215.5(b)(1)). The legal notice shall:

(1) Include the title of the project or activity and a concise description of the action(s) to be taken, the name and title of the Responsible Official, and instructions for obtaining a copy of the Decision Notice (DN) and Finding of No Significant Impact (FONSI) or Record of Decision (ROD).

(2) State that the decision is subject to appeal pursuant to 36 CFR part 215 and include the following:

(i) Name and address of the Appeal Deciding Officer with whom an appeal is to be filed. The notice shall specify a street, postal, fax, and e-mail address, and acceptable format(s) for electronically submitted appeals.

(ii) A statement that the publication date of the legal notice is the exclusive means for calculating the time to file an appeal (§ 215.14)) and that appellants should not rely upon dates or timeframe information provided by any other source. An actual date shall not be included in the legal notice.

(iii) A statement that an appeal, including attachments, must be postmarked, faxed, e-mailed, hand-delivered, or otherwise submitted to the appropriate Appeal Deciding Officer (§ 215.13) within 45 days following the date of publication of the legal notice.

(iv) A statement indicating that individuals or organizations who submitted comments during the comment period (§ 215.5) may appeal. Appeal issues are limited to those raised by the appellant in his/her comments (§ 215.5).

(v) A statement specifying, when applicable, that the Chief of the Forest Service, or a designee, has determined that an emergency situation exists (§ 215.9), and which portion of the project is covered by that determination as provided for in § 215.9.

(vi) A statement indicating how many days following publication that implementation may begin (§ 215.8), including those portions covered by an emergency situation determination, if applicable (§ 215.9).

(3) When no comments or only supportive comments are received, include a statement indicating that the decision is not subject to appeal pursuant to § 215.11.

(b) The Responsible Official shall promptly mail the ROD or the DN and FONSI to those who requested the decision document and those who submitted comments during the comment period provided under § 215.5.

§ 215.8 Decision implementation.

(a) If no appeal is filed within the time period provided, implementation of the decision may begin on, but not before, the fifth (5th) business day following the close of the appeal-filing period (§ 215.14).

(b) Except for emergency situations as noted in § 215.9(b), when an appeal is filed, implementation may occur on, but not before, the 15th business day following the date of appeal disposition (§ 215.2). In the event of multiple appeals of the same decision, the implementation date is controlled by the date of the last appeal disposition.

(c) When a project or activity decision is not subject to appeal (§ 215.11), implementation may occur as follows:

(1) Immediately when documented in a Decision Notice; or

(2) Immediately when documented in a Record of Decision after complying with the timeframes described in 40 CFR 1506.10(b)(2).

§ 215.9 Emergency situations.

(a) *Determination.* The Chief of the Forest Service or a designee may make the determination that an emergency situation (§ 215.2) exists. The authority for determination of an emergency situation may not be delegated below the Regional Forester or Station Director. The determination that an emergency situation exists shall be based on an examination of the relevant information. During the review, additional information may be requested and/or the Responsible Official may be consulted.

(b) *Implementation.* When it is determined that an emergency situation exists with respect to all or part of the decision, implementation may proceed as follows:

(1) Immediately when documented in a Decision Notice, for that portion of the decision determined to be an emergency.

(2) Immediately when documented in a Record of Decision, after complying with the timeframes described in 40 CFR 1506.10(b)(2), for that portion of the decision determined to be an emergency.

(c) *Notification.* The Responsible Official shall notify the public that the Forest Service is handling part of, or the entire project, as an emergency in the legal notice of decision (§ 215.7).

§ 215.10 Decisions subject to appeal.

(a) The following decisions are subject to appeal under this part:

(1) Decisions for projects and activities implementing land and resource management plans (§ 215.2) documented in a Record of Decision (ROD) or Decision Notice (DN), including those which, as a part of the decision, contain a nonsignificant amendment to a land and resource management plan (36 CFR 219.10).

(2) A new DN or ROD made after supplementation or revision of an environmental assessment or environmental impact statement pursuant to FSH 1909.15, section 18. However, only that portion of the decision that is changed is subject to appeal.

(3) Decisions made in conjunction with other federal agencies and meeting the requirements of preceding paragraph (a)(1) of this section. However, only that portion of the decision made by the Forest Service affecting National Forest System lands (§ 215.2) is subject to appeal under this part.

(b) Decisions solely affecting the business relationship between the Forest Service and holders of written instruments regarding occupancy and use of National Forest System lands and meeting the requirements of preceding paragraph (a) of this section are subject to appeal by permit holders under either this part or 36 CFR part 251, subpart C, but not under both parts.

§ 215.11 Decisions and actions not subject to appeal.

The following decisions are not subject to appeal under this part:

(a) Decisions for projects or activities included in a Record of Decision for significant amendment, revision, or adoption of a land and resource management plan (36 CFR part 217 and part 219).

(b) Documentation that a new decision is not needed following supplementation or revision of an environmental assessment (EA) pursuant to FSH 1909.15, section 18.

(c) Preliminary findings made during planning and/or analysis processes on a project or activity and the subsequent implementing actions that result from the initial project decision subject to appeal.

(d) Projects or activities for which notice of the proposed action and opportunity to comment is published (§ 215.5) and

(i) No comments or only supportive comments are received during the comment period (§ 215.5); or

(ii) No comments or only supportive comments are received during the comment period for a draft environmental impact statement (EIS) (40 CFR 1502.19), and the Responsible Official's decision does not modify the preferred alternative identified in the draft EIS.

(e) Decisions for actions that have been categorically excluded from documentation in an EA or EIS in FSH 1909.15, sections 31.1 and 31.2.

(f) An amendment to a land and resource management plan that is made independent of a project or activity (36 CFR 219.32).

(g) Concurrences and recommendations to other federal agencies.

§ 215.12 Who may appeal.

(a) Individuals and organizations who submit written or oral comments during the comment period for an environmental assessment (§ 215.5), or in response to a draft environmental impact statement, except as provided in paragraph (c) of this section, may file an appeal. Comments received from an official representative(s) of an organization are considered as those of the organization only, and individual members of that organization do not meet appeal requirements on the basis of membership in an organization which submitted comments.

(b) When the appeal lists multiple individuals or organizations, each shall meet the requirements of paragraph (a) of this section.

Individuals or organizations that do not meet the requirements of paragraph (a) of this section shall not be accepted as appellants.

(c) Federal agencies may not appeal.

(d) Federal employees filing appeals in a non-official capacity under this part shall comply with Federal conflict of interest statutes at 18 U.S.C. 202–209 and with employee ethics requirements at 5 CFR part 2635. Specifically, employees shall not be on official duty nor use government property or equipment in the preparation or transmittal of an appeal. Further, employees shall not incorporate official information not yet released to the public, including federal agency documents that are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552 (b).

§ 215.13 Where to file appeals.

Appeals must be filed with the Appeal Deciding Officer as follows:

If the Responsible Official who made the decision is:	Then the Appeal Deciding Officer is:
Chief	Secretary of Agriculture.
Regional Forester or Station Director.	Chief of the Forest Service.
Forest Supervisor	Regional Forester.
District Ranger	Regional Forester.
Research Work Unit Project Leader.	Station Director.

§ 215.14 Appeal time periods and process.

(a) *Time to file an appeal.* Written appeals, including any attachments, must be submitted to the Appeal Deciding Officer within 45 days

following the publication date of the legal notice (§ 215.7).

(b) *Computation of time periods.* (1) All time periods are computed using calendar days, including Saturdays, Sundays, and federal holidays. However, when the time period expires on a Saturday, Sunday, or federal holiday, the time is extended to the end of the next federal working day.

(2) The day after the publication of the legal notice (§ 215.7) is the first day of the appeal-filing period.

(3) The publication date of the legal notice of the decision is the exclusive means for calculating the time to file an appeal. Appellants should not rely on dates or timeframe information provided by any other source.

(c) *Evidence of timely filing.* When there is a question about timely filing of an appeal, timeliness shall be determined by:

(1) The postmark on an appeal and/or attachment mailed or otherwise submitted (for example, express mail service), or evidence of the date sent on an e-mailed or faxed appeal and/or attachments. When an appeal is electronically mailed, the appellant should expect to receive an automated electronic response from the agency as confirmation of receipt; or

(2) The time and date imprint at the correct receiving office on a hand-delivered appeal and/or attachments.

(d) *Extensions.* Time extensions, except as noted in paragraph (b) of this section, are not permitted.

(e) *Other timeframes.* Unless an appeal is resolved through the informal disposition process (§ 215.17), the following timeframes and processes shall apply:

(1) *Transmittal of decision documentation.* Within 15 days of the close of the appeal-filing period, the Responsible Official shall transmit the decision documentation to the Appeal Reviewing Officer.

(2) *Appeal decision.* Within 45 days following the end of the appeal-filing period, the Appeal Deciding Officer shall issue a written decision to the appellant(s) concerning the disposition of the appeal. When an appeal decision is not issued within 45 days, the Responsible Official's decision is deemed the final agency action and the appellant shall be so notified (§ 215.18).

§ 215.15 Appeal content.

(a) It is the appellant's responsibility to provide sufficient project- or activity-specific evidence and rationale, focusing on the decision, to show why the Responsible Official's decision should be reversed.

(b) The appeal must be submitted to the Appeal Deciding Officer in writing. At a minimum, an appeal must include the following:

(1) Appellant's name (as defined in § 215.2), signature (for those appeals submitted via delivery service, for example, United States Postal Service, express mail service, courier, etc.) and address, with a telephone number, if available;

(2) The name of the project or activity for which the decision was made, the name and title of the Responsible Official, and the date of the decision;

(3) The regulation under which the appeal is being filed, when there is an option to appeal under this part or 36 CFR part 251 subpart C (§ 215.10(b));

(4) Any specific change(s) in the decision that the appellant seeks or portion(s) of the decision with which the appellant disagrees; and

(5) Why the appellant believes the Responsible Official's decision failed to consider their substantive comments and/or how the appellant believes the decision specifically violates law, regulation, or policy. Appeal issues are limited to those raised by the appellant in her/his comments (§ 215.5).

(c) The Appeal Deciding Officer shall not accept an appeal when:

(1) The identity of an appellant cannot be determined; or

(2) A reasonable means of contact is not provided; or

(3) The appellant's signature is not provided, except for those appeals submitted electronically, which may be subject to verification of the author; or

(4) Multiple names are listed without a signature accompanying each name except for those appeals submitted electronically, which may be subject to verification of the author; or

(5) The signature of the individual representing an organization is not provided, except for those appeals submitted electronically, which may be subject to verification of the author; or

(6) The decision cannot be identified.

§ 215.16 Dismissal of appeal without review.

(a) The Appeal Deciding Officer shall dismiss an appeal without review when:

(1) The postmark on an appeal and/or attachment mailed or otherwise submitted (for example, express mail service) or the evidence of the date sent on an e-mailed or faxed appeal and/or attachments is not within the 45-day appeal-filing period (§ 215.14); or

(2) The time and date imprint at the correct receiving office on a hand-delivered appeal and/or attachments is not within the 45-day appeal-filing period (§ 215.14); or

(3) The requested relief or change cannot be granted under law, policy, or regulation; or

(4) The appellant has appealed the same decision under 36 CFR part 251 (§ 215.10(b)); or

(5) The decision is excluded from appeal (§ 215.11); or

(6) The appellant did not submit comments during the comment period (§ 215.5); or

(7) The Responsible Official withdraws the decision; or

(8) The appellant's appeal does not provide sufficient information in response to § 215.15(b)(4) and (5) for the Appeal Deciding Officer to render a decision; or

(9) The appellant withdraws the appeal.

(b) The Appeal Deciding Officer shall give written notice to the appellant and the Responsible Official when an appeal is dismissed and shall give the reasons for dismissal.

§ 215.17 Informal disposition.

(a) *Offer to meet.* When an appeal is received, the Responsible Official must contact the appellant and offer to meet and discuss resolution of the issues raised in the appeal. This contact shall be as soon as practicable after the appeal is received.

(b) *Time and location of meeting.* When an appellant agrees to meet, the initial meeting(s) shall take place within 15 days after the closing date for filing an appeal (§ 215.14). The location of the meeting shall be in the vicinity of the lands affected by the decision. When the District Ranger is the Responsible Official, meetings will generally be located on or near that Ranger District. When the Forest Supervisor or Regional Forester is the Responsible Official, meetings will generally take place at a location within or near the National Forest.

(c) *Meeting structure.* Generally, the appellant and any other participants should be physically present at informal disposition meetings. If the appellant cannot attend a meeting in person because of schedule conflicts or travel distances, alternative types of meetings (such as telephone conferences or video conferences) may be arranged. All meetings are open to the public.

(d) *Outcome.* The Responsible Official shall notify the Appeal Deciding Officer of the meeting participants and the outcome of the informal disposition meeting in writing. If the appellant(s) decline to meet, the Responsible Official shall advise the Appeal Deciding Officer.

(1) When an appellant and the Responsible Official reach agreement on

disposition of all or a portion of an appeal, the appellant shall withdraw all or the agreed upon portion of the appeal by letter to the Appeal Deciding Officer within 15 days of the agreement. When the appellant does not withdraw the appeal in writing, formal review and disposition of the appeal shall continue.

(2) When, as a result of the agreement reached at the informal disposition meeting, new information is received or changes to the original decision or environmental analysis are proposed, the Responsible Official must follow the procedures in FSH 1909.15, section 18, and §§ 215.3 and 215.4.

(3) When an appeal is not entirely resolved through informal disposition, formal review and disposition of the appeal shall continue (§ 215.18).

§ 215.18 Formal review and disposition procedures.

(a) *Scope of review.* The Appeal Deciding Officer shall complete a review based on the appeal record (§ 215.2) and the Appeal Reviewing Officer's recommendation (§ 215.19(b)).

(b) *Disposition.* The Appeal Deciding Officer shall issue either:

(1) Within 45 days following the end of the appeal filing period, a written appeal decision affirming or reversing the Responsible Official's decision, in whole or in part, and may include instructions for further action. When an appeal decision involves instructions concerning new information or changed circumstances, the Responsible Official must follow the procedures in FSH 1909.15, section 18; and §§ 215.3, 215.4, 215.10, and 215.11. A copy of the appeal decision shall be sent to the appellant, the Appeal Reviewing Officer, and the Responsible Official; or

(2) No sooner than 46 days nor later than 50 days following the end of the appeal filing period, written notification to the appellant that an appeal decision will not be issued and that the Responsible Official's decision constitutes the final administrative decision of the Department of Agriculture (§ 215.14(e)(2)). A copy shall be sent to the Responsible Official.

(c) The Appeal Deciding Officer shall not issue an appeal decision when 45 days have elapsed following the end of the appeal filing period.

(d) The Appeal Deciding Officer's appeal decision constitutes the final administrative determination of the Department of Agriculture.

§ 215.19 Appeal Deciding Officer's authority.

(a) *Procedural decisions.* The Appeal Deciding Officer makes all procedural determinations. Such determinations are not subject to further administrative review.

(b) *Consolidation of appeal decisions.* In cases involving multiple appeals of a decision, the Appeal Deciding Officer may consolidate appeals and may issue one or more appeal decisions.

(c) *Multiple names.* (1) When an appeal lists multiple names, the Appeal Deciding Officer shall identify all qualified appellants (§ 215.12).

(2) The Appeal Deciding Officer has the discretion to appoint a representative from those listed on an appeal to act on behalf of all parties to that appeal.

(d) The Appeal Deciding Officer may issue an appeal decision different from the Appeal Reviewing Officer's recommendation.

§ 215.20 Appeal Reviewing Officer's responsibilities.

(a) *Designation.* The Appeal Reviewing Officer may be:

(1) designated by the Chief or designee, and shall be a line officer at least at the level of the agency official who made the initial decision on the project or activity that is under appeal, who has not participated in the initial decision and will not be responsible for implementation of the initial decision after the appeal is decided.

(2) or designated by the Secretary in the case of Chief's decisions.

(b) *Review and recommendation.* The Appeal Reviewing Officer shall review an appeal and make a written recommendation to the Appeal Deciding Officer on the disposition of the appeal. That recommendation shall be released only upon issuance of an appeal decision.

(c) *Multiple appeals.* In cases involving multiple appeals of a decision, the Appeal Reviewing Officer may consolidate appeals and issue one or more recommendations.

§ 215.21 Secretary's authority.

(a) Nothing in this part limits the Secretary of Agriculture's authority for making decisions subject to this part.

(b) When the Secretary of Agriculture or Under Secretary, Natural Resources and Environment, issues a decision for projects and activities implementing land and resource management plans; such decisions shall not be subject to the notice, comment, and appeal procedures of this part. A decision by the Secretary of Agriculture constitutes the final administrative decision of the Department of Agriculture.

§ 215.22 Judicial proceedings.

It is the position of the Department of Agriculture that any filing for federal judicial review of a decision subject to appeal is premature and inappropriate unless the plaintiff has first sought to invoke and exhaust the appeal procedures in this part (7 U.S.C. 6901).

§ 215.23 Applicability and effective date.

(a) These procedures apply to all projects and activities for which notice is published after 30 days from date of publication of final rule in the **Federal Register**.

(b) Decisions for which legal notice is given (§ 215.5) on or prior to 30 days from date of publication of final rule in the **Federal Register** remain subject to the appeal procedures of 36 CFR part 215 in effect when the final rule is published

§ 215.24 Information collection requirements.

The rules of this subpart governing appeal of decisions regarding projects and activities implementing a land and resource management plan specify the information that appellants must provide in an appeal (§ 215.15). As such, these rules contain information collection requirements as defined in 5 CFR part 1320. These information requirements are assigned OMB Control Number 0596–_____.

Dated: December 11, 2002.

Dale N. Bosworth,

Chief, Forest Service.

[FR Doc. 02–31681 Filed 12–17–02; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY 139—200307(b); FRL–7423–5]

Approval and Promulgation of Implementation Plans for Kentucky: Source-Specific Revision for Lawson Mardon Packaging

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a source-specific revision to the State Implementation Plan (SIP) of the Commonwealth of Kentucky. This revision allows Lawson Mardon Packaging, USA, Corporation to have an alternative compliance averaging period of 30 days instead of the 24-hour averaging period specified by Kentucky air quality regulations 59:210 and 59:212. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the

Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this direct final rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before January 17, 2003.

ADDRESSES: All comments should be addressed to: Michele Notarianni, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).)

Copies of the Commonwealth's submittal are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (Michele Notarianni, 404/562–9031, *notarianni.michele@epa.gov*.)

Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403. (502/573–3382).

FOR FURTHER INFORMATION CONTACT: Michele Notarianni at address listed above or 404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: December 5, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–31667 Filed 12–17–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH02

Endangered and Threatened Wildlife and Plants; Designations of Critical Habitat for Plant Species From the Island of Hawaii, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft economic analysis for the proposed designations of critical habitat for 47 plant species from the island of Hawaii. The comment period for the proposed critical habitat designations originally closed on July 29, 2002. On August 26, 2002, we reopened the comment period and provided notice that the comment period would close on September 30, 2002. On September 24, 2002, we announced two public hearings and extended the comment period to allow all interested parties to submit oral or written comments on the proposal until November 30, 2002. We are now providing notice of another extension of the comment period to allow peer reviewers and all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Over a 10-year period, the draft economic analysis shows a range of total direct costs for both the plant species listings and critical habitat to be estimated at $53.1 million to $71.8 million and some of the indirect costs could be substantially larger. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period and will be fully considered in preparation of the final rule.

DATES: We will accept public comments until January 17, 2003.

ADDRESSES: Send your written comments and information to Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001or e-mail your comments to *FW1PIE_Hawaii_Island_Crithab@r1.fws.gov*. To obtain a copy of the draft economic analysis, send a written requests to the address listed above, call 808/541–3441, or visit the following Internet site: *http://pacificislands.fws.gov*. For further instructions on commenting, refer to Public Comments Solicited section of this notice.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office, at the above address (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

On May 28, 2002, we published in the **Federal Register** (67 FR 36968) a proposed rule to propose critical habitat for 47 of the 58 plant species known historically from the island of Hawaii that are listed under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), known historically from the island of Hawaii.

A total of 58 species historically found on the island of Hawaii were listed as endangered or threatened species under the Act between 1991 and 1996. Some of these species may also occur on other Hawaiian islands. In previously published proposals, we proposed that critical habitat was prudent for 31 (*Achyranthes mutica, Adenophorus periens, Asplenium fragile* var. *insulare*, Bonamia menziesii, Cenchrus agrimonioides, Clermontia lindseyana, Clermontia peleana, Colubrina oppositifolia, Ctenitis squamigera, Delissea undulata, Diellia erecta, Flueggea neowawraea, Gouania vitifolia, Hedyotis cookiana, Hedyotis coriacea, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Mariscus fauriei, Mariscus pennatiformis, Phlegmariurus mannii, Phyllostegia parviflora, Plantago princeps, Portulaca sclerocarpa, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium arenarium, Vigna *o-wahuensis*, and *Zanthoxylum hawaiiense*) of the 58 species reported from the island of Hawaii. No change is made to the 31 proposed prudency determinations in the May 28, 2002, proposed rule for plants from Hawaii. In addition, in the May 28, 2002, proposal we proposed that designation of critical habitat was not prudent for two species of loulu palm, *Pritchardia affinis* and *Pritchardia schattaueri*, because it would likely increase the threat from vandalism or collection of these species on the island of Hawaii. We also proposed that critical habitat designation was not prudent for two species, *Cyanea copelandii* ssp. *copelandii* and *Ochrosia kilaueaensis*, known only from the island of Hawaii, because these species have not been seen in the wild since 1957 and 1927, respectively, and no viable genetic material is known to exist. We further proposed that designation of critical habitat is prudent for 23 species (*Argyroxiphium kauense, Clermontia drepanomorpha, Clermontia pyrularia, Cyanea hamatiflora* ssp. *carlsonii, Cyanea platyphylla, Cyanea shipmanii, Cyanea stictophylla, Cyrtandra giffardii, Cyrtandra tintinnabula, Hibiscadelphus giffardianus, Hibiscadelphus hualalaiensis, Isodendrion hosakae, Melicope zahlbruckneri, Neraudia ovata, Nothocestrum breviflorum,

Phyllostegia racemosa, Phyllostegia velutina, Phyllostegia warshaueri, Plantago hawaiensis, Pleomele hawaiiensis, Sicyos alba, Silene hawaiiensis, and *Zanthoxylum dipetalum* var. *tomentosum*) for which prudency determinations had not been made previously.

We also proposed designation of critical habitat for 47 plant species (*Achyranthes mutica, Adenophorus periens, Argyroxiphium kauense, Asplenium fragile* var. *insulare, Bonamia menziesii, Clermontia drepanomorpha, Clermontia lindseyana, Clermontia peleana, Clermontia pyrularia, Colubrina oppositifolia, Cyanea hamatiflora* ssp. *carlsonii, Cyanea platyphylla, Cyanea shipmanii, Cyanea stictophylla, Cyrtandra giffardii, Cyrtandra tintinnabula, Delissea undulata, Diellia erecta, Flueggea neowawraea, Gouania vitifolia, Hedyotis coriacea, Hibiscadelphus giffordianus, Hibiscadelphus hualalaiensis, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion hosakae, Isodendrion pyrifolium, Mariscus fauriei, Melicope zahlbruckneri, Neraudia ovata, Nothocestrum breviflorum, Phyllostegia racemosa, Phyllostegia velutina, Phyllostegia warshaueri, Plantago hawaiensis, Pleomele hawaiiensis, Portulaca sclerocarpa, Sesbania tomentosa, Sicyos alba, Silene hawaiiensis, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium arenarium, Vigna o-wahuensis, Zanthoxylum dipetalum* var. *tomentosum*, and *Zanthoxylum hawaiiense*). We did not propose critical habitat for 4 (*Cyanea copelandii* ssp. *copelandii, Ochrosia kilaueaensis, Pritchardia affinis*, and *Pritchardia schattaueri*) of the 58 species for the reasons given above, and we did not propose critical habitat for 7 species (*Cenchrus agrimonioides, Ctenitis squamigera, Hedyotis cookiana, Mariscus pennatiformis, Phlegmariurus mannii, Phyllostegia parviflora*, and *Plantago princeps*) which no longer occur on the island of Hawaii and for which we are unable to determine any habitat that is essential to their conservation on the island of Hawaii.

Twenty-eight critical habitat units, totaling approximately 176,968 hectares (437,285 acres), are proposed for designation for 47 plant species on the island of Hawaii. For locations of these proposed units, please consult the proposed rule was published May 28, 2002.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act (16 U.S.C. 1531 *et seq.*) with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data available, and after taking into consideration the economic impact of specifying any particular area as critical habitat. We have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available on the Internet and from the mailing address listed below in the Public Comments Solicited section.

The public comment period for the May 28, 2002, proposal (67 FR 36968) originally closed on July 29, 2002. On August 26, 2002, we published in the **Federal Register** (67 FR 54766) a notice reopening the comment period for the proposed designations and non-designations of critical habitat for plant species on the islands of Kauai, Niihau, Molokai, Maui, Kahoolawe, Oahu, and the Northwestern Hawaiian Islands, and we announced that the comment period would close on September 30, 2002. On September 24, 2002, we announced two public hearings and extended the comment period to allow all interested parties to submit oral or written comments on the proposal until November 30, 2002 (67 FR 59811). We are now announcing the availability of the draft economic analysis and another extension of the comment period for the proposed designations and non-designations of critical habitat for plant species on the island of Hawaii. Over a 10-year period, the draft economic analysis shows a range of total direct costs for both the plant species listings and critical habitat to be estimated at $53.1 million to $71.8 million and some of the indirect costs could be substantially larger. However, many of the indirect costs shown in the analysis result from uncertain and possibly unlikely future private and governmental actions, and we expressly request comments as to the likelihood of these actions occurring and of the indicated costs from these possible actions being incurred. We will accept public comments on the proposal and the associated draft economic analysis for the island of Hawaii until the date specified above in **DATES**. The extension of the comment period gives all interested parties the opportunity to comment on the proposal and the associated draft economic analysis for the island of Hawaii. Comments already submitted on the proposed designations and non-designations of critical habitat for plant species from the island of Hawaii need not be resubmitted as they will be fully considered in the final determinations.

Public Comments Solicited

If you wish to provide written comments, you may submit your comments and materials concerning this proposal by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001.

(2) You may send comments by electronic mail (e-mail) to: *FW1PIE_Hawaii_Island_Crithab@r1.fws.gov*. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: RIN 1018–AH02" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Honolulu Fish and Wildlife Office at telephone number 808/541–3441.

(3) You may hand-deliver comments to our Honolulu Fish and Wildlife Office at the address given above under (1).

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above.

Copies of the draft economic analysis are available on the Internet at *http://pacificislands.fws.gov* or by request from the Field Supervisor at the address and phone number listed in **ADDRESSES**.

Author

The primary author of this document is Michelle Mansker (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: December 11, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–31876 Filed 12–17–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Status Review for the Westslope Cutthroat Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period for a new status review for the westslope cutthroat trout (*Oncorhynchus clarki lewisi*) in the United States, pursuant to a recent Court order and the Endangered Species Act of 1973, as amended. We request additional data, information, technical critiques, and relevant comments that may be available for this subspecies of fish, as previously described in the **Federal Register** (67 FR 56257; September 3, 2002).

DATES: The reopened comment period closes on February 15, 2003. Any comments that are received after the closing date will not be considered in the status review.

ADDRESSES: Comments should be submitted to Westslope Cutthroat Comments, U.S. Fish and Wildlife Service, 2900 4th Avenue North, Room 301, Billings, MT 59102. Comments also may be submitted electronically to *<fw6_westslope@fws.gov>*.

FOR FURTHER INFORMATION CONTACT: Lynn R. Kaeding at e-mail *<lynn_kaeding@fws.gov>* or telephone (406) 582–0717.

SUPPLEMENTARY INFORMATION:

Background

A September 3, 2002, **Federal Register** notice (67 FR 56257) announced the opening of a 60-day public comment period for a new status review for the westslope cutthroat trout in the United States, pursuant to a recent Court order and the Endangered Species Act of 1973, as amended. During that comment period, we received written requests for an extension of the comment period from the game and fish departments of the States of Washington, Oregon, Idaho, and Montana, as well as the Kalispel Tribe of Indians and the Earthjustice Legal Foundation. In their letters, those entities indicated that they were assembling or awaiting important information relevant to the status of westslope cutthroat trout and that those entities wanted to make such information available to us for use in the status review. The present action satisfies those requests.

Author

The primary author of this document is Lynn R. Kaeding, Chief, Branch of Native Fishes Management, Montana Fish and Wildlife Management Assistance Office, U.S. Fish and Wildlife Service, 4052 Bridger Canyon Road, Bozeman, MT 59715.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: December 4, 2002.

Marshall P. Jones, Jr.,

Director, Fish and Wildlife Service.

[FR Doc. 02–31875 Filed 12–17–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 67, No. 243

Wednesday, December 18, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Crook County Resource Advisory Committee, Sundance, Wyoming, Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure rural schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Black Hills National Forests' Crook County Resource Advisory Committee will meet Monday, January 20, 2003 in Sundance, Wyoming for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on January 20, begins at 6:30 p.m., at U.S. Forest Service, Barlodge Ranger District Office, 121 South 21st Street, Sundance, Wyoming. Agenda topics will include deciding on project selection criteria, Review of NEPA requirements, review of project proposals and scheduling of future meetings. A public forum will begin at 8:30 p.m. (MT).

FOR FURTHER INFORMATION CONTACT: Steve Kozel, Bearlodge District Ranger and Designated Federal Office at (307) 283–1361.

Dated: December 9, 2002.

Steve Kozel,

Bearlodge District Ranger.

[FR Doc. 02–31746 Filed 12–7–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 58–2002]

Foreign-Trade Zone 7—Mayaguez, Puerto Rico; Request for Manufacturing Authority, ChemSource Corporation (Bulk and Intermediate Pharmaceutical Chemicals)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Puerto Rico Industrial Development Corporation (PRIDCO), grantee of FTZ 7, on behalf of ChemSource Corporation (ChemSource), requesting authority to manufacture bulk and intermediate pharmaceutical chemicals under FTZ procedures within FTZ 7. The application was formally filed on December 10, 2002.

The application requests authority on behalf of ChemSource to manufacture bulk and intermediate pharmaceutical chemicals under zone procedures within FTZ 7—site 4, L–381–0–80 (lot 2). The ChemSource facility is located at State Road No. 3, Km. 143, Guayama, Puerto Rico (12 bldgs., 170,000 sq. ft., on 45 acres).

The facility (129 employees) is currently used for the manufacture of bulk and intermediate pharmaceutical chemicals. The chemicals that are being requested for manufacture under zone procedures are etodolac, fluvoxamine maleate, lisinopril, metformin hydrocholride, nabumetone, sililad triptophol, amiodopine besylate and enalapril maleate. Foreign-sourced materials for these products currently include dicyandiamide, celite, toluene, sodium chloride, methanol, ethyl acetate, maleic acid, sodium hydroxide and hydrazine sulfate. Materials sourced from abroad represent some 50% of finished product value.

The application also requests to include general categories of inputs that have recently been approved by the Board for other pharmaceutical plants that may be used to produce the chemicals listed above: chemically pure sugars, protein concentrates, ethyl alcohol, natural magnesium phosphates and carbonates, gypsum, anhydrite and plasters, petroleum jelly, paraffin and waxes, phosphoric acid, other inorganic acids or compounds of nonmetals, ammonia, sodium hydroxide, zinc oxide, iron oxide, titanium oxides, hydrazine and hydroxylamine, fluorides, chlorides, chlorates, sulfites, sulfates, salts of oxometallic acids, radioactive chemical elements, compounds of rare earth metals, acyclic and cyclic hydrocarbons, derivatives of phenols or peroxides, acetals and hemiacetals, aldehydes, ketone function compounds, carboxylic acids, phosphoric esters and their salts, heterocyclic compounds, sulfanomides, hormones, vitamins, glycosides, diazo-compounds, essential oils, wadding, prepared glues and adhesives, catalytic preparations, diagnostic or laboratory reagents, prepared binders, acrylic polymers, cellulose, ion exchangers, self-adhesive plates and sheets, other articles of vulcanized rubber, plastic cases, cartons, boxes, printed books, brochures and similar printed matter, carboys, bottles, and flasks, aluminum foil, tin plates and sheets, and taps, cocks and valves.

Zone procedures would exempt ChemSource from Customs duty payments on foreign materials used in production for export. Nearly 25 percent of the plant's shipments are exported. On domestic shipments, the company would be able to defer Customs duty payments on foreign materials, and to choose the duty rate that applies to the chemical products (duty free) instead of the rates otherwise applicable to the foreign input materials (ranging from 3.7%–10.7% on current production, and up to 20% on future production). ChemSource would also be exempt from duty payments on foreign merchandise that becomes scrap or waste resulting from the production process. FTZ procedures will help ChemSource implement a more efficient and cost-effective system for handling Customs requirements because of direct delivery. The application indicates that the savings from zone procedures would help improve ChemSource's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce,

Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period of their receipt is February 18, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 3, 2003.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 525 F.D. Roosevelt Ave., Suite 905, San Juan, PR 00918.

Dated: December 10, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–31894 Filed 12–17–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–813]

Notice of Final Results of Antidumping Duty New Shipper Review; Stainless Steel Butt-Weld Pipe Fittings From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty New Shipper Review.

SUMMARY: On July 17, 2002, the Department of Commerce published the preliminary results of the new shipper review of the antidumping duty order on stainless steel butt-weld pipe fittings from Korea. This new shipper review covers imports of subject merchandise from TK Corporation.

The period of review is February 1, 2001, through August 1, 2001.

No party submitted any comments on the preliminary results, and we have made no changes to the programming. Therefore, the final results do not differ from the preliminary results.

EFFECTIVE DATE: December 18, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Mike Heaney, or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2924, (202) 482–4475, or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable statute and regulations:

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (April 1, 2001).

Background

On July 17, 2002, the Department published the preliminary results of the new shipper review of the antidumping duty order on stainless steel butt-weld pipe fittings from Korea. *See Notice of Preliminary Results of Antidumping Duty New Shipper Review Stainless Steel Butt-Weld Pipe Fittings from Korea*, 67 FR 46953 (July 17, 2002). We extended the due date for the final results of review on October 31, 2002. *See Notice of Extension of Time Limit of Final Results of New Shipper Review: Stainless Steel Butt-Weld Pipe Fittings from Korea*, 67 FR 66383 (October 31, 2002). This review covers one manufacturer, TK Corporation.

On October 5, 2001, the Department initiated this new shipper review for the period February 1, 2001, through July 31, 2001. However, on April 5, 2002, TK Corporation, in response to a supplemental questionnaire that the Department issued on March 28, 2002, submitted the information that any shipments during the period of review (POR) entered U.S. Customs territory on August 1, 2001, one day after the POR ended. Therefore, we have expanded the POR by one day. Thus, the POR for this new shipper review is February 1, 2001, through August 1, 2001.

The Department has now completed this review in accordance with section 751 of the Tariff Act.

Scope of the Review

The products subject to this review are certain welded stainless steel butt-weld pipe fittings (pipe fittings), whether finished or unfinished, under 14 inches in inside diameter.

Pipe fittings are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise can be used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, and the following five are the most basic: "elbows," "tees," "reducers," "stub ends," and "caps." The edges of finished fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this review are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

No parties submitted comments on the preliminary results of review. Accordingly, there is no concurrent issues and decision memorandum or analysis memorandum issued with these final results of review.

Changes Since the Preliminary Results

We have made no changes in programming since the preliminary results of review.

Final Results of Review

We determine that a margin of zero percent exists for TK Corporation for the period February 1, 2001, through August 1, 2001.

Assessment

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review. We will direct the Customs Service to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's entries during the review period.

Cash Deposit Requirements

Bonding is no longer permitted to fulfill security requirements for shipments from TK Corporation of stainless steel butt-weld pipe fittings from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of new shipper review. The following cash-deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise entered or withdrawn from warehouse for consumption on or after the publication date as provided for by section 751(a)(2)(C) of the Tariff Act:

- For subject merchandise manufactured and exported by TK Corporation no cash deposit is required. In accordance with the practice established in *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002) and *Notice of Preliminary Results of Antidumping Duty New Shipper Review: Freshwater Crawfish Tail Meat from the People's Republic of China*, 67 FR 52442 (August 12, 2002), the new shipper review cash deposit rate will only apply to the merchandise subject to this new shipper review, *i.e.*, merchandise produced and exported by TK Corporation.
- For subject merchandise exported by TK Corporation but not manufactured by TK Corporation, the cash-deposit rate will be the rate applicable to the manufacturer.
- If the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer in the most recent segment of these proceedings in which that manufacturer participated.
- If neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 21.2 percent, the all others rate established in the less-than-fair-value investigation. (*See Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Butt-Weld Pipe Fittings from the Republic of Korea*, 57 FR 61881 (December 29, 1992)).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(2)(B) and 777(i) of the Tariff Act.

Dated: December 9, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–31893 Filed 12–17–02; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

December 12, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 19, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 351/651 is being increased for swing, reducing the limit for Categories 340/640 to account for the swing being applied to Categories 351/651.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 54983, published on October 31, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 12, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 25, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the period which began on January 1, 2002 and extends through December 31, 2002.

Effective on December 19, 2002, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
340/640	2,171,078 dozen.
351/651	501,290 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–31834 Filed 12–17–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

December 12, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 18, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift and the cancellation of special shift. This will reopen embargoes in both Categories 361 and 666-S.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63683, published on December 10, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 12, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 4, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on December 18, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Specific limits	
360	8,520,672 numbers.
361	9,639,744 numbers.
666–P [2]	1,079,969 kilograms.
666–S [3]	6,208,419 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[3] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–31835 Filed 12–17–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Review by the National Futures Association of Annual Financial Reports Required To Be Filed by Commodity Pool Operators

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and order.

SUMMARY: The Commodity Futures Trading Commission (the "Commission") is authorizing the National Futures Association ("NFA") to conduct reviews of annual financial reports filed with the Commission by commodity pool operators ("CPOs"), as required by Commission Rules 4.22(c) and 4.7(b)(3), and to grant and deny certain requests for extensions of time to file such reports. In addition, the Commission is authorizing NFA to maintain and to serve as the official custodian of Commission records required by Rules 4.22 and 4.7(b)(3).

EFFECTIVE DATE: December 18, 2002; with regard to all commodity pool annual financial reports for fiscal years ending on December 31, 2002, and thereafter.

FOR FURTHER INFORMATION CONTACT: Kevin P. Walek, Assistant Director, Eileen R. Chotiner, Futures Trading Specialist, Audit and Financial Review Section, or Michael A. Piracci, Attorney Advisor, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission previously has authorized NFA to conduct many functions that, until that time, were conducted by Commission staff. Such delegated functions include: the processing of applications for registration of intermediaries and floor traders under the Commodity Exchange Act (the "Act");[1] the processing of notices of eligibility for certain exemptions from registration as a CPO and commodity trading advisor ("CTA");[2] and the review of Disclosure Documents required to be filed by CPOs and CTAs pursuant to Commission rules.[3]

The Commission has found that NFA exercises its authority in these areas with particular proficiency. Additionally, authorizing NFA to perform such functions has enabled Commission staff to devote resources to other aspects of the Commission's regulatory mission.

The futures industry is continually expanding and transforming itself. As the industry changes and evolves, the Commission must also change and evolve, reassessing the manner in which it allocates its resources. Accordingly, by this order, the Commission is authorizing NFA to perform certain regulatory functions that may properly be performed by NFA instead of Commission staff. In particular, the Commission is authorizing NFA to review commodity pool annual financial reports for fiscal years ending on December 31, 2002, and thereafter, that CPOs are required to submit, pursuant to Commission Rules 4.22 and 4.7(b)(3).[4] In addition, the Commission is authorizing NFA, with regard to such reports, to receive, grant, and deny, requests submitted pursuant to Rule 4.22(f)(1) for extensions of time to distribute and file annual financial reports and to process notices of claims of extension of time filed pursuant to Rule 4.22(f)(2).

[1] 7 U.S.C. 1 *et seq.* (2000). *See, e.g.*, 48 FR 35158 (Aug. 3, 1983) (introducing brokers and associated persons thereof); 49 FR 39593 (Oct. 9, 1984) (futures commission merchants, commodity pool operators, commodity trading advisors, and associated persons thereof); 51 FR 34490 (Sep. 29, 1986) (floor brokers); 58 FR 19657 (Apr. 15, 1993) (floor traders).

[2] *See* 62 FR 52088 (Oct. 6, 1997) (the "1997 Order").

[3] *Id.*

[4] Commission rules referred to herein may be found at 17 CFR Ch. I (2002).

II. Authority

Section 4n(3)(A) of the Act provides, among other things, that each CPO shall "file such reports in such form and manner as may be prescribed by the Commission." The Commission also notes that, in amending the Act through passage of the Commodity Futures Modernization Act of 2000 (the "CFMA"),[5] Congress intended, as evidenced in section 2 of the CFMA, to transform the role of the Commission from that of a frontline regulator to one of an oversight regulator of the futures industry. Moreover, section 125 of the CFMA required the Commission to conduct a study of the Act and the Commission's rules and orders governing the conduct of registrants under the Act, identifying, among other things, regulatory functions the Commission performs that can be delegated to NFA.[6] Additionally, the Commission notes that NFA, as a registered futures association, is obligated to establish a program for the protection of customers and customer funds and to prevent fraudulent acts and practices.[7]

III. Review of Annual Financial Reports

Commission Rule 4.22(c) requires, among other things, that each CPO distribute an annual financial report to each participant in each pool that it operates and file two copies with the Commission. Rule 4.12(b)(2)(iii) modifies the requirements as to the information to be contained in annual financial reports for certain commodity pools and the CPOs that operate such pools. CPOs that have claimed relief pursuant to Rule 4.12(b), with respect to qualifying pools, still must distribute and file annual financial reports for such pools pursuant to Commission Rule 4.22(c). Commission Rule 4.7(b)(3) exempts a CPO from the specific requirements of Rule 4.22(c) for certain commodity pools. Pursuant to Rule 4.7(b)(3)(i), however, a CPO still must distribute and file with the Commission an annual financial report for such pools. Commission staff currently review annual financial reports and issue letters to the CPO noting any issues concerning the CPO's compliance with relevant sections of the Act or Commission Rules, and work with the CPO to resolve such issues.

NFA Compliance Rule 2–13 [8] requires NFA members to file with NFA copies of any documents required to be filed with the Commission pursuant to part 4 of the Commission's rules. NFA staff reviews CPO annual financial reports during on-site audits as well as through a desk review program. Through working closely with NFA over the years, the Commission is confident in the expertise of NFA staff in reviewing these annual financial reports.

Commission and NFA staffs have had extensive discussions concerning the specific elements of the Commission's review of CPO annual financial reports under the Act and regulations thereunder. Further, Commission and NFA staff have worked closely to ensure that NFA's procedures for review of CPO annual financial reports similarly conform to the Act and regulations thereunder. Further, NFA has represented it will take appropriate steps to address deficiencies found in such reports, that it will maintain records reflecting its review and corrective activities, and that the information contained in such reports and such records will be maintained by NFA in electronic format that shall be accessible to Commission staff by electronic means. Based on the foregoing, the Commission is satisfied that NFA has established that it is capable of and willing to receive and to appropriately review CPO annual financial reports.[9] Accordingly, the Commission believes it would be appropriate for NFA to receive and to review CPO annual financial reports for compliance with the Act and applicable regulations thereunder.

In order to avoid disruption of outstanding reviews of annual financial reports, this authorization is effective only with regard to commodity pool annual financial reports for fiscal years ending on December 31, 2002, and thereafter. Stated another way, annual financial reports of commodity pools for fiscal years ending prior to December 31, 2002, shall still be received and reviewed in the first instance by the Commission.

IV. Extensions of Time

Commission Rule 4.22(f)(1) provides that if a CPO is unable to disburse the annual financial report for a pool within the time specified in Rule 4.22(c) it may apply for an "extension of time to a specific date not more than 90 calendar days after the date as of which the Annual Report was to have been distributed." This application must be filed with the Commission prior to the date on which the annual financial report is due. The Commission must then notify the CPO, within ten calendar days after receipt of the application, whether the application has been granted, denied, or whether additional time is needed to analyze the application. As part of this order, the Commission is authorizing NFA to undertake this function. In a separate notice, published elsewhere today in the **Federal Register**, the Commission is amending its rules with regard to the submission of these applications for extensions of time so as to make clear that they need be filed only with NFA.

In granting or denying applications made pursuant to Rule 4.22(f)(1), Commission staff have issued, and made publicly available, letters that make clear the reasoning for granting or denying such requests. NFA, in determining whether to grant or deny requests made pursuant to Rule 4.22(f)(1), shall consult, and comply with, the guidance provided by the previous letters of Commission staff on this subject, as well as any future guidance, in whatever form, the Commission or Commission staff might provide. The Commission notes that in other contexts, such as determining whether to grant or deny an application for registration, NFA makes independent decisions based on general guidance provided by the Commission.[10] The Commission fully expects that NFA will exercise the authority granted in this order with regard to requests for extensions of time in the same skillful manner as it has with regard to the registration of applicants.

Commission Rule 4.22(f)(2) provides for a self-executing extension of time of no more than 60 calendar days for distributing and filing an annual financial report of a commodity pool where the CPO is unable to prepare the annual financial report in the time required under the Commission's rules as a result of the pool's investments in

[5] Pub. L. 106–554, 114 Stat. 2763 (codified as amended in scattered sections of 7 U.S.C.).

[6] A copy of the study may be viewed on the Commission's Web site at: *www.cftc.gov/files/opa/opaintermediarystudy.pdf.*

[7] *See* Commission Rule 170.5; *See also* section 17(b)(7) of the Act.

[8] NFA Rules may be found on NFA's Web site at: *www.nfa.futures.org.*

[9] *See, e.g.*, Letter from Regina L. Thoele, Managing Director, Compliance, National Futures Association, to Jane Kang Thorpe, Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission (Sep. 17, 2002); *see also*, Letter from Yvonne Downs, Senior Vice President, Compliance, National Futures Association, to Jane Kang Thorpe, Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission (Nov. 4, 2002); and Letter from Jane Kang Thorpe, Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, to Yvonne Downs, Senior Vice President, Compliance, National Futures Association (Nov. 22, 2002).

[10] *See* Appendix A to Part 3 of the Commission's rules.

another collective instrument vehicle. To obtain the extension of time provided for in Rule 4.22(f)(2), the CPO must file a notice, in the form specified in the Rule, with the Commission and NFA. In the separate notice being published today, as discussed above, the Commission is amending Rule 4.22(f)(2) to provide that the notice need only be filed with NFA. As part of this order, the Commission is authorizing NFA to maintain and to serve as the official custodian of these notices.

V. Maintenance of and Access to CPO and CTA Filings

As noted above, in a separate document, published elsewhere today in the **Federal Register**, the Commission is amending its rules with regard to the submission of annual financial reports, extensions of time for filing annual financial reports,[11] and notices of eligibility for exemption from registration and certain part 4 requirements required to be filed by CPOs and CTAs.[12] Specifically, the Commission is amending the subject rules to make clear that CPOs and CTAs need only file the relevant documents with NFA and need not also file them with the Commission. As a result, NFA will act as official custodian of such records and will receive and maintain all records required to be filed by CPOs and CTAs with regard to the authorization made by the Commission in this and the 1997 Order.

As the Commission will no longer receive the subject filings, Commission staff has made NFA staff aware of the requirements that shall apply to NFA in maintaining these records. In particular, NFA will maintain these records in accordance with the Commission's Records Disposition Schedule. In addition, although Commission staff will no longer be reviewing the subject documents on a regular basis, the work of the Commission requires that Commission staff have ready electronic access to the information contained in the documents encompassed by this and the 1997 Order. NFA and Commission staffs have discussed the required availability and access by Commission staff to these records and the information contained therein. Effective March 10, 2003, Commission staff will have, at all times, immediate electronic access to a database containing all pertinent information contained in the subject filings, as well as the results of the NFA's review thereof.[13] Moreover, NFA will, at the request of the Commission, Commission staff, or the Department of Justice,[14] make available within 24 hours hard copies of any of the documents encompassed by this and the 1997 Order.

The Commission has determined to authorize NFA to maintain and serve as official custodian of record for the filings, notice, reports, and claims required by Rules 4.7(b)(3), 4.22(c), 4.22(f)(1), and 4.22(f)(2). This determination is based upon NFA's representations regarding procedures for maintaining and safeguarding all such records, in connection with NFA's assumption of the responsibilities for the activities referenced above. In maintaining the Commission's records pursuant to this Order, NFA shall be subject to all other requirements and obligations imposed upon it by the Commission in existing or future orders or regulations. In this regard, NFA shall also implement such additional procedures (or modify existing procedures) as are acceptable to the Commission and as are necessary to: Ensure the security and integrity of the records in NFA's custody; to facilitate prompt access to those records by the Commission and its staff, particularly as described in other Commission orders or rules; to facilitate disclosure of public or nonpublic information in those records when permitted by Commission orders or rules and to keep logs as required by the Commission concerning disclosure of nonpublic information; and otherwise to safeguard the confidentiality of the records.

VI. Advisory 18–96

CFTC Advisory 18–96 makes generally available to certain registered CPOs relief from disclosure, reporting, and certain recordkeeping requirements in connection with the operation of offshore commodity pools.[15] In order to obtain the relief provided for in the advisory, a CPO must file a claim for exemption with the Commission and NFA, as required in the advisory. In the 1997 Order, the Commission authorized NFA to process notices of claims filed by qualifying CPOs pursuant to CFTC Advisory 18–96. As discussed above, in a separate document published elsewhere today in the **Federal Register**, the Commission is, among other things, amending Commission rules with regard to notices of eligibility for exemption from registration and certain part 4 requirements required to be filed by CPOs and CTAs to make clear that CPOs and CTAs need only file the relevant documents with NFA and need not also file them with the Commission. In order to conform the process for all claims for exemptions that the Commission has authorized NFA to process, the Commission is also ordering that as of January 1, 2003, all claims for exemption filed pursuant to CFTC Advisory 18–96 need only be filed with NFA and not also with the Commission.

VII. Conclusion and Order

For the reasons discussed above, and pursuant to its authority under the Act, the Commission has determined to authorize NFA, with regard to commodity pool annual financial reports for fiscal years ending on December 31, 2002, and thereafter, to: (1) Receive and review annual financial reports required to be filed by CPOs pursuant to Commission Rules 4.7(b)(3) and 4.22(c), including annual financial reports required to be filed by CPOs that have claimed relief pursuant to Rule 4.12(b) with respect to qualifying pools, and to review such reports for compliance with the Act and the Commission Rules thereunder and to provide notice of deficiencies; (2) receive and grant or deny applications filed pursuant to Commission Rule 4.22(f)(1) for extensions of time to distribute annual financial reports; and (3) process notices of claims of extension of time to distribute and file annual financial reports filed pursuant to Commission Rule 4.22(f)(2). In addition, the Commission has determined to authorize NFA to maintain and to serve as the official custodian of such records. The Commission has also determined that, as of January 1, 2003, all claims for exemption filed pursuant to CFTC Advisory 18–96 need only be filed with NFA and need not also be filed with the Commission.

These determinations are based upon: (1) The Congressional intent that the Commission be permitted to determine the best manner in which to oversee CPOs; (2) the Congressional intent that NFA, where appropriate, assume responsibility under the Act for regulatory functions the Commission has deemed unnecessary to retain; and (3) NFA's representation and demonstration of its willingness and ability to administer the required regulatory functions in accordance with the standards established by the Act, the Commission's regulations and orders promulgated thereunder, any supplemental direction established by the Commission or Commission staff, and relevant case law, and to provide the Commission with whatever information, reports, summaries, or records the Commission may determine are necessary for effective oversight of NFA's administration of the functions delegated herein, or for the Commission to fulfill its role of regulatory oversight of the futures markets.

This order does not authorize NFA to accept or act upon requests for exemption from the requirements of Rule 4.7(b)(3) or Rule 4.22(c), except applications for extensions of time filed pursuant to Commission Rule 4.22(f)(1), as discussed in this order. Moreover, NFA is not authorized to issue any interpretations, "no-action" positions, or exemptions with respect to the requirements of Rules 4.7(b)(3) and 4.22(c).

NFA is authorized to perform all functions specified in this order until the Commission orders otherwise. Nothing in this order shall prevent the Commission from exercising the authority delegated herein. NFA may submit to the Commission for decision any specific matter regarding the functions delegated to it by this order. Nothing in this order affects the applicability of any previous orders issued by the Commission.

Issued in Washington, DC on December 11, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–31684 Filed 12–17–02; 8:45 am]

BILLING CODE 6351–01–P

[11] With regard to annual financial reports and extensions of time for filing such reports, the rule amendments shall be made effective for such reports and extensions of time with regard to commodity pool annual financial reports for fiscal years ending on December 31, 2002, and thereafter.

[12] As noted above, in the 1997 Order the Commission authorized NFA to process notices of eligibility for certain exemptions.

[13] Due to routine maintenance of the system on which this information will reside, NFA has made the Commission aware that there may be times at which the system will not be accessible. NFA, however, has indicated that, whenever possible, all maintenance of the system will be conducted after business hours.

[14] *See* section 4n(3) of the Act.

[15] CFTC Advisory No. 18–96, (1994–1996 Transfer Binder), Comm. Fut. L. Rep. (CCH) ¶ 26,659 (Apr. 11, 1996).

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03–03]

36(b)(1) Arms Sales Notifications

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03–03 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: December 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

21 November 2002

In reply refer to:
I-02/010000

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-03, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $875 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Acting Director

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Attachments

Transmittal No. 03-03

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Taipei Economic and Cultural Representative Office in the United States

(ii) Total Estimated Value:

Major Defense Equipment*	$425 million
Other	$450 million
TOTAL	$875 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 4 KIDD Class Guided Missile Destroyers, 248 SM-2 Block IIIA STANDARD missiles, 32 RGM-84L BLOCK II HARPOON Missiles, shipyard/port support services and post transfer activities relating to "cold ship" turnover of 4 KIDD Class destroyers from the U.S. Navy, U.S. Government and contractor engineering and logistics personnel support services, repair and calibration services for shipboard equipment, design/construction/upgrade of shipyard maintenance and docking facilities, publications and technical data/drawings, personnel training and training equipment, support equipment, spare and repair parts and other elements of logistics necessary to prepare the destroyers for transfer to Taiwan in a "Safe to Steam" condition with all shipboard and weapon systems operational.

(iv) Military Department: Navy (SDV, LGM, LGN, LFV, and TDA)

(v) Prior Related Cases, if any:
FMS Case LGI - $109 million – 13Sep01
FMS Case LGB - $85 million – 30Sep98
FMS Case LFV - $84 million – 18Jun97
FMS Case LEZ - $67 million – 3Sep 99
FMS Case LEX - $73 million – 30Sep92
FMS Case LEL - $41 million – 18Sep89

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 21 November 2002

as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States - KIDD Class Guided Missile Destroyers

Taipei Economic and Cultural Representative Office in the United States has requested a possible sale of 4 KIDD Class Guided Missile Destroyers, 248 SM-2 Block IIIA STANDARD missiles, 32 RGM-84L BLOCK II HARPOON Missiles, shipyard/port support services and post transfer activities relating to "cold ship" turnover of 4 KIDD Class destroyers from the U.S. Navy, U.S. Government and contractor engineering and logistics personnel support services, repair and calibration services for shipboard equipment, design/construction/upgrade of shipyard maintenance and docking facilities, publications and technical data/drawings, personnel training and training equipment, support equipment, spare and repair parts and other elements of logistics necessary to prepare the destroyers for transfer to Taiwan in a "Safe to Steam" condition with all shipboard and weapon systems operational. The estimated cost is $875 million.

This sale is consistent with United States law and policy as expressed in Public Law 96-8.

The recipient needs these KIDD Class destroyers as well as the weapons and ammunition to continue its naval modernization program and enhance its Anti-Submarine Warfare (ASW) capability. The recipient already has HARPOON missiles and STANDARD missiles in its weapon inventory.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: BAV, Division of VAE in Alexandria, Virginia; Raytheon Surface Navy Air Defense System in Tucson, Arizona; and the Boeing Company in St. Louis, Missouri. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives for extended periods of time in support of this transfer.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-03

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The KIDD Class guided missile destroyers contain sensitive state-of-the-art technology. The classified information that will be provided consists of only that necessary for the recipient to operate, maintain, and repair the ships and their installed systems and related software. The proposed sale provides equipment and services and technical information related to the following classified equipment and documentation:

a. The MK 15 PHALANX Close-In Weapon System: Unclassified components with Confidential software.

b. AN/SYR-1 Communication Tracking Set: Unclassified hardware with Confidential software.

c. AN/SLQ-25A NIXIE Torpedo CM: Secret hardware, software, and documentation requiring sanitization.

d. AN/SLQ-32A(V)3 Improved ECM Set: Secret hardware. Due to USN requirements, this system must be removed and replaced with the basic AN/SLQ-32(V)2 system. Removal includes hardware, software, and technical manuals. When replaced with the basic AN/SLQ-32(V)2, the following release considerations apply: (1) hardware is Secret, (2) software is Confidential, (3) U.S. threat libraries are Secret and will not be released, and (4) technical manuals are Confidential and need to be sanitized.

e. MK 36 MOD 0 SRBOC Launching System: Confidential components with documentation requiring sanitization from Secret to Confidential.

f. AN/UYK-7(V) Computer CDS: Unclassified hardware. After sanitization, software and documentation will be Confidential.

g. MK 116 MOD 2 Underwater Fire Control System: Confidential hardware, software, and documentation requiring sanitization.

h. MK 14 MOD 5 Weapons Direction System: Secret hardware/documentation and Secret software requiring sanitization, which will downgrade classification to Confidential.

i. MK 74 MOD 14 Fire Control System GUI: Secret hardware with Secret software/documentation requiring sanitization, which will downgrade classification to Confidential.

j. AN/SQQ-28(V)11 Sonar Signal Processing System: Confidential components and documentation requiring sanitization.

k. AN/SQR-17A(V) Sonar Signal Processing System: Confidential hardware. Secret software/documentation requiring sanitization which will downgrade classification to Confidential.

l. AN/SQS-53A EC-16: Unclassified hardware. Secret software/documentation requiring sanitization which will downgrade classification to Confidential.

m. AN/SQS-53A Sonar Set: Confidential components and documentation.

2. The SM-2 Block IIIA STANDARD missile is a U.S. Navy surface-launched guided missile and is classified Secret. It is operationally deployed on cruisers, destroyers, and frigates for use against air and surface threats (aircraft, missiles and ships). The guidance system employs a continuous-wave or interrupted continuous-wave radar link for homing in on a target. Steering and roll commands from the adaptive auto-pilot system provide flight stability via four aft-mounted control surfaces. Propulsion is provided by a solid-propellant, dual-thrust rocket motor that is an integral part of the missile airframe. The target detecting device (TDD) is a complex fuze with dual radar systems to optimize warhead lethality against a spectrum of target sizes and speeds.

3. The RGM-84L HARPOON Block II missile contains sensitive technology and has the following classified components, including applicable technical and equipment documentation and manuals:

a. Radar seeker
b. Missile characteristics and performance data
c. Global Positioning System/Precise Positioning Service improves mid-course guidance to the target area

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this proposed sale, the information could be used to develop countermeasures, which might reduce the effectiveness of the reconnaissance system, or be used in the development of a system with similar capabilities.

5. A determination has been made that the recipient can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–31750 Filed 12–17–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Notice of Availability of a Finding of No Significant Impact for the Transport of Polychlorinated Biphenyl-Containing Items From Japan and Wake Island to the United States

AGENCY: Defense Logistics Agency.

ACTION: Notice of a finding of no significant impact.

SUMMARY: The Defense Logistics Agency announces the availability of the Final Environmental Assessment and the Finding of No Significant Impact for the Transport of Polychlorinated Biphenyl-Containing Items from Japan and Wake Island to the United States. The final environmental assessment evaluates the environmental impacts of the transport to the United States, from military bases in Japan and Wake Island, of approximately seven million pounds of obsolete electrical equipment and related materials (including liquids and packaging materials) containing polychlorinated biphenyls. Treatment and disposal will be conducted in accordance with Environmental Protection Agency approved methods. The environmental assessment determined that neither transportation alternative (shipment by water or shipment by air) is likely to result in an accidental release of polychlorinated biphenyls or have a significant impact on the environment or public safety. The No Action alternative was not adopted, as it was not considered a feasible solution for continuing accumulations of this material. As a result, the Finding of No Significant Impact concludes that the proposed action does not constitute a major federal action significantly affecting the quality of the human environment and an environmental impact statement is not required. DLA plans to use a combination of both transportation alternatives.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Hooper at (703) 767–5121.

SUPPLEMENTARY INFORMATION: On August 28, 2002, a **Federal Register** notice invited public comment on the draft environmental assessment for a period of 30 days. Two comments were received and were considered. The comments and DLA's responses are summarized in Appendix G of the final environmental assessment. The final environmental assessment and the Finding of No Significant Impact are available at the Defense Logistics Agency, Attention: Mr. Jack Hooper, DLA–CP, 8725 John J. Kingman Road, STOP 6220, Fort Belvoir, VA 22060–6221 and on the World Wide Web at *http://www.dla.mil/ea082802.asp*.

Dated: December 13, 2002.

Richard J. Connelly,

Director, DLA Support Services.

[FR Doc. 02–31840 Filed 12–17–02; 8:45 am]
BILLING CODE 3620–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0145]

Federal Acquisition Regulation; Information Collection; Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0145).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning use of data universal numbering system (DUNS) as primary contractor identification. This OMB clearance expires on March 31, 2003.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before February 18, 2003.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Laura Smith, Acquisition Policy Division, GSA, (202) 208–7279.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Data Universal Numbering System (DUNS) number is the nine-digit identification number assigned by Dun and Bradstreet Information Services to an establishment. The Government uses the DUNS number to identify contractors in reporting to the Federal Procurement Data System (FPDS). The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies report data on all contracts in excess of $25,000.00 to the Federal Procurement Data Center which collects, processes, and disseminates official statistical data on Federal contracting. Contracting officers insert the Federal Acquisition Regulations (FAR) provision 52.204–6, Data Universal Numbering System (DUNS) Number in solicitations they expect will result in contracts in excess of $25,000.00. This provision requires offerors to submit their DUNS number with their offer. If the offeror does not have a DUNS number, the provision provides instructions on obtaining one.

B. Annual Reporting Burden

Respondents: 35,694.

Responses Per Respondent: 4.00.

Annual Responses: 142,776.

Hours Per Response: .0200. (Averaged)

Total Burden Hours: 2,852.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0145, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification, in all correspondence.

Dated: December 11, 2002.

Jeremy F. Olson,

Acting Director, Acquisition Policy Division.

[FR Doc. 02–31718 Filed 12–17–02; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the C2 Advisory Group and the leadership of the AFC2ISR Center. The purpose of the meeting is to allow the SAB leadership to advise the commander of the AC2ISRC. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: 18–19 December 2002.

ADDRESSES: Air Force C2ISR Center, Langley Air Force Base.

FOR FURTHER INFORMATION CONTACT: Captain Kent Broome, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington, DC 20330–1180, (703) 697–4648.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–31781 Filed 12–17–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 17, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren.Whittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 12, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: Equity in Athletics Disclosure Act (EADA).

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,800.

Burden Hours: 10,800.

Abstract: The EADA amended the Higher Education Act of 1965, as amended (HEA), to require coeducational institutions of higher education that participate in any program under Title IV of the HEA and have an intercollegiate athletic program, annually to make available upon request a report on institutional financing and student and staff participation in men's and women's intercollegiate athletics. The Higher Education Amendments of 1998 amended the EADA to require additional disclosures, to require that an institution submit its report to the Department of Education, and to require the Department to report to Congress on gender equity in intercollegiate athletics and to make its report and institutions' EADA reports publicly available.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–31769 Filed 12–17–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 17, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren.Whittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: December 12, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of the Chief Financial Officer

Type of Review: New.

Title: Survey on Ensuring Equal Opportunity for Applicants.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 17,000.

Burden Hours: 1,360.

Abstract: To ensure equal opportunity for all applicants including small community-based, faith-based and religious groups, it is essential to collect information that allows Federal agencies to determine the level of participation of such organizations in Federal grant programs while ensuring that such information is not used in grant-making decisions.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or directed to her e-mail address *Vivian.Reese@ed.gov.* Requests may also be faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–31770 Filed 12–17–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–193–000]

Algonquin Gas Transmission Company; Notice of Tariff Filing

December 11, 2002.

Take notice that on December 6, 2002, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the revised tariff sheets listed in Appendix A of the filing, effective January 1, 2003.

Algonquin states that the purpose of this filing is to comply with the Order on Investigation issued by the Commission in Docket No. RP00–533–003 on November 22, 2002 [101 FERC ¶ 61,214 (2002)] (November 22 Order) and the Order on Remand in Docket No. RM98–10–011 (Remand Order).

Algonquin states that it is hereby submitting tariff revisions that comply with such orders and, in particular, eliminate (i) provisions that preclude long-term shippers from having and exercising a ROFR when they terminate a contract, and (ii) provisions relating to the term matching cap.

Algonquin states that copies of its filing have been mailed to all affected customers of Algonquin and interested state commissions, as well as to all parties listed on the Official Service List compiled by the Secretary of the Commission in Docket No. RP00–533.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31738 Filed 12–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–192–000]

ANR Pipeline Company; Notice of Tariff Filing

December 11, 2002.

Take notice that on December 6, 2002, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of January 6, 2003:

Fourth Revised Sheet No. 46.
Second Revised Sheet No. 47.
Third Revised Sheet No. 59.
Second Revised Sheet No. 60.
First Revised Third Revised Sheet No. 153A.

ANR states that the tariff sheets are being filed in order clarify the operational flexibility provided within its No Notice Rate Schedule "NNS".

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact

(202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31737 Filed 12–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–206–010]

Atlanta Gas Light Company; Notice of Compliance Filing

December 11, 2002.

Take notice that on December 6, 2002, Atlanta Gas Light Company (Atlanta), in compliance with the Commission's November 21, 2002 Order in the above-referenced proceeding, has supplemented its Rate Schedule IBSS filing to include its section 15 of the Terms of Service of the currently effective Atlanta tariff on file with the Georgia Public Service Commission. In addition, Atlanta has included its Section 1 definitions contained in the currently effective Atlanta tariff. These revised definitions are being filed to replace an incorrect version of that section of Atlanta's tariff inadvertently filed on August 19, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31744 Filed 12–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–335–002 and RP01–414–002]

Black Marlin Pipeline Company; Notice of Compliance Filing

December 11, 2002.

Take notice that on November 14, 2002, Black Marlin Pipeline Company tendered for filing as part of its Order No. 637 proceeding, a statement regarding park and loan service. The filing is being submitted in compliance with Commission letter order issued in October 30, 2002 in Docket No. RP02–568–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before December 18, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31728 Filed 12–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–161–001]

Chandeleur Pipe Line Company; Notice of Filing

December 11, 2002.

Take notice that on December 6, 2002, Chandeleur Pipe Line Company (Chandeleur) tendered Substitute 13th Revised Sheet No. 5 correctly identifying its proposed Line Loss Allowance as 0.3%.

Chandeleur asserts that this filing is tendered in order to correct and replace previously-tendered materials, docketed on November 29, 2002. Calculations contained in worksheets accompanying the November 29 filing indicate a retention value of 0.3%, however tariff sheets and accompanying materials were submitted with a proposed percentage of 0.03%.

Chandeleur states that the purpose of this filing is to account for changes in amounts retained for Fuel and Line Loss Allowance pursuant to the provisions of 18 CFR 154.403(d)(3) and in accordance with section 21.0 of the General Terms and Conditions of Chandeleury's FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before December 18, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31731 Filed 12–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–54–035]

Colorado Interstate Gas Company; Notice of Settlement Agreement

December 11, 2002.

Take notice that on December 3, 2002, Colorado Interstate Gas Company tendered for filing a settlement agreement with IMC Global, Inc. associated with the refund of Kansas ad valorem tax reimbursements.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 18, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31745 Filed 12–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–187–000]

Dauphin Island Gathering Partners; Notice of Proposed Changes in FERC Gas Tariff

December 11, 2002.

Take notice that on December 4, 2002, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of January 3, 2003:

Second Revised Sheet No. 218
Second Revised Sheet No. 221

Dauphin Island states that this filing is submitted to revise its tariff to reflect modifications necessary to reinstate the rate ceiling for short-term capacity release transactions following the conclusion of FERC's two-year waiver period as provided for in Order No. 637.

Dauphin Island states that copies of the filing are being served contemporaneously on all participants listed on the service list in this proceeding and on all persons who are required by the Commission's regulations to be served with the application initiating these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31733 Filed 12–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–18–000]

City of Duluth Public Works & Utilities Department; Notice of Application

December 11, 2002.

Take notice that on November 29, 2002, the City of Duluth Public Works & Utilities Department (City of Duluth), filed an application with the Commission in Docket No. CP03–18–000 under section 7 of the Natural Gas Act, as amended, seeking authority to construct, install, and operate certain natural gas pipeline facilities which will be owned by the City of Duluth, all as more fully stated in the application which is open to public inspection.

The City of Duluth currently owns and operates a municipal distribution system providing natural gas service to almost 90,000 residents in and around the City of Duluth, Minnesota. The City of Duluth proposes to construct, install, and operate approximately 5.33 miles of 10-inch diameter pipeline and appurtenances. The proposed facilities would provide the incremental capacity sufficient for the City of Duluth to receive up to 35,000 Mcf/day of natural gas from an interconnection with Great Lakes Gas Transmission Company (Great Lakes) in Douglas County, Wisconsin. The City of Duluth would transport natural gas from the Great Lakes interconnection to a town border station that would be constructed in St. Louis County, Minnesota. The City of Duluth would construct the proposed facilities to increase the reliability of natural gas service to residents in the Duluth, Minnesota, area and to introduce competition into the interstate natural gas supply market. The City of Duluth would operate the proposed pipeline facilities at a maximum operating allowable pressure of 974 psig.

The City of Duluth states that it estimates the total construction cost of the proposed facilities at $3,500,000. The City of Duluth seeks to have the FERC issue a limited jurisdiction certificate of public convenience and

necessity by February 28, 2003, so that the facilities may be placed in service before the commencement of the 2003–2004 heating season. The City of Duluth states that it does not propose any rates for the new facilities.

Any questions regarding the application should be directed to Gregory A. Wheeler, Esquire, as agent for the City of Duluth Public Works & Utilities Department, ProSource Technologies, Inc., 277 Coon Rapids Boulevard, Suite 304, Coon Rapids, MN 55433 or at (763) 786–1445.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and 18 CFR 385.211 and 385.214. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before January 2, 2003, the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

A person obtaining intervenor status will be placed on the service list maintained by FERC and will receive copies of all documents filed by applicant and by every one of the intervenors. An intervenor can file for rehearing of any FERC order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with FERC to every other intervenor in the proceeding, as well as 14 copies with FERC.

However, a person does not have to intervene in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of FERC. Commenters will be placed on FERC's environmental mailing list, receive copies of environmental documents, and be able to participate in meetings (if any) associated with FERC's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by FERC and will not have the right to seek rehearing or appeal FERC's final order to a federal court.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receiver copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon FERC by sections 7 and 15 of the Natural Gas Act and FERC's rules of practice and procedure, a hearing will be held without further notice before FERC or its designee on this application if no motion to intervene is filed within the time required herein, if FERC on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if FERC on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the City of Duluth to appear or be represented at the hearing.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–31723 Filed 12–17–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–188–000]

East Tennessee Natural Gas Company; Notice of Tariff Filing

December 11, 2002.

Take notice that on December 5, 2002, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing, to be effective January 6, 2003.

East Tennessee states that the purpose of this filing is to modify the East Tennessee Tariff to: (1) Delete all references to the Daily Delivery Service; (2) delete the provision related to an alternate Reservation Charge; (3) modify the two Forms of Service Agreement used for Points of Delivery to achieve consistency between the agreements; (4) reflect the reinstatement of the price ceiling for short-term capacity release transactions; (5) achieve consistency in terminology related to East Tennessee's liquefied natural gas storage service; (6) achieve consistency in terminology related to contractual quantities; (7) delete the Form of Release Request and Form of Bid; and (8) make miscellaneous non-substantive housekeeping changes to various sections of the East Tennessee Tariff.

East Tennessee states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–31734 Filed 12–17–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–39–001]

Enbridge Pipelines (Midla) L.L.C.; Notice of Compliance Filing

December 11, 2002.

Take notice that on December 6, 2002, Enbridge Pipelines (Midla) L.L.C. (Midla) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be made effective December 1, 2002.

Midla states that the filing is being made in compliance with the Commission's order dated November 20, 2002 in Docket No. RP03–39-000 wherein Midla was directed to file revised tariff sheets when the Commission issues its orders in Docket Nos. RP00–400–000, *et al.* and RP02–486–000.

Midla states that copies of its transmittal letter has been provided by First Class mail and/or electronic communication, depending on the method that such party elected to receive such copies, to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–31740 Filed 12–17–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–40–001]

Enbridge Pipelines (AlaTenn) L.L.C.; Notice of Compliance Filing

December 11, 2002.

Take notice that on December 6, 2002, Enbridge Pipelines (AlaTenn) L.L.C. (AlaTenn) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, First Revised Sheet No. 143; First Revised Sheet No. 144; First Revised Sheet No. 197; and First Revised Sheet No. 198, to be made effective December 1, 2002.

AlaTenn states that the purpose of the filing is to comply with the Commission's Order dated November 20, 2002 in FERC Docket No. RP03–40–000 wherein AlaTenn was directed to file revised tariff sheets when the Commission issues its orders in FERC Docket Nos. RP00–401–000, *et al.* and RP02–485–000. By its Order dated November 4, 2002, in FERC Docket No. RP02–485–001, the Commission found that AlaTenn's tariff revisions fully comply with the requirements of Order No. 587–O. AlaTenn further states that the proposed tariff sheets include the same language as was contained on the Sheets accepted by the Commission, *i.e.*, Substitute First Revised Sheet Nos. 141, 142, 195 and 196 to its FERC Gas Tariff, Third Revised Volume No. 1.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–31741 Filed 12–17–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–43–001]

Enbridge Pipelines (KPC); Notice of Compliance Filing

December 11, 2002.

Take notice that on December 6, 2002, Enbridge Pipelines (KPC) (Enbridge KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be made effective December 1, 2002:

Substitute Third Revised Sheet No. 15
Substitute Third Revised Sheet No. 21
Substitute Third Revised Sheet No. 26
Substitute Third Revised Sheet No. 28
Substitute Third Revised Sheet No. 30
Substitute Second Revised Sheet No. 31A
Substitute Second Revised Sheet No. 31C

Enbridge KPC states that the purpose of the filing was to comply with the Commissions Order dated November 29, 2002 in FERC Docket No. RP03–43–000. Additionally, KPC stated that in addition to the correction described above, the instant filing also reflected the rates as approved by the Commission's Order dated November 27, 2002 in Docket Nos. RP03–50–000 and 001. Because the Commission

approved an effective date of December 1, 2002 in that docket, which is the same effect date that the Commission conditionally accepted in this docket, the proposed tariff sheets show the rates and fuel retention percentages that will be effective on December 1, 2002.

Enbridge KPC states that copies of its transmittal letter has been provided by First Class mail and/or electronic communication, depending on the method that such party elected to receive such copies, to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document.

For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31742 Filed 12–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–190–000]

Florida Gas Transmission Company; Notice of Tariff Filing

December 11, 2002.

Take notice that on December 6, 2002, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet, with an effective date of January 6, 2003:

Sixth Revised Sheet No. 187

FGT states that in *Interstate Natural Gas Association of America* v. *FERC*, 285 F. 3d 18 (DC Cir. 2002) (INGAA), the United States Court of Appeals for the District of Columbia remanded certain issues to the Commission regarding Order No. 637. Subsequently, in response to the Court's remand, the Commission issued its Order on Remand on October 31, 2002 in Docket No. RM98–10–011 ("Order"). Among other things, the Order removed the term matching cap for Shippers exercising their Right-of-First Refusal ("ROFR"). FGT states that in the instant filing, it is proposing modifications to the ROFR provisions of its Tariff. Specifically, FGT states it is modifying section 20.B.4 of its General Terms and Conditions ("GT&C") by removing tariff provisions where Shippers are only required to match term provisions up to five years.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document.

For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31736 Filed 12–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–189–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Tariff Filing

December 11, 2002.

Take notice that on December 6, 2002, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to be effective February 1, 2003:

Twelfth Revised Sheet No. 1
Fifth Revised Sheet No. 8A
Eleventh Revised Sheet No. 9
Sixth Revised Sheet No. 40A
Ninth Revised Sheet No. 41
Seventh Revised Sheet No. 42A
Second Revised Sheet No. 50K
Third Revised Sheet No. 51
First Revised Sheet No. 57B
Third Revised Sheet No. 87
First Revised Sheet No. 87A
Third Revised Sheet No. 88
Second Revised Sheet No. 89

Great Lakes states that the proposed revised tariff sheets are being filed to expand the scope of Great Lakes' Master Service Agreement and Award Acknowledgment. Currently the Master Service Agreement is used only to facilitate multiple temporary capacity release transactions. Great Lakes proposes here to expand use of the Master Service Agreement and Award Acknowledgment also to facilitate multiple firm and/or limited firm transportation transactions. This change is being made to provide Great Lakes' shippers with greater ease in obtaining and finalizing contracts for service. In addition, the proposed changes will reduce the processing time for the increasing number of multiple firm or limited firm transportation transactions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://*

www.ferc.gov using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31735 Filed 12–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–157–009]

Kern River Gas Transmission Company; Notice of Negotiated Rates

December 11, 2002.

Take notice that on December 5, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective December 1, 2002.

Substitute Third Revised Sheet No. 495.
Substitute Original Sheet No. 496.

Kern River states that the purpose of this filing is to submit corrected tariff sheets to reinstate the negotiated rate agreement between Kern River and Eagle Mountain on the list of negotiated rate agreements in Kern River's tariff.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31726 Filed 12–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2353–009]

New York State Electric & Gas Corporation; Notice of Filing

December 11, 2002.

Take notice that on November 7, 2002, New York State Electric & Gas Corporation (NYSEG) tendered for filing with the Federal Energy Regulatory Commission (Commission) its revised sheets for Rate Schedule Nos. 110 and 229 pursuant to the Commission's Opinion No. 447–B issued October 10, 2002. Copies of the tendered filing have been served by NYSEG upon the other parties to the above captioned proceeding.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: December 20, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31724 Filed 12–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2353–010]

New York State Electric & Gas Corporation; Notice of Filing

December 11, 2002.

Take notice that on November 7, 2002, New York State Electric & Gas Corporation (NYSEG) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Refund Report pursuant to the Commission's Opinion No. 447–B issued October 10, 2002. Copies of the tendered filing have been served by NYSEG upon the other parties to the above captioned proceeding.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link.

Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: December 20, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31725 Filed 12–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–2–006]

Overthrust Pipeline Company; Notice of Compliance Filing

December 11, 2002.

Take notice that on December 6, 2002, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Ninth Revised Sheet No. 70, to be effective January 1, 2003.

Overthrust states that the filing is being made in compliance with Commission letter order issued July 13, 2000, in Docket No. RP00–2–000.

Overthrust states that by letter order issued July 13, 2000, the Commission approved the March 24, 2000, settlement of its rate case in Docket No. RP00–2–000.

Overthrust states that paragraph III.A.(3)(b) of the settlement provided that effective January 1, 2003, the Interruptible Revenue Sharing provision of Overthrust's General Terms and Conditions would be modified so that 50% rather than 100% of interruptible revenues would be shared annually rather than monthly and only if the total of all firm and interruptible revenues exceed $4,689,819 annually.

Further, Overthrust states that Ninth Revised Sheet No. 70 submitted with its filing implements the modified Interruptible Revenue Sharing provision in the manner set forth on the tariff sheet attached as Appendix A to the settlement, with one minor clarification regarding the annual nature of the revised provision.

Overthrust states that a copy of this filing has been served upon Overthrust's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31727 Filed 12–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–29–000]

PG&E Energy Trading-Power, L.P., Complainant, v. California Power Exchange Corporation, Respondent; Notice of Filing

December 12, 2002.

Take notice that on December 10, 2002, pursuant to 16 U.S.C. 824e and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the Commission or the FERC), 18 CFR 385.206, PG&E Energy Trading-Power, L.P. (PGET) submitted its Complaint, requesting that the Commission order the California Power Exchange Corporation (CalPX) to reduce the amount of the collateral that PGET must provide as a condition for having participated in the now-defunct CalPX markets. In particular, PGET seeks a Commission order directing the CalPX to release PGET's letter of credit currently held in the amount of $19,000,000.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before January 6, 2003. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link.

Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31896 Filed 12–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–408–002]

Sabine Pipe Line LLC; Notice of Compliance Filing

December 11, 2002.

Take notice that on December 6, 2002, Sabine Pipe Line LLC (Sabine) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective October 1, 2002.

Substitute First Revised Sheet No. 204A
Second Sub Third Revised Sheet No. 297

Sabine asserts that the purpose of this filing is to comply with Commission's order issued December 3, 2002, in Docket No. RP02–408–001.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31730 Filed 12–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–117]

Tennessee Gas Pipeline Company; Notice of Change in Negotiated Rates

December 11, 2002.

Take notice that on December 6, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing a notice of a change in the rates for the October 18, 2001 Negotiated Rate Agreement between Tennessee and NJR Energy Services (Negotiated Rate Agreement) which was accepted by the Commission in Tennessee Gas Pipeline Company, 97 FERC ¶ 61,248 (2001) (November 30 Order). As agreed to in the November 30 Order, Tennessee is providing notice of a change in rate to be effective December 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31743 Filed 12–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–194–000]

Texas Eastern Transmission, LP; Notice of Tariff Filing

December 11, 2002.

Take notice that on December 6, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the revised tariff sheets listed in Appendix A of the filing, effective January 1, 2003.

Texas Eastern states that the purpose of this filing is to comply with the Order on Investigation issued by the Commission in Docket No. RP00–535–003 on November 22, 2002 [101 FERC ¶ 61,215 (2002)] (November 22 Order) and the Order on Remand in Docket No. RM98–10–011 (Remand Order).

Texas Eastern states that it is hereby submitting tariff revisions that comply with such orders and, in particular, eliminate (i) provisions that preclude long-term shippers from having and exercising a ROFR when they terminate a contract, and (ii) provisions relating to the term matching cap.

Texas Eastern states that copies of its filing have been mailed to all affected customers of Texas Eastern and interested state commissions, as well as to all parties listed on the Official Service List compiled by the Secretary of the Commission in Docket No. RP00–535.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31739 Filed 12–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–186–000]

Transwestern Pipeline Company; Notice of Tariff Filing

December 11, 2002.

Take notice that on December 3, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to become effective January 3, 2003:

Eleventh Revised Sheet No. 20
Second Revised Sheet No. 98

Transwestern states that the instant filing is to remove the five year limitation from the ROFR matching provisions and to permit forwardhauls and backhauls to the same point, all in compliance with the Order on Remand issued October 31, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–31732 Filed 12–17–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–494–002]

Williams Gas Pipelines Central, Inc.; Notice of Compliance Filing

December 11, 2002.

Take notice that on December 4, 2002, Williams Gas Pipelines Central, Inc. (Central) tendered for filing, as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective as noted.

Effective October 1, 2002
Substitute Original Sheet No. 298B
Effective April 1, 2003
Substitute Second Revised Sheet No. 250

Central states that this filing is being made to comply with the Commission's Second Order on Compliance with Order Nos. 637 issued on November 4, 2002 (101 FERC ¶ 61,164 (2002)). The tariff changes filed herewith are intended only to implement certain changes directed by the Commission in its November 4 Order.

Central states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document.

For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–31729 Filed 12–17–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

December 12, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 7725–005.

c. *Date Filed:* September 27, 2002.

d. *Applicant:* Barton Village, Inc.

e. *Name of Project:* Barton Village Hydroelectric Project.

f. *Location:* On the Clyde River in the Town of Charleston, Orleans County, Vermont.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Denis H. Poirier, Village Supervisor, Barton Village Inc., 17 Village Square, P.O. Box 519, Barton, Vermont 05822. (802) 525–4747.

i. *FERC Contact:* Frank Winchell at 202–502–6104, or *frank.winchell@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* February 9, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The existing Barton Village Hydroelectric Project consists of:

(1) A 77-foot-long, 24-foot-high masonry and concrete gravity dam; (2) 1.5-foot-high flashboards extending 57 feet across a concrete spillway; (3) a 187-acre impoundment at elevation 1,140.9 feet mean sea level (msl); (4) a 665-foot-long, 7-foot-diameter steel penstock; (5) two 105-foot-long, 5.8-foot-diameter steel penstocks leading to: (6) a powerhouse with two units having a total installed capacity of 1.4 MW; and (7) other appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link.

Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOlineSuport@ferc.gov.* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–31897 Filed 12–17–02; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0295; FRL–7279–2]

Tetrachlorvinphos; Availability of Interim Risk Management Decision Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the interim risk management decision document for tetrachlorvinphos. This decision document has been developed as part of the public participation process that EPA and the U.S. Department of Agriculture (USDA) are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Demson Fuller, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8062; e-mail address: *fuller.demson@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the interim risk management decision document for tetrachlorvinphos, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food and pets. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0295. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

EPA has assessed the risks of tetrachlorvinphos and reached an Interim Tolerance Reassessment Eligibility Decision (TRED) or a Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision for this pesticide. With risk mitigation measures adopted, tetrachlorvinphos fits into its own risk cup-its individual, aggregate risks are within acceptable levels. The RED for tetrachlorvinphos was completed in 1995. At that time, the Agency assessed the risk for dietary, occupational, ecological, and residential concerns. With the passage of FQPA, the tolerances for tetrachlorvinphos needed to be reassessed according to the FQPA safety standard. In this current assessment, the Agency looked at dietary, residential and occupational concerns.

Tetrachlorvinphos is currently applied dermally to livestock to control flies and mites; used as a feed-through (oral) larvicide in cattle, hogs, goats, and horses; in cattle ear tags to control flies; and in poultry production to control beetles, flies, and mites. Tetrachlorvinphos also is used as a dust/powder, aerosol, and pump spray on pets and in pet sleeping areas, and in collars and shampoos for direct treatment of pets. It is used as a spray to control nuisance and public health pests (flies) in and around refuse sites, recreational areas, and for general outdoor treatment.

Dietary risks from eating food items containing residues of tetrachlorvinphos are below the level of concern for the entire U.S. population, including infants and children. Drinking water is not a significant source of exposure. Residential handler and post application risks were also not of concern for all exposure scenarios. However, the Agency has concern over

the potential for over-application of powder products. Labels need to be modified to specify how much product to apply to treat pets of different sizes. Additionally, based on discussions with stakeholders, EPA believes that directions for outdoor uses as premise sprays around kennels, yards, campgrounds, and parks, and along foot paths and roadways leading to such areas, must clearly limit use to spot treatments only.

Worker risks for most scenarios are not of concern if measures to reduce exposure, such as personal protective equipment, are used. However, use of the EC formulation as a paint-on poses high risks to workers despite the maximum protection feasible. Therefore this use will be removed from product labels. For other scenarios, such as applying dusts with power dusting equipment, additional data are needed to confirm that risks to workers will not be excessive.

In addition, EPA has determined that labels for tetrachlorvinphos feed-through products for horses must state that the product is a chlolinesterase inhibitor, describe signs of cholinesterase inhibition in horses, caution against the use with other cholinesterase inhibiting compounds, and direct horse owners to consult a veterinarian before using products containing tetrachlorvinphos on debilitated, aged, breeding, pregnant or nursing animals.

The interim risk management decision document for tetrachlorvinphos was made through the organophosphate pesticide pilot public participation process, which increases transparency and maximizes stakeholder involvement in EPA's development of risk assessments and risk management decisions. The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate pesticide risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation.

EPA worked extensively with affected parties to reach the decisions presented in the interim risk management decision documents, which conclude the pilot public participation process for tetrachlorvinphos. As part of the pilot public participation process, numerous opportunities for public comment were offered as these interim risk management decision documents were being developed. The tetrachlorvinphos interim risk management decision document therefore is issued in final, without a formal public comment period. The docket remains open, however, and any comments submitted in the future will be placed in the public docket.

The risk assessments for tetrachlorvinphos were released to the public through a notice published in the **Federal Register** of January 15, 1999 (64 FR 2644) (FRL–6056–9) and March 27, 2000 (65 FR 16197) (FRL–6551–4). Addenda to these assessments are also available in the public docket.

EPA's next step under FQPA is to complete a cumulative risk assessment and risk management decision for the organophosphate pesticides, which share a common mechanism of toxicity. The interim risk management decision document on tetrachlorvinphos cannot be considered final until this cumulative assessment is complete.

When the cumulative risk assessment for the organophosphate pesticides has been completed, EPA will issue its final tolerance reassessment decision for tetrachlorvinphos and further risk mitigation measures may be needed.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: December 3, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–31361 Filed 12–17–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7423–8]

Clean Water Act Section 303(d): Final Agency Action on 37 Total Maximum Daily Loads (TMDLs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces final agency action on 37 TMDLs prepared by EPA Region 6 for waters listed in the state of Arkansas, under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to the lawsuit styled Sierra Club, *et al.* v. *Clifford, et al.*, No. LR–C–99–114. Documents from the administrative record files for the final 37 TMDLs, including TMDL calculations and responses to comments, may be viewed at *http://www.epa.gov/earth1r6/6wq/artmdl.htm.*

ADDRESSES: The administrative record files for these 37 TMDLs may be obtained by writing or calling Ms. Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1999, five Arkansas environmental groups, the Sierra Club, Federation of Fly Fishers, Crooked Creek Coalition, Arkansas Fly Fishers, and Save our Streams (plaintiffs), filed a lawsuit in Federal Court against the United States Environmental Protection Agency (EPA), styled Sierra Club, *et al.* v. *Browner et al.*, No. LR–C–99–114. Among other claims, plaintiffs alleged that EPA failed to establish Arkansas TMDLs in a timely manner.

EPA Takes Final Agency Action on 37 TMDLs

By this notice EPA is taking final agency action on the following 37 TMDLs for waters located within the state of Arkansas:

Segment-reach	Waterbody name	Pollutant
11140203–20–11.9	Dorcheat Bayou	Mercury
11140203–22–8.4	Dorcheat Bayou	Mercury
11140203–24–7	Dorcheat Bayou	Mercury
11140203–26–23.3	Dorcheat Bayou	Mercury
11110206–02–8.7	Fourche LaFave River	Mercury
11010014–36	South Fork Little Red River	Mercury
11140203	Columbia Lake	Mercury

Segment-reach	Waterbody name	Pollutant
11110206	Cove Creek Lake	Mercury
11110206	Dry Fork Lake	Mercury
11110206	Nimrod Lake	Mercury
11010014	Johnson Hole	Mercury
11110201	Shepherd Springs Lake	Mercury
11110207	Lake Sylvia	Mercury
11110207	Spring Lake	Mercury
08040201–02–22.5	Ouachita River	Mercury
08040201–04–2.5	Ouachita River	Mercury
08040202	Oxbow River—Oxbows below Camden	Mercury
08040202	Felsenthal Wildlife Refuge	Mercury
08040202–02–4	Ouachita River	Mercury
08040202–03–8.4	Ouachita River	Mercury
08040202–04–28.9	Ouachita River	Mercury
08040203	Lake Winona	Mercury
08040203–01–0.2	Saline River	Mercury
08040204–01–2.8	Saline River	Mercury
08040204–02–53	Saline River	Mercury
08040204–04–16.4	Saline River	Mercury
08040204–06–17.5	Saline River	Mercury
08040201–01–12	Moro Creek	Mercury
08040201–03–20	Champagnolle Creek	Mercury
08040202–03–8.4	Little Champagnolle	Mercury
08040205–02–17.9	Bayou Bartholomew	Mercury
08040205–12–82.7	Bayou Bartholomew	Mercury
08040205–07–16.8	Cutoff Creek	Mercury
08040201–606–8.5	ELCC Tributary	Chloride
08040201–606–8.5	ELCC Tributary	Sulfate
08040201–606–8.5	ELCC Tributary	TDS
08040201–606–8.5	ELCC Tributary	Ammonia

EPA requested the public to provide EPA with any significant data or information that may impact the 37 TMDLs at **Federal Register** Notice: Volume 67, Number 202, pages 64369–64370 (October 18, 2002). The comments received and EPA's response to comments may be found at *http://www.epa.gov/earth1r6/6wq/artmdl.htm.*

Dated: December 10, 2002.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 02–31902 Filed 12–17–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2588]

Petition for Reconsideration of Action in Rulemaking Proceeding

December 16, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by January 2, 2003. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations, (Tyler and Lufkin, Texas) (MM Docket No. 01–244, RM–10234, and MM Docket No. 01–245, RM–10235).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–31895 Filed 12–17–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Withdrawal of Eligibility Standards for FDIC/RTC Roster of Neutrals and Roster of Neutral Questionnaires

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Withdrawal of policies relating to the creation and maintenance of a Roster of Neutrals.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC or Corporation) herewith withdraws its prior Policies regarding the establishment and maintenance of the FDIC Roster of Neutrals. The FDIC has carefully considered the maintenance of the Roster and issues raised by the development of separate neutral qualifications. The FDIC has determined that alternative dispute resolution (ADR) organizations with ample neutral qualification standards exist within the federal government and private industry sufficient to meet the FDIC's current and future demands for ADR services. As such, the FDIC's maintenance of the FDIC Roster of Neutrals with separate qualifying criteria established by the FDIC duplicates ADR neutral rosters (with highly qualified ADR specialists) that are readily available within the private and federal sectors. Therefore, the FDIC by this Notice withdraws and rescinds all prior notices (59 FR 15205–01, March 31, 1994; 56 FR 50585–02, October 7, 1991; 59 FR 47876–01, September 19, 1994; 62 FR 48659–01, September 16, 1997; and 62 FR 63177–02, November 26, 1997) establishing the FDIC's criteria for neutral selection and the maintenance of the FDIC's Roster of Neutrals.

EFFECTIVE DATE: December 18, 2002.

FOR FURTHER INFORMATION CONTACT: Terry Fenton, Paralegal, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Room H–3138, Washington, DC 20429, (202) 736–0369.

Dated at Washington, DC, this 11th day of December, 2002.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 02–31852 Filed 12–17–02; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice; Correction

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, December 18, 2002, 10 a.m.—Open Meeting Will be Held on Wednesday, December 18, 2002.

DATE AND TIME: Wednesday, December 18, 2002 at 10 a.m.

PLACE: 999 E. Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Election of Officers.

Interim Rules and Explanation and Justification for BCRA's Millionaire's Amendment.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–31971 Filed 12–16–02; 1:26 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public

Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 App. U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Carnival Corporation
3655 N.W. 87th Avenue
Miami, FL 33178–2193
Vessel: *Carnival Conquest*

Delta Queen Steamboat Company, Inc. and American Queen Steamboat, LLC
1380 Port of New Orleans Place
New Orleans, LA 70130
Vessel: *American Queen*

Delta Queen Steamboat Company, Inc. and Delta Queen Steamboat, LLC
1380 Port of New Orleans Place
New Orleans, LA 70130
Vessel: *Delta Queen*

Delta Queen Steamboat Company, Inc. and Mississippi Queen Steamboat, LLC
1380 Port of New Orleans Place
New Orleans, LA 70130
Vessel: *Mississippi Queen*

Holland America Line Inc., Holland America Line N.V. and HAL Antillen N.V.
300 Elliott Avenue West
Seattle, WA 98119
Vessel: *Zuiderdam*

Norwegian Cruise Line Limited
7665 Corporate Center Drive
Miami, FL 33126
Vessel: *Norwegian Sky*

Norwegian Cruise Line Limited and Norwegian Dawn Limited
7665 Corporate Center Drive
Miami, FL 33126
Vessel: *Norwegian Dawn*

P & O Princess Cruises International Limited, Princess Cruise Lines, Ltd. and P & O Princess Cruises plc
Richmond House, Terminus Terrace
Southampton SO14 3PN
United Kingdom
Vessel: *Oceana*

Princess Cruise Lines, Ltd., P & O Princess Cruises International Limited, Brittany Shipping Corporation, Ltd. and P & O Princess Cruises plc
24305 Town Center Drive
Santa Clarita, CA 91355–4999
Vessel: *Coral Princess*

Princess Cruise Lines, Ltd., P & O Princess Cruises International Limited, P & O Princess Cruises plc and Copropriete du Navire R3
24305 Town Center Drive
Santa Clarita, CA 91355–4999
Vessel: *Pacific Princess*

Royal Caribbean Cruises Ltd. (d/b/a Royal Caribbean International) and Navigator of the Seas Inc.
1050 Caribbean Way
Miami, FL 33132–2096
Vessel: *Navigator of the Seas*

Royal Caribbean Cruises Ltd. (d/b/a Royal Caribbean International), RCL (UK) Ltd. and Halifax Leasing (September) Limited
1050 Caribbean Way
Miami, FL 33132–2096
Vessel: *Brilliance of the Seas*

Royal Olympic Cruises Ltd and Royal World Cruises Inc.
805 3rd Avenue, 18th Floor
New York, NY 10022
Vessel: *Olympia Explorer*

Royal Olympic Cruises Ltd and Olympic World Cruises Inc.
805 3rd Avenue, 18th Floor
New York, NY 10022
Vessel: *Olympia Voyager*

Silversea Cruises, Ltd. and Silver Cloud Shipping Company S.A.
110 East Broward Blvd.
Fort Lauderdale, FL 33301
Vessel: *Silver Cloud*

Dated: December 13, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–31878 Filed 12–17–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 App. U.S.C. 817 (e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Delta Queen Steamboat Company, Inc. and American Queen Steamboat, LLC
1380 Port of New Orleans Place
New Orleans, LA 70130
Vessel: *American Queen*

Delta Queen Steamboat Company, Inc. and Delta Queen Steamboat, LLC
1380 Port of New Orleans Place
New Orleans, LA 70130
Vessel: *Delta Queen*

Delta Queen Steamboat Company, Inc. and Mississippi Queen Steamboat, LLC
1380 Port of New Orleans Place
New Orleans, LA 70130
Vessel: *Mississippi Queen*

Glacier Bay Park Concessions, Inc. (d/b/a Glacier Bay Cruises) and Glacier Bay Marine Services, Inc.
107 W. Denny Way, Suite 303
Seattle, WA 98119
Vessels: *Wilderness Adventurer and Wilderness Discoverer*

Holland America Line Inc. (d/b/a Holland America Line), Holland America Line N.V., and HAL Antillen N.V.
300 Elliott Avenue West
Seattle, WA 98119
Vessel: *Zuiderdam*

Magic Cruise Line Services Co. (d/b/a Magic Cruise Line)
c/o Fowler White Burnett P.A.
Bank of America Tower, 17th Floor
100 Southeast Second Street
Miami, FL 33131
Vessel: *Magic I*

Norwegian Cruise Line Limited (d/b/a Orient Lines)
7665 Corporate Center Drive
Miami, FL 33126
Vessel: *Marco Polo*

P & O Princess Cruises International Limited and Princess Cruise Lines, Ltd.
Richmond House, Terminus Terrace
Southampton SO14 3PN
United Kingdom
Vessel: *Adonia*

Princess Cruise Lines, Ltd., P & O Princess Cruises International Limited and P & O Princess Cruises plc
24305 Town Center Drive
Santa Clarita, CA 91355–4999
Vessel: *Pacific Princess*

RCL (UK) Ltd. (d/b/a Royal Caribbean International)
Royal Caribbean House
Addlestone Road
Weybridge, Surrey KT15 2LLE
England
Vessel: *Brilliance of the Seas*

Royal Caribbean Cruises Ltd. (d/b/a Royal Caribbean International)
1050 Caribbean Way
Miami, FL 33132–2096
Vessels: *Jewel of the Seas, Mariner of the Seas Navigator of the Seas and Serenade of the Seas*

Royal Olympic Cruises Ltd
805 3rd Avenue, 18th Floor
New York, NY 10022
Vessels: *Olympia Explorer and Lympia Voyager*

Silversea Cruises, Ltd. and Silver Cloud Shipping Company S.A.
110 East Broward Blvd.
Fort Lauderdale, FL 33301
Vessel: *Silver Cloud*

Dated: December 13, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–31879 Filed 12–17–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicant has filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicant should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant: Speedier Logistics (U.S.A.), Inc., 147–39 175th Street, Room 215, Jamaica, NY 11434. Officer: Richard Ying, President (Qualifying Individual).

Dated: December 13, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–31877 Filed 12–17–02; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science; Office of the Secretary

Request for Nominations for Members of the Chronic Fatigue Syndrome Advisory Committee

The Office of Public Health and Science (OPHS), Department of Health and Human Services (DHHS), request nominations for representatives to serve on the Chronic Fatigue Syndrome Advisory Committee (CFSAC). Nominations are solicited for biomedical research scientists with demonstrated achievements in biomedical research relating to Chronic Fatigue Syndrome (CFS); individuals with expertise in health care delivery, private health care services or insurers, or voluntary organizations concerned with the problems of individuals with CFS.

DHHS has a strong interest in ensuring that women, minority groups, and physically challenged individuals are adequately represented on the Committee and, therefore, encourages nominations of qualified candidates from these groups. DHHS also encourages geographic diversity in the composition of the Committee.

Information Required: A nominations package must include the following information for each nominee:

1. A letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (i.e., what specific attributes recommend him/her for service in this capacity), and the nominee's area of expertise;

2. A biographical sketch of the nominee and a copy of his or her curriculum vitae; and

3. The name, return address, and daytime telephone number at which the nominator can be contacted. Organizational nominators must identify a principal contact person in addition to contact information. Optimally, a nomination package would also include a statement by the nominee that he/she is willing to accept an appointment to Committee membership.

All nomination information for a nominee must be provided in a complete single package within 45 days of the publication of this notice. Incomplete nominations cannot be considered. The nomination letter must bear an original signature; facsimile transmissions or copies are not acceptable.

DATES: All nominations must be received at the address below no later than 4 p.m. EDT within 45 days of the publication of this notice.

ADDRESSES: All nomination packages shall be submitted to Debra Nichols, MD, MPH, Executive Secretary, CFSAC, Office of Disease Prevention and Health Promotion, 200 Independence Ave, Room 738G, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Debra Nichols, MD at the above address or at 202–401–0735, or e-mail at *dnichols@osophs.dhhs.gov.*

Dated: December 6, 2002.

Debra Nichols,

Executive Secretary, CFSAC, Office of Disease Prevention and Health Promotion, Office of Public Health and Science, DHHS.

[FR Doc. 02–31829 Filed 12–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Proposed Research Protocol: Precursors to Diabetes in Japanese American Youth

AGENCY: Office of the Secretary, Office of Public Health and Science, Office for Human Research Protections.

ACTION: Notice.

SUMMARY: On August 7, 2002, the Office of Human Research Protections (OHRP), Office of Public Health and Science, Department of Health and Human Services (HHS), gave notice (67 FR 51283) that it was proposing to recommend approval of HHS support for the research protocol entitled "Precursors to Diabetes in Japanese American Youth," subject to a stipulation that certain modifications be made to the protocol and consent forms. OHRP is reopening the period for public comment and is making available additional information regarding the protocol.

DATES: To be considered, written or electronic comments must be received on or before January 17, 2003.

ADDRESSES: Submit written comments to: Kelley Booher, Division of Policy, Planning, and Special Projects, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, The Tower Building, Rockville, MD 20852, telephone number (301) 402–5942 (not a toll free number). Comments also may be sent via facsimile at (301) 402–2071 (not a toll free number) or by e-mail to: *kbooher@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: On August 7, 2002, the Office for Human Research Protections published a notice in the **Federal Register**, 67 FR 51283 (*http://frwebgate.access.gpo. gov/cgi-bin/*

getdoc.cgi?dbname=2002_register&docid=02-19871-filed.pdf), soliciting comments on its proposal to recommend approval on HHS support for the research protocol entitled "Precursors to Diabetes in Japanese American Youth" (1 R01 DK59234–01). The comment period closed on August 21, 2002. OHRP hereby gives notice that the comment period is being reopened for 30 days, and additional information regarding the protocol is being made available.

OHRP received a number of comments in response to the August 7, 2002, notice. Several who commented stated that (1) the 14-day comment period was too short, and (2) the information about the research protocol that OHRP provided to the public was insufficient to allow for meaningful comment about whether the research was appropriate for HHS to support. In response to these comments, OHRP is reopening the public comment period for 30 days. OHRP also is making available additional information regarding the research protocol, namely: the protocol application reviewed by the Children's Hospital and Regional Medical Center (Seattle) IRB; the assent form; the consent form; and selected parts of the grant application, including the abstract, specific aims, background and significance, discussion of the involvement of human subjects, and literature cited. These materials are available for review on the OHRP Web page at (*http://ohrp.osophs.dhhs.gov/pdjay/pdjayindex.htm*). A paper copy of the information referenced here is available upon request.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about the research proposal may be submitted under the Freedom of Information Act (FOIA). Such requests should be directed to: Ms. Darlene Christian, PHS FOIA Office, Parklawn Building, Room 17A–46, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–5252; fax (301) 443–0925.

Dated: December 12, 2002.

Eve E. Slater,

Assistant Secretary for Health.

[FR Doc. 02–31848 Filed 12–17–02; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–07–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Requirement for a Special Permit to Import Cynomolgus, African Green, or Rhesus Monkeys into the United States (0920–0263)—Extension—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC). To receive a special permit to import cynomolgus, African green and/or rhesus monkeys, a registered importer of nonhuman primates must submit to the Director, CDC, a written plan which specifies the steps that will be taken to prevent exposure of persons and animals during the entire importation and quarantine process for the arriving nonhuman primates.

Under the special permit arrangement, registered importers must submit a plan to CDC for the importation and quarantine if they wish to import the specific monkeys covered. The plan must address disease prevention procedures to be carried out in every step of the chain of custody of such monkeys, from embarkation in the country of origin to release from quarantine. Information such as species, origin and intended use for monkeys, transit information, isolation and quarantine procedures, and procedures for testing of quarantined animals is necessary for CDC to make public health decisions. This information enables CDC to evaluate compliance with the standards and determine whether the measures being taken to prevent exposure of persons and animals during importation are adequate. Once CDC is assured, through the monitoring of shipments (normally no more than 2), that the provisions of a special permit plan are being followed by a new permit holder and that the use of adequate disease control practices is being demonstrated, the special permit is extended to cover the receipt of additional shipments under the same plan for a period of 180 days, and may be renewed upon request. This eliminates the burden on importers to repeatedly report identical information, requiring only that specific shipment itineraries and information on changes to the plan which require approval be submitted.

Respondents are commercial or not-for-profit importers of nonhuman primates. The burden represents full submission of information and itinerary/change information respectively. The burden hours are estimated to be approximately 20.

Respondents	Number of respondents	Number of responses per respondents	Avg. burden responses (in hrs.)
Businesses	2	5	30/60
Organizations (limited permit)	3	5	10/60
	15	5	10/60

Dated: December 10, 2002.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–31748 Filed 12–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–09–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: PHS Supplements to the Application for Federal Assistance SF–424 (0920–0428)—Extension—Office of the Director (OD), Centers for Disease Control and Prevention (CDC) is requesting a three-year extension for continued use of the Supplements to the Request for Federal Assistance Application, SF–424. The Checklist, Program Narrative, and the Public Health System Impact Statement (PHSIS, third party notification form) are a part of the standard application for State and local governments and for private non-profit and for-profit organizations when applying for financial assistance from PHS grant programs. The Checklist assists applicants to ensure that they have included all required information necessary to process the application. The Checklist data helps to reduce the time required to process and review grant applications, expediting the issuance of grant awards. The PHSIS Third Party Notification Form is used to inform State and local health agencies of community-based proposals submitted by non-governmental applicants for Federal funding. The total annualized estimated burden is 42,695 hours.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)
State and local health departments; non-profit and for-profit organizations	7,457	1	5.73

Dated: December 10, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–31749 Filed 12–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Interagency Committee on Smoking and Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub L. 92–463), the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Interagency Committee on Smoking and Health Cessation Subcommittee.

Date and Time: January 16, 2003; 8:30 a.m.–2:30 p.m.

Place: Room 705A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., 7th Floor, Washington, DC 20201.

Status: Open to the public, limited only by the space available. Those who wish to attend are encouraged to register with the contact person listed below. If you will require a sign language interpreter, or have other special needs, please notify the contact person by 4:30 E.S.T. on January 14, 2003.

Purpose: The Interagency Committee on Smoking and Health advises the Secretary, Department of Health and Human Services, and the Assistant Secretary for Health in the: (a) Coordination of all research and education programs and other activities within the Department and with other federal, state, local and private agencies, and (b) establishment and maintenance of liaison with appropriate private entities, federal agencies, and state and local public health agencies with respect to smoking and health activities.

Matters to be discussed: The agenda will focus on developing a plan of action to promote tobacco use cessation to be presented to the Secretary of Health and Human Services.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of committee members may be obtained from the Internet at *http://www.cdc.gov/tobacco* in mid-March 2003, or from Ms. Monica L. Swann, Committee Management Specialist, Interagency Committee on Smoking and Health, Office on Smoking and Health, NCCDPHP, CDC, 200 Independence Avenue, SW., Room 317B, Washington, DC, 20201, telephone (202) 205–8500.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 10, 2002.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–31774 Filed 12–17–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Child Care and Development Fund Plan for States/Territories.

OMB No.: 0970–0114.

Description: The Child Care and Development Fund (CCDF) Plan for States and Territories is required from the Child Care Lead Agency by section 658E of the Child Care and Development Block Grant Act of 1990 (Pub. L. 101–508), 42 U.S.C. 9858). The implementing regulations for the statutorily required Plan are at 45 CFR 98.10 through 98.18. The Plan, submitted on the ACF–118, is required biennially and remains in effect for two years. This Plan provides ACF and the public with a description of, and assurance about, the State's child care

program. The ACF–118 is approved through February 29, 2004, making it available to States and Territories needing to submit Plan Amendments through the end of the FY 2003 Plan Period. However, in July 2003, States and Territories will be required to submit their FY 2004–2005 Plans. consistent with the statute and regulations, ACF requests extension of the ACF–118 with minor corrections and modification. The Tribal Plan (ACF–118A) is not affected by this notice.

Respondents: State and Territorial Lead Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–118	56	.5	162.57	.552

Estimated Total Annual Burden Hours: 4,552.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. The Department specifically requests comment to: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Consideration will be given comments and suggestions submitted within 60 days of this publication.

Dated: December 12, 2002.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 02–31833 Filed 12–17–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0281]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by January 17, 2003.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

General Administrative Procedures: Citizen Petitions; Petition for Reconsideration or Stay of Action; Advisory Opinions (OMB Control Number 0910–0183)—Extension

The Administrative Procedures Act (5 U.S.C. 553(e)) provides that every agency shall give an interested person the right to petition for issuance, amendment, or repeal of a rule. Section 10.30 (21 CFR 10.30) sets forth the format and procedures by which an interested person may submit to FDA, in accordance with § 10.20 (21 CFR 10.20) (submission of documents to the Dockets Management Branch), a citizen petition requesting the Commissioner of Food and Drugs (Commissioner) to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action. The Commissioner may grant or deny such a petition, in whole or in part, and may grant such other relief or take other action as the petition warrants. Respondents are individuals or households, State or local governments, not-for profit institutions and businesses or other for-profit institutions or groups. Section 10.33 (21 CFR 10.33) issued under section 701(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(a)), sets forth the format and procedures by which an interested person may request reconsideration of part or all of a decision of the Commissioner on a petition submitted under § 10.25 (21 CFR 10.25) (initiation of administrative proceedings). A petition for reconsideration must contain a full statement in a well organized format of the factual and legal grounds upon which the petition relies. The grounds must demonstrate that relevant information and views contained in the administrative record were not previously or not adequately considered by the Commissioner. The respondent must submit a petition no later than 30 days after the decision involved. However, the Commissioner may, for good cause, permit a petition to be filed after 30 days. An interested person who wishes to rely on information or views not included in the administrative record shall submit them with a new petition to modify the decision. FDA uses the information provided in the request to determine whether to grant the petition for reconsideration. Respondents to this collection of information are individuals of households, State or local governments, not-for-profit institutions, and businesses or other for-profit instructions who are requesting from the Commissioner a reconsideration of a matter. Section 10.35 (21 CFR 10.35) issued under section 701(a) of the act, sets forth the format and procedures by which an interested person may request, in accordance with § 10.20 (submission of documents to the Dockets Management Branch), the Commissioner to stay the effective date of any administrative action. Such a petition must: (1) Identify the decision involved, (2) state the action requested including the length of time for which a stay is requested, and (3) include a statement of the factual and legal grounds on which the interested person relies in seeking the stay. FDA uses the information provided in the request to determine whether to grant the petition for stay of action. Respondents to this information collection are interested persons who choose to file a petition for an administrative stay of action. Section 10.85 (21 CFR 10.85), issued under section 701(a) of the act, sets forth the format and procedures by which an interested person may request, in accordance with § 10.20 (submission of documents to the Dockets Management Branch), an advisory opinion from the Commissioner on a matter of general applicability. An advisory opinion represents the formal position of FDA on a matter of general applicability. When making a request, the petitioner must provide a concise statement of the issues and questions on which an opinion is requested, and, a full statement of the facts and legal points relevant to the request. Respondents to this collection of information are interested persons seeking an advisory opinion from the Commissioner on the agency's formal position for matters of general applicability.

In the **Federal Register** of July 9, 2002 (67 FR 45525), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
10.30	150	3	450	12	5,400
10.33	10	1	10	10	100
10.35	13	1	13	10	130
10.85	3	1	3	16	48
Total					5,678

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimates for this collection of information is based on agency records and experience over the past 3 years. Agency personnel handling the petitions for § 10.30 estimate 150 (citizen petitions) received by the agency annually, each requiring an average of 12 hours preparation time. Agency personnel handling the petitions for § 10.33 (administrative reconsideration of an action) estimate 10 requests are received by the agency annually, each requiring an average of 10 hours preparation time. Agency personnel handling the petitions for § 10.35 (administrative stay of an action) estimate 13 requests are received by the agency annually, each requiring an average of 10 hours preparation time. Agency personnel handling the petitions for § 10.85 (advisory opinions) estimate three requests are received by the agency annually, each requiring an average of 16 hours preparation time.

Dated: December 6, 2002.

Margaret M.Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–31722 Filed 12–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01P–0150]

Salad Dressing Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the extension of a temporary permit issued to Kraft Foods, Inc., to market test products designated as "salad dressing" that deviate from the U.S. standard of identity for salad dressing. The extension will allow the permit holder to continue to collect data on the consumer acceptance of products, identify mass production problems, and assess commercial feasibility, in support of a petition to amend the standard of identity for salad dressing.

DATES: The new expiration date of the permit will be either the effective date of a final rule amending the standard of identity for salad dressing that may result from the petition or 30 days after denial of the petition, whichever the case may be.

FOR FURTHER INFORMATION CONTACT: Loretta A. Carey, Center for Food Safety and Applied Nutrition (HFS–822), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2371.

SUPPLEMENTARY INFORMATION: In accordance with § 130.17 (21 CFR 130.17), FDA issued a temporary permit to Kraft Foods, Inc., Three Lakes Dr., Northfield, IL 60093–2753, to market test products identified as "salad dressing" that deviate from the requirement of the standard of identity for salad dressing in 21 CFR 169.150 (66 FR 18957, April 12, 2001). The agency issued the permit to facilitate market testing of products that deviate from the requirements of the standard of identity for salad dressing issued under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). The permit covers limited interstate market testing of products that deviate from the standard for salad dressing in 21 CFR 169.150. The products may contain potassium sorbate at levels not to exceed 1 percent, and must contain not less yolk-containing ingredient than is equivalent to 2 percent by weight of liquid egg yolks (the food standard

requires 4 percent). The test product meets all the requirements of the standard with the exception of these deviations.

On April 19, 2002, Kraft Foods, Inc., requested that its temporary permit be extended to allow for additional time for the market testing of its products under the permit in order to gain additional information in support of the petition to amend the standard for salad dressing. The petitioner requests FDA to revise, simplify, and modernize the standard for salad dressing.

The agency finds that it is in the interest of consumers to issue an extension of the time period for the market testing of products identified as salad dressing to gain information on consumer expectations and acceptance. FDA is inviting interested persons to participate in the market test under the conditions that apply to Kraft Foods, Inc. (e.g., the composition of the test product), except for the designated area of distribution. Any person who wishes to participate in the extended market test must notify, in writing, the Team Leader, Conventional Foods Team, Division of Standards and Labeling Regulations, Office of Nutritional Products, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition (HFS–822), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. The notification must include a description of the test products to be distributed, justification for the amount requested, the area of distribution, and the labeling that will be used for the test product (i.e., a draft label for each size of container and each brand of product to be market tested). The information panel of the label must bear nutrition labeling in accordance with 21 CFR 101.9. Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101.

Therefore, under the provisions of § 130.17(i), FDA is extending the temporary permit granted to Kraft Foods, Inc., Three Lakes Dr., Northfield, IL 60093–2753 to provide for continued market testing of 150 million pounds of product on an annual basis. The test products will bear the name "salad dressing." FDA is extending the expiration date of the permit so that the permit expires either on the effective date of a final rule amending the standard of identity for salad dressing that may result from the petition or 30 days after denial of the petition, which ever the case may be. All other conditions and terms of this permit remain the same.

Dated: December 9, 2002.

Christine Taylor,

Director, Office of Nutritional Products, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition.

[FR Doc. 02–31720 Filed 12–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0468]

Draft Guidance for Industry on Manufacture and Labeling of Raw Meat Foods for Companion and Captive Noncompanion Carnivores and Omnivores; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance for industry (#122) entitled "Manufacture and Labeling of Raw Meat Foods for Companion and Captive Noncompanion Carnivores and Omnivores." This draft guidance document is intended to provide specific guidance on the manufacture and labeling of foods that contain raw meat, or other raw animal tissues, for consumption by dogs, cats, other companion or pet animals, and captive noncompanion animal carnivores and omnivores.

DATES: Submit written or electronic comments on the draft guidance by March 3, 2003, to ensure their adequate consideration in preparation of the final document. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance document to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http:// www.fda.gov/dockets/ecomments.* Comments should be identified with the full title of the draft guidance document and the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: William Burkholder, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0179, e-mail: *bburkhol@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Commercial foods for carnivorous and omnivorous animals containing raw meat, or other raw animal tissues, have been on the market for many years for use by zoos, mink farms, dog-racing facilities, and other professional establishments. Some of these products have included meat and other tissues from mammals and poultry that have died other than from slaughter or have otherwise been unfit for human consumption. Products containing such tissues are adulterated under section 402(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)). However, FDA's Compliance Policy Guide 7126.23 provides that investigation should only be conducted as a followup to complaints or reports of injuries. When raw meat or raw animal tissues were purchased and used by zoos, mink farms, dog-racing facilities, or other professional establishments, there was a presumption that the purchaser was aware of the potential food safety and nutritional deficiency risks of using such products. However, the new trend is toward use of raw meat foods by pet owners and others who may not be as aware of the potential harm.

FDA does not believe that raw meat foods are consistent with the goal of protecting the public from significant health risks, particularly when such products are brought into the home and/or used to feed domestic pets. Objective data derived specifically from commercial raw meat pet foods are sparse for quantifying the magnitude of risk to public health from such products. However, the potential for risk to public health from such products is undeniable, and the magnitude of such risk is likely significant given the microbiological results from studies of ingredients that could compose such products and the limited sampling of commercial raw pet foods themselves. Therefore, for firms choosing to manufacture and market raw meat and raw animal tissue products, more specific guidance for industry is warranted for how such products could be manufactured and labeled to protect pet owners and pets from risks involving food safety and nutritional deficiency.

II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking about the manufacture and labeling of raw meat foods for companion and captive noncompanion carnivores and omnivores. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this draft guidance document. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Electronic comments may be submitted on the Internet at *http:// www.fda.gov/dockets/ecomments.* Once on this site, select "02D–0468—Manufacture and Labeling of Raw Meat Foods for Companion and Captive Noncompanion Carnivores and Omnivores" and follow the directions. Copies of this draft guidance may be obtained on the Internet from the CVM home page at *http://www.fda.gov/cvm.*

Dated: December 8, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–31721 Filed 12–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Cross-site Evaluation of the Effectiveness of the Infant Adoption Awareness Training Program (IAATP)—NEW

HRSA proposes to evaluate the Infant Adoption Awareness Training Program being implemented by adoption organizations. The IAATP is authorized under the Children's Health Act of 2000 (CHA), Title XII, Subtitle A to develop, implement and evaluate curricula to achieve the goal of providing adoption information and referrals on an equal basis with other courses of action included in non-directive counseling to pregnant women. National, regional and local organizations whose primary purpose includes adoption were funded under IAATP cooperative agreements to deliver adoption training to health care workers with a special focus on those working in health care facilities funded under section 1001 and section 330 of the Public Health Service Act and those receiving grants to provide health services in schools. The Children's Health Act mandates that the Secretary submit to Congress a report evaluating the effectiveness of training delivered under the IAATP and the extent to which it results in the provision of adoption information and referrals to pregnant women on an equal basis with other courses of action included in non-directive counseling to pregnant women.

To determine if the IAATP is effective in achieving the intent of the congressional mandate, the proposed study will assess the effect of IAATP training on knowledge, attitudes and self-reported practices for health care workers who counsel pregnant women in health care settings. An estimated 1,752 health care workers who regularly counsel pregnant women and who completed IAATP training will be recruited into the study and will complete a 15 minute mail survey instrument covering the time and extent of their exposure to the IAATP training, as well as knowledge, attitudes and self-reported practices in providing adoption information and referrals to pregnant women. A comparison group of 572 health care workers who perform pregnancy counseling but did not receive the IAATP training, will receive a mail survey on their knowledge, attitudes and self-reported behaviors in providing adoption information and referrals to the pregnant women that they counsel.

In addition, staff of each of the four grantees, their trainers and trainees will participate in interviews and focus groups to document the program development and training processes and delivery of the IAATP. For each grantee, there will be one and half hour individual interviews of grantee staff, one focus group of trainers from each of four grantees, and two focus groups of trainees from each of four grantee programs.

Respondents	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Trainee Survey	1,144	1	.25	286
Comparison Group Survey	572	1	.25	143
Telephone Focus Group	36	1	1.5	54
Total	1,752			483

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, NewExecutive Office Building, Room 10235, Washington, DC 20503.

Dated: December 11, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–31719 Filed 12–17–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Spores in Pancreatic Cancer.

Date: February 24–26, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, 1250 22nd Street, NW., Washington, DC 20037.

Contact Person: Brian E. Wojcik, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8019, Bethesda, MD 20892, 301/402–2785.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–31826 Filed 12–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH

National Institutes of Health and Human Services

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee G—Education.

Date: March 12–14, 2203.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Harvey P. Stein, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8107, Bethesda, MD 20892, (301) 496–7481, *hs27p@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.932, Cancer Construction, 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Center Support; 93398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–31827 Filed 12–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Hepatitis C Prevention Research.

Date: December 13, 2002.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael W. Edwards, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 750, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301 594–8886.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 10, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–31818 Filed 12–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–29, Review of R13 Grants.

Date: December 17, 2002.

Time: 11 AM to 1 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–32, Review of R13 Grants.

Date: December 20, 2002.

Time: 11 AM to 1:30 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. Geroge Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–26, Review of R13 Grants.

Date: February 19, 2003.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lynn M. King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–38K, National Institute of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, (301) 594–5006.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 10, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–31819 Filed 12–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant of section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 542b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Deafness and Other Communication Disorders Advisory Council.

Date: January 31, 2003.

Open: 8:30 a.m. to 11:30 a.m.

Agenda: Staff reports on divisional, programmatic, and special activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 11:30 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, Phd., Chief, Scientific Review Branch NIH/NIDCD/DER, Excutive Plaza South, Room 400C, Bethesda, MD 20892–7180, (301) 496–8683.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by nongovernment employees. Persons without a government I.D. will need to show to photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home page: *www.nidcd.nih.gov/about/councils/ndcdac/ndcdac.htm*, where an agenda and any additional information for the meeting will be posed when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: December 10, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–31820 Filed 12–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Commiftee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Research Centers in Trauma, Burn, and Perioperative Injury (PAR–02–092).

Date: January 6–8, 2003.

Time: 7:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Boston Copley Place, 110 Huntington Avenue, Boston, MA 02116.

Contact Person: Carole H. Latker, PhD., Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18B, Bethesda, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: December 10, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–31822 Filed 12–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: January 16–17, 2003.

Closed: January 16, 2003, 10:30 a.m. to recess.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Open: January 17, 2003, 8:30 a.m. to adjournment.

Agenda: Presentation of NIMH Director's report and discussion on NIMH program and policy issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6C10, Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, PhD, Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609. 301–443–5047.

Any member of the public interested in presenting oral comments to the committee may notify the contact person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.nimh.nih.gov/council/advis.cfm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–31823 Filed 12–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering.

Date: January 16–17, 2003.

Open: January 16, 2003, 8 a.m. to 3:30 p.m.

Agenda: Open program advisory discussions and presentations.

Place: National Institutes of Health, Building 31C, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Closed: January 16, 2003, 3:30 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31C, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Joan T. Harmon, Director, Division of Extramural Activities, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Suite 200, Bethesda, MD 20892. 301–451–4776. *harmonj@nibib.nih.gov.*

Dated: December 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–31825 Filed 12–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: January 23, 2003.

Open: 8:30 a.m. to 12 p.m.

Agenda: The meeting will be open to the public to discuss administrative details relating to Council business and special reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 1 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Cheryl Kitt, PhD, Director, Division of Extramural Activities, National Institutes of Arthritis and Musculoskeletal and Skin Diseases, 1 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 594–2463, *kittc@niams.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 9, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–31828 Filed 12–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Nome of Committee: National Library of Medicine Special Emphasis Panel, IAIMS Site Visit—Cincinnati, OH.

Date: January 5–7, 2003.

Time: January 5, 2003, 7 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Kingsgate Conference Hotel, 151 Goodman Drive, Cincinnati, OH 45219.

Time: January 6, 2003, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Kingsgate Conference Hotel, 151 Goodman Drive, Cincinnati, OH 45219.

Time: January 7, 2003, 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Kingsgate Conference Hotel, 151 Goodman Drive, Cincinnati, OH 45219.

Contact Person: Merlyn M. Rodrigues, MD, Ph.D., Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 10, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–31821 Filed 12–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Center for Scientific Review Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Center for Scientific Review Advisory Committee, Workgroup.

Date: January 27–28, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: Discussion of activities to evaluate organization and function of the Center for Scientific Review Process.

Place: National Institutes of Health, Two Rockledge Center, Conference Room 6087, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Deputy Director, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3016, MSC 7776, Bethesda, MD 20892, (301) 435–1114.

Information is also available on the Institute's/Center's home page: *www.csr.nih.gov/drgac/drgac.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 9, 2002.

LaVerne Y. Stringfield,

Director Office of Federal Advisory Committee Policy.

[FR Doc. 02–31824 Filed 12–17–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Reopening of Public Comment Period for Incidental Take Permits for the Alabama Beach Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of public comment period.

SUMMARY: The Fish and Wildlife Service previously announced a public comment period concerning a notice of intent to prepare an Environmental Impact Statement. 67 FR 62809 (October 8, 2002). The previous notice indicated that the comment period ended on November 22, 2002; however, the comment form distributed at the October 29, 2002, scoping meeting incorrectly indicated that the comment period ended on November 29, 2002, inadvertently extending the comment period an additional 7 days. In order to assure that all interested parties are able to comment on the preparation of an EIS, we are re-opening the comment period for 15 days.

The environmental impact statement would address the proposed Gulf Highlands Area Habitat Conservation Plan (HCP) and issuance of two permits for the incidental take of the Alabama beach mouse. Comments previously submitted between October 8, 2002, and November 29, 2002, need not be resubmitted as they will be incorporated into the public record and will be fully considered in the final determination on the proposal. These permits are for the construction, occupancy, use, operation, and maintenance of two residential/recreational condominium projects—the Gulf Highlands Condominiums by Gulf Highlands LLC and Beach Club West by Fort Morgan Paradise Joint Venture on the Fort Morgan Peninsula, in Baldwin County, Alabama.

DATES: Written comments concerning our intent to prepare an EIS and

concerning the HCP should be received on or before January 2, 2003.

ADDRESSES: Persons wishing to review the application and HCP may obtain a copy by writing the Service's Southeast Regional Office at Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (Attn: Endangered Species Permits,) or Field Office, U.S. Fish and Wildlife Service, 1208–B Main Street, Daphne, AL 36526 (Attn: Ms. Barbara Allen). Documents will be available for public inspection by appointment during normal business hours at the regional office. Written data or comments concerning the HCP and our notice of intent to prepare an EIS should be submitted to the Regional Office. Please reference permit numbers TE–007985–0 (Gulf Highlands) and TE–031307–0 (Fort Morgan Peninsula Joint Venture) in such comments, or in requests for documents.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Valenta, Regional Permit Coordinator, (*see* **ADDRESSES** above), telephone: 404/679–4144; or Ms. Barbara Allen, Fish and Wildlife Biologist, Daphne Field Office, (*see* **ADDRESSES** above), telephone: 334/441–5181, extension 33.

SUPPLEMENTARY INFORMATION: The proposed residential/recreational condominium developments will be located on approximately 196 acres in south Baldwin County, Alabama, between State Highway 180 and the Gulf of Mexico (Section 28, Township 9 South, Range 2 East) about twelve miles west of Highway 59 in Gulf Shores, Alabama, on the Fort Morgan Peninsula.

Some of the Applicants' future activities have the potential to impact species subject to protection under the Act, including the Alabama beach mouse (*Peromyscus polionotus ammobates*). Section 10(a)(1)(B) permits non-Federal landowners to take endangered and threatened species, provided the take is incidental to otherwise lawful activities and will not appreciably reduce the likelihood for the survival and recovery of the species in the wild, among other permit issuance criteria. An applicant for a permit under section 10 of the Act must prepare and submit to the Service for approval a plan containing, among other things, a strategy for minimizing and mitigating all take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure that adequate funding for implementation of the plan will be provided.

The Applicants have initiated and continued discussions with the Service regarding the possibility of Permits and an associated HCP for their activities on lands to be covered by the Permits. General activities proposed for permit coverage include residential, commercial and industrial development, construction, and maintenance activities.

The Service previously considered the Applicants' HCP in an Environmental Assessment and issued a finding of no significant impact. 67 FR 17089 (April 9, 2002). That environmental analysis was challenged in an action for judicial review brought by Sierra Club and Friends of the Earth. The United States District Court for the Southern District of Alabama granted a preliminary injunction against any take of the Alabama beach mouse pursuant to the permits previously issued to Applicants. *Sierra Club and Friends of the Earth* v. *Norton*, 207 F. Supp. 2d. 1310 (S.D. Ala. 2002).

Subsequently, the Service determined to revisit the earlier NEPA analysis for this HCP and the issued permits. *See* Defendant's Motion for Voluntary Remand, *Sierra Club and Friends of the Earth* v. *Norton*, No. CV–02–0258–CB–C (S.D. Ala. Aug. 8, 2002). The Service has decided, and announces through this and the previous notice, its intent to review the proposed HCP and the environmental effects of issuing the permits through preparation of an EIS.

The environmental review will analyze the Applicants' proposed HCP as well as a full range of reasonable alternatives and the associated impacts of each. The Service is currently in the process of developing alternatives for analysis. The alternatives identified to date are as follows:

Alternative 1—No action: The service would not re-affirm the ITPs.

Alternative 2—Development according to original Gulf Highlands Subdivision plat: A portion of the Applicants' properties were originally platted and zoned for single family residential development by the Baldwin County Planning Commission. This development alternative involves development according to the original plat or by additional platting and subdivision of the lands.

Alternative 3—Development with primary features occupying full width of the escarpment: Alternative 3 consists of the residential high-rise building complexes placed atop the escarpment.

Alternative 4—Development entirely north of the escarpment: This alternative would involve development of residential condominium buildings and infrastructure approximately 300 feet north of the escarpment for both projects.

Alternative 5—Development of portions of the escarpment with a 325-ft. habitat corridor between the projects: Alternative 5 consists of the development of the same number of units, but placed on different portions of the escarpment and adjacent areas. This development configuration would result in the preservation of an undeveloped corridor of ABM habitat approximately 325 feet wide separating the individual developments and connecting the interior scrub areas with the designated critical habitat to the south of the developments.

Alternative 6—Development of onsite mitigation including a 909-foot corridor connecting adjacent primary/secondary dunes and escarpment to the interior: This alternative increases the width of the undeveloped corridor described above and repositions the corridor to the west side of the property. This alternative provides for dedication of 105.5 acres of Applicant-owned lands into conservation status via covenants, conditions and restrictions attached to the property, and conditions of any ITP that might be issued.

Persons wishing to provide relevant information and comments regarding this activity should submit these to the above address. For information, please contact the individual identified above in the section entitled **FOR FURTHER INFORMATION CONTACT**:

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR parts 1500 through 1508), and with other appropriate Federal laws and regulations, policies, and procedures of the Service for compliance with those regulations. It is estimated that the draft EIS will be available for public review in early 2003.

Dated: December 4, 2002.

Sam D. Hamilton,

Regional Director.

[FR Doc. 02–31777 Filed 12–17–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Assessment and Receipt of an Application for an Incidental Take Permit for The Meadows, Douglas County, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: Castle Rock Development Company and Castle Rock Land Company have applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The permit would authorize the incidental take of Preble's meadow jumping mouse (*Zapus hudsonius preblei*) ("Preble's"); federally listed as threatened, and loss and modification of its habitat associated with construction and use of a portion of The Meadows property in the Town of Castle Rock, Colorado. The permit would be in effect for 30 years from the date of issuance.

We announce the receipt of the applicants' incidental take permit application that includes a combined proposed Habitat Conservation Plan (HCP) and Environmental Assessment (EA) for the Preble's at The Meadows. The proposed HCP/EA is available for public comment. It fully describes the proposed project and the measures the applicants would undertake to minimize and mitigate project impacts to Preble's.

The Service requests comments on the Plan for the proposed issuance of an Incidental Take Permit. We provide this notice pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments on the Plan and permit application will become part of the administrative record and will be available to the public.

DATES: Written comments on the permit application, Habitat Conservation Plan, and Environmental Assessment should be received on or before February 18, 2003.

ADDRESSES: Comments regarding the permit application and HCP/EA should be addressed to LeRoy Carlson, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Kathleen Linder, Fish and Wildlife Biologist, Colorado Field Office, telephone (303) 275–2370.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the HCP/EA and associated documents for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the Lakewood, Colorado, Field Office (*see* **ADDRESSES** above).

Background

Section 9 of the Act and Federal regulation prohibit the "take" of a species listed as endangered or threatened. Take is defined under the Act, in part, as to kill, harm, or harass a federally listed species. However, the Service may issue permits to authorize "incidental take" of listed species under limited circumstances. Incidental take is defined under the Act as take of a listed species that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

The applicants plan to develop portions of The Meadows in Douglas County, Colorado, that may constitute habitat for the Preble's. Such development would include commercial parcels, water well construction and a recreational trail extension. The planning area for the permit application is approximately 194 hectares (480 acres) and is located west of Interstate Highway 25 (I–25), within the corporate boundaries of the Town of Castle Rock. The area subject to the permit application straddles the East Plum Creek drainage and is entirely contained within two major railway lines, with the exception of one small parcel. An existing bridge spans East Plum Creek and carries The Meadows Parkway as it crosses the property on the southern (upstream) portion of the property. The project would permanently alter a total of 3.5 hectares (8.6 acres) of vegetation within the riparian corridor and would temporarily alter an additional 10.06 hectares (24.87 acres) of vegetation. As discussed below, the applicants propose a number of measures to mitigate possible impacts of the proposed action.

Alternatives considered in addition to the proposed action were: alternative site design based on land use plans approved by the Town of Castle Rock, alternative site location, wait for a regional 10(a)(1)(B) permit, and no action. None of these alternatives eliminated potential take of Preble's.

Only one federally listed species, the threatened Preble's, occurs onsite and has the potential to be adversely affected by the project. To mitigate impacts that may result from incidental take, the HCP provides that mitigation will include the dedication of 17.5 hectares (43.3 acres) of additional open space (in addition to 98.6 hectares (243.7 acres) already designated as open space), enhancement of habitat within 4 hectares (10 acres) of existing open space, segregation of commercial areas and riparian areas with barriers, revegetation of areas of temporary disturbance with native vegetation, limitations on project sizes, limitations on access, elimination of cattle grazing, and regulation of trail use and location. All efforts will be made to minimize the temporary disturbance during construction of water wells and water delivery systems and impacts to in-stream flows. All construction will be initiated between October 15 and April 30 to minimize and avoid impacts to Preble's.

The Applicants are committed to providing the necessary funding to support the mitigation. The Applicants will place the necessary funds into an escrow or similar type account that will limit use of the funds to mitigation activities.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, the plan, and comments submitted therein to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act. If it is determined that those requirements are met, a permit will be issued for the incidental take of the Preble's in conjunction with the construction and use of The Meadows. The final permit decision will be made no sooner than 60 days from the date of this notice.

Dated: December 4, 2002.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 02–31773 Filed 12–17–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Neotropical Migratory Bird Conservation Act: Request for Grants Proposals for Year 2003

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that the Fish and Wildlife Service (Service) is accepting proposals for funding under the Neotropical Migratory Bird Conservation Act (Act) program. Projects may be for protection and management of neotropical migratory bird populations; maintenance, management, protection, and restoration of their habitats; research and monitoring; law enforcement; and community outreach and education. Projects may be located in the United

States, Latin America, or the Caribbean. Projects require matching funds.

DATES: Proposals must be sent no later than Friday, January 31, 2003.

ADDRESSES: Application materials may be found at *http://birdhabitat.fws.gov*. Proposals may be submitted as an electronic mail attachment to *neotropical@fws.gov*, or sent on a computer disk to: NMBCA Program, Division of Bird Habitat Conservation, U.S. Fish and Wildlife Service, Mail Stop MBSP—4075, 4401 North Fairfax Drive, Arlington, Virginia USA 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Ryan or Office Secretary, Division of Bird Habitat Conservation, (703) 358–1784; facsimile (703) 358–2282.

SUPPLEMENTARY INFORMATION: The purposes of the Neotropical Migratory Bird Conservation Act (Act) are to:

1. Perpetuate healthy populations of neotropical migratory birds;

2. Assist in the conservation of these birds by supporting conservation initiatives in the United States, Latin America, and the Caribbean; and

3. Provide financial resources and foster international cooperation for those initiatives.

The Act authorizes $5 million for this program, and Congress appropriated $3 million for Fiscal Year (FY) 2002. The program is expected to be funded in FY 2003. At a minimum, 75 percent of this money will be available for projects outside the United States. The maximum individual award for FY2003 will be $250,000. Federal funds requested under the Act must be matched 3:1 by non-Federal funds. That is, for every U.S. Federal dollar, three non-U.S. Federal dollars are required for the project. For projects in the United States, the non-Federal share must be in cash. For projects in Latin America and the Caribbean, the non-Federal share may be cash or an in-kind contribution.

Projects may be located in the United States and in all countries of Latin America and the Caribbean, with the exception of Cuba. Projects in Canada are not eligible for this funding.

An applicant may be an individual, corporation, partnership, trust, association, other private entity, government agency in the United States or a foreign country, or an international organization.

The information collection requirements associated with grant proposals under the Act are approved under Office of Management and Budget (OMB) control number 1018–0113, which expires on November 30, 2005.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The information collection solicited: is necessary to gain a benefit in the form of a grant, as determined by the Fish and Wildlife Service; is necessary to determine the eligibility and relative value of projects; results in an approximate paperwork burden of 40 hours per application; and does not carry a premise of confidentiality. The information collections in this program will not be part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: November 14, 2002.

Steve Williams,

Director.

[FR Doc. 02–31836 Filed 12–17–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meeting of the Klamath Fishery Management Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The Klamath Fishery Management Council makes recommendations to agencies that regulate harvest of anadromous fish in the Klamath River Basin. The objectives of this meeting are to hear technical reports, to discuss and develop Klamath fall Chinook salmon harvest management options for the 2003 season, and to make recommendations to the Pacific Fishery Management Council and other agencies.

DATES: The Klamath Fishery Management Council will meet from 3 p.m. to 8 p.m. Sunday, March 9, 2003.

ADDRESSES: The meeting will be held at the Red Lion Hotel Sacramento, 1401 Arden Way, Sacramento, California.

FOR FURTHER INFORMATION CONTACT: Phil Detrich, Project Leader, U.S. Fish and Wildlife Service, 1829 South Oregon Street, Yreka, California 96097, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: At the March 9, 2003, meeting, the Klamath Fishery Management Council may schedule short follow-up meetings to be held between March 10, through March 14, 2003, at the Red Lion Hotel Sacramento, 1401 Arden Way, Sacramento, California, where the Pacific Fishery Management Council will be meeting.

For background information on the Klamath Fishery Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: December 11, 2002.

John Engbring,

Manager, California/Nevada Operations Office, Sacramento, CA.

[FR Doc. 02–31778 Filed 12–17–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meeting of the Klamath Fishery Management Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The Klamath Fishery Management Council makes recommendations to agencies that regulate harvest of anadromous fish in the Klamath River Basin. The objectives of this meeting are to hear technical reports (including the ocean stock projection for Klamath River fall chinook in 2003), review the 2002 fishery season, and discuss and plan management of the 2003 season. The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 9 a.m. to 5 p.m. on Thursday, February 27, 2003, and from 8 a.m. to 5 p.m. on Friday, February 28, 2002.

ADDRESSES: The meeting will be held at the Best Western Beachfront Inn, 16008 Boat Basin Road, Brookings, Oregon.

FOR FURTHER INFORMATION CONTACT: Phil Detrich, Project Leader, U.S. Fish and Wildlife Service, 1829 South Oregon Street, Yreka, California 96097, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Klamath Fishery Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: December 11, 2002.

John Engbring,

Acting Manager, California/Nevada Operations Office, Sacramento, CA.

[FR Doc. 02–31779 Filed 12–17–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meetings of the Klamath River Basin Fisheries Task Force

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Klamath River Basin Fisheries Task Force (Task Force), established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meetings are open to the public. The purpose of the meetings is to continue providing recommendations from the affected interests to the Department of the Interior on implementation of their program to restore anadromous fisheries, including salmon and steelhead, of the Klamath River in California and Oregon.

DATES: The first meeting will be from 9 a.m. to 5 p.m. on February 19, 2003, and from 8 a.m. to 1 p.m. on February 20, 2003. The second meeting will be from 9 a.m. to 5 p.m. on June 18, 2003, and from 8 a.m. to 1 p.m. on June 19, 2003. The third meeting will be from 9 a.m. to 5 p.m. on October 22, 2003, and from 8 a.m. to 1 p.m. on October 23, 2003.

ADDRESSES: The first meeting will be held at the Best Western Beachfront Inn, 16008 Boat Basin Road, Brookings, Oregon. The second meeting will be held at the North Coast Inn, 4975 Valley West Blvd, Arcata, California. The third meeting will be held at the Convention Center, Best Western Miner's Inn, 112 E. Miner Street, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Phil Detrich, Project Leader, U.S. Fish and Wildlife Service, 1829 South Oregon Street, Yreka, California 96097, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: December 11, 2002.

John Engbring,

Manager, California/Nevada Operations Office, Sacramento, CA.

[FR Doc. 02–31780 Filed 12–17–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, a notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistance Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment VII to the Class III gaming compact between the Burns-Paiute Tribe and the State of Oregon.

EFFECTIVE DATE: December 18, 2002.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: November 13, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–31874 Filed 12–17–02; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–1820–AE]

Notice of Public Meeting: Northwest California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Wednesday and Thursday, Jan. 29 and 30, in the Conference Room of the Bureau of Land Management's Arcata Field Office, 1695 Heindon Road, Arcata, California. On Jan. 29, the meeting convenes at 10 a.m for a field trip to public lands managed by the BLM Arcata Field Office. Members of the public are welcome. They must provide their own transportation and lunch. On Jan. 30, the meeting begins at 8 a.m. Time for public comments has been set aside for 1 p.m. on Jan. 30.

FOR FURTHER INFORMATION CONTACT: Rich Burns, BLM Ukiah field manager, 2550 North State Street, Ukiah, CA, (707) 468–4000; or BLM Public Affairs Officer Joseph J. Fontana, telephone (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northwest California. At this meeting, agenda topics will include discussion about a management plan update for the King Range National Conservation Area, and work planning for the coming year. The council will also hear status reports from the managers of the BLM's Arcata, Ukiah and Redding field offices.

All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: December 10, 2002.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 02–31747 Filed 12–17–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–03–0777–30]

Northeastern Great Basin Resource Advisory Council; Notice of 2003 Meetings, Locations, and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of 2003 meetings, locations, and times for the

Northeastern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Nevada Northeastern Great Basin Resource Advisory Council (RAC), will meet as indicated below. Topics for discussion at each meeting will include, but are not limited to: February 14, 2003 (Eureka, Nevada)—update on noxious weed program, mining update, Ely Resource Management Plan (RMP) status report, vegetation guidelines update, and California National Historic Trail Interpretive Center update; June 19, 2003 (Ely, Nevada)—possible joint session with Mojave/Southern Great Basin RAC, review of Elko RMP Fire Management Amendment, and review of final Off-Highway Vehicle (OHV) guidelines; September 12, 2003 (Battle Mountain, Nevada)—review of Appropriate Management Levels (AML) for Wild Horse and Burro Program, fire season status update, and Great Basin Restoration Initiative update.

Managers' reports of field office activities will be given at each meeting. The council may raise other topics at any of the three planned meetings.

DATES AND TIMES: The RAC will meet three times in 2003 on February 4 at the Eureka Opera House, 31 South Main, Eureka, Nevada; on June 19 at the BLM Ely Field Office, 702 North Industrial Way, Ely, Nevada; and on September 12 at the BLM Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, Nevada. All meetings are open to the public. Each meeting will last from 9 a.m. to 5 p.m. and will include a general public comment period, where the public may submit oral or written comments to the RAC. Each public comment period will begin at approximately 1 p.m. unless otherwise listed in each specific, final meeting agenda.

Final detailed agendas, with any additions/corrections to agenda topics, locations, field trips and meeting times, will be available on the internet at least 14 days before each meeting, at *http://www.nv.blm.gov/rac*; hard copies can also be mailed or sent via FAX. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish a hard copy of each agenda, should contact Mike Brown, Elko Field Office, 3900 East Idaho Street, Elko, Nevada 89801, telephone (775) 753–0386 no later than 10 days prior to each meeting.

FOR FURTHER INFORMATION CONTACT: Mike Brown, Public Affairs Officer, Elko BLM Field Office 3900 E. Idaho Street, Elko, NV 89801. Telephone: (775) 753–0386. E-mail: *mbrown@nv.blm.gov*.

Dated: December 11, 2002.

David Stout,

Associate Field Manager.

[FR Doc. 02–31844 Filed 12–17–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–03–1420–BJ]

Notice of Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication

Indian Meridian, Oklahoma:

T. 26 N., R. 24 W., approved November 13, 2002, for Group 72 OK;

T. 2 S., R. 12 W., approved September 23, 2002, for Group 89 OK;

New Mexico Principal Meridan, New Mexico:

T. 24 N., R. 12 W., approved October 29, 2002, for Group 963 NM;

Amended Supplemental Plat for:

T. 13 N., R. 3 E., approved September 30, 2002, NM;

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of a protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed. The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico, 87502–0115. Copies may be obtained form this office upon payment of $1.10 per sheet.

Dated: November 29, 2002.

Robert A. Casias,

Acting Chief Cadastral Surveyor.

[FR Doc. 02–31845 Filed 12–17–02; 8:45 am]

BILLING CODE 4310–FB–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–747 (Final)]

Fresh Tomatoes From Mexico

AGENCY: United States International Trade Commission.

ACTION: Cancellation of hearing.

SUMMARY: On September 5, 2002, the Commission published notice in the **Federal Register** of the scheduling of its investigation, including a hearing to be held on December 16, 2002. On December 4, 2002, the Department of Commerce and Mexican tomato growers/exporters accounting for substantially all exports of fresh tomatoes from Mexico to the United States signed a suspension agreement suspending the antidumping investigation on fresh tomatoes from Mexico. The agreement will take effect upon its publication in the **Federal Register**. Accordingly, the Commission gives notice that its hearing in this investigation is cancelled. The Commission unanimously determined that no earlier announcement of this cancellation was possible.

EFFECTIVE DATE: December 11, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public*.

Authority: This hearing is being cancelled under authority of title VII of the Tariff Act

of 1930; this notice is published pursuant to sections 207.21 and 207.40 of the Commission's rules (19 CFR 207.21 and 207.40).

By order of the Commission.

Issued: December 12, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–31772 Filed 12–17–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Request OMB emergency approval and 60-day notice; immigration bond; Form I–352.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an information collection request (ICR) utilizing emergency review procedures to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. INS is requesting emergency review from OMB of this information collection to ensure the INS has the necessary time to complete Paperwork Reduction Act clearance process while maintaining the effectiveness of the program. OMB approval has been requested by December 31, 2002. If granted, the emergency approval is only valid for 180 days.

All comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Karen Lee, Department of Justice Desk Officer, 725–17th Street, NW., Room 10235, Washington, DC 20503.

Comment are encouraged and will be accepted for sixty days until February 18, 2003. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, to other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Immigration Bond.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–352. Detention and Deportation Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or household. The data collected on this form is used by the INS to ensure that the person or company posting the bond is aware of the duties and responsibilities associated with the bond. The form serves the purpose of instruction in the completion of the form, together with an explanation of the terms and conditions of the bond.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 30, 000 responses at 30 minutes (.50) per response.

(6) *At estimate of the total public burden (in hours) associated with the collection:* 15,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, NW., Room 4304, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: December 12, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–31756 Filed 12–17–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day notice of information collection under review: monthly report naturalization papers; Form N–4.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 4, 2002 at 67 FR 56591, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 17, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Monthly Report Naturalization Papers.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–4. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal Government. This form is used by the clerk of courts that administer the oath of allegiance for naturalization to notify the Immigration and Naturalization Service of all person to whom the oath was administered.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,920 responses at approximately 30 minutes (.50) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 960 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: December 10, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–31757 Filed 12–17–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 30-Day notice of information collection under review: Petition for nonimmigrant filing Fee Exemption; Form I–129W.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 2, 2002 at 67 FR 61923, allowing for a 60-day public comment period. No comments were received.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 17, 2003. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725–17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burdens of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* H–1B Data Collection and Filing Fee Exemption.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms I–129W. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. This addendum to Form I–129 will be used by the INS to determine if an H–1B petitioner is exempt from the additional filing fee, as provided by the American Competitiveness and Workforce Improvement Act of 1998.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 128,092 respondents 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 64,046 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: December 10, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–31758 Filed 12–17–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day notice of information Collection under review: Arrival Departure Record (Transit Without Visa); Form I–94T.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 13, 2002 at 67 FR 458078, allowing for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of the notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 17, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Arrival Departure Record (Transit Without Visa).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–94T. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collection is used to track the arrival and departure of aliens under the Transit Without Visa program to ensure compliance with 8 CFR 212.1(f) and 8 CFR 214.2(c).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 200,000 responses at 4 minutes (.066) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 13,200 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff; Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: December 10, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–31759 Filed 12–17–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day notice of information collection under review: Guam visa waiver information; form I–736.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 4, 2002, at 67 FR 56593, allowing for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 17, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725 17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Guam Visa Waiver Information.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–736. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used to record an alien's application for a waiver of the nonimmigrant visa requirement for entry into Guam in compliance with 8 CFR 212.1(e).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 170,000 responses at 5 minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 14,110 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: December 10, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–31760 Filed 12–17–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day notice of information collection under review: application for posthumous citizenship, form N–644.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 4, 2002, at 67 FR 56592, allowing for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 17, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimate public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Posthumous Citizenship.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–644. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collected will be used to determine an applicant's eligibility to request posthumous citizenship status for a decedent and to determine the decedent's eligibility for such status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 1 hour and 50 minutes (1.83) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 92 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: December 10, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–31761 Filed 12–17–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day notice of information collection under review: Application for suspension of deportation or special rule cancellation of removal (pursuant to section 203 of Public Law 105–100); form I–881.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 13, 2002, at 67 FR 58077, allowing for a 60-day public comment period. No comments were received by the INS on the proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 17, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practically utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of currently approved information collection.

(2) *Title of the Form/Collection:* Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–100).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–881. Office of International Affairs, Asylum Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. This form is used by nonimmigrant to apply for suspension of deportation or special rule cancellation of removal. The information collected on this form is necessary in order to determine if the individual applying for this benefit meets the criteria for eligibility under section 203 of Public Law 105–100. The information collected on this form is also necessary in order for the INS to determine if it has jurisdiction over an individual applying for this benefit under section 203 of Public Law 105–100.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 55,000 responses at 12 hours per response.

(6) *An estimate of the total public burden (in hour) associated with the collection:* 660,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: December 12, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–31771 Filed 12–17–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary Proposed Collection; Comment Request

AGENCY: Office of the Secretary, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Civil Rights Center within the Office of the Assistant Secretary for Administration and Management is soliciting comments concerning the proposed extension of the collection of the Compliance Information Report—29 CFR part 31 (Title VI of the Civil Rights Act), Nondiscrimination—Disability—29 CFR part 32 (section 504 of the Rehabilitation Act), and Nondiscrimination—Workforce Investment Act—29 CFR part 37 (section 188 of the Workforce Investment Act). A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice. In addition, a copy of the ICR in alternate formats of large print and electronic file on computer disk are available upon request.

DATES: Written comments must be submitted to the office listed in the

ADDRESSES section below on or before February 18, 2003.

FOR FURTHER INFORMATION CONTACT: Gregory T. Shaw, Civil Rights Center, (202) 693–6502 (Voice) or (202) 693–6515/16 (TTY). Please note that these are not toll free telephone numbers.

ADDRESSES: Comments should be sent to Annabelle T. Lockhart, Director of the Civil Rights Center. Electronic mail is the preferred method of submittal of comments. Comments by electronic mail must be clearly identified as pertaining to the ICR and sent to *civilrightscenter@dol.gov*. Brief comments (maximum of five pages), clearly identified as pertaining to the ICR, may be submitted by facsimile machine (Fax) to (202) 693–6505. Where necessary, hard copies of comments, clearly identified as pertaining to the ICR, may also be delivered to the Civil Rights Center Director at the U.S. Department of Labor, 200 Constitution Ave., NW., Room N–4123, Washington, DC 20210. Because of problems with U.S. Postal Service mail delivery, the Civil Rights Center suggests that those submitting comments by means of the U.S. Postal Service should place those comments in the mail well before the deadline by which comments must be received.

Receipt of submissions, whether by U.S. Postal Service, e-mail, fax transmittal, or other means will not be acknowledged; however, the sender may request confirmation that a submission has been received, by telephoning the Civil Rights Center at the telephone numbers listed below.

Comments received will be available for public inspection during normal business hours at the above address. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of the ICR will be made available, upon request, in large print or electronic file on computer disk. Provision of the rule in other formats will be considered upon request. To schedule an appointment to review the comments and/or obtain the ICR in an alternate format contact the Civil Rights Center at (202) 693–6500 (Voice) or (202) 693–6515/16 (TTY). Please note that these are not toll free telephone numbers.

SUPPLEMENTARY INFORMATION:

I. Background

The Compliance Information Report and its information collection is designed to ensure that programs or activities funded in whole or in part by the Department of Labor operate in a nondiscriminatory manner. The Report requires such programs and activities to collect, maintain and report upon request from the Department, race, sex, age and disability data for program applicants, eligible applicants, participants, terminees, applicants for employment and employees.

II. Desired Focus of Comments

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have a practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks an extension of the current OMB approval of the paperwork requirements in the Compliance Information Report. Extension is necessary to ensure nondiscrimination in programs or activities funded in whole or in part by the Department of Labor.

Type of Review: Extension.

Agency: Civil Rights Center, Office of the Assistant Secretary for Administration and Management.

Title: Compliance Information Report—29 CFR part 31 (Title VI), Nondiscrimination-Disability—29 CFR part 32 (section 504), Nondiscrimination-Job Training Partnership Act—29 CFR part 34 (section 167).

OMB Number: 1225–0077.

Affected public: State, local or Tribal governments.

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintenance): $84,289.86.

Comments submitted in response to this comment request will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC this 11th day of December, 2002.

Annabelle T. Lockhart,

Director, Civil Rights Center.

[FR Doc. 02–31766 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Child Labor Education Initiative

AGENCY: Bureau of International Labor Affairs, U.S. Department of Labor.

ACTION: Notice of intent to solicit cooperative agreement applications.

SUMMARY: The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), intends to award approximately U.S. $30 million to organizations to develop and implement formal, non-formal, and vocational education programs as a means to combat exploitative child labor in the following countries: Benin, Brazil, Burkina Faso, Cambodia, Dominican Republic, Mali, Morocco, Philippines and Uganda. ILAB will solicit cooperative agreement applications from qualified organizations (*i.e.*, any commercial, international, or non-profit organization capable of successfully developing and implementing education programs) to implement programs that promote school attendance and provide educational opportunities for working children or children at risk of starting working. The programs should focus on innovative ways to address the many gaps and challenges to basic education found in the countries mentioned above.

DATES: The solicitations for cooperative agreement applications will be published in the **Federal Register** and will remain open for at least 30 days from the date of publication. All awards will be made before September 30, 2003.

ADDRESSES: Once solicitations are published in the **Federal Register**, applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Lisa Harvey, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey. E-mail address: *harvey-lisa@dol.gov*. All inquiries should make reference to the USDOL Child Labor Education Initiative—Solicitations for Cooperative Agreement Applications.

SUPPLEMENTARY INFORMATION: Since 1995, USDOL has supported a worldwide technical assistance program implemented by the International Labor Organization's International Program on the Elimination of Child Labor (ILO–IPEC). In that time, ILAB has provided $195 million to ILO–IPEC and other organizations for international technical assistance to combat abusive child labor around the world.

In its FY 2002 appropriations, in addition to funds earmarked for ILO-IPEC, USDOL received $37 million for the Child Labor Education Initiative to fund programs that increase access to quality basic education in areas with a high incidence of abusive and exploitative child labor. The cooperative agreements awarded under these solicitations will be funded by this initiative.

USDOL's Education Initiative nurtures the development, health, safety, and enhanced future employability of children around the world by increasing access to basic education for children removed from child labor or at risk of entering it. Eliminating child labor will depend in part on improving access to, quality of, and relevance of education. Without improving educational quality and relevance, children withdrawn from child labor may not have viable alternatives and may return to work or resort to other hazardous means of subsistence.

The Education Initiative has the following four goals:

1. Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures;

2. Strengthen formal and transitional education systems that encourage working children and those at risk of working to attend school;

3. Strengthen national institutions and policies on education and child labor; and

4. Ensure the long-term sustainability of these efforts.

When working to increase access to quality basic education, USDOL strives to complement existing efforts to eradicate the worst forms of child labor, to build on the achievements of and lessons learned from these efforts, to expand impact and build synergies among actors, and to avoid duplication of resources and efforts.

Signed at Washington, DC, this 12th day of December, 2002.

Lawrence J. Kuss,

Grant Officer.

[FR Doc. 02–31784 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Unemployment Compensation for Federal Employees (UCFE) Program Forms Comment Request

ACTION: Notice; request for comments.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed revision and extension of the Unemployment Compensation for Federal Employees (UCFE) Handbook.

A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 18, 2003.

ADDRESSES: Merri Baldwin, Office of Workforce Security, U.S. Department of Labor, Room S–4231, Frances Perkins Building, 200 Constitution Ave., NW., Washington, DC 20210, telephone (202) 693–3220 (this is not a toll-free number), fax number (202) 693–3229. E-mail address: *mbaldwin@doleta.gov*.

SUPPLEMENTARY INFORMATION:

I. *Background:* The UCFE law (5 U.S.C. 8501–8509) requires State workforce agencies (SWAs) to pay UCFE in the same amount and under the same terms and conditions as would be payable under the unemployment insurance law of the State if the claimant's Federal service and Federal wages had been included as employment and wages under that State's law. Each State agency must obtain from the Federal agency wage and separation information for each claimant filing a UCFE claim to enable it to determine his/her eligibility for benefits. As a result of reorganization, all the form numbers have been changed from ES to ETA. The State agencies obtain and record required UCFE information on the following forms (either electronic or paper) developed by the Department of Labor: ETA–931, ETA–931A, ETA–933, ETA–934, and ETA–935. The use of each of these forms is essential to the UCFE claims process.

Information pertaining to the UCFE claimant may be obtained from the individual's former employing Federal agency only by using form ETA–931, Request for Wage and Separation Information. Form ETA–931A is used to request separation information or the reason for non-pay status when a claimant has a previously established benefit year and is reopening his claim after an intervening period of employment in a Federal agency. Form ETA–933 is used to obtain information from the Office of Workers' Compensation. Form ETA–934 is used to obtain information when missing or clarified data is needed from a Federal agency. This form is used in about 10% of claims. If the claimant's former employer does not provide the information, the next most feasible and effective way to obtain this information is by use of form ETA–935, the claimantss Affidavit of Federal Civilian Service, Wages and Reason for Separation, prescribed by the Department of Labor for State agency use. Without this information, States could not adequately determine the UCFE eligibility of former Federal employees and would not be able to properly administer the program. Form ETA–935 is used, generally, to overcome delays in the normal claims process caused by delayed returns of completed form ETA–931 by the employing Federal agency. The ETA–935 is required to be completed in 100% of all claims. Form ETA–936, Request for Verification of Wage and Separation Information Furnished on Form ETA–931, is sent to payroll offices to verify a sample of the forms ETA–931 submitted by that office and to provide the Federal agency with an opportunity to request technical assistance concerning the UCFE program. This form is used semi-annually. Form ETA–939, Federal Agency Visits Report, is completed by a SWA representative, on *each* visit to a Federal agency installation in connection with the UCFE program. The number of times this form is used varies with each State. Form ETA 8–32, Report of UCFE Activities, is used by each SWA every 6 months to verify activities and federal agency visits.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. *Current Actions:* This is a request for the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) of an extension to an existing collection of information previously approved and assigned OMB control no. 1205–0179. A total of 78,000 UCFE claims was filed in fiscal year (FY) 2001, and an estimated workload of 87,000 UCFE claims is projected for fiscal year (FY) 2002 reflecting a slight workload increase of 9,000, resulting in an increase of 14.15 hours toward ETA's Information Collection Budget.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Unemployment Compensation for Federal Employees (UCFE) Handbook.

OMB Number: 1205–0179.

Recordkeeping: DOL does not maintain a system of records for the UCFE program. UCFE records are maintained by the SWAs acting as agents for the federal government in the administration of the UCFE program. The DOL procedures permit the SWAs, upon request, to dispose of UCFE records according to state law provisions, 3 years after final action (including appeals or court action) on the claim, or such records may be transferred in less than the 3-year period if micro photographed in accordance with appropriate micro photography standards.

Affected Public: State governments (State workforce agencies) and Federal government agencies.

Cite/Reference/Form/etc.: Forms ETA–931, ETA–931A, ETA–933, ETA–934, ETA–935, ETA–936, ETA–939, and ETA 8–32.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (minutes)	Burden hrs.
ETA–931	87,000	1	87,000	.05	72
ETA–931A	21,750	1	21,750	.05	18.0
ETA–935	87,000	1	87,000	.08	116.0
ETA–933	4,350	1	4,350	.05	4.0
ETA–934	8,700	1	8,700	.05	7.0
ETA–936	13,050	1	13,050	.05	11.0
ETA–939	75	1	75	1.75	2.0
ETA–8–32	53	2	106	.08	.15
TOTAL			213,031		230.15

Total Burden Cost (Capital/Startup): 0.

Total Burden Cost (Operating/Maintaining): $88,303. The cost of the Louisiana Claims Control Center (LCCC) for FY 2002 was about $883,035 for UCFE/UCX claims processing of which approximately 10 percent ($88,303) was for UCFE claim processing. This amount is allocated to the LCCC by the Federal government as a State grant.

Comments submitted in response to this comment request will be summarized and/or included in the request for the Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Dated: December 12, 2002.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. 02–31768 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6627]

State of Alaska Commercial Fisheries Entry Commission Permit #65136N, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #65136N, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31786 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6628]

State of Alaska Commercial Fisheries Entry Commission Permit #56241F, Togiak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56241F, Togiak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31787 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6629]

State of Alaska Commercial Fisheries Entry Commission Permit #58075V, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #58075V, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31788 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6630]

State of Alaska Commercial Fisheries Entry Commission Permit #59311O, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59311O, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31789 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6631]

State of Alaska Commercial Fisheries Entry Commission Permit #59555R, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59555R, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31790 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6633]

State of Alaska Commercial Fisheries Entry Commission Permit #66431B, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #66431B, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31791 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6637]

State of Alaska Commercial Fisheries Entry Commission Permit #56925M, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56925M, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31792 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6638]

State of Alaska Commercial Fisheries Entry Commission Permit #67350U, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #67350U, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31793 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6645]

State of Alaska Commercial Fisheries Entry Commission Permit #57398V, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57398V, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 22nd day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31794 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6780]

State of Alaska Commercial Fisheries Entry Commission Permit #65026H, King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #65026H, King Salmon, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31796 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6781]

State of Alaska Commercial Fisheries Entry Commission Permit #57478J, King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57478J, King Salmon, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31797 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6782]

State of Alaska Commercial Fisheries Entry Commission Permit #59451O; King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59451O, King Salmon, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31798 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6784]

State of Alaska Commercial Fisheries Entry Commission Permit #67594X; King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #67594X, King Salmon, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31799 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6785]

State of Alaska Commercial Fisheries Entry Commission Permit #60136S; King Salmon, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #60136S, King Salmon, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31800 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6834]

State of Alaska Commercial Fisheries Entry Commission Permit #55857I, Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #55857I, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31801 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6835]

State of Alaska Commercial Fisheries Entry Commission Permit #63407P, Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #63407P, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31802 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6836]

State of Alaska Commercial Fisheries Entry Commission Permit #60296O, Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA-TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #60296O, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31803 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6837]

State of Alaska Commercial Fisheries Entry Commission Permit #58412Q; Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #58412Q, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31804 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6839]

State of Alaska Commercial Fisheries Entry Commission Permit #56513U; Manokotak, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #56513U, Manokotak, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31805 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6647]

State of Alaska Commercial Fisheries Entry Commission Permit #64636I; Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #64636I, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31806 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6648]

State of Alaska Commercial Fisheries Entry Commission Permit #54135R; Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #54135R, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31807 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6649]

State of Alaska Commercial Fisheries Entry Commission Permit #61300M; Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61300M, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31808 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6651]

State of Alaska Commercial Fisheries Entry Commission Permit #55589K, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #55589K, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31809 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6652]

State of Alaska Commercial Fisheries Entry Commission Permit #67874E, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #67874E, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31810 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6654]

State of Alaska Commercial Fisheries Entry Commission Permit #59494I, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59494I, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31811 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6655]

State of Alaska Commercial Fisheries Entry Commission Permit #57363P, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #57363P, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31812 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6656]

State of Alaska Commercial Fisheries Entry Commission Permit #58988Z, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement

Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #58988Z, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31813 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6657]

State of Alaska Commercial Fisheries Entry Commission Permit #59135M Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #59135M, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31814 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6658]

State of Alaska Commercial Fisheries Entry Commission Permit #61985J, Dillingham, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit #61985J, Dillingham, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31815 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7621]

Intertape Polymer Group, Menosha, WI; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on October 21, 2002, in response to a petition filed by the company on behalf of workers at Intertape Polymer Group, Menosha, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 6th day of December, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–31795 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Notification of Commencement of Operations and Closing of Mines

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal Agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506 (c)(c)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources (is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR sections 56.1000 and 57.1000; Notification of Commencement of Operations and Closing of Mines.

DATES: Submit comments on or before February 18, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *Tarr-Jane@Msha.Gov.* Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Record Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov.* (Internet E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Sections 56.1000 and 57.1000 state that the owner, operator, or person in charge of any metal and nonmetal mine shall notify the nearest MSHA Metal and Nonmetal Mine Safety and Health District Office before starting operations, of the approximate or actual date mine operation will commence. The notification shall include the mine name, location, the company name, mailing address, person in charge, and whether operations will be continuous or intermittent. When any mine is closed, the person in charge shall notify the nearest sub-district office as provided above and indicate whether the closure is temporary or permanent.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "Federal Register Documents."

III. Current Actions

Under 30 CFR 56.1000 and 57,1000, operators of metal and nonmetal mines must notify MSHA when the operation of a mine will commence or when a mine is closed. Openings and closings of mines are dictated by the economic strength of the mined commodity and by weather conditions prevailing at the mine site during various seasons.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Notification of Commencement of Operations and Closing of Mines.

OMB Number: 1219–0092.

Recordkeeping: Sections 56.1000 and 57.1000 state that the owner, operator, or person in charge of any metal and nonmetal mines shall notify the nearest MSHA Metal and Nonmetal Mine Safety and Health District Office before starting operations, of the approximate or actual date mine operation will commence. The notification shall include the mine name, location, the company name, mailing address, person in charge, and whether operations will be continuous or intermittent.

When any mine is closed, the person in charge shall notify the nearest sub-district office as provided above and indicate whether the closure is temporary or permanent.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Respondents: 2,300.

Estimated Time Per Respondent: .113 hours.

Total Burden Hours: 259 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $1,446.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: Dated in Arlington, Virginia, this 11th day of December, 2002.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 02–31763 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Approval, Exhaust Gas Monitoring, and Safety Requirements for the Use of Diesel-Powered Equipment in Underground Coal Mines

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(c)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR sections:

7.83 and 7.97—Application Requirements;

7.90 and 7.105—Approval Markings;

75.363—Hazardous Conditions; Posting Correction, and Recording;

75.371(r), (kk), (ll), (mm), (nn), (oo), and (pp)—Mine Ventilation Plan, Contents;

75.1901(a)—Diesel Fuel Requirements;

75.1904(b)(4)(i)—Underground Diesel Fuel Tanks and Safety Cans;

75.1911(i) and (j)—Fire Suppression Systems for Diesel-Powered Equipment and Fuel Transportation Units;

75.1912(h) and (i)—Fire Suppression Systems for Permanent Underground Diesel Fuel Storage Facilities;

75.1914(f)(1), (2), (g)(5), (h)(1), and (2)—Maintenance of Diesel-Powered Equipment; and

75.1915(a), (b)(5), (c)(1) and (2)—Training and Qualification of Persons Working on Diesel-Powered Equipment.

DATES: Submit comments on or before February 18, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *Tarr-Jane@Msha.Gov.* Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet e-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The regulation addresses three major areas: Diesel engine design and testing requirements; safety standards for the maintenance and use of this equipment; and exhaust gas sampling provisions to protect miners' health. It first requires that diesel engines and their critical components meet design specifications and tests to demonstrate that they are explosion-proof and will not cause a fire in a mine where methane may accumulate. Second, the safety requirements for diesel equipment include many of the proven features required in existing standards for electric-powered equipment, such as cabs or canopies, methane monitors, brakes and lights. The regulation also sets safety requirements for fuel handling and storage and fire suppression. Third, sampling of diesel exhaust emissions is required to protect miners from overexposure to carbon monoxide and nitrogen dioxide contained in diesel exhaust.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "Federal Register Documents."

III. Current Actions

Provisions under part 7 provides that manufacturers submit applications to demonstrate compliance with the test and specification requirements. In part 75, they establish mandatory safety standards for diesel-powered equipment for use in underground coal mines, minimum ventilating air quantities, the incorporation of the air quantities into the mine ventilation plan, requirements for routine sampling of toxic exhaust gases, and the use of low sulfur diesel fuel. It also provides that diesel equipment maintenance be performed by adequately trained persons. In addition, the regulation includes standards for storage, transportation and dispensing of diesel fuel, and the installation and maintenance of fire suppression systems on diesel equipment and in permanent underground fuel storage facilities.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Approval, Exhaust Gas Monitoring, and Safety Requirements for the Use of Diesel-Powered Equipment in Underground Coal Mines.

OMB Number: 1219–0119.

Recordkeeping: The information gathered is required to be recorded, maintained for the period specified, and made accessible, upon request, to authorized representatives of the Secretary of Labor and miners' representatives. This may be done in a traditional manner by recording in a book, or electronically by computer.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Section	Total respondents	Total responses	Avg time/response (hrs)	Burden hrs
7.83 (permissible applications)	690	2	.1	66
7.83 (non-permissible applications)	690	20	.8	863
7.9	690	148	.04	25
7.97	690	2	.09	65
7.105	690	20	.004	3
75.363	690	110	.28	193
75.371	690	136	.06	44
75.1901	690	1,690	.12	85
75.1904(b)(4)(i)	690	404	.02	14
75.1911(i)(j)	690	169,654	8.91	6,146
75.1912(h)(i)	690	1,250	.11	75
75.1914(f)(1)(2) & (h)	690	32,530	42.35	29,220
75.1914(g) & (h)	690	25	.07	49
75.1914(g)(5) & (h)	690	154	20.79	4,343
75.1915(a)	690	1,010	7.32	5,050
75.1915(b)(5) & (c)	690	6	.12	83
Totals	690	207,161		56,324

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $635,359.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated in Arlington, Virginia, this 11th day of December, 2002.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 02–31764 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request, Submitted for Public Comment and Recommendations; Mine Operator Dust Cards

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(c)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR sections 70.209, 71.209, and 90.209—Mine Operator Dust Data Card; 70.201(c), 71.201(c), 90.201(c)—Reporting Operator Sampling Dates; 70.202(b), 71.202(b), and 90.202(b)—Dust Sampling Certification; 70.220(a), 71.220(a), and 90.220(a)—Reporting Status Changes; and 71.300, 71.301(d), 90.300, and 90.301(d)—Respirable Dust Control Plan.

DATES: Submit comments on or before February 18, 2003.

Addresses: Send comments to Jane Tarr, Manaagement Analyst, Administration and Management 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet e-mail to *Tarr-Jane@Msha.Gov*. Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

30 CFR, 70.201(c), 71.201(c), and 90.201(c), authorizes the District Manager to require the mine operator to submit and dates(s) when sampling will begin. Only a certified person is allowed to conduct the respirable dust sampling required by these parts.

Sections 70.202(b), 71.202(b), and 90.202(b), requires that the person must pass the MSHA examination on sampling of respirable coal mine dust.

Sections 70.220(a), 71.220(a), requires the operator to report status changes to MSHA in writing within 3 working days after the status change has occurred.

Sections 70.209, 71.209, and 90.209, requires persons who are certified by MSHA to take respirable dust samples to complete the dust data card that accompanies each sample being submitted for analysis.

Sections 71.300 and 90.300 require a coal mine operator to submit to MSHA for approval a written respirable dust control plan with 15 calendar days after the termination data of a citation for violation of the applicable dust standard.

Section 71.301(d) requires the respirable dust control plan to be posted on the mine bulletin board however, 90.301(d) prohibits posting of the dust control plan for P–90 miners and, instead, requires a copy be provided to the affected P–90 miner.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of the appropriate automated, electronic, mechanical, or other technologies collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the For Further Information Contact section of this notice, or viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "Federal Register Documents."

III. Current Actions

The information provided by the mine operator on the dust data card that accompanies each dust sample, the reporting of when such samples will be collected to allow MSHA to observe the actual collection, and the reporting of any changes in operation status affecting sampling, is vital to effectively administer the operator sampling program. This allows MSHA to determine not only whether mine operators have compiled with the sampling requirements stipulated in the regulations but also which operators were in noncompliance with the applicable dust standard. After processing, results are reported back to mine operators for posting on the mine bulletin board and viewing by miners. MSHA also uses this information to plan enforcement activities and evaluate programs.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Mine Operator Dust Cards.

OMB Number: 1219–0011.

Recordkeeping: 30 CFR, 70.201(c), 71.201(c), and 90.201(c), authorizes the District Manager to require the mine operator to submit the dates(s) when sampling will begin. Only a certified person is allowed to conduct the respirable dust sampling required by these parts.

Sections 70.202(b), 71.202(b), and 90.202(b), require that the person must pass the MSHA examination on sampling of respirable coal mine dust.

Sections 70.220(a), 71.220(a), and 90.220(a), require the operator to report status changes to MSHA in writing within 3 working days after the status change has occurred.

Sections 70:209, 71.209, and 90.209, require persons who are certified by MSHA to take respirable dust samples to complete the dust data card that accompanies each sample being submitted for analysis.

Sections 71.300 and 90.300 require a coal mine operator to submit to MSHA for approval a written respirable dust control plan with 15 calendar days after the termination date of a citation for violation of the applicable dust standard.

Section 71.301(d) requires the respirable dust control plan to be posted on the mine bulletin board however, 90.301(d) prohibits posting of the dust control plan for P–90 miners and, instead, requires a copy be provided to the affected P–90 miner.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Section	Total respondents	Total responses	Avg. time/response	Burden hours
70.209	1,911	36,000	.83	29,998
71.209				
90.209				
(submit)				
70.209	1,911	50,200	.17	8,534
71.209				
90.209				
(monitor)				
70.201(c)	1,911	630	1	630
71.201(c)				
90.201(c)				
70.202(b)		182	8	1,456
71.201(b)				
90.201(b)				
(Train and Test)				
70.202(b)	1,911	48	1.5	72
71.201(b)				
90.201(b)				
(Test only)				
70.220(a)	1,911	3,200	.5	1,600
71.220(a)				
90.220(a)				
71.300	1,900	40	3	120
(new)				
71.300	1,900	5	1.2	6
(revised)				
71.300		N/a		8
(copy & mail)				
71.301(d)	1,900	45	.24	11
90.300	1,900	4	3	12
(new)				
90.300	1,900	2	1.5	3
(revised)				
90.300		N/a		1
(copy & mail)				
90.301(d)	1,900	6	.33	2
Total	1,900	90,362		42,453

Total Burden Cost (capital/startup): $990,887.

Total Burden Cost (operation/maintaining): $2,136,598.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 11th day of December, 2002.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 02–31765 Filed 12–17–02; 8:45 am]

BILLING CODE 4510–43–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–373 and 50–374]

Exelon Generation Company, LLC; LaSalle County Station, Units 1 and 2; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Exelon Generation Company, LLC (the licensee), to withdraw its May 31, 2002 application, as supplemented by letter dated October 4, 2002, for proposed amendments to Facility Operating License Nos. NPF–11 and NPF–18 for LaSalle County Station, Units 1 and 2, respectively, located in LaSalle County, Illinois.

The proposed amendments would have changed Appendix A, Technical Specifications (TS) , of the Facility Operating Licenses. Specifically, the proposed change would have modified TS Surveillance Requirement 3.6.1.3.8 to reduce the number of excess flow check valves required to be tested every 24 months.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 23, 2002 (67 FR 48218). However, by letter dated October 30, 2002, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 31, 2002, as supplemented by letter dated October 4, 2002, and the licensee's letter dated October 30, 2002, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 12th day of December, 2002.

For the Nuclear Regulatory Commission.

William A. Macon, Jr.,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–31871 Filed 12–17–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–2259]

Notice of Amendment Request and Consideration of Proposed Use of Alternate Concentration Limits for Ground Water for Pathfinder Mines Corporation's Lucky MC Site, Gas Hills, WY, and Opportunity To Provide Comments and To Request a Hearing

I. Introduction

Notice is hereby given that the U. S. Nuclear Regulatory Commission (NRC) has received, by letter dated December 21, 2000, a license amendment application from Pathfinder Mines Corporation (PMC), requesting alternate concentration limits (ALCs) for six ground water constituents at their Lucky Mc site located in the Gas Hills region of Wyoming. Staff submitted a request for additional information by letter dated October 26, 2001, and PMC responded January 11, and November 4, 2002, with page changes.

The PMC Lucky Mc former uranium mill site (now a mill tailings disposal site) is licensed by the NRC under Source Materials License SUA–672 to possess byproduct material in the form of uranium processing waste, such as mill tailings, generated by past uranium processing operations. The PMC Lucky Mc site is located in the Gas Hills region of western Natrona and eastern Freemont Counties, Wyoming, approximately 80 kilometers (50 miles) southeast of the town of Riverton, Wyoming. The mill operated from 1958 to 1988 and has been dismantled and disposed of. The site contains three disposal areas (tailings impoundments) and three tailings 2 solution ponds. The license establishes a ground water protection standard at one Point of Compliance (POC) well near the disposal area. This well is used to monitor water quality because hazardous constituents have leached from the milling waste into the upper aquifer.

The ACL application requests that site-specific concentration limits for six hazardous constituents in ground water be granted for the PMC site in place of the current concentration values in the license. The licensee has indicated that the concentration limits required to be met under the licensed corrective action program are not attainable due to the high cost and the influence of mining-impacted water. Also, the ground water at the PMC site and surrounding areas is impacted by open-pit uranium mines having the same constituents as those resulting from the tailings seepage. The requested concentration limits would be protective of public health and the environment, and appear to meet the requirements of 10 CFR Part 40, Appendix A.

PMC also is proposing that the site's Point of Exposure (POE) be established at the long-term care boundary. This boundary encompasses all the land that will be transferred to the U.S. Department of Energy (DOE) for perpetual care of the disposal site. The POE is the location nearest the site where the public or environment might be exposed to milling impacted ground water, even though such exposure is highly unlikely.

II. Opportunity To Provide Comments

The NRC is providing notice to individuals in the vicinity of the facility that the NRC is in receipt of this request, and will accept comments concerning this action within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room T–6 D59, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852, from 7:30 a.m. until 4:15 p.m. on Federal Workdays.

III. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within 30 days of the publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary of the Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by email to *hearingdocket@nrc.gov*.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Pathfinder Mines Corporation, P.O. Box 730, Mills, WY 82644, Attention: Tom Hardgrove; and

(2) The NRC staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be also transmitted to the Office of the General Counsel, either by means of facsimile transmission to 301–415–3725, or by email to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

IV. Further Information

The application for the license amendment is available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Assession Numbers: ML010250146 and ML023160530). Documents may also be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Any questions with respect to this action should be referred to Elaine Brummett, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington, DC 20555–0001. Telephone: (301) 415–6606; Fax: (301)415–5390.

Dated at Rockville, MD, this 12th day of December, 2002.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–31870 Filed 12–17–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide and Associated Standard Review Plan; Issuance, Availability, Workshop

The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a draft of a regulatory guide (and its associated Standard Review Plan). Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified by its task number, DG–1122, which should be mentioned in all correspondence concerning this draft guide. Draft Regulatory Guide DG–1122, "An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities," is being developed to provide guidance to licensees in determining the technical adequacy of a PRA used in a risk-informed integrated decision making process, and to endorse standards and industry guidance. Guidance is provided in four areas:

(1) A minimal set of functional requirements of a technically acceptable PRA.

(2) NRC position on consensus PRA standards and industry PRA program documents.

(3) Demonstration that the PRA (*in toto* or specific parts) used in regulatory applications is of sufficient technical adequacy.

(4) Documentation that the PRA (*in toto* or specific parts) used in regulatory applications is of sufficient technical adequacy.

DG–1122 proposes to endorse, with certain clarifications and substitutions, ASME Standard RA–S–2002, "Standard for Probabilistic Risk Assessment for Nuclear Power Plant Applications," and Revision A3 of NEI–00–02, "Probabilistic Risk (PRA) Peer Review Process Guidance," with its August 16, 2002 supplemental guidance on industry self-assessment.

Chapter 19.1 of the Standard Review Plan (SRP), "Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities," is being developed to provide guidance to the NRC staff on how to determine that the PRA that provides the results being used in a decision is technically adequate.

This draft guide and draft standard review plan chapter have not received complete staff approval and do not represent an official NRC staff position.

It is the NRC's intent to update this RG when a new or revised PRA standard or industry program is published. If a new standard or program is published, an additional appendix will be added to set forth the staff position. If a revision of a current standard or program would impact the staff position, the appropriate appendix would be revised.

The NRC intends to conduct a workshop on January 9, 2003, to be held in the auditorium at NRC headquarters, 11545 Rockville Pike, Rockville, Maryland, (the agenda will be announced in a future public notice), to discuss and explain the material contained in DG 1122 and SRP Chapter 19.1, and to answer questions and receive comments and feedback on the proposed documents. The purpose of the workshop is to facilitate the comment process. In the workshop, the staff will describe each document and its basis and solicit comment and feedback on their completeness, correctness, and usefulness. Since these documents cover a wide range of technical areas, many topics will be discussed. Listed below are particular topics (not limited to) on which discussion and feedback are sought at the workshop:

(1) Is the relationship of this regulatory guide to other regulatory guides (e.g., RG 1.174, RG 1.177) clear? Is it clear how this guide is to be used to support risk-informed applications? If more discussion is needed, what level of detail is needed?

(2) Is the associated SRP the appropriate place for the staff review guidance, or should the guidance be included in the application specific SRPs?

(3) Is the level of detail in the proposed guidance clear and sufficient to demonstrate the technical adequacy of the PRA to support a regulatory application? Or is more detailed guidance necessary? What level of detail is needed?

(4) Is the level of detail in the proposed guidance clear and sufficient in regard to the scope, level of detail and technical adequacy of the PRA? Or is more detailed guidance necessary? What level of detail is needed?

(5) Is the staff regulatory position on consensus PRA standards and industry PRA programs clear and sufficient? Or is more detailed guidance necessary? What level of detail is needed?

(6) Is the level of detail in the proposed guidance clear and sufficient in regard to documentation and submittal? Or is more detailed guidance necessary? What level of detail is needed?

(7) Is the staff position in the appendices of the proposed regulatory guide clear? Or is more discussion necessary? What level of detail is needed?

(8) In Appendix A, is the discussion provided on the "issue" helpful or necessary in providing the bases for the staff position? If not, should this column be removed? Is more discussion needed and what would be the appropriate level of detail?

(9) In Appendix A, the staff has provided "clarifications" to the definition regarding "dominant," "significant," and "important." Clarification of these terms is provided because in places, these terms are used interchangeably (to have the same meaning) and in other places, they may be used to convey different meanings. In the context of a PRA, these terms generally are indicating that the entity under question is a major factor to the outcome under consideration. In this general sense, these terms can be used interchangeably (*e.g.*, an important sequence, a significant sequence, a dominant sequence). However, if these terms are used to distinguish whether a requirement is imposed, a common and specific understanding (*i.e.*, quantitative) of these terms is needed. Is this the appropriate quantitative definition? If not, what quantitative definition is appropriate?

(10) In Appendix B, the staff review of NEI–00–02 and its supplemental guidance, is based on the perspective that this document is primarily historical in that almost all the licensee's PRAs have been peer reviewed using NEI–00–02, Revision A3. Consequently, the staff endorsement does not address future use of this document. If the staff has an objection to this document, the resolution would be addressed via a licensee's self assessment. Is this approach appropriate? That is, should the staff extend its review so that industry would have the staff position regarding this process for future use?

In order to gain experience and more detailed insights into the use of the approach proposed in DG–1122 and the associated draft SRP section, during the public comment period the NRC desires to conduct a review of one or more pilot applications (*e.g.*, Risk-Informed Technical Specifications Initiative 4b, "Configuration Risk Management for Completion Times") using this approach. The experience and insights gained from the practical application of the approach proposed in DG–1122 and the associated draft SRP section will support the staff's risk-informed regulatory initiatives, consistent with the NRC's policy statement on PRA. The lessons learned from the pilot applications will be documented and reflected in the final regulatory guide. Since these pilot applications will assist the NRC in developing a regulatory guide, the Chief Financial Officer will waive the review fees in accordance with 10 CFR 170.11(b)(1). By granting this waiver for the pilot applications, the NRC continues its longstanding policy of granting fee exemptions for the review of license applications accepted for review as a pilot application.

The NRC staff is soliciting comments on these proposed documents. Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by February 14, 2003.

Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (*http://www.nrc.gov*). This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV*. For information about the draft guide and the related standard review plan chapter, contact Ms. M.T. Drouin at (301) 415–6675; e-mail *MXD@NRC.GOV*.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of this draft RG are available on the NRC's Web site <*http://www.nrc.gov*> in the Reference Library under Regulatory Guides. Electronic copies are also available in NRC's Public Electronic Reading Room at the same Web site; DG–1122 is under ADAMS Accession Number ML023360076. Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4205; fax (301) 415–3548; e-mail *PDR@NRC.GOV*. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-mail to *DISTRIBUTION@NRC.GOV*; or by fax to (301) 415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 22nd day of November, 2002.

For the Nuclear Regulatory Commission.

Scott F. Newberry,

Director, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

[FR Doc. 02–31872 Filed 12–17–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Notice of Relaxed Rules for the Federal Long Term Care Insurance Program Open Season

AGENCY: Office of Personnel Management.

ACTION: Notice of relaxed rules for the Federal Long Term Care Insurance Program Open Season.

SUMMARY: The Office of Personnel Management is relaxing our previous rule for employees' Federal Long Term Care Insurance Program coverage to become effective. Previously, employees with a December 1, 2002, or January 1, 2003 coverage effective date would have to be actively at work on November 29, 2002 or December 31, 2002, respectively, for coverage to become effective. Considering heavy leave usage on those dates, coverage will not be delayed for employees on approved leave status on those dates, as long as they return to being actively at work during the month when their coverage becomes effective and they pay their premiums within the established deadlines.

DATES: This relaxed rule affects employees with December 1, 2002, or January 1, 2003, Federal Long Term Care Insurance Program coverage effective dates.

FOR FURTHER INFORMATION CONTACT: Office of Personnel Management, Office of Long Term Care Insurance, (202) 606–1413, or *ltc@opm.gov*.

SUPPLEMENTARY INFORMATION: On June 28, 2002, the Office of Personnel Management announced in the **Federal Register** an Open Season for eligible persons to apply for coverage in the Federal Long Term Care Insurance Program (FLTCIP). Open Season began on July 1, 2002, and will end on December 31, 2002.

The **Federal Register** notice stated that the effective date of coverage for an Open Season enrollment is the later of October 1, 2002, or the first day of the month that is after the date LTC Partners approves an application for coverage. A Federal civilian or Postal employee or member of the uniformed services also must be actively at work on the coverage effective date for coverage to become effective. A Federal civilian or Postal employee must meet all of the following conditions to be considered actively at work:

- The employee is reporting for work at his/her usual place of employment or other location to which Government business requires him/her to travel;

• The employee is able to perform all the usual and customary duties of his/her employment on his/her regular work schedule; and

• The employee is not absent from work due to sickness, injury, annual leave, sick leave or any other leave. (An employee is not considered to be on leave on an alternate work schedule's scheduled day off.)

For coverage effective dates that fall on a weekend or holiday, the **Federal Register** notice stated that an employee must be actively at work on the last workday before his/her coverage effective date for coverage to become effective. This meant that coverage could be delayed for one month, or more, for employees with applications approved in November and December if they were on leave on November 29 or December 31, 2002, respectively.

In view of heavy leave usage on November 29th and December 31st, and in keeping with our objectives of being employee-oriented and family friendly, we have relaxed this actively at work requirement.

For this year only, coverage will not be delayed for employees in an approved leave status November 29 or December 31, 2002, as long as they return to being actively at work during the month when their coverage becomes effective and they pay their premium within established deadlines. This applies to any approved leave, including annual leave, sick leave, leave without pay and administrative leave.

Employees, as well as all applicants, still have an obligation to contact Long Term Care Partners if their health changes in a way that would affect their answers to one or more questions on their long term care insurance application on the effective date of their coverage.

We made this change in response to employee and agency concerns about holiday leave usage toward the end of the Open Season, a period in which large numbers of employees have expressed interest in applying. We also recognize that this is the first FLTCIP Open Season.

This family-friendly policy affects only employees and members of the uniformed services applying with the abbreviated underwriting application and will not be repeated in the future or apply to leave usage other than on November 29 and December 31, 2002. It does not apply to spouses of employees and members of the uniformed services, since they do not have an actively at work requirement, nor does it apply to annuitants, retired members of the uniformed services, or other qualified relatives who apply using the full underwriting application.

Authority: 5 U.S.C. 9008.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–31854 Filed 12–17–02; 8:45 am]

BILLING CODE 6325–50–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment, including public comment regarding retroactive application of any of the proposed amendments.

SUMMARY: Pursuant to section 994(a), (o), and (p) of title 28, United States Code, the Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment. Additional proposed amendments the Commission is considering promulgating, as both temporary and permanent amendments, in response to the Sarbanes-Oxley Act of 2002, Pub. L. 107–204, and the Bipartisan Campaign Reform Act of 2002, Pub. L. 107–55, can be found in the November 22, 2002, **Federal Register** (67 FR 70999).

The specific amendments proposed in this notice are as follows: (1) A proposed amendment and issues for comment that respond to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub. L. 107–56; the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107–188; and the Terrorist Bombings Convention Implementation Act of 2002, Pub. L. 107–197; (2) a proposed amendment that addresses various application issues in § 2L1.2 (Unlawful Entering or Remaining in the United States); (3) a proposed amendment and issue for comment that addresses a number of issues in § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment); (4) a proposed amendment that makes technical and conforming changes to various guideline provisions; and (5) a proposed amendment and issue for comment regarding appropriate guideline penalties for offenses involving involuntary manslaughter.

In addition to the issues for comment that are contained within these proposed amendments, this notice sets forth separate issues for comment regarding the following: (1) Section 225 of the Homeland Security Act of 2002 (the Cyber Security Enhancement Act of 2002), Pub. L. 107–296, which directs the Commission to review and amend, if appropriate, the sentencing guidelines and policy statements applicable to persons convicted of an offense under section 1030 of title 18, United States Code; and (2) sections 11008 and 11009 of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. 107–273, which direct the Commission to review and amend the sentencing guidelines, as appropriate, to provide an appropriate sentencing enhancement for any crime of violence or drug trafficking crime in which the defendant used body armor and an appropriate enhancement for offenses involving influencing, assaulting, resisting, impeding, retaliating against, or threatening a federal judge, magistrate judge, or any other official described in section 111 or section 115 of title 18, United States Code.

DATES: Written public comment regarding (1) the amendments set forth in this notice, including public comment regarding retroactive application of any of these proposed amendments; and (2) the proposed repromulgation of the proposed emergency amendments set forth in the **Federal Register** on November 27, 2002 (67 FR 70999) as permanent, non-emergency amendments, should be received by the Commission not later than February 18, 2003.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, Washington, DC 20002–8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May of each year pursuant to 28 U.S.C. 994(p).

The Commission seeks comment on the proposed amendments, issues for comment, and any other aspect of the sentencing guidelines, policy statements, and commentary.

The proposed amendments are presented in this notice in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part for comment and suggestions for alternative policy choices; for example, a proposed enhancement of [2] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions on how the Commission should respond to those issues.

Additional information pertaining to the proposed amendments described in this notice may be accessed through the Commission's Web site at *www.ussc.gov*.

Authority: 28 U.S.C. 994(a), (o), (p), (x); USSC rules of practice and procedure, rule 4.4.

Diana E. Murphy,

Chair.

1. Terrorism

Synopsis of Proposed Amendment: This proposed amendment is a continuation of the Commission's work over the past two years to ensure that the guidelines provide appropriate guideline penalties for offenses involving terrorism. Specifically, this proposed amendment responds to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub.L. 107–56; the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub.L. 107–88; and the Terrorist Bombings Convention Implementation Act of 2002, Pub.L. 107–97.

I. Remaining USA PATRIOT Act Amendments

The following amendments build on the Commission's response during the last amendment cycle to the USA PATRIOT Act.

A. Terrorism Enhancement in Money Laundering Guideline

This amendment provides two options for treatment of the current 6-level terrorism enhancement in the money laundering guideline, § 2S1.1 (Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity). Option One eliminates the terrorism enhancement. Elimination of the enhancement is appropriate because it prevents "double-counting" with the terrorism adjustment in § 3A1.4 (Terrorism). Specifically, the money laundering terrorism enhancement applies if the defendant knew or believed that any of the laundered funds were the proceeds of, or were intended to promote, an offense involving terrorism. The terrorism adjustment at § 3A1.4 applies if the offense is a felony that involved, or was intended to promote, a federal crime of terrorism as defined in 18 U.S.C. 2332b(g)(5). Therefore, if the money laundering terrorism enhancement applied, the terrorism adjustment at § 3A1.4 also would apply based on the same conduct.

In the event the Commission determines that the money laundering terrorism adjustment should not be eliminated, Option Two provides a definition of terrorism in the money laundering guideline that mirrors the definition in § 3A1.4.

Proposed Amendment (Part IA):

[Option One:

Section § 2S1.1(b)(1)(B)(iii) is amended by striking "terrorism,".]

[Option Two:

The Commentary to § 2S1.1 captioned "Application Notes" is amended in Note 1 by inserting at the end the following new paragraph:

"'Terrorism' means a federal crime of terrorism as defined in 18 U.S.C. 2332b(g)(5).".]

B. Reference of 18 U.S.C. 1960 to Money Laundering Guideline

This amendment provides two options for the treatment of certain offenses under 18 U.S.C. 1960. These offenses prohibit knowingly conducting, controlling, managing, supervising, directing, or owning all or part of an unlicensed money transmitting business, as defined in 18 U.S.C. 1960(b)(1)(C). That provision defines an unlicensed money transmitting business as "a money transmitting business which affects interstate or foreign commerce in any manner or degree and otherwise involves the transportation or transmission of funds that are known to the defendant to have been derived from a criminal offense or are intended to be used to promote or support unlawful activity." The statutory maximum term of imprisonment is 5 years.

Option One changes the Statutory Index reference for these offenses from § 2S1.3 (Structuring Transactions to Evade Reporting Requirements) to the main money laundering guideline, § 2S1.1. This change is appropriate for this offense because its essence is money laundering rather than structuring to evade reporting requirements.

In contrast, other offenses under 18 U.S.C. 1960 would remain in the structuring guideline under Option One because they are essentially structuring offenses. Specifically, they prohibit knowingly conducting, controlling, managing, supervising, directing, or owning all or part of an unlicensed money transmitting business, as defined in 18 U.S.C. 1960(b)(1)(A) and (B). Those provisions define an unlicensed money transmitting business as "a money transmitting business which affects interstate or foreign commerce in any manner or degree and (A) is operated without an appropriate money transmitting license * * *; or (B) fails to comply with the money transmitting business registration requirements under section 5330 of title 31, United States Code, or regulations prescribed under such section."

Option Two maintains the initial Statutory Index reference for 18 U.S.C. 1960(b)(1)(C) offenses in the structuring guideline but provides a cross reference to the main money laundering guideline for conduct that falls under 18 U.S.C. 1960(b)(1)(C).

An issue for comment requests comment regarding whether the proposed cross reference should be broadened so that any structuring offense that involves the intent to promote unlawful activity, knowledge or belief that the funds were the proceeds of unlawful activity, or reckless disregard of the illicit source of the funds would be cross referenced to main money laundering guideline, leaving the structuring guideline to cover purely regulatory offenses.

Proposed Amendment (Part IB):

[Option One:

The Commentary to § 2S1.1 captioned "Statutory Provisions" is amended by inserting ", 1960 (but only with respect to unlicensed money transmitting businesses as defined in 18 U.S.C. 1960(b)(1)(C))" after "1957".

The Commentary to § 2S1.3 captioned "Statutory Provisions" is amended by inserting "(but only with respect to unlicensed money transmitting businesses as defined in 18 U.S.C. 1960(b)(1)(A) and (B))" after "1960".

Appendix A (Statutory Index) is amended in the line referenced to 18 U.S.C. 1960 by inserting "2S1.1," before "2S1.3".]

[Option Two:

Section 2S1.3(c) is amended by striking "Reference" and inserting "References"; and by adding at the end the following:

"(2) If the offense involved (A) a money transmitting business; and (B) the transportation or transmission of funds that are known to the defendant to have been derived from a criminal offense or are intended to be used to promote or support unlawful activity, apply § 2S1.1 (Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity).".

The Commentary to § 2S1.3 captioned "Application Notes" is amended by adding at the end the following:

"4. Cross Reference in Subsection (c)(2).—For purposes of subsection (c)(2), 'money transmitting business' means a money transmitting business that affects interstate or foreign commerce. 'Money transmitting' includes transferring funds on behalf of the public by any means, including transfers within the United States or to foreign locations by wire, check, draft, facsimile, or courier.".]

Issue for Comment: The proposed amendment provides two options for the treatment of offenses under 18 U.S.C. 1960(b)(1)(C). Option One provides for a Statutory Index reference for these offenses to the main money laundering guideline, § 2S1.1, rather than the structuring guideline, § 2S1.3, because such an offense is essentially a money laundering offense. Option Two references this offense to § 2S1.3 in the first instance but provides a cross reference for this offense from § 2S1.3 to § 2S1.1.

The Commission requests comment regarding whether the proposed cross reference to § 2S1.1 in Option Two should be expanded to cover any offense initially referenced to § 2S1.3 in the Statutory Index that involved the intent to promote unlawful activity, knowledge or belief that the funds were the proceeds of unlawful activity, or reckless disregard of the illicit source of the funds. Such an approach effectively would limit the application of § 2S1.3 to regulatory offenses (such as the failure to file transaction reports or structuring transactions to evade reporting requirements) unaccompanied by aggravated, real offense money laundering conduct. To effectuate such cross reference, § 2S1.3 would likely need to be amended as follows: First, the base offense level of 8 in subsection (a)(1) would be maintained for offenses under 31 U.S.C. 5318 and 5318A, but the alternative base offense level in subsection (a)(2) would be amended to level 6 without any increase from the loss table in § 2B1.1. An alternative base offense level of level 6 for a regulatory offense unaccompanied by aggravated conduct is proportionate to other regulatory offenses under the guidelines. Second, the aggravated conduct described in § 2S1.3(b)(1) and the aggravated conduct the absence of which is described in § 2S1.3(b)(3) would form the basis for the new cross reference. Accordingly, the cross reference to the main money laundering guideline would apply if: (1) The defendant knew or believed that the funds were the proceeds of unlawful activity or were intended to promote unlawful activity; [(2) the offense involved bulk cash smuggling;] or (3) the defendant acted with reckless disregard for the illegal source of the funds. The major possible effects of cross referencing offenses involving real offense money laundering conduct to the money laundering guideline are application of the six-level enhancement in § 2S1.1(b)(1) if the defendant knew or believed that the funds were the proceeds of or were intended to promote certain specified crimes, and application of the enhancement in § 2S1.1(b)(3) for sophisticated laundering.

C. Enhancement in Accessory After the Fact Guideline for Harboring Terrorists

Currently in § 2X3.1 (Accessory After the Fact) there exists an offense level "cap" of level 20 for offenses in which the conduct is limited to harboring a fugitive (and an offense level "cap" of level 30 for all other offenses sentenced under the accessory guideline). This proposed amendment makes the lower offense level "cap" of level 20 inapplicable to offenses involving the harboring of terrorists because of the relative seriousness of those offenses.

Last year, the Commission promulgated an amendment that referenced 18 U.S.C. 2339 and 2339A to 2X2.1 (Aiding and Abetting) and 2X3.1 (Accessory After the Fact). The offense at 18 U.S.C. 2339 prohibits harboring or concealing any person who the defendant knows, or has reasonable grounds to believe, has committed or is about to commit one of several enumerated offenses. The maximum term of imprisonment is 10 years. The offense at 18 U.S.C. 2339A prohibits the provision of material support or resources to terrorists, knowing or intending that they will be used in the preparation for, or in carrying out, specified crimes (*i.e.*, those designated as predicate offenses for "federal crimes of terrorism") or in preparation for, or in carrying out, the concealment or an escape from the commission of any such violation. The maximum term of imprisonment is 15 years. In contrast, a violation of the general harboring statute, 18 U.S.C. 1071, has a maximum term of imprisonment of 5 years.

For consistency and proportionality, the proposed amendment not only makes the "cap" of level 20 inapplicable to harboring a person who is convicted under 18 U.S.C. 2339 or 2339A but also to the conduct of harboring an individual who commits a terrorism offense, *i.e.*, one of the offenses listed in 18 U.S.C. 2339 or 2339A or an offense involving or intending to promote a federal crime of terrorism, as defined in 18 U.S.C. 2332b(g)(5).

Proposed Amendment (Part IC):

Section 2X3.1 is amended by striking subsection (a) and inserting the following:

"(a) Base Offense Level:

(1) Six levels lower than the offense level for the underlying offense, except as provided in subdivisions (2) and (3).

(2) The base offense level under this guideline shall be not less than level 4.

(3)(A) The base offense level under this guideline shall be not more than level 30, except as provided in subdivision (B).

(B) In any case in which the conduct is limited to harboring a fugitive, other than a case described in subdivision (C), the base offense level under this guideline shall not be more than level 20.

(C) The limitation in subdivision (B) shall not apply in any case in which (i) the defendant is convicted under 18 U.S.C. 2339 or 2339A; or (ii) the conduct involved (I) harboring a person who committed any offense listed in 18 U.S.C. 2339 or 2339A or who committed any offense involving or intending to promote a federal crime of terrorism, as defined in 18 U.S.C. 2332b(g)(5); or (II) obstructing the investigation of, or committing perjury with respect to, any offense described in subdivision (I). In such a case, the base offense level under this guideline shall be not more than level 30, as provided in subdivision (A).".

II. Amendments Required by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002

The following amendments to the guidelines are proposed in response to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107–188.

A. Biological AGents and Toxins

First, the proposed amendment amends the Statutory Index to refer new offenses involving biological agents and toxins to the guideline covering nuclear, biological, and chemical weapons and materials, § 2M6.1. Specifically, the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 amends 18 U.S.C. 175b to redesignate the existing offense and create new offenses as follows:

(1) The existing offense, redesignated at 18 U.S.C. 175b(a)(1), prohibits any restricted person (as defined in subsection (b)) from transporting, receiving, or possessing any biological agent or toxin that the Secretary of Health and Human Services has listed under regulations as a "select agent". The maximum term of imprisonment is 10 years. During the last amendment cycle, the Commission referred this offense to § 2M6.1 and provided an alternative base offense level of level 22.

(2) Two new offenses, at 18 U.S.C. 175b(b)(1) and (2), prohibit a person from transferring a select agent listed in regulations by the Secretary of Health and Human Services, or a biological agent or toxin listed in regulations by the Secretary of Agriculture as posing a severe threat to animal or plant health or products, to any person the transferor knows or has reason to believe is not registered to receive or possess such agent or toxin, as required under regulations prescribed by the pertinent Secretary. The maximum term of imprisonment is 5 years.

(3) Two new offenses, at 18 U.S.C. 175b(c)(1) and (2), prohibit any person from knowingly possessing a select agent listed in regulations by the Secretary of Health and Human Services, or a biological agent or toxin listed in regulations by the Secretary of Agriculture as posing a severe threat to animal or plant health or products, if that person has not registered to receive or possess such agent or toxin, as required under regulations prescribed by the pertinent Secretary. The maximum term of imprisonment is 5 years.

Like the existing offense at 18 U.S.C. 175b(a)(1), reference of the new offenses to § 2M6.1 is appropriate. (An amendment to the statutory index is not necessary because there already exists a reference to § 2M6.1 for section 175b offenses.)

Second, the proposed amendment provides for a base offense level of level 22 for the new offenses involving transfer to, or possession of, select biological agents by unregistered persons. This proposed base offense level is the same as the existing base offense level for offenses involving transfer to, or possession of, select biological agents by restricted persons. The proposed amendment exempts these offenses from application of § 2M6.1(b)(1), which provides a two level enhancement for offenses involving select agents, because that factor is incorporated into the proposed base offense levels.

Third, in response to Act, the proposed amendment makes two modifications to the definition of "select biological agent" in § 2M6.1. That definition exists in the guideline for purposes of the two level enhancement in § 2M6.1(b)(1) for offenses that involved such an agent. First, in response to section 212 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, the amendment proposes to expand the definition of "select biological agent" to include biological agents and toxins the Secretary of Agriculture has determined pose a severe threat to animal and plant health and products. Second, section 201 of the Act codified a number of provisions of the Antiterrorism and Effective Death Penalty Act of 1996 in the Public Health Service Act. This codification necessitates a conforming amendment to the definition of "select agent" in Application Note 1 of § 2M6.1.

Proposed Amendment (Part IIA)

Section 2M6.1(a)(2) is amended by inserting "and" after "(a)(3),"; and by striking ", and (a)(5)".

Section 2M6.1(a)(3) is amended by inserting "or" after the semicolon.

Section 2M6.1(a)(4) is amended by inserting "(A)" after "if"; and by inserting "(B) the offense (i) involved a threat to use a nuclear weapon, nuclear material, or nuclear byproduct material, a chemical weapon, a biological agent, toxin, or delivery system, or a weapon of mass destruction; but (ii) did not involve any conduct evidencing an intent or ability to carry out the threat." after "or".

Section 2M6.1(a) is amended by striking subdivision (5).

Section 2M6.1(b)(1) is amended by striking the comma after "(a)(2)" and inserting "or"; and by striking ", or (a)(5)".

Section 2M6.1(b)(2) is amended by inserting "(A)" after "(a)(4)".

Section 2M6.1(b)(3) is amended by inserting "or" after "(a)(3)," and by striking ", or (a)(5)".

The Commentary to § 2M6.1 captioned "Application Notes" is amended in Note 1 in the paragraph that begins "Select biological agent" by inserting "(A)" after "identified"; by inserting "and maintained" after "established"; and by striking "511(d) of the Antiterrorism and Effective Death Penalty Act, Pub. L. 104–132. *See* 42 CFR part 72" and inserting "351A of the Public Health Service Act (42 U.S.C. 262a); or (B) by the Secretary of Agriculture on the list established and maintained pursuant to section 212 of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401)".

The Commentary to § 2M6.1 captioned "Application Notes" is amended in Note 2 by striking "(a)(3)" each place it appears and inserting "(a)(4)(B)".

B. Safe Drinking Water Provisions

This proposed amendment responds to amendments to the Safe Drinking Water Act made by section 403 of the Public Health Security and Bioterrorism Preparedness and Response of 2002. Section 1432(a) of the Safe Drinking Water Act (42 U.S.C. 300i–1(a)) prohibits any person from tampering with a public water system. The statutory maximum penalty was increased from 5 years imprisonment to 20 years imprisonment. This offense is the only offense referenced to § 2Q1.4 (Tampering or Attempted Tampering with Public Water System). Section 1432(b) of such Act (42 U.S.C. 300i–1(b)) prohibits anyone from attempting or threatening to tamper with a public water system. The statutory maximum penalty was increased from 3 years imprisonment to 10 years imprisonment. This offense is the only offense referenced to § 2Q1.5 (Threatened Tampering with Public Water System). For purposes of both offenses, "tamper" means "to introduce a contaminant into a public water system with the intention of harming persons" or "to otherwise interfere with the operation of a public water system with the intention of harming persons".

First, the amendment proposes to consolidate the guidelines covering tampering with consumer products, § 2N1.1, and tampering with a public water system, § 2Q1.4, and to consolidate the guidelines covering threatened tampering with consumer products, § 2N1.2, and threatened tampering with a public water system, § 2Q1.5. Consolidation is proposed

because of the infrequency of occurrence of these offenses and because these guidelines cover very similar conduct; accordingly, the treatment of these offenses under the same guideline would promote proportionality in punishment. The substantive changes resulting from the proposed consolidation would include (1) increased base offense levels for public water system offenses, as discussed in the following paragraph; (2) application to consumer product cases of an existing enhancement in the public water system guidelines if the offense involved substantial disruption of governmental functions or substantial expenditure of funds to respond to the offense; (3) elimination of the existing enhancement in the public water system guideline for ongoing, continuous, or repetitive release of a contaminant into the water supply (elimination is proposed because of definitional difficulties); (4) replacement of the existing enhancement in the public water system guideline if the purpose of the offense was to influence government action or to extort money with an application note inviting an upward departure if a terrorist motive was present and a cross reference to the extortion guideline if the offense involved extortion; and (5) application to public water system offenses of an existing cross reference in the consumer products guideline to the murder guidelines if death resulted. Conforming changes are made to the Statutory Index.

An issue for comment follows regarding whether the proposed consolidations also should effectuate a consolidation of the tampering guidelines with the threatened tampering guidelines, similar to the manner in which offenses involving threats to use nuclear, biological, or chemical weapons are subsumed within the nuclear, biological and chemical guideline, § 2M6.1.

Second, the amendment proposes to increase the base offense level for offenses involving tampering and threatened tampering with a public water system. Under the proposed consolidation, the base offense level for tampering with a public water system would increase from level 18 to level 25, and the six level enhancement for the risk of death or serious bodily injury would be eliminated and replaced with a graduated enhancement for actual bodily injury. Likewise, the base offense level for threatening to tamper with a public water system is proposed to increase from level 10 to level 16. For point of comparison, the existing base offense level for threatening communications under § 2A6.1 is level 12 and for threatened use of nuclear, biological, and chemical weapons under § 2M6.1 is level 20. These substantial increases in the base offense levels are proposed to ensure proportionality with similar offenses and to respond to the increased statutory maximum penalties made by section 403 of the Public Health Security and Bioterrorism Preparedness and Response of 2002.

Third, the amendment proposes to provide an application note in the consolidated guideline that an upward departure (as provided in Application Note 4 of the terrorism adjustment in § 3A1.4 (Terrorism)) may be warranted if the tampering or threatened tampering was accompanied by a terrorist motive. The amendments to the Safe Drinking Water Act made by the Public Health Security and Bioterrorism Preparedness and Response of 2002 contemplated that terrorism may be the motive behind tampering with the public water supply. Section 1431 of the Safe Drinking Water Act (42 U.S.C. 300i–1) was amended to expand the authority of the Administrator of the Environmental Protection Agency to take emergency action to protect the public health if the Administrator determines that "there is a threatened or potential terrorist attack or other intentional act designed to disrupt the provision of safe drinking water or to impact adversely the safety of drinking water supplied to communities and individuals, which may present an imminent and substantial endangerment" to the public health. Terrorist motives similarly may be present in offenses involving tampering with consumer products.

One other criminal provision was added by the Act, but it may be appropriate not to list this provision in the Statutory Index at this time. Section 401 of the Public Health Security and Bioterrorism Preparedness and Response of 2002 added section 1433 to the Safe Drinking Water Act. This provision requires local communities to conduct assessments of the vulnerability of their public water systems to terrorist and other intentional acts. Section 1433(a)(6) of the Safe Drinking Water Act (42 U.S.C. 300i–2(a)(6)) provides that any person who acquires information from this assessment and knowingly or recklessly reveals such information to a person other than to specified persons authorized to receive such information shall be imprisoned for not more than one year and/or fined in accordance with the fines applicable to Class A misdemeanors. This provision does not provide a neat fit within the guidelines. Most of the environmental regulatory guidelines cover the failure to report information or the falsification of information, rather than the reckless disclosure of information. Rather than provide a Statutory Index reference at this point, it may be best to assess over the next few years the frequency of prosecution of this offense and what conduct typically occurs in connection with the offense.

Proposed Amendment (Part IIB)

Chapter two, part N is amended in the heading by inserting "Public Water Systems," after "Involving".

Chapter two, part N, subpart 1 is amended in the heading by inserting "Or Public Water Systems" after "Products".

Section 2N1.1 is amended in the heading by inserting "with Consumer Products" after "Tampering"; by inserting "with Consumer Products" after "Tamper"; and by adding "; Tampering or Attempting to Tamper with a Public Water System" after "Injury".

Section 2N1.1(b) is amended by striking "Characteristic" and inserting "Characteristics"; and by adding at the end the following:

"(2) If the offense resulted in (A) substantial disruption of public, governmental, or business functions or services; or (B) a substantial expenditure of funds to clean up, decontaminate, or otherwise respond to the offense, increase by 4 levels.".

The Commentary to § 2N1.1 captioned "Statutory Provisions" is amended by inserting "; 42 U.S.C. 300i–1" after "(e)".

The Commentary to § 2N1.1 captioned "Application Notes" is amended by striking Notes 1 and 2 and inserting the following:

"1. Application of Special Instruction.—Subsection (d) applies in any case in which the defendant is convicted of a single count involving (A) the death or permanent, life-threatening, or serious bodily injury of more than one victim; or (B) conduct tantamount to the attempted murder of more than one victim, regardless of whether the offense level is determined under this guideline or under another guideline in Chapter Two (Offense Conduct) by use of a cross reference under subsection (c).

2. Departure Provisions.—

(A) Downward Departure Provision.—The base offense level reflects that offenses covered by this guideline typically pose a risk of death or serious bodily injury to one or more victims; or cause, or are intended to cause, bodily injury. In the unusual case in which the offense did not cause a risk of death or serious bodily injury, and neither caused nor was intended to cause bodily injury, a downward departure may be warranted.

(B) Upward Departure Provisions.—If the offense posed a substantial risk of death or serious bodily injury to numerous victims, caused extreme psychological injury, or caused substantial property damage or monetary loss, an upward departure may be warranted.

If the offense was calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct, an upward departure may be warranted. *See* Application Note 4 of § 3A1.4 (Terrorism).".

Section 2N1.2 is amended in the heading by adding at the end "; Threatening to Tamper with a Public Water System".

Section 2N1.2 is amended by redesignating subsection (b) as subsection (c); and by inserting after subsection (a) the following:

"(b) Specific Offense Characteristic

(1) If the offense resulted in (A) substantial disruption of public, governmental, or business functions or services; or (B) a substantial expenditure of funds to clean up, decontaminate, or otherwise respond to the offense, increase by 4 levels.".

The Commentary to § 2N1.2 captioned "Statutory Provisions" is amended by inserting "; 42 U.S.C. 300i–1" after "(d)".

The Commentary to § 2N1.2 captioned "Application Note" is amended in Note 1 by inserting "Upward Departure Provisions.—" before "If"; and by adding at the end the following paragraph:

"If the offense was calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct, an upward departure may be warranted. *See* Application Note 4 of § 3A1.4 (Terrorism).".

Chapter two, part Q is amended by striking §§ 2Q1.4 and 2Q1.5 in their entirety.

Appendix A (Statutory Index) is amended in the line referenced to 42 U.S.C. 300i–1 by striking "2Q1.4, 2Q1.5" and inserting "2N1.1, 2N1.2".

Issue for Comment: For the reasons stated in the foregoing synopsis, this amendment proposes to consolidate the guidelines covering tampering with consumer products, § 2N1.1, and tampering with a public water system, § 2Q1.4, and to consolidate the guidelines covering threatened tampering with consumer products, § 2N1.2, and threatened tampering with a public water system, § 2Q1.5. The Commission requests comment regarding whether the Commission should effectuate the consolidation of these four guidelines into one guideline covering both tampering and threatened tampering cases. Such an approach would be consistent with the guideline covering nuclear, biological, and chemical weapons and materials, § 2M61, which covers both offenses involving such weapons and materials as well as offenses involving the threatened use of such weapons and materials.

C. Animal Enterprise Terrorism

This proposed amendment adds an invited upward departure provision in the fraud, theft, and property destruction guideline, § 2B1.1, to account for aggravating conduct that may occur in connection with an animal enterprise offense under 18 U.S.C. 43.

Specifically, section 336 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 increased the penalty provisions of 18 U.S.C. 43, which makes it an offense to travel in interstate or foreign commerce, or to use or cause to be used the mail or any facility in interstate or foreign commerce for the purpose of causing physical disruption to the functioning of an animal enterprise, and to intentionally damage or cause the loss of any property (including animals and records) used by the animal enterprise, or to conspire to do so.

Before amendment by the Act, the penalty structure was (1) not more than one year imprisonment for causing economic damage exceeding $10,000; (2) not more than 10 years' imprisonment for causing serious bodily injury in the course of such an offense; and (3) life or any term of years of imprisonment if death resulted. As a result of the Act, the penalty structure now is (1) not more than 6 months imprisonment for causing economic damage not exceeding $10,000 (18 U.S.C. 43(b)(1)); (2) not more than 3 years' imprisonment for causing economic damage exceeding $10,000 (18 U.S.C. 43(b)(2)); (3) not more than 20 years' imprisonment for causing serious bodily injury in the course of such an offense (18 U.S.C. 43(b)(3)); and (4) life or any term of years of imprisonment if death resulted (18 U.S.C. 43(b)(4)).

This offense currently is referenced only to § 2B1.1. While reference only to that guideline generally continues to be appropriate for violations under 18 U.S.C. 43, that guideline fails to account for aggravated situations in which serious bodily injury or death results. Although the property damage guideline contains an enhancement for the risk of serious bodily injury or death, there is no enhancement or cross reference in that guideline that would provide a higher offense level if actual serious bodily injury or death resulted. Given the highly unusual occurrence of death or serious bodily injury in property damage cases generally and the infrequency of these specific offenses, the proposed amendment adds an invited upward departure provision in Application Note 15(A)(ii) of § 2B1.1 if death or serious bodily injury occurs in an offense under 18 U.S.C. 43, or if substantial or significant scientific information or research is lost as part of such an offense.

Proposed Amendment (Part IIC)

The Commentary to § 2B1.1 captioned "Application Notes" is amended in subdivision (A)(ii) of Note 15 by adding at the end the following:

"An upward departure would be warranted, for example, in a case involving animal enterprise terrorism under 18 U.S.C. 43, if, in the course of the offense, serious bodily injury or death resulted, or substantial scientific research or information were destroyed.".

III. Amendments Required by the Terrorist Bombings

Convention Implementation Act of 2002

The proposed amendment amends the Statutory Index (and the Statutory Provisions of the pertinent chapter two guidelines) to add three new offenses created by the Terrorist Bombings Convention Implementation Act of 2002, Pub. L. 107–197, and provides conforming amendments within a number of chapter two guidelines to more fully incorporate the new offenses into the offense guidelines.

First, section 102 of the Act created a new offense at 18 U.S.C. 2332f, which provides in subsection (a) that "whoever unlawfully delivers, places, discharges, or detonates an explosive or other lethal device in, into, or against a place of public use, a state or government facility, a public transportation system, or an infrastructure facility (A) with the intent to cause death or serious bodily injury, or (B) with the intent to cause extensive destruction of such a place, facility, or system, where such destruction results in or is likely to result in major economic loss" and in subsection (b) that "whoever attempts or conspires to commit [such] an offense" shall be punished as provided under 18 U.S.C. 2332a(a). Section 2332a offenses currently are referenced to §§ 2K1.4 (the arson and property damage by use of explosives guideline) and 2M6.1 (the

guideline covering nuclear, biological, and chemical weapons). The proposed amendment refers this new offense to those guidelines as well. In addition, the proposed amendment amends the alternative base offense levels in the arson guideline § 2K1.4(a)(1) so that the base offense level of level 24 applies to targets of 18 U.S.C. 2332f offenses, namely, state or government facilities, infrastructure facilities, public transportation systems and "places of public use".

Second, section 202 of the Act created a new offense at 18 U.S.C. 2339C, which provides in subsection (a)(1) that "whoever, in a circumstance described in subsection (c) (*i.e.*, in the United States or outside of the United States by a national of the United States or an entity organized under the laws of the United States), by any means directly or indirectly, unlawfully and willfully provides or collects funds, with the intention that such funds be used, or with the knowledge that such funds are to be used, in full or in part, in order to carry out (A) an act which constitutes an offense, within the scope of certain international treaties, as implemented by the United States, or (B) any other act intended to cause death or serious bodily injury to a civilian, or to any person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or abstain from doing an act", and in subsection (b) that whoever attempts or conspires to commit such an offense, shall be punished for a maximum term of imprisonment of 20 years.

The proposed amendment refers the new offense at 18 U.S.C. 2339C(1)(A) to 2X2.1 (Aiding and Abetting). The new offense involves providing or collecting funds knowing or intending that the funds would be used to carry out any of a number of specified offenses. Accordingly, the proposed amendment treats these offenses in the same manner as 18 U.S.C. 2339A offenses, which aid and abet a predicate offense listed in the statute. An amendment is proposed to be made in § 2X2.1 to conform the definition of the "underlying offense" that is aided and abetted.

The proposed amendment refers the new offense at 18 U.S.C. 2339C(a)(1)(B) to 2M5.3 (Providing Material Support or Resources to Designated Foreign Terrorist Organizations). Reference to § 2M5.3 is appropriate because this offense involves generally providing or collecting funds knowing or intending that the funds would be used to carry out not a specified offense but rather an act which by its nature is a terrorist act (because it is meant to intimidate a civilian population or to compel a government or international organization to do something or to refrain from doing something). Therefore, the essence of the offense is the provision of material support to terrorists, which is appropriately referenced to § 2M5.3. The proposed amendment expands § 2M5.3 to include not only designated foreign terrorist organizations but other terrorists as well.

Third, 18 U.S.C. 2339C(c)(2) makes it unlawful in the United States, or outside the United States by a national of the United States or an entity organized under the laws of the United States, to knowingly conceal or disguise the nature, location, source, ownership, or control of any material support, resources, or funds knowing or intending that they were: (A) Provided in violation of 18 U.S.C. 2339B, or (B) provided or collected in violation of 18 U.S.C. 2339C(a)(1) or (2). The maximum term of imprisonment for a violation of subsection 18 U.S.C. 2339C(c) is 10 years.

The proposed amendment references offenses under 18 U.S.C. 2339C(c)(2)(A) to 2X3.1 (Accessory After the Fact), since the essence of such an offense is the concealment of resources that were known or intended to have been provided in violation of another substantive offense, namely, 18 U.S.C. 2339B. An amendment is proposed to be made in § 2X3.1 to conform the definition of the "underlying offense" to which the defendant is an accessory.

The proposed amendment references offenses under 18 U.S.C. 2339C(c)(2)(B) to 2M5.3 and 2X3.1. To the extent the offense involved knowingly concealing or disguising the nature, location, source, ownership, or control of any material support, resources, or funds knowing or intending that they were provided or collected in violation of 18 U.S.C. 2339C(a)(1), the offense should be sentenced under 2X3.1. This is because the concealment occurs with respect to material support the defendant knows is to be used, in full or in part, in order to carry out an act which constitutes any number of specified offenses. To the extent the offense involved knowingly concealing or disguising the nature, location, source, ownership, or control of any material support, resources, or funds knowing or intending that they were provided or collected in violation of 18 U.S.C. 2339C(a)(2), the offense should be sentenced under 2M5.3. This is because the concealment occurs with respect to material support the defendant knows is to be used, in full or in part, in order to carry out not a specified offense but rather an act which by its nature is a terrorist act (because it is meant to intimidate a civilian population or to compel a government or international organization to do something or to refrain from doing something). A conforming amendment is proposed to be added to the Statutory Provisions of §§ 2M5.3 and 2X3.1.

Proposed Amendment (Part III)

Section 2K1.4(a)(1)(B) is amended by striking "or a ferry" and inserting "a ferry, a public transportation system, a state or government facility, an infrastructure facility, or a place of public use".

Section 2K1.4(a) is amended by striking subdivision (2) and inserting the following:

"(2) 20, if the offense (A) created a substantial risk of death or serious bodily injury to any person other than a participant in the offense; (B) involved the destruction or attempted destruction of a structure other than (i) a dwelling, or (ii) an airport, an aircraft, a mass transportation facility, a mass transportation vehicle, a ferry, a public transportation system, a state or government facility, an infrastructure facility, or a place of public use; or (C) endangered (i) a dwelling, (ii) a structure other than a dwelling, or (iii) an airport, an aircraft, a mass transportation facility, a mass transportation vehicle, a ferry, a public transportation system, a state or government facility, an infrastructure facility, or a place of public use; or".

The Commentary to § 2K1.4 captioned "Statutory Provisions" is amended by inserting ", 2332f" after "2332a".

The Commentary to § 2K1.4 captioned "Application Notes" is amended in Note 1 by adding at the end the following new paragraph:

"'State or government facility', 'infrastructure facility', 'place of public use', and 'public transportation system' have the meaning given those terms in 18 U.S.C. 2332f(e)(3), (5), (6), and (7), respectively.".

Section 2M5.3 is amended in the heading by adding "or For a Terrorist Purpose" after "Organizations".

The Commentary to § 2M5.3 captioned "Statutory Provisions" is amended by inserting ", 2339C(a)(1)(B), (c)(2)(B) (but only with respect to funds known or intended to have been provided or collected in violation of 18 U.S.C. 2339C(a)(1)(B))" after "2339B".

The Commentary to § 2X2.1 captioned "Statutory Provisions" is amended by inserting ", 2339C(a)(1)(A)" after "2339A".

The Commentary to § 2X2.1 captioned "Application Note" is amended in Note 1 by inserting "or 2339C(a)(1)(A)" after "2339A"; and by inserting "or provided or collected funds for" after "supported".

The Commentary to § 2X3.1 captioned "Statutory Provisions" is amended by inserting ", 2339C(c)(2)(A), (c)(2)(B) (but only with respect to funds known or intended to have been provided or collected in violation of 18 U.S.C. 2339C(a)(1)(A))" after "2339A".

The Commentary to § 2X3.1 captioned "Application Notes" is amended in Note 1 by inserting ", or in the case of a violation of 18 U.S.C. 2339C(c)(2)(A), 'underlying offense' means the violation of 18 U.S.C. 2339B with respect to which the material support, resources, or funds were concealed or disguised" after "offense)".

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 2332d the following new line:

"18 U.S.C. 2332f 2K1.4, 2M6.1";

and

by inserting after the line referenced to 18 U.S.C. 2339B the following new lines:

"18 U.S.C. 2339C(a)(1)(A)	2X2.1
18 U.S.C. 2339C(a)(1)(B)	2M5.3
18 U.S.C. 2339C(c)(2)(A)	2X3.1
18 U.S.C. 2339C(c)(2)(B)	2M5.3, 2X3.1".

IV. Miscellaneous Amendments

The proposed amendment amends § 2K1.3 to add an additional base offense level of 18 for certain offenses committed under 18 U.S.C. 842(p)(2). Section 842(p)(2) criminalizes knowingly or intentionally facilitating Federal crimes of violence by teaching or demonstrating the making or use of an explosive, destructive device, or weapon of mass destruction. It also criminalizes the distribution "by any means information pertaining to, in whole or in part, the manufacture or use of an explosive, destructive, device, or weapon of mass destruction" with the intent or knowing that the teaching, demonstration, or information will be used for or in furtherance of, an activity that constitutes a Federal crime of violence. The statutory maximum term of imprisonment is 20 years.

The statute is referenced in the Statutory Index to §§ 2K1.3 (covering prohibited transactions involving explosive materials) and 2M6.1 (covering weapons of mass destruction). The applicable base offense levels at § 2M6.1 are levels 42 and 28. The applicable offense level at § 2K1.3 currently is base offense level 12. Section 2K1.3 has alternative base offense levels predicated upon recidivism. An alternative base offense level of 24 applies to a defendant with two prior felony convictions of a crime of violence or a controlled substance offense, and an alternative base offense level of 20 applies to a defendant with one prior felony conviction of a crime of violence or a controlled substance offense. The base offense level of 12 appears to be disproportionately low compared with other 20 year offenses, and compared with the treatment of 18 U.S.C. 842(p)(2) offenses under § 2M6.1. This is especially true in light of the definition of "destructive device", defined at 18 U.S.C. 921(a)(4) to include "(A) any explosive, incendiary, or poison gas (i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary charge of more than one-quarter ounce, (v) mine, or (vi) device similar to any of the devices described in the preceding clauses * * *."

The proposed amendment also makes the enhancement at § 2K1.3(b)(3) and the cross reference at § 2K1.3(c)(1) applicable to 18 U.S.C. 842(p)(2) offenses. Currently, in cases in which the defendant used or possessed any explosive material in connection with another felony offense or possessed or transferred any explosive material with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense, subsection (b)(3) provides a four level enhancement and a minimum offense level of level 18, and, if the resulting offense level is greater, the cross reference at subsection (c)(1) references such cases either to § 2X1.1 (Attempt, Solicitation, or Conspiracy), or to the most analogous homicide guideline if death resulted. Application of both subsection (b)(3) and subsection (c)(1) to 18 U.S.C. 842(p)(2) offenses is appropriate because of the defendant's knowledge and/or intent that the defendant's teaching would be used to carry out another felony.

Finally, the proposed amendment makes minor technical changes to the Statutory Provisions of § 2M6.1.

Proposed Amendment (Part IV)

Section 2K1.3(a) is amended by redesignating subdivisions (3) and (4) as subdivisions (4) and (5), respectively; and by inserting after subdivision (2) the following:

"(3) 18, if the defendant was convicted under 18 U.S.C. 842(p)(2);".

Section 2K1.3(b)(3) is amended by inserting "(A) was convicted under 18 U.S.C. 842(p)(2); or (B)" after "defendant".

Section 2K1.3(c)(1) is amended by inserting "(A) was convicted under 18 U.S.C. 842(p)(2); or (B)" after "defendant".

The Commentary to § 2K1.3 captioned "Application Notes" is amended in Note 3 by striking "(3)" and inserting "(4)".

The Commentary to § 2K1.3 captioned "Application Notes" is amended in the second paragraph of Note 9 by striking "(3)" and inserting "(4)".

The Commentary to § 2M6.1 captioned "Statutory Provisions" is amended by inserting "(only with respect to weapons of mass destruction as defined in 18 U.S.C. 2332a(c)(2)(B), (C), and (D), but including any biological agent, toxin, or vector)," after "842(p)(2)".

2. Immigration

Synopsis of Amendment: This proposed amendment addresses various application issues that have come to the Commission's attention through Helpline calls, training sessions, and case law. First, two options are provided to address felony drug trafficking offenses that receive a sentence other than imprisonment. Currently, there is some confusion regarding whether such offenses should receive a 16-, 12-, or 8-level enhancement. Under the current guideline (as well as both proposed options), drug trafficking offenses for which the term of imprisonment imposed was more than 13 months receive a 16-level enhancement. Under Option One, all other felony drug trafficking offenses will receive a 12-level enhancement. Under Option Two, felony drug trafficking offenses that receive a term of imprisonment of less than 13 months will receive a 12-level enhancement, and felony drug trafficking offenses that receive a sentence other than imprisonment (*e.g.*, probation or a fine) will receive an 8-level enhancement.

This amendment also makes the following commentary changes: Adds definitions of "alien smuggling", "child pornography", and "human trafficking" offenses; adds commentary to clarify how revocations of probation, parole, or supervised release should be treated for purposes of determining the term of imprisonment imposed; adds language prohibiting the use of juvenile adjudications under this guideline; and amends the definition of "aggravated felony" to exclude offenses of simple possession of a controlled substance.

Proposed Amendment

Section 2L1.2(b)(1)(A)(i) is amended by inserting "was a term of imprisonment that" after "imposed".

[Option One:

Section 2L1.2(b)(1) is amended by striking subdivision (B) and inserting the following:

"(B) a conviction for a felony drug trafficking offense other than a felony drug trafficking offense covered under subdivision (A), increase by 12 levels;".]

[Option Two:

Section 2L1.2(b)(1)(B) is amended by inserting "a term of imprisonment of" after "imposed was".]

The Commentary to § 2L1.2 captioned "Application Notes" is amended in subdivision (A) of Note 1 by striking subdivision (iv) and inserting the following:

"(iv) 'Term of imprisonment'.—

(I) Definition.—'Term of imprisonment' means the sentence of incarceration originally imposed.

(II) Probated, Suspended, Deferred, or Stayed Sentences.—If all or any part of a term of imprisonment was probated, suspended, deferred, or stayed, 'sentence imposed' refers only to the portion that was not probated, suspended, deferred, or stayed. A sentence in which all of a term of imprisonment was suspended and a term of probation was imposed is not a term of imprisonment for purposes of this guideline. [Option Two: Accordingly, for purposes of subsections (b)(1)(A) and (B), the sentence imposed for a felony drug trafficking offense must be a sentence of incarceration. Any felony drug trafficking sentence other than a sentence of incarceration (*e.g.*, probation or a fine) shall be counted under subsection (b)(1)(C).]

(III) Revocations of Probation or Parole.—For purposes of determining the term of imprisonment in a case involving a revocation of probation, parole, or supervised release add the term of imprisonment given upon revocation to any term of imprisonment originally imposed.

(v) Subsection (b)(1) does not apply to a conviction for an offense committed prior to age of eighteen years unless it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (*e.g.*, a Federal conviction for an offense committed prior to the defendant's eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).".

The Commentary to § 2L1.2 captioned "Application Notes" is amended in Note 1 by striking subdivision (B) and inserting the following:

"(B) Definitions.—For purposes of subsection (b)(1):

(i) 'Alien smuggling offense committed for profit' means (I) an offense described in section 1324(a) of title 8, United States Code, that was committed for profit, regardless of whether the indictment charged that the offense was committed for profit; or (II) an offense under state law consisting of conduct that would have been an offense under 8 U.S.C. 1324(a) that was committed for profit, regardless of whether the indictment charged that the offense was committed for profit, if the offense had occurred within the special maritime and territorial jurisdiction of the United States. 'Committed for profit' means the offense was committed for payment or expectation of payment.

(ii) 'Child pornography offense' means (I) an offense described in section 2251, 2251A, 2252[, or 2260] of title 18, United States Code; or (II) an offense under state law consisting of conduct that would have been an offense under any such section if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(iii) 'Crime of violence' means any of the following: murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses (including sexual abuse of a minor), robbery, arson, extortion, extortionate extension of credit, burglary of a dwelling, or any offense under federal, state, or local law that has as an element the use, attempted use, or threatened use of physical force against the person of another.

(iv) 'Drug trafficking offense' means an offense under federal, state, or local law that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

(v) 'Felony' means any federal, state, or local offense punishable by imprisonment for a term exceeding one year.

(vi) 'Firearms offense' means any of the following:

(I) An offense under federal, state, or local law that prohibits the importation, distribution, transportation, or trafficking of a firearm described in 18 U.S.C. 921, or of an explosive material as defined in 18 U.S.C. 841(c).

(II) An offense under federal, state, or local law that prohibits the possession of a firearm described in 26 U.S.C. 5845(a), or of an explosive material as defined in 18 U.S.C. 841(c).

(III) A violation of 18 U.S.C. 844(h).

(IV) A violation of 18 U.S.C. 924(c).

(V) A violation of 18 U.S.C. 929(a).

(VI) An offense under state law consisting of conduct that would have been an offense under subdivision (III), (IV), or (V) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(vii) 'Human trafficking offense' means (I) any offense described in section 1581, 1582, 1583, 1584, 1585, 1588 [, 1589, 1590, or 1591] of title 18, United States Code; or (II) an offense under state law consisting of conduct that would have been an offense under any such section if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(viii) 'Terrorism offense' means any offense involving, or intending to promote, a 'federal crime of terrorism', as that term is defined in 18 U.S.C. 2332b(g)(5).".

The Commentary to § 2L1.2 captioned "Application Notes" is amended by striking Note 2 and inserting the following:

"2. Application of Subsection (b)(1)(C).—

(A) Definitions.—For purposes of subsection (b)(1)(C), 'aggravated felony' (i) has the meaning given that term in 8 U.S.C. 1101(a)(43), without regard to the date of conviction of the aggravated felony, and (ii) does not include the offense of possession of a controlled substance without an intent to distribute that controlled substance.

(B) In General.—The offense level shall be increased under subsection (b)(1)(C) for any aggravated felony (as defined in subdivision (A)), with respect to which the offense level is not increased under subsections (b)(1)(A) or (B) [(*e.g.*, a felony drug trafficking offense for which the sentence imposed was a sentence other than imprisonment)].".

The Commentary to § 2L1.2 captioned "Application Notes" is amended in Note 3(B) by striking "(i) were separated by an intervening arrest; (ii) did not occur on the same occasion; (iii) were not part of a single common scheme or plan; or (iv) were not consolidated for trial or sentencing" and inserting "are not considered related cases as defined in Application Note 3 of § 4A1.2 (Definitions and Instructions for Computing Criminal History)".

3. § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment)

Synopsis of Proposed Amendment: This is a three part proposed amendment that addresses a number of issues in § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment). First, the amendment amends § 5G1.3(b) to allow the court to adjust the length of the sentence for any prior period of imprisonment that "resulted from offenses that have been fully taken into account in the determination of the offense level for the instant offense". Currently, this subsection only applies to undischarged terms of imprisonment for any such prior period of imprisonment. As a conforming amendment, the proposed amendment deletes the downward departure provision in Application Note 7 for prior discharged terms of imprisonment.

In addition to adding discharged terms of imprisonment to the operation of subsection (b), this amendment proposes two options to clarify the rule for application of subsection (b) to a prior term of imprisonment. There has been litigation regarding what "fully taken into account" means. *See United States* v. *Garcia-Hernandez*, 237 F.3d 105, 109 (2d Cir. 2000) (determining that a prior offense is "fully taken into account" if and only if the Guidelines provide for sentencing as if both the offense of conviction and the separate offense had been prosecuted in a single proceeding); *United States* v. *Caraballo*, 200 F.3d 20, 25 (1st Cir. 1999) (holding that the term "fuly" cannot be read as synonymous with the term "relevant conduct" because this would be over-inclusive). Compare *United States* v. *Fuentes*, 107 F.3d 1515, 1524 (11th Cir. 1997) (finding that a prior offense has been "fully taken into account" when the prior offense is part of the same course of conduct, common scheme, or plan). Option One makes clear that subsection (b) shall apply only to prior offenses that are relevant conduct to the instant offense of conviction and that resulted in an increase in the offense level for the instant offense. Option Two makes clear that subsection (b) shall apply in cases in which the conduct of the prior offense is (1) Incorporated in the base offense level for the instant offense, (2) covered by a specific offense characteristic in the guideline for the instant offense, or (3) covered by a chapter three adjustment applicable to the instant offense. Option Two does not require that the chapter two or three offense level necessarily be increased by the prior offense.

This proposed amendment provides two options to address how this guideline applies in cases in which an instant offense committed while the defendant is on federal or state probation, parole, or supervised release, and has had such probation, parole, or supervised release revoked. In doing so, this amendment resolves a circuit conflict on the issue. The majority of circuits to consider the issue have held that imposition of consecutive sentence is required by Application Note 6. See, *e.g.*, *United States* v. *Smith*, 282 F.3d 1045, 1048 (8th Cir. 2002) (stating that Application Note 6 requires consecutive sentences); *United States* v. *Alexander*, 100 F.3d 24, 27 (5th Cir. 1996) (same); *United States* v. *Gondek*, 65 F.3d 1, 3 (1st Cir. 1995) (same); *United States* v. *Bernard*, 48 F.3d 427, 431–32 (9th Cir. 1995) (same). *See* also *United States* v. *Campbell*, No. 01–5661, 2002 U.S. App. LEXIS 23024 (6th Cir., Nov. 6, 2002) (affirming imposition of consecutive sentence as consistent with guideline commentary); *United States* v. *Walker*, 98 F.3d 944, 945 (7th Cir. 1996) (noting a strong presumption in favor of consecutive sentence). Three circuits, however, have disagreed. The second, third, and tenth circuits held that the word "should" in Application Note 6 renders the commentary non-binding. *See United States* v. *Maria*, 186 F.3d 65, 70–73 (2d Cir. 1999); *United States* v. *Swan*, 275 F.3d 272, 279–83 (3d Cir. 2002); *United States* v. *Tisdale*, 248 F.3d 964, 977–79 (10th Cir. 2001). Under Option One A, the sentence for the instant offense shall be imposed to run consecutively to the undischarged term of imprisonment. Option One B maintains the current language in Application Note 6 which provides that the sentence for the instant offense should run consecutively to the undischarged term of imprisonment.

Finally, an issue for comment is provided regarding whether the Commission should resolve a circuit split with respect to § 5G1.3(c) and whether the sentencing court may grant "credit" for time served in state prison for an undischarged sentence, in addition to running the federal sentence concurrently with the remaining portion of the defendant's preexisting state sentence. *Compare Ruggiano* v. *Reish*, 307 F.3d 121 (3d Cir. 2002) (federal sentencing court may grant such credit), with *United States* v. *Fermin*, 252 F.3d 102 (2d Cir. 2001) (court may not grant such credit).

Proposed Amendment

Option One:

Section 5G1.3 is amended in the heading by striking "on a Defendant Subject to an" and inserting "in Cases Involving an"; and by inserting "or Discharged" after "Undischarged".

[Option One A:

Section 5G1.3(a) is amended by inserting "(1)" before "serving"; and by striking "imprisonment," and inserting "imprisonment; or (2) on federal or state probation, parole, or supervised release at the time of the instant offense, and has had such probation, parole, or supervised release revoked,".]

Section 5G1.3 is amended by striking subsection (b) and inserting the following:

"(b) If subsection (a) does not apply, and a term of imprisonment resulted from another offense that (1) is relevant conduct to the instant offense of conviction under the provisions of subsections (a)(1), (a)(2), or (a)(3) of § 1B1.3 (Relevant Conduct); and (2) was the basis for an increase in the offense level for the instant offense under chapter two (Offense Conduct) or chapter three (Adjustments), the sentence for the instant offense shall be imposed as follows:

(A) If the term of imprisonment for that other offense is undischarged—

(i) The court [may][shall] adjust the sentence for any period of imprisonment already served on the undischarged term of imprisonment if the court determines that such period of imprisonment will not be credited to the federal sentence by the Bureau of Prisons; and

(ii) The sentence for the instant offense shall be imposed to run concurrently to the undischarged term of imprisonment.

(B) If the term of imprisonment is discharged, the court [may][shall] adjust the sentence for any period of imprisonment already served.".

[Option One A:

The Commentary to § 5G1.3 captioned "Application Notes" is amended by striking Note 1 and inserting the following:

"1. Revocations under Subsection (a).—In a case in which the defendant was on federal or state probation, parole, or supervised release at the time of the instant offense, and has had such probation, parole, or supervised release revoked, the sentence for the instant offense shall be imposed to run consecutively to the term imposed for the violation of probation, parole, or supervised release in order to provide an incremental penalty for the violation of probation, parole, or supervised release. *See* subsection (f) of § 7B1.3 (Revocation of Probation or Supervised Release).".]

The Commentary to § 5G1.3 captioned "Application Notes" is amended by striking Note 2 and inserting the following:

"2. Subsection (b) Cases.—

(A) In General.—Subsection (b) applies in cases in which (i) all of the prior offense is relevant conduct to the instant offense under the provisions of subsection (a)(1), (a)(2), or (a)(3) of § 1B1.3 (Relevant Conduct); and (ii)

such prior offense has resulted in an increase in the chapter two or chapter three offense level for the instant offense. Cases in which only part of the prior offense is relevant conduct to the instant offense are covered under subsection (c).

(B) Inapplicability of Subsection (b).—Subsection (b) does not apply in cases in which the prior offense increased the chapter two or chapter three offense level for the instant offense, but was not relevant conduct to the instant offense under § 1B1.3(a)(1), (a)(2), or (a)(3) (*e.g.*, the prior offense is an aggravated felony for which the defendant received an increase under § 2L1.2 (Unlawfully Entering or Remaining in the United States), or the prior offense was a crime of violence for which the defendant received an increased base offense level under § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition)).

(C) Imposition of Sentence.—If subsection (b) applies, the court should note on the judgment order (i) the amount of time by which the sentence is being adjusted; (ii) the undischarged or discharged term of imprisonment for which the adjustment is being given; and (iii) that the sentence imposed is a 'sentence reduction pursuant to § 5G1.3(b), Application Note 2(C), for a period of imprisonment which will not be credited by the Bureau of Prisons.'

(D) Examples.—The following are examples in which subsection (b) applies and an adjustment to the sentence is appropriate:

(i) The defendant is convicted of a federal offense charging the sale of 40 grams of cocaine. Under § 1B1.3, the defendant is held accountable for the sale of an additional 15 grams of cocaine, an offense for which the defendant has been convicted and sentenced in state court. The defendant received a nine-month sentence of imprisonment for the state offense and has served six months on that sentence at the time of sentencing on the instant federal offense. The guideline range applicable to the defendant is 12–18 months (chapter two offense level of 16 for sale of 55 grams of cocaine; 3-level reduction for acceptance of responsibility; final offense level of 13; Criminal History Category I).

The court determines that a sentence of 13 months provides the appropriate total punishment. Because the defendant already has served six months on the related state charge as of the date of sentencing on the instant federal offense, a sentence of seven months, imposed to run concurrently with the three months remaining on the defendant's state sentence, achieves this result.

(ii) The defendant is convicted of a federal offense charging the sale of 150 grams of cocaine. Under § 1B1.3, the defendant is held accountable for the sale of an additional 50 grams of cocaine, an offense for which the defendant has been convicted and sentenced in state court. The state term was discharged after the defendant served 6 months of imprisonment. The guideline range applicable to the defendant is 24–30 months (chapter two offense level of 20 for sale of 200 grams of cocaine; 3-level reduction for acceptance of responsibility; final offense level of 17; Criminal History Category I). The court determines that a sentence of 24 months provides the appropriate total punishment. Because the defendant already has served six months on the discharged state term, a sentence of 18 months on the instant offense achieves this result.".

[Option One B would maintain current Application Note 6 of the Commentary to § 5G1.3 as follows:

"6. Revocations. If the defendant was on federal or state probation, parole, or supervised release at the time of the instant offense, and has had such probation, parole, or supervised release revoked, the sentence for the instant offense should be imposed to run consecutively to the term imposed for the violation of probation, parole, or supervised release in order to provide an incremental penalty for the violation of probation, parole, or supervised release. *See* § 7B1.3 (Revocation of Probation or Supervised Release) (setting forth a policy that any imprisonment penalty imposed for violating probation or supervised release should be consecutive to any sentence of imprisonment being served or subsequently imposed).]".

Section 5G1.3 captioned "Application Notes" is amended by striking Note 7.

Option Two:

Section 5G1.3 is amended in the heading by striking "on a Defendant Subject to an" and inserting "in Cases Involving an"; and by inserting "or Discharged" after "Undischarged".

[Option Two A:

Section 5G1.3(a) is amended by inserting "(1)" before "serving"; and by striking "imprisonment," and inserting "imprisonment; or (2) on federal or state probation, parole, or supervised release at the time of the instant offense, and has had such probation, parole, or supervised release revoked,".]

Section 5G1.3 is amended by striking subsection (b) and inserting the following:

"(b) If subsection (a) does not apply, and a term of imprisonment resulted from another offense that is covered by the applicable chapter two guideline or an applicable chapter three adjustment for the instant offense of conviction, the sentence for the instant offense shall be imposed as follows:

(1) If the term of imprisonment for that other offense is undischarged—

(A) The court [may][shall] adjust the sentence for any period of imprisonment already served on the undischarged term of imprisonment if the court determines that such period of imprisonment will not be credited to the federal sentence by the Bureau of Prisons; and

(B) The sentence for the instant offense shall be imposed to run concurrently to the undischarged term of imprisonment.

(2) If the term of imprisonment is discharged, the court [may][shall] adjust the sentence for any period of imprisonment already served.".

[Option Two A:

The Commentary to § 5G1.3 captioned "Application Notes" is amended by striking Note 1 and inserting the following:

"1. Revocations under Subsection (a).—In a case in which the defendant was on federal or state probation, parole, or supervised release at the time of the instant offense, and has had such probation, parole, or supervised release revoked, the sentence for the instant offense shall be imposed to run consecutively to the term imposed for the violation of probation, parole, or supervised release in order to provide an incremental penalty for the violation of probation, parole, or supervised release. *See* subsection (f) of § 7B1.3 (Revocation of Probation or Supervised Release).".]

The Commentary to § 5G1.3 captioned "Application Notes" is amended by striking Note 2 and inserting the following:

"2. Subsection (b) Cases.—

(A) In General.—Subsection (b) applies in cases in which the conduct comprising all of the prior offense is covered by the applicable chapter two guideline or an applicable chapter three adjustment for the instant offense of conviction. Such conduct is covered by the chapter two guideline or a chapter three adjustment if the conduct is (i) incorporated in the base offense level for the instant offense of conviction; (ii) covered by a specific offense characteristic in the guideline for the instant offense of conviction; or (iii) covered by a chapter three adjustment applicable to the instant offense of conviction. Cases in which only part of the prior offense is covered are addressed under subsection (c).

(B) Inapplicability of Subsection (b).—Subsection (b) does not apply in cases in which the base offense level or the specific offense characteristic in the applicable chapter two offense guideline is an enhancement for a prior conviction (*e.g.*, the prior offense is an aggravated felony for which the defendant received an increase under § 2L1.2 (Unlawfully Entering or Remaining in the United States), or the prior offense was a crime of violence for which the defendant received an increased base offense level under § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition)).

(C) Imposition of Sentence.—If subsection (b) applies, the court should note on the judgment order (i) the amount of time by which the sentence is being adjusted; (ii) the undischarged or discharged term of imprisonment for which the adjustment is being given; and (iii) that the sentence imposed is a 'sentence reduction pursuant to § 5G1.3(b), Application Note 2(C), for a period of imprisonment which will not be credited by the Bureau of Prisons.'

(D) Examples.—The following are examples in which subsection (b) applies and an adjustment to the sentence is appropriate:

(i) The defendant is convicted of a Federal offense charging the sale of 30 grams of cocaine. Under § 1B1.3, the defendant is held accountable for the sale of an additional 15 grams of cocaine, an offense for which the defendant has been convicted and sentenced in State court. The defendant received a nine-month sentence of imprisonment for the State offense and has served six months on that sentence at the time of sentencing on the instant Federal offense. The guideline range applicable to the defendant is 10–16 months (chapter two offense level of 14 for sale of 45 grams of cocaine; 2 level reduction for acceptance of responsibility; final offense level of 12; Criminal History Category I). The court determines that a sentence of 13 months provides the appropriate total punishment. Because the defendant already has served six months on the related State charge as of the date of sentencing on the instant Federal offense, a sentence of seven months, imposed to run concurrently with the three months remaining on the defendant's State sentence, achieves this result.

(ii) The defendant is convicted of a Federal offense charging the sale of 150 grams of cocaine. Under § 1B1.3, the defendant is held accountable for the sale of an additional 50 grams of cocaine, an offense for which the defendant has been convicted and sentenced in State court. The State term was discharged after the defendant served 6 months of imprisonment. The guideline range applicable to the defendant is 24–30 months (chapter two offense level of 20 for sale of 200 grams of cocaine; 3-level reduction for acceptance of responsibility; final offense level of 17; Criminal History Category I). The court determines that a sentence of 24 months provides the appropriate total punishment. Because the defendant already has served six months on the discharged State term, a sentence of 18 months on the instant offense achieves this result.".

[Option Two B would maintain current Application Note 6 of the commentary to § 5G1.3 as follows:

"[6. Revocations. If the defendant was on Federal or State probation, parole, or supervised release at the time of the instant offense, and has had such probation, parole, or supervised release revoked, the sentence for the instant offense should be imposed to run consecutively to the term imposed for the violation of probation, parole, or supervised release in order to provide an incremental penalty for the violation of probation, parole, or supervised release. *See* § 7B1.3 (Revocation of Probation or Supervised Release) (setting forth a policy that any imprisonment penalty imposed for violating probation or supervised release should be consecutive to any sentence of imprisonment being served or subsequently imposed).]".

Section 5G1.3 captioned "Application Notes" is amended by striking Note 7 .

Issue for Comment: The Commission requests comment on whether it should resolve a circuit split with respect to § 5G1.3(c) and whether the sentencing court may grant "credit" for time served in State prison for an undischarged sentence, in addition to running the Federal sentence concurrently with the remaining portion of the defendant's preexisting State sentence. *Compare Ruggiano* v. *Reish*, 307 F.3d 121 (3d Cir. 2002) (Federal sentencing court may grant such credit), with *United States* v. *Fermin*, 252 F.3d 102 (2d Cir. 2001) (court may not grant such credit). If so, how should this apparent conflict be resolved?

4. Miscellaneous Amendments

Synopsis of Proposed Amendment: This proposed amendment makes technical and conforming changes to various guideline provisions. The proposed amendment accomplishes the following:

(1) Amends § 1B1.1 (Application Instructions) to (A) provide an instruction that makes clear that the application instructions are to be applied in the order presented in the guideline; (B) amend Application Note 4 to make clear that, absent an instruction to the contrary, multiple specific offense characteristics (or a chapter two specific offense characteristic and a chapter three adjustment) that are triggered by the same conduct are to be applied cumulatively; and (C) provide an application note concerning the use of abbreviated guideline titles to ease reference to guidelines that have exceptionally long titles.

(2) Restructures the definitions of "prohibited sexual conduct" in §§ 2A3.1 (Criminal Sexual Abuse) and 4B1.5 (Repeat and Dangerous Sex Offender Against Minors) to eliminate possible ambiguity regarding the interaction of "means" and "includes".

(3) Amends the definition of "child pornography" in §§ 2A3.1 and 4B1.5, and the definition of "visual depiction" in § 2G2.4 (Possession of Materials Depicting Minor Engaged in Sexually Explicit Conduct), in light of *Ashcroft* v. *The Free Speech Coalition, et al.*, 122 S.Ct. 1389 (2002).

(4) (A) Amends § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical) by: (i) providing a maximum base offense level of 30 if the defendant receives an adjustment under § 3B1.2 (Mitigating Role) and providing a two level reduction if the defendant meets the criteria of subdivisions (1) through (5) of subsection (a) of § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases) to conform this guideline to § 2D1.1 (Drug Trafficking), which was amended last amendment cycle; (ii) adding red phosphorus to the Chemical Quantity Table in response to a recent classification of red phosphorus as a List I chemical; and (B) provides an issue for comment regarding the penalties for oxycodone generally and a brand named pill containing oxycodone known as Oxycontin.

(5) Amends the departure provision in Application Note 6 of § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production) to conform to Application Note 12 of § 2G1.1 (Promoting Prostitution or Prohibited Sexual Conduct).

(6) Amends subsection (b)(5) of § 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic) to include receipt and distribution in the enhancement for use of a computer. Currently the enhancement only applies to offenses in which a computer was used for the transmission of child pornography.

(7) Responds to new legislation and makes other technical amendments as follows:

(a) Amends Appendix A (Statutory Index) and § 2N2.1 (Violations of Statutes and Regulations Dealing with any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product) in response to new offenses created by the Farm Security and Rural Investment Act of 2002 (the "Act"), Pub. L. 107–171. The first new offense provides a statutory maximum of one year for violating the Animal Health Protection Act (subtitle E of the Act), or for counterfeiting or destroying certain documents specified in the Animal Health Protection Act. The second new offense provides a statutory maximum term of imprisonment of five years for importing, entering, exporting, or moving any animal or article for distribution or sale. The Act also provides a statutory maximum of 10 years for a subsequent violation of either offense.

(b) Amends Appendix A (Statutory Index) and § 2B1.1 in response to a new offense (19 U.S.C. 2401f) created by the Trade Act of 2002, Pub. L. 107–210. The new offense provides a statutory maximum term of imprisonment of one year for knowingly making a false statement of material fact for the purpose of obtaining or increasing a payment of federal adjustment assistance to qualifying agricultural commodity producers.

(c) Amends Appendix A (Statutory Index) and §§ 2C1.3 (Conflict of Interest; Payment or Receipt of Unauthorized Compensation) and 2K2.5 (Possession of Firearm or Dangerous Weapon in Federal Facility; Possession or Discharge of Firearm in School Zone) in response to the codification of title 40, United States Code, by Pub. L. 107–217. Section 5104(e)(1) of title 40, United States Code, prohibits anyone (except as authorized by the Capitol Police Board) from carrying or having readily accessible a firearm, dangerous weapon, explosive, or an incendiary device on the Capitol Grounds or in any of the Capitol Buildings. The statutory maximum term of imprisonment is five years. The proposed amendment references 40 U.S.C. 5104(e)(1) to 2K2.5. Section 14309(a) of title 40, United States Code, prohibits certain conflicts of interests of members of the Appalachian Regional Commission and provides a statutory maximum term of imprisonment penalty of two years. Section 14309(b) prohibits certain additional sources of salary and provides a statutory maximum term of imprisonment of not more than one year. The proposed amendment references 40 U.S.C. 14309(a) and (b) to 2C1.3.

(d) Amends Appendix A (Statutory Index) and § 2H2.1 (Obstructing an Election or Registration) to provide a guideline reference for offenses under 18 U.S.C. 1015(f). Currently, 18 U.S.C. 1015 generally is referenced to 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States), 2J1.3 (Perjury or Subornation of Perjury; Bribery of Witness), 2L2.1 (Trafficking in a Document Relating to Naturalization, Citizenship, or Legal Resident Status), and 2L2.2 (Fraudulently Acquiring Documents Relating to Naturalization, Citizenship, or Legal Resident Status for Own Use). However, 18 U.S.C. 1015(f) specifically relates to knowingly making false statements in order to register to vote, or to vote, in a Federal, State, or local election. The proposed amendment references 18 U.S.C. 1015(f) to § 2H2.1 (Obstructing an Election or Registration).

Proposed Amendment

Section 1B1.1 is amended by adding ".—Except as specifically directed, the provisions of this manual are to be applied in the following order:" after "Application Instructions".

The Commentary to § 1B1.1 captioned "Application Notes" is amended by striking Note 4 and inserting the following:

"4. (A) Specific Offense Characteristics.—The offense level adjustments from more than one specific offense characteristic within an offense guideline are applied cumulatively (added together) unless the guideline specifies that only the greater (or greatest) is to be used. Within each specific offense characteristic subsection, however, the offense level adjustments are alternative; only the one that best describes the conduct is to be used. For example, in § 2A2.2(b)(3), pertaining to degree of bodily injury, the subdivision that best describes the level of bodily injury is used; the adjustments for different degrees of bodily injury (subdivisions (A)–(E)) are not added together.

(B) Adjustments from Different Guideline Sections.—Absent an instruction to the contrary, the adjustments from different guideline sections are applied cumulatively (added together). In some cases, such adjustments (*e.g.*, a chapter two specific offense characteristic and a chapter three [or chapter four] adjustment) may be triggered by the same conduct, but are meant to take into account different aspects of that conduct. For example, shooting a police officer during the commission of a robbery may warrant an injury enhancement under § 2B3.1(b)(3) and an official victim enhancement under § 3A1.1, even though both enhancements are triggered by the shooting of the officer. Section 2B3.1(b)(3) accounts for the injury to the police officer, while § 3A1.2(a) accounts for the official status of the victim.".

The Commentary to § 1B1.1 captioned "Application Notes" is amended by adding at the end the following:

"(7) Whenever a guideline makes reference to another guideline, a parenthetical restatement of that other guideline's heading accompanies the initial reference to that other guideline. This parenthetical is provided only for the convenience of the reader and is not intended to have substantive effect. In the case of lengthy guideline headings, such a parenthetical restatement of the guideline heading may be abbreviated for ease of reference. For example, references to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) may be abbreviated as follows: § 2B1.1 (Theft, Fraud, and Property Destruction).".

The Commentary to section § 2A3.1 captioned "Application Notes" is amended in Note 1 by striking "'Prohibited sexual conduct'" and all that follows through "child pornography." and inserting the following:

"'Prohibited sexual conduct' means any sexual activity for which a person can be charged with a criminal offense. 'Prohibited sexual conduct' includes the production of child pornography, but does not include trafficking in, or possession of, child pornography.".

The Commentary to § 4B1.5 captioned "Application Notes" is amended in subdivision (A) of Note 4 by inserting "means any of the following:" After "conduct"; by striking "means" after "(i)"; by striking "includes" each place it appears; by inserting "or" before "(iii)"; and by striking "; and (iv)" and inserting ". It".

The Commentary to § 2A3.1 captioned "Application Notes" is amended in Note 1 in the paragraph that begins "'Prohibited sexual conduct'" by striking "'Child pornography'" and all that follows through "2256(8)." and inserting the following:

"'Child pornography' means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, in which—

(A) The production of such visual depiction involved the use of a minor engaging in sexually explicit conduct;

(B) Such visual depiction is a minor engaging in sexually explicit conduct; or

(C) Such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.".

The Commentary to § 2G2.4 captioned "Application Notes" is amended in Note 1 by deleting "'Visual depiction'" and all that follows through "and (8)." and inserting the following:

"'Visual depiction' means any visual depiction described in 18 U.S.C. 2256(5) or any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, in which—

(A) The production of such visual depiction involved the use of a minor engaging in sexually explicit conduct;

(B) Such visual depiction is a minor engaging in sexually explicit conduct; or

(C) Such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.".

The Commentary to § 4B1.5 captioned "Application Notes" is amended in subdivision (A) of Note 3 by striking subdivision (ii) and inserting the following:

"'Sex offense conviction' means any offense described in 18 U.S.C. 2426(b)(1)(A) or (B), if the offense was perpetrated against a minor, and does not include trafficking in, receipt of, or possession of, child pornography. 'Child pornography' has the meaning given that term in Application Note 1 of § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).".

The Commentary to § 4B1.5 captioned "Application Notes" is amended in subdivision (A) of Note 4 by striking "18 U.S.C. 2256(8)" and inserting "Application Note 1 of § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse)".

Section § 2D1.11(a) is amended by inserting ", except that if the defendant receives an adjustment under § 3B1.2 (Mitigating Role), the base offense level shall be not more than level 30" after "appropriate".

Section § 2D1.11(b) is amended by inserting at the end the following:

"(4) If the defendant meets the criteria set forth in subdivisions (1)–(5) of subsection (a) of § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases), decrease by 2 levels.".

Section § 2D1.11(e)(1) is amended in the subdivision captioned "List I Chemicals" by striking the period after "Gamma-butyrolactone" and inserting a semi-colon; and by adding at the end the following:

"714 G or more of Red Phosphorus.".

Section § 2D1.11(e)(2) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"At least 214 G but less than 714 G of Red Phosphorus;".

Section § 2D1.11(e)(3) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"At least 71 G but less than 214 G of Red Phosphorus;".

Section § 2D1.11(e)(4) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"At least 50 G but less than 71 G of Red Phosphorus;".

Section § 2D1.11(e)(5) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"At least 29 G but less than 50 G of Red Phosphorus;".

Section § 2D1.11(e)(6) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"At least 7 G but less than 29 G of Red Phosphorus;".

Section § 2D1.11(e)(7) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"At least 6 G but less than 7 G of Red Phosphorus;".

Section § 2D1.11(e)(8) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"At least 4 G but less than 6 G of Red Phosphorus;".

Section § 2D1.11(e)(9) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"At least 3 G but less than 4 G of Red Phosphorus;".

Section § 2D1.11(e)(10) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"Less than 3 G of Red Phosphorus."

The Commentary to § 2D1.11 captioned "Application Notes" is amended by adding at the end the following:

"7. Applicability of Subsection (b)(4).—The applicability of subsection (b)(4) shall be determined without regard to whether the defendant was convicted of an offense that subjects the defendant to a mandatory minimum term of imprisonment. Section § 5C1.2(b), which provides a minimum offense level of level 17, is not pertinent to the determination of whether subsection (b)(4) applies.".

Issue for Comment: The Commission requests comment regarding the penalties for oxycodone generally and a brand named prescription drug containing oxycodone known as Oxycontin. Currently, the Drug Equivalency Tables in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) provide a marihuana equivalency of 500 grams for one gram of a mixture of substance containing oxycodone. Recently, however, drug enforcement has reported an increase in trafficking of the prescription drug Oxycontin, which contains higher than historical amounts of oxycodone but weighs substantially less than other prescription drugs containing oxycodone. Consequently, a defendant convicted of trafficking in certain prescription drugs containing smaller amounts of oxycodone relative to the total weight of the pill may receive a higher sentence than a defendant convicted of trafficking in larger amounts of Oxycontin.

How should the Commission address the weight differential and the resulting sentencing disparity? Should the equivalency for oxycodone be reevaluated? Should the Commission amend the Drug Equivalency Tables in § 2D1.1 to provide a separate marihuana equivalency for Oxycontin, notwithstanding that the guidelines do not otherwise provide specific penalties for brand name drugs? If so, what should that marihuana equivalency be?

Alternatively, should the Commission sentence oxycodone defendants based on the purity of the prescription drug involved (an approach currently used in sentencing methamphetamine and amphetamine defendants)? This approach may require amending the Drug Quantity Tables in § 2D1.1 to provide separate penalties for oxycodone (actual) and oxycodone (mixture). Oxycontin additionally has a time release element that can be eliminated simply by crushing or breaking the pill, increasing the immediate effect for the user. Should the Commission provide an enhancement for trafficking in pills that have a time release element?

The Commentary to § 2G2.1 captioned "Application Notes" is amended by striking Note 6 and inserting the following:

"6. Upward Departure Provisions.—An upward departure may be warranted if the offense involved more than 10 victims.".

Section 2G2.2(b)(5) is amended by inserting ", receipt, or distribution" after "transmission".

The Commentary to § 2B1.1 captioned "Statutory Provisions" is amended by inserting "19 U.S.C. 2401f;" after "2332b(a)(1);".

The Commentary to § 2C1.3 captioned "Statutory Provisions" is amended by inserting "; 40 U.S.C. 14309(a), (b)" after "1909".

The Commentary to § 2H2.1 captioned "Statutory Provisions" is amended by inserting ", 1015(f)" after "597".

The Commentary to § 2K2.5 captioned "Statutory Provisions" is amended by inserting "; 40 U.S.C. 5104(e)(1)" after "930".

The Commentary to § 2N2.1 captioned "Statutory Provisions" is amended by inserting ", 8313" after "7734".

Appendix A (Statutory Index) is amended by inserting after the line referenced to 7 U.S.C. 7734 the following new line:

"7 U.S.C. 8313 2N2.1";

in the line referenced to 18 U.S.C. 1015 by inserting "(a)–(e)" after "1015";

by inserting after the line referenced to 18 U.S.C. 1015 the following new line:

"18 U.S.C. 1015(f) 2H2.1";

by inserting after the line referenced to 19 U.S.C. 2316 the following new line:

"19 U.S.C. 2401f 2B1.1"; and

by inserting after the line referenced 38 U.S.C. 3502 to the following new lines:

"40 U.S.C. 5104(e)(1) 2K2.5

40 U.S.C. 14309(a), (b) 2C1.3".

5. Involuntary Manslaughter

Synopsis of Proposed Amendment: This proposed amendment is a continuation of the Commission's work over the past several years to ensure that the guidelines provide appropriate guideline penalties for offenses involving involuntary manslaughter. In 1994, Congress increased the statutory maximum penalty for involuntary manslaughter offenses from three years' to six years' imprisonment after receiving a Commission report analyzing federal criminal penalties and recommending that the statutory maximum penalty for involuntary manslaughter be increased to six years. Studies have shown that the heartland of involuntary manslaughter offenses involves vehicular homicide and that these offenses are punished more severely by many of the States. The Commission further examined both voluntary and involuntary manslaughter offenses in 1997, and in 1998 sent a report and letter to Congress recommending that the statutory maximum penalty for voluntary manslaughter offenses be increased to permit the Commission to make changes that would maintain proportionality based on offense severity. Although no action has been taken on that recommendation, the Commission has received recommendations from Congress and the Department of Justice that it proceed to amend the guidelines for involuntary manslaughter to increase the base offense levels. Accordingly, this proposed amendment increases the base offense levels for involuntary manslaughter by [2][4][6] levels. An issue for comment follows that generally seeks the public's input regarding the appropriate offense levels for involuntary manslaughter offenses, including (with a view toward proportionate sentencing) the appropriate offense levels for involuntary manslaughter offenses compared to offense levels for aggravated assault.

Proposed Amendment

Section 2A1.4(a)(1) is amended by striking "10" and inserting "[12][14][16]".

Section 2A1.4(a)(2) is amended by striking "14" and inserting "[16][18][20]".

Issue for Comment: The Commission requests comment generally on the appropriate offense levels for offenses involving involuntary manslaughter. In addition, the Commission requests comment regarding the appropriate and proportionate offense levels for involuntary manslaughter compared to offense levels for aggravated assault under § 2A2.2 (Aggravated Assault). Currently, the base offense level for aggravated assault is level 15, and the guideline contains several enhancements, such as enhancements for bodily injury. As a consequence, the guideline penalties for aggravated assault currently are more serious than those for involuntary manslaughter.

6. Cybersecurity

Issue for Comment: Section 225 of the Homeland Security Act of 2002 (the Cyber Security Enhancement Act of 2002), Pub. L. 107–296, directs the Commission to review and amend, if appropriate, the sentencing guidelines and policy statements applicable to persons convicted of an offense under section 1030 of title 18, United States Code, to ensure that the sentencing guidelines and policy statements reflect the serious nature of such offenses, the growing incidence of such offenses, and the need for an effective deterrent and appropriate punishment to prevent such offenses.

The directive also includes a number of factors for the Commission to consider, including the potential and actual loss resulting from the offense, the level of sophistication and planning involved in the offense, whether the offense was committed for purposes of commercial advantage or private financial benefit, whether the defendant acted with malicious intent to cause harm in committing the offense, the extent to which the offense violated the privacy rights of individuals harmed, whether the offense involved a computer used by the government in furtherance of national defense, national security, or the administration of justice, whether the violation was intended to, or had the effect of, significantly interfering with or disrupting critical infrastructure, and whether the violation was intended to, or had the effect of, creating a threat to public health or safety, or injury to any person.

The Commission requests comment regarding how it should respond to this directive.

7. Offenses Involving Body Armor and Assault Against a Federal Judge Issues for Comment:

1. Section 11009 of the 21st Century Department of Justice Appropriations Authorization Act (the "Act"), Pub. L. 107–273, directs the Sentencing Commission to review and amend the sentencing guidelines, as appropriate, to provide an appropriate sentencing enhancement for any crime of violence (as defined in 18 U.S.C. 16) or drug trafficking crime (as defined in 18 U.S.C. 924(c) (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) in which the defendant used body armor. The Act further states that it is the sense of Congress that any such enhancement should be at least two levels. The Commission requests comment regarding how it should respond to this directive. For example, should the Commission provide a Chapter Three adjustment for the use of body armor in any crime of violence or drug trafficking crime? Alternatively, should the Commission provide a specific offense characteristic in all relevant chapter two guidelines (*e.g.*, § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy)) that would apply if the defendant used body armor in the course of the offense?

What would be an appropriate increase for the use of body armor if the Commission provides a chapter three adjustment or a specific offense characteristic in the relevant chapter two guidelines?

2. Section 11008 of the Act directs the Commission to review and amend, if appropriate, the guidelines or policy statements to provide an appropriate enhancement for offenses involving influencing, assaulting, resisting, impeding, retaliating against, or threatening a Federal judge, magistrate judge, or any other official described in 18 U.S.C. 111 or 115. The directive also contains a number of factors for the Commission to consider, including the range of conduct covered by the offenses, the existing sentence for the offense, the extent to which the guidelines for these offenses have been constrained by statutory maximum penalties, and the adequacy of the guidelines to ensure punishment at or near the maximum penalty for the most egregious conduct covered by the offense. The Act also increases the statutory maximum terms of imprisonment for the following offenses: For threatened assaults under 18 U.S.C. 115 (Influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), from three years to six years; for all other threats made in violation of 18 U.S.C. 115, from five years to ten years; for a violation of 18 U.S.C. 111 (Assaulting, resisting, or impeding certain officers or employees), from three years to eight years; and for the use of a dangerous weapon or inflicting bodily injury in the commission of an offense under 18 U.S.C. 111, from 10 to 20 years.

Appendix A (Statutory Index) references 18 U.S.C. 111 to 2A2.2 (Aggravated Assault) and 2A2.4 (Obstructing or Impeding Officers). These guidelines have base offense levels of 15 and 6, respectively. Section 115 of title 18, United States Code, is referenced to, among other guidelines, §§ 2A2.1 (Assault with Intent to Commit Murder; Attempted Murder), 2A2.2, and 2A2.3 (Minor Assault). The base offense level for § 2A2.1 is level 28 (if the object of the offense would have constituted first degree murder) or level 22. The base offense level for § 2A2.3 is level 6 (if the conduct involved physical contact, or if a dangerous weapon was possessed or its use was threatened) or level 3.

Given the directive, the factors to consider, and the increases in the statutory maximum penalties, the Commission requests comment regarding the following:

(A) Should the Commission provide an enhancement in the assault guidelines for offenses involving influencing, assaulting, resisting, impeding, retaliating against, or threatening a Federal judge, magistrate judge, or any other official described in 18 U.S.C. 111 or 115? If so, what would be an appropriate increase for such enhancement? Are there additional, related enhancements that the Commission should provide in the assault guidelines, particularly given the directive to consider providing sentences at or near the statutory maximum for the most egregious cases?

(B) Do the current base offense levels in each of the assault guidelines provide adequate punishment for the covered conduct? If not, what would be appropriate base offense levels for §§ 2A2.2, 2A2.3, and 2A2.4?

(C) Should the Commission consider more comprehensive amendments to the assault guidelines as part of, or in addition to, its response to the directives? For example, should the Commission consolidate §§ 2A2.3 and 2A2.4? Should the Commission amend § 2A2.3(b)(1) to provide a two level enhancement for bodily injury? Some commentators have argued that such an amendment would bring the minor and aggravated assault guidelines more in line with one another because there may be cases in which an assault that does not qualify as an aggravated assault under § 2A2.2 nevertheless involves bodily injury. Are there any other application issues pertaining to the assault guidelines that the Commission should address?

[FR Doc. 02–31869 Filed 12–17–02; 8:45 am]

BILLING CODE 2210–40–P

DEPARTMENT OF STATE

[Public Notice 4199]

Overseas Schools Advisory Council; Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Executive Committee Meeting on Thursday, January 23, 2003, at 9:30 a.m. in Conference Room 1105, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas, which are assisted by the Department of State and which are attended by dependents of U.S. Government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools. The agenda includes a review of the recent activities of American-sponsored overseas schools and the overseas schools regional associations, a presentation on the status of education in the United States and its impact on American-sponsored overseas schools, and selection of projects for the 2003 program.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for all attendees. Persons who plan to attend should so advise the office of Dr. Keith D. Miller, Department of State, Office of Overseas Schools, Room H328, SA–1, Washington, DC 20522–0132, telephone 202–261–8200, prior to January 13, 2003. Each visitor will be asked to provide a date of birth and Social Security number at the time of registration and attendance and must carry a valid photo ID to the meeting. All attendees must use the C Street entrance to the building.

Dated: December 10, 2002.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council, Department of State.

[FR Doc. 02–31850 Filed 12–17–02; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

Delegation of Authority 250; Further Assignment of Functions Under the Trade Act of 2002 ("Trade Act") to Other Departments and Agencies of the Executive Branch

AGENCY: Department of State.

ACTION: Further assignment of functions.

SUMMARY: The Trade Act specifically granted the President certain authorities and assigned the President certain functions related to agreements covered by Trade Act provisions. In Executive Order No. 13277, the President assigned certain of these functions to the Secretary of State and provided guidance for performing those functions, including the further assignment of functions to officers of any other department or agency within the Executive Branch. This notice informs the public of the Secretary of State's further assignment of certain functions. This notice does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

DATES: These actions are effective immediately.

Further Assignment of Functions

Pursuant to section 3(b)(ii) of Executive Order No. 13277, the Secretary of State hereby, as set forth below, further assigns certain functions of the Secretary of State under the Order. Departments and agencies shall carry out those functions in a manner that is supportive of agreements subject to the Trade Act.

(a) The functions of the President under section 2102(c)(2) of the Trade Act with respect to establishing consultative mechanisms assigned to the Secretary of State are further assigned to the Secretary of Labor and the United States Trade Representative, and shall be carried out collectively by the Secretary of State, the Secretary of Labor, and the United States Trade Representative.

(b) The functions of the President under section 2102(c)(3) of the Trade Act with respect to establishing consultative mechanisms assigned to the Secretary of State are further assigned to the United States Trade Representative, and shall be carried out jointly by the Secretary of State and the United States Trade Representative. Such consultative mechanisms are those established through trade agreements subject to the Trade Act. This further assignment is without prejudice to the Secretary of State's responsibility for coordinating the operation of such mechanisms and obtaining the advice and assistance of any other agency as necessary and appropriate.

This further assignment of functions shall be published in the **Federal Register.**

Dated: December 10, 2002.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 02–31849 Filed 12–17–02; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501, as amended), this notice announces the Department of Transportation's (DOT) intention to request the extension of a previously approved collection.

DATES: Comments on this notice must be received by January 17, 2003: attention DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Torlanda Archer, Office of the Secretary, Office of Aviation Analysis, U.S. Department of Transportation, (202) 366–2396, 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Office of the Secretary

Title: Public Charter Rules.

OMB Control Number: 2106–0005.

Affected Public: Public Charter Operators.

Annual Estimated Burden: 1,343 hours.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on December 12, 2002.

Michael Robinson,

Information Resource Management, Department of Transportation.

[FR Doc. 02–31889 Filed 12–17–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending December 6, 2002

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's procedural regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2002–14027.

Date Filed: December 6, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 27, 2002.

Description: Application of Victory Air Transport, Inc., pursuant to 49 U.S.C. section 41102 and subpart B, requesting a certificate of public convenience and necessity authorizing Victory to engage in interstate charter air transportation of persons, property, and mail.

Docket Number: OST–2002–14028.

Date Filed: December 6, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 27, 2002.

Description: Application of Victory Air Transport, Inc., pursuant to 49 U.S.C. section 41102 and subpart B, requesting a certificate of public convenience and necessity authorizing Victory to engage in foreign charter air transportation of persons, property, and mail.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–31890 Filed 12–17–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–69]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Vanessa Wilkins, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–8029.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 12, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2002–13291.

Petitioner: Pulaski Technical College.

Section of 14 CFR Affected: 14 CFR 65.17.

Description of Relief Sought/ Disposition: To permit Pulaski Technical College to administer the aviation mechanic general written test to students immediately following their successful completion of the general curriculum but before they meet the experience requirements of 14 CFR 65.77.

Grant, 11/25/2002, Exemption No. 7926.

Docket No.: FAA–2000–8177.

Petitioner: Experimental Aircraft Association, Inc., (EAA) and the Commemorative Air Force (CAF).

Section of 14 CFR Affected: 14 CFR 45.25 and 45.29.

Description of Relief Sought/ Disposition: To allow EAA and CAF members to operate historic military aircraft with 2-inch-high nationality and registration marks located under the horizontal stabilizer.

Grant, 11/22/2002, Exemption No. 5109G.

Docket No.: FAA–2002–11799.

Petitioner: Matsushita Avionics Systems Corporation (MAS).

Section of 14 CFR Affected: 14 CFR 21.325(b)(3).

Description of Relief Sought/ Disposition: To permit to allow MAS airworthiness representatives, reporting to an organizational designated airworthiness representative at MAS Bothell, to issue export airworthiness approvals for class III products manufactured by MAS Osaka.

Grant, 11/21/2002, Exemption No. 7925.

[FR Doc. 02–31883 Filed 12–17–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from January 13–16, 2003, from 1 p.m. to 4:30 p.m. on Monday, January 13, and from 9 a.m. to 4:30 p.m., Tuesday, January 14 to Thursday, January 16.

ADDRESSES: The meeting will be held at Summerfield Suites by Wyndham—Lake Buena Vista, 8751 Suiteside Drive, Orlando, Florida 32836.

FOR FURTHER INFORMATION CONTACT: Mr. David W. Madison, Acting Executive Director, ATPAC, Air Traffic Planning and Procedures, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3724.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held January 13 through January 16, 2003, at Summerfield Suites by Wyndham—Lake Buena Vista, 8751 Suiteside Drive, Orlando, Florida 32836.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Submission and discussion of areas of concern.
3. Discussion of potential safety items.
4. Report from Executive Director.
5. Items of interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than January 10, 2003. The next quarterly meeting of the FAA ATPAC is planned to be held from April 7–10, 2003, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on December 9, 2002.

David M. Madison,

Acting Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 02–31884 Filed 12–17–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–15–C–00–ORD To Impose a Passenger Facility Charge (PFC) at Chicago O'Hare International Airport and To Use the Revenue at Chicago O'Hare International Airport, Chicago, Illinois, and Gary/Chicago Airport, Gary, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the

application to impose a PFC at Chicago O'Hare International Airport and use the revenue at Chicago O'Hare International Airport and Gary/Chicago Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 17, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 320, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas R. Walker, Commissioner of the City of Chicago Department of Aviation at the following address: Chicago O'Hare International Airport, P.O. Box 66142, Chicago, IL 60666.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago Department of Aviation under section 158.23 of part-158.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas E. Salaman, Chicago Metropolitan Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 320, Des Plains, IL 60018, telephone (847) 294–7436. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Chicago O'Hare International Airport and use the revenue at Chicago O'Hare International Airport and Gary/Chicago Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 27, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Chicago Department of Aviation was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 26, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: December 1, 2016.

Revised proposed charge expiration date: February 1, 2019.

Total estimated PFC revenue: $258,770,000.

Brief description of proposed projects at the $4.50 level:

Impose and Use at ORD: Runway Formulation; Equipment Acquisition; School Soundproofing.

Brief description of proposed project at the $3.00 level:

Use at Gary/Chicago: Acquire Snow Removal Equipment (Snow Broom); Expand Snow Removal Equipment Building; Rehabilitate Runway 12/30; Terminal Apron Expansion and Loading Bridge Installation.

Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: Air taxi operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Chicago Department of Aviation.

Issued in Des Plaines, Illinois, on December 11, 2002.

Mark A. McClardy,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 02–31885 Filed 12–17–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Monroe Regional Airport, Monroe, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Monroe Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 17, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Cleve Norell, Manager of Monroe Regional Airport at the following address: Manager, Monroe Regional Airport, 5400 Operations Road, Room 220, Terminal Building, Monroe, LA 71203.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Monroe Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On December 10, 2002 the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FA will approve or disapprove the application, in whole or in part, no later than April 1, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: June 1, 2003.

Proposed charge expiration date: April 1, 2006.

Total estimated PFC revenue: $1,134,672.

PFC application number: 03–01–C–00–MLU.

Brief description of proposed project(s):

Projects to Impose and Use PFC's

1. Aircraft Loading Equipment Improvements
2. Rehabilitate Airfield Lighting
3. Professional and Administrative Fees

Proposed class or classes of air carriers to be exempted from collecting PFC's: FAR Part 135 on demand air Taxi/Commercial Operators (ATCO) reporting on FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Monroe Regional Airport.

Issued in Fort Worth, Texas on December 10, 2002.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 02–31886 Filed 12–17–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval Guidelines for Airborne Software

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and requests comments on a proposed Order that guides the Aircraft Certification Service (AIR) field offices (that is, Aircraft Certification Offices and Manufacturing Inspection District or Satellite Offices) and Designated Engineering Representatives (DER) on how to apply RTCA/DO–17B, "Software Considerations in Airborne Systems and Equipment Certification," for approving airborne software. Advisory Circular (AC) 20–115B, RTCA, Inc. Document RTCA/DO–178B, recognizes RTCA/DO–178B as an acceptable means of compliance for securing the Federal Aviation Administration's (FAA) approval of software in airborne systems and equipment. The proposed Order establishes guidelines for approving software in compliance with RTCA/DO–178B. The guidelines are applicable to the approval of airborne systems and equipment and the software aspects of those systems related to type certificates (TC), supplemental type certificates (STC), amended type certificates (ATC), amended supplemental type certificates (ASTC), and technical standard order (TSO) authorizations.

DATES: Comments must be received on or before January 21, 2003.

ADDRESSES: Send all comments on the proposed Order to: Technical Programs & Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration 800 Independence Avenue, SW., Room 835, Washington, DC 20591. Or deliver comments to: Federal Aviation Administration (FAA), Room 835, 800 Independence Avenue, SW., Washington, DC 20591. Comments must identify the Order file number.

FOR FURTHER INFORMATION CONTACT: Mr. John Lewis, Technical Programs & Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Room 835, Washington, DC 20591; Telephone No. (202) 493–4841; FAX No. (202) 267–5340; E-mail address: *John.Lewis@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the proposed Order by submitting written data, views, or arguments to the above specified address. Comments received on the proposed Order may be examined, before and after the comment closing date, Room 835, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director, Aircraft Certification Service will consider all communications received on or before the closing date for comments before issuing the final Order.

Background

Between 1998–2002, the FAA produced a number of software-related notices to provide guidelines for FAA Aviation Safety Engineers (ASE), Aviation Safety Inspectors (ASI), and DERs in various areas of software approval. The proposed Order combines those notices into a single document. On January 11, 1993, the FAA issued AC 20–115B which recognizes RTCA/DO–178B as a means of demonstrating compliance to regulations for the software aspects of airborne systems and equipment certification. The proposed Order assumes that RTCA/DO–178B is the means of compliance proposed by the applicant for software approval (except where previously developed software and legacy systems are addressed). If the applicant proposes other means, additional policy and FAA guidance may be needed on a project-by-project basis.

How To Obtain Copies

You may obtain a copy of the proposed Order via Internet (*http://av-info.faa.gov/software/drafts.htm*) or by inquiring at the office listed under **FOR FURTHER INFORMATION CONTACT.** Copies of Document No. RTCA/DO–178B may be purchased from the RTCA Inc., 1828 L Street, NW., Suite 807, Washington, DC 20036 (Web-site: *http://www.rtca.org*).

You may inspect the RTCA document at the FAA office location listed under **ADDRESSES.** However, RTCA documents are copyrighted and may not be reproduced without the written consent of RTCA, Inc.

Issued in Washington, DC, on December 12, 2002.

Carol Martineau,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 02–31887 Filed 12–17–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

[FHWA Docket No. FHWA–2002–13290]

Draft Nationwide Section 4(f) Evaluation and Proposed Determination for Federal-Aid Transportation Projects That Have a Net Benefit to a Section 4(f) Property

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA jointly with the FTA proposes a nationwide programmatic Section 4(f) evaluation (programmatic evaluation) for use in certain federally assisted or direct Federal transportation improvement projects where the use of land from a Section 4(f) park, recreation area, wildlife or waterfowl refuge, or historic property will result in a net benefit to the Section 4(f) property. The use of such a programmatic evaluation is intended to promote environmental stewardship and streamline the Section 4(f) process by reducing the time necessary to prepare an evaluation that satisfies Section 4(f) requirements. This programmatic evaluation would provide an additional procedural option for demonstrating compliance with the requirements of Section 4(f). It would supplement existing nationwide Section 4(f) evaluations all of which would

remain in effect. The FHWA and the FTA solicit comments on this proposed nationwide programmatic Section 4(f) evaluation that could be used in certain instances where the effects of a proposed transportation project result in a net benefit to a Section 4(f) property.

DATES: Comments must be received on or before February 18, 2003.

ADDRESSES: Submit written, signed comments to FHWA Docket No. FHWA–2002–13290 to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, or submit electronically at *http://dms.dot.gov/submit.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgement page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Leland Dong, Office of Project Development and Environmental Review, HEPE, (202) 366–2058; Ms. April Marchese, Office of the Chief Counsel, HCC–30 (202) 366–0791. FHWA office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. For FTA: Mr. Joseph Ossi, Office of Planning, TPL–22, (202) 366–0096; Mr. Scott Biehl, Office of the Chief Counsel, TCC–30, (202) 366–0952. FTA office hours are from 8:30 a.m. to 5:00 p.m. e.t., Monday through Friday, except Federal holidays. Both offices are located at 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing: You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dms.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 or 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also be downloaded from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661 by using a computer, modem and suitable communications software. Internet users may also reach the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

Background

Federally aided and direct Federal transportation projects that propose to use land from significant public parks, recreation areas, and wildlife and/or waterfowl refuges, or from significant historic sites are subject to Section 4(1)[1] of the U.S. Department of Transportation Act of 1966 (Public Law 89–670, 80 Stat. 931, October 15, 1966), a provision now codified in Title 49 United States Code, section 303 (the Act). The Act prohibits such use unless the FHWA or FTA determines that: (1) There is no feasible and prudent avoidance alternative; and (2) that the project includes all possible planning to minimize harm to the Section 4(f) property.

These efforts are normally documented in an individual Section 4(f) evaluation. For FHWA projects, it may be possible to utilize one of four nationwide programmatic Section 4(f) evaluations that were developed for specific circumstances.[2] It should be noted that the FTA has not previously made any programmatic Section 4(f) determinations.

The benefits of nationwide programmatic Section 4(f) evaluations are realized by substantially reducing the time and effort necessary to satisfy the requirements of the Act, however, each has specific limiting applicability criteria. For projects that do not meet the applicability criteria, the FHWA or the FTA must prepare an individual, case-specific Section 4(f) evaluation.

The purpose in drafting this proposed nationwide programmatic Section 4(f) evaluation is to address projects that have a net benefit, or enhancement to a Section 4(f) property. Currently, if a transportation project proposes a use of a Section 4(f) property, it is possible that none of the existing nationwide programmatic Section 4(f) evaluations can be utilized, even if transportation officials and officials having jurisdiction over the Section 4(f) property all agree that there would be a net benefit to the Section 4(f) property. Officials having jurisdiction may include: Federal, State or local park authorities; in the case of historic resources, the State Historic Preservation Officer (SHPO); or when appropriate, the Tribal Historic Preservation Officer (THPO); and any other official having official involvement (*i.e.* Department of Interior (DOI) representative because of funding from the Land and Water Conservation Fund Act, etc.). A net benefit is achieved when the use and mitigation measures result in an overall enhancement, as compared to the do-nothing alternative, in the functions and values for which the 4(f) property was originally determined eligible for Section 4(f) protection.

Description of Proposed Action

This action presents a proposed nationwide programmatic evaluation that could be used when there is a net benefit to a Section 4(f) property. The applicability criteria for this proposed programmatic evaluation states that all parties must agree with the assessment of the impacts of the project; the proposed mitigation and other measures must preserve and enhance those activities, features, or attributes of the Section 4(f) property that originally qualified the property for Section 4(f) protection when compared to the avoidance or the do-nothing alternatives; and the result must be a net benefit to the Section 4(f) property. If agreement cannot be reached, then the programmatic evaluation cannot be utilized.

Use of this proposed programmatic evaluation has the potential to streamline the existing Section 4(f) process by allowing the programmatic evaluation in lieu of an individual Section 4(f) evaluation. The programmatic evaluation is also allowed in conjunction with an Environmental Impact Statement (EIS) required by the National Environmental Policy Act of 1969 (42 U.S.C 4331 *et al.*).[3]

Examples

We thought it would be beneficial to list some examples of projects having net benefits to Section 4(f) resources. These examples are as follows:

One typical example of a net benefit is the reconstruction of a deteriorated or lost historic feature (such as a rock wall) of a historic Section 4(f) property in a location slightly different than originally sited because of a needed improvement to the adjacent transportation facility. Although the property owner, the SHPO and the transportation agency all agree that the reconstruction would enhance the property, even with the loss of historic land, the consultation required by Section 106 of the National Historic Preservation Act (16 U.S.C. 470f)[4] would likely result in an "adverse affect" determination. In such a case, the existing FHWA nationwide programmatic evaluation for historic sites would not be applicable. However, in this situation this proposed programmatic evaluation would be applicable.

A second example could be a partial or even total relocation of a Section 4(f) property (such as a small community park) to a location within the community that would have a greater value and use to that community. In this case, the existing nationwide park programmatic could not be used since there is impairment of the remaining Section 4(f) land. Again, this proposed programmatic evaluation would be applicable. A third example is the placement of transportation guide signs for a recreation facility within the boundary of the Section 4(f) property. The signs would benefit both the traveling public and the Section 4(f) property itself; however, placement location could be considered a permanent use and one of the existing programmatics would not be applicable. Therefore, the proposed programmatic evaluation would be beneficial.

A final example is the renovation of an historic railroad station to maintain its major historic elements and to permit its continued use as a historic transportation facility. In most cases, such renovation, even with considerable sensitivity to the historic character of the resource, cannot be accomplished without an adverse effect on the station. Therefore, neither the regulatory provision at 23 CFR 771.135(f) related to historic transportation facilities nor the historic site programmatic could be utilized. The adverse effect may be caused, for example, by modifications to provide access for the disabled or by interior reconfiguration to provide retail space to keep the station economically viable as a transportation facility. The benefits of the restoration of the station and the assurance of its continued use for its historic purpose may greatly outweigh the small adverse effect.

However, there may be times when the proposed programmatic evaluation would not apply. For example, the owner of a historic building has abandoned the building so that it is likely to continue to deteriorate. The transportation agency proposes to demolish the building for a transportation improvement, and agrees to record the building in accordance with the standards set by the Historic American Building Survey (HABS)[5] prior to its demolition. In the project design year (20 years hence) without the project, the building may be effectively demolished through neglect. In the design year of the project, the building will be demolished but a record of the building will be made. The SHPO agrees that having the record of the demolished building is an improvement over not having such a record. Nevertheless, this programmatic evaluation would not apply because it requires that the improvement of the resource be relative to the present-day condition and status of the resource. The future condition of the resource without the project is too speculative to serve as the basis for deciding whether there is a benefit to the resource. An individual Section 4(f) evaluation would be needed.

Mechanics

When it is necessary to use this proposed programmatic evaluation, the FHWA Division Administrator/Division Engineer or FTA Regional Administrator will make the appropriate Section 4(f) determination only after assuring and documenting that the project meets the applicability criteria provided in the programmatic evaluation, that the alternatives to the use of Section 4(f) property have been fully considered, that the measures to minimize harm and mitigation efforts agreed upon by the officials with net benefit to the Section 4(f) property, and that such measures have been incorporated into the project.

Authority: 49 U.S.C. 303; 23 U.S.C. 138; 49 CFR 1.48.

Issued on: December 11, 2002.

Jennifer L. Dorn,

Federal Transit Administrator.

Mary E. Peters,

Federal Highway Administrator.

The text of the FHWA/FTA Proposed Programmatic Section 4(f) Evaluation and Approval for Transportation Projects That Have a Net Benefit to a Section 4(f) Property is as follows:

Department of Transportation

Federal Highway Administration

Federal Transit Administration

Proposed Programmatic Section 4 (F) Evaluation and Approval for Transportation Projects That Have a Net Benefit to a Section 4(F) Property

This nationwide programmatic Section 4(f) evaluation (programmatic evaluation) has been prepared for transportation improvement projects on existing or new alignments that will use land of a Section 4(f) park, recreation area, wildlife or waterfowl refuge, or historic property, which in the view of the official with jurisdiction over the Section 4(f) land, the use of the Section 4(f) land will result in a net benefit to the Section 4(f) property. This programmatic evaluation satisfies the requirements of Section 4(f) for projects meeting the applicability criteria listed below. An individual Section 4(f)

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[1] Section 4(f) of the U.S. DOT Act of 1966, as subsequently amended, stated in relevant part:

"(b) The Secretary of Transportation shall cooperate with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of lands crossed by transportation activities.

(c) The Secretary may approve a transportation program or project requiring the use (other than any project for a park road or parkway under section 204 of title 23) of publically owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) only if—

(1) there is no prudent and feasible alternative to using that land; and

(2) the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use." 49 U.S.C 303.

[2] Final Nationwide Section 4(f) Evaluations and Approvals for Federally-Aided Highway Projects with Minor Involvements With Public Parks, Recreational Lands, Wildlife and Waterfowl Refuges, and Historic Sites; *see* 52 FR 31111, August 19, 1987. The Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects With Minor Involvements With Historic Sites was also published on August 19, 1987, and can be found at 52 FR 31118.

See also a notice regarding programmatic Section 4(f) evaluation and approval for FHWA projects that necessitate the use of historic bridges. This notice is entitled, "Historic Bridges; Programmatic Section 4(f) Evaluation and Approval" and was published in the **Federal Register** on August 22, 1983, at 48 FR 38135. Negative Declaration/Section 4(f) Statement for Independent Bikeway or Walkway Construction Projects, FHWA Memorandum, May 23, 1977.

[3] The National Environmental Policy Act of 1969 (NEPA) states that Environmental Impact Statements (EIS) are required for all major Federal actions (or those involving Federal monies) that could have a significant effect on the environment.

[4] Section 106 (16 U.S.C. 470f) states that "The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking."

[5] The Secretary of the Interior issued Standards for Architectural and Engineering Documentation in the Federal Register on September 29, 1983. These standards are commonly known as the Historic American Building Survey/Historic American Engineering Record (HABS/HAER) Standards for the HABS/HAER program of the National Park Service. These Standards are available at the following URL: *http://www.cr.nps.gov/habshaer/pubs/sisgaed.pdf.*

evaluation will *not* need to be prepared for such projects.

"Administration" refers to the Federal Highway Division Administrator or Division Engineer (as appropriate) for the Federal Highway Administration, and the Regional Administrator for the Federal Transit Administration.

The Administration is responsible for review of each transportation project for which this programmatic evaluation is contemplated to determine that it meets the criteria and procedures of this programmatic evaluation. The information and determination will be included in the applicable National Environmental Policy Act (NEPA) documentation. This programmatic evaluation will not change any existing procedures for NEPA compliance, public involvement, National Historic Preservation Act (NHPA) Section 106 consultation procedures, Land and Water Conservation Fund Act Section 6(f) requirements, or any other applicable Federal environmental requirements.

Applicability

This programmatic evaluation may be applied by the Administration to projects meeting the following criteria:

1. The proposed transportation project uses land of a Section 4(f) park, recreation area, wildlife or waterfowl refuge, or historic site.

2. The proposed project resulting in the use of the Section 4(f) land includes all appropriate measures to minimize harm and mitigation to preserve, rehabilitate, and enhance the activities, features, or attributes of the property that originally qualified the property for Section 4(f) protection.

3. For historic Section 4(f) properties, the project does not require the demolition or major alteration of the characteristics that qualify the property for the National Register of Historic Places (NRHP). Nor does the project require the disturbance or removal of archaeological properties that are determined important for preservation in-place rather than information obtained through data recovery. The determination of a major alteration or the importance to preserve in-place will be based on consultation in accordance with 36 CFR part 800.

4. In accordance with 36 CFR part 800, for historic Section 4(f) properties, there must be agreement reached amongst the SHPO or THPO, as appropriate, transportation officials, and other appropriate parties, on mitigation to minimize harm when there is a use of Section 4(f) property. Such measures must be incorporated into the project.

5. The officials with jurisdiction over the Section 4(f) property, or the SHPO/THPO (for historic/historic tribal properties) agree in writing with the assessment of the impacts, the proposed measures to minimize harm and mitigation necessary to preserve and enhance those activities, features, or attributes of the Section 4(f) property, and that the mitigation will result in a net benefit to the Section 4(f) property. A net benefit is achieved when the use and subsequent measures to minimize harm and mitigation result in an overall enhancement when compared to the do-nothing or avoidance alternatives using the functions and values that made the property eligible for Section 4(f) protection. A project does not achieve a "net benefit" if it will result in a substantial diminishment of any particular function or value that made the property eligible for Section 4(f) protection, even if the property overall is enhanced.

6. The Administration determines that the project facts match those set forth in the Applicability, Alternatives, Findings, and Mitigation sections of this programmatic evaluation.

This programmatic evaluation can be applied to any project regardless of class of action under NEPA.

Alternatives

To demonstrate that there is no feasible and prudent alternative to the use of Section 4(f) property, the programmatic evaluation analysis must address alternatives that avoid the Section 4(f) land. The following alternatives avoid the use of the Section 4(f) land:

1. Do nothing.

2. Improve the transportation facility in a manner that addresses the project's purpose and need without a use of the Section 4(f) property.

3. Build the transportation facility at a location that does not require use of the Section 4(f) property.

This list is intended to be all-inclusive. The programmatic evaluation does not apply if a feasible and prudent alternative is identified that is not discussed in this document. The project record must clearly demonstrate that each of the above alternatives was fully evaluated before the Administration can conclude that the programmatic evaluation can be applied to the project.

Findings

For this programmatic evaluation to be applied to a project, there must be a finding that the do-nothing and avoidance alternatives are not feasible and prudent. The finding must be supported by the circumstances, studies, consultations, and other relevant information for the project. To support the finding, adverse factors associated with the avoidance alternative, such as environmental impacts, safety and geometric problems, decreased transportation service, increased costs, and any other factors may be considered collectively. An accumulation of these kinds of problems must be of extraordinary magnitude when compared to the proposed use of the Section 4(f) land to determine that alternative is not feasible and prudent. The net impact of any no-build or build alternative must also consider the before-and-after value and benefit of the Section 4(f) property itself and relationship to the surrounding area or community:

1. *Do Nothing Alternative.*

The Do Nothing Alternative is not feasible and prudent because it would neither address nor correct the transportation need cited in the Purpose and Need, which necessitated the proposed project.

2. *Improve the facility in a manner that addresses purpose and need without use of the Section 4(f) property.*

It is not feasible and prudent to avoid Section 4(f) lands by using engineering design or transportation system management techniques, such as minor location shifts, changes in engineering design standards, use of retaining walls and/or other structures, and traffic diversions or other traffic management measures. Implementing such measures would result in:

(a) Substantial adverse community impacts to adjacent homes, businesses or other improved properties;

(b) Substantially increased transportation facility or structure cost;

(c) Unique engineering, traffic, maintenance, or safety problems;

(d) Substantial adverse social, economic, or environmental impacts;

(e) A substantial missed opportunity to benefit a Section 4(f) property;

(f) Identified transportation needs not being met; or

(g) Impacts, costs, or problems of truly unusual or unique, or extraordinary magnitude when compared with the proposed use of Section 4(f) lands after taking into account proposed measures to minimize use and mitigate for adverse uses, and enhance the functions and value of the Section 4(f) property. Flexibility in the use of applicable standards is encouraged during the analysis of this alternative.

3. *Build a new facility at a new location without a use of the Section 4(f) property.*

It is not feasible and prudent to avoid Section 4(f) lands by constructing at a new location because:

(a) A new location would not address or correct the problems cited in the Purpose and Need, which necessitated the proposed project;

(b) A new location would result in substantial adverse social, economic, or environmental impacts (including such impacts as extensive severing of productive farmlands, displacement of a substantial number of families or businesses, serious disruption of community cohesion, substantial damage to wetlands or other sensitive natural areas, or greater impacts to other Section 4(f) lands);

(c) A new location would substantially increase costs or cause substantial engineering difficulties (such as an inability to achieve minimum design standards, or to meet the requirements of various permitting agencies such as those involved with navigation, pollution, or the environment); or

(d) Problems, impacts, costs, or difficulties would be truly unusual or unique, or of extraordinary magnitude when compared with the proposed use of the Section 4(f) property after taking into account proposed measures to minimize use, mitigation for adverse uses, and the enhancement of the Section 4(f) property's functions and value.

Flexibility in the use of applicable standards is encouraged during the analysis of this alternative.

Measures To Minimize Harm and Mitigation

This programmatic evaluation and approval may be used only for projects where the Administration, in accordance with this evaluation, ensures that the proposed action includes all possible planning to minimize harm and includes mitigation measures, and that the agency with jurisdiction agrees in writing with the assessment that the project, including measures to minimize harm, will have a net benefit and contribute towards the preservation and enhancement of the function and values of the Section 4(f) property.

Coordination

In early stages of project development, each project will require coordination with the Federal, State, and/or local agency officials having jurisdiction over the Section 4(f) property. For non-Federal Section 4(f) properties, *i.e.* State or local properties, the official with jurisdiction will be asked to identify any Federal encumbrances. When encumbrances exist, coordination will be required with the Federal agency responsible for such encumbrances.

Copies of the final written support required under this programmatic Section 4(f) evaluation shall be provided to the official(s) having jurisdiction over the Section 4(f) property and to other interested parties as part of the normal NEPA documentation process, or upon request.

The Administration will coordinate with the appropriate U.S. Coast Guard District Commander before applying this programmatic evaluation to projects requiring a Section 9 Bridge Permit.

Public Involvement

The project includes public involvement activities that are consistent with the specific requirements of 23 CFR 771.111—Early coordination, public involvement and project development. For a project where one or more public hearings are held, information on the proposed use of the Section 4(f) land is communicated at the public hearing(s).

Approval Procedure

This programmatic Section 4(f) approval applies only after the Administration has:

1. Determined that the project meets the applicability criteria set forth in *Applicability* section;

2. Determined that all of the alternatives set forth in the Findings section have been fully evaluated;

3. Determined that the findings in this document (which conclude that the alternative recommended is the only feasible and prudent alternative) results in a clear net benefit to the function and value of the Section 4(f) property;

4. Determined that the project complies with the *Measures to Minimize Harm and Mitigation* section of this document;

5. Determined that the coordination and public involvement indicated in this programmatic evaluation have been successfully completed and necessary written agreements have been obtained; and

6. Documented the information that clearly identifies the basis for the above determinations and assurances.

Pursuant to Section 4(f), this statement has been coordinated with the Departments of Interior, Agriculture, Housing and Urban Development, and the Advisory Council on Historic Preservation.

[FR Doc. 02–31888 Filed 12–17–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2002–14063]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before February 18, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Christensen, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–5909; fax: 202–493–2180, or e-mail: *tom.christensen@marad.dot.gov*. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: EUSC/Parent Company.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0511.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval.

Summary of Collection of Information: The Effective U.S. Control (EUSC)/Parent Company collection consists of an inventory of foreign-registered vessels owned by U.S. citizens. Specifically, the collection consists of responses from vessel owners verifying or correcting vessel ownership data and characteristics found in commercial publications. The information obtained could be vital in a national or international emergency, and is essential to the logistical support planning operations conducted by MARAD officials.

Need and Use of the Information: The information is used in contingency planning and provides data related to potential sealift capacity to support movement of fuel and military equipment to crisis zones.

Description of Respondents: U.S. citizens who own foreign-registered vessels.

Annual Responses: 80 responses.

Annual Burden: 40 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments

may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*.

Dated: December 13, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–31839 Filed 12–17–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 25, 2002 (67 FR 60279).

DATES: Comments must be submitted on or before January 17, 2003.

FOR FURTHER INFORMATION CONTACT: Jean McKeever, Associate Administrator for Shipbuilding, Maritime Administration, 400 7th Street, SW., Washington, DC 20590. Telephone: 202–366–5737; FAX: 202–366–7901, or E-mail: *jean.mckeever@marad.dot.gov*. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Capital Construction Fund and Exhibits.

OMB Control Number: 2133–0027.

Type of Request: Extension of currently approved collection.

Affected Public: Owners and operators of U.S.-flag vessels.

Form(s): None.

Abstract: This information collection consists of application for a Capital Construction Fund (CCF) agreement under Section 607 of the Merchant Marine Act, and annual submissions of appropriate schedules and exhibits. The Capital Construction Fund is a tax-deferred ship construction fund that was created to assist owners and operators of U.S.-flag vessels in accumulating the large amount of capital necessary for the modernization and expansion of the U.S. merchant marine. The program encourages construction, reconstruction, or acquisition of vessels through the deferment of Federal income taxes on certain deposits of money or other property placed into a CCF.

Annual Estimated Burden Hours: 2130 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on December 13, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–31838 Filed 12–17–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13933]

Notice of Receipt of Petition for Decision That Nonconforming 1996–2002 Mercedes Benz E Class (W210) Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1996–2002 Mercedes Benz E Class (W210) passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1996–2002 Mercedes Benz E Class (W210) passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because: (1) They are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 17, 2003.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.].

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Automobile Concepts, Inc. of Miami, Florida ("AMC") (Registered Importer 01–278) has petitioned NHTSA to decide whether 1996–2002 Mercedes Benz E Class (W210) passenger cars are eligible for importation into the United States. The vehicles which AMC believes are substantially similar are 1996–2002 Mercedes Benz E Class (W210) passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1996–2002 Mercedes Benz E Class (W210) passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

AMC submitted information with its petition intended to demonstrate that non-U.S. certified 1996–2002 Mercedes Benz E Class (W210) passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1996–2002 Mercedes Benz E Class (W210) passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 114 *Theft Protection,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

The petitioner claims that the vehicles are exempt from the parts marking requirements of the Federal Motor Vehicle Theft Prevention Standard at 49 CFR Part 541 because they are equipped with U.S.-model anti-theft devices that prevent the vehicles from being driven and activate the horn.

In addition, the petitioner claims that the vehicles comply with the Bumper Standard found in 49 CFR Part 581.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Inscription of the word "brake" on the dash in place of the international ECE warning symbol; (b) replacement of the speedometer with the U.S.-model component that reads in miles per hours.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front side marker lights; (b) installation of U.S.-model tail lamp assemblies which incorporate rear side marker lights; (c) installation of a U.S.-model center high mounted stop light assembly on vehicles that are not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component or inscription of the required warning statement on the surface of that mirror.

Standard No. 118 *Power Window Systems:* reprogramming of the power window system so that the windows will not operate with the ignition off.

Standard No. 201 *Occupant Protection in Interior Impact:* The petitioner contends that all components subject to this standard are identical to those on the vehicles' U.S.-certified counterparts, which have been identified by the manufacturer as meeting the upper interior head impact requirements of the standard. All vehicles will be inspected to ensure that they are equipped with the appropriate U.S.-model parts, and those parts will be installed on any vehicles that are not so equipped.

Standard No. 208 *Occupant Crash Protection:* (a) Reprogramming of the seat belt warning buzzer; (b) inspection of all vehicles and replacement of the driver's and passenger's side air bags, control units, sensors, and seat belts with U.S.-model components on vehicles that are not already so equipped. Petitioner states that the vehicles are equipped with seat belts in front and rear outboard and the rear center designated seating positions. Petitioner further states that the vehicles are equipped with a seat belt warning lamp that is identical to the lamp installed on U.S.-certified models.

Standard No. 214 *Side Impact Protection:* inspection of all vehicles to ensure that they are equipped with door bars identical to those in the U.S. certified model and installation of those components on vehicles that are not already so equipped.

Standard No. 301 *Fuel System Integrity:* installation of a U.S.-model fuel tank, fuel level sensor, fuel vapor filter, and rollover valve.

The petitioner states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 13, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–31880 Filed 12–17–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–13989; Notice 1]

Glaval Bus, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Glaval Bus Inc. (Glaval) has determined that a total of 900 "Glaval Model Universal, Primetime, & Titan buses" do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant Crash Protection."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Glaval has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Description of the Noncompliance

During the period of January 1, 1999 through August 16, 2002, Glaval manufactured 900 buses with erroneous labeling. Of this total, all have been delivered to end users.

FMVSS No. 208 (S4.5.1(b)) requires vehicles to have a warning label permanently affixed to the sun visor concerning air bags. FMVSS No. 208 (S4.5.1(b)(3)) prohibits any other information from being on the same side of the sun visor as the air bag warning label, except an air bag maintenance label or a utility vehicle rollover warning label.

The noncompliance relates to the prohibition in S4.5.1(b)(3), in that Glaval was applying a passenger capacity label and in some instances a back up warning label to the sun visor next to the air bag warning label.

Information Supporting the Application

Glaval does not believe that this noncompliance will impact motor vehicle safety because most buses built by Glaval require the driver to have a Commercial Driver's License and these drivers are required to do a pre-trip inspection during which it is highly unlikely they would not notice that the bus had an air bag.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: January 17, 2003.

Authority: (49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: December 13, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–31881 Filed 12–17–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, January 27, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be held Monday, January 27, 2003 from 2 pm PST to 4 pm PST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider an oral or written statement, please call 1–888–912–1227 or 206–220–6096, or write Anne Gruber, TAP Office, 915 2nd Ave, M/S W406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 12, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 02–31860 Filed 12–17–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, January 13, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, January 13, 2003, from 2:30 p.m. central time to 3:30 p.m. central time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 12, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 02–31862 Filed 12–17–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, January 8, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 4 Taxpayer Advocacy Panel will be held Wednesday, January 8, 2003, from 11 a.m. central time to Noon central time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 12, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 02–31863 Filed 12–17–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference.

DATES: The meeting will be held Tuesday, January 21, 2003.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Tuesday, January 21, 2003, from 1 p.m. EST to 2 p.m. EST via a telephone conference call. Public comments will be welcome during the meeting. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or fax to 414–297–1623. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or fax 414–297–1623.

The agenda will include the following: Monthly committee summary report, discussion of issues brought to the joint committee, office report and discussion of next meeting.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 6, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 02–31864 Filed 12–17–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Friday January 17, 2003.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, January 17, 2003, from 11 a.m. EST to 12 noon EST via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 12, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 02–31865 Filed 12–17–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, January 6, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel will be held Monday, January 6, 2003 from 1 p.m. PST to 3 p.m. PST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6095, or write Anne Gruber, TAP Office, 915 2nd Ave, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6095.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 12, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 02–31866 Filed 12–17–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the State of California)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, January 14, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Peterson O'Brien at 1–888–912–1227, or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Tuesday, January 14th, 2002 from 12:30 pm Pacific Time to 2:30pm Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6098, or write to Mary Peterson O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary Peterson O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6098.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 6, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 02–31867 Filed 12–17–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, January 22, 2003.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Wednesday, January 22, 2003, from 12 noon EST to 1 pm EST via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 7771 W. Oakland Park Blvd. Rm. 225, Sunrise, FL 33351. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include the following: IRS Notices.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 12, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 02–31861 Filed 12–17–02; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
December 18, 2002

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Taconite Iron Ore Processing; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[Docket ID No. OAR–2002–0039; FRL–7417–1]

RIN 2060–AJ02

National Emission Standards for Hazardous Air Pollutants for Taconite Iron Ore Processing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for taconite iron ore processing plants. The EPA has identified taconite iron ore processing plants as a major source of hazardous air pollutant (HAP) emissions. These proposed standards will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting application of the maximum achievable control technology (MACT).

The HAP emitted by plants in the taconite iron ore processing source category include metal compounds (primarily manganese, arsenic, lead, nickel, and chromium), products of incomplete combustion (primarily formaldehyde), and acid gases (hydrochloric acid and hydrofluoric acid). Exposure of these substances has been demonstrated to cause adverse health effects, including chronic and acute disorders of the blood, heart, kidneys, liver, reproductive system, respiratory system, and central nervous system. Some of these pollutants are considered to be carcinogens.

DATES: *Comments.* Submit comments on or before February 18, 2003.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by January 7, 2003, a public hearing will be held on January 17, 2003.

ADDRESSES: *Comments.* Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Send comments (in duplicate, if possible) to: Taconite Iron Ore Processing NESHAP Docket, EPA Docket Center (Air Docket), U.S. EPA West, Mail Code 6102T, Room B108, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0039. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

Public Hearing. If a public hearing is held, it will be held at the new EPA facility complex in Research Triangle Park, NC beginning at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Conrad Chin, Metals Group, Emission Standards Division (C439–02), Research Triangle Park, NC 27711, telephone number (919) 541–1512, electronic mail address: chin.conrad@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Category	NAICS*	Example of regulated entities
Taconite Iron Ore Processing Facilities	21221	Taconite Iron Ore Processing Facilities [taconite ore crushing and handling operations, indurating furnaces, finished pellet handling operations, and ore dryers].

*North American Information Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your plant is regulated by this action, you should examine the applicability criteria in § 63.9581 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket

The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0039. The official public docket is the collection of materials that is available for public viewing in the Taconite Iron Ore Processing NESHAP Docket at the EPA Docket Center (Air Docket), EPA West, Room B108, 1301 Constitution Avenue, NW., Washington, DC 20460. The Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Air Docket is (202) 566–1742.

Electronic Access

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or review public comments, access the index of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statue, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statue. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

Comments

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments submitted after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

Electronically

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions for submitting comments. Once in the system, select "search" and then key in Docket ID No. OAR–2002–0039. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *air-and-r-docket@epa.gov*, Attention Docket ID No. OAR–2002–0039. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in this document. These electronic submissions will be accepted in Wordperfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail

Send your comments (in duplicate, if possible) to: Taconite Iron Ore Processing NESHAP Docket, EPA Docket Center (Air Docket), U.S. EPA West, Mail Code 6102T, Room B108, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0039.

By Hand Delivery or Courier

Deliver your comments (in duplicate, if possible) to: EPA Docket Center, U.S. EPA West, Mail Code 6102T, Room B108, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. OAR–2002–0039. Such deliveries are only accepted during the Docket Center's normal hours of operation as identified in this document.

By Facsimile

Fax your comments to: (202) 566–1741, Attention Taconite Iron Ore Processing NESHAP Docket, Docket ID No. OAR–2002–0039.

CBI

Do not submit information that you consider to be CBI through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, 109 TW Alexander Drive, Research Triangle Park, NC 27709, Attention Docket ID No. OAR–2002–0039. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Public Hearing

Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Cassie Posey, Metals Group, Emission Standards Division (C439–02), Research Triangle Park, NC 27711, telephone number (919) 541–0069, in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Cassie Posey to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Worldwide Web (WWW)

In addition to being available in the docket, an electronic copy of today's proposal will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Outline

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I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The category of major sources covered by today's proposed NESHAP, Taconite Iron Ore Processing, was listed on July 16, 1992 (57 FR 31576). Major sources of HAP are those that have the potential to emit greater than 10 tons/yr of any one HAP or 25 tons/yr of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any health and environmental impacts, and energy requirements.

C. What Source Category Is Affected by This Proposed Rule?

Section 112(c) of the CAA requires us to list all categories of major and area sources of HAP for which we will develop national emission standards. We published the initial list of source categories on July 16, 1992 (57 FR 31576). "Taconite Iron Ore Processing" is one of the source categories on the initial list. The listing was based on our determination that taconite iron ore processing plants may reasonably be anticipated to emit a variety of HAP listed in section 112(b) in quantities sufficient to be major sources.

A taconite iron ore processing plant separates and concentrates iron ore from taconite, a low-grade iron ore, and produces taconite pellets, which are approximately 60 percent iron. The taconite iron ore processing source category includes, but is not limited to, ore crushing and handling units, ore dryers, indurating furnaces, and finished pellet handling units. At present, taconite iron ore pellets are produced at eight plant sites in the U.S.; six plants are in Minnesota and two plants are in Michigan.

D. What Processes Are Used at Taconite Iron Ore Processing Plants?

Taconite iron ore processing includes crushing and handling of the crude ore; concentrating (milling, magnetic separation, chemical flotation, etc.); agglomerating (dewatering, drying, and balling); indurating; and finished pellet handling. The main processes of interest because of their potential to generate HAP emissions include ore crushing and handling, ore drying, indurating, and finished pellet handling.

Taconite ore is obtained from the ground using a strip mining process. First, millions of tons of surface material and rock are removed to expose the taconite ore-bearing rock layers. Next, the taconite ore is blasted, scooped up with large cranes with shovels, and loaded into transport vehicles such as 240-ton haulage trucks or railcars. The transport vehicles move the ore from the mine to the primary crushers. At most plants the mine is located adjacent to the ore processing plant. However, at a few plants the mine and the ore processing plant are miles apart. In these cases, the taconite ore is loaded onto railcars and transported by train to the processing plant.

The ore crushing process begins where the taconite ore from the mine is dumped from trucks or railcars into the primary crusher or into feed stockpiles for the primary crusher. The ore is dry-crushed in one to four stages depending on the hardness of the ore. Gyratory cone crushers are generally used for all stages of crushing. Primary crushing reduces the crude ore from run-of-mine size to a size about six inches in diameter, while fine crushing further reduces the material to a size about ¾ of an inch in diameter. Intermediate vibratory screens remove the undersized material from the feed before it enters the next crusher. Dry ore crushing and handling also includes a number of conveying and transfer points as the ore is moved from one crushing stage to the next. After it is adequately crushed, the ore is conveyed to large ore storage bins at the concentrator building.

In the concentrator building, water is typically added to the ore as it is conveyed into rod and ball mills which further grind the taconite ore to the consistency of coarse beach sand. A rod/ball mill is a large horizontal cylinder that rotates on its horizontal axis and is charged with heavy steel rods or balls and the taconite ore/water slurry. As the rods/balls tumble inside the mill, they grind the ore into finer particles.

In a subsequent process step, taconite ore is separated from the waste rock material using a magnetic separation process. During magnetic separation, a series of magnetized cylinders rotate while submerged in the taconite iron ore slurry. The iron-bearing taconite particles adhere to the magnetized cylinder surface and are collected as a iron-rich slurry. The iron content of the slurry is further increased using a combination of hydraulic concentration (gravity settling) and chemical flotation.

Since the concentrating processes are completely wet operations, any potential particulate or HAP metal emissions are suppressed. However, there are exceptions, such as one plant that conducts dry cobbing (a dry magnetic separation process) instead of a wet magnetic separation process.

The concentrated taconite slurry then enters the agglomerating process. Water is typically removed from the taconite slurry using vacuum disk filters or similar equipment. One plant, which processes a finer grained ore, uses rotary dryers after the disc filters to dry the ore further. These dryers are rotary dryers, which repeatedly tumble the wet ore concentrate through a heated air stream to reduce the amount of entrained moisture in the ore. Next, the taconite is mixed with various binding agents such as bentonite or dolomite in a balling drum which tumbles and rolls the taconite into unfired pellets. When the unfired pellets exit the balling drum, they are transferred to a metal grate that conveys them to the furnace. Once the pellets exit the balling drum they are relatively dry and, therefore, have the potential to emit particulate HAP.

During the indurating process, the unfired taconite pellets are hardened and oxidized in the indurating furnace at a fusion temperature between 2,290 to 2,550 °F. Two types of indurating furnaces are currently used within this source category: straight grate furnaces and grate kiln furnaces. The indurating furnace process begins at the point where the grate feed conveyor discharges the unfired pellets onto the furnace traveling grate and ends where the hardened pellets exit the indurating furnace cooler.

In straight grate indurating furnaces, a continuous bed of unfired pellets is carried on a metal grate through different furnace temperature zones. Each zone will have either a heated upward draft or downward draft blown through the pellets. A layer of fired pellets is placed on the metal grate prior to the addition of unfired pellets. This hearth-layer allows for even airflow through the pellet bed and acts as a buffer between the metal grate and the exothermic heat generated from the oxidation of taconite pellets in the indurating stage. Before the pellets can be oxidized, all remaining moisture is driven off in the first two stages of the furnace, the updraft and downdraft drying zones. Unfired pellets must be heated gradually; otherwise, moisture in the unfired pellets expands too quickly and causes the pellets to explode. After they are dried, the pellets enter a preheat zone of the furnace where the temperature is gradually increased for the indurating stage. The next zone is the actual firing zone for induration, where the pellets are exposed to the highest temperature. The fired pellets then enter the post-firing zone, where the oxidation process is completed. Finally, the pellets are cooled by the intake of ambient air typically in two stages of cooling. A unique characteristic of straight grate furnaces is that approximately 30 percent of the fired pellets are recycled to the feed end of the furnace for use as the hearth layer. The remaining pellets are transported by conveyor belts to storage areas.

Waste gases from the straight grate furnace are discharged primarily through two ducts: the hood exhaust, which handles the cooling and drying gases; and the windbox exhaust, which handles the preheat, firing, and after-firing gases. For a typical straight grate furnace, the two discharge ducts are combined into one common header before the flow is divided into several ducts to be exhausted to the atmosphere after control.

The grate kiln indurating furnace system consists of a traveling grate, a rotary kiln, and an annular cooler. The grate kiln system represents a newer generation of indurating furnaces and is widely used by the taconite plants. As with the straight grate furnace system, the grate kiln system is also a counterflow heat exchanger, with the unfired pellets and indurated pellets moving in a direction opposite to that of the process gas flow. A six-inch bed of unfired pellets is laid on a continuously moving, horizontal grate. The traveling grate carries the unfired pellets into a dryer/preheater that resembles a large rectangular oven. In the first half of the traveling grate, unfired pellets are gradually dried by hot air at a temperature of 700 °F. The second half of the traveling grate is called the preheater, where the unfired pellets are heated to a temperature of 2,000 °F prior to dropping into the rotary kiln furnace.

Pellets are discharged from the traveling grate and into the rotary kiln. Final indurating of the pellets occurs in the kiln as the pellets tumble down the rotating kiln. The rotary kiln typically operates at a temperature of 2,300 to 2,400 °F to ensure that the kiln oxidizes the iron pellets from a magnetite structure into a hematite structure. The hardened pellets are then discharged to a large annular-shaped cooler, which is an integral part of an elaborate energy recuperation system. The fired pellets discharged from the kiln first enter the primary cooling zone of the annular cooler, where ambient air is brought in to cool the pellets in a counter-current flow. After the pellets heat the ambient air to approximately 2,000 °F, it is then used as preheated combustion air in the rotary kiln. As the cooled pellets enter a final cooling zone, additional ambient air is used to cool the pellets further. Air exiting the final cooling zone is heated to approximately 1,000 °F and is used to maintain the temperature in the dryer section of the traveling grate. Pellets exiting the final cooling zone are cooled to an average temperature of 175 to 225 °F. Combustion air from the rotary kiln, which is approximately 2,000 °F, is used to maintain the temperature in the preheat section of the traveling grate.

Pellet cooler vent stacks are atmospheric vents in the cooler section of a grate kiln indurating furnace. Pellet cooler vent stacks exhaust cooling air that is not returned for heat recuperation. Straight grate furnaces do not have pellet cooler vent stacks. The pellet cooler vent stack should not be confused with the cooler discharge stack, which is in the pellet loadout or dumping area. New grate kiln furnace designs eliminate the cooler vent stack by recirculating the air through the furnace.

The finished pellet handling process begins where the fired taconite pellets exit the indurating furnace cooler (*i.e.*, pellet loadout) and ends at the finished pellet stockpile. Operations include finished pellet screening, transfer, and storage.

E. What HAP Are Emitted and How Are They Controlled?

Ore crushing and handling, ore drying, and finished pellet handling are all potentially significant points of particulate matter (PM) emissions. In addition, because taconite ore inherently contains trace metals, such as manganese, chromium, cobalt, arsenic, and lead, they are also emitters of HAP metal compounds. Manganese compounds are the predominate metal HAP emitted from ore crushing and handling, ore drying, and finished pellet handling, accounting for 10 tons/year. All other metal HAP compounds are emitted from ore crushing and handling, ore drying, and finished pellet handling at rates of less than 0.1 tons per year.

Approximately 70 percent of the ore crushing and handling and finished pellet handling units control PM emissions with wet scrubbers, such as venturi scrubbers, marble bed scrubbers, or impingement scrubbers. The remaining units control PM emissions with baghouses, low energy scrubbers (*i.e.*, rotoclones), multiclones, and electrostatic precipitators (ESP). The two ore dryers are controlled by cyclones and impingement scrubbers in series.

The indurating furnaces are the most significant sources of HAP emissions, accounting for about 99 percent of the total HAP emissions from the taconite iron ore processing source category. Three types of HAP are emitted from the waste gas stacks of indurating furnaces. The first type of HAP is metallic HAP existing as a portion of particulate emissions from the taconite ore or fuel (such as coal) fed into the furnaces. Manganese and arsenic compounds are

the predominate metal HAP emitted by indurating furnaces (approximately 5.8 and 6.5 tons/year, respectively, for the industry); chromium, lead, and nickel compounds are emitted in smaller amounts (each approximately between 2 to 5 tons/year for the industry); and antimony, beryllium, cadmium, cobalt, mercury, and selenium compounds are emitted in yet smaller amounts (each approximately less than 1 ton/year for the industry). The second type of HAP is organic HAP resulting as products of incomplete combustion, primarily formaldehyde. Emissions test data from indurating furnaces confirm the presence of formaldehyde. The third type of HAP is acidic gases, such as hydrochloric acid and hydrofluoric acid. Fluorine and chlorine compounds in the raw materials are liberated during the indurating process and combine with moisture in the exhaust to form hydrochloric acid and hydrofluoric acid. Both formaldehyde and the acid gases are present in exhaust gas from the indurating furnace stacks at concentrations around a few parts per million (ppm). Formaldehyde emissions from the entire industry are estimated to be 181 tons/year. Total emissions of hydrogen chloride and hydrogen fluoride are approximately 349 and 308 tons/year, respectively.

Emissions from the indurating furnace stacks are typically controlled with either a venturi wet scrubber or an ESP. One indurating furnace controls emissions with a multiclone and another furnace controls emissions with a gravity collector.

F. What Are the Health Effects Associated With Emissions From Taconite Iron Ore Processing Plants?

As previously mentioned in this preamble, there are a variety of metal HAP contained in the PM emitted from taconite iron ore processing. These include primarily manganese and arsenic compounds, with smaller quantities of lead, nickel and chromium compounds. Antimony, beryllium, cadmium, cobalt, mercury, and selenium compounds are emitted in yet smaller amounts. Other HAP, such as formaldehyde, hydrochloric acid, and hydrofluoric acid, are present in the waste gas stream from the indurating furnace pelletizing stacks on the order of ppm.

Manganese and arsenic compounds comprise the majority of the metal HAP emissions. Adverse health effects in humans have been associated with manganese dietary deficiencies and excessive exposure to manganese. Chronic exposure to low levels of manganese in the diet is considered to be nutritionally essential in humans, with a recommended daily allowance of 2 to 5 milligrams per day. Chronic exposure to high levels of manganese by inhalation in humans results primarily in central nervous system effects. Visual reaction time, hand steadiness, and eye-hand coordination were affected in chronically-exposed workers. Manganism, characterized by feelings of weakness and lethargy, tremors, a mask-like face, and psychological disturbances, may result from chronic exposure to higher levels. Impotence and loss of libido have been noted in male workers afflicted with manganism attributed to inhalation exposures. We have classified manganese in Group D, not classifiable as to carcinogenicity in humans.

Arsenic can be toxic in humans. Acute inhalation exposure to arsenic causes gastrointestinal effects, such as nausea, diarrhea, and abdominal pain, hemolysis, and central nervous system disorders. Chronic inhalation exposure to inorganic arsenic is associated with irritation of the skin and mucous membranes and is strongly associated with lung cancer. We have classified inorganic arsenic as a Group A, a known human carcinogen of high carcinogenic hazard.

Exposure to formaldehyde can result in irritation of the skin and mucous membranes. We have classified formaldehyde as a Group B1, probable human carcinogen of medium carcinogenic hazard.

Acute exposure to the acid gases can cause severe respiratory damage in humans including severe irritation and pulmonary edema. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, and dermatitis in workers. Chronic exposure to low levels of fluoride has a beneficial effect of dental cavity prevention and may be helpful in the treatment of osteoporosis. However, exposure to higher levels of hydrochloric or hydrofluoric acid may cause dental discoloration and erosion.

In addition to HAP, the proposed rule would also reduce PM emissions, which are controlled under national ambient air quality standards. Emissions of PM have been associated with aggravation of existing respiratory and cardiovascular disease and increased risk of premature death.

We recognize that the degree of adverse effects to health experienced by exposed individuals can range from mild to severe. The extent and degree to which the health effects may be experienced depend on:

- Pollutant-specific characteristics (*e.g.*, toxicity, half-life in the environment, bioaccumulation, and persistence);
- The ambient concentrations observed in the area (*e.g.*, as influenced by emission rates, meteorological conditions, and terrain);
- The frequency and duration of exposures; and
- Characteristics of exposed individuals (*e.g.*, genetics, age, pre-existing health conditions, and lifestyle), which vary significantly within the general population.

II. Summary of the Proposed Rule

A. What Are the Affected Sources and Emission Points?

The proposed rule would affect eight plants engaged in the processing of taconite iron ore (six plants in Minnesota and two plants in Michigan). The affected sources within each plant include ore crushing and handling, ore dryers, indurating furnaces, and finished pellet handling. The ore crushing and handling affected source includes the collection of all new and existing ore crushing and handling emission units including all primary, secondary, and tertiary crushers; associated screens, conveyors, storage bins and piles; transfer points; and grate feed. The ore dryer affected source includes each new or existing individual ore dryer. The indurating furnace affected source includes each new or existing individual indurating furnace. The finished pellet handling affected source includes the collection of all new and existing pellet handling emission units including all pellet screens, conveyors, storage bins, piles, and transfer points.

An existing affected source is one constructed or reconstructed on or before December 18, 2002. A new affected source is one constructed or reconstructed after December 18, 2002.

B. What Are the Emission Limitations and Work Practice Standards?

The proposed rule includes PM emission limits, work practice standards, and operating limits for control devices. Particulate matter serves as a surrogate measure of metallic HAP emissions.

The proposed PM emissions limits for ore crushing and handling and finished pellet handling operations are 0.008 grains per dry standard cubic foot (gr/dscf) for existing sources and 0.005 gr/dscf for new sources. Compliance with the proposed PM emissions limits for ore crushing and handling are determined based on the flow-weighted mean concentration of emissions for all ore crushing and handling units at the plant. Similarly, compliance with the proposed PM emissions limits for finished pellet handling are determined based on the flow-weighted mean concentration of PM emissions for all pellet handling units at the plant.

The proposed rule would establish PM emission limits that must be achieved by each individual ore dryer. The proposed emission limit is 0.052 gr/dscf for existing dryers and 0.025 gr/dscf for new dryers. Ore dryers with multiple stacks would calculate their PM emissions as a flow-weighted mean concentration of PM emissions from all stacks.

The proposed rule would establish PM emission limits that must be achieved by each individual indurating furnace. Indurating furnaces with multiple stacks would calculate their PM emissions as a flow-weighted mean concentration of PM emissions from all stacks. For each straight grate indurating furnace processing magnetite, the proposed emissions limit is 0.010 gr/dscf for existing straight grate furnaces and 0.006 gr/dscf for new straight grate furnaces. For each grate kiln indurating furnace processing magnetite, the proposed emissions limit is 0.011 gr/dscf for existing grate kiln furnaces and 0.006 gr/dscf for new grate kiln furnaces. For each grate kiln indurating furnace processing hematite, the proposed emissions limit is 0.025 gr/dscf for existing grate kiln furnaces and 0.018 gr/dscf for new grate kiln furnaces.

The proposed rule also includes specific requirements for continuous parameter monitoring and associated operating limits for baghouses, wet scrubbers, and dry ESP. Baghouses are to be equipped with a bag leak detection system (BLDS) capable of monitoring relative changes in PM loading in the baghouse exhaust, which is to alarm whenever a predetermined set point is exceeded, indicating an increase in emissions above that allowed at the set point. The proposed rule would limit the frequency and duration of alarms to no more than 5 percent of a source's total operating time in any semiannual reporting period. In the case of wet scrubbers, sources would be required to continuously monitor scrubber pressure drop and water flow rate and operate at all times at or above specified hourly average values established during initial performance testing. For dry ESP, sources would be required to install and operate continuous opacity monitoring systems (COMS). Each source must report as a deviation any 6-minute period during which the average opacity exceeds the opacity value corresponding to the 99 percent upper confidence level established during the performance test. The proposed rule would require sources to submit information on alternative monitoring parameters and operating limits if a control device other than a baghouse, wet scrubber, or dry ESP is used.

All plants subject to the proposed rule would be required to prepare and implement a written fugitive dust emissions control plan. The plan would describe in detail the measures that will be put in place to control fugitive dust emissions from the following sources at a plant, as applicable: stockpiles, material transfer points, plant roadways, tailings basin, pellet loading areas and yard areas. Existing fugitive dust emission control plans that describe current measures to control fugitive dust emission sources that have been approved as part of a State implementation plan or title V permit would be acceptable, provided they address the prior-listed fugitive dust emission sources.

C. What Are the Operation and Maintenance Requirements?

All plants subject to the proposed rule would be required to prepare and implement a written startup, shutdown, and malfunction plan according to the requirements in 40 CFR 63.6(e) of the NESHAP General Provisions. In addition, a written operation and maintenance plan is also required for each control device subject to an operating limit. This plan must describe procedures for the inspection and preventative maintenance of control devices, as well as corrective action requirements specific to baghouses equipped with bag leak detection systems. In the event of a bag leak detection system alarm, the plan must include specific requirements for initiating corrective action to determine the cause of the problem within 1 hour, initiating corrective action to fix the problem within 24 hours, and completing all corrective actions needed to fix the problem as soon as practicable.

D. What Are the Initial Compliance Requirements?

To demonstrate initial compliance with the PM emission limit for the ore crushing and handling affected source, the flow-weighted mean concentration of PM emissions of all units within the affected source must not exceed the applicable PM emission limit. Similarly, for the finished pellet handling affected source, the flow-weighted mean concentration of PM emissions of all units within the affected source must not exceed the applicable PM emission limit. In all cases, initial compliance must be demonstrated through a performance test. The performance test must be conducted using EPA Method 5 or 17 in 40 CFR part 60, appendix A. All initial compliance tests must be completed no later than 2 years following the compliance date. In lieu of conducting performance tests for all emission units, the plant may elect to group similar emission units together and conduct initial performance tests on a representative sample of units within each group. Each plant must submit a testing plan to the permitting authority for approval. The testing plan must identify the emission units that will be grouped as similar, identify the representative unit(s) that will be tested for each group, and the proposed schedule for testing.

To demonstrate initial compliance with the PM emission limit for each indurating furnace and each ore dryer, the flow-weighted mean concentration of PM emissions of all stacks for each furnace or each ore dryer must not exceed the applicable PM emission limit. Initial compliance must be demonstrated through an initial performance test. The performance test must be conducted using EPA Method 5 or 17 in 40 CFR part 60, appendix A. The initial compliance test for each indurating furnace and each ore dryer must be completed no later than 180 calendar days after the compliance date. For indurating furnaces and ore dryers with multiple stacks, all stacks for the indurating furnace or ore dryer must be tested simultaneously.

The proposed rule would also require that certain operating limits on control devices be established during the initial compliance test to ensure that control devices operate properly on a continuing basis. All operating limits must be established during a performance test that demonstrates compliance with the applicable emission limit. During the initial compliance tests, operating limits must be established for pressure drop and scrubber water flow rate for all wet scrubbers, and opacity (using a COMS) for dry ESP.

To demonstrate initial compliance with the proposed work practice standards, plants would prepare, submit, and implement a fugitive dust emission control plan on or before the applicable compliance date as specified in § 63.9583 of the proposed rule. To demonstrate initial compliance with the proposed operation and maintenance requirements, plants would certify in their notification of compliance status that they have prepared the written

plans and will operate control devices according to the procedures in the plan.

E. What Are the Continuous Compliance Requirements?

For ore crushing and handling, ore dryers and finished pellet handling units, the proposed rule would require plants to conduct subsequent performance tests to demonstrate continued compliance with the PM emission limits following the schedule established in the title V permit for each plant. If a title V permit has not been issued, the plant must submit a testing plan and schedule to the permitting authority for approval.

For each indurating furnace, the proposed rule would require subsequent testing of all stacks based on the schedule established in each plant's title V operating permit, but no less frequent than twice per 5-year permit term. If a title V permit has not been issued, then the plant must submit a testing plan and schedule to the permitting authority for approval. The testing frequency in the testing plan must be no less frequent than twice per 5-year period.

Plants are required to monitor operating parameters for control devices subject to operating limits and carry out the procedures in their fugitive dust emissions control plan and their operation and maintenance plan. To demonstrate continuous compliance, plants must keep records documenting compliance with the rule requirements for monitoring, the fugitive dust emissions control plan, the operation and maintenance plan, and installation, operation, and maintenance of a continuous parameter monitoring system (CPMS).

For baghouses, plants are required to monitor the relative change in PM loading using a bag leak detection system and make inspections at specified intervals. The bag leak detection system must be installed and operated according to the EPA guidance document "Fabric Filter Bag Leak Detection Guidance," EPA 454/R–98–015, September 1997. The document is available on the TTN at *http:www.epa.gov/ttnemc01/cem/tribo.pdf*. If the system does not work based on the triboelectric effect, it must be installed and operated in a manner consistent with the manufacturer's written specifications and recommendations. The basic inspection requirements include daily, weekly, monthly, or quarterly inspections of specified parameters or mechanisms with monitoring of bag cleaning cycles by an appropriate method. To demonstrate continuous compliance, the proposed rule would require records of bag leak detection system alarms and records documenting conformance with the operation and maintenance plan, as well as the inspection and maintenance procedures.

For scrubbers, plants would be required to use a CPMS to measure and record the hourly average pressure drop and scrubber water flow rate. To demonstrate continuous compliance, plants would keep records documenting conformance with the monitoring requirements and the installation, operation, and maintenance requirements for the CPMS.

For dry ESP, plants are required to use a COMS to measure and record the average hourly opacity of emissions exiting each stack of the control device. Plants must operate and maintain the COMS according to the requirements in 40 CFR 63.8 of the NESHAP General Provisions and Performance Specification 1 in 40 CFR part 60, appendix B. These requirements include a quality control program that consists of a daily calibration drift assessment, quarterly performance audit, and annual zero alignment.

F. What are the Notification, Recordkeeping, and Reporting Requirements?

The proposed notification, recordkeeping, and reporting requirements are based on the NESHAP General Provisions in 40 CFR part 63, subpart A. Table 2 of the proposed rule lists each of the requirements in the General Provisions (§§ 63.2 through 63.15) with an indication of whether they do or do not apply.

The plant owner or operator is required to submit each initial notification required in the NESHAP General Provisions that applies to their plant. These include an initial notification of applicability with general information about the plant and notifications of performance tests and compliance status.

Plants are required to maintain the records required by the NESHAP General Provisions that are necessary to document compliance, such as performance test results; copies of startup, shutdown, and malfunction plans and associated corrective action records; monitoring data; and inspection records. Except for the operation and maintenance plan for control devices, the fugitive dust emissions control plan, and the testing plan, all records must be kept for a total of 5 years, with the records from the most recent 2 years kept onsite. The proposed rule would require that the operation and maintenance plan for control devices subject to an operating limit, the fugitive dust emissions control plan, and the testing plan, be kept onsite and available for inspection upon request for the life of the affected source or until the affected source is no longer subject to the rule requirements.

Semiannual reports are required for any deviation from an emission limitation, including an operating limit. Each report is due no later than 30 days after the end of the reporting period. If no deviation occurred, only a summary report is required. If a deviation did occur, more detailed information is required.

An immediate report is required if there were actions taken during a startup, shutdown, or malfunction that were not consistent with the startup, shutdown, and malfunction plan and the source exceeded its emission limit. Deviations that occur during a period of startup, shutdown, or malfunction are not violations if the owner or operator demonstrates to the authority with delegation for enforcement that the source was operating in accordance with the startup, shutdown, and malfunction plan.

Plants must also submit the fugitive dust emissions control plan, testing plan, and all operation and maintenance plans on or before the applicable compliance date to the Administrator or delegated authority.

G. What are the Compliance Deadlines?

The owner or operator of an existing affected source must comply within [DATE 3 YEARS AFTER PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**]. New or reconstructed sources that startup on or before the effective date of the final rule must comply by the effective date of the final rule. New or reconstructed sources that startup after the effective date of the final rule must comply upon initial startup.

III. Rationale for Selecting the Proposed Standards

A. How Did We Select the Affected Sources?

An affected source is the collection of equipment, processes and activities within a source category to which an emission limitation, work practice standard, or other regulatory requirement in a MACT standard will apply. Depending on circumstance, we have adopted broader or narrower definitions of affected source. In some instances, we have adopted a definition as broad as all processes, equipment and activities at a source, while in other instances, we have defined affected source as narrowly as a single piece of equipment. The selection of affected

source is guided by the consideration of many factors including similarities and dissimilarities in emission units in terms of their size, type, and HAP emissions potential; the functional relationship of an emission unit or grouping of units within a plant or process; and the effect of an affected source definition on when and where new source MACT should apply.

We considered three different approaches for designating the affected source: the entire taconite iron ore processing plant, groups of emission points, and individual emission points. In selecting the affected sources for regulation, we identified each HAP-emitting operation, the HAP emitted, and the quantity of HAP emissions from individual or groups of emissions points. We determined that establishing the entire plant as the affected source does not take into account differences in the quantity and types of HAP emitted by different processing operations. We also determined that establishing each individual emission point as the affected source does not take advantage of similarities among certain processing operations. We concluded that the most appropriate approach is to designate the group of emission points associated with each major process area as an affected source. The resulting affected sources are ore crushing and handling operations, each indurating furnace; finished pellet handling operations, and each ore dryer.

As previously mentioned, the term affected source is used primarily as a means of specifying what equipment or activities would be affected by the proposed standards. In addition, the term affected source serves to define where new source MACT applies. Specifically, the General Provisions of 40 CFR part 63 define the terms "construction" and "reconstruction" with reference to the term affected source and provide that new source MACT applies when construction and reconstruction occur. When establishing the affected sources for these proposed standards, we recognized that selecting a narrow definition of affected source (*e.g.*, each crusher, conveyor, and bin) would cause new source MACT requirements to be triggered more frequently than if the affected source were defined as a collection of equipment (*e.g.*, all ore crushing and handling emission units). We do not believe that the replacement of an individual emission unit that is part of a larger integrated process should trigger new source MACT. Therefore, we established affected sources for ore crushing and handling and finished pellet handling that represent collections of equipment, rather than individual units.

During the development of the affected source definitions, we considered combining the two affected sources into one due to similarities in emission characteristics and controls. However, we decided not to do so due to differences in the physical location and organization of the units. Specifically, ore crushing handling units are located upstream of the indurating furnace, and the finished pellet handling units are located downstream of the indurating furnace. As a result, the grouping of units that comprised the affected sources are typically located in different buildings at different parts of the plant. In addition, ore crushing handling units are organized with respect to the crushing lines, whereas finished pellet handling units are organized with respect to the indurating furnace lines.

The ore crushing and handling affected source consists of the collection of equipment and operations needed to produce crushed ore suitable for processing into green pellets. Emission units include ore crushers (primary, secondary, and tertiary), screens, conveyors, storage bins, and transfer points. The ore crushing and handling affected source begins where crude taconite iron ore is dumped into the primary crusher and ends where the unfired (green) pellets enter the indurating furnace. We grouped all of these emission units into the one affected source based on their functional relationship, the similarity of their HAP emission characteristics, and the considerations for new source MACT stated above. The only HAP emitted from these units are metallic HAP, primarily manganese. We compared the outlet PM concentrations for the different types of emission units (*i.e.*, crushers, conveyors, bins, screens, and transfer points) and crushing stage (primary, secondary, and tertiary) and observed no discernable difference in emissions. In addition, grouping all the ore crushing and handling emission units into one affected source will allow sources more flexibility in developing control strategies for achieving compliance.

All wet process operations, including wet milling, magnetic separation, hydraulic separation, chemical flotation, and concentrate thickening in the concentrator area, and vacuum disk filters and balling drums in the pelletizing area, are excluded from the rule because the water effectively suppresses all emissions from these operations. Operations associated with the handling of limestone/dolomite and bentonite are also excluded since they produce no HAP emissions.

The finished pellet handling affected source consists of the following emission units: conveyors, storage bins, screens, and transfer points. The finished pellet handling affected source begins at the indurating furnace discharge and ends where the finished pellets are stockpiled. We grouped all of these emission units into the finished pellet handling affected source based on the similarity of their HAP emission characteristics and process equipment type. The only HAP emitted by these units are metallic HAP, primarily manganese. We compared the outlet PM concentrations for the different types of emission units (*i.e.*, conveyors, bins, screens, and transfer points) and observed no discernable difference in emissions. Therefore, we do not believe that subcategorization of the finished pellet handling affected source is warranted.

Unlike the ore crushing and handling and finished pellet handling affected sources, we have selected a narrower definition of affected source for indurating furnaces by defining the affected source as each individual furnace, rather than the collection of indurating furnaces at a particular plant. We defined each indurating furnace as a separate affected source because furnaces are independent emission units. As independent emission units, each indurating furnace has it own dedicated emission controls. In contrast, emissions from several ore crushing and handling and finished pellet handling process units are often combined and vented to a shared control device. In addition, since the indurating furnaces are the most significant source of HAP emissions, we wanted all new indurating furnaces to be subject to new source MACT.

The indurating furnace affected source includes any furnace, including both straight grate and grate kiln designs, in which green pellets are hardened by firing to a high temperature of between 2,200 to 2,500 °F. The indurating furnace begins at the point where the grate feed conveyor discharges green pellets onto the furnace traveling grate and ends where the hardened pellets exit the finished pellet cooler. Unlike ore crushing and handling and finished pellet handling units, indurating furnaces are combustion sources, and as such, emit substantially more HAP. In addition to emitting metallic HAP, indurating furnaces emit acid gases (HCl and HF) and products of incomplete combustion (primarily formaldehyde).

We are establishing subcategories within the indurating furnace affected source to distinguish between the two types of furnace designs—grate kiln and straight grate. We have determined that grate kiln furnaces are higher emitting sources than straight grate furnaces due to physical and operational differences that affect emissions and the controllability of emissions.

First, the grate kiln furnaces are larger than straight grate units with annual production rates approximately 30 percent higher than that of the straight grate furnaces. Second, the grate kiln furnaces are composed of two furnace sections, a continuous grate followed by a rotary kiln, while the straight grate furnaces include only a continuous grate.

In the grate kiln, the pellets drop off a conveyor into the kiln and then tumble in the kiln as it rotates. As a result, there is substantially more disturbance of the pellets in the grate kiln furnace which contributes to an increase in pellet breakage and in the entrainment of particles in the air stream and causing higher PM loadings and HAP emissions. In addition, the average volume of air flowing through a grate kiln furnace is more than twice the average volume of air flowing through a straight grate furnace. The greater air flow in grate kilns causes more entrainment of particles in the air stream, causing higher exhaust gas PM loadings and HAP emissions. Available test data show that, when processing magnetite ore, PM loadings for grate kilns are twice that of straight grate furnaces. Because grate kiln furnaces and straight grate furnaces have unique physical and operational differences that affect emissions and the controllability of emissions, we have subcategorized based on furnace type.

We have also concluded that, within the grate kiln furnace subcategory, higher PM emissions are observed when hematite ore is processed rather than magnetite ore. For example, PM emissions for one furnace were measured at 0.004 gr/dscf when the furnace was processing magnetite. When the same furnace was processing hematite, the PM emissions were measured at 0.018 gr/dscf. Contributing factors to the higher emissions include the fact that the hematite ore pellets are finer grained and subject to a higher breakage rate. As a result of the higher inlet PM loading, the controlled outlet PM emissions are higher when processing hematite than when processing magnetite. Therefore, to account for this difference in emissions, we are making a distinction on the basis of ore type within grate kilns. There are only two grate kiln furnaces that process hematite. Both of these indurating furnaces are located at the same plant in Michigan. These furnaces process hematite approximately eight months of the year and process magnetite the remainder of the year. There are no straight grate indurating furnaces processing hematite.

Emissions from cooler vent stacks are excluded from the indurating furnace affected source based on the large size of the particles and the relatively low concentration of particulate emissions. Test data indicate that PM emissions from cooler vent stacks are primarily coarse PM with 80 percent of the PM larger than 50 microns and only less than 1 percent smaller than 10 microns. Uncontrolled PM emissions from cooler vent stacks are typically around 0.04 gr/dscf. Cooler vent stacks are currently not controlled at any of the existing taconite plants. In Minnesota, cooler vent stacks are subject to the State's requirements that limit the PM concentrations based on volumetric flow rate. Based on typical volumetric flow rates in cooler vent stacks, the Industrial Process Equipment Rule (IPER) limit values range from 0.04 to 0.05 gr/dscf. In Michigan, cooler vent stacks are not recognized as emission points and are not addressed in operating permits.

Similar to the indurating furnace affected source, we have selected a narrow definition of affected source for ore dryers by defining the affected source as each individual ore dryer, rather than the collection of ore dryers at a particular plant. We defined each ore dryer as a separate affected source because ore dryers are independent emission units with their own dedicated emission control devices. There are only two ore dryers, and both are located at the same plant in Michigan. The concentrate from the Michigan plant contains a higher percentage of fine particles than other taconite operations and, therefore, requires additional drying. The ore dryers are located just upstream of the balling drum. Both dryers are rotary designs that tumble the wet taconite ore concentrate through a heated air stream to reduce the amount of entrained moisture in the taconite ore concentrate.

B. How Did We Select the Pollutants?

Pollutants emitted by plants in the taconite iron ore processing source category include metallic HAP (primarily naturally occurring compounds of manganese, arsenic, lead, nickel, and chromium, and lesser quantities of mercury), organic HAP resulting from incomplete combustion (mainly formaldehyde), and acid gases (hydrochloric acid and hydrofluoric acid).

Metallic HAP are emitted from ore crushing and handling units, indurating furnaces, finished pellet handling units, and ore dryers. We determined that it is not practical to establish individual standards for each metallic HAP that could be present in the various processes (*e.g.*, separate standards for manganese compound emissions, separate standards for lead compound emissions, and so forth for each metal compound group listed as HAP and which potentially could be present). When released, each of the metallic HAP compounds, except elemental mercury, behave as PM. As a result, strong correlations exist between PM emissions and emissions of the individual metallic HAP compounds. Control technologies used for the reduction of PM emissions achieve comparable levels of reduction of metallic HAP emissions. Standards requiring good control of PM emissions will also achieve a similar level of control of metallic HAP emissions. Therefore, we are establishing standards for total PM as a surrogate pollutant for the individual metallic HAP. Establishing separate standards for each metallic HAP would impose costly and significantly more complex compliance and monitoring requirements. In addition, establishing separate standards for each metallic HAP would achieve little, if any, HAP emissions reductions beyond what would be achieved using the total PM surrogate pollutant approach.

Products of incomplete combustion, such as formaldehyde, are released from indurating furnaces at very low concentrations as a result of the burning of fuels, such as natural gas. Formaldehyde has been measured through stack testing at concentrations that are typically less than 1 ppm.

Formaldehyde emissions are currently uncontrolled. Existing PM emission controls on indurating furnaces include ESP and wet scrubbers, neither of which are capable of controlling formaldehyde. In addition, since formaldehyde emissions are produced as a byproduct of burning fuels, generally natural gas, taconite plants cannot lower their formaldehyde emissions by switching raw materials or changing fuels.

We know of no feasible control technology for reducing formaldehyde emissions at these extremely low concentrations and at the exhaust gas temperatures typically encountered at indurating furnaces. The only known technology for the control of formaldehyde emissions at concentrations of less than 1 ppm is thermal catalytic oxidation in which formaldehyde is contacted with a precious metal catalyst in the presence of oxygen and high temperature (650 to 1,350 °F) to yield carbon dioxide and water. Destruction efficiencies of 85 to 90 percent have been demonstrated on formaldehyde emissions contained in the exhaust gas from stationary combustion turbines at concentrations in the parts per billion range and temperatures of 1,000°F or higher. Destruction efficiencies, however, decrease exponentially at reaction temperatures below 650°F, down to eventually less than 10 percent at exhaust gas temperature of 300°F or less, which is typical of most indurating furnaces. Accordingly, the burning of large quantities of additional fuel, such as natural gas, would be needed to heat the exhaust gases to the desired temperature, which would generate additional quantities of carbon dioxide (a global warming gas) and nitrogen oxides (an ozone precursor). In addition, given the large volume of exhaust gas to be treated, on the order of several hundred thousand cubic feet per minute per furnace, and the complexity of retrofitting multiple stacks with gas burners and thermal catalytic oxidation units, the capital cost and operating cost for control would be enormous.

Since formaldehyde emissions are currently uncontrolled, we conclude that the MACT floor for formaldehyde is no emissions reduction. In addition, due to the severe technical and economic constraints of controlling formaldehyde at high volumetric flow rates, very low concentrations and relatively low temperatures, we conclude that no beyond-the-floor control is feasible. Accordingly, specific emission limitations for formaldehyde are not included in the proposed rule.

Acid gases (hydrochloric acid and hydrofluoric acid) are also emitted from indurating furnaces at very low concentrations, typically less than 3 ppm. Acid gases are formed in the indurating furnace due to the presence of chlorides and fluorides in pellet additives, such as dolomite and limestone. The taconite industry has not installed equipment to specifically control acid gases. The MACT floor for acid gases was determined to be no emissions reduction. Unlike formaldehyde, some air pollution control devices currently used by the industry to reduce PM emissions can achieve incidental control of acid gases. Due to the strong affinity of these acid gases for water, control equipment that use water, such as wet wall electrostatic precipitators and wet scrubbers, have the capability of reducing hydrochloric acid and hydrofluoric acid emissions substantially. Therefore, a specific emission limitation for acid gases is not included in today's proposal.

Indurating furnaces are also a source of mercury emissions. Mercury is a naturally occurring element in the taconite ore. As the taconite pellets are heated in the furnace, the naturally occurring mercury compounds are volatilized. The key factor affecting emissions is the mercury content of the ore. Currently, none of the plants in this industry have installed controls for mercury emissions. We also have not been able to identify any currently employed operating practices which effectively reduce mercury emissions. Since specific controls for mercury are not currently present in the industry and operating practices which effectively reduce mercury emissions have not been identified, the MACT floor for mercury was determined to be no emissions reduction. In evaluating potential above-the-floor options, we were unable to identify any viable control technologies or operating practices for achieving reductions in mercury emissions from indurating furnaces at taconite iron ore plants. As a result, a specific emission limitation for mercury has not been included in the proposed rule. We will reevaluate the feasibility of controlling mercury emissions from taconite iron ore plants as part of the assessment for residual risk standards.

Due to the nature of the taconite iron ore deposits on the Mesabi Range in Northeast Minnesota, there is some potential for the occurrence of contaminant asbestos in some taconite ore mining areas. Asbestos is the name applied to a group of six different minerals that occur naturally in the environment. These minerals are made up of long thin fibers similar to fiberglass. The concern is mainly limited to two taconite plants located at the eastern end of the Mesabi Range where acicular (needle-like) minerals may be present in the ore.

Asbestos emissions are currently regulated under NESHAP promulgated in April 1984 (40 CFR part 61, subpart M) that regulate the milling of commercial asbestos and the manufacturing and fabricating of asbestos products. The provisions of the NESHAP also apply to the demolition and renovation of buildings where asbestos-containing material is present. The NESHAP do not apply to ore or other mineral processing operations that may contain asbestos as a contaminant. A work group within EPA is currently studying the complex issues involved with asbestos emissions from beneficiation and subsequent processing of minerals where asbestos may be present as a contaminant. That study was initiated in response to the events surrounding exposures of citizens to asbestos which occurred as a contaminant in a vermiculite mine in Libby, Montana. The work group has developed an action plan which identifies steps necessary to gather the information that EPA needs to decide whether regulations for sources of contaminant asbestos are warranted. The work group has targeted vermiculite mining and processing operations as the first priority in the study. The work group also plans to study asbestos that occurs as a contaminant from other mining and processing operations, including taconite ore mining and processing. Decisions on whether to regulate asbestos that occurs as a contaminant in taconite ore mining and processing and other potential industries will be based on information gathered in the study.

C. How Did We Determine the Bases and Levels of the Proposed Standards?

We have taken alternative approaches to establishing the MACT floor, depending on the type, quality, and applicability of available data. The three approaches most commonly used involve reliance on the following: State and Federal regulations or permit limits, source test data that characterize actual emissions, and use of a technology floor with an accompanying demonstrated achievable emission level that accounts for process and/or air pollution control device variability. We evaluated each of these MACT floor approaches when developing the MACT floor for each of the four affected sources: Ore crushing and handling, indurating furnaces, finished pellet handling, and ore dryers. As previously discussed in this preamble, we are establishing standards for total PM as a surrogate pollutant for individual metallic HAP compounds.

1. Ore Crushing and Handling and Finished Pellet Handling

Although ore crushing handling and finished pellet handling are defined as separate affected sources, we combined the available test data on both sources for the MACT floor and MACT analyses. This is consistent with our usual practice in developing MACT standards in organizing, as appropriate, the available information for similar HAP-emitting equipment into related groups for the purpose of determining MACT floors and MACT; yet, as appropriate, maintaining separate affected source

definitions for the purpose of defining the applicability of relevant standards.

We identified 264 emission units within the ore crushing and handling affected source and 82 emission units within the finished pellet handling affected source at the eight taconite plants (346 emission units total). Particulate matter emissions from both operations are controlled primarily with medium energy wet scrubbers (*i.e.*, venturi-rod scrubbers, impingement scrubbers, and marble bed scrubbers). Baghouses, low energy wet scrubbers (*i.e.*, rotoclones), multiclones, and ESP are also used.

Relative to State and Federal regulations and permit conditions, some of the ore crushing and handling and finished pellet handling emission units in Minnesota are subject to the new source performance standards (NSPS) for metallic mineral processing plants (40 CFR part 60, subpart LL). The NSPS limit PM emissions from each affected emission unit to 0.022 gr/dscf. However, most of the ore crushing and handling and finished pellet handling emission units in Minnesota are subject to the IPER. The Minnesota IPER establishes PM concentration emission limits as a function of volumetric flow. The emission limit becomes more stringent as volumetric flow increases. Particulate matter emission limits for ore crushing and handling and finished pellet handling units under the IPER range from approximately 0.030 gr/dscf to approximately 0.095 gr/dscf. Due to its proximity to Lake Superior, one of the Minnesota plants is subject to the following more stringent limits: 0.002 gr/dscf for tertiary crushing and some storage/transfer points, 0.010 gr/dscf for cobbing and some storage/transfer points, and 0.030 gr/dscf for the rest of the emission points. The two taconite plants in Michigan are subject to a State PM emission limit of 0.1 pounds of PM per 1,000 pounds of exhaust gas, which equates to 0.052 gr/dscf.

The PM emissions tests data used in the MACT analysis covers 60 emission units, which accounts for 17 percent of the combined 346 ore crushing and handling and finished pellet handling emission units in the source category. Included are representative data on all crushing stages, screening operations, conveyor transfer points, and storage bins, as well as finished pellet screening operations and conveyor transfer points. These tests also cover the full range of control devices applied to both emission units. Each test is composed of three, 1-hour test runs expressed in PM concentration units of gr/dscf.

We compared these 60 data points on actual emissions to the State and Federal emissions limitations to determine whether the limitations provided a reasonably realistic representation of actual emissions and performance. Based on this comparison, it is clear that actual PM emissions are considerably lower than the levels allowed by the State emission limits and the metallic mineral processing NSPS, and that the State and Federal PM emission limits do not realistically represent performance achieved in practice by the best performing sources. Test results in the data pool are on the order of 0.002 to 0.010 gr/dscf, which is substantially below that generally allowed under the State and Federal emissions limitations cited above.

We evaluated the test data by process stage (*i.e.*, primary crushing, secondary crushing, tertiary crushing, grate feed, and finished pellet handling) to determine whether PM emissions varied depending on process stage. We found no discernable differences in the types of controls or the level of controlled PM emissions among the various process stages. Consequently, we concluded that distinguishing among process stages was unnecessary, and that it was feasible to establish one PM emission limit that would apply to all ore crushing and handling and finished pellet handling emission units.

An underlying presumption when setting MACT standards is that all emission limitations must be met or complied with at all times. Consequently, when establishing MACT floors and ultimately MACT standards, we must consider the long-term variability in performance expected to occur under reasonable worst-case conditions or circumstances. We must assure that ensuing standards reflect the level of emissions control determined to be MACT. We must also assure that the standards are achievable under normal and recurring worst-case circumstances.

The MACT floor and the MACT level of control were determined based on each plant's flow-weighted mean PM concentration for all emission units in both affected sources. By averaging higher emitting units with lower emitting units, each plant's flow-weighted mean PM concentration value takes into account much of the variability in emissions among different units within the two affected sources and provides what we believe to be a reasonably accurate representation of the overall level of control that is being achieved by those affected sources.

We then proceeded to establish the MACT floor based on the pool of credible data available to us for each plant. Of the eight existing taconite iron ore plants, three plants were excluded from the floor analysis due to a lack of sufficient test data. One of the plants had no PM emissions test data whatsoever, and the other two plants had only two tested units each. Each of the remaining five plants had emissions test data for 6 to 21 units.

The first step in the MACT floor analysis was to calculate a flow-weighted mean PM concentration value (in gr/dscf) for each of the five plants using the available PM emissions data for the ore crushing and handling and finished pellet handling units at each plant. For each unit with a PM emissions test, the total grains of PM emitted during the test was calculated by multiplying the test average in gr/dscf by the test average flow rate in dscf. Then, for each plant, the grains of PM emitted by all the tested units at that plant were totaled. The total grains emitted were then divided by the total air flow for the tested units (in dscf) to obtain the flow-weighted mean PM concentration in gr/dscf. The flow-weighted mean PM concentration values (in gr/dscf) for each of the five plants were 0.0047, 0.0050, 0.0059, 0.0114 and 0.0116. The resulting MACT floor for the ore crushing and handling and finished pellet handling affected sources as determined using the flow-weighted mean PM concentration for the five plants is 0.008 gr/dscf.

We then examined a beyond-the-floor alternative. The next increment of control beyond the floor is the installation of impingement scrubbers capable of meeting a concentration limit of 0.005 gr/dscf, which is equivalent to the level of control we anticipate requiring for new sources. We estimate the additional capital cost of replacing existing controls with new impingement scrubbers performing at a level of 0.005 gr/dscf to be $3.5 million and the total annual cost to be $653,000 per year. We estimate the corresponding incremental reduction in HAP metals achieved by reducing the PM concentration from 0.008 to 0.005 gr/dscf to be 0.37 tons. The cost per ton of HAP is $1.7 million. The energy increase would be expected to be 2,870 mega-watt hours per year, primarily due to the energy requirements of new scrubbers. We believe that the high cost, coupled with the small reduction in HAP emissions, does not justify this beyond-the-floor alternative at this time. We could not identify any other beyond-the-floor alternatives. Consequently, we chose the floor level of control of 0.008 gr/dscf as MACT.

For new ore crushing and handling and new finished pellet handling affected sources, we are selecting a PM outlet concentration of 0.005 gr/dscf as new source MACT. The 0.005 gr/dscf level corresponds to the best performing source (plant) with the lowest flow-weighted mean PM concentration.

2. Indurating Furnaces Processing Magnetite

There are 21 indurating furnaces at the eight operating taconite plants. Fourteen of the furnaces are grate kiln designs and seven are straight grate designs. As discussed previously in this preamble, we are establishing subcategories within the indurating furnace affected source to accommodate differences in the two furnace designs. We have determined that these furnace design types have unique physical and operational differences which warrant their separation into two subcategories. We are also differentiating the grate kiln furnaces based on type of ore processed (*i.e.*, hematite versus magnetite ore).

We evaluated the existing State PM emission limitations as an option for establishing the MACT floor. However, a comparison of the State limits with data on actual PM emissions shows that the State limits are generally much more lenient than the actual emissions and, as such, are not appropriate for establishing the MACT floor.

Most of the indurating furnaces in Minnesota are subject to the State's IPER. Particulate matter emission limits for indurating furnaces under the IPER range from 0.025 to 0.05 gr/dscf. Due to its proximity to Lake Superior, one of the Minnesota plants, which operates straight grate furnaces, is subject to a more stringent State limit of 0.01 gr/dscf. The two Michigan plants, both of which operate grate kiln furnaces, are subject to State PM emission limits also based on air flow rates. One plant which operates two furnaces has a PM emission limit of 0.065 pounds of PM per 1,000 pounds of exhaust gas, which equates to 0.04 gr/dscf. The other plant which operates four grate kilns has a PM emission limit of 0.10 pounds of PM per 1,000 pounds of exhaust gas for two larger kilns, and 0.15 pounds of PM per 1,000 pounds of exhaust gas for two smaller kilns. The two emission limits equate to 0.06 to 0.09 gr/dscf, respectively. By contrast, the available information on actual PM emissions for 19 of 21 furnaces for which we have emissions test data indicate that the actual emissions are considerably lower than the levels allowed under the State limits. The average concentration of actual emissions measured from all 19 furnaces when processing magnetite range from 0.005 to 0.02 gr/dscf, which is about 5 times lower than the typical State limit. Therefore, we concluded that the State PM emission limits and permit conditions do not realistically represent the emission levels actually achieved in practice by the best performing sources.

We next examined the available emissions data to determine if the MACT floor could be based on actual emissions. We have credible PM test data for six of the seven straight grate furnaces and thirteen of the fourteen grate kiln furnaces. The test data for each furnace consists of a test for each furnace stack, with multiple tests for furnaces that discharge through more than one stack. Each test consists of three 1-hour test runs expressed in gr/dscf. For the furnaces with multiple stacks, the PM emissions from each indurating furnace were calculated as the flow-weighted mean concentration of PM emissions from all stacks. Given the amount and quality of available PM emissions test data, we conclude that the available information on actual emissions is more than adequate for the purpose of determining the requisite MACT floors for new and existing sources.

As a first step in our MACT floor and MACT analysis for indurating furnaces, we initially explored the appropriateness of using a plantwide average approach similar to that used for ore crushing and handling and finished pellet handling. After an assessment of the available test data, we determined that the plantwide average approach was not feasible due to insufficient data, and that an alternative approach that focuses on individual furnace emissions rather than plantwide emissions is more suitable. For plants using grate kiln furnaces, we have sufficient test data to calculate a plantwide value for only three of the five plants. For plants using straight grate furnaces, we have sufficient test data to calculate a plantwide value for only two of the three plants. Therefore, due to a lack of test data on some furnaces, it is not possible to use a plantwide approach to determine the MACT floor for indurating furnaces.

As an alternative approach, we treated each of the 21 indurating furnaces as separate emission units. As a first step, we looked at all furnaces (straight grate and grate kiln) with multiple PM emissions tests to account for the variability inherent in the performance tests. There are 12 grate kiln furnaces and three straight grate furnaces for which there were two or more emissions tests. To quantify the variability between tests for each of these furnaces, we calculated a relative standard deviation (RSD) for each furnace. The RSD is calculated by dividing the standard deviation of the data by the mean of the data and multiplying the result by 100. The RSD provides a measure of the variability of the PM test data for each furnace relative to the mean of the PM test data for each furnace. The RSD is expressed as a percentage for each furnace, and these percentages were then compared between furnaces.

The variability between tests for a given indurating furnace is due to normal variability in process operation and control device performance, as well as measurement error. These factors affect all furnaces similarly, and their affect on emissions is largely independent of furnace type and ore type. Therefore, we looked at the range of RSD values for all furnaces together (grate kilns and straight grates) when determining the overall variability. The RSD for the 15 furnaces with multiple test data ranged from 9 to 112 percent and averaged 37 percent. This indicates that on average, the PM emissions tests for each furnace are within plus or minus 37 percent of the mean of the emissions tests.

We then applied the average RSD of 37 percent to each emission test to include a measure of variability to each test. Next, we assigned a level of performance to each of the 19 furnaces for which we have actual emissions data. For furnaces for which we have two or more tests, we chose the higher of the test results as the representative value of performance for that furnace. We believe that selecting the higher of the test results provides more assurance that the inherent operational variability is fully accounted for in the selection of the representative value. For furnaces for which we have only one test, we used that single test result as the assigned value of performance.

Since there are fewer than 30 sources in the straight grate and grate kiln indurating furnace subcategories, the MACT floors were determined using the best five performing sources. Each indurating furnace was then ranked within its subcategory according to its flow-weighted mean concentration of PM emissions after application of the RSD adjustment for variability. The five furnaces in each subcategory with the lowest adjusted PM concentration were identified as the best performing sources. The MACT floor was then determined as the mean PM concentration value for the five best performing sources. The adjusted PM concentration values for the five best performing straight grate furnaces were 0.0083, 0.0090, 0.0093, 0.0105, and 0.0126. The mean of the five best performing straight grate furnaces was determined to be 0.010 gr/dscf. The

adjusted PM concentration values for the five best performing grate kiln furnaces were 0.0085, 0.0090, 0.0111, 0.0123, and 0.0123. The mean of the five best performing grate kiln furnaces was determined to be 0.011 gr/dscf.

We then examined a beyond-the-floor option. The next increment of control beyond the floor is the installation of venturi scrubbers or dry ESP capable of meeting a concentration limit of 0.006 gr/dscf, which is equivalent to the level of control required for new straight grate furnaces and new grate kiln furnaces. For straight grate furnaces, we estimate the additional capital cost of going from a level of 0.010 gr/dscf to a level of 0.006 gr/dscf to be $71.2 million and the total annual cost to be $11.4 million per year. We estimate the corresponding additional reduction in HAP achieved from straight grate furnaces to be 30 tons. The cost per ton of HAP for straight grate furnaces is $379,000/ton. The energy increase would be expected to be 17,139 mega-watt hours per year, primarily due to the energy requirements of new wet scrubbers and dry ESP. For grate kiln furnaces, we estimate the additional capital cost of going from a level of 0.011 gr/dscf to a level of 0.006 gr/dscf to be $28.5 million and the total annual cost to be $5.3 million per year. We estimate the corresponding additional reduction in HAP achieved from grate kilns to be 12.8 tons. The cost per ton of HAP for grate kiln furnaces is $414,000/ton. The energy increase would be expected to be 36,297 mega-watt hours per year, primarily due to the energy requirements of new wet scrubbers and dry ESP. We believe that the high cost, coupled with the small reduction in HAP emissions, does not justify this beyond-the-floor alternative for either furnace subcategory. We could not identify any other beyond-the-floor alternatives. Consequently, we chose the MACT floor levels of control of 0.010 gr/dscf for straight grate furnaces and 0.011 gr/dscf for grate kiln furnaces as MACT for existing indurating furnace.

For the new source MACT analysis, we did not adjust the PM emissions test results for variability. We believe that a variability adjustment is not necessary because new emission controls can be engineered to account for variability in process operation and control device performance, as well as measurement error. We ranked the representative PM concentrations for each straight grate furnace and for each grate kiln furnace from the lowest to the highest values.

We selected the furnace with the lowest PM outlet concentration of 0.006 gr/dscf as new source MACT for new straight grate indurating furnaces. We believe that this furnace, which is controlled by a venturi scrubber, represents the best controlled similar source among the seven operating straight grate furnaces.

We selected the furnace with the lowest PM outlet concentration of 0.006 gr/dscf as the new source MACT for new grate kiln indurating furnaces processing magnetite. We believe that this furnace, which is controlled by a dry ESP, represents the best controlled similar source among the 14 operating grate kiln furnaces.

3. Indurating Furnaces Processing Hematite

There are two indurating furnaces that process hematite ore. Both furnaces are grate kiln designs and are located at the same plant in Michigan. Hematite is processed approximately 8 months of the year and magnetite is processed the remainder of the year.

Both furnaces are similar in design, size, operating conditions and air pollution control. Each furnace is of the grate kiln design, which consists of a continuous traveling grate followed by a rotary kiln. The two kilns are both 25 feet in diameter and 160 feet long and have similar production rates. Exhaust gases from each furnace are controlled by three ESP, three dry units on one furnace and one wet and two dry units on the other furnace. All corresponding ESP for each furnace have similar configurations, including number of chambers and fields, and collection area; and similar operating conditions, including volumetric air flow, gas inlet temperature, primary and secondary currents, and primary and secondary voltages.

We evaluated the existing State PM emission limitations as an option for establishing the MACT floor. However, a comparison of the State limit with data on actual PM emissions shows that the State limit is much more lenient than the actual emissions and, as such, is not appropriate for establishing the MACT floor.

Both furnaces are subject to Michigan's PM emission limit of 0.065 pounds of particulate per 1,000 pounds of exhaust gas, which equates to approximately 0.04 gr/dscf. In comparison, available information on actual PM emissions for the two furnaces indicate that the actual emissions are considerably lower than the levels allowed under the State limit. The average concentration of actual emissions measured from the two furnaces when processing hematite range from 0.017 to 0.018 gr/dscf, which is about half the State limit. Therefore, we concluded that the State PM emission limit does not realistically represent the emission levels actually achieved in practice by the two furnaces when processing hematite.

We next examined the available emissions data to determine if the MACT floor could be based on actual emissions. We have credible PM test data for both furnaces while processing hematite. The test data for each furnace consists of a PM test of each furnace stack (three tests per furnace). Each test consists of three 1-hour test runs. The PM emissions from each furnace were calculated as the flow-weighted mean concentration of PM emissions in gr/dscf from all stacks. We believe that this available information on actual emissions is adequate for the purpose of determining the requisite MACT floors for new and existing sources.

A variability analysis for furnaces processing hematite could not be conducted because multiple valid PM emissions tests are not available for these furnaces. As a result, we relied on the RSD adjustment used when processing magnetite to account for process, control device, and measurement variability. As noted previously, these factors affect all furnaces similarly, and their affect on emissions is largely independent of furnace type and ore type. Therefore, we believe it is appropriate to apply the RSD calculated for furnaces processing magnetite to furnaces processing hematite. Since there are only two indurating furnaces processing hematite, and these furnaces are ostensibly identical in design, size, operation and emissions control, we selected the MACT floor based on the higher of the two PM concentration values (0.023 and 0.025 gr/dscf) after application of the RSD adjustment for variability. The resulting MACT floor for existing grate kiln indurating furnaces processing hematite is 0.025 gr/dscf.

We then examined a beyond-the-floor alternative. The next increment of control beyond the floor is the installation of a dry ESP capable of consistently meeting a concentration limit of 0.018 gr/dscf, which is equivalent to the level of control required for new grate kiln furnaces processing hematite. We estimate the additional capital cost of going from a level of 0.025 gr/dscf to a level of 0.018 gr/dscf to be $25.9 million and the total annual cost to be $4.9 million per year. We estimate the corresponding additional reduction in HAP achieved from grate kiln furnaces processing hematite to be 0.3 tons. The cost per ton of HAP for grate kiln furnaces processing hematite is $19.6 million/ton. The energy increase would be expected to be 34,898 mega-watt hours per year, primarily due to the energy requirements of new dry ESP. We believe that the high cost, coupled with the small reduction in HAP emissions, does not justify this beyond-the-floor alternative at this time. We could not identify any other beyond-the-floor alternatives. Consequently, we chose the MACT floor level of control of 0.025 gr/dscf as MACT for existing grate kiln furnaces processing hematite.

For the new source MACT analysis, we relied on the same emission source test data used above in the existing source MACT determination. However, we did not adjust the values from the emissions tests with a RSD adjustment for the new source MACT analysis. We believe that a variability adjustment is not necessary because new emission controls can be engineered to account for variability in process operation and control device performance.

As noted previously, both furnaces are ostensibly identical in design, operation and control, with measured PM emissions based on one performance test per furnace of 0.017 and 0.018 gr/dscf. Given the similarities between the two furnaces and their demonstrated performance, we selected a PM concentration of 0.018 gr/dscf as the new source MACT for new grate kiln indurating furnaces when processing hematite.

4. Ore Dryers

There are only two ore dryers in the source category. Both are rotary designs and are located at the same plant in Michigan. The first dryer measures 10 feet in diameter and 80 feet in length and has a rated capacity of 400 tons per hour. It is equipped with two cyclones and an impingement scrubber in series for PM control. The second dryer is somewhat larger measuring 12.5 feet in diameter and 100 feet in length with a rated capacity of 650 tons per hour. The exhaust gas from the second dryer is split into two streams, with each exhaust stream controlled by two cyclones and an impingement scrubber in series and discharging through a separate stack. Both ore dryers are subject to Michigan's PM emission limit of 0.1 pound of particulate per 1,000 pounds of exhaust gas, which equates to approximately 0.052 gr/dscf.

We have one PM emission test for each dryer. Both dryers were tested in May 2002 while processing hematite. Tests were conducted at each of the three dryer stacks and included three 1-hour test runs per stack. In the case of the two stack dryer, the test results were calculated on a flow-weighted basis. The results, expressed in units of PM concentration, are 0.017 and 0.040 gr/dscf for the smaller and larger dryer, respectively.

We examined the test conditions under which each dryer was tested and have determined that the smaller dryer was tested under conditions not representative of normal long-term operations. Specifically, the dryer had been idle prior to testing and brought back on-line solely for the purpose of testing only 2 hours ahead of commencing the performance test, which was 3 hours in duration. We do not believe that a warm-up period of only a few hours is adequate to produce conditions representative of the worst-case circumstance reasonably expected to occur under normal long-term operations. We have, therefore, excluded these data from further consideration in our MACT assessment.

We evaluated the existing State PM emission limit as an option for establishing the MACT floor. A comparison of the State limit of 0.052 gr/dscf with the only credible data on actual PM emissions of 0.040 gr/dscf indicates that the State limit is a reasonable proxy of actual performance and, as such, is appropriate for establishing the MACT floor level. Consequently, the MACT floor for ore dryers is determined to be the level of control indicated by the existing State limit of 0.052 gr/dscf.

We then examined a beyond-the-floor alternative. The next increment of control beyond the floor is the installation of venturi scrubbers capable of meeting a concentration limit of 0.025 gr/dscf, which is equivalent to the level of control required for new ore dryers. We estimate the additional capital cost of going from a level of 0.052 gr/dscf to a level of 0.025 gr/dscf to be $98,000 and the total annual cost to be $256,000 per year. We estimate the corresponding additional reductions in HAP achieved from ore dryers to be 0.32 tons. The cost per ton of HAP for ore dryers is $790,000/ton. The energy increase would be expected to be 3,520 mega-watt hours per year, primarily due to the energy requirements of new wet scrubbers. We believe that the high cost, coupled with the small reduction in HAP emissions, does not justify this beyond-the-floor alternative at this time. We could not identify any other beyond the floor alternatives. Consequently, we chose the MACT floor level of control of 0.052 gr/dscf as MACT for existing ore dryers.

For new ore dryers, we are selecting a PM outlet concentration of 0.025 gr/dscf as new source MACT. The 0.025 gr/dscf level corresponds to the standard for dryers in the NSPS for calciners and dryers in mineral industries (40 CFR part 60, subpart UUU). The dryers used to develop the NSPS limit are very similar to the dryers that are used by the taconite industry. Specifically, many of the dryers studied in the NSPS were of the rotary design, were controlled by wet scrubbers, and processed material with a particle size distribution similar to that of taconite ore. Therefore, due to these similarities, we believe that the level of 0.025 gr/dscf from the NSPS for calciners and dryers in mineral industries is a reasonable proxy of the performance that can be achieved by new ore dryers in the taconite industry.

D. How Did We Select the Initial Compliance Requirements?

To demonstrate initial compliance with the PM emission limit for the ore crushing and handling affected source, the flow-weighted mean concentration of PM emissions of all units within the affected source must not exceed the applicable PM emission limit. Similarly, for the finished pellet handling affected source, the flow-weighted mean concentration of PM emissions of all units within the affected source must not exceed the applicable PM emission limit. For both affected sources, emission units must demonstrate their performance through initial testing. The performance test is to be conducted using EPA Method 5 or 17 in 40 CFR part 60, appendix A.

Factors that can affect the compatibility of the Method 5 and Method 17 results are stack temperature, moisture and the type and quantity of condensible material. Stack emissions from ore crushing and handling and finished pellet handling emission units are typically at ambient temperature, and are low in moisture and condensible material. Therefore, under the conditions encountered at taconite plants for both units, we consider the results from Method 5 and Method 17 to be equivalent.

There are a total of 346 ore crushing and handling and finished pellet handling emission units in the industry. Combined, these units account for only 1 percent of the total HAP emitted from the entire source category. Requiring an initial EPA Method 5 or 17 PM test for all 346 units would cost approximately $1.73 million ($5,000 per test). The ore crushing and handling and finished pellet handling operations at most taconite iron ore processing plants consist of parallel lines of crushers, screens, bins, and conveyors. In most cases, the parallel lines consist of nearly identical process units and emission control equipment. Therefore, to reduce

the burden of initial testing, we are allowing plants to group similar emission units with similar control equipment together and then conduct an initial performance test on one or more representative emission units within each group, depending on the number of similar units within the group. To ensure consistency in the grouping of similar emission units, the rule includes the following criteria: emission units must be the same type of process unit (*e.g.*, primary crushers are separate from secondary crushers); emissions from the units must be controlled by the same type of emission control device (*e.g.*, impingement scrubbers are separate from venturi scrubbers); the difference in the volumetric flow rate among similar emission units in dscf cannot vary by more than 10 percent; and the difference in the actual process throughput rate among similar emission units in long tons per hour cannot vary by more than 10 percent. Each plant must submit a testing plan to the permitting authority for approval. The testing plan must identify the emission units that will be grouped as similar and identify the representative unit that will be tested for each group.

By allowing similar emission units to be grouped together, we estimate that the total number of emission units subjected to initial compliance testing would be reduced from 346 to 176 units. This would reduce the initial compliance burden by approximately half to $880,000.

Even after grouping similar emission units, most plants would still have to test between 20 and 39 units (ore crushing and handling and finished pellet handling combined). We believe that 180 days does not allow sufficient time to schedule and test this number of emission units. In addition, plants will be conducting initial compliance tests for their indurating furnaces at the same time. Therefore, to further reduce the burden of initial compliance testing for both emission units, we are allowing plants 2 years following the compliance date to conduct all initial compliance tests for both emission units. We believe that by grouping similar units and allowing initial testing to be conducted within 2 years, the initial compliance burden will be minimized while still providing adequate assurance of initial compliance with the emission limits.

To demonstrate initial compliance with the PM emission limit for indurating furnaces, the flow-weighted mean concentration of PM emissions of all furnace stacks for each furnace must not exceed the applicable PM emission limit. Indurating furnaces must demonstrate their performance through initial testing. The performance test is to be conducted using EPA Method 5 or 17 in 40 CFR part 60, appendix A.

As mentioned above, factors that can affect the compatibility of the Method 5 and Method 17 results are stack temperature, moisture and the type and quantity of condensible material. Stack emissions from indurating furnaces typically range from 200 to 315°F, with an 8 to 14 percent moisture content, and low concentrations of condensible material. Under these conditions we consider the results from Method 5 and Method 17 to be equivalent. However, if the stack temperature is above 320°F and the furnace is burning a fuel other than natural gas, Method 5 must be used for the performance test.

The initial compliance test for each indurating furnace must be performed within 180 calendar days of the compliance date. For indurating furnaces with multiple stacks, all stacks for the indurating furnace must be tested simultaneously. The 180-day requirement is consistent with the requirements in subpart A of 40 CFR part 63. The number of indurating furnaces per plant ranges from one to five, as well as the number of stacks per furnace. Based on the relatively small number of indurating furnaces, we believe that 180 days allows sufficient time for plants to complete initial testing of all indurating furnaces.

To demonstrate initial compliance with the PM emission limit for ore dryers, the flow-weighted mean concentration of PM emissions of all stacks for each dryer must not exceed the applicable PM emission limit. Ore dryers must demonstrate their performance through initial testing. The performance test is to be conducted using EPA Method 5 or 17 in 40 CFR part 60, appendix A.

The initial compliance test for each ore dryer must be performed within 180 calendar days of the compliance date. For ore dryers with multiple stacks, all stacks for the ore dryer must be tested simultaneously. The 180-day requirement is consistent with the requirements in subpart A of 40 CFR part 63. There are only two existing ore dryers in the source category. As such, we conclude that 180 days allows sufficient time to complete initial testing.

The proposed rule would also require that certain operating limits on control devices be established during the initial compliance test to ensure that control devices operate properly on a continuing basis. All operating limits must be established during a performance test that demonstrates compliance with the applicable emission limit. During the initial compliance tests, operating limits must be established for pressure drop and scrubber water flow rate for all wet scrubbers, and opacity (using a COMS) for dry ESP.

E. How Did We Select the Continuous Compliance Requirements?

For continuous compliance, we chose periodic performance testing for PM, which is consistent with current permit requirements. We consulted with the two States in which taconite ore processing plants are located to determine how they were implementing title V permitting requirements for performance tests. The requirements for the frequency and number of performance tests for ore crushing and handling, and finished pellet handling and ore drying units were determined to be variable and highly site-specific. Consequently, for ore crushing and handling, and finished pellet handling and ore drying units, we decided that the schedule for conducting subsequent performance tests should be based on schedules established in each plant's title V operating permit. If a title V permit has not been issued, then the plant must submit a testing plan and schedule to the permitting authority for approval.

For each indurating furnace, the proposed rule would require subsequent testing of all stacks based on the schedule in each plant's title V operating permit, but no less frequent than twice per 5-year permit term. If a title V permit has not been issued, then the plant must submit a testing plan and schedule to the permitting authority for approval. The testing frequency in the testing plan can be no less frequent than twice per 5-year period. Since the majority of the HAP emissions from this source category result from the operation of indurating furnaces, we believe that testing twice per permit term is appropriate.

We also developed procedures to ensure that control equipment are operating properly on a continuous basis. Baghouses must be equipped with a bag leak detection system. Wet scrubbers must be monitored for pressure drop and scrubber water flow rate, and they must not fall below the parametric monitoring limits established during the performance test. Dry electrostatic precipitators must be monitored for opacity using COMS. The opacity must not exceed the operating limit established during the performance test. If a plant uses equipment other than a baghouse, scrubber, or dry ESP to control emissions from an affected source, the owner or operator is required to send us a monitoring plan containing information on the type of device, performance test results, appropriate operating parameters to be monitored, operating limits, and operation and maintenance.

F. How Did We Select the Notification, Recordkeeping, and Reporting Requirements?

We selected the notification, recordkeeping, and reporting requirements that are consistent with the NESHAP General Provisions (40 CFR part 63, subpart A). One-time notifications are required by the EPA to identify which plants are subject to the standards, if a plant has complied with the rule requirements, and when certain events such as performance tests and performance evaluations are scheduled. Semiannual compliance reports containing information on any deviation from rule requirements are also required. These reports would include information on any deviation that occurred during the reporting period; if no deviation occurred, only summary information (such as a statement of compliance) is required. Consistent with the General Provisions, we also require an immediate report of any startup, shutdown, or malfunction where the actions taken in response were not consistent with the startup, shutdown, and malfunction plan. This information is necessary to determine if changes to the plan are required. Recordkeeping requirements are limited to those records that are required to document compliance with the proposed rule. Recordkeeping requirements include: a copy of each notification and report submitted and all supporting documentation; records of startup, shutdown, and malfunction; records of performance tests, performance evaluations, and opacity observations; and records related to control device performance. These notifications, reports, and records are the minimum required to ensure initial and continuous compliance with the proposed rule.

IV. Summary of Environmental, Energy, and Economic Impacts

The environmental, energy, and economic impacts of the proposed rule are based on the replacement of poor performing controls at existing sources with new controls capable of meeting the emission limits established in the proposed rule. We estimated no impacts for new sources since we do not project any new or reconstructed affected sources becoming subject to the new source MACT requirements in the foreseeable future. Specifically, we anticipate that four plants will install new impingement scrubbers on a total of 54 out of the 264 ore crushing and handling emission units to meet the PM emission limit. We expect that four plants will install new venturi rod wet scrubbers or will upgrade existing wet scrubbers on at least one of their indurating furnaces. In total, we estimate that the existing controls will be replaced with new venturi rod wet scrubbers on 7 of the 47 indurating furnace stacks. We estimate that the existing controls will be upgraded with new components on 4 of the 47 indurating furnace stacks. We anticipate that three plants will install new impingement scrubbers on a total of 11 out of the 82 finished pellet handling units to meet the finished pellet handling PM emission limit.

A. What are the Air Emission Impacts?

The installation of new controls and upgrades discussed in the preceding paragraph will result in reductions in emissions of metal HAP, acid gases, and PM. Overall, the proposed standards are expected to reduce HAP emissions by a total of 370 tons/year, a reduction of about 40 percent. Metallic HAP emissions will be reduced by 14 tons/year (a 40 percent reduction) and acid gas emissions (HCl and HF) will be reduced by 356 tons/year (a 54 percent reduction). In addition, the proposed standards are expected to reduce PM emissions by 9,438 tons/year, a reduction of about 65 percent.

B. What Are the Cost Impacts?

The total installed capital costs to the industry for the installation of control equipment are estimated to be $47.3 million. Total annualized costs are estimated at $7.0 million/yr, which includes $4.1 million/yr in capital recovery costs, $2.8 million/yr in emission control device operation and maintenance costs, and $0.1 million/yr for monitoring, recordkeeping and reporting. These costs are based on the installation of new wet scrubbers on 54 ore crushing and handling units, seven indurating furnace stacks, and 11 finished pellet handling units. The costs are also based on upgrading four wet scrubbers for one indurating furnace. In addition, the estimate includes the cost of bag leak detection systems for baghouses, continuous parameter monitoring systems for scrubbers, and continuous opacity monitors for ESP.

C. What Are the Economic Impacts?

We prepared an economic analysis to evaluate the impact this proposed rule would have on the producers and consumers of taconite and society as a whole. The taconite industry consists of eight companies owning eight mining operations, concentration plants, and pelletizing plants. The total annualized social cost of the proposed rule is $7 million (in 2000 dollars). This cost is distributed among consumers (mainly steel mills) who may buy less and/or spend more on taconite iron ore as a result of the proposed NESHAP, including merchant taconite producers that sell their output on the market, integrated iron and steel plants that produce and consume the taconite captively within the company, steel producers that use electric arc furnace (EAF) technology to produce steel from scrap, and foreign producers. Consumers incur $3.4 million of the total social costs, merchant producers incur $0.7 million in costs, and integrated iron and steel producers incur $5 million in costs. The EAF producers and foreign producers enjoy a net gain in revenues of $1.2 million and $0.7 million, respectively.

Our analysis indicates that the taconite iron ore market will experience minimal changes in the price and quantity of produced, and in the prices and quantities of steel mill products (some of which are produced using taconite). Prices in the taconite iron ore market are estimated to increase by 2/100th of a percent while production may decrease by less than 1/100th of 1 percent. The price of steel mill products is projected to increase by less than 1/100th of 1 percent and the quantity produced is projected to change by less than 1/100th of 1 percent. The EAF steel producers who make steel from scrap rather than iron ore are projected to increase their output by approximately 2/100th of 1 percent in response to the slight increase in the price of steel mill products.

While the market overall shows minimal impacts associated with this proposed rule, the financial stability of the firms operating in this market is very uncertain. The past few years have been a period of tremendous change in the iron and steel industry, during which more than 27 companies in the industry have declared bankruptcy, several plants have closed, and EAF technology has secured a growing share of the market. These changes have occurred due to evolving economic conditions, both domestically and abroad, and technological developments within the industry. Conditions continue to be challenging for iron and steel producers. In an assessment of the impacts on the companies owning taconite plants, we find the estimated costs of the proposed rule are uniformly

less than 1 percent of baseline sales revenues, and typically less than 3 percent of baseline profits. However, four of the companies had negative operating income in 2000, a period of time during in which the entire nation experienced a drop in economic activity. Three of the companies owning taconite plants have filed for protection under Chapter 11 of the bankruptcy code since September 2001. Thus, there is reason to be concerned about the financial condition of companies owning taconite plants. The incremental effect of the proposed rule on firm financial stability, however, is projected to be very small.

We also prepared a sensitivity analysis that examined the regional impacts of the proposed rule. All the taconite production plants are located within four counties in Minnesota and one in Michigan. Thus, the impacts of the proposed rule are expected to be concentrated geographically. We modeled the supply and demand linkages of the various industries and households within each county to estimate changes that may occur in the region as the taconite industry complies with the proposed NESHAP. We estimate that as industries that interact with the taconite industry (such as construction and earth moving equipment industries) react to the changes in the taconite market, and as household incomes are reduced as a result of changes in all the various industries in the region, the impact of the proposed rule will add approximately $4 million in economic cost to the region. This represents approximately 2/10ths of 1 percent of total sales in those counties. Thus, even though the impacts are concentrated in only five counties, we believe that the impacts on those county economies will not be very large.

D. What Are the Non-Air Health, Environmental, and Energy Impacts?

We project that the implementation of the rule as proposed would increase water usage by 8.4 billion gallons per year industrywide. This increased water usage would result from the installation of new wet scrubbers needed for compliance. Much of this water will be discharged as scrubber blowdown to the tailings basin(s) located at each plant. At two or more of the affected facilities, there is the potential that this increased wastewater burden will result in new or aggravated violations of permitted wastewater discharge limits from the tailings basins unless significant measures are taken to install new or upgrade existing wastewater treatment systems. The energy increase would be expected to be 15,298 megawatt-hours per year, primarily due to the energy requirements of new wet scrubbers.

V. Solicitation of Comments and Public Participation

We seek full public participation in arriving at final decisions and encourage comments on all aspects of this proposal from all interested parties. You need to submit full supporting data and detailed analysis with your comments to allow use to make the best use of them. Be sure to direct your comments to the EPA Docket Center (Air Docket), Docket ID No. OAR–2002–0039 (see **ADDRESSES**).

VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this regulatory action is not a "significant regulatory action" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include rules that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule is mandated by statute and, does not impose requirements on States, however, States will be required to implement the rule by incorporating the rule into permits and enforcing the rule upon delegation. States will collect permit fees that will be used to offset the resource burden of implementing the rule. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, the EPA did consult with State and local officials in developing this rule.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires the EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications. No tribal governments own or operate taconite iron ore processing plants. Thus, Executive Order 13175 does not apply to this rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the rule. This proposed rule is not subject to Executive Order 13045 because it is technology based and not based on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Further, this proposed rule has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and Tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation as to why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or to the private sector in any 1 year. The maximum total annual cost of this rule for any year has been estimated to be $8.9 million. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 SBREFA), 5 U.S.C. et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, "small entity" is defined as: (1) A small business whose parent company has fewer than 500 employees (the size standard set by the Small Business Administration for small businesses in NAICS 21221, Taconite Iron Ore Processing Facilities); (2) a small governmental jurisdiction that is a government or a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Since there are no small entities within the taconite industry, this proposed rule is not expected to impose regulatory costs on any small entities. Therefore, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

G. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA has prepared an Information Collection Request (ICR) document (ICR No. 2050.01), and you may obtain a copy from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. You may also download a copy off the Internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to NESHAP. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA's policies set forth in 40 CFR part 2, subpart B.

The proposed rule would require applicable one-time notifications required by the General Provisions for each affected source. As required by the NESHAP General Provisions, all plants would be required to prepare and operate by a startup, shutdown, and malfunction plan. Plants also would be required to prepare an operation and maintenance plan for control devices subject to operating limits, a fugitive emissions control plan, and a performance testing plan. Records would be required to demonstrate continuous compliance with the monitoring, operation, and maintenance requirements for control devices and monitoring systems. Semiannual compliance reports also are required. These reports would describe any deviation from the standards, any period a continuous monitoring system was "out-of-control," or any startup, shutdown, or malfunction event where actions taken to respond were inconsistent with startup, shutdown, and malfunction plan. If no deviation or other event occurred, only a summary report would be required. Consistent with the General Provisions, if actions taken in response to a startup, shutdown, or malfunction event are not consistent with the plan, an immediate report must be submitted within 2 days of the event with a letter report 7 days later. Since the rule provides a 3-year compliance period, periodic reporting, initial performance testing, and

subsequent performance testing activities would be conducted beyond the 3-year period covered by the ICR. Therefore, the burden for these items is not included in the burden estimate.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the final rule) is estimated to total 518 labor hours per year at a total annual cost of $29,052, including labor, capital, and operation and maintenance. This burden estimate includes the preparation of a startup, shutdown, and malfunction plan, an operating and maintenance plan, a fugitive dust emission control plan, and a performance testing plan. The total capital/startup costs associated with the monitoring requirements over the 3-year period of the ICR are estimated at $3.2 million (annualized capital/startup costs are $271,089/year) with operating and maintenance equipment costs of $101,455 per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's rules are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. By U.S. Postal Service, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or by courier, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822T), 1301 Constitution Avenue, NW., Room 6143, Washington DC 20460 (202–566–1700); and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 18, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by January 17, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This proposed rule involves technical standards. The EPA cites the following standards in this proposed rule: EPA Methods 1, 2, 2F, 2G, 3, 3A, 3B, 4, 5, and 17. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 2F and 2G. The search and review results have been documented and are placed in the docket (Docket Number A–2001–14) for this proposed rule.

The voluntary consensus standard ASME PTC 19–10–1981–Part 10, "Flue and Exhaust Gas Analyses," is cited in this rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ASME PTC 19–10–1981–Part 10 is an acceptable alternative to Method 3B.

This search for emissions measurement procedures identified 14 voluntary consensus standards. The EPA determined that 12 of these 14 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in this proposed rule were impractical alternatives to EPA test methods for the purposes of this proposed rule. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for this determination for the 12 methods are available in the docket.

Two of the 14 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of this proposed rule because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 2 (and possibly 1); and ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2.

Sections 63.9621 and 63.9622 to 40 CFR part 63, subpart RRRRR, list the EPA testing methods included in the proposed rule. Under §§ 63.7(f) and 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

I. Executive Order 13211, Energy Effects

This rule is not subject to Executive Order 13211, Actions Concerning Rules That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 26, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is proposed to be amended by adding subpart RRRRR to read as follows:

Subpart RRRRR—National Emission Standards for Hazardous Air Pollutants for Taconite Iron Ore Processing

What This Subpart Covers

Sec.
63.9580 What is the purpose of this subpart?
63.9581 Am I subject to this subpart?
63.9582 What parts of my plant does this subpart cover?
63.9583 When do I have to comply with this subpart?

Emission Limitations and Work Practice Standards

63.9590 What emission limitations must I meet?
63.9591 What work practice standards must I meet?

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63.9600 What are my operation and maintenance requirements?

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Initial Compliance Requirements

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63.9621 What test methods and other procedures must I use to demonstrate initial and continuous compliance with the emission limits for particulate matter?
63.9622 What test methods and other procedures must I use to establish and demonstrate initial compliance with the operating limits?
63.9623 How do I demonstrate initial compliance with the emission limitations that apply to me?
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63.9631 What are my monitoring requirements?
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63.9634 How do I demonstrate continuous compliance with the emission limitations that apply to me?
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63.9636 How do I demonstrate continuous compliance with the operation and maintenance requirements that apply to me?
63.9637 What other requirements must I meet to demonstrate continuous compliance?

Notifications, Reports, and Records

63.9640 What notifications must I submit and when?
63.9641 What reports must I submit and when?
63.9642 What records must I keep?
63.9643 In what form and how long must I keep my records?

Other Requirements and Information

63.9650 What parts of the General Provisions apply to me?
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Tables to Subpart RRRRR of Part 63

Table 1 to Subpart RRRRR of Part 63—Emission Limits
Table 2 to Subpart RRRRR of Part 63—Applicability of General Provisions to Subpart RRRRR of Part 63

Subpart RRRRR—National Emission Standards for Hazardous Pollutants for Taconite Iron Ore Processing

What This Subpart Covers

§ 63.9580 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for taconite iron ore processing. This subpart also establishes requirements to demonstrate initial and continuous compliance with all applicable emission limitations (emission limits and operating limits), work practice standards, and operation and maintenance requirements in this subpart.

§ 63.9581 Am I subject to this subpart?

You are subject to this subpart if you own or operate a taconite iron ore processing plant that is (or is part of) a major source of hazardous air pollutant (HAP) emissions on the first compliance date that applies to you. Your taconite iron ore processing plant is a major source of HAP if it emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year.

§ 63.9582 What parts of my plant does this subpart cover?

(a) This subpart applies to each new and existing affected source at your taconite iron ore processing plant.

(b) The affected sources are each new or existing ore crushing and handling operation, ore dryer, indurating furnace, and finished pellet handling operation at your taconite iron ore processing plant, as defined in § 63.9652.

(c) This subpart covers emissions from ore crushing and handling emission units; ore dryer stacks; indurating furnace stacks; finished pellet handling emission units; and fugitive dust emissions.

(d) An ore crushing and handling operation, ore dryer, indurating furnace, or finished pellet handling operation at your taconite iron ore processing plant is existing if you commenced construction or reconstruction of the affected source before December 18, 2002.

(e) An ore crushing and handling operation, ore dryer, indurating furnace, or finished pellet handling operation at your taconite iron ore processing plant is new if you commence construction or reconstruction of the affected source on or after December 18, 2002. An affected source is reconstructed if it meets the definition of reconstruction in § 63.2.

§ 63.9583 When do I have to comply with this subpart?

(a) If you have an existing affected source, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you no later than [DATE 3 YEARS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

(b) If you have a new affected source and its initial startup date is on or before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you by [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

(c) If you have a new affected source and its initial startup date is after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(d) If your taconite iron ore processing plant is an area source that becomes a major source of HAP, the compliance dates in paragraphs (d) (1) and (2) of this section apply to you.

(1) Any portion of the taconite iron ore processing plant that is a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the taconite iron ore processing plant must be in compliance with this subpart no later than 3 years after it becomes a major source.

(e) You must meet the notification and schedule requirements in § 63.9640. Several of these notifications must be submitted before the compliance date for your affected source.

Emission Limitations and Work Practice Standards

§ 63.9590 What emission limitations must I meet?

(a) You must meet each emission limit in Table 1 of this subpart that applies to you.

(b) You must meet each operating limit for control devices in paragraphs (b) (1) through (4) of this section that applies to you.

(1) For each negative pressure baghouse or positive pressure baghouse equipped with a stack applied to meet any particulate matter emission limit in Table 1 of this subpart, you must operate the baghouse such that the bag leak detection system does not alarm for more than 5 percent of the total operating time in any semiannual reporting period.

(2) For each scrubber applied to meet any particulate matter emission limit in Table 1 of this subpart, you must maintain the average pressure drop and scrubber water flow rate at or above the minimum levels established during the initial performance test.

(3) For each dry electrostatic precipitator applied to meet any particulate matter emission limit in Table 1 of this subpart, you must maintain the 6-minute average opacity of emissions exiting the control device stack at or below the level established during the initial performance test.

(4) An owner or operator who uses an air pollution control device other than a baghouse, scrubber, or dry electrostatic precipitator must submit a site specific monitoring plan as described in § 63.9631(d).

§ 63.9591 What work practice standards must I meet?

(a) You must prepare, and at all times operate according to, a fugitive dust emissions control plan that describes in detail the measures that will be put in place to control fugitive dust emissions from the locations listed in paragraphs (a) (1) through (6) of this section.

(1) Stockpiles (includes, but is not limited to, stockpiles of uncrushed ore, crushed ore, or finished pellets);

(2) Material transfer points;

(3) Plant roadways;

(4) Tailings basin;

(5) Pellet loading areas; and

(6) Yard areas.

(b) A copy of your fugitive dust emissions control plan must be submitted for approval to the Administrator or delegated authority on or before the applicable compliance date for the affected source as specified in § 63.9583. The requirement for the plant to operate according to the fugitive dust emissions control plan must be incorporated by reference in the operating permit for the plant that is issued by the designated permitting authority under part 70 or 71 of this chapter.

(c) You can use an existing fugitive dust emissions control plan provided it meets the requirements in paragraphs (c) (1) through (3) of this section.

(1) The plan satisfies the requirements of paragraph (a) of this section.

(2) The plan describes the current measures to control fugitive dust emission sources.

(3) The plan has been approved as part of a State Implementation Plan or title V permit.

(d) You must maintain a current copy of the fugitive dust emissions control plan onsite and available for inspection upon request. You must keep the plan for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

Operation and Maintenance Requirements

§ 63.9600 What are my operation and maintenance requirements?

(a) As required by § 63.6(e)(1)(i), you must always operate and maintain your affected source, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by this subpart.

(b) You must prepare and operate at all times according to a written operation and maintenance plan for each control device subject to an operating limit in § 63.9590(b). Each plan must be submitted to the Administrator or delegated authority on or before the compliance date that is specified in § 63.9583 and must address the elements in paragraphs (b) (1) and (2) of this section. You must maintain a current copy of the operation and maintenance plan onsite and available for inspection upon request. You must keep the plan for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

(1) Preventative maintenance for each control device, including a preventative maintenance schedule that is consistent with the manufacturer's instructions for routine and long-term maintenance.

(2) In the event a bag leak detection system alarm is triggered for a baghouse, you must initiate corrective action to determine the cause of the alarm within 1 hour of the alarm, initiate corrective action to correct the cause of the problem within 24 hours of the alarm, and complete the corrective action as soon as practicable. Actions may include, but are not limited to, the actions listed in paragraphs (b)(2) (i) through (vi) of this section.

(i) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media or otherwise repairing the control device.

(iv) Sealing off a defective baghouse compartment.

(v) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system.

(vi) Shutting down the process producing the particulate emissions.

General Compliance Requirements

§ 63.9610 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations, work practice standards, and operation and maintenance requirements in this subpart at all times, except during periods of startup, shutdown, and malfunction. The terms startup, shutdown, and malfunction are defined in § 63.2.

(b) During the period between the compliance date specified for your affected source in § 63.9583 and the date upon which continuous monitoring systems have been installed and certified and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(c) You must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

Initial Compliance Requirements

§ 63.9620 On which units and by what date must I conduct performance tests or other initial compliance demonstrations?

(a) To demonstrate initial compliance with the emission limits in Table 1 of this subpart for ore crushing and handling, you must conduct an initial performance test for particulate matter as specified in paragraphs (a) (1) and (2) of this section.

(1) Except as provided in paragraph (e) of this section, an initial performance test must be performed on all stacks associated with ore crushing and handling.

(2) The initial performance tests must be conducted within 2 years of the compliance date that is specified in § 63.9583.

(b) To demonstrate initial compliance with the emission limits in Table 1 of this subpart for each indurating furnace, you must conduct an initial performance test for all stacks associated with an indurating furnace within 180 calendar days of the compliance date that is specified in § 63.9583. For indurating furnaces with multiple stacks, all stacks for the indurating furnace must be tested simultaneously.

(c) To demonstrate initial compliance with the emission limits in Table 1 of this subpart for finished pellet handling, you must conduct an initial performance test for particulate matter as specified in paragraphs (c) (1) and (2) of this section.

(1) Except as provided in paragraph (e) of this section, an initial performance test must be performed on all stacks associated with finished pellet handling.

(2) The initial performance tests must be conducted within 2 years of the compliance date that is specified in § 63.9583.

(d) To demonstrate initial compliance with the emission limits in Table 1 of this subpart for each ore dryer, you must conduct an initial performance test for all stacks associated with an ore dryer within 180 calendar days of the compliance date that is specified in § 63.9583. For ore dryers with multiple stacks, all stacks for the ore dryer must be tested simultaneously.

(e) For ore crushing and handling and finished pellet handling, in lieu of conducting initial performance tests for particulate matter on all stacks, you may elect to group similar emission units together and conduct an initial compliance test on a representative sample of emission units within each group of similar emission units. The determination of whether emission units are similar must meet the criteria in paragraph (f) of this section. The number of units that must be tested within each group of similar units must be determined using the criteria in paragraph (g) of this section. If you decide to test representative emission units, you must prepare and submit a testing plan as described in paragraph (h) of this section.

(f) If you elect to test representative emission units as provided in paragraph (e) of this section, the units that are grouped together as similar units must meet the criteria in paragraphs (f) (1) through (4) of this section.

(1) The emission units must be of the same type, which may include, but is not limited to, primary crushers, secondary crushers, tertiary crushers, fine crushers, ore conveyors, ore bins, ore screens, grate feed, pellet loadout, hearth layer, cooling stacks, pellet conveyor, and pellet screens.

(2) The emission units must have the same type of air pollution control device, which may include, but is not limited to, venturi scrubbers, impingement scrubbers, rotoclones, multiclones, wet and dry electrostatic precipitators, and baghouses.

(3) The volumetric air flow rates discharged from the air pollution control devices, in dry standard cubic feet (dscf), must be within plus or minus 10 percent of the representative unit.

(4) The actual process throughput rate, in long tons per hour, must be within plus or minus 10 percent of the representative unit.

(g) If you elect to test representative emission units as provided in paragraph (e) of this section, the number of emission units tested within each group of similar units must be based on the criteria in paragraphs (g) (1) through (3) of this section.

(1) For each group of similar units with six or less units, you must test at least one unit.

(2) For each group of similar units with greater than six, but equal to or less than 12 units, you must test at least two units.

(3) For each group of similar units with greater than 12 units, you must test at least four units.

(h) If you are conducting initial testing on representative emission units within the ore crushing and handling or finished pellet handling, you must submit a testing plan for initial performance tests as required under paragraph (e) of this section. This testing plan must be submitted to the Administrator or delegated authority on or before the compliance date that is specified in § 63.9583. The testing plan must contain the information specified in paragraphs (h) (1) through (3) of this section.

(1) A list of all emission units. This list must clearly identify all emission units that have been grouped together as similar emission units. Within each group of emission units, you must identify the emission unit(s) that will be the representative unit(s) for that group, and subject to initial performance testing.

(2) The process type, type of emission control, the air flow rate in dscf, and the actual process throughput rate in long tons per hour for each emission unit.

(3) A schedule indicating when you will conduct initial performance tests for particulate matter for each of the representative units.

(i) For each work practice standard and operation and maintenance requirement that applies to you where initial compliance is not demonstrated using a performance test, you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified for your affected source in § 63.9583.

(j) If you commenced construction or reconstruction between December 18, 2002, and [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], you must demonstrate initial compliance with either the proposed emission limit or the promulgated emission limit no later than [DATE 180 CALENDAR DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] or no later than 180 calendar days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(k) If you commenced construction or reconstruction between December 18, 2002, and [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], and you chose to comply with the proposed emission limit when demonstrating initial compliance, you must conduct a second performance test to demonstrate compliance with the promulgated emission limit by [DATE 3 YEARS AND 180 CALENDAR DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], or after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

§ 63.9621 What test methods and other procedures must I use to demonstrate initial and continuous compliance with the emission limits for particulate matter?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(e)(1) and the conditions detailed in paragraphs (b) and (c) of this section.

(b) To determine compliance with the applicable emission limit for particulate matter in Table 1 of this subpart for ore crushing and handling, and for finished pellet handling, you must follow the test methods and procedures in paragraphs (b) (1) through (3) of this section.

(1) Determine the concentration of particulate matter in the stack gas and the stack gas volumetric flow rate for each emission unit according to the test methods in appendix A to part 60 of this chapter. The applicable test methods are listed in paragraphs (b)(1) (i) through (v) of this section.

(i) Method 1 or 1A to select sampling port locations and the number of traverse points. Sampling ports must be

located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G, as applicable, to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5, 5D or 17 to determine the concentration of particulate matter.

(2) Collect a minimum sample volume of 60 dry standard cubic feet of gas during each particulate matter test run. Three valid test runs are needed to comprise a performance test.

(3) For each ore crushing and handling affected source, and for each finished pellet handling affected source you must determine the flow-weighted mean concentration of particulate matter emissions using the procedure in paragraph (b)(3) (i) or (ii) of this section.

(i) Compute the flow-weighted mean concentration of particulate matter emissions using Equation 1 of this section.

$$C_w = \frac{\sum_{i=1}^{n} C_i Q_i}{\sum_{i=1}^{n} Q_i} \qquad \text{(Eq. 1)}$$

Where:

C_w = Flow-weighted mean concentration of particulate matter for all emission units within the affected source, grains per dry standard cubic foot (gr/dscf);

C_i = Three-run average particulate matter concentration from emission unit "i", gr/dscf;

Q_i = Three-run average volumetric flow rate of stack gas from emission unit "i", dscf/hr; and

n = The number of emission units in the affected source.

(ii) If you are grouping similar units as allowed under § 63.9620(d), you must meet the requirements in paragraphs (b)(3)(ii) (A) and (B) of this section.

(A) All emission units within each group of similar units must be assigned the flow-weighted mean concentration of particulate matter emissions for the representative unit.

(B) All emission units within each group of similar units must be assigned the actual average operating volumetric flow rate of exhaust gas measured for each emission unit within each group of similar units. You cannot assign the average volumetric flow rate of exhaust gas measured for a representative unit to all emission units within each group of similar units.

(c) To determine compliance with the applicable emission limit for particular matter in Table 1 of this subpart for each ore dryer and for each indurating furnace, you must follow the test methods and procedures in paragraphs (c) (1) through (5) of this section.

(1) Determine the concentration of particulate matter for each stack according to the test methods in appendix A to part 60 of this chapter. The applicable test methods are listed in paragraphs (c)(1) (i) through (v) of this section.

(i) Method 1 or 1A to select sampling port locations and the number of traverse points. Sampling ports must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G, as applicable, to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5, 5D or 17 to determine the concentration of particulate matter.

(2) Collect a minimum sample volume of 60 dry standard cubic feet of gas during each particulate matter test run. Three valid test runs are needed to comprise a performance test.

(3) For ore dryers and indurating furnaces with multiple stacks, all stacks must be tested simultaneously.

(4) For each ore dryer and each indurating furnace, compute the flow-weighted mean concentration of particulate matter for each test run using Equation 2 of this section.

$$C_a = \frac{\sum_{i=1}^{n} C_i Q_i}{\sum_{i=1}^{n} Q_i} \qquad \text{(Eq. 2)}$$

Where:

C_a = Flow-weighted mean concentration of particulate matter for run "a", gr/dscf;

C_i = Concentration of particulate matter from stack "i" for run "a", gr/dscf;

Q_i = Volumetric flow rate of stack gas from stack "i" for run "a", dscf/hr;

n = Number of stacks; and

a = Run number: 1, 2, or 3.

(5) For each ore dryer and each indurating furnace, compute the flow-weighted mean particulate matter concentration for the three test runs using Equation 3 of this section.

$$C = \frac{C_1 + C_2 + C_3}{3} \qquad \text{(Eq. 3)}$$

Where:

C = Flow-weighted mean particulate matter concentration, gr/dscf;

C_1 = Flow-weighted particulate matter concentration for run 1, gr/dscf;

C_2 = Flow-weighted particulate matter concentration for run 2, gr/dscf; and

C_3 = Flow-weighted particulate matter concentration for run 3, gr/dscf.

§ 63.9622 What test methods and other procedures must I use to establish and demonstrate initial compliance with the operating limits?

(a) For a wet scrubber subject to operating limits for pressure drop and scrubber water flow rate in § 63.9590(b)(2), you must establish site-specific operating limits according to the procedures in paragraphs (a) (1) and (2) of this section.

(1) Using the continuous parameter monitoring system (CPMS) required in § 63.9631(b), measure and record the pressure drop and scrubber water flow rate every 15 minutes during each run of the particulate matter performance test.

(2) Compute and record the average pressure drop and scrubber water flow rate for each individual test run. Your operating limits are the lowest average pressure drop and scrubber water flow rate value in any of the three runs that meet the applicable emission limit.

(b) For a dry electrostatic precipitator subject to the operating limit in § 63.9590(b)(3) for opacity, you must establish a site-specific operating limit according to the procedures in paragraphs (b) (1) and (4) of this section.

(1) Using the continuous opacity monitoring system (COMS) required in § 63.9631(c), measure and record the opacity of emissions from each control device stack during the particulate matter performance test.

(2) Compute and record the 6-minute opacity averages from 24 or more data points equally spaced over each 6-minute period (*e.g.*, at 15-second intervals) during the test runs.

(3) Using the opacity measurements from a performance test that meets the emission limit, determine the opacity value corresponding to the 99 percent upper confidence level of a normal distribution of the 6-minute opacity averages.

(4) In your semiannual compliance report required by 63.9641(b), report as a deviation any 6-minute period during which the average opacity, as measured by the COMS, exceeds the opacity value corresponding to the 99 percent upper confidence level determined under paragraph (b)(3) of this section.

(c) You may change the operating limits for a wet scrubber, or dry electrostatic precipitator if you meet the requirements in paragraphs (c) (1) through (3) of this section.

(1) Submit a written notification to the Administrator of your request to conduct a new performance test to revise the operating limit.

(2) Conduct a performance test to demonstrate compliance with the applicable emission limitation in Table 1 of this subpart.

(3) Establish revised operating limits according to the applicable procedures n paragraphs (a) and (b) of this section.

§ 63.9623 How do I demonstrate initial compliance with the emission limitations that apply to me?

(a) For each affected source subject to an emission limit in Table 1 of this subpart, you must demonstrate initial compliance by meeting the requirements in paragraphs (a) (1) through (6) of this section.

(1) For ore crushing and handling, the flow-weighted mean concentration of particulate matter, determined according to the procedures in § 63.9620(a) and § 63.9621(b), must not exceed the emission limits in Table 1 of this subpart.

(2) For indurating furnaces, the flow-weighted mean concentration of particulate matter, determined according to the procedures in § 63.9620(b) and § 63.9621(c), must not exceed the emission limits in Table 1 of this subpart.

(3) For finished pellet handling, the flow-weighted mean concentration of particulate matter, determined according to the procedures in § 63.9620(c) and § 63.9621(b), must not exceed the emission limits in Table 1 of this subpart.

(4) For ore dryers, the flow-weighted mean concentration of particulate matter, determined according to the procedures in § 63.9620(d) and § 63.9621(c), must not exceed the emission limits in Table 1 of this subpart.

(5) For each wet scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.9590(b)(2), you must meet the requirements in paragraphs (a)(5) (i) and (ii) of this section.

(i) Measure and record the pressure drop and scrubber water flow rate during the performance test in accordance with § 63.9622(a).

(ii) Establish appropriate site-specific operating limits.

(6) For each dry electrostatic precipitator subject to the opacity operating limit in § 63.9590(b)(3), you must meet the requirements in paragraphs (a)(6)(i) and (ii) of this section.

(i) Measure and record the opacity during the performance test in accordance with § 63.9622(b).

(ii) Establish an appropriate site-specific operating limit.

(b) For each emission limitation that applies to you, you must submit a notification of compliance status according to § 63.9640(e).

§ 63.9624 How do I demonstrate initial compliance with the work practice standards that apply to me?

(a) You must demonstrate initial compliance with the work practice standards by meeting the requirements in paragraphs (a)(1) through (3) of this section.

(1) You must prepare a fugitive dust emissions control plan in accordance with the requirements in § 63.9591.

(2) You must submit to the Administrator or delegated authority the fugitive dust emissions control plan in accordance with the requirements in § 63.9591.

(3) You must implement each control practice according to the procedures specified in your fugitive dust emissions control plan.

(b) [Reserved]

§ 63.9625 How do I demonstrate initial compliance with the operation and maintenance requirements that apply to me?

You must demonstrate initial compliance by certifying in your notification of compliance status that you have met the requirements in paragraphs (a) through (c) of this section.

(a) You have prepared the operation and maintenance plan according to the requirements in § 63.9600(b).

(b) You operate each control device according to the procedures in the operation and maintenance plan.

(c) You submit a notification of compliance status according to the requirements in § 63.9640(e).

Continuous Compliance Requirements

§ 63.9630 When must I conduct subsequent performance tests?

(a) You must conduct subsequent performance tests to demonstrate continued compliance with the ore crushing and handling emission limit in Table 1 of this subpart according to the schedule developed by your permitting authority and shown in your title V permit. If a title V permit has not been issued, you must submit a testing plan and schedule, containing the information specified in paragraph (e) of this section, to the permitting authority for approval.

(b) You must conduct subsequent performance tests on all stacks from indurating furnaces to demonstrate continued compliance with the indurating furnace limits in Table 1 of this subpart according to the schedule developed by your permitting authority and shown in your title V permit, but no less frequent than twice per 5-year permit term. If a title V permit has not been issued, you must submit a testing plan and schedule, containing the information specified in paragraph (e) of this section, to the permitting authority for approval. For indurating furnaces with multiple stacks, all stacks for the indurating furnace must be tested simultaneously.

(c) You must conduct subsequent performance tests to demonstrate compliance with the finished pellet handling emission limit in Table 1 of this subpart according to the schedule developed by your permitting authority and shown in your title V permit. If a title V permit has not been issued, you must submit a testing plan and schedule, containing the information specified in paragraph (e) of this section, to the permitting authority for approval.

(d) You must conduct subsequent performance tests on all stacks from ore dryers to demonstrate continued compliance with the ore dryer limits in Table 1 of this subpart according to the schedule developed by your permitting authority and shown in your title V permit. If a title V permit has not been issued, you must submit a testing plan and schedule, containing the information specified in paragraph (e) of this section, to the permitting authority for approval. For ore dryers with multiple stacks, all stacks for the ore dryer must be tested simultaneously.

(e) If your plant does not have a title V permit, you must submit a testing plan for subsequent performance tests as required in paragraphs (a) through (d) of this section. This testing plan must be submitted to the Administrator or delegated authority on or before the compliance date that is specified in § 63.9583. The testing plan must contain the information specified in paragraphs (e) (1) and (2) of this section. You must maintain a current copy of the testing plan onsite and available for inspection upon request. You must keep the plan for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

(1) A list of all emission units.

(2) A schedule indicating when you will conduct subsequent performance tests for particulate matter for each of the emission units.

§ 63.9631 What are my monitoring requirements?

(a) For each baghouse subject to the operating limit in § 63.9590(b)(1) for the bag leak detection system alarm, you must at all times monitor the relative change in particulate matter loadings using a bag leak detection system according to the requirements in § 63.9632(a) and conduct inspections at their specified frequencies according to the requirements in paragraphs (a) (1) through (8) of this section.

(1) Monitor the pressure drop across each baghouse cell each day to ensure pressure drop is within the normal operating range identified in the manual.

(2) Confirm that dust is being removed from hoppers through weekly visual inspections or other means of ensuring the proper functioning of removal mechanisms.

(3) Check the compressed air supply for pulse-jet baghouses each day.

(4) Monitor cleaning cycles to ensure proper operation using an appropriate methodology.

(5) Check bag cleaning mechanisms for proper functioning through monthly visual inspection or equivalent means.

(6) Make monthly visual checks of bag tension on reverse air and shaker-type baghouses to ensure that bags are not kinked (kneed or bent) or laying on their sides. You do not have to make this check for shaker-type baghouses using self-tensioning (spring-loaded) devices.

(7) Confirm the physical integrity of the baghouse through quarterly visual inspections of the baghouse interior for air leaks.

(8) Inspect fans for wear, material buildup, and corrosion through quarterly visual inspections, vibration detectors, or equivalent means.

(b) For each wet scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.9590(b)(2), you must at all times monitor the average pressure drop and water flow rate using a CPMS according to the requirements in § 63.9632(b) and (c).

(c) For each dry electrostatic precipitator subject to the opacity operating limit in § 63.9590(b)(3), you must at all times monitor the 6-minute average opacity of emissions exiting each control device stack using a COMS according to the requirements in § 63.9632(d).

(d) An owner or operator who uses an air pollution control device other than a baghouse, scrubber, or dry electrostatic precipitator must submit a site specific monitoring plan that includes the information in paragraphs (d) (1) through (4) of this section. The monitoring plan is subject to approval by the Administrator. You must maintain a current copy of the monitoring plan onsite and available for inspection upon request. You must keep the plan for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

(1) A description of the device;

(2) Test results collected in accordance with § 63.9621 verifying the performance of the device for reducing emissions of particulate matter to the atmosphere to the levels required by this subpart;

(3) A copy of the operation and maintenance plan required in § 63.9600(b); and

(4) Appropriate operating parameters that will be monitored to maintain continuous compliance with the applicable emission limitation(s).

§ 63.9632 What are the installation, operation, and maintenance requirements for my monitoring equipment?

(a) For each baghouse subject to the operating limit in § 63.9590(b)(1) for the bag leak detection system alarm, you must install, operate, and maintain each bag leak detection system according to the requirements in paragraphs (a) (1) through (7) of this section.

(1) The system must be certified by the manufacturer to be capable of detecting emissions of particulate matter at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(2) The system must provide output of relative changes in particulate matter loadings.

(3) The system must be equipped with an alarm that will sound when an increase in relative particulate loadings is detected over a preset level. The alarm must be located such that it can be heard by the appropriate plant personnel.

(4) Each system that works based on the triboelectric effect must be installed, operated, and maintained in a manner consistent with the guidance document, "Fabric Filter Bag Leak Detection Guidance," EPA–454/R–98–015, September 1997. This document is available on the EPA's Technology Transfer Network at *http://www.epa.gov/ttn/emc/cem/tribo.pdf* (Adobe Acrobat version) or *http://www.epa.gov/ttn/emc/cem/tribo.wpd* (WordPerfect version). You may install, operate, and maintain other types of bag leak detection systems in a manner consistent with the manufacturer's written specifications and recommendations.

(5) To make the initial adjustment of the system, establish the baseline output by adjusting the sensitivity (range) and the averaging period of the device. Then, establish the alarm set points and the alarm delay time.

(6) Following the initial adjustment, do not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in your operation and maintenance plan. Do not increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365-day period unless a responsible official certifies, in writing, that the baghouse has been inspected and found to be in good operating condition.

(7) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(b) For each wet scrubber subject to the operating limits in § 63.9590(b)(2) for pressure drop and scrubber water flow rate, you must install, operate, and maintain each CPMS according to the requirements in paragraphs (b)(1) and (2) of this section.

(1) For the pressure drop CPMS, you must follow the procedures in paragraphs (b)(1)(i) through (vi) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure and that minimizes or eliminates pulsating pressure, vibration, and internal and external corrosion.

(ii) Use a gauge with a minimum measurement sensitivity of 0.5 inch of water or a transducer with a minimum measurement sensitivity of 5 percent of the pressure range.

(iii) Check the pressure tap for pluggage daily.

(iv) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range, or install a new pressure sensor.

(vi) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(2) For the scrubber water flow rate CPMS, you must follow the procedures in paragraphs (b)(2) (i) through (iv) of this section.

(i) Locate the flow sensor and other necessary equipment in a position that provides a representative flow and that reduces swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(ii) Use a flow sensor with a minimum measurement sensitivity of 5 percent of the flow rate.

(iii) Conduct a flow sensor calibration check at least semiannually according to the manufacturer's instructions.

(iv) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(c) You must install, operate, and maintain each CPMS for a wet scrubber according to the requirements in paragraphs (c) (1) through (3) of this section.

(1) Each CPMS must complete a minimum of one cycle of operation for each successive 5-minute period.

(2) Each CPMS must have valid data for at least 95 percent of every averaging period.

(3) Each CPMS must determine and record the average of all recorded readings.

(d) For each dry electrostatic precipitator subject to the opacity operating limit in § 63.9590(b)(3), you must install, operate, and maintain each COMS according to the requirements in paragraphs (d) (1) through (4) of this section.

(1) You must install each COMS and conduct a performance evaluation of each COMS according to § 63.8 and Performance Specification 1 in appendix B to 40 CFR part 60.

(2) You must develop and implement a quality control program for operating and maintaining each COMS according to § 63.8. At a minimum, the quality control program must include a daily calibration drift assessment, quarterly performance audit, and annual zero alignment of each COMS.

(3) You must operate and maintain each COMS according to § 63.8(e) and your quality control program. Identify periods the COMS is out of control, including any periods that the COMS fails to pass a daily calibration drift assessment, quarterly performance audit, or annual zero alignment audit.

(4) You must determine and record the 6-minute average opacity collected for periods during which the COMS is not out of control.

§ 63.9633 How do I monitor and collect data to demonstrate continuous compliance?

(a) Except for monitoring malfunctions, associated repairs, and required quality assurance or control activities (including as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times an affected source is operating.

(b) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels, or to fulfill a minimum data availability requirement. You must use all the data collected during all other periods in assessing compliance.

(c) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not considered malfunctions.

§ 63.9634 How do I demonstrate continuous compliance with the emission limitations that apply to me?

(a) For each affected source subject to an emission limit in Table 1 of this subpart, you must demonstrate continuous compliance by meeting the requirements in paragraphs (b) through (f) of this section.

(b) For ore crushing and handling and for finished pellet handling, you must demonstrate continuous compliance by meeting the requirements in paragraphs (b)(1) and (2) of this section.

(1) The flow-weighted mean concentration of particulate matter for all ore crushing and handling emission units and for all finished pellet handling emission units must be maintained at or below the emission limits in Table 1 of this subpart.

(2) You must conduct subsequent performance tests for emission units in the ore crushing and handling and finished pellet handling affected sources following the schedule in your title V permit. If a title V permit has not been issued; you must conduct subsequent performance tests according to a testing plan approved by the Administrator or delegated authority.

(c) For ore dryers and indurating furnaces, you must demonstrate continuous compliance by meeting the requirements in paragraphs (c) (1) and (2) of this section.

(1) The flow-weighted mean concentration of particulate matter for all stacks from the ore dryer or indurating furnace must be maintained at or below the emission limits in Table 1 of this subpart.

(2) For ore dryers, you must conduct subsequent performance tests following the schedule in your title V permit. For indurating furnaces, you must conduct subsequent performance tests following the schedule in your title V permit, but no less frequent than twice per 5-year permit term. If a title V permit has not been issued, you must conduct subsequent performance tests according to a testing plan approved by the Administrator or delegated authority.

(d) For each baghouse subject to the operating limit for the bag leak detection system alarm in § 63.9590(b)(1), you must demonstrate continuous compliance by completing the requirements in paragraphs (d) (1) through (3) of this section.

(1) Maintaining each baghouse such that the bag leak detection system alarm does not sound for more than 5 percent of the operating time during any semiannual reporting period. To determine the percent of time the alarm sounded you must follow the procedure in paragraphs (d)(1) (i) through (v) of this section.

(i) Alarms that occur due solely to a malfunction of the bag leak detection system are not included in the calculation.

(ii) Alarms that occur during startup, shutdown, or malfunction are not included in the calculation if the condition is described in the startup, shutdown, and malfunction plan and all the actions you took during the startup, shutdown, or malfunction were consistent with the procedures in the startup, shutdown, and malfunction plan.

(iii) Count 1 hour of alarm time for each alarm when you initiated procedures to determine the cause of the alarm within 1 hour.

(iv) Count the actual amount of time you took to initiate procedures to determine the cause of the alarm if you did not initiate procedures to determine the cause of the alarm within 1 hour of the alarm.

(v) Calculate the percentage of time the alarm on the bag leak detection system sounds as the ratio of the sum of alarm times to the total operating time multiplied by 100.

(2) Maintaining records of the times the bag leak detection system alarm sounded, and for each valid alarm, the time you initiated corrective action, the corrective action(s) taken, and the date on which corrective action was completed.

(3) Inspecting and maintaining each baghouse according to the requirements in § 63.9631(a) (1) through (8) and recording all information needed to document conformance with these requirements. If you increase or decrease the sensitivity of the bag leak detection system beyond the limits specified in § 63.9632(a)(6), you must include a copy of the required written certification by a responsible official in the next semiannual compliance report.

(e) For each wet scrubber subject to the operating limits for pressure drop

and scrubber water flow rate in § 63.9590(b)(2), you must demonstrate continuous compliance by completing the requirements of paragraphs (e)(1) through (3) of this section.

(1) Maintaining the average pressure drop and scrubber water flow rate at levels no lower than those established during the initial or subsequent performance test.

(2) Inspecting and maintaining each scrubber CPMS according to § 63.9632(b) and recording all information needed to document conformance with these requirements.

(3) Collecting and reducing monitoring data for pressure drop and scrubber water flow rate according to § 63.9632(c) and recording all information needed to document conformance with these requirements.

(f) For each dry electrostatic precipitator subject to the site-specific opacity operating limit in § 63.9590(b)(3), you must demonstrate continuous compliance by completing the requirements of paragraphs (f)(1) and (2) of this section.

(1) Maintaining the 6-minute average opacity of emissions no higher than the site-specific limit established during the initial or subsequent performance test.

(2) Operating and maintaining each COMS and reducing the COMS data according to § 63.9632(d).

§ 63.9635 How do I demonstrate continuous compliance with the work practice standards that apply to me?

(a) You must demonstrate continuous compliance with the work practice standard requirements in § 63.9591 by operating in accordance with your fugitive dust emissions control plan at all times.

(b) You must maintain a current copy of the fugitive dust emissions control plan required in § 63.9591 onsite and available for inspection upon request. You must keep the plan for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

§ 63.9636 How do I demonstrate continuous compliance with the operation and maintenance requirements that apply to me?

(a) For each control device subject to an operating limit in § 63.9590(b), you must demonstrate continuous compliance with the operation and maintenance requirements in § 63.9600(b) by completing the requirements of paragraphs (a)(1) and (2) of this section.

(1) Performing preventative maintenance for each control device according to § 63.9600(b)(1) and recording all information needed to document conformance with these requirements; and

(2) Initiating and completing corrective action for a bag leak detection system alarm according to § 63.9600(b)(2) and recording all information needed to document conformance with these requirements.

(b) You must maintain a current copy of the operation and maintenance plan required in § 63.9600(b) onsite and available for inspection upon request. You must keep the plan for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

§ 63.9637 What other requirements must I meet to demonstrate continuous compliance?

(a) *Deviations.* You must report each instance in which you did not meet each emission limitation in Table 1 of this subpart that applies to you. This includes periods of startup, shutdown, and malfunction. You also must report each instance in which you did not meet the work practice standards in § 63.9591 and each instance in which you did not meet each operation and maintenance requirement in § 63.9600 that applies to you. These instances are deviations from the emission limitations, work practice standards, and operation and maintenance requirements in this subpart. These deviations must be reported according to the requirements in § 63.9641.

(b) *Startups, shutdowns, and malfunctions.* During periods of startup, shutdown, and malfunction, you must operate in accordance with your startup, shutdown, and malfunction plan.

(1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan.

(2) The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

Notifications, Reports, and Records

§ 63.9640 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9(b) through (h) that apply to you by the specified dates.

(b) As specified in § 63.9(b)(2), if you start up your affected source before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit your initial notification no later than [DATE 120 CALENDAR DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) As specified in § 63.9(b)(3), if you start up your new affected source on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit your initial notification no later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test or other initial compliance demonstration, you must submit a notification of compliance status according to § 63.9(h)(2)(ii). The initial notification of compliance status must be submitted by the dates specified in paragraphs (e)(1) and (2) of this section.

(1) For each initial compliance demonstration that does not include a performance test, you must submit the notification of compliance status before the close of business on the 30th calendar day following completion of the initial compliance demonstration.

(2) For each initial compliance demonstration that does include a performance test, you must submit the notification of compliance status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

§ 63.9641 What reports must I submit and when?

(a) *Compliance report due dates.* Unless the Administrator has approved a different schedule, you must submit a semiannual compliance report to your permitting authority according to the requirements in paragraphs (a)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.9583 and ending on June 30 or December 31, whichever date comes first after the compliance date that is specified for your source in § 63.9583.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after your first compliance report is due.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (a)(1) through (4) of this section.

(b) *Compliance report contents.* Each compliance report must include the information in paragraphs (b)(1) through (3) of this section and, as applicable, in paragraphs (b)(4) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with the official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there were no deviations from the continuous compliance requirements in §§ 63.9634 through 63.9636 that apply to you, then provide a statement that there were no deviations from the emission limitations, work practice standards, or operation and maintenance requirements during the reporting period.

(6) If there were no periods during which a continuous monitoring system (including a CPMS or COMS) was out-of-control as specified in § 63.8(c)(7), then provide a statement that there were no periods during which the CPMS was out-of-control during the reporting period.

(7) For each deviation from an emission limitation in Table 1 of this subpart that occurs at an affected source where you are not using a continuous monitoring system (including a CPMS or COMS) to comply with an emission limitation in this subpart, the compliance report must contain the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(7)(i) and (ii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable) as applicable and the corrective action taken.

(8) For each deviation from an emission limitation occurring at an affected source where you are using a continuous monitoring system (including a CPMS or COMS) to comply with the emission limitation in this subpart, you must include the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(8)(i) through (xi) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time that each continuous monitoring was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration that each continuous monitoring system was out-of-control, including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period including those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of continuous monitoring system downtime as a percent of the total source operating time during the reporting period.

(viii) A brief description of the process units.

(ix) A brief description of the continuous monitoring system.

(x) The date of the latest continuous monitoring system certification or audit.

(xi) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period.

(c) *Immediate startup, shutdown, and malfunction report.* If you had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report according to the requirements in § 63.10(d)(5)(ii).

(d) *Part 70 monitoring report.* If you have obtained a title V operating permit for an affected source pursuant to 40 CFR part 70 or 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report for an affected source along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all the required information concerning deviations from any emission limitation or operation and maintenance requirement in this subpart, submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report does not otherwise affect any obligation you may have to report deviations from permit requirements for an affected source to your permitting authority.

§ 63.9642 What records must I keep?

(a) You must keep the records listed in paragraphs (a)(1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any initial notification or notification of compliance status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests, performance evaluations as required in § 63.10(b)(2)(viii).

(b) For each COMS, you must keep the records specified in paragraphs (b)(1) through (4) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Monitoring data for COMS during a performance evaluation as required in § 63.6(h)(7)(i) and (ii).

(3) Previous (that is, superceded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(4) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a

period of startup, shutdown, or malfunction or during another period.

(c) You must keep the records required in §§ 63.9634 through 63.9636 to show continuous compliance with each emission limitation, work practice standard, and operation and maintenance requirement that applies to you.

§ 63.9643 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.9650 What parts of the General Provisions apply to me?

Table 1 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.9651 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the United States Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are specified in paragraphs (c)(1) through (3) of this section.

(1) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(2) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(3) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.9652 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows.

Affected source means each new or existing ore crushing and handling operation, ore dryer, indurating furnace, or finished pellet handling operation, at your taconite iron ore processing plant.

Bag leak detection system means a system that is capable of continuously monitoring relative particulate matter (dust) loadings in the exhaust of a baghouse to detect bag leaks and other upset conditions. A bag leak detection system includes, but is not limited to, an instrument that operates on tribroelectric, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

Conveyor belt transfer point means a point in the conveying operation where the taconite ore or taconite pellets are transferred to or from a conveyor belt, except where the taconite ore or taconite pellets are being transferred to a bin or stockpile.

Crusher means a machine used to crush taconite ore and includes feeders or conveyors located immediately below the crushing surfaces. Crushers include, but are not limited to, gyratory crushers and cone crushers.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation (including operating limits) or operation and maintenance requirement;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means any emission limit, opacity limit, or operating limit.

Finished pellet handling means the transfer of fired taconite pellets from the indurating furnace to the finished pellet stockpiles at the plant. Finished pellet handling includes, but is not limited to, furnace discharge or grate discharge, and finished pellet screening, transfer, and storage.

Fugitive dust emission source means a stationary source from which particles are discharged to the atmosphere due to wind or mechanical inducement such as vehicle traffic. Fugitive dust sources include, but are not limited to:

(1) Stockpiles (includes, but is not limited to, stockpiles of uncrushed ore, crushed ore, or finished pellets);

(2) Material transfer points;

(3) Plant roadways;

(4) Tailings basins;

(5) Pellet loading areas; and

(6) Yard areas.

Grate feed means the transfer of unfired taconite pellets from the pelletizer into the indurating furnace.

Grate kiln indurating furnace means a furnace system that consists of a traveling grate, a rotary kiln, and an annular cooler. The grate kiln indurating furnace begins at the point where the grate feed conveyor discharges the green balls onto the furnace traveling grate and ends where the hardened pellets exit the cooler. The atmospheric pellet cooler vent stack is not included as part of the grate kiln indurating furnace.

Indurating means the process whereby unfired taconite pellets, called green balls, are hardened at high temperature in an indurating furnace. Types of indurating furnaces include straight grate indurating furnaces and grate kiln indurating furnaces.

Ore crushing and handling means the process whereby dry taconite ore is crushed and screened. Ore crushing and handling includes, but is not limited to, all dry crushing operations (*e.g.*, primary, secondary, and tertiary crushing), dry ore conveyance and transfer points, dry ore classification and screening, dry ore storage and stockpiling, dry milling, dry cobbing (*i.e.*, dry magnetic separation), and the grate feed. Ore crushing and handling specifically excludes any operations where the dry crushed ore is saturated with water, such as, wet milling and wet magnetic separation.

Ore dryer means a rotary dryer that repeatedly tumbles wet taconite ore concentrate through a heated air stream to reduce the amount of entrained moisture in the taconite ore concentrate.

Pellet cooler vent stacks means atmospheric vents in the cooler section of the grate kiln indurating furnace that exhaust cooling air that is not returned for recuperation. Pellet cooler vent stacks are not to be confused with the cooler discharge stack, which is in the pellet loadout or dumping area.

Pellet loading area means that portion of a taconite iron ore processing plant

where taconite pellets are loaded into trucks or railcars.

Responsible official means responsible official as defined in § 63.2.

Screen means a device for separating material according to size by passing undersize material through one or more mesh surfaces (screens) in series and retaining oversize material on the mesh surfaces (screens).

Storage bin means a facility for storage (including surge bins and hoppers) of taconite ore or taconite pellets prior to further processing or loading.

Straight grate indurating furnace means a furnace system that consists of a traveling grate that carries the taconite pellets through different furnace temperature zones. In the straight grate indurating furnace a layer of fired pellets, called the hearth layer, is placed on the traveling grate prior to the addition of unfired pellets. The straight grate indurating furnace begins at the point where the grate feed conveyor discharges the green balls onto the furnace traveling grate and ends where the hardened pellets drop off of the traveling grate.

Taconite iron ore processing means the separation and concentration of iron ore from taconite, a low-grade iron ore, to produce taconite pellets.

Taconite ore means a low-grade iron ore suitable for concentration of magnetite or hematite by fine grinding and magnetic or flotation treatment, from which pellets containing iron can be produced.

Tailings basin means a natural or artificial impoundment in which gangue or other refuse material resulting from the washing, concentration or treatment of ground taconite iron ore is confined.

Wet grinding and milling means the process where wet taconite ore is finely ground using rod and/or ball mills.

Tables to Subpart RRRRR of Part 63

As required in § 63.9590(a), you must comply with each applicable emission limit in the following table:

TABLE 1 TO SUBPART RRRRR OF PART 63.—EMISSION LIMITS

For . . .	You must comply with each of the following . . .
1. Existing ore crushing and handling emission units.	The flow-weighted mean concentration of particulate matter discharged to the atmosphere from all ore crushing and handling emission units, as determined using the procedures in § 63.9621(b), must not exceed 0.008 grains per dry standard cubic foot (gr/dscf).
2. New ore crushing and handling emission units.	The flow-weighted mean concentration of particulate matter discharged to the atmosphere from all ore crushing and handling emission units, as determined using the procedures in § 63.9621(b), must not exceed 0.005 gr/dscf.
3. Each existing straight grate indurating furnace processing magnetite.	The flow-weighted mean concentration of particulate matter discharged to the atmosphere from all stacks, as determined using the procedures in § 63.9621(c), must not exceed 0.010 gr/dscf.
4. Each new straight grate indurating furnace processing magnetite.	The flow-weighted mean concentration of particulate matter discharged to the atmosphere from all stacks, as determined using the procedures in § 63.9621(c), must not exceed 0.006 gr/dscf.
5. Each existing grate kiln indurating furnace processing magnetite.	The flow-weighted mean concentration of particulate matter discharged to the atmosphere from all stacks, as determined using the procedures in § 63.9621(c), must not exceed 0.011 gr/dscf.
6. Each new grate kiln indurating furnace processing magnetite.	The flow-weighted mean concentration of particulate matter discharged to the atmosphere from all stacks, as determined using the procedures in § 63.9621(c), must not exceed 0.006 gr/dscf.
7. Each existing grate kiln indurating furnace processing hematite.	The flow-weighted mean concentration of particulate matter discharged to the atmosphere from all stacks, as determined using the procedures in § 63.9621(c), must not exceed 0.025 gr/dscf.
8. Each new grate kiln indurating furnace processing hematite.	The flow-weighted mean concentration of particulate matter discharged to the atmosphere from all stacks, as determined using the procedures in § 63.9621(c), must not exceed 0.018 gr/dscf.
9. Existing finished pellet handling emission units.	The flow-weighted mean concentration of particulate matter discharged to the atmosphere from all finished pellet handling emission units, as determined using the procedures in § 63.9621(b), must not exceed 0.008 gr/dscf.
10. New finished pellet handling emission units	The flow-weighted mean concentration of particulate matter discharged to the atmosphere from all finished pellet handling emission units, as determined using the procedures in § 63.9621(b), must not exceed 0.005 gr/dscf.
11. Each existing ore dryer	The flow-weighted mean concentration of particulate matter discharged to the atmosphere from all stacks, as determined using the procedures in § 63.9621(c), must not exceed 0.052 gr/dscf.
12. Each new ore dryer	The flow-weighted mean concentration of particulate matter discharged to the atmosphere from all stacks, as determined using the procedures in § 63.9621(c), must not exceed 0.025 gr/dscf.

As required in § 63.9650, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table:

TABLE 2 TO SUBPART RRRRR OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART RRRRR OF PART 63

Citation	Subject	Applies to Subpart RRRRR	Explanation
§ 63.1	Applicability	Yes.	
§ 63.2	Definitions	Yes.	
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4	Prohibited Activities	Yes.	

TABLE 2 TO SUBPART RRRRR OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART RRRRR OF PART 63—Continued

Citation	Subject	Applies to Subpart RRRRR	Explanation
§63.5	Construction/Reconstruction	Yes.	
§63.6(a)–(g)	Compliance with Standards and Maintenance Requirements.	Yes.	
§63.6(h)	Compliance with Opacity and Visible Emission (VE) Standards.	No	Subpart RRRRR does not contain opacity and VE standards.
§63.6(i),(j)	Extension of Compliance and Presidential Compliance Extension.	Yes.	
§63.7(a)(1)–(2)	Applicability and Performance Test Dates.	No	Subpart RRRRR specifies performance test applicability and dates.
§63.7(a)(3), (b)–(h)	Performance Testing Requirements	Yes.	
§63.8(a)(1)–(a)(3), (b), (c)(1)–(3), (c)(5)–(8), (d),(e), (f)(1)–(5), (g)(1)–(4).	Monitoring Requirements	Yes	Continuous monitoring system (CMS) requirements in §63.8(c)(5) and (6) apply only to COMS for dry electrostatic precipitators.
§63.8(a)(4)	Additional Monitoring Requirements for Control Devices in §63.11.	No	Subpart RRRRR does not require flares.
§63.8(c)(4)	Continuous Monitoring System Requirements.	No	Subpart RRRRR specifies requirements for operation of CMS.
§63.8(f)(6)	Relative Accuracy Test Alternative (RATA).	No	Subpart RRRRR does not require continuous emission monitoring systems.
§63.8(g)(5)	Data Reduction	No	Subpart RRRRR specifies data reduction requirements.
§63.9	Notification Requirements	Yes	Additional notifications for CMS in §63.9(g) apply to COMS for dry electrostatic precipitators.
§63.10(a), (b)(1)–(2)(xii), (b)(2)(xiv), (b)(3),(c)(1)–(6) (c)(9)–(15), (d)(1)–(2), (d)(4)–(5), (e), (f).	Recordkeeping and Reporting Requirements.	Yes	Additional records for CMS §63.10(c)(1)–(6),(9)–(15), and reports in §63.10(d)(1)–(2) apply only to COMS for dry electrostatic precipitators.
§63.10(b)(2)(xiii)	CMS Records for RATA Alternative	No	Subpart RRRRR doesn't require continuous emission monitoring systems
§63.10(c)(7)–(8)	Records of Excess Emissions and Parameter Monitoring Exceedances for CMS.	No	Subpart RRRRR specifies record requirements.
§63.10(d)(3)	Reporting opacity or VE observations	No	Subpart RRRRR does not have opacity and VE standards
§63.11	Control Device Requirements	No	Subpart RRRRR does not require flares.
§63.12	State Authority and Delegations	Yes	
§63.13—§63.15	Addresses, Incorporation by Reference, Availability of Information.	Yes	

[FR Doc. 02–31231 Filed 12–17–02; 8:45 am]
BILLING CODE 6560–50–P

Federal Register

Wednesday,
December 18, 2002

Part III

Securities and Exchange Commission

17 CFR Parts 228, et al.
Rule 10b–18 and Purchases of Certain Equity Securities by the Issuer and Others; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 240, and 274

[Release Nos. 33–8160; 34–46980; IC–25845; File No. S7–50–02]

RIN 3235–AH37

Rule 10b–18 and Purchases of Certain Equity Securities by the Issuer and Others

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (Commission) is proposing amendments to its rule that provides issuers with a "safe harbor" from liability for manipulation when they repurchase their common stock in the market in accordance with the rule's manner, timing, price, and volume conditions. The proposed amendments are intended to simplify and update the safe harbor provisions in light of market developments since the rule's adoption. To enhance the transparency of issuer repurchases, the Commission also is proposing amendments to a number of regulations and forms that would require disclosure of all issuer repurchases (open market and private transactions), regardless of whether the repurchases are effected in accordance with the safe harbor rule.

DATES: Comments must be received on or before February 18, 2003.

ADDRESSES: Persons wishing to submit written comments should send three copies to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–50–02. Comments submitted by e-mail should include this file number in the subject line. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (*http://www.sec.gov*). To help us process your comments more efficiently, comments should be sent by one method only. The Commission does not edit personal, identifying information, such as names or e-mail addresses, from electronic submissions. Submit only the information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: James Brigagliano, Assistant Director, Joan Collopy, Special Counsel, or Elizabeth Sandoe, Special Counsel, Office of Risk Management and Control, Division of Market Regulation, at (202) 942–0772, or, with respect to the proposed disclosure amendments, David Lee, Special Counsel, Office of Chief Counsel, Division of Corporation Finance, at (202) 942–2900, or, John Faust, Attorney Adviser, Office of Disclosure Regulation, Division of Investment Management, at (202) 942–0721, at the Securities Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on proposed amendments to Rule 10b–18 (the safe harbor rule for issuer repurchases) [17 CFR 240.10b–18] under the Securities Exchange Act of 1934 (Exchange Act). The Commission also is requesting comment on proposed disclosure amendments to Regulations S–K and S–B [17 CFR 229.703 and 228.703] under the Exchange Act, Exchange Act Forms 10–Q [17 CFR 249.308a], 10–QSB [17 CFR 249.308b], 10–K [17 CFR 249.310], 10–KSB [17 CFR 310b], 20–F [17 CFR 249.220f], and proposed Form N–CSR under the Exchange Act and the Investment Company Act of 1940 (Investment Company Act) [17 CFR 249.331 and 274.128].

I. Introduction

Issuers repurchase their securities for many legitimate business reasons.[1] For example, issuers may repurchase their stock in order to have shares available for dividend reinvestment, stock option and employee stock ownership plans, or to reduce the outstanding capital stock following the cash sale of operating divisions or subsidiaries. Issuers may believe that a repurchase program is preferable to paying dividends as a way of returning capital to shareholders. Issuer repurchases also provide liquidity in the marketplace, which benefits all shareholders.

At the same time, an issuer has a strong interest in the market performance of its securities. Among other things, its securities may be the consideration in an acquisition, or serve as collateral for financing. The market price also determines the price of offerings of additional securities. Therefore, at various times, the issuer may have an incentive to manipulate the price of its securities. One way to positively affect the price is to purchase the securities in the open market. Because repurchases of its securities could affect the market price of an issuer's stock, this may expose the issuer to claims that the repurchases were made in a manipulative manner even when they were done in a manner not intended to move market prices.

Rule 10b–18 addresses this problem. In 1982, the Commission adopted Rule 10b–18,[2] which provides issuers [3] with a safe harbor from liability for manipulation under Sections 9(a)(2) and 10(b) of the Exchange Act, and Rule 10b–5 under the Exchange Act, when they repurchase their common stock in the market in accordance with the rule's manner, timing, price, and volume conditions.[4] Rule 10b–18's safe harbor conditions are designed to minimize the market impact of the issuer's repurchases, thereby allowing the market to establish a security's price based on independent market forces without undue influence by the issuer.[5]

Although the safe harbor conditions are intended to offer issuers guidance when repurchasing their securities in the open market, Rule 10b–18 is not the exclusive means of making non-manipulative issuer repurchases. As the Rule states, there is no presumption that purchases outside of the safe harbor violate Sections 9(a)(2) or 10(b) of the Exchange Act or Rule 10b–5 under the Exchange Act.[6] Given the widely varying characteristics in the market for the stock of different issuers, it is possible for issuer repurchases to be made outside of the safe harbor conditions and not be manipulative. Nevertheless, we understand that issuers generally are reluctant to undertake any repurchases without the certainty that their repurchases come within the Rule's safe harbor.

Based on our experience with the operation of Rule 10b–18 and to reflect market developments since the Rule's adoption, we propose to revise Rule 10b–18 as described below. Our proposals would allow issuers whose securities are less susceptible to manipulation to stay in the market longer and to repurchase a greater number of shares during periods of severe market decline. At the same time, our proposals to modify the volume and price provisions are intended to maintain reasonable limits on the safe harbor while furthering the objectives of the Rule. Moreover, the proposed amendments to Regulations S–K and S–B, Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F, and proposed Form N–CSR seek to enhance the transparency of issuer repurchases.[7] Our proposals also are intended to continue to allow issuer repurchases (under conditions that are unlikely to create manipulative effects on the issuer's security's price or market activity) without imposing undue restrictions on the operation of issuer repurchases or undermining the economic benefit such purchases provide investors, issuers, and the marketplace.

[1] Securities Exchange Act Release No. 19244 (Nov. 17, 1982), 47 FR 53333, 53334 (Nov. 26, 1982) (1982 Adopting Release). *See also* Clifford P. Stephens and Michael S. Weisbach, "Actual Share Reacquisitions in Open-Market Repurchase Programs," *Journal of Finance*, February 1998 (observing that firms increase their repurchasing depending on the degree of perceived undervaluation of its stock and on expected cash flow).

[2] 1982 Adopting Release, *supra* note 1. Since 1967, the Commission has considered on several occasions the issue of whether to regulate an issuer's market repurchases of its own securities. The Commission first proposed Rule 10b–10 to govern issuer repurchases in connection with proposed legislation that became the Williams Act Amendments of 1968. Pub. L. No. 90–439, 82 Stat. 454 (July 29, 1968), reprinted in Hearings on S. 510 before Senate Committee on Banking and Currency, 90th Cong., 1st Sess. 214–216 (1967). The Commission then published for public comment proposed Rule 13e–2 in 1970, 1973, and 1980. Rule 13e–2, which was later withdrawn with the adoption of Rule 10b–18, would have been a prescriptive rule with mandatory disclosure requirements, substantive purchasing limitations, and general anti-fraud liability. Securities Exchange Act Release Nos. 8930 (July 13, 1970), 35 FR 11410 (July 16, 1970); 10539 (Dec. 6, 1973), 38 FR 34341 (Dec. 13, 1973); and 17222 (Oct. 17, 1980), 45 FR 70890 (Oct. 27, 1980) (1980 Proposing Release).

[3] The safe harbor is also available for "affiliated purchasers" of the issuer. In this Release, the term "issuer" includes affiliated purchasers.

[4] In other words, an issuer will not be deemed to have violated Section 9(a)(2) of the Exchange Act or Rule 10b–5 under the Exchange Act, solely by reason of the timing, price, volume, or manner of its repurchases, if the repurchases are made within the limitations of the rule. However, some repurchase activity that meets the safe harbor conditions may still violate the anti-fraud provisions of the Exchange Act. For example, as the Commission noted in 1982 when adopting Rule 10b–18, "Rule 10b–18 confers no immunity from possible Rule 10b–5 liability where the issuer engages in repurchases while in possession of favorable, material nonpublic information concerning its securities." 1982 Adopting Release, *supra* note 1, at 47 FR 53333.

[5] *Id.*

[6] *See* 17 CFR 240.10b–18(d). Moreover, the safe harbor is not intended to define the appropriate limits to be observed by those persons not covered by the safe harbor nor the appropriate limits to be observed when purchasing securities other than common stock.

[7] Regulations S–K and S–B set forth the standard filing instructions for forms under the Securities Act and the Exchange Act. Forms 10–K (KSB) and 20–F are filed by issuers (small business issuers) and foreign private issuers respectively to satisfy annual reporting obligations and Form 10–Q (QSB) is filed by issuers (small business issuers) to satisfy quarterly reporting obligations. Proposed Form N–CSR would be used by registered management investment companies to file certified shareholder reports with the Commission under the Sarbanes-Oxley Act of 2002. *See* Investment Company Act Release No. 25723 (August 30, 2002) [67 FR 57298 (September 9, 2002)]; Sarbanes-Oxley Act of 2002, Pub. L. No. 107–204, 116 Stat. 745 (2002).

II. Overview of Current Rule 10b–18

A. Scope of the Rule

Rule 10b–18 applies to bids for and purchases of an issuer's common stock by or for an issuer.[8] Purchases of any other type of security are not covered. Because Rule 10b–18 assumes normal market conditions, the definition of the term "Rule 10b–18 purchase" excludes issuer bids and purchases made during certain corporate events, for example, mergers, tender offers, and distributions that involve the issuer.[9] The safe harbor also does not confer absolute protection from all liability for purchases (*e.g.*, purchases that are part of a plan or scheme to evade the federal securities laws)—even if made in technical compliance with the Rule.[10] Rather, the safe harbor provides only that certain, specific provisions of the securities laws will not be considered to have been violated solely by reason of the manner, timing, price, or volume of such repurchases, provided the repurchases are made within the limitations of the Rule.

B. Conditions of the Rule

Rule 10b–18 provides a safe harbor for purchases on a given day. To come within the safe harbor for that day, an issuer must satisfy the Rule's *manner, timing, price*, and *volume* conditions when purchasing its own common stock in the market.[11] Failure to meet any one of the four conditions will disqualify the issuer's purchases from the safe harbor for that day.

1. Manner of Purchase Condition

The manner of purchase condition requires an issuer to use a single broker or dealer per day to bid for or purchase its common stock. This requirement is intended to avoid the appearance of widespread trading in a security that could result if the issuer uses many brokers or dealers to repurchase its stock.[12] The "single broker or dealer" condition, however, applies only to Rule 10b–18 purchases that are "solicited" by or on behalf of the issuer. Accordingly, the issuer may purchase shares from more than one broker-dealer if the issuer does not solicit the transactions. An issuer must evaluate whether a transaction is "solicited" by or on behalf of an issuer, depending on the facts and circumstances of each case.[13]

Moreover, where an issuer engages a single coordinating broker-dealer to make its Rule 10b–18 purchases, the broker-dealer can make (consistent with the single broker or dealer condition) appropriate and customary arrangements with other broker-dealers, including exchange specialists and "two-dollar" brokers on exchange floors, to execute repurchases.[14]

2. Timing Condition

The timing condition restricts the periods during which the issuer may bid for or purchase its common stock. This condition excludes from the safe harbor purchases at the opening and during the last half hour of trading because market activity at such times is considered to be a significant indicator of the direction of trading, the strength of demand, and the current market value of the security.[15] Therefore, where there is no independent opening transaction on a given trading day, the issuer is precluded from making purchases under the safe harbor for that day.

3. Price Condition

The price condition specifies the highest price an issuer may bid or pay for its common stock.[16] Rule 10b–18's current price limitations vary depending on whether the security is a reported, exchange-traded, Nasdaq, or other security, and whether the bid or purchase is effected on an exchange.[17] The price condition is intended to prevent the issuer from leading the market for the security through its repurchases by limiting the issuer to bidding for or buying its security at a price that is no higher than the highest independent published bid or last independent transaction price. As such, the price condition uses an *independent* reference price that has not been set or

[8] 17 CFR 240.10b–18(a)(3).

[9] 17 CFR 240.10b–18(a)(3)(i)–(vii). Because these transactions involve valuation periods for the issuer's security, they also present a greater incentive for the issuer to manipulate its stock price. Moreover, most of these non-covered transactions are regulated under other rules (*e.g.*, Exchange Act Rules 13e–1 and 13e–4 concerning tender offers, and Rule 102 of Regulation M regarding purchases during a distribution of the issuer's stock).

[10] *See* note 4, *supra*.

[11] 17 CFR 240.10b–18(b)(1)–(4).

[12] 1980 Proposing Release, *supra* note 2, 45 FR at 70891.

[13] Although Rule 10b–18 does not define "solicitation," we would not consider the issuer's disclosure and announcement of a repurchase program alone as necessarily causing a subsequent purchase to be deemed "solicited" by or on behalf on an issuer. *See* 1982 Adopting Release, *supra* note 1, 47 FR at 53337.

[14] *See* 1980 Proposing Release, *supra* note 2, 45 FR at 70898.

[15] 17 CFR 240.10b–18(b)(2). The prohibition of Rule 10b–18 bids and purchases near the close of trading is to prevent the issuer from creating or sustaining a high bid or transaction price at or near the close of trading.

[16] 17 CFR 240.10b–18(b)(3)

[17] *Id.*

influenced by the issuer but, instead, is based on independent market forces.

4. Volume Condition

The volume condition limits the amount of securities an issuer may repurchase in the market in a single day. The volume condition is designed to prevent an issuer from dominating the market for its securities through substantial purchasing activity.[18] An issuer dominating the market for its securities in this way can mislead investors about the integrity of the securities market as an independent pricing mechanism.[19]

Under the current volume condition, an issuer may effect daily purchases in an amount up to 25 percent of the average daily trading volume in its shares (the "25% volume limitation").[20] However, the volume limitation does not include an issuer's block purchases. Moreover, an issuer's block purchases are not included in determining a security's average daily trading volume (ADTV).[21] The Rule defines a "block" as a quantity of stock that either: (i) Has a purchase price of $200,000 or more; or (ii) is at least 5,000 shares and has a purchase price of at least $50,000; or (iii) is at least 20 round lots of the security and totals 150 percent or more of the trading volume for that security or, in the event that trading volume data are unavailable, is at least 20 round lots of the security and totals at least one-tenth of one percent (.001) of the outstanding shares of the security, exclusive of any shares owned by any affiliate.[22]

The definition further provides that a block does not include any amount a broker or dealer, acting for its own account, has accumulated for the purpose of selling to the issuer or affiliated purchaser, if the issuer knows or has reason to know that such amount was accumulated for such purpose. The definition also excludes any amount that a broker or dealer has sold short to the issuer, if the issuer knows or has reason to know that the sale was a short sale.[23]

III. Proposed Amendments to Rule 10b–18

In this release, we are proposing broad revisions to the safe harbor rule. In particular, we propose to:

- Modify the definition of a "Rule 10b–18 purchase" to incorporate the current "Rule 10b–18 bid" definition and to clarify the scope of the safe harbor;
- Modify the timing condition by applying an ADTV value and public float value test to determine when an issuer must be out of the market before the scheduled close of trading in order to qualify for the safe harbor;
- Apply a uniform price condition that limits issuers to purchasing their securities at a price that is no higher than the highest independent bid[24] or the last independent transaction price,[25] whichever is higher, quoted or reported in the consolidated system;[26]
- Modify the volume condition's treatment of block purchases by including block purchases in calculating a security's ADTV and the 25% volume limitation;
- Modify the volume condition by allowing issuers to purchase up to a daily aggregate amount of 500 shares, as an alternative to the 25% volume limitation; and
- Apply an alternative volume condition (applicable only in the trading session immediately following a market-wide trading suspension), which would increase the 25% volume limitation to 100%.

In addition, we are proposing to amend Regulations S–K and S–B, and Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F under the Exchange Act, and proposed Form N–CSR under the Exchange Act and the Investment Company Act, to require disclosure of all issuer repurchases (open market and private transactions) of equity securities, regardless of whether the repurchases are effected in accordance with Rule 10b–18. New Item 703 of Regulations S–K and S–B and new Item 15(e) would require issuers to disclose in their Forms 10–Q (10–QSB), 10–K (10–KSB), and 20–F the total number of shares (or units) purchased for the previous quarter, the average price paid per share, the identity of broker-dealer(s) used to effect the purchases (except in the case of Form 20–F), the number of shares (or units) purchased as part of a publicly announced plan or program, and the maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs. New Item 6 of proposed Form N–CSR would require closed-end management investment companies that are registered under the Investment Company Act ("closed-end funds") to provide similar disclosure.[27]

We solicit comment on our approach and the specific proposals. We also encourage commenters to present data in support of their positions.

A. Amendments Concerning the Scope of the Safe Harbor

1. Eligible Securities

Under the proposal, the safe harbor would continue to apply to bids for and purchases of an issuer's common stock by or for an issuer. Specifically, the proposal would amend the definition of a "Rule 10b–18 purchase" to include any "bid or limit order that would effect such purchase" and to codify the staff's position that the safe harbor is available for repurchases of all common equity

[18] 1980 Proposing Release, *supra* note 2, 45 FR 70890.

[19] *Id.* A market can be manipulated even in the absence of price leadership. Following the market closely with purcahses or bids essentially places a floor underneath the market at each independent purchase or bid. This may exhaust the available supply of securities that may be offered at that price, which ultimately forces others to raise their bids. *See* L. Loss and J. Seligman, *Securities Regulation, 3d Edition*, at 10–E–10 (1999); Kidder, Peabody & Co., 18 SEC 559, 570 (1945); *Halsey, Stuart & Co., Inc.*, 30 SEC 106, 129 (1949) (describing over-the-counter ("OTC") manipulation).

[20] This applies to reported securities, exchange-traded securities, and Nasdaq securities. 17 CFR 240.10b–18(b)(4). For any other security (*e.g.*, OTC Bulletin Board ("OTCBB") and Pink Sheet securities), volume of purchases on a single day may not exceed one round lot or, on that day plus the preceding five business days, 1/20th of one percent (0.0005) of outstanding shares of the security. *Id.* Trading volume is defined generally as the average daily trading volume reported to the consolidated transaction reporting system or to the NASD for the security in the four calendar weeks preceding the week that the Rule 10b–18 purchase or bid is to be effected. 17 CFR 240.10b–18(a)(11).

[21] 17 CFR 240.10b–18(b)(4). Although the rule's current volume condition does not apply to block purchases, an issuer must satisfy the other three conditions in order for the block purchases to come within the safe harbor.

[22] 17 CFR 240.10b–18(a)(14).

[23] *Id.*

[24] Proposed Rule 10b–18(a)(6) would define "highest independent bid" to mean "the highest published bid for a regular way trade (other than a bid by or for the issuer or any affiliated purchaser of the issuer) at the time the Rule 10b–18 purchase is effected."

[25] Proposed Rule 10b–18(a)(7) would define "last independent transaction price" as "the price at which the last regular way trade (other than a trade by or for the issuer or any affiliated purchaser of the issuer) was reported at the time the Rule 10b–18 purchase is effected."

[26] For purposes of Rule 10b–18's timing and price conditions, proposed Rule 10b–18(a)(5) would define "consolidated system" to mean "a consolidated transaction (or quotation) reporting system that collects and publicly disseminates on a current and continuous basis transaction (or quotation) information in equity securities pursuant to an effective transaction reporting plan (as defined in 17 CFR 240.11Aa3–1), the rules of a national securities exchange, or the rules of a national securities association."

[27] *See* Sections 4(3) and 5(a)(2) of the Investment Company Act [15 U.S.C. 80a–4(3) and 80a–5(a)(2)] (defining "management company" and "closed-end company"). Section 23(c) of, and Rules 23c–1, –2, and –3 under, the Investment Company Act also apply to closed-end fund repurchases of their own securities. Because the shares of closed-end funds frequently trade at a discount to net asset value (NAV), historically, closed-end funds have sometimes engaged in issuer repurchases in an attempt to reduce the discount.

securities (*i.e.*, an issuer's common stock or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share).[28] However, the Rule 10b–18 safe harbor would continue not to apply to any other type of security—even if related to the common stock (*e.g.*, warrants, options, or security futures products that are physically-settled). The proposal would also amend the definition of a "Rule 10b–18 purchase" to make it clear that the exception for purchases effected pursuant to a merger includes purchases effected "during the period from the time of public announcement of the merger, acquisition, or similar transaction, until the completion of such transaction."[29] Once a merger or acquisition is announced, an issuer has considerable incentive to support or raise the price of its stock. Thus, the safe harbor should not apply to purchases made during this period.

Q. Should the safe harbor be made available to securities other than common equity, such as preferred stock, warrants, rights, convertible debt securities, options, or security futures products? If the safe harbor were to include such securities, what price, volume, and time of purchase conditions should apply? We seek specific comment concerning the potential for manipulative abuse that transactions in such securities may present,

Q. Should the safe harbor continue to apply to less liquid, less transparent securities (*e.g.*, OTCBB and Pink Sheet securities)? If so, should the price, volume, and time of purchase conditions be modified in order to minimize the risk of manipulation by an issuer making market repurchases in these less liquid, less transparent securities? If so, how? For example, should these securities be subject to a more restrictive volume limitation? Please provide specific examples.

Q. Should the Rule require than an issuer have current financial disclosures as a prerequisite to receiving the protection of the safe harbor? For example, should it be available to companies that do not make public filings of financial information, or are not current in required filings?

Q. Should the safe harbor apply to an issuer's repurchases of its common stock effected outside of the United States (*e.g.*, on foreign exchanges)? If so, how should the safe harbor conditions apply to such purchases (*e.g.*, should a security's ADTV include *worldwide* trading volume)?

Q. Should the safe harbor only be available outside of the United States to foreign private issuers, or to foreign companies whose principal market is outside the United States? If so, are there certain conditions of Rule 10b–18 that should be modified or that should not apply at all with respect to purchases outside the United States and, if so, why?

Q. Are there different conditions under Rule 10b–18 that should apply with respect to purchases outside the United States and, if so, why are those conditions more appropriate than the conditions currently proposed for Rule 10b–18?

Q. Should the merger exception to the definition of a "Rule 10b–18 purchase" include purchases effected after the time of the shareholder vote and/or the end of the valuation period? We seek specific comment concerning the potential for manipulative abuse that transactions during this period may present.

2. Purchases by or for Issuers and Affiliated Purchasers

Under the Proposal, the safe harbor would continue to apply to Rule 10b–18 purchases made by an "affiliated purchaser" of the issuer. The current Rule defines an affiliated purchaser of the issuer as a person acting, directly or indirectly, in concert[30] with the issuer for the purpose of acquiring the issuer's securities, and any affiliate[31] that, directly or indirectly, controls the issuer's Rule 10b–18 purchases, or whose purchases are controlled by, or are under common control with, those of the issuer.[32] Under the current Rule, the term "affiliated purchaser" does not include a broker, dealer, or other person solely by his effecting Rule 10b–18 purchases on behalf of the issuer (and for its account), or an officer or director of the issuer solely by his participating in the decision to authorize the issuer to effect Rule 10b–18 purchases.

Q. Does the current definition of "affiliated purchaser" provide the proper scope or are there other persons that should be covered by or excluded from the safe harbor? For example, should the current definition of "affiliated purchaser" be revised to have the same meaning as contained in § 242.100 of Regulation M under the Exchange Act?

B. Amendments to the Purchasing Conditions

1. Manner of Rule 10b–18 Purchases

We are not proposing to amend the single broker or dealer condition. This condition would continue to require an issuer to use a single broker or dealer per day to bid for or purchase its common stock. Purchases by or on behalf of several affiliated purchasers of the issuer, or the issuer and at least one affiliated purchaser, would continue to be subject to the one broker or dealer condition (*i.e.*, requiring the issuer and any of its affiliated purchasers to use the same broker-dealer on any single day in effecting Rule 10b–18 purchases). The Proposal also would retain the exception for purchases that are not solicited by or made on behalf of the issuer (*i.e.*, such purchases could continue to be made from or through several brokers or dealers on a single day).[33]

Q. The Commission seeks specific comment concerning whether the single broker or dealer condition needs to be amended in order to accommodate issuer repurchases effected through ATSs (*i.e.*, which are registered as broker-dealers) or on electronic communication networks (ECNs)? If so, in what way should the condition be modified?

2. Time of Purchases

We propose to modify Rule 10b–18's timing condition by using an ADTV value and public float value test to determine the time when an issuer must be out of the market before the scheduled close of trading in order to qualify for the safe harbor. Currently, an issuer's purchase may not be the opening transaction reported to the

[28] Proposed Rule 10b–18(a)(13). Rule 10b–18 currently defines "Rule 10b–18 purchase" as "a purchase of common stock of an issuer by or for an issuer or any affiliated purchaser of the issuer." 17 CFR 240.10b–18(a)(3). The current rule separately defines "Rule 10b–18 bid" as a bid for securities that, if accepted, or a limit order that, if executed, would result in a Rule 10b–18 purchase. 17 CFR 240.10b–18(a)(4). The definition of "common equity" for purposes of Rule 10b–18 is similar to that in Rule 405 under the Securities Act.

[29] Proposed Rule 10b–18(a)(13)(iv). This would include during any period where the market price of a security will be a factor in determining the consideration to be paid pursuant to a merger, acquisition, or similar transaction.

[30] 17 CFR 240.10b–18(a)(2)(i). The "acting in concert" standard includes persons acting with the issuer in purchasing the issuer's securities, regardless of whether the purchases are made for the account of the issuer itself. 1980 Proposing Release, *supra* note 2, 45 FR at 70895, n. 30. The proposal would amend the language of the "acting in concert" standard to include the words "directly or indirectly" in order to be consistent with the "acting in concert" standard in Rule 100 of Regulation M (17 CFR 242.100).

[31] "Affiliate" is defined to mean any person that directly or indirectly controls, is controlled by, or is under common control with, the issuer. 17 CFR 240.10b–18(a)(1).

[32] 17 CFR 240.10b–18(a)(2)(ii).

[33] 17 CFR 240.10b–18(b)(1)(i). 1982 Adopting Release, *supra* note 1, 47 FR at 53337. *See* also discussion in Section II.B.1 and text accompanying note 13 *supra*.

consolidated system, nor may the issuer purchase during the last half hour before the scheduled close of trading in the principal market (including during the last half hour before the scheduled close of trading on the exchange on which the purchase is to be made) or the last half-hour before termination of the period in which last sale prices are reported to the consolidated system (whichever is applicable).[34] These limitations apply regardless of a security's trading characteristics (*e.g.*, liquidity or daily trading volume).[35]

The proposed amendments would continue to limit an issuer from effecting a Rule 10b–18 purchase as the opening transaction for the day.[36] However, limitations on purchases at the close would vary (*i.e.*, either 10 to 30 minutes before the scheduled close of trading) depending on the security's ADTV value and public float value (as defined in 17 CFR 242.100). The timing modifications are designed to reflect the relative liquidity of the security and, therefore, the likelihood of an issuer affecting the closing price.[37] As such, the proposed modifications recognize that the current Rule's last half-hour restriction may be unnecessarily long to prevent issuers of highly liquid securities from influencing market prices and volume near the close of trading. At the same time, the proposed modifications would continue to provide a clear standard whereby issuers and their affiliates would know when they must be out of the market in order to qualify for the safe harbor.[38]

The proposed modifications to the timing condition would work as follows: To qualify for the safe harbor, issuers of more liquid securities (*i.e.*, those having an ADTV value of $1 million or more and a public float value of $150 million or more),[39] could not bid for or purchase their securities during any of the following periods: (1) In the ten minutes before the scheduled close of the primary (regular) trading session in the principal market for the security, (2) the ten minutes before the scheduled close of the primary (regular) trading session in the market where the purchase is made, or (3) after the termination of the period in which last sale prices are reported in the consolidated system (*i.e.*, after the consolidated tape stops running). Thus, the proposed modification would allow issuers of more actively traded securities, which are less susceptible to manipulation, to stay in the market longer.

Issuers of all other eligible securities (*i.e.*, those having an ADTV value of less than $1 million or a public float value of less than $150 million) could not bid for or purchase their securities during any of the following periods: (1) The 30 minutes before the scheduled close of the primary (regular) trading session in the principal market for the security, (2) the 30 minutes before the scheduled close of the primary (regular) trading session in the market where the purchase is made, or (3) after the termination of the period in which last sale prices are reported in the consolidated system (*i.e.*, after the consolidated tape stops running).[40]

Q. Should eligibility for the modified timing limitation (*i.e.*, 10 minutes before the scheduled close of trading) be based on a security's ADTV and an issuer's public float? Do the proposed ADTV and public float levels need to be raised (or lowered)? Are there alternative tests we should consider?

Q. Do the proposed timing limitations for issuer bids and purchases near the scheduled close of trading adequately protect against an issuer affecting the closing price?

Q. Should the Rule's timing limitations be modified to allow issuers of more liquid securities (*i.e.*, those having an ADTV value of $1 million or more and public float value of $150 million or more) to effect a Rule 10b–18 purchase as the opening (first) transaction?

3. Price of Purchases

Rule 10b–18's current price limitations vary depending on the market for the security.[41] We propose to apply a uniform price condition that limits issuers to purchasing their securities at a purchase price that does not exceed the highest independent bid or the last independent transaction price, whichever is higher, quoted or reported in the consolidated system (*i.e.*, regardless of where the securities are traded).[42] For securities that are not quoted or reported in the consolidated system, the proposed Rule provides that an issuer's Rule 10b–18 purchases must be effected at a purchase price that does not exceed the highest independent bid or the last independent transaction price, whichever is higher, displayed and disseminated on any national securities exchange or on any inter-dealer quotation system (as defined in Exchange Act Rule 15c2–11) that displays at least two priced quotations for the security. For all other securities, Rule 10b–18 purchases must be effected at a price no higher than the highest independent bid obtained from three dealers.

We are considering whether to eliminate the "last independent transaction price" alternative (*i.e.*, and have only the "bid test"). We are concerned that permitting purchases at the last independent transaction price may allow issuers to create a floor for their security on the offer side of the market. Specifically, issuers could reach across the market to buy at the offer side, which could cause the price of their securities to move up to higher price levels—especially if done as block-size trades—or could allow issuers to purchase their stock at "stale" transaction prices (*e.g.*, in a declining market where the bid has moved down). Such activities would undermine the objectives of Rule 10b–18 by allowing the issuer to influence the market, thereby making the market less reliable for investors.

Q. We seek specific comment concerning whether the current "last independent transaction price" alternative should be eliminated.

Q. Please provide specific examples of transactions where eliminating the "last independent transaction price" alternative would significantly limit an issuer's ability to purchase its securities within the safe harbor.

Q. Has the conversion to decimal pricing, particularly where a one-cent minimum price variation could result in frequent quote changes (so-called "quote flickering"), made the Rule's "bid test" difficult to satisfy? Has decimal pricing similarly affected use of the "last independent transaction price" alternative (*e.g.*, if transaction rates substantially increase)? Please provide specific examples concerning the impact of decimalization with respect to the Rule's price condition, including specific suggestions to address these concerns.

Q. Should Rule 10b–18's price condition be based on prices quoted or reported for the security in the "consolidated system" as we propose, or should the price condition be based solely on prices reported (or quoted) in the "principal market" for the security?

Q. Should Rule 10b–18's price condition apply where the issuer or its affiliated purchaser has no control, directly or indirectly, over the price at which a Rule 10b–18 purchase will be effected, for example, automated trading systems that utilize "passive" (independently-derived) pricing, such as the volume weighted average price (VWAP) or the mid-point of the NBBO? Please provide specific examples of transactions where modifying the Rule's price condition would be appropriate. We also seek comment concerning the potential for manipulative abuse that permitting such transactions may present.

4. Riskless Principal Transactions

Rule 10b–18 covers purchases of an issuer's common stock made by or for the issuer.[43] We understand that some broker-dealers purchase shares through their market making desks when working an issuer order to repurchase shares. These shares are then sold in "riskless principal" transactions to the issuer.[44]

Riskless principal transactions raise the issue of how to apply the safe harbor to the two "legs" of the transaction: the broker-dealer's purchase in the market for its own account; and the issuer's purchase of the shares from the broker-dealer. The issuer and the broker-dealer (buying on behalf of the issuer), may seek to claim the protection of the safe harbor for both legs of the transaction.[45] This appears to contemplate one transaction by which the issuer effects its purchase, and which will result in one reported trade.

Q. How should Rule 10b–18 apply to issuer purchases from a broker-dealer engaged in a riskless principal transaction? If riskless principal trades should be eligible for the safe harbor, is it appropriate to limit the Rule's application to riskless principal trades where both legs are transacted at the same price and only one leg is reported to the market?[46]

5. Volume of Purchases

We propose to modify the volume condition's treatment of block purchases. Under the current volume condition, an issuer may effect daily purchases in an amount up to 25% of the ADTV in its shares. Block purchases by an issuer, however, are not subject to the 25% volume limitation, nor are the shares purchased by the issuer in block transactions included when calculating a security's ADTV. Because market conditions no longer appear to justify excluding block purchases from the volume limitation, the proposed amendments would eliminate the special treatment of block purchases. To qualify for the safe harbor, therefore, issuers would have to include block purchases in applying the 25% volume limitation. However, issuers would be able to include their block purchases in calculating the ADTV for the security, thereby increasing the amount of stock that some issuers would be able to purchase within the safe harbor.[47]

When Rule 10b–18 was adopted, block purchases were conducted less frequently than today. The Commission viewed the market impact of block purchases as being less than that of a series of smaller purchases that, in the aggregate, are equal in size to a block but are accomplished over a period of time and so could give the impression to the market of multiple investment decisions to buy and more likely affect the market price.[48] As such, it appeared to be reasonable to exclude blocks from the volume limitation.

Since the Rule's adoption, however, the frequency of block purchases has significantly increased. Today, block purchases comprise a substantial portion of trades on the exchanges and Nasdaq.[49] The size of a block purchase under Rule 10b–18 (*e.g.*, 5,000 or more shares) is also substantially lower than that used by the exchanges or Nasdaq (*e.g.*, 10,000 or more shares). This suggests that block purchases under Rule 10b–18 account for an even greater percentage of the overall trading in these markets.[50] Moreover, because

[34] Under the current version of Rule 10b–18(b)(2), "other" securities (*i.e.*, securities that do not meet the definition of "reported securities" under the rule) do not have timing restrictions under the safe harbor. At this time, we are not proposing to change this.

[35] 17 CFR 240.10b–18(b)(2)(i)–(iii).

[36] Specifically, proposed Rule 10b–18(b)(2) would prohibit a Rule 10b–18 purchase from being the first (opening) regular way purchase reported in the consolidated system.

[37] One concern is that the issuer may attempt to "mark the close" (*i.e.*, determine the final transaction price reported in the market). *See* 1980 Proposing Release, *supra* note 2, 45 FR at 70699. The Commission has brought several marking the close cases. See, *e.g.*, *S.E.C.* v. *Schiffer*, 1998 U.S. Dist. LEXIS 8579, Fed. Sec. L. Rep. (CCH) p. 90247 (S.D.N.Y. 1998) (issuer orchestrated over several months purchases effected at or shortly before the close of trading in order to increase the issuer's stock price); *Thomas C. Kocherhans*, Securities Exchange Act Rel. No. 36556 (Dec. 6, 1995), 60 SEC Docket 2589; *Myron S. Levin*, Securities Exchange Act Rel. No. 31124 (Sept. 1, 1992); *S.E.C.* v. *John G. Broumas*, Civil Action No. 91–2449 (D.D.C.), Litigation Rel. No. 12999 (Sept. 27, 1991).

[38] *See* proposed Rule 10b–18(b)(2). This means that an issuer may not purchase in *any* market during the specified periods.

[39] Proposed Rule 10b–18(b)(2)(ii)(A). The proposed timing amendment would incorporate Regulation M's standards and methods of calculating ADTV and public float value. Under Regulation M, issuers with a security that has an ADTV value of $1 million or more and a public float value of $150 million or more are excluded from Rule 101 of Regulation M under its "actively-traded securities" exception. See 17 CFR 242.101(c)(1). The Commission selected $150 million for the public float value test because it believes that the securities of issuers with a public float value at or above this threshold, and that also have an ADTV value of at least $1 million, have a sufficient market presence to make them less likely to be manipulated. See Securities Exchange Act Release No. 38067 (December 20, 1996), 62 FR 520. Moreover, the public float value test is intended in part to exclude issuers from the "actively-traded securities" exception where a high trading volume level is an aberration. Id.

In calculating the dollar value of ADTV, any reasonable and verifiable method may be used. For example, it may be derived from multiplying the number of shares by the price in each trade, or from multiplying each day's total volume of shares by the closing price on that day. Public float value (*i.e.*, the aggregate market value of common equity securities held by non-affiliates of the issuer) is to be determined in the manner set forth on the front page of Form 10–K, even if the issuer of such securities is not required to file Form 10–K. For reporting issuers, the public float value should be taken from the issuer's most recent Form 10–K or based upon more recent information made available by the issuer.

[40] Proposed Rule 10–18(b)(2)(ii)(B) & (C).

[41] 17 CFR 240.10b–18(b)(3).

[42] Proposed Rule 10b–18(b)(3). *See also* notes 24–26, *supra*. The proposed amendments would simplify and update the rule by removing the outdated definitions and price provisions that depend on whether the security is a "reported security," "exchange traded security," "Nasdaq security," or "other security" and whether the bid or purchase is effected on an exchange.

[43] *See* 17 CFR 240.10b–18(a)(3).

[44] A "riskless principal" purchase transaction is one in which the broker-dealer has a buyer for the shares before he purchases shares as principal from the seller, and contemporaneously resells the shares to the buyer.

[45] Under the NASD's trade-reporting rules, for certain riskless principal trades, the broker-dealer reports only one leg of the transaction (*i.e.*, the first leg of the transaction when the broker-dealer purchases the shares in the open market, rather than the offsetting transaction to the buyer) to ACT. In order to qualify for riskless principal trade reporting, the trades must be executed at the "same price" (exclusive of a markup or markdown, commission equivalent, or other fee). *See* Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999), NASD Notice to Members 99–65 (March 1999) and NASD Notice to Members 00–79 (November 2000).

[46] *See* NASD Rules 4632(d)(3)(B), 4642(d)(3)(B), and 6620(d)(3)(B).

[47] Some issuers have noted that the utility of effecting purchases in blocks (and thereby avoiding the 25% volume limitation) is largely deiminished by the inability to include such block purchases in calculatiing a security's four weeks' trading volume. *See, e.g.*, Letter regardinig Rule 10b–18: Interpretation of "Trading Volume" (October 21, 1991). Issuers also have noted the practical difficulty and burden of recording all block purchases and subtracting them from the security's overall trading volume, to calculate trading volume under the Rule.

We understand that the 25% volume limitation generally does not present a problem for the higher float issuers with large repurchase programs (*i.e.*, these issuers do not have substantial need for the block exception). However, even with the availability of a block exception, the 25% volume limitation is problematic for issuers with lower float, because it is harder for smaller issuers to execute block trades.

[48] *See* 1980 Proposing Release, *supra* note 2, 45 FR 17222.

[49] For example, block trades (which the NYSE defines as a trade of 10,000 shares or greater) accounted for approximately 50% of the total trading volume on the NYSE in 2001. *See NYSE Factbook—2001 Data*, at p. 99.

[50] In contrast to Rule 10b–18's definition of "block" (which is defined as the purchase of: (a) a quantity of stock that has a purchase price of $200,000 or more; or (b) at least 5,000 shares of stock that has a purchase price of $50,000 or more),

Continued

there is no limit on the number of block purchases an issuer can make on a single day, the block exception essentially allows issuers to avoid any volume limitation simply by effecting their Rule 10b–18 purchases in block size.[51] Thus, the block exception may allow issuers to dominate the market for their securities in a way not originally contemplated by the safe harbor. This raises the possibility that investors could be misled about the integrity of the securities trading market as an independent pricing mechanism.[52] As a result, the block exception essentially negates the volume limitation (and undermines its purpose) for many securities.[53]

Issuers also currently may attempt to take advantage of the block exception to facilitate corporate transactions. For example, in contested takeovers, bidders may purchase significant blocks of their securities, thus raising their share price and widening the spread between their offer and that of their competitors.[54] Accordingly, we would propose that block size transactions be treated as any other purchase under the Rule.

The proposed amendments would continue to limit Rule 10b–18 purchases to 25% of the ADTV for the security per day.[55] However, in contrast to the Rule's current ADTV calculation (which is based on the average daily trading volume for the security for the four calendar weeks preceding the week in which the Rule 10b–18 bid or purchase is to be made, excluding issuer block purchases during that period), the proposed amendments would define ADTV as the average daily trading volume, *including* block purchases made by or on behalf of the issuer, reported for the security during the four calendar weeks preceding the week in which the Rule 10b–18 purchase is effected.[56] Including issuer block-size purchases in the ADTV calculation would increase many issuers' volume limit. It also would substantially reduce the burden and potential error associated with issuers' having to subtract out their block-size purchases when calculating ADTV, as is required under the current Rule.

In addition, we would propose to modify the volume condition to allow issuers to purchase up to a daily aggregate amount of 500 shares, as an alternative to the 25% volume limitation. Thus, under the proposed amendments, an issuer's Rule 10b–18 purchases, on any single day, may not exceed the higher of 25 percent of the ADTV for that security or a daily aggregate amount of 500 shares.[57] This would increase the amount that issuers of thinly traded securities could repurchase under the safe harbor.

Q. Does the current four calendar-week period provide a sufficient length of time to measure a security's ADTV, or should an alternative period be used (for example, two full calendar months, or 60-day rolling period)?

Q. Should we retain the current block transaction exception, but raise the amount of shares constituting a block (for example, use the NYSE's definition)?

Q. We encourage commenters to submit data regarding what percentage of individual issuer repurchase trading volume over the past five years has been effected through block purchases. In particular, the Commission requests data and analysis on what effect eliminating the block exception would have had on such issuer's repurchasing activity during that period.

Q. Is a volume limitation based on an ADTV calculation feasible with respect to Rule 10b–18 purchases of thinly traded securities? Should we raise (or lower) the volume limit for these securities? Should the proposed 500 shares alternative (to the 25% volume limitation) be increased (or decreased)? Please provide specific examples of where modifying the Rule's volume condition (with respect to these securities) would be appropriate. We also seek comment concerning the potential for manipulative abuse that such transactions may present.

Q. Should the safe harbor be available for issuer repurchases involving security futures or option contracts (including the receipt or purchase for delivery of securities underlying such contracts)? Should the number of shares underlying an option or security futures contract (or other derivative security) entered into by an issuer count against an issuer's 25% daily volume limitation? What effect, if any, should taking delivery of common stock pursuant to a security futures contract or upon exercise of an option have regarding the Rule's other conditions (*e.g.*, price, timing, and manner of purchase) with respect to the availability of the safe harbor for purchases effected in accordance with Rule 10b–18?

IV. After-Hours Trading

A. Applicability of the Safe Harbor During After-Hours Trading Sessions

Since the adoption of Rule 10b–18, the opportunity for investors to trade securities after the markets' regular trading sessions ("after-hours trading") has increased. To date, the Division has interpreted Rule 10b–18 to be available to purchases effected during limited off-hours trading (OHT) sessions at the primary market's closing price.[58] Specifically, the Division interpreted Rule 10b–18's "one-half hour before the scheduled close of trading" language to refer to an exchange's primary trading session (*i.e.*, 9:30–4 p.m. price discovery auction session), rather than OHT trading sessions.[59] As such, Rule 10b–18 safe harbor would be available for Rule 10b–18 purchases effected during these limited OHT sessions (*e.g.*, the NYSE's Crossing Session I), provided that all the Rule's conditions are satisfied.[60]

We are not proposing any amendments to Rule 10b–18 to address after-hours trading. Comment is requested about the need for rulemaking or guidance in this area.

Q. Should the Rule 10b–18 safe harbor be available to issuer purchases effected in after-hours trading sessions?

Q. Should the safe harbor be available only if the after-hours trades are reported on a "real-time" basis, *e.g.*, to the consolidated tape?

Q. Do issuer repurchases made in after-hours trading sessions present a greater potential for manipulation?

Q. Should the safe harbor conditions be applied separately to each session or should they carry over from the regular trading session for that day? Should any of the present safe harbor conditions be further modified (*e.g.*, should the volume in an issuer's security in an after-hours trading session be included in calculating the issuer's volume limitation for that day)?

B. Guzman & Company Petition for Rulemaking

On May 21, 1999, Guzman & Company, a registered broker-dealer, filed a petition for rulemaking, requesting that the Commission amend Rule 10b–18 to apply to after-hours trading.[61] Specifically, Guzman & Company seeks the amendment of Rule 10b–18's timing and pricing conditions to permit an issuer or an affiliated purchaser of an issuer to effect purchases or make bids during "after-hours" trading sessions subject to the present conditions but with the additional proviso that trades and bids must be at prices lower than the last reported price on the primary exchange or market on which the security of the issuer is traded. The petition also seeks an amendment of the single broker or dealer condition to permit an issuer or an affiliated purchaser of an issuer to utilize a different broker or dealer for "after-hours" Rule 10b–18 purchases or bids than is used for Rule 10b–18 purchases or bids during normal trading hours.

Q. We seek specific comment concerning Guzman & Company's proposals.

V. Rule 10b–18 Alternative Conditions

A. Proposed Amendment to Rule 10b–18 Alternative Conditions

On September 23, 1999, we adopted an amendment to the safe harbor conditions in order to facilitate liquidity in the trading session following a market-wide trading suspension, or circuit breaker.[62] Specifically, we modified the timing condition to include in the safe harbor issuer purchases made at the reopening and during the last half-hour prior to the scheduled close of trading or at the next day's opening if a market-wide trading suspension was in effect at the scheduled close of trading.[63] During such trading session, all other Rule 10b–18 conditions apply to issuer purchases.

In view of the extreme market volatility that would trigger a circuit breaker and the desirability of facilitating liquidity in that context, we propose to further modify the safe harbor alternative conditions (which are applicable only in the trading session immediately after a market-wide trading suspension) by increasing the current 25% volume limitation to 100% of the ADTV for that security.[64] The proposed volume modification would permit issuers to purchase more securities within the safe harbor during these rare periods of severe market decline.[65]

Q. Following a market-wide trading suspension, could sufficient liquidity be facilitated by increasing the volume limitation to something less than 100%? If so, what level is appropriate? Should the level be greater than 100%?

Q. Should Rule 10b–18's "alternative conditions" be further modified during periods of severe market decline? For example, do Rule 10b–18's pricing or manner conditions need to be modified during such periods or does the definition "market-wide trading suspension" need to be expanded to cover additional situations? If so, please provide specific suggestions.

B. NYSE Petition for Rulemaking

On June 13, 2001, the NYSE filed a petition for rulemaking, which seeks an amendment to Rule 10b–18 to make the Rule 10b-18 "safe harbor" available to an issuer for a category of "special purchases" effected by an independent trustee during a period of unusual volatility in the issuer's stock.[66] Specifically, the NYSE seeks the amendment of Rule 10b–18 to include in the Rule's safe harbor a new category of "special purchases" that:

(i) Are effected by a trustee that is not in any control or affiliate relationship with the issuer, and, once instructed by the issuer to conduct the "special purchase" program, makes all decisions with respect to the program independent of any influence or control by the issuer ("independent trustee");

(ii) Are effected on a day when NYSE Rule 80B is put into effect, or, with respect to an individual stock, the price of such stock has declined by $2 or more (in the case of a security whose previous closing price on the NYSE was under $10), the lesser of twenty percent or $5 (in the case of a security whose previous closing price on the NYSE was between $10 and $99.99), or $10 (in the case of a security whose previous closing price on the NYSE was $100 or more); and

(iii) Are limited in volume to no more than a quantity of stock having a market value that does not exceed one-half of one percent of the average market value of the issuer's stock during the four calendar weeks preceding the week in which the "special purchase" is made.

The NYSE petitions that "special purchases" be subject to the price and single broker or dealer provisions of Rule 10b–18, but that such purchases should be allowed to be effected for the remainder of the trading day. The NYSE also asks that, if a regular Rule 10b–18 program were being conducted by an issuer on a day that a "special

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both the NYSE and the NASD define "block" purchases in terms of the following criteria: (a) the purchase of a quantity of stock that has a purchase price of $500,000 or more; or (b) the purchase of at least 10,000 shares of stock with a purchase price of $200,000 or more. The AMEX defines a block as 10,000 or more shares. Moreover, we understand that the average size of a block purchase on the NYSE is 24,735 shares. Thus, a purchase satisfying the definition of a "block" under Rule 10b–18 is extremely small by current market standards.

[51] Under the current rule, an issuer may purchase up to the 25% volume limitation, and, in addition, may purchase one or more blocks, as defined. *See* 1982 Adopting Release, *supra* note 1. *See also* L. Loss and J. Seligman, *Securities Regulation, 3d Edition*, at 10–E–10 (1999) (noting that "[g]iven the exception of blocks from the volume limitation, this [25% volume limitation] restriction can be illusory"). It is important to note that, under the current rule, the term "block" does not include any amount of securities that a broker or dealer, acting as principal, has accumulated for the purpose of selling to the issuer, if the issuer knows or has reason to know that such amount was accumulated for such purpose. Rule 10b–18(a)(14).

[52] Economic studies have shown that block trades effected in the normal course of trading can affect a security's price. *See, e.g.*, Robert W. Holthausen, *et al.*, "Large-Block Transactions, the Speed of Response, and Temporary and Permanent Stock-price Effects," 26 *Journal of Financial Economics* 71–95 (1990) (presenting evidence of a permanent price effect that increases with block size, whether the block is "buyer-initiated" [*i.e.*, blocks that trade on an uptick] or seller-initiated" [*i.e.*, blocks that trade on a downtick]); Joathan R. Macey, *et al.*, "Symposium on the Regulation of Secondary Trading Markets: Program Trading, Volatility, Portfolio Insurance, and the Role of Specialists and Market Makers" 74 *Cornell L. Rev.* 799, at 819 (July 1989) (stating that empirical evidence confirms that block transactions do affect stock prices); Robert W. Holthausen, *et al.*, "The Effect of Large Block Transactions on Security Prices: A Cross-Sectional Analysis," 19 *Journal of Financial Economics* 237 (1987) (finding that for buyer-initiated transactions [*i.e.*, blocks that trade on an uptick], a permanent price effect.results that increases with block size).

[53] *See, e.g.*, The October 1987 Market Break: A Report by the Division of Market Regulation, U.S. Securities and Exhange Commission (February 1988) (The October 1987 Market Break) at p. 6:11 (noting that the treatment of blocks under the rule may effectively negate the volume restriction for many securities).

[54] As discussed above, the proposal would also amend the definition of a "Rule 10b–18 purchase" to make it clear that the exclusion of purchases made "pursuant to a merger, acquisition, or similar transaction involving a recapitalization" under the current definition, includes purchases effected "during the period from the time of public announcement of the merger * * * until the completion of such transaction."

[55] Proposed Rule 10b–18(b)(4).

[56] Rule 10b–18 would continue to include only U.S. market trading volume data in calculating a security's ADTV.

[57] Proposed Rule 10b–18(b)(4).

[58] For example, both the New York Stock Exchange, Inc. (NYSE) and the American Stock Exchange provide crossing sessions in which matching buy and sell orders can be executed at 5:00 p.m. at the exchanges' 4:00 p.m. closing prices.

[59] *See* Letter Regarding Operation of Off-Hours Trading (OHT) Sessions by the NYSE (June 13, 1991); Letter Regarding Operation of OHT Session by the AMEX (August 5, 1991); and Letter Regarding AMEX After-Hours Trading Facility (May 6, 1997) (the "OHT Session letters".

[60] *Id.*

[61] Guzman & Company's Petition for Rule-Making (filed on May 21, 1999) is publicly available in File No. 4–424 in the Commission's Public Reference Room.

[62] Securities Exchange Act Release No. 41905 (September 23, 1999), 64 FR 52428 (September 29, 1999).

[63] 17 CFR 240.10b–18(c).

[64] Proposed Rule 10b–18(c)(5). *See, e.g.*, Comment letters, on the 1999 amendment to Rule 10b–18, from Morgan Stanley & Co. (December 10, 1998) (urging us to eliminate the current volume limitation during the period following a market-wide trading suspension condition or, as an alternative, increase the current 25% volume limitation), and Intel Corporation (December 1, 1998) (suggesting we amend the present volume condition to permit additional issuer repurchases, based on either a higher or scaled percentage, following a severe market break). Both letters are available for public inspection in the Commission's Public Reference Room, Public File No. S7–27–98. *See* also text accompanying note 79, *infra*, regarding the Commission's emergency orders where the volume limitation was temporarily increased from 25% to 100% of a security's ADTV following the events of September 11, 2001.

[65] *See generally* The October 1987 Market Break, *supra* note 53, at pp. 6:1–6:15 (noting the increase in trading volume and the impact of issuer repurchases following the October 1987 market break).

[66] The NYSE's Petition for Rule-Making is publicly available in File No. 4–446 in the Commission's Public Reference Room.

purchase" is to be effected, Rule 10b–18 be amended to provide that:

(i) The regular Rule 10b–18 program must be cancelled before the "special purchase" program can begin;

(ii) The "single broker or dealer" requirement applies separately to the regular program and the "special purchase" program; and

(iii) Any securities acquired in the regular Rule 10b–18 program would not be included in the new volume limitation applicable to the "special purchase" program.[67]

Q. Should Rule 10b–18's "alternative conditions" apply where there is a significant decline in the market price of an *individual* stock (*i.e.*, in the absence of a market-wide trading suspension), as suggested by the NYSE in its petition? If so, what conditions should apply to these purchases? Please provide specific examples of where modifying the Rule's "alternative conditions" would be appropriate.

Q. We seek specific comment concerning the NYSE's petition for rulemaking, including the feasibility of monitoring compliance with such a program (*i.e.*, especially in cases where there is a severe market decline in the price of an individual stock).

VI. Disclosure

We propose that Regulations S–K and S–B, and Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F, and proposed Form N–CSR be amended to require periodic disclosure of all issuer repurchases of shares or other units of any class of the issuer's equity securities that is registered by the issuer pursuant to Section 12 of the Exchange Act.[68] This disclosure requirement would be independent of the Rule 10b–18 safe harbor.

Under the proposal, an issuer would be required to disclose information concerning its repurchases in a new table in its Forms 10–Q/10–QSB (new Item 2(b)), 10–K/10–KSB (new Item 5(c)), 20–F (new Item 15(e)), and, for registered closed-end funds, proposed Form N–CSR.[69] The table in Forms 10–K/10–KSB, 10–Q/10–QSB, and proposed Form N–CSR would include disclosure of all issuer repurchases of its Section 12 registered equity securities (both open market and private transactions) for that quarter (or, in the case of closed-end funds, semi-annual period), including the total number of shares (or units) purchased (reported on a rolling-month basis), the average price paid per share, the identity of any broker-dealer(s) used to effect the purchases, the number of shares (or units) purchased as part of a publicly announced repurchase plan or program, and the maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs.[70]

New Item 15(e) to Form 20–F would require the same tabular presentation of information, with the exception of the identity of the broker-dealer effecting the transactions, which would not be required in the table included in Form 20–F. Thus, a foreign private issuer that has securities registered under Section 12 of the Exchange Act would be required to disclose on a yearly basis in its annual report on Form 20–F its repurchases of its securities. The disclosure provided should relate to the issuer's securities in ordinary share form, whether the issuer has repurchased the shares themselves or depositary receipts that represent the shares. The price data and other data should be based on the currency used in the issuer's primary financial statements.

We also propose footnote disclosure of the principal terms of publicly announced repurchase plans or programs, including (1) the date of announcement, (2) the share or dollar amount approved, (3) the expiration date (if any) of the plans or programs, (4) each plan or program that has expired during the period covered by the table, (5) each plan or program that the issuer has determined to terminate prior to expiration, and (6) each plan or program that the issuer has not purchased under during the period covered by the table and whether the issuer still intends to purchase under that plan or program.

The table also would have to include footnotes that briefly disclose the nature of the transaction for purchases made other than pursuant to a publicly announced repurchase plan or program. These would include, for example, open market and privately negotiated purchases, issuer tender offers, purchases made by the issuer upon another person's exercise of outstanding put rights, and in other transactions through which the company purchases its Section 12 registered equity securities.

In the past, we had proposed requiring issuers that intended to repurchase more than 2% of their stock in a twelve-month period to disclose specified information prior to effecting any repurchases.[71] Issuers also would have been required to disclose this information to the exchange on which the stock was listed for trading or to the NASD if the stock was authorized for quotation on Nasdaq.[72] After receiving comment, we determined that an issuer's obligation to disclose information concerning repurchases of its stock should depend on whether the information is material.[73] Therefore, at the time we adopted Rule 10b–18, we considered the relevant provisions of the federal securities laws and existing policies and procedures of the various self-regulatory organizations as generally sufficient to provide investors and the market with adequate information about issuer repurchases.

Information about how much common stock the issuer has repurchased may be important to investors. Studies have shown that the public announcement by an issuer of a repurchase program is often followed by a rise in the issuer's stock price.[74] Studies have also shown that some issuers publicly announce repurchase programs, but do not purchase any shares or purchase only a small portion of the publicly disclosed amount.[75] Thus, disclosure of an issuer's actual repurchases would inform investors whether the issuer had followed through on its original plan.[76] Investors also would have information regarding an issuer's repurchase activity in order to assess its possible impact on the issuer's stock price, similar to periodic disclosure of issuer earnings and dividend payouts.[77] Finally, investors should also be apprised when an issuer repurchase plan has expired, has been terminated, and where no repurchase activity has occurred for some period whether the issuer nevertheless intends to continue the repurchase program.[78]

The importance of requiring disclosure of issuer repurchases was made more apparent when the Commission temporarily afforded emergency relief regarding Rule 10b–18 following the September 11, 2001 attacks on the World Trade Center and the Pentagon.[79] The Commission's emergency action (which temporarily eased Rule's 10b–18's timing and volume limitations) was designed to provide for potential additional liquidity in order to facilitate the reopening of the U.S. equities markets on September 17, 2001, and the continued orderly operation of the markets during the weeks following. However, because Rule 10b–18 does not require disclosure, it is difficult to assess precisely how much of the purchasing activity was attributable to issuer repurchases and how much was attributable to non-issuer trading activity. Requiring issuers to disclose their repurchases in their periodic reports would provide investors with important information regarding the company's purchasing activity. It also would provide the Commission with useful information in assessing the level and market impact of issuer repurchases, as well as in responding to future market emergencies.

We also are seeking comment on whether the Commission should require issuers to disclose information about their repurchase activity on a more frequent basis (*e.g.*, on a monthly basis or within 10 days of the transaction). In cases, for example, in which an issuer makes repurchases only at the beginning of the quarter, a shareholder would not have any information about the issuer's repurchases activity until three or four months later when the issuer's Form 10–Q is filed. Thus, requiring issuers to disclose on a more-timely basis might be more helpful to investors than requiring disclosure on a quarterly basis, as is currently proposed. More frequent disclosure also would allow the Commission to monitor more effectively the level and market impact of an issuer's repurchase activity.

Q. Does the proposed disclosure requirement in new Item 703 of Regulation S–K and Regulation S–B) provide useful information to the market? Is there other information in addition to that which we are proposing that would be useful to include in Item 703 (*e.g.*, the company's intended use for the repurchased shares or the purpose for making the specific purchase, the date and price of each purchase, the source of funds for the repurchase, the average number of shares purchased per day—based on the number of days on which the issuer purchased shares—and the specific days the repurchases were made)?

Q. Should we require the information to be disclosed in "tabular" format as we propose?

Q. Should there be different treatment of purchases that exceed a specified threshold (number of shares, dollar amount, percentage of shares outstanding, etc.)? For example, should trade-by-trade information be provided for trades over a certain size? If so, what is an appropriate measure to trigger the more specific information?

Q. Should there be different treatment of small or *de minimis* repurchases? For example, if the repurchases in a quarter are below a specified dollar or share threshold, should issuers be permitted to omit the specific information provided in Item 703 and instead make summary disclosure of the *de minimis* repurchases? Similarly, if repurchases fall below a specified threshold, should issuers be permitted to aggregate the disclosure for the quarter rather than disclose information on a monthly basis? If so, what would be an appropriate threshold? Should the threshold be a fixed share or dollar amount or should it vary depending on the company's public float, average daily trading volume, or other measure?

Q. We propose brief footnote disclosure of the general nature of repurchases made outside of publicly announced repurchase plans or programs in order to provide investors with a more complete picture regarding an issuer's repurchase activity. Does such disclosure serve a useful purpose? Should we require more detailed information with respect to those transactions, such as date of purchase, price, terms of the transaction, and relationship of the seller to the company? If so, what additional details should Item 703 require with respect to those transactions? Should we require this disclosure for all repurchases made outside of publicly announced plans or programs or only for specified categories of transactions, such as privately negotiated transactions? Should we require additional disclosure with regard to repurchases made outside of publicly announced plans or programs for transactions that exceed a specified threshold in magnitude? If so, what is an appropriate threshold?

Q. Our proposal would only require disclosure of issuer purchases of equity securities of a class registered by the issuer under Section 12 of the Exchange Act. This would include disclosure of issuer purchases of securities convertible into the issuer's equity securities or options to purchase the issuer's equity securities if those convertible securities and options are themselves equity securities of a class

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[67] With respect to resales of any securities acquired pursuant to a Rule 10b–18 "special purchase," the NYSE petitions the Commission to exercise its exemptive authority to provide that such securities are not subject to re-registration under the Securities Act of 1933, and are not deemed to be "restricted securities" in any way, provided that such securities have been held by the independent trustee for a minimum of two weeks, and are sold by the independent trustee in a manner free of any influence or control by the issuer.

[68] For purposes of Item 703 of Regulations S–K and S–B, the term "equity securities" is defined in Section 3(a)(11) of the Exchange Act. For purposes of Form 20–F, the term "equity securities" is defined in General Instruction F to Form 20–F.

[69] *See* proposed Item 703 of Regulations S–K and S–B (17 CFR 229.703 and 228.703), Item 2(b) to Forms 10–Q and 10–QSB, Item 5(c) to Forms 10–K and 10–KSB, Item 15(e) to Form 20–F, and Item 6 to proposed Form N–CSR.

[70] *Id.*

[71] Proposed Rule 13e–2(d)(1). *See* 1980 Proposing Release, *supra* note 2, 45 FR at 70897.

[72] Proposed Rule 13e–2(d)(2).

[73] 1982 Adopting Release, *supra* note 1, 47 FR at 53335.

[74] *See* Comment, R. and Jarrell, G., "The Relative Signaling Power of Dutch-Auction and Fixed-Price Self-Tender Offers and Open-Market Share Repurchases," *Journal of Finance* 46 (1991), pp. 1243–71; Asquith, P. and Mullins, D., "Signaling with Dividends, Stock Repurchases and Equity Issues," *Financial Management* 15 (1986), pp. 27–44; Vermaelen, T., "Common Stock Repurchases and Market Signaling," *Journal of Financial Economics* 9 (1981), pp. 139–83; and Dann, L., "The Effects of Common Stock Repurchase on Security Holder's Returns," *Journal of Financial Economics* 9 (1981), pp. 101–138.

[75] If an issuer announced a repurchase program, but had no intention to make purchases, it may violate the anti-fraud and anti-manipulation provisions of the federal securities laws.

[76] *See* Stephens and Weisbach, *supra* note 1. *See also* Ikenberry, David, *et al.*, "Stock Repurchases in Canada: Performance and Strategic Trading," *Journal of Finance*, 55 (October 2000), pp. 2373–97 (noting that the fraction of shares actually repurchased in connection with Canadian stock repurchase programs is surprisingly low, for example, at termination of the program, roughly a quarter of the firms did not repurchase any shares). Under Canadian law, issuers must report each month the number of shares they actually repurchase. *Id.*

[77] *See, e.g.*, Grullon, G. and Ikenberry, D., "What Do We Know About Stock Repurchases," *Journal of Applied Corporate Finance* 13 (2000), pp. 31, 40–41 (discussing how corporations have been substituting repurchases for dividends, as economic equivalent means of returning excess capital to shareholders). Moreover, requiring such disclosure would be analogous to the requirement that corporate insiders disclose their own transactions involving the company's stock. *See, e.g., id.*, at 48 (emphasizing the need to regulate consistently economically equivalent practices, the authors note that "[a]lthough firms repurchasing stock are not required to disclose any of their trades, if management makes the same decision on a personal account, details about the trades must be promptly disclosed to the SEC and then made public in short order"). *See also* Cook, Douglas et al., "Safe Harbor or Smoke Screen? SEC Guidelines for Executing Open Market Repurchases," (Working Paper) (May 1999, revised April 9, 2001) (forthcoming in *The Journal of Business*) (questioning the regulatory effectiveness of safe harbors without mandatory disclosure).

[78] Disclosure to this effect would be required in the proposed disclosure forms.

[79] On September 14, 2001, the Commission issued an "Emergency Order Pursuant to Section 12(k)(2) of the Exchange Act Taking Temporary Action to Respond to Market Developments." Securities Exchange Act Release No. 44791 (September 14, 2001). This Emergency Order temporarily modified certain Commission rules and regulations governing issuer stock repurchases for an initial five-day period beginning September 17, 2001 and ending September 21, 2001. The Commission extended the period for an additional five days, ending on September 28. Securities Exchange Act Release No. 44827 (September 21, 2001). On September 28, the Commission used an exemptive authority under Section 36 of the Exchange Act to temporarily modify certain conditions of Rule 10b–18 for issuers that repurchase their own common stock during the period October 1–12, 2001. Securities Exchange Act Release No. 44874 (September 28, 2001).

In the event that there is another "market emergency" that does not fit within the meaning of a "market-wide trading suspension" (as defined under the rule), as was the case with the events following September 11, the Commission would have the same emergency and exemptive authority as above (*i.e.*, under Sections 12(k)(2) and 36(a)(1) of the Exchange Act) to modify the safe harbor conditions, as it deems necessary.

registered under Section 12 of the Exchange Act. Should this disclosure be limited to securities that are presently convertible into the issuer's equity securities and options that are in the money or should it cover all purchases of registered convertible securities and options? Should this disclosure encompass security futures products? Should we limit the disclosure requirement to common stock of a class registered under Section 12 and exclude convertible securities and options?

Q. Should we require disclosure of equity securities as defined in Section 3(a)(11) of the Exchange Act, as we propose? Is this definition too narrow or too broad? Should we limit the disclosure requirement to equity securities listed on a national securities exchange or quoted on an inter-dealer quotation system?

Q. We propose to require disclosure in the table of purchases on a rolling-month basis, beginning with the first day of the quarter covered by the report. For example, if the quarter begins on January 15 and ends on April 15, the chart would show repurchases for the months from January 15 through February 14, February 15 through March 14, and March 15 through April 15. Is this an appropriate approach? If not, what approach should we take?

Q. Should we require disclosure of the broker-dealer that effected the purchases as we propose? Should this information be reported solely for the Commission's use, and kept confidential at the issuer's request, or should it be publicly disclosed? What if any value is there in the public disclosure of this information? Is it unduly burdensome to companies to make this disclosure?

Q. Should compliance with the proposed disclosure requirement be made a condition of using the safe harbor or should issuers be required to disclose their repurchases regardless of whether they rely on the safe harbor? If the latter, should Rule 10b–18 contain a specific disclosure requirement as a condition of the safe harbor, similar to other Commission regulations that link a safe harbor with disclosure (*e.g.*, Regulation D with Form D and Rule 144 with Form 144)? What specific types of information would be useful to investors regarding an issuer's repurchase activity?

Q. Would requiring specific disclosure as a condition of the safe harbor provide a useful way to monitor the operation of (or verify compliance with) the safe harbor? Would it provide useful information in assessing the level and market impact of issuer repurchases?

Q. Is our proposal to require disclosure on a quarterly basis sufficient, or would more frequent disclosure (*e.g.*, monthly or on a "real time" basis) be more meaningful to investors? If so, how should the disclosure be made (*e.g.*, issuing monthly press releases or reporting such purchases to the tape using a special trade indicator)? Please provide specific suggestions.

Q. Should issuer repurchases be reported on Form 8–K or otherwise on a more current basis than proposed?

Q. In addition to the proposed required quarterly disclosure of aggregate volume and average price information, should an issuer also be required to maintain (and provide to the Commission, upon request) separately retrievable written records concerning the trade details (trade-by-trade information) about the manner, timing, price, and volume of its repurchases?

Q. Would disclosure regarding an issuer's transactions involving derivatives (*e.g.*, short put-options, forward contracts, or synthetic forward contracts) written on the issuer's own stock provide useful information to the market?

Q. If so, what additional details should Item 703 require with respect to put options and other derivative transactions?

Q. If the information called for by Item 703 is disclosed elsewhere in filings made with the Commission, should the issuer be permitted to cross reference to the other disclosure rather than repeat the information in the table or should all information be provided in the table?

Q. Should Item 703 require separate columnar disclosure only of repurchase programs or plans that have been *publicly announced* by the issuer, as we propose? Should we instead require separate columnar disclosure of all repurchase plans or programs that have been approved by the issuer's board of directors?

Q. Should the Commission require issuers to disclose their plans before making any purchases? Would prospective disclosure of anticipated repurchases be useful to investors? If so, should this requirement apply to all repurchases or only to anticipated purchases above a prescribed dollar, share, or percentage threshold? Should any other criteria apply to the determination whether repurchases are required to be disclosed prospectively? Should this information be disclosed on Form 8–K or Form 10–Q?

Q. Should the disclosure in the table under Item 703 be segregated to identify open market purchases (made within the safe harbor), privately negotiated transactions, purchases made pursuant to an issuer tender offer, or other specific types of transactions?

Q. When an affiliated purchaser makes purchases should these purchases be disclosed separately in the table? Should we require disclosure of the identity of the purchaser and its relationship to the issuer? Should disclosure be required of any agreements or arrangements that exist between the purchaser and the issuer related to the purchase?

Q. We propose to amend Form 20–F to require tabular disclosure of issuer repurchases by foreign private issuers. Should the new disclosure requirement apply to foreign private issuers as proposed? Some foreign jurisdictions already have requirements to disclose issuer repurchases of their securities. Should our disclosure requirement mirror the requirements in the issuer's home country?

Q. Foreign private issuers file one prescribed periodic report per year on Form 20–F. Would this annual disclosure of an issuer's repurchase activity be useful to investors? Should the repurchases be broken out on a monthly basis as we propose? Alternatively, should they be aggregated on a quarterly basis or for the entire year?

Q. Our proposal would require disclosure of repurchases of all shares of a company's equity securities of a class registered under Section 12 of the Exchange Act. Should we limit the disclosure requirement to exclude purchases made outside the United States? Would information about domestic repurchases, on its own, be meaningful to investors?

Q. In our proposed amendment to Form 20–F, we propose to apply the definition of "equity securities" in General Instruction F to Form 20–F. Is this an appropriate definition of the securities to which the disclosure requirement should apply? Should we use the statutory definition of equity securities as we do in proposed Item 703?

Q. We propose to require companies filing Forms 10–K and 10–Q to disclose the identities of brokers executing the transactions, which would provide the Commission with access to information regarding an issuer's repurchase activity (*i.e.*, in order to monitor more effectively the level and market impact of an issuer's repurchase activity). However, because we are not the primary regulators of private foreign issuers, we do not propose to require disclosure of the broker executing purchases for foreign private issuers filing reports on Form 20–F. Should we require disclosure of the brokers that execute the purchases on behalf of foreign private issuers? Should we require disclosure of the brokers only when the purchases are made in reliance on Rule 10b–18?

Q. We propose to require separate disclosure of repurchases pursuant to publicly announced programs. Would this separate disclosure be helpful to investors? Do foreign private issuers typically announce their programs? If not, should we remove this column from the table in proposed Item 15(e) of Form 20–F?

Q. The securities of some foreign companies trade in the United States in the form of depositary receipts. Would it be useful to require disclosure of repurchases of the receipts and the shares separately?

Q. The securities of many U.S. and foreign companies trade in markets outside the United States in currencies other than the U.S. dollar. What currency should issuers use in reporting their repurchases? Should foreign companies be given the flexibility to choose the appropriate currency to report their repurchases, based upon management's assessment of the most appropriate disclosure?

Q. To the extent a foreign or a U.S. company repurchases securities outside the United States, should there be disclosure of the markets on which such repurchases took place? Would investors find it useful for issuers to disclose information as to the amount of securities repurchased in any particular market?

Closed-End Funds

Closed-end funds would provide the required disclosure semi-annually on proposed Form N–CSR. Currently, closed-end funds are required to disclose information regarding privately negotiated repurchases of their securities on Form N–23C–1 not later than the tenth day of the calendar month following the month in which the purchase occurs.[80] This information includes the date of the transaction, identification of the security purchased, number of shares purchased, price per share, approximate asset value per share at the time of purchase, and name of the seller or the seller's broker. In addition, Form N–SAR, the semi-annual reporting form for registered investment companies, requires closed-end funds to disclose the aggregate number of shares and net consideration paid for all repurchases and redemptions of their common and preferred stock during the semi-annual reporting period.[81]

We believe that, as with other issuers, additional information regarding repurchase offers by closed-end funds would be useful to investors.[82] We are not currently proposing to eliminate or amend the reporting requirements of Form N–23C–1, which apply on a transaction-by-transaction basis only to privately negotiated repurchases, or the requirements of Form N–SAR, which provide the Commission with aggregate data on sales, repurchases, and redemptions of closed-end fund shares over a semi-annual period.

Q. Should closed-end funds be subject to the additional disclosure requirements that we are proposing, or are the disclosures that they are currently required to provide adequate? Is proposed Form N–CSR the appropriate location for closed-end funds to disclose additional information regarding their repurchases? Should we instead require closed-end funds to provide this information on Form N–23C–1 or Form N–SAR?

Q. Should we eliminate Form N–23C–1, and modify Rule 23c–1 to eliminate the requirement in paragraph (a)(11) that privately negotiated repurchases of closed-end fund shares be reported in the month following the transaction? How is the information on Form N–23C–1 used by investors? Would the semi-annual disclosure that we are proposing adequately fulfill investors' needs for information regarding repurchases? Should we eliminate the line items in Item 86 of Form N–SAR that require semi-annual disclosure by a closed-end fund regarding repurchases of its common and preferred stock?

Q. How frequently should we require closed-end funds to disclose information regarding repurchases of equity securities? Should we require quarterly disclosure of repurchases by closed-end funds as we propose to do for operating companies? If disclosure should be made more frequently than semi-annually, how should more frequent disclosure be provided?

VII. General Request for Comment

We request and encourage any interested person to comment generally on these proposals. In addition to the specific requests for comment, the Commission invites interested persons to submit written comments on all aspects of the proposed amendments. The Commission also requests commenters to address whether the proposed Rule 10b–18 amendments provide appropriate safe harbor conditions in light of market developments since Rule 10b–18's adoption in 1982. The Commission seeks comment on whether the safe harbor proposals raise any manipulation risks. Commenters may also discuss whether there are legal or policy reasons why the Commission should consider a different approach. For instance, should the Rule 10b–18 volume condition be further restrained or relaxed? Should the safe harbor's time of purchase condition be broader, narrower, or include different parameters? Additionally, the Commission seeks comment about whether the proposed disclosure amendments to Regulations S–K and S–B, Forms 10–K(KSB), 10–Q(QSB) and 20–F, and proposed Form N–CSR provide meaningful and timely information to investors.

The Commission encourages commenters to provide information regarding the advantages and disadvantages of each proposed amendment. The Commission invites commenters to provide views and data as to the costs and benefits associated with the proposed amendments. We also seek comment regarding other matters that may have an effect on the proposed amendments.

VIII. Paperwork Reduction Act

A. Collection of Information Under These Amendments

Certain provisions of the proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA);[83] the Commission has submitted information to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The Commission is revising the several currently approved collections of

[80] Rule 23c–1(a)(11) under the Investment Company Act [17 CFR 270.23c–1(a)(11)]; Form N–23C–1 [17 CFR 274.201]. Of 125 Form N–23C–1 filings made during the year ending September 30, 2002, it appears that at least 37 of these filings were not required under Rule 23c–1 (no repurchases occurred in the prior month or repurchases on the open market).

[81] Lines B and D of Item 86 of Form N–SAR [17 CFR 249.330; 17 CFR 274.101]. Item 86 also requires disclosure of the aggregate number of shares and net consideration received for sales of a closed-end fund's common and preferred stock during the reporting period, as well as aggregate sale and repurchase and redemption information for debt securities.

[82] *See generally* Thomas J. Herzfeld, *Market Shakeout Leads to Unprecedented Number of Share Buyback Announcements*, Investor's Guide to Closed-End Funds (Oct. 1998) (discussing actual buybacks after announcements and the use of buybacks to reduce closed-end fund discounts and noting that "many fuods maintain the authorization to repurchase their own shares in the open market, but only a handful buy back significant numbers of shares").

[83] 44 U.S.C. 3501 *et seq.*

information titled "Regulation S–K," "Regulation S–B," "Form 10–Q," "Form 10–QSB," "Form 10–K," "Form 10–KSB" and "Form 20–F" under OMB control numbers 3235–0071, 3235–0417, 3235–0070, 3235–0416, 3235–0063, 3235–0420, and 3235–0288 respectively. The Commission also is revising the collection of information titled "Form N–CSR" under OMB control number 3235–0570. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

B. Need for and Proposed Use of the Collection of Information

We believe that the proposed amendments to Regulations S–K, S–B, Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F, and proposed Form N–CSR are necessary (1) to facilitate the transparency of registrants' repurchases, (2) to bolster investor confidence in the integrity of the securities trading markets, and (3) to monitor and assess the level and market impact of registrants' repurchases.

C. Respondents

The proposed amendments to Regulations S–K, S–B, and Forms 10–K, 10–KSB, 10–Q, 10–QSB, 20–F, and proposed Form N–CSR would require disclosure of all repurchasing activity (e.g., open market purchases, tender offers, and other transactions). Approximately 708 issuers announced 796 new or expanded repurchase programs in 2000.[84]

The degree to which the proposed amendments will affect registrants and other issuers will vary from year to year. A registrant's decision to conduct open market or privately negotiated repurchases is a discretionary decision. These decisions are based on the entity's assessment of its current needs and other continually changing factors. Thus, the number of registrants who would make the proposed disclosures would vary from quarter to quarter and year to year.

D. Total Annual Reporting and Recordkeeping Burden

1. Proposed Amendments to Regulations S–K and S–B, and Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F, and N–CSR

We estimate that the average amount of time it would take to prepare the tabular disclosure required by proposed new Item 703 of Regulations S–K, S–B, Form 20–F, and proposed Form N–CSR would be approximately one hour per annual, semi-annual, or quarterly report filing.[85] To determine the average total number of hours each entity would spend completing Forms 10–K, 10–KSB, 10–Q, 10–QSB, 20–F, and Form N–CSR if we adopt the proposed disclosure, we added the one-hour increment to the current burden hours estimated for each form.

With respect to Forms 10–K, 10–KSB, 10–Q and 10–QSB, we estimate that the company bears 75% of the burden of preparation internally and that 25% of the burden of preparation is borne by outside professionals retained by the company at an average cost of $300 per hour.[86] With respect to Form 20–F, we estimate that 25% of the burden of preparation is borne by the company internally and that 75% of the burden of preparation is borne by outside professionals retained by the company at an average cost of $300 per hour.[87] The portion of the burden borne by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours.

Next, we base our estimates on the actual number of filings in the fiscal year 2002 (8,484 10–K filings, 3,820 10–KSB filings, 23,743 10–Q filings, 11,299 10–QSB filings, and 1,194 20–F filings). We also estimate, based on data indicating that approximately 708 companies announced repurchase programs in 2000, that approximately 1,000 would include the proposed repurchase disclosure in their filings.[88] We further estimate that each of the 1,000 companies would include the proposed disclosure in each of its periodic reports filed during the fiscal year on the assumption that a typical open market repurchase program lasts two to three years.[89] Because we do not have specific data indicating the number of repurchases conducted by type of issuer (e.g. large issuers, small business issuers, foreign private issuers), we estimate that the number of repurchases made by a given type of issuer was proportionate to the number of filings made by that type of issuer.

We estimate that an incremental burden of 472.5 hours (630 × 75) and an incremental cost of $47,250 (630 × .25 × $300) would be imposed on companies filing Form 10–K if we adopt the proposals. The estimated incremental burden for Form 10–KSB would be 210 hours (280 × .75) and the incremental cost would be approximately $21,000 (280 × .25 × $300). The estimated incremental burden for Form 10–Q would be 1,417.5 hours (1,890 × .75) and the incremental cost would be approximately $141,750 (1,890 × .25 × $300). The estimated incremental burden for Form 10–QSB would be 630 hours (840 × .75) and the incremental cost would be approximately $63,000 (840 × .25 × $300). The estimated incremental burden for Form 20–F would be 22.5 hours (90 × .25) and the estimated cost would be approximately $20,250 (90 × .75 × $300).

The table below illustrates the estimated incremental annual compliance burden in hours and in cost for annual and quarterly reports if we adopt the proposals.

[84] The data source is Securities Data Corp. For purposes of this paragraph and those that follow, we use repurchasing information from the year 2000 rather than 2001. Repurchasing information for the year 2001 is distorted in light of the issuer repurchases effected pursuant to the emergency and exemptive relief issued following September 11th. *See* note 79, *supra*. Repurchasing information for the year 2002 was not used because repurchasing data for the year would be incomplete since 12 calendar months have not yet elapsed. However, we note that 206 issuers announced 217 new or expanded repurchase programs during the period January 1, 2002 through July 31, 2002. The data source is Securities Data Corp.

[85] The information required to be disclosed in proposed new Item 703 would be readily available to the company.

[86] The 75% internal/25% outside professional burden allocation is based on information that we have received from registrants indicating that most of the burden of preparing annual and quarterly reports is borne internally by the company. The $300 hourly cost estimate for outside professionals is based on consultations with several outside law firms and other persons who regularly assist companies in preparing and filing annual and quarterly reports with the Commission.

[87] We estimate that outside professionals carry the greater burden of preparation of Form 20–F because that Form requires the financial statements and schedules that must be included in the Form 20–F filing to disclose an information content substantially similar to financial statements that comply with United States generally accepted accounting principles and Regulation S–X.

[88] We estimate that 1,000, rather than 708, issuers would include the proposed disclosure in their filings because the 708 estimate includes only announced repurchase programs. We have no data regarding the number of unannounced repurchase programs conducted in 2000 but estimate the number to be 300 for purposes of the PRA burden analysis. We solicit comment on the accuracy of this estimate.

[89] *See*, Gustavo Grullon and David Ikenberry, "What Do We Know About Stock Repurchases," *Journal of Applied Corporate Finance*, at p. 33 (2000).

INCREMENTAL BURDEN ESTIMATES

	Annual responses (A)	Incremental burden response hours/form (B)	75% company (C)=(A)*(B)*.75	25% professional (D)=(A)*(B)*.25	$300 professional cost (E)=(D)*300
10–K	630	1	472.5	157.5	47,250
10–KSB	280	1	210	70	21,000
10–Q	1,890	1	1,417.5	472.5	141,750
10–QSB	840	1	630	210	63,000
			25% Company	75% Professional	$300 Prof. Cost
Form 20–F	90	1	(C)=(A)*(B)*.25 22.5	(D)=(A)*(B)*.75 67.5	(E)=(D)*300 20,250

Proposed new Item 703 of Regulations S–K and S–B, proposed new Item 15(e) of Form 20–F, and proposed new Item 6 of proposed Form N–CSR would require disclosure of all issuer repurchases of shares (or other units) of any class of the issuer's equity securities that is registered under Section 12 of the Exchange Act. The issuer would have to present this disclosure in tabular format. Specifically, the issuer would have to disclose all repurchases of its registered equity securities (both open market and private transactions) for that quarter, including the total number of shares (or units) purchased (which would be reported on a rolling basis), the average price paid per share, the identity of the broker dealer(s) used to effect the purchases, the number of shares (or units) purchased as part of a publicly announced plan or program, and the maximum number (or approximate dollar value) of shares that may yet be purchased under the plans or programs. The table would also have to include footnotes that briefly disclose the nature of the transaction for purchases made other than pursuant to a publicly announced repurchase plan or program. These would include for example, open market and privately negotiated purchases, issuer tender offers, purchases made by the issuer upon another person's exercise of outstanding put rights, and in other transactions through which the company purchases its registered equity securities. We also propose footnote disclosure of the principal terms of publicly announced repurchase plans or programs, including the date of announcement, the share or dollar amount approved, and the expiration date (if any) of the plans or programs. Additionally, the proposed footnote disclosure would indicate for each plan or program during the period covered by the table, plan or program expirations, plan or program terminations, and if there has been no repurchasing but the issuer still intends to repurchase pursuant to the plan or program.

Closed-end funds would be required to provide similar disclosure on new Item 6 of proposed Form N–CSR. With respect to proposed Form N–CSR, we estimate that 75% of the burden of preparation is carried by the company internally and 25% of the burden of preparation is born by outside professionals retained by the company at an average cost of $300 per hour. Of the 3,700 registered management investment companies required to file reports on proposed Form N–CSR, 630 of those companies are closed-end funds that would be required to comply with new Item 6, resulting in 1,260 filings per year (630 closed-end funds × 2 filings per year) by closed-end funds. We estimate that an incremental burden for proposed Form N–CSR would be 945 hours annually (1 hour × 1,260 filings × .75) and the incremental costs would be approximately $94,500 (1 hour × 1,260 filings × .25 × $300).

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, with reference to File No. S7–50–02. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–50–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

IX. Costs and Benefits of the Proposed Amendments

The Commission is considering the costs and the benefits of the proposed amendments to Regulations S–K, S–B, Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F, and N–CSR, and Rule 10b–18. The Commission encourages commenters to discuss any additional costs or benefits. In particular, the Commission requests comment on the potential costs for any modifications to information gathering, management, and recordkeeping systems or procedures, as well as any potential benefits resulting from the proposals for registrants, issuers, investors, broker-dealers, other securities industry professionals, regulators, and others. Commenters should provide analysis and data to support their views on the costs and benefits associated with the proposed amendments.

A. Costs and Benefits of the Proposed Amendments to Rule 10b–18

1. Costs

As an aid in evaluating costs and reductions in costs associated with the proposed Rule 10b–18 modifications, the Commission requests the public's views and any supporting information. The Commission believes that the

proposed amendments would impose negligible costs, if any, on issuers and would not compromise investor protection. The Commission notes that any costs related to complying with the proposed amendments to Rule 10b–18 are assumed voluntarily because the Rule provides an optional safe harbor. The Commission solicits comments as to whether the proposed amendments impose greater costs on issuers than the current Rule.

2. Benefits

We believe that the proposed amendments to Rule 10b–18 would simplify, clarify, and update its provisions in light of market developments since its adoption in 1982. These proposed amendments provide clarity as to the scope of permissible market activity for issuers and the broker-dealers that assist them in their repurchasing. Many issuers might be reluctant to repurchase without the certainty that their activity comes within the safe harbor. If an issuer effects repurchases in compliance with Rule 10b–18, it will avoid what might otherwise be substantial and unpredictable risks of liability under the anti-manipulative provisions of the Exchange Act. If adopted, the amendments would continue to facilitate corporate goals, such as ensuring the availability of common stock to complete potential transactions, substituting share repurchases for dividend payments, and other corporate objectives.

The inclusion of block purchases in the volume condition would establish a reasonable limit on the amount of repurchasing activity that is protected by the safe harbor, which, in turn, prevents issuers from dominating the market in their securities. Pricing established by independent market forces rather than by an issuer's substantial repurchasing activity would promote investor confidence and enhance the integrity of the securities markets. Additionally, eliminating the block exception would not impede an issuer's ability to repurchase within the safe harbor as there is no limit on the number of days over which repurchasing can be conducted. An issuer that reaches the 25% limit on one day has the option of repurchasing additional shares on a subsequent day. Also, the inclusion of block purchases in an issuer's trading volume creates a greater base figure on which the issuer would calculate its 25% volume. This would increase the amount of stock that some issuers can repurchase within the safe harbor to facilitate an issuer's goals such as having shares available for dividend reinvestment, stock options, or employee stock ownership plans. Further, eliminating the block exception simplifies an issuer's volume calculation because block purchases would no longer be subtracted from volume. The simplified calculation eases an issuer's burden and reduces the chance for errors in the volume calculation.

The proposed option for an issuer to purchase either 25% of ADTV or a daily aggregate amount of 500 shares, whichever is higher, may provide thinly traded issuers with an increased amount of common stock that may be repurchased within the safe harbor. Moreover, the proposed alternative volume condition applicable following market-wide trading suspensions should provide an infusion of liquidity by allowing issuers to purchase up to 100% of ADTV. This proposed alternative should also prevent sell side order imbalances by reducing issuer reluctance to repurchase in response to order imbalances that may occur in severe market declines.

Next, the proposed 10-minute timing modification would allow issuers whose securities are less susceptible to manipulation to remain in the market for a longer period and implement a trading strategy in an orderly manner throughout the day. This can also result in issuers providing additional liquidity to the market for more of the day. The safe harbor eases issuer reluctance to repurchase. Some issuers might be hesitant to repurchase without the certainty of the safe harbor protection. If these issuers repurchase, their safe harbor repurchases provide liquidity to the marketplace.

Although the proposed 10-minute timing modification allows issuers less susceptible to manipulation to stay in the market for a longer time period, it retains a reasonable limit on issuer activity that may influence market prices at or near the close. Approximately 362 out of the 708 issuers that announced repurchase programs in 2000 had a public float that would satisfy the 10-minute timing modification.[90]

Lastly, the uniform price condition for all issuers makes use of the safe harbor easier for broker-dealers repurchasing for numerous issuers. This condition also prevents issuers from setting or influencing the price of their common stock.

These benefits are difficult to quantify. The Commission encourages commenters to provide empirical data or other facts to support their views concerning these and any other benefits not mentioned here. In particular, the Commission requests data and analysis on what effect the proposed changes may have on market liquidity.

B. Costs and Benefits of the Proposed Amendments to Regulations S–K and S–B, Forms 10–Q, 10–QSB, 10–K, 10–KSB and 20–F, and Form N–CSR

1. Costs

To assist the Commission in its evaluation of the costs that may result from the proposals, commenters are requested to provide views, analysis, and empirical data relating to any costs associated with these proposals and any costs, not already identified, should the amendments be adopted as proposed. The Commission expects that any costs would be reduced significantly as registrants become more familiar with the proposed disclosure.

Registrants would be required to disclose, with respect to their repurchases, the total number of shares repurchased, the average price per share, the amount of shares that were repurchased pursuant to a publicly announced plan or program, the maximum number (or approximate dollar value) of shares (or units) that may yet be repurchased under the plans or programs, and in Item 703 and Form N–CSR disclosures the identity of the broker-dealer(s) used to make the repurchases. Many registrants currently collect and publish repurchase information concerning the number of shares repurchased, the total dollar amount paid for the repurchases or the average price paid per share, and/or the number of shares or dollar amount available for repurchase under a particular repurchase program.[91] We request comment as to whether registrants would incur new costs to establish systems to collect and publish repurchase information that they would need to satisfy the proposed disclosure requirements. If so, please provide data regarding the estimated costs that registrants would incur. As mentioned in section VIII.D.1., we estimate that the average amount of time it would take to prepare the proposed disclosure would be approximately one hour per annual, semi-annual, or quarterly filing. The incremental burden in terms of internal hours (not monetized) and external monetized costs for each form is explained in section VIII.D.1. above. We request specific comment as to whether the proposed repurchase disclosure could discourage share repurchases by registrants.

[90] Based on data from Compustat, we identified that 362 of the 708 issuers of repurchase programs had a market value of $150 million or greater. Market value is a proxy for public float.

[91] *See CGS Systems International, Inc. Reports First Quarter 2002 Results*, PR Newswire (April 29, 2002) (publishing the number of shares repurchased, the average price paid per share, and the remaining number of shares available for repurchase under the repurchase program); *Republic Services, Inc. Reports First Quarter Earnings per Shares of $0.32*, PR Newswire (April 29, 2002) (publishing the number of shares repurchased, the total dollar amount paid for the repurchases, and the dollar amount remaining under the repurchase program); *Quotesmith.com 1Q Loss 14 Cents a Share*, Dow Jones News Service (April 29, 2002) (publishing the number of shares repurchased and the average price paid per share); *Gartner Reports Profitability Improvement for Fourth Consecutive Quarter*, Business Wire (April 24, 2002) (publishing the number of shares repurchased and the average price paid per share); *Datascope Third Quarter Results*, PR Newswire (April 24, 2002) (publishing the number of shares repurchased and the total dollar amount paid); and *DST Systems, Inc. Announces First Quarter 2002 Financial Results*, PR Newswire (April 24, 2002) (publishing the number of shares repurchased, the average price paid per share, as well as the fact that the repurchasing was done through a private transaction).

2. Benefits

The proposed disclosures may prevent undetected manipulation by deterring repurchase program announcements by registrants that do not intend to effect repurchases but would benefit from a post announcement increase in the price of their common stock. The proposed disclosure requirement would increase market efficiency due to improved information dissemination that otherwise has not been readily available to investors. Presently, investors and market participants have little way of knowing the amount of repurchasing effected by a registrant in any given time period. This disclosure would provide more complete information to investors in order to better assess an issuer, its activities, and its stock price. Registrants use their discretion in deciding whether and when to effect repurchases. Moreover, registrants may not repurchase all, or even any, of the shares they are authorized to repurchase. The proposed disclosure requirement should increase efficiency by providing investors with information regarding the company's stated repurchasing intentions and subsequent repurchases.

The proposed amendments would provide a uniform disclosure system concerning repurchases. This proposed system would benefit investors and other market participants by providing repurchasing information in a readily accessible venue and in a timely manner. The amendments will also provide investors with useful information concerning the manner in which a company makes repurchases (*e.g.*, through open market purchases, tender offers, in satisfaction of a company's obligations upon exercise of outstanding put options, or other transactions).

If adopted, the proposed amendments would shed light on currently undisclosed repurchases. Presently, only certain repurchasing activity must be disclosed, such as repurchases from company insiders and certain repurchases by closed-end funds. This proposal would require comprehensive repurchasing disclosure. For example, the amendments would require disclosure of currently undisclosed activity, such as an issuer repurchasing its stock from put option holders who exercised options issued by the company.

Additionally, the disclosure would provide investors and the marketplace with signaling information. A registrant's repurchases may signal information to investors such as a registrant's belief that its stock is undervalued. In the same way, the proposed disclosure could signal information about market trends.

The proposed disclosure requirement would also provide information about a registrant's use of capital. When registering an offering, a registrant may state various uses of the offering proceeds, including repurchasing. The proposed disclosures would provide follow-up information to such a registration statement disclosure. It is also a valuable way to confirm if any or a portion of the offering proceeds were used for repurchases.

The Commission does not have data to quantify the value of the benefits described above. The Commission seeks comments on how it may quantify these benefits and any other benefits, not already identified, which may result from the adoption of these proposed amendments.

X. Consideration of Impact on the Economy, Effect on Competition and Promotion of Efficiency, Competition and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),[92] the Commission requests information regarding the potential impact of the proposed amendments on the economy on an annual basis. With regard to any comments, we note that such comments are of greatest assistance if they are accompanied by supporting data and analysis of the issues addressed in those comments. Section 23(a)(2) of the Exchange Act [93] requires the Commission to consider the impact any new rule would have on competition. Further, the law requires that the Commission not adopt any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission has considered the proposed rules in light of the standards cited in Section 23(a)(2) and believes preliminarily that, if adopted, they would not likely impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act. Rule 10b–18 is a safe harbor rather than a mandatory rule and as such issuers choose whether or not to use it. Many issuers might be reluctant to repurchase without the safe harbor. Therefore, the safe harbor may provide increased liquidity to the marketplace from issuers that would not repurchase but for the safe harbor. Issuers also have the option to repurchase securities outside the Rule 10b–18 safe harbor conditions without raising a presumption of manipulation. Moreover, the proposed version of the Rule 10b–18 safe harbor, like the current Rule, would apply to all issuers. Thus, we do not believe the Rule 10b–18 amendments would have a significant effect on competition because all issuers have the option of complying with the manner, volume, time and price conditions.

Additionally, the proposed amendments to Forms 10–K, 10–KSB, 10–Q, 10–QSB, 20–F, and proposed Form N–CSR would apply equally to all filers who make repurchases. Thus, we do not believe that these proposals will have a significant anti-competitive effect.

We request comment on whether the proposed amendments, if adopted, would impose a burden on competition. Commenters are requested to provide empirical data and other factual support for their views if possible.

Section 3(f) of the Exchange Act [94] requires the Commission, when engaged in rulemaking that requires us to consider whether an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation.

The Commission preliminarily believes that the proposed amendments should improve market efficiency by providing greater clarity in terms of guidance and certainty to issuers (and broker-dealers that assist issuers with

[92] Pub. L. No. 104–121, tit. II, 110 Stat. 857 (1996).

[93] 15 U.S.C. 78w(a)(2).

[94] 15 U.S.C. 78c(f).

their repurchase programs) as to the scope of non-manipulative market activity when repurchasing their stock. The proposed amendments would also enhance market liquidity following a market-wide trading suspension by helping to ensure a deep market and reducing sell side order imbalances. For many issuers, the proposed amendments may result in enhanced liquidity by allowing for repurchase activity within the safe harbor up to 10 minutes prior to the market close. Moreover, we believe the benefits of the proposed disclosure requirements would include increased market efficiency due to improved information and transparency concerning issuer repurchases. If adopted, the disclosures should bolster investor confidence in the markets and make repurchasing information readily accessible to investors. Additionally, the proposed amendments to Forms 10–K, 10–KSB, 10–Q, 10–QSB, 20–F, and N–CSR are intended to improve the amount of current information available to investors and the financial markets. We anticipate that the proposals should improve investors' ability to make informed investment decisions concerning registrants. Informed investor decisions generally promote market efficiency and capital formation.

We request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

XI. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA)[95] regarding the proposed amendments to Regulations S–K, S–B, Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F, N–CSR, and Rule 10b–18.

A. Reasons for the Proposed Action

Based on our experience with the operation of Rule 10b–18, and to reflect market developments since the Rule's adoption, we propose to revise Rule 10b–18's provisions. In addition, we propose to provide investors and the marketplace with important information concerning a registrant's repurchases (*e.g.*, the total number of shares purchased, the average price per share, the identity of the broker-dealer for Item 703 and proposed Form N–CSR disclosures, the number of shares purchased as part of a publicly announced plan or program, and the maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs). We believe the increased transparency concerning registrants' repurchases will promote enhanced evaluation of registrants, their repurchases, and the effects of those repurchases on the registrants' common stock price and the market place generally.

B. Objectives

The proposed Rule 10b–18 amendments are designed to fulfill several objectives. A prime objective of the proposed amendments is to foster investor confidence in the integrity of our securities markets. Second, the proposed amendments are designed to maintain reasonable limits on issuer repurchasing activity within the safe harbor. Third, the proposed amendments would facilitate pricing established by independent market forces. Next, the amendments would allow corporations to provide enhanced market liquidity following market wide trading suspensions. These proposals should ease market stress during periods of severe market decline and promote orderly markets throughout those times. Lastly, the Rule 10b–18 amendments should provide issuers with a tool to help manage the risks of liability under the anti-manipulation rules of the Exchange Act. The proposals are intended to update Rule 10b–18 and provide greater clarity in terms of guidance and certainty to issuers and broker-dealers that assist issuers with their repurchase programs as to the scope of permissible market activity when repurchasing their stock.

The central objective of the proposed disclosure amendments is to provide investors with useful, easy to access information about issuer repurchases. The proposed disclosure amendments are intended to increase market efficiency through improved disclosure. The proposals would provide investors with important information in order to better evaluate registrants. The proposed amendments would shed light on currently undisclosed registrant repurchases providing investors with useful information in order to better assess a registrant and its stock price. Moreover, the disclosures would prevent undetected manipulation by deterring repurchase announcements by registrants that have no intention of repurchasing. They would also provide a means to monitor the level and impact of registrants' repurchases.

C. Legal Basis

The amendments to Rule 10b–18 are proposed pursuant to the authority set forth in Sections 9(a)(2) and 10(b) of the Exchange Act.[96] The amendments to Regulations S–K, S–B, Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F, and N–CSR are proposed pursuant to the authority set forth in Sections 12, 13, 15(d), and 23(a) of the Exchange Act and Sections 8, 23, 24(a), 30,31, and 38 of the Investment Company Act.

D. Small Entities Subject to the Rule

The proposed amendments may affect small entity issuers and affiliated purchasers that wish to avail themselves of the safe harbor provisions. Based on Exchange Act Rule 0–10(a), a small issuer is one that on the last day of its most recent fiscal year had total assets of $5,000,000 or less. We estimate that approximately 3 issuers that conducted repurchases in 2000 had assets of less than $5,000,000.[97] The Commission seeks comment on the number of issuers that rely on Rule 10b–18 when engaged in open market repurchases of its stock, and the number of such issuers that are small entities.

The Commission seeks comment on the number of registrants that would make the proposed disclosures following open market and privately negotiated purchases each quarter, and the number of those registrants that are small entities.

E. Reporting, Recordkeeping and Other Compliance Requirements

The proposed Rule 10b–18 amendments would not impose any new reporting, recordkeeping or other compliance requirements. The proposed amendments to Regulations S–K, S–B, Forms 10–K, 10–KSB, 10–Q, 10–QSB, 20–F, and proposed Form N–CSR would add a new disclosure item for issuer purchases of equity securities. As stated in Section XI.D above, approximately 3 issuers who conducted repurchase programs in 2000 were small entities. We believe no additional professional skills beyond those currently possessed by issuers (and broker-dealers) would be necessary to prepare the forms in accordance with the proposed disclosure amendments or to comply with the proposed Rule 10b–18 amendments.

F. Duplicative, Overlapping or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate, overlap, or conflict with, the proposed amendments.

G. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small issuers and broker-dealers. In connection with the proposals, the Commission considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

With respect to the proposed Rule 10b–18 amendments, the Commission believes that the establishment of different requirements for small entities is neither necessary nor practicable, because the proposal provides a voluntary safe harbor from liability for manipulation under the Exchange Act. The Commission believes that the majority of issuers effecting repurchase programs are not small entities.

With respect to the proposed amendments to Regulations S–K, S–B, Forms 10–K, 10–KSB, 10–Q, 10–QSB, 20–F, and proposed Form N–CSR, the Commission believes that any affect on small entities would be minimal. Therefore, it is not feasible to further clarify, consolidate or simplify the proposals for small entities.

H. Solicitation of Comments

The Commission encourages written comments on matters discussed in the IRFA. In particular, the Commission requests comments on (i) the number of issuers conducting repurchase programs and the number of such issuers that are small entities; (ii) the nature of any impact the proposed amendments would have on small entities and empirical data supporting the extent of the impact; and (iii) how to quantify the number of small entities that would be affected by and/or how to quantify the impact of the proposed amendments. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves. As discussed above, for purposes of the SBREFA, the Commission is also requesting information regarding the potential impact of the proposed amendments on the economy on an annual basis. Commentators should provide empirical data to support their views.

Persons wishing to submit written comments should send three copies to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–50–02. Comments submitted by e-mail should include this file number in the subject line. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted letters also will be posted on the Commission's Internet web site (*http://www.sec.gov*).

XII. Statutory Basis and Text of Proposed Amendment

The Rule amendments are being proposed pursuant to Sections 2, 3, 9(a)(6), 10(b), 12, 13(e), 15, 15(c), 23(a) of the Exchange Act, 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(b), 78m(e), 78o(c), 78o(d) and 78w(a), and Sections 8, 23, 24(a), 30, 31, and 38 of the Investment Company Act, 15 U.S.C. 80a–8, 80a–23, 80a–24(a), 80a–29, 80a–30, and 80a–37.

List of Subjects

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Part 229

Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Brokers, Dealers, Issuers, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for Part 228 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11.

Section 228.307 is also issued under secs. 3(a), 302 and 404, Pub. L. No. 107–204, 116 Stat. 745.

Section 228.309 is also issued under secs. 3(a) and 407, Pub. L. No. 107–204, 116 Stat. 745.

Section 228.406 is also issued under secs. 3(a) and 406, Pub. L. No. 107–204, 116 Stat. 745.

2. Section 228.703 is added to read as follows:

§ 228.703 (Item 703) Purchases of equity securities by the small business issuer and affiliated purchasers.

(a) In the following tabular format, provide the information specified in paragraph (b) of this Item with respect to any purchase made by or on behalf of the small business issuer or any "affiliated purchaser," as defined in § 240.10b–18(a)(3) of this chapter, of shares or other units of any class of the small business issuer's equity securities that is registered by the small business issuer pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*).

ISSUER PURCHASES OF EQUITY SECURITIES

Period	(a) Total number of shares (or units) purchased	(b) Average price paid per share	(c) Identity of broker-dealer(s) used to effect purchases	(d) Number of shares (or units) purchased as part of publicly announced plans or programs	(e) Maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs
Month #1 (Identify beginning and ending dates)					

[95] This analysis is required by the Regulatory Flexibility Act, 5 U.S.C. 603.

[96] 15 U.S.C. 78i(a)(2), 78j(b).

[97] The source of this data is Compusat.

ISSUER PURCHASES OF EQUITY SECURITIES—Continued

Period	(a) Total number of shares (or units) purchased	(b) Average price paid per share	(c) Identity of broker-dealer(s) used to effect purchases	(d) Number of shares (or units) purchased as part of publicly announced plans or programs	(e) Maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs
Month #2 (Identify beginning and ending dates)					
Month #3 (Identify beginning and ending dates)					
Total					

(b) The table shall include the following information for each class or series of securities for each month included in the period covered by the report:

(1) The total number of shares purchased (column (a));

Instruction to Paragraph (b)(1) of Item 703

Include in this column all small business issuer repurchases, including those made pursuant to publicly announced plans or programs and those not made pursuant to publicly announced plans or programs. Briefly disclose, by footnote to the table, the number of shares purchased other than through a publicly announced plan or program and the nature of the transaction. (*e.g.*, whether the purchases were made in open-market transactions, tender offers, in satisfaction of the company's obligations upon exercise of outstanding put options issued by the company, or other transactions.)

(2) The average price paid per share (column (b));

(3) The identity of any broker-dealer(s) that effected the purchases (column (c));

(4) The number of shares purchased as part of a publicly announced repurchase plan or program (column (d)); and

(5) The maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs (column (e)).

Instruction to Paragraphs (b)(4) and (b)(5) of Item 703

(1) In the table, disclose this information in the aggregate for all plans or programs publicly announced.

(2) By footnote to the table, indicate:

(a) The date each plan or program was announced;

(b) The dollar amount (or share amount) approved;

(c) The expiration date (if any) of each plan or program;

(d) Each plan or program that has expired during the period covered by the table;

(e) Each plan or program the small business issuer has determined to terminate prior to expiration; and

(f) Each plan or program the small business issuer has not purchased under during the period covered by the table and whether the small business issuer still intends to purchase under that plan or program.

Instruction to Item 703

Disclose all purchases covered by this Item, including purchases that do not satisfy the conditions of the safe harbor of § 240.10b–18 of this chapter.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation to Part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u–5, 78w, 78ll(d), 78mm, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31, 80a–37, 80a–38(a), 80b–11, unless otherwise noted.

Section 229.307 is also issued under secs. 3(a), 302 and 404, Pub. L. No. 107–204, 116 Stat. 745.

Section 229.309 is also issued under secs. 3(a) and 407, Pub. L. No. 107–204, 116 Stat. 745.

Section 229.406 is also issued under secs. 3(a) and 406, Pub. L. No. 107–204, 116 Stat. 745.

Section 229.601 is also issued under secs. 3(a) and 406, Pub. L. No. 107–204, 116 Stat. 745.

4. Section 229.703 is added to read as follows:

§ 229.703 (Item 703) Purchases of equity securities by the issuer and affiliated purchasers.

(a) In the following tabular format, provide the information specified in paragraph (b) of this Item with respect to any purchase made by or on behalf of the issuer or any "affiliated purchaser," as defined in § 240.10b–18(a)(3) of this chapter, of shares or other units of any class of the issuer's equity securities that is registered by the issuer pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*).

ISSUER PURCHASES OF EQUITY SECURITIES

Period	(a) Total number of shares (or units) purchased	(b) Average price paid per share	(c) Identity of broker-dealer(s) used to effect purchases	(d) Number of shares (or units) purchased as part of publicly announced plans or programs	(e) Maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs
Month #1 (Identify beginning and ending dates)					

ISSUER PURCHASES OF EQUITY SECURITIES—Continued

Period	(a) Total number of shares (or units) purchased	(b) Average price paid per share	(c) Identity of broker-dealer(s) used to effect purchases	(d) Number of shares (or units) purchased as part of publicly announced plans or programs	(e) Maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs
Month #2 (Identify beginning and ending dates)					
Month #3 (Identify beginning and ending dates)					
Total					

(b) The table shall include the following information for each class or series of securities for each month included in the period covered by the report:

(1) The total number of shares purchased (column (a));

Instructions to Paragraph (b)(1) of Item 703

Include in this column all issuer repurchases, including those made pursuant to publicly announced plans or programs and those not made pursuant to publicly announced plans or programs. Briefly disclose, by footnote to the table, the number of shares purchased other than through a publicly announced plan or program and the nature of the transaction. (*e.g.*, whether the purchases were made in open-market transactions, tender offers, in satisfaction of the company's obligations upon exercise of outstanding put options issued by the company, or other transactions).

(2) The average price paid per share (column (b));

(3) The identity of any broker-dealer(s) that effected the purchases (column (c));

(4) The number of shares purchased as part of a publicly announced repurchase plan or program (column (d)); and

(5) The maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs (column (e)).

Instructions to Paragraphs (b)(4) and (b)(5) of Item 703

(1) In the table, disclose this information in the aggregate for all plans or programs publicly announced.

(2) By footnote to the table, indicate:

(a) The date each plan or program was announced;

(b) The dollar amount (or share amount) approved;

(c) The expiration date (if any) of each plan or program;

(d) Each plan or program that has expired during the period covered by the table;

(e) Each plan or program the issuer has determined to terminate prior to expiration; and

(f) Each plan or program the issuer has not purchased under during the period covered by the table and whether the issuer still intends to purchase under that plan or program.

Instruction to Item 703

Disclose all purchases covered by this item, including purchases that do not satisfy the conditions of the safe harbor of § 240.10b–18 of this chapter.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

6. Section 240.10b–18 is revised to read as follows:

§ 240.10b–18 Purchases of certain equity securities by the issuer and others.

Preliminary Notes to § 240.10b–18

1. Section 240.10b–18 provides issuers (and their affiliated purchasers) with a "safe harbor" from liability for manipulation under the Act when they repurchase shares of the issuer's common stock in the market in accordance with the section's manner, timing, price, and volume conditions. As a safe harbor, compliance with § 240.10b–18 is voluntary. To come within the safe harbor, however, an issuer's repurchases must satisfy (on a daily basis) each of the section's four conditions. Failure to meet any one of the four conditions will remove all of the issuer's repurchases from the safe harbor for that day. The safe harbor, however, is not available for repurchases that, although made in technical compliance with the section, are part of a plan or scheme to evade the federal securities laws.

2. Regardless of whether the repurchases are effected in accordance with § 240.10b–18, reporting issuers must comply with Item 703 of Regulations S–K and S–B (17 CFR 229.703 and 228.703) and Item 15(e) of Form 20–F (17 CFR 249.220f) (regarding foreign private issuers), and closed-end management investment companies that are registered under the Investment Company Act of 1940 must comply with Item 6 of Form N–CSR (17 CFR 249.331; 17 CFR 274.128). Items 703, 15(e), and 6 require issuers to disclose, on Forms 10–Q/10–QSB, 10–K/10–KSB, 20–F, and Form N–CSR, all repurchases (open market and private transactions) of their equity securities during the previous quarter, including the total number of shares (or units) purchased (sorted by month), the average price paid per share, the identity of broker-dealer(s) used to effect the purchases (except in the case of Form 20–F), the number of shares (or units) purchased as part of a publicly announced repurchase plan or program, and the maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs.

(a) *Definitions.* Unless the context otherwise requires, all terms used in this section shall have the same meaning as in the Act. In addition, the following definitions shall apply:

(1) *ADTV* means the average daily trading volume reported for the security during the four calendar weeks preceding the week in which the Rule 10b–18 purchase is to be effected.

(2) *Affiliate* means any person that directly or indirectly controls, is controlled by, or is under common control with, the issuer.

(3) *Affiliated purchaser* means:

(i) A person acting, directly or indirectly, in concert with the issuer for the purpose of acquiring the issuer's securities; or

(ii) An affiliate who, directly or indirectly, controls the issuer's purchases of such securities, whose purchases are controlled by the issuer, or whose purchases are under common control with those of the issuer; *Provided, however,* that "affiliated purchaser" shall not include a broker, dealer, or other person solely by reason of such broker, dealer, or other person

effecting rule 10b–18 purchases on behalf of the issuer or for its account, and shall not include an officer or director of the issuer solely by reason of that officer or director's participation in the decision to authorize Rule 10b–18 purchases by or on behalf of the issuer.

(4) *Agent independent of the issuer* has the meaning contained in § 242.100 of this chapter.

(5) *Consolidated system* means a consolidated transaction (or quotation) reporting system that collects and publicly disseminates on a current and continuous basis transaction (or quotation) information in common equity securities pursuant to an effective transaction reporting plan (as defined in § 240.11Aa3–1 of this chapter), the rules of a national securities exchange, or the rules of a national securities association.

(6) *Highest independent bid* means the highest published bid for a regular way trade (other than a bid by or for the issuer or any affiliated purchaser of the issuer) at the time the Rule 10b–18 purchase is effected.

(7) *Last independent transaction price* means the price at which the last regular way trade (other than a trade by or for the issuer or any affiliated purchaser of the issuer) was reported at the time the Rule 10b–18 purchase is effected.

(8) *Market-wide trading suspension* means a market-wide trading halt of 30 minutes or more that is:

(i) Imposed pursuant to the rules of a national securities exchange or a national securities association in response to a market-wide decline during a single trading session; or

(ii) Declared by the Commission pursuant to its authority under section 12(k) of the Act (15 U.S.C. 78(k)).

(9) *Plan* has the meaning contained in § 242.100 of this chapter.

(10) *Principal market* for a security means the single securities market with the largest reported trading volume for the security during the 6 full calendar months preceding the week in which the Rule 10b–18 purchase is to be effected.

(11) *Public float value* has the meaning contained in § 242.100 of this chapter.

(12) *Purchase price* means the price paid per share as reported (exclusive of any commission paid to a broker acting as agent, or commission equivalent, mark-up, or differential paid to a dealer).

(13) *Rule 10b–18 purchase* means a purchase (or any bid or limit order that would effect such purchase) of an issuer's common stock (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) by or for the issuer or any affiliated purchaser. However, it does *not* include any purchase of such security:

(i) Effected during the restricted period (as specified in § 242.102 of this chapter) when the issuer or any affiliated purchaser is distributing (as defined in § 242.100 of this chapter) the issuer's common stock or any other security for which the common stock is a reference security;

(ii) Effected by or for an issuer plan by an agent independent of the issuer;

(iii) Effected as a fractional share purchase (a fractional interest in a security) evidenced by a script certificate, order form, or similar document;

(iv) Effected during the period from the time of public announcement of a merger, acquisition, or similar transaction involving a recapitalization, until the completion of such transaction;

(v) Effected pursuant to § 240.13e–1;

(vi) Effected pursuant to a tender offer that is subject to § 240.13e–4 or specifically excepted from § 240.13e–4; or

(vii) Effected pursuant to a tender offer that is subject to section 14(d) of the Act (15 U.S.C. 78n(d)) and the rules and regulations thereunder.

(b) *Conditions to be met.* Rule 10b–18 purchases shall not be deemed to have violated the anti-manipulation provisions of sections 9(a)(2) or 10(b) of the Act (15 U.S.C. 78i(a)(2) or 78j(b)), or § 240.10b–5 under the Act, solely by reason of the time, price, or amount of the Rule 10b–18 purchases, or the number of brokers or dealers used in connection with such purchases, if the issuer or affiliated purchaser of the issuer effects the Rule 10b–18 purchases according to each of the following conditions:

(1) *One broker or dealer.* Rule 10b–18 purchases must be made from or through only one broker or dealer on any single day; *Provided, however,* that:

(i) The "one broker or dealer" condition shall not apply to Rule 10b–18 purchases that are not solicited by or on behalf of the issuer or its affiliated purchaser(s); and

(ii) Where Rule 10b–18 purchases are made by or on behalf of more than one affiliated purchaser of the issuer (or the issuer and one or more of its affiliated purchasers) on a single day, the issuer and all affiliated purchasers must use the same broker or dealer.

(2) *Time of purchases.* (i) Rule 10b–18 purchases must not be the first (opening regular way purchase reported in the consolidated system; and

(ii) Rule 10b–18 purchases of an issuer's security that has an ADTV value of $1 million or more and a public float value of $150 million or more must not be effected during any of the following periods:

(A) The 10 minutes before the scheduled close of the primary trading session in the principal market for the security;

(B) The 10 minutes before the scheduled close of the primary trading session in the market where the purchase is made; or

(C) After the termination of the period in which last sale prices are reported in the consolidated system; and

(iii) Rule 10b–18 purchases of an issuer's security that does not meet the criteria described in paragraph (b)(2)(ii) of this section must not be effected during any of the following periods:

(A) The 30 minutes before the scheduled close of the primary trading session in the principal market for the security;

(B) The 30 minutes before the scheduled close of the primary trading session in the market where the purchase is made, or

(C) After the termination of the period in which last sale prices are reported in the consolidated system.

(3) *Price of purchases.* (i) Rule 10b–18 purchases must be effected at a purchase price that does not exceed the highest independent bid or the last independent transaction price, whichever is higher, quoted or reported in the consolidated system; and

(ii) For securities as to which bids and transaction prices are not quoted or reported in the consolidated system, Rule 10b–18 purchases must be effected at a purchase price that does not exceed the highest independent bid or the last independent transaction price, whichever is higher, displayed and disseminated on any national securities exchange or on any inter-dealer quotation system (as defined in § 240.15c2–11) that displays at least two priced quotations for the security. For all other securities, Rule 10b–18 purchases must be effected at a price no higher than the highest independent bid obtained from three dealers.

(4) *Volume of purchases.* The total volume of Rule 10b–18 purchases (combining all Rule 10b–18 purchases by or for the issuer or any affiliated purchaser of the issuer for that day) effected on any single day must not exceed the higher of 25 percent of the ADTV for that security or 500 shares.

(c) *Alternative conditions.* The conditions of paragraph (b) of this section shall apply in connection with a Rule 10b–18 purchase effected during a trading session following the imposition of a market-wide trading suspension, except:

(1) That the time of purchases condition in paragraph (b)(2) of this section shall not apply, either:

(i) From the reopening of trading until the scheduled close of trading; or

(ii) At the opening of trading on the next trading day until the scheduled close of trading that day, if a market-wide trading suspension was in effect at the close of trading on the preceding day; and

(2) The volume of purchases condition in paragraph (b)(4) of this section is modified so that the amount of Rule 10b–18 purchases must not exceed 100 percent of the ADTV for that security.

(d) *Other purchases.* Failure to meet any one of the Rule's conditions with respect to any Rule 10b–18 purchase will remove from the safe harbor all other Rule 10b–18 purchases for that day. However, no presumption shall arise that an issuer or an affiliated purchaser has violated the anti-manipulation provisions of sections 9(a)(2) or 10(b) of the Act (15 U.S.C. 78i(a)(2) or 78j(b)), or § 240.10b–5, if the Rule 10b–18 purchases of such issuer or affiliated purchaser do not meet the conditions specified in paragraph (b) or (c) of this section.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for part 249 is revised to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

Section 249.220f is also issued under 15 U.S.C. 78m, 78w(a), and secs. 3(a), 302, 404 and 407, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.240f is also issued under secs. 3(a), 302, 404 and 407, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.308 is also issued under 15 U.S.C. 80a–29 and secs. 3(a), 302 and 404, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.308a is also issued under secs. 3(a), 302 and 404, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.308b is also issued under secs. 3(a), 302 and 404, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.310 is also issued under secs. 3(a), 302, 404 and 407, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.310b is also issued under secs. 3(a), 302, 404 and 407, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.326(T) is also issued under 15 U.S.C. 78m(f)(1).

Section 249.330 is also issued under secs. 3(a), 302, 406, and 407, Pub. L. No. 107–204, 116 Stat. 745.

Section 249.331 is also issued under secs. 3(a), 302, 406, and 407, Pub. L. No. 107–204, 116 Stat. 745.

8. Amend Form 20–F, part I (referenced in § 249.220f) by adding Item 15(e) to read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Part I

* * * * *

Item 15(e) Purchases of Equity Securities by the Issuer and Affiliated Purchasers

(1) In the following tabular format, provide the information specified in paragraph (2) of this Item with respect to any purchase made by or on behalf of the issuer or any "affiliated purchaser," as defined in § 240.10b–18(a)(3), of shares or other units of any class of the issuer's equity securities that is registered by the issuer pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*).

ISSUER PURCHASES OF EQUITY SECURITIES

Period	(a) Total number of shares (or units) purchased	(b) Average price paid per share	(c) Number of shares (or units) purchased as part of a publicly announced plan or program	(d) Maximum number (or approximate dollar value) of shares (or units that may yet be purchased under the plans or programs
Month #1				
Month #2				
Month #3				
Total				

(2) The table shall include the following information for each class or series of securities for each month included in the period covered by the report:

(A) The total number of shares purchased (column (a)).

(B) The average price paid per share (column (b)).

(C) The number of shares purchased as part of a publicly announced repurchase plan or program (column (c)).

(D) The maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs (column (d)).

Instruction to Item 15(e)

Disclose all purchases covered by this item, including purchases that do not satisfy the conditions of the safe harbor of § 240.10b–18.

Instruction to Paragraph (2)(A) of Item 15(e)

Including in this column all issuer repurchases, including those made pursuant to publicly announced plans or programs and those not made pursuant to publicly announced plans or programs. Briefly disclose, by footnote to the table, the number of shares purchased other than through a publicly announced plan or program and the nature of the transaction (*e.g.*, whether the purchases were made in open-market transactions, tender offers, in satisfaction of the company's obligations upon exercise of outstanding put options issued by the company, or other transactions).

Instruction to Paragraphs (2)(C) and (2)(D) of Item 15(e)

1 In the table, disclose this information in the aggregate for all plans or programs publicly announced.

2 By footnote to the table, indicate:

(a) The date each plan or program was announced;

(b) The dollar amount (or share amount) approved;

(c) The expiration date (if any) of each plan or program;

(d) Each plan or program that has expired during the period covered by the table;

(e) Each plan or program the issuer has determined to terminate prior to expiration; and

(f) Each plan or program the issuer has not purchased under during the period covered by the table and whether the issuer still intends to purchase under that plan or program.

* * * * *

9. Amend Form 10–Q (referenced in § 249.308a) by:

a. Revising the heading for Item 2 in Part II;

b. Designating the existing paragraph in Item 2 as paragraph (a); and

c. Adding paragraph (b).

The addition and revision reads as follows:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–Q

* * * * *

Part II—Other Information

* * * * *

Item 2. Use of Proceeds and Issuer Purchases of Equity Securities.

* * * * *

(b) Furnish the information required by Item 703 of Regulation S–K (§ 229.703 of this chapter) for any repurchase made in the quarter covered by the report. Provide disclosures on a rolling-monthly basis. For example, if the quarter began on January 15 and ended on April 15, the charge would show repurchases for the months from January 15 through February 14, February 15 through March 14, and March 15 through April 15.

* * * * *

10. Amend Form 10–QSB (referenced in § 249.308b) by:

a. Revising the heading for Item 2 in Part II;

b. Designating the existing paragraph in Item 2 as paragraph (a); and

c. Adding paragraph (b).

The revision and addition reads as follows.

Note: The text of Form 10–QSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–QSB

* * * * *

Part II—Other Information

* * * * *

Item 2. Use of Proceeds and Small Business Issuer Purchases of Equity Securities

* * * * *

(b) Furnish the information required by Item 703 of Regulation S–B (§ 228.703 of this chapter) for any repurchase made in the quarter covered by the report. Provide disclosures on a rolling-monthly basis. For example, if the quarter began on January 15 and ended on April 15, the charge would show repurchases for the months from January 15 through February 14, February 15 through March 14, and March 15 through April 15.

* * * * *

11. Amend Form 10–K (referenced in § 249.310) by revising the heading for Item 5 in Part II by revising the caption and by adding paragraph (c) to read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–K

* * * * *

Part II

* * * * *

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

* * * * *

(c) Furnish the information required by Item 703 of Regulation S–K (§ 229.703 of this chapter) for any repurchase made in a month within the fourth quarter of the fiscal year covered by the report. Provide disclosures covering repurchases made on a rolling-monthly basis. For example, if the fourth quarter began on January 15 and ended on April 15, the chart would show repurchases for the months from January 15 through February 14, February 15 through March 14, and March 15 through April 15.

* * * * *

12. Amend Form 10–KSB (referenced in § 249.310b) by revising the heading for Item 5 in Part II and by adding paragraph (c) to read as follows:

Note: The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–KSB

* * * * *

Part II

* * * * *

Item 5. Market for Common Equity, Related Stockholder Matters and Small Business Issuer Purchases of Equity Securities

* * * * *

(c) Furnish the information required by Item 703 of Regulation S–B (§ 228.703 of this chapter) for any repurchase made in a month within the fourth quarter of the fiscal year covered by the report. Provide disclosures covering repurchases made on a rolling-monthly basis. For example, if the fourth quarter began on January 15 and ended on April 15, the chart would show repurchases for the months from January 15 through February 14, February 15 through March 14, and March 15 through April 15.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

13. The authority citation for part 274 is amended by adding the following citations to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

Section 274.101 is also issued under secs. 3(a), 302, Pub. L. No. 107–204, 116 Stat. 745.

Section 274.128 is also issued under secs. 3(a), 302, Pub. L. No. 107–204, 116 Stat. 745.

14. Form N–CSR (referenced in §§ 249.331 and 274.128) is amended by:

a. Redesignating Items 6 and 7 as Items 7 and 8;

b. Removing "Item 7(b)" from General Instruction D and in its place adding "Item 7(b)";

c. Removing "Item 6(a)" from Instruction to Item 3(a) and Instruction 1 to Item 4 and in its place adding "Item 8(a)"; and

d. Adding a new Item 6 to read as follows:

Note: The text of Form N–CSR does not, and its amendment will not, appear in the Code of Federal Regulations.

Form N–CSR

* * * * *

Item 6. Purchases of Equity Securities by Closed-End Management Investment Company and Affiliated Purchasers

(a) If the registrant is a closed-end management investment company, in the following tabular format, provide the information specified in paragraph (b) of this Item with respect to any purchase made by or on behalf of the registrant or any "affiliated purchaser," as defined in Rule 10b–18(a)(3) under the Securities Exchange Act of 1934 (17 CFR 240.10b–18(a)(3)), of shares or other units of any class of the registrant's equity securities that is registered by the registrant pursuant to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*).

REGISTRANT PURCHASES OF EQUITY SECURITIES

Period	(a) Total number of shares (or units) purchased	(b) Average price per share (or unit)	(c) Identity of broker-dealer(s) used to effect purchases	(d) Number of shares (or units) purchased as part of publicly announced plans or programs	(e) Maximum number (or approximate dollare value) of shares (or units) that may yet be purchased under the plans or programs
Month #1 (Identify beginning and ending dates)					

REGISTRANT PURCHASES OF EQUITY SECURITIES—Continued

Period	(a) Total number of shares (or units) purchased	(b) Average price per share (or unit)	(c) Identity of broker-dealer(s) used to effect purchases	(d) Number of shares (or units) purchased as part of publicly announced plans or programs	(e) Maximum number (or approximate dollare value) of shares (or units) that may yet be purchased under the plans or programs
Month #2 (Identify beginning and ending dates)					
Month #3 (Identify beginning and ending dates)					
Month #4 (Identify beginning and ending dates)					
Month #5 (Identify beginning and ending dates)					
Month #6 (Identify beginning and ending dates)					
Total					

(b) The table shall include the following information for each class or series of securities for each month included in the period covered by the report.

(1) The total number of shares purchased (column (a)).

(2) The average price paid per share (column (b)).

(3) The identity of any broker-dealer(s) that effected the purchases (column (c)).

(4) The number of shares purchased as part of a publicly announced repurchase plan or program (column (d)).

(5) The maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs (column (e)).

General Instruction

Disclose all purchases covered by this Item, including purchases that do not satisfy the conditions of the safe harbor of Rule 10b–18 under the Securities Exchange Act of 1934 (17 CFR 240.10b–18), made in the period covered by the report.

Instruction to paragraph (b)(1). Include in this column all repurchases by the registrant, including those made pursuant to publicly announced plans or programs and those not made pursuant to publicly announced plans or programs. Briefly disclose, by footnote to the table, the number of shares purchased other than through a publicly announced plan or program and the nature of the transaction (e.g., whether the purchases were made in open-market transactions, tender offers, in satisfaction of the registrant's obligations upon exercise of outstanding put options issued by the registrant, or other transactions.)

Instruction to Paragraphs (b)(4) and (b)(5)

1 In the table, disclose this information in the aggregate for all plans or programs publicly announced.

2 By footnote to the table, indicate:

a. The date each plan or program was announced;

b. The dollar amount (or share amount) approved;

c. The expiration date (if any) of each plan or program;

d. Each plan or program that has expired during the period covered by the table;

e. Each plan or program the registrant has determined to terminate prior to expiration; and

f. Each plan or program the registrant has not purchased under during the period covered by the table and whether the registrant still intends to purchase under that plan or program.

* * * * *

Dated: December 10, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31656 Filed 12–17–02; 8:45 am]

BILLING CODE 8010–01–P

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Federal Register

Wednesday,
December 18, 2002

Part IV

Securities and Exchange Commission

17 CFR Parts 275 and 279
Exemption for Certain Investment Advisers Operating Through the Internet; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release No. IA–2091; File No. S7–10–02]

RIN 3235–AI15

Exemption for Certain Investment Advisers Operating Through the Internet

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting rule amendments under the Investment Advisers Act of 1940 to exempt certain investment advisers that provide advisory services through the Internet from the prohibition on Commission registration. The rule amendments permit these advisers, whose businesses are not connected to any particular state, to register with the Commission instead of with state securities authorities.

EFFECTIVE DATE: The rule amendments will become effective on January 20, 2003.

FOR FURTHER INFORMATION CONTACT: Marilyn Barker, Senior Counsel, or Jamey Basham, Special Counsel, at (202) 942–0719 or *IArules@sec.gov*, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to rule 203A–2 [17 CFR 275.203A–2], Form ADV [(Part 1A, Item 2)] (17 CFR 279.1) and Schedule D to Form ADV [17 CFR 279.1] under the Investment Advisers Act of 1940.

Executive Summary

Section 203A of the Investment Advisers Act of 1940 (the "Advisers Act") generally prohibits an investment adviser from registering with the Commission unless that adviser has more than $25 million of assets under management or is an adviser to a registered investment company. The Commission is adopting new rule 203A–2(f) under the Advisers Act to exempt from the prohibition on Commission registration certain investment advisers that provide advisory services through the Internet.[1] An adviser is eligible for registration under the rule if the adviser provides investment advice to all of its clients exclusively through the adviser's interactive Web site, except that the adviser may advise fewer than 15 clients through other means during the preceding 12 months.

I. Background

The National Securities Markets Improvement Act of 1996 ("NSMIA") amended the Advisers Act to divide the responsibility for regulating investment advisers between the Commission and state securities authorities.[2] Section 203A of the Advisers Act effects this division by generally prohibiting investment advisers from registering with us unless they have at least $25 million of assets under management or advise a registered investment company, and preempting most state regulatory requirements with respect to SEC-registered advisers.[3] The $25 million threshold was designed to distinguish investment advisers with a national presence from those that are essentially local businesses.[4] Congress recognized, however, that some investment advisers should be regulated at the federal level even though they have less than $25 million of assets under management, and gave the Commission the authority in section 203A(c) of the Advisers Act to exempt investment advisers, by rule or order, from the prohibition on Commission registration in cases in which the prohibition otherwise would be "unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes" of section 203A.[5]

In April of this year, we proposed to use our exemptive authority under section 203A(c) to adopt new rule 203A–2(f), providing relief to certain investment advisers who, unlike state-registered advisers, have no local presence and whose advisory activities are not limited to one or a few states.[6] These advisers, which we call "Internet Investment Advisers," provide investment advice to their clients through interactive Web sites. Clients visit these Web sites and answer online questions concerning their personal finances and investment goals. Thereafter, the adviser's computer-based application or algorithm processes and analyzes each client's response, and then transmits investment advice back to each client through the interactive Web site.[7] Clients residing in any state can, upon accessing the interactive Web site, obtain investment advice at any time.

Internet Investment Advisers typically are not eligible to register with us. They do not manage the assets of their Internet clients, and consequently do not meet the $25 million statutory threshold for registration with the SEC. While traditional advisory firms with less than $25 million of assets under management usually must register in one or a few states, Internet Investment Advisers would be required as a practical matter to register in all the states absent an exemption.[8] Furthermore, our existing exemptive rules do not work for Internet Investment Advisers.[9]

In response to our proposal we received 22 comment letters, most of which supported our proposal.[10] Ten commenters urged that we expand the exemption, six wanted us to narrow it, and six asserted that we should take no action. Several commenters representing state securities authorities objected to the rule, arguing that they should continue to be responsible for Internet Investment Advisers; some supported a narrower version of the rule.

[1] Unless otherwise noted, when we refer to rule 203A–2 or any paragraph of the rule, we are referring to 17 CFR 275.203A–2 of the Code of Federal Regulations in which the rule is published, as amended by this release.

[2] Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code).

[3] 15 U.S.C. 80b–18a. Advisers prohibited from registering with us remain subject to the regulation of state securities authorities.

[4] *See* S. Rep. No. 293, 104th Cong., 2d Sess. 3–5 (1996) (hereinafter Senate Report).

[5] 15 U.S.C. 80b–3a(c). Section 203A was designed to allow the Commission to better use its limited resources by concentrating its regulatory responsibilities on advisers with national businesses, and to reduce the burden to investment advisers of the overlapping and duplicative regulation (existing prior to the enactment of NSMIA) by preempting state investment adviser statutes, thus subjecting advisers with national businesses to a single regulatory program administered by the Commission. *See* Senate Report at 2–4. Relying on this authority, the Commission has adopted and amended rule 203A–2 under the Advisers Act to permit nationally recognized statistical rating organizations, certain pension consultants, affiliated investment advisers, newly formed investment advisers, and advisers operating in multiple states to register with the Commission even if these advisers otherwise would not meet the criteria for Commission registration.

[6] *Exemption for Certain Investment Advisers Operating Through the Internet*, Investment Advisers Release No. 2028 (April 12, 2002)[(67 FR 19500 (April 19, 2002))]("Proposing Release").

[7] Internet Investment Advisers are required to provide these prospective Internet clients with a copy of their client brochure. Rule 204–3 [17 CFR 275.204–3](an investment adviser must deliver either a copy of their Part 2 of Form ADV (17 CFR 279.1) or a narrative brochure that contains at least the information required in Part 2). The personalized nature of the investment advice provided by these interactive Web sites makes the exception under Rule 204–3 for impersonal advisory services unavailable. Internet Investment Advisers may deliver their client brochure electronically, in compliance with previous SEC guidance on electronic delivery. *See Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information*, Investment Advisers Act Release No. 1562 (May 9, 1996) [61 FR 24644 (May 15, 1996)].

[8] *See* discussion in text accompanying note 13, infra.

[9] *See* discussion in Proposing Release at section I.

[10] These comment letters and a summary of comments prepared by our staff are available for public inspection and copying at our Public Reference Room in File No. S7–10–02. The comment summary is also available on our Internet Web site at <*http://www.sec.gov/rules/extra/s71002commsumm.htm*>.

II. Discussion

We are today adopting an exemption for Internet Investment Advisers in a form modified to reflect comments submitted to us. Rule 203A–2(f), which we discuss in more detail below, provides a narrow exemption for a type of adviser whose activities do not fall neatly into the model assumed by Congress when it added Section 203A to the Act to divide regulatory authority over advisers.[11] We have concluded that, as applied to these advisers, the application of the prohibition on Commission registration would be "unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes of [Section 203A]."[12]

In framing the scope of the exemption, we have carefully balanced the burdens of multiple state registration requirements for Internet Investment Advisers with the design of NSMIA to allocate responsibility for regulating smaller advisers to state securities authorities. Several commenters urging us to expand the rule suggested approaches that would or could result in the migration of a large number of smaller advisers to Commission registration. On the other hand, some of the commenters opposing or arguing for substantial narrowing of our proposed exemption seemed not to appreciate fully the burdens of multiple registration on Internet Investment Advisers.

Absent an exemption, Internet Investment Advisers would likely incur the burden of temporarily registering in every state and later de-registering. State investment adviser registration statutes generally obligate advisers to register in every state in which the adviser obtains more than a *de minimis* number of clients. Because an Internet Investment Adviser uses an interactive Web site to provide investment advice, the adviser's clients can come from any state, at any time. As a result, an Internet Investment Adviser must as a practical matter register in every state. This ensures that the adviser's registrations will be in place when it later obtains the requisite number of clients from any particular state. The adviser may subsequently become eligible for our existing exemption under Rule 203A–2(e), permitting Commission registration for advisers otherwise obligated to register in at least 30 states, but not before the adviser had already incurred the burden of registering in every state.[13]

A. New Rule 203A–2(f)

Under rule 203A–2(f), an adviser is exempt from the prohibition on Commission registration if the adviser provides investment advice to all of its clients exclusively through an interactive Web site. A limited exception, however, permits an adviser relying on the rule to provide investment advice to fewer than 15 clients through other means during the preceding 12 months. In addition, advisers registering with us in reliance on the rule must keep records demonstrating that they meet the conditions of the rule. We discuss each of the elements of the new exemption below.

1. Interactive Web Site

The exemption is available only to an adviser that provides investment advice to clients exclusively through an "interactive Web site," except as permitted by the *de minimis* exception described below. The rule defines "interactive Web site" as a Web site in which computer software-based models or applications provide investment advice to clients based on personal information provided by each client through the Web site.[14] The rule is thus not available to advisers that merely use Web sites as marketing tools or that use Internet vehicles such as E-mail, chat rooms, bulletin boards and webcasts or other electronic media in communicating with clients. The Commission recognizes that most advisers today use (or could use) the Internet in some aspect of their business. As a result, expansion of the rule to include such activities as suggested by some commenters could undermine NSMIA's allocation of regulatory responsibility over smaller advisers to state securities authorities.

In addition, the exemption is for advisers that provide investment advice to their Internet clients "exclusively" through their interactive Web sites. An adviser relying on the exemption may not use its advisory personnel to elaborate or expand upon the investment advice provided by its interactive Web site, or otherwise provide investment advice to its Internet clients, except as permitted by the *de minimis* exception discussed below.[15]

2. De Minimis Exception for Non-Internet Clients

The new rule includes an exception that would permit an adviser relying on the rule to advise clients through means other than its interactive Web site, so long as the adviser had fewer than 15 of these non-Internet clients during the preceding 12 months. This is a change from the proposal, under which an adviser would have been eligible to rely on the rule so long as at least 90 percent of the adviser's clients obtained their investment advice exclusively through the interactive Web site. We included the "90 percent test" in our proposal to prevent Internet Investment Advisers from losing the exemption as a result of providing advice to a *de minimis* number of clients through means other than an interactive Web site.

A few commenters thought the rule should employ a lower percentage threshold permitting a greater level of non-Internet clients, which we believe would be inconsistent with the purpose of the exemption. Other commenters urged a narrower exemption, arguing that an adviser having a large number of Internet clients could, under the proposed 90 percent test, have as many or more non-Internet clients than many advisers have clients.

The commenters have persuaded us that the 90 percent test, as proposed, would have permitted more than a *de minimis* number of non-Internet clients. Accordingly, we have decided to replace the 90 percent test with a provision permitting an adviser relying on the rule to have fewer than 15 non-Internet clients during the course of the preceding twelve months.[16] In

[11] *See* Section I. of the Proposing Release.

[12] Section 203A(c).

[13] An Internet Investment Adviser relying on the multi-state adviser exemption provision would not be eligible for that exemption until the adviser had obtained the requisite number of clients in 30 states to trigger its registration obligations in those states. Under that rule, the adviser must represent that it has reviewed its obligation under state and federal law and has concluded that it would be required to register with the securities administrators of at least 30 states. Rule 203A–2(e)(2).

[14] Rule 203A–2(f)(2). In response to one comment requesting technical clarification of the definition, we have added language clarifying that an interactive Web site is one which provides advice based on *personal* information supplied by the client, in order to distinguish Web sites covered by the exemption from other types of Web sites that aggregate and provide financial information in response to user-provided requests that do not include personal information.

[15] The firm may still provide clients with assistance in the technical aspects of accessing and using the interactive Web site.

[16] The new rule's *de minimis* exception is similar to section 203(b)(3) of the Advisers Act [15 U.S.C. 80b–2(b)(3)], which exempts from the requirement to register with the Commission any adviser that, during the course of the preceding 12 months, has had fewer than 15 clients. We did not include the other requirements under section 203(b)(3), that the adviser may not hold itself out generally to the

Continued

determining how many clients the adviser provided investment advice through means other than the adviser's interactive Web site for purposes of determining eligibility for the exemption, the rule provides that an Internet Investment Adviser may rely on the definition of "client" in rule 203(b)(3)–1.[17]

3. Precluding Use of Rule 203A–2(c)

One commenter expressed concern that, absent changes to the language of the proposed rule, some advisers might use rule 203A–2(c) to attempt to evade the limit on the number of non-Internet clients under new rule 203A–2(f). Rule 203A–2(c) exempts an adviser from the prohibition on Commission registration if the adviser controls, is controlled by, or is under common control with, another SEC-registered adviser with the same principal place of business. The commenter expressed concern that an Internet Investment Adviser intent on evading the restrictions on non-Internet clients under new rule 203A–2(f) might attempt to organize a subsidiary firm to serve its non-Internet clients, and assert rule 203A–2(c) as a basis to register the subsidiary with the SEC, even though the subsidiary does not manage $25 million of client assets.[18] To forestall any such efforts, 203A–2(f), as adopted, is unavailable to an Internet Investment Adviser if another adviser in a control relationship with the Internet Investment Adviser relies on the Internet Investment Adviser's registration under rule 203A–2(f) as the basis for its own registration under rule 203A–2(c).[19]

4. Recordkeeping Requirements

The rule requires an adviser relying on the exemption to maintain records demonstrating that it provides investment advice to its clients exclusively through an interactive Web site in accordance with the limits of the exemption.[20] An advisory firm relying on the exemption could comply with this requirement by maintaining records showing which of its clients the firm advised exclusively through its interactive Web site and which, if any, of its clients the firm advised through non-Internet means.[21]

B. Form ADV

We are also amending Part 1 of Form ADV, the Uniform Application for Investment Adviser Registration. Advisers register with us by electronically submitting the information required by Part 1 of Form ADV through the Investment Adviser Registration Depository (the "IARD"). We are adding the exemption under rule 203A–2(f) to the list of exemptions in Item 2 of Part 1, in which advisers registering with us indicate the basis upon which they are eligible to register with the SEC.

It will be some number of months before the National Association of Securities Dealers ("NASD"), which operates the IARD for us, completes reprogramming the IARD to implement this change to Item 2 of Part 1. In the interim, advisers relying on the 203A–2(f) exemption to register with us should select current Item 2(10), for registrants eligible for registration by SEC order, and in Schedule D, current Item 2.A(10), enter "203A–2(f)" in lieu of an application number. Upon NASD's implementation of the new 203A–2(f) exemption selection on IARD, registrants should amend their Item 2 selection and remove the Schedule D reference to the rule no later than their next annual amendment of Part 1.

III. Effective Date

The effective date of the new rule and rule amendments is January 20, 2003.

IV. Cost-Benefit Analysis

A. Background

The Commission is sensitive to the costs and benefits imposed by its rules. New rule 203A–2(f) provides relief to Internet Investment Advisers. Under the rule, an Internet Investment Adviser is exempt from the prohibition on Commission registration if the adviser provides investment advice to all of its clients exclusively through its interactive Web site (except that the adviser may advise fewer than 15 clients through other means during the preceding 12 months). In addition, advisers registering with us in reliance on the rule must keep records demonstrating that they meet the conditions of the rule. Without the exemption to the prohibition on Commission registration as provided by new rule 203A–2(f), Internet Investment Advisers typically would not initially be eligible to register with us, as they do not manage the assets of their Internet clients, and, consequently, would not meet the $25 million statutory threshold for SEC-registration. Unlike a typical state-registered adviser, an Internet Investment Adviser's advisory activities are not confined to one or a few states. Because an Internet Investment Adviser uses an interactive Web site to provide investment advice, the adviser's clients can come from any state, *at any time,* without the adviser's prior knowledge. As a result, an Internet Investment Adviser must register in all states, ensuring it has its registration in place when the firm obtains the requisite number of clients from any particular state. Consequently, these advisers would be required, absent an exemption, to register in every state.

Moreover, the Commission's existing exemptive rules would not work for these advisers. For example, an Internet Investment Adviser relying on the multi-state exemption under rule 203A–2(e) must represent that it has reviewed its obligations under state law and has concluded that it would be required to register as an investment adviser with the securities administrators of at least 30 states. The state registration obligations of Internet Investment Advisers depend on the residences of their clients, and their clients can come from any state at any time. Thus, as a practical matter, these advisers would still need to register in every state and wait until they encounter registration obligations in 30 states before registering under rule 203A–2(e) and then canceling their state registrations.

Nor is it likely Internet Investment Advisers could rely on rule 203A–2(d) to carry them through an initial period of operation without state registration in anticipation of eligibility under the multi-state exemption. If an adviser relying on rule 203A–2(d) has not become eligible for SEC registration within 120 days, it must withdraw its registration. Internet Investment Advisers must typically register early in their development and testing phase in order to obtain venture capital, and many may not even be fully operational 120 days later.

In adopting rule 203A–2(f) and amendments to Form ADV, the Commission has given consideration to the costs, as well as the benefits of the new exemption.

B. Benefits

Rule 203A–2(f) will, we believe, provide several important benefits to Internet Investment Advisers. We have limited data on the number of Internet Investment Advisers who would be eligible to obtain these benefits, since most do not currently register with us. Based on news articles, we estimate that as many as 20 firms could avail themselves of the exemption. In the Proposing Release, we requested that commenters with additional data provide it to us. However, few commenters addressed the number of Internet Investment Advisers potentially eligible for the exemption, and none provided supporting data. Importantly, while these commenters were not in agreement whether our estimate was too high or too low, all agreed that the number of firms eligible to benefit by the exemption would likely grow in the future.

The rule will benefit Internet Investment Advisers by relieving them of the burden of registering temporarily in every state and subsequently deregistering upon becoming eligible under the multi-state exemption, as discussed above. To register in every state, an advisory firm will, in all likelihood, need assistance of counsel to perform several tasks. These include evaluating the statutes and regulations of each state to check for any disparities, responding to varying comments on the firm's registration submissions from multiple state securities administrators, reviewing the firm's operations for compliance with the statutory and regulatory requirements of every state, and the like. Several small firms commenting on the rule stated that the burden of complying with the registration requirements of multiple states prohibited or significantly impeded their firm's ability to provide investment advice to clients in multiple states.

To estimate the approximate cost advisory firms would incur to obtain these services, our staff engaged in discussions with counsel familiar with state adviser registration and regulatory issues. Based on these discussions, we estimate the cost to be approximately $50,000 for each adviser, for a total of $1 million for all 20 advisers.[22] Some commenters asserted that the $50,000 estimate was significantly in excess of true costs, but none of these commenters provided any cost data or estimates of their own. One of these commenters asserted the estimate was flawed because it was based on registration with every state, whereas an Internet Investment Adviser would only be required to register in 29 states, and would then become eligible for the multi-state exemption once the adviser's registration obligations were triggered in a thirtieth state. However, this commenter did not explain how the Internet Investment Adviser, whose clients can come from any state at any time, would be able to predict which 29 states to register with as an initial matter. This commenter also argued the $50,000 estimate should be reduced to reflect the amount a firm would save on costs associated with SEC registration. We did not include such costs as an offset in our estimate, since the firm would still incur them upon reaching eligibility for our multi-state exemption.

The benefits of rule 203A–2(f) would also include other benefits that are difficult to quantify. Subjecting Internet Investment Advisers to the cost of registering temporarily in all states and to multiple state regulation acts as an impediment to launching these businesses. Rule 203A–2(f) would benefit this segment of the advisory industry by removing this potential barrier to entry, and may enable more firms to offer these types of Internet-based services. Other benefits include the savings to affected advisers from the cost of examinations by multiple states' regulators, as well as the savings to state securities authorities that would no longer examine these firms.

C. Costs

Rule 203A–2(f) would impose certain costs on advisers relying on the exemption. The Commission estimated that the total cost to each Internet Investment Adviser to comply with the recordkeeping provision of the new rule would be approximately $138.80,[23] such that the total cost for the 20 advisers that may be eligible for the new exemption at this time would be $2,776.[24]

We have concluded that the benefits of rule 203A–2(f) and form amendments adopted today justify their costs.

V. Paperwork Reduction Act

As set forth in the Proposing Release, certain provisions of rule 203A–2(f) and form amendments that we are adopting today contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (the "PRA").[25] The titles for the collections of information are "Exemption for Certain Investment Advisers Operating Through the Internet" and "Form ADV," both under the Advisers Act. The Commission submitted those collection of information requirements to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The collection of information for Form ADV has been previously approved under OMB control number 3235–0049 (expires June 30, 2003). The collection of information for rule 203A–2(f) has recently been approved by OMB; the OMB control number is 3235–0559 (expires November 30, 2005). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Rule 203A–2(f)

Rule 203A–2(f) includes a recordkeeping provision requiring an adviser registering under the new rule to maintain a record demonstrating that, with the exception of fewer than 15 clients during the preceding 12 months, all of its clients obtained investment advice exclusively through the adviser's interactive Web site. This recordkeeping provision contains a new "collection of information" requirement within the meaning of the PRA. Although we anticipate that most Internet Investment Advisers would generate the necessary records in the ordinary conduct of their Internet advisory business, we believe, as discussed in the Proposing Release, that the recordkeeping requirement might impose a small additional burden on these advisers.

In the Proposing Release, we estimated that the recordkeeping burden under the proposed rule should not

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public as an investment adviser, and may not act as investment adviser to any registered investment company or business development company.

[17] *See* rule 203A–2(f)(3) (citing rule 203(b)(3)–1 [17 CFR 275.203(b)(3)–1]). Rule 203(b)(3)–1 provides a safe harbor provision for purposes of determining who may be deemed to be a single client for purposes of section 203(b)(3).

[18] Such an attempt would not, however, be successful because it would violate section 208(d) of the Advisers Act [15 U.S.C. 80b–8(d)], which makes it unlawful for any person "indirectly, or through or by any other person, to do any act or thing which it would be unlawful for such person to do directly" under the Advisers Act.

[19] Rule 203A–2(f)(1)(iii). An investment adviser controlled, controlling, or under common control with two or more SEC-registered investment advisers, only one of which is an Internet Investment Adviser, may still rely on the Commission registration of the other adviser to establish its eligibility for the exemption in rule 203A–2(c), and the Internet Investment Adviser will not be precluded from relying on rule 203A–2(f).

[20] Rule 203A–2(f)(1)(ii).

[21] Internet Investment Advisers maintaining these records in electronic form must do so in compliance with the Commission's rules on electronic recordkeeping, rule 204–2(g) [17 CFR 275.204–2(g)].

[22] $50,000 × 20 = $1,000,000. This figure does not, however, include the time to complete Form ADV initially and the fees to file Form ADV through the IARD, since advisers relying on the exemption will still incur these costs in registering with us. Similarly, this figure does not include state registration fees. States impose notice filing requirements upon Commission-registered advisers doing business in their states, with associated fees approximately equivalent to state registration fees.

[23] The Commission estimated this figure by multiplying the burden hours to comply with the proposed rule's recordkeeping requirements (4 hours) by an average hourly compensation rate of $34.70. This compensation rate includes overhead and is the rate for an operations supervisor outside of New York City, based on a 2000 study by the Securities Industry Association. The estimate of burden hours is based on the Commission's submission for the proposed rule under the Paperwork Reduction Act and reflects recent discussions with counsel familiar with advisers' recordkeeping issues. *See infra* Section V of this Release.

[24] 20 × $138.80 = $2,776.

[25] 44 U.S.C. 3501–3520.

exceed an average of four hours annually per Internet Investment Adviser. We also estimated that there would be approximately 20 potential respondents to the collection of information, for a total burden of 80 hours annually. We requested comments on the recordkeeping requirements, as well as on the number of Internet Investment Advisers likely to register with the Commission under the proposed rule.

Only one commenter addressed our request for comment on the reasonableness of our estimate of the recordkeeping burden of the proposed rule. The commenter noted that the burden appeared reasonable and necessary. As for the number of advisers likely to register with us under the proposed rule, four commenters responded with views on this issue. One of the four thought our estimate was too low, suggesting 50 instead. Another of the four, however, considered our estimate of 20 too high. All four commenters opined that the number of Internet Investment Advisers would likely grow in the future.

Rule 203A–2(f) is being adopted as proposed, with the exception that the *de minimis* exception for non-Internet clients was revised to state that an adviser relying on the rule may only accept fewer than 15 such clients during the preceding 12 months, and the adviser may not rely on the rule if another adviser with whom it is in a control relationship relies solely on the Internet adviser's registration under rule 203A–2(f) to register under rule 203A–2(c). The burden estimate is unchanged. Providing the information required under rule 203A–2(f) is mandatory, as Commission staff uses this collection of information in its examination and oversight program. Responses to the information generally will not be kept confidential.

B. Form ADV

Rule 203A–2(f) adds a new category of advisers eligible for Commission registration and requires that Form ADV be amended. The addition of Internet Investment Advisers will increase the total burden under Form ADV, but these advisers' burden for completing Form ADV would not differ from that for current registrants. The Commission has revised its estimate of the burden hours required by Form ADV as a result of a change in the number of estimated respondents. We estimated in the Proposing Release that approximately 20 Internet Investment Advisers would register with the Commission under the proposed rule, and that each of these advisers would file one complete Form ADV and one amendment annually. The increase in the total annual burden for this collection of information results in a total revised burden of 46,921 hours. We requested comments on these estimates. As stated above, only one commenter addressed our request for comment on the reasonableness of the estimated recordkeeping burden of the proposed rule, by noting that the estimated burden appeared reasonable and necessary.

Providing the information required by Form ADV is mandatory, and responses to the information will not be kept confidential. The amendments to Form ADV were adopted substantially as proposed, and the burden estimate has not changed.

VI. Summary of Final Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis ("IRFA") was published in the Proposing Release. No comments were received on the IRFA. The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA"), in accordance with 5 U.S.C. 604, regarding rule 203A–2(f) and the amendments to Form ADV. The following summarizes the FRFA.

The FRFA discusses the need for, and objectives of, the new rule exempting Internet Investment Advisers from the prohibition on Commission registration. Advisory firms eligible for the exemption will be relieved of the burden of temporarily registering in every state.

The FRFA also discusses the effect of the rule and rule amendments on small entities. For purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity if (i) it manages assets of less than $25 million reported on its most recent Schedule I to Form ADV; (ii) it does not have total assets of $5 million or more on the last day of the most recent fiscal year and (iii) it is not in a control relationship with another investment adviser that is not a small entity.[26] The FRFA states that the Commission estimates that approximately 20 advisers will be affected by rule 203A–2(f), and all 20 are likely to be small entities.

As discussed in the FRFA, rule 203A–2(f) imposes no new reporting requirements, but does impose recordkeeping requirements on advisers, including small advisers, that provide advisory services through interactive Web sites. Rule 203A–2(f) requires advisers registering under the new rule to maintain in an easily accessible place a record demonstrating that, with the exception of fewer than 15 clients during the preceding 12 months, all of its clients obtained investment advice exclusively through the adviser's interactive Web site. As the FRFA notes, these advisers will likely generate these records in the ordinary course of their business, and the Commission believes they will not incur any significant burden under the recordkeeping requirement. The FRFA also notes that the amendments to Form ADV, requiring advisers relying on the exemption to check a box indicating their eligibility for the exemption, would have no measurable effect on these advisers.

The FRFA discusses alternatives considered by the Commission in adopting the rule that might minimize adverse effects on small advisers, including (a) the establishment of differing compliance or recordkeeping requirements or timetables that take into account resources available to small advisers; (b) the clarification, consolidation, or simplification of compliance and recordkeeping requirements under the new rule and rule amendments for small advisers; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the new rule and rule amendments, or any part thereof, for small advisers.

The FRFA states that the compliance and reporting requirements contained in the new rule will not impose a significant burden on small advisers relying on the rule. As such, it does not appear necessary to establish differing compliance and reporting requirements for small entities. The FRFA also states that small advisers will likely generate records to satisfy the compliance and recordkeeping requirements in the ordinary course of their businesses, and as a result it is not necessary to clarify, consolidate, or simplify these requirements. Regarding the use of performance rather than design standards, the FRFA discusses that the rule uses performance standards in that the rule does not specify the means by which an adviser must keep records to demonstrate its compliance with the rule. Finally, the FRFA notes that exempting small advisers from these recordkeeping requirements would be inconsistent with NSMIA's allocation of regulatory responsibility for smaller advisers to the states, because the Commission will use these records in connection with its examination and oversight program to verify an adviser's eligibility to register with the Commission under the exemption instead of registering with state securities authorities.

[26] Rule 0–7 [17 CFR 275.0–7].

The FRFA is available for public inspection in File No. S7–10–02. A copy of the FRFA may be obtained by contacting Marilyn Barker, Senior Counsel, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0506.

VII. Statutory Authority

The Commission is adopting new rule 203A–2(f) pursuant to the authority set forth in section 203A(c) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–203A(c)].

List of Subjects in 17 CFR Parts 275 and 279

Investment advisers, Reporting and recordkeeping requirements, Securities.

Text of Rule and Rule Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3A, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

2. Section 275.203A–2 is amended by adding paragraph (f) to read as follows:

§ 275.203A–2 Exemptions from prohibition on Commission registration.

* * * * *

(f) *Internet investment advisers.* (1) An investment adviser that:

(i) Provides investment advice to all of its clients exclusively through an interactive website, except that the investment adviser may provide investment advice to fewer than 15 clients through other means during the preceding twelve months;

(ii) Maintains, in an easily accessible place, for a period of not less than five years from the filing of a Form ADV that includes a representation that the adviser is eligible to register with the Commission under paragraph (f) of this section, a record demonstrating that it provides investment advice to its clients exclusively through an interactive website in accordance with the limits in paragraph (f)(1)(i) of this section; and

(iii) Does not control, is not controlled by, and is not under common control with, another investment adviser that registers with the Commission under paragraph (c) of this section solely in reliance on the adviser registered under paragraph (f) of this section as its *registered adviser.*

(2) For purposes of paragraph (f) of this section, *interactive website* means a website in which computer software-based models or applications provide investment advice to clients based on personal information each client supplies through the website.

(3) An investment adviser may rely on the definition of *client* in § 275.203(b)(3)–1 in determining whether it provides investment advice to fewer than 15 clients under paragraph (f)(1)(i) of this section.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

3. The authority citation for Part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

4. Form ADV (referenced in § 279.1) is amended by:

a. Revising Item 2e. of Instructions for Part 1A;

b. Revising the last sentence of the third undesignated paragraph of Item 2f. of Instructions for Part 1A;

c. Revising the third undesignated paragraph of Item 2g. of Instructions for Part 1A;

d. Redesignating Item 2h. as Item 2i. of Instructions for Part 1A;

e. Adding a new Item 2h. of Instructions for Part 1A;

f. In newly designated Item 2i., revising the phrase "box 11" to read "box 12" in the two places it appears;

g. In Part 1A revising the introductory text of paragraph A, and paragraphs A(10) and A(11);

h. In Part 1A, adding paragraph A(12); and

i. In Schedule D, revising the heading "Section 2.A(10) SEC Exemptive Order" to read "Section 2.A(11) SEC Exemptive Order".

The revisions and additions read as follows:

Note: The text of Form ADV does not and the amendments to it will not appear in the Code of Federal Regulations.

Form ADV

* * * * *

Form ADV: Instructions for Part 1A

* * * * *

2. Item SEC Registration

* * * * *

e. Item 2.A(7): Affiliated Adviser. You may check box 7 *only* if you are eligible for the affiliated adviser exemption from the prohibition on SEC registration. See SEC rule 203A–2(c). You are eligible for this exemption if you *control*, are *controlled by*, or *are under common control with* an investment adviser that is registered with the SEC, *and* you have the same *principal office and place of business* as that other investment adviser. Note that you may not rely on the SEC registration of an Internet investment adviser under rule 203A–2(f) in establishing eligibility for this exemption. See SEC rule 203A–2(f)(iii). If you check box 7, you must also complete Section 2.A(7) of Schedule D.

f. Item 2.A(8): Newly-Formed Adviser.

* * *

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* * * If you indicate on that amendment (by checking box 12) that you are not eligible to register with the SEC, you also must at that same time file a Form ADV–W to withdraw your SEC registration.

g. Item 2.A(9): Multi-State Adviser.

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If, at the time you file your *annual updating amendment*, you are required to register in less than 25 *states* and you are not otherwise eligible to register with the SEC, you must check box 12 in item 2.A. You also must file a Form ADV–W to withdraw your SEC registration. See Part 1A Instructions 2.i.

h. Item 2.A(10): Internet Investment Adviser. You may check box 10 *only* if you are eligible for the Internet adviser exemption from the prohibition on SEC registration. See SEC rule 203A–2(f). You are eligible for this exemption if:

- You provide investment advice to your clients through an interactive Web site. An *interactive Web site* means a Web site in which computer software-based models or applications provide investment advice based on personal information each client submits through the Web site. Other forms of online or Internet investment advice do not qualify for this exemption.
- You provide investment advice to all of your clients exclusively through the interactive Web site, except that you may provide investment advice to fewer than 15 clients through other means during the previous 12 months; and
- You maintain a record demonstrating that you provide investment advice to your clients exclusively through an interactive Web site in accordance with these limits.

* * * * *

Part 1A

* * * * *

Item 2 SEC Registration

* * * * *

A. To register (or remain registered) with the SEC, you must check at least one of the Items 2.A(1) through 2.A(11), below. If you are submitting an *annual updating amendment* to your SEC registration and you are no longer eligible to register with the SEC, check Item 2.A(12). You:

* * * * *

☐ (10) Are an Internet investment adviser relying on rule 203A–2(f);

See Part 1A Instructions 2.h. to determine whether you should check this box.

☐ (11) Have received an SEC *order* exempting you from the prohibition against registration with the SEC;

If you checked this box, complete Section 2.A(11) of Schedule D.

☐ (12) Are no longer eligible to remain registered with the SEC.

See Part 1A Instructions 2.i. to determine whether you should check this box.

* * * * *

Dated: December 12, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31843 Filed 12–17–02; 8:45 am]

BILLING CODE 8010–01–P



Federal Register

Wednesday,
December 18, 2002

Part V

Federal Emergency Managment Agency

44 CFR Part 208
National Urban Search and Rescue Response System; Proposed Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 208

RIN 3067–AC93

National Urban Search and Rescue Response System

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: We (FEMA) propose to standardize the financing, administration and operation of the National Urban Search and Rescue Response System, a cooperative effort of FEMA, participating State emergency management agencies and local public safety agencies across the country. The proposed rule addresses the relationship between Urban Search & Rescue (US&R) Task Forces and FEMA, funding for preparedness and response activities, including the acquisition of equipment and supplies and training.

DATES: We invite your comments on this proposed rule and will accept them through February 3, 2003.

ADDRESSES: Please send comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) (202) 646–4536, or (e-mail) *rules@fema.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Tamillow, United States Fire Administration, Federal Emergency Management Agency, 500 C Street, SW., room 326, Washington, DC 20472, (202) 646–2549, or (e-mail) *michael.tamillow@fema.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 303 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5144, authorizes the President of the United States to form emergency support teams of Federal personnel to be deployed in an area affected by a major disaster or emergency. T he President delegated this function to the Director of the Federal Emergency Management Agency (FEMA) under Executive Order 12148. Section 306(a) of the Stafford Act authorizes the Federal Emergency Management Agency to accept and use the services or facilities of any State or local government, or of any agency, officer or employee thereof, with the consent of such government in the performance of its responsibilities under the Stafford Act. Section 306(b) authorizes the Director to appoint and fix the compensation of temporary personnel without regard to U.S. Code provisions governing appointments in the competitive service. Section 403(a)(3)(B) provides further that the President may authorize Federal agencies to perform work on public or private lands essential to save lives and protect property, including search and rescue and emergency medical care, and other essential needs. Under section 621(c) the Director may accept and use the services of State or local governments, and use voluntary services by individuals or organizations as needed.

We[1] (FEMA) established the National Urban Search and Rescue Response System (National US&R Response System) under these authorities. The system provides specialized lifesaving assistance during major disasters or emergencies that the President declares under the Stafford Act. US&R operational activities include locating, extracting and providing on-site medical treatment to victims trapped in collapsed structures, weapons of mass destruction events, and when assigned, incident command or coordination of other operational activities.

Created in consultation with State emergency management agencies and local public safety agencies, the system is built around a core of Task Forces prepared to deploy immediately and initiate US&R operations at FEMA's direction. The Task Forces are staffed primarily by local fire department and emergency services personnel who are experienced in collapsed structure search and rescue operations, incident management, and other emergency operational activities. On activation by FEMA, US&R Task Forces are activated as temporary federal resources.

The system presently comprises 28 Task Forces in 19 States, each of which is sponsored by a State agency or local public safety agency (Sponsoring Organization). While the Sponsoring Organizations are solely responsible for the administrative management of their respective Task Forces, many invite other public safety agencies in their vicinity to contribute personnel and other resources to the Task Force. These agencies are Participating Agencies.

FEMA provides financial support in the form of grants or cooperative agreements (Grants) to each of the Sponsoring Organizations under the disaster preparedness authorities of the Stafford Act. The Sponsoring Organizations use these grants to train Task Force personnel, maintain a state of readiness and to acquire necessary equipment and supplies. We award and administer Grants under 44 CFR Part 13. In return for this financial support, each Task Force must be available for deployment as a federal resource when activated by FEMA.[2] Task Forces also must maintain minimum training requirements that we prescribe.

Separate non-standardized Memoranda of Agreement, which were individually negotiated at different stages in the system's development, govern the relationship between FEMA and each of the US&R Task Forces. In addition, we required the Task Forces to enter into separate Cooperative Agreements on forms that our Office of Financial Management prescribed. As the National US&R Response System has matured, the participants have concluded that it is desirable to standardize these relationships through a set of comprehensive regulations. We developed the proposed rule with the assistance of the National Urban Search and Rescue Advisory Committee and its Legal Issues Working Group.

Adoption of the proposed rule will enable us to standardize our agreements with the Task Forces. Following adoption of the final rule, we will ask each of the Task Forces to enter into a new, streamlined MOA as well as a Preparedness Cooperative Agreement, as described in subpart B of the proposed rule and a Response Cooperative Agreement, as described in subpart C of the proposed rule. These new, standardized agreements will document our relationship with the Sponsoring Organizations.[3]

Organization of the Proposed Rule

We divide the proposed rule into five subparts. Subpart A addresses the organization of the National US&R System, explains the relationship among the various components of the system, incorporates by reference certain provisions of other FEMA regulations and provides for sanctions if US&R regulations and directives are violated.

Subpart B describes the process through which we provide grant funds to the Sponsoring Organizations to maintain Task Force readiness. Sponsoring Organizations use these grant funds to administer the Task Forces, provide initial and recurrent training[4], and to acquire and maintain a uniform cache of equipment and supplies. Following adoption of the final rule, we will ask each Task Force to enter into a Preparedness Cooperative Agreement with us. From time to time FEMA will purchase equipment and supplies for each Task Force.

Subpart C addresses the deployment of Task Forces as a federal resource and the reimbursement of the Sponsoring Organizations for the costs that they incur as a result of these deployments. This subpart also explains the Response Cooperative Agreement that we will ask each Sponsoring Organization to sign following adoption of the final rule.

Subpart D establishes the procedures by which Sponsoring Organizations may present claims to FEMA for reimbursement of costs incurred when we use the Task Forces as federal resources, the timeframes in which they must present such claims, and any appeals.

A glossary of defined terms that we use throughout the rule and in subpart A appears in section 208.2. Sub-glossaries of defined terms used in subsequent subparts of the rule appear in sections 208.22 (subpart B), 208.32 (subpart C), and 208.52 (subpart D).

Sectional Analysis

The sectional analysis does not explain the provisions of each section of the proposed rule. We believe that most provisions are self-explanatory. We focus on providing a detailed explanation of the cost neutrality and personnel reimbursement provisions of subpart C because we believe that they are more complex than other provisions of the proposed rule. We welcome your questions and comments about any of the provisions in the proposed rule or this preamble. We will address them in the preamble to the final rule.

Section 208.33 sets forth the principles under which we will reimburse Sponsoring Organizations for participating in Alerts and Activations. Subsection (a) expresses our policy that participation in Alerts and Activations be cost neutral to Sponsoring Organizations and Participating Agencies. This commitment is critical to securing the participation of system resources. It is unreasonable to put local fire departments, which are the predominant sponsors of the Task Forces, at risk for the cost of providing emergency services outside of their respective jurisdictions. Payments are subject to 44 CFR part 13, particularly sections 13.21 (payment) and 13.22 (allowable cost). Section 13.22 incorporates various Office of Management and Budget circulars that address allowable cost. However, in the event of a conflict between this regulation and 44 CFR part 13 or the OMB Circulars, this regulation would control.

Section 208.39 explains how we will compensate Sponsoring Organizations for personnel costs during Activations. In order to understand section 208.39, one must first understand the employment relationships among FEMA, the Sponsoring Organization or Participating Agency and the individual. When we deploy individual members of US&R Task Forces we appoint them into federal service as Excepted Temporary Federal Volunteers and they work under our direction and control for the duration of the deployment. However, Task Force members who are regularly employed by a Sponsoring Organization or Participating Agency retain their concurrent employment relationship with their usual employers.[5] The maintenance of this concurrent employment relationship is a fundamental principle of the National US&R System, which dates from the inception of the system. We adopted the principle after consultations with the States, local governments and public safety employee organizations and we intend it to prevent Task Force members from suffering a break in their service to the usual employer while away on the federal deployment. While on a federal deployment, these Task Force members receive pay and benefits from their usual employers during the federal deployment just as they would if they were not Activated.

Section 208.39(a) provides that we will reimburse the Sponsoring Organization for personnel costs that result from the Activation and are consistent with these regulations. The Sponsoring Organization is responsible for reimbursing the personnel costs of its Participating Agencies in accordance with the provisions of section 208.39.

Section 208.39(b) speaks to how we will compensate Sponsoring Organizations for overtime costs that might not have been incurred but for the federal deployment. Section 7(k) of the Fair Labor Standards Act exempts public safety organizations from paying their employees overtime under certain circumstances. As interpreted by Department of Labor regulations and court decisions, the section 7(k) exemption does not apply unless the employee in question is trained in fire protection, has the legal authority and responsibility to engage in fire suppression, is employed by a public safety agency engaged in fire suppression and actually engages in fire suppression at least 80% of the time.

The scope of section 7(k) is frequently litigated and is sometimes narrowed as a result of litigation. After reviewing section 7(k), the Department of Labor regulations and court decisions, we are uncertain whether the rescue activities undertaken by US&R Task Forces are analogous to fire suppression. We also note that some Task Force personnel will not fall within the section 7(k) exemption because they are not regularly employed in fire suppression. It would be unfair not to compensate these individuals at an overtime rate, when fellow members of their Task Force, who may be volunteers or part-time fire service employees, are compensated at an overtime rate. For these reasons, we propose to disregard the section 7(k) exemption in reimbursing personnel costs and reimburse Sponsoring Organizations for regular wages and overtime wages as described in section 208.39(d), (e) and (f).[6] This will not create a windfall for Sponsoring Organizations and Participating Agencies. The Sponsoring Organizations cannot bill FEMA for

[1] Throughout this preamble and the proposed rule the terms "we", "our" and "us" mean FEMA.

[2] The Task Forces also respond to disasters and emergencies in their home states as State resources. FEMA does not directly reimburse Task Forces for the costs that they incur when deploying in their home state, although in a State deployment Task Forces may use equipment that they purchased with FEMA grant funds and federal property that is in their custody. Subpart C of this Proposed Rule does not cover in-state deployment of US&R resources. However, federal reimbursement for the cost of an in-state deployment may be available through FEMA's Public Assistance Program under regulations published at 44 CFR Part 206. In addition, the Office of Foreign Disaster Assistance of the U.S. Agency for International Development (USAID) often uses the services of US&R Task Forces to deliver humanitarian assistance abroad under agreements to which FEMA is not a party. The Proposed Rule would not affect the relationships between USAID and the Task Forces.

[3] Following adoption of the final rule, FEMA also expects to release an Administrative Manual, which will contain system policies and explain other federal regulations, and will govern the operation of the National US&R Response System. The Administrative Manual will be updated periodically.

[4] FEMA is authorized by sections 306(a) and 621(c) of the Stafford Act, 42 U.S.C. §§ 5149(a), 5197(c) to federalize US&R Task Forces to participate in preparedness activities. US&R teams are periodically federalized to participate in FEMA sanctioned training exercises, also known as mobilization exercises. During these periods, they are not Activated, within the meaning of section 208.2 of the proposed rule and therefore the provisions of subpart C do not apply to FEMA sanctioned training exercises. Funding for participation in FEMA sanctioned training exercises may be available under section 208.24(b) of the proposed rule.

[5] In some cases, the relationship between the individual and the Sponsoring Organization or Participating Agency is a contractual relationship or a volunteer relationship. These regulations do not create a common law employment relationship between an individual and a Sponsoring Organization or Participating Agency where none otherwise exists.

[6] Section 208.40(b) of the Proposed Rule addresses reimbursement for differential pay in.

personnel costs in excess of those that they actually and normally incur.

Section 208.39(c) establishes a uniform 24-hour tour of duty during the federal deployment. We propose to reimburse the Sponsoring Organizations for 24 hours of pay for each day that a Task Force member is deployed, from his or her arrival at the pre-deployment staging area (Point of Arrival)[7] until his or her release from service (Point of Return). This is known as "portal to portal" pay. We are not establishing a different rate of reimbursement for meal periods or scheduled sleep periods. Once deployed, all Task Force members must be available for immediate response twenty-four hours a day during the entire deployment period. Meal periods and sleep periods will be interrupted if Task Force members are needed to engage in vital lifesaving activities, just as they are in the firehouse.

Fundamentally, we believe that search and rescue professionals who are expected to respond on a moment's notice at any time during a 24-hour period should be compensated for 24 hours of work. Activated Task Force Members often work the first 24 to 48 hours of the Activation continuously, as this initial period involves packaging the Task Force for transport, loading and unloading equipment, attending briefings, receiving and adjusting to changes in operational objectives, establishing the base of operations and initiating the search for live victims. Once the search begins, we control Task Force activities during the entire 24 -hour period and they must be available for immediate response at any time.

Section 208.39(g) provides for the reimbursement of backfill expenses. The National US&R System depends upon the voluntary participation of public safety agencies. We recognize that these public safety agencies may be short-handed when some of their personnel are away on a federal deployment. If a public safety agency ordinarily backfills a position in situations where a regular employee is unavailable for a period of time similar to that spent on a US&R deployment, *e.g.*, Family and Medical Leave, participation in an extended mutual aid assignment, injury or disability, then it may bill us for the cost of backfilling the position for the period that the incumbent is away on a federal deployment. We propose to reimburse for incremental overtime salary and benefit expenses associated with the replacement employee. We do not believe that it would be proper to reimburse the backfilling agency for the regular salary and overtime cost of the replacement employee because the public safety agency would have to pay this cost if the federal deployment had not occurred.

National Environmental Policy Act. 44 CFR 10.8(d)(2)(ii) categorically excludes actions that qualify for categorical exclusion, such as the preparation, revision, and adoption of regulations, and specifically 44 CFR 10.8(d)(2)(xviii)(C), which relates to planning and administrative activities in support of emergency and disaster response and recovery, including deployment of urban search and rescue teams. We have not prepared an environmental assessment or environmental impact statement for this proposed rule.

Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. Section 3(f) of the Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This proposed rule could have an annual effect on the economy of $100 million or more but is not an economically significant rule under Executive Order 12866. The rule would establish the relationship between Urban Search & Rescue (US&R) Task Forces and FEMA, funding for preparedness and response activities, including the acquisition of equipment and supplies and training, and the eligibility of Task Forces to receive and maintain federal excess property. Average annual Federal cooperative agreements with US&R teams do not currently exceed $100 million. However, we anticipate that the Congress may appropriate funds exceeding $100 million to augment the equipment and human resources available for search and rescue operations. Although the funding to support US&R teams may exceed $100 million, the rule would not impose conditions on the recipients or their sponsoring organizations that would exceed $100 million annually, or would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.

We know of no other conditions that would qualify the rule as a "significant regulatory action" within the definition of section 3(f) of the Executive Order. To the extent possible, this rule adheres to the principles of regulation as set forth in Executive Order 12866. The Office of Management and Budget has not reviewed this rule under the provisions of the Executive Order.

Paperwork Reduction Act of 1995

FEMA has determined that the implementation of this rule is subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. As the Paperwork Reduction Act of 1995 requires and concurrently with this proposed rule, we have submitted a request for Office of Management and Budget (OMB) review and approval of a new collection of information, which is contained in this proposed rule. OMB will process this request for collection of information and notice for comment under its clearance procedures in 5 CFR 1320.11. The collection of information complies with provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). We invite the general public to comment on the collection of information.

Collection of Information

Title: Urban Search and Rescue Program.

US&R grant application forms approved by OMB under Control Number 3067–0206, which expires February 29, 2004, are:

Form Numbers: SF 424, Application for Federal Assistance; FEMA Form 20–10, Financial Status Report; FEMA Form 20–16, Summary Sheet for Assurances and Certifications; FEMA Form 20–16A, Assurances—Non-Construction Programs; FEMA Form 20–16C, Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements; FEMA Form 20–20, Budget Information—Non-Construction Programs; and SF LLL, Disclosure of Lobbying Activities.

Abstract: This information collection is to implement the National Urban Search and Rescue System (US&R), by which FEMA provides specialized lifesaving assistance during major disaster or emergency. US&R operational activities include locating, extracting and providing on-site medical treatment to victims trapped in collapsed structures, weapons of mass destruction events, and when assigned, incident command or coordination of other operational activities. In order to implement the US&R program FEMA must collect certain types of information, including grant applications, budget and budget narrative, financial status reports, assurances and certifications, performance information, and requests for advances or reimbursement on forms previously approved by OMB under Control Number 3067–0206.

Affected Public: State, local and Indian tribal governments.

Estimated Total Annual Burden Hours: 803 hours. A breakdown of the burden follows:

FEMA forms	No. of respondents (A)	Frequency of response (B)	Hours per response and recordkeeping (C)	Annual burden hours (A × B × C)
The following forms were approved under 3067–0206:				
SF–424 Application for Federal Assistance	28	1	1 hour	28
FEMA Form 20–10 Financial Status Report	28	1	1 hour	28
FEMA Forms 20–16, 20–16A, 20–16C, Summary Sheet for Assurances and Certifications.	28	1	30 minutes	14
SF LLL, Disclosure of Lobbying Activities	28	1	10 minutes	5
FEMA Form 20–20, Budget Information Non-Construction Programs and Budget Narrative.	28	2	9 hours	504
SF 270, Request for Advance or Reimbursement	28	2	4 hours	224
Subtotal		224		803

OMB Number: New.

Abstract: In order to implement the US&R program FEMA must collect certain types of information not included in OMB Control Number 3067–0206, including memoranda of agreement, program narrative statements, grant awards, progress reports, extension or change requests, closeout information and audits.

Affected Public: State, local and Indian tribal governments.

Estimated Total Annual Burden Hours: 1181 hours. A breakdown of the burden follows:

FEMA forms	No. of respondents (A)	Frequency of response (B)	Hours Per response and recordkeeping.(C)	Annual burden hours (A x B x C)
The following are new collections:				
Narrative Statement	28	2	4	224
Progress Reports	28	2	2	112
Extension or Change Requests	5	1	1	5
Audits of States, Local Governments, and Non-Profit Organizations	28	1	30	840
Memoranda of Agreement	28	1	[8]	[8]
Subtotal		145		1181
Total		369		1984

[8] After we publish the final US&R rule we will prepare a standardized, streamlined memorandum of agreement in consultation with the National US&R Advisory Committee, which represents the 28 US&R sponsoring organizations, and other interested parties. When completed we will make a second Paperwork Reduction Act submission to OMB.

Estimated times and costs: The approximate annual salary of State and local staff who will complete the forms is $35,000. The approximate hourly rate of pay is $18.90 ($35,000 divided by 1850 hours). The total cost to grantees is estimated to be $37,498.

The cost to FEMA is largely Headquarters grants personnel salary costs because reviewing and analyzing the information collected by these forms—for all FEMA grant programs, not just US&R grants—is a significant portion of their annual work. We estimate that for the US&R program Headquarters would expend approximately 672 hours on analysis, or an average of 24 hours per program. We estimate the cost to FEMA to be $14,112 (672 hours times $21 per hour of staff work). Printing costs are minimal because the forms are available in electronic format.

The total annual estimated time and costs are 1984 hours and $37,498 cost to applicants and $14,112 cost to FEMA. This calculation is based on the number of burden hours for each type of information collection/form, as indicated above, and the estimated wage rates for those individuals responsible for collecting the information or completing the forms. The new collection is required for sound grants management and compliance with OMB Circulars and FEMA regulations.

Comments: We solicit your written comments to: (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information will have practical utility; (b) evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be

[7] Certain Task Force members who are Activated will not report to a pre-deployment staging area but we will instruct them to travel to the incident location directly from their home or regular place of work. These individuals are Activated when they leave their home or regular place of business and we will adjust the "portal to portal" pay of these individuals accordingly.

collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., room 316, Washington, DC 20472, or (e-mail) *informationcollections@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michael Tamillow, United States Fire Administration, Urban Search and Rescue Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, telephone (202) 646–3456, facsimile (202) 646–2549, or e-mail *michael.tamillow@fema.gov* for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625 or facsimile number (202) 646-3347 or e-mail *informationcollections@fema.gov.*

Executive Order 13132 Federalism—Federalism Summary Impact Statement

The proposed rule does not have federalism implications as defined in Executive Order 13132 . The rule imposes no mandates on State or local governments; participation in the National US&R Response System is strictly voluntary. Moreover, one of the most significant objectives of this program is to build state and local US&R capability. The US&R program recognizes the primary role of state and local governments in responding to disasters and emergencies. Equipment and supplies purchased with federal funds may be used to respond to in-state disasters and emergencies. The teams may only be deployed across state lines when released by their home state. The assistance these teams provide, like other assistance under the Stafford Act, is only furnished when the combined state and local capabilities of the receiving state are exceeded and its Governor requests the assistance.

While this rule does not have federalism implications, we developed it through a collaborative process with state and local representatives. As noted above, the Legal Issues Working Group, a subcommittee of the National US&R Advisory Committee, developed the original draft of these regulations. The National US&R Advisory Committee presented a draft to FEMA. The working group and the advisory committee both comprised federal, state and local officials, as well as representatives of labor organizations some of whose members serve on the Task Forces.

List of Subjects in 44 CFR Part 208

Disaster assistance, Grant programs.

Accordingly, we propose to add part 208 to Title 44, Chapter 1 of the Code of Federal Regulations as follows:

PART 208—NATIONAL URBAN SEARCH AND RESCUE RESPONSE SYSTEM

Subpart A—General

Sec.
208.1 Purpose and scope.
208.2 Definitions of terms used in this part.
208.3 Authority for the National US&R Response System.
208.4 Purpose for System.
208.5 Authority of the United States Fire Administrator.
208.6 System Resource reports.
208.7 Sanctions for violations of regulations or System orders.
208.8 Code of conduct.
208.9 Agreements between Sponsoring Organizations and Participating Agencies.
208.10 Other regulations.
208.11 Federal status of System Members.
§ 208.12–208.20 [Reserved].

Subpart B—Preparedness Cooperative Agreements

208.21 Purpose.
208.22 Definitions of terms used in this subpart.
208.23 Preparedness Cooperative Agreement process.
208.24 Allowable costs under Preparedness Cooperative Agreements.
208.25 Purchase and maintenance of items not listed on Equipment Cache List
208.26 Obsolete equipment.
208.27 Accountability.
208.28–208.30 [Reserved].

Subpart C—Response Cooperative Agreements

208.31 Purpose.
208.32 Definitions of terms used in this subpart.
208.33 Allowable costs.
208.34 Agreements between Sponsoring Organizations and others.
208.35 Reimbursement for Advisory.
208.36 Reimbursement for Alert.
208.37 Reimbursement for equipment and supply costs incurred during Activation.
208.38 Reimbursement for re-supply and logistics costs incurred during Activation.
208.39 Reimbursement for personnel costs incurred during Activation.
208.40 Reimbursement of fringe benefit costs during Activation.
208.41 Administrative allowance.
208.42 Reimbursement for other administrative costs.
208.43 Rehabilitation.
208.44 Reimbursement for other costs.
208.45 Advance of funds.
208.46–208.50 [Reserved]

Subpart D—Reimbursement Claims and Appeals

208.51 General.
208.52 Definitions of terms used in this subpart.
208.53 Reimbursement procedures.
208.54–208.60 [Reserved]
208.60 Determination of claims.
208.61 Payment of claims.
208.62 Appeals.
208.63 Request by FEMA for supplemental information.
208.64 Administrative and audit requirements.
208.65 Mode of transmission.
208.66 Reopening of claims for retrospective or retroactive adjustment of costs.
208.67–208.70 [Reserved]

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 to 5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412.

Subpart A—General

§ 208.1 Purpose and scope of this part.

(a) *Purpose.* The purpose of part 208 is to prescribe policies and procedures pertaining to FEMA's National Urban Search and Rescue Response System.

(b) *Scope.* This part applies to Sponsoring Organizations and other participants in the National Urban Search and Rescue Response System that have executed agreements governed by this part. Part 206 of this chapter does not apply to activities undertaken under this part.

This part does not apply to reimbursement under part 206, Subpart H, of this chapter.

§ 208.2 Definitions of terms used in this part.

(a) *General.* Any capitalized word in this part is a defined term unless such capitalization results from the application of standard capitalization or style rules for Federal regulations. The following definitions have general applicability throughout this part:

Activated or *Activation* means the status of a System resource placed at the direction, control and funding of FEMA in response to, or in anticipation of, a presidential declaration of a major disaster or emergency under the Stafford Act.

Activation Order means the FEMA communication placing a System resource under the direction, control, and funding of FEMA.

Administrator means the Administrator of the United States Fire Administration, or such officer's functional or designated representative.

Advisory means a FEMA communication to System resources indicating that an event has occurred or FEMA anticipates will occur that may require Alert or Activation of System resources.

Alert means the status of a System resource's readiness that is begun by an Alert Order indicating that FEMA may Activate the System resource.

Alert Order means the FEMA communication that places a System resource on Alert status.

Assistance Officer means the FEMA employee who has legal authority to bind FEMA by awarding and amending Cooperative Agreements.

Backfill means the personnel practice of temporarily replacing a person in his or her usual position with another person.

Cooperating Agency means a State or Local Government that has executed a Cooperative Agreement to provide Technical Specialists.

Cooperative Agreement means a legal instrument between FEMA and a Sponsoring Organization or Cooperating Agency that provides funds to accomplish a public purpose and anticipates substantial federal involvement during the performance of the contemplated activity.

Daily Cost Estimate means a Sponsoring Organization's estimate of Task Force personnel compensation, itemized fringe benefit rates and amounts including calculations, and backfill expenditures for a 24-hour period of Activation.

Deputy Administrator means the Deputy Administrator of the United States Fire Administration.

Disaster Search Canine Team means a disaster search canine and handler who have successfully completed the written examination and demonstrated the performance skills required by the Disaster Search Canine Readiness Evaluation Process. A disaster search canine is a dog that has successfully completed the FEMA Disaster Search Canine Readiness Evaluation criteria for Type II or both Type II and Type I.

Emergency means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

Equipment Cache List means the FEMA-issued list that identifies the maximum quantities and types of equipment and supplies that a Sponsoring Organization and Participating Agencies may purchase and maintain with FEMA funds.

Federal excess property means any federal personal property under the control of a Federal agency that the agency head or a designee determines is not required for its needs or for the discharge of its responsibilities

Federal Response Plan means the signed agreement among various federal departments and agencies that provides a mechanism for coordinating delivery of federal assistance and resources to augment efforts of State and Local Governments overwhelmed by a Major Disaster or Emergency; supports implementation of the Stafford Act, as well as individual agency statutory authorities; and supplements other federal emergency operations plans developed to address specific hazards.

FEMA means the Federal Emergency Management Agency.

IST or Incident Support Team means a multi-disciplinary System resource composed of individuals brought together to provide management control and logistical support for federal US&R resources and technical advice and assistance to Local Governments.

Local Government means any county, city, village, town, district, or other political subdivision of any State; any federally-recognized Indian tribe or authorized tribal organization; and any Alaska Native village or organization.

Major Disaster means any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or regardless of cause, any fire, flood, or explosion, in any part of the United States, that in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act to supplement the efforts and available resources of States, Local Governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

Memorandum of Understanding (MOU) means the document signed by FEMA, a Sponsoring Organization and its State that describes the relationship of the parties with respect to the National Urban Search & Rescue Response System.

Participating Agency means a Local Government or non-profit organization that has executed an agreement with a Sponsoring Organization to participate in the National US&R Response System.

Personnel Rehabilitation Period means the period allowed by FEMA for a person's rehabilitation to normal conditions of living following an Activation.

Preparedness Cooperative Agreement means the agreement between FEMA and a Sponsoring Organization to develop and maintain System capabilities and operational readiness.

Program Manager means the individual within FEMA who is responsible for day-to-day administration of the National US&R Response System.

Program Office means the organizational entity within FEMA that is responsible for day-to-day administration of the National US&R Response System.

Response Cooperative Agreement means an agreement between FEMA and a Sponsoring Organization for reimbursement of allowable expenditures incurred as a result of an Alert or Activation.

Sponsoring Organization means a State or Local Government that has executed an MOU with FEMA to organize and administer a Task Force.

Stafford Act means the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5260.

State means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia or the Republic of the Marshall Islands.

Support Specialist means a person participating in the System who assists the Task Force with administrative or other support during mobilization, ground transportation and demobilization as directed.

System or *National US&R Response System* means the national US&R response capability administered by FEMA.

System Member means any Task Force Member, IST Member, Technical Specialist, Support Specialist or Disaster Search Canine Team.

Task Force means an integrated US&R organization of multi-disciplinary resources with common communications and a leader, organized and administered by a Sponsoring Organization and meeting FEMA standards.

Task Force Member means a person occupying a position on a Task Force.

Technical Specialist means a person participating in the System contributing

technical knowledge and skill who may be placed on Alert or Activated as a single resource and not as a part of an IST or a Task Force.

US&R means urban search and rescue, the process of searching for, extricating, and providing for the immediate medical stabilization of victims who are entrapped in collapsed structures.

We or *our* or *us* means the Federal Emergency Management Agency.

(b) *Additional Definitions.* Definitions that apply only to individual subparts of part 208 are in those subparts.

§ 208.3 Authority for the National US&R Response System.

(a) *Enabling legislation.* FEMA established and operates the System under authority of sections 303, 306(a), 306(b), 403(a)(3)(B) and 621(c) of the Stafford Act, 42 U.S.C. 5144, 5149(a), 5149(b), 5170b(a)(3)(B) and 5197(c) respectively.

(b) *Implementing Plan.* The Federal Response Plan identifies FEMA as the primary federal agency with responsibility for Emergency Support Function 9, Urban Search and Rescue.

§ 208.4 Purpose for system.

It is our policy to develop and provide a national system of standardized US&R resources to respond to Emergencies and Major Disasters that are beyond the capabilities of affected State and Local Governments.

§ 208.5 Authority of the Administrator.

(a) *Participation in activities of the System.* The Administrator is responsible for determining participation in the System and any activity thereof, including but not limited to whether a System resource is operationally ready and can be Activated.

(b) *Standards for and measurement of System efficiency and effectiveness.* In addition to the authority provided in §206.13 of this chapter, the Administrator may establish performance standards and assess the efficiency and effectiveness of System resources.

§ 208.6 System resource reports.

(a) *Reports to Administrator.* The Administrator may request reports from any System resource relating to its activities as part of the System.

(b) *Reports to FEMA Regional Directors.* Any FEMA Regional Director may request through the Administrator reports from any System resource used within or based within the Regional Director's jurisdiction.

(c) *Audits, investigations, studies and evaluations.* FEMA and the General Accounting Office may conduct audits, investigations, studies, and evaluations as necessary. Sponsoring Organizations, Participating Agencies and System Members are expected to cooperate fully in such audits, investigations, studies and evaluations.

§ 208.7 Sanctions for violations of regulations or System orders.

(a) *Sanctions for knowing violations.* The Administrator may impose a sanction on any State or Sponsoring Organization whose representative knowingly violates a regulation or System Order, including knowingly submitting a false or misleading request for reimbursement or knowingly submitting a request for reimbursement of a non-reimbursable expense.

(b) *Sanctions for other violations.* The Administrator may impose a sanction on any State or Sponsoring Organization for other violations of regulations or System Orders including significant or repeated failure of the State or Sponsoring Organization to conform to the standards and procedures of the System.

(c) *Other authority for sanctions.* Nothing in this section limits or precludes the application of other authority to impose sanctions.

(d) *Range of sanctions.* Sanctions may include but are not limited to censure, suspension, or removal from the System.

§ 208.8 Code of conduct.

The Administrator will develop and implement a code of conduct for System Members while acting under FEMA's direction and control. Nothing in this section or our code of conduct will limit the authority of a Sponsoring Organization, Participating Agency or Cooperating Agency to apply its own code of conduct to its System Members or employees. If our code is more restrictive, it controls.

§ 208.9 Agreements between Sponsoring Organizations and Participating Agencies.

Every agreement between a Sponsoring Organization and a Participating Agency regarding the System must include a provision making the rules in this part applicable to the Participating Agency and its employees who engage in System activities.

§ 208.10 Other regulations.

The following provisions of title 44 CFR, Chapter 1 also apply to the program in this part:

(a) Section 206.9, which deals with our non-liability in certain circumstances.

(b) Section 206.11, which prescribes nondiscrimination in the provision of disaster assistance.

(c) Section 206.14, which deals with criminal and civil penalties.

(d) Section 206.15, which permits recovery of assistance by us.

§ 208.11 Federal Status of System Members.

The Administrator will appoint all Activated System Members as temporary excepted volunteer employees of the United States Government. The Administrator may appoint a System Member who participates in Alert activities as such an employee of the United States Government. The Administrator may also appoint each System Member who participates in FEMA sanctioned preparedness activities as such an employee of the United States Government. We intend these appointments to secure protection for such employees under the Federal Employees Compensation Act and the Federal Tort Claims Act and do not intend to interfere with any preexisting employment relationship between a System Member and a Sponsoring Organization, Cooperating Agency or Participating Agency. System Members whom we appoint as temporary excepted volunteer employees of the United States Government will not receive any compensation or employee benefit directly from the United States of America for their service, but will be compensated through their sponsoring organization.

§§ 208.12—208.20 Reserved

Subpart B—Preparedness Cooperative Agreements

§ 208.21 Purpose.

Subpart B provides guidance on the administration of Preparedness Cooperative Agreements.

§ 208.22 Definitions of terms used in this subpart.

Project Manager means the Sponsoring Organization's primary point of contact for matters related to the Preparedness Cooperative Agreement.

Program Manager means the FEMA official responsible for developing statements of work for Cooperative Agreements and initiating amendments or awards under such agreements by developing and funding requisitions.

§ 208.23 Preparedness Cooperative Agreement process.

(a) *Application.* To obtain FEMA funding for an award or amendment of a Preparedness Cooperative Agreement, the Sponsoring Organization must submit an application. The application must be in a form that the Assistance Officer specifies.

(b) *Award.* We will award a Preparedness Cooperative Agreement with each Sponsoring Organization to provide Federal funding to develop and maintain System resource capabilities and operational readiness. For the purposes of the Preparedness Cooperative Agreement, the Sponsoring Organization will be considered the "recipient."

(c) *Amendment.* (1) *Procedure.* Absent special circumstances, we will fund and amend Preparedness Cooperative Agreements on an annual basis. Before amendment, the Assistance Officer will issue a call for Cooperative Agreement amendment applications. The Assistance Officer will specify required application forms and supporting documentation to be submitted with the application.

(2) *Period of performance.* Absent special circumstances, the period of performance for Preparedness Cooperative Agreements will be 1 year from the date of award. The Assistance Officer may allow for an alternate period of performance with the approval of the Administrator.

(3) *Assistance Officer.* The Assistance Officer is the only individual authorized to award or modify a Preparedness Cooperative Agreement.

(d) *Award amounts.* The Administrator will determine award amounts on an annual basis. A Task Force is eligible for an annual award only if the Program Manager has received and approved the Task Force's current-year Daily Cost Estimate.

(e) *FEMA priorities.* The Administrator will establish overall priorities for the use of Preparedness Cooperative Agreement funds taking into consideration the results of readiness evaluations and actual Activations, our overall priorities, and other factors, as appropriate.

(f) *Cost sharing.* The Administrator may subject Preparedness Cooperative Agreement awards to cost sharing provisions. In the call for Preparedness Cooperative Agreement amendment applications, the Assistance Officer must inform Sponsoring Organizations about any cost sharing obligations.

(g) *Sponsoring Organization priorities.* The Sponsoring Organization should indicate its spending priorities in the application. The Program Manager will review these priorities and will make recommendations to the Assistance Officer for negotiating the final agreement.

§ 208.24 Allowable costs under Preparedness Cooperative Agreements.

System Members may spend Federal funds that we provide under any Preparedness Cooperative Agreement and any required matching funds under 44 CFR 13.22 and this section to pay reasonable, allowable, necessary and allocable costs that directly support System activities, including the following:

(a) Administration, including:

(1) Management and administration of day-to-day System activities such as personnel compensation and benefits relating to System maintenance and development, record keeping, inventory of equipment, and correspondence;

(2) Travel to and from System activities, meetings, conferences, training, drills and exercises;

(3) Tests and examinations, including vaccinations, immunizations and other tests that are not normally required or provided in the course of a System Member's employment, and that FEMA requires to meet our standards.

(b) Training:

(1) Development and delivery of, and participation in, System-related training courses, exercises, and drills;

(2) Construction, maintenance, lease or purchase of System-related training facilities or materials;

(3) Personnel compensation expenses, including overtime and other related expenses associated with System-related training, exercises, or drills;

(4) System-required evaluations and certifications other than the certifications that we require System Members to possess at the time of entry into the System. For instance, we will not pay for a medical school degree, paramedic certification or recertification, civil engineering license, etc.

(c) Equipment:

(1) Procurement of equipment and supplies specifically identified on the then-current FEMA-approved Equipment Cache List;

(2) Maintenance and repair of equipment included on the current Equipment Cache List;

(3) Maintenance and repair of equipment acquired with our approval through the Federal Excess Property program, except as provided in §208.25 of this part;

(4) Purchase, construction, maintenance or lease of storage facilities and associated equipment for System equipment and supplies.

(d) Disaster search canine expenses limited to:

(1) Procurement for use as a System resource;

(2) Training and certification expenses;

(3) Veterinary care.

(e) Management and administrative costs, actually incurred but not otherwise specified in this section that directly support the Sponsoring Organization's US&R capability, provided that such costs do not exceed 7.5 percent of the award/amendment amount.

§ 208.25 Purchase and maintenance of items not listed on Equipment Cache List.

(a) Requests for purchase or maintenance of equipment and supplies not appearing on the Equipment Cache List, or that exceed the number specified in the Equipment Cache List, must be made in writing to the Program Manager. No Federal funds provided under any Preparedness Cooperative Agreement may be expended to purchase or maintain any equipment or supply item unless:

(1) The equipment and supplies directly support the Sponsoring Organization's US&R capability;

(2) The Program Manager approves the expenditure and gives written notice of his or her approval to the Sponsoring Organization before the Sponsoring Organization purchases the equipment or supply item.

(b) Maintenance of items approved for purchase under this section is eligible for reimbursement, except as provided in §208.26 of this subpart.

§ 208.26 Obsolete equipment.

(a) The Administrator will periodically identify obsolete items on the Equipment Cache List and provide such information to Sponsoring Organizations.

(b) Neither funds that we provide nor matching funds required under a Preparedness Cooperative Agreement may be used to maintain or repair items that FEMA has identified as obsolete.

§ 208.27 Accountability for use of funds.

The Sponsoring Organization is accountable for the use of funds as provided under the Preparedness Cooperative Agreement.

§§ 208.28—208.30 [Reserved]

SUBPART C—RESPONSE COOPERATIVE AGREEMENTS

§ 208.31 Purpose.

Subpart C provides guidance on the administration of Response Cooperative Agreements.

§ 208.32 Definitions of terms used in this subpart.

Affiliated Personnel means individuals not normally employed by a Sponsoring Organization or

Participating Agency and individuals normally affiliated with a Sponsoring Organization or Participating Agency as volunteers.

Demobilization Order means a FEMA communication that terminates an Alert or Activation and identifies cost and time allowances for rehabilitation.

Exempt means any System Member who is exempt from 29 U.S.C. 201 *et seq.* pertaining to overtime compensation and other labor standards.

Maximum Pay Rate Table means the FEMA-issued list that identifies the maximum pay rates for selected System positions, and whether that position is compensated on an hourly or daily basis, that may be used for reimbursement of Affiliated Personnel compensation. The Maximum Pay Rate Table does not apply to System members whom a Sponsoring Organization or Participating Agency employ.

Mobilization means the process of assembling equipment and personnel in response to an Alert or Activation.

Non-Exempt means any System Member who is covered by 29 U.S.C. 201 *et seq.*

Rehabilitation means the process of returning personnel and equipment to a pre-incident state of readiness after we terminate an Activation.

§ 208.33 Allowable costs.

(a) *Cost neutrality.* Our policy is that an Alert or Activation should be cost neutral to Sponsoring Organizations and Participating Agencies. To make an Alert or Activation cost-neutral, we will reimburse under this subpart all reasonable, allowable, necessary and allocable costs that a Sponsoring Organization or Participating Agency incurs during the Alert or Activation.

(b) *Actual costs.* Notwithstanding any other provision of this chapter, we will not reimburse a Sponsoring Organization or Participating Agency for any costs greater than those that the Sponsoring Organization or Participating Agency actually incurred during an Alert, Activation or Rehabilitation.

(c) *Normal or predetermined practices.* Consistent with OMB Circulars A–87 and A–102, Sponsoring Organizations and Participating Agencies must adhere to their own normal and predetermined practices and policies of general application when requesting reimbursement from us except as we set out in this subpart.

(d) *Indirect costs not allowed.* Except for costs included in the administrative and management costs allowance established by §208.41, indirect costs are not allowable.

§ 208.34 Agreements between Sponsoring Organizations and others.

Sponsoring Organizations are responsible for executing such agreements with Participating Agencies and Affiliated Personnel as may be necessary to implement the Sponsoring Organization's Response Cooperative Agreement with us. Those agreements must identify established hourly or daily rates of pay of System Members. The hourly or daily rates of pay for Affiliated Personnel must be in accordance with, and must not exceed the maximum pay rates contained in the then-current Maximum Pay Rate Table.

§ 208.35 Reimbursement for Advisory.

We will not reimburse costs incurred during an Advisory.

§ 208.36 Reimbursement for Alert.

(a) *Allowable costs.* We will reimburse costs incurred during an Alert, up to the dollar limit specified in the Alert Order, for the following activities:

(1) Personnel costs, including backfill, incurred to prepare for Activation.

(2) Transportation costs relating to hiring, leasing, or renting vehicles and drivers.

(3) The administrative allowance provided in §208.41.

(4) Food and beverages for Task Force Members and Support Specialists when we do not provide meals during the Alert. We will limit food and beverage reimbursement to the amount of the then-current Federal meals daily allowance published in the **Federal Register** for the locality where such food and beverages were provided, multiplied by the number of personnel who received them.

(b) *Calculation of Alert Order dollar limit.* The Alert Order dollar limit will equal:

(1) An allowance of 10 percent of the Task Force's Daily Cost Estimate; and

(2) A supplemental allowance of 1 percent of the Task Force's Daily Cost Estimate for each 24-hour period beyond the first 72 hours of Alert.

(c) *Non-allowable costs.* We will not reimburse costs incurred or relating to the leasing, hiring or chartering of aircraft or the purchase of any equipment, aircraft, or vehicles.

§ 208.37 Reimbursement for equipment and supply costs incurred during Activation.

(a) *Allowable costs.* We will reimburse costs incurred for the emergency procurement of equipment and supplies in the number, type, and up to the cost specified in the current approved Equipment Cache List, and up to the aggregate dollar limit specified in the Activation Order. The Administrator may determine emergency procurement dollar limits, taking into account previous Activation history, available funding, the extent and nature of the incident, and the current state of Task Force readiness.

(b) *Non-Allowable costs.* We will not reimburse costs incurred for items that are not listed on the Equipment Cache List; for items purchased greater than the cost or quantity identified in the Equipment Cache List; or for any purchase of non-expendable items that duplicate a previous purchase under a Preparedness or Response Cooperative Agreement.

§ 208.38 Reimbursement for re-supply and logistics costs incurred during Activation.

With the exception of emergency procurement authorized in the Activation Order, and replacement of consumable items provided for in §208.43(a)(2) of this subpart, we will not reimburse costs incurred for re-supply and logistical support during Activation. Re-supply and logistical support of Task Forces needed during Activation are the responsibility of the Incident Support Team.

§ 208.39 Reimbursement for personnel costs incurred during Activation.

(a) *Compensation.* We will reimburse the Sponsoring Organization for costs incurred for the compensation of each Activated System Member during Activation. Reimbursement of compensation costs for Activated Support Specialists will be limited to periods of time during which they were actively supporting the Activation or traveling to or from locations at which they were actively supporting the Activation. The provisions of §208.40 of this part govern costs incurred for providing fringe benefits to System Members.

(b) *Public Safety Exemption not applicable.* We will reimburse Sponsoring Organizations for costs incurred by Non-Exempt System Members in accordance with 29 U.S.C. 207(a) of the Fair Labor Standards Act, without regard to the public safety exemption contained in 29 U.S.C. 207(k). In other words, we will reimburse Sponsoring Organizations on an overtime basis for any hours worked by Non-Exempt System Members greater than 40 hours during a regular work week.

(c) *Tour of duty.* The tour of duty for all Activated System Members will be 24 hours. We will reimburse the Sponsoring Organization for salary and overtime costs incurred in compensating System Members for meal periods and regularly-scheduled sleep periods during Activation. Activated System Members are considered "on-duty" and must be available for immediate response at all times during Activation.

(d) *Regular Rate.* The regular rate for purposes of calculating allowable salary and overtime costs is the amount determined in accordance with §208.39(e)(1) through (3) of this subpart.

(e) *Procedures for calculating compensation during Activation.* A Sponsoring Organization or Participating Agency must:

(1) Convert the base hourly wage of any Non-Exempt System Member regularly paid under 29 U.S.C. 207(k) to its equivalent for a 40-hour work week;

(2) Convert the annual salary of any salaried Non-Exempt System Member to its hourly equivalent for a 40-hour work week;

(3) Calculate the daily compensation of Exempt System Members based on their current annual salary, exclusive of fringe benefits;

(4) Calculate the total number of hours worked by each System Member to be included in the Sponsoring Organization's request for reimbursement; and

(5) Submit a request for reimbursement under § 208.52 of this part according to the following table:

If the sponsoring organization or participating agency—	And the sponsoring organization or participating agency—	Then the following compensation costs are allowable—
(i) Customarily and usually compensates Exempt System Members by paying a salary, but not overtime.	Does not customarily and usually grant compensatory time or other form of overtime substitute to Exempt System members.	The daily compensation equivalent calculated under § 208.39(e)(3) for each Activated Exempt System Member for each full or partial day during Activation.
(ii) Customarily and usually compensates Exempt System Members by paying a salary but not overtime,.	Customarily and usually awards compensatory time or other overtime substitute for Exempt System Members for hours worked above a predetermined hours threshold (for example, the Sponsoring Organization customarily and usually grants compensatory time for all hours worked above 60 in a given week).	The daily compensation equivalent calculated under § 208.39(e)(3) for each Activated Exempt System Member for each full or partial day during Activation AND the dollar value at the time of accrual of the compensatory time or other overtime substitute for each Activated Exempt System Member based on the duration of the Activation.
(iii) Customarily and usually compensate Exempt System Members by paying a salary and overtime.	Customarily and usually calculates overtime for Exempt System Members by paying a predetermined overtime payment for each hour worked above a predetermined hours threshold.	The daily compensation equivalent calculated under § 208.39(e)(3) for each Activated Exempt System Member for each full or partial day during Activation AND the predetermined overtime payment for each hour during the Activation above the previously determined hours threshold for each Activated Exempt System Member
(iv) Customarily and usually compensates Non-Exempt System Members by paying overtime after 40 hours per week.	Does not customarily and usually grant compensatory time or other form of overtime substitute to Non-Exempt System members,.	For each seven-day period during the Activation, the hourly wage equivalent of each Activated Non-Exempt System Member for every hour over 40.
(v) Customarily and usually compensates Non-Exempt System Members according to a compensation plan established under 29 U.S.C. 207(k).	Does not customarily and usually grant compensatory time or other form of overtime substitute to Non Exempt System Members,.	For each seven-day period during the Activation, the hourly wage equivalent of each Activated Non-Exempt System Member calculated under § 208.39(e)(1) for the first 40 hours AND the overtime payment equivalent for each Activated Non-Exempt System Member calculated under § 208.39(e)(1) for every hour over 40.
(vi) Activates Affiliated Personnel, who are customarily and usually paid an hourly wage according to the Maximum Pay Rate Table.	.....	For each seven-day period during the Activation, the hourly wage for each Activated Affiliated Personnel for the first 40 hours and one and one-half times the hourly wage for each Activated Affiliated Personnel for every hour over 40.
(vii) Activates Affiliated Personnel who are customarily and usually paid a daily compensation rate according to the Maximum Pay Rate Table.	.....	The daily compensation rate for each Activated Affiliated Personnel for each full or partial day during the Activation.

(f) *Reimbursement of additional salary and overtime costs.* We will reimburse any identified additional salary and overtime cost incurred by a Sponsoring Organization as a result of the temporary conversion of a Non-Exempt System Member normally compensated under 29 U.S.C. 207(k) to a 40-hour work week under 29 U.S.C. 207(a).

(g) *Reimbursement for backfill costs upon Activation.* We will reimburse the cost to backfill System Members. Backfill costs consist of the expenses generated by filling the position in which the Activated System Member should have been working. These costs are calculated by subtracting the non-overtime compensation, including fringe benefits, of Activated System Members from the total costs (non-overtime and overtime compensation, including fringe benefits) paid to backfill the Activated System Members. Backfill reimbursement is available only for those positions that are normally backfilled by the Sponsoring Organization or Participating Agency during Activation. Employees exempt under the Fair Labor Standards Act (FLSA) not normally backfilled by the Sponsoring Organization or

Participating Agency are not eligible for backfill during Activation.

§ 208.40 Reimbursement of fringe benefit costs during Activation.

(a) Except as specified in paragraph (c) of this section, we will reimburse the Sponsoring Organization for fringe benefit costs incurred during Activation according to the following table:

If the sponsoring organization or participating agency—	Then the sponsoring organization or participating agency must	Example
(1) Incurs a fringe benefit cost based on the number of base hours worked by a System Member,	Bill us for a pro-rata share of the premium based on the number of base hours workedhours worked during Activation.	The City Fire Department incurs a premium of 3 percent for dental coverage based on the number of base hours worked in a week (53 hours). The City should bill us an additional 3 percent of the firefighter's converted compensation for the first 40 hours during worked per week during Activation.
(2) Incurs a fringe benefit cost based on the number of hours each System Member actually worked (base hours and overtime),	Bill us for a pro-rata share of the premium based on the number of hours each System Member worked during Activation	The City Fire Department pays a premium of 12 percent for retirement based on the number of hours worked by a firefighter. The City should bill us an additional 12 percent of the firefighter's total compensation during Activation.
(3) Incurs a fringe benefit cost on a yearly basis based on the number of people employed full-time during the year,	Bill us for a pro-rata share of those fringe benefit costs based on the number of non-overtime hours worked during Activation by System Members employed full time	The City Fire Department pays workers compensation premiums into the City risk fund for the following year, based on the number of full-time firefighters employed during the current year. The City should bill us for workers compensation premium costs by multiplying the hourly fringe benefit rate or amount by the number of non-overtime hours worked during Activation by full time firefighters who are System Members.

(b) *Differential pay.* We will reimburse the Sponsoring Organization for direct costs incurred because of any separate differential compensation paid for work performed during an Activation including, but not limited to, differentials paid for holidays, night work, hazardous duty, or other paid fringe benefits, provided such differentials are not otherwise reimbursed under paragraph (a) of this section. A detailed explanation of the differential payment for which the Sponsoring Organization seeks reimbursement must accompany any request for reimbursement under this section together with identification of every fringe benefit sought under paragraph (a) of this section and the method used to calculate each such payment and the reimbursement sought from us.

(c) We will not reimburse the Sponsoring Organization for fringe benefit costs for Affiliated Personnel.

§ 208.41 Administrative allowance.

(a) The administrative allowance is intended to defray costs of the following activities, to the extent provided in paragraph (b) of this section:

(1) Collecting expenditure information from Sponsoring Organizations and Participating Agencies;

(2) Compiling and summarizing cost records and reimbursement claims;

(3) Duplicating cost records and reimbursement claims; and

(4) Submitting reimbursement claims, including mailing, transmittal, and related costs.

(b) The administrative allowance will be equal to the following:

(1) If total allowable costs are less than $100,000, 3 percent of total allowable costs included in the reimbursement claim;

(2) If total allowable costs are $100,000 or more but less than $1,000,000, $3,000 plus 2 percent of costs included in the reimbursement claim greater than $100,000;

(3) If total allowable costs are $1,000,000 or more, $21,000 plus 1 percent of costs included in the reimbursement claim greater than $1,000,000.

§ 208.42 Reimbursement for other administrative costs.

Costs incurred for conducting after-action meetings and preparing after-action reports must be billed as direct costs in accordance with our administrative policy.

§ 208.43 Rehabilitation.

We will reimburse costs incurred to return System equipment and personnel to a state of readiness following Activation as provided in this section.

(a) *Costs for Equipment Cache List items.* (1) *Non-consumable items.* We will reimburse costs incurred to repair or replace any non-consumable item on the Equipment Cache List that was lost, damaged, destroyed, or donated at our direction to another entity, during Activation. For each such item, the Sponsoring Organization must document, in writing, the circumstances of the loss, damage, destruction, or donation.

(2) *Consumable items.* We will reimburse costs incurred to replace any consumable item on the Equipment Cache List that was consumed during Activation.

(3) *Personnel costs associated with equipment cache rehabilitation.* We will reimburse costs incurred for the compensation, including benefits, payable for actual time worked by each person engaged in rehabilitating the equipment cache following Activation, in accordance with the standard pay policy of the Sponsoring Organization or Participating Agency and without regard to the provisions of § 208.39(e)(1) of this subpart, up to the number of hours specified in the Demobilization Order. Fringe benefits are reimbursed under the provisions of § 208.40.

(b) *Costs for personnel rehabilitation.* We will reimburse costs incurred for the compensation, including benefits and backfill, of each Activated System Member regularly scheduled to work during the rehabilitation period specified in the Demobilization Order, in accordance with the standard pay policy of the Sponsoring Organization or Participating Agency and without regard to the provisions of § 208.39(e)(1) of this subpart.

(c) *Other allowable costs.* (1) *Local transportation.* We will reimburse costs incurred for transporting Task Force Members from the point of assembly to the point of departure and from the point of return to the location where they are released from duty. We will also reimburse transportation costs incurred for assembling and moving the equipment cache from its usual place(s) of storage to the point of departure, and from the point of return to its usual place(s) of storage. Such reimbursement will include costs to return the means of transportation to its point of origin.

(2) *Ground transportation.* When we have ordered a Sponsoring Organization to move its Task Force Members and equipment cache by ground transportation, we will reimburse costs incurred for such transportation, including but not limited to charges for contract carriers, rented vehicles, contract vehicle operators, fleet vehicles, fuel and associated transportation expenses. The Administrator shall have authority to issue schedules of maximum hourly or per mile reimbursement rates for fleet and contract vehicles.

(3) *Food and beverages.* We will reimburse expenditures for food and beverages for Activated Task Force Members and Support Specialists when meals are not provided by the Federal government during Activation. Reimbursement of food and beverage costs for Activated Support Specialists will be limited to periods of time during which they were actively supporting the Activation or traveling to or from locations at which they were actively supporting the Activation. Food and beverage reimbursement will be limited to the amount of the then-current Federal meals and incidental expenses daily allowance published in the Federal Register for the locality where such food and beverages were provided, multiplied by the number of personnel who received the same.

§ 208.44 Reimbursement for other costs.

(a) Except as allowed under paragraph (b) of this section, we will not reimburse other costs incurred preceding, during or upon the conclusion of an Activation unless, before making the expenditure, the Sponsoring Organization has requested, in writing, permission for a specific expenditure and has received written permission from the Program Manager to make such expenditure.

(b) At the discretion of the Program Manager, a request for approval of costs presented after the costs were incurred must be in writing and establish that:

(1) The expenditure was essential to the Activation and was reasonable;

(2) Advance written approval by the Program Manager was not feasible; and

(3) Advance verbal approval by the Program Manager had been requested and was given.

§ 208.45 Advance of funds.

At the time of Activation of a Task Force, the Task Force will develop the documentation necessary to request an advance of funds be paid to such Task Force's Sponsoring Organization. Upon approval, we will submit the documentation to the Assistance Officer and will request an advance of funds equal to 75 percent of the estimated personnel costs for the Activation. The estimated personnel costs will include the salaries, benefits, and backfill costs for Task Force Members and an estimate of the salaries, benefits and backfill costs required for equipment cache rehabilitation. The advance of funds will not include any costs for equipment purchase.

§§ 208.46–208.50 [Reserved]

Subpart D—Reimbursement Claims and Appeals

§ 208.51 General.

(a) *Purpose.* This subpart identifies the procedures that Sponsoring Organizations must use to request reimbursement from us for costs incurred under Response Cooperative Agreements.

(b) *Policy.* It is our policy to reimburse Sponsoring Organizations as expeditiously as possible consistent with Federal laws and regulations.

§ 208.52 Reimbursement procedures.

(a) *General.* A Sponsoring Organization must present a claim for reimbursement to us in such manner as specified by the Administrator.

(b) *Time for submission.* (1) Claims for reimbursement must be submitted within 90 days after the end of the Personnel Rehabilitation Period specified in the Demobilization Order.

(2) The Administrator may extend and specify the time limitation in paragraph (b)(1) of this section when the Sponsoring Organization justifies and requests the extension in writing.

§ 208.53–208.59 [Reserved]

§ 208.60 Determination of claims.

When we receive a reviewable claim for reimbursement, we will review the claim to determine whether and to what extent reimbursement is allowable. Except as provided in § 208.63, we will complete our review and give written notice to the Sponsoring Organization of our determination within 90 days after the date we receive the claim. If we determine that any item of cost is not eligible for reimbursement, our notice of determination will specify the grounds on which we disallowed reimbursement.

§ 208.61 Payment of claims.

We will reimburse all allowable costs for which a Sponsoring Organization requests reimbursement within 30 days after we determine that reimbursement is allowable, in whole or in part, at any stage of the reimbursement and appeal processes identified in this subpart.

§ 208.62 Appeals

(a) *Initial appeal.* The Sponsoring Organization may appeal to the Program Manager any determination made under § 208.60 to disallow reimbursement of an item of cost:

(1) The appeal must be in writing and submitted within 60 days after receipt of our written notice of disallowance under § 208.60 of this part.

(2) The appeal must contain legal and factual justification for the Sponsoring Organization's contention that the cost is allowable.

(3) Within 90 days after we receive an appeal, the Program Manager will review the information submitted, make such additional investigations as necessary, make a determination on the appeal, and submit written notice of the determination of the appeal to the Sponsoring Organization.

(b) *Final appeal.* (1) If the Program Manager denies the initial appeal, in whole or in part, the Sponsoring Organization may submit a final appeal to the Deputy Administrator. The appeal must be made in writing and must be submitted not later than 60 days after receipt of written notice of our determination of the initial appeal.

(2) Within 90 days following the receipt of a final appeal, the Deputy Administrator will render a determination and notify the Sponsoring Organization, in writing, of the final disposition of the appeal.

(c) *Failure to file timely appeal.* If the Sponsoring Organization does not file an appeal within the time periods specified in this section, we will deem that the Sponsoring Organization has waived its right to appeal any decision that could have been the subject of an appeal.

§ 208.63 Request by us for supplemental information

(a) At any stage of the reimbursement and appeal processes identified in this subpart, we may request the Sponsoring Organization to provide supplemental information that we consider necessary to determine either a claim for reimbursement or an appeal. The

Sponsoring Organization must exercise its best efforts to provide the supplemental information and must submit to us a written response that includes such supplemental information as the Sponsoring Organization is able to provide within 30 days after receiving our request.

(b) If we make a request for supplemental information at any stage of the reimbursement and appeal processes, the applicable time within which our determination of the claim or appeal is to be made will be extended by 30 days. However, without the consent of the Sponsoring Organization, no more than one such time extension will be allowed for any stage of the reimbursement and appeal processes.

§ 208.64 Administrative and audit requirements.

(a) *Nonfederal audit.* For Sponsoring Organizations and states, requirements for nonfederal audit are contained in 44 CFR 13.26.

(b) *Federal audit.* FEMA or the General Accounting Office may elect to conduct a Federal audit of any payment made to a Sponsoring Organization or State.

§ 208.65 Mode of transmission.

When sending all submissions, determinations, and requests for supplemental information under this subpart, all parties must use a means of delivery that permits both the sender and addressee to verify the dates of delivery.

§ 208.66 Reopening of claims for retrospective or retroactive adjustment of costs.

(a) Upon written request by the Sponsoring Organization we will reopen the time period for submission of a request for reimbursement after the Sponsoring Organization has submitted its request for reimbursement, if:

(1) The salary or wage rate applicable to the period of an Activation is retroactively changed due to the execution of a collective bargaining agreement, or due to the adoption of a generally applicable State or local law, ordinance or wage order or a cost-of-living adjustment;

(2) The Sponsoring Organization or any Participating Agency incurs an additional cost because of a legally-binding determination; or

(3) The Deputy Administrator determines that other extenuating circumstances existed that prevented the Sponsoring Organization from including the adjustment of costs in its original submission.

(b) The Sponsoring Organization must notify us as early as practicable that it anticipates such a request.

§§ 208.67–208.70 [Reserved]

Dated: December 11, 2002.

Joe M. Allbaugh,

Director.

[FR Doc. 02–31658 Filed 12–17–02; 8:45 am]

BILLING CODE 6718–06–P

Federal Register

Wednesday,
December 18, 2002

Part VI

Department of Justice

Immigration and Naturalization Service

Registration of Certain Nonimmigrant Aliens From Designated Countries; Notice

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[AG Order No. 2638–2002]

Registration of Certain Nonimmigrant Aliens from Designated Countries

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This Notice requires certain nonimmigrant aliens to appear before, register with, and provide requested information to the Immigration and Naturalization Service on or before February 21, 2003. It applies to certain nonimmigrant aliens from one of the countries designated in this Notice who were last admitted to the United States on or before September 30, 2002, and who will remain in the United States after February 21, 2003. The specific requirements are set forth in the Notice. This Notice is applicable to certain nationals and citizens of Pakistan and Saudi Arabia who entered the United States on or before September 30, 2002, and who will remain in the United States after February 21, 2003. Aliens described in this Notice are required to register and provide additional information to the Immigration and Naturalization Service between January 13, 2003, and February 21, 2003, inclusive. This Notice also rescinds an earlier Notice, Attorney General Order No. 2636–2002 of December 12, 2002, which appeared in the **Federal Register** on December 16, 2002 (67 FR 77136), and incorrectly listed Armenia as a designated country.

EFFECTIVE DATES: This Notice is effective on January 13, 2003. Aliens described in this Notice are required to register and provide additional information to the Immigration and Naturalization Service on or before February 21, 2003.

FOR FURTHER INFORMATION CONTACT: Dan Brown, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Room 6100, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION: Section 265(b) of the Immigration and Nationality Act ("Act"), as amended, 8 U.S.C. 1305(b), provides that

> [t]he Attorney General may in his discretion, upon ten days notice, require the natives of any one or more foreign states, or any class or group thereof, who are within the United States and who are required to be registered under this subchapter, to notify the Attorney General of their current addresses and furnish such additional information as the Attorney General may require.

Additionally, section 263(a) of the Act, 8 U.S.C. 1303(a), provides that the Attorney General may "prescribe special regulations and forms for the registration and fingerprinting of * * * aliens of any other class not lawfully admitted to the United States for permanent residence."

The Attorney General has previously exercised his authority under these and other provisions of the Act to establish special registration procedures under 8 CFR 264.1(f). 67 FR 52584 (Aug. 12, 2002). These requirements are known as the National Security Entry—Exit Registration System ("NSEERS"). In accordance with the authority set forth in 8 CFR 264.1(f)(4), the Attorney General has determined that certain nonimmigrant aliens specified in this Notice shall be registered and required to provide specific information. The Attorney General has the sole discretion to make this determination. Under this Notice certain nonimmigrant nationals or citizens of Pakistan and Saudi Arabia are required to appear at an Immigration and Naturalization Service ("Service") office to register under NSEERS and provide additional information. Previous Notices have applied to certain nonimmigrant nationals or citizens of Afghanistan, Algeria, Bahrain, Eritrea, Iran, Iraq, Lebanon, Libya, Morocco, North Korea, Oman, Qatar, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen. *See* 67 FR 67766 (Nov. 6, 2002); 67 FR 70526 (Nov. 22, 2002).

In light of recent events, and based on intelligence information available to the Attorney General, the Attorney General has determined that the aliens described in paragraph (a) of this Notice must appear before the Service and provide certain information. This Notice applies only to certain nonimmigrant aliens from one of the countries designated in this Notice who were last admitted to the United States on or before September 30, 2002, and who will remain after February 21, 2003. Based on intelligence information available to the Attorney General, the Attorney General has determined that registering all nonimmigrant aliens from the covered countries would not enhance national security. Moreover, the Attorney General has determined that it would not be administratively feasible at the present time to register all of the nonimmigrants from the specific countries covered by this Notice, and that the delay occasioned by registering all nonimmigrants from the countries covered by this Notice would jeopardize the national security. Accordingly, the Attorney General has determined that only males aged 16 years or older need to be registered at this time. Furthermore, the Attorney General has determined that an alien who has an application for asylum pending on the date of publication of this Notice has already provided sufficient information in the application for asylum, along with fingerprints, to warrant exclusion from this Notice.

Although section 265(b) of the Act, 8 U.S.C. 1305(b), provides a minimum period of 10 days notice for covered aliens to provide their current address and other required information, this Notice allows an alien described by the Notice a period of more than 30 days to register. The Attorney General has determined that such additional time to register is in the best interests of the United States and has extended this time to register solely as a matter of discretion.

Finally, until further notice, once enrolled within NSEERS by registration under this Notice, an alien described in paragraph (a) of this Notice is required to register annually with the Service. All aliens described in paragraph (a) shall comply with all other provisions of 8 CFR 264.1(f)(5) through (f)(9).

A willful failure to comply with the requirements of this Notice constitutes a failure to maintain nonimmigrant status under section 237(a)(1)(C)(i) of the Act, 8 U.S.C. 1227(a)(1)(C)(i). *See* 8 CFR 214.1(f). Pursuant to section 237(a)(3)(A) of the Act, 8 U.S.C. 1227(a)(3)(A), an alien who fails to comply with the provisions of this Notice is deportable, unless the alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful. Finally, if an alien subject to this Notice fails, without good cause, to comply with the requirement in 8 CFR 264.1(f)(8) that the alien must report to an inspecting officer of the Service when departing the United States, the alien shall thereafter be presumed to be inadmissible under, but not limited to, section 212(a)(3)(A)(ii) of the Act, 8 U.S.C. 1182(a)(3)(A)(ii). *See* 8 CFR 264.1(f)(8).

Notice of Requirements for Registration of Certain Nonimmigrant Aliens From Designated Countries

Pursuant to sections 261 through 266 of the Immigration and Nationality Act ("Act"), as amended, 8 U.S.C. 1302 through 1306, and particularly sections 263(a) and 265(b) of the Act, 8 U.S.C. 1303(a) and 8 U.S.C. 1305(b), and 8 CFR 264.1(f), I hereby order as follows:

(a) **Scope.** Except as provided in paragraph (g), an alien is required to register pursuant to this Notice if the alien:

(1) Is a male who was born on or before January 13, 1987;

(2) Is a national or citizen of Pakistan or Saudi Arabia, who was inspected by the Immigration and Naturalization Service and was last admitted to the United States as a nonimmigrant on or before September 30, 2002; and

(3) Will remain in the United States after February 21, 2003.

(b) **Dual citizens.** This Notice is applicable to any alien who is a national or citizen of a designated country, notwithstanding any dual nationality or citizenship.

(c) **Requirement to appear before an immigration officer.** All aliens described in paragraph (a) shall, between January 13, 2003, and February 21, 2003, inclusive, appear before an immigration officer at any of the locations listed in the appendix to this Notice.

(d) **Information to be provided.** All aliens described in paragraph (a) shall:

(1) Answer questions under oath before an immigration officer, which answers shall be recorded by the immigration officer;

(2) Present to such immigration officer:

(i) The alien's travel documents, including passport and the Form I–94 issued upon admission, and any other forms of government-issued identification;

(ii) Proof of residence, such as, but not limited to, title to land or a lease or a rental agreement, and, if applicable, proof of matriculation at an educational institution, and, if applicable, proof of employment; and

(iii) Such other information as is requested by the immigration officer; and

(3) Shall be fingerprinted and photographed by the immigration officer.

(e) *Annual reporting obligations.* All aliens described in paragraph (a) shall appear, within 10 days of each anniversary of the date on which they were registered under this Notice, before an immigration officer at any of the locations listed in the appendix to this Notice and answer questions under oath. All aliens described in paragraph (a) shall comply with all other provisions of 8 CFR 264.1(f)(5)–(9).

(f) *Notice of Change of Address.* All aliens described in paragraph (a) shall advise the Immigration and Naturalization Service, through the filing of Form AR–11, of any change of address within 10 days of such change of address. If an alien fails to notify the Immigration and Naturalization Service in writing of a change of address and the new address, as required by section 265(a) of the Act, 8 U.S.C. 1305(a), the alien may be subject to prosecution under section 266(b) of the Act, 8 U.S.C. 1306(b), and may be deportable as provided in section 237(a)(3)(A) of the Act, 8 U.S.C. 1227(a)(3)(A). If it becomes necessary to place the alien in removal proceedings, the Immigration and Naturalization Service may use the most recent address provided by the alien for service of the Notice to Appear.

(g) *Inapplicability.* The requirements of this Notice do not apply to any alien who:

(1) Is presently in a nonimmigrant classification under section 101(a)(15)(A) or 101(a)(15)(G) of the Act, 8 U.S.C. 1101(a)(15)(A) or 8 U.S.C. 1101(a)(15)(G);

(2) Is lawfully admitted to the United States for permanent residence; or

(3) Has an application for asylum pending on December 18, 2002, or has been granted asylum, under section 208 of the Act, 8 U.S.C. 1158.

(h) *Rescission.* Attorney General Order No. 2636–2002 of December 12, 2002, is rescinded.

Dated: December 16, 2002.

John Ashcroft,

Attorney General.

Appendix: Immigration and Naturalization Service Offices for Registration of Certain Nonimmigrants Pursuant to Notice of December 18, 2002

ALASKA—Anchorage, 620 East 10th Avenue, Anchorage, Alaska 99501
ARIZONA—Phoenix 2035 North Central Avenue, Phoenix, Arizona 85004
ARIZONA—Tucson 6431 South Country Club Road, Tucson, Arizona 85706–5907
ARKANSAS—Fort Smith 4991 Old Greenwood Road, Fort Smith, Arkansas 72903
CALIFORNIA—Fresno 865 Fulton Mall, Fresno, California 93721
CALIFORNIA—Los Angeles, 300 North Los Angeles Street, Room 2024, Los Angeles, California 90012
CALIFORNIA—Sacramento, 650 Capitol Mall, Sacramento, CA 95814
CALIFORNIA—San Bernardino 655 West Rialto Avenue, San Bernardino, California 92410
CALIFORNIA—San Diego, 880 Front Street, Suite 1209 San Diego, California 92101
CALIFORNIA—San Francisco, 444 Washington Street, San Francisco, California 94111
CALIFORNIA—San Jose, 1887 Monterey Road, San Jose, California 95112
CALIFORNIA—Santa Ana, 34 Civic Center Plaza, Santa Ana, California 92701
COLORADO—Denver, 4730 Paris Street, Denver, CO 80239
CONNECTICUT—Hartford, 450 Main Street, 4th Floor, Hartford, Connecticut 06103
FLORIDA—Jacksonville, 4121 Southpoint Boulevard, Jacksonville, Florida 32216
FLORIDA—Miami, 7880 Biscayne Boulevard, Miami, Florida 33138
FLORIDA—Orlando, 9403 Tradeport Drive, Orlando, Florida 32827
FLORIDA—Tampa, 5524 West Cypress Street, Tampa, Florida 33607–1708
FLORIDA—West Palm Beach, 326 Fern Street, Riviera Beach, Florida 33401
GEORGIA—Atlanta, 77 Forsyth Street, SW, Atlanta, Georgia 30303
GUAM—Agana, Sirena Plaza, Suite 100, 108 Hernan Cortez Avenue, Hagatna, Guam 96910
HAWAII—Honolulu, 595 Ala Moana Boulevard, Honolulu, Hawaii 96813
IDAHO—Boise, 1185 South Vinnell Way, Boise, Idaho 83709
ILLINOIS—Chicago, 230 South Dearborn, 2nd Floor, Chicago, Illinois 60604
INDIANA—Indianapolis, 950 N. Meridian Street, Room 400, Indianapolis, Indiana 46204
IOWA—Des Moines, 210 Walnut Street, Room 369, Des Moines, Iowa 50309
KANSAS—Wichita, 271 West 3rd Street North, Suite 1050, Wichita, Kansas 67202–1212
KENTUCKY—Louisville, 601 West Broadway, Room 390, Louisville, Kentucky 40202
LOUISIANA—New Orleans, 701 Loyola Avenue, New Orleans, Louisiana 70113
MAINE—Portland, 176 Gannet Drive, South Portland, Maine 04106
MARYLAND—Baltimore, 31 Hopkins Place, Baltimore, Maryland 21201
MASSACHUSETTS—Boston, Government Center, JFK Federal Building, Boston, Massachusetts 02203
MICHIGAN—Detroit, 333 Mount Elliot Street, Detroit, Michigan 48207–4381
MINNESOTA—Minneapolis, 2901 Metro Drive, Suite 100, Bloomington, Minnesota 55425
MISSOURI—Kansas City, 9747 Northwest Conant Avenue, Kansas City, Missouri 64153
MISSOURI—St. Louis, 1222 Spruce Street, St. Louis, Missouri 63103
MONTANA—Helena, 2800 Skyway Drive, Helena, Montana 59601
NEBRASKA—Omaha, 3736 South 132nd Street, Omaha, Nebraska 68144
NEVADA—Las Vegas, 3373 Pepper Lane, Las Vegas, NV 89120–2739
NEVADA—Reno, 1352 Corporate Boulevard, Reno, Nevada 85902
NEW HAMPSHIRE—Manchester, 803 Canal Street, Manchester, New Hampshire 03101
NEW JERSEY—Cherry Hill, 1886 Greentree Road, Cherry Hill, New Jersey 08003
NEW JERSEY—Newark 970, Broad Street, Newark, New Jersey 07102
NEW MEXICO—Albuquerque, 1720 Randolph Road SE, Albuquerque, New Mexico 87106
NEW YORK—Albany, 1086 Troy-Schenectady Road, Latham, New York 12110
NEW YORK—Buffalo, 130 Delaware Avenue, Buffalo, New York 14202
NEW YORK—New York City, 26 Federal Plaza New York, New York 10278
NORTH CAROLINA—Charlotte, 210 E. Woodlawn Road, Building 6, Suite 138, Charlotte, North Carolina 28217

OHIO—Cincinnati, 550 Main Street, Room 4001, Cincinnati, Ohio 45202
OHIO—Cleveland, 1240 East Ninth Street, Cleveland, Ohio 44199
OHIO—Columbus, 50 West Broad Street, Suite 304D, Columbus, Ohio 43215
OKLAHOMA—Oklahoma City, 4149 Highline Boulevard, Suite 300, Oklahoma City, Oklahoma 73108
OREGON—Portland, 511 Northwest Broadway, Portland, Oregon 97209
PENNSYLVANIA—Philadelphia, 1600 Callowhill Street, Philadelphia, Pennsylvania 19130
PENNSYLVANIA—Pittsburgh, 1000 Liberty Avenue, Room 214, Pittsburgh, Pennsylvania 15222
PUERTO RICO—San Juan, 7 Tabonuco Street, Guaynabo, Puerto Rico 00968
RHODE ISLAND—Providence, 200 Dyer Street, Providence, Rhode Island 02903
ST. CROIX—Christiansted, Sunny Isle Shopping Center, Christiansted, St. Croix, U.S. Virgin Islands 00820
ST. THOMAS—Charlotte Amalie, Nisky Center, Suite 1A, First Floor South, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00802
SOUTH CAROLINA—Charleston, 170 Meeting Street, Fifth Floor, Charleston, South Carolina 29401
SOUTH CAROLINA—Greer, 142–D West Philips Road, Greer, South Carolina 29650
TENNESSEE—Memphis, 1314 Sycamore View Road, Suite 100, Memphis, Tennessee 38134
TEXAS—Dallas, 8101 North Stemmons Freeway, Dallas, Texas 75247
TEXAS—El Paso, 1545 Hawkins Boulevard, El Paso, Texas 79925
TEXAS—Harlingen, 2102 Teege Avenue, Harlingen, Texas 78550–4667
TEXAS—Houston, 126 Northpoint Drive, Houston, Texas 77060
TEXAS—San Antonio, 8904 Fourwinds Drive, San Antonio, Texas 78239
UTAH—Salt Lake City, 5272 South College Drive, #100, Murray, Utah 84123
VERMONT—St. Albans, 64 Gricebrook Road, St. Albans, Vermont 05478
VIRGINIA—Norfolk, 5280 Henneman Drive, Norfolk, Virginia 23513
WASHINGTON, D.C., 4420 North Fairfax Drive, Arlington, Virginia 22203
WASHINGTON—Seattle, 815 Airport Way, South, Seattle, Washington 98134
WASHINGTON—Spokane, 920 W. Riverside Room 691, Spokane, Washington 99201
WASHINGTON—Yakima, 417 E. Chestnut, Yakima, Washington 98901
WEST VIRGINIA—Charleston, 210 Kanawha Boulevard West, Charleston, West Virginia 25302
WISCONSIN—Milwaukee, 310 East Knapp Street, Milwaukee, Wisconsin 53202

For further information relating to this notice and information about local office hours and locations, the public may call the National Customer Service Center at 1–800–375–5283 or (TTY) 1–800–767–1833, or visit the INS Web site at *http://www.ins.gov/*.

[FR Doc. 02–32045 Filed 12–17–02; 8:58 am]

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- Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway; snowmobile and snowplane use; limitations and prohibitions; published 11-18-02

JUSTICE DEPARTMENT
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Inmate control, custody, care, etc.:
- Incoming publications; nudity and sexually explicit material information; distribution to inmates; published 12-18-02
- Inmate discipline respecting violations of telephone and smoking policies; code number changes for agency tracking purposes only; published 12-18-02

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Internal Revenue Service
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- Levy restrictions during installment agreements; published 12-18-02
- Low-income taxpayer clinics; income tax return preparer; definition; published 12-18-02
- Third party contracts; published 12-18-02

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- California; comments due by 12-27-02; published 10-28-02 [FR 02-27305]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
- Exotic Newcastle disease; disease status change—
  - Campeche, Quintana Roo, and Yucatan, Mexico; comments due by 12-23-02; published 10-22-02 [FR 02-26811]

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Food and Nutrition Service
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- Child and Adult Care Program—
  - Strengthen program integrity; legislative reform implementation; comments due by 12-24-02; published 6-27-02 [FR 02-15776]

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Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Pacific halibut and sablefish; comments due by 12-27-02; published 10-29-02 [FR 02-27512]

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Acquisition regulations:
- Commercial items—
  - Transportation of supplies by sea; comments due by 12-24-02; published 10-25-02 [FR 02-27106]

Federal Acquisition Regulation (FAR):
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- Missouri; comments due by 12-23-02; published 11-22-02 [FR 02-29610]

Water pollution; effluent guidelines for point source categories:
- Construction and development; storm water discharges; comments due by 12-23-02; published 10-16-02 [FR 02-26302]

Water programs:
- Water quality standards—
  - Five Mile Creek, AL; designated use; comments due by 12-23-02; published 10-23-02 [FR 02-26845]

FARM CREDIT ADMINISTRATION
Farm credit system:
- Loan policies and operations—
  - Young, beginning, and small farmers and ranchers; comments due by 12-23-02; published 9-23-02 [FR 02-24031]

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  - 450-470 MHz frequency band; airport terminal use frequencies; comments due by 12-23-02; published 11-21-02 [FR 02-29437]

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  - FCC Database; comment request; comments due by 12-23-02; published 10-23-02 [FR 02-26483]

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  - Managed care modifications; comments due by 12-24-02; published 10-25-02 [FR 02-27142]

HEALTH AND HUMAN SERVICES DEPARTMENT
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  - Homeownership option; eligibility of public housing agency-owned or controlled units; comments due by 12-27-02; published 10-28-02 [FR 02-27310]

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- Critical habitat designations—
  - Bexar County, TX, karst-dwelling invertebrate species; comments due by 12-23-02; published 11-21-02 [FR 02-29620]
  - Vernal pool crustaceans and plants in California and Oregon; comments due by 12-23-02; published 11-21-02 [FR 02-29619]

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Federal Employees Liability Reform and Tort Compensation Act:
- Suits based on acts or omissions of Federal employees and other persons; certification and decertification; comments due by 12-23-02; published 10-22-02 [FR 02-26832]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

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H.R. 38/P.L. 107–332
Homestead National Monument of America Additions Act (Dec. 16, 2002; 116 Stat. 2871)

H.R. 308/P.L. 107–333
Guam War Claims Review Commission Act (Dec. 16, 2002; 116 Stat. 2873)

H.R. 451/P.L. 107–334
To make certain adjustments to the boundaries of the Mount Nebo Wilderness Area, and for other purposes. (Dec. 16, 2002; 116 Stat. 2876)

H.R. 706/P.L. 107–335
Lease Lot Conveyance Act of 2002 (Dec. 16, 2002; 116 Stat. 2878)

H.R. 1712/P.L. 107–336
To authorize the Secretary of the Interior to make adjustments to the boundary of the National Park of American Samoa to include certain portions of the islands of Ofu and Olosega within the park, and for other purposes. (Dec. 16, 2002; 116 Stat. 2882)

H.R. 1776/P.L. 107–337
Buffalo Bayou National Heritage Area Study Act (Dec. 16, 2002; 116 Stat. 2883)

H.R. 1814/P.L. 107–338
Metacomet-Monadnock-Mattabesett Trail Study Act of 2002 (Dec. 16, 2002; 116 Stat. 2886)

H.R. 1870/P.L. 107–339
Fallon Rail Freight Loading Facility Transfer Act (Dec. 16, 2002; 116 Stat. 2887)

H.R. 1906/P.L. 107–340
Pu'uhonua o Honaunau National Historical Park Addition Act of 2002 (Dec. 16, 2002; 116 Stat. 2889)

H.R. 1925/P.L. 107–341
To direct the Secretary of the Interior to study the suitability and feasibility of designating the Waco Mammoth Site Area in Waco, Texas, as a unit of the National Park System, and for other purposes. (Dec. 16, 2002; 116 Stat. 2890)

Last List December 17, 2002

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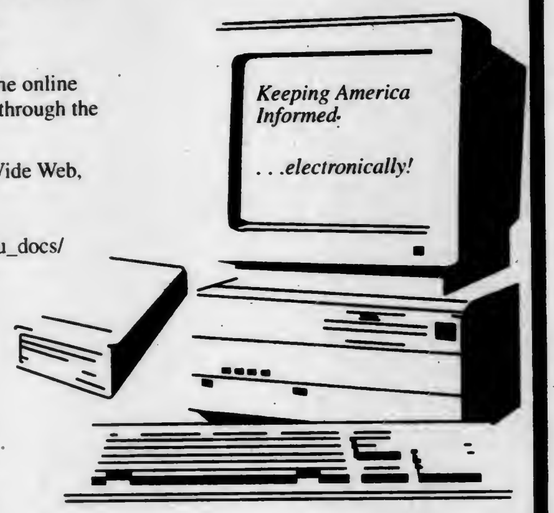
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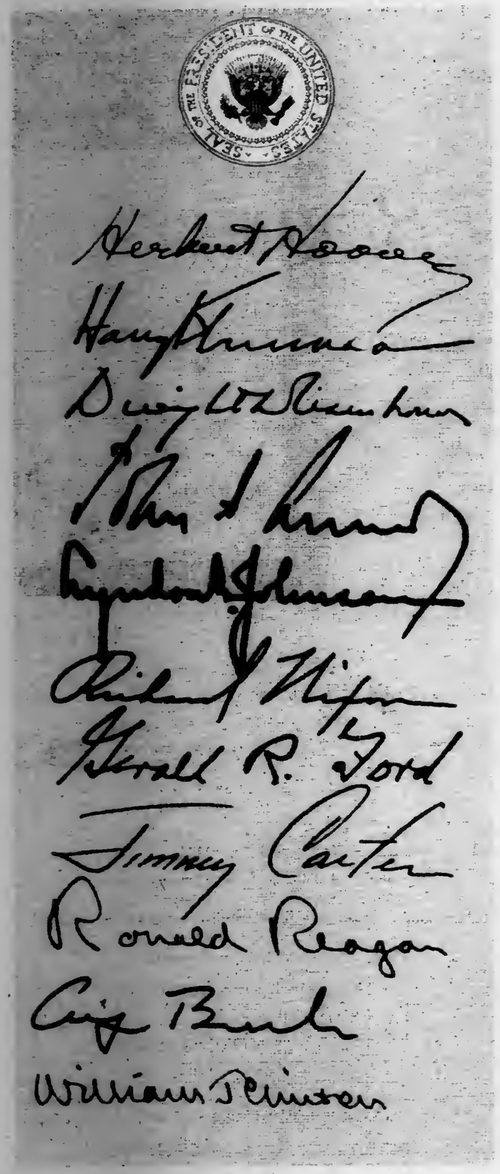
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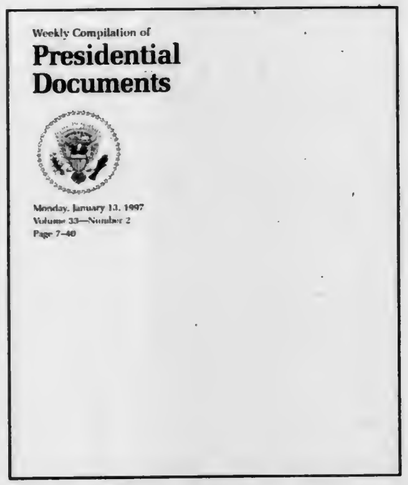
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